



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 14th, 2019

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APPEARANCES

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1 --- Upon commencing at 10:01 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Good
4 morning.

5 MS. KATE MCGRANN: Mr. Fryer, you
6 understand you're still under oath?

7 MR. TIM FRYER: Yes, I do.

8

9 TIMOTHY EDGAR FRYER, Previously Sworn

10

11 MS. KATE MCGRANN: Good morning, Mr.
12 Fryer.

13 MR. TIM FRYER: Good morning.

14 THE HONOURABLE FRANK MARROCCO:

15 Actually, before, let me just make a brief
16 announcement. They're -- one (1) of -- one (1) of you
17 has an appointment this morning of a medical nature,
18 nothing serious, so we'll -- we'll take 11:30 to 1:30
19 break, which will include lunch, and we'll sit a
20 little later to make up the time if we have to.

21

22 CONTINUED EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

23 MS. KATE MCGRANN: When we left off
24 yesterday, we've been discussing the promissory note,
25 and the payments that Collus was making to the Town

1 under the promissory note. Was that a beneficial
2 arrangement to the Town, in your opinion?

3 MR. TIM FRYER: Yes.

4 MS. KATE MCGRANN: And can you explain
5 why, please?

6 MR. TIM FRYER: When restructuring
7 occurred in 2001, there was the opportunity, if -- if
8 LDCs wanted to, to formulate debt that was considered
9 shareholder debt, and that would be in the form of a
10 promissory note. So our first inclination from an
11 approach standpoint was the -- the distribution of
12 debt equity for our size utility.

13 This is something that Mr. Chapman
14 spoke about yesterday. It was a 50/50 debt/equity
15 ratio. So we were considering taking out a promissory
16 note in the whole amount, the 50/50. But in
17 conversations with the CAO, we decided there was an
18 opportunity to purchase, and we ended up purchasing
19 Clearview assets and Thornbury assets.

20 So in order to do that, we needed to
21 take third party debt. So the reason it ended up
22 being \$1.7 million was that was the differential
23 between the amount that a 50/50 debt to equity ratio
24 would be, which would have been approximately \$5
25 million, and it was about 3.3 million to purchase the

1 other utilities.

2 We didn't want to take on any more
3 leverage than the 50/50. So that's why stayed at a
4 one point seven (1.7). And again, the interest
5 payment went directly to the municipality, and that
6 was the structure that we settled upon.

7 MS. KATE MCGRANN: And can you just
8 help me understand why that was beneficial to the
9 Town?

10 MR. TIM FRYER: Because they were
11 receiving the hundred and twenty-four thousand dollars
12 (\$124,000) per -- per year as a -- as a -- we called
13 it a cash dividend.

14 MS. KATE MCGRANN: Turning back to the
15 -- the shared services arrangements as they were in
16 practice.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: A little
21 recalibration at the beginning of every day. How's
22 that? Okay. I'm going to try not to move.

23 Turning back to the shared services
24 arrangements as they existed as at the beginning 2012,
25 were those beneficial to the Town?

1 MR. TIM FRYER: I believe so.

2 MS. KATE MCGRANN: And how were they
3 beneficial to the Town?

4 MR. TIM FRYER: I -- I think all I can
5 give -- give you is a general statement, but we -- we
6 felt that the costs that were being incurred for the
7 services were being done by power and -- and solutions
8 to complete the operational things they needed to were
9 most cost-effectively done in the arrangement that we
10 had. We felt very confident that with our -- our
11 external auditors' review, that the allocations were
12 being done appropriately.

13 And then with our comparative analysis
14 at the end of each year, contained within our -- our
15 business plan and -- and annual report, we were
16 confirming that we were in the low range of the admin
17 costs per customer, which would -- would -- we would
18 take to mean that we were doing things cost-
19 effectively.

20 MS. KATE MCGRANN: Okay. So I
21 understand you to be saying that the shared services
22 resulted into -- in efficient costs or lower costs for
23 the ratepayers? Is that right?

24 MR. TIM FRYER: We believed so, yes.

25 MS. KATE MCGRANN: I'd like to

1 understand how the shared services arrangements were
2 beneficial to the Town.

3 MR. TIM FRYER: So I was saying to
4 power and to water, and so the water side was the
5 Town, and -- and that's why I was equating it to be
6 beneficial to the Town.

7 What you'll be referring to possibly as
8 the Town services that were done outside of water, so
9 for instance, Mr. Houghton acted as -- as the CEO of -
10 - or, sorry, the director of public works, and that
11 cost was going into the water department. And the
12 work was being done for the other department, but
13 again, it was going in at a cost-effective level, as
14 far as we were concerned.

15 MS. KATE MCGRANN: Okay. So am I
16 accurately summarizing your answer when I say that
17 services were being provided in a cost efficient way
18 to the ratepayers, and also to the extent that the
19 Town was receiving services under the shared services,
20 they were being provided in a cost-effective, cost
21 efficient manner?

22 MR. TIM FRYER: We believed so, yes.

23 MS. KATE MCGRANN: When it came to the
24 work that you were going to be doing on amending the
25 shared service agreements, was it a goal of yours to

1 maintain those benefits, the cost-effective benefits
2 of the services to the ratepayers and the Town through
3 the amendments that you were making?

4 MR. TIM FRYER: Yes. That was one (1)
5 goal, yes.

6 MS. KATE MCGRANN: It's my
7 understanding that those agreements were not amended
8 before the share sale Transaction was finalized in
9 July 2012. Is that right?

10 MR. TIM FRYER: No. From what I can
11 see, there was an agreement to continue on with the
12 current ones which we had been doing prior the shared
13 purchase, and they were going to work on that.

14 MS. KATE MCGRANN: Did -- did the
15 agreement to agree that you described cause you any
16 concern that there may be a loss of the benefits that
17 you've described to me, the cost efficiencies enjoyed
18 by the ratepayers and the Town?

19 MR. TIM FRYER: At -- at that
20 particular point in time, I wasn't responsible for --
21 for that aspect of it. In and around March, there was
22 the situation where Cindy Shuttleworth was taking on
23 the -- the role of working through the transactions,
24 so to speak, in the Collus Power side, and I was
25 concentrating on the other work, and -- and

1 Collingwood public utilities, so I wasn't aware of the
2 July 31st agreement letter until I read the documents.

3 Actually, I -- I'll correct myself on
4 that; until I was a member of Council and it came to
5 light in the information that we were provided through
6 the other reviews that were done.

7 MS. KATE MCGRANN: Do you have any
8 concerns when you handed over responsibility for
9 amending the shared service agreements a couple of
10 months before the Transaction was going to be
11 finalized that the benefits may be lost if they
12 weren't finalized?

13 MR. TIM FRYER: No, because I knew the
14 work -- the real part of the work was going to involve
15 power. And since Ms. Shuttleworth was going to be
16 dealing with that, I was comfortable with -- with
17 returning the -- the duties over to her, and -- and
18 through her to Mr. Houghton.

19 I -- I wasn't surprised that they
20 couldn't be finalized, and they had -- like, they had
21 to do some sort of a letter, that when I saw the
22 letter and -- and read the contents, I wasn't
23 surprised that that had happened. I just didn't know
24 about it, even though I was there.

25 MS. KATE MCGRANN: Why weren't you

1 surprised that they couldn't be finalized before the
2 Transaction was finalized?

3 MR. TIM FRYER: I think just -- there
4 was so much work to be done in regards to firming up
5 possibly what services could come from PowerStream
6 directly, because that was one (1) of the goals of the
7 -- of the partnership was to utilize their -- their
8 back office expertise while we were going through our
9 -- our -- dealing with the various successions that we
10 had to do, and -- and those types of things.

11 So I felt, certainly at the time, that
12 the agreements were going to be in a state of flux,
13 and they probably would be prepared in -- in a form
14 that was pretty much acceptable in time for the cost
15 of service study going in, because the OEB would need
16 to approve them.

17 MS. KATE MCGRANN: The letter that you
18 mentioned, which letter were you talking about?

19 MR. TIM FRYER: The July 31st
20 agreement that there'd be a continuation of service, I
21 believe.

22 MS. KATE MCGRANN: If we can take a
23 look at paragraph 622 of the Foundation Document,
24 please.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: I'll ask you to
4 scroll down a little bit further so we can take a look
5 at the whole thing. So this paragraph describes a
6 supplementary agreement which -- way of the obligation
7 to finalize the shared service agreements.

8 Were you aware in March -- that in
9 March there was a letter that was signed as well that
10 sort of agreement to agree type letter?

11 MR. TIM FRYER: Not to my recall. I
12 can't -- I can't remember that one (1) until seeing it
13 as a member of Council.

14 MS. KATE MCGRANN: Okay. So let's
15 focus on this -- this description of the July 31st
16 letter, then. We'll scroll down. The conditions in
17 this letter included the following:

18 "That Collus PowerStream would
19 provide services to the Town of
20 Collingwood on a fully allocated
21 cost basis, plus a return on
22 investment."

23 Was that consistent with the
24 arrangement before the Transaction?

25 MR. TIM FRYER: I believe so.

1 MS. KATE MCGRANN: Okay.

2 "That Collus PowerStream would not
3 pay more than fair market value for
4 any of the services supplied by the
5 Town of Collingwood."

6 Was that consistent with the
7 arrangement before the closing of the shared sale
8 Transaction?

9 MR. TIM FRYER: I don't recall
10 anything in the prev -- in the -- in the agreements
11 that specifically talked about provision of services
12 by the Town of Collingwood, so I can't say for certain
13 on that.

14 MS. KATE MCGRANN: Okay. Looking at
15 (c):

16 "The shared service agreements would
17 be reviewed annually so that the
18 costs of the services under the
19 agreements could be revised. If the
20 parties could not agree on a revised
21 cost of services, the cost would
22 increase by 3.5 percent of the
23 year's -- previous year's costs."

24 Was that consistent with the
25 arrangement that existed before the shared sale

1 Transaction?

2 MR. TIM FRYER: My recall of the other
3 agreements was that it was based on inflationary
4 change if -- if necessary. So I -- I'm -- I don't
5 believe that that's exactly the way, but...

6 MS. KATE MCGRANN: Can you explain
7 what you mean when you say it was based on an
8 inflationary rate change, if necessary?

9 MR. TIM FRYER: My recall of the
10 agreements was that it recognized a base cost, and
11 then referred to the fact that there could be
12 inflationary increases to that amount over the course
13 of time.

14 MS. KATE MCGRANN: Do you remember
15 whether it set out a method for calculating the -- the
16 inflationary increase?

17 MR. TIM FRYER: No.

18 MS. KATE MCGRANN: Do you remember if
19 during the time that -- between 2001 and 2011 there
20 were inflationary increases applied?

21 MR. TIM FRYER: That was more to -- to
22 set a level that the services couldn't exceed. So as
23 we've explained through the course of evidence, the
24 methodology that was used was to take the exact cost
25 that was being incurred and split it over to the two

1 (2) departments, on -- on the approved percentage
2 basis.

3 And then in -- at the end, of the year
4 you'd look at the total costs that had been incurred
5 and make sure that it hadn't exceeded the level within
6 the agreement.

7 MS. KATE MCGRANN: You weren't
8 involved in the negotiation of this letter at all?

9 MR. TIM FRYER: No.

10 MS. KATE MCGRANN: Were you asked to
11 review it before it was signed?

12 MR. TIM FRYER: (NO AUDIBLE RESPONSE).

13 MS. KATE MCGRANN: Did anyone consult
14 you at all about how the shared services would be
15 addressed in -- as in the resulting entity from the
16 share sale transaction?

17 MR. TIM FRYER: No.

18 MS. KATE MCGRANN: Stepping back in
19 time from July 31st, 2012, to the beginning of 2011,
20 can you look at paragraph 140 of --

21 THE HONOURABLE FRANK MARROCCO: Are
22 you moving on to --

23 MS. KATE MCGRANN: -- the Foundation
24 document.

25 THE HONOURABLE FRANK MARROCCO: --

1 something different than the shared services? Let me
2 -- do I understand correctly that -- that the shared
3 services were known and identified?

4 MR. TIM FRYER: Yes, sir.

5 THE HONOURABLE FRANK MARROCCO: And
6 the costs of those services was known --

7 MR. TIM FRYER: Yes.

8 THE HONOURABLE FRANK MARROCCO: -- at
9 least to the previous fiscal year.

10 MR. TIM FRYER: If I may, one (1) of
11 the major costs of course was the labour of the
12 employees that were involved, so we had each of the
13 departments involved -- that actually was in a table
14 that was contained in a document I reviewed with Ms.
15 Chaplin yesterday.

16 It showed the -- the department, so it
17 showed Finance, which included myself and -- and
18 others that were part of that group and our split was,
19 I'm going to say 55 percent Power and 40 percent
20 Water, and then the 5 percent that was remaining was
21 costs that stayed within Solutions in regards to the
22 employees for things like benefits and -- and that
23 that had to be recovered.

24 And so those charges went over to the -
25 - to the individual companies with a -- with a small

1 mark-up on them and the revenue that came back from
2 those charges going over was applied to Solutions,
3 meant to be eventually on a break-even basis, that
4 Solutions would be a break-even corporation.

5 THE HONOURABLE FRANK MARROCCO: And
6 the services supplied by the Town to Power were known.

7 MR. TIM FRYER: If I may, sir, so
8 Solutions was a Collus entity and it provided services
9 to Collus Power, the LDC, Collingwood Public
10 Utilities, the water utility, and some of the
11 employees who also did work for the Town of
12 Collingwood. The Town of Collingwood itself wasn't
13 providing services back to Collus. It was Collus
14 providing them outright to the LDC and to the Town.

15 THE HONOURABLE FRANK MARROCCO: So in
16 terms of trying to figure out the -- the value of
17 these shared services, all of the information required
18 to do that was known?

19 MR. TIM FRYER: Yes.

20 THE HONOURABLE FRANK MARROCCO: And
21 every year you must have gone through an exercise to
22 do that, correct?

23 MR. TIM FRYER: In order to have our
24 external office -- external auditors approve of the
25 methodology we're using to transfer costs, we had to

1 annually review, and then in regards to things -- Mr.
2 Erling spoke about this a little bit. If we were
3 purchasing a billing system, we would look at how much
4 of the costs should be allocated to Water and how much
5 should be allocated to -- to Power, and we would
6 allocate it that way.

7 THE HONOURABLE FRANK MARROCCO: So to
8 have done a -- a valuation of the shared services for
9 -- so that it would be done prior to the closing of
10 this sale, how -- how long would that take?

11 MR. TIM FRYER: So the -- the
12 information that was available to the partners was the
13 costs that had been incurred through the years through
14 the financial statements, so they would have had a
15 fairly decent idea on -- on what the kind of costs
16 were.

17 It was more the fact that, in -- in my
18 estimation, they were thinking that PowerStream might
19 be providing some of the services to Power rather than
20 -- than through the Solutions company, and we were in
21 a state of flux as well because of our conversion from
22 GAAP to IFRS, as to whether or not we would keep the
23 corporate structure we had or would we move the shared
24 employees over to the public utilities and then just
25 simply charge charges over.

1 So it wasn't just a matter of figuring
2 out the services; it was a matter of figuring out the
3 structure. I think that was probably part of the --
4 the reason for delay.

5 THE HONOURABLE FRANK MARROCCO: Was
6 the sale premature in that sense, that it happened
7 before those considerations could be affected?

8 MR. TIM FRYER: I had made that
9 comment to -- to the Board and to Mr. Houghton, that I
10 felt that one (1) thing that really needed to be
11 worked out before we went through an exercise of -- of
12 a sale would be to get our shared services in order,
13 but I -- I could understand the reason it was decided
14 not to.

15 Part of the argument, of course, was
16 again what Mr. Erling talked about. You really needed
17 to know exactly who your partner was in order to know
18 how the -- the agreements were going to carry forward
19 with the -- the shared partnership agreement.

20 THE HONOURABLE FRANK MARROCCO: There
21 were four people who were going to bid and -- and
22 until your partner is going to be one (1) of the four
23 (4) bidders.

24 MR. TIM FRYER: Yeah. And the
25 likelihood was that Hydro One wouldn't provide

1 services back to power because typically, in my view,
2 you wouldn't be looking to them to do your billing or
3 things like that, but there probably was a fairly good
4 chance that if it was one (1) of the other three (3),
5 because they were in LDC and -- and had very similar
6 billing characteristics as us, that they possibly
7 could be involved in something like that.

8 Or, for instance, GIS services for
9 engineering, it -- it wouldn't be a case where you
10 probably have Ontario Hydro, Hydro One providing GIS
11 services to power, but it very well could be that you
12 would have that through somebody like a PowerStream.

13 So all I'm saying is that I can -- I
14 can understand the reasoning, I can understand my
15 reasoning for saying we should get these sorted out,
16 it was more about the arrangements between the Town
17 and ourselves, but I could recognize that there was
18 going to be changes probably brought about by whoever
19 the partner was that eventually settled upon.

20 THE HONOURABLE FRANK MARROCCO: If you
21 settle upon PowerStream as the partner, then you could
22 do the calculations that had to be done to figure out
23 how you're going to apportion shared services.

24 MR. TIM FRYER: Once they knew what
25 services PowerStream might provide and what would be

1 provided by internally, yes, then it could have been
2 worked out.

3 THE HONOURABLE FRANK MARROCCO: Was
4 there -- was there ever a reason provided that you
5 ever heard about why that wouldn't take place prior to
6 the closing of the transaction?

7 MR. TIM FRYER: No. As I mentioned, I
8 wasn't respons -- or I wasn't involved in that part of
9 it for those -- basically the six months leading up to
10 when the transaction was closed.

11 THE HONOURABLE FRANK MARROCCO: Thank
12 you.

13

14 CONTINUED BY MS. KATE MCGRANN:

15 MS. KATE MCGRANN: If you could turn
16 to paragraph 140 of the Foundation document. I'm
17 going to ask you some questions about the valuation
18 and options analysis that KPMG did for Collus Power in
19 early 2011.

20 This paragraph describes a letter from
21 Mayor Cooper to Collus chair Dean Muncaster and Ed and
22 it says:

23 "As you may know, our new Council
24 was partly elected to get our
25 spending and our municipal debt

1 under control."

2 And she goes on to say:

3 "As a result, I have asked our CAO,
4 Ms. Wingrove and our department
5 heads to look for opportunities
6 within their areas of responsibility
7 to explore cost reduction
8 opportunities and still offer
9 similar levels of service."

10 The letter goes on to say:

11 "I would like to ask that Collus
12 look for similar opportunities in
13 part to help reduce our debt and
14 create greater efficiencies for
15 Collingwood residents. I recognize
16 the input during the budget
17 presentations..."

18 And the letter goes on from there. Did
19 you ever see a copy of a letter along these lines from
20 Mayor Cooper?

21 MR. TIM FRYER: I don't believe so.

22 MS. KATE MCGRANN: When do you recall
23 learning that Collus Power was going to be getting a
24 valuation done?

25 MR. TIM FRYER: I believe it was early

1 in 2011.

2 MS. KATE MCGRANN: How did you learn
3 about it?

4 MR. TIM FRYER: I believe it was Mr.
5 Houghton informed me that there was going to be some
6 work done, and I believe the reasoning he gave was
7 similar to the wording in this document.

8 MS. KATE MCGRANN: And when you say
9 the reason he gave was similar to the wording, did you
10 understand that the purpose of getting the valuation
11 done was to look for opportunities to reduce the
12 Town's costs?

13 MR. TIM FRYER: My understanding was
14 that they wanted to look at their assets and know what
15 their options where. It would make sense that in
16 order to do that you'd want to have a valuation of the
17 -- of the utility assets.

18 MS. KATE MCGRANN: Okay. In the
19 letter that we just looked at, we're looking at
20 getting spending under control, getting municipal debt
21 under control, opportunities to explore cost
22 reductions, Collus looked for opportunities to reduce
23 the Town debt and create greater efficiencies.

24 Do you remember understanding at the
25 time that the valuation was being done that a focus of

1 the valuation was to help the Town try to reduce its
2 costs?

3 MR. TIM FRYER: No, I don't believe
4 that that was conveyed in -- in the conversation about
5 the reason for the valuation.

6 I just maybe would add, I think one (1)
7 of the reasons Mr. Houghton would have been discussing
8 it with me is I could do a valuation, but I would've
9 at that point in time, for two (2) reasons, said I
10 think it's a good idea that somebody else is involved,
11 because I don't have -- I've got a lot of workload on
12 me, but also you -- it's good to have a third party
13 objective view of it. And -- and then it would just
14 be a case of where I would be reviewing to see if I
15 saw anything that stood out to me.

16 MS. KATE MCGRANN: What did you
17 understand about the nature of the valuation that was
18 going to be done in terms of levels of detail and
19 things like that?

20 MR. TIM FRYER: I don't recall
21 anything during those initial conversations other than
22 it would be a general review and -- and I would've
23 equated that to mean just a -- an overview.

24 MS. KATE MCGRANN: What did you
25 understand about who made the decision to have the

1 valuation done?

2 MR. TIM FRYER: All I can recall is
3 being informed that the -- the Town wanted to do this.

4 And so I'm not really sure from a
5 decision-making standpoint.

6 MS. KATE MCGRANN: Can we look at
7 paragraph 150 of the Foundation document, please?

8 So in terms of timing, this is after
9 KPMG is provided a scope of work that's been accepted,
10 there's a kickoff meeting planned for March 11th,
11 2011. We've heard from you, I think, that you don't
12 believe that you were in attendance at that meeting,
13 is that correct?

14 MR. TIM FRYER: I don't recall being
15 there.

16 MS. KATE MCGRANN: This paragraph goes
17 on to say that Mr. Houghton determined that only the
18 Board chair, Dean Muncaster and you would attend the
19 meeting and be in the loop.

20 I want to focus on the second part of
21 that sentence, the "in the loop" section. What did
22 you understand about who knew that a valuation was
23 being done at this time?

24 MR. TIM FRYER: I can't recall that Ed
25 explained to me that Mr. Muncaster was aware, but I

1 would have assumed that because I -- I do believe that
2 Mr. Houghton wouldn't have exercised it without at
3 least talking to the Chair.

4 MS. KATE MCGRANN: Okay. And beyond
5 yourself, Mr. Houghton, and Mr. Muncaster, who else
6 did you understand was aware that the valuation was
7 being done?

8 MR. TIM FRYER: At -- in my recall
9 from back then it would have just been -- I would've,
10 as I said, assumed Mr. Muncaster and -- and Mr.
11 Houghton and -- and that would've been all I would've
12 been thinking would know. Other than the fact that it
13 had been conveyed to me that it was something that
14 Council wanted, so Council would be aware that we were
15 undertaking it.

16 MS. KATE MCGRANN: Was it your
17 understanding that you should only be communicating
18 with KPMG, Mr. Houghton, and Mr. Muncaster about the
19 valuation?

20 MR. TIM FRYER: That would have been
21 the approach I took, yes.

22 MS. KATE MCGRANN: Did you have any
23 understanding as to why knowledge of the valuation was
24 limited to the individuals you've described?

25 MR. TIM FRYER: No, but I can

1 appreciate that it's not the type of information that
2 you want to have too much of a circulation with at the
3 -- at the beginning stages.

4 MS. KATE MCGRANN: Okay. Explain to
5 me why you understand that. What's your
6 understanding?

7 MR. TIM FRYER: Even though you're
8 just getting information, it's information about what
9 the value is of -- of the asset and it involves
10 employees and -- so as a -- as a person who is
11 responsible for about ten (10) employees, I would
12 prefer that they weren't thinking along the lines that
13 there could be a possible sale, because I wasn't
14 thinking along the lines that there was a possible
15 sale. To me, I was just -- we were just getting a
16 valuation and confirming what I -- as I said, had a
17 pretty good handle on what it would be anyway.

18 MS. KATE MCGRANN: So that fact that a
19 valuation was being done, you didn't read into that,
20 that a potential sale of some or all of the LDC was
21 being considered?

22 MR. TIM FRYER: Every time a Council
23 changed, you knew there was a possibility that -- that
24 there would be some sort of exploration into what can
25 we do here. And we had various stages at different

1 times with other Council.

2 So to me, this was just the initial
3 stage, and with a brand-new Council it was totally
4 understandable, in my view.

5 MS. KATE MCGRANN: And a valuation had
6 been conducted of the LDC before?

7 MR. TIM FRYER: Just information from
8 me, not -- not on a formal basis.

9 MS. KATE MCGRANN: KPMG is retained to
10 conduct the valuation and options analysis. What was
11 your role with respect to the valuation and options
12 analysis?

13 MR. TIM FRYER: I expected that I'd be
14 a resource of information thinking along the lines
15 that a lot of the information was readily available
16 and -- and wouldn't produce an awful lot of workload.

17 MS. KATE MCGRANN: Okay. And did that
18 expectation turn out to be true?

19 MR. TIM FRYER: I believe so. I -- I
20 -- when I was responding to Mr. Erling's request for
21 information I recognized that, as a -- as a consultant
22 tasked with a job, he'd be asking for spec -- as much
23 specific information as he could.

24 And I'd try to -- to convey what I
25 could with the resources I had available, and then

1 suggest where I thought it was applicable that those
2 were specifics that would take a lot of time. And my
3 understanding was that there would be a general
4 overview.

5 MS. KATE MCGRANN: At any time during
6 the period in which KPMG was doing its work on the
7 valuation and options analysis did anyone speak to you
8 about the nature, content, or timing of your responses
9 to KPMG's request for information?

10 MR. TIM FRYER: No. I didn't become
11 aware of that until I read the document.

12 MS. KATE MCGRANN: When you say you
13 didn't become aware of that, what are you talking
14 about?

15 MR. TIM FRYER: I've seen where
16 there's been some -- about me taking some time. I
17 thought, in looking at some of the emails, that there
18 was a couple instances where there was a
19 misunderstanding be -- between myself and the other
20 party as to who was expecting the next response to
21 come from.

22 So, as I said, that -- that's -- I --
23 I've seen some of the comments. And -- and some of it
24 is internal chatter, so to speak, so -- but it didn't
25 convey that they felt that I -- I was being tardy.

1 MS. KATE MCGRANN: Okay. Were you
2 being tardy in your responses to the request for
3 information?

4 MR. TIM FRYER: I don't believe so,
5 no.

6 MS. KATE MCGRANN: Did you receive a
7 copy of the draft valuation when it was provided on
8 May 24th, 2011?

9 MR. TIM FRYER: I can't say for
10 certain. I'm expecting I did. But I'd be speculating
11 if I said to you that for certain I remember getting
12 it. But I -- I do recall an email from Mr. Rockx
13 where I was responding on specific finetuning, so I
14 have to think that comes from me receiving the draft.

15 MS. KATE MCGRANN: Okay. Can we look
16 at paragraph 163 of the Foundation Document?

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: Do you remember
21 learning at some point after May 24th, 2011, that the
22 valuation that KPMG assessed for Collus Power was 14.1
23 million to 16.3 million?

24 MR. TIM FRYER: Yes, I do.

25 MS. KATE MCGRANN: Was that consistent

1 with what your expectations were for the value of the
2 Company?

3 MR. TIM FRYER: Certainly not out of -
4 - out of the -- the area, no.

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: Can we turn up
9 KPM1032?

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: This is a slide
14 show that KPMG put together setting out their
15 assessment of the options available to the Town with
16 respect to Collus Power. Are you familiar with this
17 document?

18 MR. TIM FRYER: I can't say for
19 certain that I saw it when it was issued on the 24th
20 of May.

21 MS. KATE MCGRANN: Are you familiar
22 with it sitting here today?

23 MR. TIM FRYER: Sorry?

24 MS. KATE MCGRANN: Are you familiar
25 with it sitting here today? You've seen this document

1 before?

2 MR. TIM FRYER: Yes, I have, yeah.

3 MS. KATE MCGRANN: Do you recall if
4 you saw it before you began your work on the Strategic
5 Partnership Task Team?

6 MR. TIM FRYER: I can't recall for
7 sure on that, no.

8 MS. KATE MCGRANN: Can we turn to
9 CJI7986?

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: I bring you to this
14 document to -- to help place you in time. So, this is
15 minutes from the Council meeting of May 30th, 2011.
16 This is the Council meeting in which you, Mr.
17 Muncaster, and Mr. Houghton present the financial
18 statements along with the business plan for the Collus
19 entities.

20 We've talked about this already, but do
21 you recall this?

22 MR. TIM FRYER: Yes, I do.

23 MS. KATE MCGRANN: So, at this point
24 in time, KPMG has delivered its draft valuation. From
25 our review of the available materials about this

1 meeting, there's no mention of the fact of the
2 valuation.

3 Do you know why the valuation was not
4 mentioned at this meeting?

5 MR. TIM FRYER: Again, I -- I may be
6 speculating, but I think it's an education opinion --
7 opinion. This is May 30th. We're presenting the
8 annual report, just had received the valuation, so
9 Council wouldn't even have been apprised of the
10 valuation information yet, and I would have thought
11 that would be a major reason for not including it.

12 Plus, as I said, this was a public
13 presentation. And, again, even information about the
14 possibility that a valuation's been done would
15 probably resinate to our employees that there was a
16 possibility of a sale and -- and cause some angst.

17 So, my reflexion on it is that we were
18 reporting on the usual aspects that we would because
19 nothing had been taken to a stage where something in
20 the works was -- was -- would -- would necessitate a
21 change.

22 MS. KATE MCGRANN: So, I have a couple
23 of questions about what you just said. First of all,
24 did you know at the time -- on Monday May 30th did you
25 understand that the valuation wasn't going to be

1 mentioned?

2 MR. TIM FRYER: I can't recall a
3 conversation about that, but I would have assumed that
4 it wouldn't be.

5 MS. KATE MCGRANN: Do you -- I just
6 want to understand what you understood at the time.
7 So, do you remember having any -- considering whether
8 or not the valuation would be mentioned at all at the
9 time?

10 MR. TIM FRYER: Yeah, and sorry about
11 that. I -- I would have thought back then that it
12 wouldn't have been an appropriate time to be putting
13 information to Council in a public setting about the
14 valuation, so that's what I meant about assumed.

15 MS. KATE MCGRANN: I -- I may have
16 misunderstood you. I thought that you told us that
17 you believed that Council knew that the valuation was
18 being done during the time that KPMG was doing its
19 work?

20 MR. TIM FRYER: They would have known
21 about the valuation work but not about the -- the
22 draft options that had been put together, I guess,
23 with the May 24th information and the -- and the total
24 value of the valuation. I don't believe they had been
25 updated on that yet.

1 MS. KATE MCGRANN: So, it was your
2 understanding as at May 30th, 2011, that Council was
3 aware that the valuation and strategic options work
4 was being done?

5 MR. TIM FRYER: That -- that work was
6 being done. The reason I'm saying Council was aware
7 was because my understanding from Mr. Houghton was
8 that Council was the one (1) who had directed him to -
9 - to take a look at the options.

10 MS. KATE MCGRANN: Okay. So, you
11 thought that they knew that the work was being done
12 but you didn't think they had been provided with the
13 work product, the conclusions, at this point?

14 MR. TIM FRYER: Certainly, not any of
15 the detail like -- like what we just talked about,
16 yes.

17 MS. KATE MCGRANN: Okay. And you've
18 explained to me why, in your view, it wouldn't be
19 appropriate to give that information in a public
20 meeting, concerns for Collus staff, for one (1),
21 you've explained that.

22 Are you aware of any reason why Council
23 couldn't go in camera to receive that information on
24 May 30th?

25 MR. TIM FRYER: I'm not aware of any

1 reason, no.

2

3

(BRIEF PAUSE)

4

5

MS. KATE MCGRANN: And you've

6 explained to us that you didn't see the valuation and

7 options analysis work as an indication that a sale of

8 some or all of Collus Power was being seriously

9 considered. Is that fair?

10

MR. TIM FRYER: I guess it's a matter

11 of -- I knew it was being considered. I -- I wasn't

12 putting seriously into the -- into the mix of that.

13

MS. KATE MCGRANN: When did you first

14 become aware that a sale of some or all of Collus

15 Power was -- was being considered in a -- in a serious

16 way?

17

MR. TIM FRYER: I believe it would

18 have been the June 27th in camera session with Council

19 when, in my opinion, we were instructed to go forward

20 with an option and -- and, basically, empowered by

21 Council to start to look at that as a -- as a bonafide

22 possibility.

23

MS. KATE MCGRANN: Can we turn up

24 CPS4397, please?

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: This is a slide
4 deck that was presented to Council in camera on the
5 June 27th Council meeting that you're mentioning.

6 Are you familiar with this slide deck?

7 MR. TIM FRYER: Yes, I am familiar
8 with it.

9 MS. KATE MCGRANN: Were you given the
10 opportunity to review it before it was presented to
11 Council on June 27th, 2011?

12 MR. TIM FRYER: I don't believe so.

13 MS. KATE MCGRANN: Were you involved
14 in any discussions about the options that are reviewed
15 in this slide deck before they were presented to
16 Council?

17 MR. TIM FRYER: Not to any degree, no.

18 MS. KATE MCGRANN: Had you been
19 involved in any discussions about a potential
20 strategic partnership that Collus Power would enter
21 into before this slide deck was presented to Council?

22 MR. TIM FRYER: My recall about
23 strategic partnership was the July 8th Board meeting,
24 but since reading the material and seeing this, I know
25 the strategic partnership is part of this slide

1 presentation. So I must've heard about it on
2 June the 27th.

3 MS. KATE MCGRANN: When you said that
4 you understood at the end of this meeting that you had
5 been instructed to proceed with an option, what option
6 did you think you been instructed to proceed with?

7 MR. TIM FRYER: The partnership idea.
8 I didn't equate that to mean majority or minority. I
9 just -- can we take a look at an idea of a
10 partnership.

11 MS. KATE MCGRANN: And what did a --
12 what does a partnership idea mean to you? What would
13 that look like on the ground?

