

# **COLLINGWOOD JUDICIAL INQUIRY**

## **PART 1 - COLLINGWOOD UTILITY SERVICES CORP SHARE SALE**

### **CLOSING SUBMISSION**

**AUGUST 31, 2019**

**(Commissioner: Associate Chief Justice Frank Marrocco)**

#### **OVERVIEW:**

1. Timothy E. Fryer (**Fryer**) makes this closing submission in order to provide the Commissioner with the perspective of a participant who, was approved as a party with standing due to having a substantial and direct interest in the subject matters of the Inquiry.
2. In this submission, Fryer comments on his role in the Inquiry and places this role within the jurisdiction of the Commissioner. Generally Part 1 of the Inquiry endeavours to examine if good governance was exhibited and determine if Collingwood's public business was conducted appropriately. Not only during the period of time leading up to the July 31, 2012 closing of the share sale Transaction but also afterwards, for any associated commercial relationships thru 2017. The Commissioner will utilize the knowledge provided in the evidence to determine if there are any applicable recommendations in the public interest, amongst other things, regarding future transactions and commercial relationships of similar circumstance. Fryer will also provide comment on this aspect of the Inquiry to assist the Commissioner in his endeavours.

3. Another aspect of the Inquiry is a review of relationships, if any, between existing and former elected and administrative representatives of The Municipality of the Town of Collingwood(**Collingwood**), Collingwood Utility Services Corp(**COLLUS**) and/or PowerStream Inc (**P/S**). The Commissioner will utilize evidence in this regard. Fryer will provide submission on this particular matter but only as to what pertains to his relevant relationships.
  
4. A further aspect of the Inquiry is that determinations will be made in regards to any salary and benefit impacts on COLLUS PowerStream(**CPS**), formerly COLLUS Power(**Power**), or other COLLUS employees associated with the Transaction and then during relevant commercial operations through to 2017. In this regard the Commissioner will use the evidence provided during the review into this specific area during the Inquiry. Fryer in his COLLUS role was not a recipient or participant in regards to this aspect being reviewed by the Inquiry thereby these submissions will not include comment in regards to any salary and/or benefit derived by other individuals.
  
5. For similar reasons as outlined in Item #4 the Commissioner's review of any fee or benefit that is provided by Collingwood's eventual strategic partner P/S to any person in relation to the Transaction is not reviewed by Fryer.
  
6. Finally, since it will not be until Part III of the Inquiry is undertaken that the Commissioner may be aided in his deliberations by expert testimony, in this submission Fryer will provide only general comments in relation to recommendations. As outlined in the Commissioner's closing remarks on June 28/19 if applicable Fryer will provide submission regarding recommendations in an appropriate form at a later date.

## **Relevant Facts and Issues:**

7. The broad basis of the Inquiry's Document Review requirements, established by the majority members of Collingwood Council whom initiated the process, led to over 440,000 documents being filed with the Commissioner. The Commissioner's staff had to take the atypical step of producing Foundation Document #1(FD1) to assist all participating parties and the public. FD1 provided an "untested" general overview of what was deemed to be pertinent information pertaining to the Inquiry's purview.
  
8. In **Appendix A** of this Submission Fryer provides analysis and relevant facts regarding applicable areas of the FD1 that are deemed to require further context or clarification. The **FD1-Supplementary Analysis** is provided to assist the Commissioner during deliberation on important questions that arise and are expected to be given consideration and perhaps be addressed in the Report. In this regard, with the best of the intention in mind, Fryer's consideration of certain areas of the FD1 is undertaken in conjunction with the evidence provided during the proceedings.
  
9. A central question to be addressed by the Commissioner will be in regard to all aspects of the Transaction and related matters that are pertinent to determining if good governance was exercised at all times.
  
10. Another question to be addressed during the Commissioner's review is in relation to determining if there was good conduct undertaken in the completion of Collingwood's public business.

11. In deliberations the Commissioner will be considering, in addition to all of the evidence provided in Part I, that which is to be presented during Part III.
  
12. The Commissioner's Part I closing remarks identified that Part III is dealing with policy matters of Collingwood. During the Part III proceedings the controls already enacted by Collingwood as exhibited in the 2<sup>nd</sup> sale Transaction to EPCOR and the establishment of improved municipal policies (ie. Code of Conduct) will be reviewed. Recommendations for improvements in policy that are relevant to the matters in question will be determined after considering the steps taken and what remains necessary.

**Fryer's participation in the inquiry:**

13. Fryer acknowledges and is appreciative of the degree of flexibility the Commissioner and his counsel provided to him while representing himself in the Inquiry's proceedings to date.
  
14. Fryer acknowledges Collingwood's right to investigate matters of good governance, practices and public business in accordance with the powers granted under the Municipal Act.
  
15. Fryer's primary role in the Inquiry is as a witness but in addition provides assistance as a participant. In completing the responsibilities of these roles Fryer endeavours to provide further explanation regarding some of the key aspects of the COLLUS Transaction or relevant related business matters.

16. The Commissioner has jurisdiction under Subsection 274(1)(a) to investigate municipal representatives. Fryer as COLLUS Chief Financial Officer(**CFO**) was a municipal representative during the Transaction process and subsequent events after the July 31, 2012 closing date, up to his retirement on Sept. 30, 2012. Fryer became a municipal representative again in Dec. 2014 as an elected member of 2014-18 Collingwood Council.
17. The evidence is that Fryer exercised his best business judgment at all times during his required participation while conducting COLLUS business in the matters that are under review.
18. The evidence is that Fryer exercised proper conduct in completing his fiduciary and due diligence requirements in regard to COLLUS related business matters.
19. The evidence is that Fryer did not have any relationships other than appropriate business relations amongst the parties of interest in the considerations of this Inquiry's proceedings.

### **FRAMEWORK OF THE ANALYSIS:**

20. In December 2010 Collingwood's newly elected Council were sworn into office. At the outset of that term it was determined that options would be considered regarding all of Collingwood's major municipal assets to ensure maximum value was being realized.
21. The 2010-4 Council Strategic Plan was of the view that there were many municipal infrastructure requirements but also financial restrictions, such as an "unhealthy" level of internal and external 3<sup>rd</sup> party municipal debt.

**22.**In July 2011 the COLLUS Board members who had responsibility for the effective operation of Collingwood’s municipal electricity distribution services, as directed by Collingwood Council, determined a process to consider the possibilities that were available. Either, of maintaining Collingwood’s 100% ownership or divesting of a majority/minority interest. *Fryer only participated as a resource when Council made this determination.*

**Fryer (Chief – McGrann) – May 14/19 Pg 47**

**23.**Ultimately Council in Dec. 2011 unanimously supported entering into a 50/50 Strategic Partnership(**SP**) with P/S. A central objective was to form a successful SP model that other Ontario Local Distribution Companies (**LDC**) would find attractive and be interested in joining into after anticipated new Provincial regulation was established. Although Hydro One’s(**HONI**) proposal provided a higher bid amount and unanimously scored as 1<sup>st</sup> place for the financial criteria, HONI scored very low in regards to the SP criteria. Also there was similar lowest score results on the other 40% criteria components. The low scores for HONI indicated that the assumption was that there would be less possibility of success with HONI as a strategic partner on the “Regional Growth Strategy” going forward. *Fryer acted appropriately when he was a participant in the RFP scoring analysis that was based on the comparative information provided by KPMG. An example in evidence of this is that Fryer scored Horizon 1<sup>st</sup> on Non-Financial criteria.*

**Exhibit #89 – CPS0006920 (Individual scores for SP & Other criteria)**

**FD1 – Prgh #396 (KPMG not Fryer will evaluate RFP Bid Proposals)**

**24.**Regarding Item #22, Council appropriately decided to initiate a RFP process for analyzing and determining a strategic partner. The 2014-8 Council also undertook a RFP process when EPCOR was chosen to partner with Collingwood in the process of divesting their remaining 50% portion. The EPCOR transaction had a very successful outcome that mutually benefited Collingwood as well as the municipal electricity ratepayer. *Fryer’s participation as a Councillor during the EPCOR negotiations contributed to securing the required additional benefits to ensure this successful outcome.*

**Brown (Fryer) – Page 81 of June 27/19 Exhibit #125 (TFF0000006)**

25. Council implemented a series of amendments to policies from 2012-17. One major step was that in 2013 a Code of Conduct was established. In 2015 Council determined that amendments to that Code were required in order to ensure that the protection of the public interest was maximized. *Fryer's participation as a Councillor included supporting the new and improved regulations that were brought into policy during his term.*

**Almas(Breedon) - Exh #28(CJI0010494-Transparency amendments)**

### **RECOMMENDATIONS FOR CONSIDERATION:**

*It is noted in Item #12 that Part III of the Inquiry is still to be undertaken. Fryer expects that the deliberations at that time will provide further key analysis that will be beneficial to the Commissioner in his determination of specific recommendations that will be made in the public interest.*

*To assist, at this point in time, Fryer only provides the following general recommendations. As per the Commissioner's closing comments from June 28/19 as the Inquiry progresses if it is determined that there is any additional input that could be beneficial it may be provided for consideration after it becomes evident.*

***Fryer supports recommendations that:***

- Are effective in ensuring that the intended benefits that can be derived from the independent opinion of a municipality's Integrity Commissioner are maximized.
- Assist Municipalities in determining what if any further measures can be undertaken to improve transparency in all of their future interactions with the public.
- Are intended to protect the public interest while continuing to ensure there is effective and efficient communication amongst municipal representatives and their entrepreneurial community.
- Assist in reducing or possibly eliminating any amount of doubt or uncertainty, about decisions that are made, amongst the public and the municipal representatives they place their trust upon.
- Ensure that as efficiently and effectively as possible a clear mandate is obtained from the public on significant matters that have not had the opportunity for an open and robust public process.

