



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

June 17th, 2019

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APPEARANCES

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

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

2

3 THE HONOURABLE FRANK MARROCCO: All
4 right.

5

6 JOHN CORNELIUS ROCKX, Sworn

7

8 THE HONOURABLE FRANK MARROCCO: Good
9 morning, Mr. Rockx. The scanned -- the scanned
10 executed version of the affidavit will be up on the
11 website in the next five (5) or ten (10) minutes or --
12 you've got the unsigned version, and that's what --
13 there's no reason to wait, so we'll just get started.
14 Okay. Thanks. Go ahead.

15

16 EXAMINATION-IN-CHIEF BY MR. JOHN MATHER:

17 MR. JOHN MATHER: Good morning, Mr.
18 Rockx.

19 MR. JOHN ROCKX: Good morning.

20 MR. JOHN MATHER: You're a partner at
21 KPMG and a chartered business valuator?

22 MR. JOHN ROCKX: That is correct.

23 MR. JOHN MATHER: And His Honour has
24 just referred to you, you've provided the Inquiry with
25 an affidavit in this proceeding?

1 MR. JOHN ROCKX: That is correct.

2 MR. JOHN MATHER: So I will ask that
3 we pull up the unsworn affidavit.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: I'm going to provide
8 a brief summary, and then I'll have some questions for
9 you about your affidavit. So if we could scroll down
10 to paragraph -- starting at paragraph 3, you've
11 provided an overview of your role in the valuation and
12 options analysis that KPM can -- KPMG completed in the
13 first half of 2011. You've given evidence that you
14 were responsible for preparing the valuation
15 component.

16 If we can move down to paragraph 12,
17 you then provided your evidence on your involvement in
18 the RFP process, as well as some of your initial
19 perfect -- impressions of the non-financial components
20 of the RFP submissions. If we scroll down, that's in
21 paragraph 16.

22 Moving on to paragraph 18, you've
23 provided an overview of the adjustments you made to
24 the financial proposals prior to the November 28th,
25 2011 STT meeting in which the financial proposals were

1 scored. You've provided -- scrolling down further,
2 your recollection of the scoring meeting that took
3 place on November 28th, 2011.

4 Keep scrolling down. You've provided
5 further evidence on further adjustments you made to
6 the Hydro One bid after conversations with Hydro One.
7 You then provided your recollection of the December
8 1st, 2011 meeting in which PowerStream increased its
9 equity por -- the equity portion of its bid.

10 You further provided evidence about a
11 discussion that you and -- scrolling up to paragraph
12 29 -- you've provided evidence about a conversation
13 you had with Mr. Stevens at Hydro One in which Hydro
14 One indicated that it sought exclusivity before
15 providing further clarity on its financial submission.
16 And your request to Mr. Houghton that you be permitted
17 to provide Hydro One with a one (1) page summary of
18 the adjustments you had made to the Hydro One bid.

19 Scrolling down, you provided your
20 evidence about the further updates you made to your
21 analysis and the presentation in paragraph 33 that you
22 provided to a joint meeting of the STT and the Collus
23 board.

24 Scrolling down, finally, you've
25 provided your evidence with respect to the

1 recapitalization dividend.

2 And scrolling further down, your
3 evidence with respect to the entity being sold, your
4 role in the Transaction after PowerStream was
5 selected, and finally, your knowledge of Mr. Bonwick
6 in respect of the Transaction.

7 Is that a fair overview of your
8 affidavit?

9 MR. JOHN ROCKX: Yes, it is.

10 MR. JOHN MATHER: So if we could go to
11 paragraph 4, please.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: So taking you back
16 to the beginning of your engagement in February 2011,
17 with respect to preparing the valuation, what do you
18 recall being told about why Collus was looking for a
19 valuation at this point of time in February, 2011?

20 MR. JOHN ROCKX: As outlined in our
21 engagement letter dated, I believe it was February
22 24th there, the -- and it's not unusual, we were asked
23 to provide a valuation of Collus -- the shares of --
24 of Collus Power Corporation -- Corp. for purposes of
25 an overall strategic option review that was also being

1 undertaken.

2 MR. JOHN MATHER: Did anyone from
3 Collus or the Town explain to you why they wanted a
4 valuation and a strategic option review?

5 MR. JOHN ROCKX: I'm going to say I
6 didn't have those direct discussions, but I think it's
7 -- it's not unusual for Ontario LDCs, local
8 distribution companies, you know, to periodically look
9 at their strategic options in terms of do we retain,
10 you know, i.e., the status quo, do we sell a hundred
11 percent of our shares, do we look at other -- do we
12 merge, do we look at options of this nature. So they
13 do it periodically just to have a sense of, you know,
14 what -- what to do with their -- with their utility,
15 their LDC.

16 MR. JOHN MATHER: Could we pull up
17 paragraph 158 of the Foundation Document?

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So, Mr. Rockx, this
22 paragraph contemplates a meeting to be had in
23 Collingwood for May 12th, 2011, and paragraph 159
24 indicates that Mr. Erling met with Mr. Houghton on May
25 12th, 2011.

1 You've referenced in your affidavit
2 attending -- having conversations with Mr. Houghton,
3 Mr. Fryer, and attending a meeting at some point with
4 Mr. Muncaster.

5 Was it the meeting that's contemplated
6 here for May 12th, 2011?

7 MR. JOHN ROCKX: I was in a meeting on
8 May 12th, certainly with Mr. Muncaster and Mr.
9 Houghton. I honestly don't recall Jonathan Erling
10 being there. He might have been there at a prior
11 session, but I don't recall him being -- but the
12 purpose of -- of my meeting was just to -- and we do
13 this with any valuation we undertake, is just to talk
14 about the business, where it's been, where it is now,
15 and where it's going. So, that's just typical, just
16 ask a number of questions of the management team.

17 MR. JOHN MATHER: And in this case
18 with Mr. Houghton and Mr. Muncaster, did they give you
19 any sense of what Collus was looking to achieve by
20 undertaking a valuation or a strategic options
21 analysis?

22 MR. JOHN ROCKX: Nothing other than
23 review of strategic options. I mean, they -- they --
24 you know, if you -- if you were to sell your utility,
25 trying to get a sense of that, but no, just -- just

1 looking at their options, you want to know if -- if
2 you retain it, what your dividend yield might be. I
3 mean, it's the valuation. It's part and parcel of a
4 review of strategic options in general.

5 MR. JOHN MATHER: Did they give you
6 any sense of what Collus's goals were at that point in
7 time?

8 MR. JOHN ROCKX: I -- no, I don't
9 believe they did, no. No, they did not.

10 MR. JOHN MATHER: Did they give you
11 any sense of what the Town's goals were at that point
12 in time?

13 MR. JOHN ROCKX: Nothing definitive,
14 no. They just said we're reviewing our options with
15 no definitive goals laid out.

16 MR. JOHN MATHER: If we could pull up
17 KPM3491.1.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So, Mr. Rockx, this
22 is a transcript of some notes that you've provided to
23 the Inquiry. If you note under the context heading,
24 it says:

25 "Prepared by John Rockx, May 13th,

1 2011."

2 Do you recall when you made the notes
3 that are transcribed here?

4 MR. JOHN ROCKX: I noticed that and
5 subsequent -- that should be May 12th.

6 MR. JOHN MATHER: Okay. So these are
7 your notes from your meeting with Mr. Muncaster and
8 Mr. Houghton?

9 MR. JOHN ROCKX: That is correct.

10 MR. JOHN MATHER: I just have a few
11 quick questions about these notes.

12 So the first -- what appears to be the
13 first note you made at that point in time is "New
14 Council." Is that correct?

15 MR. JOHN ROCKX: Sorry, say that
16 again?

17 MR. JOHN MATHER: "New Council," is
18 that the first note that you made from -- from this
19 point in time?

20 MR. JOHN ROCKX: I guess so, yes.

21 MR. JOHN MATHER: Okay. So the second
22 note says:

23 "Mandate, reduce level of debt."

24 Do you recall what that note is
25 referring to?

1 MR. JOHN ROCKX: I'm going to suggest,
2 you know, that -- no, it would have to do with that --
3 the Town had a lot of -- of debt, I -- I guess, and --
4 you know, and -- and was considering maybe reducing
5 the level of debt they held.

6 MR. JOHN MATHER: Do you recall
7 whether or not either Mr. Muncaster, Mr. Houghton,
8 specifically told you that that was something the Town
9 was looking at or looking to address?

10 MR. JOHN ROCKX: Well, it was one of
11 the things they were looking at. I don't know if --
12 you know, that was one of the things that was -- they
13 were looking at from a town perspective.

14 MR. JOHN MATHER: Do you remember if
15 that was discussed at this meeting?

16 MR. JOHN ROCKX: On May 12th?

17 MR. JOHN MATHER: Yes.

18 MR. JOHN ROCKX: It's in my notes,
19 yes, it would be -- well, when I said it was
20 mentioned.

21 MR. JOHN MATHER: Other than what's in
22 your notes, do you have any recollection of that
23 conversation?

24 MR. JOHN ROCKX: No.

25 MR. JOHN MATHER: The second note

1 there says:

2 "Sale of assets, heard near the
3 end."

4 Does that -- what do you remember that
5 note referring to?

6 MR. JOHN ROCKX: Once again, one of
7 the options that they were -- I'm assuming near the
8 end of the meeting they were considering a sale of the
9 -- of the business, I guess, the LDC. Amongst -- you
10 know, once again, amongst other strategic options, but
11 --

12 MR. JOHN MATHER: Again, beyond that
13 note there, do you have any independent recollection
14 about what that note was about or what that
15 conversation related to?

16 MR. JOHN ROCKX: I don't recall
17 specifics, no.

18 MR. JOHN MATHER: At any point from
19 when KPMG was retained or -- or before then, so
20 February 2011 to when the valuation was delivered in
21 May 2011, May 24th, 2011, did you have any discussions
22 with anyone at the Town in which it was indicated to
23 you that the Town was looking to create efficiencies
24 for Collingwood residents as part of undertaking a
25 valuation and options analysis?

1 MR. JOHN ROCKX: No.

2 MR. JOHN MATHER: Did you ever have
3 any discussions with anyone where it was indicated to
4 you that the Town is looking to reduce costs as part
5 of undertaking a strategic options analysis and
6 valuation?

7 MR. JOHN ROCKX: No.

8 MR. JOHN MATHER: Can we go to page --
9 Exhibit C to your affidavit, which is at page -

10 THE HONOURABLE FRANK MARROCCO: Just
11 one second before you leave the notes. Can you go
12 back to the notes?

13 Where it says:

14 "Mayor, \$30 million value of LDC
15 asset, \$250,000 dividend" --
16 -- to what does that -- what does that
17 refer?

18 MR. JOHN ROCKX: You know, it's -- I
19 don't recall specifics, but I -- I think it's -- you
20 know, I'm -- I'm going to suggest that if the Town
21 was, you know, looking for funds, they hadn't
22 historically paid any dividends from the LDC, you
23 know, from -- from the time of incorporation in the --
24 in 2000 through 2010, no dividends and be paid.

25 So, you know, one (1) of the options is

1 maybe you start a dividend flow out of the holding
2 company through LD -- through the LDC up to the
3 holding company to provide funds to the Town.

4 THE HONOURABLE FRANK MARROCCO: Did
5 Mr. Houghton and Mr. Muncaster tell you that that was
6 the -- that the Mayor thought the asset was worth \$30
7 million and that the Town was looking for a dividend?

8 I'm trying to understand what we should
9 take from your note.

10 MR. JOHN ROCKX: I don't recall the
11 specifics, to be honest. Somebody most have mentioned
12 --

13 THE HONOURABLE FRANK MARROCCO: Was --
14 is -- are -- is this a note of that meeting?

15 MR. JOHN ROCKX: Yes, it is.

16 THE HONOURABLE FRANK MARROCCO: Okay.
17 And your recollection of what was discussed is what's
18 contained in the note?

19 MR. JOHN ROCKX: Yes. I believe
20 there's, like, three (3) or four (4) pages of notes
21 here, so you're quickly -- you know, sitting in a
22 meeting with the Mayor and asking questions and
23 putting unfortunately quick, quick -- little answers
24 down there.

25 THE HONOURABLE FRANK MARROCCO: Was

1 the Mayor at the meeting?

2 MR. JOHN ROCKX: No.

3 THE HONOURABLE FRANK MARROCCO: All
4 right.

5

6 CONTINUED BY MR. JOHN MATHER:

7 MR. JOHN MATHER: If we could go to
8 Exhibit C of Mr. Rockx's affidavit, page 13.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: And scroll down. So
13 Mr. Rockx, this is a copy of the draft calculation of
14 value that you completed and delivered on May 24th,
15 2011.

16 Is that right?

17 MR. JOHN ROCKX: That's correct.

18 MR. JOHN MATHER: Did you ever present
19 this valuation or report on your conclusions to Town
20 Council?

21 MR. JOHN ROCKX: No.

22 MR. JOHN MATHER: Did you ever discuss
23 this valuation or your conclusions with anyone who --
24 at the Town?

25 MR. JOHN ROCKX: I'm going to say no,

1 but when I say that, I know Ed Houghton wore multiple
2 hats. I think he was the Executive Director of Public
3 Works, so was -- he was a Town employee. He was also
4 President and CEO of Collus Power.

5 MR. JOHN MATHER: Other than Mr.
6 Houghton?

7 MR. JOHN ROCKX: No.

8 MR. JOHN MATHER: And other than Mr.
9 Houghton and I believe Mr. Fryer, did you ever discuss
10 your conclusions or this valuation report with anyone
11 at Collus?

12 MR. JOHN ROCKX: It would have been
13 those two (2) individuals.

14 MR. JOHN MATHER: Did you ever present
15 this valuation report or -- or your conclusions to the
16 strategic task team that was struck later in the year,
17 in --

18 MR. JOHN ROCKX: No.

19 MR. JOHN MATHER: -- August --

20 MR. JOHN ROCKX: No.

21 MR. JOHN MATHER: 2011? Sorry, just
22 for the sake of the transcript, just wait till I'm
23 done asking my question. Sorry.

24 Did you ever present this to anyone at
25 the strategic task team?

1 MR. JOHN ROCKX: No.

2 MR. JOHN MATHER: So I now have some
3 questions about the adjustments you made to the
4 financial bid, so moving ahead in time to -- to
5 November 2011.

6 So if we could start with Summary
7 Document 1-4, paragraph 6?

8 THE HONOURABLE FRANK MARROCCO: Well,
9 just before you leave that document, what did you
10 calculate the value to be?

11 MR. JOHN ROCKX: It was -- the value
12 of the share is 14.3 million to 16.1 million with the
13 mid-point of 15.2 million.

14 THE HONOURABLE FRANK MARROCCO: Thank
15 you.

16 MR. JOHN MATHER: Paragraph 6, please.

17 MR. JOHN ROCKX: Can I -- I'll correct
18 that. Sorry, I'm looking at the -- the valuation.

19 It was 14.1 million to 16.3 million
20 with a midpoint of 15.2. Midpoint was right. The
21 range was a little broader.

22 THE HONOURABLE FRANK MARROCCO: Thank
23 you.

24

25 CONTINUED BY MR. JOHN MATHER:

1 MR. JOHN MATHER: And just for
2 clarity, that was a valuation of the entirety of
3 Collus Power?

4 MR. JOHN ROCKX: Of the shares of
5 Collus Power Corp.

6 MR. JOHN MATHER: Did you consider the
7 value of 50 percent of the shares?

8 MR. JOHN ROCKX: No.

9 MR. JOHN MATHER: So I've taken you
10 here to summary document 14, which is on the screen in
11 front of you, Mr. Rockx. I've taken you here just to
12 highlight the overview of the financial bid that Hydro
13 One made in response to the RFP.

14 So there are three (3) components. One
15 (1) is a cash payment of 13.6 million dollars.

16 MR. JOHN ROCKX: M-hm.

17 MR. JOHN MATHER: The second component
18 is 1.7 million repayment of the loan to the Town.

19 And if we can scroll down, the third
20 element is the recapitalization, in this case, with
21 Hydro One to be completed after the share sale
22 transaction. So a recapitalization of 6 -- 6.4
23 million, 3.2 million of which would go to the Town and
24 the other 3.2 would go to Hydro One. Is that your
25 recollection of Hydro One's initial financial

1 proposal?

2 MR. JOHN ROCKX: That is their bid
3 that said, I know on the -- with respect to the share
4 price, we were unclear as to what deductions might be
5 coming from that when they do that, you know, in terms
6 of getting to the net price, the final price.

7 MR. JOHN MATHER: And we'll -- we'll
8 walk through that and I have some questions about
9 that.

10 But if you take Hydro One's numbers as
11 presented, they add up to 18.5 million dollars. Is
12 that correct?

13 MR. JOHN ROCKX: That is correct.

14 MR. JOHN MATHER: If we could go to
15 paragraph 20 of your affidavit.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So, in this
20 paragraph of your affidavit, you explain that on -- on
21 November 25th, 2011 you completed your initial
22 analysis of the financial offers.

23 And as I understand, it you made
24 certain adjustments to the offers in order to make
25 them apples to apples. Is that fair?

1 MR. JOHN ROCKX: Yes.

2 MR. JOHN MATHER: And so I would like
3 to -- and you say in your affidavit that your initial
4 analysis attached is Exhibit K. For ease of viewing
5 on the screens, I'm going to ask that we pull up
6 CPS2668, which is the spreadsheet that is attached as
7 Exhibit K.

8 And if we could zoom out the
9 spreadsheet a bit, just so we can have a -- that's
10 good there. Can you read that okay, Mr. Rockx?

11 MR. JOHN ROCKX: Yes.

12 MR. JOHN MATHER: Okay. Just to
13 confirm, is this the initial adjustments that you made
14 to the financial submissions?

15 MR. JOHN ROCKX: If you scroll further
16 down, I just want to see the -- it would have had a
17 date at the bottom, so. November 25, I believe.
18 Right at the very bottom.

19 Go up, yes, I'll have to go --

20 MR. JOHN MATHER: This is -- this is
21 an electronic copy of what's at Exhibit K to your
22 affidavit.

23 MR. JOHN ROCKX: Okay, yes, go up
24 then. It is.

25 MR. JOHN MATHER: So, scrolling up

1 further. Just to, again, orient ourselves right to
2 the top, please, in the document. You've indicated
3 that in yellow are areas in which further
4 clarification is required and green is areas that are
5 key areas of difference or significance.

6 So if we scroll down, we see -- or look
7 down, we see with Hydro One under "Unassumed
8 Liabilities", you've highlighted in yellow 4.112
9 million of unassumed liabilities. And then if we
10 scroll down further, we see that that number appears
11 again under "Total Cash Considerations to the Town of
12 Collingwood".

13 The total cash considerations you have
14 is 14.398 million in cash. Can you explain how you
15 adjusted Hydro One's offer down from 18.5 million to
16 14.398 million?

17 MR. JOHN ROCKX: Yes, certainly.

18 We -- I received the -- the bids on
19 November 23rd, the financial bids. And went through
20 all four of those bids. Certainly with Hydro One it
21 was a three -- three-page bid and certainly we
22 identified the pieces that you identified earlier.

23 And our interpretation, our initial
24 interpretation was that there may be some long-term
25 liabilities that might be deducted from the overall

1 purchase price.

2 So we weren't -- it wasn't clear from
3 our initial read of the offer and we wanted
4 clarification on that, so that's what the 4.112
5 million dollar deduction from the -- their share bid
6 represents.

7 And we wanted to get clarification on
8 that.

9 MR. JOHN MATHER: Do you recall which
10 long-term liabilities you were uncertain about?

11 MR. JOHN ROCKX: Certainly. There was
12 a -- a long-term regulatory liability with a value of
13 \$1.412 million. And then it wasn't clear as well
14 whether the IO, Infrastructure Ontario, IO debt would
15 also be adjusted for in the final purchase price. And
16 that was 2.7 million of long-term debt in the December
17 31st, 2010 financial statements of Collus Power Corp.

18 MR. JOHN MATHER: Were there any other
19 long-term liabilities you weren't certain of?

20 MR. JOHN ROCKX: Those are the --
21 those are the -- the big ones. I mean, there was a
22 small -- a smaller employee benefit obligation of a
23 few hundred thousand was the other one that was, I
24 believe, on the balance sheet then.

25 MR. JOHN MATHER: So one that was the

1 14. million for regulatory liabilities and then the
2 second debt was an Infrastructure Ontario debt of 2.7
3 million.

4 Can you just explain what that debt
5 was?

6 MR. JOHN ROCKX: That was a long-term
7 debt that was put in place a number of years prior.

8 And -- and once again, it wasn't clear
9 to us, I know in Hydro One's offer, they had indicated
10 they do a refinancing and a recapitalization, but it
11 referred to \$8.1 million which didn't really refinance
12 the 2.7, so that's where lack of clarity came from.

13 So we were -- wanted to confirm that.

14 MR. JOHN MATHER: And is that the same
15 with the 1.4 million, it wasn't clear how that --
16 whether that was being refinanced when they were
17 speaking to an 8.1 million refinancing?

18 MR. JOHN ROCKX: In the -- in the
19 offer that was put forward by Hydro One, it did
20 indicate that the purchase price was, you know, some
21 of the assumptions based into that, you know, and one
22 of the assumptions indicated -- I don't know if you
23 want to pull it up -- but the offer did indicate that
24 the -- that the regulatory assets and liabilities
25 would not be a material balance.

1 MR. JOHN MATHER: Sorry, you --

2 MR. FREDERICK CHENOWETH: Maybe it's
3 best to pull it up. The witness said would you wish
4 to pull it up. I wonder if it's best to pull it up?

5 MR. JOHN MATHER: Sorry, Mr. Rockx,
6 were you referring to the Hydro One offer or the
7 subsequent clarification?

8 MR. JOHN ROCKX: The Hydro One initial
9 offer.

10 MR. JOHN MATHER: So if we could go to
11 Exhibit H of Mr. Rockx's affidavit, which is paragraph
12 132.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: Scroll down.

17 So this is a copy of Hydro One's
18 financial offer. Is that the document you're
19 referring to?

20 MR. JOHN ROCKX: Correct.

21 MR. JOHN MATHER: Could you direct our
22 court operator to what you're referring to in terms of
23 --

24 MR. JOHN ROCKX: It was on page 3 of
25 the document.

1 MR. JOHN MATHER: You can direct our
2 court operator where to go.

3 MR. JOHN ROCKX: Keep going down.
4 Keep going down.

5 There, right there. Under the "above
6 payments are predicated on the following assumptions"
7 in the third bullet:

8 "Net balance of regulatory assets
9 and liabilities will not have a
10 material value."

11 MR. JOHN MATHER: And what did you
12 understand that to mean?

13 MR. JOHN ROCKX: Well, I mean, we
14 wanted to get interpretation of what material is for
15 purposes of our analysis, we assumed, you know, zero.
16 I mean, start at zero. I mean, we're not going to say
17 it's 100,000 or 200, we assume zero. Subject to
18 clarification, of course.

19 MR. JOHN MATHER: And it's my
20 understanding from your affidavit that you did reach
21 out to Hydro One for that clarification on November
22 27th, 2011. Does that sound accurate?

23 MR. JOHN ROCKX: That's -- that's
24 correct. We -- we reached out to -- to Hydro One to
25 get a clarification on -- on two items, specifically.

1 The -- the deductions that we had made on the long-
2 term liabilities.

3 MR. JOHN MATHER: And we will get to
4 that in a moment. If we could go back to the CPS2668.

5

6 (BRIEF PAUSE)

7

8 MR. JOHN MATHER: And so, if we scroll
9 down to, "Total cash proceeds." I take it from what
10 you've just said, Mr. Rockx, when it came to Hydro
11 One, you took the liabilities that you were not
12 certain of and you added them up, and then you
13 deducted that from the 18.5 million.

14 Is that a fair characterization?

15 MR. JOHN ROCKX: That is correct.

16 MR. JOHN MATHER: So, if we look at
17 the next column, that's PowerStream's -- summary of
18 PowerStream's financial bid which we see is 7.3
19 million for 50 percent of the shares, 5.5 million in a
20 recapitalization dividend, and 1.7 million for the --
21 the loan.

22 And, in this case, you have less 1.412
23 million of unassumed liabilities. What were the
24 unassumed liabilities there?

25 MR. JOHN ROCKX: That's the long-term

1 regulator liabilities.

2 MR. JOHN MATHER: So, that is a
3 component of what you were not certain Hydro One was
4 also going to assume?

5 MR. JOHN ROCKX: That's the same --
6 the same item, or one (1) of the two (2) items for
7 Hydro One; that's correct.

8 MR. JOHN MATHER: Was there any other
9 deductions made to PowerStream's financial proposal?

10 MR. JOHN ROCKX: No, although -- no.
11 No. As you can see here, is the 1.412. That said, we
12 would have had some other just clarifica -- clarifica
13 -- cation type matters, as well, yeah.

14 MR. JOHN MATHER: So, if we could go
15 to the PowerStream tab of the spreadsheet. So,
16 perhaps you could explain this. For -- you create
17 three (3) versions of this financial analysis which
18 we'll speak to. In each version, there's an offers
19 page which compares the offers, and we looked at that.

20 And then each -- each spreadsheet also
21 has an individual page for each bidder. What's
22 reflected on the individual page?

23 MR. JOHN ROCKX: What we try to do is
24 come up with, you know, the bids and just try to see
25 the impact upon Collus Power Corporation's financial

1 position. So, we're trying to use the -- the most
2 current information.

3 We would make this comment here, that
4 we ended up going back to December 31, 2010, for a
5 common starting point in a lot of cases. In -- in the
6 hydro industry or with LDCs, there's a number of --
7 you know, you never really get a firm balance sheet
8 until you get to year-end.

9 It's like they do -- they do, you know,
10 year-end -- monthly -- monthly financial statements,
11 but the balance sheet really gets cleaned up at year-
12 ends, you know, with a lot of things, with regulatory
13 accounting as -- so -- so we really try to project, as
14 you can see here at 2011 balance sheet, but -- and
15 that's why it's in yellow.

16 It's also -- you know, it's not -- it's
17 -- it needs to be adjusted because it's not final, but
18 -- so we relied on there. If you go a little bit down
19 further on this schedule, we try to identify here the
20 particular long-term net regulatory liability that was
21 uncertain whether it was part and parcel of -- you
22 know, included -- or would be an adjustment to
23 PowerStream's bid in this instance.

24 That's the 1.412 balance which, as you
25 can see, comes from the previous year-end.

1 MR. JOHN MATHER: If we could scroll
2 down further. So, we see the 1.412, which is --

3 MR. JOHN ROCKX: M-hm.

4 MR. JOHN MATHER: -- we've referenced
5 already. There's also a line in here that says,
6 "Adjust to deem working capital level at closing." Do
7 you see that?

8 MR. JOHN ROCKX: Yes.

9 MR. JOHN MATHER: And that's
10 highlighted in yellow.

11 MR. JOHN ROCKX: Yes.

12 MR. JOHN MATHER: What do you recall
13 that referring to?

14 MR. JOHN ROCKX: I think that was a
15 note to myself to -- to think that -- that issue
16 through, I mean, in terms of -- you know, with a pre-
17 closing dividend, with any of the dividends, actually,
18 because there was going to be all three (3) offer --
19 all three (3) offers had recapitalization dividends as
20 part and parcel of their offers.

21 So, you have to think through. I mean,
22 the -- the PowerStream was -- dividend was a little
23 different in than it was paid prior to a closing,
24 whereas the other three (3), it was after closing of a
25 -- of a proposed transaction.

1 So, it was just sort of let's -- let's
2 think this issue through a little bit further. And
3 that's usually what I do. We put stuff in yellow and
4 highlight it. Yeah, that's not the final.

5 MR. JOHN MATHER: What is the
6 difference in terms of -- I mean, maybe we can start
7 with this.

8 What is deemed working capital and how
9 would that affect PowerStream's bid as opposed to the
10 other bidders considering they were going to do the
11 dividend before the closing?

12 MR. JOHN ROCKX: Well, in the case of
13 PowerStream, you know, if they were paying the
14 dividend beforehand, then the Town would get
15 ultimately a hundred percent of the proceeds. If it
16 was done -- the recapitalization was done after a
17 sale, then it would be shared 50/50 between the buyer
18 and the -- and -- and the Town.

19 MR. JOHN MATHER: So, my understanding
20 is that the other three (3) bidders, Horizon,
21 Veridian, and Hydro One, proposed a recapitalization
22 dividend that would be shared after the closing. Is
23 that your recollection?

24 MR. JOHN ROCKX: That's correct.

25 MR. JOHN MATHER: And what I'm trying

1 to get a better understanding of is, with respect to
2 PowerStream, it appears that, because they are
3 proposing to do it before the closing, there's
4 something in relation to deemed working capital that
5 may be affected. And I just want to understand what
6 that might be.

7 MR. JOHN ROCKX: That may affect the
8 \$5.5 million proposed amount, yes.

9 MR. JOHN MATHER: How would it affect
10 that amount?

11 MR. JOHN ROCKX: Well, if it was
12 higher or lower. If -- if you were higher or lower
13 than the deemed working capital, if -- if you had more
14 working capital, then the dividend could be higher, if
15 you were less, which ultimately turned out to be the
16 case, you would have a reduction in the -- the
17 proposed \$5.5 million dividend.

18 MR. JOHN MATHER: So, what is the
19 deemed working capital? Let's start with that?

20 MR. JOHN ROCKX: It's in -- in
21 regulatory accounting, the -- the Ontario Energy
22 Board, if you do a cost of service filing, they
23 provide an allowance to utilities for the investment
24 in property, plant and equipment, but also an
25 allowance for working capital.

1 So, they have a calculation that goes
2 through and examines your costs in a given year. And
3 it's -- and you go through that, you know, calculate
4 here's what the expect cash costs that will be paid by
5 an LDC in a given test year.

6 And then they -- at the time, they were
7 applying a 15 percent factor to that to come up with
8 here's what the, I'll call it deemed level of
9 allowance for work -- investment in working capital
10 is.

11 MR. JOHN MATHER: And so, I take it
12 from your earlier answer, if at closing Collus was
13 above that deemed working capital -- actually, no.
14 Put it this way. How -- what affect would that have
15 on the proposed dividend to be pay -- paid to the
16 Town?

17 MR. JOHN ROCKX: Well, if -- if you do
18 a -- if you had excess investment in working capital,
19 the actual numbers in working capital were higher than
20 the amount -- the deemed amount for OEB regulatory
21 purposes, we would treat that as excess -- excess
22 investment in working capital.

23 If it was short of that, we would say
24 we've got a shortfall or a reduction from -- from the
25 -- the proposed dividend.

1 MR. JOHN MATHER: So, if it was above,
2 it would increase the dividend?

3 MR. JOHN ROCKX: If you -- if the
4 actual investment in working capital was higher, then
5 you could have a higher dividend, and if it was less
6 than, yeah, you would have a reduction from the
7 proposed.

8 MR. JOHN MATHER: Right. And at this
9 point in time, did you have an understanding of
10 whether or not PowerStream expected there to be an
11 excess or a shortfall with respect to deemed working
12 capital?

13 MR. JOHN ROCKX: I -- I think -- I --
14 I'd have to go back and look -- consider it. But I
15 think that's sort of the reason we were looking at
16 this and put the note that -- that it has to be
17 reviewed to make sure that they were above or below.

18 MR. JOHN MATHER: So, was that
19 something that was outstanding at this point in time?

20 MR. JOHN ROCKX: Yes, it would have
21 been with respect to all these. I -- I would like to
22 point out though that, you know, this is sort of a
23 common issue for all the LDCs -- or all the bids.

24 When you have a recap -- a recap
25 dividend, you know, everybody can make an assumption

1 as what -- what it will be in terms of here's, we're
2 going to -- I know you can pay different amounts, so
3 we -- we'd have to look at all four (4) of the bids in
4 terms of the recap and the impact of that.

5 For example -- and I'll -- I'll just
6 give an example if I may. You know, this came, you
7 know, as we -- we moved on. If -- if somebody owns a
8 business -- and I'll just put this as just, you know,
9 how working capital comes into play.

