



**“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 22nd, 2019

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APPEARANCES

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 ) Counsel  
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Belina Bain ) Corporation  
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William McDowell (np) ) For Town of Collingwood  
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 ) Corporation  
Norm Emblem ) John Herhalt

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1 --- Upon commencing at 10:02 a.m.

2

3 JOHN HERHALT, Sworn

4

5 MR. PAUL BONWICK: Your Honour?

6 THE HONOURABLE FRANK MARROCCO: Yes?

7 MR. PAUL BONWICK: Excuse me. I'm

8 wondering if before we get started, if I might be

9 provided the opportunity to raise an objection?

10 THE HONOURABLE FRANK MARROCCO: An

11 objection to Mr. Herhalt testifying?

12 MR. PAUL BONWICK: No. This is --

13 comes on the heel of me excusing myself forty-five

14 (45) minutes early on Friday and you suggested that I

15 take the opportunity over the weekend to read the

16 transcript, and if I had any issues, to bring them

17 forward at the next available seating.

18 THE HONOURABLE FRANK MARROCCO: Why --

19 why don't we do this. We'll -- would -- would you

20 mind -- did -- this doesn't affect Mr. Herhalt, right,

21 the objection, right?

22 MR. PAUL BONWICK: No, not -- not

23 directly.

24 THE HONOURABLE FRANK MARROCCO: I was

25 thinking I might deal with it about a quarter to 1:00

1 so that we can get into Mr. Herhalt's evidence now --  
2 he's here, sworn in -- and then I can hear the  
3 objection around -- just before the lunch break.

4 Is that -- does that impair your  
5 objection in any way, or does it affect your  
6 objection?

7 MR. PAUL BONWICK: Not -- not  
8 directly, Your Honour.

9 THE HONOURABLE FRANK MARROCCO: All  
10 right. So please raise it about a quarter to 1:00,  
11 just -- then and then I'll hear what you have to say.

12 MR. PAUL BONWICK: Thank you.

13

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

15 MS. KATE MCGRANN: Good morning, Mr.  
16 Herhalt.

17 MR. JOHN HERHALT: Good morning.

18 MS. KATE MCGRANN: To begin, would you  
19 provide us with a -- a brief overview of your  
20 professional background and experience?

21 MR. JOHN HERHALT: Sure. I -- I'm a  
22 chartered accountant. I started my career with Peat  
23 Marwick Mitchell, and -- which ultimately became KPMG,  
24 and before I retired from the firm in 2013, I was the  
25 global leader of our government and infrastructure

1 line of business. And immediately prior to that, I  
2 was the leader of our national advisory services  
3 business in Canada.

4 MS. KATE MCGRANN: During that period,  
5 were you the global leader of the infrastructure line  
6 of business?

7 MR. JOHN HERHALT: From roughly 2010  
8 through till 2013.

9 MS. KATE MCGRANN: Is that a position  
10 that required quite a bit of international travel?

11 MR. JOHN HERHALT: Yes, it did.

12 MS. KATE MCGRANN: How much of the --  
13 your time would you say was spent in travel as part of  
14 that role?

15 MR. JOHN HERHALT: I was away probably  
16 80 percent of the time.

17 MS. KATE MCGRANN: Would you please  
18 give a history of your relationship with the Collus  
19 entities?

20 MR. JOHN HERHALT: Yes. The first  
21 time I did work for the Collus entities was at the  
22 time of the restructuring here in Ontario, around the  
23 Electricity Act, which was roughly in the 2000  
24 timeframe. I don't have the dates precisely in front  
25 of me. And that was really to assist the Town and the

1 utility in coming to terms with the changes in the  
2 Electricity Act.

3 I think that was really the only  
4 project until 2011, when Mr. Houghton contacted me  
5 again.

6 MS. KATE MCGRANN: All right. In the  
7 work that you did around the restructuring in and  
8 around the 2000 period, were you working with Mr.  
9 Houghton at that time?

10 MR. JOHN HERHALT: Yes.

11 MS. KATE MCGRANN: Would you give us a  
12 -- a brief history of your relationship with Mr.  
13 Houghton, please?

14 MR. JOHN HERHALT: That would have  
15 probably been the first time that I really met Mr.  
16 Houghton. Clearly, I ran into him at different times  
17 through the period after that, during industry  
18 meetings, and different electricity sector activities.  
19 Yeah.

20 MS. KATE MCGRANN: Could we turn up  
21 paragraph 144 of the Foundation Document, please.

22

23 (BRIEF PAUSE)

24

25 MS. KATE MCGRANN: Paragraph 144

1 describes an email from you to Jonathan Erling,  
2 managing director at KPMG, in which you report that  
3 you had spoken to Ed Houghton the day before, and you  
4 say:

5 "They want to engage us and start  
6 very soon. Can you put together a  
7 draft engagement letter and put  
8 together the terms of reference?  
9 Set the fee at thirty thousand  
10 dollars (\$30,000). I'm travelling  
11 today. Will give you a call  
12 tomorrow."

13 Do you recall that in and around  
14 February to May 2011, you and your colleagues at KPMG  
15 did work on a valuation and an options analysis for  
16 Collus Power?

17 MR. JOHN HERHALT: Yes, I do.

18 MS. KATE MCGRANN: Do you recall  
19 whether this phone call that you described in your  
20 February 6th, 2011 email to Mr. Herl -- Erling was the  
21 first that you heard from Mr. Houghton or anyone else  
22 of Collus Power about that work?

23 MR. JOHN HERHALT: Yes, it is.

24 MS. KATE MCGRANN: Do you remember  
25 what he told you about what Collus Power was looking

1 for?

2 MR. JOHN HERHALT: Not precisely, but  
3 I do know that we spoke about the fact that they  
4 wanted to do an options analysis considering what  
5 options they needed to consider for the go-forward,  
6 given some of the news that was coming out of the  
7 Province around potential consolidation use, and  
8 together with that, to do a valuation of the utility  
9 that would inform the options analysis.

10 MS. KATE MCGRANN: Did you have any  
11 understanding or did Mr. Houghton or anyone else tell  
12 you anything at this time about potential intentions  
13 to sell the utility or otherwise change the governance  
14 or ownership structure?

15 MR. JOHN HERHALT: No, not at that  
16 time. Not at that time.

17 MS. KATE MCGRANN: At the time that  
18 you were first contacted about doing this work, what  
19 role, if any, did you understand the Town of  
20 Collingwood had in making the request?

21 MR. JOHN HERHALT: I did -- other than  
22 the fact that I knew that Mr. Houghton was not only  
23 the CEO of the utility, but also a member of senior  
24 management at the Town, that's really all I knew.

25 MS. KATE MCGRANN: And do you recall

1 what precisely Mr. Houghton's role on senior  
2 management at the Town was?

3 MR. JOHN HERHALT: I believe at the  
4 time, he was the -- I can't remember the exact title,  
5 executive director in charge of public works.

6 MS. KATE MCGRANN: If we turn to  
7 paragraph 147 of the Foundation Document, please.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: And this paragraph  
12 describes an email exchange as between yourself and  
13 Mr. Houghton on February 14th to 15th, 2011, and I'm  
14 going to ask that the email reference be pulled up.  
15 It's CPS2002.

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: If we could scroll  
20 to the bottom of this so we can see the first email in  
21 the chain, we can see that this email chain starts  
22 with an email from Jonathan Erling to Ed Houghton with  
23 a copy to yourself and John Rockx. Mr. Erling writes  
24 to Ed:

25

"Please find attached a draft of

1 KPMG's letter of proposal to assist  
2 Collingwood in the review of its  
3 utility ownership options."

4 He asks Mr. Houghton to review and let  
5 you know if there are any changes needed to the scope  
6 of work. And then if we could scroll up.

7 Mr. Houghton forwards this email to you  
8 directly and says:

9 "We did discuss and my authorization  
10 limit is \$20,000. Is there anything  
11 we can do to make the proposal only  
12 \$20,000? Just wondering. Thanks."

13 Do you recall receiving this email?

14 MR. JOHN HERHALT: I obviously did. I  
15 don't -- I remember the discussion around fees but I  
16 would have to admit that I only realized -- I only  
17 remember this email now that I've -- I saw it, so.

18 MS. KATE MCGRANN: What do you recall  
19 of the discussion around fees at this time?

20 MR. JOHN HERHALT: Well, the -- the  
21 discussion evolved around -- it was not only an  
22 options analysis but it was work on valuation, and so  
23 the options analysis was not really the big discussion  
24 around scope. It was the fact that the valuation had  
25 to be thought through in terms of what the scope of

1 that work was going to be.

2 A more comprehensive valuation, as I  
3 say I think later in an email, is -- I think I said 30  
4 to \$50,000. I think I talked to John Rockx about  
5 that. So really what we had to come to terms with is  
6 what was the nature of the valuation work we were  
7 doing, which we ultimately determined to do a  
8 calculation of value, not a comprehensive valuation,  
9 so.

10 MS. KATE MCGRANN: Okay. And let's  
11 just scroll up and see the rest of this email chain.  
12 Your response here, you had said:

13 "I told you right out of the gate 30  
14 to 50,000 depending on the scope.  
15 With one part of this right upfront  
16 being an indicative valuation,  
17 20,000 will not cover the whole  
18 project."

19 So is that the email that you were  
20 referring to?

21 MR. JOHN HERHALT: Yeah, yeah, that's  
22 it.

23 MS. KATE MCGRANN: And am I correct in  
24 understanding that you're saying the variation in cost  
25 of the work that KPMG is doing is largely related to

1 the kind of valuation work that -- that you would do?

2 MR. JOHN HERHALT: Correct, correct.

3 MS. KATE MCGRANN: Do you recall any  
4 conversation specifically about Mr. Houghton's  
5 authorization limit, which he had raised with you in  
6 the email we just looked at?

7 MR. JOHN HERHALT: I saw that. I  
8 don't remember the discussion being around  
9 authorization limit but nevertheless it's there, so he  
10 must have mentioned it.

11 MS. KATE MCGRANN: Given what you've  
12 said about the fact that that the -- the variation in  
13 cost of your work was largely tied to the nature of  
14 the valuation work you would be doing, and is that a  
15 fair statement?

16 MR. JOHN HERHALT: Well, I think  
17 that's -- that's a big part of it. So, I mean, if you  
18 think about probably the -- in the three (3) levels of  
19 valuation work, comprehensive down to a calculation of  
20 value, the more -- the more you go up the scale to the  
21 comprehensive level, it's -- it's a fairly intensive -  
22 - more intensive piece of work and it would cost more  
23 money, yeah.

24 MS. KATE MCGRANN: Looking at the --  
25 the options analysis work that KPMG was doing, what

1 would the cost of that work as a standalone project  
2 have been?

3 MR. JOHN HERHALT: I -- I can't tell  
4 you off the top of my head any longer but...

5 MS. KATE MCGRANN: Okay. Coming at it  
6 from the other direction, can you tell us  
7 approximately what the cost of the indicative  
8 valuation would have been as a standalone?

9 MR. JOHN HERHALT: Sorry, I don't have  
10 the details in front of me, but I would have expected  
11 that it would have been at the low end of -- of the  
12 range I would have suggested, but I don't have that in  
13 front of me.

14 I think, if I recall correctly, in the  
15 end our fee for this work was in the low \$30,000 range  
16 in total, so.

17 MS. KATE MCGRANN: If we can turn from  
18 this documents to paragraph 149 of the draft  
19 Foundation Document.

20

21 (BRIEF PAUSE)

22

23 MS. KATE MCGRANN: This paragraph  
24 describes that on February 22nd, Mr. Houghton emailed  
25 you, Mr. Erling, and Mr. Rockx, to let you know that:

1                    "We accept your scope of work and  
2                    would like to begin the review."

3                    Two (2) days later, Mr. Erling sends  
4 him a finalized engagement letter. Can I ask that  
5 that letter be pulled up? It is KPM600.

6

7                    (BRIEF PAUSE)

8

9                    MS. KATE MCGRANN: Okay. And if we  
10 could just scroll to the very bottom of the page so we  
11 can see the signatures. This letter has been signed  
12 by you and then executed by Mr. Houghton, it looks  
13 like, on behalf of Collus Power.

14                    Are you able to help us out with his  
15 signature that is on the Collus Power line?

16                    MR. JOHN HERHALT: That's Ed  
17 Houghton's, I believe.

18                    MS. KATE MCGRANN: Dated March 11th,  
19 2011, okay.

20                    Can you scroll up to the first page,  
21 please?

22

23                    (BRIEF PAUSE)

24

25                    MS. KATE MCGRANN: Here's a letter

1 that's addressed to Mr. Houghton, CEO of Collus Power.

2 In the first paragraph it says:

3 "KPMG is pleased to submit this  
4 proposal to Collus Power to help you  
5 and your shareholder, the Town of  
6 Collingwood, evaluate the strategic  
7 options for ownership of your  
8 Utility."

9 The retaining letter is with Collus  
10 Power but it mentions helping both Collus Power and  
11 its shareholder, the Town.

12 What was your understanding of -- of  
13 who you were doing this work for?

14 MR. JOHN HERHALT: Well, I think we  
15 were doing it for both Collus Power and the Town of  
16 Collingwood, albeit our direct contact was with Mr.  
17 Houghton. It -- clearly having done options analyses  
18 of different kinds for utilities in the Province of  
19 Ontario before, we knew based on our experience that  
20 ultimately if there was anything that was going to be  
21 done with these options or considered with these  
22 options, that it would need to be considered by the  
23 shareholder.

24 MS. KATE MCGRANN: And in previous  
25 retainers like this where you're doing options

1 analyses for -- for other LDCs in the province, were  
2 you typically retained by the utility or by the  
3 shareholder?

4 MR. JOHN HERHALT: Oh, both. Often --  
5 often it would depend on the municipality and the  
6 utility. Sometimes we were approached by the utility,  
7 sometimes we were approached by the municipality, and  
8 sometimes both.

9 MS. KATE MCGRANN: And just to be sure  
10 that we're -- we're talking about the same thing, you  
11 used the word "approached." I'm interested in who  
12 your retainer agreement was actually with.

13 MR. JOHN HERHALT: Oh, both as well.  
14 Both as well.

15 MS. KATE MCGRANN: And sometimes it  
16 would be directly with the utility and sometimes -

17 MR. JOHN HERHALT: Directly with the  
18 municipality, yeah.

19 MS. KATE MCGRANN: And then you  
20 mentioned that there were occasions where you would be  
21 retained by both.

22 In those instances, would you normally  
23 have signed a joint retainer letter with both the  
24 municipality and the -- and the utility?

25 MR. JOHN HERHALT: I can't recall for

1 sure.

2 MS. KATE MCGRANN: Do you recall why  
3 this particular retainer letter was structured in this  
4 way?

5 MR. JOHN HERHALT: Well, our direct  
6 contact and really our only sort of contact was  
7 through Mr. Houghton and then I think we also engaged  
8 in dialogue with Mr. Fryer and Mr. Muncaster. That's  
9 who we were spending our time with, and then -- and  
10 getting our information from, but as I said, even  
11 though that was the direct contact, we knew that any  
12 options analysis that was going to be used or acted  
13 upon would need to have the shareholder involved.

14 MS. KATE MCGRANN: You mentioned  
15 contact with Mr. Houghton and with Mr. Fryer.

16 Did you have any contact with anyone  
17 from the Town of Collingwood through the work that  
18 KPMG did on the valuation and option analysis?

19 MR. JOHN HERHALT: No, other than Mr.  
20 Houghton who obviously had a dual role.

21 MS. KATE MCGRANN: At any point during  
22 your work on this retainer, did Mr. Houghton indicate  
23 to you that he was acting in his role as Executive  
24 Director of Public Works at the Town?

25 MR. JOHN HERHALT: He didn't say that

1 explicitly, no.

2 MS. KATE MCGRANN: If we could scroll  
3 down a little bit on page 1 to the heading "Scope of  
4 Work" so we can see the bullet points underneath that.

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: We see that  
9 the first bullet point provides that you will meet  
10 with senior management at Collus to review the current  
11 business and financial plans of the Utility. When I  
12 review this retainer letter, there is no provision for  
13 similar meetings with the Town and that's consistent  
14 with what you had said about who you had contact with.

15 Do you recall why the decision was made  
16 or if -- if anyone turned their minds to whether it  
17 would make sense to meet with representatives of the  
18 Town to talk about what they were hoping for out of  
19 the strategic options analysis?

20 MR. JOHN HERHALT: No, I don't think  
21 it was. I think one thing -- I think the nature of  
22 the work was to explore options on a broad basis. It  
23 wasn't set in a context of, well, what are my  
24 objectives or what is -- what are the Town's  
25 objectives. It was looking at it broadly from what

1 are the options that are available to a utility and  
2 clearly with the Town's ownership in consideration, so  
3 I think that was the primary reason that we weren't  
4 that concerned about necessarily having interviews  
5 with all Town officials.

6 MS. KATE MCGRANN: Okay. And I'm just  
7 going to paraphrase that. You can let me know if I've  
8 --

9 MR. JOHN HERHALT: Okay.

10 MS. KATE MCGRANN: -- got it wrong.  
11 The options analysis -- the question that you and your  
12 team were answering was what options are available to  
13 a LDC, not to this specific LDC.

14 MR. JOHN HERHALT: Well, I think it  
15 was tailored to this LDC in the sense that we needed  
16 to understand what its context was. But what I mean  
17 is I think the options, the options and certainly the  
18 pros and cons of those options were options that were  
19 probably available to all LDCs, so.

20 MS. KATE MCGRANN: And what context  
21 did -- are you talking about that you tailored to?

22 MR. JOHN HERHALT: Well, what their --  
23 if -- we say you're exploring their current financial  
24 and operating status just making sure we understood  
25 what that looked like, so.

1 MS. KATE MCGRANN: And just so that I  
2 know that I've got a complete answer on this, you took  
3 instructions from Mr. Houghton. Did you take  
4 instructions from anybody else on this particular  
5 retainer?

6 MR. JOHN HERHALT: Well, the direct  
7 lead on that was certainly Mr. Houghton. I -- and the  
8 primary work was being done by Jonathan Erling and  
9 John Rockx and I believe they also had meetings with  
10 Mr. Fryer and Mr. Muncaster, so they may have had some  
11 instruction from them as well.

12 MS. KATE MCGRANN: A -- and anybody  
13 else other than those three gentlemen?

14 MR. JOHN HERHALT: Not that I'm aware  
15 of.

16 MS. KATE MCGRANN: Can we scroll down  
17 to the beginning of the second page, please?

18 So when we look at the second bullet  
19 point, this describes the options analysis that we've  
20 been discussing and you see that it says in the first  
21 paragraph you say:

22 "We'll prepare a summary of the  
23 advantages and disadvantages of  
24 various ownership options from the  
25 perspective of the Town, of utility

1 ratepayers and local ratepayers."

2 How was the options analysis going to  
3 be prepared from the perspective of the Town?

4 MR. JOHN HERHALT: Well, I think it's  
5 from the perspective of what the -- from the  
6 advantages and disadvantages, what the impacts could  
7 be to the Town, whether that's an issue of control or  
8 whether that's an issue of -- of otherwise, so.

9 MS. KATE MCGRANN: And same question  
10 for how it encompassed the perspective of utility  
11 ratepayers.

12 MR. JOHN HERHALT: Say -- same kind of  
13 view, is that it -- it's to the extent that there is a  
14 sale or a partial sale, what might that mean to --  
15 what might that mean to decisions around the utilities  
16 structure.

17 So -- that -- that's where I'd go with  
18 that. I don't have the specifics in mind, but that's  
19 what our -- our view was.

20 MS. KATE MCGRANN: Okay, and would  
21 your answer be similar if I asked you the same  
22 question about local ratepayers?

23 MR. JOHN HERHALT: Pretty much.

24 MS. KATE MCGRANN: What steps did your  
25 team take to understand the perspective of the Town of

1 Collingwood's that it could -- it could do this  
2 analysis from the Town's perspective?

3 MR. JOHN HERHALT: Well, again, I -- I  
4 think again the -- the view that we would have taken  
5 is that the impact of whether it was status quo, sale,  
6 full sale, partial sale, has a particular impact to  
7 the municipality, particular impact to the utility and  
8 we looked at that from a broad basis, not necessarily  
9 from the perspective of having interviewed Town  
10 representatives to talk about that.

11 MS. KATE MCGRANN: Was it the case  
12 that the -- the options analysis that you did took the  
13 view of -- the perspective of a municipality, not  
14 necessarily the Town of Collingwood?

15 MR. JOHN HERHALT: I think it was  
16 taken from the perspective of a municipality, yes.

17 Although it -- let's remember, there  
18 were certain things that I know Jonathan did to  
19 explore what the arrangements were with the utility  
20 and the Town, so that obviously had a tailored  
21 component to it.

22 MS. KATE MCGRANN: The last bullet  
23 point on this page says:

24 "We will provide a presentation of  
25 our report to relevant

1 stakeholders."

2 To your knowledge, was a presentation  
3 of the report ever made?

4 MR. JOHN HERHALT: Not to my  
5 knowledge.

6 MS. KATE MCGRANN: Do you know why  
7 not?

8 MR. JOHN HERHALT: I don't.

9 MS. KATE MCGRANN: Do you know whether  
10 --

11 MR. FREDERICK CHENOWETH: Your Honour,  
12 is that an accurate question? I mean, do -- we don't  
13 know that it wasn't made. In fact, the evidence  
14 suggests it was made. You're talking about his  
15 proposal options?

16 THE HONOURABLE FRANK MARROCCO: No,  
17 no, just a second. We're not going to have a personal  
18 discussion between counsel.

19 Your -- your position is that the  
20 evidence discloses the presentation was made?

21 MR. FREDERICK CHENOWETH: Correct.

22 THE HONOURABLE FRANK MARROCCO: You  
23 can ask the witness whether he knows.

24 MR. FREDERICK CHENOWETH: That's  
25 right, he -- he may not know.

1 MS. KATE MCGRANN: Well, I --

2 MR. FREDERICK CHENOWETH: That's the  
3 question. The next question was why was it not made.

4 THE HONOURABLE FRANK MARROCCO: All  
5 right, I take your point, Mr. Chenoweth.

6 MR. FREDERICK CHENOWETH: Thank you.

7

8 CONTINUED BY MS. KATE MCGRANN:

9 MS. KATE MCGRANN: To your knowledge,  
10 was a request for the presentation that was provided  
11 for in this retainer letter ever made?

12 MR. JOHN HERHALT: The presentation  
13 was not made by myself or Jonathan Erling, to my  
14 knowledge.

15 MS. KATE MCGRANN: Would this be a  
16 presentation that Mr. Rockx would make? The options  
17 analysis?

18 MR. JOHN HERHALT: Not the options  
19 analysis per se. It would be Mr. Erling that would  
20 have done that.

21 MS. KATE MCGRANN: Do you recall any  
22 discussion about whether or not a presentation of that  
23 work would be made amongst your team?

24 MR. JOHN HERHALT: I think when we  
25 delivered the draft presentation, we -- we didn't talk

1 about when, we talked about at some point we may be  
2 asked to make a presentation.

3 MS. KATE MCGRANN: Was it part of your  
4 work under this retainer to provide a recommendation  
5 to either the Town or Collus Power about what their  
6 best strategic option would be or to rank the options  
7 that were available, provide them with any advice  
8 about what next steps they should take?

9 MR. JOHN HERHALT: No, it was not.

10 MS. KATE MCGRANN: Did you have the  
11 information available through the work that you did on  
12 this retainer to provide that kind of advice, if you  
13 had been asked to?

14 MR. JOHN HERHALT: I -- I think it  
15 would have needed -- been taken a step further to do  
16 that, so.

17 MS. KATE MCGRANN: If we can scroll  
18 down to the part of the retainer letter that describes  
19 your engagement team, and you have given us some of  
20 this information already.

21 But would you just explain to us what  
22 kind of work each of the three of you did on this  
23 retainer?

24 MR. JOHN HERHALT: Well, the primary -  
25 - as I said, the primary work -- in fact, a

1 substantive part of the work was done by Jonathan  
2 Erling and John Rockx. Jonathan worked primarily on  
3 the options analysis, and John Rockx primarily on the  
4 calculation of value.

5                   Really, I was out of the country for  
6 most of it and then Mr. Houghton was aware of that, I  
7 told him that right from the beginning. I certainly  
8 had a role in -- in some liaison with Jonathan and  
9 John from time to time as things arose and if Mr.  
10 Houghton had a question or concern.

11                   But that was -- that was how it was  
12 laid out.

13                   MS. KATE MCGRANN: If we could turn to  
14 paragraph 156 of the Foundation document, please.

15                   So at this point in time in our  
16 summary, the work is underway on the retainer that  
17 we've been discussing. This paragraph describes  
18 internal correspondence from Mr. Erling, noting  
19 concerns about Mr. Fryer, and it goes on to describe  
20 an email exchange between Mr. Houghton and yourself,  
21 in which Mr. Houghton expresses some concern that  
22 things are becoming time-sensitive and we need to get  
23 to a conclusion very soon.

24                   Do you recall there being some urgency  
25 with respect to the completion of the work that your

1 team was doing?

2 MR. JOHN HERHALT: Well, some time had  
3 elapsed and Mr. Houghton wanted to -- wanted us to get  
4 our work done. He didn't speak to us about any  
5 specific deadline, per se, or any specific milestone  
6 that was occurring.

7 But I think he thought time had  
8 dragged, so this was really an exchange to say how do  
9 we get this moving forward more quickly.

10 MS. KATE MCGRANN: And if we fast  
11 forward to the -- the end of this paragraph, we see a  
12 summary of an email that you sent, where you suggest  
13 that your team focus on completing the study and for  
14 the other options and pros and cons piece, let's talk  
15 about the high level approach to that and some of the  
16 parameters, so we don't get into too much detail.

17 Do you remember any discussion about --  
18 let me back up for a second.

19 First of all, it looks like you're  
20 discussing about -- you're discussing the options  
21 analysis in this particular section.

22 Have I got that right?

23 MR. JOHN HERHALT: Yes. Yes, the  
24 discussion really revolved around there was a lot of  
25 work that Jonathan was starting to look at with

1 respect to the -- the shared services that were being  
2 done with and for the Town. And I think it was  
3 getting into a level of detail that we sort of  
4 concluded after had a subsequent discussion with Mr.  
5 Houghton to say well, that's probably going to a) take  
6 a lot longer time and perhaps not really yield the  
7 kinds of analysis that we're looking for in this  
8 particular piece of work.

9                   So that -- I think that was really what  
10 was -- was really the too much detail question was.

11                   MS. KATE MCGRANN:    Okay.  Could we  
12 look at -- I'm just going to look directly at some of  
13 the emails that are referenced.  Turn up KPM926,  
14 please.

15

16                   (BRIEF PAUSE)

17

18                   MS. KATE MCGRANN:    This is an email  
19 from yourself to Mr. Erling and Mr. Rockx, you're  
20 reporting back that you told Mr. Houghton that we were  
21 going to focus our discussion today on what we need to  
22 complete the valuation, which you note in brackets is  
23 a first priority.  You go -- you go on to say:

24                                       "Once we have what we need for that,  
25                                       we'll explore it with them; the

1 depth he's looking for and the  
2 alternative options and other  
3 analysis of both qualitative and  
4 quantitative."

5 You say:

6 "My sense is he wants that piece at  
7 a pretty high level."

8 Do you recall sending this email?

9 MR. JOHN HERHALT: I don't recall it  
10 precisely, but I -- I believe that was in the same  
11 context of us moving the -- the -- the project  
12 forward, yes.

13 MS. KATE MCGRANN: Can you help us  
14 understand what you meant when you said that your  
15 sense was that Mr. Houghton wanted that piece at a  
16 pretty high level?

17 MR. JOHN HERHALT: I think it goes  
18 back to the discussion that -- that I -- that we had  
19 around some of the detail Jonathan was exploring and  
20 just saying we -- you know, some of it's getting too  
21 detailed, let's get to a place that makes more sense  
22 in terms of what the focus of this -- this work was  
23 supposed to be, so.

24 MS. KATE MCGRANN: Was it originally  
25 envisioned that you would do a more detailed analysis

1 of -- of the shared services?

2 MR. JOHN HERHALT: Not per se. I  
3 think Jonathan started to explore that when the work  
4 was started. The -- I'll call it the work plan, is  
5 not laid out in such a level of specificity that you'd  
6 say oh well, I'm going to deep dive into this or deep  
7 dive into that, so.

8 MS. KATE MCGRANN: Okay. Can we turn  
9 up paragraph 163 of the Foundation document, please?

10 This paragraph describes that KPMG  
11 delivered a draft valuation document and an options  
12 analysis to Collus Power on May 24th, 2011.

13 To your knowledge, was the draft  
14 valuation or the options analysis ever provided to  
15 representatives of the Town?

16 MR. JOHN HERHALT: Not directly by us,  
17 no.

18 MS. KATE MCGRANN: Are you aware of  
19 whether that work product was provided to the Town?

20 MR. JOHN HERHALT: I can't say for  
21 certain.

22 MS. KATE MCGRANN: Do you have any  
23 information about whether it was provided to the Town?

24 MR. JOHN HERHALT: I think, if I  
25 recall correctly, the -- some of the information may

1 have been included in presentation that were made to  
2 the Town subsequently that were done by Mr. Houghton  
3 and others. But that would probably be as a result of  
4 my review of the Foundation document more than  
5 anything else. But at the time I wouldn't have known,  
6 so.

7 MS. KATE MCGRANN: All right. I'm  
8 going to take a look at the options analysis slides  
9 that KPMG provided. Could we turn up KPM1032?

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: These are the  
14 slides that were delivered on May 24th, 2011. Can I  
15 ask that we go to slide 9, please.

16 In this slide KPMG has identified that  
17 there are two (2) major options with respect to the  
18 electricity, LDC, they are the status quo and the  
19 sale. Under the sale option the slide goes on to note  
20 that the Town could sell its ownership interest in its  
21 entirety, or it could seek to sell only a partial  
22 interest in the utility retaining either a minority or  
23 a majority share.

24 We've seen that options that were  
25 ultimately presented to the Town included a strategic

1 partnership.

2                   As part of your work on this retainer,  
3 were you asked to evaluate a strategic partnership  
4 option for Collus Power and the Town of Collingwood?

5                   MR. JOHN HERHALT:    No, we were not.

6                   MS. KATE MCGRANN:    We know that what  
7 was ultimately sold was 50 percent of the shares in  
8 the Collus Utilities Services holding company.

9                   When we look at this slide, I see a  
10 discussion about partial interests and the Town  
11 retaining either a minority or a majority share.  
12 Would the sale of 50 percent of the shares fall within  
13 the work that KPMG did on analy -- in analysing the  
14 sale options here?

