



“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 30th, 2019

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APPEARANCES

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(No Counsel)) For Timothy Fryer
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1 --- Upon commencing at 9:03 a.m.

2

3 DENNIS NOLAN, Previously Sworn

4

5 MR. JOHN MATHER: Good Morning, Mr.

6 Nolan.

7 MR. DENNIS NOLAN: Good Morning.

8 THE REGISTRAR: Mr. Nolan, you

9 understand you're still under oath?

10 MR. DENNIS NOLAN: I do. Thank you.

11

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

13 MR. JOHN MATHER: If we could pull up

14 ALE412. This was the email we looked at before we

15 broke yesterday. I just have a couple more questions

16 about it.

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: And if we could

21 scroll down to the bottom. In the very last sentence,

22 Mr. Bonwick writes:

23 "At this time, I'm recommending we

24 include a provision for a 50/50

25 ownership position with the -- with

1 a cavity [I assume caveat] that
2 all necessary protection and
3 controls are in place, ensuring the
4 eventual consolidation we have
5 targeted."

6 Do you have understand -- any
7 understanding about what he meant by the "eventual
8 consolidation we have targeted"?

9 MR. DENNIS NOLAN: I'm not sure what -
10 - what was in his mind. I think it may -- may have
11 been that the consolidation -- possible consolidation
12 consistent with regional consolidation, including
13 those in the CHEC group in the area.

14 MR. JOHN MATHER: At the -- at this
15 period in time when PowerStream is anticipating an RFP
16 potentially for 50 percent, was there any discussions
17 about -- within Powerstream that you're of about, we
18 could bid on 50 percent and then a long-term goal
19 would be to acquire a hundred percent?

20 MR. DENNIS NOLAN: I -- I think we
21 were always open to that possibility thinking that if
22 we had a successful partnership and there was comfort
23 within that the -- the Town about working with us,
24 that that might possibly happen. But, our focus was
25 on making this work.

1 MR. JOHN MATHER: And I appreciate,
2 these aren't your words, but do you have any sense or
3 understanding of what necessary protections and
4 controls would need to be in place in order to ensure
5 the eventual consolidation that had been targeted if
6 it was the growth within the CHEC group, as you
7 suggested?

8 MR. DENNIS NOLAN: No, I don't.

9 MR. JOHN MATHER: I take it, given
10 your experience in the industry, that in 2011 you were
11 familiar with David McFadden?

12 MR. DENNIS NOLAN: Yes.

13 MR. JOHN MATHER: Do you recall when
14 you first became aware that Mr. McFadden was a
15 director of Collus Power?

16 MR. DENNIS NOLAN: Some time during
17 this process, I -- I was aware. I can't -- I can't
18 pinpoint the -- the date. You mean prior -- prior to
19 the RFP, I was aware.

20 MR. JOHN MATHER: Prior to the RFP,
21 did you know he was also a member of the Strategic
22 Task Team that was developing the RFP and would be
23 scoring it?

24 MR. DENNIS NOLAN: I'm not positive,
25 but I would -- I knew he was on the board. It

1 wouldn't -- it wouldn't surprise me at all that he
2 was. I -- I may have known that. I -- I -- I can't
3 point, you know, pinpoint a specific recollection.
4 It'd be consistent with his position, et cetera.

5 MR. JOHN MATHER: If we pull up AFF7?

6

7 (BRIEF PAUSE)

8

9 MR. JOHN MATHER: While it's being --
10 so this is an affidavit that Robert Hull has provided
11 to the Inquiry. It's my understanding that Mr. Hull
12 was a partner at Gowlings and that he represented
13 PowerStream with respect to the transaction and
14 beginning in the RFP process as well.

15 Is that correct?

16 MR. DENNIS NOLAN: That is correct.

17 MR. JOHN MATHER: And at this point in
18 time in 2000 -- September 2011, would you have known
19 that Mr. McFadden and Mr. Hull were partners at
20 Gowlings?

21 MR. DENNIS NOLAN: Yes.

22 MR. JOHN MATHER: So, if we could
23 scroll down. Mr. Hull's affidavit contemp -- speaks
24 about a conversation he had with Mr. McFadden on
25 September 28th, 2011 about the upcoming RFP. Mr. Hull

1 states at paragraph 5 on September 27th, 2011:

2 "PowerStream asked me to make
3 inquiries of David McFadden about
4 the process."

5 Do you know who at PowerStream asked
6 Mr. Hull to make inquiries of Mr. McFadden?

7 MR. DENNIS NOLAN: Yes, I did.

8 MR. JOHN MATHER: Can you tell me
9 about what led you to ask Mr. Hull to make those
10 inquiries?

11 MR. DENNIS NOLAN: Well, I was asked
12 if it would be possible to ask Mr. Hull to make those
13 inquiries and I think the -- the sole purpose was one,
14 (1) to have assurance that they were proceeding with
15 the RFP. And it was -- it was within the context and
16 -- and it was made very clear to me -- I mean by me,
17 pardon me -- even before calling Mr. Hull, as to what,
18 if anything, Mr. McFadden was free to tell us.

19 And that was the nature of the
20 conversation that -- with Mr. Hull and it's something
21 that he underscored as well but we were in -- in total
22 agreement on -- on that. So it was, one, (1)
23 confirmation that it was going ahead. But, it was
24 also to try to -- to -- if he could provide any
25 clarity, if he could, about the 50/50 in particular,

1 whether the -- there was -- would be room for any
2 alternative. So that's -- that's what I recall being
3 the -- the purpose of it, knowing that he may not be
4 at liberty to say or that he might give us some
5 direction confirming just the -- the general timing
6 and on the -- on the 50/50.

7 MR. JOHN MATHER: You said that you
8 were asked to ask Robert Hull. Who asked you to
9 initiate this process?

10 MR. DENNIS NOLAN: I don't know if it
11 was -- if it was Brian Bentz or if it came from, you
12 know, a -- a discussion with him or -- or with John
13 Glicksman. It was -- it was likely Brian.

14 MR. JOHN MATHER: So, you said that
15 you wanted to find out more, seek some -- sees -- find
16 some assurances that the RFP was proceeding, get a
17 sense of the 50 percent ownership scenario and whether
18 alternatives would be allowable or available to be bid
19 on.

20 Was there anything else you were
21 seeking, that you recall from this conversation?

22 MR. DENNIS NOLAN: No.

23 MR. JOHN MATHER: So, it sounds like
24 either you or Mr. Hull or perhaps both of you turned
25 your mind to the fact that there may be information

1 Mr. McFadden could not share or may not be at liberty
2 to share.

3 Did you have a sense of what sort of
4 information that might be?

5 MR. DENNIS NOLAN: I -- I think it was
6 -- it was within the view of being respectful of Mr.
7 McFadden and that, as Mr. Hull and I discussed and --
8 and we were on -- exactly on the same page, that he --
9 he -- you know, he may not be able to tell us
10 anything. He may be able to, you know, provide us
11 with -- with some information that -- whatever he felt
12 that he was at liberty to provide, that would be
13 proper for him to provide, but we didn't want to put
14 Mr. McFadden in an inappropriate position and, you
15 know, we had that discussion.

16 MR. JOHN MATHER: What did you -- when
17 you say you didn't want to put Mr. McFadden in an
18 inappropriate position, what were you contemplating
19 that inappropriate --

20 MR. DENNIS NOLAN: Well --

21 MR. JOHN MATHER: -- inappropriate
22 position to be?

23 MR. DENNIS NOLAN: -- simply that we
24 were -- we would not ask him -- we would ask very
25 respectfully if -- if there's -- if he was at liberty

1 to provide or give us any direction with -- with
2 respect to these points and -- and nothing further.

3 MR. JOHN MATHER: Did you have any
4 concerns at all that Mr. Hull and Mr. McFadden were
5 partners in the same law firm?

6 MR. DENNIS NOLAN: Concerns about
7 what?

8 MR. JOHN MATHER: For instance, Mr.
9 Hull is -- is PowerStream's representative and you're
10 asking Mr. Hull to reach out to his partner who is
11 also a member of the Board of Directors of the
12 potential vendor, or the asset that's being sold, not
13 the vendor.

14 MR. DENNIS NOLAN: No, I didn't have a
15 concern because I knew that Mr. McFadden would --
16 would not -- not provide anything that -- that he
17 would -- would be im -- improper, and that there
18 wasn't a con -- a conflict in -- in the firm. The
19 firm wasn't acting for -- Mr. McFadden was not acting
20 as a lawyer for -- for Collus.

21 MR. JOHN MATHER: Did you have a
22 discussion with Mr. Hull that you can recall about
23 whether or not there was a conflict or was that
24 something you -- an assessment --

25 MR. DENNIS NOLAN: No.

1 MR. JOHN MATHER: -- you made on your
2 own?

3 MR. DENNIS NOLAN: No. We didn't have
4 a discussion about that. It was -- the only
5 discussion was, that I can recall, is exactly what I
6 said, is, you know, can you enquire if Mr. McFadden
7 having a discussion that -- recognize that he -- he
8 may not be at -- at liberty or feel comfortable with -
9 - with answering the questions that -- that we were
10 posing.

11 MR. JOHN MATHER: Why did PowerStream
12 go through Mr. Hull as a channel to -- to obtain
13 information about whether the RFP was going to proceed
14 and whether or not there -- alternative bids for 50
15 percent could be put in --

16 MR. DENNIS NOLAN: He was acting on
17 the transaction for us. There was no reason not to.

18 MR. JOHN MATHER: Isn't that what Mr.
19 Bonwick had been retained to do, to obtain that sort
20 of information?

21 MR. DENNIS NOLAN: I -- I don't think,
22 you know, exclusively if -- if -- if it was, you know,
23 for me, that I could properly obtain clarification.
24 It never -- never entered my -- my mind to have Mr.
25 Bonwick enquire.

1 MR. JOHN MATHER: Do you know if
2 anyone at PowerStream also asked Mr. Bonwick to make
3 enquiries in or around September 27th?

4 MR. DENNIS NOLAN: I have no knowledge
5 of that.

6 MR. JOHN MATHER: So, is any reason --
7 sorry. Let me put it this way: do you know if anyone
8 asked Ed Houghton or Dean Muncaster about the
9 information you were seeking?

10 MR. DENNIS NOLAN: I -- I don't know.
11 It wouldn't -- it wouldn't surprise me if that was
12 something that you would ask the CEO for clarification
13 of. I don't have any personal knowledge of any such
14 conversation.

15 MR. JOHN MATHER: So you don't know
16 either way whether or not that was -- any -- any
17 enquiries were made of Mr. Houghton or Mr. Muncaster?

18 MR. DENNIS NOLAN: Not that I can
19 recall, no.

20 MR. JOHN MATHER: But you -- you, I
21 take from your answer, agree take that would also be
22 an avenue through which this information could be
23 solicited, if it was avail -- available to be
24 disclosed?

25 MR. DENNIS NOLAN: Yes.

1 MR. JOHN MATHER: So, this
2 contemplates a conversation with David McFadden on
3 Decem -- sorry, September 20th, 2011.

4 At that point in time, what information
5 did you have about the -- whether or not an RFP was
6 going to proceed and the timing of it, if was going to
7 proceed?

8 MR. DENNIS NOLAN: And my recollection
9 is that we thought that it was going -- going ahead
10 and it was -- and I think it was more a belt and
11 suspenders assurance seeking, but of course we didn't
12 know until it was released. Things -- things happen.

13 MR. JOHN MATHER: And I'm just trying
14 to get a sense of if -- you know, if you -- if you
15 felt that it was going to proceed, that was your
16 understanding, had Mr. Bonwick available to make
17 enquiries, if -- if you felt that that was an
18 appropriate use of his time. Similarly, enquiries
19 could be made of -- of Mr. Houghton or Mr. Muncaster.

20 You know, with all of that involved,
21 you know, what -- what made you believe that we needed
22 to take a belt and suspenders approach and use this
23 avenue in addition to the other avenues that were
24 available?

25 Was there something that made you want

1 to know especially so whether it was proceeding?

2 MR. DENNIS NOLAN: If Mr. McFadden
3 felt at liberty to tell us it was proceeding,
4 considering the source and respecting the source would
5 be of some comfort.

6 MR. JOHN MATHER: So you put a lot of
7 -- you would have a lot of faith in Mr. McFadden, is
8 that -- is what I'm understanding you're saying?

9 MR. DENNIS NOLAN: I have a great deal
10 of respect for Mr. McFadden, yes.

11 MR. JOHN MATHER: Okay. And before --
12 before Mr. Hull spoke with Mr. McFadden, what
13 understanding did you have about whether or not
14 alternative bids would be acceptable, if the RFP
15 proceeded?

16 MR. DENNIS NOLAN: I think we were
17 still -- and I think alluded to this yesterday, I
18 think we were -- were still wondering if -- if that
19 was -- that was possible.

20 MR. JOHN MATHER: If we could pull up
21 CPS2374.

22 THE HONOURABLE FRANK MARROCCO: Just
23 before -- when -- when you say alternatives to the --
24 you mean more?

25 MR. DENNIS NOLAN: Yes. Like, Your

1 Honour, just as an alternative bid. So here's our
2 proposal. You know, Proposal A is -- is for 50 --

3 THE HONOURABLE FRANK MARROCCO: Fifty
4 (50) percent?

5 MR. DENNIS NOLAN: -- 50 ask, but in
6 the alternative, should you wish to entertain it, we
7 are prepared to buy up to 100 percent. And, you know,
8 you don't know if -- if, upon seeing your proposal,
9 if, you know, Council might decide to entertain that,
10 but if it was, you know -- if -- if it was something
11 that would not be welcomed or send the wrong message,
12 then I guess we would back away.

13 When we got the RFP, it was -- it was
14 very clear that it was 50/50 that they wanted.

15

16 (BRIEF PAUSE)

17

18 CONTINUED BY MR. JOHN MATHER:

19 MR. JOHN MATHER: Apologies. Can we
20 pull up AFF7?

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: We're going to go to
25 Exhibit A, please.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, Mr. Nolan, in
4 Mr. Hull's affidavit, he says that these are the
5 handwritten notes that he took on a telephone
6 conference call with Mr. McFadden on September 28th,
7 2011.

8 If we scroll down, there is a
9 transcription that will make -- make it easier for us
10 to talk about.

11 MR. DENNIS NOLAN: M-hm.

12 MR. JOHN MATHER: I guess as a
13 preliminary question, did Mr. Hull advise you after
14 the fact that he had spoken with Mr. McFadden?

15 MR. DENNIS NOLAN: Yes, he did
16 verbally.

17 MR. JOHN MATHER: Do you recall what
18 Mr. Hull told you about his conversation with Mr.
19 McFadden?

20 MR. DENNIS NOLAN: He gave me
21 confirmation that -- that the -- that the RF -- that
22 they were proceeding with an RFP and -- and advice to
23 -- that -- that they were serious about the 50/50 and
24 -- and -- and as that note indicates, best not to
25 provide an alternative.

1 MR. JOHN MATHER: So on that note,
2 "likely best not to do in the alternative," did Mr.
3 Hull tell you anything more about why that would not
4 be a good idea or why that was not being suggested by
5 Mr. McFadden?

6 MR. DENNIS NOLAN: No, and I don't
7 think it was necessary.

8 MR. JOHN MATHER: And I -- I take it
9 then that that piece of information that Mr. Hull
10 relayed back to you, that was useful to PowerStream?

11 MR. DENNIS NOLAN: I mean, as I -- as
12 I said before, until you got the RFP document, you
13 know, it was, you know information that -- that -- I
14 mean, it wouldn't really change anything because you -
15 - you needed to wait and see about -- about the -- the
16 -- what the RFP -- that just -- I guess would help
17 focus you away from, you know, constructing, you know,
18 an alternative bid, sure.

19 MR. JOHN MATHER: So it was helpful in
20 that respect, that --

21 MR. DENNIS NOLAN: I think helpful in
22 -- in that -- in that small respect, but I -- until we
23 saw the RFP documents, that's what would determine our
24 response.

25 MR. JOHN MATHER: You said it was

1 helpful in that small respect, but I take it was
2 helpful enough that it was one of the items you wanted
3 Mr. Hull to raise with David McFadden rather than wait
4 and --

5 MR. DENNIS NOLAN: Right.

6 MR. JOHN MATHER: -- see what the RFP
7 came --

8 MR. DENNIS NOLAN: Helpful to some
9 extent, yes.

10 MR. JOHN MATHER: You said it -- it
11 was helpful because then PowerStream wouldn't have to,
12 you know, work on an alternative bid or wouldn't spend
13 time working on alternative bid.

14 Up until this point in time, was that
15 something PowerStream was doing, to your knowledge?

16 MR. DENNIS NOLAN: Well, it was
17 something, as I said, that we were contemplating and I
18 think it's something that we could have done very
19 easily, and if the RFP came out and indicated that
20 they were open to alternative bids, it would not have
21 been a challenge to -- to respond in time with an
22 alternative bid.

23 MR. JOHN MATHER: Do you know if at
24 this point in time PowerStream had done any work on
25 valuing Collus Power?

1 MR. DENNIS NOLAN: Yes.

2 MR. JOHN MATHER: Did that valuation
3 involve consideration of a 50 percent ownership stake
4 and a hundred percent ownership stake, and whether --
5 and how that would affect the valuation?

6 MR. DENNIS NOLAN: I wasn't involved
7 in -- in the valuation. It wouldn't -- Mr. Glicksman
8 can answer that question fully and properly, so I
9 hesitate to venture -- venture that, but I'm sure that
10 -- I -- I would think, and I'm pretty sure as a matter
11 of fact that -- that the valuation would have valued
12 the entity as a whole.

13 And then you get into judgments about
14 control premiums, if -- if there really was control,
15 not an illusory control, of 51 percent, which I
16 would call illusory because of -- of the way the
17 shareholder agreement would -- would work with
18 protections for both sides, unanimous consent, like I
19 said, consistent with the PowerStream shareholder
20 agreement.

21 MR. JOHN MATHER: What do you mean by
22 a control premium? What are -- what are you referring
23 to there?

24 MR. DENNIS NOLAN: Well, if -- if
25 there really was control in terms of -- of the Board

1 and majority of the shares in -- on decision-making,
2 then there might be an -- an added value attached to
3 that.

4 MR. JOHN MATHER: And I take it from
5 your answer that, when you talk -- also talked about
6 illusionary control of 51 percent, I take from your
7 answer is that even if someone has a -- a -- a
8 majority in the sense that they have 51 percent of the
9 shares, depending on how the governance is set up --

10 MR. DENNIS NOLAN: Exactly.

11 MR. JOHN MATHER: -- they may not
12 have, you know, a majority control in that anything
13 they want to do they can do by the fact of hold --
14 holding most of the shares.

15 Is that a -- a fair sense of what you
16 were getting at?

17 MR. DENNIS NOLAN: Exactly. And that
18 was the reality that lived with at PowerStream, as --
19 as I mentioned yesterday, since our formation in 2004
20 when we had two (2) shareholders, where one (1)
21 shareholder had 57 percent. I think they were quite
22 happy that they had more shares and hence more share
23 of the dividends, but in terms of control and -- and -
24 - and then with a later merger with -- Barrie, the
25 same thing, where Barrie owned 20.5 percent.

1 Barrie had the same veto rights, the
2 same approval rights, as did Markham and Vaughan, who
3 had significantly higher shareholdings. So that's
4 what I was referring to.

5 And certainly with the 51 percent, you
6 know, we would have contemplated, you know, a list, as
7 -- as there was, of unanimous approval items.

8 So that's why I say it's a bit
9 illusionary, you know. It's -- it's not like a
10 publicly traded company that if you had 51 percent,
11 you know, that -- that you might have had some real
12 control.

13 MR. JOHN MATHER: In your mind, what
14 level of control do you need to, you know, justify a
15 control premium? What -- what actually in your mind
16 gives one (1) shareholder control?

17 MR. DENNIS NOLAN: It could be on
18 things like, well, representation on the Board,
19 approval of strategy, whether it was -- for example,
20 if there was an acquisition contemplated, was -- would
21 it be unanimous consent required or perhaps sixty-six
22 and two thirds, so -- so those sorts of things.

23 I mean, there's -- there's a number of
24 things that you could go through, like dividend policy
25 and things like that.

1 MR. JOHN MATHER: Going -- going -- so
2 Mr. Hull reports back to you that it's likely best not
3 to do an alternative bid. Did you have any concern
4 about whether -- whether or not PowerStream should
5 have that information at that point in time?

6 MR. DENNIS NOLAN: No, because I -- as
7 I said, the -- the actual RFP was going to dictate our
8 response.

9 MR. JOHN MATHER: But it sounds like
10 it could have assisted you at least in focussing on
11 what the eventual RFP may include?

12 MR. DENNIS NOLAN: Honestly, as I
13 said, if we had received an RFP, if it had made it
14 clear that an alternative bid was contemplated within
15 the time period that we needed to respond, it would
16 not have been a problem whatsoever.

17 MR. JOHN MATHER: Did you have any
18 understanding whether other bidders were aware that it
19 was likely best not to submit an alternative proposal?

20 MR. DENNIS NOLAN: I -- I was not
21 aware.

22 MR. JOHN MATHER: Did you turn your
23 mind to whether or not this was information that you
24 were receiving that the other bidders may not receive
25 because they -- they didn't have a lawyer who's David

1 McPa -- Fadden's law partner?

2 MR. DENNIS NOLAN: I mean, we -- my
3 understanding is that we had -- that we had been given
4 some direction, and -- and I can't say from who, or
5 whether it was at the -- the preliminary meeting that
6 all of the bidders had, but that that direction of
7 50/50 was -- was made clear either by Mr. Muncaster,
8 Mr. Houghton, I -- I don't know who, but that's the --
9 the direction we were headed in.

10 This wasn't new news. But this was
11 just, I -- like I said, just seeking a confirmation
12 that -- that this is the only thing that they were
13 going to be looking at.

14 MR. JOHN MATHER: But it's -- would
15 you -- would you agree that it's fair -- fair to
16 assume that the other bidders would have been left
17 likely with the same impression that PowerStream was,
18 which is they're heading to 50/50 but it's not clear
19 yet and that they may also have been interested or
20 benefited from knowing that additional level of
21 confirmation that you were seeking here?

22 MR. DENNIS NOLAN: I agree with
23 interested. I don't know about benefiting because, as
24 I said, they were all capable, as we were, of
25 responding to an RFP in that time.

1

2

(BRIEF PAUSE)

3

4

MR. JOHN MATHER: The third bullet
point says, "Expected dates, 4th and November 16th."

6

Do you have any recollection of what Mr. Hull reported
back to you with respect to that note, if anything?

8

MR. DENNIS NOLAN: I don't remember
those dates, just that -- you know, that it -- it was
-- all I have in my recollection, that it was soon. I
-- I don't -- I don't have a memory of those specific
dates until I saw this note.

13

MR. JOHN MATHER: And so, we know from
the evidence that October 4th was the date the -- the
RFP was issued and that November 16th was the deadline
for submissions.

17

Would knowing those two (2) dates on
September 28th be of assistance to PowerStream?

19

MR. DENNIS NOLAN: Well, it sounds
like the -- and there's no more specifics, nor did we
talk about it, about the two (2) dates. But it seems
like the -- the -- if I look at this, I would have
said expected dates, 4th and November 16th.

24

I don't know what the 4th was. Was --
was that November -- November 4th? I -- I don't know

25

1 from -- from the note. And I have no recollection of
2 -- of us discussing that. As I said, all I have a
3 recollection of is Mr. Hull confirming that, yes, they
4 were going ahead with an RFP and it would be soon.

5 MR. JOHN MATHER: I appreciate you
6 don't have a recollection. But my question is, if --
7 would it have been helpful to PowerStream on September
8 28th, 2011, to know that the -- that the RFP was going
9 to be issued on October 4th and that proposal would be
10 due on November 16th if -- would that have been
11 helpful information if it had been relayed?

12

13 (BRIEF PAUSE)

14

15 MR. DENNIS NOLAN: I put it in a
16 category of a nice to know. It -- it certainly showed
17 plenty of time to -- more than adequate time to
18 respond if that was October 4th.

19 MR. JOHN MATHER: Would that
20 information have allowed PowerStream to allocate or
21 prepare resources for the RFP?

22 MR. DENNIS NOLAN: There was no
23 problem about assembling resources. It was -- I mean,
24 resources were -- were there. No, it -- it had no
25 impact on that whatsoever.

1

2

(BRIEF PAUSE)

3

4

MR. JOHN MATHER: Sorry. The -- I'm
5 just counting, but the third from the bottom note
6 says, "Likely won't include a full purchase
7 agreement." Do you have any understanding of what
8 that note's referring to?

9

MR. DENNIS NOLAN: I don't recall
10 discussing that with him. I -- I thought about that.
11 I -- I think what Mr. McFadden might have been
12 referring to is that in the RFP there would not be an
13 appended draft purchase agreement, that would come
14 later, and that's logical to me. I don't -- I don't
15 know why that would have been discussed.

16

MR. JOHN MATHER: The next point says,
17 "Concern about the number of politicians on Board."
18 Do you have any understanding of what that note refers
19 to?

20

MR. DENNIS NOLAN: I -- so, looking
21 back at -- at the Inquiry documents and looking at,
22 for example, our presentation, and I think the
23 approach, not knowing that -- not sort of responding
24 to that absolute 50/50, knowing -- knowing that it was
25 a partnership or whatever, seeing it in the notes,

1 there -- I don't know if it was in -- in the actual
2 presentation, but I did see a reference to the
3 possible members of -- of the combined future Board on
4 which it -- it would -- some of the names proposed
5 were one (1) or two (2) -- I can't remember if it was
6 one (1) or two (2) politicians that sat on the
7 PowerStream Board.

8 And so I think it was a concern is --
9 there was a debate or concern about Board
10 representation and the appearance of having
11 independents on boards as being preferable.

12 The PowerStream Board was largely
13 political, not totally. I believe, at this time,
14 there was -- out of thirteen (13), there was two (2)
15 what you would call independent, as in nonpolitical
16 Board members.

17 So, I think that's what the comment is,
18 that, you know, the future Board if we were
19 successful, you know, should be -- you know, have
20 majority independent or something like that. That's -
21 - that's what I'm surmising, but I don't remember
22 discussing this at the time.

23 MR. JOHN MATHER: I was going to say,
24 do you recall Mr. Hull relaying a concern along these
25 lines back to you when he reported to you?

1 MR. DENNIS NOLAN: I -- I -- he may
2 have, but I don't recall that.

3 MR. JOHN MATHER: Based on your
4 answer, what -- what did you -- what did you
5 understand the potential concern may be about having
6 too many politicians on a Board? What -- what issue
7 does that create from a control or governance
8 perspective?

9 MR. DENNIS NOLAN: It's not a control
10 issue what -- whatsoever. It's just an appearance of
11 -- for -- for some, it was an appearance of -- of a
12 better governance practice to have independence rather
13 than political representation on -- on the Board.

14 Most LDCs had politicians on the Board
15 but some had majority independence and maybe only one
16 (1) politician on the Board. So there was -- there
17 was always that optic.

18 MR. JOHN MATHER: From your
19 understanding why is there an argument for -- or why
20 is it possible that there's better optics when there's
21 less politicians on the Board?

22 MR. DENNIS NOLAN: Well, I guess it
23 was the -- perhaps the notion that they -- they would
24 bring their municipal -- wear their municipal hat
25 while -- while they should be focussed on the

1 interests of the Corporation and that there might be
2 conflicts.

3 My -- to my surprise, my experience
4 since 2002 with majority politicians on the Board,
5 that that didn't end up being an issue. And it
6 certainly wasn't the case with -- with PowerStream
7 that the political representatives never brought
8 parochial interests and vi -- and I don't remember any
9 instances where there was, you know, sort distinct
10 municipal points of view taken.

11 I -- I was pleasantly surprised at how
12 they really did act in the best interests of the
13 Corporation at all times. The -- it worked out very
14 well. But there was a perception that you shouldn't
15 have majority politicians on the Board.

16 MR. JOHN MATHER: So, I appreciate you
17 don't recall if Mr. Hull spe -- told -- specifically
18 spoke to you about this point.

19 MR. DENNIS NOLAN: Right.

20 MR. JOHN MATHER: If he had, would
21 that have been helpful or useful information for
22 PowerStream to know that there was a concern about the
23 number of politicians either on its current Board or
24 being proposed for the future Board?

25 MR. DENNIS NOLAN: I -- I suppose it -

1 - it was -- it was good to know. I don't think it was
2 a surprise because there was a debate about that at
3 the -- at -- we -- we knew -- I think we knew it was -
4 - it would likely be a sensitivity.

5 And -- and, you know, as -- as it
6 turned out, you know, we -- we did put majority
7 nonpolitical representatives on -- on board, and
8 that's the way it turned out.

9 MR. JOHN MATHER: Is that when you --
10 and when you said, "As it turned out," is that in your
11 proposal, that proposal that PowerStream submitted or
12 at the end result with the transaction?

13 MR. DENNIS NOLAN: The end result. I
14 can't remember the specific on -- on the -- on the
15 proposal or if it even addressed it in -- in the
16 proposal.

17 MR. JOHN MATHER: But I take it from
18 your answer that this sort of information, had it been
19 relayed, could have been used in crafting the proposal
20 because it was something you'd be alive to and
21 something you could consider how you approach it when
22 you're responding to an RFP?

23 MR. DENNIS NOLAN: It -- it could --
24 it could have been helpful. I just don't remember how
25 -- how we responded to.

1 MR. JOHN MATHER: And I --

2 MR. DENNIS NOLAN: And I also don't --
3 this was a very -- pardon me, if I may. This was a
4 very brief discussion with Mr. Hull. And I don't -- I
5 -- I recall the -- the two (2) things that I told you
6 discussing.

7 I don't remember having a detailed
8 discussion with Mr. Hull about political
9 representation on the Board.

10 MR. JOHN MATHER: Prior to September
11 28th, 2011, did you have any information about what
12 the Strategic Task Team or the Collus Board -- what
13 their views were about the political representation on
14 a potential future board in a partnership?

15 MR. DENNIS NOLAN: No, I -- it -- it's
16 not something I -- I think that had come up, other
17 than, you know, we -- we had discussed the
18 possibility, and I think it's of -- of proposing a
19 board of seven (7) and proposing an independent chair
20 and that that independent chair could be Dean
21 Muncaster, who was the present chair of Collus.

22 MR. JOHN MATHER: And then the last
23 point says, "Other bidders seem okay with 50/50." Do
24 you have any understanding of what that point means
25 based on your subsequent conversation with Mr. Hull?

1 MR. DENNIS NOLAN: I don't recall that
2 point being discussed, but I -- I take it to mean that
3 the -- the other bidders, for whatever reason, have
4 their head around participating in an RFP where --
5 where they will only be able to propose a purchase up
6 to 50 percent.

7 MR. JOHN MATHER: And the word 'okay'
8 seems to suggest that, not only might they have their
9 head around it, but they are, you know, willing and --
10 and will be prepared to participate on that basis?

11 MR. DENNIS NOLAN: Perhaps.

12 MR. JOHN MATHER: Knowing -- assuming
13 that was the case, would that be useful information
14 for PowerStream if it was really back to it?

15 MR. DENNIS NOLAN: I mean, again we
16 would be responding to what the RFP said. And if it
17 said something different, it wouldn't be a problem in
18 responding.

19 I suppose it'd be interesting to
20 know -- good to know that -- you know, that we
21 wouldn't be the only ones agreeing to respond on that
22 basis.

23 MR. JOHN MATHER: Why would that be
24 interesting or good to know?

25 MR. DENNIS NOLAN: Well, as I said,

1 it's -- the RFP would determine it, so it would be,
2 you know -- I mean, it should -- to me, it would show
3 that that had been conveyed and understood by the
4 other bidders and accepted.

5 MR. JOHN MATHER: And the fact that it
6 was accepted, what -- why -- I'm just trying to get a
7 better sense --

8 MR. DENNIS NOLAN: Yeah.

9 MR. JOHN MATHER: -- of why it is
10 useful to know that, you know, your other market
11 participants are accepting this concept or are open to
12 this concept.

13 MR. DENNIS NOLAN: That there -- that
14 there would be a level playing field, that they had,
15 you know, made -- made it clear, and the others were
16 going to participate on -- on this basis.

17 MR. JOHN MATHER: Was there value in
18 knowing that the other bidders -- given that a 50/50
19 appears to have been a unique concept at this point in
20 time, is that fair?

21 MR. DENNIS NOLAN: It was -- it was
22 not. Yeah. It was -- it was fairly unusual.

23 MR. JOHN MATHER: So is there any
24 value in knowing that this unusual structure that is
25 being proposed that other people in the marketplace

1 would -- you know, would be willing to bid on that?

2 Did you have any uncertainty about whether or not that
3 would be palatable to the market?

4 MR. DENNIS NOLAN: Yeah, I suppose so.
5 But, as I say, the -- how we -- how the RFP is worded
6 is what would matter to me.

7 MR. JOHN MATHER: After speaking with
8 Mr. Hull -- sorry. When you spoke with Mr. Hull, did
9 you confirm whether or not Mr. Hull had said to
10 Mr. McFadden that he was only interested in obtaining
11 information that Mr. McFadden was at liberty to
12 disclose?

13 MR. DENNIS NOLAN: As I said, I think
14 that was very clear prior to the conversation or when
15 I spoke -- when I spoke to Mr. Hull that -- and
16 Mr. Hull made it very clear to me that -- you know,
17 that that would be the basis of the conversation. I'm
18 quite sure it was.

19 MR. JOHN MATHER: I understand that
20 you're quite sure it was, but do you recall if
21 Mr. Hull reported back to you and confirmed that he
22 had made that basis of the conversation?

23 MR. DENNIS NOLAN: That's my
24 understanding. I mean, I can't remember the exact
25 words, but that was very clear.

1 MR. JOHN MATHER: So it reflects in
2 these notes that, you know, Mr. Hull got more
3 information that what he was initially directed to
4 obtain.

5 Do you recall having a recollection
6 that Mr. Hull reported back on more than just whether
7 or not the RFP was going to proceed and whether
8 alternative bids were a good idea?

9 MR. DENNIS NOLAN: As I said, I recall
10 the -- the two (2) points on here. It's quite
11 possible he -- he might have given some -- some
12 general feedback. The bit about the purchase
13 agreement, I don't really recall that.

14 There might have been something about
15 on the 50/50 that -- yeah -- that's the way it is and
16 you know -- and that the others are okay with that.
17 That -- that might have been conveyed.

18 But, I mean, we were asking him if --
19 if they were -- if he could tell us if they were --
20 that was the only type of bid that they were
21 interested in.

22 MR. JOHN MATHER: So the Foundation --
23 we know from the evidence, the RFP was released on
24 October 4th, 2011. Do you recall your impressions of
25 the RFP when you first reviewed it?

1 MR. DENNIS NOLAN: So it's going back
2 quite a few years, so I don't -- and I have looked at
3 it, but I don't have any perfect memory of -- of all
4 the points.

5 But I remember being surprised at the
6 weighting. I knew that there would be at the
7 weightings. My expectation was that it -- that it
8 would not be one that was, you know, in the extreme a
9 hundred percent on financial.

10 They were looking for other things.
11 They made that very clear. They were looking for a
12 cultural fit. They were looking for a partner. They
13 were looking for other benefits that could assist them
14 as a smaller utility, you know, whether that be a, you
15 know, assistance with control room, conservation
16 issues, that sort of thing.

17 I was surprised when I saw that the
18 financial weighting was 30 percent and that the
19 non-financials was 70 percent.

20 MR. JOHN MATHER: What surprised you
21 about that?

22 MR. DENNIS NOLAN: I would have
23 anticipated that the financial would be higher than
24 that. It showed to me that they were very -- that
25 they were very serious about these other things and

1 that they really wanted a partnership.

2 Yes, the financial was important, but
3 I -- I was surprised that it was weighed at
4 30 percent. So that -- those were my general
5 impressions.

6 MR. JOHN MATHER: During the
7 conversation with the other bidders yesterday, one of
8 the -- one issue that was arise -- that rose -- that
9 came up was whether or not concern that Horizon had --
10 that having 70 percent on non-financial factors as
11 having a lot of weight put on softer facts or factors
12 that are less amendable to objective measurement. Did
13 you have any thoughts on that at the time?

14 MR. DENNIS NOLAN: Well, I just said I
15 was bit surprised that -- that it was 30 percent. I
16 wouldn't have been surprised if it was 50 percent and
17 the other -- 50 on that.

18 But it just, to me, showed that they --
19 what they were really concerned about. And so I don't
20 know -- sure, there -- there would be more
21 subjectivity to that but, you know, that there --
22 there were, I think, ample examples of -- it wasn't
23 just all fluff, for example.

24 And I can't rhyme them off -- it was in
25 our proposal -- but being able to provide a 24/7 call

1 centre, being in proximity to help with -- with
2 outages if we referred to that, the way we treat our
3 employees. They were very concerned about how their
4 employees would be treated, and they were also
5 concerned about opportunities.

6 So those were some of the things
7 that -- that, I think, found its way in -- into our
8 response. So, you know, Mr. Freeman can say that, you
9 know, it's hard to evaluate those. They can certainly
10 be evaluated quite properly.

11 MR. JOHN MATHER: If we could pull up
12 paragraph 302 of the Foundation Document.

13 THE HONOURABLE FRANK MARROCCO: Just
14 before you leave that.

15 MR. JOHN MATHER: Okay.

16 THE HONOURABLE FRANK MARROCCO: You
17 said that there was a debate about the number of
18 politicians that should be on the Board. Was that an
19 internal debate or a debate in the LDC industry? In
20 other words, was it a private debate or a public
21 debate?

22 MR. DENNIS NOLAN: Oh, I think,
23 Your Honour, that there -- there was both. The -- I
24 think the -- I think there was a view that if you had
25 a totally political Board, as many of the LDCs -- or

1 that that wasn't good governance.

2 THE HONOURABLE FRANK MARROCCO: Right.

3 MR. DENNIS NOLAN: And so I think it
4 was both out there, and then internal in terms of
5 PowerStream where we had only, I believe at the time,
6 two (2) independents on the Board.

7 I think the Board -- it had some very
8 smart people on the Board that happened to be
9 politicians, and it worked very well. So they were
10 quite proud of that fact. And -- and the one
11 advantage is that you were closer to your shareholder,
12 that you weren't -- in terms of communication. So
13 there were real benefits.

14 But it definitely was a debate, both --
15 that certainly at management was alive to that -- that
16 others outside may not look at that as the best
17 governance and that this could be become an issue in
18 any acquisition that we did.

19

20 CONTINUED BY MR. JOHN MATHER:

21 MR. JOHN MATHER: So at paragraph 302
22 of the Foundation Document, on October -- so this
23 paragraph reflects:

24 "On October 5th, 2011, Paul Bonwick
25 sent a memo to PowerStream with some

1 ideas considering the company's RFP
2 bid, based on input over the past
3 several weeks. The memo which was
4 addressed to the PowerStream EVP
5 Team included the following headings
6 and information."

7 Were you a member of the PowerStream
8 EVP Team?

9 MR. DENNIS NOLAN: Yes, I was.

10 MR. JOHN MATHER: Do you recall
11 getting a memorandum from Mr. Bonwick on or about
12 October 5th, 2011 regarding the company's -- it says
13 RFP bid, but I expect that to mean, you know,
14 potential response to the RFP?

15 MR. DENNIS NOLAN: It would not
16 surprise -- I can't -- I don't have specific
17 recollection of an email on that date. Ask me what
18 happened in a meeting two (2) weeks ago, I could
19 probably tell you but back to 2011 is hard. So --

20 MR. JOHN MATHER: Do you --

21 MR. DENNIS NOLAN: -- quite likely.
22 And I do remember him being involved in providing
23 some -- some feedback and some suggestions about the
24 responses.

25 MR. JOHN MATHER: And -- sorry --

1 could you just maybe expand a bit on what
2 Mr. Bonwick's role was in developing PowerStream's
3 response to the RFP?

4 MR. DENNIS NOLAN: I think he gave
5 his -- his input and his views on -- on the responses,
6 on certainly the -- in particular, on the
7 non-financial matters. You know, he -- he didn't have
8 expertise that -- that we were certainly counting on
9 in determining the financial response.

10 MR. JOHN MATHER: This says that the
11 points that follow are based on input over the past
12 several weeks. At the time, did you have an
13 understanding of who Mr. Bonwick was receiving input
14 from?

15 MR. DENNIS NOLAN: No, I did not.

16 MR. JOHN MATHER: Did you make any
17 enquiries about who Mr. Bonwick was receiving input
18 from?

19 MR. DENNIS NOLAN: No.

20 MR. JOHN MATHER: Do you know if
21 anyone at PowerStream make those enquiries?

22 MR. DENNIS NOLAN: I do not know.

23 MR. JOHN MATHER: So if we could
24 scroll down to subparagraph (1) of this paragraph?

25 This says "issue clarification and

1 management," so this is from the bullet points in
2 Mr. --

3 MR. DENNIS NOLAN: Sorry. This is
4 point (g)?

5 THE HONOURABLE FRANK MARROCCO: (g)?

6 MR. JOHN MATHER: (g), sorry.

7 THE HONOURABLE FRANK MARROCCO: You
8 said (l).

9 MR. JOHN MATHER: Yeah. I said (l)
10 'cause there's a typo in my notes, so...

11 THE HONOURABLE FRANK MARROCCO: Yeah.

12 MR. JOHN MATHER: (g). Thank you very
13 much.

14

15 CONTINUED BY MR. JOHN MATHER:

16 MR. JOHN MATHER: It says:

17 "Issue clarification and management
18 no points. Comments under this
19 heading included provide examples
20 where existing private sector
21 companies provide support staff in a
22 cooperative working environment.
23 Veridian emphasized the synergies
24 with union."

25 Do you recall reading this section of

1 the memorandum at any point?

2 MR. DENNIS NOLAN: I don't remember
3 reading this specifically, but I do remember a
4 discussion about a concern -- a possible concern being
5 raised about having different unions. So Collingwood
6 had a different union than PowerStream, and there may
7 have been concern that that would trigger a vote and
8 a -- and a change in the union and cause some -- some,
9 you know, labour unease.

10 And it is something that I remember
11 looking into without outside counsel. The conclusion
12 was, given the geographic proximity and the fact that
13 we wouldn't have control, that there would not trigger
14 a vote, and the -- there was no union issue.

15 MR. JOHN MATHER: At this point in
16 time after the RFP was issued, did you know who the
17 other bidders were?

18 MR. DENNIS NOLAN: I think I knew who
19 the other likely bidders were but certainly didn't
20 know the -- the list. For example, I -- I would have
21 thought maybe had -- maybe had some discussion with
22 Mr. Bentz or Glicksman, for example, that -- that
23 Fortis or EPCOR could be bidders.

24 MR. JOHN MATHER: Do you know if
25 Mr. Bentz or Mr. Glicksman knew who the other bidders

1 were?

2 MR. DENNIS NOLAN: All the bidders?
3 They probably assumed -- no. I would think they
4 assumed who they were.

5 MR. JOHN MATHER: Was Veridian a
6 company you expected to be a bidder?

7 MR. DENNIS NOLAN: Absolutely.

8 MR. JOHN MATHER: This bullet point --
9 at least it appears to suggest that something that
10 Veridian has emphasized is that the synergies that had
11 with the same union. Was that valuable for
12 PowerStream to know that that was a point of emphasis
13 for Veridian?

14 MR. DENNIS NOLAN: As I said, the
15 union issue when we -- when we looked at it was not an
16 issue. So it -- there was no advantage or
17 disadvantage.

18 MR. JOHN MATHER: Did you -- did you
19 otherwise know what Veridian had emphasized --
20 actually let me ask it this way. Did you have any
21 understanding at the time where this information came
22 from about Veridian emphasizing synergies with the
23 union?

24 MR. DENNIS NOLAN: No, I don't. No, I
25 did not at the time.

1 MR. JOHN MATHER: Again, and we -- we
2 haven't heard from Mr. Bonwick on when this
3 information -- where this information came from, but
4 it's possible it could have come from Veridian's
5 presentation to the strategic task team.

6 If that was the case, is -- is that
7 something that would concern you?

8 MR. DENNIS NOLAN: Well, I -- I didn't
9 turn my mind to that. All I can say is the discussion
10 about the -- the union was not something that -- that
11 -- I don't think it arose because of knowing that --
12 that Veridian would say this. It's something that we
13 looked at, I think independently. I know I was asked
14 to look at it.

15 MR. JOHN MATHER: I appreciate that
16 you -- you didn't understand or enquire where Mr.
17 Bonwick was -- who he was speaking with to -- to
18 obtain the information he was providing.

19 Did anyone at PowerStream tell you if
20 they had an understanding?

21 MR. DENNIS NOLAN: No.

22 MR. JOHN MATHER: Can we pull up
23 ALE565?

24

25

(BRIEF PAUSE)

1 MR. JOHN MATHER: So this is an email
2 dated October 16th, 2011. It's from Mr. Glicksman to
3 Mr. Bentz and yourself, copying others. It says:

4 "Brian, et al: Attached are two (2)
5 cover pages that we can review at
6 tomorrow's 10:00 a.m. meeting. If
7 you're okay with them, I recommend
8 that we send both of them to the AFC
9 by email Monday morning."

10 I assume A and FC is the Audit and
11 Finance Committee?

12 MR. DENNIS NOLAN: Yes.

13 MR. JOHN MATHER: So if we could open
14 the one attachment, ALE566?

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So this is one of
19 the attachments to Mr. Glicksman email. It's a
20 memorandum that says -- it's -- it's a memorandum that
21 recommends contin -- a continued retainer with Mr.
22 Bonwick and discusses proposed terms of that retainer.

23 Do you recall receiving this memorandum
24 from Mr. Glicksman?

25 MR. DENNIS NOLAN: I'm sure I did.

1 MR. JOHN MATHER: And it says:

2 "Approval of engagement of external
3 consultants for Collus RFP. Report
4 by President and CEO and EVP and
5 Chief Financial Officer."

6 I -- I take it you're the EVP
7 contemplated there. Is that fair?

8 MR. DENNIS NOLAN: President and CEO,
9 EVP and Chief -- sorry, where are -- where are you
10 referring to?

11 MR. JOHN MATHER: So it says -- this -
12 - this memorandum is drafted as a report by the
13 President --

14 MR. DENNIS NOLAN: No.

15 MR. JOHN MATHER: -- and CEO and the
16 EVP and the Chief Financial Officer.

17 Would you be the EVP?

18 MR. DENNIS NOLAN: No. That was part
19 of Mr. Glicksman title.

20 MR. JOHN MATHER: So he was EVP --

21 MR. DENNIS NOLAN: So this -- yes. So
22 he was -- his title was Executive Vice President and
23 Chief Financial Officer.

24 So that's -- this is just who the
25 report is -- is being presented by, prepared by. So

1 by -- President and CEO would be Mr. Bentz, and EVP
2 and Chief Financial Officer, Mr. Glicksman.

3 MR. JOHN MATHER: So I'll have some
4 specific questions about this memorandum, but first
5 can you provide us generally with your recollection
6 about the discussions about engaging with Mr. Bonwick
7 and a continued retainer in October 2011?

8 MR. DENNIS NOLAN: I was not very much
9 involved in -- in that -- in that discussion. I
10 became -- I became aware that the -- that -- that we
11 were going to be proposing that the initial engagement
12 be extended and be broadened in terms of the --
13 looking for potential opportunities, in particular
14 with the CHEC group.