**SUMMARY:**

Fryer appreciates the Commissioner's efforts on behalf of the Town of Collingwood. Fryer looks forward to the Commissioner reporting on his findings and making recommendations that will assist municipal representatives with protecting the public interest.

# COLLINGWOOD JUDICIAL INQUIRY

## PART 1–COLLINGWOOD UTILITY SERVICES CORP SHARE SALE

### APPENDIX A

**AUGUST 31, 2019**

#### **Foundation Document 1 - Supplementary Analysis**

##### **1.0 Mr. Timothy E. Fryer - Background**

1. Timothy E. Fryer(**Fryer**) began his employment, as the primary financial resource of the Collingwood Public Utilities Commission(**CPUC**) Hydro and Water Departments, in July 1979. Fryer then served as the Chief Financial Officer(**CFO**) after the Town of Collingwood(**Collingwood**) replaced the Hydro Dept. of the CPUC by forming the related entities of Collingwood Utility Services Corp(**COLLUS**) in compliance with the *Electricity Act 1998* in 2001. Fryer retired from his CFO role on Sept. 30, 2012.

**Fryer Chief (K. McGrann) – May 13/19 Pg 186**

2. Fryer graduated from University of Western Ontario in 1979 with a Bachelor of Arts – Economics degree. Fryer then completed the SMA requirements of Certified Management Accountant in 1987. Fryer maintained full member status until moving to “Retired Status” in 2014.
3. Fryer, after retirement from COLLUS, continued to provide Administrative Services amongst some of Ontario’s Local Distribution Company (**LDC**) community of municipal electricity distribution utilities. For example, during 2012-2015 he provided services for LDC’s considering Mergers, Acquisitions, Amalgamations and Divestitures (**MAAD**) options. In addition he provided services on Valuation Calculations and Organizational Reviews.

4. Fryer became a Board member of Centre Wellington Hydro Inc (**CWH**) in 2014. CWH is wholly owned by the Township of Centre Wellington. CWH is similar in structure, processes and practices to that which COLLUS exhibited and exercised, prior to the 50% Strategic Partnership Share Sale Transaction(**SP**) in July 2012. A pertinent similar process is that CWH is also one of the founding members of Cornerstone Hydro Electric Concepts (**CHEC**), which was formed by a group of volunteers in 2002. CHEC was formed to provide a co-operative entity, for former Municipal Electric Utilities(**MEU**) considering the establishment of a LDC, that would specialize in providing essential regulatory related services for members on a cost sharing basis. Essentially this is a Shared Services model between the participating members. CHEC continues to successfully meet this objective.

**Bonwick (Fryer) – June 14/19 Pg 30-31**

5. Fryer was elected and served as a member of the Collingwood Council from 2014-18. Fryer campaigned and then attempted, during his tenure, to implement additional “municipal oversight” measures for Collingwood’s municipal utility services. Fryer regarded these additions as essential for the commercial relationship between Collingwood and PowerStream(**P/S**) Inc to be successful in achieving the partner’s goals. Limited success was achieved in regards to these efforts.

**Fryer Chief (K. McGrann) – May 13/19 Pg 187**

**Brown (Fryer) – June 27/19 Pg 120-122 (Exhibit #393)**

**Houghton (Fryer) – June 11/19 Pg 351**

6. Fryer, during 2010-12, had only a COLLUS business related relationship with Mr. E. Houghton(**Houghton**). Fryer, during 2010-12 had infrequent COLLUS business related interaction which in those matters was never as a primary resource with Mr. P. Bonwick(**Bonwick**). Fryer considered, in 2010-12, that Houghton and Bonwick were social friends, as well as being involved in COLLUS business related matters. Fryer, during 2010-12, only had COLLUS business related interaction with Deputy-Mayor Rick Lloyd(**R. Lloyd**). Fryer only had COLLUS business related interaction with related parties of P/S.

**Fryer Chief (K. McGrann) – May 13/19 Pg 188**

7. Fryer, during 2010-12, was responsible for a significant additional Finance/Regulatory & Customer Service Administration workload. Planning was undertaken to meet the requirements developed in association with conforming to regulations to ensure that all related entities were in compliance. Fryer regularly monitored and reported to COLLUS on progress towards completing the work. This was done directly through the COLLUS Audit Committee. Consideration of any possible options, in regards to the COLLUS assets, was not included into the planning until July 2011 after COLLUS and Collingwood directed staff that a SP consideration process was to be undertaken. The tracking of the workload included retirement planning for departmental personnel and other key resources, other than any employee senior to Fryer. Fryer's succession resource Ms. C. Shuttleworth(**Shuttleworth**), for an anticipated 2015-16 retirement, had joined COLLUS Jan. 2011. It was an extremely demanding time for Finance.

**Fryer Chief (K. McGrann) – May 13/19 Pg 190-92 (Exhibit #115)**

### **1.01 Foundation Document 1 – OVERVIEW**

8. Foundation Document 1(**FD1**) was produced in conjunction with the Terms of Reference requirements Collingwood established for the Inquiry. The associated request by the Commissioner resulted in approximately 440,000 documents being submitted for consideration by the participating parties. As it is outlined in FD1 that it is only a general overview, requiring in many cases further substantiation, to assist the Commissioner in establishing what evidence is considered in ascribing weight to the document contents.
9. The Commissioner at the outset of the hearings stated that FD1 had not been tested for truth of the contents, nor could it be completely reviewed during the hearing proceedings. Fryer submits, in coordination with the evidence introduced during oral hearings, additional details in the following items. It is submitted in an attempt to provide further context in regards to applicable portions of the FD1 that are deemed to require the clarifications.
10. Fryer's submitted **ITEMS** are in sequence and in conjunction, as closely as possible, with the applicable section of the untested FD1 & are duly noted.

## **1.02 COLLUS Structure & Relationship 2000-10 (FD1 : Section 1.6 Prgh 45(a))**

- 11.** In addition to COLLUS Power Corp(**Power**) being deemed to be under the regulatory regime of the Ontario Energy Board(**OEB**), all interactions with other COLLUS companies, the Collingwood Public Utilities Services Board (**CPUSB**) and Collingwood were considered to be as well. The Power related business operations with these other affiliated entities, for the purposes of performing any regulatory operations, were required to be done in compliance with the OEB's Affiliate Relationship Code(**ARC**).
  
- 12.** The ARC originated in 1999 in preparation for the 2001 establishment of LDCs and their related organizational structures. Major revisions of the initial ARC occurred throughout the next decade with the last update in March 2010. Amendments were made as the OEB deemed to be required to provide clarity to LDCs to assist them in determining how to conform. In some cases amendments actually were reversals of earlier regulations which introduced a level of uncertainty. There continues to be a measure of uncertainty about exactly how to ensure a LDC or affiliate conforms to the ARC, creating difficulties when establishing operational policies & practices.
  
- 13.** COLLUS and the OEB relied heavily that there was a full and robust review process when the 4 to 5 year regulatory required Cost of Service (**COS**) rate application was considered for approval. The review process included a process to substantiate compliance to ARC. If during a COS process a LDC is deemed not to be in conformance on a particular matter it will be recorded as a requirement to be completed and reported/verified when the next COS is filed or sooner. COLLUS never had any OEB compliance notices on the methodology it employed for matters in regards to complying with their ARC requirements.

