



“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 16th, 2019

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APPEARANCES

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John Mather) Associate Inquiry
) Counsel
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(No Counsel)) For Paul Bonwick
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William McDowell) For Town of Collingwood
Ryan Breedon)
Patrick Gajos (np)) For Collus PowerStream
) Corporation
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1	List of Exhibits		
2	Exhibit No.	Description	Page No.
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1 --- Upon commencing at 9:05 a.m.

2

3 DAVID MCFADDEN, Previously Sworn

4

5 CROSS-EXAMINATION BY MR. RYAN BREEDON:

6 MR. RYAN BREEDON: Well, Mr. McFadden,
7 we've met. My -- my name is Ryan Breedon, and I'm one
8 (1) of the lawyers for the Town.

9 You mentioned yesterday that before the
10 restructuring, that -- of the electricity industry
11 starting in around 1998, I believe there was something
12 like three hundred and seven (307) municipal
13 utilities?

14 MR. DAVID MCFADDEN: Correct.

15 MR. RYAN BREEDON: Okay. And I
16 believe you testified that by, you know, sort of 2010,
17 that was down to around eighty (80)?

18 MR. DAVID MCFADDEN: You know, it's an
19 -- an interesting question you raise on that one,
20 because when I was on the -- the Province's Group Task
21 Force that was looking at the utilities, there was
22 some question as to how many there actually were. The
23 OEB wasn't even sure.

24 When -- when the chairman of the OEB
25 came with staff, she couldn't tell us exactly the

1 number, because it oscillated to seventy-four (74) and
2 seventy-eight (78), depending on how you treated First
3 Nations. It was a muddle.

4 But you're -- you're right, it's --
5 it's between seventy (70) and eighty (80). It's
6 probably closer to eighty (80) at that point, yeah.

7 MR. RYAN BREEDON: The -- the precise
8 number doesn't really matter. The point is that there
9 was a significant reduction in the number?

10 MR. DAVID MCFADDEN: Exactly.

11 MR. RYAN BREEDON: Right.

12 MR. DAVID MCFADDEN: Yes.

13 MR. RYAN BREEDON: And that was -- I
14 think you told us that there had been a number of
15 mergers, and you described a -- a number of utilities
16 that swallowed up sort of surrounding communities,
17 Greater Sudbury, and Windsor and so on?

18 MR. DAVID MCFADDEN: Yeah. What had
19 happened was -- well, a number of them swallowed up
20 was Hydro One acquiring --

21 MR. RYAN BREEDON: Right.

22 MR. DAVID MCFADDEN: -- large numbers,
23 like, they -- they acquired about eighty-eight (88),
24 very rapidly in around 2000, 2002, and then there were
25 a number of mergers where municipalities -- I -- some

1 of it was amalgamations where these companies had to
2 come together, like Toronto, for example. Others,
3 they just came together like Veridian. There was no
4 merger there of municipalities. It's just that they
5 decided to -- to come together and -- and create the
6 Veridian Corporation.

7 MR. RYAN BREEDON: Right, and then you
8 -- you sort of moved ahead where I was going. Hydro
9 One acquired -- I think it's actually eighty-nine (89)
10 in total, but it probably doesn't matter, but it's --
11 but a large number of them.

12 MR. DAVID MCFADDEN: In that -- sort
13 of that number, correct.

14 MR. RYAN BREEDON: Sure. And -- and
15 by far, Hydro One was -- acquired the most utilities?

16 MR. DAVID MCFADDEN: Yes.

17 MR. RYAN BREEDON: Is that fair?

18 MR. DAVID MCFADDEN: The -- the
19 biggest single acquirer.

20 MR. RYAN BREEDON: All right. Now
21 were any of the utilities that were sold -- sold by
22 RFP?

23 MR. DAVID MCFADDEN: There were -- I
24 actually acted for -- for example, Prince Edward, that
25 was bought by Hydro One. The tendency -- because of

1 the -- the issue around transfer tax and everything,
2 Hydro One was only one (1) who was really interested
3 in acquiring. There were -- there weren't other real
4 buyers in the market, certainly not during that big
5 period in -- eighty-eight.

6 It was only later that some companies
7 started to show up who were interested in acquiring.
8 So, for inst -- example, Veridian bought Gravenhurst
9 Hydro, for example, and then PowerStream merged, and
10 then after they got created, they -- they started --
11 they acquired Aurora.

12 So there was -- the -- later on, the --
13 the municipal utilities started into it, or the
14 municipally owned utilities, but before that, it was
15 mainly the pro -- eventually, just because they had
16 the money, and the -- and the sophistication to do it.

17 MR. RYAN BREEDON: Right. But when --
18 were any of the utilities, to your knowledge, and you
19 may or may not know, sold by way of RFP?

20 MR. DAVID MCFADDEN: I don't -- I -- I
21 note there -- you know, I can't tell you for sure how
22 many were sold by RFP. Typically, though, they would
23 get financial advisors and lawyers involved to try to
24 look -- and try to get the best deal.

25 As for how the process happened

1 everywhere. A lot of them were -- see, a lot of these
2 -- when Veridian got created, for example, the -- it
3 was the municipal governments making deals amongst
4 themselves. It really wasn't, you know, an -- an RFP
5 kind of arrangement.

6 Gravenhurst, which is a very small
7 utility bought by Veridian -- and I don't know exactly
8 what they did. My understanding was they looked for
9 competitive bids, and Veridian was chosen, but I -- I
10 can't attest to that. I wasn't acting on that one (1)
11 at all.

12 MR. RYAN BREEDON: Sure. So again,
13 you may not know, but were any of the utilities sold
14 by way of RFP? Do you -- do you know?

15 MR. DAVID MCFADDEN: I can't -- none
16 that I was -- I -- there -- there may well have been.
17 I -- I'd have to think that one (1) out. I can't
18 think of any that I was directly involved in --

19 MR. RYAN BREEDON: Okay.

20 MR. DAVID MCFADDEN: -- involved in --
21 particularly, an RFP.

22 MR. RYAN BREEDON: All right. And
23 then similarly, I suppose, you're not aware of --
24 because of that, you're not aware of KPMG being
25 involved in any RFPs for municipal utilities?

1 MR. DAVID MCFADDEN: They would have
2 been -- where KPMG came into to that was valuations --

3 MR. RYAN BREEDON: Sure.

4 MR. DAVID MCFADDEN: -- and advising
5 on structuring, working with utilities that were
6 emerging. They -- they have had -- they had a lot of
7 experience -- I ran into them in these mergers.

8 KPMG's name kept coming up as a company that would be
9 involved in transactions.

10 Whether they were strictly involved in
11 an RFP, I can't tell you.

12 MR. RYAN BREEDON: Okay. Thank --

13 MR. DAVID MCFADDEN: You'd have to ask
14 them. I mean, I'm not sure what their -- what their
15 book of business has been.

16 MR. RYAN BREEDON: Okay. Thank you.
17 Yesterday, you testified that generally,
18 municipalities wouldn't sole-source on a transaction
19 of the size.

20 Do you recall that?

21 MR. DAVID MCFADDEN: Yes.

22 MR. RYAN BREEDON: All right. And --
23 and I take it that one (1) of the reasons for that is
24 that the municipality wants to maximize its return?

25 MR. DAVID MCFADDEN: Normally, in my

1 experience with government generally, and -- and I'm
2 assuming here as well, is you -- the reason the RFP is
3 used to try to test the market and see how you can get
4 the best price.

5 MR. RYAN BREEDON: Right.

6 MR. DAVID MCFADDEN: But there could
7 be other reasons why you do it besides that, but
8 typically in -- in government these days, at least,
9 it's unusual to sole-source significant acquisition
10 sales, or whatever it happens to be.

11 MR. RYAN BREEDON: Right, because it -
12 - it -- one (1) of the ways of testing the market and
13 getting the best price is to encourage competition
14 amongst a number of bidders?

15 MR. DAVID MCFADDEN: Correct, to try
16 to establish --

17 MR. RYAN BREEDON: It's the same as
18 when you sell your house. It's better if you've got
19 four (4) or five (5) --

20 MR. DAVID MCFADDEN: Yeah.

21 MR. RYAN BREEDON: -- buyers lined up?

22 MR. DAVID MCFADDEN: Yeah.

23 MR. RYAN BREEDON: All right. And --
24 and that's important both in terms of the optics of
25 the transaction, so satisfying the public that -- that

1 the transaction is appropriate?

2 MR. DAVID MCFADDEN: Correct.

3 MR. RYAN BREEDON: And it's important
4 for good stewardship on the part of the government?

5 MR. DAVID MCFADDEN: Yes.

6 MR. RYAN BREEDON: Whether it's a
7 provincial or municipal government?

8 MR. DAVID MCFADDEN: That's correct.

9 MR. RYAN BREEDON: Okay. And
10 similarly, as part of that process, we can hopefully
11 agree that it's important that all of the bidders be
12 given the same information?

13 MR. DAVID MCFADDEN: Yeah. That's the
14 normal process.

15 MR. RYAN BREEDON: Right. And -- and
16 the reason for that is you want all the bidders to be
17 on a level playing field?

18 MR. DAVID MCFADDEN: Yes. You don't
19 want to have anybody, you know, getting information
20 that's different. It -- it -- at least the base
21 documents. I mean, everybody in the -- when you're
22 looking at a transaction, you know, various people in
23 the trans -- may have diff -- different levels of
24 knowledge about the asset, or about the industry, but
25 the mat -- but that the material that goes the RFP

1 should be basically -- the material given -- same
2 material would be given to everybody, and the data
3 rooms, and everything else would be available to
4 everybody on an equal basis.

5 MR. RYAN BREEDON: Right. And -- and
6 similarly, you would want to give everybody the same
7 level of access to the company in terms of asking
8 questions and obtaining their -- their own specific
9 information?

10 MR. DAVID MCFADDEN: Correct, and
11 that's why companies tend to have data rooms, so it's
12 neutral.

13 MR. RYAN BREEDON: Right.

14 MR. DAVID MCFADDEN: People come in,
15 they look at the data, and then they make their own
16 decisions.

17 MR. RYAN BREEDON: And -- and the
18 reason for that is because it is the fairest way of
19 doing it for all of the bidders?

20 MR. DAVID MCFADDEN: That's correct.

21 MR. RYAN BREEDON: And also, again, is
22 likely to encourage the most competition?

23 MR. DAVID MCFADDEN: Yes.

24 MR. RYAN BREEDON: And to maximize the
25 price?

1 MR. DAVID MCFADDEN: Yes. Interesting
2 when you talk about price, RFP is sometimes -- they're
3 looking for the lowest, you know, give us your best
4 price, you bid the lowest price to provide a service.
5 It depends on the -- on what you're looking for.

6 MR. RYAN BREEDON: All right.

7 MR. DAVID MCFADDEN: So either you're
8 looking -- if you're looking to the highest price,
9 you're looking to the lowest price, it depends on what
10 kind of RFP you're dealing with.

11 MR. RYAN BREEDON: Okay. So maximize
12 the price -- to get the best price?

13 MR. DAVID MCFADDEN: Whatever you're
14 looking for, yeah.

15 MR. RYAN BREEDON: Whatever it is that
16 --

17 MR. DAVID MCFADDEN: Yeah.

18 MR. RYAN BREEDON: -- you're looking
19 for. And again, that's part of good stewardship?

20 MR. DAVID MCFADDEN: Correct.

21 MR. RYAN BREEDON: Now, just moving --
22 and I'm going to jump around a little bit, because my
23 friend was very thorough.

24 You testified yesterday that the
25 decision to sell Collus would ultimately be up to the

1 owner?

2 MR. DAVID MCFADDEN: Correct.

3 MR. RYAN BREEDON: Right? It -- that
4 -- that's a decision that the shareholder ultimately
5 is going to make?

6 MR. DAVID MCFADDEN: Absolutely.

7 MR. RYAN BREEDON: And when we talk
8 about shareholder, we can just talk about the Town
9 setting aside the -- the actual corporate structure,
10 because ultimately, the Town was the shareholder?

11 MR. DAVID MCFADDEN: You're right.
12 Absolutely.

13 MR. RYAN BREEDON: Okay. And -- and I
14 think you testified that you understood that Collus
15 Power had obtained approval or direction from the
16 shareholder before retaining KPMG to perform a
17 valuation?

18 MR. DAVID MCFADDEN: As far as I knew.
19 The share -- yeah, my understanding was the
20 shareholder wanted to proceed ahead, look at the
21 valuation with the potential of going ahead with some
22 sort of transaction.

23 MR. RYAN BREEDON: Sure. And -- and
24 certainly, you would have expected that Collus Power
25 would obtain shareholder approval before proceeding to

1 retain KPMG to do a valuation?

2 MR. DAVID MCFADDEN: That -- that
3 would be -- well, the -- somehow, the shareholder
4 needed to approve it, one (1) way or another, and --
5 and was presumably engaged. The problem with the
6 municipal shareholder is exactly who is the
7 shareholder? We've -- I mentioned that yesterday.

8 MR. RYAN BREEDON: Right.

9 MR. DAVID MCFADDEN: Under -- under
10 the -- generally speaking the owner is the Council.
11 Typically though the municipality don't go to the
12 Council for every single decision, so it works its way
13 into the mayor or the CEO or -- or general counsel, if
14 they have one.

15 So, I mean, that's -- that's one (1) of
16 the challenges, you know, in -- in the municipal area
17 is who actually gives green lights at certain times,
18 but as far as I understood, the Town wanted to have
19 this looked at, however the Town was expressed, and
20 I'm assuming that came -- well, Collus Utilities, the
21 holding company, was the most directly related to
22 Collus Power, so -- so they presumably would be the
23 ones who were expressing the view of the -- the owner.

24 MR. RYAN BREEDON: The point is just
25 that the asset can't go off and start obtaining

1 valuations of itself unless the shareholder has
2 directed it to be so.

3 MR. DAVID MCFADDEN: That's correct.

4 MR. RYAN BREEDON: Okay. And -- and
5 similarly, I think we can agree that the -- the asset,
6 in this case Collus Power, can't go off to solicit
7 other bidders or potential bidders without some
8 direction from the shareholder.

9 MR. DAVID MCFADDEN: That -- that
10 would be my understanding how it would normally
11 operate. I assume they operate that way here.

12 MR. RYAN BREEDON: Now, I assume you
13 have read the Foundation Document before coming here
14 today.

15 MR. DAVID MCFADDEN: There were a lot
16 of them. I can't say I memorized everything but --

17 MR. RYAN BREEDON: I --

18 MR. DAVID MCFADDEN: -- I did -- I did
19 read through it all.

20 MR. RYAN BREEDON: Fair enough.
21 You're aware, and we can turn it up if you want, but
22 you're aware that Mr. Houghton first met with Mr.
23 Bentz of PowerStream on December the 3rd, 2010?

24 MR. DAVID MCFADDEN: I mean, I don't
25 remember the specifics of that but, yeah, I remember

1 there was something in the material on that fact.

2 MR. RYAN BREEDON: And -- and I take
3 it you weren't aware of this meeting at the time?

4 MR. DAVID MCFADDEN: I discovered when
5 I read through there's a lot of stuff I wasn't aware
6 of, including --

7 MR. RYAN BREEDON: I'm sure that's
8 true.

9 MR. DAVID MCFADDEN: -- including that
10 meeting.

11 MR. RYAN BREEDON: All right. So you
12 weren't aware of that meeting, and -- and it wasn't
13 directed by the Collus Power Board.

14 MR. DAVID MCFADDEN: No. There was no
15 -- at no time did they ever come and say I'm going to
16 meet with Brian Bentz or anything of that nature, no.

17 MR. RYAN BREEDON: And to your
18 knowledge there was no direction from the shareholder
19 instructing Mr. Houghton to go and meet with Mr.
20 Bentz?

21 MR. DAVID MCFADDEN: Not that I'm
22 aware of.

23 MR. RYAN BREEDON: And I take it that
24 we can agree that -- that Mr. Houghton should not have
25 had that meeting without some direction from either

1 your Board or the shareholder?

2 MR. DAVID MCFADDEN: That's an
3 interesting question. If he was just having a general
4 discussion with somebody about possibilities and then
5 reported them back to the owner, saying look, you know
6 what, I've -- I've had a discussion, that they may be
7 interested, I -- that's -- you know, nothing wrong
8 with that.

9 But the question is, and what -- what -
10 - what's the understanding that maybe all the parties
11 had there, but, I mean, typically though, people do in
12 the industry -- you got to remember, as I mentioned
13 yesterday, Ed was a very active guy in the EDA and
14 everything else, and he was -- he was all over the
15 place talking to people, meeting them.

16 So I don't know what the context -- I
17 don't know if that meeting was set up with sort of the
18 objective, look, I've got an idea to go to you. You
19 know, I don't know that. I have no idea because I
20 wasn't aware that he was doing it, and certainly
21 wasn't -- there was no approval or debate about that
22 in a Board meeting.

23 MR. RYAN BREEDON: If -- if the
24 meeting was set up to explore the possibility of some
25 partnership between Collus Power and PowerStream or an

1 acquisition of Collus Power by PowerStream, that's
2 something Mr. Houghton ought not to have done without
3 direction from the shareholder. You'll agree?

4 MR. DAVID MCFADDEN: I guess if you're
5 talking about something in the abstract, yes. If he
6 was actually saying he was coming to talk about a
7 transaction per se, that's a different thing, and I --
8 I mean, I don't know what -- the context of it, and I
9 don't know who he talked to at Town Hall, but if he
10 had -- it depends on how he said it, I guess, is how I
11 would -- I would portray -- if I -- if I'm going in
12 and having a chat just generally about consolidation,
13 the industry, and what we're hearing, and are you --
14 would you be interested in the event that comes open,
15 that's okay, but if I'm coming in saying, well, here,
16 I'm going to sell you the company and I'll make sure
17 it all happens and don't worry, that's a different
18 thing. I don't know the -- the basis on which that
19 discussion took place and what happened there.

20 MR. RYAN BREEDON: All right. Well,
21 we'll hear from them and --

22 MR. DAVID MCFADDEN: Yeah.

23 MR. RYAN BREEDON: -- find out. Now,
24 can we took -- take a look at Foundation Document
25 paragraph 239, please?

1 (BRIEF PAUSE)

2

3 MR. RYAN BREEDON: Okay. So this is a
4 discussion of the first meeting of the strategic
5 partnership task team, and you were taken to the
6 minutes of it yesterday, and I understand you -- this
7 is one (1) that you participated in by telephone and
8 then had to leave a bit early. You recall that?

9 MR. DAVID MCFADDEN: Correct.

10 MR. RYAN BREEDON: Okay. Could you
11 scroll down to paragraph 240?

12 In the meeting, this indicates that Mr.
13 Houghton and Mr. Muncaster reported that they had
14 attended initial meetings with potentially interested
15 bidders and that they had used a consistent
16 introduction at each meeting. You see that?

17 MR. DAVID MCFADDEN: Yeah.

18 MR. RYAN BREEDON: Now, do you recall
19 this discussion?

20 I don't know whether this happened
21 while you were participating or -- or after.

22 MR. DAVID MCFADDEN: I do re -- well,
23 I -- I knew that Dean Muncaster had suggested that
24 they needed to go out and see if there were any
25 interested bidders and -- and -- and who they might

1 be. I don't remember hearing a very detailed response
2 to any of this at all. I do know that, thinking back
3 -- I mean, St. Thomas they felt -- I don't know why
4 they went to St. Thomas. It's a long ways from here.
5 They -- it was a small utility. I'm not sure how they
6 -- that entered the picture at all; strange.

7 In fact that company virtually went
8 into bankruptcy recently and was acquired by Integral,
9 so they would not have been a good financial partner
10 in this affair. But PowerStream, Hydro One, Veridian,
11 and Horizon all struck me as good candidates for this.

12 MR. RYAN BREEDON: All I'm actually
13 asking, sir, is whether you were present at this
14 meeting at the time when it was disclosed that Mr.
15 Muncaster and Mr. Houghton had had these various
16 meetings.

17 MR. DAVID MCFADDEN: My recollection
18 was I think this may have come up early in the meeting
19 and I think it was just a general discussion. They --
20 they met these people. I don't remember much detail
21 and I wasn't there for the whole thing, but remember
22 him -- I -- I -- I do recall discussions about they've
23 been out to meet them and that they'd all expressed an
24 interest if there was a process in putting in a bid.

25 MR. RYAN BREEDON: Sure. And -- and I

1 -- I take it you would agree that one (1) of the
2 things that was communicated to the strategic task
3 team was that Mr. Houghton and Mr. Muncaster had used
4 a consistent introduction at each meeting.

5 MR. DAVID MCFADDEN: That is what we
6 were told. Dean was very oriented that way. I mean,
7 Dean had a lot of experience in the corporate sector,
8 as we've talked about yesterday, and you -- you
9 probably already heard elsewhere. He was a very
10 sophisticated business guy, done a lot of mergers and
11 acquisitions, and so in -- in a lot of ways a lot of
12 this process was him trying to make sure that what --
13 what was undertaken fitted what he would expect out of
14 a -- a company that's running things properly.

15 So, I mean, that was Dean's approach.
16 I -- and that's why -- and so -- so when Dean took the
17 lead on this, I mean, I was very comfortable with it,
18 because, I mean, it -- it was rare to have someone
19 with his capability doing this kind of work for us.

20 MR. RYAN BREEDON: And -- and the idea
21 of using a consistent introduction at each meeting is
22 that you were communicating the same information to
23 each of the bidders?

24 MR. DAVID MCFADDEN: Yeah.

25 MR. RYAN BREEDON: It's sort of the

1 same point that we talked about earlier.

2 MR. DAVID MCFADDEN: Correct.

3 MR. RYAN BREEDON: All right.

4 MR. DAVID MCFADDEN: Exactly the same
5 point.

6 MR. RYAN BREEDON: Now, you are -- are
7 aware, I presume, and again we can go through it, but
8 that Mr. Houghton had in fact had a number of meetings
9 with PowerStream prior to this point?

10 MR. DAVID MCFADDEN: I wasn't aware of
11 that.

12 MR. RYAN BREEDON: You're aware of it
13 now.

14 MR. DAVID MCFADDEN: I'm aware --
15 well, I wasn't at the time. I'm aware of it now,
16 having read the material.

17 MR. RYAN BREEDON: And you were not
18 aware that, I presume, at the time?

19 MR. DAVID MCFADDEN: No. I thought
20 the meeting with PowerStream was the one (1) that was
21 reported on here with Mr. Muncaster.

22 MR. RYAN BREEDON: All right. Mr.
23 Houghton didn't disclose to the strategic task team
24 that he had, in fact, had a number of meetings with
25 PowerStream?

1 MR. DAVID MCFADDEN: I was not aware
2 of that. If it was reported, it wasn't reported when
3 I was there and I'm assuming it wasn't reported but I
4 have no idea.

5 MR. RYAN BREEDON: And -- and I take
6 it you'll agree with me that he should have reported
7 that. That was information that the strategic task
8 team should have known?

9 MR. DAVID MCFADDEN: It would have
10 been helpful if he'd said, look, I've had some ongoing
11 discussions with PowerStream, you know. They --
12 they've indicated a lot of interest. I -- I don't
13 know. I mean, yeah, it's -- I don't know the context
14 with all those meetings happened. I mean, frankly
15 I've seen the notes. I mean, I don't know whether,
16 you know, these were more industry discussions and
17 exchanges or not fundamentally.

18 But, yeah, I mean, it would be
19 problematic if they were being given information prior
20 to all this happening, but in the end they would have
21 to fit the RFP process anyway. So in a way, I mean,
22 the question is, did they get anything that gave them
23 any advantage or not.

24 MR. RYAN BREEDON: So that's a
25 separate question.

1 MR. DAVID MCFADDEN: Yeah.

2 MR. RYAN BREEDON: You know, whether
3 it had an impact on the eventual process is a separate
4 question. All I'm suggesting to you is that Mr.
5 Houghton should have disclosed to the strategic task
6 and that he had had a number of meetings with
7 PowerStream.

8 MR. DAVID MCFADDEN: It -- it would
9 have been preferable given that there were several of
10 these meetings. I don't know how many they came to,
11 I'd have to count them up, but there were a number of
12 them.

13 MR. RYAN BREEDON: All right. I want
14 to talk about Mr. Neate for a moment. You were here
15 for some of his evidence yesterday?

16 MR. DAVID MCFADDEN: Mr. Neate?

17 MR. RYAN BREEDON: The accountant.

18 MR. DAVID MCFADDEN: I -- you know, I
19 must've met him but when I watched him I couldn't
20 remember it. Yes, I heard it briefly, I didn't hear
21 much of what he said, I came part-way through when he
22 was being cross-examined by Tim Fryer.

23 MR. RYAN BREEDON: Okay. You will --
24 maybe we could just turn up CBB39, please?

25

1 (BRIEF PAUSE)

2

3 MR. RYAN BREEDON: So there was some
4 evidence yesterday that Mr. Neate had a number of
5 concerns about the transaction and he was cross-
6 examined quite extensively about those by the various
7 parties.

8 I take it that he did not raise his
9 concerns with the strategic task team?

10 MR. DAVID MCFADDEN: I don't remember
11 him specifically appearing and -- and making a
12 submission around this.

13 MR. RYAN BREEDON: All right.

14 MR. DAVID MCFADDEN: He -- he may well
15 have with other people, you know, Tim or some other
16 people in the -- involved in it. But I -- I don't
17 recall hearing anything from him on this specific
18 matter.

19 MR. RYAN BREEDON: He didn't raise any
20 concerns during discussions after the presentations by
21 any of the bidders or -- or in any of the meetings of
22 the strategic task team?

23 MR. DAVID MCFADDEN: The only thing I
24 remember, and it's fairly indistinct, is there seemed
25 to be some -- one (1) thing I was aware of was there

1 was some difference of opinion in the financial group,
2 and you know -- and this is not necessarily typical, I
3 mean I've been involved in transactions where you'll
4 have in -- in one (1) group of three (3) and four (4)
5 different people saying, well, I wouldn't have
6 evaluate it this way, I'd evaluate it that way, I'm
7 not sure we should go ahead, or we should.

8 And -- and so what I -- I -- so I
9 wasn't shocked to find out that financial people don't
10 necessarily agree on everything, nor the lawyers agree
11 on everything. So I'm not shocked to hear there was a
12 difference of opinion.

13 As for the significance of it, I guess
14 is the -- is the question, but we were, as a group,
15 essentially relying fundamentally on KPMG, they were
16 our financial advisors. And so at -- at -- I'd -- and
17 I can't tell you exactly whether it was after the
18 transaction or during this, that there was some
19 difference of opinion.

20 MR. RYAN BREEDON: Okay, but -- but
21 certainly you don't have a recollection of Mr. Neate
22 raising any concerns?

23 MR. DAVID MCFADDEN: I don't recall.

24 MR. RYAN BREEDON: All right. Now, at
25 some point later on, Mr. Neate was replaced as the

1 auditor for Collus. You're aware of that?

2 MR. DAVID MCFADDEN: Yes.

3 MR. RYAN BREEDON: Okay. And did the
4 Board lose confidence in Mr. Neate's abilities?

5 MR. DAVID MCFADDEN: We got a
6 recommendation that we should get a strong -- a firm
7 that was more heavily involved in the LDC business,
8 that had a -- a -- more in -- involvement in what was
9 going on in the industry and had a deeper experience
10 in it.

11 That -- that's what I can recall coming
12 up. I had no criticism of -- of him or his firm, you
13 know, they'd been there for quite some time. But
14 there was a feeling that perhaps given the -- the
15 planning and the -- now, you've got to remember there
16 was a context, given the planning maybe to make
17 Collingwood a centre for an aggregation, there was
18 something, they needed an accounting firm that had a
19 bit broader experience so that they could help out and
20 -- if that company were to develop in that direction.

21 But that -- that -- I mean, I don't
22 remember any -- there's no massive criticism. There
23 was some talk, but you know, there was nothing
24 specific. Somebody -- there was some concern about
25 some performance stuff, but I don't -- I don't want to

1 say any -- I vaguely remember that, but I think the --
2 my recollection was there -- there -- it was felt
3 their experience was a bit limited and we maybe needed
4 a firm or a partner or whatever involved in here that
5 had a bit more experience.

6 MR. RYAN BREEDON: My understanding is
7 that what -- what originally happened was that Mr.
8 Neate was replaced by one (1) of his partners who took
9 over sort of the lead role on -- on this particular
10 file, so it wasn't a switch of firms so much as just a
11 switch of who had responsibility.

12 MR. DAVID MCFADDEN: Yes.

13 MR. RYAN BREEDON: Do you know why
14 that happened?

15 MR. DAVID MCFADDEN: I don't know. I
16 have no idea that -- I assumed -- well, I mean it's
17 quite normal for accounting firms to change partners,
18 you know, after a few years you tend to switch around.

19 MR. RYAN BREEDON: Right. Although
20 the -- the -- the evidence that we've heard thus far
21 is that this was a -- came as a request from Collus.

22 So my question for you is -- and -- and
23 maybe you don't know, but was this an issue that the
24 Board had, was it the Board who wanted Mr. Neate
25 replaced by one (1) of his partners?

1 MR. DAVID MCFADDEN: No. I had no
2 problem with Mr. Neate one (1) way or the other.

3 MR. RYAN BREEDON: Okay, thank you.

4 Could we take a look at summary
5 document 1-4, please, starting at paragraph 6. And
6 while this is coming up, you'll agree, I think, that
7 all of the bidders provided different financial terms
8 as part of their bids?

9 MR. DAVID MCFADDEN: M-hm.

10 MR. RYAN BREEDON: "Yes"?

11 MR. DAVID MCFADDEN: Yes.

12 MR. RYAN BREEDON: Yes, okay.

13 And so for instance, at paragraph 6.
14 So, we don't need to go through them all, but the
15 Hydro One bid was a cash payment of \$13.6 million, a
16 repayment of the promissory note that had been owed to
17 the Town and then if we scroll down a little bit,
18 please. A recapitalization dividend of \$3.2 million.