15 MR. JOHN MATHER: You said you were
16 not very much involved.

17 What was your level of involvement?

18 MR. DENNIS NOLAN: I was aware but I
19 was not anyone that was negotiating or -- or with Mr.
20 Bonwick about this continued negotiation. That would
21 have been Mr. Glicksman and/or Mr. Bentz.

22 MR. JOHN MATHER: Do you have a view
23 about the continued engagement of Mr. Bonwick at that
24 point in time?

25 MR. DENNIS NOLAN: What do you mean by

1 "view"?

2 MR. JOHN MATHER: Do you have an
3 opinion about whether it should be done, the terms it
4 should be done? Did you have any thoughts about
5 whether or not PowerStream should con -- continue with
6 Mr. Bonwick, and if so, on what terms?

7 MR. DENNIS NOLAN: I wasn't
8 enthusiastic about it.

9 MR. JOHN MATHER: Why were you not
10 enthusiastic about it?

11 MR. DENNIS NOLAN: I just didn't think
12 we needed the -- the assistance.

13 MR. JOHN MATHER: And --

14 MR. DENNIS NOLAN: But it could be --
15 could be useful in terms of -- of contacts with --
16 within the CHEC group, but I -- I think I was a little
17 skeptical about the -- the value for -- for dollar.

18 MR. JOHN MATHER: And what led you to
19 have that skepticism?

20 MR. DENNIS NOLAN: Just my impression,
21 my experience.

22 MR. JOHN MATHER: Was it based at all
23 on what Mr. Bonwick had done to date with respect to
24 Collus?

25 MR. DENNIS NOLAN: No. I mean, you

1 know, it -- I think it was consistent with my view
2 that from -- from the onset, that -- that Mr.
3 Bonwick's engagement wasn't necessary.

4 MR. JOHN MATHER: And I -- and I
5 apologize if you've covered this history, but I don't
6 know -- earlier -- I don't know if you -- you've said
7 before that you didn't see his engagement was
8 necessary.

9 Can you explain to me what you meant by
10 that?

11 MR. DENNIS NOLAN: Simply I would have
12 preferred if -- if -- if we had gone on without
13 engaging him.

14 MR. JOHN MATHER: And -- and I'm just
15 trying to understanding why your preference would be
16 that -- that he not be engaged.

17 What was the reason for that?

18 MR. DENNIS NOLAN: Because I was
19 concerned about the -- the appearance of -- of a
20 conflict and I just honestly didn't -- sorry, I didn't
21 see the value proposition. I didn't think the
22 information that he provided was -- was particularly
23 helpful. I don't -- I didn't think it would change --
24 and I don't -- when I look at RRFP (sic), I can -- I
25 can't see any real -- real benefit, how we would have

1 approached it any differently. I think -- I believe
2 we would have approached it exactly the same.

3 MR. JOHN MATHER: At any point in time
4 did you have a concern that Mr. Baul -- Bonwick's
5 involvement might create some reputational risk for
6 PowerStream?

7 MR. DENNIS NOLAN: I mean, I -- I was
8 concerned about the appearance and that's why took the
9 steps that -- that I did in terms of disclosure, et
10 cetera.

11 MR. JOHN MATHER: At any point did Mr.
12 Bentz or anyone on the Audit -- Audit and Finance
13 Committee or the Board ask your view on whether or not
14 Mr. Bonwick should be -- continue to be engaged?

15 I see your counsel making some gestures
16 back there. I'm not seeking privileged information.

17 MR. MICHAEL WATSON: Well --

18 MR. DENNIS NOLAN: I have a --

19 MR. MICHAEL WATSON: -- hold on, hold
20 on, hold on --

21 THE HONOURABLE FRANK MARROCCO: Just
22 before you answer, let Mr. Watson say what he wants to
23 say.

24 MR. MICHAEL WATSON: I -- I'm not sure
25 what other response there's going to be than

1 privileged information to that question. You know,
2 communication of information that others received and
3 Mr. Bentz received and was given to Mr. Bonwick, I've
4 not objected to at all and I think that, you know,
5 within sort of the elastic concept of -- of privilege
6 that's fine --

7 THE HONOURABLE FRANK MARROCCO:
8 Absolutely. Let me -- let me -- I agree with you. I
9 -- I think it could easily elicit something.

10 So -- so we don't want to hear
11 privileged information, but I think asking you about
12 how you viewed the situation is entirely appropriate,
13 if that helps you with the question.

14 MR. JOHN MATHER: Yeah.

15 MR. MICHAEL WATSON: And -- and if I
16 may, Your Honour, and I'm happy -- if Mr. Nolan has
17 not finished that, but that was the entire thrust of
18 the previous questions. There may be more on that
19 point, how he felt. I don't know.

20 THE HONOURABLE FRANK MARROCCO: Well,
21 I -- I think his -- I think his view is -- is -- is
22 his view, and he's -- he's ought to be -- he's ought
23 to answer questions like that, advice he communicated
24 to the others about whether this was a good idea or
25 not. It may be an inference that is drawn on the

1 basis of his position and so on, but I - I don't think
2 we should ask him about that.

3

4 CONTINUED BY MR. JOHN MATHER:

5 MR. JOHN MATHER: So if we could
6 scroll down in the retainer letter. Looking at the
7 paragraph that says:

8 "The initial compensation that Mr.
9 Bonwick received was 10,000 per
10 month plus applicable taxes, plus
11 administrative fees. Mr. Bonwick at
12 that time had requested a success
13 fee of 2.5 percent based on the
14 acquisition price of each local
15 distribution utility to be received
16 should PowerStream be successful in
17 merging or acquiring utilities in
18 the CHEC group, including Collus.
19 For Collus Power, this would amount
20 to a success fee in the order of
21 \$500,000."

22 Do you recall discussions when Mr.
23 Bonwick was first retained about the possibility of
24 him being paid a success fee?

25 MR. DENNIS NOLAN: I do recall through

1 -- through -- through the piece and -- and that was --
2 that was something that I don't know when it was
3 finally addressed. I know it was prior to entering
4 into -- certainly around this time it was very clear
5 that we would not pay a success fee for his
6 involvement on -- on Collus in particular, and also
7 the -- the amounts that he was asking for were very
8 high, and -- and -- and I remember it not being
9 acceptable.

10 I -- I do recall that there -- there
11 was an agreement prior to and confirmation from him
12 that he would not be paid a success fee on Collus,
13 despite what -- I -- I know that the -- what the table
14 in the agreement actually says.

15 MR. JOHN MATHER: And I -- I believe
16 you're contemplating the -- the new agreement that's
17 signed in November 2011.

18 I'm asking about at the outset in, I
19 think April, May, June 2011, if you recall discussions
20 at that point in time about whether Mr. Bonwick would
21 obtain a success fee.

22 MR. DENNIS NOLAN: I don't know when
23 it was clear that he would not have a success fee. It
24 was not included in the initial retainer, but I -- I
25 think it was clear fairly early on that our position

1 was that we would not pay him a success fee with
2 respect to Collus. I can't tell you -- there's no way
3 I can remember the -- the time period or -- or the
4 specific discussion with -- with Mr. Bentz or Mr.
5 Glicksman, but I think that was very clear.

6 MR. JOHN MATHER: What was your
7 understanding of why PowerStream would not pay a
8 success fee with respect to Collus?

9 MR. DENNIS NOLAN: I think we thought
10 it was inappropriate. Quite frankly I thought what he
11 was getting -- was getting paid was -- was -- was very
12 generous for -- for what he was doing.

13 So, perhaps it went to -- to that
14 concern over appearances.

15 MR. JOHN MATHER: And how would that
16 go to the concern over appearances?

17 MR. DENNIS NOLAN: We were paying for
18 -- we didn't want to be paying for the result. We
19 wanted to be paying for -- for his -- for his efforts,
20 so there couldn't be -- if -- if he was to be paid a -
21 - a large sum for a successful transaction with
22 Collus, it would prob -- we -- it would probably make
23 that -- give live to that appearance of -- of conflict
24 issue perhaps, but it is -- it is something that we
25 decided early on wouldn't be appropriate.

1 MR. JOHN MATHER: And give rise to
2 that conflict issue, are you talking about his
3 relationship with the Mayor?

4 MR. DENNIS NOLAN: Correct.

5 MR. JOHN MATHER: Do you recall why --
6 why PowerStream was comfortable paying him what you
7 have indicated was a -- a good monthly sum, why that
8 didn't create the same concern as a success fee in the
9 event that it was -- a transaction was completed?

10 MR. DENNIS NOLAN: I -- I think it was
11 a more -- I don't know how to describe it. More
12 appropriate arrangement and -- and it was a -- a
13 fairly short-term engagement, the initial engagement.
14 But, you know, we -- we -- we hadn't worked with --
15 with Mr. Bonwick. This would be, you know, sort of --
16 but -- sort of a test, and -- and I guess the -- the --
17 - the opinion was that -- that he would be useful
18 going -- his -- his input and his efforts be useful
19 going forward in dealing with the CHEC group or other
20 LDCs that we agreed that -- that he would help assist
21 on in -- in terms of -- of the description of work
22 that's contained in the agreement.

23 MR. JOHN MATHER: Did you have any
24 concerns at the outset about the -- with respect to
25 your concerns about conflict about the amount he was

1 going to be paid monthly or the amount that was
2 contemplated he was going to be paid monthly?

3 Were you concerned that that could be
4 perceived as a high amount?

5 MR. DENNIS NOLAN: I don't know that I
6 -- I don't -- I don't know that I had that concern
7 with the -- the initial engagement.

8 MR. JOHN MATHER: Can we pull up -- I
9 guess why not -- I'm just trying to understand why --
10 sorry. That was -- I'm just trying to understand why
11 a success fee was something that you contemplated when
12 -- would potentially create a problematic appearance,
13 but why you didn't consider the -- a monthly fee, a
14 generous monthly fee wouldn't do so?

15 MR. DENNIS NOLAN: It -- it just -- it
16 -- it placed too great an emphasis -- emphasis on the
17 end result rather than -- than -- than the input,
18 simply as that, and -- I mean, sometimes in an
19 engagement, I think, you know, a success fee is
20 warranted. I'm not a big fan of them.

21 MR. JOHN MATHER: Could we go to
22 ALE119?

23

24

(BRIEF PAUSE)

25

1 MR. JOHN MATHER: And this is going
2 back to the time period before the initial retainer.
3 If we could scroll up so we can allow Mr. Nolan to see
4 what he's looking at.

5 So this is April 5th, 2011. It's an
6 email from Mr. Glicksman to Mr. Bentz, and they are --
7 you can read if you want but they're discussing, you
8 know, preparing to negotiate with Mr. Bonwick about
9 the initial retainer. And I have a question about one
10 of the attachments.

11 So if we could scroll down to the
12 second page.

13 This is a draft key points for
14 discussion that it's our understanding that Mr.
15 Glicksman prepared to discuss with Mr. Bentz when they
16 were discussing the terms of Mr. Bonwick's retainer.
17 And if you look at the paragraph that begins, "Mr.
18 Bonwick will provide."

19 Do you see that?

20 MR. DENNIS NOLAN: Yes, I do.

21 MR. JOHN MATHER: So this point says:

22 "Mr. Bonwick will provide all of the
23 proposed scope of services described
24 above, focussed on the LDCs, for a
25 monthly retainer of \$8,000 plus GST.

1 Should the relationship continue
2 past the initial three-month trial
3 period, Mr. Bonwick shall be
4 eligible for a success fee payable
5 as follows."

6 And then it sets out a formula for a
7 success fee going forward.

8 Were you aware that at one point in
9 time there was contemplation of paying Mr. Bonwick
10 \$8,000 a month, and then should the initial period
11 continue, that he would be eligible for success fees
12 under certain circumstances?

13 MR. DENNIS NOLAN: Now that I look at
14 it, I -- I know that there was, you know, various
15 discussions about the way to structure this and this
16 was one initial thought, I -- I -- I take it from Mr.
17 Glicksman as to how it might be structured.

18 MR. JOHN MATHER: And so we see in the
19 final retainer agreement that was signed in June 2011
20 that there was no mention of a success fee and that
21 that wasn't contemplated in that retainer. But his
22 fees are increased to ten -- the fees are increased to
23 \$10,000 per month.

24 Do you know if that was related to the
25 decision not to include a success fee?

1 MR. DENNIS NOLAN: I don't know that
2 but that's likely.

3 MR. JOHN MATHER: Can we go back to
4 ALE566?

5 MR. WILLIAM MCDOWELL: Just before we
6 -- we leave this, I wonder why there's a redaction in
7 this document. If the issue is legitimacy of the
8 financial arrangements with Mr. Bonwick, you know, the
9 fact that there's an arrangement with another
10 consultant becomes important and the identity of the
11 consultant frankly becomes important.

12 THE HONOURABLE FRANK MARROCCO: Why
13 don't -- why don't I -- I was going to -- I would
14 normally take a break around now anyway.

15 Let me think about that and I'll come
16 back to you in --

17 MR. WILLIAM MCDOWELL: Sure.

18 THE HONOURABLE FRANK MARROCCO: -- ten
19 (10) minutes or so.

20 MR. WILLIAM MCDOWELL: And Mr. Watson
21 may have something to say about it as well. I don't
22 know.

23 THE HONOURABLE FRANK MARROCCO: I
24 don't know who made the redaction.

25

1 MR. MICHAEL WATSON: I don't know
2 either but we can use the ten (10) minutes to find
3 that out, Your Honour.

4 THE HONOURABLE FRANK MARROCCO: All
5 right.

6

7 --- Upon recessing at 10:15 a.m.

8 --- Upon resuming at 10:24 a.m.

9

10 MR. MICHAEL WATSON: Your Honour, may
11 I address this issue?

12 THE HONOURABLE FRANK MARROCCO: Sure.

13 MR. MICHAEL WATSON: The -- the
14 redaction was made by the Inquiry, not by -- not by
15 us. We've discussed it. We know who it is. We're
16 quite prepared to disclose that. And I'll just say,
17 if I may, that the -- the name was Bridgepoint.

18 THE HONOURABLE FRANK MARROCCO: Right.
19 I think there was some cross-examination yesterday by
20 Ms. Bain of one (1) of the other witnesses where that
21 came out. So, now you know, Mr. McDowell.

22 MR. WILLIAM MCDOWELL: Thank you.

23 THE HONOURABLE FRANK MARROCCO: Thank
24 you.

25

1 CONTINUED BY MR. JOHN MATHER:

2 MR. JOHN MATHER: On Bridgepoint, I
3 believe you also mentioned the other day that
4 Bridgepoint was a consultant that PowerStream had
5 hired in the past with respect to potential mergers
6 and acquisitions. Was that correct?

7 MR. DENNIS NOLAN: That's correct.
8 And I also understand they were also engaged by Hydro
9 One in the past.

10 MR. JOHN MATHER: What -- what did
11 Bridgepoint do for PowerStream in those instances?

12

13 (BRIEF PAUSE)

14

15 MR. DENNIS NOLAN: I'm trying to think
16 of specifics. They would have provided advice about
17 various -- about their views of -- of the LDC sector,
18 which LDCs were, to their knowledge, contemplating a
19 possible sale or -- or merger, provided some
20 information about sort of the dynamics within those
21 municipalities in terms of -- of just not ma -- just
22 as by way an example.

23 This isn't -- whether, for example,
24 while the CEO, for example, of -- of the LDC may be,
25 you know, interested or not interested, vice versa,

1 Council is or isn't and advice of that, and then
2 advice about -- about different decision makers and
3 things like that.

4 Bridgepoint, they might have provided
5 some information, some -- a little bit more on the
6 financial side. Mr. Glicksman would be the person
7 that would have dealt with him, can answer that in --
8 in more detail.

9 MR. JOHN MATHER: Do you know if
10 Bridgepoint had ever been retained by PowerStream
11 prior to the Collus transaction to consult on an RFP
12 process that PowerStream was involved in?

13 MR. DENNIS NOLAN: Not an RFP process.
14 I heard yesterday about references to all sorts of
15 RFPs in the process. I'm just curious that I've not
16 heard of those RFPs or been party to them.

17 So, I think, again, people using that
18 term rather loosely in terms of -- of whether an LDC
19 was going through any kind of process. Maybe they've
20 tacked RFP onto it generically. I don't know.

21 MR. JOHN MATHER: And -- and so I take
22 it from your answer that, as far as you're aware,
23 PowerStream never had Bridgestone partic --

24 MR. DENNIS NOLAN: Bri -- Bridgepoint.

25 MR. JOHN MATHER: -- provide consult -

1 - sorry, Bridgepoint, not the tire company,
2 Bridgepoint, provide consulting services on an RFP for
3 a utility for PowerStream.

4 MR. DENNIS NOLAN: Not that I can
5 recall. There might have been one (1) that was going
6 through some sort of process, but not one (1) I can
7 recall.

8 MR. JOHN MATHER: And I take it that
9 Bridgepoint didn't rec -- didn't raise the -- the same
10 conflict issues that Compenso and Mr. Bonwick's
11 retainer raised for PowerStream?

12 MR. DENNIS NOLAN: Correct.

13 MR. JOHN MATHER: So, if we could go
14 back ALE566.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So, this is the
19 memorandum recommending a continued retainer with Mr.
20 Bonwick that we were looking at. And if we could
21 scroll down. And looking at the paragraph that
22 starts, "Since that time," so it's contemplating --
23 the paragraph before was contemplating the initial
24 retainer. And then it says:

25 "Since that time, Mr. Paul Bonwick

1 has assisted PowerStream grow its
2 presence and profile in the centre
3 Ontario region and has proven to be
4 a valuable asset in providing
5 strategic and communication advice
6 in an assisting -- in -- and in
7 assisting us to be successful with
8 both respect to Collus bid and other
9 utilities in the CHEC group."

10 Did you agree with that assessment at
11 that point in time?

12 MR. DENNIS NOLAN: I might not have
13 been as enthusiastic about that assessment.

14 MR. JOHN MATHER: And I take it from
15 your earlier answers you didn't share the view that
16 Mr. Bonwick had been a valuable asset?

17 MR. DENNIS NOLAN: Not such that I
18 think it warranted the engagement. I'm -- I'm not
19 saying that Mr. Bonwick did not provide any -- any
20 value. I'm -- I'm just saying that not to the -- I --
21 as I said, I -- personally, I didn't think the
22 engagement was necessary.

23 MR. JOHN MATHER: Under -- understood.
24 What value at this point in time did you believe Mr.
25 Bonwick had provided?

1 MR. DENNIS NOLAN: The -- I think the
2 value that he -- that he did provide was -- was an
3 assurance, which I think was the -- the initial value
4 that -- that we saw, and not to speak for others, in
5 giving us comfort that -- that the -- the Town was
6 serious about proceeding.

7 That -- that was one (1) -- one (1) of
8 the key things.

9 MR. JOHN MATHER: Do you recall when
10 you felt that you had gotten that assurance, like, at
11 what point in time, in your mind, the insurance had
12 been -- had been in place?

13 MR. DENNIS NOLAN: Well, you're --
14 you're never really sure. We've -- we've been down
15 the road with -- with other municipalities where they
16 said that they were going to go ahead and negotiate a
17 sale of -- of their utility or that they were open to
18 those discussions, and to be even invited in and --
19 and find out that it went nowhere.

20 So, it -- it's kind of a continuing
21 process. I think I was getting -- you know,
22 certainly, prior to the RFP being issued, I was
23 expecting it to be issued. So, you know -- you know,
24 in -- it's sort of a continuum.

25 So, yes, this looks like -- like it

1 could be re -- real. But, for example, when -- when I
2 -- when I first learned that Mr. Houghton had raised
3 the possibility, I -- I, from experience, knew that,
4 okay, it's a possibility, far from a certainty.

5 MR. JOHN MATHER: And my question was
6 that you said that one (1) of the values that Mr.
7 Bonwick brought was that he brought the assurance that
8 the Town was serious about this?

9 MR. DENNIS NOLAN: M-hm.

10 MR. JOHN MATHER: How did he provide
11 that assurance? I'm just trying to get the
12 understanding of why you felt that he had provided
13 that assurance.

14 MR. DENNIS NOLAN: Just from his
15 general feedback, that this is the -- that the -- that
16 this was -- was the direction coming. And, also,
17 just, you know, some gauging of -- of whether that
18 sort of thing would be something that would -- would
19 meet with approval in the community.

20 So, again, if you went down -- down the
21 road of say, you know, part of Council or a mayor of a
22 given municipality thinking this is a really good
23 idea, and then there's a couple vocal people on
24 Council, I don't mean this Council, who campaign
25 against it and it becomes, you know, a cause in -- in

1 the local municipality, you know, don't you dare sell
2 our hydro because -- you know, these are assets that -
3 - that -- particularly, a lot of smaller communities
4 coo -- took great pride in and -- and felt that
5 selling them was losing control and -- of -- of those
6 assets and that there was some -- you know, that it
7 was something that you, you know, should resist, so
8 that sort of thing, but, you know, that -- from my
9 point of view.

10 MR. JOHN MATHER: So, if we continue
11 in the memo, it says:

12 "Executive management is now
13 recommending that we engage Mr.
14 Bonwick on a long-term ba -- basis
15 subject to a normal termination
16 clause at a monthly retainer of
17 fifteen thousand dollars (\$15,000)."

18 Do you recall the rationale for the
19 increase from ten thousand (10,000) to fifteen
20 thousand dollars (\$15,000) a month?

21 MR. DENNIS NOLAN: I -- again, I
22 wasn't involved in the negotiation of that. I spec --
23 my speculation is it was because of -- of no success
24 fee in particular with Collus and an adjustment of --
25 a rather significant adjustment in what Mr. Bonwick

1 was seeking, success fees for other utilities.

2 MR. JOHN MATHER: And so, you said
3 that that was a speculation. What's the basis for
4 that speculation?

5 MR. DENNIS NOLAN: I think I -- I
6 think I have seen where -- where -- and -- and I think
7 I recall discussing with Mr. Glicksman what he was
8 initially asking for was significantly higher.

9 MR. JOHN MATHER: So, was it your
10 understanding based on your conversation with Mr.
11 Glicksman that PowerStream wasn't prepared to offer
12 what Mr. Bonwick was seeking?

13 MR. DENNIS NOLAN: Yes. And I think
14 it was reflected in -- in the -- the agreement while
15 providing success fees as -- as possible for these
16 other utilities, that that was significantly lower. I
17 can't remember exactly, but, yeah.

18 MR. JOHN MATHER: Other than as a way
19 to address Mr. Bonwick's request in terms of success
20 fees, was there any other reason the retainer was
21 increased from ten thousand (10,000) to fifteen
22 thousand dollars (\$15,000) that you are aware of?

23 MR. DENNIS NOLAN: Not that I'm aware
24 of.

25 MR. JOHN MATHER: Did you have

1 understanding or was -- was -- did you have any
2 understanding whether this was also additional
3 compensation to, for lack of a better term, reward Mr.
4 Bonwick for the work he'd already done?

5 MR. DENNIS NOLAN: I think the
6 approach was, as in the memo, that, you know, there
7 had been sort of a trial run of the initial engagement
8 and thought that Mr. Bonwick, because of his position
9 of having been a member of Parliament for -- for the
10 area in which several of the CHEC group LDCs were in
11 his -- his geographic area, as I said, I think
12 yesterday, I don't know the exact geographic boundary,
13 but I know it includes some within that CHEC group,
14 and that he would have that -- that local connection,
15 and that would be of value.

16 MR. JOHN MATHER: So, the initial
17 retainer was for a period of three (3) months --

18 MR. DENNIS NOLAN: M-hm.

19 MR. JOHN MATHER: -- which would bring
20 you -- it was signed June 7th, 2011. So, that would
21 bring you to September 7th, 2011. So, technically,
22 the initial retainer ended on September 7th, 2011?

23 MR. DENNIS NOLAN: Right.

24 MR. JOHN MATHER: This memo is being
25 circulated in October 2011. Do you have any

1 recollection of why these discussions were taking
2 place, you know, a month or so after the initial
3 retainer had technically come to an end?

4 MR. DENNIS NOLAN: I don't -- I -- I
5 don't know. I mean, we have always had a lot going on
6 as a company, certainly a lot more than this
7 transaction.

8 It may have had something to do with
9 the -- the timing of the audit and finance committee.

10 MR. JOHN MATHER: Do you recall if it
11 had any relation to the fact that the RFP for Collus
12 had been issued on October 4th?

13 MR. DENNIS NOLAN: I -- I don't know.
14 I -- I suspect it was one (1) of those things that it
15 -- the -- the time had run out and people paid
16 attention to that. I think our -- our in -- again,
17 Mr. Glicksman could -- could confirm this, but I'm
18 sure our intent was, since we hadn't terminated that
19 initial engagement, that we would honour that while he
20 was still performing work, as we did.

21 MR. JOHN MATHER: So, if we can scroll
22 down in the memorandum. I just note that the last
23 paragraph of the memorandum contemplates retaining BDR
24 & Associates --

25 MR. DENNIS NOLAN: Yes.

1 MR. JOHN MATHER: -- with respect to
2 the RFP. It's my understanding that they provided
3 financial consulting. Is that fair?

4 MR. DENNIS NOLAN: That's correct. We
5 -- we had a fair bit of experience with them. They
6 had acted for -- for us on more than one (1) occasion
7 in providing financial analysis of -- of certain LDCs
8 that we were interested in acquiring or we -- we had
9 preliminary discussions with.

10 They had also acted for the City of
11 Markham in providing an independent valuation when we
12 did the Barrie merger, I think.

13 MR. JOHN MATHER: And were they going
14 to value Collus? Was that the -- the intent?

15 MR. DENNIS NOLAN: Yes. They -- they
16 would do an independent valuation and -- and provide
17 us with guid -- guidance as to the appropriate range
18 and price.

19 MR. JOHN MATHER: At the time, would
20 you -- did you -- did you consider their independent
21 valuation to be something that was confidential to
22 PowerStream?

23 MR. DENNIS NOLAN: Yes.

24 MR. JOHN MATHER: Go to paragraph 309
25 of the Foundation Document.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So this paragraph
4 describes the memorandum --

5 MR. DENNIS NOLAN: Excuse me. Sorry.
6 Can I just clarify that last answer.

7 MR. JOHN MATHER: Absolutely.

8 MR. DENNIS NOLAN: It just occurred to
9 me. I believe that at some point -- and again,
10 Mr. Glicksman can clarify -- that that valuation may
11 have been shared. But it was with our consent in --
12 in terms of, you know, the -- and I'm not -- I'm not
13 sure that it was or at least certain aspects of it.
14 And in sort of showing the -- how we valued because
15 valuation methods can -- can vary.

16 So it -- that information may have been
17 shared, so I didn't want to give the impression that
18 I -- that I didn't think that it was.

19 MR. JOHN MATHER: Understood. But if
20 it was shared, it would have required PowerStream's
21 consent --

22 MR. DENNIS NOLAN: Yes.

23 MR. JOHN MATHER: -- is your
24 understanding? All right. Okay.

25 So if we scroll down... Continue

1 scrolling. So we see that the paragraph we were
2 looking at was discussing the memorandum we looked at.

3 And then the next paragraph says:

4 "On October 19th, PowerStream audit
5 and finance committee endorsed the
6 management's recommendation to
7 engage Paul Bonwick on a long-term
8 basis."

9 And then it sets out the terms in which
10 the recommendation came. And if we scroll down to
11 subparagraph (q). Continue -- not (q). My notes are
12 all over the place. But we see subparagraph (e). It
13 says:

14 "No success fee or a merger or
15 acquisition to Collus Power."

16 Other than what you've told us about
17 that, was there any other reason that you understood
18 why there would not be a success fee for a merger
19 acquisition of Collus Power?

20 MR. DENNIS NOLAN: I recall now. It's
21 in the Inquiry documents. But I recall seeing in -- I
22 knew that this had happened before -- I don't know
23 that I'm copied on the email -- but that Bonwick --
24 Mr. Bonwick confirmed in writing his agreement prior
25 to this that -- and I believe it was in an email to

1 Mr. Glicksman.

2 MR. JOHN MATHER: And I understood
3 that. What my question was, was other than what you
4 explained to us already about why there would be --
5 why it was -- it might be inappropriate to have a
6 success fee for Collus Power, is there any other
7 reason?

8 MR. DENNIS NOLAN: Oh, sorry. Not
9 that I can think of, no.

10 MR. JOHN MATHER: And then at
11 subparagraph (f) says:

12 "The contract would be terminated if
13 no agreement with Collus Power had
14 been executed by June 30th, 2012."

15 Do you know the purpose of that
16 provision?

17 MR. DENNIS NOLAN: I think the
18 thinking was that if we weren't successful with --
19 with Collus, then the -- the kind of regional
20 consolidation that we thought or pursuing -- 'cause we
21 wanted Collus to show that we could be this -- this
22 partner as opposed as, you know, the big utility
23 gobbling up and -- and sort of spitting out executives
24 and things like that.

25 So if that -- if we were unsuccessful,

1 then we'd have to revisit the strategy. Would we
2 then -- can still consider proceeding with the
3 strategy? I think it was just making it very clear
4 that if -- if that didn't go ahead, we'd likely not
5 proceed with the engagement.

6 MR. JOHN MATHER: So is it fair to say
7 then that Mr. Bonwick -- Mr. Bonwick's ongoing
8 retainer with PowerStream after any transaction
9 with -- sorry -- Mr. Bonwick's ongoing retainer with
10 PowerStream depended on whether or not the Collus deal
11 could be finalized and implemented?

12 MR. DENNIS NOLAN: I think in all
13 likelihood, but I think we'd have to -- it certainly
14 would have -- there would have been a reset. There
15 was a termination provision in the -- you know, for I
16 believe it was 60 days notice in -- in the agreement
17 within -- within the term. I think we would have had
18 to reconsider again whether the strategy was worth
19 pursuing.

20 MR. JOHN MATHER: So if a transaction
21 didn't occur, there would be a whole new -- there may
22 be a whole new negotiation about the terms in which
23 Mr. Bonwick could continue with PowerStream, if at
24 all. Is that fair?

25 MR. DENNIS NOLAN: Yeah. I don't

1 think I thought about it at the time, but as you pose
2 that question, it's -- it's in all likelihood. I
3 think that's probably correct.

4 MR. JOHN MATHER: And similarly,
5 this -- if we look at subparagraph (d), it does
6 contemplate success fees for acquisitions other than
7 Collus.

8 And so similarly in order for
9 Mr. Bonwick to have the opportunity to earn those
10 success fees at least under this retainer, the Collus
11 transaction would have to be completed.

12 MR. DENNIS NOLAN: Right.
13 Recognizing, of course, that these -- that these
14 potential transactions would have nothing to do with
15 Collus. I mean, they would be -- you know that --
16 your premise is okay, we don't get to these without
17 Collus happening. That -- that's likely.

18 But, of course, these -- you would have
19 to -- I think it would be quite -- to achieve the --
20 what's in (d) would be quite a fee. That would show
21 that the strategy was very successful.

22 MR. JOHN MATHER: So if we could open
23 up ALE852.

24

25 (BRIEF PAUSE)

1 MR. JOHN MATHER: So this is the
2 retainer agreement that is then signed with
3 Mr. Bonwick on November 9th, 2011 which comes after
4 the memo and the audit and finance committee
5 recommendation that we saw.

6 If we could go to page 3, please.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: So under the heading
11 "fees," it says:

12 "The parties agree that the
13 following fee structure shall
14 apply."

15 And it's some of the items we've looked
16 at. If we could scroll down -- oh, no. There we go.

17 So we see that Collus Power is one of
18 the utilities that is contemplated as a utility that
19 would entitle Mr. Bonwick to a success fee if there
20 was a transaction involving them.

21 I take it from your earlier evidence
22 this was an error?

23 MR. DENNIS NOLAN: Definitely an error
24 and showing that I'm not a very good proofreader.
25 This -- this should not have been -- been in here.

1 It was -- I think this table was -- was
2 a bit of a cut and paste. It was prepared by -- I
3 think by someone in John Glicksman's group. And this
4 may have been an earlier list of a number of customers
5 like -- and then was used for the wrong purpose.

6 MR. JOHN MATHER: And it's our
7 under -- it's my understanding that Mr. Bonwick was
8 not paid a success fee in relation to the Collus
9 transaction?

10 MR. DENNIS NOLAN: And he was not paid
11 a success fee.

12 MR. JOHN MATHER: So if we could
13 scroll down. So continue scrolling.

14 So we see that this retainer agreement
15 of November 9th continues to have the disclosure
16 provision that was in the June 7th retainer agreement.
17 Was that your understanding at the time?

18 MR. DENNIS NOLAN: Yes.

19 MR. JOHN MATHER: Do you recall if
20 there were any further disclosures made to the mayor
21 or the clerk or anyone upon this retainer being
22 entered into?

23 MR. DENNIS NOLAN: No. I think it
24 was -- you know, even though this -- this is a new
25 agreement, it was viewed as a continuation of the

1 initial retainer. A disclosure had been made. And
2 it's the same disclosure language, the same language
3 about -- to the clerk, and -- and to the mayor.

4 MR. JOHN MATHER: Do you recall if
5 there was any discussions that you were aware of about
6 whether or not this new retainer should require
7 further disclosure to the mayor or clerk?

8 MR. DENNIS NOLAN: No.

9 MR. JOHN MATHER: Do you recall if
10 there was any discussions or contemplation about
11 whether or not this retainer should be disclosed to --
12 or not this retainer, sorry -- but that Mr. Bonwick
13 should make disclosure to the members of the Strategic
14 Task Team that was now in place to review and score
15 the RFP proposals?

16 MR. DENNIS NOLAN: I -- I can't recall
17 any discussion in that regard.

18 MR. JOHN MATHER: This contemplates
19 necessary and prudent disclosures. Do you think such
20 disclosure would fall under the category of necessary
21 and prudent?

22 MR. DENNIS NOLAN: Which disclosure?

23 MR. JOHN MATHER: To the Strategic
24 Task Team?

25 MR. DENNIS NOLAN: I think the -- it

1 was likely assumed that the members of the Task Team
2 were aware that Mr. Bonwick was working for
3 PowerStream. It was no secret. And some of the
4 members of the Task Team were certainly at the
5 meeting, I believe -- the June 29th meeting -- in
6 which that additional disclosure was made.

7 So would a formal disclosure to that --
8 to the Task Team been helpful? I suppose so. But
9 I -- I think the -- our understanding would have been
10 that it was certainly known.

11 MR. JOHN MATHER: When you -- when
12 PowerStream's contemplating the disclosure that needed
13 to be made, did it consider, to your knowledge, the
14 amount that Mr. Bonwick was being paid to be an item
15 that needed or should be disclosed as part of the
16 disclosure?

17 MR. DENNIS NOLAN: No.

18 MR. JOHN MATHER: Why not?

19 MR. DENNIS NOLAN: I think that'd be
20 pretty unusual to be disclosing the -- the particulars
21 of -- of a contract between third parties. I mean, I
22 don't see the reason for it.

23 MR. JOHN MATHER: Go to ALE820.

24

25 (BRIEF PAUSE)

1 MR. JOHN MATHER: So this is an email
2 in which John Glicksman is sending a memorandum to
3 Mr. Bentz, yourself, and Mark Henderson. As you can
4 see in the second paragraph, the memo that is attached
5 outlines two (2) approaches to making the offer to the
6 Town of Collingwood.

7 And then if we could open up the
8 attachment to that, which I think is ALE821.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: So this is the
13 memorandum that was attached to that email. And as
14 you can see, it is along the lines of what
15 Mr. Glicksman described discussing potential
16 approaches to valuating Collus or making offers on
17 Collus.

18 You see there's a method 1 referenced
19 to there, which in the BDRPP presentation the base
20 case position was as follows what's called as
21 method 1.

22 And then if we scroll down, there's a
23 method 2 that's also discussed. And the introduction
24 to method 2 says:

25 "It has been suggested to us

1 (by Paul Bonwick) that we present
2 the purchase price and quote the
3 best possible light which follows
4 the approach apparently taken by
5 KPMG."

6 At this point in time, do you recall
7 reading this memorandum at this point in time?

8 MR. DENNIS NOLAN: I mean, I'm copied
9 on it. I likely read it. I don't recall it in
10 detail.

11 I do recall the -- the range being
12 familiar. But this is -- this is something that I --
13 you know, Glicksman -- Mr. Glicksman would have been
14 focussing on. And, you know, I wouldn't -- I'm not
15 the financial person. I wouldn't have been expressing
16 an opinion per se.

17 MR. JOHN MATHER: Do you recall having
18 any concerns that it appeared -- it appears at least
19 that this memorandum reflects that Mr. Bonwick knows
20 the valuation approach taken by KPMG who were Collus
21 and the Town's consultants?

22 MR. DENNIS NOLAN: "Approach
23 apparently taken by KPMG." I don't know to the -- I
24 have no idea at this time what information Mr. Bonwick
25 had about the approach taken by KPMG or what was

1 confidential.

2 MR. JOHN MATHER: Would you have
3 expected Mr. Bonwick to have information about the
4 approach taken by KPMG?

5 MR. DENNIS NOLAN: Subject to what I
6 just said, not unless that was provided to him and,
7 you know, as -- you know, I mean, it's in their
8 interest to get everyone's price up. So I don't know
9 to the extent that they disseminated that information
10 or made it available. I have no idea.

11 MR. JOHN MATHER: There's been a few
12 instances that I understand your evidence to be that
13 when Mr. Bonwick had certain pieces of information,
14 you weren't sure whether or not the Strategic Task
15 Team, or Collus, or the Town considered that
16 information to be confidential. Is that fair?

17 MR. DENNIS NOLAN: Yes. In an -- in -
18 - I indicated that in a -- in a different context than
19 -- than here, yes.

20 MR. JOHN MATHER: Yes, I understand it
21 was a different context, but it was a similar idea.
22 The information's being received and it's not apparent
23 whether the person who --

24 MR. DENNIS NOLAN: Yeah.

25 MR. JOHN MATHER: -- may have

1 disclosed that information understood it to be
2 confidential?

3 MR. DENNIS NOLAN: Correct.

4 MR. JOHN MATHER: Do you know if you
5 or anyone at PowerStream ever contacted anyone at
6 Collus or the Town to confirm whether or not the
7 information that was being received was confidential
8 information or not?

9 MR. DENNIS NOLAN: When you say "the
10 Town," who -- who at the Town? And I -- no, I'm --
11 I'm not aware.

12 MR. JOHN MATHER: You agree that that
13 would have been a method through which PowerStream
14 could verify whether or not the information it was
15 receiving it should be receiving?

16 MR. DENNIS NOLAN: I'm not sure by
17 contacting the Town. I mean the -- the point person,
18 you know, for this as would normally be the case, for
19 this exercise in coordinating it, would be the CEO,
20 Mr. Houghton.

21 MR. JOHN MATHER: You know if anyone
22 contacted Mr. Houghton at any point?

23 MR. DENNIS NOLAN: I do not know that.

24 MR. JOHN MATHER: Do you agree that
25 that would have been an avenue that PowerStream could

1 have pursued to determine whether or not the
2 information it was receiving was confidential?

3 MR. DENNIS NOLAN: Yes.

4 MR. JOHN MATHER: Was there any
5 discussions that you're aware of about whether Mr.
6 Houghton should be contacted?

7 MR. DENNIS NOLAN: Not that I'm aware
8 of.

9 MR. JOHN MATHER: Do you know -- it's
10 also our understanding that KPMG was responsible for
11 co -- communicating with bidders during the RFP
12 release. Or at least that's -- the RFP sets out that
13 people should direct questions to John Herhalt.

14 Did you or, to your knowledge, anyone
15 at PowerStream speak with KPMG about whether the
16 information they were receiving was confidential or
17 was -- had been shared with the other bidders?

18 MR. DENNIS NOLAN: I don't know. But
19 it -- I guess I -- I would say that -- that Mr.
20 Glicksman would be in a much better position to an --
21 to answer that question. If the RFP, as you say,
22 invited questions, you -- you can't -- you can't come
23 to, you know, a valuation without having certain
24 information. So there may have well -- I suspect that
25 there was, but again, Mr. Glicksman can confirm this,

1 conversations with KPMG in terms of valuation
2 methodologies and certain inputs.

3 So, I'm not that surprised by that.
4 So, it may well be that through -- through that
5 there's -- it -- it became known to us, their
6 approach, which -- which would be simply by -- by
7 doing what was contemplated in the RFP.

8 MR. JOHN MATHER: I take it from your
9 answer then that you're not aware, separate and apart
10 from this comment about KPMG, you're not aware of any
11 -- anyone at PowerStream at any time going to KPMG
12 asking if any particular piece of the informat --
13 piece of information that Mr. Bonwick was providing
14 was confidential or was -- had been shared with the
15 other bidders?

16 MR. DENNIS NOLAN: Not specifically,
17 I'm not aware of them.

18 MR. JOHN MATHER: But that is
19 something that could have been done?

20 MR. DENNIS NOLAN: I suppose.

21 MR. JOHN MATHER: Could we open up
22 ALE916.

23

24 (BRIEF PAUSE)

25

1 MR. JOHN MATHER: And scroll down to
2 the bottom?

3 MR. DENNIS NOLAN: Sorry, what is the
4 date of this again?

5 MR. JOHN MATHER: Sorry, we'll get to
6 the first email, just so you can see.

7 MR. DENNIS NOLAN: Yeah.

8 MR. JOHN MATHER: November 14th, 2011.

9 MR. DENNIS NOLAN: Thank you.

10 MR. JOHN MATHER: So it says -- this
11 is an email from Mr. Fagen, it appears; although, your
12 name is at the bottom, so I'm sure if he was sending
13 it on your behalf. In any event, it says:

14 "Attached to the latest draft of the
15 RFP responses, please note that we
16 still have some cleanup to do. As
17 you can see, we've inserted pictures
18 which still require captions. Paul,
19 this includes several of your last
20 recommended changes."

21 MR. JOHN MATHER: Do you have any
22 recollection about the changes Mr. Bonwick suggested
23 to PowerStream's RFP proposal?

24 MR. DENNIS NOLAN: I can't remember
25 specifically. I -- I do remember that he, you know,

1 made -- made some recommendations with respect to the
2 non-financial matters.

3 MR. JOHN MATHER: Do you recall if you
4 found his recommendations useful or -- or helpful?

5 MR. DENNIS NOLAN: My view is we would
6 have had a -- a RFP response that would have looked
7 very substantially the same, with or without. There
8 was probably some -- some benefit to having his input
9 about that it would be well-received, the -- the
10 things like -- that I think were in the -- the
11 response, like support of employees and things like
12 that. Things that would resonate as -- as being
13 positive. Those soft things that -- that were
14 referred to before.

15 MR. JOHN MATHER: If we could scroll
16 up. That Mr. Bonwick responds, saying:

17 "Hi Eric. I sent some recommended
18 changes to Dennis today regarding
19 the information services section."

20 MR. JOHN MATHER: And then he says:

21 "While the offer for back-office
22 support will become a reality, I
23 highly recommend removing. At this
24 time, a general offer of support
25 will be more warmly received than

1 telling them what we will provide.
2 The senior person for this
3 department is presently very
4 supportive. I don't want us to lose
5 that support."

6 MR. JOHN MATHER: And then if you
7 scroll up. You respond:

8 "Paul, we have made the changes."

9 MR. JOHN MATHER: So if we could
10 scroll back down to Mr. Bonwick's email.

11 Do you recall what was meant by the
12 offer for back-office support?

13 MR. DENNIS NOLAN: I don't remember
14 the specific change that was made. Now, when I look
15 at this, I -- what I think he was talking about was
16 avoid the -- creating some concern among employees,
17 that PowerStream has all these capabilities and they
18 may be replaced. And -- which wasn't the intent. It
19 was something along those lines. That's what I -- I
20 remember.

21 MR. JOHN MATHER: Do you know, when he
22 references a senior person for this department, who he
23 was referring to?

24 MR. DENNIS NOLAN: I'm sorry -- no, oh
25 -- oh I -- I see, yes. No, I have no idea.

1 MR. JOHN MATHER: Did you -- did you
2 or, to your knowledge, anyone at PowerStream follow up
3 on who the sen -- senior person in the department was?

4 MR. DENNIS NOLAN: I don't know if --
5 if anyone else would have known who this person was,
6 but, I did not. Is -- I'm sorry.

7 MR. JOHN MATHER: No, go ahead. I
8 don't mean to cut you --

9 MR. DENNIS NOLAN: No, a -- as I say,
10 I -- what I recall about this is -- is that general
11 concern about some -- some wording that might have
12 created some unease for Collus employees which --
13 which I think -- I think this was actually a, you
14 know, some -- some good advice.

15 MR. JOHN MATHER: Do you recall having
16 any concerns that Mr. Bonwick appears to have
17 information about what a senior person at Collus views
18 of an -- of an element -- of an element of the RFP?

19

20 (BRIEF PAUSE)

21

22 MR. DENNIS NOLAN: I -- I don't know.
23 I mean it's -- it's a small town, a small community.
24 I -- I didn't reflect on that at -- at the time. It
25 was more, as -- as I said, concern about not wanting

1 to give the wrong message to employees of Collus.

2 MR. JOHN MATHER: We could open the
3 paragraph 322 of the Foundation Document.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: So, this paragraph
8 says on November 14th, Paul Bonwick emailed Eric
9 Fagen. Mr. Bonwick advised that he had sent Dennis
10 Nolan some changes. And so this is the email we were
11 looking at. And then if we scroll down to paragraph
12 323, then says:

13 "On November 14, 2011, Mr. Fagen
14 sent an internal email to
15 PowerStream staff setting out a
16 recap of the tentative public
17 disclosure and decision timelines
18 for the Collus Power/Collingwood RFP
19 that Ed Houghton and Paul Bonwick
20 outlined to me in a conference call
21 this morning."

22 MR. JOHN MATHER: Were you aware at
23 the time that Mr. Fagen had a con -- or at least it
24 appears Mr. Fagen had a conference call with Mr.
25 Houghton and Mr. Bonwick about the public disclosure

1 and decision timelines for the RFP?

2 MR. DENNIS NOLAN: I -- I can't recall
3 but it -- it -- it's -- it's possible that I -- I did
4 know. Mr. Fagen reported to me, but he didn't tell me
5 about every conversation that he was having.

6 MR. JOHN MATHER: And to be fair, I
7 think this document reflects that you were copied at
8 least on -- on this email. So to that extent it may
9 have been brought to your attention. Is that fair?

10 MR. DENNIS NOLAN: Yes.

11 MR. JOHN MATHER: It's out -- the
12 documents indicate that the RFP or the press release
13 for the RFP came out on November 17th, 2011. So at
14 this point in time it had not been made public that
15 the RFP was ongoing.

16 Would you have expected Mr. Fagen to be
17 discussing the -- the public disclosure time lines
18 with Mr. Houghton and Mr. Bonwick before that
19 disclosure had happened?

20 MR. DENNIS NOLAN: I don't think there
21 was anything untoward of them discussing it at some
22 time prior to then, if -- if a decision had been made
23 that PowerStream would -- was the successful
24 proponent.

25 MR. JOHN MATHER: So at this point in

1 time, PowerStream had not been selected as the
2 successful proponent. It's November 14th, 2011. The
3 RFP submissions had yet to be delivered to the
4 strategic task team at this point in time.

5 Does that affect your view?

6 MR. DENNIS NOLAN: Seems premature.

7 MR. JOHN MATHER: And what would be
8 premature about that?

9 MR. DENNIS NOLAN: Well, it's -- it's
10 prior to. It's obvious it's prior to that decision
11 being made.

12 MR. JOHN MATHER: And why would that
13 be premature if it was prior to that decision being
14 made?

15 MR. DENNIS NOLAN: Well, I think
16 they're -- what they were talking about was, you know,
17 possible time lines, not -- but, you know, obviously
18 it would have been more appropriate for that
19 conversation to happen after.