15                  MR. JOHN HERHALT:    Well, it would have  
16 -- it would have fallen under the partial interest.  
17 In this particular case, 50 percent, I would argue, is  
18 not minority or majority.  It's clearly equal, so.  
19 But it's certainly a partial interest deposition.

20                  MS. KATE MCGRANN:    You identified that  
21 50 percent is equal amount of minority or majority.

22                  Would the sale of 50 percent of the  
23 shares require additional comment from your group in -  
24 - in a presentation like this?

25                  Does it raise additional concerns that

1 aren't posed by a minority or a majority share sale?

2 MR. JOHN HERHALT: I'm trying to think  
3 of whether or not. I mean, a partial interest  
4 disposition has many of the same similarities.  
5 Clearly, in a 50/50 arrangement, I think probably the  
6 most significant one (1) that you'd probably speak to  
7 a little differently is governance given the fact that  
8 now you have a 50/50 arrangement, so what does that  
9 mean in terms of governance and some of the things  
10 that go around Board representation.

11 But that would be -- to me, would  
12 have been the nuance. I think some of the others  
13 would revolve around the same considerations as any  
14 partial disposition, so.

15 MS. KATE MCGRANN: At this point in  
16 time, so it's -- this was delivered at May 24th, 2011.  
17 In or about May 2011, were you aware of any 50/50  
18 ownership splits of other LDCs in the Province?

19 MR. JOHN HERHALT: No, I was not.

20 MS. KATE MCGRANN: If we could turn to  
21 slide 14 of this slide presentation.

22

23 (BRIEF PAUSE)

24

25 MS. KATE MCGRANN: Slide up one (1)

1 and see -- there you go. So, this slide is titled,  
2 "Affiliate relationships." It talks about the impact  
3 of a sale transaction on relationships with the Town  
4 and the water utility.

5 The last sentence in the first  
6 paragraph -- first of all, we can start at the very  
7 beginning. The slide notes that:

8 "Collus provides management and  
9 support services to both the LDC and  
10 to the water utility."

11 It goes on to note that an ECL  
12 transaction could result in changes in these  
13 management and support service arrangements and this  
14 could ultimately have an impact on costs going forward  
15 at the Town and the water utility. And the side note  
16 says:

17 "Any such impacts would ultimately  
18 need to be examined as part of the  
19 financial analyses from the Town's  
20 perspective of any proposed  
21 transaction."

22 At any point between when you were  
23 retained to do the valuation and options analysis work  
24 through to the work that your group did on the RFP and  
25 afterwards, were you asked to examine the item that's

1 raised in this slide?

2 MR. JOHN HERHALT: No, we were not.

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: If you look at the  
7 two (2) bullet points on this slide, they discuss what  
8 potential purchasers of the utility may want to do  
9 with respect to the relationships Collus had with the  
10 Town and water utility.

11 At any point during the time that you  
12 were working on the valuation and options analysis or  
13 the RFP and the subsequent transaction were you  
14 involved in any discussions about what the Town would  
15 want of the transaction with respect to its  
16 relationships with the utility and the water utility?

17 MR. JOHN HERHALT: I can't recall  
18 precisely. I think there was some limited  
19 conversation around the Strategic Partnership Task  
20 Team around this which clearly included mem --  
21 representation from the Town and the utility.

22 But, again, I would -- I can't reflect  
23 -- recollect any specifics, so.

24 MS. KATE MCGRANN: Okay. Beyond what  
25 you've just told us about having a general

1 recollection -- recollection of some discussion with  
2 the Strate -- Strategic Task Team meetings, can you  
3 tell us anything about what you remember about those  
4 discussions?

5 MR. JOHN HERHALT: Well, jumping  
6 ahead, I suppose, but really the conclu -- the  
7 conclusion of the task team even before I arrived was  
8 they were really setting aside the Collus Solutions  
9 component of the Collus structure, which is where the  
10 services were being delivered from.

11 So, it was really focussed only on the  
12 LDC and the conversation was about really that, and --  
13 and so we didn't -- I didn't explore that any further  
14 degree, so.

15 MS. KATE MCGRANN: Okay. So, am I  
16 right in understanding that when you began your work  
17 with the Strategic Task Team, and we will come to that  
18 in a second, the decision had already been made not to  
19 look at the relationship as between the LDC and Collus  
20 Solutions for the purpose --

21 MR. JOHN HERHALT: Yeah.

22 MS. KATE MCGRANN: -- of the RFP?

23 MR. JOHN HERHALT: True. It was  
24 focussed on the LDC.

25 MS. KATE MCGRANN: And where you had -

1 - were you asked for your opinion or advice about that  
2 decision, to not look at those relationships for the  
3 RFP?

4 MR. JOHN HERHALT: No.

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: I'm going to turn  
9 now to a presentation that was made to the Town.

10 Could you turn up CPS4397?

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: So, this  
15 presentation was titled:

16 "Collingwood Utility Services  
17 confidential review of options June  
18 20 --"

19 It's dated June 27th, 2011. Are you  
20 familiar with this slide presentation?

21 MR. JOHN HERHALT: I have seen it,  
22 part of the Foundation Document, correct.

23 MS. KATE MCGRANN: Were you provided  
24 with a copy of this slide presentation for your review  
25 and comment before the presentation was made on June

1 27th, 2011?

2 MR. JOHN HERHALT: No, I was not.

3 MS. KATE MCGRANN: To your knowledge,  
4 were any members of your team who worked on the  
5 valuation and options analysis provided with a copy of  
6 the deck for review and comment before it was  
7 presented to the Town?

8 MR. JOHN HERHALT: Not to my  
9 knowledge.

10 MS. KATE MCGRANN: I think you've  
11 answered this question, but do you remember if you saw  
12 this slide presentation at any time betwee -- in the  
13 2011 to 2012 period?

14 MR. JOHN HERHALT: I think a copy of  
15 this did find its way to us at some point, but I can't  
16 recall exactly when.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: Could we go to  
21 slide 20 to 20 -- 21, sorry? So, this slide discusses  
22 a strategic partner option. You've already told us  
23 that you were consulted on this. Could we -- this  
24 option. Could we slide down to slide 22, please?

25 This slide describes an evaluation of

1 the strategic partner option. It lists a number of  
2 advantages. You can see a cash payment, reduced risk  
3 of being in the electricity distribution business,  
4 retains an income stream, operating synergies with the  
5 Town, control policy challenges.

6 If we could go down to the next slide,  
7 please, potential other opportunities and an interest  
8 in Collus. It lists a single disadvantage, that a  
9 transfer tax was payable.

10 In your view, is that the only  
11 disadvantage of a strategic partner option?

12 MR. JOHN HERHALT: Well, actually, you  
13 know, if you -- if you flip back to the previous  
14 slide, you could -- and I think this was in some of  
15 the work that we did, you could clearly turn some of  
16 the advantages into disadvantages, as well, or at  
17 least risks.

18 So, we've -- one (1) of the -- one (1)  
19 of the things that needs to be managed in this  
20 arrangement, as I mentioned earlier, is governance.  
21 It doesn't mean it can't be managed. It can be  
22 managed, but you have to think that one (1) through.

23 This one (1) speaks to the advantage of  
24 retaining an income stream. However, you also have  
25 lost part of an income stream. Mind you, you've

1 received a cash payment, so, hopefully, that cash  
2 payment is -- is what you wanted to effectively take  
3 away from the fact that you've lost part of your  
4 income stream.

5 Control? Yeah, there is still joint  
6 control, but you've lost full control, so you could  
7 turn that to -- I mean, it's really the flip side of  
8 these -- some of these items that I would say could be  
9 construed as possible disadvantages, so.

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: We see from the  
14 documents that after you're delivered its work product  
15 on May 24th, there's a revision that is made to the  
16 options analysis slides in early July.

17 Beyond that revision, did your group do  
18 any more work on the valuation or options analysis  
19 retainer?

20 MR. JOHN HERHALT: Not to my  
21 knowledge.

22 MS. KATE MCGRANN: And we see that you  
23 were retained to assist with the Collus Power RFP.  
24 And that's what we're going to start talking about  
25 now. If we could turn up CPS2356, please.

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Can we scroll to  
4 the bottom so we could see the first email in this  
5 chain?

6

7 (BRIEF PAUSE)

8

9 MS. KATE MCGRANN: So, in this chain  
10 we see Mr. Houghton email you on August 30th. The  
11 subject of the email is, "Strategic Partnership plan."  
12 He asks you to give him a call. If we could scroll  
13 up.

14 You indicate that you're in London,  
15 England and -- and you look to set up a time for the  
16 call. We could scroll up further. It looks like  
17 you're -- you're trying to arrange a time to call and  
18 you ask, "What is the Strategic Partnership Plan  
19 about."

20 So, a couple of questions about this  
21 email chain. First of all, do you remember this email  
22 exchange with Mr. Houghton?

23 MR. JOHN HERHALT: Yeah, broadly.  
24 Broadly. I remember that's when he reached out for  
25 me, right, and I was out of town, yeah.

1 MS. KATE MCGRANN: So, would this have  
2 been the first contact that you had from anyone at the  
3 Town or Collus Power about assisting with an RFP?

4 MR. JOHN HERHALT: Yes.

5 MS. KATE MCGRANN: Had you had any  
6 contact or done any continued work for Collus Power or  
7 the Town between the time that you'd deliver the final  
8 version of the value -- of the options analysis and  
9 this email, so through the summer?

10 MR. JOHN HERHALT: No.

11 MS. KATE MCGRANN: In your email that  
12 we're looking at right now you ask:

13 "What is the Strategic Partnership  
14 plan -- plan about?"

15 Was this email the first time that you  
16 had heard Collus or the Town make reference to a  
17 strategic partnership?

18 MR. JOHN HERHALT: Yes.

19 MS. KATE MCGRANN: Do you remember  
20 what explanation you received in response to your  
21 question there?

22 MR. JOHN HERHALT: Well, only -- I  
23 don't recall the specific conversation. Certainly, I  
24 learned about what the -- what they -- what they were  
25 contemplating in terms of the strategic partnership

1 arrangement, partial sale, 50 percent sale, along with  
2 looking for someone who would fit the attributes of  
3 what was described as the strategic partner.

4 I think Mr. Houghton, at that time,  
5 when we got on the phone, ultimately told me about the  
6 establishment of the Strategic Partnership Task Team  
7 and its representation. And then we talked about what  
8 assistance they were looking for from us.

9 MS. KATE MCGRANN: And do you remember  
10 what -- what in those initial discussions you were  
11 told about the kind of assistance that they were  
12 looking for?

13 MR. JOHN HERHALT: Yeah, primar -- it  
14 was primarily to -- I think the engagement letter says  
15 this, that, first, to attend both meetings of -- of  
16 the task team but also the bidder meetings that they  
17 had already begun to set up to assist them with the  
18 development of the RFP and to assist them with the bid  
19 evaluations.

20 There was some distribution -- I asked  
21 them -- I recall this. I asked some other questions  
22 about other things that I knew that might be pertinent  
23 in a process like this.

24 But those were really not thought  
25 through by Mr. Houghton at that point, so we agreed

1 that, you know, we'd leave that open and, to the  
2 extent that they looked for our assistance on those  
3 things later, that we would speak about those at the  
4 time they arose, so.

5 MS. KATE MCGRANN: Can you remember  
6 what the -- the pertinent items that you raised were?

7 MR. JOHN HERHALT: Well, for example,  
8 I me -- mentioned even at the time how -- how the data  
9 room would be managed and -- and taken care of, you  
10 know, to the extent that there are post -- post bid  
11 evaluation types of activities, assistance with those.

12 I think those were a couple -- two (2)  
13 or three (3) of them like that. But I don't -- I  
14 don't think those had been well thought through, so we  
15 just didn't try to get too specific about them.

16 MS. KATE MCGRANN: You were contacted  
17 by Mr. Houghton. Who did you take instructions from  
18 in your work on the RFP?

19 MR. JOHN HERHALT: Well, clearly, Mr.  
20 Houghton was my primary point of contact, but the  
21 instructions really came from the Strategic  
22 Partnership Task Team as a whole.

23 And there was a process that I took  
24 them through to come to the final draft of the RFP,  
25 so.

1

2

(BRIEF PAUSE)

3

4

MS. KATE MCGRANN: We see that you  
5 attended meetings with potential bidders in September  
6 of 2011. Was that the first time that -- that you did  
7 any work on the RFP for -- for your client?

8

MR. JOHN HERHALT: So, when I  
9 attended, I think it was the 12th and the 19th, where  
10 there bidder meetings on both those days, it was -- it  
11 was set up as Strategic Partnership Task Team  
12 meetings. The bidders were involved to those  
13 meetings. But there was also -- there were also  
14 discussions before and after the bidders.

15

And I spent most of my time really just  
16 learning and understanding what they were trying to do  
17 because in those bidder meetings, the task team were  
18 explaining to them what they were interested in what  
19 they were looking for, and they were clearly looking  
20 for a number of things for the bidders to speak to  
21 them about, and so that gave me an opportunity to  
22 really think through what the aspects were of what  
23 might be looked for in an RFP.

24

I can go further but I don't want to  
25 overdo it.

1 MS. KATE MCGRANN: No. I'm -- I'm  
2 happy to hear what you --

3 MR. JOHN HERHALT: So -- so what I did  
4 was, as a result of those meetings and -- and probably  
5 some follow-up calls, but I can't tell you  
6 specifically when those were, I put together a -- call  
7 it a slide deck, which was really the -- what I would  
8 call the frame or the essence of the RFP, based on  
9 what I had heard at those meetings and the discussions  
10 we had had, and using that frame then, there was a  
11 meeting scheduled with the task team on 28th of  
12 September where really, even though I had put the  
13 frame together, there were a number of things that  
14 still had to be decided and thought through and  
15 discussed.

16 And really I used that deck to walk  
17 them through that discussion and facilitated that  
18 discussion and looked for, through the Chair, Mr.  
19 Muncaster and the team, to come to consensus on what  
20 they wanted those elements to look like. And from  
21 that point, I prepared a draft of the RFP, which I  
22 think I delivered through Mr. Houghton, September the  
23 30th, and that was kind of life through that period,  
24 so.

25 MS. KATE MCGRANN: Okay. Turning back

1 to the -- the two (2) strategic task team meetings you  
2 attended where bidder -- bidders were invited to  
3 attend, by that point in time were you aware that Mr.  
4 Houghton and Mr. Muncaster had already attended a  
5 series of meetings with potential bidders earlier in  
6 the summer?

7 MR. JOHN HERHALT: I heard that. I  
8 heard that during those meetings, yes.

9 MS. KATE MCGRANN: Okay. So was --  
10 you were not involved in those meetings?

11 MR. JOHN HERHALT: No, I was not.

12 MS. KATE MCGRANN: You weren't  
13 consulted about what those meetings should look like  
14 or anything like that?

15 MR. JOHN HERHALT: No. The meetings -  
16 - are you talking about the meetings on September 12th  
17 and 19th or --

18 MS. KATE MCGRANN: I'm talking about  
19 the -- sorry, I apologize. I should have been clear.

20 With respect to the meetings that had  
21 occurred in -- in July as between Mr. Houghton and Mr.  
22 Muncaster, they didn't speak to you ahead of those  
23 meetings?

24 MR. JOHN HERHALT: No. I wasn't aware  
25 of that. I didn't -- I didn't become aware of this

1 until the 30th of August when Ed reached out to me.

2 MS. KATE MCGRANN: Turning back now to  
3 the two (2) strategic task team meetings in September  
4 that you attended and bidders also attended, did you  
5 provided any advice on the structure of those meetings  
6 or how they should be run?

7 MR. JOHN HERHALT: Those were already  
8 teed up really before I even had my first meeting with  
9 the task team, so.

10 MS. KATE MCGRANN: Was it your  
11 understanding that the information discussed at those  
12 two (2) meetings was to be kept confidential?

13 MR. JOHN HERHALT: I would have  
14 believed so, yeah.

15 MS. KATE MCGRANN: Do you recall, or  
16 to your recollection, did the strategic task team  
17 provide any feedback to the potential bidders on their  
18 presentations at those meetings?

19 MR. JOHN HERHALT: I don't know  
20 whether there was any formal feedback. Clearly after  
21 the bidder meetings concluded, in each case there was  
22 lots of dialogue and discussion before people were to  
23 -- would leave, and I'm sure some of the task team  
24 people gave, you know, sort of verbal feedback to some  
25 of the members of the -- of the -- of the bidders that

1 were presenting, but nothing formal that I'm aware of,  
2 so.

3 MS. KATE MCGRANN: Okay. And when you  
4 say that you're sure that some of the task team  
5 members would have given feedback, do you specifically  
6 recall being aware of any feedback that was given to  
7 the bidders at those meetings?

8 MR. JOHN HERHALT: I can't recall  
9 specifically, no.

10 MS. KATE MCGRANN: Okay. And -- and  
11 after those meetings were complete, do you know if any  
12 feedback was provided to the bidders on the  
13 presentations they had given?

14 MR. JOHN HERHALT: Not that I'm aware  
15 of.

16 MS. KATE MCGRANN: You told us that  
17 when you were first contacted about the RFP, you  
18 understood that the STT had already been formed and  
19 they had met before?

20 MR. JOHN HERHALT: I believe that's  
21 right. I think Mr. Houghton mentioned to me that it  
22 was as a result of a task team meeting that their  
23 discussion came up to contact me on the 30th of  
24 August.

25 MS. KATE MCGRANN: What did you

1 understand the role of the strategic task team to be  
2 in the process?

3 MR. JOHN HERHALT: Well, my  
4 understanding was, it was to -- to govern this process  
5 around asking for requests for proposal, to evaluate  
6 the bids that were returned from that RFP, and make a  
7 determination of -- of who they would recommend would  
8 be the appropriate strege -- strategic partner for  
9 Collus Power and the Town to proceed with -- my  
10 understanding.

11 MS. KATE MCGRANN: When you were  
12 retained to do work on the RFP, did you understand  
13 that you would also be asked to make a recommendation  
14 to Collus Power or the Town about which of -- which of  
15 the bidders should be selected?

16 MR. JOHN HERHALT: No, I was not aware  
17 of that.

18 MS. KATE MCGRANN: You mentioned that  
19 when you had been retained, the strategic task team  
20 meetings with the bidders had already been set up.

21 Had any other decisions been made by  
22 the strategic task team about the process of the RFP  
23 before you became involved?

24 MR. JOHN HERHALT: Well, certainly  
25 some of them were. I mean, the view that it would be

1 a 50/50 arrangement had been determined, that the  
2 focus was on Collus Power and not any of the other  
3 Collus group companies. The -- the decision, as you  
4 say, about the bidder meetings happening in advance of  
5 the RFP being issued had been decided.

6 I remember -- there are probably a  
7 couple of others but -- they'd already talked about  
8 some of the RFP criteria in meetings prior to me  
9 arriving in broad terms, not well-developed yet  
10 obviously at that point, and I think that was it. I  
11 think those are the main ones that they had already  
12 concluded, so.

13 MS. KATE MCGRANN: Were you asked to  
14 provide advice on any of those items, decisions that  
15 should be made about those?

16 MR. JOHN HERHALT: No. I did ask some  
17 questions around them, which they had already  
18 concluded they didn't want to proceed there. For  
19 example, I did ask whether or not Collus Solutions  
20 would be part of it or not and they had said no, they  
21 wanted it to be the LDC and they'd already  
22 communicated that to the bidders, I think.

23 The -- I -- I asked -- in fact I think  
24 you'll see it in the slide deck, I put it as a  
25 potential thing to think about, whether or not they

1 would want to have an Option B in the RFP for having  
2 the bidders propose on what they would offer if it was  
3 a full sale as opposed to just a partial sale, but  
4 that clearly was not their interest. The task team's  
5 had -- they'd -- either at the Town meetings or  
6 whatever, I think they'd already concluded they didn't  
7 want to go there.

8 I proposed and I thought about some  
9 request for proposal processes have bidder meetings  
10 after the bids are received, oral presentations so to  
11 -- so to speak, but they had concluded that they  
12 wanted to do the bidder meetings in advance, get the  
13 RFPs, and make the evaluation based on the proposals  
14 submitted, so. I think those were the -- those are  
15 three (3) of the main ones that I recall making some  
16 points about.

17 MS. KATE MCGRANN: In -- in discussing  
18 the strategic task team, the questions that you've  
19 just identified for us, those three (3) questions, can  
20 you help us understand what the nature of those  
21 conversations were like?

22 And I'm trying to understand whether it  
23 was -- whether it was the case where you asked whether  
24 the strategic task team wanted to, for example,  
25 receive presentations after the responses were

1 submitted and -- and they gave you a "yes" or "no"  
2 answer on the one end or whether the conversation was  
3 more along the lines of you giving them advice about  
4 which of -- you know, have a presentation, don't have  
5 a presentation, this is what I think you should do,  
6 and I'm choosing to take or not take your advice,  
7 somewhere in between?

8 MR. JOHN HERHALT: It was probably  
9 somewhere in between. I was just providing them with  
10 a view of how I've seen other processes go. Bidder  
11 meetings in advance aren't always, at least in the  
12 format that was done aren't -- they are done, no  
13 question. They aren't always done.

14 I think in this particular case -- and  
15 I came to understand there was lots of value in that  
16 because they were trying to make sure the bidders had  
17 a clear understanding of what the strategic  
18 partnership component of this was, which was unique in  
19 terms of what other LDCs in the province had done.

20 So I think I understood that completely  
21 and I think they saw that as a valuable way to get an  
22 understanding of what the bidders were about and what  
23 they would provide on an oral basis.

24 My point on the doing an oral  
25 presentation afterward is that you then often have an

1 opportunity to explore details of the RFP that you  
2 didn't quite understand, or need more clarity. I  
3 mean, you can do that offline. You can send emails,  
4 ask questions, clearly, but sometimes they're --  
5 they're more fulsome if -- if you have a -- a meeting.

6           So I would -- just to -- I'm -- that's  
7 a long-winded answer, sorry for that. But I think --  
8 I think the point was that it was back and forth, and  
9 -- and they'd already felt comfortable with the idea  
10 of only going with the pre-RFP meetings.

11           MS. KATE MCGRANN: Looking at the  
12 issues that you raised, including a -- offering a --  
13 an option B in the RFP for people to bid on a full  
14 sale, or taking oral presentations after the responses  
15 were submitted, you mentioned using the -- the  
16 presentations as an example that you were giving them  
17 information, I think, about what had been done in  
18 other RFPs that you had seen.

19           Is that fair?

20           MR. JOHN HERHALT: In those particular  
21 components, yeah. I -- I hadn't seen necessarily the  
22 option A and B partial -- full sale, although I -- I  
23 think that that has been done, but I -- that was more  
24 just to explore whether or not this was absolutely  
25 concluded that it's only going to be a partial sale,

1 or whether or not there was still consideration being  
2 given to looking for whether a bidder would offer  
3 something different if it was 100 percent purchase,  
4 so.

5 MS. KATE MCGRANN: Were those  
6 discussions where you're asking questions about  
7 whether they would like to take these steps in the  
8 nature of you giving the Strategic Task Team options  
9 that they could take, or did you also give them advice  
10 about which option you thought they should take and  
11 why?

12 MR. JOHN HERHALT: No. They were more  
13 about options they could take. I saw the Task Team  
14 was already having gone down a path where they'd --  
15 were fairly already clear on how they were proceeding,  
16 and what they were proceeding for, but nevertheless, I  
17 thought it was appropriate for me to at least get them  
18 to think about it and make sure that that decision was  
19 what they were -- what they had concluded on, and they  
20 were comfortable -- they'd landed where they wanted to  
21 land, so.

22 MS. KATE MCGRANN: And we'll talk  
23 about this in a little bit more detail. It may be  
24 that you can't answer a question at this high level,  
25 but in the work that you did with the Strategic Task

1 Team to create, or assemble, or draft the RFP  
2 document, you're taking on the role of facilitator to  
3 help draw out the decisions that have been made about  
4 the RFP in order to allow you to draft it, or were you  
5 providing them with advice about what should be in the  
6 RFP and what decisions they should make about what  
7 went in?

8 MR. JOHN HERHALT: Well, it was a  
9 combination of both -- a combination of both. The  
10 frame that I put together was one that said, here's  
11 what I suggest the components of the RFP should  
12 include --

13 MS. KATE MCGRANN: M-hm.

14 MR. JOHN HERHALT: -- and clearly,  
15 there were some that I thought, you know, we -- we  
16 have to have these in there or -- in some form. But  
17 there were other things where clearly, I believed it  
18 was the Task Team's role to decide, for example, the  
19 criteria had to be what they saw as what the Task Team  
20 representing the Town and Collus Power wanted the  
21 proponents to be -- to be proposing on and -- and  
22 clearly being evaluated on it.

23 And surely, I -- I provided some tweak  
24 and some colour on what I thought some of those might  
25 be. But again, it had to be what they wanted. And

1 then clearly, the weighting of the evaluation  
2 criteria, it had to represent what they thought was  
3 important. So -- so I -- again, I hope I've answered.  
4 It's a combination of both, so.

5 MS. KATE MCGRANN: We'll turn up the  
6 retainer letter, which is at TOC515777.

7 THE HONOURABLE FRANK MARROCCO: Okay.  
8 Can I -- are you moving, then, to a different topic?

9 MS. KATE MCGRANN: This is a good time  
10 to ask a question.

11 THE HONOURABLE FRANK MARROCCO: All  
12 right. In -- in terms of the option B, I think you  
13 called it, a full sale, and you -- you said that was  
14 clearly on the table as far as the Strategic Task Team  
15 was concerned.

16 Was that communicated to the bidders?

17 MR. JOHN HERHALT: It was. In fact,  
18 it was even in the RFP. It -- it actually said in the  
19 RFP that to the extent that -- and I don't have it in  
20 front of me at the moment, but I'm pretty certain it  
21 said that if they proposed a bid that -- that was  
22 other than what was being requested, they would be  
23 disqualified?

24 THE HONOURABLE FRANK MARROCCO:  
25 Disqualified?

1 MR. JOHN HERHALT: Right.

2 THE HONOURABLE FRANK MARROCCO: All  
3 right.

4 MR. JOHN HERHALT: And that question -  
5 - sorry, Your Honour -- that question actually came up  
6 from the bidders -- after the RFPs were issued, there  
7 were questions that came up.

8 THE HONOURABLE FRANK MARROCCO: And --  
9 and were they -- and they were told that -- that --

10 MR. JOHN HERHALT: Yes.

11 THE HONOURABLE FRANK MARROCCO: --  
12 it's right in the bid?

13 MR. JOHN HERHALT: Yeah.

14 THE HONOURABLE FRANK MARROCCO: So.

15 MR. JOHN HERHALT: But still, some --  
16 some -- you know how it goes, so, right?

17 THE HONOURABLE FRANK MARROCCO: Yes, I  
18 do.

19 We -- maybe this is a good point, take  
20 the break? We'll -- we'll take ten (10) minutes.

21 MR. JOHN HERHALT: Okay.

22

23 --- Upon recessing at 11:06 a.m.

24 --- Upon resuming at 11:18 a.m.

25

1 CONTINUED BY MS. KATE MCGRANN:

2 MS. KATE MCGRANN: A question that His  
3 Honour asked just before the break.

4 Do you recall what information was  
5 communicated to the potential bidders about what was  
6 going to be available for sale on the RFP at the  
7 initial bidder meetings in September? Do you remember  
8 what they were told?

9 MR. JOHN HERHALT: I believe even at  
10 that time they were being told that it was the LDC,  
11 but I have to admit, do I know specifically that  
12 that's what was said? I can't recall exactly, but I  
13 think so.

14 MS. KATE MCGRANN: And following on  
15 that question, do you recall whether the bidders were  
16 given information about whether the sale would involve  
17 all of the LDC, a partial sale of the LDC and if it  
18 was partial, what the partial sale would look like?

19 MR. JOHN HERHALT: Oh -- pretty  
20 certain at that time it was already 50/50 strategic  
21 partnership, yes.

22 MS. KATE MCGRANN: Okay, that was the  
23 information that the bidders were given at those  
24 meetings?

25 MR. JOHN HERHALT: Yes, yes.

1 MS. KATE MCGRANN: So could we turn up  
2 the retainer letter, which is at TOC515777? If we  
3 scroll to the bottom of the letter for a second?

4 That's signed by someone on behalf of  
5 Collus Power. Do you know whose signature that is?

6 MR. JOHN HERHALT: It's Ed Houghton's.

7 MS. KATE MCGRANN: Okay, could we  
8 scroll up a little bit further? Okay, could we go up  
9 to the top of the page again?

10 So this is a retainer letter, I think  
11 from you addressed to Mr. Houghton's, CEO of the  
12 Collingwood Utility Services. In the first paragraph  
13 it's written:

14 "KPMG is pleased to submit this  
15 proposal to Collus Power to help you  
16 and your shareholder, the Town of  
17 Collingwood, with the pursuit of the  
18 strategic partner."

19 The retainers with Collus Power, who  
20 did you understand your client on this engagement to  
21 be?

22 MR. JOHN HERHALT: Well, in this case,  
23 at that point I was already made aware of the  
24 strategic partnership task team and its  
25 representation, including both representatives from

1 the Town and from the utility. So I actually saw my  
2 client as being both.

3 MS. KATE MCGRANN: Would it be unusual  
4 to sign a retainer letter with one (1) client when you  
5 saw your retainer as being with more than one (1)  
6 client?

7 MR. JOHN HERHALT: Well, the -- the  
8 direct connection and the communication was all from  
9 Mr. Houghton and clearly at that point that's the  
10 communication that I saw as the one that was being  
11 asked for.

12 But in terms of the work we were doing  
13 and the fact that it was a 50 percent disposition, but  
14 also the selection of a strategic partner, I saw both  
15 Collus Power and the Town as being the client.

16 MS. KATE MCGRANN: Do you remember  
17 having any conversations with anyone about whether the  
18 retainer letter should be addressed to/signed by both  
19 Collus Power and the Town?

20 MR. JOHN HERHALT: We did not have  
21 that conversation, no.

22 MS. KATE MCGRANN: Was it your  
23 understanding that the strategic task team had been  
24 authorized by Collus Power and the Town to provide  
25 instructions to you on behalf of both of those

1 entities?

2 MR. JOHN HERHALT: That was my  
3 understanding.

4 MS. KATE MCGRANN: Do you remember  
5 where you got that understanding from?

6 MR. JOHN HERHALT: Only from the  
7 discussions and meetings.

8 MS. KATE MCGRANN: Did anyone say to  
9 you the strategic task team has been authorized to  
10 provide instructions to you on behalf of the Town?

11 MR. JOHN HERHALT: Not explicitly.

12 MS. KATE MCGRANN: It was an  
13 understanding that you came to based on the nature of  
14 the discussions and the steps that were being taken?

