Exhibit 2

Deposition of George Wenick
October 2, 2018

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STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF
COMMON PLEAS

- - -

RICHARD LIGHTSEY, LEBRIAN CLECKLEY, PHILLIP COOPER, ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	:	CASE NO. 2017-CP-25-335
Plaintiffs,	:	
vs.	:	
SOUTH CAROLINA ELECTRIC & GAS COMPANY, A WHOLLY OWNED SUBSIDIARY OF SCANA, SCANA CORPORATION, AND THE STATE OF SOUTH CAROLINA,	:	
Defendants,	:	
SOUTH CAROLINA OFFICE OF REGULATORY STAFF,	:	
Intervenor.	:	

(Case Caption Continues on Page 2)

VIDEOTAPED DEPOSITION OF GEORGE WENICK
VOLUME I

DATE TAKEN: Tuesday, October 2, 2018

TIME BEGAN: 9:09 a.m.

TIME ENDED: 5:43 p.m.

LOCATION: SMITH, CURRIE & HANCOCK, LLP
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Atlanta, Georgia

REPORTED BY: Cynthia First, RPR, CRR, CCP
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

(Case Caption Continued)

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

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

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

IN RE: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

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KEVIN DAY, CLVS, Videographer

ANDREW BATEMAN

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E X H I B I T S

WENICK EXHIBITS	DESCRIPTION	MARKED
1	Revised Notice of Videotaped Deposition of George Wenick, Subpoena, and Certificate of Service	9
2	Response to Motion to Compel Discovery Responses and Production by SCE&G and Dominion Energy	116
3	Response to Motion to Compel Discovery Responses and Production by SCE&G and Dominion Energy	207
4	Engineering, Procurement and Construction Agreement	207
5	E-mail correspondence dated 12/22/15, BPC_VCS_00000428-429	269
6	E-mail correspondence dated 12/22/15, BPC_VCS_00008248	269
7	E-mail correspondence dated 11/10/14, SCANA_RP0850425	273
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THE VIDEOGRAPHER: Good morning. We are on the record. Today's date is October 2nd, 2018. The time is approximately 9:09 a.m. This will be the beginning of the deposition of George Wenick.

Would counsel present please identify themselves?

MR. M. RICHARDSON: This is Matthew Richardson on behalf of the Office of Regulatory Staff, along with Andrew Bateman.

MR. WARD: Jay Ward --

MR. BALSER: I'm sorry. Go ahead.

MR. WARD: Jay Ward on behalf of the plaintiffs in the Lightsey case.

MR. SCHMALZBACH: Brian Schmalzbach for Dominion Energy, Inc.

MR. SMITH: Rush Smith for Santee Cooper, Intervenor in the PSC proceeding.

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

MS. MOODY: Leah Moody, counsel for SCANA.

MS. BARRETT: Julia Barrett, counsel for South Carolina Electric & Gas, with King & Spalding.

MR. BALSER: David Balser on behalf of

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South Carolina Electric & Gas and SCANA.

THE VIDEOGRAPHER: Counsel on the phone?

MR. T. RICHARDSON: Yes. Terry Richardson on behalf of the Lightsey plaintiffs.

MS. KING: And Ariail King, likewise.

THE VIDEOGRAPHER: Please swear the witness.

THE COURT REPORTER: Please raise your right hand to be sworn.

Do you solemnly swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

MR. WENICK: I do.

THE VIDEOGRAPHER: Counsel may proceed.

- - -

GEORGE WENICK, being first duly sworn, testified as follows:

- - -

EXAMINATION

- - -

BY MR. M. RICHARDSON:

Q Good morning, Mr. Wenick. We are here today taking your deposition pursuant to the South Carolina rules, and by agreement with the acceptance

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of service of process of the subpoena in the Lightsey case, and also the Order and Notice in the Public Service Commission's consolidated docket.

I've marked that as Exhibit 1.

- - -

(Revised Notice of Videotaped Deposition of George Wenick, Subpoena, and Certificate of Service marked Wenick Exhibit Number 1 for identification.)

- - -

BY MR. M. RICHARDSON:

Q Are you familiar with that and would you like to look at it to confirm?

A I'm familiar with it.

Q Okay. And if necessary, of course, we'll present any compliance issues in those venues today.

Have you had your deposition taken before?

A I have.

Q How many times?

A Twice.

Q How recent?

A The most recent one was about three or four years ago.

Q A similar circumstance, where it was related to a client representation?

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A Yes, a settlement issue.

Q And the other instance?

A The other one occurred in 1970 sometime.

Q Okay. Are you familiar with the Rules of Civil Procedure that govern depositions?

A Well, I'm familiar with various Rules of Civil Procedure. The Rules of South Carolina Civil Procedure, I only have a glancing familiarity with.

- - -

(Mr. Peifer arrived at this time.)

- - -

BY MR. M. RICHARDSON:

Q What did you do to prepare for today?

A Well, I read the Notice of Deposition and the subpoena. I did pull the South Carolina rules on -- on discovery, primarily the deposition rules.

I tried to clear some cobwebs just sort of sitting in my chair and thinking back to what had happened. I looked at a few documents primarily in connection with pulling together documents that were responsive to the subpoena.

And I met with some attorneys from King & Spalding, and I spoke to some -- Rush Smith, representing Santee Cooper, primarily because of the privilege issues.

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I did nothing in connection with the V.C. Summer plant, except as counsel to the owners of that plant. And so, from my perspective, all of my communications were privileged.

I was informed by Wallace Lightsey that there had been a waiver, a limited waiver of that privilege. So I tried to learn what the exact contours of that are, and I'm still a little in the dark about that. That's about it.

Q What did you -- what have you learned are the contours of the waiver of the privilege?

A Well, I know that certain communications related to Bechtel have been waived. And beyond that, as I say, there is a gray area, to my mind, on the edges of that -- of that topic, of that -- that I don't know if the privilege is being asserted. Of course, it's not my privilege. It's the privilege of my clients, and they're both represented here, and I anticipate that they will raise that.

I didn't undertake to learn about the privilege to the point that I could assert it for them, but I did want to understand the general contours.

Q So for the purposes of this deposition, you're not representing either of SCE&G or Santee

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Cooper?

A I don't even know what that means. How can you represent a party when you're being deposed? I'm here as myself.

Q I would agree. I would agree. I just want to make sure.

Do you have personal legal counsel?

A No.

Q You're here essentially appearing because you represented the owners of the nuclear project at V.C. Summer?

A I'm here because I received a Notice of Deposition and a subpoena.

Q Okay. And you said you learned a little bit about the waiver, but that in -- in that process, you think there are still some gray areas.

Would you tell us what the gray areas of the -- that you came up against in learning about the waiver?

A Let me tell you why I have difficulty with that question. The fact that it is a gray area is -- is why I have difficulty with that question. I don't know what the -- exactly what it is that would be the limits of the waiver. I know certain things would be outside the limits, discussions

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about virtually everything else at the plant, but there are some aspects where there is overlap, where dealing with topic 1, you might reference topic 2. Topic 1 is Bechtel, topic 2 is -- well, pick one -- any other item that is privileged.

So but as I say, I didn't attempt to learn the extent of the waiver to the point that I could assert it without assistance from the counsel for my clients, namely Santee Cooper and SCANA.

Q Okay. And so it's fair to say today, Mr. Wenick, that you will answer fully and truthfully all of my questions unless you are instructed not to on the basis of privilege?

A Right. Occasionally I may raise the question myself. So the instruction may be as a result of me identifying something that I think is either in the gray area or outside the gray area, that is, that I think is clearly privileged. And I may find it necessary to consult with attorneys for my clients in order to understand their position.

Again, the privilege belongs to the client, it doesn't belong to me. I didn't waive it; I didn't assert it. It's being waived and asserted by the client.

Q And you talked about some areas that you

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think are clearly privileged. What are those areas?

A Well, everything else. I was retained in 2011. I was -- so I was giving advice to the owners on this plant, legal advice, and receiving information upon which to base legal advice from 2011 until July of 2017. So over that six-year period, there were quite a number of topics that were addressed in those privileged communications.

Q And did that include the 2010 Bechtel report or assessment?

A What do you mean, did that -- what's that? I don't know what the reference is.

Q Well, your retention by the clients, did it include Bechtel's work on the project prior to 2011?

A Prior to 2011?

Q That's right.

A I was unaware that Bechtel did any work on the project prior to 2011. I have some knowledge of the history of the project prior to 2011, but all of that knowledge would have been gained after 2011. And I don't know of any activities by Bechtel in connection with the project prior to 2011.

Q Okay. And what did Mr. Lightsey tell you about the waiver of the privilege that has occurred

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already?

A That the certain items related to the Bechtel engagement had been waived -- certain communications, I should say.

Q And what do you mean by "the Bechtel engagement"?

A Well, let me see. The -- there was a Professional Services Agreement executed between my law firm and Bechtel in 2015. So the work done pursuant to that engagement is what I mean by "the Bechtel engagement."

Q And after you heard from Mr. Lightsey about the waiver of the privilege in this case, what did -- what did you -- what did you do to verify or to just evaluate that claim?

A Well, the ver -- I thought it was self-verifying, that an attorney representing a client, who advises me that the client has waived the privilege as to certain items, I take him at his word.

Q And did they describe what certain communications as to Bechtel were part of the waiver?

MR. BALSER: Object to the question as vague, as to "they."

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BY MR. M. RICHARDSON:

Q You can answer.

A Okay. The -- nobody identified specific documents to me as being within or without the privilege until I assembled certain documents that were -- that I considered to be responsive to the subpoena. And then I provided those documents to counsel for SCANA and Santee Cooper. And since -- and the documents that I'm prepared to provide in response to the subpoena are documents that they considered to be producible.

So that is the clearest and, frankly, the only useful direction I've been given about what documents were covered by the waiver.

Q And so when you gathered what you thought were responsive documents and provided those to counsel for SCANA and Santee Cooper, what was the clearest and direct -- clearest and useful direction that you got about the waiver? Did you all go through the documents or did --

A Well, we didn't go through them one by one. All we got back was just word that these can be produced, we're not asserting a waiver as to these, and these other ones should not be produced, or these third category should be produced with

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redactions.

So that's, you know, that gives me a pretty good idea of what's being -- what the privilege is being waived to. I would consider all, virtually all of those documents to be privileged communications left to my own devices, but the client said go ahead and produce them. I understand that to be a waiver.

Q And I think you said it now twice. I just want to make sure that we're clear that you consider all of your communications that you've had, in the time period from 2011 to 2017, with anyone associated with Santee Cooper and SCE&G or SCANA as being privileged communications?

A Well, I mean, all of -- if you literally mean any, you know, "What's for lunch? What time are you arriving to the airport?" that sort of -- obviously there were communications that are everyday communications that I would not consider to be privileged. But anything of any substance, yeah, I would consider those to be privileged communications.

Q And so you would consider all of your communications that are related to the project, in that time period that you were representing Santee

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Cooper or SCE&G, as being privileged?

A Let me say it in my own words. I would consider all communications, from 2011 to July of 2017 and after that, with the clients, in which I either offered legal advice or received facts from the client related to the offer of legal advice, to be privileged.

Q All right. Thank you.

Did you do the redacting of the documents that you were told included privileged communications?

A No. There are only about a half a dozen of those.

Q Who did the redacting?

A Rush Smith's firm.

Q Okay. And were the documents that were not produced, that you had identified as being responsive to the subpoena, did you produce a privilege log of those?

A I understand that SCANA has produced a privilege log to about a half a dozen documents that they asked that I not produce, and that Rush Smith's firm, representing Santee Cooper, has done the same.

Q Done the same in that Santee Cooper and SCANA have identified the same documents?

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A No, no. I'm sorry. I didn't mean to be unclear.

I said that SCANA, SCANA's counsel had prepared a privilege log. So when I said, "done the same," I assume that Rush Smith had prepared a privilege log, as well, and I was advised that they had.

Q And were the privilege logs the same or separate?

A There was no overlap.

Q And when you say "no overlap," you mean that SCE&G identified a half dozen or so that they thought were privileged and should not be provided, and that Santee Cooper identified other, none overlapping, other documents that should be withheld on the privilege?

A Yes.

Q Okay. We were talking about the pre-2011 Bechtel work, and you said you're familiar with the history of the project, but --

A Actually, we weren't talking about Bechtel pre-2011, because I don't know anything about Bechtel 2011. So I couldn't contribute to a conversation about that.

Q Okay. I asked you about that, and you

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said you're familiar with the history of the project, but what I wanted to know is --

A Well, yeah, I said that I was familiar with the history of the project, but that I had no knowledge of any activity by Bechtel prior to 2011.

Q Thank you. And what were you hired for in 2011?

A At that time, there were four or so requests -- I'll call them claims -- asserted by the then contractors against the owner totaling several hundred million dollars.

And my practice for 40-plus years has been more or less exclusively dealing with construction claims. So I was retained to evaluate those claims and advise the owner on the -- on how to approach that.

Q And these several hundred-million-dollar claims were essentially payments that were under the EPC?

A I'm sorry. I didn't make that clear. They were construction claims for -- for extras, changes to the work, and they were claims asserted under the design/build contract. They were claims for extra work and claims for delay, and I believe there was a claim for inefficiency.

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Q Okay. And those all existed when you got hired in 2011?

A Yes.

Q And what resulted in those claims?

A They were resolved by an amendment to the EPC contract, that is, the engineering, procurement, and construction contract. I'm sorry. I'm going to try to not slip into jargon, but those are bad habits.

So the engineering, procurement, and construction contract is the contract between the owners, Santee Cooper and SCANA, and the construction contractors consortium, which changed its stripes over the years.

And in July of 2012, those claims were resolved for something money over $250 million. The same claims on the Vogtle plant led to litigation that lasted years.

Q All right. And what else had you been -- what else were you retained for over that period of time?

A Subsequent to the resolution of those -- those pending claims through the July 2012 amendment or change order to the construction contract -- I forget exactly how it was denominated -- there were

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more or less constant issues. I was not involved weekly, let alone daily, and sometimes months would go by when I wasn't involved; but as issues arose under the construction contract that were in the nature of a dispute between the consortium, the construction consortium and the owners, I would be contacted and consulted.

Q All right. And in those disputes and issues, were you communicating with the consortium or any representative or attorney of the consortium?

A No.

Q And other than --

A Well, when I say "no," no until at least 2016.

Q Okay. And what changed in 2016?

A Well, as you, I assume, are aware, there was an agreement reached in October of 2015 --

Q Yeah.

A -- that did a lot of things. One of the things that it did was it enshrined a dispute review board for the handling of disputes. That October agreement resolved all known disputes at that time, and it was agreed that all disputes, until substantial completion under the construction contract, would be handled by the Dispute Review

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Board rather than going to the Southern District of New York, which is the venue specified for claims of a certain size in the construction contract.

So I was engaged in connection with matters before the Dispute Review Board, the DRB.

Q And the DRB essentially got started operating -- even though it was part of the EPC amendment in 2015, it really didn't get started until the summer or even the fall of 2016, right?

A It got started when the first dispute arose and there was the first referral to the DRB, which was in 2016.

Q And then take us from there to the end of your representation of the owners on the project. Were there things, other than the Dispute Resolution Board, disputes that you were involved with?

A Yes. In July of 2017, post-bankruptcy now -- so we're talking about after Westinghouse -- Westinghouse is now the -- effectively the sole participant as the contractor, and Westinghouse declared bankruptcy. It was in all the papers. You probably know about that.

Q Yes.

A And there was an effort to negotiate a contract with Westinghouse under which they would

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continue to support the project. And I attended two or three days of face-to-face negotiations with a team from Westinghouse.

Q And --

A Indeed I led the -- part of the negotiating team.

Q And was that face-to-face meeting and negotiations in July or was it back in April?

A I thought it was in July.

Q Okay.

A So post bankruptcy.

Q And what were those negotiations with Westinghouse about?

A Well, Westinghouse had certain familiarity with the design of the project, and it was -- the effort was to develop an agreement under which Westinghouse would continue to provide design support for the project.

Q And was the EPC contract part of those discussions?

A Well, the -- I understand that the EPC contract has been rejected in bankruptcy. That's my understanding.

And so Westinghouse was not -- not honoring that contract. You know how bankruptcy

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works; that they were no longer bound by that obligation as a result of the bankruptcy discharge.

So the effort was to take the debtor, the post-bankrupt entity, and enter into a separate agreement under which they would provide engineering support for the project on a going-forward basis.

Q And do you know when the EPC contract was rejected in bankruptcy?

A Oh, gosh, no. Obviously sometime after the bankruptcy -- when was the bankruptcy?

Q March 29th, I think.

A Okay. So I believe it was shortly thereafter.

Q Okay.

A I didn't actually pull the -- the filings from the bankruptcy court, and so all of my information would have been second and thirdhand, but you can get that date more readily than I can.

Q Sure. I was wondering if it was before or after these three days of meetings in July with Westinghouse that you had.

A My memory tells me it was before, but there was no -- but immediately upon bankruptcy, it was our expectation that there wouldn't be any other outcome.

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Q So to be clear, both you and your clients had a clear expectation, after the Westinghouse bankruptcy, that the EPC contract would be rejected?

A I don't recall having any conversation with the clients in which they shared with me their view as to what was likely to happen after the bankruptcy. It was obvious to me that that would happen. It did happen. It may well have been obvious to everybody at the client, but I can't testify to that.

Q Sure. And the meetings with Westinghouse, who was involved on both sides of that?

A There were probably 20 people in the -- in the room. The only one that I can say for certain who was there, besides me, was Al Bynum. Everybody else -- virtually everybody else was new to me. Everybody on the Westinghouse side was new to me. There were a number of SCANA people that I knew in passing that attended some or all of those sessions.

Q Do you remember any of the Westinghouse people that were at the July 2017 meetings?

A I really don't.

Q Do you remember who they were represented by?

A Well, there was -- there were bankruptcy

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lawyers; there were Westinghouse folks. I've told you about all I can remember of their identities.

Q Okay. And after that July negotiation with Westinghouse in 2017, did you have any other work that you did for the owners of the project?

A It was contemplated that there would be additional work done to negotiate the -- the retention of Westinghouse. So I did a little bit of work after the July meeting, but it was relatively shortly thereafter that the decision was announced that the plant would not -- the project would not go forward. So -- and I had no role in any of the wrap-up details.

Q Is it fair to say that once the plant was abandoned, that the negotiations that you had done in July were no longer relevant?

A It is -- it is fair to say that the effort to negotiate the continued involvement of Westinghouse became moot because of the decision not to continue with the project.

Q And other than the claims that were involved in 2011, when you first got hired, the DRB issues in 2016 and whenever they ended, and the 2017 negotiations with Westinghouse after bankruptcy, what other issues were you hired to represent -- or

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did you represent the owners in the project?

A Well, between 2011 and 2015, there were hundreds of issues that arose, some big, some small, some involving hundreds of millions of dollars, some, on the scope of this project, relatively small, you know, tens of millions of dollars; but there were -- I don't think it's an exaggeration to say there were hundreds.

Q Was --

A And they were all the types of issues that I do -- that I do and have made my living at for 40-plus years. They were construction claims, interpreting the contract, who gets paid what, is this an extra, does this justify some additional payment or some time. It was all those kinds of issues.

Q Was one of those issues the EPC amendment in 2015?

A Yes, I was involved with that.

Q What was your involvement with the EPC amendment?

A I did not meet with Westinghouse or communicate with them directly, but I was -- but lawyers for SCANA looked to me as more or less their lawyer. That is, they would have the negotiations;

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1 come to me. I would speak to them; I would suggest
2 language; I would suggest concepts; I would draft
3 provisions.
4 So I was deeply involved in the -- in
5 the -- in that agreement, every jot and tittle. I
6 mean, every aspect of it was something that I would
7 review and that I understood that I was being looked
8 to to provide advice.
9 Q Okay. Anybody -- who did you deal with
10 with SCANA on the EPC amendment in 2015?
11 A My primary contact was Al Bynum.
12 Q Okay. Anyone else?
13 A Well, everyone else. Everyone -- that was
14 a significant event in the life of the project, as
15 you can imagine, so everybody from the heads of the
16 two clients down to some -- some technical people,
17 and not excluding the in-house counsel.
18 Q And so the heads of the two clients were
19 Kevin Marsh and Lonnie Carter?
20 A Yes.
21 Q And you interacted with them on the EPC
22 amendment in 2015?
23 A Yes.
24 Q And the in-house counsels at the time were
25 Mike Baxley and Jim Stuckey?

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A Mike Baxley was a -- as I understood, his title was general counsel for Santee Cooper.

Steve Pelcher was -- I don't know if his name was project counsel, but that's the way I understood that he functioned.

So those were the two lawyers for Santee Cooper that I know.

Q And in addition to Al Bynum, who were the other attorneys at SCE&G or SCANA that you dealt with on the EPC amendment?

A At that time, the general counsel was Ron Lindsay.

Q And you worked with him on the EPC contract amendment in 2015?

A Well, I had communications with him.

Q Okay.

A He was not as closely involved.

Q Was there anybody else, than who we've named, who was closely involved in your work on the EPC amendment in 2015?

A Everybody that they could bring to bear, that there were people -- there must have been a dozen people from the two firms who at one time or another provided input on how that should be structured.

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Q What about any other outside counsel for the owners during the 2015 EPC amendment?

A The only outside counsel that I recall is Frank Elmore. He came in 2015.

Q Do you remember his role?

A He was brought on board by Santee Cooper.

And I should also say that prior to the execution of that document, there were a couple lawyers from Dentons who were brought on by Santee Cooper in order to review that -- that amendment, what we call the October 2015 amendment.

Q Had you worked with Dentons on the project before?

A No.

Q Have you worked on -- with Dentons on the project since?

A No.

Q Are you aware of Dentons working on the project in any way, other than the 2015 EPC amendment?

A No.

Q In those years, 2011 to 2015, in the hundreds of issues that you dealt with, was there any other issue as big as the 2015 EPC amendment?

A I don't know what -- you must be using a

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metaphor when you talk about "as big." Can you make that a little clearer to me?

Was the dollar value the same? I mean, what are you talking about, "as big"?

Q Sure. As significant to the success or continuation of the project.

A I wouldn't use those terms. The project was discontinued, so -- but in any case, there are certain amendments that were executed that were significant. The July 2012 amendment was a major step because it enabled the Santee Cooper and SCANA team to avoid litigation.

As I said, those identical issues were raised with an even higher price tag in litigation with Vogtle. So we knew at that time that we were facing the possibility of litigation. And avoiding litigation during an ongoing project that's expected to last for a long time is always a good idea.

So I considered that to be a -- avoiding litigation in 2012, I thought, was a major achievement. But I don't mean to downplay the significance of the October 2015 amendment and the option that was granted under that. That was certainly also a very significant event in the life of the project.

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Q And the option that was granted in the October 2015 amendment to the EPC was the fixed price option?

A Yes.

Q In that time frame of 2011 to 2015, when you were representing the owners in the project, were there any other issues that you dealt with that were at the same level or near the same level of significance of the 2012 amendment to the EPC and the 2015 amendment to the EPC?

A Well, a lot of the issues that I dealt with were addressed in the -- in the October 2015 amendment. So if you want to know what issues were foremost in the people's minds at that time, and some of the issues that I dealt with between 2011 -- between 2012 and 2015, you can simply review that list of resolved claims to get some flavor for that.

Q And where is the list of resolved claims?

A Well, it's in the -- it's in the October amendment.

Q And --

A Although it's not a -- it's a list, and then it says, "and everything else that you can think of." So it's more technical than that, but you know what I mean.

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Q Yes. And the October 2015 EPC amendment was the product of months, if not longer, of negotiations; isn't that right?

A From the time that the prospect of a -- some sort of resolution of the outstanding issues and the avoidance of imminent litigation, from the time that that was first broached to the resolution, it was many months, yes; I would guess four or five.

Q Are you familiar with the May 6, 2014, what's sometimes referred to as a roll-up letter, from the CEOs of the owners to the CEOs of the consortium?

A Is that a letter that lays out some deal points?

Q Or I would describe them, maybe, as challenges to the project.

A Then I'm not sure what you're referring to about that. I -- I would be surprised if something that you've just described was not something that came across my -- that -- let me rephrase that. Too many negatives.

I would be surprised if I didn't see a document that you're -- that you've just characterized at the time. I just -- nothing comes to mind.

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Q All right. One of the major issues that have been ongoing for the project was the module construction and delivery.

A Yes.

Q And was that part of the issues that was resolved by the 2015 EPC amendment?

A From my memory, I believe it was, yes. If by "issue being resolved," was a claim related to the modules resolved, I think it was.

Q And the drafting of the 2015 EPC amendment was part of the negotiation process?

A Yes, that's -- as you know, lawyers typically send drafts back and forth in editable form and redline them and do the whole thing. "Redlining" meaning highlight them so that -- so that the suggested changes by party A are transparent to party B. And then party B accepts them and redlines those and sends them back. That was the process that I observed.

Q And do you know how long the negotiations for the 2015 EPC amendment occurred in the document as you just described, redlining versions?

A No, I don't. I have no idea.

Q How long do you believe it took to document the agreement of amending the EPC agreement

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in October?

A Well, as I said, it was four -- at least four or five months between the time that there was a proposal by the -- by the contractor to avoid litigation through some sort of amendment and the time that the document was executed.

Q And how long was it for the October 2015 EPC amendment between agreement among the parties and the actual execution of the final document?

A I don't think -- I don't recall. The execution of the document required board approval of both -- of both owner entities. And so I was less focused on when that actually occurred, because I thought it was near certainty that it would occur. I don't believe it was long after the final document was negotiated and there was an agreement in principle before it was actually instituted.

Q And when you said the near certainty you had that it would be approved was based on the fact that you all had reached agreement between the two negotiating teams?

A I said I thought it was self-evidently in the best interest of the owner, and I thought that something so self-evidently in the interest of the owner would be approved by them.

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Q And the approval of the owners was the board approval of each owner?

A Yes.

Q And that occurred for both owners after you had reached, you know, the final agreement on the EPC amendment?

A Well, again, lawyers don't reach final agreements, but once there was a document in place that was blessed in principle by both sides, lawyers and others, then it was presented to the boards.

Q And do you remember if it changed, if the EPC amendment, in October of 2015, changed in any way after the lawyers had reached agreement in principle on both sides?

A Well, again, I said lawyers and others.

After the agreement in principle, we had a document. And then those were presented to the boards. And I don't recall either board suggesting changes or requesting edits to the -- to the document that was presented to them.

Q Okay. What -- in the time that you were representing the owners on the project, were there any other major issues that you dealt with like the two amendments in 2012 and 2015 to the EPC that we've talked about?

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A Every -- everything that I -- every issue that I dealt with had something in common with those issues in that they were -- they were the types of construction disputes that I typically address. So every dispute that I handled was a contract dispute, a construction dispute, a dispute about either extras or delays or inefficiencies or something of that type.

So they were -- all of the disputes were like the disputes that were resolved in July of 2012 and October of 2015. And some of them were the very same disputes indeed because, as I mentioned, the July 2012 amendment was a roll-up of four or five claims that were on the table at the time. The October 2015 amendment was a roll-up of maybe a dozen known claims, plus -- identified claims, plus all other known claims.

Q And so after the October 2015 EPC amendment, it kind of wiped the slate clean of disputes by virtue of the amendment to the EPC; isn't that right?

A All -- well, the language says all disputes that were known at that time.

So "wipe the slate clean" is not a bad way to put it; however, there were still a half a dozen

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years to go on the project, and we obviously knew there were going to be more disputes, which is why we put in place the DRB, the Dispute Review Board.

Q And can you tell us a little bit about the interim payments that occurred after the EPC amendment and before the fixed price option was exercised?

A Well, the exercise of the fixed price option, to me, is not a milestone that bears on your question. There were payments that were agreed to be made at a fixed price until the parties could arrive at a construction milestone payment schedule. And that construction milestone payment schedule took some time.

The contractor was not going to stop work until -- until that could be -- until that could be put in place, that would be in nobody's interest. So he continued to work and he provided information about what he thought his burn rate would be. "Burn rate" meaning how much he would spend for a given interval of time.

So his burn rate was suggested, just pay me in order to cover my costs until we could follow a -- follow the agreed procedure of putting in place a construction milestone payment schedule.

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Q And the DRB was tasked to come up with a construction milestone payment schedule?

A There was a dispute because the parties couldn't agree, and that was presented to the DRB.

Q And do you know when the DRB decided the project's construction milestone payment schedule?

A I don't have that date in my head. It was some -- we had hearings, and there was a -- and they made the decision.

Q It was in late -- or fall of 2016, right?

A It was -- it was certainly, if by "late," the second half of 2016. I think the hearings were in September, I think, so it would be sometime after the hearings.

Q And the September hearings were in the DRB on the construction milestone schedule?

A Construction milestone payments, yes. Yes.

Q And the fixed -- the interim fixed payment that the owners were paying the consortium after the EPC contract, what was that and when did it start?

A I believe the first payment was in January of 2016. I believe that the -- well, that's when I think it started.

Q And it was $100 million a month?

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A It seems to me that it fluctuated. There were certainly some months when it was $100 million, but that's not -- that's actually something -- not something that I've reviewed in preparation for this deposition.

