



FOUNDATION DOCUMENT PART I: THE 2012 SALE OF COLLUS SHARES

Chapter 2: Initial Preparations for the Collus Power Share Sale Process: November 2010-June 2011

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

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

Chapter 2 Initial Preparations for the Collus Power Share Sale Process: November 2010-June 2011

2.1 Ed Houghton Contacts Brian Bentz Concerning Potential RFP for Sale of Collus Power

106. PowerStream was an electricity distribution company that was jointly owned by the municipalities of Barrie, Vaughan, and Markham. The Mayors of each of those municipalities sat on the PowerStream Board of Directors and on its Audit and Finance Committee. As of February 2011, the Chair of the Board of PowerStream was Markham Mayor, Frank Scarpitti.

PowerStream Annual Report, 2011, p 2, 7-8 [ALE0049117](#)

107. On January 14, 2010, Collus board member David McFadden gave a presentation on strategic planning to the Collus board. The presentation slides focused primarily on the increasing importance of cost-effectiveness, efficiency and environmental considerations in the electricity industry. In a section entitled “Future Visions”, the presentation slides set out the following questions:

Will our current structure and approaches meet future demands, challenges and opportunities?

Can we remain the same while the world changes around us?

Are we able to find a compelling vision to meet the needs of the future?

The presentation slides did not mention potential mergers, acquisitions or divestments in the future.

Presentation to the Collus Power Strategic Planning Session, January 14, 2010, [TOC0516594](#)

108. In speaking notes prepared for an event celebrating the launch of Collus PowerStream on August 16, 2012, Ed Houghton described the fall of 2010 as a time when the Collus Board of Directors was told to “fish or cut bait”:

On September 16th, 2010 the Georgian Bay District of the EDA held a meeting in Muskoka and the theme of the meeting was "Taking Charge of Our Future"! At that meeting our Board discussed informally that it was time for us to "fish or cut bait". What we meant was, it was time for us to put our best foot forward, to ensure that we could be the best we could be and to Take Charge of Our Future. On November 23rd, 2010, the very next day I sent out my first email to see if there was an opportunity to do exactly this. The rest is history.

Talking Points for Ed Houghton, Collus PowerStream Launch Event, August 16, 2012, [TOC0516316](#)

109. On November 23, 2010, Collus CEO Ed Houghton reached out to PowerStream CEO Brian Bentz asking if Mr. Bentz was available for a confidential discussion. Mr. Bentz responded that he would be available to speak with Mr. Houghton the following day at 8:45 am.

Email chain including Brian Bentz and Ed Houghton, November 23, 2010, [CPS0008331 00001](#)

110. On November 30, 2010, Mr. Houghton followed up with Mr. Bentz and asked to meet in person. Mr. Houghton and Mr. Bentz met for breakfast at the Sunset Grill in Vaughan on December 3, 2010.

Email chain including Ed Houghton and Brian Bentz, November 30, 2010, [CPS0008333 00001](#)

Email chain including Ed Houghton and Brian Bentz, November 30, 2010, [ALE0000044](#)

Undated notes by Brian Bentz, [ALE0000008](#)

Brian Bentz transcription of undated notes, [ALE0050195](#)

111. Mr. Bentz's notes described his first contact from Mr. Houghton:

Received email E. Houghton, known him for over 15 years.

Asked to speak on a confidential matter.

Talked about situation with Collus: more demands from industry, harder to keep up. Staff turning over CFO leaving for example has _____

Undated notes by Brian Bentz, [ALE0000008](#)

Brian Bentz transcription of undated notes, [ALE0050195](#)

112. Mr. Bentz's notes included this description of his discussions with Mr. Houghton:

Also in his role as Executive Director of the Town of Collingwood basically runs Municipal Dept there has a lot of clout.

...

Talked about fiscal situation in Collingwood, \$20M in debt, last Council spent a lot and got thrown out.

...

Exploring path of what to do in LDC – preliminary discussion @ Collus Board at Town to look at options

→ RFP with multiple bidders

→ had breakfast with him shortly thereafter

Talked about process and value range

Said back of envelope \$15-\$20M on EV (Enterprise Value) less debt.

Subject to growth
 state of assets
 employees taken
 cost structure
 rates

Brian Bentz undated notes, [ALE000008](#)

Transcription of Undated notes by Brian Bentz, [ALE0050195](#)

113. Collus CFO Tim Fryer prepared insurance renewal forms for Collus dated December 12, 2010. The Collus insurance renewal documents stated that no mergers, acquisitions or divestments were contemplated in the next 12 months.

Insurance Renewal Documents 2011, Collus and Subsidiaries, December 12, 2010, [VER0000067, p 5](#)

114. On January 6, 2011, Ed Houghton gave an orientation presentation to Collingwood Town Council on behalf of Collus. The presentation slides provided a brief overview of Collus' corporate identity and detailed the services provided by Collus. The presentation slides

did not mention the contemplation of any mergers, acquisitions or divestments. The slides described Collus as “proud to be actively involved in our community and support our community goals.”

Collingwood Utility Services Council Orientation Slide Deck, January 6, 2011, [CPS0011295_0001](#)

2.2 Around the Same Time, Ed Houghton Helps Paul Bonwick Contact PowerStream

115. On the morning of January 10, 2011, Paul Bonwick sent an email introducing himself to Brian Bentz, writing:

...during the time I spent in elected office the potential sale of Collingwood’s Utility Services had been raised with mix emotion... I would like to meet and discuss Powerstream’s level of interest in pursuing such an option.

Municipal Council is in the process of beginning their budget considerations and as a result timing is potentially a critical factor. As a result I am requesting an opportunity to meet and discuss the situation should Powerstream have a potential interest.

