



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 13th, 2019

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APPEARANCES

Kate McGrann) Inquiry Counsel
John Mather) Associate Inquiry
) Counsel
Michael Watson (via internet)) Alectra Utilities
Belina Bain (via internet)) Corporation
(No Counsel)) For Paul Bonwick
George Marron) For Sandra Cooper
(No Counsel)) For Timothy Fryer
Frederick Chenoweth) For Edwin Houghton
William McDowell) For Town of Collingwood
Ryan Breedon)
Patrick Gajos (np))For Collus PowerStream
)Corporation
Norm Emblem) For KPMG

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1 --- Upon commencing at 10:05 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Mr.
4 Watson and Ms. Bain are attending by the internet.
5 Not -- they're not going to be here in person, so we
6 will continue.

7 Secondly, the Town needs us to leave at
8 a quarter to 4:00 because there's a Council meeting,
9 so -- and they need to set the room up, so that's what
10 we will do.

11 MR. FREDERICK CHENOWETH: Your Honour,
12 I wonder if I might raise a couple of issues before we
13 commence this morning?

14 THE HONOURABLE FRANK MARROCCO: Sure.
15 Go ahead.

16 MR. FREDERICK CHENOWETH: Very good.
17 Thank you. I'm going to do so seated so I can --

18 THE HONOURABLE FRANK MARROCCO: That's
19 fine.

20 MR. FREDERICK CHENOWETH: -- better --
21 better address the microphone, with which I seem to
22 have continuing difficulty. In any event, Your
23 Honour, the first issue I wish to raise is the one (1)
24 of timing of the Inquiry.

25 It is my own guesstimate, and it's

1 nothing more than a guesstimate, that we have about
2 three (3) weeks that -- that -- or three (3) months, I
3 should say, that this Inquiry will continue. I see it
4 minimum a period of -- of four (4) weeks until we
5 finish the evidence with respect to part 1, and that
6 will take us to June 12th, and Inquiry counsel's been
7 kind enough to indicate that they believe the evidence
8 will go in with respect to part 1 by June 12th.

9 We then have part 2 to take on, and I -
10 - when I simply compare it to part 1, it's my sense
11 that that'll be an eight (8) week progr -- project at
12 minimum. So we've got, I would think, three (3)
13 months before this matter is -- is concluded.

14 I have been pestering my friends, the
15 Inquiry counsel, for two (2) weeks now with respect to
16 the timing of what I see as a three (3) month project,
17 and I know that as a result of my expressing my wish
18 to -- first of all, it should be said that for
19 professional reasons and for personal reasons, I think
20 that most counsel, and I'm sure the rest of those
21 involved in the Commission, are anxious to know what
22 they can anticipate in terms of future time commitment
23 to this -- to this project, and I'm not talking about
24 the length of time, sir. I'm talking about when the
25 matter might proceed and when it might sit.

1 I know that as a result of my requests,
2 Inquiry counsel asked counsel to provide dates in
3 which they would be available for the continuation of
4 the Inquiry, and as I understand it, all counsel have
5 done that, and a -- a few counsel -- I know myself,
6 and Mr. McDowell, and others indicated some
7 difficulties continuing through the course of the
8 month of July.

9 I simply raise the issue now, Your
10 Honour. I -- I'm hoping that the Commission can give
11 us some sense of our timing over the next few months
12 so that we can plan and meet our professional
13 obligations and -- and our personal obligations as
14 well. And I simply ask the Commission consider that.

15 THE HONOURABLE FRANK MARROCCO: And
16 was there something else, or was that it?

17 MR. FREDERICK CHENOWETH: Yes, that's
18 -- that's -- the first is more a comment than -- than
19 anything else.

20 The second issue is a matter on which I
21 have -- to which I've addressed the Commission. This
22 is the fourth occasion on which I've done so. And
23 that is the impartiality and balance with which the
24 Inquiry counsel is approaching this matter.

25 I first raised the issue in an

1 application I brought before the commencement of the
2 oral part of this process, and I raised what I thought
3 were significant concerns about the -- the
4 impartiality and the balance that I saw a lack of in
5 Foundation Document number 1. That remains a concern.

6 I next raised the issue -- and I -- I'm
7 saying all these things with greatest respect to my
8 friends, Commission counsel, and I want to underline
9 that.

10 The second time I raised it was in my
11 written submissions at the commencement of this
12 matter, Your Honour. I raised my concerns at that
13 time about the impartiality of Foundation Document,
14 and my wish that, and my hope and my confidence in the
15 -- in the -- in the Commission that it would not be an
16 ongoing concern. I raised it again in remarks I made
17 here before the Commission, a matter of approximately
18 two (2) weeks ago, and I raise it again now.

19 I think it's worth referring Your
20 Honour before proceeding further to -- to certain text
21 with respect to public inquiries, and I refer to
22 "Public Inquiries in Canada: Law and Practice." It is
23 a text written by Ronda Bessner and Susan Lightstone.
24 At page 50 of that text, paragraph 2, the authors
25 indicate:

1 "It is critical that Commission
2 counsel understand their role on a
3 public inquiry is not adversarial."

4 I am concerned, I should say, Your
5 Honour, that this matter has slipped into an
6 adversarial groove, and I think that that being the
7 case is obvious from the way the matter is proceeding
8 and the manner in which the cross-examinations are
9 proceeding.

10 The text goes on to say:

11 "They are not prosecutors nor should
12 they conduct themselves in a manner
13 akin to plaintiff or defence of
14 counsel -- defence counsel in civil
15 litigation. Proceedings at an
16 inquiry are inquisitorial. A
17 Commission counsel must act
18 impartially and their objective
19 should be to ascertain the truth
20 that is the subject of the terms of
21 reference of the particular
22 inquiry."

23 It goes on to say at the bottom of the
24 next page:

25 "The conduct, comments, and

1 decisions of Commission counsel have
2 an impact on the public perception
3 of the Commissioner and on the
4 inquiry itself. As the Commissioner
5 in the Arar Inquiry and the
6 Walkerton Inquiry indicated,
7 perceived lack of impartiality or
8 independence on the part of
9 Commission counsel could seriously
10 impair the credibility of the entire
11 public inquiry."

12 And I have a concern about that, Your
13 Honour, I should say.

14 Former Supreme Court of Canada Justice
15 John Sopinka likewise stressed that:

16 "Commission counsel must guard
17 against becoming advocates
18 exclusively for a particular point
19 of view."

20 The text goes on to say:

21 "The task of Commission counsel is
22 to ensure that all the evidence and
23 all of the issues and all of the
24 possible theories are brought to the
25 Commission."

1 Similarly, Thomas Berger, Commissioner
2 in Mackenzie Pipeline Inquiry, stated that:

3 "Commission counsel Ian Scott and
4 Stephen Goudge [who we know]
5 understood that it was their
6 responsibility to see that the
7 evidence assembled and presented to
8 the inquiry be done in a manner that
9 ensures that no vital area was left
10 unexplored and no significant theory
11 ignored."

12 I'm concerned, Your Honour, that -- and
13 I've now expressed it on four (4) occasions, that
14 Commission counsel, and I say it again with the
15 greatest of respect, would appear to be pressing one
16 (1) theory of the case, and that is what has been
17 described by both witnesses and counsel as the
18 conspiratorial theory, and it's expressed, to put in a
19 word, and it's more a function of weighing the
20 evidence, and they do not to be -- they do not appear
21 to be taking occasions to look at the other side of
22 various issues that they're bringing before the
23 Commission, and in my submission they are only looking
24 at the conspiratorial side of various issues that are
25 brought before this Commission.

1 I -- I need only think of last week's
2 evidence to make that point, Your Honour, and in
3 particular I -- I note that -- I note that Jonathan
4 Erling in his examination by My Friend Mr. Mather was
5 asked on a couple of occasions, are you able to advise
6 as to whether or not KPMG's option analysis was
7 presented to Council. And of course of the witness
8 indicated that he -- that he didn't know what use had
9 been made of it.

10 That left the public and left those in
11 the room with the impression that the public had not
12 been advised as to the options that were set out in
13 the KPMG options review.

14 I'm sure Mr. Mather and I'm sure Ms.
15 McGrann are aware, as every counsel in this room is
16 aware, that on the June 27th meeting of Council the
17 slides before that meeting included virtually all of
18 the option slides that were in this gentleman's
19 report.

20 Now, he's not -- I'm not going to take
21 the time of this Commission to take him through each
22 one (1) of those slides. I'll bring it out in other
23 matters. But surely that's a well-known fact that is
24 evident to Commission counsel, and I'm uncertain as to
25 why Commission counsel, who has an obligation to do a

1 balanced job in this matter, would leave the -- the
2 public with the impression that -- that the option
3 slides and the option presentation of KPMG was not
4 eventually given to Council.

5 A second example, Your Honour, would be
6 the cross-examination that we heard over the last then
7 (10) days of -- of Councillor Lloyd, and in that
8 examination again my -- my friend Mr. Mather, and I
9 say that sincerely, chose to examine Councillor Lloyd
10 with respect to some interactions between himself and
11 Bonwick relating to the potential for Mr. Houghton to
12 be appointed CAO, and he made the suggestion to
13 Councillor Lloyd that is -- I put to you, sir, isn't
14 it the case that this is a function of yourself and
15 Mr. Bonwick pressing to have your friend, Mr.
16 Houghton, appointed as the CAO of the Town?

17 Well, there -- there is clearly a
18 counter-theory on that, and I would press that
19 counter-theory, and the theory is that Mr. Houghton
20 had no wish at all to be CAO of the Town, that he had
21 to be pressed on several occasions to -- to acquiesce
22 to the request that he would be the CAO of the Town,
23 and that he was paid absolutely nothing for his extra
24 efforts in doing so, and according to -- to Councillor
25 Chadwick, did so out of a wish to serve the best

1 interest of the Town when they were in a difficult
2 position.

3 Of course this aspect of the matter was
4 again not explored by Commission counsel, when I would
5 have thought that the evidence that would make that
6 exploration possible was before Commission counsel, it
7 could have been brought before the Commission.

8 So it's that concern, Your Honour, that
9 I again raise. I note, and we've discussed this
10 before, and my response that I receive from time to
11 time when I raise these matters is that can be raised
12 in your cross-examinations, and I -- and I hear that
13 and I do that.

14 However, we must keep in mind that
15 Commission counsel has a unique -- have unique rights
16 through the course of this Inquiry that come with
17 unique obligations. Those unique rights include the
18 right to examine the witness first, subject to
19 applications to the contrary, the right to lead the
20 witness and lead the witness extensively, and we've
21 seen Commission counsel press witnesses with the same
22 question three (3) or four (4) times in order to
23 elicit an answer from a witness who obviously doesn't
24 remember what the circumstances were. They have the
25 right to cross-examine the witness themselves.

1 All of these are unusual privileges
2 that, in my submission, come with obligations and
3 those obligations are, I think, adequately
4 demonstrated by the text to which I've made reference,
5 and that's an impartial approach without favouring a
6 particular analysis or a theory of the case and an
7 obligation to explore all sides of various theories
8 that come before this Commission.

9 I -- I can do nothing more I think at
10 this time, Your Honour, but to again for the fourth
11 time, press the Commission with respect to these
12 issues and ask that the Commission and Commission
13 counsel give these remarks and -- and what I believe
14 to be their obligation every thought in the
15 circumstances of this particular Commission.

16 THE HONOURABLE FRANK MARROCCO: Well,
17 let me say a couple of things in response to that.

18 First, as -- as far as scheduling of
19 witnesses is concern, we have indicated that we will
20 be filing affidavits to set out the evidence of some
21 witnesses. We will be asking you all to agree that
22 that -- those affidavits represent the evidence of the
23 witnesses, failing which some of the evidence will be
24 received in examination-in-chief by way of affidavit.

25 Our purpose in doing that is to try to

1 move along through the proceedings. In return, I
2 expect people to be concise in their cross-examination
3 and I will be pressing that point.

4 And as far as the conduct of Commission
5 counsel are concerned, I don't accept your submission
6 at all. They are required to probe the examination
7 and the evidence that witnesses provide. And their
8 job is to test it. It doesn't mean they have formed a
9 view, it just means they're trying to test the
10 validity of what's being said.

11 Everyone who was paying attention is
12 aware of what was discussed at the Council meeting on
13 the 27th or the 29th, whichever the date was, there's
14 no great mystery in that. And it was brought out by
15 Commission counsel as far as Councillor Lloyd's
16 evidence is -- is concerned, he made it quite clear
17 that Mr. Houghton didn't want the job, rejected the
18 job, and he was quite clear in his testimony as to
19 what he did, which was one (1) of the people he spoke
20 to is Mr. Bonwick to try to persuade Mr. Houghton to
21 change his mind. That evidence came out in a fairly
22 obvious way, I -- I -- there's just no -- there's just
23 no validity to that objecting to that. Certainly
24 there's another view and Commission counsel were
25 entitled to bring that out.

1 In the end it's a question of whether
2 the totality of the evidence the witness has to give
3 is reflected in the cross-examination, and the
4 submission can be make four (4) times, five (5) times,
5 ten (10) times, it -- it doesn't make any difference
6 to me how many times it's made. Every effort is being
7 made to be as impartial as possible.

8 As far as the Foundation document was
9 concerned, it was circulated in draft form, people
10 were asked to give input. The input people gave
11 reflected itself in the -- in the amendments to the
12 document.

13 Witnesses are being called that you
14 want to call, Mr. Chenoweth, for example, Mr.
15 McFadden. They'll be called, you requested he be
16 called and he'll be called as a witness.

17 So there's every effort to make sure
18 that all the different points of view are canvassed
19 here. But some of the points of view are awkward for
20 some people and they will continue to be awkward, and
21 that cannot be addressed by simply asking Commission
22 counsel to not carry out their responsibilities and
23 simply accept whatever evidence people give without
24 pulling it and testing it.

25 I would be very dissatisfied if my

1 counsel were conducting themselves in a way that did
2 not test the evidence. And in the end, we'll write
3 the report that we have to write.

4 So that takes care of that, as far as
5 I'm concerned. I appreciated it doesn't take care of
6 it as far as you're concerned, Mr. Chenoweth. But I -
7 - it takes care of it as far as I'm concerned. So
8 let's get back on with the witnesses.

9 MR. JOHN MATHER: The next witness is
10 Cynthia Chaplin.

11

12 CYNTHIA CHAPLIN, Affirmed

13

14 EXAMINATION IN-CHIEF BY MR. JOHN MATHER:

15 MR. JOHN MATHER: Good morning, Ms.
16 Chaplin.

17 MS. CYNTHIA CHAPLIN: Good morning.

18 MR. JOHN MATHER: You have prepared a
19 report for the Inquiry about the Ontario Energy
20 Board's mandated powers and process, is that correct?

21 MS. CYNTHIA CHAPLIN: Yes.

22 MR. JOHN MATHER: Can we please pull
23 up CJI11132. And if you look on the screen in front
24 of you, there's a report that's dated March 19th,
25 2019.

1 Is this the report that you've
2 prepared?

3 MS. CYNTHIA CHAPLIN: Yes, it is.

4 MR. JOHN MATHER: I'd as that this
5 report be marked as the next exhibit.

6 THE HONOURABLE FRANK MARROCCO: Yes.

7

8 CONTINUED BY MR. JOHN MATHER:

9 MR. JOHN MATHER: Ms. Chaplin, could
10 you please describe your background and experience
11 with the Ontario Energy Board?

12 MS. CYNTHIA CHAPLIN: Certainly. I
13 most recently was at the Ontario Energy Board from
14 2004 to 2014, at which time I was originally appointed
15 a Board member and subsequently was appointed vice
16 chair. And for a period I was also the interim chair
17 and CEO.

18 And prior to that in my career, from
19 about 1988 to 1995, I also worked at the Ontario
20 Energy Board as a staff person.

21 MR. JOHN MATHER: And my understanding
22 is you've prepared a PowerPoint presentation to assist
23 in walking through your report this morning. Is that
24 correct?

25 MS. CYNTHIA CHAPLIN: Yes, I have.

1 MR. JOHN MATHER: So if we could pull
2 up CJI11133. And I take it this is your presentation?

3 MS. CYNTHIA CHAPLIN: Yes.

4 MR. JOHN MATHER: So I'm going to turn
5 it over to you now to proceed with your presentation.

6 MS. CYNTHIA CHAPLIN: Thank you.

7 Thank you, and good morning everyone,
8 I'm pleased to be here to talk about the Ontario
9 Energy Board. May I have the next slide, please?
10 Thank you.

11 So this is an outline of what I intend
12 to cover during my presentation, and after a brief
13 introduction I'll talk a bit about the mandate of the
14 OEB, basically why the OEB exists and what it does.

15 I'll then go into a bit more depth
16 about the OEB's role with respect to mergers,
17 amalgamations, acquisitions, and divestitures.

18 And after that I'll talk a bit about
19 how the OEB regulates other aspects of electricity
20 distribution, and in particular rates and shared
21 services and affiliate transactions.

22 Next slide, please.

23 So just by way of introduction, I was
24 asked by the Collingwood judicial inquiry to prepare a
25 report about the Ontario Energy Board. As it was

1 explained to me, the inquiry wanted a report that
2 explained what the OEB is and what it does in a way
3 that would be accessible to all of the stakeholders.

4 And in my report I focussed
5 particularly on the role of the OEB as it relates to
6 electricity distribution. Although the OEB does have
7 a wider mind -- mandate, which includes electricity
8 transmission, some aspects of generation, as well as
9 most of the natural gas sector.

10 I've also particularly focussed on the
11 OEB's role in distribution mergers, amalgamations,
12 acquisitions, and divestitures. And while I try to
13 avoid jargon, I have to admit that the OEB's acronym
14 for this, MAADS, is -- is easier than the mouthful of
15 the -- the full list.

16 So there's a lot about the OEB that's
17 not in the report, but of course I'm happy to answer
18 questions on other aspects of what the OEB does.

19 And as I've already described to Mr.
20 Mather, I have been at the OEB for a total of about
21 eighteen (18) years, and that's out of a career of
22 about thirty (30) years in the natural gas and
23 electricity sector.

24 I think that's sufficient. So, the
25 next slide, please. So, first, I'm going to talk

1 about the mandate of the OEB. And to understand the
2 mandate, I really wanted to just explain three (3)
3 main things, and that's why we -- why do we have an
4 OEB, what does the OEB do, and whose interests does
5 the OEB protect.

6 The next slide, please. So, to start
7 with, why we have an Ontario Energy Board. The
8 Ontario Energy Board is what's known as an economic
9 regular. And economic regulators are actually quite
10 common.

11 You have them in most every province
12 and territory in Canada, although they do vary in
13 terms of their powers. And you also have them in
14 every US state, in Europe, in Australia, and really
15 throughout the world. And the Ontario Energy Board
16 itself has been around for more than fifty (50) years.

17 So, governments set up regu -- economic
18 regulators to deal with companies or sectors where
19 there is a natural monopoly. And electricity
20 distribution is an example of a natural monopoly. And
21 what makes it a natural monopoly are really two (2)
22 factors.

23 On the one (1) hand, it's very
24 expensive. It takes a lot of investment to build an
25 electricity distribution network, the poles, the

1 wires, the IT systems, the billing systems. And once
2 you've built that system, it's actually quite
3 inexpensive generally to add additional customers.

4 So, there are those two (2)
5 characteristics. One (1) is the high fixed costs and
6 the other's what's known as economies of scale.
7 Adding new customers is generally inexpensive. And
8 because of those two (2) characteristics, it's
9 generally very hard for other companies to enter the
10 market to compete with that company.

11 And, therefore, there's public -- and
12 there's also public interest reasons why you probably
13 don't want two (2) sets of poles and wires on the same
14 street.

15 So, you have electricity distribution
16 companies which face very little competition and, as a
17 result, they can basically charge whatever they want
18 and provide service at whatever level of quality they
19 would want because most customers don't have an
20 effective alternative.

21 So, governments set up economic
22 regulators to control what these natural monopolies
23 can charge and to oversee that -- and ensure that they
24 provide adequate service.

25 And the government sets out the

1 responsibilities and the powers of the economic
2 regulator through a piece of legislation and, in the
3 case of the Ontario Energy Board, it's the Ontario
4 Energy Board Act. And that's the document that sets
5 out all of the powers and authorities that the OEB has
6 and what it is that it's expected to do and, in some
7 cases, how it can do it.

8 So, at the highest level, the Ontario
9 Energy Board Act identifies the -- the OEB's
10 objectives. Those are the goals that are intended to
11 guide the OEB's work and -- and the parameters within
12 which the OEB should consider the public interest.

13 In a lot of areas, the OEB does have
14 flexibility in how it does its job and, in some other
15 -- in some areas, the requirements are actually quite
16 specific.

17 The next slide, please. So, what
18 exactly does the OEB do? And again, here I'm just
19 speaking about electricity distribution, or LDCs. I
20 think that term has been used within this -- within
21 this process.

22 So, first of all, the OEB licenses each
23 LDC. And these licences specify the specific service
24 territory for the LDC. And within that service
25 territory, the LDC has an exclusive right to serve

1 customers.

2 And it also sets out the operational
3 and financial obligations of the LDC or distributor,
4 and it sets that out at a fairly high level. And the
5 conditions in a distributor's licence are common
6 conditions.

7 In other words, every LDC has the same
8 licence conditions, although an LDC can apply for an
9 exemption from specific provisions if -- if it believe
10 it's warranted. And the OEB will hear and decide on
11 that request for an exemption. And if there is an
12 exemption from a specific licence condition, that is
13 noted specifically within the licence.

14 The Ontario Energy Board also sets
15 rates. I won't talk more about rate setting right now
16 because I do have some material on that later in the
17 presentation.

18 And, finally, the OEB has an oversight
19 role, and that is how it -- those are the tools and
20 ways in which the OEB is governing how distributors
21 conduct their business. And they -- the OEB uses
22 codes primarily in the case of electricity
23 distribution. And an example of that is the
24 distribution system code.

25 So, that takes the types of obligations

1 that are in the licence but goes into them in a lot
2 more detail, so details about how -- what an LDC's
3 obligations are in terms of connecting customers, what
4 its -- what its obligations are in terms of billing,
5 billing accuracy, disconnection processes and those
6 types of activities, also, regional planning, so the
7 way a distributor must work with its surrounding --
8 the surrounding companies and the transition companies
9 to plan the system overall.

10 And in addition to those codes, the OEB
11 also monitors performance, and it does that in a
12 number of ways, as well, too. It -- there are fairly
13 extensive data filing requirements that LDCs must
14 complete each year as well as an overall performance
15 scorecard which looks at about twenty (20) key
16 performance metrics.

17 And every LDC reports using the same
18 scorecard and, therefore, comparisons can be made and
19 the OEB can track performance.

20 It's also, I think, helpful to
21 understand a little bit about what the OEB doesn't do,
22 and that is it does not regular activities that are --
23 that fall outside of the activities that are
24 considered a natural monopoly or that are specifically
25 regulated.

1 And by that, I mean often LDCs will
2 have affiliate companies that are engaged in other
3 activities that are not regulated. And the OEB does
4 not regulate those affiliates.

5 What the OEB does regulate is the
6 relationship between the LDC and those affiliates.
7 And I'll talk a bit more about that later in the
8 presentation. And -- and -- but the way that the OEB
9 does that is through -- again, through a code, the
10 affiliate relationships code.

11 The next slide, please. So, whose
12 interests does the OEB protect? You'll sometimes hear
13 it said that the OEB's job is to protect the interest
14 of consumers. And that's certainly a very important
15 aspect of the OEB's mandate, but really, the OEB is
16 responsible for protecting the public interest.

17 And what this means in practice is that
18 the OEB has to consider the interests of a wide
19 variety of stakeholders in making any of its
20 decisions.

21 That being said, the OEB does have some
22 specific responsibilities for protecting consumer
23 interests and it is the -- it is the first objective
24 in the OEB's list of objectives in its legislation
25 and, therefore, it's clearly an important part of its

1 mandate.

2 However, protecting consumer interests
3 includes both short-term and long-term considerations.
4 In other words, in -- in thinking about electricity
5 rates or ele -- electricity distribution rates, those
6 rates need to be fair.

7 In other words, consumers need to pay
8 what it costs to serve them, and that cost should be
9 determined taking into account what an efficient
10 company would need to spend to -- to run the system
11 prudently.

12 And that's primarily because, if rates
13 were kept -- are kept artificially low or made
14 artificially low, then it will be harder to find -- to
15 make investments in the system and, therefore,
16 customers in the longer term may be put at risk if the
17 -- if the system is not properly maintained and
18 investments aren't made.

19 So, in other words, protecting
20 consumers' interests isn't as simple as just saying
21 rates need to be -- to be low.

22 The -- the OEB does also have -- does
23 also take into account the -- the interests and
24 concerns of the utilities, the utilities an LDC has an
25 obligation to serve, and in return, they have this

1 exclusive service territory.

2 And they are entitled to have the
3 opportunity to recover their costs, including a
4 return. And that's sometimes referred to as a
5 regulatory compact. It's sort of this -- this deal
6 that exists. It's not a guarantee that an LDC will be
7 able to recover its costs, but it is -- it is the
8 opportunity to -- to recover those costs, including a
9 return.

10 So, how does the OEB go about pro --
11 protecting the -- and promoting the public interest?
12 When it -- in the example of rates it's sometimes
13 described as a balancing of interests. Generally
14 speaking, LDCs want higher rates. They want to earn
15 more money or -- and have more opportunity to invest
16 in the system. And by and large, customers want lower
17 rates to enhance affordability.

