Exhibit 3

Deposition of Stephen Byrne
August 14, 2018

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State of South Carolina)In the Court of Common Pleas
)
County of Hampton) Case No: 2017-CP-25-355

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

Plaintiff(s),

vs.

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

Defendant(s).

Deposition

of

STEPHEN A. BYRNE

Deposition of STEPHEN A. BYRNE, taken before Heather R. Landry, CVR, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 9:00 a.m. and commencing at the hour of 9:10 a.m., Tuesday, August 14, 2018, at the office of Richardson, Patrick, Westbrook & Brickman, Mount Pleasant, South Carolina.

Reported by:

Heather R. Landry, CVR

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2 reporter, reproduce a Copy or portion thereof as an exhibit pursuant to court order or Rule or for internal
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4 consent of the reporter and/or reporting agency.

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25

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14

15

16

17

18 **REPORTER'S LEGEND:**

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

25

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1 STIPULATIONS

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

4 - - - - -

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

8 - - - - -

9 Whereupon,

10 **STEPHEN A. BYRNE**, being administered an oath
11 of affirmation or duly sworn and cautioned to
12 speak the truth, the whole truth, and nothing but
13 the truth, testified as follows:

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

16 **Witness: Stephen A. Byrne.**

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

- - - - -

EXAMINATION

BY MR. BELL:

Q Good morning, Mr. Byrne.

A Good morning.

Q Tell me what your understanding is of why we're here today.

A It's a deposition in a ratepayer case associated with the cancellation of the VC Summer nuclear project plants two and three.

Q Okay. So you are one of the executives, or were one of the executives, of I call it E&G for short, but -- and for SCANA. From your perspective, how did we get here today?

A From my perspective how did we get here today? The owners, which is SCE&G and Santee Cooper, had contracted with a consortium that originally consisted of Westinghouse and The Shaw Group to build a nuclear plant under an engineer procured construct arrangement, so an EPC contract. That EPC arrangement was partially fixed-price and partially not fixed-price in the beginning.

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1 Through a series of negotiations, the fixed-price
2 portion was increased.
3 Eventually, it was -- the EPC arrangement was
4 entirely fixed-price when the owners exercised the
5 fixed-price option with Westinghouse. At that
6 point in time, the Consortium was no longer, so
7 Westinghouse was the counter party and had brought
8 in the Fluor Corporation to actually facilitate
9 construction. That fixed-price option, from the
10 owners' perspective, provided a lot of protections
11 for the owners to complete the nuclear project.
12 Westinghouse declared bankruptcy in March of 2017.
13 That bankruptcy process meant that the fixed-price
14 protections were going to go away, such that the
15 companies SCE&G and Santee Cooper would now be
16 responsible for the cost on more of a time and
17 materials basis. So that lost of the fixed-price
18 option meant that an evaluation needed to be done
19 to determine what would be the cost and schedule
20 to finish the plants. When that cost and schedule
21 evaluation was completed it was determined that it
22 was too high to finish both units, from a cost
23 perspective, so the focus turned to a single unit.
24 And when our partner Santee Cooper said that they
25 were no longer going to participate, SCE&G

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1 attempted to look for other partners. Absent
2 that, they looked for some governmental
3 assistance. When that didn't come, it was too
4 expensive for SCE&G to complete the units, even
5 one unit on its own. So a decision was made to
6 cancel.
7 Q So how did we get -- with that scenario, how did
8 we get -- and when I say we, as ratepayers, E&G,
9 SCANA. I use that term collectively. How did we
10 get there? What happened to make -- what caused
11 all these problems? I'm trying to find out what
12 your opinion is of the core either -- maybe get to
13 the beginning of when it started in a minute, but
14 what do you think is the -- put my finger on that
15 and that's what caused this breakdown or this
16 debacle or this bankruptcy or the problems? Tell
17 me what you think.
18
19 MR. BALSER: Object to form. Vague.
20
21 A Let me answer it this way: I believe that had the
22 fixed-price option not gone away, had the
23 protections of the fixed-price not been lost, that
24 the two companies would still be building those
25 plants today. So fundamentally if that is the

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1 case then it was the loss of the fixed-price
2 contract, the loss of that protection. And I view
3 that as protection for the company, for the
4 customers, for the shareholders. Had that not
5 gone away, the companies -- the two companies, I
6 believe, would still be building those two plants
7 today. So fundamentally, in my mind -- and you
8 asked me what my opinion was. Fundamentally, I
9 think it was the bankruptcy of Westinghouse that
10 drove the loss of the fixed-price contract that
11 forced the cancellation of those units.
12 Q Okay. You mentioned earlier that the contract at
13 the original, at the beginning, had part fixed and
14 part non-fixed. Now, were you part of the
15 negotiations to finalize the EPC contract?
16 A I was.
17 Q Okay. So you can speak to that pretty much?
18 A Yeah. At least at a high-level I can speak to
19 that. There was a negotiating team that I was not
20 a part of. That negotiating team reported up
21 through, through for me.
22 Q All right. And how many folks were on that team?
23 A Probably half a dozen.
24 Q Okay. Were they all with SCANA?
25 A There was some participation from Santee Cooper on

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1 that team.
2 Q Okay. How many people from Santee?
3 A I think it was just one.
4 Q One. Do you remember that person's name?
5 A I believe that would have been Ken Brown.
6 Q And do you recall the other four or five folks
7 from SCANA?
8 A I know Ron Clary was involved, Al Paglia was
9 involved, Al Bynum was involved, Skip Smith was
10 involved, and there are probably a couple of
11 others that the names don't come to me at the
12 moment.
13 Q If you had access to the records, would you be
14 able to produce the documents associated with the
15 negotiating of the EPC contract?
16 A I don't believe that I kept any of the records
17 associated with their negotiations of the EPC
18 contract.
19 Q But those records would be at E&G, wouldn't they?
20 A They should be. I don't know that to be the case
21 for sure, but they should be.
22 Q How many e-mails, Steve, did you have back then?
23 Did you use a company e-mail? Did you have a
24 personal e-mail?
25 A I had a personal e-mail, but used the company's

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1 e-mail for work-related things.
2 Q Okay. And what is your company e-mail address?
3 What was it at the time?
4 A It was sbyrne@SCANA.com.
5 Q And what was your personal e-mail at the time?
6 A Steve.a.byrne@gmail.com.
7 Q Any other e-mails?
8 A I don't have any other e-mail.
9 Q Do you have any Twitter or any other accounts?
10 A I don't use Twitter. I don't use Facebook.
11 Q Snapchat?
12 A I don't use Snapchat.
13 Q All right. If I were curious and wanted to know
14 about those negotiations what would be some of the
15 documents, if I were to go sit down in your
16 conference room at the company and -- but what
17 would those documents look like? You'd have
18 e-mails back and forth, I assume?
19 A There certainly would be e-mails.
20 Q Okay. And you would have, I guess, someone
21 writing memos and reports to you?
22 A Again, largely via e-mail.
23 Q Okay.
24 A Some of the debriefs that I would have received
25 would have been face-to-face debriefs. And there

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1 would have been -- I don't remember what they were
2 termed, but basically negotiating -- negotiation
3 points for the back and forth with
4 Westinghouse and Shaw Group.
5 Q Do you remember -- and I know it's been a while,
6 but can you remember and help me figure out the
7 parts of the contract -- in general, not the
8 specifics -- that were the non fixed-price parts?
9 What areas that y'all were concerned about that
10 you couldn't get a number on?
11 A It isn't that we couldn't get a number on, but
12 there were some non fixed-priced portions of the
13 contract. So the contract was arranged with a
14 portion that was fixed, and fixed meant that there
15 was -- that truly that, that there was no
16 escalation on it; the price was the price. Then
17 there was a section called firm, and firm meant
18 that the price of the component or activity was
19 fixed. But it was subject to an escalation factor
20 of some kind, and there were three different types
21 of escalation factors used.
22 Q And that's laid out the EPC contract?
23 A It is.
24 Q Okay.
25 A And then there was a trunch (ph) or bucket called

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1 target. And target was estimated to the extent
2 that it could be estimated. But the actual costs
3 were going to be what the actual costs were. And
4 probably the largest piece in target was labor.
5 So the people that were going to be constructing
6 the facility, that labor was in that target
7 bucket. There was a time and materials portion of
8 the EPC contract, or T&M. And then outside of the
9 contract would have been owners' costs which --
10 and separate from the contract was an EPC
11 arrangement to build the transmission.
12 Q And that was not fixed?
13 A That was administered through another group, but I
14 don't know what the percentages were. It may have
15 been fixed. I can't remember what the
16 arrangements were around that.
17 Q In a perfect world, at the beginning of this
18 contract, your company gave the Public Service
19 Commission the cost of this project. And in this
20 perfect world, I assume y'all thought that would
21 be the approximate cost of the contract. Is that
22 correct?
23 A In the beginning the costs were estimated. And,
24 as I pointed out, we had some that were fixed,
25 some firm, some that were not even fixed or firm.

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1 Largely the target bucket, T&M portion, was, you
2 know, was a relative basis, small. Owners' costs
3 were estimated and the transmission costs, again,
4 were estimated through a separate company group
5 that negotiated a separate EPC contract. So the
6 costs were estimated. The escalation factors or
7 inflation indices were selected and those were
8 incorporated as part of that original file. So
9 that in a perfect world, the costs that were
10 estimated would have been the costs plus
11 escalation that the project would have ended up
12 with. There was an amount that was selected for
13 contingency. And that contingency was removed.
14 Some of the intervenors petitioned to have --
15 petitioned the Supreme Court to have the
16 contingency removed, and that was removed.
17 Q Are there documents or notes or minutes or e-mails
18 that would give me, again, if I'm starting over at
19 the beginning, what the estimated cost, owners'
20 cost, transmission, any the other variables would
21 be? Do y'all have an estimate of what they would
22 be?
23 A Certainly there are -- there is documentation that
24 would exist. I don't have that documentation.
25 Q Sure.

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1 A I should be clear that I, since I retired from the
2 company, do not have access to the company's --
3 Q I get it.
4 A -- systems and do not have many of my e-mails from
5 that time frame. So certainly there were would be
6 documents that exist. The company and quarterly
7 BLRA reports, a quarterly report on the project
8 status that was required under the Base Load
9 Review Act did publish what the costs were in
10 those various cost categories so that you can see
11 what the breakdowns -- what the total costs were.
12 Now, the contractor did not want some of those
13 cost categories to be advertised and requested
14 that they be treated confidentially. So there's a
15 confidential portion to those reports that would
16 not show the specific breakdowns of each one of
17 those little areas, but the totals are certainly
18 there.
19 Q Give me an example of one of the areas that the
20 contractor preferred to have a confidential
21 submission on?
22 A The fixed portion of the contract.
23 Q And they were worried, I assume, that another job
24 they were doing might look at that and get some
25 inside information, if you will?

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1 A That is certainly what was advertised to us as to
2 their desire for confidential treatment for some
3 of these cost categories. And Westinghouse, that
4 counter party, and their consortium partner, Shaw,
5 were in negotiations at that point in time with
6 other utilities for the AP1000 design, their
7 design reactor.
8 Q The total cost, however, would have included their
9 confidential submission?
10 A That's correct.
11 Q Okay. And so what's the term you use, inflation
12 factor or --
13 A Escalation.
14 Q -- escalation. Did the escalation anticipation
15 include just inflation or did it include other
16 things?
17 A The escalation, it's mostly an inflation number.
18 They come from indices. It's possible that there
19 are some other factors that go into those indices.
20 I'm not sure that it's anything other than
21 anticipated escalation.
22 Q Well, time was a big important matter for this
23 project, wasn't it, timing of completion? Would
24 you agree with that?
25 A Timing of completion was important? Yes, it was.

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1 Q For several reasons. One would be the increased
2 cost as you go down the road. That would be one?
3 A Timing associated with cost would be important,
4 yes.
5 Q All right. And then timing to close the project
6 or finish it, substantial completion, had a lot to
7 do with the tax credit, didn't it?
8 A When the plant was finished, it wasn't necessarily
9 tied to suspension of completion, but it was tied
10 to in-service, what would have been qualified as
11 production tax credits, yes.
12 Q So you had to have an in-service?
13 A In-service.
14 Q All right. And did you, at the beginning, believe
15 that the project could be completed to qualify for
16 tax credits?
17 A Yes.
18 Q And part of your ability to raise money and have
19 investor participation was the potential tax
20 credit?
21 A Certainly the tax credits were discussed with the
22 financial community. I don't to what extent the
23 tax credits were important to the financial
24 community. Again, I'm not a financial expert. I
25 don't work in the financial portion of the

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1 company. The tax credits from the construction
2 perspective obviously would come later. So the
3 tax credits had to be earned after the plant was
4 in service. So from the perspective of
5 construction, I don't know to what to extent the
6 financial community credited those or discounted
7 those.
8 Q I'm using a ballpark that I've read and seen some
9 things that there was anticipated $2 billion tax
10 credit. Is that roughly correct?
11 A So the production tax credit portion was estimated
12 up front. And I believe that our financial group
13 was using a tax-advantage number for that, which
14 may be higher than the actual production tax
15 credit number. So that what would be realized,
16 again from a tax savings in addition to the tax
17 credits themselves, would be higher.
18 Q Higher than the 2 billion?
19 A No, not higher than 2 billion. I think 2 billion
20 was the tax advantage number.
21 Q All right. But that's the number that used in
22 media publications, things like that?
23 A Correct.
24 Q Okay. Is that fairly close?
25 A Is it fairly close? Again --

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1 Q You're telling me --
2 A -- the actual value --
3 Q I'm sorry --
4 A -- the actual -- Again, I'm not a financial
5 witness. I'm not -- I don't work in the financial
6 part of the company or didn't work in the
7 financial part of the company, but there was a
8 specific value for the tax credits themselves.
9 But there was a tax advantage portion of that the
10 company also recognized. I don't remember the
11 exact value of that. Certainly the tax credit
12 number would have been on the order of a billion,
13 a billion-and-a-halfish. And then the tax
14 advantages of that would have taken it to the
15 $2 billion.
16 Q I accept your statement that you're not a
17 financial person. I'm even less so. So -- but I
18 have read and understand something called ROI.
19 You understand what that is, don't you, in the
20 general sense?
21 A I do.
22 Q Okay. Well, in figuring out the ROI, the return
23 on investment, after tax dollars are more valuable
24 than taxable dollars, aren't they?
25 A Correct.

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1 Q Okay. So your production tax credit that we're
2 talking about, having that materialize in one way
3 or the other would be important to an investor if
4 they're looking at ROI, return on investment.
5 Would that be true?
6 A Again, I'm not a financial expert. I don't know
7 what the financial community -- how they view or
8 perceive the production tax credits.
9 Q Well, let's look at it in kind of a -- this is
10 only so I can understand it, but from a simple
11 standpoint, if a company makes $3 billion over
12 some period of time and they have a $2 billion tax
13 credit over that period of time, then they would
14 only have a billion dollars in taxable income
15 versus $3 billion. Would that be fair, in the
16 simplest form?
17 A I suppose that's true.
18 Q Okay. And so you recognize, while you weren't a
19 admittedly a financial person within the company,
20 the importance of keeping the financial community
21 happy about the project?
22 A Keeping the financial community happy? I don't
23 know that I ever looked it as keeping a financial
24 community happy. Certainly the financial
25 community was important to financing the project,

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1 financing the construction of the project. So
2 certainly the company's ability to borrow money
3 was important.
4 Q Okay. Do you recall when the first time you or
5 anyone at the company ever notified the financial
6 community that this project was in trouble?
7 A Specifically, I don't recall any specific dates
8 about when a notification would have been made
9 about the project being in trouble. The company
10 and I believed that the project could be completed
11 up to the point of the Westinghouse bankruptcy,
12 which put into question both the cost and the
13 schedule for completing the units.
14 Q Okay.
15 A So there was never a question about could the
16 units be completed. I always believed that the
17 units could be completed. The Westinghouse
18 bankruptcy through threw doubt into time and
19 schedule. And the company and I did make
20 disclosures throughout the process about issues
21 that were going on. So those issues did not,
22 though, mean that the plant could not be
23 completed. So --
24 Q I'm sorry.
25 A So early on there were issues with getting the

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1 license by the time assumed in the contract to
2 obtain a license. And by license, I mean a
3 combined construction and operating license issued
4 by the Nuclear Regulatory Commission. There was
5 one other -- I think it was Army Corps of
6 Engineers -- permit that was lagging early on.
7 There were issues with module fabrication. I
8 should say submodule fabrication, particularly
9 coming from a facility in Lake Charles, Louisiana.
10 That facility was problematic. It was originally
11 called SMS, Shaw Modular Solutions. Shaw was
12 purchased by Chicago Bridge & Iron in 2013 I
13 believe it was. And then the name changed to CB&I
14 Lake Charles, Chicago Bridge & Iron Lake Charles
15 facility or CB&I Lake Charles. That facility had
16 become what was a problem and it was not
17 delivering the submodules to the site in a timely
18 manner. I know that was disclosed in testimony
19 before the Public Service Commission and in our
20 BLRA quarterly reports.
21 If you transition to a little later, the --
22 once was the module issues started to sort
23 themselves out and were being worked under a plan,
24 the efficiency of the contractor, the constructor
25 at the site, at this time would have been Chicago

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1 Bridge & Iron, or CB&I, had become an issue. And
2 that was disclosed to financial community, Public
3 Service Commission --
4 Q What time frame?
5 A -- in quarterly reports. I'm talking about the
6 time frame for that would have been probably in
7 the 2014 through '17 time frame.
8 Q All right. So let's talk about that just a
9 minute. The module issue was disclosed to the
10 investors and the public. Is that correct? Is
11 that what you said?
12 A Yes.
13 Q Okay. In its simplest form, you basically were
14 aware and disclosed that you were not getting your
15 modules or your submodules in time which was
16 creating a problem on the construction site and
17 with kind of a ripple effect. Do you agree with
18 that?
19 A That's correct.
20 Q Okay. You were the highest executive at E&G that
21 was over the construction over the project? You
22 were the top executive?
23 A At E&G, yes. Obviously, I reported to the chief
24 executive officer.
25 Q And today, when I say E&G, I'm including, unless I

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1 say we're not, we're talking about both companies,
2 okay?
3 A Both companies being SCANA and SCE&G?
4 Q SCANA, yes.
5 A Okay.
6 Q Okay. I understand the difference, but from the
7 standpoint of making it easier to not have to
8 repeat it. If there's a separation on some
9 answer, let me know.
10 A So at -- well, at SCANA then the chief executive
11 officer was the highest-ranking officer with
12 responsibility of this project. So I reported to
13 the chief executive officer.
14 Q Was that Mr. Marsh?
15 A Mr. Marsh.
16 Q Okay. But day-to-day, who was the highest level
17 executive over the project?
18 A Day-to-day with sole project responsibility would
19 have been a VP for nuclear construction. There
20 was a transition there I think in 2014. It would
21 have gone from Ron Clary to Ron Jones. So, again
22 this -- for most of the time frame that we're
23 talking about here, you said '14 through '17, that
24 would have been Ron Jones. Mr. Jones reported to
25 the chief nuclear officer. The chief nuclear

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1 officer had responsibility for construction and
2 for the operating unit. So at that same location,
3 the VC Summer location in Jenkinsville, there's
4 been a plant operating there since 1982. So
5 Mr. Archie as the chief nuclear officer had
6 responsibility for both. Mr. Archie reported to
7 me. I had responsibility for that and for also
8 hydro operations, field procurement, and
9 transmission.
10 Q Did you go to the site very often?
11 A I did go to the site. It depends on your
12 definition of very often. But I went to the site
13 I would say -- I estimated about 15 percent of my
14 time would be spent out at the site location in
15 Jenkinsville.
16 Q Okay. So I'm sitting there, a fly on the wall in
17 your office. How often would you get a report or
18 have a meeting or something in regards the
19 project?
20
21 MR. BALSER: Object to the form.
22
23 A How often would I have a meeting or some other --
24 Q Let me ask you -- let me restate that. I assume
25 you got reports about the project?

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1 A I did.
2 Q Most of them by e-mail, I assume?
3 A Majority by e-mail.
4 Q And did you have a regular weekly or monthly
5 report you got?
6 A Yes. Yes, to both. So there was a weekly
7 construction report issued. There was a monthly
8 construction report issued. Quarterly, there were
9 what we'll term executive steering committee
10 meetings. That was -- did not include the
11 contractor or the construction contract. It was
12 just SCE&G, Santee Cooper personnel. Quarterly,
13 there were what were called president's meetings.
14 A bit of a misnomer; it was really the CEOs. So
15 that was for the CEOs of the four companies
16 involved with construction: Santee Cooper, SCANA,
17 Westinghouse, and then obviously it changed
18 between CB&I and Fluor. There were biweekly phone
19 calls with the contractor, with Westinghouse, and
20 CB&I and then Westinghouse and Fluor. So there
21 were a number of communication forms on the
22 project.
23 Q Your weekly report, did that came from Ron Clary
24 or Ron Jones?
25 A The weekly report, I actually started to get that

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1 weekly report probably in the 2014 or '15 time
2 frame. That weekly report would generally come
3 from an engineer on the project, but it would come
4 out of the new nuclear development project. But
5 generally, it would come from one of the engineers
6 on the project.
7 Q Prior to '14, did you get any kind of regular
8 reports?
9 A I wasn't getting the weekly reports. I believe I
10 was getting monthly reports.
11 Q Who produced those?
12 A There were two monthly reports produced. One was
13 produced by SCE&G and one was produced by the
14 Consortium. And then after the Consortium
15 dissolved it was Westinghouse.
16 Q If we were to have available today all of those
17 weekly and monthly reports, give me your best
18 estimate -- I know you can't remember exact dates,
19 but if you can, that's fine. Give me your best
20 estimate to when you started getting notice that
21 there were problems on the construction projects.
22 A With any megaproject, and particularly with a
23 nuclear project, there are going to be issues or
24 problems probably every day. And so issues and
25 problems would have been a norm from the time the

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1 project started to the time the project ended. So
2 the fact that there were issues or problems was
3 not unusual in the way that, you know, that both
4 the Consortium and the owners dealt with those was
5 to list or try to address all of those problems at
6 each opportunity and each report.
7 Q I get it that there's always going to an issue
8 with construction, especially a job this size.
9 But they started -- you would agree with me,
10 wouldn't you, Steve, that there turned out to be
11 some systemic problems in this project? It
12 started and could just never get fixed. You agree
13 with that?
14 A Would I agree that the problems could never get
15 fixed? No, I wouldn't agree with that.
16 Q Well, can you agree that they never got fixed?
17 A I would agree that there were problems that
18 existed that were going to exist from the time the
19 project started to the time the project ended.
20 Now, the fact that the project was canceled means
21 that they didn't get fixed. But that doesn't mean
22 that they could have never been fixed.
23 Q Well, I appreciate your listening to my question
24 probably better than I gave it. So never get
25 fixed is kind of a vague term, isn't it?

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1

2 MR. BALSER (SCE&G): Objection. Vague.

3

4 Q So, I mean, y'all had problems with the number of
5 employees out there that weren't doing anything,
6 didn't it? And again, that's a general term. If
7 you have a PF factor for employees that's two and
8 three and four, I'm using the term they're not
9 doing anything efficiently or productively. Would
10 that be better?
11 A There certainly was an issue with the craft
12 efficiency.
13 Q Right. And then there were other problems, as
14 well, weren't there?
15 A I think I enumerated a few of those earlier. So
16 the submodule production issues; there were some
17 regulatory problems with the Nuclear Regulatory
18 Commission. But yes, there were those issues.
19 Issues of interpretations between Westinghouse and
20 the Nuclear Regulatory Commission on the design.
21 There were design changes that would come from the
22 Chinese projects. I'm guessing you're aware that
23 the Chinese were building AP1000s as well. And
24 there were four plants under construction in China
25 that started ahead of the US projects.

1 Q Did you visit those projects?
2 A I did.
3 Q Do you think we might need to go over there and
4 take a look at them and do some more depositions
5 over there?
6 A That's up to you.
7 Q I'm circling back to the comments you made where
8 you said "this project could have been completed"
9 and there were two conditions you said that were
10 not met: One, there was a bankruptcy and, two,
11 Santee pulled out or said enough is enough. You
12 agree?
13 A Well, I said that there was a loss of the
14 fixed-price protection. The bankruptcy was what
15 premised that loss of the fixed-price protection.
16 Now, had Westinghouse in the bankruptcy said we're
17 going to honor your contract then, you know, that
18 would have been -- they could still operate in
19 bankruptcy, and still are operating in bankruptcy
20 today.
21 Q And we're going to get into some details later. I
22 just am trying to get an overview of where we are.
23 I've never built a nuclear plant; I've built some
24 smaller things. But I can't imagine building a
25 house without plans for a roof. And I noticed in

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1 some of the documents there are literally
2 thousands of drawings that were not completed.
3 And the construction going on and on and the
4 engineers can't work, the craft can't work,
5 because they don't have a completed set of plans.
6 When did you first become aware that the plans
7 were not completed?
8 A The company was aware that the plans were not
9 complete from the start.
10 Q Okay.
11 A So it's not unusual on a construction project for
12 the plans to not be complete when construction
13 starts. In fact, I would say it's unusual on a
14 construction project, on an industrial
15 construction project, that plans are complete when
16 the construction starts. So SCE&G has built power
17 plants, converted power plants, added scrubbers,
18 built cooling towers. In all of those projects,
19 underneath VC arrangements and engineer, procure,
20 construct arrangements were started before the
21 design was actually completed.
22 Q Have y'all completed a construction project
23 successfully?
24 A Yes, certainly.
25 Q Give me a couple examples.

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1 A The Cope Power Plant is the last coal-fired power
2 plant that the company built. The Jasper
3 combined-cycle power plant in Jasper County
4 combined-cycle and natural gas power plant. The
5 water -- Wateree Plant, the south part of Richland
6 County, cooling towers were added to take it off
7 the river and make it closed-cycle. Both the
8 Wateree and the Williams Plant here in the
9 Charleston area added scrubbers probably seven,
10 eight years ago.
11 Q The building of the Cope and the combined-cycle
12 plants are two different plants, right?
13 A Two different plants.
14 Q Were they built with plans not completed?
15 A Yes.
16 Q And how long after the start were the plans
17 finished and finalized?
18 A I'm not sure. I can't remember.
19 Q But in order to finish the project, they had to
20 finish the plans?
21 A Yes.
22 Q And in order to get a component finished within
23 the project, you had to finish the component
24 plans?
25 A Yes.

