

A P P E A R A N C E S

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Lynda Jones
Tamara Cole
Charlene MacMillan-Davis
Guillemette Regan
Susan Sanchez

Videographer: Eric Jensen, Royal Video

Court Reporter: MARCELLA WING MADDEX, CCR, RPR
CCR # 2445

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P R O C E E D I N G S

(Start Video Disk No. 1)

VIDEOGRAPHER: We are on the record. Today is February 24, 2016. The time is now 9:46 a.m. This is Volume I, Tape 1, in the deposition of Ray Hoffman.

This is in the Superior Court of Washington in the matter of Maria Luisa Johnson, et al, plaintiff, versus Seattle Public Utilities, et al, defendant.

We are at Hotel 1000 at 1000 First Avenue, in the Parlor Room, Seattle, Washington. My name is Eric Jensen. I'm the owner of Royal Video Productions of Issaquah, Washington.

At this time I'd like to ask counsel to identify themselves. Please state your name, firm you're working for, and who you are representing in this matter.

MR. SHERIDAN: This is Jack Sheridan from the Sheridan Law Firm representing the seven plaintiffs in this case.

MS. MOORE: This is Portia Moore from the law firm of Davis Wright Tremaine. I represent the defendant Seattle Public Utilities and defendants Ray Hoffman, Susan Sanchez, and Guillemette Regan.

MS. WEINSTEIN: And my name is Elizabeth weinstein from the law firm Yarmuth wilson. I represent defendant Debra Russell.

1 VIDEOGRAPHER: Thank you, counsel. Today's court
2 reporter is Marcella Maddex of Marlis DeJongh and
3 Associates.

4 would she please swear Mr. Hoffman.

5 (Witness Raymond F. Hoffman sworn in by Certified
6 Court reporter.)

7 VIDEOGRAPHER: You may proceed.

8 MR. SHERIDAN: All right. Thanks.

9 * * * *

10 RAYMOND F. HOFFMAN, Sworn by the Certified Court
11 Reporter, testified:

12

13 EXAMINATION

14 BY MR. SHERIDAN:

15 Q Please state your full name for the record.

16 A Raymond Francis Hoffman.

17 Q What's your address, Mr. Hoffman?

18 A [REDACTED].

19 Q And with whom are you employed?

20 A With the City of Seattle, Seattle Public
21 Utilities.

22 Q And when did you first join the City of Seattle?

23 A In 1990.

24 Q In what capacity?

25 A At that time I was a recycling planner for the

1 solid waste department.

2 Q was that always called SPU?

3 A No.

4 Q what was -- so that was the solid waste department
5 back then?

6 A Yes.

7 Q All right. When did the phrase SPU or Seattle
8 Public Utilities come into vogue?

9 A Seattle Public Utilities was created, I believe
10 the year is 1997. It was a merger of various city
11 departments.

12 Q All right. What's your educational background?

13 A I have a bachelors and masters in accounting from
14 the University of Illinois, and I have a doctorate in
15 business government and society from the University of
16 Washington in Seattle.

17 Q What year did you get the U.W. degree?

18 A It's '84 or '85. 1984 or 1985.

19 Q I presented you with a book that has a -- that's
20 marked from -- in the -- on the first page on the bottom
21 Hoffman 1 and it goes all the way up to 247.

22 At this point I'm going to have the court reporter
23 just mark that book as Exhibit 1.

24 (Exhibit No. 1 was marked.)

25 Q And this book contains several different separate

1 exhibits that we've really just combined for ease of
2 chatting with you today, okay?

3 A Okay.

4 Q And the way that I'll do it is I will point you to
5 a certain page and then we'll give you a chance to look at
6 what's on those -- the related pages, and then we'll talk
7 about them, all right?

8 A Okay.

9 Q Our goal is always to first make sure you've seen
10 them before, and then I will explore how much knowledge you
11 have about each of the pages. If you don't recognize some
12 pages or some documents, just let me know, okay, and we'll
13 move onto the next thing.

14 All right. The other thing I just want to let you
15 know is -- is because there's two things happening today.
16 We have a court reporter who is typing everything down just
17 as though we were in a courtroom. We also have a
18 videographer who is capturing your image for the duration of
19 today. But what's real important, even though the
20 videographer gets your head shaking, the court reporter
21 can't. So you have --

22 A So I have to --

23 Q -- to say yes.

24 A -- "yes" or "no".

25 Q All right.

1 A Speak.

2 Q So I would appreciate that if you would.

3 A Okay.

4 Q And -- so if it's okay with you, we'll get going.

5 A Yes.

6 Q All right. Okay. So I'd like you to look at
7 Hoffman page 1, and tell me if you recognize this Seattle
8 Times article from April 15, 2011?

9 A Okay. I'm going to read it here.

10 Q Yeah, go ahead.

11 A Yes, I recognize this.

12 Q All right. And it appears to be an article from
13 the Seattle Times entitled Seattle Public Utilities
14 employees fired after lowering their own bills. Do you see
15 that?

16 A I see that title.

17 Q All right. And it appears to quote you in the
18 article, would you agree with that?

19 MS. MOORE: Document speaks for itself.

20 A Yes. I say, we take the public's trust seriously
21 and expect our employees to follow the city's ethics code.

22 Q All right. And did you actually say that to a
23 reporter or is that just from a press release?

24 MS. MOORE: Calls for speculation.

25 A I don't recall.

1 Q Is it fair to say that when you communicate to the
2 media you sometimes do it live, meaning that you actually
3 talk to a reporter, and sometimes you basically issue a
4 press release, which is a document, either paper or
5 electronic, and -- and you put -- you make a statement and
6 put quotations around it?

7 A Yes, both of those occur.

8 Q And it's also fair to say that with the passage of
9 time you don't remember which version of the communication
10 was made in this particular article?

11 MS. MOORE: Assumes facts not in evidence. Calls
12 for speculation. Go ahead.

13 A I don't recall whether I talked to a reporter
14 directly on this or it was part of the press release.

15 Q All right. Let's take a look at the paragraph
16 that begins -- about the third paragraph down that begins,
17 Ray Hoffman. And it says, Ray Hoffman, director of the city
18 utility, said, an investigation is continuing. He said the
19 actions of the two workers violate the city ethics code
20 which prohibits city workers from using their official
21 positions for personal gain.

22 whether or not you released it as a press release
23 or talked to a reporter, would you agree with me that that's
24 an accurate statement?

25 A Is what an accurate statement?

1 Q The statement I just read that's attributed to
2 you?

3 MS. MOORE: Document speaks for itself.

4 MS. WEINSTEIN: Same objection.

5 A What the city's ethics code says, basically, is
6 there is a clause in the city's Code of Ethics that says,
7 covered individuals, which is employees, are not supposed to
8 use their position for what would appear to a reasonable
9 person to be personal benefit as opposed to the city's
10 benefit.

11 MR. SHERIDAN: All right. With respect, move --
12 move to strike.

13 Q I'm simply just asking you to tell me in yes or no
14 if the statement I just read to you is accurate, not -- I
15 don't need any background, okay. So this is the statement.
16 It says, Ray Hoffman, director of the City of Seattle,
17 said -- now this is the part that I want you to verify that
18 it was a true statement on April 15, 2011 -- an
19 investigation is continuing. Is that a true -- was that a
20 true statement on April 15, 2011?

21 MS. MOORE: Vague and ambiguous, the document
22 speaks for itself.

23 MS. WEINSTEIN: Objection.

24 A As I recall, I would -- I'd have to look back at
25 the chronology in terms of when the investigation

1 originated. And I believe it originated earlier than this,
2 but without checking the chronology I can't confirm.

3 Q And can you give us a little information about
4 which investigation that was?

5 A This investigation. After the utility discovered
6 two employees who had done transactions on their own
7 accounts --

8 Q Okay.

9 A -- we decided to conduct an investigation of
10 everyone in the department who had access, read/write access
11 to the billing system.

12 Q And you just said, after two employees were
13 discovered having made changes to their account. Who were
14 those two employees?

15 A Again, without referencing, I would assume, but I
16 would have to confirm, that these two would be Sharon Howard
17 and Joe Phan.

18 Q Is Phan, P-H-A-N?

19 A Yes, it is.

20 Q And then, who conducted that particular
21 investigation?

22 A I believe, but I cannot confirm, that it was
23 Guillemette Regan.

24 Q Okay.

25 A I'd have to check back in.

1 Q Okay.

2 A So I'm not -- I'm not absolutely certain of that.

3 Q All right. So Joe Phan, at the time that you
4 conducted this -- strike that.

5 At the time this investigation was conducted was
6 he an employee of the city?

7 MS. MOORE: Vague and ambiguous as to time.

8 A I -- Joe Phan, because of his transactions, was
9 recommended for discipline, so he came before me in a
10 Loudermill. My decision was to terminate his employment in
11 the city. But without looking, again, at the chronology, I
12 can't tell you what date that was effective.

13 Q Can you tell me if it was before or after this
14 news article?

15 A Not without looking at the chronology.

16 Q Fair enough. Okay. And at the time that you
17 terminated Mr. Phan, what did you believe he had done wrong?

18 A Joe had used his access to the billing system to
19 alter his own account and the payments that were due to the
20 utility, and as I remember in a substantial dollar number.
21 But without, again, looking at the facts of the case, I
22 couldn't tell you the exact numbers.

23 Q All right. At the time that you -- can I say you
24 terminated him? Did you have termination authority?

25 A When it comes to discipline that involves

1 suspension without pay, demotion, or termination of an
2 employee in Seattle Public Utilities, that's my decision.

3 Q And so you decided to terminate him?

4 A Yes, I did.

5 Q All right. And at the time you decided to
6 terminate him, did you know that he had embezzled something
7 near a million bucks?

8 A No, sir.

9 Q Was that found out like a year later?

10 A I can't tell you the exact time, but it was found
11 out after, well after -- but I don't know the exact time --
12 after Mr. Phan was terminated for the incidents that we have
13 been talking about.

14 Q So this news article is really about your
15 termination of him for the ethics violations that you've
16 described?

17 A It's termination for altering his own account.

18 Q At this point in time, you didn't know that there
19 was also another million bucks or so that he had embezzled?

20 MS. WEINSTEIN: Objection.

21 A Again, I don't know the exact date, but the
22 sequencing was we did not discover Mr. Phan's larger
23 malfeasance until after he had already been terminated as an
24 employee.

25 Q And wasn't he like working in -- in Kirkland or

1 something at the time that he was -- that the underlying
2 malfeasance was -- or the significant malfeasance was
3 discovered?

4 MS. MOORE: Vague and ambiguous.

5 Q If you know.

6 MS. WEINSTEIN: Objection.

7 A Mr. Phan was working for another city government,
8 and if memory serves me correctly it was Bothell, but I
9 would have to check on that.

10 Q Now, do you know -- strike that.

11 was it your organization, meaning SPU, that
12 uncovered the significant malfeasance later?

13 MS. MOORE: Vague and ambiguous.

14 A My recollection of -- was that employees in the
15 organization discovered some discrepancies in Mr. Phan's
16 work activities after he had been fired, and they were
17 trying to figure out how to sort out his work, and that
18 those discrepancies were brought to the attention of other
19 people in the department.

20 Q So then, to go back to my prior question, so if we
21 follow that thread, is it fair to say that other people in
22 the department, then, conducted an investigation that
23 determined that he had stolen, you know, hundreds of
24 thousands or a million dollars?

25 MS. WEINSTEIN: Objection.

1 MS. MOORE: Asked and answered.

2 A Mr. -- the -- much of the work that was done on
3 determining what Mr. Phan had done was conducted in-house by
4 SPU employees. I cannot tell you any specific employees nor
5 the roles they played.

6 Q All right. Were there outside investigators, for
7 example, the police?

8 A My recollection is that we brought this to the
9 attention of the Seattle Police Department and that their
10 ability to get involved was predicated on having what they
11 called substantial evidence. In other words, they were
12 appreciative of us letting them know but decided not to get
13 involved until we had more substantial evidence that
14 something was not right.

15 Q Okay, got it. All right. Now, let's take a look
16 at Hoffman 6, so just flip to page 6. This is a December 2,
17 2011 Seattle Times article entitled utility workers fired
18 for fixing their bills. And I'd like you to take a moment
19 to look at it and see if you recognize this article.

20 A Okay.

21 Q All right. Do you recognize this newspaper
22 article?

23 A I do.

24 Q All right. And this is another newspaper article
25 that was released regarding utility workers at SPU, right?

1 A Yes.

2 Q All right. And can you tell -- so looking at the
3 second paragraph of this December 2nd article, it says,
4 three employees were fired and a fourth suspended Friday for
5 falsifying payment records, waiving late fees or arranging
6 for extended payment plans, all to benefit themselves or a
7 family member.

8 Can you recall who those four employees were?

9 MS. MOORE: If you recall. I would instruct you
10 not to speculate.

11 A I believe that three of them were Patti Theopolis,
12 Fred Spencer, and Vanessa Matlock. But again, without
13 checking the chronology, that is what I believe. And the
14 fourth I am not recalling.

15 Q Could you give me the -- the last two, Patti
16 Theopolis?

17 A Fred Spencer --

18 Q Okay.

19 A -- and Vanessa Matlock, I believe.

20 Q Okay.

21 A And again --

22 Q All right. And could you just summarize for us
23 what you recall about what they had done?

24 A They -- so again, without having the
25 investigations, this is going to be high level, it's not

1 going to be details -- but they were most likely engaged in
2 numerous activities on their own accounts that are
3 prescribed by the Code of Ethics, workplace Expectations,
4 common sense, and those would be either administrative in
5 nature or working with late fees or extra charges, or making
6 payment arrangements on their own account or that of a
7 family member or a friend.

8 Q All right. And would they -- was their conduct
9 discovered pursuant to an investigation?

10 MS. MOORE: Vague and ambiguous.

11 A I believe their activities were discovered as a
12 result of the work that we undertook when we had discovered
13 the actions of the first two employees and we decided to
14 look into the activity of all employees who had read/write
15 access to the billing system.

16 Q Was that then pursuant to an investigation
17 conducted by Ms. Regan?

18 A That would have been what I would call a team
19 effort. So Guillemette was placed in charge of leading the
20 review of employee access to the account with the help of
21 city HR, our own human resources, our own labor relations,
22 our own I.T. system, our own finance people, and the city's
23 law department. So it was an effort that took the technical
24 and professional skills of a wide variety of people.

25 Q All right. Okay. So there were -- that was in --

1 now, that was in December of 2011. In the summer of 2011,
2 weren't you under a lot of pressure because there'd been
3 findings from the state that SPU didn't have adequate
4 internal controls?

5 MS. MOORE: Assumes facts not in evidence,
6 argumentative.

7 MS. WEINSTEIN: Objection.

8 A We had -- the state had issued a finding in I
9 believe it's the spring of 2011 that we did not have
10 adequate internal controls.

11 Q The criticism by the state was referencing the
12 very thing that caused the termination of those four
13 employees in December, right?

14 MS. WEINSTEIN: Objection.

15 A The audit basically cited weaknesses in our
16 ability to discern who was accessing their own accounts --

17 Q All right.

18 A -- for their own purposes.

19 Q That would include people working in the call
20 center, right?

21 A It would include anyone who had read/write access
22 to the billing system, and I believe most, if not all,
23 employees in the contact center had that read/write access.

24 Q All right. And when you say read/write access,
25 are you talking about the CCSS system?

1 A Yes, the billing system, sometimes known as CCSS.

2 Q Did Mr. Phan have that access?

3 A I believe Mr. Phan had read/write access even
4 though he was not in the contact center.

5 Q Take a look at Hoffman 9. All right. And this is
6 another Seattle Times article dated June 7, 2011, entitled
7 audit questions 24.7 million in billing cuts to Seattle
8 utility customers. Take a moment to read that and then
9 we'll talk about it.

10 A Okay. Okay.

11 Q All right. And it's fair to say you recognize
12 this article?

13 A Yes.

14 Q All right. And this was an article that came out
15 on June 7, 2011, was it not?

16 A That's what it says.

17 Q All right. And in this article, it -- so the
18 headline is audit questions 24.7 million in billing cuts to
19 Seattle utility customers. And then the lead is, Seattle
20 Public Utilities doesn't have adequate controls over
21 customer accounts and may have lost millions in revenue to
22 the city by reducing bills without ensuring the reductions
23 were legitimate, according to a draft state audit. Would
24 you agree that as of June 7, 2011, that would have been an
25 accurate statement?

1 A We had discussions with the state auditor over
2 this issue, and the 24.7 million that they have described as
3 billing cuts to utility customers actually, to my
4 recollection, fell into several different categories. And
5 one of those categories would be employees making
6 adjustments to their own accounts. My recollection is that
7 was by far the smallest amount of the dollars that we are
8 talking about here, and that a very large amount of the
9 dollars were system adjustments. And I believe one of those
10 was for the fact that new rates went into effect, and when
11 that happens you are actually charging customers two
12 different rates over one billing period, and so you need to
13 make adjustments to your bills. But those would be done by
14 the system.

15 The other major area, I don't recall what that was
16 on.

17 Q So could you just sort of define in layperson
18 terms what do you mean when you say system adjustments?

19 A So a system adjustment would -- I would contrast
20 it with an employee adjustment, in the sense of an employee
21 receiving a call from a customer who says, can you take a
22 look at my bill, I got charged for extra garbage and I don't
23 believe it was there, and the employee, you know, adjusts
24 the account. So that's one way that a bill could get
25 adjusted on an individual basis.

1 A system wide adjustment would be a query to the
2 billing system that says, please identify all customers
3 whose rates changed during the following billing period.
4 And now I'm out of my league in terms of being able to tell
5 you how that works out. But it would be an attempt to
6 fairly charge the customer for the first portion of the
7 billing period under the old rate, and then fairly charge
8 the customer for the new rate under the remaining portion of
9 the billing period.

10 Q So then -- now, I'm going to just reask the
11 question but ask you to sort of roll it all together, and
12 then we can break it down again. But would you agree that
13 this is an accurate statement, that as of June 7, 2011,
14 Seattle Public Utilities didn't have adequate controls over
15 customer accounts and may have lost millions in revenue to
16 the city by reducing bills without ensuring the reductions
17 were legitimate, according to a draft state audit? Forget
18 the according to draft state audit, just that sentence.

19 MS. MOORE: Asked and answered. Mischaracterizes
20 the witness' prior testimony.

21 MS. WEINSTEIN: Same objection.

22 A I would focus on -- I could agree with that we
23 didn't have adequate controls over customers accounts.

24 Q But it sounds like what you've -- what you're
25 saying is the customer account issue was a very small part

1 of the 24.7 million that's being discussed here?

2 A That's my recollection.

3 Q All right. So -- and you said that there were two
4 other things that were the major ones, one was system
5 adjustments and the other one you couldn't remember.

6 Could you tell me if the system adjustments was
7 sort of the lion's share of the 24 million?

8 A I don't remember the percentage, but I do believe
9 it was substantial.

10 Q And I noticed in this story there's no quote from
11 you. Were you -- do you recall if you were not -- just not
12 contacted before the story went out?

13 A I don't recall one way or another if I was -- if I
14 had talked to this reporter.

15 Q All right. And you don't recall if there was a
16 press release?

17 A I don't recall one way or the other.

18 Q It says -- so I'm going to go down a couple of
19 paragraphs here. It says, the utility didn't have adequate
20 policies or training in place to clearly define the process
21 for an adjustment or to review the adjustments once they'd
22 been made, the audit found.

23 Now, it's hard to tell the context of this except
24 that the story is talking about customer accounts. So can
25 you tell me, based on what you know about the three

1 categories, if this paragraph, because they're talking about
2 training to define the process for an adjustment, is
3 training something that's only related to customer accounts
4 or could it also be a factor in system adjustments?

5 MS. MOORE: Calls for speculation, lacks
6 foundation.

7 MS. WEINSTEIN: Objection.

8 A You know, without my looking at the findings of
9 the state audit to see what they say I don't have the
10 context --

11 Q Okay.

12 A -- to answer that.

13 Q When -- so this -- as a layperson trying to
14 understand what a system adjustment is, what I'm trying to
15 understand is whether a system adjustment is something that
16 is -- that involves human error, or is it really just -- it
17 is that there's a lag time between the time that a new
18 bill -- a new billing rate is put in and the time that it's
19 recognized in the system?

20 MS. MOORE: Mischaracterizes the witness'
21 testimony.

22 MS. WEINSTEIN: Same objection.

23 A My use of the word system adjustment was intended
24 to convey something that would be common to many customer
25 accounts, and I can't tell you who would be in charge of

1 setting that in motion nor how it plays out technically.
2 But we're a large business with roughly 175,000 accounts.
3 Generally every year at least one of our rates for one of
4 our services goes up, and so there are -- there's the need,
5 again, to sort of adjust the system to reflect the changes
6 that are made in our charges to the customer.