10 If somebody owns a business and let's
11 say it's worth a million dollars and somebody says I'm
12 going to go out and borrow six hundred thousand
13 dollars (\$600,000) and pay that to the shareholder,
14 then, you know, we would look at it in the context of
15 you've got a six hundred thousand dollar (\$600,000)
16 cash that you received, that's the individual
17 shareholder, plus your investment in your business is
18 now worth a million -- the equity is now worth a
19 million minus the borrowings that you did to pay the
20 dividend, four hundred thousand (\$400,000), you come
21 back to the same million.

22 If somebody came along and said I've
23 got the same business, a million dollars, and I'm
24 going to borrow five hundred thousand dollars
25 (\$500,000), I don't want to lever it up as high and

1 pay a five hundred thousand dollar (\$500,000) dividend
2 to themselves, then the remaining equity in the
3 business would be five hundred thousand dollars
4 (\$500,000), i.e., a million minus five hundred
5 thousand (\$500,000) was borrowed, you get back to the
6 same million.

7 So, there was a little bit of
8 inconsistency in terms of how you, you know, look at
9 the assumed amount of dividends that could be paid
10 between them.

11 They -- you know, every bidder sort of
12 assumed a different amount of -- of dividends that
13 could be paid, and that would impact a little bit --
14 depending how much they borrowed and paid out what
15 would impact on what was left over after the
16 borrowings to pay the dividend.

17 THE HONOURABLE FRANK MARROCCO: I --
18 everybody's guessing at what the fina -- at what the
19 financial statements for 2011 will look like. Is --
20 is that's what's happening?

21 MR. JOHN ROCKX: That's a little bit.
22 You know, whether it's 2011 or at closing, yes,
23 they're sort of --

24 THE HONOURABLE FRANK MARROCCO: Well -
25 - well --

1 MR. JOHN ROCKX: -- estimating.

2 THE HONOURABLE FRANK MARROCCO: -- it
3 closes -- when do you look?

4 MR. JOHN ROCKX: Well, I mean, so
5 that's why we sort of -- at the end, we gravitated
6 back to 2010, because that was a known balance sheet
7 when we did their analysis in the, you know, the
8 further iterations.

9 THE HONOURABLE FRANK MARROCCO: But in
10 terms of reducing the dividend --

11 MR. JOHN ROCKX: M-hm.

12 THE HONOURABLE FRANK MARROCCO: --
13 because you've got the wrong capitalization or your
14 estimate is wrong --

15 MR. JOHN ROCKX: M-hm.

16 THE HONOURABLE FRANK MARROCCO: -- or
17 it turns out to be incorrect, not wrong really --

18 MR. JOHN ROCKX: Yes.

19 THE HONOURABLE FRANK MARROCCO: --
20 what would -- year do you use in this transaction?

21 MR. JOHN ROCKX: Well, we're -- we're
22 trying to do a comparison, right? That's why it made
23 it a little bit difficult. We're trying to do a
24 comparison. So we ended up gravitating -- let's
25 assume, you know, the -- a balance sheet at

1 December 31, 2010, which we knew was a real -- real
2 balance sheet, we could do those calculations based
3 upon, so that's what we ultimately did go back to.

4 And then as a new information became
5 available, you know, we could do December 31, 2011 and
6 then ultimately closing. But when you get to
7 December 31, you try to do some pro formas but, you
8 know, as I said earlier, things change. We do a lot
9 of adjustments in the -- in LDCs that impact on the
10 closing financial statements, the balance sheets.

11 You know, there's -- there's tax
12 calculations. There's a number of variance
13 calculations that are undertaken. There's a lot of
14 shifting that might be done in terms of how much
15 internal time spent by employees during the course of
16 the year in retrofitting their infrastructure that
17 comes out of an income statement and gets deferred
18 into the balance sheet.

19 So there's a lot of things that happen,
20 you know, with these types of companies, so the
21 balance sheets -- a little shifting, a little bit.

22

23 CONTINUED BY MR. JOHN MATHER:

24 MR. JOHN MATHER: So if we go to
25 paragraph 22 of your affidavit.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So this paragraph
4 describes that you attended the meeting on
5 November 28th, 2011 of the STT in which the financial
6 components were scored.

7 You write -- you provided an
8 explanation of the four (4) financial offers to the
9 STT and indicated that Hydro One had the highest
10 financial bid, and PowerStream had the second highest
11 financial bid:

12 "I presented my initial comparative
13 analysis to the STT."

14 Which is the spreadsheet we were just
15 looking at. Is that correct?

16 MR. JOHN ROCKX: That is correct.

17 MR. JOHN MATHER: Do you recall what
18 you said to the STT about what adjustments you had
19 made to each financial bid?

20 MR. JOHN ROCKX: Well, I -- excuse
21 me -- I recall going to the STT meeting, and
22 certainly, the -- the meeting would have started with
23 Dean Muncaster or Ed just, you know, introducing
24 parties.

25 I was one (1) of the speakers at the

1 front end to say, here's the -- the documents -- you
2 know, the -- I'll call it the iteration one, for a
3 lack of a better term -- matrix one of the -- of the
4 comparative analysis of the bids.

5 And I would have gone through and --
6 you know, and it wasn't just the dollars. There
7 was -- you could see the -- it was a two (2) page
8 document with a whole number of things down the --
9 down the left side in terms of, is it a binding bid or
10 non-binding? There was a number of things.
11 Certainly, the numbers were part of it.

12 It indicated issues like what would
13 like the governments -- governance look like in terms
14 of this. So it listed a number of criteria, not just
15 the financial information, but it was all coming out
16 of the financial bids or parts of that.

17 So in terms of the -- the financials,
18 we -- you know, we just spoke to that component as
19 well and just said, here's the numbers. And, you
20 know, you -- you saw the net -- estimated net cash
21 proceeds, you know, were indicated.

22 Hydro One had the -- the top bid.
23 Certainly, we indicated that some clarification was
24 required. Certainly, they were highlighted in yellow.
25 Certainly, Hydro One's was.

1 PowerStream's bid was highlighted in
2 yellow in terms of some of the -- the assumptions. I
3 mean, it was an interpretation of -- of the documents
4 without an opportunity to speak to any of the
5 proponents, the bidders themselves.

6 So -- so we did speak to that and
7 clearly indicated Hydro One is the leading bid. You
8 know, it needs some clarification, as do, you know --
9 and we went through the numbers and you indicated
10 there it looked like PowerStream was the -- or it
11 indicated that PowerStream was the second highest bid
12 and -- or then Horizon and Veridian.

13 MR. JOHN MATHER: So if we could pull
14 that spreadsheet up again: CPS2668.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So I take it from
19 your answer that you walked through this spreadsheet
20 with the Strategic Task Team. Other than what's set
21 out in this spreadsheet, do you have any independent
22 recollection of what you said to the Strategic Task
23 Team about the adjustments that had been made?

24 MR. JOHN ROCKX: I don't recall, other
25 than I -- I probably did make some comments. We need

1 to get some clarification on what long-term
2 liabilities need to be assumed. I mean, that's sort
3 of, you know, there. I'm sure that was indicated.

4 And, you know, there's other things
5 that are on there that, you know, were -- were
6 discussed as well. The -- you know, the yellow/green
7 highlighting was -- was provided as well just to focus
8 the eyes a little bit. So, you know, here's -- here's
9 the key elements, and here's things that need to be
10 clarified in the bids.

11 MR. JOHN MATHER: Do you recall if you
12 spoke to the Strategic Task Team about how you arrived
13 at the 4.112 million figure for unassumed liabilities?

14 MR. JOHN ROCKX: I don't recall
15 specifically, no.

16 MR. JOHN MATHER: Similarly, with
17 PowerStream, do you recall if you spoke to the
18 Strategic Task Team about the 1.412 million in
19 unassumed liabilities?

20 MR. JOHN ROCKX: I don't know if we
21 went item by item. It would have been under the
22 caption of long-term -- you know, long-term
23 liabilities, whether they're assumed.

24 MR. JOHN MATHER: Do you have a
25 specific recollection of whether you discussed the

1 issue of the deemed working capital that we just went
2 through?

3 MR. JOHN ROCKX: I don't recall that.
4 I don't -- I don't recall.

5 MR. JOHN MATHER: It's my
6 understanding from your affidavit that after you went
7 through this presentation -- actually, I'll maybe put
8 it this way.

9 Did the Strategic Task Team score the
10 financial components before or after you presented?

11 MR. JOHN ROCKX: It would have been
12 after.

13 MR. JOHN MATHER: You said "would have
14 been." Do you specifically recall --

15 MR. JOHN ROCKX: Yes, it was after.

16 MR. JOHN MATHER: Okay.

17 MR. JOHN ROCKX: I was at the front
18 end of the meeting. I do recall their -- you know,
19 the front, I'll call it, half hour anyhow.

20 MR. JOHN MATHER: And do you recall if
21 there was any discussion about whether or not the
22 financial bids should be scored at that point of time
23 while you were still seeking clarification from the
24 bidders on their proposal?

25 MR. JOHN ROCKX: Could you repeat --

1 repeat that? Sorry?

2 MR. JOHN MATHER: Do you recall if
3 there was any discussions about whether or not there
4 should be a scoring of the financial bids while
5 clarification was still outstanding?

6 MR. JOHN ROCKX: I do not recall
7 specifically, no.

8 MR. JOHN MATHER: Do you recall if you
9 or anyone advised the Strategic Task Team that you had
10 reached out to PowerStream and Hydro One the day
11 before to seek clarifications on certain items?

12 MR. JOHN ROCKX: I -- I believe I
13 would have said that we -- we've extended an email.

14 MR. JOHN MATHER: Do you recall any
15 discussion about that?

16 MR. JOHN ROCKX: I do not. When I say
17 not initially because at the latter part of the
18 meeting, what -- you know, there was a vote that was
19 undertaken.

20 But I do recall at the end of the
21 meeting that, you know, some of the outcomes coming
22 out of the meeting were that, you know, I think
23 Dean --- I'm going to suggest Dean Muncaster and maybe
24 Ed -- but after some discussion, some of the out-takes
25 were -- you know, they wanted to follow up with

1 PowerStream for clarification of their bid, not only
2 the financial but just the overall bid on the number
3 of items.

4 And they also wanted some
5 clarification -- and when I say that, PowerStream, at
6 the end of that meeting, was ranked as the number one
7 (1) bid overall, you know, on the qualitative and
8 quantitative elements overall.

9 And then secondarily, you know, they
10 wanted to follow up certainly with -- with Hydro One
11 in terms of its financial bid because not -- you know,
12 even though it ranked low in terms of the qualitative
13 factors, it was still the highest bid.

14 So, you know, I think Dean would have
15 said let's -- you know, would have -- you know, there
16 was some discussion about how do we -- how do we, you
17 know, run with the highest ranked bid -- once again,
18 PowerStream -- but we need some clarification. So
19 that was something that did fall out, and there was
20 some discussion on let's get some clarification.

21 MR. JOHN MATHER: So if we could go to
22 paragraph 24 of your affidavit.

23

24 (BRIEF PAUSE)

25

1 MR. JOHN MATHER: So you say -- this
2 is again talking about that meeting -- you say:

3 "Based on the scoring of proposals,
4 the STT decided to continue to have
5 discussions with PowerStream who had
6 the highest score overall and to
7 continue to clarify the financial
8 bid from Hydro One who was the
9 highest financial bid."

10 MR. JOHN ROCKX: Yes.

11 MR. JOHN MATHER: Which I believe was
12 what you were just referring to. Is that correct?

13 MR. JOHN ROCKX: That is correct.
14 That was sort of the outcome of that meeting after the
15 scoring. You know, let's get additional information
16 from -- I'll call it the highest financial bid and the
17 highest overall bid.

18 MR. JOHN MATHER: Do you recall how
19 that decision was arrived at?

20 MR. JOHN ROCKX: Decision of?

21 MR. JOHN MATHER: Well, it says here a
22 decision of the STT to -- that "the STT decided to
23 continue to have discussions with PowerStream" and "to
24 continue to clarify" with Hydro One.

25 Do you recall how that decision was

1 made?

2 MR. JOHN ROCKX: Well, I'll -- I'll
3 indicate again that usually the -- I'll say it -- the
4 individuals leading the -- the meeting typically would
5 have been Dean and -- Dean Muncaster and Ed -- Ed
6 Houghton would have been the primary parties that were
7 leading the discussions. So, you know, there was some
8 discussion, and, you know, you got to bring this to a
9 hold.

10 So I think -- well, I think -- I mean,
11 you know, obviously when you -- after -- and there was
12 a ranking prior to. Don't get me wrong here. So --
13 and there would have been a presentation of the
14 scores, and -- and it would have been identified that
15 PowerStream overall -- when you added the qualitative
16 and quantitative scores, they were the top bids.

17 So you know -- so that one would have
18 come out, you know, you're going to have a conclusion.
19 So Ed and -- or Deal would've said lets get additional
20 clarification with those folks on a number of issues.

21 And then secondarily, you know, Dean, I
22 guess he was a -- a seasoned individual, you know,
23 he'd been in business for quite some time, he probably
24 said let's -- let's, you know, do a second, you know,
25 check here and -- and let's follow-up with the highest

1 bid as well, was sort of the outcome of that
2 discussion, after this, you know, discussion of
3 issues.

4 One other item I do recall that came up
5 as well, and this was more with -- well, any of the
6 bids, but certainly with the PowerStream bid, was the
7 discussion at this meeting as well that, you know,
8 let's -- so there was a recognition, there was
9 disparity in the dollars, but there was also a
10 discussion on some other issues in terms of the
11 shotgun clause.

12 The shotgun clause was given a little
13 bit of grief to the STT at that point in time that was
14 outlined in PowerStream's bid. That was a -- that was
15 an issue that needed to be resolved as well that came
16 out of this meeting.

17 MR. JOHN MATHER: So on that last
18 point, what do you recall about the discussion --

19 THE HONOURABLE FRANK MARROCCO: Well,
20 can -- can -- just before you get into the shotgun
21 clause --

22 MR. JOHN MATHER: Yes.

23 THE HONOURABLE FRANK MARROCCO: -- why
24 was there a desire to clarify the financial bid from
25 Hydro One when they made a decision that PowerStream

1 was the highest bid overall?

2 MR. JOHN ROCKX: I think it's more --
3 I know the scoring criteria, you know, as everybody is
4 aware was -- I'll say it's 70 percent for qualitative
5 strategic partner criteria and --

6 THE HONOURABLE FRANK MARROCCO: I know
7 that.

8 MR. JOHN ROCKX: And 30 percent
9 financial.

10 I think it's more maybe, you know,
11 let's -- let's follow up and see what's there. I
12 mean, the deductions were -- were large enough, I
13 guess, I'll say as well, you know, in terms of --

14 THE HONOURABLE FRANK MARROCCO: No,
15 but I don't understand --

16 MR. JOHN ROCKX: Okay.

17 THE HONOURABLE FRANK MARROCCO: --
18 they -- they decide that PowerStream's the highest bid
19 overall --

20 MR. JOHN ROCKX: Yes.

21 THE HONOURABLE FRANK MARROCCO: --
22 what difference does it make whether Hydro One,
23 whether you clarify Hydro One or not? Like, why?

24 Was there some interest still in the
25 Hydro One bid?

1 MR. JOHN ROCKX: Financially, yes, I
2 mean as a strategic partner I'm going to suggest, you
3 know, and that was ultimately the goal of the RFP, you
4 know, it was to find a strategic partner. Certainly,
5 you know, less interest in Hydro One.

6 THE HONOURABLE FRANK MARROCCO: But
7 they ask you to clarify it. You -- you deducted \$4.1
8 million from the Hydro One bid.

9 MR. JOHN ROCKX: Yes.

10 THE HONOURABLE FRANK MARROCCO: For
11 unassumed liabilities.

12 MR. JOHN ROCKX: M-hm.

13 THE HONOURABLE FRANK MARROCCO: Was it
14 -- did it still make a difference to them what the
15 actual Hydro One bid was, and is that why they asked
16 you to clarify it?

17 MR. JOHN ROCKX: I think just to get
18 the -- the information correct, you know, I say --
19 let's go back and clarify this so that ultimately when
20 you finalize -- I say this was iteration 1, I'll call
21 it, of the -- of the matrix, you know, as you get
22 additional information.

23 So it's let's just get the -- get the
24 facts straight, you know, in terms of the -- the
25 leading bids, financially and -- and overall.

1 To your point, Your Honour, I mean if
2 they had a different number at a later date, I mean,
3 at that meeting Hydro One scored the, you know, the
4 maximum 30 on the financial component. So if they had
5 a different number, let's say a little higher, it
6 still would have been 30, you know, they would still
7 get the 30 marks across the board for the financial
8 component, so.

9 THE HONOURABLE FRANK MARROCCO: But
10 they were still interested in the \$4.1 million in
11 unassumed liabilities because they asked you to
12 clarify it.

13 MR. JOHN ROCKX: That's -- that's --
14 they wanted to get more clarity on that, yes.

15 I mean it is -- I mean, yeah. I mean,
16 you just want to get the facts straight --

17 THE HONOURABLE FRANK MARROCCO: It is
18 \$4.1 million?

19 MR. JOHN ROCKX: Yes, it is.

20 THE HONOURABLE FRANK MARROCCO: And --
21 and -- all right. Okay.

22 MR. JOHN ROCKX: It is. It is.

23 THE HONOURABLE FRANK MARROCCO: I
24 understand.

25 MR. JOHN ROCKX: Ultimately, you know,

1 I don't know, I guess they have to summarize this, you
2 know, process to Council or whoever, you know, just
3 saying here's -- here's the best information as they
4 round it out, so. So let's get more clarity on -- on
5 the bids.

6 THE HONOURABLE FRANK MARROCCO: All
7 right, Mr. Mather, go ahead.

8

9 CONTINUED BY MR. JOHN MATHER:

10 MR. JOHN MATHER: Okay. Related to
11 that, and we'll walk through them, you do make two
12 further Excel presentations or documents that further
13 adjust the bids.

14 Was there any further scoring of the
15 financial components after this November 28th meeting?

16 MR. JOHN ROCKX: Not -- not to my
17 recollection, no.

18 MR. JOHN MATHER: Do you recall if
19 there was any discussion about whether there should be
20 further scoring after the further adjustments?

21 MR. JOHN ROCKX: I do not recall, no.

22 MR. JOHN MATHER: Do you know why you
23 reached out to Hydro One and PowerStream for
24 clarification the day before the scoring meeting?

25 MR. JOHN ROCKX: Well, those were -- I

1 mean in a divestiture process, you know, and you
2 remember I'm an accountant, so I always look at
3 numbers and probably put numbers a little bit higher,
4 dollars versus I'll say a qualitative factors, but
5 certainly I wanted to have clarity on those, and those
6 are the ones that were the two leading or top
7 financial bids, so let's get this -- get the facts,
8 you know, correct, let's get the clarity in here, I
9 want to make sure that the interpretation is done
10 correctly.

11 MR. JOHN MATHER: Did you reach out to
12 them on your own initiative or at the direction of
13 someone?

14 MR. JOHN ROCKX: I don't recall. I
15 know with respect to Hydro One, I -- I did send a --
16 an email to Ed Houghton saying here's my proposed
17 email to Hydro One, you know, I want to pursue it and,
18 yes, so that was sent prior to the Hydro One propo --
19 or email going out.

20 I don't recall with respect to the
21 other ones. I'm sure I've got -- I'm sure I would've
22 gone to -- to Ed and just say, you know, maybe on a
23 phone call or something I don't -- I don't recall, but
24 I'm sure I would have said I'd like to pursue these
25 parties and follow up with additional clarification

1 questions.

2 MR. JOHN MATHER: Did you expect that
3 they would get back to you before the scoring meeting
4 the following day, on November 28th?

5 MR. JOHN ROCKX: You -- you'd hope --
6 you'd hope that they -- they might. But you know, I -
7 - I couldn't -- you know, it was over the weekend.

8 In -- you know, PowerStream did get
9 back the following morning, Monday morning, prior --
10 prior to the meeting Hydro One was after. It was the
11 following -- it was a Tuesday -- Tuesday afternoon.

12 MR. JOHN MATHER: Was there ever --
13 were you aware of any discussions about delaying the
14 scoring of the financial components until you heard
15 back from PowerStream and Hydro One about the
16 clarifications you sought?

17 MR. JOHN ROCKX: No, I don't recall
18 anything. I think those meetings were scheduled with,
19 you know, ten -- ten individuals or how many people
20 were there and -- yes.

21 The process was -- was pretty tight at
22 the end, I mean, they were trying to, as I understand
23 it, trying to get, you know, the selected proponent
24 done before Christmas and I believe Dean Muncaster was
25 going on vacation around December 12th or something

1 around there. So that probably compressed their
2 timeline as well.

3 MR. JOHN MATHER: Did you ever suggest
4 that the meeting could be delayed so you could get
5 clarity from the -- from PowerStream and Hydro One?

6 MR. JOHN ROCKX: I -- I did not put in
7 a request. I did want to get clarity though, yes, on
8 the offers.

9 MR. JOHN MATHER: Why didn't you make
10 a request or raise that issue?

11 MR. JOHN ROCKX: I don't know, it --
12 it really wasn't our process. I think they had the
13 dates laid out, I -- you see in some of the prior
14 documents that they were marching down the path in
15 terms of, you know, setting up meetings to --
16 including Town Council meetings, I'm not sure how long
17 that process is, but they sort of set dates and -- and
18 so moving forward on the process, so.

19 MR. JOHN MATHER: So looking at
20 paragraph 24 of your affidavit and the first part of
21 the paragraph you discuss how -- that either Ms. Hogg
22 or Mr. Houghton collected the proposal scores and
23 there was a brief presentation setting out the
24 results.

25 If we could pull up CPS11 -- sorry,

1 11306. If we could actually pull it up in Relativity
2 so we could see it in that form.

3 So, Mr. Rockx, does this spreadsheet
4 look familiar to you?

5 MR. JOHN ROCKX: I've seen this
6 before, yes.

7 MR. JOHN MATHER: So it's our
8 understanding that this is the spreadsheet that was
9 populated with the scores of the RFP results.

10 Is that what you understand?

11 MR. JOHN ROCKX: Yes.

12 MR. JOHN MATHER: So if we could go to
13 the shares tab. So for the shares tab, you'll see Mr.
14 Rockx, that there is no entries in -- in the actual
15 spreadsheet itself. But if you go to the next tab
16 called "Totals", we see that the financial component -
17 - there is totals for the financial component across
18 the top, 207, 270, 243, 191.

19 Do you recall how those total numbers
20 were arrived at?

21 MR. JOHN ROCKX: We -- we weren't --
22 we weren't doing the scoring, per se. I mean I --
23 I'll say that it was run by Collus Power and -- and
24 when I say that Pam Hogg, you know, would have been
25 the individual as secretary to -- to compile the

1 scores when they came in and would have -- would have
2 put them into the -- the model here, so.

3 MR. JOHN MATHER: I understand you
4 were at the meeting though. Is that cor --

5 MR. JOHN ROCKX: Yes.

6 MR. JOHN MATHER: Okay. Do you recall
7 how these scores were -- were arrived at at the
8 meeting?

9 MR. JOHN ROCKX: Well, the -- the --
10 on the financial component?

11 MR. JOHN MATHER: Yes.

12 MR. JOHN ROCKX: Oh. Well, you know,
13 every individual would have been asked to -- to --
14 would have been asked to -- to rank the -- to rank the
15 bids.

16 MR. JOHN MATHER: Is that you
17 recollection, they were asked to rank --

18 MR. JOHN ROCKX: That's my
19 recollection, yes.

20 MR. JOHN MATHER: And did they say a
21 number or did they give a ranking?

22 MR. JOHN ROCKX: Oh. I think they
23 would have given a number, yes. I -- I --

24 MR. JOHN MATHER: It sounds like
25 you're not sure.

1 MR. JOHN ROCKX: I -- I can't ex --
2 explicitly say there. I see that it was the thirties
3 for PowerStream, which would have been expected as the
4 top bid.

5 MR. JOHN MATHER: And then, with
6 respect to this meeting, you mentioned in an earlier
7 answer that there was some discussion about the
8 shotgun clause and PowerStream's offer.

9 What do you recall about that
10 discussion?

11 MR. JOHN ROCKX: Well, since it was
12 the highest overall bid, you know, let's get some
13 further discussions with PowerStream to clarify their
14 bid, enhance their bid and see what you can do to --
15 to that bid.

16 And the one (1) thing that was -- was,
17 you know, a major issue that needed to be dealt with
18 from, you know, the STT's perspective was this shotgun
19 requirement. So, that was an item that needed to be
20 discussed with PowerStream in terms of, you know, if -
21 - if we're going to proceed with, we need to have some
22 kind of mutually acceptable arrangement that would,
23 you know, deal with exit strategies in a shareholders
24 agreement.

25 MR. JOHN MATHER: Do you recall any

1 particulars of that discussion, including what
2 concerns were raised?

3 MR. JOHN ROCKX: Well, it was -- it
4 was just it was not -- they didn't want to have a
5 shotgun clause in an ideal world, yes. Now, I -- I do
6 comment that two (2) -- three (3) of the -- three (3)
7 of the bids had shotgun clauses in them, so.

8 MR. JOHN MATHER: I'm about to move to
9 another area. I'm happy to continue or...

10 THE HONOURABLE FRANK MARROCCO: Well,
11 we can -- we can take the morning -- we'll take a ten
12 (10) minute break. But I'm trying to understand. Was
13 there some discussion of going back to PowerStream and
14 asking for more money?

15 MR. JOHN ROCKX: I -- I think -- and
16 my recollection -- I believe that was one (1) of the
17 topics that came up, as well, saying we need to --

18 THE HONOURABLE FRANK MARROCCO: Is --
19 is that why they wanted to clarify whether there was a
20 \$4 million deduction from the Hydro One offer or not?

21 MR. JOHN ROCKX: No. I think they
22 need -- you know, they're -- PowerStream was a second
23 bid, so they -- you know, if it's the over -- highest
24 overall bid, you know, in any normal divestiture, at
25 least -- you know, maybe it's a little different in

1 the municipal sector, but certainly in the private
2 sector, you know, you -- you get the bids and you do a
3 second round and see what -- see if parties will throw
4 a little bit more on the table, so.

5 THE HONOURABLE FRANK MARROCCO: But --
6 but wouldn't it be -- wouldn't -- wouldn't it be
7 important to know if -- if the Hydro One bid was 14
8 million --

9 MR. JOHN ROCKX: M-hm.

10 THE HONOURABLE FRANK MARROCCO: -- or
11 18 million --

12 MR. JOHN ROCKX: M-hm.

13 THE HONOURABLE FRANK MARROCCO: -- in
14 -- in terms of when you're asking people to put up
15 more money because --

16 MR. JOHN ROCKX: Yes.

17 THE HONOURABLE FRANK MARROCCO: -- a
18 difference between the two (2) bids would be greater,
19 right?

20 MR. JOHN ROCKX: Yes. Fair. Fair.

21 THE HONOURABLE FRANK MARROCCO: But
22 you weren't -- that didn't come up?

23 MR. JOHN ROCKX: Well, they -- they
24 recognized that Hydro One was the highest financial
25 bid, so you need -- you know, in an ideal world, you

1 get more money from the overall bid, you know, to --
2 to narrow that gap.

3 THE HONOURABLE FRANK MARROCCO: Right.

4 MR. JOHN ROCKX: Yes.

5 THE HONOURABLE FRANK MARROCCO: So --
6 so it's a -- it would be important to know what the
7 gap was?

8 MR. JOHN ROCKX: Fair enough. Fair
9 enough. Yes. Right.

10 THE HONOURABLE FRANK MARROCCO: Well,
11 we'll take ten (10) minutes.

12

13 --- Upon recessing at 11:03 a.m.

14 --- Upon resuming at 11:14 a.m.

15

16 THE HONOURABLE FRANK MARROCCO: I
17 should -- I should tell you that the -- the Town
18 requires this room, we will -- and has asked us to
19 stop at 3:30, so we will stop at 3:30 today for that
20 reason. We'll start tomorrow at 9:00.

21

22 CONTINUED BY MR. JOHN MATHER:

23 MR. JOHN MATHER: So Mr. Rockx, one
24 (1) additional question in relation to the shotgun
25 clause in the conversation that happened at the STT on

1 November 20th, 2011.

2 Do you recall why the STT did not want
3 a shotgun clause?

4 MR. JOHN ROCKX: In -- in general, I
5 guess, you know, you can have disadvantages with
6 shotgun clauses. I mean, they're, you know, I'm going
7 to suggest in -- in a scenario such as this, you know,
8 you can have a financial mismatch, for example, in
9 terms of the resources to execute on a -- on a shotgun
10 in a short time frame.

11 MR. JOHN MATHER: Can you just expand
12 on what you mean by that?

13 MR. JOHN ROCKX: Typically, you know,
14 with a shotgun, if a -- a municipality such as the
15 Town of Collingwood, it might be harder to pull
16 together the resources in -- in the timelines within a
17 shotgun to buy out the other party who might have
18 deeper pockets, for example, or ability to turn around
19 quicker in terms of, you know, on a shotgun.

20 MR. JOHN MATHER: And was it your
21 impression, then, that that was something that the
22 Strategic Task Team was alive to on November 28th,
23 2011?

24 MR. JOHN ROCKX: Sorry, that they were
25 --

1 MR. JOHN MATHER: Something that they
2 were alive to, an issue they were -- and issue they
3 were -- is that the issue they had, which --

4 MR. JOHN ROCKX: No. It was
5 identified as an issue and -- and -- for follow-up
6 with PowerStream, yes, if you can get that modified.
7 There are -- there are other exit mechanisms you can
8 put into a shareholders agreement.

9 MR. JOHN MATHER: If we go to Exhibit
10 L to your affidavit, which is page 163.

11

12 (BRIEF PAUSE)

13

14 THE HONOURABLE FRANK MARROCCO: Just -
15 just let me understand that -- that you wanted to
16 modify the time period that you had to react.

17 What was -- do you know the
18 modification that they were seeking?

19 MR. JOHN ROCKX: Something other than
20 a shotgun, in an ideal world. You know, there's other
21 mechanisms you can have for exit strategies. You
22 know, you can have put -- put options, and things of
23 that nature.

24 THE HONOURABLE FRANK MARROCCO: So the
25 idea was to explore another way of exiting the deal

1 other than using the -- a shotgun clause?

2 MR. JOHN ROCKX: In -- in the
3 shareholders agreement, that is correct, Your Honour.

4 THE HONOURABLE FRANK MARROCCO: All
5 right.

6

7 CONTINUED BY MR. JOHN MATHER:

8 MR. JOHN MATHER: So this is Exhibit L
9 to your affidavit, and if you scroll down.

10

11 (BRIEF PAUSE)

12

13 MR. JOHN MATHER: This is an email
14 that you sent to Rick Stevens at Hydro One on November
15 27th, 2011 in which you set out the clarifications
16 that you were seeking wwith respect to Hydro One's
17 bid, which we have discussed.

18 The first clarification is you wanted
19 confirmation whether this share of -- this share offer
20 anticipates the inclusion of all long-term
21 liabilities.

22 And I take it those are the liabilities
23 you've already identified?

24 MR. JOHN ROCKX: M-hm. Yes.

25 MR. JOHN MATHER: And then the section

1 -- the second request is:

2 "Hydro One has also indicated the
3 following assumptions were built
4 into its pricing structure: a 2011
5 rate base of 17.9 million, and an
6 immaterial net balance of regulatory
7 assets and liabilities."

8 Can you comment on the quantification
9 of and the impact of these assumptions on the proposed
10 pricing structure? So we've already talked about the
11 net balance of regulatory liabilities or immaterial
12 net balance.

13 What were you looking for with respect
14 to clarification on the 2011 rate base?

15 MR. JOHN ROCKX: You wanted to get a
16 sense of, you know, what -- what the impact on the --
17 in the -- in the price that was offered for the
18 shares, if there was anything that would be deducted
19 out of there.

