



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 15th, 2019

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APPEARANCES

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

2

3 THE HONOURABLE FRANK MARROCCO: Just
4 before Mr. Fryer says whatever he wants to say,
5 tomorrow we'll sit from 9:00 until 1:30. And so we'll
6 get in four and a half (4 1/2), so pretty close to a
7 regular day. Sorry about that, but I do have a
8 commitment that I can't avoid in Toronto.

9 MR. TIM FRYER: Good morning, Judge
10 Marrocco.

11

12 TIM FRYER, Previously Sworn, Testifies

13

14 THE HONOURABLE FRANK MARROCCO: Good
15 morning, Mr. Fryer.

16 MR. TIM FRYER: Ms. McGrann explained
17 to me yesterday that anything I brought up to the
18 table here was something that the participants could
19 request a copy of. I plan on handing this in as
20 exhibits, but I will read the short words I have. I
21 only have one (1) item that I wanted to cover.

22 THE HONOURABLE FRANK MARROCCO: Go
23 ahead.

24 MR. TIM FRYER: Thank you. In my
25 testimony before you on May 14th, 2019, there is a

1 matter that I would like to present further comment
2 on. It is in regards to my response to a question by
3 Mr. Chenoweth located on pages -- or page 178, and
4 it's lines 3 to 6 of the transcript from that day.

5 My response is located on lines 7 to
6 12. So I thought we could bring that up, just so
7 everybody had a idea of what I'm referring to. So it's
8 page 178.

9

10 (BRIEF PAUSE)

11

12 THE HONOURABLE FRANK MARROCCO: Is --
13 is that it, Mr. Fryer?

14 MR. TIM FRYER: Yes, so it's 3 to 6,
15 and 7 -- and perfect, right there.

16 Actually, one (1) more line down, I
17 think, and then we'll have everything. Yes.

18 So I would provide the following
19 additional comment to that evidence I provided in that
20 response. I believe that the buy/sell transaction
21 results of the 100 percent share sale of Collus
22 PowerStream in 2018 to EPCOR indicates that it is a
23 very good result for both the shareholders and the
24 ratepayers. In Alectra's press release of November
25 9th, 2017, announcing their decision to sell its

1 shares in Collus PowerStream to the Town of
2 Collingwood, they indicated that it was the prudent
3 course of action. That was the first stage of sale to
4 the Town of Collingwood, which initiated the second
5 sale transaction from the Town of Collingwood to
6 EPCOR. The Town of Collingwood also viewed this as
7 the prudent course of action when it came to the
8 agreed upon terms it had established with EPCOR.

9 Further to my response to Mr.
10 Chenoweth's question, I believe that the Town of
11 Collingwood mutually benefitted from the strategic
12 partnership situation it had with Alectra and its
13 predecessor utility PowerStream. One (1) of the key
14 objectives of the partnership was to grow the value of
15 the business based on the resulting proceeds of the
16 Town of Collingwood -- or to the Town of Collingwood.
17 Upon closing of the EPCOR sale transaction, this was
18 achieved.

19 In addition to the sale proceeds, there
20 is long-term Collus PowerStream ratepayer -- ratepayer
21 protection built in, requisite capital investment
22 commitments, as well as agreement to a long-term
23 administration/operations centre presence for most, if
24 not all, of its service personnel as previously were
25 employed by Collus PowerStream.

1 I had noted earlier that it indicates a
2 very good result because it is based on my
3 understanding of the shared transaction terms and the
4 information that was released so far by the Town of
5 Collingwood after closing. I plan to study the
6 municipality's final report on the Transaction when it
7 is released, and any pertinent and related matters for
8 final confirmation.

9 Those are my comments, Judge Marrocco.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you. And we'll --

12 MR. TIM FRYER: Thank you.

13 THE HONOURABLE FRANK MARROCCO: --
14 have you provided us with that?

15 MR. TIM FRYER: So I provide my
16 statement, and the -- a copy of the Alectra --

17 THE HONOURABLE FRANK MARROCCO: All
18 right.

19 MR. TIM FRYER: -- press release,
20 which I tried to get into the court book. I was only
21 able to send it in this morning.

22 THE HONOURABLE FRANK MARROCCO: All
23 right. So we will put it in the court book, and we'll
24 put it on -- up on -- on the website so that it is
25 clear that you make that statement. I just have to

1 figure out how. So thank you very much. Re-
2 examination...?

3

4 RE-DIRECT EXAMINATION BY MS. KATE MCGRANN:

5 MS. KATE MCGRANN: Brief re-
6 examination. Good morning, Mr. Fryer.

7 MR. TIM FRYER: Good morning.

8 MS. KATE MCGRANN: Yesterday, during
9 your cross-examination by Mr. Chenoweth, you were
10 asked a series of questions about Mr. Neate's notes
11 with respect to the shotgun clause for the buy/sell
12 provision in -- proposed by PowerStream.

13 Do you remember that?

14 MR. TIM FRYER: I recall that, yes.

15 MS. KATE MCGRANN: Could we look at
16 paragraph 432 of the Foundation Document, please?

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: Paragraph 432
21 references the notes that you were being asked about.
22 And you see here that the metadata associated with
23 that document indicates that it was created on
24 December 2nd, 2011.

25 Do you see that?

1 MR. TIM FRYER: Yes, I do.

2 MS. KATE MCGRANN: If we look at
3 paragraph 429 of the Foundation Document, please.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Paragraph 429
8 describes the December 2nd, 2011 joint meeting of the
9 Collus Power and Collus Solutions boards, and it
10 indicates that amongst other attendees, at the very
11 bottom of the paragraph, Ralph Neate of Gaviller was
12 there.

13 Do you see that?

14 MR. TIM FRYER: Yes, I do.

15 MS. KATE MCGRANN: It looks like you
16 were at that meeting, too. Do you remember that
17 meeting?

18 MR. TIM FRYER: Yes.

19 MS. KATE MCGRANN: Okay. Is it your
20 recollection that there was -- that Mr. Neate made
21 comments about the buy/sell provision at that meeting?

22 MR. TIM FRYER: I honestly can't
23 recall if the comments that are in Ralph's notes were
24 made directly or not.

25 MS. KATE MCGRANN: If we could look at

1 ALE966, please.

2

3

(BRIEF PAUSE)

4

5 MS. KATE MCGRANN: This is a copy of
6 PowerStream's response to the Collus Power Corp.
7 request for proposals. If we could go to page 8 of
8 this document.

9

10

(BRIEF PAUSE)

11

12 MS. KATE MCGRANN: Scroll up a little
13 bit, and we'll start at point 1.

14

This is the information that
15 PowerStream set out in its response to the request for
16 proposals with respect to other shareholder agreement
17 matters. If you look down under the heading:

18

"Such arrangements would include any
19 transfer or pledge of Collus
20 PowerStream shares would be
21 prohibited without the written
22 consent of shareholders."

23

If we look at point 1, it discusses a -
24 - a right of first refusal. If we could scroll down
25 to point 2. This discusses:

1 "At any time after two (2) years
2 from the date of closing, other
3 shareholder may, by written notice
4 to the other institute, a buy/sell
5 mechanism by specifying a price per
6 share and requiring that the
7 recipient shareholder, in its
8 discretion, elect either to purchase
9 all of the shares of the initiating
10 shareholder, or alternatively, sell
11 of the shares of the recipient
12 shareholder in each case at a price
13 per share specified at the
14 initiating notice."

15 Other than the response to the RFP,
16 were you aware of any other information about the
17 terms of the buy/sell provision that PowerStream is
18 proposing as at December 2nd?

19 MR. TIM FRYER: At the meeting, I know
20 there was discussion about the shotgun clause, but I
21 can't recall specifically what, and I wasn't involved
22 in any discussions about the shotgun clause between
23 the date of this and -- and the date of that meeting.

24 MS. KATE MCGRANN: Mr. Cheno -- Mr.
25 Chenoweth's questions to you were contrasting your

1 comments about the twenty (20) day aspect of the
2 buy/sell provision that appeared in the shareholder's
3 agreement with Mr. Neate's comments from the December
4 2nd. He was asking you why Mr. Neate was not, or
5 asking you comment on why Mr. Neate was not commenting
6 on the 20-day provision.

7 What I'm saying to you is, it looks
8 like the only available information about the buy/sell
9 provision was that it would come into effect after two
10 (2) years. The only information about the buy/sell
11 provision that was available was in response to the
12 RFP.

13 Do you recall if at December 2nd there
14 was any other information available about the buy-sell
15 provision that PowerStream was proposing?

16 MR. TIM FRYER: No.

17 MS. KATE MCGRANN: Those are my
18 questions.

19 THE HONOURABLE FRANK MARROCCO: Thank
20 you. Thank you much -- very much, Mr. Fryer.

21 MR. TIM FRYER: Thank you.

22

23 (WITNESS STANDS DOWN)

24

25 MR. JOHN MATHER: The next witness is

1 Ralph Neate.

2

3 MR. RALPH KENNETH NEATE, Sworn

4

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

6 MR. JOHN MATHER: Good morning, Mr.
7 Neate. It is our understanding from 2008 to 2012 you
8 served as the primary auditor for the Collus entities.
9 Is that accurate?

10 MR. RALPH NEATE: Yes.

11 MR. JOHN MATHER: And we've asked Mr.
12 Neate to swear an affidavit, which is available on the
13 website, and I'll ask that document AFF1 be pulled up.

14 Mr. Neate, is this the affidavit that
15 you've sworn?

16 MR. RALPH NEATE: Yes.

17 MR. JOHN MATHER: I'd ask that it be
18 marked as the next exhibit.

19 THE HONOURABLE FRANK MARROCCO: Yeah.
20 Just one (1) other thing. Are there any corrections
21 that you want to make to the affidavit?

22 MR. RALPH NEATE: No.

23 THE HONOURABLE FRANK MARROCCO: No?
24 And is the affidavit true and to the best of your
25 ability?

1 MR. RALPH NEATE: Yes.

2

3 CONTINUED BY MR. JOHN MATHER:

4 MR. JOHN MATHER: And Mr. Neate, we've
5 asked you to swear an affidavit because when you were
6 the primary auditor for the Collus entities you
7 attended two (2) of the strategic task team meetings.
8 You've provided us with notes that you made following
9 a joint Board meeting in December 2011 in which you've
10 set out some of your concerns you had about the
11 proposed 50 percent sale -- share transaction to
12 PowerStream.

13 You've also provided evidence in the
14 affidavit about certain audit documents that indicate
15 that bonuses may have been paid to certain Collus
16 directors in respect of the share transaction.

17 And finally you've provided evidence
18 about a meeting you had in or about May 2012 with Ed
19 Houghton at the meeting. You recall that Mr. Houghton
20 said that he no longer would work with you and
21 following that meeting another -- another partner from
22 your firm Gavillers was appointed to be the primary
23 audit partner.

24 Is that a fair summary?

25 MR. RALPH NEATE: Yes.

1 MR. JOHN MATHER: Okay. At this point
2 now I will turn it over to the participants to proceed
3 with their examinations.

4

5 CROSS-EXAMINATION BY MR. RYAN BREEDON:

6 MR. RYAN BREEDON: Mr. Neate, my name
7 is Ryan Breedon. I am one (1) of the counsel for the
8 Town.

9 Can we scroll down to paragraph 3 of
10 the affidavit? All right. In your affidavit you say
11 that you attended the two (2) meetings of the
12 strategic partnership task team on a request delivered
13 by the Town of Collingwood?

14 MR. RALPH NEATE: Well, I -- I'm not
15 sure that it was a request.

16 MR. RYAN BREEDON: Okay. Who asked
17 you to attend the meetings?

18 MR. RALPH NEATE: It would have -- I
19 guess it would have been through Tim Fryer.

20 MR. RYAN BREEDON: So it was a request
21 from Collus as opposed to a request from the Town?

22 MR. RALPH NEATE: Well, I think that
23 it was actually Marjory Leonard that -- but not
24 directly.

25 MR. RYAN BREEDON: So your

1 understanding or your belief is that Ms. Leonard
2 initiated the request to have you attend the meetings?

3 MR. RALPH NEATE: Yes.

4 MR. RYAN BREEDON: And Ms. Leonard was
5 the Treasurer of the Town at the time?

6 MR. RALPH NEATE: I believe so, yeah.

7 MR. RYAN BREEDON: Do you know why you
8 were asked to attend?

9 MR. RALPH NEATE: I don't.

10 MR. RYAN BREEDON: And were you asked
11 to make a report to anybody about your attendance or
12 your observations at the meetings?

13 MR. RALPH NEATE: No.

14 MR. RYAN BREEDON: You -- I take it
15 that you consider the information that the strategic
16 task team received from the bidders to be
17 confidential?

18 MR. RALPH NEATE: Yes.

19 MR. RYAN BREEDON: And similarly you
20 considered the strategic task team's response to those
21 bids to be confidential?

22 MR. RALPH NEATE: Yes.

23 MR. RYAN BREEDON: So the internal
24 discussions were all highly confidential. Is that
25 fair?

1 MR. RALPH NEATE: Yes.

2 MR. RYAN BREEDON: And I -- I presume
3 that you did not share any of the information from the
4 strategic task team meetings with any of the bidders?

5 MR. RALPH NEATE: No.

6 MR. RYAN BREEDON: And -- and in
7 particular you did not share any of that information
8 with PowerStream?

9 MR. RALPH NEATE: No.

10 MR. RYAN BREEDON: You did not share
11 any of that information with Mr. Bonwick?

12 MR. RALPH NEATE: No.

13 MR. RYAN BREEDON: Or with any third
14 parties?

15 MR. RALPH NEATE: Well, I did discuss
16 it with Tim Fryer and with other partners within my
17 firm.

18 MR. RYAN BREEDON: Okay. So Mr. Fryer
19 of course was at those meetings?

20 MR. RALPH NEATE: Yes.

21 MR. RYAN BREEDON: All right. And --
22 and so you say that you discussed the content of the
23 strategic task team meetings with other partners?

24 MR. RALPH NEATE: Yes.

25 MR. RYAN BREEDON: All right. Who did

1 you discuss it with?

2 MR. RALPH NEATE: Sue Bragg and also
3 retired partner Ken Miller.

4 MR. RYAN BREEDON: And Ms. Bragg, as
5 I understand it, was the auditor responsible for the
6 Town at the time?

7 MR. RALPH NEATE: Yes.

8 MR. RYAN BREEDON: All right. And
9 what was Mr. Miller's responsibility vis-a-vis either
10 the Town business or Collus' business?

11 MR. RALPH NEATE: He had been the
12 prior auditor before me.

13 MR. RYAN BREEDON: For the Town or for
14 Collus?

15 MR. RALPH NEATE: For Collus.

16 MR. RYAN BREEDON: Your discussion
17 with -- why -- why did you discuss the meetings with
18 Ms. Bragg and Mr. Miller?

19 MR. RALPH NEATE: To get, I guess,
20 context and --

21 MR. RYAN BREEDON: And so we know that
22 you had some concerns, which we'll look at in a
23 moment. Did you raise your concerns with Ms. Bragg
24 and with Mr. Miller?

25 MR. RALPH NEATE: Yes.

1 MR. RYAN BREEDON: All right. And if
2 we can turn to those concerns, I think it's actually
3 an exhibit to this affidavit. It's also CB -- CBB39.

4

5

(BRIEF PAUSE)

6

7 MR. RYAN BREEDON: The first item
8 deals with your concerns regarding the price. I
9 assume you're now very familiar with this note. Yes?

10

MR. RALPH NEATE: Yes.

11

12 MR. RYAN BREEDON: All right. And
13 you'll see that you have raised the concern that the
14 5.5 million and 1.7 million the Town could extract out
15 of the Utility without doing the deal. That was a
16 note that you made at the time?

17

MR. RALPH NEATE: Yes.

18

19 MR. RYAN BREEDON: All right. The 1.7
20 is a reference to the repayment of the promissory
21 note?

22

MR. RALPH NEATE: Yes.

23

24 MR. RYAN BREEDON: And so all of the
25 four (4) bids included a provision that that
26 promissory note would be repaid?

27

28 MR. RALPH NEATE: I don't -- I'm not
29 sure as to that.

1 MR. RYAN BREEDON: All right. But
2 certainly you understand that -- or that's what you
3 were referring to, at least vis-a-vis the -- the
4 PowerStream bid, was that there was a provision that
5 the \$1.7 million promissory note could be repaid or
6 would --

7 MR. RALPH NEATE: Yes.

8 MR. RYAN BREEDON: -- be repaid. And
9 your point, as I understand it, is that it was open to
10 the Town to demand repayment of the promissory note at
11 any time.

12 MR. RALPH NEATE: Yes. However,
13 subject to they would sign a waiver at the end of the
14 year, so they had -- that they wouldn't recall within
15 that year, but I suppose they could have --

16 MR. RYAN BREEDON: Right.

17 MR. RALPH NEATE: -- beyond that.

18 MR. RYAN BREEDON: The -- the Town
19 could ultimately have recovered the \$1.7 million.

20 MR. RALPH NEATE: Yes.

21 MR. RYAN BREEDON: It was within its
22 power to do so?

23 MR. RALPH NEATE: Yes.

24 MR. RYAN BREEDON: And it did not
25 require a strategic partner for that?

1 MR. RALPH NEATE: Yes.

2 MR. RYAN BREEDON: Okay. And then
3 similarly the 1.5 million that you've referred to, was
4 a -- a proposed dividend arising from a
5 recapitalization of the Utility?

6 MR. RALPH NEATE: I'm sorry, we're
7 talking about the 5.5, aren't we?

8 MR. RYAN BREEDON: I'm sorry, yes, the
9 5.5.

10 MR. RALPH NEATE: Yes, I believe that
11 was, yes.

12 MR. RYAN BREEDON: All right. And the
13 -- the idea was that Collus would borrow money to put
14 it on the 6040 capital structure that we've now heard
15 a -- a fair bit about in this hearing?

16 MR. RALPH NEATE: Yes, yes.

17 MR. RYAN BREEDON: And then it would
18 dividend that money back out to the shareholder.

19 MR. RALPH NEATE: Yes.

20 MR. RYAN BREEDON: That's the basic
21 gist?

22 MR. RALPH NEATE: Yes.

23 MR. RYAN BREEDON: And again, your
24 point here was that that was something that Collus
25 could do anyways?

1 MR. RALPH NEATE: Yes.

2 MR. RYAN BREEDON: Again, it didn't
3 require a strategic partner to do that.

4 MR. RALPH NEATE: No.

5 MR. RYAN BREEDON: Now, did you raise
6 your concerns with the -- anybody at the Town?

7 MR. RALPH NEATE: No.

8 MR. RYAN BREEDON: And -- but you told
9 me that you did raise them with Ms. Bragg, who was the
10 Town's auditor?

11 MR. RALPH NEATE: My -- I would assume
12 so, I'm -- I don't require -- I don't remember
13 precisely that.

14 MR. RYAN BREEDON: All right. The
15 reason though, I think you told me that you spoke with
16 her was to obtain some context surrounding this
17 transaction?

18 MR. RALPH NEATE: Well, to get her
19 viewpoint, yes.

20 MR. RYAN BREEDON: Right. And -- and
21 presumably as part of that you raised the concerns
22 that we've looked at and any other concerns that you
23 had with her?

24 MR. RALPH NEATE: Yes.

25 MR. RYAN BREEDON: Do you know whether

1 she raised those with anybody at the Town?

2 MR. RALPH NEATE: No.

3 MR. RYAN BREEDON: All right. Thank
4 you, those are all my questions.

5 MR. RALPH NEATE: Okay, thanks.

6 THE HONOURABLE FRANK MARROCCO: Mr.
7 Chenoweth?

8 MR. FREDERICK CHENOWETH: Thank you,
9 sir.

10

11 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: Mr. Neate,
13 my name is Fred Chenoweth and I am the solicitor for
14 Mr. Houghton with respect to these matters.

15 I have, again, not too many questions
16 for you. Your -- your evidence is that you were asked
17 to attend by Mr. Fryer.

18 MR. RALPH NEATE: Yes.

19 MR. FREDERICK CHENOWETH: All right.
20 Your story about -- about the other individual at the
21 Town that you thought might've been the source of the
22 request for you to be there, that's -- did anyone give
23 you that information or is that just a kind of a
24 conclusion that you drew in your own mind?

25 MR. RALPH NEATE: No, it was one of my

1 other partners told me that likely Sue Bragg.

2 MR. FREDERICK CHENOWETH: Okay. Do
3 you know if your other partner had any conversations
4 with Sue Bragg or is that -- is this just something he
5 thought it might've been --

6 MR. RALPH NEATE: Sorry, that's the
7 partner, sorry, Sue Bragg.

8 MR. FREDERICK CHENOWETH: Got it.
9 Okay.

10 So Sue Bragg suggested it to you. Do
11 you know if Sue Bragg had any -- suggested to you that
12 someone at the Town had made -- had made the request?
13 Is that what I'm to understand?

14 MR. RALPH NEATE: Sorry, say that
15 again, please.

16 MR. FREDERICK CHENOWETH: I believe
17 you're telling us that Sue Bragg suggested to you,
18 being one (1) of your other partners, that someone at
19 the Town was making the request that you be there.

20 MR. RALPH NEATE: Sorry, it was either
21 Sue Bragg or the other partner is Janet Currier (sic),
22 it could have been one (1) of the two (2) of those.

23 MR. FREDERICK CHENOWETH: In any
24 event, the point is that someone suggested to you that
25 it might've been someone at the Town and I -- who did

1 you tell us it was the --

2 MR. RALPH NEATE: Marjory Leonard.

3 MR. FREDERICK CHENOWETH: Marjory
4 Leonard, the treasurer or something.

5 Someone of your partners suggested to
6 you that -- that Marjorie Leonard at the Town may have
7 made the request?

8 MR. RALPH NEATE: Uh-hm. Yes.

9 MR. FREDERICK CHENOWETH: All right.
10 Do you know if that partner was in contact with --
11 with Ms. Leonard at the Town? Or is this just
12 something they surmised?

13 MR. RALPH NEATE: No, no, I would
14 assume so, yes, that the partner --

15 MR. FREDERICK CHENOWETH: You're
16 assuming so.

17 MR. RALPH NEATE: I would assume, yes.

18 MR. FREDERICK CHENOWETH: Did they
19 tell you so?

20 MR. RALPH NEATE: My recollection is
21 that they did, yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23 In any event, the practical reality is
24 that you were requested to be there by Tim Fryer.

25 MR. RALPH NEATE: Yes.

1 MR. FREDERICK CHENOWETH: I think in
2 his testimony yesterday, Mr. Fryer indicated that it
3 was his idea that you should be there, number one, and
4 number two, that the reason he wanted you to be there
5 is -- is that you had an ability with tax that might
6 be a useful resource for the STT, the strategic task
7 force team.

8 Were you aware of that?

9 MR. RALPH NEATE: Not until yesterday.

10 MR. FREDERICK CHENOWETH: All right,
11 you heard that from Mr. Fryer yesterday?

12 MR. RALPH NEATE: Yes.

13 MR. FREDERICK CHENOWETH: All right.
14 So clearly it was -- it was clear that Mr. Fryer, in
15 any event, felt you should be there because of your
16 tax abilities, correct? We learned that yesterday.

17 MR. RALPH NEATE: I'm -- I don't
18 recall exactly whether it was the tax abilities, but
19 that would --

20 MR. FREDERICK CHENOWETH: Well, that's
21 my memory.

22 MR. RALPH NEATE: -- that would have
23 been part of it.

24 MR. FREDERICK CHENOWETH: That's my
25 memory of his evidence yesterday.

1 MR. RALPH NEATE: Yes.

2 MR. FREDERICK CHENOWETH: In any
3 event, were you aware when you went there that the
4 reason that Mr. Fryer, and I take it others who agreed
5 with him, wanted you there was so that you could make
6 some useful comments with respect to the tax
7 implications of the matter?

8 MR. RALPH NEATE: I -- I wasn't sure,
9 actually, what I was there for.

10 MR. FREDERICK CHENOWETH: Got it.
11 Okay.

12 Your usual practice at the -- at the
13 Town was an audit approach. That was what you were
14 usually there for.

15 MR. RALPH NEATE: With regards to
16 Collus, yes.

17 MR. FREDERICK CHENOWETH: Thank you.

18 You had indicated that -- you've
19 indicated your concerns, and again, let's look at your
20 affidavit, which I guess is AFF1. I -- could we pull
21 it up, please.

22 Going down to paragraph 6 of that
23 affidavit, you begin to express the concerns that --
24 that you had at the time, and this is a note of the
25 concerns, it's a -- it's maybe a little more expansive

1 then the note you made on December 2nd, which is
2 attached as Exhibit A to that affidavit.

3 But in any event, you spoke of price in
4 paragraph 6(a), correct?

5 MR. RALPH NEATE: Yes.

6 MR. FREDERICK CHENOWETH: All right,
7 suffice it to say that that wasn't a comment with
8 respect to any tax issues involved with the
9 transaction, correct?

10 MR. RALPH NEATE: I suppose there are
11 tax implications to that, but no.

12 MR. FREDERICK CHENOWETH: Thank you.

13 Your comment wasn't with respect to the
14 tax implications, it was with respect to the price,
15 correct?

16 MR. RALPH NEATE: It was with the
17 price, yes.

18 MR. FREDERICK CHENOWETH: Thank you.

19 Your comment in 6(a) wasn't an audit
20 issue, in other words, you weren't raising any audit
21 concerns there, which were then your other usual role
22 when you made comment or looked at the books and
23 records or affairs of the Town, correct?

24 MR. RALPH NEATE: Yes.

25 MR. FREDERICK CHENOWETH: Thank you. B

1 -- 6B, you talked about deficit and whether that was a
2 concern of the -- would be a concern of the Ontario
3 Energy Board.

4 MR. RALPH NEATE: Yes.

5 MR. FREDERICK CHENOWETH: That --
6 that's not a tax comment, correct?

7 MR. RALPH NEATE: No, but it's a
8 comment that relates to audit. Yes.

9 MR. FREDERICK CHENOWETH: It's a
10 comment that relates to audit?

11 MR. RALPH NEATE: Yes.

12 MR. FREDERICK CHENOWETH: Okay. Did
13 it -- did it -- are you -- are you aware or would you
14 know whether the OEB raised any concerns about --
15 about negative retained earnings?

16 MR. RALPH NEATE: They -- I don't --
17 no, they didn't. At the end of the day I don't think
18 this was an issue.

19 MR. FREDERICK CHENOWETH: All right.
20 At the end of the day the issue raised in 6B was a --
21 a non-issue.

22 MR. RALPH NEATE: Yes.

23 MR. FREDERICK CHENOWETH: And it
24 didn't have any impact?

25 MR. RALPH NEATE: No.

1 MR. FREDERICK CHENOWETH: In any
2 event, you say it wasn't a tax issue, but you say it
3 was an audit issue?

4 MR. RALPH NEATE: Yes.

5 MR. FREDERICK CHENOWETH: Just -- just
6 -- I guess I'm not an accountant, I'm going to ask you
7 a -- a crazy question, but how was it an audit issue?

8 MR. RALPH NEATE: Just in terms of
9 whether there was an issue with the retained earnings
10 and whether it could be negative. That's --

11 MR. FREDERICK CHENOWETH: That's
12 simply a financial statement issue, isn't it?

13 MR. RALPH NEATE: Right, but that's --
14 yes. That's part of what an audit is.

15 MR. FREDERICK CHENOWETH: I see.
16 Okay, all right.

17 But it wasn't -- another thing anything
18 in an audit or anything of that nature, it was
19 something that would've been obvious from the study of
20 the financial statements that were before the OEB,
21 correct?

22 MR. RALPH NEATE: Right, but that was
23 -- I mean, that is part of the audit is looking at
24 those sorts of issues.

25 MR. FREDERICK CHENOWETH: I see, okay.

1 Shotgun clause, 6C, is -- is that somehow a tax issue?

2 MR. RALPH NEATE: No.

3 MR. FREDERICK CHENOWETH: Is -- is a
4 shotgun clause an audit issue?

5 MR. RALPH NEATE: No.

6 MR. FREDERICK CHENOWETH: Thank you.
7 The control issue. You expressed a concern that the
8 Town would be required to share control of the
9 utility.

10 First of all, I take it it's -- it's
11 pretty obvious that, if you've got a partnership,
12 you're share -- you're sharing control. That's --
13 that's not -- that's not -- first of all, it's not a
14 tax issue?

15 MR. RALPH NEATE: No.

16 MR. FREDERICK CHENOWETH: It's not an
17 audit issue?

18 MR. RALPH NEATE: It could be
19 potentially.

20 MR. FREDERICK CHENOWETH: All right.
21 It's -- it's -- control is, to some large extent, a
22 legal issue. Wouldn't you say that's fair?

23 MR. RALPH NEATE: Right, but an audit
24 would look at that.

25 MR. FREDERICK CHENOWETH: Well, an

1 audit might look at who's got control. But in this
2 context, I take it that the fact that in a partnership
3 you'd share control was a fairly obvious kind of a --
4 kind of an issue, wouldn't you think?

5 MR. RALPH NEATE: I suppose, yeah.

6 MR. FREDERICK CHENOWETH: Yeah. And -
7 - and I take it that -- that really what you were
8 doing in that case is you were expressing your
9 particular view as to whether or not the idea of a
10 partnership was a good idea, correct?

11 MR. RALPH NEATE: I was just pointing
12 out that there were issues related to the deal in
13 terms of who can --

14 MR. FREDERICK CHENOWETH: I -- I take
15 it the fact in a pi --

16 THE HONOURABLE FRANK MARROCCO: Excuse
17 me, you -- you -- what were you saying?

18 MR. RALPH NEATE: These were just
19 notes that I made after the meeting. And I was just
20 commenting on some of the issues related to the deal
21 that I was considering.

22 THE HONOURABLE FRANK MARROCCO: Thank
23 you.

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: It's -- it's
2 clear that, as it turned out, others had a different
3 view, obviously, and the STT team recommended a
4 strategic partnership, correct?

5 MR. RALPH NEATE: Yes.

6 MR. FREDERICK CHENOWETH: So, as it
7 turns out, the issues you raised with respect to
8 control were not an issue and that the others who had
9 authority over this matter, i.e., the STT team in part
10 and the Council and the Board of Collus, all had a
11 different view to the view you expressed with respect
12 to control in a partnership, correct?

13 MR. RALPH NEATE: I suppose, yes.

14 MR. FREDERICK CHENOWETH: Thank you.
15 You've expressed a view with respect to dividends.
16 Was this a -- was this a -- I -- I know there's some
17 tax aspects to dividends, but was your comment that
18 you made with respect to dividends in paragraph 6(e)
19 of your affidavit, is that a tax issue?

20 MR. RALPH NEATE: It could be, yes.

21 MR. FREDERICK CHENOWETH: Well, it
22 could be in that there -- there are some -- some
23 dividend aspect -- or there are some tax issues with
24 respect to dividends.

25 But here the concern was whether or not

1 there -- there would be a dividend. That -- that's
2 not a tax issue, that's a financial issue, correct?

3 MR. RALPH NEATE: I suppose, yes.

4 MR. FREDERICK CHENOWETH: You suppose
5 or that's correct?

6 MR. RALPH NEATE: Yes.

7 MR. FREDERICK CHENOWETH: Thank you.
8 My information is that -- and -- and it wasn't an
9 audit issue, your -- your comments on dividend,
10 correct?

11 MR. RALPH NEATE: Yes, it wasn't an
12 audit issue.

13 MR. FREDERICK CHENOWETH: Thank you.
14 All right. The dividend issue, did that -- were you
15 aware that in 2014 Collus paid a dividend of three
16 hundred and sixty-seven thousand dollars (\$367,000),
17 or the -- or the -- the energy distributor paid a
18 dividend of three hundred and sixty-seven thousand
19 dollars (\$367,000) to the Town?

20 MR. RALPH NEATE: Was I aware of that?

21 MR. FREDERICK CHENOWETH: Were you
22 aware of that?

23 MR. RALPH NEATE: Not necessarily.

24 MR. FREDERICK CHENOWETH: So -- so you
25 don't know whether your dividend issue -- when you

1 say, "Not necessarily," either you were aware or you
2 weren't aware?

3 MR. RALPH NEATE: I don't recall
4 whether I knew about that or not.

5 MR. FREDERICK CHENOWETH: All right.
6 The reality, sir, is that your dividend issue, I
7 submit, other evidence will show it was a nonissue
8 and, in fact, appropriate and quite substantial.

9 In fact, the highest dividends in some
10 period of time were paid to the Town as a result of
11 the operations of the distributor in 2014?

12 MR. RALPH NEATE: Yeah.

13 MR. FREDERICK CHENOWETH: Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: So, item
18 (b), 6(b), turned out to be a nonissue talked about?

19 MR. RALPH NEATE: Yes, it did.

20 MR. FREDERICK CHENOWETH: Thank you.
21 The shotgun clause, pretty much your personal comment
22 and -- and others disagreed, correct?

23 MR. RALPH NEATE: Sorry, who
24 disagreed?

25 MR. FREDERICK CHENOWETH: Well, the --

1 the Collus Board, the STT team, the Collingwood
2 Council.

3 MR. RALPH NEATE: Okay. I can't
4 comment on that.

5 MR. FREDERICK CHENOWETH: Well, that's
6 how they proceeded, right?

7 MR. RALPH NEATE: I suppose.

8 MR. FREDERICK CHENOWETH: That's how
9 they proceeded, to use a shotgun clause. Did you know
10 that?

11 MR. RALPH NEATE: Yes, they did, yeah.

12 MR. FREDERICK CHENOWETH: Thank you.
13 So, others, obviously, thought differently than you
14 about the shotgun provision, correct?

15 MR. RALPH NEATE: Okay.

16 MR. FREDERICK CHENOWETH: All right.
17 Thank you. And the issue of control, others had a
18 different view of that, as well?

19 MR. RALPH NEATE: Sure. Yeah.

20 MR. FREDERICK CHENOWETH: Thank you.
21 And the dividend issue turned out to be a nonissue in
22 that substantial dividends were paid, correct?

23 MR. RALPH NEATE: I don't know that
24 that is necessarily the -- the summation of that
25 comment. It was related more to whether dividends

1 versus shared services.

2 MR. FREDERICK CHENOWETH: Well, were
3 you -- were you aware that shared services continued
4 after the purchase of Collus and its arrangement in
5 Collus PowerStream?

6 MR. RALPH NEATE: I believe so, yeah.

7 MR. FREDERICK CHENOWETH: All right.
8 So, it turned out to be a nonissue?

9 MR. RALPH NEATE: Okay.

10 MR. FREDERICK CHENOWETH: Not okay.
11 Isn't that accurate?

12 MR. RALPH NEATE: I suppose, yes.

13 MR. FREDERICK CHENOWETH: That's a
14 'yes'?

15 MR. RALPH NEATE: Yes.

16 MR. FREDERICK CHENOWETH: Thank you.
17 With respect to your 6(a), I take it that the \$5.5
18 million that would come as a result of an adjustment
19 in working capital, I've only been involved in this
20 for a short period of time, but that's -- that's
21 pretty -- that's pretty obvious, isn't it?

22 MR. RALPH NEATE: Sorry, the 5.5 is --
23 I think I need to look at the -- the other metadata in
24 order to --

25 MR. FREDERICK CHENOWETH: Well, let's

1 then -- let's then look, if we could, at Exhibit A,
2 the adjustment with respect to working capital.
3 Obviously, some funds were going to come from that.
4 And your point is that -- that that could come whether
5 or not there was a strategic partnership or not?

6 THE HONOURABLE FRANK MARROCCO: Well -
7 - well, just why don't we come back to that. I
8 appreciate the question. I'm not trying to interrupt,
9 but the witness wanted to look at a document, so can
10 you put the document up there? All right.

11 That's the affidavit?

12 MR. RALPH NEATE: That's it there,
13 yes.

14 THE HONOURABLE FRANK MARROCCO: All
15 right. Go ahead.

16 MR. FREDERICK CHENOWETH: Yes.

17

18 CONTINUED BY MR. FREDERICK CHENOWETH:

19 MR. FREDERICK CHENOWETH: All right.
20 Item 2...

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: I'm sorry,
25 item 1, which again is in keeping with paragraph 6(a)

1 of your affidavit, you took the view that the 5.5
2 after adjustments could be paid out in any event of
3 whether there was a partnership?

4 MR. RALPH NEATE: Yes.

5 MR. FREDERICK CHENOWETH: All right.
6 I've only been involved in this for a short period of
7 time, but I -- I take it that would have been fairly
8 obvious to people?

9 MR. RALPH NEATE: Not necessarily.

10 MR. FREDERICK CHENOWETH: Okay. You
11 didn't think it was obvious?

12 MR. RALPH NEATE: I didn't think about
13 it.

14 MR. FREDERICK CHENOWETH: All right.
15 Okay. And the 1.5 -- or 1.7 payment of the promissary
16 note, would have been aware that would -- that that
17 was a matter that the Town obviously was aware of
18 because they debated it in the past on more than one
19 (1) occasion?

20 MR. RALPH NEATE: They did what in the
21 past, sorry, if you could clarify.

22 MR. FREDERICK CHENOWETH: They debated
23 --

24 MR. RALPH NEATE: Oh.

25 MR. FREDERICK CHENOWETH: -- whether

1 or not the promissary note of \$1.7 million would be
2 repaid or not.