20 MR. JOHN MATHER: And is that because
21 at this point in time it was still open who would be
22 the successful proponent?

23 MR. DENNIS NOLAN: Correct.

24 MR. JOHN MATHER: Would you -- did you
25 have any understanding whether or not similar

1 conversations were happening with the other bidders in
2 terms of --

3 MR. DENNIS NOLAN: Sorry.

4 MR. JOHN MATHER: -- did you have any
5 understanding if similar conversations were happening
6 with any of the other bidders with respect to the
7 potential public disclosure time lines for the Collus
8 RFP?

9 MR. DENNIS NOLAN: No, I don't.

10 MR. JOHN MATHER: If we could go to
11 paragraph 371 of the Foundation Document.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: So this is also
16 November 14th, 2011. It's contemplating Mr. Bonwick
17 sending Mr. Houghton a draft of a Collus Power press
18 release announcing the RFP.

19 And then if you scroll down -- if you
20 look at the last sentence, it says:

21 "Mr. Bonwick also forwarded the
22 press release to Eric Fagen for
23 review and comment."

24 Were you aware that Mr. Fagen had been
25 provided with a draft press release for review and

1 comment?

2 MR. DENNIS NOLAN: I can't recall.
3 It's quite possible, but I don't know if I would have
4 -- have seen at it. I -- it wouldn't have been
5 brought to me for approval. He would have been just
6 work -- working on it with them.

7 MR. JOHN MATHER: And then if we could
8 go to paragraph 377.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: So this is
13 referencing an email -- an email chain that would --
14 that transpired on November 18th, 2011, which is the
15 day after the press release was issued.

16 This talks about a concern you had
17 about Collus or municipal officials being at liberty
18 to indicate the names of the companies putting forward
19 proposals.

20 My question for you is about the last
21 sentence, and it's an email from Eric Fagen saying:

22 "I told you that in our -- I told"--

23 Sorry.

24 "I told you that in our discussions
25 about Collus' public disclosure

1 about this matter, Ed Houghton had
2 indicated that it would be okay for
3 us to notify our employees once
4 Collus had distributed their news --
5 their news release."

6 I take it from your earlier answer that
7 -- that you -- be the case that you think it was
8 premature for Mr. Fagen to be having conversations
9 with Ed Houghton and Paul Bonwick about public
10 disclosure and about -- and having Mr. Fagen review
11 the press release.

12 Is that -- is that fair?

13 MR. DENNIS NOLAN: I just -- I just
14 want to be -- I just want to be real clear about the
15 time line, and, you know -- and I think this helps
16 me. What -- what I'm not clear on when these
17 conversations were happening, if the selection of,
18 wheth -- whether it was made public or not, of
19 PowerStream being the successful proponent, that
20 decision had been made. So the announcement was on
21 this -- and this is -- I have to tell you, this is a -
22 - a document that I've -- I've not looked at at all.

23 MR. JOHN MATHER: So the --
24 PowerStream is selected as the successful proponent in
25 December 2011, and these conversations are happening

1 in November 2011.

2 MR. DENNIS NOLAN: Right, right.

3 Okay, sorry, I --

4 MR. JOHN MATHER: And so I --

5 MR. DENNIS NOLAN: -- apologize --

6 MR. JOHN MATHER: I just -- I'm just -
7 - we've seen other -- I -- I've shown you other
8 instances of Mr. Fagen being either provided with
9 information about the public disclosure time lines or
10 the contemplation of the public disclosure time lines
11 and being offered an opportunity to review and comment
12 on the press release itself at a period of time before
13 PowerStream was selected and --

14 MR. DENNIS NOLAN: Right.

15 MR. JOHN MATHER: -- at a period of
16 time before the proposals had been reviewed. And I
17 take it from your earlier answer that your -- your
18 same comment applies, is that in your view this was
19 likely premature and --

20 MR. DENNIS NOLAN: Yes.

21 MR. JOHN MATHER: -- and not
22 appropriate. Is that fair?

23 MR. DENNIS NOLAN: Yes.

24 MR. JOHN MATHER: If we can go to
25 paragraph 378, please.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So this is a
4 response to Mr. Fagen's email, and Mr. Bonwick says:

5 "There is no issue regarding the
6 notice Eric sent out to a
7 PowerStream employee."

8 And then --

9 THE HONOURABLE FRANK MARROCCO: To
10 PowerStream employees.

11 MR. JOHN MATHER: Employees, thank
12 you.

13

14 CONTINUED BY MR. JOHN MATHER:

15 MR. JOHN MATHER: And then it goes on.

16 And then at one point Mr. Bonwick writes:

17 "There is apparently an internal
18 discussion taking place today with
19 review team as to whether the
20 proposal will be accepted."

21 Do you have any recollection of what
22 that was a reference to?

23 MR. DENNIS NOLAN: Okay. So now I
24 think I have a better idea of what -- what might have
25 been discussed with Mr. Fagen, and so it's about a --

1 a notice to PowerStream employees. So it was -- I
2 think there was some -- that we had some concern. It
3 was then, I think, public that we were a proponent,
4 right.

5 So it was dealing with that -- that
6 issue, and we had also, you know, employees in Barrie
7 and in other places, so there would -- there was
8 probably a concern about some transparency and what we
9 would be at liberty to tell PowerStream employees.

10 MR. JOHN MATHER: Fair enough.

11 MR. DENNIS NOLAN: So I think I was
12 missing, and I apologize, the context -- probably what
13 was -- what was going on at that time, and so I think
14 the -- the -- not to speak for Mr. Fagen, that's --
15 that the -- the coordination was to make sure that we
16 weren't saying anything inappropriate, that Collus
17 would have a problem with, and -- but being able to
18 communicate some status to our employees.

19 MR. JOHN MATHER: And -- and it
20 appears --

21 MR. DENNIS NOLAN: And that would not
22 be inappropriate to me.

23 MR. JOHN MATHER: And then it appears
24 Mr. Bonwick is -- in his response is addressing why --
25 is -- is addressing why that isn't a concern at this

1 point in time, that PowerStream has -- has told his
2 employees, and as part of that explanation he explains
3 that:

4 "There is apparently an internal
5 discussion taking place with the
6 review team as whether -- as to
7 whether the proposal will be
8 accepted. This is the rationale for
9 not sharing the names at this time.
10 By the end of the day, there may be
11 only three (3) in contention."

12 So I understand that to be Mr.
13 Bonwick's -- explaining why the press release said
14 that the bidders would not be identified at this point
15 in time, or the news article, I can't recall.

16 But my question for you is: there --
17 if you had an understanding of what he was talking
18 about when he says that there is apparently an
19 internal discussion taking place about whether a
20 proposal will be accepted and the contemplation that
21 there might only be three (3) in contention, as a
22 result of that conversation?

23 MR. DENNIS NOLAN: I just don't recall
24 this. So, you know, I -- I think he's, you know,
25 giving his view of -- of the - the status of the

1 consideration of -- of the -- of the bids, I guess.

2 MR. JOHN MATHER: At this point in
3 time, do you recall having any concern that Mr.
4 Bonwick appears to have been aware of an ongoing
5 discussion within the review team as to whether or not
6 one (1) of the bidders may in fact, I take it, be
7 disqualified?

8 MR. DENNIS NOLAN: Yeah. I -- I -- I
9 can't -- I can't recall this particular communication,
10 and I -- I can't say that I focussed on it, and also
11 if I -- I did -- I -- I'm not sure that I would, you
12 know, accept it necessarily as -- as -- as being
13 accurate, but I -- I really -- I don't recall really
14 focussing on that.

15 MR. JOHN MATHER: Can we pull up
16 ALE49170?

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: So this is an email
21 from David McFadden to Bob Hull on November 16th, two
22 --

23 THE HONOURABLE FRANK MARROCCO: No. I
24 -- I -- I think it's the other way around. I think
25 it's from Mr. Hull to Mr. McFadden.

1 MR. JOHN MATHER: Yes. Thank you for
2 the correction.

3

4 CONTINUED BY MR. JOHN MATHER:

5 MR. JOHN MATHER: So an email from Mr.
6 Hull to Mr. McFadden on November 16th, 2011. And just
7 to orient you in time, Mr. Nolan, that's the day that
8 the -- the proposals were submitted by the bidders.

9 Is that your understanding?

10 MR. DENNIS NOLAN: Yes, thank you.

11 MR. JOHN MATHER: And in -- in the
12 email, Mr. Hull is sending Mr. McFadden the
13 PowerStream RFP submissions to the Collision -- to the
14 Collingwood RFP. Were you aware that Mr. Hull was
15 sending this to Mr. McFadden at this point in time?

16 MR. DENNIS NOLAN: I'm not sure. I --
17 I -- I can't -- I can't recall.

18 MR. JOHN MATHER: Do you recall any
19 discussions with Mr. Hull about sending Mr. McFadden
20 the RFP submissions?

21 MR. DENNIS NOLAN: I don't recall
22 specifically. I assume he did so out of courtesy.

23 MR. JOHN MATHER: And one (1) of the
24 attachments to -- to this email is the financial
25 portion of the PowerStream bid, which was -- it was

1 supposed to be a two-envelope process, so that was --

2 MR. DENNIS NOLAN: Right.

3 MR. JOHN MATHER: -- not supposed to
4 be delivered to the task team members at this point in
5 time.

6 Do you recall this ever being brought
7 to your attention?

8 MR. DENNIS NOLAN: No, not at all, and
9 I -- I -- I did hear Mr. McFadden dealing with this
10 and -- and -- and describing in his testimony how --
11 how he dealt with this. So I -- I know that this --
12 sending this in hindsight was ill-advised because of
13 that process.

14 MR. JOHN MATHER: We can -- if you can
15 look at the list of the attachments, one (1) of the
16 attachments is a document called an Executive Summary.

17 MR. DENNIS NOLAN: M-hm.

18 MR. JOHN MATHER: Do you recall there
19 being an Executive Summary as part of PowerStream's
20 proposal?

21 MR. DENNIS NOLAN: I -- I -- I can't
22 remember. It wouldn't surprise me if it -- if there
23 was. That would be normal.

24 MR. JOHN MATHER: So if we could open
25 up ALE49172.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: And scroll down. So
4 this is what we understand to be a copy of the
5 Executive Summary that was submitted as part of the
6 proposal, PowerStream's.

7 And if we scroll down, we see in the
8 Executive Summary that it provides an overview of
9 PowerStream's proposal, including the financial
10 component of PowerStream's proposal.

11 Do you have any recollection of that
12 being included in -- in -- in this Executive Summary?

13 MR. DENNIS NOLAN: I mean, this --
14 this looks -- this looks accurate.

15 MR. JOHN MATHER: Do you -- do you
16 recall that financial information was included in the
17 Executive Summary?

18 MR. DENNIS NOLAN: Sorry. Can we just
19 be clear? This -- you're confirming for me. I -- I
20 think you confirmed for me that this was the Executive
21 Summary included in our proposal.

22 MR. JOHN MATHER: Yes.

23 MR. DENNIS NOLAN: Yes.

24 MR. JOHN MATHER: Okay.

25 MR. DENNIS NOLAN: It is.

1 MR. JOHN MATHER: No, and -- but my
2 question is, as we see in the Executive Summary, it
3 includes an overview of the financial portion of the
4 bid.

5 MR. DENNIS NOLAN: Yes, I understand
6 that point.

7 MR. JOHN MATHER: And my question is,
8 at -- at this point in time on November 16th, 2011, do
9 you recall being aware that the Executive Summary
10 included financial information?

11

12 (BRIEF PAUSE)

13

14 MR. DENNIS NOLAN: I -- I would have
15 seen it, so I -- I would have been aware of it, yes, I
16 think so.

17 MR. JOHN MATHER: And would you --
18 were you aware at this point in time that Collus
19 intended -- or the Strategic Task Team intended to
20 evaluate the RFP process and the two (2) envelope
21 approach?

22 MR. DENNIS NOLAN: No, I was not.

23

24 (BRIEF PAUSE)

25

1 MR. JOHN MATHER: Can we pull up
2 ALE1078?

3

4 (BRIEF PAUSE)

5

6 MR. JOHN MATHER: So, this is a email
7 chain for No -- from November 28th, 2011. The email
8 at the top is from Mr. Glicksman to Mr. Henderson;
9 you're copied. And Mr. Glicksman makes a reference to
10 an email he sent below about an expectation that
11 PowerStream would be invited to attend a meeting,
12 which I -- ends up being the meeting on December 1st,
13 as I understand it.

14 My question for you about this document
15 relates to the sentence:

16 "Based on my discussion with Paul
17 this evening, I understand that
18 others were more detailed with --
19 with WRT (sic), the type and -- type
20 and costs of operational services
21 they would offer Collus Hydro."

22 Do you recall receiving this email from
23 Mr. Glicksman?

24 MR. DENNIS NOLAN: I have no reason to
25 believe I didn't.

1 MR. JOHN MATHER: But it sounds like
2 you don't have an independent recollection of
3 receiving it?

4 MR. DENNIS NOLAN: It -- I don't
5 remember this specif -- specifically. I do remember
6 about a potential meeting which I believe took place
7 at our offices on December 1st.

8 MR. JOHN MATHER: Do you recall at any
9 point -- or do you recall taking notice of the fact
10 that it appears Mr. Bonwick was providing Mr.
11 Glicksman information about the level of detail in
12 other proponent's proposals?

13 MR. DENNIS NOLAN: No, I don't. I
14 don't recall being focussed on that.

15 MR. JOHN MATHER: Did you have any
16 understanding of where Mr. Bonwick obtained that
17 information?

18 MR. DENNIS NOLAN: No, I don't.

19 MR. JOHN MATHER: Do you know if you
20 or anyone at PowerStream followed up with Mr. Bonwick
21 about that item of information?

22 MR. DENNIS NOLAN: No, I don't.

23 MR. JOHN MATHER: I have some general
24 questions about Mr. Bon -- what Mr. Bonwick's role was
25 during the RFP process, or your views on it at the end

1 of the process.

2 At any point in time that you can
3 recall did you have any concerns just generally about
4 the nature of the information Mr. Bonwick was
5 providing PowerStream?

6

7 (BRIEF PAUSE)

8

9 MR. DENNIS NOLAN: I -- I think I had
10 con -- I -- I think I had the -- the same level of
11 concern I had throughout about -- about the retainer.
12 As I said before, I -- I didn't think that the -- the
13 inputs were all that valuable and all that helpful.

14 MR. JOHN MATHER: And I appreciate
15 that your view was that the -- the co -- the -- the
16 nature of the information was invaluable or helpful to
17 what PowerStream was doing, but I just wanted to
18 confirm more generally, did you have a concern about
19 the nature of that information, in any event?

20 MR. DENNIS NOLAN: Well, I gu -- I
21 guess I didn't know where the information was coming
22 from and whether that was information that the -- that
23 Collingwood wanted us to have. I don't -- I -- I
24 don't know where he was getting the information.

25 I was not particular focussed on Mr.

1 Bonwick.

2 MR. JOHN MATHER: At any point in time
3 during the RFP process or prior to the RFP process did
4 you or, to your knowledge, anyone at PowerStream have
5 any concerns that PowerStream was obtaining
6 information that other bidders did not have access to?

7 MR. DENNIS NOLAN: We didn't know what
8 -- what other information -- what information the
9 other bidders had access to and what information that
10 might be provided in conversations with the CEO, for
11 example. And I'm just using it as an example. And it
12 certainly wasn't a front of mind concern to me.

13 MR. JOHN MATHER: And I -- I take it
14 from some of your earlier answers you're aware of some
15 of the testimony from Horizon and Veridian and Hydro
16 One yesterday. And --

17 MR. DENNIS NOLAN: Only some of it,
18 I'm sorry.

19 MR. JOHN MATHER: Fair enough. And
20 so, I'll -- I'll put something to you --

21 MR. DENNIS NOLAN: Okay.

22 MR. JOHN MATHER: -- and --

23 MR. DENNIS NOLAN: Thank you.

24 MR. JOHN MATHER: -- and you can
25 react. Each -- each of those individuals said that

1 they weren't aware that PowerStream or Mr. Bonwick was
2 -- had in -- in their possession the sorts of
3 information we looked at.

4 And they expressed concerns that it
5 indicated -- or that -- that it gave PowerStream an
6 advantage and it may have affected how they would have
7 participated in the RFP.

8 Do you have any reaction to that?

9 MR. DENNIS NOLAN: I -- I think I can
10 understand that reaction. I think that it's -- and I
11 heard -- sorry, I -- I heard bits and pieces. So, I -
12 - I think some of the information that they expressed
13 shock about was information that wasn't confidential
14 information.

15 And it would be naive on their part to
16 think that we didn't already know about that
17 information and that it wasn't publically available
18 and, you know, was -- so that's part of my reaction.

19 But -- but I can also -- I can also
20 now, in retrospect when I think of it, see -- see the
21 reaction that they -- that they would have.

22 MR. JOHN MATHER: What, in retrospect,
23 do you now see about the re --

24 MR. DENNIS NOLAN: Well, it -- it goes
25 back to the appearance, right.

1 MR. JOHN MATHER: And what's the
2 appearance?

3 MR. DENNIS NOLAN: Appearance of -- of
4 conflict, appearance, at least in their minds, that we
5 were getting information that they weren't that was --
6 that was of value even though I don't think it was of
7 much value.

8 MR. JOHN MATHER: Do you see how
9 someone looking from the outside in could be concerned
10 that Mr. Bonwick's involvement with PowerStream in the
11 RFP gave PowerStream a form of an inside track in the
12 RFP process?

13 MR. DENNIS NOLAN: Yes, I can see
14 that.

15 MR. JOHN MATHER: Do you -- and -- and
16 what's your response to that or do you have any
17 response to that?

18 MR. DENNIS NOLAN: I -- I just agreed
19 with you, so I don't...

20 MR. JOHN MATHER: Fair enough. Is --
21 is there anything you would say in response to that in
22 terms of that concern or anything that you believe
23 addresses that concern?

24 MR. DENNIS NOLAN: I mean, typically,
25 they -- the -- these -- the -- the other proponents,

1 they weren't existing in a bubble either. They did
2 their own due diligence. They would have looked at
3 most of the factors, if not all the factors, that we
4 were considering.

5 And so, again, I -- I discount the
6 importance, right. I -- I think the importance of the
7 information is being exaggerated, and the value.

8 MR. JOHN MATHER: So, now I want to
9 ask you some questions about the December 1st, 2011 --

10 THE HONOURABLE FRANK MARROCCO: I
11 think what I'll do is, if you're going on to a
12 different --

13 MR. JOHN MATHER: Yeah, I am.

14 THE HONOURABLE FRANK MARROCCO: --
15 topic, I'll --

16 MR. JOHN MATHER: Yeah, that's fine
17 then.

18 THE HONOURABLE FRANK MARROCCO: --
19 take ten (10) minutes.

20 MR. JOHN MATHER: It's a good time.

21

22 --- Upon recessing at 11:29 a.m.

23 --- Upon resuming at 11:41 a.m.

24

25 CONTINUED BY MR. JOHN MATHER:

1 MR. JOHN MATHER: Mr. Nolan, we
2 touched on briefly yesterday a December 1st, 2011
3 meeting that you attended at which time PowerStream
4 increased their offer to equity from 7.3 million --
5 sorry -- 7.3 million to 8 million?

6 MR. DENNIS NOLAN: Correct.

7 MR. JOHN MATHER: And you spoke about
8 the indication you got that Hydro One had a -- made a
9 higher offer. Can you tell us anything else about
10 what you recall about that meeting?

11 MR. DENNIS NOLAN: I recall a
12 conversation that I think both myself and Glicksman
13 made that 7.3 was already at the high end of the range
14 and, you know, Mr. Bentz agreeing to increase it to 8
15 million.

16 I -- I don't recall exactly how the --
17 the Hydro One higher bid was portrayed, but it was
18 pretty clear that that it was higher and that you
19 needed to get your -- get your bid up.

20 MR. JOHN MATHER: Do you recall how
21 the number 8 million was arrived at?

22 MR. DENNIS NOLAN: Well, 8 million
23 was -- was the -- yes, I do. So 8 million was the
24 limit of Brian's -- Mr. Bentz's authority authorized
25 by our Board.

1 MR. JOHN MATHER: Do you know if
2 8 million was something that Brian offered or was --
3 and if so, was it in response to something that Collus
4 had put on the table?

5 MR. DENNIS NOLAN: No. I think it's
6 something that Brian offered and made it very clear
7 that he couldn't go any higher. And -- and that was,
8 you know, in our -- in our view and it still is a very
9 high price, especially for 50 percent.

10 MR. JOHN MATHER: Do you recall if
11 anyone of the Collus -- I'm going to call it the
12 Collus side of the discussion asked for more than
13 8 million after Mr. Bentz said 8 million?

14 MR. DENNIS NOLAN: I don't recall
15 that. It -- it's quite possible that -- I mean, I
16 just gave you my full recollection of that meeting.

17 MR. JOHN MATHER: Can we pull up
18 paragraph 417 of the Foundation Document?

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: So this is an email
23 just describing -- Mr. Rockx from KPMG providing an
24 agenda for the meeting that we've been discussing. The
25 agenda items for discussion include no shotgun clause,

1 and then service agreements, purchase price, avoiding
2 tax, corporate structure, future acquisitions, and
3 MAAD application assistance.

4 And then if you scroll down to
5 paragraph 418, and then keep scrolling down.

6 And then in paragraph 419, this is an
7 email setting out Mr. Rockx's report back to
8 John Herhalt at KPMG about the meeting, and Mr. Rockx
9 writes:

10 "A pretty good meeting where Collus
11 confirmed a lot of matters in
12 respect of the proposed transaction,
13 including the removal of the shotgun
14 clause."

15 Having brought these to -- this
16 information to your attention, do you recall any
17 discussion at that meeting about a shotgun clause?

18 MR. DENNIS NOLAN: Not specifically,
19 and I -- I certainly don't recall a decision about
20 removal of a shotgun clause. And, you know, as
21 Mr. McFadden testified and as I will, that you'd need
22 a dispute resolution mechanism. You would need some
23 sort of liquidity measure.

24 So I -- I'm surprised by that -- by
25 that inference that that was agreed to, that there

1 would be no shotgun clause, which is a buy-sell.

2 MR. JOHN MATHER: Do you recall other
3 than the increase in the purchase price if there was
4 any other discussion about any other elements of
5 PowerStream's proposal and if they would change?

6 MR. DENNIS NOLAN: The earlier
7 reference to MAAD support that may have been discussed
8 and -- and in terms of PowerStream having the internal
9 capability through its regulatory group to handle a
10 MAAD's application, keeping in mind that we weren't
11 sure at that time whether a MAAD's application was
12 necessitated because technically there was no change
13 in control and that became a subject of -- of
14 conversation and of speculation. In -- in the end, we
15 decided that we would, to be safe, make such an
16 application.

17 MR. JOHN MATHER: Just for -- sorry.

18 MR. DENNIS NOLAN: Sorry. Go ahead.

19 MR. JOHN MATHER: Did I cut you off?

20 MR. DENNIS NOLAN: No.

21 MR. JOHN MATHER: Just for clarity, a
22 MAAD's application is the process of seeking OEB
23 approval?

24 MR. DENNIS NOLAN: Correct.

25 THE HONOURABLE FRANK MARROCCO: Yeah.

1 I think that's clear.

2

3 CONTINUED BY MR. JOHN MATHER:

4 MR. JOHN MATHER: Could we go to
5 paragraph 455 of the Foundation Document.

6

7 (BRIEF PAUSE)

8

9 MR. JOHN MATHER: So this paragraph
10 contemplates a meeting on December 12th, 2011 and just
11 to orient you in time at this point, PowerStream had
12 been selected as the preferred proponent. And it
13 contemplates a meeting to discuss purchasing the
14 Collus holding company, and you are listed as one of
15 the invitees.

16 Do you recall attending this meeting or
17 being involved in any discussions about changing the
18 entity being sold from the LDC to the holding company?

19 MR. DENNIS NOLAN: Yeah. I don't
20 recall this specific meeting. I do recall an issue
21 arising. Their structure was -- was rather
22 complicated, and I think one of the reasons for having
23 a discussion about the change was a realization that
24 there was a tax advantage to the Town in doing so.
25 And it was neutral to -- to PowerStream.

1 That's what I -- what I think was --
2 was ultimately discussed. Whether that reflects the
3 discussion at that meeting, I can't -- I can't recall.

4 MR. JOHN MATHER: Do you have any
5 other recollections about the discussions on moving to
6 selling Holdco as opposed to Power --

7 MR. DENNIS NOLAN: That really sums up
8 my -- my recollection of the rationale.

9 MR. JOHN MATHER: If we could now go
10 to paragraph 491 of the Foundation Document.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: So the heading above
15 this says "PowerStream has possession of detailed RFP
16 materials from all bidders, and then it says:

17 "PowerStream staff prepared a
18 spreadsheet containing detailed
19 information about the financial
20 components of the four (4) bids
21 submitted."

22 And then if we could open the
23 attachment that's being referenced here, ALE1490.

24

25 (BRIEF PAUSE)

1 MR. JOHN MATHER: This is the document
2 that was referred to in that paragraph. Do you recall
3 how PowerStream obtained this information?

4 MR. DENNIS NOLAN: No, I don't.

5 MR. JOHN MATHER: Do you recall being
6 aware at any point in time of PowerStream having
7 information about what the other bidders submitted
8 with respect to financial?

9 MR. DENNIS NOLAN: So the -- the
10 timing I don't know off the top of my head, but I -- I
11 do recall after we had negotiated the deal that
12 someone sent from Aird & Berlis -- not to me -- but
13 to -- it came to someone in our office, and we assumed
14 an error that had information showing the -- the
15 financial details of the other bids.

16 MR. JOHN MATHER: If we could to
17 paragraph 469 of the Foundation Document.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: This paragraph
22 describes Scott Stoll and Aird & Berlis sending
23 Colin MacDonald an email on --

24 MR. DENNIS NOLAN: Right.

25 MR. JOHN MATHER: -- January 4th,

1 2012, and there seems to be a -- and he -- Mr. Stoll
2 attached a Strategic Partnership Task Team's strategic
3 partnership request proposal, results, and evaluations
4 from December 5th, 2011.

5 Is this what you were referring to?

6 MR. DENNIS NOLAN: Yes.

7 MR. JOHN MATHER: And if we scroll
8 down, we see that Mr. Glicksman forwarded the
9 presentation to Mr. Bentz writing:

10 "We got it from Aird & Berlis when
11 we, like, shouldn't have. It's
12 shown our ranking in detail along
13 with the other interesting points on
14 our proposed transaction."

15 You're not on the emails as reflected
16 here. Was this issue brought to your attention?

17 MR. DENNIS NOLAN: I think I was aware
18 that -- that we had received that information, but it
19 was after the deal had been negotiated.

20 MR. JOHN MATHER: And can you help me
21 with what point in time that was?

22 MR. DENNIS NOLAN: Can you go up,
23 please, to when it's the reference to the... All I
24 can say is in early -- early January.

25 MR. JOHN MATHER: When it was brought

1 to your attention, what was your response?

2 MR. DENNIS NOLAN: I don't know that I
3 actually saw it, but it was -- it was after the fact,
4 so I didn't think it was of particular -- you know, it
5 was of -- of no use in particular. And, you know,
6 it -- I think it was -- and I don't know if there was
7 any reason looking at this that -- that Mr. Stoll
8 would have -- would have sent it.

9 It may have been sent intentionally
10 as -- as to show in support of the MAAD's application.
11 The -- what other bidders were willing to pay. That's
12 possible that it -- that it could have -- that they
13 thought that it might be worthwhile referencing in
14 the -- in the MAAD's application. I'm not sure.
15 That's quite possible. But Mr. Glicksman's assumption
16 was that it was sent to us in error. I have no idea.

17 MR. JOHN MATHER: Do you know if you
18 or anyone at PowerStream followed up with Aird &
19 Berlis or Mr. Stoll about whether or not the
20 disclosure was intentional?

21 MR. DENNIS NOLAN: I -- I do not know
22 if anyone did -- if anyone picked up the phone and say
23 we got this or what interaction Colin MacDonald would
24 have with Mr. Stoll.

25 MR. JOHN MATHER: Do you think that's

1 something that -- I appreciate you don't know if it
2 happened -- but do you think that's something that
3 should have happened?

4 MR. DENNIS NOLAN: Unless there --
5 there was a reason for having it in there as
6 information that would be useful in knowing -- in
7 putting together the MAAD's application, as I look at
8 this now, but certainly as a courtesy. If it -- if it
9 wasn't -- if it was unrelated to that, someone should
10 have called them.

11 MR. JOHN MATHER: You mentioned that
12 it's possible that this was disclosed intentionally
13 because it -- Collus or the Town may want PowerStream
14 to know what the other bids were. Can you just
15 explain why --

16 MR. DENNIS NOLAN: No, I don't mean --

17 MR. JOHN MATHER: Sorry.

18 MR. DENNIS NOLAN: Pardon me. I -- in
19 terms of it being -- what I said was it -- there was a
20 possibility that it could -- that information could be
21 helpful in -- in constructing or in putting together
22 the MAAD's application. That's what I said.

23 Because of the people that are involved
24 here, Mr. Stoll, I believe, was a regulatory lawyer at
25 Aird & Berlis. Colin MacDonald was our VP of

1 regulatory. So Colin would have been in charge of
2 putting together that application. I don't know that
3 that's the case, but I'm -- I think it may well have
4 been if it was attached.

5 MR. JOHN MATHER: In your view, did
6 having -- did having possession of the information of
7 what the other bidders put forward financially give
8 PowerStream any sort of advantage in the negotiations
9 of the transaction that we're going forward?

10 MR. DENNIS NOLAN: No. We had agreed
11 upon price now, so no.

12 MR. JOHN MATHER: At any point, did
13 you or, to your knowledge, anyone at PowerStream
14 consider whether having a better understanding of what
15 the Town's other options might have been provide
16 leverage in any future negotiations?

17 MR. DENNIS NOLAN: No.

18 MR. JOHN MATHER: Do you think that's
19 something that could give PowerStream an advantage in
20 negotiations, knowing that -- having knowledge of what
21 the other bidders said they would pay financially?

22 MR. DENNIS NOLAN: No, because that
23 issue was already closed.

24 MR. JOHN MATHER: If we go to
25 paragraph 492 of the Foundation Document.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, I'm going to
4 have some questions about the authorizing bylaw. And
5 we see in paragraph 492 that Leo Longo, of Aird &
6 Berliss, sent Mr. Houghton on January 17th an initial
7 draft of the bylaw.

8 And then if we scroll down to 494, we
9 see that on the next day, January 18th, you sent Mr.
10 Houghton a revised version of Mr. Longo's draft bylaw
11 and it summarizes some of the -- the changes you made?

12 MR. DENNIS NOLAN: Yes.

13 MR. JOHN MATHER: Do you recall who
14 sent you the bylaw for a revision?

15 MR. DENNIS NOLAN: No. And in
16 reviewing the -- the documents, I couldn't -- I -- I
17 tried to come to ground on exactly that, so I don't
18 know. But since I -- I see my reply was to Mr.
19 Houghton, so my assumption is that Mr. Houghton sent
20 it to me.

21 MR. JOHN MATHER: Would this be
22 something you would expect to receive for review and
23 comment?

24 MR. DENNIS NOLAN: I would expect to
25 be involved, as I have on other transactions, on -- on

1 the nature of the approval and being very concerned
2 about the nature of the approval, yes.

3 MR. JOHN MATHER: Why does the nature
4 of the approval -- why would the nature of the
5 approval concern you?

6 MR. DENNIS NOLAN: So, I -- I would --
7 I would want to know that it's properly, for example,
8 being approved by Council and -- and just how that's --
9 -- how that's worded, how that's being done.

10 And I -- I had, you know, considerable
11 experience dealing -- dealing with those and working
12 with the other municipalities of part of PowerStream
13 on other transactions with the -- either the city
14 solicitor at, for example, the then Town of Markham,
15 City of Markham now, as an example, or with the clerk
16 of -- and -- and city solicitor for -- for Barrie when
17 they were approving things. It wouldn't be unusual.

18 MR. JOHN MATHER: In those instances,
19 did the solicitor for the counterparty -- were they
20 aware that you were reviewing and providing comments
21 on bylaws?

22 MR. DENNIS NOLAN: Yes. Yes.

23 MR. JOHN MATHER: When you were
24 commenting and revising the bylaw with respect to
25 Collingwood, was it your understanding that the Town

1 was aware that you were reviewing and providing
2 feedback?

3 MR. DENNIS NOLAN: I just assumed that
4 whatever I proposed was going to be reviewed by Aird &
5 Berliss. There is a reference to the Town solicitor.
6 I had no idea who the Town solicitor was, which was
7 one (1) of my concerns, that a party -- someone who
8 was -- wasn't familiar with the transaction, someone I
9 -- I had no idea who it was, was drafting this -- this
10 bylaw and that it was -- seemed to be drafted in a way
11 that it -- it made -- required that person's approval.

12 Which if that person who I didn't even
13 know, I -- I had never heard the name Leo Longo
14 before, was -- was the -- the person that would be
15 approving the final approval of -- of the transaction,
16 I had -- I had real concerns about that.

17 MR. JOHN MATHER: Why did you have
18 real concerns about that?

19 MR. DENNIS NOLAN: Someone that's not
20 familiar with the transaction? I think it speaks for
21 itself. I mean, if -- if it -- my assumption is, and
22 the -- the way that I normally used it and it's
23 reflected in -- in what -- what I put back to the
24 Town, which I discussed with Mr. Hull, normally, if,
25 in a transaction like this, Council approves and every

1 'I' is not dotted, every -- every 'T' is not crossed,
2 but the -- the mayor is normally the person, as head
3 of Council, that executes with the clerk and gives the
4 final approval.

5 I would fully expect in that process,
6 the mayor and the -- the clerk, for example, to get
7 assurance from, in this case, Aird & Berlis, in my
8 mind, not Town solicitor, I don't know who Town
9 solicitor is, that there are no material changes and
10 that it can be properly executed, and -- and that my -
11 - my changes were consistent with that approach.

12 MR. JOHN MATHER: Sara Almas, the --
13 the clerk, and Mr. Longo have given evidence that, in
14 their view, you, in your position as the VP at the
15 counterparty, should not have been involved in
16 drafting the bylaw.

17 The notion they advanced essentially
18 was that it's the Town's bylaw to draft?

19 MR. DENNIS NOLAN: It's absolutely the
20 Town's bylaw. Me giving input was totally proper.
21 And I think Mr. Clark testified that he found that
22 normal and proper, as well.

23 MR. JOHN MATHER: So, paragraph 494(b)
24 is the reference to the agreements being in a form and
25 content to the satisfaction of the Town solicitor.

1 And I understand what you said about
2 you didn't know who the Town solicitor was. But
3 stepping -- assuming for the sake of this question the
4 Town solicitor was the legal advisor to the Town of
5 Collingwood, would that give you any concern?

6 MR. DENNIS NOLAN: If that person was
7 someone, as it turned out, separate and distinct from
8 -- from the -- the -- the -- this -- the solicitors
9 that were advising the Town on this, Aird & Berlis and
10 Ron Clark, yeah, I would have -- I would have concern.

11 And, as Mr. Longo heard (sic) some of
12 his testimony that he was not familiar with the
13 transaction, he was a municipal lawyer, not a
14 corporate lawyer, he would not be, in my view, the --
15 the appropriate person to be reviewing this.

16 MR. JOHN MATHER: If this had said in
17 a form and content to the satisfaction of the lawyers
18 at Aird & Berlis or a lawyer you knew was involved in
19 the transaction, would have had a problem with that?

20 MR. DENNIS NOLAN: No. I mean, the --
21 the whole -- the whole concern was one (1) the Town --
22 that would have satisfied the issue of the Town
23 solicitor. But not having -- being faced with a re-
24 approval of this transaction for things that were not
25 material changes to the agreement that's being put

1 forth to Council so that you would go through a
2 process where you -- you think you have an agreement
3 and -- and that has to, yes, be finalized.

4 But it's consistent with what has been
5 communicated to Council in all other respects, there's
6 no material changes, and someone else reviews this and
7 says, oh, this needs to be re-approved, and in all the
8 uncertainty of that, you've invested all this time and
9 effort and in -- in good faith and you've -- you've
10 come to this agreement, there's no material changes,
11 so that I -- I -- and maybe I'm going on too long.

12 But I think that that was the nature of
13 the concern.

14 MR. JOHN MATHER: At this point in
15 time, what was your understanding of the state of
16 completion of the -- the share purchase agreement and
17 the unanimous shareholders agreement?

18

19 (BRIEF PAUSE)

20

21 MR. DENNIS NOLAN: I can't recall
22 exactly how far along we -- we were. I -- I couldn't
23 tell you exactly what was -- what was left to be done.

24 MR. JOHN MATHER: So, Mr. Longo's
25 evidence was that his understanding was that there was

1 still items to be finalized and potentially be -- and
2 because there was items to be finalized, he thought it
3 was prudent that there be a requirement that -- in
4 addition to the satisfaction of him and the mayor, but
5 also the requirement that there be a report back to
6 Council.

7 Do you agree that that can be prudent
8 when there is issues that are still outstanding and
9 haven't been finalized?

10 MR. DENNIS NOLAN: If they were
11 material and if there were matters that were not
12 consistent with the -- the way the transaction was
13 distribution -- that was -- that was material to the -
14 - to the transaction, for example, if the purchase
15 price was different or if the -- if the governance was
16 different or we're going to have -- I mean, not --
17 I've -- I've never had a transaction where, you know,
18 Council -- where it -- you know, every 'I' and every -
19 - was dotted and every 'T' crossed and the -- the --
20 this nonmaterial matters are -- are finalized and
21 that's left to -- to the lawyers that have been
22 engaged by -- by the Town.

23 But I would expect that those lawyers
24 would then, when the final documents -- when the mayor
25 and the clerk are asked to sign, we give an assurance

1 that this is consistent with what was approved.

2 MR. JOHN MATHER: Did you ever have
3 any discussions or, to your knowledge, Mr. Hull with
4 anyone at Aird & Berlis about the authorization of
5 bylaw? Was there any, you know, lawyer-to-lawyer
6 discussions, for lack of a better term?

7 MR. DENNIS NOLAN: No. I -- I
8 discussed these changes with Mr. Hull. But I re -- I
9 was asked, I -- I believe -- and I'm -- I'm -- as I
10 said, I -- I couldn't find the email chain, or it's
11 not in the documents, that it was sent to me by Mr.
12 Houghton.

13 My assumption was -- and -- and these
14 are changes that I'm suggesting instead of drafting
15 the Town's bylaw, changes to their bylaw that were
16 suggesting that they would be discussed. And I think
17 there was some -- that I saw in the Foundation
18 Documents indicating that that had taken place; what I
19 would have expected at the time.

20 MR. JOHN MATHER: And one (1) of the
21 other concerns that Mr. Longo raised was that -- or
22 maybe not concerns, but one (1) of the things he said
23 was that -- one (1) -- one (1) of the issues he had
24 was that he didn't know that you were making comments
25 and you were the one who had made these revisions to

1 the bylaw.

2 Is that a concern of yours, knowing
3 that he wasn't aware of that?

4 MR. DENNIS NOLAN: I didn't know who
5 Mr. Longo was. I didn't know who the City solicitor
6 was. That was for Mr. Houghton to make him aware if
7 he was the person that was being consulted on this.

8 I would have thought it would have been
9 Mr. Ron Clark.

10 MR. JOHN MATHER: And did you know if
11 anyone at Aird & Berlis or anyone other than Mr.
12 Houghton was aware that you were making changes to the
13 draft bylaw?

14

15 (BRIEF PAUSE)

16

17 MR. DENNIS NOLAN: No. As -- as --
18 but as I -- I said, I assume -- I didn't know what
19 their -- their approval process was and everything,
20 but I was asked to comment on this. I provided it
21 back to him.

22 I assumed that it would be reviewed
23 with Aird & Berlis.

24 MR. JOHN MATHER: I'm going to move on
25 to another area. I'm happy to continue going.

1 THE HONOURABLE FRANK MARROCCO: Yeah.

2 How much longer?

3 MR. JOHN MATHER: I expect another
4 thirty (30) minutes, thirty (30) to forty (40)
5 minutes.

6 THE HONOURABLE FRANK MARROCCO: No,
7 no. Go ahead. Go ahead. Let's move through it as
8 quickly as possible.

9 MR. JOHN MATHER: Thank you.

10

11 CONTINUED BY MR. JOHN MATHER:

12 MR. JOHN MATHER: If we could go to
13 paragraph 501 of the Foundation Document.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN MATHER: So, this is an email
18 dated January 19th, 2012. It's an email from Mr.
19 Bonwick to Mayor Cooper, Rick Lloyd, and Ed Houghton.
20 I appreciate you're not on this email.

21 In the email, Mr. Bonwick says:

22 "Ed mentioned that the mayor had
23 asked for a motion to be available
24 for a meeting this afternoon for
25 review by CAO clerk and Ed.

1 I would res -- respectfully suggest
2 that the mayor bring in Rick and Leo
3 either in person or online."

4 So, this is contemplating a meeting as
5 between individuals at Collus and the Mayor as well as
6 with Leo Longo, the Town solicitor. And then if you
7 go to paragraph 502, that same -- and then Mr. Bonwick
8 sends an email to Mr. Glicksman and Ms. -- and
9 yourself saying:

10 "The meeting went very well this
11 afternoon with the Town's lawyers,
12 mayor, deputy mayor, CAO, and Ed.
13 The motion is completely in keeping
14 with our discussion."

15 Do you recall receiving this email at
16 the time?

17 MR. DENNIS NOLAN: I recall getting
18 feedback, whether through this email and possibly by
19 this email, that -- that the changes that we had
20 suggested were acceptable, that's all.

21 MR. JOHN MATHER: When you received
22 this email, were you aware that -- of Mr. Bonwick's
23 earlier email where it appears he was suggesting that
24 this meeting take place?

25 MR. DENNIS NOLAN: No.

1 MR. JOHN MATHER: Did you have any
2 concerns that Mr. Bonwick appeared to be reporting on
3 a meeting between the Town's lawyers and individuals
4 at the Town as well as Ed Houghton?

5 MR. DENNIS NOLAN: Well, I assumed
6 that he was -- I guess at -- at -- at this point,
7 after the transaction -- I mean, after we had come to
8 an agreement, I assume that this was coming from Mr.
9 Houghton.

10 MR. JOHN MATHER: And did that concern
11 you that Mr. Houghton was report -- your assumption
12 being that Mr. Houghton was reporting on a meeting
13 with -- within the -- with the Town and its lawyers?

14 MR. DENNIS NOLAN: No, not in
15 particular since he -- I'm pretty sure it was Mr.
16 Houghton who asked me to review the draft bylaw. No.

17 MR. JOHN MATHER: Do you recall an --
18 an instance where Mr. Houghton came to PowerStream
19 regarding the dividend that would be paid with respect
20 to the transaction and requesting that a -- a -- a
21 minimum and a maximum dividend be set as opposed to
22 waiting to see how the financial results would lead to
23 a specific number for the dividend?

24 MR. DENNIS NOLAN: Sorry, I'm not
25 clear what dividend you're talking about.

1 MR. JOHN MATHER: So, as part of the
2 offer, PowerStream made a cash component for the
3 shares and it had also made --

4 MR. DENNIS NOLAN: Oh, the --

5 MR. JOHN MATHER: -- a recap --

6 THE HONOURABLE FRANK MARROCCO:
7 Recapitalization --

8 MR. DENNIS NOLAN: The re -- the recap
9 dividend.

10

11 CONTINUED BY MR. JOHN MATHER:

12 MR. JOHN MATHER: Yes.

13 MR. DENNIS NOLAN: Yes.

14 MR. JOHN MATHER: Do you recall being
15 involved in the discussion about whether putting caps
16 on the recap dividend in floors?

17 MR. DENNIS NOLAN: No, I don't. I
18 don't -- I don't recall. It -- it -- it could have --
19 it could have happened. You could choose to, you
20 know, protect against, you know, variability there and
21 -- and guarantee it. So it's -- it makes sense that
22 there could have been that discussion.

23 MR. JOHN MATHER: Now I'm going to ask
24 you some questions about the -- the final versions of
25 the transaction documents.

1 MR. DENNIS NOLAN: Okay.

2 MR. JOHN MATHER: So if we could go to
3 ALE3296.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: And I'd like to go to
8 -- so this is the Unanimous Shareholders' Agreement
9 that was signed on July 31st, 2012. And if we can go
10 to Section 14.11.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: So it's at the very
15 end, I believe -- near the end. Scroll up. Yeah,
16 down.

17 This was a provision of the Unanimous
18 Shareholders' Agreement, and it provides that:

19 "PowerStream shall be entitled to
20 merge with, become affiliated with,
21 acquire any equity in, enter into"

22 And it goes on. So it's essentially
23 that it's allowed to merge or become affiliated with
24 any other LDC, as I understand it, except for
25 restrictions on such business arrangements that have

1 been mutually agreed upon in writing by the parties.

2 So my understanding of this is that it
3 was a term of the Shareholders' Agreement that
4 PowerStream could acquire or merge with any other LDC
5 in the province except for those that had been agreed
6 to in writing with the Town of Collingwood.

7 Is that a fair interpretation?

8 MR. DENNIS NOLAN: Yes.

9 MR. JOHN MATHER: Then if we could go
10 to ALE3269.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: Sorry, ALE4351.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: This is a letter on
19 PowerStream letterhead dated July 31st, 2012. And if
20 we scroll -- it's addressed to Mayor Cooper, and I
21 believe you're the signatory.

22 Are you familiar with this letter?

23 MR. DENNIS NOLAN: Yes, I am.

24 MR. JOHN MATHER: So if we scroll
25 down, the first paragraph is an introduction. The

1 second paragraph says:

2 "This letter is to confirm the
3 intent of PowerStream and the Town
4 of Collingwood to pursue significant
5 growth opportunity -- opportunities
6 on a prudent and profitable basis."

7 And it -- and it goes on to describe
8 the intent in terms of what I understand to be the
9 CHEC growth strategy. Is that fair?

10 MR. DENNIS NOLAN: Yes.

11 MR. JOHN MATHER: Why was a letter --
12 this -- this letter of intent or this paragraph of
13 intent, included as part of the transaction documents?

14 MR. DENNIS NOLAN: I believe this was
15 asked for as a comfort by Mr. Clark. I think there
16 was concern that -- that we could, and I -- and the
17 earlier paragraph that you reference ties in with
18 this, that if an opportunity came up with one (1) of
19 the CHEC group members, that we could just go -- go
20 ahead and -- and do that on our own, and -- and
21 Collingwood wouldn't have any -- any -- any say in
22 that.

23 So the -- the concept was that we would
24 try to pursue, or at least in the -- in the first
25 instance, see if we could pursue these opportunities

1 together. So that's -- so there was concern. You
2 know, it's really just to provide an assurance that we
3 would pursue this together.

4 MR. JOHN MATHER: So if we scroll down
5 to the second paragraph -- the third paragraph, sorry.

6 "In accordance with Section 14.11 of
7 the Shareholders' Agreement, this is
8 also to confirm that PowerStream and
9 the Town of Collingwood agree that
10 the Corporation shall have the first
11 right to evaluate and/or pursue such
12 M&A opportunities that may arise
13 with the CHEC group of LDCs, and
14 that PowerStream will first consider
15 pursuing M&A activities with LDCs
16 having less than twenty thousand
17 (20,000) customers and within a
18 reasonable geographic proximity to
19 the Town of Collingwood through the
20 Corporation prior to pursuing such
21 opportunities."