Email from Paul Bonwick to Brian Bentz, January 10, 2011, [ALE0000045](#)

116. At 9:45 am, Mr. Bonwick forwarded a copy of his introduction to Ed Houghton. Seven minutes later, Mr. Bonwick emailed Mr. Houghton, writing “[t]he e-mail I sent to Brian just bounced back. Please resend his e-mail address.” Mr. Houghton provided Mr. Bonwick with Mr. Bentz’s email address. Later that afternoon, Mr. Houghton wrote to Mr. Bonwick, “[h]ey Bud: Can you give me a call regarding Bentz?” Mr. Bonwick and Mr. Houghton planned to chat later.

Email from Paul Bonwick to Brian Bentz, January 10, 2011, [ALE0000045](#)

Email chain including Paul Bonwick, Brian Bentz, and Ed Houghton, January 10, 2011, [TOC0036839](#)

Email chain including Paul Bonwick and Ed Houghton, January 10, 2011, [TOC0036843](#)

Email chain including Paul Bonwick and Ed Houghton, January 10, 2011, [TOC0036988](#)

Email chain including Paul Bonwick and Ed Houghton, January 10, 2011, [TOC0037001](#)

117. Mr. Bentz’s notes include the following:

A couple of weeks later: received email from ... Paul Bonwick ...

Also indicated he was the brother of the Mayor Sandra Cooper

Knows Ed Houghton for a long time

...

May be of assistance to PowerStream

Fiscal situation

Compenso Communications

So I got to check this guy out internal conflict federal politician

Called Ed - said I received call from him (i.e. Paul Bonwick) and what was his view

(Ed's response)

Knows him Thought it was good I called Ed– tell him will meet you for –

Knows him – highly respects him

- Considers him a friend
- Could help you
- You have to decide

Met with Paul. Told him we may be interested in hiring him, would like to receive a proposal.

Something I would need to bring to our AFC

In particular issue with you being brother to Mayor.

Is that a conflict?

Undated notes by Brian Bentz, [ALE000008](#)

Brian Bentz transcription of notes at [CJI0009233](#)

118. On January 12, 2011, Mr. Bentz and Mr. Bonwick met at the PowerStream offices in Vaughan.

Email chain involving Paul Bonwick and Brian Bentz, January 10 – 12, 2011, [ALE0000051](#)

Calendar Appointment, "Meeting Hon. Paul Bonwick & Brian Bentz", January 12, 2011, [ALE0000052](#)

Email from Paul Bonwick to Brian Bentz, January 13, 2011, [ALE0000053](#)

2.3 Ed Houghton asks PowerStream for Recommendations for a Valuator for Collus

119. On January 15, 2011, Brian Bentz emailed PowerStream CFO, John Glicksman, writing:

I received a call from Ed Houghton at Collus yesterday. He is going to his AFC this week to get authorization for a valuation and was wondering if we knew anyone (other than KPMG who is on his list) that we have used or would recommend.

Any suggestions for Ed?

Email chain including Brian Bentz, John Glicksman, and Dennis Nolan, January 15, 2011, [ALE0000054](#)

120. Mr. Glicksman responded, recommending John McNeil at BDR Energy. Mr. Bentz's notes include the following:

Ask C who he could use for valuation

- KPMG – know John H.
- CIBC
- BDR
- Crosbie & Co.
- All used before

Email chain including Brian Bentz, John Glicksman, and Dennis Nolan, January 15, 2011, [ALE0000054](#)

Undated notes by Brian Bentz, [ALE0000008](#)

Transcription of Undated notes by Brian Bentz, [ALE0050195](#)

121. Collus' audit and finance committee met on January 21, 2011. The committee discussed Collus Power's "updated 'draft' Year-end and 2011 Budget Financial Worksheets." There was a "lengthy review of the expected bad debt for the recent bankruptcy." Mr. Fryer presented a finance memo that included information on the Smart Meter project, the Cost of Service rate application process, and the renewal of the Service Agreements. The minutes do not record a discussion about obtaining a valuation of the company. The next meeting of the Collus audit and finance committee took place on April 20, 2011.

Audit Committee Meeting, January 21, 2011, [TOC0519594](#)

Audit Committee Meeting Minutes, April 20, 2011, [TOC0045741](#)

Email from Tim Fryer to Doug Garbutt, [TOC0519592](#) (email) and [TOC0519594](#) (attachment)

2.4 The Deputy Mayor Helps Paul Bonwick Obtain Conflict of Interest Information from the Clerk

122. On January 17, 2011, Deputy Mayor Lloyd emailed Town Clerk Sara Almas, writing:

My Brother is considering again Biding on Town Work but was worried about putting me into conflict.

I'm not involved in his business and I told him that I will not have a Conflict (Pecuniary) interest as I'm not involved in his business and the Conflict of Interest Act clearly states that I must declare an interest if its is Spouse, Sons or Daughters and Parents.

I'm sending this to you only to ask if this is your understanding as well and I do realize that you cannot give advice on this matter.

Email from Deputy Mayor Rick Lloyd to Clerk Sara Almas, January 17, 2011, [TOC0038001](#)

123. Clerk Almas responded to the email from Deputy Mayor Lloyd within the hour, and copied the Town CAO, Kim Wingrove:

You are correct in that the Municipal of Conflict Interest Act, clearly identifies that a Member of Council is NOT deemed to be in conflict if it's the interest (direct or indirect) of a sibling.

Email from Clerk Almas to Deputy Mayor Rick Lloyd, forwarded to Paul Bonwick, January 17, 2011, [TOC0038001](#)

124. Deputy Mayor Lloyd forwarded this message to Paul Bonwick on January 27, 2011.

Email from Clerk Almas to Deputy Mayor Rick Lloyd, forwarded to Paul Bonwick, January 17, 2011, [TOC0038001](#)

125. Brian Bentz's notes include the following:

On ___ Got back to me sometime later with a proposal & opinion he had received saying Mayor was not in conflict.

