



“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 23rd, 2019

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APPEARANCES

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Norm Emblem) John Herhalt

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

2

3 MR. JOHN MATHER: The next witness is
4 Marcus Firman.

5

6 MARCUS PETER FIRMAN, Sworn

7

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

9 MR. JOHN MATHER: Good morning, Mr.
10 Firman.

11 MR. MARCUS FIRMAN: Good morning.

12 MR. JOHN MATHER: In the 2011/2012
13 time period, you were the manager of water and
14 wastewater services at the Collingwood Public
15 Utilities Services Board?

16 MR. MARCUS FIRMAN: Correct.

17 MR. JOHN MATHER: And it's my
18 understanding that broadly, that meant you were
19 responsible for managing the water and wastewater
20 utilities?

21 MR. MARCUS FIRMAN: That's correct.

22 MR. JOHN MATHER: And you are here
23 today because a participant has asked that you be a
24 witness at the Inquiry. And you have provided an
25 affidavit to the Inquiry?

1 MR. MARCUS FIRMAN: I have.

2 MR. JOHN MATHER: Can we please pull
3 up AFF6.

4 Is this a copy of the affidavit that
5 you've provided?

6 MR. MARCUS FIRMAN: It is.

7 MR. JOHN MATHER: Are there any
8 changes or corrections you would like to make to the
9 affidavit?

10 MR. MARCUS FIRMAN: No.

11 MR. JOHN MATHER: Do you confirm that
12 the affidavit is true to the best of your ability?

13 MR. MARCUS FIRMAN: I do.

14 MR. JOHN MATHER: I'd like to mark
15 this as the next exhibit.

16 THE HONOURABLE FRANK MARROCCO: Yes.
17 So ordered.

18

19 CONTINUED BY MR. JOHN MATHER:

20 MR. JOHN MATHER: I'm going to provide
21 a brief summary of your affidavit -- or the matters
22 discussed in your affidavit.

23 As set out therein, you were not
24 personally involved in the Collus share -- share sale
25 to PowerStream or any of the discussions about the

1 effect that sale may have on the shared services
2 between Collus the water utility and the Town?

3 MR. MARCUS FIRMAN: Correct.

4 MR. JOHN MATHER: Your -- prior to
5 the sale, it was your view that the shared services
6 between Collus and the water utility were a good deal
7 for the Town, and that the Town was getting extremely
8 good value for the services Collus employees provided
9 to the Town?

10 MR. MARCUS FIRMAN: That is my
11 opinion.

12 MR. JOHN MATHER: Your expectation was
13 that the shared services would continue after the
14 transaction as they had before the transaction?

15 MR. MARCUS FIRMAN: Correct.

16 MR. JOHN MATHER: And then you've also
17 provided us with your recollection about retaining a
18 firm called Gemba Environmental Serv -- Services to
19 undertake a small study regarding the water utilities
20 fuel storage tanks?

21 MR. MARCUS FIRMAN: That's correct.

22 MR. JOHN MATHER: You do not recall
23 receiving -- if we could scroll down, please.

24 If you -- you do not recall receiving
25 an email from Rick Lloyd suggesting Gemba Services in

1 January 2012, and you do not remember another instance
2 where Mr. Lloyd suggested that staff look into
3 retaining a specific company?

4 MR. MARCUS FIRMAN: I do not.

5 MR. JOHN MATHER: And then finally,
6 you provided that you recall dealing with an
7 individual named Craig Fisher at Gemba, and that you
8 did not know that Mr. Bonwick had any involvement in
9 Gemba at that period of time?

10 MR. MARCUS FIRMAN: Correct.

11 MR. JOHN MATHER: Okay. I will turn
12 the examinations over the participants

13 MR. RYAN BREEDON: I have no
14 questions.

15 THE HONOURABLE FRANK MARROCCO: Thank
16 you.

17

18 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

19 MR. FREDERICK CHENOWETH: Mr. Firman,
20 my name is Chenoweth, Fred Chenoweth, and I represent
21 Mr. Houghton with respect to the matters before us.

22 I understand that you had occasion to
23 work with Mr. Houghton at water?

24 MR. MARCUS FIRMAN: Absolutely.

25 MR. FREDERICK CHENOWETH: And in your

1 memory, what was Mr. Houghton's position at water in
2 the 2011/2012 period?

3 MR. MARCUS FIRMAN: He was president
4 and CEO.

5 MR. FREDERICK CHENOWETH: Very good.
6 Fair -- fair to say he was your superior at water?

7 MR. MARCUS FIRMAN: That's correct.

8 MR. FREDERICK CHENOWETH: Thank you.
9 And you reported to him?

10 MR. MARCUS FIRMAN: I did.

11 MR. FREDERICK CHENOWETH: I got the
12 impression that -- that Mr. Houghton had a number of
13 responsibilities at Collus and at the Town?

14 MR. MARCUS FIRMAN: That's correct.

15 MR. FREDERICK CHENOWETH: And I take
16 it you would have understood him to be a -- a pretty
17 busy man during that period of time?

18 MR. MARCUS FIRMAN: Absolutely.

19 MR. FREDERICK CHENOWETH: And I take
20 it that from time to time, he would pass down to you
21 certain projects or ideas that he didn't have the time
22 to manage or to headman, and you'd headman them?

23 MR. MARCUS FIRMAN: That's correct.

24 And -- but communication is important, and so yes,
25 there was always ongoing communication between myself

1 and -- and Mr. Houghton.

2 MR. FREDERICK CHENOWETH: Yes. So
3 he'd passed on these projects to you, and you'd
4 communicate back and forth with respect to those
5 projects?

6 MR. MARCUS FIRMAN: Correct.

7 MR. FREDERICK CHENOWETH: And
8 obviously, the reason he'd pass them to you is because
9 he was relying on your thoughts and input with respect
10 to things such as price, in this case, and the
11 appropriateness of proceeding with the project,
12 correct?

13 MR. MARCUS FIRMAN: Absolutely.

14 MR. FREDERICK CHENOWETH: Thank you
15 very much. And the -- the water tank review was a --
16 I suggest, one (1) of those projects. There was some
17 thought that -- that Gemba could be of some
18 assistance, and he passed that thought to you to
19 consider such things as -- as appropriateness --

20 THE HONOURABLE FRANK MARROCCO: There
21 are about three (3) questions in there, and I wonder
22 if you could just unpack them one (1) at a time.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: All right.

1 Gemba would have been one (1) of those projects that
2 he passed on to you for your consideration?

3 MR. MARCUS FIRMAN: Correct.

4 MR. FREDERICK CHENOWETH: And you
5 would consider the appropriateness of the project and
6 the price of the project?

7 MR. MARCUS FIRMAN: Correct.

8 MR. FREDERICK CHENOWETH: Thank you.
9 And you seem to have dealt with Craig Fisher through
10 the course of the Gemba considerations?

11 MR. MARCUS FIRMAN: That is correct.

12 MR. FREDERICK CHENOWETH: And that was
13 the young engineer?

14 MR. MARCUS FIRMAN: Yes.

15 MR. FREDERICK CHENOWETH: All right.
16 And how -- how did it turn out that -- that you became
17 involved in this project and had occasion to meet
18 Craig? I -- I suspect there is something that we're
19 not seeing in the emails, maybe a -- a phone call or a
20 conversation between yourself and Mr. Houghton?

21 MR. MARCUS FIRMAN: I'm not sure that
22 -- that is -- is the case. So -- so the whole project
23 was based on a change of TSSA regulations regarding
24 fuel tanks, not water tanks. Actually, the fuel tanks
25 for our generator systems --

1 MR. FREDERICK CHENOWETH: Yes.

2 MR. MARCUS FIRMAN: We had already
3 been warned by our fuel delivery service that we might
4 have to do some additional work. So -- or to get
5 these reviewed, so as part of our due diligence, we
6 did that.

7 I think it was serendipitous, actually,
8 for my part, but --

9 MR. FREDERICK CHENOWETH: No, tell me
10 about that.

11 MR. MARCUS FIRMAN: That -- that Mr.
12 Fisher presented that he would be able to do this sort
13 of work, and we --

14 MR. FREDERICK CHENOWETH: And you were
15 -- were prepared -- you were prepared to consider
16 whether that was the case or not?

17 MR. MARCUS FIRMAN: Well, we knew we
18 needed to do something as part of our due diligence --

19 MR. FREDERICK CHENOWETH: All right --

20 MR. MARCUS FIRMAN: -- and it was such
21 a minor report that we just proceeded with it.

22 MR. FREDERICK CHENOWETH: All right.
23 And I'm -- I'm sorry, was there a change in regulation
24 that lead to that, or what was it?

25 MR. MARCUS FIRMAN: So fuel delivery

1 companies have latent (phonetic) report systems which
2 they believe need review because of safety concerns
3 with delivery of diesel.

4 MR. FREDERICK CHENOWETH: Yes.

5 MR. MARCUS FIRMAN: And -- and we know
6 that the TSSA was starting to crack down on -- on fuel
7 storage systems, so that -- that was what initiated
8 this whole thing.

9 MR. FREDERICK CHENOWETH: I see, all
10 right. And -- and you knew of those things that
11 initiated the whole thing as a result of your position
12 --

13 MR. MARCUS FIRMAN: Correct.

14 MR. FREDERICK CHENOWETH: -- in the
15 organization.

16 MR. MARCUS FIRMAN: Correct.

17 MR. FREDERICK CHENOWETH: All right.
18 So in your mind, the necessity for proceeding with the
19 project was clearly demonstrated as you've described.

20 MR. MARCUS FIRMAN: Yes.

21 MR. FREDERICK CHENOWETH: Thank you.
22 So really the only issue was the issue of price?

23 MR. MARCUS FIRMAN: Correct.

24 MR. FREDERICK CHENOWETH: All right.

25 And you dealt with Craig Fisher with respect to the

1 price?

2 MR. MARCUS FIRMAN: Yes.

3 MR. FREDERICK CHENOWETH: And you
4 advised Mr. Houghton, who was your boss, about the
5 price for doing what you saw as a necessary project?

6 MR. MARCUS FIRMAN: Correct. He had
7 actually expanded. So the initial project was just to
8 look at Collingwood Public Utilities facilities;
9 that's the water plant and that -- the store road
10 building where they had standby generation. We had a
11 price for doing that. We then realized that we have
12 all these other facilities in the Town, so I discussed
13 that with Dave McNalty, who was in charge of
14 facilities for the Town at the time.

15 MR. FREDERICK CHENOWETH: When you say
16 facilities, what does facilities mean? Is that Public
17 Works or what is that?

18 MR. MARCUS FIRMAN: No. It -- well,
19 it's part of Public Works but it's actually all of
20 Town owned other infrastructure, like sewage treatment
21 plants, sewage pumping stations, the town hall, the
22 arena, other facilities basically.

23 MR. FREDERICK CHENOWETH: Got it. So
24 --

25 MR. MARCUS FIRMAN: So where they also

1 had generators. And after speaking with Dave and we -
2 - we expand -- we provided a list of all the
3 facilities in the Town to -- to Gemba, they actually
4 said that they would maintain the same price that they
5 were going to do for the Public Utilities as well as
6 all the other facilities within the Town, which made
7 it even a better deal for everybody.

8 MR. FREDERICK CHENOWETH: It's fair to
9 say that you and Dave McNalty share the view that
10 given the change in -- in environment and regulations
11 at that time that this was a necessary and appropriate
12 project.

13 MR. MARCUS FIRMAN: I think it was
14 prudent to it, correct.

15 MR. FREDERICK CHENOWETH: Good, thank
16 you. And there's -- there's little question that in
17 the final analysis you thought that the price package
18 that you obtained for both the matters under your
19 authority and the matters under McNalty's authority
20 was a pretty good price.

21 MR. MARCUS FIRMAN: Was excellent,
22 yes.

23 MR. FREDERICK CHENOWETH: So you
24 proceeded?

25 MR. MARCUS FIRMAN: Correct.

1 MR. FREDERICK CHENOWETH: And the
2 result was satisfactory with respect to the analysis
3 done by Gemba?

4 MR. MARCUS FIRMAN: Yes, they
5 provided an analysis of the upgrades required and then
6 we -- we went out and did those things, but not
7 through Gemba but through ourselves basically.

8 MR. FREDERICK CHENOWETH: Very good.
9 Thank you very much. Those my questions.

10 MR. GEORGE MARRON: I have no
11 questions.

12 THE HONOURABLE FRANK MARROCCO: Thank
13 you, Mr. Marron. Any --

14 MS. BELINDA BAIN: I have no questions
15 either, Your Honour.

16 THE HONOURABLE FRANK MARROCCO: Mr. --

17 MR. TIM FRYER: Justice Marrocco.

18

19 CROSS-EXAMINATION BY MR. TIM FRYER:

20 MR. TIM FRYER: Mr. Firman, as a
21 matter of record, I am representing myself in these
22 proceedings and will review with you a couple of items
23 based on your affidavit and -- and further testimony,
24 specifically the review points are only in regards to
25 2, 3, and 4 of your evidence.

1 MR. MARCUS FIRMAN: Okay.

2 MR. TIM FRYER: Firstly on shared
3 service and the recall you have provided, you
4 indicated that your expectation was shared services
5 would continue essentially as they had --

6 MR. MARCUS FIRMAN: Right.

7 MR. TIM FRYER: -- prior to the 50
8 percent partnership transaction.

9 MR. MARCUS FIRMAN: Correct.

10 MR. TIM FRYER: And I think --

11 THE HONOURABLE FRANK MARROCCO: Excuse
12 me, Mr. Fryer. Mr. Firman, the affidavit is on the
13 screen.

14 MR. MARCUS FIRMAN: Thank you.

15

16 CONTINUED BY MR. TIM FRYER:

17 MR. TIM FRYER: In the initial stages,
18 this was the case with PowerStream and Collus agree --
19 as they agreed to follow along with the current
20 agreements until updates could be made, projected to
21 be done in 2013. You may recall that there were two
22 (2) agreements specifically to the circumstances,
23 Collus Solutions to Power and Collus Solutions to the
24 Collingwood Public Utility Service Board.

25 MR. MARCUS FIRMAN: That is correct.

1 MR. TIM FRYER: Thank you. A third
2 arty resource was contracted in 2013 to establish the
3 framework of new agreements incorporating the
4 necessary updates to meet reporting requirements.
5 They of course would also incorporate any aspects of
6 the new partners, PowerStream, an involvement from a
7 services aspect.

8 MR. MARCUS FIRMAN: I didn't get a
9 question there.

10 THE HONOURABLE FRANK MARROCCO: Well,
11 I guess his question is: Do you agree with what he
12 just said?

13 MR. MARCUS FIRMAN: Yes, I do.

14

15 CONTINUED BY MR. TIM FRYER:

16 MR. TIM FRYER: Okay, thank you. It's
17 been presented in earlier evidence that the draft
18 updated terms could not reach an acceptable point with
19 the Town of Collingwood.

20 Were you aware of that?

21 MR. MARCUS FIRMAN: Yes, I was aware.

22 MR. TIM FRYER: Do you have any
23 thoughts on why this could not be completed?

24 MR. MARCUS FIRMAN: I do. My opinion
25 was that the then I believe CAO was -- was looking for

1 control of everything. I think he required control,
2 he wanted control of everything, and I -- I -- there
3 seemed to be a parting of the ways between the Town
4 and the Public Utilities, and when I say the Public
5 Utilities, I mean Public Utility Service Board/Collus.

6 MR. TIM FRYER: Okay. You reflected
7 on, as I mentioned earlier, your expectation that
8 shared service -- regarding shared services, and --
9 and briefly outlined about your role as Manager of
10 Water and Wastewater Department, and that's just
11 confirmation, so you can say --

12 MR. MARCUS FIRMAN: Correct.

13 MR. TIM FRYER: In that capacity you
14 reported to the Collingwood Public Utility Service
15 Board, which had significant task of ensuring Town
16 Council was completing their requirements to adhere to
17 provincial regulation.

18 MR. MARCUS FIRMAN: Absolutely.

19 MR. TIM FRYER: I touch on this
20 because the expectation was that shared services would
21 continue, so to speak, once the partnership was in
22 place with Collus.

23 Another factor then and the
24 difficulties when completing new shared services
25 agreements would have been the uncertainty as to the

1 governance model of the 2014/'18 Council, as they were
2 trying to determine what they were going to do that
3 was on that -- that ongoing uncertainty.

4 MR. MARCUS FIRMAN: Correct.

5 MR. TIM FRYER: And that would be a
6 contributing factor.

7 MR. MARCUS FIRMAN: Yes.

8 MR. TIM FRYER: So just to be clear,
9 you were an employee of the Collingwood Public Utility
10 Service Board?

11 MR. MARCUS FIRMAN: That's correct.

12 MR. TIM FRYER: Not Collus Solutions?

13 MR. MARCUS FIRMAN: Not Collus
14 Solutions.

15 MR. TIM FRYER: Okay. And you
16 understood back in 2011 to '13 that your estimated
17 cost, so that's wages and benefits and other work-
18 related costs, none of it was being apportioned over
19 to Wastewater.

20 MR. MARCUS FIRMAN: That's correct.

21 MR. TIM FRYER: It was considered what
22 we called an in-kind service.

23 MR. MARCUS FIRMAN: Correct.

24 MR. TIM FRYER: And that was based on
25 the historical agreement amongst the Town and -- and

1 the Public Utility Service Board that when they
2 instituted the wastewater service mechanism, the --
3 the -- the sewer service -- service charge, they had
4 very little money pooled away for the eventual
5 replacement of -- of assets.

6 MR. MARCUS FIRMAN: That's correct.

7 MR. TIM FRYER: So the understanding
8 from the Public Utilities was that they would only
9 charge incremental costs, and since you were already
10 being paid by the Water Department, it was -- it
11 wasn't being allocated at the time -- was considered
12 in-service.

13 MR. MARCUS FIRMAN: That's correct.

14 MR. TIM FRYER: Or in-kind service,
15 sorry, just to correct that.

16 Now, there was some work under way to
17 possibly apportion it, coming into the next budget
18 year, but that never ever really got to fruition
19 either, even though it was incorporated in the
20 financial plan that the ministry approved.

21 MR. MARCUS FIRMAN: That's correct.

22 MR. TIM FRYER: So -- so in closing, I
23 guess what I was looking to say was that there were a
24 number of factors that attributed to changes in shared
25 services, not just the partnership.

1 MR. MARCUS FIRMAN: Yes.

2 MR. TIM FRYER: And the partnership I
3 mean with PowerStream.

4 MR. MARCUS FIRMAN: Yes.

5 MR. TIM FRYER: Because I always
6 considered Collus to have a partnership with the Town
7 --

8 MR. MARCUS FIRMAN: Right.

9 MR. TIM FRYER: -- as -- as well, but
10 --

11 MR. MARCUS FIRMAN: I agree with that.

12 MR. TIM FRYER: -- that's the one.

13 And I think you probably would share my thought that
14 some of it was good and some of it was bad?

15 MR. MARCUS FIRMAN: I would -- I would
16 say that most of it was good, yeah.

17 MR. TIM FRYER: What I mean is the
18 changes.

19 MR. MARCUS FIRMAN: Yes.

20 MR. TIM FRYER: Okay. So, those are
21 all my questions, Justice Marrocco.

22 THE HONOURABLE FRANK MARROCCO: Thank
23 you, Mr. Fryer.

24 MR. TIM FRYER: Thank you, Mr. Firman.

25 THE HONOURABLE FRANK MARROCCO: Mr.

1 Bonwick?

2

3 CROSS-EXAMINATION BY MR. PAUL BONWICK:

4 MR. PAUL BONWICK: Thank you, Your
5 Honour.

6 Mr. Firman, thanks very much for taking
7 time out of your busy schedule to attend today. I
8 hope to be relatively quick in addressing some of the
9 questions I have. I think for the large part, from my
10 perspective anyways, the reason you're here today is
11 to provide clarity to the Justice and to the community
12 at large as a result of previous questioning for other
13 witnesses related to the services that Gemba were
14 provided.

15 So I hope to touch on two (2) matters
16 today. One (1) is, Gemba and the environment
17 surrounding why you retained Gemba and the services
18 they provided, and secondly, is to touch briefly on
19 the shared services past, present, and future while
20 you were there.

21 Could you please tell the Inquiry how
22 long you actually worked for the Municipality of the
23 Town of Collingwood?

24 MR. MARCUS FIRMAN: Thirteen (13)
25 years.

1 MR. PAUL BONWICK: Thirteen (13)
2 years.

3 You worked for the Public Utilities
4 Commission, correct?

5 MR. MARCUS FIRMAN: I worked for the
6 Public Service Board, Collingwood Utilities Public
7 Service Board.

8 MR. PAUL BONWICK: Sorry, yes.
9 Collingwood Public -- I'll get it right. We've heard
10 a lot of different -- I think there's four (4)
11 different subsets within --

12 MR. MARCUS FIRMAN: -- yeah, was --
13 was not a commission came in.

14 MR. PAUL BONWICK: Right. And is it
15 far to say that these commission -- these utility
16 services boards or corporations or separate entities
17 were set up that way to provide some arms length cont
18 -- somewhat arms length from the traditional
19 operations of the Municipality and the Municipal
20 Council and sort of the political dynamic that happens
21 there?

22 MR. MARCUS FIRMAN: That was a direct
23 benefit of doing it, I think they involved commissions
24 that actually are always arms length and they were
25 commissioned. But I think one of the advantages of

1 the service board was that it did give their arms
2 length from politicians with respect to the operation
3 of an essential service like water and waste water.