19 Do you see that?

20 MR. DAVID MCFADDEN: Uh-hmm.

21 MR. RYAN BREEDON: And -- and so the
22 total compensation payable to the Town under this
23 proposal is \$18.5 million, if I've done the arithmetic
24 correctly?

25 MR. DAVID MCFADDEN: Yes, I vaguely

1 remember all those numbers there, yes. Yes.

2 MR. RYAN BREEDON: Sure. And then if
3 we scroll down to PowerStream -- sorry, paragraph 7
4 sets out the PowerStream bid, and that's a cash
5 payment of \$7.3 million, plus the repayment of the
6 promissory note, plus a dividend of \$5.5 million.

7 You see all that?

8 MR. DAVID MCFADDEN: Correct.

9 MR. RYAN BREEDON: Then of course you
10 know that PowerStream later increased the cash payment
11 from 7.3 to \$8 million?

12 MR. DAVID MCFADDEN: Correct.

13 MR. RYAN BREEDON: Now, because the
14 terms were all different, KPMG took -- undertook an
15 analysis to try to normalize the bid so that they
16 could be compared, correct?

17 MR. DAVID MCFADDEN: Correct.

18 MR. RYAN BREEDON: All right.

19 And that -- and I'm happy to turn it up
20 if you -- if you like, but the idea was that you
21 wanted to be able to compare apples to apples so that
22 you could better understand what each of the parties
23 was actually offering to contribute.

24 MR. DAVID MCFADDEN: True.

25 MR. RYAN BREEDON: Okay. And the

1 analysis that was prepared by KPMG was presented to
2 the strategic task team.

3 MR. DAVID MCFADDEN: That's correct.

4 MR. RYAN BREEDON: And I take it that
5 you relied on the analysis prepared by KPMG in your
6 evaluation of the bids.

7 MR. DAVID MCFADDEN: That's right.

8 MR. RYAN BREEDON: All right. You
9 didn't -- you yourself didn't undertake a separate
10 financial analysis.

11 MR. DAVID MCFADDEN: No, I did not.

12 MR. RYAN BREEDON: All right. And
13 nobody, to your knowledge, on the strategic task team
14 did?

15 MR. DAVID MCFADDEN: As far as I'm
16 concerned, I understand that to be true.

17 MR. RYAN BREEDON: Now, we've talked
18 about or we mentioned a moment ago that PowerStream
19 increased its bid, and perhaps we could turn up
20 Foundation document paragraph 419, please.

21 And just scroll down so that we can see
22 Mr. Rockx note. Thanks.

23 So the -- it appears from the material
24 that there was a meeting on December 1st between Mr.
25 Houghton and Muncaster on behalf of Collus, with Mr.

1 Glicksman and Mr. Bentz on behalf of PowerStream and
2 then Mr. Rockx, who was from KPMG was present.

3 You see that?

4 MR. DAVID MCFADDEN: Yes.

5 MR. RYAN BREEDON: And it was at this
6 meeting that PowerStream agreed to increase its bid,
7 the cash component, from 7.3 to \$800,000?

8 MR. DAVID MCFADDEN: Correct.

9 MR. RYAN BREEDON: All right. And I
10 presume that this was then communicated to the members
11 of the strategic task team, you were aware that
12 PowerStream had increased its bid.

13 MR. DAVID MCFADDEN: Yes, I can't
14 remember how it was communicated to us, but I remember
15 hearing that, that they had -- had increased their
16 bid.

17 MR. RYAN BREEDON: You had to have
18 known that, right?

19 MR. DAVID MCFADDEN: Yes, yes.

20 MR. RYAN BREEDON: And did you know
21 that the increase of the bid came about as a result of
22 a meeting between these people?

23 MR. DAVID MCFADDEN: Yes. When we
24 looked at the financial offers, it was a very awkward
25 situation we were in because PowerStream had -- was --

1 had clearly -- had been number 1 in -- in the -- in
2 that 70 percent category.

3 Horizon -- well, I don't know if you --
4 you've got the points in here, but Horizon was a quite
5 close second. Hydro One was quite a ways back. And
6 then you had Veridian in fourth place. That was where
7 we were at that point.

8 So, then you turn to the financial.
9 And I sort of worked out my own arithmetic on it.
10 Let's say you gave -- every one (1) of the members of
11 the task force gave Hydro One thirty (30) just because
12 they were number 1, as we don't with all the others,
13 they got thirty (30).

14 You presumably would give the others
15 something for having done something. So, if you put
16 in -- let's say you gave Veridian fifteen (15) -- or
17 PowerStream fifteen (15) or twenty (20) but you give,
18 you know, clearly Hydro One the thirty (30),
19 PowerStream still wins on -- on points.

20 And so, it was a really awkward
21 situation because clearly we had a situation where,
22 from the point of the corporation, the community, the
23 employees, the things we're looking at, the
24 PowerStream bid was way ahead of Hydro One. The
25 price, PowerStream came second in that area.

1 So, Dean -- and I remember him raising
2 this. Dean had said, well, look, you know, the normal
3 process in a thing like this, that if it's close or if
4 the one (1) side is clearly winning but there's a
5 problem in this one (1), to go to somebody and say,
6 look, give us more money to pre -- you know, are you
7 prepared to make it more equivalent because you -- you
8 are very strong on this, you're weak on that, can you
9 do something better.

10 He -- and -- and he felt, since they
11 were so much strong in the one (1) area, he said it
12 would -- it would be great if we could get some more
13 money out of them to more equalize them if that's
14 possible, so they came up with this additional money.

15 But still, on -- on the -- the one (1)
16 thing that struck me about the whole thing with --
17 either you believed in the hundred points or you
18 didn't. Once you did, PowerStream had won on points.
19 It was slightly less on money.

20 Now, if money was the only criteria,
21 then we should have just eliminated the seventy (70)
22 and said -- had money as a hundred percent and left it
23 at that. That was not the process.

24 So, if you look -- work through this
25 process, you wind up in this situation. Now, getting

1 the extra money is a good thing and -- but, you know,
2 that -- that was -- Dean initiated that. I recall it
3 -- very distinctly saying, Look, let's see if we can
4 get a bit more, since PowerStream wins anyway, let's
5 try to get some more money from them.

6 MR. RYAN BREEDON: Okay. So, my
7 question was just, were you aware that the -- that
8 this meeting had taken place. And I take it from what
9 you've said --

10 MR. DAVID MCFADDEN: Yeah.

11 MR. RYAN BREEDON: -- that the answer
12 is 'yes'?

13 MR. DAVID MCFADDEN: Yes.

14 MR. RYAN BREEDON: Okay.

15 MR. DAVID MCFADDEN: Well, I'm not
16 aware of who was all at that meeting, but I remember
17 there was a meeting that was going to happen and they
18 were going to try to get -- see if they'd put a little
19 more in on the table.

20 MR. RYAN BREEDON: Sure. Was there a
21 meeting with any of the other bidders in order to
22 rectify any of the issues with their bids?

23 MR. DAVID MCFADDEN: I don't recall
24 any other meetings. I think what they decided to do
25 is run with the one (1), which is also unusual. In --

1 in a corporate transaction, you tend to choose, a) one
2 (1) of the bids that you like for various reasons, see
3 if -- if that works. If that doesn't work, you maybe
4 go on to another one.

5 You don't necessarily though throw the
6 others out because you don't want to lose them in the
7 bid process. So, it -- it's not unusual to -- to
8 communicate in a corporate transaction with bidders
9 directly. But I'm not aware of any discussion that
10 happened with anybody else, and it may of well
11 happened, but I'm not aware of it.

12 MR. RYAN BREEDON: So, are you saying
13 that, by this point, effectively, the decision had
14 been made to go ahead with PowerStream, but Mr.
15 Muncaster thought it worth seeing if they could
16 sweeten the deal?

17 MR. DAVID MCFADDEN: Well, we looked
18 at the process. And they'd -- and they'd won the
19 process. That's the part that we -- that had won the
20 process. So, what do you do then? Because if we had
21 gone against them, then we'd have screw -- we -- we
22 wouldn't -- we would have violated our process because
23 they did -- hadn't finished first.

24 MR. RYAN BREEDON: So, the answer is
25 'yes'?

1 MR. DAVID MCFADDEN: Yes.

2 MR. RYAN BREEDON: Okay. Now, I want
3 to talk for a moment about the presentations that were
4 made by the various bidders, and you've given some
5 evidence about this yesterday.

6 And you -- you have agreed, I think,
7 that the presentations were highly confidential?

8 MR. DAVID MCFADDEN: Yeah, they were
9 confidential to the parties involved.

10 MR. RYAN BREEDON: Sure. And
11 similarly, the discussions or the evaluations of those
12 presentations on the part of the STT were very
13 confidential?

14 MR. DAVID MCFADDEN: Right.

15 MR. RYAN BREEDON: Can we look at
16 document TOC59013, please?

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: This is Mr.
21 Bonwick's memo to Mr. Bentz and others at PowerStream.
22 You'll see the subject is, "LDC presentations." And
23 can we scroll down? And we could just stop there.

24 Have you had a chance to review this
25 before?

1 MR. DAVID MCFADDEN: Yeah, I read
2 this.

3 MR. RYAN BREEDON: Yes, okay.

4 MR. DAVID MCFADDEN: Yeah.

5 MR. RYAN BREEDON: And what it appears
6 to be, and we're -- I'm happy to take you through it
7 in some detail, but it appears to be a report of the
8 presentations for Hydro One, and then Veridian --

9 MR. DAVID MCFADDEN: Correct.

10 MR. RYAN BREEDON: -- the
11 presentations that were given by those bidders to the
12 STT?

13 MR. DAVID MCFADDEN: Correct.

14 MR. RYAN BREEDON: Yes.

15 MR. MICHAEL WATSON: Your -- Your
16 Honour, I wonder if -- if I could make a suggestion
17 here. This, of course we all know from previous
18 evidence, was an attachment to an email from Mr.
19 Bonwick to Mr. Houghton.

20 Mr. Breedon has called it a memo to
21 PowerStream. It's a draft memo to PowerStream. And I
22 think we know that there isn't a document showing it
23 actually going to PowerStream. And may I -- I suggest
24 that the witness be told because, you know, he doesn't
25 know all of this, that this was a draft of a memo.

1 THE HONOURABLE FRANK MARROCCO: Well,
2 he's been told that now by you.

3 MR. MICHAEL WATSON: Well, that's why
4 I'm raising it, Your Honour.

5 THE HONOURABLE FRANK MARROCCO: No,
6 Mr. Breedon's question was reasonable. Go ahead.

7 MR. RYAN BREEDON: Thank you. And, of
8 course, I can't now recall what my question was. What
9 -- what --

10 THE HONOURABLE FRANK MARROCCO: Well,
11 that makes my --

12 MR. RYAN BREEDON: What --

13 THE HONOURABLE FRANK MARROCCO: That
14 makes my ruling more difficult.

15

16 CONTINUED BY MR. RYAN BREEDON:

17 MR. RYAN BREEDON: What -- what the
18 memo purports to be is a report on the presentations
19 given by those two (2) bidders?

20 MR. DAVID MCFADDEN: Yes.

21 MR. RYAN BREEDON: And then there was
22 a second memo dealing with the other presentations,
23 and you've seen that, as well?

24 MR. DAVID MCFADDEN: Correct.

25 MR. RYAN BREEDON: Okay.

1 MR. DAVID MCFADDEN: I've gotten all
2 the material I received.

3 MR. RYAN BREEDON: All right. And we
4 went through this with Mr. Lloyd. And I -- I presume
5 you'll agree that the memos are an accurate summary of
6 those presentations?

7 MR. DAVID MCFADDEN: As I read through
8 them, yes, they appeared to be a pretty accurate --

9 MR. RYAN BREEDON: All right.

10 MR. DAVID MCFADDEN: -- summary of
11 them.

12 MR. RYAN BREEDON: All right. And --
13 and, similarly, of some of the responses of the STT to
14 the presentations?

15 MR. DAVID MCFADDEN: M-hm.

16 MR. RYAN BREEDON: Yes?

17 MR. DAVID MCFADDEN: Correct.

18 MR. RYAN BREEDON: Okay. Now, I think
19 -- I -- I'm fairly sure that you did not disclose this
20 information to Mr. Bonwick?

21 MR. DAVID MCFADDEN: I did not.

22 MR. RYAN BREEDON: Okay. But we can
23 agree that the information had to come from somebody
24 on the STT?

25 MR. DAVID MCFADDEN: It had to be

1 somebody that was in the room.

2 MR. RYAN BREEDON: All right. Either
3 somebody on the STT or a staff person, presumably?

4 MR. DAVID MCFADDEN: Correct. Yeah.

5 MR. RYAN BREEDON: And I presume you
6 will agree that it is very concerning that somebody in
7 that room was leaking information to Mr. Bonwick?

8 MR. DAVID MCFADDEN: Yes.

9 MR. RYAN BREEDON: Now, of course, you
10 did not know that somebody was leaking information at
11 the time?

12 MR. DAVID MCFADDEN: I had no idea of
13 this at all.

14 MR. RYAN BREEDON: I -- I assume you
15 didn't know about this until you saw the Foundation
16 Document?

17 MR. DAVID MCFADDEN: The first time I
18 saw it was when I received these documents. I've
19 never seen it and -- before, for sure.

20 MR. RYAN BREEDON: And -- and,
21 similarly, set aside whether you saw the documents,
22 you didn't know that information was being leaked to
23 Mr. Bonwick --

24 MR. DAVID MCFADDEN: I did not.

25 MR. RYAN BREEDON: -- or, potentially,

1 to PowerStream? I guess we're going to hear what
2 PowerStream has to say about all of this.

3 MR. DAVID MCFADDEN: I was not aware
4 of any of that, no.

5 MR. RYAN BREEDON: And certainly,
6 PowerStream never told you that it was receiving
7 confidential information from the STT?

8 MR. DAVID MCFADDEN: No.

9 MR. RYAN BREEDON: And we know that
10 your partner, Mr. Hull, was acting for PowerStream
11 through this transaction?

12 MR. DAVID MCFADDEN: Yes.

13 MR. RYAN BREEDON: All right. And --
14 and Mr. Hull never told you that PowerStream was
15 receiving confidential information from the STT?

16 MR. DAVID MCFADDEN: Never.

17 MR. RYAN BREEDON: All right. And --
18 and, similarly, nobody at Gowlings told you that
19 PowerStream was receiving confidential information
20 from the STT?

21 MR. DAVID MCFADDEN: No.

22 MR. RYAN BREEDON: And -- and to be
23 fair, there's not been any evidence that anybody at
24 Gowlings knew about this, so --

25 MR. DAVID MCFADDEN: No.

1 MR. RYAN BREEDON: -- that's fine?
2 Now, it's obvious, looking at this memo, that this is
3 confidential information?

4 MR. DAVID MCFADDEN: On the face of
5 it, I would say you're -- that's absolutely correct.

6 MR. RYAN BREEDON: Right. So anybody
7 reading it would be aware that somebody was leaking
8 information that was the source of this memo.

9 MR. DAVID MCFADDEN: Correct.

10 MR. RYAN BREEDON: And it would be
11 obvious that whoever was leaking that information had
12 to be doing it in breach of their duty of
13 confidentiality to the Town or to Collus.

14 MR. DAVID MCFADDEN: It would
15 certainly appear so. I mean, I don't know who they
16 were, but that would certainly appear the case. If
17 they're in the room, they should have never have been
18 doing this.

19 MR. RYAN BREEDON: Whoever was in --
20 anybody who is in the room had a duty of
21 confidentiality.

22 MR. DAVID MCFADDEN: Right.

23 MR. RYAN BREEDON: And it's obvious
24 that they were breaching that duty to provide this
25 information to Mr. Bonwick.

1 MR. DAVID MCFADDEN: Correct.

2 MR. RYAN BREEDON: And assuming that
3 the person had a fiduciary duty to either Collus or to
4 the Town, it's obvious that they were in breach of
5 their fiduciary duty in leaking this information to
6 Mr. Bonwick.

7 MR. DAVID MCFADDEN: You're asking a
8 legal opinion, but yes, I think that -- it would
9 clearly on the -- clearly be a violation of fiduciary
10 duty of some type. That's for sure.

11 MR. RYAN BREEDON: I think -- I think
12 we all agree that --

13 MR. DAVID MCFADDEN: Yes.

14 MR. RYAN BREEDON: -- that you are
15 qualified to give the legal opinion.

16 MR. DAVID MCFADDEN: Yes, I would
17 agree.

18 MR. RYAN BREEDON: And all that had to
19 be obvious to PowerStream if it received this
20 information.

21 MR. DAVID MCFADDEN: I don't know what
22 was obvious to them and what they thought they were
23 getting and who got it. I mean, there's some
24 question, I gather from what we just heard now, what
25 was sent to who. But if they received this

1 information, it would be clear to them they got
2 confidential information from somewhere.

3 MR. RYAN BREEDON: Okay. Now, you, of
4 course, were not acting for PowerStream obviously.

5 MR. DAVID MCFADDEN: No.

6 MR. RYAN BREEDON: But I think that
7 you'll agree with me that if you had been and you were
8 aware that your client had received this sort of
9 information, you would be very concerned about that.

10 MR. DAVID MCFADDEN: If I saw that
11 information, I'd tell them to tear it up and delete
12 it.

13 MR. RYAN BREEDON: Right. And that's
14 because there would be very, very serious
15 repercussions if all this comes to light potentially.

16 MR. DAVID MCFADDEN: Correct.

17 MR. RYAN BREEDON: Right. And you'd
18 be concerned about possible litigation?

19 MR. DAVID MCFADDEN: To various
20 consequences.

21 MR. RYAN BREEDON: You'd be concerned
22 about the possibility of your client being dragged
23 into a judicial inquiry.

24 MR. DAVID MCFADDEN: And that's -- and
25 here we are today. Yes. So there you go. It proved

1 out.

2 MR. RYAN BREEDON: Right. And so you
3 say that you would have -- you would have them to tear
4 it up. You certainly would have instructed them to
5 stop obtaining confidential information.

6 MR. DAVID MCFADDEN: Correct. I'll
7 tell you -- I'll give you an example. I mean, I --
8 every once in a while -- I'm sure it's happened to
9 you -- you get something in the email. I -- I used to
10 get -- for some reason, there's a law firm in
11 New York. I used to get their stuff. I don't know
12 why, and what I would do is send it back to them and
13 delete it. Send it to the sender and delete it.
14 That's the normal process when you get something you
15 don't -- you shouldn't have in your possession.

16 MR. RYAN BREEDON: And so what you're
17 talking about there is sort of an inadvertent
18 disclosure of either confidential information or
19 solicitor and client information or -- or that sort of
20 thing. That's what you're talking about?

21 MR. DAVID MCFADDEN: Yeah.

22 MR. RYAN BREEDON: And so typically,
23 the process is you destroy the thing, and you let the
24 sending party know that you received it inadvertently
25 and that you've destroyed it.

1 MR. DAVID MCFADDEN: That's correct.

2 MR. RYAN BREEDON: Right. This is a
3 bit different though, right? Because this is
4 information that appears to have been obtained by an
5 agent retained by PowerStream -- Mr. Bonwick -- about
6 the transaction.

7 So it's not an inadvertent disclosure
8 by the Town so much as, you know, a consultant for
9 PowerStream going out and obtaining information,
10 correct?

11 MR. DAVID MCFADDEN: Yeah.

12 MR. RYAN BREEDON: It's a bit of a
13 different situation.

14 MR. DAVID MCFADDEN: Oh, yeah. Yeah.
15 And I'm just saying that these things -- what I -- you
16 typically do when you got information that wasn't
17 something you should really have.

18 MR. RYAN BREEDON: Right. And so
19 again, if you were acting on this -- on this matter,
20 you would have told PowerStream to stop collecting
21 this confidential information?

22 MR. DAVID MCFADDEN: Yeah.

23 MR. RYAN BREEDON: And you probably
24 would have told PowerStream to stop engaging with
25 Mr. Bonwick.

1 MR. DAVID MCFADDEN: You know, it's
2 sort of a strange one. If you got it, you'd first
3 want to find out how the devil did he get the
4 information. Like, how am I getting in possession of
5 this at all? I mean, that would be an obvious
6 question anybody might ask.

7 MR. RYAN BREEDON: Right.

8 MR. DAVID MCFADDEN: But it is -- this
9 would not be information you'd expect to be receiving
10 as a bidder.

11 MR. RYAN BREEDON: Right. And would
12 you have disclosed or advised PowerStream to disclose
13 the existence of this leak to the Town?

14 MR. DAVID MCFADDEN: If you -- well,
15 if you became aware that there'd been a leak at some
16 point, you'd certainly have wanted to report it to
17 the -- to the shareholder that there's been a leak
18 or -- or -- in this process, if you were on the task
19 force you might want to tell the chairman, or
20 whatever, a process -- it was appropriate at the time.

21 But yeah, you'd certainly say, look,
22 there's been a leak. Information is getting out. We
23 should find out how -- how this has happened. And
24 I -- there's the odd time I've been involved with
25 situations where I've been retained to look at leaks

1 that have developed, and often it's very hard to trace
2 them, you know, as to how these all -- these things
3 happen.

4 But it's clearly -- I think if
5 Dean Muncaster had seen this and was aware of it, I
6 don't think he'd have waved it off. I think he'd have
7 wanted to find out how this all happened.

8 MR. RYAN BREEDON: No. Fair enough.
9 So if -- so if the members of the Strategic Task Team
10 or Collus had been aware of the leak, you're saying an
11 investigation certainly would have taken place, and it
12 presumably would have been reported to the
13 shareholder.

14 MR. DAVID MCFADDEN: That would be the
15 normal --

16 MR. RYAN BREEDON: Sure.

17 MR. DAVID MCFADDEN: -- thing that
18 people would do.

19 MR. RYAN BREEDON: Well, my question
20 was actually on the -- on the other side. If you were
21 acting for PowerStream and was aware that there was
22 this leak at the Town because PowerStream had come
23 into possession of all of this confidential
24 information and we've talked about -- you would have
25 told them not to continue receiving it and tear it up

1 and all the rest of it. Would you have advised
2 PowerStream to disclose the leak to the Town?

3 MR. DAVID MCFADDEN: I don't know. I
4 mean, you -- you raise an interesting -- municipal
5 competitive process. I mean, I -- I don't know if I
6 would have -- I would certainly have said, don't read
7 it; don't use it.

8 And I think -- now, I'm probably a bit
9 more cautious perhaps than some people are. I'd
10 probably have called up and said, we seem to have got
11 information here that we shouldn't have, and we've
12 deleted it.

13 MR. RYAN BREEDON: Right. It's the
14 same idea as when you receive the inadvertent
15 disclosure. You have to let the other side know.

16 MR. DAVID MCFADDEN: Yeah.

17 MR. RYAN BREEDON: Right? Okay.

18 MR. DAVID MCFADDEN: Yeah.

19 MR. RYAN BREEDON: Solar vents:
20 You're the only person to tell us what they actually
21 are, so thank you. Can we look at summary document
22 number 1-3, please.

23

24 (BRIEF PAUSE)

25

1 MR. RYAN BREEDON: And at paragraph 6.
2 Okay. The solar vents program was first brought to
3 the Collus Board on June the 10th, 2011, and we looked
4 at the minutes of that Board yesterday.

5 You recall that?

6 MR. DAVID MCFADDEN: Yes.

7 MR. RYAN BREEDON: Okay. And then if
8 we scroll down to paragraph 10, you'll see that it
9 came back before the Board at -- what I believe was
10 the next meeting -- but at the July 8th meeting. And
11 it was at that meeting that the Board approved the
12 initiative. You see that?

13 MR. DAVID MCFADDEN: Correct.

14 MR. RYAN BREEDON: All right. And the
15 proposed cost was \$90,000?

16 MR. DAVID MCFADDEN: Correct.

17 MR. RYAN BREEDON: All right. And
18 then if we scroll down to -- and pardon me. And the
19 company that ultimately was the solar vent provider
20 was a company called ISSI. You're aware of that.

21 MR. DAVID MCFADDEN: Yeah. It
22 refreshed my mind when reading this, but yeah, that
23 was their name.

24 MR. RYAN BREEDON: Sure. And then if
25 we scroll down to paragraph 20 just to sort of frame

1 all of this, you'll see that Collus paid ISSI a
2 deposit of \$40,963 on July 19th, 2011?

3 MR. DAVID MCFADDEN: Yes.

4 MR. RYAN BREEDON: All right. And I
5 presume you weren't involved in these sort of
6 operational decisions.

7 MR. DAVID MCFADDEN: No. I wasn't
8 aware of that.

9 MR. RYAN BREEDON: And then scroll
10 down to paragraph 44. And then there was an
11 additional purchase of another \$23,000 in October.
12 You see that?

13 MR. DAVID MCFADDEN: Right.

14 MR. RYAN BREEDON: Okay. Now,
15 Peter Budd -- you must know Mr. Budd?

16 MR. DAVID MCFADDEN: I know Mr. Budd.
17 He was a lawyer at one (1) point in -- in Toronto in
18 the energy space.

19 MR. RYAN BREEDON: Right.

20 MR. DAVID MCFADDEN: And he -- I'm
21 seeing recently, but he -- I think he's more in
22 business these days.

23 MR. RYAN BREEDON: Right. He was a
24 very prominent energy lawyer at one (1) time?

25 MR. DAVID MCFADDEN: That's right.

1 MR. RYAN BREEDON: And you must have
2 run into him as part of that process?

3 MR. DAVID MCFADDEN: Right.

4 MR. RYAN BREEDON: And then you're
5 aware, I presume, that he was convicted of some
6 criminal charges?

7 MR. DAVID MCFADDEN: Yeah. That's
8 when his practice came to a halt --

9 MR. RYAN BREEDON: Right.

10 MR. DAVID MCFADDEN: -- and he moved
11 elsewhere, as I understand it.

12 MR. RYAN BREEDON: Right. He served a
13 short sentence and was ultimately disbarred as a
14 lawyer. You know all of that.

15 MR. DAVID MCFADDEN: You know, I
16 wasn't aware he was disbarred. I knew he had left,
17 and it makes sense, based on what I knew, that might
18 well have been the result.

19 MR. RYAN BREEDON: All right.
20 Mr. Budd, it seems, is a -- or was a shareholder of
21 ISSI. Were you aware that at the time the Board
22 approved this venture?

23 MR. DAVID MCFADDEN: The only person
24 who was identified as a principal in that company was
25 Peter Budd.

1 MR. RYAN BREEDON: Okay.

2 MR. DAVID MCFADDEN: And it -- it was
3 brought to us in the context of the province pushing
4 demand management and, you know, new technologies
5 under the Green Energy Act and so on. So this was
6 portrayed to the Board as a really interesting new
7 technology developed in Ontario, and we should be a
8 key part of it, and Peter Budd's name came up.

9 I wasn't -- I mean, Peter Budd's the
10 kind of guy who's an entrepreneur type, so, you know,
11 I wasn't shocked to hear that he was promoting
12 something like this.

13 MR. RYAN BREEDON: Okay. So that was
14 really my question that you were aware that Mr. Budd
15 was involved in this venture.

16 MR. DAVID MCFADDEN: Oh, yeah. It was
17 mentioned.

18 MR. RYAN BREEDON: Okay. Now, there's
19 a suggestion in the materials -- and I should tell you
20 Mr. Houghton disputes this I understand from
21 Mr. Chenoweth -- but there's a suggestion that
22 Mr. Houghton also had an interest in ISSI. I presume
23 you've seen that in the materials.

24 MR. DAVID MCFADDEN: Saw it in the
25 material.

1 MR. RYAN BREEDON: All right. And
2 whether that's true or not, we'll find out as part of
3 this process, I think. But I take it that if
4 Mr. Houghton had an interest in ISSI, that was not
5 disclosed to the Board?

6 MR. DAVID MCFADDEN: That was not
7 disclosed to the Board.

8 MR. RYAN BREEDON: All right. And if
9 Mr. Houghton had an interest in ISSI, it should have
10 been disclosed to the Board.

11 MR. DAVID MCFADDEN: That's correct.

12 MR. RYAN BREEDON: Right. Because it
13 really is a fairly -- if it's true that he had an
14 interest in ISSI, it's pretty clear a case of
15 self-dealing.

16 MR. DAVID MCFADDEN: Yeah. You know,
17 if in fact he does have this interest -- and I'm
18 relying on what I've seen here 'cause I didn't know
19 anything about it -- you'd have expected that he would
20 have said, look, I -- I am involved with some people
21 developing this thing. I think it's a great idea.
22 I'm leaving the room now. You make a decision. And
23 if you are, somebody else will have to handle this.

24 I mean, that -- that is what you would
25 have expected, you know, normally in a situation like

1 this, to -- we had -- I had no idea he had any
2 interest in this one (1) way or the other except that
3 I knew he knew Peter Budd.

4 MR. RYAN BREEDON: Right. And if it
5 is true that Mr. Houghton had an interest in ISSI,
6 you'll agree with me that failing to disclose that to
7 the Board was a breach of his fiduciary duty?

8 MR. DAVID MCFADDEN: Yes, if he had
9 failed to disclose an interest he had. Correct.

10 MR. RYAN BREEDON: And similarly if it
11 is true that Mr. Houghton had an interest in ISSI,
12 you'll agree with me that failing to disclose that to
13 the Board was a breach of trust.

14 MR. DAVID MCFADDEN: It can certainly
15 be described as that, yes.

16 MR. RYAN BREEDON: And similarly would
17 be cause for termination.

18 MR. DAVID MCFADDEN: It certainly
19 would -- you know, you're asking me a question. It --
20 theoretically, a breach of trust is certainly a -- a
21 cause for termination. You know -- now, it could be
22 litigated. I mean, there are various things that
23 could happen. But yes, I mean, it -- it certainly
24 could be a cause of termination. You're right.

25 MR. RYAN BREEDON: Okay. One (1) last

1 thing. This discussion that you had with Mr. Hull --
2 can we pull up his notes? It's document ALE50216.