15 MR. JOHN HERHALT: Yep. Sorry, yes.

16 MS. KATE MCGRANN: And if we could  
17 scroll down the page. You've described the scope of  
18 work that you had initially discussed, and we see that  
19 captured in these three bullet points.

20 You're going to participate in the --  
21 the interviews of the four potential strategic  
22 partners, prepare and discuss a request for proposal  
23 for issue and assist with the evaluation of the  
24 proposals.

25 After the signing of this retainer

1 engagement, did the scope of the work that you were  
2 asked to do change at all?

3 MR. JOHN HERHALT: Over time. Over  
4 time it did. We -- well, two -- two (2) specific  
5 things that evolved.

6 We were asked at one point during the  
7 time the RFP was outstanding to consider some tax  
8 issues. We were also asked post the termination of  
9 the preferred proponent to provide some -- some input  
10 on financial matters associated with the transaction.

11 There may be some other bits and  
12 pieces, but those were the big ones, so.

13 MS. KATE MCGRANN: Was an updated  
14 retainer or letter ever created and signed or did the  
15 work just kind of happen organically?

16 MR. JOHN HERHALT: No, it -- it  
17 followed under this, if you scroll further down on  
18 this letter where it's -- for example, the data room  
19 work was, as I said, something that wasn't  
20 contemplated originally.

21 So we had said originally the cost of  
22 any tasks --

23 MS. KATE MCGRANN: I think if we  
24 scroll down to the next page we'll see the section  
25 that you're looking at, the fee estimate. Is this

1 what you're referring to?

2 MR. JOHN HERHALT: Yes, yes. So yeah,  
3 the second paragraph under fee estimate, that was to  
4 capture the fact that we knew there were other things  
5 that were going to happen and I would have a  
6 conversation with Mr. Houghton and/or Mr. Muncaster  
7 about when they asked for additional things, that  
8 that's -- that would take additional hours and get  
9 their authorization to proceed, so.

10 MS. KATE MCGRANN: Was there anyone  
11 other than Mr. Houghton or Mr. Muncaster that you  
12 would have discussions with about additional work that  
13 you were taking on and the resulting additional costs?

14 MR. JOHN HERHALT: Generally not.

15 MS. KATE MCGRANN: At any time do you  
16 remember speaking to anyone other than the two of  
17 those gentlemen about additional work and additional  
18 cost?

19 MR. JOHN HERHALT: I don't recall, no.

20 MS. KATE MCGRANN: In the first line  
21 of your fee estimate the estimate assumed tasks for a  
22 total number of 40 professional hours.

23 Fair to say that your team spent more  
24 than forty (40) professional hours on the work that it  
25 did on this engagement?

1 MR. JOHN HERHALT: We did, yeah.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: I'd like to talk  
6 some more about the work that you did at the meetings  
7 of the strategic task team, based on the instructions  
8 you received from them.

9 Could we turn to paragraph --

10 Foundation document paragraph 282, please?

11 Paragraph 282 describes and sets out  
12 handwritten notes that you had made prior to September  
13 28th, 2011. You had told us before the break that  
14 when you attended the two strategic task team  
15 meetings, where the bidders were invited to make  
16 presentations, you took notes of the topics that were  
17 presented by the questions that the members of the  
18 strategic task team asked. Is that fair?

19 MR. JOHN HERHALT: Yes, among other  
20 things, but yeah.

21 MS. KATE MCGRANN: Other than  
22 observing the questions that the strategic task team  
23 members were asking and the discussions they were  
24 having with the potential bidders, what else did you  
25 do at those two (2) meetings to learn what the

1 strategic task team was looking for in terms of the  
2 strategic partner? What information should go into  
3 the RFP?

4 MR. JOHN HERHALT: Well, in addition  
5 to the actual meetings with the bidders, there were  
6 discussions that were had before the bidders arrived  
7 and afterward.

8 During those discussions I asked some  
9 questions to learn more about what was being thought  
10 about and what was being -- what the objectives were.  
11 Even though I was mostly an observer in those bidder  
12 meetings there -- from time to time I would ask a  
13 question and try to glean more, just to make sure I  
14 understood what was being said or being asked.

15 But that's primarily it. At least at  
16 that stage, September 12th to the 19th.

17 MS. KATE MCGRANN: And if we go down  
18 to paragraph 283 of the Foundation document, this  
19 describes that you prepared and sent a draft RFP slide  
20 presentation to Mr. Houghton and that he presented it  
21 to the strategic partnership task team.

22 That's consistent with what you told us  
23 before. I'm going to ask that we take a look at the  
24 draft that was circulated, that's at CPS2405.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: I want to try and  
4 gain a better understanding of yours. The items on  
5 which you gave advice and provided an explanation as  
6 to why you thought the task team should do a  
7 particular thing, as compared to items on which you  
8 asked the strategic task team to tell you what they  
9 had decided to do and -- and you used that information  
10 to incorporate it into the RFP.

11 If we look on page 3 of this draft,  
12 purpose of the request, this starts with the request  
13 for proposals being issued by Collus Power Corp and  
14 the Town of Collingwood for the purpose of soliciting  
15 written proposals, the notion of the RFP being issued  
16 by the LDC and the Town jointly, is that an issue on  
17 which you gave advice?

18 MR. JOHN HERHALT: Yes, but it was  
19 also a view that I think was shared by the task team  
20 members.

21 As I said before, my -- my view too was  
22 that there -- there were two (2) things happening  
23 here. There was a disposition of a 50 percent  
24 interest by the owner and there was also the selection  
25 of an organization that was going to be a strategic

1 partner, and that strategic partner arrangement was  
2 more than just an investor, it was more than just  
3 somebody putting money into the -- into the -- getting  
4 money to the Town or getting money to the utility.

5 And as a result, there had to be  
6 comfort by Collus Power that in fact that partner was  
7 appropriate for them for the objectives they were  
8 trying to fulfill.

9 Now, I've never -- I thought this  
10 through, I -- I mean in some ways that part was more  
11 like finding a merger partner than it was making a  
12 disposition, so, just given its characteristics.

13 MS. KATE MCGRANN: Before this RFP had  
14 you been involved in RFPs that were issued jointly by  
15 the seller of the asset and the asset itself?

16 MR. JOHN HERHALT: Yes. Yes. M-hm.

17 MS. KATE MCGRANN: Did that happen in  
18 the LDC context?

19 MR. JOHN HERHALT: It did.

20 MS. KATE MCGRANN: Can you just  
21 provide us with examples that you recall of that?

22 MR. JOHN HERHALT: No. Off the top of  
23 my head -- let me give some thought to that, but...

24

25 (BRIEF PAUSE)

1 MS. KATE MCGRANN: If we can scroll  
2 down to page 7 of this draft -- other -- under the  
3 heading, "3.1 purchase of an ownership interest  
4 primary." The second last bullet point in this  
5 section is, "Proposed representation on the Company's  
6 Board of Directors."

7 Were you asked to or did you give any  
8 advice about the level of detail that should be put in  
9 the RFP with respect to what Collus Power and the Town  
10 wanted this to look like in the strategic partnership?

11 MR. JOHN HERHALT: No, we didn't -- we  
12 didn't get into a lot of detail. We were looking for  
13 the proponents to actually propose to tell the task  
14 team what they saw as the appropriate representation.

15 Clearly, the task team saw it as being  
16 one (1) that had equal representation, balanced  
17 representation. But I think -- on reflection, I think  
18 one (1) of the reasons it was asking for the  
19 proponents to pro -- deliver what they saw was I think  
20 people were also trying to assess what sort of a  
21 partner the organization would be that was making the  
22 proposal, I mean, to the extent that you had a  
23 proposal that looked for control on representation  
24 that said something different about partnership than  
25 someone else, right.

1                   So, I think there were -- the open-  
2 ended approach had -- had a purpose, as well.

3                   MS. KATE MCGRANN:    Did you give them  
4 advice on whether the open-ended approach was the best  
5 approach for what they were looking for or whether a  
6 different approach would be better, more appropriate?

7                   MR. JOHN HERHALT:    I think we had  
8 dialogue around that.  Exactly what advice I would  
9 have given, I can't tell you off the top of my head,  
10 but -- but I think that was part of the -- the reason  
11 for keeping some of them open-ended, so.

12                  MS. KATE MCGRANN:    And the reason was  
13 because the -- the Strategic Task Team was interested  
14 in evaluating what kind of a partner the respondents  
15 would be based on their response?

16                  MR. JOHN HERHALT:    Right.

17                  MS. KATE MCGRANN:    Is there any reason  
18 why they couldn't evaluate what kind of a partner the  
19 partner would be based on whether or not the partner  
20 would give the Strategic Task Team what they wanted?

21                  MR. JOHN HERHALT:    They could.  But if  
22 you said to them, well, the Board representation has  
23 to be this, and that's it, that wouldn't tell you much  
24 about what they thought about representation or  
25 governance to put it, so.

1 MS. KATE MCGRANN: I suppose it would  
2 tell you whether or not they would be willing to do  
3 what you wanted them to do?

4 MR. JOHN HERHALT: Oh, for sure, it  
5 would do that, yeah.

6 MS. KATE MCGRANN: Did the Strategic  
7 Task Team know what they wanted as far as  
8 representation on the Company's Board of Directors at  
9 the time the RFP was issued?

10 MR. JOHN HERHALT: I think in broad  
11 terms, yes.

12 MS. KATE MCGRANN: And did you give  
13 them any advice on -- on what the representation  
14 should look like, the implications of different kinds  
15 of --

16 MR. JOHN HERHALT: No, I did not.

17 MS. KATE MCGRANN: Were you asked to  
18 do that at all?

19 MR. JOHN HERHALT: No, I was not.

20

21 (BRIEF PAUSE)

22

23 THE HONOURABLE FRANK MARROCCO: While  
24 you're -- if -- this is probably a good time to ask  
25 it. In the retainer agreement it says you're going to

1 assist with the evaluation of the proposals.

2 Can you -- can you give me a sense of  
3 the nature of the assistance that was -- that was  
4 given or contemplated?

5 MR. JOHN HERHALT: Well, what was  
6 contemplated was not very well or very detailed in  
7 terms of what was -- was asked; it was assist. What  
8 it turned out to be ultimately was we --

9 THE HONOURABLE FRANK MARROCCO: I'm  
10 actually more interested in that, what it turned out  
11 to be.

12 MR. JOHN HERHALT: What it turned out  
13 to be, ultimately, was us, obviously, reviewing the  
14 proposals, providing input to our thoughts about what  
15 the proponent's proposals said and what the  
16 implications were.

17 Probably most fundamentally, if you  
18 recall, Mr. Rockx did most of this work, a fairly  
19 amount of detailed work around the financial  
20 components of those bids to ensure we understood what  
21 they meant on a comparative basis, but that was the  
22 primary assist that we provided, yeah.

23 THE HONOURABLE FRANK MARROCCO: Do --  
24 do I understand then that it didn't go so far as to  
25 recommend which one (1) of the proposals they should

1 accept or met their needs more than the others?

2 MR. JOHN HERHALT: No, it didn't,  
3 other than, and I know we're coming to this, at one  
4 (1) point during the bid evaluation discussions I was  
5 asked to provide how I would score the bids, which I  
6 did.

7 THE HONOURABLE FRANK MARROCCO: Right.

8

9 CONTINUED BY MS. KATE MCGRANN:

10 MS. KATE MCGRANN: Within this slide  
11 show, if we could go to slide 11, please. So, the  
12 proposal evaluation's set out here. This slide sets  
13 out that the proposals will be al -- evaluated using  
14 the following weighting. It lists a number of items.  
15 And you can see that the -- they add up to a hundred  
16 but there's no numbers in there.

17 Can you help us understand how the  
18 Strategic Task Team came to decide the items that  
19 would be the subject of evaluation and the weighting  
20 of -- assigned to each of those items?

21 MR. JOHN HERHALT: Sure. Well, some  
22 of these items they had al -- already had some  
23 discussion about before I arrived, so I was picking up  
24 on some of that. This slide does not capture how --  
25 all of how they finally fell out.

1                   If you go to the RFP, there were a  
2 couple of additions to this. And -- and so, that  
3 discussion that we had around these was not only to  
4 flush these out in terms of whether they were the  
5 right criteria and whether they were appropriately  
6 worded, but, also, there were a couple of others that  
7 were added to it.

8                   The discussion around weighting was a  
9 roundtable discussion that clearly tried to figure out  
10 what were the most important things to the task team  
11 in terms of these criteria.

12                   As it turned out to be, clearly, the  
13 ownership interests and the provision ser -- excuse me  
14 -- strategic and specialized resources was the two (2)  
15 most important, including support and growing the Col  
16 -- Collus Ca -- Power business, so those were the  
17 three (3) big ones.

18                   There was a lot of dialogue around what  
19 the weighting around the -- I'll call it the -- the  
20 purchase of the ownership interests should be. It was  
21 never -- it never started at a discussion of 50 -- 50  
22 percent of the -- of the weighting. It was a question  
23 of whether it was where it ended, at -- at 30 percent  
24 or 40 percent; that's really where the discussion  
25 went.

1                   Once again, because the task team saw  
2 the strategic partnership as the import -- and very  
3 important thing to them, and they wanted to make sure  
4 that that was taken into account in a heavy fashion on  
5 the evaluation, so.

6                   MS. KATE MCGRANN:     Okay.  You said  
7 that the Strategic Task Team had already had  
8 discussion about some of these items before you became  
9 involved.  Which of the items had they already had  
10 discussion about?

11                  MR. JOHN HERHALT:    Oh, I can't -- I  
12 don't have it right in front of me.  I think  
13 supporting growth was one (1) of them, supporting  
14 interests of the Town.

15                  I mean, obviously, the -- the purchase  
16 of the interest was one (1) that was there implicitly.

17                  MS. KATE MCGRANN:     M-hm.

18                  MR. JOHN HERHALT:    The stra -- the  
19 specialized resources and support were there for sure.  
20 The ones that were added were the -- the -- and I --  
21 they could have been discussed before, too.

22                  Cultural and synergistic match as well  
23 as providing opportunities for employees, that kind of  
24 thing, were added in addition to this.  And the  
25 community support I think was one (1) that was added,

1 as well.

2 So -- so, there were a number of them  
3 that they had already at least talked about, you know.  
4 Whether or not they concluded is another story, so.

5 MS. KATE MCGRANN: And was I correct  
6 in understanding your evidence to be that the -- the  
7 first three (3) items on this side, the purchase of an  
8 ownership interest, the provision of strategic and  
9 specialized resources, support in growing the Collus  
10 Power business were the three (3) primary goals?

11 MR. JOHN HERHALT: Those were the most  
12 heavily weighted.

13 MS. KATE MCGRANN: Okay.

14 MR. JOHN HERHALT: Yeah.

15 MS. KATE MCGRANN: And were they the  
16 most heavily weighted because they were the primary  
17 goals of the Strategic Task Team?

18 MR. JOHN HERHALT: I believe so, yeah.  
19 I mean, clearly, the ownership interest was -- the  
20 purchase of the ownership interest was important  
21 because they -- they clearly did want to make sure  
22 that they received appropriate value for the 50  
23 percent disposition as well as the components that  
24 went with that around the governance.

25 But the strategic and specialized

1 resources in the growth agenda I think were one (1) of  
2 their big -- two (2) of their big items, so.

3 MS. KATE MCGRANN: It's my  
4 understanding that you used this slide presentation as  
5 part of the work that you did at the September 28th  
6 task meeting to work through the creation of the RFP?

7 MR. JOHN HERHALT: Correct.

8 MS. KATE MCGRANN: Other than the --  
9 the discussions at the two (2) meetings where bidders  
10 were invited, the Strategic Task Team -- on  
11 September 28th, were there any other meetings of the  
12 Strategic Task Team in which the group worked on  
13 assembling the RFP?

14 MR. JOHN HERHALT: No. Their meetings  
15 that I'm aware of -- there may have been -- I'm pretty  
16 certain there were, but I won't be able to tell you  
17 precisely when -- offline conversations on some items  
18 to -- to get clarity. But not -- not official  
19 meetings that I'm aware of.

20 MS. KATE MCGRANN: The offline  
21 conversations that you're describing, who were those  
22 with?

23 MR. JOHN HERHALT: I think probably  
24 with -- and again, I'm surmising here -- Ed and -- and  
25 perhaps Mr. Muncaster.

1 MS. KATE MCGRANN: Offline  
2 conversations with -- who else was involved? Were  
3 they conversations that you had with Mr. Houghton --

4 MR. JOHN HERHALT: Yes.

5 MS. KATE MCGRANN: -- and  
6 Mr. Muncaster?

7 MR. JOHN HERHALT: Yes.

8 MS. KATE MCGRANN: Okay. Do you  
9 recall having offline conversations with any other  
10 member of the STT are you were putting together the  
11 RFP?

12 MR. JOHN HERHALT: Not to my  
13 recollection.

14 MS. KATE MCGRANN: Could we pull up  
15 CPS2345, please.

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: This is an email  
20 from David McFadden to some of the members of the  
21 Strategic Task Team that were sent on -- that was sent  
22 on August 29th, 2011. You were not copied on this  
23 email, and this predates the first conversation we  
24 understand you had with Mr. Houghton about getting  
25 involved in the RFP process.

1                   Do you remember if you saw a copy of  
2 this email after you became involved in working on the  
3 RFP?

4                   MR. JOHN HERHALT:    No.  The first time  
5 I saw this was when I saw -- read it in the Foundation  
6 Document.

7                   MS. KATE MCGRANN:    I just want to use  
8 this as a tool to continue to explore the nature of  
9 the advice that you gave to the Strategic Task Team.  
10 So if you look at the first paragraph of the third --  
11 or the first sentence of the third paragraph.

12 Mr. Muncaster (sic) writes:

13                                "It is critical that the Town, as  
14                                shareholder, state its objectives at  
15                                the outset to avoid later conflicts  
16                                or misunderstandings."

17                   THE HONOURABLE FRANK MARROCCO:    It  
18 actually was Mr. McFadden.  You said Mr. Muncaster,  
19 but I'm assuming you meant Mr. McFadden.

20                   MS. KATE MCGRANN:    Thank you, and I  
21 apologize.  I did mean Mr. McFadden.

22

23 CONTINUED BY MS. KATE MCGRANN:

24                   MS. KATE MCGRANN:    Right.  So in this  
25 email that:

1 "It is critical that the Town, as  
2 shareholder, state its objectives at  
3 the outset to avoid later conflicts  
4 or misunderstandings."

5 Is that advice that you would agree  
6 with?

7 MR. JOHN HERHALT: I'd agree with  
8 that.

9 MS. KATE MCGRANN: And is that -- is  
10 that advice that you gave to the Strategic Task Team  
11 as you worked with them on the RFP?

12 MR. JOHN HERHALT: I think that was  
13 already in play then. I -- the -- I mean, whether I  
14 advised them further on that is another story, but I  
15 think they already had done that through the bidder  
16 meetings on September 12th and 19th, and I think they  
17 conclude -- continued to do that in the RFP, so...

18 MS. KATE MCGRANN: Okay. You think it  
19 was in play, but is that something that you gave them  
20 advice on?

21 MR. JOHN HERHALT: I'm -- I can't tell  
22 you for certain, but I think I would have, yes.

23 MS. KATE MCGRANN: Can we scroll down  
24 a bit further so we can see the rest of the email.  
25 Back up a bit.

1                   If you look at the first full paragraph  
2 that you can see on this page where it says:

3                   "We will need to have an  
4                   understanding of the governance  
5                   structure and approach."

6                   It notes that the composition of the  
7 Board of Directors will be critical to this. Normally  
8 the makeup of the Board will follow its shareholdings.  
9 And then he goes on to identify:

10                   "Need to understand shareholdings  
11                   and also a key question to consider  
12                   is how a deadlock could be broken."

13                   Were there issues that you remember  
14 discussing with the Strategic Task Team in putting  
15 together the RFP?

16                   MR. JOHN HERHALT: We didn't get into  
17 that level of detail. Clearly this was something that  
18 the Task Team would want in the ultimate completion  
19 of -- of the deal. But we didn't get into this level  
20 of detail in terms of putting together the RFP, so...

21                   MS. KATE MCGRANN: Was a decision made  
22 not to get into this level of detail in putting  
23 together what was being looked for in the RFP?

24                   MR. JOHN HERHALT: I think so. I  
25 think so. Again, I can't remember. Did we make an

1 absolute decision, or did we just come to that  
2 conclusion through discussion? So...

3 MS. KATE MCGRANN: Do you remember if  
4 you were asked for any advice about whether it made  
5 sense to come to a decision, for example, about how a  
6 deadlock could be broken in the partnership --

7 MR. JOHN HERHALT: No.

8 MS. KATE MCGRANN: -- or the number of  
9 seats that -- that should be assigned to each partner  
10 on the Board of Directors?

11 MR. JOHN HERHALT: We had the  
12 discussion about equal representation, yeah. The  
13 discussion about how a deadlock would be broken, we  
14 didn't have -- did not have that discussion.

15 MS. KATE MCGRANN: And I think that  
16 you answered this question already, but just to make  
17 sure that we've got clearly on the record. You  
18 discussed equal representation, but ultimately, I  
19 don't think that makes its way into the RFP.

20 Do you remember why that wasn't  
21 articulated in the RFP?

22 MR. JOHN HERHALT: Only that I  
23 think -- well, my recollection is we wanted the  
24 proponents to propose on that and to provide us their  
25 description of it, so...

1 MS. KATE MCGRANN: And with respect to  
2 not getting into a question of how a deadlock could be  
3 broken or other exits from the partnership, were you  
4 asked to provide advice either way on whether that  
5 level of detail should go into the RFP or not?

6 MR. JOHN HERHALT: The -- the  
7 discussion about the -- not the deadlock but on the  
8 buy-sell or shotgun, that came up in our discussion.  
9 In fact, in the RFP, we asked that the proponents  
10 actually speak to that specifically in their -- in  
11 their proposal because we -- that discussion about  
12 requiring or wanting to know that there's an exit  
13 arrangement was something that the Task Team thought  
14 was important as well. So that was something that was  
15 specifically mentioned in the RFP.

16 MS. KATE MCGRANN: And again, do you  
17 remember a discussion about whether the Task Team  
18 should come to a decision about what it wanted the  
19 buy-sell provision to look like, as compared to just  
20 asking to hear --

21 MR. JOHN HERHALT: No.

22 MS. KATE MCGRANN: -- what other  
23 people wanted?

24 MR. JOHN HERHALT: We didn't have that  
25 discussion that I recall.

1 MS. KATE MCGRANN: Do you know why  
2 that discussion didn't take place?

3 MR. JOHN HERHALT: I can't tell you.

4 MS. KATE MCGRANN: You received  
5 comments in the September 28th meeting, and then I  
6 understand that you circulated revised slides  
7 incorporating the comments that you had received at  
8 that meeting.

9 MR. JOHN HERHALT: I don't know that  
10 I -- I don't know that I sent revised slides. I might  
11 have. I'm just trying to recall. I might have sent  
12 revised slides, but I also then sent a draft RFP  
13 'cause the turnaround was quite quick. I think the  
14 draft RFP was sent already on the 30th of September  
15 thereabouts, so...

16 MS. KATE MCGRANN: Yeah. If we could  
17 pull up paragraph 287 of the Foundation Document.

18 And while that's coming up, you said  
19 the turnaround was quite quick. You meet with the  
20 Strategic Task Team on the 28th. You're circulating a  
21 revised -- scroll up one or two. There we go.

22 You meet with the Strategic Task Team  
23 to work through the draft slides you had assembled and  
24 take their comments. And then you're circulating a  
25 revised draft on the 30th. We know it was ultimately

1 issued on October 4th. Is that a tight turnaround  
2 time for the creation and issuance of an RFP?

3 MR. JOHN HERHALT: That was -- that  
4 was tight. Mind you by the time we got to the 28th,  
5 I'd already had worked on the skeleton of the RFP. It  
6 wasn't like it was not at all in draft form. I just  
7 knew there were many holes to fill, and there were  
8 going to be adjustment to be made.

9 But they were -- it was a matter then  
10 of just making sure that the changes that the Task  
11 Team had concluded or the other editions the Task Team  
12 had concluded were in the RFP, so...

13 MS. KATE MCGRANN: When we look at  
14 paragraph 286, it says:

15 "On September 30th, Ed Houghton  
16 circulated a revised draft of the  
17 RFP document to the Strategic  
18 Partnership Task Team."

19 Do you remember getting any further  
20 comments from the Strategic Task Team on the revised  
21 draft that was circulated?

22 MR. JOHN HERHALT: I don't recall  
23 getting much at all. It might have been a couple of  
24 minor things but not much.

25 MS. KATE MCGRANN: Was any thought

1 given to having a second meeting to discussing the  
2 revised document?

3 MR. JOHN HERHALT: Not to my  
4 recollection. I think to the extent that the draft  
5 was -- had missed the mark, then we probably would  
6 have had to have another meeting. But no one saw many  
7 changes required for it, so...

8 MS. KATE MCGRANN: Who provided you  
9 with instructions to finalize the document?

10 MR. JOHN HERHALT: Actually, in the  
11 end, the document was left with Mr. Houghton. The  
12 document was actually issued by the team at Collus  
13 Power, I believe. I did not send it out, so.

14 MS. KATE MCGRANN: Do you know if any  
15 changes were made to the document after you handed it  
16 over to Mr. Houghton?

17 MR. JOHN HERHALT: Not to my  
18 knowledge.

19 MS. KATE MCGRANN: We'll turn up the  
20 RFP. It's at CPS6891.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: If we could turn to  
25 page 10 of this PDF. Yeah, perfect. We'll scroll to

1 the bottom. That's great, looking at proposal  
2 response and contract, item 3 point -- contact, item  
3 3.8.

4                   These bullet points set out who the  
5 bidders should direct their inquiries to in the last  
6 paragraph. And we can see that it's you. To your  
7 recollection, was that process followed through --  
8 through the time that the RFP document was outstanding  
9 and we were waiting for responses?

10                   MR. JOHN HERHALT: No. There were  
11 times where people did not go directly through me.

12                   MS. KATE MCGRANN: Okay. Can we turn  
13 up KPM1187, please?

14

15                   (BRIEF PAUSE)

16

17                   MS. KATE MCGRANN: Scroll to the --  
18 the bottom of this document. Scroll up a little bit  
19 further so we can see just the beginning of this  
20 email. So, we can see Mr. Erling's writing to Mr.  
21 Fryer with a copy to yourself, Mr. Houghton, and Diane  
22 Meehan. He says:

23                   "Dear Tim, we received a call this  
24                   afternoon from a Mr. Meeker at Hydro  
25                   One who had a number of questions,

1                   comments regarding the data room and  
2                   proposed sale process."

3                   And if we could scroll up a little bit  
4 further to see the response, we see you responding and  
5 saying:

6                   "First of all, this is a breach in  
7                   the request for proposal."

8                   All questions are to be submitted in  
9 writing through you. So, here's an instance of -- of  
10 the process being not followed and you quickly  
11 correcting.

12                   Do you recall any other times at which  
13 the -- the process was not followed?

14                   MR. JOHN HERHALT:   Not at that time.  
15 Certainly, I'd seen some evidence in the Foundation  
16 Document that that clearly was the case, but not at  
17 that time, so.

18                   MS. KATE MCGRANN:   And could you help  
19 us understand what items in the Foundation Document  
20 you're referring to?

21                   MR. JOHN HERHALT:   Well, if I recall  
22 correctly, there were some -- some reach outs to -- by  
23 the bidders, to either Mr. Houghton or to -- well,  
24 primarily to -- I think, to Mr. Houghton looking for  
25 information, but I'd have to go back and look at the

1 document, but that was my recollection, so.

2 MS. KATE MCGRANN: Okay.

3

4 (BRIEF PAUSE)

5

6 MR. JOHN HERHALT: Clearly, there were  
7 -- just to add, even though they would reach through  
8 me or through then Jonathan, who was assisting me with  
9 this, clearly, there were then, obviously, we had to  
10 go back to Collus Power for the information. We  
11 wouldn't have that information, so, yeah.

12 MS. KATE MCGRANN: And the process  
13 that you're protecting here is that the inquiries  
14 first come to you, and then you deal with obtaining  
15 the responses?

16 MR. JOHN HERHALT: Right.

17 MS. KATE MCGRANN: We see that the  
18 process is set out in the RFP. We can see that you  
19 are requiring compliance with it. Why was compliance  
20 with that process important?

21 MR. JOHN HERHALT: Well, 1) to -- I  
22 think to ensure a level playing field, 2) to have an  
23 understanding of what the nature of the questions were  
24 that were being asked.

25 To the extent that there were questions

1 that were asked or information that was generically  
2 required by everyone, then it might suggest that  
3 there's a need to put more things in the data room.  
4 And -- and, certainly, it gave us an understanding for  
5 the kinds of things that people were perhaps  
6 struggling with if there was something unclear in the  
7 RFP, so, yeah.

8 MS. KATE MCGRANN: Was the -- was it  
9 important that the process be followed so that the  
10 process was fair to all of the bidders?

11 MR. JOHN HERHALT: Yes.

12 MS. KATE MCGRANN: If we could turn up  
13 TOC540520, please.

14

15 (BRIEF PAUSE)

16

17 THE HONOURABLE FRANK MARROCCO: Was  
18 the idea there that a level playing field will likely  
19 produce the best offer?

20 MR. JOHN HERHALT: Yes. But in  
21 addition to that, I think, yeah, to the extent that  
22 you -- you ended up with, for example, three (3)  
23 bidders who knew less than another bidder, then they  
24 clearly wouldn't be able to deliver up the same kind  
25 of bid, right, so, yeah, best offer all over, yeah.

1 THE HONOURABLE FRANK MARROCCO: Thank  
2 you.

3

4 CONTINUED BY MS. KATE MCGRANN:

5 MS. KATE MCGRANN: If we could scroll  
6 down so we could see the first email in this chain,  
7 email with a very long signature.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: So, here we see an  
12 October 28th, 2011, question from Dave Clark at  
13 Veridian to yourself. If you look at the -- the third  
14 paragraph down, he says:

15 "Veridian intends to propri --  
16 provide a proposal that will be for  
17 not greater than 50 percent of the  
18 shares. We do believe that there  
19 may be significant more value for  
20 Collus and its shareholder to a  
21 transaction that involved a purchase  
22 of greater than 50 percent of the  
23 shares.

24 Veridian would like to submit an  
25 alternate proposal that would also

1                   involve the purchase of more than 50  
2                   percent of the shares."

3                   And then if we could scroll up. You  
4 forward this question on to Mr. Houghton with a copy  
5 to Mr. Erling. And you said:

6                   "Ed, I believe my simple response  
7                   would be, yes, correct?"