3 MR. RALPH NEATE: Okay.

4 MR. FREDERICK CHENOWETH: They debated
5 that in the past?

6 MR. RALPH NEATE: Okay, I'm not aware
7 of that.

8 MR. FREDERICK CHENOWETH: You're not
9 aware of that. My point simply is that both of those
10 comments, I suggest to you, are relatively obvious and
11 really don't require much stating?

12 MR. RALPH NEATE: I can't comment to
13 that.

14 MR. FREDERICK CHENOWETH: Very good.

15

16 (BRIEF PAUSE)

17

18 MR. FREDERICK CHENOWETH: You
19 mentioned in paragraph 9 of your affidavit that Trevor
20 Pinn, of your organization, raised a concern that
21 there did not appear to be any documentation that
22 approved bonus payments, correct?

23 MR. RALPH NEATE: Yes.

24 MR. FREDERICK CHENOWETH: Right. As
25 an auditor, I take it Mr. Pinn's concern and

1 eventually your concern would have been the lack of
2 paper with respect to the bonuses?

3 MR. RALPH NEATE: They hadn't been
4 approved, yes.

5 MR. FREDERICK CHENOWETH: Or there was
6 no evidence that they'd been approved?

7 MR. RALPH NEATE: They -- yes, there
8 was no evidence.

9 MR. FREDERICK CHENOWETH: So, your
10 concern as an auditor was that there was a lack of
11 evidence of approval of the bonuses?

12 MR. RALPH NEATE: Yes.

13 MR. FREDERICK CHENOWETH: Right. Your
14 concern as an auditor would not have been with respect
15 to the bonuses, it would have been with respect to the
16 lack of an obvious authorization for the payments, in
17 other words, the documentation, correct?

18 MR. RALPH NEATE: Yes.

19 MR. FREDERICK CHENOWETH: Thank you.
20 And I take it you eventually got from Ms. Hogg a note
21 signed by Joan Pajunen, who was head of human
22 resources for the organization, that confirmed that
23 the bonuses had been approved by the human resources
24 committee, correct?

25 MR. RALPH NEATE: I don't recall that.

1 MR. FREDERICK CHENOWETH: You don't
2 recall that?

3 MR. RALPH NEATE: No.

4 MR. FREDERICK CHENOWETH: All right.
5 I'm looking at Exhibit B to your affidavit, about the
6 middle of the page. Would you look at Exhibit B to
7 the affidavit? Thank you.

8 MR. RALPH NEATE: M-hm.

9 MR. FREDERICK CHENOWETH: Pam Hogg
10 provided a memorandum signed by Joan Pajunen, Chair of
11 Human Resources Committee and now acting Chair of the
12 Board of Directors, indicating the amounts approved
13 for bonuses to the above by the -- to the above Collus
14 staff was approved by the -- by the Board of
15 Directors.

16 I take it that solved your problem with
17 respect to the lack of -- of documentation for the
18 bonuses?

19 MR. RALPH NEATE: I -- yes.

20 MR. FREDERICK CHENOWETH: Thank you.

21 MR. WILLIAM MCDOWELL: Sorry, if I
22 could just correct My Friend there. I don't think it
23 says that the Board approved. It says that the Human
24 Resources Committee of the Board approved.

25 MR. FREDERICK CHENOWETH: I think -- I

1 think My Friend's comment is -- is accurate.

2 Other than the fact that she was acting
3 Chair of the Board, but -- but I think my friend's
4 comment continues to be accurate.

5

6 (BRIEF PAUSE)

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: I was just a
10 little -- little concerned about -- about part of your
11 paragraph 11 of your affidavit. At the Board, you
12 indica -- or you indicated at the meeting that you
13 attended, which was a joint meeting between the STT
14 and -- and Collus Power and Collus Solution, Board
15 members seemed to be surprised to learn about the
16 bonus payments?

17 MR. RALPH NEATE: Yeah. Some of them,
18 yeah.

19 MR. FREDERICK CHENOWETH: All right.
20 So you ha -- have a memory as to who was -- who was
21 surprised?

22 MR. RALPH NEATE: I don't.

23 MR. FREDERICK CHENOWETH: All right.
24 The way that you came to the conclusion that there was
25 a surprise, was that a quizzical look on people's

1 face? Was it some note of outrage? Do you have any -
2 - any memory of what led you to the conclusion with
3 respect to some note of surprise?

4 MR. RALPH NEATE: I don't -- I don't
5 recall.

6 MR. FREDERICK CHENOWETH: So you don't
7 recall who was surprised. You don't recall what led
8 you to conclude that they were surprised, correct?

9 MR. RALPH NEATE: Yes.

10 MR. FREDERICK CHENOWETH: Thank you.
11 Now, you indicate that you had some discussions with
12 Mr. Houghton at later times in or about May of 2012 in
13 which Mr. Houghton gave some advice with respect to
14 the wish to continue with you.

15 Are you -- the date -- I'm anticipating
16 that there may be other evidence that suggests that
17 the date of this was not when Mr. Houghton was CAO at
18 the time of the Town starting in -- in April of 2012.
19 Are you certain about that date, or could it be --

20 MR. RALPH NEATE: It was in -- it was
21 after tax season. It was May 2012.

22 MR. FREDERICK CHENOWETH: Okay.

23 MR. RALPH NEATE: In the CAO's office.

24 MR. FREDERICK CHENOWETH: Very good.

25 I appreciate that. Thank you. You say that

1 Mr. Houghton indicated he didn't want to work -- he
2 didn't want to work with you anymore. Is it the case
3 that Mr. Houghton told you that the Board no longer
4 had confidence in working with you? Is that what he
5 said to you?

6 MR. RALPH NEATE: I don't recall.

7 MR. FREDERICK CHENOWETH: You don't
8 recall. But he -- I take it he didn't just say he
9 didn't want to work with you anymore. He told you
10 something about the reason why, or do you recall that?

11 MR. RALPH NEATE: I mean, I -- I
12 suppose he did mention about the Board.

13 MR. FREDERICK CHENOWETH: All right.
14 And did he tell you that the Board no longer had
15 confidence in working with you as the auditor on the
16 matter?

17 MR. RALPH NEATE: I don't recall that.

18 MR. FREDERICK CHENOWETH: Is it
19 possible that that could have been said to you by
20 Mr. Houghton on that occasion?

21 MR. RALPH NEATE: It's possible.

22 MR. FREDERICK CHENOWETH: Thank you.

23 Did you have the impression in your discussions with
24 Mr. Houghton that he was -- he wasn't on a lark of his
25 own. He was coming to you as a result of instructions

1 he'd received from the Board. Was that a sense you
2 had through the course of your meeting?

3 MR. RALPH NEATE: I believed he was --
4 it was -- it was from him.

5 MR. FREDERICK CHENOWETH: You believed
6 it was from him as opposed to from the Board?

7 MR. RALPH NEATE: Yes.

8 MR. FREDERICK CHENOWETH: All right.
9 Would you know whether, in fact, Mr. Houghton had been
10 instructed by the Board to come and speak to you and
11 tell you the Board no longer had confidence in you?
12 Would you be aware as to whether or not that happened
13 or didn't happen?

14 MR. RALPH NEATE: I'm not -- I don't
15 recall.

16 MR. FREDERICK CHENOWETH: You don't
17 recall, or you wouldn't know?

18 MR. RALPH NEATE: Well, I guess I
19 wouldn't know.

20 MR. FREDERICK CHENOWETH: I think
21 that's accurate. One (1) moment, Your Honour.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: Those are my

1 questions, Your Honour. Thank you.

2 THE HONOURABLE FRANK MARROCCO: Thank
3 you.

4 MR. GEORGE MARRON: I have no
5 questions. Thank you.

6 THE HONOURABLE FRANK MARROCCO: Thank
7 you, Mr. Marron. Mr. Fryer or Mr. Watson?

8 MR. MICHAEL WATSON: Yes, Your Honour.
9 Just a couple of points.

10

11 CROSS-EXAMINATION BY MR. MICHAEL WATSON:

12 MR. MICHAEL WATSON: Mr. Neate, you
13 attended two (2) meetings of the Strategic Task Team
14 at a request made through the Town? Yes?

15 MR. RALPH NEATE: I believe so, yes.

16 MR. MICHAEL WATSON: Right. And
17 that's -- well, that's what's in your affidavit,
18 right?

19 MR. RALPH NEATE: Yes.

20 MR. MICHAEL WATSON: All right.

21 MR. RALPH NEATE: But it's -- it's
22 based on -- it's based on at least the December
23 meeting, I'm in the meeting that -- that I was in
24 attendance. And yes, I was at those meetings, but I
25 don't recall the specific dates.

1 MR. MICHAEL WATSON: Well, you seem to
2 recall one (1) of the dates, December 2nd?

3 MR. RALPH NEATE: Yeah, yeah.
4 That's -- yeah -- from the other documentary evidence
5 that I've been presented.

6 MR. MICHAEL WATSON: All right. So
7 you don't recall the date. It's that the other
8 documentary evidence suggests that that must've been
9 the date. Is that fair?

10 MR. RALPH NEATE: Yes.

11 MR. MICHAEL WATSON: All right. And
12 you were there as an observer.

13 MR. RALPH NEATE: Yes.

14 MR. MICHAEL WATSON: And after the
15 meeting, I take it you went back to your office and
16 you made the notes that are Exhibit A to your
17 affidavit?

18 MR. RALPH NEATE: At one (1) of the
19 two (2) meetings, yes. I believe so.

20 MR. MICHAEL WATSON: But you don't
21 know which one.

22 MR. RALPH NEATE: Well, it would have
23 been December 12th because that's the date that the --
24 the last -- that the time that document was saved on
25 our system.

1 MR. MICHAEL WATSON: December 12th or
2 December 2nd?

3 MR. RALPH NEATE: No -- sorry -- 2nd,
4 sorry. December 2nd --

5 MR. MICHAEL WATSON: All right.

6 MR. RALPH NEATE: -- that's the date
7 of the...

8 MR. MICHAEL WATSON: And was that the
9 second meeting that you attended, whatever the date of
10 the first one (1) was?

11 MR. RALPH NEATE: I'm assuming it was
12 because I believe the -- or one (1) -- earlier one (1)
13 was in November, yeah.

14 MR. MICHAEL WATSON: And so you went
15 back to your office, and you made a notes on
16 December 2nd? Yes?

17 MR. RALPH NEATE: Yes.

18 MR. MICHAEL WATSON: All right. And
19 you didn't circulate them to anybody.

20 MR. RALPH NEATE: No.

21 MR. MICHAEL WATSON: You kept them in
22 your file?

23 MR. RALPH NEATE: Yes.

24 MR. MICHAEL WATSON: Okay. I wonder,
25 could we please look at Exhibit A -- I want to ask you

1 about just one (1) point -- Exhibit A which are the
2 notes.

3 And if we can look at the part dealing
4 with the shotgun clause. This is at paragraph 3.
5 These notes are made immediately after the meeting?

6 MR. RALPH NEATE: Yes.

7 MR. MICHAEL WATSON: All right. And
8 you said shot -- in point number 3, quoting:

9 "Shotgun clause - PowerStream will
10 effectively be able to purchase
11 other half of utility after two (2)
12 years - Town goal appears to hold on
13 50 percent of utility for long
14 term."

15 That's what you wrote at the time?

16 MR. RALPH NEATE: Yes.

17 MR. MICHAEL WATSON: And so your view,
18 your belief, your conclusion was that PowerStream, as
19 a result of the shotgun clause, would effectively be
20 able to purchase the other half of the utility after
21 two (2) years, right?

22 MR. RALPH NEATE: Yes.

23 MR. MICHAEL WATSON: And your view,
24 therefore, was what you're really saying is that
25 PowerStream could force the Town to sell 50 percent of

1 its shares. That's what you were really saying,
2 right?

3 MR. RALPH NEATE: Effectively, yes.

4 MR. MICHAEL WATSON: What does
5 "effectively" mean?

6 MR. RALPH NEATE: Well, the Town could
7 have obviously -- in the shotgun clause could have
8 also -- could have bought it, too, but whether they
9 had the financial resources to or not.

10 MR. MICHAEL WATSON: All right. I
11 take it you hadn't seen the shotgun clause at that
12 time?

13 MR. RALPH NEATE: I -- no. I believe
14 it was just described in the documentation.

15 MR. MICHAEL WATSON: All right. And
16 basically, the shotgun clause provided that either
17 party could offer to purchase 50 -- the other parties'
18 50 percent or sell its 50 percent, right? Either
19 party could trigger the shotgun buy/sell.

20 MR. RALPH NEATE: Yes.

21 MR. MICHAEL WATSON: And if the
22 Town -- if the Town triggered the shotgun buy/sell,
23 then PowerStream would have the choice whether to sell
24 its 50 percent of shares or buy the Town's 50 percent
25 of shares, right?

1 MR. RALPH NEATE: Yes.

2 MR. MICHAEL WATSON: Whereas if
3 PowerStream triggered the shotgun, it will be the Town
4 that would have the right to decide whether to
5 purchase or sell, right?

6 MR. RALPH NEATE: Yes.

7 MR. MICHAEL WATSON: And therefore,
8 the only circumstance in which PowerStream could get
9 the Town's shares and be assured of getting the Town's
10 shares is if the Town triggered the shotgun buy/sell,
11 right? Because then PowerStream would have the
12 choice.

13 MR. RALPH NEATE: Possibly, yes.

14 MR. MICHAEL WATSON: Well, that's the
15 way it works though. It's not "possibly." That's the
16 way the shotgun works, right?

17 MR. RALPH NEATE: I suppose, yes.

18 MR. MICHAEL WATSON: Yes. And
19 therefore, when you said in your note that PowerStream
20 will effectively be able to purchase -- what you
21 disagreed, I mean, if -- could force the Town to sell
22 its shares, that would only be if the Town voluntarily
23 chose to trigger the shotgun buy/sell itself.
24 PowerStream couldn't force the Town to do so.

25 Do you agree with that?

1 MR. RALPH NEATE: When I wrote that
2 note, I would. Yes, I guess. Well, I -- I believe
3 that I was referring to the day that -- just the Town
4 didn't have the financial wherewithal to basically buy
5 out the other half.

6 MR. MICHAEL WATSON: Well, you said in
7 point number 3 here, you know, your concern was goal
8 appears to be hold onto 50 percent of the utility.
9 You didn't say anything about finances. That wasn't
10 in your mind.

11 If it was, you would have written it
12 down, fair?

13 MR. RALPH NEATE: Well, I think it --
14 that's what it relates to is the financial side of
15 things.

16 MR. MICHAEL WATSON: I see. All
17 right. Let's go back on this one (1) point, too, that
18 what you say in your affidavit now on this point. Go
19 back, please, to the paragraph in your affidavit
20 dealing with the shotgun?

21 All right. So now there's a much
22 longer statement in your affidavit:

23 "There was a shotgun clause that
24 provide that PowerStream could
25 potentially purchase the other half

1 after two (2) years."

2 So now you've added "potentially" in
3 your affidavit, right?

4 MR. RALPH NEATE: Sure, yes.

5 MR. MICHAEL WATSON: Right. And you
6 didn't put that in your original note?

7 MR. RALPH NEATE: No.

8 MR. MICHAEL WATSON: All right. And I
9 take it that on reflection all these years later, you
10 have realized that, in fact, the Town couldn't --
11 PowerStream couldn't force the Town to sell its
12 shares, but rather that would -- could happen only if
13 the Town chose to trigger the shotgun itself, and
14 you've realized that in preparing your affidavit,
15 right?

16 MR. RALPH NEATE: I -- not
17 necessarily. I would disagree somewhat with that
18 conclusion.

19 MR. MICHAEL WATSON: Explain why my
20 conclusion's wrong?

21 MR. RALPH NEATE: Because of the
22 20-day issue that came -- I mean, this is later
23 obviously. That wasn't something I knew at the time
24 but later on. The twenty (20) days could result in
25 the Town not being able to respond to such a shotgun

1 and -- and -- and PowerStream effectively buying --
2 buying it.

3 MR. MICHAEL WATSON: All right. So
4 that's something completely -- completely different,
5 right? It wasn't something --

6 MR. RALPH NEATE: No, I don't believe
7 the twenty (20) days was in that agreement -- or in
8 the proposed agreement or whatever at the time.

9 MR. MICHAEL WATSON: Indeed it wasn't.
10 And in your affidavit that you've sworn just recently,
11 in this part about the shotgun, you don't talk
12 anything about the twenty (20) days, right?

13 MR. RALPH NEATE: No.

14 MR. MICHAEL WATSON: And I take it
15 that you heard or you listened to evidence yesterday
16 concerning the twenty (20) days?

17 MR. RALPH NEATE: I heard it
18 yesterday, yes.

19 MR. MICHAEL WATSON: Right. And I
20 take it that that's why you're mentioning it today,
21 because you've heard it just yesterday.

22 MR. RALPH NEATE: Not necessarily.
23 I've heard it before.

24 MR. MICHAEL WATSON: I see, right.
25 Those are my questions, Your Honour.

1 THE HONOURABLE FRANK MARROCCO: Thank
2 you. Mr. Fryer...?

3

4 CROSSE-EXAMINATION BY MR. TIM FRYER:

5 MR. TIM FRYER: Thank you, Justice
6 Marrocco. Hello, Mr. Neate --

7 MR. RALPH NEATE: Hi.

8 MR. TIM FRYER: -- as a matter of
9 record, I will note to you that I am representing
10 myself in these proceedings. I will be proceeding
11 with asking just a few questions regarding your
12 testimony and related matters.

13 In regards to your affidavit evidence
14 and the Item 6(a) that we've been talking about, what
15 you are noting here is essentially about the impact of
16 the working capital adjustment, correct?

17 MR. RALPH NEATE: Yes.

18 MR. TIM FRYER: At the current time
19 you're estimating it to be 1.1 million?

20 MR. RALPH NEATE: I believe those were
21 the numbers at that point.

22 MR. TIM FRYER: And just to confirm,
23 do you recall that you made these concerns -- you
24 stated the concerns to the SPTT on December the 2nd,
25 or did you record the notes afterwards, just as a

1 reflection?

2 MR. RALPH NEATE: I just recorded them
3 afterwards. They weren't stated to the -- to the --
4 the task force.

5 MR. TIM FRYER: That's good, because I
6 didn't recall you making them specifically to the task
7 force, so that's why I wanted to ask that question.

8 Do you recall that I had noted to the
9 strategic partner task team that the final price would
10 be a moving target because of the working capital
11 adjustment portions of the offers, because some of the
12 offers had the working capital adjustment in it?

13 MR. RALPH NEATE: I don't recall
14 specifically.

15 MR. TIM FRYER: Fair enough. It's a
16 long time ago.

17 And, of course, you wouldn't know
18 exactly what the impact was until closing and final
19 statements were taken.

20 MR. RALPH NEATE: Yes.

21 MR. TIM FRYER: And technically 50
22 percent of that working capital adjustment was staying
23 within the Utility, so as a 50 percent partner would
24 be -- partly be in the -- in the realm of -- of an
25 asset for the -- for the municipality anyway.

1 MR. RALPH NEATE: Yes.

2 MR. TIM FRYER: Thank you. So if we
3 could look at Item 6(c), and again this is one (1)
4 you're very familiar with because we've been talking
5 about it, the shotgun. It notes contrary to your
6 understanding of what the Town wanted.

7 So do you recall at the previous
8 meeting to the December 2nd one (1) of the SPTT, there
9 was discussion about whether a shotgun clause would be
10 a preferred option and that it was decided that it
11 wouldn't be?

12 MR. RALPH NEATE: I don't recall.

13 MR. TIM FRYER: Thank you. But your
14 understanding on December 2nd was based on reflection
15 from the group or yourself, within the -- within (c)
16 or you're just saying you understood the Town's wish?
17 So I'm just asking you what you base that on. If you
18 can't recall, that's fine.

19 MR. RALPH NEATE: I can't recall.

20 MR. TIM FRYER: Thank you. So if we
21 could bring up KPM0001877. While it's coming up, I'll
22 explain -- it's a short internal KPMG email between
23 Mr. Rockx and Mr. Herhalt.

24 So you don't recall it of course -- or
25 first, I guess, do you recall that they were two (2)

1 KPMG resources back in -- in that time that we were
2 working with?

3 MR. RALPH NEATE: Yes, but these
4 weren't the two (2), or I wasn't -- I was working --

5 MR. TIM FRYER: You're correct.

6 MR. RALPH NEATE: Stern --

7 MR. TIM FRYER: I said --

8 MR. RALPH NEATE: Was it Stern and --
9 and Ross I think.

10 MR. TIM FRYER: Yes, you're correct.

11 I said "we," which implied that you and I had worked
12 with them, but I meant Collus themselves were working
13 with these two (2) individuals as well, and you -- you
14 do recall that.

15 So if we look at Mr. Rockx's portion
16 here and we read it, if -- you can take a second to
17 read through it. You'll notice in the second sentence
18 it says:

19 "It will be interesting to see what
20 PowerStream's reaction will be to
21 the proposed elimination of the
22 shotgun cause and the possible entry
23 into a long-term 50/50 relationship
24 with the Town."

25 So it appears that Mr. Rockx

1 anticipates Collus will be proposing to eliminate the
2 shotgun clause. Would you agree with that?

3 MR. RALPH NEATE: Reading this?

4 MR. TIM FRYER: Yes.

5 MR. RALPH NEATE: Yeah, I would.

6 MR. TIM FRYER: And you haven't seen
7 it before?

8 MR. RALPH NEATE: No.

9 MR. TIM FRYER: And further, a
10 possible entry into a long-term 50/50 relationship,
11 which is exactly what your note of December 2nd says.
12 Correct?

13 MR. RALPH NEATE: Yes.

14 MR. TIM FRYER: And the date of this
15 is November 29th.

16 So then if we could bring up
17 KPM0001901. I should have just briefly looked at that
18 last email at the bottom, because it was Mr. Herhalt
19 asking Mr. Rockx to update him at the meeting that Mr.
20 Rockx was going to be attending the next day, and
21 that's the one (1) that we're bringing up now, is his
22 update that he's bringing back to Mr. -- Mr. Herhalt.

23 So it's KPM0001901, and if you could
24 just scroll down a little bit, and just probably there
25 is just fine for right now. You'll note -- maybe

1 we'll go right to the bottom just so we can be sure
2 that we've looked at the whole thing. So it's a note
3 from Mr. Herhalt there. They're both John, so it gets
4 a little confusing -- from December 1st.

5 "Are you attending the meeting of
6 Collus on Friday a.m. in person? If
7 you are, that is great. I can only
8 call in and can only join."

9 So that would be the December 2nd
10 meeting that we've been talking about.

11 Now, if we scroll up to the body of the
12 email -- right there would be fine. He confirms that
13 he's going to be attending that meeting. He calls it
14 a Board meeting but I'm sure that's the SPTT. And he
15 talks about being at the PowerStream meeting earlier
16 that day.

17 And what I wanted to look at was the
18 mention -- so in the third sentence, if we read the
19 third sentence:

20 "It was a pretty good meeting where
21 Collus confirmed a lot of matters in
22 respect to the proposed transaction,
23 including the removal of the shotgun
24 clause."

25 Do you see that?

1 MR. RALPH NEATE: Yes.

2 MR. TIM FRYER: So I'm going to just
3 scroll down to the bottom of the email and just show
4 that it says there -- the last sentence says:

5 "Tim did not participate in the
6 discussions with PowerStream."

7 -- which indicates that I wasn't there.

8 MR. RALPH NEATE: I see that, yes.

9 MR. TIM FRYER: Okay. So I want to
10 also look at ALE0005133.0002, and Slide Number 18 that
11 I would like to look at.

12 So this is the December 5th
13 presentation at the in camera session of Council, from
14 the findings of the December 2nd SPTT meeting taking
15 it forward to Council. So this -- this slide
16 presentation in this first bullet is about the shotgun
17 clause. So I just wanted to -- to show you that
18 bullet. I don't believe you've seen this one (1)
19 before, but the response about a question or -- or
20 bullet point about shotgun clause was:

21 "PowerStream does not like this
22 approach and in fact does not like
23 the phrase. The reason it's
24 mentioned is, it's because it is
25 stated this way in the RFP itself."

1 And you -- you follow all that. That's
2 December the 5th --

3 MR. RALPH NEATE: Okay.

4 MR. TIM FRYER: -- that it's being
5 said.

6 MR. RALPH NEATE: Yes.

7 MR. TIM FRYER: And if we just look at
8 -- at the TOC0512149, and this is the minutes of the -
9 - of the in camera session. If you just scroll to the
10 list of guests. Down just a little further, the staff
11 person I guess, you'll note that I'm not in attendance
12 at that meeting either.

13 MR. RALPH NEATE: I see that, yes.

14 MR. TIM FRYER: So I guess what I've
15 shown you is there seems to be some contradictory
16 back-and-forth, not just with you reflecting on what
17 you thought about the shotgun clause and what about
18 the long-term relationship the Town wanted, so there
19 was quite a bit of confusion by all parties by the
20 looks of it.

21 MR. RALPH NEATE: It appears to be,
22 yes.

23 MR. TIM FRYER: Okay, so I was going
24 to leave that and it was really about just your recall
25 of the December meeting.

1 So I wanted to -- and I will be going
2 over it with Mr. Rockx as well. So I wanted to do two
3 (2) items with you from your evidence, which again, if
4 we can go back to ALE0049388 and it would be slide 41.

5 This is going to have to do with shared
6 services. So this is a copy of the annual reports
7 that we would put forward to Council, this particular
8 one (1) we presented to Council on May 30th of 2011.

9 And the last -- this page that we're
10 looking at is the cash and signed summary form that I
11 believe you're familiar with the look. This is where
12 we would record our cash and in-kind report for
13 yourselves to audit and for the Town of Collingwood to
14 receive this information.

15 You're familiar with it. And I wanted
16 to look at the 2009 amount, the \$280,000 that is there
17 for Collus Solutions in the first green amount. Do
18 you see the one (1) I'm referring to?

19 MR. RALPH NEATE: In-kind services
20 280?

21 MR. TIM FRYER: 280, yes.

22 MR. RALPH NEATE: Yes.

23 MR. TIM FRYER: So if we could now
24 bring up KPM0000858.

25 And this is an e-mail with -- that I

1 had done with -- with Jonathan Erling, and Jonathan
2 Erling was another principle at the KPMG that we -- I
3 worked with. I can't remember for certain if he did.

4 MR. RALPH NEATE: Right.

5 MR. TIM FRYER: So if you just scroll
6 down a little bit more, down to where it comes the
7 summary sheet. Do you see the line on the summary
8 sheet, that's the question he's posing, the summary
9 sheet noted above shows, do you see that?

10 MR. RALPH NEATE: Right.

11 MR. TIM FRYER: Do you want to read
12 through that just briefly yourself, until you're
13 comfortable that you see what it says?

14 MR. RALPH NEATE: Okay.

15 MR. TIM FRYER: So, based on your
16 experience as external auditor of -- of Collus, would
17 you be able to verify that that explanation provided
18 to the question is accurate in regards to how shared
19 services costs were appropriately transferred?

20 MR. RALPH NEATE: Yes.

21 MR. TIM FRYER: Thank you.

22 With your recall, is that figure
23 represented a portion based on approved percentages of
24 solution employees, such as Mr. Houghton, being
25 charged to the water department of the Town?

1 MR. RALPH NEATE: There is, yes.

2 There is.

3 MR. TIM FRYER: Thank you. And that
4 was for percentage of time as CEO of water and
5 director of Public Works, that's how the percentage of
6 time allocation was determined.

7 MR. RALPH NEATE: Yes.

8 MR. TIM FRYER: Okay, great.

9 MR. TIM FRYER: The next slide I would
10 like to look at is KPM0001804. And this is an e-mail
11 and it's in discussion or it's -- it's a discussion in
12 reviewing the evidence. Sorry. In reviewing our
13 evidence over the last few weeks, there's been quite a
14 bit of discussion about starting out as an RFP process
15 for the sale of shares of Collus Power, eventually
16 turning into a share sale of Collus, the holding
17 company. So that's -- that's what this is partly
18 about.

19 You'll notice that this e-mail is dated
20 November 25th and -- and as you see it's a follow-up.
21 It says this is the note we sent earlier to Ed
22 regarding tax issues.

23 But if we just scroll down to the
24 October 28th portion, right there is great, I will
25 ask, do you recall this e-mail? And the reason I'm

1 asking is because of the redacted portion.

2 MR. RALPH NEATE: I don't necessarily
3 recall.

4 MR. TIM FRYER: And that was just, as
5 I said, was the redacted portion. I don't know that
6 that's not your name that's underneath there, right?

7 So I just wanted to ask that question.
8 And I wasn't going to read the whole thing, I don't
9 think it's necessary, but this is Sean Stern, who I
10 believe you'll recall is the person that we worked
11 with the most in regards to the tax questions that
12 went back and forth?

13 MR. RALPH NEATE: Yes, yes.

14 MR. TIM FRYER: So it was just -- that
15 was going to be the whole thing, but the first part is
16 -- is the part that I was going to read, which is one
17 (1) potential tax issue arises because Collingwood is
18 looking to sell an interest in Collus Power, which is
19 a subsidiary of the Municipal Corporation Collingwood
20 Utility Services or CUS. The tax issue arises in the
21 event of Hydro One is the buyer of a partial interest
22 in -- in Collus Power.

23 So the rest of the detail explains why.
24 As I said, I don't think it's necessary for our
25 purposes, the question I'm going to ask you, but I

1 wanted to familiarize you with it and -- that it went
2 to Mr. Houghton solely and it was on October 28th that
3 that went to him.

4 So then I'm going to ask to have CPS
5 000 2565 brought up. Again, an e-mail from Jonathan
6 Erling to myself and to Mr. Houghton, November 2nd,
7 and then my response to Sean.

8 So down below is the -- is the -- is
9 the first one (1) and then this is my response, Sean
10 was copied as well. So if I could just scroll down
11 and just verify that for everyone. And right there.
12 So it's Mr. Erling to myself and Mr. Houghton and --
13 and internal people, including Sean.

14 So back up to -- to the body of it,
15 when you read -- when you read the last pair -- the --
16 the paragraph in the middle where your name is started
17 with, I'm very sure that that's meant to be Ralph
18 Neate, but it just "Ralph", but I'm saying Ralph has
19 scheduled a meeting with retired partner Ken Miller.
20 So this goes back to your previous mention that you
21 did have discussions with Mr. Miller through the
22 course of time and -- and this is one (1) of the
23 instances, obviously, that you were doing that, right?

24 MR. RALPH NEATE: Yes.

25 MR. TIM FRYER: Okay. And when you

1 read the paragraph it notes that I explained to you
2 that the tax issue work probably would be a nonissue
3 because of the fact that we were looking at Collus as
4 a -- as the holding company as being the share sale.

5 MR. RALPH NEATE: Yes.

6 MR. TIM FRYER: Okay. So if we scroll
7 down further, and it would be item tax number 14, down
8 further, right near the bottom, it's a -- right there,
9 and then just a little bit further so we can see the
10 body of the. And so, this is Mr. Erling's original e-
11 mail and -- and he's outlining about tax.

12 And I would give you a chance to read
13 through that, because you won't have recalled seeing
14 this, I would have just been conveying a message to
15 you, I believe, so.

16

17 (BRIEF PAUSE)

18

19 MR. RALPH NEATE: Okay.

20 MR. TIM FRYER: And this was one (1)
21 of the question responses that were placed onto the
22 responses to Hydro One's questions. So that's where
23 it came from. And it -- it appears then, in your
24 estimation, and that this explains that the sale will
25 probably be Collus, the holding company.

1 MR. RALPH NEATE: Yes.

2 MR. TIM FRYER: And that's most likely
3 the reason why I was informing Mr. Stern of the notice
4 in the -- in the upper -- upper e-mail that we looked
5 at.

6 MR. RALPH NEATE: Okay.

7 MR. TIM FRYER: Okay. And then just
8 on the last sentence here, it -- it -- I'm going to
9 just read it over quickly.

10 In the event that the transaction
11 occurs at the holding company level by selling shares
12 in -- in CUS, the assets and operations of Solutions
13 Corp., which is now a subsidiary of CUS, would likely
14 be transferred out of CUS in advance of the
15 transaction.

16 And you -- you see that in --

17 MR. RALPH NEATE: Yes.

18 MR. TIM FRYER: Do you recall that
19 during 2011, due to various factors such as converting
20 from GAAP to IFRS, I was recommending solution B
21 dissolved.

22 MR. RALPH NEATE: Potentially, yes.

23 MR. TIM FRYER: Thank you.

24 That wasn't the first time that
25 recommendation had been made either.

1 MR. RALPH NEATE: I don't recall.

2 MR. TIM FRYER: Okay, that's fair
3 enough.

4 So that consideration, along with the
5 RFP process, had delayed finance plans to update the
6 shared service agreements in 2011 and 2012. Do you
7 recall that?

8 MR. RALPH NEATE: Sorry, if you could
9 repeat that?

10 MR. TIM FRYER: So the consideration
11 about solutions and the -- and the RFP process
12 delaying finances plans to update the shared service
13 agreements in 2011 and 2012.

14 MR. RALPH NEATE: That's -- yes, that
15 would be accurate.

16 MR. TIM FRYER: Okay. So just very
17 quickly on -- because of some of the test --

18 THE HONOURABLE FRANK MARROCCO: I
19 think -- I think what I might do, Mr. Fryer, is I'll -
20 - I'll take ten (10) minutes and then you can
21 continue.

22 MR. TIM FRYER: I have one (1) minute.

23 THE HONOURABLE FRANK MARROCCO: Oh,
24 all right. Go ahead.

25 MR. TIM FRYER: This is -- this is

1 just --

2 THE HONOURABLE FRANK MARROCCO: Go
3 right ahead.

4

5 CONTINUED BY MR. TIM FRYER:

6 MR. TIM FRYER: There was earlier
7 speaking of the bonuses and I was just going to verify
8 something with -- with Mr. Neate.

9 Do you recall that I had no knowledge
10 of the bonuses until we actually discussed things
11 during audit time, which was probably in about April,
12 even though the bonuses were paid in March?

13 MR. RALPH NEATE: Yes.

14 MR. TIM FRYER: Okay, and I just would
15 correct that Ms. Payunen was the chair of Solutions,
16 the board of Solutions, not the board of Power or the
17 board of the holding company.

18 MR. RALPH NEATE: My recollection.

19 MR. TIM FRYER: Yes. And not all the
20 recipients were members of that board?

21 MR. RALPH NEATE: I don't recall what--

22 MR. TIM FRYER: That's fair enough.

23 Those are all the questions I have,
24 sir.

25 THE HONOURABLE FRANK MARROCCO: Thank

1 you. We'll take the break.

2

3 --- Upon recessing at 11:17 a.m.

4 --- Upon resuming at 11:28 a.m.

5

6 CROSS-EXAMINATION BY MR. PAUL BONWICK:

7 MR. PAUL BONWICK: Thank you, Your
8 Honour. Mr. Neate, my name's Paul Bonwick, and I'm
9 representing myself. I'd like to start with an area -
10 - would you agree that the LDC sector is separate --
11 is a separate and unique entity as compared to a
12 municipality or a private corporation?

13 MR. RALPH NEATE: Yes.

14 MR. PAUL BONWICK: I should have
15 started it with what is the firm you're currently
16 working with?

17 MR. RALPH NEATE: Baker Tilly, SGB,
18 LLP.

19 MR. PAUL BONWICK: Great. Thank you.
20 I wanted to make sure I had it up on the -- on the
21 website, here.

22 I was reading with interest your
23 biography on the -- on the website, not -- I guess I'd
24 pose the question: do you specialize in or would you
25 consider yourself an expert specific to finance within

1 the LDC sector in Ontario?

2 MR. RALPH NEATE: I -- I suppose I had
3 some knowledge of it. I mean, I don't practice in it
4 right now.

5 MR. PAUL BONWICK: Right. That --
6 that wasn't my question. I suspect as the auditor,
7 you had some knowledge. Would you consider yourself
8 an expert in the field, LDCs in the Province of
9 Ontario?

10 MR. RALPH NEATE: I don't know if
11 "expert" is the right word, but I -- I had some
12 knowledge of it, yes.

13 MR. PAUL BONWICK: Okay. Do
14 specialize in drafting partnership agreements within
15 the LDC sector in Ontario?

16 MR. RALPH NEATE: No.

17 MR. PAUL BONWICK: Have you ever been
18 engaged by another LDC to help in the construction of
19 a shared partnership agreement within the LD sector --
20 LDC sector in Ontario?

21 MR. RALPH NEATE: No.

22 MR. PAUL BONWICK: Okay. How long
23 were you the auditor for Collus leading up to the
24 share sale process?

25 MR. RALPH NEATE: From 2008 forward.

1 MR. PAUL BONWICK: Approximately three
2 (3) years?

3 MR. RALPH NEATE: Yeah, three (3) or
4 four (4) years, yeah.

5 MR. PAUL BONWICK: Did you typically
6 work with and report directly to Mr. Fryer as the main
7 point person for Collus?

8 MR. RALPH NEATE: Yes.

9 MR. PAUL BONWICK: Would you and Mr.
10 Fryer -- on any given issue, would Mr. Fryer share his
11 opinions or seek your advice on any given issue
12 dealing with the financial matters related to the LDC
13 leading up to this event?