3

4 (BRIEF PAUSE)

5

6 MR. RYAN BREEDON: All right. And can
7 we look at the transcribed notes, please. Just scroll
8 up a little bit. Thank you. Actually a little bit
9 down so that we can get the whole thing. All right.

10 And Ms. McGrann asked you a number of
11 questions about this yesterday.

12 MR. DAVID MCFADDEN: Yeah.

13 MR. RYAN BREEDON: The notes appear to
14 have been from a discussion on September the 28th?
15 You see that sort of in the --

16 MR. DAVID MCFADDEN: Yeah. I see
17 that.

18 MR. RYAN BREEDON: All right. And
19 that's, I believe, after all of the presentations made
20 by the various bidders?

21 MR. DAVID MCFADDEN: Yeah. That would
22 be right.

23 MR. RYAN BREEDON: All right. And if
24 we look down at that last line where it says "other
25 bidders seem okay with 50/50," you testified yesterday

1 that -- and I've got a -- I think I've got this
2 quoted:

3 "I may well have said I think other
4 bidders are prepared to go along
5 with 50/50."

6 You see that? Or you --

7 MR. DAVID MCFADDEN: That's right.

8 Correct.

9 MR. RYAN BREEDON: -- that was what
10 you testified? You don't -- you don't recall this,
11 but you think that that must be --

12 MR. DAVID MCFADDEN: I don't -- my
13 impression -- and I don't recall the specific
14 discussion, but I think it had to do with confirming
15 some dates. He was called to confirm some dates, and
16 I probably -- he asked a couple of other things which
17 I responded to.

18 MR. RYAN BREEDON: Sure. And, I mean,
19 the only -- we'll hear from Mr. Hull -- but the only
20 sort of reasonable interpretation of that note is that
21 he had been told that all of the bidders were
22 agreeable with proceeding on a 50/50 basis?

23 MR. DAVID MCFADDEN: Correct. And --
24 and that was the basis on which I thought the Town was
25 going ahead. So it was really just saying, look, you

1 know, that seems to be the -- where things are going.

2 I mean, we -- that's where the Town is, too. So --

3 MR. RYAN BREEDON: Sure. And I take
4 that sort of in retrospect you'll agree that it
5 probably would have been better to have not had any
6 discussions with Mr. Hull about this.

7 MR. DAVID MCFADDEN: Yes. I -- I
8 prefer he'd never made the call, and I never discussed
9 it with him. We -- you know, the -- the fact was that
10 we maintained, as I mentioned yesterday -- I mean, I
11 never talked about this transaction, and all he never
12 called me about it typically at all. And in our
13 groups -- our energy group meetings, he didn't report
14 on ever because he didn't want to.

15 It's unfortunate that this -- he has
16 made the -- we had this discussion. But anyways, it's
17 what it is there, and that's -- those were his notes,
18 and I have no question that they're accurate.

19 MR. RYAN BREEDON: Thank you very
20 much, sir. Those are my questions.

21 MR. DAVID MCFADDEN: Thank you.

22 THE HONOURABLE FRANK MARROCCO: What
23 we'll do is we'll -- I'll take the ten (10) minute
24 morning break otherwise you'll no sooner start and
25 then I'll break.

1

2 --- Upon recessing at 10:01 a.m.

3 --- Upon resuming at 10:15 a.m.

4

5 MR. GEORGE MARRON: Mr. Commissioner,
6 we've had a review and I -- I have a couple of
7 questions to put to Mr. McFadden.

8 THE HONOURABLE GEORGE MARROCCO:
9 Certainly, go ahead.

10 MR. GEORGE MARRON: So if I may do so.
11 Thank you.

12

13 CROSS-EXAMINATION BY MR. GEORGE MARRON:

14 MR. GEORGE MARRON: Good morning, Mr.
15 McFadden.

16 MR. DAVID MCFADDEN: Good morning.

17 MR. GEORGE MARRON: My name is George
18 Marron, as you know, and I represent Sandra Cooper,
19 and I hope to be brief.

20 You were asked some questions by Mr.
21 Breeden pertaining to this letter of January 31st, or
22 at least bearing that date that was sent by my client,
23 Sandra Cooper, to the Collus -- actually, to Mr.
24 Houghton and to Dean Muncaster, two (2) directors of
25 the Collus Power Board.

1 He didn't ask you about the draft
2 letter that was prepared in advance of the January
3 31st, 2011 letter sent by Sandra Cooper and I'm
4 wondering if I could ask that the draft be pulled,
5 it's TOC0038100. Thank you.

6 Now, I'll ask you to just look at that,
7 because I'm going to ask you to compare this draft
8 letter at some point with the letter of July 3 --
9 sorry, of January 31, 2011, which was sent by -- by
10 Sandra Cooper to Dean Muncaster and Ed Houghton.

11 There's an indication that -- of a
12 specific request and it's my specific request which
13 would refer it to Sandra Cooper would be for Mr.
14 Houghton and Mr. Muncaster to undertake a valuation of
15 Collus and a look at the positives and negatives of
16 selling the assets of Collus.

17 I'm asking you to do this now where you
18 can still be in control and take the lead, as I firmly
19 believe that during our budget deliberations this year
20 or next that the suggestion will be made to sell
21 Collus.

22 Now, this -- this is an e-mail that was
23 sent from Mr. Houghton and Paul Bonwick. It bears the
24 date of the 30th of January 2011, it was sent about
25 4:51 p.m. in the afternoon.

1 Now if -- okay, you're familiar with
2 that.

3 MR. DAVID MCFADDEN: Thank you.

4 MR. GEORGE MARRON: If I could ask,
5 Your Honour, that the letter of January 31 on my
6 clients behalf, that's TOC0038169.

7 And this is -- this is a -- an
8 indication of confidential communication between
9 Shelley Fuhre, who was working in the -- as an
10 executive assistant to the mayor, Sandra Cooper, and
11 it -- if -- if we could scroll up, it's dated at 1:40
12 p.m. on Monday the 31st of January.

13 And if you could review that just with
14 a sense of comparing it to the draft. I'm going to
15 suggest to you that materially there appears to be no
16 variation one (1) with the other.

17 And the third paragraph, if I could
18 direct you to that, Mr. McFadden, is:

19 "My specific request is that Chair
20 Muncaster direct Mr. Houghton to
21 undertake an evaluation of Collus by
22 way of examining all potential
23 opportunities that would benefit
24 Collingwood residents and that a
25 report containing recommendations be

1 presented to Council by no later
2 than May 30th, 2011."

3 MR. DAVID MCFADDEN: Correct.

4 MR. GEORGE MARRON: Okay. Now, if we
5 could -- if we could move to that -- that's -- that
6 may not be the appropriate document. If we could --if
7 I could just have a brief indulgence.

8 THE HONOURABLE FRANK MARROCCO: Sure.
9 Did -- do you want me to --

10 MR. GEORGE MARRON: I may have -- I
11 may have misrecorded that number. If -- if --

12 THE HONOURABLE FRANK MARROCCO: Do you
13 want -- do you want to take five (5) minutes and see
14 if you can sort it?

15

16 CONTINUED BY MR. GEORGE MARRON:

17 MR. GEORGE MARRON: No. No, thank you
18 for that. I want the actual letter that was directed
19 on the 31st of January, the actual email. And that's
20 set out at paragraph 140 of the Foundation document at
21 page 56. And it makes reference to -- I'm sorry, I
22 may have misquoted the reference number, TOC0038164.
23 I recorded the -- the number in error, Your Honour.
24 Yes, there we go.

25 So this -- this is a -- a -- could that

1 just be scrolled up? So I -- can we then go to
2 paragraph 140 of the Foundation document? Could that
3 be scrolled up? Could you review that, Mr. McFadden?

4 MR. DAVID MCFADDEN: Yes.

5 MR. GEORGE MARRON: Especially the
6 third paragraph, I would ask --

7 "I would like to ask that Collus
8 look for similar opportunities in
9 part to help reduce our debt and
10 create greater efficiencies for
11 Collingwood residents. I recognize
12 the input during budget
13 presentation."

14 And could we scroll up from that?

15 "My specific request is that Chair
16 Muncaster direct Mr. Houghton to
17 undertake a valuation of Collus,
18 examining all potential
19 opportunities that might benefit
20 Collingwood residents and that a
21 report containing recommendations be
22 presented to Council by May 30th,
23 2011. I would appreciate this
24 review being treated with confidence
25 until myself and Council have an

1 opportunity to be presented with a
2 report."

3 So I'm suggesting to you that as
4 concerns the material particulars of this letter that
5 was sent on January 31, 2011 by Sandra Cooper to Mr.
6 Muncaster and Ed Houghton, this -- this e-mail is
7 similar to the draft that was prepared the day before,
8 on January 30th, 2011, by Mr. Houghton and forwarded
9 to Paul Bonwick.

10 MR. DAVID MCFADDEN: Correct.

11 MR. GEORGE MARRON: You agree with
12 that?

13 MR. DAVID MCFADDEN: It reads very
14 similar, there are a few words I noticed that are
15 slightly different. But yes, it's -- it is the
16 document, appears to be very similar.

17 MR. GEORGE MARRON: So Mr. Breedon
18 asked you some questions in reference to the auth --
19 the authority that Ed Houghton would have. Would you
20 expect him to be sending a -- a draft e-mail to a
21 third party which would -- would be making a request
22 of the mayor of the Town of Collingwood to direct
23 Collus in a certain direction?

24 MR. DAVID MCFADDEN: No.

25 MR. GEORGE MARRON: He would require

1 authorization from the Board, would he not?

2 MR. DAVID MCFADDEN: Yes, I -- yes.

3 MR. GEORGE MARRON: I take it that
4 your review of the Foundation document materials
5 indicates that there was no direction sought by Mr.
6 Houghton?

7 MR. DAVID MCFADDEN: Not that I could
8 see.

9 MR. GEORGE MARRON: If we continue on
10 in the Foundation document I -- I believe that Mr.
11 Breeden may have covered some of this in part, but it
12 appears that one (1) week hence, on February 6th,
13 2011, Collus put into KPMG referencing retaining them
14 or engaging them to prepare a valuation of the Collus
15 Power.

16 MR. DAVID MCFADDEN: Correct.

17 MR. GEORGE MARRON: And there was a
18 Board meeting of the directors of Collus Power on the
19 31st of January 2011. I note that Dean Muncaster was
20 there, so he wasn't in Mexico. Mayor Sandra Cooper
21 was present, and David McFadden and Ed Houghton was
22 present as well.

23 There was no indication that -- now
24 that -- that was a meeting that occurred at 7:59 in
25 the morning, so there was no indication from Mr.

1 Houghton that he had advanced a draft email as we
2 reviewed it to Paul Bonwick or to Sandra Cooper or
3 anyone.

4 MR. DAVID MCFADDEN: Certainly, no, I
5 don't believe that would be -- that's correct.

6 MR. GEORGE MARRON: So --

7 MR. DAVID MCFADDEN: -- not as far as
8 I recall.

9 MR. GEORGE MARRON: So the minutes
10 indicate a silence in that area.

11 MR. DAVID MCFADDEN: Right.

12 MR. GEORGE MARRON: Now, you -- you
13 indicated yesterday that you and -- that you'd had --

14 MR. FREDERICK CHENOWETH: I'm sorry,
15 before My Friend proceeds, could he just reiterate for
16 me, and it's my error, the date of the meeting that
17 he's --

18 MR. GEORGE MARRON: Sorry?

19 MR. FREDERICK CHENOWETH: Can you just
20 reiterate the date of meeting that you referred the
21 witness to, at which there allegedly was no suggestion
22 --

23 THE HONOURABLE FRANK MARROCCO: I
24 don't -- I don't really -- I think that -- what's the
25 date of the meeting?

1 But really, I don't know that it was
2 necessary to interrupt the cross-examination for that.
3 It could have come later.

4 MR. GEORGE MARRON: Well -- well --
5 well, I'm -- I'm quite happy to respond. I mean, the
6 minutes of the meeting of the Board of Directors of
7 Collus, January 31 2011, that's --

8 MR. FREDERICK CHENOWETH: Thank you,
9 Your Honour. I apologize for the interruption.

10 MR. GEORGE MARRON: Oh no, no. No
11 harm done.

12 THE HONOURABLE FRANK MARROCCO: I
13 appreciate that there was no harm done.

14

15 CONTINUED BY MR. GEORGE MARRON:

16 MR. GEORGE MARRON: Sandra Cooper, as
17 a result of being elected mayor for the Town of
18 Collingwood, assumed a position on the Board of
19 Directors, and you indicated that in your evidence-in-
20 chief yesterday. She was there at the end of the
21 table, as you describe it, with yourself and Dean
22 Muncaster.

23 MR. DAVID MCFADDEN: Correct.

24 MR. GEORGE MARRON: You indicated that
25 throughout the time that she was there, and I -- I

1 take it that it's -- this is an indication perhaps in
2 the early stages of her being on the Board of
3 Directors, that she had a concern and she expressed it
4 to you as to the dual personalities she had to assume
5 in the sense that she wore a hat as mayor of the Town
6 of Collingwood and that she was also being a member of
7 the Board of Directors, that she had fiduciary duties
8 in connection with Collus Power Corporation, and that
9 obviously these interests could be competing, and you
10 acknowledge that, but she seemed to express what you -
11 - from what I take from your evidence yesterday, she -
12 - she seemed to express that she had a concern in
13 doing the right thing in reference to the fiduciary
14 duty?

15 MR. DAVID MCFADDEN: Yeah, that was
16 her concern, is how she managed to deal with a
17 potential conflict between her two (2) duties in
18 effect, between the -- be on the Board and be on
19 Council.

20 MR. GEORGE MARRON: Right. And in
21 fact you used the term that it appeared perhaps to you
22 that this -- this consideration or matter was a bit of
23 a bother to her in that respect.

24 MR. DAVID MCFADDEN: Yeah.

25 MR. GEORGE MARRON: Would you agree

1 with me that she made it pretty clear to you by virtue
2 of the discussion that you would have had in this area
3 that she wanted to do the right thing?

4 MR. DAVID MCFADDEN: Yeah. I mean, in
5 my experience with -- with the mayor, or former mayor,
6 she always talked about what was interest in the Town
7 -- and, you know -- and if there was a conflict, she
8 felt -- a conflict related to matters related to the
9 Town, and how best to serve two (2) masters in effect,
10 if you will.

11 MR. GEORGE MARRON: Exactly.

12 MR. DAVID MCFADDEN: Yeah. And so --
13 so you indicated to her, look, that this isn't a top
14 secret operation that we're running here but that
15 there were areas such as personnel matters, things of
16 that -- things of that sort, that would have a -- a
17 confidential element to them, and that that wouldn't
18 be something that would go back to the Town, but --
19 but you -- and you made the distinction that you
20 indicated to her if you're reporting on the business
21 of the company, that wouldn't be a -- a particular
22 problem, being able to state that, because it would be
23 obvious in the minutes, I take it, of the --

24 MR. DAVID MCFADDEN: Correct.

25 MR. GEORGE MARRON: -- of the

1 corporate direction. Okay. All right, thank you.

2 MR. DAVID MCFADDEN: Thank you.

3

4 CROSS-EXAMINATION BY MR. MICHAEL WATSON:

5 MR. MICHAEL WATSON: Mr. McFadden, you
6 and I have known each other -- we still know each
7 other.

8 MR. DAVID MCFADDEN: Still know each
9 other.

10 MR. MICHAEL WATSON: And you know that
11 I'm one (1) of the lawyers representing Alectra,
12 PowerStream as it then was. I've half a dozen
13 discrete areas to ask you about.

14 One of the things -- you remember
15 yesterday when Mr. Chenoweth was asking you questions,
16 he asked you about the January 2010 strategic retreat
17 that you had, and remember you were talking about the
18 white board and discussing various things that might
19 happen in the future with Collus Power?

20 MR. DAVID MCFADDEN: Yes.

21 MR. MICHAEL WATSON: All right. And -
22 - and you said that -- in respect of that you said
23 Collingwood didn't want to merge with a big company.

24 Do you remember that? That's what you
25 said in your evidence yesterday?

1 MR. DAVID MCFADDEN: Yeah. Not merge,
2 that's correct.

3 MR. MICHAEL WATSON: Right. And I --
4 I took it that it -- it was a big -- you were -- you
5 were saying that it didn't want a big company, that
6 that was what the Town wanted to avoid --

7 MR. DAVID MCFADDEN: I think that --

8 MR. MICHAEL WATSON: -- in your
9 understanding?

10 MR. DAVID MCFADDEN: My recollection,
11 that was a reference to Hydro One and whether you want
12 to be subsumed into a large enterprise, because where
13 -- where these other eighty-eight (88) got consumed,
14 typically they just -- companies disappeared. I mean,
15 staff moved out and so on and so forth. So that -- so
16 the big company thing was more related to a Hydro One
17 situation.

18 MR. MICHAEL WATSON: And that was
19 exactly my point. Thank you, you -- you've taken care
20 of that.

21 I wanted to ask you about Dean
22 Muncaster. Again Mr. Chenoweth was asking you
23 questions yesterday, and -- and in connection with the
24 strategic retreat and then what had -- had followed
25 from there, and he asked you about your views on

1 liquidity and so on, and you said, quoting:

2 "Dean was such a driver of this
3 transaction."

4 Do -- do you remember saying that?

5 MR. DAVID MCFADDEN: Exactly.

6 MR. MICHAEL WATSON: Could you expand
7 a little bit on that? In what way was he a driver,
8 what did he do, and how did he behave and make it
9 appear that he was a driver of the transaction?

10 MR. DAVID MCFADDEN: By "driver" I
11 don't mean dictator, you know, somebody who just sort
12 of rammed everything through and didn't listen to
13 anybody. What I meant was that he -- he was -- once
14 the decision was made to move ahead, he moved ahead
15 very deliberately.

16 It was clear to everybody, including
17 myself, that his level of experience was something
18 nobody else had on our Board at -- at a senior level,
19 and -- and -- and -- and then he took it on himself to
20 basically lead the process as Chairman of the Board.
21 That's what I mean. But I -- I don't want to make it
22 sound like he was ramming stuff through. I mean, he -
23 - he was collegial but he was very much the leader.

24 MR. MICHAEL WATSON: Thank you. This
25 morning in answer to some questions from Mr. Breedon,

1 you said that:

2 "Dean Muncaster had suggested that
3 they needed to go out and speak to
4 potential bidders to see if there
5 was any interest."

6 Do you remember that?

7 MR. DAVID MCFADDEN: Correct.

8 MR. MICHAEL WATSON: All right. When
9 did he say that? What -- at what -- at what time in
10 the process did he say that?

11 MR. DAVID MCFADDEN: Well, at -- once
12 the -- the Town had sort of given the green light that
13 we were supposed to -- to move ahead, that was around
14 the time we said we've got to get out now and see if
15 there's a realistic situation here in terms of the
16 market.

17 And his view was, We -- we should go to
18 a -- a mixture of companies and just see how
19 interested they were. And he -- you know, he based
20 that on his experience. He said, Look -- and -- and I
21 thought he was -- I mean, you go out, you deal with
22 companies who are going to have the resources to
23 potentially do this, and that's what -- what he did.

24 MR. MICHAEL WATSON: All right. I'm
25 going to switch topics now. And I want to ask you

1 about the Strategic Partnership Task Team. Obviously,
2 there were meetings, and we're not going to go through
3 them all at all, but there were minutes, of course,
4 taken of those meetings, right?

5 MR. DAVID MCFADDEN: Correct.

6 MR. MICHAEL WATSON: And I take it you
7 received the minutes when they came out?

8 MR. DAVID MCFADDEN: Right. Yes.

9 MR. MICHAEL WATSON: And you read them
10 and reviewed them for accuracy?

11 MR. DAVID MCFADDEN: Yes.

12 MR. MICHAEL WATSON: All right. And -
13 - and also, if you weren't there, to make sure you
14 knew what had gone on?

15 MR. DAVID MCFADDEN: Exactly, and
16 that's one (1) of the great advantages of taking
17 minutes, is if you can't be there, at least you get an
18 idea of what's going on.

19 MR. MICHAEL WATSON: All right. Could
20 I ask, please, that the following document be brought
21 up, CPS87560001.

22 (BRIEF PAUSE)

23

24 MR. MICHAEL WATSON: Now, this was the
25 meeting of August 29th. You were asked about a couple

1 of things yesterday, and you will see -- that you were
2 unable to attend, as it says there, regrets?

3 MR. DAVID MCFADDEN: Correct.

4 MR. MICHAEL WATSON: So did you see
5 that?

6 MR. DAVID MCFADDEN: Yeah.

7 MR. MICHAEL WATSON: All right. And
8 if I could scroll down to the action of -- sorry,
9 first of all, you weren't there, but you received
10 these minutes, and I take it as you just said you did,
11 you would have reviewed for accur -- well, to find out
12 what had -- what was going on?

13 MR. DAVID MCFADDEN: Yes, particularly
14 in these circumstances. Correct.

15 MR. MICHAEL WATSON: Yes. All right.
16 Can we please go down to the action items. Right --
17 yes, right there. And we see -- you see action item
18 1, Mr. Houghton stated that he will contact John
19 Herhalt of KPMG to prepare the RFP and ask for further
20 costing as noted above?

21 MR. DAVID MCFADDEN: Right.

22 MR. MICHAEL WATSON: All right. And
23 that, of course, didn't surprise you at all?

24 MR. DAVID MCFADDEN: No.

25 MR. MICHAEL WATSON: All right. And

1 just the paragraph before that that leads up to it,
2 where it says, quoting:

3 "Mr. Houghton put forth a suggestion
4 that KPMG put together the RFP for
5 us as well, and as well, sit in the
6 interview meetings."

7 When -- when you see that he put
8 forward a suggestion that KPMG put together the RFP
9 for us, who did you understand the us to be?

10 MR. DAVID MCFADDEN: I'm assuming the
11 us would -- the us would be the Task Force, and -- and
12 the -- and the -- and the shareholder, obviously,
13 acting on behalf of the shareholder. That's what I
14 assumed this to be.

15 This is a fairly normal -- when you
16 have a financial advisor, you normally ask them to do
17 it, because there are advisors. So I -- I assume that
18 -- that's normal process is to get your financial
19 advisor to prepare your documents -- your RFP
20 documents, and then manage the process as -- as
21 required.

22 MR. MICHAEL WATSON: I think you'll
23 remember that the RFP itself was issued by both Collus
24 Power and the Town? Right?

25 MR. DAVID MCFADDEN: Right.

1 MR. MICHAEL WATSON: Do -- do you
2 recall that?

3 MR. DAVID MCFADDEN: Yes. I don't
4 remember the -- exactly how it was described, but yes,
5 it would have -- that would be done.

6 MR. MICHAEL WATSON: Could we bring
7 up, please, CPS6891?

8

9 (BRIEF PAUSE)

10

11 MR. MICHAEL WATSON: We can scroll
12 down. You'll recognize this. And just stopping
13 there, sorry. Right -- right there.

14 So the -- you said that you did not see
15 a draft of it before was issued, right? Is that
16 correct?

17 MR. DAVID MCFADDEN: That's correct.

18 MR. MICHAEL WATSON: Right. But --
19 but I think you also said that you saw it and you
20 reviewed it carefully after it had come out, right?

21 MR. DAVID MCFADDEN: Yes. Yes.

22 MR. MICHAEL WATSON: And I take it you
23 were satisfied with it?

24 MR. DAVID MCFADDEN: At -- yes.

25 MR. MICHAEL WATSON: Yes. And the --

1 the front page says:

2 "Collus Power Corp. requests for a
3 proposal of strategic partnership."

4 Right?

5 MR. DAVID MCFADDEN: Correct.

6 MR. MICHAEL WATSON: And it was on --
7 all right. And then going down to the next page,
8 table of contents, after that, purpose of the request.
9 If we can go down further. Keep going. All right,
10 there.

11 And so right off the bat, the first
12 thing that the bidders are being told is:

13 "This request for a proposal is
14 being issued by Collus Power Corp.
15 and the Town of Collingwood for the
16 purpose of soliciting written
17 proposals to enter into a strategic
18 partnership arrangement."

19 Right?

20 MR. DAVID MCFADDEN: Correct.

21 MR. MICHAEL WATSON: And that was
22 accurate?

23 MR. DAVID MCFADDEN: That's accurate,
24 yes.

25 MR. MICHAEL WATSON: Yes, in --

1 indeed. And part of it -- of course, the -- the
2 Town's part of it was that first bullet point of
3 purchasing shares of up to 50 percent in Collus Power,
4 right?

5 MR. DAVID MCFADDEN: Correct.

6 MR. MICHAEL WATSON: And then there
7 were various other aspects of it, however, that were
8 specifically for Collus Power itself, not for the
9 Town?

10 MR. DAVID MCFADDEN: That's correct.

11 MR. MICHAEL WATSON: Right. And so
12 the strategic partnership consisted of a number of
13 things, one (1) of which was the Town's shareholding
14 interest?

15 MR. DAVID MCFADDEN: Correct.

16 MR. MICHAEL WATSON: Okay. Now I want
17 to move to something else completely. Thank you.
18 That's a -- for that there has been -- and you will
19 be, I think, familiar with that, although you may have
20 heard something about it. There's been some
21 discussion about the shotgun buy/sell provision in
22 suggesting yesterday that there was a lot of confusion
23 about that, and how it came about, and that -- the
24 terms.

25 Are you aware of some of the discussion

1 in this Inquiry about that?

2 MR. DAVID MCFADDEN: I've heard a bit
3 about, yeah.

4 MR. MICHAEL WATSON: All right.

5 MR. DAVID MCFADDEN: Yeah.

6 MR. MICHAEL WATSON: So we -- we have
7 now moved forward to the period after December 5th,
8 2011. And I think that you will remember that on
9 December 5th, 2011, the Town Council identified
10 PowerStream as the preferred party and authorized the
11 beginning of negotiations with PowerStream for the
12 strategic partnership, right?

13 MR. DAVID MCFADDEN: Yeah.

14 MR. MICHAEL WATSON: And you know that
15 those negotiations went on for some weeks. Then there
16 was an application to the OMB, and finally closing at
17 the end of July, six and a half (6 1/2) months later?

18 MR. DAVID MCFADDEN: Correct.

19 MR. MICHAEL WATSON: Right. And you
20 were taken through some of this yesterday. Aird &
21 Berliss then became involved as lawyers for the
22 Town/Collus side?

23 MR. DAVID MCFADDEN: Correct.

24 MR. MICHAEL WATSON: And you
25 interacted with Aird & Berliss and worked with them as

1 you described, right?

2 MR. DAVID MCFADDEN: Right.

3 MR. MICHAEL WATSON: And in
4 particular, you reviewed -- I'm not suggesting as a
5 lawyer, but you reviewed the draft agreements as they
6 came out?

7 MR. DAVID MCFADDEN: Right, that was
8 as I was asked to do, yeah.

9 MR. MICHAEL WATSON: Indeed, and the
10 two (2) principal ones were the share purchase
11 agreement?

12 MR. DAVID MCFADDEN: Yeah.

13 MR. MICHAEL WATSON: Yes. And the
14 shareholder agreement, yes?

15 MR. DAVID MCFADDEN: Correct. Right.

16 MR. MICHAEL WATSON: And of course,
17 when you have a situation where you have two (2)
18 shareholders, or a very small number of shareholders
19 in a corporation, almost invariably, you need to have
20 a shareholder agreement to set out the rights and
21 obligations of the parties, right?

22 MR. DAVID MCFADDEN: Essentially.

23 MR. MICHAEL WATSON: Indeed. Could we
24 bring up, please -- and you were asked about this
25 yesterday -- ALE1183, which I believe -- and I hope

1 I've got right -- is the December 14th email from
2 Corrine Kennedy at Aird & Berlis to Bob Hull of
3 Gowlings.

4 Do you remember you were asked about
5 this one?

6 MR. DAVID MCFADDEN: Yes, yesterday.

7 MR. MICHAEL WATSON: And you were
8 copied on it, right?

9 MR. DAVID MCFADDEN: (NO AUDIBLE
10 RESPONSE)

11 MR. MICHAEL WATSON: And -- and here
12 Corrine Kennedy is saying to Bob:

13 "Attached, please find the draft
14 share purchase agreement and the
15 shareholders agreement."

16 And we're going to turn to one (1) of
17 those in -- in a moment, but you received this,
18 obviously?

19 MR. DAVID MCFADDEN: Yeah.

20 MR. MICHAEL WATSON: And this was the
21 first draft. This was being prepared by the Town's
22 lawyers, right?

23 MR. DAVID MCFADDEN: Right.

24 MR. MICHAEL WATSON: Okay. Could we
25 then, please, turn to ALE1185, which is the draft

1 shareholder agreement that was attached. And you'll
2 see upper right, "A&B draft December 14." So that's
3 Aird & Berlis?

4 Do you see that?

5 MR. DAVID MCFADDEN: Yes.

6 MR. MICHAEL WATSON: All right. And
7 can we turn please to page 25 of the document, article
8 10.

9

10 (BRIEF PAUSE)

11

12 MR. MICHAEL WATSON: And Article 10
13 here is the buy-sell provision, right?

14 MR. DAVID MCFADDEN: Right.

15 MR. MICHAEL WATSON: And of course,
16 that's what we're calling the "shotgun," although that
17 doesn't appear there. That's a colloquial term?

18 MR. DAVID MCFADDEN: Yeah. Some
19 people put it actually right in. Other people like to
20 just call it buy-sell.

21 MR. MICHAEL WATSON: All right. Fine.
22 And so here section 10.1 is the buy-sell notice.

23 And then if we can go to the next
24 page -- two (2), three (3), et cetera -- we see what
25 the notice -- buy-sell notice has to contain, right?

