



FOUNDATION DOCUMENT PART I: THE 2012 SALE OF COLLUS SHARES

Chapter 5: The RFP is Made Public, the Bids are Evaluated, Council Approves the Share Sale and Share Purchase Documents are Signed (November 22, 2011-March 6, 2012)

Commissioner: The Honourable Frank N. Marrocco, Associate Chief Justice, Superior Court of Justice, Ontario

Please note that the statements in this Foundation Document have not been tested for the truth of their contents. The contents may be tested, challenged, supplemented, proven false, or discredited through the evidence called and the submissions made at the Inquiry. It will be for the Commissioner to consider all the evidence before ascribing any weight to anything contained in the Foundation Document.

Chapter 5 The RFP is Made Public, the Bids are Evaluated, Council Approves the Share Sale and Share Purchase Documents are Signed (November 22, 2011-March 6, 2012)

5.1 Collus Issues a Press Release Announcing the RFP

371. On November 14, 2011 at 8:41 am, Paul Bonwick sent Ed Houghton a draft of a Collus Power press release announcing the RFP process and asked for Mr. Houghton's edits and comments. That afternoon, Mr. Houghton asked Councillor Ian Chadwick to review the draft press release about the bid process in an email with the subject line: "A Favour." Councillor Chadwick agreed to do so. Ed Houghton forwarded the email from Councillor Chadwick to Paul Bonwick, noting, "he is on board." Mr. Bonwick also forwarded the press release to Eric Fagen of PowerStream for review and comment.

Email and attachment from Paul Bonwick to Ed Houghton, November 14, 2011, [TOC0066622](#) (email), [TOC0066623](#) (attachment)

Email chain among Ed Houghton, Ian Chadwick and Paul Bonwick, November 14, 2011, [TOC0066790](#)

Email and attachment from Paul Bonwick to Eric Fagen, November 14, 2011, [ALE0024271](#) (email), [ALE0024271.0001](#) (attachment)

372. On the evening of November 14, 2011, Paul Bonwick and Ed Houghton discussed the wording of Mayor Cooper's quote in the upcoming press release.

Email between Paul Bonwick and Ed Houghton, November 14, 2011, [TOC0066603](#)

373. Following the October 3, 2011 update to Council (discussed above in section 3.21), Collingwood Council next received an update on the share sale from "Collus CEO Ed Houghton" on November 17, 2011, in a closed session. Council was informed that "COLLUS staff" were preparing to issue a press release announcing a public information session regarding the RFP process on November 22, 2011. The minutes do not indicate whether Council was provided with the opportunity to review the press release. The minutes also recorded that Mr. Houghton advised Council that five proposals were

received, and four proposals were being reviewed based on specified defined criteria. The minutes noted that Mr. Houghton and Chair Muncaster responded to concerns that the sale was happening quickly, as well as the magnitude of the partnership. The minutes do not record the questions asked or the answers provided. Mr. Houghton noted that the preferred option/partner would still have to receive consent from the Ontario Energy Board.

In-Camera Minutes, Town of Collingwood, November 17, 2011, [TOC0512157](#)

Agenda, Town of Collingwood, November 17, 2011, [CJI0007939](#)

374. Collus Power issued a press release announcing the RFP on November 17, 2011. Dean Muncaster, Mayor Cooper, Deputy Mayor Lloyd and Councillor Mike Edwards were quoted in the press release concerning the RFP. Mayor Cooper was quoted as follows:

This represents one of the most exciting and positive opportunities for the residents of Collingwood...During our first budget process, department heads were requested to maximize value for the residents of Collingwood while recognizing our very difficult current financial environment. A result of this directive was the strategic partnership initiative.

The media contact on the press release was Ed Houghton. Online news outlets reported on the release. In a Simcoe.com article covering the release, Deputy Mayor Rick Lloyd was quoted as saying that the proceeds from the upcoming share sale would be placed in a special reserve account, which would "provide the residents of Collingwood ample opportunity for input on the use of these funds."

Collus Press Release, November 17, 2011, [TOC0000812](#)

"Town looking for an investor for Collus", news article, November 17, 2011, [TOC0067562](#)

375. On November 22, 2011, Tim Fryer sent an email to Ed Houghton, Pam Hogg, and Cindy Shuttleworth regarding the Deputy Mayor's statement, writing:

...I would like to talk to you about the damage of Ian Adams misquoting Rick in the newspaper article. I know he is Dep Mayor but you were suppose to be the spokesperson, he really shouldn't have said anything.

I have fielded calls from 6 LDCs as of yesterday asking how can the dividend not be impacted and if the funds aren't used to invest how can we grow. I have been careful but they're all CHEC members and felt I had to say something so I said that the reporter chose to only use certain words and take them out of context. I told them that we were unsure of the impact on dividend because we hadn't even seen the financial information. I said I couldn't discuss the use of the funds for acquisitions because Council hadn't decided on that. They have accepted that but a couple of them sure weren't happy.

Email from Tim Fryer to Ed Houghton, Cindy Shuttleworth and Pam Hogg, November 22, 2011, [TOC0067989](#)

376. On November 18, 2011, David McFadden wrote to Ed Houghton to request a copy of the final RFP, noting that he only had the draft in his file.

Email from David McFadden to Ed Houghton, November 18, 2011, [TOC0520713](#)

377. Meanwhile, in response to an article covering the press release, Eric Fagen emailed Paul Bonwick stating:

Just got an email from Dennis who was concerned the statement in the article "Neither COLLUS nor municipal officials were at liberty to indicate the names of the companies putting forward proposals." He was wondering if we were premature in sending a broadcast email message out to all our employees about this. I told him that in our discussions about Collus' public disclosure about this matter, Ed Houghton had indicated that it would be okay for us to notify our employees once Collus had distributed their news release.

Email chain including Eric Fagen, Paul Bonwick, Dennis Nolan and John Glicksman, November 18, 2011, [ALE0001017](#)

378. Mr. Bonwick responded:

"There is no issue regarding the notice Eric sent out to PS employees. That notice was authorized by Collus! Collus was advised on Wednesday at the time of submission that one of the four proponents did not yet have shareholder approval for their proposal and as a result requested not to be named. There is apparently an internal discussion taking place today with review team as to whether the proposal will be accepted. This

is their rationale for not sharing the names at this time. By the end of this day there may only be three in contention.

Email chain including Eric Fagen, Paul Bonwick, Dennis Nolan and John Glicksman, November 18, 2011, [ALE0001017](#)

5.2 The Bid Scoring System is Confirmed, KPMG Discusses the Bids and Collus Power Holds a Public Information Session

379. On November 17, 2011, John Herhalt asked Jonathan Erling and John Rockx for their initial thoughts on the RFP proposals. Jonathan Erling responded:

- PowerStream proposes a 7 member Board, with PowerStream getting 4 members and Collingwood getting three.
- Veridian notes that it provides HR and business systems from within its LDC ("VCI"), and that this may result in regulatory impediments in terms of VCI providing services to COLLUS. However, it also discusses some potential ways around this.
- Hydro One will move 20 line service jobs into the Town of Collingwood.
- Horizon compares itself to the other bidders, and highlights some metrics that prove have much more cost-effective it is than the others

Email chain including John Herhalt, John Rockx and Jonathan Erling, November 17-21, [KPM0001721](#)

380. Four days later, Mr. Erling told Mr. Herhalt: "I actually thought Hydro One's was the most professional looking, and one of the most specific in terms of detail." Mr. Herhalt responded: "Interestingly I spoke to Ed today and they thought Powerstream and Hydro One were the best."

Email chain including John Herhalt, John Rockx and Jonathan Erling, November 17-21, [KPM0001721](#)

381. Meanwhile, John Rockx responded to John Herhalt stating: "Difficult to rank parties as significantly better or worse. All parties have their pros and cons as a partner for Collus". Mr. Rockx then listed pros and cons for each bidder:

Horizon

- + Appears to have lowest operating costs (OMA etc) per customer
- + Will require ongoing local presence for linemen etc.
- Far away from Collingwood; employee transfers / relocation difficult
- wants to include Collus Solutions in the deal and likely provide a lot of management services outside of Collingwood

Veridian

- + softer solution of providing Shared Services Evaluation Team to track shared services
- second furthest geographically from Collus

Hydro One

- + relocation of 20 jobs to Collingwood
- + contiguous with Collus territories
- Hydro One stigma

PowerStream

- + somewhat adjacent with Barrie and Midland presence
- + employees could relocate to Barrie offices (close enough)
- + \$25K Collingwood Fund
- wants 4 of 7 directors on Board (control issue)
- perceived as highest cost operator

Email chain including John Herhalt, John Rockx and Jonathan Erling, November 17-21, 2011, [KPM0001720](#)

382. In a separate email chain, John Rockx stated: “The second envelope with the proposed purchase price / business terms will likely be the differentiator.”

Email chain including John Herhalt, John Rockx and Jonathan Erling, November 17, 2011, [KPM0001674](#)

383. On November 20, 2011, Ed Houghton emailed Dean Muncaster, Sandra Cooper, Rick Lloyd, Kim Wingrove, David McFadden, John Herhalt, Doug Garbutt and Tim Fryer, writing:

Earlier today, Chairman Muncaster and I discussed the scoring process for the Strategic Partner. It was decided that for each criteria the best proposal shall receive the full points. For example, if you feel respondent "A" has the best proposal regarding the "Support for Employees and Their Careers" then they shall get the full 10 points. The other three respondents will be then judged and provided points based on the best proposal. If in your opinion, there is a tie then they should both receive 10 points.

The evaluation criteria and weightings are as follows:

- Payment for up to 50% of shares and other considerations in Section 3.1: 30 points
- Provision of strategic & specialized resources, support in growing the COLLUS business: 30 points
- Support for employees and their careers: 10 points
- Customer experience & satisfaction, supporting the interests of the communities we serve: 10 points
- Competitive distribution rate and cost structure of COLLUS: 10 points
- Cultural and synergistic fit: 10 points"

Email from Ed Houghton to Dean Muncaster, Rick Lloyd, Kim Wingrove, Sandra Cooper, David McFadden, John Herhalt, Tim Fryer and Doug Garbutt, November 20, 2011, [CPS0002633](#)

384. On November 22, 2011, Collus Power held a public information session. Mayor Cooper made opening comments, Chair Muncaster discussed the future of Collus, John Rockx of KPMG spoke about the environment of the electricity industry, and Ed Houghton discussed benefits of a strategic partnership, the scope of the proposals, the evaluation criteria and timelines.

Collus Power Corp Public Information Centre Slide Deck, November 22, 2011, [CPS0002643](#)

385. Neil Freeman of Horizon attended the November 22 meeting and sent an email to his colleagues the next day. Mr. Freeman's observations were:

- Attendance – 32 people, including 8 from the municipality or LDC board, and five from other LDCs, only two members of the public, with the rest were employees and spouses. There are 48 employees in water and electric, so this is not a significant turnout
- CHEC LDC CEOs attending were Doug Sherwood (Centre Wellington Hydro), Phil Marley (Midland Power) and George Shaparew (Innisfil Hydro); Eric Fagen of PowerStream was also there and there may have been someone from Veridian, but I did not know him; no one from Hydro One that I could tell
- The meeting was extremely well managed in that the mayor gave an opportunity for a number of councillors to speak, demonstrating that the council was in lock step
- There was only two questions, one of which was a question/statement from a large customer supporting the Strategic Partnership for rates purposes which was obviously a set up
- Mayor suggested there was no monetary offers yet, although Houghton later said the monetary offers had not been opened
- Deputy Mayor said the money was secondary to getting the right partner
- Board chair said strategic partnership was arrived at after considering going it alone and sale and also added that COLLUS could be the centre of a regional consolidation with continued local presence and specialized assistance
- KPMG's John Rockx gave an overview of industry change emphasizing increased industry complexity and strained management resources without a strategic partner
- Ed Houghton went over the basics of what COLLUS does and that it is only 16% of a residential bill and 75% of a commercial bill – he showed the bill of the customer in the room
- Ed said EDA and Yatchew support consolidation, said want to grow the business
- Ed went through municipal process and points system for RFP, etc., and said the council would hear “in camera” a report on December 5th with an open council meeting on the 19th, but in answer to a question said that the financial offers would not be discussed until the new year
- Customer Darryl? of Amaizeingly Green Products, L.P. asked the first question, but made a statement that he supported the SP in order to continue with competitive rates – makes food and feed products from corn
- Retired resident [redacted] asked question about needing to see the numbers so he could see for himself whether COLLUS was doing the right thing

Email from Neil Freeman to Max Cananzi and John Basilio, November 23, 2011, [ALE0050074](#)

386. After the public information session, John Rockx told John Herhalt and Jonathan Erling that Ed Houghton wanted “a ranking of the proposals as received to date to compare to the rankings prepared by other Steering Committee members.” Mr. Herhalt responded that he had formulated his rankings but that the process was “not all that easy.” One hour later, John Herhalt sent an email to Ed Houghton in which he ranked the bidders as follows:

PowerStream

Hydro One

Horizon

Veridian

Email chain including John Rockx, John Herhalt and Jonathan Erling, November 17-22, 2011, [KPM0001742](#)

Email from John Herhalt to Ed Houghton, November 23, 2011, [CPS0002645](#)

5.3 Horizon Raises a Concern that the “Fix is in”

387. Neil Freeman also sent Max Cananzi and John Basilio a picture of a Collus PowerStream solar vent billboard that he had taken the night of the public meeting. Mr. Freeman wrote, “COLLUS is not only giving away these vent fans for less than cost...it is paying for billboards to do so.”

Email from Neil Freeman to Max Cananzi and John Basilio, November 23, 2011, [ALE0050075](#) (email), [ALE0050076](#) (attachment)

388. Mr. Cananzi responded to Mr. Freeman:

This is basically a community advertisement to pave the way for a Collus/Powerstream deal for the utility. Gone are the other 3 three utilities that have also participated in this launch.

This is buying goodwill in the community. Residents are getting comfortable seeing Collus’s brand and Powerstream’s brand together on billboards. The perceptions being

created are that they are already getting along and working on business together so a more formal arrangement is no big deal.

The fix is in. Powerstream will be declared the winner of the competition. This is my prediction.

Email from Max Cananzi to Neil Freeman and John Basilio, [ALE0050080](#)

5.4 The Strategic Partnership Task Team Considers the Bids: Non-Financial Portion – Made no Record of Discussions

389. The non-financial portions of the bids were circulated to the members of the Strategic Partnership Task Team prior to a meeting on November 23, 2011. In a November 16, 2011 email to John Herhalt, Pam Hogg wrote “I am resending the PowerStream proposal as the one I sent earlier included the Financials in the Executive Summary. I have attempted to recall the email, but if you have already opened the email, please delete it and replace with the attached.” After the November 23, 2011 meeting, Pam Hogg wrote to Mayor Cooper, Deputy Mayor Lloyd, CAO Wingrove and Tim Fryer that “[s]omeone from this morning has accidentally kept their copy of the Executive Summary from PowerStream which includes financials.”

Email from Ed Houghton to Ian Chadwick, March 6, 2013, [CPS0004065](#)

Email chain including John Herhalt, Diane Meehan, John Rockx, Jonathan Erling, Pam Hogg and Ed Houghton, November 16, 2011, [KPM0001662](#)

Email chain including Pam Hogg, Rick Lloyd, Sandra Cooper, Kim Wingrove, and Tim Fryer, November 23, 2011, [TOC0515478](#)

390. The Strategic Partnership Task Team met on November 23, 2011 to review their individual findings on the non-financial element of the bid and to prepare a recommendation to the Collus Power and Collus Solutions Board for the upcoming December 2, 2011 Board meeting. The attendees required at the Team meeting were Kim Wingrove; Sandra Cooper; David McFadden; Doug Garbutt; Dean Muncaster; John Herhalt, Rick Lloyd; Ed Houghton and Tim Fryer. Conference call information was provided for Mr. Garbutt and Mr. Herhalt. Pam Hogg later explained that, at this meeting, “...[n]o minutes taken as each member provided their confidential rankings.”