8                   And if you scroll up to the top, we can  
9 see that Mr. Houghton responds, "You are correct."  
10 First of all, is this an example of one (1) of the  
11 bidders reaching out to ask if this is what you were--

12                   MR. JOHN HERHALT:    Yes.

13                   MS. KATE MCGRANN:    -- discussing  
14 earlier?

15                   MR. JOHN HERHALT:    Yeah. And -- and I  
16 believe, just based on the nature of the bidders, they  
17 would have all asked this, frankly, because I think  
18 they all wanted to make a hundred percent bid, but  
19 that's just my view.

20                   MS. KATE MCGRANN:    It was -- yeah, it  
21 was your understanding and expectation that what the  
22 bidders actually would want out of this transaction  
23 ideally would be a full -- a full purchase?

24                   MR. JOHN HERHALT:    I think so.

25                   MS. KATE MCGRANN:    Did you have any

1 discussions with the STT about the fact that the  
2 bidders likely wanted to purchase all of the LDC?

3 MR. JOHN HERHALT: Oh, I believe so.  
4 I -- I don't have the specific recollection, but that  
5 discussion sort of evolved even when I put, as you  
6 recall, in the slides sort of a part B.

7 MS. KATE MCGRANN: M-hm.

8 MR. JOHN HERHALT: That discussion  
9 kind of came out. So, there was no question that  
10 there was an interest for a whole host of reasons to  
11 make a 100 percent purchase.

12 MS. KATE MCGRANN: Were you asked to  
13 provide any advice or did you provide any advice to  
14 the STT about steps they could take to protect  
15 themselves against an initial purchase of 50 percent,  
16 and then a subsequent move to get what the bidders  
17 actually wanted, which was a hundred percent?

18 MR. JOHN HERHALT: Not -- not  
19 specifically. No, I wasn't asked for that advice.

20 MS. KATE MCGRANN: And -- and did you  
21 provide any advice on that particular topic?

22 MR. JOHN HERHALT: No, not at the  
23 time. Not at that time. Not at the RFP time, no.

24 MS. KATE MCGRANN: Was it the case  
25 that you provided advice about it after the RFP?

1 MR. JOHN HERHALT: Well, only that I  
2 think an ensuing it -- at an ensuring period, I think,  
3 when people got into the buy/sell kind of provisions  
4 going forward, I think there was some dialogue, but,  
5 frankly, I can't recall what that dialogue was at this  
6 point.

7 MS. KATE MCGRANN: So, you're talking  
8 about when the transaction documents would be  
9 negotiated --

10 MR. JOHN HERHALT: Yeah.

11 MS. KATE MCGRANN: -- in terms of the  
12 partnership?

13 MR. JOHN HERHALT: Yeah.

14 MS. KATE MCGRANN: You're asked  
15 whether Veridian can submit, I'll call it a compliant  
16 bid and an alternate bid. And you pass that question  
17 on to Mr. Houghton for instructions. Did you go to  
18 anyone at the Town for instructions on how to respond  
19 to this?

20 MR. JOHN HERHALT: Well, at the time,  
21 my -- my view was the RFP was already clear. I just  
22 wanted to make sure that before I went and answered  
23 exactly that way, that someone else hadn't had a  
24 change in view.

25 I hadn't -- I didn't not go to anyone

1 else. But I believe that the -- I think you're  
2 calling it the STT, not the SPT team?

3 MS. KATE MCGRANN: Yeah.

4 MR. JOHN HERHALT: Yes.

5 MS. KATE MCGRANN: The Strategic --

6 MR. JOHN HERHALT: Whatever.

7 MS. KATE MCGRANN: The tongue tying  
8 Strategic Task Team.

9 MR. JOHN HERHALT: Yeah. They -- I  
10 believe they already had come to that conclusion when  
11 we did the RFP, so I didn't go any further.

12 MS. KATE MCGRANN: Okay. I mean, I  
13 understand that you're asked a question and you seek  
14 instructions on your response. And I'm just wond --  
15 see you had made some assumptions about the decisions  
16 had been made, but you still seek instructions on how  
17 to respond.

18 Is there any reason why you didn't seek  
19 instructions from -- from the Town about how to  
20 respond to this?

21 MR. JOHN HERHALT: Well, like I said,  
22 the only reason that I will re -- would recall is that  
23 I believe that we already had established this was  
24 going to be a 50 percent strategic partnership  
25 proposal.

1                   And when we talked about making it  
2 something other than 50 percent, that wasn't received  
3 and wasn't agreed to, so I didn't go any further.

4                   And again, from a Strategic Partnership  
5 Task Team perspective, my view was that I had both the  
6 representation of the Town and the Utility there, so.

7                   MS. KATE MCGRANN:   Well, I understand  
8 that, but you don't ask this question to the  
9 Strategic Task Team, right? You just ask it to  
10 Mr. Houghton.

11                  MR. JOHN HERHALT:   Well, Mr. Houghton,  
12 for all intents and purpose, was my direct liaison  
13 through a lot of this, right? The only other  
14 individual from time to time that might communicate is  
15 Mr. Muncaster. So those were the two (2), and they  
16 were talking to each other pretty regularly, so.

17                  MS. KATE MCGRANN:   Was it your  
18 understanding that the Strategic Task Team had  
19 authorized Mr. Houghton to give you instructions on  
20 its behalf?

21                  MR. JOHN HERHALT:   Well, that's  
22 certainly the way things had evolved. Even from the  
23 beginning of -- of retaining our services, it was  
24 through Mr. Houghton.

25                  MS. KATE MCGRANN:   Okay. But was it

1 your understanding that Strategic Task Team had  
2 authorized Mr. Houghton to give you instructions on  
3 its behalf?

4 MR. JOHN HERHALT: That would have  
5 been my understanding.

6 MS. KATE MCGRANN: And where did that  
7 understanding come from?

8 MR. JOHN HERHALT: I think that's the  
9 way the Strategic Partnership Task Team operated. I  
10 think Mr. Muncaster asked Mr. Houghton to carry out  
11 requests and instructions and all those things. So  
12 that -- that's certainly how it operated.

13

14 (BRIEF PAUSE)

15

16 THE HONOURABLE FRANK MARROCCO: While  
17 they're conferring, your impression -- did I  
18 understand you correctly, your impression was that all  
19 of the bidders -- the preference of the bidders was to  
20 acquire a hundred percent?

21 MR. JOHN HERHALT: I believe that,  
22 yeah.

23 THE HONOURABLE FRANK MARROCCO: And  
24 was that understood by the Team?

25 MR. JOHN HERHALT: I think so. I

1 mean, clearly that's not what the -- what the  
2 objective was.

3 THE HONOURABLE FRANK MARROCCO: No,  
4 no. I appreciate that.

5 MR. JOHN HERHALT: Yeah. But -- but I  
6 think -- I actually think that the Team, at least  
7 members of the Team, knew that there was interest out  
8 there to make a hundred acquisition if it was  
9 available, so...

10 THE HONOURABLE FRANK MARROCCO: Okay.

11 MR. JOHN HERHALT: Yeah.

12

13 CONTINUED BY MS. KATE MCGRANN:

14 MS. KATE MCGRANN: Turning now from  
15 the creation or the drafting of the RFP and its  
16 issuance to the responses that were received, you've  
17 given us some information about this already, but just  
18 as we start looking at the stretch of time, what  
19 was -- what did you understand KPMG's role was in  
20 receiving and evaluating the responses and providing  
21 recommendations to Collus Power and the Town about  
22 next steps?

23 MR. JOHN HERHALT: Well, the original  
24 scope was not very clear about what that was going to  
25 look like, so all I can say is to how it ultimately

1 evolved.

2                   The role that we played was to  
3 participate in the review of the proposals, to  
4 certainly provide input to our views of what the  
5 content of those proposals were, and what their  
6 relative comparative components were. And it was not  
7 to make a recommendation per se. It was -- that  
8 was -- we saw that as the Task Team's role.

9                   And having said that, during the --  
10 both the non-financial and the financial evaluation  
11 meetings, I was asked to provide my view of how I  
12 would score the bids by category, which I did.

13                   MS. KATE MCGRANN: Can we turn up  
14 KPM1662.

15                   And while that's coming up, it's our  
16 understanding that the evaluation process envisioned  
17 was that responses would be submitted in two  
18 envelopes, one containing responses to --

19                   MR. JOHN HERHALT: Right.

20                   MS. KATE MCGRANN: -- what we've been  
21 referring to as the non-financial criteria but every  
22 criteria that wasn't purchase price and related  
23 considerations.

24                   MR. JOHN HERHALT: Correct.

25                   MS. KATE MCGRANN: The other envelope

1 contained the responses to that.

2 MR. JOHN HERHALT: Right.

3 MS. KATE MCGRANN: And that the  
4 non-financial responses would be reviewed first in the  
5 absence of knowing what the financial responses were,  
6 then the financial responses evaluated.

7 MR. JOHN HERHALT: Correct. Correct.

8 MS. KATE MCGRANN: This is an email  
9 from Ms. Hogg to yourself and Ed Houghton. She  
10 writes:

11 "I'm resending the PowerStream  
12 proposal as the one I sent earlier  
13 included the financials and the  
14 executive summary. I have attempted  
15 to recall the email, but if you've  
16 already opened the email, please  
17 delete it and replace with the  
18 attached."

19 She says thank you, and she apologizes.  
20 Do you recall receiving this email from Ms. Hogg?

21 MR. JOHN HERHALT: Only after I read  
22 it again, but clearly, it did come to me. I -- I'm  
23 certain I did exactly what she asked me to do which  
24 was delete -- if she had recalled it effectively,  
25 obviously I wouldn't have got it, but I would have

1 just deleted it, so.

2 MS. KATE MCGRANN: Okay. I think  
3 you've effectively answered my question, but just for  
4 the sake of the record, do you recall whether you  
5 reviewed the executive summary before Ms. Hogg sought  
6 to recall it?

7 MR. JOHN HERHALT: No. I have not.

8 MS. KATE MCGRANN: You had spoken to  
9 us at the beginning of the day about the amount of  
10 travel that you were doing as part of your role as  
11 global lead. Do you recall whether you were  
12 travelling during the month of November 2011?

13 MR. JOHN HERHALT: Oh, yes,  
14 absolutely. So at the times of the -- both bidder  
15 evaluation discussions by the SPTT, I was not in the  
16 country. So I participated by phone. And please  
17 don't ask me exactly where I was 'cause I won't  
18 remember, so...

19 MS. KATE MCGRANN: Understood. Can we  
20 turn up CPS2633, please.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: So if you could  
25 scroll down so we can see Mr. Houghton's email of

1 November 20th.

2 Here we see Mr. Houghton has emailed  
3 the members of the Strategic Task Team and yourself.  
4 He writes about the fact that he was discussing with  
5 Chairman Muncaster of the scoring process for the  
6 strategic partner. He writes that:

7 "It was decided that for each  
8 criteria, the best proposal shall  
9 receive full points."

10 He gives the example if you feel  
11 respondent A has the best proposal regarding this  
12 category, they shall get the full ten (10) points, and  
13 the other three (3) respondents will then be judged  
14 and provided points based on the best proposal.

15 Were you consulted or asked to provide  
16 advice on the scoring process for the strategic  
17 partners?

18 MR. JOHN HERHALT: No, I was not.

19 MS. KATE MCGRANN: Do you recall  
20 receiving this email?

21 MR. JOHN HERHALT: Only after I saw it  
22 again. But yes, that -- that refreshed my memory  
23 about it, yeah.

24 MS. KATE MCGRANN: At this point in  
25 time -- so November 20th of 2011 -- had you seen this

1 approach used in evaluating responses to your request  
2 for proposals before?

3 MR. JOHN HERHALT: Oh, I can't say  
4 whether I've seen it -- precisely this approach. I've  
5 seen similar approaches where there's a predefined  
6 approach to what you would score different rankings.

7 Upon reflection after reading it again,  
8 probably the one thing I thought was interesting is  
9 that it might have been useful to provide some  
10 guidance as to what happens to sort of number two (2),  
11 number three (3), and number (4). But not precisely  
12 this I haven't seen.

13 MS. KATE MCGRANN: Okay. And  
14 specifically, the notion that the best proposal in any  
15 category it being mandated that they get the full  
16 points, had you seen that approach taken before?

17 MR. JOHN HERHALT: I had seen that  
18 before. Yeah.

19 MS. KATE MCGRANN: Did this -- did  
20 this proposed approach cause you any concerns, or is  
21 there anything that you felt could -- should have been  
22 done differently about this?

23 MR. JOHN HERHALT: Well, the -- the  
24 latter part that I just mentioned. The interesting  
25 thing is -- and this is only after looking through the

1 documents again -- even though I think it was followed  
2 sometimes, it wasn't followed all the time.

3 MS. KATE MCGRANN: Yeah, no. Fair  
4 enough. But focussing just on the instructions that  
5 are given --

6 MR. JOHN HERHALT: Right.

7 MS. KATE MCGRANN: -- it advanced the  
8 scoring.

9 MR. JOHN HERHALT: Right. I  
10 understand.

11 MS. KATE MCGRANN: Why did you think  
12 guidance should be given to how to score placed  
13 two (2), three (3), and four (4) in the rankings?

14 MR. JOHN HERHALT: I just think that  
15 would have given more clarity to how the others -- how  
16 the others -- other bidders that were not the best  
17 bidders would have scored in the process. I mean,  
18 perhaps it would have laid out exactly the same way,  
19 but I think it would have given everybody a little bit  
20 more clarity.

21 MS. KATE MCGRANN: If we could turn to  
22 KPM1742, please.

23

24 (BRIEF PAUSE)

25

1 MS. KATE MCGRANN: While this is  
2 coming up, it's our understanding from the documents  
3 evidence we've heard so far that the non-financial  
4 responses were scored on November 22nd, 2011. I can  
5 take you to the references, but is that consistent  
6 with what you recall? Or sorry, November 23rd. They  
7 were scored on November 23rd.

8 MR. JOHN HERHALT: I thought it was  
9 November 23rd, yes. Sorry.

10 MS. KATE MCGRANN: Thank you.

11 MR. JOHN HERHALT: Yeah.

12 MS. KATE MCGRANN: Here we see an  
13 email from Mr. Rockx to you on November 22nd with a  
14 copy to Mr. Erling. That's actually just addressed to  
15 both of you. Mr. Rockx writes:

16 "Collingwood Town Hall went  
17 reasonably well."

18 He reports back on that. He indicates  
19 that Collus will open the financial offers tomorrow  
20 morning, the morning of the 23rd, and he ends by  
21 saying:

22 "Ed would like a ranking of the  
23 proposals as received to date to  
24 compare to the rankings prepared by  
25 the other steering committee

1 members."

2 Do you remember receiving this request  
3 via Mr. Rockx from Mr. Houghton?

4 MR. JOHN HERHALT: Only after I read  
5 it in the -- in the materials. Yeah.

6 MS. KATE MCGRANN: Okay. And you  
7 respond:

8 "I have done that based on our  
9 collective comments, but not all  
10 that easy as we all agreed. I will  
11 be on the call in the morning."

12 What do you remember about the ranking  
13 not being all that easy?

14 MR. JOHN HERHALT: Well, it's -- any  
15 one (1) of these -- on the -- on the -- and we're  
16 calling them financial and non-financial, I know, but  
17 take the financial part aside, it requires -- it  
18 requires judgment. If you're trying to make sure  
19 you're taking into account a -- a fairly good  
20 comparative view, and -- and therefore it's -- it's  
21 not simple.

22 Some things are obvious at times, and  
23 then other things are a little fuzzy, so you've got to  
24 make some judgments around that. But that's really, I  
25 think, all was referring to.

1                   And I was doing this -- as you know, I  
2 was doing this as I was travelling, so I had given  
3 some thought that I'd -- I'd read them all at that  
4 point, and I'd given some thought to it. I was still,  
5 I think, still formulating some of my views at that  
6 point, but nevertheless, that -- that made it even --  
7 a little more difficult.

8                   MS. KATE MCGRANN:     If we could turn up  
9 CPS2645.

10

11   (BRIEF PAUSE)

12

13                   MS. KATE MCGRANN:     So this an email  
14 from yourself to Mr. Houghton. You write:

15   "Hi, Ed. My rankings of the  
16 proposals based on the info to date  
17 would be as follows."

18                   And you list them, I think, in order,  
19 PowerStream, then Hydro One, then Horizon, then  
20 Veridian. And you say, "We will talk in more detail  
21 in the morning."

22                   Is it your recollection that you  
23 provided this ranking to Mr. Houghton before the  
24 Strategic Task Team non-financial scoring meeting that  
25 took place on the 23rd?

1 MR. JOHN HERHALT: I believe so, but  
2 this says November 23rd at 1:18 a.m. in the morning,  
3 so -- and that's probably because I was overseas,  
4 right, so the time difference would have been in play.

5 MS. KATE MCGRANN: Yeah.

6 MR. JOHN HERHALT: But I think even as  
7 I said, "based on info to date," like, the reason I  
8 say that is that I think I was still sort of doing my  
9 own noodling around this, but he wanted to get some  
10 feel for exactly how I saw them stacking up, not with  
11 scores per se, but with sort of 1, 2, 3, 4, if you  
12 will.

13 MS. KATE MCGRANN: Okay. If we could  
14 to paragraph 390 of the Foundation Document.

15

16 (BRIEF PAUSE)

17

18 MS. KATE MCGRANN: This paragraph  
19 describes that the Strategic Partnership Task Team met  
20 on November 23rd, 2011, to review their -- their  
21 evaluations of the non-financial elements. You  
22 attended this meeting by telephone, I think. That's  
23 right?

24 MR. JOHN HERHALT: Yes. That's  
25 correct.

1 MS. KATE MCGRANN: Ms. Hogg has later  
2 explained that no minutes were taken this scoring  
3 meeting or the financial scoring meeting, as each  
4 member provided their confidential rankings.

5 Were you asked whether or not minutes  
6 should be taken of this meeting?

7 MR. JOHN HERHALT: No, I was not, and  
8 I wasn't aware that minutes had not been taken, so.

9 MS. KATE MCGRANN: So was it, in fact,  
10 your expectation that minutes were being taken?

11 MR. JOHN HERHALT: I believe that  
12 would have been my expectation, yeah.

13 MS. KATE MCGRANN: Would it be normal  
14 practice to take minutes of -- of meetings such as  
15 this, where evaluations are being made or shared of  
16 the responses to an RFP?

17 MR. JOHN HERHALT: Well, I -- I would  
18 have thought so, so.

19 MS. KATE MCGRANN: Why would minutes  
20 be taken of a meeting like this? Why would that be a  
21 -- a normal practice?

22 MR. JOHN HERHALT: Well, I don't think  
23 the -- I mean, my recollection of this meeting, and  
24 was on the phone, so forgive me, but my recollection,  
25 it was not just a matter of scores being provided, or

1 -- or posted, or spoken to. I think we also had some  
2 dialogue about the proposals by category, what our  
3 thoughts were based on the four (4) proponent bids,  
4 and what we -- we saw in the various criteria.

5 I recall that primarily because I  
6 actually had made notes in that regard. I had sort of  
7 stepped back and taken the criteria, and looked  
8 through each bidder, and thought about what they were  
9 suggesting, and on that basis, had actually put by  
10 category what I thought my rankings by category were  
11 for each bidder.

12 So -- anyway, my -- my view would have  
13 been that a conversation -- the -- the conversation  
14 around the -- the individual bids and their components  
15 would be helpful to everyone around the table, because  
16 everybody comes from a different basis of knowledge --

17 MS. KATE MCGRANN: M-hm.

18 MR. JOHN HERHALT: -- and from a  
19 different background. And I would have thought that  
20 those minutes would have been useful for that, so.

21 MS. KATE MCGRANN: So we know that you  
22 ultimately provided -- you've -- you've sent Mr.  
23 Houghton your ranking just in order on the bidders at  
24 the time this meeting takes place, right?

25 MR. JOHN HERHALT: I think that might

1 have been just before that, actually. So -- but,  
2 yeah.

3 MS. KATE MCGRANN: So the ranking,  
4 then the meeting? Is that -- have I got the order  
5 right?

6 MR. JOHN HERHALT: And then during the  
7 meeting, again, I had not scored anything, because my  
8 -- my -- and again, I'll -- if I can digress for a  
9 minute --

10 MS. KATE MCGRANN: Yes,

11 MR. JOHN HERHALT: -- my view -- my  
12 view was that after being retained, or as -- as KPMG  
13 being retained, was that we were advisors to the Task  
14 Team.

15 As it turns out, subsequently, it -- we  
16 were then characterized going forward at some point as  
17 being members of the Task Team. So that is -- that  
18 was not my understanding, and -- and therefore, I  
19 didn't see KPMG being a proponent that was going to --  
20 or a participant that was going to actually score the  
21 task -- the -- the proposals. But nevertheless, I was  
22 still, in my mind, doing my own assessment of them,  
23 because I assumed at some point, someone was going to  
24 ask me what does KPMG think, right?

25 During the meeting, it was asked that I

1 actually score them. And I remember the words from  
2 either Ed, or Dean, or both, Mr. Muncaster or -- or  
3 Mr. Houghton both saying, Well, you're part of this,  
4 come on, score this.

5                   So I know that throughout the course of  
6 meeting then, I took my rankings, and I started to  
7 translate my mind into how would I score it, which I  
8 did, and so therefore now, the scores were posted that  
9 represent my scores -- the scores that I provided.

10                   Interestingly enough, and this is 20/20  
11 hindsight, I've gone back and looked at -- my rankings  
12 would have changed. I think I ranked Horizon number  
13 2, not number -- not Hydro One number 2 on the non-  
14 financial peace, so. But that tells you that you need  
15 to sort of walk through the scoring process.

16                   MS. KATE MCGRANN:    So you were coaxed  
17 into providing the scores. Did you understand that  
18 your scores would be counted in the evaluation of the  
19 --

20                   MR. JOHN HERHALT:    No, that was not --  
21 that was not clear to me at the time. Clearly, post  
22 that time -- and in fact, not even that soon after  
23 that time, because the only document that I did  
24 receive at some point when I returned from travel was  
25 a document that actually had the scores, but it was

1 anonymous, so I didn't see my name in any of them, but  
2 then subsequently found out that, in fact, my scores  
3 were a part of the -- the overall scoring process.

4 Which by the way, in the end, were not  
5 inconsistent with where things have things have gone,  
6 but nevertheless.

7 MS. KATE MCGRANN: Do you recall  
8 generally when in time you learned that your responses  
9 had been counted as part of the -- the evaluation?  
10 Like, that year, or a couple of years later --

11 MR. JOHN HERHALT: Gee, I don't -- I  
12 don't know. It certainly was well after the end of --  
13 it was definitely after the end of the 2011 calendar  
14 year. It was in 2012 at some point, so.

15 MS. KATE MCGRANN: You indicated that  
16 you viewed KPMG as an advisor to the Strategic Task  
17 Team. If when you were initially discussing a  
18 retainer for this, or when the retainer was being put  
19 together, you were asked to -- that KPMG be members of  
20 the Strategic Task Team, what would your response have  
21 been?

22 MR. JOHN HERHALT: Good question. My  
23 -- my initial reaction would have been, I don't think  
24 that makes sense. I think we needed to be -- we  
25 needed to have some ability to stand apart from the

1 team that was actually being charged with making the  
2 recommendation. That's not to say that we didn't feel  
3 comfortable providing input to that team and their  
4 determination of what their recommendation is. So I  
5 think that's -- that I would have been my initial  
6 view.

7                   Clearly, we were not retained as what I  
8 would call a fairness advisor where we had to -- where  
9 we managed the process from the very beginning to the  
10 very end and had to remain totally independent of  
11 everything; that would have been a different role  
12 altogether.

13                   In fact in that case I would say  
14 clearly we could not be a member of the task team, but  
15 -- but even so, I think to say that the -- you know,  
16 you pick a firm and say the firm is a member of the  
17 task team that's clearly trying to provide advice to  
18 the task team on how they make their recommendation, I  
19 would think that you leave us as advisors. That would  
20 be my --

21                   MS. KATE MCGRANN:    Okay. Is it the  
22 case that, and you may not be able to answer this, but  
23 let's see, is it the case that if you were asked that  
24 KPMG actually come on and -- and act as a member of  
25 the task team, you would have approached the work that

1 you did differently or you would have ultimately said  
2 that's not work we can do?

3 MR. JOHN HERHALT: Well -- well, it --  
4 it might have been one of -- one of either of those  
5 actually. I think we would have had to give that some  
6 additional thought for sure, yeah, but that's not at  
7 all what we -- how we saw what our retainer was.

8 MS. KATE MCGRANN: You understood that  
9 you were providing advice --

10 MR. JOHN HERHALT: Yeah.

11 MS. KATE MCGRANN: -- to the strategic  
12 task team and that's how you conducted yourselves?

13 MR. JOHN HERHALT: Yeah. I mean, in -  
14 - in some ways it seems here we are providing a  
15 service, we're billing for service, and now we're  
16 going to be a member of the -- that seemed to be in  
17 conflict, to -- to put us in that position, I would  
18 have thought.

19 MS. KATE MCGRANN: Turning to the  
20 evaluation of the financial component of -- of the RFP  
21 as we've been describing it, if we could turn up  
22 paragraph 399 of the Foundation Document.

23

24

(BRIEF PAUSE)

25

1 MS. KATE MCGRANN: This paragraph  
2 describes that on November 21st, 2011, you emailed Mr.  
3 Rockx indicating that Collus Power intended to open  
4 the financial bids on the night of November 23rd,  
5 2011, and then you -- you follow through with an email  
6 at 10:46 a.m. on November 23rd, saying:

7 "We had the call this evening and  
8 they opened the financial  
9 proposals."

10 That suggests to me that it might be a  
11 10:46 p.m. reference.

12 At any rate, do you remember why the  
13 financial proposals were opened at this time?

14 MR. JOHN HERHALT: I can't say to you  
15 exactly why. I don't recall whether there was a  
16 particular reason given for that, but yeah.

17 MS. KATE MCGRANN: It's our  
18 understanding that KPMG did some analysis of the  
19 financial responses in order to assist the strategic  
20 task team in its evaluation. Can you help us  
21 understand the work that KPMG did on that?

22 MR. JOHN HERHALT: Yeah, and really it  
23 was -- it was Mr. Rockx that -- that did the work. So  
24 when you read the financial parts of -- well,  
25 obviously you could say this about many parts of the

1 proposal, but particularly with the financial parts of  
2 the proposal, I think it was important for us to get a  
3 good comparative view of what those financial offers  
4 were. As the analysis went through sort of three (3)  
5 iterations, the first two (2) in particular, I think  
6 there were a couple things that were particularly  
7 important to understand.

8                   One was exactly what was the -- the  
9 purchase price for the shares; what did it mean; what  
10 did it mean in terms of what was being assumed by the  
11 bidders. The second part was, and this was a  
12 particular nu -- nuance, is they spoke to this concept  
13 of a recapitalization dividend, which in a nutshell  
14 just said they were going to move the capital  
15 structure of the Utility post acquisition -- or at  
16 acquisition to 60 percent debt, 40 percent equity,  
17 from where it was, which I think was 50/50. It's  
18 roughly thereabouts.

19                   And as a result of that, there would be  
20 the potential to declare a dividend to the  
21 shareholders. And, yes, that could have been done  
22 independently of a -- of a transaction, for sure.  
23 However, three (3) bidders did it one (1) way and one  
24 (1) bidder did it another way, and because of one (1)  
25 bidder did it another -- or three (3) bidders did it

1 one (1) way and one (1) bidder did it another way, it  
2 actually had an impact on exactly what kind of cash  
3 proceeds would flow to the Town. So it's important to  
4 understand what that looked like.

5                   So those are the kinds of -- this  
6 examples of the kinds of things that John was trying  
7 to do to make sure that the task team had an  
8 understanding of what they were looking at.

9                   MS. KATE MCGRANN:    Okay.  If we could  
10 turn up KPM1723.

11

12   (BRIEF PAUSE)

13

14                   MS. KATE MCGRANN:    My mistake, could  
15 we turn up KPM1762, please?

16

17   (BRIEF PAUSE)

18

19                   MS. KATE MCGRANN:    This is an email  
20 from yourself to Mr. Rockx on November 23rd, the  
21 beginning of this we've already looked at in -- in the  
22 Foundation Document.  The financial proposals have  
23 been opened.  You say you're going to send Mr. Rockx  
24 the main body of the proposals scanned by Pam Hogg,  
25 and she's going to courier you the rest of the hard

1 copies tomorrow. You go on to say:

2 "They would like us to look at them  
3 and boil them down into analysis  
4 that gives an apples-to-apples  
5 comparison of what they have been  
6 offered."

7 Do you remember who -- who advised you  
8 that this was the work that -- that was wanted of  
9 KPMG?

10 MR. JOHN HERHALT: I'm pretty sure it  
11 was Ed, Mr. Houghton, sorry.

12 MS. KATE MCGRANN: You go on to say:  
13 "The kicker is that they want the  
14 comparative analysis completed by  
15 end of day Friday. Can you turn  
16 things around that quickly? They  
17 want to meet and look at it on  
18 Monday afternoon."

19 You're sending this email on Wednesday.  
20 Their request is to have the work done by end of day  
21 Friday.

22 Was that a -- was that sufficient time  
23 for that work to be done?

24 MR. JOHN HERHALT: Well, I think  
25 there's probably sufficient time. Whether or not the

1 timetable was -- was desirable, I'm sure when John had  
2 that request received, I'm sure he might have said,  
3 gee, Herhalt's doing it to me again, but anyway I  
4 think we -- we're able to get it done.

5 MS. KATE MCGRANN: Do you recall if  
6 there was any discussion with Mr. Houghton or any  
7 member of the strategic task team about the time line  
8 that they were envisioning, whether there was room for  
9 movement to permit your team to do the work that's  
10 being asked of you, the reason why things were being  
11 done at the pace they were being done?

12 MR. JOHN HERHALT: We didn't get into  
13 that discussion, frankly. I think I knew from the  
14 original timetable what their objective was, which was  
15 to -- I think they wanted to really bring this to Town  
16 Council in December, early December. I remember that  
17 at that time, so we were -- we were working toward  
18 that timetable.

19 MS. KATE MCGRANN: Okay. Do you know  
20 why they wanted to bring this to Town Council in early  
21 December?

22 MR. JOHN HERHALT: Not really.

23

24 (BRIEF PAUSE)

25

1 MS. KATE MCGRANN: So it's our  
2 understanding that ultimately three (3) different  
3 analyses were performed on the -- the financial bids.