(refer to proposal in P---)

Said do you have that opinion? Said it came from City Clerk on advice of Council that if the interest is of a sibling then the elected official does not have a conflict.

→ Said request came from Deputy Mayor not Mayor.

Asked him – can you get some documentation to that effect. Said he would.

Subsequently sent me his correspondence.

Undated notes by Brian Bentz, [ALE000008](#)

Brian Bentz transcription of notes at [CJ10009233](#)

2.5 Paul Bonwick Hires Ed Houghton’s Spouse, Shirley Houghton to Assist him with the Compenso Proposal to PowerStream

126. On January 19, 2011, Paul Bonwick sent Shirley Houghton a copy of the Compenso proposal to PowerStream. The proposal identified the services Mr. Bonwick would provide to PowerStream. Mr. Bonwick asked Ms. Houghton to “please print and comment.” The following day, Mr. Bonwick offered Ms. Houghton a paid position, writing:

Ideally, I require a part-time person that can help edit letters, proposal, etc as well as assist in matters related to the Lobbyist Registrar at both the Federal and Provincial level.

The work can be mostly completed out of office with the support of a computer and a phone.

It is not a lot of hours at this time however it will likely require more in the coming weeks if I have a couple more contracts approved.

I would expect twenty hours a month at this time and see where it goes from there. I can pay \$20.00 per hour.

Please give it some subject to you being able to free up some time.

Email and attachment from Paul Bonwick to Shirley Houghton, January 19, 2011, [TOC0037571](#) (email) and [TOC0037572](#) (attachment)

Email from Paul Bonwick to Shirley Houghton, January 20, 2011, [TOC0051412](#)

2.5.1 Ed Houghton Reviews and Comments on Paul Bonwick’s Proposal to PowerStream

127. Late on January 19, 2011, Paul Bonwick sent Ed Houghton a copy of the Compenso proposal to PowerStream and in the email said “Have a look. Tried to clean up the billings

section.” The next day, Mr. Houghton replied, “I reviewed and made a few minor changes...” Mr. Bonwick thanked him.

Email and attachment from Paul Bonwick to Ed Houghton, January 19, 2011, [TOC0037577](#) (email) and [TOC0037578](#) (attachment)

Email and attachment from Ed Houghton to Paul Bonwick, January 20, 2011, [TOC0037592](#) (email) and [TOC0037593](#) (attachment)

Email from Paul Bonwick to Ed Houghton, January 20, 2011, [TOC0037595](#)

2.6 Paul Bonwick Continues the Conversation with Brian Bentz about Services from Compenso

128. On January 20, 2011, Paul Bonwick emailed Brian Bentz, writing:

...I wanted to be perfectly clear on my understanding of the conflict guidelines contained in the Municipal Act. The Town’s solicitor provided a legal opinion to the Deputy Mayor clarifying that there is no breach of conflict of interest guidelines in this situation.

...

Ed and I have had detailed discussions relating to the overall proposal that I have prepared in the context of involvement and timing. As a result of my assessment of the situation I constructed the proposal in a manner that address any potential concerns.

As we both agreed in our meeting the best approach is to be completely transparent and open should our potential business relationship come forward in the public.

It is in this regard I would purpose Powerstream consider engaging my company (subject to a satisfactory fee structure) on a much broader level eliminating the potential accusation that our business relationship is somehow predicated on family contacts.

...

This approach would in no way detract from LDC opportunity presently being discussed...

I took the liberty of designing the proposal on a success based fee structure...

Email from Paul Bonwick to Brian Bentz, January 20, 2011, [ALE0000059](#) (email) and [ALE0000060](#) (attachment)

129. Paul Bonwick and Brian Bentz scheduled a call on January 25, 2011, to discuss the Compenso proposal. In an email after the call, Mr. Bonwick highlighted the importance of a strong public relations campaign. He attached a memo recommending that PowerStream produce a full-page print bulletin to be distributed in Simcoe County.

Emails chain including Paul Bonwick and Brian Bentz, January 24, 2011, [ALE0000067](#)

Email and attachment from Paul Bonwick to Brian Bentz, January 25, 2011, [ALE0000068](#)

130. As noted above, Deputy Mayor Lloyd sent a copy of the Clerk's email about conflict of interest to Paul Bonwick on January 27, 2011. On January 29, 2011, Mr. Bonwick forwarded the email to Brian Bentz, writing:

Here is the response the Deputy Mayor received from the Clerk's office. The CAO (Kim Wingrove), was copied.

Please review and comment.

If you require more substance please let me know. The Deputy Mayor had informed me that it was a legal opinion. That said, the Clerk is the person responsible for the interpretation of the Municipal Act for Council.

Email from Paul Bonwick to Brian Bentz, January 29, 2011, [ALE0000069](#)

131. On February 1, 2011, Paul Bonwick wrote to Brian Bentz, stating:

In the interest of time, I had to initiate the beginning of the process we discussed. Unfortunately the next committee meeting was not scheduled for another two months which would have caused some timing challenges if process was not initiated this week

As a result the Chairperson and Executive Director have now received direction to commence a valuation of the Utility.

A bit of a backgrounder is now being prepared to present to the Audit Committee in order to secure approval on the sole source option as it relates to the valuation. The preparation of this background is currently underway and will be presented in three weeks.

I completely understand that Powerstream will not be in a position to formally consider my proposal until the end of February.

Should you require any information during that time please feel free to call.

I look forward to hearing from you in once you have your Board in place.

Email from Paul Bonwick to Brian Bentz, February 1, 2011, [ALE0000071](#)

132. The next day, Ed Houghton asked Paul Bonwick, “Any word”, to which Mr. Bonwick replied, “Nothing yet!”

Email exchange between Paul Bonwick and Ed Houghton, February 2, 2011, [TOC0038291](#)

133. On February 13, 2011, Paul Bonwick emailed Brian Bentz, advising Mr. Bentz that he had requested reference letters from representatives of three clients. Mr. Bonwick also provided Mr. Bentz with a letter from Mr. Houghton, dated 2005. Mr. Bonwick explained that, “I contacted Ed to secure his approval of providing this letter to you. It was my opinion that requesting a more current letter from Ed could put him in a conflict situation.” Mr. Bonwick sent the reference letters to John Glicksman on May 26, 2011.