22 I take it this is an extension of what
23 you're referring to in terms of agreeing to pursue the
24 CHEC group of utilities jointly prior to going at it
25 alone?

1 MR. DENNIS NOLAN: Correct.

2 MR. JOHN MATHER: Was it your
3 understanding that this letter was the written
4 agreement that was contemplated by Section 14.11 of
5 the Shareholders' Agreement?

6 MR. DENNIS NOLAN: Yes.

7 MR. JOHN MATHER: What was your
8 understanding of the words that:

9 "The Town of Collingwood and
10 PowerStream" -- that -- that --
11 "agree that the Corporation shall
12 have the first right to evaluate
13 and/or pursue."

14 What did that mean to you, "evaluate
15 and/or pursue"?

16 MR. DENNIS NOLAN: That -- so, in the
17 first instance, the parties would decide if -- if they
18 could do this together, if Collingwood wanted to
19 participate, they -- they would have that ability. If
20 they didn't, then if PowerStream wanted to pursue the
21 opportunity, could do it on its own.

22 MR. JOHN MATHER: Just to clarify, so
23 your understanding was that the opportunity would be
24 presented to Collingwood, it would have a decision
25 about whether it wanted to participate or not, and if

1 it didn't, then PowerStream would have the ability to
2 pursue that opportunity --

3 MR. DENNIS NOLAN: Yeah. I think --
4 pardon me, sorry. I think both parties had -- you
5 know, had to evaluate the -- the opportunity and
6 decide, but exactly as you said, then Collingwood,
7 assuming it was an opportunity that -- that
8 PowerStream wanted to -- thought was worth pursuing,
9 and -- and Collingwood, that they would have to assess
10 whether they wished to pursue that -- that
11 opportunity.

12 MR. JOHN MATHER: And that is with
13 respect to the CHEC group of LDCs. For the other
14 group of LDCs contemplated here, those being with less
15 than twenty thousand (20,000) customers within a
16 geographic proximity of Collingwood, the obligation on
17 PowerStream was to, if it was interested in acquiring
18 or merging with one of those LDCs, they first had to
19 consider pursuing that with the partnership, and -- is
20 that accurate?

21 MR. DENNIS NOLAN: Yes.

22 MR. JOHN MATHER: So -- so long as
23 PowerStream gave that consideration, it was then free
24 to proceed on its own if that consideration led them
25 to decide that it didn't want to pursue those

1 opportunities with Collingwood?

2 MR. DENNIS NOLAN: Yes, but in the
3 spirit of that we would -- because there could be --
4 and -- and I can't -- I don't know off the top of my
5 head all -- all of the LDCs in -- in the proximity,
6 but there could be an LDC, and -- and I know that Mr.
7 Glicksman and Mr. Bentz would be able to identify this
8 easier, but that made sense because of the geographic
9 proximity to do it as -- as part of this regional
10 growth strategy with -- with -- with Collus, with
11 Collingwood.

12 MR. JOHN MATHER: Do you recall the
13 discussions about how to handle the shared services
14 agreements that existed between Collus and the Town
15 Collingwood as part of the transaction?

16 MR. DENNIS NOLAN: Well, the Shared
17 Services Agreement you -- you asked me before about
18 the -- when the decision was made to purchase the --
19 the holding company. The shared services were of
20 concern because, quite frankly, there wasn't time and
21 the due diligence hadn't been done as to whether those
22 services were being provided below market, above
23 market, what -- what the -- the rate of returns were,
24 et cetera.

25 So there was a need to decide how we're

1 going to deal with that, and so we entered into a
2 letter agreement with the intention of really going
3 ahead with accepting the status quo, and then -- and
4 then attempting to resolve that at a later date.

5 MR. JOHN MATHER: Do you have any
6 recollection of why the shared services agreements
7 couldn't be resolved or finalized at the time of
8 closing?

9 MR. DENNIS NOLAN: I think it was --
10 it -- for -- for the reasons that I -- that I said, I
11 just don't think the due diligence was -- was done. I
12 -- I don't think we were satisfied at that time.

13 And we were content. I mean,
14 Collingwood -- Collus, pardon me, had been providing
15 these services for years. We didn't think that there
16 was a big risk in -- in continuing with status quo,
17 and I think it was really an accommodation on our
18 part.

19 MR. JOHN MATHER: Was there any
20 discussion, to your recollection, about extending the
21 closing date or engaging a consultant to ensure that
22 the shared services were finalized prior to the
23 transaction closing?

24 MR. DENNIS NOLAN: I don't think we
25 wanted to extend the closing date, and we thought that

1 the -- the way that I described and the way the letter
2 agreement described it would be adequate in resolving
3 them.

4 MR. JOHN MATHER: Go to paragraph 590
5 of the Foundation Document.

6

7 (BRIEF PAUSE)

8

9 MR. JOHN MATHER: So this is a
10 paragraph in relation to Mr. Houghton becoming CAO of
11 the Town of Collingwood, which happened after the
12 initial signing in March and before the closing in
13 July, 2012.

14 Was PowerStream advised in advance
15 before Mr. Houghton was appointed as acting CAO of the
16 Town of Collingwood?

17 MR. DENNIS NOLAN: I have no idea.

18 MR. JOHN MATHER: Do you recall when
19 you became aware that Mr. Houghton had become Acting
20 CAO?

21 MR. DENNIS NOLAN: No. No, I'm -- I'm
22 not aware of when I was.

23 MR. JOHN MATHER: Did you have any
24 concerns about Mr. Houghton taking on the role of
25 Acting CAO, given that he was the CEO of the -- of

1 Collus PowerStream or would be shortly the CAO of
2 Collus PowerStream?

3 MR. DENNIS NOLAN: I didn't know for
4 how long that dual role was, but that was an internal
5 matter for Collingwood. You know, if it had been a
6 large municipality, yes.

7 MR. JOHN MATHER: Do you recall if
8 anyone in PowerStream ever ex -- expressed any opinion
9 either way to Mr. Houghton about whether or not he
10 should take that position?

11 MR. DENNIS NOLAN: I -- I have no
12 knowledge of that.

13 MR. JOHN MATHER: Go to paragraph 695
14 of the Foundation Document.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So this paragraph
19 relates to a news article that came out in March, 2013
20 rem -- by Dave Seglins -- sorry, not a news article,
21 this -- this related to Degs -- Dave Seglins reaching
22 out requesting an interview with respect to Mr.
23 Bonwick and his involvement in his projects in
24 Collingwood.

25 So if we could scroll down, please.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So this paragraph
4 says:

5 "The next day, which is March 6th,
6 2013, Sandra DiPonio sent Brian
7 Bentz an email stating:
8 "Dennis is extremely concerned and
9 would like to speak with you Eric --
10 with Eric ASAP re: an investigative
11 reporter call and raising the issues
12 with Paul Bonwick.""

13 MR. JOHN MATHER: I take it at this
14 point, Mr. Seglins had reached out to PowerStream with
15 respect to the reporting he was doing?

16 MR. DENNIS NOLAN: Yes, I think that's
17 correct.

18 MR. JOHN MATHER: Is this an accurate
19 characterization that you were extremely concerned?

20 MR. DENNIS NOLAN: I was concerned, as
21 -- as you would be with -- with any inquiry by CBC
22 about an issue. It was con -- I didn't know that the
23 nature of the of the -- you know, of the inquiries,
24 but I think it was made -- there -- there may have
25 been made clear that -- that they wanted to -- that

1 Mr. Seglins -- wanted to speak about the issue of
2 retaining Paul Bonwick. So, of course, I was
3 concerned about it.

4 MR. DENNIS NOLAN: Was your concern
5 related to the issues we've already distribution --
6 discussed about the appearance of conflict?

7 MR. DENNIS NOLAN: Yes. Absolutely.

8 MR. JOHN MATHER: I have a few
9 questions about Mr. Bonwick's role with PowerStream
10 after the transaction was finalized with Collus. What
11 was his role and what was he doing for PowerStream
12 after the transaction closed?

13 MR. DENNIS NOLAN: I had very little
14 to do with Mr. Bonwick after the close of the
15 transaction. I think it was -- trying to garner, you
16 know, support for other transactions with -- with the
17 CHEC group or other LDCs that might fit in that
18 earlier characterization that we said in geographic
19 proximity. I'm -- I'm aware that certain meetings
20 were -- were arranged as result of his efforts, or
21 that's my impression.

22 MR. JOHN MATHER: So, he was assisting
23 PowerStream in its ongoing growth strategy. Is that
24 fair?

25 MR. DENNIS NOLAN: Yes. And that was

1 the -- the -- the intent of the retainer, and I -- I
2 think that -- that is what he was doing, but I had
3 very little exposure to that.

4 MR. JOHN MATHER: I take it that even
5 at the time when Mr. Bonwick was retained in June,
6 2011, there was already individuals who worked for
7 PowerStream who were responsible for growth and
8 exploring areas for growth. Is that correct?

9 MR. DENNIS NOLAN: That's correct.

10 MR. JOHN MATHER: It's our
11 understanding from the documents that at some point in
12 late 2012 Mr. Bentz suggested to Ed Houghton that Mr.
13 Bonwick begin providing his services to Collus
14 PowerStream, as opposed to PowerStream itself. Were
15 you aware of any discussions along those lines?

16 MR. DENNIS NOLAN: I think I'm a --
17 aware of that of -- of that suggestion, which seemed
18 appropriate if -- if Collus PowerStream was going to
19 be the -- the one (1) -- the vehicle used to pursue
20 these other possible acquisitions or mergers.

21 MR. JOHN MATHER: Do you recall if
22 there was any discussion at the PowerStream Board
23 level about the continuing retainer of Mr. Bonwick
24 after the close of the transmission -- the transaction
25 in July, 2012?

1 MR. DENNIS NOLAN: I thin -- what I --
2 what I can recall is I -- that may -- that there may
3 have been raised at the Board just that suggestion,
4 that since that this was the growth strategy,
5 shouldn't, you know, the continued retainer to the
6 extent that there would be, be shouldered by Collus
7 PowerStream.

8 MR. JOHN MATHER: Was it the und --
9 your understanding that Collus PowerStream would take
10 on the ret -- retainer that Mr. Bonwick had with
11 PowerStream or that there would be a new retainer?

12 MR. DENNIS NOLAN: I'm -- I'm not sure
13 it -- you know, either that it be taken on or that it
14 be revised. I -- I can't remember.

15 MR. JOHN MATHER: I just have a few
16 more questions --

17 MR. DENNIS NOLAN: Sure.

18 MR. JOHN MATHER: -- for you about
19 what happened after the transaction closed.

20 What is your recollection about how the
21 partnership progressed or how -- how things went,
22 moving forward, after the transaction closed?

23 MR. DENNIS NOLAN: I think things went
24 initially very well until there -- there was a change
25 with the CAO in -- in Collingwood and a change in

1 members of -- of Council, and then the relationship
2 soured dramatically. And I became -- I -- I'm sorry,
3 I -- I should have looked for -- for the date -- I
4 came to be a member of the Collus PowerStream Board,
5 and it was a relationship of extreme mistrust.

6 And I know from -- what I came to know
7 is that we had excellent employees and senior
8 management and that they were doing a great job, but
9 they were under a great deal of stress and criticism
10 from -- from the city administration, in part --
11 particular, Mr. Brown, and he -- that he was very
12 difficult to deal with. We were trying to deal with
13 him on -- on the shared services and come to a
14 resolution, and it was extraordinarily confrontational
15 and difficult.

16 MR. JOHN MATHER: What was your
17 understanding of the origins of the mistrust that Mr.
18 Brown and new members of Council had with respect to
19 Collus PowerStream?

20 MR. DENNIS NOLAN: I have no idea.

21 MR. JOHN MATHER: What was the effect
22 of that mistrust on the partnership going forward?

23 MR. DENNIS NOLAN: It soured it and --
24 and the effect on staff was -- was very significant.

25 MR. JOHN MATHER: Those are my

1 questions.

2 THE HONOURABLE FRANK MARROCCO: We
3 can -- I think maybe what we'll do is we'll break for
4 lunch and come back in an hour and that's -- just give
5 everybody a chance to figure out where they are with
6 their cross-examination.

7

8 --- Upon recessing at 12:30 p.m.

9 --- Upon commencing at 1:33 p.m.

10

11 CROSS-EXAMINATION BY MR. RYAN BREEDON:

12 MR. RYAN BREEDON: I think you know
13 I'm Ryan Breedon. I am one (1) of the counsel for the
14 Town. I'd like to start by talking about Mr.
15 Bonwick's compensation agreement and how it came to
16 be. And could be please turn up ALE59, please?

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: So, this is an
21 email from Mr. Bonwick to Mr. Bentz from January of
22 2011, and it attaches a proposal document which we'll
23 look at in a moment. And you can take a moment to --
24 to read through this if you'd like.

25 MR. DENNIS NOLAN: I'm fine. Thank

1 you.

2 MR. RYAN BREEDON: Thanks. You'll see
3 that there is a suggestion -- sorry. In about the
4 middle of the email there's a paragraph that begins
5 with the words, "It is in this regard." Do you see
6 that?

7 MR. DENNIS NOLAN: Yes, I do.

8 MR. RYAN BREEDON: And -- and Mr.
9 Bonwick writes that:

10 "In this regard, I would propose
11 PowerStream considering engaging my
12 company, subject to a satisfactory
13 fee structure, on a much broader
14 level, eliminating the potential
15 accusation that our business
16 relationship is somehow predicated
17 on family contacts."

18 Do you see that?

19 MR. DENNIS NOLAN: Yes, I do.

20 MR. RYAN BREEDON: Okay. Now, at this
21 time, in January of 2011, the only transaction that
22 was being contemplated was the -- the potential Collus
23 transaction, correct?

24 MR. DENNIS NOLAN: I'm not sure that's
25 entirely correct. I mean, we were always considering

1 other transactions.

2 MR. RYAN BREEDON: Fair enough. There
3 was always the possibility of other transactions and -
4 - and you would have that in your mind. But Mr.
5 Bonwick is being consulted on -- specifically with
6 respect to the Collus transaction?

7 MR. DENNIS NOLAN: Initially. But I
8 think the discussion with Mr. Bonwick, and I can't
9 point to an exact time, but I think fairly early on,
10 was talking about the -- the possibility of -- of
11 further consolidation in that area to the extent that
12 that was shared prior to his engagement.

13 MR. RYAN BREEDON: Sure. And -- and I
14 think you testified about that earlier. The idea was
15 that PowerStream would enter into an -- an agreement
16 with Collus, of whatever sort that turned out to be,
17 first, and then used that as the basis to hopefully
18 expand into other utilities in the area?

19 MR. DENNIS NOLAN: Correct.

20 MR. RYAN BREEDON: That was the
21 general strategy. But originally, the -- the original
22 engagement between Mr. Bonwick and PowerStream was
23 with respect to Collus?

24 MR. DENNIS NOLAN: Correct.

25 MR. RYAN BREEDON: Okay. And what Mr.

1 Bonwick is saying here -- and I appreciate you didn't
2 write it or -- or apparently receive it, but what Mr.
3 Bonwick seems to be suggesting is that his retainer
4 should be more broad than just the Collus transaction
5 in part to avoid any concerns that he's being retained
6 because of his relationship with his sister?

7 MR. DENNIS NOLAN: That appears to be
8 what he's saying.

9 MR. RYAN BREEDON: Right. And -- and
10 it's an optics issue in terms of how this is going to
11 be presented to the public, to stakeholders, to
12 others, yes?

13 MR. DENNIS NOLAN: Likely, yes.

14 MR. RYAN BREEDON: All right. The
15 proposal, the actual attachment, is at ALE60. Could
16 we turn that up, please?

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: All right. And
21 this was Mr. Bonwick's proposal that he was sending.
22 And could we scroll down? Keep going. You'll see he
23 sets out -- and if you want to read through the
24 document, we can. I'll just ask you a couple of
25 questions that I think you'll find fairly

1 straightforward.

2 You'll see he sets out an overview of
3 what PowerStream is looking for. And scroll down,
4 please. And then there was a request for a proposal
5 in which, I -- I take it, Mr. Bonwick is setting out
6 sort of the kinds of services that Compenso provides.

7 And if we could keep scrolling down.
8 And then there is a bit of a background about
9 Compenso. And then, finally, under that, you'll see
10 it says, "Proposed scope of work." All right.

11 And Mr. Bonwick has set out first a
12 number of general objectives. Do you see those?

13 MR. DENNIS NOLAN: Yes. Just give me
14 a moment, please.

15 MR. RYAN BREEDON: Yeah. Sure.

16

17 (BRIEF PAUSE)

18

19 MR. DENNIS NOLAN: Yes. Thank you.

20 MR. RYAN BREEDON: All right. And
21 those general objectives become the scope in his
22 ultimate retainer that -- that is executed later?

23 MR. DENNIS NOLAN: Consistent with,
24 directionally, anyway.

25 MR. RYAN BREEDON: Sure. And then, if

1 you can scroll down a little bit more. Then you'll
2 see Mr. Bonwick has a section, "Methodology and
3 deliverables." And you'll see he's got a number of
4 items:

5 "Build the case and enhance profile,
6 develop a personalized contact
7 program, access key decision-makers,
8 issue monitoring."

9 And so forth?

10 MR. DENNIS NOLAN: Correct.

11 MR. RYAN BREEDON: All right. And
12 again, those become the -- the methodology that was
13 contained in the retainer agreement that was
14 ultimately signed?

15 MR. DENNIS NOLAN: I'd have to compare
16 them, but -- but, generally, I -- I give it that
17 directionally it's -- it's fairly -- fairly similar.

18 MR. RYAN BREEDON: I don't think it's
19 necessary for our purposes to -- to go through a word-
20 by-word comparison. But I think you testified that
21 when you put together the agreement, that you took
22 some of that material from another source.

23 And it would appear, I'll suggest to
24 you, that this is the source that you took it from?

25 MR. DENNIS NOLAN: That's quite

1 possible. Like I said, it's -- it's fairly
2 consistent. I just wanted to make the point that you
3 made, that it's -- it's not exactly the same.

4 MR. RYAN BREEDON: Well, it actually
5 may be exactly the same. We would have to go through
6 it. But I --

7 MR. DENNIS NOLAN: Okay. No, I --

8 MR. RYAN BREEDON: -- I don't think it
9 matters.

10 MR. DENNIS NOLAN: I don't argue with
11 that.

12 MR. RYAN BREEDON: All right. Okay.

13

14 (BRIEF PAUSE)

15

16 MR. RYAN BREEDON: And can we turn up
17 then the first retainer agreement? And this is
18 ALE192, please.

19

20 (BRIEF PAUSE)

21

22 MR. RYAN BREEDON: And scroll down.
23 And keep going.

24

25 (BRIEF PAUSE)

1 MR. RYAN BREEDON: All right. Keep
2 going down to the disclosure section, please. All
3 right. Mr. Mather asked you a number of questions
4 about this document which I don't intend to repeat.

5 But the -- the disclosure section which
6 we looked at, I think, yesterday, sort of sets out the
7 requirement that -- that you've explained, that Mr.
8 Bonwick make certain disclosure of his involvement to
9 the Town, yes?

10 MR. DENNIS NOLAN: Correct.

11 MR. RYAN BREEDON: And then you also
12 had Mr. Bonwick enter into a confidentiality
13 agreement?

14 MR. DENNIS NOLAN: Correct.

15 MR. RYAN BREEDON: All right. And the
16 -- the way I read this, and you can correct me if --
17 if I'm wrong, Mr. Bonwick would have made additional
18 disclosure to other parties provided that PowerStream
19 consented?

20 MR. DENNIS NOLAN: Correct.

21 MR. RYAN BREEDON: Right. So, for
22 instance, if Mr. Bonwick thought it important to
23 disclose his involvement to Town Council over and
24 above just the specific disclosures that we've looked
25 at, he could have done so provided he obtained

1 PowerStream's consent?

2 MR. DENNIS NOLAN: I think that's fair
3 to say.

4 MR. RYAN BREEDON: All right. And --
5 and, presumably, had Mr. Bonwick sought that consent,
6 PowerStream would have granted it?

7 MR. DENNIS NOLAN: I believe so.

8 MR. RYAN BREEDON: Right. I mean,
9 there would be no reason for PowerStream to re --
10 refuse to grant it since already the mayor and the
11 clerk were aware of Mr. Bonwick's involvement?

12 MR. DENNIS NOLAN: And later, the
13 deputy mayor, as well.

14 MR. RYAN BREEDON: Right. And
15 PowerStream didn't want to keep -- had no reason to
16 keep Mr. Bonwick's involvement secret?

17 MR. DENNIS NOLAN: No, I don't think
18 there was any secret of Mr. Bonwick's engagement.

19 MR. RYAN BREEDON: All right. And we
20 don't need to turn it up, but this same -- this
21 provision remained intact in the second agreement that
22 was entered into a bit later, correct?

23 MR. DENNIS NOLAN: That's correct.

24

25

(BRIEF PAUSE)

1 MR. RYAN BREEDON: Okay. Can we look
2 at TOC516278, please?

3

4 (BRIEF PAUSE)

5

6 MR. RYAN BREEDON: This is a mutual
7 non-disclosure agreement entered into between, I -- I
8 believe it's the Town, Collus, and PowerStream. Are
9 you familiar with this document?

10 MR. DENNIS NOLAN: Yes, I am.

11 MR. RYAN BREEDON: Okay. And you
12 executed it on behalf of PowerStream?

13 MR. DENNIS NOLAN: That's correct.

14 MR. RYAN BREEDON: All right. This
15 was the agreement that was entered into at or around
16 the time of the first presentation?

17 MR. DENNIS NOLAN: Yes, that's
18 correct.

19 MR. RYAN BREEDON: All right. And --
20 and you understand that the other bidders entered into
21 an identical agreement?

22 MR. DENNIS NOLAN: I understand that
23 now from a review of the Inquiry documents, yes.

24 MR. RYAN BREEDON: And I -- you would
25 have assumed that to be the case back in -- at -- at

1 the time this was entered into?

2 MR. DENNIS NOLAN: I suppose so --

3 MR. RYAN BREEDON: Well --

4 MR. DENNIS NOLAN: -- because we were
5 really concerned about the others, but...

6 MR. RYAN BREEDON: I appreciate you
7 maybe didn't turn your mind to it at the time, but had
8 you of, you would have expected that all of the
9 bidders would have been asked to sign the same
10 agreement?

11 MR. DENNIS NOLAN: I -- I think that's
12 a fair assumption, yes.

13 MR. RYAN BREEDON: Okay. And what the
14 agreement provides is that both parties -- or, I
15 guess, all three (3) parties will maintain the
16 confidentiality of the -- what's defined as the
17 confidential information?

18 MR. DENNIS NOLAN: Yes. And if you
19 could scroll down a little bit for me, please.

20

21 (BRIEF PAUSE)

22

23 MR. DENNIS NOLAN: Yes. And it has in
24 -- in (b) limitations on that confidential
25 information.

1 MR. RYAN BREEDON: Right. And the
2 limitations relate to information that was already in
3 the possession of one (1) of the parties --

4 MR. DENNIS NOLAN: Yes.

5 MR. RYAN BREEDON: -- or information
6 that's other -- otherwise publically accessible?

7 MR. DENNIS NOLAN: Those -- those are
8 two (2), and those are -- or that become of the public
9 domain without any breach.

10 MR. RYAN BREEDON: Now confidential
11 information is defined quite broadly, you'll agree?

12 MR. DENNIS NOLAN: Yeah. It's -- it's
13 familiar boilerplate definition of confidential
14 information which is fairly broad, you know. You
15 know, it includes, for example, research products,
16 services, customer, supplier. So this is -- this has
17 not been tailored specifically for this transaction.

18 MR. RYAN BREEDON: Right. Even the
19 existence and nature of the discussions between the
20 parties is included as confidential information?

21 MR. DENNIS NOLAN: It is, which is
22 customary language. Yes.

23 MR. RYAN BREEDON: Right. This is all
24 very standard, I'd suggest?

25 MR. DENNIS NOLAN: Yes.

1 MR. RYAN BREEDON: Okay. And
2 certainly, it would be broad enough to capture the
3 presentation that the various bidders were making to
4 the Strategic Task Team in September of 2011?

5 MR. DENNIS NOLAN: With those
6 limitations that I mentioned in terms of the
7 exceptions because of what was public, et cetera.

8 MR. RYAN BREEDON: All right. So if
9 we take PowerStream, for instance, I assume one of the
10 things that the PowerStream presentation included was
11 a description of your service area, and you were in
12 Barrie and the other municipalities presumably.

13 MR. DENNIS NOLAN: Yeah.

14 MR. RYAN BREEDON: And that wouldn't
15 be confidential because everybody knows that.

16 MR. DENNIS NOLAN: Well, that's --
17 that's one very good example, one of probably many
18 that you can make.

19 MR. RYAN BREEDON: Right. Fair
20 enough. But the approach that PowerStream was
21 presenting to the Strategic Task Team would be the
22 kind of the thing that's confidential?

23 MR. DENNIS NOLAN: To the extent --
24 and I wasn't there -- but to the extent that there --
25 there were confidential parts of that presentation and

1 approach, yes.

2 MR. RYAN BREEDON: All right. Well,
3 maybe we can do it another way. Anything that doesn't
4 fall into the exception under subparagraph (b) that
5 you've pointed out a moment ago would be considered
6 confidential.

7 MR. DENNIS NOLAN: Yes.

8 MR. RYAN BREEDON: Okay. And the
9 obligation to preserve confidentiality is on both the
10 bidder -- yes?

11 MR. DENNIS NOLAN: Correct.

12 MR. RYAN BREEDON: -- and on the
13 Town --

14 MR. DENNIS NOLAN: Correct.

15 MR. RYAN BREEDON: -- and on Collus.

16 MR. DENNIS NOLAN: Yes.

17 MR. RYAN BREEDON: All right. And
18 this is a contractual obligation. This is a contract
19 that has been entered into between those three
20 parties.

21 MR. DENNIS NOLAN: Correct.

22 MR. RYAN BREEDON: Okay. So it's a
23 serious matter, correct? M-hm? Yes?

24 MR. DENNIS NOLAN: Pardon me, yes.

25 MR. RYAN BREEDON: You just have to

1 say yes for our transcript.

2 MR. DENNIS NOLAN: No, I understand.

3 Yes.

4 MR. RYAN BREEDON: So yesterday, you
5 were asked about, you know, some of the evidence of
6 the other bidders as to their understanding of whether
7 these meetings were considered confidential.

8 And you testified -- I think I've got
9 this right -- that you thought it was a bit rich that
10 they came here however many years later and were, you
11 know, concerned about the confidentiality.

12 But in fairness, this is something that
13 all of the bidders would have expected as a matter of
14 this contract, correct?

15 MR. DENNIS NOLAN: Yes. But I think
16 my comment was aimed at them complaining about things
17 that were public and generally known as being deep,
18 dark secrets somehow.

19 MR. RYAN BREEDON: Well, PowerStream
20 expected that its presentation would be kept
21 confidential.

22 MR. DENNIS NOLAN: As I said, I think
23 our -- the reasonable expectation is that if there was
24 anything confidential in that presentation, yes.

25 MR. RYAN BREEDON: The reasonable

1 expectation is that the Town and Collus is going to
2 comply with this agreement.

3 MR. DENNIS NOLAN: Yes.

4 MR. RYAN BREEDON: All right. And all
5 of the other bidders reasonably expected that the Town
6 and Collus would comply with this agreement.

7 MR. DENNIS NOLAN: Yes. I was just
8 explaining the point that you raised that I made
9 yesterday.

10 MR. RYAN BREEDON: All right. It's
11 not naive for the other bidders to expect that the
12 Town and Collus is going to comply with the
13 confidential -- with this confidentiality agreement,
14 is it?

15 MR. DENNIS NOLAN: No. It was just
16 the scope of what they -- what I believe that they
17 have decided to treat as confidential.

18 MR. RYAN BREEDON: Now, could we look
19 at Mr. Hull's affidavit. Sorry, I don't know which
20 number it was.

21 MR. JOHN MATHER: AFF7.

22 MR. RYAN BREEDON: Thank you.

23

24 (BRIEF PAUSE)

25

1 CONTINUED BY MR. RYAN BREEDON:

2 MR. RYAN BREEDON: And down to his --
3 the exhibit. The transcript should be the last page.

4 All right. Mr. Mather spent a fair
5 amount of time with you on this today, and I won't do
6 the same. But the last point is the reference to
7 other bidders seeming okay with 50/50. You see that?

8 MR. DENNIS NOLAN: Yes, I do.

9 MR. RYAN BREEDON: All right. And
10 you'll agree with me that what this seems to be is a
11 record of Mr. Hull's notes of what he was told by
12 Mr. McFadden regarding the approaches taken by the
13 other bidders.

14 MR. DENNIS NOLAN: With respect to --
15 to the other bidders being okay with a purchase of up
16 to 50 percent, as opposed to some other alternative
17 presumably buying more.

18 MR. RYAN BREEDON: Right. And that is
19 apparent -- it seems to be Mr. McFadden's impression,
20 based on whatever information had been communicated by
21 the other bidders. Yes?

22 MR. DENNIS NOLAN: I -- I don't know
23 what informed Mr. McFadden's comment.

24 MR. RYAN BREEDON: All right.

25 MR. DENNIS NOLAN: It's not

1 unreasonable what you said.

2 MR. RYAN BREEDON: Certainly, the
3 approach taken by the other bidders -- that is,
4 whether they were or were not prepared to bid on a
5 50/50 basis -- would be confidential information of
6 the sort that we had just talked about.

7 MR. DENNIS NOLAN: I suppose, unless
8 it was made very clear in that presentation, which I
9 wasn't at, and in the other presentations that this is
10 the way it's -- the way that it's going to be -- the
11 50/50. I don't know the nature of those discussions.

12 MR. RYAN BREEDON: What the Town may
13 have communicated to the other bidders is a separate
14 issue.

15 MR. DENNIS NOLAN: Right.

16 MR. RYAN BREEDON: The fact that the
17 other bidders seemingly communicated -- or at least
18 Mr. McFadden who is on this Strategic Task Team and a
19 Board member of the Collus -- appreciated --

20 MR. DENNIS NOLAN: Right.

21 MR. RYAN BREEDON: -- that they were
22 prepared to bid on a 50/50 basis. That is the sort of
23 the confidential information that would be covered by
24 the confidentiality agreement. Do you agree?

25 MR. DENNIS NOLAN: Yes. I think it

1 could be, yes.

2 MR. RYAN BREEDON: All right. And so
3 you'll agree that Mr. McFadden ought not to have
4 communicated this information to Mr. Hull.

5 MR. DENNIS NOLAN: Unless that had
6 been communicated to -- to the other bidders. I give
7 you that, yes.

8 MR. RYAN BREEDON: You mean unless the
9 fact that the other bidders were prepared to bid or
10 presumably prepared to bid on a 50/50 --

11 MR. DENNIS NOLAN: If they --

12 MR. RYAN BREEDON: -- let me ask the
13 question, otherwise we'll be yelled at -- the fact
14 that the other bidders were prepared to bid on a 50/50
15 basis?

16 Are you suggesting that if that was
17 communicated to all of the other bidders, then this
18 would be okay?

19 MR. DENNIS NOLAN: Yes.

20 MR. RYAN BREEDON: All right. Are
21 you -- I take it you're not aware of that having been
22 communicated.

23 MR. DENNIS NOLAN: No, I'm not aware
24 of that.

25 MR. RYAN BREEDON: All right. And

1 PowerStream wasn't asked by Mr. McFadden or by anyone
2 if Collus or the Town could communicate any of their
3 discussions with PowerStream to the other bidders?

4 MR. DENNIS NOLAN: Correct.

5 MR. RYAN BREEDON: Correct?

6 MR. DENNIS NOLAN: Yes.

7 MR. RYAN BREEDON: All right. And if
8 you had of been asked, you would have said no because
9 how PowerStream intended to bid was confidential
10 information.

11 MR. DENNIS NOLAN: Correct.

12 MR. RYAN BREEDON: All right. And
13 presumably, you'll agree -- you would expect
14 anyways -- that if any of the other bidders had been
15 asked, they also would have said no.

16 MR. DENNIS NOLAN: I don't know what
17 the other bidders would have said.

18 MR. RYAN BREEDON: Can we look at
19 TOC59013, please.

20

21 (BRIEF PAUSE)

22

23 MR. RYAN BREEDON: Now, I know your
24 evidence is that you didn't receive this at the time,
25 and I take it you only saw this memo as part of these

1 proceedings?

2 MR. DENNIS NOLAN: I'm just --

3 MR. RYAN BREEDON: I'm sorry.

4 MR. DENNIS NOLAN: I'm sorry. Just so
5 I can identify properly, can you scroll down a little
6 bit? Yes. Thank you. Okay.

7 MR. RYAN BREEDON: I'm sorry, sir. I
8 thought you had all the numbers memorized like the
9 rest of us.

10 MR. DENNIS NOLAN: No.

11 MR. RYAN BREEDON: Sorry. This is
12 Mr. Bonwick's memo of September 14th, 2011 which
13 addresses the Hydro One and I think it's the Verizon
14 presentations -- Veridian presentations?

15 MR. DENNIS NOLAN: Yes.

16 MR. RYAN BREEDON: Okay. And, again,
17 you've spent a fair amount of time on this earlier, so
18 we don't need to go through it in great detail. I'm
19 correct though, your evidence is that you didn't
20 receive this at the time?

21 MR. DENNIS NOLAN: No. I have no
22 recollection of receiving this --

23 MR. RYAN BREEDON: All right. And
24 I --

25 MR. DENNIS NOLAN: -- nor is there any

1 record that I did.

2 MR. RYAN BREEDON: And presumably if
3 you had of received it, you would remember that?

4 MR. DENNIS NOLAN: Yes.

5 MR. RYAN BREEDON: And did you first
6 see this as part of these proceedings?

7 MR. DENNIS NOLAN: Yes.

8 MR. RYAN BREEDON: Okay. And you'll
9 agree -- and we can go through it in detail if you'd
10 like -- but that this also contains the kind of
11 confidential information that would be covered by the
12 confidentiality agreement that we looked at earlier.

13 MR. DENNIS NOLAN: Again, because I
14 don't have it memorized, could you scroll down,
15 please?

16

17 (BRIEF PAUSE)

18

19 MR. DENNIS NOLAN: The only comment
20 I'll make and I think I made it before that the
21 approach here is -- and I don't think it was -- would
22 be surprising in particular to Mr. Bentz -- at all
23 surprising -- and was consistent with both company's
24 approach in other -- in other attempts at acquisitions
25 or -- or mergers.

1 MR. RYAN BREEDON: All right. So what
2 you're saying -- and I don't want to put words in your
3 mouth -- but I think what you're saying is that you
4 weren't terribly -- or you're not terribly concerned
5 because this is the sort of thing that you would have
6 expected Hydro One and Veridian to be saying?

7 MR. DENNIS NOLAN: Correct.

8 MR. RYAN BREEDON: All right. But
9 setting that aside and setting aside the question of
10 whether it had any impact on PowerStream's bid, you'll
11 agree that this is exactly the kind of confidential
12 information that is covered by that confidentiality
13 agreement.

14 MR. DENNIS NOLAN: To the extent that
15 it's not in the public domain, I agree.

16 MR. RYAN BREEDON: Right. And so -- I
17 mean, we can just start with the first few bullet
18 points -- how Hydro One is articulating its regional
19 strategy is not something that's in the public domain.

20 MR. DENNIS NOLAN: It had been
21 there -- it's consistent with their prior practices, I
22 believe.

23 MR. RYAN BREEDON: Right. But how
24 they are presenting themselves and presenting this
25 project to Collus is not something that's in the

1 public domain.

2 MR. DENNIS NOLAN: Correct.

3 MR. RYAN BREEDON: And it's exactly
4 the kind of confidential information that would be
5 covered by the agreement.

6 MR. DENNIS NOLAN: I agree it would be
7 covered.

8 MR. RYAN BREEDON: Right. And then
9 the second bullet point deals with Hydro One's
10 proposal for dealing with the existing staff. And
11 again, that's not something that would be covered in
12 the public domain.

13 MR. DENNIS NOLAN: No. But it's,
14 again -- once again, not to be too repetitive -- it is
15 consistent with their past practices.

16 MR. RYAN BREEDON: That's not my
17 question. What Hydro One is proposing to deal with --
18 to do with the Collus staff was not public
19 information.

20 MR. DENNIS NOLAN: I didn't disagree
21 with you. I qualified in the answer.

22 MR. RYAN BREEDON: How the -- if you
23 look at the fourth bullet point -- that deals with how
24 the Strategic Task Team members received the
25 presentation, correct?

1 MR. DENNIS NOLAN: Yes. Correct.

2 MR. RYAN BREEDON: And again, that's
3 not public information.

4 MR. DENNIS NOLAN: I agree.

5 MR. RYAN BREEDON: And that's very
6 confidential.

7 MR. DENNIS NOLAN: I agree it's
8 covered by the agreement.

9 MR. RYAN BREEDON: It's very
10 confidential, correct?

11 MR. DENNIS NOLAN: I agree it's
12 covered by the agreement.

13 MR. RYAN BREEDON: All right. And
14 then we have very similar -- there's a very similar
15 review of the Veridian presentation, yes?

16 MR. DENNIS NOLAN: Yes.

17 MR. RYAN BREEDON: Okay. And can we
18 scroll down, please. And keep going down.

19

20 (BRIEF PAUSE)

21

22 MR. RYAN BREEDON: All right. I'm
23 looking for -- I have a -- sorry, scroll up a bit.

24

25 (BRIEF PAUSE)

1 MR. RYAN BREEDON: Stop -- stop. Oh,
2 right. So in this very first point you'll see that
3 one (1) of the items in the Veridian presentation Mr.
4 Bonwick has -- has identified as "an item that
5 resonated well with the committee was" and then under
6 number 2, "the establishment of a contribution fund."
7 Do you see that?

8 MR. DENNIS NOLAN: Yes, I do.

9 MR. RYAN BREEDON: And -- and that was
10 at a rate of two dollars (\$2) per customer for
11 discretionary gifting, and that was sort of one (1) of
12 the things that Veridian was proposing which
13 apparently Mr. Bonwick understood to have resonated
14 well with the Strategic Task Team.

15 MR. DENNIS NOLAN: From -- from his --
16 from this memo, yes.

17 MR. RYAN BREEDON: Okay. And at this
18 time, Collus had about fifteen thousand (15,000)
19 customers?

20 MR. DENNIS NOLAN: That's about right.

21 MR. RYAN BREEDON: All right. So
22 we're talking about a contribution fund of thirty-
23 thousand dollars (\$30,000).

24 MR. DENNIS NOLAN: Yes.

25 MR. RYAN BREEDON: Okay. And can we

1 move ahead to ALE488, please.

2

3 (BRIEF PAUSE)

4

5 MR. RYAN BREEDON: So this one is the
6 memo from Mr. Bonwick that was sent on October the
7 5th, 2011, which I believe you did receive.

8 MR. DENNIS NOLAN: Yes.

9 MR. RYAN BREEDON: And we looked at
10 this one (1) also earlier, correct?

11 MR. DENNIS NOLAN: Correct.

12 MR. RYAN BREEDON: All right. Page 2,
13 under "community," and so this is Mr. Bonwick's
14 recommendations for PowerStream's response to the RFP.
15 Yes?

16 MR. DENNIS NOLAN: Yes.

17 MR. RYAN BREEDON: Yes. And so you'll
18 see that what Mr. Bonwick -- under "community," the
19 second item is the recommendation to include provision
20 for a one dollar (\$1) per customer community gifting
21 fund to be used at the direction of Council, and then
22 he has a list of things which I take it are the
23 presumed recipients of this money.

24 You -- you see that?

25 MR. DENNIS NOLAN: Yes, I see it.

1 MR. RYAN BREEDON: Okay. And it is
2 the -- the basic -- the same basic idea, although Mr.
3 Bonwick is a bit cheaper than Veridian was. "Yes"?

4 MR. DENNIS NOLAN: Yes.

5 MR. RYAN BREEDON: All right. And
6 then if we look at ALE967, please.

7

8 (BRIEF PAUSE)

9

10 MR. RYAN BREEDON: So this one I'm
11 sure you are familiar with. It's PowerStream's
12 response to the RFP?

13 MR. DENNIS NOLAN: Yes.

14 MR. RYAN BREEDON: And the -- there's
15 of course two (2) documents because there is the
16 financial and the non-financial response. This is the
17 non-financial response. Scroll down so the witness
18 can see it. And can we look at page 20, please? And
19 the very bottom of the page. Okay.

20 And so if you look in the last
21 paragraph you'll see it -- it says that:

22 "As part of the proposed
23 transaction, PowerStream is
24 proposing that Collus/PowerStream
25 would establish a Town of

1 Collingwood community fund. The
2 initial fund would be twenty-five
3 thousand dollars (\$25,000) which
4 would go to support community
5 events."

6 And -- and so on. You see that?

7 MR. DENNIS NOLAN: Yes, I do.

8 MR. RYAN BREEDON: All right. And
9 again, that's the same idea that we have seen in the
10 last two (2) documents that we've looked at?

11 MR. DENNIS NOLAN: Consistent with
12 that, yes.

13 MR. RYAN BREEDON: And so what -- what
14 seems to be the case, sir, is that Veridian proposed
15 an idea to the Strategic Task Team which was favoured
16 by the Strategic Task Team. And that Mr. Bonwick then
17 found about that somehow, and took that idea and
18 recommended that that be included in PowerStream's
19 proposal which -- which it ultimately was.

20 MR. DENNIS NOLAN: That's -- that seems
21 to be correct --

22 MR. RYAN BREEDON: Thank you.

23 MR. DENNIS NOLAN: -- but also keeping
24 in mind that I have no -- not seen the -- the document
25 that you were referring to before -- the document --

1 the summary from Mr. Bonwick.

2 MR. RYAN BREEDON: Right. But --

3 MR. DENNIS NOLAN: So I don't want the
4 premise that is consistent with something that -- that
5 I or others at PowerStream had seen before.

6 MR. RYAN BREEDON: No, you've been very
7 clear that you didn't see Mr. Bonwick's first memo.
8 But the point is that --

9 MR. DENNIS NOLAN: Yes.

10 MR. RYAN BREEDON: -- is that the --
11 based on that memo, we know -- I mean, Mr. Bonwick
12 wrote the memo and he's going to testify, and -- and
13 we're all very interested to hear what he has to say
14 about it but we know that Mr. Bonwick has identified
15 that this was a proposal that came from Veridian,
16 right?

17 MR. DENNIS NOLAN: Correct.

18 MR. RYAN BREEDON: And then Mr. Bonwick
19 said -- whether somebody at PowerStream saw the memo
20 or not, we don't know, but Mr. Bonwick then turned
21 around and made the recommendation to PowerStream that
22 they should do basically the same thing, correct?

23 MR. DENNIS NOLAN: Correct.

24 MR. RYAN BREEDON: And then PowerStream
25 did it.

1 MR. DENNIS NOLAN: Yes.

2 MR. RYAN BREEDON: All right. And
3 again, Veridian's idea that it had presented back to
4 the Strategic Task Team is exactly the kind of
5 confidential information covered by that
6 confidentiality agreement.

7 MR. DENNIS NOLAN: Yes.

8 MR. RYAN BREEDON: ALE412, please.

9

10 (BRIEF PAUSE)

11

12 MR. RYAN BREEDON: Scroll down a little
13 bit, please. Okay.

14 So Mr. Mather took you to this already,
15 and I don't intend to belabour it but, again, the
16 section -- or the paragraph that begins with the word
17 "irrespective," you see that towards the bottom of the
18 screen?

19 MR. DENNIS NOLAN: Yes, I do.

20 MR. RYAN BREEDON:

21 "Irrespective of the committee's
22 buy-in or reluctance on the issue,
23 the Council retains final authority
24 and we must remain mindful that at
25 least one (1) of our competitors,

1 Horizon, will submit a proposal
2 providing 50 percent ownership
3 scenario."

4 Now, again we don't know the source of
5 this information but if Horizon had communicated to
6 either Collus or to the Town, or to the Strategic Task
7 Team, that it was intending to make a 50 percent
8 proposal, that was confidential information that was
9 covered by the Confidentiality Agreement, correct?

10 MR. DENNIS NOLAN: Yes --

11 MR. RYAN BREEDON: Okay.

12 MR. DENNIS NOLAN: -- but presumably
13 consistent with what all bidders were being told to
14 submit.

15 MR. RYAN BREEDON: Well -- well --

16 MR. DENNIS NOLAN: I'm not -- I -- I
17 don't -- I don't see any great value in it.

18 MR. RYAN BREEDON: That wasn't my
19 question. Whether -- whether you saw great --

20 MR. DENNIS NOLAN: So you don't want me
21 to answer the question, so -- I'm sorry. If -- if I
22 have -- you want a "yes" and "no" answer?

23 MR. RYAN BREEDON: No, I just want you
24 to answer my questions.

25 MR. DENNIS NOLAN: Okay.

1 MR. RYAN BREEDON: Whether you saw --

2 MR. DENNIS NOLAN: Maybe you could
3 repeat the question then.

4 MR. RYAN BREEDON: My question, sir,
5 was that if Horizon had communicated to either the
6 Town or to Collus or to the Strategic Task Team that
7 it intended to bid for 50 percent of Collus, that was
8 confidential information covered by the
9 Confidentiality Agreement.

10 MR. DENNIS NOLAN: Yes.

11 MR. RYAN BREEDON: Now, you received
12 this email?

13 MR. DENNIS NOLAN: Yes.

14 MR. RYAN BREEDON: And you read it?

15 MR. DENNIS NOLAN: Yes.

16 MR. RYAN BREEDON: All right. And I
17 think you told Mr. Mather that you did not raise any
18 concerns, or have any concerns about the source of Mr.
19 Bonwick's information. Is that -- do I have that
20 right?

21 MR. DENNIS NOLAN: Generally. When I
22 say I read it, it was sent to me. I -- I didn't think
23 -- think too much of it because I wanted to see what
24 was in the RFP.

25 MR. RYAN BREEDON: And so do I take it

1 then the fact that Mr. Bonwick seems to have had
2 inside information about what one (1) of your
3 potential competitors intended to do, that -- that
4 just escaped your attention?

5 MR. DENNIS NOLAN: I wouldn't put it
6 that way --

7 MR. RYAN BREEDON: Okay.

8 MR. DENNIS NOLAN: -- as -- as you
9 have characterized it.

10 MR. RYAN BREEDON: Well, I'm not
11 trying to be flippant, sir. So I -- I --

12 MR. DENNIS NOLAN: Sorry. I didn't
13 say that you were. I'm -- I'm just trying to, if you
14 give me a moment, to give you an appropriate --

15 MR. RYAN BREEDON: Take your time.

16 MR. DENNIS NOLAN: -- answer.

17 MR. RYAN BREEDON: Sure.

18 MR. DENNIS NOLAN: So, you know, I did
19 have concerns, as I stated before, about it -- about
20 his engagement. I didn't know where the information
21 was coming from.

22 MR. RYAN BREEDON: Okay. So you had
23 concerns about his engagement, and you testified that
24 that was based on his relationship with his sister,
25 and -- and you've given a fairly detailed explanation

1 of that.