18 And so traditionally, the OEB and most
19 economic regulators have tried to figure out what an
20 official level of cost is and therefore set rates on
21 that efficient level of costs. But that is actually
22 quite hard to figure out because the LDC has all of
23 the operating detail, and information, and by
24 definition an economic regulator -- it doesn't want to
25 be involved in running the business. It is at one (1)

1 remove, so it's very -- it will never have as much
2 data and information as the LDC has. So it's often
3 very difficult to determine what an efficient level of
4 costs are.

5 So now, the OEB more recently -- and
6 this is also a common trend amongst economic
7 regulators -- are trying to focus on protecting the
8 public interest by trying as much as possible to align
9 the interests, for example, of customers and
10 utilities, in other words to create incentives for the
11 LDCs so that they behave in a way that it benefits
12 customers as well as their -- as well as the utility
13 and its investors. And that's what -- and this is
14 often referred to as incentive regulation.

15 So as much as possible, the regulator
16 tries to align interests, and where the interest can't
17 be aligned, it then has to assess the trade-offs and
18 come to a decision as to what's in the public
19 interest.

20 Next slide, please. So the next
21 section I have to review from my report is mergers,
22 amalgamations, acquisitions, and divestitures, which
23 I've already said I think it's easier to just refer to
24 this as MAADs which is the acronym that the Ontario
25 Energy Board uses. And to understand MAADs, I propose

1 to cover two (2) things: what a MAAD's application is
2 and how the OEB decides MAAD's applications. I'll
3 also talk a little bit about the OEB's decision in the
4 application by Collingwood and PowerStream.

5 Next slide, please. So what is a
6 MAAD's application? A MAAD's transaction means
7 there's been a change proposed for the control of an
8 LDC or for a substantial part of its assets. So this
9 is happening at the shareholder or investor or
10 municipality level. So the first question that may
11 come to mind is: Why would the OEB have any interest
12 or any concern about that type of transaction since
13 the OEB doesn't regulate the investors or the
14 shareholders or municipalities?

15 And so the reason the Ontario Energy
16 Board is concerned about these transactions is because
17 of the potential impact on the public interest and
18 particularly ratepayers and the customers of the LDC.
19 So as I covered in the first section, an LDC has
20 important obligations and authorities, and the Ontario
21 Energy Board wants to make sure that whoever is
22 controlling that entity to make sure that the LDC has
23 the financial resources and operational qualifications
24 to fulfil those obligations. So if there's a change
25 in control, the OEB wants -- needs to assess the

1 impact of that change to ensure that it's appropriate.

2 Next slide, please. So how does the
3 OEB decide a MAADs application? Well, first of all,
4 an application comes if a municipality -- in the case
5 of LDCs if a municipality plans to sell its LDC, it
6 files an application with the Ontario Energy Board.
7 And the Ontario Energy Board uses what's known or
8 what's called a no-harm test to decide whether or not
9 to approve the application. And the no-harm test is
10 what's known as a fairly narrow test, and that -- I
11 say that because it looks at very specific elements.

12 The OEB looks at the impact of the
13 transaction on the OEB's objectives in its
14 legislation, and specifically, it looks at what the
15 impact of the transaction will be on customers in
16 terms of price, quality, and reliability. And then it
17 also looks at what the impact of the transaction will
18 be on economic efficiency, cost-effectiveness, and
19 financial viability.

20 If after looking at those -- after
21 doing that analysis, if the conclusion is that the
22 impact of the transaction is either neutral or
23 positive, then it will be considered to have passed
24 the no-harm test, and the OEB will approve the
25 transaction.

1 So the OEB uses the no-harm test. It's
2 used it for quite some time. There are certainly
3 other tests that could be used, and other
4 jurisdictions sometimes use other tests. For example,
5 the test might be that there would be net benefits for
6 customers or net benefits for other stakeholders, such
7 as employees, the communities, other types of
8 requirements. But the OEB has used the no-harm test
9 for a long time and has essentially repeatedly
10 confirmed that that is the test that it's going to
11 apply.

12 And the test is also narrow in the
13 sense that there are some particular aspects of a
14 transaction that the OEB will almost -- will look at
15 very little, if at all, and it doesn't include them as
16 part of the no-harm test. And these were some
17 questions that were raised in a MAAD's application --
18 I can't remember the exact year -- but it was -- there
19 were three proposed transactions affecting three
20 different LDCs, and the Board heard a number of issues
21 in a combined proceeding.

22 And as part of that -- and that
23 decision confirmed the no-harm test and then looked at
24 three additional specific elements and concluded that
25 they were not part of the no-harm test. And the first

1 of those is enquiring whether or not an alternative
2 transaction would have been better: better for
3 customers, better perhaps for other stakeholders. And
4 the OEB concluded that that consideration would not be
5 part of the no-harm test.

6 They also considered whether the price
7 of the transaction was either too high or too low, and
8 it confirmed that by and large that wouldn't be part
9 of the no-harm test either. The only exception to
10 that would be if, for example, the price were so
11 high -- or I guess potentially worse so low -- in a
12 way that would put the LDC in financial jeopardy.
13 Then -- and that -- which could be a potential harm to
14 customers, then it might be a consideration. But
15 otherwise, it would not be.

16 And the third area that the OEB does
17 not take into account is the process that was used by
18 the sellers in their -- which gave rise to the
19 transaction. And in an earlier decision, the OEB
20 recognized that LDCs were business corporations under
21 the Business Corporations Act and that there were
22 sufficient provision-- and appropriate provisions
23 there to deal with those sorts of aspects and that the
24 OEB did not have a role in that.

25 So, again, just to reiterate that

1 they -- the OEB would only consider those areas if
2 there was potential for harm to the LDC or its
3 customers. And sort of overall, the Ontario Energy
4 Board is trying to make MAADs easier as one (1) way to
5 reduce the number of LDCs in the province and to
6 facilitate consolidation.

7 And then just briefly about the OEB's
8 decision in the Collingwood-PowerStream application,
9 the OEB applied the no-harm test in its decision, and
10 the decision in that case is quite brief and that is
11 because there were no -- there were no interveners and
12 there was no opposition to that application before the
13 Ontario Energy Board.

14 Now, just because there's no opposition
15 doesn't mean the OEB will automatically approve an
16 application. It still must consider the evidence and
17 come to a conclusion as to whether or not the no-harm
18 test has been met. And in the case of this -- that
19 application and most applications in fact, the OEB
20 determined that the test has been met.

21 There have been a couple of examples
22 where the OEB has denied a MAADs application, and a
23 recent one (1) was the proposed sale of Orillia to
24 Hydro One where the OEB concluded that the no-harm
25 test was not met because of potential adverse impacts

1 in terms of customer rates in the future. But
2 generally speaking, the OEB has approved MAAD's
3 applications involving electricity distributors.

4 Next slide, please. So the final area
5 I'm covering is regulating electricity distribution
6 more broadly, and here I'm going to talk a bit
7 about -- mostly about how the OEB sets rates and some
8 of the additional considerations in that rate-setting
9 process. I'll talk a little bit about the legal
10 framework in the process steps, and then I'll explain
11 how the OEB reaches a decision to set rates that are
12 just and reasonable. And in particular, I'll talk
13 about shared services and affiliate relationships.

14 Next slide, please. So the statutory
15 provisions -- the OEB has a lot of flexibility in how
16 it will set rates, but the provision in the statute is
17 that the rates that the OEB sets must be just and
18 reasonable, and that in -- in a sense, is the test
19 that the OEB applies. And an LDC can only charge the
20 rates that have been approved by the OEB.

21 The Ontario Energy Board uses a public
22 hearing process to consider an LDC's application, and
23 that process -- and the process a public hearing is
24 set out in the Statutory Powers Procedures Act, and as
25 well, the Ontario Energy Board has its own rules of

1 practice and procedure which set out the various steps
2 and how a public hearing -- its public hearings will
3 be conducted. And the purpose of the various statutes
4 and rules is to ensure that the process is fair.

5 Next slide, please. So here's a list
6 of the main steps in an OEB public hearing. There are
7 quite a few steps, and the hearings -- the public
8 hearing process overall can sometimes be quite
9 lengthy. And that is primarily because the OEB is
10 upholding -- promoting the public interest, and -- and
11 upholding the principles of -- of natural justice.
12 And really, there's sort of three (3) key principles
13 that are embodied in these process steps.

14 One (1) is that the people who are
15 going to be affected by the decision have the right to
16 know that the process is going on, and that's why you
17 have the notice -- a notice process where the OEB
18 informs -- broadly informs the public that the process
19 is going on.

20 The second principle is that the people
21 who are affected by the decision have the right to
22 participate in the process and have their views heard.
23 So in other words, the OEB has a process -- and what's
24 called an Intervenor process, so people whose
25 interests are affected can participate in the hearing.

1 They can ask -- there's process to ask written
2 questions. There can -- often, it can be an oral
3 hearing. There's an opportunity to cross-examine
4 witnesses and test the evidence, and then there is the
5 opportunity -- opportunity to make submissions on how
6 they feel that the OEB should make its decision.

7 And the -- the -- finally, in the third
8 principle is that the parties to the proceeding have
9 the right to know what the decision is that's made,
10 and the reasons for it, and that's why there is then a
11 -- a -- the OEB provides reasons for its decision as
12 well.

13 So the -- the theory is, of course,
14 that if the process meets all of these principles,
15 then the outcome is more likely to be accepted as
16 fair, and the process is able to retain its
17 credibility in the eyes of the public. However,
18 sometimes what's considered fair by ratepayers or
19 Intervenor groups isn't necessary confi -- considered
20 fair by LDCs.

21 It's very common for LDCs and other
22 regulated utilities to have concerns about the length
23 of the process, the amount of material that required,
24 the amount of resources that are used in the process.
25 So there's an ongoing challenge for the Ontario Energy

1 Board in terms of both having a fair and effective
2 process, but also having an efficient process.

3 And next slide, please. And that
4 concern about efficiency take -- takes me to my next
5 area, which is about how to set -- how the OEB sets
6 just and reasonable rates. So the Ontario Energy
7 Board has developed a number of tools to help it set
8 rates that are just and reasonable, but to do so in a
9 way that's consistent and predictable, and is -- and
10 more efficient.

11 And this is particularly relevant for
12 electricity distributors, because there are so many of
13 them. There are still over sixty (60), and the OEB
14 wants to set rates that are consistent, and standards
15 that are consistent across those entities.

16 So one (1) type of tool that the OEB
17 uses is what's called regulatory policy. So a
18 regulatory policy is essentially a document that sets
19 out how the OEB will look at a particular issue and
20 explain how it will -- how it will -- intends to
21 decide on an issue.

22 So a -- a key example of that is the
23 cost of cap -- the Board's -- the OEB's policy on cost
24 of capital. And that sets out what the capital
25 structure is that will be used to set rates, as well

1 as what the return on -- how that return on equity
2 will be calculated, and default rates for a long-term
3 and short-term debt.

4 So back in historical times, often in
5 each individual application, the -- the OEB would look
6 at what the cost of capital should be, what the
7 capital structure should be, what the return on equity
8 should be. This was manageable when the Ontario
9 Energy Board was regulating about three (3) large
10 natural gas distributors, but it still involved a lot
11 of competing expert witness testimony, highly
12 technical, very time-consuming, quite resource-
13 intensive and generally dealt with issues -- very fine
14 differences of opinion as opposed to differences of
15 fact.

16 And the OEB decided that there would be
17 a more efficient way to do that. And this, again, was
18 a trend adopted by quite a few economic regulators of
19 essentially looking at the -- the capital structure,
20 looking at return on equity, setting them using the --
21 the theories and -- and analyses that had always been
22 used, but then to implement a formula. And a formula
23 would then be used to determine what the cost of debt
24 and what the return on equity should be, and how it
25 should change over time. So this made the process

1 much more efficient, because you removed an entire
2 issue from -- from the hearing process.

3 Currently, what the policy -- and for a
4 long time, the -- the policy has included the
5 expectation that the structure for an LDC will be 60
6 percent debt and 40 percent equity. When the OEB
7 first started regulating LDCs, it set that the ratio
8 on the basis of the size of the -- of the LDC. The
9 smaller the LDC, the higher the equity component. And
10 that was because size was seen as a good measure of
11 risk, and you set a capital structure -- you set the
12 equity and debt ratios after an assessment of how much
13 risk the company faces.

14 However, in 2006, the OEB adopted a
15 policy of setting a single capital structure for all
16 LDCs. And it determ -- it determined that size was no
17 longer a particularly good indicator of risk, and it
18 wanted to -- it also again wanted to remove barriers
19 to consolidation, and it concluded that there was no
20 particular reason why customers of smaller LDC should
21 pay -- have to pay more, because generally, if you
22 have a higher -- a higher equity ratio, there's going
23 to be a higher cost of capital overall.

24 So the regulatory policy guides OEB
25 decisions, but they are -- the policies are not

1 binding. In other words, the OEB does not have to
2 follow the policy, and it has the flexibility to
3 depart from it if it thinks the circumstances warrant
4 it.

5 Basically, the policy sets a default
6 approach. If nobody has any particular objections,
7 and everybody is -- all the parties are content, then
8 the -- the issue is essentially taken off the table.
9 However, if the LDC believes that the policy is not
10 appropriate for its circumstances, it can -- it can
11 propose that the OEB take a different approach. But
12 in that case, the -- sort of the onus or the burden
13 will be on the LDC to demonstrate why the OEB should
14 depart from the -- the policy.

15 And similarly, it can also happen the
16 other way, too, in the case of -- if an Intervenor to
17 the proceeding thinks that the policy shouldn't be
18 applied, and a different approach should be taken.
19 Again, the -- the burden will be on them to
20 demonstrate why that should be the case.

21 And then the -- one (1) final aspect
22 around the cost of capital policy that -- it would be
23 relevant here is that this is what the OEB sets in
24 terms of deriving the rates that the LDC will be
25 allowed to charge. What its actual capital structure

1 is may vary from that, from the 60/40. It's just that
2 the rates will be based on the 60/40.

3 The -- as I mentioned earlier, LDCs
4 report the financial and operating data every year to
5 the OEB, and certainly the OEB will look at what the
6 apple -- actual capital structure is. But -- and --
7 and can take action or can review the matter if it
8 feels it is warranted. For example, if it felt that
9 the capital structure was so different from the 60/40
10 that it -- it might put the entity at some type of
11 risk, then it might want to renew -- review the matter
12 and determine if some sort of action should be taken.

13 In addition to regulatory policy, the
14 other -- one (1) of the other major tools that the OEB
15 uses are handbooks. And so there is an example --
16 there is a handbook for utility mergers, acquisitions,
17 amalgamations, and divestitures, which provides people
18 with all sorts of information about how the OEB will
19 consider such an application. There is also a
20 handbook for utility rate applications.

21 And again, it's essentially a step-by-
22 step guide for how the OEB will look at each of the
23 key components of a rate application, and it brings
24 together -- the handbooks bring together the policy,
25 the various policies of the OEB and also draw on kind

1 of all the previous decisions to set out how the OEB
2 approaches looking at particular issues.

3 Next slide, please. The final topic I
4 want to cover for my report is affiliate relationships
5 and shared services. So while an LDC is focussed on a
6 disturbing electricity to customers, it's common for
7 an LDC to have affiliated companies. These companies
8 may be involved in activities that are kind of related
9 to electricity distribution, it may be sort of back
10 office services, billing, that type of activity, might
11 be street lighting. It could also be in areas that
12 are quite different and -- and outside of any
13 electricity distribution related activities. So the -
14 - the variety of affiliates can vary quickly, quite
15 widely.

16 And as you said, the OEB doesn't
17 regulate the affiliates, but it is concerned about the
18 relationship between the LDC and its affiliates, and
19 that's because basically because that relationship can
20 lead to there being harm, either to the utility or
21 potentially to its customers.

22 And there's really two (2) key
23 concerns, and that one's called cross subsidy. So
24 that's when, for example, a utility pays its affiliate
25 for a service, but pays more than it actually is

1 costing that affiliate to provide the service, or is
2 paying more than what the LDC would have to pay in the
3 competitive market for that service.

4 The cross-subsidy can also go the other
5 way, where a utility is providing a service to the
6 affiliate and is charging less than it costs it to --
7 to do that service for the affiliate.

8 And so in both cases, the affiliate is
9 benefiting at the expense of the utility and -- and
10 potentially the expense of the utility ratepayers,
11 that potentially the ratepayers are paying costs that
12 might be -- should be borne by the affiliate.

13 The other concern is discrimination,
14 and that means that -- that's describing a situation
15 where the LDC is giving its affiliate a benefit in the
16 way it operates. For example, if it's -- if the
17 affiliate is providing a competitive service the LDC
18 may either require -- might try to require its
19 customers to use that affiliate service, or it may,
20 you know, sort of promote that affiliate to the
21 exclusion of potential competitors. It may give that
22 affiliate access to information that the competitors
23 wouldn't be able to access.

24 So in this example, they OEB is
25 considered -- is concerned about the harm of this to

1 the competitive market overall, and therefore also to
2 the ratepayers because it's reducing choices that they
3 might otherwise have the benefit of.

4 So the OEB created the affiliate
5 relationships code, and that's a set of rules about
6 what the OEB can and can't do in its dealings with
7 affiliates. And this is, unlike policies and
8 handbooks, a rule like a code is -- what's considered
9 an enforceable provision. In other words, the LDCs
10 have to follow it.

11 So it sets out operational -- the ARC
12 or Affiliate Relationships Code sets out operational
13 requirements. For example, about how customer
14 information can be shared or not shared, how -- how
15 customer information has to be protected, for example.

16 And it also sets out quite detailed
17 provisions for how services can be sold and purchased
18 between affiliates and the LDC. And these rules are
19 quite prescriptive and -- and they are designed to --
20 to address the two concerns identified, the concern
21 about cross-subsidy and the concern about
22 discrimination.

23 So also in the -- the shared -- well,
24 particularly shared services agreements are typically
25 examined and reviewed during a rate application and

1 the OEB, in its rate handbook, sets out how it will
2 look at those transactions, what factors it will be
3 looking for. And the OEB can also investigate whether
4 an LDC has been abiding by the affiliate relationship
5 code and can do that outside of a rates application.

6 And this is where I would make --
7 provide further information, because in my report of
8 the 19th of March, right on the very last page, I --
9 at the very last paragraph, I noted that there'd been
10 no formal compliance actions against an LDC in
11 relation to the affiliate relationships code, and that
12 statement was corrected at the time, but it is no
13 longer correct because at the end of April, on April
14 29th the OEB posted an acceptance -- an acceptance of
15 an assurance of compliance by InnPower. InnPower is
16 the local distribution company for the Town of
17 Innisfil and for parts of Barrie.

18 And what came to light during in its --
19 InnPower's rate application was it appeared that they
20 were improperly pricing shared services. And so and
21 investigation was then undertaken and it -- it was
22 concluded and InnPower agreed that it had not been
23 charging its affiliates properly and had not been
24 charging them in accordance with the Affiliate
25 Relationships Code.

1 And it's now committed to correcting
2 those errors and addressing those deficiencies, and as
3 a result of that action, the money is going to be
4 refunded to customers and InnPower has agreed to pay a
5 penalty of \$25,000.

6 Next slide, please.

7 So just by way of conclusion, I did
8 want to note that there -- a reason -- I believe it's
9 now past, actually, a recent bill by the new
10 government implementing changes to the structure of
11 the Ontario Energy Board, and that legislation came
12 about as a result of a review that was undertaken to
13 address OEB modernization. It was a review that was
14 initiated under the prior government, but continued
15 under the current government.

16 And so those changes are primarily
17 structural and as far as I can tell, there are not any
18 particular changes in the OEB's overall mandate and
19 powers, but of course it remains to be seen how the
20 structural change and how these changes may change how
21 the OEB does the work that it does.

22 And that concludes my presentation.

23 THE HONOURABLE FRANK MARROCCO: Thank
24 you. What we'll do is we'll take a ten (10) minute
25 break and then we'll see if there are any questions.

1

2 --- Upon recessing at 11:07 a.m.

3 --- Upon resuming at 11:18 a.m.

4

5 CONTINUED BY MR. JOHN MATHER:

6 MR. JOHN MATHER: So, thank you for
7 your presentation, Ms. Chaplin. I just have a few
8 questions for you.

9 You mentioned in your presentation that
10 in an MAAD's application, the OEB generally isn't
11 concerned with whether or not the price being paid by
12 the buyer is too high or too low, with the exception
13 that they mi -- they may consider whether or not the
14 purchase prices places the LDC in financial jeopardy.

15 Could you just explain more what you
16 mean by that?

17 MS. CYNTHIA CHAPLIN: Well, the --
18 whatever the purchase price is, if there is a premium
19 over the book value, that premium can't be recovered
20 through rates. That's an explicit prohibition with
21 the way the OEB sets rates.

22 So, to the extent a premium has been
23 paid, if it's a large premium, then the OEB may be
24 concerned as to how the entity may be planning to
25 recover it.

1 So, typically, the way it works is, to
2 the extent there's a premium, there is often a delayed
3 period of time between the transaction and the next
4 time rates are set.

5 And the purpose of that -- there --
6 there are a variety of reasons for that, one (1) of
7 which is for the purchasing entity to be able to, in a
8 sense, recover that premium through developing
9 efficiencies.

10 So, that is the expectation when
11 there's a merger or some form of consolidation, that
12 the new entity will be run more efficiently because
13 it's been combined with another one (1) and that,
14 therefore, the costs to serve customers will decline
15 and perhaps will decline and be lower than what's
16 essentially embedded in rates.

17 And that part of incentive rate making,
18 the idea that you set rates at a particular level with
19 a view to encouraging the utility to be more
20 efficient, to reduce its costs. And that, in turn, is
21 then reflected when rates are reset.

22 So, if the premium were particularly
23 high, the OEB might be concerned that the entity would
24 be seeking to kind of recover that premium either
25 through very drastic cuts in costs or perhap -- which

1 might lead to a deterioration in service.

2 So, above all, the OEB is -- is
3 concerned to ensure that the LDC will meet its
4 obligations and will per -- perform its -- its role
5 with adequate customer service.

6 MR. JOHN MATHER: With that in mind,
7 is there any set limitation that the OEB places on
8 what a buyer can pay for an LDC?

9 MS. CYNTHIA CHAPLIN: No, not that I
10 am aware of. And, in fact, I -- I cannot recall where
11 that particular issue even arose in a proceeding,
12 other -- other than the -- the affirmation and
13 confirmation that takes place every time, which is
14 that, to the extent that there is a premium, it will
15 not be recovered through rates.

16 MR. JOHN MATHER: In you report you
17 mention that the Affiliate Relationships Code requires
18 that one-third of the directors of an LDC be
19 independent. What's the policy behind that
20 requirement?

21 MS. CYNTHIA CHAPLIN: So, the -- it --
22 it's part of the underlying structure that informs the
23 Affiliate Relationships Code, in other words, to make
24 sure that the LDC does not conduct its business in a
25 way that provides a benefit to -- an undue benefit to

1 utilities -- sorry, to the affiliate at the expense of
2 customers.

3 So, for example, if the board of
4 directors were the same for both an affiliate and an
5 LDC, then there is -- there is the potential for a
6 conflict of interest because there might be something
7 that the LDC could do that would be to the benefit of
8 the affiliate but it might not be to the benefit and
9 it might not be in the LDC's best interest.

10 So, the OEB wants to ensure that there
11 is a substantial component of the LDC Board of
12 Directors whose sole obligation is to the best
13 interests of the LDC and, therefore, mitigate either
14 actual conflicts of interest or potential conflicts of
15 interest or potential divided loyalties.

16 MR. JOHN MATHER: So, I -- I guess the
17 independent director then is someone who is not on the
18 board of any of the affiliates?

19 MS. CYNTHIA CHAPLIN: That's correct.

20 MR. JOHN MATHER: Is there anything
21 else that qualifies someone to be the independent
22 director, or any other requirements?

23 MS. CYNTHIA CHAPLIN: Well, there's
24 not a specific definition of 'independent' in the ARC,
25 I don't believe, so I think it would be independent at

1 it -- it's -- it's just saying independent of an
2 affiliate.

3 So, securities, regulators, and their
4 guidance have a more extensive definition of
5 'independence', but I don't know that that's
6 necessarily the case for the Affiliate Relationships
7 Code.

8 MR. JOHN MATHER: Another thing you
9 mentioned in your report is that the OEB recently has
10 introduced guidance -- governance guidance for LDCs
11 that appears to be LDC specific.

12 In 2011 to 2012, what guidan -- what
13 guidance was available to an LDC on corporate
14 governance?

15 MS. CYNTHIA CHAPLIN: Well, there are
16 a variety of sources of information around good
17 corporate governance. At the highest level, the OECDE
18 provides as -- as -- and I don't know when they first
19 published their principles for corporate governance,
20 but I believe it predated that.

21 Securities regulators, such as the
22 Ontario Securities Commission, publishes guidance
23 around good corporate governance, so many of the same
24 principles, so that would address all of those
25 principles.

1 As well, there are certainly a number
2 of groups that do director education, for example, The
3 Directors College, which is affiliated with McMaster.
4 And the Institute of Corporate Directors has a program
5 with Rotman, so there -- there's educational resources
6 available.

7 A number of consultants and lawyers
8 either provide services in the area of corporate or,
9 in fact, have written -- written books about Canadian
10 corporate governance.

11 So, there -- there would -- so -- and I
12 believe there were some -- there's some work done by
13 some lawyers particularly looking at LDC corporate
14 governance, but I don't think there was anything
15 particular comprehensive specifically directed at
16 LDCs, but there is lots of general guidance.

17 MR. JOHN MATHER: Okay. Those are my
18 questions.

19 THE HONOURABLE FRANK MARROCCO: I just
20 had one (1) question. You -- you referenced a
21 premium. What -- what is the premium?