Email from Pam Hogg to Ed Houghton, May 26, 2015, [CPS0005544](#)

Outlook Invitation, Strategic Partnership Task Team Meeting, November 23, 2011, [CPS0002579](#)

Strategic Partnership Task Team met and provided their individual ratings of the submissions, November 23, 2011, [TOC0516415](#)

List of Key Events, undated, [EHH0000054](#)

RFP Proposal Evaluation Charts, Undated, [EHH0000083](#)

Email chain including Ed Houghton, Tim Fryer, Pam Hogg, David McFadden, Sandra Cooper, John Herhalt, Kim Wingrove, John Mascarin, Rick Lloyd, Dean Muncaster, and Doug Garbutt, November 8-10, 2011, [CPS0002584](#)

Email from Ed Houghton to Ian Chadwick, March 6, 2013, [CPS0004065](#)

391. John Herhalt retained notes from the meeting. The text below is a transcription of these notes created by John Herhalt in response to a request by the Inquiry:

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Collus Proposals (prepared prior to the evaluation meeting in November – some notes added during the meeting)

	<u>Pwrstrm</u>	<u>Veridian</u>	<u>H1</u>	<u>Horizon</u>
Specialized/strategic Resources (15) (Financial/ <u>[illegible]</u> ____, info systems, employees/unions)	<ul style="list-style-type: none"> - Financial systems/IFRS - Fleet/Procurement/ Facilities - Health/Safety - Control center (cost?) - HR - IS (SLA cost) - Rates/Regs 	<ul style="list-style-type: none"> - OEB - SSET approach (SLA's) - Both Great Plains - Issue on support from LDC (neg) - Some CIS (but?) 	<ul style="list-style-type: none"> - SLA's - Buying power - YD share - Sophisticated but cost? - no chgs - Regs/Filing s 	<ul style="list-style-type: none"> - Same - Toronto arrange (taken to Horizon) ??? - Move to Fin syst
Growing the business (15) (organic/inorganic)	<ul style="list-style-type: none"> - Renewables/solar - Grow/acquire (no parameters?) - Experience 	<ul style="list-style-type: none"> - Smart chgr - Experience - capital/equity(?) - no organic ideas (?) - (solar) <u>[illegible]</u> 	<ul style="list-style-type: none"> - Experience - Extent of process - Capital 	<ul style="list-style-type: none"> - Less experience - No other businesses

		- (Epcor, expand, renewables)		
Employee/career support (10)	- No layoffs - Coach/train – other jobs - Georgian College	- IBEW same - Durham College - <i>[same points to Coach/train other jobs in adjacent box]</i>	- No chgs - Training in-house	- Same IBEW
Customer experience/satisfaction/support of communities (10)	- Econ Dev. Record (focus) – (key accts) - Call center (IVR) – outage mngt - Billing (++ munis) - Community Fund (\$25k) - Donations/sponsorships	- <i>[same points to Call center/outage mngt in adjacent box]</i> - 20 jobs (pos) into Collingwood - Same <i>[points to the same call centre point in adjacent box that is noted earlier]</i> - GIS/mobile? (Better)	- Donations - Power Play - Customer (?)	- Lower cost
Competitive rates and cost structure (10)	- Same or lower	- Costs lower	- Same rates	- More cost effective - High returns (old system)
Cultural/synergistic fit (10) (other) Governance/Price/etc.	- Geographical proximity <i>[illegible]</i> - Entrepreneurial/previous collaboration - Shareholder working - 4 to 3 (neg)? (where) - Bd. Members (still		-close – territory - Big corp culture -provincial owner (reg.) - cap	- Far away - Solutions merger (?) or at services

	stands??)		structure financing (\$) -CDM learn	level
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Collus Proposals (see Ed's email) (all issues)

Overall

- SLA cost
- Rate/cost competitiveness
- Desire to own more
- Specifics

<u>Category</u>	<u>Pwrstrm</u>	<u>Veridian</u>	<u>H1</u>	<u>Horizon</u>
1 Specialized/Strategic Resources (15) (systems Financial, employees/unions)	- Financial systems/IFRS - Fleet/Procure/Facilities - Health/Safety - Control Center - HR – union harmony - IS - Rates/Regulatory - SLA/cost to determine #1 15	- Both Great Plains - Same CIS (but is it good?) - SSET approach to evaluate/determine - Regulatory/OEB issue if from LDC - SLA/cost to determine #3 (caveats/qualified)	- Sophisticated help but cost of SLA? - No chg to Collus - Regulatory/Procurement advantages - Share/use of yard #2	- Terminate sourcing arranger in favour of Horizon - Move to their financial systems - Same as others #2 – complete cutover(?)
2 Growing the Business – organic/inorganic (15)	- Renewables/Solar - Grow organic with experience (no real specifics) #1 15	- Experience in merger - Capital/equity - Smart charger pilot - Organic ideas? - Epcor,	- Experience - Capital - Extent of process #2 or #1	- Less experience - Other business?

		renewables, other #2		#3
3 Employee Career Support (10)	- No layoffs - Coach/train – other jobs - Georgian College (close) #1 10	- IBEW same - Durham College - Coach/train – other jobs #2 7	- No changes - Training etc – in-house #2 (cost) 7 (best at it)	- Same – also IBEW - No retention #4 5
4 Customer Exp./Satis./Support of Communities (10)	- Econ. Dev. Record – key accounts (focus) - Call center (IVR) – outage mngt - Billing for munis as well - Community Fund (\$25k) - Donations/sponsorships #1 10	- Call center – GIS mobile (Better?) - No fund #2 9	- 20 to jobs to Town - Donations - Power Play - Customer service (quality?) #4 6	- All about lower cost – will it be? #3 8
<i>Page 3</i>				
5 Competitive rates/cost structure (10)	- Same or lower (as good as Veridian better than H1 – higher than Horizon) 8 (merger cost down)	- Lower cost #2 8	- Same rates - Costs higher #3 5	- Most cost effective - About high returns - Old system – capital costs lower #1 10
6 Cultural/synergistic fit (10)	- Geographic proximity - Entrepreneurial – previous collaboration - Shareholder involvement - 4 to 3 Bd. Members is this	- Shareholder involvement - Entrepreneurial #1 8	- Territory of service close - Big corp. culture - Provincial shareholder (intervention) - Finance new Cap. Structure - Learn Collus CDM	- Distance far away - Acquire also Solutions or at Service level (?)

	still in place (?) 10 #1 594	359	#3 5 288	#2 7 491
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– Financial Proposals (get doc's to Rockx to do analysis)

(Governance etc. -3.1) 50% of int Inc. (new pay – dividend policy) (400/500) (Thursday Dec 1 3:30 pm) -25k fund	- Cash – 14.5 mil 10,170 50% - 7.3 mil (deemed capital) Recap – 5.5 mil ? (prior to close) Note – 1.7 mil ----- 14.5 mil 60/40 (Bd comp/structure as in slides) - No analysis Veridian - No Hydro One (?) - Independent	- Refinance 1.7 mill note - 50% - 6.5 mil cash - Div Recap 2.0 mil (actually 4 million – 2 each) after close - Note – 1.7 mil - 50/50 (holdback 250k) (50/50 Board)	Cash – 18.5 million (\$13.6 million – 50%) 6.4 million (3.2 each) + 3.2 dividend +1.7 note receivable -Bd even/independent (Tim Fryer) -Dividends 21 King St W Suite 700	Bd 50/50 - 50% - \$6.5 - \$8.5 million – range? Includes Solution (range of service provision) - No recap dividend? – possible - Debt? (est) - 60/40 - SLA's - 60% dividend - (Send address of John Rockx) - (rate hold – price AJE) - IFRS
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Undated Notes, [KPM0003243](#) (handwritten), [KPM0003243.0001](#) (transcription)

392. Kim Wingrove also retained her notes from this meeting, the content of which are reproduced below:

	Hydro One	Power Stream	Horizon	Veridian
General considerations – current vs. future obligations/costs e.g. aging infrastructure, density and customer concentration vs. geographic dispersion, rate of return, growth, ineligible for rate harmonization as a separate entity, non compete on future M+A				
	Hydro One	Power Stream	Horizon	Veridian
payment for	120	(265) integration	() contractor	formed of 9 LDCs,

shares, other considerations (30)		into system control centre, construction resources, key acct mgmt, economic dev, outsourced call centre, water billing and meter reading, IFRS migration	agreements, systems conversion to Horizon	further 5 acquisitions and a merger, same accounting sw, disentanglement re CPUSB and PW
support for employees and their careers (10)	4 bureaucracy, costs = cuts?	8 training w Georgian, health and safety mgmt, separate union	9 integrated into horizon organization, performance management, leadership development, same union IBEW, understood Solutions issue	6 same union, advancement, secondments, strong health and safety, employee engagement in the community(green and top 75 employer)
customer experience and satisfaction, supporting community (10)	not so easy to do business with	communications, eg web ivr, coop in LEAP, united Way, est \$25k community fund	strong focus here, easy to do business with goal, green energy, energy mapping	Asset services, system control centre with capacity, self healing technology, GIS. Mutual aid, meter to cash process, ebilling, Durham College CSR training
competitive distribution rate and cost structure (10)	\$424 OEB	184	\$165 low price, highest shareholder return	\$165 low price, highest shareholder return
cultural fit (10)		shared project on roof vent, geographic proximity,		Pickering to Belleville + Gravenhurst

		natural regional partner		
	very high level	glosses over some key issues	articulate, intelligent, reasoned. Collus Solutions must be merged into Collus Power. Need the service delivery aspect to the town e.g. street lights	technically most explicit, regulatory issues defined and a process to address is outlined
	13.6 +	7.3 (14.5 total)	6.5 to 8.5	6.5+2+1.7=10.2
		5.5 recap		2 recap
sale proceeds – how much money gets left in the company. Shareholder gets the proceeds.				

Kim Wingrove undated notes, [CJ10009668](#)

5.5 The Tax Implications of a Share Sale and the Idea of Selling the Collus Holding Company are Discussed Again

393. On November 21, 2011, KPMG partner John Herhalt asked KPMG tax partner Shawn Stern to assist Collus with the tax calculations related to the share sale. Mr. Herhalt told Mr. Stern that the proposals had been received and Collus would be deciding on a strategic partner “this week.”

Email from John Herhalt to Shawn Stern, November 21, 2011, [KPM0001711](#)

394. Later that day, Mr. Herhalt emailed Mr. Stern, stating that if Mr. Fryer had not provided the information Mr. Stern required:

...please tell Ed that by email and discuss it with him when he calls. Let him know precisely what you need if that is the case and, if possible get at it as soon as you get the information

It wouldn't surprise me if Tim didn't get you all you needed because he is not happy that they are pursuing this deal and he would want to use his auditors to do any work

...

PS – keep me posted. I am out of the country but checking email

Email from John Herhalt to Shawn Stern, November 21, 2011, [KPM0001712](#)

5.6 Ed Houghton Informs KPMG that Tim Fryer is not Evaluating RFP Proposals

395. On November 23, 2011, Tim Fryer emailed Shawn Stern, John Herhalt, Jonathan Erling, Ed Houghton, Cindy Shuttleworth, Pam Hogg, and Dean Muncaster stating:

We also believe there is sufficient safe income room to...reduce the eventual tax. If there was any tax at all because it looks like we would be willing to do this as a Holding Company action and not COLLUS Power.

Email chain including John Herhalt, Ed Houghton, Shawn Stern, Tim Fryer, Cindy Shuttleworth and Jonathan Erling, November 21-23, 2011, [KPM0001758](#)

396. On November 24, 2011, Ed Houghton emailed John Herhalt:

I just got a voicemail from John Rockx and he was asking questions and stated we would speak to Tim since he was also evaluating. Can you quickly advise him that Tim is not (at least at this time) evaluating the RFP's.

Mr. Herhalt forwarded Mr. Houghton's email to John Rockx, with the following note:

See below – Tim is not charged with evaluating the financial proposals – see below. Please speak to Ed before you speak to Tim or continue to work with him at all. Please take your instruction from Ed.

Email between Ed Houghton, John Rockx and John Herhalt, November 24, 2011, [KPM0001795](#)

397. John Rockx responded: "I believe Tim is dealing with a rate filing so he is too busy to deal with any financial analysis. I will speak to Ed." John Herhalt then replied: "Regardless of whether Tim is busy or not please go through Ed for everything and only go to Tim if he directs you to. The board and Ed are very unsure of Tim right now (between you and I)"

Email chain including Ed Houghton, John Rockx and John Herhalt, November 24, 2011, [KPM0001796](#)

398. On November 25, 2011, Jonathan Erling forwarded John Rockx an email that Mr. Erling had sent Ed Houghton on October 28, 2011. In that email, Mr. Erling explained that:
- a. Tax implications of a partial sale of Collus Power to Hydro One, including that this sale would force Collus Power out of the PILS [Payments in Lieu of Taxes] regime, subjecting Collus Power to “regular income taxes”; and
 - b. “...CUS [Collus] will realize a capital gain on the sale of shares of COLLUS Power if the proceeds for the shares exceeds the tax cost of those shares. This gain is independent of the particular purchaser...”

Email from John Erling to John Rockx and Shawn Stern, November 25, 2011, [KPM0001804](#)

5.7 KPMG Analyzes the Financial Components of the Bids

399. On November 21, 2011, John Herhalt emailed John Rockx, indicating that Collus Power intended to open the financial bids on the night of November 23, 2011. At 10:46 am on November 23, 2011, Mr. Herhalt sent Mr. Rockx an email indicating “[w]e had the call this evening and they opened the financial proposals.”

Email from John Herhalt to John Rockx, November 21, 2011, [KPM0001723](#)

Email from John Herhalt to John Rockx, November 23, 2011, [KPM0001762](#)

5.8 The First KPMG Analysis – November 25, 2011-Follow Up Questions to PowerStream and Hydro One

400. On November 23, John Herhalt sent John Rockx some initial thoughts regarding the RFP bidders’ financial proposals:

“[The bidders] are expecting to provide services under a service level agreement which will likely include a cost but none speak clearly about that cost, Hydro One’s proposal very briefly indicates that the proposal pricing is subject to adjustment if Collingwood wants to continue with their current approach to rates (they are expecting to increase rates I believe), and Horizon has proposed the inclusion of Collus Solutions in the deal.”

Email from John Herhalt to John Rockx, November 23, 2010, [KPM0001773](#)

401. With regards to each bidder's approach to a potential recapitalization dividend, Mr. Herhalt stated:

Powerstream has proposed to do the recap immediately prior to closing and the dividend would flow entirely to Collingwood (5.5 million). Veridian estimates a \$4 million dividend split between Veridian and Collingwood after closing – hence \$2 million. Hydro One estimates a \$6.4 million dividend split between Hydro One and Collingwood post closing hence \$3.2 million. Horizon doesn't provide an estimate. It is interesting that they have come up with amounts that differ so much.

Email from John Herhalt to John Rockx, November 23, 2011, [KPM0001773](#)

402. On the same day, John Herhalt sent additional thoughts on the financial bids to John Rockx:

You will see that Hydro One has really sweetened the pot (surprise surprise) – all the other offers for the shares are in the range of the valuation approximately. The one variable we need to analyze is the recapitalization dividend amounts which all are different. We may want to look at what we would think those amounts represent in terms of the capital structure go forward. Tim Fryer would like to understand the basis of these as well.

Email from John Herhalt to John Rockx, November 23, 2011, [KPM0001762](#)

403. On or around November 25, 2011, John Rockx of KPMG completed the first analysis of the bids for Collus Power. Mr. Rockx sent his analysis to Mr. Houghton, copied to John Herhalt, noting that “[f]undamentally Hydro One's offer appears to be highest” as far as cash component and fair market value of the remaining shares, in part because Hydro One would inject the lowest level of new debt.

Email Correspondence between John Rockx and Ed Houghton, November 25, 2011, [CPS0002667](#) (email); [CPS0002668](#) (attached bid analysis)

404. Mr. Rockx wrote that he was “prepared to ask a few additional questions of the prospective purchasers.” Mr. Rockx identified the key issues: the long-term liabilities assumed to be excluded from Collus Power's closing balance sheet in conjunction with the share offers (i.e. Infrastructure Ontario debt, post retirement liability, net regulatory

liability) as well as a clarification of closing date financial metrics /hurdles (normal working capital requirements/ rate base levels etc.).

Email Correspondence between John Rockx and Ed Houghton, November 25, 2011, [CPS0002667](#)

405. On November 26, 2011 Ed Houghton forwarded the Rockx email to David McFadden, copy to Dean Muncaster, as follows: “I was wondering if you would take a look at this information and provide Dean and I with your thoughts. Dean is the only other one with this information.” David McFadden suggested a discussion on Monday so that he could access the information from his computer.

Email chain between Ed Houghton, David McFadden and Dean Muncaster, November 26, 2011, [CPS0002670](#)

5.9 The Strategic Partnership Task Team Considers the Financial Bids for 50% of the Town’s Collus Power Shares: No Recorded Minutes of Meeting

406. On November 28, 2011 the Strategic Partnership Task Team, including KPMG representatives, met to discuss the financial bids offered for 50% of Collus Power shares. Pam Hogg later stated that, at this meeting, “The financial portion (second envelope) of the RFP was reviewed and ranked. No minutes due to the commercially sensitive information.”

Email from Pam Hogg to Ed Houghton, May 26, 2015, [CPS0005544](#)

Outlook Invitation, Strategic Partnership Task Team Meeting, November 28, 2011, [CPS0002650](#)

List of Key Events, undated, [EHH0000054](#)

407. In an undated handwritten note titled “Hydro One Acquisition Debrief,” John Herhalt wrote: “Customer service/cost reputation...Perception of high costs/rates...Large corporate culture/process (cumbersome intervention) ...financial offer scored highest but only 30%...perceived superior attitude...Community support – true interest”.

John Herhalt Handwritten and Transcribed Notes, [KPM0003177](#) (handwritten), [KPM0003177.0001](#) (transcript)

5.10 Questions to Hydro One: November 27-29, 2011

408. On November 27, 2011 John Rockx provided a draft of his questions for Hydro One to Ed Houghton and mentioned that he only had a telephone number for Rick Stevens at Hydro One. Mr. Rockx invited Mr. Houghton to send his email to Hydro One if Mr. Houghton had an email address for Mr. Stevens. Mr. Rockx sent the email to Mr. Stevens after the exchange with Mr. Houghton and attached the financial statements for Collus Power for year end December 31, 2010. At 6:41 a.m. Rick Stevens replied, "Message received and we will respond promptly John."