20 I mean, there was the -- the conditions
21 in the original three (3) page offer -- financial
22 offer from Hydro One that listed the number of items
23 that are in it, says we need a -- \$17.9 million, you
24 know, our -- our offer -- the pricing of our offer is
25 conditional -- well, based upon, sorry, is based upon

1 a \$17.9 million rate base, you know, and -- and not a
2 material balance in net regulatory.

3 So just clarification of some of those
4 bullets, to make sure that their -- their proposed
5 share offer would -- would stand at what they -- what
6 they indicated.

7 MR. JOHN MATHER: So to get a better
8 sense of to the extent the rate base changed, how that
9 would affect Hydro One's offer?

10 MR. JOHN ROCKX: Yes. That, and --
11 and some of the deductions for some of these long-term
12 liabilities.

13 MR. JOHN MATHER: So if we continue on
14 to Exhibit N, which we can just scroll down. Or
15 actually, no, let's jump ahead to page 193, Exhibit N.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So keep scrolling.
20 Scroll down.

21 So in this email, Mr. Rockx, is the
22 response you received from Hydro One to the questions
23 you posed. And if you need to take a moment to review
24 it, go ahead.

25 You say in your affidavit that Hydro

1 One's response did not answer all of your questions.
2 And so the question I have for you is, what did Hydro
3 One not answer?

4 MR. JOHN ROCKX: Yeah. If you can go
5 a little further on this, clearly we were comfortable
6 that the \$2.7 million IO infra -- Ontario --
7 Infrastructure Ontario debt was, you know, not going
8 to be adjustment to the offer.

9 If you go in -- in point 2, bullet 2,
10 there, it certainly, you know, says here that the --
11 the liabilities would be assumed under there, but we
12 still wanted to get clarification on whether there
13 would be any impact from the net regulatory
14 liabilities on the, you know, the -- the proposed
15 purchase price of thirteen point six (13.6). And, you
16 know, under point 2, you know:

17 "The proposal is based upon a
18 variety of factors and assumptions,
19 including but not limited to
20 estimates for a rate base, and
21 assets and liability (including
22 regulatory assets and liabilities)."

23 So when we read that, we weren't sure
24 how that lined up still with the original offer, where
25 they had indicated that their offer -- the pricing of

1 the offer was still assuming and a not material
2 balance in net regulatory liabilities. And the
3 balance of that was \$1.4 million back in 2010.

4 So we just wanted to have absolute
5 clarity: would that adjust the purchase price? So,
6 you know, in the follow-up iteration, if you will, of
7 the matrix, we -- the IO \$2.7 million deduction
8 disappeared. We were clear on that one. And the
9 \$1.412 million regulatory, we still wanted to just
10 make sure it didn't impact on the purchase price, is -
11 - is really what it is, because they still had this
12 comment that, you know, their -- their proposal is
13 based on various factors as listed here in point 2.

14 THE HONOURABLE FRANK MARROCCO: He --
15 he says in the previous paragraph:

16 "Based on the proposed price,
17 recapitalization, and promissory
18 note payment and dividend, the Town
19 would receive total cash proceeds of
20 eighteen point five (18.5)."

21 He's saying there that the Town would
22 receive eighteen point five (18.5) total cash, right?

23 MR. JOHN ROCKX: Based upon their
24 proposal, subject to, if, you know, if there was any
25 adjustments that would be made to elements of that

1 proposal.

2 THE HONOURABLE FRANK MARROCCO: Okay.

3 MR. JOHN ROCKX: And that's what we
4 want absolute clarity on. We just --

5 THE HONOURABLE FRANK MARROCCO: Well,
6 okay.

7 MR. JOHN ROCKX: -- wouldn't want to
8 assume, you know.

9

10 CONTINUED BY MR. JOHN MATHER:

11 MR. JOHN MATHER: In the -- in the
12 second paragraph of point 1, he says:

13 "The proposal includes the
14 assumption of the estimated pro rata
15 shares of assets and liabilities."

16 What did you understand that to mean?

17 MR. JOHN ROCKX: Well, we understood
18 that the deal would encompass, you know, you're -- you
19 taking the whole balance sheet. There would be no
20 exclusions. However -- so it was part -- it was part
21 of the deal, but once again, the pricing -- we just
22 wanted to make sure there was no adjustments to the
23 pricing in terms of on the shares in respect of any
24 liabilities that might be there.

25 And once again, it was a little bit of

1 a -- a clarity once again that still stuck in the back
2 of her mind, the original offer which did have this
3 net regulatory liability specifically. It was
4 identified net regulatory liabilities would not be
5 material.

6 So, you know, so we just wanted to get
7 clarity on that, and -- and hence our follow-up
8 request for a phone call. You know, let's have a
9 phone call. Let's talk it through, tell me what I
10 need to hear. We're good. I just wanted clarity.

11 MR. JOHN MATHER: So it's my
12 understanding between receiving this email and that
13 follow-up phone call, which we'll spoke -- we'll speak
14 to, you did do a further adjustment based on the
15 information in this email.

16 Is that correct?

17 MR. JOHN ROCKX: It was a, you know, a
18 second iteration was prepared.

19 MR. JOHN MATHER: So if we could pull
20 up CPS2699.

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: And if we go to the
25 main tab, the offers tab.

1 So Mr. Rockx, this is the native or
2 Excel format of the Exhibit O to your affidavit -- davit
3 --

4 MR. JOHN ROCKX: Yes.

5 MR. JOHN MATHER: -- which is your
6 second iteration.

7 Is that correct?

8 MR. JOHN ROCKX: Yes.

9 MR. JOHN MATHER: Okay. So if we
10 could go to the middle of the page, where we can see
11 the total cash considerations for Hydro One.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN ROCKX: Okay.

16 MR. JOHN MATHER: So we see there
17 three (3) main components less 1.4 million, regulatory
18 liabilities less 1.1 million, rate base shortfall less
19 450K lower dividend.

20 So you've explained to us that -- why
21 you continued to deduct the regulatory liabilities.
22 What was the deduction for the 1.1 million rate base
23 shortfall?

24 MR. JOHN ROCKX: Yeah. We were --
25 were starting to look a little bit more in terms of

1 the -- the -- you know, the -- the working capital
2 adjustments to make sure it's an apples-to-apples
3 comparison.

4 As I indicated earlier, that, you know,
5 everybody was making sort of assumptions on how much
6 you could refinance the -- the company and, you know,
7 if one party paid a bigger dividend than the others,
8 certainly the cash component would be higher, but the
9 remaining company would be -- you know, have a little
10 bit less value if you pay more dividends. It's just
11 the nature of -- of how it is, you pay out a dividend,
12 a higher dividend.

13 So, it was trying to deal with -- with
14 the differences in that, and specifically, you know,
15 within the PowerStream bid you can see that we were
16 estimating that there would be a working capital
17 shortfall under that bid, so.

18 MR. JOHN MATHER: And it's the same
19 amount, 1.1 million?

20 MR. JOHN ROCKX: That's correct.

21 THE HONOURABLE FRANK MARROCCO: That
22 would be the same for all the bidders though, right?

23 MR. JOHN ROCKX: It would be, that's
24 correct.

25 THE HONOURABLE FRANK MARROCCO: So you

1 -- you deducted 450,000 on account of the lower
2 dividend?

3 MR. JOHN ROCKX: Yeah. I see that as
4 well and that's -- that's -- correct.

5 THE HONOURABLE FRANK MARROCCO: But
6 you -- did you -- did -- you didn't do that for
7 PowerStream?

8 MR. JOHN ROCKX: Well, no. It's
9 coming out -- the 1.1 was coming out of their bid.
10 The -- the \$13.4 million was 7.3 million plus 5.5 plus
11 1.71 minus 1.1, so it's deducted out there.

12 THE HONOURABLE FRANK MARROCCO: I
13 understand that the 1.1 is deducted out, but in the
14 Hydro One bid it says less 450,000 lower dividend.

15 MR. JOHN ROCKX: Right.

16 THE HONOURABLE FRANK MARROCCO: I just
17 didn't see that on the PowerStream -

18 MR. JOHN ROCKX: Yeah. No. And
19 that's -- that's a function of --

20 THE HONOURABLE FRANK MARROCCO: Would
21 -- wouldn't it be -- wouldn't a dividend be lower for
22 everybody because the -- the -- the -- because the --
23 because of the adjustment to financial statements?

24 MR. JOHN ROCKX: This -- this
25 adjustment --

1 THE HONOURABLE FRANK MARROCCO: The
2 working capital -- the working capital would apply to
3 everybody.

4 MR. JOHN ROCKX: It would apply to
5 everybody, that is correct.

6 THE HONOURABLE FRANK MARROCCO: So the
7 \$450,000 deduction should apply to everybody.

8 MR. JOHN ROCKX: Well, this one was to
9 -- the fact that under the Hydro One transaction,
10 which is once again trying to make the -- the
11 dividends somewhat equal.

12 So, in the Hydro One offer of a recap
13 at \$6.4 million versus 5.5 million, not only would
14 there be the working capital shortfall which applied
15 everybody but Hydro One assumed a higher
16 recapitalization dividend, i.e., the 6.4 minus the
17 5.5, which, if you borrow the money and paid it out,
18 the Company once again would be worth -- that's a
19 \$900,000 difference. The Company would be worth
20 \$900,000 less because you paid more dividends.

21 So we're sort of saying, you know,
22 yeah, the cash is higher but the ongoing entity has a
23 reduced value and we took 50 percent of that value.

24 THE HONOURABLE FRANK MARROCCO: Okay.

25

1 CONTINUED BY MR. JOHN MATHER:

2 MR. JOHN MATHER: So is that \$450,000
3 number a function of the fact that Hydro One is
4 proposing to do the dividend after the close of the
5 Transaction as opposed to for -- before?

6 MR. JOHN ROCKX: It's 50 percent of --
7 of a -- of a difference between the assumed dividend
8 amount, yes, in total.

9 Now, this version, I believe, of the
10 iteration, I think it went to Ed and Dean. I didn't
11 go to a broader group. It was --

12 MR. JOHN MATHER: That's set out in
13 your affidavit.

14 So if we could go to paragraph 410 of
15 the Foundation Document.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So this paragraph,
20 Mr. Rockx, summarizes or sets out an email that you
21 sent to John Glicksman at PowerStream in which you
22 sought clarification with respect to PowerStream's
23 financial bid.

24 The first question is similar to the
25 question to Hydro One about whether or not all

1 liabilities were being assumed.

2 And then if we scroll down to the next
3 question. And then it says:

4 "PowerStream has also indicated that
5 the closing date financial
6 statements of Collus Power will need
7 to be -- meet the OEB's deemed level
8 of net working capital. Can you
9 clarify or roughly quantify what
10 this deemed net working capital
11 balance will approximate?"

12 I take it that this question was
13 looking to understand what the -- what PowerStream
14 thought the effect may be if the working capital was
15 either greater or lower than the deemed working
16 capital.

17 Is that a fair summation?

18 MR. JOHN ROCKX: That is correct. And
19 if you recall in version 1 of the matrix, there was
20 that question about net working capital, so this is
21 sort of a follow-up to that, just -- or it was sent
22 prior to that actually, in conjunction with that.

23 MR. JOHN MATHER: So -- and if we
24 scroll down, paragraph 411, we see that this
25 summarizes -- my understanding from your affidavit and

1 the documents is you then had a conversation with Mr.
2 Glicksman which you then reported to Mr. Houghton in
3 the form of an email. And in response to your two (2)
4 questions, PowerStream indicated that:

5 "It would assume all existing long-
6 term liabilities on the balance
7 sheet of Collus Power without any
8 change in the share offer price.

9 And then with respect to the working
10 capital, you wrote that you indicated to Mr. Houghton
11 that the net working capital deduction of December
12 31st, 2010, resulted in approximately \$1.1 million
13 shortfall, but that the projected pre -- 2011, 2012
14 pre-closing earnings/cash flow could reduce this gap
15 considerably.

16 We've seen already that you applied the
17 1 -- \$1.1 million figure with respect to working
18 capital shortfalls.

19 Did that figure come from Mr. Glicksman
20 at PowerStream?

21 MR. JOHN ROCKX: I guess, yes, it
22 would have. I mean, it was in some of his
23 calculations. Yes.

24 MR. JOHN MATHER: And we saw already
25 that PowerStream's offer was also adjusted for that

1 \$1.1 million.

2 MR. JOHN ROCKX: Yes.

3 MR. JOHN MATHER: So now I'd like to
4 pull up paragraphs 31 -- sorry, actually let's pull up
5 KPM1914 of your --

6 THE HONOURABLE FRANK MARROCCO: Well,
7 just before you do that, was the -- this is November
8 28th, which is the date on the email down there. You
9 see that on the screen.

10 MR. JOHN ROCKX: Yes.

11 THE HONOURABLE FRANK MARROCCO: Was
12 the strategic partnership task team told that there
13 was a projected shortfall of \$1.1 million?

14 MR. JOHN ROCKX: I don't recall
15 specifically. I do not recall. I don't know. This
16 was in the morning of, so the morning before the
17 meeting which I think happened in the early afternoon.

18 THE HONOURABLE FRANK MARROCCO: But --
19 but wouldn't that be important for them to know
20 because there -- there's going to be one -- if this is
21 correct --

22 MR. JOHN ROCKX: M-hm.

23 THE HONOURABLE FRANK MARROCCO: --
24 there -- there's going to be a short -- they're going
25 to -- they're going to be short what they think

1 they're going to get --

2 MR. JOHN ROCKX: Yes.

3 THE HONOURABLE FRANK MARROCCO: -- by
4 \$1.1 million.

5 MR. JOHN ROCKX: Yes.

6 THE HONOURABLE FRANK MARROCCO: No
7 matter who it is.

8 MR. JOHN ROCKX: I don't recall if it
9 was -- it certainly wasn't on the -- on the matrix
10 that was presented to that meeting. I mean, I would
11 have had the call with Mr. Glicksman in the morning,
12 jumped in the car to come to Collingwood, so it's
13 unlikely we -- I couldn't adjust the -- the matrix or,
14 you know -- was --

15 THE HONOURABLE FRANK MARROCCO: No, I
16 understand that.

17 MR. JOHN ROCKX: So --

18 THE HONOURABLE FRANK MARROCCO: It's
19 just that --

20 MR. JOHN ROCKX: I can't recall --

21 THE HONOURABLE FRANK MARROCCO: --
22 PowerStream is anticipating a \$1.1 million --

23 MR. JOHN ROCKX: Right.

24 THE HONOURABLE FRANK MARROCCO: --
25 shortfall.

1 MR. JOHN ROCKX: And I don't recall if
2 that was brought up. I honestly do not recall.

3 THE HONOURABLE FRANK MARROCCO: Yeah.
4 Okay, thank you.

5

6 CONTINUED BY MR. JOHN MATHER:

7 MR. JOHN MATHER: Could we go to
8 KPM1914? What we're pulling up, Mr. Rockx, is the
9 third and final adjustments that were made to the
10 PowerStream and Hydro One bids. We're pulling up the
11 Excel version of Exhibit U to your affidavit.

12 Does that look correct?

13 MR. JOHN ROCKX: Yes.

14 MR. JOHN MATHER: And it's my
15 understanding from your affidavit that it is this
16 presentation that was used as a reference point when
17 you spoke to the Collus Board and the STT on December
18 2nd, 2011?

19 MR. JOHN ROCKX: Sorry, can you go
20 down a little further on this? Yeah, sorry, go on,
21 sir.

22 MR. JOHN MATHER: So it's my
23 understanding that this final version is what was used
24 when you spoke to the STT and the Collus Board on
25 December 2nd, 2011. Is that correct?

1 MR. JOHN ROCKX: That is correct, yes.
2 Can you scroll up just a bit again? Sorry. Yeah,
3 good, thank you.

4 MR. JOHN MATHER: And the numbers that
5 are reflected in total cash considerations, those were
6 the numbers that were presented to Town Council on
7 December 5th, 2011. Is that correct?

8 MR. JOHN ROCKX: That is correct,
9 yeah.

10 MR. JOHN MATHER: So a few questions.
11 So we see with respect to PowerStream, which is in the
12 second column, that the 7.3 figure has been increased
13 to 8 million.

14 And that's a result of the meeting on
15 December 1st, 2011, that you describe in your
16 affidavit?

17 MR. JOHN ROCKX: Sorry, maybe repeat
18 that. I was looking at the numbers.

19 MR. JOHN MATHER: Yeah. So if we look
20 at the second column, we see that for PowerStream's
21 total cash considerations, it's now -- the equity
22 component is \$8 million.

23 Do you see that?

24 MR. JOHN ROCKX: Yes.

25 MR. JOHN MATHER: I understand that

1 that's changed from the version we looked at before
2 because in the interim period there was a meeting with
3 PowerStream in which they increased their equity
4 offer.

5 MR. JOHN ROCKX: That is correct.

6 MR. JOHN ROCKX: That is correct.

7 MR. JOHN MATHER: So if we look at
8 Hydro One's offer, we see that there's the reduction
9 for regulatory liabilities and estimated net working
10 capital shortfall of 1.1 million.

11 What is not there is the 450,000. Do
12 you recall why that was removed?

13 MR. JOHN ROCKX: Yeah. I don't recall
14 specifically,. But certainly, the 1.41 million, we
15 still wanted to get that clarified as in the yellow up
16 above. And then wanted to speak through, you know,
17 the working capital shortfall with Hydro One as well
18 for the 1.1 million. Just wanted further
19 clarification. And yeah. Or we didn't get
20 clarification on that. Yeah.

21 MR. JOHN MATHER: So if we look at
22 PowerStream, we see that PowerStream no longer has a
23 debit for the 1.1 million in working capital
24 shortfall. Instead, that has been moved up with
25 respect to the recapitalization as part of the

1 financing. Do you know why that change was made?

2 MR. JOHN ROCKX: Sorry. Repeat the
3 questions again? Sorry?

4 MR. JOHN MATHER: So the -- in the
5 previous version, PowerStream also had a 1.1 million
6 deduction for net working capital. That's now gone.

7 MR. JOHN ROCKX: Yes. Yes.

8 MR. JOHN MATHER: It appears that it's
9 now been moved up within the recapitalization
10 category. So if you look just immediately above that,
11 I'm just -- want to understand why and how that change
12 was made.

13 MR. JOHN ROCKX: Yeah. So certainly,
14 the -- the amount of the -- the dividend was reduced
15 to 5.3. That was some further calculations done by
16 PowerStream. The one (1) point million estimated
17 shortfall -- when I'm looking, that was -- yeah.

18 I mean, we -- we got a little bit more
19 comfortable that the \$5.3 million dividend would be --
20 you know, would -- was making a little bit more sense.
21 But once again, it was still based upon some
22 pro formas for 2011.

23 The -- the working capital shortfall
24 still -- I guess, under the Hydro One still would
25 represent the difference between now the \$6.4 million

1 total and the revised 5.3, which is a 1.1 million
2 differential.

3 MR. JOHN MATHER: And apologies. I
4 don't necessarily follow up. I just want to
5 understand why 1.1 million continued to be deducted
6 from Hydro One and not PowerStream.

7 MR. JOHN ROCKX: Right.

8 MR. JOHN MATHER: If you can set that
9 out.

10 MR. JOHN ROCKX: You know, and I guess
11 now that I'm looking at it, that 1.1 would have been
12 difference between the \$6.4 million total -- total
13 dividend that was in Hydro One's proposal. And the
14 revised 5.3 that was in PowerStream's proposal, that's
15 \$1.1 million.

16 And I look at this -- you know, I guess
17 looking at it now and -- you know, it was -- you need
18 to be clarified. But certainly, probably should have
19 been half of that 1.1 in this instance. You know, the
20 1.1 should have been out in the -- should be 550.

21 MR. JOHN MATHER: So the 1.1 million
22 under the recapitalization should be 550. What should
23 happen with the other 550?

24 MR. JOHN ROCKX: Well, there still
25 would have been a difference between the amount of

1 total dividends that would have been paid, of which we
2 were trying to adjust what the intention was trying to
3 adjust for the difference between the total amount of
4 dividends that would have been paid under the two (2)
5 offers, one between Hydro One which was at a total
6 dividend of six four and PowerStream at 5.3. So we're
7 saying there's a \$1.1 million differential.

8 So we were trying to quantify that.
9 It's a \$1.1 million gap in the Hydro One bid. I'm
10 just looking at it now. I mean, that should have
11 been -- you know, the 1.1 should have been half of
12 that number in looking at it now because that would
13 have been the difference between the two (2)
14 dividends, and then there should have been that
15 point five (.5) times factor on that because it was
16 paid after the fact. So just trying to reconcile.

17 MR. JOHN MATHER: So how would that
18 change the total cash considerations for either
19 Hydro One or PowerStream?

20 MR. JOHN ROCKX: PowerStream's would
21 have gone up by 550 then.

22 MR. JOHN MATHER: PowerStream's would
23 have increased by 550?

24 MR. JOHN ROCKX: Five fifty (550). So
25 it makes it on an apples to apples, yes. And I'm

1 seeing that in hindsight here, so...

2 MR. JOHN MATHER: Can we go to
3 paragraph 33 of --

4 THE HONOURABLE FRANK MARROCCO: Sorry.
5 I'm still not clear.

6 MR. JOHN ROCKX: M-hm.

7 THE HONOURABLE FRANK MARROCCO: Net
8 share purchase price, you deducted \$1.1 million for
9 estimated net working capital shortfall. And I
10 thought that that problem would be common to all the
11 bids because there's a shortfall and the net working
12 capital which will reduce the dividend.

13 MR. JOHN ROCKX: Yes.

14 THE HONOURABLE FRANK MARROCCO: So --
15 so I guess shouldn't there be a \$1.1 million
16 adjustment to the other bids, including the
17 PowerStream bid?

18 MR. JOHN ROCKX: We could have -- we
19 could have done it that route where we deduct off
20 1.1 -- or a -- well, 1.1 from the other bids and then
21 made the previous adjustment to the Hydro One bid
22 because they had the differential in the amount of
23 assumed overall dividend payments. But this --
24 anyhow, we -- we adjusted it here.

25 So to my point, I guess the 1.1 should

1 have been half of that to get to the same net outcome.

2 THE HONOURABLE FRANK MARROCCO: If you
3 go to the recapitalization, it's a 60/40 debt equity.
4 That's the same -- the same borrowing.

5 MR. JOHN ROCKX: M-hm.

6 THE HONOURABLE FRANK MARROCCO: Three
7 point two (3.2) to the Town, 3.2 to Hydro One, and 1.7
8 to repay the loan.

9 Was Hydro One paying the dividend out
10 after the transaction closed?

11 MR. JOHN ROCKX: They paid the --
12 their proposal indicated to pay it after the closing.
13 That's correct.

14 THE HONOURABLE FRANK MARROCCO: So
15 then 5.3 is the pre-closing dividend to the Town. The
16 shareholder loan is the same.

17 MR. JOHN ROCKX: Yes.

18 THE HONOURABLE FRANK MARROCCO: And
19 then 1.1 is used to finance the estimated shortfall.

20 MR. JOHN ROCKX: Yes.

21 THE HONOURABLE FRANK MARROCCO: So the
22 money to finance the estimated shortfall is coming
23 100 percent from the Town --

24 MR. JOHN ROCKX: The shortfall, it
25 would have come out of --

1 THE HONOURABLE FRANK MARROCCO: --

2 because --

3 MR. JOHN ROCKX: Yeah, sorry.

4 THE HONOURABLE FRANK MARROCCO: No.

5 I'm just trying to understand.

6 MR. JOHN ROCKX: Yes. The -- if there
7 was a \$1.1 million shortfall under the -- under the
8 PowerStream proposal --

9 THE HONOURABLE FRANK MARROCCO: That's
10 happening before the closing.

11 MR. JOHN ROCKX: That would happen
12 before the closing. That's correct.

13 THE HONOURABLE FRANK MARROCCO: So the
14 \$1.1 million shortfall would be fully funded by the
15 Town.

16 MR. JOHN ROCKX: That's correct.

17 THE HONOURABLE FRANK MARROCCO: Not --
18 there's no 50/50 split there.

19 MR. JOHN ROCKX: No. That's correct.

20 THE HONOURABLE FRANK MARROCCO: In the
21 Hydro One bid, the shortfall is funded 50 percent by
22 Hydro One and 50 percent by the Town because that's
23 taking place after?

24 MR. JOHN ROCKX: That's correct.

25 And --

1 THE HONOURABLE FRANK MARROCCO: So the
2 Hydro One bid should not have been reduced by 1.1. It
3 should have only been reduced by 550.

4 MR. JOHN ROCKX: That's correct. And
5 that's what I -- so it just --

6 THE HONOURABLE FRANK MARROCCO: So it
7 would go up by 550.

8 MR. JOHN ROCKX: That's correct,
9 Your Honour.

10 THE HONOURABLE FRANK MARROCCO: I
11 don't understand. I thought you said PowerStream's
12 bid went up.

13 MR. JOHN ROCKX: Well, if I did, that
14 was in error. No. Hydro One's bid would go up by
15 550.

16 THE HONOURABLE FRANK MARROCCO: All
17 right.

18 MR. JOHN ROCKX: If that was my --

19 THE HONOURABLE FRANK MARROCCO:
20 That -- thank you.

21 MR. JOHN ROCKX: Or sorry. Sorry.

22

23 CONTINUED BY MR. JOHN MATHER:

24 MR. JOHN MATHER: Can we go to
25 paragraph 33 of your affidavit.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So in this
4 paragraph, you discuss attending a joint meeting of
5 the STT and the Collus Board. And you made a brief
6 presentation of the updated comparison of the four (4)
7 financial offers which is the versions -- the version
8 we just were looking at.

9 MR. JOHN ROCKX: M-hm.

10 MR. JOHN MATHER: What do you recall
11 about what you said during that presentation?

12 MR. JOHN ROCKX: Once again, I would
13 have gone through the version three (3) of the matrix
14 and presented the bids. Certainly, you know, the
15 focus was on obviously Hydro One and PowerStream as
16 the two (2) leading bids.

17 I was just strictly talking from a
18 financial perspective. I would have indicated that --
19 well, I indicated that Hydro One still had the highest
20 bid -- you know, the highest bid clearly.

21 And that there -- you could see that
22 there was still some yellow sections that need to be
23 clarified. And I, you know, indicated that I was 550
24 short on that one. Hopefully, in an ideal world if we
25 had spoken with -- been able to get that clarified

1 with Hydro One.

2 But certainly, it was the highest bid,
3 and PowerStream was number two (2). And the
4 PowerStream bid, you know, did have a pickup of
5 \$700,000 a prior day.

6 MR. JOHN MATHER: So if we could
7 scroll up in the affidavit to paragraph 29 and 30.

8

9 (BRIEF PAUSE)

10

11 MR. JOHN MATHER: So these paragraphs
12 discuss a conversation you had with Mr. Stevens at
13 Hydro One on December 1st, 2011 --

14 MR. JOHN ROCKX: Yes.

15 MR. JOHN MATHER: -- in which you
16 sought more clarity from Hydro One. And in response,
17 Mr. Stevens indicated to you that Hydro One would --
18 wanted exclusivity before providing more clarity.
19 However, Mr. Stevens advised that they would be
20 willing to review a -- your preliminary calculations.

21 You then reported on that to
22 Mr. Houghton and sought instructions to provide a
23 one (1) page summary. And if we scroll down to
24 paragraph 30, you did not ultimately receive those
25 instructions.

1 When you made the presentation to the
2 Board and the STT on December 2nd, the following day,
3 did you advise them about Hydro One's offer to review
4 the one (1) page summary and the fact that you had not
5 been instructed at that point to do so?

6 MR. JOHN ROCKX: To the -- to the
7 broader committee? I -- I don't -- I -- I wouldn't --
8 I don't believe I did say that. I mean, certainly
9 indicated I had some -- you know, in an ideal world,
10 we have further clarification of -- of their offer and
11 -- and that, yeah, we -- we didn't have that
12 clarification.

13 MR. JOHN MATHER: Did the broader
14 board and committee give you any direction about
15 whether or not further clarification should be sought
16 at that point?

17 MR. JOHN ROCKX: I -- I believe they
18 were charging down on going with the highest overall
19 bid being PowerStream at that point in time, you know.

20 MR. JOHN MATHER: So, I -- I take it
21 from that answer they didn't provide you any
22 direction?

23 MR. JOHN ROCKX: With respect to Hy --
24 Hydro One? No.

25 MR. JOHN MATHER: Did you provide any

1 explanation to the Board or the -- and -- and then the
2 members of the task team that were there, about what
3 the potential impact would be of the clarification you
4 were seeking?

5 MR. JOHN ROCKX: Other -- well, no, I
6 -- well, when I say that, I mean, we -- you could see
7 it was highlighted, the -- the deduction, so they were
8 still shown as being clarifying issues, so it was laid
9 out there.

10 THE HONOURABLE FRANK MARROCCO: But --
11 but the \$2.7 million portion of the \$4 million
12 deduction --

13 MR. JOHN ROCKX: That was --.

14 THE HONOURABLE FRANK MARROCCO: -- had
15 been clarified.

16 MR. JOHN ROCKX: Yes.

17 THE HONOURABLE FRANK MARROCCO: And --
18 and Hydro One was assuming that liability.

19 MR. JOHN ROCKX: Yes, that was -- yes,
20 Your Honour, that was no longer on the version 3.
21 That was long gone, yes.

22

23 CONTINUED BY MR. JOHN MATHER:

24 MR. JOHN MATHER: Do you recall if at
25 the meeting on December 2nd, 2011, there was -- with

1 the Collus Board and the STT, if there was any
2 discussion about the fact that the amount of
3 recapitalization dividend could change, so, at that
4 point in time, it was estimated at 5.3 million, but
5 that that wasn't a final number?

6 MR. JOHN ROCKX: You know, it was a
7 fluid number. I mean, this is at the December 2nd
8 Board meeting -- or a meeting, STT meeting. You know,
9 I -- I think with -- well, with respect to the -- that
10 portion of the bid there was some -- you know, some
11 variability depending upon the closing balance sheet,
12 so, you know, there -- there may have been a little
13 bit of discussion around that piece.

14 The other two (2) pieces were fixed in
15 terms of the note and the share price.

16 MR. JOHN MATHER: Do you recall if
17 that discussion happened?

18 MR. JOHN ROCKX: If it was, it wasn't
19 lengthy, so I don't -- don't recall specifically, no.

20 MR. JOHN MATHER: Do you recall if
21 that discussion happened with the STT prior to that
22 meeting at any point?

23 MR. JOHN ROCKX: I do not recall.

24 MR. JOHN MATHER: So, three (3) days
25 after the December 2nd meeting there was an in camera

1 presentation to Town Council regarding the results of
2 the RFP process.

3 Do you recall attending that meeting?

4 MR. JOHN ROCKX: Yes, I -- yes, I was
5 there.

6 MR. JOHN MATHER: What do you recall
7 about that meeting?

8 MR. JOHN ROCKX: I have to check my
9 notes here and see. Well, there was -- it was a
10 Council update that was presented. And I'm trying to
11 remember here. I -- I believe it was something that
12 was primarily -- Ed was the primary speaker. Ed
13 Houghton was the primary speaker at that. I don't
14 even recall if I spoke at it.

15 But, you know, it went through the
16 various scoring tabulations was what was presented at
17 that meeting, you know, laying out here's the four (4)
18 bids, you know, with some detail on how the -- the STT
19 had scored both the qualitative and the quantitative
20 pieces of that and here's the overall scoring.

21 There was a one (1) pager at the back
22 that sort of went through the quantitative, the
23 financial pieces, at the back. But, once again, Ed --
24 it was -- Ed was speaking to Council in camera there.
25 I was more or less there attending if there was any

1 questions that came out that related to the financial
2 side of things.