**14.**Careful consideration of the ARC formed the basis to the establishment of first the appropriate terms and then the on-going maintenance of the Shared Service Agreements(**SSA**) that the OEB required to be in place between Power and its' affiliate entities. One example is the requirement for COLLUS Solutions Corp(**Solutions**) the services corporation, to use the same structure of terms, for the SSA with Power, as the SSA it maintained with CPUSB. Over the years leading up to the SP, Collingwood understood this to be the case and complied. Collingwood also relied on the external auditor's annual report which indicated that all entities were in compliance.

**15.**One of the primary goals of ARC is to ensure that there is no cross-subsidization of cost by Power's electricity ratepayers to an affiliate company. That was also a primary goal of CPUSB on behalf of the water ratepayer. By extension it was also a primary goal of Collingwood for the municipal taxpayer.

**16.**Prior to the SP neither Power nor Solutions were made aware of any cross-subsidization concerns by either an external regulator such as the OEB or COLLUS's independent auditor. Nor was there an indication or concern brought forward from any of the affiliated entities.

**OEB Report for Collingwood Judicial Inquiry: Pg 13-14 (Exhibit #111)**

### **1.03 History of COLLUS Companies (FD1: S 1.7 Prgh 50)**

**17.** The Collingwood Public Utilities Commission(**CPUC**), until the inception of COLLUS, had a Hydro and Water Department. The CPUC governance was provided by a Board consisting of 2 elected Commissioners and the Mayor of Collingwood. After COLLUS incorporation the CPUC continued in regards to the provision of municipal water operations on behalf of Collingwood.

- 18.** During the Strategic Plan implementation in regards to the new Hydro governance structure it was decided that the CPUC would takeover full ownership of the Operations Centre at 43 Stewart Road. As a tenant Power would pay annual rent, calculated in conformance to applicable regulations so that it could be appropriately recovered through electricity rates.
- 19.** Other operational decisions were also made at the time to the direct benefit of Collingwood, such as the CPUC also taking on full ownership of the rental hot water tank business. These decisions were done in conjunction with the establishment, by Collingwood, of the COLLUS's shareholder directed investment and dividend policies/practices.
- 20.** The structure for Collingwood as the 100% owner/shareholder of the COLLUS holding company and 3 operating subsidiary entities was one that was prevalent amongst Ontario municipalities. Importantly from Collingwood's perspective neighbouring Wasaga Beach established the same structure. This model of a new LDC structure was utilized by dozens of Ontario LDCs. Specifically those that were clients of PowerBudd LLP.

**Erling(Fryer) – May 13/19**

- 21.** When the CPUC had to be dissolved because of the termination of the Public Utilities Act, Collingwood decided it would establish a new municipal service board structure. Since a municipal service board could not own property, 43 Stewart Road ownership transferred directly over to Collingwood. Power's annual rent charge was paid to Collingwood through the CPUSB. The CPUSB itself didn't directly pay rent to Collingwood. Any of the CPUSB associated Operation Centre costs were directly incorporated into water user rate calculations. It is unknown if Collingwood recorded an internal adjustment to account for this subsidization by water ratepayers.

#### 1.04 Collingwood's Shareholder Direction to COLLUS (FD1: S 1.8 Prgh 54)

22. The "no sharing of confidential information" responsibility, noted in Prgh #54, which would be incumbent upon officers and directors of the COLLUS entities would still be applicable even after an individual was no longer an active employee or director.

**Brown(Fryer) – June 27, 2019 (Pg 72-73)**

**Brown(Fryer) – June 27, 2019 (Pg 88)**

#### 1.05 The COLLUS/CPUSB/Town Service Agreements (FD1: S 1.9)

23. In 2000 ECMI consulting services was utilized by COLLUS, as they were by numerous LDCs, to establish a service agreement structure that would conform to ARC. ECMI also assisted in the agreements Wasaga Distribution established as the neighbouring LDC also had the same corporate structure.

**Erling(Fryer) – May 13/19 Pg 130**

24. A feature of the subsequent SSAs was that transfer pricing/costing for services rendered would be completed on a **cost-based basis, transparent and effective**, consistent with the OEB's precedents at the time. SSAs methodology must be cost based and any allocation of cost should specifically reflect cost causation to be ARC appropriate. An additional feature was that the services outlined within the SSA would maintain a **"bundled"** format because of **"overlap"** that occurred when services were being administered by Solutions staff.

**Brown(Fryer) – Pg 100-103 (Exhibit #392)**

25. The annual COLLUS Financial Statements(**FS**), as required to conform to Generally Accepted Accounting Practices (**GAAP**), included applicable Notes to the FS that reflected detailed information on transfer pricing interactions amongst related parties for any services exchanged by affiliated companies.

**26.** COLLUS, CPUSB and Collingwood all utilized the audit firm of Gaviller & Co as their external auditor. There was agreement amongst the entities that an additional annual report feature would be beneficial in providing evidence as to meeting the obligations of the Shareholder Direction that are outlined in FD1 Prgh 53(d). The Cash and In-Kind(**CIK**) analysis summary was provided with historical, current year, budget year and 2 year forecast details. The CIK summary was part of the Annual Report and Business Plan(**AR/BP**) presented annually to Collingwood Council for their consideration prior to providing any formal approval. When the AR/BP was approved, the Council motion also provided guidance for their appointee that was selected to represent the shareholder at the COLLUS and CPUSB Annual Meeting that was generally held shortly thereafter.

**Neate(Fryer) – May 15/19 Pg 66**

**27.**Internal accounting processes closely monitored the largest component of any shared service cost. That was the labour related costs for whenever Solutions employees provided services to Power, CPUSB or Collingwood.

**Fryer(Marrocco) – May 14, 2019 (Pg 16-19)**

**McFadden(Fryer) – May 13/19 Pg 105 Line 3 (Exhibit TFF00004)**

**28.** COLLUS identified in 2010 there was a need to prepare to amend the then active SSAs. The intention at that time was to update the SSAs in conjunction with the planned filing of the 2012 COS rate application. That would ensure the new agreements and associated cost/methodology would be reviewed fully by the OEB and if necessary any intervening party.

**Cooper(Fryer) – Apr. 25/19 Pg 321**

**29.**In 2011 for a number of reasons such as recent rulings by the OEB(ie. Brantford) on transfer price agreements and the requirement to conform to the new International Financial Reporting System(**IFRS**) regulation, COLLUS determined that Solutions should be terminated. An expected outcome of this re-structuring step would be that only a SSA between the CPUSB and Power would be required. There was no timetable set at that point in time.

**Brown (Fryer) – June 27/19 Pg 93-94**

**30.**When Collingwood Council decided to formally enter into a SP for Power with P/S, decisions were reached that the SSAs would be updated in 2013. A major factor in that decision was that P/S was likely to become a service provider to at a minimum COLLUS PowerStream(**CPS**), the new Collingwood LDC entity. Therefore all parties agreed to allow the closing of the SP transaction to move forward and then any required amendments would be determined and new SSAs established in approximately 1 year.

**McFadden(Fryer) – May 16/19 Pg 110**

**Shuttleworth(Fryer) – May 17/19 Pg 125**

**1.06 Ed Houghton: Dual roles with COLLUS and Town of Collingwood (FD1: S 1.11 P 59-60)**

**31.** Houghton was also appointed CEO of CPUSB along with all COLLUS entities.

**32.** Houghton(Executive Exp.) and Irwin(Management Exp.) were compensated directly as employees of Solutions and then an appropriate cost allocation to Power and the CPUSB for their applicable portion was made as per the approved table. Finance at a minimum annually reviewed all Solution employees associated workloads to establish the appropriate allocation portion to the operating companies. The external auditor reviewed the report annually in conjunction with amounts recorded in the CIK summary.

**McFadden (Fryer) – May 16/19 Pg 105-108 (Exhibit TFF000004)**

**Fryer (Chief - Justice Marrocco) – May 14/19 Pg 17-20**

**33.**The Operations Dept. employees of Power and the Information Technology Dept. employees of Solutions reported directly to Irwin. The Regulatory and Administration employees of Solutions reported to Fryer.

### **1.07 The Report of the Ontario Distribution Sector Review Panel (FD1 S1.13 )**

**34.** Although the report of the ODSRP delivered some of the findings that were anticipated by the COLLUS Board and Houghton the LDC sector was not impacted by any new regulations, associated with the key findings, as significantly as expected. Municipal shareholders and their related LDCs, that have chosen to, have essentially been successful in maintaining the “**status quo**” since 2011. They have been successful by utilizing a number of different methodologies to provide cost effective solutions to meet any new requirements. As such then “**status quo**” per se continues for the vast majority of LDCs that were operational in 2010-11.

**35.**CHEC continues to be one of the most effective methods of achieving cost efficiency utilized by its member LDCs. CHEC has grown in size to 17 members in 2018. CHEC also now delivers additional service options compared to those that were in place back in 2010-11. CHEC’s value/return, as calculated annually, is an estimated \$256,000 per member in 2017.