1 MR. DAVID MCFADDEN: M-hm.

2 MR. MICHAEL WATSON: Is that a "yes"?

3 MR. DAVID MCFADDEN: Yes.

4 MR. MICHAEL WATSON: We need that for
5 the transcript.

6 MR. DAVID MCFADDEN: Yes.

7 MR. MICHAEL WATSON: And then the
8 particular point that -- over which there has been
9 some discussion and some angst has to do with the
10 acceptance period. And we see the acceptance period
11 is set out in paragraph 10.2:

12 "The offeree shall be entitled to
13 accept either of the offers
14 contained in the buy-sell notice by
15 notice in writing delivered to the
16 offeror within 20 days of receipt by
17 the offeree of the buy-sell notice."

18 You see that?

19 MR. DAVID MCFADDEN: Yes.

20 MR. MICHAEL WATSON: And you reviewed
21 this?

22 MR. DAVID MCFADDEN: Yes.

23 MR. MICHAEL WATSON: And I take it you
24 were satisfied with it?

25 MR. DAVID MCFADDEN: That's a fairly

1 normal provision in these agreements to allow people a
2 period of time to make a decision whether they want to
3 go --

4 MR. MICHAEL WATSON: Right. And --

5 MR. DAVID MCFADDEN: -- where they
6 want to go.

7 MR. MICHAEL WATSON: Right. And there
8 can be various time periods put in an acceptance
9 provision like this, right?

10 MR. DAVID MCFADDEN: Oh, yeah. It
11 could be longer; it could be shorter. Twenty (20)
12 days is basically three (3) weeks.

13 MR. MICHAEL WATSON: Right.

14 MR. DAVID MCFADDEN: It's written on
15 there.

16 MR. MICHAEL WATSON: And I take it
17 that -- I mean, looking out for the interests of the
18 Town and Collus Power that you were satisfied with
19 this when you reviewed it.

20 MR. DAVID MCFADDEN: Yes.

21 MR. MICHAEL WATSON: All right. And
22 we see that this 20-day period was put in by the
23 Town's lawyers, right?

24 MR. DAVID MCFADDEN: That's correct.

25 MR. MICHAEL WATSON: Right. And

1 PowerStream accepted that, correct? Because that's
2 what ended up in the final agreement. It wasn't -- it
3 wasn't changed. You're aware of that?

4 MR. DAVID MCFADDEN: I don't know if
5 it was ever changed. I -- as far as I know, it was
6 never changed.

7 MR. MICHAEL WATSON: All right. Thank
8 you. That's it for that one.

9 I want to ask you something about --
10 well, you had talked about the LDC review panel that
11 you were named to?

12 MR. DAVID MCFADDEN: M-hm.

13 MR. MICHAEL WATSON: "Yes"?

14 MR. DAVID MCFADDEN: Yes.

15 MR. MICHAEL WATSON: All right. Could
16 I ask -- and I'm not going to through it -- but just a
17 couple of points. CJI10462.

18

19 (BRIEF PAUSE)

20

21 MR. MICHAEL WATSON: And I think that
22 you will remember this report if we can scroll down.

23 MR. DAVID MCFADDEN: Yeah. By the
24 way, we deliberately put that title in "putting the
25 consumer first" because it felt as a problem in the

1 sector. So just looking at the title here.

2 MR. MICHAEL WATSON: Sorry. You're
3 saying that was your suggestion?

4 MR. DAVID MCFADDEN: Well, it was a
5 suggestion we -- we reached. We found that the
6 consumer -- wasn't always put first, so we put that in
7 the title.

8 MR. MICHAEL WATSON: Well, and --

9 MR. DAVID MCFADDEN: Sorry. I
10 shouldn't put that advertisement here, but I mean that
11 was one (1) of the things that we -- has turned out to
12 be correct.

13 MR. MICHAEL WATSON: And indeed, in
14 the report there was a lot of discussion about putting
15 consumer first.

16 MR. DAVID MCFADDEN: Absolutely.

17 MR. MICHAEL WATSON: And in particular
18 about ways of reducing costs among LDCs to the benefit
19 of consumers.

20 MR. DAVID MCFADDEN: That's right.

21 MR. MICHAEL WATSON: All right. Now,
22 in this report there were a number of sections, and
23 one (1) of them was a section dealing with the history
24 of LDCs and the curious and, what was called, highly
25 unusual situation in Ontario compared with other

1 jurisdictions (a) in Canada, and (b) in the world,
2 right?

3 MR. DAVID MCFADDEN: That's right.
4 Ontario, at one (1) point, had more LDCs than all of
5 North America put together. It was -- we think of it
6 as a normal structure, but it's not common in the
7 world.

8 MR. MICHAEL WATSON: And this was a
9 process producing this report. I think that you may
10 recall that the three (3) of you -- if we can --
11 sorry -- if we can just go down to the list of people
12 just to remind everybody. The chair was Murray
13 Elston.

14 MR. DAVID MCFADDEN: Right.

15 MR. MICHAEL WATSON: And then Floyd
16 Laughren who was treasurer under a previous
17 government, right, and yourself?

18 MR. DAVID MCFADDEN: Right.

19 MR. MICHAEL WATSON: Right. And this
20 was set up in the -- in the spring of, I believe,
21 2012.

22 MR. DAVID MCFADDEN: That's right.

23 MR. MICHAEL WATSON: And there were
24 submissions and discussions with stakeholders over the
25 many months?

1 MR. DAVID MCFADDEN: We had literally
2 dozens -- (UNREPORTABLE SOUND). Sorry. I meant to
3 turn it off. I apologize, Your Honour. It was --

4 THE HONOURABLE FRANK MARROCCO: No
5 problem.

6 MR. MICHAEL WATSON: Tell Mr. Laughren
7 you'll call him back later.

8 MR. DAVID MCFADDEN: I'll tell him to
9 phone me later. Thank you. I'm just going to turn...

10

11 CONTINUED BY MR. MICHAEL WATSON:

12 MR. MICHAEL WATSON: All right. And
13 do I -- you participated fully with the -- with the
14 others in the writing of this report.

15 MR. DAVID MCFADDEN: Yes. There's a
16 lot of work went into this one.

17 MR. MICHAEL WATSON: And is the report
18 an accurate representation, first of all, of the
19 history that we just described, as well as the
20 submissions of the stakeholders and the
21 recommendations?

22 MR. DAVID MCFADDEN: It was. We had
23 over -- about 90 submissions altogether that came in
24 from full cross-section LDCs, consumer groups,
25 industrial groups, municipalities, the whole -- whole

1 kit and caboodle, add in the interest.

2 MR. MICHAEL WATSON: Right. Your
3 Honour, one (1) of the things that -- when these
4 hearings started a year ago or whenever it was that I
5 forgot to do is mark this as an exhibit. So I ask
6 that this be marked as an exhibit now.

7 THE HONOURABLE FRANK MARROCCO: Yes.

8 MR. MICHAEL WATSON: Thank you.

9

10 CONTINUED BY MR. MICHAEL WATSON:

11 MR. MICHAEL WATSON: One (1) last
12 point, and I want to talk to you about the level of
13 control. You said in your evidence yesterday that a
14 level of Town control was important.

15 Do you remember that?

16 MR. DAVID MCFADDEN: What context?

17 MR. MICHAEL WATSON: Well, it was like
18 the Town's wishes and the Town's goals and objectives
19 with respect to a potential transaction involving
20 Collus Power.

21 MR. DAVID MCFADDEN: Yeah.

22 MR. MICHAEL WATSON: All right. And
23 that -- and it was made clear that the Town wanted to
24 maintain a level of control?

25 MR. DAVID MCFADDEN: I see what you're

1 saying. Yes.

2 MR. MICHAEL WATSON: All right. And
3 so you remember in that context saying yesterday that
4 a level of Town control was important.

5 MR. DAVID MCFADDEN: That's what I was
6 told, and I think that it was repeated over and over
7 again. And certainly, for example, Mayor Cooper made
8 that quite clear that she felt it very important. And
9 I think she -- and I -- as far as I was concerned, she
10 was speaking for Council when she was saying that.

11 MR. MICHAEL WATSON: And one (1) way
12 of dealing with and ensuring a level of control would
13 be through the Shareholders Agreement, right?

14 MR. DAVID MCFADDEN: Correct.

15 MR. MICHAEL WATSON: Right. And so
16 I'm going to ask the last document, and I'm going to
17 bring it up again, but go to a different point:
18 ALE3296, please, again, the Shareholder Agreement.

19 And while that's coming up, negotiating
20 the terms of a shareholder agreement therefore would
21 be one (1) way of ensuring the level of control that
22 you want, right?

23 MR. DAVID MCFADDEN: That's right.

24 MR. MICHAEL WATSON: And you are aware
25 of the fact that in shareholders agreements, very

1 typically there are provisions requiring unanimous
2 consent of all shareholders before certain steps are
3 taken?

4 MR. DAVID MCFADDEN: That's very
5 common.

6 MR. MICHAEL WATSON: Right. So could
7 we please turn to section 5.1, which I think it is
8 page 14 of the agreement. Right there.

9 And we see article 5 then is approval
10 of certain corporate actions, and I'll give you a
11 minute just to read those over. You're probably very
12 familiar with this kind of language.

13

14 (BRIEF PAUSE)

15

16 MR. DAVID MCFADDEN: Yeah. I think
17 there's even more --

18 MR. MICHAEL WATSON: Right.

19 MR. DAVID MCFADDEN: -- provisions,
20 but yes.

21 MR. MICHAEL WATSON: All right. And
22 let's just go to -- if you would see the others. All
23 right.

24 MR. DAVID MCFADDEN: Yeah.

25 MR. MICHAEL WATSON: And so what we

1 have here are very detailed provisions that have been
2 put in this agreement and to which the parties agreed,
3 right?

4 MR. DAVID MCFADDEN: Correct.

5 MR. MICHAEL WATSON: And these list a
6 variety of steps and actions into the future that the
7 Corporation cannot take unless it has unanimous
8 consent of the shareholders, Right?

9 MR. DAVID MCFADDEN: That's correct.

10 MR. MICHAEL WATSON: And you see
11 throughout all of these the concept of "ordinary
12 course of business"?

13 MR. DAVID MCFADDEN: Yes.

14 MR. MICHAEL WATSON: Which is a
15 defined term. We don't have to go to it, but it's a
16 defined term, Right?

17 MR. DAVID MCFADDEN: That's correct.

18 MR. MICHAEL WATSON: And again, this
19 was a section that you read and were comfortable with?

20 MR. DAVID MCFADDEN: Yes.

21 MR. MICHAEL WATSON: And essentially,
22 do you agree with me that what all of these things
23 taken altogether indicate is that before anything in
24 the future could be done out of the ordinary course of
25 business -- meaning what Collus had been doing and was

1 doing up to that time -- the Town had to consent.

2 MR. DAVID MCFADDEN: Yeah. The Town
3 had to consent on virtually any significant decision
4 that was being made about the asset itself and then
5 about a whole bunch of financial and other matters.
6 Correct.

7 MR. MICHAEL WATSON: Right. And that
8 was in the agreement right from the first draft all
9 the way through to the end, correct?

10 MR. DAVID MCFADDEN: I think if you
11 looked at every draft, you'd find these kind of -- in
12 fact, typically what happens in any negotiation is you
13 take -- that's subject to some debate normally.
14 Sometimes you take some things out; sometimes you
15 strengthen things, depending on what the interest of
16 the shareholders are. Yeah. This is typical.

17 MR. MICHAEL WATSON: Yes, indeed. And
18 so this represents a very significant level of control
19 of the Town over what was going to happen into the
20 future.

21 MR. DAVID MCFADDEN: Yeah.

22 MR. MICHAEL WATSON: You'd agree with
23 that?

24 MR. DAVID MCFADDEN: It's a very
25 exhaustive list.

1 MR. MICHAEL WATSON: Indeed.

2 MR. DAVID MCFADDEN: And it was
3 deliberately exhaustive. I mean, we went -- the Town
4 was not sort of just passing on control, that was for
5 sure.

6 MR. MICHAEL WATSON: And those are my
7 questions, Your Honour. Thank you.

8 THE HONOURABLE FRANK MARROCCO: Thank
9 you, Mr. Watson. Mr. Fryer...?

10

11 CROSS-EXAMINATION BY MR. TIM FRYER:

12 MR. TIM FRYER: Thank you, Justice
13 Marrocco, and hello, Mr. McFadden. As a matter of
14 record, I will state that I am representing myself in
15 this proceedings.

16 I do have a page that I'm going to
17 provide as an exhibit. I didn't get a chance to get
18 it into the court book, but I know you're very
19 familiar with it. It actually is page 23 of the
20 report that Mr. Watson was just speaking to us briefly
21 about, the panel that you sat on in 2012.

22 And I was just going to review from the
23 first two (2) paragraphs under the heading "the drive
24 for efficiency." And I'll just precis a little bit,
25 and I think you will be familiar with it. But that's

1 just to give you some familiarity with where I am at.

2 And it refers --

3 THE HONOURABLE FRANK MARROCCO: Why
4 don't we just wait till we get that on the screen.

5 MR. TIM FRYER: I don't have it, Sir,
6 because I'll have to hand it in as an exhibit.

7 THE HONOURABLE FRANK MARROCCO: But
8 no, we just -- but we have the report.

9 MR. TIM FRYER: Oh, I'm sorry.

10 THE HONOURABLE FRANK MARROCCO: So
11 it's page 23 of the report I thought you said.

12 MR. TIM FRYER: I'm very sorry. Yes.
13 Okay. I had no thought about --

14 THE HONOURABLE FRANK MARROCCO: So
15 let's just --

16 MR. TIM FRYER: -- the fact the report
17 would be there.

18 MR. MICHAEL WATSON: Your Honour,
19 that's CJI10462.

20 MR. TIM FRYER: Thank you.

21 THE HONOURABLE FRANK MARROCCO: Thank
22 you. Thank you, Mr. Watson.

23

24 CONTINUED BY MR. TIM FRYER:

25 MR. TIM FRYER: So okay. So it's

1 page 23 and just scroll it up a little bit so the --
2 oh, no, sorry -- and down. Right there is perfect.

3 And it's just the two (2) paragraphs
4 that I'm referring to. I can give you a moment to
5 read right through them and that would be probably
6 better?

7

8 (BRIEF PAUSE)

9

10 MR. DAVID MCFADDEN: Yeah. In fact,
11 the CHEC group, I remember, came as a -- it provided
12 evidence --

13 MR. TIM FRYER: Yes.

14 MR. DAVID MCFADDEN: -- and it
15 appeared --

16 MR. TIM FRYER: They had. So if I
17 may, I'll just say that as you can -- as you've
18 already mentioned, it refers to the 12-member
19 Cornerstone Hydroelectric Concepts CHEC group of LDCs,
20 one (1) of which is Collus PowerStream being a
21 cooperative that reduced their cost by jointly
22 developing conservation and demand management programs
23 and other services.

24 So what was Collus's perspective back
25 then about the CHEC group, if I could ask you?

1 MR. DAVID MCFADDEN: Well, Collus
2 Power was a -- but first of all, it was the largest
3 group -- the largest company in the group and was
4 clearly -- had made a real commitment to try to make
5 this work.

6 And I know Ed Houghton and I believe
7 yourself were both involved with it. I don't know if
8 you and Ed were the founders of it. But certainly,
9 you were intimately involved, I recall that.

10 MR. TIM FRYER: So that gives us a
11 little bit of background, as far as that goes.

12 MR. DAVID MCFADDEN: Right.

13 MR. TIM FRYER: But it's another
14 example of shared service agreements amongst partners.
15 Obviously, they weren't shareholder partners, but they
16 were partners.

17 MR. DAVID MCFADDEN: Correct.

18 MR. TIM FRYER: Yes. So it also
19 states in the second paragraph that the co-op model is
20 not stable enough. Firstly, it's voluntary, and then
21 secondly, Collus Power has partnered with PowerStream
22 to get advantages of linking with a larger utility.
23 So you'll recall that specific statement as well?

24 MR. DAVID MCFADDEN: Right.

25 MR. TIM FRYER: So what concern was

1 there then about the impact on CHEC of the Collus
2 PowerStream partnership? Because it is referred to
3 specifically in this as one (1) of the -- one (1) of
4 the reasons it was not stable enough.

5 MR. DAVID MCFADDEN: I mean, I think
6 that was just an observation that was made. I don't
7 think we were trying to delve into the CHEC
8 organization itself. I mean, I -- I don't know if I'm
9 answering your question.

10 I mean, our concern was basically this
11 that if you were going to achieve consolidation, it
12 would -- it's possible, but the cooperative model we
13 felt -- because it was voluntary, it was -- would
14 be -- it was probably not the answer in the longer run
15 to develop those efficiencies. It -- it -- not that
16 it's impossible, but it would be a difficult way to go
17 at it.

18 MR. TIM FRYER: It was more about the
19 reference --

20 THE HONOURABLE FRANK MARROCCO: Just a
21 second, Mr. Fryer.

22 MR. TIM FRYER: Sorry. I'm sorry.

23 THE HONOURABLE FRANK MARROCCO: Yes?

24

25 (BRIEF PAUSE)

1 THE HONOURABLE FRANK MARROCCO: Oh,
2 all right. We will stand down for a couple of minutes
3 till the system uncrashes.

4

5 --- Upon recessing at 10:56 a.m.

6 --- Upon resuming at 11:06 a.m.

7

8 THE HONOURABLE FRANK MARROCCO: Go
9 ahead, Mr. Fryer.

10 MR. TIM FRYER: Thank you, Judge
11 Marrocco.

12

13 CONTINUED BY MR. TIM FRYER:

14 MR. TIM FRYER: I think you gave us
15 some perspective from the panel's point of view. From
16 you, as a Collus PowerStream Board member at the time,
17 did you feel that CHEC was vulnerable for these ta --
18 two (2) reasons, as well?

19 MR. DAVID MCFADDEN: To my mind, as a
20 Board member, I never thought that CHEC played a big
21 part of our life. I know Ed was really committed to
22 it and -- and felt that there was some real value to
23 the Company to be involved.

24 And I -- and I think where -- from
25 where we're positioned, we could benefit from

1 cooperating with other people. The problem we had at
2 the time, as -- as you know, is that being a small
3 company in -- in this thing would -- had disadvantages
4 and -- and were missing some resources, so working
5 with CHEC was one (1) option to do it.

6 I never personally, but, you know, I --
7 I wasn't there on a day-to-day basis and you were. I
8 never saw any big benefits to the Company, but I
9 thought it was important, you know, as a member of the
10 industry, that we should be supporting a good -- a
11 group like this that had very positive goals in mind.

12 MR. TIM FRYER: And again, the shared
13 service aspect of things, to divide costs across the
14 group, which, as we know, totalled about a hundred
15 thousand customers then, gave us some size in -- in
16 making certain agreements together with -- with
17 service providers?

18 MR. DAVID MCFADDEN: I could see that
19 as a benefit --

20 MR. TIM FRYER: Okay.

21 MR. DAVID MCFADDEN: -- certainly.

22 MR. TIM FRYER: So -- so we can -- we
23 can step away from that. And I was going to go over
24 with you -- your testimony yesterday talked about
25 subsidization concerns, and that was on the shared

1 services issue.

2 So, I was going to bring up a document.
3 It's TFF. And it's 4. I don't think I have to give
4 the zeros. If I do, just let me know. And when it's
5 coming up, I'll just say it's an excerpt from Collus
6 PowerStream's 2012 application to the OEB for the new
7 cost of service rates in 2013.

8 So, you'll recall that it would have
9 been brought forward to the Board for approval, not
10 the whole rate application, but the fact that a rate
11 application went in, correct?

12 MR. DAVID MCFADDEN: Yes.

13 MR. TIM FRYER: This particular
14 excerpt is about shared services. And the first
15 paragraph, I'll give you a chance to -- to peruse it,
16 I wasn't looking for anything specific question wise
17 on this. It's -- it's talking about structure and
18 adherence. It has the adherence statement so that
19 we're conforming to the Affiliate Relationships Code?

20 MR. DAVID MCFADDEN: Right.

21 MR. TIM FRYER: And we can scroll
22 down, I think that's the right direction, past the
23 org. chart into that next sentence, which is -- that's
24 a further adherence statement explaining the situation
25 as far as the -- the service level agreements go.

1 So, if you note there, it says that
2 changes will come to the Board in 2013. Do you know
3 if that happened?

4 MR. DAVID MCFADDEN: I don't know if
5 that was the -- there is a study I remember being done
6 that was provided --

7 MR. TIM FRYER: -- consultant is
8 mentioned there, yes.

9 MR. DAVID MCFADDEN: Yeah. I -- and
10 I'm assuming it was done. I think that's what it
11 relates to because I know there -- there was a report
12 that came to us that went through all the various
13 aspects of the tra -- of the -- the work, and it was -
14 - it was very dense reading, I should tell you.
15 That's the one (1) that came in, was -- I remember
16 getting a study on that.

17 MR. TIM FRYER: And -- and it may have
18 been a draft study because, in the end, we know that
19 the service agreements didn't get finalized. So --
20 so, unfortunately, it may have come, but it -- it
21 didn't get completely handled?

22 MR. DAVID MCFADDEN: No. I -- I mean,
23 that was a subject of a lot of contention.

24 MR. TIM FRYER: Yeah.

25 MR. DAVID MCFADDEN: The problem we

1 had was we had a 50 percent shareholder who had no
2 interest in these services agreement. We had a 50
3 percent owner who obviously did have an interest in
4 it. And it was -- it -- it -- this was sort of -- a
5 bit of a conflict.

6 So, the decision was made that, look,
7 since the Town -- it's a benefit, theoretically, the
8 Town is getting through the shared services
9 arrangements and it -- and it's part of the Town's
10 operation. We would leave it to the PowerStream side
11 to try to negotiate that and -- and try to come up
12 with a deal that is fair to all sides, the Town and --
13 and, obviously, the Company.

14 MR. TIM FRYER: And -- and, again, I
15 think if we -- if we just look at the next part, as we
16 scroll down, it talks about common services and it
17 talks about the relationships amongst the -- what I
18 call the three (3) partners --

19 MR. DAVID MCFADDEN: Yeah.

20 MR. TIM FRYER: -- the Town of
21 Collingwood, Collus, and -- and, also, PowerStream and
22 -- in their own stead. It also points out that
23 they're cost-based agreements.

24 So, if we scroll down a little bit
25 further, there's a table. And we can just stop right

1 there. So, this table outlines the cost allocation
2 percentages. And this touches towards the idea that
3 there wasn't any subsidization going on. There was a
4 shared services going on. And this shows in the table
5 the various departmental expense categories which
6 employee cost allocations would be within.

7 So, do you recall -- these allocations
8 were approved by the Board, so they did come. You
9 talked yesterday about bevy of financial information
10 you'd see from me?

11 MR. DAVID MCFADDEN: Yes.

12 MR. TIM FRYER: Do you recall this?

13 MR. DAVID MCFADDEN: I don't recall
14 these percentages.

15 MR. TIM FRYER: Okay.

16 MR. DAVID MCFADDEN: I -- I know there
17 was an allocation for sure.

18 MR. TIM FRYER: No.

19 MR. DAVID MCFADDEN: And the idea was
20 we were trying to avoid un -- inappropriate
21 subsidization that would be contrary to the energy
22 regulation.

23 MR. TIM FRYER: And contrary to
24 finance regulations in Collus and --

25 MR. DAVID MCFADDEN: Yeah.

1 MR. TIM FRYER: -- contrary to our
2 external auditors --

3 MR. DAVID MCFADDEN: Yeah. We were
4 trying to be fair for everybody.

5 MR. TIM FRYER: Exactly.

6 MR. DAVID MCFADDEN: That was the
7 intent anyway.

8 MR. TIM FRYER: Yeah. So, your point
9 yesterday about Mr. Houghton and -- and service as --
10 as CAO, that's what I was going to say is, within the
11 allocations, the work done by Mr. Houghton, the amount
12 charged to the water side, which is essentially the
13 Town and the costs, was for his work time there, so --
14 so, we weren't subsidizing.

15 And I think there was that confusion
16 with PowerStream directly in the beginning. And then
17 it got tougher along the way, as well?

18 MR. DAVID MCFADDEN: Yeah, they're --
19 I mean, as I think you know, the -- there was quite a
20 contention developed between Town Hall, you know, and
21 -- and PowerStream and the Company over where things
22 should all be allocated and who was getting a benefit
23 out of it.

24 MR. TIM FRYER: And you spoke about
25 that yesterday. And I'm going to come along to that

1 in a second, if I could. I'll just stay on -- on the
2 order I had here.

3 So, we know that the 2013 intention of
4 -- of getting the agreements worked out -- I would
5 have thought that when Mr. Houghton became CAO and he
6 was the CEO of the other two (2) entities, that would
7 have been a perfect opportunity to -- to get the
8 service agreements completed.

9 So, I wondered why that didn't happen
10 then.

11 MR. DAVID MCFADDEN: I have no idea.

12 MR. TIM FRYER: Okay. And that's very
13 fair. So, your subsidization concerns that you talked
14 about, it seems to me, and -- and you started to touch
15 on this, became prevalent as the Town of Collingwood
16 looked to change the services they received.

17 And, quite honestly, the Strategic
18 Partnership was looking at possibly changing things,
19 too, because PowerStream might have been able to
20 provide certain services directly to Collus
21 PowerStream rather than using a shared services
22 approach with the Town?

23 MR. DAVID MCFADDEN: Correct.

24 MR. TIM FRYER: And -- and so, the
25 timing of it, as I said, was kind of -- the Town was

1 wanting to change. It was after the Strategic
2 Partnership, and it was after Mr. Houghton had vacated
3 the CAO role that it was really starting to come to a
4 head?

5 MR. DAVID MCFADDEN: Correct.

6 MR. TIM FRYER: And -- and him leaving
7 the role led to the discord between the new CAO, Mr.
8 Brown, and senior Collus staff?

9 MR. DAVID MCFADDEN: Yeah. There was
10 a remarkable amount of bitterness and argument about
11 this --

12 MR. TIM FRYER: Yeah.

13 MR. DAVID MCFADDEN: -- way beyond
14 what it should have ever been.

15 MR. TIM FRYER: Yeah. So -- so, I
16 just wanted to review that with you. And I just had
17 wanted to move to something else now, and it has to do
18 with your testimony again yesterday about Board
19 governance after the Strategic Partnership, so we're
20 talking in the period, basically, of 2013 through
21 2017.

22 And you reviewed that, so you recall
23 all that?

24 MR. DAVID MCFADDEN: Right.

25 MR. TIM FRYER: So, the Board makeup

1 in 2014 through to '17 was after the municipal
2 election. And Council, at that time, reappointed
3 Mayor Cooper?

4 MR. DAVID MCFADDEN: Right.

5 MR. TIM FRYER: And -- and you recall
6 when that happened. That would have been January
7 2015?

8 MR. DAVID MCFADDEN: Right.

9 MR. TIM FRYER: They also had
10 requested an increase in Council representation at
11 that time. Do you recall that?

12 MR. DAVID MCFADDEN: I don't remember
13 that coming to the Company, but they may well have --
14 Council may well have felt that that was something
15 they wanted.

16 MR. TIM FRYER: Yeah. That was in the
17 resolution that reappointed Mayor Cooper?

18 MR. DAVID MCFADDEN: I did not see
19 that resolution. I knew that the mayor had been
20 reappointed.

21 MR. TIM FRYER: Okay.

22 MR. DAVID MCFADDEN: I wasn't aware
23 there was --

24 MR. TIM FRYER: So --

25 MR. DAVID MCFADDEN: -- other parts of

1 it.

2 MR. TIM FRYER: So, I was going to ask
3 you why the Board had decided not to accept that
4 request in -- in early 2015 when they advertised for a
5 new position, but you don't recall on that?

6 MR. DAVID MCFADDEN: I do not recall a
7 discussion at the Board about changing the -- adding
8 another member of Council. I don't remember that. I
9 remember there was -- there -- when David Garner's
10 term finished, I knew that there was -- I think he had
11 --

12 MR. TIM FRYER: That was around April.

13 MR. DAVID MCFADDEN: Yeah. He'd --

14 MR. TIM FRYER: Yeah.

15 MR. DAVID MCFADDEN: -- somehow moved
16 or something had happened. And we -- he -- he had
17 been a very -- actually, been a very conscientious
18 director, and so he had left. And I know that some
19 kind of a process was put in place and Mr. Worts was
20 appointed.

21 MR. TIM FRYER: In that particular
22 case, that was a case of where the deputy mayor had
23 applied for the position because it hadn't been
24 offered to him directly by the Board, and Council had
25 to reach a decision between the two (2).

1 MR. DAVID MCFADDEN: Now, the Board,
2 we -- we don't -- I mean, look, I -- I don't -- fair
3 to say -- we weren't offering anybody any positions.
4 I mean, it's up to the shareholder to appoint who they
5 choose to appoint to our Board.

6 MR. TIM FRYER: Exactly.

7 MR. DAVID MCFADDEN: And -- and in the
8 end, it was Mr. Worts. I don't know what happened to
9 Mayor Saunderson's campaign to be on the Board.

10 MR. TIM FRYER: At that particular
11 time, he was deputy mayor, but -- but --

12 MR. DAVID MCFADDEN: Yeah. I was
13 saying he's the mayor now, but --

14 MR. TIM FRYER: Yes. Yes.

15 MR. DAVID MCFADDEN: -- deputy mayor
16 then.

17 MR. TIM FRYER: Exactly.

18 MR. DAVID MCFADDEN: Yeah.

19 MR. TIM FRYER: Yeah. Okay. So, just
20 very briefly because Mr. Watson already went over it
21 with you about the shotgun clause and you did agree
22 that it was a normal vision and -- and twenty (20)
23 days was a normal period.

24 Wouldn't you think that that would be
25 more favourable to PowerStream than to the Town, the

1 Town being a Council that would have to make a
2 decision?

3 MR. DAVID MCFADDEN: It's a normal
4 provision. The Town -- I mean, I -- my feeling about
5 it was essentially this. No one's going to launch
6 this. The -- it isn't the sort of a thing that
7 happens out of the blue, in my experience. Like, it
8 doesn't -- suddenly -- suddenly, everybody's getting
9 along and suddenly they say I'm going to buy you out.