7 Q So again, as a layperson, right, we -- recently in
8 the news was this thing with the state where the state
9 correctional folks were miscalculating how long somebody
10 should remain in jail and let a whole bunch of people out
11 for free --

12 A Um-hum.

13 Q -- and so the -- or early -- and so the argument
14 was that their computer didn't keep -- didn't properly
15 calculate the numbers. So again, trying to understand what
16 system adjustment means, does it have to do with sort of the
17 usual process of doing business, or is there some kind of
18 mistake that's happening that needs to be fixed?

19 A The former.

20 Q The former. Okay. So it's really just the
21 computer program needs to sort of catch up with whatever the
22 accurate data is?

23 A Yes.

24 MS. WEINSTEIN: Objection.

25 Q All right. And --

1 THE WITNESS: Can I get some water?

2 MR. SHERIDAN: Yes, please.

3 THE WITNESS: Thank you.

4 MR. SHERIDAN: And I think your counsel --

5 MS. MOORE: You can take this here.

6 MR. SHERIDAN: -- would --

7 THE WITNESS: Okay.

8 MR. SHERIDAN: -- yeah, would be --

9 THE WITNESS: Okay. Thank you.

10 MR. SHERIDAN: Give you a minute there. Thank
11 you.

12 THE WITNESS: Okay.

13 Q Okay. Do you want -- I don't want to ask you a
14 question and cause you to choke, sir.

15 A No, no, I'm all right.

16 Q You're all right?

17 A Yeah.

18 Q So the system adjustment aspect of the draft
19 audit, from your perspective as manager, was that like not
20 really a big problem because you understood that it was
21 really just a computer process?

22 MS. MOORE: Mischaracterizes the witness'
23 testimony.

24 A Yeah. Could you ask me that question again?

25 Q Yes. So did you consider the system adjustment

1 issue to be a big problem that needed fixing?

2 MS. WEINSTEIN: Objection, vague and ambiguous.

3 A System adjustment is something that the billing
4 system is designed to do, so I don't view it as a problem.

5 Q Got it. All right. So when this article came out
6 and focused on inadequate controls over customer accounts,
7 did you do anything in response -- well, strike that. I
8 sort of said it in a way that misses the underlying issue.

9 when the state auditor's draft report came out and
10 indicated that there were inadequate controls over customer
11 accounts, what, if anything, did you do in response?

12 A Before the state auditor's report had come out we
13 had initiated steps to review and improve issues associated
14 with access to the billing system because of what we had
15 discovered in terms of numerous employees using the system
16 for personal benefit. And that we started after the first
17 two employees had been discovered.

18 Q All right.

19 A So we had already -- we were under way in terms of
20 reviewing how we could improve in that area.

21 Q All right. And again, you've explained that many
22 people were involved, but this -- you're referring, again,
23 to the investigation headed by Ms. Regan?

24 A Yes. And I don't remember exactly when we placed
25 Guillemette in charge of that.

1 Q And was she a direct report to you?

2 A In what year?

3 Q In 2011.

4 A In 2011 Guillemette was in charge of risk and
5 quality assurance, so no, she was not a -- I believe, but
6 I'd have to look at the org chart in part because over time
7 and various times in our employment history Guillemette has
8 been a direct report to me. But without looking at the org
9 chart I believe at the time risk and quality assurance was
10 in finance and administration. But I'd have to confirm.

11 Q In 2000 -- did she become a direct report at a
12 later time, like in 2012, '13, or '14?

13 A During that time Guillemette has -- and again, I'd
14 have to look at the org charts, but to the best of my
15 recollection, during those years Guillemette was not a
16 direct report to me.

17 Q Do you remember --

18 A But --

19 Q I'm sorry --

20 A Go ahead.

21 Q -- I didn't meant to speak over you.

22 Do you recall to whom she reported?

23 A I believe it would have been to -- if Guillemette
24 was in finance and administration, then it would have been
25 Melina Thung, T-H-U-N-G.

1 Q Got it. Okay.

2 So as a result of the -- and let me go down and
3 read you one of the quotes attributed to Dan Potapenko, it's
4 P-O-T-A-P-E-N-K-O. It says, in quotations, could it
5 potentially be millions of lost revenue? Absolutely, said
6 Dan Potapenko, assistant auditor -- audit manager for the
7 state Auditor Brian Sonntag after the audit briefing Tuesday
8 before the City Council finance committee.

9 First, let me ask you, did you attend that
10 meeting?

11 MS. MOORE: Vague and ambiguous. Assumes facts
12 not in evidence.

13 A I don't recall.

14 Q All right. As a result -- you know Mr. Potapenko,
15 do you not?

16 A I know who he is, yes.

17 Q All right. And you've been at meetings with the
18 city council in which he was present, correct?

19 A Again, without going back, Mr. Potapenko was an
20 auditor from the state who was assigned to Seattle Public
21 utilities. I recall meeting with -- on occasion with
22 Mr. Potapenko in staff meetings. But I don't recall one way
23 or the other whether I was in a City Council meeting with
24 Mr. Potapenko present.

25 Q Fair enough. Is it also true that from time to

1 time -- strike that.

2 To whom do you report?

3 A I report to the mayor.

4 Q All right. And from time to time do you give
5 testimony before the City Council?

6 A Yes, I do.

7 Q And have you given testimony regarding this issue
8 of having inadequate controls over customer accounts at SPU?

9 A I recall that after -- the time frame may not be
10 consistent with the date of this article, but there was an
11 extended period of time where the department briefed our
12 utilities committee on a regular basis on audit findings, on
13 our work to address the findings and pursue the
14 recommendations of the audits. So I was before council more
15 than once at the committee level, I believe, most
16 specifically, either providing an update and/or answering
17 questions in regards to the billing system and internal
18 controls.

19 Q Was the committee subject -- at those times was
20 the subject matter the committee was addressing was internal
21 controls at SPU?

22 A The subject matter was internal controls and
23 large -- more largely speaking what we were doing to address
24 the various findings from the state auditor, the city
25 auditor, and the independent auditors that had been hired by

1 finance and administrative services. So in my recollection
2 internal controls was a part of that but not the only topic
3 that was covered.

4 Q All right. Were you the author of CS-106?

5 A I don't know what you mean by the word author.

6 Q Meaning did you draft it?

7 A I did not.

8 Q Do you know who did?

9 A I do not.

10 Q Do you know how it came to you?

11 A CS-106 is a policy and, generally speaking,
12 policies and/or procedures come to me when they have worked
13 their way through the process and are ready for review and
14 authorization.

15 Q All right. Let's have you turn to Hoffman, page
16 12. This is a copy of CS-106 dated March 28, 2011, is it
17 not?

18 A Yes, it is.

19 Q Is that your signature on the left side of the
20 document?

21 A Yes, it is.

22 Q And when you put your signature on a policy,
23 what's the significance of that?

24 A The significance of that is that I am authorizing
25 this policy to become official for the department.

1 Q All right. So you've sort of given us an
2 understanding of how it is that the policy gets to you. Can
3 you give us a little more detail now about how CS-106 was
4 originally formulated and who worked on it?

5 MS. WEINSTEIN: Objection.

6 MS. MOORE: Vague and ambiguous, asked and
7 answered.

8 A I'm not sure what you mean by formulated.

9 Q Well, CS -- so looking under supersedes on the
10 right side, do you see that?

11 A Yes.

12 Q It says new, correct?

13 A It does.

14 Q And that's because there was no policy that it
15 could supersede?

16 MS. WEINSTEIN: Objection.

17 MS. MOORE: Assumes facts not in evidence, vague
18 and ambiguous.

19 A This one is -- the purpose is that it's related to
20 performance transactions, and there were a variety of
21 different documents that address performance -- performing
22 transactions on your own account that go substantially back
23 in time.

24 Q Well, but would you agree with me that prior to
25 March 28, 2011, there was no policy that established

1 employee expectations related to performing transactions
2 involving utility customer accounts in conformance with SMC
3 4.16.070?

4 MS. MOORE: Assumes facts not in evidence.

5 MS. WEINSTEIN: Objection.

6 A I can't tell you. I would have to refer back to
7 the SMC to even know what 4.16.070 relates to. And I think
8 we're having a discussion over what we mean by policy.
9 Because we have a variety of guidance documents that go back
10 to, again, UAR Expectations, workplace expectations, the
11 Code of Ethics, all of which provide direction to employees
12 on what are acceptable things to do. What this basically
13 said is that this was new in the sense that there wasn't a
14 document of this nature that it was replacing.

15 Q well, you've signed off on more than one policy,
16 right?

17 A Yes.

18 Q And so you're familiar with sometimes in the block
19 where this particular -- where the word new is written,
20 sometimes you'll see the word supersedes and then it'll give
21 you a cite to an earlier policy, right?

22 A Yes.

23 Q And in your experience that's because the policy
24 that you're signing off on today basically is sort of either
25 updating or replacing the policy that is being superseded,

1 right?

2 A Yes.

3 Q So you would agree with me that at least with
4 regard to the policy -- and I'm not talking about whether
5 this UAR or other documents -- but if we just talk about
6 policy, would you agree with me that this was a new policy?

7 MS. WEINSTEIN: Objection.

8 MS. MOORE: Asked and answered.

9 A Yeah. I go back to, again, no. And this is --

10 Q Did you say no?

11 A I said -- what I want to say is I believe we're
12 having a discussion over how we use the word policy, and
13 what I want to be clear on is that for a very long time the
14 issues that are addressed in this policy have also been
15 addressed by other publications and guidance documents.

16 Q I understand your position, okay. And I don't
17 want to argue with you about whether there's a whole bunch
18 of documents that may say what's said in here. But right
19 now, just in terms of policy, I want to know if you would
20 agree with me that this is a new policy?

21 MS. MOORE: But you are arguing with him, Jack.
22 It's been asked and answered.

23 A Yeah, I go back to it. And again, we use the word
24 policy in multiple ways in the department. And I do not
25 want to leave anyone with the impression that the issues

1 that are addressed specifically in CS-106 have not been
2 addressed and articulated in other documents. So -- and I
3 want to stick with that.

4 Q All right. I understand.

5 well, so your -- in March of 2011 you held what
6 position?

7 A In March of 2011 I was the director of Seattle
8 Public Utilities.

9 Q All right. And you're still in that position,
10 right?

11 A That is correct.

12 Q And you've reported to the mayor, right?

13 A That is correct.

14 Q And you read this policy before you signed off on
15 it, right?

16 A Yes, I did.

17 Q And you didn't find the need to cross out the word
18 new when you signed it, did you?

19 MS. WEINSTEIN: Objection.

20 MS. MOORE: Argumentative.

21 A Cross out the word new?

22 Q Yeah. I mean, by signing that you were agreeing
23 that it was an accurate statement of the new policy,
24 correct?

25 MS. MOORE: Mischaracterizes the witness'

1 testimony, argumentative, lacks foundation.

2 MS. WEINSTEIN: Same objections.

3 A The word new here basically means that there is
4 not another document that it is replacing.

5 Q well then, you would agree with me that that
6 document as written on the time you -- on the date you
7 signed it was inaccurate?

8 MS. WEINSTEIN: Objection.

9 MS. MOORE: Asked and answered --

10 A Yeah, I'm not understanding the question.

11 MS. MOORE: Excuse me. No, you need to let me get
12 my objections in.

13 Asked and answered, argumentative, assumes facts
14 not in evidence.

15 Q well, let's take a look at it a different way.
16 Look at this document, this policy CS-106, and tell me if in
17 your view there's anything written on the face of the policy
18 that is inaccurate?

19 MS. WEINSTEIN: Objection, vague and ambiguous.

20 A I don't understand the nature of the question.

21 Q well, okay, then, let's go to the page before.
22 Let's see, let's go back to something easy. How about we
23 take a look at -- let's take a look at CS-106.1. That
24 begins on page Hoffman 14. Do you see that?

25 A Yes.

1 Q And this is a policy you also signed off on,
2 right?

3 A This is a procedure.

4 Q It's a procedure, right. And you signed off on it
5 on July 16, 2012, right?

6 A That is correct.

7 Q All right. And so again, this is a procedure that
8 applies to the policy that is CS-106, correct?

9 A Let me read for a moment.

10 Q Yeah, please. And for the purposes of these
11 questions I'm just going to ask you about the first page,
12 okay?

13 A Okay.

14 Q All right. Just looking at the first page of the
15 policy, that is your signature, is it not?

16 A Yes, it is.

17 Q All right. Is there anything inaccurate about the
18 first page of the policy as you read it?

19 MS. MOORE: Vague and ambiguous.

20 MS. WEINSTEIN: Same objection.

21 A And can you let me know what you mean by
22 inaccurate.

23 Q Sure. Let's say, for example, it said -- instead
24 of 2012 as the effective date it said 2001.

25 A Oh.

1 Q You would agree with me that that would be
2 inaccurate, right?

3 A Right. So --

4 Q So what I'm asking you is to look at the face of
5 this and tell me if you see anything inaccurate like that?

6 MS. WEINSTEIN: Objection.

7 MS. MOORE: Same objection. On the first page
8 only, since you're only talking about the first page,
9 correct, Jack?

10 MR. SHERIDAN: That's correct, only the first
11 page.

12 A So I'm not trying to be literal here, but accuracy
13 to me has to do with facts, and this is a procedure. So I
14 know it went into effect in 2012, and I have no reason to
15 argue that it was July 16th. I know it is called CS-106.1.
16 I know that the responsibility for it lies with the customer
17 service branch. And I know that I signed off on it. And
18 then I'm not sure how you're applying the word accurate to
19 the details of the procedures that are starting to be
20 spelled out.

21 Q well, I'm actually asking it in the same way that
22 you've just responded that, for example, if it had said July
23 16, 2001, you would have told me it was inaccurate?

24 A Looking at it, yes.

25 Q All right. Now, let's go back to CS-106 on

1 Hoffman page 12. And I want to ask you again, is there
2 anything on the face of this procedure that you consider to
3 be inaccurate in the same way as you've just described
4 inaccuracy?

5 MS. MOORE: Vague and ambiguous, asked and
6 answered.

7 MS. WEINSTEIN: Same objections.

8 A It is accurate subject to the discussion that
9 we've now had four or five times, which is that I want to go
10 on record that this is not the first policy, with a small p,
11 where we have indicated to employees that it's not
12 acceptable to work on your own accounts.

13 Q Got it.

14 MS. MOORE: Jack, can we take a break when you're
15 done with these questions?

16 MR. SHERIDAN: Yeah. This is a fine time right
17 now, okay?

18 VIDEOGRAPHER: We're going off the record. The
19 time is 10:38.

20 (Break.)

21 VIDEOGRAPHER: We are back on the record. The
22 time is 10:49. You may continue.

23 BY MR. SHERIDAN:

24 Q All right. Do you know the name Nick Pealy?

25 A Yes, I do.

1 Q And who is Nick Pealy?

2 A Nick is a former employee of Seattle Public
3 Utilities.

4 Q What position did he hold when he was there?

5 A Nick was deputy director of field operations and
6 maintenance.

7 Q All right. And when did he leave Seattle City
8 Light -- strike that.

9 when did he leave the City of Seattle?

10 A Without looking at his file I can't recall the
11 date.

12 Q When he was the deputy director of field
13 operations and maintenance, did he report to you?

14 A Yes, he did.

15 Q And about how many years did he work for you?

16 A Nick -- I became acting director in January of
17 2009, so at that point Nick would have started to report to
18 me. So that's when he started reporting to me.

19 Q All right. Did -- was he a new hire in January
20 2009?

21 A No, he was not.

22 Q All right. What position did he have before you
23 became acting director?

24 MS. MOORE: If you know.

25 A So when I became acting director, Nick was in that

1 position.

2 Q And you kept him in the position?

3 A I did.

4 Q During the time that you were -- oh, we might as
5 well complete the facts here. You said you were acting
6 director in January 2009. When did you become permanent
7 director?

8 A I believe I was confirmed in May of 2010, but I'd
9 have to go back and check the records to --

10 Q Sure.

11 A -- be accurate.

12 Q Got it. All right. Do you know why Mr. Pealy
13 left?

14 A why he left the organization?

15 Q Yes.

16 A Yes, I do.

17 Q why?

18 A Nick was -- decided to resign in lieu of being
19 terminated.

20 Q And what was it that he had done that caused this
21 threat of termination?

22 MS. MOORE: Jack, this is a subject of a
23 settlement agreement that's a confidential settlement
24 agreement. So --

25 MR. SHERIDAN: Do you want to protect the record?

1 MS. MOORE: So I don't think that he can talk
2 about it without leaving the city liable, because it's
3 confidential under the terms of the settlement agreement.
4 So --

5 MR. SHERIDAN: Well, I mean, if you want --

6 MS. MOORE: -- he can't talk about that.

7 Q Well, I'll tell you what, let's make this easy.
8 Turn to Hoffman 133, if you would.

9 You have that in front of you?

10 A 133?

11 Q Right.

12 A Yes.

13 Q This is a copy of the -- it looks like an
14 unexecuted settlement agreement with Mr. Pealy. So tell me
15 what is it, what was the misconduct that he did?

16 MS. MOORE: So I'm going to instruct him not to
17 answer that, Jack, based on the confidentiality provision.

18 MR. SHERIDAN: But the confidentiality provision
19 can't stop -- I mean, you can -- why don't you just say that
20 it's confidential for the purposes of the deposition.

21 MS. MOORE: Because I think it's confidential.
22 I'm afraid that I'm opening up the city. I think it's
23 confidential. We need to get a judge's order on this.

24 He can tell you that he -- he can tell you that he
25 was going to terminate Mr. Pealy based on misconduct. He

1 can tell you about the terms of the settlement agreement.
2 But I'm just uncomfortable with this given the
3 confidentiality provisions of this settlement agreement.

4 MR. SHERIDAN: Well, the confidentiality --

5 MS. MOORE: I mean, if you want to call a judge
6 during a break and try and get a ruling, I'm happy to do
7 that. I just can't leave the city open for this.

8 MR. SHERIDAN: I understand your point. But it
9 says -- look at Hoffman 137, right. It says under paragraph
10 12, the parties agree that neither they nor their attorneys
11 shall reveal to anyone, other than as may be lawfully
12 required in response to a Public Disclosure Act request,
13 subpoena, or other legal obligation, any of the terms of
14 this settlement. Mr. Pealy may confer with his attorney,
15 tax advisers, counselors, and immediate family.

16 MS. MOORE: Uh-hum.

17 MR. SHERIDAN: So you -- I mean, it's just a
18 matter of law that disciplinary actions are not protected
19 under the Public Records Act. So we have disciplinary
20 actions, but --

21 MS. MOORE: But I think under the terms of this
22 confidentiality agreement he cannot talk about the terms.
23 We've got a signed confidentiality agreement.

24 MR. SHERIDAN: Well, then --

25 MS. MOORE: We can get a judge to do it. We can

1 talk about it.

2 MR. SHERIDAN: And I'll take you at your word.
3 I'll just ask you, counsel, to file a motion for a
4 protective order in a reasonable period of time and we'll
5 address it before the court. We don't need to --

6 MS. MOORE: That's --

7 MR. SHERIDAN: -- take up the time of the parties
8 today.

9 MS. MOORE: You can ask him about the terms of the
10 settlement agreement that you have. I'm not objecting to
11 that. But I just can't let you go into it.

12 MR. SHERIDAN: I understand your position. Also,
13 we were hoping to finish our witness' testimony today, but
14 we may have to come back to address those issues.

15 Q Anyway, all right. So tell me this: What did he
16 do that got him fired? Don't make any reference to
17 settlement.

18 MS. MOORE: No, that's exactly what I'm saying.
19 He can't answer, Jack.

20 MR. SHERIDAN: You're taking the position that --
21 I'm not talking about the settlement agreement. You're
22 saying that you are instructing him not to answer as to why
23 he fired Nick Pealy?

24 MS. MOORE: Well, Mr. Pealy resigned in lieu of
25 termination. He can tell you that he would have terminated

1 Mr. Pealy for poor performance. I'm not going to let you
2 get into the specifics of the performance absent a judge's
3 order.

4 MR. SHERIDAN: Well --

5 MS. MOORE: That's what I'm telling you.

6 MR. SHERIDAN: -- why don't we lay a foundation
7 for did he -- what the nature of the misconduct was besides
8 performance. I mean, do we know --

9 MS. MOORE: Well, you can ask the question, then
10 I'll see if --

11 MR. SHERIDAN: Sure.

12 MS. MOORE: -- I'll let him answer.

13 MR. SHERIDAN: All right.

14 Q So how long did you work with Mr. Pealy?

15 A Mr. Pealy and I worked in the same organization
16 for a very long period of time. We -- since the early
17 1990s. But in a reporting relationship, to the best of my
18 recollection, that started with when I was director in
19 January of 2009.