And when I say "that," I didn't review exactly when those payments were made and what their exact amounts were. My memory is that there were some that were 100 million. It seems to me there were some less than that, but I don't -- I'm not certain of that.

Q And you talked about Westinghouse providing its burn rate information to the owners to come up with that amount of monthly payments; is that right?

A Right.

Q When was that information given?

A I don't know. I wasn't involved in that aspect of the process.

Q But that would have had to have been given before the EPC amendment, wouldn't it, to have been taken into account for the fixed payments in the interim?

A I -- you said it would have to be. I don't follow your reasoning.

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Q I thought that the October 2015 EPC amendment set up the interim payment so that Westinghouse would continue working on the project until the construction milestone payment schedule could be set.

A But the fixed price is the fixed price, you understand. So there is -- once the fixed price is set, then all payments made after a certain time are payments of that fixed price. So whether you pay them $5 or $5 million or $100 million in January of 2016, that is credited against the fixed price amount.

Q And I'm asking: How did they come up with the interim monthly payments?

A And I've told you that it's my understanding that Westinghouse provided the burn rate to the folks out at new nuclear, and that that was vetted, and there was an agreement that those payments would be made.

I wasn't -- I didn't review that data provided. I was not consulted on what the amount of the payments should be. And I have really nothing else -- or I can't think of anything else I can tell you about that.

Q No problem.

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Who was -- who would have been involved in that?

A Well, the folks at NND. There was a -- as you can imagine, the owner had a significant team at the plant in Jenkinsville. And those people would have looked at those numbers. There was also -- but I think it would have had to have been approved by the executives.

Q And the executives on an issue like that are who?

A Well, since I don't know who -- who actually approved those numbers, I can't identify people for you. But I would be surprised if all of the executives weren't involved at some point in evaluating that number. But I don't know that.

Q All right. And you're characterizing them as executives. I'm just wondering who you're talking about. Are we talking about Kevin Marsh and Steve Byrne?

A I would think those people and Lonnie Carter and other Santee Cooper.

Q And do you know who under Steve Byrne was out at NND during this period of time?

A Well, I think everybody at NND was under Steve Byrne.

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Q And who was directly underneath him?
A Oh, that I don't know. I never saw an org chart.
Q Okay. When you said that that -- that that information was given to folks out at NND, you didn't have anybody specific in mind, you just --
A No, just the team.
Q Okay. And do you know if these -- I think you referenced that these kind of interim monthly payments would be credited towards the contract price.
Is that also described as a true -- true up the payments?
A No. That's a different concept.
Q Okay.
A The crediting is a simple mathematical function, and there was never any dispute about that. The true-up is a different concept altogether.
Q But crediting just means it's not in addition to the contract amount?
A Right.
Q And the true-up means that you aren't entitled to keep the amount that is fixed in the interim. You actually have to either give back, if

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you didn't actually spend it, or get more, if you spent more; is that right? It trues up to the actual cost?

A Actually, it trues up to the construction milestone payment schedule, because contractors don't -- they hope not to build things solely at actual cost. There are a lot of other things that are built into that.

So the idea is that we would have a construction milestone payment schedule, but that that would -- could not be developed immediately. So that the true-up, as I understood it, was, you know, pay X number of dollars for a certain number of months. You'll eventually develop a construction milestone payment schedule. That milestone payment schedule might entitle the contractor to more or less than what the monthly fixed sums were. And so you true up by identifying whether it should be more or less. And then money either flows to the contractor or back to the owner or is credited.

Q And in late 2016, when the construction milestone payment schedule was set, did those interim payments get trued up?

A That was an issue for the DRB.

Q And did the DRB make a decision about the

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true-up of the interim payments?

A They did.

Q And what was that?

A I -- I'm hesitant to characterize a document that I don't have in front of me. Do you happen to have the --

Q I'm sorry. I don't.

But you saying that the issue of whether it gets trued up or not was presented to and decided by the DRB?

A Yes.

MR. BALSER: Matthew, when you get to a convenient stopping place, can we take a short break?

MR. M. RICHARDSON: Let's go ahead and stop. We'll take a quick break.

THE VIDEOGRAPHER: The time is approximately 10:08. We are off the record.

(Recess in the proceedings from 10:08 to 10:17.)

THE VIDEOGRAPHER: The time is approximately 10:17 a.m. We're back on the record. Counsel may proceed.

BY MR. M. RICHARDSON:

Q Mr. Wenick, would you mind passing me

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those documents that you brought today, and the hard copies, too, please.

A Those are duplicates.

Q That's okay.

A They're for my purposes.

Q I'll give them back.

A (Handing.) Okay.

Q Mr. Wenick, do you know why Bechtel was hired in 2015?

A They were hired to assist me in evaluating the project in anticipation of litigation.

Q And what was the litigation anticipated at that time?

A Litigation between the owner and the consortium.

Q And what was that -- what was that potential litigation about?

A It was about the expected and actual pending construction claims concerning the project.

Q And what were the pending construction claims?

A Well, if you'd hand me back my documents, I would tell you.

Q All right. We'll come back to that.

And how did you decide to hire Bechtel?

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A Bechtel was proposed as somebody who was interested in conducting a review of the project, and so I -- I agreed that they would be a suitable entity to perform that review.

Q And who proposed Bechtel as being interested in a review of the project?

A Santee Cooper.

Q And when did that occur?

A I don't know when that occurred.

Q Before you got involved?

A Oh, gosh, no. I was involved in 2011. Nobody, to my knowledge, from Santee Cooper proposed Bechtel prior to 2011.

Q Santee Cooper proposed Bechtel to do a review of the project before you got involved with that issue of hiring Bechtel; isn't that right?

A I learned in May of 2015 that Santee Cooper was interested in hiring Bechtel, and I was advised that there was a concern about producing discoverable material.

Q Do you know why Santee Cooper wanted to hire Bechtel to review the project?

A No, not in May of 2015.

Q Did you learn later why they wanted to hire Bechtel?

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A I received a number of explanations, not always consistent with one another.

Q And did you come to any conclusion yourself about why Santee Cooper wanted to hire Bechtel?

A There were times when I spoke with Santee Cooper personnel when they agreed that I should retain them, which I did, that I should retain them in anticipation of litigation, which is what the retention agreement says, and there were other times I learned that they wanted to use the Bechtel information in the normal course of business.

Q And what would be using the Bechtel review in the normal course of business?

A Using -- using information that Bechtel would gather in order to advise Santee Cooper and SCANA on aspects of the project.

Q And who did you discuss that with in May of 2015?

A I don't recall a discussion in May. I received an e-mail from Al Bynum, which is in front of you right now, stating that Santee Cooper was interested in retaining Bechtel. And Mr. Bynum solicited my advice, and he said, "Are we just creating discoverable material?" Which I understood

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to be discoverable material in an eventual dispute with the contractor, a construction dispute.

Q And did you have discussions with anyone else about Santee Cooper wanting to hire Bechtel?

A I had discussions with multiple people over the course of several months, both orally and by e-mail, about that topic.

Q And did anyone else, other than Santee Cooper, want to hire Bechtel to review the project in 2015?

A Well, the initial impetus came from Santee Cooper, but then the parties together agreed that I should retain Bechtel in anticipation of litigation of construction disputes in order to see what Bechtel might be able to provide to assist us in understanding the project and the nature -- the cause of certain issues that led to disputes.

Q And did you have any discussions about hiring Bechtel outside of the owners or employees of the owners?

A Oh, my law firm buddies, I suppose. I had discussions with certain other members of my law firm about -- about hiring Bechtel. But other than that, maybe my wife. I sometimes share with her what's going on in my life, my professional life. I

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try not to, but it leaks out. So anybody -- those are the only people I can think of.

Q Did you have any conversations or negotiations with the consortium or representatives of the consortium?

A Not directly.

Q And who had those communications?

A I think the usual suspects, but I don't -- I don't specifically recall that. I recall being involved in looking at Bechtel's concern about limiting the information that it provided to Bechtel and limiting the uses to which that information could be put. But I was, again, the lawyer to the lawyer. I was reviewing drafts that others had prepared and -- (phone interruption).

Q Were there any other concerns of the consortium, other than limiting the information that they provided to Bechtel and the use of the Bechtel report?

A Well, there are really a cluster of issues that are related in some way to those two concerns. They were concerned about providing Bechtel with certain information because Bechtel is a potential competitor, and maybe an actual competitor of the consortium.

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So there were -- as I said, that's one of the cluster of issues that were related to limiting the information that the consortium would make available to Bechtel and limiting the use to which it would be put.

There were also concerns about the manner in which the information would be provided. That is, it would not be provided with a large electronic document dump, but rather a lot of it would be simply made available in a -- in a room in hard copy format.

But there were, as I say, a number of -- a cluster of issues related to the concern about limiting the flow of information from the consortium to Bechtel, and limiting the uses to which that information would be put.

Q And just so that we're all clear, the consortium's concern about the use of the information relates to the information that the consortium was providing to Bechtel and not the results of the findings of Bechtel?

A Well, it was both. They -- as I said, they wanted to limit the uses to which the information would be put, so there was a concern about -- about what a report would look like and how

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it might be used.

Q And at that time, prior to the formal hiring of Bechtel, was there an understanding or agreement about whether there would be a written report?

A I don't recall. If you'd hand me back my documents, I would tell you what -- what is in the agreement.

I brought you electronic form because that's the form in which these documents are maintained. I have no obligation to provide them to you in another form. I've handed them to you as a courtesy so you could make notes as to what I brought with me, but I would like them back if you're going to continue to ask me about things that touch on those documents.

Q Sure. No problem. And we'll go through them. It's not a memory contest. I'm not holding you to that.

The agreement you referred to, though, is the PSA that was signed in early August?

A Yes, the agreement I'm referring to is the Professional Services Agreement that I negotiated with Bechtel, and that was executed in August of 2015.

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Q And your -- I think we've covered this, but your clients for the V.C. Summer nuclear project was SCE&G and Santee Cooper?

A I think that the engagement was and the billings went to SCANA. So SCE&G, as a -- what I understand to be a subsidiary of SCANA, certainly was a client, but I was primarily -- I thought of my client as being SCANA and Santee Cooper and any affiliated entities.

Q And, in part, SCANA or SCE&G was an agent for Santee Cooper in the context of the project; isn't that right?

A In the execution of the engineering, procurement, and construction contract, it recites that SCANA is executing that document as an agent of Santee Cooper. And I believe that was pursuant to a specific agency agreement that was limited to the execution of that document.

I do not -- I have no reason to believe that, in general, that they were an agent of Santee Cooper or had any general agency authority.

Q They were just a limited agent for purposes of the project?

A Well, I think it's much more limited than that.

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Q Okay.

A It was my understanding that there was a separate agency agreement limited to the execution of the document, and that that limited agency only authorized SCANA to act as an agent for Santee Cooper for the purpose of executing that document. That's my understanding.

Q And so if SCANA or SCE&G was a limited agent for Santee Cooper for purposes of the EPC contract --

A No. Now you're changing my words.

Q I'm asking.

A Okay.

Q I understand your answer. I just want to clarify the contours of your answer. I'm sorry to be talking over each other. Let me finish the question, and then you'll see if it's different.

A Yeah. Sure.

Q If SCANA or SCE&G was a limited agent for Santee Cooper, for purposes of the EPC contract, beyond just signing it, you just don't know that or are unaware of it?

A I'm unaware of it. I've not seen any evidence of that. And it's contrary to my understanding, because I had understood that

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subsequently, when there were other documents that SCANA was going to sign as agent for Santee Cooper, that there were other specific agency agreements executed.

If SCANA had somehow been authorized to act as a general agent for Santee Cooper, it seems to me that those other specific agency agreements would have been unnecessary.

Q And so for purposes of your representation of the owners, with respect to the project, you didn't have a greater engagement with one of the owners over the other?

A I took -- no. And I took great care to keep them both apprised of what I was doing. I've represented joint ventures before. I understand what they are, how they operate, and what they expect from their legal counsel.

Q And as legal counsel to the owners on the project, and specifically with respect to the Bechtel assessment and report, you fully communicated to Santee Cooper just like you communicated with SCE&G?

A Absolutely.

Q Well, did you have an engagement letter or a representation agreement?

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A Apparently not. I've looked for that. Going back to 2011, I don't remember one way or the other, but I haven't been able to locate it.

Q I was curious why you didn't list the V.C. Summer nuclear project or SCE&G or SCANA or Santee Cooper on your web bio. Why is that?

A A lot of clients don't like to be listed. And, frankly, I don't like to list my clients. I'm old-fashioned that way.

Q I understand that, too.

Did either of the owners request that you not list them?

A I don't remember ever asking them, and I don't remember them ever expressing a view on that.

Q Did you communicate with anybody representing the consortium about the Bechtel assessment or the report?

A Yes, frequently and several people.

Q Who was that?

A Well, in the first instance, it would have been the four lawyers that I've mentioned, Mike Baxley and Steve Pelcher for Santee Cooper.

Q Can I interrupt you a second?

A Of course.

Q I believe I asked about the consortium.

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A Oh, at the consortium.
Q Right.
A I'm sorry.
Q Did you communicate with anybody representing the consortium?
A No. I think you've already asked me that question. And no, I did not directly.
Q And that's true after the report came out, as well?
A Yes.
Q You've -- we had talked about, you know, you had found out that Santee Cooper wanted to have Bechtel hired to review the project.
We were talking about why Santee Cooper wanted to hire Bechtel, and I think you gave two reasons. I wanted to ask about the second one, that they wanted to use it in the normal course. And I think you had -- just to get us back where we were, I think you said you advised on aspects of the project.
Do you know -- I mean, can you give me more about what the -- what the use of the Bechtel report in the normal course would be, just on aspects?
A Well, I didn't know what the report would

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look like, and I took steps to try to shape the report so that it would be useful to me.

Frankly, I saw it as an opportunity to do something that I, in the back of my mind, I had wanted to do, and that is to bring in a construction expert to advise me on certain things about the project that would be useful to me in evaluating issues, primarily delay issues, but also extra work issues for the project.

Q What -- what are extra work issues?

A Well, a contention, for example, that there was a design dictated by the Nuclear Regulatory Commission of the basemat. And as a result of that dictated design change, the reinforcing in that mat had to be much more robust. Putting in a more robust basemat entails additional cost and additional time.

So that's one of dozens of construction disputes concerning extras that could and in that case did arise in connection with this project.

Q And when was that design change dictated by the NRC, if you remember?

A Actually, I think that was one of the items that was resolved in 2012.

Q Right. Okay. So in dealing with the

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Bechtel assessment in 2015, what were some of the extra work issues?

A Well, at the time there were about a dozen that were significant enough to -- to rise to the level of everybody's attention, that had price tags of between 10- and more than $100 million each.

Q And what were some of those, just as a -- give us an example.

A They're all listed in the documents that you decided not to give back to me. And I'd like to have them back.

Q Okay.

A Well, you said, "Okay." What does -- is there a problem with returning those?

Q No. I'm just saying we'll come back to it. I haven't had a chance to look at it either. I thought I'd just do that at the next break.

A Okay. Well, then, hand me back, please, the October amendment, and I can tell you what items were resolved in the October amendment. You say it's not a memory contest, but indeed it seems that it's becoming that.

Q Well, I'm fine with the answer to the question of what the extra work issues that you were interested in on the Bechtel assessment being

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identified as the -- as the disputes resolved in EPC amendment. I'm fine with that.

MR. BALSER: I want the record to reflect the witness has asked four times that his personal copy of the documents that he brought with him to the deposition that you asked for as a courtesy, and he provided to you, be provided back to him, and you are refusing to give the witness the documents back.

MR. M. RICHARDSON: I'm also telling him he doesn't have to answer the question. So when he gets to that point, we move on.

BY MR. M. RICHARDSON:

Q Mr. Wenick, was the Bechtel report kept confidential to protect the consortium in their litigation over the Vogtle project?

A I don't -- you're asking me about the Vogtle project?

Q That's right.

A To protect the -- you're asking me if the Bechtel report was kept confidential to protect the contractor consortium in connection with the Vogtle project?

Q That's right.

A That never occurred to me till you just

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simply -- that you had suggested it just now. I had no idea what the motivations of other people at the owner -- that is, at SCANA or Santee Cooper -- were. That was not my motivation. That's not why they were retained. That's not what their scope of services defines.

So if you're asking me my view, no. If you're asking me about the owners, I have no idea, but it wasn't discussed in my presence.

Q And so you weren't told by your client that that was one of the concerns that the consortium had?

A I simply don't remember that being mentioned.

Q Do you remember any discussions about the consortium not wanting the Bechtel assessment or report to be used or available in the Vogtle litigation?

A Well, let me say that there was always an issue about sharing anything about this project to anybody, including and especially the Vogtle owners, because of certain non-disclosure obligations that were embedded in the EPC contract.

But specifically in connection with Bechtel, I don't recall that discussion one way or

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the other.

Q Was the -- was the Bechtel report a preliminary or incomplete assessment?

A It was certainly preliminary. They said so; and I viewed it that way, and I think everybody did.

Q And do you know if Westinghouse ever had a fully integrated resource-loaded construction schedule?

A That issue was discussed, but I don't recall what the answer was. They may have had one up through commissioning. I think their contention was that they did have one up through commissioning.

Q And what is commissioning?

A Well, that's -- that is the -- basically the startup of the plant. So the construction is substantially over, but there's more work to be done in order to make certain that everything works and starts up properly. And so it's the detailed, time-consuming, complicated process, especially on a project of this nature. So...

Q And the commissioning is at the end of the construction project, right?

A Right. Correct.

Q Is it fair to say you don't know if they

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ever -- if Westinghouse ever had a fully integrated resource-loaded construction schedule?

A Well, I can't swear to it. You're obviously asking me to swear to it; so I don't know for certain.

Q Do you believe that Santee Cooper's primary motive on the Bechtel assessment was to secure a larger, more permanent role for Bechtel on the project?

A You said -- okay. So there are a number of words you've used in there, that their primary goal was for Bechtel to do a -- the suspicion that Bechtel was -- there was some self-promotion with their report -- began hovering over the Bechtel engagement well before the report was issued.

And I never -- I heard that. I credited that, that there was some self-promotion involved. Some people seemed to think they had some firsthand information or pretty good reason to suspect that. And those -- and I -- and that -- those opinions, those views, filtered to me.

It did seem to a lot of people that they saw the report as a first step in becoming the owners' engineer, which is a position that is expressly permitted under the EPC contract. And

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Bechtel probably thought that they were the right person to do that. And, therefore, I and others looked at some of their recommendations about -- some of the comments about the project as being made, at least in part, because of their desire to become the owners' engineer.

Q And it sounded like you answered it on behalf of Bechtel.

My question was: Were you familiar or did you know that Santee Cooper's, one of their primary motives, related to the Bechtel assessment and report, was to secure a larger, more permanent role for Bechtel on the project?

A I think that it was reported to me that there were some people at Santee Cooper who -- who had that primary agenda.

Q And who were they?

A I never paid attention to the names. You know, I was told about family relationships between people at Santee Cooper and somebody at Bechtel and all that. I basically kept my head down and tried to work through those issues rather than get to the bottom of that.

Q And we talked about earlier why Santee Cooper -- why Santee Cooper wanted Bechtel hired to

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do assessment of the project. You didn't mention this. I wanted to make sure that you don't know that that was a primary motive of Santee Cooper, wanting Bechtel to have a greater role in the project.

A The only way I would know that firsthand is if someone from Santee Cooper told me that. And so someone from Santee Cooper didn't tell me that, but people at SCANA told me that that was their understanding of what at least some people at Santee Cooper were up to.

And, again, the way I saw my role was it was to use the Bechtel report in a way that was useful to me as construction counsel in anticipation of a dispute. And if other people had other agendas, I tried to prevent that from interfering with what I was up to, but I didn't investigate.

Q And did Santee Cooper ever suggest that they wanted to hire Bechtel to assist you in anticipation of litigation?

A Oh, absolutely. There were multiple discussions about all of that before and after the actual execution of the agreement. And the agreement was in the possession of my clients. And the clients agreed that I should -- agreed to the

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terms that are in that Professional Services Agreement. And that Professional Services Agreement recites that they are being retained to assist me in evaluating potential litigation.

So absolutely, the owners were absolutely on board with the whole goal. And we had multiple conversations and e-mails about that.

Q And I understand that Santee Cooper agreed to hire Bechtel, at least under the PSA, in anticipation of litigation. But I want to know if Santee Cooper ever came up with that idea on their own or suggested it themselves.

A The first idea was proposed, to my knowledge, by me. After I received the May e-mail from Al Bynum, then I responded and recited what my normal approach was to retaining experts. And that was in response to Al Bynum's concern that we would be just creating discoverable material.

And in this context, I think I need to explain what I understood "discoverable" to mean. That's a term that lawyers use. It's not -- and it has a specific meaning to lawyers. What it means is that in the future dispute, through the discovery made available by the Federal Rules of Civil Procedure -- and I had mentioned the federal rules

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because it was contemplated that that dispute would be in the Southern District of New York -- but under those rules, certain things are discoverable and certain things are not.

So Al Bynum immediately put up a red flag. The same e-mail when he advised me of the interest of retaining Bechtel, Al Bynum raised a red flag that any competent in-house counsel would raise in that context, that are we creating discoverable material.

And so I explained that my normal practice is for my firm to retain the expert. Now, at that time I wasn't certain whether they would be retained as an expert for -- a testifying or non-testifying expert. Again, to lawyers that has significant meaning. Firms retained as testifying experts are obligated to produce reports. Firms retained as non-testifying experts can be -- don't have to be disclosed. They don't have to provide reports. Their identity doesn't have to be disclosed.

And so at that time it wasn't clear. But in either case they were being retained, the concept, beginning in May, was that they would be retained as either a testifying or non-testifying expert in anticipation of litigation with the

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consortium about the normal run-of-the-mill construction claims that I deal with every day and have for 40-plus years of practice.

Now, when I say "run-of-the-mill," on a $10 billion project, they look a little less run-of-the-mill. But in terms of the types of claims, they were the types of claims that I deal with every day.

Q Okay. Thank you.

Did the owners ever use a owners' engineer on the project?

A I can't think of any time when that term was assigned to anyone, but I don't know.

Q And they certainly didn't hire Bechtel, after the assessment, to be the owners' engineer, did they?

A No. A lot of things happened after the assessment that -- that changed the overall complexion of the project, including the October amendment that we referred to.

Q And does that have some bearing on the owners hiring an owners' engineer?

A Well, it -- it certainly had a -- in my mind, it did. I don't know what was in the minds of SCANA or Santee Cooper personnel.

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Q But you know that the owners did not hire Bechtel as an owners' engineer after the assessment?

A Bechtel didn't cover themselves in glory with their report. I think they -- a lot of people thought that they more or less disqualified themselves, both because of the manner in which they conducted themselves and the ultimate report that they issued.

So no, they weren't hired as an engineer. And I -- and I don't think they would have been had there been no change.

Q And who were the folks that thought they should -- they disqualified themselves through the assessment?

A It would be easier to try to come up with somebody who didn't. I don't think anybody thought that Bechtel's report was what -- what we had in mind. A lot of it was mooted by the October amendment. They did things that they weren't asked to do. They did things badly.

So I don't think anybody was -- thought, hey, these are the guys that we really need to bring in here. At least nobody ever said that to me. Nobody ever said positive things about Bechtel after -- after the report or after -- even after

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their presentation in October.

Q I'm trying to understand what aspects of the assessment and report that -- that they did that you -- that they weren't asked to do, for example.

A Well, they weren't asked to do a projection, a projection of completion. And had I asked them to do that, I would have asked them to do it -- do it properly rather than the way that they did it.

Q Anything else they did that they were not asked to do?

A I thought that they went out of their way to be critical of the way in which the project was being managed on the owners' side, and I couldn't help but read that in the context of these comments, that they were trying to ingratiate themselves with the owner to become the owners' engineer.

Q Yeah. How do you reconcile those -- those two things, that you -- you believe they were trying to audition for the job, but then they were going out of their way to criticize the decision-makers for the hiring?

A The thrust of -- the way I would simplify that point is: Bechtel was saying, "You don't know how to do this. We do. Hire us."

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Is that clear enough?

Q I mean, is that the answer?

A Yeah, that's -- that's a -- that's a simplification.

But understand that I don't think that Bechtel was solely motivated by self-promotion and that that was solely a marketing effort. But when I read the report, I couldn't help but think that some of their topic areas and some of their conclusions were influenced by their desire to self-promote.

Q And what were -- anything else that they did that they weren't asked to do, other than the schedule for the project and criticizing the project management?

A Well, it's a several-hundred-page report and I haven't read it in a couple years. So I -- my answer is I feel certain that there is, but I can't point you to anything because I didn't memorize that report.

Q And when you talked about the people that, seeing the results of the assessment and the report, thinking that Bechtel had disqualified themselves, I mean, you said it would be easier to figure out who didn't do that. So you're saying that everybody you talked to about the Bechtel report had the same

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opinion?

A I'm saying that nobody said, "Hey, these guys really have this nailed. They know how to build this project. We need to bring them in."

I don't remember anything like that or anything that I would paraphrase as being like that. I don't recall anybody giving a glowing account of Bechtel's performance, either during the assessment, during the seven or eight weeks when they were looking at the project, or as a result of their oral presentation, or as a result of their written reports.

Q And did the owners find that the Bechtel assessment or conclusions were surprising or different than they expected?

A In general, the -- there were too many -- there were just too many findings and conclusions for me to say what the owner thought about every single one.

If you want to ask me about a particular conclusion or assessment or finding, I'll be happy to try to give you my best memory of what the thinking was, if it was ever expressed to me.

Q And the scope of what their work was going to be was laid out in advance, right?

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A Their -- the agreement states what they're going to do in general terms. If you try to match up what the agreement says with the report, I think you'll become frustrated because it doesn't line up very well.

Q And there's no question that the results of the Bechtel assessment were critical of the owners and, in particular, the project management?

A There's no question that Bechtel was critical about many aspects of the project. They were certainly critical of the consortium, and they were critical of the owner. Those were the two parties involved or two groups involved. And Bechtel was critical of both.

Q Is it fair to say that the senior management of the owners were not happy with the results of the Bechtel assessment?

A I remember that they thought it was pretty thin gruel, that that is that the -- some of their comments and findings were delivered as though that were the first time any issues had been identified, whereas it was pointed out to me that a number of the issues they were looking at were the subject of frequent meetings between the owners and Bechtel.

So there was one category that was obvious

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and had already been identified. There was another category that was mooted by the -- by the October 2015 amendment, which was already in final form at the time of Bechtel's oral presentation. And there was a third category where they were doing things with an unreliable methodology that was considered to be useless.

Q Well, what was that?

A Oh, that was the schedule projection.

Q And whose conclusion was that, that it was unreliable and useless?

A Well, among others, it was mine.

Q And who else?

A I don't think anybody ever voiced a disagreement when I expressed my opinion. I did it in writing and orally to both clients, and nobody ever said, "Well, no, I think that's -- I think they got it right."

Everybody -- there were no dissents that I recalled from my somewhat forcefully expressed opinion that it was -- well, it certainly wouldn't be used and couldn't be used in a court of law. It wouldn't pass a Daubert test. You know what a Daubert test in federal court is, right? A Daubert test is when you challenge the methodology of an

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expert to determine whether it was sufficiently reliable for that test -- expert to testify. This was far short of that. But it was even worse than that. Even by their own admission, they couldn't do enough -- they hadn't done enough analysis to get reliable projections. And when I say "their own admission," I'm saying Bechtel said those words.

Q And so what did -- what analysis did you do, other than using your training and experience to read the report, to conclude that they had used unreliable methodology in their schedule assessment?

A Well, if you take off the table my training and experience, then you don't leave me with much.

Did I go to third parties? No.

Did I consult authoritative texts on scheduling? I did, yes.

Q Which -- what are those?

A Well, the AACE International is an organization of people who do scheduling. It's mainly Americans, but it's -- there are some Canadians and Brits involved. And they establish more or less recommended practices in various areas of forensic analysis related to construction, costing, for instance, scheduling.

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And so I -- I've used those, their recommended practices as authoritative texts in disputes before. It is readily available, easily reviewed, easily understood, something that I understood. And I looked at what Bechtel did and measured it against recommended practices and found that it fell far short.

Q And the recommended practices that you identified to compare it to were for determining a high confidence level or a -- or a what?

A Well, recommended practices for a schedule analysis, which includes both a prospective and retrospective, so forward-looking and backward-looking. It addresses both.

Q And the forward-looking, you know, has different aspects of analysis.

And I'm asking: Of the recommended approaches, you know, you've got different types of appraisals. Same with -- same with forward-looking schedule analyses.

Which recommendations from -- that you went and consulted and compared what Bechtel asked to do to see if they had reliable methodology?

A Well, I actually prepared a lengthy e-mail on this point. I think it's Recommended Practice

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Number 29 of the AACE International. And what it says is it defines different levels of schedule, so that there can be a common understanding among cost engineers and contractors and owners as to the detail and the uses of various schedules.

Bechtel said that they did a level 2 schedule, which is something you can basically do on a whiteboard. And a level 2 schedule cannot be used for the purposes to which Bechtel put it.