**Bonwick(Fryer) – June 14/19 Pg 30-31**

**1.08 Ed Houghton Contacts Brian Bentz Concerning Potential RFP for Sale of  
- COLLUS Power (FD1: S2.1 Prgh 108 & 113)**

**36.**The evidence indicates that Fryer was not a participant in the September 2010 informal Board discussions. Other than being a resource for KPMG during the valuation process Fryer did not participate in the process that was undertaken as per the September discussions until Collingwood Council indicated the direction that was to be pursued, around June 27, 2011.

**Fryer (Chief-McGrann) – May 14/19 Pg 37**

**37.**The evidence is that Fryer was not aware when completing the annual insurance renewal questionnaire in Dec. 2010 that there was any consideration by Collingwood of a possible MAAD transaction in 2011.

**1.09 Ed Houghton asks P/S for recommendation for a Valuator of COLLUS (FD1: S 2.3 P 121)**

**38.**The evidence indicates that there was not any discussion by Houghton with the COLLUS Audit Committee on Jan. 21/11 in regards to the authorization of a valuation of Power.

**Fryer (Chief-McGrann) – May 14/19 Pg 23**

**1.10 Houghton Retains KPMG to Value COLLUS Power(FD1: S 2.8 Prgh 150&151)**

**39.**The evidence indicates that Fryer did not participate in the initial call of March 11/11. Fryer was instructed by Houghton that a valuation process was going to be done on behalf of Collingwood. As shareholder, Collingwood wanted to understand more about the potential value of their asset. It was further explained that all municipal assets were under review.

**Erling (Fryer) – May 13/19 Pg 140**

**Fryer (Chief-McGrann) – May 14/19 Pg 24 - 26**

**40.**The evidence indicates that Fryer supported the use of KPMG to provide a valuation as it would be an objective view from an independent expert agency. In addition Fryer was prioritizing Finance’s successful completion of the department’s work on other critical Finance/Regulatory requirements.

**Fryer (Chief-McGrann) – May 14/19 Pg 25**

### **1.11 KPMG Raises Concerns About the Valuation (FD1: S 2.10 Prgh 155&156)**

**41.**The evidence is that on April 25/12, the same day more specific information was requested by KPMG, Fryer notified all parties involved in the valuation process, that his understanding was that only a general overview would be done. If more specific work was initiated then Fryer had time concerns.

**42.**The evidence indicates that Fryer participated appropriately and with the best business judgment possible throughout the valuation process.

**Erling (Fryer) – May 13/19 Pg 138-9**

**Fryer (Chief-McGrann) – May 14/19 Pg 30-31**

### **1.12 The KPMG Draft Valuation Report is Delivered (FD1 S 2.12 Prgh 163&164)**

**43.**The valuation determinations that were delivered appeared to closely correspond with the ratios that were known to be prevalent in regards to any of the recent(circa 2010) LDC transactions. The evidence indicates that the estimated value was determined based on a perspective that there was a high level of uncertainty/risk in place due to current market conditions.

**Erling (Chenoweth) – May 13/19 Pg 117-118**

**44.**As noted in the evidence the only truly accurate indicator of value would be what a buyer was willing to pay. Especially since various long-term debt level possibilities for COLLUS could be and as it turns out were factored into the offer packages that were provided by the interested RFP proponents.

**45.**The evidence indicates that the services that Solutions employees provided to Power, Solutions and/or Collingwood were fully charged for, to the appropriate entity. There wasn't "free services" or subsidization occurring.

**Erling (Fryer) – May 13/19 Pg 160**

**46.** Regarding **Prgh #166** the evidence shows that COLLUS not only always presented the annual Consolidated Financial Statements(**FS**) to Collingwood Council, but they also provided the FS on their website for public & media access. As well, Power's annual FS were provided and issued in a public release by the OEB in the annual comparative statistical summary report.

**1.13 Fryer comments on Draft Valuation: KPMG Considers the Comments and Renders its Account (FD1: S 2.13 Prgh 170-1)**

**47.** The evidence, as outlined in Prgh #170, is that even though the Transfer Tax correction to the KPMG draft report was favourable to Collingwood's position as to the consideration of a sale, the Board and Houghton were at odds with Fryer about his correction of the consultant's Draft Report.

**48.**The \$33,900 fee of KPMG was correctly expensed by Power. The decisions by COLLUS as to apportion the costs, incurred during the SP process that would be allocated to Collingwood, were made without Fryer's participation. Also the Working Capital adjustment clause of the SP transaction terms utilized in the closing process would result in a NIL impact even if 100% had been allocated. In that case the dividend would have been \$16,950 higher, offsetting Collingwood's increased expense.

**Shuttleworth(Fryer) – May 17/19 Pg 119**

**1.14 COLLUS Delivers its Annual Report&Business Plan to Council on May 30/11-  
- (FD1: S 3.1 Prgh 179)**

**49.** The evidence is that the AR/BP presentation to Council was a continuance of the process that was fulfilled each year to meet their reporting requirement. The requirement was outlined in the Shareholder's Direction established when COLLUS was originally incorporated. As was required it included performance measurement analysis that provided information for Council to utilize in their determination of what the overall performance had been. Prior to the SP every annual presentation was well received by Council and unanimously approved.

**50.**The evidence indicates that the only "grey" sense in the allocation of shared services was that an estimation process had to be used to determine the appropriate allocations of Solution employee costs to Power and the CPUSB. To be as accurate as possible allocation percentages were reviewed with each employee annually and then as well audited by the external auditor. Also the OEB reviewed the apportionments for accuracy and appropriateness when the COS rate applications were submitted.

**Neate(Fryer) - May 15/19 Pg 66**

**51.** MacDonald's costs were fully allocated to the CPUSB, from the outset of when he was employed in 2000. The annual CIK report information was provided by COLLUS and the CPUSB to Collingwood for use in their own internal processes of recording any cross-subsidization adjustments, between the **taxpayer** and **water ratepayer**, that they deemed necessary.

**MacDonald(Fryer) – May 23/19 Pg 67 & 70**

**52.** The use of an "In-Kind" assessment and reporting was an agreed upon mechanism that the external auditor required for appropriate tracking of transfer pricing impacts. In-Kind is an approved accounting methodology prevalent in the municipal and electric utility sectors, as a way to determine the full-cost for a particular service that is being provided to the ratepayers.

**MacDonald(Fryer) – May 23/19 Pg 72**

**53.** The evidence indicates that Houghton's statement that > 50% of his job is Collingwood related is not accurate. The evidence further shows that although Collingwood did not directly provide compensation to Houghton, the associated costs of his municipal work were allocated and paid for by the CPUSB. As a result either water user rates or municipal property tax rates(dependent on Collingwood's internal treatment of any In-Kind allocations) were covering those expenses. The evidence indicates there was no portion of this municipal cost (Houghton's compensation allocation) knowingly being subsidized by electricity ratepayers.

**Neate (Fryer) – May 15/19 Pg 66**

**McFadden(Fryer) – May 16/19 Pg 108**

**1.15 Houghton requests a meeting with COLLUS chair & Independent Director McFadden (FD1: S 3.2 Prgh 184) -**

**54.**The evidence indicates that from Dec. 2010 to the noted early June meeting any relevant discussions did not include Fryer. The “only on a need to know basis” limited participation role continued over the next 6 months. It culminated with no direct participation at all in the 2012 SP closing process.

**Houghton(Cheonweth) – Pg 251**

**Shuttleworth (Fryer) – May 17/19 Pg 119**

**Houghton(Fryer) – June 11/19 Pg 342**

**1.16 The Strategic Partnership Task Team Meeting August 29/11 (FD1: S 3.17 P 248-9,253 & 258)**

**55.**The evidence in Prghs #248-9 indicates that Fryer had limited participation in important phases of the interactions of the SPTT in August 2011.

**56.**The evidence indicates that once the SPTT established that P/S was the preferred option, further negotiation did take place. This is considered a common practice once a preferred proponent has been selected. Fryer did not participate in any of the negotiations or clarification meetings/work.

**Herhault(Chenoweth) – May 22/19 Pg 213**

**Neate(Fryer) – May 15/19 Pg 63**

**FD1/Sect: 5.6/Prghs 396-7**

**57.**The evidence is that the additional \$700,000 provided by P/S during negotiations was considered an “early mover premium”, which combined with the \$7,300,000 Purchase Price offer to achieve the total cash proceeds of \$8,000,000.