20 Q And he was also your friend, was he not?

21 A No, he was not.

22 Q Did you go to college with him?

23 A I did not.

24 Q Did you know him before coming to Seattle City
25 Light?

1 A Seattle Public Utilities?

2 Q Yes, right. Thank you.

3 A Not to my recollection. I believed I met Nick
4 after I started working with the city. I may be wrong, but
5 that's my recollection.

6 Q Look at Hoffman 138.

7 A Yes.

8 Q And is this a letter of recommendation that you
9 gave him?

10 A I remember the draft. I don't see a signed copy.

11 Q Okay.

12 A So without knowing that, I remember the draft,
13 though.

14 Q Do you remember whether you gave him a signed
15 letter of recommendation?

16 A Not without looking at the records.

17 Q Okay, fair enough.

18 MS. MOORE: Jack, do you have a signed copy of the
19 settlement agreement?

20 MR. SHERIDAN: It may be in discovery. I don't
21 have it here today.

22 MS. MOORE: Okay. I can provide you with a signed
23 copy.

24 MR. SHERIDAN: Okay. Thanks. So there is a
25 signed copy?

1 MS. MOORE: Yeah.

2 MR. SHERIDAN: Okay.

3 MS. MOORE: Of the settlement agreement.

4 MR. SHERIDAN: Oh, of the settlement agreement?

5 MS. MOORE: Of the settlement agreement. I don't
6 know about this other.

7 MR. SHERIDAN: All right. Great.

8 Q So with regard to the summer of 2011 again, when
9 you wrote -- I'm sorry, when you signed off on CS-106, which
10 for reference purposes is on Hoffman 12, again.

11 A Okay.

12 Q All right. So you testified before that with
13 regard to CS-106, when I asked you whether it was a new
14 policy, you said, well, there's a bunch of other --
15 another -- a bunch of other things that addressed this,
16 right?

17 MS. MOORE: Objection, mischaracterizes the
18 witness' testimony.

19 A I believe what I said was that there were a
20 variety of other guiding documents that addressed employees
21 accessing their own account and behaving ethically.

22 Q So let's look at this policy that you signed on
23 March 28, 2011. The first part of the policy under A, it
24 says, employees are expected at all times to conduct their
25 official duties primarily for the benefit of the city, and

1 are prohibited from any activity that results in private
2 gain, either directly received or in exchange for services
3 rendered to others, or in a loss of public funds not
4 authorized by ordinance or SPU policy or procedure.

5 where would one find that information in other
6 documents besides this policy?

7 A You would find it in the city's Code of Ethics.
8 And again, without being able to repeat the section word for
9 word, it notes that employees are expected to not engage in
10 activities where a reasonable person would interpret that
11 their actions were for their personal benefit.

12 Q And B says, utility account access is granted to
13 employees having a business need upon completion of an
14 application process.

15 what does that mean to you?

16 A Utility account access is granted to employees
17 having a business need means to me that it is part of the
18 requirements of their job, that they need to be able to use
19 the billing system. So for example, a customer calls in and
20 discovers that they were assessed an extra garbage charge
21 and they say, I didn't put out any extra garbage. The
22 account representative can then adjust that customer's
23 account to take that charge off, just as an example. So to
24 me it means you are granted access -- in order to do your
25 job you need to have access to the system.

1 Q And just, again, for layperson purposes, utility
2 account access means like customer accounts, right?

3 A Customer accounts.

4 Q Okay.

5 A Yes.

6 Q All right. And then under C it says, employees
7 may not perform account transactions involving themselves,
8 their family members, people they know, or on behalf of
9 other employees.

10 where else could one find that prohibition?

11 A well, I remember that in the UAR Expectations from
12 1999, at which point five of the plaintiffs were already
13 employed by SPU, there was language to the effect that if
14 you need to work on your own account, please contact your
15 supervisor. That's a rough approximation of it.

16 I would also offer you that this also goes back to
17 the Code of Ethics, because working on your own account is
18 certainly not for the benefit of the city. So it's a
19 personal benefit that would accrue to the employee, and so I
20 believe the Code of Ethics gets to this as well.

21 Q Anything else? Any other place one would expect
22 to find that language?

23 A Again, Workplace Expectations for SPU refer to
24 asking employees to conduct their work ethically and has a
25 direct reference to the Code of Ethics.

1 Q Is there anyplace that you know of that existed
2 before March of 2011 where one could read language to the
3 effect that, employees may not perform account transactions
4 involving themselves, their family members, people they
5 know, or on behalf of other employees?

6 MS. MOORE: Vague and ambiguous.

7 MS. WEINSTEIN: Objection.

8 MS. MOORE: You mean that specific language, Jack?

9 MR. SHERIDAN: I mean that specific intent.

10 MS. MOORE: Well, that's vague and ambiguous, and
11 asked and answered.

12 Q Go ahead and answer.

13 A So again, the words of that sentence, I can't
14 answer that for you. But directions to not work on your own
15 accounts I refer back, again, begin with UAR Expectations,
16 1999.

17 Q Okay.

18 A I also refer to the -- doing things for your
19 personal benefit, which is under the Code of Ethics. And
20 again, the connection I'm making is when an employee works
21 on their own account, it's not for the benefit of the city.

22 Q And so employees are frequently also customers,
23 right?

24 A I'm not sure what you mean by that.

25 Q well, so the people working in the call center may

1 live in the city of Seattle, right?

2 A That is correct.

3 Q And they may actually be customers of SPU, right?

4 A That is correct.

5 Q And as customers of SPU you would agree, would you
6 not, that they would have the same rights as any other
7 customers in terms of getting adjustments to their utility
8 bill?

9 MS. MOORE: Objection, vague and ambiguous.

10 MS. WEINSTEIN: Objection.

11 MS. MOORE: Calls for speculation.

12 A The -- all customers have the right to the same
13 set of services from the city department. The burden on
14 employees, though, is that when adjustments need to be made
15 on their own accounts, they need to be done by someone other
16 than themselves.

17 Q I understand that point. But I guess what I'm
18 asking is, I think you testified earlier that if they make
19 adjustments on their own account, it's a personal benefit
20 not a benefit to the city, right?

21 A That is correct.

22 Q But you would agree with me that if the person
23 sitting next to them at the call center made the same exact
24 adjustment, that would be a benefit to the city?

25 MS. MOORE: Mischaracterizes the witness' --

1 A I'm not sure I understand.

2 MS. MOORE: You need to let me --

3 THE WITNESS: Okay.

4 MS. MOORE: You need to let me get my --

5 mischaracterizes the witness' testimony, assumes facts not
6 in evidence.

7 Q So --

8 MS. WEINSTEIN: Same objection.

9 Q So you said you didn't understand?

10 A Could you repeat it, please?

11 Q Sure. So let's say I'm an employee of the city
12 and I call in on my day off to the call center, and I say,
13 hey, I was charged for garbage that -- for extra garbage
14 when I didn't have extra garbage. Can you make an
15 adjustment? And the person says, okay, and makes the
16 adjustment. You would agree that that's for the benefit of
17 the city, right?

18 MS. MOORE: Assumes facts not in evidence.

19 MS. WEINSTEIN: Objection.

20 A I'm having trouble with your question in --

21 Q How so?

22 A There is a set of services that we offer to our
23 customers.

24 Q Right.

25 A And those services are available to all utility

1 customers whether or not you're an employee of Seattle
2 Public Utilities.

3 Q Right. Well, so what I'm actually commenting on
4 is your earlier testimony where you said that if a person
5 makes a change to their own account, that's a personal
6 benefit not a benefit to the city. Did I say that
7 accurately?

8 A I said that when an employee does an adjustment to
9 their own account.

10 Q That's what, not a benefit -- that's not a benefit
11 to the city, right?

12 A That's a -- that's a -- the benefit accrues to the
13 employee adjusting the account.

14 Q All right. We agree. Now, what I want to
15 understand now is, let's say that same employee on their day
16 off calls into the call center and asks for the very same
17 adjustment. You would agree that that's not a personal
18 benefit to the employee?

19 A You know, without knowing the particulars, if
20 they're an employee getting adjustments to their own account
21 needs to go through a different process, whether or not they
22 have a day off, as it needs to go through a different
23 process.

24 Q What process is that?

25 A I believe the process is stipulated that if you

1 need an adjustment to your own account, please contact your
2 supervisor.

3 Q That's a process that is in place today, correct?

4 A I believe it is in place today.

5 Q well, you would agree that process was not in
6 place on January 1, 2011?

7 A I --

8 MS. MOORE: Miss -- wait a minute.

9 Mischaracterizes the witness' testimony, asked and answered.

10 MS. WEINSTEIN: Objection.

11 A That policy was in place in 1999 with the UAR
12 Expectations that basically said -- and I won't get the
13 language exactly right -- that if you need to work on your
14 own account, please contact a supervisor.

15 Q So if I call in and ask for an adjustment, is that
16 working on my own account?

17 MS. MOORE: Incomplete hypothetical, calls for
18 speculation.

19 MS. WEINSTEIN: Same objection.

20 A I don't know how that plays out. I'm not an
21 employee of the contact center, so I don't manage those
22 transactions.

23 Q Bear with me. I'm trying to find something.

24 Let's take a look at Hoffman 239. It purports to
25 be a UAR Expectations, and in the lower left corner it says

1 12/22/09. why don't you take a minute and look at that.

2 A Sure. Okay.

3 Q All right. And do you recognize this document as
4 being the UAR Expectations used at SPU in December of 1999?

5 MS. MOORE: Assumes facts not in evidence, calls
6 for speculation.

7 A I can tell you that it's dated December 22nd '09.
8 I don't know that --

9 Q Did I just say 1999? Oh, it's 2009. My mistake.
10 We're getting close to lunch.

11 A So it is dated. I can't tell if it's draft or
12 final.

13 Q Okay.

14 A But it is a document that addresses UAR
15 Expectations.

16 Q All right. Let's -- why don't you go through
17 this? Is this the document you were referring to that you
18 said you can go back to 1999 and find a place where language
19 similar to CS-106 could be found?

20 A I was saying that in the 1999 version of this
21 document you could find this.

22 Q Oh, not in the 2009, the 1999?

23 A The 1999 version.

24 Q Oh, well, the 19 -- so would you take a look at
25 the 2009 version and tell me if you can find such language

1 in there?

2 A Okay.

3 Q Thank you.

4 A Okay. And the question again?

5 Q Yeah, is whether the 2009 version of the UAR that
6 you have in front of you addresses the issue of whether
7 persons can access their own accounts or the accounts of
8 friends and family like appears in the CS-106?

9 A On the first perusal, I don't see it in here.

10 Q Do you have any understanding of why you're
11 referring to a 1999 version of the UAR Expectations rather
12 than one more recent?

13 A Yes.

14 Q why is that?

15 A Because the expectation of getting assistance to
16 work on your own account was established well back in the
17 utility.

18 Q well, if it was the policy in 2009, wouldn't you
19 expect to see it written in the UAR policies -- I mean, the
20 UAR Expectations?

21 MS. MOORE: Calls for speculation, lacks
22 foundation.

23 Q And when I say, wouldn't you expect, I mean as the
24 head of SPU?

25 A I don't know why the policy doesn't have it in

1 there.

2 Q Except for this 1999 policy that you've referred
3 to, can you point to any other specific document that's more
4 recent than 1999 that contains language, not necessarily
5 exact language, but language communicating this idea, that
6 employees may not perform account transactions involving
7 themselves, their family members, people they know, or on
8 behalf of other employees?

9 MS. MOORE: Asked and answered, twice.

10 MS. WEINSTEIN: Same objection.

11 A I go back, again, to the city's Code of Ethics,
12 which indicates that an employee should not engage in
13 activity that appears to a reasonable person to be conducted
14 for their personal benefit.

15 Q I want you to look at Exhibit 10 -- I'm sorry,
16 Hoffman 41 again.

17 MS. MOORE: Are you done with 239, Jack?

18 MR. SHERIDAN: Say again?

19 MS. MOORE: Are you done with 239?

20 MR. SHERIDAN: Oh, I may go back. But right now
21 we're looking at 41.

22 A Okay. I'm on 41.

23 Q And what is 41?

24 A This is CS-106.

25 Q All right. So you've said that the ethics rules

1 address the issue that we've been discussing, which is
2 employees may not perform account transactions involving
3 themselves, their family members, people they know, or on
4 behalf of other employees, right?

5 A I've said that the ethics rule indicates that
6 employees are not to be able to engage in activities that
7 are for their personal benefit.

8 Q Personal benefit. And that's -- and it's your
9 understanding that that clearly means that employees may not
10 perform account transactions involving themselves, their
11 family members, people they know, or on behalf of other
12 employees, right?

13 A I think a reasonable person looking at an employee
14 and who was accessing their own account to make adjustments
15 would view that as a personal benefit. If they view it as a
16 personal benefit, then it is something that should not be
17 engaged in.

18 Q All right. So if it's so clear, why did you sign
19 off on policy CS-106?

20 MS. WEINSTEIN: Objection.

21 A I signed off on 106. And in my estimation this is
22 unfortunate, that we even needed this policy. We assumed
23 that our employees would operate with integrity, that they
24 would not abuse a system, and that was our mistake. We
25 didn't have adequate internal controls in place, and as a

1 result, a portion of our employees -- and I'm happy to say
2 not the vast majority of the employees that have access to
3 the system -- did not engage in this. So we felt it
4 necessary to spell it out and put in a bright line.

5 Q So CS-106 was meant to be a bright line?

6 MS. WEINSTEIN: Objection, mischaracterizes the
7 witness' testimony, argumentative.

8 A CS-106 was meant to spell out for employees who
9 might consider accessing the system, their own account, it
10 was just to spell out that they weren't supposed to do that.

11 Q All right.

12 A Again -- and again, most employees who have access
13 to their own account did not engage in that activity.

14 Q So you felt that it was necessary because some
15 people did access their own accounts?

16 MS. WEINSTEIN: Objection.

17 MS. MOORE: Mischaracterizes the witness'
18 testimony, asked and answered now.

19 A I felt it was necessary because the evidence had
20 proven that people were accessing their own account, and we
21 needed to do more to make sure that every employee
22 understood that that was not acceptable.

23 Q Well again, as the head of SPU, was it your view
24 that perhaps SPU didn't provide reasonable notice to the
25 employees that they should not access their own accounts,

1 the accounts of their family members, people they know, or
2 on behalf of other employees?

3 MS. WEINSTEIN: Objection, vague and ambiguous.

4 MS. MOORE: As to time.

5 A Reasonable notice? I'm not sure what you mean by
6 that.

7 Q well, so what notice means is that if I'm giving
8 you notice, I'm telling you, I'm telling you that there's
9 something out there, a new fact, a new policy --

10 A Right.

11 Q -- or something, okay?

12 So one approach as the head of SPU could have been
13 to say, look, these employees have notice because back in
14 1999 we had a policy that set it out, a UAR Expectations,
15 and there's a general ethics policy that says no public
16 benefit. So in my view you could have said, these employees
17 have notice, I don't need CS-106.

18 So how come you didn't take that position?

19 MS. MOORE: That's asked and answered.

20 MS. WEINSTEIN: Same objection.

21 MS. MOORE: A couple of times now.

22 A You're going to have to reframe that for me,
23 because I'm not sure what you're asking.

24 Q Sure. So what I originally asked is whether or
25 not you thought that CS-106 was necessary in order to

1 provide all the employees with reasonable notice of the
2 policy, right?

3 A Not reasonable -- reasonable notice. With all due
4 respect, those aren't my words, those are yours.

5 Q I agree, these are my words. So let me ask
6 it -- let me take out reasonable.

7 Did you sign off on CS-106 to provide notice to
8 all employees that as of March 28, 2011, you cannot perform
9 account transactions on your own accounts, on family
10 members' accounts, the people you know, or on behalf of
11 other employees?

12 MS. MOORE: Asked and answered, about three times,
13 and now it's argumentative.

14 MS. WEINSTEIN: Same objection, and also vague and
15 ambiguous.

16 Q Can I get an answer?

17 A One more time, please.

18 Q Sure.

19 MR. SHERIDAN: Let's have that read back.

20 (Reporter read requested question.)

21 MS. MOORE: Asked and answered.

22 A When this policy went into effect, most employees
23 who had access to the billing system already knew that they
24 weren't supposed to access and adjust their own account.
25 For those employees, this policy, in my mind, was probably

1 not necessary. For those employees who had decided to
2 access their own accounts over various periods of time for
3 various transactions, it became evident that we needed to
4 put this in place.

5 Q All right. And now let's look at Hoffman page 42.
6 And this is the procedure, is it not?

7 MS. MOORE: Jack, I note that there's writing on
8 the bottom of 42. I've never seen this writing before.

9 MR. SHERIDAN: First of all, let's see if the
10 witness --

11 Q Do you recognize the writing on this document?

12 A The writing up top is my signature.

13 Q Okay.

14 A The writing down at the bottom does not look like
15 my writing.

16 Q All right. Then we will redact that writing at
17 the bottom on this particular document.

18 All right. So when you signed off on this
19 CS-106.1, how come there was a lag between the March
20 sign-off and the July sign-off on this one?

21 MS. MOORE: Vague and ambiguous.

22 Q Do you understand the question?

23 A So CS-106 was -- went into effect on March 28,
24 2011.

25 Q Right.

1 A And the procedure, CS-106.1, went into effect on
2 July 16, 2012.

3 Q So how come -- oh, 2012. How come there was such
4 a long lag between getting out the policy and getting out
5 the procedure?

6 MS. WEINSTEIN: Objection.

7 MS. MOORE: Assumes facts not in evidence,
8 argumentative.

9 A First of all, I wouldn't characterize it as a long
10 lag. What I know of this is that the drafting of these
11 procedures -- and again, this is high level -- was an
12 iterative process.

13 Q A what?

14 A Iterative, meaning it went through multiple
15 drafts, and that representatives from management and labor
16 were involved in spelling out the details. So I know that a
17 lot of time and effort went into trying to draft this in a
18 way where it was clear and coherent, and it wasn't something
19 that just one person wrote up and handed to me and said,
20 sign it. So I cannot tell you who all was involved, but I
21 know that quite a few different people were involved.

22 Q And this procedure, it was rolled out, was it not?

23 MS. MOORE: Vague and ambiguous.

24 MS. WEINSTEIN: Objection.

25 A I'm not sure what you mean by rolled out.

1 Q well, when you come up with a new policy at SPU,
2 you make efforts to publicize the existence of the policy to
3 the work force, right?

4 A I can -- that's highly situational. I do remember
5 that when we rolled out policy CS-106, there were multiple
6 communications regarding that. Without looking at
7 documentation, I can't tell you what communications were
8 used for procedure CS-106.1.

9 Q Okay.

10 (Interruption from electronic device.)

11 MS. MOORE: Shut off your phone, Jack.

12 MR. SHERIDAN: That's my calendar.

13 Q So talking about CS-106, when that was rolled out,
14 you said there were multiple ways that it was communicated?

15 MS. MOORE: Mischaracterizes the witness'
16 testimony.

17 MS. WEINSTEIN: Same objection.

18 A I believe what I meant to say was that there were
19 multiple communications. The two I recall -- and again, I
20 don't have the documents here, to my knowledge -- was I did
21 a director's message, and I believe it was some time in
22 April of 2011. And I believe -- but again, without
23 referring to documents -- I believe that was followed up by
24 a communication by the customer service branch.

25 Q Anything else?

1 A For policy. There may be more, but without my
2 having access to documents those are the two that I
3 recollect.

4 Q What is a director's message?

5 A A director's message is a message that goes out to
6 all employees in the department, and it can be on a wide
7 variety of topics. So, for instance, it could be on a new
8 policy. It could be on the financial condition of the
9 utility. It could be on our new committee chair for our
10 utility committee. But it is a communication that is
11 intended to go out to all city employees --

12 Q What --

13 A -- all SPU employees.

14 Q What format does it follow? Or I should ask:
15 what medium is it communicated in?

16 A Electronically.

17 Q It's an email?

18 A It's an email I believe with a link to the
19 director's message, if I recall correctly.

20 Q So basically -- so if -- let's say I was working
21 there at the time. I would get an email from -- would it be
22 from you, it would say from Mr. Hoffman or --

23 A I would have to look back at the -- it doesn't
24 come from my computer.

25 Q Okay.

1 A I don't have a master list. This goes to all city
2 employees.

3 Q Okay.

4 A But it is transmitted via computer. And again,
5 without looking at the document I can't tell you if it says
6 from Ray Hoffman or if it says a message from the director.
7 I don't track at that level of detail.