14 MR. RALPH NEATE: Sorry, if you can
15 restate that?

16 MR. PAUL BONWICK: Would Mr. Fryer
17 share with you his opinions? Would he ask you
18 questions throughout the year, or on any given matter
19 leading up to these events on matters specific to
20 Collus?

21 MR. RALPH NEATE: Yes.

22

23 (BRIEF PAUSE)

24

25 MR. PAUL BONWICK: You'll recognize,

1 of course, that this is arguably one (1) of the
2 largest transactions that the Town of Collingwood and
3 Collus entered into?

4 MR. RALPH NEATE: Yes.

5 MR. PAUL BONWICK: You've shared that
6 it's a very unique entity in terms of these LDCs, and
7 I assume with that comes a great deal of complexity as
8 you're entering into these share sale agreements?

9 MR. RALPH NEATE: Yes.

10 MR. PAUL BONWICK: Are you familiar
11 with the board that was in place with Collus at that
12 time?

13 MR. RALPH NEATE: Sorry, I'm familiar
14 with?

15 MR. PAUL BONWICK: Were you familiar
16 with who sat on the Board of Collus during that period
17 of time?

18 MR. RALPH NEATE: Some of them, but I
19 don't recall precisely.

20 MR. PAUL BONWICK: Were you a fair --
21 aware of the Chairperson, Mr. Muncaster?

22 MR. RALPH NEATE: Yes.

23 MR. PAUL BONWICK: Were you aware that
24 Mr. McFadden sat on the board?

25 MR. RALPH NEATE: Yes.

1 MR. PAUL BONWICK: Mr. Garbutt?

2 MR. RALPH NEATE: I -- probably, but,
3 I mean, it could have been what -- I have a little bit
4 of confusion over which board, because we were dealing
5 with a number of them, but.

6 MR. PAUL BONWICK: You and I both.

7 MR. RALPH NEATE: Yeah.

8 MR. PAUL BONWICK: But based on your
9 limited understanding of who was sitting on the board,
10 would you agree that it was a very capable, very
11 experienced board with a great deal of depth?

12 MR. RALPH NEATE: I -- I'm not sure I
13 can comment on that. I don't necessarily agree, but.

14 MR. PAUL BONWICK: Okay. Could you
15 please expand on why you would not agree with the fact
16 that having Mr. Muncaster as a Chair, Canadian icon,
17 in business Mr. McFadden, one (1) of the most well-
18 respected international lawyers --

19 MR. RALPH NEATE: Yeah, I would say
20 that they were respected, for sure, yeah.

21 MR. PAUL BONWICK: So then you would
22 agree that the board had significant depth and
23 experience?

24 MR. RALPH NEATE: Certainly, those
25 individuals did.

1 MR. PAUL BONWICK: So based on the
2 complexity of the deal that was being structured,
3 based on the fact that you would not necessarily
4 consider yourself an expert in the field, based on the
5 fact that you have no experience in drafting these
6 servicing -- or these share sale agreements, would it
7 in your mind be reasonable that the board might want
8 somebody that actually doesn't lend experience in
9 those specific areas?

10 MR. RALPH NEATE: Yes.

11 MR. PAUL BONWICK: Thank you. There
12 was some discussion about the bonuses. Yesterday, Mr.
13 Fryer indicated that Collus had historically paid out
14 bonuses to himself and others.

15 Were you aware of that?

16 MR. RALPH NEATE: I wasn't.

17 MR. PAUL BONWICK: So you -- you -- to
18 get clarity, over years leading up to the share sale
19 agreement, you were not aware of the fact that during
20 your time as the auditor, that, in fact, bonuses had
21 been paid out to senior management within the Collus?

22 MR. RALPH NEATE: I don't remember.

23 MR. PAUL BONWICK: That ends my
24 questions.

25 THE HONOURABLE FRANK MARROCCO: Thank

1 you. Any re-examination? I'm sorry, you're -- you're
2 --

3 MR. RYAN BAULKE: Good morning, Your
4 Honour.

5 THE HONOURABLE FRANK MARROCCO: --
6 you're -- you're counsel for Mr. Neate?

7 MR. RYAN BAULKE: I am counsel for Mr.
8 Neate. Ryan Baulke. I just have less than ten (10)
9 minutes of questions --

10 THE HONOURABLE FRANK MARROCCO: Go --
11 right. Go ahead, Mr. Baulke. Sorry.

12

13 EXAMINATION BY MR. RYAN BAULKE:

14 MR. RYAN BAULKE: Just to begin, I
15 think there was some -- some confusion in terms of the
16 evidence put in in terms of how you were requested to
17 attend the Strategic Task Team meeting.

18 I understand your evidence, Mr. Neate,
19 and correct me if I'm wrong, to be that you believed
20 the underlying request came from Tim Fryer, but it was
21 delivered by Marjory at the Town.

22 Is that a correct summation of -- of
23 your evidence?

24 MR. RALPH NEATE: No. I think that it
25 was -- maybe it was Marjory that suggested, and as far

1 as I know, and -- and maybe it was Tim that delivered
2 it, so, yeah.

3 MR. RYAN BAULKE: In connection with
4 that meeting, were you provided a specific mandate in
5 terms of your role?

6 MR. RALPH NEATE: No.

7 MR. RYAN BAULKE: Were you asked to
8 specifically limit your comments to tax matters?

9 MR. RALPH NEATE: No.

10 MR. RYAN BAULKE: Were you asked to
11 specifically limit your comments to audit matters?

12 MR. RALPH NEATE: No.

13 MR. RYAN BAULKE: And prior to that
14 meeting, was it ordinary or usual for members of the
15 Collus management to seek your input or advice on
16 matters that, in your view, extend beyond solely tax
17 or audit matters?

18 MR. RALPH NEATE: Yes.

19 MR. RYAN BAULKE: Thank you. My
20 friend on behalf of Alectra suggested that -- when
21 going over some of your notes, certain concepts
22 weren't included, and -- and that if you didn't
23 include them, perhaps they weren't important, or
24 weren't top of mind at the time.

25 To the best of your knowledge and

1 recollection, were those notes intended to be
2 exhaustive and cover all eventualities at the time?

3 MR. RALPH NEATE: No.

4 MR. RYAN BAULKE: And in the ordinary
5 course of you taking notes, would you typically record
6 everything that came into your mind at the time?

7 MR. RALPH NEATE: No.

8 MR. RYAN BAULKE: Okay. Mr. Chenoweth
9 asked you a few questions about some of the concerns
10 that you did raise in those notes, and -- and put to
11 you some evidence after the fact of -- of what
12 actually arose.

13 So just as a starting point, was it
14 your position at the time that those notes were
15 certain to become realities, or were they concerns
16 based on information available to you at the time?

17 MR. RALPH NEATE: Concerns based on
18 information available at the time.

19 MR. RYAN BAULKE: Okay. Just turning
20 to some of the specific concerns, with respect to your
21 concern on the retained earnings deficit, at the time
22 of the meeting and at the time that you recorded those
23 notes, had you consulted with the OEB's accounting
24 procedures to know whether or not it would be an
25 issue?

1 MR. RALPH NEATE: I hadn't.

2 MR. RYAN BAULKE: Okay. And from time
3 to time prior to that date -- the date of that
4 meeting, was it the case that the Collus entities did
5 seek your advice or opinions with respect to their
6 compliance with the OEB's accounting procedures?

7 MR. RALPH NEATE: Yes.

8 MR. RYAN BAULKE: Okay. And at the
9 time you made those notes, did you know whether
10 dividends would be paid in the future if the
11 Transaction was concluded?

12 MR. RALPH NEATE: I didn't know.

13 MR. RYAN BAULKE: Okay. And at the
14 time you made those notes, did you know whether or not
15 the shared services would continue in the future if
16 the Transaction was concluded?

17 MR. RALPH NEATE: I didn't know.

18 MR. RYAN BAULKE: Okay. Thank you.

19 In his questions, Mr. Chenoweth also raised the
20 possibility that you were -- you were removed as the
21 lead audit partner because there was a lack of
22 confidence in your services from the board of
23 directors.

24 Do you recall whether specific reasons
25 were provided to you regarding this alleged lack of

1 confidence?

2 MR. RALPH NEATE: I don't remember.

3 MR. RYAN BAULKE: And at any point
4 prior to your meeting with Mr. Houghton in May of
5 2012, do you recall whether any member of the Collus
6 management or Collus board of directors had expressed
7 to you dissatisfaction or concerns with the services
8 you were providing?

9 MR. RALPH NEATE: No.

10 MR. RYAN BAULKE: And prior to that
11 date, how would you characterize your relationship
12 with the management and individuals that you worked
13 with at Collus?

14 MR. RALPH NEATE: Prior to which date?

15 MR. RYAN BAULKE: Prior to the date of
16 the meeting with Mr. Houghton.

17 MR. RALPH NEATE: Well, I felt that
18 probably Mr. Houghton was unfriendly.

19 MR. RYAN BAULKE: Sorry, I -- to
20 clarify my question, prior to the date of that
21 meeting, excluding Mr. Houghton, had anyone -- any
22 other individual, whether it be Collus management or a
23 member of the boards of directors of the Collus
24 entities expressed to you dissatisfaction or concerns
25 with the services you were providing?

1 MR. RALPH NEATE: No.

2 MR. RYAN BAULKE: Okay. Thank you.

3 Just a couple further questions, Mr. Neate. In the
4 context of providing services, and this is more of a
5 general question, but would it be ordinary usual for
6 you to consult with other members of the Gavillers --
7 now Baker Tilly -- team on issues that come up from
8 time to time?

9 MR. RALPH NEATE: Yes.

10 MR. RYAN BAULKE: And would all of
11 that information typically be treated as -- as
12 confidential to the client that has provided it?

13 MR. RALPH NEATE: Yes.

14 MR. RYAN BAULKE: Thank you. That
15 concludes my questions.

16 THE HONOURABLE FRANK MARROCCO: Thank
17 you. Re-examination?

18 MR. JOHN MATHER: No re-examination.

19 THE HONOURABLE FRANK MARROCCO: Thank
20 you, Mr. Neate.

21 MR. RALPH NEATE: Okay. Thank you.

22

23 (WITNESS STANDS DOWN)

24

25 MS. KATE MCGRANN: Our next witness is

1 David McFadden.

2

3 DAVID MCFADDEN, Sworn

4

5 THE HONOURABLE FRANK MARROCCO: Just
6 for the benefit of everybody here, I practiced law
7 with Mr. McFadden for years. I'm well acquainted with
8 his expertise, so there's no need to go into that in a
9 great deal of detail.

10 And, Mr. Chenoweth, I -- are you --
11 we'll lead the evidence. Will you be cross-examining
12 last, or will you be -- because you requested
13 Mr. McFadden's -- or do you want to continue in the
14 same order that you always have?

15 MR. FREDERICK CHENOWETH: I'll consult
16 with my fellows through the course of the day, I
17 suppose.

18 THE HONOURABLE FRANK MARROCCO: Well,
19 that's fine. I don't need to know that now.

20 MR. FREDERICK CHENOWETH: Yeah. Thank
21 you, Sir.

22 THE HONOURABLE FRANK MARROCCO: Go
23 ahead.

24

25 EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

1 MS. KATE MCGRANN: Good morning,
2 Mr. McFadden.

3 MR. DAVID MCFADDEN: Good morning.

4 MS. KATE MCGRANN: In light of His
5 Honour's comments, I'll ask you to give us a brief
6 overview of your background and work experience as it
7 relates to the electricity industry in Ontario.

8 MR. DAVID MCFADDEN: Well, I'm
9 David McFadden. I'm former partner in Smith Lyons and
10 then Gowlings. I was chairman of the firm's energy
11 and infrastructure group from 1996 -- pardon me -- to
12 2009.

13 Over the period of time, I've been
14 involved in a lot of initiatives in the energy
15 industry. I was co-chair of the electricity
16 transition committee when legislation was changed in
17 the late 90s.

18 And then subsequent to that, I've been
19 involved in a number of other activities, too,
20 including on the Supply and Conservation Task Force of
21 the Province of Ontario.

22 And then I -- I was involved in a panel
23 created by the province in 2012 -- or created by the
24 province in 2012 to look at LDC consolidation and
25 structuring.

1 So I've had a variety of things. I
2 won't go on and on. Perhaps that might be adequate.

3 MS. KATE MCGRANN: Thank you. I
4 understand you're also an independent director on the
5 Collus LDC Board of Directors, commencing in 2007? Is
6 that right?

7 MR. DAVID MCFADDEN: That is correct.

8 MS. KATE MCGRANN: And you continue to
9 serve as a director on that entity and its subsequent
10 iterations through to June 2016. Is that right?

11 MR. DAVID MCFADDEN: That's correct.

12 MS. KATE MCGRANN: How did come to
13 start serving on the Collus Power Board of Directors?

14 MR. DAVID MCFADDEN: Well, my wife and
15 I had bought a condominium here in Collingwood, like
16 many people have done I guess. And I knew Ed Houghton
17 through activities of the EDA, the Electricity
18 Distributors Association. And I used to see him at
19 conferences over the years.

20 And when he heard I'd come up to
21 Collingwood, he had raised the possibility of my --
22 putting my name forward to become a member of the
23 Board of Collus Power. There was an opening coming
24 up, and so I said I'd be prepared to let my name stand
25 if they wished.

1 I went in for an interview with
2 Dean Muncaster and a couple of other members, Joan
3 Pajunen and we -- I was interviewed there. And I --
4 you know, I can't --

5 MS. KATE MCGRANN: I may be able to
6 assist. We could do it on the break. Okay.

7 MR. DAVID MCFADDEN: I haven't got the
8 correct spelling. I'm sorry.

9 And then I -- I finished the interview,
10 and then I was called to say I was appointed. And
11 that -- and that's what happened. It was very simple.
12 It was just an introduction that was made, and I went
13 to the interview.

14 In that interview, Ed wasn't there
15 though. It was just Dean and Joan.

16 MS. KATE MCGRANN: Would you describe
17 for us what your role was on the Collus Power Board of
18 Directors?

19 MR. DAVID MCFADDEN: Just as a member
20 of the Board of Directors. That was it. It was a
21 very small operation, and I -- so I attended quarterly
22 Board meetings.

23 MS. KATE MCGRANN: What was your early
24 experience on the Collus Power Board of Directors
25 like?

1 MR. DAVID MCFADDEN: Well, it --
2 essentially, the Board meetings were unusual in -- in
3 my finding in this sense that generally speaking
4 across the province, the power utilities are separate
5 completely from water and other activity.

6 The Board meetings had an unusual
7 aspect. You went into the boardroom and at the one
8 (1) end Dean Muncaster sat. I sat to the right of
9 him. Across the table was the mayor of the day, first
10 Chris Carrier and -- and then Ms. -- Mayor Cooper.
11 And then Ed Houghton was there, along with Tim Fryer;
12 Tim being the CFO of the company, Ed being the
13 president. And the rest of the table were directors
14 from Collus Utilities. It was all the other people on
15 that Board.

16 So we would meet at this end, and the
17 meetings typically lasted about an hour, maybe an hour
18 and a half at the most. Most of the time was
19 Tim Fryer would go through in great detail the
20 finances. He was very conscientious in terms of his
21 approach and -- and gave us a lot of knowledge and
22 information about what was happening with the finances
23 of the corporation.

24 There was sometimes a little bit --
25 other talk and then the meeting finished, and that was

1 that. Then I would leave the room. And this -- the
2 Collus Utilities Board would just continue on, I
3 guess. I -- I don't know. I just departed, and that
4 was that. So that was -- that was the pattern at
5 these meetings.

6 MS. KATE MCGRANN: From your
7 description of those early meetings, it sounds that
8 were serving largely a listening and information-
9 receiving role. Did that change over time?

10 MR. DAVID MCFADDEN: No, no. It
11 remained the same pretty much all along.

12 MS. KATE MCGRANN: You're aware of our
13 profession. Were you acting as a lawyer when you
14 conducted your duties as a Collus Power director?

15 MR. DAVID MCFADDEN: No. No. I was
16 approached on the -- well, no. I was not, period. I
17 was never -- it -- the company was never a client of
18 the firm's ever that I'm aware of, and certainly, I
19 was not active as a lawyer. It was a -- a personal
20 thing I was doing as a community, kind of, project,
21 just like I'm on the Board of Theatre Collingwood. I
22 mean, I considered it to be something you'd do. I
23 have an expertise that I thought I could share with
24 the company, and that was it.

25 But certainly, not as counsel. We were

1 never retained. I was never paid on that basis. In
2 fact, I -- I should tell you that the amount of pay I
3 got for here, I'd probably make in about a day if I
4 was billing it, the firm. So it was -- it -- I wasn't
5 doing anything that was meant to -- and I just thought
6 I was going to -- helping out in terms of helping the
7 company. That's how it was left.

8 MS. KATE MCGRANN: Do you recall if
9 there was any discussions with the other Board
10 members, or did you ever explain to them that while
11 you were there to give you time, you weren't there in
12 your role as a lawyer? You weren't providing legal
13 advice.

14 MR. DAVID MCFADDEN: Well, it never
15 came up. I mean, there didn't seem to be any need for
16 legal advice through much of this. I mean, we -- we
17 basically just see the financial information. It
18 never came up one (1) way or the other whether I was -
19 - what -- I mean, I wasn't -- it's clear I wasn't
20 there as a lawyer for the firm.

21 The Town had its own lawyers. I
22 believe Aird Berlis was the ongoing solicitor for the
23 Town. There could have been other law firms they use
24 for all I know. But I remember hearing somewhere that
25 Aird Berlis was the Town's solicitor. It certainly

1 wasn't me.

2 MS. KATE MCGRANN: Turning
3 specifically to the time period between 2010 and 2012,
4 you've mentioned that you had a condominium in
5 Collingwood. But were you living in Collingwood
6 during that time?

7 MR. DAVID MCFADDEN: No. We -- we
8 were regular visitors. We've -- probably came out --
9 typically would be here three (3) weekends a year, and
10 then in the summer, maybe two (2) or three (3) weeks
11 and over Christmas. So we were quite typical of a lot
12 of people in this community, and that is sort of
13 commuting back and forth really is what was happening.
14 But my main work was in Toronto. It wasn't here.

15 MS. KATE MCGRANN: You've anticipated
16 my next question. You didn't live here. Would you
17 attend the Board meetings in person, or would you call
18 in? How was your attendance --

19 MR. DAVID MCFADDEN: Generally, I'd --
20 generally, I was there in person. Typically, a lot of
21 times I'd drive up first thing in the morning and --
22 and then head right back down to Toronto. Sometimes,
23 I'd join by phone, but -- but I think the record would
24 show I generally tried to attend all the meetings.

25 MS. KATE MCGRANN: And again during

1 the period between 2010 and 2012, aside from your work
2 as a director on the Collus Power Board of Directors,
3 what else were you working on professionally during
4 that time? What was taking up your time?

5 MR. DAVID MCFADDEN: Well, a number of
6 things. In 2009, I became chairman of Gowlings
7 International Committee, which meant I was doing a lot
8 of travelling to Europe, to some extent to Asia and
9 certainly across Canada.

10 In addition to that, I was the chairman
11 of a group of infrastructure funds, established by
12 Fengate Capital so I -- and they were just getting
13 relaunched in a serious way, so I was -- I had a lot
14 of work there. And then I worked with Macquarie
15 infrastructure on the whole variety of their funds and
16 -- and structuring.

17 So there was a lot of things going on
18 in -- in -- in the practice as well as more generally
19 energy work within the firm and infrastructure work.

20 MS. KATE MCGRANN: In terms of the
21 amount of time that you were on the Collus Power Board
22 of Directors took up as compared to the other work
23 that you just described, could you give us a general
24 sense?

25 MR. DAVID MCFADDEN: Well, I -- if I

1 were to add it up, probably travel time from -- I'd
2 travel to Collingwood and back was a greater amount
3 than I spent attending board meetings, to start with.
4 Meanwhile we received meeting materials in advance of
5 the meeting, but they weren't that extensive. They
6 were mainly, as I mentioned, financial records. So
7 you've got to look through those.

8 But most of -- the meetings lasted
9 about an hour, hour and a half, they were not long
10 meetings, but because I was on the Board I thought I -
11 - I had better attend all of them if I could.

12 MS. KATE MCGRANN: You served on the
13 Collus Power Board of Directors and boards of the
14 subsequent entities for approximately nine (9) years.

15 Why did you choose to act as a director
16 for that length of time?

17 MR. DAVID MCFADDEN: Well, it's --
18 it's interesting you'd ask that question, because
19 after about two (2) years on the Collus Board, the
20 Collus Power Board, I -- I met with Dean and said I
21 don't really think I'm doing much here. I mean, I'm
22 happy to contribute what I can, but it doesn't seem
23 like there's much happening and I'm basically just
24 sitting looking at financial records and you may find
25 there are other people in the community more able than

1 me or more able to do this.

2 And Dean said well, Dave, you know --
3 you know, a lot is happening in the industry, things
4 are starting to -- there's some talk, there had been a
5 -- a -- you know, planning meeting that I had attended
6 and he said look, stay on for a while because I -- I
7 could really use your help.

8 Dean was a very persuasive guy, I mean,
9 I -- the Town, I don't know how much they should
10 appreciate having got someone with his capability to
11 be chairman, now he had a -- he's an outstanding
12 businessman, he'd been president of Canadian Tire and
13 he's a persuasive guy.

14 So he said look, Dave, I'd really like
15 you to stay. So I -- I agreed to stay on to the end
16 of my term, that term. But I didn't feel I was making
17 much of a contribution, frankly.

18 But it was interesting and I did get to
19 know an awful lot about the finances of the company,
20 the day-to-day finances of it anyways.

21 MS. KATE MCGRANN: Just to be sure
22 that we've got the timing of that conversation, you
23 said about two (2) years in, so would that be in or
24 around 2009?

25 MR. DAVID MCFADDEN: Well I -- it --

1 it was in around 2009 or so. I mean, it -- I remember
2 -- I remember that -- having -- I don't drink coffee,
3 so I remember having tea with -- with Dean in a
4 restaurant and talking to him about this.

5 I can't remember the date. And I'm
6 pretty certain it was on a weekend. But that's what I
7 can remember. And we just chatted about this stuff.
8 I said, you know, I don't know, Dean, there's nothing
9 much that I'm contributing, I'm just showing up at
10 these meetings and it's taking me two (2) hours or
11 three hours to get here and then back again.

12 So anyway -- and he said look, would
13 you be prepared just to stay on, and that's what
14 happened. I -- I can't tell the date, but it was
15 somewhere in that time period.

16 MS. KATE MCGRANN: And you said that
17 the conversation you were having you mentioned that
18 you didn't feel that you were making much of a
19 contribution, maybe somebody else would be better
20 suited.

21 Did that feeling change after your
22 conversation with Mr. Muncaster?

23 MR. DAVID MCFADDEN: Well, actually it
24 wasn't so much a specific thing. What happened after
25 that, of course, is then they -- this whole strategic

1 partnership thing came up. And then it -- it morphed
2 into something that was a bit different.

3 So yes, at that point that I felt I
4 needed to stay on, at least to see this thing through.

5 I -- I expected once the transaction
6 was finished I was gone. I mean, I didn't expect to
7 be hanging around as long as I did, frankly.

8 MS. KATE MCGRANN: Once the strategic
9 partnership was started up was there a noticeable
10 change in the amount of time that was required of you
11 in your role as a director?

12 MR. DAVID MCFADDEN: Yes, there was.
13 And -- and it actually became quite difficult to deal
14 with it all, to be honest. I wasn't able to be here
15 all the time. I mean, I was having to do it with the
16 telephone, I was travelling. I -- I noticed in the
17 material that I wasn't able to be at everything
18 because of my schedule.

19 And -- and that was -- I tried to keep
20 up with everything and to -- to give input wherever I
21 possibly could on the phone or by e-mail, but it -- it
22 did get pretty busy once this whole thing got
23 launched.

24 MS. KATE MCGRANN: Can we turn up
25 paragraph 107 of the Foundation document.

1 MR. DAVID MCFADDEN: Okay.

2 MS. KATE MCGRANN: This paragraph
3 talks about a -- a presentation that you gave on
4 January 14th, 2010, a strategic planning to the Collus
5 Board.

6 Do you recall giving this presentation
7 or the Board discussing strategic planning in or
8 around January 14th, 2010?

9 MR. DAVID MCFADDEN: I mean, I should
10 generally remember it. I don't recall the details of
11 the meeting. I -- I know I -- the presentation when I
12 looked at it and I remember doing it. I've got to
13 tell you that presentation, bits of it I'd given
14 elsewhere.

15 I mean it was -- basically what I was
16 going through there was the developments that were
17 happening in the industry and what, as a Board, we
18 needed to consider and -- and were we prepared as a
19 company and I'm talking about Collus Power, I'm not
20 talking about all the other machinations, Collus
21 Power, were we as a company ready for that?

22 And -- and so that's why I did and I
23 was asked to do, I don't know who asked me to do it
24 specifically, I think it was probably Dean though, my
25 recollection, but I'm not sure, but I did it anyway.

1 MS. KATE MCGRANN: When you say other
2 machinations, are you referring to the other Collus
3 entities, the holding company, Solutions --

4 MR. DAVID MCFADDEN: Yes, all these
5 other things that were going on.

6 I was only addressing the Collus Power.
7 I -- I didn't follow it all, all of the other and
8 every -- all these other issues. I was focussing -- I
9 was there as a Board member of Collus Power and that
10 was it, and that's what I was focussing on as a -- as
11 a director of -- of a power company, and LDC in
12 Ontario, what do you have to address.

13 MS. KATE MCGRANN: You said you've got
14 a general recollection of this meeting.

15 Do you recall whether there were any
16 discussions about potential changes for Collus Power
17 or future directions for the company that that
18 meeting?

19 MR. DAVID MCFADDEN: There were --
20 that -- in around this time, you know, discussions
21 with Dean and Ed, they were talking about look,
22 changes are happening, we're going to have to look
23 maybe at doing something different.

24 If you look at the context in which we
25 were living, and -- and I think that probably is

1 really important, is that over the period -- if you
2 look at -- at this point we're at 2010, a little over
3 10 year -- 10 -- 10 years earlier, around 2000 there
4 were 307 LDCs in Ontario like Collus Power.

5 By this point the number had dropped
6 down to a little under 80. When the government
7 mandated a restructuring of the industry under the
8 Electricity Competition Act, they mandated all to be
9 incorporated -- business corporations.

10 But the municipal utilities were given
11 the option just to sell the assets. What the province
12 had done, essentially, was give the assets to
13 municipal governments in -- in the year 2000, 2002 it
14 basically gave them the asset.

15 So Collingwood found itself owing a
16 power company and having to incorporate it. A lot of
17 municipalities just sold out, got out of it, cashed
18 out. There were a lot of amalgamations, Toronto Hydro
19 being an example, Chatham-Kent being another example
20 that was given municipal amalgamations. Then you had
21 Hydro Ottawa, Greater Sudbury Power, all these
22 companies where it's a huge amount of activity between
23 1999, basically, and 2010, companies merging, selling,
24 moving on.

25 It -- it -- on top of all that, and

1 that's what this slide deals with, not only did you
2 have all this restructuring happening, people moving,
3 but they did all the technol -- so the Green Energy
4 Act had come in 2009, which mandated smart grid. That
5 -- that required, for example, utilities to totally
6 change out all of their metres.

7 Now, that may seem minor, but that's
8 huge for a -- for a utility. Not only that, it
9 mandated companies were involved in -- in conservation
10 demand management. We didn't have a program like
11 that. We had eleven (11) employees.

12 They were -- and I could go on and on,
13 but I -- but I won't do that.

14 But that's really what we're trying to
15 address. So in the atmosphere in which we were
16 dealing, things were happening around us, technology
17 was moving fast.

18 A guy like Dean Muncaster said, Look
19 at, I -- I've been in business, I mean, this -- we're
20 in an unstable situation, what should we be doing. Is
21 -- and that's the context in which this
22 presentation...

23 I -- and you'll notice I didn't
24 advocate any corporate restructuring. All I was asked
25 to do is to talk about what's going in the industry.

1 It's up to the owner to decide what they want to do
2 with it.

3 I mean, the owner could say, well, I
4 couldn't care less or I'm -- I'm going to do something
5 about. But -- but, in the meantime, that's what this
6 whole thing was around, was what is the challenge
7 we're facing.

8 MS. KATE MCGRANN: But I think you
9 said that in and around this time there had been
10 discussions with Dean and Ed. You've given us some
11 background and context in terms of the situation as it
12 was at that time.

13 Do you recall if in and around the
14 beginning of January, or the beginning of 2010 in
15 general, there were discussions about potential
16 restructuring or other options for the Company?

17 MR. DAVID MCFADDEN: Well, at this --
18 there -- if I can look at this a bit further here.
19 There was an earlier -- this relates -- there was a --
20 we -- we had a -- there -- there was discussions about
21 the options at that particular meeting. There --
22 there was a general discussion about options.

23 Among the options that was raised was
24 standing alone, selling, or having a strategic
25 partnership, and those were the realistic three (3)

1 options.

2 And, you know, the shareholder, you
3 know, was having the job of deciding which one (1) it
4 wanted to do. But Collus Power itself wouldn't own
5 the Company, so it was up to -- up to the owner to
6 decide whi -- which option they chose to consider.

7 MS. KATE MCGRANN: With respect to the
8 three (3) options that you just identified that were
9 discussed at the time, sta -- standing alone, so
10 continuing --

11 MR. FREDERICK CHENOWETH: I'm sorry,
12 Your Honour, I -- I'm -- maybe my friend would assist
13 me. What time was this and what meeting was it? I'm
14 sorry, what's the reference again --

15 THE HONOURABLE FRANK MARROCCO: I --

16 MR. FREDERICK CHENOWETH: -- the time
17 reference?

18 THE HONOURABLE FRANK MARROCCO: --
19 thought this was in 2010.

20 MR. FREDERICK CHENOWETH: Just 2010?

21 THE HONOURABLE FRANK MARROCCO: Well,
22 can you -- can you -- well --

23 MS. KATE MCGRANN: I think that the
24 best person to answer that question is probably Mr.
25 Muncaster.

1 CONTINUED BY MS. KATE MCGRANN:

2 MS. KATE MCGRANN: Around what -- the
3 meeting -- around what time are you referring to?

4 MR. DAVID MCFADDEN: Well, there was -
5 - there was an official meeting. Then there was --
6 yeah, I mean, Dean Muncaster led this. Nothing else I
7 can say about it.

8 MS. KATE MCGRANN: So -- so, to assist
9 you, we are looking at a paragraph that references a
10 strategic planning session for Collus Power on January
11 14th --

12 MR. DAVID MCFADDEN: Yes.

13 MS. KATE MCGRANN: -- 2010. Does
14 that -- does that help?

15 MR. DAVID MCFADDEN: Yes. There was
16 an earlier one (1). I'm -- I'm just trying to recall
17 the exact dates. Just which -- no, when we originally
18 interviewed, I got a date on this one (1).

19 There was the one (1) -- there was a
20 meeting at which Mayor Carrier was at but not Mayer
21 Cooper. And whi -- and -- and it was at that meeting
22 that there was a very specific discussion that took
23 place around -- around what was go -- to happen, the
24 plan.

25 MS. KATE MCGRANN: Mayor Cooper took

1 office in December of 2010. Chris Carrier would have
2 been mayor in January of 2010, if that's of any
3 assistance.

4 MR. DAVID MCFADDEN: Yeah. All right.
5 Then that would -- that would be the meeting I'm
6 considering, yeah.

7 MS. KATE MCGRANN: Okay. So, we're
8 looking at early 2010?

9 MR. DAVID MCFADDEN: Yeah.

10 MS. KATE MCGRANN: You had referenced
11 three (3) options that you remember being discussed,
12 standing alone, which I thi -- I think that continuing
13 as -- as the company was --

14 MR. DAVID MCFADDEN: Correct.

15 MS. KATE MCGRANN: -- selling. Do you
16 recall what that option looked like, a complete sale,
17 a partial sale? Do you remember the details?

18 MR. DAVID MCFADDEN: I don't know if
19 we got into all the details of that. The -- the -- it
20 depends on what a shareholder's looking for. I mean,
21 if you -- you can always get a better price for it per
22 share if you give control, whether it's 51 percent or
23 selling a hundred percent.

24 If you're selling minority interest,
25 you get a lot less if that's what your interest is per

1 share. 50/50 is -- then you really function of how
2 does everybody get -- interest get protected, so.

3 But the -- the -- the values tend to go
4 up the more you give somebody control if they're
5 buying. Now, the Town, from what I heard from Mayor
6 Carrier, and then later from Mayor Cooper, was the
7 Town had -- didn't want to sell out and disappear, get
8 out of the business.

9 They wanted to maintain local control,
10 local involvement. If you sell out a hundred percent,
11 you can't maintain that. Now, if you keep it totally,
12 well, yeah, then you're in complete control, but then
13 you face all these other challenges.

14 So, that's why the -- the discussion
15 then came around, okay, maybe a partnership is the way
16 to go. And -- and, presumably, that's 50/50, it could
17 be 49/51, but mo -- but 50/50 would be a typical
18 partnership, and looking -- and then the discussion
19 about, well, who do you want as a partner.

20 Well, the -- the discussion -- and I
21 recall going back and forth at this meeting, but also
22 later discussions with Dean and so on was you -- if
23 you get a straight financial partner, simply put some
24 money in, they don't add much.

25 So, the feeling was we're not looking

1 for some kind of a fund to put money in or some
2 investor from New York. I mean, that wasn't what --
3 even if it was legally advisable, it wouldn't be
4 something I'd do.

5 So -- so, then it came around to the
6 idea that, okay, if we can get a partner who can not
7 only bring in money for the Town, but also bring in
8 expertise and resources for the Company, that seemed
9 to be a good alternative.

10 And that's how the -- the discussions
11 were -- during this time period, there was a lot of
12 talk about this and what seemed to work best if -- if
13 you want to maintain local control, get money, and
14 then get all the res -- the resources that a company
15 needs in -- in the -- in the way in which the market
16 had reconfigured.

17 MS. KATE MCGRANN: So, a couple of
18 questions.

19 MR. DAVID MCFADDEN: Sure.

20 MS. KATE MCGRANN: Starting -- because
21 we'll want to understand the time at which those
22 discussions took place and who was involved with them,
23 starting with the -- the strategic planning session,
24 is that the first time that you recall the notion of a
25 partner or a strategic partner being discussed for

1 Collus Power?

2 MR. DAVID MCFADDEN: Yes. I don't
3 recall anything before that.

4 MS. KATE MCGRANN: Okay. Do you
5 specifically recall the term 'strategic partner' being
6 used at that meeting?

7 MR. DAVID MCFADDEN: Someone wrote it
8 on a board. I can remember there was a blackboard and
9 somebody was writing stuff down. And I -- they -- my
10 recollection was 50/50 or strategic partnership was
11 the term between sale and hundred percent holding, was
12 strategic partner, sort of a 50/50 arrangement, but
13 there wasn't a lot of specifics around it.

14 It wasn't that we started negotiating
15 with ourselves about how we were going to do it. It -
16 - it was just, you know, that was an idea.

17 MS. KATE MCGRANN: Okay. I appreciate
18 that it was some time ago, but do you remember what
19 specifically was written on the board in terms of the
20 strategic partnership? You had referenced 50/50.

21 Was that written on the board?

22 MR. DAVID MCFADDEN: My recollection -
23 - I -- you know, I don't -- you know, I wish I had
24 taken a picture of it. I -- I think all it said was
25 one (1), two (2), and then there was this thing in the

1 middle about strategic partnership or 50/50. It was
2 something like that. I mean, I just can't remember
3 all the -- the details of that.

4 MS. KATE MCGRANN: Understood. And I
5 just want to -- to get a better understanding of what
6 you do remember. Do you remember whose idea the
7 concept of the strategic partnership or the 50/50
8 notion was?

9 MR. DAVID MCFADDEN: I re -- recall it
10 being more of just a group discussion. You know, just
11 we were looking at options, and that was one (1) of
12 them. I don't remember anybody standing up and, you
13 know, seriously advocating that position. My
14 recollection was it just came out of the discussion.

15 MS. KATE MCGRANN: So, we understand
16 what you remember about what was written on the board
17 at that particular meeting.

18 Do you recall what was discussed about
19 the option that existed between full sale and carry
20 on, as we are right now?

21 MR. DAVID MCFADDEN: Actually, nothing
22 was deci -- I mean, wasn't the meeting came out with a
23 resolution. People just -- we just sort of thanked
24 everybody and the mayor took the advice. And -- and
25 the Board members of Collus Utilities, who was there,

1 Dean Muncaster and I -- there was no resolution.
2 There was no agreed on paper or anything came out of
3 it.

4 MS. KATE MCGRANN: I misspoke, I'm
5 sorry. I just want to understand what was discussed.

6 Do you remember what specifically was
7 discussed about that in-between option at that
8 particular meeting?

9 MR. DAVID MCFADDEN: Other than what
10 we just talked about, I can't -- you know, I mean, the
11 -- there was a discussion about, you know, if we keep
12 it, we've got the challenges we have to deal it. If
13 we sell it, the Town -- there -- there was just a
14 consensus in the room we don't want to sell a hundred
15 percent, we don't want to give up that kind of
16 control, and so 50/50 might answer the problems.