14 MR. TIM FRYER: At that time, I
15 would've considered a partial sale of some sort to --
16 towards the area of upwards of 50 percent. I -- I
17 didn't think that they were thinking of majority. So
18 I hadn't probably put anything in my head at that time
19 as to what was anticipated. I was aware that in -- in
20 some -- some circumstances out in the industry, there
21 had been sale of 10 or 15 percent to -- for some LDCs.

22 So just as I said, I didn't have a
23 like -- like a percentage in mind, but I -- I
24 certainly felt that what the possibility was was that
25 we were looking for a partner who would maybe buy a

1 portion of the -- of the asset -- or shares of the
2 corporation.

3 MS. KATE MCGRANN: Okay. And when you
4 say "upwards of 50 percent," can you help me
5 understand what you mean by that?

6 MR. TIM FRYER: Well, I would consider
7 that 50 percent or more would be a majority sale,
8 and -- and my understanding at the time was that they
9 were not interested in becoming a minority partner.
10 So we would have been looking at only the potential
11 for something upwards to 50.

12 MS. KATE MCGRANN: Okay. I just --
13 because you say -- because you said "they" and upwards
14 to 50, what did you understand the Town was
15 considering selling?

16 MR. TIM FRYER: That they were
17 interested in finding out more about an option of a
18 share sale for up to 50 percent of the shares, that
19 they called or referred to as a partnership.

20 MS. KATE MCGRANN: Who is "they"?

21 MR. TIM FRYER: Council and -- and ...

22 MS. KATE MCGRANN: Okay. So the first
23 time you become aware of this potential sale of some
24 or all of Collus Powers on June 27th at this meeting
25 when you believe that you've been -- Collus Power has

1 been empowered to explore the potential sale of up to
2 50 percent. Is that right?

3 MR. TIM FRYER: Yes.

4 MS. KATE MCGRANN: And then you
5 mentioned -- it was a slightly different understanding
6 at the July 8th meeting, and that's the Collus Power
7 Board meeting. Is that right?

8 MR. TIM FRYER: Yes, it is.

9 MS. KATE MCGRANN: So we turn up
10 CPS7018_30001.

11 THE HONOURABLE FRANK MARROCCO: Before
12 you --

13 MS. KATE MCGRANN: Yeah.

14 THE HONOURABLE FRANK MARROCCO: -- or
15 while you're doing that, was it your understanding
16 that the Town did not want to sell -- did not want to
17 lose control?

18 MR. TIM FRYER: They -- they didn't
19 want to become a minority owner.

20 THE HONOURABLE FRANK MARROCCO: So
21 when you say up to 50 -- if you don't want to become a
22 minority owner, does that mean less than 50 percent
23 would be sold to you at that time?

24 MR. TIM FRYER: At that point in time,
25 that's the way I would have looked at it. I would've

1 said anything 50 percent or more is essentially losing
2 control.

3 THE HONOURABLE FRANK MARROCCO: Right.

4 Okay. Thank you

5

6 CONTINUED BY MS. KATE MCGRANN:

7 MS. KATE MCGRANN: So we're looking at
8 minutes of a meeting of the Board of Directors of
9 Collus Power from Friday, July 8th. If we could
10 scroll down to page 3, please.

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: We're looking at
15 the first full paragraph where it says:

16 "Upon motion duly made, seconded,
17 and carried, the meeting moved
18 in-camera to discuss a matter
19 pertaining to personnel and/or
20 property."

21 And we see that:

22 "The Board rose from the in camera
23 session and reconvened the regular
24 meeting."

25 And it says that basically:

1 "The Board unanimously voted to
2 support the preferred option of
3 moving forward with the strategic
4 partner option and fully supports
5 management in the execution of the
6 direction."

7 Is it your recollection that during the
8 in camera portion of this meeting, there was a
9 discussion about the options and ultimately a decision
10 to move forward with the strategic partner option?

11 MR. TIM FRYER: It was clear to me,
12 based on -- on this meeting, the concept of not just
13 having somebody purchase shares and -- and become a --
14 like a -- like a partial owner, but we were looking
15 for somebody who would be a partner, and it be
16 all encompassing, so to speak. It would be they would
17 become involved in possibly the provision of services
18 or back and forth and -- and take advantage of -- of
19 expertise and -- and those types of things.

20 So it became quite clear to me at this
21 meeting that it was what they were terming to be a
22 strategic partnership was the -- was the term that was
23 being used.

24 MS. KATE MCGRANN: Was there an
25 in-camera discussion about those kinds of things?

1 MR. TIM FRYER: I'm positive that
2 that's what was being talked about, yes.

3 MS. KATE MCGRANN: Do you have a
4 recollection of that discussion?

5 MR. TIM FRYER: No, other than that it
6 was clear to me about the concept.

7 MS. KATE MCGRANN: And other -- when
8 you say "all encompassing," what do you mean by that?

9 MR. TIM FRYER: You could have a
10 situation where somebody just purchase share sales,
11 and they're not even on your Board of Directors. It
12 was clear that that wasn't going to be the case here.
13 So that's just one (1) example of that.

14 Another would be in this particular
15 case, the anticipation was that the partner would be
16 able to assist us with their expertise.

17 MS. KATE MCGRANN: And those are the
18 things that you -- were being discussed at this
19 meeting.

20 MR. TIM FRYER: It was clear to me
21 that that's what they were looking for, based on -- on
22 the information I received at that meeting.

23 MS. KATE MCGRANN: Anything else you
24 recall learning at that meeting?

25 MR. TIM FRYER: Not at this time, no.

1 MS. KATE MCGRANN: Did you have any
2 concerns that -- it sounds to me like you had one (1)
3 understanding of what was being pursued when you left
4 the Council meeting on July 27th, and you had a
5 different or better understanding of what was being
6 pursued when you left the Collus Power Board meeting
7 on July 8th. Is that fair?

8 MR. TIM FRYER: Yes. I would say your
9 statement about a "better understanding" of what
10 was -- and -- and now I had the Board's empowerment to
11 proceed with that -- that objective, as well.

12 MS. KATE MCGRANN: To your knowledge,
13 did anyone take the additional information that you
14 learned at the July 8th meeting back to Town Council
15 so they, too, could have a better understanding of
16 what was being pursued?

17 MR. TIM FRYER: I can't say for
18 certain. I know the mayor was a liaison and would've
19 been at this -- in fact, was at this meeting. And --
20 but I -- I can't say for certain that she would've
21 conveyed that directly back.

22 MS. KATE MCGRANN: You were a -- you
23 were a member of the Strategic Partnership Task Team.
24 Is that correct?

25 MR. TIM FRYER: Yes, I was.

1 MS. KATE MCGRANN: Do you remember how
2 you were selected to be a member of that team?

3 MR. TIM FRYER: I'm -- not so much
4 how. I know it happened at an in camera session of
5 Council. It was identified who would be on the task
6 team.

7 MS. KATE MCGRANN: Do you know who
8 picked you to be on the task team?

9 MR. TIM FRYER: I can't say for
10 certain, no.

11 MS. KATE MCGRANN: Do you know why you
12 were picked to be on the task team?

13 MR. TIM FRYER: I'm CFO of the utility
14 that was involved.

15 MS. KATE MCGRANN: Is that your
16 understanding of why you were picked, or was that
17 explained to you?

18 MR. TIM FRYER: That would be my
19 understanding.

20 MS. KATE MCGRANN: What did you
21 understand your role on the Strategic Task Team to be?

22 MR. TIM FRYER: Certainly as a
23 resource. I -- I did consider the situation that
24 there was five representatives on it, that three
25 were -- were Board members and two (2) were -- or

1 Council members. And I considered them to be what I
2 would call the voting members of the -- in reading the
3 materials and that, I -- I don't think that's conveyed
4 in -- in any way that there was votes, and -- and it
5 was only the five (5) of them voting.

6 But I certainly, as a member of the
7 Task Team, looked more at my role as being a resource.
8 I did participate in the -- in the scoring, which
9 would make sense to me to do that, put it over the
10 whole group.

11 But, in the end, I think, if there was
12 any decisions to be made, I would be turning to the
13 people who were the voting members of the Board and --
14 and Council, that they would be the ones making the fi
15 -- ultimate decisions.

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: Fair to say that
20 the Strategic Task Team did make a number of decisions
21 before it received and evaluated responses to the RFP?

22 MR. TIM FRYER: I guess we would have
23 made decisions about the criteria for it. So, yes,
24 there would have been some decisions made in -- in
25 advance of that.

1 MS. KATE MCGRANN: On how to conduct
2 better meetings?

3 MR. TIM FRYER: I -- I believe they
4 would have been at the Strategic Planning Task Team
5 sessions.

6 MS. KATE MCGRANN: Were there ever any
7 discussions at the Strategic Task Team meetings or
8 otherwise about the idea that there were decision-
9 making members of the team and resource members of the
10 team? Was that ever discussed?

11 MR. TIM FRYER: I don't believe it
12 would have been a discussion point.

13 MS. KATE MCGRANN: Was it ever
14 explained to anyone that -- that you would not be
15 participating in the decision-making function of the
16 Strategic Task Team up to the evaluation of the RFP
17 responses?

18 MR. TIM FRYER: No. My recall of it
19 is that I just assumed that that was the role.

20 MS. KATE MCGRANN: But what was the
21 Strategic Partnership Task Team there to do?

22 MR. TIM FRYER: It was there to
23 conduct an exercise to determine possible strategic
24 partner alternatives.

25 MS. KATE MCGRANN: And what did you

1 understand the goals of the strategic partnership to
2 be? What was the Tow -- what was the Town and Collus
3 Power looking to achieve by entering into a strategic
4 partnership?

5 MR. TIM FRYER: Finding a partner that
6 would allow the utility to at least continue to
7 function in the -- in the -- to the level -- the high
8 quality level that it had been on a go forward basis,
9 recognizing there was numerous influences within the
10 market as to required changes.

11 And there was issues about continuing
12 on and being able to do the -- the services that we
13 needed to do at the most cost-effective way. So, we'd
14 be looking to the partner to -- to achieve that, as
15 well, so, basically, grow the value of the
16 organization.

17 MS. KATE MCGRANN: Okay. When you say
18 provide services in the most co -- cost-effective way
19 possible, are we looking at most cost-effective from
20 the perspective of the ratepayer?

21 MR. TIM FRYER: Yes.

22 MS. KATE MCGRANN: And I think you
23 summarized your explanation of what the goals for the
24 strategic partner were, to grow the organization?

25 MR. TIM FRYER: Grow the value of.

1 And that's why I just says 'yes' to the ratepayer
2 question, because, in my view, the goal for the
3 shareholder was to grow the value of the organization.

4 MS. KATE MCGRANN: Was one (1) of the
5 purposes of the strategic partnership to put Collus
6 Power and its partner in a position to grow the size
7 of the organization, acquire other LDCs or engage in
8 further partnerships?

9 MR. TIM FRYER: I certainly was aware
10 that there was discussion during our meetings about
11 potentially bringing other LDCs within the model just
12 in a general sense. That was the discussions that I
13 recall, is just that it was a possibility.

14 MS. KATE MCGRANN: We had looked
15 earlier at the -- the mayor's letter from January 2011
16 that talked about the need to try to reduce costs for
17 the Town. Did you understand that to be a goal of the
18 strategic partnership?

19 MR. TIM FRYER: No, I -- I didn't know
20 the specifics. I just knew that they had talked about
21 it at -- I thought it was a strategic planning
22 session, but it may have been a budget session of
23 Council.

24 MS. KATE MCGRANN: Okay. My question
25 is actually, did you understand one (1) of the goals

1 for any strategic partner would be to reduce the costs
2 to the Town?

3 MR. TIM FRYER: No.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Do you recall
8 participating in any discussions about the RFP
9 criteria with the Strategic Partnership Task Team?

10 MR. TIM FRYER: I have to say I don't
11 recall. I'm assuming it happened in a strategic
12 partnership meeting -- or task team meeting and I
13 would have been part of it, but I cannot say for
14 certain.

15 MS. KATE MCGRANN: Do you recall that
16 KPMG was retained to provide assistance with respect
17 to the RFP procedure?

18 MR. TIM FRYER: Yes.

19 MS. KATE MCGRANN: What did you
20 understand their role to be?

21 MR. TIM FRYER: A third-party resource
22 providing us with -- with their objectivity and -- and
23 using Mr. Herhalt to -- to lead the discussion so that
24 the other members of the task team could participate
25 in -- in things more fully.

1 MS. KATE MCGRANN: Was it your
2 understanding that KPMG had been asked to provide
3 advice about the nature of the strategic partnership,
4 the quantum of shares to be offered, things like that?

5 MR. TIM FRYER: I don't recall that
6 they were, no.

7 MS. KATE MCGRANN: Do you recall
8 attending bidder presentations that were made to
9 members of the Strategic Task Team in September of
10 2011?

11 MR. TIM FRYER: Yes, I did.

12 MS. KATE MCGRANN: What was your
13 understanding about the nature of the information that
14 was discussed at those meetings?

15 MR. TIM FRYER: That was looking at
16 expressions of interest from -- from the four (4)
17 selected pro -- proponents. And it was, again, all-
18 encompassing delivery of information from those four
19 (4) proponents as to the current organization they had
20 and the aspects of where they saw -- working with
21 Collingwood as a partner, where they could see it
22 going.

23 MS. KATE MCGRANN: Do you recall
24 whether the information that was discussed at those
25 meetings was intended to be treated as confidential?

1 MR. TIM FRYER: I would certainly have
2 thought so.

3 MS. KATE MCGRANN: Do you recall
4 whether the Strategic Task Team gave the bidders any
5 feedback on their presentations either during the
6 presentation or afterwards?

7 MR. TIM FRYER: I can't recall what --
8 I -- I expected there would have been at least a brief
9 expression back to them at the time of the meeting
10 thanking them, more or less, but I can't recall any
11 specifics about -- about that part of things after
12 that.

13 MS. KATE MCGRANN: Okay. And just to
14 understand your answer, you expect that the Strategic
15 Task Team would have expressed thanks for the work put
16 in but nothing more than that?

17 MR. TIM FRYER: Yeah. And if I recall
18 correctly, it was -- all of Council was there, as
19 well.

20 MS. KATE MCGRANN: You think that all
21 of the members of Town Council were present at the
22 presentations that the bidders made to the Strategic
23 Task Team in September?

24 MR. TIM FRYER: That's my
25 recollection, yes.

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Could we turn to
4 TOC518041, please?

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: Scroll to the
9 bottom to see the first email in this chain. This is
10 an email from you to Brian Bentz on September 15th,
11 2011. You say:

12 "Hey, Brian. I hope that you're
13 doing real well. We haven't seen
14 each other for a long time."

15 Are -- are you familiar with this
16 email?

17 MR. TIM FRYER: Yes, I am.

18 MS. KATE MCGRANN: I think you've
19 mentioned that you were aware of Brian Bentz before
20 your work on the Strategic Task Team. How did you
21 know Brian Bentz?

22 MR. TIM FRYER: I knew Brian from his
23 days when he was the treasurer at the Barrie Public
24 Utilities. And I'm going to put thirty (30) years ago
25 to that kind of an area of time.

1 MS. KATE MCGRANN: You met -- you
2 first met him approximately thirty (30) years prior to
3 this email?

4 MR. TIM FRYER: Yes.

5 MS. KATE MCGRANN: And at the time
6 that you first met him, thirty (30) years prior, did
7 you have a work or social relationship with him at
8 that time?

9 MR. TIM FRYER: We were -- we -- we
10 worked together on -- there was an exercise that
11 actually started out of Barrie PUC to look at a
12 Georgian Bay cooperative utility. Don Douds was the
13 CEO there, and it was kind of my first delving into
14 some possibilities that the province would be looking
15 for changes and -- and that.

16 So we had met and -- and gone
17 through -- through things, because the Georgian Bay
18 utilities, Collingwood was one (1) of them, and -- and
19 Barrie was one (1) of them. So we had done some work
20 together on that. And had a social relationship, but
21 nothing other than just his acquaintances.

22 MS. KATE MCGRANN: When did you work
23 on that particular initiative end?

24 MR. TIM FRYER: Oh, it's -- it's -- it
25 was in the -- I hate to talk about decades, but I'm --

1 late 80s or early 90s I would think. So...

2 MS. KATE MCGRANN: Did you maintain a
3 social relationship with Mr. Bentz after your work on
4 the Georgian Bay initiative ended?

5 MR. TIM FRYER: No.

6 MS. KATE MCGRANN: Did you have any
7 contact with him at all between that time and this
8 email on September 15th, 2011?

9 MR. TIM FRYER: No. I'm -- I'm sure I
10 would have bumped into him at some various
11 professional things that we would have been attending.
12 But my last recollection of meeting with Brian was I
13 was working on a -- on a working group that was
14 looking into a billing -- a customer billing solution,
15 and we met with Brian at his office down at -- at
16 PowerStream. And I'm going to say that was around
17 2006.

18 And I recall when we finished the forum
19 part of the meeting, I remember we were leaving, and
20 I -- I said to Brian, it's been a long time, and he
21 said yeah. And I said, next time you're going to be
22 in my area, let me know, and we'll get together. But
23 as I said, that was 2006.

24 MS. KATE MCGRANN: And you don't
25 remember any contact other than incidental contact at

1 industry events between 2006 and 2011?

2 MR. TIM FRYER: No. In fact, this
3 email is the only one (1) of the three thousand
4 (3,000) documents that there was.

5 MS. KATE MCGRANN: Okay. So on this
6 date, you reach out to him and invite Mr. Bentz to
7 play golf. Why did you send this email?

8 MR. TIM FRYER: Just as I said,
9 this -- the last time I talked to him, I said you're
10 going to be in Collingwood, make sure I know, and
11 we'll do something.

12 MS. KATE MCGRANN: Did you consider at
13 the time that you sent this email that Mr. Bentz was
14 going to be -- it was potentially going to be a bitter
15 RFP process that you would be evaluating?

16 MR. TIM FRYER: I certainly understood
17 that they were one (1) of the proponents we were
18 speaking with. At this particular date, it was the
19 strategic -- or the -- the partners coming -- the
20 proponents coming and presenting their expression of
21 interest. So it wasn't at the RFP stage yet.

22 MS. KATE MCGRANN: And how did the
23 fact that it wasn't at the RFP stage yet factor into
24 your consideration about sending this email?

25 MR. TIM FRYER: It didn't. I'm just

1 saying that it wasn't.

2 MS. KATE MCGRANN: Other than the fact
3 that you had previously years ago discussed getting
4 together with Mr. Bentz when he was in Collingwood,
5 what prompted you to send this email on this date?
6 Why did you want to go golfing with him?

7 MR. TIM FRYER: Well, just as it
8 reads:

9 "When you're here in Collingwood on
10 Monday, I wonder if you'd be
11 interested and plan to hang around
12 for a golf game in the afternoon. I
13 was hoping you would be able to join
14 me as my guest and play at Georgian
15 Bay Club or Lower Bay Club. I
16 wasn't sure if you already had an
17 opportunity to play Georgian Bay or
18 not. If not, then it would probably
19 be your best choice, and you would
20 really enjoy it. The weather isn't
21 supposed to be great as it's been in
22 the last week. I figure we'd play
23 around 2, 2:30...fast."

24 I -- it's just a -- to me, it's a
25 personal email just saying we're going to have a golf

1 game.

2 MS. KATE MCGRANN: Okay. So the last
3 sentence in the email says:

4 "I know it is short notice, so it
5 may not work, but it would be great
6 to get a chance to chat with you."

7 Was there anything in particular that
8 you wanted to chat with Mr. Bentz about?

9 MR. TIM FRYER: Well, just as I said,
10 it was a social personal chat, I guess.

11 MS. KATE MCGRANN: Was this email
12 related in any way to your work on the Strategic
13 Partnership Task Team, the considerations of looking
14 for a strategic partnership, or Collus Power in any
15 way?

16 MR. TIM FRYER: No.

17 MS. KATE MCGRANN: Did you ultimately
18 play golf with Mr. Bentz?

19 MR. TIM FRYER: I don't believe so. I
20 believe we were rained out.

21 MS. KATE MCGRANN: Did you have any
22 communications with him after this email exchange?

23 MR. TIM FRYER: No.

24 MS. KATE MCGRANN: Did you advise the
25 Strategic Partnership Task Team that you had reached

1 out to invite Mr. Bentz to play golf?

2 MR. TIM FRYER: No.

3 MS. KATE MCGRANN: Why not

4 MR. TIM FRYER: I didn't -- at the
5 time, I didn't think that that was an issue.

6 MS. KATE MCGRANN: Other than your
7 role on the Strategic Partnership Task Team, what
8 involvement did you have in the RFP process that
9 Collus Power ran?

10 MR. TIM FRYER: I recall that I would
11 have been in the discussions about the criteria and
12 the weighting of the criteria.

13 MS. KATE MCGRANN: What do you recall
14 about that?

15 MR. TIM FRYER: I would have been part
16 of the discussion on trying to determine what we
17 thought was the best percentage layout. And my
18 recollection is that I had -- had suggested a
19 50 percent financial. I can understand that they
20 wanted to put a fairly heavy weight onto the strategic
21 partner side of it.

22 So the result was, as we know,
23 30 percent financial, and -- and 30 percent strategic
24 partner, and then dividing the other components with
25 10 percent.

1 MS. KATE MCGRANN: Okay. I'm reacting
2 to your use of the phrase "would have" when you
3 started your answer. Do you have specific
4 recollections of the discussions you engaged in about
5 the RFP criteria?

6 MR. TIM FRYER: I can't say for
7 certain, other than that I know that I would have been
8 there, and we would've talked about them.

9 MS. KATE MCGRANN: Do you remember
10 what happened when you suggested that you thought that
11 the waiting for the financial offer should be
12 50 percent?

13 MR. TIM FRYER: I believe there would
14 have been discussion, and it was determined that it
15 wouldn't be.

16 MS. KATE MCGRANN: Do you have any
17 recollection of those discussions?

18 MR. TIM FRYER: Not formally, no.

19 MS. KATE MCGRANN: Do you specifically
20 recall telling the other members of the task team that
21 you thought it should be 50 percent waiting on the
22 financial component though?

23 MR. TIM FRYER: I'm going to say yes,
24 but I can't say for certain.

25 MS. KATE MCGRANN: Do you recall

1 whether that would have been done in writing or in
2 person?

3 MR. TIM FRYER: It would have been at
4 the meetings, and so it would have been verbal.

5 MS. KATE MCGRANN: Can we turn to
6 paragraph 293 of the Foundation Document, please.

7

8 (BRIEF PAUSE)

9

10 MS. KATE MCGRANN: So I'm going to
11 scroll down so that you can see table 4.1 in the
12 evaluation criteria.

13 MR. TIM FRYER: M-hm.

14 MS. KATE MCGRANN: Going -- so can you
15 explain to me your understanding of how the points are
16 apportioned to your -- you had said thirty (30)
17 financial, thirty (30) non-financial, and then the
18 other components ten (10). Explain to me how you saw
19 this working.

20 MR. TIM FRYER: Sorry? I'm not sure I
21 follow what your question is.

22 MS. KATE MCGRANN: We've had other --
23 we've heard evidence from other witnesses that their
24 view of the waiting was that it was thirty (30) points
25 for the financial bid, 70 percent for the non-

1 financial criteria. It's my understanding from things
2 that you've said that you viewed this a little bit
3 differently, that you saw it as a 30:30:10:10:10
4 situation. I'd like to understand what you understood
5 the waiting to be.

6 MR. TIM FRYER: So if we can just
7 scroll a little bit up to see the full -- so -- so the
8 first 30 percent is what I would consider to be
9 financial to a degree because I do believe the -- the
10 rates are part of financial, but that's down a little
11 bit lower. So that's the 30, and -- and it has, as we
12 can see, I guess, nine bullet point items that
13 they're -- they're looking at.

14 So certainly, I would look at that as
15 one (1) component from a statistical standpoint. If
16 you're looking at that as one (1) component, then it
17 would make sense that you're looking at something that
18 has similar weighting as another component. And
19 that's the provision of strategic and specialized
20 resources and supporting growing the Collus business.

21 So in my view, you easily could have
22 put out three (3) packages: a financial package, a
23 strategic partner package, and the other qualitative
24 factors that are down here.

25 Does that answer your question?

1 MS. KATE MCGRANN: It does. Could we
2 scroll up for a second.

3 So you're -- when you look at proposed
4 representation on Collus Power Board of directors, you
5 viewed that as a financial criteria?

6 MR. TIM FRYER: In the -- in the
7 essence of what's there, yes, I would.

8 MS. KATE MCGRANN: Okay, and the
9 second last bullet point, proposed capital structure
10 shareholders agreement, buy sell arrangements, right
11 of first refusal, and shotgun provisions, you viewed
12 those as financial considerations.

13 MR. TIM FRYER: That's what I meant
14 about the essence with the bullet points that are
15 equated into there, yes.

16 MS. KATE MCGRANN: Would you agree
17 with me that those two (2) bullet points that we
18 looked at, representation on the Collus Power board of
19 directors and capital structure shareholder's
20 agreement, right of first refusal, and shotgun
21 provisions, those would be important considerations
22 for an entity that doesn't want to lose control of
23 what it's selling?

24 MR. TIM FRYER: Can you run that by me
25 again? Sorry.

1 MS. KATE MCGRANN: Sure. I understood
2 you to be saying that you understood that the Town did
3 not want to lose control of the LDC when it entered
4 into a strategic partnership.

5 MR. TIM FRYER: Yes.

6 MS. KATE MCGRANN: The question of
7 representation on the board of directors would be an
8 important consideration for another that doesn't want
9 to lose control of the entity.

10 Would you agree with that?

11 MR. TIM FRYER: I would say they're
12 important considerations, yes.

13 MS. KATE MCGRANN: The contents of the
14 shareholders agreement would be an important
15 consideration for an entity that doesn't want to lose
16 control of what's being sold?

17 MR. TIM FRYER: Yes.

18 MS. KATE MCGRANN: Concepts like right
19 of first refusal and whether there are going to be
20 shotgun provisions included in the agreements, those
21 would be important considerations for an entity that
22 doesn't want to lose control of what it's selling?

23 MR. TIM FRYER: Yes.

24 MS. KATE MCGRANN: Do you recall any
25 specific discussions about whether those kinds of

1 considerations should be given more weight given the
2 goals for the strategic partnership?

3 MR. TIM FRYER: I can't recall, no.

4 MS. KATE MCGRANN: So I understand
5 that you were involved in discussions about how to put
6 the RFP together.

7 When you say that you thought that the
8 financial considerations should be given a 50 percent
9 weighting, are these bullet points here that are
10 currently assigned to 30 percent weighting, those are
11 the considerations you thought should be weighted 50
12 percent?

13 MR. TIM FRYER: I would say yes.

14 MS. KATE MCGRANN: Outside of your
15 role as a member of the strategic partnership task
16 team, stepping back into your role as CFO of the
17 Collus entities, what involvement, if any, did you
18 have in -- in the RFP process?

19 Did you participate in the population
20 of the data, were you responding to requests, were you
21 involved in discussions about bidder questions and
22 things like that?

23 MR. TIM FRYER: Yes, to both of those.

24 MS. KATE MCGRANN: Okay. First of
25 all, would you tell me what your involvement in the

1 data room was?

2 MR. TIM FRYER: The requests for data
3 would have come through to me and I would've
4 percolated those out to the appropriate parties or
5 taking care of it myself.

6 As we mentioned yesterday, it
7 eventually became electronic and -- and housed at
8 Collus. So I would've been the one (1) tasked with
9 making sure the person responsible for getting the
10 data into the data room was -- was taking care of
11 that.

12 MS. KATE MCGRANN: How would those --
13 how would those requests come into you? Would they
14 come in through KPMG, would they come directly to you?

15 MR. TIM FRYER: It should have come
16 through KPMG because the proponents would've been
17 directed to put anything towards them first.

18 MS. KATE MCGRANN: Should have come
19 through KPMG, did they come through KPMG?

20 MR. TIM FRYER: I'm going to say yes.

21 MS. KATE MCGRANN: Do you recall
22 receiving requests from anyone other than KPMG?

23 MR. TIM FRYER: No.

24 MS. KATE MCGRANN: And then in terms
25 of passing that information on to the people who would

1 obtain the information, are you referring to staff at
2 Collus Power?

3 MR. TIM FRYER: Yes.

4 MS. KATE MCGRANN: And would the
5 process be similar for other requests from -- from
6 bidders? Did they -- did they ask -- did you respond
7 to requests other than data room related requests from
8 bidders?

9 MR. TIM FRYER: I did -- I don't
10 recall receiving anything directly from a bidder.

11 MS. KATE MCGRANN: What about through
12 KPMG?

13 MR. TIM FRYER: That's who it should
14 have come through, yes, and that's who I remember it
15 coming through.

16 MS. KATE MCGRANN: During the time
17 that you were working on the strategic task team, were
18 you aware that Mr. Bonwick was providing services to
19 PowerStream?

20 MR. TIM FRYER: I was aware that Mr.
21 Bonwick worked for -- was doing work for PowerStream,
22 I'm going to say around the same time. So during the
23 RFP process for certain I would've been aware.

24 MS. KATE MCGRANN: How did you become
25 aware of that?

1 MR. TIM FRYER: I believe I was just
2 informed and -- and my recollection is by -- by the
3 CEO and in a verbal form.

4 MS. KATE MCGRANN: Okay, when you say
5 the CEO, are you referring to Mr. Houghton?

6 MR. TIM FRYER: Yes.

7 MS. KATE MCGRANN: So your
8 recollection is that Mr. Houghton told you in a
9 conversation that Mr. Bonwick was working for
10 PowerStream?

11 MR. TIM FRYER: That's my recollection
12 of it, yes.

13 MS. KATE MCGRANN: Do you remember if
14 you were told what Mr. Bonwick was doing for
15 PowerStream?

16 MR. TIM FRYER: No.

17 MS. KATE MCGRANN: Did you learn at
18 any time before the selection of PowerStream as the
19 successful proponent what Mr. Bonwick was doing for
20 PowerStream?

21 MR. TIM FRYER: No.

22 MS. KATE MCGRANN: Did you learn what
23 he was doing for PowerStream at any time before the
24 transaction was finalized?

25 MR. TIM FRYER: Just the matter of the

1 solar vents. I knew that Mr. Bonwick's company was
2 involved and I knew PowerStream was involved along
3 with us.

4 So at that time I would've equated that
5 to be the kind of work that he was doing with
6 PowerStream.

7 MS. KATE MCGRANN: At any point after
8 you learned from Mr. Houghton that Mr. Bonwick was
9 working for PowerStream, did you ask any questions of
10 anyone to determine what kind of work Mr. Bonwick was
11 doing for them?

12 MR. TIM FRYER: No.

13 MS. KATE MCGRANN: Okay. Why not?

14 MR. TIM FRYER: I didn't see it as an
15 issue on my -- on my side.

16 MS. KATE MCGRANN: Were the other
17 members of the strategic task team aware that Mr.
18 Bonwick was working for PowerStream?

19 MR. TIM FRYER: I don't know.

20 MS. KATE MCGRANN: Do you recall any
21 discussions at strategic task team meetings or
22 otherwise with other members about the fact that Mr.
23 Bonwick was working for PowerStream?

24 MR. TIM FRYER: No.

25 MS. KATE MCGRANN: Did you have any

1 concerns at any point -- did you ever ask yourself,
2 let me restart that. Did you ever ask yourself
3 whether Mr. Bonwick was doing work on PowerStream's
4 response to the Collus Power RFP?

5 MR. TIM FRYER: No.

6 MS. KATE MCGRANN: You've explained to
7 us that you were involved in the evaluation of the
8 responses to the request for proposals. Do you have a
9 specific recollection of -- of reviewing the responses
10 and assigning scores?

11 MR. TIM FRYER: Yes.

12 MS. KATE MCGRANN: What do you recall
13 about evaluating --

14 THE HONOURABLE FRANK MARROCCO:
15 Actually, you're not getting into the evaluation.
16 We'll take ten (10) minutes now.

17 MS. KATE MCGRANN: Okay.

18 THE HONOURABLE FRANK MARROCCO: Just a
19 second. As my counsel points out to me, we're going
20 to have to break for lunch at 11:30, so we'll just
21 carry on for another fifteen (15) minutes.

22

23 CONTINUED BY MS. KATE MCGRANN:

24 MS. KATE MCGRANN: What do you recall
25 about evaluating the responses to the non-financial

1 portion of the RFP?

2 MR. TIM FRYER: I recall that we were
3 given the information to evaluate and then we met as a
4 -- as a team and we presented our findings at the
5 meeting.

6 MS. KATE MCGRANN: Did you score the
7 responses before the meeting or at the meeting?

8 MR. TIM FRYER: I would have had my
9 scores prepared for the meeting.

10 MS. KATE MCGRANN: Did you change any
11 scores that you assign as a result of the meeting?

12 MR. TIM FRYER: No.

13 MS. KATE MCGRANN: What do you recall
14 about evaluating the financial responses to the
15 requests for proposals?

16 MR. TIM FRYER: I didn't evaluate the
17 financial responses. The -- I think there's some e-
18 mail evidence of it being said that I wouldn't be
19 doing evaluation of the financials.

20 MS. KATE MCGRANN: I want to make sure
21 that I understand what you're talking about.

22 Did you review the financial responses
23 and assign a score to them?

24 MR. TIM FRYER: So reviewing them for
25 the scoring, yes.

1 MS. KATE MCGRANN: Okay. When you say
2 you weren't involved in evaluating them, do you mean
3 involved in -- what do you mean by that?

4 MR. TIM FRYER: They were taken away
5 and evaluated by KPMG to put it into a format that we
6 could utilize that hopefully would give us a decent
7 apples-to-apples comparative table format. That was
8 my understanding.

9 MS. KATE MCGRANN: And was the
10 comparative table format what you used to assign the
11 scores?

12 MR. TIM FRYER: Yes.

13 MS. KATE MCGRANN: And what do you
14 recall about -- was there -- sorry, was there a
15 similar process followed in which scores were assigned
16 and then there was a meeting to discuss the scores
17 that were assigned?