Email from John Rockx to Ed Houghton, November 27, 2011, [CPS0002674](#) (email) [CPS0007500_0001](#) (attachment)

Email and attachment from John Rockx to Rick Stevens, November 27, 2011, [CPS0002678](#), [CPS0007500_0001](#) (attachment)

Email from Rick Stevens to John Rockx, November 28, 2011, [CPS0002681](#)

409. Hydro One responded to the KPMG questions on November 29, 2011, the day following the Strategic Partnership Task Team meeting to consider the financial bids. Hydro One said that its bid included assumption of the estimated pro rata share of assets and liabilities and repayment of the Town's promissory note. Mr. Stevens' full response to KPMG read as follows:

Hydro One is pleased to respond to your request for clarification as follows:

- The \$13.6 million proposed price for 50% of the shares of Collus Power assumes the following:
- Recapitalization of Collus Power to 60/40 debt/equity, which would result in an estimated \$8.1 million of new debt
- Repayment of the \$1.7 million promissory note from the Town
- Dividend to shareholders of approximately \$6.4 million (\$3.2 million to each of the Town and Hydro One)

Based on the proposed price (\$13.6 million), recapitalization and promissory note repayment (\$1.7 million) and dividend (\$3.2 million), the Town would receive total cash proceeds of approximately \$18.5 million.

The proposal includes the assumption of the estimated pro rata share of assets and liabilities, based in part on the detail provided in the 2010 audited financial statements. The proposal includes the following long-term liabilities:

- Employee future benefits
- Net regulatory liability
- Ontario infrastructure debt of \$2.7 million as at Dec. 31, 2011, alternatively this debt could be refinanced with third party debt as part of the overall recapitalization

- 2) The proposal is based on a variety of factors and assumptions including, but not limited to, estimates for rate base and assets and liabilities (including regulatory assets and liabilities) on closing, etc. based on the review of due diligence materials received to date by Hydro One and its advisors, including Collus Power's 2010 Financial Statements. Changes in any of these variables, assumptions or estimates may impact the proposed price positively or negatively.

We hope these responses adequately clarify our response. We would be pleased to elaborate further on any matter contained in our proposal and clarification.

Regards,

Rick Stevens

Vice President Asset Management

Hydro One Networks

Rick Stevens email to John Rockx, copy to Ed Houghton, November 29, 2011, [CJ10007011](#)

5.11 Questions to PowerStream from KPMG Regarding Collus Power

410. On November 27, 2011, John Rockx emailed PowerStream the following questions regarding Collus Power:

1. Powerstream has offered \$7.3 million for a 50% share / equity interest in Collus Power. Can you confirm that this share offer anticipates the inclusion of all long-term liabilities (i.e. employee future benefits, the long-term net regulatory liability, Town note payable and Ontario Infrastructure debt) without any adjustment?

2. Powerstream has also indicated that the Closing Date financial statements of Collus Power will need to meet the OEB's deemed level of net working capital calculated as at December 31, 2011. Can you clarify or roughly quantify what this deemed net working capital balance will approximate?

Mr. Glicksman of PowerStream responded by email, after which Mr. Glicksman and Mr. Rockx scheduled a call for 9:30 am on November 28. Paul Bonwick offered to come to the PowerStream offices to sit in on the call. Mr. Glicksman also reached out to Dennis Nolan, Brian Bentz and Mark Henderson asking if they would like to sit in on the meeting. Mr. Nolan directed Mr. Glicksman to take the call one on one.

Emails between John Rockx and John Glicksman, November 27, 2011, [CPS0002676](#)

Email from Paul Bonwick to John Glicksman, November 27, 2011, [ALE0001034](#)

Email between Dennis Nolan and John Glicksman, November 27, 2011, [ALE0001064](#)

411. Mr. Rockx described the PowerStream response in an email to Ed Houghton on the morning of November 28, 2011. According to Mr. Rockx, PowerStream said that they would “assume all existing long-term liabilities on the balance sheet of Collus Power (i.e. including the net regulatory liability position) without any change in the share offer price.” Mr. Rockx also indicated that the net working capital calculation at December 31, 2010 resulted in an approximately \$1.1 million shortfall (i.e. a price reduction to PowerStream's benefit) but that the projected 2011 and 2012 pre-closing earnings/cash flows of Collus Power could reduce this gap considerably.

Email from John Rockx to Ed Houghton, November 28, 2011, [CPS0002682](#)

412. In an email of further clarification later that day, John Glicksman advised KPMG as follows:

Further to our brief discussion this morning, I spoke to Brian Bentz, our President & CEO, after our call and he asked that I re-emphasize the following to you.

When we put our bid together we considered building in half of the recapitalization dividend into the price for the equity under the assumption that the utility would move to its deemed capital structure after the transaction took place, and that a recapitalization dividend would be paid out post closing to both shareholders on a 50-50 basis. This would have resulted in: an initial payment to the Town of Collingwood of

10.05 \$M (7.3 \$M + 3.75 \$M) with a recapitalization dividend after the transaction (e.g. post closing) of 2.75 M\$ to each shareholder. We thought it was more transparent to instead make an offer of a cash payment for the equity of 7.3M\$ and a pre-closing recapitalization dividend of approximately 5.5 M\$ facilitated by PowerStream.

In both cases the Town of Collingwood receives a total cash amount of 12.8 M\$ (assuming they do not want their note of 1.7 M\$ redeemed).

Email from John Glicksman to John Rockx, copy to Brian Bentz, Paul Bonwick, Mark Henderson, Daniel Miller, John McNeil, November 28, 2011, [ALE0001072](#)

413. On November 28, 2011, John Glicksman reported to other members of the PowerStream team that Paul Bonwick had provided information about the other bids, “Based on my discussion with Paul this evening I understand that others were more detailed wrt [with respect to] the type and costs of operational services they would offer Collus Hydro. I expect that we will get more details regarding this when Ed calls to formally invite us in.” PowerStream was also expecting to receive an invitation from “Ed” to call around noon on November 29, 2011 to invite them to a meeting on the morning of December 1, 2011.

Email from John Glicksman to Mark Henderson and Dennis Nolan, forwarding prior email to Brian Bentz, November 28, 2011, [ALE0001078](#)

5.12 The Second KPMG Analysis – November 30, 2011

414. A second bid analysis by KPMG, also dated November 25, 2011, appears to have been prepared on or around November 30, 2011. In the second bid analysis, both Hydro One and PowerStream were shown to have “No unassumed liabilities.” There was no change on the spreadsheet to the Hydro One net share price. PowerStream’s net share price was shown as having increased to \$6.2 million. The net share prices for Horizon and Veridian’s bids were unchanged from KPMG’s first bid analysis. Horizon and Veridian were also both shown as having “no unassumed liabilities”. On November 30, 2011, John Rockx sent this bid analysis to Ed Houghton and Dean Muncaster stating:

I have adjusted Hydro One’s leverage to match that of the PowerStream offer (which reduces the proposed dividend slightly), and made some adjustments to the purchase price of the shares to reflect the estimated impact of Hydro One’s Closing Date requirements (nominal regulatory liabilities / rate base of \$17.9 million).

Email from John Rockx to Ed Houghton and Dean Muncaster, November 30, 2011, [CPS0002698 \(email\)](#) and [CPS0002699 \(spreadsheet\)](#)

5.13 The Negotiations Between the Second and Third KPMG Bid Analysis – PowerStream Increases Its Offer of Payment; Hydro One’s Bid Remains the Highest

415. After the second KPMG bid analysis, there were communications between KPMG and Collus Power about the nature of the bids by two of the bidders: PowerStream and Hydro One. These are described in the following paragraphs.

416. On November 29, 2011, Ed Houghton advised Dean Muncaster, John Herhalt and John Rockx, with a copy to Pam Hogg, that he had arranged a meeting with PowerStream on the morning of December 1, 2011, to discuss PowerStream’s financial offer, future service agreements, the proposed shotgun clause and to negotiate further items such as cash proceeds. John Rockx remarked to John Herhalt, that “ideally all the proponents want to own 100% of Collus.”

Email correspondence from Ed Houghton, November 29, 2011, [CPS0002693](#)

Email between John Rockx and John Herhalt, November 29, 2011, [KPM0001877](#)

417. On November 30, 2011, John Rockx of KPMG provided an agenda for the meeting with PowerStream to Ed Houghton and Dean Muncaster. The agenda items for discussion included no “shotgun clause,” service agreements, purchase price, avoiding tax, corporate structure, future acquisitions, and MAAD application assistance. Mr. Rockx attached an adjusted spreadsheet based on the response KPMG had received from Hydro One to its questions on November 29, 2011.

Agenda re meeting with PowerStream, December 1, 2011, [CPS0002698 \(email\)](#); [CPS0002699 \(spreadsheet\)](#) and [CPS0002700 \(agenda\)](#)

418. Early in the morning of December 1, 2011, Tim Fryer provided information to KPMG about a large customer who owed Collus Power \$1M.

Email from Tim Fryer to KPMG, December 1, 2011, [CPS0002703](#)

419. On December 1, 2011, Ed Houghton and Dean Muncaster met with John Rockx, John Glicksman and Brian Bentz at PowerStream's offices. After the meeting, Mr. Rockx reported back to John Herhalt. Mr. Rockx's email included the following:

A pretty good meeting where Collus confirmed a lot of matters in respect of the proposed transaction, including the removal of the shotgun clause. Ed also indicated that he needed a higher price for the 50% share interest in Collus, and got a commitment for an additional \$700K (i.e. moves the share offer to \$8.0 million from \$7.3 million) from Brian Bentz (John G and Dennis Nolan expressed that the current price was full value already).

I have a phone call with Hydro One this afternoon to confirm the details of their offer; which probably still is \$2 million higher than that of Powerstream.

Notwithstanding the higher price from Hydro One, Ed and Dean will be promoting the Powerstream deal to the Board tomorrow. The selection of Powerstream works under the selection criteria (70% - general metrics; 30% financial metrics) established for the process."

Outlook invitation, Meeting with Brian Bentz, KPMG, Dean & John Glickman, December 1, 2011, [CPS0002688](#)

Email chain including John Herhalt and John Rockx, December 1, 2011, [KPM0001901](#)

5.14 KPMG Notes There Is No Appetite for the Hydro One Offer, although its Financial Offer is "Better"

420. John Rockx replied to John Herhalt's email, stating, "No surprise on them promoting the PowerStream deal with the commitments made today. There really hasn't been an appetite for Hydro One even if there financial offer was better."

Email chain including John Herhalt and John Rockx, December 1, 2011, [KPM0001901](#)

421. John Rockx emailed Ed Houghton on December 1, 2011, at 2:44 pm to provide information about a call with Rick Stevens of Hydro One. Mr. Rockx described the call to Mr. Houghton in an email:

I spoke with Rick Stevens of Hydro One who also conferenced in his advisor from the National Bank. I wanted to get some clarity on the Hydro One financial offer for a 50% interest in Collus. I explained the areas over which we required some clarity, but

Hydro One was somewhat non-committal in their responses. They indicated that they would respond to the issues in further detail if an exclusivity arrangement was entered into. They also indicated that some issues might be negotiable.

I indicated that the Steering Committee and the Town required some clarity on the financial offers in order to make an informed decision, and that we would have to make some assumptions about Hydro One's offer if they did not provide some clarification. At this time, they did indicate that they would be willing to look at our preliminary calculation of their offer and our assumed adjustments to it.

Can I provide Hydro One with the one-page summary of their offer to see if they agree with the assumed purchase price adjustments? (Emphasis in the original)

Mr. Houghton's response to Mr. Rockx's question about summarizing the assumed purchase price adjustments to Hydro One was:

I have copied Dean and will give him a call to let him know about the email but my first reaction is to leave as is for now.

Let me speak to Dean and I will call you.

Ed

Email between John Rockx and Ed Houghton, December 1, 2011, [KPM0001905](#)

422. At 5:42 p.m. on December 1, 2011, John Glicksman sent Ed Houghton and Brian Bentz a copy of a slide from a presentation that had been shown to PowerStream's directors and shareholders. Mr. Glicksman blind copied Paul Bonwick and other PowerStream and BDR staff members on the email. The slide outlined the premiums that had been paid in previous LDC purchases in Ontario. Mr. Glicksman concluded the email by stating:

As discussed, based on our calculations at 8M\$ for 50% of the equity this would put the premium for Collus at 1.60 times book or pretty well the highest that has been paid in the sector. I hope you will find this information useful and please call me if you have any questions regarding it. Good luck in your meeting tomorrow and I look forward to working with you towards a successful conclusion to our negotiations and to working with you and the rest of our team to build our new partnership into a much larger regional presence.

Email and attachment from John Glicksman to Ed Houghton, Brian Bentz, John McNeil, Mark Henderson, Dennis Nolan, Daniel Miller and Paul Bonwick, December 1, 2011, [ALE0001099](#) (email) and [ALE0001100](#) (attachment)

PowerStream Collus Power RFP Update Presentation, October 24, 2011, [ALE0000617](#)

423. At 5:52 pm on December 1, 2011, Ed Houghton forwarded John Glicksman's email to John Rockx and Dean Muncaster, stating, "[a]s you can see, the \$8,000,000 for 50% is paying a premium of 1.6 times book value or in other terms it is tied for 2nd for the highest price paid." Mr. Rockx replied, stating, "I agree that the enhanced Powerstream price is near the top of the range. A good deal for the Town." Mr. Houghton replied, "[f]or sure. Thanks for your efforts".

Email chain and attachment including Ed Houghton, John Rockx and Dean Muncaster, December 1, 2011, [KPM0001907](#) (email) and [KPM0001908](#) (attachment)

Email from John Rockx to Ed Houghton and Dean Muncaster, December 1, 2011, [CPS0002707](#)

424. At 8:17 pm, on December 1, 2011, John Rockx sent Ed Houghton a spreadsheet titled "Collus Power Corp. Comparison of Proposals – Financial Considerations", incorporating PowerStream's increased offer of \$8M. The spreadsheet was labelled "DRAFT – December 2, 2011"

Email and attachment from John Rockx to Ed Houghton and Dean Muncaster, December 1, 2011, [KPM0001913](#) (email) and [KPM0001914](#) (attachment)

425. Mr. Rockx wrote that, "Powerstream's total offer is still \$1.0 million less than Hydro One. We have continued to make a few assumptions re: Hydro One's offer as they were not helpful in addressing the impact of closing date issues on their purchase price"

Email and attachment from John Herhalt to Ed Houghton and Dean Muncaster, December 1, 2011, [KPM0001913](#) (email) and [KPM0001914](#) (attachment)

426. A meeting that had been scheduled for the Strategic Partnership Task Team on December 1, 2011 was cancelled.

Meeting cancellation notice, December 1, 2011, [CPS0002655](#)

5.15 The Third KPMG Analysis – December 2, 2011

427. The third KPMG bid analysis was prepared by John Herhalt and dated December 2, 2011. The third bid analysis was consistent with the bid details presented to the Collus Power and Collus Solutions Boards on December 2, 2011 and, subsequently, to Council on December 5, 2011. The third bid analysis reflected the adjustments resulting from negotiations with PowerStream on share purchase price and the assumptions adopted by KPMG about the Hydro One bid. Veridian and Horizon's stated share purchase prices remained unchanged from previous KPMG bid analyses.

Third KPMG Bid Analysis, December 2, 2011, [BLG0000209_0001](#)

5.16 The Collus Power and Collus Solutions Boards of Directors Vote to Recommend PowerStream

428. On December 2, 2011, Dean Muncaster emailed Ed Houghton, writing:

Woke up rather early this morning thinking about our meeting -- surprise!!!

Wondering if we should review John's latest "matrix" with Joan & Mike prior to the Board meeting, but limit the full group discussion to the comparison of Powerstream & HydroOne's offers as described by John's single "proformas".

When you have a minute, why not give me a phone call to discuss along with any other agenda items?

Or I would be happy to come over prior to the 0930 meeting?

Email from Dean Muncaster to Ed Houghton, December 2, 2011, [CPS0002710](#)

429. On December 2, 2011, a joint meeting of Collus Power and Collus Solutions was convened. The attendees were Dean Muncaster (Chair, Collus Power), Mayor Sandra Cooper (Director, Collus Power), David McFadden (Director, Collus Power), Joan Pajunen (Chair, Collus Solutions), Doug Garbutt (Director, Collus Solutions), Mike Edwards (Director, Collus Solutions), three staff members (Ed Houghton, Tim Fryer and Pamela Hogg), and four guests (Rick Lloyd, John Herhalt and John Rockx of KPMG, and Ralph Neate of Gaviller).

Unsigned Minutes of joint meeting of the Board of Directors of COLLUS Power Corp. and COLLUS Solutions Corp., December 2, 2011, [CPS0007026 0001](#)

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, p 4](#)

Collus Power Corp Request for Proposal – Strategic Partnership, October 4, 2011, [CPS0006891](#), p 8

430. The unsigned minutes of the joint Board meeting stated that no conflicts were declared, and the following resolution was passed:

Upon motion duly made, seconded and unanimously carried the Board approved that COLLUS Power Corp Board hereby accepts the findings of the Strategic Partnership Task Force Team and recommends to Collingwood Council that Collus Power Board be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement;

And further that the results of these negotiations be brought back to Collingwood Council in a timely fashion for further review and consideration.