8 Q Does the subject line just simply say director's
9 message?

10 A without looking, I can't tell.

11 Q Have you sent one in the last 30 days?

12 A I'm trying to think. I would have to look.

13 Q When you send them, do you also get a copy?

14 A I review the director's messages and approve them
15 before they're transmitted.

16 Q But no, I mean like are you a recipient?

17 A I believe I am.

18 Q Okay.

19 A But I'd have to go onto my computer and look.

20 Q My question is: In the last 30 days, have you
21 received a director's message?

22 MS. MOORE: Objection.

23 A without going back to my computer, I couldn't tell
24 you.

25 Q All right.

1 A I would have to scroll through the last 30 days to
2 answer that.

3 Q All right. And so basically for you to view your
4 own director's message, assuming you're a recipient, you
5 would have to actually click on the email and then click on
6 the link, is that right?

7 A The director's messages are also put on our
8 in-website, so -- but if I got an email and I opened it up,
9 I don't believe it would be the director's message.

10 Q You'd have to click on another link to read it?

11 A I believe so, yes.

12 Q All right. Is that basically -- since you've been
13 sending director's messages, is that pretty much the mode
14 that they're sent in?

15 A I'd have to go back and look.

16 Q Okay.

17 A I've been director now for almost seven years, so
18 I can't speak in totality.

19 Q Now, you also said that there was something else,
20 some other place electronically where one could find a
21 director's message?

22 A I believe -- and again, I'd have to confirm --
23 that if you went to the internal SPU website, there is a
24 underlined set of words that will say something like
25 director's messages. And again, that's about the level I

1 could give you.

2 Q All right. And so it would be your understanding
3 that if I was an employee -- first of all, if I'm not an
4 employee, I can't access the website you're talking about,
5 right?

6 A I can't confirm that.

7 Q But you said internal for a reason?

8 A It's -- well, there's an external facing website
9 for all of our non-departmental customers, the people who
10 live and work in Seattle. So if they want to conduct
11 business, they have access to one website. Our employees
12 have access to that website as well as our internal website.

13 Q And director's messages, to your knowledge, would
14 be on the internal website?

15 A Yes, on the internal website, although I don't
16 know, quite frankly, if they're on the external website.

17 Q All right. On the internal website, if I were an
18 employee, the way that I would access the director's message
19 on the SPU website is I would actually go to the internal
20 website and then click on director's messages, and I assume
21 there's a list, and then I would click on the one I wanted
22 to read. Does that sound right?

23 A I believe that's how it works.

24 Q All right. And there's no -- if I were your
25 employee, you couldn't fire me for not reading your

1 director's message on the website, could you?

2 MS. MOORE: Calls for speculation.

3 Q I've asked it poorly. Let me ask it again.

4 If I don't open and read director's messages on
5 the SPU website, am I in any -- in your view, am I -- would
6 I be in any way derelict in my duties?

7 MS. WEINSTEIN: Objection, speculation.

8 A If I understand your question, what I would say is
9 there's an expectation that reading emails, whether they're
10 from the director or otherwise, is part of the job. And I
11 can't tell you that I've ever had a discipline that has come
12 up to me where someone was before me because they didn't
13 read their emails.

14 Q All right. Fair enough. The CS-106.1 policy
15 had --

16 MS. MOORE: It's a procedure, Jack.

17 Q Let me say that again. The CS-106.1 procedure
18 had -- along with it had a rollout that included training,
19 did it not?

20 MS. MOORE: If you know.

21 A I'm not sure.

22 Q At the point of CS-106.1's rollout was there any
23 person that was in charge of the rollout itself, to your
24 knowledge?

25 MS. MOORE: Assumes facts not in evidence, vague

1 and ambiguous.

2 A So what I could offer you is, without going back
3 into information, I don't know what sort of rollout there is
4 nor do I know who would have been in charge of it.

5 Q All right. Fair enough.

6 Take a look, if you would, at Hoffman 237.

7 A Shall I read it?

8 Q Yeah, you might as well.

9 MS. MOORE: Yes, you should read it.

10 A Okay.

11 Q All right. And this is a March 5, 2013, email
12 from you to Councilmember Jean Godden. Could you just give
13 us a summary of what this is and why you sent it?

14 A So I would have to -- at that point Councilmember
15 Godden, who was chair of the utilities' committee, which is
16 who our department would report to you on the City Council
17 for all business that we do, and this is a status report on
18 our efforts to pursue and implement a variety of internal
19 controls that came out of the multiple audits that were
20 conducted on SPU.

21 Q Do -- does anything in this email relate to
22 accessing one's own account or the accounts of family or
23 friends?

24 A Do you mean explicitly those words?

25 Q No. I mean, is there anything about this time

1 frame and what you were doing that addressed that subject
2 matter?

3 MS. MOORE: That's vague and ambiguous.

4 A There were literally dozens of recommendations
5 that came out of the audits. And my read of this document
6 is is that it is not designed to address every
7 recommendation that came out of those audits, but it is more
8 of a high level picture for the council with some specific
9 examples.

10 So in my review of this, I would have to go back
11 to all of the recommendations that were suggested by the
12 various audits that were done to see what they put in on
13 that topic.

14 Q Looking under background it says, the four-year
15 internal controls implementation work plan (2013-2016) was
16 developed as a result of a large scale effort, including
17 three external audits and multiple internal assessments, to
18 review all of SPU's financial internal controls.

19 So when you wrote this in March of 2013, you were
20 making reference to a work plan, were you not?

21 MS. MOORE: Document speaks for itself.

22 A That's what it says.

23 Q All right.

24 A It says, implementation work plan.

25 Q And had SPU created an implementation work plan by

1 this date?

2 A That's what this says.

3 Q But as far as -- I mean, as head of the agency or
4 the organization can you tell me whether you have personal
5 knowledge whether there was such a work plan in existence in
6 March of 2013?

7 A On that date, I would have to go back and look at
8 the work plan. I can tell you that a work plan was
9 developed that was four years in duration because the number
10 of recommendations were so large and so diverse that we
11 reasonably thought we could not accomplish them in a shorter
12 period of time.

13 And I know that the work plan was developed with
14 an eye towards trying to address some of the more
15 significant deficiencies first. But in terms of a date
16 where that plan was, without going back to records to see
17 where we were in the implementation in the work plan
18 process, I can't give you that answer.

19 Q All right. Was the work plan something that was
20 in writing?

21 A To my recollection, what I recall -- and again,
22 without going back we'd have to confirm -- there was the
23 equivalent of a four-year time frame chart, and that chart
24 would have listed audit findings and the suggested time and
25 length of time for addressing those.

1 Q Was this a chart shared with the City Council?

2 A I don't recall.

3 Q It wasn't -- so it -- was it -- the chart was
4 created by SPU people, right?

5 A Again, I recall the chart, but without having it
6 here, it would have been a work document that was created by
7 a variety of staff in SPU.

8 Q All right.

9 VIDEOGRAPHER: It's about 10 minutes.

10 MR. SHERIDAN: Okay. All right. Okay. This is a
11 good place to break. Why don't we break here.

12 THE WITNESS: Okay.

13 VIDEOGRAPHER: We're going off the record. This
14 ends Tape No. 1. The time is 11:24.

15 (Lunch break.)

16 * * * *

17 A F T E R N O O N P R O C E E D I N G S

18 * * * *

19 (Start Video Tape No. 2)

20 (Exhibit No. 2 was marked.)

21 VIDEOGRAPHER: We are back on the record. The
22 time is now 1:20 p.m. This is Tape 2.

23 You may continue.

24 MR. SHERIDAN: Thank you.

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EXAMINATION (Cont'd)

BY MR. SHERIDAN:

Q All right. Do you know the name Elaine webster?

A Yes, I do.

Q Is she still with the city?

A I believe Elaine has retired.

Q And was she the senior management systems analyst and CCSS liaison for Seattle Public Utilities?

A I don't know what Elaine's job title was.

Q All right. I'm going to hand you what's been marked as Exhibit 2.

A I'm going to put this on the floor for now.

Q Yeah, that's fine.

All right. Please take a look at Exhibit 2. It has the Bates stamp of J215 through 17. And this is an email string, so I'll suggest you might want to read it from the back forward.

(Exhibit Nos. 3 through 8 were marked.)

A Okay. Okay.

Q All right. So back in July of -- first of all, let me establish, have you seen this email string before?

A I'm not sure.

Q Okay.

A It doesn't seem familiar to me.

Q well, let's talk about subject matter. Starting

1 with the third page first, it's a July email dated July 7,
2 2011, from Elaine Webster to Guillemette Regan and cc Melina
3 Thung. Subject is Expectations Regarding Adjustments. And
4 of the names I just listed, were any of those persons direct
5 reports to you?

6 A At this point in time Melina Thung would have been
7 a direct report to me.

8 Q All right. So this is Ms. Regan writing -- I'm
9 sorry, Ms. Webster writing to Ms. Regan, saying that,
10 Melina -- and that's Melina Thung, right?

11 A Yes.

12 Q -- and I had a conversation earlier today. She
13 asked me on your behalf if we had any documentation in the
14 contact center prior to March 2011 regarding agents and
15 their personal utility accounts. And she writes, I've done
16 some digging, and the answer is we did not have anything
17 documented prior to the most recent policy that was put into
18 place in March.

19 Now, in March 2011 that's when CS-106 was put into
20 place, right?

21 MS. MOORE: You can answer that question.

22 THE WITNESS: Pardon?

23 MS. MOORE: You can answer that question.

24 THE WITNESS: Okay.

25 A Once more, please.

1 Q Yeah. It's true, is it not, that in March 2011
2 that's when CS-106 was put into place?

3 A Yes. CS-106 was adopted in March 2011.

4 Q So here Ms. Webster is saying that she didn't find
5 anything documented prior to that. It's fair to say that in
6 July 2011 that was your understanding as well, right, that
7 there was nothing documented regarding prohibitions
8 pertaining to friends and family before March 2011?

9 MS. MOORE: Mischaracterizes the witness'
10 testimony, asked and answered. And to the extent you're
11 asking him to comment on this document, it calls for
12 speculation and lacks foundation.

13 Q All right. And --

14 MS. WEINSTEIN: Same objections.

15 Q Let me clarify. I really want to understand what
16 you knew in July of 2011. I'm not asking you to comment on
17 the document, okay.

18 So what I want to understand is, in July 2011 it's
19 fair to say that you didn't know that there was a 1999 UAR
20 that mentioned a prohibition of friends and family, right?
21 You hadn't heard that yet?

22 MS. MOORE: Mischaracterizes the witness'
23 testimony.

24 MS. WEINSTEIN: Objection.

25 MS. MOORE: Asked and answered.

1 A I don't recall exactly when I learned about UAR
2 Expectations in 1999.

3 Q All right. It's true, is it not, that -- well,
4 let's take a look at this July 2011 email on page 2. At the
5 bottom Ms. Regan is writing to Ms. Webster and she says, a
6 document -- she says, a document was developed and launched
7 in August '99 called Expectations for Facility Account
8 Representatives. Development was a joint effort between
9 business and labor representatives.

10 Then she writes, one of the expectations on page 4
11 states, ask a supervisor or utility account representative
12 two to provide maintenance to your account and the accounts
13 of your relatives, friends, and co-workers. This
14 expectations document was reviewed in detail with every
15 existing employee at the time and every new hire until the
16 development of the new expectations document.

17 Then she writes, I obtained a copy of the new UAR
18 Expectations dated March 24th, '11. And on page 5 the
19 document states, under no circumstances should any account
20 maintenance be performed on your own personal SPU or SCL
21 accounts. For assistance on your personal account, please
22 see the duty or backup supervisor.

23 So my question to you is: This information that
24 Ms. Regan is writing to Ms. Webster, is it fair to say that
25 you didn't -- you were unaware of this before July 2011?

1 MS. MOORE: Lacks foundation, calls for
2 speculation, and mischaracterizes the witness' testimony.

3 A Again, I don't know when I became aware of these
4 expectations.

5 Q The 1999 expectations?

6 A Yes.

7 Q But it's fair to say that you would have heard
8 that from Ms. Regan?

9 MS. MOORE: Mischaracterizes the witness'
10 testimony.

11 MS. WEINSTEIN: Objection.

12 A I would have heard what from Ms. Regan?

13 Q You -- is it fair to say that you heard from
14 Ms. Regan that there was a 1999 UAR Expectations that talked
15 about friends and family and co-workers?

16 MS. MOORE: Lacks foundation, mischaracterizes the
17 witness' testimony.

18 MS. WEINSTEIN: Objection, also vague and
19 ambiguous as to time.

20 A Quite frankly, I don't know who I heard it from.

21 Q So policy CS-106, that never really got rolled
22 out, did it?

23 MS. MOORE: Vague and ambiguous as to the term
24 rolled out.

25 A Should I be referring back to CS-106?

1 Q Sure. If that's helpful to you, absolutely.

2 A Do you have reference?

3 Q Yeah, 42.

4 MS. MOORE: 41. I thought it was 41.

5 A Okay. And the question?

6 Q So my question is: That never really got rolled
7 out, did it?

8 MS. MOORE: Same objection, vague and ambiguous as
9 to the term rolled out.

10 MS. WEINSTEIN: Objection.

11 A I'd like to know what you mean by rolled out.

12 Q well, I mean -- well, let me ask you some other
13 questions and we'll see if we can get there.

14 when a new policy is put forward to the work
15 force, is it typical to have the employees each sign the
16 policy as evidence that they have seen it?

17 MS. MOORE: Lacks foundation, calls for
18 speculation on the part of this witness.

19 Q In your experience?

20 MS. WEINSTEIN: Same objection.

21 A Okay. Question again, please.

22 Q Yeah. In your experience, when a new policy comes
23 out that affects the work force, isn't it the practice that
24 you would have the employees sign the policy as evidence
25 that they had notice of the policy?

1 MS. MOORE: Lacks foundation, calls for
2 speculation.

3 A Was that the policy for all new policies, is that
4 what you're asking me?

5 Q Whatever your typical practice was.

6 MS. MOORE: Same objections.

7 A To my knowledge, I was not aware of a practice
8 that when we introduced a new policy, that there was a
9 requirement that employees sign. I'm not sure what they're
10 signing for. Perhaps you could tell me that.

11 Q Okay.

12 A For all policies.

13 Q Right. Well, I guess -- you can't think of any
14 reason why you'd want to have employees sign a policy, is
15 that right?

16 A No, that's --

17 MS. MOORE: Mischaracterizes the witness'
18 testimony.

19 A No, that's --

20 MS. WEINSTEIN: Same objection.

21 A That's not right. What I was saying is I wasn't
22 aware that there was a requirement in the department that
23 with the issuance of a new policy, that -- any new policy --
24 so for example, we have many other policies besides the ones
25 that we've been talking about today. I don't know that

1 there was a practice of having employees who the policy
2 relates to their work having to sign it.

3 Q Okay.

4 A I wasn't aware of a requirement.

5 Q well, I was actually kind of asking if it was a
6 practice, not whether it was a requirement?

7 MS. WEINSTEIN: Same objection.

8 MS. MOORE: Same objection, vague and ambiguous.

9 Q was it a practice?

10 A I can't speak to details. I am aware that there
11 are various documents, and they may not all be policies,
12 where sometimes we ask employees to sign that they have read
13 and understood the document. So for example, we have
14 confidentiality agreements where people are asked, because
15 of the nature of their work, to acknowledge that they've
16 read the document, that they've signed the document, things
17 along those lines.

18 So I'm struggling with the word practice in that
19 there are occasions where the department asks for that sort
20 of written acknowledgment. But I am not aware that it was
21 across the board.

22 Q All right. With regard to policy CS-106, to your
23 knowledge, did SPU require that the employee sign a copy of
24 the policy to give -- to acknowledge that they received the
25 policy and had read it?

1 MS. MOORE: Vague and ambiguous as to time.

2 A My understanding is some point after the issuance
3 of policy CS-106 there was an effort to document that the
4 employees that it applied to were supposed to acknowledge
5 receipt and sign a document.

6 Q Now, how did that decision get made, if you know?

7 A I don't know.

8 Q Well, was it your decision that employees should
9 sign a copy of CS-106?

10 A No.

11 Q Do you know whose --

12 A Not to my recollection.

13 Q Do you know who directed that?

14 A I do not.

15 Q Do you know when it was directed?

16 A I do not.

17 Q Would it be your expectation that it would have
18 been directed soon after its issuance in March of 2011?

19 MS. WEINSTEIN: Objection.

20 A Difficult to say. In part, the first thing that
21 comes to mind is there could have been a discussion that
22 they wanted to wait to sign the documents, the policy, until
23 after the procedures were in place. And I'm speculating
24 there, but if that was the case --

25 MS. MOORE: Well, I'm instructing you not to

1 speculate. Sorry.

2 MR. SHERIDAN: Let's have this marked as
3 Exhibit --

4 Q This has been marked as Exhibit 3. Take a look at
5 that. And these are --

6 MS. MOORE: Jack, do you --

7 MR. SHERIDAN: Yeah, I didn't forget you.

8 MS. MOORE: Okay. Thanks.

9 Q So Exhibit 3, it's a bunch of CS-106s that we
10 received from the city, and it has some signatures on the
11 bottom. First, I wanted to know whether you had ever seen
12 any of these signed versions of CS-106?

13 A Not that I recall.

14 Q All right. And then I'm going to ask you if you
15 could look at some of them and tell me if you can tell whose
16 signature it is. On the first page, which is Bates stamped
17 1584, can you tell whose signature that is?

18 A Down at the bottom?

19 Q Yes.

20 A No.

21 Q And do you see how it's dated 12/13/12?

22 A Yes.

23 Q Do you have any recollection of any discussion
24 among management of -- in roughly December of 2012 of the
25 need to have employees sign a copy of CS-106?

1 A Not that I recall.

2 Q All right. Now, look at the next page. It says
3 somebody Navarro. Do you see that?

4 A Yes.

5 Q Do you know that person? Can you tell me who that
6 person is?

7 A I can't.

8 Q And that's 12/13/12 also. And then how about the
9 next signature, do you recognize that?

10 A No. So I have a question. Are you asking me can
11 I read the signature or do I recognize the name as in the
12 individual or?

13 Q Let's -- I'll take either. If you know the name
14 of the person or you recognize the signature -- I assume if
15 you recognize the signature you know the name of the person,
16 so --

17 MS. MOORE: Well, I object to that.

18 Q So let's -- the goal is, it's one of
19 identification, whether you can tell whose signature it is?

20 MS. MOORE: Well, you need to make clear in your
21 answer, Mr. Hoffman, whether you're saying you can read the
22 signature or if you know the individual.

23 A I can read the signature. Which one are we on?

24 Q 1586.

25 A Okay. I can read the signature.

1 Q But you don't know the person?

2 A I don't.

3 Q How about 1587?

4 A Difficulty with the signature.

5 Q And Debra Warren is 1588. Do you recognize that
6 name?

7 A Yes.

8 Q Who's she?

9 A Debra is the -- I probably won't get her -- well,
10 wait, I may be confusing names. Debra and Dee. No, I know
11 the first name, but I don't want to confuse it with the
12 wrong person, so. . .

13 Q Have you ever heard that copies of CS-106 were
14 placed in employee files and then removed?

15 MS. MOORE: Assumes facts not in evidence,
16 argumentative, calls for speculations, lacks foundation.

17 MS. WEINSTEIN: Same objections.

18 A I haven't heard that.

19 Q All right. Are you aware of any CS-106 copies
20 being pulled from personnel files of your employees, of any
21 of your employees?

22 A No, I'm not.

23 Q I'm handing you Exhibit 4. All right. Take a
24 look at Exhibit 4 -- it's Exhibit 26 to the Regan
25 deposition -- and then we'll talk about it when you're

1 ready.

2 A Okay.

3 Q All right. You're familiar with these talking
4 points for CS-106.1?

5 MS. MOORE: Assumes facts not in evidence.

6 A I am not.

7 Q And you see how they're dated July 16, 2012, up in
8 the top --

9 A Yes.

10 Q -- there?

11 A Yes.

12 Q All right. So it's your understanding that --
13 whether or not you're familiar with the specific talking
14 points, it is your understanding that there was some
15 training around the issuance of CS-106.1, correct?

16 MS. WEINSTEIN: Objection.

17 MS. MOORE: Calls for speculation, lacks
18 foundation, assumes facts not in evidence.

19 MS. WEINSTEIN: Objection.

20 A My understanding was that the whole purpose of the
21 procedure was to spell out in detail to employees how to
22 comply with the policy.