**Bentz(Fryer) - June 3/19 Pg 82-83**

### **1.17 Preliminary Interviews arranged with 4 Bidders&SPTT (FD1 S 3.19 Prgh 279)**

**58.**The evidence indicates that as per the statement by Bonwick regarding “eventual consolidation we have targeted”, ultimately the Unanimous Shareholder Agreement(**USA**) established terms that would allow this to occur after 2014. Specifically the 30 month standstill clause, which had not been outlined in the RFP request, would end approximately in Dec. 2014.

**Bentz (Fryer) – June 13/19 Pg 90**

**59.**The evidence is that when BLG’s Mark Rodger did his review, referred to in Section 8:17, he reported to Council that it appeared, based on his limited understanding of the information, that the SP was a 2 stage acquisition.

### **1.18 The RFP Selection Criteria (FD1: S 4.2 Prgh 293)**

**60.** The evidence indicates that the criteria established for evaluating the RFPs was weighted as 30% Financial, 30% Strategic Partnership and 40% Other. The RFP requested a separation of any bidder’s submission into 2 separate packages. One for Financial and the other of what was described as Non-financial. There also could have been a separate package request for the Strategic Partnership criteria because of the level of importance it garnered. Especially since it was being given equal value to the Financial.

**Fryer (Chief-McGrann) – May 14/19 Pg 60**

**Herhault(Fryer) - May 23/19 Pg 116-7**

### **1.19 Concern about Methodology Establishing Purchase Price (FD1 S 4.10 Prgh 319)**

61.The evidence in the Prgh #319(as well as #412) indicates that the intention of the P/S approach, regarding their Purchase Price offer, was that it would be more transparent to propose a pre-capitalization dividend approach. There was significant difficulty though for KPMG when they tried to provide precise comparative information to the SPTT and Council in regards to the other 3 RFP proponent's post-capitalization approach for their bids.

62.The evidence indicates that a consideration with any partnership choice would include the possibility of eventual rate harmonization for Power ratepayers. P/S distribution rates are lower than Hydro One Networks Inc's (HONI), so harmonization with P/S would be best for the municipal electric distribution ratepayers over the long-term.

**Bentz(Fryer) - June 3/19 Pg 95**

### **1.20 Veridian Asks Whether a Bid for more than 50% of Collus Power would Disqualify the Bidder (FD1: S 4.15 Prgh 339)**

63.The evidence indicates that once Collingwood Council determined that it would only consider a 50/50 partnership, other options were not to be reviewed. Veridian's desire to provide a full sale option and similar positions put forward did not alter the adherence to the 50% guideline.

**Fryer(Chief-McGrann) – May 14/19 Pg 88-90**

### **1.21 Hydro One (FD1: S 4.16 P 342)**

64.The evidence indicates that Erling only had the email information of HONI and P/S. Fryer authorized release to the RFP proponents that had provided the contact information, with an understanding that others would receive it as soon as Erling could get their appropriate email address information.

**65.**The evidence indicates that the data room was housed at Power's secured location and accessible to all proponents. The data room contained the information Power expected a proponent would require - at first, mostly items that were already in the public domain(ie. Power's AR/BP & Financial Statements) - then it would be added to as required based on any proponent's request and/or inquiry.

**Erling(Chief-Mather) – May 13/19 Pg 97**

**Erling(Fryer) – May 13/19 Pg 167**

**1.22 Concerns raised about Sharing one Bidders Questions with Other Bidders --**  
**- (FD1: S4:17 Prgh 345, 347, 351 & 355)**

**66.**The evidence indicates the decision for the share sale of Power to become a share sale of COLLUS was made for a number of reasons. These included:

- the indication at the time that Solutions would be dissolved, so Power would be the only active subsidiary of COLLUS.

**Neate(Fryer) – May 15/19 Pg 71**

- there were possible higher tax cost implications in the case of at least one of the bids(HONI) if it was just a share sale of Power.

**Neate(Fryer) – May 15/19 Pg 67-68**

- it was anticipated that if only Power shares were sold there could be negative impacts on the planned updating of the SSA. This was partly due to uncertainty as to how Solutions would be dissolved (ie. Post-Dissolution Re-Location of Solutions workers was unknown at the time).

The expectation was that SSA services would essentially remain at least the same moving forward with a SP. This factor and the others were prevalent when decisions were made as to the best corporate structure after the SP.

### **1.23 Summary Table 1-4-1: Non-Financial Bid Details (FD1: S 4.24 Prgh 367)**

**67.**The evidence indicates it was recognized that successful service level SSAs between Collingwood and P/S would be essential for success in the Regional Growth Strategy moving forward.

**Bentz(Fryer) – June 3/19 Pg 96**

**68.**The evidence is that the statement was made during the RFP consideration process that the objective was for CPS to be the “hub” of the RGS LDCs.

**Nolan(Fryer) – May 30/19 Pg 287-288**

**Bentz(Fryer) – June 3/19 Pg 85-86**

### **1.24 COLLUS Issues Press Release (FD1)**

### **1.25 The Bid Scoring System is confirmed, KPMG discusses the Bids and COLLUS - - Power Holds a Public Information Session (FD1 S 5.2 Prgh 383)**

**69.**The evidence indicates that although Houghton’s email states “it was decided” this was only in reference to what was being proposed to the SPTT members for their overall consideration. In the end a rule that there would be a starting point of 10 was not enforced upon the SPTT members.

**Cooper (Fryer) - April 25/19 Pg 302-3**

**1.26 Houghton informs KPMG that Fryer is not Evaluating RFP Proposals (FD1: S 5.6 Prgh 396-7)**

**70.**The evidence indicates that Fryer wasn't charged with evaluating the RFP Financial Offers. As with the other members of the SPTT Fryer relied on KPMG's summarized details to provide an accurate comparative analysis to determine their scores. HONI unanimously received thirty(30) 1<sup>st</sup> place points from the SPTT for a score on the Financial component of the criteria.

**Rockx(Fryer) – June 18/19 Pg 27**

**71.** The evidence is that there was internal bantering amongst KPMG resources that did not encompass any official positions. There is no indication in any evidence that Fryer had been made aware of any direct concerns by Board or Houghton of any uncertainty with his work in conjunction with KPMG.

**Erling(Fryer) - May 13/19 Pg 138**

**Houghton(Chief-McGrann) – June 11/19 Pg 295**

**1.27 The Discussions Between the 2<sup>nd</sup> & 3<sup>rd</sup> KPMG Bid Analysis – PowerStream increases the Offer of Payment – Hydro One's Continues to be Highest (FD1 S 5.13 Prgh 417&419)**

**72.**The evidence indicates that the Dec. 1/11 negotiation meeting is when the 30 month stand-still agreement was reached between COLLUS and P/S.

**Houghton (Fryer) – June 11/19 Pg 331-2**

**73.** The evidence indicates that P/S had a valuation of Power done during their RFP consideration. The increase of \$700,000 that was provided to Power brought the P/S offer up to \$8,000,000 which was approximately 50% of the valuation estimate that BDR determined. The COLLUS valuation (Prgh #163) indicated a calculated upper range of \$16,300,000 for 100%.

**Bentz(Fryer) – June 3/19 Pg 83**

**1.28 COLLUS Auditor Raises Concern about Proposed Sale to P/S (FD1 S 5.17 Prgh 432-33)**

**74.**The evidence is that Neate attended SPTT meetings as per the committee's request to provide expertise. This decision was based on the fact that Neate's external auditing services(which included preparing the CRA required annual filings) for COLLUS and the CPUSB Boards over the previous years had been well received and appreciated. No concerns were noted.

**Cooper(Fryer) – Apr. 25/19 Pg 322**

**McFadden(Breedon) – May 16/19 Pg 31**

**75.**The evidence indicates that Neate's objective review to the SPTT was essentially not relied on by Houghton. After the Dec. 2/19 SPTT meeting neither Neate or Fryer directly participated in any of the further Collingwood and P/S share sale closing processes.

**Shuttleworth Affidavit – May 13/19 Item #4**

**Shuttleworth (Fryer) – May 17/19 Pg 119**

**Houghton(Fryer) – June 11/19 Pg 342**

**1.29 PowerStream Considers Purchasing the COLLUS Holding Co (FD1 S 5.22 Prgh 453-61)**

**76.**The evidence indicates as per detail in #75 the financial resources utilized at the Dec. 12/11 SP resources meeting and any associated follow-up closing duties (ie. Unanimous Shareholders Agreement) were Shuttleworth and Rockx. In addition to the purpose of minimizing tax, the likely termination of Solutions supported a final determination that COLLUS should be vendor.

### **1.30 The Recapitalization Dividend is Calculated (FD1 S 5.33 Prgh 504-506)**

**77.** The evidence indicates that Prghs #504-506 were amended to indicate that Fryer was not part of the email chain identified as Doc # TOC0084661.