17 I think that's how it was sort of
18 addressed. But there wasn't anything in terms of a
19 decision around it. It wasn't that detailed and it
20 wasn't -- we had a whole list of things, it was more
21 of a general discussion.

22 MS. KATE MCGRANN: Okay. And then
23 it's reflected that you had said, you can let me know
24 if I'm wrong, a typical partnership would be 50/50.

25 At that point in time, were you aware

1 of any 50/50 partnership as between LDCs in the
2 Province?

3 MR. DAVID MCFADDEN: There -- there
4 were a lot of different -- I'll give you an example.
5 You know, Toronto Hydro was the product of a whole
6 bunch of utilities that all came together.

7 Chatham-Kent was the product of a
8 number of utilities that came together. Greater
9 Sudbury was Hydro Ottawa. There were all kinds of
10 examples all over the Province of utilities coming
11 together.

12 You know, I can't name a specific one
13 (1) that I can think of off the top of my head where
14 they -- they sat down and said I want a 50 percent
15 partner. It was more companies looking at each other
16 saying we'll come together and let's -- and the
17 typical situation, even if you looked at PowerStream,
18 PowerStream is the product of Markham and Vaughan
19 agreeing to put their assets together.

20 As it turned out, Markham got 43
21 percent, Vaughan got the rest. That -- that -- they
22 looked on that as a partnership. But when they got
23 involved in, the -- the shares based on how much each
24 brought to the table in an amalgamation.

25 Now, this wasn't an amalgamation, per

1 se, but there were a lot of examples of companies
2 coming together all over the Province.

3 MS. KATE MCGRANN: When you use the
4 phrase, "Come together," does that phrase encompass
5 mergers and company amalgamations?

6 MR. DAVID MCFADDEN: Yeah. I mean,
7 it's -- it's pret -- it could be mergers. The -- the
8 typical situation, most of -- of the restructuring
9 involved companies merging with each other; that was
10 the most typical thing.

11 Collingwood did not want, from what I
12 could see at this meeting, and subsequent to merge
13 with a big company, and then wind up with a small
14 minority. They -- they wanted to keep 50 -- you know,
15 a substantial stake in the Company, 50 percent, or,
16 you know, and -- and a really significant position in
17 terms of governance.

18 MS. KATE MCGRANN: So, was it the case
19 that from this point, in early 2010 onwards, your
20 understanding of the Town's position was that it
21 wanted to maintain at least a 50 percent ownership of
22 the Company?

23 MR. DAVID MCFADDEN: That would have
24 been my impression. I had no impression that the Town
25 had in mind to sell a hundred percent. No one ever

1 talked about that at all.

2 MS. KATE MCGRANN: Okay. And I just
3 want to make sure that we're talking about the same
4 thing. I understand that you understood that the Town
5 didn't want to sell a hundred percent.

6 Was it -- it was also your
7 understanding that they wanted to maintain ownership
8 of at least 50 percent?

9 MR. DAVID MCFADDEN: That was the
10 impression I had.

11 MS. KATE MCGRANN: And did you
12 understand what the motivation was for wanting to
13 continue to hold 50 percent? Was it an interest in a
14 share of profit? Was it an interest in control of the
15 Company?

16 MR. DAVID MCFADDEN: I think the
17 combination of local control and involvement in
18 decision making, protecting local interests, local
19 consumer, and, obviously, making some money out of it.
20 I mean, that would be normal.

21 MS. KATE MCGRANN: And I think you
22 said that no decisions were made at the conclusion of
23 this meeting. Is that right?

24 MR. DAVID MCFADDEN: That's right. It
25 -- it was not an official meeting, basically meeting

1 at -- at the -- it was the Georgian Manor. It was --
2 it was sort of kind of -- it was more or less a
3 retreat kind of arrangement if you think about. It
4 wasn't an official Board meeting.

5 MS. KATE MCGRANN: Okay. And you had
6 referenced discussions with Mr. Muncaster about a
7 partnership and the idea that another company could
8 bring expertise and resources to Collus Power.

9 Was it the case that there were ongoing
10 discussions with Mr. Muncaster after this meeting
11 throughout 2010 about that topic?

12 MR. DAVID MCFADDEN: I don't know. I
13 can't tell.

14 MS. KATE MCGRANN: Do you remember
15 after this, the next time there was a discussion in
16 terms of stra -- strategic planning for Collus Power?

17 MR. DAVID MCFADDEN: Well, during that
18 -- I mean, there was an election. There -- there was
19 a bit of a hiatus that happened. An election
20 happened. I don't know what discussions were had.

21 Then -- then the -- there was a new
22 Council came in. Mayor Carrier was no longer the
23 mayor. He -- he personally was always interested in
24 the power sector. I think he had a company that was
25 involved in it, so he was -- he was perhaps far more

1 interested in it than perhaps might be expected, but
2 then he didn't seek reelection.

3 Mayor Cooper came in and carried on
4 from there. Mayor -- the only change really that
5 happened at that point was that Mayor Cooper replaced
6 Mayor Carrier on the Board.

7 MS. KATE MCGRANN: So, fair to --

8 MR. DAVID MCFADDEN: Collus Power.

9 MS. KATE MCGRANN: Understood. And
10 the election you're referring to is the municipal
11 election in the Town of Collingwood?

12 MR. DAVID MCFADDEN: Correct.

13 MS. KATE MCGRANN: Fair to say that
14 you don't recall any specific discussions with Dean
15 Muncaster or others about strategic planning for the
16 Company for the remainder of 2010?

17 MR. DAVID MCFADDEN: None that I was
18 involved in.

19 MS. KATE MCGRANN: I'd ask you to take
20 a look at paragraph 163 of the Foundation Document.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: This paragraph
25 describes a May 24th, 2011, draft valuation document

1 and option analysis that KPMG delivered to Collus
2 Power, so we've now jumped a year and a couple of
3 months ahead in time.

4 Were you aware in early -- in early --
5 late winter/early spring of 2011 that KPMG was doing a
6 valuation and strategic options analysis for Collus
7 Power?

8 MR. DAVID MCFADDEN: I know Dean had
9 talked to me about it and Ed. It -- it -- it was sort
10 of an awkward situation, because actually Collus
11 Power, I had no role in this at all. It was a
12 decision the shareholder was making as to what they
13 wanted to do.

14 My -- you know, whatever advice I gave
15 them was informal because the company itself was not
16 selling anything. It was being moved around
17 theoretically in terms of the ownership, but -- but
18 that was about it.

19 MS. KATE MCGRANN: Do you recall when
20 you became aware that KPMG was doing this work for
21 Collus Power?

22 MR. DAVID MCFADDEN: I don't remember
23 precisely when. I don't remember precisely when. I'd
24 heard it was happening. I don't -- precisely when --
25 and they didn't -- I mean, they weren't hired by

1 Collus Power to do it.

2 MS. KATE MCGRANN: Who did you believe
3 they were hired by?

4 MR. DAVID MCFADDEN: I assume the
5 owner.

6 MS. KATE MCGRANN: Are you referring
7 to the Town of Collingwood?

8 MR. DAVID MCFADDEN: The Town of
9 Collingwood, yeah.

10 MS. KATE MCGRANN: Is it fair to say
11 that you didn't provide any input or advice with
12 respect to the work that KPMG was doing?

13 MR. DAVID MCFADDEN: No. I was not --
14 I was not -- I wasn't brought into those discussions.

15 MS. KATE MCGRANN: If we could pull up
16 TOC38169.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: This is an email
21 from Sandra Cooper to her executive assistant on
22 January 31st, 2011. You're not copied on this email.
23 If we can scroll down a little bit, it's: "Re:
24 Confidential," and it contains a draft letter to Mr.
25 Muncaster and Mr. Houghton. I'll just give you a

1 second to review it. If you could let me know when
2 you're done.

3

4 (BRIEF PAUSE)

5

6 MR. DAVID MCFADDEN: No, I didn't --
7 I've never seen -- I didn't receive a copy of that
8 letter. I know that during the cam -- election
9 campaign, there was a lot of concern about the --
10 about the municipal debt in Collingwood, and -- and I
11 notice that's commented on here, so this reads to me
12 that the mayor had asked Collus to look at options.

13 MS. KATE MCGRANN: This is a draft of
14 -- of this letter. I understand you to be saying you
15 didn't see this letter.

16 Did -- did you ever see a letter around
17 these lines from Mayor Cooper?

18 MR. DAVID MCFADDEN: I -- I never
19 received one.

20 MS. KATE MCGRANN: You had mentioned
21 that it was your understanding that the work that KPMG
22 was doing on the valuation and the options analysis
23 was being done at the behest of the shareholder, the
24 Town.

25 Was it your understanding that -- that

1 the Town Council had requested that that work be done?

2 MR. DAVID MCFADDEN: I don't know who
3 requested it. I assume the Town. I mean, I don't
4 know if it required Council approval or whether the
5 administration of the -- of the Municipality could
6 simply order it. I don't know if it required Town
7 Council to approve it or not. I'm not sure of the
8 bylaws on a thing like that.

9 MS. KATE MCGRANN: Okay. Fair to say
10 that you just had a general understanding that the
11 request had come from the Town and the work was being
12 done --

13 MR. DAVID MCFADDEN: M-hm.

14 MS. KATE MCGRANN: -- at the -- in
15 response to the Town? Could we turn up CPS2001,
16 please?

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: And could we scroll
21 to the bottom of this email exchange? Again I'm
22 taking you to an email that you're not copied on. I'm
23 going to use it to situate the next few questions that
24 I ask you.

25 So at the bottom, the first email in

1 this chain, we see it's a February 14th, 2011, email
2 from Jonathan -- if you could scroll up a little bit.
3 There you go, Jonathan Erling, KPMG, to Ed Houghton,
4 John Herhalt, and John Rockx. Mr. Erling is providing
5 a draft of KPMG's letter of proposal to assist
6 Collingwood in review of its Utility ownership
7 options. If you could scroll up a little bit more. I
8 see that Ed forwarded it onto Dean. We'll stop there
9 for a second.

10 I take it from your answers so far that
11 you did not see a copy of the KPMG proposal letter at
12 any time?

13 MR. DAVID MCFADDEN: No, I didn't.

14 MS. KATE MCGRANN: If we could scroll
15 up a little bit further. This is an email from Dean
16 Muncaster to Ed Houghton, and you see that he writes:

17 "Ed, The proposal seems to me to
18 meet our requirements."

19 He discusses the fact that:

20 "The fee estimate exceeds your
21 authorization limits and, therefore,
22 raises the tactical question about
23 the involvement of the other Collus
24 Power directors."

25 He notes that:

1 "Mayor Cooper has been involved in
2 the procee -- previous consideration
3 of having this valuation done,"

4 And says he would:

5 "suspect that we will be relying on
6 her judgment about the involvement
7 of the shareholder."

8 Then he goes on to say:

9 "The point at which David McFadden
10 was introduced to the issue is an
11 interesting one, but I think that
12 sooner is better than later, if that
13 does not cause you and the mayor
14 undue difficulty from a political
15 point of view, because he has the
16 obligations and responsibilities of
17 a director."

18 My first question for you is: Does
19 seeing this email assist you in recalling when you
20 learned that valuation and an options analysis work
21 was being done by KPMG?

22 MR. DAVID MCFADDEN: No. I -- I got
23 to admit I didn't see this letter either till I read
24 it through the material. No, it doesn't help me. I
25 mean, I -- I'm not sure exactly when -- when it was

1 raised with me. I'm not sure. Obviously Dean is
2 going to Mexico, so I'm not sure.

3 MS. KATE MCGRANN: He does say that,
4 yes.

5 MR. DAVID MCFADDEN: Yeah.

6 MS. KATE MCGRANN: Do --

7 MR. DAVID MCFADDEN: Adios, yeah.

8 MS. KATE MCGRANN: Did you ever have
9 any discussions with Dean, Mayor Cooper, or anyone
10 else about difficulties, political difficulties that
11 your involvement could potentially create because of
12 the obligations you owed as a director?

13 MR. DAVID MCFADDEN: I don't recall
14 ever having a discussion like that. It -- it's
15 perceptive of them, I guess, to realize that, but
16 funny -- I mean, it was okay to involve me, but -- and
17 -- and eventually they did, but being a director of
18 Collus Power, I mean, my interest would be to make
19 sure whatever happens, my advice would be do something
20 to strengthen the Company. That -- that would be my
21 advice. So you look at valuation, that's valuation on
22 the way to doing something hopefully as opposed to
23 just doing it for its own sake.

24 MS. KATE MCGRANN: Is the difficulty
25 that -- that you think is being referenced here, the

1 difficulty that you would be acting in the best
2 interest of Collus Power, whereas the mayor would be
3 looking at the interests of the Town?

4 MR. DAVID MCFADDEN: Well, my
5 obligation was simple. I have to act in the best
6 interest of Collus Power. You know, it's com -- I
7 mean, corporate law is complicated around here, but
8 basically the director is -- is -- is -- when you
9 become a director, you have to act in the best
10 interest of the corporation.

11 Now, hopefully that turns out to be the
12 best interest of the shareholders. I mean, it would
13 be odd that it'd be best for the company and would
14 hurt the shareholder, but that could happen in certain
15 circumstances, but in this case, my -- that would be
16 my interest.

17 MS. KATE MCGRANN: I understand that
18 you -- you're not the author of this email. You
19 weren't copied on it.

20 MR. DAVID MCFADDEN: M-hm.

21 MS. KATE MCGRANN: I want to
22 understand what you meant when you said that it was
23 perceptive that this was noted here.

24 MR. DAVID MCFADDEN: Well, because I
25 think they started to realize that, you know, there's

1 an impact on the company itself, whatever we happen to
2 do, and I -- I -- look, I don't know what they meant
3 by what they said, but I'm just looking at it, saying,
4 well, maybe they -- they needed to inform me as an
5 independent director of what they're doing with this
6 asset, but I don't know what they meant -- what was
7 meant by that, and Dean unfortunately is not alive to
8 tell us.

9 MS. KATE MCGRANN: When you were
10 advised about the work that KPMG was doing on the
11 valuation and the options analysis, were you surprised
12 that you hadn't been involved or advised earlier in
13 the process?

14 MR. DAVID MCFADDEN: Not really. I
15 mean, this is a shareholder decision. I mean, we're -
16 - you know, I'm not trying to meddle in the City's
17 business, the Town's business. You know, I -- I had a
18 specific job to do and I -- and it didn't disappoint
19 me that I wasn't involved. I -- I had more than
20 enough to do separately. I wasn't feeling jilted or
21 anything like that.

22 MS. KATE MCGRANN: Understood. When
23 you look at this email, in the middle where it says:

24 "Because Cooper has been involved in
25 the previous consideration of having

1 this valuation done, that should not
2 be a difficulty, and I would suspect
3 that we will be relying on her
4 judgment about the involvement of
5 the shareholder."

6 Did you think that the shareholder was
7 already involved in the decision to have the valuation
8 done at this point in time? I mean, when you learned
9 about it.

10 MR. DAVID MCFADDEN: Well, I'm -- I'm
11 assuming that the sharehold -- depends how you look at
12 it.

13 The direct shareholder is Collus
14 Utilities that -- that's the direct share and that's
15 100 -- 100 percent owned by the Town.

16 So you've got -- I mean, there's a
17 direct line right there between one (1) and the other.

18 In the corporate structure that was set
19 up was in part, I guess, to work around the
20 legislation with -- when they -- they had to
21 incorporate Collus Power.

22 But I don't know. I mean, I have no
23 idea what they mean by the involvement of the
24 shareholder, unless they're talking about the -- the -
25 - unless Dean is talking about Council.

1 I mean, legally the shareholder, if you
2 look at municipal law, and I've been through this
3 quite a number of times, the shareholder is the
4 Council, it's not -- there's not some other thing, the
5 shareholder is actually all of Council. That creates
6 real problems, a lot of municipalities trying to deal
7 with that.

8 Now they can -- shareholder can appoint
9 a proxy to act on their behalf, but the shareholder is
10 oddly enough is the -- is the Council itself. Maybe
11 that's what she's referring to is -- is the Council,
12 I'm not sure what he's referring to there.

13 MS. KATE MCGRANN: To your knowledge
14 at this point in time, so February of 2011, had
15 Council appointed a proxy -- a shareholder proxy with
16 respect to its shareholdings?

17 MR. DAVID MCFADDEN: What typically
18 happened was that when we had the annual statements we
19 -- we had to approve them, a different member of
20 Council typically would have a proxy to -- would show
21 up at the meeting with a proxy. So it would be
22 different people.

23 Typically, the mayor didn't do that
24 because she felt it was a good idea to have somebody
25 else do it, you know, another member of Council, but I

1 -- I'm not aware of any proxy that was appointed
2 certainly at this point.

3 MS. KATE MCGRANN: Do you recall
4 having discussions with the other board members at any
5 point in time about when to advise Council about the
6 work that was being done by KPMG.

7 MR. DAVID MCFADDEN: Well the only
8 other members of the Board are the mayor and Dean
9 Muncaster.

10 I don't recall -- I mean, any specific
11 discussion at this certainly this -- at this Board,
12 anything about that. It may have happened, I do not
13 recall any discussion about timing going to Council or
14 anything of that nature. I -- as far as I know it
15 didn't happen. But I -- I have no record of it.
16 Didn't think of it.

17 MS. KATE MCGRANN: Could we turn up
18 KPM1032, please? Scroll down a little bit so we can
19 see the cover page.

20 This is a slide show that KMPG
21 delivered to Collus Power outlining its work on the
22 strategic review of options and the 24th, 2011.

23 My question for you is did you receive
24 a copy of this document? If you need to scroll
25 through to take a look to recognize it you can direct

1 our court operator to -- to scroll down as you want.

2 MR. DAVID MCFADDEN: Sure. You'll
3 notice this is addressed to Collingwood Utility
4 Services, not to Collingwood Power, they're -- they're
5 not reporting to Collingwood Utility Services in this
6 case. I mean that's -- I'm not trying to make too
7 fine a point on it, but that's really what it was
8 aimed at.

9 Now, sure I could scroll through it if
10 you want, sure.

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: Just so you know
15 where I -- where I'm going with this, my question for
16 you first is did you receive a copy of this slide
17 show, do you recall?

18 MR. DAVID MCFADDEN: I don't know.
19 There were so many documents flying around. I don't.
20 I must've seen it. I just don't recall this I -- I
21 vaguely recall getting it. But I don't know what the
22 context was in which I got it, may have got it later
23 on.

24 MS. KATE MCGRANN: I was going to say
25 could you help me with the timing of -- of when you

1 think you received it?

2 MR. DAVID MCFADDEN: I can't, I'm
3 sorry.

4 MS. KATE MCGRANN: You say you --

5 MR. DAVID MCFADDEN: I know I didn't -
6 - I mean I -- I can't tell you more than I'm saying.

7 I mean I -- I -- it -- it looks
8 familiar, I've -- I've seen it although I'm not so
9 sure I didn't see it because of the material from the
10 -- from the Inquiry, in fact.

11 But I mean it -- it reads well and it
12 makes all the points.

13 MS. KATE MCGRANN: You say you must
14 have received it. Can you just help me understand why
15 you conclude that you must have received it?

16 MR. DAVID MCFADDEN: Well, there's a
17 lot of material that was circulated and this may have
18 been one (1) of the things I got.

19 MS. KATE MCGRANN: You just can't say
20 for --

21 MR. DAVID MCFADDEN: I just can't, I'm
22 sorry. I can't tell you for sure.

23 But when I read through it -- it rings
24 true and I may well have -- have seen it at some
25 point.

1 MS. KATE MCGRANN: Fair to say that
2 you don't remember being asked for your comments on
3 the contents in May or June of 2011.

4 MR. DAVID MCFADDEN: There was
5 discussion about valuations. I don't remember the
6 sequence of board meetings right in that time period
7 where this actually came up. And whether it came up a
8 little later on, I know there was a -- but I think
9 you've got it in your material.

10 There was a point at which we got -- we
11 were notified by the mayor that they decided to move
12 ahead with the transaction.

13 MS. KATE MCGRANN: We will be coming
14 to some questions about the board meetings with
15 reference to minutes.

16 But my question for you right now is do
17 you recall being asked to review this slide show from
18 KPMG on the strategic options available to the company
19 and provide your comment on their work in May or June
20 of 2011.

21 MR. DAVID MCFADDEN: I don't remember
22 actually getting this report and -- and providing my
23 comments on it. I -- it -- it is possible it -- there
24 were so many reports, but I mean, I don't recall this.
25 I -- I've read through this report, it's a good --

1 it's a good -- good report.

2 MS. KATE MCGRANN: Could we turn up
3 CPS2151, please? And can we scroll down to the first
4 e-mail in the chain? Scroll up a little bit.

5 So this is an e-mail chain that
6 discusses scheduling a meeting to place on, I believe,
7 June 4th, 2011. I will -- if we scroll up from the
8 bottom, Mr. Houghton reaches out to you asking if
9 you've got time to speak to -- to Dean and he
10 regarding Collus Power. We can scroll up a little bit
11 further.

12 There is plans for a call on Thursday
13 morning, you indicate that you'll be in town over the
14 weekend. Scroll up a bit further.

15 You make plans to -- to meet over the
16 weekend. Scroll up. Little bit further.

17 You're going to meet for about an hour.
18 Scroll up a bit further. And the conclusion is that
19 you're going to meet at 2:00 p.m. on Saturday, which
20 would be June 4th.

21 MR. DAVID MCFADDEN: Right.

22 MS. KATE MCGRANN: Do you have any
23 recollection of -- of planning to attend this meeting?

24 MR. DAVID MCFADDEN: I don't -- I --
25 I've read the material. Obviously the meeting took

1 place. I imagine -- the only thing I can tell, I --
2 truthfully is -- is that I -- the meeting would have
3 doubtedly (sic) taken place and I'm betting it had to
4 do with the valuation. That -- that would be my
5 feeling, but I'm not sure.

6 MS. KATE MCGRANN: Okay. Fair to say
7 you don't recall what the purpose of the meeting was?

8 MR. DAVID MCFADDEN: I don't recall,
9 no. I don't recall this particular meeting, but my --
10 my -- my betting, if I were to thinking this back is
11 it probably had to do with valuation or what might be
12 happening, but I don't know.

13 There were -- there were a lot of
14 meetings that happened around different aspects of the
15 company and -- and I just can't -- I'm not sure this
16 dealt with valuation, but it -- it made some sense
17 given the sequence of events here that it would have.

18 MS. KATE MCGRANN: Okay. Do you
19 recall if there was any reason why Sandra Cooper was
20 not invited to this meeting?

21 MR. DAVID MCFADDEN: I have no idea.

22 MS. KATE MCGRANN: And I -- I think
23 that you've effectively answered this question, but do
24 you remember attending this meeting, do you remember
25 what was discussed?

1 MR. DAVID MCFADDEN: No, I'm sorry.
2 Like, I'm not sure the meeting happened, but I'm
3 assuming it did. I don't -- I don't know.

4 MS. KATE MCGRANN: You've given us
5 some evidence about discussions about potential
6 directions that the company could go in and
7 information about the context in which those
8 discussions took place.

9 Do you remember when you first learned
10 that a sale of some or all of the company was
11 seriously being considered?

12 MR. DAVID MCFADDEN: The -- the first
13 I ever heard that was the mayor attended a meeting of
14 our Board and -- and informed us -- informed the Board
15 that this was happening.

16 MS. KATE MCGRANN: Okay. I'm going to
17 take you to some Board minutes in a minute, before we
18 do that, can we turn up TOC50024.

19

20 (BRIEF PAUSE)

21

22 MS. KATE MCGRANN: If we can scroll
23 down to the first email in this chain, so up a little
24 bit.

25 So this is a June 14th, 2000 email from

1 Ed Houghton to you. The subject is "confidential
2 Council presentations." Mr. Houghton writes:

3 "David, can you review the attached
4 and see if I've captured what we
5 discussed. I've been sensitive in
6 the areas of sale. Thanks, Ed."

7 Do you remember receiving this email?

8 MR. DAVID MCFADDEN: Yeah. This is a
9 point at which Ed was looking to make a presentation
10 at Council. I recall, you know, just generally, he
11 had to go to Council to talk about what had been going
12 on. I -- I recall that.

13 MS. KATE MCGRANN: Okay. Do you know
14 what he's referring to when he says see if I have
15 captured what we discussed and have been sensitive in
16 the areas of "sale"?

17 MR. DAVID MCFADDEN: I -- I'm not sure
18 what discussion he's particularly talking about. But
19 obviously, there's a sensitivity on any sale around
20 confidentiality and -- and how it gets handled.

21 MS. KATE MCGRANN: Okay. When you say
22 obviously there is sensitivity, it sounds like you're
23 speaking from a more general experience.

24 MR. DAVID MCFADDEN: Correct.

25 MS. KATE MCGRANN: Do you specifically

1 recall sensitivities that would have been discussed
2 about a sale of Collus Power?

3 MR. DAVID MCFADDEN: Well, I -- it's
4 a -- it's an asset of the Town, and I guess there's a
5 lot of -- I mean, I -- there obviously is always a
6 sensitivity around the sale of a significant asset,
7 whether it's a government agency or a public company.
8 I mean, it -- the -- that's what I -- I think is being
9 referred to here. It's just the natural sensitivity
10 in the community around that and getting it right.

11 MS. KATE MCGRANN: Do you remember any
12 discussions with Mr. Houghton about that sensitivity
13 in and around June 14th, 2011?

14 MR. DAVID MCFADDEN: No specific
15 discussions. No.

16 MS. KATE MCGRANN: Mr. Houghton refers
17 to an attachment here. We don't have the attachment
18 to this email. If you could scroll up for a second.
19 I'm going to show you your response, and then I'm
20 going to take you to a copy of a presentation that we
21 think may have been referenced and see if it rings any
22 bells for you or not.

23 So you respond, "Ed, the presentation
24 is very good." You provide a couple of suggestions.
25 You give him some suggestions about what the Strategic

1 Partnership might look like, and you go on to discuss
2 some concerns about the timing of the RFP.

3 I'll give you a second to read your own
4 email, and then you can let me know when you're done.

5 MR. DAVID MCFADDEN: Sure.

6

7 (BRIEF PAUSE)

8

9 MR. DAVID MCFADDEN: Yeah.

10 MS. KATE MCGRANN: Now, if we could
11 turn for a second to CPS4397?

12

13 (BRIEF PAUSE)

14

15 MS. KATE MCGRANN: This is a copy of a
16 slide show that we understand Mr. Houghton gave to
17 Town Council in an in camera session on June 27th,
18 2011.

19 My question for you will be, do you
20 recall if it was a version of this slide show that
21 Mr. Houghton had asked you to provide comments on?
22 Again, I'll ask you to direct the court operator to
23 scroll through so you can review it at your pace.

24 MR. DAVID MCFADDEN: Okay. Yeah.

25

1 (BRIEF PAUSE)

2

3 MR. DAVID MCFADDEN: This -- I mean,
4 this I -- I recall something. I mean, I don't know if
5 it's per se exactly this one, but I recall giving
6 it -- the input on -- on it.

7 MS. KATE MCGRANN: Okay. This is a
8 final version, so --

9 MR. DAVID MCFADDEN: Yeah.

10 MS. KATE MCGRANN: -- I expect that if
11 you did give input, it was likely on an earlier
12 version. But you recall giving input on something
13 like this?

14 MR. DAVID MCFADDEN: Yeah. He asked
15 my view on -- on -- he said he had to go to Council to
16 talk about what we were doing, and -- and so he's sent
17 a copy to me.

18 MS. KATE MCGRANN: Okay. So let's
19 return to the email at TOC50024.

20

21 (BRIEF PAUSE)

22

23 MS. KATE MCGRANN: And if we could
24 scroll down a little bit. The question I have for you
25 about this is the third paragraph that you've written

1 here where you say, "I am concerned about the timing
2 of the RFP." And you write:

3 "It might be prudent to do it after
4 the provincial election, since we
5 will want to have some idea about
6 the future direction of government
7 policy."

8 You note the concern about this could
9 deter potential investors and partners. For example,
10 a transfer tax holiday might take some time to be
11 considered and implemented. We know that, in fact,
12 the RFP was released in October and called at the end
13 of November.

14 Do you recall how your concerns about
15 timing and the reasons that you give for having those
16 concerns were addressed?

17 MR. DAVID MCFADDEN: The problem we
18 have in Ontario is governments constantly get in the
19 middle of the power sector one (1) way or another,
20 causing sometimes havoc.

21 I guess my concern here was did we want
22 to run the risk of doing the process when a provincial
23 election was going on and then find out that the --
24 the government of the day or change of government was
25 going to turn -- change direction, and we might be

1 caught, you know, in mid -- in midstream on this.

2 That's really what I was referring to.

3 And as it turned out, the -- it wasn't
4 much of an issue in that election. Well not --
5 specifically what did come up during the course of --
6 of that election was the gas plant problem. But that
7 didn't in any way relate to Collus PowerStream.

8 MS. KATE MCGRANN: Where you were
9 sitting at the time that you wrote this email though,
10 you have expressed this concern and suggested that it
11 might be prudent to move forward with the RFP after
12 the provincial election. Do you remember having
13 discussions with Ed, Dean, the Collus Power Board of
14 Directors, or other people involved in Collus about
15 the timing of the RFP and whether it was a good idea
16 to move ahead or wait?

17 MR. DAVID MCFADDEN: I don't recall --
18 outside of what I wrote there, I don't having any
19 particular discussion about the timing.

20 MS. KATE MCGRANN: Okay. So this is
21 the only time you remember the --

22 MR. DAVID MCFADDEN: That's correct.

23 MS. KATE MCGRANN: -- the concerns
24 about timing coming up? Okay.

25 Can we turn up CPS7018_0001, please.

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: So these are the
4 minutes of a meeting of the Collus Power Board of
5 Directors held on July 8th, 2011. You can see that
6 you were there, along with the other Board members:
7 Ed Houghton, Tim Fryer, Pam Hogg, and guests show Joan
8 Pajunen and Doug Garbutt, Mike Edwards, Glen
9 McAllister, Deputy Mayor Rick Lloyd, and Ralph Neate.

10 If we can turn -- scroll down to
11 page 3. You see the -- the first full paragraph on
12 the page notes that the meeting was in camera to
13 discuss a matter pertaining to personal owned
14 property.

15 And following that, the Board rises and
16 reconvenes the regular meeting, and there's a
17 unanimous vote to support the preferred option of
18 moving forward with the strategic partner option fully
19 supporting management in the execution of the
20 direction.

21 Do you know whether it was this meeting
22 on July 8th -- is that the meeting that you've been
23 referring to where you mention that the mayor advised
24 that there would a partial sale? I'm not sure that
25 I'm quoting you correctly, but you've mentioned the

1 mayor coming in and talking about a decision of moving
2 in this direction.

3 MR. DAVID MCFADDEN: This could well
4 have been the meeting. I'm not sure the exact date of
5 that meeting, but I -- it makes sense that it'd be at
6 this meeting.

7 We -- you know, we'd -- we'd been
8 spending -- obviously there had been time back and
9 forth. Ed had been working on it. Dean clearly had
10 been working on it about what the -- the right option
11 was. And we had an indication that Town Hall was
12 interested in that option. Well, we supported it.

13 MS. KATE MCGRANN: The June 27th
14 Council meeting, were you in attendance at that
15 meeting?

16 MR. DAVID MCFADDEN: No.

17 MS. KATE MCGRANN: Okay. When you say
18 that Ed had been working on it and Dean had clearly
19 been working on it, are you referring to the retainer
20 of KPMG to do the valuation and --

21 MR. DAVID MCFADDEN: No, no. Working
22 on the whole project, whether it was KPMG right
23 through to the -- to working on the strategic option.
24 It -- it was the slide presentation, everything else.

25 MS. KATE MCGRANN: Do you specifically

1 recall any of the discussions that proceeded the
2 unanimous vote to move forward the strategic partner
3 option?

4 MR. DAVID MCFADDEN: I don't recall
5 there being much of a -- a debate on it. I think
6 there was a -- there was a discussion about what was
7 happening, what the options were, so on and so forth.

8 My recollection was that the Board was
9 unanimous on it. Now, remember this is -- this is --
10 it relate -- this is the Board meeting of Collus
11 Power. We, you know, certainly didn't have any
12 objection to the Town selling its interest, it's up to
13 the Town, or selling down. We didn't have any
14 objection to this.

15 Collus Power -- I mean, it wasn't -- if
16 you follow the logic of it, I mean, you might say,
17 well, maybe to our advantage to be able to get
18 additional resources into the Company, which goes with
19 the earlier presentations.

20 I mean, we -- we were a bit of an
21 island up here. And so, we felt that it was -- I
22 mean, I -- I think there was just a general feeling
23 within our Board that something needed to move, and
24 strategic partnership was a satisfactory option for
25 Collus Power.

1 Whether it was suitable for the Town,
2 that's the Town's business, or the Collus utility. I
3 mean, that's not -- we were just looking at it from
4 the point of view of what would help our company.

5 MS. KATE MCGRANN: It sounds to me
6 like what you're saying is that the decision about
7 whether or not to pursue a potential strategic partner
8 was ultimately the decision of the Town?

9 MR. DAVID MCFADDEN: It had to be, or
10 the -- well, I -- I mean, the sequence -- whoever owns
11 the shares is the one (1) who makes that decision.

12 MS. KATE MCGRANN: M-hm.

13 MR. DAVID MCFADDEN: Now, I know
14 there's the holding company sitting in the middle.
15 So, you can say, well, a holding company would have to
16 decide that, and then the Town Council, but in the
17 end, there's only one (1) shareholder in this whole
18 piece. There's not multiple shareholders and
19 different interests through that.

20 MS. KATE MCGRANN: What then was the
21 purpose of -- of this vote if the decision is the
22 decision of the shareholder?

23 MR. DAVID MCFADDEN: Well, I think
24 what it was was -- I would have thought what the mayor
25 was looking was are you okay with this idea, do you

1 see that as helping the Company, is this a good idea
2 for Collus Power to bring in a strategic partner.

3 And remember this is -- we're talking
4 about a strategic partner somehow for Collus Power, it
5 wasn't for water. The water thing never came up. I
6 mean, it was always about Collus Power, would this be
7 helpful as an option for us.

8 MS. KATE MCGRANN: And this would be
9 in line with some of the questions that I've asked you
10 previously, but at any point up to and including this
11 date did anyone ask you to give your professional
12 advice or opinion on the options available to the
13 Company or what the best option would be?

14 MR. DAVID MCFADDEN: Professional
15 advice meaning -- what do you mean?

16 MS. KATE MCGRANN: In your role as a
17 lawyer who's been involved in these kinds of matters
18 and issues for -- for quite some time now.

19 MR. DAVID MCFADDEN: Nobody -- I mean,
20 there was never an indication it was retaining me to
21 be counsel. If -- if they had approached me to be
22 counsel, I would have said no because it would have
23 been a conflict being a director. I mean, that --
24 that's the -- that's the way it is.

25 I mean, the -- this -- you know, we've

1 mentioned another issue about the roles of mayors and
2 everybody else. The -- the issue is the Board is not
3 there to be its own counsel. The Board rely -- you
4 know, is there as a policy to set strategy. It
5 doesn't, presumably, do the day-to-day.

6 So, I was not looking -- I was not
7 coming here as counsel to the Company to tell them all
8 the legal aspects and let's go and negotiate
9 everything. I was there as a director only.

10 The Town had counsel. I wasn't going
11 to become -- start conflicting with the Town's counsel
12 over this.

13 MS. KATE MCGRANN: And I appreciate if
14 you don't remember, but I will ask you, do you
15 remember if, at this point in time, where a unanimous
16 vote -- vote is made to support the strategic partner
17 option, whether it was understood that a strategic
18 partner would include a 50/50 share split?

19 MR. DAVID MCFADDEN: Well, as I
20 mentioned, I mean, it -- it could be 51/49. There
21 could be other kinds of relationships.

22 MS. KATE MCGRANN: M-hm.

23 MR. DAVID MCFADDEN: I mean,
24 theoretically, you could have somebody -- you could
25 just simply take some -- a service and work together,

1 but I think the understanding here was 50 -- a 50/50
2 arrangement was the most obvious way to go.

3 That would be up to, presumably,
4 negotiations to see what you could get for fif -- you
5 know, for some kind of a partnership.

6 MS. KATE MCGRANN: Okay. And I
7 understand your evidence that you were there as a
8 director and not as legal counsel to the Company and
9 that the Town had legal advice.

10 Was it your understanding the Town had
11 received advice about the legal aspects, governance
12 considerations, et cetera, the impacts of a 50/50
13 share split at the time that this vote was made?

14 MR. DAVID MCFADDEN: I have no idea --
15 I had no idea certainly at that point as to what legal
16 advice the Town had gotten.

17 MS. KATE MCGRANN: And what about the
18 Company itself?

19 MR. DAVID MCFADDEN: Which company?

20 MS. KATE MCGRANN: Collus Power.

21 MR. DAVID MCFADDEN: Collus? Well, I
22 don't think we really needed legal advice because we
23 weren't doing anything. Somebody -- the Town was
24 going to do something with us, presumably, as our
25 hundred percent owner, so we didn't have -- have any

1 call to have counsel on it.