3 MR. JOHN MATHER: So, do you recall if
4 there was any questions?

5 MR. JOHN ROCKX: I do not recall
6 specific questions, no.

7 MR. JOHN MATHER: Do you recall if you
8 presented the matrix that we've been looking at?

9 MR. JOHN ROCKX: I do not recall.

10 MR. JOHN MATHER: You referenced
11 something about a one (1) pager at the back. At the
12 back of what?

13 MR. JOHN ROCKX: One (1)...?

14 MR. JOHN MATHER: You were saying Mr.
15 Houghton was giving a presentation --

16 MR. JOHN ROCKX: Oh.

17 MR. JOHN MATHER: -- at the end.

18 There was a one (1) pager.

19 MR. JOHN ROCKX: Yeah, as part of his
20 overall pre -- if you look at the slide deck for that
21 one (1). I don't know if you have that December 5th--

22 MR. JOHN MATHER: So, if we can open
23 up ALE5133.2.

24

25

(BRIEF PAUSE)

1 MR. JOHN MATHER: You can direct our
2 court operator if you need to scroll through it, but
3 is this the presentation you're referring to?

4 MR. JOHN ROCKX: That is correct.

5 MR. JOHN MATHER: Okay. And if we can
6 go to slide 15. So, this is a slide that sets out --
7 and scroll down so we can see the body of the slide.
8 Thank you.

9 This is a slide that sets out the
10 financial proposals. Is that what you were referring
11 to?

12 MR. JOHN ROCKX: That is correct.

13 MR. JOHN MATHER: In -- in this slide
14 for Hydro One it says, "15.998 million in cash." At
15 any point during the meeting, do you recall if it was
16 -- Council was advised that Hydro One's offer on its
17 face was for 18.5 million?

18 MR. JOHN ROCKX: I don't re -- I don't
19 recall, no, but this was flowing out of the matrix 3,
20 I'll call it. These were the -- the sums that came
21 out of matrix 3.

22 MR. JOHN MATHER: Do you recall if Mr.
23 Houghton or anyone explained that adjustments had been
24 made to the Hydro One and PowerStream financial offers
25 from what was delivered on their face?

1 MR. JOHN ROCKX: I -- I do not recall,
2 no. I do note on here it just says the -- you know,
3 the unassumed liabilities. And when I say that, you
4 know, the liabilities were assumed, but would it have
5 an impact on the purchase price.

6 I see for -- for Hydro One, it still
7 showed as unconfirmed, so there's still, i.e., get the
8 clarification on the \$1.4 million, for example, of
9 regulatory liabilities. That would have been, you
10 know, the piece that would have been different than,
11 for example, on PowerStream where it showed it was
12 confirmed.

13 MR. JOHN MATHER: Right. And I -- and
14 I -- I take it from your answer though that it wasn't
15 explained -- or least, sorry, that you don't recall
16 whether it was explained whether --

17 MR. JOHN ROCKX: I don't recall.

18 MR. JOHN MATHER: -- that adjustments
19 were made?

20 MR. JOHN ROCKX: I do not recall here.
21 It was --

22 MR. JOHN MATHER: Okay.

23 MR. JOHN ROCKX: -- laid out here, but
24 I don't recall if the specifics were gone into.

25 MR. JOHN MATHER: Do you remember if

1 it was explained to Council that there was still items
2 of -- of clarification that hadn't been answered yet?

3 MR. JOHN ROCKX: I do not recall other
4 than, you know, if -- if it was touched on that the --
5 I'll call it the unassumed liabilities still shown as
6 unconfirmed, i.e., clarity.

7 MR. JOHN MATHER: Did Mr. Houghton
8 provide you a copy of this presentation before he gave
9 it?

10 MR. JOHN ROCKX: I do not recall. I
11 don't believe so. I mean, I -- I don't -- no. I'm
12 going to say no. I mean, this was a Monday meeting.
13 And the -- where the -- December 2nd was -- the
14 previous Friday was when we had the meeting with the
15 STT and the Collus Board.

16 And it would have been over the
17 weekend, so, no, I don't believe I -- I did not see
18 this.

19 MR. JOHN MATHER: Can we go to slide 4
20 of this presentation? So, this sets out who the
21 Strategic Partnership Task Team was. And on there, it
22 identifies Mr. Herhalt and yourself.

23 Did you consider yourself a member of
24 the Strategic Task Team?

25 MR. JOHN ROCKX: No, I did not. We

1 considered ourselves, KPMG, as advisers to the
2 Strategic Task Team.

3 MR. JOHN MATHER: Do you know if this
4 was something that was raised at the Council meeting
5 when this slide was presented?

6 MR. JOHN ROCKX: Well, it would have
7 been introduced by Ed saying here's the parties that
8 were on there. But was there discussion over at KPMG?
9 No, not -- no, not to my recollection.

10 MR. JOHN MATHER: So, we've already
11 touched on this. But you explain in paragraph 35 and
12 36 about how the recapitalization dividend was fluid,
13 as you said, and could change, it wouldn't necessarily
14 be \$5.3 million and that it would ultimately depend on
15 the 2011 financials.

16 Do you recall whether that was
17 discussed with Council, that that 5.3 might change?

18 MR. JOHN ROCKX: I do not recall.

19 THE HONOURABLE FRANK MARROCCO: And --
20 and do you recall whether there was any discussion
21 about the fact that PowerStream was projecting that it
22 would be \$1.1 million lower?

23 MR. JOHN ROCKX: Ye -- no. I do
24 recall in some discussions with --

25 THE HONOURABLE FRANK MARROCCO: No,

1 I'm talking about with the Council or with the team.

2 MR. JOHN ROCKX: Oh, with Council?

3 No, not -- not specific --

4 THE HONOURABLE FRANK MARROCCO: No,
5 not Mr. Houghton.

6 MR. JOHN ROCKX: -- one question --

7 THE HONOURABLE FRANK MARROCCO: No, he
8 knows.

9 MR. JOHN ROCKX: No.

10

11 CONTINUED BY MR. JOHN MATHER:

12 MR. JOHN MATHER: And just to clarify
13 with the \$1.1 million lower, was it your expectation
14 that that 5.3 would be reduced by \$1.1 million?

15 MR. JOHN ROCKX: At the outside I
16 guess there would be one (1). There was some
17 discussion that it was hoped that the -- you know,
18 over the -- be -- between -- you know, by the time you
19 got to the closing date, some of that -- that would be
20 narrowed down was sort of the expectation.

21 You know, that was sort of the focus,
22 let's -- let's narrow that gap, if you will, if it was
23 -- yeah.

24 MR. JOHN MATHER: At that December 5th
25 meeting, do you recall any discussions about the

1 shotgun clause or any -- any discussion about exit
2 strategies?

3 MR. JOHN ROCKX: This -- this is at
4 the December 5th meeting?

5 MR. JOHN MATHER: Yes.

6 MR. JOHN ROCKX: If you go back to the
7 presentation, I'm not sure if there was something in
8 there or not.

9 MR. JOHN MATHER: I'm just interested
10 in your recollection --

11 MR. JOHN ROCKX: I don't recall. I
12 don't recall. I think it was more of a -- a process
13 update to Council and, you know, here's the criteria
14 that was looked at and here's how the rankings went on
15 qualitative and quantitative and here's how they got
16 to, you know, the decision to go with PowerStream.

17 And -- and there was a couple -- there
18 might have been a couple slides at the back that might
19 have dealt with next steps, but I don't -- I don't
20 know if they specifically spoke about that issue, the
21 -- in terms of the shotgun.

22 MR. JOHN MATHER: Do you recall if at
23 that meeting there was any discussion about whether or
24 not the Town could have the \$1.7 million loan repaid
25 without proceeding with a share trail -- share sale

1 transaction?

2 MR. JOHN ROCKX: I do -- sorry, repeat
3 the question.

4 MR. JOHN MATHER: Do you remember if
5 there was any discussion that the Town could just
6 simply request that the \$1.7 million loan be repaid
7 without having to go through a share sale transaction?

8 MR. JOHN ROCKX: I don't recall that
9 specifically being discussed, although it may have
10 been, but I don't know.

11 MR. JOHN MATHER: Do you -- do you
12 have any recollection of you or anyone at KPMG ever
13 discussing that with anyone at the Town at all?

14 MR. JOHN ROCKX: Just redeeming the
15 promissory note?

16 MR. JOHN MATHER: Yes.

17 MR. JOHN ROCKX: Maybe part of the
18 strategic options weigh at the outset, you -- with the
19 Town, sorry, not with the Town. No. No.

20 MR. JOHN MATHER: Do you recall if
21 there was any discussion at that meeting with the Town
22 about whether or not the Town could recapitalize
23 without proceeding with a share sale transaction?

24 MR. JOHN ROCKX: No discussion with
25 the Town on that, no.

1 MR. JOHN MATHER: Do you recall any
2 discussions with the Town outside of the December 5th
3 meeting on recapitalizing without a share sale
4 transaction?

5 MR. JOHN ROCKX: No discussions with
6 the Town other than, you know, as I said earlier, that
7 Ed was sort of wearing multiple hats, so he would have
8 been the only Town individual that we would have, you
9 know --

10 MR. JOHN MATHER: Do you recall --
11 sorry.

12 MR. JOHN ROCKX: He was the only
13 individual from the Town that we'd have dealt with
14 directly.

15 MR. JOHN MATHER: Do you have any
16 specific recollection of discussing with Mr. Houghton
17 whether or not the Town or Collus would be interested
18 in either redeeming the 1.7 million or
19 recapitalization -- recapitalizing without proceeding
20 with a share sale transaction?

21 MR. JOHN ROCKX: I don't recall those
22 discussions, no.

23 MR. JOHN MATHER: If we could pull up
24 paragraph 488 of the Foundation Document.

25 So Mr. Rockx, this paragraph introduces

1 a closed-session meeting that took place on January
2 16th, 2012 in which Aird & Berlis provided a
3 negotiation update regarding the share sale
4 transaction.

5 Do you recall if you attended that
6 meeting?

7 MR. JOHN ROCKX: I -- yes, I believe I
8 was there.

9 MR. JOHN MATHER: And if we scroll
10 down. See 489 introduces a presentation that Mr.
11 Clark made, and if we scroll down you see excerpts of
12 the slide presentation.

13 Do you recall this presentation?

14 MR. JOHN ROCKX: Yes, I do.

15 MR. JOHN MATHER: Do you recall if you
16 -- if you spoke during any portion of the Aird &
17 Berlis presentation?

18 MR. JOHN ROCKX: No, I don't believe I
19 did. I did not.

20 MR. JOHN MATHER: Do you recall if
21 anyone asked you any questions during the Aird &
22 Berlis presentation?

23 MR. JOHN ROCKX: I do not recall any
24 questions, no.

25 MR. JOHN MATHER: Did you make any

1 separate presentation?

2 MR. JOHN ROCKX: No.

3 MR. JOHN MATHER: So if you look at
4 the first slide that's on the screen there, it talks
5 about why a share -- why a sale of shares of CUS
6 rather than Collus directly, so referring to the share
7 of the sale of the Holdco as opposed to the LDC.

8 MR. JOHN ROCKX: M-hm.

9 MR. JOHN MATHER: First question, did
10 you provide any input to Aird & Berlis on that slide
11 presentation?

12 MR. JOHN ROCKX: I -- I do not believe
13 I did, no.

14 MR. JOHN MATHER: Do you recall any of
15 the discussion at this January 16th meeting about the
16 decision to sell the holding company as opposed to the
17 LDC?

18 MR. JOHN ROCKX: I don't recall at
19 this meeting. I do recall previous discussions as --
20 as that decision was arrived at for purposes of doing
21 a sale of the holdco shares versus the Collus Power
22 shares, I knew the background and all those
23 discussions leading to this, but.

24 MR. JOHN MATHER: Right, and that's
25 set out in your affidavit.

1 So if we scroll down, we see that this
2 next slide refers to the share purchase agreement and
3 if you look under point 2, there's a heading
4 "Consideration" and at the second point is 5.2 million
5 for the estimated dividend arising from the -- the
6 debt injection. Do you see that?

7 MR. JOHN ROCKX: Yes.

8 MR. JOHN MATHER: So this presentation
9 is January 16th, 2012.

10 MR. JOHN ROCKX: M-hm.

11 MR. JOHN MATHER: We see, and I'll ask
12 you about it, a couple of days later you and Mr.
13 Houghton have a conversation about the reality or the
14 possibility, I should say, that the recapitalization
15 dividend will be less than that.

16 Was that something that was on your
17 radar at the January 16th meeting?

18 MR. JOHN ROCKX: It was certainly
19 surfaced around then. I don't know if it was at this
20 point in time, but we were trying to get updated
21 financial statements for 2011, trying to do that.

22 The other thing that factored into it
23 was, you know, you take the -- at this time there was
24 full drafting of share purchase agreement and related
25 schedules there too.

1 So you know, you're trying to put into
2 words the -- the methodology, the mechanism for doing
3 the recap dividend and that's sort of what was, you
4 know, getting into the details of putting it in the
5 language and what's in and what's out. So that's sort
6 of what was going on in the background around this
7 time.

8 MR. JOHN MATHER: Do you recall if the
9 possibility that the recapitalization dividend may be
10 less was an item of discussion at this meeting?

11 MR. JOHN ROCKX: At the Council
12 meeting?

13 MR. JOHN MATHER: Yes.

14 MR. JOHN ROCKX: I -- I do not recall
15 specifically, no.

16 MR. JOHN MATHER: If we can go to
17 paragraphs 400 -- 405 and 405 of the Foundation
18 Document.

19 So just walking through these
20 paragraphs, Mr. Rockx, summarized an email exchange
21 between you and Mr. Houghton on January 18th, 2012.
22 So two days following the meeting we were just
23 speaking about.

24 Mr. Houghton asks if 5.5 million is the
25 new value of the recap, and scroll down. You respond

1 that PowerStream's calculation was -- that you didn't
2 think that the calculation would be achieved and at
3 this point you say too much of an increase over the
4 balance for 2012, 4.6 million, and you go on to
5 explain, you know, various ways that the
6 recapitalization dividend may play out.

7 MR. JOHN ROCKX: Yes.

8 MR. JOHN MATHER: And I understand
9 from this email chain at this point in time, you
10 believed that the recapitalization dividend could be
11 as low as \$4.6 million, is that right?

12 MR. JOHN ROCKX: That's correct.

13 MR. JOHN MATHER: And ultimately
14 that's what the recapitalization dividend ended up
15 being, is that correct?

16 MR. JOHN ROCKX: Yes. In that area,
17 yes.

18 MR. JOHN MATHER: Other than the
19 discussions with Mr. Houghton that are reflected in
20 these paragraphs, did you discuss the fact that the
21 recapitalization dividend may be lower than 5.3
22 million with anyone else at Collus?

23 MR. JOHN ROCKX: Well certainly Tim
24 Fryer was, you know, he was looking at those numbers
25 as well, so I think he recognized that there would be

1 some -- some reduction from the 5.3 or \$5.5 million
2 number.

3 So he was involved in those
4 calculations, I'll call it.

5 MR. JOHN MATHER: Anyone else at
6 Collus?

7 MR. JOHN ROCKX: And I guess this --
8 the new CFO as well, would have been Cindy
9 Shuttleworth. She might have been part -- you know,
10 in some of the emails as well.

11 MR. JOHN MATHER: Do you recall
12 discussing at this period of time, January -- late
13 January 2012, discussing with anyone at the Town that
14 the recapitalization dividend might be as low as \$4.6
15 million?

16 MR. JOHN ROCKX: Not directly with
17 anybody from the Town, no.

18 MR. JOHN MATHER: So if we could
19 scroll down to paragraph 517 of the Foundation
20 Document.

21 So this paragraph introduces or
22 discusses a public Council meeting on January 23rd,
23 2012 in which Council voted to proceed with the share
24 sale.

25 Were you in attendance at that meeting?

1 MR. JOHN ROCKX: Yes.

2 MR. JOHN MATHER: And if we could
3 scroll to paragraph 420. Sorry, 520.

4 So then this identifies that a slide
5 presentation was given entitled "Collus Power Corp.
6 Strategic Partnership Initiative" and you were
7 identified as a -- as one of the speakers.

8 Do you recall speaking at this meeting?

9 MR. JOHN ROCKX: Yes.

10 MR. JOHN MATHER: Do you recall what
11 you said at the meeting?

12 MR. JOHN ROCKX: Once again, if you
13 pull up the presentation, I was at -- did a little
14 discussion of the LDC environment. I think there was
15 four (4) -- four (4) slides or so that I spoke to.

16 MR. JOHN MATHER: Okay. So, if we
17 could pull up KPMG2403.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: And if we could just
22 scroll down. So, we see number 1 on the agenda is the
23 electricity industry environment yesterday and today.
24 Is that what you're referring to?

25 MR. JOHN ROCKX: Yes.

1 MR. JOHN MATHER: We see that item 5
2 is, "Financial considerations," and Mr. Houghton is
3 identified as the speaker. Do you recall if you spoke
4 at all about the financial considerations relating to
5 the share sale transaction?

6 MR. JOHN ROCKX: I do not recall
7 speaking. I was there more if there was any questions
8 that came up to help in answering them was sort of the
9 role on the financial side other than the -- you know,
10 speaking at the front end there on -- on the LDC
11 environment.

12 MR. JOHN MATHER: Do you recall if you
13 were directed not to say anything in the financial
14 portion or if that's something you assumed?

15 MR. JOHN ROCKX: You know, this -- Ed
16 and Dean were -- you know, that was their
17 presentation, so, you know, we -- you know, I wasn't
18 going to say, here, we'll jump in and do this and
19 that. I mean, that was their -- they -- they set the
20 agenda.

21 MR. JOHN MATHER: So, Mr. Muncaster
22 and Mr. Houghton set the agenda?

23 MR. JOHN ROCKX: Yes. Well, certainly
24 -- certainly, Ed's here and -- yeah. And I don't see
25 Dean speaking, so. But certainly Ed would have been

1 involved in setting the agenda and the table of
2 contents here.

3 MR. JOHN MATHER: Do you ever -- do
4 you recall ever having a discussion with Mr. Houghton
5 about what your role would be when this presentation
6 was given?

7 MR. JOHN ROCKX: Not specifically,
8 other than, here, you do the -- the piece at the
9 front, right, the industry environment.

10 MR. JOHN MATHER: Was that something
11 that Mr. Houghton asked you to do?

12 MR. JOHN ROCKX: Ultimately, yes.
13 That would have come -- direction would have come from
14 him, yes.

15 MR. JOHN MATHER: I -- I'm just trying
16 to understand if you offered to do it or if they asked
17 you to do it.

18 MR. JOHN ROCKX: No, no, no. I mean,
19 we were -- you know, assisted as needed, if you will.

20 MR. JOHN MATHER: And, again, is that
21 -- are -- are you -- is that something you remember
22 speaking to Mr. Houghton about? I'm just trying to
23 understand how you understood what your role would be
24 --

25 MR. JOHN ROCKX: Well, Ed -- Ed was

1 our -- our primary point of contact through the whole
2 process, Ed Houghton was. And, you know, meetings he
3 se -- he would, you know, send, you know, either an
4 email or a phone call, there's a meeting on such and
5 such a date, can you come and, you know, speak to the
6 industry environment.

7 We'll put a slide deck together and,
8 you know, say a few words on, in this case, the
9 industry environment. So, I said, Sure, we'll come
10 up.

11 MR. JOHN MATHER: You said that you
12 were available if anyone had any questions. Do you
13 recall if there was any questions asked of you?

14 MR. JOHN ROCKX: I do not recall, no.

15 MR. JOHN MATHER: Do you recall if you
16 reviewed this presentation before it was given on
17 January 23rd?

18 MR. JOHN ROCKX: I may have reviewed
19 the section I dealt with specifically just to make
20 sure you're -- what I'm speaking to, but...

21 MR. JOHN MATHER: Do you recall if you
22 reviewed any other sections?

23 MR. JOHN ROCKX: Can you go further
24 down? I'll just see what's here. I can't recall
25 what's in here. Yeah, keep going.

1 MR. JOHN MATHER: Keep scrolling.

2 MR. JOHN ROCKX: Just scroll and see
3 what other -- this part, the front end, I -- I know.
4 I think this is a carryover for something that was the
5 -- the front end was sort of largely a carryover from
6 a presentation back in November.

7 MR. JOHN MATHER: Sorry, and what was
8 that presentation back in November? We'll just stop
9 there.

10 MR. JOHN ROCKX: There was one (1), I
11 think a November 22nd or thereabouts, and some of the
12 slides look similar.

13 MR. JOHN MATHER: Is that a
14 presentation you gave to someone at Collus or the
15 Town?

16 MR. JOHN ROCKX: That was a -- that
17 was a town hall, I believe.

18 MR. JOHN MATHER: The public
19 information session?

20 MR. JOHN ROCKX: Public information
21 session.

22 MR. JOHN MATHER: So, if we can
23 continue scrolling through. Just keep scrolling. You
24 can ask the court operator to stop at any point, but I
25 want to understand if you reviewed any other portion

1 of this presentation before it was given.

2 MR. JOHN ROCKX: You can keep going
3 down there, it's fine. I don't -- I don't believe I
4 did, no.

5 MR. JOHN MATHER: So, if we could go
6 to -- actually, stop here on slide -- sorry. Scroll
7 down one (1) more slide. Okay. So, this is the slide
8 relating to financial consideration.

9 So, I take it from your earlier
10 answers, well, that Mr. Houghton presented this slide?

11 MR. JOHN ROCKX: Yes.

12 MR. JOHN MATHER: Do you recall what
13 Mr. Houghton said about the financial consideration?

14 MR. JOHN ROCKX: Well, that there was
15 three (3) components to the transaction as laid out
16 here, and -- and the proceeds, you know, were between
17 14 and 15 million, which, you know, when I look at
18 this, I -- I think it reflects a little bit less than
19 -- you know, in our version 3 of our matrix to reflect
20 the expectation of a lower dividend ultimately than,
21 you know, the 5.3.

22 MR. JOHN MATHER: So, was that
23 something you thought at the time, while this
24 presentation was being given?

25 MR. JOHN ROCKX: That -- sorry?

1 MR. JOHN MATHER: So, I understood
2 from your answer that, looking at this now, you see
3 that the 14 point -- 14 to 15 million doesn't reflect
4 the fact that the dividend may be lower. And I'm just
5 wondering if that's something you considered at the
6 time?

7 MR. JOHN ROCKX: Well, when I -- when
8 I saw this, I mean, it seemed like the range was fine.
9 The 15 million was sort of the -- the matrix 3 is sort
10 of where we had, but that was before some -- you know,
11 some adjustments to the ultimate recapitalization
12 dividend, so, you know, the -- the bottom end is taken
13 out up to a million dollars from that estimate.

14 So, in that range looked like it was
15 reasonable if they went through and got the share
16 price, did the recap, and went through with a -- you
17 know, redeemed their promissary note. So, that was in
18 the range, so, you know, it would have fallen in
19 there.

20 That seemed representative of where the
21 net proceeds would be, in that range.

22 MR. JOHN MATHER: And I'm just trying
23 to understand because I --

24 THE HONOURABLE FRANK MARROCCO: I'm
25 sorry. No, go ahead.

1

2 CONTINUED BY MR. JOHN MATHER:

3 MR. JOHN MATHER: I'm ju -- it sounds
4 to me that, at -- at some point in time, you've
5 reflected on this or you've looked at this and
6 thought, well, this doesn't really reflect the net
7 working capital \$1.1 million deduction.

8 Is that -- am I understanding that
9 correct?

10 MR. JOHN ROCKX: No. No, no, I --
11 what I'm saying is that when -- you know, our matrix 3
12 showed estimated proceeds to the Town of \$15 million.
13 But subsequent to that -- that was back in December,
14 if -- you know, early December.

15 And then we -- you saw the email of
16 January 16th or 18th where we said, hey, there's going
17 to be some shortfall in terms of the dividend, the
18 recap dividend, you know, would be 4.6 versus 5.3 with
19 seven hundred thousand dollar (\$700,000) reduction.

20 So, from 15, you know, you're probably
21 in the neighbourhood of 14.3, so it's within the
22 range. And I think that's what, you know, Ed must
23 have done here, or whoever pulled this slide together,
24 just saying, we're in this range, it's -- a) it's
25 variable, it's between 14 and 15 and it's reduced from

1 the \$15 million that might have been, you know,
2 presented in -- you know, earlier to Council.

3 So, it's kind of setting here's where
4 you're going to be, in this range.

5 MR. JOHN MATHER: Do you recall if the
6 -- the recapitalization dividend and it's potential
7 fluctuation was something that was discussed at the
8 meeting?

9 MR. JOHN ROCKX: At this meeting?

10 MR. JOHN MATHER: Yes.

11 MR. JOHN ROCKX: Not specifically.
12 No, I don't recall. But I do point out there is a
13 range there, of course.

14 MR. JOHN MATHER: Do you recall, now
15 having this slide in front of you, saying anything at
16 all about the purchase price and the financial
17 considerations at this meeting?

18 MR. JOHN ROCKX: I don't recall if I -
19 - I don't believe I spoke on any of the financial
20 issues other than if somebody had a question that Ed
21 could not hand -- you know, deal with.

22 MR. JOHN MATHER: So, just one (1)
23 more area for some questions. If we could turn up
24 paragraph 16 of your affidavit.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, we're going to
4 go back in time for a second. And this paragraph
5 refers to an email you sent on November 21st, 2011.
6 So, this is prior to the financial bids being opened
7 but after the non-financial bids were opened.

8 And you provided some initial thoughts
9 on the non-financial components to Mr. Herhalt and
10 Jonathan Erling at KPMG. And if we scroll down.

11 You've talked about three (3) of the
12 things you identified. The first is an issue you
13 identified, that there may be -- it may be difficult
14 to harmonize distribution rates in a 50/50
15 partnership. And then you say that you do not recall
16 if this consideration was discussed with the STT.

17 And then the second one (1) is a con --
18 an issue you raised about the fact that Collus Power
19 might not have enough equity to -- to pursue further
20 accident -- acquisitions if it did a full
21 recapitalization.

22 And you say again there that you're not
23 sure if this consideration was discussed with the STT.
24 You've spoken about the STT. Do you know if these two
25 (2) considerations were ever discussed with Town

1 Council at any of the meetings you attended with them?

2 MR. JOHN ROCKX: I don't recall if
3 they were discussed. Certainly, it's not something I
4 would have indicated or discussed with Council.

5 MR. JOHN MATHER: And do you recall if
6 anyone else discussed it with Council?

7 MR. JOHN ROCKX: With Council? I
8 know, with Council, no, I don't -- I don't know. I
9 can't say if anybody else did, no.

10 MR. JOHN MATHER: And then third one
11 (1), in subparagraph (c), you talk about, using your
12 words, creeping tape -- take -- that the potential
13 bidders were creeping takeover parties, and you
14 explain what you meant by that.

15 And then in the last sentence you say:
16 "I understood that this would be done through --
17 sorry, you say:

18 "I understood that the STT wanted a
19 long-term strategic partner and this
20 would need to be addressed. I
21 understood that this would be done
22 through legal counsel and
23 negotiating the potential future
24 transaction, including appropriate
25 shareholder's agreement."

1 Do you know if -- did you ever have any
2 further conversations with Aird & Berlis about what
3 was being done to safeguard against a bidder being a
4 creeping takeover party?

5 MR. JOHN ROCKX: Well, obviously this
6 -- the creeping takeover issue gets back to, you know,
7 when you do a 50/50 transaction you've got to put a
8 shareholder's agreement together that, you know, that
9 if the objective was to have a long-term partner, you
10 want to have a -- a shareholder's agreement with a
11 50/50 partner that would, amongst other things,
12 address exit strategies for both shareholders.

13 So -- so you know, certainly the legal
14 counsel, you know, representing the Town and Collus
15 Power would need to put in appropriate language or --
16 or methodologies how to make it, you know, so that it
17 wouldn't be a -- a pure shotgun and there are other
18 methods that can be used, you know, you can have
19 rights of first refusals, put clauses and things.

20 It's not unique to, you know,
21 PowerStream, it's -- it's for a lot of share
22 transactions where you've got multiple shareholders
23 you need to address the shareholders agreement and the
24 exit.

25 So -- so you know, we identified it and

1 said this has got -- got to be dealt with ultimately
2 in the process by legal counsel.

3 MR. JOHN MATHER: And so this email is
4 an email from yourself to Mr. Erling and Mr. Herhalt
5 at KPMG. My question is whether you recall ever
6 discussing with Aird & Berlis any of the issues that
7 you identify here, including exit strategies or how
8 that was being dealt with in the transaction.

9 MR. JOHN ROCKX: Well, when the share
10 purchase agreement and the shareholder's agreement
11 were being drafted, I mean I -- I was -- certainly I
12 was, you know, involved in some -- a couple meeting
13 and a couple -- I saw some drafts of things, so these
14 are issues that were being discussed by, you know,
15 legal counsel on both sides.

16 And -- and so I saw that, I -- you
17 know, I would.

18 MR. JOHN MATHER: Did you ever have
19 any discussions or did you participate in those
20 discussion?

21 MR. JOHN ROCKX: With specifically it
22 -- well, I mean I would -- I would review some of the
23 drafts of documentation that would be prepared.

24 MR. JOHN MATHER: Did you ever discuss
25 the shotgun clause with anyone at Aird & Berlis?

1 MR. JOHN ROCKX: Well, I was in some
2 meetings where it was discussed. So I don't know, I
3 wouldn't have said anything, you know, I don't know, I
4 mean -- I was aware there were discussions going on,
5 but did I say anything specifically one way or the
6 other? No, it's -- I'll let the lawyers craft the
7 language and terms.

8 MR. JOHN MATHER: So we see ultimately
9 that a -- a shotgun clause or a form of a shotgun
10 clause is -- is included in the final transaction
11 documents.

12 MR. JOHN ROCKX: M-hm.

13 MR. JOHN MATHER: Given what you --
14 given the discussion you were privy to at the STT
15 about not wanting a shotgun clause, do you know what
16 changed or why one was ultimately included?

17 MR. JOHN ROCKX: No, I -- I'm going to
18 -- I'll just backtrack a little bit, but I know at the
19 -- the meeting with PowerStream on December 1, that
20 was one of the topics of, you know, in the agenda
21 topics and you know, I -- I think I had an email
22 subsequent to that suggesting that, you know, it
23 wasn't going to be a shotgun.

24 So I came out of that meeting with the
25 understanding that there'd be rights of first refusals

1 and put options and things like that -- of that nature
2 that would, you know, be a little bit softer than a
3 shotgun, if you will.

4 And you know, once again, that was my
5 understanding. But once again, that -- that whole
6 documentation of that and the resolution of that whole
7 issue between the respective legal counsel and, you
8 know, and PowerStream and Collus Power and -- and so
9 forth would have been, you know, that's -- that's not
10 my forte, those discussions had and ultimately they
11 ended up back at a shotgun. I don't know -- I don't
12 know all the details there.

13 MR. JOHN MATHER: I have no further
14 questions.

15 THE HONOURABLE FRANK MARROCCO: We'll
16 take 10 minutes and then we'll start the cross-
17 examination.

18

19 --- Upon recessing at 12:19 p.m.

20 --- Upon resuming at 12:28 p.m.

21

22 THE HONOURABLE FRANK MARROCCO:

23 Mr. Breedon.

24

25 CROSS-EXAMINATION BY MR. RYAN BREEDON:

1 MR. RYAN BREEDON: Mr. Rockx, my name
2 is Ryan Breedon. I think you know I am counsel for
3 the Town.

4 Last week, Mr. Bonwick testified that
5 sometime in September of 2011 when the bidders were
6 meeting with the Strategic Task Team, he met privately
7 with Mr. Muncaster. I don't know if you're aware of
8 that evidence or not. I take it you were not aware of
9 any such meeting at the time?

10 MR. JOHN ROCKX: No.

11 MR. RYAN BREEDON: Okay. And to your
12 knowledge -- or are you aware, did Mr. -- or did --
13 pardon me. Let me try that again. Do you know
14 whether Mr. Muncaster told Mr. Herhalt about any such
15 meeting?

16 MR. JOHN ROCKX: I -- I do not know.

17 MR. RYAN BREEDON: Okay. You're going
18 to have to speak up a little bit.

19 MR. JOHN ROCKX: No, I don't know.

20 MR. RYAN BREEDON: All right. I take
21 that if Mr. Muncaster was meeting with potential
22 bidders in and around that time, you would expect that
23 KPMG would be aware of that?