A presentation to Collingwood Council will be made in-camera on Monday, December 5th, 2011.

Unsigned Minutes of joint meeting of the Board of Directors of COLLUS Power Corp. and COLLUS Solutions Corp., December 2, 2011, [CPS0007026 0001](#)

431. In an email to his KPMG colleagues, John Rockx described the results of the December 2, 2011 meeting as follows:

As you are aware, the Steering Committee for Collus Power met this morning to discuss the four offers received and to make a decision as to which proponent to enter into negotiations with. At the end of the meeting, the Steering Committee selected Powerstream as the preferred party for further negotiations as the strategic partner. This recommendation will be taken to Collingwood Town Council on Monday evening for formal approval (which should occur as the mayor, vice mayor and one other councilor were on the Steering Committee). The Monday meeting will be held in camera.

Next Steps:

The transaction is likely to be structured as a purchase of 50% of the shares of Collus Holdco, which owns 100% of Collus Power and Collus Solutions. The employees of Collus Solutions will be allocated to Collus Power or to the Water Operations / City (probably on or about December 31, 2011). Collus Solutions will likely be wound up with a dividend of about \$200K of net working capital paid to Collus Holdco (the

remaining assets will be needed to offset an approximate \$300K future employee benefit liability) ...

I told Ed, Dean and Tim that the December 31, 2011 balance sheet will drive the final purchase price and is needed ASAP. The last reliable balance sheet is from December 31, 2010.

Dave McFadden (Gowlings) will be preparing the SPA and Shareholders Agreement.

One question that should be answered is whether Powerstream's proposed pre-closing dividend can be made in full as it drives the retained earnings of Collus Power into a deficit position (I believe Barrie Hydro had the same issue when it paid a pre-closing dividend prior to merging with Powerstream).

At this stage, no disclosure is to be made to the other three proponents - Hydro One, Horizon Utilities and Veridian. [emphasis in original]

Email from John Rockx to John Herhalt, Jonathan Erling and Shawn Stern, December 2, 2011, [KPM0001917](#)

5.17 The Collus Auditor Raises Concerns about Proposed Sale to PowerStream

432. Ralph Neate, Collus Power's auditor (with the firm Gaviller & Company), made notes titled, "[c]oncerns about the potential deal." The metadata associated with this document indicates that it was created on December 2, 2011. The notes said:

1. Is price high enough – KPMG valuation indicates a value of between \$14M-\$16M for 100% of the equity of whole entity. Offer from Powerstream is at \$6.2M. Using KPMG valuation Collus should receive between \$7M-\$8M for 50% of the shares. There offer is not \$7.3M as there is an adjustment related to working capital of \$1.1M. The \$5.5M & \$1.7M (\$7.2M) the town could extract out of the utility without doing the deal. KPMG proforma spreadsheet seems to imply that remaining 50% of utility is worth only \$4.3M.
2. Should discuss with legal council whether Power can create a deficit in retained earnings of \$2.5M by paying an \$5.5M dividend to town.
3. Shotgun clause – Powerstream will effectively be able to purchase other half of utility after 2 years – Town goal appears to hold on 50% of utility for long term.
4. Control – will Town maintain control over utility given there will be equal votes at board.
5. What will the town be able to receive in the form of a dividend going forward vs. [note ends here].

Ralph Neate, Handwritten notes, undated, [CBB0000039](#)

433. Mr. Neate's concerns about the deal were the subject of a later email conversation between CFO Cindy Shuttleworth and an audit colleague in March. Ms. Shuttleworth wrote that,

...Ed was unhappy with gavillers and it has to do with ralph strongly expressing his opposition to the share purchase. Ed feels as our auditor it was not his business to make such comments in meetings he was invited to for the purposes of just being in the loop to what was happening.

Email between Cindy Shuttleworth and colleague, March 26, 2012, [CPS0003131](#)

5.18 Council Holds a Closed Meeting on December 5, 2011

434. On the afternoon of December 5, 2011, Sara Almas sent an email to Sandra Cooper, Kim Wingrove and Leo Longo stating:

Please accept this email as my delegation of authority as Clerk for the purposes of recording a portion of an in-camera meeting, scheduled for December 5, 2011 with respect to a personal matter pertaining to the CAO performance Evaluation Process, to Municipal Solicitor Mr. Leo Longo. This delegation is in accordance with the Municipal Act, 2001, Subsection 228(4) which permits the clerk to "delegate in writing to any person, other than a member of council, any of the clerk's powers and duties under this and any other Act."

I trust the following to be satisfactory and appropriate, in this matter.

Email from Sara Almas to Sandra Cooper, Kim Wingrove and Leo Longo, December 5, 2011, [CJI0009220](#)

435. Paul Bonwick sent speaking notes to Mayor Cooper in advance of the closed session of Council on December 5, 2011. These notes included thanking, "Dean Muncaster and his Board", and, "Ed and his Team at Collus as well as the KPMG consultants for their extraordinary efforts."

Email from Paul Bonwick to Mayor Cooper, with attachment, December 5, 2011, [TOC0069485](#) (email) and [TOC0069486](#) (attachment)

436. As the meeting was beginning, at 7:37 p.m., Paul Bonwick forwarded an email string from a developer to Deputy Mayor Lloyd as Council was moving from public session to *in camera* meeting. He advised, “[t]ry to lighten things up a bit when you go in-camera...we need them in a good mood for other things.” He also sent an email of encouragement to Ed Houghton, “[y]ou might want to start with a bit of humour considering what they just went through with that public meeting....good luck.” Mr. Houghton responded, “I will try...” Paul responded, “[c]hin up! When the going gets tough the tough get going.”

Email chain including Paul Bonwick, a developer and Rick Lloyd, December 5, 2011, [TOC0069692](#)

Email between Paul Bonwick and Ed Houghton, December 5, 2011, [TOC0069702](#)

437. At the December 5, 2011 Council Meeting, the agenda included an *in camera* item related to the “Collus Strategic Partnership RFP Review.” The minutes record that,

Councillor Chadwick declared a pecuniary interest with respect to the *in camera* discussion, as he provides consulting services for electricity sector clients. Councillor Chadwick indicated that he will not be participating in the *in-camera* discussion until it is known whether his client has submitted an RFP for the COLLUS Partnership discussion.

In-Camera Council Agenda, December 5, 2011, [TOC0512148](#)

438. Councillor Chadwick left the room for the Collus Strategic Partnership RFP Review.

Minutes of Council meeting, December 5, 2011, [TOC0517646](#)

In-Camera Minutes of Council meeting, December 5, 2011, [TOC0512149](#)

439. During the *in camera* discussion of the Collus Strategic Partnership RFP Review, Mayor Cooper provided an overview of the RFP and potential partnership opportunities. Council received a slide presentation titled “Strategic Partnership Request for Proposal Results and Evaluations”. The slides identified the following members of the “Strategic Partnership Task Team”:

- Mayor, Sandra Cooper
- Deputy-Mayor, Rick Lloyd

- Kim Wingrove, CAO
- Dean Muncaster, Chairman, Collus Power Corp
- David McFadden, Director, Collus Power Corp
- Doug Garbutt, Director, Collus Solutions Corp
- John Herhalt, KPMG / John Rockx, KPMG
- Ed Houghton, President & CEO
- Tim Fryer, CFO

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slide 4](#)

In-Camera Minutes of Council meeting, December 5, 2011, [TOC0512149](#)

440. Council was advised that the meetings of the Strategic Partnership Task Team after the bids were received took place on the following dates:

- a. November 23, 2011 - Fourth Meeting of Strategic Partnership Task Team
- b. November 28, 2011 - Fifth Meeting of Strategic Partnership Task Team
- c. December 2, 2011 - Meeting with Collingwood Utility Services, COLLUS Power Board and Strategic Partnership Task Team to propose a recommendation to Council

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slide 20](#)

441. The slide presentation to Council included tables with the points that nine of the Strategic Partnership Task Team Members awarded each of the four bidders for each of the RFP criteria, along with the following summary tables:

Proposal Evaluation Totals (70 POINTS)				
	Horizon	Hydro One	PowerStream	Veridian
Provision of strategic and specialized resources, support in growing COLLUS	200	120	265 (1 st)	105
Support for employees and their careers	65	49	80 (1 st)	55
Customer experience and satisfaction, supporting the interests of the communities	75	44	89 (1 st)	81
Competitive distribution rate and cost structure of COLLUS	88 (1 st)	37	72	75
Cultural and synergistic fit	63	38	88 (1 st)	43
Totals	491	288	594 (1st)	359

Proposal Evaluation Summaries				
	Horizon	Hydro One	PowerStream	Veridian
Total cash consideration to Town of Collingwood	3rd	1st	2nd 1 st	4th
Provision of strategic and specialized resources, support in growing COLLUS			9 out of 9	
Support for employees and their careers	1 st 2 out of 9		1 st 6 out of 9	1 st 1 out of 9
Customer experience and satisfaction, supporting the interests of the communities			1 st 9 out of 9	
Competitive distribution rate and cost structure of COLLUS	1 st 8 out of 9			1 st 1 out of 9
Cultural and synergistic fit			1 st 9 out of 9	
Totals	1st 10 out of 45	1st 0 out of 45	1st 33 out of 45	1st 2 out of 45

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slides 12 and 14](#)

442. The slide presentation also included a slide that addressed section 3.1 of the RFP, which was payment for up to 50% of shares and other considerations. The section on unassumed liabilities indicated that Hydro One had not confirmed whether it would assume liabilities. This information was inconsistent with KPMG’s analyses of the bids, which indicated that Hydro One’s position on unassumed liabilities had been confirmed. PowerStream was shown as having confirmed that it would assume those liabilities.

Proposal Evaluation Summaries				
Business Issue	Horizon	Hydro One	PowerStream	Veridian
Binding/Non-Binding	Non-Binding	Non-Binding	Non-Binding	Non-Binding
Shares	50%	50% or less	50%	50%
Unassumed Liabilities	unconfirmed	unconfirmed	confirmed	unconfirmed
Recapitalization	60%/40% Debt to Equity \$2.65 M to Town \$2.65 M to Horizon	60%/40% Debt to Equity \$3.2 M to Town \$3.2 M to Hydro One	60%/40% Debt to Equity \$5.3 M to Town \$0.0 to PowerStream \$1.71 M payout Town's option	60%/40% Debt to Equity \$2.65 M to Town \$2.65 M to Veridian
Promissory Note	\$1.71 M payout	\$1.71 M payout	50% Town 50% PowerStream Majority Independent 2 Co-Chairs	\$1.71 M payout
Governance	50% Town 50% Horizon Majority Independent	20% Town 20% Hydro One 60% Independent		50% Town 50% Veridian 100% Independent
Total cash consideration to Town	\$11.86 million in cash	\$15.998 million in cash	\$15.010 million in cash	\$10.86 million in cash

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slide 15](#)

KPMG Bid Analysis, November 30, 2011, [CPS0002699](#)

KPMG Bid Analysis, December 2, 2011, [BLG0000209 0001](#)

443. The presentation advised council that, "PowerStream has agreed to increase their offer up to \$8,000,000. This represents a 10% increase and moves the offer to the highest range for premiums paid in recent years at 1.6 times book value."

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slide 19](#)

444. Council was advised that a MAAD (a Mergers, Acquisitions and Divestiture application to the Ontario Energy Board) would be required and that PowerStream had agreed to take the lead role, at no cost to Collus Power.

Collus Power Corp Strategic Partnership Request for Proposal Results and Evaluations Update to Council, December 5, 2011, [ALE0005133.0002, slide 17](#)

445. Council carried a motion to, "...direct the Collus Board to continue negotiations with the preferred proponent, being PowerStream Inc., for a potential strategic partnership arrangement."

In-Camera Minutes of Council meeting, December 5, 2011, [TOC0512149](#)

5.19 Negotiations with PowerStream Continue

446. On December 6, 2011, Deputy Mayor Lloyd emailed Dean Muncaster, expressing his concern about, “Tim [Fryer] and his obvious distaste” for the Strategic Partnership idea. Deputy Mayor Lloyd suggested that, at the next Collus board meeting, the board have an *in camera* discussion with Mr. Fryer in order to bring him “on board”. Mr. Muncaster responded, thanking Deputy Mayor Lloyd for his suggestions and stating that his objective was to ensure complete support for the successful completion of the Partnership. Deputy Mayor Lloyd then forwarded this email chain to Mr. Houghton’s personal Gmail address.

Email chain including Rick Lloyd, Dean Muncaster and Ed Houghton, December 6-7, 2011, [TOC0070115](#)

447. On the same day, John Rockx sent Jonathan Erling, Ed Houghton, Tim Fryer and Dean Muncaster a preliminary calculation of the net proceeds to the Town of Collingwood from a potential sale of 50% of Collus Power’s shares to PowerStream.

Email from John Rockx to Jonathan Erling, Ed Houghton, Tim Fryer and Dean Muncaster, December 6, 2011, [KPM0001948](#) (email) and [KPM0001949](#) (attachment)

448. The Collus Power board met on December 9, 2011. At this meeting, Ed Houghton requested the board’s approval to send letters informing the three unsuccessful bid proponents that their bids had not been accepted. Mr. Houghton reported that he had a meeting with PowerStream the following week. David McFadden reported that he had a meeting with Aird & Berlis in the coming days to discuss a draft share purchase agreement.

Collus Power Board Meeting Minutes, December 9, 2011, [SCO0000023](#)

5.20 The RFP Bidders are Informed of the Outcome

449. On December 12, 2011, Collus Power sent letters to Horizon, Hydro One, and Veridian informing them that their RFP bids were unsuccessful.

Signed letter from Collus Power to Hydro One Networks, December 12, 2011, [CPS0002756](#)

Signed Letter from Collus Power to Horizon Utilities Corporation, December 12, 2011, [ALE0050087](#)

Signed letter from Collus Power to Veridian Connections, December 12, 2011, [VER0000175](#)

450. At a PowerStream board meeting on December 14, 2011, John Glicksman reported that, “...PowerStream has been selected and the objective is to negotiate Purchase and Shareholder Agreements by the end of January 2012 and the estimated closing is by June, 2012.”

PowerStream board of directors meeting minutes, December 14, 2011, [ALE0001157](#)

451. On December 16, 2011, Horizon’s Vice President of Business Development Neil Freeman emailed Max Cananzi, Horizon’s President and CEO:

I just spoke to Ed and he told me that Collingwood Council felt they did not need to do a public announcement of who they are negotiating with so there will be no announcement this Monday. Ed said, in addition, that we did well and we did ourselves proud. I asked whether he meant our presentation looked good or whether the content was well received. He said both. I said we were worried because we could not offer up what they had wanted, to which he said, “in the end that was the deciding factor”.

Email from Neil Freeman to Max Cananzi, December 16, 2011, [ALE0050099](#)

5.21 Collus, KPMG and Gaviller Discuss the Tax Matters and the Dividend

452. After further discussion in December 2011 about receiving background documents, Sean Stern, Tim Fryer, Ralph Neate, Cindy Shuttleworth, John Rockx, and Ed Houghton discussed the capital gains and tax that would result from the sale of 50% of Collus Power’s shares. Mr. Neate corrected the return of the figures in the schedule. He suggested to Mr. Stern that the capital gain on the shares would be \$3.8 million, meaning that the corporate tax payable on the transaction would be \$380,000. Mr. Stern adjusted his schedule accordingly.

Email chain and attachment including Sean Stern, Tim Fryer and Ralph Neate, December 21, 2011, [CPS0002803 \(email\)](#) and [CPS0002804 \(attachment\)](#)

Email chain including Ralph Neate, Shawn Stern and Tim Fryer, November 21 – December 21, 2011, [KPM0002156](#)

5.22 PowerStream Considers Purchasing the Collus Holding Company

453. On December 8, 2011, John McNeil of BDR emailed John Glicksman, writing:

Note that Collingwood Utility Services (assume also an OBCA company) owns not just Solutions but also COLLUS Energy Corp and has a relationship with Collingwood Public Utilities Service Board.

We did get some info...re some of these entities such as Solutions but did not focus on the numbers very much because we were not investing (at that time) in the upstream company. Now we are planning to invest in the upstream company to help Collingwood mitigate a potential capital gains tax.

At a minimum, PowerStream should understand the financial relationship between these entities in order to make a determination as to whether these entities either add or subtract from our overall valuation package (or the impact might be neutral). Also we should think about whether this form of shareholding has any adverse regulatory or other tax impacts?

...

Email from John McNeil to John Glicksman, December 8, 2011, [ALE0001122](#)

454. In a December 9, 2011 email, Mr. Houghton wrote to Mr. Glicksman,

As we discussed last week, we are struggling to determine the appropriateness of the purchase of the shares of the Holding Company vs. Collus Power vs. Collus Solutions. You had indicated that you would discuss this with us and provide your thoughts on what you see as the correct approach. Mr. Muncaster is leaving for holidays this coming Wednesday, so we were hoping to discuss this with you on Monday..."

Email from Ed Houghton to John Glicksman, December 9, 2011, [ALE0001120](#)

455. Ed Houghton arranged a meeting for December 12, 2011 "to discuss purchasing the Collus Holding Company." Mr. Houghton invited Dean Muncaster, Cindy Shuttleworth, John Glicksman, John Herhalt, Shawn Stern, John Rockx, Dennis Nolan, and Robert Hull from Gowlings, who was counsel to PowerStream on the transaction.