2 MS. KATE MCGRANN: So, this is July
3 8th, 2011. Moving forward into the summer, a
4 Strategic Partnership Task Team is struck.

5 Do you remember that?

6 MR. DAVID MCFADDEN: Yes.

7 MS. KATE MCGRANN: And you were a
8 member of the stregic -- Strategic Partner Task Team?

9 MR. DAVID MCFADDEN: Yeah, I was asked
10 to go on that.

11 MS. KATE MCGRANN: Do you remember who
12 asked you to join that team?

13 MR. DAVID MCFADDEN: I don't recall
14 who specifically asked me. My betting would be it was
15 probably Dean since Dean was the one (1) I generally
16 dealt with on Board matters, but I would imagine it
17 was Dean, but I can't tell you for certain --

18 MS. KATE MCGRANN: Okay.

19 MR. DAVID MCFADDEN: -- who actually
20 approached me.

21 MS. KATE MCGRANN: Do you remember --
22 or what did you understand the purpose of the
23 Strategic Partnership Task Team to be?

24 MR. DAVID MCFADDEN: I understood it
25 would be to be involved with the initiation of -- of a

1 process, and then to essentially evaluate what the --
2 what was received and to make -- you know, make a
3 recommendation one (1) way or the other, or at least a
4 report, to Council on -- on how they saw it.

5 MS. KATE MCGRANN: At the time that
6 you were asked to join the team, you've mentioned that
7 you understood that it was to -- to initiate a
8 process.

9 Did you know the process going to be a
10 request for proposals?

11 MR. DAVID MCFADDEN: I assumed it was.
12 I di -- I didn't -- I didn't think we would do a sole
13 source to one (1) company. I mean, it's theoretically
14 possible to do sole source, but that certainly I don't
15 think was ever in -- in mind, was just a sole source.
16 I assumed that we would run a process.

17 MS. KATE MCGRANN: Do you recall why
18 you concluded that it was unlikely that this would
19 proceed by way of sole source?

20 MR. DAVID MCFADDEN: Well, normally
21 municipal governments don't sole source, certainly on
22 anything on this size, I mean, I'm -- and -- and given
23 the relative importance of it to the Town, I assumed
24 that they would run a full process.

25 MS. KATE MCGRANN: And what did you

1 understand your role on the Strategic Task Team to be?

2 MR. DAVID MCFADDEN: Just to be on the
3 team just like everybody else.

4 MS. KATE MCGRANN: So, once again, you
5 didn't -- you weren't there to -- to act as a lawyer
6 or give legal advice to the team?

7 MR. DAVID MCFADDEN: I was not
8 retained as a lawyer and I wasn't behaving like one
9 (1) at the time. And I wasn't asked to be a lawyer.
10 I wasn't being asked to be counsel. And I didn't see
11 my role as being counsel; otherwise, I would have
12 gotten off it. I mean, I can't very well be counsel
13 and be evaluating, too. I mean, it didn't -- it was
14 impossible.

15 So, I was not -- had no idea that I --
16 I was definitely not there as counsel.

17 MS. KATE MCGRANN: Did the Strategic
18 Task Team discuss or develop a set of goals for the
19 strategic partnership? What did you all understand
20 you were looking for in a strategic partner?

21 MR. DAVID MCFADDEN: Well, there was a
22 number of factors, and it evolved over time. I
23 remember we went through -- different ideas came
24 forward. We -- there was a great deal of concern
25 about making sure, first of all, there was local

1 involvement.

2 We wanted to have brought into the
3 Company technological capability we didn't have to
4 deal with things like smart grid. We wanted to have
5 somebody to come in to deal with -- see, we basically
6 ran our control room eight (8) hours a day.

7 You know, it seemed to us, in fairness
8 to the consumer, it would be better to have a partner
9 who would help us running it twenty-four (24) hours.
10 We -- we found it pretty burdensome dealing with all
11 the regulatory requirements of the OEB. And I believe
12 you had a witness earlier on talking about OEB
13 requirements.

14 That's costly and complex. We did not
15 have in-house counsel or regulatory person on our
16 staff. Having said all that, so -- so that -- and --
17 and one (1) of the other really serious problems was
18 keeping staff.

19 Linemen are very difficult people to
20 keep. And we were constantly being poached by other
21 companies, Hydro One or -- or bigger companies said,
22 Look, we can give you a better benefit package, you
23 know, here rather than staying in Collingwood.

24 So, there were a lot of issues that the
25 Company was facing, so we were looking for a partner

1 who could help us through all that. Conservation
2 demand management had been mandated in the Green
3 Energy Act. We didn't have any capability to launch a
4 full-fledged conservation demand program. I mean,
5 there's a whole series of steps that we -- we would
6 look for a partner to bring to the table.

7 One (1) of the other things that we
8 wanted to make sure, that if someone was coming in,
9 they were going to get engaged locally. We didn't
10 just want to have big money show up or somebody just
11 bring in some technology. We also wanted to find a
12 partner who would come into the community and -- and
13 engage the community, would fit in nicely with the --
14 with the community.

15 And then, obviously, another aspect was
16 money. And -- and so the problem was where do you put
17 your -- your numbers. And so, the discussion came
18 around and -- and basically said, well, all right,
19 money is an important factor; it was 30 percent.
20 There was a group of things in that category.

21 The other factors were all given
22 different per -- percentages of -- of the hundred --
23 or -- or numbers -- units out of the one hundred
24 (100), however you want to approach it.

25 MS. KATE MCGRANN: Did you understand

1 in your work on the strategic partnership that Town
2 control was an important issue to be addressed with
3 any strategic partner?

4 MR. DAVID MCFADDEN: Yes, there was no
5 doubt about that. The Town was not anxious to be
6 removed from any role. They -- they did want to
7 maintain a level of control.

8 MS. KATE MCGRANN: We had looked at
9 the draft letter from Mayor Cooper from January of
10 2011 that discussed Town debt and cost reduction. You
11 recall that there had been a lot of discussion about
12 that. Were there --

13 MR. DAVID MCFADDEN: Right.

14 MS. KATE MCGRANN: Was there a concern
15 about reducing the Town's costs as part of a search
16 for a strategic partner?

17 MR. DAVID MCFADDEN: I think -- I
18 don't know so much the Town's costs as getting -- I --
19 I assume because money was certainly an issue and had
20 been an issue in the election, that one (1) of the
21 ideas being doing this was to generate some money for
22 the Town to apply to either debt or needed services or
23 projects that was desirable for the community.

24 MS. KATE MCGRANN: And what about the
25 concept of working with a partner to actually grow the

1 Collus Power business through additional partnerships
2 or otherwise expand its reach and scope and size? Was
3 that a goal for the --

4 MR. DAVID MCFADDEN: Well --

5 MS. KATE MCGRANN: -- strategic
6 partnership?

7 MR. DAVID MCFADDEN: -- that was
8 certainly a background goal. It wasn't -- what we --
9 what we could see happening around us, it goes to what
10 I said earlier on. We saw the number of utilities
11 dropping. We saw consolidation going. We were
12 islanded up here, to some extent.

13 One (1) of the ideas that, you know --
14 and I -- I know Ed was a big supporter of this through
15 his work at the EDA and everything, he saw an
16 opportunity whereby you could use Collus, and -- and
17 Collus with its partner, with resources, as an
18 aggregator for small utilities.

19 We're not going aggregate and acquire,
20 you know, Toronto Hydro or -- Ottawa Hydro, but what
21 we might be able to do is make -- work with Wasaga
22 Beach or Orangeville and surrounding people.

23 So, there -- there was a vision around
24 that. But I don't -- that was not necessarily core to
25 this. Core to this was the Town getting money --

1 MS. KATE MCGRANN: M-hm.

2 MR. DAVID MCFADDEN: -- 1, but 2, bill
3 -- strengthening the company, making it more resilient
4 and -- and better to deal with the kind of challenges
5 we were facing. And -- and that would be good for the
6 community, for employees, as well.

7 MS. KATE MCGRANN: Okay. I'm looking
8 at the time. And this is a natural break in my
9 questions.

10 THE HONOURABLE FRANK MARROCCO: All
11 right. Mr. McFadden, 2:15 --

12 MR. DAVID MCFADDEN: Fifteen (15).

13 THE HONOURABLE FRANK MARROCCO: --
14 we'll come back. And, obviously, you -- you should
15 refrain from discussing your evidence with less there
16 be a misunderstanding.

17 MR. DAVID MCFADDEN: Thank you, Your
18 Honour.

19

20 --- Upon recessing at 12:58 p.m.

21 --- Upon commencing at 2:20 p.m.

22

23 CONTINUED BY MS. KATE MCGRANN:

24 MS. KATE MCGRANN: Good afternoon, Mr.
25 McFadden.

1 MR. DAVID MCFADDEN: Good afternoon.

2 MS. KATE MCGRANN: And when we left
3 off, we were talking the goal was that the Strategic
4 Partnership Task Team, understood were in sight for
5 any potential strategic partner. Now I'd like to walk
6 through some of the meetings of the Strategic
7 Partnership Task Team with you.

8 Could we turn up CPS2342, please.

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: So these are the
13 minutes of the Strategic Partnership Task Team on the
14 meeting on August 3rd, 2011. It's our understanding
15 that this was the first meeting of the team.

16 And underneath the attendees, it says
17 that:

18 "The meeting was scheduled to begin
19 at 11:00, but did not begin until
20 11:30. Due to the late start, the
21 agenda was revised to accommodate
22 Director McFadden's schedule."

23 Up above the attendees section, it's
24 listed beside your name that you attended via
25 conference call until 11:50. So is this an example of

1 you not being able to attend a meeting in person, or
2 for the entire time, due to your other work
3 commitments?

4 MR. DAVID MCFADDEN: That's correct.

5 MS. KATE MCGRANN: Do you know if you
6 were provided with an update of the discussions of
7 this meeting for the portion that you weren't able to
8 attend for?

9 MR. DAVID MCFADDEN: I don't recall
10 specific communication verbally, but I would have
11 undoubtedly got the meeting notes at some point.

12 MS. KATE MCGRANN: We'll turn now to
13 CPS2345.

14

15 (BRIEF PAUSE)

16

17 MS. KATE MCGRANN: Our understanding
18 that the next meeting of the Strategic Partnership
19 Task Team took place on August 29th, 2011. This is an
20 email from you on August 28th, 2011, indicating that
21 you had to fly to Ottawa unexpectedly, and so you
22 wouldn't be able to attend the meeting.

23 So you've met with Dean and you'd given
24 him your comments, and you sent them out in an email
25 for the rest of the team.

1 Do you recall sending this email?

2 MR. DAVID MCFADDEN: I do not recall
3 specifically typing it up, but it definitely reads
4 like something I would have sent, so yes, I'm sure it
5 was my email.

6 MS. KATE MCGRANN: If we could scroll
7 down a little bit, what I'd like to look at is the two
8 (2) paragraphs starting with:

9 "We need to be clear as to what is
10 available to prospective bidders."

11 And you go on to write:

12 "It's my understanding that we're
13 prepared to accept bids for up to 50
14 percent of shares of Collus Power,
15 but not 51 percent or more."

16 You note that this would have a
17 significant impact on price as well as control. You
18 comment on needing to decide whether shares -- the --
19 sorry, the bidders are requiring shares in Collus
20 Power or from the company's treasury.

21 And then the next paragraph, you go on
22 to state that:

23 "We would need to have an
24 understanding of the governance
25 structure and approach."

1 You comment that the composition of the
2 board of directors will be critical to this. And you
3 go on to make some comments about the makeup the --
4 makeup of the board, explanations and examples of how
5 that may play out.

6 What do you remember about
7 conversations or discussions on the Strategic Task
8 Team about governance issues presented by accepting
9 bids up to 50 percent?

10 MR. DAVID MCFADDEN: I don't -- I -- I
11 -- I don't recall a -- any particular discussion on up
12 to 50 percent.

13 MS. KATE MCGRANN: Okay.

14 MR. DAVID MCFADDEN: It -- it says as
15 I understand -- I understood that they were prepared
16 to accept bids up to 50 percent. That was my
17 understanding of it. This would not been a decision,
18 of course, of the Strategic Team. This would have
19 been a decision of its shareholder, ultimately. This
20 -- this group was put in place to -- to facilitate the
21 process and evaluate what they heard, and then
22 ultimately inform Council how they saw it in terms of
23 the ratings.

24 MS. KATE MCGRANN: We've heard
25 evidence that part of the role of the Strategic Task

1 Team was to identify criterion and participate in the
2 creation of the request for proposal document.

3 Was that your understanding?

4 MR. DAVID MCFADDEN: That's correct,
5 to provide advice on that. That's correct.

6 MS. KATE MCGRANN: What do you recall
7 about discussions about governance issues as they
8 would be presented in the request for proposal
9 document?

10 MR. DAVID MCFADDEN: Gov -- governance
11 issue in the sense of the Board itself, or other
12 aspects?

13 MS. KATE MCGRANN: Anything. What do
14 you recall about decisions of anything --

15 MR. DAVID MCFADDEN: Well --

16 MS. KATE MCGRANN: -- in that nature?

17 MR. DAVID MCFADDEN: -- I think it --
18 the -- the -- if you look at the two (2) paragraphs
19 that you've highlighted just now, the first one (1)
20 relates to how we saw the partner -- the strategic
21 partnership developing. Were we looking to get money
22 into the company, which could be done by somebody
23 acquiring 50 percent of the company directly, or is
24 the shareholder looking to be bought out and -- and
25 therefore their share drops, but the company doesn't

1 get anything as a result of that? Nobody's buying
2 shares in the company, per se, from treasury.

3 So that was the first issue, and I
4 wasn't clear -- as -- as you can see from here --
5 whether the Town's objective was to have somebody come
6 in, acquire shares directly, and that money goes into
7 the -- into the company, or was -- or -- or was the
8 objective for -- for the Town to be paid directly for
9 its shares? So that was the first issue that they --
10 needed to be addressed, because that obviously -- any
11 buyer's is going to want to cons -- that -- that would
12 have a cons -- an impact.

13 As far as the makeup of the board,
14 typically, the makeup of a board reflects the balance
15 of the shareholdings. So the anticipation would be if
16 it's 50/50, it'd be a 50/50 split of -- of directors
17 being nominated by each shareholder. If it's not,
18 then you might -- one (1) side might wind up with a,
19 you know, what -- an extra -- one (1) more director
20 than the other side. So that's -- that's really all
21 I'm getting at, there.

22 We also had the issue, you know, about
23 votes. Now, my -- this is a fairly important point.
24 Virtually everybody in the shareholders agreement has
25 a thing about deadlock and disputes. Very, very, very

1 seldom do you ever have to look to a shareholders
2 agreement in -- in terms of votes. My experience,
3 almost 100 percent of the time, is that corporate
4 boards sit down and you work it out, and if you can't,
5 you don't push it down somebody's throat. That's my
6 experience.

7 There's the odd time we have a big
8 dispute, but typically that's not the circumstance.
9 But obviously, the makeup of a Board has an effect on
10 the kind of emphasis that happens, and the expertise,
11 and everything you've brought to the table.

12 We also had to -- the effect of who the
13 -- the chair might be. And it, you know, you'd have -
14 - you'd have to work that one (1) out after the
15 Transaction's finished, how that's going to work. You
16 could have co-chairs. You could alternate. You could
17 do a lot of things with the chair. But that's
18 obviously a -- a point in any of these arrangements
19 where the -- the identity of the chair can be quite
20 important, but -- so that was another issue that I
21 just highlighted there.

22 MS. KATE MCGRANN: Okay. So you've
23 identified four (4) issues. Let's go through them one
24 (1) by one (1).

25 In terms of the source of the shares,

1 what do you recall of discussions amongst the
2 Strategic Task Team as to what the source of the
3 shares would be?

4 MR. DAVID MCFADDEN: I don't remember
5 that even com -- I mean, the source being whether they
6 bought from treasury, or -- I don't recall that ever
7 coming up at the meeting, per se. I know I raised it,
8 but I'm not -- I'm not sure that it got discussed.

9 MS. KATE MCGRANN: Okay.

10 MR. DAVID MCFADDEN: But it's
11 obviously something that you'd have to consider when
12 you're going out offering something. You have to make
13 a decision what you're going to do.

14 MS. KATE MCGRANN: Okay. But you
15 don't have any information about what consideration
16 was given to that topic?

17 MR. DAVID MCFADDEN: No.

18 MS. KATE MCGRANN: Ultimately, a
19 decision was made. Do you know who made that
20 decision?

21 MR. DAVID MCFADDEN: The Town must
22 have made it. I -- I can't think of who else could
23 make that decision.

24 MS. KATE MCGRANN: Okay.

25 MR. DAVID MCFADDEN: It -- it has to

1 be a decision of the Town as to what they wanted. And
2 do they want money out of the deal, or do they want to
3 just bring an investor in to bolster the company?

4 MS. KATE MCGRANN: It sounds to me
5 like -- like you're making your best guess at who
6 would have made the decision. Is that fair?

7 MR. DAVID MCFADDEN: That's my best
8 guess, yeah, particularly given what we talked about
9 before lunch, about the Town to reduce debt, and --
10 and the concerns about situation -- the financial
11 situation at Town Hall, it would be reasonable to
12 expect they want to get money out, but they might not.

13 MS. KATE MCGRANN: With respect to the
14 makeup of the board, what do you recall about the
15 discussions on the Strategic Task Team about the
16 makeup of the board?

17 MR. DAVID MCFADDEN: I don't recall a
18 discussion about the -- you mean makeup -- who would
19 be on it, or -- or you mean just the -- it would be
20 50/50, or some number?

21 MS. KATE MCGRANN: The composition of
22 the board in term -- as between representatives of
23 Collus Power and the new -- the new owner.

24 MR. DAVID MCFADDEN: Well, yeah, it
25 would depend on what they were buying and if they were

1 -- I -- I was assuming they were likely investing in
2 Collus Power --

3 MS. KATE MCGRANN: M-hm.

4 MR. DAVID MCFADDEN: -- in which case
5 the Town would be choosing "X" number of directors and
6 the buyer would be produce -- you know, appointing
7 others.

8 MS. KATE MCGRANN: Do you remember any
9 discussion amongst the members of the strategic task
10 team about Board membership, how that would look, how
11 you'd pose it in the RFP?

12 MR. DAVID MCFADDEN: Good question. I
13 -- I had made the assumption it would go with -- in
14 accordance with the share -- whatever the offer was
15 that -- you know, their share interest. There was --
16 there -- there always is concern with LDCs about
17 having politicians on boards. That -- that constantly
18 comes up and it comes up today. Whether you have
19 citizen -- you know, inde -- citizen represent,
20 whatever you want to call them, independents, and --
21 and -- and do you want to have members of Council,
22 mayors, and so on. That's an ongoing issue in
23 Ontario.

24 There's a -- there's a feeling that a
25 mayor or a councillor has a conflict of interest,

1 because when they go -- go back to Council, can they
2 really divulge things if they've got a fiduciary
3 responsibility to -- like, where does their fiduciary
4 responsibility end and -- and go forward.

5 Most municipalities have come to grips
6 with it and said there's not a problem, we'll put a
7 mayor, we'll put a councillor on. That -- that works
8 fine. And it's up to the councillor, the mayor, to
9 figure out what they can say and do, but there is an
10 active debate around that, and the tendency today,
11 unlike maybe a few years ago, is to have a majority of
12 boards made up of non-politicians.

13 That -- that's the -- so if you look
14 around the province, you see who's on the various
15 boards, you tend to find generally speaking, not all
16 cases for sure, but generally speaking, you tend to
17 have non-elected people, a minority on boards
18 nowadays.

19 MS. KATE MCGRANN: And that was the
20 case at the time in August of 2011 though?

21 MR. DAVID MCFADDEN: Well -- well, the
22 Power -- yeah, see, back then there were three (3)
23 board members. We had Dean Muncaster, myself, and
24 then the mayor was representing the Town -- or was --
25 was the political person on the panel -- on the board,

1 pardon me.

2 MS. KATE MCGRANN: Do you recall ever
3 having any discussions with Mayor Cooper about any
4 potential conflict of interest she may be in due to
5 her dual roles as mayor and director on the Board of
6 Collus Power?

7 MR. DAVID MCFADDEN: Yes. She used to
8 raise that from time to time. She felt that --
9 handicapped but what she felt she could say to
10 Council. I remember two (2) or three (3) times over
11 the years she was saying how she felt a bit
12 handicapped, and she felt that she had a fiduciary
13 relationship in the company, you know, to keep certain
14 things confidence, whatever, but -- but then coming to
15 Council, she felt -- she had a bit of a conflict, and
16 I -- I know it bothered her. It certainly seemed to
17 bother her more than I think some other mayors I've
18 met.

19 MS. KATE MCGRANN: And what would you
20 say to her when she raised that?

21 MR. DAVID MCFADDEN: Well, I -- I
22 suggested to her that as a representative of the
23 shareholder, she should -- she shouldn't be worried
24 about it and if she has to report to the shareholder
25 what's going on, I mean, she should be reporting to

1 shareholder. I -- I didn't think she had a serious
2 conflict in general.

3 There could be situations, personnel
4 situations, for example, where maybe she shouldn't say
5 anything, but in general when you're reporting on the
6 business of the Company, you know, we -- we provided
7 annually a very detailed annual report, so it wasn't
8 this is a top secret operation, so there'd be -- there
9 would be no problem with -- with the mayor reporting
10 on company activities, but there would be areas
11 undoubtedly where confidentiality was very important.

12 MS. KATE MCGRANN: Okay. Turning back
13 to my question about the governance structure and
14 approach on the composition of the Board of Directors
15 and how that was -- how that was presented in the RFP,
16 you've given me some general information about those
17 topics, but what I'd like to know is what you recall
18 about the discussions that the strategic task team had
19 about how those topics would be presented in the RFP.

20 MR. DAVID MCFADDEN: I recall there
21 was a discussion both -- orally, but then of course
22 some of the stuff that came out later in writing
23 because we were -- the -- the issue was where you put
24 your emphasis in terms of the evaluation of the -- of
25 each bid. That was really the -- the critical point,

1 and where you put your emphasis, and that I remember
2 being something that was discussed.

3 The -- the actual percentages and so
4 on, I wasn't involved directly in the discussion about
5 which numbers we put on which thing. I -- I received
6 that document subsequent certainly to this meeting
7 where it said these are -- these are the points that
8 we're going to be applying, the 70/30 arrangement.

9 MS. KATE MCGRANN: Okay. So you
10 weren't involved in the discussion about the weight to
11 be given to --

12 MR. DAVID MCFADDEN: No.

13 MS. KATE MCGRANN: -- each of the
14 items as set forth in the RFP?

15 MR. DAVID MCFADDEN: No. I assumed
16 that the -- that reflected the shareholder view, where
17 they wanted to put the emphasis, i.e., on the company
18 and on community, and the money was still a major
19 aspect of it, but that was -- I mean, I -- when I read
20 it and -- and saw the breakdown, it made sense to me
21 based on the discussions we'd had previously.

22 MS. KATE MCGRANN: Okay. And we'll
23 take a look at that document in a few minutes. I
24 guess what I'm trying to understand is, I understand
25 the RFP document is a request for -- for potential

1 bidders to make proposals about how a strategic
2 partnership would work. Collus Power would put out
3 some sort of an explanation of what it is looking for
4 and what it wants the partnership to look like.

5 Do you remember being involved in any
6 discussions about what Collus Power was going to say
7 it wanted the governance structure or the composition
8 of the Board, et cetera, to look like?

9 MR. DAVID MCFADDEN: Collus Power
10 itself, I do not recall any discussion at the Collus
11 Power Board meetings specifically what -- what Collus
12 Power was looking for.

13 MS. KATE MCGRANN: What about of the
14 strategic partnership task team, the group tasked with
15 putting together the RFP?

16 MR. DAVID MCFADDEN: I remember
17 getting the numbers, I don't remember sitting down,
18 and it may have been at the meeting that I -- I wasn't
19 able to attend the whole meeting where that may have
20 been discussed, but all I know is we were given this
21 list, we were giving -- this is the emphasis and
22 that's what we -- as far as I was concerned, that was
23 what we were running with.

24 MS. KATE MCGRANN: Okay. And I think
25 again you're talking about the weighting to be

1 assigned to the various --

2 MR. DAVID MCFADDEN: Right, correct.

3 MS. KATE MCGRANN: -- items in the
4 RFP. I'd like to focus on the items in the RFP
5 themselves.

6 I think what you're telling me is that
7 you weren't involved in any discussions about what
8 would be said in the RFP about what Collus Power was
9 looking for with respect to the composition of the
10 Board of Directors, for example, representation,
11 number of seats, et cetera.

12 MR. DAVID MCFADDEN: No. As I say --
13 well, I don't know -- maybe -- the problem we got here
14 now is the same name keeps coming up. Collus Power
15 had no position on that. It would be the shareholder
16 make a decision, the composition of the Board. I
17 don't remember the Collus Power Board actually
18 discussing that issue at all as a board.

19 The -- my general impression was that
20 this rating was developed in concert with KPMG, who
21 were our financial advisors with the Town, and then
22 obviously the task group would have reviewed it. That
23 would have been -- that was my understanding as I
24 recall, was it was KPMG as the financial advisor
25 clearly had an impact on what -- the kind rating.

1 They're experienced in this. They do these
2 transactions all the time.

3 In fact I -- they're one (1) of
4 Canada's leading accounting firms and they -- and they
5 have a very strong advisory service, so I assumed this
6 was developed with them, I'm sure it was, with
7 representatives of the owner.

8 MS. KATE MCGRANN: When I look at your
9 email and you say:

10 "We need to be clear as to what is
11 available to prospective bidders."

12 I read this email as saying we, the
13 strategic task team, need to be clear in what we
14 communicate through the Request for Proposal to
15 prospective bidders as to what we're looking for.

16 Am I understanding this email properly?

17 MR. DAVID MCFADDEN: I think you're
18 right. What I'm referring to is -- I mean, I could
19 have said some other words, but what I'm saying is, in
20 the bid document -- whenever we put out "we," meaning
21 broadly "we," need to be clear on what we're asking
22 people to bid on, because what we didn't want was a
23 bunch of noncompliant stuff or else stuff that we
24 couldn't -- you know, is comparing apples and oranges.
25 So the idea of it being -- let's be clear on this --

1 and that's really -- because it's 50/50 thing and that
2 -- then the next sentence follows on from that.

3 MS. KATE MCGRANN: What I'm trying to
4 understand is what steps the strategic task team took
5 to be clear, first of all, as amongst it selves, and
6 second of all, what it communicated to the potential
7 bidders, what was available to prospective bidders
8 with respect to the governance structure, the approach
9 that would be taken, and the composition of the Board
10 of Directors.

11 What steps did the strategic task team
12 take to gain a clear understanding of what was being
13 offered?

14 MR. DAVID MCFADDEN: Well, I think it
15 was contained in the documents. I mean, I don't -- I
16 -- look, I don't know -- all I know is that we
17 received this -- these criteria. It was discussed.
18 Obviously I responded to it, suggested that whatever
19 we do, we needed to be clear on it.

20 MS. KATE MCGRANN: So at this point in
21 time, the draft RFP document has not been circulated
22 yet. It's our understanding that these are the
23 discussions that are leading up to the draft RFP
24 document which the Strategic Task Team had a role in
25 developing.

1 MR. DAVID MCFADDEN: That's correct.
2 I mean, what we -- I remember us looking at it is just
3 what were the criteria we were looking at? What
4 was -- what were we looking at? The -- the rest of it
5 is, in many ways, details. The critical thing is what
6 are the major point that you're looking for in seeking
7 bidders?

8 And my only point there was it's
9 advantageous to be clear on that one (1) way or the
10 other. Right. Now, if you may choose to leave it up
11 in the air and allow people to be creative, then
12 that's -- that's another way to go at it.

13 But that's all I was saying was you --
14 it's useful and to be as clear as you can. Otherwise,
15 it becomes tough to analyze responses.

16 MS. KATE MCGRANN: So I understand you
17 saying that it's important to be clear, and I'm
18 concerned that I'm not doing a great job at asking my
19 questions. So I'm going to try it again a different
20 way. I appreciate your patience.

21 You've identified some items that you
22 say we need to be clear on the way that we communicate
23 what we want to the other bidders, right? Have I got
24 it right so far?

25 MR. DAVID MCFADDEN: Yeah.

1 MS. KATE MCGRANN: Okay. What I want
2 to understand is what steps the Strategic Task Team
3 took to come to an agreement about where they stood on
4 these issues so that they could communicate it clearly
5 in the RFP.

6 MR. DAVID MCFADDEN: Well, I think it
7 was embedded -- it should have been embedded, and I
8 understood it was embedded in the documents we sent
9 out. Now --

10 MS. KATE MCGRANN: Okay. So --

11 MR. DAVID MCFADDEN: -- now, the --
12 did -- as to who drafted it, my recollection was it
13 was probably -- I think it was KPMG, but I'm not sure
14 who actually had the pen on drafting the -- I mean, we
15 looked at -- and -- and I looked at the overall
16 points.

17 I was not part of a drafting session on
18 the RFP itself. I was asked to address the -- the
19 criteria, the key criteria that was being used. And
20 we -- and our financial advisor, my assumption is that
21 normally that's what financial advisors do is they put
22 the document together and -- and then some executive
23 team or whatever sign off on it, and it goes out.

24 MS. KATE MCGRANN: Okay.

25 MR. DAVID MCFADDEN: Am I missing

1 something? I don't know if that's --

2 MS. KATE MCGRANN: If you are, I'm
3 sure that it's my fault. So I'm going to try it this
4 way, and we'll see if it goes that way.

5 You don't know who was holding the pen,
6 but I think you'll agree with me that no matter who's
7 holding the pen, some information has to go through
8 their hand onto the page --

9 MR. DAVID MCFADDEN: Yes.

10 MS. KATE MCGRANN: -- in trying to
11 figure out where that information came from.

12 MR. DAVID MCFADDEN: Well, I --

13 MS. KATE MCGRANN: It's our
14 understanding it would have come from the Strategic
15 Task Team who made the decisions about these items so
16 that they could be put in the RFP.

17 MR. DAVID MCFADDEN: Yeah. I think
18 what -- yeah. The Strategic Task Team would have
19 decided on the key criteria. Who had the actual pen,
20 I would -- look, I'm not precisely sure. I would
21 imagine it was between Dean Muncaster, who's chair.
22 I -- I expect Mr. Houghton was -- was somewhere
23 involved in that. I don't know if Mr. Fryer had any
24 input on that at all. I don't -- but certainly, the
25 KPMG people would have been pretty important to that

1 one.

2 MS. KATE MCGRANN: Okay. So --

3 MR. DAVID MCFADDEN: That's their --
4 their role.

5 MS. KATE MCGRANN: -- for the part of
6 the answer where you said they -- the Strategic Task
7 Team would have made the decisions, what do you
8 remember about the process that led to those decisions
9 being made? How did the group come to a consensus?
10 What was discussed?

11 MR. DAVID MCFADDEN: I may not have
12 been at that part of the meeting. All I know was that
13 I -- I got the sheet. It looked fair to me. I was
14 just trying to clarify some of the point, just to be
15 sure we were on the right -- right track.

16 But the actual detailed drafting was
17 not something I was involved in, nor did I -- was
18 involved in approving the RFP document. I had nothing
19 to do with it. It didn't come to our Board, that's
20 for sure. I mean, I -- I don't know who it went to.
21 I don't think it went -- I -- it may have gone to Town
22 Council. I don't think so. I think it was handled
23 through the administration.

24 MS. KATE MCGRANN: Okay. And I'm
25 going to try and summarize what you said to me to make

1 sure that I've got it right.

2 So first of all, it sounds to me like
3 you're saying you don't have any recollection of being
4 involved in any discussions about what the composition
5 of the Board of Directors would be as proposed in the
6 RFP or the description of any other government
7 structure asks that the company would be making in
8 that document.

9 MR. DAVID MCFADDEN: What I remember
10 is basically what's in here is that sent -- I -- I
11 assumed it would -- the composition of the Board would
12 be a function of the shareholdings, which I find would
13 be the typical situation in these kind of things.

14 MS. KATE MCGRANN: Okay. So you don't
15 remember any discussion beyond what you have laid out
16 in your email.

17 MR. DAVID MCFADDEN: Oh, that's
18 correct.

19 MS. KATE MCGRANN: Okay. And second
20 of all when it comes to who was approving the RFP, you
21 don't have any recollection of being part of the group
22 that had responsibility to do that.

23 MR. DAVID MCFADDEN: I did not recall
24 reading the RFP in advance or being asked to sign off
25 on an RFP. I don't recall ever seeing that.

1 I -- I recall the ratings and -- and
2 going through that discussion.

3 MS. KATE MCGRANN: Okay. Could we
4 turn up CPS6891?

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: Could you scroll
9 down for a second. So this is the Collus Power RFP.
10 It's an 18-page document.

11 I understand you saying that you didn't
12 review or sign off on this before it was distributed
13 to the bidders?

14 MR. DAVID MCFADDEN: That's correct.
15 But I remember getting it when it was circulated.

16 MS. KATE MCGRANN: Could we turn up
17 paragraph 293 of the Foundation Document?

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: If we could scroll
22 and see the table here.

23 You had referenced in our discussions a
24 second ago a sheet with points to be associated with
25 certain items. Is this what you were talking about,

1 the -- these items and these points? Could you scroll
2 down a little bit more so we can see the whole box, if
3 possible. Is this what you were referring to?

4 MR. DAVID MCFADDEN: That's correct.
5 That's it.

6 MS. KATE MCGRANN: Okay. Was it your
7 recollection that you were asked to review this and
8 provide comment on it before it was finalized?

9 MR. DAVID MCFADDEN: My recollection
10 was getting it, commenting on the major points. I
11 wasn't involved in drafting it per se.

12 MS. KATE MCGRANN: Okay. And when you
13 say the "major points," what are you referring to?

14 MR. DAVID MCFADDEN: Well, just the
15 major items under various points. I remember looking
16 at it and -- and sort of considering, based upon our
17 previous meetings and -- and even the material that I
18 provided to the strategic planning meeting is, was
19 this going to meet what appeared to be the needs and
20 objectives of Collus Power?

21 MS. KATE MCGRANN: Okay.

22 MR. DAVID MCFADDEN: As -- which is
23 not necessarily the shareholders interest. It's -- so
24 I'm looking at it from the point of Collus Power. You
25 know and previously are -- does this meet what I

1 thought was the challenge the company faced around
2 specialized resources, supporting our employees and
3 their careers, dealing with our customers, ensuring we
4 had a competitive distribution rates. I mean, that
5 was all vital to our customers and to the people in
6 Collingwood and Stayner and Thornbury and somewhere
7 we -- we actually were servicing people.

8 And then we also wanted -- wanted to be
9 sure that we were right in a competitive way and --
10 and with a good team of employees who were able to
11 really stay with us and -- and help us succeed in the
12 business.

13 So that -- that was the 70 points, and
14 then the -- the particular numbers we put beside
15 those, I didn't -- wasn't directly involved in the
16 decisions on which numbers to put on which side which,
17 but, I mean, that was -- I understood that to be the
18 direction the Town wanted to go in.

19 MS. KATE MCGRANN: Okay. So you
20 turned your mind when you reviewed this to what the
21 company's interests were, and you've already described
22 those to us what they were. But you didn't think that
23 you had any say in the points that were assigned to
24 each of those items?

25 MR. DAVID MCFADDEN: I was not

1 involved with developing those points. I -- I had the
2 feeling it was probably done by KPMG maybe in concert
3 with Dean Muncaster and perhaps Ed Houghton. I don't
4 know who -- the mayor -- I -- I'm not sure who
5 actually was involved specifically with establishing
6 those numbers.

7 MS. KATE MCGRANN: Okay.

8 MR. DAVID MCFADDEN: But when I looked
9 at it, it reflected, you know, where I thought we had
10 just talked about.

11 MS. KATE MCGRANN: And just to be
12 clear, was it the case that you felt that those
13 couldn't be changed even if you thought they should
14 be? That was --

15 MR. DAVID MCFADDEN: I mean, I -- I
16 guess it would -- was in the realm of possibilities.
17 The task group said, well, we will never get any bids
18 on this, or it doesn't fit. We could always go back
19 and say they should be amended.

20 But we didn't see any reason to do
21 that. I didn't see any reason. It sounded -- the
22 balance sounded roughly right. I mean, you could move
23 numbers around a bit. I know there was some people
24 who said, oh, maybe you should have put more on money,
25 for example. But it certainly covered all the points

1 that we had discussed.

2 MS. KATE MCGRANN: I don't take your
3 answer to be exhaustive, but in identifying the points
4 that you were looking at in -- in identifying the
5 points that you were looking at in fulfilling your
6 role and protecting the Company's interest, did you
7 turn your mind to the questions of control --
8 maintaining control of the company, or were you more
9 focussed on bringing in resources, support for
10 employees and their careers, supporting the interest
11 of the communities, competitive distribution rights,
12 and such?

13 MR. DAVID MCFADDEN: As a director of
14 the Company, that was my main interest. It was up to
15 the shareholder to decide if they wanted, one (1) way
16 or another, to sell all or a portion of their shares.
17 I -- I assume they weren't interested in selling all
18 of them. That was fairly clear to me. They could
19 have decided to sell none.