Email from Paul Bonwick to Brian Bentz, February 13, 2011, [ALE0000073](#)

Email from Paul Bonwick to John Glicksman, CC Brian Bentz, Victoria Scoffield, and Sandra DiPonio, May 26, 2011, [ALE0035415](#) (email), [ALE0035415.0001](#) (attachment), [ALE0035415.0003](#) (attachment), [ALE0035415.0004](#) (attachment), [ALE0035415.0005](#) (attachment)

134. On March 9, 2011, the Chair of the PowerStream Board, Barrie Mayor Jeff Lehman, asked Mr. Bentz if he wanted a meeting set up with Mayor Cooper, or to speak to Ed Houghton first. Mr. Bentz declined the meeting and told Mayor Lehman that he was:

...planning on speaking with Ed first. I was also thinking after our meeting that he may be somewhat sensitive to me seeing the Mayor before this process gets off the ground- I know he wants to maintain control of the process to the extent possible.

Perhaps an informal one on one meeting (either by phone or face to face) between you and the Mayor Cooper only would make more sense at this stage, given the fact you know each other.

I'll call him in any event and get his perspective- my instincts tell me he wouldn't want me going 'directly to the top' at this point in the process.

Email chain including Jeff Lehman and Brian Bentz, March 9, 2011, [ALE0004220](#)

135. On April 12, 2011, Ed Houghton emailed Paul Bonwick, writing, “Hey Bud: How did you make out with PowerStream? Any word from the Chief? Have you spoken to Sandra about the extension of the Board Terms? Thanks.....Ed”

Email from Ed Houghton to Paul Bonwick, April 12, 2011, [TOC0045070](#)

136. Paul Bonwick and Ed Houghton exchanged further emails that day. In response to Mr. Houghton’s questions, Mr. Bonwick responded, “You got a minute...meeting with Powerstream tomorrow afternoon. Sitting with Craig right now discussing opportunities.” Mr. Bonwick and Mr. Houghton exchanged emails arranging to speak on the phone. At 9:17 pm, Mr. Bonwick wrote, “[t]hank you for your insight and assistance...I will give you a call tomorrow morning prior departure.”

Email chain including Ed Houghton and Paul Bonwick, April 12 – 13, 2011, [TOC0045155](#)

137. On April 13, 2011, a presentation titled “M&A and New Business Update” was provided to PowerStream’s audit and finance committee. The presentation stated that, “[b]ased on discussions with representatives from Collus Power, it is our understanding that the utility is planning to move ahead with a potential sale. A meeting has been arranged for April 13th with Brian Bentz, the Mayors of Vaughan, Markham and Barrie as well as Paul Bonwick to further discuss the potential sale of Collus.”

PowerStream Inc M&A and New Business Update, April 13, 2011, [ALE0030995.0001](#)

2.7 Ed Houghton and Paul Bonwick Plan a Direction from the Mayor to Collus: The Mayor Prepares the Draft Direction

138. On Sunday January 30, 2011, Ed Houghton wrote to Paul Bonwick: “[w]e have a Board Meeting tomorrow morning and I was wondering if we should chat?” Mr. Bonwick responded, “[g]ood idea. I will call you in a few minutes if that works.” Mr. Houghton wrote to Mr. Bonwick, “[i]t is so important that Rick does not know what I am doing.” Mr. Bonwick responded, “No kidding...that applies to absolutely everyone...” Their email chain concluded with further discussion of Rick.

Email chain including Ed Houghton and Paul Bonwick, January 30, 2011, [TOC0038108](#)

139. Later that same evening, Ed Houghton sent the following draft statement to Paul Bonwick for his review:

As you know, my Council was elected to get our spending and our municipal debt in control. I have asked our CAO and our Department Heads to look for opportunities within their areas of responsibility to reduce costs and still offer similar levels of service.

I would like to ask that Collus looks for similar opportunities to help reduce our debt...

My specific request would be for Mr. Houghton and Mr. Muncaster to undertake an valuation of Collus and to look at the positives and negatives of selling the assets of Collus. I'm asking you to do this now where you can still be in control and take the lead because I firmly believe that during our budget deliberations this year or next that the suggestion will be made to sell Collus. When that occurs someone else will be in control.

...

This request and your review must be kept in strictest confidence. I must also say that this is not a "done deal" that Collus will be sold. If after the review we are asked about selling Collus we can provide the details that suggest the contrary if that is the right thing.

Respectfully.....

Email from Ed Houghton to Paul Bonwick, January 30, 2011, [TOC0038100](#)

140. On January 31, 2011, Mayor Cooper drafted an email which she forwarded to her Executive Assistant for review and formatting. Mayor Cooper's draft read:

To Collus chair and Ed,

As you may know, our new council was partly elected to get our spending and our municipal debt under control.

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

I would like to ask that Collus look for similar opportunities in part to help reduce our debt and create greater efficiencies for Collingwood residents. I recognize the input during budget presentation.

My specific request is that chair Muncaster direct Mr. Houghton to undertake a valuation of Collus examining all potential opportunities that might benefit Collingwood residents and that a report containing recommendation be presented to Council by May 30, 2011.

I would appreciate this review being treated with confidence until myself and council have an opportunity to be presented with a report.