And the foundation of the schedule was even worse, because the foundation was their own, I would say, "guess," but their estimate. I suppose they were bringing their training and experience to bear, but it's not the sort of thing that gets the attention of construction lawyers, because it was little more than a guess. And it had parameters of plus or minus -- no -- plus-eight months or so.

So it was so -- I'm going to use a technical term here -- squishy in its detail, and so poorly underpinned in its foundation, and such a high level, meaning level 2 -- level 1 is the highest level, basically start and finish. Level 2 says here is a half dozen or a dozen activities. Level 3 then gets into detail.

They used a level 2 schedule to tell the

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owner what the expected completion date was when the contractor had bet $900 million in liquidated damages on quite a different schedule.

So when I look at that, look at what people -- what skin they had in the game, look at the contractor who's signing up for potentially $900 million in damages for being late relative to the schedule he committed to, versus a -- the Bechtel group, who had seven or eight weeks, a limited budget, and limited access to information, and what they were projecting for completion, I just -- I just didn't put much stock in it. And that was immediate and consistent. I immediately had that reaction when they made their oral presentation in October of 2015.

Q And did you ever analyze Westinghouse's schedule for the project?

A No. That's what I had hoped Bechtel would do. But Bechtel told us in October that they tried to download the schedule, but it just took too long, so they stopped trying to download it.

So -- and I was flabbergasted. When they said that to me, I then asked a few questions: "Tell me about your methodology." Because unless you can tell me what your methodology is, dates mean

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nothing to me. I mean, go to a soothsayer and read tea leaves. Anybody can come up with dates. Tell me how you arrived at your dates.

And when they told me what their method was, I was basically done with Bechtel.

Q And did you ever ask Westinghouse what their method was for determining the schedule for the project?

A Oh, I know what the schedule was. This schedule was a -- was a detailed critical path method, CPM method, which is computerized. What it does is it takes -- it's an algorithm. It takes activities, breaks down the job into, in this case, tens of thousands, perhaps hundreds of thousands of activities, identifies start and finish dates, identifies the connectors. Is this going to -- is this activity A going to start when activity B ends, or is it going to start 10 days later, or is it going to precede activity B, what are the relationships. And all of that is put into a computer, but it's simple math.

So I understood that methodology. That's the methodology that's been in place for, oh, I want to say the last 60 years. And they used a Primavera software in order to do the calculations of this

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algorithm. And -- and that was the schedule that Bechtel attempted to download but stopped trying to download.

And without -- without downloading that and coming to grips with what the actual schedule was, from that point on, Bechtel was just in the dark.

Q Did you ever ask or analyze Westinghouse's schedule for the project?

A No. That's what I understood Bechtel was going to do.

Q Okay. And?

A But they didn't.

Q And although you know that they used the computerized algorithm and Primavera to come up with their schedule, do you know how many items is appropriate for a project of this size in a detailed schedule?

A Yeah. The activities, I think, is the term you're reaching for.

Q How many activities?

A I don't. I don't. I know that there were a lot in this schedule, which is why it took so long for Bechtel to attempt to download it and why they aborted that attempt.

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Q Do you know even what the ballpark is, in terms of within 10,000 activities, how many would be expected on a project like this?

A No. On a $10 billion project, I just don't have a feel for that.

Q You're not actually an expert yourself either in analyzing schedules for projects?

A I consider myself to be an expert at analyzing schedule analyses, not in actually performing the analyses.

Q Did you ever analyze the owners' schedule assessments that were done internally?

A No.

Q Did you ever ask or find out what schedule level the owners were using?

A No.

Q How about Westinghouse? Did you ever ask Westinghouse or find out what level their schedule was?

A Well, I assume that their schedule was the -- was the highest level, just what -- the information that is currently on the table would suggest that to you, with tens of thousands, perhaps hundreds of thousands of activities. It was as highly detailed as a schedule could be.

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Q Is it possible for a schedule to be too detailed as to be unuseful or unhelpful to the project?

A There are -- there are mechanisms for simplifying schedules. You put documents in what's referred to as a hammock. So you may have 50 electrical activities in level 4, quadrant X, but you may put those into a hammock so that it's all one activity, which shows the start date of the earliest start of the activity and the end date of the latest start activity. So huge schedules can be managed and kept and actually put in a person's head through the use of these simplifying methods or hammocks.

Can things get too complicated for a human to understand? Of course. But as I said, there are strategies for dealing with that.

Q And isn't what you described the way that you kind of zoom out to a lower-level schedule so that it is digestible by a group that -- for example, the CEOs sitting around a table?

A You don't zoom it out to something that can be put on a whiteboard. Once you get to that level, then you're not really -- you're not using the data in the schedule.

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And that's not what Bechtel did. Bechtel did not take the contractor's schedule and put everything into hammocks, and then try to project it. That was not their technique. They described their technique in detail in their report, and they also described it orally, and that's not what they did.

But that is something that could be done. And I would expect -- I don't know why Bechtel didn't do that. If they were trying to simplify things so they could present it to a CEO, then they could have taken the schedule and done the simplifying process that I just described to you. But that's not what they did.

Q Do you know if it was possible to do the simplifying process that you're suggesting with the Westinghouse's schedule, detailed schedule data?

A I -- my belief is that it would have been, but I didn't attempt that process, and Bechtel didn't do it. So I have no evidence that it was actually done.

Q And you actually have no idea about Westinghouse's detailed schedule because you didn't ask about it, and you didn't look at it, and you didn't analyze it, did you?

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A I have a lot of ideas about Westinghouse's schedule. It was done with P6 Primavera software. It was done with predecessors and successors and activities and durations. And I had hoped that Bechtel would look under the hood, so to speak, of the schedule and get to the bottom of it and advise me. That's what being retained in anticipation of litigation -- that's certainly one aspect of what I would expect them to do.

Q And you didn't look under the hood at all about what the Westinghouse schedule was like and whether it could be used in the way you're saying Bechtel should have used it? You didn't do any of that analysis, did you?

A Okay. That's three questions. Which one do you want me to answer?

Q All three of them.

A No. Give them to me one at a time.

Q You didn't look under the hood at all about what the Westinghouse schedule was like, did you?

A If by "looking under the hood" you mean load it on my desktop or other computer and run the data myself or produce reports myself, no, I didn't do that.

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Q How about did you go talk to anybody who had done any of those things with the Westinghouse schedule?

A There were -- there were people in NND who felt they understood the Westinghouse schedule and didn't have the -- had objection that it was too complicated or too many activities or couldn't be simplified. I only learned of those people sometime in 2016.

Q So you didn't have any conversations with anybody back in and around the Bechtel assessment report about Westinghouse's schedule?

A I did. I just didn't have any discussions with the group that was stationed in Jenkinsville, that was working with the schedule on a daily basis, about what their view of the schedule was, until 2016.

Q And so you didn't know whether the Westinghouse schedule could be used in the way that you're saying Bechtel should have used it, do you?

A I had every reason to believe that it could. When we actually did a deep dive -- and when I say, "we," I wasn't, again, at the computer terminal -- but we did a deep dive into those schedules in 2016 as we were attempting to develop a

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construction milestone payment schedule. And I saw nothing about the schedule that was in any way unusual or anything that would have prevented a competent construction expert from getting to the bottom of what was going on in that schedule.

Q When you did the deep dive, in 2016, of the Westinghouse schedule, did you-all have complete access to all the detailed schedule data?

A I believe that we did.

Q Did you come across anything with respect to Westinghouse schedule information that you-all didn't have or couldn't get, and that became an issue in the 2016 construction milestone payment schedule process?

A There were some discovery issues that arose in the DRB along those lines, and I don't recall the details of that precisely.

Q But on behalf of the owners in that process, you had all the data you needed from Westinghouse for a schedule and the budget to determine the construction milestone payment schedule?

A We had -- there's always something more you can ask for, and we did ask for more. We felt we had a good handle on the schedule sufficient to

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develop our own construction milestone payment schedule. We hired a consultant at that time for that purpose, and he assisted us -- or they assisted us in that effort.

So we felt -- felt that at the DRB hearing, we had a well-defended proposal for the construction milestone payment schedule.

Q And who was the consultant you hired during that process?

A Secretariat --

Q And they were asked --

A -- like the race horse.

Q -- to do what?

A Well, they were asked to assist in the development of the construction milestone payment schedule.

Q And what level of schedule did the owners use for developing that construction milestone payment schedule?

A I believe it was the Bechtel schedule.

Q From the report?

A No. From living it, from interacting with various witnesses and -- I'm sorry.

Q You just said "Bechtel." Maybe you meant Westinghouse.

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A Oh.

Q I asked: "What level of schedule did the owners use for developing the construction milestone payment schedule?"

A Yeah, you're right. I did. I misspoke. Thank you for catching that.

It was the Westinghouse schedule. You couldn't do it with a level 2 schedule, because the construction milestone payment schedule attempts to tie payment amounts to activities. And you wouldn't have nearly enough activities from a level 2 schedule unless you wanted to have a dozen milestones, which would -- wasn't what anybody wanted.

Q A level 2 schedule would only have about a dozen points?

A No. Well, I'm trying to give you an order of magnitude. And -- and thank you for pointing that out. I don't really mean to say that a level 2 schedule only has a dozen points. But a level 2 schedule does not have the -- isn't fine-grained enough to prepare a construction milestone schedule.

Q And so when, on behalf of the owners, you were developing the construction milestone payment schedule in 2016, you had access to the detailed

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Westinghouse schedule data?

A I understand that that's what -- that's what was used as the basis for -- for both sides. That is, both sides tied various payments to activities in the schedule. When I say "activities," I'm talking about specific activity numbers in the Westinghouse schedule.

Q And in using the Westinghouse schedule, did you ever come across or hear about or discuss constrained dates?

A Constrained dates are more or less taken for granted. They always occur, because you're trying to identify major milestones on a project, and you constrain the dates because you want to understand what -- whether you're going to meet that milestone at the -- at the sometimes the promised time period and sometimes just a target time period. So you constrain the dates to figure out whether you're going to meet that milestone.

That's my principal experience with constrained dates. I suppose I've seen a schedule that didn't have them, but I work primarily in the power industry, and they are routinely used to identify milestones.

Q Did you have any specific experience with

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constrained dates in this project?

A I think I learned that Westinghouse, like any other contractor on a power project, had constrained dates. I think I had that information a long time ago.

Q Do you remember any of the dates that were constrained in the -- in the schedule?

A I don't. I don't.

Q And when you want to use this computer algorithm to determine what the commissioning date or the substantial completion date would be, isn't it true you have to release the constrained dates?

A I think, generally speaking, that's -- you'd want to release the dates and let the schedule run in order to -- to avoid hiccups in the computations. That's my understanding.

Q And do you know if that was done on this project, the constrained dates were released to determine the substantial completion dates?

A I don't know one way or the other. Again, that would require me to look under the hood. And I don't keep Primavera on my laptop.

Q And do you know if --

A I used to. When I was learning about scheduling, I used to, but I don't anymore.

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Q And do you know if in the context of coming up with the construction milestone payment schedule, whether the constrained dates in the schedule were released?

A I don't remember any discussion about it one way or the other.

Q You, I think, are familiar with that Bechtel had some trouble getting information and documents about the project when they -- when they started?

A That trouble actually began before they started. That's when Westinghouse was asserting that they would not give free access to -- to information.

Q And do you know how Westinghouse asserted that?

A Yes. They proposed a document that embodied the agreement as to the way in which information would be made available and the uses to which it would be put.

Q And how did that get resolved, if it ever got resolved?

A Well, I don't actually remember if there was a document executed, although it seems to me there must have been. There -- a document was

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circulated back and forth for some months.

Q And do you know why SCE&G would not have provided complete access to all of its engineering and scheduling documents to Bechtel?

A Oh, I was talking about Westinghouse. I have no reason to believe that the premise of your question is accurate. That is, you said, why didn't SCE&G do something? I think they probably did. That is, more specifically, I think that they -- I have no reason to believe that the owner did not make available to Bechtel all of the information that Bechtel requested as part of its assessment.

Q So as far as you know, the only problems with access to information, documents, and data was with the consortium's cooperation with Bechtel?

A Yes.

Q And the owners agreed to hire and pay for the Bechtel assessment, right?

A Yes. Well, the owners agreed that I would hire them, and that they would -- that they would fund the effort.

Q And who gave the approval to, you know, to make the hire?

A I can't think of an individual. The agreement was circulated. It was approved by the

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lawyers. Again, the four lawyers that I've mentioned all looked at that document. I don't know who else they consulted or showed the proposed Professional Services Agreement to, but I was authorized to retain Bechtel, and I did.

Q And both SCE&G and Santee Cooper approved your hiring them and spending a million dollars on the assessment, right?

A Yes.

Q Do you know why the Bechtel report was withheld from the -- from ORS and the Public Service Commission?

A Nobody at the ORS ever contacted me about the Bechtel report. I don't know and haven't investigated whether the privileges that so clearly attach to that document in the context of any litigation with Westinghouse would attach to that document in the context of the ORS or anybody else, because I just have never had a situation where that came up. I don't know the legal answer.

All I was focused on was not providing it to the contractor and in the litigation that I was anticipating in the Southern District of New York.

Q And the -- you've told us this before, but the 2015 EPC amendment was finalized prior to the --

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even the Bechtel presentation was made?

A No. The sequence is -- the document, the form of the document, the agreement in principle was in place as of October 22nd, the date of the Bechtel assessment. It was not approved by the boards until later. So that's the chronology, as I remember it.

Q And -- but it was within days of the presentation that the EPC contract was executed, right? I mean, it was executed in October 2015, so it couldn't have been more than a week.

A You mean the amendment to the EPC contract.

Q The amendment.

A It is true that shortly after the oral presentation by Bechtel on October 22nd, the boards approved the -- the amendment. I don't think Westinghouse approved it until much later. It may even have been the end of the year.

You understand there was a lot of movement of the pieces on the chessboard associated with that agreement. And getting that done took some months, as I remember it.

For instance, Westinghouse bought Stone & Webster, and CB&I was released, and Fluor was brought in as a consultant. So those are the

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pieces on the chessboard I'm talking about.

I think that took, if I had to guess, I'd say the end of December, but I'm not sure when that all happened. But there had to be both -- all of those pieces had to be in place before the agreement was -- was formally effective. It may have been signed in October but not effective until approved, is the way I remember it.

But if you'd give me back my documents, I could give you a better answer, but you apparently don't want to do that.

Q The EPC amendment had the -- had the effect of, seems like, of undermining the usefulness of the assessment or the report for any potential litigation against the consortium; isn't that right?

A The relationship between the October 2015 amendment and the Bechtel assessment is real, but it's complicated. And I can't assent to what you said as being accurate.

Q And you already told us the EPC amendment resolved all known claims.

A Right, but it created new -- it created possibilities for new ones.

Q Possibility of future claims under the EPC amendment?

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A Yeah. That's the $900 million in liquidated damages is what I'm talking about. You know what liquidated damages are, right? Liquidated damages are damages that typically are agreed to be paid to the owner for the contractor's late completion.

We had new completion dates in that October amendment. That's why I say it's complicated. We had new completion dates, but we had a possibility of as much as 920-some million dollars worth of liquidated damages if the -- if Westinghouse didn't meet those new dates.

So the chance of litigation -- frankly, the likelihood, the near certainty of litigation occurred to me within a few months of that agreement. There was a certain euphoria when we got the agreement signed and all that, "Oh, we've resolved all these claims." But, you know, the next day dawns and you have to look ahead, and we did.

Q So the EPC amendment's approval, as of that date, there were no owner claims against the consortium?

A No. Again, if you'd hand me back your documents, I could read to you the language so that the record was clear and my testimony was accurate.

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MR. M. RICHARDSON: Hand that back to him (handing).

BY MR. M. RICHARDSON:

Q Please let me know if that's not the right document that you're asking for.

A That's not the right document I'm asking for. Oh, wait. I'm sorry. It is. It is the right document.

Q Okay.

A I apologize.

Q I think we just want to be clear that I'm understanding you, that at the time of the EPC amendment approval, there were no owner claims against the consortium.

A What the agreement says is that it gives a list of items A through H, then goes on to say that's not an exhaustive list of all claims, disputes, and amounts that are satisfied by this October 2015 amendment. It being the parties' intent that all disputes outstanding under the EPC agreement or concerning the project as of the effective time are settled and resolved. By way of further clarifications under this October 2015 amendment, the parties waive and settle any and all claims currently pending or threatened by either

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party against the other party, and of any and all claims currently known or reasonably foreseeable by either party against the other party.

So that's fairly broad, but that's what the agreement provided.

Q And where are you reading from in the agreement?

A That's page 2, the bottom of the page, paragraph 3.

Q Thank you.

And after reading that, you can -- you can confirm what I'm asking, that at the time right after the EPC amendment approval, the owner had no current claims against the consortium, right?

A The -- yeah, but that the approval -- and this does also clarify for me the effective time of the agreement.

And paragraph 1, page 1 of the agreement says: "The parties agree that this October 2015 amendment will be a binding obligation between the owner and Westinghouse upon approval of the boards of directors of both owners" -- so that would be Santee Cooper and SCANA -- "and the authorization of the board of SCPSA," which is the -- I'm sorry. That is --

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Q Santee Cooper.

A Santee Cooper -- "for its management to execute the necessary documentation and execution of those documents."

So that's one of the special agency agreements that I referred to before.

"Which shall become effective upon the consummation of the transaction. And in the event it's not" -- I'm sorry. "In the event the transaction is not consummated by March 31, 2016, this October 2015 amendment shall be null and void in all respects."

So there were other issues that needed to be resolved. Westinghouse's board of directors had to approve this, and Westinghouse's board of directors wasn't going to approve it until all these other pieces were in place. That is, that there was a closing of the purchase of Stone & Webster from CB&I, CB&I is released, and so forth and so on.

Q And when did that occur?

A I don't have that date in my head. I think it was the end of the year.

Q And -- but we know it occurred?

A Oh, there's no question about that.

Q So the October 2015 EPC amendment was not

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only approved and executed, but also became effective in 2015, right?

A Well, it's assuming that it was done by the end of the year. And I do assume that, but I don't know that. Then yes, assuming that all of these approvals were given and the effective time was in 2015, then the release, yes, would have been in 2015.

Q And the release is what we talked about before, all known disputes, waiving and settling all disputes, including those reasonably foreseeable?

A Yeah. It's the -- it's the disputes specified in paragraph 3 on page 2 of the October 2015 amendment.

Q And any new claims or problems that occurred among the owners and the consortium wouldn't have been part of the Bechtel assessment that was completed in 2015, would it?

A Well, there were retrospective and prospective aspects of the Bechtel report, that is, backward-looking and forward-looking. Certainly the schedule assessment was forward-looking. Some aspects of the criticism of management had both backward-looking and forward-looking implications.

So I guess I wouldn't assent to your

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questions. It oversimplifies.

Q So how would you use the Bechtel assessment in a -- in a dispute that arose after the effective date of the 2015 EPC amendment?

A The Bechtel assessment that I thought that I was going to get when they were retained in July would have been an analysis of schedule that would have enabled me to respond to any -- any claims that Westinghouse raised, as well as the claims that were pending at that time concerning delays to the project.

So the -- it's going to be really hard for me to answer your question about what use I planned to put to the Bechtel report unless we have some clarity about when, because in May, we all thought that it was going to be an assessment and we didn't want it to be discoverable. And I saw it as an opportunity to gain information that would be useful in addressing some of the disputes that were on the table at that time.

When the -- by the time the oral presentation was made, I, frankly, didn't have much interest in what Bechtel had to say. I didn't attend the presentation, although I listened in for a time, a brief time. And as we move forward in the

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calendar, the schedule assessment became more and more concerning to me if it were to be discovered in a future dispute, because of comments that are made with very little accessibility and information, very little time, not enough money, not enough resources to do a proper investigation.

So I was concerned that an analysis that they themselves characterize as preliminary could be used in future disputes after -- not disputes that were resolved here, obviously. But I was brought in, as I understood it, because of my training and experience in these matters. And my training and experience told me you need to think about being in a courtroom in southern Manhattan in 2021-2022. What are the issues that are going to arise? What's going to matter to you and to your clients in that litigation?

And that's -- and that affected my view of the uses of the Bechtel report. So as you move along in time, my view of the Bechtel report changed, but I didn't know what it was. What I hoped it was going to be useful was one thing. When I finally got it, it was another thing. And then as we move further in the calendar, it became a third thing.

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Q The Bechtel findings on schedule were a big problem for the project with the PSC, wasn't it?

A I have no idea. I don't know why it would be.

Q You don't know that information given to the owners that suggests that the substantial completion dates were years later than they were telling the PSC, and that it was part of the approved schedule, would be a problem for the project?

A If someone walked up to me on the street and said, "Hey, your project is going to be late," is that something that I think is significant, should -- should give some credibility to the point that I go around to regulators and tell them? No.

Now, Bechtel did a lot more than that, but frankly, to me, their methodology meant that that was little more than someone tapping me on the shoulder and saying, "You know, all these new plants are late. You're going to be late."

Q Did you know or did someone at SCE&G or Santee Cooper -- probably just SCE&G -- tell you that the substantial completion dates needed to be in no later than 2020 in order for the production tax credits to be realized for this project?

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A Oh, sure. I knew all about the production tax credits. There's also -- I also knew that there was effort afoot to move that date backward. And I think that Vogtle's either achieved that or is working on that.

So, you know, I'm not sure -- yeah, I knew that.

Q Okay. It made it sound like you didn't -- you didn't -- you didn't think that the dates moving had any impact on the project. I just wanted to make sure.

A The dates didn't move.

Q Okay.

A What you're referring to is some assessment with an unreliable methodology suggesting that the dates would move. On the other hand, we have one of the Marquis names -- it used to be the Marquis name before the bankruptcy -- committing to up $900 million behind the date that they had just committed to.

So which one has more validity in my mind? Well, obviously the Westinghouse dates that were backed up by these liquidated damages promises had much more validity than some guess from -- from Bechtel. By the way, I say "guess" as a shorthand,

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because I gave you what I think is a detailed response on the Bechtel methodology. It was more than a guess, but their methodology tells me it wasn't much more than a guess.

Q Are you familiar with the 2017 schedule analysis post bankruptcy done by SCE&G?

A No.

Q Are you aware that SCE&G actually confirmed the schedule that Bechtel suggested was the case and showed that Westinghouse's schedule was not reliable?

A I have not heard anything about that. Therefore, whatever representation you're making about what's in that, I can't affirm or disagree with.

Q I'm just wondering if you are aware of any of that.

A I don't know if that's an accurate statement, and I have no information about any post-bankruptcy schedule analysis.

MR. M. RICHARDSON: Can I have that Complaint, Federal Complaint, the first thing you showed me this morning that you were trying to get the names off of?

You were getting the names off of it.

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THE COURT REPORTER: (Handing.)

BY MR. M. RICHARDSON:

Q Do you know Ms. Iris Griffin?

A It seems to me I've met an Iris somewhere along the line, but I'm not sure if that's your Iris.

Q She's the CFO of SCANA.

A Oh, no, then -- was she previously on their board?

Q I don't know.

A Okay. Well, I can't think when I would have met her in her current position. I wouldn't have, in fact. My last dealings with -- well, it predates her, my last dealings with those parties.

Q You talked about earlier being involved with Westinghouse in July, three days of meetings in July of 2017?

A I did, yes.

Q Did you all have any conversations at that time about the schedule?

A I don't recall any. The purpose was to hire them as a professional to provide support. And I don't remember -- they were not committing to a schedule in that document, and I don't remember a schedule being discussed.

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Q Who decided to remove the schedule assessment from the Bechtel report?

A Well, there was some suggestion that the -- that there be two reports. And the history of it was that I proposed some edits to the report because I thought those edits would be -- were, A, inaccurate, done with -- that is, the edited material was inaccurate, was done with insufficient time and insufficient resources and insufficient access to information, and -- and was critical and could be damaging to any eventual litigation between the owner and the contractor.

So I suggested those edits. And the back and forth between Bechtel and me with involvement of the client, it was agreed that they would do two reports, one of which was the schedule assessment, and the other addressed the project assessment.

Q And in those edits that you proposed, did anybody else contribute to those edits or tell you to make those edits?

A The initial version of those edits were done by me and me alone.

Q Are those the ones to the November 12th draft report that you sent on -- you know, that had all the blackout on the draft report?

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A My edits were submitted to Bechtel with redactions in their -- in their draft report, and they had blackouts, yes.

Q Did you do any other edits than those redactions essentially?

A The only edits that I sent to Bechtel were done once in a document that would use the entire assessment as the base document, and then had blackouts of -- of suggested edits.

Q And you were solely responsible for those edits?

A Yes.

Q And no one at SCE&G told you to remove the schedule assessment from the report?

A No one told me to do it, no.

Q Did you discuss it with anyone at SCE&G or SCANA?

A I know that SCANA was aware of two reports, and that there would be a schedule report and a -- I'm sorry. I know that Santee Cooper was aware because -- but I don't know that from my memory. I know that from a document that -- that's in my production in which Bechtel is advising Mike Baxley directly that the two reports had been sent to me.

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Q And did Steve Byrne ask you to -- to remove material from the draft Bechtel report?

A I don't recall Steve Byrne giving any direction about the content of the draft report.

Q Did anybody at SCE&G ask you to either soften or take out language critical of the owners' project management?

A I don't recall anybody giving me a direction to do that. I was -- I understood that I was authorized to make edits, as I would normally do, to a -- to this report in order to address the discovery issue.

As you know, the federal rules categorize experts into two groupings, the testifying experts and non-testifying experts.

An issue that has been very in the fore -- in the forefront of my thinking for years has been what you do with testifying experts, and are those draft reports discoverable. But as you probably know, in 2010, there was an amendment to the federal rules that -- that said that those draft reports were not discoverable, in essence cloaking interaction between attorneys and testifying experts with privilege.

As to non-testifying experts, there's an

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absolute privilege. They don't even need to be identified.

I was concerned, though, that with -- if this report were circulated, it would eventually get out. So I wanted to edit the report so that it would not damage the owner in the eventual litigation. And it was known that I was doing that. But there was -- in the initial edits, there was no direction, there was nobody at my side telling me, "Delete this," and there was nobody who said, even in general terms, "Delete this."

I understood that I was authorized as counsel to identify things that I thought would be, A, incorrect or misleading or based upon insufficient information that could possibly be damaging to the owner in future litigation, and that's what I did.

Q And who did you provide drafts of the Bechtel -- the draft Bechtel report to?

A Martyn Daw.

Q Well, he's at Bechtel, right?

A Yeah. He's the one I sent my notes to, right.

Q I'm asking who -- when you got the draft report, who did you provide it to?

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A You know, I don't know who all I did it to because I haven't gone through to try to identify from the e-mails. And I -- this is one of those situations where my memory of what I did with the report doesn't give me those kinds of details.

I could sit down and go through the e-mails one by one and puzzle that out because I feel certain that it went by e-mail, but I don't know who it was.

Q Did you circle it -- circulate it to anyone?

A It was narrowly distributed, but I don't remember exactly to whom or when.

Q And if you had provided it to someone at SCE&G, would you have also provided the draft report to Santee Cooper?

A I don't think I ever provided any significant information to one of my clients and not provide it to the other. So my belief is that both clients had -- if I had circulated the draft report, that is, the draft report prior to my proposed edits, it would have gone to both parties. But I just don't know if I did that or when I did that, if I did.

Q And who with the client, either of the

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owners, did you discuss the draft Bechtel report with?

A I discussed it with both clients.

Q And who at those clients?

A There would -- it would certainly have been the four lawyers, but I think others, the executives.

Q And the four lawyers would be Baxley, Pelcher, Lindsay, and Bynum?

A Yes.

Q And the executives would have been whom?

A Well, I know Lonnie Carter and Kevin Marsh were aware of the draft report, and I would have had -- did have discussions with them about that. There were other people who attended meetings, in and out, or participated in discussions, but I have less clarity about exactly which others.

Q And what about Steve Byrne? Did you have discussions with him about the draft Bechtel report?

A You know, I don't actually remember a discussion with Steve Byrne about the draft report, but he may have been in a meeting where we discussed it.

Q What about Jimmy Addison? Did you discuss the draft Bechtel report with him?

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A It's less likely that I discussed it with Jimmy Addison, because he didn't attend as many project meetings as others.

Q And how did you have these discussions about the draft Bechtel report? Was it over the phone, by e-mail, or in-person meetings?

A All of those.

Q And did you have any of those discussions, meetings, or calls prior to your providing the edits to Mr. Daw?

A Yes.

Q And what were the discussions about making changes to the report?

A Well, just would we make changes or would we circulate the draft report in its raw form.

Q And was there any discussions about specific edits?

A I don't recall anybody giving me direction about what to take out or what to leave in from -- from the draft report.

Q Did you all have discussions at that point about not having a report?

A Yes, there was some discussion about, A, not having a report at all, and then once the draft report came out, about not ever putting it in final.

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Q And who didn't want a report at all?

A Well, it changed. This was a fluid situation where people were taking different positions sometimes within the same week, where they would say, "Oh, we want everybody to have the draft. Oh, we want -- we want only the attorneys to look at it. Oh, we want -- we want it because our board wants it. Oh, we don't want it at all because we think that it's mooted and not worth anything."