20 So, I thought it was the shareholder's
21 decision as to what they wanted to do.

22 MS. KATE MCGRANN: Okay. So, fair to
23 say that you didn't think it was your role to ensure
24 that the shareholder's interest was adequately
25 protected by the -- the items and the scoring in this

1 list?

2 MR. DAVID MCFADDEN: Oh. Well, I'm
3 not ignoring the shareholder interest. I'm not
4 saying, look, I -- I couldn't give a damn what
5 happens. No, that wouldn't be accurate.

6 The -- KPMG was acting on behalf of the
7 shareholder. Dean Muncaster, as -- as chairman, was
8 acting on behalf -- you know, the mayor was on the
9 Board. I mean, people -- there -- there was real
10 attention to trying to ensure that we got good value.

11 Nobody's trying to sell this at a cut
12 rate or anything like that. We -- we want it to be at
13 a good value, but we -- we -- you have these
14 contending things that needed to be done.

15 Part of it's -- and -- and I think
16 that's what this is meant to reflect, is there's
17 financial consideration on the one (1) side, there are
18 company considerations on the other.

19 As -- as a director of Collus Power, I
20 -- I had no power to tell the shareholder whether they
21 should buy or sell their shares, I mean, it's up to
22 them. What I can have input maybe on is -- is try and
23 encourage the shareholder to ensure that the Company
24 interests are taken into account, so.

25 MS. KATE MCGRANN: And it was your

1 understanding that KPMG had been retained by the Town?

2 MR. DAVID MCFADDEN: That was my
3 understanding.

4 MS. KATE MCGRANN: Do you know where
5 you got that understanding from?

6 MR. DAVID MCFADDEN: They -- well,
7 they weren't retained by Collus Power, so whoever they
8 were retained by, and -- and I -- I assume they
9 weren't volunteers. So, my understanding was they
10 were retained by the shareholder.

11 And we've got this -- I mean, this
12 strange distinction. I mean, there's a shareholder of
13 the Town. This holding company in the middle is the
14 shareholder, it's not a foreign area that sort of
15 showed up in the middle of the corporate strategy here
16 somehow.

17 So -- so, the two (2) of them, I -- I
18 would have considered them one (1). I mean, there's -
19 - there is a shareholder of Collus Power. The
20 ultimate shareholder is the Town, the ultimate owner.
21 We have a shareholder of Collus Power. And then
22 there's Collus Power.

23 So, I'm assuming whoever is above
24 Collus Power is the one (1) who retained KPMG because
25 we weren't involved with vetting KPMG or its

1 qualifications or anything of that nature approving
2 their contracts.

3 MS. KATE MCGRANN: If KPMG had been
4 retained by Collus Power would you have approached
5 your work on the Strategic Task Team and the approval
6 of the RFP differently?

7 MR. DAVID MCFADDEN: Well, that would
8 have made quite a difference if -- if they're
9 reporting to us, but it would be odd that they would
10 be reporting to the -- not reporting to the owner. It
11 -- it would be strange.

12 I've never -- in -- in any corporate
13 setting, if I own a subsidiary, the subsidiary doesn't
14 tell me how I'm disposing of my shares; I decide and I
15 tell them.

16 I mean, as it turns out, this is very
17 collegial. In -- in a typical corporate setting you
18 don't bring in all these people to look at it and --
19 from different places and employees and this group and
20 that group.

21 In my experience, when companies decide
22 to sell assets they -- they tell the subsidiary what
23 to do and -- and there's no debate about it, you just
24 get it done.

25 And so, I'm -- I'm taking my job as I

1 would if I were a corporate director. And when the
2 shareholder said they're interested in selling, they
3 take -- they take the steps and do it. And my job is
4 to try to fac -- you know, facilitate what the
5 shareholder wants to get done.

6

7 (BRIEF PAUSE)

8

9 MS. KATE MCGRANN: Can we turn up
10 TOC0515777, please?

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: So, this is the
15 retainer letter that we understood governed KPMG's
16 work on the -- the RFP process. It's dated September
17 9th, 2011. And if you scroll down, you can see that
18 the first paragraph says:

19

"KPMG is pleased to submit this
20 proposal to Collus Power, Collision
21 -- defined as Collus, our client, to
22 help you and your shareholder, the
23 Town of Collingwood, with the
24 pursuit of this strategic partner.
25 The letter describes the objectives

1 of the engagement."

2 I take it you have not seen this letter
3 before?

4 MR. DAVID MCFADDEN: Well, you know,
5 this is this ongoing confusion. Look at who it's
6 addressed to. It's addressed to the Chief Executive
7 of Collingwood Utility Services. And he says,
8 "submitting this proposal to Collus Power." He's not
9 addressing to the president of the Company. He's
10 addressing it to the shareholder.

11 MS. KATE MCGRANN: Mr. McFadden, have
12 you seen this letter before?

13 MR. DAVID MCFADDEN: I don't remember
14 seeing this letter --

15 MS. KATE MCGRANN: Okay.

16 MR. DAVID MCFADDEN: -- that I can
17 recall. I mean, it -- it doesn't -- it -- it's a
18 strange letter, but anyway, I don't recall this
19 letter. I don't recall it coming to the Board for --
20 for a review.

21 MS. KATE MCGRANN: Okay. And if we
22 could just scroll to the bottom of page 3 so we could
23 take a look at the initial lines. Now, Mr. Houghton
24 has signed this on behalf of Collus Power on September
25 27th, 2011. If we could scroll up. It's signed by

1 John Herhalt on behalf of KPMG.

2 So, you were not shown this letter, or
3 you weren't advised at the time that this was the --
4 the retainer relationship that -- that KPMG was -- was
5 working under?

6 MR. DAVID MCFADDEN: Well, my view,
7 it's with the wrong party. I don't know why the
8 consumers -- the power consumers of Collingwood are
9 paying for this service. That's a shareholder matter.

10 MS. KATE MCGRANN: Okay. Can I scroll
11 up a little bit further, please? Keep going to the
12 description of the scope of work. So, this is the
13 scope of the work in the retainer letter. Could you
14 just take a look at that and let us know if that
15 reflects what you understood KPMG was doing with
16 respect to the RFP?

17

18 (BRIEF PAUSE)

19

20 MR. DAVID MCFADDEN: Well, that's
21 certainly what they did, from what I re -- recall.

22 MS. KATE MCGRANN: Okay. So, it
23 accurately reflects what you understood they were
24 there to do?

25 MR. DAVID MCFADDEN: Yeah. Yeah.

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Can we turn up
4 paragraph 268 of the Foundation Document, please?

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: So, paragraph 268
9 describes that on September 12th, 2011, the Strategic
10 Partnership Task Team met in Collingwood for --
11 Collingwood with Veridian and Hydro One. And then if
12 we could turn over to paragraph 274.

13

14 (BRIEF PAUSE)

15

16 MS. KATE MCGRANN: Maybe up one (1),
17 sorry. And then on September 19th the team meets with
18 Horizon and PowerStream. Do you recall attending
19 these meetings with four (4) -- the four (4) potential
20 bidders?

21 MR. DAVID MCFADDEN: Yes. I attended
22 all four (4) meetings.

23 MS. KATE MCGRANN: Do you recall what
24 your understanding was with respect to whether the
25 information discussed at those meetings was to be kept

1 confidential or not?

2 MR. DAVID MCFADDEN: I think we agreed
3 that -- I mean, these were confidential sessions.
4 They weren't -- weren't -- they weren't being
5 broadcast. The -- the information there was not for
6 public consumption, that's for sure.

7 MS. KATE MCGRANN: Okay. So, was it
8 your understanding that you weren't to share or
9 discussed it with anyone outside of the Strategic Task
10 Team?

11 MR. DAVID MCFADDEN: And -- and, you
12 know, people within the group and, I guess, KPMG and
13 people related.

14 MS. KATE MCGRANN: Who would be
15 included in the group of people related?

16 MR. DAVID MCFADDEN: Well, potentially
17 people on staff and so on that needed to provide in --
18 input. I mean, I don't -- I don't know. I mean, my
19 understanding was this was not a public session. It
20 was a -- it was not meant to be public. It was meant
21 to be confidential, private and confidential.

22 MS. KATE MCGRANN: Okay. So, okay to
23 discuss it with other members of the task team,
24 necessary staff at Collus Power and KPMG who was
25 advising?

1 MR. DAVID MCFADDEN: Generally
2 speaking, yeah.

3 MS. KATE MCGRANN: Okay. Anybody else
4 that I didn't identify there?

5 MR. DAVID MCFADDEN: Nobody separate
6 from the process here, no.

7 MS. KATE MCGRANN: To your
8 recollection, did the members of the Strategic Task
9 Team provide the bidders with feedback either at the
10 time that they made their presentations or afterwards
11 on their presentations?

12 MR. DAVID MCFADDEN: No. I mean,
13 there's no structured way in which that was ha --
14 supposed to happen, no. I don't recall anybody, you
15 know, saying, well, let's talk to everybody.

16 I mean, there's one (1) thing that you
17 pointed out. I did get a call, it looks like, which I
18 didn't remember from one (1) of the lawyers asking to
19 confirm some dates and so on. But other than that,
20 I've -- no, I don't think we were -- we were -- I do --
21 - I'm not aware of any communication program that was
22 set up to -- to communicate out -- to a bunch of
23 people outside of the organization or to the various
24 bidders in any structured way.

25 I'm not aware that there was one (1).

1 MS. KATE MCGRANN: Okay, and we'll
2 come to the call that you just mentioned in a second,
3 but outside of the fact that you weren't aware of any
4 existence of any structured program to your knowledge,
5 was feedback provided in any way by members of the
6 strategic task team to the bidders on their
7 presentations?

8 MR. DAVID MCFADDEN: No, I'm not aware
9 of any structured communication whatsoever, no.

10 MS. KATE MCGRANN: Okay, leaving aside
11 the structured part where --

12 MR. DAVID MCFADDEN: I'm just not
13 aware. I was -- I was just taking your wording. No,
14 I'm not aware of any communications programs set up
15 for that purpose.

16 MS. KATE MCGRANN: Are you aware of
17 whether anyone from the strategic task team
18 communicated feedback to any of the bidders on their
19 presentations?

20 MR. DAVID MCFADDEN: No, I'm not aware
21 of it.

22 MS. KATE MCGRANN: Okay. Are you
23 aware of any members of -- or sorry. Representatives
24 of Collus or KPMG providing that kind of feedback to
25 the bidders?

1 MR. DAVID MCFADDEN: Not that I'm
2 aware of.

3 MS. KATE MCGRANN: When did you learn
4 that Gowlings would be representing PowerStream with
5 respect to the request for proposals?

6 MR. DAVID MCFADDEN: It was after the
7 process got launched that I -- I found out, and it was
8 almost inadvertent. I mean, I found out that Gowlings
9 had been retained by PowerStream.

10 MS. KATE MCGRANN: When you say after
11 the process got launched, what do you mean by that?

12 MR. DAVID MCFADDEN: After the task
13 force was set up, as I recall it, I -- I heard that
14 and as a result of that, I mean -- well, start with
15 sort of an odd situation because Collus or -- is not a
16 client of the firm, so it wouldn't appear in a
17 conflict's search, it didn't exist.

18 It -- normally if it was a client,
19 you'd pick it up right away because we have -- you had
20 these -- you know, very thorough search process, so
21 that didn't show up.

22 It happened to come up in some -- I
23 don't even remember exactly the context, that somehow
24 Robert Hull from Gowlings had been retained to work
25 with Gowlings and in my -- he said well, you know, we

1 -- you know, we talked about very -- I said look, we
2 can't talk about any of this. And -- and so when we
3 had our weekly energy group meetings, he never ever
4 reported on this ever, it never -- it was as if the
5 deal never happened as far as everybody else was
6 concerned, and certainly that -- that was the
7 understanding.

8 I originally was thinking there may
9 have been a conflict screen put in place, but it --
10 it's hard to put a conflict screen in place when
11 there's no -- there's no -- the firm didn't have a
12 conflict.

13 So it was sort of a weird situation.
14 So, yeah, I did not know about it and we did not -- I
15 didn't ask him for any information at all and -- and
16 so I mean -- so we agreed we wouldn't speak about it.

17 MS. KATE MCGRANN: Okay. Could we
18 turn up ALE5026, please.

19 So these are -- our understanding is
20 that these are handwritten notes that Robert Hull
21 took.

22 If you scroll down, we've also been
23 provided with a typewritten transcription of them,
24 which I think might be an easier point of reference
25 for us.

1 MR. DAVID MCFADDEN: I couldn't read
2 that writing.

3 MS. KATE MCGRANN: So I'm going to
4 suggest that we work from the type -- the typewritten
5 transcripts.

6 So the document is titled Transcription
7 of Bob Hull's notes of 2011 and September 2008
8 discussion with David McFadden.

9 I'll give you a second to review the
10 notes and my first question for you will be you
11 remember having this discussion with or a discussion
12 like this with Robert Hull?

13 MR. DAVID MCFADDEN: I don't remember
14 the specifics of the discussion. The only thing I can
15 think of at -- he did call about what's the next step,
16 or what are the expected times coming up. I -- I
17 vaguely remember a conversation about that, and that's
18 about it.

19 I don't remember the -- the gist of the
20 rest of this, talking about it specifically at all,
21 but I remember getting a call and then he -- he said,
22 look, I don't -- we agreed we couldn't talk about
23 anything about what had happened and some of -- you
24 know, I -- what's said there, I'm not questioning that
25 he didn't write it down wrong, I'm -- but all I

1 remember is talking to him briefly about the dates and
2 the fact it was -- you know, we were proceeding ahead.

3 MS. KATE MCGRANN: Okay, you said that
4 you remember that -- you've explained to us that you
5 remember about the conversation. Is it -- is it the
6 case that if I would like to ask you some questions
7 about the notes, I understand that you say that you
8 don't have much of a recollection of the conversation.

9 For example, the last bullet point
10 where it says "other bidders seem okay with 50/50", do
11 you recall anything about that part of your discussion
12 with Mr. Hull?

13 MR. DAVID MCFADDEN: Actually, no, I
14 don't remember saying that. I may very well have, it
15 may have come up in the -- you've got to remember, he
16 is making notes, I mean, it probably came up about 50-
17 50, is that okay or whatever. I may well have said
18 well, you know, I think other bidders are prepared to
19 go along with 50/50 perhaps something like that. I
20 just don't remember, to be honest, what I said exactly
21 there.

22 MS. KATE MCGRANN: Well, I don't want
23 to belabour this by going through it point by point.
24 Is -- is there anything else that you can say that
25 will help us understand the conversation between the

1 two (2) of you based on the notes that are here in
2 front of you?

3 MR. DAVID MCFADDEN: My recollection
4 was I -- when I think about, I think I was mainly
5 calling up to find out where is the process, rather
6 than anything else. I think that's really what the
7 context, where is the process now.

8 MS. KATE MCGRANN: Do you know why --
9 you know, we just looked at the dates of the strategic
10 task team meeting, so PowerStream would have been in
11 front of the strategic task team nine days earlier.

12 Do you know why he's coming to you with
13 questions that he could've asked at that meeting or
14 that PowerStream could've asked at that meeting?

15 MR. DAVID MCFADDEN: You'd have to ask
16 him that, I'm not sure why he called me at that point.

17 MS. KATE MCGRANN: Do you know if at
18 this point in time the other bidders had been advised
19 that all the other bidders seemed okay with 50-50?

20 MR. DAVID MCFADDEN: Nobody -- I mean,
21 in -- in the various meetings we had, nobody came
22 forward and said we want -- we'll only buy a hundred
23 percent. There seemed to be a general awareness among
24 all the bidders that we're -- Collingwood was not
25 going to likely -- well, was not prepared to sell 51

1 percent.

2 So what -- where do you wind up at that
3 point? So I think the general assumption was we're
4 talking 50/50. But that -- that was the general
5 impression because at that point we hadn't received
6 any proposals, per say, so.

7 MS. KATE MCGRANN: Okay, and my
8 question is a little bit different. Do you know if at
9 this point in time or afterwards the other bidders
10 were provided with the information that -- or the
11 other bidders seemed okay with 50/50?

12 MR. DAVID MCFADDEN: They could have.
13 I don't know who -- it might be they checked with KPMG
14 or somebody like that. I don't know.

15 MS. KATE MCGRANN: Do you know whether
16 that information was shared with any other --

17 MR. DAVID MCFADDEN: I don't know. I
18 don't know.

19 MS. KATE MCGRANN: Turning to the
20 scoring of the RFP, if we could put up CPS6891.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: You know, we'll
25 just turn directly to paragraph 359 in the foundation

1 document.

2 I gave you this paragraph to situate
3 you in time, so the responses to the request for
4 proposals were due on November 16th, 2011. Do you
5 remember that?

6 MR. DAVID MCFADDEN: Yes.

7 MS. KATE MCGRANN: Our understanding,
8 it was set out in the RFP that the responses were to
9 be delivered in two (2) envelopes, one (1) containing
10 the responses to what has been referred to as the non-
11 financial criteria, the 70, and then the other
12 envelope containing the financial criteria which was
13 allotted --

14 MR. DAVID MCFADDEN: That's correct.

15 MS. KATE MCGRANN: Okay.

16 MR. DAVID MCFADDEN: That, by the way,
17 is a fairly common thing done with government
18 procurements, so that -- because the tendency in -- in
19 -- typically in government procurements is that you
20 first look at the money and then you look at other
21 things, so the decision is -- is fairly typical now,
22 not put the money separate and look at -- evaluate
23 everything but money and then look at money and then
24 see if -- how it all fits together.

25 MS. KATE MCGRANN: Okay. And that was

1 exactly where I was about to go with my questions.

2 MR. DAVID MCFADDEN: Sorry.

3 MS. KATE MCGRANN: No, no, that's --
4 no, don't be sorry at all.

5 It's our understanding that the
6 approach that was to be taken by the strategic task
7 team was first they would receive the non-financial
8 information, review it, score it, then receive the
9 financial information afterwards for the first time,
10 review it and score it.

11 MR. DAVID MCFADDEN: Right.

12 MS. KATE MCGRANN: Is that how you
13 understood the process was --

14 MR. DAVID MCFADDEN: That's exactly
15 right.

16 MS. KATE MCGRANN: Could we turn up
17 TOC67284, please.

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: This is an email
22 sent on November 16th, 2011, from Pam Hogg to Marian
23 Spence and yourself. It's got an attachment,
24 PowerStream.pdf. Who's Marian Spence?

25 MR. DAVID MCFADDEN: That's my wife.

1 Strangely enough, I don't know why she's getting this.

2 That's strange.

3 MS. KATE MCGRANN: Can you take a look
4 at the attachments to this document, please, which I
5 believe is TOC67313?

6

7 (BRIEF PAUSE)

8

9 MS. KATE MCGRANN: All right. I've
10 jumped ahead of myself. Turning back to TOC67284,
11 what we just looked at.

12

13 (BRIEF PAUSE)

14

15 MS. KATE MCGRANN: As you see, there's
16 an attachment. Could we then turn up the attachment,
17 which is TOC67285?

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: This is a November
22 16th, 2011, letter from PowerStream to Dean Muncaster.
23 If you scroll through, you can see that it contains a
24 PowerStream Executive Summary. If you keep scrolling
25 down to page 9, that -- it appears to be the -- the

1 response to Sections 3.2 to 3.7 is provided.

2 Do you recall receiving this document
3 on this date from Pam Hogg?

4 MR. DAVID MCFADDEN: I don't
5 specifically remember receiving it. I know I read the
6 document but I don't recall receiving it in this way,
7 but I -- I may very well have received it from Pam.

8 MS. KATE MCGRANN: Okay. And then if
9 he could turn to TOC67313, please?

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: This is now the
14 next day from Ms. Hogg to you, saying:

15 "David: I'm resending the
16 PowerStream proposal as the one (1)
17 I had sent earlier included the
18 financials and the executive
19 summary. I've attempted to recall
20 the email but if you've already
21 opened the email, please deplete
22 (sic) it and replace it with the
23 attached."

24 Do you recall receiving this email from
25 Pam Hogg?

1 MR. DAVID MCFADDEN: Yes. It was a --
2 no. Yeah, it was -- it was a mistake.

3 MS. KATE MCGRANN: And -- and do you
4 remember what you did in response to this email?

5 MR. DAVID MCFADDEN: I remember
6 deleting a document. I don -- still remember I
7 deleted the whole proposal, I -- and that was the only
8 feasible way to do it. I remember I deleted the whole
9 previous one. I don't know if I actually read the
10 whole one (1) before -- before I got this one (1)
11 anyway, but I certainly delete -- I remember deleting
12 a whole raft of stuff in -- in line with what Pam had
13 said.

14 MS. KATE MCGRANN: Okay. Could we
15 turn to ALE49170, please?

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: This is an email
20 from Robert Hull to you on November 16th, 2011. He
21 says:

22 "Dave: As discussed, here are the
23 PowerStream submissions to the
24 Collingwood RFP as delivered today."

25 And as you can see there are a series

1 of documents attached to the email.

2 MR. DAVID MCFADDEN: Yeah.

3 MS. KATE MCGRANN: Do you recall
4 receiving this email?

5 MR. DAVID MCFADDEN: You know what, I
6 don't really recall receiving the email. It was
7 redundant information anyways. I already -- going to
8 get it separately. I know why he sent it to me
9 really. You know, it had already gone to the company,
10 so it was already there, but, I mean, I had no reason
11 to receive it this way but I guess he thought he would
12 be helpful and send it to me, but I -- I don't
13 particularly remember the email. I don't particularly
14 remember addressing it. I -- I remember getting a
15 document and thinking it's sort of redundant, I
16 already have it somewhere else, but I don't know why
17 he sent it to me. It wasn't needed.

18 MS. KATE MCGRANN: In his email to
19 you, Mr. Hull says:

20 "Dave: As discussed, here are the
21 PowerStream submissions."

22 Do you recall the discussion that he's
23 referencing there?

24 MR. DAVID MCFADDEN: No, I don't. He
25 may have just said, look, we've submitted our RFP or

1 something -- that response. That's probably all he
2 said. I can't imagine what else he'd have said at
3 that point.

4 MS. KATE MCGRANN: It looks to us like
5 you receive a complete response. You see, "Responding
6 to your RFP response Section 3.1, RFP response Section
7 3.2 to 3.7."

8 That would be inconsistent with the
9 process that was envisioned whereby the task team
10 would receive first the non-financials --

11 MR. DAVID MCFADDEN: Yeah.

12 MS. KATE MCGRANN: -- score, and then
13 the financials and score?

14 MR. DAVID MCFADDEN: That's why I
15 didn't -- I didn't read this stuff because I knew --
16 because I already was aware -- yeah. I -- I didn't
17 read it. I remember -- and I don't know why he sent
18 it to me, to be honest with you, but it wasn't
19 appropriate.

20 MS. KATE MCGRANN: Okay. So is it
21 your evidence that you recall receiving this email and
22 you recall thinking this is inappropriate and so you
23 didn't read --

24 MR. DAVID MCFADDEN: Yeah.

25 MS. KATE MCGRANN: -- the attachments?

1 MR. DAVID MCFADDEN: I -- I was not
2 going to go through and read all that when I knew I
3 was already -- had the stuff from -- I was going to
4 have the stuff from Collus. It made no sense, so I
5 just -- I don't know if I deleted it right away or
6 what I did with it, but I know I -- I remember getting
7 this, saying I don't know why I'm getting all this. I
8 mean, I know he said we've submitted it, and then he -
9 - he sent this along. He probably thought this -- he
10 may not have been aware of the process we were
11 following. I don't know. I have no idea what he was
12 aware of at the time, but he probably thought he was
13 just being helpful by sending things along, but it
14 wasn't -- it wasn't helpful at all, certainly not in
15 these circumstances.

16 MS. KATE MCGRANN: Do you -- do you
17 recall if you responded to him in any fashion to let
18 him know that you didn't think you should have all
19 that information and you'd be deleting it?

20 MR. DAVID MCFADDEN: I don't recall.

21 MS. KATE MCGRANN: Do you recall if
22 you advised the other members of the strategic task
23 team that you had received this information and you
24 thought it wasn't appropriate so you deleted it?

25 MR. DAVID MCFADDEN: No, I didn't tell

1 any --

2 MR. MICHAEL WATSON: Your Honour --
3 Your Honour, I -- I have to object. The witness has
4 not adopted and agreed with the characterization,
5 which has twice been made now that it was
6 inappropriate. Rather, what the witnesses has been
7 saying over and over again is that it wasn't useful
8 and it was redundant.

9 My respectful submission is that it
10 ought to be put to him directly, because he hasn't
11 accepted that in his answers.

12 THE HONOURABLE FRANK MARROCCO: I
13 actually thought he did, but go ahead.

14 MS. KATE MCGRANN: That's okay. We
15 can do it step by step.

16

17 CONTINUED BY MS. KATE MCGRANN:

18 MS. KATE MCGRANN: So we had talked
19 about the fact that there was going to be a two-stage
20 review process in which the strategic task team first
21 received the non-financial components and reviewed
22 them and scored them, and then received the financial
23 components and reviewed them and scored them.

24 I understood your evidence to be, first
25 of all, that's pretty usual practice for good reason,

1 and second of all, that that's what you thought the
2 process was. Is that fair?

3 MR. DAVID MCFADDEN: Absolutely.

4 MS. KATE MCGRANN: Did you think it
5 was appropriate for you to be receiving all of the
6 information at once?

7 MR. DAVID MCFADDEN: No, and I didn't
8 read it.

9 MS. KATE MCGRANN: Okay. So when I
10 say to you, receiving all of this information at once
11 is inappropriate, do you agree with me?

12 MR. DAVID MCFADDEN: Yes, in these
13 circumstances it was clearly inappropriate. I -- I
14 can't tell you what he was thinking, but I --
15 certainly from my point of view it was because --
16 that's why I didn't even look at any of this stuff,
17 because I didn't want to have this problem of having
18 reviewed the financial stuff ahead of when we're
19 supposed to do it.

20 MS. KATE MCGRANN: And, you know,
21 unless he had told you what he was thinking. I'm not
22 asking you to put yourself into Mr. Hull's mind. I
23 understand your evidence to be that you don't know why
24 he sent this to you. Is that right?

25 MR. DAVID MCFADDEN: I think he was

1 trying to be helpful and was saying, well, here, this
2 is what we sent in today, and I think that's really
3 what the motive was. I don't think it was -- you'd
4 have to talk to him, but I -- I mean, he's a, in my
5 experience, a highly ethical guy. I don't think he'd
6 be wanting to expose for me or anybody else in the
7 company to a -- to a situation that was improper.

8 MS. KATE MCGRANN: And I understand
9 your evidence also to be that first of all you have no
10 recollection of responding to Mr. Hull, letting him
11 know that you didn't think you should be getting this
12 information and you'd delete it.

13 MR. DAVID MCFADDEN: I don't recall
14 going back to him with anything. If I did, I might
15 have but I -- I certainly ignored it and I didn't
16 thank him for it or anything else. I mean, that was
17 just -- I didn't pay attention to it.

18 MS. KATE MCGRANN: And you didn't
19 advise the other members of the strategic task team
20 that you had received all of this information?

21 MR. DAVID MCFADDEN: That's correct.
22 That's correct.

23 MS. KATE MCGRANN: Did you advise
24 anyone at KPMG that you had received this information?

25 MR. DAVID MCFADDEN: I didn't advise

1 anybody of it at all. I just sort of ignored it.

2 MS. KATE MCGRANN: I think that you
3 said that you didn't review this information, so it
4 may make my last question redundant, but what effect
5 did receiving this information have on your scoring of
6 the responses to the RFP?

7 MR. DAVID MCFADDEN: Absolutely none.
8 It didn't matter to me; zero.

9 MS. KATE MCGRANN: Could we turn up
10 ALE5133.0002.

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: So this is a slide
15 presentation that was made to Council on an in camera
16 session on December 5th, 2011. Were you present for
17 this presentation?

18 MR. DAVID MCFADDEN: There were so
19 many meetings on at that point. I'm not sure that I
20 was. This would have been an in camera session. I
21 don't think I would've been invited to this.

22 MS. KATE MCGRANN: Okay. Could we go
23 to slide 18 of this document, please?

24 I want to ask you about point number 4
25 because it specifically references you. So this is

1 talking about PowerStream's response to questions. In
2 your response to the RFP, you noted a "shotgun
3 clause." Can you expand on your thoughts? The bullet
4 points:

5 "PowerStream does not like this
6 approach and in fact does not like
7 this phrase. The reason it is
8 mentioned is because it is stated
9 this way in the RFP to sell itself.
10 Their views on liquidity is exactly
11 that of our's and specifically David
12 McFadden's."

13 Do you know what view is being
14 referenced there?

15 MR. DAVID MCFADDEN: Well, typically a
16 shotgun clause is included to break a deadlock that
17 has become very unhealthy in the company for whatever
18 reason, and it turned out that there was some truth to
19 that. So basically what it does is it permits under
20 the other side to get out of a deal, in other words to
21 get liquidity when they want out with a shotgun
22 clause.

23 I mean, you can -- there are different
24 ways you can deal with this. One (1) is a right of
25 first refusal, which is also seen, but that can go on

1 for months. This one (1) -- the shotgun clause
2 facilitates a more rapid resolution of a dispute. You
3 allow one (1) side so many days to decide whether to
4 sell or buy at -- at a price which tends to -- the
5 price tends to be fair because you're not putting an
6 unbelievably high price because it could hurt you if
7 you're buying an inflated price. You don't want to
8 make it so low that obviously the other side is going
9 to pick it up. So you try to come up with one (1)
10 that's fair market.

11 So this is -- that's the -- that's a
12 fairly common clause. It's -- it's virtually never
13 used. I -- I can't tell you how many times I put a
14 shotgun clause in and never see the light of day. One
15 (1) of the few companies that it actually has been
16 used on has been Collus PowerStream, oddly enough.
17 So, I mean, this is the sort of exception to prove the
18 rule.

19 MS. KATE MCGRANN: Okay. And I had
20 understood your evidence to be that you weren't
21 engaged in any discussions about governance and things
22 like that with the Strategic Task Team in terms of
23 what was going to go into the RFP, the information
24 that you just gave me is that information that you
25 discussed with members of the Strategic Task Team was

1 part of the formation of the RFP exercise.

2 MR. DAVID MCFADDEN: Yeah. I expect
3 that's the kind of general clause that we'd have
4 discussed.

5 MS. KATE MCGRANN: You have specific
6 recollection of discussing that with the members of
7 the Strategic Task Team?

8 MR. DAVID MCFADDEN: I recall in
9 general a discussion about what do we do if there's a
10 breakdown in relationships, and I -- I think the
11 shotgun was a -- just a handy-dandy way to -- it's the
12 normal industry clause most people in the legal areas
13 know what that means.

14 MS. KATE MCGRANN: Can you tell me
15 what you remember about that discussion?

16 MR. DAVID MCFADDEN: I don't remember
17 much about it. I don't remember it being a debate.
18 But I -- it doesn't strike me as a debate. I mean, I
19 think we talked about what happens if we want to get
20 out, and we talked about the shot -- to put a shotgun
21 clause in. Other one (1) is a ROFR. There's --
22 there's more than one, and there -- there are
23 variations of the two.

24 But typically, this is the -- well,
25 there is a put which you can force somebody to buy

1 from you. That is another way you can do it. But
2 typically, that's not used a lot.

3 MS. KATE MCGRANN: In the general
4 discussion you recall having with the Strategic Task
5 Team, do you recall if there was also discussions of a
6 ROFR and a put as options?

7 MR. DAVID MCFADDEN: I remember us
8 having a discussion about it. I don't remember us
9 going through all the details of, you know, what went
10 into each one (1) of them. I know we did discuss what
11 involve -- what a shotgun involved.

12 MS. KATE MCGRANN: Okay. But you
13 don't remember whether there was a consideration of
14 the different sort of exit options --

15 MR. DAVID MCFADDEN: I don't remember
16 it.

17 MS. KATE MCGRANN: -- pros and cons.

18 MR. DAVID MCFADDEN: Maybe a
19 discussion on that, and I don't -- if there was one, I
20 don't recall comparing one (1) to the other.

21 The discussion was more what happens if
22 we have a breakdown. What do we -- what clause -- how
23 can we deal with that? 'Cause there was a real worry.
24 I mean, we could get in with a company and that -- you
25 know, and it turns out that the Town and the company

1 can't get along. So what do you do at that point? So
2 you need some protection in here for both sides.

3 MS. KATE MCGRANN: So you remember the
4 question of how to exit the relationship was a serious
5 concern that was considered by the Task Team?

6 MR. DAVID MCFADDEN: Oh, yeah. It was
7 discussed. It -- but you'd want that in any agreement
8 like this. So yes, it was -- it was -- and -- and
9 this is obviously what was decided.

10 I don't remember who originally
11 proposed this, whether -- whether KPMG had just said
12 we should have that in. A lot of this was driven by
13 KPMG. But I mean, the others said this should go in,
14 or there was a discussion. But that's what...

15 MS. KATE MCGRANN: And I'd just like
16 to focus with you right now on what you can remember
17 about what was discussed by the Strategic Task Team.
18 And if it's the case that you can't remember
19 anything --

20 MR. DAVID MCFADDEN: I can't remember
21 the details on it. I remember seeing it made sense to
22 me that we -- it needed a clause in the event there's
23 a breakdown in relations.

24 MS. KATE MCGRANN: Okay. But I --
25 you've got to let me finish my questions.

1 MR. DAVID MCFADDEN: Sorry.

2 MS. KATE MCGRANN: That's okay. It's
3 normal for people to talk over each other.

4 But what I wanted to get at was you --
5 I think you remember generally that there was some
6 discussion about a shotgun clause, but you can't
7 remember whether various exit options were raised
8 explaining the pros and cons explored and a decision
9 made about what would be best for Collus Power in this
10 particular circumstance.

11 MR. DAVID MCFADDEN: Other people
12 might remember. I do not remember a detailed
13 discussion about all the options of this nature. I
14 remember a discussion about what do we -- what can we
15 do if -- if the relationship breaks down.

16 MS. KATE MCGRANN: Okay. And you
17 don't remember ultimately how a decision was made or
18 by whom in terms of what would be put into the RFP on
19 that point?

20 MR. DAVID MCFADDEN: Oh, I mean, I
21 don't remember who actually had the -- I mean, I -- I
22 think KPMG had the pen on this, so they probably went
23 ahead and did it.

24 You know, we didn't do sort of joint
25 drafting. I mean, it was -- it was obviously done by

1 KPMG in concert with -- with Dean and -- and likely
2 Ed Houghton.

3 MS. KATE MCGRANN: Okay. Because KPMG
4 would have to take instructions from someone, right?
5 They weren't retained to make all of the decisions
6 for --

7 MR. DAVID MCFADDEN: But they would
8 have been in the rooms, so they were listening to the
9 discussion. They probably said, oh, well, okay.
10 We'll put that in.

11 MS. KATE MCGRANN: And when you say it
12 was likely that Dean or Ed Houghton, that's a guess.
13 You don't know that, right?

14 MR. DAVID MCFADDEN: No. I can't -- I
15 don't know. I -- it -- this whole situation is a
16 little awkward because Dean was such a important
17 driver of this transaction, and it's hard to get the
18 flavour of it without him here, how it was actually
19 operating. But anyway, he isn't here. He's passed
20 away.

21 MS. KATE MCGRANN: Turning now to the
22 negotiations of the transaction with PowerStream after
23 it was selected as the successful proponent, what
24 involvement did you have in the transaction
25 negotiations following their selection as the

1 successful bidder?

2 MR. DAVID MCFADDEN: Very little. The
3 only thing that I was involved in, it was Dean wanted
4 me to go to a meeting with Ron Clark of Aird & Berlis,
5 who was representing the Town, talk to him about share
6 purchase agreements and what was needed. And that
7 did -- that was at Mr. Clark's office in Toronto.

8 And after that, I really didn't attend
9 any meetings with the law firm at all. I received
10 from time to time documents, but they -- they weren't
11 really directed to me. They were -- you know, they
12 went -- went to Dean and -- and Ed Houghton and
13 others.

14 MS. KATE MCGRANN: With respect to the
15 meeting that you went to with Ron Clark of Aird &
16 Berlis, I think you said that Aird & Berlis was
17 representing the Town?

18 MR. DAVID MCFADDEN: Yeah.

19 MS. KATE MCGRANN: And you were there
20 to discuss what was needed for the Share Purchase
21 Agreement?

22 MR. DAVID MCFADDEN: Well, because --
23 yeah. Dean wanted us to sit down and just discuss the
24 nature of the transaction. You know, what -- what --
25 how did -- you know, that -- that matrix in terms of

1 what was expected to be in the agreements to reflect
2 the hundred points that we had put together. It was
3 things of that nature. We want to be sure the
4 agreements reflected what the Town was interested in
5 and what had been discussed.

6 MS. KATE MCGRANN: Were you there to
7 represent the interests of the company and ensure what
8 the company needed to be in those agreements made it
9 into those agreements?

10 MR. DAVID MCFADDEN: Correct.

11 MS. KATE MCGRANN: And Mr. Clark was
12 doing the same thing on behalf of the Town?

13 MR. DAVID MCFADDEN: Correct.

14 MS. KATE MCGRANN: Other than that one
15 (1) meeting, you don't remember discussing that kind
16 of thing with him any further?