Meeting invitation from Ed Houghton to Dean Muncaster, Cindy Shuttleworth, John Glicksman, John Herhalt, John Rockx, Shawn Stern, and Dennis Nolan, forwarded to Robert Hull, December 12, 2011, [ALE0001125](#)

Email from Ed Houghton to John Glicksman, December 9, 2011, [ALE0001120](#)

456. On December 14, 2011, John Rockx of KPMG sent John Glicksman, Brian Bentz, and Ed Houghton financial details regarding all the Collus affiliate corporations. Mr. Rockx noted that, "Collus Solutions is intended to operate as a break-even company that recovers all employee wages and benefits", and that, "the Shared Services Agreement between Collus Solutions and Collus Power...is antiquated and needs to be updated." Mr. Glicksman later forwarded this information to Dennis Nolan, Robert Hull, and two representatives from BDR, asking that BDR examine the information.

Email from John Rockx to John Glicksman, Brian Bentz, and Ed Houghton, December 14, 2011, [ALE0001131](#)

Email from John Glicksman to John A. MacNeil, Paula Zarnett, Dennis Nolan, and Robert G. S. Hull, December 14, 2011, [ALE0001141](#)

457. On December 14, 2011, Corrine Kennedy of Aird & Berlis, who was counsel to Collus for the transaction, sent a draft Share Purchase Agreement and a draft Unanimous Shareholders Agreement to Robert Hull. The draft Share Purchase Agreement included notes to draft indicating that the contents of the agreement were subject to change if tax structuring required that PowerStream purchase Collus shares instead of Collus Power shares.

Email from Corrine Kennedy to Robert Hull, December 14, 2011, [ALE0001183](#) (email), [ALE0001184](#) (attachment), p 1 and 17, and [ALE0001185](#) (attachment)

458. In a December 16, 2011 email, PowerStream's valuator, BDR, sent John Glicksman a report on the Collus companies' financial information. The report stated, amongst other things, that "...perhaps purchasing shares at the Holdco [Collus] level will help value as PowerStream will have more control (influence) over the shared services company."

Email and attachment from Neil Winger to John Glicksman, December 16, 2011, [ALE0036358](#) (email) and [ALE0036358.0001](#) (attachment)

459. On December 20, 2011, Robert Hull sent a memo to Corrine Kennedy, copying Dennis Nolan, John Glicksman, David McFadden, and Ron Clark, a lawyer with the law firm Aird & Berlis, who was advising Collus on the transaction. In the memo, Hull provided PowerStream’s comments on the draft Share Purchase Agreement. Among other things, he wrote that,

We understand that by virtue of Collingwood’s tax status, it is desired to have PowerStream Inc. acquire 50% of the issued and outstanding shares of Collingwood Utilities Services Corp. (“CUS”)...We would like to perform Minute Book reviews for each of the four affected corporations, and perhaps we could discuss the best way to arrange that...we discussed with the Collingwood representatives the desirability of endeavouring to execute the Share Purchase Agreement, with a definitive new Unanimous Shareholder Agreement as a schedule, in early to mid-January...

Memo from Robert Hull to Corrine Kennedy, copying Dennis Nolan, John Glicksman, Ron Clark, and David McFadden, December 20, 2011, [ALE0001261, p 1-2](#)

460. On January 6, 2012, Corrine Kennedy of Aird & Berlis sent a revised draft Share Purchase agreement to Bob Hull at Gowlings. A note to draft of the agreement indicated, “Collingwood to determine whether holding company will be put in place to be Vendor entity rather than the Town directly. This draft assumes Vendor remains the Town directly.”

Email and Attachment from Corrine Kennedy to Robert Hull, January 6, 2012, ALE0001319, [ALE0001321, p 5](#)

461. In a January 10, 2012 email to John Glicksman, BDR President John McNeil stated: “...the transaction has now moved upstairs to “Holdco” [Collus]. This gets us further away from the detailed W/C [working capital] calculations allowed by the regulator”.

Email from John McNeil to John Glicksman, January 10, 2012, [ALE0001351](#)

5.23 A Collingwood Citizen Expresses Concerns about the Sale

462. On December 16, 2011 7:42 a.m., an anonymous concerned citizen sent an email to Collingwood Council, Ed Houghton, and Tim Fryer, questioning the wisdom of the Collus

share sale. The citizen argued that whoever was purchasing 50% of Collus must know that the asset will be profitable in the long term and that selling half of its electric utility might cause Collingwood to lose revenue over the long term. The anonymous author also wrote, amongst other things,

It was noted in the article published in the local paper that the consultant believes the government wants to see fewer utilities in the Province. I would like to see where the government has put this in their legislation or policy papers. Is it possible that those suggesting there should be fewer utilities are actually those that are trying to get bigger and bigger by taking over other municipal assets?

...

So far as I can tell, we have only heard from those who are trying push the sale. Every salesman and consultant will always tell you what you want to hear. They get paid to help make the sale. Without a doubt there will be commissions paid in one form or another to those who helped broker the deal and convince council to sell. It worries me that the biggest supporter of the sale is from within the utility itself.

Do we truly have any information from an impartial agency to help council make up their minds on what is best for our Town in the long term? I look forward to hearing more at the next opportunity for public input.

Email chain including "Concerned Citizen", Sandra Cooper, Dale West, Joe Gardhouse, Rick Lloyd, Kevin Lloyd, Ian Chadwick, Mike Edwards, Sandy Cunningham, Keith Hull, Ed Houghton, Tim Fryer and Paul Bonwick, December 16, 2011, [TOC0071762](#)

463. Mr. Houghton forwarded the "concerned citizen" email to Paul Bonwick, who replied, "who is this?" Mr. Houghton replied, "call me."

Email chain including "Concerned Citizen", Sandra Cooper, Dale West, Joe Gardhouse, Rick Lloyd, Kevin Lloyd, Ian Chadwick, Mike Edwards, Sandy Cunningham, Keith Hull, Ed Houghton, Tim Fryer and Paul Bonwick, December 16, 2011, [TOC0071762](#)

464. On December 16, 2011 at 9:30am, Mr. Bonwick forwarded the "concerned citizen" email to Eric Fagen at PowerStream and asked him to draft a response. Mr. Bonwick indicated that he, "would like to have a response that could be used by recipient if requested."

Email chain including "Concerned Citizen", Sandra Cooper, Dale West, Joe Gardhouse, Rick Lloyd, Kevin Lloyd, Ian Chadwick, Mike Edwards, Sandy Cunningham, Keith Hull, Ed Houghton, Tim Fryer, Paul Bonwick, Eric Fagen, John Glicksman, Brian Bentz and Mark Henderson December 16-20, 2011, [ALE0001209](#)

465. Eric Fagen responded at 9:53 am, advising that, he had "...crafted a draft response to this email this morning. I am having Dennis, John and Mark review it now." He provided a draft to Paul Bonwick shortly thereafter.

Email chain including "Concerned Citizen", Sandra Cooper, Dale West, Joe Gardhouse, Rick Lloyd, Kevin Lloyd, Ian Chadwick, Mike Edwards, Sandy Cunningham, Keith Hull, Ed Houghton, Tim Fryer, Paul Bonwick, Eric Fagen, John Glicksman, Brian Bentz, and Mark Henderson, December 16-20, 2011, [ALE0001209](#)

466. At 12:46pm, Mr. Bonwick edited the statement, re-drafted it in the form of a letter sent by Mayor Cooper to the concerned citizen and sent the draft letter to Ed Houghton's Gmail account for his review. At 12:53 pm, Mr. Bonwick sent an edited version of Mr. Fagen's statement back to Mr. Fagen, stating, "I have included a couple of my own comments. It is now in their hands for any editing they may want. It will then go out this afternoon prior to Council"

Email chain including "Concerned Citizen", Sandra Cooper, Dale West, Joe Gardhouse, Rick Lloyd, Kevin Lloyd, Ian Chadwick, Mike Edwards, Sandy Cunningham, Keith Hull, Ed Houghton, Tim Fryer, Paul Bonwick, Eric Fagen, John Glicksman, Brian Bentz, and Mark Henderson, December 16-20, 2011, [ALE0001209](#)

Email from Paul Bonwick to Ed Houghton, December 19, 2011, [TOC0072178](#) (email) and [TOC0072179](#) (attachment)

467. Mayor Cooper responded by email to the "concerned citizen" on December 16, 2011, writing:

It is disappointing that you have not attached your name but I will formulate a comment for you.

Of course I do not know whether you attended the recent open house information session.

It was very informative. I will pull that information together and send to you.

Email from Sandra Cooper to "Concerned Citizen", Rick Lloyd, Mike Edwards, Kevin Lloyd, Ian Chadwick, Keith Hull, Dale West, Sandy Cunningham, Joe Gardhouse, Ed Houghton, and Tim Fryer, December 16, 2011, [TOC0071754](#)

468. On December 19, 2011, Paul Bonwick forwarded a copy of the Mayor’s response to the Concerned Citizen for review and comment by Ed Houghton.

Email from Paul Bonwick to Ed Houghton, December 19, 2011, [TOC0072178](#) (email) and [TOC0072179](#) (attachment)

5.24 PowerStream Receives an Internal Collus Document in Error

469. On January 4, 2012, Scott Stoll of Aird & Berlis sent Colin MacDonald of PowerStream an email re: “Collus MAADs Application,” writing “[a]ttached presentation.” Mr. Stoll attached the Strategic Partnership Task Team’s “Strategic Partnership Request for Proposal Results and Evaluations” slide deck from December 5, 2011 to his email. Mr. MacDonald forwarded that email and attachment to John Glicksman, noting, “[t]his is what we got from Scott but it is not the Town Hall presentation.”

Email chain including Scott Stoll, Colin MacDonald and John Glicksman, [ALE0001296](#) (email) and [ALE0001297](#) (attachment)

Collus Power Corp Public Information Centre Slide Deck, November 22, 2011, [CPS0002643](#)

Email from John Rockx to Ed Houghton re Town Hall Session, November 14, 2011, [KPM0001632](#)

470. John Glicksman forwarded the presentation to Brian Bentz, writing, “[w]e got it from Aird & Berlis when we like shouldn’t have. It shown our ranking in detail along with other interesting points on our proposed transaction...”

Email from John Glicksman to Brian Bentz, January 4, 2012, [ALE0001307](#) (email) and [ALE0001308](#) (attachment)

5.25 Collus, PowerStream and Paul Bonwick Discuss Expansion

471. Paul Bonwick and Ed Houghton met on January 6, 2012 to discuss an expansion strategy and communications related to the Collus/PowerStream announcement. In an email to John Glicksman reporting on the meeting, Mr. Bonwick suggested that a meeting be arranged with Mr. Bonwick, Mr. Houghton, Mr. Glicksman and Dennis Nolan.

Email chain including Paul Bonwick, John Glicksman, Dennis Nolan and Victoria Scoffield, January 7, 2012, [ALE0001324](#)

472. On January 10, 2012, Paul Bonwick and Ed Houghton met with John Glicksman, Dennis Nolan and Mark Henderson. The calendar invite included this note: “Secondary Plan (other LDCs) 1 hr 15 min Communication Plan with respect to Collus/PS Initiative.”

Outlook invitation, “Collus Update w P. Bonwick & E. Houghton”, January 10, 2012, [ALE0001326](#)

5.26 Paul Bonwick Advises PowerStream that the CAO has been “Engaged at the Political Level” and that No More Problems are Expected

473. On the evening of January 13, 2012, Paul Bonwick sent John Glicksman an update that referred to CAO Kim Wingrove, as follows:

The CAO attempted to cause some problems in the middle of the week, requesting the Town lawyer to add some last minute items that were contrary to the ongoing discussion and agreement. The CAO has since been engaged at the political level and has a very clear understanding of the level of support expected at this late date. No more problems expected.

Email between Paul Bonwick and John Glicksman, January 13, 2012 [ALE0001394](#)

474. The day prior to this exchange, Mr. Houghton emailed Mr. Bonwick in connection with a “Mt. View” matter, asking if he had heard that there was an opening for a CAO at Meaford. Mr. Bonwick responded, “Forward to Kim.”

Email chain involving Paul Bonwick, Ed Houghton and Rick Lloyd, January 12, 2012, [TOC0079809.0001](#)

5.27 Further Discussions Regarding the Share Sale, Dividends and the Purchase of the Collus Holding Company

475. On January 10, 2012, Town solicitor Leo Longo emailed Aird & Berlis counsel Corrine Kennedy, writing:

...here are the 3 things the Town's CAO asked of me respecting the Collus /Powerstream Transaction: 1) need for service level definitions; 2) HR clarity – relationship of staff to Town vs. Collus vs. PowerStream; 3) responsibility for meeting IT and other infrastructure needs and costs.

Email from Leo Longo to Corrine Kennedy, January 10, 2012, [ARB0000006](#)

476. The following day, Ed Houghton wrote to Dean Muncaster, Sandra Cooper, David McFadden, Doug Parker, Mike Edwards, and Pam Hogg to provide "...a brief update on where we are with our Strategic Partnership Initiative":

Since receiving direction from Council on December 5th to begin negotiations with PowerStream and preparing the Purchase Sale Agreement and the Shareholder's Agreement a number of meetings have taken place...we are now in a position to take these agreements to Council in-camera this Monday January 16th. We have one more meeting tomorrow with the lawyers and PowerStream and we anticipate that all outstanding items will be agreed upon. It is truly amazing how well this process has gone and how easy we have agreed on all aspects of the agreements. Hats off to David and our legal Team of Ron Clark and Corrine Kennedy.

...

The activities that are currently underway are as follows:

...

Corrine Kennedy of A & B has been keeping the Town's municipal lawyer, Leo Longo up to speed on the agreements and Mayor Cooper has asked for a conference call tomorrow between Mr. Longo, the Deputy-Mayor, herself and myself to confirm that Leo is comfortable with the agreements.

On Monday evening if Mayor Cooper senses that the information is well received by Council will ask if an authorizing by-law can come forth next week for the execution of the agreements. The agreements will obviously be contingent on OEB approval and will be based on the financial situation at the time of closing.

...

Email chain including Ed Houghton, Dean Muncaster, Sandra Cooper, David McFadden, Doug Parker, Mike Edwards, and Pam Hogg, January 11, 2012 – April 13, 2016, [CPS0007947 0001](#)

477. On January 12, 2011 John McNeil of BDR sent PowerStream staff a new calculation of the special dividend that was to result from the share sale, assuming PowerStream purchased the Collus holding company and not just Collus Power. Mr. McNeil stated that, if

PowerStream purchased the holding company, the net special dividend yielded from the sale would decrease. Mr. McNeil also stated:

One problem is (it could be argued) that we may be using apples and oranges if we use the LDC rate base in a Holdco context.

Also note that the Employee Future benefits liability is quite a bit higher on a Holdco basis (\$655,332 vs. \$308,029).

Due to the inclusion of the Solutions employees.

Not sure how we get “indemnified” re this item. Otherwise Solutions looks like a flow through company.

Email and attachment from John McNeil to Carolyn Young, Daniel Miller and John Glicksman, January 12, 2012, [ALE0001371](#) (email), [ALE0001372](#) (attachment)

5.28 Ed Houghton Praises Paul Bonwick to Brian Bentz

478. On January 13, 2012 Ed Houghton sent Brian Bentz an email thanking him and the rest of the PowerStream board for their cooperation in completing the transaction up to that point. Mr. Houghton wrote:

I also need to tell you that Paul Bonwick has assisted me in so many ways by giving me a “heads up” if an issue was brewing, or helping me communicate our position to Council or the public or to help strategize our next move. Thanks for allowing me to use him as a resource.

Mr. Bentz responded:

Thank you very much for your kind note. I too have been very pleased with the progress of our discussions and now understand that most (if not all) of the issues have now been resolved. This is very good news as it now affords us the opportunity to (hopefully, once approvals are obtained) formally begin our partnership. One I know will bring our respective organizations much success. It has been a pleasure working with you, Her Worship, Dean (a consummate professional), David and the rest of your team. I also agree that Paul has added much value to the process. I look forward to the coming weeks and months as we begin our journey together.

Email chain including Ed Houghton and Brian Bentz, January 13, 2012, [ALE0001413](#)

5.29 Town Council Receives a Negotiation Update – The Town Solicitor Flags That the Town and Collus May Have Different Interests on the Share Sale Transaction

479. On January 11, 2012, Mayor Cooper requested a meeting with Town solicitor Leo Longo to discuss “our Strategic Plan with Collus.” Mr. Longo forwarded Mayor Cooper’s request to Aird & Berlis counsel Ron Clark and Corrine Kennedy, stating that he was unclear as to what specifically Mayor Cooper wished to discuss. Ms. Kennedy responded: “I spoke with Ed this morning and he made it clear that the Mayor had expectations that there be no red flags that come up Monday night - this may be what she is calling about but we can discuss further later.”

Email chain including Sandra Cooper, Leo Longo, Rick Lloyd, Ed Houghton, Kim Wingrove, Ron Clark and Corrine Kennedy, January 11, 2012, [ARB0000129](#)

480. The following day, Leo Longo had a telephone call with Mayor Cooper, Deputy Mayor Lloyd and Ed Houghton. In notes taken during the meeting, Mr. Longo wrote: “Q who is our client?” and “Q has Town’s interests been considered?”.