So people were changing positions in ways that were very confusing to me. And when I say "confusing," I'm trying to do what the client wants to do. I make a recommendation. My recommendation was to edit the report. And then I'm getting conflicting information from the client. I've got two clients, and even within the clients there may have been disagreement and people were shifting positions. And I might get direction from one person at Santee Cooper, but some other direction from somebody else at Santee Cooper.

So it was a fluid situation and confusing and difficult to summarize in the way that I know you'd like me to.

Q How did you decide what to do?

A I followed my normal practice, which I

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understood I was authorized to do, which was to send back my edits to Bechtel.

Q Did you get any clarity from the clients at that stage?

A No. If by "clarity" you mean take out this sentence, leave in that sentence, take out this paragraph, leave in this finding, there was no item-by-item, line-by-line direction from the owner.

The owner, having worked with me now for some four years, trusted me to make the proper judgment about what would be best to remove if we were ever to face litigation with the contractor.

MR. M. RICHARDSON: Let's stick with your recommendation or request and take a break for lunch, if that suits.

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is approximately 12:07. We are off the record.

(Recess in the proceedings from 12:07 to 1:11.)

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(Response to Motion to Compel Discovery Responses and Production by SCE&G and Dominion Energy marked Wenick Exhibit Number 2 for identification.)

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THE VIDEOGRAPHER: The time is approximately 1:11. We're back on the record. Counsel, you may proceed.

BY MR. M. RICHARDSON:

Q Mr. Wenick, I want to talk a little bit about the Dispute Resolution Board claim that was back in -- made in -- I think it was filed in August 1 of 2016.

Do you remember that you needed additional time to repair and file that claim about the milestone schedule?

A Additional time beyond what?

Q To file the claim. It was -- it involved -- an extension was needed, so additional payment had to be made in kind of the --

A I have no idea what you're talking about.

Q Okay. Tell me -- tell us what Secretariat was -- or what specifically was the construction milestone payment schedule they were asked to consult on?

A They were asked to develop one with the assistance from the folks at Jenkinsville.

Q And Jenkinsville is --

A That's the site of the plant.

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Q The new nuclear group?
A I'm sorry.
Q The new nuclear group?
A Yeah. I've heard them referred to as the NND group, I guess, New Nuclear Development, perhaps, but NND group at Jenkinsville.
Q Did Secretariat have some work on a cash flow schedule or a cash flow curve?
A There were various cash flow curves that were in play, and Secretariat may have contributed to one of them or more.
Q Do you know that during that process of the Dispute Resolution Board, in setting the construction milestone payment plan, that -- and as part of the EPC contract and fixed price option, that Westinghouse had accepted financial responsibility for cost overruns?
A I know that Westinghouse accepted financial responsibility for any costs in excess of the fixed price once the fixed price option was exercised.
Q And did you also realize that that implicated the financial viability of Westinghouse going forward?
A I had no reason to believe that when we --

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when we negotiated that document.

Q All right. But I'm talking about in -- during the Dispute Resolution Board in setting the construction milestone payment schedule in 2016.

A Okay. And what is your question?

Q Did you know that your clients expected that Westinghouse would be cash short?

A What I knew was that we were motivated to structure the milestone payment schedule so that only actual costs would be covered. That's one. And, two, that the contract proceeds would not be exhausted before the end.

Q All right. And that is essentially the benefit of the bargain for the owners, right, in the EPC amendment, the fixed price option that you're talking about?

A Well, it creates a lot of benefits to the owner of the -- of the EPC amendment and fixed price options. It's a lengthy document. We resolved claims; we instituted a DRB; we increased the liquidated damages; and we had the option, subsequent to the amendment, to fix the price of the contract going forward.

Q And did you understand that, because of that amendment and the fixed price option, that

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Westinghouse may be cash short at some point in the execution of the contract?

A Well, it was either that or the owner pays -- paid more money. I mean, it's one or the other. It's a zero-sum game. Either they run out of money at the end or the owner steps forward and funds more. But that's what fixed price is all about.

Contractors apparently are in the business of giving fixed prices, knowing that if they can't complete the project for that fixed price, they're going to go into their pocket.

Q Yes. And did you know that your clients knew that almost under every scenario, that Westinghouse was going to come out cash short under that arrangement?

A That's contrary to what I know. What I know is that there were a number of projections of cost based upon different assumptions, some of which would be in excess of the fixed price and some would not.

Q So you're not aware that your clients said that the owners project the total cost of the building -- of building the units is greater than the cost of the option, and that's why the owners

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are electing the fixed price option?

A What I told you is what I know, that there were a number of projections using the former payment regime, where there were four components, four buckets: Fixed price, firm price, target price, and T&M. Those are the four buckets.

And there were a number of ways of looking at the costs going forward using those four buckets. And we -- and I saw comparisons run of that with a fixed price option. And the owners' conclusion was the fixed price option was superior, which is why they elected it. Indeed if they had concluded that they would pay more money on the fixed price option, I would think that the boards would not have approved.

Q And was Secretariat running the cash flow models for the owners to make that conclusion?

A The cash flow models that you -- that were run in October of 2015 and before that preceded Secretariat's engagement. So no, they were not involved in the -- in the projections that led to the evaluation and ultimate approval of the October amendment.

Q But in terms of exercising the fixed price option, that actually occurred in 2016, didn't it?

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A That's when it was actually exercised, but the -- the agreement with the option was evaluated well before that. It was evaluated when the agreement was entered into in October of 2015.

Q And circumstances change between the year that passed, between when the EPC amendment was negotiated and agreed upon and when the fixed price option was actually exercised, didn't it?

A Nothing particularly comes to mind that occurred in that interim between the exercise of the fixed price option and the October 2015 amendment. If you tell me what you have in mind, I'll tell you whether I think that affected the issue.

Q For example, the owners were paying $100 million a month, including beyond the number of months that were in the EPC or the interim agreement.

A But that's not -- that's not a change. That was contemplated in the October amendment.

Q Five months were contemplated in the -- in the October amendment, correct?

A I don't know. You still have the -- no, you don't. Actually, I have it here, so I can answer that question.

I do believe that the time period set

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forth in the -- in the amendment was exceeded, and therefore the fixed price payments were extended, because there was nothing to put in its place. But I can tell you in a minute how many months, if that matters to you.

It's six months from the effective time. So that would take you -- I believe the first payment was January, so that would take you to June.

Q Right. And do you know how many payments were made?

A I don't know, but I think the fixed price option was exercised before you got to the end of that six months. I think it had to be. I think it was, in any case.

Q And did it go into effect before the DRB ruling in -- in late fall of 2016?

A Yeah, by -- I don't know -- six months or so.

Q When did you learn that Westinghouse was having financial difficulties?

A That was disputed up until the time they filed bankruptcy. People trying to run a business often dispute any rumors of financial hardship until the facts are indisputable.

So I didn't -- you said when did I know

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they had financial hardships? I knew it when they filed bankruptcy.

When did I suspect it? Well, sometime before that, but I can't put a date on it.

Q And when you looked up the payments in the EPC amendment, what -- were you in paragraph 12?

A You should have asked me a minute ago.

Yeah, paragraph 12 on the bottom of page 4 mentions that if the parties fail to agree to a construction milestone payment schedule by the date that is six months from the effective time.

Now, I think the effective time was when the Westinghouse board approved the October amendment, which I believe occurred at the end of December. And then there were payments in January, February, March, April, May, and June. Those are your six months. So that is the time that the matter then became ripe for referral to the DRB. So that would be another 60 days. So that would be the end of August, right? End of July, end of August. And the DRB hearings were held the beginning of September.

So I think that's more or less what was contemplated. What happened is what was contemplated.

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Q The parties contemplated making more of those $100 million a month payments than was in the contract?

A What the parties contemplated was that if the parties did not agree to a construction milestone payment schedule within six months, the matter would be referred to the DRB within 60 days. And that's what was contemplated.

Q And what do you think was contemplated about a delay in the decision by the DRB on the construction milestone payment schedule for the monthly payments?

A I don't think that's addressed in this agreement, and that wasn't the focus of my review.

Q Were you involved in that issue while the DRB claims and decisions were going on?

A If by "that issue" you mean the continuation of payment -- is that the issue you mean?

Q Yes.

A I was involved in discussions about continuing to pay. And it was -- the common sense approach is that if a contractor's out there continuing to work, and spending tens of millions, perhaps hundreds of millions of dollars a month,

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maybe the owner ought to continue to pay them until some alternative mechanism was put in place. I think that common sense approach was adopted.

Q And were you aware that Westinghouse was continuing and refusing to give any meaningful construction project expenditure information over that six-month period?

A NND was dissatisfied with the amount of information. They were giving -- Westinghouse was giving the information that Westinghouse wanted to give, and NND, and eventually I, wanted to have more.

Q And you and the owners did not get that additional expenditure information from Westinghouse?

A Through the DRB process, we did gain some additional information than what we first got. We didn't have full transparency into their books.

Q Did you all think that Westinghouse was negotiating in good faith during that time?

A Bad faith is not a claim that I level lightly. They were doing what they thought was in their best interest. The owner was doing what they thought was in the owner's best interest. Sometimes the elbows got sharp, but I'm not sure that bad

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faith is something that I would adopt certainly in hindsight.

Q You would not adopt that even in hindsight?

A Yeah, I wouldn't really adopt that in hindsight. I think -- I think -- I think Westinghouse was surprised by their own financial condition.

Q They were -- they were refusing to provide you all information they'd agreed to provide you during this process; isn't that right?

A The agreement wasn't -- I would say it's not right, because I don't think there was an agreement that was -- that had sufficient clarity that it could be enforced. Had there been an agreement with sufficient clarity to be enforced, we would have requested the DRB to enforce it.

Now, that doesn't mean that we didn't complain that we didn't have enough information. We did. We wanted to complete the transparency concerning Westinghouse's expenditures and their projections, and we didn't have complete transparency.

Q But you all knew that in the first six months of 2016, that the owners had paid

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$600 million to Westinghouse, right?

A That's the math, six times 100,000.

Q And do you know what the construction progress over the same period was?

A That was also disputed. Westinghouse had their record of what it was. We had a conflicting record that showed less progress.

Q And even during this interim period, the failure to meet milestones meant that they didn't -- shouldn't be paid even the $100 million; isn't that right?

A There were no milestones. So when you say their failure to meet milestones, that question doesn't make any sense to me. Can you clarify that?

Q Yes. For the June billing period, the owners had accepted Westinghouse's milestones and payment schedule, which had 27 milestones, and requested a payment of $156 million for the month. Are you familiar with that?

A I -- I don't -- no, I'm not. I don't -- well, I was familiar with it at the time. I don't recall it. I don't know what you're talking about.

Q Okay. And then were you aware that only four of those 27 were completed, which would have meant a payment of just $23 million?

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A Are you talking about an evaluation done of those payments in hindsight or are you talking about what was known in June or July of 2015?

Q When the invoicing occurred in June of 2016.

A Okay. And you're saying that when the invoicing occurred in June of 2015, someone said, "Hey, Westinghouse is behind schedule. We shouldn't pay them"?

Q That's right. June of 2016.

A Yeah, okay. They may have.

Q And were you aware at that time that even though the EPC amended contract had been in effect for at least six months, that, you know, that that rate of progress meant that the construction schedule had slipped already?

A Nobody knew that. That was -- that was un -- well, it was unknown and unknowable. There were changes made to management that -- and hope sprang eternal.

Q And if your clients were, maybe not including you, but having those precise conversations, it's just that you weren't part of that. You just didn't know that those were the circumstances?

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A I know that I was involved in discussions about the milestone payment schedule. The owner was committed to -- under the agreement, was committed to pay the first six payments.

I'm not aware of any circumstances under which the owner could have said, "Well, despite agreeing to pay six payments of $100,000, I'm not going to do it because you're not making sufficient progress."

There's just no contractual basis for doing that. And as complicated as construction law can be, it all comes down to the contract. And this was an executed amendment.

Q Were you aware that during this time, in midsummer 2016, that Westinghouse told your clients, the owners, that it was in a condition of financial extremis on the project?

A No, and that's -- and I don't know if that's true. And whether it's true or not, no one ever told me that.

Q What did you hear about Westinghouse's financial difficulties in 2015?

A Which -- what difficulties are you talking about?

Q Cash flow problems, you know, in

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1 particular, you know, the project that it had
2 undertaken as being a loss leader for it to be a
3 nuclear -- new nuclear construction company.
4 A What I know is that Westinghouse
5 repeatedly said, including under oath, that they
6 would finish the project; that if there were losses,
7 they would absorb them, but they were committed to
8 the plant. They were marketing the plant abroad.
9 They were -- they had a very profitable refueling
10 operation going that relied on a certain -- well,
11 that would benefit from a certain backlog of
12 existing AP1000 plants.
13 So they repeatedly said, as I say, and
14 including under oath, that they were committed to
15 performing. They also said that, "The more you pay
16 us per month, the more work we can do," which again
17 is logical. They didn't want to dip into their
18 pocket any earlier than necessary.
19 Q And so were you aware that even though
20 they were hopeful and willing to -- and said they
21 were willing to bear financial losses on this
22 project, were you aware that they had financial
23 difficulties as a firm that would allow them to
24 actually realize, you know, their hope?
25 A I didn't have any concerns about their

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financial condition until -- until I heard about Toshiba, which had -- and I'm sorry if I say it in a funny way. I learned to say that on this job. Like everybody else, I've always said "Toshiba," but apparently that line over the O means you emphasize it, so I picked up that habit.

But when Toshiba developed a whole series of problems with other divisions, that's when I personally became concerned about the ability of Westinghouse to go forward. Up till then, I thought, well, you've got another household name. You have Westinghouse first, and now you've got Toshiba. And plus, there are Japanese cultural issues that come into play that suggested to me personally that -- that they would stick it out, even if it meant paying more than the fixed price.

When Toshiba started having problems with other divisions, then I began to be concerned.

Q And when did you learn about Toshiba's financial difficulties?

A Oh, I don't know, but it's in all -- it's in all the papers. Again, you can go back and look it up. I suspect it was the very beginning of 2017. That seems to be about right.

Q Are you referring to the accounting

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scandals that became public?

A Well, there were accounting scandals, but those accounting scandals revealed a problem with the financial condition of the company. And people don't -- I mean, you can refer to it offhandedly as an accounting scandal, but what it really was was the divisions were losing money at a rapid rate.

And that caused me to be concerned -- and I think it was in the beginning of 2017 -- about whether Westinghouse would stick around, either because they'd be sold off or Toshiba would be raiding Westinghouse. Those would all -- that's all speculation, by the way, but that was my speculation.

Q And when you started to become personally concerned about Westinghouse's financial viability and sticking around, did you do anything with the owners about that?

A Well, I know eventually the owners hired bankruptcy counsel.

Q And who did they hire?

A Reed Smith, the Pittsburgh -- their flagship is Pittsburgh, although they're a national firm these days. And they hired some -- you know, some people out of Reed Smith.

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Q And do you remember when that was?
A I don't.
Q Were you involved in that at all?
A I was.
Q Did you secure bankruptcy counsel for the owners?
A If by "secure," did I -- did I call around and interview? Yes, I did. But I didn't retain them, which is implied by the term "secure." Obviously, they were retained by the owners.
Q And did you point them to Reed Smith?
A Yeah, I recommended Reed Smith after -- after looking around. We -- first of all, we thought that they would file in Pittsburgh, so that was the first thing, because Westinghouse is traditionally a Pittsburgh company, and their main office is -- was still in Cranberry Township, just north of Pittsburgh. So we thought that they would file there or in New York.
The people at Reed Smith that I spoke to were experienced in both venues. They ended up filing in New York. But yeah, that was my recommendation.
Q And did you all -- in discussing the EPC amendment, did you-all talk about the Westinghouse's

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financial security?

A No. That was -- no one mentioned it in my presence, and that was the farthest thing from my mind.

Again, I grew up in the Pittsburgh area. Westinghouse to me was like Coke in Atlanta. I mean, just a company, gold standard, always going to be there -- always been there, always going to be there.

Q Were you -- you weren't aware that Santee Cooper was raising liquidity concerns about Westinghouse in 2015?

A I can't think of a single time when anybody mentioned liquidity concerns in my presence until at least a year later, and probably more.

Q What were the reasons why the Toshiba parent guaranteed payments were increased as part of the EPC amendment?

A You're conflating a number of things. The -- the construction contract had certain implications in case of a termination for default. Those implications only touched on four -- on two of the four pricing components. So there's a firm price, fixed price, target price, and T&M.

T&M, time and materials, was actually a

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very small component. The fixed price was not a problem. That was mainly equipment, as I remember. And the firm price sounds like a synonym. It's not quite. The firm price could escalate, but otherwise was fixed. It could escalate according to an inflation formula.

The target price was where the problem was, because the target price was essentially time and materials with an opportunity for bonus or penalty if you didn't meet the target. Well, they had blown through the target. So essentially there was a situation in place under which the contractor was doing most of the work that was exposed to financial risk under the target price work.

But under the construction contract, the only components that would be implicated in case of a termination for default were the fixed price and the firm price components.

I can -- in fact, I think I pulled that as one of the items in Exhibit 4 here, because it's a little tricky, and I didn't want to misstate it. But what it says is that if the unpaid balance of the firm price and fixed price exceeds the cost of finishing those two components, then the contractor has to pay the owner. If the costs of those two

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1 components is less, then -- then the owner has to
2 remit the funds to the contractor.
3 Well, those were not where the real risks
4 were in October of 2015. The real risks were in the
5 target price. Now, when you convert the entire
6 contract to the fixed price, an implication of that
7 is that the owners' rights upon termination for
8 default are expanded. I don't think Toshiba knew
9 that. I'll tell you that that was -- that was an
10 implication that we were aware of, but in the
11 negotiation with Westinghouse, I don't think they
12 raised it.
13 However, they ultimately -- when Toshiba
14 paid the amounts under their guarantee eventually,
15 they honored that -- that increased exposure that
16 resulted from converting everything. But that
17 was -- there were only a handful of people that were
18 aware of that mechanism, because that's in the
19 weeds.
20 Q Was that new in the EPC amendment or was
21 that --
22 A No. That was new in the fixed price.
23 That's once you convert from these four buckets to a
24 single bucket, then these rights -- it's on page 83
25 of the EPC agreement -- these rights then become

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expanded so that the -- the entire contract becomes subject to this provision. So that -- so if the entire contract costs more than the fixed price after the termination for default, then Westinghouse owes that and Toshiba backs up that.

Q Up to its limit of its guarantee?

A Up -- yeah, right.

Q And that's one of the problems here, right, is that wasn't enough to cover the balance?

A Well, nobody knows what the balance is because there was -- because it wasn't finished. This formula assumes completion of the work. So you say "one of the problems." There were a lot of problems. But one of the problems that was overcome in the negotiation with Toshiba -- or Toshiba. Sorry -- is that they accepted that, yes, the completion would exceed the fixed price amount. So there was a negotiation there up to the full amount of the guarantee.

Q And there's no question about that, is it? Once bankruptcy occurred, I mean, your clients did a detailed internal analysis and figured out that the total amount to complete the project was in excess of 7- or $8 billion from that point?

A I don't know those figures, but they

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certainly did an evaluation that persuaded them that now that the fixed price was gone, it made more sense to pull the plug than it did to spend more money to complete -- or enough money to complete the project.

Q And so let's go back to the consideration of Westinghouse's financial stability.

In the EPC amendment negotiations, obviously, if the project gets built, it works great; if Westinghouse doesn't fail, it works great. But it didn't.

And the question is: Did you all know how much Westinghouse was at risk under the fixed price option?

A Well, it was either their risk or our risk. You see, the risk is on the table. If we get a fixed price option, the risk goes to Westinghouse. If we don't get the fixed price option, the risk stays with the owner under the target price.

So it's -- again, it's a zero-sum game. If that -- if that job is going to overrun greatly under the four components with the target price, all of that money was going to come from the owner. The owner was contractually obligated to pay it.

So once it was -- the fixed price option

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was put in place, that risk was shifted to Westinghouse. So that's why at the time, and in hindsight, I think that was the owner's best option, at the time and in hindsight.

Q Assuming a two -- a two-sided decision tree, right? I mean, because there's another risk that's implicated once you choose the fixed price option, and that is the risk of failure or bankruptcy and repudiation of the agreement by Westinghouse.

A Okay. Do you want me to tell you why I disagree with that?

Q Sure.

A So under the former regime, the idea presumably is that how it's paid for is not going to affect the cost. So let's say you have a tremendous overrun under the four buckets. And what we're really talking about is the huge overrun under the target price component, which is effectively T&M. So then the owner is going to pay all of that, right? The owner is going to pay every dime, plus markup, that the contractor incurs, because that's the nature of the target price component.

Once Westinghouse takes that on, well, I guess you could say there's a risk of them going

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bankrupt. But the owner can come forward and take that risk back if he wanted, but the owner didn't want it back. There was -- there was no downside to the owner. The worst that happens is that you come up in the same place. That is, you say, "Okay. You can't afford to pay to complete the job under the fixed price option, so we'll fund you more money."

But it's never going to be more than you would have paid under the target price, so there is no increased risk. There is no risk of Westinghouse going bankrupt because the owner never is going to be any worse off than they were before they executed the fixed price option.

Q So you all just didn't -- you all -- I mean, I guess, the question is: Did you do anything to assess the risk and the fallout from that Westinghouse's possible bankruptcy or not being able to perform?

A I just told you my assessment. My assessment is that there was no risk in the sense that the worst that happens is the owner pays what it was going to pay before you execute that option. That's the worst that happens. Because under the -- under the -- before the execution of the fixed price option, the owner had an obligation to pay

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Westinghouse no matter what it took to complete the job.

So if Westinghouse runs out of money and says, "We need more money," and come to the owner with their hand out, that's -- what their hand is out for is never going to be what the owner was contractually obligated to pay before the exercise of the fixed price option.

Q I appreciate it, and I'm not trying to be obtuse, but what I forget is is that you're not involved really in this litigation, so you don't realize that -- that there are -- there were risks and real losses realized under the circumstances, because it didn't get constructed.

A I have no idea what this litigation is about.

Q Okay.

A But -- but under your -- under your supposition that we don't have a fixed price option, the owner then gets -- is paying money hand over fist under the target price, and eventually decides, "Wait a second. I'm now in -- whatever we are -- in 2017, and I can see that I've got another 8 million to pay."

So the implications for whoever else is

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involved or -- I know there are plenty of people that were damaged. Bankruptcy tends to leave a lot of bodies in its wake. However many people were damaged would have been damaged pretty much in the identical way and at the same time. The owner would have said, "No, I can't pay any more under the target price. I've got to terminate the contract," or -- if there is no fixed price option.

On the fixed price option, we've got Westinghouse going bankrupt. The owner always could have said just on the eve of bankruptcy, "Hey, contractor, we'll go back to the other regime. We'll continue to pay them." But I don't think anybody would be happy with that outcome, because then you'd be paying whatever millions of dollars or billions of dollars it would take to finish from that point.

So, you know, if I'm getting a little heated or rapid in my delivery, it's because these issues were -- were -- had been thought about for a long time. And the -- and I was in favor of the fixed price option because I was thinking about a lot of these issues, not particularly maybe bankruptcy, but a lot of these other issues. And I saw no downside. And in retrospect, I see no

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1 downside. That's not what caused the bankruptcy.
2 The bankruptcy -- the bankruptcy could
3 have been avoided if the owner had simply said,
4 "Okay. Forget about the fixed price option. We'll
5 convert it back to T&M." Then you're back to where
6 you started.
7 Q And when the EPC contract got repudiated,
8 isn't that exactly where the contractor -- I mean,
9 where the owners kind of got put back into it?
10 A No, a lot more happened when the contract
11 got repudiated. There was no -- the real work was
12 being done by Fluor, and after the 2015 --
13 amendment. F-L-O-U-R. And Fluor was working for
14 Westinghouse. Westinghouse was basically doing the
15 design work, and Fluor was basically doing the
16 construction work.
17 So when Westinghouse repudiates, they're
18 gone. Fluor is owed a bunch of money. There's a
19 reassessment of the cost to complete, and the owners
20 decided it didn't make sense.
21 But I don't see -- I really don't
22 understand how any issues with the fixed price
23 option changed the dynamic or the risk relationship
24 of the parties except to reduce the risk of the
25 owner, because the owner is not in the driver's

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seat. The owner is not in the driver's seat when they have the obligation to pay the target price. They've got to continue to pay or breach the contract or terminate.

Q And maybe -- maybe that's where, you know, I'm taking for granted and we're not talking about, is could the owner have terminated if they concluded that the -- that either the cost or the schedule was -- was much -- much bigger or longer?

A Sure. And then -- and then they would have faced the identical problem that they faced in July of 2017: What do we do with Westinghouse now terminated? It was repudiated in bankruptcy.

In fact, in your hypothetical, if there's a termination, you're in the same boat. You've got a certain amount of costs to complete. You've got an issue of getting -- well, getting the IP data from Westinghouse, and you've got an issue of whether Westinghouse is going to participate to support you. So you've got the same bundle of issues. You know, change the names a little bit, not much.

Q In November 2014, this is back, you know, when the Westinghouse had provided this different -- rebaselining of the schedule and a different

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estimate, at completion, of a billion dollars.

Do you remember that?

A Wait. When are you talking about, now?

Q November of 2014, November 10th of 2014. It was actually a meeting right here about the billion dollars Westinghouse estimate at completion.

Do you remember that? There was a series of meetings.

A There was a series of meetings, and there was a push to get a rebaseline schedule. I mean, we're scrambling the chronology a little bit because we've been talking about 2015 and 2016 primarily.

Prior to that time, there was -- yes, there was a lot of issues -- there were a lot of issues with getting a useful schedule out of -- out of Westinghouse in 2014. I don't think it started in 2013. I think 2014 is right. Of course, Shaw was involved then, I believe. I think that was even before CB&I got involved.

Q So as we're -- we know, in 2014, it's what led in part to the EPC amendment, right? I mean, there was -- there was this effort at rebaselining the schedule, and there was an estimate at completion that showed that there was a substantial increase in the cost. And that was this billion

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dollars EAC that was -- that was talked about in late 2014.

A Yeah. I -- well, if you say it was late 2014, I'm not going to dispute that, but I don't have those dates in my head. I just didn't go back and refresh my recollection on 2014, but I know those -- those discussions occurred. I know what the EAC is. I know what it was projecting. I know that eventually there were threats of suit, that CB&I was prepared to walk, and all those kinds of things, although I think that was a little bit later.

Q And in 2014 is when the owners had stopped payment because of some of the construction delays. And, in part, because of the delays, the progress payments had gotten ahead of the milestones.

A I was directly involved, so I know about that.

Q Right. And then there was a series of three meetings on November 10th, November 14th, and December 3rd in 2014, kind of dealing with not only Westinghouse's estimate at completion and schedule, but SCE&G's internal EAC validation. Do you remember using that?

A I never heard the word "EAC validation"

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put together. I know what the EAC is. It's a spreadsheet of certain projected costs. But I don't know about a validation. And those meeting dates don't ring a bell with me.

Q And did you know that there was both an EAC from Westinghouse that was a billion dollars and there was an EAC from the --

A CB&I.

Q No. From the owners, an internal EAC.

A No. But, I mean, that would seem to be the sort of exercise you'd expect an owner to perform.

Q All right. And then soon after these meetings, there's a March 12th, 2015, petition for modification of the schedule for the project with the Public Service Commission. Are you familiar with that?

A I was aware that there were steps taken intermittently to advise the Public Service Commission of South Carolina of the projected completion dates, including efforts to get approvals of adjusted completion dates, but I don't -- I'm not -- that date doesn't ring a bell as when that happened.

Q Were you aware that in order to finance

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the project, that the project -- the approved schedule and budget on file with the PSC had to be, you know, within 18 months of the actual schedule?

A I was aware that the -- there was some constraint related to the schedule, and that there was a what -- a confidence range permitted. And 18 months, I don't remember that particularly, but...

Q And were you aware that after the rebaselining of the schedule by Westinghouse, that the approved schedule needed to be modified with the Public Service Commission?

A I don't -- I know, in general, there -- that there was an effort by the owner to keep the -- what they believe was the likely completion date in sync with what they were telling the Public Service Commission. I thought they were -- they made a great deal of effort to do that.

Q And I think you can look on the front page of Exhibit 4. You'll see somebody created a little chart of those substantial completion dates.

A Yeah. Actually, I did that.

Q Okay. And is --

A And that's just because I find it especially challenging to keep a set of two dates in my mind when they changed these three -- you know,

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in these three different documents. I just did that for my own --

Q And the first one is the original EPC contract dates, right?

A Right.

Q And the second one we talked about is the 2012 adjustment --

A Yes.

Q -- to the schedule.

A Correct.

Q And then the third one you've got is the 2015 modification?

A Yeah, correct.

Q And that's the one that I'm talking about. That had to be changed with the PSC.

And what I really want to ask you, just to cut through this, is: Were you involved at all with the -- with the testimony by the owners, particularly SCE&G, in seeking the modification to the schedule and budget?

A I was consulted about -- about the terms of the October 2015 agreement because I was seen as the person who had the best handle on all the implications of that.