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1 Q Okay.
2 A Yes.
3 Q And on a progression of starting at A, B and C,
4 and kind of the step-by-step progress in a
5 construction project, you've got to at least get
6 the first-thing-you-do plans ready. And as you go
7 forward, you got to keep your planning, your plans
8 up with the construction. Would you agree with
9 that?
10 A Yes.
11 Q Okay. And that didn't in this VC Summer project,
12 did it?
13 A Certainly there were design-related issues that
14 had impacts on construction. The first part of
15 the project is civil where you're doing ground
16 clearing, excavation, pouring mud mats and base
17 mats and those kinds of things. So the project --
18 the engineering of a project did become an issue.
19 Again, design changes from China, Nuclear
20 Regulatory Commission impact, so not all the fault
21 of Westinghouse or the fact that the design was
22 not a hundred percent complete when the -- when
23 construction started.
24 A lot of those changes were forced by a new
25 process, a new regulatory scheme for constructing

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1 these plans. So if you go back to the '60s,
2 '70s, '80s when the majority of the nuclear
3 plants in this country were actually constructed
4 that was under the Title 10 of the Code of Federal
5 Regulations subpart 50, often times called 10CFR
6 Part 50 or Part 50. The construction going
7 forward, the NRC changed the licensing regime, and
8 it's now 10CFR Part 52. So construction under
9 Part 52 is different than it was under Part 50.
10 And one of the impacts of that is that there are
11 many categories where under the old regime, under
12 Part 50, you had a construction permit. So you
13 constructed and if pipes didn't line up, you just
14 change -- you made the pipes line up and then you
15 changed the drawings later. You as-built the
16 drawings later, which is pretty standard on almost
17 any kind of construction. Even on a house you can
18 change things as-built later.
19 Because you didn't have an operating license,
20 so once the construction was finished, you then
21 apply for an operating license. So there were two
22 sets of hearings, two opportunities for
23 intervention, but it gave you more latitude during
24 the construction process. The new Part 52 was
25 intended to actually add certainty by removing one

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1 of the sets of hearings and one of the
2 opportunities for intervention. So when you got
3 this license from the NRC, it was a combined
4 construction and operating license. The NRC took
5 the position that because you had an operating
6 license, anything that was significant to that
7 license, when you found that things didn't line up
8 during construction, you couldn't just change
9 them. You had to go and change the license first
10 then you could change the line up. So that added
11 a degree of complexity. So there were a number of
12 licensed changes that had to be made on the
13 project before construction could continue. So
14 that was a part of the new -- I think an
15 unintended consequence of the new 10CFR Part 52.
16 Q Who would you recommend that I talk to you that
17 would be able to give me a -- that was involved in
18 these design issues that would have a good handle
19 on some details in regards to that? Are you able
20 to do that?
21 A A better person would probably be the person who
22 was over engineering at the time for SCE&G. That
23 would have been Brad -- Robert B. Stokes.
24 Mr. stokes was the general manager for
25 engineering. You know, I'm sure there are

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1 Westinghouse folks. I don't know who's at
2 Westinghouse any longer or not at Westinghouse any
3 longer that could talk to the issues that
4 Westinghouse had with the regulator and coming to
5 grips with the Part 52.
6 Q Is Stokes still around, Mr. Stokes?
7 A I'm not sure where he is. I don't know if he's
8 still with the company or not with the company any
9 longer.
10 Q Okay. So if the project could have been
11 completed, as you mentioned without the bankruptcy
12 and the fixed-price and the pullout of Santee
13 Cooper, you would have recommended that it go
14 forward and be completed?
15 A Yes, sir.
16 Q At what cost?
17 A Again, if it was -- if it was not the bankruptcy,
18 or even if there were the bankruptcy and not the
19 loss of the fixed-price option, then the bulk of
20 the cost would have been fixed. So provided that
21 Westinghouse honored their fixed-price contract,
22 then it's the owner's cost piece that would have
23 been higher. The transmission piece, the company
24 could have completed the transmission. And it was
25 largely complete. All of the transmission

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1 treatment two was complete when the project was
2 terminated. I think the unit three transmission
3 was somewhere in the 80 percent range complete.
4 So that could have been completed even with the
5 plant construction still going on. And the staff
6 size from the contractor would have obviously been
7 diminished. So some of the carrying costs would
8 have gone down. When the first unit comes on,
9 those folks would transition from the capital work
10 order to operation and maintenance costs. So, you
11 know, extensively half of the staff -- half of the
12 owner's cost, the carrying cost for the owner, the
13 construction would have gone down just whenever
14 the first unit came on.
15 So you say at what cost. The short answer is
16 I don't know at what cost, but the bulk of the
17 cost, the contract cost, would have been fixed.
18 So, you know, what I premise this on was two
19 things: That you still had the partner that was
20 funding their 45 percent share and we still had
21 the fixed-price contract.
22 Q If you have a fixed-price contract with a
23 contractor who is woefully inadequate in the way
24 they're keeping the production and efficiency,
25 aren't you basically forcing them into bankruptcy?

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1 A No, I don't think so.
2 Q That's what happened, isn't it?
3 A Well, certainly that's what happened, but just
4 because it's what happened doesn't mean that the
5 actions that the company took forced them into
6 that bankruptcy, so, you know --
7 Q I didn't say the company took it. I said if you
8 know at the time you're changing over to a
9 fixed-price, you know up to that point you can't
10 deal with this variable cost anymore. They were
11 killing you, weren't they?
12 A The variable cost?
13 Q I mean the cost-plus. I mean, y'all were getting
14 bills. You had to pay them --
15 A You're talking prior to the fixed-price?
16 Q Right. Even if you didn't agree with them, you
17 had to pay it. Even if you disputed it, you had
18 to pay it.
19 A Had to pay a portion of it.
20 Q You had to pay all of it, according to the
21 contract, then you could go dispute it later.
22 A No. According to the contract, prior to the
23 fixed-price option, prior to that amendment in
24 October of 2015, if you disputed a cost, you'd pay
25 90 percent of the disputed cost.

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1 Q Okay.
2 A And withheld ten percent. The company also
3 returned a number of invoices as deficient, which
4 means that those costs were not paid. The company
5 also challenged some progress payments, started
6 with whole progress payments. And there were
7 costs that Westinghouse tried to recover that the
8 company took the position that they were not
9 entitled to recover those costs. So there were
10 mechanisms that the owners had to withhold
11 payments. Certainly the company did those things,
12 both owners did those things, withheld payments
13 from the Consortium. Because at the time it was
14 still the Consortium of Westinghouse and CB&I.
15 The fixing the cost was something that was
16 important to the owners. While the owners were
17 withholding some costs, it's not like the
18 contractor had carte blanche and they could just
19 charge a hundred of whatever they wanted to.
20 While the owners were withholding costs --
21 withholding payments, obviously the Consortium was
22 threatening litigation, threatening to walk off
23 the project. So they were threatening that if you
24 don't pay, you know, we're not going to
25 continue --

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1 Q They were in litigation already, weren't they,
2 down south?
3 A They were in litigation with the other project,
4 with the Southern Company project. So the -- it
5 isn't that the companies couldn't take some action
6 to withhold money. The question is does the
7 Consortium see that as legitimate or not? You
8 know, obviously they didn't because they sent a
9 number of project letters to the owner saying
10 that, you know, you need to pay or else. So there
11 were a variety of threats.
12 I'm trying to go back to your original
13 question which was -- I'm trying to remember now
14 what the original question was.
15
16 MR. BALSER: If you don't remember, let
17 Mr. Bell ask you again rather than just . . .
18
19 A Go ahead. You said that we couldn't -- we had to
20 pay a hundred percent of cost and that's not the
21 case.
22 Q Actually, what I said, you had to pay it and then
23 you said, "We ended up having pay 90 percent."
24 A Right. And you said, "You had to pay all of it,"
25 and I said "No, we had to pay 90 percent."

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1 Q Correct. So I stand corrected on that. But you
2 had something called a Disputed Invoice Log or
3 something. Maybe I've got it -- butchered the
4 name, but what was it called?
5 A I don't remember --
6 Q It's a list of --
7 A I know what you're talking about. I don't
8 remember what it was called either, but -- so we
9 can call it Disputed Invoice Log, something along
10 those lines.
11 Q But it's basically a way to chart or track the
12 disputed invoices?
13 A (Nonverbal response.)
14 Q When did you first learn, Steve, that you may be
15 getting invoices from Westinghouse for labor that
16 wasn't there?
17 A Again, with any megaproject you're going to have
18 issues with things like time keeping. Another
19 reason why the owner started going to a
20 fixed-price would be helpful because then you
21 don't have to worry about how many Kubota vehicles
22 that they have on-site. They don't have to worry
23 about timecards and timekeeping, those kind of
24 things. There were frequently invoices where the
25 SCANA Audits Group would audit the invoices of the

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1 contractor and find discrepancies. That's
2 something that's not unusual.
3 Q But my question goes directly to an issue that I
4 think you may know a little bit about. And that
5 is it's been learned since then, since the
6 project, that there may have been invoices to
7 SCANA for craft employees that were not actually
8 working on the site. When did you first hear
9 about it or learn about it?
10 A I'm not aware of invoices where craft employee --
11 where the company was invoiced for craft employees
12 that were not actually working on the site.
13 Q Are you aware of other kind of employees other
14 than craft employees?
15 A There were. There are home office charges from
16 both consortium partners that's often times
17 difficult to track how many hours somebody in the
18 home office would be charging. I guess it would
19 be a lot like, you know, trying to figure out how
20 many hours your lawyer is charging. Difficult
21 sometimes to say how often they're on the phone,
22 right? So it's difficult with home office charges
23 to figure that out. So there were challenges to
24 those kinds of things. There were instances where
25 the contractor was charging -- were attempting to

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1 charge for work that the company felt was not in
2 the target bucket of work. So the company thought
3 was in the fixed or firm bucket of work. That was
4 a disagreement.
5 Q When did you first learn that these kinds of
6 things may be going on?
7 A I don't recall specific dates along those lines.
8 Q Can you give me a year?
9 A Yeah. I'd have to say probably in the 2014 or '15
10 time frame.
11 Q During this contract period, Santee Cooper started
12 becoming a little bit dissatisfied with the way
13 things were going. Do you recall that?
14 A Yes.
15 Q And they expressed that to Mr. Marsh and to you
16 and others in either memos or e-mails or letters.
17 Do you remember that?
18 A Yes.
19 Q If you take a look at the correspondence that
20 started in '13 and '14 all the way through the
21 time -- up to the time they withdrew, it almost
22 seems like it's the same complaint in each --
23 again, almost the same, but similar issues that
24 E&G responded, so we're going to work on that,
25 we're going to get that fixed, but it never got

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1 fixed. What happened?
2
3 MR. BALSER: Object to the form.
4
5 A The first thing I'd like to say that when you say
6 "it never got fixed" I think you're talking about
7 the issues raised by Santee Cooper?
8 Q Sure.
9 A Some of the issues raised by Santee Cooper were
10 actually fixed. I want to be clear that Santee
11 Cooper would complain to SCE&G because they were
12 the -- we operated as the agent, so SCE&G was also
13 dissatisfied with things like productivity of the
14 contractor and let the contractor know. SCE&G was
15 also dissatisfied with the way that the submodules
16 were coming out of Lake Charles facility and let
17 the contractor know. So it isn't that SCE&G was
18 dissatisfied; it's that Santee Cooper was not
19 actually handling construction themselves, so the
20 only people they really had to complain to was
21 SCE&G. So that wasn't necessarily a surprise to
22 me.
23 Also, Santee Cooper has a different
24 philosophy on construction than SCE&G has in
25 general. Santee Cooper is accustomed to being

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1 their own general contractor, whereas SCE&G tends
2 to look to EPC-type contracts. So there's a
3 difference between contracts. I'm guessing you're
4 probably aware. But under EPC, Engineer, Procure
5 and Construct, the counter party or the contractor
6 is responsible for basically everything, say for
7 perhaps some things like the permitting. And when
8 they're finished with the project, they give you
9 the keys. That's kind of the premise. That
10 doesn't work that way in nuclear, but that's the
11 premise. If you're your own general contractor
12 then you would -- and Santee's got some experience
13 with this with some of their coal and their
14 natural gas plants -- you'd buy the components;
15 you contract the engineering; you contract the
16 construction; you're responsible for all of the
17 facets of the plant. So there was a difference in
18 philosophy on construction, which I think at times
19 led to some frustration on the part of Santee.
20 Again, SCE&G had had some successes with
21 construction under EPC. And actually, a lot of
22 the EPC contracts that SCE&G entered into were
23 with Fluor Corporation.
24 Q So go back to my original question, which I'm not
25 sure you answered.

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1 A Okay. Go ahead.
2 Q If you look at the Santee -- the whole body of
3 correspondence where there was a suggestion or a
4 complaint or a whining of sorts that they were
5 concerned about different things. Y'all would
6 have meetings. You would -- you know what I'm
7 talking about? The groups would have meetings?
8 A Right.
9 Q And at every one of those meetings the response
10 was, "We're going to look into it. We're going to
11 care of it or going to do what we can do." But,
12 yet, almost the exact same problems continued and
13 continued and continued. And I'm asking you not
14 the philosophy behind it, but wasn't there a time
15 that you or your group said we can't get
16 Westinghouse to get this damn thing done. You see
17 what I'm saying?
18
19 MR. BALSER: Object to the prefatory remarks.
20
21 Q And the reason I ask it is because you said a
22 minute ago this project could have been completed.
23 And I'm asking under what circumstances would this
24 project had been completed? Would it have been
25 completed under the way it was handled up til

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1 then, or would it have been a new philosophy going
2 forward?
3 A Well, first off, the project could have been
4 completed even under the way the project was
5 going, but it would have likely involved higher
6 cost. Again, why the fixed-price options are
7 important and why the loss of the fixed-price
8 option is important and a decision to cancel.
9 But, secondly, there were always mitigation plans
10 underway with the Consortium. And each time that
11 the company would go to the Public Service
12 Commission to request a new date or a new schedule
13 for cost, the new either substantial completion
14 date or guaranteed substantial completion date was
15 advertised and with the understanding that there
16 was mitigation that would need to take place to
17 hit those dates. That mitigation was multifaceted
18 on lots of things, and some of that mitigation was
19 successful.
20 Q But not a lot of it?
21 A Much of the mitigation was successful. There were
22 some aspects of the project where the mitigation
23 was not successful.
24 Q And those were the big money parts,weren't they?
25 A It was not for lack of trying. The performance

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1 factor that you pointed out was one area where
2 the -- despite the best efforts of the contractor
3 and the urgings of the owners, the performance
4 factor did not improve. In fact, probably got
5 worse. But one thing I think that's important to
6 keep in mind with performance factor -- often
7 times people call it PF -- is that you can be
8 efficient -- inefficient and still get to the
9 final product by applying more resources. So if
10 the PF didn't get any better, I could apply more
11 people to do the work and still get there on time.
12 It's analogous to, you know, fuel efficiency on a
13 car. If I'm going a hundred miles and I've got a
14 car that gets 20 miles a gallon, and I know it's
15 going to take me five gallons of gasoline. If for
16 some reason that car gets less efficient, somebody
17 let's out all the air out of the tire --
18 Q You add more gas?
19 A -- sparkplugs, you can still get there. You can
20 still do the hundred miles, but you're going to
21 have to use more gas.
22 Q So --
23 A It's a similar premise with construction
24 resources. So if a PF -- you know, the contract
25 will assume a certain PF, or performance factor,

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1 on efficiency of the craft. And if the efficiency
2 of the craft isn't there, you can still meet the
3 date by putting on more craft and having more
4 people do the same amount of work. But it means
5 it's going to be less efficient.
6 Q Steve, I want to make sure that you and I
7 understand each other. If we go to trial in this
8 case, will you promise me that you'll say that
9 same thing you just said to a jury? In other
10 words, to fix this problem we're going to add just
11 more inefficient people and more cost without
12 telling the public it's going to cost them a
13 fortune. In essence, what you're saying is we
14 couldn't fix it, so let's just throw more people
15 at it, and because we have a fixed-price we're
16 going to make the contractor go under. That's the
17 result.
18
19 MR. BALSER: Object to the form.
20
21 Q Isn't it?
22 A So you said would I -- if we go to trial, would I
23 say the same thing that I said now?
24 Q Yes, sir.
25 A I'll say the same thing that I said now, which is

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1 not anything near what you just repeated back to
2 me.
3 Q Well, let me make sure I get it then. You're
4 saying that because we had a PF factor that was
5 very inefficient and it got worse --
6 A Uh-huh.
7 Q -- then the answer to that is either make
8 everybody be more efficient, which y'all were
9 unable to do, or just throw more inefficient
10 people on the project to get it finished?
11 A I didn't say more inefficient people. I said put
12 more people on the project.
13 Q Did y'all ever find any efficient people to throw
14 at it?
15 A Certainly.
16 Q Well, where's the proof of that?
17 A Well, if you look at the folks from CB&I Services.
18 Q Okay. But I'm talking about when you're looking
19 at a PF factor from two to almost up to five in
20 some areas, those, virtually, never got fixed, did
21 they?
22 A I don't know anything about a PF of five.
23 Q Four, then. Four something.
24 A I don't know about an overall PF of four.
25 Certainly the PF was not where the contractor

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1 wanted it to be, where the contractor planned for
2 it to be, or where the owners wanted it to be. So
3 there's no dispute about that. But I think what
4 sometimes people misunderstand is that the PF, or
5 the performance factor, if it doesn't improve,
6 then you'll never finish on time. That's not the
7 case. That's the point that I was trying to get
8 to is that you can add more resources to it in
9 order to finish -- still finish on time.
10 Q May I suggest an alternative in simple fashion?
11 If you got ten inefficient people, why not add
12 five efficient people and get rid of the other
13 five that are least efficient? But y'all didn't
14 do that, did you? You added ten more people but
15 didn't get rid of the ten inefficient people.
16 A Yeah. I would not agree with that premise.
17 Q All right. Let's talk about that. When did y'all
18 first address the PF factor and how did you
19 address it? And let's talk about when the
20 contractor replaced those men or women that were
21 the inefficient ones.
22 A So which question do you want me to answer first?
23 Q Well, you had a good chance of answering the
24 general question. Now let's get down to the
25 specifics.

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1 A So you said when did we first -- when did the
2 company first --
3 Q Let me start over. All right. When did you --
4 and I'm using "you" in the collective. When did
5 you first learn that the PF factors were out of
6 kilter?
7 A Again, don't recall exact dates. I would have to
8 say it was probably in the 2014 time frame.
9 Q Okay. And did you have meetings concerning these
10 problems?
11 A We certainly had meetings where the PF factor came
12 up.
13 Q Okay. And were those meetings just with your
14 group or with your group and the contractor or the
15 Consortium?
16 A Both.
17 Q And what was the response from the contractor
18 about the inefficiency or the high PF?
19 A It was -- it was not a single response. There
20 were a variety of responses. One of the responses
21 is, "We're going to do some things to try to
22 improve the PF." A second response was, "There
23 are reasons why the PF is not as good as we had
24 hoped it would be." So there were different
25 responses to it. And, you know, sometimes it was

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1 blaming other things. But, you know, they also
2 did commit to try to improve the PF.
3 Q Okay. But they committed to improve the PF on
4 multiple occasions, didn't they?
5 A They did.
6 Q And are you aware of whether or not, overall, not
7 in particular specific areas -- because there a
8 couple of areas that the PF was pretty good,
9 wasn't it?
10 A There were areas where it was good and there were
11 time frames where it was good, yes.
12 Q So when they kept saying "we're going to improve,"
13 that was a good response. But when they didn't
14 improve and they told you again at another
15 meeting, "We're going to improve." How often do
16 they have to tell you that before you started
17 understanding that either they're not going to
18 improve or they're incapable of improving?
19 A So let me answer that two ways. One is I don't
20 know exactly how many times you have to listen to
21 somebody before you make a determination like
22 that, but certainly at some point the company had
23 concluded that an improvement of the PF was
24 unlikely. And in testimony before the Public
25 Service Commission, I said that the PF would not

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1 improve to what the contractor wants it to. And
2 that would involve more people to get to the same
3 endpoint and would involve higher cost. So
4 certainly there was a point where before the
5 Public Service Commission in testimony I said
6 that.
7 Q You know what year?
8 A I think it was '15 and '16.
9 Q All right. So --
10 A And there were certainly things that the
11 Consortium, and then later Westinghouse and Fluor,
12 tried to do in order to improve PF. So you
13 pointed out a few minutes ago that there were
14 areas where the PF was good. And in general, that
15 was an area where a subcontractor would be
16 responsible for the majority of the work. So not
17 the megaproject contractor but something that they
18 subbed out. So one of the things that the
19 Consortium was doing and Fluor was on board with
20 was subbing out more things to subcontractors.
21 Because the PF was really only a measure of the
22 direct craft.
23 Q Right.
24 A So if something was subbed out and went well, it
25 didn't factor into -- there wasn't -- there was a

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1 benefit to the project, but the PF number that the
2 Consortium would report, or Westinghouse would
3 report, would not get benefit of that, if you
4 understand what I'm saying.
5 Q You mentioned that they would say things like
6 we're going to improve and then they would give
7 reasons why they were having these problems. Do
8 you recall the reasons or some of them?
9 A Part 52 was often times blamed as a reason. There
10 were changes in the design where blame was a
11 reason, things coming from China. There were, you
12 know, certainly things like weather. I discounted
13 those kind of things. The procedural or training
14 requirements. Nuclear has training requirements
15 that go beyond general or typical construction.
16 It will be unusual for craft on a normal
17 construction project to get trained other than
18 their upfront or initial training, whereas in a
19 nuclear arena you get more training like quality
20 assurance and quality-control, intrusiveness,
21 those kind of things. So there were reasons, and
22 a lot of it was that nuclear construction is more
23 difficult than general construction and that
24 design issues and the Part 52 impacts were more
25 significant than they had anticipated.

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1 Q Have you seen the documents that discuss -- this
2 is, I think, an illustrative detail -- that
3 discuss the issues of the craft men and women
4 getting there at their start time but actually
5 taking at least an hour to get to the job site?
6 And then with the midday break or midmorning break
7 and then lunch they're working not much but an
8 hour, an hour-and-a-half for the whole morning.
9 Did you see that?
10 A No.
11 Q Did you hear about that?
12 A Could you show it to me?
13 Q I can bring it up. I'm just trying --
14 A I don't have that document, so I don't know which
15 document you're talking about. So for me to
16 comment on it --
17 Q But in general, not necessarily the document. Did
18 you hear about that being a problem?
19 A Did I hear about those types of efficiency issues
20 being a problem?
21 Q Right.
22 A Not to the extent that you just discussed. I'm
23 aware that the Consortium did and Westinghouse did
24 commission a couple of efficiency studies. And
25 those efficiency studies did identify some issues,

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1 and the results of those issues, there were
2 changes made to work practices, policies and
3 procedures. An example of that is cell phone
4 usage. So Fluor had determined that cell phone
5 usage was a problem and basically outlawed the use
6 of cell phones on the site. They put on dedicated
7 walk paths so that people couldn't get lost, if
8 you will, going from one place to another. They
9 laid on extra bus transportation to take --
10 relatively large construction site. Parking is
11 far afield from where the craft would actually
12 work. So, you know, controlling that many craft
13 going from a parking lot a long way away to the
14 job site, you know, they are inefficiencies. But
15 I think Fluor was working on those inefficiencies.
16 Q I'll try to find that document over the break --
17 A Okay.
18 Q -- and let you look at it. So that would hurt the
19 PF factor if you worked an hour-and-a-half in a
20 four-hour morning. That's not a good PF.
21 A Certainly if you worked an hour-and-a-half in a
22 four-hour morning, it would hurt the PF.
23 Q If you only worked two hours in a four-hour
24 morning, that wouldn't be good, would it?
25 A That's correct.

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1 Q So going back to this comment that if those -- if
2 the bankruptcy hadn't occurred and Santee hadn't
3 have pulled out that you think that the
4 fixed-price would have been your best bet.
5 A What I said was the fixed-price option, had it
6 been maintained and the fixed-price contract been
7 maintained and our partner would have stayed in, I
8 believe that we would both have still been
9 building the plants.
10 Q And, again, we'll go through some details in a
11 little bit. But prior to the fixed-price option,
12 do you know approximately what the group was
13 paying each month on average?
14 A Prior to the fixed-price option what we -- what
15 the owners were paying --
16 Q Right.
17 A -- on a monthly basis? The short answer is it
18 varied. It varied. It could vary quite a bit
19 with milestone achievement. But it could be, you
20 know, $50 million to $100 million plus.
21 Q Okay. So -- and that was the total payout with
22 both partners?
23 A Yeah. A hundred percent number, yes.
24 Q And so the fixed-price, y'all were paying 100
25 million a month?

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1 A That's correct. Well, after the negotiation of
2 the fixed-price option --
3 Q Right.
4 A Starting, I think, in January of the following
5 year, the owners had agreed to pay Westinghouse a
6 fee of $100 million a month for a five or
7 six-month period while the negotiations were
8 ongoing for a construction milestone payment
9 schedule.
10 Q Would there be a ready reference document or
11 something that if you and I wanted to talk about
12 that we could look at the monthly payment and kind
13 of chart it out what you were paying before the
14 100 million a month?
15 A I think the financial services group at SCANA
16 would have that. I don't have that number. I
17 don't have those documents.
18 Q I'll try to find over the break a document or two,
19 if we have it, to talk about the prior payments.
20 A Okay.
21 Q My impression was -- and I may be wrong, so I may
22 be off. But my impression was is that when you
23 went to the fixed-price, there was a fairly
24 dramatic increase on a monthly basis of what the
25 payment was?

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1 A There was certainly an increase. I don't know
2 that it was dramatic over some months.
3 Q But over --
4 A In months where they would have --
5 Q -- but the average is what I'm talking about.
6 A There was certainly an increase over the average.
7 And that increase was premised on the fact that
8 Fluor was coming in as the new constructor.
9 Westinghouse was taking over, CB&I had exited the
10 project, you know, starting January 1. And that
11 there was a recognition on the part of
12 Westinghouse that there were -- in order to fund
13 the mitigation activities, which included more
14 craft that Westinghouse would have to ramp up in
15 order to get to -- to get to those mitigations
16 such that the status quo payments would have
17 resulted in a status quo increases in efficiency
18 or getting more work done and mitigation factors.
19 So what Westinghouse asked for was to staff up.
20 And in order to staff up they needed a little bit
21 more money. And Westinghouse was also paying for
22 things that the company wouldn't necessarily be
23 invoiced for. And so to compensate them for those
24 kind of things, they asked for more than 100
25 million. They wanted a 130 million, I think, or

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1 140 million. So they wanted significantly more.
2 So it was a negotiated number down from their
3 number up from what the company had been paying to
4 allow them to cover some of the cost they were not
5 entitled to bill a company for and to compensate
6 them for the fact that they were going to ramp up
7 with the proviso for a true-up at the end.
8 Q So that increased the owner's cost?
9 A That increased the owners' cost? That did not
10 increase the owners' cost.
11 Q The 100 million a month?
12 A That was not owners' cost. That was cost --
13 Q Excuse me. Increase the cost of the project?
14 A It did not increase the cost of the project. It
15 was a timing issue.
16 Q Well, let me put it this way: It increased the
17 cost of the project over a period -- over that
18 time frame?
19 A It set the cost payments to Westinghouse in lieu
20 of the construction milestone payment schedule
21 while that was being negotiated in anticipation of
22 ramping up the construction that Fluor would have
23 to hire a lot more people in order to get the job
24 done. The same thing we talked about a few
25 moments ago. So it was in anticipation of all

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1 those things for a finite period of time with a
2 true-up at the end.
3 Q Steve, I just -- I'm trying to figure this out.
4 And I know you've been through it and you're
5 probably are sick of thinking about it. But how
6 in the world would E&G and SCANA add more people
7 to an inefficient project instead of replacing
8 inefficiencies with better people and thus saving
9 money? We're talking about millions and millions
10 of dollars when you ramp up like you're talking
11 about.
12 A Well, once you go to the fixed-price contract,
13 then the inefficiencies don't cost the owners more
14 money. So the contractor is not going to get more
15 money from you for those inefficiencies, which was
16 a concern the owners had which is why the owners
17 pushed so hard for the fixed-price contract.
18 Q I get all that. I understand that.
19 A So your premise is that if you just get rid of a
20 few people and -- a few inefficient people then
21 the project becomes more efficient. And the
22 problem with that notion is that it isn't
23 necessarily the craft themselves that were being
24 inefficient. So what the owner said is that it's
25 -- that's a leadership issue with the Consortium

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1 before the October agreement and with Westinghouse
2 and Fluor after that agreement, that the
3 leadership needs to take care of those kinds of
4 issues: leadership with the Consortium, leadership
5 with Fluor, leadership with Westinghouse.
6 And the contractor did go through a couple of
7 reductions in force, and those reductions in
8 force, they would call the least efficient people
9 from the workforce. So there were two or three --
10 at least two or three times when the contractor
11 would actually call the workforce to do just what
12 you're suggesting, which is get rid of inefficient
13 people. I mean, the same time they have to ramp
14 up hiring.
15 Q How many people did they get rid of at this time?
16 A It was different each time. I can remember at one
17 point being about a 150 people. But the numbers
18 were different each time. I don't recall exactly
19 what they were on each date.
20 Q So you're saying that some of the reason for the
21 inefficiency or the higher PF may have to do with
22 leadership of the contractor?
23 A Well, I want to say it's a number of things. It
24 could be design related issues, procurement
25 related issues, procedure issues. Could be

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1 weather, although I didn't put too much stock in
2 the weather. There were a lot of things that
3 means that a nuclear workforce in general is less
4 efficient than a nonnuclear workforce, okay.
5 Procedural requirements, quality assurance,
6 quality control, NRC oversight, inspections, there
7 are a lot of reasons for some of those
8 inefficiencies. So it's -- I don't think you can
9 just say we had a number of bad actors in the
10 craft and that was the reason they were
11 inefficient. Certainly, there were inefficiencies
12 there. And so one of the things the contractor
13 did was they culled some of their workforce at
14 periodic times through the project, starting with
15 CB&I and ending with Fluor. Shaw may have
16 actually done some of that as well. You know,
17 once Shaw was there, the total craft population
18 wasn't that large, so they may not have done one.
19 But the contractor also commissioned these
20 efficiency studies and did change things on the
21 project to improve efficiency.
22 Q During these times '14, '15, '16 there are
23 comments in y'all's notes and e-mails and
24 different things we have seen that y'all worried
25 about Westinghouse going bankrupt. What did

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1 that --
2
3 MR. BALSER: Object to the form.
4
5 Q What did that -- how did that play into your
6 thinking about what to do about the project and
7 how to manage it?
8 A Well, the bankruptcy discussion started off as
9 contingency planning. So, you know, the
10 companies, the owners did a lot of contingency
11 plans, so I didn't think it was necessarily
12 untoward to plan for a contingency.
13 Q Right.
14 A So it didn't strike me as unusual that we would be
15 doing that. The actual retention of any kind of
16 bankruptcy expert in planning was really with the
17 legal departments of SCANA and Santee Cooper, so I
18 was not involved with that.
19 Q I mean, I think having a contingency plan is a
20 good one. But the fact that you were thinking
21 that this might happen must have come about as a
22 result of your thinking that the contractors, they
23 can't get their act together and, therefore,
24 they're -- they keep telling us they want to bill
25 us more and we have these fights. And we see

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these documents where y'all are battling back and forth. But, all said and done over the period of time that this contract occurred, it cost a lot more than would you anticipated, didn't it?