17 MR. DAVID MCFADDEN: No. He didn't --
18 no. In fact, from then on basically the reporting
19 sort of went to the owner. I mean, it -- it wasn't
20 coming to the Collus Board.

21 MS. KATE MCGRANN: Okay. So you
22 understood that Mr. Clark and his team at Aird &
23 Berlis were reporting directly to who?

24 MR. DAVID MCFADDEN: To the owner, to
25 the shareholder.

1 MS. KATE MCGRANN: Okay. And when you
2 say that, are you referring to the holding company or
3 are you referring to the Town?

4 MR. DAVID MCFADDEN: You know, we keep
5 going through this distinction. I've got to tell you
6 I don't make that distinction period. I mean, the
7 shareholder to me is the Town. The holding company
8 is -- is a hundred percent owned by the Town. That's
9 it. That's the shareholder. So when I refer to the
10 shareholder, I'm referring to those people --

11 MS. KATE MCGRANN: Okay.

12 MR. DAVID MCFADDEN: -- or that group.
13 If they wanted separate counsel, they can get separate
14 counsel. Collus Power is essentially the assets as
15 being sold. So we don't -- we're not -- we are
16 part -- we are the part of the puzzle here. We're
17 being sold, but they're not doing a deal with us.
18 They're -- the deal -- PowerStream is with the Town
19 and -- and with Collus Utilities. It's not with us.

20 MS. KATE MCGRANN: Do you know who was
21 providing instructions on the part of the Town or on
22 behalf of the Town?

23 MR. DAVID MCFADDEN: I have no idea.
24 I mean, I'm assuming that whoever would normally give
25 instructions for the Town are giving them. I -- I'm

1 not intimately familiar with how this Town operates,
2 and how it certainly operated at that point in time,
3 and how it gave instructions to Aird & Berlis.

4 There seems to have been there are more
5 than one (1) lawyer at Aird & Berlis that seemed to be
6 involved with them, and I -- I don't know how they all
7 got their instructions.

8 MS. KATE MCGRANN: And is that an
9 observation you made at the time, or is that an
10 observation that you're making based on what you've
11 read in the documents?

12 MR. DAVID MCFADDEN: That's basically
13 what I now read in the documents. I mean, the only
14 person I knew who was -- who was actually involved day
15 to day with Ron Clark -- and there was another lawyer
16 associate of his by the name of - I think it's
17 Corrine Kennedy.

18 MS. KATE MCGRANN: M-hm.

19 MR. DAVID MCFADDEN: I think the two
20 (2) of them were working together as a team. There
21 could have been others. And there's another person in
22 there who had some relationship -- acted for the Town
23 on other things. Mr. Longo somehow was in -- in the
24 picture, as well, but he wasn't really an energy or
25 energy-related lawyer. So it would have fell onto his

1 partner, Ron Clark, and his associate.

2 MS. KATE MCGRANN: Now, the Collus
3 entities were signatories to these agreements. Do you
4 know who was representing them in the transaction
5 negotiations?

6 MR. DAVID MCFADDEN: Which -- who?

7 MS. KATE MCGRANN: I said the Collus
8 entities. I believe both the holding company and
9 Collus Power were signatories to these agreements. Do
10 you know who was representing them in the transaction
11 negotiations?

12 MR. DAVID MCFADDEN: Well, I assume it
13 was Aird & Berlis. I'm not sure whether the law firms
14 were retained by them. But I -- I assumed it was Aird
15 & Berlis, but it could be others.

16 MS. KATE MCGRANN: Do you know who was
17 providing instructions on behalf of the involved
18 Collus entities?

19 MR. DAVID MCFADDEN: I'm assuming a
20 combination of -- what you'd normally expect, it'd be
21 a combination of Dean Muncaster, chair of the holding
22 company, and likely the CAO unless the mayor was
23 giving personal direction herself.

24 But I mean, I assumed it would be --
25 normally in any municipal government, the CAO tends to

1 do the day-to-day work retaining lawyers and making
2 decisions. That's -- unless you have an in-house Town
3 solicitor, which it didn't have. So normally that'd
4 be the CAO combined with Dean Muncaster who was chair
5 of the holding company.

6 MS. KATE MCGRANN: Okay. Turning from
7 your understanding of what normal practice would be,
8 do you know who was providing instructions on behalf
9 of the Collus entities with respect to this
10 transaction?

11 MR. DAVID MCFADDEN: I have no idea
12 who was giving specific direction to Ron Clark.

13 THE HONOURABLE FRANK MARROCCO: Are
14 you going to move to something else, because if you
15 are, I'm going to take a short break.

16 MS. KATE MCGRANN: That makes sense.

17 THE HONOURABLE FRANK MARROCCO: Ten
18 (10) minutes.

19 MR. FREDERICK CHENOWETH: Your Honour,
20 I wonder if we might make that a fifteen (15) minute
21 break? And then I'd like an opportunity to -- I may
22 be the first cross-examiner, and I'd like an
23 opportunity to review my notes just before we proceed
24 with that cross-examination.

25 THE HONOURABLE FRANK MARROCCO: I'll

1 be happy to give you fifteen (15) minutes. It may
2 shorten the cross-examination.

3 MR. FREDERICK CHENOWETH: Indeed,
4 that's the purpose, Sir. Thank you.

5 THE HONOURABLE FRANK MARROCCO: Yeah.
6 I'm fine with that.

7

8 --- Upon recessing at 3:34 p.m.

9 --- Upon resuming at 3:49 p.m.

10

11 THE HONOURABLE FRANK MARROCCO: Did
12 you -- did you have sufficient time, Mr. Chenoweth?

13 MR. FREDERICK CHENOWETH: I asked a
14 few things and I had my red pen out.

15

16 (BRIEF PAUSE)

17

18 CONTINUED BY MS. KATE MCGRANN:

19 MS. KATE MCGRANN: I'm just going to
20 close out with a couple of questions about events that
21 took place after the transaction finalized.

22 So, could you just explain what your
23 involvement was in Collus Power -- PowerStream after
24 the transaction closed?

25 MR. DAVID MCFADDEN: After the

1 transaction closed I was asked to stay on the Board.
2 Now, Dean Muncaster died just before the closing,
3 which was a shock to everybody, so agreed to stay on
4 in the -- in the -- certainly, in that circumstance.

5 The mayor stayed on as the nominee of
6 the Town. And then a gentleman by the name of David
7 Garner, who was a very experienced businessperson who
8 -- who's a resident of Collingwood was the third
9 person invited on. And then PowerStream nominated
10 three (3) people, as well, so it was three (3) and
11 three (3).

12 We came up with this idea of -- of what
13 to do with the -- the chair. We decided to have co-
14 chairs. We could have alternated. But then the
15 decision was made, well, rather than make a decision,
16 let's have co-chairs.

17 So, I become co-chair together with
18 Brian Bentz. And then we were joined on the Board by
19 a fellow by the name of David Horchuk (phonetic), who
20 is a lawyer and had been a director of PowerStream,
21 and Mayor Lehman, from Barrie.

22 So, that was the group, six (6) of us.
23 And Brian and I co-chaired. And we tended to
24 alternate meetings. So, one (1) meeting I'd chair.
25 And then I'd sit out. And then he'd chair. And

1 that's how we worked it for a couple of years.

2 MS. KATE MCGRANN: Okay. It's our
3 understanding that in and around April of 2012 Mr.
4 Houghton took on the role of acting CAO with the Town.
5 Was that a role that he discussed with the Board
6 before he took it on?

7 MR. DAVID MCFADDEN: No, he didn't ask
8 for our permission. The CAO at the time left quite
9 suddenly, from what I could see, and -- and Ed was
10 asked to fill in that position, which in -- so, he --
11 he was doing that -- the acting CAO position -- or I
12 can't remember the acting or interim, but one (1) or
13 the other, acting, and also carrying on his work with
14 Collus PowerStream, and then various capacities he had
15 there.

16 MS. KATE MCGRANN: Did you or the
17 Board have a view on his agreement to take on that
18 additional role of acting CAO of the Town?

19 MR. DAVID MCFADDEN: I was never keen
20 on it. I -- I understood it was sort of like an
21 emergency situation, somebody had to fill the role.
22 But the fact is that this company had taken on a new
23 shareholder. There was some restructuring that had to
24 happen.

25 We had also come to an understanding

1 that Collus PowerStream company was going to be a
2 regional aggregator, that PowerStream was happy with
3 that kind of role, so that required a lot of work.

4 What I found out later which I was
5 surprised at, but -- well, I was surprised. It just
6 struck me -- I -- I made inquiries as to who was
7 paying him for the -- for being the interim CAO. And
8 I discovered he was doing that job for nothing because
9 he was being paid by the Collus company, and I found
10 that sort of unusual.

11 But, I mean, it was an accommodation
12 that the Company provided the Town to get them through
13 until they could hire somebody to be full-time -- or
14 to -- or to at least assume that role if it wasn't
15 going to be full-time.

16 MS. KATE MCGRANN: And was it your
17 understanding that the Town was taking immediate steps
18 to try to fill that role while Mr. Houghton covered
19 the emergency that you identified?

20 MR. DAVID MCFADDEN: That's my
21 understanding, is they launched a search process or in
22 the process of finding somebody to replace him over a
23 period of time. I -- I don't recall a specific
24 deadline.

25 He -- he took on the job, in effect, as

1 a volunteer, in some respects, which -- and you may
2 say, well, that's sort of odd. But because of the
3 role he had in this Collus utilities operation, he --
4 he had his finger in an awful lot of things that were
5 already going on in the town, so it wasn't totally out
6 of -- you know, bizarre that he would take on more
7 responsibility on an interim basis.

8 But the question I had is that,
9 frankly, as a -- as a Board member was, is this --
10 it's kind of a cross subsidy that we're -- that the
11 Company's offering the Town. I mean, it would have
12 been more appropriate to have shared his compensation
13 or something like that.

14 But look at, you know what? It's not
15 worth rehashing necessarily all that, but the fact is
16 that's what happened. And it went on for my -- I
17 can't remember the exact length of time, but I think
18 it was the better part of a year.

19 MS. KATE MCGRANN: Turning from that
20 to the shared services as between the Collus entities
21 and the Town, how did those services pay out once
22 Collus Power -- PowerStream was -- was in place?

23 MR. DAVID MCFADDEN: It started out
24 all right. But then, gradually -- and it more
25 happened after Ed Houghton left as the inter -- CAO

1 and -- and another interim CAO came in, Mr. Brown,
2 that there was a lot of question about whether this
3 should all be brought -- continue the way it was going
4 and -- and who was getting the most value.

5 One (1) thing I would point out is that
6 Collingwood was almost unique. There are a couple of
7 other municipalities I know that do this, but
8 virtually all -- everywhere in Ontario you want to
9 look, the power companies are totally separate from
10 water.

11 They're incorporated. They run as a
12 power company. That's all they do. They don't get
13 involved with water and all this other stuff. They
14 operate in their own buildings and everything. You
15 can go from one (1) end of Ontario to the other.

16 Ottawa Hydro does not operate the water
17 systems. Toronto Hydro does not operate Toronto's,
18 Burlington, Milton; you could go all around the
19 Province.

20 The thing up here was unique in some
21 respects. The only other place that I know is
22 Kingston did a similar thing. The reason why they did
23 it there was they said their utility would not be
24 viable if they didn't merge -- have a shared premises
25 and -- and facilities. And Windsor had a similar

1 issue. But other than those two (2), I can't name
2 others.

3 And the -- so this is an unusual
4 arrangement, to have all -- all this commingled. What
5 you then head into, of course, is this whole concern,
6 is -- are -- is -- where's the pricing here, is this
7 fair, is it fair to the electricity consumers, a thing
8 called the Affiliate Relationships Code.

9 We -- the -- a power utility has to
10 operate in a way where, when it's working for related
11 entities, that -- that the consumer is not being
12 disadvantaged, that there's somehow a subsidy that is
13 being transferred so that the -- this other entity,
14 whoever it happens to be, is somehow getting a benefit
15 or reduced cost at the expense of the ratepayer -- the
16 electricity ratepayer.

17 So, that was -- that's always an issue.
18 And then debate arose over what was happening, who was
19 subsidizing who or was there any subsidy at all, and
20 it became quite a tense situation.

21 MS. KATE MCGRANN: And then that was
22 an intense situation between the Company on the one
23 (1) hand, and the Town on the other?

24 MR. DAVID MCFADDEN: Yes. Well, not -
25 - yes, be -- the administrations of the two (2),

1 that's correct.

2 MS. KATE MCGRANN: All right. And did
3 that lead to a deterioration of the -- the services as
4 were shared between companies on the one (1) side,
5 Town on the other?

6 MR. DAVID MCFADDEN: I don't think it
7 hurt services. I actually believe that the employees
8 worked through it. I don't think the water services
9 or any other services were -- were hurt, nor was the
10 power.

11 It was more to -- at a personnel level
12 and more at a -- at a relationship level where the --
13 these tensions really came up and studies were
14 undertaken. It wa -- there was a general problem with
15 it.

16 And I think there -- there had been a
17 feeling that, well, you know, it worked well for
18 years, it should be just fine. But -- but then some
19 questions arose as to whether it should be carried on
20 or -- and maintained, and so that -- that did create a
21 lot of tension.

22 MS. KATE MCGRANN: And were there
23 ultimately changes to the shared services
24 relationships as between the Town and the -- the
25 Collus entities?

1 MR. DAVID MCFADDEN: Not during the
2 time that I was chairman or -- or co-chair. It -- it
3 settled later, although now it looks like it's been
4 all brought together again.

5 But, no, the -- what had happened was
6 PowerStream had no real interest in this water asset.
7 They were a pure power company. They had assumed that
8 this was all going to be a friendly relationship. And
9 when -- when they got into it, they discovered there's
10 all this controversy going on and difference of
11 opinion of subsidization, everything else, and
12 contention over this.

13 Myself, the mayor, and David Garner
14 found ourselves in a very odd position. So, it was
15 agreed that PowerStream, they'd have their team
16 negotiate with the Town because, you know, we -- we
17 were in sort of a bit of a conflict here where we were
18 nominees of the Town, so PowerStream took it on to try
19 to work out an arrangement that everybody would be
20 happy with it.

21 And in the time I was there it never
22 quite got resolved. It was -- I remained a source of
23 tension and -- and controversy internally. I mean, I
24 don't think -- the -- the community out there wasn't
25 seeing the water turning off or any controversy as far

1 as that's concerned, it was more internal among all
2 the staff.

3 MS. KATE MCGRANN: You had mentioned a
4 plan to do some regional aggregation. What happened
5 with that plan?

6 MR. DAVID MCFADDEN: The problem was a
7 lot of the people didn't want to be aggregated. There
8 -- there was discussions with Wasaga Beach. They're
9 very friendly, didn't want to -- didn't want to do it.
10 Discussions were had with Orangeville. They seemed to
11 be friendly, and then didn't want to do it.

12 It never actually went anywhere in the
13 end. It wasn't for want of trying. I mean, Ed
14 Houghton was out talking to people at the CHEC group,
15 so on, about what they could do together, but the --
16 it never quite gelled.

17 And then toward the end, when I was
18 chairman, the Company then became totally preoccupied
19 with all its internal problems, and so that -- that
20 ceased to be operative. But for the first couple of
21 years, Ed was out there beating the bushes trying to
22 find opportunities.

23 MS. KATE MCGRANN: From what you could
24 see, was the -- the tension related to the shared
25 services agreements and the fact that the regional

1 aggregation never took off two (2) separate things, or
2 did -- was there overlap between them?

3 MR. DAVID MCFADDEN: No. The -- the
4 tensions were quite is -- the tension between the Town
5 and Collus PowerStream were no way related to any
6 plans to aggregate. That -- that was on a separate
7 track.

8 The -- the tensions all revolved, a lot
9 of it, around the shared services, reporting, who was
10 going to be doing what with whom, and then, you know,
11 per -- and personality conflicts.

12 The stuff to do with aggregation was
13 really a function of whether anybody really wanted to
14 aggregate with us, and they decided not to. And then
15 eventually what happened was the team got so bogged
16 down internally trying to -- to cope with the issues
17 that were developed within Collus PowerStream, that
18 they stopped -- virtually stopped doing it is
19 essentially what happened from what I saw.

20 MS. KATE MCGRANN: Okay. So, it
21 wasn't the case that, you know, outside companies who
22 are looking at potentially merging or otherwise
23 amalgamating saw tension between the Town and the
24 Company and said, wow, we don't really want any part
25 of that, that's -- this doesn't look like it's for us?

1 MR. DAVID MCFADDEN: It leaked out.
2 That -- I mean, there -- there -- it was got -- after
3 about a year or so of this tension it did get around
4 Ontario.

5 I remember I used to go to meetings and
6 people would say, Oh, jeez, I hear -- boy,
7 Collingwood's up to its old game again, ay, you got
8 trouble up there, and so the word sort of out within
9 industry people. And you never know where people get
10 these stories from.

11 Some of it was in the medial locally,
12 but a lot of it was just people talking. So, there
13 was a -- there was a certain negative atmosphere
14 around Collus PowerStream at that point, toward the
15 last part of my term here, just this controversy was
16 swirling around the Company.

17 And who wants to become part of a
18 muddle? So, they -- there was not much more you could
19 do in that state?

20 MS. KATE MCGRANN: Those are my
21 questions. Thank you.

22 THE HONOURABLE FRANK MARROCCO: Mr.
23 Chenoweth...?

24

25 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: You're new
2 to this, but we've been dealing with this for a while.

3 MR. DAVID MCFADDEN: Yeah.

4 MR. FREDERICK CHENOWETH: It's -- it's
5 been interesting. In -- in any event, my name is
6 Chenoweth, Fred Chenoweth, and I represent Mr.
7 Houghton.

8 This is a bit of a question sort of out
9 of the -- out of the chronology of things, but you
10 were referred by Inquiry counsel to some
11 correspondence in which you expressed a concern about
12 the timing of the RFP.

13 And you said that possibly we should
14 consider postponing the RFP because of political
15 concerns and put it after the election. And I think
16 you highlighted the -- the necessity to -- to have an
17 opportunity for a holiday of transfer taxes to be put
18 into place?

19 MR. DAVID MCFADDEN: M-hm.

20 MR. FREDERICK CHENOWETH: Tell me if
21 you'd remember this. Assist me if you can. Did you -
22 - not terribly long after that and before KPMG fe --
23 fessed up to the fact that they'd miss that, did you
24 learn that, in fact, there was a holiday for transfer
25 tax and, therefore, the political concern was less of

1 an issue?

2 MR. DAVID MCFADDEN: Yeah. Certainly,
3 the -- in the LDC sector, this transfer tax wa -- was
4 a real burden for utilities to do anything. The other
5 aspects though that we were obviously concerned with,
6 for example, was the future of the Green Energy Act.
7 There -- there was a -- the -- the -- already, the
8 controversy had started around that, and -- and we had
9 been reacting to this, and in -- you know, moving
10 ahead with smart meters, looking at CDM, or
11 considering what we should be doing, and the -- it
12 might change the kind of deal we wanted, you know, if
13 there was a change in -- in government.

14 But as it turned out, we -- we cons --
15 the -- the decision was to carry on, so. But there
16 was the threat that something other than the transfer
17 tax, some policy changes, the OEB could -- could come
18 out with a different rate arrangement or something
19 else that may upset it, and these changes often follow
20 right on elections. You know, there's -- there's an
21 election issue around it, and -- and at that point, as
22 I mentioned earlier on, power yet again was an
23 election issue at that point in time.

24 So that -- that was my concern.
25 Whether it had affected us or -- or -- if there had

1 been a change of government, who knows. It may -- it
2 may have been no effect.

3 MR. FREDERICK CHENOWETH: I understand
4 there was -- there was -- you were able to confirm
5 that there was, in fact, a transfer tax holiday --

6 MR. DAVID MCFADDEN: Correct.

7 MR. FREDERICK CHENOWETH: And -- and
8 that reduced the political concern that you had
9 expressed in that letter?

10 MR. DAVID MCFADDEN: Correct.

11 MR. FREDERICK CHENOWETH: And as a --
12 as a board, et cetera, you felt comfortable knowing
13 that there was a holiday on the transfer tax you felt
14 comfortable proceeding.

15 MR. DAVID MCFADDEN: Correct.

16 MR. FREDERICK CHENOWETH: Correct?
17 Okay, thank you. Another kind of out of chronological
18 -- chronological sequence thing, but I suppose it
19 isn't if we're talking about how you got involved in -
20 - in Collus, I had a sense from what you had told us
21 achieve that it was Mr. Houghton that approached you
22 and asked if you would consider becoming involved in
23 the Collus Power operation?

24 MR. DAVID MCFADDEN: That's correct.
25 It -- it -- I -- Ed was virtually the only person I'd

1 ever met in -- in the Collus operation. I mean, I met
2 him at conferences. He was about the only person I
3 ever knew up here.

4 Dean Muncaster, I knew his son, oddly
5 enough, but it -- but he wasn't in any involved here.
6 So, yes. So I -- Ed was the only person I really
7 knew.

8 MR. FREDERICK CHENOWETH: I got the
9 impression that Ed -- was for a number of years, had
10 been quite involved in the energy sector, taking on
11 roles with the EDA and other organizations of that
12 nature.

13 Is that accurate?

14 MR. DAVID MCFADDEN: Yeah. He -- he
15 was really well known. He, at one (1) point, was
16 chair of the board of directors of the EDA, was on
17 their -- their board of directors for quite a number
18 of years. You know, you -- in any meeting I ever went
19 to, Ed Houghton was always there, I mean, long before
20 I had anything to do with Collus. I mean, I'd see Ed.

21 So he -- he was very much a personality
22 in the industry --

23 MR. FREDERICK CHENOWETH: Right.

24 MR. DAVID MCFADDEN: -- and certainly
25 representing the smaller LDCs. I mean, the big

1 companies, you know, had their own things, but Ed was
2 very much a guy who represented the medium and small
3 sized companies.

4 THE HONOURABLE FRANK MARROCCO: And --
5 and you say he was very well known. What was his
6 reputation in terms of -- of skills and -- and
7 knowledge of the industry around the time that he got
8 you involved in this organization, in -- I think it
9 was 2006, you said?

10 MR. DAVID MCFADDEN: 2007, I --

11 MR. FREDERICK CHENOWETH: 2007, okay,
12 yeah.

13 MR. DAVID MCFADDEN: Yeah.

14

15 CONTINUED BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: What was his
17 reputation in the -- in the -- I'll call it the LDC
18 industry at that point?

19 MR. DAVID MCFADDEN: Well, I think he
20 was regarded as a real leader in the community. He
21 was energetic. He was somebody you could always count
22 on to come to meetings. He supported everything that
23 was going on, regional meetings, everything.

24 So I think he was regarded as a -- as
25 one (1) of the really -- real -- real troopers in the

1 industry, got out there, supported things, and -- and
2 could be counted on.

3 MR. FREDERICK CHENOWETH: And -- and
4 did that -- did that prove to be true as you became
5 more intricately involved with Mr. Houghton in the --
6 in the management of -- of the Collus Power operation?

7 MR. DAVID MCFADDEN: Yeah, I mean --
8 it -- it -- for example, the aggregation thing that we
9 -- we were chatting about earlier on --

10 MR. FREDERICK CHENOWETH: M-hm.

11 MR. DAVID MCFADDEN: -- I mean, he
12 knew -- knew everybody. I could -- there was no
13 president of any company and probably right down to
14 the lineman that -- that Ed didn't know. I mean,
15 which, you know, normally, it'd be very useful. We
16 had our own problem why it didn't go ahead, but -- but
17 he certainly knew them, and -- and he was involved
18 with starting things, so he was very engaged in all --
19 all aspects.

20 MR. FREDERICK CHENOWETH: So you found
21 him capable and knowledgeable with respect to the LDC
22 industry?

23 MR. DAVID MCFADDEN: Yeah.

24 MR. FREDERICK CHENOWETH: And did you
25 find him to act with integrity?

1 MR. DAVID MCFADDEN: In my dealings
2 with him, I never had any problem with Ed on that
3 front at all.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: Now, you had
8 occasion to look at the -- and there's -- there's kind
9 of a chronological thing that develops here that --
10 that suggests that certain things happened at certain
11 times.

12 MR. DAVID MCFADDEN: M-hm.

13 MR. FREDERICK CHENOWETH: One (1) of
14 the first things comes to mind when I review these
15 materials, and -- and it -- it may or may not engage
16 your mind, but you were referred by Inquiry counsel to
17 a letter written by the mayor on or about January
18 31st, 2011, in which he directed Dean Muncaster and --
19 and Ed to do a valuation, and to look at options for
20 Collus Power.

21 And I think you -- you indicated that -
22 - that you didn't see that letter?

23 MR. DAVID MCFADDEN: I don't remember
24 seeing it, no, that's --

25 MR. FREDERICK CHENOWETH: All right,

1 and that was you --

2 MR. DAVID MCFADDEN: -- that -- that
3 is correct.

4 MR. FREDERICK CHENOWETH: -- that was
5 your answer to Inquiry counsel, and -- and thank you
6 for --

7 MR. DAVID MCFADDEN: M-hm.

8 MR. FREDERICK CHENOWETH: --
9 confirming it. Would you -- you, I take it, obviously
10 had a -- had a -- a strong relationship with -- with
11 Dean Muncaster --

12 MR. DAVID MCFADDEN: Yes.

13 MR. FREDERICK CHENOWETH: -- which
14 must have been a pleasure. In any event, did you
15 learn through Dean that -- through your discussions
16 with Dean that the Town was interested in getting a --
17 a valuation, and reviewing options for the future of
18 Collus Power?

19 MR. DAVID MCFADDEN: Well, I assumed
20 he did. Dean would --

21 MR. FREDERICK CHENOWETH: No, did --
22 did you learn from Dean --

23 MR. DAVID MCFADDEN: Yes.

24 MR. FREDERICK CHENOWETH: -- that the
25 Town had been directed, and I'm not -- I'm not

1 specifically referring to the letter, but in
2 discussions with Dean, did you learn that the Town had
3 been direct -- I'm sorry, that Collus had been
4 directed by the Town to -- to look at options and get
5 a valuation?

6 MR. DAVID MCFADDEN: Yes. Whether the
7 word "directed" is the right word, like, I don't think
8 it was sort of you go and do it, it was more --

9 MR. FREDERICK CHENOWETH: Yes.

10 MR. DAVID MCFADDEN: -- yes. We --
11 we'd been asked to go ahead and -- and we're doing it.
12 I mean that -- Dean thought that was an important
13 aspect, I remember talking about it saying and -- and
14 he was saying, you know, I think KPMG is the best firm
15 and so on, based on his experience.

16 But I don't remember him saying well,
17 you know the Town demanded this to happen. I mean, I
18 don't think you meant it that way.

19 It was -- it was understood we were
20 doing it and the Town was interested in hearing what
21 the asset was worth.

22 MR. FREDERICK CHENOWETH: So pretty
23 clear at that juncture that Dean and -- and the Collus
24 Board and been asked to take the lead with respect to
25 that issue?

1 MR. DAVID MCFADDEN: That's correct.
2 The Town did not do it on its own, the CAO didn't do
3 it, that's correct.

4 MR. FREDERICK CHENOWETH: And so you
5 had occasion to talk about KPMG as the possible
6 organization to look at the options and look at a
7 valuation, you discussed that with Dean?

8 MR. DAVID MCFADDEN: Yes, it was one
9 (1) of -- we needed a financial advisor, that was the
10 one (1) thing for sure, as we discussed -- I mean, it
11 was clear that we're not going to do this on our own,
12 we didn't have the internal capability to run a
13 process, do an evaluation and run a process.

14 MR. FREDERICK CHENOWETH: Yes.

15 MR. DAVID MCFADDEN: So we had to get
16 outside assistance and KPMG is well-known for its work
17 in the LDC sector. And -- and in the area of
18 financial advisory work.

19 MR. FREDERICK CHENOWETH: Right. So
20 you were obviously pleased to know that KPMG was --
21 was about to be retained or was retained to look at
22 the valuation and the options?

23 MR. DAVID MCFADDEN: I'll tell you one
24 (1) -- yes. I -- I -- I thought that was -- I don't
25 see how we could have done it without them. If -- if

1 -- if the Town was going to do it at all, I don't see
2 how it could be done without them.

3 MR. FREDERICK CHENOWETH: Right.

4 Now, you referred in another letter,
5 you referred to another letter by Inquiry counsel, and
6 it was a letter that, in essence, said it was a
7 curious kind of a -- kind of a statement, a letter
8 between Dean and -- and Ed, in which Dean was sort of
9 discussing or asking. So the next issue was when do
10 we get McFadden, the independent director, involved in
11 this piece, i.e., the valuation et cetera.

12 You remember that letter?

13 MR. DAVID MCFADDEN: I remember
14 reading it, yes.

15 MR. FREDERICK CHENOWETH: All right.
16 And the letter was not too long before an alleged
17 meeting on June 4th at which Dean and Ed and Mr.
18 McFadden were present --

19 MR. DAVID MCFADDEN: Right.

20 MR. FREDERICK CHENOWETH: -- and I'm -
21 - I'm going to see if I can massage your memory a
22 little bit about that particular meeting.

23 First of all, we looked at -- at -- at
24 the e-mails and they -- they were brought up, and I'm
25 -- I'm frankly not going to take the time, I don't

1 think, unless you wish me to and I'm happy to do it if
2 necessary.

3 There was a series of e-mails that --
4 that you went through with Inquiry counsel about
5 setting the date for that.

6 And there was a -- a curious address
7 that was mentioned in -- in your e-mails, which I take
8 it was your address and you were suggesting that --
9 that it may be that the -- the meeting should take
10 place at -- at your home and that there -- that the
11 advantage of that was there might be some refreshments
12 available, I think was the -- was the tone and nature
13 of the letter that you sent.

14 MR. DAVID MCFADDEN: That's correct,
15 yes.

16 MR. FREDERICK CHENOWETH: And that was
17 a meeting that was scheduled for Saturday, June 4th?

18 MR. DAVID MCFADDEN: Yes.

19 MR. FREDERICK CHENOWETH: And I -- I
20 think you were able to tell me that that meeting went
21 ahead. I -- I simply suggest to you that that appears
22 to have been meeting at which the opportunity was
23 taken to bring McFadden up to speed with respect to
24 what had been going on with the valuations that Dean
25 had been earlier discussing with him.

1 MR. DAVID MCFADDEN: I think that's
2 probable.

3 MR. FREDERICK CHENOWETH: All right,
4 thank you.

5 So that Dean and Ed and yourself got
6 together at your home, I don't know whether this is
7 encouraging your memory at all, but you --

8 MR. DAVID MCFADDEN: I think we did it
9 at the office, you know that?

10 MR. FREDERICK CHENOWETH: Oh, do you?

11 MR. DAVID MCFADDEN: I -- I think we
12 did it at the -- I never did -- and they didn't even
13 have coffee there. No, I mean -- no, I think we did
14 it at the office.

15 MR. FREDERICK CHENOWETH: All right,
16 very good. Thank you. That's helpful.

17 And you told me that the purpose of the
18 meeting probably was to bring you up to speed with
19 respect to the -- the status of the valuation, and on
20 June 4th the valuation and options reports of KPMG had
21 been received, because they were received on May 24th.

22 MR. DAVID MCFADDEN: Yes.

23 MR. FREDERICK CHENOWETH: I -- I take
24 it it's -- it's likely that if the purpose of the
25 meeting was to discuss those valuations and options,

1 that the valuations and options which had already been
2 received were -- were there at the meeting to be
3 discussed and reviewed.

4 MR. DAVID MCFADDEN: Yes, certainly I
5 -- my recollection of that is where do we go from
6 here. We've got valuations done, where do we go from
7 here?

8 MR. FREDERICK CHENOWETH: All right,
9 fine.

10 MR. DAVID MCFADDEN: That would've
11 been my recollection.

12 MR. FREDERICK CHENOWETH: And so you
13 would have talked about things because we're now
14 working -- we're now starting to work towards the June
15 27th Council meeting and I take it you would've talked
16 about things like the development of the STT team.

17 MR. DAVID MCFADDEN: Yes. How to
18 approach it, what to do. I don't recall specifically
19 talking about creating that team, but I -- it may well
20 have come up at that discussion.

21 MR. FREDERICK CHENOWETH: But you
22 talked -- you talked about the process?

23 MR. DAVID MCFADDEN: Yes, we talked
24 where do you go from here, in the event that Council
25 gives a green light.

1 MR. FREDERICK CHENOWETH: All right.
2 And -- and did you talk about the fact that you may
3 need some assistance with respect to the -- to the --
4 if you get a green light to the drafting of any RFPs
5 and things of that nature, would that have been the
6 kind of thing you would have discussed there?

7 MR. DAVID MCFADDEN: Yes. The
8 understandings was KPMG would handle all that, that's
9 part of the financial advisory role that they had.

10 MR. FREDERICK CHENOWETH: Right. And
11 so -- so that prospect of KPMG handling the RFP was
12 out there and of subject of discussions between the
13 three of you, in any event, as early as probably June
14 4th, 2011?

15 MR. DAVID MCFADDEN: Yes.

16 MR. FREDERICK CHENOWETH: At that
17 meeting that didn't take place at your home and took
18 place at the office.

19 All right. And I'm assuming that the
20 strategic partnership concept would have also been a
21 discussion that you had at that particular meeting?

22 MR. DAVID MCFADDEN: Yes.

23 MR. FREDERICK CHENOWETH: All right.
24 And in fact, the next task was to -- was to bring the
25 mayor into the loop and because it was only the three

1 of you meeting there, so I note some correspondence
2 which I don't think you referred to, and let's bring
3 that up if we could. It's TOC0516341, it's June 8th
4 correspondence, an e-mail authored by you.

5 And you asked Mr. Houghton and Mr.
6 Muncaster at that point, and this is shortly after
7 your June 4th meeting in which you were discussing
8 next steps and process and things of that nature.

9 You ask, "Have you been able to arrange
10 a meeting with the mayor later on Friday or
11 potentially over the weekend?", so you were, I take it
12 one (1) of the next steps as you saw in any event, was
13 to -- was to bring the mayor into what you were up to
14 and eventually the Town.

15 MR. DAVID MCFADDEN: Yes, I think the
16 important thing was this, that the work was being
17 done, the background work was being done to prepare a
18 decision to be made and it became important for me
19 there.

20 MR. FREDERICK CHENOWETH: When you say
21 the background work, you're talking about the
22 involvement of KPMG, the valuation, the options
23 possibilities, things of that nature, that was
24 progressing and had been done?

25 MR. DAVID MCFADDEN: Yeah and --

1 MR. FREDERICK CHENOWETH: And you knew
2 it had been done.

3 MR. DAVID MCFADDEN: Yeah. So it's --
4 I mean, I wasn't sure who talked to who, but, I mean,
5 it made -- the mayor needed to be fully informed of
6 what's going on.

7 MR. FREDERICK CHENOWETH: Right. All
8 right. From all I can see, the meeting of the mayor -
9 - with the mayor took place shortly after that. And
10 the only cue I have to that is the June 10th Power
11 Board minutes which I'd ask you to bring up which is
12 at CPS0007007_0001. Bring that up, please.

13 And this is a meeting at which -- let's
14 see, the attendees there first of all. You've got the
15 mayor; you've got Dean Muncaster; you've got
16 Ed Houghton; you got Mr. McFadden; you've got
17 Pam Hogg, et cetera, et cetera, and the usual cast of
18 individuals from the other Boards who you indicate
19 seem to be at the other end of the table during the
20 course of --

21 MR. DAVID MCFADDEN: Yeah. They
22 always appear here as guests, but I actually -- that
23 was something I was a guest of their's in a way. But
24 I mean -- yeah -- they were -- they were at the other
25 end of the table. They're different group numbers

1 down there, but they were always there. Yeah.

2 MR. FREDERICK CHENOWETH: And as we go
3 down through the minutes, there's a reference to the
4 vent project. Houghton displayed a solar vent, and he
5 went through that. Houghton described the way in
6 which a solar vent operates, et cetera, et cetera. Do
7 you have some memory of that taking place in there
8 with the solar vent?

9 MR. DAVID MCFADDEN: Yeah. I remember
10 a presentation on that and -- this solar vent and how
11 you put it on your roof, and it had a fan in it, and
12 it reduced the temperature in your attic --

13 MR. FREDERICK CHENOWETH: Right.

14 MR. DAVID MCFADDEN: -- as I recall
15 how that worked. And there was some suggestion here
16 that this would go toward Collus Power's commitments
17 under demand management conservation, but that was --
18 the context in which that would've come up.

19 MR. FREDERICK CHENOWETH: And do you
20 think it would've come up in the fact it appears to
21 have been discussed at this Board meeting of July 8 --
22 I'm sorry -- July 10th.

23 MR. DAVID MCFADDEN: Yeah.

24 MR. FREDERICK CHENOWETH: June 10th.

25 MR. DAVID MCFADDEN: June 10th. Well,

1 it looks like -- yeah. I mean, I -- I remember -- I
2 don't remember if this was the meeting or not, but
3 they had a -- they had some pictures they put around
4 about this idea and how it would work and how it was
5 relevant for --

6 MR. FREDERICK CHENOWETH: And I don't
7 think I have to take you to it, but it's common ground
8 that at this meeting, the Collus Board approved the
9 involvement of Collus Power in this roof vent project.