24 MR. JOHN ROCKX: Sorry. Rephrase that
25 again? Sorry?

1 MR. RYAN BREEDON: Well, if --
2 Mr. Muncaster was the chairman of your client, right?

3 MR. JOHN ROCKX: Yes.

4 MR. RYAN BREEDON: And I take it that
5 it was meeting with potential bidders -- having
6 private meetings with potential bidders in and around
7 the time that the RFP was being developed, you would
8 expect that KPMG would be made aware of those
9 meetings?

10 MR. JOHN ROCKX: Yes.

11 MR. RYAN BREEDON: Okay. Thank you.
12 Now, I want to turn to the financial analysis that --
13 that you've been speaking about this morning. You
14 were the one who was tasked, I think, with preparing
15 this financial analysis?

16 MR. JOHN ROCKX: That's correct.

17 MR. RYAN BREEDON: And the purpose was
18 to permit the Strategic Task Team and ultimately the
19 Council to evaluate the bids on -- what we've been
20 calling an apples-to-apples basis. Fair?

21 MR. JOHN ROCKX: Correct.

22 MR. RYAN BREEDON: All right. And the
23 idea, I guess, was that understanding the financial
24 ramifications of the bids was fairly complicated. And
25 so the Town needed your expertise in doing that.

1 MR. JOHN ROCKX: That's correct.

2 MR. RYAN BREEDON: Right. You
3 wouldn't expect the members of the STT or the
4 Town Council to be able to unpack the -- this
5 themselves?

6 MR. JOHN ROCKX: Typically, if you're
7 in a situation like this, you would -- you know, you
8 would expect maybe somebody maybe not on the STT, but
9 you know, financial capacity with either the Town or
10 the Collus Power would be involved in those reviews.

11 MR. RYAN BREEDON: All right. But in
12 this particular case, it was you who was tasked with
13 conducting the financial analysis that was then going
14 to be relied upon by the STT and the Town.

15 MR. JOHN ROCKX: Certainly, KPMG was
16 tasked with that. But once again, I would have
17 expected or normally would have expected someone else
18 would -- you know, other people would be looking at
19 this as well. It's not just usually in isolation.

20 Just -- you know, it's, you know, put -
21 - put your blinders on and just ignore everything. I
22 mean, I would have thought that normally, there were
23 other parties, and I don't know if there were or
24 weren't. But --

25 MR. RYAN BREEDON: All right. Well,

1 that was going to be my next question. You're not
2 aware of anybody, either from Collus or from the Town,
3 who is doing this same sort of exercise to try to
4 unpack these different bids.

5 MR. JOHN ROCKX: I wasn't aware of
6 anyone, but, you know, I would have expected somebody
7 would be.

8 MR. RYAN BREEDON: And you're not
9 aware of anybody now having the benefit of --

10 MR. JOHN ROCKX: I still don't -- I
11 don't --

12 MR. RYAN BREEDON: -- days and days of
13 evidence.

14 MR. JOHN ROCKX: I still don't know if
15 anybody did --

16 MR. RYAN BREEDON: Right.

17 MR. JOHN ROCKX: -- from the Town, or
18 I just -- honestly do not know if they did or don't.

19 MR. RYAN BREEDON: Okay. And so
20 certainly from your perspective when you were
21 preparing this analysis, you understood that the --
22 the STT and the Town Council would be relying on your
23 work.

24 MR. JOHN ROCKX: On the financial
25 component?

1 MR. RYAN BREEDON: Yes.

2 MR. JOHN ROCKX: Certainly looking
3 at -- it would be -- yeah, they'd be looking at that.
4 Yes.

5 MR. RYAN BREEDON: Okay. Now, you
6 were asked a number of questions about why the STT
7 directed you to follow up with Hydro One after that
8 sort of initial meeting when --

9 MR. JOHN ROCKX: M-hm.

10 MR. RYAN BREEDON: -- PowerStream had
11 been elected as -- or selected as the preferred
12 bidder. You recall that?

13 MR. JOHN ROCKX: M-hm.

14 MR. RYAN BREEDON: And it strikes
15 me -- maybe you can help us with this -- at the end of
16 the day, it's Council who is deciding whether or not
17 to proceed with the transaction. Correct?

18 MR. JOHN ROCKX: At the end of the
19 day, they're the shareholder. That's right.

20 MR. RYAN BREEDON: Right. I mean, the
21 STT has been tasked with going through this process
22 and making a recommendation to Council, which they
23 did.

24 MR. JOHN ROCKX: M-hm.

25 MR. RYAN BREEDON: Right? You just

1 have to just say yes --

2 MR. JOHN ROCKX: Yes.

3 MR. RYAN BREEDON: -- for the
4 transcript. But at the end of the process, ultimately
5 Council is going to do what they think is in the best
6 interest of the Town. Correct?

7 MR. JOHN ROCKX: That's correct.

8 MR. RYAN BREEDON: And one of the
9 things that the Council is going to want to
10 understand, I'd suggest, is what the different offers
11 are that are on the table. Yes?

12 MR. JOHN ROCKX: Yes. I guess, that's
13 full -- full information.

14 MR. RYAN BREEDON: Sure. And in
15 particular, they're going to want to know what the
16 highest bid was.

17 MR. JOHN ROCKX: They want to know all
18 the bids ideally.

19 MR. RYAN BREEDON: But -- but in
20 particular, the highest bid. Right?

21 MR. JOHN ROCKX: Fair enough.

22 MR. RYAN BREEDON: Because, you know,
23 particularly in a situation like this where the STT is
24 proposing to go with the second highest bid for
25 strategic reasons, the Council needs to know how much

1 money they're leaving on the table. Is that fair?

2 MR. JOHN ROCKX: It would -- it would
3 be of -- I think it would be of interest to -- to
4 Council.

5 MR. RYAN BREEDON: Right. So -- and
6 in this case what was told to them was that they would
7 be leaving about \$900,000 on the table plus or minus?
8 I mean --

9 MR. JOHN ROCKX: It was at least a --
10 it was a million.

11 MR. RYAN BREEDON: Or a million
12 dollars. And, of course, Council ultimately accepted
13 that proposal, and that's what they went with. We
14 know.

15 MR. JOHN ROCKX: M-hm.

16 MR. RYAN BREEDON: That may or may not
17 have been the case if -- if that differential was
18 higher.

19 MR. JOHN ROCKX: That's fair. Can I
20 make a comment here though. In the process and -- and
21 the STT I guess and maybe my lack of knowledge of
22 municipal workings -- but as my understanding that the
23 STT was set up by the -- the Town and consisted a
24 number of Town individuals -- you know, councillors,
25 the mayor, et cetera, and you know, to some extent,

1 Town employees to the extent Ed had a dual role.

2 So I guess I've sort of -- you know,
3 they're privy to a lot of the discussions to say that,
4 you know, at a Council meeting, it's totally
5 side blinded is a little bit of a stretch, I would
6 say, because some of the parties were directly
7 involved in those STT discussions where some of these
8 issues were talked about.

9 MR. RYAN BREEDON: No, no, no. We're
10 not -- I'm not talking about Council being
11 side blinded. All I'm saying is that one of the
12 reasons that -- that you were asked to go and find out
13 what the Hydro One bid actually was --

14 MR. JOHN ROCKX: Yeah.

15 MR. RYAN BREEDON: -- was because
16 Council needed to know what that -- what that bid was
17 so they could make a decision about whether to proceed
18 with PowerStream or not. Is that fair?

19 MR. JOHN ROCKX: Yeah, that's fair. I
20 mean, that's fair.

21 MR. RYAN BREEDON: I mean --

22 MR. JOHN ROCKX: And the STT, I think,
23 and Dean Muncaster probably, as I said, you know,
24 wanted to continue those discussions to see what that
25 number would be.

1 MR. RYAN BREEDON: Sure. Because at
2 the end of the day, the Council is responsible to
3 the -- to the ratepayers and the Town.

4 MR. JOHN ROCKX: M-hm.

5 MR. RYAN BREEDON: And so if they're
6 leaving 1 million or 2 million or \$3 million on the
7 table for strategic reasons, they have to understand
8 that.

9 MR. JOHN ROCKX: Understand.

10 MR. RYAN BREEDON: Right? Do you
11 agree with that?

12 MR. JOHN ROCKX: Yeah. Agree. Yeah.

13 MR. RYAN BREEDON: Okay. Now, can we
14 look at KPM1914, please.

15

16 (BRIEF PAUSE)

17

18 MR. RYAN BREEDON: Okay. So this one
19 is the final version of your analysis, and you looked
20 at -- we've looked at all three (3). But I think we
21 can just stick with the final one for now. And can
22 you just scroll down a little bit, please. Okay.
23 Stop about there.

24 All right. So the -- I think it's
25 going to be helpful for the Commission just to

1 understand what these numbers should have been because
2 I gather, based on your evidence to date, there --
3 there would need to be some adjustments.

4 And so if we start with the PowerStream
5 bid, do I understand what you're saying to be that --
6 in response to a question that Justice Marrocco asked
7 you, that there should have been a \$1.1 million
8 reduction to take into account this net working
9 capital issue that they had raised.

10 MR. JOHN ROCKX: Certainly as it
11 turned out, there was a -- you know, here was
12 \$5.3 million was the total dividend that was here.
13 And they ended up at 4.6, so a \$0.7 million reduction
14 is what the final outcome was.

15 MR. RYAN BREEDON: Yeah. But you
16 wouldn't -- you couldn't have known in December of
17 2011 what the -- what the final numbers would be after
18 closing. So I don't -- I mean, I don't think we
19 can -- that that matters in terms of understanding
20 what the analysis was at the time.

21 But your information, based on your
22 communications with Mr. Glicksman, was that based on
23 the 2010 financial figures, PowerStream was projecting
24 a \$1.1 million working capital adjustment, which --
25 which might --

1 MR. JOHN ROCKX: Yeah.

2 MR. RYAN BREEDON: -- change. Right?

3 MR. JOHN ROCKX: Yeah. It was -- I
4 think, in fact actually, Mr. Glicksman -- you know, by
5 the time some of the numbers were -- you know, it
6 started at one one. I was thinking it was down to
7 900,000.

8 MR. RYAN BREEDON: It's one one based
9 on the 2010 financial statements and then would be
10 subject to adjustment, based on projections for 2011
11 right through to closing. Is that right?

12 MR. JOHN ROCKX: That's correct.

13 MR. RYAN BREEDON: Okay. And your
14 analysis, you've testified, was based on the 2010
15 financial statements --

16 MR. JOHN ROCKX: Yes.

17 MR. RYAN BREEDON: -- because those
18 were the only ones that were set in stone by this
19 point.

20 MR. JOHN ROCKX: Yes, that's correct.

21 MR. RYAN BREEDON: Right? And so
22 based on the 2010 financial statements, that working
23 capital adjustment would be \$1.1 million.

24 MR. JOHN ROCKX: I'd have to look at
25 that, but yeah, I guess it was in that neighbourhood.

1 MR. RYAN BREEDON: Okay. And the --
2 and the working capital adjustment that we're talking
3 about is an adjustment between the actual working
4 capital and the deemed working capital based on the
5 OEB formula.

6 MR. JOHN ROCKX: Correct.

7 MR. RYAN BREEDON: Right? So there
8 was a shortfall in Collus' actual working capital
9 relative to what the OEB had said it should be. And
10 so that's -- that's where that \$1.1 million came from.

11 MR. JOHN ROCKX: Correct.

12 MR. RYAN BREEDON: Okay. And so if
13 that was to come off of the top on the PowerStream
14 side, the \$15 million figure that you have recorded as
15 being the cash amount should be reduced by
16 \$1.1 million.

17 MR. JOHN ROCKX: No. I -- I think
18 the -- well, say some of it -- like, there's the -- a
19 0.2 deduction that was already made there. So -- so I
20 think it would have been, you know, if you'd made that
21 full amount, you would be a little over 14 million. I
22 don't know. I wouldn't -- I wouldn't -- you'd be 14.1
23 or 2 or something like that.

24 MR. RYAN BREEDON: All right, so,
25 sorry --

1 MR. JOHN ROCKX: If you made the full
2 \$1 million deduction there.

3 MR. RYAN BREEDON: Right, so -- and
4 I'm sorry, so you have a \$.2 million deduction, so
5 really we're only talking about another \$.9 million?

6 MR. JOHN ROCKX: And maybe just to
7 backtrack, there was a schedule that was done that
8 showed it was 4.6 based on the 2010 numbers, if I
9 recall correctly.

10 That was based on the -- and I don't
11 know, I mean, there are so many documents here, but --
12 so -- and that was based on 2010 numbers --

13 MR. RYAN BREEDON: Right.

14 MR. JOHN ROCKX: -- calculating that
15 it would be around -- so anyhow, it may not have been
16 the full 1.1, but some number, 7 to \$900,000.

17 MR. RYAN BREEDON: Okay, so -- so
18 you're -- the PowerStream, I mean we're --

19 MR. JOHN ROCKX: It would be less than
20 15. It would be somewhere in the 14 millions, if --
21 if somebody wanted to look at here's where you -- you
22 might end up, yes, 14 million.

23 MR. RYAN BREEDON: Okay. And then on
24 the Hydro One side, here you did deduct \$1.1 million
25 for the estimated net working capital shortfall,

1 right? Do you see that?

2 MR. JOHN ROCKX: Yes.

3 MR. RYAN BREEDON: Okay, and that's
4 the number that you've testified actually should have
5 been \$550,000 because the way the -- the dividend was
6 going to be structured in the Hydro One offer?

7 MR. JOHN ROCKX: It would have been --
8 would have been two things. If you're going to take
9 the deduction off, which is not there, on the -- on
10 the PowerStream offer, you know, 700 to \$900,000, 1.1,
11 then you would have had a similar deduction there,
12 plus the deduction for the 550, because they had
13 assumed a dividend of -- total dividend of 6.4 versus
14 5.3 in PowerStream's revised -- you know, there was a
15 revised which has a difference in and of itself of 1.1
16 million, and you would take half of that because one
17 is assuming an additional dividend well in excess of
18 the other one, which reduces the value of the LDC.

19 MR. RYAN BREEDON: Okay. So the \$1.1
20 million deduction that you have on this spreadsheet,
21 was that intended to capture that issue which you have
22 just described, which is the difference between the
23 amount of new debt that the different bidders thought
24 that they could obtain, or was it to deal with the
25 difference in this -- this networking capital

1 adjustment?

2 MR. JOHN ROCKX: Yeah, so you know, I
3 -- I testified earlier that that difference between
4 the two should have been 550, so half of that 1.1, the
5 difference between the 6.4 total dividend and the 5.3.
6 That's what it should have been.

7 Now, if you wanted to say that you
8 wanted to take off the working capital shortfall, that
9 would be a deduction from both sides, you know, from
10 both PowerStream and from -- and from Hydro One's bid.

11 MR. RYAN BREEDON: Okay, so when we --

12 MR. JOHN ROCKX: You can adjust Hydro
13 One by 1.1, which would have been too much, but then
14 you would have had to deduct out 550 from Hydro One's
15 bid here, so to make them comparable.

16 MR. RYAN BREEDON: So my -- my
17 question was: the \$1.1 million deduction that we see
18 referred to, and it looks like it's column D39, maybe,
19 you see that in the green box?

20 MR. JOHN ROCKX: Yes.

21 MR. RYAN BREEDON: Is that relating to
22 the difference between the amount of new debt that the
23 two bidders thought that they could obtain, or is it
24 relating to a -- this networking capital adjustment?

25 MR. JOHN ROCKX: I know it says

1 working capital adjustment, but since it wasn't
2 deducted from PowerStream it should have been just the
3 differential between the 6.4 and the 5.3 at half -- at
4 50 percent.

5 MR. RYAN BREEDON: Okay, fair enough.
6 So it's not -- it's not tied to the working capital
7 issue. It's -- it's -- it's making an adjustment to
8 equalize the amount of new debt that the two bidders
9 are --

10 MR. JOHN ROCKX: That's correct.
11 That's correct.

12 MR. RYAN BREEDON: Okay, all right.
13 Now, in that case, why is there a full
14 \$1.1 million deduction for that amount?

15 MR. JOHN ROCKX: And -- and as I
16 indicated earlier, it should have been half of that.

17 MR. RYAN BREEDON: Okay, so -- so
18 there should be -- so on the PowerStream side it's \$15
19 million, plus or minus, less a million dollars for the
20 net working capital adjustment, is what --

21 MR. JOHN ROCKX: It wouldn't have been
22 a million, but some number.

23 MR. RYAN BREEDON: In that range.

24 And on the Hydro One side, we start
25 with 18.5, which we, you know, is the -- it's sort of

1 the total number that they had.

2 And then you deduct from that, first of
3 all a half million dollars to take into account the
4 difference in the amount of debt that the two
5 companies were offering.

6 MR. JOHN ROCKX: 550, yes.

7 MR. RYAN BREEDON: Right, 550.

8 And -- and then you're also, I take it,
9 going to make an adjustment for this networking
10 capital issue?

11 MR. JOHN ROCKX: That's -- yes, so
12 that's right. If you're going to do it on the one, do
13 it on the other.

14 MR. RYAN BREEDON: But on the Hydro
15 One side, that would also be 550, because it's only
16 going to be half of the amount gets allocated to Hydro
17 One? Because it comes out of the dividend and the
18 dividend is being split between the two (2)
19 shareholders, right?

20 MR. JOHN ROCKX: Yeah, I have to
21 think. So in the -- in the final outcome here, I
22 mean, I'm going to say that 1.1 should be half and
23 there was no deduction for the -- the working capital
24 on other -- on either -- either party here.

25 MR. RYAN BREEDON: Right, but -- but

1 the working capital adjustment in the Hydro One side
2 should only be 50 percent of the working capital
3 adjustment on the PowerStream side, because -- because
4 the Town is only responsible for half of the working
5 capital adjustment, correct?

6 MR. JOHN ROCKX: Potentially. I -- I
7 don't know. I'd have to -- you're getting me a little
8 bit -- here, but --

9 MR. RYAN BREEDON: Well --

10 MR. JOHN ROCKX: Once again, at the
11 end of the day I think we're trying to quantify here
12 without getting into all the working capital, we're
13 saying here there's the two (2) deductions on Hydro
14 One's side, and the 1.1 should have been half of that
15 amount.

16 MR. RYAN BREEDON: Right, but -- but
17 on the -- but this is actually important, so I -- I
18 don't mean to belabour the point --

19 MR. JOHN ROCKX: Okay.

20 MR. RYAN BREEDON: -- but on the -- on
21 the Hydro One side, if there is going to be a
22 deduction to deal with this working capital
23 adjustment, there's a big "if" there, and we'll talk
24 about that in a moment, but if there's going to be
25 that deduction, that deduction is taken from the

1 recapitalization dividend, correct? And that's how
2 this works.

3 MR. JOHN ROCKX: Yes. I'll think this
4 through here.

5

6 (BRIEF PAUSE)

7

8 MR. JOHN ROCKX: Yeah, I have to think
9 it through here.

10 MR. RYAN BREEDON: Do you need some
11 time?

12 MR. JOHN ROCKX: Yes, probably need a
13 little bit of time to think it through.

14 So you're saying that the 1.1 working
15 capital, I've already said that should be split in
16 half.

17 MR. RYAN BREEDON: Well, what -- what
18 you've said is that where it says 1.1 working capital,
19 it's actually -- it's actually an -- an equalization
20 adjustment to reflect that they would take on the same
21 amount of new debt under both options, right?

22 I mean, that's what -- that's how you
23 testified you came up with that 1.1.

24 So it says it's the net working capital
25 adjustment, but it's actually not the net working

1 capital adjustment, it's this kind of equalization --

2 MR. JOHN ROCKX: Differential. The
3 differential.

4 MR. RYAN BREEDON: And the
5 differential should be half, so it should be 550, not
6 1.1?

7 MR. JOHN ROCKX: Right.

8 MR. RYAN BREEDON: Okay, so park that.
9 I think we're agreed on that.

10 And then the second issue though, is
11 that PowerStream has raised this networking capital
12 adjustment, Mr. Glicksman raise it with you and it
13 had, we've seen and we can dig out Mr. Glicksman's
14 emails if you'd like, but he -- he was estimating it
15 as \$1.1 million based on the 2010 financial
16 statements.

17 MR. JOHN ROCKX: M-hm.

18 MR. RYAN BREEDON: And so I -- I think
19 we've agreed that essentially that amount, of course
20 it will be subject to adjustments, but that amount
21 should be deducted from the PowerStream bid. That
22 gets PowerStream down to about \$14 million, correct?

23 MR. JOHN ROCKX: If it was the full
24 million --

25 MR. RYAN BREEDON: Sure.

1 MR. JOHN ROCKX: -- I'm saying it was
2 something less than that by the time --

3 MR. RYAN BREEDON: Fair enough.

4 MR. JOHN ROCKX: -- it was going
5 forward, yes.

6 MR. RYAN BREEDON: Well, if it was
7 something less than that, it would be something less
8 than that on the Hydro One side as well?

9 MR. JOHN ROCKX: That's correct.

10 MR. RYAN BREEDON: Okay, so -- so it
11 probably doesn't matter for our purposes to -- to
12 piece that out.

13 But, now, what I'm suggesting to you
14 that -- on the Hydro One side, if you were going to
15 make that net working capital adjustment, again, that
16 split 50/50 between Hydro One and the Town so that
17 it's only -- it's only another \$550,000 that would be
18 reduced on the Hydro One side.

19 Do you see that?

20 MR. JOHN ROCKX: Well, depending how
21 it was structured, I suppose if you made that full
22 deduction the -- possibly.

23 MR. RYAN BREEDON: So if the full
24 deduction was \$1.1 million, half of that, ultimately,
25 is going to be paid out of the -- is going to come

1 from the dividend paid to the Town and half of that is
2 going to come from the dividend paid to Hydro One,
3 correct?

4 MR. JOHN ROCKX: If -- if there was a
5 reduced dividend after the fact, yes, that's a shared
6 dividend.

7 MR. RYAN BREEDON: Okay, all right.

8 Now, Hydro One -- let me do it this
9 way. The -- the -- PowerStream gets to this by
10 looking at what the rate base was for the utility and
11 what the deemed networking capital was for the utility
12 as of year-end 2010 and the actual working capital for
13 the utility as of year-end 2010, right?

14 MR. JOHN ROCKX: That's correct.

15 MR. RYAN BREEDON: Okay. And the --
16 and the actual working capital is just the current
17 assets less the current liabilities?

18 MR. JOHN ROCKX: With some adjustment
19 for the current portion of long-term debt potentially.

20 MR. RYAN BREEDON: With an adjustment
21 for the current portion of long-term debt. Thank you.
22 That information was available to Hydro One. It had
23 the same financial statements when it prepared its
24 bid, yes?

25 MR. JOHN ROCKX: It would have the

1 2010, yes --

2 MR. RYAN BREEDON: Right.

3 MR. JOHN ROCKX: -- financials, yes.

4 MR. RYAN BREEDON: And -- and Hydro
5 One certainly has the sophistication to understand how
6 to calculate the rate base and all of the other --

7 MR. JOHN ROCKX: Yeah.

8 MR. RYAN BREEDON: -- pieces that go
9 into this?

10 MR. JOHN ROCKX: Yes.

11 MR. RYAN BREEDON: And Hydro One
12 didn't suggest to you that it needed to make an
13 adjustment to the -- to dividends in order to ensure
14 that the actual working capital matched the deemed
15 working capital?

16 MR. JOHN ROCKX: No, they -- you know,
17 that's the one (1) we was trying to clarify in that
18 phone call on December 1, is one (1) of the items that
19 we would -- would like to speak to them about, you
20 know, incoming up with their \$6.4 million.

21 And -- and to that, I mean, different
22 operators operate at different levels of -- of
23 financial liquidity. I mean, it's to how comfortable
24 are you. Certainly, Collus Power had a history of
25 operating with cash in the bank.

1 I mean, they never paid dividends, so
2 they operated from relative strength -- a strong
3 balance sheet, whereas other LDCs, you know, might
4 operate with an operating line so instead of having
5 cash, they just ran a little bit more tighter, so.

6 MR. RYAN BREEDON: Well, I ha -- well,
7 I -- I had some questions about that. I mean, in --
8 it appears, based on Mr. Glicksman's calculations and
9 -- and what we've been talking about, that -- that
10 Collus was actually operating with, you know, a
11 million dollars less working capital --

12 MR. JOHN ROCKX: Yeah.

13 MR. RYAN BREEDON: -- than the OEB's
14 deemed amount, right?

15 MR. JOHN ROCKX: That's right.

16 MR. RYAN BREEDON: I mean -- I mean,
17 that's how Collus was --

18 MR. JOHN ROCKX: Yeah, fair enough.

19 MR. RYAN BREEDON: -- actually
20 operating?

21 MR. JOHN ROCKX: Yeah.

22 MR. RYAN BREEDON: And -- and it was
23 permitted to do that?

24 MR. JOHN ROCKX: M-hm.

25 MR. RYAN BREEDON: Yes?

1 MR. JOHN ROCKX: Yes.

2 MR. RYAN BREEDON: And so, there's not
3 a legal requirement that the utility has to maintain
4 actual working capital at an amount that matches the
5 deemed working capital?

6 MR. JOHN ROCKX: No. I mean, there --
7 there could be, you know, no legal requirement. I
8 don't know. But, in some cases, lenders want to look
9 at working capital as they do their covenant ratios
10 and --

11 MR. RYAN BREEDON: Yeah.

12 MR. JOHN ROCKX: -- and so forth.

13 MR. RYAN BREEDON: Yeah, sure. And --
14 and, as you've said, different utilities have
15 different tolerances for how much working capital they
16 -- they want on hand and all the rest of it.

17 I mean, there's lots of business
18 reasons that go into this. But there's no -- there's
19 no legal requirement or regulatory requirement that
20 the actual working capital meet or exceed the deemed
21 working capital?

22 MR. JOHN ROCKX: No.

23 MR. RYAN BREEDON: Right. And -- and,
24 of course, there couldn't be because, if there was,
25 Collus would have been in breach of such an

1 obligation, right?

2 MR. JOHN ROCKX: Yes.

3 MR. RYAN BREEDON: Okay. And so, it
4 was not a required component of any of these bids that
5 the -- this working capital adjustment be made, right?

6 MR. JOHN ROCKX: Sorry, there was --
7 repeat the question.

8 MR. RYAN BREEDON: Yeah. It -- it's
9 not necessary that there be this working capital
10 adjustment which was raised by PowerStream. It's not
11 a legal obligation for that to happen?

12 MR. JOHN ROCKX: No, but it was to
13 make apples to apples. That was the -- the rationale.

14 MR. RYAN BREEDON: Well, it's only
15 apples to apples -- well, maybe I don't understand
16 that. So, in thi -- in this case, we know that
17 PowerStream raised this as an issue. And PowerStream
18 said that we, PowerStream -- if we are selected as the
19 successful bidder, here is how we are going to
20 structure this transaction.

21 And one (1) of the components that
22 PowerStream raised was that they wanted the dividend
23 to be reduced --

24 MR. JOHN ROCKX: M-hm.

25 MR. RYAN BREEDON: -- by whatever

1 amount was required in order to ensure that the actual
2 working capital met the deemed working capital, right?

3 That was an issue --

4 MR. JOHN ROCKX: Yeah. Yes.

5 MR. RYAN BREEDON: -- that PowerStream
6 raised?

7 MR. JOHN ROCKX: Yes.

8 MR. RYAN BREEDON: Okay. None of the
9 other bidders raised that, did they?

10 MR. JOHN ROCKX: I can't recall on
11 Horizon and Veridian because we never got into them,
12 but certainly --

13 MR. RYAN BREEDON: All right. Hydro
14 One didn't raise that?

15 MR. JOHN ROCKX: It didn't raise it,
16 and -- but it was a topic that we wanted to discuss
17 with -- or wanted to discuss with them on December 1--

18 MR. RYAN BREEDON: So, you don't --

19 MR. JOHN ROCKX: -- amongst other
20 things.

21 MR. RYAN BREEDON: So, you don't --
22 you don't know -- and -- and I ga -- and I gather from
23 what you've te -- testified, you didn't get a
24 completely satisfactory answer from Mr. Stevens in
25 your discussions from Mr. Stevens about these issues?

1 MR. JOHN ROCKX: No, I didn't. I
2 mean, he was sort of -- we tried to raise it. And he
3 was sort of saying, I don't want to get into details,
4 sign an exclusivity and we'll deal with.

5 And we were almost -- I wouldn't say
6 begging, We want to go and present your offer as
7 clearly as we can, we just want clarity, can you help
8 us out here. And it's --

9 MR. RYAN BREEDON: Okay.

10 MR. JOHN ROCKX: -- shut us down.

11 MR. RYAN BREEDON: Fair enough. Al --
12 although he did offer to look at your assumptions?

13 MR. JOHN ROCKX: M-hm.

14 MR. RYAN BREEDON: He did say he would
15 do that, yes?

16 MR. JOHN ROCKX: Yes.

17 MR. RYAN BREEDON: Sorry, again, you
18 just have to say 'yes' --

19 MR. JOHN ROCKX: Yes.

20 MR. RYAN BREEDON: -- for the
21 transcript. And -- and I think the evidence is that
22 you took that to Mr. Houghton and you were instructed
23 not to follow up with Hydro One?

24 MR. JOHN ROCKX: That's correct.

25 MR. RYAN BREEDON: Okay. Now, I -- I

1 guess the point though is that Hydro One never said to
2 you that they wanted to make the same working capital
3 adjustment?

4 MR. JOHN ROCKX: They di -- it wasn't
5 -- it wasn't -- it didn't say that in their -- in
6 their offer; that's correct.

7 MR. RYAN BREEDON: Right.

8 MR. JOHN ROCKX: And we wanted
9 clarification on that.

10 MR. RYAN BREEDON: Okay.

11 MR. JOHN ROCKX: And can I just make
12 one (1) more comment? But this goes to the point I
13 made earlier in testimony this morning, that you can
14 dividend out more cash and get more cash but what's
15 left behind in the remaining company.

16 So, it's not just, if you dividend out
17 more, the remaining company is worth less because it's
18 got more debt against it. So, even though I went
19 through an example of a company worth a million
20 dollars, if you dividend out more, you're still
21 getting, at the end of the day -- if you've got more
22 dividends, then the equity in the company is less and
23 you come up with the same million.

24 So, if Hydro One dividend out more, the
25 Town would have had a little bit more cash, but its

1 residual 50 percent in the company would have been
2 worth less than under the PowerStream offer which paid
3 less dividends.

4 MR. RYAN BREEDON: Right.

5 MR. JOHN ROCKX: I just want to make
6 that clear. It's not a -- I was trying to get apples
7 to apples, not only on cash, but overall value.

8 MR. RYAN BREEDON: Right, although I -
9 - I guess the significance of that would vary
10 depending on the circumstances, right? What -- what --

11 MR. JOHN ROCKX: No, it's pretty black
12 and white, I would say.

13 MR. RYAN BREEDON: But whe -- whether
14 you would prefer to have the cash or the value left in
15 the asset would depend on the circumstances. The
16 different bidder -- different vendors --

17 MR. JOHN ROCKX: It's --

18 MR. RYAN BREEDON: -- will have
19 different views about that?

20 MR. JOHN ROCKX: Agreed. But to do a
21 full economic, it's great, you could have dividend out
22 everything and had a much better offer. But then the
23 -- the LDC would have been worth a lot less, so that's
24 why we try to put on an economic apples-to-apples
25 basis.

1 So, one might pay a little more cash to
2 a dividend. That's why we made those adjustments,
3 because the remaining equity in the company would be
4 worth that extra dividend that was paid by one (1)
5 bidder, Hydro One, versus PowerStream.

6 MR. RYAN BREEDON: Right. But you
7 addressed that in this equalization type -- type
8 adjustment that we've been talking about, right?

9 MR. JOHN ROCKX: That's why we -- we
10 brought those issues up, so. So -- so, it's not that
11 Hydro One, by paying a higher dividend -- you know,
12 there is an offset. You know, you pay higher cash
13 dividend, then the remaining equity in the LDC is
14 worth less under that option.