4 Do you recall that?

5 MR. JOHN HERHALT: Yes.

6 MS. KATE MCGRANN: Can you help us  
7 understand why three (3) analyses were performed?

8 MR. JOHN HERHALT: Well, the first one  
9 obviously was done on the basis of the first read of  
10 the -- the bids; the second one I believe was done  
11 after a conversation with at least a couple of the  
12 bidders, particularly Hydro One and PowerStream; and  
13 the third one ultimately was done after the strategic  
14 task team decided to have a meeting with PowerStream  
15 where they specifically asked if they would sweeten  
16 their bid somewhat. So those are the three (3).

17 MS. KATE MCGRANN: Could we turn up  
18 Foundation Document, paragraph 406, please?

19

20 (BRIEF PAUSE)

21

22 MS. KATE MCGRANN: It's our  
23 understanding that the -- the meeting of the strategic  
24 task team to -- to discuss their evaluations of the  
25 financial bids took place on November the 28th, 2011.

1                   Is that consistent with your  
2 recollection?

3                   MR. JOHN HERHALT:     Correct.

4                   MS. KATE MCGRANN:     Okay.

5                   MR. JOHN HERHALT:     And I called in to  
6 this one as well.

7                   MS. KATE MCGRANN:     Based on what we  
8 can see about the three (3) analyses that were done to  
9 the bids, it looks like one (1) was done on November  
10 28th; one (1) was done on November 30th; and one (1)  
11 is done at the very beginning of December.

12                   Is that consistent with what you  
13 recall?

14                   MR. JOHN HERHALT:     I think that's  
15 right, yeah.

16                   MS. KATE MCGRANN:     The first analysis  
17 is available to the strategic task team at the time  
18 that they meet to discuss their evaluation of the  
19 bids.

20                   What do you remember about the  
21 discussion of the -- of the financial portion of the  
22 bids, their evaluation and analysis?

23                   MR. JOHN HERHALT:     At this particular  
24 meeting? Well, I -- I clearly -- I think there was a  
25 discussion not only about the dollars, but also some

1 of the other components that were part of that  
2 category.

3                   Once again, round table discussion  
4 about people's views. At this point it was clear that  
5 it was -- it was -- even though John had done his  
6 analysis it still showed that Hydro One's financial  
7 bid was the best financial bid.

8                   People were asked to score the  
9 financial bid, which I was asked to do again, which  
10 was consistent.

11                   And then my recollection is that the  
12 conclusion in this meeting, based on the -- now the  
13 accumulation of the financial bid scores and the non-  
14 financial bid scores, it showed that the overall  
15 highest score was with PowerStream.

16                   And then there was a conversation, I  
17 can't remember exactly how it -- it developed, but I -  
18 - I think it was led by Mr. Muncaster, which was okay,  
19 so let's stand back and have sober second thought  
20 here. Yes, we have now all done this and  
21 PowerStream's bid is the one that is ranked the most  
22 highly overall. But we do have a bidder that has  
23 proposed more financially, let's just make sure we've  
24 all thought about that and that still makes sense.

25                   I think that was really the nature of

1 the conversation, that -- the fact that you would not  
2 choose -- and that was never the way that the  
3 evaluation criteria were set up, but I think it was  
4 more of a question of let's just make sure we've --  
5 we're clear that that -- that all makes sense, that  
6 all this hangs together in terms of how it's been  
7 scored. No changes, no -- nobody is going back to  
8 change. I think that was just the sober second  
9 thought conversation which was had.

10                   And then there was a discussion by the  
11 task team that said well, you know what, I think we  
12 should have a meeting with the -- with Power -- the  
13 Power -- with PowerStream to talk about -- and this is  
14 not unusual when you get to a place where you have a  
15 preferred bidder, that they wanted to have a  
16 discussion to see if there was anything else that they  
17 might be able to offer, which is what then happened.

18                   MS. KATE MCGRANN:    Okay. I'd like to  
19 ask you some discussions about -- ask you some  
20 questions about both of those things you just  
21 mentioned.

22                   First of all, with respect to the --  
23 the sober second thought conversation you mentioned.  
24 When did that conversation take place?

25                   MR. JOHN HERHALT:    Oh, toward -- near

1 the end of the meeting.

2 MS. KATE MCGRANN: Okay, so it took  
3 place within the --

4 MR. JOHN HERHALT: Oh yeah, in the --  
5 in this -- I -- well, my memory was listening to that  
6 conversation on the phone, so.

7 MS. KATE MCGRANN: Was there any  
8 discussion of reconvening a further meeting of the  
9 strategic task team to reconsider their evaluation of  
10 the financial components following the additional  
11 information obtained?

12 MR. JOHN HERHALT: You mean after the  
13 -- after the PowerStream meeting?

14 MS. KATE MCGRANN: No, after the --  
15 the questions were asked of the -- the bidders.  
16 Sorry, maybe I misunderstood your evidence.

17 MR. JOHN HERHALT: Maybe. I'm a  
18 little mixed up now.

19 MS. KATE MCGRANN: So maybe I can come  
20 at it this way.

21 The second analysis that's performed  
22 after the September 28th meeting, could you help me  
23 with the purpose of performing that second analysis?

24 MR. JOHN HERHALT: Well, my  
25 recollection was -- was at some point after the first

1 analysis and after the first discussion, Mr. Rockx did  
2 have a call with a couple of bidders to get some  
3 clarity around some things that weren't clear.

4                   And I think the second iteration he did  
5 of that is after he got some of that information.

6                   The third iteration was only to include  
7 what PowerStream then subsequently agreed to do with  
8 their -- with their share purchase price.

9                   MS. KATE MCGRANN:     So was any  
10 consideration given to providing the strategic task  
11 team members the opportunity to revisit their scores  
12 of the financial components after Mr. Rockx obtained  
13 more clarity from some of the bidders and performed  
14 his second analysis?

15                   MR. JOHN HERHALT:     I think there was -  
16 - well, no, I don't think that that happened. That  
17 certainly didn't happen.

18                   What -- what happened was given the  
19 fact that PowerStream had scored as well as they did  
20 on the non-financial category and that they were  
21 sitting effectively at number 2 in the financial  
22 category, the only bid that was better than theirs was  
23 Hydro One's.

24                   So I don't think anybody saw the scores  
25 changing substantively, regardless of what happened.

1 In fact, what happened was the bid -- some of the  
2 things that Mr. Rockx followed up on on the Hydro One  
3 side actually brought the Hydro One bid closer to what  
4 the PowerStream bid was.

5 So I think that's the reason that it  
6 didn't go through a re-scoring.

7 I was trying to think through what  
8 happened with the ultimate final analysis that Mr.  
9 Rockx did. There was a meeting of the Collus Power  
10 Board and the strategic partnership task team, I  
11 believe, on December 2nd, which is where ultimately a  
12 recommendation was made to proceed with PowerStream  
13 and recommend that to the Town.

14 And I don't -- I wasn't there, but I  
15 would -- my assumption was that the final analysis of  
16 the bids, the financial analysis of the bids would  
17 have been brought to that meeting.

18 MS. KATE MCGRANN: So a couple of  
19 things. First of all, with respect to whether the  
20 strategic task team was given the opportunity to  
21 revisit their evaluations after the second analysis  
22 was done, to your knowledge was Mr. Rockx's second  
23 analysis of the financial responses provided to the  
24 members of the strategic task team?

25 MR. JOHN HERHALT: I can't recall for

1 sure.

2 MS. KATE MCGRANN: And I understand  
3 that there wasn't a revisiting of the scores that were  
4 --

5 MR. JOHN HERHALT: Not to my  
6 knowledge.

7 MS. KATE MCGRANN: Do you recall any  
8 discussion about whether or not that -- that was an  
9 opportunity that was going to be provided to the  
10 members of the strategic task team?

11 MR. JOHN HERHALT: I don't recall.

12 MS. KATE MCGRANN: Okay. In terms of  
13 the meeting that was taken with PowerStream to -- to  
14 discuss whether or not they would offer more money,  
15 you said that the strategic task team decided to have  
16 that meeting, what do you recall about the strategic  
17 task team making that decision?

18 MR. JOHN HERHALT: Well, only that I  
19 think they're of the view that I -- or the -- the way  
20 the discussion unfolded was it was the scoring process  
21 had le -- resulted with PowerStream being the number  
22 one choice, but it was not the best financial choice.

23 And so I think the discussion was that  
24 wouldn't it be great to be able to pick PowerStream  
25 and have an augmented financial bid. I think that's

1 really what it turned out to be.

2 MS. KATE MCGRANN: Do you remember  
3 when that discussion took place?

4 MR. JOHN HERHALT: That was on the  
5 28th.

6 MS. KATE MCGRANN: That was on the  
7 28th, so that was a discussion that took place with  
8 the strategic task --

9 MR. JOHN HERHALT: I think it was the  
10 end of -- end of the meeting on the 28th, from my  
11 recollection, so.

12 MS. KATE MCGRANN: Okay, and this is  
13 something we both have to be careful of, but I will  
14 get in trouble from the Court Reporter if we speak  
15 over each other, because the transcript --

16 MR. JOHN HERHALT: Sorry.

17 MS. KATE MCGRANN: -- becomes messy.

18 MR. JOHN HERHALT: Sorry, my -- my  
19 apologies.

20 MS. KATE MCGRANN: No, it's -- this is  
21 a both of us responsibility.

22 Okay, so it's your recollection that at  
23 the September 28th meeting, one -- the financial  
24 scores are shared, November 28th, thank you, one, the  
25 financial scores are shared. Two, there's a decision

1 to go back to the bidders to seek more clarity. And  
2 three, a decision is made to go to PowerStream and  
3 seek more money.

4 MR. JOHN HERHALT: That's a good --  
5 that's a good point, that makes -- that doesn't make  
6 sense, does it? No. No, I think that still was it, I  
7 think that was it.

8 I think -- I think that all happened on  
9 the 28th. I think the -- the reality was that there  
10 were some question marks around particularly the Hydro  
11 One share purchase price offer, and that needed more  
12 clarity.

13 And then there was clearly a view that  
14 PowerStream was the one that scored the best and it  
15 would be good to go to them to talk to them about  
16 sweetening the pot, so to speak.

17 But I think yeah, I think both of those  
18 happened toward the end of the meeting on the 28th.  
19 That would be my recollection.

20 MS. KATE MCGRANN: Do you recall if  
21 there was any discussion about seeking more money from  
22 Hydro One in the process of seeking clarity on their  
23 bid, if you're going to be talking to them anyways?

24 MR. JOHN HERHALT: Well, they -- they  
25 -- I'd probably be better to ask Mr. Rockx this,

1 because he did have direct contact with them, but I  
2 think one of the things that was interesting is that  
3 at a certain point in time Hydro One did not want to  
4 have further conversations unless they had an  
5 exclusivity arrangement with the -- with the process.

6 MS. KATE MCGRANN: Do you recall that  
7 being discussed at the November 28th meeting?

8 MR. JOHN HERHALT: That happened  
9 afterward, I believe. That happened afterward.

10 MS. KATE MCGRANN: Okay, so at  
11 November 28th when there's discussions on the  
12 strategic task team about going to some bidders to ask  
13 for clarity, going to PowerStream to ask for more  
14 money, do you recall if there was a discussion of  
15 asking any of the other bidders if they would pay more  
16 money?

17 MR. JOHN HERHALT: No, I don't recall  
18 that happening. But I think the -- if I might, I  
19 would offer this. I don't think -- I think the  
20 reality was, the only reason PowerStream was selected  
21 for that is because they scored the best.

22 So, this was going to the preferred  
23 bidder, not going to everybody. That was the -- that  
24 was the rationale.

25 MS. KATE MCGRANN: And then the third

1 analysis which is conducted after the discussions with  
2 PowerStream, it's your recollection that that was  
3 presented to Strategic Task Team and the award at the  
4 joint meeting on December 2nd?

5 MR. JOHN HERHALT: I -- I can't say  
6 that for certain. All I know is that there was that  
7 meeting and Mr. Rockx was there. So, my assumption  
8 would be that that analysis would have been there, as  
9 well, but...

10 MS. KATE MCGRANN: I'm looking at the  
11 time and for some guidance from you. I'm about to  
12 move on to a related topic, but I'm done this  
13 particular group of questions.

14 THE HONOURABLE FRANK MARROCCO: Well,  
15 do -- do you want to -- maybe we should deal with Mr.  
16 Bonwick's objection and -- and just -- so, Mr.  
17 Herhalt, we're going to deal with Mr. Bonwick's  
18 objection.

19 We're going to then break for lunch.  
20 We'll be back after lunch, 2:15.

21 MR. JOHN HERHALT: Okay.

22 THE HONOURABLE FRANK MARROCCO: So, if  
23 you could come back at 2:15, that would be great.

24 MR. JOHN HERHALT: Sure.

25 THE HONOURABLE FRANK MARROCCO: Thank

1 you.

2

3

(WITNESS STANDS DOWN)

4

5

THE HONOURABLE FRANK MARROCCO: And

6 we'll -- we'll take -- take a couple minute break.

7 And then we'll deal with the objection.

8

9 --- Upon recessing at 12:41 p.m.

10 --- Upon resuming at 12:46 p.m.

11

12

THE HONOURABLE FRANK MARROCCO: So,

13 Mr. Bonwick, what was the nature of your objection?

14

MR. PAUL BONWICK: Your Honour, would

15 you like me here or would you like me up there?

16

THE HONOURABLE FRANK MARROCCO: No, I

17 can hear you. Wherever you find it more convenient.

18

MR. PAUL BONWICK: Either one (1)

19 works for me. I'll take your direction.

20

THE HONOURABLE FRANK MARROCCO: Just

21 stay where you are. Turn on the mic.

22

MR. PAUL BONWICK: That'll maybe help

23 a little bit. Okay.

24

25

(BRIEF PAUSE)

1 SUBMISSIONS BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: Your Honour, after  
3 you kindly suggested that I review the transcripts for  
4 the last approximate forty-five (45) minutes of the  
5 hearings on Friday, I did take that opportunity. And  
6 out of that, I wanted to raise an objection with you.

7 And I thought it was important for me  
8 to share my perspective in terms of the matter that  
9 I'm putting before Your Honour. In my mind, there's -  
10 - there's sort of two (2) components to this. One (1)  
11 is His Honour's experience in terms of dealing not  
12 only with judicial inquiries, but all sorts of matters  
13 related to law.

14 And I respect the fact that you  
15 certainly have the ability to dissect various  
16 arguments and lend credibility or weight based on --  
17 on how that information or evidence or theories are  
18 being brought forward.

19 Subject, of course, to your counsel  
20 cross-examining and helping to correct the record,  
21 there's also -- and I'm reading through the website.  
22 And certainly because Collingwood counsel has asked to  
23 have the judicial inquiry live streamed, there's a  
24 separate component that I believe warrants  
25 consideration by the judicial inquiry in terms of what

1 people in the community are receiving in terms of live  
2 information and how they're predicating decisions and  
3 judgments and how the committee -- the community in  
4 general is -- is following this -- this trend.

5                   And so, with that in mind, I was  
6 somewhat surprised or -- or shocked that there wasn't  
7 cross-examination by the judicial counsel specific to  
8 the objection I'm raising from Collingwood counsel's  
9 line of questioning on Friday afternoon with the  
10 former CAO, Ms. Wingrove.

11                   What I'd respectfully like to do is  
12 draw your attention -- and the line of questioning was  
13 about whether Collingwood and Collingwood counsel was  
14 misled in terms of receiving new money in -- as it  
15 related to \$15 million or something thereabouts.

16                   And so, what I wanted to do to support  
17 the objection and ask for your ruling on this is --  
18 bring forward page 334, please, of transcript -- or  
19 sorry, it may not be it. If it's not downloaded --  
20 the transcript -- it's on the -- on the website.

21

22                   (BRIEF PAUSE)

23

24                   THE HONOURABLE FRANK MARROCCO:    Oh,  
25 just -- just a second.   Okay.

1 MR. PAUL BONWICK: To give you some  
2 orientation, this is where Collingwood Council is  
3 doing a cross-examination of Ms. Wingrove asking about  
4 a staff report regarding the strategic partnership of  
5 Collus and PowerStream that was prepared on  
6 January 23rd.

7 Now, in this exchange, Collingwood  
8 counsel states, and I quote:

9 "I believe that it was you that  
10 testified that Mr. Houghton had  
11 prepared the first draft and then  
12 sent it to you and made some  
13 revisions."

14 We had spent a significant amount of  
15 time leading up to this, demonstrating that in fact  
16 this was entirely not the case. As counsel knows,  
17 there was clear evidence that Ms. Wingrove --  
18 Ms. Wingrove drafted the staff report, albeit from  
19 what she says -- states on April 18th:

20 "Using information that was provided  
21 to me throughout this process from  
22 Mr. Houghton, specifically in  
23 preparation for the decision that  
24 was being put before Council."

25 Page 205, if I could -- if I could,

1 please?

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: That just simply  
6 verifies that.

7 THE HONOURABLE FRANK MARROCCO:

8 We'll -- just a second. It'll come up.

9 MR. PAUL BONWICK: Thank you.

10

11 (BRIEF PAUSE)

12

13 MR. PAUL BONWICK: Line 11. Line 11.

14 I'm wondering if I'm pulling it off the -- the  
15 original. Yeah, sorry. It'd be -- when I was doing  
16 this, Your Honour, it had not been -- the transcript  
17 hadn't been downloaded, so my pages aren't going to  
18 necessarily --

19 THE HONOURABLE FRANK MARROCCO: Well,  
20 why don't you make the argument --

21 MR. PAUL BONWICK: Okay.

22 THE HONOURABLE FRANK MARROCCO: -- and  
23 then if there's an issue about it, we can address it.

24 MR. PAUL BONWICK: Thank you. If I  
25 could pull up -- if we review exchange in an email,

1 CJ10010810.

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: Is that the right  
6 one here?

7

8 (BRIEF PAUSE)

9

10 MR. PAUL BONWICK: I've maybe got the  
11 wrong --

12 THE HONOURABLE FRANK MARROCCO: So --  
13 but just maybe I can help a bit. It seems -- are you  
14 saying that the way Council characterized the  
15 financial -- the financial aspect of the transaction,  
16 Council for the Town characterized the financial  
17 transaction with the witness without objection --  
18 wasn't correct -- and left a false impression about  
19 that? Is that -- is that the gist of it?

20 MR. PAUL BONWICK: Yes. And what I  
21 was going to do, Your Honour, was bring forward  
22 evidence that's already been collected by the judicial  
23 counsel for the Inquiry, as well as other evidence  
24 that's been submitted, that clearly, clearly stated  
25 this was not the case.

1                   It was a false narrative that was  
2 driven, was left out in the community and through the  
3 live streaming, that in fact there was something that  
4 misled Council to believe that they were finding new  
5 money, when in fact all the documentation that you've  
6 received or the judicial counsel has collected has  
7 clearly stated that the transaction value itself or  
8 the valuation of Collus was somewhere between 14 and  
9 \$16 million. I can pull that information up for you.

10                   Clearly half of that is somewhere  
11 between 7 and \$8 million. There is clear reference to  
12 other costs being included in the \$15 million  
13 transaction throughout all the evidence that's been  
14 collected by the judicial counsel.

15                   There is a slide presentation to  
16 Council that shows that only one component of the  
17 amount of money that they were receiving was specific  
18 to the 50 percent payment of the shares. Common  
19 practice would be that Collingwood Council would not  
20 disproportionately leave a significant amount of their  
21 equity into a newfound 50/50 partnership.

22                   That all translates out in terms of  
23 what the Court had -- or what the Judicial Inquiry has  
24 heard, what judicial counsel has collected. But yet a  
25 false narrative was allowed to stand, and we all just

1 know it's -- it's not accurate.

2           And -- and so in the interest of people  
3 having fair and accurate information, I understand we  
4 can cross-examine. But to let a false narrative  
5 stand, that's what I'm objecting to, Your Honour.

6           THE HONOURABLE FRANK MARROCCO: I  
7 appreciate the objection. What you're objecting to  
8 has, of course, taken place and -- and the effect of  
9 it is that -- is has happened.

10           So the only way that I can deal with  
11 that is you will have to put that to witnesses that  
12 come forward to demonstrate what the -- from your  
13 perspective what the actual financial transaction was.

14           I can't -- I had the same problem -- I  
15 can't take back the evidence once it's there. And as  
16 you would know given your former life, what -- former  
17 life, once the information gets out into the -- once  
18 the information is out, it's out, and people react to  
19 it.

20           MR. PAUL BONWICK: And, Your Honour,  
21 I'm very respectful of that -- that reality.

22           My objection came in the form of  
23 raising it not only for the benefit of correcting the  
24 record but also to identify once again where I feel  
25 that there is a clear or unintended bias -- perhaps it

1 was the Friday afternoon everybody trying to get out  
2 for the long weekend -- but the fact is judicial  
3 counsel for the Inquiry -- or sorry -- counsel for the  
4 Inquiry put together all this information that we're  
5 relying on, the evidence that we're looking at.

6                   And so from my perspective, counsel  
7 certainly does not have a problem in cross-examining  
8 witnesses when they've completed if it's driving some  
9 other type of narrative. But I would argue that there  
10 was no -- there was no effort made to simply correct  
11 what, in fact, we know to be the case. And I'll  
12 simply stand down at that point.

13                   THE HONOURABLE FRANK MARROCCO:    And I  
14 appreciate that. I don't think it demonstrates a  
15 bias, but -- but I will give -- it'd be an order to  
16 try to address the objection. I'll give you every  
17 opportunity to get the narrative out the way you want  
18 to get it out when their witness is here who can  
19 testify to the financial nature of the transaction.

20                   Mr. Chenoweth?

21

22 SUBMISSIONS BY MR. FREDERICK CHENOWETH:

23                   MR. FREDERICK CHENOWETH:    Yes,  
24 Your Honour. I wanted to support the comments of  
25 Mr. Bonwick on this matter. But in the final

1 analysis, I want to take a slightly -- slightly  
2 different approach to the one suggested by Mr. Bonwick  
3 was -- which I guess is to try and some way take back  
4 the evidence or correct the record by a statement from  
5 you at this point, all of which I understand the  
6 difficulties with.

7 I, too -- and it's -- I was probably  
8 remiss in not making an objection at the time, and I  
9 regret not doing so. Had I been quicker, I would have  
10 expressed a concern about Mr. Breedon's question, and  
11 I believe that what you testified was -- and this is  
12 at page 334 of the transcript:

13 "I believe you testified was that  
14 Mr. Houghton had prepared the first  
15 draft and then sent it to you, and  
16 you made some revisions."

17 All of these matters are factual  
18 matters which the Court will have to weigh. I simply,  
19 with respect to that, want to draw the Court's  
20 attention to the email that I think that Mr. Bonwick  
21 was referring to. And I had a number for it, and I  
22 hope it's right, which was CJI0010810, which was  
23 pretty definitive with respect to that matter.

24 And it -- yeah. It doesn't appear to  
25 be the right number. I am going to read and describe

1 the email if I might, Your Honour, and I apologize for  
2 the wrong number.

3                   It's an email from Kim Wingrove dated  
4 January 19th, 2012 to Mr. Houghton and to Sara Almas  
5 and to Sandra Cooper. And she says:

6                   "I would appreciate your review of  
7 the attached."

8                   And I had taken her through this in my  
9 cross-examination of her. And what she's sending is  
10 the -- the staff report that she'd prepared. And she  
11 goes on to say:

12                   "I have highlighted a few places  
13 that I felt were either sensitive or  
14 required a bylaw number. Please pay  
15 special attention to these. I have  
16 tried to strike a balance between  
17 providing sufficient detail to  
18 support the recommendations without  
19 drowning everyone in detail. Your  
20 comments would be most welcome."

21                   The point of -- and then there's a --  
22 Sara Almas responds to that, which isn't much.

23                   But the point of it all is that it's  
24 pretty clear from that email that Ms. Wingrove  
25 prepared the staff report and forward it -- forwarded

1 it to Mr. Houghton and Ms. Almas and Ms. Cooper for  
2 her comment.

3 She admits as much on page 205 of her  
4 transcript in my cross-examination of her. And I'll  
5 make this quick.

6 "So, you would acknowledge that --  
7 that you actually -- that you had  
8 some information from other sources,  
9 but you actually prepared the first  
10 draft of that report, correct?"

11 She responds. She doesn't say 'no'.

12 She says:

13 "Using information that was provided  
14 to me through this process and from  
15 Mr. Houghton specifically and in  
16 preparation for the decision that  
17 was being put before Council."

18 THE HONOURABLE FRANK MARROCCO: So,  
19 she acknowledged in that that the -- Mr. Houghton  
20 provided the information? Did I understand you to  
21 read that correctly? Did I understand that correctly?

22 MR. FREDERICK CHENOWETH: I'll -- I'll  
23 read it -- I'll read it again -- again.

24 THE HONOURABLE FRANK MARROCCO: I -- I  
25 -- all right, please do.

1 MR. FREDERICK CHENOWETH: All right.

2 "Information that was provided to me  
3 through this process and from Mr.  
4 Houghton specifically."

5 That's what she says.

6 THE HONOURABLE FRANK MARROCCO: Right.

7 MR. FREDERICK CHENOWETH: She's  
8 talking about the information that she made the report  
9 out of. But there's no question that -- that she's  
10 indicating that she prepared the report, so.

11 THE HONOURABLE FRANK MARROCCO: From  
12 information received from other sources. I'm just  
13 listening to what you're reading to me.

14 MR. FREDERICK CHENOWETH: Oh, no -- no  
15 question it would be from other sources because she  
16 would have been involved in a variety of different  
17 meetings with respect to this issue. So, she would  
18 have gathered information from -- from all sorts of  
19 other sources, it appears, including Mr. Houghton.

20 But in any event, the point of it all  
21 is that I think, as a result of looking at the email  
22 that I've referred the commission to and looking at  
23 her answers, it's clear that she prepared the first  
24 draft of the staff report, and then sent it -- sent it  
25 to others for their comment.

1                   So, that I -- I -- my only point with  
2   respect to that, Your Honour, is -- is to say that,  
3   when one is concluding where the staff report came  
4   from and, thereafter, whether or not the staff report  
5   was misleading, I think it's important that this  
6   evidence be considered when weighing it.

7                   More importantly than that, I was  
8   concerned about -- about the nature of the line of  
9   questioning that Mr. Breedon --

10                  THE HONOURABLE FRANK MARROCCO:   Well,  
11   no. No, but -- but as you said yourself, the -- the  
12   objection would have been -- Mr. -- Mr. Bonwick wasn't  
13   here. The -- it's a little different when some -- and  
14   as you acknowledged yourself, it's a little different  
15   when someone is here and doesn't object and now comes  
16   back today with an objection of some kind. Like --

17                  MR. FREDERICK CHENOWETH:    I agree it's  
18   a little different.

19                  THE HONOURABLE FRANK MARROCCO:   You --

20                  MR. FREDERICK CHENOWETH:    I  
21   acknowledge --

22                  THE HONOURABLE FRANK MARROCCO:   You  
23   understand what I'm --

24                  MR. FREDERICK CHENOWETH:    You're --

25                  THE HONOURABLE FRANK MARROCCO:   --

1 saying when I say it's a little --

2 MR. FREDERICK CHENOWETH: So, Your --

3 THE HONOURABLE FRANK MARROCCO: --

4 different?

5 MR. FREDERICK CHENOWETH: I -- I do,

6 Your Honour.

7 MR. PAUL BONWICK: Your Honour, I was

8 -- not that I'm not concerned about having a breakdown

9 in communications, a witness saying one (1) thing, and

10 -- and then later saying another, I -- I wasn't so

11 much focussed on that, but I appreciate Mr. Chenoweth

12 --

13 THE HONOURABLE FRANK MARROCCO: I -- I

14 took it you were focussed on the --

15 MR. PAUL BONWICK: I was focussed --

16 THE HONOURABLE FRANK MARROCCO: --

17 what you perceive to be the inaccurate presentation --

18 MR. PAUL BONWICK: -- the overall --

19 THE HONOURABLE FRANK MARROCCO: -- of

20 the financial aspects of this transaction.

21 MR. PAUL BONWICK: If you bring up

22 KPM0002403 --

23 THE HONOURABLE FRANK MARROCCO: Well -

24 - well, what I'm interested --

25 MR. PAUL BONWICK: -- it sort of

1 demons --

2 THE HONOURABLE FRANK MARROCCO: -- in  
3 Mr. Chenoweth. He --

4 MR. PAUL BONWICK: Oh, I apologized.

5 THE HONOURABLE FRANK MARROCCO: He  
6 wasn't finished yet.

7 MR. PAUL BONWICK: My apologies.

8 MR. FREDERICK CHENOWETH: The other  
9 concern I had, Your Honour, and I think that the only  
10 approach that can successfully be taken at this time  
11 is for the court to consider this concern in weighing  
12 its eventual conclusion as to whether or not the  
13 counsel was -- the counsel of the Town was -- was  
14 misled.

15 I think it's important to note that, as  
16 my memory of the evidence, and I checked it with other  
17 counsel, that this is the first time that this line of  
18 questioning about the Council or councillors having  
19 been in some way misled about -- about the price or  
20 amount they're receiving, it's the first time it was  
21 raised.

22 And it wasn't raised with -- with the  
23 very councillors that might have been able to -- to  
24 give some comment on it, i.e., Sandra Cooper, Lloyd,  
25 and Chadwick.

1                   In my view, the legal argument that  
2 would relate to that would be a breach of the  
3 principle of Browne v. Dunn, which would have required  
4 that that be put to the best witnesses who could make  
5 comment on it, and it -- and it wasn't.

6                   The difficulty that creates is those  
7 witnesses have now gone and we're unable to ask those  
8 witnesses without recalling them. And I'm not here  
9 asking that they be recalled. But we now are not in a  
10 position to ask those witnesses whether at the Council  
11 meeting, particularly the Council meeting that were  
12 involved with this, June -- or Ja -- January 16th and  
13 January 23rd, to ask them whether there's any sense  
14 that they were misled at all. And -- and we're  
15 restricted to ask that of other witnesses that are  
16 coming here after, which do not include Council  
17 members.

18                   So, I think it's an important  
19 principle. And I simply say, Your Honour, and I say  
20 nothing more than this, that I'd ask the commission to  
21 weigh -- that it -- that it weigh that unfortunate set  
22 of circumstances with respect to when this line of  
23 cross was weighed and that we didn't get a chance to  
24 put it to those involved.

25                   I'd ask that the Commission weigh that

1 when coming to its conclusion with respect to the  
2 issue of whether or not there was a problem with the  
3 presentation of the financial information.

4 THE HONOURABLE FRANK MARROCCO: I'm  
5 certainly going to pay attention to whether there was  
6 a misstatement concerning the financial information  
7 and -- and in terms of whether cou -- the -- it  
8 appears from the evidence that -- that that kind of  
9 misrepresentation took place. I certainly will do  
10 that.