22 MS. CYNTHIA CHAPLIN: So --

23 THE HONOURABLE FRANK MARROCCO: How do
24 you look at it?

25 MS. CYNTHIA CHAPLIN: Pardon me. So,

1 the premium would be -- let's say the utility's assets
2 -- an LDC's rates are based on its operation costs and
3 a return on the invested capital. And that return on
4 invested capital is -- relates to what's known as the
5 rate base.

6 So, these are all of the physical
7 assets that the LDC has, its poles, its wires, its IT
8 systems, and rates are based on the book value of
9 those assets.

10 So, to the extent a purchaser paid more
11 -- pays more than what that book value is, that's what
12 the premium is. So, the assets are not revalued for
13 rate making purposes. And -- and that way, if there
14 is a premium, it is not being pa -- co -- recovered
15 through rates.

16 THE HONOURABLE FRANK MARROCCO: As a
17 practical matter, how do people recover the premium?

18 MS. CYNTHIA CHAPLIN: So, the way they
19 -- practically speaking, the way they recover is it,
20 after the transaction goes through and the companies
21 are then perhaps operated on a merged basis, there are
22 co -- a potential to reduce costs either through, for
23 example, bringing together building systems, bringing
24 together maintenance crews, being able to operate them
25 more efficiently, perhaps be -- being able to reduce

1 the total number of employees.

2 THE HONOURABLE FRANK MARROCCO: But --
3 so, if you're paying a premium, you're also trying to
4 measure what the efficiencies are going to be after
5 the merger to see if it justifies the premium you're
6 thinking of paying?

7 MS. CYNTHIA CHAPLIN: That would
8 certainly be one (1) consideration, yes.

9 THE HONOURABLE FRANK MARROCCO: All
10 right. Thank you. Cross-examination?

11 MR. RYAN BREEDON: Yes. Thank you.
12 Just a couple of questions about this last topic and
13 rate setting. If we could --

14 THE HONOURABLE FRANK MARROCCO: Well,
15 maybe it would be a good idea if people asking the
16 questions identified --

17 MR. RYAN BREEDON: Certainly. I'm --

18 THE HONOURABLE FRANK MARROCCO: --
19 which party they are.

20

21 CROSS-EXAMINATION BY MR. RYAN BREEDON:

22 MR. RYAN BREEDON: I'm sorry. So, my
23 name's Ryan Breedon and I'm counsel for the Town.

24 MS. CYNTHIA CHAPLIN: Thank you.

25 MR. RYAN BREEDON: I think I may have

1 the wrong name tag up front.

2 MS. CYNTHIA CHAPLIN: You're not --
3 you're not Mr. McDowell.

4 MR. RYAN BREEDON: I'm not Mr.
5 McDowell. In terms of setting rates, if we look at it
6 from the highest possible level, the -- the first step
7 is determining the revenue requirement for the
8 utility?

9 MS. CYNTHIA CHAPLIN: Yes.

10 MR. RYAN BREEDON: All right. And
11 that, as I understand it, includes both a cost of
12 capital component which you've spoken about this
13 morning --

14 MS. CYNTHIA CHAPLIN: Yes.

15 MR. RYAN BREEDON: -- and then, also,
16 a working capital adjustment or a cost of providing
17 the service adjustment?

18 MS. CYNTHIA CHAPLIN: Yes. There's a
19 -- a working capital requirement is included.

20 MR. RYAN BREEDON: All right. And
21 then you determine the pool of money that the utility
22 is going to require to operate for the year?

23 MS. CYNTHIA CHAPLIN: Yes.

24 MR. RYAN BREEDON: And then that gets
25 broken down into fixed and variable rates depending on

1 a variety of circumstances?

2 MS. CYNTHIA CHAPLIN: Yes.

3 MR. RYAN BREEDON: Okay. In terms of
4 the cost of capital, you have -- you've spoken about
5 this earlier, but as I understand it, it's really in
6 two (2) categories. One (1) is the return on the
7 equity portion?

8 MS. CYNTHIA CHAPLIN: There is a
9 return on equity, yes.

10 MR. RYAN BREEDON: Right. And that's
11 the -- the return that the shareholder would expect to
12 receive based on the actual equity in the utility?

13 MS. CYNTHIA CHAPLIN: Based on the
14 deemed equity of 40 percent, yes.

15 MR. RYAN BREEDON: Right. And then
16 there is an amount for servicing the debt?

17 MS. CYNTHIA CHAPLIN: Yes, there --
18 debt costs are included, as well.

19 MR. RYAN BREEDON: Right. And again,
20 the -- the OEB has deemed a 60:40 debt to equity ratio
21 for these LDCs?

22 MS. CYNTHIA CHAPLIN: Correct.

23 MR. RYAN BREEDON: Okay. And -- and
24 the reason for that is that it will generally be much
25 cheaper to service the debt than the equity?

1 MS. CYNTHIA CHAPLIN: Yes, generally
2 speaking, cost of debt is lower than cost of equity.

3 MR. RYAN BREEDON: Right. And -- and
4 so, the point of deeming this capital structure is to
5 reduce the rates paid by consumers?

6 MS. CYNTHIA CHAPLIN: The purpose of
7 deeming that capital structure is to set a capital
8 structure which is commensurate with the risk. What
9 you're doing is balancing the risk that the entity
10 faces with what is the kind of an optimal way to
11 finance that.

12 MR. RYAN BREEDON: Fair enough. And
13 to ensure consistency for consumers across the
14 province.

15 MS. CYNTHIA CHAPLIN: Yes.

16 MR. RYAN BREEDON: So that regardless
17 of how a utility is actually capitalized, they're all
18 going to pay rates as though there was the 60/40
19 split.

20 MS. CYNTHIA CHAPLIN: Correct.

21 MR. RYAN BREEDON: All right. And as
22 I understand it, many of the LDCs in Ontario and
23 particularly smaller LDCs were under-leveraged so that
24 they would be -- they would actually have a much
25 higher equity portion and carry lower debt than was

1 deemed.

2 MS. CYNTHIA CHAPLIN: Well, as I -- as
3 I said before, the OEB switched to a straight 60:40.
4 It had a variety of deemed structures that were based
5 on size, and so the smaller entities were deemed to
6 have a higher equity ratio.

7 MR. RYAN BREEDON: Set aside how they
8 were deemed, whether they were deemed at 60/40 or
9 something else, many of these smaller utilities
10 carried very little debt?

11 MS. CYNTHIA CHAPLIN: I don't have
12 specific information on that to hand with me today.

13 MR. RYAN BREEDON: Okay. Fair enough.

14 MS. CYNTHIA CHAPLIN: Yeah.

15 MR. RYAN BREEDON: And just one (1)
16 last thing, you mentioned that the expectation for an
17 acquiring entity would be that there would be some
18 efficiencies that would offset the cost of the
19 premiums that were paid on acquisition.

20 In this case, we know that when Collus
21 was -- or 50 percent of Collus was sold, the plan was
22 that Collus would continue to be operated as an
23 independent entity. You're aware of that?

24 MS. CYNTHIA CHAPLIN: I'm not
25 specifically aware of that, no.

1 MR. RYAN BREEDON: All right. Just
2 assume that that's the case. So it wasn't being
3 merged with PowerStream or anything of the sort.

4 In that case, there would be no impact
5 on its rates in the short term. Is that right?

6 MS. CYNTHIA CHAPLIN: I'm not sure I
7 quite understand your question. There's no immediate
8 impact on rates until there's a new rate application.
9 If you're asking whether or not there would be any
10 immediate savings if they continue to be operated
11 separately, there may still be opportunities for
12 saving, even if they're operated separately.

13 MR. RYAN BREEDON: I guess maybe if
14 we -- if we look at it from the other perspective, if
15 Collus continues to be operated as an independent
16 entity when it comes time for rate basic, it's still
17 going to be determined based on just the Collus assets
18 for the Collus rates as opposed to some larger entity?

19 MS. CYNTHIA CHAPLIN: Yes. It would
20 be the Collus rate base and its operating costs, which
21 presumably might involve some sort of allocation
22 between Collus and the acquiring entity.

23 MR. RYAN BREEDON: All right.

24 MS. CYNTHIA CHAPLIN: PowerStream in
25 this case.

1 MR. RYAN BREEDON: Presuming there was
2 some shared services arrangement in place.

3 MS. CYNTHIA CHAPLIN: Yes.

4 MR. RYAN BREEDON: Okay. Thank you.
5 Those are my questions.

6 THE HONOURABLE FRANK MARROCCO: Okay.

7

8 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: I have only
10 a few questions, madam. My name is Chenoweth,
11 Fred Chenoweth, and I represent Mr. Houghton.

12 In any event, you've told us a bit
13 about MAAD applications. You've told us that MAAD
14 applications like to comply with principles of natural
15 justice. And you've told us that in doing so, one (1)
16 of the principles that you utilize is the requirement
17 for notice.

18 MS. CYNTHIA CHAPLIN: Yes.

19 MR. FREDERICK CHENOWETH: All right.
20 And can you tell me if you would please and tell the
21 Commission a little more about the extent and degree
22 of notice to the public of the prospect of a MAAD
23 application before the OEB.

24 MS. CYNTHIA CHAPLIN: Certainly. I
25 don't have any -- I would have to refer to the

1 decision to give you any specific information about
2 notice for that particular proceeding, but I can
3 answer generally.

4 MR. FREDERICK CHENOWETH: I'm not --
5 yes, thank you.

6 MS. CYNTHIA CHAPLIN: Okay.

7 MR. FREDERICK CHENOWETH: That's good.

8 MS. CYNTHIA CHAPLIN: All right. So
9 generally speaking, the OEB will receive an
10 application, and it will, first of all, ask the
11 applicant its views as to which party should receive
12 notice and how notice should be given.

13 And then the OEB then determines itself
14 how notice will be given. And that could involve ads
15 in a newspaper; it could involve notices being
16 included in customer bills. We are now increasingly
17 seeing notice distributed -- if customers are
18 receiving their bills electronically, they sometimes
19 will get an email notice of a rates proceeding, for
20 example.

21 The same standards are used for any
22 type of proceeding, whether its rates or MAAD's, or an
23 infrastructure application. It's the OEB's assessment
24 of whose interest may be potentially affected and
25 ensuring that they receive notice. And generally,

1 it's -- they try to cast it widely.

2 MR. FREDERICK CHENOWETH: All right.
3 You, I take it, you're unaware of any information that
4 would suggest that notice of this proceeding -- this
5 particular application with respect to Collus and
6 PowerStream was other than distributed widely, as is
7 the usual practice of the OEB.

8 MS. CYNTHIA CHAPLIN: I have no
9 information about this particular application, and I
10 would -- but I would expect that its notice -- the
11 extent of the notice would be similar to any other
12 similar applications the OEB would have received in
13 that time period.

14 MR. FREDERICK CHENOWETH: All right.
15 Newspapers, et cetera, and possibly notices in
16 billings, et cetera. Things of that nature.

17 MS. CYNTHIA CHAPLIN: Certainly
18 newspapers. For notices in news -- in bills, I think
19 the practice is mixed in that. I don't know that that
20 is every time, but -- but newspapers is often the most
21 typical.

22 MR. FREDERICK CHENOWETH: And you
23 spoke with some knowledge about what occurred in this
24 particular application, and I think you indicated that
25 in spite of the robust notice to the public that was

1 received here that there was no written questions from
2 any members of the public with respect to this MAAD
3 application?

4 MS. CYNTHIA CHAPLIN: The way it's
5 reported in the decision of that application is that
6 there were no -- there were no interveners, which
7 means no external parties sought to be participants in
8 that process, and so the OEB relied on Board staff.

9 MR. FREDERICK CHENOWETH: Right. So
10 in other words, to the best of your knowledge, no one
11 in the public -- in reading the decision in any
12 event -- it indicates that no one in the public came
13 forward raising any issues with respect to this
14 particular MAAD application.

15 MS. CYNTHIA CHAPLIN: That is what the
16 decision records.

17 MR. FREDERICK CHENOWETH: Yes. Thank
18 you. Now, I'm just interested in the ARC rules and
19 when they might be tested. And to some large extent,
20 they appear from what I read from your report to deal
21 with some analysis of the affiliate relationships that
22 may exist in a particular LDC.

23 And in that respect, is there an
24 analysis done by the OEB of affiliate relationships
25 when rate applications are made?

1 MS. CYNTHIA CHAPLIN: Yes, there is.

2 MR. FREDERICK CHENOWETH: All right.

3 And are they made -- is it usually the practice that
4 rate applications are made on an annual basis?

5 MS. CYNTHIA CHAPLIN: Well, rate
6 applications are made on an annual basis, but for
7 probably four (4) years out of every five (5), that
8 will be a very mechanistic and largely administrative
9 process.

10 MR. FREDERICK CHENOWETH: Yes.

11 MS. CYNTHIA CHAPLIN: It is only once
12 in the sort of rate-making cycle that it's a more
13 in-depth probing. And so that would be the time at
14 which an affiliate transactions would be -- would be
15 reviewed would be once every five years or perhaps
16 longer if the rate period is extended.

17 MR. FREDERICK CHENOWETH: All right.
18 So that I think you've confirmed to me that once every
19 five years, there would be pretty in-depth analysis of
20 the affiliate relationships and whether or not all of
21 the ARC rules were complied with.

22 MS. CYNTHIA CHAPLIN: I think it'd be
23 more accurate to say that each time an LDC comes in to
24 have its rates re-based, which would be -- is roughly
25 every five (5) years; it could be longer -- affiliate

1 shared services agreements will be reviewed primarily
2 from the perspective of what the impact should be on
3 rates.

4 It's not reviewed from the perspective
5 of seeking to determine if there -- the LDC is out of
6 compliance. Evidence may come to light that suggests
7 that, but a rate review process is not a compliance
8 proceeding. They are treated very separately.

9 MR. FREDERICK CHENOWETH: All right.
10 But if evidence came forward in that process that
11 indicated a particular LDC was out of compliance with
12 the ARC rules, I take it that would lead to some
13 action on behalf of the OEB.

14 MS. CYNTHIA CHAPLIN: Yes. And that's
15 the example -- the recent example of InnPower. That
16 is what happened.

17 MR. FREDERICK CHENOWETH: Thank you.
18 Are you aware of -- of any suggestions or allegations
19 that either Collus or Collus PowerStream, after the
20 closing of their partnership arrangements on July
21 31st, 2012, are you aware that there was ever any
22 concerns expressed by the OEB with respect to whether
23 or not either of those entities, either before or
24 after the partnership was confirmed, were out of
25 alignment with respect to their ARC applications, or

1 their ARC rules?

2 MS. CYNTHIA CHAPLIN: I do not have
3 any information about those two (2) specific entities
4 other than to observe that there have been no
5 compliance actions regarding ARC with -- sorry,
6 regarding Affiliate Relationships Code, except in the
7 case of InnPower.

8 MR. FREDERICK CHENOWETH: Very good.
9 Thank you very much. Those are my questions.

10 THE HONOURABLE FRANK MARROCCO: Mr.
11 Marron, who's next?

12 MR. GEORGE MARRON: Yes. May I --
13 I'll go next, if I may.

14 THE HONOURABLE FRANK MARROCCO: Sure.

15 MR. GEORGE MARRON: Thank you.

16

17 CROSS-EXAMINATION BY MR. GEORGE MARRON:

18 MR. GEORGE MARRON: My name is George
19 Marron, Ms. Chaplin. I represent Sandra Cooper, the
20 Mayor, and I just have one (1) area of questioning,
21 and that involves the report which you so kindly
22 prepared for the 19th of March 2019 for this judicial
23 inquiry. And at page 9 of that report, you make
24 reference to Hydro One and the situation concerning
25 the Orillia Power Company.

1 Do I understand from what you have
2 reported that in that particular instance of Hydro
3 One's attempt to acquire the Orillia Power, that the
4 OEB was concerned about the underlying cost structures
5 and expressed doubt that Hydro One's overall cost
6 structure to serve Orillia's customers would be no
7 higher than Orillia's underlying cost structure absent
8 the transaction?

9 MS. CYNTHIA CHAPLIN: Yes.

10 MR. GEORGE MARRON: That -- that was a
11 statement you made at page 9?

12 MS. CYNTHIA CHAPLIN: Yes.

13 MR. GEORGE MARRON: It indicated that
14 the OEB though pointed to the rate proposals that
15 Hydro One had filed for a group of other distributors
16 it had acquired, other LDC corporations it had
17 previously, and noted that the customers of those LDCs
18 are now facing significant rate increases.

19 Now we -- we know from the information
20 that we've been privy to in this Inquiry into the
21 Foundation Document that Hydro One was one (1) of the
22 proponents in the circumstances here with the other
23 three (3) LDCs who were standing forth to acquire a --
24 a portion of, or 50 -- up to 50 percent of the Collus
25 Power business.

1 Hydro One made a -- an offer which
2 monetarily was significantly higher than the other
3 proponents, generally a figure to be about a million
4 dollars more than what anybody else would be offering,
5 including PowerStream.

6 I take it that the situation in Orillia
7 then raised some issues because of the amount of money
8 that was being offered and how they could potentially,
9 or possibly recover -- recover that money over time.

10 MS. CYNTHIA CHAPLIN: My understanding
11 of the situation in Orillia is not -- or -- or the
12 reason that the OEB gave for denying that application
13 was not really in relation to the premium, but rather
14 in relation to what the impact of the transaction was
15 going to be on customer rates over time, and that
16 although Orillia and Hydro One had put forth a
17 proposal which would see -- I think it either had
18 rates being held fixed or -- I don't remember
19 precisely but they were not to increase for some
20 period of time.

21 The concern was, what would happen to
22 the Orillia rates after that initial period was over,
23 and so the OEB looked at what the underlying cost
24 structure of Hydro One is as an entity and compared
25 that with the underlying cost structure of Orillia and

1 saw -- its conclusion was that in the long run,
2 perhaps Orillia's rates would be higher than they
3 would have otherwise been, and it looked to what was
4 sort of concurrent evidence in a Hydro One
5 application, which appeared to show exactly that
6 happening to some other distributors that had been
7 acquired.

8 MR. GEORGE MARRON: Right. So the
9 proof was in the pudding, so to speak, with Hydro One
10 on some of these prior deals.

11 MS. CYNTHIA CHAPLIN: What I'm saying
12 is that the issue had to do with the cost to provide
13 service to customers and what it might mean for rates,
14 not in relation to the premium specifically.

15 MR. GEORGE MARRON: Well -- well,
16 there's been some significant public discussion in the
17 Town of Collingwood referencing that Hydro One's offer
18 was a million dollars more and why wouldn't the Town
19 in its wisdom accept Hydro One's offer as opposed to
20 considering other offers which were lower in monetary
21 offering.

22 So your report goes on to indicate
23 though, and -- and I think you've stated this, but it
24 -- just to review it with you, your report concludes
25 that Hydro One was given an opportunity to file

1 additional evidence to address the issue, that's the
2 Orillia issue, but didn't do so.

3 We've heard information here that KPMG,
4 who was hired by the -- by the Collus Power authority
5 to review some of the proponents and what had been
6 offered, communicated with Hydro One and wanted some
7 further particulars and response of Hydro One was
8 basically what the response was to request in Orillia
9 and they just said nothing and didn't respond at all.

10 So obviously the OEB would conclude
11 circumstances like that, the no-harm test had not been
12 met. I mean, they had no further particulars and they
13 sought those particulars and got no response. The
14 application would be determined accordingly, I take
15 it.

16 MS. CYNTHIA CHAPLIN: That is what --
17 that is how the OEB expressed it in their decision. I
18 believe the parties sought to have that decision
19 reviewed, and I don't know offhand the immediate --
20 the -- the current status of that.

21 MR. GEORGE MARRON: Okay, thank you.
22 Those are my questions.

23 THE HONOURABLE FRANK MARROCCO: I just
24 have one (1) question arising out of that.

25 THE HONOURABLE FRANK MARROCCO: If

1 Hydro One is paying -- assume for a moment, is
2 offering a million dollar more than the other people
3 bidding, that's -- that -- would that premium --
4 that's not recoverable -- that's to be recovered out
5 of efficiencies, not out of a rate increase.

6 MS. CYNTHIA CHAPLIN: Right. The
7 premium can't be recovered through rates, So it can be
8 recovered through efficiencies, and I suppose the
9 other consideration is sometimes entities will pay a
10 premium because they believe there's some sort of
11 longer-term strategic benefit maybe through affiliated
12 -- involving affiliated businesses. There may be a
13 variety of reasons for a particular premium, but
14 certainly effic -- expected deficiencies is one (1) of
15 them.

16 THE HONOURABLE FRANK MARROCCO: So the
17 expectation would -- would not, correct me if I'm
18 wrong, would not be that accepting the higher bid,
19 assuming that Hydro One's bid was higher, would then
20 automatically lead to higher rates. In -- in fact,
21 that would not be a correct assumption.

22 MS. CYNTHIA CHAPLIN: That's correct.
23 And I think in the case of a Orillia, the reason these
24 other distributors were facing higher rates was
25 because the -- the costs embedded in Hydro One's

1 system, particularly because it -- it has a very wide
2 service territory, it doesn't have a very dense
3 service territory, it deals with a variety of parts of
4 the province is a reasonably expensive system, and
5 potentially more expensive than some of these
6 individual entities that it purchased.

7 THE HONOURABLE FRANK MARROCCO: I
8 suppose then --

9 MS. CYNTHIA CHAPLIN: And -- and that
10 when you -- when you average it all and you give
11 everybody the same rates, the result is that
12 potentially that these customers of the acquired
13 distributors see their rates going up.

14 THE HONOURABLE FRANK MARROCCO: So I
15 suppose then in terms of what Mr. Marron was asking
16 you about that sort of issue could have arisen in
17 other proceedings involving Hydro One.

18 MS. CYNTHIA CHAPLIN: Yes.

19 THE HONOURABLE FRANK MARROCCO: All
20 right. Okay, thanks.

21 MR. TIM FRYER: Thank you, Justice, I
22 was going to go next, I think.

23 THE HONOURABLE FRANK MARROCCO: Go
24 ahead.

25

1 CROSS-EXAMINATION BY MR. TIM FRYER:

2 MR. TIM FRYER: Okay. Welcome, Ms.
3 Chaplin. My name's Tim Fryer and I'm the former CFO
4 for the LDC and the Collus entities during the term of
5 the -- of the RFP process and entering into the
6 strategic partnership.

7 So I wanted to touch on a couple of
8 areas and I -- first off, I thought your information
9 has been excellent and -- and a very good overview.

10 There's been a great deal of info
11 within the Foundation document in regards to shared
12 services before and after the strategic partnership.

13 So if we just scrolled up on the screen
14 to just the bottom part of page 9. Right there.

15 I'm sorry, and actually, I wanted page
16 13. I wanted page 13 instead of page 9, sorry about
17 that. Just the bottom part of page 13.

18 This is something you've already
19 actually touched on and it -- it has to do with what
20 requirements an LBC would have in -- in getting away
21 the approval of their service agreements, and speaks
22 to -- that they are in place for the five-year period,
23 because they're usually coincidental with the -- with
24 the rate filings, the cost service rate filings and it
25 does talk about how pricing is determined and it

1 refers to market service and competitive bidding
2 process.

3 So I only had a chance to look over
4 some of this information this morning and I'm going to
5 refer to the cost of service rate application that was
6 put in by Collus PowerStream in 2013, they filed on
7 May 24th. This is for the matter of record, not for
8 you to try to remember about a filing. So May 24th,
9 2013 they filed application EB-2012-0116, and as I
10 said, it was a cost of service rate filing to meet
11 their five-year requirement.

12 And in Exhibit 4, tab six (6), schedule
13 1, which is page 768 of the document, I'm just going
14 to read out a couple of sentences and -- and get your
15 opinion on something.

16 So it says there are shared services
17 among affiliates of Collus PowerStream and appropriate
18 agreements are structured to provide for hearings to
19 all regulatory requirements, such as the Affiliate
20 Relationship Code. These four (4) service level
21 agreements that exist between Collus PowerStream and
22 members of his corporate family are attached as
23 appendices A, B, C, and D.

24 These service level agreements are
25 currently being reviewed by an external consultant and

1 a proposed change to these arrangement -- these --
2 these agreements will be presented to Collus
3 PowerStream management in 2013.

4 This external study will be filed with
5 the Board after it is being reviewed and approved by
6 Collus PowerStream management.

7 And a little bit further down it -- it
8 does the -- the requisite, it shows the percentage
9 breakdown of the services that are being delivered,
10 how much which is going to the power side, the -- the
11 LDC and how much is being charged to an affiliate,
12 which is the water in this particular case.

13 So, I wanted to refer back to now the
14 decision that was levelled by the OEB on EB 2012-116,
15 and that was on October 10th of 2013 and page 12 of
16 this decision it referred to no unsettled matters. So
17 what I'm looking for from an opinion in your case, is
18 that it was -- it was provided in the cost of service
19 rate filing that the service agreements that were in
20 place at the time of the changeover and -- and -- and
21 going forward were going to be carried on, but they
22 were influx and they were going to be worked on and
23 the OEB had agreed to that.

24 Would you have any thoughts on that or
25 -- or input on it?

1 MS. CYNTHIA CHAPLIN: It's really
2 quite difficult for me to offer much, having not had
3 an opportunity to review that decision in full, and I
4 don't know precisely what you're referring to, if --
5 what it sounds like is perhaps there was a settlement
6 agreement governing that application. I don't know,
7 because you referred to no unsettled matters.

8 So without more information I would
9 feel uncomfortable venturing any particular opinion or
10 observations on that.

11 MR. TIM FRYER: And that's fair
12 enough. I -- I think it was as much entering into the
13 information during your testimony that the service
14 agreements were being worked on and the OEB was aware
15 of that.