15 MR. RYAN BREEDON: Okay. Now, the --
16 the other deduction that you made from Hydro One is
17 this -- from Hydro One's bid is the \$1.4 million net
18 regulatory --

19 MR. JOHN ROCKX: Yes.

20 MR. RYAN BREEDON: -- liability
21 figure, right?

22 MR. JOHN ROCKX: Yes.

23 MR. RYAN BREEDON: And again, that was
24 based on the net regulatory liabilities as they
25 existed in the 2010 financial statements?

1 MR. JOHN ROCKX: Yes.

2 MR. RYAN BREEDON: And if you need us
3 to turn it up, we can, but I understand that by 2011,
4 that number had dropped significantly and it was about
5 three hundred thousand dollars (\$300,000) or
6 something?

7 MR. JOHN ROCKX: I recall that. And at
8 June -- July 31, it was 1.6.

9 MR. RYAN BREEDON: One point six
10 million?

11 MR. JOHN ROCKX: Yes.

12 MR. RYAN BREEDON: Okay.

13 MR. JOHN ROCKX: It's -- that -- that
14 asset and liability does have a lot of variability. I
15 mean, somebody that's in the LDC industry, it's --
16 it's hard to predict where it goes sometimes, but --

17 MR. RYAN BREEDON: Okay.

18 MR. JOHN ROCKX: -- it does have a lot
19 of volatility. And, in fact, I think there's a
20 document out there that showed -- I saw a balance
21 sheet that showed at October 31, 2011, that the amount
22 of that liability was shown as 1.5.

23 MR. RYAN BREEDON: All right. So --

24 MR. JOHN ROCKX: So and that was --
25 three hundred thousand (300,000). It goes to my point

1 earlier, as well, where I had indicated there was a
2 lot of adjustments that are made at year-end for
3 certain items, including regulatory assets and
4 liabilities, where -- so there's variability.

5 MR. RYAN BREEDON: Okay. Now -- now,
6 you -- I think you've told us that this was one (1) of
7 the things that you particularly wanted clarification
8 from Hydro One on and -- and was one (1) of the
9 reasons that you contacted Mr. Stevens?

10 MR. JOHN ROCKX: Yes.

11 MR. RYAN BREEDON: Right. And Mr.
12 Stevens sent you back that email that we looked at in
13 some detail in which he -- he said that their bid was
14 based on the 2010 balance sheet, essentially?

15 MR. JOHN ROCKX: Yes.

16 MR. RYAN BREEDON: Right. And you
17 were left, I think, with some question -- or you
18 wanted some confirmation or certainty that Hydro One
19 was not seeking an adjustment for the net regulatory
20 liabilities, right?

21 MR. JOHN ROCKX: Correct.

22 MR. RYAN BREEDON: And that was
23 another thing that you had proposed to go back to
24 Hydro One on and -- and Mr. Houghton told you not to
25 bother?

1 MR. JOHN ROCKX: Certainly, I wanted
2 to get clarity on that because it was getting -- yeah,
3 it had that -- not material would be adjusted, if not
4 material.

5 MR. RYAN BREEDON: Okay. And -- and,
6 now, did you see the evidence or have you seen the
7 transcript of the evidence of Ms. Gaspar? She
8 testified as --

9 MR. JOHN ROCKX: I have seen -- I have
10 the seen the testimony and such, yes.

11 MR. RYAN BREEDON: Okay. And -- and
12 she testified, I think, that the -- Hydro One was not
13 seeking an adjustment to the purchase price based on
14 the 2010 net regulatory liabilities. You've seen
15 that?

16 MR. JOHN ROCKX: I've seen that. I
17 also noted -- I did see the video testimony and I
18 think, you know -- I -- I know you didn't look at
19 Clause 2 in that same letter that sort of said the
20 purchase price under that scenario will be adjusted
21 for closing adjustments, including, in brackets,
22 (regulatory assets and liabilities).

23 MR. RYAN BREEDON: Okay. So the
24 letter that you're talking about is Mr. Stevens'
25 email?

1 MR. JOHN ROCKX: His email.

2 MR. RYAN BREEDON: All right. Why
3 don't we turn it up? It's -- it's in the -- it's page
4 155, I think, of the -- oh no, I'm sorry. It's
5 Exhibit N to the witness' affidavit.

6

7 (BRIEF PAUSE)

8

9 MR. JOHN MATHER: Page 193.

10

11 (BRIEF PAUSE)

12

13 CONTINUED BY MR. RYAN BREEDON:

14 MR. RYAN BREEDON: Okay. Scroll down,
15 please. A little bit more.

16 So, okay -- so this is the email you're
17 talking about from Mr. Stevens, and he says that,
18 first of all:

19 "That the \$13.6 million price
20 assumes the following" --

21 And then he sets out the different
22 components, right?

23 MR. JOHN ROCKX: Right.

24 MR. RYAN BREEDON: Okay. And then he
25 says that:

1 "Based on the proposed price, the
2 Town received total cash proceeds of
3 about \$18.5 million."

4 You see that?

5 MR. JOHN ROCKX: Yes.

6 MR. RYAN BREEDON: Okay. And then if
7 you scroll down a little bit more, he says:

8 "The proposal includes the
9 assumption of the estimated pro rata
10 share of assets and liabilities" --

11 MR. JOHN ROCKX: Yes.

12 MR. RYAN BREEDON:
13 -- "based in part on the detail
14 provided in the 2010 audited
15 financial statements. It includes
16 the following long-term liabilities,
17 one (1) of which is net regulatory
18 liability."

19 Right?

20 MR. JOHN ROCKX: Yes.

21 MR. RYAN BREEDON: Okay. And then he
22 -- and that seems to be suggesting that the regulatory
23 liabilities as of 2010 are taken into account in the
24 Hydro One bid.

25 MR. JOHN ROCKX: They're one of the

1 assumed -- the liabilities would be assumed. We
2 wanted clarity as to whether there would be a purchase
3 price adjustment for the shares, and to that fact we
4 looked at point 2. And then it goes on to say:

5 "The proposal is based on a variety
6 of factors and assumptions, included
7 but not limited to, estimates for
8 rate base and assets and
9 liabilities, in brackets, (including
10 regulatory assets and liabilities)."

11 And that sort of triggered us, so --

12 MR. RYAN BREEDON: Right. So can I
13 just stop you there, because we'll -- we'll talk about
14 the point 2 in --

15 MR. NORM EMBLEM: Can Mr. Rockx be
16 given an opportunity to complete his answer before Mr.
17 Breedon carries on with his question? We've had half
18 of a paragraph --

19 THE HONOURABLE FRANK MARROCCO: I
20 think --

21 MR. NORM EMBLEM: -- too read into the
22 record at this point.

23 THE HONOURABLE FRANK MARROCCO: I -- I
24 think Mr. Breedon's just trying to organize his cross-
25 examination, but I -- I will let you finish what you

1 were going to say.

2 MR. JOHN ROCKX: Okay. Well, I -- I --
3 - we saw the top part, but in the second part we -- we
4 knew that it -- it was clear that, you know, this --
5 part of the deal -- so you're going to take those --
6 liabilities would be assumed as part of the overall
7 deal, but the question we still had and wanted to get
8 clarified in the phone call, the subsequent phone
9 call, just to have crystal clear clarity.

10 I mean, we don't want to oversell the
11 offer. We wanted it to be bang on, but would there be
12 adjustment to the overall share price for, you know,
13 the net regulatory liability and, you know, this --
14 this -- this Clause 2 speaks to that, saying the
15 proposal is still based upon various assumptions
16 relating to regula -- you know, amongst other things,
17 revelatory assets and liabilities.

18 And then we go all the way back to the
19 original offer where there was that one (1) clause
20 that the regulatory assets and liabilities were
21 assumed to be not material, and we assumed zero, and,
22 you know, I said earlier that at December 31, they're
23 1.4 million. So all we wanted to have was a call to
24 clarify it. If on that call he said no, you know,
25 it's included and the purchase price won't be

1 adjusted, you know, that would have been great, but we
2 -- we're shut off and -- and, you know, I guess, in --
3 in hindsight, you know, a little bit more cooperation
4 from Hydro One on that call would have been -- would
5 have been great. I mean, it would have been.

6 MR. RYAN BREEDON: Right.

7 MR. JOHN ROCKX: And -- and
8 secondarily, a little bit more ability to follow up
9 with, here's our calculation comparison, you know, we
10 didn't get that from, I'll say, Collus manage -- the
11 STT Collus management. You know, that's -- that sort
12 of led to where we are here, so.

13

14 CONTINUED BY MR. RYAN BREEDON:

15 MR. RYAN BREEDON: So -- so just -- so
16 just to unpack this a little bit, if we deal just with
17 point number 1 --

18 MR. JOHN ROCKX: Sure.

19 MR. RYAN BREEDON: -- the kind of the
20 -- the text under point number 1, it seems to be that
21 what Mr. Stevens is saying is that the net regulatory
22 liabilities as of the 2010 audited financial
23 statements are included in Hydro One's -- Hydro One's
24 assessment and in Hydro One's bid.

25 I mean, that seems to be what he is

1 saying, correct?

2 MR. JOHN ROCKX: That the liabilities
3 are going to be assumed.

4 MR. RYAN BREEDON: Right. And -- and
5 -- and it seems to be -- he seems to be saying that
6 there would not be an adjustment for those
7 liabilities, just based on the way he's -- he's
8 written this out.

9 MR. JOHN ROCKX: Well, we just wanted
10 -- we wanted absolute clarity because the initial
11 offer was still -- so he said -- one says this, one is
12 sort of there. Didn't say the --

13 MR. RYAN BREEDON: No, I --

14 MR. JOHN ROCKX: -- purchase price
15 won't be adjusted for this.

16 MR. RYAN BREEDON: You -- you've made
17 that point very clear --

18 MR. JOHN ROCKX: Yes.

19 MR. RYAN BREEDON: -- that you wanted
20 clarity and -- and I don't think --

21 MR. JOHN ROCKX: Yes.

22 MR. RYAN BREEDON: -- anybody is
23 faulting you for that, because you don't want to tell
24 the Town that the Hydro One offer is some amount and
25 then you discover that Hydro One thinks it's \$1.4

1 million less. I -- I understand that.

2 MR. JOHN ROCKX: Yes.

3 MR. RYAN BREEDON: But all I'm asking
4 is, that the first part of his email seems to be
5 suggesting, maybe not as crystal clear as one would
6 like, but -- but -- but it seems to be suggesting that
7 Hydro One has taken into account that \$1.4 million
8 liability in the price that it has made. Yes?

9 MR. JOHN ROCKX: You know, once again,
10 subject to interpretation. We want it crystal clear.

11 MR. RYAN BREEDON: And certainly Ms.
12 Gaspar, that was what her evidence was, was that --
13 that Hydro One had taken that into account, right?

14 MR. JOHN ROCKX: I wish she was on the
15 call December 1.

16 MR. RYAN BREEDON: Okay. Now the
17 point number 2 that you've raised --

18 THE HONOURABLE FRANK MARROCCO: Is
19 there a point where it's convenient?

20 MR. RYAN BREEDON: I'm almost
21 finished, so it --

22 THE HONOURABLE FRANK MARROCCO: No, go
23 ahead.

24 MR. RYAN BREEDON: -- if I'm ten (10)
25 more minutes I'll be amazed.

1 THE HONOURABLE FRANK MARROCCO: That's
2 fine. I'll take -- go ahead.

3

4 CONTINUED BY MR. RYAN BREEDON:

5 MR. RYAN BREEDON: The -- the point
6 number 2 then he -- Mr. Stevens, as you pointed out,
7 says that:

8 "This is based on a variety of
9 factors and assumptions" --
10 et cetera, et cetera. And then at the
11 bottom, the last line, he says:

12 "Changes in any of these variables,
13 assumptions, or estimates may impact
14 the proposed price positively or
15 negatively."

16 Right? And isn't what he's saying that
17 if there are changes in the position of Collus from
18 the 2010 audited financial statements to closing, that
19 that may have some effect on the price?

20 MR. JOHN ROCKX: That's one
21 interpretation.

22 MR. RYAN BREEDON: Well, isn't that
23 sort of the obvious interpretation --

24 MR. JOHN ROCKX: Once again, we want
25 to have it crystal clear, so tell me that. Just tell

1 me that in a phone call.

2 MR. RYAN BREEDON: Okay.

3 MR. JOHN ROCKX: Take away my
4 discomfort on that issue.

5 MR. RYAN BREEDON: All right.

6 MR. JOHN ROCKX: No surprises.

7 MR. RYAN BREEDON: If it is true, if
8 Ms. Gaspar is correct that there -- that Hydro One had
9 taken into account the \$1.4 million net regulatory
10 liability, then that would not be deducted from Hydro
11 One's bid, correct?

12 MR. JOHN ROCKX: If -- if that was
13 confirmed, yes, that's correct.

14 MR. RYAN BREEDON: Okay. All right.
15 And so then on that -- on that analysis, based on what
16 we've kind of walked through, assuming that there is
17 no deduction for the net regulatory liability, the
18 Hydro One -- the -- the total package from Hydro One
19 works out to about \$17.4 million, you know, 18.5 less
20 550 less 550.

21 MR. JOHN ROCKX: It would be higher
22 and maybe in the 17 -- yeah.

23 MR. RYAN BREEDON: Maybe even higher.
24 And then --

25 MR. JOHN ROCKX: It would be in the 17

1 millions, let's say.

2 MR. RYAN BREEDON: Okay. And then --
3 and the PowerStream bid, as we've seen, is in sort of
4 the 14 millions.

5 MR. JOHN ROCKX: Well, I don't know.
6 I guess we'd have to do a stacking up of everything,
7 but certainly it would -- the gap would be wider.

8 MR. RYAN BREEDON: Thank you very
9 much. Those are my questions.

10 THE HONOURABLE FRANK MARROCCO: We'll
11 break for lunch for an hour.

12

13 --- Upon recessing at 1:08 p.m.

14 --- Upon resuming at 2:11 p.m.

15

16 THE HONOURABLE FRANK MARROCCO: Mr.
17 Chenoweth, before you start your cross-examination, I
18 should -- just wanted to canvass all of you. Mr.
19 Chenoweth would like me to call Mr. Lloyd as a
20 witness? I'm prepared to do that. My counsel will
21 lead Mr. Lloyd.

22 The difficulty is this: Mr. Lloyd's
23 only available on the 28th, because he's away. The
24 28th's the last day for these phase I witnesses. This
25 -- the -- it is the last day.

1 So I would like to get an estimate from
2 all of you on -- on the assumption that we restrict
3 Mr. Lloyd's evidence to whether there was confusion or
4 not, which is the issue which Mr. Chenoweth wants to
5 address. Can you give me an estimate of how long
6 you'll be cross-examining, assuming that his evidence
7 is restricted in that way, and then I'll get back to
8 you with whether I'm going to call him or not.

9 But I want to -- I -- I don't want to
10 arbitr -- I know I could arbitrarily impose a limit,
11 but I don't really want to do that. So assuming that
12 Mr. Lloyd testifies on the issue of confusion,
13 approximately how long do each -- and assuming his
14 evidence is led by Commission counsel, how long do
15 each of you think you'll take with Mr. Lloyd on that
16 issue, and then I'll -- I'll make the formal ruling
17 unless the time is such that we can't finish him in a
18 day, which I -- I don't think will be the case, in
19 which case, then, I will restrict -- I will restrict
20 the times that you've suggested.

21 Is that clear? All right. Okay.

22 MR. FREDERICK CHENOWETH: I think I
23 would be about a half an hour on that one (1) issue.

24 THE HONOURABLE FRANK MARROCCO: All
25 right. Well -- well, you can tell me now, or you can

1 -- that's fine. Well --

2 MR. FREDERICK CHENOWETH: I'm telling
3 you now.

4 THE HONOURABLE FRANK MARROCCO: All
5 right. Okay. Well, we'll -- assuming the rest of you
6 can figure all that out. Mr. Bonwick...?

7 MR. PAUL BONWICK: Yes, Your Honour.
8 I'm wondering if you could expand on when you say to
9 the issue of confusion. It confused me.

10 THE HONOURABLE FRANK MARROCCO: Well,
11 in Mr. Chenoweth materials, he indicates that in -- in
12 his client's view, whether Council was confused about
13 the Transaction or not was an issue that was raised
14 after certain witnesses had testified and -- and those
15 witnesses couldn't be there, for -- for example, Mayor
16 Cooper had already testified when the issue came up,
17 and therefore she wasn't asked about it.

18 Mr. Chenoweth would like to call Mr.
19 Lloyd, who is -- was, and whom you know, obviously, on
20 that issue. I want to -- Mr. Lloyd's not here, so I
21 want to rest -- I will restrict his evidence to the
22 question of confusion. He -- he is leaving today, so
23 I'll restrict his evidence to the question of
24 confusion, but I -- I want to be sure we finish him on
25 the 28th, which is the Friday, so hence why I'm asking

1 everybody how long you'll be, because I could
2 arbitrarily restrict the amount of time that people
3 would have with the witness, but I'd rather do that
4 with some informed understanding of how long people
5 think they need.

6 And if I can accommodate everybody, I
7 will, and if not, I'll shrink everybody down
8 proportionately so that we finish in a day. But I
9 think it sounds like we'll finish in a day.

10 MR. PAUL BONWICK: So, Your Honour,
11 I'm -- two (2) points that I'd like you to consider.
12 First of all, I have no concerns. If you needed to
13 allocate specific time for us, that's perfectly okay
14 with me. I don't suspect I'll be much more than
15 twenty (20) minutes with Mr. Lloyd.

16 That being said, Mr. Lloyd served on
17 Council from 2010 to 2018. And my concern about
18 limiting his examination or cross-examination to the
19 simple matter of confusion, I think, narrows the
20 ability for the Commission to gain his perspective
21 beyond the simple confusion element as it related to
22 post-Transaction, which I think is certainly part of
23 the consideration that Your Honour is challenged with.

24 THE HONOURABLE FRANK MARROCCO: Well,
25 the -- the -- I -- the -- the issue, though, that's

1 been put, and the issue with which I'm concerned, is
2 the issue raised by Mr. Chenoweth.

3 I specifically do not -- I propose to
4 limit the witness to make sure that we -- but -- but
5 because that's -- that's an issue of -- I want to
6 inquire into, and there have been lots of witnesses
7 who were on Council, and who testified, and have been
8 asked questions relating to their time on Council.

9 MS. KATE MCGRANN: And --

10 THE HONOURABLE FRANK MARROCCO: You
11 know, whether it was -- whether it was the deputy
12 mayor, or whoever it was.

13 MS. KATE MCGRANN: If I may just --
14 sir --

15 THE HONOURABLE FRANK MARROCCO: I --
16 I'm not going to do that.

17 MR. FREDERICK CHENOWETH: They were
18 all before the issue was raised.

19 THE HONOURABLE FRANK MARROCCO: I know
20 -- no, no, I'm -- I'm not disagreeing with your -- I'm
21 -- I'm not disagreeing with your position at all.

22 MS. KATE MCGRANN: For the sake of
23 clarity, on the confusion point, the point of
24 confusion that Mr. Chenoweth has raised in his
25 application is confusion -- potential confusion by

1 members of Town Council over the price that the Town
2 would be receiving for 50 percent of the -- the shares
3 of Collus Utility Services.

4 THE HONOURABLE FRANK MARROCCO: Yeah,
5 you've had -- the confusion that's outlined in -- in
6 the affidavit that -- to which -- which meant Mr.
7 Houghton filed in support of the -- the application,
8 and -- and that's the issue I'm -- I'm limiting it to.

9 MR. PAUL BONWICK: Your Honour, if I
10 may, just to close out on this point, I think it would
11 serve the Commission and yourself well if Mr. Lloyd --
12 recognizing the time constraint, and I'm very
13 respectful of you trying to get this all done on the
14 28th, if Mr. Lloyd was able to share with him -- share
15 with you his perspective post-Transaction as it
16 related to his engagement with Mr. Brown, his
17 engagement with Council, this is a -- a person that
18 was sitting only on the Cou -- Council side, and will
19 have, I think, a very valuable -- and potentially not,
20 until he's had the opportunity to cross-examine, we
21 won't know what his perspective was on events that in
22 part have led to us sitting here today.

23 THE HONOURABLE FRANK MARROCCO: Well,
24 The Councillor's perspective on that is one (1) thing.
25 The people involved have already given their evidence

1 about what they think the problem was post-merger, and
2 they've tried to explain that it wasn't the merger
3 that caused the problem, it was Mr. Brown.

4 I got that. I heard that, and we'll
5 call Mr. Brown, see what he has to say. I don't think
6 I need to hear from the Councillors on that.

7 MR. MICHAEL WATSON: Your Honour, on
8 the question that you asked, I -- I expect Alecra --
9 Alectra to be zero minutes, plus or minus ten (10),
10 even though I'm not going to be here next week, so we
11 may have nothing at all.

12 THE HONOURABLE FRANK MARROCCO: Zero
13 minutes, plus or minus ten (10)?

14 MR. MICHAEL WATSON: Well, yes, I can
15 --

16 THE HONOURABLE FRANK MARROCCO: Is
17 that ten (10) minutes?

18 MR. MICHAEL WATSON: No. It's going
19 to be zero to ten (10), another way of saying it.

20 THE HONOURABLE FRANK MARROCCO: Thank
21 you, Mr. Watson.

22 MR. MICHAEL WATSON: I just need to
23 say something today. Thank you.

24 THE HONOURABLE FRANK MARROCCO: And
25 Mr. Fryer, do you know how long you'll be?

1 MR. TIM FRYER: Yes, Justice Marrocco.
2 I don't expect I would be any more than five (5)
3 minutes, myself.

4 THE HONOURABLE FRANK MARROCCO: Mr.
5 Breedon...?

6 MR. RYAN BREEDON: No more than --

7 THE HONOURABLE FRANK MARROCCO: Or --
8 you or your -- I didn't want to ignore your -- your
9 colleague.

10 MR. RYAN BREEDON: My junior. No more
11 than thirty (30) minutes, Your Honour.

12 THE HONOURABLE FRANK MARROCCO: Any
13 I've forgotten? Mr. Marron...? I'm sorry.

14 MR. GEORGE MARRON: I might have been
15 content to sit in the weeds --

16 THE HONOURABLE FRANK MARROCCO: Yeah,
17 I -- I appreciate that strategy --

18 MR. GEORGE MARRON: If anything, I'll
19 be --

20 THE HONOURABLE FRANK MARROCCO: -- but
21 it's just advancing age that is preventing me from
22 recognizing it.

23 MR. GEORGE MARRON: I would be very
24 brief --

25 THE HONOURABLE FRANK MARROCCO: All

1 right.

2 MR. GEORGE MARRON: -- and let me
3 reserve on that, and I'll consider it further, Your
4 Honour, and -- and get back to you on that.

5 THE HONOURABLE FRANK MARROCCO: Well,
6 my input -- my instinct is to allow the application
7 column on the 28th, and counsel will lead them as --
8 and -- and just let -- but let me know if -- when
9 you've got a time.

10 MR. FREDERICK CHENOWETH: Your Honour,
11 if I might just speak on one further element of that.
12 It would be interesting to know how long --

13 THE HONOURABLE FRANK MARROCCO: Sorry,
14 Mr. Rockx, for interrupting your evidence like this.

15 MR. FREDERICK CHENOWETH: It would be
16 interesting to know how long Inquiry counsel intends
17 to be with this gentleman, because it would appear
18 that given the length of the cross-examinations, in
19 keeping with the suggestion of Mr. Bonwick, there
20 doesn't appear to be any necessity for limiting the
21 evidence which -- which Mr. Lloyd might give.

22 THE HONOURABLE FRANK MARROCCO: No. I
23 -- I want to limit it to the confusion to make sure
24 that this doesn't expand unduly and -- and create a --
25 you know, and part of the obligation is to have

1 proceedings that are proportionate to what's involved
2 and we've set a schedule and everybody's working to
3 stick to it, and I feel I need to do that in order --
4 but -- but the question is approximately how long will
5 we be in leading his evidence?

6 MS. KATE MCGRANN: Approximately an
7 hour.

8 THE HONOURABLE FRANK MARROCCO:
9 Approximately an hour. So probably less than -- I
10 would say probably less than that. So, actually less
11 than an hour.

12 So, we -- we should be able to easily
13 do it unless Mr. Marron is going to take a half a day
14 or something like that and --

15 MR. GEORGE MARRON: No fears of that.

16 THE HONOURABLE FRANK MARROCCO: All
17 right. So if you could let me know, Mr. Marron, and
18 then I'll formally do it.

19 So we can return now to -- Mr.
20 Chenoweth, are you cross-examining next?

21 MR. FREDERICK CHENOWETH: Yes, sir, I
22 am.

23

24 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: Mr. Rockx,

1 good day. As you may be aware, I act on behalf of Mr.
2 Ed Houghton with respect to these matters.

3 Prior to the lunch adjournment, Mr.
4 Breedon was taking you through a proposition, i.e.,
5 the proposition that if you did certain calculations
6 and/or if Ms. Gaspar's evidence and proposition was a
7 correct proposition, that the gap between the two (2)
8 prices, i.e., Hydro One and PowerStream, would widen,
9 correct? You remember being --

10 MR. JOHN ROCKX: If -- if those were
11 confirmed, those -- those things were confirmed, then
12 the gap would widen.

13 MR. FREDERICK CHENOWETH: Thank you.
14 Could we look for a moment then at the proposition
15 apparently stated by Ms. Gaspar in her evidence on May
16 29th that net regulatory liabilities would be assumed
17 pursuant to the bill.

18 Could we just explore that for a
19 moment? And in that respect, have you had an
20 opportunity to review the testimony of Ms. Gaspar?

21 MR. JOHN ROCKX: I've -- I've seen her
22 -- her comments, video, yeah.

23 MR. FREDERICK CHENOWETH: All right.
24 And you reviewed it by looking at the archived footage
25 of Ms. Gaspar's testimony?

1 MR. JOHN ROCKX: Yes.

2 MR. FREDERICK CHENOWETH: All right.

3 And I understand that in order to elicit this thought
4 out of Ms. Gaspar during the course of Mr. Breedon's
5 cross-examination, he referred the witness to certain
6 parts of the bid of Hydro One, correct?

7 MR. JOHN ROCKX: Yes.

8 MR. FREDERICK CHENOWETH: All right.

9 And the bid of Hydro One is -- appears to be Exhibit H
10 to your affidavit.

11 Could we turn to that exhibit, please?

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: Page 132.

16

17 (BRIEF PAUSE)

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH: Now, maybe
21 you could assist me, Mr. Rocks. I understand that
22 reference was made by Mr. Breedon to page 1 of the
23 Hydro bid. Is that correct?

24 MR. JOHN ROCKX: I guess, yes. He
25 made a reference to it?

1 MR. FREDERICK CHENOWETH: I'm asking
2 you, you tell me you reviewed what Ms. Gaspar was
3 referred to.

4 MR. JOHN ROCKX: Yes.

5 MR. FREDERICK CHENOWETH: Do I
6 understand that a reference was made by Mr. Breedon to
7 page 1 of the Hydro bid?

8 MR. JOHN ROCKX: Yes.

9 MR. FREDERICK CHENOWETH: All right.
10 And what paragraph was referred to on page 1 of the
11 Hydro bid?

12 MR. JOHN ROCKX: Scroll down here.

13 MR. FREDERICK CHENOWETH: Go slowly
14 now so the witness can have an opportunity. Thank
15 you.

16 Was it the Purchase and Sale section,
17 just to try and assist you a bit?

18 MR. JOHN ROCKX: Well, certainly the
19 purchase and sale was -- you know there's -- going
20 through the purchase and sale piece, yes.

21 MR. FREDERICK CHENOWETH: All right.
22 And the offer of \$13.6 million dollars, correct?

23 MR. JOHN ROCKX: That's correct.

24 MR. FREDERICK CHENOWETH: All right.
25 And that was a reference on page 1.

1 Was there any other references in the
2 bid directed -- directing the witness again to the
3 bid? Was there other pages that the witness was
4 referred to?

5 MR. JOHN ROCKX: I think it was also
6 looked at, was the -- the response to my queries was
7 also referenced to. That's certainly the...

8 MR. FREDERICK CHENOWETH: We'll come
9 to your response to your queries.

10 Was the reference to page 3 of the
11 Hydro One bid?

12 MR. JOHN ROCKX: I'm trying to
13 remember here.

14 MR. FREDERICK CHENOWETH: Look at page
15 3.

16 MR. JOHN ROCKX: Yes. Go to page 3.

17 MR. FREDERICK CHENOWETH: And look at
18 the bullets in the penultimate paragraph at the end of
19 page 3.

20 MR. JOHN ROCKX: I think there was a
21 reference to the regulatory assets and liabilities
22 piece and I believe -- been a while since, you know --
23 anyhow, so -- trying to remember exactly what was done
24 every -- every moment, but there was some reference to
25 Hydro One's offer and the res -- and the first

1 response to my queries.

2 MR. FREDERICK CHENOWETH: All right.

3 And did Mr. Breedon refer Ms. Gaspar to the third
4 bullet in the second last paragraph, i.e.:

5 "Net balance of regulatory assets
6 and liabilities will not have
7 material value"?

8 MR. RYAN BREEDON: Your Honour, I
9 don't mean to interrupt my friend, but rather than
10 cross-examining this witness on his recollection of
11 Ms. Gaspar's cross-examination, if My Friend wants, he
12 can turn up the transcript. It's page 150 of the May
13 29th examination in which the questions that were
14 asked of Ms. Gaspar were put to her directly, and then
15 this witness doesn't have to try to remember what was
16 asked or not asked.

17 THE HONOURABLE FRANK MARROCCO: Well,
18 I -- I --

19 MR. FREDERICK CHENOWETH: In that --

20 THE HONOURABLE FRANK MARROCCO: I
21 think -- I think I'll just let Mr. Chenoweth carry on.
22 Perhaps you could lead him a bit --

23 MR. FREDERICK CHENOWETH: In -- indeed
24 I will.

25 THE HONOURABLE FRANK MARROCCO: --

1 rather -- rather than the witness struggling and all
2 of us waiting.

3 MR. FREDERICK CHENOWETH: I'm -- I'm
4 quite content to do that, Your Honour. Thank you very
5 much.

6

7 CONTINUED BY MR. FREDERICK CHENOWETH:

8 MR. FREDERICK CHENOWETH: In any
9 event, you've told us there was a reference to the
10 third bullet on page 3:

11 "Net balance of regulatory assets
12 and liabilities will not have
13 material value."

14 MR. JOHN ROCKX: That's correct.

15 MR. FREDERICK CHENOWETH: All right.
16 Thank you.

17 Do you recall whether the witness was
18 referred to page 2 of the bid, and in particular under
19 "Key Terms" -- look at page 2, if you would -- the bid
20 -- we're moving to that now, thank you.

21 Drop a little further so we can see the
22 whole thing first of all. Thank you.

23 Under "Key Terms" there's a number of
24 items.

25 "The following provide some of the

1 additional terms that we would
2 expect to negotiate with you towards
3 a mutually acceptable purchase and
4 sale agreement."

5 And in particular can we look down to -
6 - to Item 7?

7 MR. JOHN ROCKX: M-hm.

8 MR. FREDERICK CHENOWETH: Do you
9 recall whether Ms. Gaspar was referred to Item 7?

10 MR. JOHN ROCKX: I don't recall. For
11 some reason I'm thinking not, but --

12 MR. FREDERICK CHENOWETH: All right.
13 I'm suggesting to you that -- that she wasn't referred
14 in particular to the provisions for price adjustments
15 relating to closing balances, undisclosed liabilities
16 that affect valuation, including, for example, rate-
17 based regulatory assets.

18 Tell me what you -- what you take then
19 from someone who would only have an opportunity to
20 look at the third bullet on page 3 without the
21 opportunity to look at the Key Terms, Item 7,
22 regulatory assets reference.