2 MR. DENNIS NOLAN: Correct.

3 MR. RYAN BREEDON: Were you concerned
4 about where his information was coming from?

5 MR. DENNIS NOLAN: I assumed that the
6 information was -- was coming from obviously someone
7 close to the deal on -- on their side. And whether
8 that was being given to him -- and whether that
9 information was being shared -- whatever information
10 he was being given, how that was being shared if at
11 all with the -- the others, we wouldn't have known.

12 I did not think a lot of his input, and
13 I was waiting for the -- the RFP.

14 MR. RYAN BREEDON: Were you concerned
15 about where Mr. Bonwick's information was coming from?

16 MR. DENNIS NOLAN: I don't know that I
17 focussed on that very much.

18 MR. RYAN BREEDON: And when you say you
19 don't know that you focussed on it very much, did you
20 focus on it at all?

21 MR. DENNIS NOLAN: I -- I don't know -
22 - I'm -- I'm trying to recall what was -- what my
23 reaction was sev -- over seven (7) years ago. And so
24 I'm trying to give you an accurate recollection of
25 that, and not a reaction from seeing these documents

1 now.

2 MR. RYAN BREEDON: Okay.

3 MR. DENNIS NOLAN: So I can't tell you
4 really, you know, the degree to which I was concerned.

5 MR. RYAN BREEDON: Okay.

6 MR. DENNIS NOLAN: I was -- I was
7 concerned. I would say I was likely concerned about
8 the -- about the information, and the accuracy of the
9 information.

10 MR. RYAN BREEDON: Okay. So those are
11 two (2) issues. I mean, one (1) is whether the
12 information is accurate or not; what you need to know
13 in order to determine whether you should take any
14 action or rely on it, correct?

15 MR. DENNIS NOLAN: Correct.

16 MR. RYAN BREEDON: Okay. The second
17 issue though is the source of the information. And so
18 what -- what I want to know is, did you have any
19 concerns at any point during this transaction about
20 the source of the information that Mr. Bonwick was
21 bringing to PowerStream?

22 MR. DENNIS NOLAN: I wasn't overly
23 concerned because I -- I didn't think we really -- I
24 didn't give a lot of weight to the information, and
25 didn't think we needed the information.

1 MR. RYAN BREEDON: Were you concerned
2 about the source of the information that Mr. Bonwick
3 was bringing to PowerStream?

4 MR. DENNIS NOLAN: I didn't know the
5 source of his information.

6 MR. RYAN BREEDON: I -- I know you
7 didn't know the source. Were you concerned about who
8 that source might be? Was that a thing that you were
9 worried about?

10 MR. DENNIS NOLAN: I don't know that I
11 turned my mind to it at the time.

12 MR. RYAN BREEDON: Okay.

13 MR. DENNIS NOLAN: I cannot recall.

14 MR. RYAN BREEDON: Okay. Thank you.
15 Now, I understand that Mr. Bentz may testify that
16 there were internal discussions at PowerStream to the
17 effect that some of the information PowerStream was
18 receiving from Mr. Bonwick was confidential, or
19 proprietary.

20 Do you recall those discussions?

21 MR. DENNIS NOLAN: I don't recall the
22 specific discussions, but if -- if that's his
23 recollection it is probably is -- is correct.

24 MR. RYAN BREEDON: Okay. Well, we'll
25 find out what -- what Mr. Bentz said --

1 MR. DENNIS NOLAN: Yeah.

2 MR. RYAN BREEDON: -- is going to say
3 when he testifies. Do you have any recollection of
4 having any discussions with anyone at PowerStream
5 concerning or -- or regarding a concern that Mr.
6 Bonwick was bringing confidential or proprietary
7 information to PowerStream?

8 MR. DENNIS NOLAN: I don't think I can
9 properly answer that question for reasons of
10 solicitor/client privilege.

11 MR. RYAN BREEDON: All right. Fair
12 enough. Did you do anything in response to any
13 concerns that PowerStream may have had that Mr.
14 Bonwick was bringing confidential or proprietary
15 information to PowerStream?

16 MR. DENNIS NOLAN: Did I do anything?
17 I think it falls into the same category -- category as
18 my last answer.

19 MR. RYAN BREEDON: Set aside what --
20 that -- whether you may have given advice internally.
21 I'm not asking about that. That's solicitor and
22 client privilege.

23 Did you take any action to alert the
24 Town that Mr. Bonwick may be providing PowerStream
25 with confidential or proprietary information?

1 MR. DENNIS NOLAN: No.

2 MR. RYAN BREEDON: Did you take any
3 action to notify Collus that Mr. Bonwick was
4 potentially providing PowerStream with confidential or
5 proprietary information?

6 MR. DENNIS NOLAN: No.

7 MR. RYAN BREEDON: Why not?

8 MR. DENNIS NOLAN: I'm not sure how to
9 answer. But the -- I think the assumption was that
10 the information was coming from Collus or from the
11 Town.

12

13 (BRIEF PAUSE)

14

15 MR. RYAN BREEDON: Can we look at
16 TOC516412, please?

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: This is the request
21 for proposal document. And you're familiar with that,
22 I think?

23 MR. DENNIS NOLAN: Yeah. Yes, I'm
24 somewhat familiar with it. I -- I don't recall all
25 the details without looking at it.

1 MR. RYAN BREEDON: That's fine. We
2 can -- we can go through it. But it sets out what the
3 proposal criteria were, where the information would be
4 located and so on?

5 MR. DENNIS NOLAN: Yes.

6 MR. RYAN BREEDON: It's all fairly
7 standard for one (1) of these types of documents?

8 MR. DENNIS NOLAN: Sorry, that was a
9 question?

10 MR. RYAN BREEDON: Yes.

11 MR. DENNIS NOLAN: I don't think that
12 there's necessarily a standard request for proposal.
13 I think it's tailored by -- by the -- by the person or
14 body that's putting it together.

15 MR. RYAN BREEDON: Okay. And can we
16 look down to page 9, please?

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: Sorry, I'm not
21 sure. It may -- keep going down. Oh, so there's the
22 proposal. Stop here, sorry. So, this is the data
23 availability section, and it includes or sets out the
24 data that was being provided to the various bidders --

25 MR. DENNIS NOLAN: Yes.

1 MR. RYAN BREEDON: -- and sets out the
2 instructions for how the bidders could access the data
3 room?

4 MR. DENNIS NOLAN: Yes.

5 MR. RYAN BREEDON: Okay. And then if
6 we go up to page -- I have it as page 6, but it may be
7 -- may be page 8. Scroll down. Okay. So, you'll see
8 section 3.8 is the proposal response and contact
9 section. Do you see that?

10 MR. DENNIS NOLAN: Yes.

11 MR. RYAN BREEDON: And this tells you,
12 first of all, where the proposals are to be sent.
13 You'll see in the second bullet that it says to send
14 them to Mr. Muncaster at Collus?

15 MR. DENNIS NOLAN: Yes.

16 MR. RYAN BREEDON: And then the last
17 bullet on this page says that:

18 "All inquiries regarding this
19 request for proposal should be
20 directed in writing to Mr. Herhalt
21 at KPMG."

22 You see that?

23 MR. DENNIS NOLAN: Yes, I do.

24 MR. RYAN BREEDON: And the idea is
25 that any information that any of the bidders wanted

1 was to be directed through KPMG?

2 MR. DENNIS NOLAN: Yes.

3 MR. RYAN BREEDON: Right. And again,
4 that idea, that there be a single point of contact, is
5 very common for an RFP process?

6 MR. DENNIS NOLAN: I assume so.

7 MR. RYAN BREEDON: Well, you've been
8 involved in others?

9 MR. DENNIS NOLAN: Not involving a
10 utility. I think it's what you make of it. But I --
11 I think this is an approach that's often taken.

12 MR. RYAN BREEDON: Right. And the
13 idea is that the vendor wants to ensure that it's
14 controlling what information is being given to the
15 bidders --

16 MR. DENNIS NOLAN: Yes.

17 MR. RYAN BREEDON: -- and to ensure
18 that all the bidders are being given the same
19 information?

20 MR. DENNIS NOLAN: Sorry, is that a
21 question?

22 MR. RYAN BREEDON: Yes.

23 MR. DENNIS NOLAN: I assume so, yes.

24 MR. RYAN BREEDON: Right, in order to
25 ensure that the process is fair --

1 MR. DENNIS NOLAN: Yes.

2 MR. RYAN BREEDON: -- and to ensure
3 that the process maximizes the value for the vendor?

4 MR. DENNIS NOLAN: Yes. I think it's
5 very important that -- that there be a way for the
6 vendor -- the vendor to interact with the proponents
7 to seek clarification and vice versa.

8 MR. RYAN BREEDON: Right. And so --
9 and -- and you -- PowerStream had interactions with
10 the people at KPMG leading up to your response,
11 correct?

12 MR. DENNIS NOLAN: I -- I wouldn't be
13 the -- the one having any of those interactions, but I
14 believe they did take place.

15 MR. RYAN BREEDON: Yeah. That's --
16 that's fair. I don't -- I don't intend to ask you
17 about those interactions, you weren't involved in
18 them. But the point is that PowerStream made use of
19 this and contacted KPMG to obtain some more
20 information?

21 MR. DENNIS NOLAN: Yes. I think vice
22 versa, as well.

23 MR. RYAN BREEDON: Right. And
24 ultimately, after the -- your proposal was submitted,
25 KPMG followed up with PowerStream with some questions

1 about it?

2 MR. DENNIS NOLAN: I assume so. I --
3 I don't -- I don't have any recollection of that
4 specifically.

5 MR. RYAN BREEDON: All right. And
6 that was all, I think, Mr. Glicksman, who was
7 primarily the point of contact --

8 MR. DENNIS NOLAN: Yes.

9 MR. RYAN BREEDON: -- on those issues?

10 MR. DENNIS NOLAN: That's -- sorry,
11 that is correct --

12 MR. RYAN BREEDON: All right.

13 MR. DENNIS NOLAN: -- being the CFO.

14 MR. RYAN BREEDON: All right. And
15 your expectation is that, if Collus or the Town wanted
16 to convey information about the utility to PowerStream
17 or to the other bidders, it would do so through KPMG?

18 MR. DENNIS NOLAN: That's reasonable.

19 MR. RYAN BREEDON: Yes. That was what
20 you expected reading this?

21 MR. DENNIS NOLAN: When I read it now,
22 yes.

23 MR. RYAN BREEDON: Right. And you
24 didn't expect that the information would be
25 communicated through the mayor's brother?

1 MR. DENNIS NOLAN: That's fair.

2 MR. RYAN BREEDON: All right. So,
3 let's go back to my earlier question, which is, if --
4 if in fact it's the case that somebody at PowerStream
5 had concerns about the information that Mr. Bonwick
6 was providing to PowerStream, that it might be
7 confidential or proprietary, why did you not raise
8 those concerns with the Town or Collus or KPMG?

9

10 (BRIEF PAUSE)

11

12 MR. DENNIS NOLAN: I -- I can't -- I --
13 - I can't say why, but there was an avenue for -- as --
14 - as you pointed out, for raising questions. It --
15 I'm not sure that it would be the -- the avenue to --
16 I guess, you know, it's their process and they're
17 providing information.

18 And, yes, it says that the information
19 be provided through KPMG, but it's essentially their
20 process.

21 MR. RYAN BREEDON: So, what are you
22 saying? Are you saying that, from PowerStream's
23 perspective, the Town had decided that it would, for
24 some reason, provide its information through Mr.
25 Bonwick?

1 MR. DENNIS NOLAN: I didn't say that.

2 MR. RYAN BREEDON: Okay. So, my
3 question is -- I appreciate it's the Town's process,
4 but -- but surely you didn't think that the -- the
5 Strategic Task Team, the Town of Collingwood, Collus
6 Power, that -- that collectively a conscious decision,
7 an intentional decision was made to provide Mr.
8 Bonwick with the sort of information that you've seen
9 in this proceeding --

10 MR. DENNIS NOLAN: Correct.

11 MR. RYAN BREEDON: -- and
12 particularly, the information about what the other
13 bidders were communicating to the Strategic Task Team?

14 MR. DENNIS NOLAN: Correct.

15 MR. RYAN BREEDON: I mean, surely you
16 didn't expect that -- that the Town had adopted this
17 as some sort of a strategy?

18

19 (BRIEF PAUSE)

20

21 MR. DENNIS NOLAN: I'm not so sure
22 about -- about the -- the Town per se, but providing
23 us with certain information. I mean, in their
24 interest was to get the -- the maximum value for the
25 Town.

1 MR. RYAN BREEDON: Right, which they
2 do by providing the same information to all of the
3 bidders through KPMG as part of the process --

4 MR. DENNIS NOLAN: Yes.

5 MR. RYAN BREEDON: -- outlined in the
6 request for proposal --

7 MR. DENNIS NOLAN: If they had done
8 that, yes.

9 MR. RYAN BREEDON: -- amongst other
10 things, so that nobody sues the Town at the end of all
11 of this --

12 MR. DENNIS NOLAN: I suppose.

13 MR. RYAN BREEDON: -- right? I mean,
14 that would be a -- you're a lawyer. That would be a
15 concern?

16 MR. DENNIS NOLAN: I don't know if it
17 was a concern of theirs or not.

18 MR. RYAN BREEDON: It would be a
19 concern of yours if PowerStream was running a
20 procurement and -- and the terms of its own RFP were
21 being breached, yes?

22 MR. DENNIS NOLAN: It -- it would be a
23 concern.

24 MR. RYAN BREEDON: Or if one (1) of
25 PowerStream's employees was breaching a

1 confidentiality agreement that PowerStream had entered
2 into, that would be a concern?

3 MR. DENNIS NOLAN: Yes, it would.

4 MR. RYAN BREEDON: And so, surely you
5 didn't think that the Town -- the Town, as the Town --
6 the entity of the Town was aware that somebody was
7 providing this information to Mr. Bonwick?

8 MR. DENNIS NOLAN: I don't know what
9 the Town was aware of.

10 MR. RYAN BREEDON: All right. But you
11 didn't think that the Town was aware that somebody was
12 providing this information to Mr. Bonwick?

13 MR. DENNIS NOLAN: Well, I didn't say
14 that. Someone was aware.

15 MR. RYAN BREEDON: All right. But you
16 decided not to take any steps to notify the Town or
17 the Strategic Task Team?

18 MR. DENNIS NOLAN: That appears to be
19 correct.

20

21 (BRIEF PAUSE)

22

23 MR. RYAN BREEDON: Can we look at
24 ALE1529, please?

25

1 (BRIEF PAUSE)

2

3 MR. RYAN BREEDON: Mr. Mather took you
4 to this earlier. Scroll down.

5

6 (BRIEF PAUSE)

7

8 MR. RYAN BREEDON: This is the email
9 which Mr. Bonwick sent to Mr. Glicks -- Glicksman and
10 yourself relating to the meeting with the Town's
11 lawyer?

12 MR. DENNIS NOLAN: It appears to be,
13 yes.

14 MR. RYAN BREEDON: Yes. And you
15 understood that that meeting would be subject to
16 solicitor and client privilege?

17

18 (BRIEF PAUSE)

19

20 MR. DENNIS NOLAN: I didn't know of
21 this meeting with -- with the Town's lawyers, but I
22 assume that, if it was treated as such, it would be.

23 MR. RYAN BREEDON: Well, the first
24 line of the email says:

25 "The meeting went very well this

1 afternoon with the Town's lawyers,
2 mayor, deputy mayor, CAO, and Ed."

3 And Ed would be Mr. Houghton, correct?

4 MR. DENNIS NOLAN: (NO AUDIBLE
5 RESPONSE).

6 MR. RYAN BREEDON: Yes. And it would
7 be obvious to you on reading that that this meeting
8 would be subject to solicitor and client privilege?

9 MR. DENNIS NOLAN: It was obvious to
10 me that the intent is to communicate to us that the
11 changes that we had proposed were accepted.

12 MR. RYAN BREEDON: It was obvious to
13 you that the meeting which Mr. Bonwick is reporting on
14 would be subject to solicitor and client privilege?

15 MR. DENNIS NOLAN: You're asking me to
16 agree to that. I... I don't -- I don't really see
17 the significance. If -- if they're -- if -- if Mr.
18 Houghton -- for example, if he was communicating
19 through Mr. Bonwick that the Town had had a meeting
20 with their -- including with their lawyers about
21 changes that we proposed and that it was acceptable,
22 that doesn't mean that I disagree that it was subject
23 to solicitor client privilege.

24 But, you know, it was -- it was a
25 meeting -- like, if you -- if -- if they were

1 conveying a result of a discussion -- our lawyers say
2 it's okay, that's basically my reaction to it, is a
3 confirmation that we did discuss it and that it was
4 okay.

5 MR. RYAN BREEDON: My question was, it
6 is obvious that the meeting was subject to solicitor
7 and client privilege?

8 MR. DENNIS NOLAN: Yes. I -- I would
9 say, yes, to the extent that they wanted to maintain
10 that.

11 MR. RYAN BREEDON: And it appears that
12 -- from this email that somebody either waived or
13 breached solicitor and client privilege in order to
14 communicate the content of the meeting to Mr. Bonwick?

15 MR. DENNIS NOLAN: It appears so.

16 MR. RYAN BREEDON: Okay. Were you
17 concerned that you were receiving what was potentially
18 solicitor and client privileged information about a
19 meeting between the Town and its lawyers?

20 MR. DENNIS NOLAN: No, I didn't see it
21 that way.

22 MR. RYAN BREEDON: Look at ALE2075,
23 please.

24

25

(BRIEF PAUSE)

1 MR. RYAN BREEDON: And so scroll down.
2 Keep going. Oh, yes. So stop.

3 So you'll see this -- I'm sure you've
4 seen this document in preparation for today. This
5 is -- originated as an email from Mr. Clark to
6 Mr. Longo and copied to various people attaching a
7 number of documents?

8 MR. DENNIS NOLAN: No. I'm not overly
9 familiar with it. If you could go back to the top so
10 I could review it.

11 MR. RYAN BREEDON: Well, why don't we
12 go through it chronologically so it'll make a little
13 bit more sense to you.

14 MR. DENNIS NOLAN: Fine.

15 MR. RYAN BREEDON: So -- and then if
16 you scroll up, please -- Mr. Longo forwards the email
17 to Ms. Cooper and to Ms. Almas, and says:

18 "Please see the attached, especially
19 the final memo which generally
20 describes the purpose of each
21 document. I'd be happy to discuss
22 this with you at your convenience."

23 And I'll show these to you in a moment,
24 sir, but what is attached are the various execution
25 documents -- the closing documents -- plus a memo that

1 we'll look at in a moment. Okay?

2 MR. DENNIS NOLAN: Okay.

3 MR. RYAN BREEDON: Scroll up, please.

4 And then you'll see that Mr. Houghton has forwarded
5 this to Mr. Bonwick for some reason, and you'll see he
6 says:

7 "Can you ensure this takes place
8 before the end of the day Friday?"

9 And scroll up again.

10 And Mr. Bonwick sends it to Ms. Cooper
11 with some instructions.

12 MR. DENNIS NOLAN: Okay.

13 MR. RYAN BREEDON: And then scroll up
14 again. And then you'll see Mr. Bonwick sends it to
15 Mr. Houghton and attaches a number of people,
16 including yourself -- or pardon me -- copies a number
17 of people, including yourself.

18 MR. DENNIS NOLAN: Yes.

19 MR. RYAN BREEDON: All right. And do
20 you have a recollection or receiving this chain of
21 emails back in -- it's March of 2012?

22 MR. DENNIS NOLAN: I don't have much
23 of a recollection of it, but I -- I assume -- because
24 I was copied on it, I have no reason to believe that I
25 didn't receive it.

1 MR. RYAN BREEDON: Okay. And then can
2 we look at ALE2084, please?

3

4 (BRIEF PAUSE)

5

6 MR. RYAN BREEDON: So this is the memo
7 that I just referred to that was one of the documents
8 that was attached and have you looked at this before?

9 MR. DENNIS NOLAN: I don't recall.

10 MR. RYAN BREEDON: Okay.

11 MR. DENNIS NOLAN: Just --

12 MR. RYAN BREEDON: We can scroll down,
13 and you can direct the --

14 MR. DENNIS NOLAN: Sure.

15

16 (BRIEF PAUSE)

17

18 MR. DENNIS NOLAN: Okay. You can go
19 down, please. Yes.

20 MR. RYAN BREEDON: And then we
21 don't -- you probably don't need to review all of it,
22 although if you want to, you certainly can.

23 But you'll see that what it is
24 basically is an internal memo at Aird & Berlis which
25 describes all of the various closing documents. You

1 see that?

2 MR. DENNIS NOLAN: Yes.

3 MR. RYAN BREEDON: And there's a --
4 and what there is is a description of the document, a
5 brief explanation of what the purpose is or why the
6 document is part of this package, and then a direction
7 as to who actually needs to sign the thing. All
8 right? And again, this would be -- this is a subject
9 to solicitor and client privilege?

10 MR. DENNIS NOLAN: I'm not sure how --
11 how it came to me. This would be the kind of thing
12 that I wouldn't be surprised or -- for the other side
13 to share it to say, here's how -- how we're -- sort of
14 a steps memo of how we're -- we're dealing with
15 things.

16 MR. RYAN BREEDON: So how it came to
17 you, we've seen. We just walked through the email
18 chain, and it comes to you -- you'll have seen -- via
19 Mr. Bonwick.

20 My question though is you'll agree that
21 the memo itself on its face is subject to solicitor
22 and client privilege.

23 MR. DENNIS NOLAN: Yes.

24 MR. RYAN BREEDON: Okay. And, I mean,
25 we don't have in the documents the corresponding memo

1 from Mr. Hull, but presumably, there would be some
2 sort of thing that would be also subject to solicitor
3 and client privilege.

4 MR. DENNIS NOLAN: Yes. I -- I
5 suppose strictly so. But nothing that I -- I would be
6 concerned if the other side saw.

7 MR. RYAN BREEDON: All right. And I
8 take it you didn't raise any -- you didn't tell
9 anybody at the Town or at Collus that you were
10 receiving solicitor and client privileged information?

11 MR. DENNIS NOLAN: I didn't think of
12 it in -- in those terms and maybe I should have. But
13 the -- what I -- all I did was -- when seeing this is
14 get some comfort that they're going about this the
15 right way getting the right things executed. That's
16 all.

17 MR. RYAN BREEDON: Okay. Now, a
18 moment ago, we discussed the fact that PowerStream
19 never alerted the Town or Collus or KPMG to the fact
20 that it was potentially -- or that it was receiving
21 information that it might be proprietary or
22 confidential from Mr. Bonwick.

23 Did you ever instruct Mr. Bonwick to
24 stop getting that information?

25 MR. DENNIS NOLAN: I wasn't providing

1 instructions to Mr. Bonwick.

2 MR. RYAN BREEDON: Who was providing
3 the instructions to Mr. Bonwick?

4 MR. DENNIS NOLAN: For the most part,
5 Mr. Glicksman.

6 MR. RYAN BREEDON: Okay. Are you
7 aware -- we'll ask Mr. Glicksman -- but are you aware
8 whether Mr. Glicksman ever instructed Mr. Bonwick to
9 stop obtaining confidential or proprietary
10 information?

11 MR. DENNIS NOLAN: I don't know.

12 MR. RYAN BREEDON: I take that had
13 that instruction been made, you would have been aware
14 of it?

15 MR. DENNIS NOLAN: Possibly.

16 MR. RYAN BREEDON: And I'll suggest to
17 you that there's no evidence anywhere that we have
18 seen thus far that anybody at PowerStream ever
19 instructed Mr. Bonwick to stop obtaining confidential
20 or proprietary information?

21 MR. DENNIS NOLAN: Sorry. That's a
22 question --

23 MR. RYAN BREEDON: Yes.

24 MR. DENNIS NOLAN: -- or a statement?

25 MR. RYAN BREEDON: That's a question.

1 Are you -- are you aware of any evidence?

2 MR. DENNIS NOLAN: No.

3 MR. RYAN BREEDON: All right. And
4 you've looked through the materials presumably?

5 MR. DENNIS NOLAN: Yes. I've gone
6 through a lot of the materials.

7 MR. RYAN BREEDON: All right. And in
8 fact, not only did PowerStream not instruct
9 Mr. Bonwick to stop getting confidential information,
10 in fact what we've seen in they ended up giving him a
11 raise, correct?

12 MR. DENNIS NOLAN: Entered into
13 another engagement with a different scope.

14 MR. RYAN BREEDON: Thank you very
15 much. Those are my questions.

16 THE HONOURABLE FRANK MARROCCO: What
17 I'll -- what I'll do is I'll take ten (10) minutes
18 now.

19

20 --- Upon recessing at 2:37 p.m.

21 --- Upon resuming at 2:48 p.m.

22

23 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

24 MR. FREDERICK CHENOWETH: Mr. Nolan,
25 my name is Chenoweth, Fred Chenoweth, and as you may

1 know, I appear on behalf of Ed Houghton with respect
2 to these matters. I have just a few questions and
3 really, in essence, clarifications.

4 You have indicated through the course
5 of your testimony that from the start of your
6 relationship with Mr. Bonwick and through the course
7 of the time that you considered retaining him and your
8 two (2) retainers with letters with respect to him,
9 you had a concern about the -- about the perception of
10 a conflict of interest.

11 MR. DENNIS NOLAN: That's correct.

12 MR. FREDERICK CHENOWETH: All right.
13 And as a result of that, you retained the assistance
14 of counsel when drafting the two (2) retainer letters
15 you had with Mr. Bonwick to draft the disclosure
16 sections that you put into those agreements.

17 MR. DENNIS NOLAN: In particular that
18 part of the agreement, yes.

19 MR. FREDERICK CHENOWETH: Yes. And I
20 take it, did you obtain -- without telling me the
21 nature of the advice -- did you obtain advice with
22 respect to municipal conflicts of interest?

23 MR. DENNIS NOLAN: Yes, I did.

24 MR. FREDERICK CHENOWETH: All right.
25 And did you become aware -- without, again, telling me

1 the advice -- that there wasn't a technical formal
2 concern with respect to the activities of Bonwick
3 because the relative involved was a sibling and not
4 someone covered by the Municipal Conflict of Interest
5 Act?

6 MR. DENNIS NOLAN: That's correct.

7 MR. FREDERICK CHENOWETH: All right.

8 And the -- and I'm assuming that -- and I don't think
9 this is particularly troubling -- I'm assuming it's --
10 the people you obtained advice with respect to
11 conflicts from was the law firm that you later used,
12 being Gowlings.

13 MR. DENNIS NOLAN: That's correct.

14 MR. FREDERICK CHENOWETH: All right.

15 And the focus of the advice that you obtained --
16 again, without telling me the nature of the advice you
17 received -- the focus of that advice, when drafting
18 that agreement and when dealing with the issue of
19 perceived conflicts, was on the Municipal Conflict of
20 Interest Act? Is that fair?

21 MR. DENNIS NOLAN: Yes. And to -- and
22 also to make sure that we weren't offside with any
23 other legislation or requirements.

24 MR. FREDERICK CHENOWETH: And you were
25 satisfied that there was no formal breaches or

1 potential breaches in that respect?

2 MR. MICHAEL WATSON: Your Honour, if I
3 may, we're really -- all these questions all together
4 are asking, in effect, for Mr. Nolan to disclose the
5 advice that he was getting from outside counsel.

6 MR. FREDERICK CHENOWETH: I'm --

7 MR. MICHAEL WATSON: I think that
8 question goes too far in my submission -- maybe
9 actually a couple of the previous ones.

10 MR. FREDERICK CHENOWETH: Yeah. I'm
11 content to move on.

12 THE HONOURABLE FRANK MARROCCO: Okay.
13 I think Mr. Watson's right to be careful in this area.

14 MR. FREDERICK CHENOWETH: I'm content
15 with that. I've covered what I wished to cover.

16

17 CONTINUED BY MR. FREDERICK CHENOWETH:

18 MR. FREDERICK CHENOWETH: Would you be
19 kind enough to pull up document number TOC48812.
20 Hopefully it's a June 2nd letter forwarded by the
21 mayor to --

22 THE HONOURABLE FRANK MARROCCO: It
23 appears to be that, Mr. Chenoweth.

24 MR. FREDERICK CHENOWETH: -- to the
25 attention of Mr. Bentz. I've been lucky for one of

1 the first times in this proceeding.

2

3 CONTINUED BY MR. FREDERICK CHENOWETH:

4 MR. FREDERICK CHENOWETH: In any
5 event, you know what this is. We've been through it
6 before in your evidence-in-chief. It's obviously a
7 letter from Sandra Cooper who, I think, is a signator
8 at the bottom of the letter to Mr. Bentz, the
9 president and the CEO of PowerStream.

10 And if we could go down through that
11 letter, I'm looking for about the -- just stop there
12 for a second.

13

14 (BRIEF PAUSE)

15

16 MR. FREDERICK CHENOWETH: And looking
17 at the second paragraph of the letter:

18 "Paul has described the potential
19 services his company will provide to
20 include, but not limited to,
21 strategic advice in matters relating
22 to public relations, strategic
23 planning, acquisitions --"

24 An interesting word:

25 "-- and media relations. He has

1 also stated that these
2 responsibilities could potentially
3 incorporate advice relating to the
4 Town of Collingwood, subject to
5 certain conditions unfolding in the
6 coming months."

7 Little doubt that that's a reference to
8 the potential of a transaction between PowerStream and
9 Collus for a purchase or sale of some shares. Is that
10 fair?

11 MR. DENNIS NOLAN: That's -- that's
12 the way I think we interpret it, and I think that's
13 fair.

14 MR. FREDERICK CHENOWETH: Very good.
15 And the next line is really the one I'm interested in:
16 "Should these conditions come into
17 play, Paul has suggested that a
18 meeting be scheduled with relevant
19 parties to more formally clarify
20 Paul's role with PowerStream."

21 That would seem to contemplate a
22 further meeting should those certain conditions
23 unfold, i.e., should the potential sale of Collus come
24 forward. It seems to suggest that another meeting,
25 where one might formally clarify Paul's role with

1 PowerStream, was something we should think about.

2 MR. DENNIS NOLAN: Yes.

3 MR. FREDERICK CHENOWETH: All right.

4 And we know that there was a meeting on the 29th of
5 June at which the mayor attended. I believe the
6 deputy mayor, Rick Lloyd, attended. I believe the
7 CAO, Ms. Wingrove, attended. I believe Mayor Lehman
8 attended. I believe Mr. Bentz attended.

9 And little doubt that that was the
10 meeting contemplated by that paragraph, i.e. should
11 these conditions come into play.

12 MR. DENNIS NOLAN: I think it's
13 consistent with -- with what she was anticipating
14 perhaps.

15 MR. FREDERICK CHENOWETH: All right.
16 And you, of course, had a concern about disclosure.

17 MR. DENNIS NOLAN: Yes, I did. That's
18 right.

19 MR. FREDERICK CHENOWETH: So that you
20 would have been anxious that -- that there be --
21 anxious as apparently the mayor was, as well, that
22 there be an opportunity for full disclosure of -- of
23 Mr. Bonwick's potential activities with PowerStream as
24 they relate to the purchase of Collus shares.

25 MR. DENNIS NOLAN: Yes. It was

1 helpful that there would be disclosure beyond what was
2 contractually obligated in terms of disclosure to the
3 mayor and to the clerk. And that -- that certainly
4 would -- would help us with a transparency with
5 respect to Mr. Bonwick's retainer.

6 MR. FREDERICK CHENOWETH: So you were
7 anxious to have the relationship -- or I'm sorry --
8 the meeting so that you could deal further with the
9 question of disclosure?

10 MR. DENNIS NOLAN: We very much
11 welcomed the meeting. I did not attend.

12 MR. FREDERICK CHENOWETH: No. I
13 understand.

14 MR. DENNIS NOLAN: I guess you know.

15 MR. FREDERICK CHENOWETH: Yeah.

16 MR. DENNIS NOLAN: However, yes. I
17 was glad to -- happy to hear that meeting was taking
18 place and had taken place.

19 MR. FREDERICK CHENOWETH: And it
20 appears that the mayor, at least on June 2nd in any
21 event, sought -- thought such a meeting might, if the
22 conditions developed, be a good idea.

23 MR. DENNIS NOLAN: Yes.

24 MR. FREDERICK CHENOWETH: So there was
25 a meeting of the minds really as to the purpose of the

1 meeting on June 29th.

2 MR. DENNIS NOLAN: It appears to be,
3 yes.

4 MR. FREDERICK CHENOWETH: And there's
5 little doubt that the purpose of the meeting on
6 June 29th was with respect to ensuring that full
7 disclosure of the nature of the work Mr. Bonwick was
8 going to do, as it related to PowerStream and Collus,
9 could be fully disclosed.

10 MR. DENNIS NOLAN: Yes.

11 MR. FREDERICK CHENOWETH: And I think
12 you indicated in your evidence-in-chief that you had
13 occasion to speak to those that attended the meeting,
14 including Mr. Bentz, after the meeting occurred.

15 MR. DENNIS NOLAN: That's correct.

16 MR. FREDERICK CHENOWETH: And I think
17 you indicated that you learned that it was a good
18 meeting and that the meeting was about disclosure, and
19 that we introduced ourselves.

20 MR. DENNIS NOLAN: Yes. So
21 confirmation that -- that the primary purpose was --
22 was met and then also the opportunity, you know, for
23 sort of an introduction to PowerStream for those that
24 were not familiar with us.

25 MR. FREDERICK CHENOWETH: All right.

1 So you were satisfied from your debriefing, in
2 essence, on that meeting that the primary purpose, as
3 you understood it of the meeting -- i.e., the
4 disclosure of Mr. Bonwick's coming activities on
5 behalf of PowerStream in relation to the purchase of
6 Collus shares -- had been met.

7 MR. DENNIS NOLAN: Yes. I -- I felt
8 much better about the disclosure, as I said, being
9 more than what was contractually obligated in -- in
10 the disclosure statement, and I thought it was very
11 positive that -- that that further meeting had taken
12 place.

13 MR. FREDERICK CHENOWETH: Yes. And
14 just another area with some clarifications. I didn't
15 have a complete understanding of your evidence with
16 respect to your use prior to this matter -- prior to
17 the Collus share purchase. It was unclear to me.

18 You indicated that you had on earlier
19 occasions retained the services of a consultant or
20 lobbyist firm -- and I think you described them as
21 Bridgepoint.

22 MR. DENNIS NOLAN: That was -- that
23 was one firm that we had used, and also I made the
24 point that Hydro One had also had occasion to use them
25 to assist them with acquisitions.

1 MR. FREDERICK CHENOWETH: But you'd
2 had occasion to use other firms other than
3 Bridgepoint?

4 MR. DENNIS NOLAN: I believe so. I
5 mean, we've -- we've engaged numerous consultants.
6 And so yes, there -- there were others, but that's the
7 one that comes to mind.

8 MR. FREDERICK CHENOWETH: All right.
9 Consultants -- is the word "lobbyist" appropriate?
10 These are -- the organizations and individuals are
11 licenced lobbyists under the appropriate legislation,
12 both provincially and Federally?

13 MR. DENNIS NOLAN: Yes. Some would be
14 licenced lobbyists and -- and others perhaps not.
15 I -- I don't know of all the credentials of -- and
16 can't remember all the names of -- of the companies.
17 But there are likely registered lobbyists as well --

18 MR. FREDERICK CHENOWETH: All right.

19 MR. DENNIS NOLAN: -- as I believe
20 Mr. Bonwick was.

21 MR. FREDERICK CHENOWETH: Very good.
22 And so that you'd used Bridgepoint in the past, and as
23 you understood it, it's likely used other consultants
24 in the past as well.

25 MR. DENNIS NOLAN: Yes. I think we --

1 there were other consultants used in not too
2 dissimilar circumstances.

3 MR. FREDERICK CHENOWETH: All right.
4 And had you used them for the purpose of such things
5 as set out in Mr. Bonwick's retainer identifying key
6 decision makers?

7 MR. DENNIS NOLAN: Yes. I think -- I
8 can think of the engagement with -- with Bridgepoint
9 in particular likely -- not likely. That -- that
10 would have been definitely within -- within the scope.

11 MR. FREDERICK CHENOWETH: Yes.

12 MR. DENNIS NOLAN: And not necessarily
13 about a -- just a retainer with respect to one utility
14 but just looking at sort of possible LDCs that would
15 be open or that were interested in -- in consolidation
16 by way of a sale or merger.

17 MR. FREDERICK CHENOWETH: And again,
18 you'd -- I think as you indicated -- you could --
19 well, with Mr. Bonwick, you would use the consultant
20 to gauge the sense of the community with respect to
21 possible acquisitions or mergers?

22 MR. DENNIS NOLAN: Yes, that's
23 correct.

24 MR. FREDERICK CHENOWETH: All right.
25 And you indicated that in your observation, Hydro One

1 had occasion to use Bridgepoint for what you believed
2 to be similar purposes, as you understood it?

3 MR. DENNIS NOLAN: Yeah. I don't
4 pretend to know what -- the scope of the retainer.
5 All I know is that they had engaged Bridgepoint to
6 assist them on -- in their -- with some of their many
7 acquisitions.

8 MR. FREDERICK CHENOWETH: All right.
9 And in your experience in this industry -- and I think
10 you indicated that you've been active in the
11 industry -- did you say since 2002?

12 MR. DENNIS NOLAN: That's correct.

13 MR. FREDERICK CHENOWETH: All right.
14 So it's a while ago now that you said that.

15 MR. DENNIS NOLAN: Now it does, yes.

16 MR. FREDERICK CHENOWETH: But in any
17 event, had you been active at this -- by 2011, you'd
18 been active for some nine (9) years in the industry.

19 MR. DENNIS NOLAN: Correct.

20 MR. FREDERICK CHENOWETH: All right.
21 So that -- can you tell me in your observation, the
22 use of consultants and/or lobbyists in this -- frankly
23 in this rather government-heavy industry, was that
24 something that you observed to reasonably commonplace
25 in your experience?

1 MR. DENNIS NOLAN: I think not -- not
2 so much on the -- on the lobbyist in the way of, you
3 know, a formal -- like, lobbyist, say, at Queen's Park
4 or whatever.

5 But I don't think that we're the only
6 ones that -- that use them, but we -- we did use them,
7 and it was on a case-by-case basis. It wasn't like we
8 were constant -- constantly had, you know, several
9 lobbyists under retainer or anything like that.

10 MR. FREDERICK CHENOWETH: I
11 understand, and I'm not suggesting same.

12 MR. DENNIS NOLAN: Yeah.

13 MR. FREDERICK CHENOWETH: I really am
14 just wondering about the scope of the use of
15 consultants and et cetera in the industry.

16 MR. DENNIS NOLAN: Yeah.

17 MR. FREDERICK CHENOWETH: And your
18 observations appear to be that this was not a rarity
19 in the industry.

20 MR. DENNIS NOLAN: I think that's fair
21 to say.

22 MR. FREDERICK CHENOWETH: All right.
23 Moving on, the meeting of December 1st had with Dean
24 Muncaster and Mr. Houghton and some of the PowerStream
25 crew. You indicated that at that meeting Mr. Bentz

1 saw fit to raise his -- his offered price by an amount
2 of seven hundred thousand dollars (\$700,000)?

3 MR. DENNIS NOLAN: That's correct.

4 MR. FREDERICK CHENOWETH: And just --
5 just a clarification. Would you know whether at that
6 meeting or a result of that meeting Mr. Bentz also
7 agreed to -- to be responsible for the costs of the
8 Ontario Energy Board application?

9 MR. DENNIS NOLAN: That's -- that's --
10 that was probably the case. It was something that we
11 could do largely with internal resources, so I think
12 that probably was agreed to.

13 MR. FREDERICK CHENOWETH: All right.
14 And internal resources are not -- I take it that
15 that's not an inexpensive application to complete, the
16 MAAD application. It takes some resources, some time,
17 some legal cost, et cetera?

18 MR. DENNIS NOLAN: Right. We try to
19 minimize the legal costs. And we would do most of the
20 work internally, especially on -- on this one (1),
21 which would have been more straightforward, yet none
22 of these applications are -- are simply filling out a
23 form, so.

24 MR. FREDERICK CHENOWETH: I -- I had a
25 sense, from what little I know about the nature of

1 these applications, that the cost of same could easily
2 be measured in the -- in the hundreds of thousands of
3 dollars?

4 MR. DENNIS NOLAN: Many -- many of
5 them wu -- could well be. I don't think this one (1)
6 would have cost as much as that, but it -- it was
7 still not insignificant.

8 MR. FREDERICK CHENOWETH: Very good.

9 MR. DENNIS NOLAN: I don't know how
10 much it cost us.

11 MR. FREDERICK CHENOWETH: Those are
12 all my questions. Thank you.

13 THE HONOURABLE FRANK MARROCCO: Mr.
14 Marron...?

15 MR. GEORGE MARRON: Thank you, Your
16 Honour.

17 THE HONOURABLE FRANK MARROCCO:
18 Actually, Mr. Marron, before you ask your first
19 question, I've been wanting to ask this question, and
20 I have failed to do so.

21 PowerStream had already been selected
22 at the strategic partner. Why did Mr. Bentz agree to
23 give them seven hundred thousand dollars (\$700,000)
24 more than he'd offered? I mean, he -- more than had
25 been su -- was sufficient to be selected?

1 MR. DENNIS NOLAN: So, I think we were
2 selected, Your Honour, as the successful proponent to
3 -- in -- in which to negotiate a deal with and to
4 conclude a deal --

5 THE HONOURABLE FRANK MARROCCO: I see.

6 MR. DENNIS NOLAN: -- so. And -- and
7 that is what we offered. But I think there was
8 considerable -- you know, there -- it wasn't -- it was
9 a bit of a surprise, but not, I don't think, anything
10 untoward for them to come back and -- and try to get
11 additional concessions.

12 And, you know, the agreement still had
13 to be negotiated, et cetera, but --

14 THE HONOURABLE FRANK MARROCCO: I see.
15 All right.

16 MR. FREDERICK CHENOWETH: May -- may I
17 ask an additional question arising out of that, Your
18 Honour?

19 THE HONOURABLE FRANK MARROCCO:
20 Certainly.

21 MR. FREDERICK CHENOWETH: Very good.
22 And I'll make it brief.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: I take it

1 that clearly there was some further negotiations, no
2 question about that, on December 1st?

3 MR. DENNIS NOLAN: Financial
4 negotiations? Yes. And then negotiations with
5 respect to the agreements?

6 MR. FREDERICK CHENOWETH: Right. And
7 you were frank to suggest that -- that it would have
8 been relayed to you at that meeting that -- that you
9 weren't the top bidder and there was another
10 organization that had made a --

11 MR. DENNIS NOLAN: Yeah.

12 MR. FREDERICK CHENOWETH: -- a
13 substantial bid?

14 MR. DENNIS NOLAN: I don't remember
15 the words, but I think it -- it was -- it was pretty
16 clear that -- and -- and, no, there was no disclosure
17 of the -- of -- of what they bid, but that -- that
18 Hydro One's financial offering was -- was higher.

19 MR. FREDERICK CHENOWETH: So --

20 MR. DENNIS NOLAN: So, that was a
21 concern.

22 MR. FREDERICK CHENOWETH: -- is there
23 any doubt from your observations with respect to the
24 negotiations that took place on December 1st that Mr.
25 Bentz's further offer was made in response to the

1 risks presented by that better offer, the risks of
2 losing the deal presented by that better offer?

3 That's what he was responding to, was
4 concerns in that respect, correct?

5 MR. DENNIS NOLAN: Yes. And -- and,
6 you know, it was -- yes, I -- I think there was --
7 there was still the opportunity, as I said to His
8 Honour, that -- you know, that they could choose not
9 to go forward.

10 MR. FREDERICK CHENOWETH: Indeed.
11 Thank you, Your Honour.

12 THE HONOURABLE FRANK MARROCCO: Sorry,
13 Mr. Marron, for the interruption. Go ahead.

14 MR. GEORGE MARRON: Thank you, Your
15 Honour.

16

17 CROSS-EXAMINATION BY MR. GEORGE MARRON:

18 MR. GEORGE MARRON: Mr. Nolan, I -- my
19 name is George Marron. I represent Sandra Cooper, who
20 was the Mayor of the Town of Collingwood in the time
21 frame that's under inquiry in these proceedings back
22 from 2010 to 2014 and, more particularly, in relation
23 to the time frame that's been reviewed with you over
24 the last day and a half, 2000 and early -- well, late
25 2010, 2011, and 2012.

1 I just want to ask some questions of
2 you generally. With -- with this retainer agreement,
3 I -- I take it that this was something that you were
4 asked to do by Mr. Bentz. Was he the one who asked
5 you to draw the agreement?

6 MR. DENNIS NOLAN: Yes. I can't
7 remember the exact conversation, but, yes, it would be
8 --

9 MR. GEORGE MARRON: Okay.

10 MR. DENNIS NOLAN: -- something that
11 would fall to me.

12 MR. GEORGE MARRON: Well -- well, you
13 indicated in your review of, you know, your education
14 and experience that you -- you're a lawyer and you --
15 you practised in private practice for a while, but
16 since 2002, had been the corporate --

17 MR. DENNIS NOLAN: Yeah, I --

18 MR. GEORGE MARRON: -- counsel.

19 MR. DENNIS NOLAN: I -- I've been in-
20 house counsel since 1983 --

21 MR. GEORGE MARRON: Okay.

22 MR. DENNIS NOLAN: -- and for a brief
23 time before that in private practice, so most of my
24 career as in-house counsel.

25 MR. GEORGE MARRON: Okay. I'm not

1 taking much of an issue with the manner in which you
2 drew the -- the agreement. It was an agreement that
3 was drawn on the 1st of June. At least there was a
4 draft that was prepared on the 1st of June.

5 And then the -- the letter of retainer
6 which is dated June the 7th, 2011, was word-for-word
7 what -- the draft of June the 1st retainer letter?

8 MR. DENNIS NOLAN: I can't really
9 think back to the drafts. I -- I know what the -- and
10 we've reviewed the -- the retainer that was actually
11 executed.

12 MR. GEORGE MARRON: Okay. Well, do --
13 do you want to take a look at it or do you want to
14 take my word for it?

15 MR. DENNIS NOLAN: No, I -- I take
16 your word for it that it was the same.

17 MR. GEORGE MARRON: Okay. So -- and -
18 - and, you know, without getting into a lot of detail,
19 you consulted, as you indicated, with your outside
20 legal counsel. And you consulted with him in
21 reference to the letter of retainer generally?

22 MR. DENNIS NOLAN: Aspects of, for
23 example, as -- as I stated earlier, the -- the
24 disclosure provision in particular.

25 MR. GEORGE MARRON: Okay. Okay. So -

1 - so, you were satisfied, obviously, had the letter --
2 the retainer letter drawn on the 1st of June by way of
3 draft, and then executed on June the 7th the -- the
4 retainer letter of that date?

5 MR. DENNIS NOLAN: Yes.

6 MR. GEORGE MARRON: All right. And
7 the disclosure provision, as I indicated, we may not
8 be taking issue with that as to the extent to which it
9 has been drawn and the legal aspects of it.

10 But the difficulty is, I see it, is
11 that you left the monitoring of the disclosure -- you
12 left that to the person who stood to benefit by the
13 agreement, Paul Bonwick?

14 MR. DENNIS NOLAN: He had obligations
15 under that -- that agreement if -- if further
16 disclosure was required, I -- if -- if that's what
17 you're asking. I mean, it speaks for itself.

18 MR. GEORGE MARRON: Well --

19 MR. DENNIS NOLAN: So -- so you're --
20 you're saying -- sorry, what -- what is the question?

21 MR. GEORGE MARRON: The question is,
22 you left the monitoring of the disclosure as set out
23 in the agreement, you left that up to Paul Bonwick?