18 MR. TIM FRYER: I believe so but I
19 can't say for certain on that.

20 MS. KATE MCGRANN: Do you recall if
21 there was any discussion about the responses to the
22 various financial criteria amongst the members of the
23 strategic task team before the successful proponent
24 was selected?

25 MR. TIM FRYER: No, I'm not aware of

1 any.

2 MS. KATE MCGRANN: Did you share any
3 of the information that you learned through your role
4 on the strategic task team with anyone outside of that
5 team --

6 MR. TIM FRYER: No.

7 MS. KATE MCGRANN: -- at any point in
8 time?

9 MR. TIM FRYER: No.

10 MS. KATE MCGRANN: Can we turn to
11 paragraph 345 of the Foundation Document?

12

13 (BRIEF PAUSE)

14

15 MS. KATE MCGRANN: This paragraph
16 discusses some email correspondence in late October of
17 2011, and if you look at the bottom of the paragraph
18 it says, "In Tim Fryer's response the next day," so it
19 would be October 22nd, you indicated that:

20 "The transaction will most likely be
21 the Collingwood Utility Service Corp
22 shares being sold by the Town of
23 Collingwood."

24 MR. TIM FRYER: Could you bring up the
25 email, please?

1 MS. KATE MCGRANN: Yes.

2 MR. TIM FRYER: I'm sorry, Ms.

3 McGrann.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: TOC521817, please.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: Scroll to the

12 bottom and allow Mr. Fryer to -- to read it.

13 MR. TIM FRYER: And just -- so -- so,

14 yes, it -- it's the November 2nd, and -- and as you

15 read it, yes, I remember it.

16 MS. KATE MCGRANN: What do you recall

17 about conversations at this point in time about which

18 entity's shares would be sold?

19 MR. TIM FRYER: I -- I guess just if -

20 - if we can scroll up with the information that's in

21 the response. Sorry -- sorry, scroll down.

22 So as it reads there, that we were

23 considering the options and the structure of the

24 Utility such going forward. The last paragraph is --

25 is -- or that last sentence is an important one.

1 "In the event of the transaction
2 occurring at the holding company
3 level, i.e., by selling -- selling
4 shares in -- in CUS, the assets in
5 Operations (sic) Solution Corp,
6 which is now a subsidiary of CUS,
7 would likely be transferred out of
8 CUS in the advance of the
9 transaction."

10 So, I certainly was aware that the
11 Board understood we were looking at corporate
12 structure for a number of reasons, and in this
13 particular case this is explaining to Hydro One that
14 it looked like the sale at the holding company would
15 be achievable.

16 MS. KATE MCGRANN: Okay. And just to
17 put this response in context because you've only
18 looked at a portion of the email, what you're looking
19 at here is a draft response to Hydro One.

20 We haven't seen any evidence that this
21 response was actually provided, but stepping away from
22 that at this point in time, so end of October, early
23 November, were you involved in discussions about which
24 entity's shares would ultimately be sold?

25 MR. TIM FRYER: Definitely we were

1 looking at the tax implications. There's an earlier
2 email. I -- I can get you the number maybe at break
3 and I'll show you the one (1) I mean, that was talking
4 about the tax issues for Hydro One, and I believe it
5 was dated October 28th, and this relates to what was
6 being conveyed in this response back to Hydro One.

7 So -- but I had explained in earlier
8 evidence through the proceedings that the conversion
9 from GAAP to IFRS was putting us into a situation
10 where we had to look at our corporate structure and
11 decide if we were going to continue to maintain it the
12 way it was, and so I felt all along there was a good
13 chance that we would be going down to a single
14 operating company with a holding company or just a
15 holding company going forward, but -- but again,
16 everything was in kind of a state of flux at that
17 particular time.

18 MS. KATE MCGRANN: So I understand
19 that you're referencing an earlier email. You and I
20 cannot discuss your evidence on break. The only way
21 we can discuss your evidence is in front of everyone
22 and Justice Marrocco in the way that we're doing it
23 now, but I don't think that we --

24 MR. WILLIAM MCDOWELL: If it assists,
25 that -- the email he's referring to is KPM1804.

1 MS. KATE MCGRANN: That's useful, but
2 I don't intend to go there right now because what I'd
3 like to understand is, why are we only looking at the
4 tax implications of which shares are going to be sold
5 at this point in time? Why didn't these discussions
6 happen before the RFP was put together?

7 MR. TIM FRYER: So instead of putting
8 an RFP out for Collus Power, put an RFP out for
9 Collingwood Utility Services for the holding company.

10 MS. KATE MCGRANN: Or even taking a
11 step back in time, stopping to ask the question, what
12 are the tax implications of selling shares in Collus
13 Power versus selling shares in the holding company and
14 which should be the subject of the RFP.

15 Do you know if that was considered
16 before the RFP was put together?

17 MR. TIM FRYER: I don't believe so,
18 because we felt there was tax exemption being
19 provided. This turned out to be a different tax
20 issue.

21 MS. KATE MCGRANN: Okay. What tax
22 exemption did you think was available when the RFP was
23 put together?

24 MR. TIM FRYER: The transfer tax.

25 MS. KATE MCGRANN: And what tax issue

1 is being discussed here?

2 MR. TIM FRYER: This is because -- and
3 the other email will show that, but my recollection,
4 the other email says that because Hydro One could not
5 own a percentage, they either had to buy something in
6 whole or not. If they didn't buy it in whole, then
7 there was this tax implication for them.

8 MS. KATE MCGRANN: So your
9 understanding of this discussion is that you're
10 looking at or it's that what's being discussed is tax
11 consequences specifically related to the sale to Hydro
12 One?

13 MR. TIM FRYER: That's what that was
14 referring to, yes.

15 MS. KATE MCGRANN: Ultimately, what
16 ends up being sold is shares in the holding company.
17 Do you know why that decision was made?

18 MR. TIM FRYER: I believe it was the
19 best from a tax planning standpoint. And to the
20 earlier question, reflecting on being concerned about
21 the RFP going out for Collus Power and not for the
22 holding company, as I said, I felt pretty strongly
23 that most likely Collus Solutions would be dissolved
24 and there would just be Collus Power, so I wasn't
25 overly concerned at that point in time that it was

1 going out as Collus Power and not as the holding
2 company itself.

3 MS. KATE MCGRANN: I'm going to try to
4 summarize what you and I have discussed over the last
5 few minutes. You understood that shares in the LDC
6 were put out for sale because there was an available
7 tax exemption -- there was an available tax exemption
8 for shares in the LDC and shares in the LDC were put
9 out to RFP.

10 MR. TIM FRYER: I believe the RFP was
11 put out for the LDC, Collus Power.

12 MS. KATE MCGRANN: It was. And was it
13 your understanding at the time that there was a tax
14 exemption available for sale of those shares?

15 MR. TIM FRYER: Yes.

16 MS. KATE MCGRANN: And then it's later
17 discovered that there is a potential tax consequence
18 if the shares are sold to Hydro One?

19 MR. TIM FRYER: Yes.

20 MS. KATE MCGRANN: And then
21 ultimately, shares in the holding company are sold
22 because that's most advantageous from a tax planning
23 standpoint?

24 MR. TIM FRYER: And I think from a
25 corporate standpoint it was decided that it should be

1 the whole entity.

2 MS. KATE MCGRANN: Were you involved
3 in those discussions?

4 MR. TIM FRYER: I don't believe so.

5 MS. KATE MCGRANN: So when you say
6 that you believe it was also most beneficial from a
7 corporate standpoint, are -- are you guessing?

8 MR. TIM FRYER: And I guess I
9 shouldn't say I don't believe so, because as I said I
10 was advising about Collus Solutions and -- and the
11 restructuring, so I certainly was involved about
12 corporate structure and -- and as we scroll up in this
13 email, I believe this is the one (1) where I had
14 advised that it would likely be the holding company at
15 -- Mr. Stern. So I obviously was part of the
16 conversations and the decisions that were being made.

17 MS. KATE MCGRANN: This would be a
18 good time for me to take a break in my questions.

19 THE HONOURABLE FRANK MARROCCO: 1:30.

20

21 --- Upon recessing at 11:31 a.m.

22 --- Upon resuming at 1:34 p.m.

23

24 CONTINUED BY MS. KATE MCGRANN:

25 MS. KATE MCGRANN: Good afternoon, Mr.

1 Fryer.

2 MR. TIM FRYER: Good afternoon.

3 MS. KATE MCGRANN: I'd like to ask you
4 a couple more questions about the work you did scoring
5 the financial responses to the RFP. You had told us
6 that you weren't involved in the evaluation of the
7 bids, that KPMG did some work to -- to create a sort
8 of apples to apples comparison with those responses.

9 Have I got that right?

10 MR. TIM FRYER: That's my
11 recollection, yes.

12 MS. KATE MCGRANN: Were you shown the
13 results of KPMG's work to help you in your scoring of
14 those responses?

15 MR. TIM FRYER: That's what I recall.

16 MS. KATE MCGRANN: Can we pull up
17 CPS2668?

18

19 (BRIEF PAUSE)

20

21 THE HONOURABLE FRANK MARROCCO: Is
22 there a problem, Mr. Glicksman?

23 THE COURT OPERATOR: A little bit.
24 Internet delay.

25

1 (BRIEF PAUSE)

2

3 CONTINUED BY MS. KATE MCGRANN:

4 MS. KATE MCGRANN: Just while there's
5 some internet issues, why don't we turn to paragraph
6 239 of the Foundation Document?

7

8 (BRIEF PAUSE)

9

10 MS. KATE MCGRANN: Let's go with third
11 time's a charm, paragraph 293 of the Foundation
12 Document. We looked at these evaluation criteria
13 earlier today.

14 The first question I have for you, if
15 we could scroll down to the look at the -- the bullet
16 points that form that 30 percent of what has been
17 referred to as the financial considerations, do you
18 recall any discussion amongst the members of the
19 Strategic Task Team about how to apportion the thirty
20 (30) available points across the items that are listed
21 there of Canada bullet points?

22 There's nine (9) of them, so there's
23 not an easy division.

24 MR. TIM FRYER: No, I don't recall
25 that.

1 MS. KATE MCGRANN: Do you recall how
2 you approached apportioning the thirty (30) points
3 across those nine (9) items when you scored the
4 financial responses?

5 MR. TIM FRYER: Nothing that I can
6 specifically bring to mind. I -- I just can't think
7 of specific things, that's what you're asking of, if I
8 can narrow down things about the partnership.

9

10 (BRIEF PAUSE)

11

12 THE HONOURABLE FRANK MARROCCO: Well,
13 while they're doing that, let me address the
14 scheduling issue. On the 21st, I have to attend a
15 swearing in of a judge in Toronto, which means that we
16 would sit from 9 to 12 or so, and then break, and then
17 come back the next day.

18 What makes more sense to me is that we
19 won't sit on the 21st, but we will sit later than
20 usual on the 22nd, 23rd, and 24th to make up the time.
21 And so, I'd ask you to think about that and let us
22 know in the -- in the next little while whether that
23 makes sense because I really -- I really can't see the
24 wisdom of dragging everybody here for three (3) hours,
25 and then -- and then adjourning again, when we can

1 make up that time by just sitting later when
2 everybody's here.

3 But let me know if that causes grave
4 problems. I might do it anyway, but I'd at least like
5 to know if it's going to cause you any problems.

6 MR. WILLIAM MCDOWELL: Just could I
7 ask because you probably know about these things, what
8 time is the swearing in that day, at 4:00?

9 THE HONOURABLE FRANK MARROCCO: 4:30.

10 MR. WILLIAM MCDOWELL: 4:30. Thanks.

11 THE HONOURABLE FRANK MARROCCO: You
12 know, so you want to make sure -- you got to leave
13 early enough to make sure you get there, otherwise,
14 it's a bit awkward.

15 MR. WILLIAM MCDOWELL: Well, they
16 can't start without you, so.

17 THE HONOURABLE FRANK MARROCCO: It
18 does look a bit awkward.

19

20 CONTINUED BY MS. KATE MCGRANN:

21 MS. KATE MCGRANN: I'm going to switch
22 to a different part of the questions that I have to
23 ask you that don't rely on documents. And then, once
24 we're able to pull documents upon relativity, I'll
25 come back.

1 What I'd like to ask you is this.
2 We've seen reference to different emails that are
3 referred to in the Foundation Document and otherwise
4 in which other people express views or suggest that
5 you were -- you had some opposition to the sale.

6 What was your view of -- of the
7 proposed sale that was outlined in the RFP of the
8 responses that were received and of the ultimate
9 selection of PowerStream?

10 MR. TIM FRYER: And -- and you're
11 correct. There was some -- I -- I didn't see any
12 evidence in -- in my emailing to people that indicated
13 that, but others had -- had surmised that either from
14 -- information from somebody else or -- or on their
15 own.

16 My belief was that Council had chosen a
17 path that I, as CFO of the organization, needed to
18 make sure was done in an appropriate fashion, and I
19 was -- I was working towards that.

20 I continue to say, and I've said it
21 many times, I'm a proponent for municipally owned
22 local distribution corporations. My beliefs and my --
23 my discussions with them through the course of time
24 when they're making their decision, ultimately, they
25 decided that they were going to go with the approach

1 that they wanted.

2 And I was acceptant of that and -- and
3 moving forward, as far as I was concerned.

4 MS. KATE MCGRANN: Why did you -- why
5 are you a proponent of municipally owned utilities?
6 Why did you think that that was important? Or what
7 were --

8 MR. TIM FRYER: I --

9 MS. KATE MCGRANN: Why did you see the
10 municipality would be losing through the -- the sale?

11 MR. TIM FRYER: I -- I believe
12 strongly that municipal LDCs are a viable operation if
13 the pillars are in place to -- to work successfully
14 with the shareholder. And in Collingwood's case, the
15 shareholder decided something different.

16 MS. KATE MCGRANN: At any point during
17 the time that you were a member of the Strategic Task
18 Team or through to the time that the deal was
19 completed did anyone come and speak to you about
20 concerns they had about your views of the share sale?

21 MR. TIM FRYER: The time that it -- it
22 was brought to my attention that there was concerns
23 was in an in camera meeting of Collus Solutions. And
24 I believe the date was December the 7th. It was 7th
25 or 8th.

1 And, at that point in time, I was -- I
2 wasn't aware that it was going to happen, but I was --
3 in the in camera session I was asked to explain my
4 situation with the -- with regards to the share sale.

5 And I explained that, just as I said, I
6 recognized that the shareholders made a decision and I
7 certainly will put my efforts behind bringing that to
8 fruition.

9 But I did consider the fact that not
10 exploring all four (4) options fully to me wasn't the
11 appropriate way to proceed. But I did explain that I
12 wasn't prepared really to say any more at this point
13 in time because it was -- as I said, it was a surprise
14 to me to -- to be asked, but I was fully prepared to
15 meet at another appointed time and -- and discuss it
16 further if they would like.

17 MS. KATE MCGRANN: Who asked you to
18 explain your position on the share sale?

19 MR. TIM FRYER: That was a Collus
20 Solution Board meeting. When we went in camera, the
21 chair of the Board was Joan Pajunen, and so she was
22 the one (1) who posed the question.

23 MS. KATE MCGRANN: When you say that
24 you advised them that you thought that all four (4)
25 options should have been considered more fully, what

1 four (4) options are you referring to?

2 MR. TIM FRYER: Well, by only seeking
3 out a strategic partner and, in fact, narrowing it
4 down to four (4) individual utilities to approach, I
5 guess there was five (5) at -- at one (1) point in
6 time, I thought that really the approach would have
7 been to put an RFP out there and see what other
8 proposals we got from other interested parties.

9 So, I didn't have anything specifically
10 in mind other than making sure it was an open process
11 to any of the LDCs or interested parties in -- in the
12 -- in the marketplace in Ontario.

13 MS. KATE MCGRANN: I want to
14 understand what -- what is different between the RFP
15 process you're envisioning and the one (1) that was
16 actually put in place, so -- so could you describe
17 more fully what you're talking about?

18 MR. TIM FRYER: The one (1) that went
19 forward was only to the four (4) proponents.

20 MS. KATE MCGRANN: Okay.

21 MR. TIM FRYER: And I would have
22 envisioned an RFP that went out to everybody, any --
23 any interested parties, I guess, and it would just be
24 saying, give us your proposals.

25 MS. KATE MCGRANN: Without any

1 parameters around what the proposals might be?

2 MR. TIM FRYER: I'm assuming -- I -- I
3 never got into detail with people and this is the type
4 of thing that I would have been prepared to talk about
5 in more depth with them, but they never pursued that
6 with me, but that was my contention, was that could we
7 be leaving something off the table here that -- that
8 could be available if we didn't go out.

9 MS. KATE MCGRANN: Okay. In my notes
10 of your answer to one (1) of my questions that I asked
11 you a few minutes ago, I've got you saying that you
12 thought that all four (4) options should have been
13 considered more fully.

14 Have I got that right?

15 MR. TIM FRYER: In a sense I felt that
16 that would happen, by -- by going out into the
17 marketplace, so the four (4) options being the full
18 sale, partial sale, I guess partial being minority or
19 majority, which would be three (3), and then the
20 partnership one (1) would be the fourth.

21 MS. KATE MCGRANN: Okay. Why didn't
22 you raise those -- that view earlier in the process?

23 MR. TIM FRYER: Well, as I said,
24 during the process I made it known what I believe was
25 best way to move forward and the decisions were made

1 along the way to proceed with the way they were going.
2 It -- it wasn't the first time I'd made
3 recommendations and the decision had been to do
4 something different. That happens. You're an officer
5 of the Corporation and decisions are made and
6 sometimes they're what you recommended.

7 An example I'll give is the formation
8 of -- of the -- the new structure to meet the
9 Electricity Act. I felt that the shared employees
10 should stay in the public utilities rather than move
11 them into the service company within the -- the OBCA
12 structure, and I -- I wasn't successful with that, but
13 that didn't change my approach to dealing with it
14 after the fact, and it would be the same with the RFP
15 process.

16 MS. KATE MCGRANN: Okay. So I
17 understand you to be saying that even though you had
18 particular views and opinions on how things should
19 progress, those views and opinions didn't impact the
20 way you approached your job as CFO of the Utility.

21 Is that fair?

22 MR. TIM FRYER: They can't.

23 MS. KATE MCGRANN: And it didn't?

24 MR. TIM FRYER: No.

25 MS. KATE MCGRANN: I'd like to --

1 focussing specifically on the -- the RFP process --
2 understand the views that you say that you aired
3 earlier in the process. So we've heard you give
4 evidence that you thought that the -- waiting for the
5 financial components of the RFP should be 50 percent.

6 Were there any other positions that you
7 put forward to your discussions on the STT or
8 otherwise that weren't realized in the RFP process?

9 MR. TIM FRYER: Not that come to mind,
10 no.

11 MS. KATE MCGRANN: There's the 50
12 percent. And that's it?

13 MR. TIM FRYER: Yeah.

14 MS. KATE MCGRANN: Save and except for
15 your conversation at the Collus Solutions meeting in
16 December about the fact that you thought all four (4)
17 options should have been considered more fully and
18 perhaps taken to market in the form of an RFP?

19 MR. TIM FRYER: Yes.

20 MS. KATE MCGRANN: Okay. Why didn't
21 you raise that concern earlier or that view earlier,
22 that, well -- well, that maybe we should be taking
23 different options more -- considering them more or
24 putting them in the RFP as well?

25 MR. TIM FRYER: I -- I believe I did

1 voice it but it was decided not to.

2 MS. KATE MCGRANN: When did you do
3 that?

4 MR. TIM FRYER: I -- I -- it would
5 have been through the process.

6 MS. KATE MCGRANN: Can you recall
7 specifically voicing those views?

8 MR. TIM FRYER: No, I cannot.

9 MS. KATE MCGRANN: Do you have any
10 recollection of how you may have -- have done it or
11 who you might have -- have expressed it to?

12 MR. TIM FRYER: My expectation is that
13 it would have been at strategic partner meetings, but
14 as I said, I can't say specifically.

15 MS. KATE MCGRANN: Is there anything
16 else that you can tell us that you do remember about
17 views that you voiced about the RFP content or
18 process?

19 MR. TIM FRYER: No, and -- and one (1)
20 of the reasons I do believe it would have been at the
21 -- at a partners' meeting is because when we attended
22 other things like the in camera sessions with the
23 Council, I -- I didn't speak at those, so that's what
24 I'm saying, I would have verbally con -- conveyed my
25 feelings and I believe it would have been at the

1 strategic partner task team meetings.

2 MS. KATE MCGRANN: We've heard
3 evidence from former Deputy Mayor Rick Lloyd that you
4 attended at his flower shop and expressed your views
5 about the potential share sale to him with his staff
6 in the shop.

7 Did you -- do you have any recollection
8 of a discussion like that?

9 MR. TIM FRYER: No, I did not.

10 MS. KATE MCGRANN: Okay. What
11 discussions, if any, did you have with Rick Lloyd
12 about your views about the share sale?

13 MR. TIM FRYER: I had none.

14 MS. KATE MCGRANN: No conversations
15 with him at all about it?

16 MR. TIM FRYER: No.

17 THE HONOURABLE FRANK MARROCCO: Before
18 you move on -- Mr. Fryer, why did you think 50 percent
19 was a more appropriate percentage?

20 MR. TIM FRYER: I said to your staff,
21 because I'm an accountant, so that was part of it. At
22 the time --

23 THE HONOURABLE FRANK MARROCCO:
24 Probably not always -- you shouldn't assume I'm privy
25 to the interviews but just --

1 MR. TIM FRYER: Yeah. So -- so I felt
2 that financial should -- and it seemed to me like you
3 wouldn't go any less than half, and on that basis, as
4 I said, I could understand the other argument about
5 the partnership aspect having the same weighted value,
6 so you wouldn't have just fifty (50) and fifty (50)
7 because you wanted to equate those other four (4)
8 criteria you're using. So could it have been 40/40,
9 and 5/5/5/5? I -- that would have probably met my
10 kind of criteria, but in the end they decided to go
11 with the 30/30 and the 10s for the other four (4).

12

13 CONTINUED BY MS. KATE MCGRANN:

14 MS. KATE MCGRANN: Okay. I understand
15 that Relativity is up and running again, so could we
16 please turn up KPM2668? And to reposition you, I
17 wanted to ask you some more questions about the
18 scoring of the financial components.

19 MR. TIM FRYER: Yes.

20 MS. KATE MCGRANN: And in particular
21 we had talked earlier about whether or not cost
22 savings for the Town were a particular focus for or
23 goal for the partnership. I understood your evidence
24 to be no.

25 Is that accurate?

1 MR. TIM FRYER: Can you repeat that
2 again? I think I distracted --

3 MS. KATE MCGRANN: Yeah. We had
4 talked earlier -- I had asked you earlier about
5 whether achieving cost savings for the Town was an
6 objective for the strategic partnership that was being
7 examined here, and I think you said no, that wasn't
8 the main goal.

9 MR. TIM FRYER: That's not something I
10 had in mind. I would have had in mind ensuring that
11 we were at least maintaining the cost to the Town that
12 we had with -- with the current arrangement without
13 having a partner.

14 MS. KATE MCGRANN: Do you remember
15 discussions amongst the members of the strategic task
16 team about a goal for the strategic partnership being
17 to reduce costs for the Town?

18 MR. TIM FRYER: Not specifically, no,
19 I do not.

20 MS. KATE MCGRANN: Do -- I think that
21 you said that you did remember -- that you understood
22 that the Town didn't want to sell more than half of
23 the Utility.

24 MR. TIM FRYER: I believe we went in
25 with the approach of up to 50 percent.

1 MS. KATE MCGRANN: Did you understand
2 that the Town did not want to lose control of what was
3 being sold?

4 MR. TIM FRYER: That was my
5 understanding.

6 MS. KATE MCGRANN: I'm showing you a
7 chart that we understand was put together by KPMG. Is
8 this what you remember being shown in terms of the
9 results of their evaluation of the financial
10 components of the bid?

11 MR. TIM FRYER: Yes, I do.

12 MS. KATE MCGRANN: Do you remember
13 when you were provided with this chart?

14 MR. TIM FRYER: No, I don't.

15 MS. KATE MCGRANN: Could you tell us
16 whether it was before the meeting of the strategic
17 task team to review the financial considerations or
18 whether maybe it was presented to you at that meeting?

19 MR. TIM FRYER: I can't say for
20 certain.

21 MS. KATE MCGRANN: Okay. Do you
22 remember if you had access to this chart before you
23 scored the financial responses to the bids?

24 MR. TIM FRYER: I can't say for
25 certain on that either.

1 MS. KATE MCGRANN: If we could scroll
2 down a little bit, I'm looking at the business issues
3 in the -- in the column to the left. Stop there,
4 that's perfect.

5 You see the -- the heading "Governance"
6 on the left-hand side here --

7 MR. TIM FRYER: Yes, I do.

8 MS. KATE MCGRANN: -- second one (1)
9 from the bottom? And then there's a summary of -- of
10 the responses in each of these columns.

11 Do you recall any discussion amongst
12 the members of the strategic task team about the
13 responses from the bidders on the question of
14 governance?

15 MR. TIM FRYER: Not specific
16 conversations. I know we had them, but I can't say
17 what was discussed.

18 MS. KATE MCGRANN: What -- what do you
19 recall about the discussions know you had?

20 MR. TIM FRYER: Well, there's a fair
21 difference in some of the approaches here, so I know
22 we would've been thinking what would we like to see.

23 MS. KATE MCGRANN: When you use the
24 word "would have", it suggests to me that you're going
25 back in time and trying to piece together what

1 probably happened, and what I would like to know is
2 what you remember about what did happen.

3 Do you have a specific recollection on
4 having any discussions about the government's
5 responses with the members of the strategic task team?

6 MR. TIM FRYER: I'd have to say no
7 then.

8 MS. KATE MCGRANN: And if we could
9 scroll down to the next page, keep going. Exit
10 strategy. Do you see that heading there on the left-
11 hand side, second up from the bottom?

12 MR. TIM FRYER: Yes, I do.

13 MS. KATE MCGRANN: Do you remember
14 having any discussions with any members of the
15 strategic task team about rights of first refusal,
16 liquidity rights or shotgun clauses, things like that?
17 The responses in the bids?

18 MR. TIM FRYER: I definitely recollect
19 the shotgun clause, because I was the one (1) who, I
20 believe, first mentioned that you probably need to
21 look at a shotgun clause.

22 And that was when I would've become
23 aware of the fact that they were considering 50
24 percent.

25 MS. KATE MCGRANN: Sorry, can you

1 explain what you mean by that?

2 MR. TIM FRYER: At -- at the time they
3 decided that they were actually going to pursue 50
4 percent rather than -- I -- I know the RFP proposal
5 had gone out is up to, I said if that's the case, then
6 we'd need to consider whether or not we need to have a
7 shotgun clause, because it appeared to me that would
8 be a situation where you'd have no clear majority
9 owner and you'd have to have some sort of methodology
10 for -- for dealing with things like -- I didn't have
11 any -- I don't have any immediate recollection about
12 first -- or first right of refusal. That just seems
13 to me to be a standard thing that you put in, but.

14 MS. KATE MCGRANN: I'd like to
15 understand some more about the specific memory you
16 have of mentioning the shotgun clause when it was
17 decided that it would be 50 percent.

18 MR. TIM FRYER: Yes.

19 MS. KATE MCGRANN: When was it decided
20 that it would be 50 percent?

21 MR. TIM FRYER: I can recall being in
22 -- and I'm -- I do have the memory very vivid, so I'm
23 -- believe it was strategic partner task team meeting
24 and I was sitting -- I was sitting at the far end of
25 the table, where I don't normally sit, I normally sit

1 at the other end.

2 And I remember Mr. Houghton saying that
3 we were going to be looking to approach this as a --
4 as an equal partner, true partner situation and that
5 it was Mr. Muncaster that had come -- had come forward
6 with that idea.

7 And I remember looking at him at the
8 time and him nodding his head. That's the memory I
9 have of when I became aware of -- of the fact that
10 they were going to go with 50 percent.

11 MS. KATE MCGRANN: Do you remember
12 whether that occurred before or after the RFP was
13 issued?

14 MR. TIM FRYER: I can't say for
15 certain, no, when it was. But I know that is the time
16 that I brought up that we would need to consider a
17 shotgun cause as -- as part of the agreement.

18 MS. KATE MCGRANN: Okay. When you
19 were looking at the responses to the RFP, do you
20 recall having discussions with the strategic task team
21 about the responses on a shotgun clause, what it would
22 look like, whether one (1) would be included or not?

23 MR. TIM FRYER: No, I don't remember.

24 MS. KATE MCGRANN: Do you remember
25 whether you assigned a monetary score to the responses

1 to the financial components of the bid? I know we've
2 talked about how you would allocate those 30 point
3 shares, but do you specifically recall actually
4 assigning numerical scores to those financial
5 responses?

6 MR. TIM FRYER: I specifically recall
7 giving Hydro One the highest score. And -- and I know
8 I would've scored the others, but I -- and now we are
9 just talking about my memories back then. I can't
10 recall specifically what I gave the other three. And
11 I haven't -- and that includes I haven't come across
12 it in the -- in the evidence either.

13 MS. KATE MCGRANN: Okay. Could we
14 turn up CPS --

15 THE HONOURABLE FRANK MARROCCO: Just
16 before you do that.

17 MS. KATE MCGRANN: Sorry.

18 THE HONOURABLE FRANK MARROCCO: Can
19 you recall why you gave Hydro One the top score?

20 MR. TIM FRYER: Because they had the
21 best monetary offer and the other parameters that went
22 with the analysis, I felt that they were the top
23 offer.

24 THE HONOURABLE FRANK MARROCCO: The
25 exit strategy for them was a right of first refusal,

1 that's all it was?

2 MR. TIM FRYER: Yes.

3

4 CONTINUED BY MS. KATE MCGRANN:

5 MS. KATE MCGRANN: Just because of the
6 fact that you have such a specific memory of bringing
7 up the need for a shotgun clause and Hydro One did not
8 propose to include one, can you remember how that
9 affected your score at all?

10 MR. TIM FRYER: No.

11 MS. KATE MCGRANN: Could we turn up
12 CPS11306. And I understand that that's an open
13 question, because relativity may not be cooperating
14 with us right now.

15 MR. TIM FRYER: Sorry, I -- I didn't
16 catch that.

17 MS. KATE MCGRANN: It was a terrible
18 joke. I think the internet may be out, so it might
19 take us a second. No, here we are.

20 MR. TIM FRYER: Okay.

21 MS. KATE MCGRANN: If we could look at
22 the -- the totals sheet. My understanding that this
23 is the only information that we've got about the
24 scores that were assigned for the financial component
25 of the bid.

1 If you look at the first row across the
2 top, it's payment for up to 50 percent of shares and
3 other considerations and 3.1, and there are totals
4 here for each of the respondents.

5 Do you recall ever seeing a sheet that
6 set out the scores that each of the members of the
7 strategic task team assigned to the respondents for
8 the financial component of the bid?

9 MR. TIM FRYER: I don't remember
10 receiving -- you're talking about the individual
11 member scores, even though it wouldn't identify who
12 the member was, and I don't recall getting anything
13 like that.

14 MS. KATE MCGRANN: Can we turn up CPS
15 7026_0001.

16 These are the minutes of a joint
17 meeting of the Board of Directors of Collus Power
18 Corp. and Collus Solutions Corp. held on December 2nd,
19 2011. If you could scroll down a little bit. That's
20 -- that's perfect.

21 It looks from the minutes that -- if we
22 scroll up a little bit. That board meeting was in
23 camera, comes out of the in camera session, scroll
24 down, and votes to approve and accept the findings of
25 the strategic partnership task force team and make

1 recommendation to Council that Collus Power undertake
2 negotiations with PowerStream for the purpose of
3 entering into the strategic partnership arrangement.

4 Do you recall attending this meeting?

5 MR. TIM FRYER: I -- I would've been
6 there.

7 MS. KATE MCGRANN: Do you have any
8 recollection of what was discussed at the meeting
9 before this vote was taken?

10 MR. TIM FRYER: I don't.

11 MS. KATE MCGRANN: Turn up

12 ALE5133.0002.

13 This was a slide presentation made to
14 Council in camera reporting on the results and
15 evaluations of the strategic partnership RFP
16 responses.

17 Were you at the Council meeting where
18 this presentation was given?

19 MR. TIM FRYER: I believe so.

20 MS. KATE MCGRANN: Go to slide 15,
21 please. Scroll a little bit down.

22 Here's some information that was
23 presented to Council about the responses to the
24 financial components of the bid, in particular I'd
25 like to draw your attention to the second last row,

1 the governance row.

2 Do you recall what discussion there was
3 at the Council meeting about the responses on the
4 point of governance?

5 MR. TIM FRYER: No, I don't.

6 MS. KATE MCGRANN: Do you recall if
7 there was any discussion about the implications of
8 each of the responses on the ability of the Town to
9 maintain some control over the utility after the sale
10 was completed?

11 MR. TIM FRYER: No, I don't.

12 MS. KATE MCGRANN: Can we go to slide
13 18, please.

14 THE HONOURABLE FRANK MARROCCO: I'm
15 sorry, just before you do that.

16 Can you just explain, if you look under
17 governance portion it says PowerStream -- about there
18 says 50 percent Town, 50 percent PowerStream, majority
19 independent.

20 What -- what -- how -- how did -- how
21 would that work?

22 MR. TIM FRYER: So the -- when they
23 form the unanimous shareholders agreement, the
24 structure was to be three (3) members appointed by
25 PowerStream, three (3) members appointed by

1 Collingwood, and two (2) of them had to be
2 independent, is -- is according to the shareholders
3 agreement.

4 THE HONOURABLE FRANK MARROCCO: This
5 says "majority independent."

6 MR. TIM FRYER: So -- so that's what
7 I'm saying. If four (4) were independent and two (2)
8 could be dependent, then -- then you'd have a
9 majority.