23 MR. JOHN ROCKX: Well, they say the
24 devil is always in the detail when you look at any
25 offer and, you know, to just look at a number and say

1 here's what we offer without looking at the conditions
2 attached to that offer is, you know, a little bit
3 dangerous, you know, when we're all going back,
4 recalling, you know, events that happened seven and a
5 half (7 1/2), eight (8) years ago.

6 So -- so yeah, you have to tie in all
7 the pieces here. So if it's an offer of, in this
8 case, 13.6 for shares, but it's subject to a number of
9 conditions, including provisions for price adjustments
10 and the fact that the offer assumes not a material
11 balance for regulatory assets and liabilities goes to
12 the heart of what we tried to clarify to make sure the
13 13.6 was 13.6 or something less than that.

14 And our conclusions or, you know, our -
15 - when we went through it our -- our understanding was
16 that there would be or could be some deductions from
17 the share purchase price and that's why we went
18 through and tried to get these clarified.

19 MR. FREDERICK CHENOWETH: All right.
20 I've got that. I'm -- we're talking now about the --
21 what Ms. Gaspar told us in the course of her evidence,
22 i.e., that net regulatory liabilities would be assumed
23 in the price. And they -- in other words, they'd be -
24 - they'd be paid for by Hydro One.

25 MR. JOHN ROCKX: Her -- her

1 recollection was that yeah, the 8 -- whatever the full
2 price was the full price and there wouldn't be any
3 adjustment as a -- from my recollection.

4 MR. FREDERICK CHENOWETH: That was her
5 assertion. All right.

6 MR. JOHN ROCKX: My understanding.

7 MR. FREDERICK CHENOWETH: Is that in
8 keeping with what you read under key terms, item 7?

9 MR. JOHN ROCKX: No. I mean, it is
10 subject to getting clarification on these issues, you
11 know, to -- so no, I would say you've got a -- you've
12 got to make sure that what's stated in gross amounts
13 is -- is what's going to be delivered at closing and
14 there are a bunch of conditions.

15 So hence our desire to get
16 clarification.

17 MR. FREDERICK CHENOWETH: Item 7, in
18 fact, says that there may well be price adjustments
19 based on undisclosed liabilities, such as net
20 regulatory assets, correct?

21 MR. JOHN ROCKX: Yes.

22 MR. FREDERICK CHENOWETH: So that
23 certainly raises the question of whether or not the
24 13.6 will be reduced by any net regulatory assets. Is
25 that correct?

1 MR. JOHN ROCKX: Yes.

2 MR. FREDERICK CHENOWETH: Thank you.

3 Hence your query?

4 MR. JOHN ROCKX: Yes.

5 MR. FREDERICK CHENOWETH: Thank you.

6 Now, what does -- what does the
7 reference on page 3 suggest:

8 "Net balance of regulatory assets
9 and liabilities will not have
10 material value."

11 What does that suggest to you?

12 MR. JOHN ROCKX: Well, in my
13 understanding you've got to define what material
14 value, but is that the -- they are -- it's assumed to
15 be nominal, you know, material, I guess material you
16 can try to differentiate what it is, but I -- you
17 know, we went with the approach that it will be
18 nominal, so you know --

19 MR. FREDERICK CHENOWETH: Does -- does
20 that raise the fear that if net regulatory liabilities
21 are not nominal, that there may be an adjustment?

22 MR. JOHN ROCKX: Yes.

23 MR. FREDERICK CHENOWETH: Thank you.

24 Hence your queries?

25 MR. JOHN ROCKX: Yes.

1 MR. FREDERICK CHENOWETH: All right.

2 The point being, if you're only
3 referred to page one, the 13.6 million, and then
4 referred to page 3, and I won't go to page 3 again,
5 without being referred to item under key terms, item
6 7, what's -- what's the value of the comment of Ms.
7 Gaspar?

8 MR. JOHN ROCKX: Well, I -- I guess it
9 may not be taking into account all the details that
10 were in the full offer, you know, you're just omitting
11 or -- or not remembering some of the pieces of the
12 offer.

13 MR. FREDERICK CHENOWETH: All right.

14 MR. JOHN ROCKX: Potentially.

15 MR. FREDERICK CHENOWETH: Thank you.

16 So in any event, going back to your
17 position, you made an adjustment of 1.4 million for
18 net regulatory assets?

19 MR. JOHN ROCKX: That's correct.

20 MR. FREDERICK CHENOWETH: And you --
21 you felt that from what you read in the bid, that that
22 was the most reasonable approach to try to create an
23 asset to asset -- I'm sorry, apples-to-apples
24 valuation?

25 MR. JOHN ROCKX: That's -- that's

1 where we there (sic) and wanted to get it confirmed.

2 MR. FREDERICK CHENOWETH: Very good.

3 So you wrote a letter?

4 MR. JOHN ROCKX: An email requiring --
5 yes.

6 MR. FREDERICK CHENOWETH: And you sent
7 that to Mr. Stevens?

8 MR. JOHN ROCKX: Yes.

9 MR. FREDERICK CHENOWETH: All right.

10 Now, could we turn to the November 27th
11 emails between these parties, which is Exhibit N.

12 MR. JOHN MATHER: Page 193.

13

14 CONTINUED BY MR. FREDERICK CHENOWETH

15 MR. FREDERICK CHENOWETH: And -- and
16 the first of those emails, November 27th at 6:24, you
17 Mr. Rockx wrote to Mr. Stevens and queried him about
18 certain items and without trying to do all of these
19 matters, you had a second query and it appeared to be
20 with respect to an immaterial net balance of
21 regulatory assets and liabilities.

22 What were you, in essence, querying
23 this gentleman about in that correspondence?

24 MR. JOHN ROCKX: Yeah, we've got the
25 wrong reference in here. This is the response. Maybe

1 it's below, or is it lower? Oh, there it is.

2 So you're asking about question 1 or 2?

3 MR. FREDERICK CHENOWETH: I'm asking
4 about question 2.

5 MR. JOHN ROCKX: 2.

6 MR. FREDERICK CHENOWETH: Again, it
7 talks about, and I'm sorry that you weren't on it at
8 the time, and an -- an immaterial net balance of
9 regulatory assets and liabilities.

10 MR. JOHN ROCKX: We were just trying
11 to --

12 MR. FREDERICK CHENOWETH: What was
13 your query there?

14 MR. JOHN ROCKX: Yeah, I was trying to
15 determine, once again, what the price would be, the
16 price that was indicated and if there would be
17 adjustments, what type of adjustments would follow out
18 of some of these -- if this key assumptions, you know,
19 the \$17.9 million rate base was not net, what would --
20 if -- what was the impact of the net regulatory assets
21 and liabilities impact on the purchase price, as well
22 for shares.

23 MR. FREDERICK CHENOWETH: Very good.

24 In other words, was it an assumed
25 liability or wasn't it, correct?

1 MR. JOHN ROCKX: Certainly in the case
2 of the regulatory assets -- liabilities, yes, correct.

3 MR. FREDERICK CHENOWETH: Thank you.
4 And you got a response to that email?

5 MR. JOHN ROCKX: Yes.

6 MR. FREDERICK CHENOWETH: And we've
7 already been through this, so I won't spend very much
8 time on it. But the -- if we could look at that,
9 which is Rick Steven's response of November 29th, at
10 5:56 p.m.

11 MR. JOHN ROCKX: M-hm.

12 MR. FREDERICK CHENOWETH: If you could
13 look down to that, what did you take from the
14 paragraph that starts out with:

15 "The proposal includes the
16 assumption of estimated pro rata
17 shares of assets"

18 et cetera, et cetera, and the three (3)
19 bullets, and in particular the middle bullet "net
20 regulatory liability", what did you take from --

21 MR. JOHN ROCKX: We took from --

22 MR. FREDERICK CHENOWETH: -- that
23 answer?

24 MR. JOHN ROCKX: We took from it that
25 they're buying the shares and that would be one of the

1 items that would be -- when I say "assumed", part of
2 the overall transaction, what we wanted and clearly
3 get is whether it would have an impact on the purchase
4 price.

5 MR. FREDERICK CHENOWETH: So you
6 didn't find any clarification there as to whether or
7 not there would be an adjustment for net regulatory
8 liabilities, is that correct?

9 MR. JOHN ROCKX: No, not crystal
10 clear, that's correct, and we looked at the second
11 bullet as well that talked about, you know, right
12 behind there that -- right below there that talked
13 further that the proposals based upon a variety of
14 factors and assumptions, et cetera, et cetera,
15 including regulatory assets and liabilities that we
16 wanted to reconcile, you know, once again if there was
17 an impact based upon the original purchase offer that
18 said in not a material balance and there I just wanted
19 to have it just crystal clear --

20 MR. FREDERICK CHENOWETH: All right,
21 so --

22 MR. JOHN ROCKX: -- would there be any
23 adjustment to the purchase price for shares.

24 MR. FREDERICK CHENOWETH: So to the
25 time of Mr. Stevens or your receiving Mr. Steven's

1 correspondence of November 29th at 5:55 p.m., I guess
2 a couple of days after you'd -- you'd written him, I
3 take it it was still your view that the most
4 reasonable way to approach your apples-to-apples
5 summaries was to take out the \$1.4 million net
6 regulatory liability?

7 MR. JOHN ROCKX: It was still subject
8 to confirmation. Yes. So we deducted it.

9 MR. FREDERICK CHENOWETH: Was it your
10 view that the correct -- so you deducted it and it was
11 your view that that was the right approach with the
12 information you had at that time?

13 MR. JOHN ROCKX: With the information
14 subject to confirmation, yeah, that's what we did. It
15 -- if it was started at a -- at a nominal amount, yes.

16 MR. FREDERICK CHENOWETH: Thank you.

17 So I take it thereafter you made
18 further attempts to clarify?

19 MR. JOHN ROCKX: Yes.

20 MR. FREDERICK CHENOWETH: And you did
21 that by way of a phone call?

22 MR. JOHN ROCKX: Setting up a phone
23 call, yes.

24 MR. FREDERICK CHENOWETH: All right.

25 And when did that phone call take

1 place?

2 MR. JOHN ROCKX: 1:30 -- 1:30 p.m. on
3 December 1.

4 MR. FREDERICK CHENOWETH: All right.
5 And just with respect to the timing of that phone
6 call, do I take it that the phone call took place
7 after Mr. Muncaster, Mr. Houghton, and others had
8 attended on Mr. Bentz and others from PowerStream on
9 the morning of December 1st?

10 MR. JOHN ROCKX: That's correct. I
11 was at that meeting and then I went back to my office
12 and had the call at 1:30 that afternoon.

13 MR. FREDERICK CHENOWETH: All right,
14 thank you.

15 So in any event, by the time you took a
16 third crack at getting clarification from this
17 gentleman, or not a third crack, it was your second
18 crack, you'd received -- this is a third potential
19 piece of material with respect to that clarification.
20 It was after Collus had already gone to PowerStream,
21 correct?

22 MR. JOHN ROCKX: Yes.

23 MR. FREDERICK CHENOWETH: And -- and,
24 in fact, as a result of some urging by Collus,
25 PowerStream had increased its -- its bid by seven

1 hundred thousand dollars (\$700,000)?

2 MR. JOHN ROCKX: That's correct.

3 MR. FREDERICK CHENOWETH: So, to some
4 extent, they'd already gone down the road with
5 PowerStream?

6 MR. JOHN ROCKX: Yes.

7 MR. FREDERICK CHENOWETH: Thank you.
8 And, again, you continued to pursue your quest for
9 clarification in spite of the fact that that had
10 happened and you had a conversation with Mr. Stevens?

11 MR. JOHN ROCKX: Yes.

12 MR. FREDERICK CHENOWETH: And -- and I
13 don't think I need to belabour this overly. You used
14 the phrase 'shut you down' or 'shut you down'. You
15 weren't able to get the clarification you wished to
16 get from Mr. Stevens?

17 MR. JOHN ROCKX: I wanted to have just
18 a discussion, let's go through the -- you know, the
19 adjustments that we were making to -- just to make
20 sure that we're not -- we're making the right
21 assumptions, you know.

22 And the -- you know, and -- and
23 indicated we just want to make sure that we can, you
24 know, position their offer fairly and correctly based
25 upon the information that's there.

1 And after a little bit of discussion,
2 you know, they -- and when I say, "Shut them down,"
3 they had asked that, you know, we're happy to answer
4 questions provided, you know, you sign -- you know, if
5 Collus would sign an exclusive -- or the Town would
6 sign an exclusivity agreement with us, and then we'll
7 get into those details.

8 And we found it was a little bit odd.
9 I mean, you know, getting exclusivity is not an
10 unusual thing. Once you're selected as a successful
11 proponent in a transaction, then, you know, you want
12 to shut down other parties so that they're not
13 discussing with other parties, so.

14 But it would have been ideal if we
15 could have just kind of just got their -- their offer.
16 Now, that said, they did offer to, you know, review
17 the details of -- of the -- you know, our calculation
18 of their offer.

19 MR. FREDERICK CHENOWETH: In your
20 evidence-in-chief, you used the phrase, "Shut down,"
21 with respect to the comments of Mr. Stevens. After
22 that conversation, in any event, with Mr. Stevens, you
23 still didn't have the clarification that you wished
24 for?

25 MR. JOHN ROCKX: No.

1 MR. FREDERICK CHENOWETH: All right.

2 And you then, I take it, approached Mr. Houghton in an

3 email dated December 2nd at 2:44. Is that correct?

4 And we'll look at Exhibit S, if we could, please --

5 MR. JOHN ROCKX: It's --

6 MR. FREDERICK CHENOWETH: -- of this

7 gentleman's affidavit.

8 MR. JOHN ROCKX: It would be December

9 1, but, yes.

10 MR. FREDERICK CHENOWETH: Yes,

11 December 1. If misspoke, December 1. Could we look

12 at that Exhibit S, please, of this gentleman's

13 affidavit? And maybe My Friend has a page number.

14 Okay, Exhibit S.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: Page 211.

19 MR. FREDERICK CHENOWETH: Thank you.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: Go down

24 further, please. Thank you.

25

1 CONTINUED BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: So, this is
3 your request of Mr. Houghton for the opportunity to
4 send the one (1) pager to Mr. Stevens, correct?

5 MR. JOHN ROCKX: That's correct.

6 MR. FREDERICK CHENOWETH: All right.

7 MR. JOHN ROCKX: Sort of gave him an
8 update of what happened in that phone call and, you
9 know, in light of, you know, following up still, just
10 want to get clarity here just so we can get the facts
11 correct, if you will.

12 MR. FREDERICK CHENOWETH: Thank you.
13 So, going back to Mr. Houghton's reply -- oh, scroll
14 up, please. Thank you. Mr. Houghton indicates that
15 he's copied Dean and will give him a call to let him
16 know about the email.

17 His first reaction, however, was to
18 leave it for now, correct?

19 MR. JOHN ROCKX: Yes.

20 MR. FREDERICK CHENOWETH: All right.
21 So, you waited there after -- for some response that
22 might be received after Mr. Houghton made inquiries
23 with Mr. Muncaster?

24 MR. JOHN ROCKX: Yeah. I -- I was,
25 you know, waiting for a response, correct.

1 MR. FREDERICK CHENOWETH: Yes. And
2 you didn't get a response?

3 MR. JOHN ROCKX: No.

4 MR. FREDERICK CHENOWETH: All right.
5 And I take it, by this time, by the time -- your email
6 was at 2:44, basically, three o'clock that afternoon
7 and shortly after 3:00 Mr. Houghton said he would make
8 the inquiries and you didn't get a response.

9 That, again, is on December 1st -- the
10 afternoon of December 1st. And, again, that's after
11 the -- the meeting in which PowerStream -- I'm sorry,
12 in which Collus had gone down the road, as I've
13 described it, with -- with PowerStream with respect to
14 price?

15 MR. JOHN ROCKX: That's correct. It
16 was after that meeting.

17 MR. FREDERICK CHENOWETH: Do you have
18 any idea, and you may not, and you can tell me that --
19 that you don't, would you have any idea as to whether
20 that reality, i.e., they'd gone down the road already
21 with PowerStream, would you have any idea whether that
22 affected the prospect of your getting a response from
23 that query that you made that day?

24 MR. JOHN ROCKX: I -- I don't know
25 about getting a response. I'm sure everybody was

1 busy, you know, with all kinds of matters. And maybe
2 -- maybe Ed could not get a hold of Dean. I don't
3 know the circumstances for not get -- not getting a
4 response.

5 MR. FREDERICK CHENOWETH: Thank you.

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: Can we bring
10 up the notes that you made at the time of your May
11 12th meeting? I think it was with Mr. Muncaster and
12 Mr. Houghton around the time that you took on the
13 project.

14 MR. JOHN ROCKX: An evaluation portion
15 of the engagement. On May 12th, I did meet with both
16 those gentlemen to talk about, you know, the -- the --
17 you know, just talk about the -- the LDC and, you
18 know, its -- its history, it's current operations, its
19 future operations, its standard -- standard procedures
20 and undertaking evaluation, let's learn about the
21 business.

22 MR. FREDERICK CHENOWETH: Thank you.

23 Can we look at the notes which I believe to be
24 KPM3491.1 -- .001, I guess, if that matters?

25 MR. JOHN MATHER: They're on the

1 screen, I think.

2 MR. FREDERICK CHENOWETH: Thank you.

3

4 CONTINUED BY MR. FREDERICK CHENOWETH:

5 MR. FREDERICK CHENOWETH: And we -- we
6 had some conversation about that this morning. And
7 Mr. Mather was inquiring with you with respect to some
8 of these matters.

9 So, again, who's in the room on this
10 occasion, yourself and Mr. Muncaster and Mr. Houghton?
11 Is that correct?

12 MR. JOHN ROCKX: That's -- that's my
13 recollection. I understand Jonathan Erling was in
14 Collingwood that day, as well. I don't recall him
15 being in the meeting, but he may have -- may have
16 been, I suppose, but I -- I don't recall him. He may
17 have left already or...

18 MR. FREDERICK CHENOWETH: Very good.
19 But -- but certainly, the --

20 MR. JOHN ROCKX: Certainly, those two
21 (2).

22 MR. FREDERICK CHENOWETH: Certainly,
23 the responses you got to your queries on that day
24 which are set out in these notes would not have come
25 from Jonathan Erling?

1 MR. JOHN ROCKX: No.

2 MR. FREDERICK CHENOWETH: They came
3 from either Ed or Mr. Muncaster?

4 MR. JOHN ROCKX: That's correct.

5 MR. FREDERICK CHENOWETH: All right.
6 So, when we were talking about new Council and
7 mandate, it says, "Reduce level of debt."

8 Is -- is it fair to say that either Mr.
9 Muncaster or Mr. Houghton told you that the mandate of
10 the new Council was to reduce the level of debt that
11 Collingwood had?

12 MR. JOHN ROCKX: It would -- it -- you
13 know, based upon this, yeah, it must have got a new
14 Council in the -- in the previous election, I guess.
15 And one (1) of their mandates was to reduce the level
16 of debt by exploring what they can do to reduce their
17 debt, the municipal debt.

18 MR. FREDERICK CHENOWETH: You were
19 told that by either Mr. Muncaster or by Mr. Houghton?

20 MR. JOHN ROCKX: Yeah.

21 MR. FREDERICK CHENOWETH: Thank you.

22 MR. JOHN ROCKX: Yes.

23 MR. FREDERICK CHENOWETH: Was there
24 reference to sale of assets heard near the end?
25 Again, I'm -- I'm a little lost on that in spite of

1 capable questions by Mr. Mather with respect to that.

2 What did you understand that to be?

3 MR. JOHN ROCKX: Well, one (1) -- one
4 (1) of the things, if you're looking to reduce
5 municipal --

6 MR. FREDERICK CHENOWETH: No, just
7 tell me what you understood the -- what you understood
8 you were told on that occasion.

9 MR. JOHN ROCKX: Well, they were
10 exploring the sale of assets, municipal assets.

11 MR. FREDERICK CHENOWETH: You were
12 told that again by Mr. Houghton or Mr. Muncaster?

13 MR. JOHN ROCKX: Yes.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And there's another reference, and this is:

16 "Mayor, 30 million value of LDC,
17 250K dividends to the town via
18 Holdco."

19 You told us in Mr. Mather's examination
20 that you understood you were being told that there had
21 been no dividends paid to the Town to date from the
22 operations of Collus Power. And -- and what did you
23 understand the reference to the 30 million to be?

24 MR. JOHN ROCKX: Once again, in the
25 sale of assets, I guess somebody had suggested that

1 the LDC asset might be worth 30 million, that
2 presumably --

3 MR. FREDERICK CHENOWETH: And -- and -
4 - and this --

5 MR. JOHN ROCKX: -- a hundred percent
6 basis. And then there's a reference to dividends.
7 Another -- another thing is that maybe we can get some
8 dividends to the Town via -- from the LDC as, you
9 know, another option.

10 MR. FREDERICK CHENOWETH: Which they
11 hadn't got previously?

12 MR. JOHN ROCKX: Well, they hadn't
13 been in the -- in the practice of paying them.

14 MR. FREDERICK CHENOWETH: Very good.
15 Thank you. And you indicated in your evidence-in-
16 chief that -- that the 30 million was a reference, as
17 you understood it, to the fact that the Town was
18 looking to reduce debt.

19 MR. JOHN ROCKX: They were looking to
20 reduce debt -- exploring ways to reduce debt.

21 MR. FREDERICK CHENOWETH: Thank you.
22 And again, you were told that by either Muncaster or
23 Houghton. Correct?

24 MR. JOHN ROCKX: It would have been of
25 those two (2). Yes.

1 MR. FREDERICK CHENOWETH: Thank you.

2 Very good.

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And you were

7 at the meeting of the Town that was had on

8 December 5th?

9 MR. JOHN ROCKX: Yes.

10 MR. FREDERICK CHENOWETH: Okay. And

11 you saw a set of slides at that meeting, as I

12 understand it?

13 MR. JOHN ROCKX: Yes.

14 MR. FREDERICK CHENOWETH: And could we

15 turn to what I understand to be the slides that were

16 presented at this meeting, and they appear to be

17 document number ALE5133.2.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: And if we

22 could look at what I understand to be page 16 of those

23 slides, LDC acquisition premiums. Just bring up the

24 note a little higher, if you could, ever so slightly.

25 Thank you very much.

1 I take it, in your memory this slide
2 with the note at the bottom was shown to the
3 councillors on the day of the December 5th Council
4 meeting?

5 MR. JOHN ROCKX: Yes. It would have
6 been shown to the councillors.

7 MR. FREDERICK CHENOWETH: Thank you.

8 MR. JOHN ROCKX: It wasn't my slide.

9 MR. FREDERICK CHENOWETH: Not your
10 slide. That's fine.

11 MR. JOHN ROCKX: Not my slide.

12 MR. FREDERICK CHENOWETH: But in any
13 event, the slide seems to indicate that based on an
14 8.0 million for 50 percent of the equity, the premium
15 offered by PowerStream for Collus is 1.6 times book or
16 pretty well the highest that has been paid in the
17 sector. I don't know whether you know anything about
18 whether or not it's the highest.

19 MR. JOHN ROCKX: That -- that was a
20 quote, I think, that came from John Glicksman in an
21 email to -- to Ed when this table also originated from
22 PowerStream.

23 MR. FREDERICK CHENOWETH: Do you know
24 whether that's accurate, or can you comment on that?

25 MR. JOHN ROCKX: Well, it doesn't say

1 times book value of what. And if it's book value of
2 equity or book value of enterprise value makes a
3 difference, so...

4 MR. FREDERICK CHENOWETH: Okay. I
5 understand -- do I take that for councillors who were
6 at that event on December 5th that -- that meeting
7 with Council that if you were listening or looking at
8 the slides, you would have understood on that occasion
9 that the offer made by PowerStream for 50 percent of
10 the shares of Collus was \$8 million? That would have
11 been obvious to you?

12 MR. JOHN ROCKX: Well, it says for
13 the -- the share piece was \$8 million is what's
14 indicated here.

15 MR. FREDERICK CHENOWETH: For
16 50 percent of the equity --

17 MR. JOHN ROCKX: Yes.

18 MR. FREDERICK CHENOWETH: -- in
19 Collus.

20 MR. JOHN ROCKX: That's what it says
21 for the shares. That wasn't the full offer, but yeah,
22 that was -- what was offered for the share piece,
23 yeah.

24 MR. FREDERICK CHENOWETH: For the
25 50 percent of the shares.

1 MR. JOHN ROCKX: Yes. 50 percent of
2 shares.

3 MR. FREDERICK CHENOWETH: \$8 million.
4 The figure of \$8 million.

5 MR. JOHN ROCKX: Yeah. Just for the
6 shares. I mean, there was --

7 MR. FREDERICK CHENOWETH: So if a
8 councillor was listening --

9 MR. JOHN ROCKX: Yes.

10 MR. FREDERICK CHENOWETH: -- he would
11 understood that what was being offered for 50 percent
12 of the Collus shares was \$8 million.

13 MR. JOHN ROCKX: If it was just for
14 the shares. There was the other components of the
15 bid.

16 MR. FREDERICK CHENOWETH: I
17 understand. We're only talking about the shares.
18 Correct?

19 MR. JOHN ROCKX: Well, this is -- you
20 know, if -- yeah. It says -- well, it says 50 percent
21 of the equity so. Maybe we'll get into a terminology
22 issue, I suppose.

23 MR. FREDERICK CHENOWETH: I'm maybe a
24 little simpler at these matters than you, but isn't
25 that 50 percent of the Collus shares?

1 MR. JOHN ROCKX: Yes.

2 MR. FREDERICK CHENOWETH: Thank you.

3 And the offer was \$8 million made by PowerStream.

4 Correct?

5 MR. JOHN ROCKX: Yes.

6 MR. FREDERICK CHENOWETH: Thank you.

7 And if a councillor had his lights on, he would have

8 heard that and understood that.

9 MR. JOHN ROCKX: I guess so, yes.

10 MR. FREDERICK CHENOWETH: Thank you

11 very much. Could we go to page 19, please.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: And again,

16 read the slide. We won't take the time to do that.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And the

21 upshot of this is again councillors -- we were being

22 told when the slide was presented to them. And I take

23 it, there was both conversation around the slides and

24 the slide itself. Is that fair?

25 MR. JOHN ROCKX: Well, this would have

1 been presented by Mr. Houghton to Council, yes.

2 MR. FREDERICK CHENOWETH: Thank you.

3 And he seems to be saying -- certainly, he put the
4 words in the slide in any event -- that PowerStream
5 has agreed to increase their offer up to \$8 million.
6 This represents a 10 percent increase and moves the
7 offer to the highest range of premiums paid,
8 et cetera, et cetera.

9 I take it if -- and again, there's a
10 reference just above that.

11 "We would like to negotiate the
12 offer for the 50 percent shares up
13 from 7.3 million to 8 million."

14 I take it if a councillor was listening
15 that he would have understood that the amount that was
16 going to be paid or could be paid if this transaction
17 was concluded by PowerStream for 50 percent of these
18 shares would be 8 million bucks.

19 MR. JOHN ROCKX: Yes.

20 MR. FREDERICK CHENOWETH: Thank you.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: And if we
25 could look quickly, if we could please, at CPS11306.

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: All right.
4 And if we could go down to -- and by the way -- well,
5 if we could go down to the last of -- I think it's the
6 last of the -- of the slides, which has the totals
7 with respect to these matters.

8 And this seems to have both the totals
9 for the non-financial bid and the financial bid. Is
10 that fair?

11 MR. JOHN ROCKX: Yes.

12 MR. FREDERICK CHENOWETH: Thank you.
13 And under this matter, Hydro One got 270 points it
14 looks like for payment for 50 percent of the shares or
15 up to 50 percent of the shares and other
16 considerations. Correct?

17 MR. JOHN ROCKX: Yes.

18 MR. FREDERICK CHENOWETH: All right.
19 So I take it that's -- you understood that there was
20 30 points that each person could score, the maximum
21 that could be given for the top financial price
22 offered?

23 MR. JOHN ROCKX: Yes.

24 MR. FREDERICK CHENOWETH: And nine (9)
25 voters or scorers.

1 MR. JOHN ROCKX: Of nine (9) voters.

2 MR. FREDERICK CHENOWETH: So it looks
3 like Hydro One got all nine (9) scorers 30 points for
4 a total of 270.

5 MR. JOHN ROCKX: Yes.

6 MR. FREDERICK CHENOWETH: And that
7 appeared to be before the -- before the team at the
8 time that this was discussed.

9 MR. JOHN ROCKX: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Can we look
15 for a moment at TOC531801. This is a set of slides
16 that my friend, Mr. Mather, took you through and to
17 through the course of your examination-in-chief. And
18 if we could look at slide number 3 if we could, I
19 believe it is.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: I am looking
24 for a slide. And maybe this is it and then again, it
25 isn't.

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: Actually I'm
4 wrong. Could it be slide 6 if you would, please?

5 So as I understand it, this was a
6 presentation that legal counsel and Aird & Berlis, Mr.
7 Clark made to the gathered councillors on January
8 16th?

9 MR. JOHN ROCKX: That's correct.

10 MR. FREDERICK CHENOWETH: All right.

11 And on this occasion I take it that
12 again under reference 2A, and I'll make this brief,
13 Your Honour, under reference 2A the councillors are
14 again being told that the amount that PowerStream is
15 prepared to pay for 50 percent of the shares of on
16 this occasion CUS, C-U-S, as opposed to Collus Power,
17 is \$8 million?

18 MR. JOHN ROCKX: For the shares alone,
19 yes.

20 MR. FREDERICK CHENOWETH: Thank you.

21 So if a councillor was listening, he'd
22 know that that was the price being paid for the
23 shares, correct?

24 MR. JOHN ROCKX: Yeah, and I'll just -
25 - once again I said that for the shares it was 8

1 million and there was other components of the
2 transaction.

3 MR. FREDERICK CHENOWETH: Indeed. And
4 the councillors were told about that, correct?

5 MR. JOHN ROCKX: It's laid out here,
6 yes.

7 MR. FREDERICK CHENOWETH: Yes.

8 And the components were the -- the
9 dividend adjustment, the recapitalization dividend
10 adjustment, and that was at that juncture suggested to
11 be 5.2 million?

12 MR. JOHN ROCKX: Yes, here, yes.

13 MR. FREDERICK CHENOWETH: And give or
14 take, and that was -- it's indicated in the
15 presentation made by Mr. Clark that that was an
16 estimate.

17 MR. JOHN ROCKX: Yes.

18 MR. FREDERICK CHENOWETH: And that was
19 an appropriate term to use because as you've explained
20 through the course of your evidence, this number moves
21 around a good deal so that at that juncture the word
22 "estimate" was appropriate?

23 MR. JOHN ROCKX: Yes.

24 MR. FREDERICK CHENOWETH: Thank you.

25 And the last item that they were being

1 told about is a source of capital was to do -- if you
2 could just scroll up ever so slightly, no, the other
3 way. I guess it's down. Thank you, you can stop
4 there.

5 Under item C is that there would be a
6 rate -- a repayment of the promissory note for \$1.7
7 million?

8 MR. JOHN ROCKX: Yes.

9 MR. FREDERICK CHENOWETH: And that
10 encompasses all the sources of funds that would have
11 been available to the Town as a result of -- of this
12 transaction right from the purchase of the shares to
13 the recapitalization and the -- and the dividend and
14 the repayment of the promissory note.

15 So if a councillor was listening on
16 that occasion, he would have known what was being paid
17 for the shares and he would have known what the other
18 sources of cash would have been in the transaction and
19 -- and what those amounts -- at least the estimated
20 amounts were at that time, correct?

21 MR. JOHN ROCKX: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: You
2 mentioned that you would have been in attendance after
3 the Town directed Collus to -- to negotiate with
4 PowerStream, you would have been in attendance at some
5 meetings in which legal counsel were doing what they
6 allegedly do well, i.e., negotiating these agreements?

7 MR. JOHN ROCKX: After -- after --
8 once PowerStream was selected, you're suggesting?

9 MR. FREDERICK CHENOWETH: Yes.

10 MR. JOHN ROCKX: Some of the legal
11 documentation stage, let's call it, yeah, I was -- I
12 was in some meetings and on some calls and emails,
13 yes.