Leo Longo meeting notes, January 12, 2012, [ARB0000074](#)

481. On January 16, 2012, Ron Clark informed Leo Longo that there were two other “issues” of which Mr. Longo needed to be aware regarding the share sale:

1. We (A&B) had inserted a call right whereby Collingwood could repurchase its shares at the sale price for one year following the transaction (if it had “seller’s remorse”). This right was bargained away by Collingwood. Note that this was not in the RFP and PowerStream considered it a dealbreaker.
2. There will be a confidential “side letter” giving Collingwood/Collus a right of first refusal should PowerStream wish to acquire, merge with or otherwise enter into a strategic business relationship with certain utilities in the Georgian Triangle/Central Ontario region. The purpose is to ensure that Collus is used as a vehicle for regional integration and not bypassed by PowerStream.

Email from Ron Clark to Leo Longo and Corrine Kennedy, January 16, 2012, [ARB0000014](#)

482. Later that day, Leo Longo emailed Mayor Cooper and Deputy Mayor Lloyd, advising that he had:

...reviewed the latest draft agreements. They contain proposed reps & warranties to be made by the Town and Services Board. I will review these to ensure the Town can make these statements. What I cannot comment on are the financial aspects of the deal. Has the Town received advice that it is receiving fair value?

Email chain including Leo Longo, Sandra Cooper, Rick Lloyd, Leo Longo, Ed Houghton, and John Mascarin, January 16, 2012, [CJI0006303 \(extract\)](#)

483. Mayor Cooper responded, stating:

Collus has included Corrine and Ron from A and B to review documents. Also David Mcfadden, an electricity expert reviewing other electricity agreements. He is an independent attending Collus board meetings. John ehrholdt (sp) and John Rocx from KPMG have participated as the observer in all aspects including the financial part. They feel the agreement is very fair. The board's opinion from whispers provincially, small LDCs will be forced to amalgamate in a few short years. Better to be the one out front with the controls than someone such as the province make that decision...I hope this addresses your comments.

Email chain including Leo Longo, Sandra Cooper, Rick Lloyd, Leo Longo, Ed Houghton, and John Mascarin, January 16, 2012, [CJI0006303 \(extract\)](#)

484. Mr. Longo replied that Mayor Cooper's comments "partially" addressed his comments. He then noted that "Ron and Corrine are advising Collus, not the Town. I just want to note that the Town's interests may not be identical to Collus."

Email chain including Leo Longo, Sandra Cooper, Rick Lloyd, Leo Longo, Ed Houghton, and John Mascarin, January 16, 2012, [CJI0006303 \(extract\)](#)

485. In response, Deputy Mayor Lloyd stated:

...The fact is that the best interest of the Town has been the driving force and objective for this entire initiative...on a consistent basis Council has been fully briefed and provided unanimous support to continue with this direction.

Email chain including Leo Longo, Sandra Cooper, Rick Lloyd, Leo Longo, Ed Houghton, and John Mascarin, January 16, 2012, [CJI0006303 \(extract\)](#)

486. Leo Longo indicated that he understood and was not questioning that Council believed the Collus-PowerStream transaction to be in the best interest of the Town. Mr. Longo then stated:

My earlier email addressed something different; i.e. that the lawyers preparing the agreements are representing entities other than the Town.

I simply wish to bring that to your attention as you move forward on this.

It is clear that those drafting the agreements wanted Town input (and Town eyes) on the proposed reps and warranties. John Mascarin and I will be doing so.

Ed is “in the loop” on this.

Email from Leo Long to Rick Lloyd and Sandra Cooper, January 16, 2012, [CJI0006303 \(extract\)](#)

487. Deputy Mayor Lloyd responded that he was,

...pleased that the firm of Aird and Berlis will be in general looking after the interests of the Town of Collingwood and its ownership of Collus. I only expect that you and your colleagues provide the best guidance possible to us and our company of Collus. I totally understand your responsibility and that of Aird and Berlis in general...and look forward to a very positive outcome of this transaction.

Email chain including Rick Lloyd, Leo Longo, Sandra Cooper, Ed Houghton, and John Mascarin, January 16, 2012, [CJI0006303 \(extract\)](#)

5.30 Council is Told it Should Sell Collus Instead of Collus Power

488. On the evening of January 16, 2012, Town Council held a closed session meeting in which Council received a “negotiation update” from Aird & Berlis lawyer Ron Clark with respect to the recommended Collus “Strategic Partner.”

A Strategic Partnership between Collingwood Utility Services and PowerStream Inc. Proposed Transaction: Purchase of 50% of Collingwood Utility Services Inc. Shares by PowerStream Inc., January 16, 2012, [TOC0531801](#)

489. At the meeting, Collus’ counsel Ron Clark made a presentation to Town Council that included the following slides (references to “CUS” in the slides below are references to Collus and references to COLLUS are to Collus Power):

I. Why sale of shares of CUS rather than COLLUS directly?

NOTE: Original Request for Proposals ("RFP") from Collus Power Inc. ("Collus") contemplated purchase of shares of Collus from CUS

KPMG LLP review determined transaction was more beneficial from a tax perspective when Vendor was Town and target was CUS, rather than Collus

Implications:

- a) Collus Energy Corp. ("Energy") and Collus Solutions Corp. ("Solutions") are also part of the transaction
- b) Pre-closing adjustments to Energy, Solutions and Collus
- c) More due diligence
- d) Avoid capital gains tax on the transaction (estimated at \$350,000)

Transaction Structure (cont'd)

Share Purchase Agreement ("SPA")

1. Timing:
 - a) Pre-Execution and Due Diligence
 - b) Execution of Agreements
 - c) Interim Period – fulfillment of conditions
 - d) Closing Target Date - April 2012 following:
 - i. financial arrangements
 - ii. Infrastructure Ontario consent
 - iii. Amendment to Service Agreements
 - iv. OEB filing
 - v. Interim 2011 Financial Statements
2. Consideration (see Article 2 of SPA):
 - a) PowerStream pays \$8M for 50% of shares of CUS
 - b) \$5.2M – Estimated dividend arising from debt injection by PowerStream (or Third Party) through Collus and up to Town

- i. based on draft Working Capital numbers
 - ii. adjusted post-closing
 - iii. Holdback Amount of \$1M
- c) \$1.7M – Repayment of Promissory Note to Town
- d) Dispute resolution mechanism for disagreements on calculation of final numbers
- 3. Reps and Warranties (see Section 5.1(a) and (b))
 - a) Basic reps of Town with respect to the Town
(corporate power and authority, enforceability, no bankruptcy, no violation of by-laws and contracts by entering into transaction)
 - b) More extensive reps by Town and CUS re CUS and Subsidiaries (ie. Collus, Energy, Solutions)
(Issued capital, ownership of shares, no third party rights to purchase shares, no violations of by-laws and contracts by entering into the transaction, compliance with laws, real property and leased property, intellectual property, environmental, insurance, employees and plans, litigation, taxes, service agreements with Town)

III. Outstanding Issues

1. Holding Company between Town and CUS?
2. Source of financing of \$5.2M and \$1.7M
3. Service Agreements with Town and Subsidiaries – approval or amendment
4. Calculation of Recapitalization Dividend methodology

A Strategic Partnership between Collingwood Utility Services and PowerStream Inc. Proposed Transaction: Purchase of 50% of Collingwood Utility Services Inc. Shares by PowerStream Inc., January 16, 2012, [TOC0531801, slides 3, 6, 7, 15](#)

490. Draft minutes from the in camera portion of the January 16, 2012 Collingwood Council meeting recorded the following:

Sale between Collingwood utility services (and not just COLLUS). (will include ... COLLUS, Collus Solutions Corp., Collus Energy Corp.)

Will a new entity needed in accordance with the shareholder agreements....

\$8M (from Power Stream) \$7M (includes the \$1.7M of the promissory) (from Collus Energy through the CUS. COLLUS POWER will have higher debt (higher leveraged) 60% : 40% debt to equity.

Cash dividend -- \$300K, previously. Now what??? Will have a dividend earnings will be available in the future.

Process and OEB filing, and public appeal process. Since it is not a "sale of control" it avoids the MADS application process (merger, amalgamations, divestitures). May still continue with a MADD application, as it is a good example for other local distribution companies.

Addressed question with respect to dividend from interest on promissory note – keeping it or not??

New Shareholder agreement will be in place following the sale...

- 1) Should there be a holding company – (not agreed to yet, but may be best to 1)incorp a holdco.)
- 2) Powerstream is owned by various municipalities(??)

Guiding principles – if our neighbours want to join this kind of structure – built into a right of first refusal collingwood has the right to participate in the new structure. If Collingwood says no, than Powerstream can proceed on there own.

Ed – emotional allergy – concern with "CHECK" group – and looking at those customers. Do not want to target other members, yet we maintain a 1st right of refusal. Will be covered in a confidential "side letter"??

Shareholder can nominator director. Director has fiduciary duties to the Board (not representing the town). Cannot instruct a director to vote in certain ways. However, the Municipality can dissolve the appointment of a director.

Receive negotiation update with respect to the recommended COLLUS Strategic Partner.

Thanked Ed ...

Public approval will be included on the January 23rd Council Agenda.

Draft in camera council minutes, January 16, 2012, [CJ10009079](#)

5.31 PowerStream has Possession of Detailed RFP Materials from All Bidders

491. PowerStream staff prepared a spreadsheet containing detailed information about the financial components of the four bids submitted to Collus during the RFP.

Detailed Bid Comparison, January 17, 2012, [ALE0001490](#)

5.32 The Share Sale By-Law is Drafted for Council Approval

492. On January 17, 2012, at 5:14 pm, Leo Longo of Aird & Berlis sent Ed Houghton a draft by-law authorizing Collingwood to enter into a Share Purchase Agreement and Unanimous Shareholders' Agreement with PowerStream, writing:

Here's an initial draft of a proposed authorizing Council by-law for your review and input.

In particular, can you take a stab at drafting the "Whereas" clauses due to your intimate familiarity with this proposal.

Email and attachment from Leo Longo to Ed Houghton, Sara Almas, Kim Wingrove, and John Mascarin, January 17, 2012, as appended to Miller Thomson report regarding issues surrounding the services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the sale of shares in Collingwood Utility Services Corp., and related issues, May 15, 2015, [CJI0008820, p 156-157](#)

493. The by-law drafted by Mr. Longo included the following clauses.

2. That the Mayor and Clerk be authorized to execute the Share Purchase Agreement and Shareholders Agreement with Powerstream Inc. respecting the purchase of shares of the Collingwood Utility Services Corp. once those agreements are in a form and content to the satisfaction of the Town's Solicitor.

3. That Appropriate Town Staff and the Town Solicitor report back to Council, as required as the conditions precedent to closing this transaction are addressed and, in any event, prior to the final closing of this share purchase transaction.

...

Email and attachment from Leo Longo to Ed Houghton, Sara Almas, Kim Wingrove, and John Mascarin, January 17, 2012 as appended to Miller Thomson report regarding issues surrounding the services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the sale of shares in Collingwood Utility Services Corp., and related issues, May 15, 2015, [CJI0008820, p 156-157](#)

494. On January 18, 2012 at 12:22 pm, Dennis Nolan, PowerStream Executive Vice President-Corporate Services and Secretary, sent Ed Houghton a revised version of Mr. Longo's draft by-law. Mr. Nolan's draft:

- a. Included "whereas" clauses;
- b. Replaced the requirement that the Share Purchase Agreement and the Unanimous Shareholders Agreement be "in a form and content to the satisfaction of the Town solicitor" with a requirement that the agreements be "in a form and content to the satisfaction of the Mayor";
- c. Removed the requirement that Town Staff and the Town Solicitor report back to Council before the closing of the transaction; and
- d. Added a clause authorizing the Mayor and the Town Clerk to execute any documents related to the transaction.

Email and attachment from Leo Longo to Ed Houghton, Sara Almas, Kim Wingrove, and John Mascarin, January 17, 2012 as appended to Miller Thomson report regarding issues surrounding the services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the sale of shares in Collingwood Utility Services Corp., and related issues, May 15, 2015, [CJ10008820, p 156-157](#)

Email and attachment from Dennis Nolan to Ed Houghton, January 18, 2012, [ALE0001516](#) (email) and [ALE0001517](#) (attachment)

495. On January 18, 2012 at 1:19 pm, Dennis Nolan's draft of the by-law was forwarded from Shirley Houghton's email address to Ed Houghton's email address. One hour later, Ed Houghton sent this draft back to Leo Longo.

Email and attachment from Shirley Houghton to Ed Houghton, January 18, 2012, [CPS0002865](#) (email), [CPS0002866](#) (attachment)

Email and attachment from Ed Houghton to Leo Longo, January 18, 2012, as appended to Miller Thomson report regarding issues surrounding the services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the sale of shares in Collingwood Utility Services Corp., and related issues, May 15, 2015, [CJ10008820, p 158-159](#)

496. At 3:18 pm, Mr. Longo forwarded a draft of the by-law to Mayor Cooper, Deputy Mayor Lloyd, Kim Wingrove, Sara Almas, Ed Houghton, John Mascarin, Ron Clark and Corrine Kennedy. The draft forwarded by Mr. Longo added a requirement that:

“Appropriate Town Staff and the Town Solicitor report back to Council as required as the conditions precedent to closing this transaction are addressed and, in any event, prior to the final closing of this share purchase transaction.”

Email chain including Leo Longo, Corrine Kennedy, Sandra Cooper, Rick Lloyd, Sara Almas, Ed Houghton, Kim Wingrove, John Mascarin and Ron Clark, January 19, 2012, [ARB0000234, p 11-12](#)

497. One hour later, Mr. Houghton sent a draft of the by-law to CAO Kim Wingrove. This version of the by-law did not include the requirement that Mr. Longo had added one hour prior.

Email and attachment from Ed Houghton to Kim Wingrove, January 18, 2012, [TOC0516463](#) (email), [TOC0516464](#) (attachment)

498. On January 19, 2012 at 12:46 pm Corrine Kennedy of Aird & Berlis emailed Leo Longo about the draft by-law, writing:

After some further discussions with Ed and Ron, and in an effort to make sure we’ve covered all bases with respect to authorizing at the front end of this transaction and don’t have to go back, I am working on some revisions to the bylaw for your review. I hope to turn it to you as early as possible this afternoon. Hope that works for you, but please let me know if you have any concerns about that approach.

Email chain including Leo Longo, Corrine Kennedy, Sandra Cooper, Rick Lloyd, Sara Almas, Ed Houghton, Kim Wingrove, John Mascarin and Ron Clark, January 19, 2012, as appended to Miller Thomson report regarding issues surrounding the services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the sale of shares in Collingwood Utility Services Corp., and related issues, May 15, 2015, [CJ10008820, p 160-162](#)

499. Three hours later, Corrine Kennedy sent a new draft of the by-law to Clerk Almas, John Mascarin, Leo Longo and Ron Clark. This draft:

- a) Authorized the mayor to make any changes to the share purchase agreement and unanimous shareholders’ agreement that were “reasonable or necessary”;

- b) Authorized the mayor to take a number of actions related to the completion of the share purchase, including:
- i. Amending corporate by-laws and filings;
 - ii. Changing the number of directors on the Collus board;
 - iii. Amending and entering into service agreements between the Town and Collus; and
 - iv. Authorizing Collus' declaration of dividends and authorizing the redemption of the promissory note funds owed to the Town by Collus; and
- c) Re-established the requirement that the Town Solicitor report back to Council before the closing of the transaction;

Email from Corrine Kennedy to Leo Longo, John Mascarin and Ron Clark, January 19, 2012, [ARB0000234, p 17-21](#)

500. At 6:29 pm, Ed Houghton sent the final version of the by-law to Mayor Cooper, Clerk Sara Almas, CAO Kim Wingrove, Rick Lloyd and Dean Muncaster. This version reworded the above-mentioned powers granted to the Mayor and again removed the requirement that the Town Solicitor report back to Council before the closing of the transaction.

Email and attachment from Ed Houghton to Sara Almas, Megan Schollenberger, Sandra Cooper, Rick Lloyd and Dean Muncaster, January 19, 2012, [ARB0000234, p 22-24](#)

501. On the same day, Paul Bonwick emailed Mayor Cooper, Rick Lloyd and Ed Houghton stating:

Ed mentioned that the Mayor had asked for a motion to be available for a meeting this afternoon for review by CAO, Clerk and Ed. I would respectfully suggest that the Mayor bring in Rick and Leo either in person or on line. This will provide an opportunity to provide clear direction to Leo and the CAO from both members of the review team who also happen to be Mayor and Deputy Mayor. If the Mayor believes this to be a reasonable approach I would suggest it must take place this afternoon.

Email from Paul Bonwick to Sandra Cooper, Rick Lloyd and Ed Houghton, January 19, 2012, [CPS0009063_00001](#)

502. At 7:02 pm, Mr. Bonwick reported on the meeting to Mr. Glicksman and Mr. Nolan, writing:

The meeting went very well this afternoon with the Town's lawyers Mayor, Deputy Mayor, CAO and Ed. The motion is completely in keeping with our discussion. It subject to the satisfaction of the Mayor with no mention of their lawyer.

The discussion left no room for misinterpretation in regards to expectation Monday night.