24 MR. DENNIS NOLAN: There -- there was
25 that obligation on him in the agreement --

1 MR. GEORGE MARRON: Right.

2 MR. DENNIS NOLAN: -- correct.

3 MR. GEORGE MARRON: Right. And you
4 left that to him notwithstanding that you knew that
5 Mr. Glicksman had had difficulty. He indicated in an
6 email, and you referred to this generally yesterday in
7 your -- in your evidence, that there was a
8 misunderstanding in reference to what Mr. Bonwick was
9 portraying and what he was representing was the
10 discussions that he had with the clerk of the Town of
11 Collingwood?

12 MR. DENNIS NOLAN: Again, and we
13 addressed that.

14 MR. GEORGE MARRON: Well, you thought
15 you had. You raised it?

16 MR. DENNIS NOLAN: Yes, we thought we
17 had.

18 MR. GEORGE MARRON: Okay.

19 MR. DENNIS NOLAN: That's correct.

20 MR. GEORGE MARRON: Well, you raised
21 it with him. I -- I don't see anything in the
22 Foundation Document that -- that indicates that it was
23 ever addressed other than brought to Mr. Bonwick's
24 attention.

25 MR. DENNIS NOLAN: We, I believe

1 through Mr. Glicksman, communicated that the -- the
2 initial disclosure was not in keeping with the
3 disclosure contemplated. And then there was further,
4 I believe, communication that seemed to confirm, and
5 the clerk was copied on that correspondence --

6 MR. GEORGE MARRON: Right.

7 MR. DENNIS NOLAN: -- that gave us an
8 assurance that that disclosure had been made to the
9 clerk.

10 MR. GEORGE MARRON: Okay.

11 MR. DENNIS NOLAN: And then...

12 MR. GEORGE MARRON: Well, there are
13 two (2) issues that arise out of this. Firstly, there
14 was the term that Mr. Glicksman used in an email to
15 Paul Bonwick on the -- it was either the 1st of June,
16 2011, or the 31st of May, 2011, that -- that indicated
17 that there was --

18 MR. PAUL BONWICK: Your Honour, can we
19 bring these up? I'm trying to follow. And I
20 apologize, I don't have it in my memory what emails
21 he's referring to.

22 THE HONOURABLE FRANK MARROCCO: Do --
23 do we have that?

24 MR. GEORGE MARRON: I -- I cer -- I
25 know the letter. I've seen it several times.

1 MR. JOHN MATHER: Go to paragraph --
2 if we go to paragraph 191 of the Foundation Document.

3

4 (BRIEF PAUSE)

5

6 MR. PAUL BONWICK: Thank you.

7 THE HONOURABLE FRANK MARROCCO: All
8 right. And so...

9 MR. GEORGE MARRON: Yeah, this --
10 there was this quote --

11 THE HONOURABLE FRANK MARROCCO: I can
12 leave it there or we can bring up the email and settle
13 it.

14 MR. GEORGE MARRON: Yeah. Okay. Do
15 you -- do you see that, Mr. Nolan?

16 THE HONOURABLE FRANK MARROCCO: No, it
17 was Mr. Bonwick who asked.

18 MR. GEORGE MARRON: Oh, I'm sorry.

19 THE HONOURABLE FRANK MARROCCO: If the
20 -- if you'd like the actual email, we can try to get
21 it up. If you're okay, Mr. Bonwick, I'm --

22 MR. PAUL BONWICK: I'm fine, Your
23 Honour.

24 THE HONOURABLE FRANK MARROCCO: All
25 right. Go ahead, Mr. Marron.

1 MR. GEORGE MARRON: Thanks, Your
2 Honour.

3

4 CONTINUED BY MR. GEORGE MARRON:

5 MR. GEORGE MARRON: So, as I
6 indicated, that there are two (2) issues that I see it
7 in -- in respect to what you just said in your
8 evidence.

9 The first is that there's this -- some
10 apparent misunderstanding of the disclosures that
11 Brian, that would be Brian Bentz, thought you had made
12 to date with him with respect to both the mayor and
13 the City clerk?

14 MR. DENNIS NOLAN: Yes.

15 MR. GEORGE MARRON: Well, you knew of,
16 I'm sure -- or at least you know now by going through
17 the Foundation Documents of the Inquiry, that there
18 was some early indication in January that the deputy
19 mayor, Rick Lloyd, had approached Sara Almas, the Town
20 clerk of Collingwood, asking for an opinion as to
21 whether his brother might put him in a conflict of
22 interest if his brother took on some work for the Town
23 of Collingwood. Do you recall that?

24 MR. DENNIS NOLAN: Yes. I, of course
25 --

1 MR. GEORGE MARRON: All right.

2 MR. DENNIS NOLAN: -- heard that for
3 the first time, yes.

4 MR. GEORGE MARRON: Right. And -- and
5 somehow, rather, that opinion that was provided by Ms.
6 Almas made it to the PowerStream office, made it to
7 Mr. Bentz?

8 MR. DENNIS NOLAN: I -- and --

9 MR. GEORGE MARRON: Are you aware of
10 that?

11 MR. DENNIS NOLAN: Well, I'm aware
12 that Mr. Bonwick -- and I don't have the email chain
13 in front of me. But I am aware that Mr. Bonwick
14 indicated that the clerk had said that a sibling in
15 this situation, the mayor, and work being undertaken
16 by a brother would not be -- are not -- obviously,
17 these aren't the words, would not be a conflict.

18 And -- and it was -- and it was an
19 email that the clerk was -- either from the clerk or
20 that the clerk was copied on.

21 Then there was -- after Mr. Glicksman's
22 email that's referenced here, then there was a follow-
23 up from Mr. Bonwick that -- that -- an email that Ms.
24 Almas was copied on that seemed to provide the -- that
25 assurance that the clerk was made aware of Mr.

1 Bonwick's retainer, and at least by being copied on it
2 agreeing to his statement that it was not a conflict
3 under the Municipal Conflict of Interest Act.

4 MR. GEORGE MARRON: There -- there was
5 an email that was sent in January 2011 by Paul Bonwick
6 to PowerStream, and I believe it was sent to Brian
7 Bentz. And it was purporting to pertain to Paul
8 Bonwick, not pertaining to the Deputy Mayor's brother
9 but it was pertaining to Paul Bonwick not being in a
10 conflict, and then that opinion had been obtained by
11 the Deputy Mayor.

12 MR. DENNIS NOLAN: I believe there was
13 two (2) -- two (2) email -- two (2) distribution --
14 distinct emails, is what I -- is what I'm -- I'm
15 trying to say.

16 MR. GEORGE MARRON: Well, no --

17 MR. DENNIS NOLAN: I don't have it in
18 front of me --

19 MR. GEORGE MARRON: -- and I'm trying
20 --

21 MR. DENNIS NOLAN: -- and I don't have
22 them memorized.

23 MR. GEORGE MARRON: All right. Well,
24 I appreciate that, but I'm saying there was an email
25 that came in January 2011, and then we get up to the

1 2nd of June 2011. There was one (1) email that came
2 in.

3 MR. DENNIS NOLAN: Okay.

4 MR. GEORGE MARRON: Okay. Recall
5 that? And -- and it purported to be something that the
6 Deputy Mayor had obtained on Mr. Bonwick's behalf, and
7 he sent it to PowerStream as a confirmation that he
8 was not in conflict of interest with his sibling, the
9 Mayor of the Town of Collingwood.

10 Do you recall that?

11 MR. DENNIS NOLAN: Yes.

12 MR. GEORGE MARRON: All right.

13 MR. JOHN MATHER: If we could pull up
14 ALE69?

15 MR. GEORGE MARRON: Thank you.

16 THE HONOURABLE FRANK MARROCCO: That's
17 just the email, Mr. Marron. I hope it doesn't
18 interrupt unduly but I asked --

19 MR. GEORGE MARRON: Well, I'm not
20 asking --

21 THE HONOURABLE FRANK MARROCCO: --
22 Inquiry counsel to pull it up.

23

24 (BRIEF PAUSE)

25

1 CONTINUED BY MR. GEORGE MARRON:

2 MR. GEORGE MARRON: This is the 29th
3 of January. This is signed by Paul Bonwick, directed
4 to Brian Bentz, and he says -- this is what the Deputy
5 Mayor received from the clerk's office.

6 "If you require more substance, let
7 me know. The Deputy Mayor had
8 informed me that it was a legal
9 opinion."

10 And we heard the other day from Mr.
11 Longo, who -- whose name was introduced earlier this
12 afternoon to you, you know, a municipal lawyer. We
13 heard from Mr. Longo that the clerk was not someone
14 who would be providing a legal opinion. And he knew
15 the clerk, and was satisfied that that was her
16 practice, right, so if we can move on then. Okay.

17 So we've got this -- we've got this
18 email then that comes in on the 29th of January, 2011.
19 Now, we've moved forward and we move forward to the
20 30th of May, or the 31st of May and the 1st of June,
21 2011.

22 And this was the point in time where
23 the retainer letter comes into effect, the draft
24 retainer letter, and the contract of confidentiality
25 as it pertains to the property of PowerStream and Mr.

1 Bonwick, all right?

2 MR. DENNIS NOLAN: M-hm. Yes.

3 MR. GEORGE MARRON: So as I indicated
4 earlier, there were no substan -- substantive changes
5 from the letter -- the retainer letter of June the
6 7th, and the retainer letter draft of the 1st of June,
7 2011.

8 MR. DENNIS NOLAN: Correct.

9 MR. GEORGE MARRON: All right. So the
10 only thing that's standing between Mr. Bonwick and
11 this wonderful offer of a contract for ten thousand
12 dollars (\$10,000) a month and whatever else was in it,
13 HST include -- or on top -- some expense money, was
14 his going out and obtaining what you would expect and
15 want to see by way of confirmation that the agreement
16 -- the draft agreement which was in existence had been
17 disclosed.

18 MR. DENNIS NOLAN: But the nature of
19 his work that he'd be performing was disclosed, and
20 confirmation that it was not, in the clerk's opinion,
21 a conflict under the Municipal Conflict of Interest
22 Act.

23 So we didn't rely on, as I said before,
24 just the email that you referred to earlier that
25 apparently as testimony came out, I believe, related

1 to an inquiry made by the former Deputy Mayor.

2 MR. GEORGE MARRON: The issue here,
3 Mr. Nolan, is -- is quite simple. It's a question of
4 disclosure of the scope of the work that's set out in
5 the retainer letter of June the 7th and the draft
6 retainer letter of the 1st of June, which is one and
7 the same.

8 MR. DENNIS NOLAN: M-hm.

9 MR. GEORGE MARRON: And, you know, you
10 were questioned on this yesterday by Associate
11 Commission Counsel, Mr. Mather, and you acknowledged
12 to him that the responsibility, or the onus of
13 obtaining satisfactory disclosure -- as far as you
14 were concerned the onus was on Paul Bonwick.

15 MR. DENNIS NOLAN: Well, I -- I --
16 yes, but I take issue with -- with -- if there's an
17 inference that we didn't attempt to be satisfied that
18 there was proper disclosure.

19 There was the letter from the Mayor,
20 and then there's the -- also the email that you're not
21 referring to, the further email that the clerk is
22 copied on, which in -- which Mr. Bonwick confirms a
23 meeting with -- with the clerk and that the disclosure
24 was made, and the -- not legal opinion but the view of
25 the clerk that it's not a conflict under the Conflict

1 of Interest Act, and then the -- of course the further
2 meeting on June 29th.

3 MR. GEORGE MARRON: We -- you were
4 questioned on all that yesterday.

5 MR. DENNIS NOLAN: Yes

6 MR. GEORGE MARRON: And you indicated
7 --

8 MR. DENNIS NOLAN: That's right.

9 MR. GEORGE MARRON: -- as concerns the
10 clerk, that there was -- there was an email that was
11 sent to the clerk by Paul Bonwick, and it set certain
12 things out in it.

13 The clerk provided no response to that
14 email. Isn't that right?

15 MR. DENNIS NOLAN: The -- the email
16 that she was copied on, there was not a response
17 saying any -- any disagreement with -- with Mr.
18 Bonwick's characterization of that advice.

19 MR. GEORGE MARRON: All right. And --
20 and you set out the --

21 MR. JOHN MATHER: I'm sorry, Mr.
22 Marron. I just think it might be beneficial to have
23 the emails. There's -- there's --

24 MR. MICHAEL WATSON: I was about to
25 say the same, Your -- Your Honour, that I think Mr.

1 Marron has misstated that he --

2 THE HONOURABLE FRANK MARROCCO: Well -
3 - well, I -- I agree with Mr. -- I agree but before I
4 get into what Mr. Marron has done or not done, I'll
5 put the email up there, and then everyone can see it
6 and read.

7 MR. JOHN MATHER: There -- there are
8 two (2) emails. There's an email from Mr. Bonwick
9 only to Clerk Almas, and there's an email from Mr.
10 Bonwick to Brian Bentz and John Glicksman, copying
11 Clerk Almas.

12 Would you like both emails?

13 MR. GEORGE MARRON: Well, I think we
14 better. There might --

15 THE HONOURABLE FRANK MARROCCO: Mr.
16 Marron didn't ask for either --

17 MR. JOHN MATHER: Okay.

18 THE HONOURABLE FRANK MARROCCO: -- but
19 the witness indicated --

20 MR. GEORGE MARRON: Well, I --

21 THE HONOURABLE FRANK MARROCCO: -- the
22 witness wanted -- wanted to see it. Mr. Marron has no
23 objection, obviously, so let's put the -- let's put
24 the emails up there.

25 And then Mr. Watson wants to indicate

1 that Mr. Marron mischaracterized the email, and then
2 maybe we can get to the question.

3 MR. JOHN MATHER: We'll start with the
4 first one (1) then, ALE176.

5

6 (BRIEF PAUSE)

7

8 CONTINUED BY MR. GEORGE MARRON:

9 MR. GEORGE MARRON: Scroll up, I
10 guess. Thank you. So this -- this is the email that
11 is -- is the thank you email, and that's how it's been
12 described.

13 Do you see anything in there that
14 indicates anything as to scope of work?

15 MR. DENNIS NOLAN: No.

16 MR. GEORGE MARRON: Do you see
17 anything in there that indicates that Ms. Almas is
18 confirming on the 2nd of June that she viewed the
19 letter of retainer -- the draft letter of retainer of
20 June the 1st?

21 MR. DENNIS NOLAN: No.

22 MR. GEORGE MARRON: All right. Can we
23 scroll to the other email?

24 MR. DENNIS NOLAN: Is this the -- the

25 --

1 THE HONOURABLE FRANK MARROCCO: Put
2 that back up so Mr. Nolan can see it.

3 MR. DENNIS NOLAN: I'm sorry. I just
4 wanted to know if that was the end of that email
5 chain, or if there was an email before the one that
6 Mr. Marron was referring to. No. Thank you.

7

8 CONTINUED BY MR. GEORGE MARRON:

9 MR. GEORGE MARRON: That -- that was --

10 MR. DENNIS NOLAN: Yes, thank you.

11 MR. GEORGE MARRON: -- the email --

12 MR. DENNIS NOLAN: Yes, I --

13 MR. GEORGE MARRON: -- that --

14 MR. DENNIS NOLAN: Thank you.

15 MR. GEORGE MARRON: That was the email
16 entitled 'thank you'. Now, we're looking at an email
17 -- we were.

18 MR. JOHN MATHER: The -- the second
19 email, I believe, is ALE175.

20

21 (BRIEF PAUSE)

22

23 CONTINUED BY MR. GEORGE MARRON:

24 MR. GEORGE MARRON: Thank you. Now,
25 this is dated the 6th of -- or sorry, June the 2nd at

1 12:37. And it indicates that Ms. Almas is copied.

2 MR. DENNIS NOLAN: Yes. And this is
3 the email I was attempting to refer to in my answer to
4 your -- to your --

5 MR. GEORGE MARRON: Okay.

6 MR. DENNIS NOLAN: -- line of
7 questions.

8 MR. GEORGE MARRON: Apart from the
9 second line, it says:

10 "I had the opportunity to meet with
11 the clerk of the Town of
12 Collingwood, Ms. Sara Almas, this
13 morning. During the meeting, I
14 described the services my company
15 would be providing to PowerStream
16 throughout the region, as well as
17 specific to Collingwood."

18 So do you see anything in that that
19 sets out the scope of work as it is described in the
20 letter of retainer of the 1st of June?

21 MR. DENNIS NOLAN: No.

22 MR. GEORGE MARRON: It goes on to say:

23 "Ms. Almas was kind enough to offer
24 an interpretation, or an opinion, of
25 the Provincial Conflict of Interest

1 Act."

2 MR. DENNIS NOLAN: Yes.

3 MR. GEORGE MARRON: And we know from
4 Mr. Longo that there's no such thing as the Provincial
5 Conflict of Interest Act. And you're a lawyer, I
6 would suggest to you that you'd agree with that.

7 MR. DENNIS NOLAN: Yes, and I assumed
8 he was referring to the Municipal Conflict of Interest
9 Act.

10 MR. GEORGE MARRON: Right; not the
11 Provincial Conflict of Interest Act --

12 MR. DENNIS NOLAN: Right.

13 MR. GEORGE MARRON: -- and it's set
14 out in quotations.

15 MR. DENNIS NOLAN: Right.

16 MR. GEORGE MARRON: Right.

17 "Ms. Almas was quite clear there's
18 no conflict of interest based on my
19 company's relationship with
20 PowerStream."

21 Now, the -- the conflict of interest,
22 it would be as between -- the potential conflict of
23 interest, or the apparent conflict of interest would
24 be as between Mr. Bonwick and his sister, the Mayor
25 Sandra Cooper.

1 MR. DENNIS NOLAN: Yes.

2 MR. GEORGE MARRON: Right. It
3 indicates in the last line:

4 "Ms. Almas agreed to be copied on
5 this message."

6 Now, you got nothing back by way of
7 response from Ms. Almas?

8 MR. DENNIS NOLAN: Correct.

9 MR. GEORGE MARRON: So you're assuming
10 that her silence is her consent; is that it?

11 MR. DENNIS NOLAN: I'm agreeing -- I'm
12 assuming that -- that she didn't take exception to Mr.
13 Bonwick's email --

14 MR. GEORGE MARRON: Well, I'm -- I'm --

15 MR. DENNIS NOLAN: -- and to -- and to
16 -- the statement there is imperfect as it is stated.

17 MR. GEORGE MARRON: How can you assume
18 that, that she took no exception to it by virtue of
19 the fact that she didn't reply? I'm suggesting to you
20 that's far overstepping what the reality of it may be.

21 And that -- and that is --

22 MR. DENNIS NOLAN: But it -- it's also
23 at the -- at the same time, Mr. Marron, we also had
24 independently confirmed through outside counsel that
25 this wouldn't be a offending Municipal Conflict of

1 Interest Act.

2 MR. GEORGE MARRON: No, but we're not
3 concerned with that because you got that opinion.
4 What we're concerned with now, as I indicated, is the
5 disclosure.

6 MR. DENNIS NOLAN: M-hm.

7 MR. GEORGE MARRON: And there's no
8 indication in this email of the terms or the scope of
9 the work set out in that disclosure agreement --

10 MR. DENNIS NOLAN: No.

11 MR. GEORGE MARRON: -- is there? You
12 agree to that?

13 MR. DENNIS NOLAN: No, there's a
14 statement that he described the services.

15 MR. GEORGE MARRON: Well, but this --
16 this is an email that is written by Paul Bonwick.

17 MR. DENNIS NOLAN: There's no -- no
18 reason not to believe that he had described the
19 services.

20 MR. GEORGE MARRON: Well, there's no
21 independent proof that he did.

22 MR. DENNIS NOLAN: Correct.

23 MR. GEORGE MARRON: All right. And
24 this -- as I said earlier, this is an individual who
25 stands to gain a significant benefit by virtue of this

1 contract which is in existence by virtue of the draft
2 that was prepared, and it -- on the 1st of June, 2011.

3 Agree with that? He stands to benefit.

4 MR. DENNIS NOLAN: He stands to -- he
5 stands to benefit from us being satisfied with the
6 disclosure, and -- and being able to proceed with the
7 contract, correct.

8 MR. GEORGE MARRON: Well, he -- Paul
9 Bonwick was unknown to you before January. I -- we're
10 told in the foundation brief that he didn't appear on
11 scene at PowerStream until the 10th of January, 2011.

12 MR. DENNIS NOLAN: That's correct.

13 MR. GEORGE MARRON: All right. And --
14 and I take it that you had very little to do with him.
15 You've had no dealings with him. His dealings seem to
16 be primarily with Brian Bentz, the CEO of PowerStream.

17 MR. DENNIS NOLAN: Brian Bentz and
18 John Glicksman.

19 MR. GEORGE MARRON: Okay. Well, was
20 Paul Bonwick -- I understood from your evidence today
21 that Paul Bonwick wasn't reporting to you.

22 MR. DENNIS NOLAN: That's correct.

23 MR. GEORGE MARRON: In fact, you --
24 you had some I -- you had some difficulty getting your
25 head around the fact that Paul Bonwick was being

1 hired? You didn't see the value?

2 MR. DENNIS NOLAN: I made comments to
3 the -- to the effect that I questioned the value, yes.

4 MR. GEORGE MARRON: Right. And -- and
5 you've been consistent in your evidence on that. I
6 mean, all the way through the period that's been under
7 review here, you've been of the view that he was
8 overrated, that the information he was providing was
9 something that was generally available?

10 MR. DENNIS NOLAN: I think that, as --
11 as I said, that I didn't think the retainer was
12 necessary.

13 MR. GEORGE MARRON: Right. Okay.
14 Well -- so are these the two (2) sources then that you
15 are asserting to communicate to us that disclosure was
16 made to the clerk and to Sandra Cooper, the Mayor?

17 MR. DENNIS NOLAN: Is -- is imperfect
18 as may be, that's what we relied on and then took
19 further assurance from the June 29th meeting.

20 MR. GEORGE MARRON: All right. So
21 you're unaware then that on 14th of June, 2011, Mr.
22 Bonwick met with the CAO of the Town of Collingwood,
23 Kim Wingrove?

24 MR. DENNIS NOLAN: I'm not sure if I
25 was made aware of that or if I heard it in the --

1 during the course of the -- of the -- of the testimony
2 or with -- from the -- if it was in the Inquiry
3 documents.

4 MR. GEORGE MARRON: Right. Well, it's
5 in the Foundation Brief, trust me on that. But you --
6 you haven't raised that in your evidence? You're --
7 you're unaware that he met with Kim Wingrove, the CAO,
8 on 14th of June 2011?

9 MR. DENNIS NOLAN: I don't know, Mr.
10 Marron. I can't recall if we were made aware of that
11 or not a -- after -- after that meeting.

12 MR. GEORGE MARRON: Well -- well --

13 MR. DENNIS NOLAN: I just -- I -- I
14 cannot recall.

15 MR. GEORGE MARRON: Well, she -- she
16 wasn't one (1) of the two (2) persons that were set
17 out in the agreement with whom he had to communicate
18 and satisfy you that he had done that in order to
19 comply with the condition of his employment agreement?

20 MR. DENNIS NOLAN: That's correct.
21 But add -- additional disclosure would have been
22 welcomed.

23 MR. GEORGE MARRON: So you're saying
24 that he, just out of the goodness of his heart, went
25 out and did this? Is that what you're saying? There

1 was no requirement on it to do was it?

2 MR. DENNIS NOLAN: Mr. Marron, I -- I
3 do not know.

4 MR. GEORGE MARRON: Okay. All right.
5 There was no requirement on him to do that?

6 MR. DENNIS NOLAN: That's correct.

7 MR. GEORGE MARRON: All right. So
8 have you -- did you ever ask him or -- well, you
9 didn't know, I take it, in 2011 in June? You didn't
10 know that he'd met with the CAO, so the -- there would
11 be no reason to ask him?

12 MR. DENNIS NOLAN: As I said, I can't
13 recollect if we were made aware of that meeting or
14 not.

15 MR. GEORGE MARRON: Well, Ms. Wingrove
16 testified in these proceedings and -- just have your
17 indulgence, Your Honour.

18 And I'm referring to the transcript,
19 Your Honour, of the 18th of April, 2019, at page --
20 the top of page 10.

21

22 (BRIEF PAUSE)

23

24 MR. GEORGE MARRON: All right. Now,
25 she was shown by Commission Counsel, Kate McGrann --

1 she was shown this June, 2011 -- June 7, 2011 letter
2 from PowerStream and Mr. Bonwick. And it was put to
3 her, "Dear Paul." I -- I should read this in or we
4 can attempt to just --

5 THE HONOURABLE FRANK MARROCCO: I -- I
6 don't think we need to read it in. I --

7 MR. GEORGE MARRON: Yeah, okay.

8 THE HONOURABLE FRANK MARROCCO: -- I
9 think.

10

11 CONTINUED BY MR. GEORGE MARRON:

12 MR. GEORGE MARRON: Cou -- could you
13 read the section that -- it says, "the letter begins"
14 and --

15 MR. DENNIS NOLAN: Sorry, this is --

16 MR. GEORGE MARRON: This is Kate Grann
17 -- McGrann, our Commission Counsel --

18 MR. DENNIS NOLAN: Yes.

19 MR. GEORGE MARRON: -- examining
20 Kimberly Win -- Wingrove --

21 MR. DENNIS NOLAN: Thank you.

22 MR. GEORGE MARRON: -- who's the CAO.
23 And this was done --

24 MR. DENNIS NOLAN: Okay.

25 MR. GEORGE MARRON: -- on the 8 --

1 18th of April, 2018 in these proceedings.

2 Okay. So if you would be kind enough
3 to commence with the words, "the letter begins," and
4 read that.

5 MR. DENNIS NOLAN:

6 "The letter begins:

7 Dear Paul,

8 This letter will serve as our
9 agreement with respect to the
10 services and terms and conditions
11 upon which you, as principal of
12 Compenso Communications Inc., will
13 provide services to PowerStream."

14 Yes.

15 MR. GEORGE MARRON: Right. That's the
16 first paragraph of the June 7, 2011 consulting
17 engagement letter?

18 MR. DENNIS NOLAN: Yes.

19 MR. GEORGE MARRON: All right. And
20 this is the -- this is Ms. Wingrove's evidence, and
21 it's relating to what she knew as a result of this
22 June 14, 2011 meeting with Paul Bonwick. So, the June
23 7, 2011 letter, PowerStream, the consulting
24 engagement, was in effect at that point, okay? So --
25 so she's -- so she's asked, did you see the letter at

1 any point between the 7th of June, 2011 and July the
2 31st, 2012?

3 Do you see that?

4 MR. DENNIS NOLAN: Yes, I do see that.

5 MR. GEORGE MARRON: Okay. And her
6 response was, "no, I did not."

7 MR. DENNIS NOLAN: Yes.

8 MR. GEORGE MARRON: And Ms. McGrann
9 asked her, "have you seen a copy of it since?" And
10 she said, "only within the materials that were
11 provided to me."

12 She was then asked to -- to -- scroll
13 down the page, and if we could go down to -- maybe a
14 little too far. Thank you. Ms. McGrann says:

15 "I want to talk to you about the
16 information that Mr. Bonwick gave
17 you about the work he would be doing
18 with PowerStream in reference to
19 this letter. This letter says --"

20 Just continue on. We got -- I'm just
21 going to run to the next page. Thank you.

22 "This letter says he informed me
23 that he'd been engaged by
24 PowerStream."

25 Just a minute here. There line -- I'm

1 sorry, something has gone awry here.

2

3

(BRIEF PAUSE)

4

5 THE HONOURABLE FRANK MARROCCO: Get
6 line 1 on the screen.

7

MR. GEORGE MARRON: Yeah. Is this --
8 I need -- yeah, page -- page -- I was on -- I was on
9 page 10, and have 11 here.

10

THE HONOURABLE FRANK MARROCCO: Page
11 11 is on --

12

MR. GEORGE MARRON: Yeah. Yeah, that
13 -- that's right. I'm sorry.

14

THE HONOURABLE FRANK MARROCCO: Page
15 11 is on the screen.

16

MR. GEORGE MARRON: Yes, thank you.

17

18 CONTINUED BY MR. GEORGE MARRON:

19

MR. GEORGE MARRON: So it indicates
20 that this letter that:

21

"PowerStream was committed to

22

pursuing growth opportunities by way

23

of acquisitions and/or mergers

24

involving other Ontario local

25

distribution companies."

1 It goes on to say -- and it sets out:
2 "The Honourable Paul Bonwick, as a
3 principal of CCI, has expertise on
4 government relations and
5 communications that may assist
6 PowerStream in achieving its M&A
7 objectives."

8 M&A being merder -- merger and
9 acquisitions?

10 MR. DENNIS NOLAN: Yes, that's what it
11 stands for.

12 MR. GEORGE MARRON: And it notes he's
13 a registered lobbyist. The question that is put by
14 Ms. McGrann:

15 "At any point between June 2011 and
16 July 2012 did Mr. Bonwick or anyone
17 else disclose to you that Mr.
18 Bonwick was retained to assist
19 PowerStream in achieving its M&A
20 objectives with respect to other
21 local distribution companies?"

22 The response from Ms. Wingrove was:

23 "I don't recall those specific terms
24 ever being used."

25 Do you see that?

1 MR. DENNIS NOLAN: Yes, I do.

2 MR. GEORGE MARRON: Ms. McGrann:

3 "Do you recall that concept being
4 disclosed to you?"

5 MR. GEORGE MARRON: And Ms. Wingrove's
6 response:

7 "As I mentioned earlier, my meeting
8 with Mr. Bonwick was very brief. He
9 informed me that he had been engaged
10 by PowerStream and would be working
11 with them. The extent and the exact
12 nature of those activities was not
13 clear to me."

14 All right. And then Ms. McGrann asked
15 the -- the electronic wizard to scroll down to the
16 "Scope of Work" heading at the top of the page. And
17 she refers us to read the first two (2) bullet points
18 under this heading. So just continuing, question:

19 "Would you take a second to read the
20 first two (2) bullet points under
21 this heading?"

22 And you've been through that. Do you
23 need that to be pulled up? Do you have the agreement?

24 MR. DENNIS NOLAN: No. It's fine.

25 MR. GEORGE MARRON: I'm happy to make

1 -- make it available, but you do -- you're familiar
2 with the agreement? You drafted it?

3 MR. DENNIS NOLAN: Yes, I am.

4 MR. GEORGE MARRON: All right. So,
5 the first:

6 "Did Mr. Bonwick disclose that he'd
7 be doing the kinds of activities?
8 And under, "Scope of work," we're
9 looking at firstly, identify
10 potential opportunities for the
11 purchase, merger, or other business
12 combinations with LDCs."

13 Now, you were taken through this
14 earlier today.

15 MR. DENNIS NOLAN: Yes, I'm familiar
16 with it.

17 MR. GEORGE MARRON: All right, "within
18 PowerStream's geographic footprint." And yesterday,
19 you were questioned on the concept of the geographic
20 footprint. You agreed that -- that Collingwood
21 probably fell within it.

22 You weren't able to be specific on
23 that, but your agreement was that you believed it
24 would, given the proximity of Collingwood to the Town
25 or the City of Barritt (sic)?

1 MR. DENNIS NOLAN: Yes.

2 MR. GEORGE MARRON: The second bullet
3 point:

4 "Prepare detailed brief -- briefings
5 identifying key decision-makers
6 related to a particular
7 opportunity."

8 All right. So, we'll go back to the
9 transcript, page 12, then, Your Honour, line 16.

10 "Did Mr. Bonwick disclose that he'd
11 be doing the kinds of activities
12 that are set out in the first two
13 (2) bullet points here to you at any
14 point between June 2011 and July
15 2012?

16 MS. WINGROVE: No, he did not."

17 Ms. McGrann's question:

18 "Did anybody else disclose to you
19 that Mr. Bonwick would be doing this
20 kind of work for PowerStream during
21 that time period?"

22 And the response at the top of page 13
23 of the transcript is, "No, he did not." Ms. McGrann
24 is asking to scroll down to the next page and she --

25 THE HONOURABLE FRANK MARROCCO: Can we

1 -- can we take it that the questions are the same and
2 the answers are the same rather than go through it, or
3 did you want to go through each one (1) of the bullet
4 points?

5 MR. GEORGE MARRON: Well, I wanted to
6 go through --

7 THE HONOURABLE FRANK MARROCCO: All
8 right.

9 MR. GEORGE MARRON: There are a couple
10 specific -- and I appreciate that this has been put
11 before you. And I don't intend now -- I'll read it as
12 properly and as quickly as I can.

13

14 (BRIEF PAUSE)

15

16 MR. GEORGE MARRON: But I do
17 appreciate the point you're making, but I'll -- I'll
18 keep this short and -- if I may.

19 THE HONOURABLE FRANK MARROCCO: Yes.
20 Certainly, go ahead, Mr. Marron.

21 MR. GEORGE MARRON: Okay. Thank you.

22

23 CONTINUED BY MR. GEORGE MARRON:

24 MR. GEORGE MARRON: So, the three (3)
25 bullet points are set up at the top of the second page

1 of the -- of the June 7, 2011, agreement. It says:

2 "Assist in the preparation of any
3 proposals that PowerStream intends
4 to submit."

5 The second bullet:

6 "Provide strategic advice relating
7 to commissions."

8 And the third bullet:

9 "Assist with any other duties
10 required as it relates to
11 PowerStream's M&A activity."

12 Okay. So, the next -- the question
13 then of Ms. McGrann is:

14 "Did Mr. Bonwick or anybody else
15 disclose to you that he'd be doing
16 this kind of work for PowerStream
17 during the period between June 2011
18 and July 2012?"

19 Ms. Wingrove responds:

20 "The strategic advice related --
21 relating to communications is
22 certainly what was explained to me."

23 And then Ms. McGrann said:

24 "Well, with respect to the other two
25 (2) bullet points?"

1 And her response, Ms. Wingrove:

2 "Was assisting in the preparation of
3 proposals that PowerStream intends
4 to submit was absolutely not
5 discussed with me.

6 And, as I mentioned, the specific
7 'mergers and acquisitions' term was
8 never used in a conversation with
9 me."

10 She goes on to indicate:

11 "He informed me that he'd been
12 engaged with PowerStream and would
13 be working with them. The extent
14 and the exact nature of those
15 activities was not clear to me."

16 And then to -- scroll down. I may be
17 in error there. Ms. McGrann:

18 "Could you scroll down so the method
19 -- "Methodology and deliverables"
20 header is at the top?"

21 And she sets out in the transcript:

22 "Bonwick shall undertake the
23 following while executing this
24 retainer, build the case and enhance
25 the profile, develop a personalized

1 contact prob -- pro -- program."

2 MR. JOHN MATHER: Can we scroll to the
3 top of the page?

4 MR. GEORGE MARRON: Thank you. Yes.
5 If we could just scroll a littler farther. I think
6 I'm past that, "Build the case." Go up.

7

8 CONTINUED BY MR. GEORGE MARRON:

9 MR. GEORGE MARRON:

10 "...for personalized contact pro --
11 program. Would you take a look at
12 those and let us know if at any
13 point between June 2011 and July
14 2012 this information was disclosed
15 to you?"

16 And you'll see her response, "No, it
17 was not." Then Ms. McGrann asked to scroll down to
18 access key decision-makers. And I'll ask you the same
19 question about those two (2) paragraphs. Do you want
20 that -- want that read to you? You --

21 MR. DENNIS NOLAN: No, it's not
22 necessary.

23 MR. GEORGE MARRON: Okay. All right.

24 And the question:

25 "Certainly, not the access key

1 decision-maker's point. And the
2 terms 'issue monitoring' was never
3 used either."

4 And Ms. -- Ms. McGrann continues on:

5 "Issue -- issues monitoring says
6 that CCI -- that's Mr. Bonwick's
7 company -- in detail underneath says
8 CCI is in constant contact with
9 municipal government leaders and, as
10 such, is able to monitor and report
11 on any changes or opportunities that
12 may arise.

13 As your early warning system, our
14 intelligence gathering will help
15 prepare you to response to any
16 potential critical challenges
17 brought forward regarding this
18 approach."

19 And the question:

20 "Was that disclosed to you?"

21 A. No, it was not."

22 Then she goes on, Ms. McGrann, with the
23 question:

24 "If -- if this information had been
25 disclosed at -- at any point between

1 June 2011 and July 31st, 2012, what
2 would your reaction to it have
3 been?"

4 And Ms. Wingrove's response was:

5 "I would have been, I think,
6 extremely that the idea of being
7 retained to provide access to
8 municipal officials, especially in -
9 - in a time where there was the
10 potential for a transaction between
11 the parties, that simply would not
12 have passed my own perception of
13 what was correct.

14 And I think I would have made that
15 known that was just not possible to
16 do. I would have -- if I can
17 continue, I would have definitely
18 engaged with the Town's legal
19 counsel if that had been brought to
20 my attention, and I would have asked
21 for their advice about how best to
22 proceed."

23 And then Ms. McGrann continues:

24 "And when you refer to the Town's
25 legal counsel, who are you referring

1 to?"

2 Ms. Wi -- Wingrove indicates:

3 "Aird & Berlis, Leo Longo, and John
4 Mascarin."

5 MR. PAUL BONWICK: Your Honour, I'm
6 going to object. I'm trying to find -- I'm not paying
7 attention to the clock, of course, but I'm trying to
8 find some relevance to reread the transcripts in their
9 entirety when Mr. Marron has acknowledged that there
10 was no obligation to engage Ms. Wingrove.

11 I'm just -- I'm trying to be patient,
12 but I -- and it's not my role to sit up there, but I'm
13 -- I'm struggling with the -- where this is going.

14 THE HONOURABLE FRANK MARROCCO: I
15 think -- I think there's a question -- I think there's
16 a question coming and that this is setting the stage
17 for the question. At least that's what I anticipate.
18 And that's why I'm waiting un -- until the --

19 MR. PAUL BONWICK: Okay.

20 THE HONOURABLE FRANK MARROCCO: --
21 exercise is completed.

22

23 CONTINUED BY MR. GEORGE MARRON:

24 MR. GEORGE MARRON: I've reviewed the
25 transcript. And the -- the question I have -- now,

1 having listened to that, the point is you would agree
2 that it would be important to have this retainer
3 letter available -- made available, and you would
4 expect that would have happened with the clerk, the
5 CAO, and with the mayor of the Town of Collingwood?

6 MR. DENNIS NOLAN: I would expect that
7 there would have been a proper description of the
8 nature of the engagement.

9 MR. GEORGE MARRON: All right. And
10 you indicated in your testimony yesterday that there
11 were ways to -- to get around this. I mean, there
12 could have been a letter sent to the mayor, to the
13 clerk, and to the CA -- CAO if necessary with the
14 retainer letter attached to it and requesting a letter
15 of confirmation as to the fact that the recipient of
16 the letter had reviewed the retainer agreement?

17 MR. DENNIS NOLAN: I don't think
18 that's what I said, in fairness. I think that I said,
19 yes, there's other ways that this could have been
20 communicated. In terms of attaching the retainer
21 letter, I don't think that would have been
22 appropriate.

23 Describing those services and -- and
24 communicating directly was, you know, in hindsight, an
25 -- an alternative to get --

1 MR. GEORGE MARRON: Right.

2 MR. DENNIS NOLAN: -- any of the
3 assurance that we were attempting to get through Mr.
4 Bonwick's distribution -- disclosure or attempted
5 disclosure to the clerk and to -- and to the mayor.

6 It seems that the mayor understood the
7 nature of -- of the retainer and we were satisfied
8 with that letter. And we were ultimately satisfied
9 with the clerk. And we were satisfied more that the
10 mayor -- deputy mayor, again, where it was disclosed,
11 the meeting of June 29th.

12 MR. GEORGE MARRON: All right.

13 MR. DENNIS NOLAN: So --

14 MR. GEORGE MARRON: You didn't know
15 that --

16 THE HONOURABLE FRANK MARROCCO: Oh,
17 no, just let him --

18 MR. DENNIS NOLAN: So, I -- I -- the -
19 - the --

20 MR. GEORGE MARRON: I thought he had
21 concluded.

22 MR. DENNIS NOLAN: Sorry.

23 MR. GEORGE MARRON: Are you finished
24 your ans --

25 THE HONOURABLE FRANK MARROCCO: Oh, ju

1 -- just a minute. Just finish your answer.

2 MR. DENNIS NOLAN: I'm -- I'm sorry,
3 Your Honour. No, I was just -- all I was going to
4 say, I -- in -- in response to -- which Mr. Marron was
5 saying, if I -- I think consistent with what I said
6 yesterday, yes, there could have been other ways that
7 this was accomplished.

8

9 CONTINUED BY MR. GEORGE MARRON:

10 MR. GEORGE MARRON: Right, other ways
11 by which you have independent corroboration or
12 confirmation with full and complete disclosure was
13 received, right?

14 MR. DENNIS NOLAN: Yes.

15 MR. GEORGE MARRON: And you indicated,
16 I believe, in your evidence yesterday was that you
17 were unaware of the fact that there was a draft letter
18 provided to PowerStream on May the 18th, 2011, that
19 was the exact duplicate of the letter that was sent by
20 Sandra Cooper on June the 2nd, 2011.

21 Were you aware of that?

22 MR. DENNIS NOLAN: Yes, I'm aware of
23 my testimony, and, yes.

24 MR. GEORGE MARRON: Well, had you
25 reviewed it?

1 MR. DENNIS NOLAN: I'm sorry, what was
2 the question?

3 MR. GEORGE MARRON: Had you reviewed
4 this draft letter that had been --

5 MR. DENNIS NOLAN: I don't recall
6 seeing the draft letter was my testimony and I don't
7 recall seeing the draft letter.

8 MR. GEORGE MARRON: Well, exactly.
9 And that's what I recall your testimony was, as well.

10 MR. DENNIS NOLAN: Right.

11 MR. GEORGE MARRON: So, Mr. Bonwick
12 didn't tell you about this draft letter?

13 MR. DENNIS NOLAN: Sorry, I -- I don't
14 -- I don't understand the point, but I -- I don't
15 believe so, no.

16 MR. GEORGE MARRON: All right. So --
17 so does it not -- now that you know that there was a
18 draft letter and it would have been deposited with the
19 PowerStream offices sometime in the middle of May, now
20 that you know that, does that not give you some cause
21 for concern?

22 MR. DENNIS NOLAN: I -- if -- if that
23 was the case, I assume that it was trying to get
24 confirmation that that would be sufficient
25 acknowledgement by the mayor --

1 MR. GEORGE MARRON: Oh. But do --

2 MR. DENNIS NOLAN: -- is what I

3 assume.

4 MR. GEORGE MARRON: But doesn't that

5 fact go to the legitimacy of the June 2nd, 2011,

6 letter?

7 MR. DENNIS NOLAN: No, I don't see how

8 it does.

9 MR. GEORGE MARRON: Well, the fact

10 that somebody --

11 MR. DENNIS NOLAN: It's --

12 MR. GEORGE MARRON: -- the fact that

13 somebody took the time and drew up a letter and

14 provided it to PowerStream -- I mean, Paul Bonwick's

15 acknowledged to Brian Bentz that he did that, and he

16 made it available to Brian Bentz. And he even

17 referred to it as the mayor's letter?

18 MR. DENNIS NOLAN: Well, ultimately,

19 what I saw we received was a letter signed by the

20 mayor that I can only assume that the mayor read and

21 agreed with.

22 MR. GEORGE MARRON: All right. So,

23 Mr. Bonwick didn't tell you then that it was an exact

24 duplicate of what had been drafted and provided to

25 Brian Bentz in May and, as I indicated --

1 MR. DENNIS NOLAN: No, I don't -- I
2 don't believe so.

3 MR. GEORGE MARRON: All right. Well,
4 wouldn't that have caused you some concern, once
5 again, as the legitimacy of the letter, allegedly, or
6 that was sent by Sandra Cooper on the 2nd of June?

7 MR. DENNIS NOLAN: I'm -- I'm not sure
8 how it undermines the legitimacy if -- if the mayor
9 reviewed the letter, signed the letter, and agreed
10 with the letter. If -- if you're suggesting that the
11 letter was -- was, you know, some -- somehow
12 fraudulent, I don't think that's what you're saying.

13 MR. GEORGE MARRON: Well, no, I'm not
14 saying it's fraudulent because it exists. But I'm
15 saying that it was drafted by someone else.

16 MR. DENNIS NOLAN: Right.

17 MR. GEORGE MARRON: It was signed by
18 the mayor. And, you know, we heard from the mayor in
19 her testimony as to what her understanding of it was.
20 And her understanding she indicated under oath -- and
21 this is just by way of a general comment, but her
22 understanding was that Paul Bonwick was involved in a
23 communications business and government relations?

24 MR. DENNIS NOLAN: I believe the
25 letter said more than that. In the context of the

1 letter, it referred to acquisitions.

2 MR. GEORGE MARRON: Right.

3 MR. DENNIS NOLAN: It seemed to be
4 more than just communications. I -- I can't remember
5 it verbatim, but...

6 MR. GEORGE MARRON: No, no. And I
7 agree with you.

8 But the difficulty that we have is that
9 the letter was drafted by Paul Bonwick, and I'm
10 suggesting to you that causes some difficulty in
11 accepting that somehow or other, the mayor directed
12 her mind to it. She didn't draft the letter herself.
13 She didn't draw the letter herself. She signed what
14 somebody else obviously put under her nose.

15 MR. DENNIS NOLAN: I assumed -- as
16 I -- and like I'll say it one more time -- we assumed
17 that the mayor, since she signed the letter -- read
18 the letter, agreed with the letter -- I think that was
19 a fair assumption -- not assumption. I think we could
20 rely on that.

21

22 (BRIEF PAUSE)

23

24 MR. GEORGE MARRON: Now, you've made
25 reference to this meeting, and you indicated to us

1 that you consider this meeting with some particular
2 degree of importance.

3 MR. DENNIS NOLAN: Which meeting?

4 MR. GEORGE MARRON: The meeting on
5 June the 29th --

6 MR. DENNIS NOLAN: Yes.

7 MR. GEORGE MARRON: -- 20- -- sorry.

8 MR. DENNIS NOLAN: While I wasn't at
9 attendance, yes. I -- I am familiar with the meeting.

10 MR. GEORGE MARRON: Right. But you
11 weren't there personally.

12 MR. DENNIS NOLAN: That's correct.

13 MR. GEORGE MARRON: All right. And
14 this meeting supposedly was to be held or it was
15 organized so that PowerStream and Paul Bonwick could
16 give disclosure, alert the Town of Collingwood that
17 they might be knocking on the door in reference to the
18 electric facility -- the power facility.

19 MR. DENNIS NOLAN: I think -- I think
20 one of the primary purposes of the meeting, in my
21 understanding, was to make sure that there was
22 transparency in PowerStream's retainer of Mr. Bonwick
23 and that could include if the Town of Collingwood
24 chose to move forward with an RFP or to, in otherwise,
25 to sell the utility, it -- that retainer could also

1 include that.

2 MR. GEORGE MARRON: All right. But
3 you weren't invited to the meeting. We're told
4 that -- we're told that Brian Bentz invited
5 Jeff Lehman to come to the meeting.

6 MR. DENNIS NOLAN: I understand
7 Mr. Lehman was invited to the meeting.

8 MR. GEORGE MARRON: Right. But at
9 this point in time, Brian -- Brian Bentz would have
10 known that you were the individual who was responsible
11 for drawing the retainer agreement with Mr. Bonwick
12 and the retainer agreement which made provision for
13 disclosure.