23 Q All right. And the supervisors in the call center
24 and other places, they were charged with providing training
25 in that regard, correct?

1 A I don't know.

2 Q Let's look at these -- the first talking point.
3 And it says, the purpose of the procedure is to clarify how
4 SPU expects employees to handle transactions for their own
5 accounts, accounts of people you know, or co-workers, and
6 city employees who may have access to CCSS.
7 would you agree that that really was the purpose of the
8 procedure CS-106.1?

9 A I would say, yeah, the purpose is to provide
10 guidelines and directions for how employees can comply with
11 the policy.

12 Q And then the first bullet point says, a lot of
13 time and effort, consideration, and thought have gone into
14 this procedure. would you agree that that's an accurate
15 statement of the process of drafting CS-106.1?

16 MS. MOORE: Calls for speculation, lacks
17 foundation.

18 MS. WEINSTEIN: Same objection.

19 A I don't have the details. At a high level, what I
20 was aware of was that the drafting of that procedure
21 required a lot of back and forth between management, labor
22 relations, and employees.

23 Q The next sentence says, SPU did not rush into
24 development of this procedure, and it has gone through
25 scrutiny of city attorneys and the city's joint labor

1 management committees. And that sounds like that's your
2 understanding, right?

3 MS. WEINSTEIN: Objection.

4 MS. MOORE: Same objections.

5 A I'm not sure about the legal review, and I would
6 be -- the term here, I'm not sure it's -- I don't know if it
7 was the city's joint labor management committee or the
8 utilities joint labor management committee.

9 Q And then the last bullet in that section says,
10 this is a procedure that is in effect for all of the
11 customer service branch, not just the call center.

12 would you agree with that?

13 A That's what it says.

14 Q No, no, I want to know whether you as the head of
15 SPU agree that CS-106.1 applied not just to the contact
16 center but to the customer service branch in general?

17 A I believe CS-106.1 should actually apply to anyone
18 who has read/write access to the system.

19 Q within SPU?

20 A within SPU.

21 Q All right. So the next bullet point -- the next
22 section, first bullet point says, what this means to you.
23 It means that sometimes completing an account request will
24 take longer than it used to. Did you have any sense of
25 whether it would take longer to follow the procedure of

1 CS-106.1 than it used to --

2 MS. MOORE: Calls.

3 Q -- before it was issued?

4 MS. MOORE: Calls for speculation, lacks
5 foundation. I'm going to instruct you not to speculate.
6 You can answer if you know.

7 MS. WEINSTEIN: Same objections.

8 A I don't know what goes into completing an account
9 request.

10 Q Is it fair to say you never spoke with Ms. Regan
11 about that issue, whether it would take longer than it used
12 to?

13 A I don't recall having any conversation like that.

14 Q How about Ms. Russell, did you have any
15 conversations with her about the implications in terms of
16 the effort that would be needed by persons working in the
17 contact center with -- in complying with CS-106.1?

18 A Not that I --

19 MS. WEINSTEIN: Objection, lacks foundation.

20 A Not that I recall.

21 Q And did you see under Section A it says, key
22 points, request -- bullet one, request changes on your
23 account via email to a supervisor. Was it your
24 understanding that that was one of the requirements of
25 CS-106.1?

1 A without reviewing CS-106.1 I couldn't tell you if
2 this is a requirement of that or not.

3 Q Let's grab the book and see if it refreshes your
4 recollection.

5 A Okay. what number?

6 Q I'll pull it right up. It's Hoffman 9. wait,
7 wrong, hang on. Hoffman 14.

8 A Can I have the question again?

9 Q The first bullet point said, key points, request
10 changes on your account via email to a supervisor, that that
11 was one of the key points of CS-106.1. would you agree?

12 MS. MOORE: Calls for speculation, lacks
13 foundation. The document speaks for itself.

14 MS. WEINSTEIN: Same objections.

15 A what I'm looking at is on page 2, under A-1 where
16 it says, employees will notify a supervisor or division
17 management by email of the account transaction and request.

18 Q Having signed off on CS-106.1 I'm interested in
19 knowing whether you think that that's a key point of the
20 procedure?

21 MS. WEINSTEIN: Same objection.

22 A Yes, I do.

23 Q All right. would you agree with me that before
24 CS-1 became effective on July 16, 2012, there was no prior
25 procedure regarding this particular process?

1 MS. MOORE: CS-106.1?

2 MR. SHERIDAN: Yes.

3 MS. WEINSTEIN: Objection.

4 MS. MOORE: Vague and ambiguous.

5 A which process are you talking about?

6 Q To provide a transaction processing procedure
7 related to policy CS-106, customer utility account
8 transactions, which prohibits employees from performing
9 account transactions involving themselves, their family
10 members, people they know, or on behalf of other employees.

11 MS. MOORE: Vague and ambiguous.

12 MS. WEINSTEIN: Same objection.

13 A What I'm aware of is that before the adoption of
14 CS-106.1, there was the direction to employees in the 1999
15 UAR Expectations that if you needed to conduct business on
16 your own or a family member's account, please contact your
17 supervisor.

18 Q Let's take a look at Exhibit 5. All right. Take
19 a look at Exhibit 5, if you would?

20 A Okay.

21 Q All right. So this is an email cover from
22 Ms. Regan to Melina Thung and you, a copy to Andy Ryan,
23 subject, news release, dated December 2, 2011. And this is
24 an email you received, is it not?

25 A Yes, it is.

1 Q All right. And who's Andy Ryan?

2 A Andy Ryan is an employee of SPU.

3 Q All right. Does he work for you?

4 A He works in the communications division on media
5 relations.

6 Q Oh. Does he ever grant interviews, or is he the
7 guy that sort of sets up the communications?

8 A In Andy's day-to-day works, sometimes he will be
9 the spokesperson for the department, which means that if the
10 media is there, they would speak to Andy. And sometimes
11 Andy arranges for the media to speak to a subject matter
12 expert and attends the interview.

13 Q Got it. So this press release contains some
14 quotes from you. And so I'd like to turn over to the
15 December 2, 2011, press release. Attributed to you is --
16 and I'm going to start by reading four paragraphs before the
17 end of the first page of the press release.

18 A Um-hum.

19 Q It says, at this point, net revenue losses to the
20 utility are estimated about \$440. And the subject is, three
21 workers fired in continuing utility billing investigation.

22 The next paragraph says, SPU Director Ray Hoffman
23 said that although the dollar amount involved is relatively
24 small, the greater issue is the responsibility of public
25 employees to work ethically and not use their positions to

1 benefit themselves or family or friends. Is that an
2 accurate portrayal of what you intended to communicate in
3 this press release?

4 MS. MOORE: This has been asked and answered,
5 Jack. We went over this this morning.

6 MR. SHERIDAN: This is the press release.

7 MS. MOORE: Asked and answered.

8 A All right. This is a reminder to -- since this
9 went out to the public, it was a reminder to the public that
10 we take our position of public trust very seriously, and
11 that was the indication.

12 Q All right. The next page of the press release
13 says -- and I'm starting in the middle of the second line of
14 the first full paragraph -- it says, since then, the
15 department has taken a number of steps to improve billing
16 process monitoring and augment employee training. And then
17 there's a list of bullets. And about halfway down the
18 bullets it says, required employees who have access to
19 billing system to sign a confidentiality agreement that
20 includes an ethics statement.

21 was it your understanding that by December 2011
22 all employees at SPU had signed a confidentiality agreement
23 that included an ethics statement?

24 MS. MOORE: That mischaracterizes the document.

25 MR. SHERIDAN: I'm not talking about the document.

1 MS. MOORE: Mischaracterizes the document.

2 MS. WEINSTEIN: Objection, it assumes facts not in
3 evidence.

4 A And the question again?

5 Q The question is: Was it your understanding as of
6 December 2011 that all employees working for Seattle Public
7 Utilities had signed a confidentiality agreement that
8 included an ethics statement?

9 MS. MOORE: Assumes facts not in evidence,
10 mischaracterizes the witness' prior testimony,
11 mischaracterizes the document.

12 MS. WEINSTEIN: Same objections.

13 A I am not aware of what employees may or may not
14 have signed in relation to this statement by that date.

15 Q And the next bullet says, remind employees of
16 their existing obligations under the ethics code, which
17 prohibits them from making adjustments on their own utility
18 accounts or those of friends or family.

19 So my question is: Was it your understanding that
20 by December 2011 all employees had received notice that they
21 were prohibited from making adjustments on their own utility
22 accounts or those of friends or family?

23 MS. MOORE: Vague and ambiguous.

24 MS. WEINSTEIN: Same objections.

25 A It is -- I have not conducted a survey of all

1 employees to find out what they were aware of by that date.
2 what I can tell you is I am aware of multiple efforts to
3 communicate the requirements of policy CS-106. The ones I
4 mentioned previously, but I'm not sure it's all inclusive,
5 was my -- I believe I had two director's message between the
6 issuance of CS-106 and the end of the year, so it may not
7 have been by this date. I believe the customer service
8 branch had a communication to customer service branch
9 employees about CS-106. But whether or not there was
10 universal knowledge, I can't answer for you.

11 Q All right. Would it be your expectation that the
12 confidentiality agreements that employees signed from 1999
13 on would include an ethics statement?

14 MS. WEINSTEIN: Objection.

15 MS. MOORE: If you know. Calls for speculation.

16 A Quite frankly, I don't know that in 1999
17 employees -- I don't know one way or another what they were
18 required to sign.

19 Q All right. Is it part of your job -- as part of
20 your job duties do you, yourself, sign an ethics statement?

21 MS. MOORE: Vague and ambiguous.

22 Q A confidentiality -- strike that. Wait, let me
23 reask.

24 Is it true that as one of your job requirements
25 you signed a confidentiality agreement?

1 MS. MOORE: Vague and ambiguous as to time.

2 A I don't recall.

3 Q Here is Exhibit 6. Okay. I've handed you what's
4 been marked as Exhibit 6. And it is a email string, again,
5 so you may want to read from the back forward.

6 A Okay.

7 Q So who is Norman Dizon, D-I-Z-O-N?

8 A Norman is our lead individual on responding to
9 public disclosure requests.

10 Q So looking at the March 2014 email, which is at
11 the back of the exhibit, it's from him to Debra Reed. And
12 Debra Reed is who?

13 A Debra Reed is the first level manager of the
14 contact center UARs. So the UAR supervisors report to Debra
15 Reed.

16 Q All right. And he's writing her in March 2014
17 saying that we need all -- UAR Expectations for all
18 employees who signed them between June 1, 2012, and August
19 31, 2012, not just Luisa Johnson's. And she writes back on
20 the 19th of March saying, I thought you meant just Luisa.
21 And she said, I started my role here, et cetera, et cetera,
22 and goes on to say -- asked for more time to respond.

23 Please go to the next page. It's a March 21st
24 email from Norman Dizon to Debra, and says, any progress?
25 And then on March 22nd she says, I located a few signed

1 documents and sent them to the office.

2 So let me ask you this: At any point in March of
3 2014 did you get involved in any searches for signed UAR
4 Expectations that covered the period June 2012 to August 31,
5 2014?

6 A Not to my recollection.

7 Q All right. Well, did you receive any reports from
8 Ms. Regan or anyone else about the status of tracking down
9 such documents?

10 A Yeah. In what time frame?

11 Q This would be in March 2014.

12 A Not to my recollection.

13 Q And then towards the top of the first page, it's
14 an email from Ms. Regan saying -- asking whether she needs
15 to do a page-by-page comparison of the results of the
16 search. Is it fair to say that Ms. Regan has had no
17 communications with you about this subject matter?

18 A Not that I recall.

19 Q Here's Exhibit 7. And Exhibit 7 is a
20 confidentiality agreement, Bates stamped Johnson 61537.
21 It's dated December 17, 2010, and it's signed by Luisa
22 Johnson. Have you seen this version of the confidentiality
23 agreement before?

24 MS. MOORE: Vague and ambiguous. By -- you mean
25 this version, you mean the one signed in 2010, Jack?

1 Q The one that's in front of you. Have you seen
2 this version of it?

3 A I'll need to read it.

4 Q Please do. And as you're reading it, would you
5 look for an ethics statement?

6 MS. MOORE: Vague and ambiguous as to the term
7 "this version" as to what you mean by that.

8 MS. WEINSTEIN: Objection, vague and ambiguous as
9 to the term ethics statement.

10 A Okay. And your question again?

11 Q So my question is: Are you familiar with this
12 particular version of the confidentiality agreement?

13 A I can't --

14 MS. MOORE: Vague and ambiguous as to the term
15 version.

16 A I can't tell you that I've seen this one before.

17 Q All --

18 A One way or the other. I may have, I may not have.

19 Q Let's take a look at Exhibit 8. And don't put
20 away 7 yet because we're going to compare them.

21 MR. SHERIDAN: Hang on a second. Hang on. These
22 all go together. They go behind the first page of Exhibit
23 8.

24 Q And so Exhibit 8 is just a pile of signed
25 confidentiality agreements that are dated either the end of

1 2011 or some time in 2012. Why don't you just page through?

2 MR. SHERIDAN: I'll represent to counsel that
3 they're all the same version of the confidentiality
4 agreement for that date.

5 MS. MOORE: And the problem that I have is when
6 you say a version, Jack, is that these aren't dated.

7 So. . .

8 MR. SHERIDAN: What's not dated?

9 MS. MOORE: The actual confidentiality agreement,
10 it doesn't have a date on it.

11 Q The -- so anyway, the one that is Exhibit 8 has a
12 date of September 6, 2011, in the lower right-hand corner.
13 Do you see that, sir, the lower left-hand corner?

14 A Hold on. Exhibit 8?

15 Q Yes.

16 A On the lower left-hand corner?

17 Q Um-hum.

18 A I see a rev 09/06/2011.

19 Q Do you know what rev means?

20 A I'm not sure.

21 Q Does it mean revised, in your experience?

22 A It could mean that, yes.

23 Q All right. Okay. So now --

24 MS. MOORE: I just want to note for the record
25 that this is a pile of documents that you've given us, some

1 have revision September 6, 2011, some have revised September
2 8, 2011, and I can't read others. I just want to state that
3 for the record.

4 MR. SHERIDAN: Yes, that's a very good point, that
5 if you do page through you'll see some of them say revised
6 9/6/11 and some say revised 9/8/11.

7 MS. MOORE: And it appears at least one says
8 revised 9/5/2011.

9 MR. SHERIDAN: If you see that, could you just
10 tell us roughly where that is, 9/5/11?

11 MS. MOORE: It is --

12 MR. SHERIDAN: Oh, I see it. It's the one signed
13 by Nida Cayetan?

14 MS. MOORE: Yes.

15 MR. SHERIDAN: So it looks like about two, four,
16 five, six pages in. It's got a different revision date. It
17 says 9/5. So there's some 9/5, 9/6, and 9/8 it appears.

18 Q So let's look at -- let's compare Section 3 with
19 Exhibit 7 and Exhibit 8. So in Exhibit 7, how many subparts
20 are there to item number 3?

21 A Four, a through d.

22 Q All right. And would you just summarize for us
23 what -- you don't have to read them -- but just summarize
24 what the a through d address?

25 MS. MOORE: The document speaks for itself.

1 MS. WEINSTEIN: Same objection.

2 A Only divulge confidential information as required
3 by law.

4 Q Okay.

5 A Maintain confidentiality, including not talking
6 about it outside the workplace or outside your work area. A
7 requirement to abide by this even after you no longer work
8 for the city.

9 Q Okay.

10 A And the use of the confidential information is for
11 work-related use and not for personal use.

12 Q All right. Now, if you look at Exhibit 8, and
13 item 3, are there -- can you tell whether or not the
14 subparts are a little different?

15 MS. MOORE: Document speaks for itself.

16 MS. WEINSTEIN: Same objection.

17 A In the Exhibit 8, instead of there being four sub
18 points, there are six.

19 Q All right. And then let's take a look at -- why
20 don't you read into the record d and e for Exhibit 8?

21 A D?

22 Q Um-hum.

23 A Per the city Code of Ethics I understand that I
24 must never post any transactions on my own utility account
25 or on the accounts of any of my friends or family members

1 without supervisory authorization.

2 Q Now, going back to Exhibit 7, the confidentiality
3 agreement version that is signed by Ms. Johnson in 2010, can
4 you find similar language?

5 MS. WEINSTEIN: Objection.

6 MS. MOORE: Vague and ambiguous.

7 A Similar information to 3d on --

8 Q Right. Something along the lines of --

9 A -- Exhibit 8?

10 Q Yeah, something along the lines of I must never
11 post any transactions on my own utility accounts or on the
12 accounts of any of my friends or family without supervisory
13 authorization.

14 MS. WEINSTEIN: Same objection, vague and
15 ambiguous.

16 A I don't see the language of 3d, Exhibit 8, in
17 Section 3, Exhibit 7.

18 Q All right. Now, let's look at -- on Exhibit 8
19 let's look at some of the names and see if you recognize the
20 names. On the first page of Exhibit 8, whose name is that?

21 MS. MOORE: If you know.

22 A Again, for clarification, can I read the name or
23 do I know the person or both?

24 Q First, tell me if you can read the name, and then
25 I'll ask you if you know the person.

1 A Okay. This looks like Marnes Jones.

2 Q Do you know that person?

3 A Not that I know.

4 Q How about the next name?

5 A Guillemette Regan.

6 Q Do you recognize her signature on that page?

7 A Not really.

8 Q But you know her, of course?

9 A I'm reading off of the printed and I'm assuming
10 that that's accurate.

11 Q What's the date that Ms. Regan signed this
12 confidentiality document that has this Section 3d?

13 MS. MOORE: The document speaks for itself.

14 A November 7, 2011.

15 Q All right. Can you make out the next name?

16 A I can't read the signature, and the date is fuzzy
17 as well, and it looks like Katy G-R-something.

18 Q All right. But you don't recognize the name?

19 A No.

20 Q All right. Next page, Nathaniel Borden, do you
21 recognize the name?

22 A I can't read the signature, but the name, it might
23 be the same employee, Nate Bolden.

24 Q Where did he work?

25 A I don't know. When was this signed?

1 Q It's -- look at the signature next to it. It
2 looks like November 21, 2011?

3 A The position I know Nate in, although I don't know
4 if he was in it at this time, was as a solid waste
5 inspector.

6 Q How about the next page, Shari Akramoff?

7 A Yes.

8 Q Who's she?

9 A She's an employee of the utility.

10 Q Do you know what she does or was doing back in
11 January of 2012?

12 A I believe Shari was in the customer service
13 branch, but -- and after that I'm not sure whether or not
14 she was over meters and other things at that point in time.
15 But I believe Shari was in the customer service branch.

16 Q Let's take a look at some of the additional
17 documents that are in the big book.

18 A Okay.

19 Q All right. If you would, take a look at Hoffman
20 16.

21 A Okay. Okay.

22 Q All right. And do you recognize this policy?

23 A Yes.

24 Q And what is 106.2?

25 MS. MOORE: Jack, for the record, it's a

1 procedure, not a policy.

2 Q Oh, okay, let's -- let me ask again. Is CS-106.2,
3 is it a procedure?

4 A Yes, it is.

5 Q And what's the purpose?

6 A The purpose of the procedure is to provide details
7 and guidelines for determining what -- whether or not an
8 employee should have access to the billing system. And if
9 they should have access, if they -- it's determined that
10 they should have access to the billing system, at what
11 level. Meaning there would be different access levels, such
12 as read only, or read and write, and as far as I know there
13 may be different security levels as well.

14 Q All right. Is it fair to say that the reason for
15 this policy is it came to your attention that there were
16 people with CCSS access that perhaps shouldn't have had it?

17 MS. WEINSTEIN: Objection.

18 MS. MOORE: Assumes facts not in evidence.

19 A My recollection of why we put this procedure into
20 place was part of their result of our ongoing investigation
21 of the CCSS system. And so, for example, it could include
22 folks who had legitimate access to the system under an old
23 job, move to a new job, and no longer required access to the
24 system but they still had it.

25 The other motivations was to be more rigorous in

1 evaluating whether or not people who currently had access
2 really needed access, and whether the access that they had
3 was at the right level of security for their work
4 requirements.

5 Q Okay, thank you. All right. Take a look at
6 Hoffman 44, please.

7 A Okay.

8 Q And tell me if you do recognize your signature on
9 this?

10 A I do recognize my signature.

11 Q It says in the upper corner, Director's Rule.
12 What is that?

13 A A Director's Rule is one of a variety of
14 administrative guidance documents that I am authorized to
15 sign. So a policy as CS-106 is a different administrative
16 document, and a procedure is yet again a different
17 administrative document.