10 Normally, you're aware that there's
11 some problem. As far as the Town is concerned on this
12 one, I -- I didn't think the Town would have much
13 difficulty financing if it wanted to do the
14 acquisition of the PowerStream interest in the event
15 that that came up. And, in fact, that's been proven
16 right.

17 You know, I mean, I -- I think, you
18 know, it could be financed through its banking sources
19 or whatever. So, the idea that the Town was
20 disadvantaged wouldn't be there because obviously
21 there'd be -- you know, they could line up a buyer for
22 that other interest in the -- in the near future
23 anyway. It was -- the company was making money, and
24 it would be an attractive investment for somebody
25 else. And that -- and history has proven that.

1 MR. TIM FRYER: So your reference to
2 "it ended up happening" was to, of course, the EPCOR
3 transaction when they initiated the buy-sell option.

4 MR. DAVID MCFADDEN: That's right.

5 MR. TIM FRYER: But I guess what I was
6 saying is the difficulty for the Town would be, as you
7 said, perhaps they could get the finance taken care
8 of, but it would be the public input that would be
9 basically pushed aside.

10 MR. DAVID MCFADDEN: Well, the -- this
11 is the problem with municipalities being involved
12 in -- in businesses. I mean, this is a business. It
13 was incorporated out of the Business Corporations Act.
14 We're in a business here. You -- you have to -- when
15 you approach it, you have to at least approach it in
16 a -- in a businesslike fashion. This is a normal
17 provision you put into any agreement.

18 So when Aird & Berlis put it in, I
19 didn't think there was anything unusual about it. It
20 was -- it was pretty standard fare. You know, it
21 has -- have a reasonable notice, but, I mean, you
22 could increase it or decrease it. You could do
23 whatever you want.

24 But I think it was pretty -- it's a
25 normal process you put in -- in -- when you're dealing

1 with a -- you know, a business arrangement.

2 MR. TIM FRYER: But you touched on the
3 major difficulty which is this is a shareholder who's
4 a public corporation owning and OBCA corporation and
5 trying to deal with the nuances between how one (1)
6 operates and how the other one (1) has to operate in
7 regards to the public.

8 MR. DAVID MCFADDEN: This is a -- an
9 ongoing problem in the whole utility sector in
10 Ontario. I mean, we -- the majority of all of the
11 LDCs are government owned. You know, it's either --
12 or government controlled. And -- and the bulk of LDCs
13 are municipally owned, and they all have their own
14 rules.

15 And -- and so you -- you get into a
16 dynamic here where the legislation setting all this up
17 required a business corporation we set up.

18 MR. TIM FRYER: Yeah.

19 MR. DAVID MCFADDEN: And -- and yet we
20 have municipal processes that somehow get involved in
21 it as well. It -- it is a real tension in -- in all
22 this.

23 MR. TIM FRYER: Mr. Roger, who'd
24 provided a report to Council during this term we're
25 talking, about made a statement that you -- I think

1 you would agree with, maybe you're one (1) of the few
2 that you would agree with the report -- but it was
3 that municipalities were never given the proper tools
4 to deal with an OBCA corporation, and it could result
5 in the kind of conflict that we're talking about
6 exactly here.

7 MR. DAVID MCFADDEN: I don't if they
8 were given the proper tools. I mean, I think the
9 municipalities have -- you know, since they were given
10 this asset in many respects and -- and allowed to
11 capitalize on it, you've got to think municipalities
12 also have an obligation to set up process to properly
13 manage the asset they have. And -- and if they don't
14 and they're not prepared, then that's a problem.

15 MR. TIM FRYER: Including dissolving
16 the asset in some way, whether it's amalgamation, a
17 merger, or whatever.

18 MR. DAVID MCFADDEN: Or whatever.

19 MR. TIM FRYER: Yes.

20 MR. DAVID MCFADDEN: And clearly,
21 Collingwood made a decision to sell that they'd --

22 MR. TIM FRYER: Yeah.

23 MR. DAVID MCFADDEN: -- had enough, I
24 guess, of --

25 MR. TIM FRYER: Okay.

1 MR. DAVID MCFADDEN: -- running a
2 utility.

3 MR. TIM FRYER: Thank you,
4 Justice Marrocco. Those are my questions.

5 THE HONOURABLE FRANK MARROCCO: Thank
6 you.

7 MR. DAVID MCFADDEN: Thank you.

8 THE HONOURABLE FRANK MARROCCO:
9 Mr. Bonwick...?

10

11 CROSS-EXAMINATION BY MR. PAUL BONWICK:

12 MR. PAUL BONWICK: Thank you, Your
13 Honour. Greetings, Mr. McFadden. My name's
14 Paul Bonwick, and I'm a participant in the Inquiry.
15 And I'll start with apologizing right off the bat.
16 You caught me in the middle of two (2) books, so
17 you've got the last three (3) pages of one, and you've
18 got the next on the other.

19 MR. DAVID MCFADDEN: Okay.

20 MR. PAUL BONWICK: So I may be
21 flipping back and forth a little bit here for you.
22 There we go.

23 Thanks very much by the way for making
24 time to come. It's greatly appreciated. I know that
25 the Inquiry and certainly I find a lot of value in

1 what you've had to share with us as it relates to this
2 matter.

3 Based on your testimony yesterday and
4 considerable experience, is it reasonable to say that
5 Collus and its various entities -- the Town of
6 Collingwood itself, ratepayers, and taxpayers --
7 should consider themselves grateful for having
8 received a significant benefit as a result of
9 Mr. Muncaster's leadership leading up to this process?

10 MR. DAVID MCFADDEN: Yes. I would
11 agree with that. He -- he was a -- made a very
12 valuable service. I mean, he was involved long before
13 I got involved, and -- and then he died while he was
14 involved. So yes.

15 MR. PAUL BONWICK: Very unfortunate,
16 and I would echo those comments based on my dealings
17 with him as well.

18 I think in fairness for -- as you know,
19 we're live streaming -- I think in fairness, the same
20 could be said for you. Not to throw too many
21 accolades your way but --

22 THE HONOURABLE FRANK MARROCCO:
23 Mr. McFadden's still alive.

24 MR. PAUL BONWICK: No, no. I don't
25 mean him passing.

1 MR. DAVID MCFADDEN: Your Honour. I
2 was -- let the record show the rumours of my demise
3 here are greatly exaggerated. You just -- Mark Twain.

4 MR. PAUL BONWICK: Exactly.

5 MR. DAVID MCFADDEN: I could do an
6 imitation, but I won't.

7

8 CONTINUED BY MR. PAUL BONWICK:

9 MR. PAUL BONWICK: The -- although
10 we're not familiar with each other, I certainly know
11 people that know of you and followed your career over
12 the last few weeks in terms of your experiences and
13 what you had to say here. And I would submit that any
14 municipality or LDC would be -- should be extremely
15 grateful for the leadership and the involvement that
16 you have provided.

17 So I certainly appreciate the fact that
18 you're one (1) of the more highly respected people if
19 not in North American, globally in this particular
20 industry.

21 MR. DAVID MCFADDEN: That may be an
22 exaggeration, but thank you all the same.

23 MR. PAUL BONWICK: You commented about
24 Collingwood having reservations about the approach
25 related to -- and I'll use the term "amalgamation" and

1 really what that is a hundred percent share to a
2 larger LDC, whether that's using an example like
3 Hydro One or other entities that there was a
4 reservation within the community and expressed through
5 Council that they did not want to go down that path.

6 MR. DAVID MCFADDEN: That's correct.
7 There was no -- certainly at the beginning, there was
8 no interest in selling out I -- I didn't find. There
9 was no pressure from -- certainly not from Town Hall
10 that they wanted to get out of the business.

11 MR. PAUL BONWICK: In your experience,
12 would you agree that that was a reasonably common
13 thought or belief held by many small Councils or
14 regional LDCs, as opposed to looking at trying to
15 create efficiencies within or connecting with members
16 within associations rather than simply amalgamating?
17 Perhaps even considering it part of their identity as
18 a community, these smaller LDCs?

19 MR. DAVID MCFADDEN: Yeah. After the
20 first sort of big 88 sort of -- after the original 88
21 sort of merged in with the Hydro One, the people -- I
22 think a lot of the utilities that were left were the
23 ones who did not -- who wanted to maintain local
24 control, and they -- you know, so Collingwood was not
25 unusual in that respect that there are several dozen

1 communities around the province who feel that way.

2 MR. PAUL BONWICK: In fact, it would
3 be reasonable to say that the same belief or feeling
4 was held within many of the members of the CHEC
5 association itself.

6 MR. DAVID MCFADDEN: Yes. And I think
7 that's probably one (1) of the bases why CHEC got
8 started was to try to find a way to maintain local
9 autonomy but still get some advantages of
10 consolidation.

11 MR. PAUL BONWICK: Then would it be
12 reasonable to assume that once a partnership was
13 created that under an ideal set of circumstances or a
14 reasonable set of circumstances that Collus
15 PowerStream might be uniquely positioned beyond some
16 of the larger participants in the industry, and I
17 would say Hydro One, PowerStream, Veridian, Horizon,
18 EPCOR. We might have a competitive advantage in terms
19 of attracting some of these smaller regional leasees.

20 MR. DAVID MCFADDEN: That was
21 definitely the -- the idea that we would -- we talked
22 about was that we had the advantage of having a -- the
23 town of Collingwood as a 50 percent owner we -- we had
24 as a partner a big company. We could bring the
25 advantage of big and small to other municipalities if

1 they wanted to come in with us.

2 So that was the -- that was the
3 underlying thing that we thought. We thought there
4 was a real dynamic, and we weren't aware of any other
5 examples of this, which made it sort of a -- it might
6 have been very attractive to people to say, well, look
7 let's join with those guys. I mean, they've got the
8 advantages of both municipal ownership, small town,
9 and then the large company with all the resources.

10 MR. PAUL BONWICK: I think you'd agree
11 then what was created was a sort of very unique
12 situation that could potentially address the concerns
13 of small of these -- some of these smaller LDCs as it
14 related to loss of identity and loss of control.

15 MR. DAVID MCFADDEN: Yeah. I think
16 that was one (1) of the objectives certainly that
17 Ed Houghton used to talk a lot about.

18 MR. PAUL BONWICK: I know based on my
19 experiences -- and I will ask about yours -- that this
20 deal was referred to post-OEB approval as a bit of a
21 hybrid. And I'm curious the feedback that you
22 received after the fact over the course of the --

23 MR. DAVID MCFADDEN: M-hm.

24 MR. PAUL BONWICK: -- the next year --
25 I won't go beyond that -- but over the course of the

1 next 12 months after OEB approval. You're very active
2 within the industry. What kind of comments and
3 feedback were you getting in terms of how this had
4 been done?

5 MR. DAVID MCFADDEN: There -- I mean,
6 there's a lot of interest in it because nobody had
7 quite done it this way before and there was -- there
8 was industry -- interest. Ed certainly went out and
9 he met a lot of people and tried to do deals with them
10 and so on and so forth. But sure, it -- it got a -- a
11 lot of interest within the industry.

12 MR. PAUL BONWICK: Is it fair to say
13 that the feedback that you received was positive, that
14 it outlined what people believed to be a creative
15 approach in terms of dealing with consolidation, but
16 yet doing in a creative way where it might allow
17 expansion within this particular arena?

18 MR. DAVID MCFADDEN: I could say right
19 now I -- did -- I never received anybody saying this
20 is crazy or in the public interest, most people were
21 just interested to hear all about it. I never got any
22 negative comments about it from anybody.

23 MR. PAUL BONWICK: I've listened to
24 you speak about your opinion of KPMG. I think it's
25 been well-served in terms of what the reputation is,

1 one (1) of the big four (4), tremendous depth and
2 experience in this particular area.

3 You're familiar with Aird & Berlis?

4 MR. DAVID MCFADDEN: Yes.

5 MR. PAUL BONWICK: I would submit, one
6 (1) of the more highly respected law firms in the
7 province of Ontario specific to municipal law?

8 MR. DAVID MCFADDEN: Yes. They're
9 very well-known in the municipal area and in the
10 energy area.

11 MR. PAUL BONWICK: And in the energy
12 area.

13 MR. DAVID MCFADDEN: Yes, in both
14 areas.

15 MR. PAUL BONWICK: Absolutely.

16 You spoke highly about Mr. Houghton and
17 his, I'll call it network and reputation within the
18 LDC sector?

19 MR. DAVID MCFADDEN: Yes, he was very
20 well-known.

21 MR. PAUL BONWICK: I understand how
22 fortunate we were to have Mr. Muncaster, yourself, as
23 well as others involved as well.

24 MR. DAVID MCFADDEN: Right.

25 MR. PAUL BONWICK: And -- and so I say

1 it was quite a team amassed in terms of developing
2 this process, moving through the process and getting
3 it over the goal line?

4 MR. DAVID MCFADDEN: Yes, I think it
5 was a good team. A good mix of talents.

6 MR. PAUL BONWICK: And I'd move over
7 to the -- and I keep writing down the wrong acronym,
8 but the strategic review, SPTT, partnership --

9 MR. DAVID MCFADDEN: Strategic
10 partnership task team.

11 MR. PAUL BONWICK: Strategic
12 partnership task team.

13 MR. DAVID MCFADDEN: Yes. Should have
14 come up with a simpler name, probably, but --

15 MR. PAUL BONWICK: I was -- I was
16 looking at the task team and I'm sitting there going -
17 - there was Mr. Muncaster.

18 MR. DAVID MCFADDEN: Correct. He was
19 chair.

20 MR. PAUL BONWICK: Chair of it. Thank
21 you.

22 There was yourself?

23 MR. DAVID MCFADDEN: Correct.

24 MR. PAUL BONWICK: There was Mr.
25 Houghton?

1 MR. DAVID MCFADDEN: Correct.

2 MR. PAUL BONWICK: CEO. There was Mr.
3 Fryer, CFO. Ms. Wingrove, the CAO.

4 MR. DAVID MCFADDEN: Right.

5 MR. PAUL BONWICK: Deputy Mayor Lloyd,
6 chairman of finance for the municipality. The mayor.
7 So I think there was a total of seven.

8 MR. DAVID MCFADDEN: And then John
9 Herhalt was sort of part of the group too.

10 MR. PAUL BONWICK: But from -- okay,
11 and John Herhalt and obviously with the support of
12 KPMG, the --

13 MR. DAVID MCFADDEN: Correct.

14 MR. PAUL BONWICK: -- the committee or
15 the task force and joined the support of KPMG as well.

16 Could you have envisioned a more robust
17 team or task force?

18 MR. DAVID MCFADDEN: I thought -- it -
19 - it struck me as -- as -- it seemed to cover all
20 bases, to my mind, you know, it covered the -- the --
21 the concerns that we had from the -- we had the Town
22 represented by several people, the company, Collus
23 Power Stream was and then the Collus Utility is the
24 holding company. So they were all -- we had people
25 from all different entities.

1 MR. PAUL BONWICK: Would you, in
2 hindsight, suggest that there should've been more than
3 seven people on the scoring team or task force, task
4 team?

5 MR. DAVID MCFADDEN: I would have
6 thought -- I thought the number involved was -- was
7 certainly more than adequate. You can add people, but
8 I -- I thought it nicely represented all adverse
9 interests.

10 MR. PAUL BONWICK: Fair enough. And
11 I'm sure in your experience, you could speak to the
12 size of committees as they grow exponentially or you
13 start to get a dozen or more, it sometimes becomes
14 unworkable, is that fair?

15 MR. DAVID MCFADDEN: It's fair to say
16 that it -- it's hard even to set up meetings if you
17 get too large.

18 MR. PAUL BONWICK: You'll be aware of
19 the fact that throughout this process there was
20 regular engagement with municipal Council or the
21 shareholder, as you're referring it to?

22 MR. DAVID MCFADDEN: Yes.

23 MR. PAUL BONWICK: There was public
24 meetings?

25 MR. DAVID MCFADDEN: Yes.

1 MR. PAUL BONWICK: There was notices
2 in the paper.

3 MR. DAVID MCFADDEN: Yes.

4 MR. PAUL BONWICK: There was
5 eventually an application provided to the Ontario
6 Energy Board.

7 MR. DAVID MCFADDEN: Correct.

8 MR. PAUL BONWICK: The Ontario Energy
9 Board is responsible, as I understand it, to also put
10 out notices as it relates to the review of their
11 application.

12 MR. DAVID MCFADDEN: That's right.

13 MR. PAUL BONWICK: Are you aware of
14 the fact that as the OEB reviewed the application for
15 the purposes of approval or decline, that there was no
16 opposition to the application?

17 MR. DAVID MCFADDEN: That's as I
18 understand it. They do advertise and -- and as I
19 understand it there's no questions or interventions
20 from anybody.

21 MR. PAUL BONWICK: Is it fair to say
22 that in your experience, municipalities are dealing
23 with the sale of an LDC, whether in whole or part, or
24 the consideration of a sale of an LDC in whole and
25 part, that these can be highly controversial within a

1 community?

2 MR. DAVID MCFADDEN: Yes, it -- it
3 certainly can in some communities. Some places nobody
4 cares less and others it can become quite
5 controversial.

6 MR. PAUL BONWICK: Would it be fair to
7 say that it's much more of a higher profile issue
8 within smaller communities?

9 MR. DAVID MCFADDEN: That's fair to
10 say. I can give an example. Gravenhurst. The -- one
11 (1) councillor decided in favour of selling their
12 utility and election issue because the election
13 happened just around that time, and there was a total
14 change of Council. And they -- strangely enough they
15 decided not to sell based upon the voters and about
16 two (2) or three (3) years later they sold anyway, and
17 they used the money for the wharf project.

18 So municipalities, you know, I found
19 over the years will look at what their financial needs
20 are and then make decisions around that as to what --
21 that -- that seems to be the driving force, like much
22 of this is the municipal government's need for money
23 from time to time.

24 MR. PAUL BONWICK: So based on the
25 team that worked on this, which I would argue is as

1 deep and experienced as anyone could hope for, based
2 on the strategic task force that was put in place or
3 strategic task team that was put in place, based on
4 the public consultation extended through Collus and
5 the municipality and subsequently by the OEB and then
6 followed up, would you say this was a very robust and
7 transparent process?

8 MR. DAVID MCFADDEN: I thought it was
9 robust and transparent, as -- as far as you can get it
10 in -- in a transaction like this. You can't have
11 total disclosure of everything to the whole public and
12 involve them, do this all on the stage.

13 But yes, I -- I felt that it was a good
14 process, certainly from start to finish, the -- that's
15 why KPMG, for example, was brought on board, to make
16 sure that this was a process that fit in industry
17 standard in terms of -- and -- and that of course was,
18 you know, I know that was Dean's view too, he -- he
19 didn't want to have something that wasn't.

20 MR. PAUL BONWICK: Whether we're
21 talking about yourself or Mr. Muncaster or KPMG or
22 Aird & Berlis, none of these parties would undermine
23 their integrity or their values to try and shortchange
24 this in any way. I think --

25 MR. DAVID MCFADDEN: I think that's

1 fair to say. I don't think anybody on the group that
2 I know of would've done anything other than call it
3 the way they saw it.

4 MR. PAUL BONWICK: Best interest of
5 the community always at heart.

6 MR. DAVID MCFADDEN: Yes.

7 MR. PAUL BONWICK: I -- I want to just
8 quickly address one (1) matter that was touched on two
9 (2) weeks ago, approximately, and in fairness you
10 weren't privilege to the meeting, but I -- I would ask
11 you in this context.

12 As the final decision had been made or
13 the approved candidate, which was PowerStream moved to
14 the next stage in terms of firming up the documents,
15 would it seemed reasonable to you if you were creating
16 the -- the document, if you were creating the enabling
17 bylaw that you would share that information with your
18 perspective or soon to be new partner in making sure
19 that you got the wording right and it captures from
20 everybody's perspective what's required?

21 MR. DAVID MCFADDEN: Yes, I don't
22 think that's unusual, particularly in the -- in the
23 case of a municipality were things have to be
24 disclosed openly.

25 I mean -- I mean there -- there are

1 instances, I suppose, if it was two (2) private
2 companies where you may not share as much. But I mean
3 in this case, yes, I mean, it would be quite normal so
4 you can be sure that the process fits what the deal
5 is.

6 MR. PAUL BONWICK: Right. So when the
7 Town's lawyers were preparing the enabling bylaw to
8 authorize mayor and the clerk to sign this, there's, -
9 - there's language in there that effectively
10 authorizes them and provides the -- the prerequisite
11 conditions for them to sign it, would it make sense in
12 your mind that the Town solicitor would have well with
13 -- well with -- been within his rights and in fact
14 should've done through -- so through due diligence to
15 engage PowerStream to make sure that they've been
16 captured?

17 MR. DAVID MCFADDEN: Yes, I would
18 think that would be a normal thing to do. You don't
19 want the bylaw to conflict with the transaction, so
20 why not ask the lawyers on the other side if I
21 captured everything. That's not abnormal, that's for
22 sure.

23 MR. PAUL BONWICK: Thank you. I
24 should have captured this at the first because I
25 normally do -- at any time did you or I correspond via

1 email, phone calls, meetings? Did I ever reach out
2 to you and ask you for suggestions on criteria, on
3 what you should be thinking, anything in that matter?

4 MR. DAVID MCFADDEN: This may seem
5 remarkable, I've never -- I've only met you once and
6 that was years ago. I remember meeting you somewhere;
7 I can't remember where it was. It just stuck out that
8 you were a former MP. But I -- other than that, I've
9 never had a conversation with you at all.

10 MR. PAUL BONWICK: Thank you.

11 MR. DAVID MCFADDEN: And you certainly
12 never sent me an email or --

13 MR. PAUL BONWICK: Or --

14 MR. DAVID MCFADDEN: -- letters or
15 anything else or --

16 MR. PAUL BONWICK: -- asked to meet
17 with you to discuss anything --

18 MR. DAVID MCFADDEN: No, you've never
19 spoken to me on anything like this.

20 MR. PAUL BONWICK: Interesting that
21 you say you reflected on that. When I seen your name,
22 and I'd heard of you obviously -- when you walked in I
23 said I've met him somewhere before but I'm not sure
24 where. So, we're -- we're like-minded in that regard.

25 I'd like to touch on the -- the solar

1 attic vent presentation for --

2 MR. DAVID MCFADDEN: Yeah.

3 MR. PAUL BONWICK: -- just a -- really
4 just a quick question.

5 Is it reasonable that Collus staff
6 would be looking at exploring and adopting energy
7 conservation initiatives, especially from a pilot
8 perspective, in order to engage the public in -- in
9 sus -- sustainable energy practices?

10 MR. DAVID MCFADDEN: Yeah. In fact,
11 utilities all across the province were looking at
12 things like this. I mean, not specifically this
13 technology, but everybody was being mandated to deal
14 with conservation demand management, so this would be
15 part of that whole thing. So -- and -- and there was
16 a real encouragement to look at technology using the
17 smart grid it started, so, you know, there's a real
18 push on under the Green Energy Act to be innovative
19 and -- and to do things that would lead to reductions
20 in -- in -- in power usage.

21 MR. PAUL BONWICK: And while I'm not
22 trying to solicit comment on the Green Energy Act,
23 because I think there's a -- a lot of split opinion on
24 --

25 MR. DAVID MCFADDEN: Yeah.

1 MR. PAUL BONWICK: -- the
2 effectiveness of that partic --

3 MR. DAVID MCFADDEN: Yeah.

4 MR. PAUL BONWICK: -- to say the
5 least, on that particular one. Would you agree that a
6 lot of the initiatives out there, short of smart
7 metering, a lot of the initiatives out there precluded
8 the ability of what I'll refer to as the average
9 taxpayer to fully engage in -- in best practices or
10 sustainable energy.

11 And I'm thinking for an example, there
12 was the solar power initiatives where you could put
13 them on your roof or side yard, but in fairness they
14 were anywhere from sort of 80 to \$120,000. There
15 didn't seem to be a lot. Is that a fair statement of
16 opportunities for the average taxpayer or ratepayer to
17 engage in these best practices?

18 MR. DAVID MCFADDEN: Well, that's
19 correct, and -- and I know the industry talks about
20 this. I mean, the -- even though solar-powered cells,
21 for example, are dropping in price, the problem is
22 installation, and knowing what -- and so the average
23 person -- it's not like buying a car where you can go
24 in and then get all specs, you drive it off the lot.
25 It's a bit complicated to get into solar or other

1 generations. So yes, it's fair to say that the
2 average consumer has not been as engaged perhaps as
3 some -- as some people might have liked.

4 MR. PAUL BONWICK: And in your
5 experience, the average ratepayer or taxpayer is,
6 generally speaking, wanting to participate. They're
7 just -- there's limited mechanisms or opportunities
8 provided through LDCs or through the Provincial
9 Government for them to participate.

10 MR. DAVID MCFADDEN: Yeah. Typically
11 LDCs don't offer these kind of programs to any great
12 extent, and in fact, they haven't found it necessarily
13 financially beneficial, so they -- I mean, they --
14 they haven't done a lot. I mean, all municipalities
15 are doing de -- various things: conservation, demand
16 management, but as it relates to homeowners, I mean,
17 there are peaksaver programs, you know, the new smart
18 metres.

19 There have been a bunch of initiatives
20 that utilities have tried to do to get -- and -- and
21 in a lot of cases they've been effective at sort of
22 curtailing demand, but new technologies like solar,
23 you know, rooftop and everything, have not been
24 adopted at a tremendously fast rate, and part of it
25 has been people working out the cost benefit of

1 spending that kind of money, like what do you get out
2 of it. Some people do it because they're not worried
3 about the money; they're worried about making a
4 statement and then making a commitment on green. But
5 a lot of people -- if you look at your -- your
6 electricity price versus the cost of -- how do you
7 realize on that? That's a -- it's an ongoing issue.
8 It may get resolved in the years ahead though,
9 assuming they go to get solar rays at Canadian Tire
10 and stuff like that, but right now it's not common.

11 MR. PAUL BONWICK: Is it fair to say
12 that quite often the people, the first in the door on
13 some of these initiatives, are not necess --
14 necessarily doing it for monetary reasons but rather
15 to try to engage the public to make them aware of
16 steps that can be taken to be more -- to have a more
17 sustainable approach towards their energy consumption?

18 MR. DAVID MCFADDEN: I depends on if
19 you're a private company or public. I -- I think --

20 MR. PAUL BONWICK: Sorry, I'd keep it
21 to the LDCs in fairness, so --

22 MR. DAVID MCFADDEN: Oh, the LDCs,
23 yeah. I mean, I think the LDCs tend to really --
24 well, the LDCs have found themselves in an odd
25 position. The LDCs get money based on consumption, so

1 it's to the benefit of LDCs under their rates to
2 increase the amount of power being purchased. On the
3 other hand, the government through the CDM programs
4 are trying to encourage you to go into programs to
5 reduce consumption. So you find it's -- it's an odd
6 one.

7 So the government brought in these
8 financial incentives so that LDCs would not say, well
9 look, why am I going to encourage any of this at all.
10 So that's why the -- the government had these
11 incentives. Now, they -- they, in the last several
12 months, have been terminated, so that's all stopped,
13 but up until very recently that's how the government
14 chose to deal with it, by giving financial incentives
15 to the utilities to do something.

16 MR. PAUL BONWICK: Right. And so back
17 in 2011, 2012, 2013, there was government support or
18 program support, whether through -- through the
19 Ontario Energy Board, as well as there was latitude
20 extended, if I understand it correctly, to the LDCs to
21 adopt any programs, potentially get funding back from
22 the OEB, and in fact be able to collect or receive
23 financial compensation from the end users through
24 billing practices.

25 MR. DAVID MCFADDEN: Yeah. There were

1 a whole variety of schemes that were considered and
2 implemented.

3 MR. PAUL BONWICK: I want to fast
4 forward a little bit somewhat. So you have a unique
5 perspective on this situation because, unfortunately,
6 with the passing of Mr. Muncaster -- thank you for it,
7 stand up, (sic) and sort of take on a more stringent
8 leader -- leadership role. But the reason I say you
9 have a broader perspective on this, you were there
10 leading up to it and you have the ability to assess
11 the after situation as well.

12 And so I would say picking a date,
13 twelve (12) months after the OEB approval and Collus
14 and PowerStream had entered into the partnership,
15 conducted business, after a one-year period, how would
16 you assess the nature of that relationship? Would you
17 use words like complimentary, beneficial?

18 MR. DAVID MCFADDEN: Yeah. I mean, we
19 -- in the end it proved to be quite seamless. I mean,
20 at a Board level, the -- as I mentioned yesterday, in
21 the -- we went up to six (6) directors, so basically
22 we -- we had Collus -- Collus Power had three (3).
23 All we did was increase it to six (6). The -- the
24 president of -- of PowerStream was appointed to the
25 Board as was the mayor of Barrie, who was a member --

1 chairman of -- of PowerStream at the time, and a
2 fellow named Dan Horchik, who's a lawyer and been a
3 director of PowerStream. So they put on some senior
4 people.

5 They certainly took this seriously,
6 right from the beginning, and over the time what we
7 looked at was, okay, we -- there -- there was an
8 understanding that PowerStream was going to provide
9 certain assistance and so on to the Company as part of
10 the deal, which they did, 24-hour control room, which
11 we didn't have, staff supports. They made a -- they
12 made a -- at least one (1) donation I know in the
13 community in terms of -- I think it was to the
14 hospital, as I recall it.

15 The -- on a day-to-day basis, from the
16 staff I spoke to, everybody seemed to be happy about
17 it, they -- they -- they were positive about the
18 interaction, and we got tremendously enhanced
19 resources that we didn't otherwise have. It allowed
20 us, for example, to start moving in a -- in a more --
21 in the larger ways, CDM programs, which we probably
22 could -- we wouldn't have been able to do without --
23 without that.

24 So we had a lot of resources that we
25 hadn't seen before sort of the staff level, and you

1 could -- you can obviously speak to the staff, but
2 they could tell you that there were a lot of positives
3 that came out of it.