4 And in -- what's interesting is they're
5 looking to maybe go back to that in some areas.

6 MR. PAUL BONWICK: Right. And so is
7 it reasonable for me to state that two things in the
8 community are more important than managing the water
9 intake and subsequently the waste water --

10 MR. MARCUS FIRMAN: That's my belief
11 too, I think that's --

12 MR. PAUL BONWICK: And --

13 THE HONOURABLE FRANK MARROCCO: I
14 actually don't think you have any difficulty
15 persuading us that water is important, Mr. --

16 MR. PAUL BONWICK: Considering your
17 history, Your Honour, I can appreciate that.

18

19 CONTINUED BY MR. PAUL BONWICK

20 MR. PAUL BONWICK: And so while you
21 didn't have direct responsibility for Public Works,
22 you certainly worked in other municipalities and is it
23 reasonable to say that there is -- there is a greater
24 level of political direction as it relates to things
25 like roads, sidewalks, which bridges gets fixed first,

1 those -- which parks get fixed first, is it fair to
2 say that there is a stronger political influence
3 related to those pieces of infrastructure?

4 MR. MARCUS FIRMAN: That is absolutely
5 correct and one of the first things that I've done in
6 my recent position and in what I did with the Town of
7 Collingwood was I actually to provide them standard of
8 care treatments training so that they know their
9 responsibilities and how they have to rely on experts.
10 They -- they -- the right of a Council is to ask
11 questions and -- but rely on experts. They don't have
12 to be experts in water themselves.

13 MR. PAUL BONWICK: And we certainly
14 appreciate that Associate Chief Justice Marrocco has
15 had some experience in terms of dealing with this in -
16 - in another community, but for the general benefit of
17 the public, it's important for them to recognize that
18 it's likely in the best interest to keep that utility
19 as the management of the waste water and water in a
20 separate or somewhat arm's length domain?

21 MR. MARCUS FIRMAN: I believe so.

22 MR. PAUL BONWICK: Thank you.

23 I'd like to move forward in terms of
24 the environment that was created as a result of what I
25 believe, and I'd like you to confirm if you're of the

1 same mind, that the Federal Government, as a result of
2 some very significant catastrophes, brought forward a
3 new regime as it related to regulatory controls for
4 fuel systems throughout the country.

5 MR. MARCUS FIRMAN: Correct.

6 MR. PAUL BONWICK: And would you agree
7 that there had been, based on the lack of those
8 regulations, some very significant tragedies take
9 place, especially from an environmental perspective
10 due to the lack of understanding on safe fuel storage?

11 MR. MARCUS FIRMAN: Yes.

12 MR. PAUL BONWICK: I want to help you
13 refresh your memory in terms of Gemba Environmental
14 Services, and I'm not sure if you've brought up the --
15 the website for them. The company is now inactive and
16 it -- it's inactive because unfortunately the
17 president and partner was so good at his job he got
18 hired by a multinational to deal with this exact
19 matter.

20 But going back to -- to Mr. Fisher, and
21 if I will just for the purpose of refreshing your
22 memory, Mr. Fisher -- shoot.

23

24 (BRIEF PAUSE)

25

1 MR. PAUL BONWICK: Mr. Fisher is
2 actually a CET so he's one (1) of your brothers.

3 MR. MARCUS FIRMAN: There's nothing
4 wrong with that.

5 MR. PAUL BONWICK: No, but has an
6 honours degree in engineering and never -- or sorry,
7 satisfied his PES requirements in that particular
8 regard.

9 He's considered a specialist within the
10 fuel system storage arena. As you may be aware, and
11 I'm hope -- I'm bringing this out to see if you can
12 confirm that you were aware of this, he's been an
13 advisor to Environment Canada as they were unfolding
14 their regulations relating to foo -- fuel system
15 storage across Canada. Are you aware of that?

16 MR. MARCUS FIRMAN: Yes, I was aware
17 of that, actually.

18 MR. PAUL BONWICK: And you'll be aware
19 of the fact that he was working in other private
20 arenas as it related to fuel systems storage?

21 MR. MARCUS FIRMAN: Correct.

22 MR. PAUL BONWICK: Would it be safe to
23 say that based on the new regulations that had been
24 implemented that there were not a lot of specialists
25 or consultants with his background being able to

1 provide that service?

2 MR. MARCUS FIRMAN: That's true.

3 MR. PAUL BONWICK: The services you
4 provided and -- and I think you were earlier
5 questioned on this and -- and answered, but for my
6 benefit how would you rank the level of service that
7 pr -- that was provided as it relates to the amount of
8 money that was charged?

9 MR. MARCUS FIRMAN: It was excellent.
10 He was concise, he -- he did what he was -- the terms
11 of reference required him to do and provided and
12 excellent report and it was excellent value.

13 MR. PAUL BONWICK: Thank you.

14 Had Mr. Fisher maintained his role with
15 Gemba, would you hesitate to use his services again in
16 other areas related to fuel tank storage systems and
17 the reviews that --

18 MR. MARCUS FIRMAN: No, I would not.

19 MR. PAUL BONWICK: Did you ever see me
20 out there helping with the technical reviews or
21 helping plot out the fuel systems and develop the
22 plans that are required in order to meet these
23 regulations?

24 MR. MARCUS FIRMAN: No.

25 MR. PAUL BONWICK: Did I ever advise

1 you on what you should or shouldn't be doing as it
2 relates to these federal fuel tank systems?

3 MR. MARCUS FIRMAN: No.

4 MR. PAUL BONWICK: Thank you.

5 So just to surmise, you -- you feel you
6 got good value, it was a -- a great product, it was
7 required by the Federal Government and at the end of
8 the day you feel the taxpayers got good value for the
9 services that were provided?

10 MR. MARCUS FIRMAN: I do.

11 MR. PAUL BONWICK: Thank you.

12 I -- I'd like to jump forward now and
13 talk about the shared services environment that you've
14 referred to. Mr. Chenoweth has identified that Mr.
15 Houghton was the president and CEO, if I understood?

16 MR. MARCUS FIRMAN: Correct.

17 MR. PAUL BONWICK: And so your direct
18 supervisor?

19 MR. MARCUS FIRMAN: Correct.

20 MR. PAUL BONWICK: You're aware of the
21 fact that Mr. Houghton wore many hats in the Town of
22 Collingwood in terms of what his responsibilities
23 were?

24 MR. MARCUS FIRMAN: I -- I am.

25 MR. PAUL BONWICK: You and Mr.

1 Houghton worked closely for a number of years?

2 MR. MARCUS FIRMAN: Absolutely.

3 MR. PAUL BONWICK: Is it safe to say
4 Mr. Houghton, based on his confidence in you, and I --
5 I don't want to get you pumped up too much, but is it
6 safe to say that Mr. Houghton, based on his level of
7 confidence in witnessing how you've done your job,
8 relied on your heavily to manage the day-to-day
9 operations based on the fact that he had so many other
10 responsibilities?

11 MR. MARCUS FIRMAN: I think that's a
12 fair statement.

13 MR. PAUL BONWICK: And would you
14 characterize your relationship with Mr. Houghton,
15 generally speaking, as very positive?

16 MR. MARCUS FIRMAN: Yes.

17 MR. PAUL BONWICK: Could you speak to
18 the level of commitment that Mr. Houghton demonstrated
19 towards the utilities and generally speaking in your
20 experience the community as a whole?

21 MR. MARCUS FIRMAN: Yes, I can. Mr.
22 Houghton, born and bred in Collingwood, Collingwood
23 sort of runs through his blood stream. I believe he
24 was always motivated to do the right thing for
25 Collingwood. It was his -- yes, the -- the -- many

1 things have been said about Ed -- Ed in the past, but
2 that's the one (1) thing that I -- I would attest to
3 in my opinion, he -- he always put Collingwood first.

4 MR. PAUL BONWICK: Thank you.

5 You've referenced in your earlier
6 testimony that you felt the Municipality -- I don't
7 want to misstate your words, but effectively that you
8 -- you felt the Municipality was getting a great deal
9 based on the shared services arrangement that had been
10 in place with Collus, your utility, and the Town
11 itself, the CAO Council?

12 MR. MARCUS FIRMAN: Yes, I do. And --
13 and it's not just the shared services, it was the
14 promissary note, the amount of interest that the
15 utility was willing to provide to the Town by means of
16 some sort of bonusing. But -- but I think it was an
17 excellent deal, actually.

18 MR. PAUL BONWICK: And in your
19 thirteen (13) years, did --

20 MR. MARCUS FIRMAN: Yes.

21 MR. PAUL BONWICK: Yes, in your
22 thirteen (13) years how did you, leading up prior to
23 the time you left Collingwood, let's call it for the
24 first eleven (11) years, how would you describe the
25 relationship in terms of -- of intercommunications

1 with staff between these various entities? I mean,
2 we've heard about three or four different pockets,
3 including the shareholder of the Municipality,
4 generally speaking the working environment between all
5 staff irrespective of their reporting lines.

6 MR. MARCUS FIRMAN: So it was never an
7 us and them early on, it was all working together for
8 the benefit of the taxpayer's of Collingwood, actually
9 and -- and for the greater good.

10 I think those lines started to be drawn
11 later, af -- after that period and it became evident
12 to me that there was going to be a parting of the ways
13 and -- and -- I actually stated that on the -- when I
14 resigned, actually, and I was interviewed and I said I
15 didn't like the way things were going and I -- I think
16 the throwing away things that have been historically
17 advantageous for the Town and -- I think that was a
18 shame.

19 MR. PAUL BONWICK: During your 13
20 years, it's -- it's reasonable to state that you
21 worked under several different councils and worked
22 with -- I was trying to count this morning -- I'm
23 going to say at least four CAOs.

24 MR. MARCUS FIRMAN: Yes, yes.

25 MR. PAUL BONWICK: I'm thinking --

1 MR. MARCUS FIRMAN: I'm thinking.

2 MR. PAUL BONWICK: Could you confirm
3 Mr. Morrison?

4 MR. MARCUS FIRMAN: Yes.

5 MR. PAUL BONWICK: Mr. Norris?

6 MR. MARCUS FIRMAN: Yes.

7 MR. PAUL BONWICK: Mr. Currier, J.?

8 MR. MARCUS FIRMAN: Oh, yes.

9 MR. PAUL BONWICK: Not exactly an
10 endorsement for tracking CAOs, but in fairness you've
11 worked with four or five of them I -- I assume?

12 MR. MARCUS FIRMAN: Yes.

13 MR. PAUL BONWICK: And so your earlier
14 testimony stated up until your recent depart -- or
15 that your departure you felt that it was somewhat of a
16 seamless organization that people were less concerned
17 about their jurisdictions or their reporting, their
18 lending or reporting cycles, but more about what's
19 best for the community.

20 MR. MARCUS FIRMAN: Absolutely. I
21 think that was the thinking that it's all the one
22 pocket and -- and so therefore we'll all have a
23 responsibility to be as efficient as possible as one
24 unit. And -- and there was definitely that
25 cooperation and comradeship within the Town and the

1 utility and I think it was not -- it didn't actually
2 consider us as part of a separate entity. The reality
3 is we were, but it was not operated that way, it was
4 operated as -- as a -- a homogeneous type unit.

5 MR. PAUL BONWICK: And I appreciate,
6 based on your earlier testimony and your affidavit,
7 you did not work directly with the electrical utility,
8 but rather the was -- water and waste water, correct?

9 MR. MARCUS FIRMAN: Correct.

10 MR. PAUL BONWICK: And so you can
11 share a unique perspective for the year following the
12 OEB approval surrounding the Collus PowerStream
13 partnership.

14 In your experience that year following,
15 how did you find the environment with the new
16 partnership that it had been created with Collus
17 PowerStream? For the first year.

18 MR. MARCUS FIRMAN: Right. I think --
19 I think the partnership was very good, actually, and -
20 - and there was even discussions about water and
21 operations and things that we could take advantage of
22 through their systems, I -- it was a good partnership
23 in the first year.

24 MR. PAUL BONWICK: So would it be
25 reasonable to state that the new partnership, namely

1 Collus and PowerStream, were open to ideas and
2 dialogue about how you might enhance services, create
3 more efficiencies, in short provide a better, more
4 cost-effective service to the Municipality?

5 MR. MARCUS FIRMAN: Absolutely.

6 MR. PAUL BONWICK: I want to fast
7 forward and go a year beyond that now. And you've --
8 you've indicated or referenced the CAO. I assume
9 you're referring to Mr. Brown?

10 MR. MARCUS FIRMAN: Correct.

11 MR. PAUL BONWICK: Can you expand on
12 your answer you mentioned about wanting control, at
13 2014 and could you -- sorry, I should ask you this
14 question.

15 What year did you leave or resign from
16 the Town of Collingwood?

17 MR. MARCUS FIRMAN: 2015.

18 MR. PAUL BONWICK: In 2015. And so
19 going back to 2014, new Council, relatively new CAO
20 moved from acting, I guess to CAO or interim, I'm not
21 sure which one it was.

22 Could you provide a more detailed
23 description of how the environment turned if the
24 environment turned and what the effect was in terms of
25 your ability to operate the utility?

1 MR. MARCUS FIRMAN: Yes, it's my
2 opinion that it became a toxic environment. Mr.
3 Brown, my opinion again, was that he wanted total
4 control of everything.

5 He -- one of the things he always
6 insisted on was I was a Town employee regardless of me
7 providing evidence of my letter of employment and
8 legal opinion, he -- he wanted me to report to him,
9 rather than me report to my board, which is where I
10 should be reporting.

11 I think that's indicative of him
12 wanting control and he was working to actually achieve
13 that.

14 MR. PAUL BONWICK: Could you maybe
15 provide a little more insight in terms of the working
16 relationship from the water, wastewater? And, again,
17 I'm moving aside the electricity side because you
18 didn't work for them.

19 You had a separate reporting structure.
20 It was set up as a separate utility --

21 MR. MARCUS FIRMAN: Yeah.

22 MR. PAUL BONWICK: -- for all the
23 reasons and the right reasons we've described, or what
24 we believe to be the right reasons. Can you expand on
25 the -- the communication structure, the level of --

1 what was the communication structure like in terms of
2 your desire to work in a cooperative manner with --
3 with the Town post 2014 and how did you find the idea
4 of the municipality being supportive and encouraging
5 and looking for and striving for efficiencies?

6 MR. MARCUS FIRMAN: Right. So, I
7 believe the efficiency comes from total cooperation
8 and working together. And I saw that prior to 2013.
9 And I started to see that falling apart and the
10 creation of lines between the two (2), the absorption
11 and the polarization of ideas and control.

12 And it's one (1) of the reasons I look
13 to leave, because --

14 MR. PAUL BONWICK: So, just -- just
15 surmise that last little bit there. It's reasonable
16 for the hearing to take from your words that you felt
17 that, from an arm's length perspective, that the
18 Collus PowerStream deal was a good deal for the first
19 year, that it provided good service, that it was
20 providing a very positive working environment?

21 And then post 2014, that environment,
22 using your words, became caustic or --

23 MR. MARCUS FIRMAN: Toxic.

24 MR. PAUL BONWICK: Toxic. Sorry,
25 toxic.

1 MR. MARCUS FIRMAN: Toxic --

2 MR. PAUL BONWICK: Fair word for the
3 wastewater treatment fellow.

4 MR. MARCUS FIRMAN: Yeah.

5 MR. PAUL BONWICK: Okay. So, this
6 last line of questioning would be much easier if I had
7 a lawyer asking it rather than me directly because it
8 has to do with me specifically.

9 You'll be aware of the fact that I was
10 the member of Parliament for the riding for a number
11 of years?

12 MR. MARCUS FIRMAN: Absolutely.

13 MR. PAUL BONWICK: Would you be aware
14 of the fact that I sat on municipal council prior to
15 that?

16 MR. MARCUS FIRMAN: Absolutely.

17 MR. PAUL BONWICK: You'll be aware of
18 the fact that I've operated at least one (1), but a
19 few companies within the South Georgian Bay region --

20 MR. MARCUS FIRMAN: Yes.

21 MR. PAUL BONWICK: -- over the past
22 number of years?

23 MR. MARCUS FIRMAN: Yeah.

24 MR. PAUL BONWICK: You've never had
25 any interest in any of these companies. Is that fair

1 to state?

2 MR. MARCUS FIRMAN: That is correct.

3 MR. PAUL BONWICK: You've never been
4 asked to have any interest in any of these companies?

5 MR. MARCUS FIRMAN: That is correct.

6 MR. PAUL BONWICK: Is that fair to
7 state? Have you ever felt in any way, shape, or form
8 -- and I'd -- I'd ask you to be completely forthright,
9 not that you wouldn't be with the hearing. Have you
10 ever felt in any manner that I have tried to persuade
11 you to go in a direction that you're not comfortable
12 with, that I've tried to influence you in some reas --
13 some manner, that I've acted in some way that would
14 not offer a benefit to the municipality?

15 I'm wondering if you might expand on
16 what your understanding is based on your known history
17 of me.

18 MR. MARCUS FIRMAN: Right. Yeah, so
19 the simple -- the simple part of it is, no, you --
20 you've never directed or -- or suggested. I think you
21 know me well enough that, even if you had have done,
22 which you didn't, I probably would have ignored you
23 anyhow, and then come with my own professional
24 abilities and opinions.

25 And then I'd take -- take it on board,

1 but I wouldn't follow direction necessarily. But I
2 don't recall you ever doing that. Like, I said, I --
3 I think the -- your -- your motivation has always been
4 doing the right thing for the Town of Collingwood and
5 I would -- I would never question that, in my opinion.

6 MR. PAUL BONWICK: Thank you. And
7 I'll simply close out with this. Do you feel that
8 your utility had -- this will be how your -- how your
9 utility worked in cooperation with the electric
10 utility, if I get this right.

11 Do you believe that there was an
12 enhanced value for proponents that were looking at
13 partnering with -- with Collus as part of that shared
14 -- shared servicing that had existed up to that date?

15 MR. MARCUS FIRMAN: Absolutely, I do.
16 And I think some of that could have been expanded and
17 that was some of the -- the issues because, as a water
18 utility, we actually had a revenue stream coming in,
19 as well, and I think that this is important.

20 We provide services to Base Borden.
21 And we provided services to Devil's Glen, and even to
22 the Township of Clearview. I think that was
23 efficient. I think that's good use of taxpayer money,
24 to be as efficient as possible, divide these services
25 which are highly regulated to -- to the best of our

1 ability.

2 And I think that that could have been
3 expanded, potentially.

4 MR. PAUL BONWICK: Mr. Firman, I want
5 to thank you very much again for -- for taking time,
6 certainly the years of service you provided to our
7 region, and wish you the very best in the future.
8 That ends my questioning.

9 THE HONOURABLE FRANK MARROCCO: Thank
10 you. Just one (1) question arising out of that. I
11 think you said, as I understood it, that Mr. Fisher
12 was a CET?

13 MR. MARCUS FIRMAN: I didn't. Mr. --
14 Mr. Bonwick actually clarified that.

15 THE HONOURABLE FRANK MARROCCO: Do you
16 know, what is a CET?

17 MR. MARCUS FIRMAN: It's a certified
18 engineering technologist, of which I am, as well.

19 THE HONOURABLE FRANK MARROCCO: All
20 right. And you get that designation from a
21 professional organization?

22 MR. MARCUS FIRMAN: That is correct.
23 It's now covered under the Professional Engineers' Act
24 somewhat.

25 THE HONOURABLE FRANK MARROCCO: All

1 right.

2 MR. MARCUS FIRMAN: Yes.

3 THE HONOURABLE FRANK MARROCCO: Thank
4 you. Is there any re-examination?

5 MR. JOHN MATHER: Just one (1)
6 question.

7

8 RE-DIRECT EXAMINATION BY MR. JOHN MATHER:

9 MR. JOHN MATHER: When Mr. Bonwick was
10 examining you, you mentioned that, in addition to the
11 shared services, that the promissary note between the
12 Town and -- and the Collus entities was another
13 benefit to the Town.

14 Could you just expand on what you meant
15 by that?

16 MR. MARCUS FIRMAN: So, the Town had a
17 promissary note, I think it was over a million
18 dollars, approximately a million dollars, with respect
19 to the Electricity Board. And as par -- part of a
20 bonus, they would pay a higher rate of interest, or --
21 or public utilities -- no, sorry, Collus paid interest
22 on that at a -- at an exaggerated rate.

23 MR. JOHN MATHER: Just to clarify,
24 your understanding is that Collus was paying a higher
25 level of interest than would be expected, and that was

1 a bonus to the Town?

2 MR. MARCUS FIRMAN: Correct.

3 MR. JOHN MATHER: Those are my
4 questions.

5 THE HONOURABLE FRANK MARROCCO: Thank
6 you very -- thank you very much.

7

8 (WITNESS STANDS DOWN)

9

10 MR. JOHN MATHER: The next witness is
11 Kris Menzies.

12

13 PAULA KRISTINE MENZIES, Affirmed

14

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

16 MR. JOHN MATHER: Good morning, Ms.
17 Menzies.

18 MS. KRIS MENZIES: Good morning.

19 MR. JOHN MATHER: You are a partner
20 with the urban planning consulting firm, MHBC. Is
21 that correct?

22 MS. KRIS MENZIES: Yes, it is.

23 MR. JOHN MATHER: And you are also
24 here today because a participant has requested that
25 you be a witness at the Inquiry. My understanding is

1 that you were not personally involved in the sale to
2 Collus to PowerStream or the events leading up to that
3 sale. Is that correct?