And so to the extent that I was consulted

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about -- about a presentation to the Public Service Commission, I believe it was limited to that issue, you know, make certain that we have properly characterized the -- the October 2015 terms.

I don't know if -- whose presentation it was, but it was presentations of executives who were not familiar with all of the details of that agreement. So they naturally turned to their lawyer, who was involved. And Al deferred to me -- Al Bynum deferred to me on those issues.

Q And did you have any involvement with the estimate at completion or the budget testimony involved in the 2015 modifications?

A No. In fact, I didn't understand the budget, because the budget was -- it was always expressed in -- I think this is right -- always expressed in 2007 dollars, and always expressed as the 55 percent that SCANA had of the project, because that's all that was presented. And those numbers just were different from the numbers that I was used to dealing with. So I never looked into those. I never had a handle on those numbers.

Q Were you asked to find bankruptcy counsel in 2016?

A I don't remember when it was.

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Q Okay. You were asked to find project bankruptcy counsel, though, right?

A That's right, and we did. And the date of that engagement is -- it should be easy to find. And -- and I was asked to locate them shortly before they were located.

Q Okay. On March 21 of 2016, there was a joint board meeting at the Columbia Hilton. Do you remember being there, where you discussed the declining financial condition of Toshiba and what the owners should do to -- about the project?

A I did attend a meeting, a joint meeting of the boards of the two companies, in Columbia in 2016. And I was not asked any questions, and I didn't offer any comments. I was there in case any issues came up. And I don't remember any discussion of the type that you -- that you described.

Q Do you remember who requested that you get bankruptcy counsel for the project?

A I think it was a joint decision on the part of the owners, but I don't remember which individual asked me to do that.

Q Do you remember that Santee Cooper was the owner that was requesting bankruptcy counsel in 2016?

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A I believe that both parties were. Well, I don't know about 2016, so I don't know if that date is correct. I do know that Santee Cooper was interested in getting bankruptcy counsel and had sought and perhaps consulted with somebody from your firm or rather -- no, with Rush's firm, that's who it was -- consulted with somebody at Rush's firm who felt they couldn't take the matter because they had a suspicion of a conflict with Westinghouse.

But there's no question that Santee Cooper wanted a recommendation, as did SCANA.

Q And do you remember what you did to identify bankruptcy counsel for the project?

A It's what I would normally do. I know lawyers in Pittsburgh that I've had dealings with over the years, who practice at the highest levels, and I asked for their recommendations.

Q And how long did it take to find bankruptcy counsel?

A Once I began those calls, it didn't take long.

Q Did -- after Santee Cooper first asked about getting bankruptcy counsel on the project, did -- did anyone tell you not to secure or not to identify bankruptcy counsel?

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A First of all, the first time the bankruptcy counsel issue was raised, it wasn't -- it wasn't "Go get bankruptcy counsel." It was, "Gee, do we need bankruptcy counsel? Would it be beneficial?" so forth and so on.

From the time that I was told to get bankruptcy counsel to the time I got bankruptcy counsel was a very short time, a matter of weeks. And during that time, nobody told me not to get bankruptcy counsel.

Q Do you remember that period of weeks?

A No, I don't.

Q And when you say when you were told, the client asked you to get bankruptcy counsel, do you remember who that was?

A No, but I understood that both parties were interested in getting it. I didn't -- I didn't take a lot of care in distinguishing between requests from SCANA and requests from Santee Cooper. I viewed them as joint clients, and that if there was ever any doubt, I -- when one requested something, I'd go to the other, but there was seldom any doubt.

A lot of these meetings were joint meetings, so representatives of both clients were

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present.

Q Now, when the issue of bankruptcy counsel first came up, did you believe or think that it was not necessary at that time?

A When the issue was first raised, I did think it was not necessary.

Q And why --

A I was not direct -- you know, when attorneys are directed to do something, they do it. So there were discussions about hiring bankruptcy counsel before I was asked to get bankruptcy counsel or recommend bankruptcy counsel.

Q And I agree with you, which is why I keep kind of pressing the point is I'm trying to figure out if you have any memory whatsoever of who told you or asked you to get bankruptcy counsel. And -- and just as importantly, when it was first discussed, who told you you don't need to worry about getting bankruptcy counsel?

A Nobody told me you don't have to worry about it, that I remember. And when it was first discussed, I wasn't asked to do it. It was discussed.

Q Did you have any involvement with Dentons as bankruptcy counsel?

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A No.

Q Just going back to this, when -- your EPC amendment and Westinghouse's financial condition. Did you all know or discuss at all that Westinghouse could use bankruptcy to get out of the EPC contract?

A Well, did I know that? As an attorney, I know that any corporation, any individual can repudiate a contract in bankruptcy.

But did I -- did I think that that was likely or possible? No, I didn't. Again, the idea of Westinghouse filing bankruptcy was completely strange to me until they -- they were on the verge, because it just -- perhaps I was at fault for that, but I just didn't see it coming. I absolutely didn't see it coming.

Q Okay. When you all amended the EPC contract and the fixed price option was out there, was there any agreement or strategy not to exercise it until later in 2016?

A My -- my -- I don't recall anybody saying that we shouldn't exercise it. The majority of the discussion in October, and in advance of the agreeing to the October amendment, was two pieces, of the amendment itself and of the option.

So I kind of viewed the acceptance of the

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agreement as preceding the exercise of the option, but that the exercise of the option was inevitable. It just made sense.

Q Did the exercise of the fixed price option require the construction milestone payment schedule to be established?

A Well, there was -- unless and until the other regime was replaced -- well, let me back up.

Once you convert, then you can't use the other regime. You know, the target price goes out the window because there's no, you know, cost plus arrangement. T&M goes out the window. There's no time and material arrangement.

The schedules associated with fixed price and the firm price go out the window, so something has to take its place. And what was agreed to, to take its place, were the interim payments, and then the construction milestone payment schedule.

You know, it is fair to say that in the original construction contract, there were construction milestone payment schedules. And those were tied to the fixed price and the firm price components of the contract price. So what we needed to do was replace those with one that would embrace the entire lump sum agreement.

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Q And the interim payments of $100 million a month, that started in 2016 and continued through most of that year, was in part because Westinghouse was needing cash flow and needing to be a certain level of cash being paid in order to ramp up, for example, with Fluor. Didn't Fluor onboard in early 2016?

A I believe they were on board then.

The project is about as massive as you can expect a $10 billion project to be, and every single day they were spending millions. So I don't think there was any expectation on anybody's part, the owner of the consortium, that the contractor would continue working without any payment at all at the same level it had been working. And that was not in the owners' interest, nor in the contractor's interest.

Every time we extended those payments, there was gnashing of teeth, there was disappointment, but it was recognized as being the best of two bad options. The one is to pay the money, and the other is to not pay the money and the contractor stops work.

Q And we had talked earlier about Westinghouse giving burn rate information to the

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owners. I mean, part of the reason for the 100 million a month, and having extended beyond what the contract called for, was to ensure that the contractor continued working on the project pending the construction milestone payment schedule conclusion in the DRB, right?

A The money was paid on a monthly basis in order to ensure that the contractor continued working.

Q And without that $100 million, Westinghouse told you and the owners that it would not be able to continue working on the project?

A Well, they didn't tell me, and they may have told the owners that. Nobody needed to tell me that, though, for me to know it. Contractors don't spend tens of millions or $100 million a month for months on end without being paid. They just don't do it.

Q And were you part of, in this 2016 time frame leading into the DRB and the construction milestone payment schedule -- we talked earlier about Westinghouse not being fully forthcoming with its financial information.

Isn't it -- isn't it true that once those payments started, it was about four to six months

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before you all even heard back from Westinghouse?

A Well, that question is confusing to me. What is the four- to six-month time period? Between what and what are you asking?

Q So when they started getting paid $100 million --

A In January 2016?

Q Right. Westinghouse stopped communicating with the owners, didn't it?

A No. No. They had -- there were meetings with NND before I even got involved in the construction milestone payment schedule issue that began almost immediately.

And these were both face-to-face meetings, as well as a lot of communications by e-mail, and documents exchanged and a lot of information, all of which was reviewed and digested in preparation for the DRB hearing.

Q And the owners weren't getting the information from Westinghouse that they needed, did they?

A They were not getting all the information that they wanted. There's no question about that.

Q And in fact, during that period of time of paying $100 million a month, the parties, the owners

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and the consortium, were supposed to come to an agreement on the construction milestone payment schedule, right?

A Well, yes, it was an agreement to agree. And, you know, that has a certain meaning to lawyers. It's something you wish to avoid, but sometimes it's unavoidable.

There was an agreement to agree to a milestone payment schedule, but it was also contemplated that, guess what, the parties might not agree, which is why we set up the DRB and specifically referenced the DRB as the way to resolve the parties' inability on their own to come to an agreement. Certain things are foreseeable, namely -- and one of those was when the parties agreed to agree, it was foreseeable that they might not. And they didn't.

Q And isn't it true the reason they didn't agree was because Westinghouse wasn't providing any information during this period of time when they were getting paid $100 million a month?

A My perception is that the reason that they didn't agree is that they wanted more money sooner, and the owner wanted to pay less money later. And, you know, that's also foreseeable, but that's what

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1 happened.
2 Q And during this time, the owners knew that
3 Westinghouse wasn't accounting for the $100 million
4 that it was being paid each month; isn't that right?
5 A I don't know what kind of information --
6 well, I know some of the information that
7 Westinghouse was provided in order to help arrive or
8 attempt to arrive at an agreed milestone payment
9 schedule.
10 There was no obligation on Westinghouse's
11 part in the -- in the October amendment to justify
12 the $100 million. That was a -- I don't believe
13 there are any conditions on the obligation to pay
14 that for the first six months. I think Westinghouse
15 actually provided more information than they were
16 obligated to provide concerning where that money
17 went, not nearly as much as what NND wanted during
18 their negotiations. Because that's where the
19 negotiations started. It wasn't until those
20 negotiations broke down that I got involved.
21 Q And so your understanding from your client
22 was that Westinghouse was providing more information
23 than required to document what it was doing with the
24 $100 million a month during that period of time?
25 A Well, since -- since my reading of the

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document is that they had zero obligation to justify those first six months, any information they provided for those six months was more than they had to. But let's not confuse that with the information that NND wanted to develop the construction milestone payment schedule going forward. That's where the complaints were related to the development of that payment schedule going forward.

And the Westinghouse was saying, "We're giving you more than enough," and the NND was saying, "No. We need this, we need that, we need something else." And -- but the parties did exchange draft schedules. It's just that the schedules had the disconnect that I referred to earlier. Westinghouse wanted more money sooner, and the owner didn't agree.

Q Did SCE&G oppose hiring Bechtel at first?

A I don't recall anything that could have been interpreted as opposing hiring Bechtel. I've referred to, and you have in front of you, an e-mail that I received in May where Al Bynum first advised me of Santee's interest in retaining Bechtel. And he said -- he said, in essence, "Do you think it's a good idea or are we just creating discoverable material?"

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As I said before the break, when he referred to "discoverable material," to me, as a lawyer, that meant exactly what he meant. That meant to me what he intended, namely that we need to be careful about bringing in somebody to prepare a report, because those reports can be taken out of context.

In fact, in another e-mail that you have in front of you, I wrote to Mike Baxley, and explaining to him by using concrete examples of a case that I was involved with, where an expert report was prepared based upon insufficient information prior to discovery, with limited access to data, but -- and the owner resisted producing it. We were able to force production because it was being used in the normal course of business rather than in anticipation of litigation. And the case settled shortly after that.

So I laid all that out in an e-mail. These are not abstract issues. These are things that I've lived with, lived through. And I was trying to bring that experience to bear in connection with -- with my client. I think that's why they hired me, to bring that kind of experience to bear.

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Q Let's just go ahead and talk about that a minute. That past experience you had about engineering experts for a construction project, that was in litigation in the '80s, from the Western District of Pennsylvania?

A Yes.

Q And that involved a coal fire plant where the opposing party had hired an expert to assess potential legal claims and not just the project, right?

A Right.

Q Okay. And then that assessment was done during construction, but before litigation, right?

A It was before there was a reasonable expectation of litigation. That was the finding.

Q Okay. And then you moved to compel its disclosure and had it successfully produced to you, right?

A That's correct.

Q And then you used it in the litigation, once it arose, about the claims that the opposing expert had analyzed, right?

A Right.

Q Okay. And then you all settled that case?

A On favorable terms to my client, as you

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can expect.

Q Right. So just to contrast that or to compare it, rather, to here, the analysis by Bechtel was about the project and its challenges, including the schedule, right?

A The -- the retention of Bechtel was done to assist me in evaluating anticipated claims in litigation. That's what the agreement says. That's what Bechtel signed up for.

Now, what they actually did is not exactly in line with that. But what they were retained for was to help me. When the -- the idea of bringing in Bechtel was first floated, Al was -- Al Bynum was concerned about discoverability, as was I, but I also thought, this -- these folks should be able to help me in understanding what's going on with this contractor who was threatening suit.

Q And I know that the agreement says it was -- it was done in anticipation of litigation. But you also just, I think, said the first time that it was to help you analyze claims.

A Well, help me understand the claim environment. But, now, understand that my principal focus at the time was on understanding their schedule. And I know what schedule consultants can

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do with a schedule. And I expected that Bechtel, of their 40- or 50,000 employees, they would find somebody who could do what claims consultants -- what forensic schedulers do, which is get into a schedule, find out if there are any -- if there's anything being done that disguises problems with their performance.

Q And when you say "schedule," you're talking about the construction schedule for the project?

A Yeah. I'm sorry. It's the P6 schedule, the Primavera software schedule that was in place at the time. I wanted to understand where that was going, because that's where the big money would be.

As I said, in the October amendment, the possible exposure is in excess of $900 million. So understanding the scheduling issues was actually more important than understanding the issues related to extra work. And it's those scheduling issues that drove a lot of the payment disputes that had preceded that agreement.

Q And if the schedule was going to be years longer into the future, the costs would be even more than 900 million in excess of the current budget, wouldn't it?

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A Time is money, so we would expect that -- that any delays in construction would be expensive to Westinghouse. And -- well, at that time Westinghouse/CB&I meant eventually just Westinghouse, because I had no idea that CB&I was going to leave the picture.

So yes, certainly the longer things take, the more expensive they get. I wanted to make certain that that expense stayed on Westinghouse's side and wasn't passed on to us in the form of a delay claim, which would both negate the $900 million in liquidated damages and expose the owner to additional payment for delay. And the Bechtel report helped me not at all in that -- in that assessment.

Q But your -- and it's fair to say that the primary motivation for wanting this expert consultant was to analyze the Westinghouse project schedule and whether it was accurate or had challenges that could -- could not be resolved; is that right?

A No. I think that's a simplification.

Q Okay.

A They were retained to do a lot of things. The contract says that. Plus, they were instructed

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by people as to what they wanted. So I wouldn't simplify it.

And I will tell you that what I wasn't looking for was a projection, because what I wanted to know was: Tell me about the schedule that's in place right now. And what -- what are they projecting right now? And what are the problems with the schedule that they're using?

I didn't ask them to come up with their own level 2 schedule based upon a bunch of assumptions that even they wouldn't back up and characterize as preliminary.

Q But there's no question that you wanted them to look at the scheduling problems that had been part of the project?

A That's what I wanted; although, frankly, eight weeks, a million dollars, that's probably not enough to get that job done.

Q But that's what you hired them to do?

A That's what I was hoping that they would do.

Q And when they came back on October 22nd or even November 12th, and you were so unhappy with what they -- the product was, what did you do then to get what you -- what you wanted?

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A Okay. By that time, I had lost interest in Bechtel. They -- my primary focus at that time was the amendment, because the amendment was going to resolve a lot of claims, and was putting in place a lot of new terms. And I didn't see where Bechtel was going to be of any assistance.

And when they made their oral presentation on October 22nd, I remember dialing in. They started in to the schedule projections. I asked them what methodology they used, and they described it. And I've described it here today.

And from that point on, I -- I discounted anything they had to say, because what they were doing, in my judgment, was less than useless.

Q And so for your purposes, it was worthless?

A And for anybody's purposes. That is, if you want to know -- let's say that I did ask them to do a projection. Then I'd want them to do something other than follow the methodology that they did. I would have said, "Look, you spent a couple hours trying to download the schedule. All right. Spend the rest of the day. Download the schedule. I want you to tell me what's in Westinghouse's schedule. I don't want you to come up with your own schedule

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based on a bunch of guys sitting around the room, no matter how experienced they may be, and having them give their guesses about how long various components are going to be; and then do a Monte Carlo on those guesses; and then you get a sort of average of all the guesses as a product of the Monte Carlo," which is, you know, and people don't say it much anymore, but garbage in, garbage out.

You've got estimates that are then Monte Carlo'd. And then you come out with estimates that now look like they're something. They're nothing. They're not useful. That was my judgment then and now.

And so they didn't give me what I wanted. They didn't give me any understanding, any insight into what was really driving the project, driving Westinghouse's schedule. And they gave me something that was different that I also thought was unuseful.

Q And --

A And I shared those feelings with my client.

Q And you even hung up early on October 22nd, on the phone call?

A I did. I was done with them. But I wasn't that interested in them to begin with. I was

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in Columbia that night. If I had been interested in Bechtel on October 22nd, I would have flown up that morning.

By that point, I was pretty much done with them because most of what I understood they were doing would be mooted by what I was really interested in, which was the October agreement.

Q And you didn't hire them specifically to analyze claims like in your past experience that you had?

A Well, I didn't identify numerical claims, but I did expect them to assess the project from a claim point of view. That's -- that's why you hire somebody in anticipation of litigation.

Q But it wasn't -- the assessment wasn't for any specific legal claims?

A I did not give them an enumerated list of legal claims. I actually understood that I was dealing with an entity that would have the sophistication to realize that an analysis of a project of this nature, including a schedule analysis, which they said they were going to do, would include an analysis of any issues in the schedule, any delays, any anomalies in the -- in the activities. I was wrong.

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Q How was the report in anticipation of litigation on October 22nd, 2015?

A It was when they were retained.

Q Okay. But I mean, on October 2015, October 22nd, 2015 -- you don't even stay on the phone the whole time -- how was the Bechtel assessment and report that was forthcoming at that point, how was that in anticipation of litigation?

A As I understand it, the measure is was there a reasonable expectation of litigation at the time that the party was retained. And you don't lose that subsequently. The -- whatever privilege there is related to that document, whatever -- whatever the Rules of Civil Procedure provide with respect to a document prepared under those circumstances persists.

It doesn't go away just because, oh, now we don't think there are claims. Well, how about if the next day, you think there are claims? It's not a blinking light. It's not a privilege that you have one day, and then lose the next, and then maybe get it back the third day. That's not my understanding of the law anyhow.

Q And is there a way to -- I mean, is the report -- how was the report in anticipation of

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litigation in February of 2016, when it was issued?

A Same answer. It was always in anticipation of litigation, except that in February of '16, now I'm more concerned about the new liquidated damages regime which is -- which is put in place under the October amendment. And that regime has real teeth in it.

As I said, I've cited the figure of $900 million multiple times today because that's an eye-watering figure. That's a significant number. And to some extent, I viewed my principal responsibility at that time as ensuring that -- that nothing happened to damage the ability of the owner to pursue that claim if and when the contractor completed, if it were appropriate.

Q And the contract you're talking about in February is the EPC amendment, right?

A Well, the EPC contract is the contract. The amendment doesn't replace the contract; it supplements it; it amends it. So what I'm talking about is the project.

Q Right. And the liquidated damages regime that you were then concerned about wasn't in effect during the Bechtel analysis, was it?

A You asked me about February 2016. Now are

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you changing the time period in your question?

Q No. Part of your answer was it's because I was concerned at that point about the liquidated damages regime, that was the stepped-up amount.

A Right. And you asked -- but prior to that, you cited February of 2016.

You said, "Why is it in anticipation of litigation in 2016?"

I said, "Same answer, namely that the privilege attached when they were retained and kept there." But in addition, there was -- there was that anticipation of litigation in 2016, because we did have that new regime, that $900 million regime for liquidated damages in place at that time.

Q But not when the Bechtel was doing its assessment?

A Well, we can talk about any one of these time periods, and you get to pick, but you can't pick them all at the same time. So just tell me what period you want me to discuss, and I'll discuss it.

Q I want to talk about the period of time when you were first asked to get involved with the Bechtel assessment. That was, I think you said, in May.

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A Yeah. In fact, I'd like my documents back because those would help me.

Q (Handing.)

A Thank you.

Yes. So on May 20th, Al Bynum wrote me a very brief e-mail. He says: "Santee Cooper wants to hire Bechtel pursuant to the attached proposal." And there's a parenthetical about that proposal. "I'm curious to see if you see any problems from this. Are we just creating discoverable material?"

Now, as I've said, "discoverable materials" tells me that Al is doing his job as project counsel. He's sensitive to the issue of litigation and what would be discoverable in litigation. He's looking to me as outside counsel to advise him on that issue of whether we're just creating discoverable materials.

Q And that was the first time you were in conversations about the Bechtel hiring or assessment?

A I don't remember anything earlier than this, and I've searched my records and I don't see any indication of any knowledge prior to this. So this is -- I would say that this, to the best as I can determine, is the first time that I learned of

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Bechtel in connection with the project in any capacity.

Q Okay. And so you weren't part of the discussions between Bechtel and the owners in February of 2015, were you?

A I don't know that there were discussions in February of 2016, but in any case -- I'm sorry -- in 2015, but in any case, I wasn't part of those discussions.

Q And did you know that both sides, including your clients, had agreed, prior to your involvement, that the Bechtel assessment would not review attribution of past impacts with the validity of any pending or future claims?

A I believe that's inaccurate based upon the -- what you just said.

So you asked me if I knew something that I considered to be inaccurate. No, I didn't know that, and I don't think that's accurate. Otherwise, I would not have gotten an e-mail from project counsel. Al was considered to be fairly senior, from my perception, and I understood this to be reaching out to me for my opinion, not that they had already reached a decision, and that this was simply a waste of an e-mail.

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Q And the analysis that was done essentially would focus on the cost and schedules to improve the trajectory of the project? Is that part of what you were told when you were asked to come in to the negotiations about hiring Bechtel?

A The -- attached to Al Bynum's e-mail of May 20 was a proposal. And one of the things that was in that proposal, it was the sentence, quote: "For clarity, this team will not evaluate the ownership of past impacts or validity of pending or future claims."

And I wrote to Al, on May 22nd, and said that I disagreed with that. And I said: First, I have trouble seeing how Bechtel could come to understand, quote, the issues that have caused impacts to date, closed quote, without evaluating, quote, the ownership of past impacts, closed quote. That seems illogical. Second, and more important, we need to prevent Bechtel's product from being discoverable.

This is in May, before they were retained. This was always the understanding that I had with the owner. We need to prevent Bechtel's product from being discoverable. To do that, we need to establish that we were hiring Bechtel in

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anticipation of litigation or to prepare for trial. We will likely not be able to do so if Bechtel, quote, will not evaluate the owner's past impacts or validity of pending or future claims.

So I specifically objected to that language in the Bechtel proposal. And it's not in the document that they signed, the Professional Services Agreement, because of my objection.

Q And isn't -- wasn't your objection because if you didn't insist on that change, there would be no argument that it could be protected from being discoverable?

A Oh, I think that's pretty much an overstatement. All of these issues are -- are based upon a cluster of facts. They're fact-intensive inquiries.

We could have an agreement that said I'm not retained in anticipation of litigation, but prove that in fact it was in anticipation of litigation. So I don't know the particular language of an agreement is going to be dispositive on that question.

As I've said, I've litigated this question, and it turns upon the facts of what the parties knew and anticipated. But certainly the

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agreement language is important as one of those things.

Q And as soon as you got involved, and the client had raised the question of shielding it from discoverability in the future at some circumstance, you said, "We've got to make sure and put this language in that it's in anticipation of litigation," didn't you?

A Yeah. And I explained that to both clients with as much clarity as I could muster.

For instance, another one of these e-mails that I have here is an e-mail that I wrote to Mike Baxley on July 14, 2015, again, before Bechtel's retained. And that's when I cited the Western District of Pennsylvania issue.

And I think it's important that this be read into the record, because it helps you to understand why a construction litigator would be concerned about a report prepared at these early stages.

What I said is that: "We learned of the existence of the report and requested production, but the other party refused, contending that the report was privileged. We then successfully moved to compel production. The report in that case was

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highly favorable to my client and its production quickly led to a settlement on highly favorable terms. The other side settled because it recognized it would have a nearly impossible task if it attempted to persuade the fact finder to ignore the report. In short, the consultants hired by the other side effectively" -- and I put in quotes, "decided the dispute," because they didn't literally decide it, but they effectively led to the disposition of the dispute -- and I'm picking up again -- "when it wrote its report, although the report was preliminary and prepared without the aid of discovery. The same could happen here with the Bechtel report. We should give careful thought to whether we want to put Bechtel in the position of possibly deciding any eventual dispute based upon a seven-week review."

That was my concern then and that continued to be my concern: Preliminary, limited access, worked to a budget. We've done it in a short amount of time, and without the aid of discovery. And if that is later presented in a dispute in the Southern District of New York, on a $900 million liquidated damages claim, there could be things in that report that we would regret being

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in evidence.

And so I felt and do feel today that it would have been irresponsible for me to allow this process to go forward without ensuring that I had some control over it, and that it was done in anticipation of litigation in fact. And it was done, in fact, in anticipation of litigation.

Q Until it was complete, though, right?

A Well, it wasn't done at all once it was complete. It was done, though. It wasn't done in anticipation of anything because it was over.

Q So based on your past experience with this other case and Mr. Bynum's question of discoverability in his e-mail, you made it your primary purpose to shield this report from future disclosure and discoverability, right?

A I made it my primary purpose to ensure that this report would not be discoverable in a dispute in the Southern District of New York against the contractor concerning issues that might be impacted by that report, because I was concerned that that report -- before I got it in July, in this e-mail, I was concerned that it might say something based upon limited access, limited time, limited budget, and the like, that might be damaging. Once

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I got it, I was concerned that it did, in fact, say things that could be damaging in that eventual lawsuit.

Now, as to -- you used the broad term "disclosure." I have no idea whether this arrangement shielded it from any other types of disclosure. That's not what I look at. That's not what I was retained for. It's not what I was asked to do. I have no idea whether retaining them in anticipation of litigation has any implications for other disclosures that the owner might be obligated to make.

What I was concerned about at the time was, and rightly, I believe -- I believe today, I believed then -- rightly, was that this would be disclosed in litigation with the contractor.

Q And you pointed out the e-mail in July of 2014, when some of these discussions were coming to a head, about how to structure the hiring of Bechtel. And do you also remember that your client, at least the counsel for Santee Cooper, on both the 13th and the 15th, did not agree with you?

A Mike went back -- went hot and cold. I explained these issues to Mike in detail. Mike was a South Carolina judge, as you know. And I felt

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that he would understand these issues. And every time I -- not every time. Several times when I would end the conversation with Mike, I thought he agreed with me. Mike's a very polite, accommodating person, and maybe that was the politeness that I was misinterpreting. But I understood that, when I was talking with him, that he agreed with me. I understood, when I was talking to Lonnie Carter about these issues, that he agreed with me.

And then something would happen, and I'd get a word back that they would try to move it back. Maybe they were getting pressure from their board or something else. So I was getting conflicting advice from the same person, not to mention from different people in the same entity, not to mention different people from the two different entities. So I was getting a lot of input, and it was not consistent.

Q Were you aware that your client, Santee Cooper, wanted the Bechtel assessment and a written report for the reasons that you described as the normal course, that is, recommendations about how to get this project on schedule and how to do it?

A I did. I did. That was one of the reasons -- that was one of the things that they wanted. And it's my understanding of the law --

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again, I'm a lawyer, so I view these things through that prism -- that a report of this nature can be used to -- for in the normal course -- let's use that term -- without destroying the privilege so long as the primary purpose of the retention was in anticipation of litigation. That's my understanding of the law.

So I want -- so to the extent Santee Cooper expressed an interest in having the report available to it in order to guide judgments about -- in the normal course of business, I wanted to ensure that that didn't conflict with and in any way supersede the primary purpose, the purpose mentioned in the Professional Services Agreement, the purpose that I discussed both with Mike Baxley and Al Bynum, namely the purpose of in anticipation of litigation.

Q And are you aware that until you got involved in the summer of 2015, that nobody had mentioned hiring Bechtel in anticipation of litigation?

A Until May, I had no idea that there were any discussions of hiring Bechtel at all. So I had no idea of them hiring Bechtel either in anticipation -- in anticipation of litigation or otherwise.

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But I thought that I -- I thought, in my interactions with my client, that we had come to an agreement that that would be the basis for the retention. I got buy-in on the agreement that says that.

Now, I don't think Mike Baxley, a judge from South Carolina, would have approved that agreement if he thought it was a sham. Nor do I think that the in-house counsel for SCANA would have approved that agreement if they thought it was a scam. It said what I wanted to do with Bechtel, and it said it loud and clear, and it said that they were retained in anticipation of litigation.