16 Thank you.

17 THE HONOURABLE FRANK MARROCCO: Thank
18 you, Mr. Fryer.

19 Mr. Bonwick...?

20 MR. PAUL BONWICK: Thank you very
21 much, Your Honour.

22

23 CROSS-EXAMINATION BY MR. PAUL BONWICK:

24 MR. PAUL BONWICK: My name is Paul
25 Bonwick. Thanks very much for the presentation. I

1 want to echo the comments that it really helps paint a
2 picture in terms of what the OEB's responsibilities
3 are and how they deliver on those responsibilities.
4 It's a well written document, so thank you for that.

5 MS. CYNTHIA CHAPLIN: Thank you.

6 MR. PAUL BONWICK: As a -- as a
7 layperson, as I read your website and I look at the
8 report from a layperson's perspective, is it
9 reasonable to state that the OM -- the OEB provides
10 sort of a transparent comprehensive review of re --
11 applications with the larger responsibility of making
12 sure the ratepayers are protected?

13 MS. CYNTHIA CHAPLIN: Yes, I think
14 that's accurate.

15 MR. PAUL BONWICK: In keeping with
16 that level of transparency, when the OEB rejects an
17 application, is that rejection made public?

18 MS. CYNTHIA CHAPLIN: Yes, it is. All
19 decisions are made public.

20 MR. PAUL BONWICK: Again, certainly
21 following this it appears that all decisions I've --
22 wanting to focus on the negatives ones, but yes, the --
23 - the -- all decisions are made negative -- or sorry,
24 made public.

25 During the review of the application,

1 is there continued dialogue between staff at the OEB
2 and the applicants in terms of addressing questions,
3 providing additional information, addressing any
4 concerns?

5 Is there an ongoing dialogue during
6 that review process?

7 MS. CYNTHIA CHAPLIN: There would be
8 informal dialogue between Board staff, the applicant,
9 and all the parties in terms of items such as
10 scheduling and that type of thing.

11 Any information requests relating to
12 the substance of the application would be done through
13 one (1) of the formal process steps. So those might
14 be written questions with written answers, sometimes
15 there's an or -- an informal oral proceeding, which is
16 called a technical conference, where the parties can
17 ask questions of a technical nature and the applicants
18 can explain answers.

19 So -- so that's the nature of the
20 communications.

21 MR. PAUL BONWICK: That seems very
22 reasonable, you have some clearly defined criteria in
23 the application and how you're going to review that,
24 but I think based on your description it's --
25 description, it's -- it's safe to say that it's --

1 it's somewhat fluid as well, so that there's
2 opportunities for back-and-forth information to ensure
3 the OEB has the best, clearest understanding of what's
4 actually trying to be achieved.

5 MS. CYNTHIA CHAPLIN: Yes, and all of
6 that sort of information sharing is done in a
7 transparent way to all the parties and on the public
8 record.

9 MR. PAUL BONWICK: Have you and I ever
10 had any discussions in any manner of speaking over the
11 course of the last 18 years of your career?

12 MS. CYNTHIA CHAPLIN: You and I?

13 MR. PAUL BONWICK: Yes.

14 MS. CYNTHIA CHAPLIN: Not that I
15 recall.

16 MR. PAUL BONWICK: Have you ever heard
17 my name brought up with any of your colleagues in
18 terms of me making representations to the OEB or
19 contacting the OEB regarding this application or any
20 other one?

21 MS. CYNTHIA CHAPLIN: Not that I have
22 knowledge of, no.

23 MR. PAUL BONWICK: Thank you, Your
24 Honour.

25 THE HONOURABLE FRANK MARROCCO: Re-

1 examination?

2 MR. JOHN MATHER: No re-examination.

3 THE HONOURABLE FRANK MARROCCO: Thank
4 you very much for your presentation, it was extremely
5 helpful.

6 MS. CYNTHIA CHAPLIN: Thank you.

7 THE HONOURABLE FRANK MARROCCO: And
8 you're free to go, unless you really want to stay here
9 longer.

10 MS. CYNTHIA CHAPLIN: Thank you very
11 much.

12

13 (WITNESS STANDS DOWN)

14

15 MR. JOHN MATHER: We'll continue with
16 the examination of Jonathan Erling. Mr. Erling, will
17 you come back?

18 While everyone is getting settled, if
19 we could turn up paragraph 165 of the Foundation
20 document.

21

22 JONATHAN MICHAEL ERLING, Previously Sworn

23

24 CONTINUED EXAMINATION IN-CHIEF BY MR. JOHN MATHER:

25 MR. JOHN MATHER: So, Mr. Erling, when

1 we were last speaking we had finished going through
2 the review of options presentation that you had
3 prepared, I had brought you to paragraph 165 of the
4 Foundation document just to reorient ourselves that
5 this was a presentation that you provided to Mr.
6 Houghton and Mr. Fryer on May 24th, 2011.

7 Do you recall us discussing your
8 presentation?

9 MR. JONATHAN ERLING: Yes, I do.

10 MR. JOHN MATHER: So if we could now
11 please turn up CPS4397.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: So what's before
16 you, Mr. Erling, is a slide presentation on a Collus
17 presentation template dated June 27th, 2011. And if
18 we could just quickly scroll through the slides so Mr.
19 Erling could see them.

20

21 (BRIEF PAUSE)

22

23 MR. JOHN MATHER: I think that's good
24 for now, and go back to the first slide.

25 Mr. Erling, have you seen this slide

1 presentation before?

2 MR. JONATHAN ERLING: I had seen it
3 when we discussed it during my interview with you, but
4 prior to that, I had not seen it.

5 MR. JOHN MATHER: Okay. So the date
6 on the slide presentation is June 27th, 2011. I take
7 it, then, from your answer, you had -- did not see
8 this presentation or a version of it prior to June
9 27th, 2011?

10 MR. JONATHAN ERLING: Correct.

11 MR. JOHN MATHER: This -- having
12 briefly looked at some of the slides and knowing that
13 you've seen it prior to today, it appears that much of
14 the presentation is the content that was in your
15 presentation that you prepared, but on a different
16 template.

17 Do you know if anyone asked you to
18 review this presentation before June 27th, 2011?

19 MR. JONATHAN ERLING: I was not asked
20 to review this presentation.

21 MR. JOHN MATHER: Are you aware if
22 anyone at KPMG was asked to review this presentation
23 before June 27th, 2011?

24 MR. JONATHAN ERLING: I don't know.

25 MR. JOHN MATHER: Were you aware that

1 Collus was making a presentation along these lines to
2 Town Council on June 27th, 2011?

3 MR. JONATHAN ERLING: Not
4 specifically, no.

5 MR. JOHN MATHER: So if we could go to
6 slide 5 of this presentation.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: So I'm going to be
11 taking you back just over a week, but if you recall,
12 on the presentation you prepared, there was a slide
13 about transfer tax and this slide appears to contain
14 some of the similar content. And if we go in the
15 slide, we see -- down to the -- to the bottom of the
16 slide, it says:

17 "The presence of -- the presence of
18 the transfer tax means that if a
19 sale transaction is cont --
20 contemplated, it would make sense to
21 wait until a new exemption is
22 introduced to complete the
23 transaction."

24 Do you see that?

25 MR. JONATHAN ERLING: I do.

1 MR. JOHN MATHER: And as we discussed
2 on the previous day, in fact, there was an exemption
3 in place at this point in time.

4 I have that correct?

5 MR. JONATHAN ERLING: Yes, for
6 purchases by other municipally owned LDCs, and I think
7 also Hydro One.

8 MR. JOHN MATHER: So this point, June
9 27th, 2011, this consideration at the bottom of this
10 slide is no longer applicable.

11 Is that correct?

12 MR. JONATHAN ERLING: It's -- it's no
13 longer applicable to sale transactions to public
14 sector entities, i.e., municipally owned, local
15 distribution companies. It would still apply for sale
16 transactions with private entities.

17 MR. JOHN MATHER: So if we could go to
18 slide 10, please.

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: So if you recall,
23 Mr. Erling, in the presentation that you prepared and
24 was delivered on May 24th, you identified two (1)
25 options. One (1) was status quo, and the other was

1 sale, and then within the sale, there was the sub-
2 options.

3 We see on this slide, the first two (2)
4 options that you had set out are there, and then
5 there's a third option that says, "strategic
6 partnership."

7 Do you see that?

8 MR. JONATHAN ERLING: I do.

9 MR. JOHN MATHER: Do you know what a
10 strategic partnership is?

11 MR. JONATHAN ERLING: I don't think
12 it's a defined term. I'm assuming that it means that
13 there would be no equity interest between the
14 partners, or sharing of equity between the partners.

15 MR. JOHN MATHER: I'm sorry, what do
16 you mean by there would be no equity interest or
17 sharing of equity?

18 MR. JONATHAN ERLING: Well, there
19 would be no -- be -- because any -- because the other
20 -- the -- the sale of a partial equity share has been
21 contemplated under the sale transaction bullet, I
22 assume this bullet addresses something different,
23 where you wouldn't have an ownership interest being
24 taken by a partner.

25 MR. JOHN MATHER: What sort of

1 interest would you have in mind, then?

2 MR. JONATHAN ERLING: Maybe some type
3 of business relationship, contractual or otherwise.
4 But again, no -- no ownership position taken by the
5 partner in -- in, for example, Collus.

6 MR. JOHN MATHER: Prior to June 27th,
7 2011, were you asked to consider a strategic
8 partnership option for Collus?

9 MR. JONATHAN ERLING: Not that I
10 remember.

11 MR. JOHN MATHER: Were you ever asked
12 to consider an option whereby Collus would sell a 50
13 percent interest?

14 MR. JONATHAN ERLING: Not
15 specifically, no.

16 MR. JOHN MATHER: In your experience
17 with LDCs, are you aware of any LDC ever selling a 50
18 percent interest?

19 MR. JONATHAN ERLING: I think that
20 this was the first sale of its type in terms of a 50
21 percent ownership share. I'm not aware of any other
22 sales of that magnitude.

23 MR. JOHN MATHER: So if we can move to
24 slide 21.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: And actually, if we
4 could scroll up. And scroll up further.

5 So if you recall, Mr. Erling, in your
6 presentation, there was an analysis of advantages and
7 disadvantages of the options that you had considered
8 and analyzed, and those considerations for the partial
9 sale option are here. And -- and I won't take you to
10 it, but those -- those -- that analysis is in this
11 presentation.

12 So if we scroll down to slide 21, so we
13 see here there's an analysis of the strategic partner
14 option. And if you scroll down to slide 22 and 23, we
15 see there's analysis of the advantages of the
16 strategic partnership option. Those continue on to
17 slide 23, and then there's an analysis of the
18 disadvantages of the strategic partnership option.

19 I take it from your answers that this
20 analysis of the strategic partnership option is not an
21 analysis you conducted?

22 MR. JONATHAN ERLING: Correct.

23 MR. JOHN MATHER: So if we could go to
24 KPMG1089.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So just to orient
4 you in time, the -- we're looking at an email from you
5 to Mr. Herhalt and Mr. Rockx dated July 11th, 2011.
6 So, you know, a -- over a month after you had sent
7 your options analysis.

8 And you write, looking at this -- the
9 first email in this chain:

10 "John Rockx spoke with Tim Fryer
11 regarding the valuation point he --
12 points he has raised, with the one
13 (1) outstanding point is that Tim
14 wants us to confirm the transfer tax
15 currently applies to -- to sales of
16 LDCs, even if sold to other
17 municipally owned entities. This is
18 my -- that is my understanding, but
19 I'm trying to find some hard
20 evidence."

21 Do you see that?

22 MR. JONATHAN ERLING: I do.

23 MR. JOHN MATHER: And so I take it
24 here this is Mr. Rockx -- you're reporting that -- on
25 the tax issue that we've looked at earlier?

1 MR. JONATHAN ERLING: Yes.

2 MR. JOHN MATHER: So if we could open
3 the attachment -- open the attachment to this.

4 THE HONOURABLE FRANK MARROCCO: Can I
5 just stop you for a minute?

6 MR. JOHN MATHER: Yeah.

7 THE HONOURABLE FRANK MARROCCO: Tim
8 is?

9 MR. JONATHAN ERLING: Tim Fryer.

10 THE HONOURABLE FRANK MARROCCO: All
11 right.

12

13 CONTINUED BY MR. JOHN MATHER:

14 MR. JOHN MATHER: So if we could open
15 KPMG1095 -- sorry, actually, KPMG1094.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So this is another
20 email dated July 11th, 2011, from yourself to Mr.
21 Fryer, and in it you write that you've corrected the
22 options analysis to -- report to note that there is a
23 permanent holiday from the transfer tax for
24 transactions involving publicly owned entities, and
25 which was introduced in 2009.

1 Do you see that?

2 MR. JONATHAN ERLING: I do.

3 MR. JOHN MATHER: Do you remember
4 sending this email?

5 MR. JONATHAN ERLING: Vaguely. I
6 mean, it looks familiar. I -- I remember the issue,
7 and I remember making the corrections, so.

8 MR. JOHN MATHER: So if we could open
9 the attachment KPM1095.

10

11 (BRIEF PAUSE)

12

13 MR. JOHN MATHER: If we could go to
14 the fourth slide. I think it's actually the next
15 slide.

16 So this is the slide dealing with the
17 transfer tax.

18 What changes did you make to the slide?

19 MR. JONATHAN ERLING: I don't remember
20 specifically but it looks like the second paragraph is
21 new because it talks about the holiday from the
22 transfer tax that had been introduced and that Tim
23 Fryer had brought to our attention.

24 MR. JOHN MATHER: Okay. So this is --
25 that -- that's what you did as -- as a result of what

1 Mr. Fryer brought to your attention on the --

2 Do you remember if you made any other
3 changes to this slide deck as compared to the version
4 you sent on May 24th, 2011?

5 MR. JONATHAN ERLING: Well, I think as
6 we discussed in an interview, we changed the wording
7 and ordering of some of the advantages and
8 disadvantages of various options as a consequence of
9 making this change.

10 MR. JOHN MATHER: Can we go to slide
11 19?

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: Scroll down.

16 MR. JONATHAN ERLING: Yes. So the
17 last bullet on this page, the -- was initially the
18 first bullet but it's been reworded and put at the
19 bottom because it's less relevant.

20 MR. JOHN MATHER: So other than
21 changes you made to -- to deal with the transfer tax
22 issues, did you make any other changes to the slide
23 presentation?

24 MR. JONATHAN ERLING: Not that I
25 remember and I think we looked through and compared

1 the two (2), and those were the changes that we
2 identified.

3 MR. JOHN MATHER: So we've now looked
4 at two (2) versions of the options analysis that you
5 sent to Collus, one (1) on May 4th of 2011 and one (1)
6 on July 7th, 2011.

7 Did you prepare any other slide decks
8 or presentations for Collus in 2011?

9 MR. JONATHAN ERLING: No.

10 MR. JOHN MATHER: Are you aware of
11 anyone at KPMG making any other slide decks anal --
12 analyzing strategic options for Collus in 2011?

13 MR. JONATHAN ERLING: No, I am not.

14 MR. JOHN MATHER: So the email that
15 enclosed this version of the slide presentation was
16 sent to Mr. Fryer.

17 Do you know -- did you send this
18 version to anyone else at Collus or the Town?

19 MR. JONATHAN ERLING: I don't recall
20 sending it to anyone else. I -- it is unlikely that I
21 would have sent to the Town. I had no email
22 communications with the Town during this engagement,
23 as far as I remember.

24 MR. JOHN MATHER: After you sent this
25 version of the presentation to Mr. Fryer, do you know

1 to whom, if anyone, it was disseminated to?

2 MR. JONATHAN ERLING: No.

3 MR. JOHN MATHER: Did you ever present
4 this version of the slide deck to anyone at the time?

5 MR. JONATHAN ERLING: No.

6 MR. JOHN MATHER: Did you speak with
7 anyone at the Town about this version of the slide
8 deck?

9 MR. JONATHAN ERLING: Not during this
10 period of time.

11 MR. JOHN MATHER: And what do you mean
12 by this period of time?

13 MR. JONATHAN ERLING: I -- I think I
14 spoke to John Brown about these presentations in
15 subsequent conversations, but those were a number of
16 years later.

17 MR. JOHN MATHER: When he was the
18 Acting CAO?

19 MR. JONATHAN ERLING: Yes.

20 MR. JOHN MATHER: Are you aware of
21 anyone else at KPMG presenting this slide deck or an
22 earlier version to -- of it to anyone at the time?

23 MR. JONATHAN ERLING: No, I'm not. I
24 mean, I don't -- I can't say for sure that nobody did.
25 I can't say for sure that somebody else wouldn't have

1 spoken to it at a meeting, but I don't -- I don't know
2 of any instances where that occurred.

3 MR. JOHN MATHER: And then, other than
4 the discussions you had with Mr. Fryer, Mr. Houghton,
5 and Mr. Muncaster, which you've explained to us, or
6 your recollection you've explained, did you ever
7 present your slide decks or your analysis about the
8 options to anyone else at Collus?

9 MR. JONATHAN ERLING: No.

10 MR. JOHN MATHER: Are you aware if
11 anyone at KPMG provided -- discussed your slide deck
12 or your analysis with anyone else at Collus?

13 MR. JONATHAN ERLING: I'm not aware.

14 MR. JOHN MATHER: I have a few
15 questions for you about the RFP process for the 50
16 percent sale of Collus.

17 As a starting point, what was your role
18 in the RFP?

19 MR. JONATHAN ERLING: In the RFP
20 process, I helped in the running of the data room,
21 which is to say I helped field questions from bidders
22 and gave them access to documents.

23 MR. JOHN MATHER: What is the data
24 room?

25 MR. JONATHAN ERLING: Well, initially

1 it was really a series of files that were sent to us
2 in hard copy form and bidders had an opportunity to
3 come over to KPMG offices and review those files,
4 again in hard copy form.

5 I think over time I suggested that
6 making electronic copies of files would be preferable,
7 and people wouldn't have to come over in person, so I
8 think files were made available subsequently
9 electronically. I don't recall where they were
10 hosted, whether we had a KPMG website or whether it
11 was somehow disseminated through a Collingwood
12 website, I don't remember that, but a data room was
13 essentially the collection of documents, whether in
14 hard copy form or electronic.

15 MR. JOHN MATHER: So you oversaw the
16 data room. Did you have any other responsibilities
17 with respect to the RFP process?

18 MR. JONATHAN ERLING: I think that I
19 initially helped transform the draft that had been
20 prepared by either Collus or John Herhalt and assisted
21 in having it reformatted with -- through John
22 Herhalt's secretary or admin -- administrative
23 assistant, so it was purely a production function in a
24 sense.

25 MR. JOHN MATHER: And sorry, when you

1 say the "draft," what do you mean?

2 MR. JONATHAN ERLING: Well, there was
3 a document and there was -- I think it needed to be
4 reformatted or put in better formatting, so I -- I
5 think I helped put that document through -- you know,
6 get the word processing done.

7 MR. JOHN MATHER: And what document
8 are you referring to?

9 MR. JONATHAN ERLING: The RFP.

10 MR. JOHN MATHER: So if we can go to
11 paragraph 291 of the Foundation Document.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: So this paragraph
16 describes that on October 4th, 2011, Collus Power sent
17 the Request For Proposal documents to four (4)
18 bidders, and so just brought here as a point in time.
19 So I understand from your answer you were involved in
20 getting the RFP document prepared to be released.

21 Were you involved or consulted on the
22 development of the criteria within the RFP?

23 MR. JONATHAN ERLING: No.

24 MR. JOHN MATHER: When you were
25 involved in preparing the RFP to be released, were you

1 involved in drafting or redrafting any portions of the
2 RFP?

3 MR. JONATHAN ERLING: No.

4 MR. JOHN MATHER: Did you review the
5 RFP substantively prior to it being released?

6 MR. JONATHAN ERLING: I'd say no, not
7 substantively.

8 MR. JOHN MATHER: What was the nature
9 of your review?

10 MR. JONATHAN ERLING: I don't
11 remember. I don't remember even if I saw it, you
12 know, prior to it being released. You know, I think I
13 just arranged really for some word processing and
14 formatting, but I don't even know that I reviewed it
15 prior to it being forwarded to Collus.

16 MR. JOHN MATHER: So if we could go to
17 paragraph 307.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So this paragraph
22 says:

23 "On October 14th, 2011, Jonathan
24 Erling reported to John Herhalt that
25 Ed Houghton had called to ask him to

1 help Collus CFO Tim Fryer as much as
2 possible. Mr. Houghton had told
3 John -- Jonathan Erling that he
4 thought Tim Fryer's opposition to
5 the deal was showing up in Mr.
6 Fryer's slow responses to the data
7 rom requests from the bidders. Ed
8 Houghton told Mr. Erling that he was
9 concerned that Tim Fryer might
10 'sabotage' the deal. Herhalt
11 replied 'Amazing.'"

12 Do you recall this sequence of emails?

13 MR. JONATHAN ERLING: Vaguely.

14 MR. JOHN MATHER: What do -- what do
15 you recall about them?

16 MR. JONATHAN ERLING: I remember that
17 there was some emails at that time of this nature. I
18 might remember more if I was looking at specific
19 emails but that's -- I remember the interchange or
20 discussions with Ed, vaguely.

21 MR. JOHN MATHER: And what do you
22 remember about those discussions with Mr. Houghton?

23 MR. JONATHAN ERLING: Just that they
24 had occurred, and Ed had expressed opinions similar to
25 those being indicated here.

1 MR. JOHN MATHER: As the person who
2 was overseeing the data room, did you share
3 Mr. Houghton's concerns?

4 MR. JONATHAN ERLING: When you say did
5 I share them, I -- I relayed them to John Herhalt in
6 an email, I think.

7 MR. JOHN MATHER: So let me put it
8 this way, did you have a concern that Mr. Fryer was
9 slow in responding to data room requests?

10 MR. JONATHAN ERLING: I think I had a
11 concern that there -- he was slow in responding to
12 data requests. I didn't attribute to it any
13 particular motive.

14 MR. JOHN MATHER: Okay. In your view,
15 did the bidders have timely access to the information
16 they required in the data room?

17

18 (BRIEF PAUSE)

19

20 MR. JONATHAN ERLING: Did they have
21 timely access to the data? I'm just thinking about
22 it. I didn't think that it had gotten to the point
23 that they would not be able to put in competitive bids
24 or that they would be hindered in -- in putting
25 together a -- a response to the RFP, if that's one (1)

1 way of answering the question. I mean, I think over
2 time we got them the data that they required.

3 MR. JOHN MATHER: Would you go to
4 paragraph 343?

5

6 (BRIEF PAUSE)

7

8 MR. JOHN MATHER: So this paragraph
9 describes an email that you sent advising that
10 Hydro One on October 19th, 2011 -- that Hydro One had
11 asked -- that had -- the questions asked by:

12 "Hydro One had enquired whether
13 questions asked by a bidder and
14 answers provided in response would
15 be only seen by that bidder.
16 However, Collus Power reserved the
17 right to make additional information
18 in response to any questions asked
19 available to all bidders.

20 Mr. Erling further discussed the
21 issue with Hydro One. Mr. Erling
22 summarized that conversation for
23 John Herhalt. Mr. Erling reported
24 that Hydro One indicated that it was
25 unusual not to have full disclosure

1 of all questions and answers to
2 everyone. Mr. Erling responded to
3 Hydro One that the idea was to allow
4 people to ask questions that may
5 reflect their own unique
6 circumstances and to not discourage
7 these questions by bidders for fear
8 that their thinking will get
9 revealed to everyone else."

10 Do you recall engaging in these sorts
11 of discussions?

12 MR. JONATHAN ERLING: I do.

13 MR. JOHN MATHER: What do you recall
14 about what was being discussed and considered?

15 MR. JONATHAN ERLING: Well, I think,
16 you know, my recollection is fairly well summarized
17 here. There was a bit of interchange as to how we
18 would respond to some enquiries we have from Hydro One
19 regarding the process for responding to bidder
20 questions.

21 MR. JOHN MATHER: So it appears that
22 you had a conversation with an individual or
23 individuals at Hydro One, and they indicated that it
24 was unusual not to have full disclosure of all
25 questions and answers to everyone.

1 Was that true in your experience?

2 MR. JONATHAN ERLING: Was what true in
3 my experience? I think it -- I was surprised at
4 Hydro One's position on that issue. I've been
5 involved in a lot of transactions where private sector
6 bidders are competing to purchase an equity interest
7 in a company that is going through an auction process.

8 And -- and my general experience is
9 that -- is that, you know, questions and answers are
10 not disclosed to all parties, that you, as a bidder --
11 and we often would be in those circumstances working
12 for a bidder -- we would submit questions, and we'd
13 get answers back.

14 And typically, the questions are logged
15 in, say, an Excel spreadsheet, and then answers -- you
16 know, the answers come back, the Excel spreadsheet is
17 filled in, and we don't see in those processes the
18 questions posed by others -- other bidders. So I
19 was -- I was a bit surprised at Hydro One's position
20 on that.

21 MR. JOHN MATHER: Have you been
22 involved in RFPs where questions and answers from all
23 bidders were disclosed?

24 MR. JONATHAN ERLING: Yes. Typically,
25 if I find a few are responding to a government

1 proposal for consulting services, the questions and
2 answers are disclosed to all. I think that's a bit of
3 a different circumstance because it's a -- you know,
4 it's an RFP process for consulting services.

5 And I also know that when we, as
6 consultants, are responding in those processes, we
7 sometimes do not ask questions if we think the value
8 of the answer that we might get is less than the
9 potential loss that will accrue from having asked a
10 question and maybe flagged or identified for other
11 bidders an issue that maybe they need to think about
12 but we prefer that they didn't think about as a
13 competitor.