10 THE HONOURABLE FRANK MARROCCO: So two
11 (2) of the three (3) would be independent?

12 MR. TIM FRYER: The -- that's the way
13 they wrote it into the agreement -- the Unanimous
14 Shareholders Agreement -- is that they wanted two (2)
15 independents and one (1) could be a dependent. And --
16 and a dependent would be somebody who's affiliated
17 with the -- with the appropriation in some fashion.

18 THE HONOURABLE FRANK MARROCCO: Thank
19 you.

20

21 CONTINUED BY MS. KATE MCGRANN:

22 MS. KATE MCGRANN: Could we turn to
23 slide 18, please.

24

25 (BRIEF PAUSE)

1 MS. KATE MCGRANN: Because of your
2 specific recollection about the shotgun clause, I
3 wanted to ask you about point number 4 on this slide
4 which sets out further clarifications. It says:

5 "In your response, the RFP noted a
6 shotgun clause. Can you expand on
7 your thoughts?"

8 The response is:

9 "PowerStream does not like this
10 approach and in fact does not like
11 the phrase. The reason it is
12 mentioned is because it is stated
13 this way in the RFP itself. Their
14 views on liquidity is exactly that
15 of ours and specifically David
16 McFadden's."

17 Do you recall what the views on
18 liquidity referenced here were?

19 MR. TIM FRYER: No, I don't.

20 MS. KATE MCGRANN: Do you recall what
21 David McFadden's view on liquidity was?

22 MR. TIM FRYER: No, I don't.

23 MS. KATE MCGRANN: D you recall any
24 discussions about the shotgun clause or the other
25 information on this bullet point at all?

1 MR. TIM FRYER: No.

2 MS. KATE MCGRANN: Can we turn to
3 paragraph 617 of the Foundation Document, please?

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Paragraph 617
8 describes the shotgun clause. This paragraph says
9 that:

10 "The Town or PowerStream could offer
11 to purchase all the other
12 shareholders shares at any time.
13 Such an offer would trigger a 20-day
14 period during which the other
15 shareholder had to either accept the
16 offer and sell all its shares or buy
17 the offering shareholder shares at
18 the offered price per share."

19 Is this what you were envisioning when
20 you suggested that a shotgun clause be included?

21 MR. TIM FRYER: No. And as I
22 mentioned, I wasn't involved in the negotiations in
23 the final Unanimous Shareholder Agreement structuring.
24 So I wasn't aware of actually this 20-day period until
25 I was a member of the Council.

1 MS. KATE MCGRANN: Okay. What about
2 the shotgun clause is not what you envisioned?

3 MR. TIM FRYER: Sorry?

4 MS. KATE MCGRANN: You said that you
5 suggested a shotgun clause be included as soon as you
6 understood that 50 percent was what was going to be
7 sold.

8 What about this shotgun clause is not
9 consistent with what you had envisioned would be put
10 in place?

11 MR. TIM FRYER: I would have thought
12 20 days was a very restrictive time period for a
13 municipal situation. And that's what we were going to
14 be in. And I just wouldn't think it be lengthy
15 enough. In fact, when I first saw it, I thought, is
16 there a one (1) missing in front of it?

17 MS. KATE MCGRANN: And what about --
18 can you help me understand why you thought it was too
19 restrictive? What were the implications of that for
20 the municipality?

21 MR. TIM FRYER: The implications of
22 the shotgun clause is that one (1) partner can offer
23 an amount of money to the other partner for the -- for
24 their shares, and the other partner has the period of
25 time allowed to decide if they're going to pay that

1 amount to the partner who made the initial offer or
2 not.

3 And if they do decide to do that, the
4 other partner has to accept it. If you don't decide
5 to do that, then you have to accept what they've
6 offered to you.

7 So being a situation where the utility
8 was going to be fully leveraged so it was going to
9 have its 60 percent, that situation -- if there was
10 going to be a situation where Collus was having to
11 respond to an offer from PowerStream or Alectra,
12 eventually, then it would require -- if there was any
13 thought to -- to purchasing it back, it would
14 require -- definitely require Town Council approval.

15 And trying to get approval for
16 borrowing or getting money from Town Council, I would
17 have thought 20 days would be very, very restrictive.

18 MS. KATE MCGRANN: Okay. So the offer
19 Collus -- it wouldn't be Collus responding to the
20 offer. It'd be the Town responding to the offer.
21 Correct?

22 MR. TIM FRYER: Yes. The Unanimous
23 Shareholders Agreement, so it'd be Town of Collingwood
24 would be accepting the offer.

25 MS. KATE MCGRANN: And the concern was

1 that 20 days wouldn't be sufficient to get -- for Town
2 Council to be able to respond basically.

3 MR. TIM FRYER: It would -- I'm not
4 saying it can't be done because, as -- as Mr. Chadwick
5 explained when -- when I was speaking to him in -- in
6 this, Council has borrowing room.

7 But it would be making a decision most
8 likely without public input to any major degree
9 because you'd be rushing through to -- to get it done
10 'cause I believe that was 20 calendar days, too. It
11 wasn't 20 working days.

12 MS. KATE MCGRANN: So I understand
13 that you didn't have any input into how the shotgun
14 clause was finally drafted. Were there any
15 discussions on the Strategic Task Team about what
16 parameters would be required or acceptable to the Town
17 as far as a shotgun clause went?

18 MR. TIM FRYER: No. That's wasn't
19 part of the task team discussions.

20 MS. KATE MCGRANN: After PowerStream
21 was successfully selected as the successful proponent,
22 what involvement did you have in the negotiations or
23 the agreements that were put together for the deal?

24 MR. TIM FRYER: Basically none. The
25 conversations I had directly with PowerStream was in

1 regards to the upcoming cost of service filing and
2 deciding if we thought that it would be best to
3 proceed or may ask for an exemption for a year in
4 order to work on things, like service agreements and
5 that. So I met with Mr. Glicksman and Mr. Houghton
6 down at PowerStream. We had those discussions, and we
7 did emailings back and forth.

8 But those were really my only
9 discussions of any degree with PowerStream after they
10 had been selected. The negotiation part of the -- was
11 being handled by others.

12 MS. KATE MCGRANN: Have I got it right
13 that the discussions that you had directly with
14 PowerStream and with Mr. Houghton were related to the
15 position you'd take. These would be the regulator on
16 the shared services and other issues that would lead
17 to rate --

18 MR. TIM FRYER: On the -- on the 2013
19 cost of service filing, which is an extensive filing.

20 MS. KATE MCGRANN: No input into the
21 terms of the Shareholders Agreement or --

22 MR. TIM FRYER: No.

23 MS. KATE MCGRANN: -- the Share
24 Purchase Agreement?

25 MR. TIM FRYER: No, I did not.

1 MS. KATE MCGRANN: Were you involved
2 in any of the discussions around those documents?

3 MR. TIM FRYER: No. May I -- that was
4 being handled by Ms. Shuttleworth.

5 MS. KATE MCGRANN: Can we turn up
6 TOC --

7 THE HONOURABLE FRANK MARROCCO: Just
8 if I might -- sorry -- before you do that. You
9 indicated that the prevailing view was that
10 Collingwood should not lose control of the Utility.

11 MR. TIM FRYER: I believe that, yes.

12 THE HONOURABLE FRANK MARROCCO: This
13 shotgun clause would allow PowerStream at some point
14 to buy the entire utility, wouldn't it?

15 MR. TIM FRYER: Yes. And the
16 protection for Collingwood would -- would be that they
17 couldn't give you a low price without running the risk
18 of you turning around and -- and paying it.

19 THE HONOURABLE FRANK MARROCCO: I
20 appreciate that. But I thought that the Town didn't
21 want to lose control of the utility.

22 MR. TIM FRYER: And I believe that
23 that -- they didn't believe that they were losing
24 control.

25 THE HONOURABLE FRANK MARROCCO: If you

1 were giving somebody the right to buy your shares?

2 MR. TIM FRYER: I guess because you
3 have the same right to buy theirs.

4 THE HONOURABLE FRANK MARROCCO: Is --
5 was that the discussion at the Strategic Partnership
6 Task Team if there was one?

7 MR. TIM FRYER: I can't say for
8 certain, Justice Marrocco, that there was discussion.
9 I -- I mean, I'm providing you my view of it, I guess.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you.

12

13 CONTINUED BY MR. KATE MCGRANN:

14 MS. KATE MCGRANN: I have a couple
15 questions about Amaizeingly Green. Could we turn up
16 CPS7018_0001?

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: If we look at the
21 last paragraph at the bottom of the second page...
22 So, these are the minutes of the July 8th, 2011,
23 Collus Power Board meeting.

24 MR. TIM FRYER: M-hm.

25 MS. KATE MCGRANN: So, here it says:

1 "A discussion ensued as to the
2 status of Amaizeingly Green's
3 account. Mr. Houghton stated that a
4 payment should be received today and
5 that weekly payments would be
6 received until the account is
7 current.

8 Amaizeingly Green is suggesting that
9 the account will be cleared up by
10 November."

11 Is your recollection that that
12 statement turned out to be accurate? Did they get
13 their accounts cleared up by November of 2011?

14 MR. TIM FRYER: That was the promise
15 we were having the customer, yes.

16 MS. KATE MCGRANN: Okay. And was that
17 what turned out to be the case? Did they actually pay
18 it off by then?

19 MR. TIM FRYER: I know it was paid
20 off. I can't say for certain that it was exactly on
21 that schedule, but it wouldn't have been too far off.

22 MS. KATE MCGRANN: Okay. This
23 paragraph goes on to say:

24 "Mr. Houghton stated that he has a
25 conference call at their head office

1 scheduled for July 13th. Once the
2 account is current, we will be
3 requesting a \$1 million line of
4 credit."

5 Can you explain to me what the \$1
6 million line of credit request is there?

7 MR. TIM FRYER: Utilities have the
8 right to ask the customer for a security deposit,
9 whether it's a residential customer, commercial, or
10 industrial customer. And in the case of our
11 industrial customers, we hadn't taken that approach
12 and didn't generally have lines of credit even on
13 them.

14 But what they had agreed to was a
15 fairly unique situation to other utilities out there.
16 We were actually the envy of them. They had agreed to
17 a weekly payment schedule, the major -- major
18 customers that we had.

19 So, we would provide them information
20 on a weekly basis as to what their consumption had
21 been the week before. They would make payment on
22 that. So, in a sense, it's a partial payment over the
23 four (4) weeks of the month.

24 And then we would do the normal billing
25 at the end of the month. And what the differential

1 was between the payments they made and -- and left
2 would be the amount outstanding.

3 So it reduced the risk quite a bit for
4 the utility because, unfortunately, the billing of
5 customers is somewhat like when customers are using
6 your credit card but you're not using your receipts
7 until you get that bill.

8 And you're talking about a customer
9 that was being billed in the order of probably between
10 a hundred and two hundred thousand dollars (\$200,000)
11 a month for electricity charges.

12 So, we had been using that approach.
13 In the case of Amaizeingly Green, they had encountered
14 difficulty. We were aware of it. We were talking to
15 them regularly, but it meant that they were falling
16 behind. And this was the culmination of when things
17 started to turn around and they were bringing it back
18 up to -- to current.

19 So, at the time -- and I don't recall
20 this particular sentence but, at the time the
21 statement was made, obviously, that we would request
22 the line of credit rather than ask for a million
23 dollar security deposit which would cost them money,
24 more money than it would be to have a line of credit,
25 we would take the line of credit, and if we had to

1 exercise on it, we would, whereas if we took a
2 security deposit, it would -- mo -- money would come
3 to us and we'd put it in our bank account and we would
4 pay them interest on it.

5 So, the -- the line of credit was the
6 one (1) that was talked about here.

7 MS. KATE MCGRANN: Okay. And do you
8 know whether this line of credit was ultimately put in
9 place in respect of Amaizeingly Green?

10 MR. TIM FRYER: I don't believe it
11 was.

12 MS. KATE MCGRANN: The last thing I
13 want to ask you about is the solar attic vent
14 initiative that Collus Power participated in. Do you
15 remember that Collus Power was involved in a project,
16 solar attic vents in homes?

17 MR. TIM FRYER: Yes, we were.

18 MS. KATE MCGRANN: What do you recall
19 about what that project was?

20 MR. TIM FRYER: I remember the project
21 being presented to the Board at a Board meeting and
22 the Board agreeing to undertake what I believe they
23 called a pilot project to initiate the process, I
24 guess, of -- of getting out there and selling
25 customers solar vent products.

1 And one (1) of the parts of the
2 proposal was that we would offer the ability for the
3 customer to put the charge onto their bill and pay it
4 over a period of time. I can't recall specifically
5 the period of time.

6 I'm thinking it was a year, but it
7 would just be speculation, but it was something like
8 that. It wasn't just two (2) or three (3) months. It
9 was definitely a little longer period. And it was
10 meant to be a way of promoting the sales of them
11 because people wouldn't have to necessarily put the
12 money upfront right away.

13 So, that's what I recall, is that we --
14 that was presented and the Board approved it. And
15 then we undertook operationally to -- to start to put
16 that process in place.

17 MS. KATE MCGRANN: So, who did the
18 work to take care of the billing for the -- the pilot
19 project then?

20 MR. TIM FRYER: That became my
21 responsibility.

22 MS. KATE MCGRANN: Did you -- or did
23 the Company receive any payment for doing that billing
24 work?

25 MR. TIM FRYER: I can't remember for

1 certain, so I can't say 'yes' or 'no'.

2 MS. KATE MCGRANN: Okay. Other than
3 overseeing the billing for the solar attic vent pilot
4 project, did you have any other involvement in that
5 project?

6 MR. TIM FRYER: No.

7 MS. KATE MCGRANN: At the time, you
8 told us that you were aware that Mr. Bonwick was
9 involved in the project. What did you know about his
10 involvement?

11 MR. TIM FRYER: I believed that it was
12 Paul's company that was involved in -- in the -- I
13 believe that that's what I remember as the -- as the
14 situation.

15 MS. KATE MCGRANN: Okay, and what
16 company was that?

17 MR. TIM FRYER: I believe it was Green
18 Leaf.

19 MS. KATE MCGRANN: Do you remember how
20 you came to -- to understand that that was Mr.
21 Bonwick's company?

22 MR. TIM FRYER: I can't recall why I
23 knew that, but that's what I thought was going...

24 MS. KATE MCGRANN: And I think you had
25 told us earlier that you also knew that PowerStream

1 was involved with that project.

2 Did you think there was any connection
3 between Green Lead and PowerStream?

4 MR. TIM FRYER: I -- I did not. Or
5 I'm sorry, what I should say there is -- is when I
6 knew that Green Leaf was involved in -- in the -- in
7 the units, I equated that to the fact that, oh, and
8 PowerStream is, too.

9 So, I knew at the time that Paul was
10 doing work for PowerStream, so I assumed that there
11 was some relationship there from that. And that --
12 that was probably all I would assume at that point in
13 time.

14 MS. KATE MCGRANN: Okay. Do you
15 recall if you asked any questions to understand better
16 who was involved in the pilot project or what they
17 were doing?

18 MR. TIM FRYER: I felt that the
19 information that the Board had received when they made
20 the decision was everything we needed to know.

21 MS. KATE MCGRANN: And what -- what
22 information do you recall the Board receiving?

23 MR. TIM FRYER: Things like the cost
24 of the unit, how we were going to promote it, the fact
25 that we were looking to other partners, and -- and

1 PowerStream was one (1), I believe Wasaga Beach was
2 another, Orangeville, possibly, so along those lines,
3 and then the idea of -- of what they were going to
4 charge for the unit.

5 Now I think about that. What was going
6 to be charged for the unit would have been meant to
7 recover any costs that we were incurring to run the
8 program through the billing and -- and things like
9 that.

10 MS. KATE MCGRANN: Was it your
11 understanding that Collus Power would incur the cost
12 of running the pilot program and those costs would be
13 recovered through the payments that people made for
14 their solar attic vents?

15 MR. TIM FRYER: And I can't say if it
16 was fully recoverable or -- or not because I can't
17 recall on that.

18 MS. KATE MCGRANN: Okay. Okay. So,
19 leaving aside the recovery for a second, was it your
20 understanding that Collus Power would bear the costs
21 of running the pilot program, some or all of those
22 costs would be recovered through the purchase price of
23 the attic vents?

24 MR. TIM FRYER: I certainly felt that
25 it was something that we were doing, and the

1 incremental cost of it would have been definitely
2 covered.

3 MS. KATE MCGRANN: What was your
4 understanding of Mr. Houghton's involvement in the
5 pilot project?

6 MR. TIM FRYER: As I said, he
7 presented the proposal to -- to the Board and received
8 approval to go on with the process. And that, to my
9 knowledge, was the only involvement with the -- with
10 the units, was taking that particular product and
11 taking it forward as -- as the Board wanted.

12 MS. KATE MCGRANN: Do you know how he
13 identified that product as a product that should be
14 taken forward to the Board?

15 MR. TIM FRYER: No, I don't.

16 MS. KATE MCGRANN: Did he have any
17 discussions with you about his decision to take that
18 product to the Board before he did so?

19 MR. TIM FRYER: No. And -- and I
20 wouldn't expect that he would have.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: Those are my
25 questions.

1 THE HONOURABLE FRANK MARROCCO: I -- I
2 just have one (1) other question. Amaizeingly Green,
3 it eventually did go bankrupt?

4 MR. TIM FRYER: Yes, it did.

5 THE HONOURABLE FRANK MARROCCO: And
6 was there a loss --

7 MR. TIM FRYER: I've --

8 THE HONOURABLE FRANK MARROCCO: -- as
9 a result of that?

10 MR. TIM FRYER: I've tried to remember
11 specifically, but I -- I'm going to say to you, no,
12 because I don't recall there being one (1).

13 THE HONOURABLE FRANK MARROCCO: Okay.

14 MR. TIM FRYER: It would have had to
15 be fairly significant for me to -- to know of one (1),
16 so I can't say for certain that there wouldn't have
17 been a small amount.

18 But as far as I can remember, when we
19 got the -- them back up to current, they continued to
20 be current.

21 THE HONOURABLE FRANK MARROCCO: So --
22 so if there had been a significant loss associated
23 with their ultimate bankruptcy, you -- you probably
24 would know about it?

25 MR. TIM FRYER: I -- I definitely

1 would remember that

2 THE HONOURABLE FRANK MARROCCO: Yes.

3 Thank you. Who's...

4 MR. WILLIAM MCDOWELL: I assume I am.

5 I -- I will be pretty brief --

6 THE HONOURABLE FRANK MARROCCO: All

7 right.

8 MR. WILLIAM MCDOWELL: -- twenty-five

9 (25) minutes, a half an hour.

10 THE HONOURABLE FRANK MARROCCO: Go

11 ahead.

12

13 CROSS-EXAMINATION BY MR. WILLIAM MCDOWELL:

14 MR. WILLIAM MCDOWELL: So, my friend
15 has done a very good job of going through the various
16 aream -- areas of your testimony, Mr. Fryer, so I'll
17 be jumping around a bit with a few questions.

18 MR. TIM FRYER: Okay.

19 MR. WILLIAM MCDOWELL: On the
20 financial criteria, you thought that they should be 50
21 percent rather than 30 percent. That's your -- that's
22 correct?

23 MR. TIM FRYER: That would be my
24 initial rememory -- memory is that I was thinking you
25 wouldn't go anything less than fifty (50).

1 MR. WILLIAM MCDOWELL: Right. And
2 when asked why that was, you said, Well, that's
3 because I'm an -- an accountant. And what you really
4 mean, I think, is that the financial criteria,
5 property understood, are metrics. They are things you
6 can measure, correct?

7 MR. TIM FRYER: Most certainly, it's -
8 - it's something you can measure more easily than
9 qualitative, yes.

10 MR. WILLIAM MCDOWELL: Right. And --
11 and as I look at the list of non-financial criteria --
12 we don't need to go through them -- but a lot of them
13 are subject to a lot of interpretation, correct?
14 Like, the quality of customer service, and --

15 MR. TIM FRYER: I -- I would agree,
16 yes.

17 MR. WILLIAM MCDOWELL: Right. And the
18 -- and how they treat their employees, for example?

19 MR. TIM FRYER: Yes. Yes.

20 MR. WILLIAM MCDOWELL: So just dealing
21 with a customer one, it's not as though in evaluating
22 that criterion the Strategic Task Team went out and --
23 and did some kind of analysis of Hydro One customers
24 and their complaints and that sort of thing, correct?

25 MR. TIM FRYER: They provided

1 information in their proposal that was -- I'm just
2 making sure I don't get told to -- they provide
3 information towards those criteria to -- to supplement
4 what we would probably because we're in the industry
5 know about the four (4) proponents already.

6 MR. WILLIAM MCDOWELL: Right but just
7 on customer service what you would know is, I gather,
8 I'm not being critical, it would be antidotal
9 information?

10 MR. TIM FRYER: It certainly would be
11 subjective, yes.

12 MR. WILLIAM MCDOWELL: Right. Going
13 now to the shotgun clause, I just had a few questions.
14 The shotgun clause required the Town -- if the Town
15 wanted to retain control, required the Town within
16 twenty (20) days to purchase the -- the other half of
17 the Utility, correct?

18 MR. TIM FRYER: Yes. Right.

19 MR. WILLIAM MCDOWELL: And PowerStream
20 as a company is much larger than one-half of the
21 former Collus?

22 MR. TIM FRYER: Much larger, yes.

23 MR. WILLIAM MCDOWELL: Right And so
24 the thing about the shotgun clause is that there's an
25 asymmetry in the ability to buy, I assume.

1 MR. TIM FRYER: Between the larger
2 entity and the smaller entity.

3 MR. WILLIAM MCDOWELL: Correct.

4 MR. TIM FRYER: Smaller entity being
5 the Town of Collingwood --

6 MR. WILLIAM MCDOWELL: Yes.

7 MR. TIM FRYER: -- which isn't probably
8 an awful lot smaller than PowerStream but it isn't an
9 LDC.

10 MR. WILLIAM MCDOWELL: Right, it isn't
11 an LDC and there's a couple of problems, one (1) is,
12 as you said, you've got a -- you've a member of a
13 municipal council, you've got to persuade the Council
14 within twenty (20) days of the wisdom of buying the
15 other half, correct?

16 MR. TIM FRYER: That would be what the
17 challenge would be.

18 MR. WILLIAM MCDOWELL: Right. And
19 then a -- another challenge, I suppose, is that in the
20 signing to sell half of it in the first place, you
21 commissioned a valuation, and that valuation process
22 took I think three (3) months, correct?

23 MR. TIM FRYER: Yes. And -- and that
24 was just a general.

25 MR. WILLIAM MCDOWELL: Right, and is -

1 - we may get into it a little bit, but it required an
2 awful lot of data collection by you, and responses to
3 complicated questions, and so on, and that was hard
4 enough to do in three (3) months?

5 MR. TIM FRYER: Yes.

6 MR. WILLIAM MCDOWELL: And so it's
7 pretty impractical within twenty (20) days?

8 MR. TIM FRYER: M-hm. I -- I thought
9 it was very restrictive, and -- and I wouldn't have
10 wanted to be the financial person accepting that
11 challenge on -- on getting information to a Council to
12 make a decision about whether they should or
13 shouldn't.

14 MR. WILLIAM MCDOWELL: Right. And so
15 when you were recommending that a shotgun clause be
16 inserted, you were thinking that there has to be some
17 way out of a -- a deadlock that could develop, right?

18 MR. TIM FRYER: Different views on how
19 the organization needed to grow, or that type of
20 thing.

21 MR. WILLIAM MCDOWELL: Sure. And so
22 you need a way to get divorced, if I can put it that
23 way?

24 MR. TIM FRYER: Amiably.

25 MR. WILLIAM MCDOWELL: Amiably, but

1 also you weren't thinking of twenty (20) days.

2 MR. TIM FRYER: As I said, I'm -- I am
3 -- I've said it numerous times. I thought there was a
4 one (1) that should have been in front of it.

5 MR. WILLIAM MCDOWELL: Right. So in
6 other words, do it in four (4) months or something
7 like that?

8 MR. TIM FRYER: It seemed to me like
9 that would be the time period that you want to work
10 with.

11 MR. WILLIAM MCDOWELL: Okay. And so
12 the terms of the shotgun clause were the subject of
13 negotiation, I assume?

14 MR. TIM FRYER: I -- I didn't
15 participate in that part of it, so I can't say for
16 certain.

17 MR. WILLIAM MCDOWELL: Was it the case
18 that Mr. Houghton was instructing the lawyers on
19 behalf of the Town on issues like this?

20 MR. TIM FRYER: And again, because I
21 wasn't participating, I didn't really know who was --
22 was taking on what role in that part of it.

23 MR. WILLIAM MCDOWELL: Right. But in
24 order for us to understand how we arrived at this
25 twenty (20) day period, we would have to see the back

1 and forth between the lawyers for the Town and the
2 lawyers for PowerStream, I take it?

3 MR. TIM FRYER: I -- I guess you --
4 you would, yes.

5 MR. WILLIAM MCDOWELL: And the lawyers
6 for Collus, I guess, potentially, too.

7 MR. TIM FRYER: And again, I didn't
8 know who was doing what roles in that regard.

9 MR. WILLIAM MCDOWELL: No, fair
10 enough. And I guess just on the valuation point, the
11 shotgun clause that was negotiated couldn't be
12 exercised within two (2) years. Is that --

13 MR. TIM FRYER: I --

14 MR. WILLIAM MCDOWELL: -- your
15 recollection?

16 MR. TIM FRYER: -- I believe that's
17 correct, that it was a -- a minimum of two (2) years
18 before it could -- could be exercised.

19 MR. WILLIAM MCDOWELL: So if you're
20 four (4) or five (5) years out, you know, Collingwood
21 seems to me to be growing. There might be a different
22 customer base. You really do need a valuation to
23 understand what it is you're selling or buying?

24 MR. TIM FRYER: It -- we've talked
25 about it in the valuation evidence we've heard over

1 the -- over the few weeks that it is possible to get a
2 pretty good rule of thumb together fairly quickly.

3 MR. WILLIAM MCDOWELL: Right.

4 MR. TIM FRYER: The problem with
5 selling a public asset is you need to be able to show
6 you've done your homework, and -- and --

7 MR. WILLIAM MCDOWELL: The value for
8 money.

9 MR. TIM FRYER: -- and you'd want to
10 make sure that you had objective views to -- to show
11 that you've done your homework. And -- and so you
12 would want to have a third party involved rather than
13 just necessarily internal resources, even though you
14 may have a good idea --

15 MR. WILLIAM MCDOWELL: M-hm.

16 MR. TIM FRYER: -- what the figure's
17 going to be, I think it's about being able to show
18 that you've done your homework.

19 MR. WILLIAM MCDOWELL: Fair enough.
20 So let me just ask you a couple of questions about
21 rates. So you were involved with the process of
22 setting the customer rates, I take it?

23 MR. TIM FRYER: Yes, I was.

24 MR. WILLIAM MCDOWELL: And we heard
25 from Ms. Chaplin the distribution rates were based on

1 a deemed capital structure of 60/40 debt to equity?

2 MR. TIM FRYER: Yes, it was.

3 MR. WILLIAM MCDOWELL: And that in
4 fact is how Collus's rates were -- were calculated,
5 based on that deemed capital structure --

6 MR. TIM FRYER: Every LDC in the
7 Province was, yes.

8 MR. WILLIAM MCDOWELL: Okay. Now let
9 me back to this big question that we've heard some
10 evidence around. As I've heard your evidence, this is
11 your attitude towards the sale. You've said a number
12 of things. One (1) is that you had a huge number of
13 competing responsibilities at the same time?

14 MR. TIM FRYER: Yes, I did.

15 MR. WILLIAM MCDOWELL: And you've
16 given us a list, and on behalf of the Town, we will
17 stipulate that that's a long list of things that you
18 had to do.

19 You also have said that you had
20 reservations about the process that was followed, that
21 the pro -- so in other words, the RFP you thought
22 should have had terms which said, We're considering
23 selling all or part of our utility; give us your
24 proposal?

25 MR. TIM FRYER: Yes. So I didn't have

1 concerns with the actual process that was undertaken.

2 MR. WILLIAM MCDOWELL: Right.

3 MR. TIM FRYER: I just felt that it
4 could have been more put towards looking at the other
5 options. But as I said, I recognize Council had
6 decided not to when they decided to go for the
7 partnership, and that process was undertaken properly.

8 MR. WILLIAM MCDOWELL: Okay. And
9 there -- there are a lot of emails in which people
10 within KPMG are saying, you know, Tim doesn't seem to
11 like what we're doing, and Tim seems to be going very
12 slowly. You -- you've seen those. I don't need to
13 pull them up?

14 MR. TIM FRYER: No, I've seen them.

15 MR. WILLIAM MCDOWELL: And is it your
16 evidence that that was their perception, but that was
17 not, in fact, true?

18 MR. TIM FRYER: Yes, through the
19 course of my years with the Utility, there was
20 instances where people would have an opinion about
21 what I was doing, or not doing, and --

22 MR. WILLIAM MCDOWELL: Right.

23 MR. TIM FRYER: -- and I had to weigh
24 those -- in those particular cases. I didn't know
25 that they were saying those things.

1 MR. WILLIAM MCDOWELL: Right.

2 MR. TIM FRYER: So I looked towards
3 whether there was anything within my emails that I
4 actually came out and said, and there wasn't. So I --
5 I looked at it as just internal chatter, and -- and if
6 I'd known about it at the time, I probably would have
7 looked at it the same way then, too. I just would
8 have said, I've got to keep doing what I'm doing, and
9 make sure the customers aren't affected.

10 MR. WILLIAM MCDOWELL: So is this
11 phrase that you heard on CNN a while back between the
12 -- the generals and President Trump that the generals
13 would say that the slow march -- certain orders, in
14 other words, they would carry out the instructions,
15 but just do it in a very slow way. That's not what
16 you were doing here, I take it?

17 MR. TIM FRYER: I don't believe there
18 was -- at any point in time that -- that I was tardy
19 in -- in doing what I could do to move any of the
20 initiatives forward in the best light possible.

21 MR. WILLIAM MCDOWELL: Okay. And can
22 we pull up -- it's TOC70115.

23

24 (BRIEF PAUSE)

25

1 MR. WILLIAM MCDOWELL: Still...

2

3

4 (BRIEF PAUSE)

5

6 MR. WILLIAM MCDOWELL: Let the record
7 reflect that Ms. McGrann has broken the Internet.

8 Okay. Well, let me --

9 THE HONOURABLE FRANK MARROCCO: Well,
10 you know, you know, why -- why don't I -- I would have
11 taken a break at some point anyway. I'll take it now
12 and see if we can get the Internet up and running.

13 MR. WILLIAM MCDOWELL: Sure. Okay.
14 Thanks, Commissioner.

15

16 --- Upon recessing at 2:36 p.m.

17 --- Upon resuming at 2:49 p.m.

18

19 THE HONOURABLE FRANK MARROCCO: We're
20 up and running apparently.

21

22 CONTINUED BY MR. WILLIAM MCDOWELL:

23 MR. WILLIAM MCDOWELL: So I think I
24 was looking for TOC70115.

25

1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: Now, if you
4 scroll down -- there. So this is an email that I
5 assume you've seen.

6 MR. TIM FRYER: Yes, I have.

7 MR. WILLIAM MCDOWELL: Right. And --
8 and this is one (1) from Rick Lloyd to Mr. Muncaster,
9 who was the Chair of Collus, and Mr. Lloyd seems
10 terribly cracked up about things in this email.

11 MR. TIM FRYER: Yes, he does.

12 MR. WILLIAM MCDOWELL: And in the
13 second paragraph he says:

14 "I remain concerned about Tim and
15 his obvious distaste for the idea
16 and his lack of professionalism."

17 At this point I take it that Mr. Lloyd
18 hadn't raised anything like this with you?

19 MR. TIM FRYER: No.

20 MR. WILLIAM MCDOWELL: And then he
21 carries on and he says:

22 "I believe that he still seems to be
23 opposed to the whole idea."

24 You've said that you had certain
25 reservations, which you've expressed, but you were

1 carrying out the instructions.

2 MR. TIM FRYER: That's what I
3 explained to the Board when I was asked about it, yes.

4 MR. WILLIAM MCDOWELL: Right. And
5 that's what I was coming to, that -- so he says we're
6 going to have a board meeting, we're going to
7 hopefully talk about this with -- with Tim. And that
8 happened?

9 MR. TIM FRYER: That's the boardroom
10 (sic) I believe when I -- I spoke of earlier, I was in
11 camera asked to explain my position about this.

12 MR. WILLIAM MCDOWELL: Right. And
13 that's where you set out the -- set out the points
14 about the four (4) options which might have been --

15 MR. TIM FRYER: I -- I would have said
16 that we should have explored our options.

17 MR. WILLIAM MCDOWELL: Right. I just
18 wanted to make sure that that was the same meeting
19 that we're talking about.

20 And did anybody in the Board meeting
21 suggest that you were acting with a lack of
22 professionalism?

23 MR. TIM FRYER: No. My recollection
24 is that the -- the Chair asked me to speak in regards
25 to my position about the sale and I said what I had

1 referred to and explained that it was a surprise to me
2 to -- to be asked and -- and I wasn't prepared to
3 speak any more in depth on it, but I would if they
4 wanted to -- at another point in time.

5 MR. WILLIAM MCDOWELL: Okay. Now, can
6 we pull up KPM2496?

7

8 (BRIEF PAUSE)

9

10 MR. WILLIAM MCDOWELL: So this is a
11 few months later, February the 4th, 2012; Mr. Houghton
12 to several of the people at KPMG in relation to MAAD,
13 M-A-A-D, application matters. And Mr. Houghton says:

14 "Can you please stop any more
15 contact with Tim until further
16 notice? I will explain what details
17 I can later."

18 I take it you weren't aware of this
19 email in -- at the time?

20 MR. TIM FRYER: No, I was not.

21 MR. WILLIAM MCDOWELL: Right. Now, I
22 don't want to go too far into this, but you took a
23 medical leave at some point?