A When you look on a total cost perspective --

Q Let me ask you just to answer that first because sometimes I forget my question by the time you want to talk about it. So it cost a lot more, didn't it?

A It cost more, certainly.

Q You don't use the term "a lot"?

A Well, it depends on -- well, you may have one thing in mind when you say "a lot." I may have a different thing when I say "a lot." So I was just going to explain my answer. Certainly it cost more. There's no question that it cost more.

Q More than what was predicted?

A More than what was predicted.

Q All right. And more than what the public was told at the beginning that they would have -- in other words, the public, they rate holders are going to foot a lot of this bill eventually, weren't they?

A The ratepayers.

Q The ratepayers.

A Yeah, the ratepayers were going to foot a lot of

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1 the bill, which is the way the rate design is in
2 the utility business, yes.
3 Q Well, of course, the rate design in the utility
4 business went upside down when the BLRA came
5 about, didn't it? This brand new rate paying
6 system.
7
8 MR. BALSER: Object to the form.
9
10 Q For construction purposes, right?
11
12 MR. BALSER: -- upside down.
13
14 Q Upside down is pretty good. Let me just do it
15 another way. It went 180 degrees, didn't it?
16
17 MR. BALSER: Object to the form.
18
19 A Yeah. I don't think that it went 180 degrees; I
20 don't think it was upside down. But it certainly
21 changed. It changed the way that the projects,
22 whether they be nuclear or coal, could be
23 constructed in South Carolina.
24 Q It certainly benefited SCANA and E&G tremendously,
25 didn't it?

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1 A I think there was a tremendous benefit to the
2 ratepayers also, in as much as the financing cost
3 savings on this project were going to be
4 significant. So it was a billion dollars over the
5 construction project, and I think it was 4 billion
6 over the lifetime of the plant because the
7 financing charges were being paid as the project
8 was being constructed as it was it going along.
9 So the Baseload Review Act was a benefit to the
10 ratepayers. A large, a capital intensive project
11 would likely not be possible without some form of
12 legislation like the Baseload Review Act for
13 utilities of the size of Santee Cooper and SCANA.
14 Q Do you remember the first couple of questions I
15 asked you at the beginning is how do we get here?
16 Do you remember?
17 A Uh-huh.
18 Q Would it be fair to say that you believe -- or
19 maybe I'll ask it this way: Would be fair to say
20 that if the project had gone along as planned then
21 the BLRA would have been a benefit to the
22 ratepayers and to SCANA, wouldn't it?
23 A It certainly would have been a benefit to both.
24 Q Right. Now, the group that really, up to now, has
25 not had to take it on the chin are the investors.

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1 Isn't that true?
2
3 MR. BALSER: Object to the form. Can you
4 read back that question? I'm sorry, I just didn't
5 hear it.
6 MR. BELL: I'll just restate it.
7 MR. BALSER: Okay.
8
9 Q The ratepayers that I represent, the company that
10 you work for, your company hugely benefited in
11 profits over this construction period, didn't it?
12 A Usually benefited in profits? I think that the
13 return on equity was spelled out in the BLRA.
14 Q Please answer my question first. And I understand
15 you want to explain it, but let me rephrase it so
16 it will be an easier question. During the
17 construction project, SCANA and SCE&G increased
18 the capitalization, increased their market
19 share -- not the market share -- increased their
20 stock price and the investors made a really good
21 return on their money, didn't they?
22 A I think the investors made a reasonable return on
23 the money, which was consistent with what the
24 returns prior to the nuclear project. But again,
25 I'm not a financial expert.

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1 Q All right. But they didn't suffer because of the
2 construction problems, did they?
3 A No. I think the company suffered through a number
4 of downgrades by rating agencies and downgrades in
5 stock ratings and performance measures. The stock
6 price certainly did increase. That's a function
7 of what the market will bear or what the market
8 sees. So, again, not a financial expert.
9 Q But you were on some of those calls, weren't you?
10 A Certainly.
11 Q And you told the investors that we had these
12 little issues but we think they're going to work
13 out, didn't you?
14 A I informed the investors of the status of the
15 project. And when asked questions about issues, I
16 shared those issues.
17 Q Right. But you didn't share a lot of issues, did
18 you?
19 A I think I did share a good many issues.
20 Q But there were a lot of problems in this
21 construction project that at the PSC level and at
22 the investor level were not told to the PSC or the
23 investors. Would you agree with that?
24 A No, I wouldn't agree.
25 Q Okay. So your testimony is that you fully

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1 informed the PSC of the problems associated with
2 the construction, and you fully informed the
3 investors on your investor calls with these
4 problems sufficient enough to let them make a wise
5 investment?
6 A So my testimony is that while perhaps not every
7 single issue was discussed in detail, the topics
8 that were problems for the construction and the
9 progress of construction were disclosed to the
10 Public Service Commission and to the investors.
11 Q Now, let's pretend like -- do you have stock in
12 SCANA?
13 A I do.
14 Q You have a lot of stock, don't you?
15 A I have a fair amount of stock.
16 Q And you got most of your stock during the
17 construction period, didn't you?
18 A I worked for the company for 22 years and have
19 been pretty much buying the same percentage in the
20 401(k) program the whole time.
21 Q A percentage, but you got bonuses with stock?
22 A Got bonuses with stock?
23 Q I got some --
24 A -- in terms of stock?
25 Q Yes, sir.

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1 A Not during the construction progress, no.
2 Q Okay. So when we see that the company has
3 furnished us some financial information and see
4 that you were making a salary four to five, 600 in
5 that area during this period. You have stock
6 options of something during that period of
7 millions of dollars. Tell me how that works.
8 A No stock options.
9 Q Okay. And you got the stock?
10 A No. The company paid out two forms of bonus. One
11 was a short-term bonus which was annual and
12 another one was a long-term incentive payout which
13 is over a three-year period.
14 Q Was it all cash?
15 A All cash.
16 Q Okay. So when we see something that -- how much
17 you made during this period, we can assume that's
18 all cash?
19 A With the exception of the things that were
20 benefits to --
21 Q Sure.
22 A -- home security and those kind of things.
23 Q I get that.
24 A And then there would be a company match in the
25 401(k) because, as I said, I had been

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1 participating at the same level of the 401(k) ever
2 since I started with the company.
3 Q But would you -- and again, I'm just doing the
4 30,000-foot level. Wouldn't you agree that
5 without the construction project you would not
6 have gotten the large payout you got during that
7 five or six years?
8 A No, I would not agree with that.
9 Q Okay. But you would have gotten it anyway?
10 A The structure of the bonus plans or the
11 compensation plans has -- is unchanged. So I
12 believe that I would have gotten at or near those
13 same levels.
14 Q But as your cost increased for the project so did
15 your income, didn't it?
16 A As the cost increase so did my income?
17 Q So did the company's income?
18 A The company's income? So the net income for the
19 company may have.
20 Q I mean, they got a return on their cost?
21 A They got a return on -- they got a return on
22 equity, yes.
23 Q So the more the capital expenditure was the more
24 they made?
25 A Well, the capital expenditure -- again, I'm not an

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1 expert in rate design; I'm not a financial expert.
2 The BLRA was a recovering on the cost of
3 financing.
4 Q Let me ask you this: If you were to show an
5 investor the letters that Lonnie Carter wrote and
6 the e-mails he wrote talking about the problems,
7 do you think an investor would say "I was told
8 that. I got that understanding from Mr. Byrne
9 when he told us at our investor meetings. I got
10 the same understanding from him that I'm reading
11 in Lonnie Carter's letters." Do you think that
12 they would say that they did or didn't get the
13 same impression from the -- from your investor
14 calls?
15
16 MR. BALSER: Objection. Calls for
17 speculation.
18
19 A I don't know what an investor would say.
20 Q Pardon me?
21 A I don't know what an investor would say.
22 Q Well, okay. You would agree, wouldn't you, that
23 someone looking at Lonnie Carter's or the Santee's
24 complaints and those letters and things are
25 certainly different than what was told to the PSC

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1 and to the investor calls, wouldn't you?
2 A You know, I don't know that I would agree with
3 that statement. I think that Mr. Carter may have
4 been more vociferous. I think Mr. Carter at times
5 would be positive and at times be negative. I
6 think sometimes he was grandstanding. I think
7 often times he was taking a negotiating posture.
8 Q Negotiating for what?
9 A Well, negotiating, one, with the Consortium. And
10 some of the e-mails I'm guessing that you're
11 talking about would be in his interactions with
12 consortium members and sometimes even with SCE&G
13 members. So, you know, Mr. Carter would often
14 time say things that were a little peculiar to me.
15 Q So let me ask it a different way. We'll come to
16 this and we'll go over those in a little bit. I
17 recognize there's some disagreement with counsel
18 over the Bechtel report. You've heard that,
19 haven't you?
20 A Disagreement with counsel?
21 Q Whether it's confidential or not?
22 A When you say "disagreement with counsel" are you
23 talking about --
24 Q Your guys think it's confidential; we think we've
25 got it and it's okay. All right. So let me just

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1 ask you this question: Did you read the newspaper
2 article where they published the Bechtel report?
3 A I did not.
4 Q Okay. So have you read the Bechtel report?
5 A I have.
6 Q Okay. If an investor had the Bechtel report in
7 front of him or her, and then heard your PSC
8 testimony or the investor calls or even some of
9 your press days, would they get the same
10 impression from what Mr. Carter said and what
11 Bechtel said and what you told him?
12 A I'm not going -- I don't want to speculate on what
13 an investor might read from either the Bechtel
14 report or Mr. Carter's comments. So I don't know.
15 Q But I understand your answer. But you know the
16 reason for having an investor call is to give that
17 investor an open and fair rendition of what's
18 happening so they can make a wise decision as to
19 whether to invest or not, don't you?
20 A That certainly could be one of the purposes of the
21 call.
22 Q So from your standpoint, do you think that what is
23 found in the Bechtel report, what is found in
24 Lonnie Carter's letters, those e-mails, gives the
25 same impression of what you gave in the PSC's

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1 testimony and the investor calls and the press
2 days that you had? Don't you see a dichotomy
3 there?
4 A I think that we were fair and balanced in what was
5 said in media days and press releases and
6 testimony and BLRA public reports. I think that
7 Mr. Carter would, again, sometimes adopt
8 negotiating postures which are not necessarily
9 what you would view the same way as if you were
10 giving a report to somebody that was looking at
11 the project.
12 Q Okay.
13
14 MR. BALSER: Ed, when you get to a convenient
15 stopping point, why don't we take a short break?
16 MR. BELL: Let's take a break. Off the
17 record.
18 VIDEOGRAPHER: This concludes volume one of
19 the video deposition of Stephen Byrne. The time
20 is now 10:48 a.m. We are now off the record.
21
22 (Off The Record)
23
24 VIDEOGRAPHER: We are now back on the record.
25 Today's date is August 14, 2018. The time is

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1 approximately 11:25 a.m. This is video number two
2 of the video deposition of Stephen Byrne.
3
4 MR. BELL: For the record, we are identifying
5 Exhibit No. 1 as the August 23, 2013, letter from
6 Lonnie Carter to Kevin Marsh. We'll pull it up on
7 the screen.
8
9 (Whereupon, Contract Negotiations Letter
10 was marked Exhibit No. 1 for
11 identification.)
12
13 MR. ELLERBE: Is there a Bates number?
14 MR. BELL: There is. It's ORS00 073599.
15
16 BY MR. BELL (Continuing):
17 Q When you've had a chance, let me know, Steve, when
18 you've finished reading.
19 A Okay, I've read it.
20 Q Was this one of several communications that
21 Mr. Carter had with Mr. Marsh, that you were aware
22 of?
23 A Mr. Carter certainly had many communications with
24 Mr. Marsh. This is certainly one of those, yes.
25 Q Okay. I'm not going to hold you to it, but do you

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1 remember when Mr. Carter started becoming more --
2 I don't know what the right term would be -- more
3 assertive in his complaints about the project?
4 Like the year or what time frame?
5 A I don't. I think Mr. Carter was concerned with
6 the performance of the contractor for the majority
7 of the project.
8 Q Okay. So this letter starts out with a complaint
9 or a concern Mr. Carter has in the first paragraph
10 concerning the Lake Charles facility about the
11 submodules. Is that correct?
12 A Yes.
13 Q Okay. And then he references in April 9 meeting
14 with the CB&I leadership, review the issues. CB&I
15 committed -- according to this letter -- it says
16 "CB&I committed to deliver 83 modules by the end
17 of 2013." According to the letter, they provided
18 a delivery schedule. And then in that letter it
19 reduced it from 83 to 69. Do you see that?
20 Second paragraph.
21 A Yes.
22 Q Do you know why CB&I changed their commitment from
23 83 to 69?
24 A I don't remember.
25 Q Okay. Did CB&I, the best you can recall, deliver

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1 69 modules, as stated in this letter, by the end
2 of 2013?
3 A I don't recall.
4 Q From your best memory, though, they most likely
5 didn't from the problems you were having?
6 A I don't recall.
7 Q Do you know how many modules and submodules were
8 part of the contract with Lake Charles?
9 A No. It was a significant number. This was not
10 talking, I don't believe, about one specific
11 module for which they were making submodules. So
12 this was obviously talking about more than one
13 module for which they were making submodules. But
14 the total number that were originally premised to
15 come out of Lake Charles, I don't remember what
16 that total number is.
17 Q Okay. So the third paragraph talks about the nine
18 to 12 month delay due -- and that by 2013,
19 August that there was a nine to 12 month delay.
20 There was financial community was notified on the
21 June 5th presentation. Were you present on that?
22 A I was.
23 Q Okay. At that time, did the owners indicate the
24 additional cost or the amount of the additional
25 cost this nine to 12 month anticipated delay would

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1 incur?
2 A I don't remember what was disclosed at that time
3 relative to cost.
4 Q It later turned out that the nine to 12 months
5 turned out to be longer, didn't it?
6 A Yeah, I don't know if it was for this reason.
7 Certainly it turned out to be longer than the nine
8 to 12 months that was announced at this
9 analyst meeting.
10 Q And when was that announced? That the nine to 12
11 months at the June 5th analyst meeting, when did
12 the owners correct that or make an announcement
13 that y'all's estimate turned out not to be
14 fulfilled, I guess?
15 A Well, first of all, the nine to 12 months came
16 from the Consortium. At this point in time
17 Chicago Bridge & Iron had just taken over the
18 facility in Lake Charles from Shaw. So it
19 transitioned from Shaw Module Solutions to CB&I
20 Lake Charles. CB&I had done a review of their
21 module status, which is what Mr. Carter references
22 here, where they committed to deliver a certain
23 number of modules. That was announced in the
24 analyst day presentation in New York on June 5th,
25 as it says here. Subsequent to this, there was

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1 another estimate to complete done by the
2 Consortium. And it was either later this same
3 year in 2013 or in 2014 where the Consortium was
4 proposing some new dates. That was the time frame
5 where SCE&G made those announcements.
6 Q The module construction, was that delayed because
7 of design issues or because of Lake Charles having
8 problems with their own ability to construct, if
9 you recall?
10 A Oh, I recall.
11 Q Okay.
12 A The Lake Charles facility had a number of issues.
13 Certainly design issues played into it. And if
14 you were to ask Shaw and CB&I, they would point to
15 design issues. If you would Westinghouse, they
16 would point to fabrication issues and issues of
17 qualifications and record keeping and all kinds of
18 other things with the workforce down at the Lake
19 Charles facility itself. So I would say the Lake
20 Charles facility had a number of issues.
21 Q Did the owners have an agent representative or
22 someone at the Lake Charles facility to oversee
23 what was going on?
24 A The owners did place somebody at the Lake Charles
25 facility. Not originally, but as some of these

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1 problems started to unfold, the entity
2 construction team wanted some first-hand feedback
3 on that Lake Charles facility. So they did place
4 one inspector at the facility.
5 Q Do you recall who that was?
6 A I don't recall the name.
7 Q Did that turn out to be an employee or a contract
8 worker?
9 A I believe that was a contract person.
10 Q Who would know or who would I -- if you were
11 asking to find that name, how would you go about
12 doing that?
13 A The best person in the position to answer that
14 question likely would be Alan Torres who was the
15 general manager for construction.
16 Q With Westinghouse?
17 A No, with SCE&G.
18 Q Okay. You don't recall -- was it a man or woman?
19 A I don't recall.
20 Q Okay. Did you get reports from this individual?
21 A I did not get reports from that individual.
22 Q Did you eventually see reports that were shown to
23 you or e-mailed to you?
24 A I don't recall seeing reports from this
25 individual. Those reports would have gone to the

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1 construction team. Again, Mr. Torres would have
2 been one seeing those reports.
3 Q I'm trying to figure out how we could do some
4 research to figure out the person's name and get
5 their e-mail or something. So would you think
6 that I would be successful if I ask for
7 Mr. Torres' e-mails from someone that was working
8 up at Lake Charles on SCANA's behalf? You think
9 someone would be able to find those, if I ask?
10 A You're talking about somebody at SCE&G?
11 Q Yes.
12 A I really don't know if they would be successful or
13 not.
14 Q Okay. I understand that, but --
15 A Well, I know Mr. Torres no longer works for SCE&G.
16 Q Right.
17 A To what extent his e-mails have been captured, I
18 don't know.
19 Q But he certainly communicated back-and-forth?
20 A I would imagine he communicated back-and-forth.
21 But again, that was communications between
22 Mr. Torres and the inspector at Lake Charles. I
23 did not see those.
24 Q How long did that individual work for E&G?
25 A I don't know, but it was one individual the whole

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1 time. There were perhaps some change --
2 individuals. But SCE&G had a person at the
3 facility for a number of years, basically until
4 that facility stopped producing submodules.
5 Q Would that have been a company that furnished the
6 individual or do you recall?
7 A Would it have been a company? Did the individual
8 work for a company?
9 Q That was hired by E&G?
10 A I don't recall.
11 Q Okay.
12 A It may well be. I just don't recall.
13 Q All right. But in any event, you expect that that
14 particular individual or his company would have
15 probably communicated back with -- back-and-forth
16 with Alan Torres and y'all got information from
17 him?
18 A I would imagine that that individual communicated
19 with Mr. Torres. Now, if Mr. Torres had somebody
20 that was intermediary between him and this person,
21 I couldn't answer that question.
22 Q Do you recall whether in some of your weekly and
23 monthly reports that some of that information
24 would have been passed on to you?
25 A Information about module fabrication was in -- was

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1 contained in the weekly and monthly reports.
2 Q Okay. I'm not familiar with this kind of
3 fabricating company or business. Were they the
4 only ones in America that were capable of
5 fabricating these modules?
6 A No. To try to understand the Lake Charles issue,
7 you have to understand at the time the nuclear
8 renaissance was supposedly emerging in the US, and
9 indeed around the world, US companies were looking
10 at building plants. So I know at one point in
11 time there were 18 license applications with the
12 Regulatory Commission. So Summer would have been
13 one of those. The two plants in Summer would have
14 been one application. The two plants in Vogle
15 would have been one application. So there were 18
16 on file with the Regulatory Commission at one
17 point in time. Each of those were looking at a
18 technology or they would try to be technology
19 agnostic. But each one of the ones that was
20 looking at a specific technology would get that
21 reactor supplier. In our case that Westinghouse
22 but there were others. But each was paired with a
23 constructor. Westinghouse was paired with Shaw
24 Group. Shaw Group, I believe, was a 20 percent
25 owner of Westinghouse at that point in time. And

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1 the Shaw Group was -- built this facility
2 specifically to make modules for the AP1000
3 reactor. So this facility did not exist in 2008.
4 Q Kind of built into the project?
5 A It was built specifically to make modules for this
6 project. A similar strategy was employed in
7 China. So the Chinese -- I don't know which
8 manufacturer it was -- but the Chinese built a
9 module facility just to make modules for their
10 AP1000 buildings. So this was a similar model to
11 what the Chinese were using.
12 Q Describe, if you can in layman's terms, what are
13 we talking about when we talk about a module or a
14 submodule?
15 A Yeah. So the modules that we're talking about
16 here are called structural modules. They have a
17 designation CA01 through CA05 and then CA20, so
18 there really were six. So Westinghouse often
19 called them the big six modules. These varied in
20 size, something the size of this room to something
21 the size of a five-story building. I think the
22 largest of the modules was about 80 feet wide by
23 80 feet tall by 50 feet wide and was -- each of
24 these was too large to be shipped by rail or
25 truck. So they were designed as submodules, and

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1 each of the submodules could be delivered by
2 truck. So each of these submodules, some of them
3 were, you know, 70 feet long, but nevertheless,
4 could be trucked to the site.
5 The first of the big modules was a module
6 called CA20 and it was about 70x70x45. So, you
7 know, five-floor building kind of size. It
8 contained 72 different submodules. So each of the
9 72 submodules would be fabricated at the Lake
10 Charles facility. And a submodule would be
11 something probably about the size of this table
12 but 70 feet long sometimes. And that would be
13 trucked to the site. It would go into a module
14 assembly building once it reached the site. And
15 then each of these submodules would be welded
16 together to form a big structural module, a very
17 large module.
18 Q Were the modules steel?
19 A Modules were different materials. Certainly
20 steel. But some of them were alloys of steel;
21 some of them would be stainless; some of them
22 could be carbon steel. So they were different.
23 Even within a single module, you might have
24 different grades of steel.
25 Q So the idea was you make the modules there, you'd

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save money. Wouldn't have so much on-site work, things like that?

A The premise of the modular construction was similar to putting together a nuclear submarine or aircraft carrier. And as much as there is generally a higher degree of quality in a shop environment than if you're in the field. So the more you can build in a shop environment, the less you build in the field, generally the better.

Q Do you remember or recall what the six -- the big six were?

A The first to be installed of the big six was a module called CA20 which comprised a large portion of the auxillary building. The next five -- so that went outside of the containment vessel. So you have a containment vessel which is a big steel cylinder. So five of the six steel structural modules went inside of this big steel cylinder. Outside adjacent to that big steel cylinder was a large square that comprised the auxillary building, that was CA20.

Q The auxiliary building did what?

A It contained what the nuclear industry would call the auxillary equipment. So safety-related pumps and heat exchangers and valves -- fuel cooler

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1 would go into just kind of fuel storage pool.
2 Q So you had the auxillary building and then the
3 other five were in containment?
4 A Inside the containment building.
5 Q And how many of those of the six got built in
6 total?
7 A For unit two, all six got built and all six were
8 installed. For unit three, all were built. I
9 think four of the six were installed.
10 Q To they're still there now?
11 A Still there.
12 Q If you went out and looked at them, would you
13 understand them a little bit more? I'm trying to
14 get an idea in my mind.
15 A If I went out and looked --
16 Q If I were to go out there --
17 A Oh, you. Would you understand them a little bit
18 more? You'd have a good understanding of the size
19 and the complexity. I don't think it would be
20 obvious, based on looking at them, what their
21 function was.
22 Q Did y'all have some kind of layman's brochure that
23 tells the story about what those modules do?
24 A Those certainly exist at both SCE&G and at
25 Westinghouse. I don't know that I have them, but

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1 they exist.
2 Q All right. So if I were to get some kind of
3 materials like that it might give a good
4 description with maybe some pretty color
5 photographs. Stuff like that?
6 A Yes, it would.
7 Q So let me ask you this --
8 A I'm not sure they would be pretty.
9 Q There were problems, if I understand you
10 correctly, with the module construction issues,
11 timing, things like that. Plans, I guess, were
12 problems. Is that -- part of the plans were not
13 completed, the module plans? Or did they all have
14 them completed?
15 A I'm not sure what state of completion the module
16 design was in at the time Shaw went to
17 construction, but certainly there were changes to
18 the design after the start of construction.
19 Q Of the percentage of the overall cost increase of
20 this project, ballpark, although I know you took
21 approximately, what kind of percentage are we
22 talking about with the delay in the module
23 delivery to the site -- not withstanding why
24 they didn't get built, but delivery -- what affect
25 did that have and what part did that play in the

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1 overall cost increase?
2 A So the module -- you're asking what the module
3 delay impacts on cost were to the project?
4 Q Yes.
5 A Yeah. I'm not sure I'm in the position to
6 quantify that as we sit here today. Even giving
7 you a ballpark, I'm not sure I would be really
8 accurate. The actual cost of the modules
9 themselves were fixed. So -- and commodities were
10 fixed. The implications on the site were storage
11 and the delay which would increase the target
12 bucket. So it would be -- it's not direct from
13 the modules themselves, but indirect from the
14 target bucket.
15 Q So delaying the module to get to the site delayed
16 timing of the completion of the project?
17 A It did.
18 Q People expecting it coming in on March 1. They're
19 hanging around; don't have a module; they can't go
20 to work?
21 A At least they can't go to work on that component.
22 They could be reassigned to other things.
23 Q Right.
24 A It would also impact the hiring plans. So if you
25 plan to staff up to a certain level, you knew the

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1 modules weren't coming, you would probably scale
2 back on the hiring plans. Certainly SCE&G did
3 that. I believe the Consortium did that as well.
4 Another implication of the modules was that as a
5 mitigation plan some of the submodules were
6 actually sent to the project site and finished at
7 the project site. The project's workforce were
8 actually better at nuclear safety-related
9 construction than the Lake Charles workforce was.
10 And so the fabrication of these submodules
11 actually went better when they were shipped to the
12 site. So the owners at both sites -- both the
13 Vogle site, the Southern Company site, and the VC
14 Summer site -- allowed some of these modules to be
15 shipped incomplete and finished there at the site.
16 Q You visited Lake Charles?
17 A I visited Lake Charles.
18 Q How many times?
19 A I think it was three times.
20 Q Do you recall who you dealt with at Lake Charles?
21 A Each time that I went to Lake Charles there
22 were -- the first time it was Shaw. Thereafter, I
23 think it was CB&I, or Chicago Bridge & Iron.
24 There were Westinghouse personnel there at each of
25 the meetings that we had. At one meeting it was

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1 joint between SCANA and Southern Company and then
2 Westinghouse and I think it was Shaw Group but
3 could have been after transition to CB&I, but I
4 think it was Shaw Group. And so we dealt with
5 some -- a leadership person at either Shaw or
6 CB&I. And then plant manager would have been
7 involved in those meetings. The first plant
8 manager I remember because he was a College of
9 Charleston graduate, which seemed unusual for
10 somebody in Lake Charles, Louisiana. Shaw
11 executives were there, Ben Barrick (ph) for
12 example. Shaw executive -- was there. So it was
13 a -- there were large number of folks that were
14 there . . .
15 Q Would there usually be a follow-up report or a
16 cleanup report for the meeting?
17 A There was -- I don't -- I wouldn't categorize it
18 as a report. They were communications between the
19 entities after the meetings. I should point out
20 Santee Cooper went to the meetings as well to Lake
21 Charles facility.
22 Q Did Mr. Carter go?
23 A Mr. Carter was there. I don't remember if he went
24 on every one of the meetings. He wasn't there
25 each time that I went, but he was certainly there.