4 MS. KRIS MENZIES: That is correct.

5 MR. JOHN MATHER: And you've provided
6 the -- the Inquiry with an affidavit?

7 MS. KRIS MENZIES: Yes.

8 MR. JOHN MATHER: Will you please pull
9 up AFF5? Is this a copy of the affidavit that you
10 provided?

11 MS. KRIS MENZIES: Yes, it is.

12 MR. JOHN MATHER: Are there any
13 changes or corrections you wish to make to the
14 affidavit?

15 MS. KRIS MENZIES: No.

16 MR. JOHN MATHER: Do you confirm that
17 the affidavit is true to the best of your ability?

18 MS. KRIS MENZIES: Yes.

19 MR. JOHN MATHER: I'd like this marked
20 as the next exhibit.

21 THE HONOURABLE FRANK MARROCCO: So
22 ordered.

23

24 CONTINUED BY MR. JOHN MATHER:

25 MR. JOHN MATHER: I'm going to provide

1 a brief summary of the matters discussed in your
2 affidavit. So, if we could scroll down. As set out
3 in your affidavit, that in your role as a planning
4 consultant, you have experienced preparing draft
5 zoning bylaws, including with respect to the Town of
6 Collingwood.

7 You state that, when you have been
8 involved in drafting zone bylaws, you drafted the
9 substantive portions of those bylaws relating to
10 zoning and submitted the draft bylaws to Town staff as
11 part of a public approval process that's contemplated
12 by the Planning Act.

13 Your evidence is that it is common
14 practice for consultants such as yourself to submit
15 draft zoning bylaws as part of this public appraisal --
16 approval process. Keep scrolling down.

17 When you have prepared draft bylaws you
18 have done so using precedence provided by Town of
19 Collingwood staff and your work involved inserting
20 specific relevant planning information into those
21 precedence.

22 You state that, as far as you aware,
23 the Town planning staff were always aware of your
24 involvement in drafting zoning bylaws and that the
25 process was not confidential.

1 And, to your knowledge -- and -- and,
2 finally, you state that your knowledge about preparing
3 bylaws and the process for par -- preparing bylaws is
4 strictly related to drafting the substantive
5 provisions of zoning bylaws as it relates to the
6 Planning Act and that you have no knowledge or
7 experience with drafting -- of the drafting process of
8 bylaws outside of the context of the Planning Act.

9 Is that a fair summary of your
10 evidence?

11 MS. KRIS MENZIES: Yes, it is.

12 MR. JOHN MATHER: Okay. I will now
13 hand it over to the participants.

14 MR. RYAN BREEDON: I have no
15 questions, Your Honour.

16 MR. FREDERICK CHENOWETH: Ms. Menzies,
17 my name is Chenoweth, Fred Chenoweth.

18 THE HONOURABLE FRANK MARROCCO: Sorry,
19 Fred --

20 MR. FREDERICK CHENOWETH: And I --

21 THE HONOURABLE FRANK MARROCCO: Just a
22 sec. I'm sorry, Mr. Chenoweth. Mr. Bonwick...?

23 MR. PAUL BONWICK: I apologize, but
24 I'm just not sure if Mr. Chenoweth wanted me to go
25 first and him to finish or if he wants to lead. I'm

1 good either way. Just it's his witness. That's all I
2 was thinking. Thank you.

3 THE HONOURABLE FRANK MARROCCO: Well,
4 why don't we just --

5 MR. FREDERICK CHENOWETH: I'm -- I'm --

6 THE HONOURABLE FRANK MARROCCO: --
7 continue, Mr. Chenoweth?

8 MR. FREDERICK CHENOWETH: I'm content
9 to proceed -- to proceed --

10 THE HONOURABLE FRANK MARROCCO: Yeah,
11 go ahead.

12 MR. FREDERICK CHENOWETH: -- Your
13 Honour. Thank you.

14

15 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

16 MR. FREDERICK CHENOWETH: Ms. Menzies,
17 again, my name is Chenoweth, Fred Chenoweth, and I am
18 representing Mr. Houghton with respect to this Inquiry
19 here in Collingwood.

20 You have described a process in the
21 planning arena in which the practice appeared to be to
22 allow the third-party participant to participate in
23 the drafting of -- of a Town bylaw?

24 MS. KRIS MENZIES: Not really. So, as
25 -- to clarify, as a planning consultant who is acting

1 for an applicant --

2 MR. FREDERICK CHENOWETH: Yes.

3 MS. KRIS MENZIES: -- I would consider
4 myself either the first or second party. So, it
5 relates to lands that my clients would own.

6 MR. FREDERICK CHENOWETH: Right.

7 MS. KRIS MENZIES: And as part of a
8 complete application, it's the municipality's
9 practice, in my experience, that when we make that
10 application, we are to deliver a draft bylaw, zoning
11 bylaw, as part of that application.

12 So, I wouldn't consider my client the
13 third party, or myself. I would consider maybe an
14 agency or the public a third party.

15 MR. FREDERICK CHENOWETH: Thank you.
16 Whether you call yourself the first party, the second
17 party, or the third party, and my characterization may
18 have been inappropriate in that respect, it was a
19 cooperative opportunity to ensure that the result of
20 the bylaw was satisfactory to -- to both the Town and
21 your client?

22 MS. KRIS MENZIES: Yes.

23 MR. FREDERICK CHENOWETH: Thank you.
24 And you have indicated that your experience was
25 strictly in the planning area?

1 MS. KRIS MENZIES: Correct.

2 MR. FREDERICK CHENOWETH: That
3 cooperative approach to bylaws that you've described,
4 I suggest to you that -- that -- and, again, your
5 experience was strictly with respect to planning, but
6 a cooperative approach to bylaws, I suggest to you,
7 would not be inappropriate in -- in other areas in
8 which the Town might be involved in drafting bylaws?

9 MS. KRIS MENZIES: I have no knowledge
10 or comment about that because I have no experience
11 with it. It really depends on the rules, procedures,
12 and legislation that the municipality is dealing with
13 under those other bylaws of which I have no knowledge.

14 MR. FREDERICK CHENOWETH: All right.
15 But you could surely conceive that a cooperative
16 approach to the drafting of bylaw in other areas,
17 particularly where there are common interests between
18 the parties, might be a useful thing to consider?

19 THE HONOURABLE FRANK MARROCCO: Hasn't
20 the witness really just answered that question?

21 MR. FREDERICK CHENOWETH: Well, I
22 rephrased the question and put it in a different way.
23 And I'm -- I'm -- you know, I'm obviously pressing for
24 an answer.

25 MS. KRIS MENZIES: Once again, it

1 would depend on the circumstance, the rules,
2 procedures, and regulations of the municipality is
3 dealing with with respect to whether or not there
4 should be a cooperative authoring of anything.

5 And the knowledge I have is only
6 related to the Planning Act.

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: But you can
10 conceive circumstances in which a cooperative approach
11 might be useful?

12 MS. KRIS MENZIES: Sir, I apologize.
13 I'm just going repeat my answer.

14 THE HONOURABLE FRANK MARROCCO: No,
15 no. Really --

16 MS. KRIS MENZIES: I -- I can only
17 speculate for you.

18 THE HONOURABLE FRANK MARROCCO: -- can
19 we move on to something else?

20 MR. FREDERICK CHENOWETH: Thank you,
21 Your Honour. I don't believe I have any further
22 questions of the witness. Thank you.

23 THE HONOURABLE FRANK MARROCCO: I just
24 wanted to ask you, did I understand you correctly that
25 in the zoning area the application for a change in the

1 bylaw requires you to file the draft proposed bylaw?
2 Did I understand you to say that or did I
3 misunderstand?

4 MS. KRIS MENZIES: The application
5 form for the municipality has the opportunity for Town
6 staff to ask that it be filed when the application is
7 made, and it's common practice that they do ask for
8 that, yes.

9 THE HONOURABLE FRANK MARROCCO: Thank
10 you. Who's next?

11 MR. GEORGE MARRON: No questions.

12 THE HONOURABLE FRANK MARROCCO: Thank
13 you.

14 MS. BELINDA BAIN: I have no
15 questions, Your Honour.

16 MR. TIM FRYER: No questions, Your
17 Honour.

18 THE HONOURABLE FRANK MARROCCO:
19 Rebuttal?

20

21 CROSS-EXAMINATION BY MR. PAUL BONWICK:

22 MR. PAUL BONWICK: Thank you, Your
23 Honour. I'll try to be brief here.

24 Ms. Menzies, thanks for taking time
25 today to come in. Could you please provide the

1 hearing your educational background?

2 MS. KRIS MENZIES: I have a degree in
3 environmental studies and urban planning from the
4 University of Waterloo, and I'm a registered
5 professional planner.

6 MR. PAUL BONWICK: And could you let
7 us know how long have you been providing these
8 professional planning services within the South
9 Georgian Bay region?

10 MS. KRIS MENZIES: Approximately
11 twenty (20) years.

12 MR. PAUL BONWICK: Thank you. Is it
13 reasonable to state that it's important for you
14 working with your clients within the development
15 sector to maintain a cooperative and good
16 communication structure with the various
17 municipalities and their appropriate authorities
18 within those municipalities?

19 MS. KRIS MENZIES: Yes.

20 MR. PAUL BONWICK: Is it reasonable
21 state that the developments that you work on with --
22 with the developers have the ability to impact
23 municipalities for many generations into the future?

24 MS. KRIS MENZIES: Yes. A lot of what
25 I deal with his land use change, so yes, it has the

1 ability to impact municipalities for some years to
2 come.

3 MR. PAUL BONWICK: Many of us might
4 suggest in a very positive way. Of course, there's
5 others that may not, but to expand on your answer, you
6 work with redevelopment from taking land, if I
7 understood it, from one (1) use into a residential
8 use, as an example? And of thinking a -- a rural use
9 to a residential use. Is that a fair -- you provide
10 services to help with that transition?

11 MS. KRIS MENZIES: I provide serv --
12 provide services, yes, under the Planning Act to make
13 changes in land use.

14 MR. PAUL BONWICK: Right. And so,
15 again, based on that, some of the developments that
16 you have been attached measure the redevelopment in
17 terms of hundreds of new homes come into a community?

18 MS. KRIS MENZIES: That is possible,
19 yes.

20 MR. PAUL BONWICK: And so that
21 reinforces the point that it has the ability to have a
22 very significant and long-term impact in terms of the
23 growth of that community?

24 MS. KRIS MENZIES: It has a -- an
25 ability to have an impact, the significance of which,

1 I guess, is the opinion of who's viewing that
2 application.

3 MR. PAUL BONWICK: Is it reasonable to
4 state that some of the developments that you are
5 engaged with and providing services, that the
6 developments can measure hundreds of millions of
7 dollars at the completion of the development cycle?

8 MS. KRIS MENZIES: That is possible
9 with some applications, yes.

10 MR. PAUL BONWICK: And you have been
11 involved with applications that have, in fact,
12 demonstrated that kind of economic impact over a --
13 granted, a long period of time within jurisdictions
14 like Collingwood and others?

15 MS. KRIS MENZIES: I don't measure
16 economic impact, so I'm confused somewhat by the
17 question, but are there hund -- have I been involved -
18 - if the question is: Have I -- I been involved with
19 development applications which come with a large
20 dollar amount, either money being brought into the
21 municipality, or the cost of construction for that,
22 the answer is yes.

23 MR. PAUL BONWICK: Yeah. Perhaps --
24 and I apologize. Let me -- you likely phrased it
25 better than I did, but let me rephrase.

1 If, for example, you are leading the
2 planning process on a development in Collingwood, and
3 that development in Collingwood hypothetically has
4 four hundred and fifty (450) new homes approved
5 through a period of time, recognizing four hundred and
6 fifty (450) homes times five hundred thousand dollars
7 (\$500,000), you do quick math, it's -- it's a couple
8 of hundred million dollars plus, and I realize you
9 don't monitor the economic impact, as you've just
10 said, but you play an important role in helping the
11 community achieve that economic value?

12 MS. KRIS MENZIES: I play a role in
13 changing the land use to have developments
14 constructed.

15 MR. PAUL BONWICK: It is my
16 understanding that, like a lawyer, as a professional
17 planner, you have a -- and I won't word this properly,
18 so you'll help me -- is it my understanding that you
19 have a code of conduct, or you have a set of rules
20 that govern your profession that very clearly indicate
21 that you must follow a process that's ethical, that's
22 appropriate, and in the best interests of not only
23 your client but the municipality as well?

24 MS. KRIS MENZIES: Well, as a
25 registered professional planner, yes, we have a code

1 of conduct.

2 MR. PAUL BONWICK: And so I want to go
3 to -- specifically to the planning act itself, and
4 recognizing that your decisions have very, very long-
5 term -- sorry, the matters that you're involved with
6 have very, very long-term impacts for a municipality.

7 Rec -- recognizing that as part of the
8 process that you play, the developer in developing
9 those homes has the ability to create an economic
10 engine that would potentially put hundreds of millions
11 of dollars in the economy over a long period of time,
12 does it seem reasonable to you that the municipality
13 specific to the Planning Act would work in a
14 cooperative fashion with you as the representative of
15 the developer for planning -- providing planning
16 services to make sure that you get the bylaw right
17 before it goes before Council to allow them to pass
18 such a significant matter?

19 MS. KRIS MENZIES: I would suggest to
20 you that the planning staff at the Town of Collingwood
21 would, along with myself, want to ensure that a bylaw
22 is done correctly. We don't reflect on any economic
23 impact associated with that bylaw, but yes, we would
24 work in a cooperative manner to make sure that the
25 land use that is being applied for is appropriately

1 articulated in the bylaw.

2 MR. PAUL BONWICK: Right. So what I
3 took out of that, and just to make sure I'm clear on
4 it, you feel it's important to make sure that the
5 staff work with you to ensure you attain the right
6 language in the bylaw to achieve what, in fact,
7 everybody is trying to achieve, something for the best
8 interests of the community at large?

9 MS. KRIS MENZIES: Yes.

10 MR. PAUL BONWICK: Could you envision
11 a scenario where a municipality prepares a bylaw in
12 isolation of you, and that you're not familiar with
13 the contents of that bylaw prior to reading it four
14 (4), five (5) days before it's adopted at Council?

15 MS. KRIS MENZIES: No. Under the
16 Planning Act, the bylaws are fully public. So as an
17 example, the bylaw would have been brought forward at
18 the time of the statutory public meeting. So if there
19 was a circumstance that I didn't see the bylaw in
20 advance, I certainly would have seen it at that point
21 in time, and I also would have seen it on a Council
22 agenda prior to Council's consideration of it.

23 MR. PAUL BONWICK: Thank you, and
24 that's the part I was referring to. But in -- in
25 short, would it be reasonable to say it has the

1 potential to be significantly problematic if you're
2 not engaged in the development of that bylaw, at -- at
3 the very least, to review it and provide comment?

4 MS. KRIS MENZIES: If a bylaw is
5 passed by Council on a parcel of land in which my
6 client is the applicant, and the bylaw is not
7 satisfactory to my client, we have the opportunity and
8 the Planning Act to object to LPAT, formally known and
9 commonly more known as the Ontario Municipal Board.

10 So yes, it would be problematic if a
11 bylaw being brought forward on a client's parcel of
12 land was is not acceptable to my client and was
13 supportable to have it appealed.

14 MR. PAUL BONWICK: Thank you. I -- I
15 think that -- that answered the question, and from my
16 perspective, I just take it's -- it's much more
17 beneficial to work in a cooperative environment and
18 share the information prior to the bylaw coming before
19 Council rather than dealing with it in isolation and
20 you having to deal with the consequence thereafter?

21 MS. KRIS MENZIES: Yes, it is.

22 MR. PAUL BONWICK: Ms. Menzies, you've
23 mentioned that you've been providing your professional
24 services in the Collingwood area for many years. Have
25 you had the opportunity to work through these

1 developments in any manner of speaking with Mr.
2 Houghton?

3 MS. KRIS MENZIES: Yes, I have.

4 MR. PAUL BONWICK: Would you please
5 articulate from both your personal and professional
6 engagement with -- with Mr. Houghton, would you
7 enlighten the hearing in terms of how you felt he
8 conducted himself on behalf of the Town of
9 Collingwood?

10 MS. KRIS MENZIES: So my experience of
11 Mr. Houghton relates to his involvement in the eng --
12 civil engineering side of the municipality, which is a
13 consideration under development applications. And I
14 have found him to be accessible, knowledgeable, and
15 serving, as far as my experience was, the best
16 interests of the Town of Collingwood.

17 MR. PAUL BONWICK: At any time during
18 your interactions with Mr. Houghton, was there
19 anything other than those experiences you speak about
20 in terms of his desire to provide the best interests
21 of the Town of Collingwood his -- his attentiveness to
22 the ongoing demands of public works? I'm just --

23 MS. KRIS MENZIES: Certainly not what
24 I would -- that I recall, no.

25 MR. PAUL BONWICK: Thank you. And

1 I'll do the same thing. Again, this is a difficult
2 question for me to ask directly, simply because I
3 don't have a lawyer here, but is it reasonable to
4 state you and I have worked on previous developments
5 in the past?

6 MS. KRIS MENZIES: Yes.

7 MR. PAUL BONWICK: Have you ever found
8 me to conduct myself in a manner that would be
9 otherwise considered professional -- best interests of
10 the community at heart? I -- and I don't want to put
11 words in your mouth, so I would be more interested --
12 you sharing with the hearing how you found my conduct
13 as we were dealing with various developments in the
14 past.

15 MS. KRIS MENZIES: I have found it
16 professional, and I found it knowledgeable, and
17 similarly, I have no indication or no belief that you
18 acted in any other way other than with the best
19 interests of the municipality, or your client.

20 MR. PAUL BONWICK: Your Honour, I have
21 no other questions for the witness. And Ms. Menzies,
22 again, thank you for taking time out to be with us
23 this morning.

24 THE HONOURABLE FRANK MARROCCO: Any
25 re-examination?

1 MR. JOHN MATHER: No re-examination.

2 THE HONOURABLE FRANK MARROCCO: Ms.

3 Menzies, thank you very much.

4 MS. KRIS MENZIES: Thank you.

5 MR. JOHN MATHER: So, Your Honour, we

6 had asked Mr. Herhalt to come back at 11:30. I

7 believe that Mr. MacDonald, who was another affiant

8 may be available.

9 MR. RYAN BREEDON: We're trying to

10 track him down right now. He had been told to come

11 after Mr. Herhalt's evidence, so --

12 THE HONOURABLE FRANK MARROCCO: I

13 understand. We'll stand down. If Mr. Herhalt arrives

14 earlier, we'll start earlier. If -- Mr. Brown, is it

15 -- MacDonald --

16 MR. RYAN BREEDON: MacDonald.

17 THE HONOURABLE FRANK MARROCCO: --

18 MacDonald arrives earlier, the same applies.

19

20 --- Upon recessing at 11:02 a.m.

21 --- Upon resuming at 11:14 a.m.

22

23 MR. JOHN MATHER: The next witness is

24 Brian MacDonald.

25

1 BRIAN JOHN MACDONALD, Sworn

2

3 EXAMINATION-IN-CHIEF BY MR. JOHN MATHER

4 MR. JOHN MATHER: Good morning, Mr.
5 MacDonald.

6 MR. BRIAN MACDONALD: Good morning.

7 MR. JOHN MATHER: Your current
8 position is the Director of Public Works and
9 Engineering for the Town of Collingwood?

10 MR. BRIAN MACDONALD: That's correct.

11 MR. JOHN MATHER: And it is my
12 understanding that in the 2011 to 2012 time period,
13 you were the managing -- Manager of Engineering
14 Services. Is -- was that your title?

15 MR. BRIAN MACDONALD: That's correct.

16 MR. JOHN MATHER: And you were a
17 Collus Solutions employee at the time?

18 MR. BRIAN MACDONALD: Yes, that's
19 correct.

20 MR. JOHN MATHER: But you did your
21 work for the Town of Collingwood?

22 MR. BRIAN MACDONALD: Correct.

23 MR. JOHN MATHER: And you've provided
24 an affidavit to the Inquiry?

25 MR. BRIAN MACDONALD: Yes.

1 MR. JOHN MATHER: Could we please pull
2 up AFF4?

3

4 (BRIEF PAUSE)

5

6 MR. JOHN MATHER: Is this the
7 affidavit that you've sworn?

8 MR. BRIAN MACDONALD: Yes.

9 MR. JOHN MATHER: Are there any
10 changes or corrections you wish to make to the
11 affidavit?

12 MR. BRIAN MACDONALD: No.

13 MR. JOHN MATHER: You confirm that the
14 affidavit is true to the best of your ability?

15 MR. BRIAN MACDONALD: Yes.

16 MR. JOHN MATHER: I'd like this marked
17 as the next exhibit.

18 THE HONOURABLE FRANK MARROCCO: So
19 ordered.

20

21 CONTINUED BY MR. JOHN MATHER:

22 MR. JOHN MATHER: So if we scroll
23 down, your affidavit is brief and it sets out your
24 knowledge of the working relationship with Mr.
25 Houghton and Ms. Wingrove.

1 In the 2010 to 2012 time period, you
2 reported to Mr. Houghton and you understood that Mr.
3 Houghton reported to Ms. Wingrove. You provide
4 evidence that you attended approximately six (6) to
5 ten (10) meetings per year with Mr. Houghton and Ms.
6 Wingrove in Ms. Wingrove's office -- office. Your
7 impression was their interactions were businesslike
8 and you were not aware of any tensions between them.

9 Is that a fair summary of your
10 affidavit?

11 MR. BRIAN MACDONALD: That's correct.
12 That's a fair summary.

13 MR. JOHN MATHER: And I'll hand it
14 over to the participants.

15 THE HONOURABLE FRANK MARROCCO: All
16 right.

17 MR. RYAN BREEDON: I think I would go
18 last versus a Town employee.

19 THE HONOURABLE FRANK MARROCCO: Okay.

20 MR. FREDERICK CHENOWETH: Your Honour,
21 I have no questions.

22 MR. PAUL BONWICK: I have no
23 questions, Your Honour.

24 THE HONOURABLE FRANK MARROCCO: Just -
25 - sorry, Ms. Bain?

1 MS. BELINA BAIN: No questions, Your
2 Honour.

3 THE HONOURABLE FRANK MARROCCO: Oh,
4 all right, go ahead, Mr. Fryer.

5

6 CROSS-EXAMINATION BY MR. TIM FRYER:

7 MR. TIM FRYER: Thank you, Justice
8 Marrocco. Hello, Mr. MacDonald.

9 MR. BRIAN MACDONALD: Hello.

10 MR. TIM FRYER: For my record, I am
11 representing myself in these proceedings. I have a
12 few items to review with you from your affidavit
13 evidence and your -- your testimony.