Q And there's no question, I don't think, in anybody's mind that it was your primary purpose to have the Bechtel assessment, retention, and reports as its primary purpose in anticipation of litigation in order --

A That's right.

Q -- to shield it from disclosure?

A And if anybody objected to that, they should have said so when they were looking at the Professional Services Agreement which defines the parameters of that -- of that engagement, and there was none. So I had every reason to believe and did

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1 believe at that time -- despite the back and forth
2 about assessment and whether it was or was not in
3 anticipation of litigation, I had every reason to
4 believe and did believe that the clients had bought
5 in on the basis for the retention. Why wouldn't I?
6 What else would I think?
7 Q Other than your clients not objecting to
8 your primary purpose of -- of labeling this
9 assessment as in anticipation of litigation, do you
10 have any reason to think that they were hiring
11 Bechtel or wanted Bechtel to be hired --
12 A Yes.
13 Q -- in anticipation of litigation?
14 A Yes, because you didn't specifically say
15 the agreement itself.
16 Also, there were multiple discussions with
17 Mike Baxley and Steve Pelcher and Ron Lindsay and Al
18 Bynum about this exact issue. And I explained to
19 them multiple times my viewpoint. And I had
20 understood that they had accepted that; that they
21 thought that there was an opportunity to use it for
22 what I would call the normal course of business, but
23 they recognized my points. And I thought they
24 deferred to my judgment.
25 Q And wasn't it Santee Cooper's legal

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counsel's judgment, on July 13th, that if you insist on hiring them for the purpose of giving legal advice, that it would result in the failure of this assessment? Didn't he tell you that?

A I don't remember that. If that's in an e-mail. But that comment, setting aside whether he said it or not, makes no sense to me.

Q I mean, he --

A When I say it makes no sense to me, I fail to see how retaining Bechtel for the purposes of preparing for litigation would cause the assessment to in any way fail. That's -- that's somewhat illogical.

Now, you know, Mike is a tremendously sophisticated guy and was a judge. I don't know that he was ever a litigator. So maybe our perspectives were quite different.

Q Neither here nor there, but he was.

I think it's -- he says to you: "I am concerned that hiring Bechtel through legal counsel and certain phrases in the proposed agreement that Bechtel is hired for the purpose of assisting counsel in giving legal advice to the owner will result in the failure of this initiative."

And then he continues on the 15th after

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your response to him, and he says that: "It is my understanding that the owner's CEO met with Bechtel earlier this week and there's change in previous thinking on this, away from litigation, towards open disclosure of findings among the parties."

You remember there had been months of discussions about hiring Bechtel before you ever got involved at all.

A I didn't know that. How would I know that?

Q But you know that now, don't you?

A You said that. I haven't seen any evidence of that. I mean, I don't mean to disrespect your representations, but I have no knowledge of any contacts prior to May, presumably sometime before May 20, since there's already a proposal. But I didn't know of those -- those prior contacts.

But in any case, consider the quote that you've repeated now of Mike Baxley saying that if we include that language, the assessment will fail. Well, ultimately we did approve that language. We did include that language in the document. He approved that document.

So I can only assume that he changed his

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mind. He says in July, before the document's executed, that if we include that, the assessment will fail. But then he approves the language in the ultimate agreement that has that language. So he must have changed his mind about whether the assessment would fail if that language were included.

Q Do you --

A But that gives you some sense of why I say that there was a lot of back and forth about the -- this and related issues, when I thought there was an understanding, and then they backtrack. And then come forward again, I think there's agreement, we're proceeding forward, and then there's someone that says, "Well, no. I dissent."

And that was happening. And I'm dealing with two clients, but I understood that when I retained Bechtel, that issue was resolved, because that language is in the agreement and that agreement language was approved by attorneys for both parties.

Q And we all -- we all struggle with not knowing what we don't know. But did you know how long Santee Cooper had been trying to get Bechtel or some third-party assessment done of the project?

A As I said, I learned about it on May 20th.

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And there's nothing in the -- in Al's document that suggests that they've been kicking this around for a long time. In fact, the way Al introduces it to me, Santee Cooper wants to hire Bechtel. He doesn't say, "Well, as you know, we've been kicking Bechtel around for months and months and months, and now they finally want to hire them."

No. Al is telling me for the first time. And I had no reason to believe that this was more than, you know, a couple days, a couple weeks old, and didn't -- and didn't assume that.

Q Right. I'm not trying to say it's your fault. I'm just saying there are other things happening, obviously.

A I have no doubt, but I'm -- you're the only witness that's in front of you, so I guess you're getting what you're getting.

Q Thank you.

Can you understand that trying to make it for litigation purposes, like what Santee Cooper was concerned about, would actually undermine the cooperation needed from the consortium?

A That was an issue that -- that was addressed in the context of discussions about the NDAs and similar types of assurances that the

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consortium wanted; so yes, I was aware.

Q And even -- and so the result of forcing it into this agreement that says it's for litigation actually had the effect of causing problems with the consortium's cooperation in providing documents and information to Bechtel, didn't it?

A I can't -- I can't agree with your speculation about Westinghouse's motives. My understanding of Westinghouse's reluctance to give up information was that Bechtel was a competitor, one; and, two, they didn't particularly want the owner to know certain things that they considered to be confidential.

MR. BALSER: Matthew, we've been going for about two hours. Do you want to take a short break?

MR. M. RICHARDSON: Sure. You've got to give me a signal.

THE VIDEOGRAPHER: The time is approximately 2:57, and we are off the record.

(Recess in the proceedings from 2:57 to 3:08.)

THE VIDEOGRAPHER: The time is approximately 3:08 p.m. We are back on the record. Counsel, you may proceed.

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BY MR. M. RICHARDSON:

Q No question that SCE&G was in favor of hiring Bechtel before or when they -- when you actually hired them, right?

A I certainly understood that they agreed to the hiring of Bechtel.

Q And you believe Kevin Marsh, for example, was in favor of hiring Bechtel before October 22nd, 2015, right?

A Well, they were already retained.

Q Right. And do you have any reason to think that he did not want Bechtel hired or doing an assessment before October 22nd, 2015?

A At some point, there was skepticism expressed about the hiring of Bechtel by various people, primarily people at SCANA as opposed to Santee Cooper.

I mentioned earlier that there was some suggestion that Bechtel was looked at as something less than an honest broker by some people because of the perceived interest that Bechtel had in being retained for what would promise to be a very lucrative contract for Bechtel in connection with the $10 billion project.

So I -- I would resist assenting to any

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categorical statements like that. That just doesn't -- I think there was a certain skepticism about Bechtel that preceded the issuance of the report, and possibly even the retention.

Q But you know that the senior leadership of SCANA certainly became opposed to Bechtel on October 22nd, 2015, when the presentation was given, don't you?

A I had no idea. As you've characterized it, I think, accurately, I called in and participated briefly. It was not a webinar, so I didn't see any of their slides. I wasn't able to gauge the reactions of the people in the room. I can't even tell you with any confidence who was in the room.

So to ask me what anybody was thinking on October 22nd, we're not going to get anywhere.

Q And after that is really what I'm more interested in, because you had -- after the presentation was given, a draft report was given, you were having conversations with both sets of your clients.

A Yeah, the other thing that I should mention is that a number of the members of the Bechtel team were characterized as being somewhat

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abrasive. I didn't experience that. I didn't see that, so I can't say that they were abrasive. That tends to be a subjective characterization, in any event. But a number of people felt that about their report or about their team, team members in particular, a number of whom left Bechtel shortly after that. And so I think there were a number of reasons that people looked at Bechtel with a jaundiced eye even before getting their presentation.

Now, I have no idea whether Kevin Marsh or anybody else thought Bechtel had identified anything useful in their report. I've mentioned to you that some of those things fell into the category of, "Well, yeah, we've known about that for a long time and we talk about it weekly with the contractor," or "No. We disagree." Or the third thing is, "Gosh, you're -- you're just completely off base there."

So to suggest that, prior to October 22nd, everything -- everybody thought Bechtel was a hero, and afterwards, some people changed their minds, I think that would be a false characterization.

Q It also sets up kind of extremes that I didn't ask about. What I was asking --

A It does set up extremes, that's true. But

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I think that there was an implication in your question that somehow something changed dramatically on October 22nd. And that's not my -- my impression, but -- for the reasons that I mentioned.

Q You can confirm for us, though, that SCANA's executives, senior executives, in particular Kevin Marsh and Steve Byrne, after they heard and saw Bechtel's findings and recommendations, became hostile to Bechtel's assessment and the issuance of a report?

A I've never seen Kevin Marsh or Steve Byrne act with any hostility towards anything, so I can't confirm that. Did they -- did their suspicions about or did their opinions of Bechtel degrade even further after March 22nd? I don't know. I wasn't that aware of or have information about what their view of Bechtel was.

Q Well, forgive my characterization. You could confirm for us that SCANA senior executives, in particular Kevin Marsh and Steve Byrne, after they heard and saw Bechtel's findings and recommendations, were against the release of any written report?

A No. At one point, I have a very clear recollection that Kevin Marsh wrote me an e-mail

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saying that he wanted the written report.

It was a moving target, as I've said. I've got multiple clients, multiple representatives of different clients. But I think there was one point, well after October 22nd, when Kevin specifically said he wanted a written report.

Q And I hope we look at that. That was November 30th, after he already knew you had a copy of the draft report, right?

A Well, I believe I got the report on November 28th. Is that right?

Q 12th.

A 12th. Okay.

So yes, obviously it was after that. And he would have known that I received that, so -- in any case. So you knew that what you were trying to get me to agree to was false?

Q No.

A That's why you asked me the question?

Q No. You answered a different question.

A Oh, okay.

Q What I'm asking is not that he wanted to see the report after he knew you had it, but rather, he didn't want one issued at all. You never heard from him or Steve Byrne that they wanted a written

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report issued?

A You know, that -- again, that's not consistent with my memory. At one point, Martyn Daw wanted to issue the last bill. And it seems to me that I remember him saying that he thought that the oral presentation completed their services. And I said, "No. That's not consistent with my -- with my -- with my direction, that the oral presentation didn't complete your services."

So people were saying a lot of different things, and they weren't always consistent from week to week. But I can say, from this point on, Steve definitely didn't want it, or from this point on, Kevin did want it, or during this interim, he did want it, then he didn't want it.

The e-mails are what they are, and you can go through them and identify various times when people said they wanted the report and various times when the same person might say they didn't want the report. It was a very fluid situation for everybody but me. I had my own views, and they were pretty consistent.

Q And you didn't want anything done that might end up making a Bechtel report discoverable?

A Discoverable in the litigation with the

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contractor, because I know that this lawsuit involves a lot more than -- than whether that report would be discoverable in a lawsuit with the contractor. So all I know is that that was my concern. I didn't want it to be discoverable in a lawsuit with the contractor.

In some ways, I view that eventual dispute as my client. I mean, granted, my client were living human beings who were representing corporations, but I was hired to protect that dispute and to ensure that that dispute had the most favorable outcome. And whether that was settlement or whether that was successful litigation, that was my goal.

And so I was always focused on that dispute. And whether it would be discoverable in any other context didn't show up on my radar screen; it wasn't something that I would be competent to give legal opinions about; it wasn't something that I did give legal opinions about.

Q Do you know about the productivity factors and labor ratios with respect to the Westinghouse schedule?

A I knew a lot about those issues with respect to a lot of different things. That was one

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of the key points of analysis.

Q And were there other mitigation plans like those, those two issues, that were necessary to justify the schedule?

A The other mitigation plans besides what? Let me -- let me just address what the mitigation plans were, in my mind, at least those that were foremost at that time. And foremost was, one, the conversion alone should have incentivized the contract, because he's now not being paid essentially costs plus. When you're being paid costs plus for your labor and your supervisors, there's not as much incentive to hold those costs down because you're getting the plus. So just by converting it to a fixed price, you think you're creating a greater incentive to the contractor to be more efficient.

Two, you're jettisoning CB&I. I feel certain that nobody at Westinghouse is exchanging Christmas cards with anybody at CB&I. They were not friends on the job, and they didn't stay friends afterwards. And that friction was not a good thing for the project.

Three, you were bringing in Fluor. It's my understanding, my recollection -- you can check

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me on this -- but Fluor built Unit 1. The units that were the subject of the EPC contract were Units 2 and 3. Fluor had roots in South Carolina. They were local boys. They felt that they could trust them and that they would make a difference.

So everybody was optimistic that those productivity factors could be influenced initially, at least, could be influenced by those three factors and others. But those are the three that come to my mind.

Q And when I -- when I was asking about productivity factor, I was speaking of, you know, the craft, manual labor on the job --

A Sure.

Q -- and the ratio, essentially, that's given for the productivity factor, and then labor ratios as to indirect versus direct. But you named some others.

My -- my bigger question is: Were you aware that the Westinghouse schedule depended on both the implementation and success of those mitigation plans and not -- and was not based just on the realities of the project at the time?

A The realities of the project had just changed in the ways that I described. But I was

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certainly aware that on this job, as on any job, that labor and productivity and ratios affect costs and typically time performance. But we were -- we were aware at that time that for Westinghouse to achieve the contract successfully at -- within the time period given, then they would have to improve certain things. And we thought that they would do it because the incentive, because of getting rid of CB&I, and because of bringing in Fluor.

I would also say that the price, from Westinghouse's viewpoint, was in excess of what they were projecting as their cost. It's my understanding that the fixed price number was arrived at because Westinghouse was giving a projection, and -- and Steve Byrne said, "Well, if we paid you another" -- I think it was $500 million, but I'm not certain of that -- he said, "if we paid you a little bit more, would you agree to convert this to a -- to a fixed price?"

So Westinghouse thought they could do it. In fact, the fixed price was in excess of what they were projecting at the time of what it would cost them. So we thought that this was a realistic schedule and a realistic budget, and that they could be profitable at -- at the agreed fixed price

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number.

That was all -- that was -- everything that we had, everything that I had, at least, was telling me that. Now, if there were internal numbers being run, I don't know about that. But -- but it looked like they could perform given the changes in the project.

Q And we -- I think we've already talked about the 2014 internal EAC review, right? That was calculating the cost, not what Westinghouse was giving, but testing the -- vetting those numbers and testing the validity of that.

So you just say, when you're answering about that you thought not only was it a good deal, but you thought Westinghouse was going to make a profit on the fixed price option --

A Well, it was --

Q -- you're not speaking on behalf of the owners, are you?

A I'm telling you what the -- no. I'm always telling you -- I'm not speaking on behalf of the owners in this deposition. I'm speaking -- I'm answering your questions about what was known at the time. And that was one of the things that I knew at the time and one of the things that the owner knew

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at the time.

And I haven't sat down and lined up the EAC with the fixed price number, but -- recently. I did it then, and I don't remember being worried about that.

Q Did you ever see the internal EAC numbers?

A The only EAC I saw was the -- was the contractor's EAC, and that was in a spreadsheet form. And I had a copy of the spreadsheet. And I manipulated it and I worked with it. I did, you know -- ran various scenarios. I tried to analyze it and tried to understand it.

Q And did you have any opinion about the reliability of the realistic nature of the assumptions on the labor productivity factors or the labor ratios?

A When?

Q In late 2014, at the end of the rebaselining.

A Oh, I don't have a clear recollection of what I thought about the -- about the EAC in 2014. As I said, I didn't really review all seven -- six years of my involvement in preparation for this deposition. I just didn't look at much from 2014 at all.

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Q Yeah. And I wouldn't have gone back and asked you about it again. I think you've already told us you weren't -- weren't familiar with it, except that was part of your answer. You said that you saw the contractor's EAC.

Were you referring to the 2014, the August 2014 EAC?

A That's what I -- actually, that's the only one that I was aware of by the contract or by the owner. I think you're right, it's August of 2014, and it's an Excel spreadsheet.

Q And -- and who were you working with in the owners on that issue?

A Well, the same group of people that I've mentioned here.

Q But not with the EAC group?

A I didn't -- I didn't meet anybody from NND, except Jeff Archie, if he's considered part of NND, until 2016.

Q Uh-huh. And what purpose were you doing this, your own analysis of the owner -- excuse me -- of the consortium's EAC in 2014?

A I wanted to understand if we were in trouble, because right then we still had the four buckets. And I was -- I learned pretty early in the

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process that the bucket to keep an eye on was the target, target price bucket. And I wanted to understand if we were -- just what they were projecting with respect to the target price.

And as I remember it, it's fairly -- it's a bit of a challenge to take the EAC and figure out what's in what bucket, because it wasn't carved up that way, but I wanted to understand that.

Q And when you said that you thought that the owner believed that Westinghouse would make a profit off of the fixed price option, who -- what's that based on?

A That's -- actually, that's based upon something that I heard Steve Byrnes say. And he actually didn't use the word "profit," so I don't want to quote him or paraphrase him inaccurately.

What he said was that the Westinghouse came to him and said, "This is what we're projecting to complete."

And Steve said, "Well, how about if we paid you X number of dollars more, would you agree to a fixed price?"

So whether Steve understood that to be profit or Steve thought their projections were too low, I don't know. But I've told you what I -- what

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I understand.

Q And did you have a discussion with Steve so you'd understand what he -- why he was willing to offer an additional $500 million under this current --

A I -- no, I never had any follow-up issues or questions for Steve about that.

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(Response to Motion to Compel Discovery Responses and Production by SCE&G and Dominion Energy marked Wenick Exhibit Number 3 for identification.)

- - -

(Engineering, Procurement and Construction Agreement marked Wenick Exhibit Number 4 for identification.)

- - -

BY MR. M. RICHARDSON:

Q I've got an Exhibit 3 and 4, which are basically the same thing, but I've only got one copy of Exhibit 3.

Exhibit 3 is the entire June 11th, 2018, filing by SCE&G in the Public Service Commission labeled, Response To Motion To Compel Discovery and Responses and Production by SCE&G.

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A Do you want me to just hand it down?
Q The fewer hands, maybe the better (handing).
A Do you want me to read this?
Q Nope.
MR. SMITH: Does it have a Bates number, by any chance?
MR. M. RICHARDSON: It's a filed document. If you look in the right side --
MR. SMITH: If somebody just will specify what the date is so we can find it.
MR. M. RICHARDSON: It's the June 11th -- I've already said it on the record, but it's the June 11th, 2018, filing in the PSC by SCE&G.
MR. SMITH: Okay. Thanks.
MR. M. RICHARDSON: It was also filed in the federal court action on August 3rd with some, but not all, of the excerpts. All of the exhibits, I mean.
MR. SMITH: Thanks.
BY MR. M. RICHARDSON:
Q I wanted to -- I'm going to ask you about Exhibit 4. But you met with the owners in late 2014 about a scheduling expert; isn't that right?

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A You know, my copy is really awful. Is this -- do you know what this Exhibit 4 is?

Q It's December 17th, 2014, notes by Mr. Steve Byrne.

MR. BALSER: I don't have it. Where is that?

MR. M. RICHARDSON: That's one of the exhibits that's not in the copy you all have. He's got the master copy. The other two, you do. I can give you a copy of it if you'd give me one second.

MR. BALSER: I'd like to have a copy if you're going to examine the witness about it.

MR. M. RICHARDSON: That's Exhibit 5. I need Exhibit 4. Actually, I don't have it either.

BY MR. M. RICHARDSON:

Q You probably haven't seen these before, but do you remember having a negotiation pre-meeting about experts with Mr. Byrne --

A I remember --

Q -- and others?

A -- raising the issue of engaging experts with the group. This was obviously well in advance of the Bechtel issue, but it's consistent with the

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purpose to which I wanted to put Bechtel, because I felt that I, as a construction lawyer, would benefit from having a team brought in, you know, someone like a Navigant or a Secretariat, to evaluate schedule, look at cost. And I believe that there were new claims being asserted at this time.

So in any case, I don't -- I can't, independent of this Exhibit 4 --

Q You don't have any memory?

A Well, I have a lot of memories, but independent of the exhibit, I wouldn't necessarily say that I raised the issue of forensic accounting and schedulers on December 19th of 2014. But I would say, independent of that exhibit, that I did raise that issue with the owners. All of our meetings were in the -- in the main conference room, not the boardroom, the main conference room. And I remember being in that conference room with representatives of both clients and making that point.

Q Uh-huh. And do you see that these are notes about your confidential communications with your client about what became the Bechtel assessment and, in particular, your legal advice about construction scheduling assessment?

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A Actually, this is essentially illegible to me. I don't -- I won't say that every word is illegible, but it's -- the copier skidded, and consequently it's duplicated.

And you tied this to the Bechtel engagement. Certainly when Bechtel was raised, I saw an opportunity -- I thought I saw an opportunity to have them do something that I'd mentioned earlier, but Bechtel would not have been the entity that I recommend.

Q At that time?

A Really more or less any time.

Q Would you agree that SCE&G agreed with you, as its counsel, a recommendation to hire Bechtel to ensure that the project was on track to be completed on time and on budget?

A I don't see any mention of Bechtel in this document.

Q I've moved on from that document. I'm just asking you a question.

A Oh, I'm sorry. So could you -- would you read back the question?

Q Sure. No problem.

Would you agree that SCE&G agreed with your recommendation to hire Bechtel to ensure the

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project was on track to be completed on time and on budget?

A No. No. I -- that's not what my recommendation was concerning Bechtel.

So there's parts to that question. Did they agree to the engagement? Obviously, they agreed to the engagement. They approved the Professional Services Agreement. They paid the money. But the purpose that you defined there is still -- I don't associate that with the retention of Bechtel.

Q And Bechtel actually assessed whether the project was on track to be completed on time and on budget, didn't it?

A They formed an opinion on that, albeit preliminary, and with, what, some percentage of confidence on schedule.

The budgetary viewpoint was moot by that point because they were assuming that the owner was going to have to pay based upon the productivity factors and the ratios that were in place, and they would have to pay under the four-bucket payment scheme.

So Bechtel was -- you know, kind of missed the boat or they were -- no, they didn't miss the

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boat. They were moot by that time.

Q And in their conclusion of their assessment, they concluded the project was not on track for its approved budget or construction schedule; isn't that right?

A Bechtel's conclusions are what they are. They made a projection, albeit preliminary and without a hundred percent confidence, and with a wide range of possible dates of when the project would be completed, based upon an unreliable methodology. That's what they did.

And that was not, of course, what I recommended in December of 2014 or any time.

Q When you first started talking about the Bechtel retention with Al Bynum, did he tell you that Bechtel had already executed a form of the proprietary data agreement that was in the EPC exhibit 01?

A No. But I did learn that in 2015. But that was -- you understand that was -- if I remember correctly, that was an exhibit to the construction contract that anybody had to sign basically to even talk to anybody from the project. That wasn't the key document from the contractor's perspective. In fact, I think I signed one of those.

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Q Will you turn to Exhibit 12?
A Yeah. (Witness complies with request.) Okay.
Q You mentioned Jeff Archie before. Who is he?
A He is -- he reports to Steve Byrne. He may be a direct report. I'm not sure. But he's with SCE&G.
MR. BALSER: I don't have Exhibit 12.
MR. M. RICHARDSON: Can you look for 7? July 16, 2015.
MR. BALSER: Just tell me what it is. We may be able to pull it up on the computer.
MR. M. RICHARDSON: Sure. It's an e-mail with the subject, Videoconference, from Jeffrey Archie to Steve Byrne.
MR. BALSER: Got it.
MR. SMITH: And the date? I'm sorry. I missed the date.
MR. M. RICHARDSON: July 16, 2015.
BY MR. M. RICHARDSON:
Q Do you know who he's referring to as Crosby in this e-mail?
A Yeah, Mike Crosby.
Q And do you see the second sentence that

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says: "He's softening on the George Wenick issue"?
A Yeah. I didn't realize I had an issue.
Q We've heard --
A Yes, I see that.
Q I think we know what your issue is, don't we?
A Well, so Mike is softening on the issue. Does that mean he's coming around to my point of view on the issue? What is the issue that we know it is?
Q What is the issue that's being talked about here?
A Well, I don't know. This didn't -- wasn't sent by me or to me or copied to me.
Q Let's go to the next sentence. Maybe that will clue us in: "We need to consider if focusing on precluding discovery."
Do you know what SNC is?
A No. I was going to ask you.
Q Have you ever heard of Southern Nuclear?
A What's the C stand for?
Q Company, probably, but part of the Vogtle ownership.
A Oh, no. What's the "engaging Wenick" thing? That makes no sense to me, because I've been

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engaged for four years by this time.

Q I know you don't remember this or didn't know it, but the Bechtel hiring had been going on for months before you got involved.

So it would be --

A Well, I knew about it in May, so -- but that's -- I don't know what "engaging Wenick." When did they engage me, to do what?

Q I think when Al Bynum called -- contacted you.

You may not have known, but let's move on.

What -- do you know what the more important part of this, which is the "precluding complications with the litigation that the consortium is very interested in"?

A Yeah, you asked me about that earlier. And I -- I don't recall that angle, that is, the angle that involved the litigation between the contractor and the Vogtle owners as being a concern of the consortium. I take Steve at his word, but I just don't remember that being brought up to me.

Q In part, because you weren't talking to the consortium at all about this issue, were you?

A No, but these types of things -- well, no. I wasn't talking to the consortium about any types

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of issues. The first dealings I had directly with the consortium were in 2016 in connection with the DRB.

Q But you were the attorney advising both Steve Byrne and Jeff Archie on this issue, weren't you?

A Which issue is that?

Q Bechtel retention.

A I was advising Steve Byrne and Jeff Archie on Bechtel retention in July of 2015. There's no question about that.

Q And in this e-mail, there's no question that they were discussing the reason to engage you to complete the hire of Bechtel; isn't that right?

A No. They were talking about more of a driver there. They apparently have in mind at least two drivers, and perhaps a number of drivers, and they're saying that one of them that they think should be more prominent relates to precluding discovery by SNC, because that is something the consortium is interested in and resonates with Mike.

THE VIDEOGRAPHER: Excuse me, Mr. Wenick. Can you get the paper off?

THE WITNESS: Sorry.

BY MR. M. RICHARDSON:

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Q So isn't it -- isn't it true, in your advising the owners on this issue in this time period, that Santee Cooper was needing to be convinced to have this be an attorney retention for anticipation of litigation?

A I've said repeatedly today that there were various times when Santee Cooper was more focused on getting an assessment related -- that they could use for the normal course of business than on anticipation of litigation; and that they several times expressed that preference, and several times reversed themselves or took the opposite position and agreed with me.

And then ultimately, when the Professional Services Agreement was circulated, it was approved, which I'd just note it's not the first time, but as unequivocal acceptance that they would follow my strong recommendation on that issue.

Q And today you've talked repeatedly about this Southern District of New York litigation that you were concerned about, based on the venue clause of the EPC contract.

A Right.

Q Is -- are you aware of any communications that refer to that litigation in relation to the

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hiring of Bechtel?

A There was no -- there was no litigation at that time, but there were multiple -- there were multiple communications about an eventual lawsuit with the owner. And I explained my view on what you call "this issue," the issue with the Bechtel retention, in the context of that litigation, which everybody understood I was talking about when I talked about in anticipation of litigation.

We didn't talk about when it would be filed or -- I'm not sure we even talked about the venue. But I can talk to you as a lawyer about what the contract says and what I had in my mind. I have been in that courthouse. I know what it's like. And I anticipated that that's where this whole thing would play out in my sunset years.

Q And you suggested that this was -- that I would call this your issue, but in fact, it's your clients calling it your issue, isn't it?

A I'm not sure what they're calling the George Wenick issue. It's certainly plausible to believe that it's -- it's what you suggest, but I don't know that, so I can't testify to that.

Q Could it be anything else?

A I don't -- you know, a lot of people have

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issues with me. It could be a dozen things. They might not like my ties. I don't know. Who knows?

As I said, it's plausible that they're talking about the retention of Bechtel, but it's also plausible that there were other matters that fit this description. I haven't given it much thought since I was just handed this 10 minutes ago.

Q And considering your issue of wanting to make sure the Bechtel assessment or report wasn't discoverable, you never had any concern or thought that it was in anticipation of litigation or discoverability in litigation that did not involve your clients?

A No, I didn't care. I can see why the consortium might care, but I didn't care.

Q But you also did not believe that the assessment or the report could be protected from discoverability based on litigation that did not and could not involve your clients; isn't that right?

A Actually, I thought I made clear that I didn't have a view on that. And it's not -- it's not that I'm agnostic. It's that I just never thought about it. That's -- that's a hypothetical that didn't occupy me for a moment.

What did occupy me was -- was the

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litigation with the contractor. I think I made clear that I had never researched, never considered, and don't know the answer to the question of whether retaining Bechtel in anticipation of litigation with the contractor cloaks that document with any sort of privilege in any other venue, in any other forum. I just don't have a view on that.

You know, lawyers don't offer -- shouldn't offer views on things they don't know anything about. And I don't know anything about that.

Q And your advice to ensure the Bechtel retention was in the context of both attorney-client privilege and in anticipation of litigation, was based in part on the risk of unfavorable results of that expert opinion or assessment?

A Not just unfavorable, unfavorable and half-baked, to use a colloquialism. Unfavorable, but based upon incomplete information.

And think back to my e-mail to Mike Baxley. I said that that expert in that case in the Western District of Pennsylvania didn't have all the facts. It was a preliminary report. Nonetheless, in the context of litigation, you know what it's like. You get that report. You stand up in front of a judge or a jury, you wave it and say, "Their

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own expert said such and so."