The Mayor was agrees/approves of the format discussed in the Boardroom this morning. All is moving ahead as per our discussion.

....

Email chain including Paul Bonwick, John Glicksman, Dennis Nolan, Eric Fagen, Carolyn Young, Daniel Miller, Brian Bentz, and Mark Henderson, January 19, 2012, [ALE0001529](#)

503. Mr. Glicksman responded,

Thanks for the update and your support. We very much look forward to completing this partnership successfully and moving ahead successfully on the growth strategy with the rest of the CHEC group. Have a great evening.

Email chain including Paul Bonwick, John Glicksman, Dennis Nolan, Eric Fagen, Carolyn Young, Daniel Miller, Brian Bentz, and Mark Henderson, January 19, 2012, [ALE0001529](#)

5.33 The Recapitalization Dividend is Calculated

504. On January 18, 2012, Ed Houghton and John Rockx exchanged emails about the Recapitalization Dividend. In this correspondence, Mr. Houghton asked if the \$5.5M noted in the draft Calculation of Recapitalization Dividend provided by PowerStream was, "the new value of the recap?"

Email chain and attachment including John Rockx, Daniel Miller, John Glicksman, Carolyn Young, Ed Houghton Dean Muncaster, Tim Fryer, Corrine Kennedy, and Ron Clark, January 17, 2012, [ALE0001483](#) (email), [ALE0001484](#) (attachment), and [ALE0001485](#) (attachment)

Emails chain including John Rockx, Daniel Miller, John Glicksman, Carolyn Young, Ed Houghton Dean Muncaster, Tim Fryer, Corrine Kennedy, and Ron Clark, January 18, 2012, [TOC0084661](#)

505. John Rockx responded to Ed Houghton that he didn't think that PowerStream's calculation for 2011 would be achieved, writing "[t]oo much of an increase over the balance for 2010 - \$4.6 million." Mr. Houghton wrote back, "[s]o we are now from \$5.3 to \$4.6?" Mr. Rockx replied:

We are trying to get to a dividend of \$5.3M. Based on the 2010 financial statements we are at \$4.6 M from Collus Power + \$0.2 M from Solutions = \$4.8M. Powerstream estimates that the recap dividend from Collus Power alone will be \$5.6 M once calculated based on 2011 financial statements.

I think Powerstream is too aggressive and that the 2011 financial statements will show a \$5.0 to \$5.1 M recap dividend from Collus Power + \$0.2 M from Solutions = \$5.2M to \$5.3 M. This increase over 2010 values is more in line with expected profits from Collus Power for 2011. However, I cannot confirm the Recap Dividend until the 2011 financial statements are available. I also think it would be dangerous to include Powerstream's projected 2011 recap dividend of \$5.6M in the Recap Dividend Schedule attached to the Share Purchase Agreement since it is not realistic and will create unrealistic expectations.

So - \$4.8M of dividends is real (based on 2010 financial statements) + an estimated increase of \$400K to \$500K for 2011 +/- a possible pick-up for the stub period from December 31, 2011 to the closing date.

I hope that this helps a bit.

Emails chain including John Rockx, Daniel Miller, John Glicksman, Carolyn Young, Ed Houghton Dean Muncaster, Tim Fryer, Corrine Kennedy, and Ron Clark, January 18, 2012, [TOC0084661](#)

506. Ed Houghton forwarded John Rockx's response to Dean Muncaster.

Emails chain including John Rockx, Daniel Miller, John Glicksman, Carolyn Young, Ed Houghton Dean Muncaster, Tim Fryer, Corrine Kennedy, and Ron Clark, January 18, 2012, [TOC0084661](#)

507. On January 20, 2012, Ed Houghton emailed Brian Bentz, John Glicksman and Paul Bonwick, writing:

I was hoping that you would grant me a small portion of your time on Monday morning to discuss the Collus Power recapitalization dividend. I truly know how busy you are but I thought a brief face to face would go a long way to getting an agreement on the recapitalization portion and allow us to go to Council on Monday evening with a comfort that this issue is resolved.

Now you know this financial stuff better than, I but I was thinking that we may have options that could allow us comfort on Monday. Let me explain;

The amount of the recap dividend (including the additional Collus Solutions dividend) is still unknown (at best an estimate) and depends on the financial statements of Collus Power for the year ended December 31, 2011 and again, as at the Closing Date. While we have projected the total recap dividend to increase to around the \$5.3 million range as at Dec 31, 2011, it is possible that the recap dividend could be lower than this. There are a number of variables in the 2011 financial statements that impact on the existing formula for the recap dividend. We are literally a few minutes away from getting a reasonably accurate 2011 Financial Statement sent off to John Rockx and this will assist us in getting better clarity on the projected amount of the recap dividend.

...

As you know, we have been telling Council that our goal is to provide them with approximately \$15 million by the time we are finished with this transaction. That amount is made up of \$8 million from 50% of the shares, \$1.7 million from the promissory note and \$5.3 million from the recap dividend. For Monday evening I was hoping to increase the Town's certainty of getting near to the total of the \$5.3 million recap dividend, and to do so we will require a) the inclusion of software as part of the recap dividend formula or b) the inclusion of a clause in the SPA that provides for a minimum recap dividend at closing. So I was thinking, could we identify a minimum of \$5.1 million recap dividend and a maximum recap dividend to say \$5.5 million? A third alternative may be available to us and hopefully we can discuss at the meeting.

Email chain involving Ed Houghton, Paul Bonwick, Brian Bentz, and John Glicksman, January 20, 2012, [ALE0001572](#)

508. John Glicksman forwarded Ed Houghton's email to Brian Bentz, Dennis Nolan and Mark Henderson, writing:

Essentially as Ed describes below they want a guarantee of more money from the transaction and are looking at the recap dividend as a way to do so. We had provided them with a detailed illustration of our recapitalization calculation on Nov 28th prior to the meeting where we went from 7.3M\$ to 8M\$ for the equity... Adjusting for the items they describe below without looking in more detail at the rest of the balance sheet is simply an increase in the amount we are paying for the equity.

Email chain involving Ed Houghton, Paul Bonwick, Brian Bentz, and John Glicksman, January 20, 2012, [ALE0001572](#)

509. On January 23, 2012, John Glicksman wrote to Ed Houghton, with a copy to Paul Bonwick, Brian Bentz, Dennis Nolan, Mark Henderson, and John Glicksman, writing:

I did some more thinking regarding the issues we discussed Friday evening and met with my staff this morning to also walk through with them the way the Aurora purchase was completed including how we dealt with working capital at that time (as a post closing adjustment). I still do not see any way to change our position and am available to chat about it further at your convenience. Dennis and I also spoke to Bob Hull this morning and gave him feedback regarding a couple of financial issues your lawyers had raised with him. Thanks for all of your co-operation and support and I look forward to a successful completion of our partnership. I also expect to accompany Brian, Mark and Dennis up to Collingwood this evening and look forward to seeing you later today...

Email chain including Ed Houghton, Paul Bonwick, John Rockx, John Glicksman, Dennis Nolan, and Mark Henderson, January 23, 2012, [ALE0001660](#)

510. Mr. Houghton responded:

Thanks very much for your email. If there is no change to your position there is no need for a call. We continue to work on our Financial Statements but as you can imagine this early in the year it is pretty difficult...

Email chain including Ed Houghton, Paul Bonwick, John Rockx, John Glicksman, Dennis Nolan, and Mark Henderson, January 23, 2012, [ALE0001660](#)

5.34 The Collus Board Recommends that the Town execute the SPA and USA

511. On January 18, 2012, Ed Houghton sent Dean Muncaster a draft of a Collus board resolution recommending that the town sell 50% of its shares in Collus to PowerStream. The draft resolution, amongst other things, included the following whereas clause:

AND WHEREAS upon review of the strategic ownership options, Town Council gave direction to Collus to further investigate the Strategic Partnership option through the creation of a Strategic Partnership Task Team and to issue a Request for Proposal (RFP) to perspective partners;

The draft resolution concluded as follows,

NOW THEREFORE IT IS RESOLVED:

THAT Collingwood Utility Services Board recommends that the Town of Collingwood execute the Share Purchase Agreement and Unanimous Shareholder Agreement for the sale of 50% share of CUS.

Email chain including Ed Houghton and Dean Muncaster, January 18, 2012, [TOC0084682](#) (email) and [TOC0084683](#) (attachment)

512. On January 19, 2012 at 1:24 pm, Ed Houghton emailed the members of the Collus Board advising that Chair Dean Muncaster wished to call a special meeting of the Collus Board of Directors on January 20, 2011 at 8 a.m. With respect to the notice of the meeting, Mr. Houghton wrote:

...in accordance with our Collingwood Utility Services Corp. By-Law No. 1, specifically Section 5.03, subsection (3); it states; "meetings of the Board may be held at any time without formal notice if all the Directors are present or if all the directors who are not present, in writing or by cable, telegram or any form of transmitted or recorded communication, waive notice or signify their consent to the meeting being held without formal notice." If all of our Directors are present tomorrow we will simply waive the notice of meeting or if a Director is not present we will ask for a resolution to waive the required notice of meeting.

Email and attachment from Ed Houghton to Dean Muncaster, Joan Pajunen, Mike Edwards, Sandra Cooper, and Doug Garbutt, January 19, 2012, [TOC0085056](#) (email) and [TOC0085057](#) (attachment)

513. Mr. Houghton's email attached a draft resolution that provided that the Collus Board:

- a. Recommend that the Town execute a Share Purchase Agreement (SPA) and Unanimous Shareholder Agreement (USA) for the sale of 50% share of CUS to PowerStream Inc.;
and
- b. Resolve that the Chair and President and Chief Executive Officer be authorized to execute the SPA and USA.

Email and attachment from Ed Houghton to Dean Muncaster, Joan Pajunen, Mike Edwards, Sandra Cooper, and Doug Garbutt, January 19, 2012, [TOC0085056](#) (email) and [TOC0085057](#) (attachment)

514. At 3 pm on January 19, 2012, Ed Houghton sent the draft resolution to CAO Wingrove, copying Mayor Cooper, Deputy Mayor Lloyd and Dean Muncaster. In his email, Mr. Houghton wrote:

The attached is the resolution that will be passed tomorrow morning by our Collingwood Utility Services Board. I would assume it will be unanimous, but I will confirm with you by 8:30 tomorrow morning.

As well, I spoke to Ron Clark and Corrine Kennedy today and they are uncomfortable having an unexecuted agreement out in the public realm. They are suggesting that we can make it available to Council in the Council Room and once it is executed we will make it available to the public...

Email and attachment from Ed Houghton to Kim Wingrove, Sandra Cooper, Rick Lloyd, and Dean Muncaster, January 19, 2012, [TOC0516465](#) (email) and [TOC0516466](#) (attachment)

515. The minutes for the January 20, 2011 Collus Board meeting indicate, amongst other things, that Ed Houghton reported that:

...Ron Clark....presented the Shareholders Agreement to Council on Monday, January 16, 2012...Mayor Cooper requested an authorizing by-law for Council to pass which would allow [Collus] to proceed with 50% of the sale of shares to PowerStream. The next presentation will be at the January 23rd meeting of Council...Mr. Houghton stated that it is hoped that the by-law will pass unanimously.

Mr. Houghton requested a resolution be passed by the Board for the Share Purchase Agreement. Mr. Houghton read the "Draft" Resolution. The minutes recorded:

Upon motion duly made, seconded and unanimously carried, the Resolution was approved as read.

Minutes of a Special Meeting of the Board of Directors of Collingwood Utility Services Corp., January 20, 2012, [EHH0000100](#)

516. The Minutes did not indicate any discussion about the resolution or sale, or that any questions were asked. The Collus Board meeting was 33 minutes long.

Minutes of a Special Meeting of the Board of Directors of Collingwood Utility Services Corp., January 20, 2012, [EHH0000100](#)

5.35 Town Council Approves the Share Sale

517. Collingwood Council was scheduled to receive a presentation concerning the proposal for PowerStream to purchase 50% of Collus Power at the Council Meeting held on January 23, 2012. The Council meeting was scheduled to begin at 5pm.

Collingwood Council Agenda, January 23, 2012, [VER0000186 p 1-2](#)

Council Meeting Minutes, January 23, 2012, [CJ10008080](#)

518. At 10:35am in the morning of January 23, 2012, the PowerStream valuator, John McNeil, emailed John Glicksman and Daniel Miller. He attached a copy of Staff Report CAO 2012-01 (“COLLUS PowerStream Strategic Partnership”), writing:

I understand (and I am sure that you are aware) that the following staff report will be submitted tonight. It is drafted such that it “sounds like” PowerStream is paying \$15 million for 50% of the shares! [...] Well done!

Email from John McNeil to John Glicksman, Daniel Miller, pzarnett@bdrenergy.com, and Neill Winger, January 23, 2012, [ALE0001643](#) (email) and [ALE0001644](#) (attachment)

519. Staff Report CAO 2012-01 discussed the proposed Collus PowerStream Strategic Partnerships. The Report, amongst other things, described the transaction as one in which the Town would, “receive cash and other considerations valued at approximately \$15M” and recommended that Council enact By-law 2012-011 to execute the agreements with respect to the sale of 50% of the shares of the Collingwood Utility Services Corp to PowerStream Inc. and related matters.

Collingwood Council Agenda, January 23, 2012, [VER0000186](#), p 3-10

520. A slide presentation was given at the Council meeting entitled, “Collus Power Corp Strategic Partnership Initiative.” The speakers included Ed Houghton, John Rockx, Mayor Cooper and Brian Bentz. The presentation included a slide listing the Strategic Partnership Task Team members that included the original eight members plus two more: John Herhalt and John Rockx of KPMG.

PowerPoint presentation to Council, January 23, 2012, [KPM0002403 at slides, 2, 12](#)

Video of Council Presentation, January 23, 2012, TOC0555855.00001

Council Meeting Minutes, January 23, 2012, [CJ10008080](#)

Transcript of Council Meeting, January 23, 2012 [CJ10009241](#)

521. The presentation included one slide setting out the total points each proponent received for the non-financial component of the bid:



Proposal Evaluations

Proposal Evaluation Totals (70 POINTS)				
Criteria	Partner A	Partner B	Partner C	PowerStream
Provision of strategic and specialized resources, support in growing COLLUS	200	120	105	265 (1 st)
Support for employees and their careers	65	49	55	80 (1 st)
Customer experience and satisfaction, supporting the interests of the communities	75	44	81	89 (1 st)
Competitive distribution rate and cost structure of COLLUS	81(1 st)	37	71	76 (2 nd)
Cultural and synergistic fit	63	38	43	88 (1 st)
Total Points	484	288	355	598 (1st)

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PowerPoint presentation to Council, January 23, 2012, [KPM0002403 at slide 13](#)

522. One slide in the presentation addressed the financial component of the bid:



Financial Consideration

- Estimated proceeds for the Town of Collingwood is \$14 - \$15 million
- Calculation predicated on three considerations:
 - 50% share purchase
 - Recapitalization
 - Redeeming of historical promissory note

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PowerPoint presentation to Council, January 23, 2012, [KPM0002403, slide 14](#)

523. Both the slides and the Staff Report stated that Council had approved/directed Collus to investigate a strategic partnership.

PowerPoint presentation to Council, January 23, 2012, [KPM0002403, slide 16](#)

Staff Report CAO 2012-01, January 23, 2012, [ALE0001644, p 4](#)

524. At 5:42 p.m. on January 23, 2012, Paul Bonwick sent an email to Rick Lloyd with the subject line, "what's up?". Deputy Mayor Lloyd responded: "Brian B is now presenting.....going well.....I had Gardhouse second the motion to accept the staff report and I gave the Bylaw to Mike to Present as I seconded it as mike is on the Collus Board."

Email chain including Rick Lloyd and Paul Bonwick, January 23, 2012, [TOC0087499.0001](#)

525. At 5:46 p.m. on January 23, 2012, following CAO Wingrove's remarks in Council, Strategic Partnership Task Team member and Deputy Mayor Rick Lloyd sent an email to Paul Bonwick with two words: "HOME RUN" The meeting adjourned at 6:15pm.

Email from Rick Lloyd to Paul Bonwick, January 23, 2012, [TOC0087557.0001](#)

Transcript of Council meeting January 23,2012, [CJI0009241](#)

526. At approximately 5:49 pm, Councillor Ian Chadwick made the following statement at the Council meeting:

Thank you, Your Worship, back last year when this was first brought up to us it was about the time the provincial election was being announced at that time I was tracking the political winds finding out the different political parties would be saying about Ontario's energy situation on a number of different levels one of the things that came up from every single party was every party wanted to consolidate the energy source-services in the province they each had a different number in a different direction it was very clear that there was going to be some sort of consolidation no matter who won within the next few years and that would involve reducing the number of LDCs in the province to a considerably smaller number and at that point it looked fairly prudent to anybody who was tracking this, there was going to be legislation that would force the situation.

It made sense for us to be looking for strategic partners before we were put in the position of having to take one that way we would be able to get a better partner and a better situation. I'm pleased to see this process went through this way we found a partner that is able to work with us rather than having one dictated to us by the province and one that will help us in the future growth for this community.