Email from Sandra Cooper to Shelley Fuhre, January 31, 2011, [TOC0038164](#)

141. Mayor Cooper's executive assistant made some minor revisions to the draft email and sent it back to Mayor Cooper.

Email chain including Shelley Fuhre and Sandra Cooper, January 31, 2011, [TOC0038169](#)

142. Earlier on January 31, 2011, Paul Bonwick emailed Mayor Cooper:

Good Morning: I got your message re budget. You will need to be very clear with Department Heads on your expectations

Same goes for COLLUS. It also sends a message through early in your term that your Council will provide direction.

When I spoke to you a few weeks ago about this type of direction Ed thought his Board would be supportive of the request.

See you here at 1:30.

Email from Paul Bonwick to Sandra Cooper, January 31, 2011, [TOC0038162](#)

143. On January 31, 2011, the Collus Power Board met. The minutes do not record any Board approval of a valuation of Collus Power. Under a subheading titled "Minutes of Previous Meeting", the minutes note that the Collus Power Board moved to proceed *in camera* "to discuss a matter pertaining to personnel and/or property".

Collus Power Board Minutes, January 31, 2011, [CPS0006996_0001](#)

2.8 Ed Houghton Retains KPMG to Value Collus Power: KPMG Begins Its Work

144. On February 6, 2011, Ed Houghton called John Herhalt, Global Lead, KPMG Government Services Practice. Mr. Herhalt emailed Jonathan Erling, a Managing Director at KPMG the next day, writing:

I spoke to Ed Houghton yesterday and they want to engage us and start very soon. Can you put together a draft engagement letter and put together terms of reference. Set the fee at \$30k. I am travelling today – will give you a call tomorrow.

Email from John Herhalt to Jonathan Erling, February 7, 2011, [KPM0000542](#)

145. On February 6, 2011, KPMG partner John Herhalt asked Ed Houghton how his conversation with the Board Chair had gone.

Email from John Herhalt to Ed Houghton, Jonathan Erling and John Rockx February 6, 2011 [KPM0000541](#)

146. On February 14, 2011, Jonathan Erling send Ed Houghton a draft proposal for KPMG to “...assist Collingwood in a review of its utility ownership options....” Mr. Houghton forwarded the proposal to the Chair of the Collus Board, Dean Muncaster, for review. Chair Muncaster observed that the fee estimate was higher than Mr. Houghton’s authorization limit, raising the tactical question of involving other directors. Chair Muncaster wrote that:

Because Mayor Cooper has been involved in the previous consideration of having this valuation done that should not be a difficulty and I would suspect that we will be relying on her judgement about the involvement of the shareholder.

The Chair discussed when to involve independent director David McFadden. He finished the note with “[o]ther than these tactical issues, I believe the process is well-launched.”

Email from Jonathan Erling to Ed Houghton, John Herhalt and John Rockx, February 14, 2011, [CPS0001999](#) (email) and [CPS0002000](#) (attachment)

Email chain involving Ed Houghton and Dean Muncaster, February 14, 2011, [CPS0002001](#)

147. Ed Houghton emailed John Herhalt, writing, “[w]e did discuss that my authorization limit is \$20,000. Is there anything we can do to make the proposal only \$20,000.” KPMG

partner John Herhalt replied that he had told Mr. Houghton “out of the gate” that the valuation would cost \$30,000-\$50,000.

Email chain including Ed Houghton and John Herhalt, February 14 and 15, 2011, [CPS0002002](#)

148. During internal discussions at KPMG regarding the Collus Power retainer letter, John Rockx, Associate Partner at KPMG, provided the following blacklined revisions in response to Mr. Erling’s request that he “reword the section on indicative valuation”, observing that Mr. Rockx “probably [had] a better sense of what we can get away with”:

We will prepare an ~~high-level~~ analysis of the potential sale value of Collus. This will not be a formal valuation but rather an indicative view of the potential value of the utility in a sale transaction based on the multiples that have been observed in the marketplace for similar transactions, as well as a review of management’s multi-year projections for Collus. The valuation analysis can be used to assess the financial merits of the various ownership options (i.e.; sell, retain, merger) for the utility. Because there have been few recent transactions in this sector, these estimates of value will be subject to significant uncertainty. (I am not sure that this wording will go over very well – what else can we do and say on this front) [all text effects in original]

Email chain including John Rockx, Jonathan Erling and John Herhalt, February 14, 2011, [KPM0000563](#) (email) and [KPM0000564](#) (attachment)

149. On February 22, 2011, Ed Houghton emailed Jonathan Erling, John Rockx and John Herhalt to tell them “we accept your scope of work and would like to begin the review.” Two days later, Jonathan Erling sent Mr. Houghton a finalized engagement letter. The letter described the scope of KPMG’s work as follows:

To support deliberations by Collus and its shareholder, KPMG will provide an objective assessment of the ownership options open to the Town and of their likely financial and business implications.

During our work we will undertake the following tasks:

- We will meet with senior management at Collus to review the current business and financial plans of the utility. During this meeting, we will explore the current financial and operating status of the utility and identify any issues that may impact on the utility’s value to the Town either in a sale transaction or as a stand-alone entity.

- We will prepare an analysis of the potential sale value of Collus. This will not be a formal valuation but rather an indicative view of the potential value of the utility in a sale transaction based on the multiples that have been observed in the marketplace for similar transactions, as well as a review of management’s multi-year projections for Collus. The valuation analysis can be used to assess the financial merits of the various ownership options (i.e.; sell, retain, merger) for the utility.
- We will also prepare a summary of the advantages and disadvantages of various ownership options from the perspective of the Town, of utility ratepayers, and local ratepayers. This summary will take into account both financial and qualitative issues. It will address the implications for a local distribution utility of broader developments in the electricity sector, including the desire for a smart grid and incentives for renewable power generation.
- We will then summarize our findings from the work-steps noted above in a Power-Point style report that will identify the financial implications of alternative options and the strategic issues that may influence the Town’s decision on a preferred option going forward.
- We will provide a presentation of our report to relevant stakeholders.