18 Q All right. And the effective date of CS-310.1 is
19 May 1, 2013?

20 A Yes, it is.

21 Q All right. And it says on the document that it
22 supersedes CS-110.1. Would you agree that that means it
23 replaces CS-110.1?

24 MS. WEINSTEIN: Objection.

25 A Yes, that's the general meaning.

1 Q All right. And that's your understanding of the
2 meaning based on your years of experience as the head of
3 SPU?

4 A Generally speaking, when we have the word
5 supersedes, it means that there has been some level of
6 change between the current document and a previous document
7 that addressed the same issue.

8 Q All right.

9 MR. SHERIDAN: So let's mark this the next
10 exhibit.

11 A Should I keep this open?

12 Q Yes, please. And this is Exhibit 9 I've been
13 told.

14 (Exhibit No. 9 was marked.)

15 Q All right. I'm showing you what purports to be a
16 copy of CS-106.1. And let me ask you to take a moment to
17 look at it, and tell me if you recognize it?

18 A I don't recall seeing this.

19 Q It goes back to, it says, June 2008. And do you
20 recognize the signature?

21 A The first -- yeah, that's -- it looks like it's
22 the signature of Chuck Clarke, who was the former director
23 of Seattle Public Utilities.

24 Q Is he your immediate predecessor?

25 A Yes, he was.

1 Q And CS-310, that is -- sorry, CS-110.1 is
2 superseded -- this is the document that is -- that at least
3 it purports to be superseded, but you said you've never --
4 you don't recall seeing this particular policy?

5 A I don't recall seeing this.

6 Q All right. Let me take your -- draw your
7 attention back to CS-310.1 and ask you to look at Hoffman
8 45. And towards the bottom, it's Section C, Notices, it
9 says, SPU will send notices to customers whose accounts are
10 delinquent. Then it has something called an Urgent Notice.
11 And it says, this notice is generated once the account's
12 past due balance and number of days past the payment date
13 due on the bill meet SPU criteria for potential shutoff.

14 Do you have any specific knowledge about the
15 urgent notice provision?

16 MS. MOORE: Vague and ambiguous.

17 MS. WEINSTEIN: Same objection.

18 A No. What I'm generally aware of is that we have a
19 multi-step procedure for customers whose accounts fall
20 behind.

21 Q Prior to your shutoff or --

22 A Yes.

23 Q -- end of service?

24 A Yes.

25 Q And have you ever heard this jargon before, urgent

1 notice?

2 A I may have heard that term.

3 Q It says, the next paragraph -- and I just want to
4 know if you're familiar with this provision -- once an
5 urgent notice is generated, a minimum of 50 percent of the
6 total past due balance in certified funds must be paid, and
7 a payment agreement must be established to pay the remainder
8 within 60 days. Are you familiar with that provision?

9 MS. MOORE: The document speaks for itself. Vague
10 and ambiguous.

11 A I'm aware that we give the customer a notification
12 that shutoff is impending. And I'm also aware that we
13 provide the customer with an opportunity to avoid that. And
14 that we also provide the customer with an opportunity to
15 figure out a game plan to -- if they can't pay it all at
16 once, to give them a period of time to settle up.

17 Q Do you give any guidance to your employees
18 regarding sort of how tough to be before shutting off
19 someone's service?

20 MS. WEINSTEIN: Objection.

21 A I'm not sure what you're asking there.

22 Q So one could rigidly interpret the rules and say,
23 we're going to shut you off on May 1st.

24 A Um-hum.

25 Q Or one could take the position that, you know, you

1 better do your best to make payments by May 1st or we'll
2 shut you off, and then not shut somebody off. Is there any
3 sort of philosophical teaching that is given to your staff
4 in terms of how tough to be on issues like shutoff?

5 MS. MOORE: Vague and ambiguous, asked and
6 answered.

7 MS. WEINSTEIN: Same objections.

8 A Generally speaking, for the staff who carry out
9 this work, they are requested to follow the procedures that
10 are spelled out. Having said that, over the course of my
11 position there have been times when a customer issue or
12 concern will get escalated and perhaps brought to my
13 attention. And then I am in the position of rendering a
14 judgment over whether or not we're going to deviate from our
15 procedures and policies. But generally speaking, we ask our
16 staff who are required to carry this out on a daily basis to
17 stick to procedures.

18 Q All right. Thank you. All right. Let's look at
19 Hoffman 28.

20 MS. MOORE: Jesus, Jack. You keep. . .

21 A Okay.

22 Q All right.

23 MS. MOORE: Hang on, hang on. I got to get it.

24 MR. SHERIDAN: Okay.

25 MS. MOORE: Okay.

1 Q All right. It says on the heading, 2009
2 Accountability Audit Information. And under scope it says,
3 our audit was planned and conducted using a risk-based
4 approach covering the following general areas for the period
5 beginning July 1, 2008, and ending June 30, 2009.

6 First, do you recognize this document?

7 A Is this a state or a city audit?

8 Q I'm going to let you find that out for yourself so
9 that I'm not. . .

10 MS. MOORE: I'm going to object. This doesn't
11 appear to be a complete document. So if it calls for
12 speculation, I'm going to instruct you not to speculate.

13 Do you have the front page of this document, Jack?

14 Q Let me help you. Look at page 7 -- look at -- I'm
15 sorry, look at Hoffman 34.

16 MS. MOORE: It's the same objection. Incomplete
17 document, vague and ambiguous as to time, calls for
18 speculation.

19 MS. WEINSTEIN: Same objections.

20 (Ms. Ashbaugh joined the proceedings.)

21 A It's hard for me to tell given this. I am aware
22 that there was an audit, but. . .

23 Q well, let me ask it this way: Looking at page 34,
24 do you recognize the name Dan Potapenko?

25 A Yes.

1 Q And you see that that name is listed under State
2 Auditor's Office Contacts?

3 A Yes.

4 Q All right. And you see how if you look at the
5 section above that, Known or Suspected Loss Notification,
6 see how it's a reference to state law RCW 43.09.185 -- the
7 page before.

8 A Okay.

9 Q Yeah. -- and not SMCs?

10 A Okay.

11 Q So did -- to your knowledge was there an audit
12 done by the state in 2009 regarding your organization?

13 A There was -- I'm unclear of two things. One is
14 the period of time over which the audit applies to, so for
15 example, just reading from this document --

16 Q Yes.

17 A -- this one says it covers half of one year and
18 half of another.

19 Q Right. July 1, 2008, ending June 30, 2009.

20 MS. MOORE: I'm objecting to any questions on this
21 document. This is an incomplete document. It calls for
22 speculation.

23 MR. SHERIDAN: That's fine.

24 MS. MOORE: You need to listen to his question and
25 you can answer his question. I don't want you to speculate

1 about this document.

2 THE WITNESS: Okay.

3 MS. MOORE: It's an incomplete document.

4 Q So my question --

5 MS. WEINSTEIN: Same objections.

6 Q -- is: Was there an audit by the state in 2009?

7 A I believe there was a state audit of the city of
8 which certain departmental aspects of SPU were part of that
9 state audit.

10 Q Let's take --

11 A But I can't speak to whether the audit covered the
12 year 2000 -- the state fiscal year or the city's fiscal
13 year, which are two different things.

14 Q Fair enough.

15 A And generally speaking, the city gets audited by
16 the state just about every year.

17 Q All right. Take a look at Hoffman 30, if you
18 would. Look at the third bullet from the bottom of the
19 bulleted list. Do you see that?

20 A Yes, I do.

21 Q It says, we repeated our recommendations to the
22 city, to the Seattle City Light and to Seattle Public
23 utilities to improve monitoring control over adjustments to
24 individual customer accounts. Then it says, the utilities
25 are committed to improvement of controls. Can you tell me

1 in 2009 whether state auditors repeated their
2 recommendations to Seattle Public Utilities to improve
3 monitoring controls over adjustments to individual customer
4 accounts?

5 MS. MOORE: If you know. Calls for speculation.

6 A You know, I'm vague on this in part because I'm
7 not quite sure that I saw this document at the time that it
8 was released.

9 Q Here's a -- let me draw your attention to Hoffman
10 35. This appears to be a May 13, 2009, draft of the audit
11 report from the state regarding SPU. And I'm going to ask
12 you --

13 MS. MOORE: Mischaracterizes the document.

14 MR. SHERIDAN: How so, counsel?

15 MS. MOORE: It states it's an exit conference.
16 You're talking 35?

17 MR. SHERIDAN: Yeah, State Auditor's Office Exit
18 Conference -- oh, I see that, yes. Okay. Exit Conference.

19 Q Take a look, if you would, at Hoffman 37. Let me
20 ask you: Did you have face-to-face interactions with state
21 auditors in 2009?

22 A I can't recall for sure.

23 Q Tell me -- I'm going to read you a section from
24 this and ask you if it's an accurate representation. Under
25 utility customer account adjustments the state auditor

1 writes: We identified a weakness in internal control over
2 utility customer accounts. We learned during our
3 discussions with SPU residential auditing and accounting
4 supervisor that accounting technicians can make adjustments
5 to individual accounts without supervisory review. We also
6 learned that the customer billing system has the ability to
7 generate a report of all adjustments but the function has
8 not been activated.

9 So I'm going to ask you first, is it -- for this
10 time period, 2009, is it an accurate statement that SPU
11 residential auditing, within that organization, accounting
12 supervisors and accounting technicians could make
13 adjustments to individual accounts without supervisory
14 review?

15 MS. MOORE: Lacks foundation, calls for
16 speculation.

17 Q Only if you know.

18 MS. WEINSTEIN: Same objections.

19 A Yeah, I don't know.

20 Q For 2009, do you know whether it's an accurate
21 statement that the customer billing system has the ability
22 to generate a report of all adjustments but the function has
23 not been activated?

24 MS. MOORE: Lacks foundation, calls for
25 speculation.

1 MS. WEINSTEIN: Same objection.

2 Q If you know.

3 A I don't know.

4 Q You don't know. Okay. Fair enough. Let's take a
5 look at Hoffman 66, if we can. This is a June 2009 -- it's
6 entitled Management Letter from Carol Ehlinger, audit
7 manager. Do you recognize that name?

8 A I've heard the name before.

9 Q The first sentence of this letter says, in
10 planning and performing our accountability audit of the City
11 of Seattle for the period July 1, 2007, through June 30th,
12 '08, we noted some areas in the city's internal controls
13 over utility customer accounts and cash receipt could be
14 improved. Is it fair to say that through 2008 and 2009 it
15 came to your attention that the state auditor's office had
16 found weaknesses in SPU internal controls?

17 MS. MOORE: Calls for speculation, lacks
18 foundation.

19 MS. WEINSTEIN: Same objections.

20 Q And only if you know.

21 A I don't remember this coming to my attention. And
22 I would note that I didn't assume the position I'm in until
23 January of 2009.

24 Q Let's look at Hoffman 19. And it goes all the
25 way -- this is a letter from you that appears to go all the

1 way to Hoffman 25. So let's start at Hoffman 25 so you can
2 verify that that's your signature.

3 A Yes, it is.

4 Q All right. Now, let's go back to Hoffman 19 just
5 to nail down who you were writing to.

6 A The letter is addressed to Brian Sonntag, the
7 state auditor.

8 Q What's the date of the letter?

9 A September 10, 2009.

10 Q All right. Now, could I bring your attention to
11 page 23?

12 A Yes.

13 Q And it has a heading -- this section of your
14 letter has a heading Customer Service: Call Center
15 Operations. You write, SPU agrees with the audit
16 recommendation to analyze workload fluctuations,
17 productivity indicators, and make full use of technology to
18 establish and maintain appropriate staffing levels. SPU
19 recently hired a new call center manager with many years of
20 experience running call centers.

21 Do you remember -- can you tell us who that call
22 center manager was?

23 A I am not certain, but I would assume it would be
24 Debra Russell.

25 Q Debra Russell, okay. You go on to write, by the

1 end of 2009 we expect to have a three-year plan developed
2 and implementation begun to address many of the issues cited
3 in this audit. And is it fair to say that in 2009 you
4 developed a three-year plan to address the issues in the
5 audit?

6 MS. MOORE: Vague and ambiguous as to which audit
7 you're referring to, Jack.

8 MS. WEINSTEIN: Same objection.

9 A Yeah, I can't say which audit it's referring to.
10 And the other thing that I would note is I'm unclear what
11 issues are being cited.

12 Q In the letter?

13 A Yes.

14 Q I understand. All right.

15 MS. MOORE: And Jack, when you're done with this
16 exhibit, can we take a break? We've been going for over an
17 hour.

18 MR. SHERIDAN: Oh, we can take --

19 MS. MOORE: No, you can finish the exhibit.

20 MR. SHERIDAN: Well, no, let's take a break now.
21 I am very sensitive to that. That's fine.

22 MS. MOORE: You have to go to the bathroom, Jack?

23 VIDEOGRAPHER: This ends Tape 2. The time is
24 2:38. We're going off the record.

25 (Break.)

1 (Start Video Tape No. 3)

2 VIDEOGRAPHER: This begins Tape No. 3. The time
3 is now 2:59. You may continue.

4 BY MR. SHERIDAN:

5 Q All right. Let's have you look at page 58 in the
6 book. This is an email string --

7 A Not there yet.

8 Q Oh, okay, take your time. Ready?

9 A Okay.

10 Q It's an email string, so again, you'll start at
11 the bottom and read up. The bottom is an email dated April
12 29, 2010, from Dan Potapenko to Ms. Regan, and the subject
13 is SPU's accountability audit. The thing I want to bring
14 your attention to, it says -- he says, I'm closing out the
15 2009 accountability audit and remembered that at the 4/2
16 meeting with Rick and Anastassia they mentioned to you that
17 we will mark the previously issued management letter about
18 customers accounts as unresolved. And then he attaches a
19 chart. The bottom row of the chart has, the utilities have
20 been unable to establish fully effective internal controls
21 over customer accounts.

22 I wanted to ask you, would you agree that as of
23 April 2010 SPU was still unable to establish fully effective
24 internal controls over customer accounts?

25 MS. MOORE: Lacks foundation, calls for

1 speculation, argumentative.

2 MS. WEINSTEIN: Same objections.

3 A The question, again, please.

4 Q The question was: would you agree that as of
5 April 29, 2010, SPU was still unable to establish fully
6 effective internal controls over customer accounts?

7 MS. MOORE: Also vague and ambiguous.

8 A What I would offer you is at that time I am not
9 sure how aware I was of what the state of internal controls
10 over utility accounts was.

11 Q Is April 29th before the investigation began?

12 MS. MOORE: Vague and ambiguous as to
13 investigation.

14 A Can you tell me which investigation?

15 Q The one that Ms. Regan ran.

16 A The review of all employees who had read/write
17 access?

18 Q CCSS, yes.

19 A We started that in approximately February of 2011.

20 Q 2011, okay. And you see that, if you go to the
21 top of the email, you are a recipient on this email?

22 A I am.

23 Q So you would agree you received it at the time?

24 A Yes.

25 Q But it's your testimony that you perhaps were not

1 that familiar with these -- the details of these issues at
2 this time?

3 MS. MOORE: Mischaracterizes the witness'
4 testimony.

5 A I think what I was trying to say is I don't know
6 the parameters of that statement and where we had made
7 progress and where there was more work to do.

8 Q Now, if you would, take a look at page 70. I'm
9 going to walk you forward to this June 15, 2011, letter that
10 begins on 68. And it's a letter from Glen Lee to Carol
11 Ehlinger at the state auditor's office.

12 MS. MOORE: So are you looking at page 68, Jack?

13 MR. SHERIDAN: So 68 is where the letter begins,
14 right, but you have to look over at 69 to see the signature.

15 A Okay. I'm sorry, didn't you just refer me to page
16 70?

17 Q Yeah, and we'll talk about that in a minute.

18 A Okay. So I will need to read this letter.

19 Q Sure.

20 A Okay.

21 Q So at the time Glen Lee was your -- was the city
22 finance director?

23 A Yes, it appears so.

24 Q Did she report to you?

25 A No. The city finance director is in a different

1 department.

2 Q City of Seattle?

3 A Yes.

4 Q Not SPU?

5 A Correct.

6 Q Got it. But she cc'd you and Jorge Carrasco on
7 this letter, right?

8 A He did.

9 Q Glen did, right?

10 A Yes.

11 Q All right. I just want to see -- you to look at
12 this first paragraph and see if you agree with it factually
13 as of June 15, 2011. It says, this letter serves as an
14 addendum to the city's earlier comments provided in response
15 to the state's accountability audit for the time period of
16 July 2009 to July 2010. One of the three findings in the
17 audit states that the city -- and this is in quotes -- lacks
18 adequate processes to monitor adjustments to accounts, to
19 utility customers. The city agrees that better controls are
20 necessary to manage the processes which adjust account
21 balances, and will continue working to implement changes in
22 policies, procedures, and monitoring practices. However,
23 the city believes that financial risks from the current
24 monitoring processes have not been appropriately described
25 in the audit and we would like to take the opportunity to do

1 so.

2 were you in the loop in the creation of this
3 letter?

4 A Not that I recall.

5 Q Were you in any discussions with the city finance
6 director concerning responding to the state auditor's
7 addendum -- I'm sorry, the state auditor's audit for the
8 period July '09 to July '10?

9 A Not that I recall.

10 Q If you would, jump to the last paragraph.

11 A On that page?

12 Q Last paragraph of the letter --

13 A Okay.

14 Q -- above the sincerely. So the second sentence in
15 that last paragraph begins, while we understand that these
16 controls have been lacking, we note that the audit report
17 did not contain any assertion of revenue loss or
18 illegitimate billing adjustments or the potential loss of
19 millions of dollars due to bad billing practices.

20 MS. MOORE: Billing adjustment practices.

21 Q Bad billing adjustment practices, right. And you
22 remember from this morning we talked about Potapenko's
23 statement regarding the possibility of millions of dollars
24 in the newspaper article?

25 A Yes, I do.

1 Q So do you know one way or the other -- strike
2 that.

3 Do you have any facts to either support or refute
4 this last sentence in the letter based on what you knew back
5 in April of 2010 -- or June of 2011. I'm sorry.

6 MS. WEINSTEIN: Objection.

7 A The question one more time, please.

8 Q Yeah. Do you have any way of knowing, if we take
9 you back to when this letter was written in June of 2011,
10 whether Glen Lee's statement here is an accurate one where
11 he writes that, while we understand that these controls have
12 been lacking, we note that the audit report did not contain
13 any assertion of revenue loss or illegitimate billing
14 adjustments or the potential loss of millions to bad billing
15 adjustment practices.

16 So my question is: Did you know back in 2011
17 whether there really were millions of dollars of losses?

18 MS. MOORE: Calls for speculation, lacks
19 foundation.

20 A So this is a high level response and I'm not sure
21 as to the time.

22 Q The date of the letter is the summer of 2011.

23 A No, I understand that. The recollection I'm going
24 to give you, I don't know where it falls in relation --

25 Q Oh.

1 A -- to this date.

2 Q Okay.

3 A And what I recall is -- we talked about this
4 morning is that when the state identified the \$24,000,000 --
5 we had a discussion over, and I believe they labeled it as
6 account adjustments -- we had a discussion that the vast
7 majority of those adjustments, I believe, both in number and
8 dollars, were not adjustments of the nature that are carried
9 out by our UARs. We talked about an adjustment for a change
10 in rates, and then this morning I couldn't recollect what
11 the other issues were.

12 Q Right.

13 A It appears those are articulated here.

14 And I also recall that we had -- we, not myself,
15 but a discussion was had with the state over whether they
16 had identified lost funds. And I remember their response
17 was, no, we're not saying this money is gone. We're saying
18 that you can't -- given how you're set up, it's difficult
19 for you to track it.

20 And so I believe Glen was attempting to explain
21 that we did not feel that there was anywhere close to that
22 magnitude of money in play as having been lost.

23 Q Can I turn your attention to page 60, please? And
24 this is a -- the heading says Schedule of Audit Findings and
25 Responses.

1 MS. MOORE: I'm sorry, Jack. What --

2 Q 60, please.

3 A Excuse me.

4 Q Hoffman 60.

5 MS. MOORE: All right. Got it.

6 MR. SHERIDAN: Got it?

7 MS. MOORE: Yeah.

8 Q Schedule of Audit Findings and Responses, City of
9 Seattle, King County, May 17, 2011. And this section says,
10 city lacks adequate processes to monitor account adjustments
11 that reduce amounts owed by utility customers which may
12 cause other customers to pay more.

13 My question is: Do you recognize this document?

14 MS. MOORE: I'm going to object. I note for the
15 record that this is an incomplete document. So I'm going to
16 instruct you not to speculate. I don't know where this
17 document comes from.