4 MR. PAUL BONWICK: PowerStream back
5 then, Alectra now, you're familiar with the
6 organization? Yes?

7 MR. DAVID MCFADDEN: Alectra as it is
8 now, yeah.

9 MR. PAUL BONWICK: Yeah. The
10 ownership structure of Alectra, am I to understand it,
11 it still remains municipally owned?

12 MR. DAVID MCFADDEN: Correct, except
13 for a small piece that OMERS owns. And they got that
14 from Enersource because Enersource in -- the
15 Mississauga entity was 10 percent owned by OMERS
16 pension, their pension fund. And the rest -- so they
17 -- they came along but ev -- outside of the OMERS
18 piece everything else is owned by the municipalities
19 that are -- become part of this.

20 MR. PAUL BONWICK: And the Alectra
21 board or I'll call it PowerStream because of -- trying
22 to take that snapshot back in time in 2011, the
23 PowerStream board was comprised of regional and city
24 mayors, correct?

25 MR. DAVID MCFADDEN: Correct.

1 MR. PAUL BONWICK: People -- board
2 members from the community at large, typically with
3 some level of expertise in these particular areas?

4 MR. DAVID MCFADDEN: I don't know the
5 total makeup of their board, to be honest with you. I
6 know -- I know there was a combination of -- of
7 political people, you know, politicians, municipal
8 government leaders and -- and then citizens.

9 MR. PAUL BONWICK: What I'm trying to
10 demonstrate, it was a fairly robust board with a good
11 cross-section of people sitting on it?

12 MR. DAVID MCFADDEN: Yes, I
13 understood.

14 MR. PAUL BONWICK: People that would
15 obviously have the best interest of their community,
16 their shareholders and for that matter the province at
17 top of mind.

18 MR. DAVID MCFADDEN: I'd expect so,
19 yes.

20 MR. PAUL BONWICK: You had -- at that
21 time are you familiar with Mr. Bentz?

22 MR. DAVID MCFADDEN: Yes.

23 MR. PAUL BONWICK: Mr. Bentz was the
24 CEO, president and CEO at the time.

25 MR. DAVID MCFADDEN: Correct.

1 MR. PAUL BONWICK: Mr. Nolan was
2 counsel, senior vice-president and counsel for
3 PowerStream.

4 MR. DAVID MCFADDEN: Met him, yep, I
5 know him.

6 MR. PAUL BONWICK: John Glicksman was
7 the CFO --

8 MR. DAVID MCFADDEN: Yeah.

9 MR. PAUL BONWICK: -- Chief Financial
10 Officer?

11 MR. DAVID MCFADDEN: Yep.

12 MR. PAUL BONWICK: Can you speak to
13 their reputations within the LCD sector?

14 MR. DAVID MCFADDEN: Well, Brian is --
15 Bentz is very highly recorded. I mean he -- he has --
16 had various roles outside of the company. I know he
17 was the Chairman of the Ontario Energy Association for
18 a -- for a term or two. He's also has been involved
19 with a number of organizations. I know he's chair of
20 a couple of things with regard to independent
21 electricity system operator, well known.

22 Dennis Nolan is their general counsel.
23 He's a very senior counsel and John Glicksman is a --
24 a -- is a long time serving financial executive in the
25 utility sector and is well respected, as far as I

1 know.

2 MR. PAUL BONWICK: So, again, it would
3 be fair to say that the executive management team was
4 very well respected in the industry and, in your
5 experience, certainly would first and foremost as a
6 priority have the ratepayers, their shareholders,
7 within the province generally speaking, as a priority
8 in all their business matters -- dealings.

9 MR. DAVID MCFADDEN: I would have
10 sought so. Yeah, expect with that kind of team, yeah.

11 MR. PAUL BONWICK: And that's what
12 we've witnessed in fairness?

13 MR. DAVID MCFADDEN: Yeah.

14 MR. PAUL BONWICK: Thank you. And so
15 would it cause you some surprise that, in fact, Mr.
16 Bentz took a personal interest in term of helping
17 develop this regional growth strategy after the
18 partnership. Would that demonstrate to you his level
19 of commitment and PowerStream's level of --

20 MR. DAVID MCFADDEN: Yep.

21 MR. PAUL BONWICK: -- to see this
22 regional growth strategy take place?

23 MR. DAVID MCFADDEN: Well, I know on
24 the board he used to express a lot of interest in it
25 and was encouraging it to happen.

1 MR. PAUL BONWICK: And I'm not trying
2 to downplay the size of the importance of Collingwood
3 or Collus but, generally speaking, it would be
4 considered a relatively small player in the industry?

5 MR. DAVID MCFADDEN: Well, that's true
6 and if we -- if we had had some transactions we would
7 have expected that the financial support would have
8 more likely come from PowerStream than it was going to
9 come from -- from our end.

10 MR. PAUL BONWICK: Potentially but,
11 again, depending on what any deal might look like it
12 could have been amalgamation purchase, another partner
13 coming in. I mean, until you get to --

14 MR. DAVID MCFADDEN: There's a lot of
15 way to skin the cat. It could have been amalgamation,
16 it could be acquisitions, it could be a lot of things,
17 but they have the hev (sic) obviously.

18 MR. PAUL BONWICK: As I've sat here as
19 a layperson, not a lawyer, I've found it somewhat
20 interesting. Would you agree that sort of a highly
21 talented -- highly tentative lawyer can provide a
22 selective argument and create an abstract that after
23 cross-examined may not actually be the case?

24 THE HONOURABLE FRANK MARROCCO: I --
25 I'm not -- I'm not sure you need to prove that. I

1 think all of us have seen effective cross-examinations
2 to take something apart, but...

3 MR. PAUL BONWICK: And I --
4 respectfully, Your Honour, I -- I bring it up simply
5 because, while we don't normally have tremendous
6 participation in the gallery, I know there's a lot of
7 people that, like me, were lay people and are watching
8 from home and curious about how these various
9 narratives get constructed.

10 THE HONOURABLE FRANK MARROCCO: Go
11 ahead and ask the question.

12 MR. PAUL BONWICK: Yeah.

13 MR. DAVID MCFADDEN: I -- I would have
14 to agree with the Association Chief Justice on that
15 matter.

16

17 CONTINUED BY MR. PAUL BONWICK:

18 MR. PAUL BONWICK: And that was?

19 MR. DAVID MCFADDEN: That under cross-
20 examination a lot of things can be, you know, delved
21 into or -- or turned upside down.

22 MR. PAUL BONWICK: Right. So, it
23 would come as no surprise that -- okay. So, it would
24 come as no surprise for you that Mr. McDowell or Mr.
25 Breedon, who worked with the former CAO in

1 constructing the request for the judicial inquiry,
2 might be able to create a narrative that is not
3 necessarily going to hold water once we get through
4 it?

5 MR. DAVID MCFADDEN: I don't think I
6 should comment on that. That's not -- I mean, I -- I
7 don't have evidence of that. And I don't think I'd
8 want to comment on what they're trying to achieve in
9 this Inquiry.

10 MR. PAUL BONWICK: Fair enough. I'll
11 go to one (1) of the narratives that was proposed to
12 you and asked to comment on. And I'll expand it
13 slightly from evidence that was provided a few days
14 ago by Mr. Fryer.

15 You were asked about whether Mr.
16 Houghton, and I would ask again, or Mr. Fryer had
17 Board authorization to meet with Mr. Bentz to discuss
18 matters that, quite frankly, we have no idea what was
19 discussed in those conversations, and I think your
20 answer was quite reasonable.

21 Were you aware of any other meetings
22 that Mr. Houghton or Mr. Fryer might have had with
23 other CEOs within the LDC sector during this period of
24 time?

25 MR. DAVID MCFADDEN: I have no idea

1 all the meetings they had. I know that for sure they
2 were -- well, within the CHEC group, for example,
3 there would be meetings there. Mr. Houghton was
4 actively involved in the EDA. I'm sure he talked to
5 people all over -- across the Province about one (1)
6 thing or another.

7 I mean, I have no idea all of his
8 communications and who they were with and what the
9 subjects were, but it would be surprisi -- well, first
10 of all, it was obvious he would be doing that given
11 his role in the industry, so I -- I don't think that
12 would be a surprise.

13 MR. PAUL BONWICK: And moving aside
14 PowerStream, you would not be surprised to have
15 learned that he had met with several other CEOs of
16 LDCs, whether they be those constructing a bid or
17 those watching with interest?

18 MR. DAVID MCFADDEN: No. It wouldn't
19 be surprising to me that he'd be in, you know, contact
20 with people in the industry because he was a player in
21 the industry.

22 MR. PAUL BONWICK: And, in fairness,
23 would the same be said for Mr. Fryer, the CFO?

24 MR. DAVID MCFADDEN: Oh, sure.

25 MR. PAUL BONWICK: And so, would you

1 expect them as -- as a Board member or inform -- then
2 following up as a Board chair to be coming to you and
3 informing you about the meetings or the discussions
4 they're having with all these industry participants?

5 MR. DAVID MCFADDEN: I wouldn't expect
6 they would be telling me every communication they had,
7 that's for sure. If it's relevant to a decision or
8 there's something affecting the Company, they're in a
9 discussion on something that's direct bus -- business
10 that -- that should come to the Board, that's
11 different.

12 But, I mean, I don't -- I can't think
13 of a company where the CEO of any company reports to
14 the Board on every discussion they ever had with
15 anybody in the industry. I mean, the boards are there
16 to deal with strategic direction, not the -- you know,
17 the day-to-day communication on everything.

18 You don't -- I've never seen a company
19 require a log of what their CEO does ev -- on a day-
20 to-day basis.

21 MR. PAUL BONWICK: I want to touch on
22 one (1) other matter that counsel for the Town brought
23 to your attention, and that was Mr. Budd's involvement
24 in ISSI. Or anyways, I likely got the acronym wrong
25 again, but --

1 MR. DAVID MCFADDEN: Mr. Butts?

2 MR. PAUL BONWICK: Mr. Budd. Mr.

3 Budd, sorry.

4 MR. DAVID MCFADDEN: Oh, I thought you
5 said Butts. I was trying to -- what he had to do with
6 this.

7 MR. PAUL BONWICK: Hopefully, nothing.

8 MR. DAVID MCFADDEN: That's right.

9 MR. PAUL BONWICK: Counsel asked you
10 if you were familiar with Mr. Budd's criminal
11 conviction and subsequent having met the terms of the
12 court decision. And you alluded to the fact that you
13 knew something about it but not a great deal?

14 MR. DAVID MCFADDEN: I know -- outside
15 of the fact I knew he had had legal problems and was
16 no longer practising law, I don't know anything more
17 about it than that. I -- I never -- I -- I hadn't got
18 up to date on what had happened there.

19 MR. PAUL BONWICK: Irrespective of the
20 fact that it's my understanding that the -- the legal
21 issues were not related to his business practice or --
22 or law, do you typically do criminal background checks
23 on people that are making presentations or people that
24 are -- are trying to get you somehow to participate in
25 a pilot program?

1 I'm trying to understand the --

2 MR. DAVID MCFADDEN: Yeah.

3 MR. PAUL BONWICK: -- relevance of
4 where --

5 MR. DAVID MCFADDEN: Yeah.

6 MR. PAUL BONWICK: -- counsel was
7 going --

8 MR. DAVID MCFADDEN: Well, normally --
9 I mean, normally, if someone comes in to make a submis
10 -- presents something to you, you don't normally do a
11 criminal background check right away unless you're
12 actually going to get in business with them.

13 And even then, I mean, the assumption
14 isn't -- isn't normally that everybody you're dealing
15 with is -- could have a criminal record. That's not
16 the normal process in business.

17 Now, in this case, I mean, the only
18 name that was suggested to be associated with this was
19 Mr. Budd. And, you know, I had no idea who else was
20 involved in this company.

21 MR. PAUL BONWICK: Sitting back there,
22 I was trying to understand the relevance of asking you
23 if you were aware of this and -- as part of your decis
24 --

25 MR. DAVID MCFADDEN: Yeah.

1 MR. PAUL BONWICK: -- decision to move
2 forward on a pilot program for solar conservation or
3 energy conversation.

4 MR. DAVID MCFADDEN: No. As techno --
5 techno -- unless it -- unless this asset came through
6 criminal activity of some type, I mean, presumably, it
7 stood on its own.

8 Mr. Marron -- I'm going to change on
9 you here again. Mr. Marron asked you about the
10 appropriateness of Mr. Houghton preparing a draft
11 letter for the mayor and subsequently -- or prior to
12 giving it to the mayor, subsequently sending it to a
13 third party, namely me.

14 I think what my friend left out was
15 would it have made more sense if in fact the mayor had
16 have had a conversation with Mr. Houghton prior to Mr.
17 Houghton preparing the draft letter, articulating out
18 what she was thinking.

19 And, as you've said, he wore many hats
20 in the community. He worked for the municipality and
21 Collus. Would it be reasonable that she might ask him
22 to draft -- put together a draft letter capturing what
23 she had said to him so that she could in fact review
24 it, edit it, and send it out?

25 MR. DAVID MCFADDEN: Well, it's

1 reasonable she may have asked that to happen, sure.

2 MR. PAUL BONWICK: And so, if the
3 mayor had reasonably asked somebody that she called on
4 many occasions over her time on Council and as mayor,
5 asked her to put that verbal discussion onto paper for
6 her review so that she could submit it to the Board,
7 would that be something that you would expect him to
8 go back to the Board and say the mayor's asked me to
9 put together a draft based on a verbal confirmation,
10 can I do this?

11 MR. DAVID MCFADDEN: No, I don't think
12 that was required.

13 MR. PAUL BONWICK: Right. Thank you.
14 It's -- you're aware of the fact that I was engaged
15 with PowerStream, now through --

16 MR. DAVID MCFADDEN: I am now.

17 MR. PAUL BONWICK: You are now.

18 MR. DAVID MCFADDEN: Aware now. I
19 wasn't then, but I know now.

20 MR. PAUL BONWICK: Right.

21 MR. DAVID MCFADDEN: Right, when I got
22 the material.

23 MR. PAUL BONWICK: And you'll be aware
24 of the fact that that took place in the summer of
25 2011?

1 MR. DAVID MCFADDEN: At least in the
2 material I saw here.

3 MR. PAUL BONWICK: So, clearly, I was
4 not engaged with Council -- or sorry, with -- with
5 PowerStream in January of 2011, based on what you've
6 seen?

7 MR. DAVID MCFADDEN: Yeah. I mean, I
8 -- I can't confirm all this, but, yeah.

9 MR. PAUL BONWICK: So, as somebody
10 that from time to time offers advice or support to the
11 mayor, being my sister, under that scenario and not
12 being engaged with PowerStream in any manner of
13 speaking, would it seem reasonable, as a
14 communications person, that Mr. Houghton might vet a
15 similar letter that had been requested for me to check
16 and make sure that I think it's met the test in terms
17 of the campaign that was ran?

18 MR. DAVID MCFADDEN: I mean, in -- in
19 the -- in the context of the campaign --

20 MR. PAUL BONWICK: Well, Town, of
21 course.

22 MR. DAVID MCFADDEN: Yeah, no. And --
23 and I don't know how everything operates in your
24 family, to be honest with you, so I -- I'm not sure
25 what the relationships were.

1 I mean, it's not unusual for somebody
2 to run something past their brother or their sister.
3 John Kennedy had his brother as attorney general. I
4 mean, these things happen. I mean, I -- and so, I
5 can't comment on -- on how that all worked within your
6 family and -- and within the campaign.

7 MR. PAUL BONWICK: I'm glad you used
8 the Kennedys. I thought you were going to bring up
9 the Fords.

10 MR. DAVID MCFADDEN: No, yeah, that's
11 another thing.

12 MR. PAUL BONWICK: I -- I'm going to
13 close out with your observations, and -- and this is,
14 again, where you have a very unique perspective, I
15 believe, your observations, for discussion purposes,
16 I'm going to say, one (1) year after the closing
17 moving -- moving beyond that date.

18 So, at that point in time --

19 MR. DAVID MCFADDEN: Yeah.

20 MR. PAUL BONWICK: -- you were co-
21 chair -- acting chair or co-chair with -- with Mr.
22 Bentz?

23 MR. DAVID MCFADDEN: Co-chair at that
24 point, yeah.

25 MR. PAUL BONWICK: Co-chair with Mr.

1 Bentz.

2 MR. DAVID MCFADDEN: Yeah.

3 MR. PAUL BONWICK: And so, you've --
4 you've told the Inquiry that, up to that one (1) year
5 point, things seemed to be moving along very well, the
6 environment was very positive, very constructive,
7 positive working relationship with municipal staff,
8 with PowerStream, and with the Collus PowerStream
9 team?

10 MR. DAVID MCFADDEN: What I saw, yeah.

11 MR. PAUL BONWICK: And so, moving
12 forward, when -- when Mr. Brown was appointed acting
13 CAO or interim CAO, I'm not sure which, once Mr.
14 Houghton left and came back to the Board -- or came
15 back to Collus, it's my understanding, and I'm
16 wondering if you could confirm, that the relationship
17 dissolved rather quickly?

18 MR. DAVID MCFADDEN: Fairly rapidly
19 a -- a real tension developed. It was obviously --
20 started developing between Mr. Brown and -- and
21 Ed Houghton. And -- and there seemed to be a
22 contention there fairly early on. I can't remember
23 all the particulars, but there certainly was a -- a
24 level of contention between them.

25 MR. PAUL BONWICK: And in fairness,

1 I'll set aside Mr. Houghton as the Board co-chair and
2 working closely with -- and I apologize. I forgot his
3 name. He was the chair of HR on your Board?

4 MR. DAVID MCFADDEN: John Worts.

5 MR. PAUL BONWICK: John Worts. Can
6 you inform the Inquiry or confirm to the Inquiry that
7 in fact the Board or Mr. Worts had to hire out an
8 HR expert to deal with the concerns and complaints
9 regarding abuse and bullying from Collus employees as
10 it related to the actions of Mr. Brown and others
11 within the municipality?

12 MR. DAVID MCFADDEN: That's correct.

13 MR. PAUL BONWICK: And so within that
14 environment, you had several staff people within
15 Collus that had effectively worked very cooperatively
16 for many, many years with the municipality; work
17 through the transition; had a very open, positive,
18 constructive relationship with PowerStream and the
19 municipality after the sale.

20 But within a two-year period, the
21 relationship had dissolved where, in fact, the Board
22 had to act by bringing in a third-party person to
23 manage the complaints related to abuses that, in their
24 minds, were taking place from the municipality.

25 MR. DAVID MCFADDEN: Yeah. It --

1 there was serious conflicts to the point where -- it
2 was actually a -- a Board decision that any meetings
3 of a couple of members of staff -- female members of
4 staff with Mr. Brown, there had to be a Board member
5 present in the room. And that was -- and John Worts
6 offered to -- to fill that function.

7 MR. PAUL BONWICK: That's fairly
8 drastic action when senior management --

9 MR. WILLIAM MCDOWELL: Sorry,
10 Commissioner, just before we go further with this
11 exchange. This isn't an objection, but it's an
12 observation that even based on what's been said so
13 far, my position is that privilege may well have been
14 waived over all of the HR files that are being
15 discussed here.

16 And my concern is that, as Mr. Watson
17 reminds me, he isn't acting for Collus Power.
18 McCarthy's are acting for Collus Power, and they're
19 not here. So -- I mean, I'm content to let this go
20 on, but my position's going to be all of this stuff
21 has to be produced.

22 THE HONOURABLE FRANK MARROCCO: I take
23 your point.

24

25 CONTINUED BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: Would you agree
2 that it is somewhat of a drastic action for a Board to
3 have to engage a third party and to adopt policies
4 whereby when senior members of your team, namely
5 female management, are meeting with Mr. Brown that
6 they will have to be accompanied by somebody else.

7 MR. DAVID MCFADDEN: At -- it is
8 unusual.

9 MR. PAUL BONWICK: And so what I think
10 I'm trying to demonstrate is the situation became so
11 unmanageable -- in fact, you stated that -- I believe
12 it was you that stated that during the discussions
13 related to the cooperative working relationship -- the
14 shared services agreement -- that Collus was no
15 long -- Collus PowerStream, as an entity, was no
16 longer able to move forward with the Town, and the
17 Town started to deal directly with PowerStream itself.

18 MR. DAVID MCFADDEN: Yeah. It made
19 sense that because PowerStream didn't have a -- you
20 know, otherwise the Town's negotiating with the Town
21 sort of, and -- and you've got other shareholders. So
22 it made sense for them to bring their resources to try
23 to work out some sort of transaction. It would work
24 for the benefit of everybody.

25 MR. PAUL BONWICK: And so a highly

1 respected member within the LDC sector of PowerStream
2 with deep roots within the municipal family, after
3 approximately a year of back and forth with the
4 municipality, that effectively fell apart as well,
5 correct?

6 MR. DAVID MCFADDEN: Yeah. It wasn't
7 a very positive situation. That's true.

8 MR. PAUL BONWICK: So even though the
9 Collus PowerStream family was taken out of the
10 equation, the relationship -- or the negotiations
11 started bilaterally between the Town and PowerStream,
12 PowerStream couldn't satisfy what the municipality or
13 Mr. Brown or the deputy mayor -- mayor of the day were
14 asking for.

15 MR. DAVID MCFADDEN: Well, in effect,
16 I mean, the two (2) shareholders agreed to talk and
17 try to iron this one (1) out because it wasn't
18 anything the Board could iron out. We -- we were not
19 in a position as a Board to deal with it. So it was -
20 - it moved to the shareholders to resolve it.

21 MR. PAUL BONWICK: My last point, Your
22 Honour, if I could ask to bring up T0C0059013.

23

24

(BRIEF PAUSE)

25

1 MR. PAUL BONWICK: Can you scroll down
2 a bit -- scroll down a bit, please. Thank you.
3 That'll start the process there.

4 There was some suggestion by
5 Mr. Breedon that this information contained in here
6 was highly confidential, if I could use the two (2)
7 words he mentioned to you, and that there had to be a
8 leak within the strategic task -- or Strategic Team
9 Task Force or staff in order to secure that
10 information. Was -- did I hear him correctly?

11 MR. DAVID MCFADDEN: I think that's
12 what he -- what he said.

13 MR. PAUL BONWICK: Do you see any
14 quotations? And could you please scan down. Do you
15 see any reference to a particular Board member or
16 staff person within this?

17 MR. DAVID MCFADDEN: No. I mean, it's
18 a summary of what is said.

19 MR. PAUL BONWICK: Is it reasonable
20 that it could be a summary of casual conversation or
21 meetings with any number of different people that were
22 in that room?

23 MR. DAVID MCFADDEN: It's possible.
24 It's a composite of various discussions.

25 MR. PAUL BONWICK: In fairness, my

1 wording -- my composite of what's transpired, during
2 that initial meeting when the Strategic Task Team met,
3 was there a time set aside where legal counsel was
4 brought in where you were advised in a very clear
5 matter what discussions should be treated with
6 confidence, what were protected in terms of sharing
7 with the general public, what matters were not?

8 MR. DAVID MCFADDEN: No. Legal
9 counsel are not involved at this point. We were
10 working with our financial advisor on this. So no,
11 legal counsel were not advising at this stage.

12 MR. PAUL BONWICK: But in fairness to
13 your response, there was an underlying acceptance that
14 must -- much of the information, certainly financial
15 information, should be treated with confidence, and
16 that would be a generally accepted premise?

17 MR. DAVID MCFADDEN: That's -- that's
18 for sure. No. We weren't going to divulge any
19 financial information out.

20 MR. PAUL BONWICK: Did I attend that
21 meeting by any chance and of the meetings with the
22 Strategic Task Force to learn about the confidential
23 agreement that you found yourself working with them?

24 MR. DAVID MCFADDEN: Not that I saw.
25 I don't know if you were there. I didn't see you, and

1 I don't know how you -- how you were there.

2 MR. PAUL BONWICK: Right. My point
3 being is that -- and I -- while I'm compiling
4 information and trying to develop a framework in terms
5 of what different participants may or may not be
6 doing, I'm not sitting in on your meetings and thereby
7 privileged to what -- what your lawyers consider
8 confidential and what your lawyers consider not
9 confidential.

10 MR. DAVID MCFADDEN: No. And I -- I
11 have no idea how you'd garnered all this information.

12 MR. PAUL BONWICK: Fair enough.
13 You're familiar with sort of a standard procedure
14 within the business world of signing and NDAs,
15 non-disclosure agreements?

16 MR. DAVID MCFADDEN: Right.

17 MR. PAUL BONWICK: Very common?

18 MR. DAVID MCFADDEN: Yeah.

19 MR. PAUL BONWICK: And so you could
20 appreciate that if I'm dealing with or discussing in a
21 casual way or in an informal meeting setting that I
22 don't disclose information that I received from other
23 individuals when I'm working within the framework of
24 an NDA?

25 MR. DAVID MCFADDEN: Correct.

1 MR. PAUL BONWICK: Thank you. Sorry.
2 Can you bring that back up again? Scroll down. Stop.
3 Oh, sorry. We'll just deal with Hydro One.

4 As a person that had spent some time
5 monitoring the news and the industry, generally
6 speaking, with the LDCs -- within the LDC sector
7 understanding the approach that Hydro One had taken in
8 the past, would it seem reasonable to you that I might
9 make a statement, for example, a platform of their
10 presentation, generally speaking, would be predicated
11 on building a regional centre here? Does something
12 like that seem reasonable in terms of how they've
13 approached --

14 MR. DAVID MCFADDEN: Yeah.

15 MR. PAUL BONWICK: What I'm getting at
16 is, again, it would seem reasonable that this is my
17 interpretation out of any variety of different
18 sources -- whether they be Internet, again casual
19 conversation -- and at no point in time was I
20 privileged to the fact that there may be or may not be
21 privileges related to pieces of information that may
22 be shared with me.

23 MR. DAVID MCFADDEN: Yeah. I have no
24 idea where this all came from. I can't tell you how
25 this all came to your attention.

1 MR. PAUL BONWICK: Thank you.

2 MR. DAVID MCFADDEN: It could be
3 composite, as I said earlier on. I -- I can't tell
4 you.

5 MR. PAUL BONWICK: I'll finish with
6 simply this and say I want to thank you for everything
7 you did leading up, your leadership, the involvement
8 that you provided to it. I think the community was
9 very fortunate to have people like yourself,
10 Mr. Muncaster, as well as others involved in the
11 process. And I take to heart the fact that you feel
12 that you did the best for the community, for the
13 ratepayers, and that the best product was achieved
14 after the OEB approval. So thank you very much for
15 your time.

16 MR. DAVID MCFADDEN: Thank you.

17 THE HONOURABLE FRANK MARROCCO: Maybe
18 what we'll do is we'll take a short break. And then
19 we'll have the re-examination, and we'll be finished

20

21 --- Upon recessing at 12:15 p.m.

22 --- Upon resuming at 12:28 p.m.

23

24 MR. WILLIAM MCDOWELL: Commissioner?

25 THE HONOURABLE FRANK MARROCCO: Yes?

1 MR. WILLIAM MCDOWELL: My Friend from
2 EPCOR who are the successors entitled to PowerStream,
3 wishes to address you on a point that I raised during
4 the testimony.

5 THE HONOURABLE FRANK MARROCCO: What I
6 think I'll do, unless it causes a problem, is finish
7 the re-examination, complete Mr. McFadden's evidence,
8 and then deal with what -- whatever it is EPCOR wants
9 to say, unless you're telling me I -- I that's not
10 advis -- unless you're telling me that would cause a
11 problem.

12 MR. WILLIAM MCDOWELL: I don't -- I
13 don't think it will. It's just I -- I said to him
14 during the break that I thought that having regard to
15 our discussion, it's something he should raise with
16 you at the first opportunity, but that doesn't have to
17 be in the next five (5) minutes.

18 THE HONOURABLE FRANK MARROCCO: All
19 right. So we'll complete the re-examination, and then
20 we'll --

21 MR. WILLIAM MCDOWELL: All right.

22 THE HONOURABLE FRANK MARROCCO: --
23 deal with that.

24

25 RE-DIRECT EXAMINATION BY MS. KATE MCGRANN:

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

3 MR. DAVID MCFADDEN: I think we're in
4 the afternoon now.

5 MS. KATE MCGRANN: It's an open
6 question, so.

7 MR. DAVID MCFADDEN: Yeah.

8 MS. KATE MCGRANN: Hello.

9 MR. DAVID MCFADDEN: Depending on
10 where you are in the world, it's -- it's morning
11 somewhere.

12 MS. KATE MCGRANN: I just want to ask
13 you some questions for starters to clarify some
14 evidence that you gave yesterday with respect to your
15 recollection of certain events.

16 So Mr. Chenoweth asked you some
17 questions about discussions that you had with Dean
18 Muncaster about the KPMG valuation and options
19 analysis.

20 Can help us understand generally when
21 you learned that that work was being done? And I'll
22 give you some timeline information to help put you in
23 place. February, they're retained, end of May, they
24 give their report, end of June, report is made to
25 Council.

1 So where in there do you learn that
2 that work was being or had been done?

3 MR. DAVID MCFADDEN: I can't be
4 precise on the time. I knew it -- there -- KPMG was
5 brought into it because Dean said, We need to have a
6 financial advisor. I mean, this thing is getting --
7 we need somebody to do a valuation. I know that.

8 MS. KATE MCGRANN: Were you consulted
9 on the retainer of KPMG before they were retained?

10 MR. DAVID MCFADDEN: I recall having a
11 discussion about KPMG, and raising the idea of having
12 KPMG, and what did I think. That's all I can
13 remember. And I was very familiar with them. I mean,
14 they're a well-known company, and they're very well-
15 known in the utility sector and municipal area.

16 So I -- certainly, that was -- that was
17 it.

18 MS. KATE MCGRANN: So my question --
19 I'm just wondering whether that can help situate us in
20 time. They're retained in February. If you were
21 consulted about their retainer before they were
22 retained, you knew before that. If not, then we turn
23 to the later months and -- and think about when you
24 did learn.