**78.** The evidence indicates that Fryer indicated that the P/S proposed terms would mean the “recapitalization” dividend calculation would be a moving target until the transaction closed. The evidence further indicates that Rockx relayed this perspective to Collingwood Council on Jan. 16/12.

**Neate(Fryer) – May 15/19 Pg 58**

**79.** The evidence also indicates that Fryer indicated that the “recapitalization” was brought about by a “debt injection” into COLLUS. That could be done without an ownership change as it would just be that Collingwood, the Shareholder, would be borrowing against asset value. If that step was exercised though it would result in the COLLUS investment value decreasing by the amount of external 3<sup>rd</sup> Party debt undertaken.

**Glicksman(Fryer) – June 4/19 Pg 145-7**

**1.31 CHAPTER 6 – FINALIZING SHARE PURCHASE-COMPENSO CONSULTING  
WORK CONTINUES WITH P/S AFTER COUNCIL APPROVAL OF SHARE SALE (FD1  
SECTIONS 6.1-6.3)**

**80.**The evidence indicates that a concentrated effort was made in early to mid-2012 by Bonwick, Houghton & Bentz on behalf of Collingwood and P/S regarding regionalization and consolidation(Regional Growth Strategy).

**Sections 6.1, 6.2 & 6.3**

**81.**The evidence indicates that Bonwick recognized implementation of the Regional Growth Strategy(RGS) would require his and Houghton’s commitment and involvement over a long-term period of time if it was to be as successful as possible.

**Bonwick(Fryer) – June 14/19 Pg 17**

**82.**The evidence indicates that Bonwick discussed retirement with Houghton in conjunction with the anticipated success of Compenso’s retail initiatives.

**Bonwick(Fryer) – June 14/19 Pg 18**

**1.32The Closing of July 31/12: The Contemplated Relationship between CPS, P/S  
& Collingwood (FD1 S 6.12-6.17)**

**83.**The evidence is that in addition to the major provisions outlined in Prghs #617-622 that were entered into at the closing, there was a 30 month “stand-still” clause.

**84.**The evidence indicates that P/S had targeted 2015 as a potential ending point for the SP initiative if there was a lack of success with implementing the RGS. P/S did not exercise this clause though for commercial and good partnership reasons.

**Bentz(Fryer) - June 3/19 Pg 90**

**85.**The evidence indicates that although P/S had the ability, for more than 2 years to initiate the buy-sell provision, it was actually Collingwood that finally exercised it in conjunction with the EPCOR share sale transaction. As P/S agreed to sell their shares both shareholders believed selling was a prudent decision to make. Collingwood maximized on its' investment then.

**Bentz(Fryer) – June 3/19 Pg 100-101**

**Fryer(Chenoweth) - May 15/19 Pg 6-8 (Exhibits #125&6)**

**Brown(Fryer) – June 27/19 Pg 79-81**

**86.**The evidence indicates the supplementary agreement which waived the P/S obligation to finalize the Shared Service Agreement(SSA) was non-binding. The terms and conditions of the July 31/12 Side Agreement encompassed the general concepts that P/S and Collingwood envisioned to be legally agreed upon. SSA amendments that fulfilled the commitment to these concepts were expected to be implemented shortly after the Transaction closed.

**Prgh #767 – CJI0008820 Pg 3-6**

**87.**The evidence is that in regard to Prgh #622 (a) if a “return on investment” was incorporated it would not result in an increase to the gross earnings of CPS. Costs and revenues from affiliate companies for shared services are incorporated in the OEB’s rate calculation process. Thus a ROI would be offset by lower distribution rates and resulting service revenue earned from the CPS electricity ratepayers. There would be a NIL impact for ROI in a SSA.

### **1.33The OEB MAAD Application Re COLLUS Share Sale to P/S (FD1 S 6.9)**

**88.**The evidence indicates Fryer's participation was restricted, for various reasons, from assisting with the "MAAD Application Matters" process.

**Fryer (McDowell) - May 14/19 Pg 141**

### **1.34Three Dividend Payments made to the Town(FD1 S 7.3 Prgh 641-3)**

**89.**The evidence indicates that from 2001-11 Collingwood's and COLLUS's policy/practice was to retain any annual earnings in equity. Additionally in regards to external 3<sup>rd</sup> party debt, prior to the SP, Power was to maintain a significantly lower actual External borrowing "debt to equity" ratio than the OEB levels of 60%/40% used to calculate maximum allowable electricity ratepayer distribution rates. For Power the practice was also to employ OEB approved maximum allowable rates, when applying charges through to customers, to maximize the return from rates impact on the value of Collingwood's investment.

**90.**The evidence also indicates that these approaches outlined above were normal practice for Ontario LDCs of Power's magnitude. The central reason for Collingwood's approach was that projections indicated there were major future capital investment requirements for Power. Power sought to reduce the risk of not being able to adequately fund capital requirements by utilizing external borrowing room. Rather than an approach of having to request that the shareholder provide a sizable additional direct investment.

**91.**In further regards to the approach outlined in #89 & 90 the evidence indicates that Power had significant future capital expenditure requirements.

**Glicksman(Fryer) – June 4/19 Pg 148-9 (Exhibit #180 - TFF000007)**

**Glicksman(Chenoweth) – June 4/19 Pg 83**

**Herhault (Fryer) – May 23/19 Pg 125**

**92.**The evidence indicates that the 2014-8 Collingwood Council was concerned about the current municipal debt levels. The evidence further indicates an initial objective of that Council was to reduce debt. There was a disjoint between this objective and deciding to sell 50% of the Power asset, because no portion of the proceeds was used to reduce the current External 3<sup>rd</sup> party municipal debt. The SP also changed COLLUS's policy to be one of taking on maximum external debt level and pay annual dividends.

**93.**The evidence indicates that there was a high probability that any future acquisitions under the Regional Growth Strategy would require investment from Collingwood in order to maintain their “no less than” 50% ownership SP objective.

**Glicksman(Fryer) – June 4/19 Pg 131-132**

### **1.35 Public Consultations, Commercial Relationships, After COLLUS Share Sale and the Post Closing Reviews (FD1 Chapter 8 Overview Prgh #684-686)**

**94.**The FD1 information contained in Chapter 8 not only provides a brief description of each of the “Post-Closing Inquiry/Analysis” review reports but also only highlights some specific sections of those reports. Therefore additional evidence is provided within the next items, to supplement the FD1 details of these reports and to provide further clarifications as may be required.

### **1.36 The Post Closing Reviews Begin with the HSG Report Commissioned by a COLLUS P/S Entity in 2013. (FD1 S8.2 Prgh #691-694)**

**95.**The evidence is that when the CPUSB was first established by Council a central objective was to continue to operate under the same policies and practices of the former Commission that had been in place under the Public Utilities Act. Direct Council interaction was maintained by continuing to include that one of the Board positions would be held by the Mayor while the other two directors were duly appointed by Council. During that period of time Council deemed this to be the appropriate governance structure for the delivery of municipal water service operations.

**96.**The evidence is that there were shared service agreements (**SSA**) in place that were structured to conform to both Collingwood Council requirements and those of the OEB. This was acceptable to Council because the CPUSB annually (at a minimum) provided, on an as required basis, complete and externally audited FS and other related reporting. The Annual Report and Business Plan that was provided in public presentation to Council each year, included all the information that Council deemed necessary to determine that operations were acceptable and in conformance to their requirements. This also was a central goal because of the obligations placed upon them under the Ontario governments Safe Drinking Water Act 2002.

**97.**The evidence is that the financial record-keeping for the CPUSB conformed to the same Generally Accepted Accounting Principles (GAAP) methodology that COLLUS utilized. This was the same methodology that was utilized in the past for the CPUC Hydro and Water Depts. The major benefit for the CPUSB was that this resulted in all “accrual accounting” principles being adhered to. While conforming to these principles the CPUSB and its’ former entities ensured that Full Cost Recovery consideration was being included when annual budget and rate setting decisions were being made.

**98.**The evidence indicates that it was well known and documented by both COLLUS, CPUSB and all related parties (ie: External Auditor, Council) that the SSAs were requiring amendment. Although the OEB had reviewed and approved the COLLUS SSAs in the 2009 rate application process, there were recent OEB rulings in 2010 regarding transfer pricing agreements that altered future requirements for LDCs and their SSAs.. The established plan, prior to the impact of the SP transaction, was for the COLLUS/CPUSB SSA to be updated in 2011 to be ready for submission in April 2012 as part of the required 2013 Cost of Service rate application filing.