14 MR. DENNIS NOLAN: Mr. Bentz was very
15 familiar with the agreement.

16 MR. GEORGE MARRON: But he would have
17 been aware of the fact that you drew it.

18 MR. DENNIS NOLAN: Mr. Bentz --

19 MR. GEORGE MARRON: Yeah.

20 MR. DENNIS NOLAN: -- was aware. Of
21 course, yes.

22 MR. GEORGE MARRON: Yeah, yeah.

23 MR. DENNIS NOLAN: Of course he was.

24 MR. GEORGE MARRON: But wouldn't it
25 make sense for Mr. Bentz to want to take you along

1 because, in effect, you had been instrumental in
2 bringing about the retainer letter and, accordingly,
3 would be able to properly and adequately advise the
4 Town of Collingwood as to the disclosure elements in
5 the letter.

6 MR. DENNIS NOLAN: I don't see why it
7 was necessary. Mr. Bentz could -- and Mr. Bonwick
8 were perfectly capable of describing the nature of --
9 of the retainer.

10 MR. GEORGE MARRON: Yeah.

11 MR. DENNIS NOLAN: And that was the
12 purpose.

13 MR. GEORGE MARRON: Well, Mr. Bonwick
14 wasn't at the meeting either.

15 MR. DENNIS NOLAN: I'm sorry.
16 Mr. Bentz was perfectly capable of -- of doing that on
17 his own.

18 MR. GEORGE MARRON: Did you furnish
19 Mr. Bentz with the June 7, 2011 retainer letter?

20 MR. DENNIS NOLAN: I believe he had
21 access to that. I don't know if he had it with him
22 going to the meeting or not.

23 MR. GEORGE MARRON: But wouldn't you
24 agree, it might be a little difficult to make
25 disclosure in reference to Paul Bonwick's particular

1 situation without the -- without having the letter
2 available?

3 MR. DENNIS NOLAN: Not at all.

4 MR. GEORGE MARRON: How do you figure
5 that?

6 MR. DENNIS NOLAN: It's not that
7 complicated what the scope of -- the general scope of
8 the retainer was, and to explain that, it's --

9 MR. GEORGE MARRON: No.

10 MR. DENNIS NOLAN: -- Mr. Bentz was
11 more than capable of doing that, and I understand that
12 he did.

13 MR. GEORGE MARRON: The difficulty we
14 have here is that you're concerned about the
15 apparently appearance of things -- the optics of
16 things, and the appearance that, you know, this whole
17 issue -- this whole phoney issue of conflict and how
18 it may appear to the public at large. This was your
19 concern.

20 MR. DENNIS NOLAN: I was concerned
21 about the appearance of conflict, correct.

22 MR. GEORGE MARRON: And I'm concerned
23 with the fact that it didn't seem to adequately
24 addressed in the sense of communicating what was in
25 the content of the letter. It wasn't made available

1 on the evidence that we've heard. It wasn't made
2 available to the clerk. It wasn't made available to
3 the CAO. And we've heard from Sandra Cooper that
4 nothing was made available to her either.

5 MR. DENNIS NOLAN: When you say
6 "nothing was made available," --

7 MR. GEORGE MARRON: In the way of the
8 June --

9 MR. DENNIS NOLAN: -- they weren't
10 furnished with a copy of the agreement.

11 MR. GEORGE MARRON: I appreciate that.

12 MR. DENNIS NOLAN: So I understand
13 that, if that's what you're saying. I -- I don't
14 disagree with that.

15 MR. GEORGE MARRON: It's clear that
16 you were prepared and did leave the -- I hesitate to
17 use the word "disclosure" because we've been talking
18 about the disclosure provisions that are in the
19 agreement -- but you were quite prepared and did leave
20 the knowledge of the agreement to Paul Bonwick and to
21 him exclusively.

22 MR. DENNIS NOLAN: I'm not -- I'm not
23 sure I understand your question.

24 MR. GEORGE MARRON: Well, he was the
25 one who was to go out and make disclosure obviously.

1 MR. DENNIS NOLAN: Well, on this
2 occasion, Mr. Bentz was making that disclosure along
3 with Mayor Lehman and to the mayor and deputy mayor
4 and, I believe as stated earlier, Ms. Wingrove.

5 MR. GEORGE MARRON: Well, you didn't
6 know that because you weren't at the meeting.

7 MR. DENNIS NOLAN: That's what I
8 understand took place. That's what I --

9 MR. GEORGE MARRON: All right.

10 MR. DENNIS NOLAN: -- I understand it
11 took place. You can -- you can ask Mr. Bentz.

12 MR. GEORGE MARRON: Well, he -- you're
13 right. He's coming to testify. Yeah.

14 But let me review with you briefly --
15 right. You weren't there, and I'll save this for
16 Mr. Bentz then.

17 Thank you. Those are my questions,
18 Your Honour. Thanks. Thanks for...

19 THE HONOURABLE FRANK MARROCCO: Thank
20 you, Mr. Marron. Mr. Watts or Ms. Bain, who's --

21 MR. JOHN MATHER: Your Honour --

22 MR. MICHAEL WATSON: Well, I guess
23 since it's our witness, we go after all the
24 cross-examinations.

25 THE HONOURABLE FRANK MARROCCO: Oh,

1 all right. Certainly. Certainly. Mr. Fryer...?

2 MR. TIM FRYER: Thank you,
3 Justice Marrocco.

4

5 CROSS-EXAMINATION BY MR. TIM FRYER:

6 MR. TIM FRYER: Hello, Mr. Nolan. For
7 the record, I am Tim Fryer and representing myself in
8 these proceedings.

9 I'd like to bring up ALE412. This is
10 the email we saw earlier from September the 20th, 2011
11 from Mr. Bonwick to PowerStream senior management.

12 So I wasn't going to review the whole
13 thing. I was going to review with you -- you
14 testified that the consolidation reference at the end
15 of the last paragraph most likely was in reference to
16 targeting of the CHEC LDCs?

17 MR. DENNIS NOLAN: Can I just -- could
18 you scroll down, please, so I know what Mr. Fryer is
19 referring to?

20 MR. TIM FRYER: So the consolidation
21 right at the end there.

22 MR. DENNIS NOLAN: All right. Just
23 give me a sec. "At this time, I'm ..."

24

25 (BRIEF PAUSE)

1 MR. DENNIS NOLAN: Yes.

2 MR. TIM FRYER: So through the end of
3 the second paragraph -- so if we could scroll it back
4 to the top -- through the end of the second paragraph,
5 the third paragraph, and the fourth paragraph --
6 generally, it looks like the strategy outlined is to
7 work towards a greater than 50 percent share of
8 Collus. It is -- you've seen a lot of documents, so
9 you may want to just take a look at that.

10

11 (BRIEF PAUSE)

12

13 MR. DENNIS NOLAN: Mr. Bonwick seems
14 to be exploring an avenue to see if -- if that is
15 available. I -- I don't recall ever being part of
16 that discussion.

17 MR. TIM FRYER: Okay. It also speaks
18 to achieving shareholder agreement protection for
19 PowerStream, including a shotgun clause reference?

20 MR. DENNIS NOLAN: Sorry.

21 MR. TIM FRYER: It's within the body.

22

23 (BRIEF PAUSE)

24

25 MR. DENNIS NOLAN: Sorry. What

1 paragraph are you referring to?

2 MR. TIM FRYER: I'd have to scroll.

3

4 (BRIEF PAUSE)

5

6 MR. TIM FRYER: It is within that, but
7 I'll leave that. That's fine.

8 So perhaps the consolidation reference
9 was regarding obtaining a hundred of Collus because
10 that would be a consolidation. Is that possible that
11 that's what the reference -- consolidation at the
12 bottom means?

13 MR. DENNIS NOLAN: I -- I don't think
14 so. However, you know, I -- I've said if -- you know,
15 if down the road if -- if we did obtain 50 percent
16 and -- and, you know, it certainly would have been
17 interested in -- in acquiring the other 50 percent at
18 the appropriate time. But now, I think that is
19 reference to the -- the strategy of further
20 consolidation within the CHEC group.

21 MR. TIM FRYER: But it is possible it
22 could be either.

23 MR. DENNIS NOLAN: I don't think that
24 was -- I don't think that was the intent. I think it
25 was referencing the strategy within the CHEC group,

1 and I'm not sure what Mr. Bonwick meant as -- as to
2 put in protections to ensure that happened. I -- I
3 don't know what was -- what was in his -- his mind
4 when he made that reference. But I -- I think it is
5 with respect to the CHEC group.

6 MR. TIM FRYER: Okay. Thank you.
7 We'll move on then to -- regarding the target of the
8 CHEC group of LDCs.

9 So at the public meeting in
10 November 2011 regarding the potential share sale,
11 Mr. Houghton made reference to the expectation of
12 regionalization Ontario LDCs and the desire to ensure
13 Collus would be the hub.

14 MR. DENNIS NOLAN: M-hm.

15 MR. TIM FRYER: Were you aware of that
16 goal?

17 MR. DENNIS NOLAN: I think that was
18 consistent with his strategy that we would, you know,
19 hopefully start with a successful partnership with --
20 with Collus -- Collingwood. And -- and then we would
21 in -- that Collus would be a hub for further
22 consolidation as, you know, loosely defined and -- and
23 obviously how that -- that would pan out would be
24 rather dynamic, as you could appreciate.

25 MR. TIM FRYER: So there were

1 three (3) CHEC member LDCs in attendance that evening.
2 So as members of the voluntary cooperative CHEC, would
3 you expect that hearing the goal of Collus was to be
4 the hub would be well received by those three (3)?

5 MR. DENNIS NOLAN: I don't know. I've
6 never turned my mind to that. I -- I suspect if -- if
7 it was viewed in a way that it would make them
8 redundant, no, that would not be well received. But I
9 don't that was the intent.

10 It was to show that there's another
11 model here of -- to look at. It was something new and
12 different in terms of a partnership, and it could
13 perhaps be further 50 percent purchase of one (1) of
14 those LDCs or if -- if they were comfortable with
15 being part of something that was smaller and more
16 regional rather than being folded into the greater
17 PowerStream or Hydro One, for example.

18 MR. TIM FRYER: But the only term was
19 Collingwood as a hub that evening.

20 MR. DENNIS NOLAN: I -- I'm not
21 familiar with that evening.

22 MR. TIM FRYER: Yeah. So I can say
23 that it was not well received. And as one would
24 expect, it appeared that those LDCs that Collus wanted
25 to be in control, it would be expected then that this

1 hub statement would create a level of concern amongst
2 those member utilities, if that was the case.

3 MR. DENNIS NOLAN: You're -- you're
4 telling me that they had that concern. I -- I'm not
5 aware of anything that you're really talking about.

6 MR. TIM FRYER: Okay. So within the
7 evidence that you've reviewed -- most specifically the
8 November 9th, 11th of 2011 agreement where Mr. Bonwick
9 has a success fee -- it shows very clearly now the
10 internal strategy was in place to target the CHEC
11 group.

12 MR. DENNIS NOLAN: Yes, correct.

13 MR. TIM FRYER: You're also -- your
14 testimony also indicates part of the reason for
15 engaging Mr. Bonwick was for the successful completion
16 of the Collus sale.

17 MR. DENNIS NOLAN: Part of the reason
18 for retaining Mr. -- yes. Yes.

19 MR. TIM FRYER: So to the goal again
20 of the CHEC LDCs, although the OEB didn't approve the
21 Collus transaction until June 2012, there would have
22 been efforts put towards it through that first part of
23 the year?

24 MR. DENNIS NOLAN: I can't recall
25 specifically what efforts were made in that time

1 frame. I'm sorry.

2 MR. TIM FRYER: But then after
3 approval -- so through the course of 2012 -- there was
4 no material advances in regards to any of the CHEC
5 group LDCs.

6 MR. DENNIS NOLAN: It -- there's no
7 success to be pointed to during -- during that time.
8 I understand that there were meetings and some
9 efforts, but I wasn't really involved with them.

10 MR. TIM FRYER: So if there'd been a
11 successful one, what would the expected process be
12 from that point?

13 MR. DENNIS NOLAN: I -- that's -- I
14 think would be rather dynamic, depending on the
15 individual LDC, but, for example, and I -- earlier
16 there was reference to -- to the letter of -- of --
17 that opportunities would first be, you went with
18 Collus, if there was an LDC, for example, that wanted
19 to divest, to sell, for example, 100 percent, and they
20 were comfortable with -- with that -- selling to
21 Collus/PowerStream, then we would explore purchasing.
22 If it was a merger, then we would look at as some way
23 of merging that into that Collus/PowerStream entity.

24 MR. TIM FRYER: So if -- if the
25 process was -- and -- and say we're looking at a

1 similar value of the utility of -- of Collus, because
2 we're familiar with those values, and they wanted to
3 join, Collus/PowerStream would need to invest \$8
4 million.

5 MR. DENNIS NOLAN: They would have to
6 to invest -- I -- okay. I --

7 MR. TIM FRYER: Using this --

8 MR. DENNIS NOLAN: Let's -- let's --
9 I'll use your example, yes, sure.

10 MR. TIM FRYER: And -- and that's how
11 the hub situation would be created.

12 Collus/PowerStream is making the \$8 million investment
13 into this new partner LDC.

14 MR. DENNIS NOLAN: That's -- that's
15 quite possible, yes.

16 MR. TIM FRYER: So, and I know that's
17 hypothetical, but you'd expect that the appropriate
18 advance modelling would have been done, and as CFO, I
19 had asked the question during the process to see the
20 business modelling of how that would work, and nothing
21 had been produced to me.

22 So, I wasn't aware of it being done
23 internally at Collus. I expected then that possibly
24 since PowerStream was involved and -- and they were
25 providing specialized resources, had it been modelled

1 at all at PowerStream and shown to Collus?

2 MR. DENNIS NOLAN: I'm sorry, Mr.
3 Fryer, I -- I just have -- I don't have any knowledge
4 of what you're asking.

5 MR. TIM FRYER: I guess the -- the
6 whole concept of how it progressed, so -- so we'll
7 leave that.

8 But in any event, if -- if the -- if
9 Collus/PowerStream had to make an \$8 million
10 investment, then as a 50 percent owner, the Town of
11 Collingwood would have to make 4 million of that.

12 MR. DENNIS NOLAN: If they were -- if
13 your assumption that they would part -- participate on
14 an equal basis, I -- I assume that that would be
15 correct.

16 MR. TIM FRYER: And that would be --

17 MR. DENNIS NOLAN: You're asking the
18 lawyer, not the financial guy.

19 MR. TIM FRYER: I -- I recognize that
20 but this is more as a Board member of the Utility, I
21 think --

22 MR. DENNIS NOLAN: Right.

23 MR. TIM FRYER: -- as I'm looking at
24 it. And -- and -- and I'm envisioning the hub
25 situation being created that way.

1 So, it would appear then that an
2 additional hurdle of initiating another partnership
3 with an LDC CHEC member or not, it would be --
4 Collingwood would need to invest dollars, would be a
5 hurdle for Collingwood.

6 MR. DENNIS NOLAN: That's a
7 possibility, yes.

8 MR. TIM FRYER: Yeah. So we'll move
9 ahead then a little to look at the partnership a few
10 years later.

11 So if we could bring up TFF8.

12

13 (BRIEF PAUSE)

14

15 MR. TIM FRYER: And this is a slide
16 presentation that was made at the -- in 2015, June
17 2015, to the CHEC CEO and Board members, and it was
18 basically a strategic planning session.

19 So, I believe you were still on the
20 Board in 2015.

21 MR. DENNIS NOLAN: On the Board of
22 Collus --

23 MR. TIM FRYER: Collus.

24 MR. DENNIS NOLAN: -- PowerStream?

25 MR. TIM FRYER: Yeah.

1 MR. DENNIS NOLAN: In 2015, I was on
2 the Board.

3 MR. TIM FRYER: Yeah. And I'm not
4 going to go through all the slides.

5 I would like to bring up Slide 26.

6 MR. DENNIS NOLAN: I'm not familiar
7 with this presentation, however, at all.

8 MR. TIM FRYER: I'm -- I'm wondering
9 if you're familiar with this slide, because it does
10 seem to indicate a different modelling to the idea of
11 Collus being a hub.

12 MR. DENNIS NOLAN: I can't comment on
13 this slide.

14 MR. TIM FRYER: So you haven't seen
15 this slide, okay. So --

16 MR. DENNIS NOLAN: It -- it has no
17 familiarity. I have no familiarity with this at all.

18 MR. TIM FRYER: I'll -- I'll -- I'll
19 look at that with Mr. Bentz then.

20 So -- so one last item about the growth
21 goal. Earlier -- the July 31st, 2012, what I will
22 call side letter, because it was the agreement between
23 PowerStream and Collingwood, in regards to first right
24 of refusal.

25 MR. DENNIS NOLAN: Yes.

1 MR. TIM FRYER: So did it ever get
2 exercised, in any case?

3 MR. DENNIS NOLAN: No, I don't believe
4 it did.

5 MR. TIM FRYER: Okay. So now just in
6 closing, regarding your testimony about shared
7 services. So earlier testimony by myself and others
8 agreed that the July 31st agreement to continue as is
9 was necessary, for many of the reasons you outlined,
10 time, assessment of market value charges, determining
11 who would be doing the services.

12 Would you agree with that?

13 MR. DENNIS NOLAN: Yes.

14 MR. TIM FRYER: Other evidence was
15 shown that indicated the intention to have the shared
16 services completed by early 2013.

17 MR. DENNIS NOLAN: Correct.

18 MR. TIM FRYER: The -- that's outlined
19 in the MAAD actually.

20 So, during the time frame, Mr. Houghton
21 was CAO and CEO of the Collingwood parties, but those
22 agreements weren't done.

23 Can you think of any reasons why?

24 MR. DENNIS NOLAN: I can't -- I -- I
25 can't explain that, whether it was just being

1 satisfied with -- with the -- the -- the current state
2 of things or not. I -- I -- I cannot -- I can't
3 provide a -- a -- an answer to that question.

4 MR. TIM FRYER: Okay, 'cause I believe
5 you had referred to some dysfunctional comments and
6 whereas Mr. Brown --

7 MR. DENNIS NOLAN: Well, it became
8 that way. I can't --

9 MR. TIM FRYER: But that was later in
10 2013.

11 MR. DENNIS NOLAN: I'm sorry. I -- I
12 believe that was later. I can't remember the exact
13 time frame when -- when things took that turn.

14 MR. TIM FRYER: 'Cause I'm just
15 looking at the time line of the CAO position. Mr.
16 Houghton starts as CAO April 2012, steps down April
17 2013.

18 Do you know the reason why he decided
19 to step away from CAO?

20 MR. DENNIS NOLAN: I have no idea.

21 MR. TIM FRYER: Okay. And then a
22 search was required after that, after his exit, and
23 that led to Council hiring Mr. Brown in late 2013.

24 MR. DENNIS NOLAN: I -- I -- is that a
25 question? I -- or --

1 MR. TIM FRYER: Well, just -- just --
2 that's the time line as I outlined it.

3 MR. DENNIS NOLAN: I -- I -- I'm not
4 doubting you at all. I -- I -- I don't off -- off the
5 top my head, I don't know if that's the -- the time
6 line or not.

7 MR. TIM FRYER: Okay. So --

8 MR. DENNIS NOLAN: Sounds -- sounds
9 about right.

10 MR. TIM FRYER: Thank you very much,
11 Mr. Nolan. Those are my questions.

12 MR. DENNIS NOLAN: Thank you.

13 THE HONOURABLE FRANK MARROCCO: Mr.
14 Bonwick, before you start I think we'll take ten (10)
15 minutes.

16

17 --- Upon recessing at 4:22 p.m.

18 --- Upon resuming at 4:36 p.m.

19

20 THE HONOURABLE FRANK MARROCCO: Mr.
21 Bonwick, go ahead.

22

23 (BRIEF PAUSE)

24

25 CROSS-EXAMINATION BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: Good afternoon, Mr.
2 Nolan. My name's Paul Bonwick and I'm a participant
3 here at the Inquiry.

4 MR. GEORGE MARRON: Good afternoon.

5 MR. PAUL BONWICK: Could I call up the
6 Foundation Document? I think it's page 309, line 20.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: Are you referring to
11 paragraph 20?

12 MR. PAUL BONWICK: Oh, the -- yes,
13 sorry, line -- it was 309 when I was writing it down.

14 THE HONOURABLE FRANK MARROCCO: It's
15 the paragraph number?

16 MR. PAUL BONWICK: I believe so.

17 THE HONOURABLE FRANK MARROCCO: All
18 right. Is that it?

19 MR. PAUL BONWICK: It comes up
20 differently, yes, no, that's not it. Oh, my
21 apologies, it's transcript.

22 MR. JOHN MATHER: Do you know which
23 date?

24 MR. PAUL BONWICK: 05-17, I believe.

25 MR. JOHN MATHER: May 17th?

1 MR. PAUL BONWICK: Yes.

2 MR. JOHN MATHER: And then the page
3 number?

4 MR. PAUL BONWICK: Twenty -- would
5 that -- 309 would be the page number. If I could go
6 up just a little wee bit.

7

8 CONTINUED BY MR. PAUL BONWICK:

9 MR. PAUL BONWICK: I started to
10 explain -- excuse me, If you could, Mr. Nolan, just
11 notice where I start my cross-examination with Ms.
12 Wingrove. Could you just read my comments there,
13 please.

14 MR. DENNIS NOLAN: I start --

15 THE HONOURABLE FRANK MARROCCO: Well, I
16 don't think you need to read them out loud.

17 MR. PAUL BONWICK: Yeah, I don't want
18 --

19 THE HONOURABLE FRANK MARROCCO: No,
20 no, I don't think you did. I think you just meant
21 read them. So, you can just read them to yourself,
22 Mr. Nolan. Let us know when you've read them.

23

24 (BRIEF PAUSE)

25

1 MR. PAUL BONWICK: We'll go to 269
2 when Mr. Nolan's done and can you read Ms. Wingrove's
3 comments.

4

5 (BRIEF PAUSE)

6

7 MR. PAUL BONWICK: Okay, if we could
8 go to 269.

9 THE HONOURABLE FRANK MARROCCO: Did
10 you have a chance to -- Mr. Nolan, did you finish
11 reading before we switched pages?

12 MR. DENNIS NOLAN: I'm -- I'm fine,
13 Your Honour.

14 THE HONOURABLE FRANK MARROCCO: Okay.

15 MR. PAUL BONWICK: Rather than go
16 through the transcripts and if somebody wants me to
17 demonstrate this, I wanted to respond as quickly as I
18 possibly can to Mr. Marron's line of questioning.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: Evidence will show
22 that through cross-examination Ms. Wingrove provided
23 three (3) different answers with regards to the brief
24 meeting that we had; that was scheduled by myself.

25 One, as you've noticed, that she could

1 not recall the contents of the discussion to any great
2 degree.

3 The second part, she acknowledged with
4 cross-examination -- or, sorry, with examination by
5 judicial counsel Ms. McGrann that she recalled clearly
6 that certain things hadn't been covered off.

7 And then subsequently, and
8 unfortunately, I didn't have time to research this
9 after Mr. Marron's comments, she commented in another
10 section that, in fact, she did recall me talking about
11 government relations (sic) and acquisitions.

12 And so, I'm happy to provide that to --
13 to the Commission at a later date in order to just --
14 or later this evening once I get a chance to review
15 it.

16 The point I'm making on this, Mr.
17 Nolan, is, as was identified in the letter of
18 engagement, the clerk and the mayor were the two (2)
19 people, if I'm understanding it properly, that I was
20 supposed to engage for the purposes of disclosing my
21 responsibilities in -- in relationship to PowerStream.
22 Is that correct?

23 MR. DENNIS NOLAN: That's correct.

24 MR. PAUL BONWICK: And so, the fact
25 that not only was the mayor briefed in terms of the

1 duties and obligations that I would have specific to
2 PowerStream, as was identified in a letter that she
3 sent to Mr. Bentz, subsequently, there was some
4 confusion related to my request or my information that
5 I provided from the clerk. Is that correct?

6 MR. DENNIS NOLAN: That's correct.

7 MR. PAUL BONWICK: And so -- excuse me
8 -- in the first approach, I provided an opinion that
9 the deputy mayor had secured on a completely unrelated
10 matter but simply identifying that he had a similar
11 situation with regards to a sibling and was identified
12 not to be in a conflict. Is that correct?

13 MR. DENNIS NOLAN: That's what I
14 understand, yes.

15 MR. PAUL BONWICK: Subsequent to that,
16 Mr. Glicksman, unbeknownst to me through internal
17 discussions, responded back suggesting that, whether
18 it was Mr. Bentz or others, we're not satisfied with
19 that level of disclosure and would require additional
20 confirmation from the mer -- the clerk specific to my
21 situation. Is that correct?

22 MR. DENNIS NOLAN: That's correct.

23 MR. PAUL BONWICK: And subsequent to
24 that, the Foundation Documents will demonstrate, and I
25 believe you're aware of the fact, that I scheduled a

1 meeting with Mr. Almas.

2 While you were not in attendance at
3 that meeting -- excuse me -- to the best of my
4 abilities, recognizing eight (8) years ago that I went
5 through several parts of the responsibilities that
6 were contained within our agreement, you're aware of
7 the fact that a meeting took place but you can't
8 comment on the content of that meeting?

9 MR. DENNIS NOLAN: That's correct.
10 And I think that meeting is the meeting referenced in
11 the email that we viewed during Mr. Marron's cross-
12 examination.

13 MR. PAUL BONWICK: Correct. And then,
14 subsequent to that, I sent Ms. Almas, the clerk, a
15 simple thank you letter for taking the time to
16 actually meet. Do you acknowledge that you've
17 reviewed that?

18 MR. DENNIS NOLAN: Yes. And I think
19 Mr. Marron showed that today, yes.

20 MR. PAUL BONWICK: And subsequent to
21 that email, at the conclusion of my meeting with Ms.
22 Almas I asked her if -- for her approval to copy her
23 on an email that I would be sending to Mr. Bentz
24 identifying the fact that the meeting had taken place,
25 that I had identified the responsibilities -- or the -

1 - the work that I would be doing with PowerStream and,
2 subsequent to that, that I shared the discussion
3 related to whether the mayor was in conflict or not in
4 conflict.

5 And while she could not give me a legal
6 opinion or specific advice for my situation, she did
7 comment that her understanding under the Municipal Act
8 was that a sibling did not create a conflict of
9 interest.

10 Is that what you took out of that email
11 that I sent to Mr. Bentz and copied her on?

12 MR. DENNIS NOLAN: Yes, I -- I took
13 that you had disclosed, although, as Mr. Marron notes,
14 it doesn't enumerate the -- the disclosure, but it
15 says that you disclosed the -- the activities --
16 duties that you'd be performing for -- under the
17 retainer.

18 And then there's -- there is a
19 reference to Provincial Conflict of Interest Act, I
20 believe, which we -- we assume was -- was in error,
21 and -- and took comfort from the independent
22 verification that -- that I obtained.

23 MR. PAUL BONWICK: In -- in fairness,
24 I'll accept responsibility for that. Clearly, I
25 misspoke or wrote down the wrong thing. It -- it's

1 the Provincial Government's Municipal Conflict of --

2 MR. DENNIS NOLAN: Right.

3 MR. PAUL BONWICK: -- Information Act,
4 and -- and that was clearly my error. Excuse me. And
5 you have identified through earlier testimony that
6 when that email was sent, Ms. Almas did not follow up
7 in any manner of speaking to seek further
8 clarification to challenge any of the content in the
9 email. There was no further communication related to
10 that matter. Is that correct?

11 MR. DENNIS NOLAN: Not that I'm aware
12 of, no.

13 MR. PAUL BONWICK: Right. And so
14 you've also confirmed your knowledge that a meeting
15 took place on or about June 29th -- and I could be
16 wrong on the dates -- but the meeting was hosted by
17 the mayor in the Council boardroom downstairs.

18 Participating in that meeting was
19 Mayor Sandra Cooper in her capacity as mayor;
20 Deputy Mayor Rick Lloyd in his capacity as deputy
21 mayor; and finance chair, Mr. Bentz, president and CEO
22 of PowerStream; Mayor Jeff Lehman; Kim Wingrove, chief
23 administrative officer for the Town of Collingwood;
24 and Mr. Dean Muncaster, the chair of the Collus Board.

25 MR. DENNIS NOLAN: That's my

1 understanding.

2 MR. PAUL BONWICK: Excuse me. And at
3 that meeting, it is your understanding -- and I'll
4 take a step back -- in fact, were you aware of the
5 fact that there had been discussions taking place --
6 or a discussion had taken place that perhaps was best
7 that I not sit in on that meeting in order to allow a
8 free flow of discussion as it relates to Mr. Bentz
9 outlining what my responsibilities might be and to
10 provide a free and open environment for others to
11 respond?

12 MR. DENNIS NOLAN: I -- I do have a --
13 I do have that impression. Again, I -- I can't
14 remember -- it's hard after reading the documentation
15 when -- whether I was aware of that at the time.

16 But I do think initially, I thought
17 that you were going to be attending the meeting as
18 well, and I understood that you did not attend the
19 meeting.

20 MR. PAUL BONWICK: I attended one (1),
21 but there was -- there was several meetings. But I
22 will -- we'll go to the point of to the best of your
23 ability -- and again, I recognize it's eight (8) years
24 ago or thereabouts -- I can't remember in great detail
25 myself two (2) years ago.

1 That being said, based on the best of
2 your ability to remember or recall, Mayor Lehman and
3 Mr. Bentz clearly responded that the meeting was
4 positive, that they had the opportunity to have full
5 discussion, not only on PowerStream but in terms of my
6 engagement with PowerStream, and that there did not
7 appear to be any concerns brought forward at that
8 time.

9 MR. DENNIS NOLAN: I think that's a
10 fair characterization of -- of what I was informed
11 about the results of the meeting or that -- yes.

12 MR. PAUL BONWICK: I'd like to fast
13 forward to the consultants that you've hired in the
14 past. I understand Bridgepoint being one along with
15 others.

16 Have you even taken the extraordinary
17 efforts of asking Bridgepoint to make their activities
18 aware to the CAO, municipal Council, or the Board of
19 Directors as they're doing consulting work for you on
20 any LDC within any municipality?

21 MR. DENNIS NOLAN: Not that I can
22 recall. But -- no.

23 MR. PAUL BONWICK: And subsequent to
24 that, the other consultants that you've engaged, did
25 you, as a requirement, ask them to take the added step

1 of engaging with clerk and engaging the mayor,
2 engaging the chair of the utility corporation to
3 advise on the services that they would be providing?

4 MR. DENNIS NOLAN: No. But I want to
5 go back to what I just said. I think we -- we
6 probably had on occasion made the -- the other side of
7 a transaction aware that -- that we had engaged a
8 consultant.

9 But not -- to answer your second
10 question, your follow-up question, no. Insisting any
11 of that disclosure, no. It was -- it was never seen
12 appropriate or necessary.

13 MR. PAUL BONWICK: I'm not sure if you
14 had the opportunity to follow the cross-examination
15 with Mr. Longo. But during that time -- I'll ask you
16 if you did have the opportunity to hear Mr. Longo's
17 response.

18 I asked Mr. Longo if I or the company
19 that I represented was somehow obliged by rules under
20 the Municipal Conflict of Interest Act. His response
21 was no. Do you recall that?

22 MR. DENNIS NOLAN: I did not see that
23 portion of Mr. Longo's -- I did not see your -- if --
24 was that in your cross-examination?

25 MR. PAUL BONWICK: Yes, it was.

1 MR. DENNIS NOLAN: No, I did not see
2 that.

3 MR. PAUL BONWICK: To surmise really
4 quickly, I asked him about the Municipal Conflict of
5 Interest Act, I asked him about the code of conduct
6 that a municipal Council is obliged to follow, and I
7 asked him about the oath of office that they swear at
8 the time they secure office.

9 And in short, Mr. Longo stated that, as
10 an outside consultant, we are not governed by the
11 rules or regulations that elected officials are to
12 follow.

13 As a follow up to that question, I made
14 Mr. Longo aware to the fact that there was at least
15 four (4) different meetings regarding the disclosure
16 of my involvement and the activities that I would be
17 providing on behalf of PowerStream and asked him his
18 thoughts in terms of that level of engagement.

19 And while he wasn't providing any great
20 detail, I think the transcript would show that he said
21 more transparency and more engagement is better than
22 none, and certainly, that's commendable to reach out
23 in that regard, and that is -- at the time, was the
24 Town's solicitor. You're aware of that?

25 MR. DENNIS NOLAN: Sorry. I'm not

1 aware of -- of those further meetings. But I agree
2 with the notion that additional transparency was
3 beneficial.

4 MR. PAUL BONWICK: Thank you. Could
5 you please describe the makeup for the Board of
6 Directors for PowerStream at the time. And I don't
7 look for individual names, but in terms of the
8 cross section of people and the numbers that are
9 there.

10 MR. DENNIS NOLAN: Sorry. Of --

11 MR. PAUL BONWICK: Do you recall the
12 cross -- do you recall the makeup of the Board -- of
13 the Board of Directors for PowerStream during that
14 period of time?

15 MR. DENNIS NOLAN: Oh. Oh, I'm sorry.
16 Yes. Okay. Try to get this right. We have
17 13 members, and there was -- Barrie had
18 2 representatives. I believe Markham had 4.

19 MR. PAUL BONWICK: I think in
20 fairness, I can -- unless the --

21 MR. DENNIS NOLAN: Yeah.

22 MR. PAUL BONWICK: -- the Commission
23 wants to hear the full makeup, there was 13 Board
24 members --

25 MR. DENNIS NOLAN: Thirteen (13) Board

1 members.

2 MR. PAUL BONWICK: -- representing a
3 cross section of the various areas that you
4 represented --

5 MR. DENNIS NOLAN: Yeah.

6 MR. PAUL BONWICK: -- as well as
7 members from the community at large. Is that
8 accurate?

9 MR. DENNIS NOLAN: Well, what's --
10 I'll be quick. So there -- there were
11 representatives. Vaughan had the most representatives
12 on the Board, Markham -- and had fewer, and then
13 Barrie.

14 There was two (2) independents. They
15 were -- but they were appointed by -- at various
16 times. There was one (1) from -- from Markham, one
17 (1) from Vaughan, but in this time frame, there was
18 one (1) from Markham and one (1) from Barrie.

19 MR. PAUL BONWICK: Thank you. Can you
20 describe the makeup of the audit committee?

21 MR. DENNIS NOLAN: The audit committee
22 had -- my recollection had three (3) mayors on it,
23 being Mayor Scarpitti; Mayor Bevilacqua; and
24 Mayor Jeff Lehman from Barrie; and Dan Horchik, who
25 was the independent member from Markham and also a

1 lawyer; Gino Rosati, regional councillor from Vaughan.
2 I think that was the committee.

3 MR. PAUL BONWICK: Thank you. Could
4 you speak -- I'm sensitive to time -- but could you
5 give some -- the Commission some indication as it
6 relates to sort of the ethical or best practice steps
7 that PowerStream had engaged throughout its calendar
8 year to ensure that they're maintaining the best
9 possible business practice as it relates to integrity
10 and following the values that they've identified?

11 MR. DENNIS NOLAN: I'm not sure what
12 you're looking for. Is it a description of the
13 governance we had -- I think, you know, we have -- we
14 had, you know, a very good governance structure in
15 that the Board and committees -- audit, and finance,
16 and there was a human resources committee -- and, you
17 know, a very -- very active Board, well-informed
18 Board. I'm not sure what else you're looking for.

19 MR. PAUL BONWICK: That'll suffice.
20 I'm not going to ask you to toot the horn of
21 PowerStream, but we've heard evidence. And have you
22 had an opportunity to hear some of the evidence
23 offered by KPMG, as well as others, related to the
24 high regard that PowerStream has held within the LDC
25 sector and, more generally, in the province of

1 Ontario?

2 MR. DENNIS NOLAN: I did not listen to
3 KPMG's evidence. Unfortunately, I also have a day
4 job, so I couldn't watch all of the testimony.

5 MR. PAUL BONWICK: Would it be your
6 opinion that PowerStream maintains a very high regard
7 within the industry sector in the province of Ontario?

8 MR. DENNIS NOLAN: That's my view.

9 MR. PAUL BONWICK: Thank you. Could
10 you imagine any scenario where the audit committee,
11 the extended Board, or the senior executive management
12 team, or for that matter, any member of your
13 management team would participate in anything that you
14 would perceive to be inappropriate or unethical?

15 MR. DENNIS NOLAN: No.

16 MR. PAUL BONWICK: Did you sit in on
17 the first meeting between myself and Mr. Bentz and
18 Mr. Glicksman as we talked about the opportunity to
19 engage Compensio Communications and more specifically
20 myself within that umbrella?

21 MR. DENNIS NOLAN: I don't believe so.

22 MR. PAUL BONWICK: So then you -- I
23 don't recall you being there as well, but you wouldn't
24 recall the fact that there was much general discussion
25 beyond the PowerStream.

1 In the meetings that you did attend,
2 and I respect the fact that they were somewhat limited
3 in terms of my engagement --

4 MR. DENNIS NOLAN: right.

5 MR. PAUL BONWICK: -- would it be fair
6 to suggest that at every opportunity that I was
7 pushing Mr. Glicksman, Mr. Bentz, when you were in
8 attendance yourself, or others, to drive the best
9 possible deal for the Town of Collingwood?

10 MR. DENNIS NOLAN: Oh, I think that
11 became apparent. Might question in whose interests
12 you were working for at times.

13 MR. PAUL BONWICK: And I appreciate
14 that, hence your concern. But -- bring up
15 ALE005133.0002, please.

16

17 (BRIEF PAUSE)

18

19 MR. PAUL BONWICK: If I could go down
20 about halfway. They don't -- didn't have the pages
21 numbered on mine, but it was the -- the financial
22 evaluation.

23 MR. JOHN MATHER: Page 15.

24

25 CONTINUED BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: Mr. Nolan, there's
2 been some discussion surrounding -- oh, sorry. I'll
3 reference this as we go through it.

4 There's been some discussion related to
5 the -- what we'll refer to as the softer component in
6 my mind, and obviously in the mind of Council and the
7 Collus Board, a very, very important part of the
8 presentation, but there's been some discussion related
9 to the scoring and how PowerStream ranked on that.
10 And if I understood you properly, you're suggesting
11 that -- how would I say this -- much of the
12 information contained in any of the proposals as
13 specific to the softer part of the presentation is
14 available online through their websites, through OEB
15 access.

16 Is -- is that a fair statement?

17 MR. DENNIS NOLAN: When -- I -- I'm
18 saying that -- that my impression is that a lot of the
19 information that has been described by the other
20 proponents as being confidential was generally
21 available, whether on the OEB website, on their own
22 websites, yes.

23 MR. PAUL BONWICK: So if you were --
24 if you were assessing sort of a ranking in terms of
25 what's truly sensitive and confidential information,

1 the fact that certain LDCs spend money in certain
2 areas of the community versus the actual financial
3 component of the bid, where would you land in terms of
4 what truly is sensitive information as it relates to
5 the bid? You hold the financial considerations
6 certainly in a -- in a regard that would be quite
7 confidential?

8 MR. DENNIS NOLAN: I think as I said
9 before, I -- I think there -- the information that was
10 generally available, and in the public domain, I would
11 not -- and -- and -- and it wouldn't be confidential
12 by the terms of the confidentiality agreement. So I'm
13 not sure --

14 MR. PAUL BONWICK: Are you aware of
15 the fact that KPMG provided cert -- sorry.

16 THE HONOURABLE FRANK MARROCCO: Let
17 him finish.

18 MR. PAUL BONWICK: I thought he was
19 finished.

20 THE HONOURABLE FRANK MARROCCO: Let
21 him finish. Had you finished your answer?

22 MR. DENNIS NOLAN: Yes, Your Honour.

23 MR. PAUL BONWICK: I'm trying to go
24 quickly, Your Honour.

25

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: Are you aware of
3 the fact that KPMG provided services to -- to Collus
4 as it related to not only the scoring, but in terms of
5 trying to formulate what has been referred to
6 throughout the hearings or -- or the Commission, as an
7 apples-to-apple kind of scoring? Are you aware of the
8 fact that KPMG provided that service to the Municipal
9 -- or to the -- to Collus?

10 MR. DENNIS NOLAN: No, I was not privy
11 to their methodology or their advice to -- to
12 Collingwood.

13 MR. PAUL BONWICK: Would it make sense
14 to you based on the size, and Collus has been referred
15 to as a relatively small LDC within the -- sort of the
16 provincial LDC sector. Would it make sense to you
17 that Collus and its management team would hire outside
18 consultants or outside experts to help them through
19 this process?

20 MR. DENNIS NOLAN: No, not sur -- it
21 was prudent for them to do so.

22 MR. PAUL BONWICK: And would it make
23 sense again that Collus would use the likes of -- of
24 KPMG to help them do cost analysis, cost benefit
25 analysis, and make sure that they understand fully

1 that it's an apples-to-apples scenario?

2 MR. DENNIS NOLAN: Yes.

3 MR. PAUL BONWICK: And so based on the
4 information that KPMG has provided, the evaluations
5 and subsequent information they provided to Collus,
6 this was the -- the end result in terms of what was
7 provided to the Board and at the end of the day, I
8 guess, the stakeholder, namely the Council.

9 You'll see that Collus, or sorry,
10 you'll see that PowerStream stepped up and paid
11 several million dollars more than the next two (2)
12 closest competitors in ranking.

13 Do you see that on the screen?

14 MR. DENNIS NOLAN: I --

15 MR. PAUL BONWICK: Approximately --

16 MR. DENNIS NOLAN: I can see what --
17 what the numbers are on the screen, yes.

18 MR. PAUL BONWICK: And so you'll see
19 as your second place ranking in the -- in the proposal
20 evaluation summaries, you were approximately 4.1 or
21 \$4.2 million higher than Veridian and you were
22 approximately 3 million -- \$3.2 million higher than
23 Horizon.

24 Do you agree with that?

25 MR. DENNIS NOLAN: The -- the -- the

1 numbers indicate those kinds of differences from --
2 from what is -- is being shown on -- on -- on -- in
3 this slide.

4 MR. PAUL BONWICK: And so again, KPMG
5 provided this information to Collus, and it
6 demonstrates that Hydro One was in fact somewhere in
7 the neighbourhood of \$980,000 higher than your bid.

8 Do you see that?

9 MR. DENNIS NOLAN: I -- I -- I can see
10 that from what -- what the -- the numbers are here. I
11 -- I don't know what their bid was.

12 MR. PAUL BONWICK: I'm going to take
13 you back in time for a moment, 2011, 2010.

14 Do you recall the -- in the media, the
15 -- the unwelcome scandal that was taking place
16 surrounding Hydro One as it related to the gas plants?

17 MR. DENNIS NOLAN: Yes.

18 MR. PAUL BONWICK: So you'll
19 appreciate --

20 MR. DENNIS NOLAN: Sorry, sir. Hydro
21 One with respect to --

22 MR. PAUL BONWICK: Ontario Hydro.

23 MR. DENNIS NOLAN: Well, no --

24 MR. WILLIAM MCDOWELL: I think the
25 record will show it was PG actually.

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: Oh, PG, my
3 apologies.

4 MR. DENNIS NOLAN: And the provincial
5 government at the time.

6 MR. PAUL BONWICK: I was -- where I
7 was coming from was I was googling earlier today,
8 profile issues regarding Hydro One and it was not
9 difficult to pull out stories out of the media in
10 terms of some of the negative exposure they've had in
11 the media as a result of changes in government or
12 decisions made by political leaders at the government
13 level.

14 Would you be aware of that?

15 MR. DENNIS NOLAN: Are you saying
16 political inference in Hydro One?

17 MR. PAUL BONWICK: I'm saying that the
18 reputation or that the profile that Hydro had within
19 the province of Ontario, it -- it regularly
20 experienced negative news stories within the media as
21 it related to its operations?

22 MR. DENNIS NOLAN: I -- I don't know
23 if -- if that's fair. I mean, they had a significant
24 billing issue with -- with their -- with their -- what
25 we refer to as a CIS system, Customer Information

1 System, that went very poorly for them. That they got
2 a lot of negative press. There may be more on that
3 but I'm sure -- they were certainly I think a target
4 of some media.

5 MR. PAUL BONWICK: And so it would be
6 reasonable to think that the nine (9) person scoring
7 panel, the board of directors for Collus, as well as
8 municipal Council would have had access to similar
9 kinds of information that you would have related to
10 that -- to those particular issues in --

11 MR. DENNIS NOLAN: They would have --
12 I'm sorry for not letting you finish. They would have
13 had access to information that's in the public domain,
14 as anyone would.

15 MR. PAUL BONWICK: You -- you and
16 other witnesses, have spoke to the importance that the
17 shareholder was placing on the long-term ability of
18 the partnership. What it was going to mean and the
19 importance of them finding a partner that they could
20 work well with in the coming years.

21 Is that a fair statement?

22 MR. DENNIS NOLAN: Yes, we thought we
23 were that partner.

24 MR. PAUL BONWICK: Would you consider
25 it prudent on behalf of the stakeholder as well as the

1 scoring committee and the board of directors to look
2 beyond a five (5) year horizon, that they should have
3 been viewing things through a ten (10), or fifteen
4 (15) or twenty (20) year horizon in terms of the
5 benefits and the challenges that may be brought
6 forward for their LDC?

7 MR. DENNIS NOLAN: I think you try to
8 look as -- as -- at the long term. I don't -- I don't
9 know that I would take it in those gulps of -- of
10 years but it certainly -- there's -- there's real
11 peril in having a -- a real short-term view in terms
12 of -- of planning and -- and -- and your -- and your
13 vision for your organization.

14 MR. PAUL BONWICK: In your experience
15 and we've heard a significant amount of evidence in
16 this regard, the LDC sector leading up to that time
17 and post that time was experiencing -- was
18 experiencing significant change as it related to back
19 office and various technologies and regulations and
20 technologies that were becoming available.

21 Is that a fair statement?

22 MR. DENNIS NOLAN: I believe that's
23 accurate.

24 MR. PAUL BONWICK: Would you agree
25 that it was challenging -- it was more challenging for

1 some of the smaller LDCs to accommodate and adjust to
2 the changes that were coming down as it relates to the
3 LDC sector?

4 MR. DENNIS NOLAN: You know, the --
5 you know, my view is that it -- it likely was and --
6 because we know the challenges that, you know, a
7 comparably large organization had with -- with those
8 regulatory requirements and -- and changing
9 technologies, et cetera, for sure.

10 MR. PAUL BONWICK: The idea of having
11 a regional growth strategy out of Collingwood, are you
12 aware of the fact that some of the smaller LDCs, I'll
13 put it politely, were sensitive to some of the larger
14 LDCs snapping them up?

15 MR. DENNIS NOLAN: Absolutely.

16 MR. PAUL BONWICK: Would you agree
17 that some of the smaller LDCs had a real kinship with
18 regards to the LDC in -- in their specific community,
19 a strong relationship, a good cultural synergy?

20 MR. DENNIS NOLAN: Sorry, you lost me
21 at the end of that. The -- the --

22 MR. PAUL BONWICK: Sorry, that was a
23 bit -- a bit of a run-on. Do you think that most
24 municipalities -- smaller municipalities with smaller
25 LDCs had a very strong relationship with those LDCs?

1 MR. DENNIS NOLAN: Yes. I -- I think
2 there was, you know, a great deal, as I think I said
3 earlier, in -- pride in -- in their local LDCs and
4 very much a concern that you referred to earlier,
5 about being assimilated into large LDCs.