14 So in regards to the employment history
15 you've provided, although I noted concern with the
16 consideration of placing you when you were hired in
17 2000, so not your hiring but the placing of you, the
18 Collus Board decided it would be within Collus
19 Solutions, as you have indicated. Correct?

20 MR. BRIAN MACDONALD: Correct.

21 MR. TIM FRYER: You may recall, as I
22 do vaguely, that at the time the Collingwood municipal
23 services concept that had been endorsed by Council and
24 then CAO Morrison was in operation but also was still
25 in development.

1 Do you recall that?

2 MR. BRIAN MACDONALD: I came on board
3 as a Solutions employee. In terms of the development
4 of the Board, I really didn't have an involvement with
5 the Board.

6 MR. TIM FRYER: I was speaking more
7 about that Collingwood municipal services concept that
8 had been approved by Council and by CAO Morrison that
9 was in development at that particular time.

10 MR. BRIAN MACDONALD: When I came on
11 board, it was in development, yes.

12 MR. TIM FRYER: Yes. So there was
13 some thought at the time then that it provided
14 flexibility to have you placed within Solutions, as
15 those developments continued to evolve.

16 Would that be a fair statement?

17 MR. BRIAN MACDONALD: I'm not aware of
18 -- of the reasons for it being set up in the manner
19 that -- what it was. I was hired by Solutions to work
20 for the Town.

21 MR. TIM FRYER: Yeah. That's my
22 recollection of it --

23 MR. BRIAN MACDONALD: Okay.

24 MR. TIM FRYER: -- and I was just
25 trying to see if you had as well -- so for those years

1 between 2000 and 2014, you worked from an office at
2 the Town and Works Department Building and directed
3 Town of Collingwood employees in their municipal
4 duties.

5 MR. BRIAN MACDONALD: That's correct.

6 MR. TIM FRYER: You also drove a
7 municipal fleet vehicle?

8 MR. BRIAN MACDONALD: There was a --
9 there was a municipal vehicle, yes.

10 MR. TIM FRYER: Facility, office heat,
11 hydro, associated costs, and -- and vehicle costs were
12 direct municipal expenses in your annual Works
13 Department budget, you but together?

14 MR. BRIAN MACDONALD: Correct.

15 MR. TIM FRYER: The principal areas of
16 concern I had outlined in 2000 were those municipal
17 duties we just had referred to, specifically ensuring
18 that there wasn't an overlap of liability, or worse,
19 no liability coverage, because the structure involved
20 both the Town of Collingwood and Collus Solutions from
21 a coordination's basis. That's just to explain where
22 the concern kind of laid. And there wasn't any formal
23 contract or outlining agreement amongst the two (2)
24 parties, at least to my knowledge.

25 Were you aware of any contract --

1 contract that explained your outlining --

2 MR. BRIAN MACDONALD: I'm only aware
3 of my employment contract. I'm not aware of any
4 contract between the two (2) parties.

5 MR. TIM FRYER: So the shared service
6 agreements didn't include specifics that would be
7 expected in any kind of an outlining agreement
8 covering your daily work processes?

9 MR. BRIAN MACDONALD: I'm not aware of
10 anything like that.

11 MR. TIM FRYER: The accounting for
12 wage and benefit cost wasn't an issue because it was
13 tracked and charged to the municipality's Collingwood
14 Public Utilities Commission first and then Service
15 Board as it changed over.

16 MR. BRIAN MACDONALD: I'm not sure how
17 my wage was reported back to the Town.

18 MR. TIM FRYER: Yeah. So it -- it was
19 done that way and I -- I can understand that you
20 wouldn't recall that that was how it was done because
21 --

22 MR. BRIAN MACDONALD: Yeah.

23 MR. TIM FRYER: -- that was an
24 accounting function.

25 MR. BRIAN MACDONALD: Yeah.

1 MR. TIM FRYER: Those costs were noted
2 about in the annual report to municipality that the
3 Water Department provided as an in-kind service to the
4 Works Department. And again, you may not remember
5 that unless you can recall the annual report and it
6 would show in there.

7 MR. BRIAN MACDONALD: It was my
8 understanding it was an in-kind service.

9 MR. TIM FRYER: So again, I was
10 thinking that it wasn't something you necessarily
11 track -- tracked for your budget work.

12 MR. BRIAN MACDONALD: No. I wasn't
13 aware of the details. It was my understanding that my
14 -- my contribution was an in-kind service.

15 MR. TIM FRYER: So tracking and
16 reporting in-kind costs and benefits is a recognized
17 accounting function, especially within the public
18 sector, and again you -- I'm not assuming you'd know
19 that. This is more just making a statement about it
20 being --

21 MR. BRIAN MACDONALD: Certainly,
22 that's a statement.

23 MR. TIM FRYER: And -- and since
24 you're not -- I think it's more prevalent within the
25 Parks and Rec culture side of -- department of -- of

1 the Town, where there's many instances wherein service
2 is provided rather than donating towards a festival or
3 an event. And you may recall when the department
4 budget would be talked about, the Parks and Rec
5 Department, is they would talk about in-kind service
6 as well.

7 MR. BRIAN MACDONALD: Yeah. I -- I'm
8 not familiar with that.

9 MR. TIM FRYER: And that's -- that's
10 fair enough.

11 So I -- I definitely understand the
12 2014 decision made by Collus Solutions to transfer you
13 into the municipal employee realm, but more
14 specifically from the liability perspective, not
15 necessarily an accounting requirement unless
16 contractual terms couldn't be reached, and that
17 appears to be the situation.

18 Once that transfer was completed, and
19 really the only shared service function that's in
20 place now is the water and wastewater customer billing
21 and administrative services that are provided by
22 Collus Solutions for the water and the wastewater.

23 MR. BRIAN MACDONALD: That's my
24 understanding.

25 MR. TIM FRYER: And that really

1 simplifies any kind of shared service agreement needs
2 to be put together.

3 So I was going to close with, then in
4 2014, Council decided to have your expense allocated
5 to other departments rather than Water subsidize it.
6 Council makes those cost allocation decisions amongst
7 departments based on information provided by staff.

8 That a -- is a fair statement?

9 MR. BRIAN MACDONALD: Yes.

10 MR. TIM FRYER: Okay. And I -- I'd
11 say that another example was the decision with regards
12 to fire hydrant maintenance expense made by the 2014
13 Council, because now it's paid directly by the Water
14 Department rather than the Fire Department. And
15 that's a correct statement as well.

16 MR. BRIAN MACDONALD: I believe so,
17 yes.

18 MR. TIM FRYER: Okay. Justice
19 Marrocco, those are all my questions. Thank you, Mr.
20 MacDonald.

21 THE HONOURABLE FRANK MARROCCO: Mr.
22 Bonwick, do you have any questions?

23 MR. PAUL BONWICK: Five (5) minutes or
24 less, I suspect.

25 THE HONOURABLE FRANK MARROCCO: That's

1 fine.

2

3 CROSS-EXAMINATION BY MR. PAUL BONWICK:

4 MR. PAUL BONWICK: Mr. MacDonald,
5 could you please state for the Inquiry your
6 educational background?

7 MR. BRIAN MACDONALD: I'm a CET, I'm
8 educated through college; CET, civil engineering.

9 MR. PAUL BONWICK: Thank you. Could
10 you give us some background in terms of your work
11 history leading up to your employment in Collingwood?

12 MR. BRIAN MACDONALD: I started in '83
13 for a consultant -- I then worked for the Town of
14 Innisfil for eleven (11) years, a private paving
15 contractor for several years, two (2) or three (3)
16 years, and then came to the municipality.

17 MR. PAUL BONWICK: There's been some
18 discussion related to the shared services, and I'm
19 still trying to get my head wrapped around what all
20 these various entities were, but there seems to be a
21 consistent message and I'm -- I'm going to ask you the
22 -- the same question I put to others.

23 Irrespective of the linear boundaries
24 for Collus Service or Public Utilities Corporation or
25 Public Works, is it reasonable to say that yourself

1 and your experience with others that everybody was
2 focused on trying to deliver the best possible
3 services for the best possible price for the residents
4 of the Town of Collingwood?

5 MR. BRIAN MACDONALD: That -- that's
6 my understanding, yes. That -- that's what I believe
7 to --

8 MR. PAUL BONWICK: Would it be
9 reasonable to state in that environment that
10 irrespective of Collus, the Town, Public Works, Mr.
11 Firman, and Public Utilities Board, that people were
12 less concerned about the -- the confines of the
13 corporations or the entities they were working for and
14 more focused on trying to work within a team
15 environment to achieve those best interests for the
16 municipality?

17 MR. BRIAN MACDONALD: Yeah. Yeah, it
18 was a team environment regardless of who your employer
19 or what your -- what your pigeonhole or where your --
20 your lines, as you described it, were. It was a -- it
21 was a team environment, yes.

22 MR. PAUL BONWICK: Thank you. In your
23 -- in your affidavit you stated that you attended
24 approximately six (6) to ten (10) meetings per year
25 with Mr. Houghton and Ms. Wingrove. You further went

1 on to state that the interactions seemed businesslike,
2 using your language, and I was not aware of any
3 tension between them.

4 Based on that math and the time that
5 Ms. Wingrove was there, I'm going to suggest
6 extrapolating you likely attended somewhere around a
7 dozen meetings over the entire time she was there
8 then.

9 MR. BRIAN MACDONALD: Approximately,
10 yeah. It's an estimate, yes.

11 MR. PAUL BONWICK: And -- and in
12 fairness, I understand that.

13 Do you recall at any time Mr. Houghton
14 in any of these meetings, treating Ms. Wingrove with
15 disrespect, contempt, discounting her in any way?

16 MR. BRIAN MACDONALD: No, never.

17 MR. PAUL BONWICK: Do you recall,
18 based on those approximate twelve (12) meetings, at
19 any time Mr. Houghton not showing up for a meeting,
20 Mr. Houghton cancelling a meeting a few minutes or the
21 date of that meeting?

22 MR. BRIAN MACDONALD: I don't recall
23 that. You know, there could have been a possibility
24 of a cancellation. You know, I know I can't --
25 sometimes meetings get -- other things come up, so --

1 but I can't recall something like that happening.

2 MR. PAUL BONWICK: And in fairness, I
3 mean, whether it be you or -- or Mr. Houghton or with
4 Ms. Wingrove, very, very busy schedules, I appreciate
5 the fact that meetings sometimes get put off, but
6 generally speaking you don't re --

7 MR. BRIAN MACDONALD: No.

8 MR. PAUL BONWICK: -- don't recall
9 ever a time where it was terminated with really no
10 advance notice?

11 MR. BRIAN MACDONALD: No, not -- not
12 to my recollection.

13 MR. PAUL BONWICK: Those are my
14 questions, Your Honour. Thanks very much, Mr.
15 MacDonald.

16 THE HONOURABLE FRANK MARROCCO: Any
17 re-examination?

18 MR. JOHN MATHER: No re-examination.

19 THE HONOURABLE FRANK MARROCCO: Mr.
20 MacDonald, thank you.

21 MR. BRIAN MACDONALD: Thank you.

22

23 (WITNESS STANDS DOWN)

24

25 THE HONOURABLE FRANK MARROCCO: Mr.

1 Herhalt is here, so I'd ask him to come back to the
2 witness stand.

3

4 JOHN HERHALT, Previously Sworn

5

6 CROSS-EXAMINATION BY MS. BELINDA BAIN:

7 MS. BELINDA BAIN: Good morning, Mr.
8 Herhalt.

9 MR. JOHN HERHALT: Good morning.

10 MS. BELINDA BAIN: Welcome back. My
11 name is Belinda Bain. I represent Alectra, formerly
12 PowerStream.

13 You explained to us yesterday that over
14 the course of your career at KPMG, you focused on
15 infrastructure and government services. Is that
16 right?

17 MR. JOHN HERHALT: In the latter part
18 of my career, but certainly a good chunk of it did
19 involve that, yeah.

20 MS. BELINDA BAIN: Okay. And a
21 considerable background in energy and LDCs in Ontario.
22 Is that right?

23 MR. JOHN HERHALT: Correct.

24 MS. BELINDA BAIN: And you have a lot
25 of experience in mergers and acquisitions of LDCs in

1 Ontario, correct?

2 MR. JOHN HERHALT: Yes.

3 MS. BELINDA BAIN: You were asked
4 yesterday if you've ever been involved in any other
5 RFPs for the sale of part or all of an LDC in Ontario.
6 Do you recall that?

7 MR. JOHN HERHALT: Yes.

8 MS. BELINDA BAIN: And you said that
9 you had been involved in several. You couldn't quite
10 remember how many. Is that right?

11 MR. JOHN HERHALT: That's correct.

12 MS. BELINDA BAIN: In your experience,
13 does the sale of some or all of an LDC in Ontario
14 usually go by way of RFP or is it more usual that it
15 would be a sole-source transaction?

16 MR. JOHN HERHALT: Oh, it's often
17 sole-source, or at least a process of discussion
18 without a formal request for proposal.

19 MS. BELINDA BAIN: And that was also
20 the case in 2011/2012?

21 MR. JOHN HERHALT: I would say so.

22 MS. BELINDA BAIN: So you'd agree with
23 me then that the -- the sale of some or all of the
24 shares of Collus Power in 2011/2012 didn't have to go
25 by way of RFP; it could have just been a discussion

1 with an interested purchaser, correct?

2 MR. JOHN HERHALT: Could have been.

3 MS. BELINDA BAIN: And in fact that
4 would have been the more common way for a transaction
5 of that nature to take place.

6 MR. JOHN HERHALT: Yeah. The only
7 qualifier I'd put to it is that I think one (1) of the
8 nuances of this transaction was that it wasn't just a
9 disposition.

10 MS. BELINDA BAIN: Understood. Thank
11 you. In your evidence yesterday you were asked about
12 meetings of the Strategic Task Team and you used a
13 phrase called 'roundtable discussions' in describing
14 the meetings of the task team.

15 Can you explain for us what you meant
16 by that, 'roundtable discussion'?

17 MR. JOHN HERHALT: Well, yeah. I
18 mean, just that I think was talking about it, for
19 example, on the November 23rd meeting where there was
20 the scoring of the non-financial aspects of the bids.

21 Prior to the -- the individuals on the
22 team talking about the scores, there was a discussion
23 by everyone about how they saw certain aspects of the
24 bids, what their -- their views were, what their --
25 whether they had issues where they wanted to seek more

1 clarity, so, again, 'roundtable' just meaning
2 everybody was able to collaborate.

3 MS. BELINDA BAIN: So, all members of
4 the team had an opportunity to express their views.

5 MR. JOHN HERHALT: Correct.

6 MS. BELINDA BAIN: Is that right?

7 MR. JOHN HERHALT: Correct.

8 MS. BELINDA BAIN: Could I pull up
9 paragraph 277 of the Foundation Document, please?

10

11 (BRIEF PAUSE)

12

13 MS. BELINDA BAIN: Paragraph 277

14 reads:

15 "In September of 2011, John Herhalt
16 wrote comments on the face of a
17 September 6th letter to Veridian.
18 He noted that PowerStream made the
19 best pitch and Veridian had the
20 second best.

21 Mr. Herhalt made marginal comments
22 on most of the twelve (12) listed
23 items for discussion."

24 Could we now go, please, to KPM3228?

25

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: So, Mr. Herhalt, is
4 that your handwriting there in the top right corner of
5 this letter?

6 MR. JOHN HERHALT: It is.

7 MS. BELINDA BAIN: And this letter
8 appears to be a September 6th letter addressed to
9 Veridian inviting it to participate in an interview on
10 September 12th, 2011. Is that right?

11 MR. JOHN HERHALT: Correct.

12 MS. BELINDA BAIN: And you were
13 present at that meeting?

14 MR. JOHN HERHALT: I was. And as we
15 now know, all four (4) bidders participated in
16 meetings, two (2) on September the 12th being Veridian
17 and Hydro One, and then later, on September 16th,
18 PowerStream and Horizon.

19 Does that accord with your
20 recollection?

21 MR. JOHN HERHALT: It was September
22 19th, but, yes.

23 MS. BELINDA BAIN: Okay. Thank you.
24 I misspoke. So, looking at the note that you've made
25 in the top right-hand corner of this correspondence,

1 it states:

2 "Best pitches, Veridian number 2,
3 PowerStream number 1."

4 Do I understand from that that, based
5 on all four (4) of the presentations that -- that you
6 attended in September of 2011, in your view,
7 PowerStream had made the best presentation and
8 Veridian the second best? Is that right?

9 MR. JOHN HERHALT: Yeah. And I don't
10 know that that was after all four (4). That was maybe
11 only after the first two (2), so.

12 MS. BELINDA BAIN: Well, certainly,
13 PowerStream had not done their presentation --

14 MR. JOHN HERHALT: Okay.

15 MS. BELINDA BAIN: -- until the second
16 round. So, I take it that you li --

17 MR. JOHN HERHALT: It makes sense.

18 MS. BELINDA BAIN: Okay.

19 MR. JOHN HERHALT: Yeah, makes sense.

20 MS. BELINDA BAIN: So, mo -- you most
21 likely made this note after all four (4). Is that
22 fair?

23 MR. JOHN HERHALT: Yeah. Perhaps. I
24 -- I don't recall it precisely, but I'm sure it was my
25 view of the presentations, so.

1 MS. BELINDA BAIN: And do you recall
2 why, in your view, PowerStream's was the best
3 presentation?

4 MR. JOHN HERHALT: Not in any detail.

5 MS. BELINDA BAIN: Can we please go to
6 paragraph 386 of the Foundation Document?

7

8 (BRIEF PAUSE)

9

10 MS. BELINDA BAIN: This paragraph
11 reads:

12 "After the public information
13 session, John Rockx told John
14 Herhalt and Jonathan Erling that Ed
15 Houghton wanted a ranking of the
16 proposals as received to date to
17 compare to the rankings prepared by
18 other steering committee members.
19 Mr. Herhalt responded that he had
20 formulated his rankings but the --
21 the process was not at all easy.
22 One (1) hour later John Herhalt sent
23 an email to Ed Houghton in which he
24 ranked the bidders as follows:
25 PowerStream, Hydro One, Horizon,

1 Veridian."

2 Now, you were asked questions about
3 this email yesterday. Can we pull up this paragraph,
4 as well? Could we please pull up CPS2645?

5

6 (BRIEF PAUSE)

7

8 MS. BELINDA BAIN: So, as I say, we
9 went to this email yesterday. This is an email from
10 yourself to Ed and, I understand, responding to his
11 request of you to rank the proposals, correct?

12 MR. JOHN HERHALT: Correct.

13 MS. BELINDA BAIN: And the email is
14 timed and dated at 1:00 a.m. Wednesday the 23rd. You
15 explained to us that you were travelling at the time,
16 correct? And really, this was in the wee hours and,
17 unfortunately for you, an extension of probably a very
18 long working day on November the 22nd, correct?

19 MR. JOHN HERHALT: Correct.

20 MS. BELINDA BAIN: Okay. At the
21 bottom of this email it says, "We will talk in more
22 detail in the morning." I take it that that was
23 anticipating the task team meeting that was coming up
24 on November the 23rd, correct?

25 MR. JOHN HERHALT: Right.

1 MS. BELINDA BAIN: So, in these
2 rankings --

3 THE HONOURABLE FRANK MARROCCO: Sorry,
4 was there an answer? I -- I missed it.

5 MR. JOHN HERHALT: Oh, sorry, I said,
6 "Correct."

7 THE HONOURABLE FRANK MARROCCO: Okay.

8 MR. JOHN HERHALT: Yes. Sorry, yeah.

9

10 CONTINUED BY MS. BELINDA BAIN:

11 MS. BELINDA BAIN: And so, in -- in
12 these rankings -- and -- and I take it -- so, at the
13 time, you've based these rankings on the September
14 2011 meetings that you attended with each of the
15 bidders, correct?

16 MR. JOHN HERHALT: No, I don't think
17 so. At that point, I would have had an opportunity to
18 review the non-financial components of the process.

19 MS. BELINDA BAIN: And I was going
20 there. Sorry, I was breaking it down into pieces.
21 So, you would have had the benefit not only of having
22 heard the presentations, you also would have received,
23 as well as all of the other members of the task team,
24 copies of each of their presentations --

25 MR. JOHN HERHALT: Yes.

1 MS. BELINDA BAIN: -- correct? And
2 you would have reviewed those in making these rankings
3 --

4 MR. JOHN HERHALT: Yes.

5 MS. BELINDA BAIN: -- correct?

6 MR. JOHN HERHALT: Although I'll only
7 qualify that. Not really have scored them because, as
8 you know, I didn't score them until during the meeting
9 of the 23rd.

10 MS. BELINDA BAIN: Understood. And --
11 and I -- you told us that yesterday, and I wanted to
12 understand a little bit more about that. So, as I
13 understand it, on the evening of the 22nd into the wee
14 hours of the 23rd you produced a ranking.