Email chain including Ed Houghton, Jonathan Erling, John Herhalt and John Rockx, February 14, 2011 – March 11, 2011, [KPM0000599](#) (email) and [KPM0000600](#) (attachment)

Signed engagement letter between Collus Power and KPMG, February 24, 2011, [KPM0000600](#)

150. After accepting KPMG’s scope of work, Mr. Houghton and Mr. Erling planned a “kick off meeting” for March 11, 2011. Mr. Houghton determined that only the Board Chair (Dean Muncaster) and Collus CFO Tim Fryer would attend the meeting and be “in the loop.”

Email chain including Ed Houghton, Jonathan Erling, John Herhalt and John Rockx, February 14, 2011 – February 24, 2011, [KPM0000590](#)

151. On March 11, 2011, Mr. Houghton signed the KPMG retainer letter and participated in a call with KPMG. Tim Fryer was also present for this call.

Email chain including Jonathan Erling, Ed Houghton, John Herhalt and John Rockx, February 24, 2011 - March 11, 2011, [KPM0000613](#)

Calendar invitation, Conference Call with KPMG, March 11, 2011, [CPS0002028](#)

Email chain including Ed Houghton, Jonathan Erling, John Herhalt and John Rockx, February 14, 2011 – March 11, 2011, [KPM0000599](#)

Signed engagement letter between Collus Power and KPMG, February 24, 2011, [KPM0000600](#)

152. On March 23, 2011, Jonathan Erling forwarded “some benchmarking reports” to John Rockx, writing “Collus doesn’t rank well.” Mr. Rockx responded, “[n]ot surprised.”

Email between Jonathan Erling and John Rockx, March 23, 2011, [KPM0000654](#)

2.9 The April Meeting of the Collus Audit and Finance Committee

153. On April 20, 2011, the Collus Audit and Finance committee had a meeting. The minutes from that meeting describe a meeting with the Collus auditor to review draft financial statements. The minutes do not record any discussion of the valuation that was being done by KPMG.

Minutes of Collus Audit Committee meeting, April 20, 2011, [TOC0515599 p 9-10](#)

2.10 KPMG Raises Concerns About the Valuation

154. On April 25, 2011, Jonathan Erling of KPMG sent Ed Houghton and Tim Fryer some questions based on KPMG’s initial review of Collus’ financial documents. Among other questions, Mr. Erling asked:

[W]e still don’t have a clear picture of the financial transactions that occur among Collus, the Collingwood Public Utility Board (CPU), and the Town, and of any operating profits that are associated with these transactions... The summary sheet outlining cash and in-kind services to the Town doesn’t tie with the numbers shown in the Financial Statements. How do we reconcile?

Email chain including Jonathan Erling, Tim Fryer, Ed Houghton, John Rockx, John Herhalt and Cindy Neale, April 25-May 9, 2011, [CPS0002112](#)

155. Mr. Fryer responded:

There are only a couple of the amounts on the summary sheet that tie directly to the [Financial Statements]. I didn't think this was going to be such an in-depth analysis. My understanding from Ed was this was just going to be a general overview. It would take a great deal of my time to go through this in detail

Email chain including Jonathan Erling, Tim Fryer, Ed Houghton, John Rockx, John Herhalt and Cindy Neale, April 25-May 9, 2011, [CPS0002112](#)

156. KPMG continued to seek information from Collus CFO Tim Fryer to assist with the study of Collus Power. Jonathan Erling commented to his KPMG colleagues that he did not think that Mr. Fryer was “onboard” with the study. In a separate email exchange, Mr. Houghton wrote to Mr. Herhalt that “[t]his is becoming very time sensitive and we need to get a conclusion very soon.” Mr. Herhalt responded that he would call Mr. Houghton, writing “I don’t think things have gone off the rails.” Mr. Herhalt suggested that they focus on completing the study, and “[f]or the other options and pros and cons pieces let’s talk about the high-level approach to that and some of the parameters so we don’t get into too much detail.”

Email chain including Jonathan Erling, Ed Houghton, Tim Fryer, John Rockx, John Herhalt, and Cindy Neale, April 25 - May 9, 2011, [KPM0000858](#)

Email chain including Ralph Neate, Tim Fryer, Rick Zahorchak, and Jonathan Erling, May 7 - May 9, 2011, [KPM0000861](#)

Email chain including Ralph Neate, Rick Zahorchak, Tim Fryer, and Jonathan Erling, May 7 - May 9, 2011, [KPM0000863](#)

Email chain including Jonathan Erling, Ed Houghton, Tim Fryer, John Rockx, John Herhalt, and Cindy Neale, May 9, 2011, [KPM0000884](#)

Email chain including John Herhalt and Ed Houghton, May 9 - 10, 2011, [CPS0002122](#)

157. In the Spring of 2011, Jonathan Erling had a conversation with Ed Houghton. Mr. Erling’s notes from this conversation read:

- Tim opposed to being sold
- We are painted into a corner
- Tim Fryer – he is scrambling
- Darius – is no longer here
- Efficiency: we increase costs to put best foot forward
- Seriously need to do a good [job]
- Need to put best foot forward
- Being careful on how I chose our words: we are near end of careers.
- Lots of change
 - o 1/3 of people on electricity side will be gone because of retirements in near future.
- Smart grid:
 - o we will be forced to do smart grid

- difficult for us because of customer base
- Negative perspective:
 - lost ability to think outside the box
- To be not concern about Ed or Tim
- Smart grid:
 - self-healing system
 - fault
 - automatic switches – minimize areas of outage
- Lots of maintenance [support?] in Toronto
- Hamilton:
 - buying opportunity
 - generation within service territory.