6 There's a perceived notion of loss of
7 control, which I think was fairly illusionary because
8 of the regulation by the Ontario Energy Board.

9 MR. PAUL BONWICK: So, then
10 understanding the sensitivities within the political
11 domain, and I'm not suggesting for a moment they were
12 real, but there were sensitivities out there --

13 MR. DENNIS NOLAN: Yes.

14 MR. PAUL BONWICK: -- and I -- I think
15 we can agree on that, recognizing that there was
16 changes within the LDC sector that were going to cause
17 all organizations to speed up and adopt new policies
18 and practices.

19 And I guess the last thing would be,
20 there had been a push for a number of years, if I'm
21 not mistake, towards consolidation irrespective of
22 what political party was in office.

23 Would you agree that that push was in
24 place to see us shrink down the number of LDCs in
25 Ontario?

1 MR. DENNIS NOLAN: We believe that
2 there -- there was going to be increasing pressure for
3 consolidation. We had been leaders in -- in
4 significant consolidation in the creation of
5 PowerStream.

6 Horizon was another one (1) that --
7 that, you know, had achieved some significant
8 consolidation. But, at the same time, there -- as --
9 as you point out, there was -- a lot of the smaller
10 LDCs wanted -- were very reluctant to -- to go down
11 that path.

12 But the -- the thought was that the
13 government didn't really like the idea, nor did it
14 appear to be efficient, and -- and definitely isn't,
15 or wasn't, for there to be seventy (70) or eighty (80)
16 LDCs, that there are synergies, and we -- that's what
17 we believed at PowerStream in coming together, that
18 you're stronger and more efficient.

19 MR. PAUL BONWICK: So, then is it
20 reasonable to state that you paid several million
21 dollars more than the other two (2) bidders, that you
22 certainly put forward a significant effort in trying
23 to acquire the 50 percent stake within Collus?

24 Would you agree or would you like to
25 comment on the fact that that was predicated on the

1 ability to grow this regional LDC in a very
2 significant way within our own catchment area?

3 MR. DENNIS NOLAN: Quite frankly, it
4 wouldn't make sense on its own to -- to -- for -- to
5 be in a static situation of borrowing 50 percent of
6 Collus, so it only makes -- made sense with -- as a
7 catalyst for further consolidation, regional
8 consolidation, or at least with other -- some other
9 utilities in the area.

10 MR. PAUL BONWICK: Were you aware of
11 that fact that during the time that I was engaged with
12 PowerStream, that I was also reaching out to utilities
13 like Wasaga Hydro, meeting with the chair of CHEC as
14 well as others within the organizations to inquire
15 about their level of interest as it related to
16 potential mergers, sale, other matters related to
17 acquisitions of some kind?

18 MR. DENNIS NOLAN: As you know, you
19 weren't reporting to me, but I was generally aware of
20 those efforts, yes.

21 MR. PAUL BONWICK: Thank you.

22

23 (BRIEF PAUSE)

24

25 MR. PAUL BONWICK: There's been some

1 discussion about a memo that I prepared. And I can
2 either bring it up. It was an in -- it was a con --
3 memo prepared on my letterhead. The memo identified
4 where in my interpretation the various competitors
5 stood in terms of how they were managing their
6 engagement with the Town of Collingwood.

7 Will you recall that memo?

8 MR. DENNIS NOLAN: I -- I just would
9 like to know specifically what memo you're referring
10 to.

11 MR. PAUL BONWICK: ALE000 -- it's
12 ALE916, I believe, I think.

13

14 (BRIEF PAUSE)

15

16 MR. PAUL BONWICK: I'm hoping I got
17 this right. I was jotting number numbers.

18

19 (BRIEF PAUSE)

20

21 MR. PAUL BONWICK: ALE --

22 MR. JOHN MATHER: Do you know the
23 month or the date or --

24 MR. PAUL BONWICK: It was the Compenso
25 memo. It was up just a short time ago.

1 MR. JOHN MATHER: The one (1) that
2 discusses Hydro One and Veridian?

3 MR. PAUL BONWICK: Yes.

4 MR. JOHN MATHER: Okay. TOC59013.

5 MR. PAUL BONWICK: Okay. Then --
6 yeah, there it is.

7

8 (BRIEF PAUSE)

9

10 MR. PAUL BONWICK: So, just scan up
11 quickly so Mr. Nolan can --

12 MR. DENNIS NOLAN: Yes, I'm -- I'm
13 familiar --

14 MR. PAUL BONWICK: You --

15 MR. DENNIS NOLAN: With it now.

16

17 CONTINUED BY MR. PAUL BONWICK:

18 MR. PAUL BONWICK: Okay. That's
19 great. And thank you.

20 MR. DENNIS NOLAN: I just wanted a
21 confirmation of what --

22 MR. PAUL BONWICK: Right.

23 MR. DENNIS NOLAN: -- what you were
24 talking about.

25 MR. PAUL BONWICK: So, your earlier

1 testimony -- if I'm correct in asserting this, your
2 earlier testimony demonstrated that, through internal
3 searches, as well as review of the Foundation
4 Documents, as well as your own recollection, you never
5 received a copy of this, correct?

6 MR. DENNIS NOLAN: I have no knowledge
7 of receiving a copy of this.

8 MR. PAUL BONWICK: Thank you.

9 MR. DENNIS NOLAN: And, as -- as you
10 indicated, it -- it -- to my -- as understand, did not
11 come up in any of the extensive searches of our
12 documents.

13 MR. PAUL BONWICK: All right. Thank
14 you. Can I bring up ALE488?

15

16 (BRIEF PAUSE)

17

18 MR. PAUL BONWICK: ALE967.

19

20 (BRIEF PAUSE)

21

22 MR. PAUL BONWICK: What I was -- and
23 again, the document is -- is less important unless you
24 need to reference it, but there was some points
25 brought forward with regards -- or -- or there was --

1 through cross-examination it was suggested that you
2 had included a community fund as part of the proposal.

3 And it showed in an earlier email that
4 I had recommended, in fact, a community fund of some
5 consideration as part of the proposal. Do you recall
6 that?

7 MR. DENNIS NOLAN: Yes, I do.

8 MR. PAUL BONWICK: Is it only
9 reasonable to state then that if you had never
10 received -- and there's no record of you ever
11 receiving that document. If I was making that
12 recommendation, would it only be reasonable for you to
13 state that I am the guy that's making the
14 recommendation as opposed to getting the information
15 from somewhere else?

16 MR. DENNIS NOLAN: I -- yes, I think
17 that's -- that's fair. And I -- if -- if you made
18 that recommendation, yes.

19 MR. PAUL BONWICK: I could rephrase
20 it. There would be no reason for you to think that
21 anybody other than me was making the recommendation?

22 MR. DENNIS NOLAN: Correct.

23

24

(BRIEF PAUSE)

25

1 MR. PAUL BONWICK: Are you aware of
2 the fact that during the period of the -- of 2010 to
3 2012, that Compenso communications maintained a four
4 (4) or five (5) suite in downtown Collingwood?

5 MR. DENNIS NOLAN: No, I was not aware
6 of that.

7 MR. PAUL BONWICK: Were you aware of
8 the fact that we had offices in Collingwood and staff
9 in -- in Collingwood?

10 MR. DENNIS NOLAN: I was not aware of
11 -- of what staff or offices that you had. I -- I
12 assumed that you were -- had -- had offices in -- in
13 Collingwood. That's -- that's I had no knowledge of
14 that.

15 MR. PAUL BONWICK: So I just want to
16 go to the point. As a -- as corporate lawyer, when --
17 when a corporation enters into an agreement and in
18 turn -- in turn there's a billing structure within
19 that agreement, based on your experience if the
20 corporation invoices its client for a dollar amount,
21 and this particular is \$10,000, do you typically
22 perceive that -- that \$10,000 as then going directly
23 into the owner's pocket?

24 MR. DENNIS NOLAN: No. We're -- we
25 were engaging you as principal of your corporation, if

1 that's what you're getting at, but with you as -- as
2 principal.

3 MR. PAUL BONWICK: And so you'd
4 recognize, of course, that through a \$10,000 a month
5 billing there's a significant amount of back office
6 support and leases and insurance and all that kind of
7 stuff that goes into the operation of a company like
8 Compenso.

9 MR. DENNIS NOLAN: I have no idea what
10 your cost structures were but that sounds reasonable.

11 MR. PAUL BONWICK: And there's a
12 certain irony in being questioned about that fee but--

13 Another important matter here that I
14 wanted to cover off with you.

15 Excuse me, Your Honour, I'm just about
16 done.

17

18 (BRIEF PAUSE)

19

20 MR. PAUL BONWICK: You've had
21 significant experience within the LDC sector, and
22 we've heard that. I understand there may be a bias
23 but I think that bias has long since passed as a
24 result of the sale.

25 And so my question to you is, post

1 transaction, do you believe -- do you believe that the
2 ratepayers -- the taxpayers, at the end of the day
3 this shareholder, namely Collingwood, for Collus,
4 received the best possible deal available to them
5 through this transaction process?

6 MR. DENNIS NOLAN: I absolutely
7 believe in the end they did, and there -- there was
8 lots of other benefits other than the sale proceeds
9 and -- and there was lots of benefits, and there could
10 have been more if the -- the spirit of the partnership
11 that I think that we had established had been
12 maintained.

13 So, yes, I would agree that -- that I -
14 - I do believe that they got a very good deal, both
15 monetarily and for the other things that they were
16 looking for.

17 MR. PAUL BONWICK: You would of course
18 be involved in various association or LDC sector
19 meetings or conventions or conferences and things of
20 that regard, I suspect, following this transaction?

21 MR. DENNIS NOLAN: Occasionally.

22 MR. PAUL BONWICK: Did you ever --
23 could you share with the Commission the kind of
24 feedback you got post transaction over the course of
25 the next year?

1 MR. DENNIS NOLAN: I think it was very
2 positive and it was -- was seen as something that was,
3 you know, very -- as -- you know, as -- as very -- a
4 bit unusual but po -- positive, and I -- I think they
5 -- they -- they saw us in -- in -- in a better light
6 as -- as a result of the transaction.

7 MR. PAUL BONWICK: That ends my
8 questions.

9 THE HONOURABLE FRANK MARROCCO: Thank
10 you, Mr. Bonwick.

11 Ms. Bain, I got myself into some
12 difficulty the last time.

13 MR. MICHAEL WATSON: That's -- that's
14 -- that's -- that's quite all right. We'll -- we'll
15 ensure that you continue to have a back and forth,
16 Your Honour, but I have just some very few points.

17 I just wondered, however, if I might
18 enquire, we have the next witness who is eager to get
19 some evidence in, and we could get at least half an
20 hour in. We've asked him to be here and I wondered
21 whether that's your intention, at least to get him
22 started.

23 THE HONOURABLE FRANK MARROCCO: That
24 is my -- that is my intention.

25 MR. MICHAEL WATSON: Thank you, Your

1 Honour. Fine. Then -- then I'll proceed very quickly
2 with my few points.

3

4 EXAMINATION BY MR. MICHAEL WATSON:

5 MR. MICHAEL WATSON: And you will
6 remember, Mr. Nolan, that you were cross-examined by
7 Mr. Marron at some great length about the entire issue
8 concerning disclosure and the letter -- the email from
9 -- that copied Ms. Almas and all of that.

10 Do you remember that?

11 MR. DENNIS NOLAN: Yes, I do.

12 MR. MICHAEL WATSON: I want to ask you
13 just about something that then led up that to give
14 some context to it.

15 Could we please have ALE163?

16

17 (BRIEF PAUSE)

18

19 MR. MICHAEL WATSON: Thank you. And
20 what I'd like to do -- so this is an email chain that
21 preceded a lot of what was put to you. And what I'd
22 like to do is ask to go to the bottom, this email
23 chain, June 1st. If we can go to the bottom of the
24 email chain. And we see here now -- thank you -- May
25 26, Mr. Bonwick is -- is sending to John Glicksman,

1 he's saying:

2 "Hi, John. Pleasure to meet you. I
3 appreciate the confidence Brian you
4 have demonstrated. Here is a copy
5 of the proposal that I presented to
6 the audit committee a few weeks ago.
7 Please review the contents..."

8 Et cetera. And this was a proposal
9 that then was the basis of the draft agreement. Do
10 you remem -- that -- that was prepared by PowerStream.
11 Do you remember that?

12 MR. DENNIS NOLAN: Yes, I do.

13 MR. MICHAEL WATSON: And so you were
14 made aware of this?

15 MR. DENNIS NOLAN: Yes.

16 MR. MICHAEL WATSON: Thank you. Go up
17 to the next one then.

18 And then we see Mr. Glicksman and we're
19 -- on June 30 -- May 31st saying:

20 "Paul, thanks again for sending a
21 soft copy proposal. Attached,
22 please, find for your review, a copy
23 of the draft consulting engagement
24 and confidentiality agreements that
25 we have developed. We've attempted

1 to build in as much a proposal as we
2 deemed relevant at this time --"

3 Et cetera. And you were aware that
4 this was being sent out?

5 MR. DENNIS NOLAN: Yes.

6 MR. MICHAEL WATSON: Yes. And -- and
7 the -- and that is the draft consulting agreement that
8 you had the pen on and had prepared, right?

9 MR. DENNIS NOLAN: That's correct

10 MR. MICHAEL WATSON: And --

11 THE HONOURABLE FRANK MARROCCO: I -- I
12 think Mr. Nolan's copied on it.

13 MR. MICHAEL WATSON: Indeed, yes.
14 Thank you, Your Honour.

15

16 CONTINUED BY MR. MICHAEL WATSON:

17 MR. MICHAEL WATSON: And -- and this
18 was dated May 31st. And do you remember that the
19 first -- that the draft agreement that was not signed
20 was dated June 1st?

21 MR. DENNIS NOLAN: Correct.

22 MR. MICHAEL WATSON: And so was the
23 intention indeed that it was going to be signed on --
24 on June 1st, assuming that everything was
25 satisfactory?

1 MR. DENNIS NOLAN: Assuming that
2 everything was satisfactory in terms of the disclosure
3 in particular, yes.

4 MR. MICHAEL WATSON: Yes. Thank you.
5 Go up to the next email then in the chain.

6 And -- and so now, the same time -- and
7 sorry, let's just go back. I -- I want to get the
8 time. Just go back down a little bit. Okay. So it's
9 12:53 p.m. on the 31st. Go back up.

10 And then about five (5) hours later,
11 Mr. Bonwick writes back to Mr. Glicksman, with a copy
12 to Bentz and Nolan saying:

13 "Hi, John. Thank you for having the
14 documentation prepared in an
15 expeditious manner. They are in
16 keeping with our discussion."

17 Dah-dah-dah.

18 "I do have signing authority."

19 And then -- and then you'll see in the
20 middle, it says:

21 "There's one (1) some correction
22 required in the disclosure paragraph
23 related to notice to the clerk. The
24 paragraph is correct in its
25 assertion that the Mayor has been

1 informed and has subsequently agreed
2 to provide written confirmation to
3 PowerStream. I have not formally
4 engaged with the clerk or any other
5 municipal staff on this matter at
6 this time. Brian and I had
7 discussed partic..."

8 And then he says:

9 "Brian and I had discussed
10 participating in a meeting with
11 several municipal and LDC officials
12 from the Town of Collingwood and
13 Collus at a date and time to be
14 determined should the Municipality
15 announce an RFP."

16 I take it you read this?

17 MR. DENNIS NOLAN: Yes.

18 MR. MICHAEL WATSON: I want to ask you
19 about two (2) points, and I'll ask the second one
20 first.

21 You had mentioned yesterday in your
22 evidence that it was to Mr. Bonwick's credit that it
23 was the one who had suggested a meeting. Is this what
24 you were taking about?

25 MR. DENNIS NOLAN: That -- yes, that

1 he was suggesting the -- the further meeting with --
2 with other municipal officials.

3 MR. MICHAEL WATSON: All right. And -
4 - that's what ultimately became the June 29th meeting?

5 MR. DENNIS NOLAN: Correct.

6 MR. MICHAEL WATSON: All right. And
7 then just going up then, there's one (1) small
8 correction that's -- no, sorry -- sorry, don't, just
9 stay there -- but the point just above.

10 I -- I take it -- it made some impact
11 on you when he said that he had not given notice to
12 the clerk but only to the Mayor?

13 MR. DENNIS NOLAN: Absolutely, it did.

14 MR. MICHAEL WATSON: And what was that
15 impact?

16 MR. DENNIS NOLAN: That was an impact
17 that led to Mr. Glicksman sending an email that --
18 that was not the kind of disclosure that we had talked
19 about. I -- I think he used the term
20 'misunderstanding'.

21 MR. MICHAEL WATSON: Yes, indeed.

22 MR. DENNIS NOLAN: So --

23 MR. MICHAEL WATSON: Let's go up then
24 -- oh, I'm sorry. I don't want to --

25 MR. DENNIS NOLAN: No, that's all

1 right.

2 MR. MICHAEL WATSON: -- cut you off.

3 Let's go up then to the email from Mr. Glicksman, and
4 this is what the -- what you're referring to, right?

5 MR. DENNIS NOLAN: Yes.

6 MR. MICHAEL WATSON: All right. And
7 we've -- we've gone through this before and we
8 understand this, but there's one (1) part here that I
9 -- hasn't really been focussed on, I think, at all.

10 In the second line -- at the end of the
11 send line, you -- it says "he" that is Brain, Brian
12 Bentz:

13 "Was under the impression you'd made
14 disclosure to and received clearance
15 from the City Clerk, that under the
16 Municipal Conflict of Interest there
17 is no conflict for you to do work
18 leading to or on a potential RFP of
19 Collus --"

20 And that you had received written
21 confirmation of same from -- from City Clerk.

22 Was -- was this the content that is
23 relating specifically to a potential RFP of Collus
24 that you expected and were communicating and that
25 PowerStream was communicating to Mr. Bonwick was

1 expected of him?

2 MR. DENNIS NOLAN: Yes.

3 MR. MICHAEL WATSON: All right. Thank
4 you. That's all for that one. And then if we could
5 go then to ALE178.

6

7 (BRIEF PAUSE)

8

9 MR. MICHAEL WATSON: And just while
10 we're getting that one up. I know we've looked at it
11 again but I just want to remind us of it. I -- I take
12 it that it was that misunderstanding, which is the way
13 in which it -- it was put, that led to the June 1
14 draft not being executed and being replaced by --
15 well, an identical one but with the date June 7th.

16 MR. DENNIS NOLAN: That's correct.

17 MR. MICHAEL WATSON: Okay. And we --
18 and we see here then that immediately after that --
19 we've heard evidence about Mr. Bonwick going to see
20 Sara Almas, the clerk, immediately after that email
21 from Mr. Glicksman, right?

22 MR. DENNIS NOLAN: That's correct.

23 MR. MICHAEL WATSON: All right. And
24 then we have on the next day, Mr. Bonwick:

25 "Good morning, John. Further to our

1 emails, the original documents that
2 you sent through are now completely
3 accurate."

4 And I take it you understood when --
5 when you saw this -- well, sorry. Did you -- did you
6 see this?

7 MR. DENNIS NOLAN: Yes.

8 MR. MICHAEL WATSON: All right. That
9 -- that referred to the draft agreement?

10 MR. DENNIS NOLAN: Correct.

11 MR. MICHAEL WATSON: And then:

12 "The clerk has been thoroughly brief
13 by me."

14 Did you take that to be that he was
15 saying that he had been -- the clerk had been
16 thoroughly briefed in accordance with what Mr.
17 Glicksman had communicated to him was required to be
18 stated?

19 MR. DENNIS NOLAN: Yes.

20 MR. MICHAEL WATSON: Thank you.
21 That's it for that one.

22 On the issue of -- very quickly on the
23 issue of no success fee for -- for the Collus
24 transaction, could we have ALE441, please.

25

1 (BRIEF PAUSE)

2

3 MR. MICHAEL WATSON: All right. And
4 this is an email from Paul Bonwick to John Glicksman,
5 dated September 27th. And -- and you indicated that
6 John Glicksman was the one who was involved and
7 engaged in the negotiations or discussions with Mr.
8 Bonwick about an extension to the consulting
9 agreement, right?

10 MR. DENNIS NOLAN: That's correct.

11 MR. MICHAEL WATSON: All right. And
12 -- and we see in the first line that there was a
13 proposal: "the proposal disused in your office last
14 Thursday."

15 I take it you were aware that a
16 proposal was being discussed?

17 MR. DENNIS NOLAN: Yes.

18 MR. MICHAEL WATSON: All right. In
19 the middle of the page, it says:

20 "It is in this regard I agree to the
21 payment terms as discussed. I agree
22 that there will be no bonus attached
23 in any way to the Collus
24 initiative."

25 And then he says:

1 "I'd appreciate consideration to
2 making the new payment terms
3 retroactively."

4 I take it that came to your attention?

5 MR. DENNIS NOLAN: Yes.

6 MR. MICHAEL WATSON: And was that his
7 -- his confirmation to you that he agreed that there
8 wouldn't be?

9 MR. DENNIS NOLAN: That there would be
10 no bonus attached to the Collus RFP, yes.

11 MR. MICHAEL WATSON: Thank -- thank
12 you. That's it for that one.

13 I'm -- I think maybe finally -- I'm
14 going to make this finally, there was some -- His
15 Honour asked a question. I just wanted to clarify
16 just a little bit of the timing. Do you remember that
17 he asked you why PowerStream had offered more money
18 since it had already been selected as the preferred
19 and -- or successful bidder; was the way the question
20 was?

21 MR. DENNIS NOLAN: Yes.

22 MR. MICHAEL WATSON: All right. And
23 if we -- and -- and now the meeting in which the
24 request was made of PowerStream was December 1, we all
25 know, right?

1 MR. DENNIS NOLAN: That's correct.

2 MR. MICHAEL WATSON: All right. And
3 could we, please, turn up the Foundation Document to
4 paragraph 429 and 430, just very quickly to get the
5 events surrounding PowerStream being identified.

6 Do we see here that on December 2nd, a
7 joint meeting of Collus/Power and Collus/Solutions was
8 convened? That's what it says here?

9 MR. DENNIS NOLAN: M-hm.

10 MR. MICHAEL WATSON: All right.

11 MR. DENNIS NOLAN: Yes.

12 MR. MICHAEL WATSON: Sorry, yes. And
13 then 4:30:

14 "So joint board meeting stated that
15 no conflicts. The following
16 resolution was passed upon motion
17 duly made, seconded unanimously,
18 carried, the board approved the
19 Collus/Power Board Corp. here by
20 accepts the findings of the
21 Strategic Partnership Task team and
22 recommends to Collingwood Council
23 that Collus/Power Board be directed
24 to undertake negotiations with
25 PowerStream."

1 All right. I take it you -- you knew
2 that -- that first of all Collus -- not just the
3 Strategic Partnership Task Team, but Collus would have
4 to approve this first, right?

5 MR. DENNIS NOLAN: Yes, correct.

6 MR. MICHAEL WATSON: And -- and then
7 you were aware that it would have to go to -- to town
8 Council for approval?

9 MR. DENNIS NOLAN: Yes, absolutely.

10 MR. MICHAEL WATSON: Could we turn,
11 please, to paragraph 443, and then I'm almost done.

12 All right. And -- and we see -- and
13 this is, by the way -- this deals with -- with the
14 December 5th meeting of Town Council. I take it you
15 were aware that that was happening?

16 MR. DENNIS NOLAN: Yes, I was aware.

17 MR. MICHAEL WATSON: All right. And
18 that there was an in camera presentation?

19 MR. DENNIS NOLAN: Yes, I believe so.

20 MR. MICHAEL WATSON: All right. And
21 then the presentation advised Council, December 5th:

22 "PowerStream has agreed to increase
23 their offer up to 8 million. This
24 represents a 10 percent increase and
25 moves the offer to the highest range

1 for premiums paid in recent years at
2 one point six (1.6) times book
3 value."

4 You were aware, I take it, of that one
5 point six (1.6) times?

6 MR. DENNIS NOLAN: Yes, I was.

7 MR. MICHAEL WATSON: And I take it
8 that that's one of the things you had in mind when you
9 said on December 1, Well, seven point three (7.3) is
10 already at the high end of the range?

11 MR. DENNIS NOLAN: Absolutely.

12 MR. MICHAEL WATSON: All right. And
13 then down to 445. And here:

14 "Council carried a motion to direct
15 Collus Board to continue
16 negotiations with the preferred
17 proponent, being PowerStream, for
18 potential strategic partnership
19 arrangement."

20 And I take it that you became aware of
21 this then shortly thereafter?

22 MR. DENNIS NOLAN: As I -- yes, I was
23 aware that -- shortly thereafter that -- that we were
24 selected, and, as -- as I mentioned to His Honour,
25 that there would be further negotiations as a result.

1 MR. MICHAEL WATSON: All right. I had
2 another few points but I'm going to just abandon them
3 now.

4 And that's it for me, Your Honour.
5 Thank you.

6 THE HONOURABLE FRANK MARROCCO: Any
7 re-examination?

8 MR. JOHN MATHER: No, Your Honour.

9 THE HONOURABLE FRANK MARROCCO: Thank
10 -- thank you very much, Mr. Nolan.

11 MR. DENNIS NOLAN: Thank you.

12

13 (WITNESS STANDS DOWN)

14

15 MR. MICHAEL WATSON: Your Honour,
16 might I just step out to get the next witness?

17 THE HONOURABLE FRANK MARROCCO: We'll
18 stand down for a few minutes. Let us know when you're
19 ready to go.

20 MR. MICHAEL WATSON: Thank you, Your
21 Honour.

22

23 --- Upon recessing at 5:31 p.m.

24 --- Upon resuming at 5:34 p.m.

25

1 BRIAN BENTZ, Sworn

2

3 EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

4 MS. KATE MCGRANN: Good evening,
5 Mr. Bentz.

6 MR. BRIAN BENTZ: Good evening.

7 MS. KATE MCGRANN: To begin, would you
8 please provide a brief overview of your professional
9 background as it relates to your work at PowerStream.

10 MR. BRIAN BENTZ: I started my career
11 in 1992 in Barrie Public Utilities Commission as an
12 accounting supervisor. Worked my way up to chief
13 operating officer and chief financial officer.

14 When the utility was corporatized in
15 2000, we were involved in a number of acquisitions in
16 Simcoe County, including New Tecumseth, which includes
17 Beaton, Tottenham, and Alliston; Essa township, which
18 is the village of Thornton, Bradford,
19 West Gwillumbury, and Penetanguishine.

20 In 2002, I became -- I moved from
21 Barrie Public Utilities Commission to Hydro Vaughan
22 Distribution Inc. in York Region and accepted the
23 position of president and chief executive officer.
24 That was in 2002.

25 Shortly thereafter, I was involved in

1 negotiations of a merger with Markham Hydro and
2 Hydro Vaughan Distribution, and they jointly owned
3 Richmond Hill Hydro at the time. And so that merger
4 took place in June of 2004, and it created
5 PowerStream. And I was appointed president and CEO of
6 PowerStream in June of 2004.

7 In 2005, we acquired Aurora Hydro
8 Connections Inc. In 2009, we merged with Barrie Hydro
9 and the entities that it had acquired in 2000. In
10 2012, we acquired the 50 percent in Collus.

11 And in 2014, we began merger talks with
12 Enersource and Horizon, and that was precipitated by
13 the Clark panel, the premier's advisory Council on
14 government assets, that recommended that Hydro One
15 Brampton be sold. So we negotiated with the Province
16 of Ontario the sale of Hydro One Brampton.

17 And that transaction was completed in
18 January of 2017, the merger of PowerStream,
19 Enersource, and Horizon. And a month later, we
20 acquired Hydro One Brampton from the Province of
21 Ontario.

22 And then in January 1st of this year,
23 we merged with Guelph Hydro. So that's a summary of
24 my role at PowerStream.

25 MS. KATE MCGRANN: And your current

1 position is?

2 MR. BRIAN BENTZ: I'm currently the
3 president and CEO of Alectra.

4 MS. KATE MCGRANN: We heard evidence
5 that PowerStream had a growth strategy in place. Was
6 that accurate for the period between 2010 and 2012?

7 MR. BRIAN BENTZ: Yes.

8 MS. KATE MCGRANN: What resources did
9 PowerStream have in-house to support its growth
10 strategy?

11 MR. BRIAN BENTZ: We had built
12 competencies in that area. Our -- our finance team
13 was -- had financial models, could do valuations. We
14 had a team that was looking at the marketplace with
15 respect to accusations. We would negotiate when --
16 when transactions became available. We would
17 negotiate terms and conditions of mergers and
18 acquisitions with internal staff, so mostly finance
19 and regulatory staff.

20 MS. KATE MCGRANN: Other than finance
21 and regulatory, any other strengths related to growth
22 strategy in-house?

23 MR. BRIAN BENTZ: So we had
24 competencies in post-merger integration, sort of part
25 of the organization of bringing companies together,

1 driving synergies, driving back office synergies. I
2 would say also creating a common culture, hopefully a
3 positive culture. So sort of the HR and culture side
4 of things, as well.

5 MS. KATE MCGRANN: With respect to
6 identifying potential opportunities for growth, did
7 you have strengths that ask for doing that kind of
8 work?

9 MR. BRIAN BENTZ: We were also
10 monitoring the marketplace for what was out there in
11 terms of transactions, who was interested in a
12 potential transaction. And, you know, which
13 municipalities and utilities were -- were, you know,
14 sort of reviewing their options with respect to merger
15 and acquisition activity.

16 MS. KATE MCGRANN: Was there an
17 individual or group or -- of individuals within the
18 company who were tasked with that work?

19 MR. BRIAN BENTZ: Well, it's more
20 the -- the executive team took -- took responsibility
21 for that, the broader executive team took
22 responsibility for the strategy around mergers and
23 acquisitions.

24 MS. KATE MCGRANN: And did you feel
25 that you were having success with that approach?

1 MR. BRIAN BENTZ: Yes. We thought we
2 had a -- we had a successful track record with respect
3 to merger and acquisitions.

4 MS. KATE MCGRANN: Have you
5 participated in an RFP for an LDC before the Collus
6 Power RFP?

7 MR. BRIAN BENTZ: A formal RFP -- I'm
8 trying to remember the acquisitions in Barrie in the
9 early 2000s. I think they were primarily sole
10 sourced.

11 The Aurora transaction, they were
12 looking at a merger with Newmarket at the time, as
13 well as the sale with PowerStream. It wasn't a formal
14 RFP, but they were examining options with respect to,
15 you know, what they were doing.

16 Similarly in the Barrie merger, there
17 were, you know, a number of deputations, including
18 Veridian who came to Barrie City Council and -- and
19 made their case as to why they should be considered
20 for -- as a merger partner with -- with Barrie Hydro.

21 MS. KATE MCGRANN: And why did you
22 mention Aurora in response to a question about having
23 participated in an RFP before?

24 MR. BRIAN BENTZ: Because we had
25 acquired Aurora in 2005.

1 MS. KATE MCGRANN: I was looking for
2 the analogy you see between that exercise and the RFP.

3 MR. BRIAN BENTZ: It was an
4 acquisition of a utility, so no. It wouldn't be an
5 RFP. I was just sort of going through the list.

6 MS. KATE MCGRANN: I understand that
7 PowerStream had retained consultants to assist in its
8 growth strategy before. Is that accurate?

9 MR. BRIAN BENTZ: Yes.

10 MS. KATE MCGRANN: We heard reference
11 to Bridgepoint. I think that's Bridgepoint Group.
12 Have I got that right?

13 MR. BRIAN BENTZ: Yes.

14 MS. KATE MCGRANN: Any other
15 consulting -- consultants that you can remember
16 retaining?

17 MR. BRIAN BENTZ: No. The banks
18 would -- who did valuations were aware of
19 transactions. CIBC, I think, was active in this
20 space. So, you know, they -- they weren't a
21 consultant per se, but they would apprise you of
22 potential transactions that -- that might be
23 available, and we might want to consider.

24 MS. KATE MCGRANN: With respect to
25 your -- your work with Bridgepoint Group, what kind of

1 work would they do for you?

2 MR. BRIAN BENTZ: They would do --
3 they would look at the -- the landscape mostly in
4 the -- the utility and municipal sector. And what
5 were the deliberations of the -- of the Boards of
6 Directors? What were the deliberations of the
7 executive management teams of these utilities? And
8 what were the Councils thinking? Sort of an
9 intelligence gathering in terms of who might be
10 interested in a transaction.

11 MS. KATE MCGRANN: In your work with
12 Bridgepoint, did you ever run into a relationship that
13 they had that caused you to ask questions or take
14 steps to address any potential conflicts of interest?

15 MR. BRIAN BENTZ: No. I -- I can't
16 recall any offhand, no.

17 MS. KATE MCGRANN: I'm going to ask
18 you some questions about interactions you had with
19 Mr. Houghton starting at the end of 2010.

20 Before the end of 2010, did you know
21 Mr. Houghton?

22 MR. BRIAN BENTZ: Yes.

23 MS. KATE MCGRANN: And how did you
24 know him?

25 MR. BRIAN BENTZ: So I had worked at

1 Barrie Public Utilities Commission, as I mentioned, in
2 1992 to 2002. Mr. Houghton was operating the utility
3 in Collingwood and, I think, post the merger in the --
4 in the outlying service areas in -- in Stayner,
5 Creemore, and Thornbury after 2000.

6 And so in the sense that we were, I
7 would say, industry colleagues, there was a
8 familiarity. In the early years, I was more focussed
9 internally. I really didn't have an external role.

10 There was the Municipal Electric
11 Association was the advocacy and networking group for
12 the 300 utilities across Ontario at the time, and our
13 general manager was involved in the advocacy and
14 networking aspect of that. So there was a -- there
15 was a relationship with the utilities in our district,
16 and so he had a relationship there.

17 As I had more of an outward-facing
18 role, as I became chief operating officer and chief
19 financial officer, I would attend industry events,
20 like the annual general meeting in the Royal York for
21 the Municipal Electric Association or the Electricity
22 Distributors Association. So I would see him there,
23 see him at industry events.

24 When I -- when I moved to York Region
25 and worked for Hydro Vaughan, it was -- you know, our

1 paths crossed less frequently but still at industry
2 events. So that would be the nature of the
3 relationship.

4 MS. KATE MCGRANN: During the period
5 between 2006 and 2010, did you have the kind of
6 relationship where you would be contacting each other
7 directly?

8 MR. BRIAN BENTZ: No. It was -- it
9 was mostly sort of a -- you know, an industry
10 relationship like we'd have with any other utility.

11 MS. KATE MCGRANN: I'm going to ask
12 you about a November 23rd, 2010 email that you
13 received from Mr. Houghton and some communications you
14 had with him afterwards.

15 Before I do that, I'm going to ask that
16 some notes be shown to you. They're at ALE8.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: I understand that
21 these are your notes. Are you able to -- can you
22 confirm that?

23 MR. BRIAN BENTZ: Yes.

24 MS. KATE MCGRANN: We've been provided
25 with a transcript of these notes, and they're at

1 ALE50195.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: This is the
6 transcript that we've provided with the notes at ALE8.
7 Were you involved in the creation of this transcript?

8 MR. BRIAN BENTZ: Yes, I was.

9 MS. KATE MCGRANN: Can you confirm
10 that it's an accurate transcript of the notes that we
11 looked at at ALE8?

12 MR. BRIAN BENTZ: Yes.

13 MS. KATE MCGRANN: It's my
14 understanding that you made these notes to reflect,
15 amongst other things, interactions that you had with
16 Mr. Houghton starting in the end of 2010 for your own
17 reference in the spring of 2011. Is that accurate?

18 MR. BRIAN BENTZ: Yes.

19 MS. KATE MCGRANN: Okay. So we'll
20 come back to these notes so that you can refer to
21 them --

22 MR. BRIAN BENTZ: Okay.

23 MS. KATE MCGRANN: -- as we talk about
24 your -- your interactions with Mr. Houghton.

25 Could we pull up CPS8331_00001?

1

2

(BRIEF PAUSE)

3

4

MS. KATE MCGRANN: If we can scroll
5 down a bit just to see the email at the bottom of the
6 page so we can see the whole thing? That's perfect.
7 Thank you.

8

We're looking at a November 23rd, 2010
9 email from Mr. Houghton to you. He says: "Brian, how
10 are you?" Second paragraph, he says:

11

"I was hoping to have a confidential
12 discussion with you at your
13 convenience. It won't take long,
14 maybe 15 minutes, and I was hoping
15 sometime tomorrow. Do you have time
16 to slate me in, and if so, what
17 number could I call?"

18

Do you remember receiving this email
19 from Mr. Houghton?

20

MR. BRIAN BENTZ: Yes.

21

MS. KATE MCGRANN: If we could scroll
22 up, we can see your response, and you give him a time
23 to call in the next day. Do you remember speaking to
24 Mr. Houghton in response to this email?

25

MR. BRIAN BENTZ: Yes.

1 MS. KATE MCGRANN: What do you
2 remember of that discussion?

3 MR. BRIAN BENTZ: This related to an
4 event that we held at Barrie Central High School with
5 ESA Works. And this is a gentleman, Rob Ellis, who's
6 son was tragically killed in a -- in an accident, and
7 we had partnered with him. And we did events in the
8 community, and we did an event in the -- in the
9 auditorium at Barrie Central High School one day, and
10 we were on the stage with Mr. Ellis.

11 And unbeknownst to me, someone who
12 Ed Houghton knew was at the event and said that they
13 were impressed with, you know, sort of how we handled
14 it. And so he reached out to me, and then -- then
15 said maybe you could meet this -- this person. And
16 so, you know, I met with her.

17 MS. KATE MCGRANN: So it's your
18 recollection that the confidential conversation he
19 wanted to have with you is to ask you to meet his
20 friend?

21

22 (BRIEF PAUSE)

23

24 MR. BRIAN BENTZ: The confidential
25 conversation on November 23rd? I'm not sure. This

1 was -- this was in relation to the ESA safe event at -
2 - at the high school, that we held at -- at Central
3 High School.

4 MS. KATE MCGRANN: Okay. Can we turn
5 up your notes at ALE50195?

6

7 (BRIEF PAUSE)

8

9 MS. KATE MCGRANN: If we look at the
10 notes at the top under the heading, it sa -- it looks
11 -- it says:

12 "Collingwood sla --
13 Collus/Collingwood deal. Looking
14 for your guidance/direction and
15 thoughts on how to pe -- proceed on
16 Collingwood situation. Potential
17 opportunity to purchase the LDC.
18 Have described it before to the
19 Board generally in this committee.
20 At the point where we have to make a
21 decision."

22 Do you know what this section of the
23 notes is referring to?

24 MR. BRIAN BENTZ: This would be
25 referring to the decision with respect to the hiring

1 of Mr. Bonwick.

2 MS. KATE MCGRANN: Okay. And then if
3 we move down further to the section under the heading,
4 "History," it says:

5 "Received email from E. Houghton.
6 Known him for over fifteen (15)
7 years. Asked to speak on a
8 confidential matter."

9 Can you help me? Is that in reference
10 to the email that we just looked at?

11 MR. BRIAN BENTZ: I think I recall the
12 -- the initial conversation was a phone call on
13 November 30th, I think, where he reached out to me and
14 said he wanted to speak with me on a confidential
15 matter.

16 MS. KATE MCGRANN: So, let's look at
17 the email, it's CPS8331_00001, again.

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: In Mr. Houghton's
22 email to you on November 23rd --

23 MR. BRIAN BENTZ: Thank you.

24 MS. KATE MCGRANN: -- in the second
25 paragraph he says:

1 I was hoping to have a confidential
2 discussion with you at your
3 convenience. It won't take long,
4 maybe fifteen (15) minutes, and I
5 was hoping sometime tomorrow. Do
6 you have time to slate me in, and if
7 so, what number could I call?"

8 You respond with a time for him to call
9 you.

10 Is the telephone call that resulted
11 from this email exchange the call that is referred to
12 in the notes we just looked at?

13 MR. BRIAN BENTZ: I don't recall.

14 MS. KATE MCGRANN: Okay. Let's go
15 back to your notes, ALE50195.

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: And let's scroll
20 down so we can look at the section under the heading,
21 "History."

22 So, your notes say you received an
23 email from Mr. Houghton, that you've known him for
24 over fifteen (15) years, and that he asked to speak to
25 you on a confidential matter.

1 Do you remember approximately when you
2 received this email?

3 MR. BRIAN BENTZ: I thought it was a
4 call on November 30th and we met on December 3rd, is
5 my recollection. It was sometime in late November.

6 MS. KATE MCGRANN: So the documents do
7 indicate that you do end up meeting with him on
8 December 3rd. I'd like to just walk through your --
9 your notes here for a second.

10 You say:

11 "Asked to speak to me on a
12 confidential matter. Talked about
13 situation with Collus. More demands
14 from industry harder to keep up.
15 Staff turning over, CO for --
16 leaving, for example, has [and then
17 an underline]. Also in his role as
18 Executive Director of the Town of
19 Collingwood, basically runs
20 municipal. Deputy there, has a lot
21 of clout. Talked about fiscal
22 situation in Collingwood, \$20
23 million in debt. Last Council spent
24 a lot and got thrown out."

25 Says:

1 "He talked about how he observed
2 what we did in Barrie."

3 Gives some information there.

4 "Thought we handled it well.
5 Exploring poss -- path of what to do
6 in LDC. Preliminary discussion at
7 Collus Board at Town to look at
8 options."

9 You note:

10 "RFP with possible bidders."

11 And then you've noted:

12 "Had breakfast with him shortly
13 thereafter."

14 Is the breakfast that you mentioned
15 there the -- the meeting that you think you had with
16 him in early December?

17 MR. BRIAN BENTZ: I recall a -- a
18 brief phone call conversation with him, which I -- I
19 believe was on the 30th.

20 MS. KATE MCGRANN: Okay.

21 MR. BRIAN BENTZ: I don't have the
22 dates exactly. But these are contemporaneous notes,
23 so they're not in necessarily the order in which it
24 occurred. The -- the -- the conversation I had with
25 him at breakfast was more of the content at the

1 beginning, and the phone call, as -- as I remember it,
2 was more about a confidential matter. I believe he
3 did tell me that it related to the -- to Collus and
4 the potential sale of Collus, and that he would like
5 to meet with me on that. So the -- the phone call was
6 much, much shorter than the breakfast meeting.

7 Most of the -- most of the content in
8 here came from the breakfast meeting.

9 MS. KATE MCGRANN: Okay. So, let's go
10 one (1) step at a time. You have a telephone call
11 with him. On the phone call did he tell you that he
12 wanted to speak to you about something confidential?

13 MR. BRIAN BENTZ: Yes.

14 MS. KATE MCGRANN: Did he explain to
15 you why it was confidential?

16 MR. BRIAN BENTZ: Yes. He said it
17 related to the potential sale of the utility.

18 MS. KATE MCGRANN: What else do you
19 remember discussing on that phone call?

20 MR. BRIAN BENTZ: I -- as I recall, it
21 was a fairly short conversation, but, you know, it --
22 it got my attention. So, yeah, I was interested in --
23 in meeting him.

24 MS. KATE MCGRANN: Okay. And at the
25 end of the call, had you made plans to go out and meet

1 in person?

2 MR. BRIAN BENTZ: Yes. Yeah. I think
3 we -- we compared calendars and there was some
4 conflict in the calendar, so we ended up meeting on a
5 Friday in Vaughan, I think.

6 MS. KATE MCGRANN: When you met with
7 him to continue your discussion, did you understand
8 that that discussion was also confidential as your
9 phone call had been?

10 MR. BRIAN BENTZ: Yes.

11 MS. KATE MCGRANN: And what do you
12 remember of the discussion you had when you had your
13 first meeting with him?

14 MR. BRIAN BENTZ: So, he talked to me
15 about -- well, he -- I -- I think he did refer back
16 actually to the -- to that session, and so when you
17 talk about in high schools there, that's referring to
18 that session with the -- MySafeWork, I think it's
19 called, the Rob Ellis event at Central High School,
20 and that his friend had seen that. He was impressed
21 with that. He -- he was impressed with what we did in
22 terms of community work with the Royal Victoria
23 Hospital and Georgian College, and thought, you know,
24 that we were -- we handled that very well.

25 Then -- then he spoke about the fact

1 that the Board was considering options with respect to
2 the sale of the Utility, and he talked about reasons
3 why they were considering those options, and one was
4 the fiscal situation in the Town. He said that they
5 were -- there were challenges in the fiscal situation,
6 and also the -- the Utility environment was changing.

7 So with respect to regulation, for a
8 smaller utility, the regulatory burden was increasing.
9 So, for example, we just had the -- I think the
10 legislation come in that changed the licence condition
11 of all utilities in the province, making conservation
12 demand management part of the purpose of the Utility.

13 Regulatory filings and the
14 administration around regulation was becoming more --
15 more challenging, so it's harder to keep up, and he
16 was seeing -- he was seeing more turnover, especially
17 at the senior level, and that the industry was
18 changing from a technology point of view, so that in
19 terms of things like smart grids, smart meters, was a
20 technological advancement in the sector, and that he -
21 - you know, the -- the -- the Board was of the opinion
22 that considering options around a sale would be a good
23 strategic move at this time. I was under the
24 impression they hadn't finalized that. They were
25 considering options.

1 And he asked me if I would consider
2 being -- if -- he mentioned an RFP process and he said
3 would PowerStream consider being a bidder if we went
4 to an RFP process, and I said yes, I may be interested
5 in that. You know, I'd have to look at it further,
6 have to see if it makes strategic sense. All of these
7 transactions were vetted through our Audit and Finance
8 Committee or our Board, so I wanted to make sure that,
9 you know -- we had a ways to go before we would commit
10 to something like that and the process was in its
11 early stage.

12 One of the concerns I had was that the
13 -- the Town, it appeared that the Town had not been
14 engaged on this potential sale yet, and, you know, I
15 had seen situations in the past where there wasn't an
16 alignment between the utility and the owner, and you
17 can end up wasting a lot of time, and I had in the
18 past done that on transactions where there wasn't
19 alignment between a municipality and the -- and the
20 utility.

21 MS. KATE MCGRANN: Did you explain
22 that concern to Mr. Houghton at your breakfast
23 meeting?

24 MR. BRIAN BENTZ: Yes, I believe I
25 did.

1 MS. KATE MCGRANN: Where your notes,
2 say talked about process and value range, do you
3 remember what that discussion was?

4 MR. BRIAN BENTZ: So, I just wanted to
5 get a sense of the general size of Utility. What was
6 the -- what was the rate base of the Utility, because
7 that's typically the -- the estimate of -- of value.
8 It's an objective estimate of value, that utilities
9 are rated on. So, and I wanted to know are we
10 talking, you know, five (5) million or fifty (50)
11 million, just a general range, and I think he said
12 maybe the -- the rate base was in the 16 to \$17
13 million range -- 16 to \$18 million range, and so that
14 was -- that was the estimated value.

15 MS. KATE MCGRANN: Where it says --
16 said back on envelope, 15 to 20 million on EV (S)
17 Enterprise value less debt," was that his number or
18 your number?

19 MR. BRIAN BENTZ: That was his number.

20 THE HONOURABLE FRANK MARROCCO: Is
21 this --

22 MS. KATE MCGRANN: It'd be.

23 THE HONOURABLE FRANK MARROCCO: So,
24 Mr. Bentz, we'll continue tomorrow at -- at 9:00.

25 MR. BRIAN BENTZ: Okay. Thank you.

1

2

(WITNESS RETIRES)

3

4 --- Upon recessing at 6:00 p.m.

5

6

7

8 Certified correct,

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13 Wendy Woodworth, Ms.

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