11 I -- I will -- just because there was  
12 no objection to the line of questioning, I -- does not  
13 mean that I will accept the line of questioning  
14 without otherwise having regard to the evidence.

15 MR. PAUL BONWICK: Your Honour, I  
16 appreciate you clarifying that for Mr. Chenoweth.

17 THE HONOURABLE FRANK MARROCCO: It  
18 doesn't really address --

19 MR. PAUL BONWICK: Yeah, my --

20 THE HONOURABLE FRANK MARROCCO: -- the  
21 issue --

22 MR. PAUL BONWICK: -- mine was very  
23 specific. And -- well, I felt it was. And just when  
24 I read the transcript, the words 'misleading' on  
25 different occasions were coming up, and it was related

1 specifically to the fact -- or to the evidence that  
2 the Council has collected in terms of the \$15 million.

3                   And we have evidence that Collingwood  
4 Council was presented prior to approving the deal --  
5 I've downloaded it here. It's the 50 percent share  
6 purchase. It's the recapitalization and it's the  
7 redeeming of the historical promissary note. No  
8 councillor could have missed that unless they were not  
9 in the room.

10                   My point was, it -- it was a false  
11 narrative and nobody stood up and asked to correct the  
12 record on it.

13

14 RULING:

15                   THE HONOURABLE FRANK MARROCCO: Well,  
16 I think -- I think the nature of your objection  
17 amounts to an articulation that, at least from your  
18 perspective, it was a false narrative.

19                   Secondly, people do have the  
20 opportunity to make written closing -- so, I -- I  
21 appreciate you may not -- a person might not want to  
22 wait to correct the narrative.

23                   But nevertheless, apart from what was  
24 said here, there will be the opportunity in writing to  
25 flesh out the fact that, from your perspective, at

1 least, the suggestion that the Town didn't get 14 to  
2 16 million was not correct. It was a false narrative.

3           The opportunity to say that in writing  
4 will -- will come later on. And it's been said now --  
5 and I don't think I can do much more at this  
6 particular point than say I -- I understand what you  
7 said. And you have said it on -- on -- today. And  
8 you will have the opportunity to flush that out in  
9 writing at the end.

10           MR. PAUL BONWICK: Thank you, Your  
11 Honour.

12           THE HONOURABLE FRANK MARROCCO: All  
13 right. Well, with -- with all that, we'll now break  
14 for lunch.

15

16 --- Upon recessing at 1:10 p.m.

17 --- Upon resuming at 2:19 p.m.

18

19           MR. RYAN BREEDON: Your Honour, just  
20 before we -- it -- it's Ryan Breedon. Just before we  
21 begin with the witness, I wonder if I might address a  
22 matter very briefly.

23           We weren't asked to respond to the  
24 objection before the lunch break, and I appreciate  
25 that you have determined it, but given that --

1 THE HONOURABLE FRANK MARROCCO: Go  
2 ahead. I'm -- I'll -- I'll -- I'll hear you out even  
3 though I've already ruled on the matter. The  
4 procedure's been fairly irregular with respect to this  
5 objection, anyway, so go ahead.

6 MR. RYAN BREEDON: Thank -- thank you,  
7 Your Honour. So as -- and I'll be very brief.

8 As I understand it, there's basically  
9 two (2) issues. One (1) is the suggestion that in my  
10 cross-examination of Ms. Wingrove, I misstated earlier  
11 evidence, and then the second is this question about  
12 whether it was fair to suggest that the staff report  
13 was misleading in the circumstances that it arose.

14 The first -- the first point was made  
15 with respect to the question which appears at page  
16 334, line 12, of Friday's transcript.

17

18 (BRIEF PAUSE)

19

20 MR. RYAN BREEDON: Right. And if we  
21 scroll down a little bit more.

22 So the question was -- or the  
23 suggestion was, I -- I put to the witness:

24 "I -- I believe that you testified  
25 that Mr. Houghton had prepared the

1 first draft" --

2 And of course, this is of the staff  
3 report.

4 -- "and sent to you. You made some  
5 revisions and finalized them."

6 And then if we scroll down a little bit  
7 more.

8 "And I believe you had told us you  
9 could now recall what the revisions  
10 were that you had made?"

11 And -- and the witness agreed with all  
12 of that.

13 Now had an objection been made at the  
14 time, we would have looked at the transcript from  
15 April 18th at page 103.

16

17 (BRIEF PAUSE)

18

19 MR. RYAN BREEDON: Starting at line 16

20 --

21 THE HONOURABLE FRANK MARROCCO:

22 Coming.

23

24 (BRIEF PAUSE)

25

1 MR. RYAN BREEDON: And this was Ms.  
2 Wingrove's examination by Ms. McGrann. And you'll see  
3 the question was:

4 "There's a reference on this page to  
5 the staff report. Are you familiar  
6 with it?"

7 She says, "Yes." And if we scroll  
8 down, Ms. McGrann asks, "Do you know who drafted it?"

9 And the witness testified:

10 "This staff report, like many  
11 others, the initial draft of it came  
12 from Mr. Houghton, and then I made -  
13 - did editing, and completed it, and  
14 submitted it to the clerk."

15 That question was, then, "What -- what  
16 kind of editing did you do?"

17 And the witness testified she couldn't  
18 remember.

19 So in my submission, the -- the  
20 question that was put to Ms. Wingrove was fair based  
21 on the transcript. That'll be a question for you to  
22 determine whether she resiled from that in her cross-  
23 examination later on.

24 If we can turn back to page 334,  
25 please, of the Friday's transcript. This now turns to

1 the -- the second issue which has been raised. Scroll  
2 down, and keep going. All right.

3 Now -- and if we keep going, just onto  
4 the next page, so immediately after the issue which  
5 was raised, you'll see that the question right --  
6 right at line 1 was that the report was submitted,  
7 though, under your name -- Ms. Wingrove's name.

8 And that was actually the point of the  
9 questioning, was that although there was some issue as  
10 to how the report was drafted, ultimately, it was  
11 submitted to Council under Ms. Wingrove's name, and  
12 Ms. Wingrove effectively becomes the author of the  
13 report.

14 And so there has been a suggestion that  
15 the questioning as to whether the report was  
16 misleading or not may have inaccurately characterized  
17 the financial aspects of the transaction. I don't  
18 agree with that but that will be ultimately for you to  
19 decide.

20 But in my submission, the fact that the  
21 author of the report now testifies that her report was  
22 misleading is a significant and relevant fact for this  
23 Inquiry to take into account. And lastly, there was a  
24 suggestion by Mr. Chenoweth this morning -- earlier  
25 this afternoon, that the rule in Browne v. Dunn

1 somehow requires this to be put to earlier witnesses.

2           Obviously, in my submission, Browne v.  
3 Dunn isn't engaged in this case but -- but the -- the  
4 concern, as I understand it, is that we might not know  
5 what Council was actually told at the meeting because  
6 other witnesses weren't asked about this discrepancy.  
7 That -- that arises only because of the timing of Ms.  
8 Wingrove's cross-examination. This had to be put to  
9 her first before her evidence could be put to any  
10 other witnesses.

11           But more to the point, we have a -- a  
12 video of the Council meeting in which the staff report  
13 and the presentation were presented to Council. I  
14 understand if it's not in the court book, it's going  
15 to be put in the court book already, and so any  
16 concerns about what was actually presented to Council  
17 can be addressed by that, because we actually have a  
18 recording of it, and it -- I'm not speaking out of  
19 hand, I don't think, to say that the concerns that Ms.  
20 Wingrove spoke about don't come up in the Council  
21 meeting at all.

22           So those are my submissions with  
23 respect to the objection.

24           THE HONOURABLE FRANK MARROCCO: Well,  
25 now, everyone's had -- I think everyone's had their

1 say about this. I'm moving on, because the -- this  
2 Inquiry is not going to rise or fall on that one (1)  
3 issue alone, so we're going back to the re-exam -- the  
4 examination of Mr. Herhalt, so he can -- doesn't -- so  
5 that we can get through his testimony.

6

7 CONTINUED BY MS. KATE MCGRANN:

8 MS. KATE MCGRANN: Good afternoon, Mr.  
9 Herhalt.

10 MR. JOHN HERHALT: Good afternoon.

11 MS. KATE MCGRANN: Can we put KPM1742  
12 on the screen. And this is an email that we've  
13 already looked at. It's the email in which Mr. Rockx  
14 conveys Mr. Houghton's request to you that you provide  
15 your ranking.

16 There's just one (1) additional item  
17 I'd like to ask you about. Though -- the email that's  
18 in the centre of the screen, from Mr. Rockx to you on  
19 November 22nd, the last line:

20 "Ed would like a ranking of the  
21 proposals as received to date to  
22 compare to the rankings prepared by  
23 the other steering committee  
24 members."

25 Was it your understanding that the

1 other steering members -- committee members had  
2 already ranked the proposals when you received this  
3 request?

4 MR. JOHN HERHALT: I can't recall,  
5 although this is November 22nd, right?

6 MS. KATE MCGRANN: M-hm.

7 MR. JOHN HERHALT: They were asked to  
8 score the bids in advance of the 23rd. So it might be  
9 that that he's referring to, but I can't tell you for  
10 sure.

11 MS. KATE MCGRANN: If we could turn up  
12 CPS2668. Before the break, we had been talking about  
13 the meeting at which the financial components of the  
14 responses were scored. This is the analysis that I  
15 think Mr. Rockx put together that was provided to the  
16 Strategic Task Team. I just want to use it as a tool  
17 to assist in -- in the questions I have for you about  
18 what was discussed at that meeting.

19 And what I would like to do is -- is  
20 scroll down. And you can see in the left-hand side,  
21 there's -- business issues are identified. With  
22 respect to the business iss -- issue of governance,  
23 which is right there, and then if we scroll to the  
24 right, you can see that there's a summary of -- of  
25 each of the bidder's responses on the governance

1 piece.

2 Do you recall if these responses were  
3 discussed generally or with respect to the scores that  
4 the -- the Strategic Task Team members assigned to the  
5 respondents?

6 MR. JOHN HERHALT: I can't speak to it  
7 specifically, but there was a round table discussion  
8 where a lot of the inputs were discussed -- discussed,  
9 and certainly, John's analysis was discussed. So I --  
10 I believe that would have come out, but in how much  
11 detail, I can't tell you off the top of my head, so.

12 MS. KATE MCGRANN: Okay. So is it  
13 fair --

14 MR. JOHN HERHALT: But this was  
15 provided to everyone so that they could have a view of  
16 it as well, so.

17 MS. KATE MCGRANN: Okay. But you  
18 don't specifically recall any discussion about the  
19 responses on the governance piece?

20 MR. JOHN HERHALT: No, not  
21 specifically.

22 MS. KATE MCGRANN: Similarly, if you  
23 could scroll down further, there is businesses you  
24 identified, exit strategy.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: And if we scroll to  
4 the right, we see Mr. Rockx's summary of the responses  
5 received.

6 Do you specifically recall the exit  
7 strategy being a topic of discussion at the STT  
8 meeting where these responses were scored?

9 MR. JOHN HERHALT: Just that John, I  
10 think, highlighted them, but -- but I can't tell you  
11 for certain what the specifics of the conversation  
12 were. I -- I can't recall those now.

13 MS. KATE MCGRANN: Okay. And the far  
14 right, I see, for example, a shotgun provision and a  
15 piggyback provision. Do you recall if any explanation  
16 was provided as to what a piggyback provision was?

17 MR. JOHN HERHALT: I think there would  
18 have, but I -- it would have been John that spoke to  
19 it, so -- but I can't give you the details of it that  
20 I -- it's just recollection. I -- I can't recall.

21 MS. KATE MCGRANN: Okay. And when you  
22 say, John would have given that -- that explanation,  
23 do you recall him actually giving that explanation?

24 MR. JOHN HERHALT: I -- I can't  
25 recall, but I know he reviewed this summary at one

1 point with the -- with the Strategic Partnership Task  
2 Team.

3 MS. KATE MCGRANN: Okay. And when you  
4 say, "At one point," do you recall whether it was at  
5 the September -- or sorry, the November 28th meeting,  
6 or do you think you recall it as another time --  
7 reviewed it at another time?

8 MR. JOHN HERHALT: No. It would have  
9 been -- it would have been at one (1) of the meetings  
10 for sure, yeah.

11 MS. KATE MCGRANN: So this one (1) is  
12 prepared on November 25th, this document. We see the  
13 strategic task team meeting on November 28th to review  
14 the financial bids. We don't see them meet again, so  
15 --

16 MR. JOHN HERHALT: It would have been  
17 then. It would have been then, for sure.

18 MS. KATE MCGRANN: Turning to the --  
19 the December 1st meeting that -- the meeting with  
20 PowerStream. If we could turn to paragraph 460 --

21 THE HONOURABLE FRANK MARROCCO: Before  
22 -- before you do that, I'm just looking at that  
23 summary, and I think the second one was PowerStream,  
24 and it says -- yeah, I'm sure it was. And it says:

25 "Shotgun clause beginning two (2)



1 advises Mr. Muncaster, yourself, and Mr. Rockx that he  
2 had arranged a meeting with PowerStream on the morning  
3 of December 1st, 2011, to discuss PowerStream's  
4 financial offer, future service agreements, shotgun  
5 clause, and to negotiate other items.

6 Do you -- is this what you were  
7 referring to when you talked about a -- a meeting with  
8 PowerStream?

9 MR. JOHN HERHALT: Yes.

10 MS. KATE MCGRANN: Will you turn up  
11 KPM1877, please?

12

13 (BRIEF PAUSE)

14

15 MS. KATE MCGRANN: So if we could  
16 start at the bottom of this email chain. It's a short  
17 one. You see you've emailed Mr. Rockx, "Hi John."  
18 The subject line is, "Collus and PowerStream Meeting."  
19 You write:

20 "Hi John: Please send me a note  
21 after the meeting and let me know  
22 the outcome."

23 Mr. Rockx responds to you:

24 "It should be an interesting  
25 discussion. It will be interesting

1 to see what PowerStream's reaction  
2 will be to the proposed elimination  
3 of the shotgun clause and the  
4 possible entry into a long-term  
5 50/50 relationship with the Town."

6 He remarks:

7 "Ideally, all the proponents really  
8 want to own 100 percent of Collus."

9 And then you can scroll up. So  
10 finished off, and your response is:

11 "You bet."

12 Can you tell me what you recall about a  
13 proposed elimination of the shotgun clause and  
14 possible entry into a long-term 50/50 relationship  
15 with the Town?

16 MR. JOHN HERHALT: Well, the -- the  
17 long-term relationship was actually the subject of the  
18 proposal, so I don't know why John said it that way,  
19 but I don't recall the discussion about the  
20 elimination of the shotgun off the top of my head.

21 The last comment about the proponents  
22 really wanting to own a hundred percent of Collus,  
23 well, that was a notion that we -- we knew from the  
24 proponents all along, but whether or not that -- I  
25 don't know that that would have come up in that

1 discussion, so.

2 MS. KATE MCGRANN: Okay. And you've  
3 got no recollection of the other items that are  
4 mentioned --

5 MR. JOHN HERHALT: No, not about the  
6 proposed elimination of the shotgun clause but... My  
7 -- my response is more around, it should be an  
8 interesting discussion, so.

9 MS. KATE MCGRANN: And I think you've  
10 answered this already, but given that it looks like  
11 Mr. Rockx is envisioning attending a meeting with  
12 PowerStream whereby there's going to be a proposal to  
13 eliminate a shotgun clause and -- and entry into a  
14 long-term 50/50 relationship, to your knowledge was  
15 KPMG asked to give advice about the shotgun clause or  
16 entering into a long-term 50/50 relationship at this  
17 point in time?

18 MR. JOHN HERHALT: I certainly was not  
19 asked that. I don't know that John would have been  
20 either. I think John was there more because of the  
21 analysis he had done on the financial parts of the  
22 bid, so -- but I think the -- the discussion was  
23 really -- my understanding of the discussion was going  
24 to be about the share -- the purchase price offer that  
25 they made, and -- and on the basis of that, being able

1 to proceed with them in the long-term relation --  
2 long-term 50/50 relationship.

3 MS. KATE MCGRANN: Okay. To your  
4 knowledge, other than the work that you and your  
5 colleagues at KPMG were doing, was either the Town or  
6 Collus Power receiving any other professional advice  
7 on this transaction at this point in time?

8 MR. JOHN HERHALT: I can't answer  
9 that.

10 MS. KATE MCGRANN: Were you --

11 MR. JOHN HERHALT: I think -- I think  
12 -- and certainly the accounting firm that was retained  
13 by both the Town and Collus certainly had some input  
14 to some parts of the discussion, Ralph Neate, I think.

15 MS. KATE MCGRANN: The auditors?

16 MR. JOHN HERHALT: The auditors, yeah.  
17 But whether -- how engaged they were, I can't -- I  
18 can't answer that, so.

19 MS. KATE MCGRANN: And other than the  
20 -- the -- Gaviller, the auditing firm, were you aware  
21 of any other professionals who were providing advice  
22 about the transaction at this point in time?

23 MR. JOHN HERHALT: Not to my  
24 knowledge, because I wasn't at those discussions, so.

25 MS. KATE MCGRANN: Okay. Could we

1 turn to paragraph 419 of the Foundation Document,  
2 please?

3

4

(BRIEF PAUSE)

5

6 MS. KATE MCGRANN: This paragraph  
7 describes an email that Mr. Rockx sent to you,  
8 reporting back on the December 1st meeting with  
9 PowerStream, and his email includes the following  
10 comments. He says it's a pretty good meeting. Collus  
11 confirmed a lot of matters in respect of the prose --  
12 proposed transaction, including the removal of the  
13 shotgun clause.

14 He goes on to report that:

15 "Ed indicated that he needed a  
16 higher price and got commit for --  
17 commitment for an additional  
18 \$700,000."

19 I understand that you don't have any  
20 recollection about discussions around removing the  
21 shotgun clause.

22 Does this assist in that regard at all?

23 MR. JOHN HERHALT: No. I wasn't part  
24 of that conversation, so.

25 MS. KATE MCGRANN: Even though you

1 weren't part of the conversation, does seeing the  
2 reporting that you received from Mr. Rockx help you  
3 remember anything about why Collus wanted the shotgun  
4 clause removed?

5 MR. JOHN HERHALT: I can't answer  
6 that, sorry.

7 MS. KATE MCGRANN: Could we turn up  
8 CPS70 --

9 THE HONOURABLE FRANK MARROCCO: Well,  
10 just before you do that, is it your recollection that  
11 the Hydro One -- that that's accurate to say that the  
12 Hydro One offer still in \$2 million higher than that  
13 of PowerStream?

14 MR. JOHN HERHALT: Based on John's  
15 analysis at the time, I think he still had a  
16 conversation he was going to have with Hydro One  
17 which, at least in John's estimation, changed that,  
18 but at that time, yeah.

19

20 CONTINUED BY MS. KATE MCGRANN:

21 MS. KATE MCGRANN: Could we turn to  
22 CPS7026\_0001?

23

24

(BRIEF PAUSE)

25

1 MS. KATE MCGRANN: These are the  
2 minutes of a joint meeting of the Board of Directors  
3 of Collus Power and Collus Solutions, held on December  
4 2nd at -- December 2nd at 10:09 a.m.

5 If we scroll down, we can see that you  
6 listed as a guest via conference call, along with Mr.  
7 Rockx and Mr. Neate. Mr. Lloyd is also in attendance,  
8 along with Ed and Tim.

9 Is this the meeting that you thought  
10 was a joint meeting of the Board of Collus Power and  
11 the strategic task team?

12 MR. JOHN HERHALT: Certainly that's  
13 the date that -- that John Rockx sent me a note about.  
14 Actually, to be frank, I'm not convinced that I was on  
15 this call, and John Rockx was certainly there, but --  
16 because I did get a -- an email from John Rockx  
17 afterwards reporting to me about what happened at the  
18 meeting, so I don't think I was on that call, but --

19 MS. KATE MCGRANN: Okay. So questions  
20 that I would have for you about what was discussed at  
21 this meeting, is that something that you can help me  
22 out with?

23 MR. JOHN HERHALT: Probably not.

24 MS. KATE MCGRANN: Okay. Because you  
25 don't have a recollection of --

1 MR. JOHN HERHALT: No.

2 MS. KATE MCGRANN: -- attending this  
3 meeting at all?

4 MR. JOHN HERHALT: Yeah.

5 MS. KATE MCGRANN: And just for the  
6 sake of the record, could you just confirm, you don't  
7 have a recollection of attending this meeting at all?

8 MR. JOHN HERHALT: I don't.

9 MS. KATE MCGRANN: Could we turn to  
10 TOC512149, please?

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: So these are the  
15 minutes of an in camera meeting of Town Council held  
16 on December 5th, 2011.

17 If we can scroll down to the first item  
18 for discussion, it lists staff present, Ms. Wingrove,  
19 Ms. Almas, Mr. Houghton, Mr. Muncaster, Mr. Irwin,  
20 Doug Garbutt, and John Rockx of KPMG.

21 Do you recall if you were in attendance  
22 at this meeting?

23 MR. JOHN HERHALT: I was not.

24 MS. KATE MCGRANN: If we could turn up  
25 TOC512149. Pardon me --

1 THE HONOURABLE FRANK MARROCCO: That's  
2 the number you just gave us.

3 MS. KATE MCGRANN: Yes. No, pardon  
4 me. ALE1 5 -- ALE513.0002.

5

6 CONTINUED BY MS. KATE MCGRANN:

7 MS. KATE MCGRANN: So this is a slide  
8 presentation that was presented to Council in camera  
9 on December 5th, 2011. If you could turn to slide 4,  
10 please?

11 You've already addressed this in your  
12 evidence, you received the strategic partnership task  
13 team lists yourself and Mr. Rockx as members of the  
14 strategic task team.

15 Do you remember learning, shortly after  
16 this presentation was given, that Council was informed  
17 that you and Mr. Rockx were members of the strategic  
18 task team?

19 MR. JOHN HERHALT: Well, it certainly  
20 was after this meeting, but how shortly I can't tell  
21 you.

22 The -- I don't even recall getting the  
23 actual presentation until several -- several weeks  
24 later, but certainly I didn't know it at the time, so.

25 MS. KATE MCGRANN: Okay, so you

1 weren't asked to review and comment on the slide show  
2 that was presented to Council about the work of the  
3 task team before it was given?

4 MR. JOHN HERHALT: Not at all.

5 MS. KATE MCGRANN: Did you have any  
6 concerns about the fact that Town Council had been  
7 advised that you and Mr. Rockx were members of the  
8 strategic partnership task team?

9 MR. JOHN HERHALT: Certainly I did not  
10 think the way we were characterized was correct,  
11 although I thought that the members of the strategic  
12 task team that were from the Town knew that we were  
13 advisors to the task team. That was certainly the  
14 impression that -- certainly what I thought everybody  
15 understood, so I didn't -- didn't pursue it any  
16 further after that, so.

17 MS. KATE MCGRANN: Okay. I understand  
18 that you didn't pursue it, but did you have any  
19 concerns that Council had been told that you and Mr.  
20 Rockx were members of the strategic partnership task  
21 team?

22 MR. JOHN HERHALT: Well, I -- I think  
23 I had concerns that we had been positioned that way,  
24 for sure. Yes.

25 MS. KATE MCGRANN: What were your

1 concerns?

2 MR. JOHN HERHALT: Well, we discussed  
3 those earlier, that we saw ourselves as advisors to  
4 the task team, not members of the task team, and we  
5 had a particular role to play as advisors, which we  
6 did, so.

7 MS. KATE MCGRANN: Okay, and I  
8 understand from your evidence that ultimately you  
9 didn't choose to take any steps to correct that?

10 MR. JOHN HERHALT: We -- we didn't. I  
11 mean, mind you had I tried to do that it would have  
12 been much after the fact, so.

13 MS. KATE MCGRANN: At any point  
14 between this presentation on December 5th, 2011 and  
15 the completion of the transaction in July, July 31st,  
16 2012, did you field any questions from any  
17 representatives of the Town about the process that led  
18 to the selection of PowerStream?

19 MR. JOHN HERHALT: Not to my  
20 recollection.

21 MS. KATE MCGRANN: You're aware that  
22 ultimately what was sold was shares in -- in the  
23 holding company, not the LDC, yes?

24 MR. JOHN HERHALT: Yes.

25 MS. KATE MCGRANN: What do you recall

1 about the process that led to the decision to sell the  
2 shares in the holding company as opposed to the LDC?

3 MR. JOHN HERHALT: Well, the -- the  
4 driving factor after the RFP was issued -- actually, I  
5 think it was near the end of October, was that Mr.  
6 Houghton asked if we could look at some of the tax  
7 implications of the transaction, proposed transaction.

8 And so I asked Shawn Stern, one (1) of  
9 our tax partners that -- that worked in this area, to  
10 have a look at things, which he did.

11 Shawn's review of things led to really  
12 two broad findings, one was specific to Hydro One,  
13 which indicated that if -- in Hydro One's case, the  
14 unique aspects of the legislation, the payment in lieu  
15 of tax legislation, was that if in fact they only  
16 bought a partial interest of the LDC, then the LDC  
17 would be knocked out of the payment in lieu of tax  
18 regime, which by virtue of the way the legislation was  
19 constructed would create a deemed disposition of all  
20 the assets and the LDC, 100 percent of the assets in  
21 the LCD.

22 The only resolution to that was  
23 twofold. One, that Hydro One bought the LDC 100  
24 percent, or Hydro One that did the purchase through a  
25 hold -- to the holding company. So that was the first

1 issue identified.

2                   The second issue he identified is that  
3 by acquiring the LDC and not the holding company, so  
4 by making the acquisition of 50 percent interest  
5 through -- at the LDC level and not at the holding  
6 company level, that there would in fact -- it could in  
7 fact, and potentially, because at that point no one  
8 had done any calculation, could trigger a capital gain  
9 that would be taxable in the hands of the holding  
10 company.

11                   So those were the two tax implications  
12 that were identified. And I mean, it wasn't a  
13 decision about whether or not to do the deal at the  
14 holding company level, it wasn't made immediately  
15 after that, but certainly that led to a bunch of  
16 analysis and conversation and discussion that  
17 ultimately led to do the transaction at the holding  
18 company level.

19                   MS. KATE MCGRANN: And who was  
20 involved in the analysis discussion conversation that  
21 you described?

22                   MR. JOHN HERHALT: The tax  
23 conversation? Well, I know Shawn Stern was. I  
24 believe Mr. Fryer was, Mr. Neate. Those are the three  
25 (3) I recall, they were the most involved, so.

1 MS. KATE MCGRANN: And do you know who  
2 ultimately made the decision to -- to switch from sale  
3 of shares of the LDC to the holding company?

4 MR. JOHN HERHALT: I can't tell you  
5 who the ultimate -- who the ultimate decision was made  
6 by. Certainly that is my understanding, is it was  
7 made that way. In fact, I think even the presentation  
8 that Aird & Berlis made to the Town came to that or  
9 presented that as the suggested way forward, so.

10 MS. KATE MCGRANN: If we could look at  
11 paragraph 351 of the Foundation document. Try to get  
12 a sense of timing which Mr. Stern of your office gets  
13 involved.

14 Here we see on October 26th, 2011, you  
15 advise Mr. Houghton and Mr. Erling that Mr. Stern will  
16 be reviewing the tax implications of disposing of a 50  
17 percent interest in Collus Power.

18 Is this around the time that you recall  
19 Mr. Stern being involved?

20 MR. JOHN HERHALT: Yes. Yes.

21 MS. KATE MCGRANN: Or becoming  
22 involved, I should say?

23 MR. JOHN HERHALT: Yes, yeah. In fact  
24 -- sorry, go ahead.

25 MS. KATE MCGRANN: No, please go

1 ahead.

2 MR. JOHN HERHALT: No, I was just  
3 going to say that he then spent some time talking  
4 through it with Mr. Erling and I think they sent a  
5 memorandum on or around the 28th of October, just a  
6 couple of days later, to -- to Mr. Houghton,  
7 explaining to him what the implications were.

8 MS. KATE MCGRANN: Was it around this  
9 time that KPMG was first asked to consider the  
10 potential tax implications of a sale of the LDC?

11 MR. JOHN HERHALT: Just shortly before  
12 that. I reached out for Mr. Stern and that's when we  
13 looked at it for the first time.

14 MS. KATE MCGRANN: Do you know why  
15 this issue was not considered earlier?

16 MR. JOHN HERHALT: I can't answer  
17 that, other than the first time that we were asked to  
18 look at it was then. And certainly when we were  
19 retained, we weren't retained to look at the structure  
20 of the transaction or the tax implications of the  
21 transaction, so we didn't do that.

22 MS. KATE MCGRANN: Do you know if any  
23 thought was given about advising the bidders that the  
24 -- that what was for sale may ultimately be shares in  
25 the holding company to permit them to ask questions or

1 revise the bids that they intended to submit or  
2 anything like that?

3 MR. JOHN HERHALT: I don't believe  
4 that was done.

5 MS. KATE MCGRANN: Do you know why  
6 that -- that wasn't done?

7 MR. JOHN HERHALT: Well, the why -- I  
8 mean, the de -- the decision around doing it in the  
9 first place was with someone else, so I can't answer  
10 that with any certainty.

11 I would say two (2) things though, one,  
12 it isn't that unusual for the tax implications of  
13 something like this to come up later, it's -- I mean,  
14 it's ideal, believe me, it would be ideal to do it  
15 early and upfront. But it -- you know, it -- it's  
16 certainly been my experience in other deals that the -  
17 - this gets looked at later.

18 The other part of it is I'm -- I don't  
19 know that people believed that the substantive nature  
20 of what the bids were would have changed by virtue of  
21 the fact that it was done through hold co, so.

22 MS. KATE MCGRANN: I see that there's  
23 a -- there's some focussed effort on considering the  
24 tax implications from the -- resulting from the sale  
25 of the LDC and then from the sale of the holding

1 company.

2                   The issue that your group identified in  
3 the options analysis about -- I'll call it the shared  
4 services, the relationship between the Town, Collus as  
5 CPUSB.

6                   Do you know if potential implications  
7 from selling the holding company with respect to the  
8 shared services agreement, including, you know, sale  
9 and ownership and Collus Solutions was considered at  
10 this point and how it would affect --

11                   MR. JOHN HERHALT: It really didn't  
12 come up in this conversation. I think it certainly  
13 came up at some point as the transaction unfolded, but  
14 it didn't come up here and it wasn't discussed here.