Jonathan Erling notes from conversation with Ed Houghton, Spring 2011, [KPM0003267](#) (notes), [KPM0003267.0001](#) (transcription)

158. While John Herhalt and Ed Houghton discussed concerns with the valuation, Jonathan Erling asked John Rockx, “Can’t we just give them a 1.3X book multiple and be done with it?” John Rockx answered, “[e]ssentially yes – we analyzed a few recent transactions to support this rule of thumb.” Mr. Erling suggested that a meeting scheduled for May 12 be delayed because Tim Fryer was not available.

Email chain including John Herhalt, Ed Houghton, Jonathan Erling, and John Rockx, May 9-10, 2011, [KPM0000917](#)

Email chain including, Tim Fryer, Jonathan Erling, John Rockx and John Herhalt, May 9 – 10, 2011, [KPM0000918](#)

Email chain including John Rockx and Jonathan Erling, May 11, 2011, [KPM0000924](#)

159. Mr. Erling met with Ed Houghton on May 12, 2011. In advance of the meeting, Mr. Herhalt advised Mr. Erling and Mr. Rockx that the purpose of the meeting would be to identify the information KPMG needed to complete the valuation and to “explore...the depth he is looking for in the alternative options and other analysis of both quantitative and qualitative – my sense is he wants it at a pretty high level.” The following day, Mr. Erling advised Mr. Herhalt that he thought the meeting went “ok”. He then stated: “We agreed to stay away from the detailed operational impacts of losing synergies between the water and electricity operations (and with the Town), so our job has actually become

easier.” Mr. Herhalt responded: “good.” In a separate email conversation, John Rockx indicated that KPMG was required to complete a draft valuation by the following week.

Email from John Herhalt to Jonathan Erling and John Rockx, May 12, 2011, [KPM0000926](#)

Accepted: Collingwood – Update Meeting, May 12, 2011, [KPM0000869](#)

Email chain including Jonathan Erling, Ed Houghton, Tim Fryer, John Rockx, John Herhalt, and Cindy Neale, April 25, 2011 – May 13, 2011, [KPM0000929](#)

Email chain including Cindy Neale and John Rockx, May 13, 2011, [KPM0000940](#)

160. During the valuation process, Tim Fryer sent Jonathan Erling a document containing notes on Collus’ finances. Mr. Fryer said that Collingwood Council had not approved the Collus business plan for 2010 because of delays relating to changes in accounting rules.

Email chain between Jonathan Erling, Ed Houghton, Tim Fryer, John Rockx, and John Herhalt, March 23 - 27, 2011, [CPS0002051](#) (email) and [CPS0007404_0001](#) (attachment)

Collingwood Power Corp. Preliminary Informational Needs - Valuation Analysis, [CPS0007404_0001, p 2](#)

2.11 The Collus Power Board Meeting of May 13, 2011

161. Collus Power held a Board meeting on May 13, 2011. The minutes record that Ed Houghton provided an update on the business plan. The minutes do not record any discussion about the valuation that KPMG was undertaking of Collus Power during that month.

Collus Board Meeting Minutes, May 13, 2011, [CPS0007002_0001](#)

2.12 The KPMG Draft Valuation Report is Delivered

162. Town Clerk Sara Almas made handwritten notes dated May 18, 2011. The notes included the following:

Collus – valuation → financial report
→ In-camera
→ Council Re- → motion

Excerpt from Clerk's Notebook, May 18, 2011, DocID pending

163. On May 24, 2011, KPMG delivered a draft valuation document and an options analysis to Collus Power. Based on the information available at that time, KPMG valued the outstanding shares of Collus Power at December 31, 2010 at \$14.1 million to \$16.3 million.

Email from Jonathan Erling to Ed Houghton, Tim Fryer, John Rockx and John Herhalt, May 24, 2011, [KPM0001030](#) (email) and [KPM0001031](#) (attachment)

Email chain including John Rockx and Jonathan Erling, May 24, 2011, [KPM0001051](#)

164. KPMG did not value Collus, the holding company. KPMG did not formally finalize its draft valuation of Collus Power. In a separate email exchange, John Rockx noted that the Town could be receiving \$250,000 in free services from Collus. Jonathan Erling asked if a dividend had ever been declared to the Town.

Email and attachment from Jonathan Erling to Ed Houghton, Tim Fryer, John Rockx and John Herhalt, May 24, 2011, [KPM0001030](#) (email) and [KPM0001031](#) (attachment)

Email chain including John Rockx and Jonathan Erling, May 24, 2011, [KPM0001051](#)

165. On May 24, 2011, KPMG delivered a slide presentation to Collus entitled: "Collingwood Utility Services: Review of Options." The slides noted that the provincial government was expected to take steps to encourage LDCs to consolidate and create large, regional utility companies. The presentation stated that, if Collingwood was looking to sell its electric utility, it should do so quickly before the number of LDC transactions increased, which might affect Collus Power's value. The presentation outlined options for the future of Collus Power: maintaining full ownership, selling 100% of Collus Power, selling a majority interest in Collus Power or selling a minority interest in Collus Power.

Email and attachment from Jonathan Erling to Ed Houghton, Tim Fryer, John Rockx and John Herhalt, May 24, 2011, [KPM0001030](#) (email), [KPM0001032, p 4, 9 – 10](#) (attachment)

166. In an email to Ed Houghton on May 25, 2011, Tim Fryer noted that Collingwood Council received access to Collus' business plan and audited year-end financial statements but the

public and the media would only receive access to the business plan and not the audited financial statements.

Email from Tim Fryer to Ed Houghton, May 25, 2011, [TOC0530067](#)

167. On June 3, 2011, Paul Bonwick advised John Glicksman (copying Brian Bentz) that KPMG had completed its valuation of Collus Power.