14 MR. JOHN MATHER: So it appears from
15 this paragraph that the initial response provided to
16 Hydro One is that questions/answers would not be
17 shared. Hydro One raises a concern they have with
18 that process.

19 Do you know what process was ultimately
20 followed?

21 MR. JONATHAN ERLING: I don't know
22 that I do know what process was ultimately followed.
23 I mean, the -- the intent of my response here was to
24 indicate that as much we were not going to disclose
25 Q&A or questions from a specific bidder to other

1 bidders and the answers that we gave to that bidder to
2 other bidders.

3 If, in the course of asking the
4 question, they identified information that should be
5 provided to everybody, we would make sure that that
6 information was provided to everybody. We wanted to
7 have a level playing field. We wanted it to be as
8 competitive a process as possible. And that means
9 giving all the information to bidders that they might
10 want in -- in refining the bid.

11 And I would distinguish, you know, when
12 you ask a question, you might identify an issue that
13 somebody needs to think about. And as a result of
14 them having identified an issue, they may wish to
15 receive some information.

16 Well, the intent was, you know, if we
17 gave that information that they asked for as a result
18 of identifying the information, we'd make sure the
19 information was available to all other people that may
20 or may not mean identifying the specific issue that
21 they had identified in the question.

22 MR. JOHN MATHER: So how is that
23 approach explained to the bidders so they knew what
24 would happen when they submitted a question?

25 MR. JONATHAN ERLING: I don't recall

1 whether there was a specific direction or
2 communication of the bidders on that concept. I just
3 don't remember.

4 MR. JOHN MATHER: Is there usually
5 direction provided to bidders about how questions will
6 be dealt with?

7 MR. JONATHAN ERLING: I don't know. I
8 mean, I -- I don't know that this question is -- is
9 as -- is posed as specifically as it was here in most
10 processes.

11 MR. JOHN MATHER: If we could go to
12 paragraph 345. So this is referencing a question that
13 Hydro One asked KPMG on October 21st, 2011, and the
14 question was if the bids were to be based on a share
15 purchase of Power Corp. alone or Solutions Corp. as
16 well. And then on November 2nd, 2011, you circulated
17 a draft response which is then set out.

18 Do you know if this draft response was
19 ever provided to Hydro One?

20 MR. JONATHAN ERLING: I don't know. I
21 think this -- one (1) thing to note is that specific
22 tax issue, I think -- no. I was going to say there
23 may have been some specific tax issues associated
24 specifically with Hydro One, you know, because it has
25 a different legal status than I think LD -- other LDCs

1 do.

2 So there may have been certain issues
3 that were specific to Hydro One that were not relevant
4 to transactions by other parties. But I don't know
5 that to be the case.

6 MR. JOHN MATHER: And that may be the
7 case, but I was -- just want to know if you recalled
8 whether this response was ever sent to Hydro One.

9 MR. JONATHAN ERLING: I don't know.

10 MR. JOHN MATHER: Or any -- or any of
11 the other bidders?

12 MR. JONATHAN ERLING: I don't
13 remember.

14 MR. JOHN MATHER: So just a few more
15 questions. If we could to paragraph 379.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So this is
20 referencing communications between yourself, Mr.
21 Herhalt, and Mr. Rockx, on November 17th, 2011. And
22 to orient you in time, the responses to the RFP were
23 submitted the day earlier, on November 16th, 2011.
24 And it appears from this paragraph that you reviewed
25 the submissions.

1 Is that your recollection?

2 MR. JONATHAN ERLING: I remember
3 reviewing the submissions, but I did it fairly
4 briefly. I was just asked for my initial impressions.

5 MR. JOHN MATHER: And --

6 MR. JONATHAN ERLING: Yeah, there
7 wasn't any sense that I was ranking them, or really
8 doing anything.

9 MR. JOHN MATHER: And there's some
10 impressions from -- of each bidder set out here. Is -
11 - are those the initial impressions you're referring
12 to?

13 MR. JONATHAN ERLING: I assume so. I
14 may have had others, but these certainly -- yeah,
15 would -- would have been some of my initial points
16 that I summarized.

17 MR. JOHN MATHER: Okay. And so if we
18 look here, for each bidder, it looks like you've
19 identified one (1) item that stood out to you, perhaps
20 about the submissions.

21 Is it fair to say that these are things
22 that caught your attention when you reviewed the
23 submissions?

24 MR. JONATHAN ERLING: I -- it -- they
25 obviously caught my attention. I'm not sure I would

1 read a lot of significance into the fact that they
2 caught my attention. I -- I wasn't trying to be
3 balanced or thorough in my review of the proposals. I
4 think they had just wanted me to have a quick look at
5 them because maybe they didn't have time to look at
6 them right away.

7 MR. JOHN MATHER: So with respect to
8 PowerStream, you say:

9 "PowerStream proposes a seven (7)
10 member -- seven (7) member board
11 with PowerStream getting four (4)
12 members and Collingwood getting
13 three (3) members."

14 Do you remember why that was something
15 you identified to your colleagues at KPMG?

16 MR. JONATHAN ERLING: No, it may just
17 have been that, you know, PowerStream was very
18 specific on that issue, and therefore I noted it. I
19 don't know if the other responses had similar
20 positions or were specifically explicit about the
21 number of board members.

22 MR. JOHN MATHER: From your
23 perspective, what was the significance of the fact
24 that PowerStream was proposing four (4) members and
25 Collingwood three (3)?

1 MR. JONATHAN ERLING: Well, clearly,
2 in terms of voting rights, if you have four (4)
3 members on a seven (7) member board, that -- at first
4 glance, that gives you control of the board, because
5 you have a majority of the votes.

6 MR. JOHN MATHER: And with respect to
7 Hydro One, the note you make is:

8 "Hydro One will move twenty (20)
9 line service jobs into the Town of
10 Collingwood."

11 Do you recall why you identified that
12 component of the Hydro One submission?

13 MR. JONATHAN ERLING: s I don't recall,
14 but it, you know, it's a significant or measurable
15 commitment, so that's my -- why I would have noted it.

16 MR. JOHN MATHER: And -- and what do
17 you mean by a significant or measurable commitment?

18 MR. JONATHAN ERLING: Well, you can --
19 you can easily identify twenty (20) jobs and monitor
20 that they have, in fact, been moved into the Town of
21 Collingwood. So it -- it's something that Hydro One
22 would have been in the position to do, whereas other
23 bidders may not be, because other bidders didn't have
24 service territory surrounding the Town of Collingwood.

25 So it's something that Hydro One would

1 have been able to do in a way that other bidders might
2 not have been.

3 MR. JOHN MATHER: And is that
4 something you recall thinking at the time?

5 MR. JONATHAN ERLING: I don't recall
6 what I thought at the time.

7 MR. JOHN MATHER: So if we could go to
8 paragraph 380. So this is in reference to the
9 paragraph we're just looking at. It says:

10 "Four (4) days later, Mr. Erling
11 told Mr. Herhalt, 'I actually
12 thought Hydro One's was the most
13 professional looking, and one (1) of
14 -- and one (1) of the most specific
15 in terms of detail'."

16 Do you recall saying that to Mr.
17 Herhalt?

18 MR. JONATHAN ERLING: Yes.

19 MR. JOHN MATHER: And does that align
20 with your recollection of Hydro One's presentation?

21 MR. JONATHAN ERLING: I really do not
22 remember what the bids looked like now. You know,
23 it's eight (8) years ago. You -- you know, I think,
24 you know, what my -- may have been thinking about at
25 the time is that Hydro One's was very professional,

1 and polished, and well-formatted, and the text was
2 articulate, and polished. I -- I vaguely remember
3 thinking that it was a nice-looking proposal.

4 MR. JOHN MATHER: Other than the two
5 (2) emails we've -- that are referenced in these two
6 (2) paragraphs we've looked at, do you recall
7 providing any other feedback on these submissions from
8 the proponents?

9 MR. JONATHAN ERLING: Do I recall
10 providing other feedback on the submissions? Yes. I
11 don't know if there are other emails that document
12 some of my thoughts, but I do remember some
13 discussions.

14 MR. JOHN MATHER: Other than what
15 we've looked at, is there any other -- what else do
16 you recall about the feedback you provided?

17 MR. JONATHAN ERLING: Nothing
18 specific.

19 MR. JOHN MATHER: Did you ever discuss
20 your views of the submissions with anyone other than
21 Mr. Rockx and Mr. Herhalt?

22 MR. JONATHAN ERLING: I don't think so.

23 MR. JOHN MATHER: Do you --

24 MR. JONATHAN ERLING: It's possible I
25 might have had a brief conversation with Ed on the

1 submissions, but I don't recall.

2 MR. JOHN MATHER: Anyone else at
3 Collus?

4 MR. JONATHAN ERLING: No.

5 MR. JOHN MATHER: Did you speak with
6 anyone at the Town about your views?

7 MR. JONATHAN ERLING: Definitely not
8 the Town.

9 MR. JOHN MATHER: Those are my
10 questions.

11 THE HONOURABLE FRANK MARROCCO: Now,
12 you were also saying at paragraph 380 that the --
13 Hydro One was one (1) of the most specific in terms of
14 detail. Are you -- do you remember whether you were
15 referring to the detail in their proposal?

16 MR. JONATHAN ERLING: I assume I was
17 referring to the detail in their proposal, yes.

18 THE HONOURABLE FRANK MARROCCO: And
19 that's something different than just the cosmetic
20 appearance of the proposal?

21 MR. JONATHAN ERLING: Yes. But I
22 don't recall specifically what I had in mind when I
23 wrote that.

24 THE HONOURABLE FRANK MARROCCO: No,
25 this is --

1 MR. JONATHAN ERLING: I'd have to look
2 at the propo --

3 THE HONOURABLE FRANK MARROCCO: --
4 years later.

5 MR. JONATHAN ERLING: Yes.

6 THE HONOURABLE FRANK MARROCCO: And
7 Mr. Herhalt's response -- Ed -- who's Ed? Do you
8 think Ed Houghton?

9 MR. JONATHAN ERLING: Yes.

10 THE HONOURABLE FRANK MARROCCO: And it
11 says he -- Mr. Herhalt says, "They thought PowerStream
12 and Hydro were the best." Do you know who the "they"
13 is?

14 MR. JONATHAN ERLING: I don't. I
15 assume it was Ed and some other individuals involved
16 in reviewing the proposals, but I don't know who.

17 THE HONOURABLE FRANK MARROCCO: You
18 don't -- you don't recall whether he indicated -- was
19 it Mr. Muncaster or not?

20 MR. JONATHAN ERLING: I think his --
21 this conversation was with Mr. Herhalt. So I -- I --
22 it wasn't directly with me. You know, it would be --

23 THE HONOURABLE FRANK MARROCCO: All
24 right.

25 MR. JONATHAN ERLING: -- reasonable to

1 assume Dean was one (1) of the parties, but I have no
2 knowledge of that.

3 THE HONOURABLE FRANK MARROCCO: Thank
4 you.

5 MR. JOHN MATHER: Those are my
6 questions.

7 THE HONOURABLE FRANK MARROCCO: Cross-
8 examination?

9 MR. RYAN BREEDON: I have no
10 questions.

11 THE HONOURABLE FRANK MARROCCO: Who's
12 next?

13 MR. FREDERICK CHENOWETH: Thank you,
14 sir.

15

16 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

17 MR. FREDERICK CHENOWETH: Mr. Erling,
18 I was...

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: Yes. Sorry.
23 I'll turn it on. Mr. Erling, I am looking at your
24 options presentation, which is -- I believe it's
25 KPM0001032. Could you pull that up, please?

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: And looking
4 at slide 10 of that review, the options, that appears
5 to be slide 11, we're looking for 10. Thank you.

6 You said it really -- two (2) options,
7 the status quo, number 1, and number 2, which is the
8 sale of -- of some or all of the shares I'm -- I'm
9 assuming that the prospect of some or all of the
10 shares included in that would be the prospect of the
11 sale of 50 percent of the shares?

12 MR. JONATHAN ERLING: Right.

13 MR. FREDERICK CHENOWETH: Thank you.

14 You at earlier times have indicated
15 that there were concerns about the certainty -- or the
16 uncertainty, actually, of the evaluations that you
17 were doing, and as I understood it from your
18 testimony, that was a function of the fact that there
19 were a limited number of -- of current comparables to
20 use.

21 MR. JONATHAN ERLING: Correct.

22 MR. FREDERICK CHENOWETH: And in
23 addition, there were -- you had decided not to do a
24 detailed analysis of the shared service agreements?

25 MR. JONATHAN ERLING: Correct.

1 MR. FREDERICK CHENOWETH: All right. I
2 -- I take it Mr. Herhalt would've been aware of the
3 uncertainties of the valuation that would've arisen
4 from those two (2) considerations?

5 MR. JONATHAN ERLING: Yes.

6 MR. FREDERICK CHENOWETH: All right.
7 And are you aware as to whether as a result of your
8 conversations with the clients or Mr. Herhalt's
9 conversations with the clients, were you aware that
10 these potential uncertainties were discussed with the
11 clients?

12 MR. JONATHAN ERLING: I'm not
13 specifically aware. I -- I would think that when we
14 had the meeting, we -- John Rockx and I had a meeting
15 with Dean Muncaster and Ed on -- I think it's May
16 12th, that date can be verified through time records,
17 but I am sure that that topic came up at that meeting,
18 that we would've talked about the uncertainty in the
19 valuation at that time.

20 I don't specifically recall us talking
21 about it, but it would surprise me if we didn't talk
22 about it.

23 MR. FREDERICK CHENOWETH: Thank you,
24 that's helpful.

25 Suffice it to say that given the timing

1 of the request for the variation et cetera, for the
2 valuation, et cetera, you were exercising your best
3 skills in giving the valuation you did, given the
4 information that was available to you at the time.

5 MR. JONATHAN ERLING: I -- I think so.
6 I mean, I think an important consideration in -- in
7 the valuation process is that it was being used to,
8 you know, inform the city's decision or the Town's
9 decision whether or not to sell. And if it was going
10 to sell the -- you know, it was -- it was input to a
11 process, a -- an important decision.

12 But if the Town was going to sell the
13 utility, it would do so through a competitive proposal
14 process.

15 And so the value of the utility would
16 be determined by the outcome of that process. You
17 know, if you think about the context in which
18 valuations are sometimes used, sometimes they're used
19 to determine the value of the transaction. For
20 example, if you have a sale transaction between two
21 (2) parties and it's a negotiated process and -- and
22 the valuation process could be the starting point for
23 negotiations.

24 So rather than the value being
25 determined by a competitive market process, the

1 valuation is an input to the actual price that's going
2 to be used.

3 Similarly, you know, in other
4 circumstances you could use a valuation to put the
5 value of an entity or record the value of an entity
6 for financial reporting purposes.

7 And so in those circumstances the
8 valuation is more important to the ultimate
9 transaction that occurs or the ultimate reporting of a
10 financial position, then it would be in this instance.

11 MR. FREDERICK CHENOWETH: All right.
12 And it's -- it's -- it's clear to you that the -- the
13 request for value on this occasion made by Collus
14 Power was for the former purpose, i.e., to -- to
15 consider options for a potential process rather than a
16 -- rather than a -- a hard-core structural valuation?

17 MR. JONATHAN ERLING: Yes. And -- and
18 I think the other consideration in the nature of the
19 valuation that we undertook was that we weren't sure
20 what the transaction might mean in terms of the
21 organization of the entity and, for example, whether
22 or not it would continue to share services with the
23 Town of Collingwood.

24 And you know, that factor would have an
25 impact on -- on potentially the economics of the

1 transaction and couldn't be determined in advance of
2 getting a bit from a proponent and negotiating with
3 the proponent as to what those arrangements might look
4 like in the future.

5 MR. FREDERICK CHENOWETH: So it made -
6 - it made the shared services detailed valuation to
7 some extent moot because you didn't know where that
8 issue was going to go in terms of responses to bids,
9 or responses to the RFP?

10 MR. JONATHAN ERLING: Exactly. And I
11 -- I think, you know, we had discussed in my prior
12 appearance that, you know, there had been some
13 communication back and forth between me and Ed and Tim
14 on -- on the mechanics of the shared service
15 arrangements and, you know, it reflected us trying to
16 understand in detail the nature of those arrangements,
17 and I think I reasonably concluded or John Rockx and I
18 reasonably concluded that it -- it really would be
19 premature to go down that issue in too much detail in
20 advance of knowing what changes might be made.

21 So we simply made the assumption that
22 the -- you know, the projections as prepared by
23 management that in some respects reflected the status
24 quo were a reasonable basis to do the valuation.

25 MR. FREDERICK CHENOWETH: All right.

1 I think you were frank in your earlier testimony that
2 the value of a particular entity, to some large
3 extent, hinges on the environment that exists at the
4 time of -- of the offering of it for sale.

5 MR. JONATHAN ERLING: Yes.

6 MR. FREDERICK CHENOWETH: And I think
7 you indicated that -- that certainly was at play in --
8 in this valuation because one (1) wasn't sure whether
9 the government was going to press people and to what
10 extent it was going to press people to consolidate
11 LDCs, or how many potential purchasers were going to
12 come in to that particular market. That was an
13 unknown at the time you did the valuation.

14 MR. JONATHAN ERLING: Well, government
15 policy was, in my mind, a longer-term consideration.
16 It was, you know, spoke to the issue of should you
17 sell now or should you sell a little later and would
18 you be better off selling a little later instead of
19 now, or vice versa.

20 MR. FREDERICK CHENOWETH: Right.

21 MR. JONATHAN ERLING: I -- you know, I
22 don't think we had any question that there would be a
23 loss of potential bidders at this time for this
24 utility, and I think the facts bear out the fact that
25 it received quite a bit of interest from the parties

1 that we sent the RFP to.

2 MR. FREDERICK CHENOWETH: All right,
3 but to use My Friend Mr. Marron's phrase, to some
4 extent the valuation that one achieves or the -- the
5 price that one eventually gets vis-a-vis evaluation is
6 -- the proof is in the pudding in that you don't know
7 how that's going to turn out until you actually go to
8 the market and -- and let the market respond.

9 MR. JONATHAN ERLING: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.

11 There was an issue raised about Mr.
12 Houghton's comments, which you noted in one (1) of the
13 exhibits, it was reviewed in your evidence in-chief,
14 that Tim was scrambling.

15 Did you -- did you get a sense from
16 your interaction with -- with the Mr. Fryer that in
17 fact he had a number of things on his plate and -- and
18 was concerned about his ability to both answer your
19 questions that you had at that time and deal with the
20 other matters on his plate?

21 MR. JONATHAN ERLING: Well, I think in
22 one (1) of the e-mails that Tim provided in response
23 to our questions, he indicated there was some IT
24 system overhaul ongoing at the time, I think it might
25 have had to do with a billing issue. So he did

1 indicate that he had other commitments, and that was
2 consistent with the conversation that I had with Ed
3 and which Ed said that both Tim and himself, you know,
4 as the management of the utility, were finding it
5 increasingly difficult to keep up with developments in
6 the industry.

7 THE HONOURABLE FRANK MARROCCO: But --
8 excuse me for the interruption, but it was Mr. Fryer
9 who identified that the tax issue might be different
10 than had been originally --

11 MR. JONATHAN ERLING: Yes. Yes. And
12 he was absolutely -- and he was absolutely correct on
13 that. Yes.

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: So although
17 he may have been working hard or -- or possibly
18 scrambling a little bit at the time, he -- he wasn't
19 asleep at the switch and --

20 MR. JONATHAN ERLING: No, absolutely
21 not.

22 MR. FREDERICK CHENOWETH: -- and he --
23 he responded with some -- with some -- some reasonable
24 input to your option report?

25 MR. JONATHAN ERLING: Correct.

1 MR. FREDERICK CHENOWETH: Thank you.

2 You indicate in your evidence in-chief
3 that Mr. Houghton was showing some frustration at the
4 processes as you were going through, that was your
5 initial testimony, I think.

6 MR. JONATHAN ERLING: Sorry, I don't
7 recall that specific statement. He was --

8 MR. FREDERICK CHENOWETH: Well, I
9 think you indicated that he was frustrated and wanted
10 to move the matter along and get -- and get his
11 valuation.

12 MR. JONATHAN ERLING: Oh, yes, I
13 remember that exchange, yes.

14 MR. FREDERICK CHENOWETH: All right.

15 MR. JONATHAN ERLING: I think he was
16 frustrated that, you know, we had a bunch of questions
17 and maybe more detail than they had anticipated us --
18 that we would get into.

19 MR. FREDERICK CHENOWETH: I -- I take
20 it if there was any sense of initial frustration that
21 that dissipated in your ongoing relationship with Mr.
22 Houghton was functional and businesslike.

23 MR. JONATHAN ERLING: I think so.

24 MR. FREDERICK CHENOWETH: Thank you.

25 So those are my questions, Your Honour.

1 Thank you.

2 THE HONOURABLE FRANK MARROCCO: Mr.

3 Marron...?

4 MR. GEORGE MARRON: I have no
5 questions, thank you.

6 THE HONOURABLE FRANK MARROCCO: All
7 right, thank you.

8 Mr. Fryer...?

9 MR. TIM FRYER: Yes, Justice, I'll
10 come up to the podium, if that's okay.

11 THE HONOURABLE FRANK MARROCCO: That's
12 fine.

13 MR. TIM FRYER: I'm fairly detailed,
14 so cognizant of the time, would you rather start after
15 lunch?

16 THE HONOURABLE FRANK MARROCCO: How
17 long are you going to be?

18 MR. TIM FRYER: Forty-five (45)
19 minutes?

20 THE HONOURABLE FRANK MARROCCO: All
21 right, we'll break now and take until two o'clock.

22

23 --- Upon recessing at 12:54 p.m.

24 --- Upon resuming at 2:00 p.m.

25

1 THE HONOURABLE FRANK MARROCCO: Mr.

2 Fryer...?

3

4 CROSS-EXAMINATION BY MR. TIM FRYER:

5 MR. TIM FRYER: Okay. Thank you,

6 Justice Marrocco. Hello, Mr. Erling. Welcome back to

7 Collingwood.

8 MR. JONATHAN ERLING: Okay.

9 MR. TIM FRYER: It's been a while. As

10 a matter of record, I am representing myself, Tim

11 Fryer. And, understandably, it restricts me from

12 speaking with the parties related to the proceedings,

13 so I hadn't had an opportunity to say hello.

14 So, relating to this opportunity for us

15 to speak, I wanted to begin by asking you if we'd had

16 any contact since basically the 2011 related valuation

17 work or RFP work ended?

18 MR. JONATHAN ERLING: I don't think

19 so.

20 MR. TIM FRYER: Okay. I want to start

21 with that because for approximately six (6) years I

22 have participated on the board of directors of another

23 LDC --

24 MR. JONATHAN ERLING: Okay.

25 MR. TIM FRYER: -- and it had many of

1 the same characteristics as Collus prior to the
2 partnership expansion. So even though I still have
3 been heavily involved in the industry, we haven't had
4 occasion to cross paths and, thereby, have any
5 discussions pertaining to this previous work?

6 MR. JONATHAN ERLING: Correct.

7 MR. TIM FRYER: Thank you. In your
8 testimony, you've provided a great overview of your
9 recall and related information to assist with these
10 proceedings and, as would probably be expected, it
11 creates some clarification questions.

12 So, I'm going to try to -- to in
13 general but it has been ten (10) days, and I want to
14 make sure that I'm referring back to things that you
15 can recall having gone through.

16 MR. JONATHAN ERLING: Yeah.

17 MR. TIM FRYER: So, in that regard, if
18 I could bring up ALE0049388 and go to page 8.

19

20 (BRIEF PAUSE)

21

22 MR. TIM FRYER: Sorry, back to -- back
23 to page 8. Right there. So -- so, that's good.
24 Actually, just up a little bit further because we just
25 want to show the mapping of the corporate structure.

1 Yes.

2 So, I just wanted to bring that up. As
3 you can see, it's the -- it's the map of the corporate
4 structure. And you generally referred to it in your
5 earlier testimony on May the 3rd.

6 So, it was just to familiarize yourself
7 with exactly what the layout looked like. I think, as
8 you mentioned, you had worked with us on this, so your
9 recall of it is because of that.

10 But, also, I think you'd agree it's --
11 it's very much the Power Budd model is what I would
12 call it because we worked with the legal
13 representatives from Power Bud when we put the
14 corporate structure together, and it's a very similar
15 structure to many LDCs out there.

16 Would you recall that?

17 MR. JONATHAN ERLING: Sorry, would I
18 recall what specifically?

19 MR. TIM FRYER: That this is a fairly
20 standard model.

21 MR. JONATHAN ERLING: I think it's
22 very standard to have a holding company and a number
23 of subsidiaries, including one (1) which would be an
24 LDC.

25 MR. TIM FRYER: Thank you. That's

1 exactly what I was thinking. And at the time,
2 Gaviller & Company are external auditors, where one
3 (1) of the participants in the process of setting up.

4 And then staying with that, from a
5 professional services resources standpoint, back in
6 2000, we also utilized Roger White of ECMI. And that
7 was to formulate our base service agreements which
8 mostly all LDCs an -- anticipated would be required to
9 operate in compliance with the OEB's Affiliate
10 Relationships Code.

11 So, that's just explaining --

12 MR. JONATHAN ERLING: Okay.

13 MR. TIM FRYER: -- that that had
14 happened. And I'd say to you, would you say that in
15 the early stages and until fairly recently, the ARC
16 requirement was somewhat restrictive in nature as
17 you're familiar with it, or do you have a poi -- point
18 of view?