15 And then I believe you indicated that
16 on the 23rd you were then asked to convert those
17 rankings into scorings broken down in connection with
18 the criteria for the RFP. Is that --

19 MR. JOHN HERHALT: Correct.

20 MS. BELINDA BAIN: -- right? Okay.
21 Thank you. And so, do you recall why you ranked
22 PowerStream number 1?

23 MR. JOHN HERHALT: Oh, I haven't gone
24 back through all the notes again. But I think there
25 were three (3) -- three (3) categories probably that

1 PowerStream stood out in. One (1) was just a broad
2 category of how they would, as a strategic partner,
3 support Collingwood in the, I'll call it strategic and
4 specialized resources area, I think in the growth
5 agenda, which was also part of that category.

6 And I think the other area was in this
7 really customer service and community comp --
8 community interaction. I think those were the three
9 (3) high strengths of -- of PowerStream at the time.
10 In fact, I think those are the areas where I would
11 have scored them the best.

12 The other areas, I think, if I recall
13 correctly, were, if not -- they were -- they were not
14 first, I think, in one (1) aspect of it, I think they
15 may have been tied in another. Those are just my
16 recollections, so.

17 MS. BELINDA BAIN: Okay. And to be
18 fair to you, you have produced notes that you prepared
19 as you went through these rankings, correct?

20 MR. JOHN HERHALT: As I was reading
21 the proposals. That's right.

22 MS. BELINDA BAIN: Okay.

23 MR. JOHN HERHALT: Yeah.

24 MS. BELINDA BAIN: Could we please
25 pull up KPM0003243?

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: Do you recognize
4 these notes?

5 MR. JOHN HERHALT: Oh, I do.

6 MS. BELINDA BAIN: And, as I
7 understand it, these are the notes that, I take it,
8 you initially prepared on the evening of the 22nd,
9 early on the 23rd when Mr. Houghton had asked you to
10 rank the various bidders.

11 MR. JOHN HERHALT: Yeah.

12 MS. BELINDA BAIN: Is that correct?

13 MR. JOHN HERHALT: Yeah, or whenever -
14 - I can't recall exactly when we received the non-
15 financial proposals. But whenever I received those
16 and I got the time to review them, that's when I
17 prepared most of this.

18 MS. BELINDA BAIN: Okay. Can we
19 scroll down, please, to the second page? And so, we
20 see there various points with respect to the various
21 bidders. There are numerals with hash tags -- or hash
22 signs beside them.

23 I take it those would relate to the
24 rankings that you assigned on the evening of November
25 22nd, early November 23rd. Is -- does that make

1 sense?

2 MR. JOHN HERHALT: I believe so.

3 MS. BELINDA BAIN: Okay. And so, does
4 that accord with your recollection as to when you
5 would have prepared these notes? So, do I take it
6 from that that -- that you prepared the majority of
7 these notes on the evening of the 22nd?

8 MR. JOHN HERHALT: Yeah, I prepared
9 them in advance of the session on the 23rd. You keep
10 referring to the evening of the 22nd, I could have
11 prepared these notes in advance of the evening of the
12 22nd, whenever I was reviewing the proposals.

13 MS. BELINDA BAIN: Understood. Thank
14 you. And also on these notes there are numerals and
15 circles. Can we scroll down a little bit more?

16 For example, 15 circled, 15 circled, I
17 take it those are the scores that you subsequently
18 assigned during the meeting of November 23rd, when you
19 were asked to score the proposals. Is that right?

20 MR. JOHN HERHALT: I believe that's
21 right.

22 MS. BELINDA BAIN: Okay, thank you.

23 And you've provided a transcription of
24 the notes and it may be easiest for us all if we go to
25 your typewritten transcription and it is reproduced at

1 paragraph 391 of the Foundation document.

2 And could you scroll down, please, to
3 page 154. Down just a little further, please. Sorry,
4 back up so we can at least see the header on -- there
5 we go.

6 And so as we see, you've set out a
7 table, first column being category, next column is
8 PowerStream, then Veridian, Hydro One, and Horizon, is
9 that right?

10 MR. JOHN HERHALT: Correct.

11 MS. BELINDA BAIN: And this sets out
12 each of the criteria from the RFP, correct?

13 MR. JOHN HERHALT: Correct.

14 MS. BELINDA BAIN: So looking at the
15 first category there, the specialized strategic
16 resources, and there is a notation there, 15, I take
17 it from that there were 15 points on the RFP available
18 for that criteria, correct?

19 MR. JOHN HERHALT: (No audible
20 response)

21 MS. BELINDA BAIN: And you have ranked
22 PowerStream number 1 and provided it with the full 15
23 points in that category, correct?

24 MR. JOHN HERHALT: Correct.

25 MS. BELINDA BAIN: Looking -- looking

1 at your notes now, does that refresh your memory as to
2 why you would have ranked PowerStream number 1 and
3 provided it the full 15 points?

4 MR. JOHN HERHALT: I wish I could tell
5 you exactly what I was -- what I was thinking at the
6 time. I mean, clearly these were notes I was making
7 as I -- as I was reviewing it.

8 But I can't take you through exactly
9 all the components of how I got there, so.

10 MS. BELINDA BAIN: For example, given
11 the fact that financial systems is listed there, I
12 take it that you would have considered that a positive
13 in terms of one of the things that PowerStream had to
14 offer to Collus Power. Is that fair?

15 MR. JOHN HERHALT: Perhaps, yes.

16 MS. BELINDA BAIN: If we can scroll
17 down to the next category. Just stop there. Growing
18 the business organic, again, I take it that the
19 fifteen (15) there accords with the fifteen (15)
20 points on the RFP attributable to this particular
21 element. Is that fair?

22 MR. JOHN HERHALT: I would also say
23 not everything that was perhaps a strength of each one
24 of them or a drawback was noted in this document.

25 There were some things that were -- I

1 was -- I was knowledgeable of and -- and I've clearly
2 ma -- made a notation even in the document itself.

3 For example, I knew that certain of
4 these utilities had experience in growing the business
5 inorganically, in different ways. And -- but I didn't
6 write that down. So I think the reality is not
7 everything that I may have considered is written in
8 the -- in these notes.

9 MS. BELINDA BAIN: Okay, that's fair.

10 I take it though, I mean the points
11 that you've written down would have been important to
12 you at --

13 MR. JOHN HERHALT: There were things
14 that I wasn't aware of and I wanted to make sure I
15 captured them.

16 MS. BELINDA BAIN: Understood. Thank
17 you. Can we scroll down a little further, please?
18 Just stopping at employee career support.

19 We see there that that was worth 10
20 points on the RFP and based on the second column here,
21 you've ranked PowerStream number 1 and provided it 10
22 points, correct?

23 MR. JOHN HERHALT: Correct.

24 MS. BELINDA BAIN: And number 4,
25 customer experience, again that was worth ten (10)

1 points, you ranked PowerStream number 1 and provided
2 the full ten (10) points, correct?

3 MR. JOHN HERHALT: I think so, yes.

4 MS. BELINDA BAIN: And that was based
5 on your independent assessment of the presentations
6 and of the materials provided, correct?

7 MR. JOHN HERHALT: Correct.

8 MS. BELINDA BAIN: Before you had
9 spoken to anyone else on the task team with respect to
10 their views or particular rankings and scorings,
11 correct?

12 MR. JOHN HERHALT: Well, the only
13 thing I would say is that the rankings were done by me
14 before any discussion on November 23rd.

15 The scores, I translated my rankings
16 into scores, but I think those scores that I
17 translated the rankings in -- from were done after
18 there was a round table discussion on the 23rd.

19 MS. BELINDA BAIN: Fair. But prior to
20 your having spoken to anyone and based on your review,
21 you ranked PowerStream number 1 in terms of customer
22 experience and satisfaction, correct?

23 MR. JOHN HERHALT: Yes, I did.

24 MS. BELINDA BAIN: Thank you.

25 Scrolling down just a little further.

1 So on criteria number 5, competitive
2 rates and cost structure, this is worth 10 points on
3 the RFP, this is one where you did not rank
4 PowerStream highest. It appears that you ranked
5 Horizon, which is the far-most right column, number 1,
6 and then ranked PowerStream and Veridian tied at
7 number 2. Am I taking that correctly from your notes?

8 MR. JOHN HERHALT: I think so.

9 MS. BELINDA BAIN: Each with eight (8)
10 points?

11 MR. JOHN HERHALT: I think so, yes.

12 MS. BELINDA BAIN: Okay. And last for
13 competitive rates and cost structure, you ranked Hydro
14 One, which is the fourth column over. You gave it 5
15 out of 10. Do you see that?

16 MR. JOHN HERHALT: Right.

17 MS. BELINDA BAIN: As opposed to the 8
18 for PowerStream and Veridian and the ten (10) for
19 Horizon.

20 MR. JOHN HERHALT: Yes.

21 MS. BELINDA BAIN: Do you have a
22 recollection as to why you ranked Hydro One so low
23 with respect to competitive rates and cost structure?

24 MR. JOHN HERHALT: I think it was more
25 my thinking around this, and I'm trying to recall,

1 it's -- it's only broad thinking, but it was -- was
2 cost structure.

3 Everybody spoke to maintaining rates
4 for a period of time after the transaction, but I
5 think the bigger question was how cost structure was
6 going to impact whatever was going to be done in this
7 50/50 arrangement going forward.

8 And to the extent that that cost
9 structure and the approach to what they might have to
10 do with their cost structure was going to have a
11 negative impact then I probably ranked them lower, so.

12 MS. BELINDA BAIN: Okay, thank you.

13 And just to close the loop on this, of
14 we can scroll down slightly, for cultural and just --
15 synergistic fit out of ten (10), you'll have to scroll
16 down a bit more, please. You ranked PowerStream
17 number 1 and gave it the full ten (10) points on that
18 one, is that correct?

19 MR. JOHN HERHALT: Correct.

20 MS. BELINDA BAIN: Thank you.

21 Now, you've -- you've indicated that
22 each of the members of the task team completed their
23 scoring prior to attending at the November 23rd
24 meeting, correct?

25 MR. JOHN HERHALT: That's my

1 understanding.

2 MS. BELINDA BAIN: Okay. And that
3 would be a good thing, that each of them had the
4 opportunity to independently review and score before
5 they had necessarily heard the views of others,
6 correct?

7 MR. JOHN HERHALT: Yes.

8 MS. BELINDA BAIN: And it's important
9 that none of them felt intimidated or pressured to
10 score in a certain way based on what others might
11 think?

12 MR. JOHN HERHALT: No. Although I'd
13 offer another point of view, which was also there was
14 probably benefit in having a -- a cross-section of
15 knowledge that was around that table in order to
16 finalize their understanding of their scores, but
17 that's just another point of view, so.

18 MS. BELINDA BAIN: When you initially
19 answered my question you said no, and I take it that
20 what you were responding to was I said no one would
21 have felt pressured to rank in a particular way --

22 MR. JOHN HERHALT: Right.

23 MS. BELINDA BAIN: -- to which you
24 said no, is that correct?

25 MR. JOHN HERHALT: Right.

1 MS. BELINDA BAIN: Thank you.

2 You spoke a bit yesterday about the
3 timing of the recapitalization dividend and its impact
4 on the total consideration flowing to the Town in
5 connection with the share sale. Do you recall that?

6 MR. JOHN HERHALT: Yes.

7 MS. BELINDA BAIN: And you described
8 for us how each of the four bids structured the
9 approach in terms of a 60/40 debt-to-equity ratio.

10 And all four (4) bids, therefore,
11 included a recapitalization dividend that would flow
12 as a result of taking on more debt, correct?

13 MR. JOHN HERHALT: Correct.

14 MS. BELINDA BAIN: And you described
15 for us a difference with respect to the timing of the
16 recapitalization dividend.

17 And in particular, if the
18 recapitalization dividend occurred immediately before
19 closing, it would flow 100 percent to the Town as the
20 sole shareholder. Is that right?

21 MR. JOHN HERHALT: That's correct.

22 MS. BELINDA BAIN: Whereas if the
23 dividend were immediately after closing, it would be
24 split 50/50 with the Town and the successful bidder,
25 who at that point would now be 50 percent shareholder,

1 correct?

2 MR. JOHN HERHALT: Correct.

3 MS. BELINDA BAIN: Now, I think there
4 was somewhat of a difference in terms of how the
5 parties estimated what the recapitalization dividend
6 would be, so estimates being anywhere between 4
7 million and 6.2 million. Do you recall that?

8 MR. JOHN HERHALT: Not -- not exactly,
9 but I know there was a range.

10 MS. BELINDA BAIN: Okay, and in terms
11 of the timing of that dividend then, -- sorry, just to
12 -- to step back.

13 So of all of the bidders, PowerStream
14 was the only bidder that structured the bid in such a
15 way that the recapitalization dividend would be paid
16 immediately before closing, correct?

17 MR. JOHN HERHALT: Correct.

18 MS. BELINDA BAIN: And so that -- the
19 capitalization dividend would be flowing 100 percent
20 to the Town, correct?

21 MR. JOHN HERHALT: (No audible
22 response).

23 MS. BELINDA BAIN: And all of the
24 other bidders had their bid structured in such a way
25 that the recapitalization dividend would be paid

1 immediately post closing, in which case, the Town
2 would only get half of the recapitalization dividend--

3 MR. JOHN HERHALT: Yes.

4 MS. BELINDA BAIN: -- correct? And
5 it's a significant amount. You've indicated you can't
6 recall for sure, but between 4 and 6.2 million are the
7 estimates. Is that right?

8 MR. JOHN HERHALT: The total dividend,
9 yeah.

10 MS. BELINDA BAIN: Total, correct.

11 MR. JOHN HERHALT: Right.

12 MS. BELINDA BAIN: And so, in terms of
13 the actual impact on the cash payment flowing -- or
14 consideration flowing to the Town, 50 percent of that,
15 it would be in the range of -- of 2 million to -- to 3
16 million potentially?

17 MR. JOHN HERHALT: If it was only
18 half, that's right.

19 MS. BELINDA BAIN: Yeah. Correct.
20 Okay. And so, given the fact that PowerStream was the
21 only bidder that had structured its bid in such a way
22 as to be the recapitalization dividend coming before
23 closing, its bid was essentially that much higher than
24 the other bidders in terms of what's flowing to the
25 Town, correct?

1 MR. JOHN HERHALT: It was not in total
2 higher than Hydro One's in total.

3 MS. BELINDA BAIN: I'm sorry, in terms
4 of the impact of the recapitalization dividend?

5 MR. JOHN HERHALT: It was, yes.

6 MS. BELINDA BAIN: Correct.

7 MR. JOHN HERHALT: The recap dividend
8 coming -- or being proposed by the way Hy --
9 PowerStream proposed it would have been the highest.

10 MS. BELINDA BAIN: Thank you.

11

12 (BRIEF PAUSE)

13

14 MS. BELINDA BAIN: Can we please pull
15 up paragraph 407 of the Foundation Document?

16

17 (BRIEF PAUSE)

18

19 MS. BELINDA BAIN: This paragraph
20 reads:

21 "In an undated handwritten note
22 titled "Hydro One acquisition
23 debrief," John Herhalt wrote
24 customer service cop rep -- cost
25 reputation."

1 I won't go through it all. Could we
2 pull up the actual transcribed note, please, or,
3 actually, the handwritten note first, if you don't
4 mind? It's KPM3177.0001.

5

6 (BRIEF PAUSE)

7

8 MS. BELINDA BAIN: Do you recognize
9 this?

10 MR. JOHN HERHALT: I do.

11 MS. BELINDA BAIN: So, this is your
12 handwritten note?

13 MR. JOHN HERHALT: It is.

14 MS. BELINDA BAIN: And I take it there
15 was a sticky on top of it that we see in the top
16 right-hand corner that says, "Please put in Collus
17 file"?

18 MR. JOHN HERHALT: Yes.

19 MS. BELINDA BAIN: And the title here
20 is, "Hydro One acquisition debrief." Do --

21 MR. JOHN HERHALT: Right.

22 MS. BELINDA BAIN: Do you recall the
23 circumstances in which you made this note?

24 MR. JOHN HERHALT: I do.

25 MS. BELINDA BAIN: And can you

1 describe them for us, please?

2 MR. JOHN HERHALT: Sure. And I can't
3 tell you what the date was, but some time after the
4 proponents were informed of the -- of Collingwood's
5 decision and things were proceeding with PowerStream,
6 Hydro One --

7 MS. BELINDA BAIN: Sorry to interrupt.
8 Do you have a recollection of -- of how long after, a
9 month maybe or more?

10 MR. JOHN HERHALT: (NO AUDIBLE
11 RESPONSE).

12 MS. BELINDA BAIN: Okay. Thank you.
13 But certainly after --

14 MR. JOHN HERHALT: It was -- it was a
15 coup --

16 MS. BELINDA BAIN: -- December 2011?

17 MR. JOHN HERHALT: -- I think it was a
18 couple of months for sure, if not longer. At one
19 point, Hydro One reached out for me and asked if I
20 might be able to provide them with a debrief as to why
21 they weren't chosen.

22 MS. BELINDA BAIN: And you did?

23 MR. JOHN HERHALT: Well, at first, I
24 contacted Mr. Houghton because, as I said to Hydro
25 One, I don't know that I'm the person that should be

1 providing the debrief, it should be someone from the
2 organization.

3 We were advisors. And so, I called Mr.
4 Houghton. And he said, I'm fine with you providing
5 the debrief. Clearly, he felt comfortable with me
6 doing that. I said, Okay, well, fine, if that's -- if
7 that's your desire, I will do that at the appropriate
8 time. So, that's --

9 MS. BELINDA BAIN: So, it was just you
10 then meeting with Hydro One to --

11 MR. JOHN HERHALT: Hydro One --

12 MS. BELINDA BAIN: -- to conduct the
13 debrief.

14 MR. JOHN HERHALT: -- there were
15 several people from Hydro One that joined me in a
16 meeting, yeah.

17 MS. BELINDA BAIN: Thank you. Can we
18 scroll down a bit? So, it looks like the second point
19 is customer service cost reputation.

20 Do you recall what that relates to?

21 MR. JOHN HERHALT: Yeah. I mean, I
22 think there was a general view. And I think some of
23 it came out in the document. Some of it came out from
24 people's understanding about whether Hydro One had the
25 best reputation from a customer service perspective as

1 well as their cost structure and how that would impact
2 the -- the -- Collus Power going forward, so.

3 MS. BELINDA BAIN: Do I take it from
4 that there was a negative perception with respect --

5 MR. JOHN HERHALT: That was a neg --
6 that was a negative.

7 MS. BELINDA BAIN: -- to customer
8 service?

9 MR. JOHN HERHALT: That was a
10 negative; that's right.

11 MS. BELINDA BAIN: Okay.

12 THE HONOURABLE FRANK MARROCCO: Just
13 would remind you to speak one (1) at a time. It makes
14 it hard for the transcript.

15 MR. JOHN HERHALT: My apologies.

16 MS. BELINDA BAIN: Apologizes, Your
17 Honour.

18 MR. JOHN HERHALT: We did it again.

19

20 CONTINUED BY MS. BELINDA BAIN:

21 MS. BELINDA BAIN: Can you provide us
22 with any details with respect to the negative
23 perception of Hydro One from a customer service
24 perspective?

25 MR. JOHN HERHALT: Not -- I'm not

1 going to -- I don't have all the detail before me. I
2 would say that, at the time, there was certainly views
3 from not only some of the service areas that they
4 provided service to, some that were experiences with -
5 - with other utilities that they had done dealings
6 with that just questioned whether or not their
7 customer service was -- was as good as other
8 utilities, so.

9 MS. BELINDA BAIN: And there were also
10 concerns with respect to cost with respect to Hydro
11 One?

12 MR. JOHN HERHALT: Well, their --
13 their overall cost structure and how that would impact
14 arrangements going forward because their cost
15 structure was known to be a higher cost structure, so.

16 MS. BELINDA BAIN: Thank you. Further
17 down on -- the last point on -- on this view,
18 "Perception of high cost rates," can you recall what
19 that relates to?

20 MR. JOHN HERHALT: Well, it was
21 connected to the same issue really. I think, even
22 though there was a commitment to keeping rates and not
23 harmonizing rates, certainly the experience by -- by
24 many in other jurisdictions was that their rates were
25 higher.

1 And, again, the belief was that that
2 was driven to a certain degree by their cost
3 structure, so.

4 MS. BELINDA BAIN: And this being a
5 debrief with respect to the RFP that had just taken
6 place, I take it that in your meeting with Hydro One
7 these were points that you were raising that -- that
8 you believe might have had some impact on the views of
9 the task team that was scoring the RFP. Is that
10 right?

11 MR. JOHN HERHALT: Correct. I mean --
12 I mean, in many ways, I think from a Hydro One
13 perspective, I was trying to be helpful to them. If
14 they wanted to understand what -- what it was that did
15 not put them in the first position even though they
16 had the best financial offer, I think it was important
17 for them to understand what some of the other
18 considerations were that were around the table that
19 were driving them out of the number 1 category, so.

20 MS. BELINDA BAIN: Thank you. Can we
21 please pull up CPS0002668? I'd like to ask you about
22 the issue of the total consideration flowing to the
23 Town as a result of the transaction.

24 So, what we have here is the first bid
25 analysis that was performed by KPMG. So, this is

1 before PowerStream increased its -- its cash offer for
2 the sale of the shares to 8 million. But I take it
3 the essential approach in terms of the items that were
4 analyzed by KPMG in each of the three (3) bid analysis
5 was consistent. Is that right?

6 MR. JOHN HERHALT: It was, although I
7 would -- John Rockx is the author of this, so I would
8 -- I would defer to John, but -- yeah, but it was
9 consistent.

10 MS. BELINDA BAIN: And we'll have a
11 chance to ask him, as well.

12 MR. JOHN HERHALT: Right.

13 MS. BELINDA BAIN: And I appreciate
14 you providing your thoughts here today. Could we
15 scroll down a little farther, please?