18 MR. SHERIDAN: Yeah, it's page 12 of a document
19 from the Washington State Auditor's Office if you look at
20 the bottom.

21 MS. MOORE: But we don't have the whole document,
22 so my objection stands.

23 MR. SHERIDAN: Yeah, valid objection.

24 MS. WEINSTEIN: Same objection.

25 Q So my question is: Do you recognize this?

1 A Again, I'm sort of lacking context to the larger
2 report, but I am aware that the state issued a comprehensive
3 response on city departments, and it looks like this may be
4 part of it.

5 Q I just want to get a sense of if you're aware of
6 certain facts that are in this document. So if you'll look
7 at under Description of Condition, it says, the utilities do
8 not adequately monitor adjustments to customer accounts to
9 ensure they are legitimate. The utilities do not have any
10 way to know if employees are adjusting their own accounts.
11 And do you have any information as to whether or not that's
12 an accurate -- was an accurate statement at the time that it
13 was written?

14 A By the time that was released we were probably
15 four months into our own investigation, and our
16 investigation was based on the fact that the -- we noticed
17 that we didn't have adequate internal controls.

18 Q The next paragraph says, we noted approximately
19 300 employees have the system access needed to make
20 adjustments to utility accounts. Going back to that time
21 frame, is that an accurate estimate of the amount of
22 employees that could access the CCSS system?

23 MS. MOORE: Calls for speculation, lacks
24 foundation.

25 Q If you know.

1 MS. MOORE: If you know.

2 A I couldn't tell you, but what I would note, and I
3 believe this continues to be the case, that employees from
4 multiple departments have access to the system. So I'm not
5 sure if this is a number in total or for just the department
6 or what the number is.

7 Q Oh, gotcha. Okay. All right.

8 Take a look, if you would, at 60 -- hang on a
9 second -- 48.

10 A Okay.

11 Q So this is a five-page document that's dated
12 November 15, 2011, from Ms. Regan to you. And the subject
13 is CCSS Investigation - Summary of Supervisor Interviews.
14 So let me ask, first, do you recognize this document?

15 MS. WEINSTEIN: Objection, mischaracterizes the
16 document.

17 MR. SHERIDAN: Well, what did I say wrong?

18 MS. WEINSTEIN: It appears to be from Nancy Coyle.

19 MR. SHERIDAN: Oh, oh, thanks. Late in the day.
20 I had my coffee.

21 Q From Nancy Coyle, labor relations coordinator, to
22 Ray Hoffman, director, cc Guillemette Regan. Got it.

23 MR. SHERIDAN: Thank you for the correction.

24 A And your question?

25 Q Do you recognize this?

1 A I do.

2 Q All right. And so at some point was a decision
3 made that the CCSS -- the supervisors that had CCSS access
4 should be interviewed?

5 MS. MOORE: Lacks foundation, calls for
6 speculation.

7 MS. WEINSTEIN: Same objections.

8 A I don't recall the process by which this
9 investigation was initiated.

10 Q So if you look under introduction, the last
11 sentence of the first paragraph says, the purpose of the
12 interviews was to answer the following questions, and then
13 it lists six questions. The first one is, did the
14 supervisors know or should have known that UAR (utility
15 account reps) employees were making transactions on their
16 own accounts and/or accounts of family members, friends, or
17 co-workers; and if they knew, what corrective action was
18 taken? And then the second one is, supervisors'
19 understanding of policies and et cetera.

20 So this is a document that at the time, at least,
21 you were familiar with back in November 2011, correct?

22 A This was a document I read back when it was
23 delivered to me.

24 Q All right. So let's take a look under Factual
25 Findings, the second paragraph. It says, all of the

1 supervisors stated that they were unaware that UARs were
2 doing transactions outside the policy, training, and
3 guidelines by accessing their accounts or accounts of
4 family, friends, relatives, or co-workers. They added that
5 if they knew of improper transactions, they would have told
6 the director or human resources. They indicated they had no
7 such reports.

8 And then after you received that information, did
9 you take any action as a result, if you recall?

10 MS. MOORE: Vague and ambiguous.

11 MS. WEINSTEIN: Same objection.

12 A Take any action in relation to?

13 Q To the fact that the supervisors said they were
14 unaware.

15 A Well --

16 MS. MOORE: Vague and ambiguous.

17 A Yeah.

18 MS. WEINSTEIN: Same objection.

19 A Did I take any -- I'm still struggling with --

20 Q So this paragraph says that all of the supervisors
21 stated that they were unaware that UARs were doing
22 transactions outside of policy, training, and guidelines by
23 accessing their own accounts or the accounts of family,
24 friends, relatives, and co-workers. Did that -- was that
25 important to you to know that this -- from the supervisors'

1 perspective they said they were totally unaware?

2 A By --

3 MS. MOORE: That UARs were doing transactions
4 outside of policy?

5 MR. SHERIDAN: Yes.

6 A By this point in time I believe we were already
7 well under way to trying to make improvements at all levels.
8 So the examples, of course, would be when CS-106 came out
9 earlier in that year and that without knowing the details of
10 it we were looking into more frequent reviews on a regularly
11 scheduled basis and different triggers for identifying how
12 people -- whether or not employees were working on their
13 account. I don't know if they were in place, but that was
14 part of the larger work effort, was --

15 Q Okay.

16 A -- to get more clear so that both employees and
17 management could be more aware if this -- had the tools to
18 become more aware if this sort of activity was going on.

19 Q And looking at under the heading Supervisors'
20 Understanding of Policies and Procedures, it's written, all
21 of the supervisors stated that there is no specific written
22 SPU policy or procedure that references a prohibition
23 against UARs executing transactions on their personal
24 account or the account of their family members and friends.
25 When you read that, did it move you towards any action?

1 MS. MOORE: Vague and ambiguous.

2 MS. WEINSTEIN: Same objection.

3 A I don't recall how I responded to that written
4 statement at the time. And again, what I would offer you is
5 by that time CS-106 was in place and I believe work had
6 begun on the procedures for CS-106.1.

7 Q Okay. But if we include CS-106.1, it's fair to
8 say that it came to your attention in November of 2011 that
9 all of the supervisors had said that there's no specific
10 written policy or procedure, right?

11 MS. MOORE: The document speaks for itself.
12 Mischaracterizes the document.

13 A Yeah, what it basically says is based on the
14 interview by the investigator that is what they said. And
15 the other thing that I would offer and -- is I don't know at
16 that point whether or not the supervisors who were in place
17 were any of the supervisors that were in place back in 1999
18 when we did have the written UAR Expectations which said if
19 you're going to go work on your own account, please talk to
20 your supervisor.

21 Q So let's now look at the bottom of page Hoffman
22 49. And that paragraph begins, five of seven supervisors
23 said it was never acceptable for an employee to do a
24 transaction on their own account or on their friends' or
25 family's accounts. And then the next sentence says, all of

1 the supervisors said that UARs were told to go to their
2 supervisor if work was needed done on their own account or
3 family members' or friend's account. Then it says, one
4 supervisor, Beverly Flowers, had a conflicting opinion and
5 said no one ever told her it was not okay to do payment
6 plans.

7 Do you know the name Beverly Flowers?

8 A I know the name.

9 Q Was she a supervisor working under your oversight
10 back in 2011?

11 A She would have been under either Dee or Debra's
12 oversight. She was not in a reporting relationship to me.

13 Q And when you say Debra you mean?

14 A There's -- I don't know if Dee Reed was there yet,
15 but her -- the top of her report would have been Debra
16 Russell and then Susan Sanchez.

17 Q Got it. Going on to page Hoffman 50 at the top,
18 this report writes, Ms. Flowers believes that it is
19 acceptable for UARs to do payment arrangements for
20 themselves, a family member, friend, or co-worker as long as
21 it's within the policy guidelines which apply to any other
22 customer. She referenced this repeatedly during the course
23 of the interview. However, this was not consistent with the
24 other supervisors' understanding of the policy. She also
25 stated that prior to a March 2011 memo from SPU's department

1 director, it was unclear that UARs could not work on another
2 UAR's account.

3 So after you received this information what did
4 you do with regard to Ms. Flowers, if anything?

5 MS. MOORE: Objection, vague --

6 A I --

7 MS. MOORE: Go ahead.

8 A I don't --

9 MS. MOORE: Wait a minute.

10 Are you done with your objection?

11 MS. WEINSTEIN: Go ahead.

12 MS. MOORE: Mischaracterizes the document.

13 Go ahead.

14 A I don't recall that I did anything to Ms. Flowers.

15 Q All right. So to your knowledge Ms. Flowers was
16 not in any way disciplined after you received this report?

17 A Disciplined for what?

18 Q For anything.

19 A without checking my disciplinary records I
20 couldn't tell you whether or not she's been in my office.

21 Q And then under Training -- so we're still on
22 Hoffman 50, the second paragraph -- it says, all of the
23 supervisors stated that they and UARs were told that they
24 should not touch their own accounts during new hire training
25 and that the message was repeated thereafter. So do you

1 know what new hire training is?

2 A I'm not sure what this is referring to. I do know
3 that when we have new agents who come into the utility,
4 there's a period of time where -- the way I would describe
5 it is they learn the system because they're dealing with
6 four different lines of business, they're dealing with
7 residential and commercial accounts. There's a tremendous
8 amount of knowledge that they need to absorb, and that
9 there's a period of time while they're in what for lack of a
10 better word I will say is training before they move into
11 full service where they're operating on their own and
12 reporting to their supervisor, the length of time and what's
13 required during that period of time, I don't have details
14 on.

15 Q So this summary of supervisor interviews was
16 prepared by Nancy Coyle. Could you remind us who she is?

17 A At the time Nancy was the labor relations
18 coordinator.

19 Q And who did she report to?

20 A At that point in time she would have reported to
21 Laura Southard who reported to Kim Collier.

22 Q And she lists at the bottom of page 51 and onto
23 Hoffman 52, she has a bunch of conclusion paragraphs. I'd
24 like to draw your attention to paragraph 10 which reads, the
25 culture in the contact center was dysfunctional.

1 Enforcement of policies and performance standards was viewed
2 as discouraged by the previous division director, Mike
3 Harms. The current director's focus on productivity and
4 accountability is welcomed by most supervisors, but
5 challenges still exist with the more tenured employee in
6 that regard. Do you know who Mike Harms was or is?

7 A Mike Harms is an employee with Seattle Public
8 Utilities.

9 Q And was he a direct report to you?

10 A No, he was not.

11 Q To whom did he report?

12 A At this point -- well, actually I don't know --
13 excuse me. So I don't know because he is a previous
14 division director at that point in time, so I'm not sure
15 what time they're talking --

16 Q All right.

17 A -- about here, so it's hard for me to say who he
18 reported to.

19 Q To your knowledge was he ever disciplined?

20 MS. MOORE: Vague and ambiguous.

21 A I'm trying to -- disciplined on anything?

22 Q Right.

23 A I believe Mike was disciplined after the date of
24 this document on an issue that's not related.

25 Q What issue was that?

1 A I can't recall without having my file.

2 Q Do you remember what the level of discipline was?

3 A I don't.

4 Q Okay.

5 A I'm inclined to say that it was a suspension of
6 some length.

7 Q Okay.

8 MR. SHERIDAN: Oh, just to complete our record
9 from earlier this morning regarding Pealy, let me just ask a
10 question so, counsel, I can see where the scope -- where
11 your objection begins and ends.

12 MS. MOORE: Um-hum.

13 Q Can you tell me, during Nick Pealy's employment,
14 was he disciplined?

15 MS. MOORE: For any purpose?

16 MR. SHERIDAN: Yes.

17 A During Nick's full tenure at the city?

18 Q well, let's limit it to when he worked for you.

19 A There is only the issue that we talked about this
20 morning.

21 Q All right. Did it result in discipline?

22 MS. MOORE: Vague and ambiguous.

23 A Nick resigned in lieu of termination.

24 Q In lieu of termination, okay. All right.

25 MR. SHERIDAN: And counsel, I understand that it's

1 the inquiry as to what the nature of the improper act was,
2 that's where you're instructing the witness not to answer.

3 MS. MOORE: Yeah, based on the confidentiality of
4 the settlement agreement.

5 MR. SHERIDAN: Okay. I just wanted to nail it
6 down.

7 Q So you're aware that Ms. Regan conducted audits of
8 various employees, right?

9 MS. MOORE: That mischaracterizes the testimony.

10 A Are you referring to the work she did in terms of
11 looking at employees and transactions on their account?

12 Q Yes.

13 A Yes, I'm aware of that.

14 Q Can you tell us whether you have any knowledge as
15 to how she decided who to audit and not to audit?

16 MS. MOORE: That assumes facts not in evidence.

17 MS. WEINSTEIN: Same objection.

18 A My recollection --

19 Q Yes.

20 A -- and I can't be 100 percent certain of this, but
21 I believe the investigation was focused on SPU employees who
22 had read/write access to the CCSS system.

23 Q And so it's in the record that there are something
24 around 74 investigative reports. But would you agree with
25 me that there were many more people than that that had CCSS

1 access?

2 A Yes, although I don't know the explicit number.

3 Q Can you tell us, if you know, how the decision was
4 made to actually investigate those 74 or so people?

5 MS. MOORE: Vague and ambiguous, calls for
6 speculation.

7 MS. WEINSTEIN: Same objections.

8 A Not in detail. I would assume --

9 MS. MOORE: I'm going to instruct you not to
10 speculate.

11 THE WITNESS: Okay.

12 A It would include employees where it was identified
13 that they had made adjustments on late fees or charges and
14 payment arrangements.

15 Q Now, besides people that work in the call center,
16 are there other persons that -- whose job it would be to
17 make adjustments on late fees or payment arrangements?

18 A Besides which location?

19 Q Besides the call center.

20 A I'm not specifically clear on that.

21 Q It's true, is it not, that Seattle City Light also
22 would route their customers to the call center?

23 A My understanding of how it works is certain
24 varieties of calls from City Light's customers come to SPU
25 to be answered and addressed by the UARs. But it's also my

1 understanding that there are other sorts of customer calls
2 from City Light customers that City Light deals with
3 directly. But I can't tell you which calls fit in which
4 category.

5 Q So this idea that investigations would be
6 conducted on employees who made adjustments on late fees or
7 payment arrangements, was that your idea?

8 MS. MOORE: Mischaracterizes the witness'
9 testimony, assumes facts not in evidence, mischaracterizes
10 the facts.

11 MS. WEINSTEIN: Same objections.

12 A My understanding is that in the beginning the
13 investigation focused on all employees who had read and
14 write access. And my understanding of the process is if
15 during that investigation that activity was not shown, the
16 review of that employee and their account went no further.
17 If there was activity of the type that we have talked about,
18 then that account was reviewed further.

19 Q So this guy Phan that stole a million bucks or
20 whatever he stole, do you know how he went about doing it
21 and how he got away with it for a year or whatever period of
22 time it was?

23 MS. MOORE: Lacks foundation, calls for
24 speculation.

25 Q If you know.

1 MS. MOORE: I instruct you not to speculate.

2 MS. WEINSTEIN: Same objections, and vague and
3 ambiguous.

4 A My recollection of Mr. Phan, first again, is by
5 the time we discovered the fraud he had been terminated for
6 adjusting his own account, and that during the process of
7 piecing together and distributing his work, it came to an
8 employee's attention that something didn't square right. An
9 internal team, which consisted of folks in the engineering
10 branch and Guillemette in finance started reviewing
11 material. We notified -- I know for sure we notified the
12 police department. They indicated something to the effect,
13 when you have a smoking gun, then give us a call.

14 I believe the evidence that was discovered was a
15 check that came back to the department. If memory serves me
16 correctly, it was from housing authority in a substantial
17 amount, and it was to an account called City of Sea, S-E-A.
18 With that, we transmitted that information to the police
19 department and, I believe -- I'm not sure on the
20 sequencing -- to the prosecuting attorney in King County.

21 They undertook their own work approximately, I
22 don't know, two to three months later. Mr. Phan was picked
23 up at work and charged with embezzlement of funds from the
24 city. And we learned during the investigation that his
25 activity had been going on for multiple years.

1 Q Within, again, which department? Which --

2 A Joe Phan --

3 MS. MOORE: Asked and answered.

4 Q You can answer.

5 A Joe Phan was an employee of Seattle Public
6 Utilities.

7 Q And within Seattle Public Utilities which
8 suborganization?

9 A He was in the project delivery branch.

10 Q So here's what I'm wondering is, we've looked at
11 the headlines now that were reported, the press release, et
12 cetera, and the amount of money that was identified, at
13 least in the press, something like \$400 in one of the
14 cases --

15 A Um-hum.

16 Q -- so when you have -- my question is: When you
17 have such big fraud going on, why was your organization
18 focusing its time on what could be argued as small cases
19 that involved very little money?

20 A The distinction I would draw is that the
21 investigation over Mr. Phan was on large sums, embezzlement,
22 and while the dollar value of employees' adjustments on
23 their own accounts was small, the driver on that was far
24 from strictly financial. The driver on that was the public
25 has an expectation that employees are going to conduct

1 themselves appropriately, they're going to be honest,
2 they're going to act with integrity. And a message to the
3 public and our customers that we have employees who are
4 going in and adjusting their own account is the quickest way
5 we can lose the trust of our customers.

6 Q So you --

7 A So the reasons were not strictly dollars for
8 either of those. Mr. Phan did a lot of damage to the
9 credibility and the trust of the organization.

10 Q All right. And by going -- by disciplining the
11 persons that you disciplined you sent a message to the
12 public that we're not going to tolerate a lack of integrity?

13 MS. MOORE: Objection, mischaracterizes the
14 witness' testimony.

15 MS. WEINSTEIN: Same objection.

16 A The purpose of the discipline -- and I would note
17 that while I don't remember all of the disciplinary cases
18 that came before me under the CCSS investigation -- was
19 every employee has a different set of facts and
20 circumstances that apply to their disciplinary process. And
21 as a result of that, unfortunately, I felt the need to let
22 some employees go. I felt the need to suspend employees
23 without pay for various periods of time, even recognizing
24 that that can cause financial hardship on people who are the
25 income earners for their family. Others did not come to my

1 office and they might have received a written warning or a
2 verbal, or they might have gotten what is called -- that's
3 the disciplinary process. And coaching and counseling, I
4 believe, was made to employees as well.

5 So the purpose wasn't to send a message. The
6 purpose was to carry out my responsibilities as the director
7 of the department to impose what I thought the appropriate
8 discipline was for the activities that the employee engaged
9 in.

10 Q well, it's true, is it not, that a
11 disproportionate number of persons that were disciplined
12 were from the call center?

13 A Under the -- run that by me again.

14 Q Yeah. It's true, is it not, that a large
15 percentage of the persons disciplined were from the call
16 center?

17 MS. MOORE: Vague and ambiguous.

18 A For this investigation, without having access to
19 the number, most -- I believe most of the employees that
20 came to my office for a suspension without pay or
21 termination, most of the employees, I can't give you the
22 exact percentage, were probably from the contact center.

23 Q And you knew, did you not, that the persons who
24 staffed the contact center, there was -- a large proportion
25 of those persons were persons of color?

1 MS. MOORE: Vague and ambiguous.

2 MS. WEINSTEIN: Objection, assumes facts not in
3 evidence.

4 A I knew that the composition of contact center
5 employees had more people of color than their distribution
6 in the city population and than in some of the other
7 divisions within the department.

8 Q You also knew that they tended to be older
9 workers, right?

10 A I really didn't know the age of the employees.
11 We're a large organization, we have 1,450 employees. Many
12 of these employees who came to my office I would have their
13 file and I would have a name, and I couldn't associate a
14 color or an age with that, because we're that large of an
15 organization. I know we had long-standing employees. I
16 know we also had younger employees. And that's true
17 throughout the organization.

18 Q Can you help me understand how it became important
19 to look to issues of making adjustments or penalty waivers,
20 how that became a criteria for the investigation?

21 MS. MOORE: Vague and ambiguous.

22 MS. WEINSTEIN: Same objection.

23 A I don't know exactly what the investigation
24 team -- I don't know all of the things that they looked at.
25 But the family of activities that I understood the

1 investigation to undertake was anything associated with
2 accessing your own account. And again, that goes back to
3 what the expectations are in the Code of Ethics about
4 personal benefit.

5 And the benefit that employees have is they're in
6 a position that no other customer is in. They have access
7 to their own account. No other customer outside the folks
8 who work for the system have access to their account. And
9 there's a responsibility that comes with it.