And then you come back and say, "Well, yeah, he said that, but he had limited access, he only had eight weeks, I only paid him a million dollars. And besides, you know, things were changing, and so forth and so on, and they didn't have the qualifications."

Fine. And what do they remember? They remember the waving of the report, not all your qualifications. So I didn't even want to allow those arguments to be made. And that's -- that's not a position that I've developed for this case. That's more or less been my practice when I deal with experts. And I deal with experts all the time, sometimes four or five experts on a matter.

Q And after you executed the Professional Services Agreement with Bechtel, did you do anything to work with them to ensure they were providing, you know, consulting services to you?

A No. And that was one of my disappointments about the whole dynamic. I would -- first of all, I wouldn't have set it up with a million-dollar fee. I would have set it up, "This is what I want. Give me your billing rates."

Frankly, setting up with a million-dollar

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fee means that Bechtel is going to work to a budget, and they're going to make a profit and do as much as they -- they're going to be honest about it, but they're not going to do more than what they can do for a million dollars profitably.

So I -- I was unhappy with the way it was set up. But I thought if that's the way the owner wants to set it up, fine, but I want to use it for my purposes in understanding this job and preparing for litigation with the contractor.

Q And after you entered into the PSA agreement with Bechtel, did you really have any interactions at all with them or with the assessment until the October 22nd preliminary presentation?

A No.

Q And did you stay on the phone on the October 22nd presentation long enough to hear that they reported that the completion dates for Unit 2 would need to be adjusted 18 to 26 months out, to sometime after December 2020, and that the completion date of Unit 3 would need to be adjusted 24 to 36 months out, to sometime in 2022 or 2023?

A What I remember about that is that there were dates -- they were talking about their assessment. At a certain point, I interrupted with

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a question of their method, because without understanding the method, the dates would mean nothing to me. As I said, it would be little more than someone tapping me on the shoulder and saying, you know, "All these nuke plants finish late."

"Okay. Fine. That's no -- that's no use to me at all. Tell me what your methodology is." So I interrupted.

And if I heard those dates, I didn't mark them in my mind. You know, two sets of dates -- you know, we've got all these dates moving around. They propose two sets of dates. Did I hear them? Probably, but I don't remember that, because I remember thinking whatever is coming out is going to be useless: Unreliable methodology. Not enough time. You said it's preliminary. You said words to the effect, "In order to give you any meaningful projections, we have to do a lot more work."

They said those words, and then they -- they lay out the numbers. Well, by that time, I've stopped listening. I may have still been on the phone, probably was, but I stopped listening because I don't care if they say tomorrow or five years from now or 20 years from now. It means nothing to me. If you don't have a reliable methodology, your

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result is not useful to a construction litigator. It's just not.

Q And Bechtel's preliminary report said that its assessment was based on the current civil progress and performance that would remain unchanged.

A Sure. And that's another reason to discount it, although that wasn't foremost in my mind. The -- I told you all the reasons that it was believed that that would improve.

So I think every assumption they made was a worst-case scenario assumption, but that was -- that was not the core of my objection to their analysis. The core of my objection was their methodology.

Q And in contrast, you know, because I think that's one of the comparisons we have, is that SCANA was repeatedly disclosing that its anticipated completion dates that were being reported were subject to a number of mitigation measures that the consortium was seeking to implement. Isn't that right?

A Yeah.

Q And, I mean, it seems like that means that the SCE&G knew at the time that it was reporting

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substantial completion dates of 2019 and 2020, that it was having to assume the mitigation measures would be both implemented and successful.

A Well, I don't know what they were reporting. I assume they were reporting July 31 of 2019 and July 31 of 2020, which were the dates in the October 2015 amendment, which is -- are the dates that the contractor committed to in a very serious meaningful way.

And it was everybody's expectation that -- you call them mitigation measures, but there were a whole series of things that were -- that were very real to the owner that were being changed, not just an effort by the owner to do typical construction mitigation, where you work overtime and do all those kinds of things. There were changes in personnel, bringing in Fluor. There was the incentive in deleting the target price and going to fixed price. There were all sorts of things that would encourage -- not to mention the $900 million, which I've already mentioned so many times, the $900 million incentives that the contractor had to meet those dates.

So there were a lot of things going on that caused me and others to believe that those were

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real dates, those were achievable dates.

Q But none of those mitigation plans that were actually used or even discussed in this project at that point were successful or even made a difference in either the budget or the construction schedule for this project?

A I have no reason to say that. I'm not sure why you say it.

Q Do you have any reason to dispute it?

A I think that Fluor was more effective at building this job once they got their arms around it than CB&I. So yeah, I guess that's a reason to dispute it.

Q What's the metric of that or what's your -- what gives you that impression?

A I'm relying largely on feedback from the NND folks who did things -- Fluor, once they got their arms around the job, which took a bit, were doing better.

But we'll never know. We'll never know because of the bankruptcy. Who knows what they could have achieved had this job normalized, but it didn't. It went into bankruptcy. This job didn't have -- wasn't cancelled because of schedule. It was cancelled because of the bankruptcy.

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Q If it cancelled because of the bankruptcy, what were you doing for three days in July negotiating with Westinghouse?

A Well, I didn't know that there was going to -- there was an effort to see if there was -- well, what I was doing in July was what I said I was doing. I was attempting to negotiate a contract with Westinghouse to continue to go forward with the project.

But the ultimate reason for the cancellation, as I understand it, had little to do with schedule and everything to do with the bankruptcy, namely the repudiation of the fixed price contract and the fact that we're now opening up the owner to the exposure of all costs to complete.

Q We talked about this a little earlier, but I didn't actually use it then. I feel like maybe I should use it now, continuing the theme of maybe we just don't know what we don't know.

Are you familiar with a filing in federal court, June 29th of this year, by SCE&G against members of the Public Service Commission?

A No. Oh, is that the injunction, where they sought the injunction?

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Q The injunction action for the temporary rate relief.

A Everything I know about that came from a newspaper article --

Q Newspaper article.

A -- so I don't know very much.

Q And you know the CFO of SCANA is one of the ones who signs, under Sarbanes-Oxley, of SEC filings and public disclosures?

A That's my understanding of the act.

Q And were you -- I think I've asked you this, but were you aware that in a verified statement by that CFO of your client, during the time in which you were representing them in the summer of 2017, that "After a careful assessment of Westinghouse internal data, which only became available following the bankruptcy filing, SCE&G concluded that despite Westinghouse's repeated representations and guarantees to the contrary, the consortium likely would not have been able to complete Unit 2 until December 2022, and Unit 3 until March 31, 2024"?

And then they went on to talk about determining the total cost to complete the units would be 8.8 billion in future dollars, an increase

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of over a billion dollars from the estimate from 2016.

Are you surprised, I guess, to find -- to find out that your client had actually done a detailed analysis and essentially corroborated the Bechtel findings?

A I don't know how detailed their analysis was, and I don't think those corroborate the Bechtel findings. Bechtel findings were done in 2015. A lot happened between 2015 and 2017 to affect the job and when it would be completed. So the premise of your question, I disagree with.

Q Actually, it looks like not a lot happened in that period of time, given the conclusions that your client came to in the summer of 2017.

A Okay. Then Bechtel assumed a lot would happen. If a lot didn't happen, that was a change in circumstance. They did not -- nobody verified the Bechtel findings, to my knowledge. And that doesn't change my opinion of that, what you just read.

Q Do you agree that the key takeaway from the Bechtel presentation was that the construction schedule was at risk if progress and performance did not change?

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A No. I eventually got the slides, and there were a lot of issues that they raised in their slides. There were multiple slides. The schedule was just a few of them.

I think that's probably an accurate characterization of the review on schedule, but I don't know that that's the key. In fact, that's the least significant from the viewpoint, for instance, of Santee Cooper, which wanted information, an assessment of the project that would be useful in managing the project.

Telling somebody you're going to finish late doesn't help you manage anything. Telling them that you need a more robust owner management team tells you something that you can use. Telling me, "You're going to be late," I'm not sure where that gets you, especially the way they did it.

Q Well, and you know, obviously, that there were a lot of recommendations about how to deal with this key takeaway from the Bechtel presentation; isn't that right?

A I'm not sure that there were anything I'd consider to be particularly useful recommendations on scheduling.

Q Are you aware of Santee Cooper's Bechtel

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Action Plan?

A Not by that name. I may know of some --

Q Okay.

A -- information.

Q And --

A But not really -- it didn't come out of the schedule assessment. It came out of -- whatever action plan I'm aware of -- I don't know it by that name, Bechtel Action Plan, but I know that there were some -- some efforts to address certain issues that had been raised by Bechtel, but not scheduling issues. Because scheduling issues, that's just a projection of completion. That doesn't tell you what to do to perform better as an owner on the project. It was the other -- it's the other items in the project assessment that might give you those, although most of those are already known.

Q Who is Paul Singer or Singing?

A Yeah, I think he's the King & Spalding lawyer, isn't he?

Q The bankruptcy lawyer?

A Yeah, I think so.

Q Okay.

A I never met Paul, but I've spoken to him on the phone several times.

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Q If you'll turn to Exhibit 31 in that --

MR. M. RICHARDSON: What exhibit is this?

THE COURT REPORTER: The last one we marked was 4.

MR. M. RICHARDSON: Okay.

BY MR. M. RICHARDSON:

Q In Exhibit 3. In the back of it is Exhibit 31. Do you see another set of handwritten notes?

A I do.

Q According to Steve Byrne's notes here of another third-party assessment call in January 14th of 2016, you see that your name is listed on the fourth line down?

A I do.

Q Do you remember meeting with these folks, Lonnie Carter, Baxley, Crosby, Pelcher, and Cherry --

A Yes.

Q -- Marsh --

A Yep.

Q -- Addison, Byrne, Ron Lindsay, and Bynum?

A I don't remember all these people being there. I'm not saying I disagree that they were there, but I remember having a meeting in the middle

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of January with a bunch of folks from both clients.

THE VIDEOGRAPHER: Excuse me, Mr. Wenick.

THE WITNESS: Sorry.

BY MR. M. RICHARDSON:

Q You see there's the third entry for you down -- it's almost smack-dab in the middle. Do you know the shorthand for change, delta character?

"If we don't change their prediction, we'll be viewed as the owners' opinion, dash, consequences."

Do you see that?

A I don't know what that delta means, "If we don't" something, the -- but my view that a consultant will be viewed as expressing the owners' opinion, and that there would be consequences in litigation, is consistent with what I've been telling you all day, which was my concern that their -- that their report would be taken as the owners' internal opinion.

I don't know what "If we don't," I don't know what that is, because there was never any discussion, that I'm aware of, of trying to get Bechtel to change their prediction. I know exactly what I asked Bechtel to edit, and I never asked them to change anything. I asked them to delete things,

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but I didn't ask them to change anything.

Q A deletion could be fairly characterized as a change to a draft report, couldn't it?

A You couldn't -- no, not a change to a prediction. This doesn't just say change their report. It says "change their prediction," "if we don't change their prediction."

There was never any discussion of changing Bechtel's prediction. There was just -- I just proposed deleting certain things in their report. Frankly, it's not my practice to try to change anything that a consultant says. Sometimes I ask them to address things they didn't address. Sometimes I ask them not to address things that they have addressed.

But I think it would be unwise and, frankly, I wouldn't want to work with a consultant who would -- who would change an opinion because I asked him. And so that's not my practice, and I didn't do it here, and I didn't discuss doing it here.

Q And I'm not suggesting you did. What I might suggest is --

A I think you were.

Q Well, let me clarify then.

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A Yeah.
Q I might suggest that this isn't written in complete sentences and it is written in shorthand.
A Yeah.
Q And the comment is, "If we don't change, then their prediction will be viewed as an owners' opinion."
A But I don't know, changing what? You're --
Q Well, you've already answered that question, and that's to delete the schedule from the draft report.
A Well, I don't -- I don't know that. If we don't change their report, their prediction will be viewed -- I didn't think the report was going to be discoverable at all, but if it was going to be released, I wanted it to be released in the least damaging form possible.
So I don't -- I -- I'd suggest you ask Steve Byrne. All I can tell you is that I never discussed changing Bechtel's prediction, and never discussed asking Bechtel to change any of the opinions that they expressed in their report.
Q But you did discuss and actually changed the report, didn't you?

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A Most people would understand the difference between delete and change. And deleting something is one thing. You're taking it out altogether. Changing something is rephrasing something, to me. And I can't imagine that I would have failed to be clear about that.

Q What if the delta represented deletion instead of just change?

A What if it meant, you know, any number of things? You can --

Q Why don't you tell us your best recollection of what you were saying on this call.

A My best recollection is that -- I think it was a face-to-face, actually.

Q Meeting?

A My best recollection is that I was repeated -- more or less saying what I said to Mike Baxley in July of 2015, which is that when reports get out, they are viewed as the owners' opinion. Even if they're produced with incomplete facts and they're labeled "preliminary," they are still -- they still can be damaging. And they were in the case that I cited to them, and in other cases.

So I would have -- I've taken that position consistently from July of 2014 through

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January 2015.

Q And if Bechtel's prediction on the schedule was actually an owner's opinion, what would the consequences have been?

A Well, the consequences would have -- to my mind, would have -- in the context of the litigation with the contractor, would have exposed the contractor's claim for $900 million of liquidated damages to a variety of defenses, superior knowledge, estoppel, possible waiver, bad faith, a number of legal theories that would have undercut a claim for not having a million dollars.

And believe me, when you get into those kinds of claims, every single issue is litigated to its death. And I didn't want to add another issue to the stack if that litigation actually occurred.

Q And as their lawyer, you were aware of other consequences, too, for these owners if the Bechtel prediction on the schedule was seen as the owners' opinion of the schedule; isn't that right?

A If this were the owners' opinion of the schedule, the owner would have said this was their opinion of the schedule. And they didn't do that. And I don't think it was their opinion of the schedule.

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And they -- and besides, they were told this on October 22nd. All this talk about getting a reported account came much after the owner was told Bechtel's prediction. And nobody at the owner said, "Hey, I'm persuaded by Bechtel."

Q On January in 2016, you-all are having this meeting. You're telling them that it's got -- that the report's got to be changed because there are consequences, and it's not just in the potential anticipated litigation.

A Why do you say that? That's --

Q You know that.

A That's what I was hired for.

Q Okay. So you just didn't have any opinion and you didn't give them any advice on consequences beyond what was a potential future anticipated litigation?

A I gave an overview of why we engaged Bechtel. I'm just counsel. I'm looking for guidance. I'm your -- I'm your construction counsel looking for guidance. I don't want this report issued at all, but if it's issued, I want it with certain deletions so that it does the minimum damage in a $900 million liquidated damages claim. It's really as simple as that.

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Now, what other -- what other issues the owner was -- was dealing with, I don't have an opinion on that.

Q Did you have any discussions about disclosure of the Bechtel report to Office of Regulatory Staff?

A The only discussion I had about disclosure is to the extent that I don't know what your disclosure obligations are. I don't think the Bechtel report has any merit, and it was prepared with an unreliable method. But I don't know if you have to report every piece of information that comes to you even if you discount it, even if you consider it to be an unreliable method, even if your attorney is telling you that it's not useful.

But I was not regulatory counsel, I was not disclosure counsel in any context, and never offered an opinion as what they should do concerning any of those disclosures.

Q Well, I mean, that's leaving out a pretty big part of this issue, isn't it?

A What's leaving out?

Q You're talking about the attorney saying there's no merit to this report, there's no useful -- it's not useful, but I don't know what

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your disclosure obligations are.

A I don't, because I don't. Does a party in this context have to disclose every rumor that's circulated at the job site, every opinion of a -- of some person who thinks they understand nuclear construction and gives advice? Do they have to report it all? I don't know. That's just not what I do.

I don't -- I don't advise people on disclosures in any context. What I advise them on is construction disputes. And so my advice related to the construction dispute that I anticipated with the contractor on this project.

Q And --

A If they had other concerns, I know they had other counsel. They had counsel in the PSC proceeding, they had disclosure counsel, and that was their bailiwick.

I'm actually pretty careful not to try to practice law outside of my field. That's when lawyers get into trouble. I don't like -- I don't want to get into trouble. So I don't advise them on those other issues.

Q And in this case, with this assessment and report, you cloaked it in privilege --

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A From the get-go.

Q -- and gave it to your client saying, "This is not discoverable"?

A In the litigation with the construction contractor. All of my discussions were about the construction contractor.

As I've said repeatedly, I don't know whether the privilege attaches in any other proceeding against any other party. I simply don't know the legal answer to that. I don't even know if there's a clear answer, but I haven't looked at it. I haven't even, you know -- I haven't even peeked to try to understand whether the privilege that attaches to a document prepared in anticipation of the litigation -- of litigation by a non-testifying expert has any privilege in any other context than the litigation that is anticipated. It may well. I can understand that it might. I can understand other arguments going the other way, but I don't have an opinion on that and never did.

Q Were you aware that the owners, your clients, have actually adopted your position about the report and maintained that privilege and protection, at least until this year?

A I -- I am aware of that, and they might be

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right or they might be wrong. I'm a complete agnostic on the issue. I know what they've done. They didn't do it at my direction or my request or based upon my legal opinion. I know what they've done. And presumably at some point it will be determined whether that was a correct position or not, but I don't have an opinion on it.

Q Did you have any discussions about it in a different context than the construction litigation?

A I don't recall any such discussions and, gosh, I hope not. I don't think I did.

Q Did you have any discussions about disclosure of the Bechtel report to the Public Service Commission?

A No.

Q How about any discussion about disclosure of the Bechtel report in response to requests for information from the Office of Regulatory Staff or the Public Service Commission?

A No.

Q Nobody in either of your clients came back to you and said, "We're being asked for this. Can we turn it over or not?"

A Okay. Now, there is a request that -- I want to turn to my clients and see if they're going

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to object.

MR. M. RICHARDSON: You can ask them.

MR. BALSER: Let's go off the record and let me confer with the client -- I mean, the witness.

THE VIDEOGRAPHER: The time is approximately 4:21. We are off the record.

(Recess in the proceedings from 4:21 to 4:29.)

THE VIDEOGRAPHER: The time is approximately 4:29. We're back on the record. Counsel may proceed.

BY MR. M. RICHARDSON:

Q Mr. Wenick, neither of your clients came back to you and said, "We're being asked for the Bechtel report, and can we turn it over or not," did they?

A No. But you asked a broader question. And there was a subpoena issued to Bechtel. And Bechtel advised me of that fact, as they were obligated to do under the Professional Services Agreement.

Q And what did you do when Bechtel notified you that they had received a subpoena?

A I reached out to my clients and had

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certain communications with them.

Q And the subpoena you're talking about was recent in this pending litigation?

A Actually, I don't recall. I didn't double-check. It was a -- I don't recall.

Q Let's just go with the temporal element. Was it recent, in the last --

A Well, define "recent." We've been talking about dates back in 2011. It was last year, I believe.

Q Four or five months ago?

And who did you contact at your clients after Bechtel told you they got a subpoena?

A I spoke to Jim Stuckey at one point.

Q And before getting the communication from Bechtel about their receiving a subpoena, when is the last time that you talked about disclosure of the Bechtel report?

A It may well be the January 14, 2016, meeting, but it would be in that time frame.

Q You don't remember anyone coming to you before the Bechtel subpoena and asking about whether the Bechtel report could be disclosed or should be disclosed to any governmental agency or entity?

A I don't remember because it didn't happen.

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Q Okay. And just to be certain, did you have any discussions about disclosure of the Bechtel assessment as opposed to the report?

A No, not except in the context of the litigation with the owner if it came to pass. That was the only disclosure discussions that I had.

Q The discussions we've already talked about?

A Yes, exactly.

Q You weren't involved in any decision about not disclosing the Bechtel report to the Public Service Commission or Office of Regulatory --

A That's correct, I was not involved.

Q Did you ever instruct anybody at SCE&G, SCANA, or Santee Cooper not to disclose the Bechtel report to the Public Service Commission or ORS?

A No.

Q Do you know if anyone ever disclosed the Bechtel report to ORS or the PSC?

A Everything I know about that I learned from the newspapers, and they've had a lot of fun with that issue.

Q Now, I want to ask you: What are all of the drafts and presentations and versions of the Bechtel report that you're familiar with? And not

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testing your memory. Just tell me if you recognize these, and if you don't, stop me.

There was an October 2015 draft report prior to even the presentation.

A I've never seen it.

Q Okay. There was an October 22nd, 2015, presentation to the executives.

A I received that the first week or so of January 2014 -- 2015 -- 2016. Do I hear '17? Yes. So it was -- yeah. I requested that from Martyn Daw and received it in January of 2017.

Q So even though you were on the phone for some period of time of that October 22nd call, you didn't actually receive the October 22nd, 2015, presentation, written presentation, until January of 2016?

A No. I didn't -- I didn't receive it prior to that time, and I didn't see it at the time of the call.

Q Why did you request it in January?

A I was asked to request it by somebody representing the client in anticipation of the meeting of January 14, 2016.

Q And who was that?

A I'm not certain.

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Q Which client?
A I believe it was SCANA.
Q And was there any reason why that you -- it was suggested that you should request it for that meeting?
A I don't recall a reason given. When a client asks me to do something, I do it.
Q Was there another instruction, like to look at a particular part, or anything?
A No. I think they wanted me to have the full picture, but I don't know that. That's what -- that's my surmise.
Q Did you do anything else, other than review it for that meeting, with the October 22nd presentation?
A No. I'm not even sure I reviewed it for that meeting, but I suppose I must have.
Q There is a reference to a November 9th, 2015, draft report. Are you familiar with that one?
A No. I've only seen four versions of the -- of the Bechtel report. One was the November report that includes everything; the second one was my redacted version of that same document; the third and the fourth were the project assessment and schedule assessment of February 2016.

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So those are the only four versions that I've seen of any report from Bechtel, if that helps you.

Q Yes. Those were the next four I was going to ask you about.

A Okay.

Q And also the October 22nd presentation, to the extent that that qualifies.

A As I told you, I have seen that.

Q We've already talked about Santee Cooper pushing for the -- for the hiring of Bechtel. But isn't it also true that Santee Cooper was pushing to get the Bechtel report, get a copy of the Bechtel report?

A Well, you know, throughout this deposition, you've referred to wasn't Santee Cooper doing this or SCANA saying that. And you understand that those are corporate entities, and I didn't think of them as corporate entities. I thought of them as individuals.

And I haven't brought up that point until it mattered, and it matters now, because there were certain people at Santee Cooper that wanted the report, and other people who told me other times that they didn't need it or didn't want it. So I

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was getting conflicting information even from Santee Cooper. So that's my answer to your question.

Q And we know the counsel, general counsel was asking for it. So who was -- who was telling you they didn't need it?

A There was a time that Lonnie Carter gave me very clear direction that they didn't want it. And part of my frustration on that issue at the time was that I was getting mixed signals from one of my clients. I mean, let alone what they saw between themselves -- I mean, what, if any, degree to which they didn't see eye to eye between themselves.

So I was getting mixed signals. And eventually I did what I did. And that's all -- I did it all by e-mail.

Q And you did not give the clients the draft report at all, did you?

A You know, that's what I don't -- I don't remember. I'm deferring to the record, because the record is pretty clear on what I was sending to whom and when. And I didn't write down the chronology. I didn't go back and try to reconstruct it. It's there. And if it's interesting to you, you can reconstruct it.

Q And the conflicting messages you were

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getting from one of your clients, Santee Cooper, from Lonnie Carter and general counsel, did that result in your deciding not to provide them the report?

A No. They eventually got the report, as I remember.

Q The final report?

A Yeah.

Q But there was a substantial amount of communications, including voicemails and e-mails and even offers to come down to your office without taking notes, just to get a look at the report. And that was all refused, wasn't it?

A I wouldn't say it was refused. It just didn't come to pass. There were -- before the first suggestion could be implemented, somebody had some different suggestion. And then that suggestion was superseded by another. And that's kind of the way it went.

The report, separate from the schedule report, contains everything that's in the assessment except for the schedule section. And I believe they did have and eventually did get -- and it's in the e-mails as to when -- the project assessment report of February as opposed to the schedule assessment

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report. They knew they weren't getting the schedule assessment report, and they seemed fine with that. They understood that the schedule assessment was separate.

Q And in November and December and January, you didn't provide Santee Cooper a copy of the draft report. And I was wondering if there was somebody who told you not to provide it to them.

A There were discussions about how to handle that. And those discussions, if they ever -- if at any time Santee Cooper said unquestionably, "I don't care what SCANA says. I want the report," I would have given it to them.

It's my recollection that every time they asked for it, they would then retract that request. That's my recollection.

Q Is that your recollection also when Santee Cooper's general counsel was asking to come down before a meeting in December just to see the report so --

A I was fine with that meeting. As I said, something happened that superseded that proposal. So I was fine with the proposal to have the meeting. The meeting never took place. I think that's clear.

Q And they never saw a copy of the draft

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report?

A I don't believe that I sent them a copy of the draft report.

Q And did it --

A What I had wanted to do was send them the report with my redactions.

Q And did you do that?

A No, because -- because I was dealing with Bechtel at the time, and that didn't lead to a report with my redactions. So I didn't send them something that had my blackouts in it. I didn't see the point of that.

Q Did anyone at SCANA or SCE&G ever ask you not to provide Santee Cooper with a copy of the report?

A I don't recall either client asking me to treat the other client differently or -- but specifically to your question, "Don't provide it, for goodness sakes. Don't provide it. I know they're asking for it, but don't provide it."

No. If they'd asked for it, I'd give it to them.

But I wanted to -- to the extent possible, I wanted to bring the two parties in alignment on what would happen. And when they were disagreeing

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about the best course forward, there was never direction to do something, but they were disagreeing on what the best process was.

But if they said, "Look, I disagree with SCANA. Send it to me," obviously I'd send it to them. They're my client. I'd try to talk them out of it, but I'd send it to them. But it never got to that point. It was always, "Well, all right. I understand what SCANA is saying," or "I understand what Santee Cooper is saying. Let's talk about this some more. Let's see if we can develop something else."

These were partners who had been involved with this job for a long time, and they -- they were trying to work things out so that they could agree on something. And even though SCANA had a 55 percent share, and therefore was the majority, I never saw them pull rank. They wanted to cooperate. They thought they were going to be in bed together for, you know, for another many years and had been for many years. And plus, they'd be operating the plant in the future for many years.

So they were trying to accommodate each other. And when they would have an agreement, I'd give my opinion. I'm not bashful about that.

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You've seen that. But then they would try to work it out. And if they couldn't come to an agreement -- there was never a time when one said, "Well, I don't care what SCANA says. Send it to me," or "I don't care that Santee Cooper is asking for it. I don't want you to send it." That never happened. That's not the nature of these people; not the nature of their relationship.

Q Not as to your clients -- I understand your testimony there -- but you did tell Bechtel not to send them directly to your clients, right?

A Yes, and the client didn't want me to send them directly to them. They wanted me to do what I -- what I intended to do all along, which was review the report. Sending a raw report to the client, that's really not good litigation practice.

Q What about the final report?

A "The final report," meaning the assessment report?

Q Right.

A Right. I think they have that.

Q But didn't you tell Bechtel not to send that directly to Santee Cooper?

A At a time, I didn't want them to send it because there was a confusion about what the parties

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wanted.

You can find an e-mail in which I've given probably four or five different conflicting directions to four or five different people because my clients were giving me four or five different directions. But ultimately what happened, I don't think anybody disagreed with.

Q And as part of that instruction to Bechtel, you told them not to even communicate directly with employees of Santee Cooper, didn't you?

A Well, I told them on the issue of the -- of the report, that they were to communicate with me, that I would advise the clients. And that is indeed a term that they had agreed to in the Professional Services Agreement, that their communications would be with me; but the direction would be with me, as more observed in the breach, though.

Q You know, you've maintained that there's always -- it was always the client who didn't insist or didn't follow through on asking and getting a draft or the final report, but you understand there's -- they were -- after months of asking for it and not getting it, you can understand why they

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were communicating directly with Bechtel, can't you?

A I didn't say object -- that I didn't understand why they were doing it. It's just it was contrary to the lines of the communication that I thought I'd set up. But they did. And ultimately, you know, there's a back and forth where Martyn Daw and Mike Baxley and I are sending e-mails between and among each other. And ultimately we agree that we're going -- that I agreed I was going to copy Mike on the communications with Bechtel.

And then after that, Martyn Daw wrote directly to Mike Baxley and copied me. That's when he told him, "I've now delivered the project assessment report and the separate schedule report."

Q So that final report, you got the two separate reports, and then you sent to the lawyers, the four lawyers you're talking about, the project assessment report?

A Right.

Q And said distribute it as you will?

A Yes, exactly.

Q As you need.

A Yeah. I wanted to limit the -- for all the reasons I've talked about, I wanted to limit the circulation.

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Q And you all had talked about how to distribute that final report, hadn't you?

A I don't know. Maybe.

Q Do you remember coming up with a plan to have numbered copies that were specific to individuals?

A No. I wasn't involved in that. I don't doubt that that was implemented or at least suggested. But I more or less trust adults to be adults, so I wouldn't do something as controlling as that, and I wasn't aware it was done.