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1 Q Do you recall in general what Lake Charles
2 basically said was their cause of the delay?
3 A Lake Charles had a lot of excuses. But the Lake
4 Charles folks, whether they were Shaw or whether
5 they were CB&I -- again, the facility changed
6 hands -- would like to blame design changes coming
7 from Westinghouse and material changes coming from
8 Westinghouse. Again, the Westinghouse folks would
9 blame quality workforce, those kind of things.
10 The Lake Charles facility also received from the
11 Nuclear Regulatory Commission a number of
12 inspections. A number of those inspections were
13 critical of Lake Charles, whether it was Shaw or
14 whether it was CB&I. And shortly after CB&I
15 acquired the facility they got what's called a
16 Safety Conscious Work Environment letter from the
17 Nuclear Regulatory Commission, which in the
18 nuclear arena is a fairly big deal.
19 Q What were they basically being cited for?
20 A In the Safety Conscious Work Environment letter --
21 which, again, the NRC doesn't dole those out; they
22 do dole those out judiciously -- it was
23 intimidation of the workforce, being told not to
24 raise problems.
25 Q Not to --

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1 A Not to raise problems or issues. There were
2 documentation issues that looked like supervision
3 and craft were not being honest on some of the
4 reporting of some of their -- with some of this
5 documentation. But, in general, a Safety
6 Conscious Work Environment means that the NRC
7 wants people to be free to raise problems and
8 issues. So this letter, you know, basically said
9 people -- the workforce does not feel free to
10 raise problems and issues and you need to correct
11 those issues.
12 Q Was that corrected? At least according to the
13 NRC?
14 A Yes, it was corrected.
15 Q So the Lake Charles facility was built in part due
16 to this renaissance and was originally owned by
17 Shaw who owned 20 percent of Westinghouse?
18 A One correction there. I think the facility was
19 built exclusively to make AP1000 modules.
20 Q Okay. But it was owned by Shaw?
21 A Owned by Shaw.
22 Q Did Westinghouse have any ownership in it?
23 A No. Westinghouse didn't have any ownership in it.
24 Now, Westinghouse would have a consortium
25 agreement with Shaw Group, an agreement that SCE&G

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1 was not privy to. I don't know what that
2 agreement would have said about how the facility
3 was run or operated or costs to share, that kind
4 of thing. But Westinghouse did not have any
5 ownership that I'm aware of in the facility
6 itself.
7 Q Once the modules were shipped, were they pretty --
8 was it efficient? Were they efficiently
9 constructed and put together or was that an issue
10 as well?
11 A I would say that for the first module there was --
12 it was not as efficient as it needed to be. That
13 CB&I did have some issues and problems with
14 fabricating that first big modules on-site.
15 Thereafter, I think it got much more smooth.
16 Q Do you recall what the problems were on the first
17 module?
18 A They did have some problems with fit-up, as in you
19 put two modules together and they're supposed to
20 look like this and maybe perhaps they don't, so
21 the walls would need to be straightened. They had
22 some issues with welding, automated welding
23 techniques versus manual welding techniques.
24 While in general the site was not working,
25 actually at that time, they were working around

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1 the clock in the modules assembly building itself.
2 The night shift was not as productive as the day
3 shift. And it looked like they had a lot of
4 people calling in sick on the night shift, that
5 kind of thing. So there were issues with assembly
6 of the module, even once the submodules were
7 shipped to the site.
8 Q In your contract with Westinghouse was there
9 penalty clauses if they didn't meet the schedule?
10 A There were.
11 Q Did E&G ever enforce its penalty to clauses?
12 A E&G let the contractor know at one point that they
13 would enforce the penalty clause, so the penalty
14 clause schedule would be called Schedule
15 Liquidated Damages. Those Schedule Liquidated
16 Damages would not occur until the contractor went
17 back past the contractual guaranteed substantial
18 completion date. So the guaranteed substantial
19 completion date, or GSCP, was a contractual
20 kickoff for current liquidated damages, and they
21 would accrue over a period of time. So while they
22 never actually got to that point, there was a
23 period of time in 2015 where SCE&G did tell the
24 contractor they would attempt to collect
25 liquidated damages.

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1 Q Were those damages resolved in the agreement that
2 resulted in the fixed contract?
3 A The October 2015 agreement that resulted in the
4 fixed-price option did change the liquidated
5 damages provision and did change the guarantee
6 substantial completion date such that the
7 contractual point where liquidated damages would
8 accrue were moved and the amount of liquidated
9 damages was increased.
10 Q Steve, you're aware of the lawsuit that was filed
11 by Vogle, right? Vogle Construction?
12 A Which lawsuit are you talking about?
13 Q The one against Westinghouse.
14 A I'm aware that there was a lawsuit or lawsuits
15 between the Consortium and Summer. And it may
16 have been there were, I think, four owners that at
17 Southern Company, so there may have been four
18 owners.
19 Q Who are there -- Westinghouse was being sued for
20 construction issues, timing, things like that down
21 in Georgia?
22 A I was aware of lawsuits in Georgia, yes.
23 Q And is that called the Vogle Plant or where is
24 that? Down in Augusta?
25 A It's, yeah, Waynesboro, Georgia not far from

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1 Augusta, and it's called Vogle project, yes.
2 Q So those lawsuit or suits came out of that
3 project?
4 A That's correct.
5 Q Did you have any meetings or discussions with
6 anyone about the lawsuits that were being filed or
7 served or in place against Westinghouse?
8 A No.
9 Q Why not?
10 A Well, a couple of reasons. One, the first lawsuit
11 that I'm aware of was relative to a problem that
12 was not applicable to the VC Summer site.
13 Q Do you remember what it was?
14 A It had to do with backfill and the amount
15 safety-related backfill that was -- that had to be
16 used. I'm aware of that because Southern Company
17 was public about the issue. Their conditions,
18 their soil conditions, the conditions underneath
19 the plants were different in Waynesboro than they
20 are in Jenkinsville. So the same issue was not
21 applicable to that VC Summer site. And then
22 secondly, commercial issues and terms, we were not
23 allowed to talk about with the Southern Company.
24 Q You were not going to talk about them?
25 A No.

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1 Q Why?
2 A Two reasons. One, Westinghouse didn't want it.
3 They had confidentiality clauses around from both
4 companies both going both ways. They didn't want
5 us talking commercial terms with Southern; they
6 didn't want Southern talking commercial terms with
7 us. And I was advised against it by SCANA
8 attorneys.
9 Q Not getting into the legal advice, but from a
10 business standpoint, you had asked to have the
11 permission to look into it?
12
13 MR. BALSER: Object to the form of the
14 question to the extent that it calls for the
15 reveal of any discussions that he had with
16 SCANA . . .
17
18 Q Let me just ask it this way: Were you desirous
19 wanting to look into the issues that were being
20 raised by the lawsuits?
21 A To the extent that I knew what the issues were,
22 for example in this backfill issue, that was not
23 applicable to us so I would not have had a desire
24 to look at that.
25 Q Sure.

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1 A But would I have been desirous to know other
2 commercial terms or issues? Certainly I would
3 have liked to have done that from a business
4 perspective. But I believe that there are
5 issues -- there are some legal issues around
6 that . . .
7 Q Now, when you say "legal issue" are you talking
8 about the confidentiality issues?
9 A Certainly that. But beyond that there are other
10 legal issues.
11 Q From your standpoint, what are those --
12
13 MR. BALSER: I'm going to -- I object to the
14 question to the extent it calls to reveal anything
15 you learned from SCANA attorneys regarding any
16 issues.
17
18 A I would have to divulge -- to answer your
19 question, I would have to divulge my
20 conversations --
21 Q Don't tell him. Just tell me what you . . .
22 A I'll whisper it to him.
23 Q So let me ask you this. I'm just curious and I
24 hadn't even thought about this until now. You
25 know Westinghouse is -- y'all got problems. We

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1 could go on for days talking about the timeline,
2 can't we? Maybe weeks. We can go on a long time,
3 can't we? But there were construction problems
4 from the beginning and some of which try to
5 resolve and try to resolve and they never got
6 resolved. That's fair, isn't it?
7 A Some were not resolved by the time construction
8 ceased, that's right.
9 Q Sure. And did the -- did the Summer Jenkinsville
10 project start about at the same time as Vogle?
11 A Started at roughly the same timeframe as Vogle. I
12 think Vogle probably started a little bit ahead of
13 VC Summer.
14 Q You mentioned a minute ago that Westinghouse
15 didn't want you to talk to the Vogle -- to the
16 issues, or I'm not sure who you talked to, but
17 didn't want to discuss those. Did they tell you
18 why?
19 A They viewed the contracts as separate and distinct
20 and proprietary. So they didn't want -- what
21 Westinghouse did not want was Vogle cherrypicking
22 what they liked from the Summer contract and
23 trying to push Westinghouse into that and vice
24 versa.
25 Q Well, I get that on the contractual terms --

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1 A They also --
2 Q -- I'm talking about the lawsuit.
3 A They also --
4
5 MR. BALSER: Let him finish.
6
7 A They also were in -- Westinghouse was also in
8 contract negotiations with other entities to
9 build 51,000 active contract negotiations. So
10 they didn't want those contract negotiations
11 flavored by knowledge in the Southern contract or
12 the Summer contract.
13 Q Okay. But once a contract was entered into and
14 the performance of the contract got started, did
15 Westinghouse suggest or imply or ask you not to
16 talk to Vogle about those issues, the lawsuit
17 issues?
18 A They did.
19 Q Who did you talk about those?
20 A That would have been when the first lawsuits --
21 lawsuit came out. I think it was a relatively
22 early process. I don't remember who at
23 Westinghouse it was. I don't recall if it was Dan
24 Litman (ph) at that point in time. There were a
25 lot of changes in leadership at Westinghouse, so I

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1 had to deal with a lot of different
2 people/personalities.
3 Q Sure.
4 A I have a feeling it was Dan Litman at that point
5 time.
6 Q Do believe that you may have gotten correspondence
7 from them concerning this?
8 A There may have been correspondence, which would
9 have been in the form of a -- what SCE&G and the
10 Consortium call a project letter. I don't know
11 that that exists. I certainly got verbal
12 communication from Westinghouse that they did not
13 want us to interface with the Southern Company on
14 commercial terms.
15 Q Okay. I've read that term "commercial terms" in
16 some of the writings here. What does that mean?
17 A Commercial terms mean how the contracts are
18 structured, what you pay in each different
19 category, so basically it's how the contract is
20 built.
21 Q Okay.
22 A But they extended that to legal actions based on
23 how the contract was built.
24 Q And what was your response to Mr. Litman or
25 whoever you talked with?

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1 A My response, in general, when Westinghouse would
2 claim something as proprietary or business
3 confidential was to ask them to reconsider. But
4 with regard to the commercial terms at Southern, I
5 didn't see much point in arguing that. It seemed
6 futile, based one of the confidentiality
7 agreements that the entities had signed with each
8 other and that the advice that we talked about
9 that I got from the lawyers.
10 Q Let's say I have not seen the litigation papers.
11 I guess those are public documents, aren't they?
12 A Which litigation papers?
13 Q From the Vogle papers against Westinghouse. Those
14 would be filed in a court of law?
15 A I have no knowledge of that.
16 Q They weren't? They were mediations and
17 arbitration type things?
18
19 MR. BALSER: DRVs.
20
21 Q DRVs. Did you inquire of Westinghouse of whether
22 they were having construction -- not commercial
23 but construction -- issues similar to yours down
24 in Georgia?
25 A Certainly, yes.

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1 Q Okay. I'm going toward that more so than the
2 commercial things.
3 A Okay.
4 Q Did you talk with anyone other than Litman about
5 that?
6 A Yes.
7 Q Compared your problems with Vogle?
8 A Yes. Yes.
9 Q Who did you talk to?
10 A Rick Perez.
11 Q Who is he?
12 A He was the chief operating officer for
13 Westinghouse.
14 Q Okay.
15 A I talked with Jeff Benjamin, who was a senior VP
16 at Westinghouse for nuclear projects. I spoke
17 with each of the project managers who were VP
18 level person at Westinghouse, so an officer at
19 Westinghouse, but their title on the project was
20 project manager to ensure that the project manager
21 was talking with his counterpart on the Vogle
22 project to see that issues were being resolved and
23 the issues they would have, we would have. SCE&G
24 personnel, met frequently with folks from Southern
25 Company on the Vogle project just to make sure

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1 that we were up to speed on what was going on
2 there and they were up to speed with us. There
3 were some equipment that we shared, mostly rigging
4 and lifting type equipment for specialty
5 components. We would have to coordinate where
6 those were and what site needed them when.
7 When --
8 Q They would just truck them back and forth?
9 A Yes. Yes. And there were also quarterly meetings
10 with the Nuclear Regulatory Commission that were
11 started at some point probably in that 2014 time
12 frame, '13, '14 time frame, where both sites
13 participated -- both Southern and SCE&G
14 participated with the Nuclear Regulatory
15 Commission, both the regional staff from Atlanta
16 and their headquarter staff in Washington, and
17 alternated each quarter which site the meeting
18 would take place, which it involved on site tools.
19 So the two companies, the two sets of owners, did
20 a lot of things to make sure that from a
21 construction perspective things would go smoothly
22 as they could.
23 Q So through those meetings, report back -- reports
24 back to you from people at SCE&G going down to
25 Vogle and vice versa. Did you learn from the

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1 construction issue or what construction issues
2 were at issue?
3 A We -- the company -- SCE&G certainly learned from
4 experiences at Vogle and Vogle certainly learned
5 from construction experiences with Summer. As an
6 example when VC Summer poured base mat, which is
7 the -- for the nuclear, which is what all of the
8 nuclear ponds will eventually sit on. It's a very
9 large, it's six-foot thick monolithic pour so
10 there's no joints in it. You just pour the whole
11 thing at one point in time, you know, thousands of
12 yards of concrete. It took 50, 51, 52 hours
13 continuous pour. VC Summer got to that point just
14 before Vogle did. Vogle had personnel there
15 observing concrete pour to try to learn lessons on
16 how it went and then tried to incorporate those
17 lessons in a comparable pour at Vogle, the
18 comparable first pour at Vogle took a little less
19 time because of the learnings of Summer.
20 Similarly, when Vogle would do something before
21 Summer would get to it then the Summer personnel
22 would be at the Vogle site to observe. If an
23 issue was discovered at either of the sites, they
24 would have to deal with the Nuclear Regulatory
25 Commission. The site discovering it would take

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1 the lead in resolving that issue with the NRC. So
2 it was a fairly collaborative arrangement between
3 the two companies on the construction terms, not
4 commercial.
5 Q Did you understand that the litigation between the
6 Vogle Groups and Westinghouse was a construction
7 issue? Design issue seems like that's similar to
8 yours.
9 A Again, the first lawsuit I'm aware of was the
10 Bechtel issue. Subsequent lawsuits, I'm not sure
11 what -- you know, I may have known at one point
12 time. I don't recall what the substance of those
13 lawsuits was.
14 Q But you knew they were in litigation?
15 A I knew they were in litigation.
16 Q And during these meetings the -- y'all are two
17 companies side-by-side, in essence. Your
18 territory backed up to each other. You probably
19 shared some real electricity, things like that.
20 A We do.
21 Q So you had a working relationship with that group
22 and y'all didn't get a feel or an understanding of
23 what their litigation was about?
24 A Based on advice from our attorneys, I'm not going
25 to put myself at risk or in jeopardy. So I wasn't

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1 going to pursue it. And I don't know that it
2 would have much difference. There were some
3 differences that we were aware of in the contract,
4 so the Vogle contract and Summer contract did have
5 some differences in them. I don't know what all
6 those differences were, but became aware, largely
7 through Westinghouse, of the differences.
8 Q Did you learn through these interoffice meetings
9 between the two that there were some issues
10 relating to timing, the schedule, things like
11 that?
12 A Well, certainly we were -- SCE&G was aware of the
13 issues going on at the Vogle site and the Vogle
14 site was aware of the issues going on at the
15 Summer site. Largely, they were the same issues.
16 Q Okay. So I don't have to beat this thing to
17 death, they were having similar issues that y'all
18 were having at Jenkinsville?
19
20 MR. BALSER: I think we've moved passed that.
21 MR. BELL: Not quite.
22
23 A So the issues on the Southern Company project in
24 Waynesboro were similar to the issues the were
25 happening at the Summer project in Jenkinsville.

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1 Q Okay. So my next question then is if they were
2 having similar issues in Waynesboro similar to
3 Jenkinsville, were they getting theirs corrected
4 or were they still having similar issues with
5 correction?
6 A Based on our interface with both the contractor
7 and with Southern Company and our troops over
8 there to visit, it appeared that the Southern
9 Company was suffering from the same issues and the
10 resolutions were similarly impacted, as in they
11 were not getting to resolution any faster than the
12 Summer site was. And the fact -- you know, I said
13 that the Southern Company project actually started
14 a little before the Summer project. But when the
15 project -- when the Summer project was terminated
16 it was, I would say, a little ahead of the
17 Southern Company project. For example, things
18 like some of the big picture milestones like some
19 generator sets, reactor vessel sets, those kind of
20 things, the Summer project progressed ahead of the
21 Vogle project on some of these. In other words,
22 if there was a resolution to an issue that worked
23 at Southern then SCE&G would be aware of it and
24 would look to implement the same kind of
25 resolution in the contract.

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1 Q Let's go, please, on Exhibit No. 1 to the last
2 paragraph. It's up on the screen. And could you
3 read that paragraph into the record for me,
4 please, Steve? That one and the --
5 A The one that starts with Kevin?
6 Q No. Let's start with "The consortiums inability,"
7 the first page?
8 A The last paragraph of the first page, okay.
9 Q I'm sorry? Say it again.
10 A The last paragraph of the first page?
11 Q Yes, sir.
12 A (As read) "The consortiums inability to deliver
13 submodules has been a major source of concern and
14 risk for this project for a long time. At the last
15 president's meeting on June 21, 2013, the
16 Westinghouse/CB&I discussion demonstrated they do
17 not functional well as a team to resolve critical
18 project issues. The Consortium scheduled
19 performance including any associate module delay
20 cost currently embedded in the project cost for
21 future claims against the project are simply
22 unacceptable to Santee Cooper. Our view is that
23 the consortium's inability to fulfill their
24 contractual commitments in a timely manner places
25 the project's future in danger. SCE&G and Santee

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1 Cooper need to examine together the remedies
2 provided for under the EPC for the consortium's
3 failure to perform and exercise the fullest extent
4 of these remedies to project -- to protect our
5 interest."
6 Q All right. Let's talk about -- this is, again, a
7 letter dated August 23, 2013.
8
9 MR. BALSER: If you're going to move onto
10 another exhibit, might we break for lunch if this
11 is a good stopping point?
12 MR. BELL: Sure. I'm sorry. That's a good
13 idea. That all right with you, Steve?
14 THE WITNESS: Sure.
15 VIDEOGRAPHER: We will go off the record.
16 The time is approximately 12:18 p.m.
17
18 (A lunch break was taken from 12:18 p.m.
19 until 1:26 p.m.)
20
21 VIDEOGRAPHER: We are now back on the record.
22 The time is approximately 1:25.
23
24 BY MR. BELL (Continuing):
25 Q Mr. Byrne, going to the last paragraph you read

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1 into the record, I believe it begins on the first
2 page of this letter from Mr. Carter, Lonnie
3 Carter, to Mr. Marsh dated August 3, Exhibit
4 No. 1. Do you see that? If you don't mind, can
5 we break that last paragraph down and talk about
6 kind of some of the subjects in there?
7 A Certainly.
8 Q Okay. First sentence says, "The Consortium's
9 inability to deliver submodules has been a major
10 source of concern and risk for this project for a
11 long time." Now, the three things in that
12 sentence that make me curious. One, the term "for
13 a long time." Do you know how long that the
14 inability of the Consortium's submodule delivery
15 has been a -- how long has that been a concern?
16 Since the beginning of the contract?
17 A No.
18 Q Approximately what are we talking about?
19 A Yeah, so the module -- the module facility was
20 only actually constructed in the 2009/10 time
21 frame.
22 Q Okay.
23 A I believe that the module facility started this
24 production in the 2010 time frame.
25 Q Okay.

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1 A And so it would be sometime thereafter.
2 Q Do you remember when the first module was
3 delivered. I say module. Module or submodule?
4 A I don't remember, no.
5 Q Okay. Was it on time?
6 A I don't remember.
7 Q But Mr. Carter, who is I guess president and CEO,
8 Chief Executive Officer of Santee Cooper, he adds
9 to that term "concern and risk for this project."
10 And you read this letter at the time or got a copy
11 of it somewhere down the line?
12 A I don't have a specific recollection of reading --
13 Q Okay. You were aware that Santee expressed its
14 concern for a while?
15 A I was aware of the concerns Santee expressed, yes.
16 Q And so when a CEO from the partner of SCE&G
17 indicates in his letter that he's concerned about
18 the risk of this project, do you believe that at
19 time in 2013 that that was something that E&G
20 agreed with or disagreed with?
21 A I would say that SCE&G agreed that the problems at
22 the module facility were creating a problem for
23 the project --
24 Q All right.
25 A -- and could have an impact on schedule.

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1 Q Okay. But the term I'm asking for is "risk."
2 A Uh-huh.
3 Q And maybe I'm looking at the term differently than
4 what Mr. Carter was, but, reading it on face
5 value, you say "risk for the project," it sounds
6 like it could be something that would make the
7 project not complete or not finalized. Did you
8 read it that way?
9 A Well, as I read it here today, knowing what I know
10 about the project and knowing Mr. Carter, I would
11 take from this that what he meant was risk to the
12 schedule.
13 Q Well, it was during 2013 that Santee started
14 trying to sell its interests. Isn't that correct?
15 A I don't remember the exact time frame, but it
16 would be in that general time frame, I think yes.
17 Q And they were discussing the Duke Power to sell
18 their interest?
19 A They did have discussions with, as I understand
20 it, a number of parties, but certainly including
21 Duke Power.
22 Q And y'all -- E&G was concerned that if that would
23 take place that it would look bad on the investor
24 community?
25 A I'm not aware of that.

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1 Q Did you, or anyone that you're aware of, express
2 any concerns about Santee selling or attempting to
3 sell their interest?
4 A I'm not aware that anybody had any difficulty with
5 Santee selling a portion of their interest,
6 provided that it was a worthy counter party, as in
7 somebody that would be -- would understand the
8 nuclear construction and somebody that would have
9 the wherewithal.
10 Q I don't recall, and I'm not sure I've even seen
11 the contract between E&G and Santee, y'all's
12 partnership contract, but was there a provision
13 that one of the partners could get out or sell out
14 if they wish?
15 A Yeah. Of course, I don't have the agreement with
16 me. But there was a construction and an operating
17 agreement and that agreement did contemplate that
18 one or either -- either of the parties could exit
19 the project.
20 Q What it be fair to say that the impact of the
21 increased costs that this project was incurring
22 was having a larger impact on Santee's customers
23 than on E&G's customers because they had less
24 customers?
25 A Are you saying that Santee has zero customers?

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1 Q Yes.
2 A I'm not sure that that's the case. Generally, the
3 way that Santee Cooper would talk to SCE&G about
4 customers, they would include customers of the
5 co-ops. And so I think when you include all of
6 the customers of the co-ops plus Santee Cooper's
7 direct customers, they may be fairly close in
8 size. And from a megawatt perspective, I think
9 Santee Cooper peaked at a higher megawatt level
10 than SCE&G.
11 Q There's some documents that address the cost per
12 customer for E&G at Santee. And it seemed to me,
13 when I read them, that the customers at Santee had
14 a higher cost per customer for this increased
15 cost. Do you know why that would be or are you
16 familiar with that at all?
17 A I don't know that to be the case. I don't know
18 why that would be.
19 Q All right. The next sentence on Mr. Carter's
20 letter says (as read) "At the last president's
21 meeting on June 1 -- June 21, 2013, the
22 Westinghouse and CB&I discussion demonstrated they
23 do not function well as a team to resolve critical
24 project issues." Was Westinghouse and CB&I at
25 that meeting or was that just a meeting for the

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1 presidents and their staff with Santee and E&G?
2 A The president's meetings always included the CEO's
3 of the four entities, so the two owners and the
4 two Consortium partners.
5 Q Okay. Do you remember if you attended the June 21
6 meeting?
7 A I don't recall if I attended or not. I may have,
8 I just don't recall.
9 Q They have their minutes -- meeting minute notes
10 for that meeting?
11 A I don't know that there were minutes. If I
12 attended, I would have taken notes in the meeting.
13 Q Was there a readout or a summary of the meeting
14 prepared, do you know?
15 A Not that I'm aware of.
16 Q Okay. But clearly Mr. Carter thought there was,
17 at least from his standpoint, that CB&I and
18 Westinghouse didn't function very well together.
19 Do you agree with that?
20 A If I consider what Mr. Carter wrote, yes.
21 Q Did you agree with that assessment?
22 A I'm not sure that I necessarily agreed to that
23 assessment. What I do know is there were
24 frustrations on the part of both owners, or I
25 should say both co-owners, that the modules at the

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1 Lake Charles facility were not being delivered in
2 a timely manner and that the CB&I corporate
3 structure had the fabrication and manufacturing in
4 a different division than the folks who were
5 trying to build the plants. So what Mr. Carter
6 may have been referring to is this hierarchy at
7 CB&I where fabrication and manufacturing, or F&M,
8 didn't report to the power group.
9 Q So then that gets to the next sentence in that
10 paragraph. It says, "The Consortium's scheduled
11 performance. . ." That's the schedule that you as
12 the owner, or one of the owners, would be given by
13 the contract of Westinghouse. Is that correct?
14 A I'm not sure which schedule Mr. Carter's referring
15 to. He could be referring to that overall project
16 schedule that I think you're referring to. He
17 could be referring to specific schedules for
18 submodule delivery.
19 Q Well, the next sentence kind of helps on that. It
20 says, "The Consortium's scheduled performance
21 including any associated module delay cost
22 currently embedded in the project cost or future
23 claims against the project are simply unacceptable
24 to Santee Cooper." Now, what was E&G's position
25 on that?