Email from Paul Bonwick to John Glicksman, Victoria Scoffield, Brian Bentz, and Sandra DiPonio, June 3, 2011, [ALE0000178](#)

2.13 CFO Tim Fryer Comments on the KPMG Draft Valuation: KPMG Considers the Comments and Renders its Account

168. On June 14, 2011, Tim Fryer emailed Jonathan Erling and commented on the draft valuation prepared by KPMG. Mr. Fryer noted that the valuation's calculation of Collus Power's 2010 earnings before interest and tax failed to mention an "extraordinary loss" that had occurred in that year. The loss was mentioned later in the report in a different context, but Mr. Fryer felt that it was important for a reader of the valuation to know that Collus' 2010 earnings could have been above \$1 million if not for the loss. Mr. Fryer also noted:

...

6. Regarding the projection of 25.75% for 2020 moving from 18.4% in 2010 I do have a bit of a concern with anticipating even just a gradual increase in the margin rate. I understand that it is a result of the factors that are being used. Historical data doesn't indicate the rate in this kind of area has ever been achieved, in fact not exceeding even 20%.
7. The item 6 item is brought about from another area I am concerned about. This is due to the fact that a return of 9.85% has been used which of course is the current rate and this combined with the factor used to project increased revenues against the factor that is used to project increased expenses leads to an increasing EBIT margin. I would like to see an additional analysis that includes a lower amount of return, say 9%, so that I can see the impact of this on the overall valuation. I don't expect this to change anything substantially I just would prefer to have it at hand for doing my risk assessment.

8. In regards to the above I recognize and agree that the assumption is that we are a growth utility. I think though we need to keep in mind that conservation is occurring and expected to continue and this will counter some of the growth impact. That certainly is what we have seen over the past few years. We successfully received an LRAM recovery in our rates this past year. I don't know how successful we will be in the next attempts though.

Email from Tim Fryer to Jonathan Erling and Ed Houghton, June 14, 2011, [KPM0001064](#)

KPMG Draft Valuation Report, May 20, 2011, [KPM0001031, p 14](#)

169. A KPMG staff member noted that Tim Fryer "seems pretty unhappy with the valuation." John Rockx responded that Mr. Fryer appeared satisfied with the valuation conclusion but thought some changes to certain details were necessary.

Email chain including Tim Fryer, Jonathan Erling, John Rockx, Ed Houghton, John Herhalt, and Cindy Neale, June 14, 2011, [KPM0001074](#)

170. On July 8, 2011, Tim Fryer had a discussion with John Rockx regarding whether a transfer tax would apply to the sale of an LDC. On July 11, 2011, Jonathan Erling emailed John Herhalt and Mr. Rockx, noting that Mr. Fryer believed that the transfer tax did not apply, but that Mr. Fryer's opinion was "at odds both with some of the Board members and our report." Mr. Herhalt suggested that Mr. Erling check with Shawn Stern of KPMG to confirm whether the transfer tax applied. Later that day, Mr. Erling wrote to Mr. Fryer with a copy to Ed Houghton, Mr. Rockx and Mr. Herhalt to say that he had corrected KPMG's "Options Analysis" report to note that there was a permanent transfer tax "holiday" for publicly-owned entities that was introduced in 2009. Mr. Erling noted that he had "missed this" and hadn't checked with KPMG's tax specialists before issuing the first draft of KPMG's report.

Email chain including Jonathan Erling, John Herhalt and John Rockx, July 11, 2011, [KPM0001089](#)

Email from Jonathan Erling to Tim Fryer, July 11, 2011, [CPS0002218](#)

171. On July 22, 2011, Collus Power paid KPMG a fee of \$33,900.00, inclusive of HST, for the draft valuation. Ed Houghton and CFO Tim Fryer signed for the account as an "Executive

Expense.” Later, after the share sale, Collus Power deducted half of this fee along with other costs of the transaction from the Town’s dividend.

Invoice # 4417593 to Collus from KPMG, July 19, 2011, [KPM0001111](#)

Cheque record, July 22, 2011, [TOC0512947](#)

Collus Power Corp Dividends, July 31, 2012, Collins Barrow audit document, [CBB0000191](#)

Collus Power, Audit note “Costs associated with sale of Collus Power” July 31, 2012, [CBB0000058](#)

172. On June 27, 2011, KPMG employee Cindy Neale sent John Rockx a point-by-point review of Tim Fryer’s email from June 14, 2011.

Email chain including John Rockx, Cindy Neale, Tim Fryer, Ed Houghton and John Herhalt, June 14 – July 27, 2011, [KPM0001082](#)

2.14 In the Meantime, Ed Houghton, Paul Bonwick and International Solar Solutions Discuss a Business Selling Solar Attic Vents

173. On May 24, 2011, Paul Bonwick sent a draft memo to Ed Houghton that described the ownership structure of a company involved in selling solar attic vents called International Solar Solutions Inc (ISSI). Paul Bonwick asked Ed to print a copy for one of their other proposed partners, Peter Budd. The proposal outlined a split of voting shares between Peter Budd and the inventor, and a split of non-voting shares as follows: Inventor 30%, Peter, Paul and Ed, 23.3 % each.

Email from Paul Bonwick to Ed Houghton, May 24, 2011 [TOC0048017](#) (email) and [TOC0048018](#) (attachment)

174. On June 9, 2011, Paul Bonwick recommended to Ed Houghton that, from that point forward, Mr. Bonwick and Peter Budd contact Mr. Houghton at his Gmail address.

Email chain including Paul Bonwick, Ed Houghton and Peter Budd, June 9, 2011, [TOC0049530](#)

175. As discussed in more detail below and in Summary Document 1-3, Mr. Houghton and Mr. Bonwick introduced ISSI to Collus and PowerStream. Mr. Houghton did not disclose his

interest in the company to Collus. When specifically asked by Brian Bentz about ownership of ISSI, Mr. Bonwick did not disclose his financial interest in ISSI in his response to Mr. Bentz. Collus and PowerStream partnered in a promotional campaign for the solar attic vents. The campaign, which included billboard advertising in the Town, was launched in August 2011, shortly before the RFP for the sale of Collus Power shares was issued.

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