16

17 (BRIEF PAUSE)

18

19 MS. BELINDA BAIN: Sorry, this is
20 going to be tricky. So, can you scroll in such a way
21 that, "Total consideration flowing to the Town," is
22 just at the bottom and we can see above it?

23 And so, there's a line in this
24 evaluation or analysis entitled:

25 "Total cash consideration to the

1 Town of Collingwood."

2 Do you see that?

3 MR. JOHN HERHALT: Yes.

4 MS. BELINDA BAIN: And it's your
5 understanding that that was KPMG's Mr. Rockx's
6 analysis with respect to the cash which would flow to
7 the Town in connection with the transaction.

8 Is that right?

9 MR. JOHN HERHALT: Correct.

10 MS. BELINDA BAIN: And the -- the
11 figure there under, "Total cash consideration to the
12 Town of Collingwood," includes the share purchase
13 price, any unassumed liabilities, the recapitalization
14 dividend, and also the existing shareholder loan,
15 correct?

16 MR. JOHN HERHALT: That's right.

17 MS. BELINDA BAIN: And that's
18 consistent in terms of the elements included in the
19 calculation of the total cost consideration for each
20 of the bidders, correct?

21 MR. JOHN HERHALT: It is.

22 MS. BELINDA BAIN: And certainly, you
23 would consider unassumed liabilities, the
24 recapitalization dividend, and the existing
25 shareholder loan to have real value to the Town of

1 Collingwood, correct?

2 MR. JOHN HERHALT: Yeah. And I think
3 the -- I think the important point in this analysis is
4 to try and make sure that we're looking at what the
5 entire -- the total package of cash would be to the
6 Town.

7 It was particularly important to do it
8 this way because of the recapitalization dividend
9 difference in approach as well as the different
10 assumptions being made by the bidders on a liability -
11 - liabilities assumed, so.

12 Because really, the net purchase price
13 or the share purchase price was really the -- the --
14 well, let's put it this way. The recap dividend and
15 the shareholder loan were items that could have been
16 dealt with outside of a transaction. But because of
17 the way they were handled by each bidder, it altered
18 the total cash position that would have been offered
19 in each bid.

20 MS. BELINDA BAIN: Thank you. I think
21 your phrase was the total cash package?

22 MR. JOHN HERHALT: Right.

23 MS. BELINDA BAIN: And certainly, you
24 considered unassumed liabilities, the recapitalization
25 dividend, and the shareholder loan to be part of that

1 total cash package, correct?

2 MR. JOHN HERHALT: Yeah, to keep --
3 keep it as apples to apples, right.

4 MS. BELINDA BAIN: Thank you. Those
5 are all my questions.

6 THE HONOURABLE FRANK MARROCCO: I
7 think just before -- just before we leave that chart,
8 if you look at unassumed liabilities --

9 MR. JOHN HERHALT: Yes.

10 THE HONOURABLE FRANK MARROCCO: -- 4
11 point -- Hydro One, 4.112 million of unassumed
12 liabilities, is that a description of liabilities that
13 are not being assumed or --

14 MR. JOHN HERHALT: Yeah. I think --
15 and John Rockx would be better --

16 THE HONOURABLE FRANK MARROCCO: All
17 right.

18 MR. JOHN HERHALT: -- to answer this.

19 THE HONOURABLE FRANK MARROCCO: Okay.

20 MR. JOHN HERHALT: But I would say
21 this. The -- the questions that were being asked
22 were, in their proposal, what had they assumed they
23 were assuming, if you know what I mean.

24 At one point, I know -- and John, in a
25 conversation with them or correspondence with them,

1 they said they would assume liabilities, but they
2 assumed that certain liabilities would be zero. And
3 the fact of the matter was certainly those liabilities
4 were not going to be zero. The regulatory liabilities
5 were not going to be zero.

6 So, I think that's why I arrived there,
7 so.

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

10 MR. TIM FRYER: Yes, Sir.

11

12 (BRIEF PAUSE)

13

14 CROSS-EXAMINATION BY MR. TIM FRYER:

15 MR. TIM FRYER: Thank you, Justice
16 Marrocco, and hello, Mr. Herhalt.

17 MR. JOHN HERHALT: Hello.

18 MR. TIM FRYER: For a matter of
19 record, I am representing myself in these proceedings
20 and I have a few questions to go over with you. I'm
21 just going to bring up that same slide again. I
22 hadn't intended on doing this. I was going to do it
23 with Mr. Rockx. But because of the judge's question,
24 I think I'll maybe just suggest something about it.

25 If we go to that same spot, you notice

1 that it says, "4.112 million," in -- in the second
2 column, and it says, "1.412 million," in the next
3 column.

4 It looks like it might be a
5 transposition error here because those unassumed
6 liabilities should probably be the same. So, it just
7 like the 1 and 4 got flipped around.

8 MR. JOHN HERHALT: I don't -- I --
9 you'd have to ask Mr. Rockx.

10 MR. TIM FRYER: Okay.

11 MR. JOHN HERHALT: Sorry.

12 MR. TIM FRYER: I had intended on
13 doing that, but that's --

14 MR. JOHN HERHALT: Yeah, please do.

15 MR. TIM FRYER: -- that's -- just
16 because it's been talked about.

17 MR. JOHN HERHALT: Please do.

18 MR. TIM FRYER: Okay. So, if we
19 could, I'm -- I'm just going to open up with a brief
20 review of the scoring matrix for the RFP. So, I
21 wasn't going to bring anything up because you're
22 completely familiar with --

23 MR. JOHN HERHALT: Yeah.

24 MR. TIM FRYER: -- with that.

25 MR. JOHN HERHALT: Actually, just can

1 I go back to that question?

2 MR. TIM FRYER: Yes.

3 MR. JOHN HERHALT: One (1) thing that
4 I do recall John saying though is that, in
5 PowerStream's bid, they had assumed that the
6 regulatory liabilities would be assumed regardless of
7 what they were, so just in case it was not a typo, so.

8 MR. TIM FRYER: It's very possible
9 that that adds up to that and it just happens to --

10 MR. JOHN HERHALT: You have to ask
11 John.

12 MR. TIM FRYER: -- to look that way.

13 MR. JOHN HERHALT: You have to ask
14 John.

15 MR. TIM FRYER: But I -- I just
16 thought I better mention it now --

17 MR. JOHN HERHALT: For sure.

18 MR. TIM FRYER: -- rather than leave
19 it because the justice had asked about it.

20 MR. JOHN HERHALT: Yeah.

21 MR. TIM FRYER: So, as I said, I'm not
22 going to change. It's -- it's just the matter of the
23 general reference to 30 percent quantitative and 70
24 percent qualitative.

25 So, I presented earlier that it should

1 be considered at 30 percent financial, quantitative,
2 30 percent strategic partner element, and 40 percent
3 qualitative. Does that sound logical in -- in your
4 estimation?

5 MR. JOHN HERHALT: Maybe just walk me
6 through the -- the second one. Just --

7 MR. TIM FRYER: So, the 30 percent for
8 the strategic partner element.

9 MR. JOHN HERHALT: Meaning growth,
10 specialized resources?

11 MR. TIM FRYER: That you split into
12 the two (2) --

13 MR. JOHN HERHALT: Right. Right.

14 MR. TIM FRYER: -- fifteens (15s)
15 because --

16 MR. JOHN HERHALT: Right.

17 MR. TIM FRYER: -- there's the two (2)
18 categories within it.

19 MR. JOHN HERHALT: Right.

20 MR. TIM FRYER: So, it was just that
21 that's the way I'd been reflecting on it. And in your
22 experience with your other RFPs that you've talked
23 about, it wouldn't be unusual to settle on these kinds
24 of weightings?

25 MR. JOHN HERHALT: I think the only

1 unusual part of this was that the emphasis here was on
2 the strategic partner component, so -- and, therefore,
3 it was different.

4 MR. TIM FRYER: And -- and --

5 THE HONOURABLE FRANK MARROCCO: Can we
6 just --

7 MR. TIM FRYER: Yeah.

8 THE HONOURABLE FRANK MARROCCO: -- let
9 -- let the -- let's just finish the answer before we
10 get the next question.

11 MR. TIM FRYER: Yeah.

12 THE HONOURABLE FRANK MARROCCO: So,
13 you -- the last tail-end of what you were going to
14 say?

15 MR. JOHN MATHER: Yes. So, as I said,
16 this proposal or this RFP and this request was focused
17 not just on the financial transaction, it was focused
18 on the strategic partnership element.

19 So, that in and of itself was unique in
20 the LDS sector to date, so.

21

22 CONTINUED BY MR. TIM FRYER:

23 MR. TIM FRYER: Unique and important
24 to the proponents who were looking to -- for the
25 partner? Because you made this mention yesterday

1 about the situation was more than just finding an
2 investor.

3 MR. JOHN HERHALT: Correct.

4 MR. TIM FRYER: So I essentially
5 looked at it as a joint venture. I think you
6 mentioned that it was kind of like a merger?

7 MR. JOHN HERHALT: Yeah. I'll -- I'll
8 add to that. I've often thought of it as it was a
9 hybrid between a disposition and a merger in -- in
10 that concept.

11 MR. TIM FRYER: Yes. Okay. So I'd
12 like to bring up KPM0001758. And while that's coming
13 up, this is an email train with Mr. Stern that
14 actually was looked that little bit yesterday. And
15 you're familiar with it, because you were copied.

16 So I wanted to go down -- just scroll
17 up, I guess, a little bit, is the right terminology.
18 And we're going to settle right there, where the --
19 yeah, the -- the larger paragraph is there. That's
20 what I wanted.

21 So -- so if you -- if you look at that
22 -- and I guess, first, I'll just mention about in
23 regards to the transfer tax correction that KPMG had
24 to make to the report submission, we talked about --
25 you talked about that yesterday, and reflected on that

1 -- that -- what came from my input about the exemption
2 being in place --

3 MR. JOHN HERHALT: Correct.

4 MR. TIM FRYER: -- for the municipal
5 outright, and Hydro One 100 percent?

6 MR. JOHN HERHALT: Correct. Yes.

7 MR. TIM FRYER: So if -- if we're --
8 if -- and I'll just give you a chance to read that
9 larger paragraph.

10 THE HONOURABLE FRANK MARROCCO: The
11 one that starts "Ed or Dean"?

12

13 CONTINUED BY MR. TIM FRYER:

14 MR. TIM FRYER: "Ed or Dean," yes.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN HERHALT: Okay.

19 MR. TIM FRYER: Okay. So would you
20 agree that it conveys some of the determinations on a
21 couple of aspects of the tax implications?

22 MR. JOHN HERHALT: It does.

23 MR. TIM FRYER: Okay. So on the --
24 first, on the transfer tax, it's not -- and it says
25 that it may not be applicable for any potential

1 purchase option because the exemption is in place?

2 MR. JOHN HERHALT: Correct.

3 MR. TIM FRYER: The second part is the
4 indication about the expectation that there is
5 sufficient, safe income room to reduce any eventual
6 tax that may be caused by the gain from purchase. You
7 spoke about this yesterday as well?

8 MR. JOHN HERHALT: Correct.

9 MR. TIM FRYER: Yeah. So at the time,
10 then the possible tax implications had been
11 considered, and there didn't appear to be any major
12 concern going forward?

13 MR. JOHN HERHALT: No. I don't think
14 we knew precisely whether there was any tax exposure,
15 but yes, I think we knew what -- what it might look
16 like.

17 MR. TIM FRYER: So that would be why
18 the actual calculation of a possible transfer tax,
19 which would be the 33 percent less any bills that had
20 been paid from the period of 2000 through to the --
21 the closing of the -- of the deal, that calculation
22 could've been done, but it wasn't done because we knew
23 it wasn't applicable?

24 MR. JOHN HERHALT: Correct.

25 MR. TIM FRYER: Okay. So one (1)

1 final review point on -- on this particular matter,
2 then, is the decision of the holding company -- or
3 having the holding company, Collus, shares being sold
4 -- once it was established that Collus solutions would
5 be dissolved, logically, then, the holding company
6 share transaction would be best, because really, the
7 only other operating Corporation was right underneath
8 it, the -- the power company?

9 MR. JOHN HERHALT: I -- I -- when that
10 decision was made, I don't think I was part of the
11 conversation, so.

12 MR. TIM FRYER: And you even mentioned
13 yesterday -- you reflected on the fact that Mr. Clark
14 presented about this part of things to Council in
15 December?

16 MR. JOHN HERHALT: That's what I saw
17 in the documents, yes.

18 MR. TIM FRYER: Yeah. So if we could
19 go to paragraph 442 in the Foundation Document. And
20 this is the paragraph -- and the small chart that --
21 so -- so the paragraph explains the -- the slide
22 presentation. And -- and just scrolling down -- or up
23 a little bit, this is the chart. So we're just going
24 to sit there for a second.

25 And -- and Ms. Bain has already

1 reviewed some about this, but I want to look at a
2 little -- a little bit differently. So I want to talk
3 about the 15.01 million PowerStream summary data. So
4 on the chart, it's identified as cost considerations,
5 which is really total proceeds?

6 MR. JOHN HERHALT: Correct, total
7 cash.

8 MR. TIM FRYER: Yeah. And it's a
9 combination of sharing of increased third party debt
10 levels and the 8 million cash purchase price that was
11 being offered?

12 MR. JOHN HERHALT: Correct.

13 MR. TIM FRYER: So another approach --
14 and one that I had recommended should be considered as
15 an option during the negotiation stages was, what
16 would be the result if the purchaser agreed to leave
17 the borrowing room and the municipal debt note intact?
18 That's just a statement of -- of another approach that
19 I was suggesting we could take a look at as we
20 negotiated with -- with the potential partner, leaving
21 the debt room there.

22 THE HONOURABLE FRANK MARROCCO: So the
23 question is -- what's the question?

24

25 CONTINUED BY MR. TIM FRYER:

1 MR. TIM FRYER: So it was kind of a --
2 a preamble towards where I'm coming with -- with the
3 next.

4 So a major reason for that was wanting
5 to at least consider this approach, because the budget
6 forecasts were indicating major capital investment
7 requirements in the near future for Collus Power.
8 That was why the debt room was -- was kept intact for
9 many years. And I'm going to circle back to that.

10 But in the case of PowerStream, if
11 there was agreement to provide further cash investment
12 because the debt room was going to be left intact,
13 then if all things remain the same, what it could
14 amount to was a further investment of 50 percent of
15 that debt room that was there.

16 So in the -- in the power -- extreme
17 case, if we're looking at the chart, here, we see the
18 5.3 million to the Town, and the 1.7 million to the
19 Town, which is both what the debt would be if it was
20 cashed in -- or -- or taken out as third party debt.
21 So it amounts to \$7 million that was debt room within
22 the utility.

23 Would you agree with that?

24 MR. JOHN HERHALT: Yes, I understand
25 that, yeah.

1 MR. TIM FRYER: Okay. So -- so if the
2 partner agreed to leave the debt room intact, then the
3 assumption would be that you'd see another \$3.5
4 million of payment in addition to the eight (8),
5 because the debt room was remaining intact. They were
6 willing to pay \$8 million for the fully leveraged
7 utility. The assumption that I wanted to look at was
8 if -- if they left the debt room there, then they'd be
9 willing to put another 3.5 million in, because all
10 that debt room was there, and they were getting that?

11 MR. JOHN HERHALT: It's -- it's a
12 proposition. I don't know whether they would have
13 gone for it, but, yeah.

14 MR. TIM FRYER: And -- and that's
15 totally correct, because -- and that was the other
16 premise behind asking about it, was because if they
17 weren't going to, then why did they want us to be
18 fully leveraged?

19 MR. JOHN HERHALT: The only -- the
20 only observation I would have is that the fully
21 leveraged arrangement would have been something that
22 would not have cost them anything out of pocket from
23 their accounts. An additional 3 1/2 million meant
24 that they had to come up with another 3 1/2 million in
25 cash, right, so.

1 MR. TIM FRYER: Okay. So -- so we can
2 -- we can leave it at that. And -- and if we did the
3 same calculation on the Hydro One proposal, we'd still
4 end up with that nine hundred thousand (900,000) --

5 MR. JOHN HERHALT: -- be consistent.
6 Sure.

7 MR. TIM FRYER: -- nine hundred and
8 ninety thousand dollar (\$990,000) difference.

9 MR. JOHN HERHALT: Sure. They'd be --

10 MR. TIM FRYER: So if it was the case
11 where PowerStream would have paid essentially 11 1/2
12 million, the Hydro One offer still would have been
13 12.49 million, and -- and the nine hundred and ninety
14 thousand dollar (\$990,000) difference would be there.

15 But it was -- it was more to try to
16 clear up the idea, because there's a lot of confusion
17 around the -- the debt room --

18 MR. JOHN HERHALT: M-hm.

19 MR. TIM FRYER: -- because one was
20 offering more than -- than the other, and that type of
21 thing. So -- so we'll -- we'll move on from that.
22 And as I said it was -- it was proposed to at least
23 discuss the possibility with the preferred partner.

24 So I wanted to bring up KPM0001762.
25 And this is an email that you actually had addressed

1 yesterday as well. And this is just further to -- to
2 what I was -- I was discussing.

3 You'll -- if -- if we just scrolled up
4 a little bit, you'll notice the last sentence in the
5 last large paragraph says:

6 "Tim Fryer would like to understand
7 the basis of this as well."

8 And this -- this has to do with the
9 capital structure, because I was concerned about being
10 in a fully leveraged situation --

11 MR. JOHN HERHALT: M-hm.

12 MR. TIM FRYER: -- with the -- with
13 the -- the anticipated capital investment requirements
14 we were going to have.

15 So in that regard, I was in -- and I
16 was going to bring up TF -- or TFF607, because this
17 will add some context to that -- to that particular
18 concern.

19

20 (BRIEF PAUSE)

21

22 MR. TIM FRYER: And this is a table
23 from the distribution system plan that is in place for
24 Collus Power, now EPCOR. And I wanted to just briefly
25 review the -- the total line in -- in the -- which is

1 -- is -- is the fourth line. And I'm not going to ask
2 you to do the math. I -- I worked it out quickly.
3 The -- the -- the average -- it looks like they've
4 undercapitalized their investment in the first four
5 (4) years, because the average from 2013 to 2016 is
6 about \$1.8 million. The 2017 to '22 average is
7 showing 3.2 million, so a 75 percent increase in
8 annual capital requirements.

9 So again, this was just to give some
10 context to my statement about concern about capital
11 requirements going forward, and it relates back to
12 what you had noted in your notes, which was I wanted
13 to understand more about the capital structure because
14 of the concern about going forward.

15 So just coming to -- to an end, the
16 other clarification I was going to put forward was,
17 yesterday when we were talking about the sixty (60) to
18 forty (40) debt-to-equity ratio that was going to be
19 in place, you had referred back to, you thought that
20 we generally were running a 50/50.

21 MR. JOHN HERHALT: That was just --

22 MR. TIM FRYER: It was -- it was just
23 a guess?

24 MR. JOHN HERHALT: Yeah.

25 MR. TIM FRYER: Sorry, Your Honour.

1 And I recognize it was just a guesstimate, so I was
2 just actually going to say, we were about 35/65 --

3 MR. JOHN HERHALT: Okay.

4 MR. TIM FRYER: -- debt-to-equity.

5 And again, that was because debt room was important in
6 -- in -- in our planning from a long-range capital
7 standpoint.

8 And you may recall that that level of
9 debt-equity ratio is in evidence usually with the mid-
10 size utilities in Ontario.

11 MR. JOHN HERHALT: Okay.

12 MR. TIM FRYER: So you also yesterday
13 reviewed Option B, the approach with the strategic
14 partnership task team, which was -- you thought
15 perhaps it would be good task for -- for -- what would
16 the offer be for a full.

17 MR. JOHN HERHALT: Yes. That was a
18 suggestion.

19 MR. TIM FRYER: I too believed that
20 that approach should have been taken, and I expect you
21 would agree with me that it would help to give a
22 perspective as to whether the 50 percent option was
23 really in the right kind of range.

24 MR. JOHN HERHALT: Which, sorry?

25 MR. TIM FRYER: If you ask for full --

1 MR. JOHN HERHALT: Yes.

2 MR. TIM FRYER: - as well as the 50
3 percent --

4 MR. JOHN HERHALT: Yes.

5 MR. TIM FRYER: -- then it gives you a
6 perspective as to how the 50 percent is comparing to
7 an actual offer rather than to the -- the -- the
8 valuation parameter that was being used.

9 MR. JOHN HERHALT: Yeah. I mean, I
10 think there's a general UN (phonetic) experience that
11 if there's a hundred percent acquisition, it may be
12 more than what 50 percent acquisition might be in
13 terms of a bid. I think that's been people's view. I
14 think that's to your point. If you saw what the
15 hundred percent bid price might be, you'd know whether
16 or not the 50 percent bid price lined up, so.

17 MR. TIM FRYER: Over the next few
18 years, quite often asked, is -- is the 50 percent half
19 or was it less than half or was it more than half?
20 And you had no basis to really -- to --

21 MR. JOHN HERHALT: Right.

22 MR. TIM FRYER: -- to look and examine
23 --

24 MR. JOHN HERHALT: The only basis you
25 had to refer to was the calculation of value really,

1 so, yeah.

2 MR. TIM FRYER: I'm thinking
3 additionally you'd agree that this was going to be a
4 long-term partner, and by asking for full price, it
5 would give you an idea of what the value they were
6 putting on the organization, that they were looking to
7 be a long-term partner on.

8 MR. JOHN HERHALT: Yeah. I mean, I --
9 I think my thinking at the time was even more direct
10 than that, and you'd at least understand if you
11 actually chose to sell it for a hundred percent what
12 it is you would get, so.