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1 A SCE&G's position on the delays coming from Lake
2 Charles was that the costs were of the modules
3 themselves were fixed and that the owners should
4 not be responsible for costs associated with
5 delays on the project stemming from module delays.
6 Q How about all the other delays? I mean, the
7 modules weren't just the only problem?
8 A Well, you were asking me about this -- this
9 sentence and what I agreed with that.
10 Q Right, but --
11 A That's what I was commenting on.
12 Q -- I was talking about, to me, what he's saying
13 the Consortium's scheduled performance including
14 the modules, not just the modules. "Currently
15 embedded in the project cost are future claims
16 against the project are simply unacceptable to
17 Santee Cooper." And so not just the module
18 issues, but the other delays and the other
19 increased cost on the cost-plus basis?
20
21 MR. BALSER: Well, hold on. I object to the
22 prefatory remarks. He didn't hear your question.
23 MR. BELL: All right. It was probably a bad
24 question. I'll start over.
25 MR. BALSER: -- excuse.

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1 MR. BELL: I've never . . .
2
3 Q I mean, isn't the real question here is not just
4 the modules, but there were other problems in
5 addition to modules that were created delays. Is
6 that correct?
7 A There were problems other than modules that were
8 creating delays. I believe that Mr. Carter, in
9 this memo, was addressing modules, was
10 specifically submodules from the Lake Charles
11 facility, and including associated module delay
12 costs. So I believe he was talking about -- when
13 he said "Consortium's schedule performance" I
14 believe was talking about modules. And when he
15 said "delayed cost" I believe he was talking about
16 delayed cost from the modules. So I believe that
17 Mr. Carter's memo here was referencing the modules
18 or submodules.
19 Q But outside of what Mr. Carter meant or didn't
20 mean, the fact is there were more -- there were
21 other problems in addition to the modules, weren't
22 there?
23 A There were other factors that were causing delays.
24 Q Those delays were causing increased cost?
25 A The delays -- is that a question?

1 Q Yes, sir.
2 A Yes.
3 Q I'm sorry.
4 A The other delays were causing increased cost.
5 Q Mr. Carter says, "Our view is that the
6 Consortium's inability to fulfill their
7 contractual commitments in a timely matter" -- I
8 think he meant manner -- "places the project's
9 future in danger." You agree with that?
10 A I guess it depends on what you mean by -- or what
11 he meant by "danger" and I don't know what he
12 meant by "danger."
13 Q What do you -- what is your definition of danger,
14 in this context?
15 A Well, I don't know that I have a definition of
16 danger. And again, I don't know that I would have
17 chosen that word anyway, so this is Mr. Carter's
18 memo so you're asking me to try to figure out what
19 Mr. Carter meant by danger.
20 Q May I suggest that maybe just for the purpose of
21 my question that maybe "danger" might mean
22 jeopardy? Let's just use that term and not put
23 it -- not assign that term to Mr. Carter. But do
24 you believe or do you have an opinion as to
25 whether the Consortium's inability to fulfill

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1 their contractual commitments in a timely manner
2 placed the project's future in jeopardy?
3 A I think that the Consortium's failure to live up
4 to their contractual commitments certainly placed
5 the schedule in jeopardy and certainly could have
6 led to increase cost.
7 Q Led to increase cost?
8 A Yes.
9 Q But not the project itself?
10 A Not -- I believe then, and continue to believe,
11 that the project could be built.
12 Q You're familiar with the term "in the money,"
13 aren't you?
14 A I've heard the term, yes.
15 Q And how does that -- what's that term mean in the
16 electrical business?
17 A I don't know that I've heard the term in the
18 electrical business.
19 Q Okay. Have you not read some articles and other
20 comments about this project about being "in the
21 money" or "out of the money"?
22 A I have -- I do not recall reading any articles
23 that talk about in or out of the money.
24 Q So if I were to come up with a definition and "in
25 the money" means, in this instance, that without

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1 the BLRA and without the tax credit this would not
2 have been a commercially economically, feasible
3 project?
4 A Yeah. I think the company has been on record
5 saying without the BLRA these projects could not
6 have been built.
7 Q Right. And part of that analysis also had to do
8 with whether you get the tax credit. Is that
9 correct?
10 A The issue of tax credit relative to construction,
11 the tax credits didn't come into play until after
12 construction was over with.
13 Q But it does come into play from balancing how
14 much -- if something costs $10 and eventually get
15 a credit for five, your overall cost is $5, right?
16 That's very simple.
17 A Sure.
18 Q But --
19 A But the production tax credits were going to go to
20 the full advantage of the customer.
21 Q In what way?
22 A Inasmuch as the production tax credits were going
23 to be a credit to the fuel clause which would have
24 been a direct passthrough to the customer.
25 Q Well, it's kind of unique to say that because when

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1 E&G got their settlement with Toshiba, I don't see
2 any credits to the customer on that. Did --
3 A I'm not sure what the Toshiba settlement has to do
4 with PTCs.
5 Q Well, it's no different. I mean, Toshiba paid
6 money back, right? There was a settlement on a
7 dispute.
8 A Are you talking about the Toshiba guarantee?
9 Q I'm talking about the dispute over money that E&G
10 got.
11 A So that was --
12 Q I don't know what you call it.
13 A -- a Toshiba guarantee.
14 Q But it had to do with this project, didn't it?
15 A The project had nothing to do with production tax
16 credits.
17 Q But it lessened the cost of the project because
18 you got a refund?
19 A You were asking me about production tax credits?
20 Q No, sir. I'm asking you about the Toshiba refund.
21 A So what are you asking about?
22 Q I'm asking you when that money came back to E&G
23 did you go to the PSC and say, "Look, we got money
24 back to reduce our cost so that our customers will
25 have a lesser rate"? Did you do that?

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1 A Yes.
2 Q When did you do that?
3 A When?
4 Q Yes.
5 A Did that -- it was actually Jimmy Addison that
6 explained that portion after the guarantee was --
7 I think it was after the guarantee was finalized
8 and then after the abandonment of the project.
9 Q Right. And do you remember what the reduction
10 was?
11 A I think that the SCE&G portion was around
12 1.1 billion. And I believe that Jimmy reported
13 that taxes would have to be paid on that such that
14 it would reduce the final impact to customers by
15 about 700 million.
16 Q Okay. So that was a reduction in the cost of the
17 project?
18 A That was a reduction that the company had proposed
19 at a meeting with the Public Service Commission.
20 Q So the rates were reduced?
21 A I don't know that the rates were reduced. The
22 company made a filing and the legislator requested
23 the company withdraw the filing. So that filing
24 was withdrawn subsequent to my retirement. They
25 may have refiled.

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1 Q So, as far as you know, to date the customers have
2 not gotten any credit or any new reduction in
3 their rates as a result of the Toshiba settlement?
4 A I don't know what has happened with the Toshiba
5 settlement. I know what was proposed, and before
6 any action had been taken I retired from the
7 company. I have not been involved in that.
8 Q Do you know what E&G did with the money?
9 A I don't.
10 Q Were you involved in any discussions about that?
11 A I was not.
12 Q Mr. Carter's goes on to say that E&G and Santee
13 Cooper "should examine together the remedies
14 provided under the EPC for the Consortium's going
15 failure to perform and exercise the fullest extent
16 for the remedies to protect our interest." And
17 those remedies would be set out in the liquidated
18 damages and things like that in the EPC contract?
19 A Certainly there were liquidated damages provisions
20 in the EPC contract. The EPC contract Schedule
21 Liquidated Damages provision, though, would not
22 come into play until after the -- much later in
23 the project. All right. So much later than what
24 Mr. Carter was talking about here.
25 Q So you couldn't get credit for it right now?

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1 A No.
2 Q Was there any kind of limitation provision in the
3 EPC contract in regards to a limit of liability
4 Westinghouse may have?
5 A The EPC contract did contain a limitation on
6 liability that I believe was 25 percent of what
7 had been spent to date on the EPC.
8 Q Are there other limitation provisions?
9 A The liquidated damages were limited.
10 Q Is that the one that's 150 million?
11 A A 155.5, something along those lines, yes. That's
12 a 100 percent basis number.
13 Q So if, for example, the project could cost -- I'm
14 using these numbers so I can divide -- 4 billion
15 then the limitation would have been a $1 billion
16 limitation?
17 A If --
18 Q In general terms?
19 A Yeah. If 4 billion had been spent then 1 billion
20 would be the limited liability.
21 Q Okay. And earlier you mentioned when you went to
22 the flat rate deal that you ended up paying for
23 things in that settlement that you would not have
24 otherwise had to have paid for in the earlier
25 agreement. Explain that.

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1 A There was going to be a change to the premise of
2 the EPC contract, whereas prior to that
3 October 2015 agreement payments were made -- the
4 payments were made based on a variety of streams.
5 So there was a payment made for milestones. There
6 were progress payments. Progress payments, in my
7 mind, are a misnomer. They weren't really based
8 on progress; they were based on time. And there
9 would be invoices from the contractor for target
10 and TNN. So you pay based on all of those
11 factors.
12 Going forward from the October 2013
13 agreement, there was an agreement that the change
14 would be to a milestone payment schedule. So it
15 was called a construction milestone payment
16 schedule. But there was a acknowledgment that it
17 would take some period in time to negotiate that
18 construction milestone payment schedule. So in
19 the interim, Westinghouse wanted to -- they just
20 kept cost neutral, which they said was
21 $130 million a month. The owners argued that they
22 didn't think it was quite that much and there
23 would be -- they would only be entitled to a
24 lesser amount under the old contract way of
25 paying, which Westinghouse agreed with. However,

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1 since there was going to be a change in the
2 premise of the project going forward and to pay
3 for some of the mitigation activities, there would
4 need to be a ramp-up and things like subcontracts
5 and then the Fluor hiring that was going in place.
6 And there were things that the contractor couldn't
7 recover from the owners until it was placed in
8 service. So they would not get credit in general
9 for module work until the module was placed in the
10 facility.
11 So their issue was that they have significant
12 expenditures beyond what they were covering from
13 our project, and asked that as a gap to get to
14 this construction milestone payment schedule and
15 make the needed improvements that we would agree
16 on a fixed amount per month to be paid.
17 Q Was there ever any discussion in the preliminary
18 part of the contract to have any performance bonds
19 in place?
20 A There was a performance bond in the contract.
21 Q Okay. And who was that with?
22 A Well, the performance bond would have been the
23 responsibility of the Consortium. But the owner
24 would have to pay for the fee for the performance
25 bond.

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1 Q Explain that to me again. I understand the fee
2 issue, but what was the first part?
3 A The Consortium would be responsible for bonding.
4 Q For buying the bond?
5 A For buying the bond. And the owners would be
6 responsible for the cost of the bond itself.
7 Q So was a bond ever purchased?
8 A Yes.
9 Q From whom?
10 A I don't recall which financial institutions that
11 were used.
12 Q And was any claims ever made to have the bond
13 intervene and start working?
14 A I'm not aware of a claim. If there was a claim,
15 that would have been handled by our legal
16 department. But I'm not aware of a claim. And
17 there was an overall negotiation for the Toshiba
18 parental guarantee money and maybe that that money
19 was folded into the parental guarantee agreement.
20 Q So you think that might have substituted for the
21 bond?
22 A I wouldn't say necessarily substituted for the
23 bond. But when the negotiation happened with
24 Toshiba -- and, again, I was not directly involved
25 in the negotiations for the Toshiba parental

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1 guarantee, but I know that the parental guarantee
2 amount negotiated was higher than the amount --
3 was higher than the 25 percent paid by the
4 contracts so far. So there were obviously other
5 considerations that went into that parental
6 guarantee.
7 Q As part of the settlement, did you give up your
8 rights to the bond?
9 A I don't -- I wasn't involved in the negotiations,
10 so I don't know.
11 Q That's just a guess maybe, it might have folded
12 in?
13 A I'm just saying I'm not aware that there was a
14 claim against the bond. Again, if there was a
15 claim that would have been based on our legal
16 department taking some action. And what happened
17 with Westinghouse in the bankruptcy, I'm really
18 not sure.
19 Q So the bond guarantor would -- did Toshiba/Toshiba
20 guarantee the bond?
21 A Again, I wasn't involved with negotiating that
22 bond and I'm not sure.
23 Q Did y'all get copies of the bond?
24 A I didn't get copies of it. I'm sure the company
25 did.

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1 Q Okay. So that's -- someone has that, right?
2 A Presumably.
3 Q Okay. And do you recall the amount of the bond?
4 Did it cover the whole contract or did it cover a
5 portion or do you know?
6 A No. It did not cover the whole contract. Again,
7 the limited liability was 25 percent of the
8 extent, so that would have been the max. There
9 was a description of the bond in the EPC contract.
10 I just don't remember off the top of my head what
11 it said.
12 Q But if your limit of liability to the Consortium
13 was 25 percent of what you've been paid, then it
14 was extremely important for you guys not to have
15 all these problems and increase and increase and
16 increase the cost because then you were limiting
17 yourself to what you could eventually get from the
18 Consortium. Isn't that correct?
19 A I'm not sure I'm following you.
20 Q Okay. I don't have the contract in front of me,
21 but let's just, for the purpose of my question,
22 assume that the problems that you were having
23 at -- on the construction issues were sufficient
24 enough to breach the contract with Westinghouse.
25 Just assume that. Then your limit to recover was

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1 25 percent of what you had already paid. Is that
2 what you told me earlier?
3
4 MR. BALSER: Objection. Improper . . .
5
6 Q Did I hear you wrong?
7 A What I said earlier was you asked me if there was
8 a limit of liability for the contractor, and the
9 limited liability was -- the liability was limited
10 to 25 percent of what had been paid to date under
11 the EPC contract.
12 Q Okay. So the contract might have been X and y'all
13 spent half X in the limit of 25 percent of that
14 half X. Is that correct?
15 A That's correct.
16 Q Okay. But if Westinghouse had just walked off of
17 the site, "We're through. We can't do. We're out
18 of money," and you could not collect even the
19 25 percent, you still had parental guarantee,
20 right, which was the 25 percent?
21 A Well, the parental guarantee existed and was
22 eventually collected, but the 25 percent limited
23 liability applied to the parental guarantee as
24 well. All right. So the amount paid under the
25 parental guarantee couldn't be more than

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1 25 percent of what had been paid on the contract,
2 even though our financial team negotiated a number
3 that was higher than that.
4 Q And that's where you're not sure how the bond may
5 have come into play?
6 A That's correct.
7 Q Okay. All right. Sorry to get off track.
8 A No problem.
9 Q At the end of Mr. Carter's letter he says that
10 it's critical to get this going properly and he
11 said that, "We should make clear to hold the
12 Consortium accountable for the cost to our
13 companies and should insist on the Consortium
14 providing a realistic plan that could be executed
15 by the Consortium to fabricate and deliver the
16 submodules in a timely manner to complete the
17 project on schedule." Do you know whether there
18 were meetings with Santee and others and E&G to
19 take this suggestion and run with it?
20 A There were meetings with SCE&G, Santee Cooper and
21 the Consortium on the module delivery issues, yes.
22 Q Okay.
23
24 (Whereupon, E-mail Correspondence was
25 marked Exhibit No. 2 for

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1 identification.)
2
3 Q I've marked Exhibit No. 2 SCANA Bates number
4 0034698, RP0034698. We'll put it up in a second.
5 And this is a note e-mail, it looks, from Kevin
6 Marsh the Paula Rowland. Who is Paula Rowland?
7 A Paula Rowland was Kevin's assistant.
8 Q Okay. And to Kevin Marsh, okay. This sounded
9 like maybe an e-mail to himself or a little
10 reminder of sorts. All right. It says, "Paula,
11 will you please forward the following message to
12 the directors. Thanks, Kevin." So the first
13 paragraph -- and this is dated June 4, 2013. This
14 is before the letter -- I didn't mean to get out
15 of order, but before the letter of Mr. Carter. It
16 says, "Late last week we received the module
17 delivery schedule we asked CB&I to provide us."
18 Is that correct?
19 A Yes.
20 Q Would you read the balance of -- I'll stop you
21 when I want you to finish.
22 A "In our meeting with their new CEO, Phil Asherman,
23 earlier this year we asked them to give us a
24 module delivery schedule we could rely on for
25 planning and scheduling purposes."

1 Q A little slower.
2 A (As read.) "We explained that Shaw had failed
3 numerous times in providing an accurate schedule.
4 They had given us their revised schedule, and
5 based on that schedule the completion of Unit 2
6 will slide from March 2017 until late 2017 or the
7 first quarter in 2008. Completion of Unit 3 will
8 also need to move, but they have not focused their
9 efforts on that calculation at this time. We are
10 in the process of reviewing a new schedule and
11 will continue work with CB&I to gain an
12 appropriate level of comfort with the new
13 completion dates. The impact on costs has not
14 been determined and will certainly be challenged
15 -- be a challenge given our previous settlement
16 with Shaw that we would not incur any additional
17 costs related to module delivery delays. On a
18 positive note, the last three modules have been --
19 the last three modules we have received have come
20 in ahead of the latest schedule dates. Too early
21 to tell if this will continue."
22 Q Stop there, please. So at this juncture,
23 Mr. Marsh is indicating that the date of
24 completion for both units will have to be moved
25 forward?

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1 A Move backward.
2 Q Will take longer?
3 A Will take longer.
4 Q Okay.
5 A Yes.
6 Q Do you remember in 2013 when the petition that
7 year was made to the PSC? Approximately?
8 A I don't believe there was a petition made to the
9 PSC in 2013.
10 Q Okay. So the next one would have been in '14?
11 A I believe the next one was '15.
12 Q Okay. We couldn't find a couple of those. I was
13 worried I couldn't -- in 2015 was the completion
14 date moved in your PSC petition?
15 A In 2013?
16 Q '15?
17 A '15. In 2015, the completion date was moved in
18 the petition.
19 Q Do you remember what it was right off? When it
20 was moved to?
21 A I believe that it was June of '19 or June '20.
22 Q Still in time to meet the deadline for the tax
23 credit?
24 A It was still in time to meet the deadline for the
25 construction tax credits.

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1 Q The next paragraph, the second line -- or the
2 first line talked about an upcoming analyst
3 presentation in New York tomorrow. Did you attend
4 that presentation?
5 A I did.
6 Q Did you make the presentation?
7 A There was -- this was an analyst presentation that
8 involved all aspects of the company, so there were
9 a number of people who made a presentation. I
10 certainly made a presentation on the construction
11 project at that meeting.
12 Q And I assume at that meeting you -- we talked
13 about the delays, you talked about the timing
14 having to be forward, things like that?
15 A Talked about the delay in the schedule, yes.
16 Q You were talking about the completion date having
17 to be moved?
18 A Yes.
19 Q Did you indicate, or did someone indicate, what
20 the increased costs would be for the delays?
21 A I don't believe that we had an increased cost at
22 that point in time.
23 Q But you expected one, right?
24 A We expected certainly a frank discussion with the
25 Consortium on the cost.

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Q Right. But did you discuss increased cost with the analyst?
A I don't recall what was discussed relative to cost.
Q If it wasn't discussed, would that be something that in hindsight should have been discussed?
A As I said, I don't know that I didn't discuss it. I just don't recall if it was discussed or not.
Q Very good. And then Mr. Marsh says, "While we cannot determine the actual cost of the delay at this point, we're doing our best to define some preliminary boundaries on the cost of the delay to keep the market from assuming the worst. Jimmy, Steve and I will be working on this today in preparation for the meeting tomorrow. I'll keep you posted." So do you recall discussing what the presentation being relative to traditional cost?
A I don't have a specific recollection of it.
Q All right. I have marked for Exhibit No. 3, a set of documents ORS 00011441, 444, 449, 450 and 455. This is entitled "VC Summer Nuclear Deployment Project, Units 2 and 3, Board of Director Meetings." Did you attend this board meeting, Mr. Byrne?
A No.

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(Whereupon, VC Summer Presentation was marked Exhibit No. 3 for identification.)

Q You did not? Did you normally attend board meetings?
A No. This is a Santee Cooper board meeting.
Q Okay. Very well.
A I did not normally attend Santee Cooper board meetings.

MR. BALSER: I object to Exhibit No. 3 as incomplete. I mean, feel free to keep questioning --

MR. BELL: I don't mind supplementing and completing it.

MR. BALSER: Yeah. It's just not a complete record of the --

MR. BELL: I was kind of looking at it myself, figure out what it was.

So, Madam Court Reporter, we will substitute a complete copy of Exhibit No. 3, which would cover the PowerPoint, if you'll remind us.

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1 Q I know you weren't there, so let's look at this
2 kind of with fresh eyes. What do you think?
3 A Yeah.
4 Q All right. So let's go to page 2, I guess, 1444,
5 and it talks about a Unit 2 Schedule Delay
6 Summary. And to the left -- to the left what does
7 COL mean?
8 A Combined Operating License.
9 Q Okay. And it has the base contract in 2011. Do
10 you see that?
11 A I see that.
12 Q And then there is a delay of COL. Do you know
13 what that is? What that -- was there a delay of
14 COL?
15 A Yes. So this talks about the owners receiving the
16 license from the nuclear regulatory commission.
17 Q Right.
18 A And the license was originally forecasted to be
19 issued in July 2011.
20 Q Right.
21 A But the NRC did not issue the license until March
22 of 2012.
23 Q Okay. So I'm looking over to the 2016 line, the
24 gray line, and it says, "Base Contract with
25 Substantial Completion." Do You see that?

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1 A I do.
2 Q And was that approximately April of 2016?
3 A It was.
4 Q And the COL delay, according to this document,
5 caused the delay -- or should have caused it to
6 March of 2017?
7 A That's correct.
8 Q Okay. Do you agree with those dates so far?
9 A Yes.
10 Q Okay. And have you seen this before?
11 A No, I haven't.
12 Q And where it says "Module Delay, December to
13 February of '17 and '18," do you know was there a
14 module delay until that time frame?
15 A That's what the -- the memo that Mr. Marsh was
16 having sent to the Board of Directors is
17 discussing. So this was dated June 4, 2013, and
18 it says last week we received a module deliver
19 schedule that we had asked CB&I to provide. That
20 module delivery schedule received in late
21 May/early June.
22 Q In what year?
23 A Of 2013.
24 Q Right.
25 A Was this -- was reflected in this delay.

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1 Q So where it has on the right the little red line,
2 the red column, and it has Module Delay, what was
3 that date reflective of?
4 A That's the delay that the contractor gave to the
5 owners. So based on their updated module delivery
6 schedule, the overall impact of -- or the impact
7 of the overall schedule was going to be a
8 difference in between nine and 12 months.
9 Q I got you. So at this point in time, which was
10 June of '13 --
11 A Right.
12 Q -- they expected the module delay to extend the
13 substantial completion to December to February of
14 2018?
15 A Correct.
16 Q Okay. Let's go to 449, please. And here's an
17 estimate. Did E&G give estimates to Santee Cooper
18 as the cost of the delays?
19 A Well, Santee Cooper had personnel that were
20 embedded with the new nuclear team.
21 Q All right.
22 A So would have had access to all of the financial
23 information of SCE&G Financial Group had. Santee
24 Cooper, though, was capable of generating their
25 own cost estimates. And of course, their

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1 estimates were 45 percent numbers, and we often
2 times use the 45 percent as approximately for
3 their cost. Take a 100 percent number ratio to
4 45 percent is approximately the cost. But their
5 accounting was a little bit different than SCE&G's
6 accounting. The cost of money was different,
7 those kinds of things. So they're often times
8 small differences in Santee's numbers other than a
9 simple ratio of SCE&G cost.
10 Q Would you mind just looking down the numbers. And
11 I'm not asking you to verify the dollar exactness,
12 but from a general sense, right there 45 percent,
13 does that look to be in line with what E&G was
14 thinking at the time?
15 A Again, I'm reading this for the first time, and
16 it's not an SCE&G product or not a SCANA work
17 product. But it appears that what Santee is doing
18 is they're estimating on a 100 percent basis what
19 the increases are going to be, what the impact of
20 escalation is going to be, how much more in
21 owners' costs are going to be, coming up with a
22 total, subtracting their assumption for liquidated
23 damages and then netting it to the $257 million
24 and then ratioing 55/45. That's what it appears
25 to be looking at.

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1 Q And do you think at that time in this timeframe
2 that was a reasonable estimate?
3 A I don't know at what point in time SCE&G's new
4 nuclear team could come up with an estimate, so I
5 don't know if this is accurate. I wouldn't say it
6 would be far off from SCE&G's estimate, but I
7 don't know if SCE&G had run their numbers and
8 concluded a number of this point in time.
9 Q Steve, who would have been the person or persons
10 over the group within E&G that would have sat down
11 and said, "Gosh, we've got this problem with this
12 delay or this hiccup, and how much it's going to
13 cost us?"
14 A There was a financial group dedicated to the
15 nuclear project that reported up to the CFO. That
16 financial group would have been responsible for
17 estimating the cost increases on this project.
18 Q Would you have gotten a report or a note or some
19 communication that would have given you some
20 estimated costs to these delays?
21 A Yes, I would have.
22 Q Was that part of the weekly report or that been a
23 separate report?
24 A No, not part of the weekly report. It would have
25 been separate.

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1 Q A monthly report?
2 A No. For calculating an increase in cost based on
3 a new forecast from the vendor, that would have
4 been something specific to that task.
5 Q Okay. So if I were to ask the question of E&G in
6 a legal paper, what would be the way that I should
7 word it to get that information? How would you
8 ask for it?
9 A To get --
10 Q To get the financial estimation of cost or the
11 increased costs due to contract problems.
12 A I think --
13 Q Does that sound good?
14 A I think the way you just worded would sound good
15 to me.
16 Q You know, sometimes when lawyers receive that they
17 say it's not clear. And I just want to make sure
18 that you and I understood. Okay. So according to
19 this report, Santee Cooper's estimate of the
20 cost -- and I understand it's Santee Cooper -- was
21 in June of '13 an additional $388 million, not
22 counting the credits that they were anticipating
23 or otherwise. Is that correct?
24 A That's what it appears from this paper.
25 Q All right. So let's go to the next, page 11450.

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1 Now, this is -- this -- can you tell what that is
2 by just looking at it? I know it's new to you.
3 A It looks like a cash flow curve to the end of the
4 project for just Santee Cooper's 45 percent share.
5 The blue line is what had been -- was actual so
6 that was known, so that stays. The FNTP is Final
7 Notice to Proceed. That's the point where the
8 Final Notice to Proceed notification would be
9 given to the contractor. And the red looks like
10 it comes from the -- it says PSC 2012, so I'd have
11 to make an assumption here that that's what SCE&G
12 filed with the Public Service Commission in 2012
13 and Santee is taking a 45 percent ratio of that.
14 Q So let's just assume that the numbers are accurate
15 and came from the quarterly filings of the PSC.
16 From 2000 -- well, from 2012 to 2013 there was an
17 increase of approximately half-a-billion dollars
18 for Santee Cooper's share. Is that correct? 993
19 to 1.49?
20 A Yes.
21 Q And so with your 55 thrown in there, we're looking
22 at over a billion dollars just in one year?
23 A You're talking about spend or you're talking about
24 increase?
25 Q Increase.