15                   MS. KATE MCGRANN: Okay. So, that  
16 wasn't something that your group was asked to consider  
17 --

18                   MR. JOHN HERHALT: No.

19                   MS. KATE MCGRANN: -- at this point?

20                   MR. JOHN HERHALT: No.

21                   MS. KATE MCGRANN: Was it asked to  
22 consider that question at any point before the  
23 transaction was finalized?

24                   MR. JOHN HERHALT: Whi -- which one,  
25 sorry?

1 MS. KATE MCGRANN: How the sale of --  
2 of the holding company would potentially bring  
3 implications with the shared services agreement for  
4 the Town or the Collus entities?

5 MR. JOHN HERHALT: We weren't asked to  
6 look at that.

7 MS. KATE MCGRANN: When the decision  
8 was made to offer to sell the shares of the holding  
9 company, did you think the other bidder should have  
10 been given the opportunity to bid on those shares?

11 MR. JOHN HERHALT: Well, once again, I  
12 look back at this and I say, you know, probably 98  
13 percent plus of the value in the entire Collus group  
14 was sitting in the LDC, so I don't know that reissuing  
15 or changing the scope of the RFP would have been that  
16 substantive.

17 At least, that's sort of a reflection I  
18 have at this point, so -- and I think it was one (1)  
19 that was had then, too. But, clearly, in an ideal  
20 world and in ideal circumstances, it would have been  
21 great to have determined the tax implications upfront  
22 and have gone out with an RFP at the hold co level.  
23 That would have been the desirable thing to do.

24 MS. KATE MCGRANN: When you talk about  
25 the value being largely in the LDC and the taxes, it

1 sounds like you're looking at my question from the  
2 perspective of the purchase price that may be obtained  
3 if you look at selling the shares.

4 MR. JOHN HERHALT: The bidders.

5 MS. KATE MCGRANN: Yeah.

6 MR. JOHN HERHALT: From the bidders'  
7 perspective.

8 MS. KATE MCGRANN: Yeah. And are you  
9 speaking with respect to the purchase price --

10 MR. JOHN HERHALT: Right.

11 MS. KATE MCGRANN: -- from the  
12 bidders' perspective? Given that this was a request  
13 for proposals that was looking for the best strategic  
14 partner for Collus and that 70 percent of the criteria  
15 were actually looking for a strategic partner, not  
16 focussed on the costs, do you know if there was any  
17 consideration given to the implications of selling the  
18 holding company from a what is our strategic partner  
19 going to do with this perspective?

20 MR. JOHN HERHALT: I can't tell you  
21 that that perspective was brought to the table, so.

22 MS. KATE MCGRANN: Does that mean  
23 that, to your knowledge, there were no discussions  
24 about that?

25 MR. JOHN HERHALT: I don't believe so,

1 and certainly none that I was part of, so.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: If we could go to  
6 paragraph 455 of the Foundation Document, please.

7

8 (BRIEF PAUSE)

9

10 MS. KATE MCGRANN: This paragraph  
11 describes a meeting for December 12th, 2011, that Mr.  
12 Houghton arranged to discuss purchasing the Collus  
13 holding company. The invitees include Mr. Muncaster  
14 and Ms. Shuttleworth, Mr. Glicksman, yourself, Mr.  
15 Stern, Mr. Rockx, Mr. Nolan, and Mr. Hull.

16 Do you recall attending a meeting or a  
17 call on this date to discuss purchasing the Collus  
18 holding company?

19 MR. JOHN HERHALT: I don't believe I  
20 was in attendance at that meeting.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: Turning now from  
25 this -- this sort of post-receipt of response to the

1 RFP and selection of PowerStream to the involvement --  
2 any involvement that you had after the selection of  
3 PowerStream, what involvement did you have in the  
4 negotiation of the transaction with PowerStream?

5 MR. JOHN HERHALT: Directly? None.  
6 From time to time, Mr. Rockx was asked to provide some  
7 input to some financial aspects of the transaction.  
8 And he would either keep me in the loop or once in a  
9 while bounce an idea off me, but that was about it.

10 MS. KATE MCGRANN: I think earlier in  
11 the day you had mentioned being involved in some  
12 discussions about the buy/sell provision during the  
13 negotiation of the transactions. Have I got that  
14 right?

15 MR. JOHN HERHALT: I think that was  
16 John probably asking me some questions as that was  
17 unfolding, but, yeah, that's -- that's about all I can  
18 really recall.

19 MS. KATE MCGRANN: Okay. So, do you  
20 remember what -- what specifically you would have  
21 discussed with Mr. Rockx about the -- the buy/sell  
22 provisions?

23 MR. JOHN HERHALT: Sorry, I don't.

24 MS. KATE MCGRANN: And you -- you  
25 didn't think that you had been retained to give advice

1 about the buy/sell provisions in the transaction  
2 documents?

3 MR. JOHN HERHALT: No. We had none.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Who did KPMG  
8 ultimately provide its invoices to for the work that  
9 it did on the RFP and -- and selecting the successful  
10 proponent and things like that?

11 MR. JOHN HERHALT: All of them were  
12 send to Mr. Houghton's atte -- attention.

13 MS. KATE MCGRANN: Okay. Mr.  
14 Houghton's attention in what capacity?

15 MR. JOHN HERHALT: To -- I think the  
16 engagement letter says Collus Collingwood Utility  
17 Services. That's who we would have directed them to.

18 MS. KATE MCGRANN: I think the  
19 retainer letter had both. I think it was adjusted.  
20 He meant Collingwood Utility Services but he signed it  
21 at CEO of Collus Power. So, I don't know if that  
22 helps or not.

23 MR. JOHN HERHALT: I'd have to go back  
24 and look at what was actually in our billing files,  
25 but it would have gone to the Collus Group as opposed

1 to if you -- it certainly did not go to the Town, so.

2 MS. KATE MCGRANN: If we could go to  
3 paragraph 712 of the Foundation Document. It's our  
4 understanding that colleagues of your at KPMG were  
5 retained to do an organization review in or around  
6 2013. Does that ring a bell to you?

7 MR. JOHN HERHALT: Yeah.

8 MS. KATE MCGRANN: Okay.

9 MR. JOHN HERHALT: Sorry, yes.

10 MS. KATE MCGRANN: Paragraph 712  
11 describes an email that Mr. Houghton wrote to you on  
12 June 1st, 2013. The re: line was, "Another KPMG  
13 slam." Mr. Houghton writes to you that he's -- that  
14 one (1) of your colleagues has destroyed thirty-five  
15 (35) years of a good partnership between the utility  
16 and the Town of Collingwood. He goes on to give you  
17 some details and explain that he can't believe it and  
18 he's so saddened by it.

19 First of all, with respect to the --  
20 the re: line of this email, "Another KPMG slam," had  
21 there been -- had Mr. Houghton previously brought KPMG  
22 slams to your attention? Do you know what that's  
23 about?

24 MR. JOHN HERHALT: I -- I don't  
25 recall, I don't.

1 MS. KATE MCGRANN: What do you  
2 remember about receiving this email from Mr. Houghton?

3 MR. JOHN HERHALT: Well, I -- I  
4 remember receiving it. I had no idea what it was  
5 about because I didn't know that we were doing the  
6 organizational review at the time.

7 So, all I did was I reached out for  
8 Oscar Poloni, who was the partner involved on the  
9 file, and just, you know, asked him what was going on.  
10 It may have ev -- even been Bruce Peever who was  
11 involved in the work.

12 And I just asked what was going on and  
13 what's up, and then relayed to them what Mr.  
14 Houghton's concern was, which seemed to revolve, if I  
15 recall correctly, primarily around what was being  
16 suggested would impact the -- the shared services  
17 construct and the cooperative construct between  
18 Collus, the Collus Group, and the Town and that that  
19 synergy could be lost if the suggestions being made by  
20 my colleagues were considered something to go forward  
21 with.

22 So, I just relayed that to Mr. Poloni,  
23 and clearly with some question mark, too, that -- you  
24 know, making sure that there weren't some agendas  
25 being played out here that I wasn't aware of, but I

1 left it at that.

2                   It was really for -- for Oscar and  
3 Bruce to manage. And I just wanted to make sure they  
4 had had some context that came from Mr. Houghton since  
5 he was a client relationship at Collingwood -- or  
6 Collus that I'd had. And -- and it played out from  
7 there, so.

8                   MS. KATE MCGRANN: Okay. And I think  
9 if we look at paragraph 720 of the Foundation Document  
10 --

11                   THE HONOURABLE FRANK MARROCCO: Just  
12 before you leave that, can you just help me though  
13 with what the complaint seems to -- what the complaint  
14 seems to be? Was Mr. Peever suggesting that everyone  
15 should be an employee of the Town?

16                   MR. JOHN HERHALT: I think he was --  
17 this is just my recollection. I think what was  
18 happening was there was a question about whether or  
19 not the dual roles that were being occupied by people  
20 in the Town and the utility, if that was, you know,  
21 the best governance, whe -- whether that introduced  
22 conflict.

23                   However, the other part of it, as well,  
24 was, to the extent that that were to change or that  
25 were eliminated, then it would start to change some of

1 the shared synergies that they had between each other.

2 And what Mr. Houghton's complaint was,  
3 you're going to destroy the synergistic relationship  
4 we've developed here. I think that was really where  
5 it was going, so.

6

7 CONTINUED BY MS. KATE MCGRANN:

8 MS. KATE MCGRANN: Okay. And then if  
9 we could go to paragraph 720 of the Foundation  
10 Document, you see that Mr. Houghton responds to you on  
11 --

12 MR. JOHN HERHALT: Yeah.

13 MS. KATE MCGRANN: -- June 14th  
14 saying:

15 "Thank you for waiting into the  
16 latest Town of Collingwood issue.  
17 It seems that Monday's presentation  
18 which mu -- was much better."

19 Do you recall any further  
20 correspondence on this issue?

21 MR. JOHN HERHALT: No, none.

22 MS. KATE MCGRANN: My last question  
23 for you is that earlier when we were exploring the  
24 information that you provided and the advice you gave  
25 through the RFP process, you noted that you weren't

1 engaged as a fairness advisor.

2 MR. JOHN HERHALT: Right.

3 MS. KATE MCGRANN: What does a  
4 fairness advisor do?

5 MR. JOHN HERHALT: Oh, okay. Well, so  
6 you could be engaged to manage the entire procurement  
7 process from the beginning to the end and be engaged  
8 in such a way that you're not just sort of providing  
9 input to the bid discussion, but you're actually  
10 managing the bid discussion in all its aspects to make  
11 sure that everything is fair and everything is  
12 absolutely level. And I mean through all parts of the  
13 process, right? And that is certainly a way that KPMG  
14 has been engaged before to be engaged that fully.

15 MS. KATE MCGRANN: Okay.

16 MR. JOHN HERHALT: But, you know,  
17 whether or not that's the right full description I'm  
18 not going to say to you, but that's kind of what we  
19 would characterize the fairness advisors.

20 MS. KATE MCGRANN: Okay. And that  
21 wasn't the nature of your retainer on this particular  
22 project?

23 MR. JOHN HERHALT: No. The scope for  
24 doing that would have been much bigger.

25 MS. KATE MCGRANN: Okay. And I think

1 that we know the answer to this, but there was no  
2 fairness advisor retained as far as this procedure  
3 goes to your knowledge, right?

4 MR. JOHN HERHALT: Not to my  
5 knowledge. And sometimes -- just to add -- sometimes  
6 some organizations have their own procurement  
7 functions that will do that, right? I mean, they --  
8 they participate in the context of everything that a  
9 particular business unit is doing, and their entire  
10 function is to deal with the procurement aspects of  
11 the whole thing, so.

12 MS. KATE MCGRANN: Okay. And to your  
13 knowledge, there was no one in that role with respect  
14 to this transaction.

15 MR. JOHN HERHALT: Not to my  
16 knowledge.

17 THE HONOURABLE FRANK MARROCCO: And  
18 just -- if you're engaged then as a fairness advisor,  
19 then it would be fair to say that you're really  
20 responsible for the entire transaction.

21 MR. JOHN HERHALT: Well, certainly the  
22 procurement component of it, yes.

23 THE HONOURABLE FRANK MARROCCO: Yes.

24 MR. JOHN HERHALT: Yes. Yeah.

25 THE HONOURABLE FRANK MARROCCO: And do

1 not -- yes. That's what I meant.

2 MR. JOHN HERHALT: Yeah.

3 THE HONOURABLE FRANK MARROCCO: That's  
4 what I meant.

5 MR. JOHN HERHALT: Yeah.

6 MS. KATE MCGRANN: Those are my  
7 questions.

8 THE HONOURABLE FRANK MARROCCO: Have  
9 you decided on the order of cross-examination?

10 MR. RYAN BREEDON: I believe I am  
11 first.

12 THE HONOURABLE FRANK MARROCCO: Go  
13 ahead, Mr. Breedon.

14 MR. RYAN BREEDON: Thank you.

15

16 CROSS-EXAMINATION BY MR. RYAN BREEDON:

17 MR. RYAN BREEDON: Sir, I think as you  
18 know, I am Ryan Breedon, one of the counsel for the  
19 Town.

20 You testified today that both Collus  
21 Power and the Town were your clients?

22 MR. JOHN HERHALT: That's how I saw  
23 it, yeah.

24 MR. RYAN BREEDON: And what did you  
25 understand that your duty to Collus was?

1                   MR. JOHN HERHALT:    In which part of  
2 our retainers?

3                   MR. RYAN BREEDON:    Dealing with the  
4 RFP and the --

5                   MR. JOHN HERHALT:    Okay.

6                   MR. RYAN BREEDON:    -- and the  
7 negotiations regarding the transaction.

8                   MR. JOHN HERHALT:    Well, my view of  
9 our retainer and what we were being asked to do was  
10 that because it was a strategic partnership, which  
11 included a 50 percent disposition, is that my -- my  
12 obligations were both to the -- to Collus and the Town  
13 because really the partnership was going to be one  
14 that Collus Power had to manage as they went forward.  
15 So that -- I think that component seemed to be more to  
16 be around Collus.

17                  MR. RYAN BREEDON:    Okay.  And then in  
18 terms of your obligation to the Town or the service  
19 that you were providing to the Town and, again, just  
20 dealing with the RFP and the ultimate transaction,  
21 what did you understand you were doing?

22                  MR. JOHN HERHALT:    Well, for the most  
23 part, we were helping with the request for proposal  
24 process and helping with the bid evaluation.  Really  
25 at that time, we had not been -- at the time we were

1 retained, we weren't really advising on the  
2 transaction, so to speak.

3 We did have some input -- some advice  
4 that we provided on an ongoing basis after the fact,  
5 so -- so after the -- the decision was -- the decision  
6 to go with PowerStream was made.

7 MR. RYAN BREEDON: All right. And in  
8 terms of helping the Town evaluate the bids or  
9 evaluate the information that was coming before it, I  
10 take it that largely concerned the -- or the activity  
11 that you described with the Strategic Task Team, so  
12 your involvement on the Task Team and the analysis  
13 that Mr. Rockx was performing?

14 MR. JOHN HERHALT: Correct. Correct.  
15 Yeah.

16 MR. RYAN BREEDON: And also ensuring  
17 that Town Council was provided with the information it  
18 needed to understand that transaction that was being  
19 put before it.

20 MR. JOHN HERHALT: Well, actually most  
21 of our dealings were directly with the Task Team. So  
22 to the extent that information was then going to the  
23 Town, that was really left to the Task Team to get to  
24 the Town or to Collus Board if that's where it went.  
25 But certainly, all our dealings were primarily with

1 the Task Team.

2 MR. RYAN BREEDON: Okay. Although --  
3 well, actually maybe -- maybe we'll deal with it this  
4 way. You testified or you explained what the roles of  
5 the different people at KPMG were with respect to sort  
6 of the valuation piece. Ms. McGrann walked you  
7 through that.

8 In terms of the then RFP and the bid  
9 evaluation side of it, it was still you and Mr. Rockx  
10 and Mr. Erling who were primarily involved?

11 MR. JOHN HERHALT: Primarily at the  
12 beginning. It then included Mr. Stern and --

13 MR. RYAN BREEDON: Right.

14 MR. JOHN HERHALT: -- and I think that  
15 was really it. Mr. Stern, yeah.

16 MR. RYAN BREEDON: All right. And --  
17 and your involvement, as I understand it, was you  
18 participated in the meetings of the Task Team which  
19 you've told us about?

20 MR. JOHN HERHALT: Yes.

21 MR. RYAN BREEDON: And you drafted or  
22 assisted in the drafting of the actual RFP?

23 MR. JOHN HERHALT: Correct.

24 MR. RYAN BREEDON: And you provided  
25 some additional advice along the way?

1 MR. JOHN HERHALT: Yes.

2 MR. RYAN BREEDON: And am I right that  
3 you were sort of managing this process from the KPMG  
4 side?

5 MR. JOHN HERHALT: Well, certainly I  
6 was the -- in our vernacular the engagement partner.  
7 Mind you, there was a point in time, too -- well,  
8 that's not still -- certainly, I was still in the  
9 loop. But there was a point in time, given my  
10 responsibilities out of the country, where certainly  
11 things were really in Mr. Rockx's hands in terms of  
12 much of the day to day.

13 MR. RYAN BREEDON: Sure. And then  
14 Mr. Erling, I think we've heard, became responsible  
15 primarily for the data room?

16 MR. JOHN HERHALT: Correct.

17 MR. RYAN BREEDON: And then Mr. Rockx  
18 we've heard was responsible for the financial  
19 evaluation of the bids?

20 MR. JOHN HERHALT: Primarily, yeah.

21 MR. RYAN BREEDON: And he ultimately  
22 was the one who came and made a presentation to  
23 Council.

24 MR. JOHN HERHALT: He joined, I think,  
25 members of the Task Team at that presentation,

1 correct.

2 MR. RYAN BREEDON: Sure.

3 MR. JOHN HERHALT: Yeah.

4 MR. RYAN BREEDON: And that's the  
5 meeting on January 23rd, 2012?

6 MR. JOHN HERHALT: You got me.

7 MR. RYAN BREEDON: The meeting where  
8 Council ultimately approved the sale?

9 MR. JOHN HERHALT: I believe so, yeah.

10 MR. RYAN BREEDON: And you were not  
11 there.

12 MR. JOHN HERHALT: Not there.

13 MR. RYAN BREEDON: Okay. Had you been  
14 involved in an RFP regarding the sale of all or part  
15 of an LDC prior to this transaction?

16 MR. JOHN HERHALT: Yes.

17 MR. RYAN BREEDON: Okay. How many?

18 MR. JOHN HERHALT: Several. I can't  
19 tell you the number.

20 MR. RYAN BREEDON: Just turning to the  
21 meetings of the STT for a moment, you testified that  
22 you understood those meetings to be confidential?

23 MR. JOHN HERHALT: I did.

24 MR. RYAN BREEDON: And similarly, the  
25 presentations of the bidders were confidential?

1 MR. JOHN HERHALT: I did. I believe  
2 so.

3 MR. RYAN BREEDON: The response of the  
4 members of the STT Team to the bids would be  
5 confidential?

6 MR. JOHN HERHALT: I would say so.

7 MR. RYAN BREEDON: Right. And  
8 certainly, the deliberations of the STT were  
9 confidential?

10 MR. JOHN HERHALT: I would have  
11 thought so.

12 MR. RYAN BREEDON: And I take it, sir,  
13 you did not leak any of this information to  
14 PowerStream?

15 MR. JOHN HERHALT: I did not.

16 MR. RYAN BREEDON: Or to Mr. Bonwick?

17 MR. JOHN HERHALT: I did not.

18 MR. RYAN BREEDON: Or to any third  
19 party.

20 MR. JOHN HERHALT: To no one.

21 MR. RYAN BREEDON: The -- can we turn  
22 up the Foundation Document 390, please?

23 So when it comes up, this was a meeting  
24 of the Strategic Task Team on November 23rd to review  
25 the non-financial components, and I believe you

1 testified that you called into this one --

2 MR. JOHN HERHALT: I did.

3 MR. RYAN BREEDON: -- from some --  
4 some remote location?

5 MR. JOHN HERHALT: I did.

6 MR. RYAN BREEDON: All right. And the  
7 purpose of this meeting was to evaluate the  
8 non-financial criteria?

9 MR. JOHN HERHALT: Correct.

10 MR. RYAN BREEDON: Okay. And could we  
11 scroll down to -- keep scrolling down. So at  
12 paragraph 391 of this Foundation Document, we have  
13 what begins a very lengthy transcription of your notes  
14 from this meeting?

15 MR. JOHN HERHALT: Yes.

16 MR. RYAN BREEDON: And could we look  
17 at the middle of page 156, please? It's all the same  
18 notes that carry on. Sorry, up a little bit.

19 So this is the end of those notes, and  
20 you'll see that there is a discussion of the -- or  
21 what appears to be a recitation of the financial  
22 components of the bids?

23 MR. JOHN HERHALT: Yes.

24 MR. RYAN BREEDON: Do I understand  
25 that during this first meeting the financial bids were

1 actually opened?

2 MR. JOHN HERHALT: At the end of the  
3 meeting.

4 MR. RYAN BREEDON: At the end of the  
5 meeting. Okay.

6 MR. JOHN HERHALT: At the end -- after  
7 the scores were all done, yeah.

8 MR. RYAN BREEDON: Okay. Thank you.  
9 And there was some discussion of the financial  
10 components of the bids at that meeting?

11 MR. JOHN HERHALT: Not really. I  
12 think it was more about -- then there was --  
13 Mr. Houghton that I asked Mr. Rockx to do the  
14 comparative analysis. Really, the financial  
15 discussion didn't happen until the 28th.

16 MR. RYAN BREEDON: All right. I guess  
17 what happened is everybody looked at them and realized  
18 you would need to do a bit of an analysis to be able  
19 to compared them.

20 And so Mr. Rockx was asked to do that,  
21 and then the second meeting was scheduled?

22 MR. JOHN HERHALT: Correct.

23 MR. RYAN BREEDON: All right. Last  
24 thing, we've heard a bit of evidence about a staff  
25 report that was prepare -- that was delivered to

1 Council on January 23rd. I'm happy to turn it up if  
2 you like, but as far as I can tell --

3 MR. JOHN HERHALT: -- a bit earlier?

4 MR. RYAN BREEDON: Yes. That's the  
5 one. As far as I can tell, you were not provided with  
6 a copy of that staff report in advance of the meeting?

7 MR. JOHN HERHALT: No, I was not.

8 MR. RYAN BREEDON: Okay. And  
9 similarly, there was a presentation that was given at  
10 that meeting by various people, a PowerPoint  
11 presentation. And again, as far as I can tell, you  
12 weren't provided with a copy of that in advance to the  
13 meeting either.

14 MR. JOHN HERHALT: I was not.

15 MR. RYAN BREEDON: Okay. Thank you  
16 very much, sir. Those are my questions.

17 THE HONOURABLE FRANK MARROCCO:

18 Who's --

19 MR. FREDERICK CHENOWETH: I'm next,  
20 Your Honour.

21 THE HONOURABLE FRANK MARROCCO: Well,  
22 why don't we do this, Mr. Chenoweth? While you're  
23 looking -- we'll take -- we would take a break  
24 anyways, so we'll take ten (10) minutes and then come  
25 back.

1 MR. FREDERICK CHENOWETH: Thank you  
2 very much, Sir.

3

4 --- Upon recessing at 3:11 p.m.

5 --- Upon resuming at 3:20 p.m.

6

7 THE HONOURABLE FRANK MARROCCO: Mr.  
8 Chenoweth, the Town requires us to be out by four  
9 o'clock, so we'll stop the -- at -- at that particular  
10 time.

11 MR. FREDERICK CHENOWETH: Very good,  
12 Your Honour, I suspect I'll be long finished by then.

13 THE HONOURABLE FRANK MARROCCO: I  
14 heard him, he said he'd be long finished by then.

15 MR. FREDERICK CHENOWETH: Thank you  
16 for the break, Your Honour, it gives me an opportunity  
17 to use my red pen again.

18

19 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH

20 MR. FREDERICK CHENOWETH: You  
21 indicated that the instructions on the RFP came from  
22 the STT team as whole, the instructions -- by the way,  
23 my name is Fred Chenoweth and I act on behalf of Ed  
24 Houghton.

25 You indicated in your -- in your

1 evidence in-chief that the instructions on the RFP  
2 came from the STT team as a whole, correct?

3 MR. JOHN HERHALT: Correct.

4 MR. FREDERICK CHENOWETH: All right.

5 And you had had an opportunity to develop a sense as  
6 to what the -- what the players wanted as a result of  
7 your discussions before the September 12th and  
8 September 19th bidder meetings.

9 You had gained that knowledge by  
10 attending the bidder meetings. You had had  
11 discussions after that and then you came into contact  
12 with the STT team, I think, on September 28th, and at  
13 a later time came up with your first draft of the --  
14 of the RFP, correct?

15 MR. JOHN HERHALT: Correct.

16 MR. FREDERICK CHENOWETH: All right.

17 So you had a pretty good idea at that time as to what  
18 the wishes of your clients, Collus and the Town were  
19 by the time you came to drafting the draft RFP?

20 MR. JOHN HERHALT: Yes.

21 MR. FREDERICK CHENOWETH: And you had  
22 an opportunity to discuss that, the drafting of the  
23 RFP, in your meetings, I think it was on September  
24 28th, as I recall?

25 MR. JOHN HERHALT: Correct.

1 MR. FREDERICK CHENOWETH: All right.

2 And it appeared that there was some  
3 views that were obviously held by the Town and Collus  
4 and the members of the STT team in particular, one  
5 view in particular that they didn't want to sell 100  
6 percent of -- of their LDC?

7 MR. JOHN HERHALT: Correct.

8 MR. FREDERICK CHENOWETH: All right.

9 And you'd had an opportunity, I think  
10 Inquiry counsel took you through the draft RFP and a  
11 number of the pages, pages 6 and 7 and 11 of that  
12 draft RFP and you advised as to whether there was  
13 discussions on some of those issues or whether there  
14 wasn't discussions on some of those issues.

15 Can you tell us, having some  
16 understanding of what the STT team and others wanted  
17 from this process, in the final analysis, after the  
18 discussions that were had, was it your view that the  
19 eventual RFP sent out on October 4th satisfied the  
20 needs that were -- that were evidenced in those  
21 various requirements of the players?

22 MR. JOHN HERHALT: I believe so.  
23 Certainly once it was drafted and provided for review,  
24 there wasn't much of any feedback that came back after  
25 that.

1 MR. FREDERICK CHENOWETH: All right.  
2 But in any event, you were -- it was obvious that you  
3 were providing advice with respect to the RFP and I  
4 take it that if there was something inadequate or  
5 irregular or improper or missing in the way the -- the  
6 -- the request was described in the RFP, you would  
7 have -- you would have had made people aware of that  
8 before it went out?

9 MR. JOHN HERHALT: Yes, if I would  
10 have thought that something was really not in-line  
11 with what they're goals were or what was appropriate  
12 for the bidders to respond, I would have done that.

13 MR. FREDERICK CHENOWETH: All right.  
14 And certainly as you saw the RFP and the request for  
15 bids go out on October 4th you were content with the  
16 RFP as it had been developed?

17 MR. JOHN HERHALT: Yes.

18 MR. FREDERICK CHENOWETH: Thank you.  
19 Some questions were put to you with  
20 respect to the fact that your main contact throughout  
21 the course of developing the RFP and evaluating the  
22 bids was Mr. Houghton. I think that was your  
23 evidence?

24 MR. JOHN HERHALT: Correct.

25 MR. FREDERICK CHENOWETH: Did you at

1 any time and -- and you -- you indicated that you were  
2 acting for both Collus and the Town, did you ever find  
3 any conflict or -- or anything that suggested to you  
4 that the instructions you were getting from Mr.  
5 Houghton was other than consistent with both what  
6 Collus wanted and what the Town wanted?

7 MR. JOHN HERHALT: No, I didn't. I  
8 would say that at the strategic partnership task team  
9 meetings, I mean clearly there was dialogue and  
10 discussion and that sometimes needed to -- to happen,  
11 just to get to the right position.

12 But for the most part I found that the  
13 -- the team seemed aligned in what they were trying to  
14 accomplish.

15 MR. FREDERICK CHENOWETH: Very good.

16 And you didn't find the team's  
17 instructions or -- to be at odds with what you were  
18 hearing from Mr. Houghton or what you thought the Town  
19 might want? In other words, there was no conflict --

20 MR. JOHN HERHALT: Not -- not that I  
21 was aware of.

22 MR. FREDERICK CHENOWETH: Very good.  
23 Thank you.

24 Now, Inquiry counsel took you through  
25 the -- the points system and I think you indicated

1 that it might have been better if there was some  
2 clearer instructions to those scoring, in particular  
3 the non-financial aspect of the bid, if they'd  
4 received more instructions with respect to how one  
5 might score the second or third person on the list, as  
6 opposed to giving the full ten to the -- to the one  
7 who was at the top of the heap?

8 MR. JOHN HERHALT: That might have  
9 been more -- more helpful, yes.

10 MR. FREDERICK CHENOWETH: All right.  
11 I take it you'd agree with me that as it turned out in  
12 the scoring of the non-financial aspect of the bids,  
13 PowerStream was far and away the top dog when it came  
14 to that scoring?

15 MR. JOHN HERHALT: That's correct.

16 MR. FREDERICK CHENOWETH: And  
17 accordingly, whether or not there had been further  
18 instructions with respect to how the score of the  
19 second or third bidder, that would have little impact  
20 on the -- on the result of PowerStream reaching the  
21 best score?

22 MR. JOHN HERHALT: I mean, clearly I  
23 haven't gone through any mathematical exercise to that  
24 extent, but certainly it would appear to me that  
25 PowerStream was ranked highest by -- by most of the

1 team, yes.

2 MR. FREDERICK CHENOWETH: Very good.

3 And similarly with respect to the  
4 scoring yourself of the non-financial bids, you  
5 eventually did score that, you indicated at the  
6 request of Dean Muncaster and Mr. Houghton, and you  
7 became aware that -- that your scores became part of  
8 the eventual totals?

9 MR. JOHN HERHALT: I did. I am aware  
10 of that.

11 MR. FREDERICK CHENOWETH: All right,  
12 and that was a bit of a surprise to you?

13 MR. JOHN HERHALT: It was.

14 MR. FREDERICK CHENOWETH: All right.

15 And I take it -- you told us in your  
16 evidence in-chief that -- and I'll call it evidence  
17 in-chief, that the scoring you did was not in any  
18 event inconsistent with the scoring of others?

19 MR. JOHN HERHALT: It was not.

20 MR. FREDERICK CHENOWETH: All right.  
21 In other words, you gave quite substantial points to  
22 PowerStream and the non-financial scoring?