Transcript of the Council meeting, January 23, 2012, [CJI0009241 p 11](#)

Video of Council Presentation, January 23, 2012, TOC0555855.00001, 48:40-50:25

527. Councillor Ian Chadwick emailed Mr. Bonwick at 4:53 pm on January 23, 2012, writing "I'm at council right now. Can we chat tomorrow?" Mr. Bonwick responded at 5:11pm, after the commencement of the Council meeting, "...I was going to ask you to speak to Industry trend and leading the way. You likely know more about the industry than others at the table."

Email exchange between Paul Bonwick and Ian Chadwick, January 23 – 24, 2012, [CJI0000576](#)

528. Compenso Communications Inc. retained and paid Councillor Chadwick for his services related to electricity news in the summer of 2011. Councillor Chadwick sought additional work from Compenso on January 4, 2012 and was providing services to Compenso as of

January 28, 2012. The communications about services performed by Councillor Chadwick for Compenso are described in further detail in Summary Document 1-5.

Email from Ian Chadwick to Paul Bonwick, January 4, 2012, [CJI0000119](#)

Email chain involving Paul Bonwick and Ian Chadwick, January 23-28, 2012, [CJI0000580](#)

[Summary Document 1-5: Councillor Chadwick's Services to Compenso 2011-2012](#)

529. At the council meeting on January 23, 2012, all the Council members present voted in favour of the proposed share sale. Councillor Hull was absent from the meeting. No member of Council declared any conflict with respect to the proposed sale.

Minutes, Council Meeting of January 23, 2012, [CJI0008080](#)

530. Later that evening, Paul Bonwick forwarded the Deputy Mayor's "HOME RUN" email to John Glicksman at PowerStream. Mr. Bonwick wrote, "FYI Congrats." Mr. Glicksman responded, "Paul Thanks and thanks so much for your support".

Email between Paul Bonwick and John Glicksman, January 23, 2012, [ALE0001645](#)

531. After the meeting, Councillor Ian Chadwick emailed Paul Bonwick, asking if Mr. Bonwick still wanted to chat. He asked about dropping by to pick up "the final" cheque paying him for his work for PowerStream through Compenso, advising that it had "...been a lean month for [him], income-wise." Mr. Bonwick responded, "Yes we should meet...would like to discuss growth strategy as well. They are interest in expansion that requires monitoring..."

Email from Paul Bonwick to Ian Chadwick, January 24, 2012, [CJI0000576](#)

532. In an email sent on February 1, 2012, a member of the Veridian bid team identified a "twist" in the Collus sale:

Our offer matched what was contained within the Collingwood RFP - a purchase of 50% of the shares of COLLUS Power.

Powerstream did not purchase shares of COLLUS Power. They purchased 50% of the parent company, Collingwood Utility Services Corp. Collingwood Utility Services Corp owns COLLUS Power, COLLUS Solutions Corp and Collus Energy Corp

One might argue that the deal doesn't match the RFP. "Proposals which fail to conform to the scope and requirements as set out in section 3 of this request for proposal will be disqualified and rejected". Did Collingwood significantly change the essence of the transaction by changing to sell 50% of Collingwood Utility Services Corp [Collus], not 50% of COLLUS Power?

Email chain including Dave Clark, George Armstrong, Michael Angemeer, and Mark Turney, February 1, 2012, [VER0000198](#)

533. In another email conversation on the same day, Dave Clark and George Armstrong of Veridian had the following discussion:

Mr. Clark: "Somewhere along the way, Collingwood seems to have lost their rigidity on the form of proposals that they would consider. Remember that the response we got from them was that if we submitted something that wasn't within the scope of their RFP, then we would be rejected and disqualified."

Mr. Armstrong: "I'm wondering if PowerStream submitted a compliant offer and was selected as the front-runner, and then the transaction morphed during the negotiations phase?"

Mr. Clark: "Probably. I think it's still unfair to establish a rule that you're disqualified if you present other alternatives, then proceed to negotiate other alternatives with one bidder... one can view this as municipalities making back room deals with one favoured LDC (Barrie and now Collingwood). If we hit them where it hurts, then perhaps the next municipality will be a little more careful in running a fair process."

Email chain including Dave Clark, George Armstrong, Michael Angemeer, and Mark Turney, February 1, 2012, [VER0000204](#)

534. In an email to Veridian staff the following day, Dave Clark stated:

Now that I've looked at the numbers closer, the option of us acquiring at the holding company level wouldn't have caused us to increase our offer. I think it's an issue that can be ignored. Powerstream just clearly out bid us.

Email chain including Dave Clark, Mark Turney, Laurie McLorg, and George Armstrong, February 2, 2012, [VER0000207](#)

535. One month after the sale to PowerStream was announced, Neil Freeman of Horizon spoke with Ed Houghton about Horizon's unsuccessful bid. When reporting on this conversation to Horizon staff, Mr. Freeman stated:

I spoke to Ed [Houghton] at the ROMA conference and he provided two interesting groups of information. First, he said we came second and that the decision to go with PowerStream was about geography. He also said that our submission was good, but when I asked how it compared he said the others provided comparable submissions.

Second, I asked him how the deal was arrived at with the holdco when it started out with the LDC. He said it was about the transfer tax and that, while he did not explain it well, he said that there would have been some liability if they had not done so at the holdco. He also said that, had they know this in advance, the RFP would have been different. On this same vein, he said the OEB did not require a MAAD when the transaction was at the holdco level, or 50% of it, but the OEB asked for one anyway so that other LDCs without holdcos would not create one to avoid the MAAD.

On the second point, I would appreciate your comments because I had not heard of this before.

Email from Neil Freeman to Max Cananzi, February 26, 2012, [ALE0050123](#)

5.36 Overview of the Sale Transaction

536. The share sale transaction involved three stages:

- a. The signing of the share purchase agreement, unanimous shareholder agreement, and other transaction documents;
- b. Ontario Energy Board approval of the transaction (the "MAADs" process); and
- c. The closing of the transaction.

5.37 The Share Purchase Agreement is Signed, March 6, 2012

537. On February 29, 2012, Leo Longo sent Mayor Cooper, Clerk Almas and Ed Houghton copies of documents to be signed, along with a memo that, "generally [described] the purpose of each document." The memo explained, amongst other things, that the SPA, "executes the Share Purchase Agreement. Signatures will be collected and held by [Aird &

Berlis] until execution.” The signature pages were the only portion of the Share Purchase Agreement attached to the email.

Email chain including Leo Longo, Ron Clark, Corrine Kennedy, Paul Bonwick, Kim Wingrove, Sandra Cooper, Ed Houghton, Brian Bentz, John Glicksman, Dennis Nolan and Mark Henderson, March 1, 2012, [ALE0002075](#) (email), [ALE0002076](#) (attachment), [ALE0002077](#) (attachment), [ALE0002078](#) (attachment), [ALE0002079](#) (attachment), [ALE0002080](#) (attachment), [ALE0002081](#) (attachment), [ALE0002082](#) (attachment), [ALE0002083](#) (attachment), and [ALE0002084](#) (attachment)

538. Ed Houghton forwarded the email to Paul Bonwick, writing, “[c]an you ensure this takes place before the end of Friday.” Mr. Bonwick forwarded the email chain to Mayor Cooper early in the morning of March 1, 2012, asking if she had time to chat and explaining that the attached documents must be signed by Friday afternoon.

Email chain including Paul Bonwick, Sandra Cooper, Sara Almas, Kim Wingrove, Ed Houghton, Brian Bentz, John Glicksman, Dennis Nolan and Mark Henderson, March 1, 2012, [ALE0002075](#) (email), [ALE0002076](#) (attachment), [ALE0002077](#) (attachment), [ALE0002078](#) (attachment), [ALE0002079](#) (attachment), [ALE0002080](#) (attachment), [ALE0002081](#) (attachment), [ALE0002082](#) (attachment), [ALE0002083](#) (attachment), and [ALE0002084](#) (attachment)

539. On March 1, 2012, Paul Bonwick forwarded the whole chain to Ed Houghton, copying Brian Bentz, Dennis Nolan, John Glicksman, and Mark Henderson. In his email, Mr. Bonwick wrote that a meeting had been scheduled for 3pm that day. Mr. Bonwick suggested that Mr. Houghton participate in the meeting as, “[t]heir solicitor on occasion is not as constructive as one would hope.”

Email chain including Paul Bonwick, Sandra Cooper, Sara Almas, Kim Wingrove, Ed Houghton, Brian Bentz, John Glicksman, Dennis Nolan and Mark Henderson, March 1, 2012, [ALE0002075](#) (email), [ALE0002076](#) (attachment), [ALE0002077](#) (attachment), [ALE0002078](#) (attachment), [ALE0002079](#) (attachment), [ALE0002080](#) (attachment), [ALE0002081](#) (attachment), [ALE0002082](#) (attachment), [ALE0002083](#) (attachment), and [ALE0002084](#) (attachment)

540. On March 5, 2012, Aird & Berlis counsel Corrine Kennedy told Town solicitor Leo Longo to expect an email from John Rockx of KPMG explaining that the dividends declared as a result of the upcoming share sale would be lower than expected. After receiving information from Mr. Rockx, Mr. Longo followed up with Ms. Kennedy and asked whether Mr. Rockx was preparing any further documentation regarding the dividend. Ms. Kennedy

responded: “Leo, Ed Houghton has confirmed that he is briefing the Mayor and dealing with this directly and there is nothing for us to do on our end.”

Email chain and attachment including Corrine Kennedy, Leo Longo and Ron Clark, March 5-6, 2012, [ARB0000108](#) (email), [ARB0000109](#) (attachment)

Email chain including Corrine Kennedy, Leo Longo and Ron Clark, March 5-6, 2012, [ARB0000111](#)

541. On the same day, Corrine Kennedy forwarded the following to Robert Hull of Gowlings:
- a. The Share Purchase Agreement (blackline and clean versions);
 - b. The Escrow Agreement (blackline and clean versions);
 - c. The Shareholders’ Agreement (blackline and clean versions);
 - d. The Additional Dividend Schedule to the Share Purchase Agreement (blackline and clean versions);
 - e. The List of Schedules to the Share Purchase Agreement (blackline and clean versions);
 - f. The Closing Agenda (blackline and clean versions);
 - g. The Working Capital Write Up Schedule (blackline and clean versions); and
 - h. Schedule A to the Share Purchase Agreement: The Promissory Note.

Email from Corrine Kennedy to Robert Hull, Ed Houghton, Ron Clark, and Leo Longo, March 5, 2012, [ALE0002196](#) (email), [ALE0002197](#) (attachment), [ALE0002198](#) (attachment), [ALE0002199](#) (attachment), [ALE0002200](#) (attachment), [ALE0002201](#) (attachment), [ALE0002202](#), (attachment), [ALE0002203](#) (attachment), [ALE0002204](#) (attachment), [ALE0002205](#) (attachment), [ALE0002206](#) (attachment), [ALE0002207](#) (attachment), [ALE0002208](#) (attachment), [ALE0002209](#) (attachment), [ALE0002210](#) (attachment), and [ALE0002211](#) (attachment)

542. On March 6, 2012 the Town, the Collus entities and PowerStream entered into a Share Purchase agreement or “SPA” and related documents. The provisions of the SPA included a requirement to declare recapitalization and closing dividends prior to finalization of the agreement and preparing dividends to be paid after closing. Collus Power was provided with the ability to repay the promissory note to the Town at the Town’s discretion. The

sale transaction was subject to, amongst other things, the approval of the Ontario Energy Board (the “OEB”).

Share Purchase Agreement, March 6, 2012, Articles 2, 4.3 [ALE0002782](#)

543. Mayor Cooper (for the Town) and Ed Houghton (for Collingwood Utilities Services Corp.) signed a letter confirming their intention that the Town of Collingwood would continue to purchase services under the Service Agreements.

Re: Purchase Agreement dated March 6, 2012, [ALE0004326](#)

544. On March 15, 2012, Collus issued a cheque for \$1262.73 to Compenso Communications for a dinner meeting that included the Mayor, the Deputy Mayor, the PowerStream executive management team and Brian Bentz. The Collus audit papers recorded the expense as related to the signing of the purchase agreement.

Collus PowerStream/Solutions, Specific Vendor Testing, December 31, 2012, [CBB0000167](#)

5.38 A Proposal is Made for a New Marketing Company for Solar Attic Vents with Ed Houghton and Paul Bonwick as Shareholders; Green Leaf Distribution Inc. Becomes Involved with Solar Attic Vent Product Development

545. By email dated January 21, 2012, Peter Budd of International Solar Solutions sent Paul Bonwick and Ed Houghton (at his Gmail address) an email regarding: “the structural issues surrounding ISSI and the marketing successes and general company plans for 2012.” Mr. Budd then set out the following ten points:

1. There will be a separate marketing company established, funded and owned presumably and exclusively by Ed and Paul (‘EPCO’).
2. PB and AY will continue to provide support services to EPCO, as are provided today, for example, in the Ontario LDC sales.
3. Notwithstanding 2. above, PB and TB’s income will derive exclusively from ISSI and not EPCO.

4. Tom will continue to grant EPCO an exclusive licence to sell to Ontario LDCs, and will entertain other marketing proposals for other territories on a proposal by proposal basis.
5. Tom will continue to be responsible for all other aspects of ISSI.
6. Specific programs and costs relating to the product sales may be the subject of a future Costs Sharing Agreement, but the plan is that each of ISSI and EPCO shall bear its own costs. The immediate exception to this item is that ISSI will pay 50% of Abby Stec's compensation and 100% of her travel expenses on ISSI business since the time in 2011 when Abby commenced her work at Compenso.
7. All units will be sold by ISSI to EPCO at a predetermined price, which shall be adjusted to whatever makes sense in the market according to the decision of EPCO and ISSI.
8. EPCO will earn a minimum \$30 to a maximum of \$50 per unit above the wholesale price.
9. Where it is evident that the marketing work of EPCO has contributed to other ISSI product sales, ISSI will recognize that goodwill and effort through a further marketing recognition fee, to be established on a case by case basis.
10. ISSI and EPCO will work closely together, shall remain separate corporate entities and will share product and market information with the goal of enhancing product sales.

Mr. Houghton forwarded this email from his Gmail address to his Collus email address.

*Email chain among Mr. Budd, Mr. Bonwick, Mr. Houghton and Mr. Bushey,
[TOC0086569.0001](#)*

546. On March 19, 2012, Cleanenergy.com published an article about the solar vent initiative with a photo of the solar vent under the headline, "Canadian companies study Solar Attic Vents." Eric Fagen circulated the article to Paul Bonwick, Ed Houghton and PowerStream communications.

CleanEnergyAuthority.com, March 19, 2012, [ALE0024099](#)

547. The article reported that, "PowerStream, Orangeville Hydro, Collus Power, Wasaga Beach Distribution, and St. Thomas Energy are joining forces with Green Leaf Distribution and International Solar Solutions (ISSI) to study temperature differences in homes with solar

attic vents in Ontario, Canada.” The article included a photograph of the solar attic vent unit.

CleanEnergyAuthority.com, March 19, 2012, [ALE0024099](#)

548. On May 6, 2012, Paul Bonwick sent an email to Ed Houghton stating:

As mentioned earlier this week I would very much appreciate Shirley’s insight on the campaign we are about to embark on with Green Leaf and Collus. Ryan will be soliticing final approval from the OEB Monday.

I would like to report back to you on my meeting with John Glicksman this past Friday morning. We discussed your recent discussion with Innisfil Hydro and their desire to be kept informed of our progress as well as your standing invitation to Center Wellington Management Team. I also informed John of the invitation that has now been extended to Mayor Patterson from Mayor Lehman and Mayor Cooper and the support that is being provided to both Mayors. We also had extensive discussion related to whether or not Powerstream was comfortable with me presenting as requested by the newly created Provincial Panel. John has reservations about participation however he will seek direction from Brian on this matter. He has asked me to prepare a short brief the points I would highlight. I will ensure you receive a copy for review and comment.

John and I then discussed a couple of different approaches related to my continued involvement post Collus/Powerstream approval. John has raised the issue that there is likely to be challenges at the Board level related to our current agreement. As a result, we agreed that you and Brian should have a discussion in terms of level of engagement, fee structure, reporting structure and payment model. John presented a couple of options that he thought might be acceptable from a Board perspective. I believe John is supportive of continuing our approach however is unsure at this point on how to structure that in an acceptable manner for all parties.

Email from Paul Bonwick to Ed Houghton, May 6, 2012, [CPS0009247 00001](#)

549. During the spring of 2012, Green Leaf organized a door-to-door sales effort for the Solar Attic Vents, along with a radio and print media campaign. Further details of these activities are found in Summary Document 1-3: The Solar Attic Vent Activity.

[Summary Document 1-3, The Solar Attic Vent Activity](#)

Email chain including Abby Stec, Tim Fryer, Glen McAllister, Ryan Manchee, Ed Houghton, Pam Hogg, Cindy Shuttleworth, and Paul Bonwick, May 23-27, 2012, [TOC0162907](#)

Email chain including Abby Stec, Rick Lloyd, Susan Nicholson, and Paul Bonwick, June 6, 2012, [TOC0168671](#)

Email chain including Abby Stec and Rick Lloyd, June 6, 2012, [TOC0168679](#)

Email chain including Abby Stec, Rick Lloyd, Susan Nicholson, and Paul Bonwick, June 6, 2012, [TOC0168689](#)