10 MR. DAVID MCFADDEN: In a pilot --
11 yeah. I mean, I -- it wasn't quite clear as a --

12 MR. FREDERICK CHENOWETH: In the
13 pilot project. Okay.

14 MR. DAVID MCFADDEN: As far as I -- it
15 was very much a demo kind of thing. It was -- there
16 was very little in the way of financial commitment on
17 it. It was meant to sort of -- it was looked on as an
18 interesting idea for our community, and -- and Ed had
19 suggested that somehow we could be a pilot community,
20 as it says here.

21 Like, this -- we would -- this is a new
22 idea. It had been developed by -- by a company. I
23 don't remember the particular name of the company, but
24 this company developed this idea, and -- and we could
25 be one (1) of the early adopters potentially of this

1 in our community.

2 MR. FREDERICK CHENOWETH: I won't
3 bother taking you to it 'cause I think we all know
4 it's here. But there was -- at this particular
5 meeting, there was an approval of Collus Power being
6 involved in that pilot project.

7 MR. DAVID MCFADDEN: That's correct.
8 I remember this -- as part of our ongoing demand
9 management program in the community. Correct.

10 MR. FREDERICK CHENOWETH: Thank you.
11 And getting back to it -- getting back to the mayor,
12 which is really why I'm looking at this document
13 because the rest is known. I see that the mayor left
14 the meeting at this time.

15 MR. DAVID MCFADDEN: M-hm.

16 MR. FREDERICK CHENOWETH: So she left
17 the meeting -- it appears she actually left the
18 meeting just before the involvement of Collus Power in
19 the pilot vent project was approved.

20 But in any event, she left the meeting
21 on that occasion so that the opportunity didn't
22 present itself at the meeting to do what you had
23 suggested on -- in your June 8th correspondence, which
24 was bringing the mayor into the loop as a next step
25 and making sure that she was -- she was ready to go.

1 I'm told -- and I don't know whether
2 you can confirm this to me or not -- but that because
3 she left the meeting on that occasion, therefore later
4 on that day -- i.e. June 10th -- there was a meeting
5 had with the mayor.

6 You chased the mayor down, and you had
7 a meeting with the mayor, including Dean and David and
8 Ed. And I believe the suggestion is that that meeting
9 would've been had at the mayor's office. Does that
10 bring to your memory --

11 MR. DAVID MCFADDEN: That could well
12 be. I don't recall the details of that meeting, but
13 it makes -- it would be -- yeah, it's quite well -- it
14 could well be.

15 MR. FREDERICK CHENOWETH: All right.

16 MR. DAVID MCFADDEN: Yeah.

17 MR. FREDERICK CHENOWETH: So that
18 falls into your thinking. In any event, it's pretty
19 clear that there was a meeting on or about that time
20 to bring the mayor into these discussions, correct?

21 MR. DAVID MCFADDEN: Correct.

22 MR. FREDERICK CHENOWETH: All right.
23 And I am simply suggesting to you from what I know of
24 other evidence -- and you can either confirm or deny
25 it -- that the meeting in fact took place on June 10th

1 after the mayor left the Board meeting, and you went
2 to another location to have the meeting with her.

3 MR. DAVID MCFADDEN: That could well
4 be. I don't recall the specifics of that, but I --
5 it -- something had to happen, and then -- it makes
6 sense.

7 MR. FREDERICK CHENOWETH: All right.
8 Thank you. And do you believe it's likely that
9 whenever the meeting occurred -- and I'm suggesting to
10 you that it occurred on June 10th -- whenever the
11 meeting occurred, there would've been a fulsome
12 discussion with the mayor about the valuation and
13 about the options report and the various options that
14 were suggested by KPMG, correct?

15 MR. DAVID MCFADDEN: Correct. Because
16 it has to go to Council. I mean, this thing had to --
17 had to get to Council at some point --

18 MR. FREDERICK CHENOWETH: That's
19 right. And --

20 MR. DAVID MCFADDEN: -- soon.

21 MR. FREDERICK CHENOWETH: -- and you
22 indicated that at your June 4th meeting, you believe
23 that the strategic partnership was discussed, and
24 presumably on the meaning shortly after that -- be it
25 June 10th or some date around there -- again, the

1 strategic partnership concept would've been reviewed
2 with the mayor at that time.

3 MR. DAVID MCFADDEN: I'd have thought
4 so, yeah.

5 MR. FREDERICK CHENOWETH: Thank you.
6 And was there any -- would you remember any specific
7 discussions about forming STT teams and things of that
8 nature at that meeting, or maybe that's pressing your
9 memory a little much?

10 MR. DAVID MCFADDEN: Yeah. I don't
11 remember that coming up at the -- at a meeting at that
12 point. It -- it could have. I mean, the biggest
13 concern during this period was just for the mayor to
14 be fully in the picture on where -- where things were.

15 MR. FREDERICK CHENOWETH: And that's
16 what you did, including a discussion about the --
17 about the prospect of a strategic partnership,
18 correct?

19 MR. DAVID MCFADDEN: Correct.

20 MR. FREDERICK CHENOWETH: All right.
21 Now, we again appear to moving towards getting counsel
22 involved in this, or that's what the timetable would
23 seem to suggest.

24 And on June 14th -- and I'll just bring
25 this up to assist you. This is TOC524.

1 (BRIEF PAUSE)

2

3 THE COURT OPERATOR: Could you repeat
4 that, please, counsel?

5 MR. FREDERICK CHENOWETH: I have
6 TOC0050024. Okay.

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: Going a
10 little further down on that email down at the
11 commencement of the email chain, Ed sent you a -- what
12 I take it was a series of slides, i.e., his
13 presentation, that he was preparing for the June 27th
14 meeting.

15 MR. DAVID MCFADDEN: Correct.

16 MR. FREDERICK CHENOWETH: And he
17 appears to be asking you whether or not he's captured
18 what we discussed, and then sensitive to certain areas
19 of the sale. He seems to be asking you, do my slides
20 capture the discussions that -- that David and Dean
21 and Ed have had at meetings such as June 4th and
22 meeting with the mayor on or about June 10th -- do the
23 slides capture that and am I putting this proposition
24 properly to the Town for the June 27th meeting.

25 MR. DAVID MCFADDEN: I take that to be

1 what he's asking, yes.

2 MR. FREDERICK CHENOWETH: Thank you
3 very much. And you gave a response to that, going up
4 -- up the chain further. Thank you. Your indicate
5 and the presentation is very good. You got a couple
6 of suggestions and -- and so you were kind enough to
7 assist Ed in preparing those slides for the -- for the
8 Town presentation on June 27th. And -- and I suppose
9 it -- it wouldn't surprise you that the slides in --
10 included concepts such as the favoured option of a
11 strategic partnership, because that's what you
12 discussed, correct?

13 MR. DAVID MCFADDEN: Correct.

14 MR. FREDERICK CHENOWETH: All right.
15 And they included next steps such as the formation of
16 the STT team. Are you aware that that was -- you
17 would have been aware from your review and --

18 MR. DAVID MCFADDEN: Of the slides --

19 MR. FREDERICK CHENOWETH: -- maybe you
20 don't recall it.

21 MR. DAVID MCFADDEN: -- yes. Yeah.

22 MR. FREDERICK CHENOWETH: But you
23 would have been aware that the -- one (1) of the next
24 steps was the formation of the STT team.

25 MR. DAVID MCFADDEN: Correct.

1 MR. FREDERICK CHENOWETH: And it looks
2 as far -- it looks from what we can see from the
3 slides that in fact the STT team was, in essence,
4 formed right at the June 27th meeting. The names were
5 mentioned, Mr. Lloyd was filled in as another Town
6 rep, and -- and things began to proceed right at that
7 June 27th meeting. Is that in keeping with your
8 understanding?

9 MR. DAVID MCFADDEN: It is.

10 MR. FREDERICK CHENOWETH: Very good,
11 thank you. In any event -- and I don't think I need
12 to take you to this, and I'll go over it very quickly,
13 I want -- I want to be thoughtful with respect to
14 timing here.

15 After the June 27th meeting, there's a
16 July 8th Board meeting at which you're in attendance
17 and the mayor is in attendance and Dean and Ed are in
18 attendance, and at that Board meeting, and I'll bring
19 it up should you -- should you wish me to do so, the -
20 - there was a motion that the Power Board supports the
21 strategic partnership option.

22 Is that in keeping with your memory of
23 things?

24 MR. DAVID MCFADDEN: That's correct.

25 MR. FREDERICK CHENOWETH: All right,

1 very good.

2 And I thought it interesting at the --
3 at the -- what I think was the first of the STT team
4 meetings on August 3rd, you had some interesting
5 comments, and I'm going to ask that the -- that I be
6 assisted by pulling up this document. It's
7 CPS0002342, and this is a set of minutes of the
8 strategic partnership, and you can see the -- the cast
9 at the top there that were attendees, including
10 yourself, Mr. McFadden.

11 And if we go down to the first set of
12 paragraphs and first set of bullets that are in this -
13 - and the secretary, who I take it was Pam Hogg -- the
14 salient points from the meeting are as follows -- and
15 she outlines a little presentation by yourself and
16 that appeared again to occur on the -- is -- is -- on
17 August 3rd.

18 "Mr. McFadden broached the subject
19 of where the partnership would come
20 in."

21 And you seem to talk, even at that
22 early stage, about two (2) prospects.

23 "Would come in to poller -- to
24 Collus Power. Then the interested
25 party only becomes a shareholder in

1 Collus Power."

2 Further down in the bullets:

3 "The simplest would be that the
4 shares are acquired directly from
5 the Town or a holdings Corporation."

6 So even at that early stage, you appear
7 to be thoughtful enough to be discussing how the share
8 purchase would come in. In other words, is it going
9 to be a -- a purchase of -- of the shares of Power or
10 is it going to be a purchase from the Town of some of
11 the Town's shares in the holding company, Collus? So
12 that's something you were raising at an early time.

13 MR. DAVID MCFADDEN: Yeah. I seem to
14 keep raising that issues actually, but -- yeah. I
15 mean, they -- they -- they needed -- a decision had to
16 be made by the Town in this case on what they were
17 selling, and -- and -- and I think this sets it all
18 out. It depends on where you want the money to flow

19 MR. FREDERICK CHENOWETH: And you were
20 raising that for the consideration of the STT team so
21 they could make recommendations to the Town.

22 MR. DAVID MCFADDEN: Correct.

23 MR. FREDERICK CHENOWETH: All right.
24 And I think Inquiry counsel took you through the
25 August 28th letter that you wrote prior to the second

1 meeting of the STT team on August 29th, and you
2 brought up a number of issues that you thought were
3 important to focus the team, correct?

4 MR. DAVID MCFADDEN: Correct.

5 MR. FREDERICK CHENOWETH: All right.

6 And I don't think we need to go to that letter again,
7 but you talked about governance and a number of other
8 issues and -- and making it clear what you were
9 looking for and understanding what Collus Power was
10 looking for, before they entered into this process.

11 MR. DAVID MCFADDEN: Correct.

12 MR. FREDERICK CHENOWETH: All right.

13 And you weren't at the August 29th meeting, but one
14 (1) of the things that was discussed at the meeting
15 was the -retainer of KPMG to do the RFP, and -- and
16 obviously this is something you were knowledgeable
17 about and were content to have take place.

18 MR. DAVID MCFADDEN: Yeah. There --
19 as I mentioned a few minutes ago, they're a first
20 class firm, they're broadly experienced in the sector.
21 It made sense, to me at least, that they be retained.

22 MR. FREDERICK CHENOWETH: All right.

23 And I -- I -- I found it interesting, you were really
24 indicating that they took what -- what would appear to
25 have been a bit of a leadership role with the STT team

1 in that they had particular skills in this industry
2 and had been through the -- through the jumps a number
3 of times with kind -- with respect to this kind of
4 process in this industry, and they kind of led the way
5 in the discussions of some of the criteria that were
6 eventually developed.

7 MR. DAVID MCFADDEN: Correct.

8 MR. FREDERICK CHENOWETH: And they
9 assisted in -- in the division that took place between
10 financial and non-financial considerations.

11 MR. DAVID MCFADDEN: Correct.

12 MR. FREDERICK CHENOWETH: All right.
13 So, to some significant extent, you -- you said you
14 didn't recall detailed discussions about governance
15 and -- and matters of that nature at the STT team.
16 Those were answers that you gave to -- to My Friend,
17 the Inquiry counsel, in your evidence-in-chief.

18 MR. DAVID MCFADDEN: That's correct.

19 MR. FREDERICK CHENOWETH: All right.
20 So to some extent, the STT team was assisted and
21 guided by the expertise of -- of KPMG in developing
22 those concepts.

23 MR. DAVID MCFADDEN: That is a fairly
24 standard approach I found in business when you hire a
25 financial advisor. They very much lead the process,

1 and -- and, you know -- and obviously you have to
2 consent and -- and have to agree on -- on the exact
3 approach, but it's -- it's pretty common.

4 This is the normal process. When you
5 hire a financial advisor, they take the lead. They
6 work it through with you, do the drafting, and then
7 you either say "yes" or "no" and ultimately the
8 decision is yours, but, I mean, they -- they put the
9 process into place.

10 MR. FREDERICK CHENOWETH: So you found
11 it -- there to be nothing unusual about the fact that
12 KPMG led the process here.

13 MR. DAVID MCFADDEN: that's correct.

14 MR. FREDERICK CHENOWETH: And in fact
15 that's what you anticipated they would do.

16 MR. DAVID MCFADDEN: That's typical in
17 a -- in a financial transaction of this type.

18 MR. FREDERICK CHENOWETH: But you had
19 an opportunity to review what they had come up with,
20 and the ST team had that opportunity, the STT team
21 did, and in fact I think you indicated to Inquiry
22 counsel that -- that you reviewed the criteria they
23 came up with and you recall having an opportunity to
24 review the -- the breakdown of the non-financial
25 matters and the points that were associated with that,

1 and you had an opportunity to review, as did the rest
2 of the team, the breakdown between financial and non-
3 financial, being 70/30.

4 MR. DAVID MCFADDEN: Correct.

5 MR. FREDERICK CHENOWETH: And just --
6 just to confirm it, and I -- I -- I'm not wishing to
7 repeat what -- what my friend brought out, but you
8 were content that what you saw in the division, i.e.,
9 the 70/30 division between financial and non-
10 financial, and in the development of the criteria, the
11 specific criteria, you found those to be appropriate,
12 number one, correct?

13 MR. DAVID MCFADDEN: Correct?

14 MR. FREDERICK CHENOWETH: And you
15 found them to be in keeping with what you understood
16 the Town wished to accomplish.

17 MR. DAVID MCFADDEN: That's what I
18 assumed. I mean, I -- there were two (2) things.
19 What was the need -- I mentioned -- I don't want to
20 repeat myself. What -- what were the needs of the
21 company --

22 MR. FREDERICK CHENOWETH: Yes.

23 MR. DAVID MCFADDEN: -- and that was
24 reflected in here, and then the Town's requirement for
25 money was also reflected in here, so it covered the -

1 - the -- I thought fairly, the -- the distribution of
2 interests.

3 MR. FREDERICK CHENOWETH: Thank you.
4 November 22nd was a scoring meeting of the STT.

5 MR. DAVID MCFADDEN: Right.

6 MR. FREDERICK CHENOWETH: And you were
7 unable to make that meeting because of other
8 commitments, but you were good enough to send in your
9 scoring of the non-financial aspect of this matter and
10 you sent it in -- I think you sent it in on the 20th
11 or 21st of November, which suggests to me that you
12 obviously had the -- the -- the non-financial
13 materials before the November 22nd meeting. I think
14 we've -- we've confirmed that in your evidence-in-
15 chief.

16 MR. DAVID MCFADDEN: Correct.

17 MR. FREDERICK CHENOWETH: And you
18 prepared your score before that non-financial
19 assessment meeting and sent it in.

20 MR. DAVID MCFADDEN: Yeah. I read
21 through it all and -- and then sent in what I felt was
22 a fair depiction of what scoring.

23 MR. FREDERICK CHENOWETH: And without
24 belabouring this very much, but again we've had
25 occasion here at this -- at this Commission to go

1 through this in some detail, but I -- I note that when
2 it came to the non-financial scoring you in particular
3 rated PowerStream pretty high. In fact, I think you
4 scored them 69 out of 70.

5 Is that in keeping with your scoring,
6 as you recall it, of the non-financial matters?

7 MR. DAVID MCFADDEN: You know, I don't
8 recall exactly. I -- I know that their -- their
9 presentation was very strong. It -- it --

10 MR. FREDERICK CHENOWETH: Right.

11 MR. DAVID MCFADDEN: -- in terms of
12 meeting what we seemed to be needing, that their --
13 their presentation was very strong.

14 Horizon was very strong as well, I mean
15 I -- I mean, if Horizon had been the alternative, I
16 think they would've been fine too. I mean, it -- it
17 wasn't that I was saying that's the only one (1) we
18 could ever conceive of, but I thought Horizon was very
19 close to what -- what we were looking for.

20 MR. FREDERICK CHENOWETH: Yes.

21 MR. DAVID MCFADDEN: PowerStream was
22 just slight -- was -- was ahead, but not by much.

23 MR. FREDERICK CHENOWETH: Right.

24 MR. DAVID MCFADDEN: And the -- the
25 others were -- I mean they -- they -- in general, they

1 were quite a bit below the first two.

2 MR. FREDERICK CHENOWETH: When you say
3 their presentations were such that were -- were very
4 good, you're talking about their -- about their
5 response to the RFP?

6 MR. DAVID MCFADDEN: Well, yes, there
7 were two (2) levels. I mean, the -- yes, the -- the
8 presentations in the -- the written documentation.

9 MR. FREDERICK CHENOWETH: Yes.

10 MR. DAVID MCFADDEN: The oral
11 presentations were interesting because the -- if you
12 just based it on the oral you might've come up with a
13 different result, frankly.

14 It was interesting because PowerStream
15 had a good presentation. Veridian was really good,
16 and as a presentation -- long presentation, Horizon
17 was solid and Hydro One brought in all their senior
18 team, was very good, but you had the feeling we were
19 going to be a small cog in a big wheel, so that --

20 MR. FREDERICK CHENOWETH: A little
21 bureaucratic, was it?

22 MR. DAVID MCFADDEN: Yes, a little --
23 little bit.

24 So -- they all have something good, I
25 mean, none of them were bad. Like none of them you

1 say oh God, I can't believe -- where did we dredge
2 these people up. It was nothing like that. They were
3 all -- they made solid presentations orally and in
4 writing. The written ones were -- there -- there was
5 quite a gap in the written ones. I think it was more
6 dramatic. The oral ones were very much -- they were
7 all strong.

8 MR. FREDERICK CHENOWETH: Yes.

9 MR. DAVID MCFADDEN: The written ones,
10 there was some difference between the four of them and
11 I think the points -- you know, if you follow
12 distribution sort of reflect what I -- I noticed.

13 MR. FREDERICK CHENOWETH: So having
14 reflected as you've just done now on the -- on the
15 presentations, the oral presentations and the written
16 bids that were made by the parties, I take it you were
17 content that the process, at least to that date in any
18 event, had unearthed some -- some strong contenders to
19 be strategic partners with PowerStream. Or I'm sorry,
20 with Collus Power.

21 MR. DAVID MCFADDEN: Absolutely.

22 MR. FREDERICK CHENOWETH: Very good.

23 And in any event, in the final
24 analysis, and I think you indicated this in your
25 testimony, in terms of non-financial you ranked

1 PowerStream the highest of any of the bidders.

2 MR. DAVID MCFADDEN: They had the most
3 in their bid that reflected what we were asking for it
4 -- most. And that was -- I've -- I even looked at
5 them, you know, when I got all this material a while
6 ago and it -- you know, it -- it stood out. Their
7 presentation was really first class.

8 Not that the Horizon was bad. It was a
9 good presentation, or -- but PowerStream's was clearly
10 a -- a class almost by itself in terms of the scope,
11 what it was offering the Town, what it was offering
12 staff and everything else.

13 The -- the others were fine, I mean,
14 there's nothing -- none of them were garbage at all, I
15 mean, they're all -- they all did a serious job, but I
16 thought they on balance were ahead.

17 MR. FREDERICK CHENOWETH: So they
18 illustrated some specific expertise that -- that was
19 obviously going to be of assistance to Collus Power?

20 MR. DAVID MCFADDEN: Yes.

21 MR. FREDERICK CHENOWETH: And they
22 illustrated a willingness to -- to consider growth?

23 MR. DAVID MCFADDEN: Yes.

24 MR. FREDERICK CHENOWETH: And they
25 indi -- illustrated a -- they -- they appeared to be

1 the kind of organization that would take on the
2 challenging future that you earlier described, along
3 with Collus Power, correct?

4 MR. DAVID MCFADDEN: Right.

5 MR. FREDERICK CHENOWETH: All right.

6 And the upshot of all this was the
7 December 2nd Board meeting with Power -- with Power
8 and the Solutions Board when they met together.
9 Again, I think the STT team was also present and the
10 upshot of that at that December 2nd meeting, and I
11 think we've all seen the -- the minutes of that, was
12 that there was a recommendation made by Power that
13 they proceed to negotiate with -- with PowerStream to
14 move this matter forward.

15 MR. DAVID MCFADDEN: Right.

16 MR. FREDERICK CHENOWETH: All right.

17 I'm -- I just wanted to inquire with you, the next
18 part of my examination will be with respect to
19 activities relating to the formation of the -- of the
20 share purchase agreement and the unanimous
21 shareholders agreement that was eventually entered
22 into.

23 I notice one (1) document, and you
24 might -- you might bring it up if you would please,
25 KPM1917, it's a December 7th e-mail from Rockx to

1 Herhalt. Could you bring that up, please? Go down a
2 little further if you would, about there.

3 And I notice a -- a line, second from
4 his bottom para -- maybe third from his bottom
5 paragraph, in which he said that David McFadden,
6 Gowlings, will be preparing the SPA and shareholders
7 agreement.

8 Is that accurate?

9 MR. DAVID MCFADDEN: I noticed that, I
10 don't know where he got this idea. I -- I was never
11 asked to prepare an agreement, I -- I wasn't preparing
12 the agreement. I don't know, I never talked to John
13 Rockx. I -- I've met him once. I have no idea how we
14 got the idea I was doing that. Obviously he was -- I
15 don't know who gave him that information, I wasn't --
16 ever had preparing anything of that nature.

17 MR. FREDERICK CHENOWETH: All right.
18 So he -- he's wrong when he pauses that suggestion in
19 this correspondence of December 2nd, is that the case?

20 MR. DAVID MCFADDEN: It's erroneous.
21 I had no role in doing that whatsoever. I wasn't
22 asked to.

23 MR. FREDERICK CHENOWETH: Was there --
24 was there any undertaking by you to -- to -- to follow
25 the back and forths by the lawyers and -- and move

1 that -- that process along?

2 MR. DAVID MCFADDEN: The only thing I
3 was -- I -- I was asked to do was to go with Dean to
4 meet Ron Clark.

5 Anyway, the only meeting I really had
6 was with Ron Clark with Dean to go over the deal.
7 After that, I mean it became -- it went between
8 lawyers, fundamentally the communication, I mean, with
9 some oversight from Dean, obviously, and I -- I think
10 Ed Houghton had -- was -- was involved with reviewing
11 documents too.

12 I -- I was just cc'd on all this stuff,
13 but I -- I saw my roles eventually it, you know, it
14 all got settled and we would have to eventually
15 approve the deal, but I wasn't involved so -- in any
16 of that share purchase agreement, shareholder's
17 agreement or anything else, or drafting or -- or
18 approving it.

19 MR. FREDERICK CHENOWETH: I'm just
20 going to refer you to the moment to a document which I
21 understand is SC023, December 9th, Power Board
22 meeting.

23 MR. DAVID MCFADDEN: Usual cast of
24 characters.

25 MR. FREDERICK CHENOWETH: Usual cast

1 of characters, including a gentleman named McFadden.

2 MR. DAVID MCFADDEN: Yes.

3 MR. FREDERICK CHENOWETH: And at that
4 meeting, looking for the moment at the documentation,
5 and move it down if you would, please, in the
6 document. Hold on for a sec. Go a little further
7 into the document. Hold on. Yes, the paragraph
8 that's now come up, director McFadden reported that he
9 would be meeting with Aird & Berlis this afternoon and
10 it's proposed an amended draft agreement will be
11 prepared by Monday. Mr. Houghton will meet with
12 PowerStream on Thursday.

13 MR. DAVID MCFADDEN: Maybe that was
14 part of the meeting. I'm not sure.

15 MR. FREDERICK CHENOWETH: You're not
16 sure.

17 MR. DAVID MCFADDEN: No.

18 MR. FREDERICK CHENOWETH: But in any
19 event, it -- it certainly appears that whether that
20 was the meeting or not, you were meeting with Aird &
21 Berlis about the amended draft agreements being the
22 share purchase agreement and the unanimous
23 shareholders agreement, you were about to do that this
24 afternoon.

25 Is that fair?

1 MR. DAVID MCFADDEN: It's -- it's
2 fair, yes.

3 MR. FREDERICK CHENOWETH: And do you
4 believe that meeting took place with Aird & Berlis on
5 that occasion?

6 MR. DAVID MCFADDEN: I believe so. I
7 mean, I can't contradict that, I mean I -- I don't
8 recall the details of the meeting with -- but it -- it
9 would always be with Ron Clark though, I know that.

10 MR. FREDERICK CHENOWETH: Right. And
11 -- and the subject again was the share purchase
12 agreement, the amended draft agreements being the
13 share purchase agreement and the unanimous
14 shareholders agreement, correct?

15 MR. DAVID MCFADDEN: Right, that's
16 what it reflects.

17 MR. FREDERICK CHENOWETH: Thank you.
18 If you could pull up another document,
19 this is ALE1183. December 14th document.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: And this is
24 an email from Corrine Kennedy. It's to Robert Hull.
25 It's copied to yourself. It's copied to -- also, to

1 Ron Clark.

2 "And further to our telephone
3 conversation yesterday, attached
4 please find the draft share purchase
5 agreement and the shareholders'
6 agreement in -- with respect to the
7 above transaction.

8 The drafts remain subject to further
9 comment on our end. Once you have
10 had a chance to review the drafts, I
11 look forward to discussing them with
12 you."

13 So, you had an opportunity, I take it,
14 on that occasion to review the drafts?

15 MR. DAVID MCFADDEN: Yeah.

16 MR. FREDERICK CHENOWETH: And you had
17 an opportunity to ensure that the directions that the
18 drafts were then taking were in keeping with what you
19 had understood the -- the wishes of the shareholders
20 were and the wishes of the Collus Power Board were?

21 MR. DAVID MCFADDEN: Yeah. I just
22 scanned through the documents. I mean, I wasn't
23 fundamentally negotiating. I -- I would have scanned
24 through them just to be sure they fitted the direction
25 we were trying to head in.

1 MR. FREDERICK CHENOWETH: Right.

2 MR. DAVID MCFADDEN: And if I had any
3 comments, I'd have gotten a hold of Ron or Corrine.

4 MR. FREDERICK CHENOWETH: Right. So,
5 if you did have any comments, you would have made
6 those comments and you would have made them to -- to
7 Ron or Corrine or some of the people --

8 MR. DAVID MCFADDEN: Right.

9 MR. FREDERICK CHENOWETH: -- at Aird &
10 Berliss --

11 MR. DAVID MCFADDEN: Correct.

12 MR. FREDERICK CHENOWETH: -- provided
13 them with what you thought was the necessary guidance?

14 MR. DAVID MCFADDEN: Correct.

15 MR. FREDERICK CHENOWETH: All right.
16 Very good. And a further document, there's a December
17 20th document, and it's AEL -- or ALE, I should say,
18 1261.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: Go further
23 down to that -- down through that, if you would,
24 please. And again, just going back, if we could again
25 go back to those that are -- that are part of this.

1 This is a memo sent by Corrine Kennedy,
2 and it's -- it's sent not only to -- well, in this
3 case, actually, it's -- it's -- it appears to be sent
4 really directly to the -- to the involved parties.
5 It's sent to PowerStream who was represented by Dennis
6 Nolan and John Glicksman. Is that fair?

7 MR. DAVID MCFADDEN: Who is this from?

8 MS. KATE MCGRANN: This is from Bob
9 Hull.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: I -- I had
13 unders -- again, this is PowerStream. Did I not
14 understand John Glicksman to be an executive with
15 PowerStream?

16 MR. DAVID MCFADDEN: Yes, that's true,
17 yeah. I think he was the CFO, as I recall it.

18 MR. FREDERICK CHENOWETH: And Dennis
19 Nolan is also an executive with PowerStream?

20 MR. DAVID MCFADDEN: I think he's
21 general counsel or was general counsel --

22 MR. FREDERICK CHENOWETH: All right,
23 fine.

24 MR. DAVID MCFADDEN: -- at that point.

25 MR. FREDERICK CHENOWETH: And Ron

1 Clark is a -- is a lawyer, correct?

2 MR. DAVID MCFADDEN: Representing the
3 Town.

4 MR. FREDERICK CHENOWETH: Representing
5 the Town, and representing, to some extent, Collus
6 Power, as well?

7 MR. DAVID MCFADDEN: Yeah.

8 MR. FREDERICK CHENOWETH: All right.
9 And you were there in that you were representing
10 Collus Power and, to some extent, the Town?

11 MR. DAVID MCFADDEN: Yeah. Well, I'm
12 -- I'm getting this as a director of the Company
13 because I --

14 MR. FREDERICK CHENOWETH: I
15 understand.

16 MR. DAVID MCFADDEN: -- because I'm
17 not there as a counsel.

18 MR. FREDERICK CHENOWETH: All right.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: And she's
23 providing to -- or at least Corrine Kennedy is
24 providing to the -- to the people involved, both
25 lawyers and people with the various entities, she's

1 providing --

2 THE HONOURABLE FRANK MARROCCO: I
3 don't think she is, is she? This is to her.

4 MR. FREDERICK CHENOWETH: Right. Very
5 good. All right. I think you're right, Your Honour.
6 All right. Just take it further down.

7 MS. KATE MCGRANN: Please scroll up to
8 the top.

9 MR. FREDERICK CHENOWETH: Okay. All
10 right, further up.

11 MS. KATE MCGRANN: You'll see it's a
12 Gowlings memorandum from --

13 MR. FREDERICK CHENOWETH: All right.
14 All right. So, it's from Robert Hull. That's --
15 that's what my note says.

16 THE HONOURABLE FRANK MARROCCO: Does
17 this -- I mean, is there -- is -- is there -- is there
18 something here that's contentious?

19 MR. FREDERICK CHENOWETH: It -- it may
20 not be contentious, Your Honour. I just really wanted
21 to illustrate with this.

22

23 CONTINUED BY MR. FREDERICK CHENOWETH:

24 MR. FREDERICK CHENOWETH: Mr.
25 McFadden, you were kept up to -- up to date with

1 respect to the status of -- of the formation of those
2 documents, including --

3 MR. DAVID MCFADDEN: That's right.

4 MR. FREDERICK CHENOWETH: -- the --
5 the share purchase document and the unanimous
6 shareholder's agreement?

7 MR. DAVID MCFADDEN: Well, they --
8 they sent it to me. I -- just to keep me up to date
9 on where the transaction was.

10 MR. FREDERICK CHENOWETH: Indeed.

11 And, as you indicated with the last document, you had
12 the opportunity to review the document and -- and make
13 sure it was going in the direction you felt it should
14 be going, correct?

15 MR. DAVID MCFADDEN: Yeah.

16 MR. FREDERICK CHENOWETH: And you had
17 the opportunity to direct or comment on the direction
18 of the document with -- with Ron Clark and other
19 individuals involved in this process --

20 MR. DAVID MCFADDEN: Correct.

21 MR. FREDERICK CHENOWETH: -- and to
22 provide them with what instructions you felt were
23 appropriate, correct?

24 MR. DAVID MCFADDEN: Correct.

25 MR. FREDERICK CHENOWETH: All right.

1 Thank you. And if we could review another document.

2 It's ALE1260, again, December 20th.

3

4

(BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And I don't

7 think there's very much contentious about this, but

8 pull it up. Again, we've got -- let's go down a

9 little bit. Maybe I'm missing it. Yeah, there it is

10 right there. Robert Hull on December 20th is again:

11

"PowerStream has now reviewed the

12

draft agreements which you forwarded

13

last Wednesday and, to this end, I

14

attach the following; memo regarding

15

the draft share agreement;

16

representations and warranties of

17

the vendor; and marked up draft

18

unanimous shareholders' agreement."

19

So, again, this is all part of the same

20 process on December 20th, giving you an opportunity to

21 review the documents and give what instructions to Ron

22 Clark or others that you felt were necessary, correct?

23

MR. DAVID MCFADDEN: Correct.

24

MR. FREDERICK CHENOWETH: All right.

25 And I notice that Ed Houghton wasn't copied on any of

1 these materials, correct? He wasn't part of this --
2 of this circle of individuals reviewing these
3 documents and providing instructions?

4 MR. DAVID MCFADDEN: This is basically
5 exchanges between law firms rather than bringing in
6 everybody else. I mean, John Glicksman was the CFO of
7 --

8 MR. FREDERICK CHENOWETH: Well, it's
9 an exchange between -- between law firms. But it's
10 also an exchange in which the parties are involved, as
11 well, and given --

12 MR. DAVID MCFADDEN: Right.

13 MR. FREDERICK CHENOWETH: -- an
14 opportunity to provide what necessary instructions
15 they wish to their respective counsel, correct?

16 MR. DAVID MCFADDEN: Right.

17 MR. FREDERICK CHENOWETH: All right.

18 MR. DAVID MCFADDEN: Correct.

19 MR. FREDERICK CHENOWETH: Thank you.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: I'm looking
24 at a correspondence of -- of January 11th, 2012, and
25 it's CP -- CPS7947_0001.

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: It's an
4 email of January 11th.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: Let's go up,
9 if we could, and see if I can find what I'm looking
10 for. There we go. That's -- that's it. This is an
11 email sent by Ed Houghton on January 11th, and he
12 sends it to, it looks like, the STT team, from what I
13 can see here. And he says:

14 "Ladies and gentlemen, I want to
15 provide you with a brief update on
16 where we are with our strategic
17 partnership initiative. Since
18 receiving directions from Council on
19 December 5th to begin negotiating
20 with PowerStream and preparing the
21 purchase agreements and
22 shareholders' agreements, a number
23 of meetings have taken place.
24 Dave McFadden has been the champion
25 of the agreements and has been

1 working daily, even through the
2 holidays, with our lawyers, with
3 Aird & Berlis and PowerStream's
4 lawyers, and we are now in a
5 position to take these agreements to
6 Council in camera on December -- or
7 I'm sorry -- on January 16th."

8 He appears to be laudatory with respect
9 to your efforts and he describes you as the champion
10 of the agreements, correct?

11 MR. DAVID MCFADDEN: This is an
12 overstatement. But, you know, I -- I wouldn't say I
13 was champion of the agreements. I think the people
14 who drafted them were the champions working over the
15 holidays and everything else, but -- or in that whole
16 time frame.

17 But, yeah, I mean, I -- I was the one
18 (1) Board member who was involved with working with
19 the -- with the legal team --

20 MR. FREDERICK CHENOWETH: Yes. Thank
21 you.

22 MR. DAVID MCFADDEN: -- from our side.

23 MR. FREDERICK CHENOWETH: From your
24 side.

25 MR. DAVID MCFADDEN: And then John

1 Glicksman --

2 MR. FREDERICK CHENOWETH: Providing
3 instructions and things of that nature, where
4 necessary. Very good.

5

6 (BRIEF PAUSE)

7

8 MR. FREDERICK CHENOWETH: And again,
9 there is one (1) further document I wish to refer you
10 to, and that's KPM4987.001.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: And I
15 suppose on this occasion, again, this is KPMG's notes
16 from a meeting between Collus Power and PowerStream
17 with -- and/or -- with -- also, with their legal
18 counsel, to discuss issues with respect to completing
19 the transaction. And this appears to have taken place
20 on January 12th, 2012 -- or I'm sorry 2011 -- I'm
21 sorry, 2012, January 12, 2012.

22 And, again, legal counsellor are there
23 and representatives of the parties are there, and you
24 were there, as well, to discuss and instruct with
25 respect to how legal counsel might proceed to conclude

1 this transaction?

2 MR. DAVID MCFADDEN: Correct.

3 MR. FREDERICK CHENOWETH: Good.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: I think
8 those are all my questions, Your Honour. Thank you
9 very much.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you. Well, it's -- it's five o'clock. Who's -- who's
12 next and how long are going to be?

13 MR. RYAN BREEDON: I'm next, Your
14 Honour. We -- we volunteered Mr. Chenoweth to go
15 first since he had asked for this witness to come.
16 I'm probably going to be forty-five (45) minutes.

17 THE HONOURABLE FRANK MARROCCO: All
18 right. We'll reconvene -- tomorrow is it nine
19 o'clock? Nine o'clock, Mr. McFadden.

20 MR. DAVID MCFADDEN: Thank you.
21 --- Upon adjourning at 5:07 p.m.

22 Certified Correct,

23

24 _____

25 Wendy Woodworth, Ms.

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