24 MR. TIM FRYER: No, I did not.

25 MR. WILLIAM MCDOWELL: All right.

1 MR. TIM FRYER: If I may, I -- I was --

2 MR. WILLIAM MCDOWELL: Sure.

3 MR. TIM FRYER: I was put on to an
4 imposed leave of absence.

5 MR. WILLIAM MCDOWELL: By Collus?

6 MR. TIM FRYER: Yes.

7 MR. WILLIAM MCDOWELL: So it wasn't a
8 -- wasn't a medical issue at all?

9 MR. TIM FRYER: That'd be personnel
10 matter and that'd be confidential.

11 MR. WILLIAM MCDOWELL: Yeah. Well,
12 it's not confidential here unfortunately.

13 MR. TIM FRYER: No. No, that's -- but
14 I'm just saying it would be -- that's why I'm saying I
15 considered it to be an imposed leave of absence.

16 MR. WILLIAM MCDOWELL: Right. But
17 it's probably obvious why I'm asking this. We've
18 heard some evidence here about the way in which Mr.
19 Houghton and Mr. Lloyd dealt with employees at the
20 Town.

21 MR. TIM FRYER: Yes.

22 MR. WILLIAM MCDOWELL: There have been
23 allegations of harassment, and frankly, allegations of
24 bullying. You were here for that evidence.

25 MR. TIM FRYER: Yes.

1 MR. WILLIAM MCDOWELL: Right.

2 MR. FREDERICK CHENOWETH: Your Honour,
3 I -- I'm having a little trouble with that question.
4 I don't recall any evidence that ever suggested that
5 Mr. Houghton had in any way bullied anyone at the
6 Town. There was some suggestions by Ms. Wingrove that
7 she had some trouble obtaining meetings with him,
8 which we'll deal with, but I don't recall any
9 allegations of bullying at any point in this
10 commission with respect to Mr. Houghton.

11 MR. WILLIAM MCDOWELL: Well, Mr. --

12 MR. FREDERICK CHENOWETH: I wonder if
13 the question might be rephrased?

14

15 CONTINUED BY MR. WILLIAM MCDOWELL:

16 MR. WILLIAM MCDOWELL: No, I think My
17 Friend might want to look at the transcript, but let
18 me ask you a different question.

19 MR. FREDERICK CHENOWETH: That'd be
20 good.

21 THE HONOURABLE FRANK MARROCCO: No,
22 no, no, no. Let's not start that.

23

24 CONTINUED BY MR. WILLIAM MCDOWELL:

25 MR. WILLIAM MCDOWELL: So you were put

1 on a -- on an imposed leave.

2 Was your physician involved in any part
3 of this, because -- and the reason I ask that is that
4 I've seen in the documents reference to you coming
5 back from an -- from a medical leave.

6 MR. TIM FRYER: It may say medical
7 leave. I didn't consider it to be a medical leave.

8 MR. WILLIAM MCDOWELL: Okay. So what
9 were the circumstances in which you took the leave?

10 MR. TIM FRYER: I came into the office
11 one (1) morning and immediately Ms. Hogg -- Mrs. Hogg
12 and Mr. Houghton attended my office, shut my door, and
13 informed me that I had ten (10) minutes to leave the
14 building, just do what I needed to do, and -- and that
15 I was being put on leave.

16 MR. WILLIAM MCDOWELL: Did they
17 explain why?

18 MR. TIM FRYER: They reviewed that
19 they had concerns for me and -- and such from a
20 medical standpoint. I told them that I was fine and I
21 told them that I felt that I had two (2) choices here.
22 I could say no, which would cause a problem
23 internally, and -- and I didn't see that being a -- a
24 -- a real positive position going forward for
25 everybody involved, so I said I accepted it.

1 MR. WILLIAM MCDOWELL: And you were
2 fine in fact medically?

3 MR. TIM FRYER: In my opinion I was.

4 MR. WILLIAM MCDOWELL: Did you seek
5 any medical person's opinion about that or --

6 MR. TIM FRYER: In order to come back
7 when I did, which was roughly six (6) weeks later, I
8 had to have doctor's authorization to do it.

9 MR. WILLIAM MCDOWELL: Okay. Which
10 you obtained, I assume?

11 MR. TIM FRYER: Yes, I did.

12 MR. WILLIAM MCDOWELL: And you
13 obtained it the first time you asked for it?

14 MR. TIM FRYER: Within the parameters
15 -- I believe, if I remember correctly, it was a
16 minimum of a month, so -- so I had to -- I knew I was
17 going to have to wait for the month.

18 MR. WILLIAM MCDOWELL: All right. And
19 when you returned to work, did you go headlong into
20 everything you had been doing or did you manage to get
21 a bit of a -- bit of relief from that massive
22 workload?

23 MR. TIM FRYER: No, because of work
24 it had fallen behind on some of the initiatives, so I
25 was back to a sixty (60) or sixty-five (65) hour work

1 week.

2 MR. WILLIAM MCDOWELL: And how long
3 did you stay with Collus PowerStream?

4 MR. TIM FRYER: Sorry, what do you
5 mean by "stay with"?

6 MR. WILLIAM MCDOWELL: When did your
7 employment with the company merge or otherwise ceases?

8 MR. TIM FRYER: So I -- I spoke to Mr.
9 Houghton about -- about looking at retirement the day
10 that we found out the OEB had approved the
11 transaction.

12 MR. WILLIAM MCDOWELL: Right.

13 MR. TIM FRYER: I am of the same view
14 as Mr. Erling. I was somewhat surprised that the OEB
15 approved it. I thought that there'd be the
16 possibility they might not because of the situation
17 with the review panel still to bring their -- their
18 findings down, but I recognize that the OEB works
19 within their -- their parameters and it was simply
20 that it met the no-harm test and -- and the OEB could
21 not -- could not (sic) approve it.

22 MR. WILLIAM MCDOWELL: Right. And
23 then the effective date of your retirement was?

24 MR. TIM FRYER: September 30th, 2012.
25 I believe the ruling from the OEB would have been in

1 early July, if I remember correctly, of 2012.

2 MR. WILLIAM MCDOWELL: Right. Now,
3 just while we're on the -- the subject of employment,
4 in the shotgun clause there was a two-year period
5 before either side could pull the trigger as it were.

6 MR. TIM FRYER: That's my
7 understanding of the clause, yes.

8 MR. WILLIAM MCDOWELL: Which suggests
9 to me that there'd be a -- sort of a two-year period
10 of stability within the Corporation?

11 MR. TIM FRYER: Certainly neither
12 partner could initiate that clause.

13 MR. WILLIAM MCDOWELL: Right. Were
14 there discussions about whether the executive team
15 would stay involved once the transaction took place?

16 MR. TIM FRYER: Not with me, no.

17 MR. WILLIAM MCDOWELL: Were you aware
18 of any other discussions?

19 MR. TIM FRYER: No. I -- I guess I
20 should just correct myself on that, Mr. McDowell.

21 Certainly I was aware of the fact that
22 in the RFP, it was about what are the plans for the
23 employees, and I believe PowerStream didn't indicate
24 anything, so my -- my belief was that things would
25 carry on as is.

1 MR. WILLIAM MCDOWELL: Right.

2 MR. TIM FRYER: I guess --

3 MR. WILLIAM MCDOWELL: Well, that's
4 really what I'm getting at, whether you had an
5 expectation one (1) way or the other.

6 Could we pull up CBB39? I know I'm
7 moving around here but just to cover off a couple of
8 these questions.

9

10 (BRIEF PAUSE)

11

12

13 MR. WILLIAM MCDOWELL: Just before we
14 leave the past subject, did you think that placing you
15 on an involuntary leave was a reasonable or an
16 unreasonable thing to have -- for the CEO to have
17 done?

18 MR. TIM FRYER: Oh, I thought it was
19 unreasonable.

20

21 (BRIEF PAUSE)

22

23 MR. WILLIAM MCDOWELL: And the only
24 discussion that you had with them about that, I take
25 it, was when you were advised that you had ten (10)

1 minutes to -- to leave?

2 MR. TIM FRYER: And they explained
3 things and -- and gave me the ten (10) minutes, yes.

4 MR. WILLIAM MCDOWELL: Right. You
5 never put your position in writing back to Mr.
6 Houghton or Ms. Hogg or anybody else?

7 MR. TIM FRYER: You mean in --
8 immediately?

9 MR. WILLIAM MCDOWELL: Or at any time.

10 MR. TIM FRYER: I -- I can't recall if
11 there was written paperwork back and forth. I -- I --
12 I can't say anything for certain on that.

13 MR. WILLIAM MCDOWELL: So these are
14 the notes prepared by Mr. Neate and Mr. Neate was the
15 auditor?

16 MR. TIM FRYER: He was a member of
17 what was Gaviller and Company at the time, and he was
18 one (1) of the partners and he was the partner
19 responsible for doing the audit work for the utility.

20 MR. WILLIAM MCDOWELL: He had done
21 that for a number of years?

22 MR. TIM FRYER: Yes, he had.

23 MR. WILLIAM MCDOWELL: He was a
24 trusted business advisor, I take it?

25 MR. TIM FRYER: I -- I certainly

1 considered him to be, yes.

2 MR. WILLIAM MCDOWELL: You had a lot
3 of faith in him, I assume.

4 MR. TIM FRYER: Yes, I did.

5 MR. WILLIAM MCDOWELL: All right, so
6 Mr. Neate joins a meeting of the strategic task team.
7 Was there just one (1) meeting or was there more than
8 one?

9 MR. TIM FRYER: I am sure that there
10 was more than one (1) meeting. I can't say that there
11 was more than two.

12 And it -- Mr. Neate joined because I
13 had recommended to the -- to the team that Mr. Neate
14 be involved because I didn't have any tax experience
15 when we moved to the OBCA format. I was a municipal
16 accountant and -- and so the partner at the time was
17 Ken Miller at Gaviller, both him and Ralph served --
18 served our tax purposes. All of our tax work went
19 through them over the course of time.

20 MR. WILLIAM MCDOWELL: All right. So
21 Mr. Neate joins a meeting and he raises a number of
22 issues here. So one (1) of them, just for example,
23 5.5 million and 1.7 million, the Town could extract
24 out of the utility without doing the deal, right? So
25 he says that?

1 MR. TIM FRYER: Yes.

2 MR. WILLIAM MCDOWELL: And what that
3 means is that the Town could take out 5.5 million by
4 way of dividend?

5 MR. TIM FRYER: They could because the
6 -- that was the difference between the borrowing room
7 that we were using and what was remaining to reach the
8 deem structure.

9 MR. WILLIAM MCDOWELL: All right. And
10 then the 1.7 million is a promissory note?

11 MR. TIM FRYER: So that was part of
12 what we already had, so that actually could at -- be
13 added to the -- to the difference as well.

14 MR. WILLIAM MCDOWELL: Then he raises
15 an issue about the shotgun clause and he had concerns
16 that were similar to yours, it looks like.

17 MR. TIM FRYER: He -- he does say that
18 in this note, yes.

19 MR. WILLIAM MCDOWELL: All right, and
20 then control, he raises the issue of the 50/50 split
21 on the board?

22 MR. TIM FRYER: Yes.

23 MR. WILLIAM MCDOWELL: So are these
24 the kinds of issues that you would expect him to raise
25 in his capacity, as a business advisor?

1 MR. TIM FRYER: Yes, and in the first
2 bullet talks about the -- the fact that there is a --
3 we knew it was a moving target, so to speak, until the
4 books actually closed on July 31st, 2012, and you're
5 able to put your financial statements together you
6 wouldn't be able to know for certain what your working
7 capital adjustment figure would be.

8 At the time that he wrote this, he
9 indicated that it was about a \$1.1 million adjustment.

10 MR. WILLIAM MCDOWELL: Right.

11 MR. TIM FRYER: But -- and -- and
12 everybody was aware of that because both -- or any of
13 the other proposals that were put forward looked at
14 confirming things with the -- the final statements,
15 they were using the current statements we had, they
16 were saying we would expect that these would be
17 adjusted according to what the final figures are.

18 So we -- we knew we were working with a
19 -- with a moving target that could go up or down
20 depending on the circumstances.

21 MR. WILLIAM MCDOWELL: That's fair.

22 Now, let me pull up KPM1804. And this
23 is the document than Ms. McGrann didn't want you to
24 look at, but I'm going to ask you to look at it.

25 MR. TIM FRYER: Okay.

1 MR. WILLIAM MCDOWELL: Just scrolling
2 down, I don't want to go too deeply into this, but
3 this was what you're talking about relative to Hydro
4 One, correct?

5 MR. TIM FRYER: And the reason I
6 mentioned it was because it's dated October 28th, and
7 to me that first paragraph underneath consequence of
8 sale, the rest of it is detail about why, but the --
9 the last sentence is the tax issue arises in the event
10 of Hydro One as the buyer of a partial interest in
11 Collus Power.

12 MR. WILLIAM MCDOWELL: Right.

13 MR. TIM FRYER: But the October 28th
14 date shows me that we were informed, this didn't come
15 to me, it had come to Mr. Houghton, that we were
16 informed about the possibility there's -- that's how I
17 believe the November 2nd response came to be.

18 MR. WILLIAM MCDOWELL: Yes.

19 MR. TIM FRYER: And then I was simply,
20 on November 3rd, contacting Mr. Stern and -- and
21 basically conveying the message that was previously
22 conveyed in -- in the -- in the documentation that had
23 come together.

24 MR. WILLIAM MCDOWELL: All right.

25 Now, there was a particular issue with Hydro One, as

1 it turned out, the transaction with PowerStream had to
2 be structured differently than originally contemplated
3 for tax reasons.

4 MR. TIM FRYER: I can't say for
5 certain if it went just Collus Power, because they had
6 the transfer tax exemption for certain, as would Hydro
7 One, and I don't know enough about the other part of
8 things. Again, my expertise wasn't in that field.

9 MR. WILLIAM MCDOWELL: That's all
10 right, we can -- we can dig it out with other
11 witnesses.

12 But -- but the point is that at the end
13 of the day it had been contemplated the Town would
14 sell the shares of Collus Power and instead the shares
15 of the Holdco were sold, correct?

16 MR. TIM FRYER: Yes.

17 MR. WILLIAM MCDOWELL: Now, -- but let
18 me ask you this, in your view, did this create a
19 perception that there was something disadvantageous
20 about doing it with Hydro One because of this
21 particular problem?

22 MR. TIM FRYER: No. I -- I don't
23 believe so. It was simply indicating that a partial
24 interest of Collus Power only could generate this
25 issue.

1 Mr. Stern had referred to the fact that
2 there would be possibly ways to minimize it and I
3 don't believe that ever got explored because it never
4 was going to go to that point.

5 So I don't know whether that would have
6 meant that there could have been an elimination of it
7 or not.

8 MR. WILLIAM MCDOWELL: All right,
9 that's fair.

10 So let me ask you, you were a member of
11 Council from 2014 to 2018?

12 MR. TIM FRYER: Yes, I was.

13 MR. WILLIAM MCDOWELL: And am I right
14 in my perception that the shared services agreement
15 then, the way that shared services were being carried
16 out and paid for became a real issue of friction
17 between the Town and Collus PowerStream?

18 MR. TIM FRYER: Yes, I -- I agree with
19 the term that Mr. Roger used, which was never there
20 was an erosion of trust amongst the -- the parties
21 that were involved. And in any partnership, if you
22 have an erosion of trust, it can -- it can put things
23 into a real concerned state.

24 MR. WILLIAM MCDOWELL: And is it fair
25 that because there was this uncertainty surrounding

1 the arrangement about shared services, that that
2 contributed to the erosion of trust?

3 MR. TIM FRYER: I'd be more inclined
4 to think it went the other way. I think there was the
5 erosion trust that led to do we really want to be
6 doing these shared services this way now?

7 MR. WILLIAM MCDOWELL: All right.

8 And just to pull up CPS2668 for a
9 second, then scrolling down. I think it's towards the
10 bottom, I think. Okay. There we go, shared services
11 relationship.

12 So none of the proponents has really
13 any specificity in the way they approached this item.

14 MR. TIM FRYER: I would agree, it was
15 just general, yeah.

16 MR. WILLIAM MCDOWELL: Right. And
17 when I talk about uncertainty, that's what I'm talking
18 about.

19 MR. TIM FRYER: Because -- you're
20 correct, it had to be worked out with whatever partner
21 you're going to proceed with.

22 MR. WILLIAM MCDOWELL: Just briefly on
23 the solar vents' issue, did -- did Collus Power have
24 an employee code of conduct when you were working
25 there?

1 MR. TIM FRYER: No.

2 MR. WILLIAM MCDOWELL: We have seen in
3 the documentation documents which suggest that Mr.
4 Houghton had a financial interest in the solar vent
5 company.

6 MR. TIM FRYER: I've seen information,
7 I'm not going to say it suggests it because to me
8 there's not proof, so.

9 MR. WILLIAM MCDOWELL: All right, but
10 if you accept from me that an inference could be drawn
11 that he had a financial interest, would that have been
12 improper given his position at Collus Power?

13 MR. TIM FRYER: I would expect so.

14 MR. WILLIAM MCDOWELL: But there was
15 no code of conduct that addressed that situation?

16 MR. TIM FRYER: No. But we have our
17 fiduciary responsibilities of -- of our professional
18 conduct.

19 MR. WILLIAM MCDOWELL: You've
20 anticipated my next question, so --

21 MR. TIM FRYER: Yeah.

22 MR. WILLIAM MCDOWELL: -- thank you.
23 And then I think this is my last question or two (2).
24 If we turn up TOC67989...

25

1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: So, this is in
4 November. And I wanted to scroll up a little bit
5 here. What you say there:

6 "I would like to talk to you about
7 the damage of Ian Adams misquoting
8 Rick in the newspaper article. I
9 know he is the deputy mayor, but you
10 were supposed to be the
11 spokesperson. He really shouldn't
12 have said anything."

13 So, this has to do with Mr. Lloyd
14 talking about how the proceeds received from the sale
15 might be used?

16 MR. TIM FRYER: Not just the proceeds.
17 He ex -- he included information about the dividend.
18 If it was just about the proceeds, I probably wouldn't
19 have reacted to it.

20 MR. WILLIAM MCDOWELL: Right. But the
21 dividend, as well.

22 MR. TIM FRYER: So, he -- he made some
23 references about dividend and -- and such.

24 MR. WILLIAM MCDOWELL: Right. And
25 then this caused a bit of a fuss with other LDCs in

1 the area, I take it?

2 MR. TIM FRYER: Trying to understand
3 the statement, yes.

4 MR. WILLIAM MCDOWELL: Right. What
5 was problematic about the statement?

6 MR. TIM FRYER: It is eight (8) years
7 ago. And -- and I didn't recall this email until I --
8 I looked at it in the document. So, the way it seems
9 to me would have been is it was saying about the
10 dividend. And, as I explained here, I -- I told him
11 that I couldn't discuss the use of funds for
12 acquisitions because Council hadn't decided that and
13 that I was unsure of the impact on a dividend because
14 we hadn't seen all the financial information that
15 would be applicable.

16 So, I gave them some general
17 information because I -- in my belief, I'm not
18 supposed to be speaking about. I made reference to
19 one (1) spokesperson.

20 My recollection of things was that the
21 -- we were -- we were told, as members of the
22 Strategic Partnership Task Team, that there would be
23 one (1) spokesperson, and they chose that Ed would be
24 the spokesperson, Mr. Houghton would be the
25 spokesperson, and -- and that's what I'm referring to

1 there.

2

3

(BRIEF PAUSE)

4

5

MR. WILLIAM MCDOWELL: Those are the
6 questions on behalf of the Town. Thank you,
7 Committee.

8

THE HONOURABLE FRANK MARROCCO: Thank
9 you. Now who's next? Mr. Chenoweth, go ahead.

10

11 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

12

MR. FREDERICK CHENOWETH: Mr. McDowell
13 asked you about a series of matters. He asked you
14 about the shotgun clause. And as I understand it, the
15 concerns you expressed about the shotgun clause at the
16 time was the -- the length of time to respond to the
17 shotgun, i.e., twenty (20) days?

18

MR. TIM FRYER: I didn't express that
19 to them because I wasn't aware of the length of time.
20 My involvement with -- about the shotgun clause is
21 that I felt when they started to talk about a 50/50
22 situation, they probably needed to consider a shotgun
23 clause because it seemed to me like there would be an
24 appropriate term to come to an agreement with a
25 partner about.

1 MR. FREDERICK CHENOWETH: I
2 understand. That's more helpful yet. So, the reality
3 is that it was really, to some extent, on your
4 suggestion that consideration was given to a shotgun
5 clause in the first place?

6 MR. TIM FRYER: I believe that I was
7 the one (1) who mentioned it first, yes, I do.

8 MR. FREDERICK CHENOWETH: Right. And
9 you think that a shotgun clause was a necessary
10 concept given the fact that it was 50/50 and, to use
11 Mr. McDowell's phrase, if you had to do a divorce, you
12 had some -- some way of doing it, maybe even in an
13 amicable way?

14 MR. TIM FRYER: I would call it
15 amicable because the party that was making the offer
16 would recognize that they could be given the same
17 amount for the shares and he chose to do that, yes.

18 MR. FREDERICK CHENOWETH: The point of
19 it all is you were in fa -- in favour of putting in a
20 shotgun clause?

21 MR. TIM FRYER: At the time, I didn't
22 know how it was negotiated, so I can't comment at the
23 time how I would have felt about seeing that.

24 MR. FREDERICK CHENOWETH: So, you
25 eventually, however, at later times when you saw the

1 provisions of the shotgun clause, you did have some
2 concern, and that concern was with respect to the
3 twenty (20) day period?

4 MR. TIM FRYER: And now I was a member
5 of the shareholder, and so I was looking at it from a
6 shareholder per -- perspective, yes.

7 MR. FREDERICK CHENOWETH: Right. Did
8 you express that -- that concern about the twenty (20)
9 day period at any time when you were at the
10 shareholder, as it were, when you were a councillor?

11 MR. TIM FRYER: Yes. When I -- when I
12 became aware of the twenty (20) days, I thought that
13 that was very restrictive and put us in -- in what I
14 felt was a risky -- more risky situation.

15 MR. FREDERICK CHENOWETH: So, you made
16 some comment to -- about -- to that effect at Council?

17 MR. TIM FRYER: I would have, yes.

18 MR. FREDERICK CHENOWETH: All right.
19 Thank you. You would have. Do you specifically
20 remember making such a comment at Council?

21 MR. TIM FRYER: I believe it would
22 have been in a public session, but I can't tell you
23 for certain when it was.

24 MR. FREDERICK CHENOWETH: Okay. All
25 right. That's the only concern you ever expressed

1 about the shotgun clause, i.e., the shortness of the
2 twenty (20) day period when you were a councillor or -
3 - or otherwise?

4 MR. TIM FRYER: Yes. The -- again,
5 the reason that I was concerned was because the
6 utility was fully leveraged. The money would have to
7 come from the municipality.

8 MR. FREDERICK CHENOWETH: All right.
9 So, you didn't at any time ever express a concern
10 about the concept that Mr. McDowell has introduced,
11 i.e., the concept of an asymmetry between the parties?
12 That was never something that you raised with anyone
13 as a councillor or otherwise?

14 MR. TIM FRYER: Again, I wasn't part
15 of the negotiation of the terms --

16 MR. FREDERICK CHENOWETH: I know that.

17 MR. TIM FRYER: -- of the shotgun so I
18 -- I didn't, no.

19 MR. FREDERICK CHENOWETH: All right.
20 So, we know that. But you didn't raise -- you raised
21 -- you -- you tell us you believe you might have
22 raised the 20 percent -- or the twenty (20) day issue,
23 at later times -- you didn't at later times raise an
24 inappropriate symmetry between -- or an asymmetry
25 between the two (2) parties to the shotgun provision.

1 That's not something you raised at a --
2 at a later time. You only raised the question of the
3 twenty (20) days?

4 MR. TIM FRYER: I wouldn't have had to
5 raise anything else. To me, the twenty (20) days was
6 the riskier situation of anything.

7 MR. FREDERICK CHENOWETH: Thank you.
8 Ralph Neate -- my friend, Mr. McDowell, took you to
9 Ralph Neate and his comments. I don't think I have to
10 bring you back to the document mostly because I don't
11 have the document number in front of me. But in any
12 event of that --

13 MR. TIM FRYER: That's quite all
14 right. I -- I'm fine with it.

15 MR. FREDERICK CHENOWETH: -- I think
16 we all remember it. Ralph Neate, in his comments,
17 didn't mention the twenty (20) days, correct?

18 MR. TIM FRYER: I don't recall seeing
19 it in it, no.

20 MR. FREDERICK CHENOWETH: Thank you.
21 His concern, as he expressed it and as I read it
22 moments ago, was an entirely different concern. And
23 that was, after two (2) years, PowerStream could buy -
24 - could buy Collus out?

25 MR. TIM FRYER: Yes.

1 MR. FREDERICK CHENOWETH: All right.
2 So that it appears that, if he had a concern with the
3 shotgun clause, and he appears to have had one (1), it
4 was a different concern than yours?

5 MR. TIM FRYER: I can't comment on
6 that. And I know he's coming --

7 MR. FREDERICK CHENOWETH: But sure --
8 sure you can. It was -- yours was twenty (20) days.
9 He was that after two (2) years you could be bought
10 out. They're two (2) different concerns, are they
11 not?

12 MR. TIM FRYER: And I'm trying to
13 think of the date of the email, or the notes, because
14 it could be that the twenty (20) days hadn't been
15 established yet.

16 THE HONOURABLE FRANK MARROCCO: Let's
17 just pull the note up. What is the number?

18

19 (BRIEF PAUSE)

20

21 THE HONOURABLE FRANK MARROCCO: Is it
22 39, CBB39? Yes.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: His concern

1 is expressed at -- at paragraph 3, shotgun --

2 MR. TIM FRYER: M-hm.

3 MR. FREDERICK CHENOWETH: -- clause,
4 PowerStream will effectively be -- and -- and is there
5 a -- is there a date with respect to this note, just
6 to assist the witness? Is that evident from the
7 document?

8 MR. TIM FRYER: No. But we do know
9 that it was from a Strategic Partner Task Team meeting
10 which would have been before the terms of the USA were
11 negotiated.

12 MR. FREDERICK CHENOWETH: All right.
13 I think that's -- I think that's adequate. And I do
14 have a note of the date at another location.

15 In any event, his expressed concern
16 with respect to the shotgun clause was that
17 PowerStream will effectively be able to purchase the
18 other half of the utility after two (2) years?

19 MR. TIM FRYER: As he understood it at
20 the time, yes.

21 MR. FREDERICK CHENOWETH: All right.
22 Thank you. I'm simply suggesting to you that contrary
23 to the suggestion of my friend Mr. McDowell, his
24 concern about the shotgun clause was not the same as
25 your concern. It was a different concern in that your

1 concern was about the twenty (20) days, and it arose
2 after the clause was drafted. Correct?

3 MR. TIM FRYER: The twenty (20) days
4 arose after this was drafted.

5 MR. FREDERICK CHENOWETH: I'm having a
6 little difficulty getting a direct answer to the
7 question. I'm simply suggesting to you that the
8 concern expressed by Mr. Neate with respect to the
9 shotgun clause is a different concern than the 20-day
10 concern that you expressed with respect to the shotgun
11 clause, forgetting about the timing.

12 Is that not the case?

13 MR. TIM FRYER: Forgetting about the
14 timing? Yes, that's the case.

15 MR. FREDERICK CHENOWETH: You're not
16 aware that Mr. Neate expressed any other concerns at
17 any other times other than the concerns he expressed
18 in this note.

19 MR. TIM FRYER: None come to mind.

20 MR. FREDERICK CHENOWETH: Thank you.
21 All right. We have heard -- and you, in fact, created
22 a document which is now part of the record in this
23 proceeding -- indicating that going into 2011, you had
24 a lot on your plate.

25 MR. TIM FRYER: The -- I guess the LDC

1 did, and -- and well, I guess all the entities did.
2 And finance department had quite a bit on its plate,
3 yes.

4 MR. FREDERICK CHENOWETH: It did. It
5 had changes of accounting rules and a whole variety of
6 extra tasks that were not part of your normal routine.

7 MR. TIM FRYER: Yes.

8 MR. FREDERICK CHENOWETH: All right.
9 So you had a lot of work to do, and it was
10 challenging.

11 MR. TIM FRYER: Yes.

12 MR. FREDERICK CHENOWETH: One (1)
13 individual, Mr. Houghton, appears to have expressed to
14 one (1) of the KPMG individuals -- he used the word
15 "scrambling." It may not be a word that you would
16 have chosen, but I take it, it in essence gets across
17 the idea that you were -- you had substantial work on
18 your plate and, in that respect, wasn't inappropriate.

19 MR. TIM FRYER: Yes.

20 MR. FREDERICK CHENOWETH: Thank you.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: If I could
25 just -- I'm not sure I understand your position on the

1 Shared Service Agreement, and I just wanted to attempt
2 to clarify that.

3 But as I understand it, it was
4 difficult to bring clarity to the Shared Services
5 Agreements as you approach the closing in that, to
6 some large extent, this was a matter to be negotiated
7 by the potential eventual -- or negotiated with the
8 potential eventual partner?

9 MR. TIM FRYER: I had explained that
10 around March, as far as I was concerned, the -- the
11 duties on taking forward the amendments to the service
12 agreements had been turned over to Ms. Shuttleworth
13 and -- and Mr. Houghton.

14 So I wasn't -- at the time of getting
15 close to closing, I wasn't really involved in the --
16 in the direct conversations about it. But I also have
17 said that it wouldn't -- I wouldn't -- I wasn't
18 surprised that it was tough to nail down at that point
19 in time.

20 So is that helpful with my response?

21 MR. FREDERICK CHENOWETH: It is -- it
22 is helpful. Yes. And I take it one (1) of the
23 reasons that it would be difficult to nail down is
24 because it was likely a matter that would require some
25 negotiation with the eventual chosen partner.

1 MR. TIM FRYER: Well, in that point in
2 time, it was PowerStream, and -- and it would take
3 some ironing out as to what services were going to
4 continue, because as I've mentioned, one (1) of the
5 premises behind the partnership was to draw upon the
6 expertise of the -- of the partner. And so there may
7 have been a role or two (2) that needed to come from
8 them as part of the shared services.

9 MR. FREDERICK CHENOWETH: Thank you.
10 I was again a little confused by some of your answers
11 with respect to your position on the STT team. You
12 indicated that you regarded yourself as a resource,
13 which makes sense, but you regarded the others as --
14 or some of the others as voting individuals.

15 MR. TIM FRYER: And the individuals I
16 considered to be that were the voting members of the
17 Board and -- and Council that were part of the task
18 team.

19 MR. FREDERICK CHENOWETH: All right.

20 MR. TIM FRYER: So the five (5)
21 members.

22 MR. FREDERICK CHENOWETH: Did anyone
23 ever tell you that -- explained to you in some way
24 that you were allegedly a non-voting member of the STT
25 team, or is this something that -- a concept that came

1 to your mind --

2 MR. TIM FRYER: The concept --

3 MR. FREDERICK CHENOWETH: -- that you
4 thought was fair?

5 MR. TIM FRYER: -- the concept was in
6 my mind, and it would be similar to when I would
7 attend Board meetings or audit committee meetings.
8 There were voting members, and -- and I was the
9 resource for them. So that concept was in my mind in
10 regards to the task team, as well.

11 MR. FREDERICK CHENOWETH: All right.
12 But no one ever told you that you had a restricted
13 position with respect to your activities on the STT
14 task force team. Correct?

15 MR. TIM FRYER: No. And -- and I was
16 able to provide input.

17 MR. FREDERICK CHENOWETH: All right.
18 No one told you that you had a restricted position.
19 Correct?

20 MR. TIM FRYER: As I said, it was my
21 concept in my mind, yes.

22 MR. FREDERICK CHENOWETH: All right.
23 Fine. Did you ever tell anyone else on the STT team
24 that you were a non-voting member of the team?

25 MR. TIM FRYER: I don't believe so.

1 MR. FREDERICK CHENOWETH: All right.

2 So this was something you -- this concept that you
3 had, you kept that to yourself.

4 MR. TIM FRYER: And I would have
5 considered Mr. Houghton and Ms. Wingrove and -- and
6 Mr. Herhalt to be of the same situation.

7 MR. FREDERICK CHENOWETH: All right.
8 Well, we'll get to them in due course.

9 The information I've been provided with
10 is that the STT team worked on the basis of consensus.
11 The team came to an agreement with respect to an issue
12 and then proceeded forward with respect to that issue.
13 Is that in keeping with your observation during the
14 time that you were a member of the team?

15 MR. TIM FRYER: I believe that there
16 was consensus. I just believe that the consensus
17 would have come from -- what I considered to be
18 essentially the voting members.

19 MR. FREDERICK CHENOWETH: All right.

20 MR. TIM FRYER: But definitely, I was
21 providing input as required.

22 MR. FREDERICK CHENOWETH: Did people
23 put up their hands to vote, or did it just -- it was
24 just a consensus developed in the room, or do you
25 recall?

1 MR. TIM FRYER: I don't believe it was
2 a show of hands at any point in time.

3 MR. FREDERICK CHENOWETH: But in any
4 event, it's -- it is your sense that the STT team
5 decided ideas or concepts as a result of reaching a
6 consensus.

7 MR. TIM FRYER: You know, whether it
8 was the nine or whether the five, it would have been
9 by consensus, yes.

10 MR. FREDERICK CHENOWETH: All right.
11 I'm sorry. Is there --

12 MR. TIM FRYER: I -- I guess -- I
13 guess the only instance that that wouldn't be the case
14 is when we did our scoring because we did our scoring
15 individually. Every person's scoring was considered
16 equally. So in that particular case, all nine were
17 considered as -- as equals.

18 MR. FREDERICK CHENOWETH: Very good.
19 And when I -- when we talk about a consensus, you mean
20 that you -- that you would all agree on an issue. Is
21 that correct?

22 MR. TIM FRYER: My recollection would
23 be that those five members would indicate that, but
24 it's just -- I can't say instance, so it's
25 speculative.