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1 A Well, you know, there's forecasted spend that
2 wouldn't be a change from the plan. It would be
3 in these numbers. So embedded in these numbers is
4 not only what they would have expected to have
5 spent, but also an increase coming from the 388
6 million probably netted against liquated damages.
7 But, again, I don't know how they run their
8 numbers.
9 Q All right. So what would be --
10 A In other words, this is not a chart that is
11 supposed to demonstrate how much the project has
12 changed in the cost is -- if there was no change
13 in cost it would have a similar type curve because
14 you would expect to spend a certain amount each
15 year.
16 Q All right. So can this curve tell us what the
17 increased in cost would be? Or this is just an
18 increase on how much was spent each year?
19 A Well, the blue line --
20 Q Projected cost.
21 A -- the blue line was actual, so that's how much
22 was spent by Santee Cooper in those years. So I'd
23 have to take it on face value that those numbers
24 are accurate. And it appears that the redline
25 that what they took was the estimate ratioing

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1 SCE&G's number to a Santee Cooper number based on
2 a filing from the year earlier.
3 Q Okay. I guess the best thing that this graph can
4 have would be the curve which was projected from
5 the beginning to see were we are. Wouldn't you
6 agree with that? It would be a nice line to have
7 in there?
8 A Sure.
9 Q Okay. So we know that at the end of 2012 Santee
10 had spent about a billion dollars; E&G had spent
11 probably a little bit more than that. So you're
12 looking at about 2 billion at the end of 2012. Is
13 that in line with what the original projection was
14 or is that an in increase in cash flow?
15 A Again, not the financial report -- my recollection
16 is that up to that point in time, the project had
17 underspent the original projection. So not that
18 that -- it's not to say that there wasn't a
19 forecast to be an increase. But that some things
20 were coming back lower than was originally
21 anticipated such that if you looked at what was
22 originally projected to be spent at that point in
23 time or what was actually spent at that in point
24 in time going back to 2012, I believe that the
25 project was underspent.

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1 Q All right.
2
3 MR. BALSER: Two page exhibit?
4 MR. BELL: I'm sorry. let me get to it.
5
6 Q I have one more question, Steve, on that last
7 series of questions. What was the reason why
8 Santee had underspent in 2012? Is that because
9 you hadn't gotten as far as you wanted to go?
10 A Yeah. What I said was my recollection was there
11 was an underspending. So some things that the
12 Consortium would not get payments for had they not
13 met certain milestones, escalation was coming
14 lower, the cost of borrowing was a little bit
15 lower. So overall, when you look at the total
16 cost, it was actually -- it was actually a bit of
17 an underspent. At some point that changed, but I
18 think back in 2012 I remember it still underspent.
19 Q Exhibit No. 4 is FOE 0000018 and 0000019. Who is
20 Ron Lindsay?
21
22 (Whereupon, E-mail Correspondence was
23 marked Exhibit No. 4 for
24 identification.)
25

1 A Ron Lindsay was the general counsel for SCANA.
2 Q Okay. And who is Alvis Bynum?
3 A Al Bynum was an internal attorney with SCE&G who
4 was more or less dedicated to nuclear regs.
5 Q Okay. Who is Steve Pelcher?
6 A Steve Pelcher was an attorney with Santee Cooper.
7 Q Okay. Apparently reading this, looks like Steve
8 Pelcher forwarded to Alvus Bynum a note from
9 Carter, Lonnie Carter, to Kevin Marsh. You see
10 that?
11 A From Belcher to Bynum forwarded, yes.
12 Q Middle of the page there.
13 A Yes.
14 Q And a copy of that is sent to Judge Brogdon -- or
15 Jim Brogdon?
16 A Yes.
17 Q All right. Lonnie's writing the note. It says,
18 "Kevin, Thanks. I believe your letter is clear
19 and expresses the urgency well. I can make all of
20 the dates you have given them work. Let me know
21 when we can get together with our teams to
22 consider our options and chart a course to get
23 them back on schedule." So he's appreciative of
24 what Mr. Marsh has done. Is that correct,
25 apparently?

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1 A Sounds like it.
2 Q Okay. The reason I'm kind of going through these
3 is earlier you had mentioned that Mr. Carter
4 sometimes wrote his notes to -- I'm trying to
5 remember the term used, but I didn't think you
6 used the term histrionic. But what was the --
7 what were you trying to say about Mr. Carter's
8 notes?
9 A I think sometimes Mr. Carter would say things for
10 effect and that it was often times in the vein of
11 negotiations, typically when the Consortium would
12 also sometimes with SCE&G, as if, you know, he
13 would assume that these memos might make their way
14 to the Consortium and wanted to make him sound
15 very tough.
16 Q Was he a good negotiator?
17 A I thought Mr. Carter was a pretty good negotiator.
18 Q I've known him a long time. That's the reason I
19 asked you that. Did y'all ever think about
20 getting Mr. Carter in there to work with
21 Westinghouse and . . .
22 A Mr. Carter often was involved in negotiation
23 sessions with Westinghouse and the Consortium.
24 Q And in some of these meetings -- well, in all of
25 the meetings I read about they always said "we'll

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1 look into it; we'll take care of it," didn't they?
2 A I don't know that I could characterize it that
3 way.
4 Q They seem to give a -- the Westinghouse and the
5 Consortium seemed to give a response at least that
6 answered the present question, didn't it?
7 A Well, I believe the Consortium, and when the
8 Consortium was dissolved, Westinghouse did believe
9 that they could impact improvements and did at
10 least acknowledge the concerns of the owner's and
11 to try to address the concern of the owner's.
12 Q So this paragraph that Mr. Carter -- I don't know
13 if this is the first time, but at least in the
14 second paragraph says, "One thing they brought to
15 my attention today is that SCANA has outside
16 counsel with construction litigation experience,"
17 referring to Smith, Currie and Hancock. "I assume
18 they would likely represent SCANA and Santee
19 Cooper in any litigation. If that is the case, I
20 would recommend we get them involved. We need
21 their advice before we meet with Roderick and
22 Asherman." And who is Roderick and Asherman?
23 A Roderick is Danny Roderick who was then CEO of
24 Westinghouse and Asherman is Phil Asherman, the
25 CEO of Chicago Bridge & Iron.

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1 Q Were there discussions about the possibility of
2 having to litigate with the Consortium?
3 A There were some discussions involving litigation
4 with the Consortium, but relatively few of those
5 discussions involved me. And so the folks that
6 you mentioned on these memos were really involved
7 with that, including the Smith, Currie and Hancock
8 the SCANA legal department would have been working
9 with.
10 Q And answer this for me: Who is Danny and Phil?
11 A Danny is Danny Roderick, the CEO of
12 Westinghouse --
13 Q The same ones you told me?
14 A Yes.
15 Q The next page -- and I'll ask you this question:
16 It looks like you received a copy of this note
17 from Kevin Marsh?
18 A Uh-huh.
19 Q The last sentence Mr. Marsh says, "I don't have to
20 remind you that continuing delays and cost
21 overruns are unacceptable from a public
22 perspective and could have serious effects. We
23 need to meet." Did y'all meet about this note
24 from Mr. Marsh?
25 A You know, I don't specifically remember, but I

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1 don't have any reason to doubt that we didn't. It
2 appears that Mr. Marsh threw out some dates to
3 those two CEOs and Mr. Carter was basically saying
4 he can make any of those dates. So I'm sure that
5 there's a subsequent communications relative to
6 when they meeting.
7 Q Okay.
8
9 MR. BELL: Off the record.
10 VIDEOGRAPHER: This concludes the ending of
11 the video deposition of Stephen Byrne. The time
12 is approximately 2:27 p.m. We are now off the
13 record.
14
15 (Off The Record)
16
17 VIDEOGRAPHER: We are now back on the record.
18 The day's date is August 14, 2018. The time is
19 approximately 2:51 p.m. This is video number
20 three of the video deposition of Stephen Byrne.
21
22 Q Steve, I have marked Exhibit No. 5 as an
23 interoffice communication of October 21, 2013, ORS
24 00065013. Do you have a copy? Do you have the
25 exhibit?

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1 A I have it.
2 Q Okay.
3
4 MR. BALSER: And before we began in
5 questioning, we had a conversation off the record
6 about the notations on some of these exhibits that
7 have red boxes and lines. And I understand that
8 counsel for the plaintiffs have added those
9 markings, and we agreed that at some point we will
10 substitute clean copies of these exhibits. We
11 have no objection to questioning the witnesses
12 with these.
13 MR. BELL: There's no objection. All right.
14
15 (Whereupon, E-mail Correspondence was
16 marked Exhibit No. 5 for
17 identification.)
18
19 Q Do you remember seeing this at the time? Or it
20 doesn't look like you were on the circulation
21 list, but --
22 A I don't recall seeing this.
23 Q Okay. Have you seen it before?
24 A I don't recall ever seeing this.
25 Q You want to take a minute and kind of read it in

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1 detail or skim it, either way you'd like?
2 A All right.
3 Q I'm not going to go through every part of it.
4 A (Witness complies.) Okay.
5 Q This is a memo, interoffice communication memo,
6 from the president of Santee Cooper, Lonnie
7 Carter, to Steve Pelcher and James Brogdon,
8 according to the heading. Is that correct?
9 A That's correct.
10 Q And this appears to be a memorandum after a
11 meeting that Mr. Marsh, the president of SCANA,
12 and E&G and Mr. Carter had with the Consortium
13 presence. Is that correct?
14 A The Consortium and Toshiba it looks like.
15 Q Okay, very well. So you were not at this meeting,
16 I assume?
17 A It does not appear that I was at this meeting.
18 Q Okay. But if this recollection of Mr. Carter is
19 accurate -- I'm setting that as an if -- then it
20 would appear that Mr. Carter is expressing a lot
21 of reservations about what's gone on and what
22 might happen in the future. Would you agree that?
23
24 MR. BALSER: Objection. Lack of foundation.
25

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1 Q You've read the memo, haven't you?
2 A I've read through this memo and I think it's clear
3 at this point in time -- this is back in 2013 --
4 that the owners were not satisfied with the level
5 of progress specifically at that Lake Charles
6 facility. CB&I, as the new owners of that Lake
7 Charles facility, had given the project owners a
8 new schedule based on module deliveries. Some of
9 those module deliveries were not meeting their own
10 schedule. And this appears that Mr. Carter and
11 Mr. Marsh were voicing their concerns and
12 frustrations over some of those scheduled
13 activities and their lack of delivery modules to
14 the Consortium and to Toshiba.
15 Q In fact, on the first page Mr. Carter says, "Their
16 failure to provide modules" -- I'm at the last
17 paragraph.
18 A Last paragraph, okay.
19 Q -- "failure to provide modules on a timely manner
20 is now having a critical impact on the project,
21 and if not addressed immediately could mean that
22 our organization would be forced to take drastic
23 action." Do you see that?
24 A I see that.
25 Q And then the next sentence says he says,

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1 "Kevin," -- I assume he's talking about Kevin
2 Marsh -- "and I went on to note we have reached so
3 many new schedules -- we have received so many new
4 schedules that they are meaningless." Do you see
5 that?
6 A I see that.
7 Q All right. Now, this was not a communication from
8 Lonnie Carter to -- it was to their internal
9 organization, wasn't it?
10 A That's what it appears.
11 Q All right. So he wasn't negotiating or wasn't
12 puffing or wasn't kind of doing all the things in
13 these other letters you mentioned. He was talking
14 to his own group, right?
15 A That's what it appears.
16 Q Okay. He also indicated that at this meeting
17 there was a number of discussion and points made
18 that these delays and the problems they were
19 having could affect their bondholders, their
20 investors, their banks, their financial market, if
21 you will. Do see all the references in there?
22 A I certainly see the references to bond offerings
23 and, in fact, I think it indicated Santee Cooper
24 was preparing to go out in the market for the bond
25 offering.

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1 Q It mentions somewhere about E&G having to go in
2 the financial market --
3 A Would likely be in the market.
4 Q That's right. So I assume Steve -- and you were
5 not in the financial area, were you?
6 A No.
7 Q Okay. But you were kind of the spokesman for
8 Santee in a lot of the financial meetings and the
9 investor meetings, things like that?
10 A I wasn't a spokesman for Santee at all.
11 Q I apologize. You were the spokesman for E&G?
12 A Correct.
13 Q And did you -- was Santee at those meetings or
14 just E&G? These were to your investors.
15 A To the investor meetings that SCANA would have had
16 would not have involved Santee Cooper.
17 Q Okay. So you were the spokesman for SCANA and E&G
18 at these investor meetings?
19 A I was one of the spokesman for SCANA and SCE&G,
20 yes.
21 Q Okay. Were you the highest ranking executive at
22 those meetings?
23 A Our chief financial officer was generally in those
24 meetings. So he was at the same level as was I.
25 Q Okay.

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1 A And occasionally our CEO was in those meetings, so
2 he would -- obviously, he's higher.
3 Q Did most -- were most of those meetings in person
4 or did a lot of them occur on the phone?
5 A It would depend on the meeting. The company had
6 quarterly analyst calls, earnings calls. Those
7 were on the phone. The company, for a period of
8 time, had annual analyst meetings in New York.
9 And the June 5th reference that you've seen in
10 some of these documents was one of those
11 face-to-face in New York webcast meetings. The
12 company did have one or two -- I think it was
13 two -- of those annual analyst meetings at the
14 project site in Jenkinsville. And then there were
15 what are colloquially termed "one-on-one sessions"
16 with investors generally around financial
17 conferences where representatives from the company
18 will speak to analysts. They called them
19 "one-on-one" but it's generally three to five
20 people from the company and one to 12 analysts.
21 Q Would you normally have a statement or was it
22 usually oral presentation?
23 A The earnings calls had a script that was read and
24 then there was a Q&A session. The --
25 Q And do you -- I'm sorry.

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A The analysts meetings in New York generally were speaking from slides on PowerPoint presentations. The meetings -- the one-on-one sessions that were generally in New York, but could be in other cities, would have a book of slides that the of analysts would have their choices to whether they'd use those or didn't use those, whether we answered questions on the slides or whether they just asked questions and we answered questions.

Q So you kind of pass out a presentation and let -- for them to ask questions?

A That's correct.

Q Are you -- do you remember ever hearing or speaking to any analyst or any -- meaning any of these investor meetings that E&G and SCANA had grave concerns over whether or not these companies can produce as a key promise?

A Well, first of all, I would not have used the term "grave" because I didn't believe that that was the case. So when you're asking me what I would have said, the company and I did make analysts aware of the fact that we had delays and that the module facility in Lake Charles was problematic.

Q Okay. And would that be in some of the slides you'd have or some of the statements?

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1 A It would be in all of them, yes.
2 Q Okay. And so --
3 A It's also in testimony before the Public Service
4 Commission. It's also in the quarterly BLRA
5 reports that the company produced.
6 Q Okay. When these delays occurred and it cost E&G
7 money, that increase in cost would be passed on to
8 the customers. Is that correct? Pursuant to the
9 BLRA?
10 A Yeah. If you were going to be outside of the
11 approval for BLRA for either cost or schedule,
12 then the company would have to go back to the
13 Public Service Commission to request a new
14 schedule and a new cost call schedule -- a new
15 construction schedule and a new cost schedule.
16 Q In order to get a cost increase, you had to also
17 pre that request have a schedule change?
18 A In order to get a new cost --
19 Q Yeah, and --
20 A I'm not sure I'm following you there.
21 Q I'll take that.
22 A Okay.
23 Q You were not allowed to get an increase in the
24 rate to the customer unless you were within your
25 schedule. Is that correct?

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1 A There was not a specific time between cost and
2 schedule before the Public Service Commission. So
3 the company could have asked for a change to
4 either one without a change in the other. The
5 Baseload Review Act called for a contingency
6 period around the schedule of plus 24 months or
7 minus 18 months. Plus would mean your accelerated
8 months. So focusing on the minus 18 months, which
9 means a delay, whatever schedule was approved by
10 the Public Service Commission, each of the
11 milestones would have an 18-month leeway to be
12 delayed. So you were still within the confines of
13 the BLRA schedule approval as long as you were
14 within 18 months of the last approval.
15 Q I guess one day I'll ask Mr. Carter this question.
16 But did you -- since he's kind of repeating what
17 he remembered at this meeting, the request to the
18 Consortium to obtain new schedules was tied into
19 this complaint that Santee was having with their
20 potential meetings with their bondholders, the
21 financial market. When you were telling these
22 folks there were delays, did you give them the raw
23 language of what was going on, that this was a
24 huge problem, there were potential questions about
25 whether the project was viable or not? Or were

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1 you just saying, well, we've had expected delays
2 and don't worry about it we -- and on and on? Was
3 it soft-shoed or was it told just flat-out giving
4 them the straight and narrow?
5
6 MR. BALSER: Object to the prefatory remarks
7 before the question and object to the question as
8 compound.
9
10 Q Go ahead.
11 A Let me start off -- you started off saying Santee
12 Cooper and their bond offerings. I was not
13 involved with Santee Cooper or their bond
14 offerings and I really don't know anything about
15 them. I don't know what language Santee Cooper
16 used in their bond offerings. You also said that
17 the -- something along the lines the project
18 couldn't be completed, and that was never the
19 case. The project was always going to be viable.
20 And I think you used the term "not viable." The
21 project was viable. It was really just a matter
22 of cost and schedule, but the project was viable.
23 So in the disclosures that SCE&G made to the
24 financial community and the Public Service
25 Commission, the company did make those entities

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1 aware of the fact that there were ongoing problems
2 at the Lake Charles facility with regard to
3 module -- submodule deliveries, and made those
4 statements over multiple periods.
5 Q Those would be included in the ones you mentioned
6 earlier?
7 A They would be.
8 Q Okay. And that was the extent of the explanation
9 given in regards to the delays in respect to the
10 modules?
11 A Without having them in front of me, I don't
12 remember exactly what was said. There may have
13 been a little bit more explanation.
14 Q Okay. Who is Richard Lorenzo?
15 A Mr. Lorenzo was, I believe, an external attorney
16 that Santee Cooper used.
17 Q On the last page, Mr. Carter indicates, "I remain
18 skeptical as to whether the information provided
19 by the Consortium can be relied upon. We made
20 clear, Kevin and I, that we would monitor their
21 progress weekly and would take whatever actions
22 were necessary to protect our organizations and or
23 customers." Did I read it correctly?
24 A You certainly seemed to have read it correctly.
25 Q All right. I've marked Exhibit No. 6 which is a

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1 joint letter from Santee and SCANA dated May 6,
2 2014. SCANA Bates RP 0304602.
3
4 (Whereupon, Letter was marked Exhibit
5 No. 6 for identification.)
6
7 Q Have you read this letter before?
8 A I have.
9 Q Okay.
10 A When's the last time I read it? I don't remember
11 when the last time. I certainly read it in 2014.
12 Q Way back then, okay. Is this is a fairly accurate
13 historical rendition of what had happened?
14 A I think the facts contained in here were fairly
15 accurate.
16 Q Okay.
17 A This was a letter that was written to Phil
18 Asherman and Danny Roderick and sent to Toshiba.
19 And so the real audience of the memo was Toshiba.
20 Q Okay.
21 A This was sent in advance of a visit that the two
22 companies made to Tokyo to visit with Toshiba. So
23 this was intended to lay out for Toshiba all of
24 the issues that the companies thought were
25 involved with the projects to try to solicit some

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1 support from Toshiba or draw Toshiba in to assist.
2 Toshiba professed to have some skills, abilities,
3 knowledge that would be helpful in construction.
4 And the owners hadn't seen much of that to date
5 and wanted to get Toshiba's commitment towards
6 helping CB&I and their company, their subsidiary
7 Westinghouse, in the construction of these units.
8 Q Go to page 7. The page is listed up top. We
9 talked a minute ago about E&G's public disclosure.
10 And you mentioned that some of this had been
11 disclosed. Under letter D it says, "On June 5,
12 2013, SCE&G publicly disclosed your statement to
13 us that you would not be able to meet the required
14 completion dates in the 2012 Agreement." Would
15 that have been the first time that disclosure was
16 made or was it -- had it been made earlier than
17 that?
18 A The disclosure you're talking about is the delay
19 that's highlighted in this paragraph?
20 Q Where it says, "not being able to meet the
21 required completion date in the 2012 Agreement."
22 Had there been any prior statements that the
23 completion date was not going to be met?
24 A So you're talking about prior to June 5th?
25 Q Yes, sir.

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1 A I don't believe so.
2 Q Okay. So we can then take June 5th as kind of the
3 date that you were first told that the completion
4 date may not be obtainable?
5 A That was the first day that SCANA announced it
6 publicly. I think we got the schedule a couple of
7 days ahead of that.
8 Q Okay. And you would have gotten that from the
9 Consortium?
10 A From the Consortium.
11 Q Would that have been Westinghouse?
12 A That would have come from Westinghouse and Chicago
13 Bridge & Iron.
14 Q And how far down the road did they extend or
15 propose the completion date would be extended?
16 A I think that it is the fourth quarter of 2017 or
17 the first quarter of 2018 for Unit 2.
18 Q All right. And a similar delay for Unit 3?
19 A That's correct.
20 Q But in June of 2013, in addition to the module
21 unit delays, there were other problems that had
22 not been resolved. Is that correct?
23 A Again, on a megaproject like this there are always
24 going to be problems and issues. I think at this
25 point in time the only significant issue, at least

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1 that we're aware of at that point in time, was the
2 module delivery schedule. So there had been some
3 previous issues getting licensed, for example.
4 But at this point in time the license had been
5 issued.
6 Q So in June of '13, your main concern at that time
7 was your delay at delivery?
8 A The main concern was the module delivery schedule.
9 Q What is the 47 CA-01 submodules?
10 A Where are you? What page number?
11 Q I'm sorry. Page 10.
12 A Ten?
13 Q Under the letter H, the last paragraph.
14 A Last paragraph under hotel? The CA-01 is one of
15 the big six structural modules and CA-01 is
16 comprised of 47 submodules.
17 Q So none of those had been delivered by that time?
18 A That's correct.
19 Q Were y'all becoming further concerned that the
20 date of completion would be extended?
21 A I think there was always a concern for schedule.
22 The module delivery schedule certainly had a
23 potential impact. When asked directly, the
24 contractor would say that they believed that the
25 scheduled dates were attainable and they were

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1 working on mitigation activities with submodules.
2 Q On page 11, what is IFC?
3 A IFC is Issued For Construction.
4 Q So these are your design drawings?
5 A These would be design drawings that would be
6 issued to the project site for construction.
7 Q You started the project in 2009?
8 A Yeah. The construction module started in 2009.
9 Q The second paragraph I thought was curious and I'd
10 like for you to comment on it. I'll read it.
11 "The Consortium's early reports of design progress
12 were optimistic. For example, in the March 17,
13 2011 Monthly Project Review Minutes, the
14 Consortium reported that it had delivered 90.49
15 percent of the scheduled IFC documents. As a
16 result, the Consortium stated, 'Design
17 finalization is coming to an end and transitioning
18 to support certified for construction design.'"
19 Are we talking about all of the design documents
20 they indicated in March 2011, they were 90 percent
21 complete, 90.49?
22 A Yes. The Consortium had indicated that the
23 design -- that the issue for construction design
24 documents were that far along.
25 Q And as you read further in these paragraphs, the

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1 letter indicates that you kept getting increased
2 percentage of completion of the IFC designs?
3 A The Consortium would report out monthly on what
4 their status was on the issue with construction,
5 yes.
6 Q Did you find at a later time that these
7 representations were inaccurate?
8 A Yeah. The Consortium reported to us that their
9 representations were inaccurate.
10 Q When did you find out they were inaccurate?
11 Before or after they told you?
12 A When they told us.
13 Q So when they were telling it's 90 percent
14 complete, yet they can't do some work on the
15 building because they don't have design drawings,
16 I don't understand why you wouldn't have gotten
17 some clue that you weren't getting accurate
18 information.
19 A That's not a question. What's the question?
20 Q All right. Can you tell me why you didn't have a
21 clue that you weren't getting accurate information
22 on the completion of these drawings?
23 A Well, I didn't say that we didn't have a clue.
24 What I said was that Westinghouse reported to us,
25 the owners, that their previous estimate

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1 for percent of documents that were ready for the
2 issue for construction was inaccurate. They had
3 some reasons for those. But I don't recall in the
4 2013 time frame going to work on a building, as
5 you suggest, and it not being -- the design not
6 being ready to support the building.
7 Q Have you seen some of your internal documents?
8 And -- have another group that talks about the
9 number of design documents that weren't completed?
10 A Have I seen them?
11 Q Have you seen these? Y'all have these internal
12 documents that talk about -- have you seen some
13 that say that, that talk about it?
14 A I'd have to see what documents you're talking
15 about to make a comment.
16 Q Did your group keep track of the final documents
17 that were completed?
18 A The new nuclear construction group, particularly
19 the engineering department, did track engineering
20 completion and certainly did look at these
21 documents. That's not to say that that team may
22 not have raised a concern to Westinghouse over the
23 status of the documents. I just know that much
24 about it.
25 Q Would that have been something that would have

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1 been reported to your or someone else or -- I
2 guess I'm curious because if you read through and
3 kind of the gist of all of this is that
4 Westinghouse was not giving you an accurate report
5 on how complete they were with the design
6 documents. E&G was out there trying to figure out
7 why everything is getting delayed and later on
8 everybody finds out these documents are completed.
9
10 MR. BALSER: Objection to the prefatory
11 remarks.
12
13 Q That's a good overview, isn't it?
14 A No, I don't think that is a good overview. I
15 think your question really presumes that the
16 change in percent complete for the IFC documents
17 was a cause for the delays. I don't know that to
18 be the case. Again, at this point in time, the
19 primary cause of the delays -- again, there were
20 some delays that had been in the past over the
21 licensing delay -- delay in issuing the license,
22 that was in the past. There was some design
23 issues with the basemat pour. That had already
24 been poured at this point in time. So those kind
25 of issues were behind. So in the forefront, at

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1 this point in time, not to say there weren't other
2 problems, but in the forefront there was this
3 submodule delivery schedule issue.
4 Q So as I'm hearing what you're saying, Steve, is
5 that while at some point there were issues with
6 the design drawings, that wasn't a major problem
7 in 2013?
8 A In 2013, that was not a major problem.
9 Q Did it become a major problem?
10 A Design issues certainly become a major problem.
11 I'm not sure whether the issue for design or the
12 issue for construction, design diagrams were a big
13 part of that problem or not. And the design
14 issues at sub-vendors. And certainly places like
15 Lake Charles would be a sub-vendor. Those would
16 not be reported in the IFC completion percentage
17 numbers. So those were not issued for
18 construction. That was something that was handled
19 at a sub-vendor off site; not on-site construction
20 issues with construction vendors.
21 Q What is WEC Design?
22 A WEC was their terminology for Westinghouse.
23 Q Okay.
24 A I think it's Westinghouse Electric Company.
25 Q So on the paragraph C on page 12, this letter

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1 outlined some of the design issues and the impact
2 it had on delays. Is that correct?
3 A That's correct.
4 Q And are these current in 2013 he's talking about
5 or things that happened in the past?
6 A Well, this is 2014, this letter.
7 Q I'm sorry.
8 A And so some of these would have been historical
9 representations of issues such that Toshiba was
10 well aware of them. Again, you know, the letter
11 was written to the Consortium which is who the
12 contract was with. Westinghouse would have been
13 painfully aware of all of these issues. So the
14 audience for these was really Westinghouse. LARs,
15 the License Amendment Request, if you remember
16 when I was talking about the Part 52 issues and if
17 things don't line up we might have to change the
18 license. Well, LAR is the way that the license is
19 formally changed with the regulator. And so the
20 point here is that changes to the design were
21 forcing the project to do more changes to the
22 license. So once the license is issued by the
23 Nuclear Regulatory Commission, that's in custody
24 of what they call the licensee, which would have
25 been SCE&G. So SCE&G is the ones that now have to

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1 change the license if a design change forces the
2 change in the license.
3 Q Okay. So whether we talk about a final design
4 versus a design change, design changes were giving
5 you a lot of problems, right?
6 A Design changes were causing some problems on the
7 site, yes.
8 Q And design changes were because of what? Why were
9 they having those changes?
10 A There wasn't any one issue. The design changes
11 were coming from a number of things. One, as
12 Westinghouse would finalize things with the
13 Nuclear Regulatory Commission, they saw a lot of
14 turnover at the Commission with people who would
15 proof the design up front. And while they thought
16 they had an agreement, an agreement with a new
17 person didn't seem to hold, so there were
18 necessitated changes to the design. There was an
19 issue with the shield building and aircraft
20 impact, and Westinghouse had to do a lot of
21 changes to the design of the shield building, much
22 beyond what they anticipated doing. There were
23 changes that were coming from the projects being
24 constructed in China that were ahead of the US
25 projects. There were things that the US projects

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1 were learning. So if you find out you can't buy
2 certain material that may have been spec'd, then
3 they would have to change the material spec, that
4 could require a license change. So there were a
5 variety of reasons for the changes to the license
6 and the design causing these kinds of design
7 problems because of the new construction regiment
8 under the 10CFR Part 52.
9 Q What is a departure?
10 A A departure is a way to change a part of the
11 design that doesn't require NRC approval. So the
12 significance of changes was kind of tiered. If it
13 met a certain tier, you'd have to go to the NRC
14 before you could implement that change. But there
15 was a lower tier, some things that weren't really
16 described in detail in the design that you could
17 change with the departure.
18 Q In the bottom of page 12, this letter states "In
19 addition to the LARs, the Consortium has also had
20 a large number of departures. The April 17, 2014,
21 project status report states that 595 departures
22 have been identified. That's a lot, isn't it?
23 A It seemed like a lot, but in reality that was a
24 fairly manageable number.
25 Q Well, but you indicated this had the potential for

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1 impacting the project's schedule.
2 A Yeah. So any departure, any license change would
3 have a potential to impact.
4 Q "Of these 237 are in progress," -- are in process,
5 excuse me -- "and 358 are in the queue. These
6 departures do not require NRC review but have the
7 potential for impacting the project schedule due
8 to Westinghouse design changes." So this letter
9 is basically laying out a list of issues, a list
10 of the problems. And, with all due respect to
11 your testimony, are you trying to minimize these
12 now?
13 A No. I'm not trying to minimize them. They are
14 what they are.
15 Q But when I ask you about them, each one is like,
16 well, it's not -- it's almost making me feel like
17 these aren't really bad; these are okay.
18
19 MR. BALSER: Objection. Argumentative.
20
21 Q Is that what you're trying to do or --
22 A No. That's certainly not what I'm trying to do.
23 Q I mean, these are --
24 A I was trying to add some context to the letter.
25 Q Okay.