25 MR. DAVID MCFADDEN: I -- I can't tell

1 you exactly when I learned it, it -- was -- was it --
2 when -- when we had the first discussion on KPMG. It
3 was -- it was early on, but I can't tell you the
4 timing of it.

5 MS. KATE MCGRANN: When you say "early
6 on," what do you mean by that?

7 MR. DAVID MCFADDEN: Early on meaning
8 that timeframe, that -- which somewhere -- and it
9 wasn't -- it wasn't on the day that -- that they gave
10 the report. I'd heard earlier on that -- that they
11 had been retained.

12 MS. KATE MCGRANN: So the report was
13 given on May 24th. You think it was earlier than
14 that?

15 MR. DAVID MCFADDEN: I'm pretty
16 certain it was earlier than that, because I -- I
17 remember the name KPMG being discussed at -- as doing
18 work for the -- for the shareholder on this issue.

19 MS. KATE MCGRANN: Okay. So you think
20 somewhere between February and May you learned that
21 this was being done?

22 MR. DAVID MCFADDEN: I believe so. I
23 can't be more specific than that.

24 MS. KATE MCGRANN: With respect to the
25 June 4th, 2011 meeting between yourself, Mr.

1 Muncaster, and Mr. Houghton, when I asked you some
2 questions about that yesterday morning, your evidence
3 was that you didn't remember what was discussed at the
4 meeting, and you didn't know whether or not it took
5 place.

6 When Mr. Chenoweth asked you some
7 questions, he suggested certain topics that may have
8 been discussed at the meeting.

9 MR. DAVID MCFADDEN: Yeah.

10 MS. KATE MCGRANN: It wasn't clear to
11 me whether you then actually recalled that the meaning
12 took place and that discussions happened or not. So --

13 MR. DAVID MCFADDEN: Right. It was
14 more a function of the -- the -- logically, what was
15 discussed.

16 OBJ MR. FREDERICK CHENOWETH: Your -- Your
17 Honour, I -- I have some -- some difficulty with this
18 form of re-examination. My concern is that this
19 witness was, on their own admission, asked questions
20 about this topic, about June 4th, in his -- in what
21 I'm going to describe as the evidence in chief of Mr.
22 McFadden.

23 I then delved into it in the course of
24 my cross-examination of Mr. McFadden. I -- is -- is
25 this a -- is -- is re-examination to be a third

1 opportunity to bring up exactly the same question and
2 to try and get a different answer?

3 THE HONOURABLE FRANK MARROCCO: No,
4 and I --

5 MR. FREDERICK CHENOWETH: And I don't
6 see that as a proper use of -- of re-examination, Your
7 Honour.

8 THE HONOURABLE FRANK MARROCCO: I -- I
9 agree with you that it wouldn't be a proper use, but
10 where there are two (2) different -- where -- where
11 there's some confusion about whether the witness is
12 actually remembering or -- or whether that's
13 supposition as to what took place, I think that's
14 proper re-examination.

15 MR. FREDERICK CHENOWETH: Well, my --
16 my only thought on that, Your Honour, is that I -- I
17 wonder -- I mean, the transcripts are obviously
18 available. We have those transcript. The words are
19 in the transcript, and I would have thought the -- the
20 usual approach to these matters would be to leave that
21 conclusion to argument and not ask the same question
22 for a third time, hoping to get an answer that's --
23 that's helpful to one (1) position or the other.
24 That's my thought with respect to that, Your Honour.

25 THE HONOURABLE FRANK MARROCCO: Yeah.

1 It can be clarified on re-examination. Go ahead.

2

3 CONTINUED BY MS. KATE MCGRANN:

4 MS. KATE MCGRANN: So I'm just trying
5 to understand what you recall, what you actually
6 recall about the meeting.

7 MR. DAVID MCFADDEN: The -- the
8 meeting doesn't stand out as -- as a marquee event at
9 the time. I mean, I would -- I -- it -- I mean, it --
10 obviously, there was a meeting. I -- I'm not aware of
11 all the details we discussed there. It made sense it
12 would be about -- about the whole area of the -- the
13 valuation and -- and the -- and where we go from here.
14 I do not recall all the particulars of what happened
15 at that meeting.

16 MS. KATE MCGRANN: So do you
17 specifically recall attending the meeting?

18 MR. DAVID MCFADDEN: I did not recall
19 spec -- I -- I vaguely remember being in the office
20 and -- and sitting down, I mean, that's about it. I -
21 - I don't remember, you know, everything that was
22 discussed and what was said at that meeting.

23 MS. KATE MCGRANN: Okay. And --

24 MR. DAVID MCFADDEN: The -- the -- why
25 it stands out in my mind, I don't think there was

1 anybody there in the building, which is -- you know,
2 it -- it was a hot day.

3 MS. KATE MCGRANN: Similarly, Mr.
4 Chenoweth made a series of suggestions to you about
5 what was discussed at a meeting between yourself, Mr.
6 Muncaster, Mr. Houghton, and the mayor.

7 Do you specifically recall attending
8 that meeting?

9 MR. DAVID MCFADDEN: Vaguely. I mean,
10 I don't remember it distinctly.

11 MS. KATE MCGRANN: When you say
12 "vaguely," what do you mean?

13 MR. DAVID MCFADDEN: I vaguely sort of
14 remember meetings happening. I don't remember exactly
15 what happened in them all. And -- and then -- and
16 obviously, the meeting happened, so I can't say it
17 didn't happen. I just don't remember the details of
18 that meeting.

19

20 (BRIEF PAUSE)

21

22 MS. KATE MCGRANN: You were asked a
23 question today about the public notice that was given
24 with respect to the RFP and the Transaction, and you
25 made reference to an example being Gravenhurst. And I

1 think you told us that in that situation, there was a
2 -- a decision to -- to engage in the transaction with
3 the utility, and then there was a municipal election,
4 and the residents there had the opportunity to vote on
5 the issue as part of the municipal election.

6 Have I captured your evidence
7 accurately?

8 MR. DAVID MCFADDEN: Yeah. What had
9 happened was there was that the Council has approved
10 going ahead to negotiate with Hydro One in the spring.
11 There was an election that fall, and that became a big
12 election issues -- sign -- that -- that's where my --
13 my cottage is, so that's why I happened to be aware of
14 all this stuff.

15 They -- they -- and then I -- I --
16 around that time, Mayor Betts had asked me to come and
17 -- and work -- help him work through this Transaction.
18 And what happened was Mayor Betts stepped down, didn't
19 run for reelection, and became the big election issue
20 in Gravenhurst. Mayor Klinck became the Mayor, and
21 the -- the idea of doing a deal with Hydro One was
22 aborted.

23 MS. KATE MCGRANN: And this --

24 MR. DAVID MCFADDEN: Subsequent to
25 that, they did sell the utility, though.

1 MS. KATE MCGRANN: In this case, to
2 your knowledge, did the 2010 and 2014 Council members
3 that election involve a question of whether or not a
4 Transaction would be done with respect to the utility?

5 MR. DAVID MCFADDEN: I -- I don't know
6 all the details of what Kennedy said in that election.
7 I don't remember it being an election issue. It -- it
8 -- I think that as I remember the campaign, it was
9 more about governments -- about debt -- the buildup of
10 debt and spending, and -- and the need to -- to bring
11 costs under control, and to deal with the debt.

12 That remains an issue in Collingwood,
13 if you read the local papers. So, I mean, that isn't
14 anything unusual. So that -- that, as I remember what
15 was discussed, but I don't know. There could have
16 been some candidates talking about that. I just don't
17 recall anyone.

18 MS. KATE MCGRANN: To your knowledge,
19 there was no discussion about it in the election?

20 MR. DAVID MCFADDEN: Not that I'm
21 aware of.

22 MS. KATE MCGRANN: From what we've
23 see, it looks like the first public notice that's
24 given of this transaction was given after the RFP
25 responses had been received.

1 Are you aware of any public discussion
2 about this before that time?

3 MR. DAVID MCFADDEN: I'm -- I don't
4 recall any, it being a public event. I just don't --
5 I don't recall that part of it.

6 MS. KATE MCGRANN: So a bit of a
7 different situation here with respect to public notice
8 than the example you gave in Gravenhurst?

9 MR. DAVID MCFADDEN: Sorry?

10 MS. KATE MCGRANN: A bit of a
11 difference with respect to the amount and timing of
12 public notice in this situation as compared to the
13 example you gave in Gravenhurst?

14 MR. DAVID MCFADDEN: Yeah. It -- the
15 -- I don't -- I don't recall. They didn't so much
16 make it a public announcement in Gravenhurst as it
17 just became it was known in the community, and -- and
18 candidates came against -- were -- were opposed to it
19 --

20 MS. KATE MCGRANN: M-hm.

21 MR. DAVID MCFADDEN: -- after Council
22 had unanimously agreed to go ahead.

23 MS. KATE MCGRANN: M-hm. You were
24 asked some questions about the drafting of the bylaw,
25 and whether, in your experience, it's normal for a

1 counterparty to be involved in the drafting of the
2 bylaw for a transaction like this.

3 Do you remember that?

4 MR. DAVID MCFADDEN: Yes.

5 MS. KATE MCGRANN: In your experience,
6 would everyone involved on both sides know about the
7 involvement of the counterparty in the bylaw?

8 MR. DAVID MCFADDEN: The -- I mean, I
9 -- I was talking there about -- I don't think it's
10 unusual if -- if you entered into a transaction that
11 the municipal government would -- would necessarily
12 run it by somebody, say, this is the transaction to --
13 have we captured in the bylaw what -- what is -- what
14 -- what the deal envisaged.

15 MS. KATE MCGRANN: I understood -- and
16 my question is -- to you is: Would the individuals on
17 -- representing the municipality know that the
18 counterparty was being asked to provide input on the
19 bylaw?

20 MR. DAVID MCFADDEN: I -- I would
21 assume it had been -- been a communication between the
22 lawyers rather than between shareholders.

23 MS. KATE MCGRANN: Yes. So in your
24 experience, the lawyers representing the municipality
25 would know that the counterparty had been consulted in

1 the drafting of the bylaw?

2 MR. DAVID MCFADDEN: Well, I don't
3 know what -- I mean, I don't -- I -- I mean, every
4 municipality, I suppose, has their own thing. I don't
5 act for a lot of municipalities on -- on what they do.
6 But I -- I would assume that if they were entering
7 into a significant transaction involving an asset
8 that's a -- of major value, that the -- you'd
9 anticipate the lawyers would be looking, talking to
10 each other before it would come to Council.

11 Now, you could have a situation, I
12 guess, where no lawyers get involved in anything, but
13 I -- I don't think there's anything unusual with
14 Council, you know, trying to be sure that whatever a
15 bylaw is reflects the business deal.

16 MS. KATE MCGRANN: So I understand
17 your evidence, that it's not unusual for municipal
18 representatives involved in negotiating a deal to seek
19 input from the counter-party in the drafting of the
20 bylaw. I think we agree on that.

21 MR. DAVID MCFADDEN: I don't think
22 it's unusual, no.

23 MS. KATE MCGRANN: So my question to
24 you is, in your experience, the people on the
25 municipality side know that the counter-party had been

1 consulted, was providing input on the drafting of the
2 bylaw? And it seems like a strange question but in
3 your experience, everybody on the one (1) side knows
4 that the other side --

5 MR. DAVID MCFADDEN: Yeah.

6 MS. KATE MCGRANN: -- has been
7 consulted, right?

8 MR. DAVID MCFADDEN: Normally. And it
9 didn't seem to me to be something you'd keep secret.

10 MS. KATE MCGRANN: You've given quite
11 a bit -- well, you've given some evidence about your
12 involvement in the negotiation in the -- of the
13 transaction documents and the drafting of the -- were
14 you tasked by Collus Power to provide instructions to
15 the lawyers representing those entities on the
16 negotiations and transaction documents?

17 MR. DAVID MCFADDEN: I wasn't tasked
18 in terms of I was asked to review documents. I wasn't
19 tasked to -- to negotiate.

20 MS. KATE MCGRANN: Were you the
21 individual who was to provide instructions to the
22 entities' lawyers with respect to the negotiations of
23 the transaction?

24 MR. DAVID MCFADDEN: My understanding,
25 those instructions came from Dean Muncaster and/or Ed

1 Houghton, who were the -- I was part of -- of a list
2 of people, as you can see, who was reviewing
3 documents. I wasn't giving instructions. I was
4 giving comments. But we -- we had our own lawyers.
5 Aird & Berlis were our counsel, so they were drafting.
6 I wasn't involved with giving them -- I mean, they
7 weren't reporting to me. I never thought they were
8 ever reporting to me. I was part of the email chain
9 commenting. Ultimately they're responsible to the --
10 the shareholder.

11 MS. KATE MCGRANN: Okay. And just to
12 be clear that I've got an answer to my question, Aird
13 & Berlis are your lawyers, Collus Power's lawyers.
14 You're not providing them with instructions, they're
15 not reporting to you specifically?

16 MR. DAVID MCFADDEN: I've never
17 thought that they were reporting to me. I mean, I was
18 part of the email chain making comments. There's a
19 difference between commenting and -- and trying to
20 help the process along and then actually saying that
21 people -- I was somehow the person who was giving them
22 direction. I -- the day-to-day -- the direction was
23 coming from the shareholder in my view. I don't think
24 I was -- I didn't see my role as having -- reporting -
25 - they're reporting to me for what they were doing.

1 They were certainly not reporting to me.

2 MS. KATE MCGRANN: Okay. And at no
3 point in time were you told that you'd been authorized
4 to provide instructions to the lawyers for Collus
5 Power on this transaction?

6 MR. DAVID MCFADDEN: I was never given
7 direction to take over any -- the legal aspects of
8 this transaction.

9 MS. KATE MCGRANN: And similarly, were
10 you providing instructions on behalf of the Town with
11 respect to the negotiations of this transaction?

12 MR. DAVID MCFADDEN: No, I was not. I
13 was never asked by the Town to give direction.

14 MS. KATE MCGRANN: And were you
15 responsible to or did you report back to the Town on
16 the negotiations of this transaction?

17 MR. DAVID MCFADDEN: I assumed that
18 was done by the lawyers. This is -- this is between
19 people -- the lawyers were dealing with each other.
20 Presumably they were reporting back to their -- their
21 respective clients who they were reporting to.

22 MS. KATE MCGRANN: I'm not asking you
23 to guess who they were reporting to. All I want to
24 know is what you know. Were you reporting back to the
25 Town on the negotiations of the transaction?

1 MR. DAVID MCFADDEN: You know, I don't
2 what you mean by "reporting." I mean, I was not going
3 into meetings and telling them I had discussions and
4 the following amendments are made. I mean, what would
5 happen was we went through it and then the -- the
6 documents were then sent on for -- for review --

7 MS. KATE MCGRANN: Sent on to who?

8 MR. DAVID MCFADDEN: -- approval.

9 MS. KATE MCGRANN: Sent on to who?

10 MR. DAVID MCFADDEN: The owner. Well,
11 the owners on both sides, PowerStream by their counsel
12 and -- and by counsel for -- for the Town.

13 MS. KATE MCGRANN: And do you know who
14 was providing -- approving instructions on behalf of
15 the Town?

16 MR. DAVID MCFADDEN: I'm assuming that
17 would be Dean Muncaster, Ed Houghton, and whoever
18 else, the CAO or whoever was acting on behalf of the -
19 -- working for the Town.

20 MS. KATE MCGRANN: So --

21 MR. DAVID MCFADDEN: I -- I have no
22 idea what the command structure was over here at this
23 building, and -- and who was reviewing what here. I
24 mean, it -- it wasn't -- I never came over here. I
25 was never involved with Town Hall, so I don't know how

1 they handle their business and -- and who approved
2 what. All I know is I reviewed documents and it was
3 sent on by the -- by the counsel.

4 MS. KATE MCGRANN: Just -- just
5 because we've got a Town Council and a lawyer counsel,
6 you mean they were sent on by Aird & Berlis?

7 MR. DAVID MCFADDEN: Yeah.

8 MS. KATE MCGRANN: To whoever was
9 providing instructions on behalf of the Town?

10 MR. DAVID MCFADDEN: Correct.

11 MS. KATE MCGRANN: Okay. Mr. Bonwick
12 asked you some questions about whether you thought it
13 was reasonable that his sister would consult him with
14 respect to -- or that he would be consulted with
15 respect to a letter that his sister was going to send
16 the lawyer and instructing that the valuation be
17 taken. Do you remember those questions?

18 MR. DAVID MCFADDEN: Yes.

19 MS. KATE MCGRANN: And you referenced
20 the Kennedy family.

21 MR. DAVID MCFADDEN: Well, yeah. I
22 mean, the -- it's one (1) of those -- I mean, this is
23 -- you know, if you'd done work on somebody's campaign
24 and -- and they -- and they look on the communication
25 as part of the campaign, I don't think there's

1 anything unreasonable for somebody to look at a memo
2 that they're sending out. The -- you know, I mean,
3 whether -- if -- without -- if all it involved was him
4 giving a -- to his sister, some advice, and since I --
5 I -- I understand Mr. Bonwick was working on her
6 campaign, I don't think there's any reason --
7 unreasonable for her to seek advice from people
8 working on her campaign on things. I mean, that was
9 the question I -- I received.

10 MS. KATE MCGRANN: Yeah, and part of
11 that question, Mr. Bonwick gave you the information
12 that he hadn't been retained by PowerStream until this
13 summer. Do you remember that?

14 MR. DAVID MCFADDEN: Yeah, and I can't
15 recall exactly when the retainer was.

16 MS. KATE MCGRANN: Okay. Can we turn
17 up paragraph 115 in the Foundation Document, please?

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: This paragraph
22 describes -- and we know that Mr. Bonwick sent to Mr.
23 Bentz on January 10th, 2011, so about twenty (20) days
24 before the letter that we're talking about, in which
25 he indicates that when you spend time in elected

1 office, the potential sale of Collingwood Utility
2 Services had been raised with mixed emotions and he
3 indicates that he would like to meet with Mr. Bentz
4 and discuss Power -- PowerStream's level of interest
5 in pursuing such an option. He notes that municipal
6 council is in the process of beginning their budget
7 considerations and he says that time is a potentially
8 critical factor. So that happens on January 10th.

9 MR. DAVID MCFADDEN: M-hm.

10 MS. KATE MCGRANN: And then could we
11 go to paragraph 118, please?

12

13 (BRIEF PAUSE)

14

15 MS. KATE MCGRANN: Paragraph 118
16 describes that on January 12th, Mr. Bentz and Mr.
17 Bonwick met at the PowerStream offices in Vaughan.

18 Then can we go to paragraph 126,
19 please?

20

21 (BRIEF PAUSE)

22

23 MS. KATE MCGRANN: 128 -- I can't read
24 my own writing. Paragraph 128 describes that on
25 January 20th, so ten (10) days before that letter a

1 consultation happens approximately. Mr. Bonwick
2 emails Mr. Bentz, discussing the Conflict of Interest
3 Act. He goes on to say that:

4 "Ed and I have had detailed
5 discussions relating to the overall
6 proposal that I've prepared in the
7 context of involvement and timing."

8 And you can scroll a bit further down.
9 He talks about proposing that PowerStream consider
10 engaging his company with respect to an LDC
11 opportunity being presented.

12 So we see that there is some
13 consultation between Mr. Houghton and Mr. Bonwick, or
14 that at least a draft of that letter is exchanged on
15 January 30th.

16 And then if you go to paragraph 131.

17 MR. PAUL BONWICK: Your Honour --

18 THE HONOURABLE FRANK MARROCCO: Yes.

19 MR. PAUL BONWICK: If I may, I simply
20 stated, and through the cross-examination I will --
21 very much confused at this point in time. My
22 statement to the witness was simply that at that point
23 in time I was not engaged. Reflecting through all
24 this documentation in terms of communication that was
25 going back and forth in terms of what's happening in

1 the industry and my desire to reach out, how is this
2 relevant to the point that I raised in terms of the
3 timing of my engagement?

4 THE HONOURABLE FRANK MARROCCO: You
5 mean because it's consistent with you not being
6 engaged?

7 MR. PAUL BONWICK: That was my point.

8 THE HONOURABLE FRANK MARROCCO: Yeah.
9 What's your question?

10

11 CONTINUED BY MS. KATE MCGRANN:

12 MS. KATE MCGRANN: My question is, as
13 part of the question Mr. Bonwick had indicated to you
14 that he had not been engaged. Does the fact of these
15 communications change your response to his question?

16 MR. DAVID MCFADDEN: Either he was
17 engaged or he wasn't engaged, I guess is the -- is the
18 issue here. I mean, the -- I -- look, I don't know.
19 You're -- you're asking me to get involved with
20 relation between Mr. Bonwick and his sister, who was
21 mayor at the time, what their relationship was, how
22 close that was, whether it had something to do with
23 business or whether it was more of a personal thing he
24 did.

25 You know, obviously, I mean, if he was

1 under retainer from PowerStream or, you know, had some
2 real contemplation of it, the -- there -- there is a
3 potential issue around that. But you know, first I
4 saw --

5 THE HONOURABLE FRANK MARROCCO:

6 Actually, actually I think -- I think there's some
7 merit in Mr. Bonwick's objection. I think we'll just
8 cut that off there.

9

10 CONTINUED BY MS. KATE MCGRANN:

11 MS. KATE MCGRANN: Okay. My final
12 question for you is, you have given evidence about
13 tension that arose over the status of the shared
14 services and the shared services agreements after the
15 conclusion of the transaction once the -- the
16 partnership moved forward, and there's been discussion
17 about back and forth and thing -- and things like
18 that, but will you agree with me that at the base of
19 those disputes was the issue that there was
20 uncertainty over the shared services agreements, there
21 had been an agreement to agree and ultimately an
22 agreement couldn't be reached?

23 MR. DAVID MCFADDEN: Yes, there was a
24 lot of certainty around that. I -- I -- I think you -
25 - you depict it. I think the parties it was

1 originally a -- sort of an understanding where
2 everything was municipally owned, that they -- they
3 weren't going to worry that much about all the details
4 and that becomes quite clear in the material that
5 you've circulated, you know.

6 And -- and even the -- even the -- the
7 comments that Ed Houghton made to Council, I mean, it
8 was -- it was -- but it was all owned by the same
9 party, so they thought well, who's that worried about
10 it.

11 I -- I'm not saying that nobody didn't
12 try to address it. And I -- I think Mr. Fryer was
13 quite clear, he took it very seriously, the whole
14 breakdown of percentages and how everybody was going
15 to work.

16 I -- but I think as it evolved the
17 question then became is there subsidies here, is
18 somebody getting something out of it they shouldn't.
19 Because at that point you have the third party, you
20 had PowerStream. So I mean, they also needed to be
21 satisfied that there wasn't some benefit going to the
22 Town unfairly in this arrangement, or the other -- or
23 it could -- the other way around, was PowerStream --
24 as a -- as shareholder, somehow benefiting from
25 something that the Town was getting that they

1 shouldn't have been getting.

2 And -- and that was a thorny issue that
3 never seem to get resolved, it went on and on for
4 months.

5 MS. KATE MCGRANN: Is it fair to say
6 that that thorny issue could have been avoided if the
7 shared services agreements had been worked out in
8 advance of the closing of the transaction?

9 MR. DAVID MCFADDEN: That's quite
10 possible, but you can see the difficulties of working
11 these things out and the -- there was a desire to try
12 to get the transaction done. Clearly it would have
13 been a great idea if everything had been settled
14 before the transaction.

15 But based on what we've seen it would -
16 - you know, who knows when the transaction ever closed
17 if -- if you're trying to bring all these parties
18 together, it seemed.

19 MS. KATE MCGRANN: Those are my
20 questions.

21 THE HONOURABLE FRANK MARROCCO: Thank
22 you. Thank you, Mr. McFadden, you can -- you can stay
23 if you want to, or you can leave.

24 MR. DAVID MCFADDEN: Yes. Thank you
25 very much, Your Honour.

1 THE HONOURABLE FRANK MARROCCO: All
2 right. So there was a -- an issue that -- was there,
3 counsel?

4 MR. PAUL BONWICK: Your Honour, if I
5 may before counsel goes forward?

6 THE HONOURABLE FRANK MARROCCO: Yes.

7 MR. PAUL BONWICK: With all due
8 respect, I'd -- I would like to object to the
9 intervention.

10 It's my understanding, and I could be
11 mistaken, that EPCOR or their legal counsel does not
12 have standing at this Inquiry.

13 There's been no reference to the point
14 leading up to the sale of EPCOR or post-EPCOR in any
15 of the comments that I provided.

16 I would also ask you to consider that
17 the fact that other nonparticipants have not been
18 afforded the opportunity to raise issues without
19 advance notice to all parties and subsequently us, an
20 opportunity to review what's going to be said, and
21 it's for these reasons I object to the fact that Mr.
22 McDowell is soliciting or recommending to outside
23 counsel to address my cross-examination.

24 THE HONOURABLE FRANK MARROCCO: I
25 don't think Mr. McDowell was doing that. I think --

1 MR. PAUL BONWICK: Respectfully --

2 THE HONOURABLE FRANK MARROCCO: I took
3 his intervention to be just warning everyone that the
4 questions and answers were creating a situation where
5 there'd been a waiver of what would have otherwise
6 been information that we wouldn't be able to get into.

7 MR. PAUL BONWICK: But responsible --

8 THE HONOURABLE FRANK MARROCCO: And --
9 and as far as that issue is concerned, I'm prepared to
10 hear what counsel has to say.

11 MR. WILLIAM MCDOWELL: Let me just
12 situate this --

13 THE HONOURABLE FRANK MARROCCO: Right.
14 But I -- so I am prepared to hear the -- at least hear
15 the submission and then I'll return back to -- to the
16 nature of your objection.

17 MR. WILLIAM MCDOWELL: Okay, let me --
18 let me just situate this, Commissioner, if I might.

19 So there's cross-examination
20 surrounding the shared services agreements and then
21 Mr. Bonwick introduces this idea that, you know, the
22 conduct of the former CAO was relevant and he suggests
23 that there was an HR person brought in for some
24 reason. And he says explicitly that this is sort of
25 gender-based harassment, which is a very serious thing

1 to say in 2019.

2 So, that's what makes all of this
3 relevant then it's kind of unfortunate that he's done
4 that. But Mr. Bonwick --

5 MR. PAUL BONWICK: Your Honour, this--

6 MR. WILLIAM MCDOWELL: -- had to admit
7 he is making these submissions for the folks at home
8 as much as he is for anybody else.

9 So that's the reason that I think that
10 the material is relevant, but I wanted to give my
11 colleague a chance to address it because what I said
12 to you is McCarthy's are acting for EPCOR, the
13 successors in title, they're not here. I hadn't
14 appreciated my friend was here for EPCOR.

15 THE HONOURABLE FRANK MARROCCO: Well,
16 -- well, Collus PowerStream has the right to
17 participate, I think. And --

18 MR. PAUL BONWICK: Your Honour, just
19 on a point of clarification there, I did not raise the
20 issue of gender-based -- the gender-based issue.

21 If you check the transcript, in fact,
22 it was brought forward by the witness, Mr. McFadden,
23 and I simply echoed once he had stated that, that that
24 was in fact the case. At no point in time did I
25 suggest that it was gender-based. It was in fact the

1 witness, and this is what I was referring to about
2 counsel for Collingwood bringing forward objectives
3 and trying to drive their own narrative.

4 THE HONOURABLE FRANK MARROCCO: I
5 don't quite recollect it, but -- but there's a
6 transcript and we'll all have access to it and I'll
7 take a look at it as soon as it's available.

8 But I will hear counsel for EPCOR.

9 MR. MARCUS OSTROWERKA: Thank you,
10 Your Honour, and -- and in answer to Mr. Bonwick's
11 objection there, I think you satisfied yourself, but
12 EPCOR does have standing as a participant and we will
13 have some witnesses coming up.

14 But I wanted to object about discussion
15 around and evidence given around Mr. Brown's conduct
16 vis-à-vis Collus PowerStream employees in the years
17 following the closing of the transaction that's
18 actually at issue here. I don't think that's at all
19 relevant to the terms of reference, I'm not sure that
20 it furthers the Inquiry's purpose.

21 So on that basis, I would object to the
22 line of questioning that Mr. Bonwick carried on with
23 Mr. McFadden and I ask that that be removed from the
24 record.

25 THE HONOURABLE FRANK MARROCCO: Well

1 I'll take a -- I'll take a look at it.

2 You know, the questions have been asked
3 and the answers been given. That -- that's the
4 difficulty with some ruling by me that I'll take
5 something out of the -- somehow excise something from
6 the proceedings. It -- it -- it's -- it's already
7 happened.

8 But -- but I will take a look at the
9 transcript. I -- I think, you know, there are --
10 there are reputations affected by these proceedings as
11 all of the parties I think have more or less reminded
12 me from time to time. And so I'm conscious of that,
13 but I -- I'm not -- I'm not going to rule on it now,
14 I'm -- I'm going to take a look at the transcript.

15 MR. WILLIAM MCDOWELL: Just --

16 THE HONOURABLE FRANK MARROCCO: And --
17 and I'm leaving open the question of whether or not
18 there's been a waiver.

19 MR. WILLIAM MCDOWELL: Right. Just a
20 tiny point to situate this as well, that the terms of
21 reference at page 2, item (a)(v), a relationship
22 between PowerStream and Collus PowerStream, any other
23 Collus entity and the Town is squarely an issue, and
24 that's how this comes in.

25 But anyway, we don't have to say

1 anything more about this now I don't think.

2 THE HONOURABLE FRANK MARROCCO: Well,
3 and -- and I'd have to construe the term relationship.
4 I -- I think the commercial aspects of this and what
5 went on that -- in -- in -- in the events leading up
6 to these, the commercial transaction is part of the
7 relationship. Whether it was intended to get into
8 personnel matters is -- is another story, but as I
9 say, the -- the damage -- the questions have been
10 asked and answered.