1 MR. FREDERICK CHENOWETH: I'm sorry.

2 It's what?

3 MR. TIM FRYER: It's speculative.

4 MR. FREDERICK CHENOWETH: It's
5 speculative.

6 MR. TIM FRYER: Yes.

7 MR. FREDERICK CHENOWETH: All right.
8 Very good. Do you recall any issues other than the
9 issues you described in which everyone voted their
10 particular way with respect to the scoring? Do you
11 recall any other issues in which things were proceeded
12 other than by way of a consensus?

13 MR. TIM FRYER: No. I felt the
14 process was completely as it should be.

15 MR. FREDERICK CHENOWETH: Very good.
16 And -- and with respect to -- to process, as I
17 understand it, were you have the view that Collus
18 Power had the -- the benefit of good, solid board
19 members, including Mr. Muncaster and Mr. McFadden?

20 MR. TIM FRYER: Yes.

21 MR. FREDERICK CHENOWETH: And did you
22 see that as being one (1) of the -- the strengths of
23 the Collus situation, the involvement of those two (2)
24 individuals?

25 MR. TIM FRYER: For the Task Team?

1 MR. FREDERICK CHENOWETH: No, just in
2 general at Collus in the running of the organization.

3 MR. TIM FRYER: The -- the Board
4 structure was very, very good for qualifications.

5 MR. FREDERICK CHENOWETH: Very good.
6 Thank you. And did you -- were you of the view that
7 they made a useful and substantial contribution?

8 MR. TIM FRYER: Most definitely.

9 MR. FREDERICK CHENOWETH: Did the
10 process that the Town entered into to -- to eventually
11 reach the strategic partnership that it eventually
12 entered into?

13 MR. TIM FRYER: Yes.

14 MR. FREDERICK CHENOWETH: And that was
15 a great benefit to the Town?

16 MR. TIM FRYER: Their service was,
17 yes.

18 MR. FREDERICK CHENOWETH: Thank you.
19 And did you believe that the STT team concept was a
20 useful part of the process that the Town undertook to
21 -- to reach its eventual result?

22 MR. TIM FRYER: I certainly understood
23 the premise behind why it was formed, and -- and the
24 members that were -- were part of it, and -- and so as
25 I've said, I felt the process was -- was a process

1 that was solid, yes.

2 MR. FREDERICK CHENOWETH: Very good.

3 And did you think the same about the fact that Council
4 appears to have been consulted with respect to these
5 matters on as many as six (6) occasions through the
6 course of the process?

7 MR. TIM FRYER: I knew because I had
8 attended some of the meetings that they were being
9 apprised regularly, yes.

10 MR. FREDERICK CHENOWETH: All right.
11 And you thought that was an appropriate way to
12 proceed?

13 MR. TIM FRYER: I -- in the later part
14 of it, because I wasn't attending those meetings, I
15 can't really speak to whether or not it was adequate.

16 MR. FREDERICK CHENOWETH: But
17 certainly with respect to the meetings you attended,
18 you thought it was an appropriate thing to do and an
19 appropriate part of the process?

20 MR. TIM FRYER: Yes, I thought that
21 the information was being provided.

22 MR. FREDERICK CHENOWETH: And the two
23 (2) public meetings were a useful part of the process?

24 MR. TIM FRYER: They were an essential
25 part of the process, yes.

1 MR. FREDERICK CHENOWETH: Thank you.

2 And the -- the assistance of KPMG was useful
3 throughout the process, including its involvement with
4 the STT?

5 MR. TIM FRYER: I think it's important
6 to have an objective view as well, yes.

7 MR. FREDERICK CHENOWETH: And the
8 legal advice -- and you may -- may not have known much
9 of this in that you weren't part of the negotiations,
10 but you were aware that Aird & Berlis was involved
11 acting allegedly for both the Town and Collus?

12 MR. TIM FRYER: No, I wasn't aware of
13 that.

14 MR. FREDERICK CHENOWETH: But you
15 aware that they had legal advice with respect to the
16 formation of the -- the partnership agreement between
17 Collus and PowerStream --

18 MR. TIM FRYER: Yes.

19 MR. FREDERICK CHENOWETH: -- and with
20 respect to the creation of the unanimous shareholders
21 agreement?

22 MR. TIM FRYER: I certainly expected
23 that they have, and -- and had no reason to not think
24 that they had legal.

25 MR. FREDERICK CHENOWETH: Knowing all

1 that and making the comments that you -- that you
2 have, did you form a view as to the appropriateness of
3 -- of the process that was used to eventually achieve
4 the strategic partnership with PowerStream?

5 MR. TIM FRYER: I --

6 MR. FREDERICK CHENOWETH: Did you have
7 a view of that process?

8 MR. TIM FRYER: What --

9 MR. FREDERICK CHENOWETH: Did you
10 regard it as a fulsome, rigorous, useful process?

11 MR. TIM FRYER: The process to pick
12 partners -- pick the partner --

13 MR. FREDERICK CHENOWETH: And I've
14 just under -- outlined it to you and had your comment
15 on it, all the way from the satisfactory board members
16 that you had to the use of KPMG and other
17 professionals.

18 MR. TIM FRYER: Yeah. Again, the
19 knowledge I had of what happened during the time I was
20 there, I felt that the process was solid. In
21 reviewing the information after the fact as a member
22 of Council, I was concerned about that part of things,
23 but I was not aware of it at the time. So as far as I
24 was concerned, the process had proceeded properly.

25 MR. FREDERICK CHENOWETH: Very good.

1 So when you say you were concerned about that kind of
2 things, I take it you're referring to some of the
3 items that are brought out in the Foundation Document.

4 Is that correct?

5 MR. TIM FRYER: Yes --

6 MR. FREDERICK CHENOWETH: Thank you.

7 MR. TIM FRYER: -- which is after the
8 fact for me.

9 MR. FREDERICK CHENOWETH: Right. Did
10 you regard the result that was achieved, i.e., the
11 partnership with PowerStream, to have been a good
12 result?

13 MR. TIM FRYER: I never formed
14 opinion, whether it was a good result, or not a good
15 result, because I always said to the people who ask me
16 that, I can't tell you if the first 50 percent was --
17 was handled properly until I know what happens with
18 the second half.

19 MR. FREDERICK CHENOWETH: All right.
20 One (1) moment.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: I believe
25 those are all the questions I have of this witness.

1 Thank you.

2 THE HONOURABLE FRANK MARROCCO: Thank
3 you, Mr. Chenoweth. Mr. Watson, are you next?

4 MR. MICHAEL WATSON: Yes --

5 THE HONOURABLE FRANK MARROCCO: Mr.
6 Watson, are you next?

7 MR. MICHAEL WATSON: -- thank you,
8 Your Honour.

9

10 CROSS-EXAMINATION BY MR. MICHAEL WATSON:

11 MR. MICHAEL WATSON: Mr. Fryer, I
12 think you know that my name is Michael Watson, and I'm
13 one (1) of the lawyers for Alectra, which of course is
14 the current name of PowerStream.

15 You understand that?

16 MR. TIM FRYER: Yes, I do.

17 MR. MICHAEL WATSON: I have about half
18 a dozen areas to try to get through fairly quickly.
19 And as Mr. McDowell did, I'll try to -- I'll -- I'll
20 be bouncing around a little bit.

21 This morning you gave some evidence
22 about knowing about and meeting Brian Bentz of
23 PowerStream many years earlier?

24 MR. TIM FRYER: Yes.

25 MR. MICHAEL WATSON: All right. And -

1 - and you said that you knew him when he was treasurer
2 of Barrie?

3 MR. TIM FRYER: And that may not have
4 been his title, but --

5 MR. MICHAEL WATSON: I --

6 MR. TIM FRYER: -- that's what he was
7 doing.

8 MR. MICHAEL WATSON: -- and -- sorry,
9 treasurer of Barrie Public Utilities is how you
10 described it?

11 MR. TIM FRYER: Yes.

12 MR. MICHAEL WATSON: And that was
13 about thirty (30) years earlier, before 2011, I think
14 you said?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: I wanted to ask
17 you, you said that you worked together with Mr. Bentz
18 with respect to Georgian Bay, a cooperative utility,
19 and you said that at that time, the Province would be
20 looking for changes. Do you remember that?

21 MR. TIM FRYER: And I didn't --

22 MR. MICHAEL WATSON: First of all, do
23 you remember saying that?

24 MR. TIM FRYER: Yes, I do.

25 MR. MICHAEL WATSON: All right. I

1 want to ask you --

2 MR. TIM FRYER: Okay.

3 MR. MICHAEL WATSON: -- I take it what
4 you were saying is that you were aware at the time
5 when you were working with Mr. Bentz that the Province
6 would be looking for changes?

7 MR. TIM FRYER: I believe that was the
8 premise behind Mr. Douds wanting to pursue the idea of
9 looking at a regional kind of utility situation.

10 MR. MICHAEL WATSON: And when you say
11 "a regional kind of utility situation," do you mean
12 some kind of getting together of a number of regional
13 small LDCs into a larger entity?

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: I take it that
16 you were aware of the fact that it was government
17 policy to reduce the large number of LDCs in Ontario?

18 MR. TIM FRYER: It wasn't a -- it
19 wasn't a firm policy. Certainly, we felt that the
20 premise was there. And I -- and -- and continue now
21 to believe strongly in the ability for a municipal LDC
22 to function by itself.

23 MR. MICHAEL WATSON: I -- I understand
24 that. I'm not asking you about that. You've made
25 that point before. I'm asking you about the

1 government policy, and I want to try to keep your
2 answers --

3 MR. TIM FRYER: Okay.

4 MR. MICHAEL WATSON: -- to my
5 question.

6 MR. TIM FRYER: Yes. Sorry.

7 MR. MICHAEL WATSON: We have your
8 evidence from before.

9 MR. TIM FRYER: Sorry.

10 MR. MICHAEL WATSON: I think you are
11 prob -- were probably aware of the fact, given your
12 long service with -- with Collus, that in the 1990s,
13 there were upwards of three hundred (300) LDCs in
14 Ontario?

15 MR. TIM FRYER: Three hundred (300)
16 plus, yeah.

17 MR. MICHAEL WATSON: Right. And that
18 by the, say, early -- well, mid to late 2000s, that is
19 just before this Transaction took place, that had been
20 reduced to a number that we've seen of between eighty
21 (80) and eighty-two (82), something like that?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: And that was the
24 clear direction that the Province was going, and I
25 take it from your observation?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: All right. And
3 indeed, there had been discussions that the Collus
4 Power Board meetings, at various times, that the
5 direction of the Provincial government seemed to be in
6 the direction of trying to have more consolidation as
7 time went on, right?

8 MR. TIM FRYER: That was being
9 conveyed, yes.

10 MR. MICHAEL WATSON: Right. And one
11 (1) of the reasons for that, whatever you yourself
12 felt, you understood that one (1) of the reasons for
13 that was the Provincial push to -- to try to get
14 better efficiencies among the larger LDCs?

15 MR. TIM FRYER: That was one (1) of
16 the goals of that, yes.

17 MR. MICHAEL WATSON: All right. And I
18 take it that -- that this was one (1) of the things
19 that you were working with Mr. Bentz on with respect
20 to Georgian Bay and a larger cooperative utility back
21 thirty (30) years earlier?

22 MR. TIM FRYER: Yes, that would have
23 been part of the work.

24 MR. MICHAEL WATSON: Right. And then
25 you also were asked -- well, you were asked a lot of

1 questions about shared services and so on. But -- and
2 with respect to -- remember the promissory note? This
3 morning, you were asked questions about that?

4 MR. TIM FRYER: Yes, I do.

5 MR. MICHAEL WATSON: Right. And in
6 the course of that you talked -- you were asked about
7 the use of the funds, do you remember?

8 MR. TIM FRYER: (NO AUDIBLE RESPONSE).

9 MR. MICHAEL WATSON: And -- and what I
10 want to get to is that you talked about -- you said
11 that the funds went to purchase assets of Clearview
12 and Thornbury. Do you remember that?

13 MR. TIM FRYER: You're talking about
14 the -- the initial purchase of those assets.

15 MR. MICHAEL WATSON: Indeed.

16 MR. TIM FRYER: Yes.

17 MR. MICHAEL WATSON: Indeed. And --
18 and of course you were with Collus at that time when
19 the assets of Clearview and Thornbury were purchased?

20 MR. TIM FRYER: Yes, I was.

21 MR. MICHAEL WATSON: And what year was
22 that?

23 MR. TIM FRYER: It would have been
24 2001, I guess.

25 MR. MICHAEL WATSON: And I take it

1 that this was just within about two (2) years after
2 so-called deregulation and -- of the electricity
3 market in -- in Ontario?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: All right. Were
6 you involved in the discussions, any discussions at
7 all that all that led to the acquisition by the Town
8 of those assets?

9 MR. TIM FRYER: Yes, I was.

10 MR. MICHAEL WATSON: What was your
11 role?

12 MR. TIM FRYER: It would have been
13 financial resource and it certainly -- my recollection
14 of it was that we felt that the Utility side, that it
15 was the right thing to approach the Town about,
16 because we felt those two (2) smaller utilities were
17 doing exactly what the government kind of was
18 initiating and -- and pushing for, is if you're going
19 to be a standalone utility, you can expect this, so
20 they wanted to look at what's -- what possibilities
21 they had for -- for solutions.

22 MR. MICHAEL WATSON: All right. I --
23 I'm a big fan of figuring out what pronouns mean, so
24 when you say "they" and "them" and they wanted to find
25 out, who do you mean?

1 MR. TIM FRYER: So Clearview Council
2 as the decision-maker about whether or not to form an
3 LDC and Thornbury, the same. We were dealing with
4 them looking into their options and we were taking to
5 our shareholder the idea that we could maybe consider
6 purchasing those assets.

7 MR. MICHAEL WATSON: All right. At
8 the time, did either Clearview or Thornbury have a
9 public utility?

10 MR. TIM FRYER: No.

11 MR. MICHAEL WATSON: But I take it
12 what you're saying is that Clearview and Thornbury
13 provided electricity distribution services to the
14 ratepayers?

15 MR. TIM FRYER: As an LD -- as an MEA,
16 (sic) I guess would be a better description instead of
17 LDC because they hadn't formed the LDC yet.

18 MR. MICHAEL WATSON: Okay. Well, I
19 guess we'd better make that clear. What's an MEA?

20 MR. TIM FRYER: Municipal electric ut
21 -- sorry, MEU, municipal electric utility, which was
22 basically the description that we use to describe
23 ourselves unless we were a public utilities prior to
24 the changes to the new structure.

25 MR. MICHAEL WATSON: All right. And

1 at that time was Collus an -- an MEU?

2 MR. TIM FRYER: We were a public
3 utilities and we had both the Hydro and Water
4 Department within the public utility.

5 MR. MICHAEL WATSON: All right. And
6 so Clearview and Thornbury had municipal utilities,
7 yes?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: And those
10 utilities owned assets?

11 MR. TIM FRYER: Yes, they did.

12 MR. MICHAEL WATSON: And did both of
13 those utilities constitute LDCs, local distribution
14 companies, for electricity?

15 MR. TIM FRYER: I don't believe they
16 ever formed their LDC. I believe we dealt with the
17 transaction prior to that, in conjunction with the
18 time restrictions being put in place.

19 MR. MICHAEL WATSON: And -- and so
20 when you're talking about now forming an LDC, are you
21 talking about the requirement to form a business
22 corporation under Ontario Business Corporations Act
23 with respect to the distribution of electricity in
24 municipalities?

25 MR. TIM FRYER: Yes, I am.

1 MR. MICHAEL WATSON: All right. And
2 so I take it that then -- when that took place within
3 municipalities, those new business corporations then
4 became called LDCs?

5 MR. TIM FRYER: Yes, they did.

6 MR. MICHAEL WATSON: All right. And
7 so who initiated the process by which, or who
8 initiated the first discussions by which Clearview and
9 Thornbury ended up selling assets to Collingwood?

10 MR. TIM FRYER: I can't say
11 personally that it was me, but I would have been a
12 part of the management and board at the Utility
13 deciding to approach the Town about it.

14 MR. MICHAEL WATSON: My question was a
15 bad one. What I really meant was, was it Clearview
16 and Thornbury on the one (1) hand or was it
17 Collingwood on the other that initiated the
18 discussions with the other?

19 MR. TIM FRYER: I believe it would
20 have been them initiating it with us because they
21 would have been looking at what options they had.

22 MR. MICHAEL WATSON: And again when
23 you say "would have," I take it what you're saying is
24 that's your best recollection?

25 MR. TIM FRYER: Unfortunately, yes, it

1 is.

2 MR. MICHAEL WATSON: That's fine. It
3 was many years ago, even more than this one.

4 And I take it, therefore, that what
5 happened is that they contacted Collingwood and asked
6 are you interested.

7 MR. TIM FRYER: And we saw an
8 opportunity.

9 MR. MICHAEL WATSON: They contacted
10 Collingwood and asked are you interested?

11 MR. TIM FRYER: I believe so.

12 MR. MICHAEL WATSON: Right. And on
13 your side, you saw an opportunity --

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: -- to increase
16 the number of -- of customers --

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: -- and to grow
19 Collus?

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: And you thought
22 that was a good idea?

23 MR. TIM FRYER: We did.

24 MR. MICHAEL WATSON: Right. And I
25 take it that Clearview did not put out an RFP.

1 MR. TIM FRYER: My recollection, two
2 (2) transactions were different. Clearview turned out
3 to be a purchase of the Utility, and I don't believe
4 many -- any employees were involved, but I -- I can't
5 say that for certain, so I shouldn't speculate, but I
6 think there were two (2) types of different
7 transactions, but the thing I did -- that does stand
8 out in my mind about the Clearview one (1) is, I can
9 remember Mayor Geddes and Town Council at the time,
10 when we approached them about Clearview and got the
11 authorization to approach Clearview with -- with an
12 intent to express interest, that the -- we explained
13 to Town Council that Clearview knew one (1) of its
14 options was to -- to sell to Hydro One, and they were
15 not eager to do that.

16 So the premise that they were putting
17 forward, that our understanding was and we put to
18 Council about, was that they didn't want us to turn
19 around and sell to Hydro One afterwards. I think it
20 was meant to mean somewhat short term, but -- but it
21 is something that -- that was conveyed.

22 MR. MICHAEL WATSON: And I'll -- I'll
23 take that as an answer to a different question that I
24 haven't yet asked.

25 MR. TIM FRYER: All right.

1 MR. MICHAEL WATSON: The question
2 was: Did Clearview put out an RFP? I take it the
3 answer is "no."

4 MR. TIM FRYER: I can't recall, so I
5 can't say for certain.

6 MR. MICHAEL WATSON: So I -- I think
7 what you said is that Clearview approached
8 Collingwood. Isn't that right?

9 MR. TIM FRYER: And -- and I don't
10 know if they did an RFP though.

11 MR. MICHAEL WATSON: And you don't
12 have any information that -- that they did?

13 MR. TIM FRYER: No.

14 MR. MICHAEL WATSON: Nor Thornbury?

15 MR. TIM FRYER: No.

16 MR. MICHAEL WATSON: And was it
17 explained to you by anybody, including Clearview, why
18 Clearview was not interested in selling to Hydro One?

19 MR. TIM FRYER: They were looking at
20 long-term rate implications.

21 MR. MICHAEL WATSON: Such as?

22 MR. TIM FRYER: They felt that the
23 Hydro One rates were higher and they didn't want their
24 customers paying those rates if they -- if that could
25 be avoided. I guess that's all I can say for certain.

1 MR. MICHAEL WATSON: That's fine, all
2 right.

3 Now, I want to go onto the next thing.
4 You were asked a number of questions about shared
5 services, and -- do you that this morning?

6 MR. TIM FRYER: Yes.

7 MR. MICHAEL WATSON: Right. And you
8 said that shared services were a low or low cost and
9 beneficial to both the ratepayers and the Town.

10 MR. TIM FRYER: I believe they were,
11 yes.

12 MR. MICHAEL WATSON: I'm just
13 reviewing what you said this morning. I just want to
14 refresh your memory. That's what you said?

15 MR. TIM FRYER: Yes, I did.

16 MR. MICHAEL WATSON: And the Collus --
17 Collus and the Town wanted a strategic partnership to
18 enhance the provision of -- of shared services?

19 MR. TIM FRYER: Certainly not to lose
20 any of the advantages we had, yes.

21 MR. MICHAEL WATSON: And that would
22 entail a strategic partner providing such services to
23 Collus?

24 MR. TIM FRYER: That was an
25 expectation of the partnership, yes.

1 MR. MICHAEL WATSON: Right. And --
2 and could I please have Foundation Document paragraph
3 293 brought up -- 293?

4

5 (BRIEF PAUSE)

6

7 MR. MICHAEL WATSON: And 293 of course
8 has, and we've seen this many times, the evaluation
9 criteria. And if we can go -- scroll down, please a
10 little bit. Under the second 30 percent one (1) we
11 see one (1) of the two (2) bullet items is "Provision
12 for strategic and specialized resources."

13 Do we see that?

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: And that's really
16 what we're talking about here, correct?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: And so that was
19 an important component of a 30 percent component,
20 right?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: And -- and you
23 said at one (1) -- in your evidence, you said:

24 "The likelihood was that Hydro One
25 wouldn't provide the shared services

1 back to Power."

2 Remember saying that this morning?

3 MR. TIM FRYER: Not specifically but I
4 definitely believe you're telling me --

5 MR. MICHAEL WATSON: Well, I remember
6 you saying it because I wrote it down. And when you
7 said Power, I take it you were talking about Collus
8 Power.

9 MR. TIM FRYER: Yeah. Can you read
10 that to me again?

11 MR. MICHAEL WATSON: Sure. Quote:

12 "The likelihood was that Hydro One
13 wouldn't provide the shared services
14 back to Power."

15 MR. TIM FRYER: Okay, yes. I did -- I
16 do recall saying that, and my premise was that I
17 didn't expect that we would be doing something like
18 billing --

19 MR. MICHAEL WATSON: All right. And -
20 - and --

21 MR. TIM FRYER: -- through Hydro One.

22 MR. MICHAEL WATSON: -- just -- just
23 so you know, my -- my second job is as a court
24 reporter. Okay, so -- and -- and what was the source
25 of that expectation that you didn't think Hydro One

1 would do that?

2 MR. TIM FRYER: When I made the
3 statement, I guess I was just looking at it from my
4 experience, so to speak.

5 MR. MICHAEL WATSON: That -- that's
6 fine. I understand. And -- and you had a lot of
7 experience. What was that experience with Hydro One
8 that made you think that?

9 MR. TIM FRYER: I wouldn't see us
10 using their billing services, I guess, is the way I
11 was looking at it.

12 MR. MICHAEL WATSON: Why?

13 MR. TIM FRYER: I guess just kind of
14 thinking along the lines of more about the customers
15 becoming part of a billing system that handled
16 millions of -- a million customers plus at the time, I
17 guess, when I was -- was making that comment.

18 MR. MICHAEL WATSON: Were you
19 concerned about Collingwood's fifteen thousand
20 (15,000) approximately customers getting lost in Hydro
21 One?

22 MR. TIM FRYER: And I would -- I would
23 say yes, that would be part of it, yes.

24 MR. MICHAEL WATSON: Okay. Now I want
25 to go onto something else. You were asked this

1 morning many questions about the valuation that -- of
2 Collus Power that was being done in the spring of
3 2011?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: And about the
6 possibility of the sale of all or part of Collus?

7 MR. TIM FRYER: Yes.

8 MR. MICHAEL WATSON: Do you remember
9 that at one (1) point, you said, Every time there was
10 a new Council, there was the possibility of something
11 being done about Collus, in response to that question?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: And I take it
14 what you mean is that every time there was a new
15 Council, every -- what it was back then, every --
16 every four (4) years, that possibility of something
17 like a sale of all or part of Collus came up.

18 Is that what you're saying?

19 MR. TIM FRYER: Or certainly we knew
20 it would be a possibility that it would come up.

21 MR. MICHAEL WATSON: All right. And -
22 - and I take it, this is going back many elections
23 over some decades, perhaps even. Is that right?

24 MR. TIM FRYER: Yes. So --

25 MR. MICHAEL WATSON: All right. And -

1 - and did new Councils discuss that, to your
2 knowledge, that possibility over the years?

3 MR. TIM FRYER: Not to any significant
4 degree.

5 MR. MICHAEL WATSON: But there was
6 some discussion, I take it?

7 MR. TIM FRYER: I -- I am sure that
8 there would have been, yes.

9 MR. MICHAEL WATSON: Okay. And so I
10 take it, then, that in the spring of 2011, the
11 prospect of a -- the prospect -- the possibility of a
12 sale of all or part of Collus shares did not come as
13 any thunderbolt to you. It wasn't a huge surprise
14 because of what had been going on and the discussions
15 previously.

16 MR. TIM FRYER: Well --

17 MR. MICHAEL WATSON: Is that fair?

18 MR. TIM FRYER: -- the valuation was
19 in the spring, and that wasn't a surprise, because
20 certainly, the shareholder can ask us to tell them
21 what the value of their utility is.

22 MR. MICHAEL WATSON: Right. And --
23 and a -- a valuation is -- is -- it really not only
24 does prudent but really necessary before you consider
25 and enter into any kind of transaction to sell all or

1 part of shares, or do a merger, or an acquisition, or
2 anything significant, right?

3 MR. TIM FRYER: With a third party
4 giving you the -- the information, yes --

5 MR. MICHAEL WATSON: Right.

6 MR. TIM FRYER: -- because their
7 objective.

8 MR. MICHAEL WATSON: Right. And, you
9 know, we've seen some of the documentation, a draft
10 letter about -- or -- or a draft memo about reducing
11 costs within the Town?

12 You've seen that, right?

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: All right. And I
15 -- I take it you -- well, you were a voter in
16 Collingwood, right?

17 MR. TIM FRYER: M-hm. Yes.

18 MR. MICHAEL WATSON: Yes? And so
19 therefore you paid attention, I take it, to the
20 various platforms of the politicians in the October
21 2010 municipal election?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: All right. And
24 Sandra Cooper in particular, who was elected mayor,
25 and who had been on Council for many years ran partly

1 on a -- a platform of cutting costs, and trying to get
2 the financial house in order.

3 Is that a fair way to put it?

4 MR. TIM FRYER: She would have, yes.

5 MR. MICHAEL WATSON: Well, she -- not
6 only she would have, she did?

7 MR. TIM FRYER: Yes.

8 MR. MICHAEL WATSON: Yes. And -- and
9 you -- you don't need a valuation of Collus to figure
10 out a way of cutting costs, right?

11 MR. TIM FRYER: No.

12 MR. MICHAEL WATSON: Right. And so --
13 all right, fair enough. We'll leave that point, then.

14 Now next, talking about the sale of
15 some shares, part shares, you said this morning -- and
16 -- and I noted this, it was interesting -- you said
17 that in the past, there had been sales of 10 or 15
18 percent of the shares of LDCs.

19 Do you remember saying that?

20 MR. TIM FRYER: I did say that, and I
21 -- I am aware of -- of 10 percent ownership for some.
22 It may not have been a share sale. I'm -- I can't say
23 that for certain, but I'm not sure what other kind of
24 sale it could be, but I believe Westario was a utility
25 that had a 10 percent interest sold to Fortis.

1 MR. MICHAEL WATSON: Sold to?

2 MR. TIM FRYER: Fortis.

3 MR. MICHAEL WATSON: All right. And
4 when was that?

5 MR. TIM FRYER: And -- and now I'm
6 completely speculating, because I --

7 MR. MICHAEL WATSON: Then don't.
8 Please -- please don't do that.

9 MR. TIM FRYER: -- so -- so I won't --
10 I won't do that.

11 THE HONOURABLE FRANK MARROCCO: That's
12 not helpful if -- if you're completely speculating.
13 That -- that's just not helpful.

14

15 CONTINUED BY MR. MICHAEL WATSON:

16 MR. MICHAEL WATSON: And -- and are
17 there any other examples of a very small minority
18 shareholding like that of one (1) entity in an LDC
19 other than that one?

20 MR. TIM FRYER: The only one (1) that
21 comes to mind is Mississauga, when -- when OMERS -- it
22 wasn't OMERS. I believe Mississauga had a small
23 interest sale --

24 MR. MICHAEL WATSON: Okay.

25 MR. TIM FRYER: -- some years back.

1 MR. MICHAEL WATSON: I -- I take it,
2 therefore, apart from those two (2), the vast majority
3 -- the vast -- vast majority of transactions involving
4 LDCs, that -- that reduced the number from three
5 hundred (300) to approximately eighty (80) were
6 mergers and acquisitions of some form or other?

7 MR. TIM FRYER: Yes, they were.

8 MR. MICHAEL WATSON: Because
9 otherwise, it -- it's nothing -- the sale of a few
10 shares is really nothing more than an investment in an
11 LDC, and the number of LDCs remains the same, right?

12 MR. TIM FRYER: And I would --

13 MR. MICHAEL WATSON: Sorry, is that a
14 yes?

15 MR. TIM FRYER: Yes. Yes.

16 MR. MICHAEL WATSON: All right. And
17 sorry, but I -- if you want -- if you had something --

18 MR. TIM FRYER: No, I -- I'm fine,
19 yes.

20 MR. MICHAEL WATSON: All right. Now
21 moving on, then. You -- with respect to the RFP, you
22 said, quoting, "I thought the RFP should be sent to
23 everyone."

24 Do you remember saying that?

25 MR. TIM FRYER: The offer should be

1 made to everyone, yes.

2 MR. MICHAEL WATSON: Well, what you
3 said is the RFP should be sent to everyone.

4 MR. TIM FRYER: I said that, yes.

5 MR. MICHAEL WATSON: All right. And -
6 - and you then immediately said, "Well, to all
7 interested parties," right?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: That's what you
10 said? All right. And the interested parties would be
11 possibly other LDCs within Ontario who might be
12 interested in doing some kind of strategic
13 partnership, or merger, or acquisition with Collus,
14 right?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: And you have to
17 figure out who those were, right, who the interested
18 parties might be?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: By approaching
21 them, yes?

22 MR. TIM FRYER: Or make an all-out
23 offer.

24 MR. MICHAEL WATSON: All right, but
25 the all-out offer would be to the -- everyone --

1 MR. TIM FRYER: Yeah.

2 MR. MICHAEL WATSON: -- right. And
3 then --

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: -- but you
6 qualified by saying, Or to the interested parties.

7 MR. TIM FRYER: Yeah. And --

8 MR. MICHAEL WATSON: All right. And
9 to figure out -- you'd have to figure out who the
10 interested parties were to figure out, you know, to
11 what address to put on the front of the RFP, right?

12 MR. TIM FRYER: And that's why said
13 that I couldn't really comment specifically, because I
14 hadn't developed any kind of complete idea about it.

15 MR. MICHAEL WATSON: I understand.
16 But in order to identify interested parties -- and
17 KPMG had some discussion about this, to see whether
18 there was any interest out there, in -- to identify
19 them, you've got to go out and -- and talk to the, you
20 know, the potential suitors, right?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: And -- and there
23 would be some obvious ones that would be out there
24 that everybody in the LDC industry would know about,
25 right?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And certainly,
3 your next door neighbour in Barrie, PowerStream, would
4 be right at the top of the list as to potential
5 interested parties, right?

6 MR. TIM FRYER: And our immediate next
7 door neighbour, Wasaga Beach.

8 MR. MICHAEL WATSON: All right.
9 Wasaga Beach, I take it, was fairly small compared
10 with PowerStream?

11 MR. TIM FRYER: Well, yes.

12 MR. MICHAEL WATSON: Very small, with
13 all due respect, fair enough?

14 MR. TIM FRYER: A similar size to us,
15 yes.

16 MR. MICHAEL WATSON: All right. And
17 so it would be no surprise that if people were trying
18 to figure out who might be interested parties, that
19 those people would go to PowerStream, Horizon,
20 Veridian, and poss -- Hydro One, fair?

21 MR. TIM FRYER: I -- definitely, yes.

22 MR. MICHAEL WATSON: And I'd like to
23 go to the financial evaluation that you were asked
24 about. And this CPS11306.

25

1 (BRIEF PAUSE)

2

3 MR. MICHAEL WATSON: Just while we're
4 getting that up, Mr. Fryer, we have heard evidence --
5 and I don't want to look at this just for the moment.

6 We've heard evidence that there was
7 some either suggestion or direction that the -- that
8 when -- when scoring, the various members of the -- of
9 the SPTT would be asked to give the maximum marks to
10 the top ranked bidder, and then lower marks to the
11 others.

12 So, for example, on the financial
13 component, the top one, because there was thirty (30)
14 -- thirty (30) points available, or 30 percent, would
15 be given thirty (30), and then the others would be
16 given lower amounts.

17 Do you remember something about that?

18 MR. TIM FRYER: It was said that that
19 was a -- a directive, that we were supposed to start
20 at the top mark, but I don't recall that being the
21 case.

22 MR. MICHAEL WATSON: When you say you
23 don't recall that being the case, are you saying you
24 don't recall that being a directive, or do you not --
25 or do you recall -- not recall it actually being done?

1 MR. TIM FRYER: I know it wasn't done.

2 MR. MICHAEL WATSON: You know it
3 wasn't done. I see.

4 MR. TIM FRYER: Yeah.

5 MR. MICHAEL WATSON: And -- and so let
6 -- let's just take a look and we want to get to the
7 financial ones, but just -- let's just look at the
8 first one (1) here, which was the provision of
9 strategic and specialized resources, and I believe
10 this is the first tab and we see the various names on
11 the left side, right?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: Including you,
14 right?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: And of course, on
17 -- on -- on this one (1) the total of point value
18 under the criteria was 30 percent right?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: And do you see
21 that -- that everybody except Mr. Garbutt, in fact,
22 gave 30 percent to PowerStream, right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: So everybody
25 except Mr. Garbutt seems to have followed that

1 directive, right, including you?

2 MR. TIM FRYER: I wasn't following the
3 directive, I just gave him thirty (30) points because
4 I felt that that was what they deserved.