Q So after all the effort over those many months to, you know, protect the -- protect the report, once it was final and you sent it to the lawyers for the clients, you didn't really care what they did with it?

A No, I wouldn't say that. I still wanted to limit the circulation. The only use that was made of it after that point, to my knowledge, is that there was an effort to extract from the assessment report certain information that some people, not everybody, some people thought might be beneficial in guiding the owner going forward.

So there was information extracted. And all I said to them is, "You're going to extract the

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information. The primary purpose was in anticipation of litigation. I'd rather you not circulate the report itself, but if you want to extract some of these recommendations in the normal course, that's fine."

I just didn't want the normal course to predominate over the "in anticipation of litigation." But if they wanted to do that, that was fine. I think that's the use they made of it, but that's kind of when it left my control.

Q And isn't it true that's the only use that was made of the Bechtel assessment report?

A Well, it certainly wasn't used in litigation because there was no litigation. So -- well, I don't know if that was the only use.

Q And what happened to the schedule report?

A Nothing much. It resides somewhere electronically in this office. It can be printed out. I gather you have a copy. What do you mean, "What happened to it?" Nothing happened to it.

Q I guess, when were you asked for it?

A I don't know that I was ever asked for it.

Q How did it get out of this office, I guess, is my question.

A You know, it may have been in connection

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with the Bechtel business. That is, I'm not sure that my -- that my electronic copy did. It may have been produced in response to the subpoena to Bechtel. I'm not sure. I don't recall sending the schedule report to the client, and I haven't seen a record of that.

Q Did any of -- anybody from either of your clients ever ask for the schedule assessment report?

A I don't believe so. As I said, I saw the e-mail that reminded me that Martyn Daw advised Mike Baxley that the two reports were sent, a project assessment report and a schedule report. I don't recall anybody ever asking that I produce to the client the schedule report.

Q And you talked about that there might be recommendations or something from the report that could be pulled out and used.

Do you know about the, what's called the CORB or the Construction Oversight Review Board?

A An entity like that sounds vaguely familiar, but I wasn't involved in setting it up or staffing it or advising them.

Q Okay. And you mentioned a minute ago about what was taken out of the draft report.

Was there anything other removed, other

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than schedule information, in your edits?

A In my initial edits or in the ultimate?

Q Let's start with the initial edits.

A Because there was only one edit.

Q Okay. That was going to be the follow-up.

A Yeah, there was one edit. And in my initial edits, yes, I addressed schedule and I addressed comments critical of the owner, the sort of things I wouldn't want to be read in open court in the Southern District of New York.

There were a lot of other edits. You have the document. You can do a comparison. There were a lot of things that were -- that I asked to be deleted from the report.

Q And all of those changes were just deletions. You didn't rewrite, reword?

A I didn't -- I didn't change a word or propose to change a word.

Q Is it your memory that there's anything about scheduling you didn't remove?

A Yes, there is a brief discussion of schedule in the -- in the document, as I remember it, in the what's called the Project Assessment Report of February 2016.

Q There was a wording change that I wanted

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to ask you about in the November 12th draft report. It said that an assessment of the project schedule was also performed.

And instead of that being removed, it was actually changed to read in the final report, "A specific assessment of the project schedule is not included in this report."

A Yeah. Everything that was done in order to extract the schedule information was done by Bechtel without my input. And any changes to wording that you just -- I had no involvement with and, frankly, I wasn't aware of it. But it makes sense that you modify certain things, but...

Q So you would have removed that statement in your edits. And the fact that they left a modified version in the final report was their work?

A Yeah. The process was I sent them my redacted version, which you've seen, and then discussed with Martyn Daw separating the schedule. And then I had no role in the next step until I received the two reports.

Q One of the changes that occurred was this reference to this November 9th, 2015, Bechtel report issued to SCH. And that's the initials for your law firm.

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A Yeah.
Q I'm wondering if you know whether there was ever a November 9th report or --
A I've only seen one draft report. And I don't -- I know it's November, November 8th. What is the date of the draft report that you have?
Q The one that you actually received was November the 12th.
A Okay.
Q And -- but that draft actually referenced a November -- November 9th version.
A Okay. Does that -- does that draft that you have in front of you reference the November 12th version? I'm asking because I wonder if they have a November 9th version they sent me on the 12th.
Q No.
A Do they refer to two separate?
Q They refer to two separately, yeah.
A Okay.
Q In the final report, the November 9th date is changed to November 12th. And then they add the fact that the February 5th final report was issued at SCH, as well.
A Okay. So the final report doesn't reference a November 9th.

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Q It does not.

A I don't think there was one. They probably just caught an error, but it wasn't -- I didn't catch the error. I didn't instruct them to make the change.

Q I was just curious.

One of the changes, one of the rewordings in the conclusion deals with the schedule, and I wanted to ask you about that.

What was removed in the final report, which had been in the November 12th report, is Bechtel's assessment, based on certain assumptions of Units 2 and 3 commercial operation dates, indicate new COD Unit 2, December 2020 to August 2021, and Unit 3, 2022 to 2023.

That was removed. So those were specific dates --

A Right.

Q -- that were removed. And what was added back in is: "While the consortium's engineering, procurement and construction plans are integrated, the plans and schedules are not reflective of actual project circumstances."

A Right. When you extract every reference or all the most significant references to schedule,

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there is a certain amount of stitching up you have to do. But all of that was done by Bechtel, not at my request or direction.

Q And did you see that before it became final?

A No. No. The -- what I got is -- what I got from Bechtel, after we talked about splitting it, is the form that it existed, and I never saw it before I actually received it.

Q But you assumed that when you received the final report, that it had removed those sections that you wanted to be removed from the November 11th --

A No, I didn't remove all of them. It only removed the schedule section.

Q The schedule section.

A There were other sections that I wanted them to remove that they wouldn't remove.

And I also asked them to add what Martyn Daw -- he's a Brit -- he said a health warning. I don't know if that's some term --

Q Yeah. What is that?

A That means this is preliminary, you know, it's under -- things to make it clear that you really shouldn't rely on this report.

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And he called it a health warning, you know, don't operate heavy machinery while reading this report, that sort of thing.

He was fine with that because it was so obviously preliminary, and Bechtel had said that on October 22nd when they gave their presentation. But I asked him what -- "Gosh, I don't see that."

And he said, "Well, since we did the separation we talked about, we didn't think the health warning was necessary, but it does say in the report that it's preliminary, and so forth. So, you know, you should be satisfied with that."

And I wasn't going to go back to the well.

Q And on October 22nd, it was a preliminary presentation of their assessment well, you know, before any kind of report was even drafted, for that matter.

A I think that's a mischaracterization. They never did any more analysis than they did as of October 22nd. All they did was write it up.

Q And so you asked for this health warning, and they didn't actually put it in?

A They put in some modified version that wasn't what I thought we had agreed to, but it was something.

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Q There was a removal I wanted to ask you about from the draft report to the final that said: "It is our confident opinion that the costs will indeed continue to increase to and very likely beyond the level of the fixed price option."

Is that something that you remember removing?

A No, I don't. In fact, when they -- I don't know that they had information about the fixed price option when they initially made their presentation or in their draft, so I'm not sure where that comes from.

Q Was there a level of a fixed price option in the EPC prior to the 2015 amendment?

A No.

Q But remember, at the time of the final report, the 2015 EPC amendment was not only finalized and executed, but had been fully approved and was in operation, right?

A The -- the amendment was approved. I don't think the fixed price option had been exercised.

Q Right.

A And if we didn't -- frankly, if we didn't think the costs were going to exceed the fixed price

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amount, that would mean that we thought we could save money if we stuck with the old buckets. And we didn't think that, although there was -- people were running different scenarios.

My judgment at the time was that the owner would save money by doing that. And what you're reading there is consistent with that.

Q Which made the answers that you gave about Steve Byrne earlier so surprising. I mean, I didn't know that anybody on the owner's side had any inclination.

A Well, what I'm repeating to you is the conversation about the negotiation with Westinghouse. They weren't privy to our numbers. We were running our own scenarios.

So they were -- so Westinghouse felt it could complete profitably because it was -- I think it was, honestly, $500 million above their cost projection.

And Steve at the time said, "Fine." And it wasn't until later -- that conversation, I believe, occurred in July. And we were running our alternate scenarios in -- in October and November -- I'm sorry -- September and October of 2015.

And I was very much attuned to that

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because I was being looked to to explain the fixed price option, whether it was a good idea. And so I wanted to get -- understand what -- if this, then that, if this, then that, if this, then that, sort of thing. And that's a complicated effort involving multiple disciplines and the rest, but that's what we did.

Q And to put it in context, that was Steve Byrne's negotiating position with Westinghouse, not an actual internally held belief that --

A I don't know what Steve believed at the time when he was negotiating. I'm not sure that he -- but sequentially he would not have been privy to the -- to the -- these alternate scenarios because, at least to my knowledge, they weren't run until later.

MR. M. RICHARDSON: I want to mark two exhibits.

- - -

(E-mail correspondence dated 12/22/15, BPC_VCS_00000428-429, marked Wenick Exhibit Number 5 for identification.)

- - -

(E-mail correspondence dated

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12/22/15, BPC_VCS_00008248, marked Wenick Exhibit Number 6 for identification.)

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MR. M. RICHARDSON: Pass these to the witness. These are copies for the three of you all (handing).

MR. BALSER: Thank you. Here you go, George (handing).

BY MR. M. RICHARDSON:

Q I'm handing you what's been marked Wenick Exhibit 5 (handing). It's an e-mail on December 22nd, 2015, from Martyn Daw to you, copying some other folks.

A This is the e-mail exchange that I referred to earlier.

Q Right. And if you'll notice on the back is page 2, which is the attachment, a PDF, that includes Bechtel's balance invoice for the report.

A Okay.

MR. BALSER: This is 5?

MR. M. RICHARDSON: 5 is the one at 7:38. 6 is the one at 7:45.

BY MR. M. RICHARDSON:

Q And if you'll look at Exhibit 6, which responds to Mr. Daw, your response to Mr. Daw --

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A Daw.

Q Daw. Thank you -- essentially you're surprised, right, that he's considering it final and complete at this point?

A Well, I don't know if "surprised" is the right characterization. I wrote what I wrote. It was contrary to my understanding. And I think that -- well, I don't know. I don't know the sequence of events here.

I wrote my e-mail response at 7:45 p.m. I'm not always at the office at that time. I may have -- but it was the same day. I suspect that I reached out. So it wasn't a surprise one way or the other.

He says, "That's okay. I want to confirm it with my client because I'm not going to take Bechtel's word for it."

So I reached out to the client and -- although I said I spoke to him this week instead of just now. So I don't know. I'm not sure that "surprised" is the right word, but it was contrary to what my direction was from the client as of December 22nd, which was they wanted the -- that I was to request a copy of the PowerPoint. So I alluded to that earlier.

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And also advised that: "We will eventually want a final copy, but hold off on providing it." So that, you know, speaks for itself.

Q And we had talked about your being asked to request a copy of the presentation. And that's referred to in this e-mail, as well.

Does that refresh your memory that maybe you've been asked earlier?

A Well, I said the first week of January. It seems to me that I did ask again, maybe, so it -- it suggests to me that maybe I had to ask twice.

Q And you also -- you're very careful in this e-mail. There's a lot of "I's" in it, except one place. In the last sentence, you're telling them: "I was -- I was told to tell and advise you. I was told to advise you, Bechtel, that we will eventually want a final copy of the report."

A Yes. My client -- I was -- you're right, I was careful with my pronouns. The "we" embraced the clients.

I spoke -- I asked the question: "I spoke to the CEO. I have a different understanding. I was directed. I was also told that we will eventually," meaning the client. So you're right.

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The pronoun change was intentional.

Q And the "we" referred just to the clients?

A Yeah.

Q Okay.

A Who else? Sorry.

Q That's why I'm asking.

MR. M. RICHARDSON: Let's mark this Exhibit 7.

- - -

(E-mail correspondence dated 11/10/14, SCANA_RP0850425, marked Wenick Exhibit Number 7 for identification.)

- - -

BY MR. M. RICHARDSON:

Q Excuse me. I found the other exhibit we were missing. Just remove that from the back of it.

MR. BALSER: Exhibit 4 is removed. So Exhibit --

THE WITNESS: Exhibit 7?

MR. BALSER: Exhibit 7 is going to be a one-page exhibit?

MR. M. RICHARDSON: That's right.

MR. BALSER: Okay.

THE WITNESS: Yeah, because we looked at the other page previously.

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BY MR. M. RICHARDSON:

Q You know, we had talked about this time frame. And although you're not copied on this, these e-mails, you're starring in them.

Do you remember or did you work and talk with Carlette Walker --

A I don't --

Q -- regularly?

A I don't see any mention of me in this e-mail.

Q The very first line.

A Can you point me to it?

Q If you read the very first line of text in the first e-mail, Carlette Walker is telling Jimmy Addison that "I also had the benefit of talking with George Wenick."

A Oh, okay. I'm sorry.

Yeah. Carlette was a financial type and was providing information to me, I believe, related to some of the projections.

Oh, I'm sorry. I need to reset the clock. We're in 2014.

Q That's right. This goes back into November --

A Yeah.

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Q -- 2014.
A Yeah. Well, but what I said about Carlette Walker still goes. She was one of the people I looked to for financial data.
And I see there's a reference to the EAC in the initial e-mail down at the bottom of the page.
But what's your question?
Q If you follow from the bottom, you can see that this is part of the discussion of the rebaselining of the schedule, and then the EAC that came from Westinghouse. Can you tell that? And if you look at the very --
A I don't see any reference to schedule in the first e-mail. Can you point me to the reference to the schedule that you're talking about?
Q On the very bottom, do you know who Dukes Scott is?
A I don't.
Q Okay. You see in the second line of the very bottom e-mail, it talks about updates on the EAC and the delay negotiations?
A Yeah, I do see that.
Q Okay.
A But that's -- that's -- I'm not sure that

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you'd want to conflate that with the rebaseline. I think -- I think this -- well, okay.

I see what you're interpreting as related to the rebaselining. I'm not sure that it does. The rebaselining was an internal exercise by the contractor. It was not something that was subject to negotiations. So that's why I don't read this -- that sentence the way you do.

Q No problem. But it informed the EAC that was provided by the consortium in August of 2014, didn't it?

A Wait. It informed?

Q Yeah. I mean, delay means cost. We talked about that, on a construction project.

A Well, there seem to be two different things going on here. One is the EAC. Those are the updates. And then the separate thing is the delayed -- delayed negotiations. I think at this time that the -- the negotiations in question may relate to some sort of time extension that they thought -- that the contractor thought they were entitled to, but I'm not quite certain.

Q You don't -- you don't know what they're talking about?

A No, but I know what delay in negotiations

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are. So I feel confident in saying that they're not talking about the rebaseline. Precisely what they are talking about, I can't help you.

Q But they're talking about the construction schedule delay, aren't they?

A They're talking about negotiations with the contractor related to a delay. Now, whether that's acceleration dollars or whether that's delayed completion and delayed claim dollars, I don't know. Contractors like to get acceleration dollars. So I don't know what the negotiations are. And I'm reluctant to speculate, and I think I've given you some examples of why speculation could lead you astray.

Q And you see that what's essentially the middle e-mail from Kevin Marsh to Jimmy Addison copying Carlette Walker? It's talking about a message to ORS.

A Yeah, I see that.

Q Okay. And it also talks about -- the last line is that: "We should not get into any details of the discussions to date."

A Well, I think what Kevin Marsh is saying there is that there will be more discussions to come, and he can't predict the outcome. That seems

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to be his basis for saying they didn't want to get into the details of the discussion.

But, again, I don't have any knowledge to bring to bear to give you an interpretation of this language.

Q Uh-huh. Well, and the question really is about the first one, which is: What were you talking with Carlette Walker about in the context of these negotiations?

A I don't know. Who redacted it for privilege?

MR. BALSER: We did.

THE WITNESS: Okay. So apparently someone is asserting a privilege with what I talked to Carlette about, and I'm going to defer to that exercise of the privilege.

BY MR. M. RICHARDSON:

Q Well, I don't --

A But I don't recall it anyhow, so we don't even get there.

Q Do you know who Kenny is that they're referring to in the middle e-mail, "I talked with Kenny this morning"?

A I don't.

Q You got that big exhibit there? I think

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it might be 3.

A I do, yes.

Q There's an Exhibit 5 we may have talked about. You see that's a --

A I have it. Just hold on a second.

Q I'm sorry.

A Okay. I have Exhibit 5 in front of me.

Q You see these are notes from a phone call with you?

A Yes.

Q Do you remember that?

A I remember that there were notice of claims that Westinghouse filed. Based on the date, I could probably find the Westinghouse notice and give you an answer, but based on this, I can't.

It was clearly a payment dispute. The fact that it's a round number suggests it was one of the milestone payments in the original contract, but that's about all I can tell you.

Q I want to -- I want to ask you about this second entry. It's got "Kenny, question mark" beside it.

A Yeah, I don't know if that has anything to do with the phone call with me.

"We revised schedule with PSC without" --

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I have no idea what that means, and I wasn't involved in revising schedules with the PSC or talking to -- who was I talking to anyhow? Do we know?

Q Kevin Marsh.

A It was Kevin Marsh. Okay. And Kevin said these are his notes?

Q Well, SCE&G has.

A Okay.

Q I think we can take their word for it.

A Okay. Then I will accept your representation.

Q Or theirs.

A No. I'll accept your representation that they had said that.

Q Okay.

A And then, yes, I will accept their representation. So I'm accepting two representations.

"Can we revise schedule with PSC without commitment?" I have no idea what that means. I know who PSC is, but revising the schedule without commitment to costs, I'm not sure what that means.

Q Do you remember having a conversation with Kevin Marsh about the claim and talking about PSC

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revisions?

A I don't -- no. Those -- I feel fairly confident that those two entries are unrelated; that the claim here is a milestone payment claim that we denied because, I believe -- as I said, the $70 million, the round number gives it away. I believe that that was a dispute that we had, that we didn't want to make a milestone payment because they -- the schedule had been adjusted twice since the original contract, and if we paid them according to the existing payment schedules, we would pay them 100 percent of these milestones before they were finished.

And I think you're familiar with that issue. And I suspect that's what it has to do with.

Q So could the schedule actually refer to the payment schedule as opposed to the construction schedule?

A I don't -- I don't know -- I don't know why Kevin is -- Kevin Marsh is linking a revision to the schedule with commitment to cost. The only relationship that I'm aware of related to these milestone payments and the issue of whether the schedule for payments should be changed because of the time extensions that had been granted.

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So I can't -- I can't help you with that. It looks like he's repeating this issue about looking for experts, forensic accounting, civil engineering, scheduling, which was about the date of the meeting that you showed me before.

Q Right. And so does that refresh your recollection at all about the --

A No. It looks like I told him that on the 17th. And then on the 19th, two days later, we had a meeting when I told him that. It says "meeting Monday," which would mean the 17th would be a Saturday. And I don't recall ever talking to Kevin Marsh on a Saturday, but maybe then.

Q All right. I think we might have talked about this, but were you aware that Bechtel had already executed a proprietary data agreement with SCE&G before your involvement with the Bechtel assignment?

A You did already ask me that. I didn't know that they -- when I received Al Bynum's e-mail in May of 2015, I did not know that Bechtel had already signed the NDA that anybody who has anything to do with the project has to sign. I later learned that they had signed it, but that wasn't really what -- that wasn't enough for the contractor, for

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the consortium.

Q But you didn't even -- you didn't even know that after you got involved.

A No, I eventually did. There's some reference to that, some passing reference, but that -- in my view, that's a relatively low-level agreement. It's the minimum that anybody involved with the project has to sign under the terms of the construction contract, under the terms of the EPC contract.

I don't think that Santee Cooper could have even met with Bechtel until they had signed that.

Q SCE&G?

A Well, I'm saying -- you told me Santee Cooper met with them before May. I'm saying that as I think about the way in which that NDA was supposed to function, I don't see how they could have even had a preliminary meeting with Bechtel without getting Bechtel's signature on that NDA, because they would have wanted to talk about the project in a way that would have violated the EPC agreement if they -- unless the third party, Bechtel, had signed an NDA.

So even at the interview stage, they'd

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want an NDA.

Q And do you know -- did you know that they had a July 8th, 2015, kickoff meeting with SCE&G and Santee and Bechtel, and were set to go with the third-party assessment, and just waiting on the agreement to be signed?

A I didn't remember that, but I've seen that I was told that in an e-mail. So I knew of it at the time or shortly thereafter.

Q And also that it was -- at that time it had been agreed that it would be between the owners and Bechtel?

A That what would be between the owners?

Q The agreement.

A I don't remember that, and obviously it didn't pan out that way. So once again, people made a decision and then reversed themselves.

Q Well, and they all --

MR. M. RICHARDSON: Let's go ahead and make this an exhibit, then.

- - -

(E-mail correspondence dated 12/22/15, SCANA_RP0792232-792237, marked Wenick Exhibit Number 8 for identification.)

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MR. M. RICHARDSON: Can you tell me what the last one is on your desk?

THE WITNESS: The last one I have is 7.

MR. M. RICHARDSON: We'll make it 8 then.

MR. BALSER: It's getting late. Where are you? We said 5:00.

MR. M. RICHARDSON: Right. We're not going to finish, that's all. In fact, I know Jay Ward has already had to leave to catch his flight. So you tell me how long you want to go or can go.

MR. BALSER: I'd say, if you're not going to finish, we ought to let the witness have a -- you know, end the day when he's ready.

THE WITNESS: Okay. I'm ready.

MR. M. RICHARDSON: Could I make a request that -- that we do one more -- just one more thing. We won't go to this exhibit, but I do need to deal with this one other thing. I just want to confirm with him about the -- about the production.

MR. BALSER: And I'm going to have one follow-up question I'm going to need to ask.

MR. M. RICHARDSON: No problem.

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Where is the folder for this? I'm going to need to have that back. It might be in this one right here (indicating). See if you can find it.

It is Exhibit 8, but we're going to pick that up.

BY MR. M. RICHARDSON:

Q Mr. Wenick, last question for the day.

We talked about and received from you the thumb drive. And confirm for me that we have given you back all of your paper copies that you had today.

A Yes, it appears so. Yes.

Q And that you have -- you collected and provided all documents subject to -- that were responsive to the subpoena request?

A I believe that I have, yes.

Q And you provided --

A Except for those to which people asserted privilege.

Q Right. But you didn't do that. You collected all of them --

A Right.

Q -- and gave a complete set to both clients?

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A Right. But I did not give a complete set to you because of the privilege asserted.

Q And so they came back to you and said, "These are the ones we want you to withhold"?

A Yes.

Q And I believe that Mr. Smith has indicated he has the privilege log and will provide it to us?

MR. SMITH: I e-mailed it to you earlier, you and Jay.

MR. M. RICHARDSON: Today?

MR. SMITH: Yeah.

MR. M. RICHARDSON: And that privilege log covers both clients?

THE WITNESS: No.

MR. BALSER: We have -- we have a separate privilege log we e-mailed to you, as well, and we have a hard copy for you, as well.

MR. M. RICHARDSON: Okay. Good.

BY MR. M. RICHARDSON:

Q And then when -- so when you got it back from the two different owners, you did two things. One, you removed all of the documents that each owner indicated was privileged, and you also redacted certain documents at their direction?

A No, I didn't do any redactions. I

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substituted PDFs of the MSG files that contained the redactions for the MSG files.

Q So you actually received the redacted version back from the clients?

A I did.

Q Okay. And then from that, you produced all the non-privileged and the redacted documents on the thumb drive that you gave us today?

A I did, yes.

Q And you left the privilege log to the two --

A They told me they would take care of it, and I think they have.

MR. M. RICHARDSON: That's all I had to put on the record about that.

MR. BALSER: Okay. I'm just going to ask a few quick follow-up questions, and then we'll call it a day.

- - -

EXAMINATION

- - -

BY MR. BALSER:

Q Mr. Wenick, very early in the day, you mentioned a phone call, I believe, that you received from Wallace Lightsey --

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A Yes.
Q -- in which you were informed that your clients had waived the privilege. Did I hear you correctly?
A Yes.
Q When did you receive that phone call from Mr. Lightsey?
A Well, the best way for me to answer that is to look at the Notice of Deposition. So it would have been between the time that I received that notice and today. The notice is dated September 17, 2018. So it would have been within the last, roughly, two weeks.
Q And tell me what you recall about that telephone conversation.
A Mr. Lightsey asserted to me that -- that both SCANA and Santee Cooper had waived the privilege as to anything related to the Bechtel report. And to back up his position, he sent me certain documents that he's intended documented that waiver by SCANA. And he said, "If you need anything from Santee Cooper, please tell me."
Well, of course I didn't rely on Mr. Lightsey, so I did my own investigation after that.

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Q Okay. Did he ask you anything substantively about your work on the matter?

A No, he did not.

Q What was the purpose of the call, as you understood it?

A He -- he called because he wanted -- actually, it was before I received the notice, because he called and he wanted to coordinate schedule. And really that was -- that was all it was. And so it would have preceded the September 17 notice, now that I think of it.

Q Did you have an understanding as to who Mr. Lightsey represented?

A He told me.

Q And who did he tell you he represented?

A The Office of Regulatory Staff.

Q Throughout the day today, you've been asked repeatedly questions about discoverability or disclosure of the Bechtel report. And you've been fairly religious in making clear that your concern about disclosure and discoverability related only to disclosure and discoverability of the Bechtel report by Westinghouse in potential litigation between the owners and the consortium; is that correct?

A I hope -- I hope that I've made that

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clear, because that is my view.

Q And just so the record is crystal clear on the point, you at no time during your representation of SCE&G or Santee Cooper in this matter were concerned about or considered whether the Bechtel report could be disclosed or discoverable to the Public Service Commission of South Carolina, correct?

A Correct. That was never my concern, and that concern was never expressed by my clients in my presence.

Q And you were never concerned or thought about or analyzed disclosure and discoverability of the Bechtel report to the Office of Regulatory Staff?

A Correct.

Q And at the time that you were asked by the client to -- clients to engage Bechtel as a consulting expert for you, that was well before the October amendment to the EPC, correct?

A Yes. I think -- I think I dated it with some precision by reference to the e-mail that was -- that e-mail was in May of 2015.

Q And at that time, the prospect -- that is, as of May 2015, the prospect of litigation between

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the owners and the consortium was very real, was it not?

A It was very real. They had already initiated litigation on the Vogtle project. They were not shy about going to court. I know their lawyers. I know they're aggressive and they're, again, not shy about going to court. And we had substantial disputes of hundreds of millions of dollars between the parties. And litigation seemed imminent. And shortly after May, litigation was expressly threatened.

Q By the consortium?

A By the consortium against the owners.

Q And once -- now fast forward to February 2016. We have the EPC amendment which released all of those claims that were very real at the time that the Bechtel engagement occurred.

And you've testified about the fact that there was still the prospect down the road of potential litigation between the consortium and the owners over potential liquidated damages in the future.

A My -- every instinct that I could bring to bear, based upon my training and experience, told me that this contractor was going to pursue claims, and

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that they could well be substantial liquidated damages issued or litigated at the end of the project.

And I say "at the end of the project" because the DRB would resolve -- would address claims and suspend some during the project.

But I anticipated that, frankly, that that would be my last case in my professional career, and that it was likely to happen.

Q And in February of 2016, you were concerned that a half-baked, methodologically unsound report that wasn't protected by the privilege could eventually be used against the owners in litigation with the consortium if it were not properly protected under the attorney-client privilege; is that correct?

A Yes. And then those -- you are repeating to me words that I've used to characterize the Bechtel report, half-baked, based upon an unsound methodology. And, of course, there were other ways in which I explained my concern about that report and how it could be misused to the owners' detriment in litigation with the contractor.

MR. BALSER: That's all I have. Thanks.

MR. M. RICHARDSON: Anybody else need to

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put something on the record today?

All right. We'll reconvene as soon as we can get it scheduled.

THE VIDEOGRAPHER: All right. The time is approximately 5:43. This will suspend today's deposition of George Wenick. We are off the record.

- - -

(Deposition was adjourned at 5:43 p.m.)

- - -

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SIGNATURE OF DEPONENT

I, the undersigned, GEORGE WENICK, do hereby certify that I have read the foregoing deposition transcript and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

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DATE GEORGE WENICK

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DISCLOSURE STATEMENT

STATE OF GEORGIA:

COUNTY OF FULTON:

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28(c).

I am an independent contractor acting on behalf of EveryWord, Inc. My office was contacted by Mr. Richardson to provide court reporting services for this proceeding.

EveryWord, Inc. will not be taking this proceeding under any contract that is prohibited by Georgia law.

This the 2nd day of October 2018.

Cynthia First

CYNTHIA FIRST, Certified Court Reporter Georgia Cert. No. 2721
Registered Professional Reporter
Certified Realtime Reporter

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CERTIFICATE OF REPORTER

I, Cynthia First, Registered Professional Reporter, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Cynthia First

CYNTHIA FIRST
Certified Court Reporter
Georgia Cert. No. 2721
Registered Professional Reporter
Certified Realtime Reporter

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