14 MR. FREDERICK CHENOWETH: All right.

15 You -- you in fact got some of the
16 documents and had an opportunity to review them?

17 MR. JOHN ROCKX: Some of the drafts of
18 the legal agreements, yes.

19 MR. FREDERICK CHENOWETH: Yes. And
20 you understood from reviewing those drafts that the
21 matter of the shotgun clause was something that was
22 being negotiated between the parties and their
23 respective lawyers?

24 MR. JOHN ROCKX: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And you would have been in the room
2 when the shotgun clause was -- was a matter of
3 discussion, not from you, because you've indicated
4 that that wasn't your particular skill and -- and the
5 lawyers were taking care of that?

6 MR. JOHN ROCKX: I would have dealt
7 with financial matters and that would be more of a --
8 a legal issue.

9 MR. FREDERICK CHENOWETH: So the
10 question is you observed it from the documents you saw
11 and from what you heard, the question of whether or
12 not a shotgun clause would be included or any other
13 manner of take out clause was a matter that it
14 appeared Collus and the Town were taking advice on
15 from Aird & Berlis?

16 MR. JOHN ROCKX: Well, collectively,
17 yes, they were coming to a decision, you know,
18 negotiating with -- with PowerStream and its legal
19 counsel.

20 MR. FREDERICK CHENOWETH: Through
21 their legal counsel?

22 MR. JOHN ROCKX: Well, collectively,
23 the -- PowerStream and its legal counsel and Collus,
24 the Town and its legal counsel, yes.

25 MR. FREDERICK CHENOWETH: Indeed.

1 Would you recall whether Mr. McFadden was in those
2 meetings and part of those negotiations?

3 MR. JOHN ROCKX: I'm sure he would
4 have been in some of the meetings or emails, but which
5 ones or now much I can't recall.

6 MR. FREDERICK CHENOWETH: Right,
7 right.

8 But as you observed it, there --
9 there's no doubt that Mr. McFadden had input with
10 respect to the -- the results of those negotiated
11 agreements?

12 MR. JOHN ROCKX: Certainly at the
13 front end. More so when I was transitioned to the
14 legal counsel, that would have been -- you know, he
15 would have been involved there.

16 I don't know in the latter parts but --

17 MR. FREDERICK CHENOWETH: You're
18 uncertain of the latter parts, but certain of the
19 parts you saw, he had some input into those?

20 MR. JOHN ROCKX: At the out -- outset
21 when there was discussions, you know, with PowerStream
22 about the issues, you know, the business issues in
23 general.

24 MR. FREDERICK CHENOWETH: Very good.

25 MR. JOHN ROCKX: He would have been

1 involved in some of the email exchanges, et cetera.

2 MR. NORM EMLEM: You're going to need
3 to just keep your voice up, I'm having difficulty
4 hearing you from here, and others share that.

5 MR. JOHN ROCKX: Thank you.

6 THE HONOURABLE FRANK MARROCCO: Did
7 you get that last answer?

8 MR. FREDERICK CHENOWETH: Your Honour,
9 those are all the questions I have of this witness.

10 Thank you very much.

11 THE HONOURABLE FRANK MARROCCO: Mr.
12 Marron?

13 MR. GEORGE MARRON: I have no
14 questions.

15

16 CROSS-EXAMINATION BY MR. MICHAEL WATSON:

17 MR. MICHAEL WATSON: Thank you, Your
18 Honour.

19 Mr. Rockx, I think I introduced myself
20 earlier. My name is Michael Watson, I think you know
21 I'm one of the lawyers for Alectra, which is the
22 current name of what was PowerStream.

23 I take it you're quite familiar with
24 Alectra and PowerStream because of your background and
25 your involvement in the electricity sector?

1 MR. JOHN ROCKX: Yes.

2 MR. MICHAEL WATSON: All right.

3 Could I turn, please, to your CV for a
4 moment, which is Exhibit A to your affidavit, and
5 that's in the PDF, page 8 of the PDF, I want to just
6 ask you about some of this.

7 And if I -- if we could -- just so
8 those of us who are of a certain age can read this
9 better, could you -- I'm interested in the stuff under
10 professional and industry experience, if we could make
11 that a little larger, that would be great.

12 And so I -- I take it that this is an -
13 - this is an accurate statement of your experience in
14 this sector, is that right?

15 MR. JOHN ROCKX: Yes.

16 MR. MICHAEL WATSON: And it -- it says
17 here that you've assisted the -- before the bullets,
18 assisted LDC clients in -- in Ontario electricity
19 distribution sector and so on. You say:

20 "Strategic business and option
21 reviews for a number of LDCs since
22 market deregulation began in 1998."

23 And I take it that was with the passing
24 of the Electricity Act in 1998?

25 MR. JOHN ROCKX: Yes.

1 MR. MICHAEL WATSON: All right. About
2 how many LDCs, between then and 2011 had you dealt
3 with?

4 MR. JOHN ROCKX: At one time there was
5 over 300 LDCs or MEUs in Ontario at the outset, in
6 1998, so KPMG actually has a large market presence in
7 -- in this sector and the number of LDCs went from 300
8 in, I'll say 2000, down to around 75 at the time of
9 this transaction through consolidations, mergers, a
10 lot of sales, for example, in -- in 2000, 2001 I think
11 Hydro One bought 89 or 90 LDCs --

12 MR. MICHAEL WATSON: Mr. Rockx, I
13 don't want to --

14 THE HONOURABLE FRANK MARROCCO: How
15 many did you have involvement with?

16 MR. JOHN ROCKX: And I -- I'm just
17 trying to give a little context, so I was -- probably
18 had been involved with maybe, I don't know, 50-60,
19 touched -- touched in some point.

20 MR. MICHAEL WATSON: And just so --
21 just so you know, there has been a lot of evidence
22 going back several weeks, months or years even in this
23 Inquiry about the background there that you've talked
24 about, so thank you for that, but we're quite familiar
25 with that.

1 THE HONOURABLE FRANK MARROCCO: It --
2 it hasn't taken years.

3 MR. MICHAEL WATSON: Months, weeks.
4 It just seems that way sometimes.

5

6 CONTINUED BY MR. MICHAEL WATSON:

7 MR. MICHAEL WATSON: And -- and in the
8 second point it talks about business valuations from
9 merger and acquisition transactions.

10 About how many valuations had you been
11 involved in, again, in that approximately thirteen
12 (13) year period?

13 MR. JOHN ROCKX: I'm going to say
14 maybe forty (40), let's say.

15 MR. MICHAEL WATSON: Okay. And third
16 last point there, merger assistance, it says you've
17 assisted in the review or you ha -- well, you have
18 assisted in the review of several merger transactions.

19 And I take it that those are some of
20 the ones that you were referring to a few minutes ago?

21 MR. JOHN ROCKX: Yes, divestitures,
22 mergers. I don't know. You know, I'm going to say
23 maybe ten (10).

24 MR. MICHAEL WATSON: Okay. And --

25 MR. JOHN ROCKX: Mergers and

1 divestitures, yeah.

2 MR. MICHAEL WATSON: Right. And had
3 you been involved in stra -- in strategic options
4 reviews as well as valuations?

5 MR. JOHN ROCKX: Yes.

6 MR. MICHAEL WATSON: Again, about how
7 many in that thirteen (13) year period?

8 MR. JOHN ROCKX: Let's say maybe a
9 dozen primarily at the outset --

10 MR. MICHAEL WATSON: Before --

11 MR. JOHN ROCKX: -- you know, 2000,
12 that is.

13 MR. MICHAEL WATSON: Before the Collus
14 transaction had you ever heard the term 'strategic
15 partnership' with respect to LDCs or options
16 concerning future -- the future of any LDCs?

17 MR. JOHN ROCKX: Not -- maybe not in
18 those specific words, but certainly the concept of
19 getting -- you know, for smaller LDCs to get a bigger
20 entity to help out. You know, with the complex of the
21 industry, it was not unique.

22 MR. MICHAEL WATSON: Had you heard of
23 any of that kind of proposed transaction that had
24 actually been completed where a so-called strategic
25 partnership described as you just did was in fact

1 closed?

2 MR. JOHN ROCKX: That had closed?

3 MR. MICHAEL WATSON: Yes.

4 MR. JOHN ROCKX: I'll just give a
5 little context. The sale of a 10 percent that had
6 happened in a number of instances, which is a small
7 minority interest. A sale of a 50 percent I'm going
8 to say is unique.

9 And then there were I wouldn't say a
10 sale but where a number of LDCs would merge. And, you
11 know -- and, you know, if you had five (5) different
12 LDCs merged, often times, of the smaller size, you
13 know, they -- they'd take relative percentage
14 ownership interests in there.

15 So, they could be, you know, a 85/15
16 percentage swing if there were just two (2) or you
17 could have a 40/40/20, you know. They're -- you know,
18 I'm just speaking. There -- there were some
19 permutations on a merger basis, not a sale basis.

20 MR. MICHAEL WATSON: Right. Now, in
21 his evidence, Mr. Herhalt said that the strategic
22 partnership component of this RFP for Collus was, to
23 use his words:

24 "Unique in terms of what LDCs in the
25 Province had done."

1 Was that your understanding and your
2 experience, as well, in 2011?

3 MR. JOHN ROCKX: On a 50 percent
4 basis, that's correct.

5 MR. MICHAEL WATSON: And you -- you
6 said in paragraph 14 of your affidavit that you were
7 not aware at that time of any other municipality that
8 had sold 50 percent shares of its LDC, right? That's
9 what you --

10 MR. JOHN ROCKX: Not -- not --

11 MR. MICHAEL WATSON: -- say in your
12 affidavit?

13 MR. JOHN ROCKX: Not -- not a 50/50
14 deal, no.

15 MR. MICHAEL WATSON: Were you aware --
16 and, again, we're doing this in -- in 2011, not now,
17 but in 2011, of any share splits in ownership of an
18 LDC where a municipality owned 50 percent and another
19 LDC owned the other 50 percent?

20 MR. JOHN ROCKX: It's possible that he
21 could have got a split like that through a merger.

22 MR. MICHAEL WATSON: My question is
23 whether you were aware of any at all as at that time,
24 2011.

25 MR. JOHN ROCKX: On a 50/50 basis?

1 I'm not aware of any, you know, not -- and certainly,
2 not through a sale of 50 percent ownership.

3 MR. MICHAEL WATSON: Thank you. Let -
4 - let's now turn to something else, and that is the
5 calculation of value. If we could turn, please, to
6 Exhibit C to your affidavit, which is your -- the
7 valuation -- or the calculation of value. And this is
8 page 14, I believe, of the PDF, if I have this right.
9 I hope I do. Yes. All right.

10 So, this is the -- and this was indeed
11 a draft, right? And it was never finalized. Is that
12 fair?

13 MR. JOHN ROCKX: Yes.

14 MR. MICHAEL WATSON: All right. And
15 if we can take a look, please, just so we can see
16 where these numbers come from, page 2 of the report.

17

18 (BRIEF PAUSE)

19

20 MR. MICHAEL WATSON: Yes. All right.
21 And if we could scroll down. We -- we see, "Valuation
22 conclusion," there. And just a little bit more.
23 There we go.

24 And so, in paragraph 4, this is sort of
25 an executive summary at the beginning of this fairly

1 lengthy document. Is that right?

2 MR. JOHN ROCKX: Yes.

3 MR. MICHAEL WATSON: All right. And
4 we see here:

5 "Based on the scope of our review,
6 and you've set that out in Appendix
7 A, and subject to assumptions and
8 restrictions, Appendix B, we've
9 calculated the fair market value of
10 all the issued and outstanding
11 shares of Collus Power Corp. as of
12 December 31, 2010, to be in the
13 range of 14.1 million to 16.3
14 million, i.e., with the midpoint
15 value of 15.2 million."

16 And that was the conclusion at which
17 you arrived. Is that right?

18 MR. JOHN ROCKX: Yes.

19 MR. MICHAEL WATSON: And -- and, as I
20 understand, without going into any of the details
21 because it's getting late, this calculation of value
22 was based on an average of a number of different
23 methods of valuation. Is that right?

24 MR. JOHN ROCKX: Two (2) -- two (2)
25 primary approaches. The simple average, yes.

1 MR. MICHAEL WATSON: All right. And -
2 - and what are the names of those two (2)?

3 MR. JOHN ROCKX: The discounted cash
4 flow approach was one (1) and --

5 MR. MICHAEL WATSON: Right.

6 MR. JOHN ROCKX: -- the other was a
7 market comparables approach where we looked at other
8 transactions in the industry.

9 MR. MICHAEL WATSON: Right. And I --
10 and I take it that that range of -- of value, of 14.1
11 to 16.3, was -- and I think this is elsewhere in your
12 report, it -- it didn't include any adjustment for a
13 minor -- minority interest or any adjustment for a
14 majority interest or for a strategic value. Is that
15 fair?

16 MR. JOHN ROCKX: That's correct. It's
17 non-block value for a hundred percent of the shares.

18 MR. MICHAEL WATSON: All right. And -
19 - and, therefore, if we're talking about 50 percent of
20 the shares, leaving aside, you know, strategic
21 considerations and so on, what we'd be talking about
22 is -- is half that, that is 7.05 million to 8.15
23 million, fair?

24 MR. JOHN ROCKX: Yes.

25 MR. MICHAEL WATSON: All right. Now,

1 if we can go to page 28 of the PDF. And that -- and
2 this is page 14 of your report. If we scroll down to
3 section 7.6. Keep going down. All right.

4 And right there you -- you set out some
5 of the advantages that -- that Collus Power had. Is
6 that right?

7 MR. JOHN ROCKX: Yes.

8 MR. MICHAEL WATSON: All right. And -
9 - and I'm sure not going to go through all of them.
10 But you do talk, for example, in the fourth point
11 about the company's distribution system being
12 continually upgraded and so on, right?

13 MR. JOHN ROCKX: Yes.

14 MR. MICHAEL WATSON: And then item
15 number 2 there, going back up:

16 "The attractiveness of Collus Power
17 as an acquisition target, the
18 company's service territory is
19 located in an area where
20 consolidation could become more
21 active in the future with
22 participation by a large active
23 industry consolidator, such as
24 PowerStream and Veridian
25 connections."

1 I -- I take it that these advantages
2 and the points you note here you knew of and were
3 aware of from your lengthy experience, thirteen (13)
4 years since the Electricity Act and all of the clients
5 and so on that you'd been involved with?

6 MR. JOHN ROCKX: Yeah, they were some
7 of the active acquirers, PowerStream and Veridian,
8 yes.

9 MR. MICHAEL WATSON: Right. And --
10 and you were familiar with them as being active
11 acquirers, right?

12 MR. JOHN ROCKX: Yes.

13 MR. MICHAEL WATSON: And I take it
14 that you were familiar with the fact that just about
15 two and a half (2 1/2) years earlier, that PowerStream
16 in fact had -- had done a merger with Barrie?

17 MR. JOHN ROCKX: Yes.

18 MR. MICHAEL WATSON: And a few
19 earlier, of course, PowerStream had been created from
20 the merger of three (3) municipa -- municipally owned
21 electrical utilities?

22 MR. JOHN ROCKX: Yes.

23 MR. MICHAEL WATSON: Okay. And then
24 if we can go down, please, to the next section on the
25 next page, 7.7. You do here have some disadvantages.

1 And the first one (1) is kind of what I would call
2 maybe vanilla. And that is:

3 "General risks and uncertainties
4 surrounding regulation of the
5 Ontario electricity industry by the
6 OEB."

7 Right?

8 MR. JOHN ROCKX: Yes. Yeah, regula --
9 there's regulatory things that can change your
10 business without your un -- over which you don't have
11 control.

12 MR. MICHAEL WATSON: Right. And so,
13 that is absolutely not a disadvantage unique or
14 special to Collus?

15 MR. JOHN ROCKX: No, that's probably
16 fair, yes.

17 MR. MICHAEL WATSON: All right. And
18 then if we go down further. If we can scroll down a
19 little bit. The second bullet point on the top of
20 this page:

21 "The low level of distribution
22 revenues per customer compared to
23 other LDCs..."

24 And then it talks about rate
25 harmonization. I take it that this was a matter

1 specific to Collus?

2 MR. JOHN ROCKX: Yes. More specific
3 to Collus, yes.

4 MR. MICHAEL WATSON: All right. And
5 then the final bullet point there:

6 "The challenge to increase the
7 overall level of profitability
8 generated by Collus Power due to its
9 limited ability to realize economies
10 of scale."

11 MR. JOHN ROCKX: Yes.

12 MR. MICHAEL WATSON: All right. And -
13 - and that, I take it, was because of its fairly small
14 size?

15 MR. JOHN ROCKX: That's correct. And
16 there were a number of government studies that, you
17 know, espoused that same opinion, that there are some
18 economies of size.

19 MR. MICHAEL WATSON: Well, indeed.
20 And the -- and you're familiar with the fact that the
21 Ontario Government established sector review panel in
22 April of 20 -- of 2012 --

23 MR. JOHN ROCKX: Yes.

24 MR. MICHAEL WATSON: -- and which
25 reported in December 2012, and among the conclusions

1 was exactly that point?

2 MR. JOHN ROCKX: Yes. And there was a
3 Drummond Report prior to that.

4 MR. MICHAEL WATSON: Right. All
5 right. That's it for that one (1). Thank you. And
6 then I -- I wanted to go back and just ask you a
7 little bit about what Mr. Chenoweth asked about. And
8 -- and that is the table of -- if we could turn,
9 please, to KPM1907. I believe this is the December 1
10 email chain.

11

12 (BRIEF PAUSE)

13

14 MR. MICHAEL WATSON: Right. And we've
15 seen this before. If we could scroll down to the
16 bottom. Okay. Not quite. Right.

17 And so this is John Glicksman at
18 5:42 p.m., and you were familiar with Mr. Glicksman?
19 You've heard of him.

20 MR. JOHN ROCKX: Yes.

21 MR. MICHAEL WATSON: All right. And
22 indeed, you met him -- no, you didn't. I'm sorry.
23 Yes, you did. Did you meet him on December 1 at all?

24 MR. JOHN ROCKX: Yes, he would have
25 been there. Yes.

1 MR. MICHAEL WATSON: Right. All
2 right. And so John Glicksman's writing to
3 Ed Houghton, and he's saying:

4 "Further to our phone discussion a
5 short while ago, attached is a copy
6 of a slide we showed to our Board
7 and shareholders outlining the
8 premiums that we understand to have
9 starkly been paid --"

10 We'll go then, again, very briefly in a
11 moment:

12 "-- as discussed, based on
13 calculations of 8 million for
14 50 percent of the equity. This
15 would put the premium for Collus at
16 1.6 times book are pretty well the
17 highest that's been paid in the
18 sector. Hope you find the
19 information..."

20 And so on and so on. And so if we can
21 then go -- scroll up, then just a few minutes later,
22 Mr. Houghton sends -- forwarded this to you. Right?

23 MR. JOHN ROCKX: Yes, that's correct.

24 MR. MICHAEL WATSON: Right. And you
25 commented on it -- right -- in this email?

1 MR. JOHN ROCKX: From --

2 MR. MICHAEL WATSON: Sorry. I'm
3 sorry. Mr. Houghton was commenting on this to you.

4 MR. JOHN ROCKX: Oh.

5 MR. MICHAEL WATSON: Right?

6 MR. JOHN ROCKX: Yes.

7 MR. MICHAEL WATSON: I'm sorry.

8 MR. JOHN ROCKX: He was commenting to
9 me and Dean and somebody else.

10 MR. MICHAEL WATSON: Right. And I --
11 and I take it that you looked at the attachment when
12 he sent it to you.

13 MR. JOHN ROCKX: Yeah. You know,
14 funny if -- I saw the attachment with the -- I think
15 there was a -- the premiums from other transactions.
16 I didn't see the calculation of the 1.6.

17 MR. MICHAEL WATSON: No. And I
18 understand that. But you did open -- you see that the
19 attachment says LDC premiums dot ppt for PowerPoint?

20 MR. JOHN ROCKX: Yes.

21 MR. MICHAEL WATSON: All right. And I
22 take it that you -- oh, when you got this, you opened
23 it and looked at it.

24 MR. JOHN ROCKX: I -- I did see the
25 other transactions in multiples that were --

1 MR. MICHAEL WATSON: Right.

2 MR. JOHN ROCKX: -- that they
3 attached, yes.

4 MR. MICHAEL WATSON: Sorry. My
5 specific question, just to make sure I'm clear, is you
6 opened this attachment when you got the email and
7 looked at the attachment.

8 MR. JOHN ROCKX: I looked at the
9 attachment.

10 MR. MICHAEL WATSON: All right. And I
11 take it, there doesn't seem to be any indication in
12 any of the documents that you replied at all to
13 Ed Houghton.

14 MR. JOHN ROCKX: No, I didn't.

15 MR. MICHAEL WATSON: All right. Now,
16 if we can please look to 19.08. We've looked at this
17 before, which is the table.

18 MR. JOHN ROCKX: Yes.

19

20 (BRIEF PAUSE)

21

22 MR. MICHAEL WATSON: And I take it --
23 and we see here that these are transactions running
24 from May 2000 at the top to August of 2009 at the
25 bottom. And going through these, I take it that these

1 were transactions that were well known in the industry
2 and therefore, because of your familiarity, well known
3 to you.

4 MR. JOHN ROCKX: A number of the
5 transactions, yes. I've seen these or been involved
6 with some of them. Yes.

7 MR. MICHAEL WATSON: All right. And I
8 take that you were familiar with the enterprise to --
9 price to book value ratios on -- on the right?

10 MR. JOHN ROCKX: Everyone calculates
11 them a little bit differently but the general
12 principle yes. Yes.

13 MR. MICHAEL WATSON: All right. And
14 then if we -- and we see that there are
15 16 transactions here. And can we see -- you know, if
16 we look just after the break two-thirds of the way
17 down for Cornwall Electric, we see a low of 1.25 for
18 enterprise price to book -- to book value or price to
19 book value. Do you see that?

20 MR. JOHN ROCKX: Yes.

21 MR. MICHAEL WATSON: All right. And
22 the highest then is Uxbridge at the top, which was
23 early on in 2000 at 1.69?

24 MR. JOHN ROCKX: Yes.

25 MR. MICHAEL WATSON: All right. And

1 using my high-level math, I've figured it out that the
2 average here is 1.38, and I take it you wouldn't
3 dispute that.

4 MR. JOHN ROCKX: Well, the two (2)
5 averages are one four one and one three eight, so
6 you're in the ballpark.

7 MR. MICHAEL WATSON: All right. And
8 so the 8 million purchase price that PowerStream
9 offered then -- if you had us do very simple division
10 wouldn't need an assumed book price of \$5 million,
11 right? Because 0.6 times 5 is 3 -- you have, 5 and 3,
12 and you get to the 8. Fair enough?

13 MR. JOHN ROCKX: Yes. Although you
14 know -- so I say the enterprise value to book is
15 different than I think share value to book value of
16 equity.

17 MR. MICHAEL WATSON: I understand
18 that. But if we're talking about -- about the
19 \$8 million, which was the -- which was the figure
20 there --

21 MR. JOHN ROCKX: Yes.

22 MR. MICHAEL WATSON: -- what we're
23 talking about then is to -- that is 1.6 of 5 million
24 times 5 million. Right?

25 MR. JOHN ROCKX: Yeah. For a

1 half interest, yeah.

2 MR. MICHAEL WATSON: Right.

3 MR. JOHN ROCKX: Yeah.

4 MR. MICHAEL WATSON: And so -- and so
5 if we think -- that was -- the \$8 million is what
6 PowerStream went to, but it's -- of course, it started
7 at 7.3. Right?

8 MR. JOHN ROCKX: Yes.

9 MR. MICHAEL WATSON: All right. And
10 7.3, when you -- you know, it's very easy to multiply
11 that out. That comes then to a ratio of 1.46 instead
12 of 1.6, right?

13 MR. JOHN ROCKX: Yes.

14 MR. MICHAEL WATSON: All right. And
15 so that would still be above the average -- even at
16 the original price would be above the average that had
17 been paid in all of these that are on the table.
18 Right?

19 MR. JOHN ROCKX: Once again, you're
20 comparing apples and oranges a little bit because
21 there's enterprise value versus just share value to --
22 but --

23 MR. MICHAEL WATSON: All right.

24 MR. JOHN ROCKX: -- if you -- yeah.

25 Oh, yeah. I mean, I said -- I said

1 there you're comparing a little bit of difference if
2 you're saying that an \$8 million value, that's just
3 the equity value where this is enterprise value, which
4 is debt and equity.

5

6 CONTINUED BY MR. MICHAEL WATSON:

7 MR. MICHAEL WATSON: But I take it,
8 when you -- when you saw the email from Mr. Glicksman,
9 and you read it, and you -- then it was sent, of
10 course, to Mr. Houghton, and Mr. Houghton forwarded it
11 to you, and you read his email, and you read this
12 attachment, you agree you didn't reply. Right?

13 MR. JOHN ROCKX: M-hm.

14 MR. MICHAEL WATSON: Is that correct?

15 MR. JOHN ROCKX: I did not -- I did
16 not reply. Yeah.

17 MR. MICHAEL WATSON: Right. And I
18 take it that if you had been of the view that whoa,
19 whoa, whoa, this is misleading. There's a problem
20 with it. It doesn't really work. The analysis
21 comparison is not something you should rely on, client
22 Mr. Houghton, you would have said something. Fair?

23 MR. JOHN ROCKX: Well, I don't recall
24 having seen the details of the calculations, so I
25 didn't -- I didn't go to that level and no. So I -- I

1 don't know. What I mean is I saw it referenced, and I
2 saw it reused again.

3 MR. MICHAEL WATSON: I want to -- and
4 you saw it reused again. You saw it reused again in
5 the -- reproduced in the slide deck that was part of
6 the presentation to Town Council?

7 MR. JOHN ROCKX: Yes.

8 MR. MICHAEL WATSON: All right. And
9 you had no problem with that being presented. You
10 didn't pipe up and say, hey, you can't rely on this,
11 or anything like that.

12 MR. JOHN ROCKX: My gut sense was that
13 it was on the hi -- certainly high.

14 MR. MICHAEL WATSON: The 1.6.

15 MR. JOHN ROCKX: Yes.

16 MR. MICHAEL WATSON: Exactly as
17 Mr. Glicksman had said.

18 MR. JOHN ROCKX: Higher -- no. The
19 one six was higher than it -- the actual transaction
20 EV, multiple.

21 MR. MICHAEL WATSON: I -- but you
22 didn't say anything?

23 MR. JOHN ROCKX: I don't know. I
24 might have mentioned it to Ed, but I certainly didn't
25 make a big deal of it. I -- you know, somebody's just

1 putting a number out there and --

2 MR. MICHAEL WATSON: You have -- I
3 take it you have no recollection of having said
4 anything to Ed.

5 MR. JOHN ROCKX: No specific
6 recollection, but I may have mentioned it to him.
7 And, you know, probably mentioned to him, hey, that
8 looks -- looks high. The calculation looks high.

9 MR. MICHAEL WATSON: Sorry. You're
10 speculating, or you're saying you probably did?

11 MR. JOHN ROCKX: I would have thought
12 I would have done.

13 MR. MICHAEL WATSON: I see.

14 MR. JOHN ROCKX: I can't say
15 definitively. It's eight (8) years ago.

16 MR. MICHAEL WATSON: I want to ask you
17 about something else very briefly, and that is about
18 transfer tax.

19 You're familiar with transfer tax that,
20 as I understand it, under Ontario legislation had --
21 had been imposed on the transfer of electricity
22 assets?

23 MR. JOHN ROCKX: Yes.

24 MR. MICHAEL WATSON: All right. And
25 that was -- was that a 33 percent tax transfer?

1 MR. JOHN ROCKX: Yes.

2 MR. MICHAEL WATSON: All right. And
3 as I understand, in the -- it was in the year 2009.
4 It was -- checking this up on the administrative
5 finance website, it was in the year 2009 that the
6 Ontario government introduced a tax exemption.

7 MR. JOHN ROCKX: They had a number of
8 transfer tax holidays over the past couple decades.
9 So there was one in effect at the time of this
10 transaction.

11 MR. MICHAEL WATSON: Right. And --
12 but does it ring a bell that that was introduced in
13 2009, that is specifically the transfer of electricity
14 assets among publically-owned utilities?

15 Does that ring a bell?

16 MR. JOHN ROCKX: Well, I -- I can't
17 comment on the exact dates. I don't recall. But
18 there was transfer tax holidays -- periodic ones --
19 introduced by the province of Ontario.

20 MR. MICHAEL WATSON: All right. And
21 at the time of this transaction, there was one for
22 transfers among publicly-owned utilities. Right?

23 MR. JOHN ROCKX: Yes.

24 MR. MICHAEL WATSON: That is utilities
25 owned by municipalities?

1 MR. JOHN ROCKX: Yes.

2 MR. MICHAEL WATSON: All right. And
3 the purpose, as it has been explained, was to
4 encourage municipalities to enter into consolidation
5 transactions and not incur that penalty?

6 MR. JOHN ROCKX: Yes.

7 MR. MICHAEL WATSON: And as I
8 understand it, more recently -- and I'm not going to
9 go into it any further than just this one question --
10 in 2015, this exemption or holiday was extended to
11 transfers for all municipal electricity utilities,
12 including transfers to private entities. Is that
13 right? Are you familiar with that?

14 MR. JOHN ROCKX: I don't recall. I'm
15 not a full-time tax practitioner but...

16 MR. MICHAEL WATSON: But you're -- you
17 continue to work in the LDC --

18 MR. JOHN ROCKX: Yeah.

19 MR. MICHAEL WATSON: -- industry
20 valuations and --

21 MR. JOHN ROCKX: There have been
22 instances. There's still a -- a prohibition generally
23 or a disincentive for private -- private companies to
24 come in. I can't remember the specifics back then.

25 MR. MICHAEL WATSON: Okay. And of

1 course, PowerStream -- back in 2011 and Alectra now --
2 was a corporation that was municipally owned?

3 MR. JOHN ROCKX: Yes.

4 MR. MICHAEL WATSON: And Hydro One was
5 not though. Right?

6 MR. JOHN ROCKX: It was owned by the
7 province, but I believe it was still covered by -- it
8 was the -- sort of municipally owned plus -- plus
9 Hydro One when it was still owned -- wholly owned by
10 the province.

11 MR. MICHAEL WATSON: I see. That --
12 and that's what I wanted to ask you about. Was it
13 your understanding that Hydro One was also covered by
14 the exemption?

15 MR. JOHN ROCKX: It would have --

16 MR. MICHAEL WATSON: Or do you know?

17 MR. JOHN ROCKX: I believe it was, but
18 once again, I'm not a full-time -- it was a anomaly in
19 terms, but I thought it was also covered by the
20 transfer tax exemption if you structure it properly.

21 MR. MICHAEL WATSON: All right. Then
22 I want to -- Your Honour, I probably have about 12
23 more minutes. I'm just -- and then Mr. Fryer may have
24 10 or 15 or something like that. I don't know whether
25 we have to be out of here at 3:30 or quarter to 4:00.

1 THE HONOURABLE FRANK MARROCCO: We're
2 asked -- no, no. We're asked to leave earlier, not at
3 a quarter to 4:00 but at 3:30. So I'm leaving at
4 3:30.

5 MR. MICHAEL WATSON: I might therefore
6 as well.

7 THE HONOURABLE FRANK MARROCCO: I
8 don't really want to -- I don't really want to create
9 a problem for the Town, so.

10 MR. MICHAEL WATSON: All right. Well,
11 I am going to move to a new topic, and it'll take a
12 few minutes. And I see it's within two (2) minutes of
13 3:30, so I'm happy to stop now and finish up quickly
14 in the morning. Quickly.

15 THE HONOURABLE FRANK MARROCCO:
16 Tomorrow at 9:00.

17 MR. MICHAEL WATSON: Thank you,
18 Your Honour.

19

20 (WITNESS RETIRES)

21

22

23 --- Upon adjourning at 3:30 p.m.

24

25

1 Certified Correct,

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5 _____

6 Wendy Woodworth, Ms.

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