5 MR. MICHAEL WATSON: Oh, I see, yes.
6 And to be fair, you also gave 30 to Horizon, right?

7 MR. TIM FRYER: Yes, I did, and I
8 think that proves it.

9 MR. MICHAEL WATSON: Which was why I
10 wanted to -- I wanted to make sure it was proven.
11 Let's go down then, I believe, to the last one (1)
12 which is the financial one, if I have this right. All
13 right, yes. Okay.

14 So we now have the -- so this now is
15 various other totals. And do you remember that you
16 were asked this morning about whether you'd seen any
17 document having the individual breakdowns, that is,
18 the individual votes by the members of the SPTT on --
19 on these items?

20 MR. TIM FRYER: I remember being asked
21 and I said I did not see it.

22 MR. MICHAEL WATSON: Right. And we
23 haven't seen any document that shows that thus far.

24 There were nine (9) members of the
25 SPTT?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And -- and on
3 this one (1) the -- all -- all of these items -- these
4 are the so-called financial items which together
5 totalled thirty (30) --

6 MR. TIM FRYER: Yes.

7 MR. MICHAEL WATSON: -- points, right?

8 And -- and we see that Hydro One
9 received two hundred seventy (270) then for the
10 payment of up to 50 percent and the other
11 considerations, do you see that?

12 MR. TIM FRYER: Yes, I do.

13 MR. MICHAEL WATSON: And that top
14 line, that's the 30 percent financial, right?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: Okay. And so,
17 therefore, summoning up my -- well, not quite calculus
18 but arithmetic, 9 times 30 equals 270, right?

19 MR. TIM FRYER: Yes, it does.

20 MR. MICHAEL WATSON: So therefore all
21 members of the SPTT obviously gave Hydro One thirty
22 (30) points, right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: And then we see
25 PowerStream at 243, do we see that?

1 MR. TIM FRYER: Yes, we do

2 MR. MICHAEL WATSON: Right. And --

3 and again I don't know how this worked exactly, but it

4 so happens that when you divide 243 by 9 you get

5 exactly 27. Can we accept that arithmetic?

6 MR. TIM FRYER: Yes.

7 MR. MICHAEL WATSON: And therefore,

8 the members of the SPTT gave PowerStream 90 percent on

9 financial, 90 percent of what the members together

10 gave to Hydro One. Do you see that?

11 MR. TIM FRYER: On average, yes.

12 MR. MICHAEL WATSON: Yes. Well, and

13 therefore some might have been below, but therefor

14 some above?

15 MR. TIM FRYER: Exactly. Three (3)

16 could have been 28, three (3) could have been 27,

17 three (3) could have been 26.

18 MR. MICHAEL WATSON: In -- indeed.

19 So when we talk about, you know, this

20 difference between Hydro One and PowerStream, when all

21 of the members of the SPTT did their own independent

22 reckonings and evaluations, they gave PowerStream 90

23 percent of what they gave Hydro One, right?

24 MR. TIM FRYER: On average, and even

25 if some had scored a little bit lower it couldn't have

1 been too much lower, because there's not enough room
2 there to -- to make up the difference.

3 MR. MICHAEL WATSON: Exactly.

4 Let's then talk about a little bit
5 more. We love the shotgun buy sell. So, I want to
6 talk about a couple of things. One, first of all, is
7 the concept, and the second is the actual terms in the
8 shareholder agreement.

9 So a shotgun buy/sell is -- is a -- a
10 process in an agreement whereby one (1) party can make
11 an offer to the other party either to buy or sell the
12 other party's shares, right?

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: Right. And the
15 shotgun nature of it is that the recipient of the
16 offer -- I -- and sorry, before I go there.

17 The offer or to either buy or sell
18 shares, has to name a price at which the offeror is
19 prepared either a) to sell or b) to purchase the
20 shares, right?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: And the shotgun
23 nature of it is that the recipient has the choice
24 either to purchase or to sell the recipient's shares
25 at that price, right?

1 MR. TIM FRYER: Price and whatever
2 other parameters that offeror wanted to put forward.

3 MR. MICHAEL WATSON: In -- in --
4 indeed, I -- of -- of course, but focussing just on
5 the price right now.

6 MR. TIM FRYER: Yes.

7 MR. MICHAEL WATSON: And what that
8 means is that the recipient of the offer can control
9 what ultimately ends up happening; that is, the
10 recipient ends up with the shares or the recipient
11 ends up selling its shares, right?

12 MR. TIM FRYER: Thus, it can be an
13 amiable arrangement.

14 MR. MICHAEL WATSON: Well, you may --
15 okay, you can go into that -- I'm trying to get an
16 answer. That's the way it works, the way I it, right?

17 MR. TIM FRYER: Yes, yes.

18 MR. MICHAEL WATSON: Okay, and the --
19 the purpose or one (1) of the essential purposes of
20 the shotgun buy sell is to make sure that the offeror
21 offers a fair price, right?

22 And you're nodding, is that right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: And of course
25 that's the essential nature of it, isn't it?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: Because if the
3 offeror offers to purchase or sell at too low a price,
4 the recipient will gobble that up and buy the shares
5 at that low price, right?

6 MR. TIM FRYER: You would expect so,
7 yes.

8 MR. MICHAEL WATSON: Of course. And
9 similarly, if the offeror offers to purchase or sell
10 at too high a price, the recipient can sell its shares
11 and get out at a high price right?

12 MR. TIM FRYER: Yes. And so the whole
13 idea of a shotgun buy sell is to get a fair price at
14 which either party may be prepared, fair market value,
15 for example, to buy or sell at that price. It's a
16 price levelling mechanism, right?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: Okay, now at --
19 and -- and -- and so have you see the -- the shotgun
20 buy sell provisions actually in the shareholder
21 agreement?

22 MR. TIM FRYER: Yes, I have.

23 MR. MICHAEL WATSON: All right, can we
24 please get that up, that is ALE3296, which is the
25 shareholder agreement.

1 And for some reason the shareholder
2 agreement starts at numbered page 4 at the bottom. I
3 think that this may actually have been a -- a schedule
4 to something else, but I want to go please to section
5 9.1, which I believe is around, I don't know, page 24
6 of -- yeah, of that one. Bring up page 24 of the --
7 of the document, of the PDF.

8 All right. So, it -- now, I take it
9 you haven't seen agreement that contains one (1) of
10 these that actually says shotgun buy/sell, right?

11 MR. TIM FRYER: No.

12 MR. MICHAEL WATSON: All right, that's
13 a colloquial term to describe what's going on?

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: So the wild west
16 term maybe we can call it here. But here it's the
17 buy/sell provisions, right?

18 MR. TIM FRYER: And -- and this is the
19 agreement and we -- we can see it, but this is the one
20 (1) that was actually signed.

21 And so 9.1 is the notice that is to --
22 that is to be given by one (1) of the parties to the
23 other, right?

24 THE HONOURABLE FRANK MARROCCO: I
25 don't mean to interrupt here, but if -- if you're just

1 taking the witness through the agreement to have the
2 witness confirm what we can all read, then I don't
3 know that that's terribly helpful. If there's some
4 other question you propose to put, then by all means,
5 go ahead.

6

7 CONTINUED BY MR. MICHAEL WATSON

8 MR. MICHAEL WATSON: Right. Well,
9 what I wanted to get at is that buy sell agreements
10 work in different ways. And this one (1) actually was
11 an offer to either sell or buy as opposed to an offer
12 to do only one.

13 MR. TIM FRYER: That's what it says.

14 MR. MICHAEL WATSON: Yes, all right.

15 So, what we -- what we see is in sub A,
16 subject of subparagraph B, et cetera, either of the
17 shareholders, and it's called the offer or shall be
18 entitled to give notice to the other shareholder or
19 the offeree, do we see that?

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: All right.

22 And of course there were only two (2)
23 shareholders, right?

24 MR. TIM FRYER: Yes.

25 MR. MICHAEL WATSON: Town and -- and

1 PowerStream at that time?

2 MR. TIM FRYER: Yes.

3 MR. MICHAEL WATSON: All right. And
4 the notice had to contain one (1) little line, the
5 price at which the offeror will purchase to sell each
6 share?

7 MR. TIM FRYER: Yes.

8 MR. MICHAEL WATSON: And to an
9 unconditional offer, irrevocable, et cetera. to
10 purchase all of the common shares, right, and three
11 (3), an unconditional offer or irrevocable, et cetera
12 to sell all of the shares, do you see that?

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: And so the way
15 this buy sell worked is that an offer had to contain
16 an offer to do both, both to purchase and -- or to
17 sell at that price, right?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: Okay, that's the
20 way this one (1) worked, and I -- I think that that's
21 all I need here.

22 Now, the way then -- let's -- let's
23 suppose that the Town triggered the shotgun buy sell
24 by giving a buy sell notice, all right?

25 MR. TIM FRYER: Okay.

1 MR. MICHAEL WATSON: All right. And I
2 think you're aware of the fact that that's what
3 actually happened in November 2017, right?

4 MR. TIM FRYER: I'm very familiar with
5 it, yes.

6 MR. MICHAEL WATSON: Right. And --
7 and PowerStream never exercised this power, did it?

8 MR. TIM FRYER: No. They -- they
9 could have.

10 MR. MICHAEL WATSON: Of course they
11 could have, but PowerStream didn't, right?

12 MR. TIM FRYER: I agree, yes.

13 MR. MICHAEL WATSON: It was the Town
14 that decided to do that, right?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: Okay. So when
17 the Town made it's -- it's offer, it had to make an
18 offer at a specified price both to purchase or to
19 sell, right? Either one.

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: And PowerStream
22 then could choose what to do to accept the offer that
23 the Town would purchase the shares, or to accept the
24 offer that the Town sell its shares, right?

25 MR. TIM FRYER: Yes.

1 MR. MICHAEL WATSON: And that is
2 within the power of the recipient of the offer, called
3 the offeree here to do, right?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: And so when -- if
6 the Town were to make the offer, the Town then could
7 not control what actually ended up happening, it's up
8 to the recipient.

9 MR. TIM FRYER: Yes.

10 MR. MICHAEL WATSON: And the Town,
11 therefore, could avoid that possibility of not knowing
12 what would happen, simply by never exercising its
13 right and never making an offer, right?

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: Whereas, if
16 PowerStream had ever made the offer, the Town could've
17 chosen what to do, right?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: And so the Town
20 had it within its power, under the shotgun buy sell,
21 not ever to incur the risk of having it's -- it's
22 shares sold out from under it, right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: Simply by not
25 making an offer?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: But it chose to
3 make an offer, right?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: Thank you.

6 I wanted to ask one (1) last thing, and
7 it had to do with something that -- you remember you
8 were asking questions of Mr. Erling yesterday?

9 MR. TIM FRYER: Yes.

10 MR. MICHAEL WATSON: It had to do with
11 Mr. Bentz specifically, this is my last point. Could
12 I have the transcript brought up from yesterday,
13 please. Yesterday's transcript. And page 144. At
14 the bottom, starting at line 19.

15 And this is you questioning Mr. Erling
16 and do you remember you were questioning him about the
17 notes, Mr. Bentz's notes that are referred to in the
18 Foundation document?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: All right. I'm
21 not going to go through all of this, but I just want
22 to orient you very quickly.

23 Mr. Fryer, line 19:

24 "I would also suggest that another
25 estimation, example, and this was -- you remember

1 estimation of value?

2 MR. TIM FRYER: Yes.

3 MR. MICHAEL WATSON: All right.

4 Comes from the meeting that happened
5 with Mr. Houghton and Mr. Brian Bentz back in December
6 2010, and it's listed in the -- in the document under
7 paragraph 112. Do you remember that?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: I'd like to go
10 over, not the next page, because it's not interest --
11 not stuff I'm interested in, but the page after where
12 this continues.

13 All right, and so discussion about not
14 blaming anybody for not reaching the -- reading the
15 Foundation document, and then line 7. I don't blame
16 you.

17 So circling back to it again, if I
18 could bring up ALE4330, to our initial look at the
19 balance sheet, et cetera. And so we had spoken about
20 a rough figure of, say, -- sorry, do I have this
21 right? No, I don't. I don't.

22 I'm terribly sorry, I need to go back
23 to the previous page 145. Thank you.

24 So this is Mr. Bentz's notes that he
25 had written out from the meeting.

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And if we just --
3 I'm sorry, I'm quoting, okay.

4 And if we just scroll down to see the
5 notes, I think that's probably pretty good because
6 it's the 20 million or actually just -- you know, et
7 cetera.

8 And then going -- scrolling down. So
9 from this meeting appears to be an opportunity through
10 professional familiarity to become informed about the
11 current circumstances, I worked with Brian Bentz close
12 to 30 years ago, we can skip down a little bit more.

13 You ask whether he is familiar with
14 him, yes, and then line 20. Thank you. So, as CEO of
15 PowerStream, which could be described as an acquirer -
16 - acquirer in the LDC market. He gave a quick opinion
17 with a range that he thought Collus would probably be
18 -- his note says back of envelope 20, 25 million less
19 debt. Do you see that?

20 MR. TIM FRYER: 15, 20 million.

21 MR. MICHAEL WATSON: 15, I'm sorry,
22 yes. That's what you put to -- to Mr. Erling?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: And I take it
25 your supposition was that the notation on Mr. Bentz's

1 notes were -- constituted his estimate of value, that
2 was your supposition?

3 MR. TIM FRYER: I was saying that,
4 yes.

5 MR. MICHAEL WATSON: All right. Could
6 we please then go to FD, paragraph 112. It's on page
7 45.

8 And I'm going to tell you to be fair
9 and this -- it hasn't -- hasn't come out yet, but
10 there will be evidence, I expect, and I expect it will
11 come from Mr. Bentz, that these notes were actually
12 made in April of 2011 and they were made in
13 preparation for a PowerStream Board meeting at which
14 he was explaining the background of all of this.
15 including everything that happened up to that date,
16 starting with the call -- the call from Mr. Houghton
17 back at the end of November of 20 -- of 2010.

18 MR. TIM FRYER: Okay.

19 MR. MICHAEL WATSON: And so if we can
20 just go down -- yes, all right. And -- and we see Mr.
21 Bentz's notes included his description of discussions:

22 "Also in his role as executive
23 director of the Town of Collingwood,
24 basically runs municipal debt there,
25 has a lot of clout."

1 And then going down:

2 "Talked about fiscal situation in
3 Collingwood, 20 million in debt.
4 Last Council spent a lot and got
5 thrown out."

6 Now, these -- these are notes of the
7 discussion that he had with Mr. Houghton on December
8 3rd. I take it you agree this sounds as though this
9 is what Mr. Houghton is saying to Mr. Bentz about the
10 fiscal situation in Collingwood, his home
11 municipality?

12 MR. TIM FRYER: Yes, he is, yes.

13 MR. MICHAEL WATSON: All right. And
14 then the next one (1):

15 "Exploring path of what to do at
16 LDC. Preliminary discussion at
17 Collus Board at Town to look at
18 options."

19 This again looks like it's very much
20 Mr. Houghton telling Mr. Bentz what's going on?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: "RFP with
23 multiple bidders," what he was thinking at that point?

24 MR. TIM FRYER: Yes.

25 MR. MICHAEL WATSON: Right. And then

1 sorry, that -- that one (1) from the telephone call,
2 "Then had breakfast with him shortly thereafter," and
3 there's evidence about that.

4 And then going down:

5 "Talked about process and value
6 range. Said back of envelope 15 to
7 20 million on enterprise value less
8 debt."

9 Now, before I put that same proposition
10 to you, Mr. Houghton was CEO of Collus, right?

11 MR. TIM FRYER: Yes.

12 MR. MICHAEL WATSON: And he had access
13 to all of the financial information, right?

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: Right. And, of
16 course, all of that financial information was within
17 Collus, which was an ABCA corporation, right?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: It was not what
20 we call a reporting issuer or a public corporation?

21 THE HONOURABLE FRANK MARROCCO: I
22 don't know if the witness can -- it -- it isn't, is
23 it?

24 MR. MICHAEL WATSON: Well, no, no,
25 it's not. And --

1 THE HONOURABLE FRANK MARROCCO: All
2 right. So, then it isn't.

3 MR. TIM FRYER: No reports to the OEB,
4 yeah.

5 MR. MICHAEL WATSON: And that's what
6 I'm asking the witness, Your Honour. All right.

7

8 CONTINUED BY MR. MICHAEL WATSON:

9 MR. MICHAEL WATSON: And -- and so --
10 and so that information would not be public?

11 MR. TIM FRYER: Which information,
12 sorry?

13 MR. MICHAEL WATSON: Yes, the -- the
14 financial information, Enterprise Value and all the
15 numbers that would go into that.

16 MR. TIM FRYER: I -- I would think
17 that it would be considered public because you're
18 putting your financial statements to -- to the OEB and
19 those are publically displayed.

20 MR. MICHAEL WATSON: This is certainly
21 something that Mr. Houghton would know intimately,
22 right?

23 MR. TIM FRYER: Certainly.

24 MR. MICHAEL WATSON: All right. And
25 is -- can -- can you see, therefore, that maybe your

1 supposition was incorrect, that this may very well
2 have been a statement made by Mr. Houghton rather than
3 by Mr. Bentz?

4 MR. TIM FRYER: It's very possible,
5 yes.

6 MR. MICHAEL WATSON: Those are my
7 questions, Your Honour.

8 THE HONOURABLE FRANK MARROCCO: Mr.
9 Marron...?

10 MR. GEORGE MARRON: Yes, thanks, Your
11 Honour.

12

13 CROSS-EXAMINATION BY MR. GEORGE MARRON:

14 MR. GEORGE MARRON: This is one (1) of
15 my first forays into the electronic world, at least in
16 a hearing. I just wanted to refer to document number
17 CPS0007 triple -- or sor -- 70070001. It's the
18 minutes of the Board of Directors of Collus Power
19 meeting of Friday June the 10th at 9:08.

20 It indicates that you were present, Mr.
21 Fryer. It's the point in time when, on the second
22 page, it indicates that Mr. Houghton appeared with a
23 solar roof ventilation unit and made a bit of a pitch,
24 I take it, to the Collus Board about the unit.

25 And he also indicated that he intended

1 to propose a project and that he would be assisted by
2 Mr. McAllister and report back to the Board. It
3 indicates then that my client, Mayor Cooper, left the
4 meeting?

5 MR. TIM FRYER: Yes.

6 MR. GEORGE MARRON: Okay. And then it
7 goes on on page 3 to indicate the Board made a
8 decision to move forward with the initiative?

9 MR. TIM FRYER: Yes.

10 MR. GEORGE MARRON: All right. And it
11 states the reason as showing that the Company would be
12 considered perhaps as a leader with a positive message
13 for the utility and Council to get the message out
14 regarding conservation?

15 MR. TIM FRYER: Yes.

16 MR. GEORGE MARRON: And the Board
17 concluded its meeting. Okay. So, she wasn't present
18 then when the Board made the resolution or the
19 agreement to support this project and move forward
20 with it?

21 MR. TIM FRYER: Yes. According to the
22 minutes, yes.

23 MR. GEORGE MARRON: Thank you. The --
24 just so I understand, you're -- you're listed in the
25 Foundation Documents and a lot of the material that

1 I've read as being a member of the Strategic
2 Partnership Task Team?

3 MR. TIM FRYER: Yes.

4 MR. GEORGE MARRON: And -- and you're
5 making a distinction. You're -- you're putting
6 yourself in the position that the KPMG personnel, two
7 (2) of them, where, in other words, they were -- they
8 didn't participate by way of vote or a show of hands
9 or -- indicating their appraisal or -- of the process
10 that was being presented?

11 MR. TIM FRYER: I believe what I was
12 conveying was, of the nine (9) members, I considered
13 the three (3) Board members, Mr. McFadden, Mr.
14 Muntester (sic), and --

15 MR. GEORGE MARRON: Right.

16 MR. TIM FRYER: -- and Mr. Garbutt, to
17 -- to be what I was considering voting members as well
18 as the mayor and the deputy mayor. And then the other
19 four (4) members, myself, Mr. Houghton, Ms. Wingrove,
20 and Mr. Herhalt, from KPMG, I considered them in my
21 concept as being resources with providing input, but
22 the decision makers were the other five (5).

23 MR. GEORGE MARRON: Well -- well, that
24 -- well, that's comes as a bit of a surprise to me
25 because we've heard from Wingrove. She indicated she

1 was a member of the Strategic Partnership Task Team
2 and she voted on -- and, in fact, she was taken
3 through her evidence in reference to how she assessed
4 certain aspects of the RP -- RPF.

5 MR. TIM FRYER: And definitely all
6 nine (9) of us had the same -- same process and the
7 same vote in regards to the scoring of the RFP.

8 MR. GEORGE MARRON: Okay. So -- so,
9 what you're saying, in effect, as I -- just -- just so
10 that I understand this, is you were there. You were
11 giving -- as you indicated, as a resource, you were
12 giving some opinions.

13 I take it that you were giving those
14 opinions if -- if they were being sought by members of
15 the -- of the task team?

16 MR. TIM FRYER: Yes.

17 MR. GEORGE MARRON: Okay. But that,
18 at the end of the day, when it came time to tally or
19 to vote, that you also voted?

20 MR. TIM FRYER: We all did --

21 MR. GEORGE MARRON: Okay.

22 MR. TIM FRYER: -- equally.

23 MR. GEORGE MARRON: And there were
24 nine (9) members then?

25 MR. TIM FRYER: Yes, there were.

1 MR. GEORGE MARRON: Now, you made a --
2 you made a point and indicated that 50 percent or more
3 would be losing control. I understand more, I mean,
4 if it's 51 percent, obviously, it's 51/49, so it's a
5 control position.

6 But -- but I didn't quite comprehend
7 when you said that 50 percent -- that if I sold you 50
8 percent of something, half of something, I'd be losing
9 control.

10 What -- what I'd be doing would be
11 creating a different entity. It'd be taking something
12 that I possessed and controlled and I'd be turning it
13 into a different entity whereby I would -- would not
14 lose control, but I'd have to share control?

15 MR. TIM FRYER: And I'm simply of the
16 point of view that 50 percent does run the risk of
17 losing control, yes.

18 MR. GEORGE MARRON: Well, I guess
19 that's the area that I'm having a little bit of
20 difficulty in. I -- I'm seeing a different situation
21 being created, not that it would mean losing control,
22 but it would be sharing control?

23 MR. TIM FRYER: And I'm understanding
24 what you see. And I'm just explaining what I see.

25 MR. GEORGE MARRON: Yeah. So, it's

1 more a question of perspective?

2 MR. TIM FRYER: I'm sorry?

3 MR. GEORGE MARRON: It's a question of
4 perspective then?

5 MR. TIM FRYER: I would say so, yes.

6 MR. GEORGE MARRON: Like, the glass is
7 half full or the glass is...

8 MR. TIM FRYER: Precisely.

9 MR. GEORGE MARRON: Okay. All right.
10 Half empty, okay. The -- the other area I have is
11 concerning this timing of the approach that you made
12 to Brian Bentz. I mean, you -- you're an executive
13 with the Collus group of companies.

14 You had an email communication with him
15 on the 15th of September 2011 referring to a potential
16 golf game on the 23rd of September?

17 MR. TIM FRYER: I think the 19th. Was
18 it -- was it the 23rd?

19 MR. GEORGE MARRON: Well -- well, the
20 -- the 15th was a Thursday and the game was proposed
21 for the Tuesday, so I --

22 MR. TIM FRYER: The 19th, I think.

23 MR. GEORGE MARRON: -- so I did what I
24 thought proper advance of -- of the numbers, but it
25 could be stand -- I guess I could stand --

1 MR. TIM FRYER: I believe it was the
2 19th because I believe that was the day that they --

3 MR. GEORGE MARRON: Okay.

4 MR. TIM FRYER: -- were going to be
5 here to give --

6 MR. GEORGE MARRON: Well, in any event
7 --

8 MR. TIM FRYER: -- their presentation.

9 MR. GEORGE MARRON: Yeah. Okay.
10 Well, in any event, it's a point in time after August
11 the 3rd, which was the first meeting of the Strategic
12 Partnership Task Team?

13 MR. TIM FRYER: Yes.

14 MR. GEORGE MARRON: Okay. And, I
15 mean, at that point, you would have known that
16 PowerStream was interested in making a bid?

17 MR. TIM FRYER: Yes. They were --
18 they were going to provide an expression of interest
19 proposal at the -- to Council that same day.

20 MR. GEORGE MARRON: Well -- well, did
21 you have any concerns about the optics of this? I
22 mean, you're --

23 MR. TIM FRYER: Not at the time, no.

24 MR. GEORGE MARRON: Well, have you any
25 concerns at this point in time --

1 MR. TIM FRYER: No.

2 MR. GEORGE MARRON: -- how it would
3 look?

4 MR. TIM FRYER: No.

5 MR. GEORGE MARRON: And here -- here's
6 somebody who's head of -- well, let's just -- here --
7 here's an individual, Brian Bentz, who basically is in
8 charge of PowerStream and -- and the executive branch,
9 the Board. You're with Collus. And it's Collus
10 that's interested in selling at least a portion of the
11 business.

12 Two (2) of you are meeting, and this is
13 in September, at a point in time when there were
14 active steps being taken to assess who might
15 eventually end up being the winning proponent of 50
16 percent of Collus?

17 MR. TIM FRYER: Yes.

18 MR. GEORGE MARRON: It didn't cause
19 any concern?

20 MR. TIM FRYER: Not at the time, no.

21 MR. GEORGE MARRON: What do you mean,
22 "not at the time"? You mean, it does now?

23 MR. TIM FRYER: No.

24 MR. GEORGE MARRON: So, it would -- it
25 didn't cause any concern at the time because you

1 didn't think about it?

2 MR. TIM FRYER: Sorry?

3 MR. GEORGE MARRON: You didn't
4 consider it at the time?

5 MR. TIM FRYER: At the time, I did not
6 consider it, no.

7 MR. GEORGE MARRON: Well, would you
8 agree with me that it might cause some concerns given
9 the optics of it?

10 MR. TIM FRYER: No.

11 MR. GEORGE MARRON: Can you explain
12 that, why -- why that would be?

13 MR. TIM FRYER: Because when I read
14 through it, it simply is a social invite, and it was
15 from a previous discussion, so.

16 MR. GEORGE MARRON: Well, no, I
17 appreciate that, but -- and you indicated you had
18 known him or met him a long time ago. But this -- he
19 wasn't somebody that you saw in a regular way?

20 MR. TIM FRYER: No.

21 MR. GEORGE MARRON: So, that's --
22 that's what causes what I suggest as some concern, as
23 that suddenly there's a golf game in the offing and
24 it's September 2011 and people are lining up to make
25 bids for Collus?

1 MR. TIM FRYER: And I didn't.

2 MR. GEORGE MARRON: Pardon?

3 MR. TIM FRYER: I said I didn't have a
4 concern with it.

5 MR. GEORGE MARRON: Well, did Mr.
6 Bentz have any concern? Did he voice any concern to
7 you?

8 MR. TIM FRYER: No. And there wasn't
9 any more communication after that point.

10 MR. GEORGE MARRON: Well, is that just
11 because there was no communication or because there
12 was some sort of concern?

13 MR. TIM FRYER: No. No, no concern.

14 MR. GEORGE MARRON: Or some thought --

15 MR. TIM FRYER: Just there was no
16 communication.

17 MR. GEORGE MARRON: Well, or some
18 thought that it might be inappropriate?

19 MR. TIM FRYER: There would be no
20 communication before that and no communication after
21 that.

22

23 (BRIEF PAUSE)

24

25 MR. GEORGE MARRON: All right. Thank

1 you. Those are my questions.

2 THE HONOURABLE FRANK MARROCCO: Mr.
3 Bonwick?

4 MR. GEORGE MARRON: Oh, just -- could
5 -- could I just -- just one (1) matter. I -- I --

6 THE HONOURABLE FRANK MARROCCO: Yes.

7 MR. GEORGE MARRON: I missed a point
8 here.

9 THE HONOURABLE FRANK MARROCCO: Go
10 ahead.

11

12 CONTINUED BY MR. GEORGE MARRON:

13 MR. GEORGE MARRON: I mean, you
14 indicated to us that you gave some consideration to
15 Hydro One. And, you know, you -- you appraised them
16 at the highest point with the dollar figure. I mean,
17 that was pretty straightforward. There it was.

18 And -- but you indicated that you had
19 concerns with Hydro One because of the personnel
20 situation, the bureaucracy that they perhaps
21 presented. They were a large group and might make for
22 some significant changes to the operation here in
23 Collingwood, of Collus?

24 MR. TIM FRYER: And that's why I
25 scored them a 10 on the partnership part of things.

1 MR. GEORGE MARRON: Right. And -- and
2 scored them a lot less on the other matters?

3 MR. TIM FRYER: Yes.

4 MR. GEORGE MARRON: Right. And -- and
5 this was something -- Okay. So, this -- this scoring
6 hadn't occurred at the point in time of the proposed
7 golf game in September of 2011? You hadn't scored
8 Hydro One at that point?

9 MR. TIM FRYER: No. The RFPs hadn't
10 gone out until October.

11 MR. GEORGE MARRON: Yeah. Well,
12 that's -- yeah. Okay. Thank you. Thank you, Your
13 Honour.

14 THE HONOURABLE FRANK MARROCCO: Mr.
15 Bonwick...?

16 MR. PAUL BONWICK: Thank you, Your
17 Honour. I likely have a half an hour worth of --

18 THE HONOURABLE FRANK MARROCCO: Sure,
19 go ahead.

20 MR. PAUL BONWICK: Do you want to do
21 it now or would you like to -- it's up to you
22 entirely, or we could take a break, it's up to you.

23 THE HONOURABLE FRANK MARROCCO: No,
24 no. I -- I think, as everybody -- we'll just carry
25 on.

1 MR. PAUL BONWICK: Okay. Yeah, that's
2 great with me.

3

4 CROSS-EXAMINATION BY MR. PAUL BONWICK:

5 MR. PAUL BONWICK: Thank you for the
6 time, Mr. Fryer. I'm just going to address one (1)
7 matter here before I move into the rest of it. And I
8 think I'm going to take the exact opposite approach
9 that Mr. Marron took in the -- in the last reign of
10 questioning, taking a walk back in time, in 2011.

11 You identified the fact that you had a
12 working professional relationship with Mr. Bentz over
13 some extended period of time going back thirty (30)
14 years?

15 MR. TIM FRYER: We were definitely
16 professionally involved over that period of time.

17 MR. PAUL BONWICK: Right. You're both
18 what I would refer to as senior executives within
19 neighbouring LDCs?

20 MR. TIM FRYER: Yes.

21 MR. PAUL BONWICK: And so I would
22 submit the exact opposite premise and say, to me --
23 and I'm asking your opinion -- would it not only make
24 sense that if you had a colleague visiting the area
25 from a neighbouring LDC that you might extend an

1 invitation for lunch, a phone call, golf, something
2 where -- especially considering your past?

3 MR. TIM FRYER: In this particular
4 case, it was because of our past social relationship.

5 MR. PAUL BONWICK: Fair enough. And
6 in fact, you have relationships, I assume, with people
7 from Veridian and -- I can't name all the LDCs within
8 the region but a lot of --

9 MR. TIM FRYER: Definitely --

10 MR. PAUL BONWICK: -- longstanding
11 relationships --

12 MR. TIM FRYER: -- definitely, yes.

13 MR. PAUL BONWICK: -- considering your
14 history with the -- within the LDC sector.

15 MR. TIM FRYER: Yes.

16 MR. PAUL BONWICK: Is it fair to say
17 that if they were coming in for some particular reason
18 and it was somebody you had a longstanding
19 relationship, you might extend the same invitation?

20 MR. TIM FRYER: Very possibly.

21 MR. PAUL BONWICK: I think that seems
22 reasonable in my perspective, not that I'm the Judge.

23 I want to address a couple of matters
24 just from a housekeeping perspective, and there seems
25 to be some confusion as it relates to dividends and

1 benefits.

2 And so as a person that's worked in the
3 financial world most of his life -- and I say that on
4 the accounting -- on the accountant side of things --
5 would you agree that, for example, if you owned
6 CIBC -- the building CIBC was in, and CIBC was paying
7 rent, and in the same breath, you were a shareholder
8 within CIBC.

9 Would you agree that the two (2) are
10 completely unlinked?

11 MR. TIM FRYER: I'm not sure I'm
12 following your question.

13 MR. PAUL BONWICK: So if the Bank of
14 Commerce was your tenant hypothetically speaking --

15 MR. TIM FRYER: Yes.

16 MR. PAUL BONWICK: -- and they had to
17 pay you rent because you owned the building --

18 MR. TIM FRYER: Yes.

19 MR. PAUL BONWICK: -- does that have
20 anything to do with the fact that you might
21 hypothetically own shares in the bank, and they pay a
22 dividend at the end of the year?

23 MR. TIM FRYER: I guess I'd say no.

24 MR. PAUL BONWICK: And getting at, of
25 course, is there two (2) -- in the accounting world,

1 they are two (2) very separate and distinct things.

2 MR. TIM FRYER: M-hm. Okay.

3 MR. PAUL BONWICK: Rents, being one
4 (1) thing.

5 MR. TIM FRYER: Yeah.

6 MR. PAUL BONWICK: Respectfully, if
7 you had a different tenant in there that was
8 publically traded or had shares -- it was a
9 corporation --

10 MR. TIM FRYER: M-hm.

11 MR. PAUL BONWICK: -- you own the
12 building, and they paid you rent. You lent them
13 money, and they paid you interest on the loan.

14 MR. TIM FRYER: Okay.

15 MR. PAUL BONWICK: That is a
16 completely separate calculation as it relates to
17 getting a dividend based on the shares you might have
18 on that company.

19 MR. TIM FRYER: It would be a
20 different accounting, yes.

21 MR. PAUL BONWICK: And certainly, it
22 would be reasonable for the person that owns the
23 building and lent the money and has some share
24 interest in it to separate those things and say, I'm
25 not getting a dividend because I'm getting the rent.