19 MR. JONATHAN ERLING: Well, I -- I
20 would say the ARC puts some restrictions on pricing of
21 shared services between a regulated and unregulated
22 affiliates.

23 MR. TIM FRYER: As well as restricting
24 some of the things that could be done or -- or within
25 the LDC or -- or out of the LCC?

1 MR. JONATHAN ERLING: Perhaps. I
2 don't recall the specific limitations in the ARC on
3 that.

4 MR. TIM FRYER: Fair enough. I
5 wondered if you had an opinion, if you felt that it
6 had evolved a little bit, the OEB actually was looking
7 at the fact that allowing LDCs to provide more
8 services because they could see the cost efficiencies
9 and savings that were developing, that if you had an
10 opinion if that had -- had started to -- to move that
11 way?

12 MR. JONATHAN ERLING: In 2011?

13 MR. TIM FRYER: Yeah, in that kind of
14 time period over the last six (6) or seven (7) years.

15 MR. JONATHAN ERLING: I don't -- I
16 don't recall that I had a view on that.

17 MR. TIM FRYER: Okay. I guess,
18 actually, technically, I'm looking at it in today's
19 circumstances, if you have a point of view on it.

20 MR. JONATHAN ERLING: So, the question
21 is: Has the ARC or the application of the ARC evolved
22 --

23 MR. TIM FRYER: Yes.

24 MR. JONATHAN ERLING: -- since 2011?
25 I don't know. Not that I know of. I mean, the ARC, I

1 think, is written in the same way that it was then,
2 unless there have been revisions that I don't know.

3 MR. TIM FRYER: I -- I think my -- my
4 statement to you would be that it appeared like it's
5 created some business opportunities, if you can have a
6 fairly robust and extensive municipal ser -- services
7 in place, and that was what -- one (1) of the goals of
8 the -- of the shared partnership was to look at doing.

9 So, as you said, you don't have a view
10 on it though.

11 MR. JONATHAN ERLING: Sorry.

12 MR. TIM FRYER: So we'll just move
13 ahead. So, shared services have been incorporated as
14 the preferred operational component by many municipal
15 LDCs for base services, such as water and wastewater,
16 customer billing and service.

17 In fact, the OEB is supportive of it if
18 it's properly executed because it can result in
19 ensuring a cost. Is that a statement you'd agree
20 with?

21 MR. JONATHAN ERLING: Sorry, if you
22 could back up again.

23 MR. TIM FRYER: Yeah.

24 MR. JONATHAN ERLING: Specifically,
25 what's the statement?

1 MR. TIM FRYER: So -- so it's -- it's
2 a preferred operational component by many LDCs for
3 base services, such as water and wastewater, customer
4 billing and services. In fact, the OEB is supportive
5 of it because it can produce cost savings?

6 MR. JONATHAN ERLING: I'm -- I'm not
7 sure I would speak for the OEB on that point. I mean,
8 I think Collingwood is unusual in that it had the
9 joint operations of the water utility and the LDC in
10 the same entity, and that was an unusual circumstance.

11 In many cases, you know, electricity
12 distribution utilities do not have much involvement
13 with the water utility of the Town. Some cases, they
14 -- they may do, performing billing services perhaps,
15 but I'm not specifically aware of the particulars.

16 MR. TIM FRYER: And that's -- and
17 that's fair enough. I was going to say that a very
18 recent example that pertains to Collingwood
19 specifically is when we look at the information in
20 EPCOR's MAAD application.

21 There -- shared services are a large
22 component of EPCOR's planned deficiency gains. Since
23 Collus was no longer sharing the services they had
24 with the Town of Collingwood, EPCOR sees potential to
25 reduce those deficiencies in different ways, so.

1 And then I was going to move into just
2 what you spoke to. You pointed out in your earlier
3 testimony that a unique aspect of Collingwood was what
4 is shown in the map here as a dotted line relationship
5 with the Collingwood Public Utility Service Board.

6 So, you had correctly pointed out that
7 it was somewhat unique and that it is no longer
8 operational here today, but it's still utilized in
9 some other locals, and you named some of those.

10 MR. JONATHAN ERLING: Yes.

11 MR. TIM FRYER: But back in 2011, that
12 -- this was the structure which would have had an
13 impact on how you proceeded when asked to provide your
14 independent valuation and options analysis.

15 Is that correct?

16

17 (BRIEF PAUSE)

18

19 MR. JONATHAN ERLING: Sorry, I'm not
20 sure I fully follow the question.

21 MR. TIM FRYER: I can -- I can go
22 back.

23 So I'm just saying in 2011 --

24 MR. JONATHAN ERLING: Yes.

25 MR. TIM FRYER: -- this is the

1 structure and it would have had an impact on how you
2 proceeded when we asked for you to provide your
3 independent valuation.

4 MR. JONATHAN ERLING: I think we would
5 have taken the structure into account. I think we did
6 the valuation, primarily the LDCs, so I'm not sure it
7 had a big impact on the -- the actual analysis,
8 because we took the financial projections of the LDC
9 as is and -- and didn't make adjustments for changes
10 that might occur. So I'm not sure that the structure
11 had a meaningful impact on -- on our work at the time.

12 MR. TIM FRYER: Okay. So one (1) last
13 point on this is that maintaining the former Public
14 Utilities, Hydro, and Water Department concept, which
15 is really what we're doing here, it really meant that
16 Collus was continuing its partnership with the Town of
17 Collingwood.

18 So we already had a partner in the Town
19 of Collingwood and we had for -- for basically a
20 hundred years when we'd been operating. So I just --
21 before I bring up my next slide, I was just going to
22 comment that this is showing the holding company with
23 the operational units below.

24 So I wanted to bring up ALE0004330, and
25 hopefully it comes up fine. I had trouble -- it came

1 up and gave me that native message. I had a little
2 bit of trepidation.

3

4

(BRIEF PAUSE)

5

6 MR. TIM FRYER: So this is going to be
7 the balance sheet, so this is the accountant putting
8 some numbers to -- to the front for us.

9 So on page 2 -- sorry, I guess it's
10 page 3, sorry. May as well say page 2 but it -- it's
11 --

12 So just a little bit further up, I just
13 want to show the property, plant, and equipment.
14 That's good right there. Okay.

15 So I wanted to review with you
16 specifically on the valuation work KPMG did. We'll
17 just note that this is the balance sheet for 2010 and
18 2011, so the darker numbers are the 2011 and the --
19 and the lighter are the two thousand and -- and ten.
20 It's just not showing here above in the schedule.

21 MR. JONATHAN ERLING: Sure.

22 MR. TIM FRYER: The holding company
23 did not have any assets within it, so these are the
24 consolidated statements but it's basically just Collus
25 Power and Collus Solutions added together. I think

1 you -- you'd be aware that some LDCs had decided to
2 put some assets or -- or such into their holding
3 company, but in our case we had not.

4 MR. JONATHAN ERLING: Okay.

5 MR. TIM FRYER: That being explained,
6 we can see the 2011 net property, plant, and equipment
7 is \$3.1 million. Does that show it to you there? Or
8 13.1, sorry. I said 3.

9 MR. JONATHAN ERLING: 13.1 I can see,
10 yes.

11 MR. TIM FRYER: Yes. So generally
12 using the 1.3 times book value, and that's from an
13 earlier thing that you had talked about. I think you
14 --

15 MR. JONATHAN ERLING: Yes.

16 MR. TIM FRYER: -- recall that -- you
17 made earlier. So -- so that would create a premium of
18 \$3.9 million.

19 MR. JONATHAN ERLING: Sounds
20 reasonable.

21 MR. TIM FRYER: And this lends to what
22 you had discussed with the Justice just a little bit
23 earlier. And that would give us a total of around \$17
24 million. In 2010, the column right beside it, without
25 going through the math, it -- it's about a \$500,000

1 difference between --

2 MR. JONATHAN ERLING: Sorry, what's --
3 what's a \$500,000 difference?

4 MR. TIM FRYER: It would be a little
5 lower. It would be 16 1/2 in 2010 with the premium
6 added, but --

7 MR. JONATHAN ERLING: Okay.

8 MR. TIM FRYER: -- just to reflect on
9 that. So reflecting on your intercompany comment to
10 John Rockx, that was revert -- reviewed earlier in
11 your testimony, inquiring to what we can get away with
12 --

13 MR. JONATHAN ERLING: M-hm.

14 MR. TIM FRYER: -- you've explained
15 that there wasn't any sinister element in the use of
16 these words. It sounded like in your explanation they
17 were used in a more broader sense and had an element
18 of usual jovial banter with Mr. Rockx.

19 Is my sense of that correct?

20 MR. JONATHAN ERLING: I think so.

21 MR. TIM FRYER: Okay. So then
22 considering a May 9th KPMG intercompany comment after
23 receiving an email with some detailed information from
24 me, which -- edi -- doesn't indicate anything other
25 than I was busy, you said:

1 "I don't think Tim is on board."

2 I would suggest that perhaps this again
3 was a more broader internal chatter, more towards that
4 you were sensing, just as you had said, that all of
5 the detailed questions you started looking for may not
6 get covered.

7 Would that sound correct in your mind?

8 MR. JONATHAN ERLING: Sorry, what's
9 the question again?

10 MR. TIM FRYER: I guess what I'm
11 asking is, your reference to, "I don't think Tim is on
12 board," I look at that as -- as a broader internal
13 chatter as well, and -- and you were sensing that some
14 of the detailed questions you had given weren't going
15 to get covered, and then you did state -- and actually
16 what we can do is if you bring up paragraph 156 of the
17 Foundation Document. That's kind of where I'm at.

18

19 (BRIEF PAUSE)

20

21 MR. TIM FRYER: So what I -- what I'm
22 saying is that particular comment, I looked at it as
23 how you explained the other comment, which was it was
24 -- like a broad sense is Tim's not on board to get me
25 all the questions covered, but you also had said in

1 this paragraph that there was a good chance that it
2 may not all be needed either.

3 MR. JONATHAN ERLING: Correct. So it
4 may not all be needed, I agree with that statement.

5 MR. TIM FRYER: Okay. So I thought
6 the other possibility was that perhaps your words were
7 due to the other comments you had received like the
8 ones in the next paragraph.

9 And these are your notes that you had -
10 - had explained that were from a call with Mr.
11 Houghton.

12 MR. JONATHAN ERLING: Correct.

13 MR. TIM FRYER: Due to some of the
14 content, it appears to me that those comments probably
15 came from, I think, the March 11th kickoff conference
16 call, and -- and if we went to paragraph 151 --

17 MR. JONATHAN ERLING: Yeah. I think -
18 - okay. I think they probably are from the call.

19 MR. TIM FRYER: Yeah. It suggests
20 that I was on the call, but I don't remember being on
21 that call. It's eight (8) years ago, so it doesn't
22 mean that I wasn't. So --

23 MR. JONATHAN ERLING: And I don't
24 that I don't remember whether you were or weren't, so
25 --

1 MR. TIM FRYER: Yeah.

2 MR. JONATHAN ERLING: -- neither of us
3 remember, I suppose.

4 MR. TIM FRYER: Yeah. And -- and --
5 and the purpose here is isn't so much about the call.
6 It's just to establish that if you could recall if I
7 was on the call. I don't recall being on the call.
8 But the in the loop part of the -- part of it,
9 suggests that it was meant to be an indirect
10 involvement by me, but it -- it is possible there was
11 another reason for it being stated like that.

12 I wanted to go back with you and review
13 an earlier comment that you made when you were
14 testifying on May the 3rd.

15 Do you recall Mr. Mather asked if you
16 had done any other work for Collus entities besides
17 the 2001 and 2011 engagements?

18 MR. JONATHAN ERLING: Any other work
19 prior to the -- our involvement in 2011 you mean?

20 MR. TIM FRYER: I -- I -- I thought it
21 was about any work you had done for Collus entities.

22 MR. JONATHAN ERLING: Between 2000 and
23 2011, sorry?

24 MR. TIM FRYER: We did the 2001
25 structure work with you and we did the 2011 RFP

1 process, and Mr. Mather asked if there was anything
2 else.

3 MR. JONATHAN ERLING: I think I said
4 no. I'm -- but I'm wondering -- I think between that
5 time, I now -- I think you may have approached us and
6 asked us to do some work on something but I don't
7 remember what the specific issue was.

8 MR. TIM FRYER: I think you're
9 correct, you had said no. And you're referring now to
10 what I was going to suggest, is that I think when Mr.
11 Mather asked the question, he was implying all the
12 entities, probably including the Collingwood Public
13 Utilities Service Board.

14 And I was going to ask you if you
15 recall doing valuation work related to assets and
16 operational aspects of the Collingwood Public
17 Utilities Service Board.

18 MR. JONATHAN ERLING: I don't recall.

19 MR. TIM FRYER: Okay. So you don't
20 recall that. I'll just cover that there was a meeting
21 that you attended at the Public Utilities Service
22 Board, and I cannot recall the year of it either, but
23 it was a valuation of our filtration plant.

24 MR. JONATHAN ERLING: Okay. And who
25 did -- who did the valuation?

1 MR. TIM FRYER: You had done the work.

2 MR. JONATHAN ERLING: I don't remember
3 that.

4 MR. TIM FRYER: And that's what I
5 recall, and since you don't recall it -- but it was a
6 case where I didn't know about the valuation work
7 until I showed up at that meeting. So my point had
8 been that the work had been done without the CFO,
9 and -- and it could be done without the CFO.

10 So I'll just say that a reason for
11 reviewing this with you is still in regards to the
12 valuation -- the 2011 valuation -- because when a
13 general or a high-level valuation is being done to get
14 that overall picture that you spoke of -- is it
15 10 million; is it 15 million -- the CFO doesn't even
16 really need to be involved at ground level. The vast
17 amount of data you would require is publicly
18 accessible. Would you agree with that?

19 MR. JONATHAN ERLING: I agree that,
20 you know, in the LDC sector, you can get a pretty good
21 estimate of market value by plot -- by applying a --
22 you know, a reasonable multiple to publicly available
23 information on rate base, and that gets you most of
24 the way there.

25 MR. TIM FRYER: And I was going to ask

1 for paragraphs 772 and 773 to be brought up. And I
2 was going to say that this is another recent example
3 of the 2015 Henley valuation report that the Town of
4 Collingwood had completed. And we'll look at the --
5 at the wording in here and just scroll down just a
6 little bit.

7 You notice that it says:

8 "The report pointed out that its
9 analysis used only publicly
10 available information and
11 information provided by the Town of
12 Collingwood."

13 So not -- no participation by Collus
14 PowerStream, but they felt the report could reach
15 adequate conclusions that were -- they believe it
16 sound. So I think that fits with what you just had
17 said?

18 MR. JONATHAN ERLING: Yes.

19 MR. TIM FRYER: I'd also suggest that
20 another estimation example comes from the meeting that
21 happened with Mr. Houghton and Mr. Brian Bentz back in
22 December 2010, and it's listed in the -- in the
23 document under paragraph 112.

24

25 (BRIEF PAUSE)

1 MR. TIM FRYER: So this is Mr. Bentz's
2 notes that he had written out from the meeting, and if
3 we just scroll down to see the notes. I think that's
4 probably pretty good 'cause it's the 20 million -- or
5 actually just -- yeah, just down a little bit more.
6 It's the -- it's the comment that he meets...

7 So from -- this meeting appears to be
8 an opportunity through professional familiarity to
9 become informed about current circumstances. I worked
10 with Brian Bentz close to 30 years ago -- it was
11 probably when we started -- during his days as chief
12 accountant at Barrie PC.

13 I expect you've had contact with
14 Mr. Bentz professionally?

15 MR. JONATHAN ERLING: Yes.

16 MR. TIM FRYER: Yeah. Probably one
17 (1) of the most knowledgeable people in our industry?

18 MR. JONATHAN ERLING: He's -- he's
19 very well regarded and well respected.

20 MR. TIM FRYER: Thank you. So as CEO
21 of PowerStream, which could be described as an
22 acquirer in the LDC market, he gave a quick opinion
23 with a range that he thought Collus would probably be.
24 His note says: "Back of envelope 15, 20 million less
25 debt."

1 So I didn't know if you were aware that
2 that had been in the -- in the document as
3 information?

4 MR. JONATHAN ERLING: I had not read
5 the entire Foundation Document, and I did not see this
6 email.

7 MR. TIM FRYER: I don't blame you. So
8 circling back to -- and again, if I could bring up
9 ALE0004330 to our initial look at the balance sheet.
10 And if you could just scroll to the next page and
11 just -- that's good.

12 So we had spoke about a rough figure of
13 say 16 and a half million. And if you look at page 3
14 here, the long-term liabilities is showing a debt of
15 \$4.2 million for 2011?

16 MR. JONATHAN ERLING: Yes.

17 MR. TIM FRYER: Okay. So 1.7 million
18 of that is shareholder promissory note, and that was
19 established in 2001 and would have come in without any
20 influx of cash investment from the shareholder. Many
21 utilities set up a promissory note when they
22 incorporated?

23 MR. JONATHAN ERLING: Sorry, it's 1.7?

24 MR. TIM FRYER: One point seven (1.7).

25

1 MR. JONATHAN ERLING: Okay. Yeah.

2 MR. TIM FRYER: So it's -- sometimes
3 it's called paper debt because it is with the
4 shareholder.

5 MR. JONATHAN ERLING: Right.

6 MR. TIM FRYER: I don't know if you've
7 heard that reference or not. But what I was going to
8 say, would you agree that it wouldn't really be
9 applicable in regards to the back of envelope
10 calculation when Mr. Bentz refers to debt?

11 MR. JONATHAN ERLING: What wouldn't be
12 applicable?

13 MR. TIM FRYER: The 1.7 million
14 because it's the shareholder debt. You may not have
15 an opinion on that.

16 MR. JONATHAN ERLING: I'm -- I'm --
17 yeah -- I'm not sure the significance of that. And,
18 you know, I would say if he's saying the
19 shareholder -- he's saying the enterprise value is
20 15 to 20 and then he's just saying to figure out the
21 equity portion, you need to deduct whatever debt that
22 you have.

23 MR. TIM FRYER: Yeah. So, again, as I
24 say, you may not have an opinion on that. I was
25 looking at it -- the fact that when I was considering

1 the \$4.2 million of debt, there was 1.7 million of
2 shareholder debt.

3 There'd also be a fairly large amount
4 of money that had been taken on, due to the movement
5 to smart metre technology every utility has to put in
6 place for the -- be effective for January -- or
7 January 1st, 2012. That was something you referred to
8 a little bit ago. You were talking about a billing
9 change and what it was. We were going to all
10 time-of-use metering for all of our customers.

11 MR. JONATHAN ERLING: Yeah. I wasn't
12 specifically referring to the cash investment
13 required. I -- I think I was just referring to there
14 is some management workload associated with those
15 metres or the changes in the building operations.

16 MR. TIM FRYER: Yes. So effectively
17 what I was trying to suggest to you is that there's
18 about a million dollars of third-party debt there that
19 I would look at is what Mr. Bentz was meaning would
20 come off the -- the midrange that he had, which was
21 between 15 and 20 which is seventeen and a half and
22 about a million dollars of debt would bring it down to
23 sixteen and a half, which matches up closely with the
24 1.3 calculation we were talking about.

25 MR. JONATHAN ERLING: Okay.

1 MR. TIM FRYER: And then if we could
2 look at paragraph 163.

3

4 (BRIEF PAUSE)

5

6 MR. TIM FRYER: So the finer
7 calculation by KPMG had it -- the 16.3 was the upper
8 range. But as you talked about -- you had uncertainty
9 built into some of the factoring.

10 But in any event, it is fairly close,
11 and that's what I was trying to project to you.

12 MR. JONATHAN ERLING: Okay. I
13 understand.

14 MR. TIM FRYER: So one (1) of the
15 reasons for reviewing all this with you is that
16 apparently the final formal valuation was never
17 issued. And if we scroll down to 164, we'll see the
18 first sentence where it does say that the -- the draft
19 value -- the formally finalized draft value. So you
20 can see that?

21 MR. JONATHAN ERLING: Yes.

22 MR. TIM FRYER: Okay. And then if
23 you'd bring up CPS0005638.

24

25 (BRIEF PAUSE)

1 MR. TIM FRYER: And we just read the
2 body where Mr. Rockx is replying to Pam:

3 "As requested, attached is an
4 electronic copy of the draft for the
5 valuation report and the shares of
6 Collus Power as of December 31st,
7 2010. KPMG never did issue the
8 valuation report and final as we
9 never received an executed
10 representation letter from Collus
11 Power."

12 So I believe you've seen that response?
13 Do you recall?

14 MR. JONATHAN ERLING: This response
15 from John Rockx?

16 MR. TIM FRYER: Yes.

17 MR. JONATHAN ERLING: I don't recall
18 it.

19 MR. TIM FRYER: Okay.

20 MR. JONATHAN ERLING: It looks like I
21 was copied on it.

22 MR. TIM FRYER: I was going to ask you
23 if you'd expect any major changes for the final draft
24 evaluation work if that's all that was left
25 outstanding to be done.

1 MR. JONATHAN ERLING: No. I don't
2 know.

3 MR. TIM FRYER: Thank you. So, I
4 wanted to refer back to your testimony and I thought
5 it would maybe be easier to just bring up some of it,
6 rather than you trying to recall what you said and --
7 and me saying what you recall.

8 So I was going to look at -- so the May
9 3rd testimony, and it would be page 141 and it's lines
10 20 to 25. So page 141 and 20 to 25.

11 So you can peruse that a little bit.

12 MR. JONATHAN ERLING: Okay.

13 MR. TIM FRYER: So it says the
14 engagement letter notes that it isn't a formal
15 valuation, but an indicative view of the potential
16 value, and we'd have to go on to the next page and not
17 so much to read the rest of it, but I was going to key
18 on it isn't going to be precise, but it can be useful
19 for business decision-making purposes, was certainly
20 what our -- us as a client was expecting from you.

21 Would you agree with that?

22 MR. JONATHAN ERLING: Yes.

23 MR. TIM FRYER: Okay. So then if we
24 could look at 144, lines 13 and 14. And what I'm
25 looking at is:

1 "and ultimately you really only find
2 that out through an RFP process".

3 So I was just going to have you recall
4 that you had said that.

5 MR. JONATHAN ERLING: Yes.

6 MR. TIM FRYER: And I think that makes
7 sense. And so then as Collingwood completed its RFP
8 process, the two most active acquirers of LDCs in
9 Ontario put financial offers forward that were within
10 10 percent of each other and appeared to be in the
11 valuation range established by KPMG.

12 Would you think that was an accurate
13 statement?

14 MR. JONATHAN ERLING: What the --
15 the two offers --

16 MR. TIM FRYER: Thinking about HON --
17 so Hydro One Networks and -- and Alectra --
18 PowerStream at the time.

19 MR. JONATHAN ERLING: I guess those
20 would be the most active, yes.

21 MR. TIM FRYER: And their bids were
22 within 10 percent of each other and in the range that
23 -- it appears to be in the range of what KPMG had
24 given as a valuation.

25 MR. JONATHAN ERLING: I -- I never --

1 I haven't looked specifically at the numbers recently,
2 but that sounds right.

3 MR. TIM FRYER: And I thought you
4 might have suggested that it's difficult to tell
5 because you simply can't just look at 50-50, you --
6 you need to consider majority, minority, control,
7 those types of things.

8 But if you're thinking that your
9 valuation was in the 16 range and half is 8 million,
10 then it appears like they were in -- and therefore
11 just looking at it simple -- simplified in that
12 fashion.

13 MR. JONATHAN ERLING: That -- that
14 sounds reasonable.

15 MR. TIM FRYER: So, on page 180, likes
16 2 and 4, or 2, 3, 4, so at that time -- at that time,
17 I also had the same belief as you state in your
18 testimony here, that by not including an analysis of
19 shared service, it wouldn't fundamentally change the
20 approximate value of the utility.

21 MR. JONATHAN ERLING: I think I said
22 but I don't know that they would change fundamentally
23 the approximate value of the utility.

24 I mean, I think if you change the
25 shared services arrangements, it should have some

1 impact. It -- it -- it should have some impact on
2 value if there's a change in cash flows.

3 MR. TIM FRYER: So certainly interest
4 was on the Collus side, to find a partner that could
5 join with Collus and Collingwood, the Town of
6 Collingwood, to do the things that have been
7 successful in the past.

8 A key partnership objective was
9 certainly to grow the business. So having a
10 successful shared service model with its current
11 partners would be an essential component for going
12 forward if they're going to grow the business.

13 Would you agree with that?

14 MR. JONATHAN ERLING: I think it would
15 be a very desirable attribute if you wanted to grow
16 the business, yes.

17 MR. TIM FRYER: Yes. So as the
18 presentation you prepared on the valuation indicated,
19 shared services would need to be further analysed, but
20 certainly the opinion at the time was that either by
21 continuing on with exactly the same approach, or
22 adopting something that would result in, say, growth
23 of the business, what we're looking for was that it
24 would end up being at least as beneficial to
25 Collingwood going forward as it had been in the past.

1 That was kind of the -- the goal, was that when we
2 worked with the partner, we want to at least maintain
3 the level of benefit that we were getting from --
4 prior to any kind of partnership.

5 MR. JONATHAN ERLING: So the question
6 is --

7 MR. TIM FRYER: Well, --

8 MR. JONATHAN ERLING: Was that your
9 goal? I don't know -- I don't know -- I don't
10 specifically know if that was the Town's goal or that
11 sounds a reasonable goal.

12 MR. TIM FRYER: That's -- that's --
13 that's fair enough. Thank you.

14 So the other aspect about shared
15 services is that your testimony had a large component
16 on this to explain -- help explain what shared
17 services could be, and how generally you'd expect that
18 they would work for an LDC.