**Neate (Fryer) – May 15/19 Pg 72**

**Fryer (Chief-McGrann) – May 13/19 Pg 130 (Exhibit #115 Item #6)**

**99.**The evidence indicates that COLLUS was required to conform to a changeover from GAAP to International Financial Reporting Standards(**IFRS**) by 2013. Transfer pricing reporting requirements would substantially increase under IFRS in relation to Power and Solutions SSAs to ensure conformance. This impacted the CPUSB SSA as well because the OEB had a requirement that transfer pricing agreements amongst affiliates be similar. So the amended Power SSA terms and conditions would need to be encompassed in the amended terms of the CPUSB SSA as well.

**100.** The evidence indicates that conforming to IFRS would likely result in the termination of Solutions to reduce the complexities and cost of financial recording/reporting on any shared services. The recent OEB rulings, at this point in time, on transfer pricing and affiliate agreements indicated that the Solutions employees should be transferred into Power.

**Neate(Fryer) – May 15/19 Pg 71**

**101.** The evidence indicates that when the SP transaction was confirmed it was recognized by all parties that the update of the SSA would be completed after closing. Non-binding letters of agreement were utilized in March and July 2012 to establish the intention of this amongst the parties.

**Bentz(Fryer) – June 3/19 Pg 96**

**102.** The evidence indicates that Power commissioned the Howard Gorman (HSG) analysis and report in the first half of 2013. This was an essential step towards meeting the conditions of the July 2012 letter of agreement between the shareholders(Collingwood and P/S). Also the analysis moved towards successfully meeting the requirement of Collingwood, COLLUS and the CPUSB, to enter into a mutually beneficial tri-party shared services arrangement.

**Bentz(Fryer) – June 3/19 Pg 96**

**103.** The evidence indicates the HSG report confirmed for Collingwood, COLLUS and the CPUSB that the underlying principles and established allocation methodologies that had been used in the past were accurate and appropriate. The report was accepted by both Boards on July 22/13. The next part of the process was to work closely with their new partner P/S to establish amended SSAs as required under the new governance structure.

**Bentz(Fryer) – June 3/19 Pg 96**

**1.37 April 2013 – Jan. 2014: KPMG Organizational Review (FD1 S 8.6 Prgh #713&719)**

**104.** The evidence indicates that there was some disagreement amongst the related parties regarding KPMG’s findings. There was agreement though, between the shareholders, that one step that was necessary was to move McDonald from being employed by Solutions into Collingwood’s direct employ. McDonald had been working for Solutions since the Town Engineer’s(Ken Astill) had retired in 2000. While employed and compensated as a Solutions employee, 100% of McDonald’s costs were allocated to Collingwood through the charges applied to CPUSB. There was no subsidization by electric ratepayers occurring at any time regarding this.

**McDonald (Fryer) – May 23/19 Pg 68**

**Houghton (Fryer) – June 11/19 Pg 349 (Phonetic Line 23 Canaska-Ken Astill)**

**105.** The evidence indicates that Council’s decision on June 10/13, outlined in Prgh #719, aligned with the steps that were underway at COLLUS and the CPUSB. This ensured that at this point in time all associated parties had been appropriately engaged and fully supportive to work towards completing the planned amending process for the SSAs.

**Bentz(Fryer) – June 3/19 Pg 96**

**1.38 July 2014: The COLLUS PowerStream 2013 Annual Report(FD1 S 8.9 Prgh728)**

**106.** The evidence indicates that on July 7, 2014 Collingwood was advised that a Master Shared Services Agreement had been entered into by CPS and P/S. This information was included in the public presentation of the 2013 Annual Report and Consol Review. The AR also duly reported on 2013 operations. It was received and given approval by Council.

**2013 COLLUS PowerStream Annual Report – Appendix A Pg 22**

**107.** The evidence indicates that the 2013 Annual Report did not include the COLLUS 3 year Business Plan(**BP**) that was outlined in the Unanimous Shareholder Agreement (**USA**) as a requirement. Fryer unsuccessfully sought to have a CPS BP submitted by public presentation, during his tenure on 2014-18 Council, to provide essential commercial information for Collingwood to consider during its deliberations on the COLLUS options. A BP was never provided, to give Council this important commercial information, during their deliberations on the options for the 50% share of COLLUS on a go forward basis.

**Brown(Fryer) – June 27/19 Pg 99-100**

**108.** The evidence is that Fryer sought Council support but was not successful for more direct interaction between the Board of CPS and Council. The CPS 2018-22 Distribution System Plan(**DSP**) that was provided to Council indicated that in 2016 Town Staff directed COLLUS that the Annual Report only needed to be submitted in written form, without the customary delegation and public presentation.

**Brown(Fryer) – June 27/19 Pg 136 (Exhibit #397 – TFF000011)**

**1.39 April 2014 – Aug. 2014 Brown discusses Town’s legal representation (FD1 - S 8.10 Prgh #729 & 730)**

**109.** The evidence indicates that there was discord between Brown and Houghton from July 2013 forward. This created major difficulty in the completion of the development of mutually agreed upon new and amended arrangements regarding the sharing of services between Collingwood and P/S.

**Brown(Fryer) – June 27/19 Pg 113 Ln 5-9**

**Houghton(Chief-McGrann) – June 11/19**

**110.** The evidence indicates that there was an erosion of trust perpetuated by a series of events after the CAO position was filled in late July 2013. Prgh #729 & 730 highlight two(2) instances of suspect interaction that is brought about due to the lack of trust amongst the partners. This type of interaction contributed to a deterioration of the Commercial Relationship between the partners during a critically important time period.

**Houghton(Chief-McGrann) – June 11/19**

**Brown(Bonwick) - June 27/19**

**111.** The evidence indicates that a major reason for the trust erosion between the parties was the interactions that occurred when Collingwood attempted to obtain specific COLLUS confidential information. The resulting discourse that developed between the partner's key resources caused disruption of the partner's plan towards reaching a mutually beneficial extension of the SSA to continue to provide services. In the end only some of the shared services were extended(ie. Customer Billing & Admin Service)

**Brown (Fryer) – June 27/19 Pg 75-77**

**Brown(Fryer) – June 27/19 Pg 113 Ln 16-20**

**Brown (Chief-Mather) – June 26/19 Pg 99 Ln 17-18**

**112.** The evidence is that 2010-14 Council nor the Integrity Commissioner were made aware of a concern that there was a deteriorating level of trust.

**Brown (Chief-Mather) – June 26/19 Pg 117 Ln 6**

**Brown(Fryer) – June 27/19 Pg 82**

**113.** The evidence indicates the trust issue and concerns continued to a degree when the 2014-18 Council was formed. This impacted the methods used in the communication process with some of the members of Council.

**Brown (Chief-Mather) – June 26/19 Pg 117**

**114.** The evidence indicates that Brown, during his tenure as Collingwood CAO, deemed it necessary at times to negotiate with individual members of Council on a confidential basis.

**Brown(Fryer) – June 27/19 Pg 86**

**Brown(Fryer) – June 27/19 Pg 114**

**Brown(Fryer) – June 27/19 Pg 127**

115. The evidence outlined in Item #22, regarding Confidential Information, was a key factor that caused Fryer to have to consider whether specific COLLUS information he had knowledge of was public or not. Fryer indicated in those cases that he deemed could not be expanded on, that once the EPCOR transaction was finalized and COLLUS was not operational, any fiduciary restrictions would cease to be an inhibitor.

**Brown(Fryer) – June 27/19 Pg 127**

**116.** The evidence indicates that Fryer considered CPUSB related matters that he had knowledge of, from when he provided CFO services, could be openly discussed with Council and municipal staff. Portions of that information may have needed to be first discussed in a confidential manner because there could be commercial aspects to consider (ie. New Tecumseth Waterline Agreement). But overall Fryer could assist as much as required without circumventing any fiduciary restrictions.

**Brown(Fryer) – June 27/19 Pg 129**

**117.** The evidence indicates that when Brown became a member of the CPUSB it provided an additional avenue for Collingwood towards obtaining required information. Further detail regarding this is provided in item #120.

**Brown(Fryer) – June 27/19 Pg 117**

**Brown(Fryer) – June 27/19 Pg 73**

**1.40 Aug 2014 – March 2015 Beacon 2020 and True North Report (FD1 S 8:11 Prgh 732 (a), (b-i) & (d))**

**118.** The evidence indicates that the report stated that on Aug. 10/14 the Collingwood’s lawyer determined that the CPUSB – CPS SSA had not expired in 2005. The verification was required when the CPUSB Auditor reported on the possibility that the SSA may have expired and outlined that there should be a legal review to confirm that it had not.

**Prgh #732 – CPS0006376 - Pg 6 (Bottom left paragraph)**

**Prgh #767 – CJI0008820 Pg 3-6**

**119.** The evidence is that Houghton became a CPUSB Board member in 2014, shortly after the Strategic Partnership had been entered into.