11 MR. WILLIAM MCDOWELL: That's --
12 that's the problem and there is -- there is no
13 practical way to remove it from the record because
14 it's gone out to the doubtless hundreds of thousands
15 of people watching us.

16 THE HONOURABLE FRANK MARROCCO: That -
17 - that may be an exaggeration of the interest in the
18 community, but in any event, I'll deal with it in due
19 course. Where are we now?

20 MR. JOHN MATHER: The next witness is
21 Cindy Shuttleworth.

22 THE HONOURABLE FRANK MARROCCO: All
23 right.

24

25 CINDY SHUTTLEWORTH, Sworn

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

2 MR. JOHN MATHER: Good afternoon, Ms.
3 Shuttleworth.

4 MS. CINDY SHUTTLEWORTH: Good
5 afternoon.

6 MR. JOHN MATHER: You joined the
7 Collus companies in June 2011 as a controller. Is
8 that correct?

9 MS. CINDY SHUTTLEWORTH: Yes, it is.

10 MR. JOHN MATHER: Could you just
11 briefly explain what the role of a controller is?

12 MS. CINDY SHUTTLEWORTH: They're in
13 the finance department. I would oversee billing
14 collecting -- I would oversee the finance department,
15 which would involve the billing and collecting
16 department, customer service, any financial reporting
17 support to the CFO and the person that I was replacing
18 that was there for about almost a year while I was
19 initially there.

20 MR. JOHN MATHER: And then you became
21 the CFO of what was then the Collus PowerStream
22 companies in October 2012. Is that correct?

23 MS. CINDY SHUTTLEWORTH: Yes, it is.

24 MR. JOHN MATHER: And you replaced Tim
25 Fryer?

1 MS. CINDY SHUTTLEWORTH: Yes.

2 MR. JOHN MATHER: Okay. And my
3 understanding is you provided the Inquiry with a sworn
4 affidavit. Is that correct?

5 MS. CINDY SHUTTLEWORTH: Yes.

6 MR. JOHN MATHER: If we could please
7 pull up AF2 -- AFF2, sorry.

8

9 (BRIEF PAUSE)

10

11 MR. JOHN MATHER: And to the -- to the
12 extent it assists, we can scroll through it. But my
13 question for you is whether or not this is your
14 affidavit.

15 MS. CINDY SHUTTLEWORTH: Yes.

16 MR. JOHN MATHER: Do you wish to make
17 any corrections to your affidavit?

18 MS. CINDY SHUTTLEWORTH: No.

19 MR. JOHN MATHER: Do you confirm that
20 the contents of the affidavit are true to the best of
21 your abilities?

22 MS. CINDY SHUTTLEWORTH: Yes.

23 MR. JOHN MATHER: I'd like this to be
24 marked as the next exhibit.

25 THE HONOURABLE FRANK MARROCCO: Yes.

1 CONTINUED BY MR. JOHN MATHER:

2 MR. JOHN MATHER: And just by way of
3 summary, in your affidavit, and we can scroll down,
4 you've provided evidence about -- if we could just
5 scroll down in the affidavit, please. You've provided
6 evidence about a conversation you recall having with
7 Mr. Fryer in an around July 2012 in which he advised
8 that he intended to leave Collus after the
9 transaction.

10 Continuing to go down the affidavit,
11 you've provided your recollection on a conversation
12 you had with Mr. Houghton about Ralph Neate, the
13 Collus auditor.

14 It was your recollection that Mr.
15 Houghton told you that Mr. Neate had strongly
16 expressed his opposition to the PowerStream
17 transaction at a December 2nd, 2011, Board meeting,
18 then go on to state that Collus eventually stopped
19 using Mr. Neate as its primary audit partner and that
20 it is your believe that Mr. Neate's comments at the
21 December 2nd Board meeting were a tipping point that
22 led to that decision, although the Collus companies
23 did have concerns with Mr. Neate.

24 And we can continue scrolling down.
25 You then have provided some evidence on the decision

1 to change from -- the -- change the entity being sold
2 from Collus Power to the holding company.

3 Moving on, you've provided some
4 evidence about the bonus payment you received for your
5 work on the sale transaction. And then if we can
6 scroll down. Finally, you've provided evidence on the
7 two (2) payments that Collus PowerStream made to
8 Compenso Communications in 2013 for certain
9 communications work.

10 You explain that the second payment was
11 cancelled after news reports about Compenso be -- came
12 out in March 2013, at which time you recollect that
13 Mr. Houghton told you that Collus PowerStream could no
14 longer retain Compenso.

15 I realize that was a lot of
16 information, but was that a fair summary of what
17 you've set out in your affidavit?

18 MS. CINDY SHUTTLEWORTH: Yes, very
19 good.

20 MR. JOHN MATHER: Okay. So, before I
21 turn the examination over to the participants, I have
22 some topics I'd like to talk with you about that are -
23 - are not addressed in your affidavit.

24 The first series of questions I have
25 for you are about the shared services agreement which

1 we've already heard some about today with Mr.
2 McFadden.

3 So, as a starting point, when did you
4 first come familiar with the shared services
5 agreement?

6 MS. CINDY SHUTTLEWORTH: I would say
7 probably in the later half of 2012.

8 MR. JOHN MATHER: Was it in relation
9 to you becoming CFO?

10 MS. CINDY SHUTTLEWORTH: Yes.

11 MR. JOHN MATHER: So, prior to the
12 later half of 2012, did you form an understanding as
13 your role as controller about how costs were allocated
14 as between the Collus entities and the Public Utility
15 Services Board?

16 MS. CINDY SHUTTLEWORTH: Yes.

17 MR. JOHN MATHER: Mr. Fryer suggested
18 in his evidence, I believe, yesterday that in or
19 around March 2012 you took over responsibility for
20 amending the shared services agreement as part of the
21 transaction.

22 Does that accord with your
23 recollection?

24 MS. CINDY SHUTTLEWORTH: No, not at
25 all.

1 MR. JOHN MATHER: What is your
2 recollection about who was responsible for the shared
3 -- amending the shared services agreement as part of
4 the transaction?

5 MS. CINDY SHUTTLEWORTH: That it was
6 Tim Fryer's responsibility and it should have done
7 before the RFP was offered.

8 MR. JOHN MATHER: And why do you say
9 that the shared services agreement should have been
10 done before the RFP was offered?

11 MS. CINDY SHUTTLEWORTH: Naturally,
12 anyone looking at items in the data room would want to
13 see finalized shared service agreements as it would
14 give a level of comfort as to what was going to happen
15 in the future.

16 MR. JOHN MATHER: So, the RFP is
17 issued in October 2011. What was your understanding
18 of the shared service -- the state of the shared
19 services agreements at that date?

20 MS. CINDY SHUTTLEWORTH: Sorry, which
21 date?

22 MR. JOHN MATHER: October 2011. So,
23 October 4th, 2011, is when the RFP was issued to the
24 proponents.

25 MS. CINDY SHUTTLEWORTH: I wouldn't

1 have formed any opinion early on in my position.

2 MR. JOHN MATHER: Okay. I was just
3 trying to understand because your comments, I -- as I
4 understood it, was that your belief is that the -- the
5 shared services agreements should have been finalized
6 before the RFP was issued.

7 And I just wanted to get an
8 understanding of what state you believe the shared
9 services agreements to have been in at the time the
10 RFP was issued.

11 MS. CINDY SHUTTLEWORTH: I would not
12 have known that. Looking back, I can say that I -- I
13 believe they should have been done before the RFP went
14 out.

15 MR. JOHN MATHER: So, in hindsight, it
16 was your understanding that they weren't finalized at
17 that point in time?

18 MS. CINDY SHUTTLEWORTH: Yes.

19 MR. JOHN MATHER: Okay. So, I have
20 some questions about your understanding about how the
21 shared services agreement operated prior to the
22 transaction.

23 Before I get into those questions, I
24 want to just confirm what entities are involved when
25 we're talking about the shared services agreement

1 because I'm sure, as everyone appreciates, there's
2 several entities.

3 So, one (1) of the entities was Collus
4 Power, which was the electricity utility company. Is
5 that -- is that correct?

6 MS. CINDY SHUTTLEWORTH: Yes.

7 MR. JOHN MATHER: And Collus Power was
8 wholly owned by a holding company called Collingwood
9 Utility Service Corporation?

10 MS. CINDY SHUTTLEWORTH: Yes.

11 MR. JOHN MATHER: Okay. So, I'm going
12 to refer to that as the holding company as we proceed.
13 Another entity that was involved in the shared
14 services agreement was the Collingwood Public Utility
15 Service Board. Is that correct?

16 MS. CINDY SHUTTLEWORTH: It wasn't
17 part of the entities, but it was a service board of
18 the Town of Collingwood.

19 MR. JOHN MATHER: Right. And it
20 controlled the water utility. Is that --

21 MS. CINDY SHUTTLEWORTH: Yes.

22 MR. JOHN MATHER: So -- so, I'm going
23 to call that the water utility if that's useful.

24 MS. CINDY SHUTTLEWORTH: Okay.

25 MR. JOHN MATHER: And it's my

1 understanding that the water utility is controlled by
2 the Town. Is that correct?

3 MS. CINDY SHUTTLEWORTH: Yes.

4 MR. JOHN MATHER: And -- but within
5 the shared services agreements, it was one (1) of the
6 entities that was party to the shared services
7 agreements?

8 MS. CINDY SHUTTLEWORTH: Yes.

9 MR. JOHN MATHER: Okay. So, we have
10 Collus Power, the electrical utility. We have the
11 water utility. And then another entity that again was
12 involved with the shared services agreement was Collus
13 Solutions. Is that correct?

14 MS. CINDY SHUTTLEWORTH: Yes.

15 MR. JOHN MATHER: And Collus Solutions
16 was also a private company like Collus Power which was
17 wholly owned by the holding company?

18 MS. CINDY SHUTTLEWORTH: Correct.

19 MR. JOHN MATHER: Okay. And it's my
20 understanding that Collus Solutions employees provided
21 services to both Collus Power and the water utility.
22 Is that correct?

23 MS. CINDY SHUTTLEWORTH: Yes.

24 MR. JOHN MATHER: Okay. Who emp --
25 what about employees that worked solely for the

1 electrical utility or solely for the water utility?

2 Were they employed by Collus Solutions?

3 MS. CINDY SHUTTLEWORTH: No, not --
4 not in general that I can recall, no.

5 MR. JOHN MATHER: Okay. So, would
6 they -- who would they have been employed by if they
7 worked exclusively for one (1) utility?

8 MS. CINDY SHUTTLEWORTH: So, when it
9 was the original Public Utilities Commission, which
10 was the electricity and water together, the government
11 had around the year 2000 decided that they needed to
12 split out the electricity.

13 So, that's when the Canadian control of
14 private corporations were set up for the Collus
15 entities and the service board for water was set up.
16 And now I've lost my question. Can you...

17 MR. JOHN MATHER: So, I -- you were
18 explaining that, as I understand it, the origins of
19 having a separate electrical utility and a water
20 utility that's a commission was the decision of the go
21 -- of a government decision in 2000.

22 MS. CINDY SHUTTLEWORTH: Right.

23 MR. JOHN MATHER: And my question was,
24 where an employee worked just for one (1) of the two
25 (2) utilities, who was their employer?

1 MS. CINDY SHUTTLEWORTH: Right. So,
2 when those companies were split apart it was quite
3 evident where certain employees belonged because they
4 wholly did work for water or they wholly did work for
5 power. So, they were split into those companies if
6 they fit there.

7 There was a group of employees that
8 didn't fit in either. We wore two (2) hats, one (1)
9 for electricity and one (1) for water. So, in that
10 case, they were segregated in the Collus PowerStream
11 Solutions Corporation.

12 MR. JOHN MATHER: So, as -- as
13 controller and as CFO, because you did work for both
14 Collus Power, which later became Collus PowerStream
15 Power, and Collus -- and -- and the water utility, you
16 were employed by Collus Solutions?

17 MS. CINDY SHUTTLEWORTH: Yes.

18 MR. JOHN MATHER: So, the entities
19 we've gone through is we have Collus Power. We have
20 the water utility. We have Collus Solutions. We know
21 the Town is another entity involved because they
22 control the water utility.

23 Is there any other entities that were
24 involved in the shared services agreements?

25 MS. CINDY SHUTTLEWORTH: No.

1 MR. JOHN MATHER: So -- again, so it's
2 my understanding then, and based in part on what
3 you've already said, is that Collus Power, the water
4 utility, and Collus Solutions would provide each other
5 services in various forms prior to the transaction.
6 Is that fair?

7 MS. CINDY SHUTTLEWORTH: Yes.

8 MR. JOHN MATHER: And one (1) of the
9 significant ones was that Collus Solutions employees
10 worked for both the power utility and the -- and the
11 water utility, like you described?

12 MS. CINDY SHUTTLEWORTH: Yes.

13 MR. JOHN MATHER: And another example
14 of a shared services, I understand it, was Collus
15 Power leased space from the water utility?

16 MS. CINDY SHUTTLEWORTH: Yes.

17 MR. JOHN MATHER: Okay. And then, as
18 -- again, correct me at any point if I'm wrong. It's
19 my understanding that the purpose of the shared
20 services agreements were to govern how those costs
21 were allocated as between Collus Power, the water
22 utility, and Collus Solutions. Is that fair?

23 MS. CINDY SHUTTLEWORTH: That's
24 correct.

25 MR. JOHN MATHER: Okay. So, with that

1 kind of framework in mind, what was your understanding
2 of how costs were allocated as between Power Solutions
3 and the water utility prior to the transaction?

4 MS. CINDY SHUTTLEWORTH: The costs
5 were employee cost only in Solutions, and they were
6 segregated to each of the companies at cost. There
7 was no income earned on that in Solutions. It was
8 basically a breakeven.

9 It was more a mechanism to segregate
10 those wages and make sure that they were allocated
11 appropriately to the two (2) companies.

12 MR. JOHN MATHER: So, what do you mean
13 by, "segregate those wages"?

14 MS. CINDY SHUTTLEWORTH: Because if
15 they're in a separate corporation, it's much easier to
16 keep them identified as to what benefits relate to
17 them and employee future benefits.

18 So, it -- it just makes sure for
19 reasons of the OEB, ARC, et cetera, that those wages
20 are allocated properly.

21 MR. JOHN MATHER: So, maybe you can
22 explain. How do you allocate someone's wage when
23 you're talking about shared services and -- and
24 allocating for the purposes of the OEB?

25 MS. CINDY SHUTTLEWORTH: Sometimes it

1 becomes difficult because you simultaneously do two
2 (2) jobs at once. And one (1) example I could use is,
3 when you're preparing a bill for a customer that has
4 both electricity and water on it, you're doing that at
5 the same time

6 So it's not as if you can bill five (5)
7 minutes for doing this job, and then another hour for
8 doing another job. So, in that case, you use
9 something called a cost driver. And it's a mechanism
10 to try and come up with what proportion would make
11 sense for that employee doing those bills to be
12 allocated to water or electricity.

13 And, in that case, the cost driver for
14 billing would be how many bills were prepared, how
15 many of them are just for electricity, how many of
16 them have water on there, also, and, in some cases,
17 how many are for water only.

18 And then you come up with a formula or
19 proportion to take that person's eight (8) hour
20 workday and split between power and water.

21 MR. JOHN MATHER: So, it sounds -- and
22 you're describing a process whereby you have a Collus
23 Solutions employee who's -- or -- or service -- the
24 billing service, and you're determining how much of
25 that cost should be paid for by the power company and

1 how much of that cost should be paid for by the water
2 utility?

3 MS. CINDY SHUTTLEWORTH: Yes.

4 MR. JOHN MATHER: And prior to the
5 transaction, was the process for determining how does
6 -- how to divide those costs, was that what -- was
7 that what was set out in the shared services
8 agreements?

9 MS. CINDY SHUTTLEWORTH: The shared
10 service agreement didn't have any appendix that I saw
11 that actually had proportions on it, unless I'm not
12 recalling. It referred to something to do with a base
13 price allocation. The agreement did not seem to be
14 following what the actual process or practice was in
15 the organization.

16 So it looked to me like it -- it did
17 need an update to what was actually happening to match
18 it. I don't think it was much different in the long
19 term of what the cost would have been one (1) way or
20 the other, but it -- it wasn't matching.

21 MR. JOHN MATHER: Okay, so I take it
22 from that answer you're saying it's the -- the process
23 by which costs were allocated before the transaction
24 was different than what appeared to be contemplated by
25 the services agreements.

1 MS. CINDY SHUTTLEWORTH: Yes.

2 MR. JOHN MATHER: So what was the
3 process that was followed?

4 MS. CINDY SHUTTLEWORTH: It was the
5 cost allocation process, which we continued on
6 subsequent to the transaction.

7 MR. JOHN MATHER: And prior to the
8 transaction, who was responsible for the cost
9 allocation process?

10 MS. CINDY SHUTTLEWORTH: Tim Fryer.

11 MR. JOHN MATHER: And while you were
12 controller and Mr. Fryer was responsible for the cost
13 allocation process, did you have an understanding of
14 how -- how that process proceeded? Did you know how
15 he was allocating costs?

16 MS. CINDY SHUTTLEWORTH: No, it really
17 wasn't until, like I said, probably the middle of
18 2012, where these pieces started to come together and
19 I spent more time with those agreements.

20 MR. JOHN MATHER: I'll have some
21 questions about that in -- in a moment.

22 Do you know how often the cost --

23 MR. TIM FRYER: Excuse me, if -- if
24 Judge Marrocco, if I may?

25 THE HONOURABLE FRANK MARROCCO: Yes,

1 Mr. Fryer?

2 MR. TIM FRYER: I -- I was trying not
3 to interrupt but I was picking the right point and I
4 think this is the right point.

5 I -- I was a little taken by surprise
6 when Mr. Mather referred to my testimony earlier and I
7 was expecting that it would be brought up because
8 there was quite a bit of testimony and -- and I would
9 like to ask if I could see exactly what he's referring
10 to.

11 He said that I had said that Ms.
12 Shuttleworth was responsible for the secured services
13 agreements.

14 THE HONOURABLE FRANK MARROCCO: It's
15 on the website, isn't it? Isn't your transcript
16 there?

17 MR. TIM FRYER: Well, and I was trying
18 to look through quickly to see, but it has been said
19 and we are going to break shortly and I would -- I was
20 just hoping to hear it now exactly what he --

21 THE HONOURABLE FRANK MARROCCO: No,
22 no, I'll just leave it. We'll just carry-on and --
23 and you can take a look at it. We're going to break
24 at 1:30 and you'll be able to look it up then.

25 MR. TIM FRYER: Okay, thank you.

1

2 CONTINUED BY MR. JOHN MATHER:

3 MR. JOHN MATHER: So my question was,
4 prior to the transaction do you know how frequently
5 the Collus entities would review the cost allocations
6 and determine how they -- how costs should be
7 allocated?

8 MS. CINDY SHUTTLEWORTH: No, I -- I
9 didn't start till June 2011, so, no.

10 MR. JOHN MATHER: Fair enough.

11 And I believe you already touched on
12 this, but was it your understanding prior to the
13 transaction whether or not Collus Solutions sought to
14 seek a return on the costs they were allocating or if
15 they just simply sought to recover their base costs?

16 MS. CINDY SHUTTLEWORTH: Just recover
17 the costs.

18 MR. JOHN MATHER: It is our
19 understanding at this point that certain employees in
20 the Collus entities did work directly for the Town,
21 but not for water. So examples that we're aware of
22 are Mr. Houghton, who was the head of Public Works,
23 and another individual named Brian McDonald.

24 Is that your understanding?

25 MS. CINDY SHUTTLEWORTH: Yes.

1 MR. JOHN MATHER: When Mr. Houghton
2 and Mr. -- and I understand that Mr. Houghton and Mr.
3 McDonald were Collus Solutions employees?

4 MS. CINDY SHUTTLEWORTH: Yes.

5 MR. JOHN MATHER: When they were doing
6 work for the Town, how was that allocated?

7 MS. CINDY SHUTTLEWORTH: Shortly after
8 I started I took Brian McDonald and put him directly
9 into water, and then eventually he was moved to the
10 Town.

11 His time was fully allocated to water,
12 even though he didn't, as far as I know, do work in
13 water, it was directly for the Town of Collingwood.

14 So eventually we had to get that fixed
15 and him in the right company.

16 MR. JOHN MATHER: So I -- I take it
17 from that answer, so you said shortly after you
18 started. Do you mean as CFO or do you mean as
19 controller?

20 MS. CINDY SHUTTLEWORTH: As CFO.

21 MR. JOHN MATHER: So it sounds like he
22 was -- you moved him from Solutions to water, is that
23 fair?

24 MS. CINDY SHUTTLEWORTH: Yes.

25 MR. JOHN MATHER: But prior to that

1 then, he was a Solutions employee?

2 MS. CINDY SHUTTLEWORTH: Yes.

3 MR. JOHN MATHER: And was it your
4 understanding that the work he was doing while he was
5 a solutions employee was for the water utility?

6 MS. CINDY SHUTTLEWORTH: No, I believe
7 it was for the Town, but I -- the only place I could
8 allocate his time to was the Water Services Board,
9 which was part of the Town.

10 MR. JOHN MATHER: So is the effect of
11 that then that the water utility is paying Mr.
12 McDonald's salary even though he's not doing any
13 direct work for the utility itself?

14 MS. CINDY SHUTTLEWORTH: That's
15 correct.

16 MR. JOHN MATHER: Prior to the
17 transaction, was it your understanding that the Town
18 was ever billed directly for any services, or was it -
19 - or were any services provided to the Town always
20 allocated to the water utility?

21 MS. CINDY SHUTTLEWORTH: There was IT
22 services that were charged directly to the Town.

23 MR. JOHN MATHER: And can you just
24 explain what you mean by that?

25 MS. CINDY SHUTTLEWORTH: There were

1 three staff that did work for the Town of Collingwood,
2 from Town hall to the fire department, library, etc.,
3 that they performed the information technology work
4 and they were billed directly to the Town.

5 MR. JOHN MATHER: So these -- would
6 these be three Solutions employees then?

7 MS. CINDY SHUTTLEWORTH: Yes.

8 MR. JOHN MATHER: And so when they
9 were doing work for the Town, Solutions would send the
10 Town a bill?

11 MS. CINDY SHUTTLEWORTH: Yes.

12 MR. JOHN MATHER: Okay. Can we pull
13 up CPS7390_1.

14 So our understanding is that what
15 you're looking at is a document that was a -- from a
16 report that was made to Council in 2011. Have you
17 seen this document or a document like this before?

18 MS. CINDY SHUTTLEWORTH: This -- this
19 is quite old and well before my time, but I think I
20 have seen a -- a summary of it, yes.

21 MR. JOHN MATHER: Okay, and if we
22 could just scroll down a bit.

23 So it looks like this document is
24 reporting on, you know, some of the relationships
25 we're talking about as between the Collus entities and

1 -- and the Town before the transaction.

2 And some of the services that are
3 described here are described as in-kind services.

4 MS. CINDY SHUTTLEWORTH: M-hm.

5 MR. JOHN MATHER: Do you know what in-
6 kind services are?

7 MS. CINDY SHUTTLEWORTH: That's not
8 kind -- any kind of accounting terminology that I
9 would be familiar with. Generally the principles of
10 accounting are that an entity should be holding the
11 expenses of that entity. You wouldn't put expenses in
12 one (1) company and say you're doing it on the benefit
13 of another company.

14 MR. JOHN MATHER: So -- so I
15 appreciate that. The in-kind services isn't an
16 accounting term that you were familiar with, but do
17 you know when there's references to in-kind services
18 before the transaction what the -- what those services
19 were?

20 MS. CINDY SHUTTLEWORTH: I -- I mean
21 some of this is in 2002 to 2007 that I can see. Some
22 of the names don't even -- in-kind services Hockley
23 and Firman. I'm assuming what that would mean is
24 Marcus Firman was the main person working in
25 Collingwood Public Utilities. Mr. Fryer must have

1 assumed -- and again, I'm speculating -- that Mr.
2 Firman had done some work that was benefiting the Town
3 of Collingwood directly, in addition to the work he
4 was doing at the Collingwood Public Utilities.

5 So that would be in-kind to them or a
6 benefit that the Town was receiving.

7 MR. JOHN MATHER: So in -- in that
8 example, it sounds similar to what we were talking
9 about with Mr. Houghton and Mr. McDonald where they're
10 being allocated to the utility, but the services
11 they're actually providing are for the Town.

12 MS. CINDY SHUTTLEWORTH: Yes.

13 MR. JOHN MATHER: So -- and -- and I
14 didn't have a specific question about this document,
15 other than I just wanted to see if it -- use it as a
16 base point to see what you understood an in-kind
17 service to be, even when you were the controller in
18 2011. And if you scroll over it talks about them in
19 2011 as well.

20 MS. CINDY SHUTTLEWORTH: Okay. So
21 some of it is very straightforward as well. The
22 promissary note, for instance, the Town of Collingwood
23 had debt with Collus and so that's just the interest
24 that they're earning on that debt and the rental for
25 the building.

1 In addition to things that look like
2 labour, and there may be some other administrative
3 expenses, I think I do recall something where there
4 were some pamphlets that the Town of Collingwood
5 wanted to put in the bills for Collus, and so we did
6 the printing of those pamphlets and they -- they went
7 in the same envelopes with the bills. And that cost
8 was still in Collus at that time.

9 And I know that when I took over as
10 CFO, I -- I didn't allow that kind of thing to happen
11 anymore, that if the Town had requested services then
12 they were billed for those services.

13 And in turn, if we wanted to provide
14 them a benefit at some point in time, it would be
15 through an actual legal dividend.

16 MR. JOHN MATHER: So I want to break
17 that down a bit and maybe we'll use this example of
18 the pamphlets.

19 So the Town of Collingwood at some
20 point requested that Collus print pamphlets which came
21 and insert them in bills, which I presume came to --
22 at a cost to Collus. Is that correct?

23 MS. CINDY SHUTTLEWORTH: Yes.

24 MR. JOHN MATHER: And before you were
25 CFO or -- are you thinking of a specific example when

1 you're talking about that?

2 MS. CINDY SHUTTLEWORTH: Yes.

3 MR. JOHN MATHER: And so in that
4 specific example did Collus then bill the Town for
5 that cost?

6 MS. CINDY SHUTTLEWORTH: No, not at
7 that time.

8 MR. JOHN MATHER: Did it receive any
9 form of conference -- compensation for that cost?

10 MS. CINDY SHUTTLEWORTH: No.

11 MR. JOHN MATHER: So is that what an
12 in-kind service is?

13 MS. CINDY SHUTTLEWORTH: It -- that's
14 not an accounting terminology. Like, you should be
15 billing another company, it's a completely separate
16 entity for that.

17 MR. JOHN MATHER: So I appreciate that
18 that's not an accounting practice you would follow,
19 but is that example of Collus providing something to
20 the Town at no charge, is that what you understood
21 others within the department to refer as an in-kind
22 service?

23 MS. CINDY SHUTTLEWORTH: Yes.

24 MR. JOHN MATHER: And I take it then,
25 when Collus was providing in-kind services to the Town

1 or it sounds like the water utility was also providing
2 in-kind services to the Town, that's something
3 separate and apart from what's contemplated by the
4 shared services agreement?

5 MS. CINDY SHUTTLEWORTH: I don't -- I
6 don't know if I can answer that question or not.

7 MR. JOHN MATHER: Maybe I'll put it
8 this way. In-kind services or how you understood them
9 aren't something that was -- was -- was dealt with
10 when cost allocations were going -- were -- were being
11 done because they were never costs that were going to
12 be allocated?

13 MS. CINDY SHUTTLEWORTH: Well, I mean
14 if Solution -- if, for instance, Brian McDonald was on
15 the Solutions allocation, you would see zero to Collus
16 PowerStream and 100 percent to Collingwood Public
17 Utilities Service Board.

18 MR. JOHN MATHER: Right. So in that
19 case Mr. MacDonald was -- was allocated to the water
20 utility.

21 MS. CINDY SHUTTLEWORTH: And that
22 would have probably been written in the shared service
23 agreement.

24 MR. JOHN MATHER: Okay, fair enough.
25 So you mentioned that you didn't continue this -- this

1 -- what I'll call practice of in-kind services after
2 you became the CFO.

3 What did you do differently?

4 MS. CINDY SHUTTLEWORTH: I tried to
5 get whatever employees needed to be in the right
6 company moved there, and it did take some time before
7 Brian McDonald was actually put on the payroll
8 directly with the Town of Collingwood.

9 Ed Houghton wasn't as easy to deal with
10 with his -- the work that he did for Public Works.
11 The -- the most I could do was split his time between
12 Power and water.

13 And yes, we -- wherever we could make
14 sure that we invoice the Town for things that they
15 requested from us, we did that and in turn tried to
16 give them the benefits through dividends.

17 MR. JOHN MATHER: And can you explain
18 the different, at least in your mind, what the
19 difference was between, for instance, providing a
20 service to the Town without -- without billing them as
21 opposed to providing the service, billing them and
22 then declaring a dividend?

23 MS. CINDY SHUTTLEWORTH: Well, it
24 would be more legally specific for what the dividend
25 actually is that was going to them, and then when a

1 partner comes on, such as PowerStream, it's much more
2 equitable and fair that the dividends are flowing to
3 both parties and not one (1) shareholder is getting
4 some benefit over the other.

5 MR. JOHN MATHER: Your Honour, I'm
6 about to move to another area. I note it's close to
7 1:30.

8 THE HONOURABLE FRANK MARROCCO: How
9 much longer are you going to be?

10 MR. JOHN MATHER: I imagine I would
11 probably have twenty (20) more minutes of questions
12 before we could get to the examinations.

13 THE HONOURABLE FRANK MARROCCO: Well
14 then I guess we'll stop for today and we'll come back
15 tomorrow, ten o'clock.

16

17 --- Upon adjourning at 1:20 p.m.

18

19 Certified Correct,

20

21

22 _____

23 Wendy Woodworth, Ms.

24

25

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