19 So it wasn't so much specific to
20 Collingwood. So in your summary explanation, and this
21 is on page 190, and it's lines 1 to 8 and you're
22 responding to one (1) of Justice Marrocco's questions,
23 it's a little more specific to Collingwood situation
24 through 1 through 8, and -- and I wasn't going to read
25 it all through, but you do refer to Collus. And then

1 simply just look at lines 14 and 16.

2 And there you say "depends on nature of
3 the transaction and nature of the purchaser".

4 MR. JONATHAN ERLING: Absolutely, yes.

5 MR. TIM FRYER: So -- so I just wanted
6 to confirm that through you.

7 Do you recall, as well, the other
8 ongoing consideration of the matter for us at the time
9 was that Collus was examining the preferred corporate
10 structure as it moved to complete the required
11 transformation from GAAP to IFRS accounting
12 principles?

13 Do you recall that?

14 MR. JONATHAN ERLING: I don't recall
15 that.

16 MR. TIM FRYER: Okay. And that again,
17 it's eight (8) years ago.

18 It was probably back then Collus
19 Solutions would cease to operate and one (1) option
20 was to have the employees move back to the Collingwood
21 Public Utilities Service Board's and that -- at that
22 point in time it actually was still to commission.

23 So it would have been back to a similar
24 structure that had been in place prior to the
25 electricity restructuring.

1 Then Collus would simply -- Collus
2 Power would contract the services they required,
3 outside of those some that could be more efficiently
4 delivered by their other partner, PowerStream, they
5 would get them from Collingwood Public Utilities side
6 at market costs and the updated affiliate relationship
7 code conforming service agreements would be structured
8 that way.

9 That's just more or less like -- like
10 the statement about what it seemed was a possibility,
11 solutions was most likely going to dissolve, or
12 factors.

13 MR. JONATHAN ERLING: Okay. No
14 involvement in those discussions --

15 MR. TIM FRYER: And you can't remember
16 the --

17 MR. JONATHAN ERLING: That's news to
18 me, so.

19 MR. TIM FRYER: Yes.

20 So what I was going to ask, with all of
21 the aspects that I've asked you to consider here,
22 would you say the best approach at the time, they get
23 the valuation as an as is basis and then the very
24 fluid situation of the service -- shared services
25 would be formalized later, depending on who the new

1 partner would be, would you say that that was the best
2 approach we could take on at the time?

3 MR. JONATHAN ERLING: Yes, and I think
4 that's consistent, you know, with my testimony on --
5 what's the date? The --

6 MR. TIM FRYER: May 3rd.

7 MR. JONATHAN ERLING: May 3rd, that --
8 that ultimately, you know, we started going down the
9 road of trying to make hypotheses about what might
10 happen and how things might be restructured and it was
11 not a fruitful or valuable thing to do at that time.

12 MR. TIM FRYER: Yes. And -- and I
13 knew I was covering some former ground, but as I said,
14 it had been ten (10) days ago and I thought it was
15 important to -- to put the context there.

16 So if we could bring back up paragraph
17 164. And this again, we've -- we've seen this before
18 and I -- I had asked you specifically about the first
19 -- or second sentence.

20 You'll notice that this has the
21 component to share -- ties to the shared service
22 discussions. That's the two hundred and fifty
23 thousand dollar (\$250,000) reference that Mr. Rockx is
24 making. You can see that? So, we're going to bring
25 up the email, if that's okay, KPM0001051.

1

2

(BRIEF PAUSE)

3

4

MR. TIM FRYER: And we just scroll it
5 up a little bit so Jonathan can see -- or Mr. Erling
6 can see the -- the -- scroll up a little bit, just --
7 just a touch. That's good.

8

It was really about the PS part that
9 you'll notice the two hundred and fifty thousand
10 (250,000) is -- is referenced there. So, I'll give
11 you a chance to have a look at it.

12

MR. JONATHAN ERLING: Yes. Okay.

13

MR. TIM FRYER: Okay. Since this is
14 an internal email and I don't recall being asked about
15 it, I was unsure of how the last part, that PS part
16 was deduced, so I'm going to ask a question about it.
17 But I'll bring up another email, KPM --

18

MR. JONATHAN ERLING: Yeah, I
19 certainly don't know where the two fifty (250) number
20 came from. It looks like it's a bit of a -- just by
21 the wording in the email, that's an email from John
22 Rockx, it -- it looks like.

23

MR. TIM FRYER: Yes. So, if we look
24 at KPM000858. And this one's going to be our May 9th
25 email between yourself and I. And I think you'll be

1 familiar with it.

2 MR. JONATHAN ERLING: Yes.

3 MR. TIM FRYER: It's the May 9th one
4 (1) that --

5 MR. JONATHAN ERLING: Yeah.

6 MR. TIM FRYER: -- that you had
7 forwarded that we spoke about earlier. If we just
8 scroll to the third area. So, the summary sheet noted
9 above shows the provision of incoming service valued
10 at two hundred and eighty thousand (280,000).

11 So, I'm giving you a chance to review
12 that. And that's where you're asking me about the two
13 hundred and eighty thousand dollar (\$280,000) dividend
14 amount in the cash and in kind report?

15 MR. JONATHAN ERLING: M-hm.

16 MR. TIM FRYER: And I explained in my
17 response that it -- it pertains to charges to the
18 water department, which is, essentially, the Town.
19 So, I think -- it appears to me like that could be
20 what Mr. Rockx was referring to?

21 MR. JONATHAN ERLING: It's possible.
22 The two eighty (280) is similar in magnitude to two
23 fifty (250).

24 MR. TIM FRYER: It doesn't exactly
25 match up. But I can't recall any other figure that he

1 would have got into that misunderstanding. And so,
2 what I'm saying here is that, yes, the Collingwood
3 Public Utilities was paying for the cost.

4 So, then the Town would decide if they
5 wanted to do an actual payment from the other
6 department that was involved in this particular case.
7 It would have had to do with services being provided
8 by Brian MacDonald and -- and Ed Houghton and -- and
9 like for -- for other departments of the Town.

10 But because it's going into the water,
11 it's part of the Town. It's not being --

12 MR. JONATHAN ERLING: Yeah, I -- I
13 agree with that. If it -- if these are services being
14 provided from the Col -- Collingwood Public Utilities
15 --

16 MR. TIM FRYER: And that's --

17 MR. JONATHAN ERLING: -- that's --
18 that's kind of -- that's outside of the scope of our
19 focus for the valuation, which was on the local
20 distribution utility.

21 MR. TIM FRYER: And I was going to
22 explain that that was the in kind service reference on
23 the document and that this was the practice over the
24 years, similar to what last Council decided to do with
25 fire hydrant costs related to fire prevention, because

1 they decided that they could be subsidized through the
2 water department rather than pay through fi -- hydrant
3 fees.

4 So, it's -- it's in -- it's the Town of
5 Collingwood's internal choice how they handle that
6 once -- once it comes over to them.

7 MR. JONATHAN ERLING: Okay.

8 MR. TIM FRYER: So, if we went to
9 ALE0049388 and page 41... And if we could just scroll
10 up a little bit. And -- and it could maybe be
11 expanded just a touch, could it? Yes. It -- it's
12 more just to -- to show it.

13 We see in the 2009 column -- we see the
14 reference to the two hundred and eighty thousand
15 dollars (\$280,000). So, the other component of the
16 earlier email was your question about asking if
17 dividends had actually been paid. That was the
18 response you gave to -- to Mr. Rockx was, had
19 dividends ever been paid.

20 So, on this list, Collingwood
21 considered the promissary note interest and the rent
22 that Power paid to the public utilities because the --
23 in turn turned that over to the Town of Collingwood.
24 They were considered to be dividends.

25 Does that make sense to you?

1 MR. JONATHAN ERLING: Does it make
2 sense that they were considered to be dividends?
3 Well, technically, no, but I -- you know, it's a
4 benefit received by the Town.

5 MR. TIM FRYER: So, referencing back
6 to your question that you asked Mr. Rockx that day,
7 you said have they ever paid dividends. You weren't
8 refer -- you were referring to what was happening with
9 the earnings that were earned every year if -- if a
10 dividend was being paid out?

11 MR. JONATHAN ERLING: Yeah. And I
12 don't remember why I was interested --

13 MR. TIM FRYER: Okay.

14 MR. JONATHAN ERLING: -- to know
15 whether they had paid dividends.

16 MR. TIM FRYER: Yeah.

17 MR. JONATHAN ERLING: You know, it was
18 kind of -- that was in the past and our valuation was
19 looking forward. It was probably just, you know --

20 MR. TIM FRYER: Yeah.

21 MR. JONATHAN ERLING: -- is it going
22 to be paying dividends on the future.

23 MR. TIM FRYER: So, I've gone over a
24 lot of detail with you here. And I just thought I'd
25 give you the opportunity. Is there anything in

1 addition to what I've asked you or -- or your thoughts
2 of things that I've -- as I said, I -- I've given you
3 a lot to consider and -- and you've responded to it,
4 but I just wondered if there was anything that came to
5 mind that you further wanted to say about what I'd
6 been asking about.

7 MR. JONATHAN ERLING: No.

8 MR. TIM FRYER: Okay.

9 MR. JONATHAN ERLING: Sorry.

10 MR. TIM FRYER: So, I wanted to look
11 at KPM0001877.

12

13 (BRIEF PAUSE)

14

15 MR. TIM FRYER: And, again, this is an
16 internal email, and it actually doesn't include you.
17 But if you read the content...

18 Do you recall anything about this?

19 Because the proposed elimination of the shotgun
20 clauses, the statement that -- and -- and the referent
21 to the long-term 50/50 relationship is what stood out
22 to me when I saw the email.

23 Do you recall anything internal
24 discussion wise about -- about this?

25 MR. JONATHAN ERLING: No. I -- I --

1 MR. TIM FRYER: Okay.

2 MR. JONATHAN ERLING: I don't think
3 that I was involved in any of these discussions.

4 MR. TIM FRYER: Okay. So, as I -- as
5 I wind that down, I'm going to ask if I can bring up
6 ALE0005133.0002...

7

8 (BRIEF PAUSE)

9

10 MR. TIM FRYER: -- and slide 18. And
11 it was just, as I said, in order to kind of close the
12 loop with asking a question about that is -- is that
13 on this particular slide it says, in regards --

14 "PowerStream does not like this
15 approach and, in fact, do not like
16 the phrase."

17 Which seems to be different than what I
18 saw with the content of the KPMG. Do you recall if
19 you prepared this particular bullet point?

20 MR. JONATHAN ERLING: Oh, I definitely
21 did not.

22 MR. TIM FRYER: Okay. Good. That --
23 I just wanted to confirm that part of it. I will be
24 asking Mr. Rockx more about the -- the content when --
25 when we get a chance to see him.

1 I do just have a couple of things
2 because of the questions from -- from earlier, and the
3 KPM -- KPM0001095. And this is about the transfer
4 tax. So, we've already looked at this. And I just
5 wanted to run something by you.

6 So, it's slide 20, I believe, would --
7 would be what I would want. And just at the bottom is
8 the -- is the reference to transfer tax may be
9 payable.

10 And what hadn't really been discussed
11 in all of the talk about transfer taxes, the part of
12 the sentence that says here:

13 "Less any corporate income taxes on
14 bills -- or bills that had been paid
15 since market restructuring."

16 So, since 2001, any payments we've made
17 in tax would reduce what the transfer tax calculation
18 may be if there's no exemption. So, I -- I haven't
19 put a quantum to it to -- to suggest to you, but what
20 I was referring you to -- this for was that we've
21 talked about the fact that transfer tax could be
22 applicable, and the reference says 33 percent, but in
23 fact, it could be substantially lower than that,
24 depending on how much tax had been paid over those ten
25 (10) -- ten (10) or so years.

1 MR. JONATHAN ERLING: Yes, I agree
2 with that.

3 MR. TIM FRYER: Okay.

4 MR. JONATHAN ERLING: It could be
5 less. I don't know how much less. I haven't tried to
6 quantify it.

7 MR. TIM FRYER: Okay. And then I was
8 going to look at paragraph 307. And I'd first
9 mentioned, just while we're bringing that up, you were
10 referring to the data room and the fact that it had
11 been hard copy situation at your office, eventually it
12 turned over to being electronic. I was going to say
13 that the electronic data room was held at Collus?

14 MR. JONATHAN ERLING: Okay.

15 MR. TIM FRYER: You may remember some
16 of my emails would include Mark Hammond, our IT
17 person, and through my contact to you and him, I was
18 letting him know to put a document into the data room.
19 You may not recall that either, because it is eight
20 (8) years ago, but that's just to confirm to you that
21 it was held at our location?

22 MR. JONATHAN ERLING: Actually, that -
23 - that makes sense, because I don't remember the -- I
24 don't remember us doing it --

25 MR. TIM FRYER: Yeah.

1 MR. JONATHAN ERLING: -- so that --
2 that's plausible.

3 MR. TIM FRYER: So -- so this email,
4 there's the one (1) that has the word "sabotage" on
5 it. I saw it. I tended to look at the other part of
6 it, which was asking you to help me as much as
7 possible, and that was the -- I just wanted to point
8 out that that's what I took out of that.

9 I -- I disregarded --

10 MR. JONATHAN ERLING: That's probably
11 what I took out of it as well. I didn't necessarily
12 pay too much attention to it.

13 MR. TIM FRYER: So those are all my
14 questions, Justice, and thank you very much, Mr.
15 Erling.

16 MR. JONATHAN ERLING: Okay. Thank
17 you.

18

19 CROSS-EXAMINATION BY MR. PAUL BONWICK:

20 MR. PAUL BONWICK: Thank you, Your
21 Honour. Mr. Erling, my name is Paul Bonwick.

22 MR. JONATHAN ERLING: Okay. Good
23 afternoon.

24 MR. PAUL BONWICK: Good afternoon.
25 I'll clear up a couple of things fairly quickly, if I

1 can, following the -- the similar pattern as this --
2 Mr. Fryer.

3 Over the course of the last eight (8)
4 years, have we had any professional or personal
5 relationships, or have any dialogue with regards to
6 this particular matter?

7 MR. JONATHAN ERLING: No, we have not.

8 MR. PAUL BONWICK: Thanks very much.
9 I did want to just -- just for the purpose of getting
10 your opinion, and I think I'll -- I'll start with a
11 conversation came up on the weekend. And I know that
12 the counsel for the judge was kind enough to give you
13 a bit of an introduction when you came back on May
14 3rd. But one (1) of the -- somebody came up to me and
15 said, Who is KPMG? What are they really?

16 And there rea -- wasn't a -- the kind
17 of substantive background that I think truly would
18 impress those at home, and as well as -- as those in
19 the room. And I was just doing some research, and
20 from what I understand, KPMG is arguably one (1) of
21 the four (4) largest accounting and consulting firms
22 on the planet, with somewhere in excess of two hundred
23 thousand (200,000) employees?

24 Is that correct?

25 MR. JONATHAN ERLING: We certainly

1 considered one (1) of the big four (4) professional
2 services firms. I have no idea the number of
3 employees or the revenue.

4 MR. PAUL BONWICK: On your website, it
5 said two hundred and twelve (212) or something like
6 that, but...

7 MR. JONATHAN ERLING: I -- I will
8 assume that's correct.

9 MR. PAUL BONWICK: One (1) of the
10 other things that we spoke in terms on your website is
11 core values for KPMG. And it really focuses in on
12 integrity, and transparency, on shared communications,
13 on engaging people to make sure that -- for the
14 benefit of all of those involved, you're trying to
15 achieve the best result.

16 Is that -- is that a fair
17 interpretation of how you view the KPMG environment?

18 MR. JONATHAN ERLING: Yes.

19 MR. PAUL BONWICK: I was also reading
20 with interest a little bit of your background. And
21 you have an engineering degree from Western
22 University, and you have a Masters degree from Toronto
23 in finance. Is that correct?

24 MR. JONATHAN ERLING: That's correct.

25 MR. PAUL BONWICK: You've been with

1 KPMG for twenty-eight (28) years? A bit more?

2 MR. JONATHAN ERLING: It will be
3 thirty (30) in June.

4 MR. PAUL BONWICK: A long time. And I
5 only bring that out --

6 MR. JONATHAN ERLING: That's a very
7 long time.

8 MR. PAUL BONWICK: -- I only bring
9 that out to suggest that there's few people who will
10 come in contact with the depth or the breadth of
11 experience that you have personally, and certainly the
12 organization that you're involved with, and that's why
13 I think you're -- the evidence, or the comments, or
14 the opinions you share are of critical importance to
15 what -- what this Inquiry is -- is all about.

16 I think it would be safe to assume,
17 then, based on the answers you've provided related to
18 integrity and transparency, that on any given business
19 matter that you're engaged with, it would be a
20 foremost consideration to -- for you and your
21 colleagues to conduct yourself again in a very
22 forthright, transparent manner, and maintaining the
23 highest levels of integrity, and making sure that your
24 client is as well served as possible?

25 MR. JONATHAN ERLING: Yes.

1 MR. PAUL BONWICK: So then I have to -
2 - or is it reasonable for me to assume that at the
3 conclusion of the OEB approval, subsequent partnership
4 that moved forward with Collus PowerStream, that you
5 were satisfied with the result?

6 MR. JONATHAN ERLING: Satisfied with
7 which specific result? I don't know that I had a
8 view, personally.

9 MR. PAUL BONWICK: I'm not trying to
10 play on words. You're obviously aware of the fact
11 that PowerStream -- now Alectra -- purchased 50
12 percent of the shares in Collus. Collus PowerStream
13 came into existence. It was approved at the Ontario
14 Energy Board, and that -- that partnership continued
15 to evolve over the course of the next few years.

16 And I'm wondering at the conclusion of
17 that process, I have to assume you had some sort of
18 feeling about job well done, job not well done.

19 MR. JONATHAN ERLING: It seemed a
20 reasonable outcome to me. I -- I hadn't -- I wasn't
21 specifically asked by anybody to look at the results
22 of the Transaction or to form an opinion on it, but I
23 had no concerns about it. I'll put it that way.

24 MR. PAUL BONWICK: Again, I -- I'm --
25 again, based on the number of transactions that you've

1 been involved with, and your experience, I think
2 that's -- that's quite relevant.

3 You spoke earlier today about some
4 communications that you had with the former CAO, Mr.
5 John Brown. And that was sort of fast forwarding to--

6 MR. JONATHAN ERLING: Yes.

7 MR. PAUL BONWICK: -- 2000 -- and I
8 may have missed the date -- 2015? It may have been
9 later than that, but.

10 MR. JONATHAN ERLING: It's -- it was -
11 - I think it was 2015. I think I've seen some emails
12 that tie it to that year.

13 MR. PAUL BONWICK: So leading -- or
14 post close of the sale, it's reasonable to say that
15 you had no concerns about the Transaction. And then
16 fast forward two (2) or two and half (2 1/2) years
17 later when the new acting CAO took over, how did you -
18 - do you have a -- an opinion in terms of the -- the
19 assessment of the relationship once Mr. Brown came
20 into -- became actively engaged in the file?

21 MR. JONATHAN ERLING: Assessment of --
22 of which relationship?

23 MR. PAUL BONWICK: Mr. Brown's
24 relationship with Power -- with Collus PowerStream.

25 MR. JONATHAN ERLING: I didn't -- I

1 didn't really have direct knowledge of his
2 relationships with PowerStream. It seemed that they
3 were not as cordial as you might expect the
4 relationship -- John Brown and Collus at that time.

5 MR. PAUL BONWICK: What I'm getting at
6 is there's -- there's two (2) potential scenarios that
7 are sort of afoot right now. And I'll -- I'll go back
8 to your thirty (30) years plus in the industry, and
9 association with many transactions and advising
10 various governments, your opinion would be valuable as
11 it relates to the ongoing proceedings.

12 You had engagement, as I understand it,
13 with Mr. Houghton, the CAO. You had engagement with
14 Mr. Muncaster, the Chair.

15 MR. JONATHAN ERLING: Yes.

16 MR. PAUL BONWICK: You had engagement
17 with Mr. Fryer, the CFO, one (1) of the most highly
18 respected people in the industry during that period of
19 time.

20 You were somewhat familiar, I assume,
21 with the board of directors Collus had, McFadden?

22 MR. JONATHAN ERLING: I don't know
23 that I knew who was on the board other than I knew
24 Dean Muncaster was on the board, and I think I knew
25 David McFadden was on the board.

1 MR. PAUL BONWICK: So you were aware
2 that Aird & Berlis were actively involved, one (1) of
3 the most highly respected law firms in --

4 MR. JONATHAN ERLING: Yes, I was
5 aware. Yeah.

6 MR. PAUL BONWICK: -- in the municipal
7 sector in the Province of Ontario? You're obviously
8 aware that KPMG was actively involved in the file, and
9 so you're aware, of course, that the OEB did a review
10 of the application, that there was no opposition to
11 that?

12 MR. JONATHAN ERLING: Yes.

13 MR. PAUL BONWICK: And so I've just
14 laid out a path that the -- the hearing is familiar
15 with, that allowed this transaction to be completed.

16 In your opinion, is there -- is there a
17 scenario you could come up with where somebody might
18 have manipulated the situation to come out with a
19 different result, based on all the players that are
20 involved?

21 MR. JONATHAN ERLING: Well, it's a
22 tough question for me to answer, you know, it's a
23 hypothetical.

24 MR. PAUL BONWICK: Yes.

25 MR. JONATHAN ERLING: You know, I

1 wasn't at the table when they were comparing bids and
2 making decisions about the relative merits of the bid.

3 So you know, is it possible that they
4 could've chosen another purchaser, possibly. Is it
5 possible they may have made a different decision as to
6 what percentage share of Collus to sell, possible. I
7 -- I just don't have direct knowledge. I'm sorry.

8 MR. PAUL BONWICK: Right, and -- and
9 I'm not asking specifically to the Collus PowerStream
10 share. You're familiar with the number of people, the
11 number of consultants, the number of lawyers,
12 accountants, senior executives and board people that
13 are involved.

14 Does it seem likely to you then that an
15 individual, or perhaps two individuals, could've
16 constructed an environment that would have led us down
17 a completely different path with that many people
18 involved?

19 MR. JONATHAN ERLING: It -- it would
20 be surprising that you would have an outcome that
21 would be grossly incorrect or inappropriate. I agree
22 with that.

23 MR. PAUL BONWICK: Thank you.

24 The sale of utility companies in the
25 province of Ontario, and I suspect across Canada, tend

1 to be in some cases highly controversial.

2 Would you agree with that?

3 MR. JONATHAN ERLING: Yes.

4 MR. PAUL BONWICK: In some cases the
5 applications are rejected and some places ratepayer
6 groups become so active that it creates a scenario
7 where the -- simply the municipal government will not
8 move forward with it. Is that a fair assessment?

9 MR. JONATHAN ERLING: Absolutely.
10 Sales of local distribution utilities can be very
11 politically sensitive.

12 MR. PAUL BONWICK: And so at a time
13 when Collingwood Council, the Board of Directors for
14 Collus, their staff, and their umpteen others -- other
15 professionals that were attached to it went through
16 this process, which we're told was quite robust with
17 lots of public engagement in it, were you surprised at
18 the end of the day when the Ontario Energy Board
19 commented that there was no opposition to it.

20 MR. JONATHAN ERLING: I was a little
21 bit, yes.

22 MR. PAUL BONWICK: In a pleasant sort
23 of way?

24 MR. JONATHAN ERLING: Yes.

25 MR. PAUL BONWICK: Thank you.

1 So I would ask for your opinion on an
2 alternate scenario. We've had this robust,
3 transparent, publicly engaged process where a lot of
4 very smart people are sitting around the table with
5 countless years of experience, that's the one (1) I
6 just described.

7 The one (1) I'll describe, fast forward
8 to your comments about the relationship two (2) years
9 after the fact, where in fact the acting CAO, the then
10 deputy Mayor, and certain members of Council embarked
11 on a relationship, and it's not a finger-pointing
12 exercise, it's just simply the way it was, embarked on
13 a relationship where that relationship became very
14 caustic. Is that a fair statement?

15 MR. JONATHAN ERLING: Sorry, the
16 question is did it become very caustic?

17 MR. PAUL BONWICK: Yes.

18 MR. JONATHAN ERLING: There appeared
19 to be some tension in the relationship.

20 MR. PAUL BONWICK: So in terms of
21 whether the ratepayers, the shareholder, and the
22 residents of Collingwood were well-served based on the
23 process leading up to two years after the transaction,
24 versus two (2) years post-transaction and subsequent
25 OPPORTUNITY investigation, subsequent judicial

1 inquiry, in your opinion, understanding the
2 controversial nature of many of the sales of these
3 LDCs, do you have an opinion in terms of the political
4 nature that might be driving the process at this
5 stage?

6 MR. JONATHAN ERLING: No. I'm not
7 going to guess on motives.

8 MR. PAUL BONWICK: Okay. During your
9 time as a consultant with Collus, leading up to the
10 sale of this, did I at any time reach out to you and
11 ask you to influence the criteria or to push one (1)
12 company over another or anything in that regard?

13 MR. JONATHAN ERLING: No, I've never
14 had any contact with you before, as far as I know.

15 MR. PAUL BONWICK: As the consultant,
16 did Mr. Fryer, Mr. Houghton, Mr. Muncaster, Mr.
17 McFadden or anybody else for that matter, I suspect
18 you had some dealings with Ms. Hogg, did anybody raise
19 any concerns about me being actively involved at that
20 point in time?