**120.** The evidence indicates that Houghton was replaced as a Board member, by Brown, on the CPUSB in Jan. 2015. This appointment provided opportunity for Brown to access all CPUSB/Solutions detailed information by exercising his Board member powers. Fryer also became a Board member at this time in the Council representative position.

**Brown(Fryer) – June 27/19 Pg 73**

**121.** The evidence indicates that for the purposes of CPS’s operations both P/S and Collingwood as co-owners had an objective of earning stable “regulated returns”. Solutions’ expenses that were charged as per the SSA terms, for delivery of services, formed part of the CPS OEB approved Rate Base that was used to calculate the approved regulated return.

**Brown(Fryer) – June 27/19 Pg 107-8**

**1.41 Jan. 2015- June 2015 BMA & DFA Water and Water Service Report (FD1 S  
8.12 Prgh 747(c))**

**122.** The evidence indicates that from the outset of formation the CPUSB's SSA had bundled services arrangements due to need to match the similar methodology contained in Power's SSA. It also further indicates that this methodology was established using a 3<sup>rd</sup> party expert's (ECMI) recommendation. The recommendations that were implemented, as initially outlined in Item #23, were done to conform to the OEB requirement to "**unbundle costs but not necessarily any overlapping services**" for the new 2001 regulatory rate setting guidelines and process.

**123.** The evidence indicates that the estimated savings analysis within the report was done independently by the consultants. Neither the External Auditor nor CPUSB's CFO was fully or appropriately engaged in the review process that was utilized. There was disagreement amongst the partners at this time as to the accuracy of the projections and concerns established within the report.

**Brown (Fryer) – June 27/19 Pg 140**

**Shuttleworth(Fryer) –**

**Brown(Bonwick) – June 27/19 Pg 41-45**

#### **1.42 March – May 2015 Town Discuss Legal Matters (FD1 S 8:13 (b) Prgh 757-8)**

**124.** The evidence indicates that in 2012 Council was aware of existing SSAs that were legally binding and appropriately applied, tracked and reported on. Council was also aware that the agreements had been in place since 2001.

**125.** The evidence, as outlined in items #102&3, indicates that review of the pertinent agreements had actually been undertaken within the required year timeframe. Further that steps were being taken in an attempt to complete updated SSAs for inclusion with the 2013 COS rate application.

#### **1.43 May 2015 Miller Thompson Report on the Services Agreements and Share-Sale (FD1 S8.14 Prgh #767)**

**126.** The evidence indicates that the MT Report(May 2015) verified that the 2003 SSAs were still legally binding. Also the report confirmed that the July 31, 2012 letter agreement was not legally binding nor did it amend the terms of the SSAs.

**Prgh #767 – CJI0008820 Pg 3-6**

**1.44 June 2015 KPMG Advises that there was no Final Valuation of COLLUS-Power in 2011 (FD1 S 8:15 Prgh 771)**

**127.** The evidence indicates that although a required executed representation letter had not been provided, a Final Valuation report would not have been significantly different to the Draft Valuation report issued May 20, 2011.

**Erling(Fryer) – May 13/19 Pg 155**

**1.45 June 2015 Henley Valuation Report (FD1 S 8.16 Prgh #774 b&c)**

**128.** The evidence indicates that Collingwood’s interest in COLLUS was significantly attractive to EPCOR leading to a sale transaction that was to the mutual benefit, more so Collingwood, of each of the 50% owners. The report indicated that a result of new regulations in 2016 is the creation of a new class of purchaser which had been missing from the market to date.

**BLG0000023\_0001\_0001 (Pg 20 Last Prgh)**

**Brown(Fryer) – June 27/19 Exhibit #125 (TFF0000006)**

**129.** The evidence indicates that the information that Solutions would be terminated was available when the Henley Report was being prepared. This would have appropriately contributed to the decision to an assignment of “no value” for the purposes of valuing Power and by extension COLLUS.

**130.** The evidence indicated in Prgh #774(a) notes the valuation had a median value of \$28,400,000. The valuation would be considered as the gross value prior to any costs associated with a sale of COLLUS ownership.

**131.** The evidence in #128 is that after the EPCOR transaction closed Collingwood reported, on their 2018 FS, the following regarding the final Gross Proceeds received from the Sale of the 50% COLLUS share(2<sup>nd</sup> Stage):

- Sell 100% of CPUSC Shares to EPCOR \$25,000,000
- Purchase Price Adjustment from Epcor \$ 3,402,634
- (Purchase Alectra's 50% share of CPUSC) ( \$13,112,500 )
- (Purchase Price Adjustment paid to Alectra)( \$ 368,329 )
- Dividends from Portfolio Investment \$ 1,332,988

Total Gross Proceeds of 2018 Transaction **\$16,254,793**

The evidence contained within the Foundation Document outlines Gross Proceeds from the initial transaction and the further direct allocations to Collingwood. The proceeds related to COLLUS SP transaction(1<sup>st</sup> Stage & other):

- Prgh #640 Total P/S purchase price \$ 8,000,000
- Prgh #646(Table 1) Closing Dividends \$ 4,598,389
- 2014 Dividends \$ 183,500
- 2015 Dividends \$ 204,054
- Prgh #654 Property Sale Proceeds \$ 122,998
- Promissory Note Proceeds(Prgh #656) \$ 1,710,170

Total Gross Proceeds 1<sup>st</sup> Transaction & Other Related **\$14,819,111**

**132.** The evidence indicated in Item #131 outlines that the Total Gross Proceeds received by Collingwood amounted to **\$31,073,904**. The upper value of the Henley valuation referred to in Item #130 is **\$30,300,000**. The Henley report indicated that this upper level value was calculated using a transaction-based methodology. It was also reported that the higher amount of forecasted premium represented a significant departure from premiums that were paid during the past two years. Based on the Total Gross Proceeds Collingwood benefited significantly from the sale of CPUSC.

**BLG0000023\_0001\_0001 - Pg 3 (First Prgh)**

**133.** The evidence in Item #131 also indicates that Collingwood received Cash proceeds of close to \$18.5M after the initial Stage 1 transaction was completed. P/S received proceeds of close to \$15.2M. A significant portion of the \$3.3M difference resulted from the premium EPCOR paid for CPUSC.

**134.** The evidence is that although the Gross Proceeds exceeded the Henley valuation estimate, the premium that was paid by EPCOR is not recoverable from the municipal electricity ratepayers. The CPS Ratebase that has been established in conjunction with OEB approval for setting customer rates, doesn't change if a premium is paid as a result of an ownership change.

**Chaplin(Chief-Mather) – May 13/19 Pg 49**

#### **1.45 October 2015 – April 2016 BLG Report (FD1 S 8.17 Prgh #787a)**

**135.** The evidence indicates that in the 2002-12 time period the maintenance of a lower debt to equity capitalization was typical for similar sized LDCs to Power. Fryer reviewed this correction to the report contents with the consultant at the BLG presentation to Council on March 30, 2016.

**136.** The evidence indicates that it was also explained to BLG that the “reasoning for retaining earnings within Power” was so that capital investment could be made, with minimal new external debt, that would help maintain an extremely reliable supply of electricity, as well as earn a very good rate of return.

**Exhibit #396 Page 4 #1**

**137.** The evidence also indicates that it was explained to BLG that the opportunity to issue approximately \$4,800,000 in dividends was only available because annual earnings were retained by Power in equity. Otherwise external 3<sup>rd</sup> party borrowing would have increased in order to finance the capital investments made over the years. Thereby reducing the amount of “room” available for borrowing to increase debt level to 60%.

**Exhibit #396 Page 5 2<sup>nd</sup> Prgh of response**

**138.** The evidence is that it was outlined to BLG that any review would need to thoroughly examine a number of factors to ensure “complete context” was utilized when their analysis was completed.

**Pg 5 Nov10/15 9:20 am email last sentence**

## **CLOSING:**

As outlined by the Commissioner the Foundation Document was provided to give meaningful disclosure of the Inquiry’s material information to the participants in advance of the hearing, provide opportunity for participants to make suggestions about the FD content and provide the public with a comprehensive overview of the information disclosed to the Inquiry.

The submissions within Appendix A are provided to supplement those objectives of the Commissioner on his consideration of the key areas encompassed in the FD entered into evidence on April 15, 2019.

As the Commissioner has invited participation from Fryer because of his substantial and direct interest in the subject matters, this submission is provided to assist. In some cases the items that are submitted are based on recollection of matters from 10 or more years ago. In addition Fryer’s interpretation of the evidence has been utilized with the best of intentions. Fryer appreciates the Commissioner’s consideration of these submissions. Fryer remains available to the Commissioner for any purpose that is deemed necessary during the Inquiry.