1 A And I wanted to try to understand that even though
2 this was letter that was sent to CEOS of the
3 Consortium members that the owners really had a
4 different audience in mind for the letter. So it
5 was going to recant things that the Consortium
6 would have been well familiar with and that there
7 would have been other documentation to back up
8 those issues. I don't want to try to minimize all
9 the issues, but certainly there were delays going
10 on in the project and certainly the owners wanted
11 the Consortium to start performing and certainly
12 they wanted the parent company, Toshiba, who had
13 advertised some of their own skills in the nuclear
14 construction, to get more involved. And this
15 letter was followed up by a visit by the
16 executives to Toshiba in Tokyo to solicit their
17 support.
18 Q When you look at the -- I'm not sure sometimes
19 when I read it. When you look at your testimony
20 before the PSC, some says it's submitted or, you
21 know, kind of prepared in advance, and some, I
22 guess, you're sitting there and answering
23 questions. I don't get the -- excuse me -- I got
24 the -- and I'm going to give you this preliminary,
25 and I know I'll get an objection. I got the same

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1 feeling reading that testimony that I'm getting
2 today, that it's almost minimized for the audience
3 instead of what it actually says in the letter.
4 So my question to you is was that intentional that
5 the impact of these was trying to be minimized or
6 was that really given in the raw state like I just
7 read in the letter?
8
9 MR. BALSER: Object to the prefatory remarks.
10 Object to the characterization of the witness'
11 prior testimony from the PSC.
12
13 A You had asked me to explain individual aspects.
14 Certainly the others were concerned, concerned
15 enough to write the letter and concerned enough to
16 make the visit to Japan. So the issues were real
17 issues; some of them are historical. So -- but I
18 was trying to put some context around the letter.
19 Q On page 13 of the Roman paragraph V, it says "Our
20 frustration continues to mount." Did you at any
21 time ever tell the PSA that your company's
22 frustration continued to mount in this project?
23 A Certainly company witnesses before the PSC did
24 discuss the fact that the required improvements
25 were not taking place; that the promised

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1 improvements were not taking place, but while,
2 perhaps, did not use the term "frustration
3 continues to mount" the gist of that was in that
4 testimony.
5 Q Did you ever tell the PSC or an investor meeting
6 that Westinghouse and the Consortium has made
7 promise after promise but fulfilled few of them?
8 A That specific language, no. But we certainly made
9 the PSC and the investor community aware of
10 problems and delays and cost increases for the
11 project.
12 Q Did you ever say to the PSC or to the investor
13 meetings that the delays that you were referring
14 to were solely the Consortium's fault?
15 A Did we ever say that the delays were solely the
16 Consortium's fault? When the company discussed
17 the delays, they discussed who would be
18 responsible for the delays. Some of the delays,
19 for example, the delay in receiving the license,
20 some of that delay was on the Nuclear Regulatory
21 Commission. And I believe if you look at what we
22 discussed, you would've pointed that out, where
23 delays came from modules, submodule delivery. We
24 called out who was responsible for that. So --
25 Q What was the 2012 agreement? Remind me.

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1 A There was an agreement with -- at the time it was
2 Shaw -- with Shaw and Westinghouse that was all
3 for kind of big picture commercial issues, one of
4 which was the delay in receiving a license. So it
5 accounted for that eleven month delay. So if, you
6 know, the Consortium did not want to be held
7 responsible from a liquidated damages perspective
8 for the Nuclear Regulatory Commission not issuing
9 the license in time. So there was a negotiation
10 about additional costs. For example, there was a
11 valley in the rock below Unit 2. Ours is a hard
12 rock site, but they mapped the site to the extent
13 that they could, but between some of the moorings
14 there was a big depression in the rock which meant
15 it had to be filled in. So that was additional
16 cost, so that was a change order that was
17 negotiated in with this. The delay in receiving
18 the license was a change that was negotiated into
19 that 2012 agreement. So out of that 2012
20 agreement did come some new guarantee completion
21 dates, which I think you saw and referred to
22 earlier in this document. But that was an
23 agreement that was inked in I think early 2012,
24 but actually finalized by July of 2012.
25 Q Okay. So this letter indicates that the delays

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1 since the 2012 agreement had been solely the
2 Consortium's fault. Do you agree with that?
3 A Where are you reading from?
4 Q The first -- the second paragraph under V?
5 A I would have to say that since that agreement they
6 were all or mostly the Consortium's fault.
7 Q Okay. Let's go to the -- two paragraphs down. It
8 says -- it estimated that additional cost of $150
9 million and a 100 million in liquidated damages.
10 And then the letter say,s, "We are in the process
11 of investigating other additional costs we're
12 incurring due to the unexcused delays or
13 associated changes to your work plan. We will
14 advise you of their categories and amounts once we
15 have completed our investigation." Who was in
16 charge of that investigation?
17 A I don't remember a specific individual, but it
18 would have been a combined effort between the new
19 nuclear construction group and the financial
20 group. So there would have been a delay in the
21 associated cost. The delay would have to be
22 identified and associated cost would have to be
23 identified. So it would have to be a
24 collaborative effort between those two groups.
25 And these were things like additional storage

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1 because of the delay. The Consortium started to
2 use a lot of tents to store things and the owner
3 started to build a lot of -- we received a lot of
4 invoices for tents, which are more expensive than
5 you might think. So the owner started to reject
6 some of those invoices for tents.
7 Q So was there a report issued after the
8 investigation was completed?
9 A I don't recall.
10 Q If there was, would you have been given a copy of
11 it?
12 A That would be likely.
13 Q And, again, if I were wanting to find that report
14 or if you wanted to find it, how would you ask for
15 it?
16 A Well, I would likely go to -- well, the person I
17 would go to would be Alan Torres probably, but to
18 try to find that now, Alan doesn't currently work
19 there. He knew, and I would have asked about it
20 if he still was working with the company.
21 Q Right. Exhibit No. 7 is SCANA Bates number
22 RP0465823. Again, the red boxes are self-entered
23 and we will clean them up at a later time, if
24 requested.
25

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(Whereupon, SCANA Release Document was marked Exhibit No. 7 for identification.)

Q You're familiar with this?
A I am.
Q Document?
A Uh-huh.
Q Rhonda O'Banion and Christina Putman, they work in media and investor contact?
A Yes. Rhonda O'Banion works for SCANA in media relations and Christina Putman, at the time, worked for SCANA in investor relations.
Q Is she still there?
A I think she's still with the company. I don't think she's still with investor relations.
Q Okay. This is a press release?
A It is.
Q The first paragraph basically says that something was "completed on November 4, 2013. Placement of the nuclear island basemat for the VC Summer Unit 3 in Fairfield County. This major milestone comes just seven months after SCE&G poured the first new construction nuclear concrete in the US in three decades for its Unit 2 nuclear island."

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1 So that was the introduction. Was that an
2 important milestone?
3 A It was.
4 Q And what is that nuclear island basemat?
5 A The basemat for the nuclear island is the concrete
6 foundation that everything that's nuclear
7 associated with the plant will sit upon.
8 Q Is that the base --
9 A It's the basemat; it's the foundation.
10 Q Is that six-foot thick?
11 A That's correct.
12 Q Did it have a lot of rebar in it?
13 A Had a lot of rebar.
14 Q Since you're a little bit familiar with it, I
15 guess you watched some of it get poured?
16 A I watched what?
17 Q Did you watch some of it get poured?
18 A No, I did not.
19 Q How large of a footprint is that?
20 A It was about 7,000 cubic yards. I would be
21 surprised if they didn't put the footprint in
22 here. So 32,000 square feet.
23 Q Eighty times 40? Forty times -- 80 times 40 sound
24 about right? It might not be that exact
25 dimension, but --

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1 A Yes. Yes.
2 Q All right. And six feet deep?
3 A Yeah.
4 Q So read, please, if you don't mind, the first
5 paragraph that's in red. It starts off "We are
6 again proud."
7 A "We are again proud to have accomplished such a
8 significant milestone as our nuclear project
9 progresses, said Kevin Marsh, chairman and CEO of
10 SCANA. This is another example of our outstanding
11 collaboration with Santee Cooper, CB&I,
12 Westinghouse Electric Company and the many other
13 stakeholders who play a role in providing South
14 Carolina with the best solution for meeting the
15 long-term for clean, safe and reliable power."
16 Q The next paragraph, if you don't mind reading
17 that, please.
18 A "This successful basemat is a testament to the
19 hard work by all involved, said Lonnie Carter,
20 president and CEO of Santee Cooper. We have come
21 a long way since getting our combined construction
22 and operating licenses in March 2012, and this
23 milestone gets us one step closer to the finish
24 line and the many benefits these units will
25 provide for state."

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1 Q This was issued on November 3 -- 4, 2013. Is that
2 correct?
3 A That's correct.
4 Q A couple months after the round-up letter of
5 May 6,2014. Is that right? In all these meetings
6 we've been talking about?
7 A The round-up letter was in 2014.
8 Q I'm sorry. So this was prior to the round-up
9 letter?
10 A That's correct.
11 Q I recognize the round-up letter is in 2014, but it
12 does look back in history about what was going on,
13 doesn't it?
14 A It does do some backward looking.
15 Q In fact, most of it is backward, isn't it? We
16 talked about the 2013 time frame, didn't we? Are
17 we talking about the 2013 time frame in the
18 round-up letter?
19 A I don't remember what we discussed, but I think
20 there were references to 2013 in the round-up
21 letter, if that's what you're asking.
22 Q And then we talked about the letter from -- the
23 joint letter from Santee Cooper and SCANA which
24 was the May 14 letter. So if I were someone
25 reading this and I'm a customer of E&G, it would

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1 sound like everything was going fine, wouldn't it?
2
3 MR. BALSER: Objection. Calls for
4 speculation.
5
6 Q You know what that word "fine" means? That's a
7 Sumter, South Carolina term.
8 A (Response.)
9 Q So you're from Mount Pleasant and not too far from
10 Sumter.
11 A Originally from West Hartlepool, England, which
12 is --
13 Q Where is that?
14 A West Hartlepool, England, which is a long way from
15 Sumter. However --
16 Q What would y'all use instead of fine? Do you have
17 a term that you might use?
18 A We'd probably say it was bloody good.
19 Q Bloody good, okay.
20 A This is a press release which is advertising an
21 accomplishment. And key to this is that the
22 qualification for production tax credits actually
23 had three gates that you had to clear. The one
24 that we've been talking about is qualifying for
25 production tax credits has been the last gate, but

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1 there were two prior gates. One was you had to
2 apply for a license by a certain time frame, and
3 the second was you had to pour -- concrete by a
4 certain time frame. So this qualified the -- both
5 units now --
6 Q You --
7 A It made that second gate for production tax
8 credits.
9 Q Okay. I think the part that gives me some concern
10 is the quote by Kevin Marsh, and I understand how
11 press releases are done. Every now and then I see
12 a quotes sometimes that I'm sure I made. I see
13 that Mr. Marsh says, "This is another example of
14 our outstanding collaboration with Santee Cooper,
15 CB&I, Westinghouse and many other stakeholders who
16 played a role," et cetera. If I were Toshiba, I
17 would probably like to see this document compared
18 to the stinging documents I had just gotten or
19 were going to get. Did E&G ever have a press
20 gathering and say, look, we're just catching the
21 booger out there. This is tough. This is costing
22 us a lot, lot more than we thought and we're not
23 sure this project's going to make it?
24
25 MR. BALSER: Object to the form.

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1

2 Q Did y'all ever do that, a press briefing or
3 anything?
4 A First off, the company was never of the opinion
5 that this project wasn't going to make it.
6 Q Well, then let me rephrase my question. When I
7 use the term "not going to make it," do you
8 remember we talked about earlier "in the money?"
9 If this project ever got out of the money, would
10 y'all continue it anyway?
11 A Well, I'm not sure -- again, I'm not sure what you
12 mean by "out of the money." But there was an
13 evaluation done in 2017 by SCE&G relative to what
14 it was going to cost to finish the project without
15 Westinghouse's involvement as the EPC contract.
16 And that evaluation, it said the plans couldn't be
17 done, but it was this is the new schedule and this
18 is the cost, associated costs. And that
19 associated cost was viewed by the company as to
20 high --
21 Q Prohibitive?
22 A Right.
23 Q Do you remember who did the cost analysis? Was
24 that internal?
25 A It was internal.

1 Q Steve, let me ask you a tough question. When was
2 that -- ask you a tough question. When was that
3 analysis done?
4 A That analysis was done at about -- it started
5 about the time of the Westinghouse bankruptcy and
6 concluded in July '17.
7 Q March 17 and July?
8 A Correct.
9 Q So E&G had the ability to do the proper financial
10 analysis for the project at any time it wanted to,
11 didn't it?
12 A No. The bankruptcy gave to the owners some
13 information that it did not previously have. So
14 the Westinghouse became very open with information
15 when the bankruptcy happened. So there was
16 information that the company did not have
17 previously that it did have to do its own estimate
18 with.
19 Q But you had the ability, if you wanted to, to
20 obtain outside experts along with your internal
21 people to sit there in 2013 and '14 and say where
22 are we going; how much is this going to really
23 cost us? You had that option if you wanted to
24 exercise it, didn't you?
25 A The owners did review the ETCs when they were

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1 presented to the company from the Consortium. So
2 there were reviews done of the schedules and the
3 costs. And those cost review often led to
4 commercial issues or disputes between the
5 Consortium and others. In fact, leading up to the
6 2015 case that the company had with the Public
7 Service Commission, there was a string of
8 negotiations stemming from a late 2014 estimate to
9 complete that the Consortium had given to the
10 others. It was a significant review of cost and
11 schedule at that point.
12 Q Okay. Thank you, I appreciate that. My question,
13 though, wasn't -- I wasn't looking for that
14 answer, but I appreciate it. It's good to have
15 that information. Your company, however, if so
16 choose, could have gone outside of asking what
17 Westinghouse is telling you, because y'all have
18 already said you didn't trust the, did you? So
19 why would you not go get an independent analysis
20 and say, "What is this going to cost us? Are we
21 going to be in the money or not?" Whether you use
22 that term, but you know how I'm using it now. Why
23 didn't y'all do that early on instead of in 2017?
24 A So your question, there was a couple of things in
25 there. Could you ask that question?

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1 Q Sure. I know I might be a little naive about
2 this, because this is a complicated project. But
3 there are other people in this world that know how
4 to come in and give you a cost analysis of that
5 kind of project. Westinghouse wasn't the only one
6 out there, were they?
7 A No. Westinghouse is the only one that had all of
8 the information that would be needed to . . .
9 Q Well, you knew what you had on-site, didn't you?
10 A We certainly knew --
11 Q You knew how far you had gone.
12 A We certainly knew how far we had gone.
13 Q And if something is sitting up the road in
14 somebody else's yard, that's not on-site, is it?
15 A No. That would be in somebody else's yard.
16 Q Right. So you could figure out, if you wanted to,
17 in the simplest, the high view, of what we've done
18 so far and what's left to be done. And I assume
19 you had the right to look at drawings, didn't you?
20 A We had the right to look at drawings.
21 Q So if you had wanted to go get a cost analysis in
22 2013 or '14, that could have been done, couldn't
23 it?
24 A Well, the company did do that with its own people.
25 Q But you said they did it with Westinghouse

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1 involved and that's where you weren't getting the
2 same information that you got from the bankruptcy
3 people.
4 A We would have to have Westinghouse involved.
5 Westinghouse, during the bankruptcy process,
6 became more open and gave us access to information
7 that they previously had considered to be either
8 confidential or business proprietary, which is not
9 unusual in a closed proportion of an EPC contract.
10 But that also included -- that included not just
11 schedule and cost but actually information from
12 subcontracts and some vendors that they were using
13 to deliver things to the site.
14 Q You said that you, in fact, in fact did that, in
15 fact did do the analysis. When was that done?
16 A The company did an analysis on a couple of
17 occasions. And relative to scheduling, the
18 company did a review of the schedule every month.
19 Q Do you have a report on those?
20 A I don't have a report, but I know that their
21 construction group had a procedure where they had
22 a -- had to do a review of the schedule every
23 month.
24 Q Was that broken down to a report of some kind?
25 A I don't know if it was broken down in a report of

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1 some kind. I got the feedback on the schedule
2 reviews verbally for Mr. Torres, Mr. Jones,
3 Mr. Archie. And with what the NND team would have
4 to do is they would have to rely on some
5 information that came from the contractors,
6 whether that was Shaw and Westinghouse or CB&I and
7 Westinghouse or Fluor and Westinghouse, they would
8 have to rely on some information that came from
9 the contractors. And the NND team would review
10 the schedule to make sure all of the aspects of
11 the schedule were actually in it so that things
12 were not omitted. And then they would verify that
13 things were logically tied, such that, you know,
14 precursor A would have to come before activity B
15 and that things flowed through to the end. So
16 there was a schedule review done by my folks that
17 are much more experienced than I am in reviewing
18 schedules and looking at schedules. There were
19 also things that had to track into the schedule
20 that the Consortium wouldn't necessarily be
21 concerned with but that SCE&G would have to be
22 concerned with. Some of the LAR activities, for
23 example. Training operators, for example. That's
24 not something that the Consortium would put in the
25 schedule, but it is something that SCE&G would put

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1 in the schedule.
2 Q Okay.
3 A So -- and then we did have a financial team with
4 accountants and auditors that would review the
5 cost buildups. And, again, that did lead to a
6 number of commercial disputes between the
7 entities.
8 Q So did y'all ever make an analysis, a financial
9 analysis, and a schedule analysis that was part of
10 your internal review? I asked you a minute ago,
11 you could have gone outside. And you said, in
12 fact, you did that, but you did it with internal
13 people, didn't you?
14 A Yeah. The internal NND team could have relied on
15 some external expertise along the way. That would
16 have been up to them. I don't know that they
17 didn't use external --
18 Q And so would there be reports that reflected that
19 analysis?
20 A There may be reports. What I got was verbal. I
21 know that there was a report of some description
22 around the August 2014 ETC that the Consortium
23 gave to the owners, and it was a review of cost
24 and schedule. So there was a report issued, at
25 least at that point in time.

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1 Q But doesn't that report reflect what you're being
2 told by Westinghouse?
3 A It certainly would reflect what were being told by
4 Westinghouse and have a review done by our folks,
5 by the NND team. And, generally, that was mostly
6 SCE&G folks but with some Santee Cooper
7 involvement to review that the schedule made
8 sense, that the schedule was logical. You would
9 have to make some assumptions on some of their
10 inputs. That's true. You would have to make some
11 other assumptions. And the cost numbers, you
12 know, I think the SCE&G team was fairly in depth
13 of figuring out the cost analysis. There were
14 some closed-book portions that the SCE&G team
15 would not have access to. But, again, that did
16 lead to a number of disputes between companies.
17 So it wasn't a case of, you know, you roll over
18 and just accept what they had. You would have a
19 number of disputes.
20 Q So if I were to ever say to a court or a jury that
21 Westinghouse, until the bankruptcy, never went
22 outside to get an independent analysis of what's
23 going on and the cost of future -- the future cost
24 of the project, would that be a fair statement?
25 A I don't believe so.

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1 Q Okay. And I'm asking you. Tell me why that's
2 not?
3 A Well, you said Westinghouse went outside --
4 Q I apologize. I meant E&G.
5 A Okay.
6 Q Let me rephrase that. Let me start over. If I
7 were ever to tell a court or a jury that E&G and
8 SCANA did not go outside of its company and
9 perform an -- have performed an independent
10 analysis of what it would take from some point in
11 time to finish the project, would that be a fair
12 statement?
13 A Certainly at the point of bankruptcy, SCE&G did do
14 an internal evaluation of cost of schedule with
15 information it didn't previously have, and did
16 employ some outside resources to do that.
17 Q So prior to that it wasn't done?
18 A Prior to that, what I said was the NND team may
19 have employed -- they certainly did reviews of
20 schedule and reviews of cost. They may have
21 employed some external resources in the schedule
22 review. But generally have the internal resources
23 with the experience that would have been required
24 to do those schedule reviews, and, in fact,
25 outside of the Southern Company project and the

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1 Summer project, I don't believe there were experts
2 out there with Part 52 experience that could have
3 effectively reviewed the schedule as well as the
4 folks internally could have.
5 Q What did you get from Westinghouse from the
6 bankruptcy that you could not have gotten earlier?
7 A There was cost and schedule information, buildups,
8 commodities, quantities of commodities, unit rates
9 and then subcontract information from some of the
10 vendors that Westinghouse was using. Those were
11 some of things. Now, to get a more accurate
12 description you would need to talk to the to team
13 that performed that ETC. It was led by a
14 gentleman named Kyle Young.
15 Q Kyle Young?
16 A Yeah.
17 Q So I hear what you're saying, but if you had to
18 get the cost from subs from Westinghouse, an
19 independent analysis could come up with their own
20 without having to talk to Westinghouse, couldn't
21 they?
22 A Well, if they did it without talking to
23 Westinghouse, you wouldn't know if it is accurate.
24 Q But at least -- when the analysis was done, what
25 was at least reported to the public, it was

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1 astounding to what it would cost, right?
2 A Say that again.
3 Q I mean what was the analysis? What was the
4 result? To finish the project, after the
5 bankruptcy, what would it have cost?
6 A The exact figure, I don't have. I think the --
7 you're talking about the to-go cost or the cost
8 above the fixed-price option?
9 Q Well, you didn't have that anymore because
10 Westinghouse was gone.
11 A Well, we didn't have the fixed-price contract, but
12 you were asking for what was the cost. So you're
13 asking for what was the cost in excess of what had
14 been approved?
15 Q Right. In other words, what would have been the
16 increased cost over what you had already gotten
17 approved?
18 A I don't remember exactly, but I think it was on
19 the order of $2 billion.
20 Q Only 2 billion?
21 A Only 2 billion.
22 Q I mean, a billion here and a billion there becomes
23 a lot of money, but what was the total cost of the
24 project that was reflected or was to take?
25 A I think the SCE&G's portion of the total was

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1 around 7.7 billion under the fixed-price option --
2 under the fixed-price contract.
3 Q So y'all were willing to pay that?
4 A Yes.
5 Q Okay. And Santee was willing to pay theirs, a
6 little bit smaller than that?
7 A Right.
8 Q Okay. And so to get this project finished would
9 cost an additional 2 billion?
10 A Again, I said I don't remember the exact number.
11 Q Approximate?
12 A I think it was under the order of 2 billion, and
13 that would have been the E&G portion of it. So it
14 may have been three-and-a-half to four billion
15 total when you include the Santee Cooper.
16 Q Steve, how could your internal people be so off in
17 2013 '14 when they did this analysis? $4 billion
18 off, that's a lot of money.
19 A Well, I don't know that if you look back at 2013
20 or '14, that you would've come to the conclusion
21 that it would have been this far off. So there
22 was a lot of things that happened in the meantime,
23 so you're talking about, what, three years to four
24 years. So there was a lot of things that went on
25 in that time frame: The Consortium had been

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1 broken up; there were commercial disputes between
2 the Consortium members themselves; there were
3 lawsuits between the Consortium members
4 themselves; some of the commodities were obviously
5 off; how much the commodities were obviously off;
6 and then you have a new constructor come in. And
7 every new entity wants to do things their way,
8 right. So CB&I wanted to do things their way.
9 Fluor comes in, they want to do things their way.
10 So I'm not necessarily saying that the Fluor unit
11 rates were correct, but our team adopted the Fluor
12 unit rates. So, you know, everybody has their own
13 bent or slant on how they can do things, their own
14 means and methods. I do think that Westinghouse
15 was not mature in the EPC agreement. I think they
16 tried to bring in that experience with their
17 Consortium partner, and as they went through
18 Consortium partners, I don't think that worked
19 very well for them. But again, there was
20 information that was not given to our team that
21 would have allowed them to do the kind of
22 evaluation you're talking about in order to deal
23 with that significant amount of cost.
24 Q All right. So let me just get some ballpark
25 figures. The total cost of the project originally