1 I'm getting the rent because I own the building.

2 MR. TIM FRYER: Yes.

3 MR. PAUL BONWICK: I'd like to spend a
4 little bit of time on this -- use of this word
5 "shotgun clause." And to Michael's point, it's one
6 (1) that I very rarely hear within the business
7 circles. I've seen many, many dozens of partnership
8 agreements in my life, both public and public-private,
9 and I can't recall ever seeing one.

10 And I'm interested in your opinion on
11 this where there's not a buy-sell provision. Can you
12 imagine a scenario -- and I'm -- where, in fact, you
13 entered into an agreement with PowerStream that you
14 had no option for exit?

15 MR. TIM FRYER: When I made the
16 suggestion about shotgun, it was because I felt that
17 that needed to be built into the agreement, the exit
18 strategy.

19 MR. PAUL BONWICK: The actual language
20 used within all legal documents -- certainly that I've
21 ever seen -- is a buy-sell provision when you get
22 contractually obligated -- not shotgun -- but I
23 understand where you're going.

24 MR. TIM FRYER: It was a -- it was a
25 layman's -- yes.

1 MR. PAUL BONWICK: Thank you. Within
2 the context of "shotgun," would you agree that comes
3 into play when a situation has unfolded whereby one
4 (1) partner, for whatever reasons, does not want to be
5 partners with the other?

6 MR. TIM FRYER: Most definitely that
7 would be the premise, yes.

8 MR. PAUL BONWICK: Thank you. Can you
9 imagine a scenario -- you're familiar with Alectra
10 obviously and formerly PowerStream?

11 MR. TIM FRYER: Yes.

12 MR. PAUL BONWICK: You're familiar
13 with its ownership makeup?

14 MR. TIM FRYER: Yes.

15 MR. PAUL BONWICK: The fact that its
16 Board of Directors hosts several regional, somewhat
17 big city mayors, people from the public at large, it's
18 quite a diverse Board?

19 MR. TIM FRYER: Most definitely.

20 MR. PAUL BONWICK: Would you agree
21 that it operates, certainly based on your assessment,
22 at the highest ethical standards?

23 MR. TIM FRYER: I would expect so.

24 MR. PAUL BONWICK: Same applies for
25 Mr. Bentz?

1 MR. TIM FRYER: Most certainly.

2 MR. PAUL BONWICK: And so is it
3 reasonable to think that it would be a challenge to
4 find a scenario where a publicly-traded LDC that has
5 become a partner with you would exercise that clause
6 under any scenario under -- other than when it's
7 really become an unworkable situation?

8 MR. TIM FRYER: I can't say anything
9 for certain because it would be based on the
10 circumstances.

11 MR. PAUL BONWICK: Thank you. Does
12 that seem reasonable though?

13 MR. TIM FRYER: It's -- it's
14 reasonable that Alectra would not be concerned with
15 exercising the --

16 MR. PAUL BONWICK: They're not in the
17 business of trying to create partnerships. Would you
18 agree with that, whereby they're getting past their
19 two (2) year birthday and then snapping up the LDC and
20 moving somebody aside?

21 MR. TIM FRYER: The only thing I can
22 say to that, Mr. Bonwick, is that the terms were
23 worked out with PowerStream, and then PowerStream
24 became Alectra. So it's difficult for me to talk
25 about Alectra in that -- at that point in time that we

1 were working on -- with PowerStream.

2 MR. PAUL BONWICK: And I think that's
3 quite fair. But realistically, you have 30-some years
4 experience within the industry. You work next door
5 with -- next door to Alectra, and so you can certainly
6 have some opinions on it, and that's all I was trying
7 to get at.

8 MR. TIM FRYER: Alectra's an acquirer
9 of utilities, so.

10 MR. PAUL BONWICK: There was some
11 discussion related to the partnership. And,
12 Mr. Fryer, when you said 50 percent or more is losing
13 control is your position, I took some time, and I just
14 kind of googled it.

15 The actual legal definition of a
16 minority shareholder whereby you're losing control:

17 "A shareholder who owns less than
18 50 percent of shares of a
19 corporation or stock is considered a
20 minority shareholder."

21 Would you agree that's when you lose
22 control?

23 MR. TIM FRYER: That's why I said
24 "may" when I said 50. It may put you in a situation
25 of not being in control.

1 MR. PAUL BONWICK: And if I could call
2 up the document Michael -- or sorry, no. I'll go to
3 this one (1) here -- shotgun. ALE0002782, page 43.
4 Top of that page, please.

5

6 (BRIEF PAUSE)

7

8 THE HONOURABLE FRANK MARROCCO: It's
9 got a nine (9) or a ten (10). It almost looks like
10 maybe it might be the other direction.

11 MR. PAUL BONWICK: All right.

12 THE HONOURABLE FRANK MARROCCO: No,
13 no. Try going up.

14 MR. PAUL BONWICK: Up a little bit,
15 please. Sorry. Provisions down one. Down, down,
16 down just a little bit. I'm hoping I haven't given
17 you the wrong file. "Arbitration procedures." There
18 it is right there at the bottom of 43.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: So I would submit,
22 based on the definition that I just read to you, in
23 fact Collingwood or Collus nor Alectra was neither in
24 a majority or a minority situation by way of the
25 buy-sell provision. Both had control over the

1 eventual sale or disposition of the shares.

2 Is that reasonable?

3 MR. TIM FRYER: Yes, they did.

4 MR. PAUL BONWICK: But in terms of
5 there's been some reflection over the course of the
6 last few days about Alectra being the size that it is
7 versus Collus being the size that it was and sort of
8 Alectra being the elephant in the room, so to speak.

9 But I'll refer you to 8.2 arbitration
10 procedures. There is an -- and you can scroll down a
11 little bit there, please -- there is an extensive
12 reference to various arbitration procedures that would
13 come into play should the competing interests or
14 should there be a disagreement between shareholders
15 far before you ever have to exercise a buy-sell
16 provision.

17 And I think you can see that there's
18 various forms of arbitration. There's legal
19 proceedings that would be involved. There's a series
20 of steps, in other words, that would lead up to --
21 should you have a disagreement with the larger player
22 that provides protections for the smaller participant.
23 Would you agree with that?

24 MR. TIM FRYER: If they choose to
25 follow these, yes.

1 MR. PAUL BONWICK: If they choose to
2 follow those. Thanks. And what I'm trying to get at,
3 Mr. Fryer, is just simply, it really didn't matter
4 that one (1) is much larger than the other. There is
5 a schedule in here that protects both parties as it
6 relates to arbitration if you've come to a matter that
7 you can't resolve with in the Board.

8 MR. TIM FRYER: If you choose to go
9 through the dispute process, yes.

10 MR. PAUL BONWICK: Thank you. You had
11 the opportunity to provide some testimony and some
12 cross-examination to KPMG yesterday.

13 If I understood your proof correctly --
14 and I want to make sure that I did -- you appear to
15 hold KPMG in high regard, as well as -- and I don't
16 know the names of the three people that were working
17 there. I apologize. But you appeared to hold them in
18 high regard.

19 MR. TIM FRYER: Certainly.

20 MR. PAUL BONWICK: You recognize the
21 services that KPMG has provided in the past, not only
22 to you but in terms of being a provincial global
23 player?

24 MR. TIM FRYER: Yes.

25 MR. PAUL BONWICK: And so would it

1 seem -- it would seem reasonable, based on that level
2 of confidence, that you would have -- and that level
3 of respect that you would have some level of
4 confidence in terms of how their -- and I'll use your
5 language -- trying to create a scenario where we're
6 comparing apples to apples in the financial section of
7 the assessment.

8 MR. TIM FRYER: Yes.

9 MR. PAUL BONWICK: And so they were
10 charged with that responsibility. You had confidence
11 in them, you recognize all their abilities, and they
12 presented you with apples to apples comparables.

13 MR. TIM FRYER: I felt they had, yes.

14 MR. PAUL BONWICK: If I could go to
15 FD001.4.1. I'll get the language right.

16

17 (BRIEF PAUSE)

18

19 MR. PAUL BONWICK: I apologize. I'm
20 thinking that is the scoring criteria. It's
21 CPS0006920.

22

23 (BRIEF PAUSE)

24

25 MR. PAUL BONWICK: Thank you. You've

1 walked through it -- just -- whoops -- you've walked
2 through it just a few moments ago with Michael
3 representing PowerStream -- some of your scoring.

4 I took the liberty over lunch of
5 scoring out the points you've allocated for
6 PowerStream.

7 MR. TIM FRYER: Okay.

8 MR. PAUL BONWICK: And in the overall
9 scoring, you scored PowerStream as -- if you could
10 scroll down -- I believe it was a total of sixty-two
11 (62) points for the non-financial portion.

12 MR. TIM FRYER: Yes.

13 MR. PAUL BONWICK: And I reference
14 that the sixty-two (62) points is actually the lowest
15 score out of the other eight (8) participants --

16 MR. TIM FRYER: Okay.

17 MR. PAUL BONWICK: -- allotted to
18 PowerStream.

19 MR. TIM FRYER: Okay.

20 MR. PAUL BONWICK: I also took the
21 scoring calculation for you on Hydro.

22 MR. TIM FRYER: Yes.

23 MR. PAUL BONWICK: And if -- you're
24 welcome to take a count there -- but I scored you at
25 26 on Hydro. Would you accept that?

1 MR. TIM FRYER: I -- it would have
2 been around that, yes.

3 MR. PAUL BONWICK: So you scored
4 PowerStream in the top end of the criteria for the
5 non-financially related matters.

6 MR. TIM FRYER: Yes.

7 MR. PAUL BONWICK: You scored
8 Hydro One the lowest in the non-financially related
9 matters.

10 MR. TIM FRYER: Yes.

11 MR. PAUL BONWICK: And so I would
12 submit or would you agree that if you gave Hydro One
13 the thirty (30) points, that would take you to fifty-
14 six (56) points?

15 MR. TIM FRYER: Thirty (30) points for
16 what?

17 MR. PAUL BONWICK: The financial
18 scoring --

19 MR. TIM FRYER: Yes, yes.

20 MR. PAUL BONWICK: It was my
21 understanding it was a financial scoring. I apologize
22 for not being clear on that.

23 MR. TIM FRYER: Yes.

24 MR. PAUL BONWICK: You gave Hydro One
25 twenty-six (26) points on the non-financial scoring.

1 MR. TIM FRYER: Yes.

2 MR. PAUL BONWICK: It totals fifty-six
3 (56) points.

4 MR. TIM FRYER: Yes.

5 MR. PAUL BONWICK: Going back to the
6 level of confidence that you've demonstrated in KPMG,
7 KPMG, as you recall from the screen earlier today,
8 scored -- in the apples and apples group parable --
9 scored Hydro One, for argument's sake, about \$900,000
10 higher than the second closest bid which was
11 PowerStream. Do you recall that?

12 MR. TIM FRYER: So not necessarily
13 "scored," but showed us that the total value. That is
14 what you said.

15 MR. PAUL BONWICK: Thanks very much
16 for using that language because you're using better
17 language than I am. I would agree, so I'll rephrase
18 it. They showed you in an apples to apples comparison
19 that Hydro One was approximately \$900,000 higher than
20 the second place bid which was PowerStream.

21 MR. TIM FRYER: That's what I recall,
22 yes.

23 MR. PAUL BONWICK: And so, is it
24 reasonable to assume that PowerStream may have got
25 half the points that you would have allocated to Hydro

1 One, being the second place finish?

2 MR. TIM FRYER: Hydro One got thirty
3 (30) points --

4 MR. PAUL BONWICK: Right. But I can't
5 see your financial score, sorry.

6 MR. TIM FRYER: But -- but thirty (30)
7 times -- everyone had to score then with the highest
8 financial scoring --

9 MR. PAUL BONWICK: And I apprec --

10 MR. TIM FRYER: -- which was thirty
11 (30).

12 MR. PAUL BONWICK: I -- I appreciate
13 that just by the math that --

14 MR. TIM FRYER: Yeah.

15 MR. PAUL BONWICK: -- was done. But
16 when you go to the second place score, you don't know
17 if somebody scored -- you don't know exactly what the
18 scores are because it doesn't divide evenly?

19 MR. TIM FRYER: The -- now you're
20 referring to the PowerStream score --

21 MR. PAUL BONWICK: Correct.

22 MR. TIM FRYER: -- that averaged out
23 to twenty-seven (27)?

24 MR. PAUL BONWICK: So, what I'm
25 getting at is, irrespective of what score you

1 allocated for the financial component because we can't
2 see them --

3 MR. TIM FRYER: Yes.

4 MR. PAUL BONWICK: -- no matter what
5 score you allocated to PowerStream, PowerStream was
6 going to be the clear winner?

7 MR. TIM FRYER: Yes.

8 MR. PAUL BONWICK: And so, when I take
9 everybody else out of the equation and I suggest, if
10 you were the only one (1) scoring, the eventual
11 product would have been exactly the same?

12 MR. TIM FRYER: PowerStream.

13 MR. PAUL BONWICK: PowerStream. Thank
14 you.

15 THE HONOURABLE FRANK MARROCCO: I -- I
16 -- maybe I missed it, but did you -- you agreed with
17 that, did you, or --

18 MR. TIM FRYER: Yes. That --

19 THE HONOURABLE FRANK MARROCCO: Okay.

20 MR. TIM FRYER: I was stating who it
21 would have been, yes.

22 THE HONOURABLE FRANK MARROCCO: Thank
23 you. That was your last question, Mr. Bonwick?

24 MR. PAUL BONWICK: No.

25 THE HONOURABLE FRANK MARROCCO: Oh.

1 No, no, I wasn't trying to hurry you along.

2 MR. PAUL BONWICK: I can see that far
3 though. Like, I get...

4

5 CONTINUED BY MR. PAUL BONWICK:

6 MR. PAUL BONWICK: I'd like to talk a
7 little bit about your thirty (30) years, or
8 thereabouts, with --

9 MR. TIM FRYER: M-hm.

10 MR. PAUL BONWICK: -- with Collus.
11 You had a long career with one (1) employer, which
12 isn't always heard of today. Clearly, there was a
13 high level of confidence in your abilities throughout
14 that period of time or, quite frankly, it wouldn't
15 have worked. Is that a reasonable statement?

16 MR. TIM FRYER: And the job was a
17 great job.

18 MR. PAUL BONWICK: And -- thank you.
19 And irrespective of your love for the job and the
20 community, there's been a lot of evidence shown that
21 you're not afraid to break from the fray and give a
22 counter opinion if you believe it's in the best
23 interest of either the utility or the community.

24 Is that a fair statement?

25 MR. TIM FRYER: Yes.

1 MR. PAUL BONWICK: And so, while some
2 people may not like the fact that you're providing
3 challenging comments, you're simply doing it because
4 you believe in your heart that this is information
5 that's of value?

6 MR. TIM FRYER: Yes.

7 MR. PAUL BONWICK: So, I want to link
8 that back to the fact that, in all the assessments
9 that you did throughout the process on the Strategic
10 Ta -- I never get the acronym right, the Strategic
11 Task Force, was done based on what you thought was in
12 the best interest of the community?

13 MR. TIM FRYER: Yes.

14 MR. PAUL BONWICK: I did want to
15 clarify one (1) thing. And I do appreciate Council
16 going through this this morning, but I -- I open up
17 every conversation the same way.

18 Over the course of the last nine (9)
19 years, have we had any conversations about the share
20 sale or any matter related to this issue?

21 MR. TIM FRYER: No, we have not.

22 MR. PAUL BONWICK: Just to be
23 perfectly clear, during the time you were involved
24 with the Strategic Task Force, did I have any
25 engagement with you about scoring criter -- period,

1 any engagement?

2 MR. TIM FRYER: No, we did not.

3 MR. PAUL BONWICK: Thank you.

4 Throughout this thirty (30) years, so you get to give
5 a barometer or a measuring stick that many can't, you
6 had a management team, Cindy Shuttleworth, if I'm
7 pronouncing her name properly? Or sorry, no.

8 MR. TIM FRYER: So, not through the
9 thirty (30) years.

10 MR. PAUL BONWICK: No, no, no. I
11 understand. I'm -- sorry, I'll get to that.

12 MR. TIM FRYER: Yeah.

13 MR. PAUL BONWICK: You had Cindy
14 Shuttleworth and, I apologize if I'm pronouncing the
15 name wrong, Pam -- Pam Hogg, Larry Irwin, Marcus
16 Firman, Ed Houghton, of course, yourself.

17 That sort of represented, for lack of a
18 better description, a core management team?

19 MR. TIM FRYER: They were senior
20 management people, yes, for the utility.

21 MR. PAUL BONWICK: Senior management
22 people?

23 MR. TIM FRYER: Yes.

24 MR. PAUL BONWICK: Can you speak to
25 your experience in terms of the relationship that that

1 team had, namely the Collus or the utilities group,
2 had with the Town of Collingwood staff leading up to
3 2012? So, I'm reflecting on Carmen Morrison, Gord
4 Norris, the senior management staff at town hall,
5 Councils.

6 What was the -- could you give us a
7 flavour of what the environment was like between these
8 two (2) groups of senior managers?

9 MR. TIM FRYER: I certainly would
10 consider it at least cordial and probably even more so
11 a very good working relationship.

12 MR. PAUL BONWICK: Would it be fair to
13 say almost familiar in nature that Christmas parties
14 were attended, there was -- there was really a very
15 strong positive, constructive working relationship
16 between the two (2) groups?

17 MR. TIM FRYER: Yes.

18 MR. PAUL BONWICK: I'd like to move
19 forward to 2012, and recognizing you're no longer with
20 Collus PowerStream at 2012, if I understand correctly?

21 MR. TIM FRYER: September 30th, yes.

22 MR. PAUL BONWICK: But in November
23 2012 you did take a seat on Council, correct, or was
24 that '14?

25 MR. TIM FRYER: That would have been

1 '14.

2 MR. PAUL BONWICK: That -- '14, sorry.
3 Thank you for the correction on that. So, when you
4 took a seat on Council in 2014, how did you find the
5 relationship between this longstanding family of inner
6 workings -- how did you find the relationship under
7 the leadership of Mr. Brown and Council?

8 MR. TIM FRYER: It had changed --

9 MR. PAUL BONWICK: I think for the
10 benefit of --

11 MR. TIM FRYER: -- to a degree. I --
12 I won't try to assess how much it changed, but there
13 was a change.

14 MR. PAUL BONWICK: And I'm going to
15 press you a little bit on this because, in fairness,
16 you worked with these people for many years. I'm sure
17 you maintained some level of -- of relationship with
18 at least some of them after you left Collus. You're
19 from the community.

20 I don't want to lead you as a witness.
21 I wanted to come out and give a reasonable description
22 in terms of how you thought the relationship had
23 unfolded to and where it had gone.

24 MR. TIM FRYER: I guess I can only
25 comment on my relationship. And, as a member of

1 Council, unfortunately, I did find that the
2 relationships I had had changed.

3 MR. PAUL BONWICK: Would it be fair to
4 say that under CAO Brown and -- and that Council in
5 2014, the -- the situation had become unworkable,
6 caustic, an incredibly challenging environment?

7 MR. TIM FRYER: I wouldn't say that
8 only because I -- I wouldn't have been privy to the
9 kinds of things that would have to get me to draw that
10 conclusion.

11 MR. PAUL BONWICK: Fair enough. Are
12 you aware that several of your colleagues have --
13 former colleagues had filed complaints in terms of
14 harassment and challenges as it related to the
15 relationship between Collus and the municipality?

16 MR. TIM FRYER: No.

17 MR. PAUL BONWICK: You weren't aware
18 of that.

19

20 (BRIEF PAUSE)

21

22 MR. PAUL BONWICK: During your time at
23 Collus were you ever provided a bonus at the end of
24 the year, a financial bonus?

25 MR. TIM FRYER: We were a performance-

1 based system, yes.

2 MR. PAUL BONWICK: And so, to the
3 question at hand, you would have been provided annual
4 bonuses if you had met your objectives or delivered --

5 MR. TIM FRYER: Yes.

6 MR. PAUL BONWICK: -- a good result?

7 MR. TIM FRYER: Yes.

8 MR. PAUL BONWICK: Were those bonuses
9 ever reflected in the public domain?

10 MR. TIM FRYER: No.

11 MR. PAUL BONWICK: During your time
12 with Collus after the Provincial restructuring was
13 your wage ever brought out into the public domain?
14 And I'm thinking more specifically -- I think they
15 call it the sunshine list.

16 MR. TIM FRYER: No.

17 MR. PAUL BONWICK: Why was that?

18 MR. TIM FRYER: It didn't have the
19 requirements of the sunshine list. The sunshine list
20 was municipal, where there was funding mechanisms
21 available to municipalities, therefore, the government
22 required that you had to publish your employee payment
23 information.

24 MR. PAUL BONWICK: So, is it
25 reasonable to state that, in fact, your Board of

1 Directors or your CAO was under the structure it had
2 prohibited from publically announcing your wage or
3 your bonuses?

4 MR. TIM FRYER: It wouldn't have been
5 prohibited because the Board could choose through
6 proper contractual terms with its employees that it
7 could put certain information out, maybe a -- a
8 payment range or something like that.

9 But it wouldn't have been necessarily
10 prohibited.

11 MR. PAUL BONWICK: I -- I appreciate
12 they could have made contractual changes, but within
13 the existing frame, the work that you were operating
14 within, was the border, was the president and CEO in a
15 position to publicly announce your wage or your
16 bonuses?

17 MR. TIM FRYER: Not the specifics.

18 MR. PAUL BONWICK: Thank you.

19 Was it common in the industry that that
20 ever happened, in the LDC world?

21 MR. TIM FRYER: Not common, a few did.

22 MR. PAUL BONWICK: I'm going to be
23 just a couple more minutes here, Your Honour.

24 I'd -- I'd like to just address a
25 couple of comments Mr. McDowell raised with you

1 earlier today.

2 And my world words are very important
3 and description of services are very important, titles
4 are very important, and so I've had the benefit of
5 working with business consultants, as have you,
6 correct?

7 MR. TIM FRYER: Yes.

8 MR. PAUL BONWICK: You spoke about the
9 high degree of confidence that you have in KPMG?

10 MR. TIM FRYER: Yes.

11 MR. PAUL BONWICK: You recognize that
12 KPMG, when they provided the services, had one (1)
13 person that was providing financial advice?

14 MR. TIM FRYER: Yes.

15 MR. PAUL BONWICK: You had one (1)
16 person providing business advice, strategic advice as
17 it related to scoring structure?

18 MR. TIM FRYER: Yes.

19 MR. PAUL BONWICK: Two (2) very
20 separate things in reality.

21 MR. TIM FRYER: Yes.

22 MR. PAUL BONWICK: One (1) is a --
23 kind of an accounting process, if I may, and I
24 apologize if I'm not using the right language that it
25 -- that you would use, but it's kind of a -- it's a

1 numbers crunching exercise. The other one (1) is a
2 business strategic kind of exercise.

3 MR. TIM FRYER: Yes.

4 MR. PAUL BONWICK: And so I was
5 confused when you were led with questions about a
6 trusted business advisor for the accountant that was
7 working for Gaviller's, and in my mind using the KPMG
8 analogy, when an accountant from Gavillers who deals
9 with the costing and the accounting, typically not be
10 moving outside their fray to start talking about
11 whether you should have a shotgun provision or not
12 have a shotgun provision, about whether you should
13 have share sales or not have share sales, but rather
14 talk about what the implications of those decisions
15 are.

16 MR. TIM FRYER: I can't answer that
17 because I don't know the experience.

18 MR. PAUL BONWICK: Okay, you work with
19 Mr. Neate, and I apologize I've never met him so if I
20 have mispronounced his name, is it not typical for an
21 accountant to offer advice related specifically to
22 financial matters and the implications of strategic
23 business decisions, what that means in -- from a
24 financial perspective?

25 MR. TIM FRYER: In the case of our --

1 our external auditor and -- and the information they
2 were providing us, it had a -- it stretched across
3 corporate structure and -- and those types of things.

4 MR. PAUL BONWICK: So it's -- is it
5 reasonable to say you wouldn't have hired Mr. Neate or
6 brought Mr. Neate in to give you advice in terms of
7 how you might develop the back end billing, how you
8 might develop a new service for Collus, would you
9 normally use his services for something like that?

10 MR. TIM FRYER: No.

11 MR. PAUL BONWICK: Would you normally
12 bring him in to help you develop a share agreement
13 with a third-party?

14 MR. TIM FRYER: No.

15 MR. PAUL BONWICK: And so what I'm
16 trying to get at is it's kind of a strange thing for
17 an accountant to offer advice in terms of how the
18 structure of the shared service agreement should be,
19 but rather does it not seem reasonable that Mr. Neate
20 should be offering advice on the implications of those
21 decisions financially?

22 MR. TIM FRYER: Mr. Neate was brought
23 in for his expertise in regards to tax and -- and
24 knowledge of the -- but did participate in the
25 meetings where those information things were -- were

1 shared and -- and I guess he felt he -- he had a
2 reason to take note of it.

3 MR. PAUL BONWICK: I've been in that
4 environment. Everybody's an expert. I just want to
5 close out with the solar vent issue, again in keeping
6 with this.

7 Hypothetically, of course, you -- you
8 spoke positively about the meeting and the
9 presentation regarding the solar attic fan earlier
10 today, is that correct?

11 MR. TIM FRYER: I have a recollection
12 that it was done and approved by the Board, yes.

13 MR. PAUL BONWICK: Seemed to be a
14 positive decision based on what I read in the minutes,
15 I wasn't at the meeting.

16 MR. TIM FRYER: They -- they certainly
17 accepted that, yes.

18 MR. PAUL BONWICK: Hypothetically, of
19 course, if you had shares or financial interest in my
20 company, do you think you should have declared a
21 conflict?

22 MR. TIM FRYER: In which company is
23 that?

24 MR. PAUL BONWICK: The one (1) that
25 was working with the solar attic vents that you talked

1 about earlier?

2 MR. TIM FRYER: That's hypothetical
3 and I'm not going to speculate how I would have acted.

4 MR. PAUL BONWICK: But I think in
5 fairness, when Mr. McDowell put it to you and said,
6 okay, we don't know for sure, but hypothetically if
7 Mr. Houghton had shares, you did give an answer on
8 that one.

9 And so I think the real answer is you
10 don't have any interest at all, never have, never
11 will, financial interest in -- in that particular
12 entity, and so there would be no need for you to be
13 concerned about declaring conflicts, is that a fair
14 statement?

15 MR. TIM FRYER: No, because I would
16 look at it in my fiduciary responsibility based on my
17 professional degree.

18 MR. PAUL BONWICK: I think I -- I'm
19 going to take responsibility for not answering the --
20 asking the question properly.

21 You have never had any interest in any
22 of that product or what was presented to the Board
23 that day. And so the hypothetical really is
24 irrelevant because you never had a conflict on it,
25 correct?

1 MR. WILLIAM MCDOWELL: Well, I think
2 Mr. Bonwick may have misunderstood the question that I
3 was putting to the witness, which was if Mr. Houghton
4 had an interest, whether Mr. Houghton ought to have
5 declared, not --

6 MR. PAUL BONWICK: Actually, it is in
7 a way which hypothetically, and I could --

8 THE HONOURABLE FRANK MARROCCO: I
9 think the question that Mr. Bonwick is trying to put
10 to the witnesses is if you don't own -- if you didn't
11 own any shares then you don't have a conflict, I think
12 that's the question he's --

13 MR. WILLIAM MCDOWELL: If that's the
14 question, that's a fair question.

15 THE HONOURABLE FRANK MARROCCO: I
16 don't know, Mr. Bonwick, if I understood what you were
17 asking, but if that was it --

18 MR. PAUL BONWICK: That is exactly it,
19 Your Honour, I was trying to go down the same path as
20 -- leading the witness on a hypothetical that of
21 course doesn't exist, and I was trying to correct the
22 record for Mr. Fryer, letting him know that at no
23 point has he ever had a conflict in the -- in this
24 scenario, but rather I was using sort of the same
25 framework Mr. Fryer -- Mr. McDowell had used for

1 somebody else.

2 MR. TIM FRYER: But I'm still confused
3 on what the question is.

4 THE HONOURABLE FRANK MARROCCO: Well,
5 I'm going to put it -- I think it's a question of
6 argument, I get the question.

7

8 CONTINUED BY MR. PAUL BONWICK:

9 MR. PAUL BONWICK: When you announced
10 your retirement date, it was after the OEB decision,
11 is that what I understood from an earlier
12 conversation?

13 MR. TIM FRYER: When they became aware
14 that the OEB had approved the sale, yes.

15 MR. PAUL BONWICK: How -- how long did
16 you stay in your position or how much notice did you
17 give in terms of sticking around after the decision
18 was made?

19 MR. TIM FRYER: Between three (3) and
20 four (4) months, probably.

21 MR. PAUL BONWICK: So I would assume
22 that's more about a succession planning exercise and
23 trying to help with the transfer of files and making
24 sure people, your colleagues, are up to speed?

25 MR. TIM FRYER: And that list that we

1 had talked about earlier, the major projects would
2 have been trying to get some of them finalized because
3 I would've been the sole person working on it, maybe.

4 And so just try to get those things
5 done and -- and -- in a way.

6 MR. PAUL BONWICK: I did go through
7 that list and it was quite extensive, and I've seen
8 similar lists for other CFOs working in other
9 utilities.

10 Is it fair to say that many things on
11 that list were actually shared responsibilities, not
12 simply yours, but --

13 MR. TIM FRYER: We have people in the
14 finance department, yes.

15 MR. PAUL BONWICK: You -- you kind of
16 handled the financial component of it, you and your
17 team.

18 MR. TIM FRYER: Yes.

19 MR. PAUL BONWICK: But many other
20 things beyond that on each section was the
21 responsibility of Darius, Mr. Houghton, any number of
22 different people --

23 MR. TIM FRYER: At that particular
24 time, Darius had already retired, but I know what
25 you're saying and -- and -- and definitely it was --

1 it was shared work.

2 MR. PAUL BONWICK: Did you believe
3 when the decision was finally made at the time, it's
4 easy to reflect back with a lens now and -- did you
5 believe at the time that the best possible decision
6 was made for Collus and the tax payers based on the
7 process that unfolded?

8 MR. TIM FRYER: I believe that the
9 process had been appropriate to meet the requests of
10 the shareholder.

11 MR. PAUL BONWICK: Thank you, that
12 ends my questions.

13 THE HONOURABLE FRANK MARROCCO: Thank
14 you. Any re-examination?

15 So Mr. Fryer, you've been answering
16 questions all day. You're a witness at this stage,
17 you're not going to ask yourself any questions?

18 MR. TIM FRYER: No, I'm not going to
19 do that.

20 THE HONOURABLE FRANK MARROCCO: If
21 there's something that you want to explain or
22 something you -- go ahead, but I -- I'm -- it's not a
23 time for submissions and you're not going to be asking
24 yourself questions.

25 MR. TIM FRYER: I understand that,

1 sir, and -- and your counsel had explained to me that
2 I might have the opportunity to make some remarks,
3 after the questioning. I do --

4 THE HONOURABLE FRANK MARROCCO: But it
5 doesn't have to be in the nature of the kind of
6 submission that would be made at the closing or
7 something like that.

8 If there's something you want to
9 explain or something you want to say, then go ahead.

10 MR. TIM FRYER: And -- and I was going
11 to say that it's been a long day and -- and I've had
12 quite a bit of testimony because I guess the thing
13 that I would be looking to do would be try to make
14 sure that I put something in so that I could use it in
15 my closing submission, and I -- and -- and I would've
16 hoped that I could have gone through the transcript to
17 have a look at that.

18 THE HONOURABLE FRANK MARROCCO: I'm --
19 I'm prepared to do that. Give you the opportunity to
20 do that and hear you tomorrow morning.

21 At least I don't see any reason that --
22 yes. So that we can accommodate you tomorrow morning.

23 But this is not a closing submission or
24 anything of that nature. It's if you've left
25 something out or there's something you want to

1 explain, then you'll have the -- then that's what you
2 would be doing.

3 MR. TIM FRYER: And I will say that
4 I'm not anticipating anything significant because I
5 recognize that I'm still a participant as well. And
6 if there's something that I feel I need to get into
7 evidence, I have the opportunity through the other
8 witnesses, so.

9 THE HONOURABLE FRANK MARROCCO:
10 Precisely, precisely.

11 All right, so then we'll adjourn until
12 tomorrow morning.

13 MR. TIM FRYER: Okay.

14 MR. WILLIAM MCDOWELL: Sorry, I
15 wonder, just hearing Mr. Fryer, whether -- if Mr.
16 Fryer goes home tonight and looks at the transcript
17 and -- and jots down some points, whether it might be
18 in everybody's interest if he simply filed that rather
19 than coming and reading it.

20 THE HONOURABLE FRANK MARROCCO: Let me
21 ask him.

22 Do you want to -- do you want to do it
23 that way?

24 MR. TIM FRYER: If -- if -- if I think
25 --

1 THE HONOURABLE FRANK MARROCCO: We'll
2 receive it as an exhibit.

3 MR. TIM FRYER: Yes, as I said, I'm
4 not -- I'm not anticipating anything significant. So
5 as long as it was just a matter of maybe correcting
6 one (1) or two (2) things, I can do it either way so.

7 THE HONOURABLE FRANK MARROCCO: Well,
8 if you can do it simply by telling us, that's fine.
9 If you decide to reduce it to writing, assuming you
10 don't say anything outrageous, we'll receive it as a -
11 - as a -- as the clarification that -- that you wanted
12 to make.

13 MR. TIM FRYER: Yes.

14 THE HONOURABLE FRANK MARROCCO: So you
15 can do it in writing if you want to.

16 MR. TIM FRYER: Yes, and as I said, I
17 don't anticipate anything significant THE right now.

18 THE HONOURABLE FRANK MARROCCO: All
19 right. Tomorrow morning. Thank you.

20

21 --- Upon adjourning at 5:07 p.m.

22 Certified Correct,

23

24 _____

25 Wendy Woodworth, Ms.

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