10 Q Let's take a look at Hoffman 211 if we can. This
11 is an email string again, so -- it's only on one page, but
12 when you get there start reading from the bottom. And it
13 begins with a March 23, 2012, email from Martin Baker to
14 Susan Sanchez, Kim Collier, cc Ray Hoffman and Melina Thung.
15 Subject: Question - confidential.

16 Take a moment and review this and then we'll talk
17 about it.

18 MS. MOORE: Which ones do you want him to review,
19 Jack, starting with 214?

20 Q 2-0 -- oh, yeah, why don't you start with 214 and
21 go forward.

22 A Okay. 214 --

23 Q Oh, I'm sorry, 214 and go backward in an email
24 string.

25 A Okay. So start at the bottom of 214 and go to

1 the --

2 Q Yes, please.

3 A -- top of 2011?

4 Q Yes.

5 A Okay.

6 Q And there's some repetitiveness there.

7 A Okay. Again, there's a lot of duplication, but I
8 think --

9 Q Right. So you can skip through that.

10 A I've covered it.

11 Q Good. Thank you. Okay. So for record purposes,
12 who's Martin Baker?

13 A Martin Baker is a former employee of Seattle
14 Public Utilities.

15 Q Did he report to you?

16 A At this time, yes, he did.

17 Q What was his job title at that time?

18 A I believe it was either director of -- let me see.
19 I think it was called CSC, corporate strategies and
20 communications. But I would have to check with an org chart
21 to be sure.

22 Q In a nutshell, what does that mean he did?

23 A It means that Martin's job included what I would
24 call legislative affairs at the local, state, and federal
25 level. So at the local level the people who worked for

1 Martin would address interactions with the City Council
2 and/or with the mayor's office. It included establishing
3 and maintaining relations with our regulators at the
4 federal, state, and local level. It also included
5 inter-governmental relations where we had working
6 relationships with other governmental departments at a
7 different level.

8 Q Can you tell me why he left?

9 A He retired.

10 Q So he writes in the March 23, 2012, entry, Meg
11 keeps asking for the ethnicity of the staff fired over
12 accessing the billing system. First of all, do you know who
13 Meg is?

14 A I am assuming that this was Meg Moorehead who
15 worked for the central City Council staff.

16 Q He then writes, Susan, I am not sure you ever got
17 an answer, and I have forgot to mention this to Kim when I
18 saw her today. Do you have any sense of who Kim is?

19 A Kim, I believe, is referencing Kim Collier --

20 Q Okay.

21 A -- who's the head of human resources and service
22 equity.

23 Q Then he writes, what are the rules or status on
24 information we can provide. Meg asked me during the kick
25 off meeting with the auditors, Susan and I discussed later,

1 and then Meg brought it up in the meeting with Godden today
2 on internal controls. And who's Godden?

3 A That would be Councilmember Jean Godden who --
4 again, I'd have to check, but I believe at the time she was
5 either the current chair of our -- I think she was the
6 current chair of our utilities' committee. So she was a
7 city council member.

8 Q All right. And then he writes, I said we were
9 working on it. Can you tell us whether you or any member of
10 your staff were asked to appear in front of the City Council
11 to discuss the racial or ethnic components of the persons
12 who were disciplined as a result of Ms. Regan's
13 investigation?

14 MS. MOORE: Vague and ambiguous as to time.

15 A I can't recall one way or the other.

16 Q Let's read up, if we can. And this is an email
17 from Kim Collier to Martin Baker, Susan Sanchez, cc you and
18 Melina Thung. And it says, Susan and I talked about it
19 since Meg asked her, too. We can provide percentages but
20 we'll want to ensure they are in context and I think it
21 should be provided verbally. Do you have any
22 understanding -- first of all, you would have received this
23 email, right?

24 A Yes, I'm cc'd on it.

25 Q Do you have any understanding as to why this

1 information should be provided verbally?

2 MS. MOORE: Calls for speculation, lacks
3 foundation.

4 MS. WEINSTEIN: Same objection.

5 MS. MOORE: I instruct you not to speculate.

6 A Yeah. I don't recall --

7 Q Okay.

8 A -- the basis for that suggestion.

9 Q And POC in this email equates with people of
10 color. And it says, people of color in SPU, 40 percent.
11 And is it fair to say that you had occasion to know ethnic
12 and racial percentages as part of your job as the head of
13 SPU?

14 A One of the things that we have available to us,
15 and this comes out of both the office of civil rights and
16 EEOC, is we look at what I will call the demographics of our
17 employee base. So we look at employees' representation in
18 various employee classes from, for instance, a laborer to
19 management to an administrative assistant. I don't
20 remember, you know, exactly all the categories.

21 And we ask for the composition, the racial
22 composition of the work force in those work categories, in
23 part because one of the city's policy objectives is to see
24 whether or not the distribution of jobs in various
25 categories matches up with the city's demographic, or it is

1 skewing disproportionately to either over or under
2 representation.

3 So over the course of my job there would be times
4 when I would receive what I'll call demographic information
5 based on ethnicity. And I know I received it at the
6 department level, and on occasion I received it at the job
7 classification level.

8 Q And so when you see that persons of color in SPU
9 is 40 percent, does that seem like a reasonable number to
10 you?

11 A You know, I --

12 MS. MOORE: As of this time, as of March 2012?

13 Q As of March of 2012.

14 A I can't recall.

15 Q Okay.

16 A I have nothing to compare it against.

17 Q Then it says, persons of color in customer
18 response division, 67 percent. And could you remind us,
19 what was the customer response division?

20 A The labeling here may be a little bit different.
21 So I am not sure whether or not they are referring to the
22 customer service branch or it was the name for the folks in
23 the contact center, the UARs, and the other employees who
24 basically ran the day-to-day activities of the contact
25 center.

1 Q All right. Then it says persons of color, EE's
2 disciplined, and it says billing system. Any sense of what
3 EE's means?

4 A I think it references employees.

5 Q Disciplined in the billing system, it says, it
6 looks like, 50 percent. Do you know what the billing system
7 is?

8 A No. The reference here to me is ambiguous enough
9 that I'm not sure exactly what it's referencing.

10 Q And it says, persons of color of those disciplined
11 that were terminated, and it says 60 percent. It's fair to
12 say that anyone terminated would have come to you as the
13 person who terminated them, right?

14 A I am -- yeah. I am the person that decides on
15 discipline for employees, if it reaches the stage of
16 suspension without pay or demotion or termination. If that
17 is the recommendation from management, then I have a
18 Loudermill hearing with the employee.

19 Q would you state in layperson terms what is a
20 Loudermill hearing?

21 A I will try in lay terms. For you and for counsel,
22 I am not an attorney.

23 But I believe the name Loudermill reflects the
24 individual who won a legal case that set a precedent that
25 employees, represented employees, are owed a hearing with

1 the appointing authority. In SPU that would be me. And
2 it's an opportunity for them to present their story, their
3 side of the case. They are entitled to be accompanied by a
4 labor representative and/or legal counsel, that is their
5 choice. And it's a step in the disciplinary process before
6 any disciplinary decision can be made.

7 Q All right. With regard to the persons who are the
8 plaintiffs, did they all attend Loudermill hearings, to your
9 recollection?

10 A To my recollection, no. From the seven
11 plaintiffs, if I get my numbers correctly, three retired, so
12 they would not have gone through the Loudermill process, and
13 then the remaining four were either disciplined or
14 terminations. They would be afforded the opportunity. On
15 occasion an employee will waive that right. But to the best
16 of my recollection I believe the plaintiffs in the room here
17 who were suspended or terminated all met with me.

18 Q And you were -- prior to making a decision to
19 terminate any of the plaintiffs was -- strike that.

20 Prior to making the decision to terminate or
21 otherwise discipline any of the plaintiffs, is it fair to
22 say that you read the reports and the recommendation of
23 Ms. Sanchez, or whomever, regarding what they had allegedly
24 done wrong?

25 A The way the -- the way I have conducted the

1 Loudermill process is I receive a file on the employee one
2 to two days before, and in that file there will be several
3 things. I ask for three years' worth of the employee's
4 performance evaluations. This gives me a little bit of a
5 picture on perhaps not the issue at hand that the employee
6 is there for but how they're doing in the workplace. And
7 these are forms that are supposed to be filled out annually
8 between the employee and their supervisor or manager, and
9 there's various categories, technical skills, communication,
10 teamwork, things along those lines.

11 So I ask for three years' worth of performance
12 evaluations. I did what I will call any letters that have
13 been drafted. So in this case it could be a letter from the
14 branch director -- let's take customer service, for example.
15 So if Susan was recommending discipline on an employee in
16 her division, she would communicate, I believe it's Susan
17 who would communicate, with that employee through a letter
18 that, we have discovered the following things. Based on
19 what we know, I am recommending, et cetera. You will have
20 the opportunity for a Loudermill. There's another letter
21 that Susan sends to me that says -- reiterates the event,
22 what occurred or what is alleged to have occurred, and puts
23 a recommendation in it. If there's an investigation, that
24 is included in the file as well.

25 And then after I have reviewed all of those

1 documents, we hold the Loudermill. I meet with the employee
2 and their representative. They go up to an hour. And
3 during that time in many situations I hear from both the
4 employee and their representative. And, of course, the
5 employee and their representative have the right and the
6 opportunity to meet beforehand, you know, to discuss how
7 they want to approach the meeting with me.

8 And then I listen to them. And at the beginning I
9 always -- or virtually always, I try to say the following
10 things: This is an opportunity for me to hear from you and
11 your representative. It's a part of the disciplinary
12 process that provides value and assurances to both the
13 employee and me, because I'm in a position to hear
14 information that the employee may not have previously shared
15 with any of their management. And the same from their labor
16 representative. I tell them that I will ask questions. I
17 tell them that I know this is not a fun meeting. I know
18 that it can be stressful. I know that it can be especially
19 stressful if you're being proposed for termination. And we
20 try to conduct those meetings with respect.

21 In the situation, I try to distinguish the issue
22 or issues they are here before me on versus them as a person
23 and the totality of their employ. So just as a hypothetical
24 example, if somebody ends up in my office because they were
25 disrespectful and lost their temper with a co-worker or a

1 supervisor, they're there for that. If I look at their
2 performance evaluations and they're, you know, a stellar
3 employee, I try to take that into consideration. If they've
4 never been before me, I try to take that into consideration.

5 And then I offer the employee that I never make a
6 decision in the room, that sometimes I agree with the
7 recommendation of management and sometimes I don't, and that
8 given the nature of the situation I try to be timely. But
9 what I would offer you, sometimes I feel that there's work
10 to be done, there's questions I need to ask and answer after
11 the Loudermill has taken place for me to make my decision.

12 Q So you would only see people when there's a
13 recommendation from one of your direct reports for
14 termination or suspension, right?

15 MS. MOORE: Mischaracterizes his testimony.

16 A I would only see people in the disciplinary
17 process.

18 Q Right.

19 A And demotion.

20 Q And -- oh, right. But for example, if someone is
21 going to get a letter of reprimand, you don't see them?

22 A That's correct.

23 Q And if someone is going to get a letter of
24 reprimand, do you get notified of that fact?

25 A I don't.

1 Q So there's no way for you to even know -- for
2 example, if a Caucasian male within the same organization
3 wasn't given a suspension but a letter of reprimand for
4 similar conduct, you wouldn't even know that, right?

5 A Yeah. I don't get communications for the
6 disciplinary process below the three that I just talked
7 about.

8 Q Got it.

9 A So regardless of the situation if it's a verbal or
10 written in the disciplinary process, I am not part of that.
11 It doesn't -- that is left to lower levels of management.

12 Q would you agree with me that the persons who work
13 in the call center, of the group of people that have CCSS
14 access, they tend to be some of the lower paid?

15 MS. MOORE: Mischaracterizes the evidence, vague
16 and ambiguous as to lower paid.

17 MS. WEINSTEIN: Objection.

18 A I can't answer that. What I could offer you is we
19 have -- I would have to look at a sheet with all of the
20 people who came before me and what their salary and job
21 classification was. So I don't have that sort of
22 granularity on the wage levels of the various people that
23 came before me on this.

24 Q So you're aware that some of the plaintiffs that
25 were disciplined or terminated, some of the things that they

1 allegedly did wrong preceded the date of CS-106?

2 A Meaning -- can you run that by me again?

3 Q Sure.

4 A Yeah.

5 Q You're aware, are you not, that some of the
6 plaintiffs -- all of the plaintiffs who were disciplined or
7 terminated were alleged to have either accessed their own
8 account or a family or friend or made an adjustment for
9 their own account or family or friend on dates prior to the
10 date of CS-106, meaning before March of 2011?

11 A Right. So when I would receive an investigation,
12 it would, in a summary form, identify, I believe,
13 administrative transactions, late fees and charges, and
14 payment arrangements that the employee engaged with for
15 themselves, a family member, or a friend for a 10-year
16 period of time at the start of the investigation and by the
17 end of the investigation it may have been a little bit
18 longer period of time. And some of the investigations I got
19 showed employees who had been engaged in accessing their own
20 account for years with great frequency, some showed a very
21 small number with a very short duration. So yes, there were
22 transactions included in the investigation that occurred
23 before CS-106.

24 Q So -- but you knew at the time that you
25 disciplined or terminated these plaintiffs that before

1 CS-106 there really was no written policy or procedure
2 prohibiting the accessing of one's own account or family or
3 friends, did you not?

4 MS. MOORE: That's been asked and answered about
5 50 times.

6 A Right.

7 MS. MOORE: Mischaracterizes the --

8 A So --

9 MS. MOORE: Let me finish. Mischaracterizes the
10 witness' testimony, mischaracterizes the evidence.

11 MS. WEINSTEIN: Same objections.

12 A This goes back to what I would call the family of
13 documents that set -- I believe are pretty basic
14 understanding of the rights and wrongs. And I'll go through
15 them again. And it starts with the city's Code of Ethics
16 where to a reasonable person you are not to engage in an
17 activity that has personal benefit and not a city benefit.
18 For five of the seven plaintiffs it includes the workplace
19 Expectations that were issued in 1999 that said, if you're
20 going to work on your own account -- I don't have the
21 specific language -- please contact your supervisor. It
22 included the 2005 workplace Expectations which said -- has a
23 section on act ethically, be familiar with the city's Code
24 of Ethics. If you have activities that you're not sure
25 about, please contact your supervisor.

1 So I believe it was well-known or should have been
2 known by employees that accessing your own account is a
3 no-no.

4 Q It's true, is it not, that by terminating and
5 otherwise disciplining this group of employees, it allowed
6 you to get off the hook with the state auditor who was
7 applying heat because there was a failure of SPU to have in
8 place safeguards against improper action?

9 MS. MOORE: Argumentative, assumes facts not in
10 evidence, mischaracterizes the evidence.

11 Q You can answer.

12 MS. WEINSTEIN: Same objections.

13 A So I'm not aware of a hook with the state auditor
14 other than the fact that when they do their audits, they
15 have observations, they have findings, they make
16 recommendations.

17 Q Also, isn't it true that during this time period
18 that the city auditor was also making findings that there
19 were inadequate controls and safeguards?

20 MS. MOORE: Vague and ambiguous as to time.

21 A Yeah, which --

22 MS. WEINSTEIN: Same objection.

23 A Which period of time?

24 Q From 2010 on.

25 A And the question, again?

1 Q Isn't it true that there was also pressure coming
2 from the city auditor alleging that SPU still had not
3 implemented safeguards against making improper adjustments?

4 MS. MOORE: Lack of foundation, calls for
5 speculation, mischaracterizes the evidence.

6 MS. WEINSTEIN: And argumentative.

7 A At the time, in the time frame from 2010 forward,
8 there were multiple audits going on by multiple parties.
9 There was the state, there was the city, there were auditors
10 that were hired by FAS. The biggest pressure I felt was
11 that we had let down our customers by having a situation
12 that caused an erosion of trust and the fact that our -- all
13 of our employees would do their job. That was the biggest
14 pressure.

15 we have 650,000 customers. We're a public entity.
16 we're held to a higher standard. That standard includes it
17 doesn't have to be wrong, you can't even have it look wrong.
18 That's what the appearance is. That was the biggest
19 pressure, that and the expectation of our other employees
20 that we would take the right actions and correct the things
21 that needed to be corrected.

22 Q well, how come the criteria that you chose was to
23 go after some of the lowest ranking persons who were persons
24 of color rather than focusing on the people who were
25 committing big fraud?

1 MS. MOORE: That assumes facts not in evidence,
2 it's argumentative, mischaracterizes the evidence.

3 MS. WEINSTEIN: Same objections.

4 A I never had a criteria that went after people of
5 color. I never had a criteria that said, we're going to go
6 after small dollars and not big dollars. The individuals
7 who came for me for discipline, they were not requested to
8 come to me by race, age, religious belief, gender, sexual
9 preference, none of those things were criteria for coming in
10 my door. The criteria for coming in my door in the
11 disciplinary process was engaging in the accessing of your
12 own account as in conflict with all of the things that we've
13 been talking about today.

14 Q For private benefit, right?

15 A For personal --

16 MS. MOORE: Mischaracterizes the witness'
17 testimony.

18 MS. WEINSTEIN: Same objection.

19 A Again, depending on which document you're talking
20 about. If it's the city's Code of Ethics, you are expected
21 to conduct your job in a way where to a reasonable person it
22 does not appear that you are getting personal benefit. For
23 the UAR Expectations, it's if you're going to work on your
24 own account, talk to your supervisor for workplace
25 Expectations for SPU. All of those played into account.

1 Q So when it came down to it, once you realized
2 that -- once you looked at the email that we were talking
3 about that had the percentages on it, what, if anything, did
4 you do to determine whether or not there may have been an
5 improper focus on persons of color?

6 MS. MOORE: Assumes facts not in evidence,
7 mischaracterizes the evidence. It's argumentative.

8 MS. WEINSTEIN: Same objections.

9 A Again, the people that came into my office -- and
10 to my understanding there was no criteria in the
11 investigation that looked at age, wage, gender, race -- the
12 things that they were looking at were transactions,
13 transactions on your own account.

14 Q Where there was a personal gain, right?

15 MS. MOORE: Objection --

16 A Transactions on your own account --

17 MS. MOORE: -- mischaracterizes the witness'
18 testimony.

19 COURT REPORTER: One at a time.

20 MS. MOORE: Mischaracterizes the witness'
21 testimony.

22 MS. WEINSTEIN: Same objection.

23 MS. MOORE: Deliberately mischaracterizes the
24 witness' testimony.

25 MR. SHERIDAN: Counsel, non-speaking objections.

1 Q Go ahead.

2 A I need you to run it by me again.

3 Q Yeah.

4 MR. SHERIDAN: Read that back, please.

5 (Reporter read requested question.)

6 A I need more context than that.

7 Q Sure. So it was your criteria that you would
8 discipline or terminate a person if there was personal gain,
9 right?

10 MS. MOORE: Mischaracterizes the witness'
11 testimony deliberately.

12 A My criteria in evaluating a case that came before
13 me were multiple. So they were the documents that we've
14 talked about and whether I thought the employee's actions
15 were inconsistent with what those things say, the Code of
16 Ethics, UAR Expectations, Seattle Public Utilities workplace
17 Expectations.

18 They were also issues that I always try to
19 deliberate on, which is the employee's performance history,
20 whether or not it's their first time in the office, whether
21 or not they appear to acknowledge that they have done
22 something, and whether or not they are contrite. All of
23 these things play into trying to make a decision on what is
24 the right thing to do.

25 Q what's the highest ranking person that you

1 disciplined for improperly accessing his or her account?

2 MS. WEINSTEIN: Objection.

3 MS. MOORE: I would instruct you not to speculate.

4 You can answer if you know.

5 A without looking at the list of employees, I
6 couldn't tell you.

7 Q Okay.

8 MR. SHERIDAN: All right. That's all the
9 questions I have for now. Thank you.

10 THE WITNESS: Okay.

11 MS. MOORE: Okay. Tomorrow -- can I go off the
12 record?

13 MR. SHERIDAN: Yeah, off the record.

14 VIDEOGRAPHER: This concludes Tape 3. The time is
15 4:12. We're going off the record.

16 (Deposition concluded at 4:12 p.m.)

17 (Signature reserved.)

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CERTIFICATE

STATE OF WASHINGTON)
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the annexed and foregoing deposition, containing page 1 through 167 of the witness named herein was taken stenographically before me and reduced to typewriting under my direction.

I further certify that the witness examined will be given an opportunity to review and sign their deposition after the same is transcribed, unless indicated in the record that the parties and witness waived the signing.

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking each deposition, or to the conduct of any party have been noted by me upon each deposition.

I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof.

I further certify that the witness before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

I further certify that the deposition, as transcribed is a full, true and correct transcript of the testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination, and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline.

DATED: March 6, 2016

MARCELLA WING MADDEX
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