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1 presented to PSC was how much approximately?
2 A You're talking about the 100 percent, Santee and
3 SCE&G.
4 Q Yes.
5 A It was I think about 9.9 billion. So let's call
6 it 10 billion.
7 Q Okay. So 10 billion. And with the increases that
8 were requested and approved, how much did the
9 total cost go to?
10 A When the fixed-price option was approved, it would
11 have been about, in the ballpark, about 14.
12 Q And then the analysis after bankruptcy would have
13 added another 4 billion?
14 A I think it was around that number. Again, I'm
15 going off memory and I don't know that it's
16 accurate, but it's --
17 Q So that's where the total of about 18 billion. So
18 out of the 14 projected, cost after approval, how
19 much was actually paid out of the 14 billion?
20 A I think the number was on the order of nine.
21 Q So if someone just in general with those numbers,
22 someone coming in would have to spend another nine
23 billion to finish the project?
24 A That would be about right.
25 Q So someone coming in today would have to spend

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1 almost as much as the original contract called
2 for.
3 A Correct.
4 Q So I represent the customers of SCE&G. And we run
5 into people all the time that want to talk about
6 the case. You can imagine. And they ask the
7 question, "How could someone not figure this out
8 and be so off?" And I keep telling them, "It's
9 not your fault; you're just a customer." They
10 say, "I know, but we're having to pay the rate."
11 So whose fault was all of this? Did y'all not
12 have any blame in overseeing what was happening
13 and taking a quicker step to cut it off? And the
14 reason I ask that, and I'll ask the question: If
15 Lonnie Carter asked one of his first letters, "We
16 need to review our options." And one of those
17 options could have been back in '13 to declare the
18 contract over. There were so many things done
19 wrong by Westinghouse, I'm assuming that would
20 have been an option. So if that had taken place
21 and everybody had stepped back and said, "Let's
22 get this project rebuilt" you could have at least,
23 at that time, have said should we go forward or
24 not. Could that not have been the case?
25

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1 MR. BALSER: I object to everything.
2 MR. BELL: Everything?
3 MR. BALSER: Well, everything except for the
4 last sentence in which you actually asked the
5 question.
6 MR. BELL: Come on? Everything?
7 MR. BALSER: Everything.
8
9 Q All right. Steve, this is an important question
10 to me, and I'm not sure it has much legal impact,
11 but it is a curiosity of the man and woman on the
12 street, is you guys, SCE&G, were the ones
13 overseeing the project, correct?
14 A Correct.
15 Q And the PSC in fact said in one of their orders
16 Westinghouse didn't have a duty to the customer;
17 y'all did. Do you remember that?
18 A I don't remember.
19 Q It's in one of the orders. Actually, it's kind
20 of -- they don't have the duty to the customer but
21 you, SCANA, SCE&G do. But you don't deny that, do
22 you?
23 A No.
24 Q Okay. So I think of my young son who is different
25 than my young daughter because he's always not

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1 doing his homework and she always does hers. When
2 does it come to the point you take away the
3 skateboard and the screens and how long do you let
4 it go before you cut it off? That's not a hard
5 example, I understand this. So my question to you
6 is Lonnie Carter said in 2012/13, "We got to look
7 at our options." Did y'all ever consider that
8 that maybe we could say, "Let's stop; let's look
9 at the cost going forward to see if these people
10 that have proven -- almost proven that they were
11 incompetent. That we're just going to continue to
12 pay for the incompetence." Was that ever
13 considered or talked about?
14
15 MR. BALSER: Object to the prefatory remarks
16 of the skateboards and screens.
17
18 A Let me see if I can explain to what I know about
19 this. Certainly there were times over the life of
20 this project that the owners, SCE&G and Santee
21 Cooper, looked at what they could do and what
22 their options were. Certainly there were times
23 over the life of this project that companies were
24 not happy with the progress being made by the
25 Consortium, whether that Consortium was

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1 Westinghouse and Shaw or Westinghouse and CB&I.
2 At each step where there problems or issues, the
3 owners attempted to remedy those issues by a
4 variety of methods. Now, firstly, you're going to
5 ask the Consortium to try to do better. And there
6 are a slew of what are called "project letters"
7 from the owners to the Consortium to say we're not
8 happy with what you're doing here, please improve.
9 You've seen some examples of things like that
10 here. This wasn't a Consortium letter, but it was
11 a letter to the Consortium members that really
12 angered their parent company, Toshiba. There were
13 mitigations that were attempted. Some of them
14 successful; some of them were not successful.
15 There were changes in plans. There were changes
16 in schedule launching. The owners withheld money
17 to try to force the Consortium to, you know --
18 convince them that we're serious and try to push
19 them towards completion. We had seen that the
20 litigation, whatever it was at Southern, didn't
21 seem to be having any positive impact on the
22 Southern Company project. Your premise that the
23 owners could have simply just said stop, kick
24 Westinghouse to the curb, and decide to continue
25 is faulty. The owners had a contract with a

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1 Consortium. The owners didn't want to breach that
2 contract. What you're proposing would have been a
3 breach of that contract.
4 Q If the other side --
5 A I'm trying to answer question --
6 Q Yes, sir but --
7 A I'm trying to answer the question --
8 Q -- you're filibustering.
9 A No, I'm not filibustering. You asked me a
10 question about -- and you said it was hard
11 question. So you asked me a question why didn't
12 the owners do this.
13 Q I asked you did --
14 A Did the owners ever do this --
15 Q -- did you think about that as an option?
16 A So I'm telling you that the owners didn't think
17 about a lot of those things. So not only did the
18 owners consider what actions they could take, they
19 took actions: withholding money, trying to help
20 the Consortium, threatening the Consortium, going
21 to visit the Consortium's boss, if you will. So,
22 you know, there were a lot of things that were
23 done. Certainly, you know, the company threatened
24 the Consortium with litigation. They threatened
25 the owners with litigation. But to do what you're

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1 suggesting would have been a breach of contract
2 and that would have been embroiled in a much
3 longer legal dispute. Once Westinghouse was
4 selected and the license was issued, the owners
5 then needed to go with Westinghouse. So to kick
6 Westinghouse to the curb and select somebody else
7 would have meant starting over, starting from
8 scratch with another vendor that may have not been
9 any better.
10 Q That's what you would have had to once the
11 bankruptcy was done, wasn't it?
12 A Not the case. So the owners did consider that.
13 And even if the owners tried to make the case that
14 Westinghouse was in breach, there wasn't anything
15 there was obvious to say they're in breach. And
16 that would have resulted in litigation between the
17 owners and the Consortium. So then construction
18 stops, the workforce that we've now trained goes
19 away. All the field non-manual personnel go away.
20 A lot of their own people -- it's the hiring for
21 SCE&G staff that went from a handful up to about
22 650 by the time the project stopped. So in this
23 2013 time frame we may have been at 400 people.
24 Those people go away. And so stopping the
25 project, even for a period of time, once you lose

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1 those resources, then getting them back is very
2 difficult training them again. It's very
3 difficult, particularly with licensed operators
4 and nuclear technicians.
5 So, yeah, it was contemplated what would
6 happen if we stopped, what would happen if we
7 tried to make a pitch for Westinghouse being in
8 breach. Now, some of those discussions were with
9 our attorneys that my colleague will remind me I'm
10 not supposed to talk about. But those kind of
11 things were considered. And it wasn't until the
12 bankruptcy when Westinghouse was clearly in breach
13 that we had the access to the information. And
14 the plan to go forward was a plan to go forward
15 with Westinghouse still involved. So Westinghouse
16 was still an entity in bankruptcy; they would
17 still be involved in the project, though not
18 leading construction. So that was the change that
19 was contemplated after the bankruptcy.
20 So what you're suggesting, yes the owners did
21 mull that over. And the potential ramifications
22 or consequences of that were also very
23 significant.
24 Q You can't talk about that because you had
25 attorneys involved?

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A I think I've talked about it, but the specifics about what I discussed with the attorneys relative to the breach discussions, I don't think I can talk about.

Q Well, I have to ask it, and I might get an objection. But you said something a minute ago that Westinghouse was not in a breach. Is that your opinion or is that something you were told?

MR. BALSER: Object to the extent that it calls for disclosure attorney-client privilege. Thank you. To the extent you can answer it without revealing attorney-client privilege information, you can answer it.

A And I think that would difficult for me to talk about without revealing privileged conversations.

Q Okay. I mean, what would they have had to done? I mean, in all seriousness, what would they have had to have done to be in breach of this damn contract?

A Well, your premise is that just because they're late or just because it's costing more money means that they're in breach, and that's not necessarily the case. So the remedy in the contract for

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1 somebody being late is liquidated damages. So the
2 Consortium did send us at times project letters
3 indicating what our remedies would be for those
4 things.
5 Q So Mr. Carter was suggesting along these lines
6 that's that it's time to get a third-party --
7 outside third-party in to take a look at things?
8 A When are we talking about here.
9 Q 2013?
10 A Are you referring to something that we've been
11 discussing?
12 Q Well, I'm just kind of moving on.
13 A Okay.
14 Q Do you recall before the Bechtel Group was brought
15 in that Mr. Carter actually they met with Bechtel
16 Group. You heard about that?
17 A I'm aware that Santee Cooper met with Bechtel
18 before SCE&G knew about it, yes.
19 Q Okay. And do you know the length of time from the
20 time of that meeting to the time that Bechtel was
21 finally engaged?
22 A I don't.
23 Q Okay. Now, who is Michael Crosby? Is he a Santee
24 Cooper guy?
25 A Yes.

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1 Q Now, this is Exhibit No. 8, ORS 00006114 through
2 6116. Again, the red mark's ours. We agree to
3 remove them at a later time. All right.
4
5 (Whereupon, E-mail Correspondence was
6 marked Exhibit No. 8 for
7 identification.)
8
9 Q This is dated October 14, 2015. Do you see that?
10 A Yes.
11 Q Okay. Now, this is after or before the final
12 Bechtel report came out?
13 A This was before.
14 Q Remember the date on the Bechtel? I don't have it
15 right off.
16 A Bechtel gave what they called a preliminary
17 presentation to the owners on October 22nd. And
18 the Bechtel final report was dated in February, I
19 think was February 5, 2016.
20 Q February, all right. So the initial report to the
21 owners, was that the draft report?
22 A No. The initial report of the owners was a
23 presentation and it was from October 22nd.
24 Q Did they have a PowerPoint?
25 A They had a PowerPoint, yes.

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1 Q Okay. I think I've seen that. I'm not sure. But
2 have you seen a draft report?
3 A No.
4 Q You haven't? Were you aware of a draft report?
5 A No.
6 Q Draft November 9, 2015. I guess that would have
7 been after the October 22nd meeting?
8 A What's the date on it?
9 Q November 9.
10 A Would have been after October 22nd, yes.
11 Q So that would have been after the owners meeting?
12 A Correct.
13 Q All right. So this e-mail of Mr. Carter to
14 Michael Crosby says, "Carl has provided you and me
15 preliminary bullet notes from the assessment."
16 Who is Carl, do you know?
17 A Well, first of all, this is not a memo that I
18 was --
19 Q Sure. This is Santee Cooper. That's right.
20 A -- Santee Cooper. I imagine that Carl was Carl
21 Rau (ph).
22 Q Okay. And who was he?
23 A He was, at the time, I think a contractor or
24 consultant to Bechtel.
25 Q Very good. And it says, "Carl has provided you

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1 and me preliminary bullet notes from the
2 assessment. See below. SCE&G has not seen this
3 yet." The next line says, "I do not see any real
4 surprises. The Bechtel projection on commercial
5 operation dates is sobering." So remember I asked
6 you a little earlier about could you have gone out
7 in 2013 and 2014 and gotten an independent
8 analysis. This wasn't a cheap analysis. I think
9 it cost, what? A million dollars?
10 A Correct.
11 Q Okay. But it was -- someone was able to do it or
12 some company was able to do it, right?
13 A Bechtel was able to do something. The question
14 was it accurate. So the feeling that SCE&G was
15 that it was not accurate.
16 Q So now we get to where Santee Cooper thinks it was
17 accurate. You've heard that hadn't you?
18 A I don't know that I ever heard Santee Cooper
19 thought it was accurate.
20 Q Okay. You said they didn't seem any surprised,
21 but that may not be the same as thinking it's
22 accurate.
23 A I think when he says, "don't see any real
24 surprises" and then it says something was
25 "sobering" I think that would be a surprise.

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1 Q Okay. "Once a CEO meeting is scheduled, Carl will
2 work the schedule and sit down with Byrne . . ."
3 I guess that's you?
4 A It would be me.
5 Q "And me," that would be Michael Crosby. Did y'all
6 have the sit down?
7 A I don't recall having a sitdown meeting.
8 Q Who is Jeff Archie?
9 A Jeff Archie is the chief nuclear officer for
10 SCE&G.
11 Q "And also a separate meeting which Jeff Archie's
12 staff, but he needs to get you," which would be
13 Michael --
14 A Lonnie.
15 Q Lonnie Carter, "and Kevin nailed down first. Per
16 Carl, the CEO meeting is looking like the 22nd,"
17 which is what you mentioned earlier, "or 23rd.
18 Marty told me your schedule is better." So now,
19 Carl Rau sends a note on the 13th, which is a day
20 earlier, "Michael, the attached is hot off the
21 press. Preliminary assessment, which will form
22 the basis of our presentation to the execs. I did
23 not include recommendations, as they are still in
24 development and will be part of the exec review."
25 Is that what -- did I read it correctly?

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1 A You did read it correctly.
2 Q Okay. Did you see the preliminary assessment?
3 A If what Carl means by preliminary assessment was
4 the presentation given to the owners on
5 October 22nd, I did.
6 Q So probably a draft of the bullet points or the
7 PowerPoint?
8 A It was labeled preliminary. I don't -- that's
9 what I remember about it.
10 Q But you did see that?
11 A I did.
12 Q Now, it says the Scope of the Assessment. The
13 first point says evaluate the status of the
14 project to assess the Consortium's ability to
15 complete the project on the forecasted schedule.
16 That was an important thing to know, wasn't it?
17 A Would be an important thing to know?
18 Q It's important to know whether the Consortium
19 could complete the project on that forecasted
20 schedule?
21 A An assessment of Consortium's ability to meet
22 schedule was -- complete the project on the
23 forecasted schedule. And assessment of the
24 Consortium's ability to meet schedule was -- would
25 have been important, yes.

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1 Q Right. And they actually evaluated it from a
2 third-party which had not -- Bechtel had been
3 involved a little bit in the project, hadn't they?
4 A They had been involved up front with the
5 development of the combined operating license. It
6 was a different group within Bechtel.
7 Q I think back in 2010 or something like that?
8 A Earlier than that, probably. Yeah, earlier.
9 Early in the project, yes.
10 Q Okay. And then Bechtel's focus wasn't on the
11 cost, so that's -- we talked about that. And this
12 team consisted of some of the . . . Now, let's go
13 to the next page, please, Steve. The first bullet
14 point on the top of the page, if you'll read that,
15 please.
16 A "Project management approach used by the
17 Consortium does not provide appropriate visibility
18 and accuracy on project progress and performance."
19 Q Do you agree with that?
20 A No, I'm not sure that I would agree with that.
21 Q Who is the -- who was the project manager? Would
22 that be SCE&G?
23 A The project management approach used by the
24 Consortium, they're referring to the Consortium of
25 the time it was CB&I and Westinghouse.

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1 Q And then let's go to the second one. Would you
2 read that, please.
3 A "There is a lack of accountability in various
4 departments in both the owner's and the
5 Consortium's organizations."
6 Q Do you agree with that?
7 A I would not agree with it from the owner's
8 organization, no.
9 Q Eventually, the reporter, I guess, expands or
10 explains that bullet point?
11 A I don't recall. I'm sure we'll see it.
12 Q Right. And then the next one says, you can read
13 it, please.
14 A "The current hands-off approach taken by the
15 owners toward management of the Consortium does
16 not allow for real-time, appropriate cost and
17 schedule mitigation."
18 Q Do you agree with that?
19 A No, I would not agree that there was a hands-off
20 approach taken by the owners at all.
21 Q Okay. And then the third one I think we skipped
22 says "The Consortium's lack a project management
23 integration is a significant reason for the
24 current construction installation issues and
25 project schedule delays." See that?

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1 A I do.
2 Q You agree with that?
3 A I think there's probably at least something there,
4 yes.
5 Q It uses the term "resolution of constructability
6 issues." You recall in another documents -- and I
7 can't pull them right now -- but the
8 constructability issues related to -- mostly to
9 plans not being finished or plans on hold?
10 A The constructability issues generally refer to a
11 specific design, not being constructable by the
12 construction. So you have a design engineer that
13 designs something one way, and when the field goes
14 to install it, they say, "I can't do this."
15 Sometimes it's, "I don't want to do this" or it's
16 "there's a better way to do this" or "this is
17 difficult for us to do." So constructability
18 reviews get linked into that. So sometimes it's
19 actually preference of the constructor. But it's
20 a difference between what the design engineer
21 believes can be done easily the field and what the
22 field thinks can be done easily in the field.
23 Q The next bullet point talks about the Westinghouse
24 and the CB&I relationship was extremely poor. Do
25 you agree with that?

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1 A I think that the Westinghouse and CB&I
2 relationship on-site wasn't bad. I think at the
3 executive level I believe that the relationship
4 was strained. And in fact, you know, at this
5 point in time the Consortium had come to the
6 owners and said CB&I wants out of the project, and
7 Westinghouse said we want to let CB&I out of the
8 project. So, yes it was -- that was not a
9 surprise.
10 Q What does the term "commercial issues" mean in
11 relation to this bullet point? The "relationship
12 is extremely poor caused to a large extent by
13 commercial issues"?
14 A I can only tell you what I know about commercial
15 issues between Consortium members. So what
16 they're now referring to here, I don't believe
17 commercial issues between the owners and the
18 Consortium. I believe that the Consortium members
19 themselves had some commercial issues, so --
20 Q Commercial, what does that mean?
21 A Just cost, cost issues. Cost or terms. So, you
22 know, if CB&I has agreed that they'll use their
23 facility to fabricate something and that's
24 fixed-price and Westinghouse sends a design change
25 and CB&I now cannot pass that cost along to the

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1 owners because it's fixed-price, then CB&I would
2 have an issue with Westinghouse because it's
3 costing more money for CB&I and Westinghouse is
4 the one that's issuing the design change. So
5 there would be commercial dispute, just an
6 example.
7 Q But would the owners be responsible for design
8 changes on the fixed-price?
9 A That why I say it's a commercial dispute between
10 the Consortium members themselves because that
11 cost cannot be passed on to the others.
12 Q What if the designed change that was not the fault
13 of anybody, that maybe they should have known
14 better to design it different or what would -- why
15 would y'all not have -- why would the owners not
16 have been responsible?
17 A When the owners fixed the price of the modules
18 then they were fixed-price. So if the design
19 needed to change, that was on the designer and the
20 constructor, not the owner. So that's the -- that
21 was the EPC arrangement.
22 Q Okay.
23 A Now, there was a -- there would be, if there was a
24 change in law, the provision to allow them to get
25 a change order for them. And there were other --

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1 type issues, but that's not really -- you know,
2 that's not a design change.
3 Q So the next red box is bullet point 1. It says,
4 "Our preliminary assessment of the project
5 schedule is that the commercial operation dates
6 will be extended. And the Unit 2 is another 18 to
7 26 months past June 2019. And Unit 3, 24 to 32
8 months past June 20, 2020, with a 50 to 75 percent
9 probability." Do you agree with that?
10 A Did I a agree with it?
11 Q Do you agree with it, I guess?
12 A No. I didn't agree with it.
13 Q Okay. But if that's true, that's a long way out,
14 isn't it?
15 A It is a long way from the current forecasted . . .
16 Q From -- let's just say this is
17 November/December 2015. The project shut down in
18 what month in '17?
19 A July.
20 Q July.
21 A July 31.
22 Q Two-and-a-half years. From October or
23 November 2015 to July 2017, what percentage of the
24 project had been completed? In other words, how
25 much did you gain on the final product? Isn't

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1 there some numbers out there that --
2 A There certainly are. I would be going from memory
3 and I don't know where the project stood at that
4 this point. When the project was finished -- when
5 the project was canceled, I believe it was just
6 over 36 percent construction complete. And the
7 Consortium looked at completion in terms of four
8 factors. So they looked at engineering,
9 procurement, construction and start up. I gave
10 you a number that was composite of those four
11 things, and I think they were about 60 some
12 percent complete at termination. But the
13 construction percent complete, I think there's 36
14 point something.
15 Q Do you remember the numbers of all four of
16 those --
17 A I don't.
18 Q -- categories?
19 A I don't.
20 Q Is there a document somewhere that would say that?
21 A Yes.
22 Q Do remember what kind of document it was?
23 A I think you'll find that in the BLRA quarterly
24 report.
25 Q Okay, good. Was the extended timeframe reported

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1 to, at least the one that Bechtel did, reported to
2 PSC?
3 A No.
4 Q Was the extended time frame by Bechtel reported to
5 the public?
6 A No.
7 Q Was the extended time frame reported to investors
8 or potential financial buyers?
9 A No.
10 Q The next box says, "The Consortium's forecast for
11 schedule durations, productivity forecasted
12 manpower peaks, and percent complete are
13 unrealistic." Do you agree with that?
14 A Not all of it. So, the productivity, I would say
15 yes, I believe that. The forecasted manpower
16 peaks, no, I would not believe that. I don't know
17 what they mean by percent complete are
18 unrealistic. I think percent complete was what it
19 was.
20 Q What are they talking about, the forecast?
21 A Forecast percent complete, again, I'm not sure
22 what they mean by forecast percent complete or how
23 that would differ from schedule duration.
24 Q Would you read the next box, please.
25 A Okay. "The owners do not have an appropriate

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1 project controls team to assess/validate
2 Consortium reported progress and performance."
3 Q Do you agree with that?
4 A No. No, I don't agree with that. This is one of
5 the reasons why I was trepidatious about having
6 Bechtel do the evaluation in the first place, is
7 that I believe that they were looking for work on
8 the project. Some of the things that I saw in the
9 report were indicative of the fact that I believe
10 that they were looking for work on the project.
11 Q In layman's terms, you think they fudged the
12 report to get some work?
13 A I think that they embellished some of these points
14 where they could slot themselves in to help out.
15 Q You agree that construction productivity was poor?
16 A I think productivity was poor, yes.
17 Q Did you agree that manual and non-manual overtime
18 was negatively affecting productivity?
19 A No, I'm not sure that that was the case.
20 Q Did you agree that CB&I's work planning procedures
21 were overly complex and inefficient?
22 A I do think that there were -- there's certainly
23 room for improvement in CB&I's work process and
24 procedures, yes.
25 Q I'm not sure I understand the next bullet point,

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1 which is the indirect to direct ratio. What does
2 that mean, those two terms?
3 A On any construction project you have direct craft.
4 And the direct craft would be people that actually
5 get credit for doing work. So if I'm welding
6 something together, the welder is a direct craft.
7 The indirect craft would be people that support
8 the direct craft, so if I have a scaffold that
9 needs to be built to get that welder up to weld
10 this component, the scaffold builder is the direct
11 craft.
12 Q I got you.
13 A So there are direct craft and indirect craft.
14 Q Administrative personnel would be indirect?
15 A Administrative personnel would be field
16 non-manual.
17 Q You can out maneuver me in those areas, now.
18 Field non-manual turnover is high at 17.4 percent.
19 Do you agree with that?
20 A Do I agree with the number or that it's high?
21 Q That it was high?
22 A I would say that's probably high.
23 Q And do you have any reason to think the number's
24 wrong?
25 A I don't. I just validate the number.

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1 Q Sure. "The current construction percent complete
2 per month is one-half percent versus plan of
3 1.3 percent." Do you think that's reasonably
4 accurate?
5 A I certainly know there were times when a
6 .5 percent per month would have been accurate.
7 But I don't know that at this point time it was
8 accurate. I'm not saying it wasn't, I just don't
9 know that it wasn't. And when Fluor came in, they
10 were able to increase that percent complete per
11 month fairly significantly.
12 Q They complemented the safety. Y'all were good
13 about things like that?
14 A I think the Consortium did a fairly good job with
15 safety.
16 Q Okay. And the last page, please. And the first
17 one says, "Resolution of many engineering and
18 design coordination reports is behind schedule."
19 Do you agree with that?
20 A Yes, I would.
21 Q And did you agree that the backlog was not getting
22 better but getting worse?
23 A I would agree with the statement here that says
24 "the backlog is not decreasing."
25 Q The third bullet point down says, "There is

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1 significant engineering and licensing workload
2 remaining for electrical design, I&C, post
3 construction design completion, ITAAc closure,
4 etc. Much of this remaining engineering will
5 potentially impact construction." What is he
6 basically saying? What does that mean?
7 A That there's a significant amount yet of
8 engineering workload. Even if things like the
9 issue for construction, drawings were 100 percent
10 complete, there are still engineering workload
11 that has a take place.
12 Q To be done?
13 A To be done. So some of that could have a
14 potential impact of construction.
15 Q Were the owners or the Consortium in charge of the
16 LAR work?
17 A The short answer is. The owners would submit the
18 LARs to the Nuclear Regulatory Commission. In
19 large measure, the engineering work from the LARs
20 would have to come from Westinghouse because it
21 was their design. It had to be a collaborative
22 effort.
23 Q So this report or these notes actually
24 complemented the work on the LARs?
25 A Yes.

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1 Q You agree with that?
2 A Yes. I'm not surprised.
3 Q Then it said there's procurement problem,
4 disconnect between construction need dates and
5 procurement dates. There was 457 open WEC and
6 2907 open CB&I. Is that high?
7 A The short answer is I'm not sure for a megaproject
8 if that's high or not.
9 Q They were basically saying that procurement was
10 being -- was late because it interfered with the
11 construction needs. Is that correct?
12 A That's correct.
13
14 MR. BELL: Let's go ahead and take a short
15 break. I think we're at the end at the tape
16 anyway.
17 THE WITNESS: This concludes video number 3
18 in the video deposition of Stephen Byrne. The
19 time is approximately 4:44 p.m. We are now off
20 the record.
21 - - - - -
22 (Whereupon, there being no further
23 questions, the deposition concluded at
24 4:45 p.m.)
25

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1 CERTIFICATE

2 Be it known that the foregoing Deposition of STEPHEN A. BYRNE was taken by Heather R.
3 Landry, CVR;

4 That I was then and there a notary public in and for the State of South Carolina-at-Large;
5

That the witness was sworn by me or
6 administered an oath of affirmation to testify the truth, the whole truth, and nothing but the truth,
7 concerning the matter in controversy aforesaid;

8 The foregoing transcript represents a true, accurate and complete transcription of the
9 testimony so given at the time and place aforesaid to the best of my skill and ability;
10

That I am not related to nor an
11 employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the
12 parties hereto, nor interested in the outcome of this action.
13

Witness my hand and seal this 22nd day of
14 August 2018.

15

16 _____
Heather R. Landry, CVR
17

18 Notary Public for South Carolina
My Commission Expires: April 10, 2024
19

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21 **speaker.**

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23

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1
2 In the matter of: Richard Lightsey et al.
3 vs. SCE&G et al.
4 Deponent: Stephen A. Byrne
5 Date of Deposition: August 14, 2018
6 DECLARATION UNDER PENALTY OF PERJURY
7 I declare under penalty of perjury
8 that I have read the entire transcript of
9 my Deposition taken in the captioned matter
10 or the same has been read to me, and
11 the same is true and accurate, save and
12 except for changes and/or corrections, if
13 any, as indicated by me on the DEPOSITION
14 ERRATA SHEET hereof, with the understanding
15 that I offer these changes as if still under
16 oath.
17 Signed on the _____ day of
18 _____, 20___.
19
20 _____
21
22
23
24
25

1 DEPOSITION ERRATA SHEET

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24 SIGNATURE:_____DATE:_____

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