23 MR. JOHN HERHALT: I did.

24 MR. FREDERICK CHENOWETH: All right.

25 And fair it to say -- fair to say that even if you had

1 not scored, it would appear -- and again, you may not  
2 have done a -- a detailed calculation with respect to  
3 same, but it seems clear that even if you didn't score  
4 and there was one less score, that PowerStream, at  
5 least on the non-financial aspects that matter, would  
6 have been the winning bid?

7 MR. JOHN HERHALT: Well, based on my -  
8 - my glance or my -- my overview, yeah, I would think  
9 that still makes sense, but clearly, yeah, I have not  
10 done the math, so.

11 MR. FREDERICK CHENOWETH: And you not  
12 only scored the bids, but you also took the trouble at  
13 Mr. Houghton's request to send him your early  
14 impression prior to the November 23rd meeting of who  
15 the top party in the non-financial scoring aspect was?

16 MR. JOHN HERHALT: I did.

17 MR. FREDERICK CHENOWETH: And I think  
18 you indicated to him that that was PowerStream?

19 MR. JOHN HERHALT: I did.

20 MR. FREDERICK CHENOWETH: There was  
21 some discussion in your evidence in-chief with respect  
22 to -- and I think this was -- this discussion took  
23 place at -- I believe, at the November 28th financial  
24 scoring meeting.

25 You indicated that, after that meeting

1 there was some comments by Dean Muncaster in which he  
2 encouraged going back to -- to PowerStream given the  
3 fact that they had already -- and -- and only  
4 PowerStream, given the fact that they'd won the non-  
5 financial aspect of things, to going back to  
6 PowerStream and seeing if they would increase their  
7 financial bid given the fact that Hydro One had a  
8 financial bid that was somewhat higher than theirs --

9 MR. JOHN HERHALT: That's right.

10 MR. FREDERICK CHENOWETH: -- correct?

11 MR. JOHN HERHALT: That's right.

12 MR. FREDERICK CHENOWETH: All right.

13 That idea of going back for a sweetener to  
14 PowerStream, was there anything in your mind other  
15 than the fact that that was likely a prudent thing to  
16 have done?

17 MR. JOHN HERHALT: Well, I sort of --  
18 I think I said this earlier. Clearly, in other deals,  
19 bids that I've been involved in, once you get to a  
20 place where you think you've got a preferred proponent  
21 and -- and you're -- and that's the direction you're  
22 going, it's not uncommon to have that kind of a  
23 conversation with that preferred bidder, so whether or  
24 not it's just because of the -- the financial bid or  
25 otherwise, but -- so, no, it did not -- it did not

1 surprise me. It didn't seem -- it didn't strike me as  
2 imprudent, so.

3 MR. FREDERICK CHENOWETH: It didn't  
4 strike you as imprudent. It didn't strike you, I take  
5 it, as improper in any way?

6 MR. JOHN HERHALT: Well, frankly, you  
7 know, we had -- now, maybe you could have gone through  
8 a much more formal process, but, for example, Hydro  
9 One at one point said to Mr. Rockx, I'm happy to talk  
10 with you further if you give me an exclusive --  
11 exclusivity arrangement --

12 MR. FREDERICK CHENOWETH: Right.

13 MR. JOHN HERHALT: -- which is pretty  
14 common practice in not only this sector, but others,  
15 where one (1) bidder gets to a place where they get  
16 exclusivity, and then you negotiate with them. But  
17 it's usually done once you land in the place where you  
18 say this is the proponent that I actually want to go  
19 with, so.

20 MR. FREDERICK CHENOWETH: Right. So,  
21 when you decide on the proponent, it's not unusual  
22 that there might be a little negotiation that takes  
23 place thereafter?

24 MR. JOHN HERHALT: No, not -- not  
25 unusual. Not unusual.

1 MR. FREDERICK CHENOWETH: And not  
2 improper?

3 MR. JOHN HERHALT: Not from my  
4 understanding.

5 MR. FREDERICK CHENOWETH: Very good.  
6 You were asked about the discussions that took place  
7 with respect to the first John Rockx analysis of the  
8 financial bids that was reviewed at the November 28th  
9 meeting.

10 And you indicated that you couldn't  
11 recall whether there was any discussions about  
12 governance, correct?

13 MR. JOHN HERHALT: Correct.

14 MR. FREDERICK CHENOWETH: And you said  
15 you couldn't recall whether there was any discussions  
16 about the shotgun provisions?

17 MR. JOHN HERHALT: Not specifics, no.

18 MR. FREDERICK CHENOWETH: All right.  
19 I -- I take it that in fact you really can't remember  
20 any of the specifics about the discussions that took  
21 place about John Rockx's analysis other than the fact  
22 that it was discussed?

23 MR. JOHN HERHALT: No. And I would  
24 say the one (1) part that I do recall is there was a  
25 discussion. Particularly one (1) part that I do

1 recall is, with respect to the financial bids  
2 themselves --

3 MR. FREDERICK CHENOWETH: Yes.

4 MR. JOHN HERHALT: -- he did outline  
5 where he saw issues of clarity that needed to be  
6 followed up. And those he made clear to everybody  
7 because that was certainly a next step he was  
8 suggesting that be taken to at least get clarity on  
9 some of those things that weren't clear to him, so.

10 MR. FREDERICK CHENOWETH: Right. And,  
11 in fact, he did so as you would best understand it?

12 MR. JOHN HERHALT: Yes, he did.

13 MR. FREDERICK CHENOWETH: And it led  
14 to a second analysis?

15 MR. JOHN HERHALT: Yes, it did.

16 MR. FREDERICK CHENOWETH: All right.  
17 So, that's the one (1) thing that you do recall being  
18 discussed?

19 MR. JOHN HERHALT: Yes.

20 MR. FREDERICK CHENOWETH: And you  
21 don't have a clear memory of recalling other matters--

22 MR. JOHN HERHALT: Not --

23 MR. FREDERICK CHENOWETH: -- discussed?

24 MR. JOHN HERHALT: Not in any detail,  
25 no.

1 MR. FREDERICK CHENOWETH: Very good.  
2 Thank you. In the analysis that was done of Town  
3 processes in June of 2013, obviously, that process --  
4 or the recommendations that were being made at that  
5 time appeared to upset Mr. Houghton?

6 MR. JOHN HERHALT: Appeared to.

7 MR. FREDERICK CHENOWETH: All right.  
8 And I think, as you described it, the suggestion was  
9 that it -- it may be a risk not worth taking that you  
10 have joint responsibilities between Collus and the  
11 Town and the other Collus entities.

12 Does that appear to be what your  
13 associate was suggesting?

14 MR. JOHN HERHALT: Yeah, I think he  
15 was coming at it from the standpoint of organization  
16 structure and governance, yes.

17 MR. FREDERICK CHENOWETH: Yes. And  
18 you would have been aware that having more than one  
19 (1) hat in the Collus operation and in the Town was  
20 something that Mr. Houghton had spent, in fact, his  
21 entire career doing?

22 MR. JOHN HERHALT: Yes, I was aware of  
23 that.

24 MR. FREDERICK CHENOWETH: All right.  
25 And I -- I take it it wasn't with any particular

1 surprise that you found that the -- the chosen  
2 direction by your associate ruffled Mr. Houghton's  
3 feathers?

4 MR. JOHN HERHALT: No, it did not.  
5 Certainly, when Mr. Houghton's description of what he  
6 was concerned about was raised, I understood exactly  
7 where he might be coming from, so.

8 MR. FREDERICK CHENOWETH: Very good.

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: Now, Mr.  
13 Erling told us in his evidence that he gave before  
14 this Inquiry, and I think you echoed the same, that  
15 given the detail that was going to be required to  
16 analyze the -- the joint service agreements, that it  
17 was agreed that there would not be an analysis of  
18 those joint service agreements completed?

19 MR. JOHN HERHALT: That's correct.

20 MR. FREDERICK CHENOWETH: And I also,  
21 as I understand it from the evidence of Mr. Erling,  
22 and you can comment on this, was it also the case that  
23 -- as Mr. Erling described it, that there was a  
24 limited number of comparables available -- recent  
25 comparables, in any event, that might have made a full

1 valuation more possible if there was?

2 Was that also a concern?

3 MR. JOHN HERHALT: I think that was  
4 something that Jonathan raised with John Rockx.

5 MR. FREDERICK CHENOWETH: Right.

6 MR. JOHN HERHALT: And John Rockx, I  
7 think in his valuation, calculation of value, I think  
8 indicated what comparables he had. But I don't think  
9 that was the reason for not doing a comprehensive  
10 valuation.

11 I think it was more that a  
12 comprehensive valuation for the purposes of the  
13 options analysis was really not required at that point  
14 in time, a calculation of value was more appropriate.

15 MR. FREDERICK CHENOWETH: Very good.

16 And it would be more time consuming --

17 MR. JOHN HERHALT: Absolutely.

18 MR. FREDERICK CHENOWETH: -- and more  
19 expensive?

20 MR. JOHN HERHALT: Absolutely.

21 MR. FREDERICK CHENOWETH: And it  
22 became clear to you that -- that Collus and the Town  
23 required this in a fairly timely way?

24 MR. JOHN HERHALT: Yeah. I mean, I --  
25 I don't know if this is helpful. Often, those three

1 (3) basic ranges of valuation work are usually deter -  
2 - you usually determine which level you do based on  
3 what the purpose is.

4 MR. FREDERICK CHENOWETH: Yes.

5 MR. JOHN HERHALT: And in the case of  
6 a comprehensive valuation, I think Jonathan, in his  
7 transcript, spoke to this. It's usually because it's  
8 required as an input to something. Perhaps it's going  
9 to be used to actually record something on the balance  
10 sheet of the financial statement.

11 Or, for -- for example, it might be  
12 used because it's determined to use the relative share  
13 ownership in a merger. It actually becomes the basis  
14 for which the transaction details are used as opposed  
15 to being used to determine in order of magnitude,  
16 well, what might this mean if option 1, option 2, or  
17 option 3 were pursued.

18 MR. FREDERICK CHENOWETH: Right.

19 MR. JOHN HERHALT: That's a different  
20 context, so.

21 MR. FREDERICK CHENOWETH: The bottom  
22 line being that in order to evaluate and understand  
23 what options were available to this LDC, a full  
24 valuation wasn't required.

25 MR. JOHN HERHALT: Not a comprehensive

1 valuation, no.

2 MR. FREDERICK CHENOWETH: And you  
3 indicated that, I believe, in your draft fee proposal  
4 that was forwarded to Mr. Houghton on February 11th:

5 "We will prepare an analysis of the  
6 potential sale value of Collus.

7 This will not be a formal valuation  
8 but rather an indicative view of the  
9 potential value of the utility."

10 MR. JOHN HERHALT: Yeah.

11 MR. FREDERICK CHENOWETH: So that it  
12 would have been clear to those who had retained you  
13 that this wasn't a full valuation, but an indicative  
14 view of the value for purposes of assessing the  
15 options.

16 MR. JOHN HERHALT: Yes.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: I note some  
21 notes of Mr. Rockx that appear to have been made on  
22 May 13th, 2011 and maybe we could go to those now, and  
23 I believe it is KPM3491.0001. Could we turn to that,  
24 please?

25

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: And could we  
4 go down through the three (3) pages of this document  
5 so that this witness might have an opportunity to look  
6 at it and go reasonably slowly because the witness was  
7 not at this meeting.

8

9 (BRIEF PAUSE)

10

11 MR. FREDERICK CHENOWETH: This is  
12 sometimes described as the -- as the kickoff meeting,  
13 I think, for your valuation and options project. You  
14 weren't at the meeting, but it appears to have been a  
15 meeting between your associate, Mr. Rockx, and  
16 Mr. Houghton and Mr. Muncaster.

17 It would appear that a substantial  
18 number of topics were covered at the meeting to give  
19 Mr. Rockx on behalf of KPMG some sense of the  
20 background of the company that he was valuing.

21 MR. JOHN HERHALT: Yes. Background,  
22 context, information that would lend itself for him to  
23 do an analysis of -- of the calculation of value for  
24 sure.

25 MR. FREDERICK CHENOWETH: And just

1 looking at the topics -- and again, you weren't at the  
2 meeting -- would it appear that there was an  
3 adequately fulsome discussion to allow Mr. Rockx to  
4 continue his valuation and options project?

5 MR. JOHN HERHALT: Well, certainly  
6 this would be the beginning. This would sort of give  
7 him some understanding of many of the issues that he  
8 might want to delve into. I'm sure he gathered other  
9 information besides this, including various types of  
10 financial information, but this would be the start.

11 MR. FREDERICK CHENOWETH: Thank you.  
12 There was some questions asked of you by Inquiry  
13 counsel with respect to whether or not your slides --  
14 your options slides that were prepared and were part  
15 of your review of options report, dated May 24th,  
16 whether or not they ever got to Council.

17 I would like to show you the slides  
18 that were presented to Council on June 27th. Indeed,  
19 you have an opportunity to review your own slides  
20 before you compare the two sets of slides.

21 I'm going to suggest to you that  
22 virtually all of your slides, with the exception of  
23 possibly one (1) slide, was shown to the Town on  
24 June 27th.

25 Would you like to review your slides

1 before you look at the slides of June 27th, or are you  
2 able to go --

3 MR. JOHN HERHALT: Are you looking for  
4 me to answer that question?

5 MR. FREDERICK CHENOWETH: I'm looking  
6 for you to answer that, yes.

7 MR. JOHN HERHALT: Well, I don't have  
8 the content of the slides that we did right off the  
9 top of the head, so --

10 MR. FREDERICK CHENOWETH: All right.  
11 So if you would -- then have a look at them if you  
12 would at the following numbered document. It's  
13 KPM1032.

14

15 (BRIEF PAUSE)

16

17 MS. KATE MCGRANN: Just to clarify,  
18 are you asking this witness to do a head-to-head  
19 comparison and identify the difference between one  
20 document and another for you?

21 MR. FREDERICK CHENOWETH: I don't know  
22 that I'll do it that granularly. But I am going to  
23 suggest to the witness at the end of this exercise  
24 that the great majority of his slides ended up in the  
25 slide presentation given to Council on June 27th.

1                   And if you require me to, I can go  
2 through each and every one of them, but that's not  
3 certainly what I intended to do.

4

5                   (BRIEF PAUSE)

6

7                   THE HONOURABLE FRANK MARROCCO:    Go  
8 ahead, Mr. Chenoweth.

9                   MR. FREDERICK CHENOWETH:    Very good.  
10 Thank you.

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13                   MR. FREDERICK CHENOWETH:    If you  
14 would, could you take a look at the -- could you  
15 slowly cruise through those slides if you would,  
16 please, for the benefit of the witness? And take your  
17 time with this, if you would, please, sir. Thank you.

18

19                   (BRIEF PAUSE)

20

21                   MR. JOHN HERHALT:    Sure. That's good.  
22 Thank you.

23                   MR. FREDERICK CHENOWETH:    Move on?

24                   MR. JOHN HERHALT:    Thank you.

25                   MR. FREDERICK CHENOWETH:    Move on,

1 please. Thank you.

2 MR. JOHN HERHALT: This is not the  
3 final version of this laid out, I think. I don't  
4 think this is the final version of the slide deck  
5 because the last slide's still speaks to the transfer  
6 tax exemption not being in place.

7 MR. FREDERICK CHENOWETH: Right. Are  
8 you aware as to whether that was ever amended or --

9 MR. JOHN HERHALT: It was.

10 MR. FREDERICK CHENOWETH: It was.

11 MR. JOHN HERHALT: But I don't think  
12 it was amended before you went to -- before the one  
13 went in June -- on June 27th.

14 MR. FREDERICK CHENOWETH: No. It  
15 wouldn't have been.

16 MR. JOHN HERHALT: Okay.

17 MR. FREDERICK CHENOWETH: So --

18 MR. JOHN HERHALT: Just want to make  
19 sure I'm looking at --

20 MR. FREDERICK CHENOWETH: -- that's  
21 how it existed as I understand it --

22 MR. JOHN HERHALT: Yeah.

23 MR. FREDERICK CHENOWETH: -- on  
24 May 24th when you delivered it and when the  
25 presentation was done on June 27th.

1 MR. JOHN HERHALT: Fair enough.

2 MR. FREDERICK CHENOWETH: And just to  
3 deal with that for a second, I think you're suggesting  
4 that at page -- or slide number 4, there really is an  
5 inaccuracy with respect to the description of whether  
6 or not there was a transfer tax --

7 MR. JOHN HERHALT: Correct.

8 MR. FREDERICK CHENOWETH: -- at the  
9 time that the slide presentation and options report  
10 was prepared on May 24th, correct?

11 MR. JOHN HERHALT: Correct.

12 MR. FREDERICK CHENOWETH: And you're  
13 saying that as a result of a request by -- I think you  
14 said Houghton after the bids were sent out, a more  
15 detailed tax review was done?

16 MR. JOHN HERHALT: No, no. That --  
17 these are -- those are totally unrelated.

18 MR. FREDERICK CHENOWETH: Okay.

19 MR. JOHN HERHALT: This is only to do  
20 with the transfer tax.

21 MR. FREDERICK CHENOWETH: Very good.

22 MR. JOHN HERHALT: The tax -- the tax  
23 review that was done afterward had to do with income  
24 tax implications --

25 MR. FREDERICK CHENOWETH: Very good.

1 MR. JOHN HERHALT: -- which there --  
2 they exist regardless of whether there's a transfer  
3 tax exemption, so...

4 THE HONOURABLE FRANK MARROCCO: And I  
5 think it was Mr. Fryer who might have been the first  
6 one to suggest that the transfer tax information  
7 wasn't correct.

8 MR. JOHN HERHALT: Wasn't correct.

9 MR. FREDERICK CHENOWETH: I recall  
10 that evidence, Your Honour. Thank you.

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13 MR. FREDERICK CHENOWETH: Proceed  
14 through this after the transfer tax.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN HERHALT: I don't know if  
19 you're going to want me to remember all twenty-two  
20 (22) slides.

21

22 THE HONOURABLE FRANK MARROCCO:  
23 There's twenty-two (22) slides. We're -- it was --  
24 probably the best way to do this is just to have the  
25 witness compare them.

MR. FREDERICK CHENOWETH: That's --

1 that's all I'm -- that's really all I'm questioning.

2 THE HONOURABLE FRANK MARROCCO: No.

3 But I mean rather than all of us sitting around here  
4 while he's doing it, just let him compare them, and  
5 then we can just ask him the question.

6 MR. FREDERICK CHENOWETH: Would you  
7 like me to give him copies of the two (2) documents?

8 THE HONOURABLE FRANK MARROCCO:  
9 Probably the best thing to do, yeah. And then --

10 MR. FREDERICK CHENOWETH: I'm quite  
11 content to do that if --

12 THE HONOURABLE FRANK MARROCCO: --  
13 find out --

14 MR. FREDERICK CHENOWETH: -- you wish  
15 me to do it. And I can present these two (2)  
16 documents to the witness.

17 MR. JOHN HERHALT: Thanks.

18 MR. FREDERICK CHENOWETH: That one is  
19 your -- your document. Thank you.

20 THE HONOURABLE FRANK MARROCCO: We --  
21 do we need -- I mean, do the documents speak for  
22 themselves?

23 MR. FREDERICK CHENOWETH: I think they  
24 do, Your Honour.

25 THE HONOURABLE FRANK MARROCCO: Well,

1 perhaps then -- do you have any other questions of Mr.  
2 Herhalt?

3 MR. FREDERICK CHENOWETH: I do.

4 THE HONOURABLE FRANK MARROCCO: Maybe  
5 you should ask them and we'll see whether the  
6 documents don't speak for themselves.

7 MR. FREDERICK CHENOWETH: Very good.  
8 Thank you. Content.

9

10 CONTINUED BY MR. FREDERICK CHENOWETH:

11 MR. FREDERICK CHENOWETH: Yes. You  
12 need not go through those documents at this time.  
13 Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: I'm going to  
18 take you to some notes that -- or a transcript of  
19 notes you prepared with respect to the September 28th  
20 STT meeting, and those notes are found at document  
21 KPM3229.001. Could you take the witness to those  
22 notes, if you would, please?

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: Are you  
2 familiar with these notes?

3 MR. JOHN HERHALT: I am.

4 MR. FREDERICK CHENOWETH: All right.  
5 I was interested -- are these notes, notes that you  
6 took at the meeting?

7 MR. JOHN HERHALT: I can't tell you if  
8 they were at the meeting or in preparation for the  
9 meeting.

10 MR. FREDERICK CHENOWETH: Right. Do  
11 they assist you in remembering whether or not there  
12 was a discussion about strategic partnership and its  
13 scope?

14 MR. JOHN HERHALT: At the --

15 MR. FREDERICK CHENOWETH: At the  
16 meeting on --

17 MR. JOHN HERHALT: -- STT --

18 MR. FREDERICK CHENOWETH: -- September  
19 28th, either as a result of you raising the topic,  
20 because these were notes that you prepared pre  
21 meeting, or in the notes of the meeting in which you  
22 note that it was discussed.

23 MR. JOHN HERHALT: I would say there  
24 were discussions even in advance of the 28th, even at  
25 the components of the meetings on the 12th and the

1 19th around the bidders, and then at the 28th again,  
2 for sure.

3 MR. FREDERICK CHENOWETH: So there was  
4 ongoing discussions with respect to the -- the  
5 specific objectives of the STT team -- or not the STT  
6 team --

7 MR. JOHN HERHALT: No, but of the --

8 MR. FREDERICK CHENOWETH: -- but of  
9 the strategic partnership.

10 MR. JOHN HERHALT: -- strategic  
11 partnership. Yeah. Well, in -- yes, that's right.

12 MR. FREDERICK CHENOWETH: Thank you.  
13 And going down a little further, there appears to have  
14 been, either as a result of your initiating them or  
15 the result of a note that you made with respect to the  
16 fact that they took place -- there was a discussion  
17 about weighting of proposal response; in other words,  
18 the weighting that would be given to the various  
19 responses.

20 MR. JOHN HERHALT: To the criteria and  
21 the response, yes.

22 MR. FREDERICK CHENOWETH: All right.  
23 Do you recall that discussion?

24 MR. JOHN HERHALT: Well, on the 28th  
25 we had a very specific discussion about that. There

1 was a page in the deck that I prepared that had the  
2 criteria that -- at least the ones that I heard at  
3 that point, plus others that were added afterward,  
4 where we talked about those criteria, and then talked  
5 with the strategic partnership task team about what  
6 the relative weighting of those criteria should be.

7 MR. FREDERICK CHENOWETH: Right. And  
8 did you -- you led those discussions, did you?

9 MR. JOHN HERHALT: I did.

10 MR. FREDERICK CHENOWETH: All right.  
11 And it was a discussion about not only the criteria  
12 and choosing the criteria, but also the weighting of  
13 those criteria.

14 MR. JOHN HERHALT: It was.

15 MR. FREDERICK CHENOWETH: And did you  
16 regard that as a fulsome discussion?

17 MR. JOHN HERHALT: It was.

18 MR. FREDERICK CHENOWETH: All right.  
19 As a result of that discussion and your draftsmanship  
20 with respect to the RFP, were you comfortable that the  
21 criteria that were chosen were in keeping with what  
22 you understood both the criteria and the -- and the  
23 scoring of those criteria, were you satisfied that  
24 those were in keeping with what you understood the  
25 wishes of the Town and Collus to be?

1 MR. JOHN HERHALT: Certainly the  
2 wishes of the strategic partnership task team, yes.

3 MR. FREDERICK CHENOWETH: Thank you.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: I'm noting  
8 correspondence that you sent to John Rockx, which is  
9 dated November 23rd, and I'd ask that that be pulled  
10 up. It's KPM1762.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Have a look  
15 at that correspondence.

16 MR. JOHN HERHALT: Yeah, I am.

17 MR. FREDERICK CHENOWETH: And I take  
18 it in that correspondence you're advising your  
19 associate Mr. Rockx, that -- and this was as a result  
20 of a meeting you were at on November 23rd that the  
21 financial bids were open and he'd be provided with a  
22 copy of same?

23 MR. JOHN HERHALT: Yeah. This is the  
24 meeting that I called into on the 23rd of November.

25 MR. FREDERICK CHENOWETH: Yes.

1 MR. JOHN HERHALT: And at the very end  
2 of the meeting, the financial bids were opened and  
3 there was a need to do, quote unquote, "the apples-to-  
4 apples analysis and comparison" and I was asking him  
5 if he would be able to do that in a reasonably short  
6 time frame.

7 MR. FREDERICK CHENOWETH: Right. You  
8 were really advising him and giving him some -- your  
9 own thoughts as to what needed to be done at that  
10 time?

11 MR. JOHN HERHALT: In broad terms,  
12 yes.

13 MR. FREDERICK CHENOWETH: And it was  
14 the apple-to-apple comparison, correct?

15 MR. JOHN HERHALT: Correct.

16 MR. FREDERICK CHENOWETH: And the one  
17 (1) variable we need to analyze is the capitalize --  
18 is the recapitalization dividend amount, which are all  
19 different, and of course that would have been  
20 difficult as a result of those differences to do an  
21 analysis.

22 As I understand it, there was only one  
23 (1) of the bidders, being PowerStream, that was  
24 prepared to consider doing the recapitalization prior  
25 to the closing of the transaction.

1 MR. JOHN HERHALT: Correct.

2 MR. FREDERICK CHENOWETH: And the  
3 other three (3) were not?

4 MR. JOHN HERHALT: Correct.

5 MR. FREDERICK CHENOWETH: And do I  
6 take it that that was a significant point of  
7 differentiation between the -- the various offers?

8 MR. JOHN HERHALT: That was a -- that  
9 was a very notable difference, yeah.

10 MR. FREDERICK CHENOWETH: Very good.  
11 And can you tell us why that was a very notable  
12 difference?

13 MR. JOHN HERHALT: Well, so a utility  
14 could have done a recapitalization at any time, and  
15 the upshot of that, without going into the details of  
16 the calculation --

17 MR. FREDERICK CHENOWETH: By the way,  
18 do you think you understood the -- do you think the  
19 members of the ST team --

20 MR. NORM EMBLEM: Your Honour,  
21 shouldn't the witness be given a chance to respond to  
22 the question that Mr. Chenoweth asked before asking  
23 the next question?

24 THE HONOURABLE FRANK MARROCCO: I  
25 think so.

1 MR. FREDERICK CHENOWETH: Content.

2 MR. JOHN HERHALT: So the recap  
3 dividend essentially changes the debt/equity ratio in  
4 the company, brings in more debt in this case, less  
5 equity, which means a requirement for more debt and --  
6 and a requirement for less equity, which frees up an  
7 amount that can be declared as a dividend to the  
8 shareholder at the time.

9 The reality is, if you do a transaction  
10 and you do the re -- the -- you do the -- the  
11 recapitalization after the transaction closes, then  
12 that recap dividend gets paid out to the new  
13 shareholder as well. So in other words, if there are  
14 two (2) shareholders, it gets split; whereas if it  
15 gets paid out before that, it gets paid to one (1)  
16 shareholder, which in this case would have been the  
17 Town.

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH: So  
21 PowerStream's suggestion that they were prepared,  
22 unlike the other bidders, to do the recapitalization  
23 before -- to allow it to be done immediately before  
24 the transaction closed was a real cash flow benefit to  
25 -- to the Town?

1 MR. JOHN HERHALT: Certainly. And for  
2 those that decided to do it afterward, part of -- with  
3 part of the recap dividend -- dividend flowing to them  
4 after the transaction closed. It essentially financed  
5 the purchase price that they were willing to offer on  
6 the shares, so.

7 THE HONOURABLE FRANK MARROCCO: We --  
8 we're at a point where we have to stop for today  
9 because the Town needs the facility, so we will have  
10 to continue tomorrow.

11 MR. FREDERICK CHENOWETH: I suspect I  
12 could be finished by four o'clock, Your Honour, if  
13 that makes any -- any difference.

14 THE HONOURABLE FRANK MARROCCO: Go  
15 ahead then.

16 MR. FREDERICK CHENOWETH: Very good.

17 THE HONOURABLE FRANK MARROCCO: That's  
18 one (1) or two (2) minutes from now.

19 MR. FREDERICK CHENOWETH: I know -- I  
20 know. I can see that --

21 THE HONOURABLE FRANK MARROCCO: Okay.

22 MR. FREDERICK CHENOWETH: -- very  
23 clearly.

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: There was  
2 one (1) other matter of note, and I'd ask you to raise  
3 document number CPS2682.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: Just read  
8 the first paragraph of that document, if you would.

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: It appears  
13 that PowerStream was offering to assume all existing  
14 long-term liabilities.

15 I take it this is a positive thing for  
16 Collus?

17 MR. JOHN HERHALT: Yes. If -- if they  
18 do without changing the share offer price, that's  
19 right.

20 MR. FREDERICK CHENOWETH: Thank you.  
21 Do you know what the position of the other bidders was  
22 with respect to assuming all outstanding liabilities?

23 MR. JOHN HERHALT: My recollection was  
24 that -- and I don't have them all off the top of my  
25 head, but certainly in one (1) instance there was an

1 assumption to assume a liability position, but they  
2 assumed that that liability position would be zero, so  
3 they weren't assuming to assume a liability, so.

4 MR. FREDERICK CHENOWETH: Your Honour,  
5 those are all my questions. Thank you.

6 THE HONOURABLE FRANK MARROCCO: Thank  
7 you, Mr. Chenoweth. We will -- we will still have to  
8 ask you to come back tomorrow, Mr. Herhalt, to  
9 complete the cross-examination.

10 What are we doing tomorrow morning?  
11 And -- and I'm asking this question so that we can fix  
12 a time for Mr. Herhalt to return, unless -- unless you  
13 really want to watch other aspects of -- of the  
14 Inquiry.

15 MS. KATE MCGRANN: We've received the  
16 evidence of two (2) witnesses, Marcus Firman and Chris  
17 Menzies by way of affidavit. Those witnesses will be  
18 called for what I understand will be relatively brief  
19 cross-examinations in that order, so Mr. Firman and  
20 then Ms. Menzies. We anticipate that their cross-  
21 examination will be complete by 11:30ish, and so we'll  
22 speak with Mr. Eldon (phonetic) after this is over,  
23 but our anticipation is that Mr. Herhalt's evidence  
24 will start up again at around 11:30.

25 THE HONOURABLE FRANK MARROCCO: Okay.

1 So, therefore, we will -- counsel will arrange with  
2 you but there's, therefore, no need to be here at  
3 10:00 a.m.

4 MR. JOHN HERHALT: Thank you.

5

6 (WITNESS RETIRES)

7

8 --- Upon adjourning at 4:03 p.m.

9

10 Certified Correct, f

11

12

13 \_\_\_\_\_

14 Wendy Woodworth, Ms.

15

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