13 MR. TIM FRYER: And just to add to the
14 complexity, now we know that it didn't develop that
15 way.

16 MR. JOHN HERHALT: No.

17 MR. TIM FRYER: And now it turns out
18 that EPCOR was successful in making a bid to the Town
19 of Collingwood and to PowerStream, that they thought -
20 - decided was beneficial to both, and accept.

21 Justice Marrocco, those are all my
22 questions, and thank you, Mr. Herhalt.

23 THE HONOURABLE FRANK MARROCCO: Before
24 we go on the next -- probably Mr. Bonwick, I don't
25 understand why the recapitalization, the divided

1 resulting from the recapitalization is part of the
2 cash consideration in the bid, because they could have
3 done that anyway, and I don't -- can you help me with
4 that?

5 MR. JOHN HERHALT: Sure, sure. It --
6 it isn't actually part of the bid price, but here --
7 here's the dilemma, given the fact that there were
8 three (3) that proposed to do the recap dividend post
9 closing and one (1) that did not, and that is that
10 effectively the ones that were doing it post closing,
11 that resulted in 50 percent of that recapitalization
12 dividend going to not the Town of Collingwood but to
13 the two (2) shareholders, because it was after
14 closing, whereas if it was done immediately before
15 closing, the entire recap dividend went to the Town of
16 Collingwood.

17 THE HONOURABLE FRANK MARROCCO: I
18 understand that, and obviously the one (1), if you're
19 the Town of Collingwood, is better than the other. I
20 comprehend that.

21 MR. JOHN HERHALT: So why include it
22 in the analysis?

23 THE HONOURABLE FRANK MARROCCO: Why is
24 it -- but -- yes because -- and I'm asking for some
25 help with this. It seems to me what -- what's

1 happening is you're borrowing money through the --
2 Collus Power at that point anyway, and the Town owns
3 Collus Power, so the asset now has a debt it didn't
4 have before. After the transaction, that debt I --
5 it's half owned by somebody else, but I don't
6 understand why the whole dividend is included in the
7 cash consideration.

8 MR. JOHN HERHALT: Well in the case of
9 -- some might argue that in a case of the bidder --
10 the bidders that were offering the share purchase
11 price and then receiving half the recapped dividend,
12 they were financing their purchase price with part of
13 the dividend.

14 THE HONOURABLE FRANK MARROCCO: Yes,
15 yes.

16 MR. JOHN HERHALT: That's -- that's
17 the reason it was done in that analysis, is that in
18 one case there was no financing of the dividend being
19 done by -- by the recapped dividend, and I think that
20 was the fundamental -- the fundamental view, so.

21 THE HONOURABLE FRANK MARROCCO: See,
22 this -- you may have seen in the document, this starts
23 regardless of who composed the email at the direction
24 from the mayor --

25 MR. JOHN HERHALT: Right.

1 THE HONOURABLE FRANK MARROCCO: -- to
2 try to find ways to save -- to -- to try to find
3 efficiencies, to use that shorthand.

4 MR. JOHN HERHALT: I saw that.

5 THE HONOURABLE FRANK MARROCCO: And --
6 and so it would have seemed to me that what would be
7 logical is how much new cash flows in to the Town from
8 the sale of the asset.

9 MR. JOHN HERHALT: Yeah, and I think
10 there was a discussion earlier, if I saw it correctly,
11 that really the net proceeds on the share purchase
12 price were -- was that was the number, but I do think
13 that given the fact that you actually had half the
14 recap dividend flowing out of the Town's hands, I
15 think was an impact that had to be considered in the
16 analysis.

17 THE HONOURABLE FRANK MARROCCO: Okay,
18 thank you. Mr. Bonwick...?

19

20 CROSS-EXAMINATION BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: Thank you, Your
22 Honour.

23 Mr. Herhalt, Paul Bonwick, participant
24 at the Inquiry. Nice to meet you.

25 MR. JOHN HERHALT: Good to meet you.

1 MR. PAUL BONWICK: Thanks very much
2 for taking time to come back again today. Very much
3 appreciated and -- and enlightening.

4 Mr. Herhalt, over the course of the
5 last few days we've had the opportunity to hear from,
6 amongst others, your former colleague, Mr. Erling.
7 We've heard from Mr. McFadden, as well as others. And
8 you'll be pleased to know that whether it was your
9 former colleague or whether it was people that were
10 considered industry leaders, KPMG was really held in
11 the highest regard in terms of the consulting services
12 and their depth of knowledge as it related to the
13 energy sector in Canada.

14 It was also interesting to note that
15 your colleague confirmed the high degree of integrity
16 that KPMG team members would bring to the table and
17 that at the end of the day they consider themselves,
18 like you, if I understood you correctly, working for
19 Collus and the Town of Collingwood.

20 MR. JOHN HERHALT: Correct.

21 MR. PAUL BONWICK: Sort of a holistic
22 thing.

23 Would it seem reasonable to you just to
24 reaffirm that position that if during your meetings
25 you had the Mayor in attendance, you had the Deputy

1 Mayor, who was also the Chair of Finance for the Town
2 of Collingwood, and you had the Chief Administrative
3 Officer for the Town of Collingwood -- would it seem
4 reasonable to you that in fact then Collingwood was
5 very actively involved in the information sharing,
6 both providing input as well as receiving feedback?

7 MR. JOHN HERHALT: Yes.

8 MR. PAUL BONWICK: I'd like to move
9 over to the Strategic Task Team. And if -- I have it
10 right and I'd like you to confirm with me, please, my
11 understanding is that the chair, Dean Muncaster, was
12 part of the organize -- or part of that task team that
13 Mr. Fryer, the CFO, was part of that task team, that
14 Ms. Wingrove was part of that task team as the CAO,
15 that the mayor was part of that task team as her
16 capacity as mayor, that the deputy mayor and chair of
17 finance was part of that task team, that Mr. Houghton
18 was part of that task team. And I don't know if I'm
19 missing anybody, but --

20 MR. JOHN HERHALT: Mr. McFadden.

21 MR. PAUL BONWICK: Mr. McFadden.

22 Thank you. Mr. McFadden was --

23 MR. JOHN HERHALT: Mr. Garbutt, I
24 think.

25 MR. PAUL BONWICK: Mr. Garbutt was

1 part of that task team as well. Thank you very much
2 for clarifying that.

3 We've heard a lot of comments about Mr.
4 Muncaster in a very positive sense, sort of a Canadian
5 icon and very fortunate to have him. I think your
6 colleague, Mr. Erling, commented on this. Very
7 fortunate to have him or Mr. McFadden in terms of
8 being the steward for this project in driving it
9 forward. Would you agree with that?

10 MR. JOHN HERHALT: Yes.

11 MR. PAUL BONWICK: And so looking at
12 members like Mr. Muncaster, I think Mr. McFadden is
13 known to all of us now, some of you long before that,
14 as well as the other representations from the utility,
15 as well as the Municipality, would you agree that this
16 strategic task team had incredible depth and
17 understanding and a sort of a cross-perspective in
18 terms of what was actually transpiring?

19 MR. JOHN HERHALT: I would the -- I
20 would say so.

21 MR. PAUL BONWICK: During your
22 engagement, and I appreciate the fact that you were
23 the managing partner for Canada and travelling a lot,
24 and so I -- I think everybody would have appreciated
25 the fact you would take time out of your travels to

1 participate in light of your responsibilities.

2 But I understood your testimony
3 yesterday that you found the strategic team to work in
4 a very sort of collegial, open, constructive
5 environment, is that a fair assessment?

6 MR. JOHN HERHALT: I didn't see it
7 otherwise, no. No, I -- I mean I had no -- no
8 evidence to suggest they weren't working together. I
9 certainly found that they seemed aligned with what we
10 were trying to do, so.

11 MR. PAUL BONWICK: So there -- there
12 was hindsight always 20/20 as they say. Yesterday
13 during cross-examination you raised some issues, I
14 won't say they were substantive, but I -- I would say
15 you raised a bit of concern in terms of the fact that
16 Mr. Muncaster had incorporated your scoring as part of
17 the overall strategic task team.

18 Is that a fair assessment?

19 MR. JOHN HERHALT: Yes.

20 MR. PAUL BONWICK: Respectfully out of
21 Mr. Muncaster and unfortunately he's passed and not
22 here, but trying to get into his mind to have what
23 arguably is one of the foremost experts in the energy
24 sector with KPMG involved. Purely from his
25 perspective, would you see the value in him sort of

1 wanting to include you in that process?

2 MR. JOHN HERHALT: Oh, I think I can
3 understand that, although as I said, I don't think we
4 ever had a discussion where we were enlisted as
5 members of the task team.

6 MR. PAUL BONWICK: And I think that's
7 fair, I'm just trying to sort of paint a different
8 narrative in terms of if I had you as part of my
9 advisory, I would certainly want to include you.

10 But you did acknowledge yesterday,
11 however, that irrespective of him including you in the
12 score, it really had no impact because the same result
13 would have transpired, correct?

14 MR. JOHN HERHALT: My scores would
15 have aligned with that, yes.

16 MR. PAUL BONWICK: And so again, I
17 appreciate that you didn't bring your calculator, but
18 when the scoring was up yesterday, would you agree
19 with the proposition that it really didn't matter
20 whether you removed you or three of the -- any three
21 of the scores or any six of the scores, in fact every
22 single member, when you did the combined score, ranked
23 PowerStream number 1?

24 MR. JOHN HERHALT: That was my
25 recollection, yes.

1 MR. PAUL BONWICK: Thank you.

2 There was some discussion related
3 yesterday through cross-examination related to the
4 minutes, minutes being taken at one, minutes not being
5 taken at the other.

6 And again, I'm very respectful of the
7 fact that you took the time to participate in these
8 via conference call and the fact that you're -- you're
9 travelling. But during the meeting where there was no
10 minutes taken, and the hearing hasn't determined why,
11 but move that aside. My reference is more about the
12 relevance of it.

13 You participated in a conference call.
14 Was there something that transpired in that meeting
15 that would have shifted in some reasonable or
16 significant way the train of thought or the collective
17 ideal that the committee was moving towards? Is there
18 something that would have been representative of those
19 minutes that would have been striking to say holy
20 jumpin', based on you listening in over the phone?

21 MR. JOHN HERHALT: Not to my
22 recollection.

23 MR. PAUL BONWICK: So would it be fair
24 to say that, quite frankly, whether the minutes were
25 completed or not completed, they're kind of somewhat

1 irrelevant in terms of what the collective did in
2 terms of the strategic task team moving forward
3 knowing that everybody was participating?

4 MR. JOHN HERHALT: I suppose the --
5 the only thing I would offer is that it would have
6 provided some record of what the dialogue was. There
7 was certainly discussion, there was certainly views
8 shared. I think that's really the -- the benefit of
9 that. I don't -- as I say, I don't think -- I can't
10 think of anything that would have changed the -- the
11 outcome that the task team came to.

12 MR. PAUL BONWICK: In fairness, your
13 testimony is consistent with the others that we've
14 interviewed to date or provided testimony to date that
15 would not heard anything striking come out of the
16 meeting other than the minutes, and that's why I was
17 trying to bring relevance to it.

18 You commented yesterday with respect to
19 your suggestion or the idea or the concept of greater
20 value for 100 percent sale versus something less than
21 100 percent sale.

22 Would you agree with me that there was,
23 for lack of a better description, I'll call it a
24 phenomenon or a trend perhaps, within the smaller LDC
25 environment that there was a great deal of trepidation

1 of nervousness within these smaller LDCs about being
2 swallowed up by the larger participants in the
3 industry, and I'm thinking Hydro One in fairness,
4 electro -- PowerStream, Veridian, others. Is that a
5 fair statement?

6 MR. JOHN HERHALT: That's fair.

7 MR. PAUL BONWICK: Would you agree,
8 and please feel free to expand on it, but would you
9 agree that when the smaller LDCs are looking at future
10 prospects, whether that's amalgamation, share sale,
11 whatever that might be, that in many cases they tend
12 to be highly controversial, or very high profile as it
13 relates to other issues within a community?

14 MR. JOHN HERHALT: Oh, absolutely. I
15 would say through the course of the time that I was
16 involved heavily in restructuring in the electricity
17 sector in Ontario, my colleagues and I did many, many,
18 many engagements with municipalities of a variety of
19 sizes, including their utilities, options analysis,
20 like the ones that you saw that we did in conjunction
21 with testimony that's being given here.

22 And in many cases, those options
23 analysis were identical in terms of the types of
24 options being considered. In fact, we did a similar
25 thing for Collingwood in 1999, if you go all the way

1 back to that piece of work. And well all -- the only
2 reason I'm saying that is that in many instances with
3 the smaller municipalities in particular but not
4 necessarily just them, the conclusion after all that
5 work was status quo, thank you very much. Because
6 there was a desire, either a concern about someone
7 else buying it or the desire to continue to have
8 control. That was clearly and often in conclusions,
9 so.

10 MR. PAUL BONWICK: In fact, I think
11 some have referenced it, it may have been me, but it -
12 - it almost in some cases would you agree is -- they
13 viewed it as part of their identity or part of their
14 sort of local mosaic or culture, not simply from a
15 business perspective, but there was emotion in there
16 beyond the actual business decision of whether it made
17 sense to sell part or all.

18 MR. JOHN HERHALT: True. And in fact
19 even after restructuring then there became even
20 another motivation, which was the income stream that
21 they were receiving from their -- their utility that
22 was 100 percent owned.

23 MR. PAUL BONWICK: You've referenced,
24 to some degree, and I apologize if I missed out on how
25 much emphasis you put on this, but we've been informed

1 that there has been a clear trend, for argument sake,
2 for the past 15 or 20 years, irrespective of the party
3 of the day that's in government, towards consolidation
4 within the Province of Ontario.

5 MR. JOHN HERHALT: Correct.

6 MR. PAUL BONWICK: And so is it
7 reasonable to assume that all participants in the
8 industry understand that this trend has been followed
9 and we've seen, for lack of better numbers, 310 go
10 down to 80 and so is it reasonable to say that all
11 participants in the industry would understand that
12 this is the trend that seems to be taking place?

13 MR. JOHN HERHALT: Certainly that's
14 been what's been happening, certainly that's still
15 what our, from a policy perspective, is being
16 encouraged, so.

17 MR. PAUL BONWICK: And whether one
18 refers to the -- the Drummond report or one refers to
19 the conservative government or back in the day the NDP
20 or the NDP in opposition or the liberals, there seems
21 to be a consensus whether it's one with the NDP or
22 liberals and conservatives having a more closely
23 ranked consolidation model. There seems to continue
24 to be a desire to seek consolidation continue -- and
25 I'm taking a snapshot back in time, in 2011.

1 MR. JOHN HERHALT: I believe so.

2 MR. PAUL BONWICK: So municipalities
3 must have known that, I mean they attend the AMO, the
4 Association of Municipalities conferences, they have
5 board members on LDCs, they must have known that.

6 MR. JOHN HERHALT: I would think so.

7 MR. PAUL BONWICK: So when I take your
8 testimony and I say that municipalities understood
9 that consolidation was the trend, when I say that the
10 LDCs certainly knew that it was the trend, and then I
11 take your evidence or your testimony and say there was
12 a great sense of trepidation about being swallowed up
13 by Hydro One, for example, would it not make sense in
14 your mind that PowerStream might develop a strategy
15 whereby they want to focus more on creating a regional
16 LDC out of the -- the norm in terms of an acquisition
17 but rather create a strategic growth opportunity that
18 would allow or provide greater comfort for some of
19 these smaller LDCs to participate in a regional LDC
20 versus what I'll refer to as -- as one of the top five
21 (5) big boys?

22 MR. JOHN HERHALT: Well, I'd answer it
23 this way, I think that's the -- that -- that concept
24 is not unlike the reason many LDCs have chosen to do a
25 merger, as opposed to just selling, I think to -- and

1 obviously it depends on who your merger partners are,
2 but in those cases where those merger partners have
3 some reasonable equity -- or equality, if you will,
4 then it is -- is -- it's -- it's similar to that,
5 right? And that's why they've gone that direction.

6 MR. PAUL BONWICK: So it's fair to say
7 then that all the big players in the industry
8 understood that there was a level of trepidation by
9 the smaller part -- or the smaller LDCs in getting
10 swallowed up?

11 MR. JOHN HERHALT: Oh, I would think
12 so. I would think so. Not in all instances,
13 obviously, but -- but certainly some.

14 MR. PAUL BONWICK: No, agreed. Where
15 I'm -- where I'm going is simply to get your
16 perspective in terms of it didn't make sense that
17 PowerStream would try to create a hybrid with a
18 willing partner like Collus to develop a regional LDC
19 model that's not one of the big four (4) or five (5),
20 but rather a more homegrown environment to allow
21 others to be part of that organization.

22 MR. JOHN HERHALT: Yeah, I think so.

23 MR. PAUL BONWICK: Thank you.

24 Would you agree that the idea of Collus
25 aligning themselves with a partner like PowerStream or

1 others, that that partner would have the ability to
2 provide strategic resources to allow Collus to enjoy a
3 scope and scale that they wouldn't otherwise be able
4 to do as an independent small LDC?

5 MR. JOHN HERHALT: Oh, I think -- I
6 think that was clearly the objective and I think
7 that's what Collus was looking for.

8 MR. PAUL BONWICK: Would you agree
9 that part of the strategic resources that would
10 benefit customers with Collus with a partner like
11 PowerStream, would you agree resources like the 24/7
12 call centre would offer significant value to the
13 Collus rate base?

14 MR. JOHN HERHALT: Yes.

15 MR. PAUL BONWICK: Would you agree
16 that working with a larger LDC that has the resources
17 for rate filings and other regulatory controls have
18 the ability to -- had the ability to offer significant
19 value to the Collingwood or the Collus ratepayer
20 group?

21 MR. JOHN HERHALT: Yes.

22 MR. PAUL BONWICK: Generally speaking,
23 it makes sense and that's part of the consolidation
24 model for the smaller LDCs that are tasked with all
25 these responsibilities that are coming down the pipe

1 to look for some sort of partnership or alignment with
2 a larger LDC that has the resources to be able to
3 provide that?

4 MR. JOHN HERHALT: Yes, the model was
5 to find more depth and scale.

6 MR. PAUL BONWICK: I'm not going to go
7 down the path of asking questions hypothetically if
8 Council had chose to go in a different direction in
9 terms of capitalizing Collus or wanting to take money
10 out versus leave money in, but I -- I want you to help
11 me understand that this 60/40 split that everybody was
12 working with, that equity ratio, is that not mandated,
13 that's the ceiling mandated through the Ontario Energy
14 Board?

15

16 MR. JOHN HERHALT: It's -- it's a
17 ceiling. I think that's the key word. I think -- in
18 fact, it's not even -- it's not even -- it is -- it is
19 the desired and deemed capital structure that they
20 want utilities to have. And the -- the revenue
21 requirement model -- in other words, the rate-setting
22 model -- is based on that deemed capital structure.

23 So to the extent that you don't choose
24 to have it, either lower or higher -- and higher gets
25 you into other consequences -- but then you may not be

1 in the position to have the -- as they put it, the
2 deemed revenue requirements that otherwise could be
3 available, so.

4 MR. PAUL BONWICK: Must have gotten --

5 MR. JOHN HERHALT: There's other --
6 there's other things that go with it but --

7 MR. PAUL BONWICK: That was really my
8 next question is the fact that my understanding is the
9 OEB in fact deems the 60/40 ratio.

10 And in your opinion, is -- is that a
11 reasonably conservative model that allows significant
12 stability within that LDC entity?

13 MR. JOHN HERHALT: Well, it's
14 certainly done from the perspective of what they
15 believe is appropriate in -- within the risk
16 parameters they think are appropriate for an LDC.
17 There are many utilities though, as Mr. Fryer pointed
18 out, that have a deemed -- or have a -- an actual
19 capital structure that is not at the 60:40. But --
20 but there are many that do, so...

21 MR. PAUL BONWICK: Could we bring
22 ALE0005133.0002?

23

24 (BRIEF PAUSE)

25

1 MR. PAUL BONWICK: Go about
2 three-quarters of the way down, and I'm going to say
3 around page 17, but I'm not positive on that. My
4 computer wasn't showing the... Continue down a little
5 bit more, please. A little further; a little further.
6 It was the point scoring. It may be -- it was the
7 dollar scoring, so it may have to be up. My
8 apologies. Fifteen (15)? Thank you.

9 There's been significant discussion
10 centred around the actual costing and the scoring
11 criteria split. The fact that your colleague
12 Mr. Rockx was able to actually give them an apples-to-
13 apples comparable in terms of where the four (4)
14 stood, you can see that the difference, for example,
15 between PowerStream and Horizon, based on Mr. Rockx's
16 calculation, PowerStream is approximately 3.1 million
17 higher? Do you agree with that?

18 MR. JOHN HERHALT: Yes.

19 MR. PAUL BONWICK: You can see that on
20 Hydro One, they're approximately \$980,000 lower?

21 MR. JOHN HERHALT: Correct.

22 MR. PAUL BONWICK: And you can see
23 that in the Veridian example, they're about
24 \$4.1 million higher.

25 MR. JOHN HERHALT: Correct.

1 MR. PAUL BONWICK: This is an apples
2 to apples, everybody bidding under the same, doing the
3 same cost calculations in term to the valuation, and
4 your colleague Mr. Rockx, with all of his experience,
5 came up with here's really what you should be
6 considering. Fair?

7 MR. JOHN HERHALT: Yes.

8 MR. PAUL BONWICK: And so if you go to
9 the top of the page -- sorry -- the right -- number 1.
10 Right to the top. Sorry. Number 1.