21 MR. JONATHAN ERLING: No, I -- I never
22 had heard of your name before this proceeding.

23 MR. PAUL BONWICK: Thank you.

24 That ends my questions. Thank you,
25 Your Honour.

1 THE HONOURABLE FRANK MARROCCO: Thank
2 you, Mr. Bonwick. Re-examination?

3

4 RE-DIRECT EXAMINATION BY MR. JOHN MATHER:

5 MR. JOHN MATHER: Yes, Your Honour.

6 If we could turn up KPM1032 and slide
7 9, please. It's the slide 9 that's on the -- on the
8 actual slide itself. So -- there we go, thank you.

9 So, Mr. Erling, Mr. Chenoweth brought
10 you to this slide from your options analysis and he
11 asked you whether or not a 50 percent sale would be
12 included in the point about the tow -- Town could seek
13 to sell only a partial interest in the utility.

14 If there was a 50 percent sale, in your
15 view would the Town retain a minority or a major --
16 majority interest?

17 MR. JONATHAN ERLING: Well, good
18 question. 50-50 is, I suppose, neither a minority or
19 the majority. It is exactly on the boundary, where
20 you are equal owners.

21 So technically, I think the phrase
22 retaining either a minority or a majority share does
23 not cover 50 percent, although I think that's a
24 technicality.

25 MR. JOHN MATHER: One (1) of the

1 things Mr. Chenoweth asked you about, and that we
2 discussed, was where in the process the impact of the
3 share services agreements would need to be analyzed
4 when considering a sale of all or part of Collus.

5 I take it the Town could have proposed
6 a specific shared service arrangement that it hoped to
7 seek with the potential proponent and place that in
8 the RFP and ask bidders to make submissions on their
9 proposed share service arrangement.

10 MR. JONATHAN ERLING: It could have
11 done that, yes.

12 MR. JOHN MATHER: And if it had done
13 that, part of the process then in reviewing the
14 submissions would be to evaluate the responses on the
15 proposed shared service arrangement?

16 MR. JONATHAN ERLING: Yes, I think if
17 the Town was going to do that, you would have had to
18 go through a process of determining what shared
19 service arrangement it would want, and the nature of
20 the services that it would want might depend on who
21 the buyer was, because the buyer would bring different
22 things to the table and would be in a -- you know,
23 each one (1) may be in a different position with
24 respect to the services that they would want or be in
25 a good position to provide.

1 So, you know, there is some logic from
2 one (1) perspective in the Town crafting a potential
3 agreement for comment by bidders. In this
4 circumstance I'm not sure that would actually be
5 optimum because the bidders were different and they
6 may have different interests with respect to that
7 arrangement or shared services arrangement.

8 So, you know, to leave it for further
9 discussion and negotiation may have been a reasonable
10 approach.

11 MR. JOHN MATHER: But they could have,
12 through the RFP process, invited bidders to say what
13 their interests would be in the shared services
14 arrangements?

15 MR. JONATHAN ERLING: Yes.

16 MR. JOHN MATHER: Okay, those are my
17 questions.

18 THE HONOURABLE FRANK MARROCCO: And
19 just one (1) question. If -- if you leave it for
20 future negotiation, you run the risk that you won't
21 agree?

22 MR. JONATHAN ERLING: I agree, that is
23 a risk. I think you'd -- you'd have to take the
24 position that you know, you were going out to the RFP
25 process and trying to get a competitive and that this

1 would be a -- something that re -- reasonable parties
2 could come to a conclusion on in the negotiation
3 process, rather than being core to the substantive
4 value that you're going to get.

5 THE HONOURABLE FRANK MARROCCO: Would
6 you have recommend this, or can you not answer that
7 after the fact?

8 MR. JONATHAN ERLING: Recommend this?

9 THE HONOURABLE FRANK MARROCCO:
10 Postponing a -- a consideration of how you were going
11 to deal with the shared services until after the deal.

12 MR. JONATHAN ERLING: Would I --

13 THE HONOURABLE FRANK MARROCCO:
14 There's a certain amount of hindsight in the question,
15 right --

16 MR. JONATHAN ERLING: Yes, yes.

17 THE HONOURABLE FRANK MARROCCO: -- so
18 if you can't answer it, you can't answer it, but would
19 you have recommended that if -- if your opinion had
20 been sought on?

21 MR. JONATHAN ERLING: I don't know. I
22 think you'd have to go through a fair amount of work
23 to figure out what you might want the shared services
24 arrangement to be.

25 So it would have taken a bit of effort.

1 I don't know that when I was doing this PowerPoint
2 that I also really knew where they were going in terms
3 of the proposed deal structure. I certainly didn't
4 know that they were going to go out with the 50-50
5 proposal. Or at least I don't think I knew that.

6 Yes, again, since it -- it will depend
7 on the nature of the purchaser and -- and what they're
8 bringing to the table at -- it -- it may have been
9 difficult to do in advance.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you.

12 MR. JONATHAN ERLING: The problem with
13 doing it in advance is that it may, in fact, point to
14 a specific bidder as being the person they had in
15 mind, because the shared service arrangement may make
16 more sense for one (1) bidder than -- that you are
17 proposing may make more sense for one (1) bidder for
18 another.

19 So in that sense, maybe it would have
20 been unleveling the playing field, that -- there's a
21 risk of that, I think. But again, this is all kind of
22 after the fact and I -- I didn't really think about it
23 at the time.

24 THE HONOURABLE FRANK MARROCCO: Thank
25 you. Thanks very much. That completes your evidence.

1 MR. JONATHAN ERLING: Okay. Oh, thank
2 you.

3 THE HONOURABLE FRANK MARROCCO: As I -
4 - as I said to the previous witness, you can stay here
5 if you want to or you're free to leave.

6 MR. JONATHAN ERLING: I -- I may
7 depart.

8

9 (WITNESS STANDS DOWN)

10

11 THE HONOURABLE FRANK MARROCCO: We are
12 not departing.

13 MS. KATE MCGRANN: Our next witness is
14 Tim Fryer. Would you like to call him before or after
15 we take the afternoon break?

16 THE HONOURABLE FRANK MARROCCO: Why
17 don't we take a couple of minutes, take a break now
18 and then hear from you.

19

20 --- Upon recessing at 3:12 p.m.

21 --- Upon resuming at 3:24 p.m.

22

23 TIMOTHY EDGAR FRYER, Sworn

24

25 EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

1 MS. KATE MCGRANN: Good afternoon, Mr.
2 Fryer.

3 MR. TIM FRYER: Good afternoon.

4 MS. KATE MCGRANN: I'd like to start
5 with some questions about your background. It's my
6 understanding that you began working at the
7 Collingwood Public Utilities Commission in 1979.

8 Is that correct?

9 MR. TIM FRYER: Yes, it is.

10 MS. KATE MCGRANN: And shortly after
11 you began working there you essentially became the
12 primary financial resource person at the commission.
13 Is that right?

14 MR. TIM FRYER: Yes, I did. I took
15 over for the accountant who was there.

16 MS. KATE MCGRANN: Okay. And you
17 continued to be the primary financial resource at the
18 commission until the formation of the Collus entities.
19 Is that correct?

20 MR. TIM FRYER: Until? Yes.

21 MS. KATE MCGRANN: At which point, you
22 became the chief financial officer of the Collus
23 entities and the Collingwood Public Utility Service
24 Board?

25 MR. TIM FRYER: Yes, I did. I became

1 an employee of Collus Solutions and, as such, was the
2 CFO of the Collus entities, and also served as CFO as
3 the public utilities.

4 MS. KATE MCGRANN: And you remained in
5 that role until you resigned on September 30th, 2012?

6 MR. TIM FRYER: Yes, I did.

7 MS. KATE MCGRANN: So, in total, you
8 served as the primary financial resource for the
9 Collus entities and its various iterations for over
10 thirty (30) years. Is that right?

11 MR. TIM FRYER: Yes, I did.

12 MS. KATE MCGRANN: I understand that
13 you were also elected as a member of the Town of
14 Collingwood Council for the 2014/2018 term?

15 MR. TIM FRYER: Yes, I was.

16 MS. KATE MCGRANN: Are you now
17 retired? Yes?

18 MR. TIM FRYER: Yes. Yes, I guess.

19 MS. KATE MCGRANN: Turning from your --
20 your role and background with the Collus entities,
21 another person who has worked for those entities for a
22 very long time was Ed Houghton.

23 Would you please tell us about your
24 relationship with him from a work perspective?

25 MR. TIM FRYER: Ed and I are the same

1 age, so both being from Collingwood, we went to
2 schools -- through schools together until going on to
3 secondary -- or to post-secondary schools.

4 And then Ed started to work one (1)
5 year before me at the utility, so we worked together
6 for the thirty-three (33) years that I was employed
7 there.

8 MS. KATE MCGRANN: And what was the
9 nature of your professional relationship like?

10 MR. TIM FRYER: Very good. We had a
11 good working relationship.

12 MS. KATE MCGRANN: Did you have a
13 relationship outside of work?

14 MR. TIM FRYER: No.

15 MS. KATE MCGRANN: Did you socialize
16 with Mr. Houghton at all during that time?

17 MR. TIM FRYER: In the early years, I
18 would say, yes, but certainly in the last twenty (20),
19 no.

20 MS. KATE MCGRANN: During the period
21 between 2010 to 2012...

22

23 (BRIEF PAUSE)

24

25 CONTINUED BY MS. KATE MCGRANN:

1 MS. KATE MCGRANN: During the period
2 between 2010 to 2012, what did you know about Mr.
3 Houghton's relationship with Paul Bonwick?

4 MR. TIM FRYER: I knew they were
5 friends, but that was the extent that I know.

6 MS. KATE MCGRANN: And when you say,
7 "They were friends," what do you mean by that?

8 MR. TIM FRYER: That they were
9 friends. As far as I knew, that meant that they
10 socialized together. I can't give you any examples,
11 but that was what I would term to be a friend.

12 MS. KATE MCGRANN: And during the
13 period between 2010 to 2012, did you have any
14 relationship with Rick Lloyd?

15 MR. TIM FRYER: No, I did not.

16 MS. KATE MCGRANN: When you interacted
17 with him on the Strategic Task Team, did you interact
18 with him outside of that role?

19 MR. TIM FRYER: Certainly, in his
20 roles over the years as being on Council, there would
21 be numerous interactions typically in the situation
22 where I'd be presenting to Council and he'd be a
23 member.

24 But there were instances where, for our
25 Collus annual meetings, Mr. Lloyd attended at the

1 representative for the Town, so there would have been
2 those interactions, but, again, it would have been on
3 the basis of him being a member of Council and me
4 being an employee of a corporation that the Council
5 was governing.

6 MS. KATE MCGRANN: Okay. So, outside
7 of his role as a member of Town Council and your role
8 as a CFO of the Collus entities or predecessors, did
9 you have any other interactions with him.

10 MR. TIM FRYER: No, I did not.

11 MS. KATE MCGRANN: I'm going to ask
12 that document TFF3 be shown on the screen.

13

14 (BRIEF PAUSE)

15

16 MS. KATE MCGRANN: Mr. Fryer, this is
17 a document that you've supplied to the inquiry. Would
18 you please describe what this document is?

19 MR. TIM FRYER: Yes, I will. I -- I
20 recall during the time period that we're talking,
21 2011/2012, because of the number of major projects we
22 had on, I had a list similar to this.

23 I will definitely say it wasn't as
24 detailed as this one (1) is because when I put it
25 together for my use back then, the people that I was

1 providing updates on and things like that were members
2 of the audit committee or Mr. Houghton or -- or
3 employees within the organization that were familiar
4 with many of the bullet points I've put down here
5 that, as I said, makes it more detailed than what it
6 is.

7 But I couldn't find in any of the
8 documentation in the court book that would list that I
9 had, so I decided to put this one (1) together.

10 MS. KATE MCGRANN: Okay. About when
11 did you put this list together?

12 MR. TIM FRYER: Just in the past week.

13 MS. KATE MCGRANN: I'm assuming that
14 you relied on your memory to help you assist you in
15 recreating this list?

16 MR. TIM FRYER: Definitely, the -- the
17 most part of it was memory. But, admittedly, I've
18 read a lot of documentation in the last few months
19 pertaining to the -- to these proceedings, so I would
20 have been influenced to a degree. But -- but I do
21 believe that's it's generally my recall of what were
22 pertinent to those particular major projects and --
23 and trying to show the -- the level of work that was
24 involved in those.

25 MS. KATE MCGRANN: During the period

1 between I'll call it the end of 2010 and -- and the
2 end of 2012, what was your workload like as CFO of the
3 Collus entities and the CPUSB?

4 MR. TIM FRYER: If we just scroll down
5 to number 6 on the list here, I guess, going on to the
6 -- actually, now that I think about it, scroll down a
7 little bit more, please. And I'm just looking for
8 the...

9 So -- so, I note here that the major --
10 was for monitoring and assessing progress and
11 reporting. Items 1 to 6 were what I termed to be
12 additional workload requirements over and above the
13 typical requirements.

14 So, if we go back up and we look at --
15 on to 6, there's some fairly extensive work that
16 needed to be done and, most importantly, I think in
17 the listing there was the succession planning element.

18 We'd had some -- two (2) senior people
19 leave. I had a succession plan in place with the
20 hiring of -- of Cindy Shuttleworth to eventually be my
21 replacement. So, we were working with -- with new
22 people and -- and undertaking a succession planning
23 exercise when some fairly extensive customer
24 interaction things were happening, and smart -- smart
25 metres was -- was most specifically that.

1 We were involving every customer in the
2 Town in -- in implementing time of use metering, and
3 it was so important that it went as seamlessly as
4 possible. So it was a very extensive workload at the
5 time, going into early 2011. Knowing what was ahead
6 of us over that year was very extensive.

7 MS. KATE MCGRANN: If we could scroll
8 down to the top of page 2, so -- scroll up a little
9 bit more so we can see the -- the top of point 6.

10 Under "2013 Collus Power cost of
11 service, rate filing/implementation," you note that
12 the filing was required to the OEB on April 1st, 2012
13 for approval by December 2012 and implementation
14 January 1st, 2013. The bullet point below that
15 states:

16 "Updated Collus CPUSB Collingwood
17 share service agreements for the
18 April 2012 filing."

19 Would you give us a sense of what was
20 involved in completing that task?

21 MR. TIM FRYER: The shared service
22 agreements that we were utilizing were the ones that
23 we had submitted in 2009 and the OEB had approved of.
24 Great things that were changing were the -- the
25 movement towards -- from GAAP to IFRS, and transfer

1 pricing reporting requirements were extensive and
2 different to what was under generally accounted -- or
3 general accounting principles. So we knew that we
4 needed to work at the -- the agreements, and the
5 agreements were basically in the same format they had
6 been from 2001.

7 So it was important to update it and
8 get transfer pricing clauses in and outline more
9 precisely how the interaction of shared services was
10 being done between Collus Solutions, Collus Power, and
11 Collingwood Public Utilities.

12 MS. KATE MCGRANN: Would it be fair to
13 say that during the period between 2001 and the
14 beginning of 2011, the nature and extent and matter of
15 provision of shared services had evolved over time?

16 MR. TIM FRYER: Really, the services
17 weren't too much different from -- from 2001 through.
18 Personnel had changed. But the roles still had -- had
19 remained somewhat the same.

20 So it was more that the document was an
21 older document, and it laid out what was referred to
22 as a base cost, and that was interpreted from -- from
23 what your costs were in 1999 coming into the
24 restructuring and then an element of percentage
25 increase was -- was allowed.

1 So when we were -- when we were doing
2 our methodology for ensuring that we were charging
3 costs over properly, it was incorporating the
4 parameters of that, but it needed to be more detailed
5 and -- and outlined exactly how the -- the costs were
6 being allocated and the agreements of the parties as
7 to what would happen with -- with any need to share
8 any -- any benefits that were coming out.

9 Collus Solutions was meant to operate
10 basically on a breakeven format with -- and it only
11 held -- it held employees. So it didn't have assets
12 that it was going to have to replace eventually, other
13 than the human assets. And -- and so it -- it held an
14 amount of money in the bank just to make sure that it
15 had -- had coverage for its chequest that it was
16 writing.

17 But essentially, it was not meant to
18 generate profit. It was meant to allocate the costs
19 out to the -- to organizations that were utilizing the
20 people in that organization.

21 MS. KATE MCGRANN: A couple more
22 questions for you about the shares services that were
23 in existence as at the beginning of 2011. I'd like to
24 turn you to CJI9243.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Look at this
4 document just to help situate you in time before I ask
5 you the questions.

6 So this is a transcript of the Council
7 meeting from Monday, May 30th, 2011. And at that
8 meeting, it's my understanding that you, along with
9 Mr. Houghton and Mr. Muncaster, presented some
10 information to Council. Could you just generally tell
11 us what information you were presenting at this time?

12 MR. TIM FRYER: In this particular
13 case, we would be doing our required annual report to
14 Council, and it would be for the 2010 financial year.
15 So we would provide the consolidated financial
16 statements for -- for the holding company. And as
17 well, we would provide the business plan, which was
18 2011 to 2013.

19 And as per our shareholder direction,
20 those were required elements that we would report on
21 annually. And the report format was something we had
22 used over a few years and incorporated metrics as to
23 how performance had gone in comparison to the market
24 and -- and -- like the LDC market or -- or within
25 the -- the water utilities to give an indication of --

1 of acceptable performance if -- if Council deemed what
2 we were showing them was -- was right.

3 So -- so the business plan and annual
4 report provided the audited statements, the
5 projections of the business plan, and included
6 comparative performance information for Council's use.

7 MS. KATE MCGRANN: I'm going to turn
8 now to a slide presentation that was given at this
9 meeting as part of the presentation. It's found at
10 TOC529995.

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: Pause on the first
15 slide here. Do you recognize this slide presentation?

16 MR. TIM FRYER: I -- that's what it
17 would look like, yes.

18 MS. KATE MCGRANN: Okay. Can we
19 scroll down on this second last slide, so slide 24,
20 please.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: This slide is
25 titled "Collus value added," and it walks through what

1 appears to be a description of cash payments and
2 in-kind services provided by Collus Power, Collus
3 Solutions, and the Public Utilities to the town.

4 Have I accurately described this slide?

5 MR. TIM FRYER: Sorry. Can you repeat
6 that again? Sorry.

7 MS. KATE MCGRANN: Sure. Maybe the
8 easier way to do this is: Do you recognize this
9 slide?

10 MR. TIM FRYER: I -- definitely. I
11 looked at it. Yeah.

12 MS. KATE MCGRANN: Could you explain
13 to me at a high level what this slide is showing?

14 MR. TIM FRYER: The -- the blue colour
15 is -- as it shows in the summary total is -- is cash
16 transactions that actually occurred between the
17 entities.

18 So Collus Power paid the Town of
19 Collingwood a hundred and twenty-four thousand dollars
20 in 2009 for interest on the promissory note. The
21 lighter-coloured green is meant to -- to cover what we
22 call incoming services, and those were billed over to
23 the water department, and I have explained it during
24 some of my -- my interaction with witnesses. The
25 water department was paying those charges, and some of

1 them were associated to other departments within the
2 Town of Collingwood.

3 And we reported through this mechanism
4 to the treasurer of the Town of Coll3ingwood what the
5 value of those services were, and then they can
6 determine how they wanted to allocate on their side
7 because at -- at the point in time, 2010 and '11, the
8 -- it was a service board, so it didn't do its own
9 statements or anything. It was just an arm of the
10 Town of Collingwood.

11 And so the accounting for it eventually
12 was being done by the -- we -- we did prepare
13 statements, but those were turned over to the Town and
14 they were just incorporated right into their
15 statements, for the public utilities. Power still had
16 its own statements.

17 MS. KATE MCGRANN: It's my
18 understanding that the in-kind services that are
19 summarized on this slide are not encompassed in the
20 there "shared services," that they've been -- have
21 been used in this proceeding.

22 Is there a difference between in-kind
23 services and shared services?

24 MR. TIM FRYER: No. These would be as
25 a result of shared services. So if -- if we think

1 about the charges that went from the shared service
2 people over to Collus Power --

3 MS. KATE MCGRANN: M-hm.

4 MR. TIM FRYER: -- then Collus Power
5 would have paid money back to Collus Solutions based
6 on that billing. Similarly, anything to do with the
7 public utilities went over to the public utilities and
8 they paid money to Collus Solutions, but some of the
9 costs that we were transferring over to public
10 utilities were considered in-kind services because
11 they weren't really solely for water.

12 For example, Mr. Houghton, he worked as
13 -- as the Director of Public Works, so that wasn't
14 Water but how the Town chose to deal with that expense
15 going into Water, I'm not certain, but I believe there
16 was some adjustment at the financial information
17 reporting stage that they put together for the
18 province where they showed the in-kind amount of what
19 the charge would be to Works for Mr. Houghton and take
20 it out of Water, but I can't say for certain that they
21 were doing that, but I seem to recall that that was
22 what was being done.

23 MS. KATE MCGRANN: Okay. So was it
24 your understanding that Mr. Houghton in his role of
25 Director of Public Works, Water Department was paying

1 for that but in fact some of the services you were
2 providing was -- was to the Town, not just to water?
3 Water is picking up the cost of that?

4 MR. TIM FRYER: Yes. So if I recall
5 correctly, 55 percent of Mr. Houghton's pay was built
6 over to Collus Power, and then I believe 40 percent
7 was going to Water. The 5 five percent within --
8 stayed within Collus Solutions because that was things
9 like vacation time and other benefits and costs that
10 are associated to -- to the employee, and the margin
11 that we put on to the charges that we sent over
12 covered the recovery of those small amounts within the
13 -- the utility.

14 So in Mr. Houghton's particular case,
15 40 percent of his wage was being paid by the Water
16 Department, but he did -- he was the -- the CEO of the
17 Water Department, so certainly there was -- was this
18 but he also was the Director of Public Works, and
19 that's where the 40 percent had come from, the amount
20 of work he was doing for the Municipality in those two
21 (2) capacities.

22 MS. KATE MCGRANN: Okay. And that --
23 all of the work that Mr. Houghton was doing, and that
24 cost sharing that you've just described, that would be
25 covered by the shared services agreements that you

1 were looking at updating?

2 MR. TIM FRYER: Yes.

3 THE HONOURABLE FRANK MARROCCO: We
4 have to leave at a quarter to 4:00. Do you want -- do
5 you have something else to finish this off or are we
6 finished?

7 MS. KATE MCGRANN: I -- I have a
8 couple more questions --

9 THE HONOURABLE FRANK MARROCCO: Go
10 ahead, ask.

11 MS. KATE MCGRANN: Okay.

12

13 CONTINUED BY MS. KATE MCGRANN:

14 MS. KATE MCGRANN: When you were
15 asking questions of Mr. Erling, I believe that you
16 looked at the top three (3) entries in this table, the
17 blue ones for cash, and suggested that those might be
18 seen as a dividend.

19 Do you remember that? Have I got that
20 right?

21 MR. TIM FRYER: I referred to the
22 first two (2) because the interest on the promissory
23 note was a methodology that some utilities decided to
24 do, which was to put a promissory note in place and
25 pay interest on an annual basis to -- to the -- to the

1 munic -- to the municipality, and -- and then the
2 other case was, we chose to -- the operation centre
3 housed both Hydro and Water, so when we formed the new
4 corporations, we said okay, well the Water is going to
5 own the building and the Electric will pay rent on the
6 building, and so that rent is the \$200,000 amount
7 that's coming into Water, and then when we move from
8 being a public utilities commission to a public
9 utilities service board, you cannot own assets as a
10 service board, so the owner of the asset was the
11 municipality, the dollars are turned over to them as
12 the landlord so -- so to speak.

13 MS. KATE MCGRANN: Okay. Turning to
14 the promissory note for a second, what can you say
15 about the rate of interest that is being paid on that
16 note to the Town relative to interest rates that were
17 otherwise available at the time?

18 MR. TIM FRYER: I know -- I know they
19 were -- we -- we would pay the maximum that the OEB
20 would allow on that particular kind of debt. They --
21 in the beginning years, they accepted that the -- the
22 rate of debt could be higher for the -- for the
23 promissory note debt. I believe it was 7.25 percent
24 the whole time, but I could be wrong on that, but it
25 was in that kind of order. But over the years that

1 has been dropped down to be more in line with the
2 third party debt calculations that are done by
3 utilities in determining what their debt -- approved
4 debt rate is.

5 MS. KATE MCGRANN: I think it's
6 probably good to leave it there for now.

7 THE HONOURABLE FRANK MARROCCO: We
8 have to adjourn because your client requires this room
9 this evening, so, until tomorrow morning, ten o'clock.

10

11 (WITNESS RETIRES)

12

13 --- Upon adjourning at 3:49 p.m.

14

15 Certified Correct,

16

17

18

19 _____

20 Wendy Woodworth, Ms.

21

22

23

24

25

<u> </u> \$	101:25	152:10,22	148:21	58:6 68:3
\$17 137:23	107:21	158:14	151 140:16	87:3
\$200,000	109:19	166:25	156 139:16	94:1,4
203:6	112:13,14	10:05 5:1	16 138:5	113:5,6
\$25,000	114:13	10th 77:15	146:13	117:6,7
48:5	116:1	11 117:5	153:9	118:4
\$250,000	117:7	199:7	156:1	119:21
158:23	122:8	11:07 49:2	16.3 149:7	136:9,10
\$280,000	123:12,22	11:18 49:3	163 149:2	153:16
160:13	129:23	111 4:3	164 149:17	173:16
162:15	130:3	112 4:4	158:17	174:6
\$3.1 137:7	132:7	144:23	165 82:19	178:8,24
\$3.9 137:18	135:12	113 4:5	83:3	192:18
\$4.2 146:15	145:17	114 4:6	168 3:19	193:8
148:1	149:14	115 4:7	16th 108:23	201:21
\$500,000	155:21,22	116 3:17	17th 108:21	202:22
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