11 You can see that this was provided by
12 way of the update to Council on December the 5th, the
13 results of the valuation. So in your mind --
14 considering the Strategic Task Team that was put in,
15 and you're recognizing the incredible depth and
16 experience that the Task Team had -- the benefit of
17 having KPMG, a global leader, involved in this matter;
18 having a cross-section of Town representatives; having
19 known that Collingwood Council, and Councils for that
20 matter, across the province have an identity issue
21 with regard to losing complete control --
22 understanding the scoring, would it make sense then
23 the final outcome that Council made, based on the
24 information that they were provided -- including and
25 very importantly the dollar amounts -- would it make

1 sense to you, given that environment, that PowerStream
2 was their natural choice?

3 MR. JOHN HERHALT: I think that's the
4 conclusion that -- yeah -- that all arrived at was
5 that given the objectives that were established for
6 the strategic partnership and the 50 percent
7 disposition that PowerStream was the best overall
8 choice.

9 MR. PAUL BONWICK: From a layperson's
10 perspective, which I'm offering, it seemed to be a
11 highly evolved scoring process -- there was a number
12 of different categories and points offered, depending
13 on how much priority was put into that criteria -- it
14 seemed to be a very evolved scoring process.

15 The fact that an expert through KPMG
16 did the costing analysis for them to demonstrate
17 exactly what they were getting, would you agree that
18 post-OEB approval that, in fact, Council had made the
19 best decision considering the priorities that they had
20 in place?

21 MR. JOHN HERHALT: I think that's the
22 conclusion that was arrived at, yeah.

23 MR. PAUL BONWICK: We've talked about
24 the sensitivities surrounding LDC sales and your
25 colleague Mr. Erling alluded to the fact -- and I'm

1 interested in your opinion, and I'll choose his words,
2 and I think I'm accurate when I say so -- he was
3 pleasantly surprised to see a transaction of this
4 nature developed, approved, go through the OEB, all
5 the public process that's involved.

6 And where he was pleasantly surprised
7 was that there was no opposition brought forward at
8 the time the OEB was going through the review process
9 or subsequent approval. Could you share your thoughts
10 in terms of the fact that there was no opposition
11 during that period of time?

12 MR. JOHN HERHALT: Well, I'm sure
13 Mr. Erling was surprised because typically, the
14 Ontario Energy Board interveners and objections are
15 raised quite regularly. So I think that's a -- that
16 would be the norm. The fact that there were none
17 usually is a surprise, so.

18 MR. PAUL BONWICK: And so in your
19 opinion, would that speak to the robust nature, the
20 level of engagement within the public domain, both by
21 the municipality, and the OEB, and the fact that this
22 had been a very significant effort by a lot of
23 professionals and a lot of people that had the
24 community best at heart?

25 MR. JOHN HERHALT: I -- that would

1 be -- that would be a guess on my heart. I don't know
2 for sure but that --

3 MR. PAUL BONWICK: Okay. I'm going
4 to -- I'm going to close out with some issues
5 regarding confidentiality.

6 Some of your colleague -- or one of
7 your colleagues, as well as others, have spoke to sort
8 of the environment within the Strategic Task Team
9 meetings. But I'm going to ask you the same question
10 that I asked them, and I suspect the answers will be
11 the same.

12 Do you recall Dean -- Chairman
13 Muncaster ever bringing in a lawyer to caution the
14 team in terms of what might be commercially sensitive
15 information, what might not be commercially sensitive
16 information?

17 MR. JOHN HERHALT: Not at the meetings
18 I attended.

19 MR. PAUL BONWICK: While I respect the
20 fact that Collus Collingwood -- I'll call it
21 Collingwood -- was deemed to be your client in your
22 mind and certainly based on your professional
23 designation and your responsibilities to KPMG, it
24 would be an automatic, I would assume, that anything
25 you're dealing with is a -- of a confidential nature.

1 MR. JOHN HERHALT: Correct.

2 MR. PAUL BONWICK: With the lay people
3 that are sitting around the table as part of the
4 scoring -- some lay, some not -- was there ever a
5 significant time where Mr. Muncaster provided a
6 significant caution to people sitting around the table
7 as it related to what might be commercially sensitive
8 and might not be?

9 And I say that with the backdrop -- or
10 ask that question with the backdrop of you yesterday
11 commenting when there was presentations made, after
12 the presentations were made there was little
13 engagement. And while you weren't privy to what the
14 conversations were, you suspect there was general
15 discussion about how they did and what was going on
16 next, that kind of just kind of friendly collegial
17 discussions.

18 So I go back to the question of: Did
19 Mr. Muncaster make a concentrated effort at the
20 beginning of each meeting or -- I won't call it the
21 riot act -- I'll say strong cautionary advice as it
22 related to what might be commercially sensitive and
23 what might not?

24 MS. KATE MCGRANN: Just before -- if I
25 may interject -- that was -- I don't know if that was

1 really an accurate paraphrase of the evidence from
2 yesterday.

3 So I would ask that either the witness
4 be taken to the transcript, or shown the evidence
5 that's being referred to, or if the simple standalone
6 question can be divorced from the summary, that would
7 be fine, too.

8 THE HONOURABLE FRANK MARROCCO: I
9 think I'd prefer it if you just put the question and
10 save the commentary, rather than going through the
11 transcript from yesterday.

12 MR. PAUL BONWICK: Thank you, Your
13 Honour, and happy to do so.

14

15 CONTINUED BY MR. PAUL BONWICK:

16 MR. PAUL BONWICK: Did Chairman
17 Muncaster at either of the Strategic Task Team
18 meetings set aside time and provide a cautionary to
19 all people as it related to what might be commercially
20 sensitive and what might not be?

21 MR. JOHN HERHALT: Not to my
22 recollection.

23 MR. PAUL BONWICK: Thank you. Do you
24 recall me ever participating in any of the Strategic
25 Task Team meetings?

1 MR. JOHN HERHALT: No.

2 MR. PAUL BONWICK: Do you recall if we
3 had any engagement in terms of what your
4 responsibilities were and just generally any level of
5 engagement related to what you were doing?

6 MR. JOHN HERHALT: Between you and I?

7 MR. PAUL BONWICK: You and I.

8 MR. JOHN HERHALT: No.

9 MR. PAUL BONWICK: Thank you. I want
10 to deal with what I would deem to be less commercially
11 sensitive information and get your opinion on it.

12 Would you -- would you agree that it's
13 sort of an obvious and broad statement, such as that
14 there is recognition that Collus may have some
15 regional value when LDCs are looking at it?

16 MR. JOHN HERHALT: Today?

17 MR. PAUL BONWICK: Back then.

18 MR. JOHN HERHALT: I think that was
19 the premise that was positioned that there was a
20 potential for a regional hub here.

21 MR. PAUL BONWICK: Again, I think all
22 people -- bidders would have a sense of that if --

23 MR. JOHN HERHALT: Yeah.

24 MR. PAUL BONWICK: -- if that's what I
25 understood you to say. Would it make sense that all

1 the bidders would have a sense that within the smaller
2 communities, the employees are an important
3 consideration?

4 And so that there would be a natural
5 understanding that all bidders are likely going to
6 have to come up with an approach where there's a
7 retention program for existing staff?

8 MR. JOHN HERHALT: I think that was
9 generally accepted, yes.

10 MR. PAUL BONWICK: Would --
11 irrespective of who was participating in the
12 presentations -- I'm thinking more in terms of the
13 political people -- would that have some significant
14 impact as it related to the content of what was being
15 scored through the Strategic Task Team? Who was in
16 attendance versus what the content was?

17 MR. JOHN HERHALT: You mean during the
18 bidder presentations --

19 MR. PAUL BONWICK: Correct.

20 MR. JOHN HERHALT: -- on the 12th and
21 the 19th? I think there was a favourable impression
22 on the Task Team when the people that were
23 participating from the bidders were individuals that
24 they thought had -- whatever it was -- insight or a
25 level of understanding or certainly the authority

1 within the organizations. I think that -- that had an
2 impact on the Task Team.

3 MR. PAUL BONWICK: So it's reasonable
4 to assume then or it's reasonable to state that the
5 Task Team -- without speaking on behalf of the
6 collective -- the Task Team, in your opinion, would
7 have been impressed that all of the parties that were
8 bidding brought in their -- their senior people.

9 MR. JOHN HERHALT: Correct.

10 MR. PAUL BONWICK: That being said,
11 all of the parties did bring in their senior people.
12 Do you think that that in some way swayed the
13 Strategic Task Team to score one way versus another on
14 one individual entity?

15 MR. JOHN HERHALT: I don't know that
16 it had that much influence. I would -- I would not
17 know though what everybody was thinking when they
18 scored it themselves, so...

19 MR. PAUL BONWICK: Would you agree
20 that LDCs have really made a cultural shift over the
21 last 20 years where they tend to be much more engaged
22 in community events and sort of the community social
23 fabric where they're -- they're quite active in any
24 number of different initiatives in the community much
25 more so than they may have been 30 years ago?

1 MR. JOHN HERHALT: Oh, I think since
2 restructuring as the organizations became more
3 corporate, I think that's fair.

4 MR. PAUL BONWICK: And so would be it
5 reasonable to assume that all the bidders understand
6 that there is -- the bar is much higher as it related
7 to what the expectations are for community support
8 across the board in any number of different
9 initiatives that might be happening beyond the scope
10 of providing electricity?

11 MR. JOHN HERHALT: I think so.

12 MR. PAUL BONWICK: I'll close out with
13 this, and it's perhaps somewhat of a repeat. But
14 we've learned that KPMG -- one of the lead
15 international players in the energy market, certainly
16 in Canada -- was an active participant. We've learned
17 that there was several different lawyers that were
18 involved. We've learned about the composition of the
19 Board, as well as the Strategic Task Team. We've
20 learned about the robustness of the program.

21 Would you agree that the process that
22 was followed was, in fact, robust, as transparent as
23 it could be, considering the amount of monies that are
24 at stake, and that, in fact, the best possible result
25 was delivered for the ratepayers and the residents of

1 the town of Collingwood?

2 MR. JOHN HERHALT: That's a mouthful.
3 I would say that I think the process was a good
4 process. Obviously, all processes can have
5 improvements. But I thought the process was a good
6 process.

7 MR. PAUL BONWICK: And my question --
8 as much a run-on statement as it was -- my question
9 was also going to, do you believe that the residents
10 of the town of Collingwood -- the ratepayers of the
11 town of Collingwood -- received good value as a result
12 of that process at the time?

13 MR. JOHN HERHALT: I think -- I think
14 that the -- I think that the choice that was made,
15 based on the objectives that were established, was the
16 best choice.

17 MR. PAUL BONWICK: Thank you, Your
18 Honour. That answers my questions.

19 THE HONOURABLE FRANK MARROCCO:
20 Re-examination --

21 MR. NORM EMBLEM: Your Honour, I have
22 a couple of questions just to more to orient the
23 Judicial Inquiry to what Mr. Herhalt referred to as
24 the "first options analysis." And I wonder if you can
25 turn up paragraph 50 of the Foundation Document,

1 please.

2 MR. GEORGE MARRON: Just -- just to
3 indicate, Your Honour, I have a couple questions I'd
4 like to put to Mr. Herhalt.

5 MR. NORM EMBLEM: Sorry, I jumped out
6 of order because I thought --

7 THE HONOURABLE FRANK MARROCCO: Oh,
8 I'm sorry, Mr. Marron.

9 MR. GEORGE MARRON: Oh, no, no.

10 THE HONOURABLE FRANK MARROCCO: Go
11 ahead and ask your -- go ahead and ask your questions.

12 MR. GEORGE MARRON: Well, I -- I
13 appreciate --

14 THE HONOURABLE FRANK MARROCCO:
15 Counsel will go last.

16

17 CROSS-EXAMINATION BY MR. GEORGE MARRON:

18 MR. GEORGE MARRON: No, I had an
19 opportunity, obviously, in the usual order and was --
20 collected I'd be passed over quietly, but if I may.

21 And it rises out of some questions that
22 the Commissioner put to you, Mr. Herhalt, referencing
23 the recapitalization dividend and an indication that
24 this process which we're involved basically commenced
25 on the 31st of January, 2011, when my client, I

1 represent the mayor at that time, Sandra Cooper, sent
2 a letter to -- or an email to Ed Houghton and Dean
3 Muncaster which essentially asked them to look within
4 the Corporation to see what savings could be obtained
5 or what they could do, in effect, to obtain moneys
6 from within the Corporation to apply to the
7 outstanding Town debt which was significant at that
8 time.

9 So, I guess the question I'm putting to
10 you is that, were -- were you or anyone on -- on the
11 staff at KPMG asked to consider a restructuring of the
12 Company within itself? In other words, you know,
13 we've -- we've heard about this debt equity ratio
14 which could be advanced to 60:40 and it was something
15 less than that.

16 Were you ever asked to look within the
17 Corporation to see what moneys could have been
18 obtained without any change in the status of the
19 Company so far as a sale or a portion of a sale or
20 anything?

21 MR. JOHN HERHALT: We weren't asked
22 that.

23 MR. GEORGE MARRON: I -- I take it
24 that the -- that the recapitalization dividend as it
25 was determined to be at the time of closing was

1 essentially what it would have been in January 2011?

2 MR. JOHN HERHALT: Oh, except that the
3 numbers change. The numbers change depending on what
4 the financial position of the Company is at the time,
5 so.

6 MR. GEORGE MARRON: Yeah. But it
7 would still be a fairly --

8 MR. JOHN HERHALT: The approach is the
9 same.

10 MR. GEORGE MARRON: I mean, it was
11 estimated that -- that the recap dividend was about
12 5.3 million when we're looking through these documents
13 to which you've been asked to make some comment on?

14 MR. JOHN HERHALT: Excuse me, I don't
15 understand the question.

16 MR. GEORGE MARRON: Well, we -- we've
17 looked at the -- the documents that are before you on
18 the evaluation of the request for proposal and -- and
19 the figures that were there. And there was an
20 indication that on -- on one (1) of those documents,
21 that the recap dividend was 5.3 million?

22 MR. JOHN HERHALT: Yes.

23 MR. GEORGE MARRON: So, ostensibly --
24 I mean, nobody made any inquiry. But, ostensibly, if
25 someone had considered this in February or late

1 January of 2011, it -- it might have been available,
2 \$5.3 million, by a restructuring within the Company of
3 its debt to equity ratio?

4 MR. JOHN HERHALT: Yeah. I mean,
5 without getting into --

6 MR. GEORGE MARRON: Yeah.

7 MR. JOHN HERHALT: -- what the math
8 would have been at the time, there would -- you could
9 have -- you could have done that without the tra -- a
10 transaction, right.

11 MR. GEORGE MARRON: Right.

12 MR. JOHN HERHALT: Yeah.

13 MR. GEORGE MARRON: Right. And -- and
14 likewise, the promissary note was available, as well,
15 and that was --

16 MR. JOHN HERHALT: Correct.

17 MR. GEORGE MARRON: -- 1.7 million?

18 MR. JOHN HERHALT: Correct.

19 MR. GEORGE MARRON: Okay. So, in my
20 simple mathematical addition, I'm -- I'm looking at a
21 potential of \$7.0 million that could have been made
22 available by a restructuring of the Company?

23 MR. JOHN HERHALT: Yeah, if -- if the
24 math would have proved out, yes.

25 MR. GEORGE MARRON: Right.

1

2

(BRIEF PAUSE)

3

4

MR. GEORGE MARRON: Okay. So, this
5 could have been made available without any potential
6 sale being effected of the Collus group?

7

MR. JOHN HERHALT: Could have.

8

MR. GEORGE MARRON: And you weren't
9 asked to do this?

10

MR. JOHN HERHALT: No.

11

MR. GEORGE MARRON: All right. Thank
12 you.

13

14 EXAMINATION BY MR. NORM EMBLEM:

15

MR. NORM EMBLEM: Turn up paragraph 50
16 of the Foundation Document, please. Mr. Herhalt, Ms.
17 McGrann asked you yesterday, I think, what your first
18 involvement was with Mr. Houghton. I believe you
19 indicated it was late 1990s or the year 2000 or so.

20

Before there ever was a Collus Power
21 Corp., as I understand it from paragraph 50, you, Mr.
22 Erling, and a lawyer, Peter Budd, presented at a
23 strategic planning session for the Collingwood Public
24 Utilities Commission in 1999?

25

MR. JOHN HERHALT: Yes.

1 MR. NORM EMBLEM: And one (1) of the
2 documents hyperlinked to that paragraph I'd like to be
3 turned up, KPM0000447.

4 THE HONOURABLE FRANK MARROCCO:
5 Counsel, just let me tell you that we'll -- we'll
6 complete Mr. Herhalt's evidence before we adjourn for
7 lunch, so.

8 MR. NORM EMBLEM: That's what I
9 expected, Your Honour.

10 THE HONOURABLE FRANK MARROCCO: Yeah.

11

12 CONTINUED BY MR. NORM EMBLEM:

13 MR. NORM EMBLEM: I think the
14 paragraph cites to August the 28th. This is an August
15 18th, 1999, PowerPoint presentation or slide deck.
16 And if you can scroll down, you're one (1) of the
17 three (3) presenters, Mr. Herhalt?

18 MR. JOHN HERHALT: Yes.

19 MR. NORM EMBLEM: All right. And if
20 you could go to page 68, please. This is a heading,
21 "Review of options." And then if you can scroll down
22 to page 69, please. And the heading there is,
23 "Possible options distribution."

24 And can you just assist with respect to
25 what the purpose of this slide and the following

1 slides was at the time?

2 MR. JOHN HERHALT: Well, at the time,
3 there were two (2) things happening; one (1), clearly,
4 the restructuring to comply with the Electricity Act.
5 But there was also, at the same time, as many
6 municipalities and their utilities were doing was --
7 were examining, so what does the -- what are the
8 options for the future.

9 And, in this particular case, it's
10 really similar to the options analysis that we -- we
11 refreshed, if you would use that word, in 2011 where
12 the LDC could effectively continue status quo, sell
13 100 percent, or continue with others, meaning merger
14 or venture or joint venture of some sort, so -- so
15 similar kind of analysis, but those were really what
16 those were describing.

17 And -- and people were considering that
18 because this created an entirely different environment
19 that everybody had to now either manage or decide
20 whether or not they continue -- wanted to continue to
21 own the asset.

22 MR. NORM EMBLEM: All right. And if
23 we just go to the very next page, and that'll be the
24 last page. These were LDC basic business options.

25 Do I understand to that point in time,

1 prior to the change in the Electricity Act, that the
2 water as well as the Wiresco were operated by the
3 Collingwood Public Utilities Commission, but going
4 forward after the Act, that the LDC would have to be
5 owned separately by an Ontario business corporation?

6 MR. JOHN HERHALT: Yeah. I mean,
7 there were -- there were several public utility
8 commissions -- commissions in the Province that --
9 that operated both electricity and water.

10 And with the introduction to the
11 Electricity Act, then there had to be a change in the
12 way that was arranged. And clearly, the electricity
13 business had to be rolled into an Ontario business
14 corporation, and that was not the case with water, so
15 we had to reconfigure how that was going to go
16 forward, how water and -- if there -- and may did
17 choose to have shared services arrangements between
18 water and the electric utility to accomplish that, so.

19 MR. NORM EMBLEM: All right. And to
20 be clear, the options analysis that you referred to
21 earlier, the first options analysis where KPMG was
22 engaged to provide advice to the Town of Collingwood,
23 this is it in 1999?

24 MR. JOHN HERHALT: Correct.

25 MR. NORM EMBLEM: And the balance of

1 the slide deck is what it is, as it were, set the pros
2 and cons of the various options?

3 MR. JOHN HERHALT: Yes.

4 MR. NORM EMBLEM: And, as I understand
5 it, at the end of that exercise what the Town of
6 Collingwood ended up doing in the next year was
7 incorporating the Holdco which then for the next
8 eleven (11) years owned a hundred percent of what
9 became Collus Power Corp.?

10 MR. JOHN HERHALT: Correct.

11 MR. NORM EMBLEM: All right. Those
12 are all my questions.

13 THE HONOURABLE FRANK MARROCCO: Re-
14 examination?

15

16 RE-DIRECT EXAMINATION BY MS. KATE MCGRANN:

17 MS. KATE MCGRANN: Mr. Herhalt, in the
18 course of your cross-examination you mentioned
19 mergers. And you mentioned reasonable equality as
20 between merger partners.

21 Can you help me understand what you
22 meant when you referenced reasonable equality?

23 MR. JOHN HERHALT: Yeah. I think the
24 context I was thinking of was there was a distribution
25 -- I think some of the proposition was smaller

1 utilities were -- would feel like they were swallowed
2 up by others.

3 I think the idea of a partnership or a
4 merger, particularly when the merger partners are
5 reasonably equal in size, not one (1) very dominant,
6 one (1) very small, tends to lend itself to, you know,
7 the kind of thing that people want to do more readily
8 than if it's a merger of a small -- very small entity
9 with a very big entity, so that's...

10 MS. KATE MCGRANN: Those are my
11 questions.

12 THE HONOURABLE FRANK MARROCCO: All
13 right. Thank you, Mr. Herhalt.

14 MR. JOHN HERHALT: You're welcome.

15

16 (WITNESS STANDS DOWN)

17

18 THE HONOURABLE FRANK MARROCCO: I think
19 we're at a stage where matters progressed sufficiently
20 today that we don't have a witness for this afternoon,
21 so we will adjourn until tomorrow morning. I want to
22 thank everyone for going along with this process as
23 far as the affidavits are concerned.

24 Is -- is there anything else to cover
25 today? No. So, I want to thank you. It looks like

1 that process is helping us to move along more quickly,
2 and I appreciate that. So, tomorrow at ten o'clock.

3

4 --- Upon adjourning at 1:06 p.m.

5

6 Certified Correct,

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10 _____

11 Wendy Woodworth, Ms.

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