



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 29th, 2019

1 APPEARANCES

2

3 Kate McGrann) Inquiry Counsel

4 John Mather) Associate Inquiry

5) Counsel

6

7 Michael Watson) Alectra Utilities

8 Belinda Bain) Corporation

9

10 (No Counsel)) For Paul Bonwick

11

12 George Marron) For Sandra Cooper

13

14 (No Counsel)) For Timothy Fryer

15

16 Frederick Chenoweth) For Edwin Houghton

17

18 William McDowell) For Town of Collingwood

19 Ryan Breedon)

20

21 Patrick Gajos (np)) For Collus PowerStream

22) Corporation

23

24 Ewa Krajewska) Michael Angemeer

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1	TABLE OF CONTENTS	
2		PAGE NO.
3	List of Exhibits	4
4		
5	Discussion	5
6		
7	PANEL WITNESSES:	
8	MICHAEL CHRISTOPHER ANGEMEER, Sworn	
9	NEIL FREEMAN, Sworn	
10	KRISTINA JULIANA GASPAR, Sworn	
11	Examination-in-Chief by Mr. John Mather	16
12	Cross-examination by Mr. Ryan Breedon	139
13	Cross-examination by Mr. Frederick Chenoweth	157
14	Cross-examination by Mr. Belinda Bain	197
15	Cross-examination by Mr. Tim Fryer	235
16	Cross-examination by Mr. Paul Bonwick	258
17	Re-direct Examination by Mr. John Mather	289
18		
19	DENNIS NOLAN, Previously Sworn	
20	Continued Examination-in-Chief	
21	by Mr. John Mather	297
22		
23	Certificate of Transcript	348
24		
25		

1		List of Exhibits	
2	Exhibit No.	Description	Page No.
3	203	TOC0516275	
4	204	ALE0000244	
5	205	ALE0000246	
6	206	TOC0059012	
7	207	ALE0000488	
8	208	ALE0000819	
9	209	ALE0000916	
10	210	ALE0001078	
11	211	FD0001.4 (Summary Doc 1-4)	
12	212	BLG0000209_0001	
13	213	TOC0048781	
14	214	FD0001.4.1 (Summary Doc 1-4-10	
15	215	CJI0007005	
16	216	KPM0004876	
17	217	KPM0001851	
18	218	VER0000204	
19	219	VER0000207	
20	220	CPS0002297	
21	221	TOC0059332	
22	222	ALE0050218	
23	223	CPS0002373	
24	224	ALE0001099	
25	225	ALE0001100	

1 --- Upon commencing at 9:33 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Let me
4 -- I just want to make a few brief opening remarks
5 before we get started. The witnesses are here and
6 we'll hear from all three (3) of them at the same
7 time, a -- a process that the slang term in -- in the
8 legal world for the sort of thing is called hot
9 tubbing the witnesses.

10 I appreciate we're in Collingwood, and
11 I would urge people to appreciate that that's a legal
12 term, and that the ideas we will hear from all three
13 (3) of the other bidders all at once, in the interests
14 of efficiency.

15 We are getting closer to the end of the
16 first phase of the Inquiry, and so I thought it was a
17 good idea to tell you basically what the plan is, the
18 -- we anticipate completing the evidence by the end of
19 June in the -- as with respect to part 1.

20 Scheduling can be challenging, and I
21 want to make it very clear that I very much appreciate
22 the cooperation that I've had from everyone as far
23 scheduling is concerned, but we do lose days for
24 different reasons. Next week, one (1) of you is
25 sitting on an administrative tribunal and unavailable

1 for a couple of days. Other people, including myself
2 have or had medical appointments, which have
3 necessitated shorter working days. So I know
4 scheduling is challenging, but -- and I want to, as I
5 say, thank you for your help, but we will complete the
6 witnesses for part 1 by the end of June.

7 Closing submissions with respect to
8 part 1 will be in writing. So it won't be necessary
9 for us to assemble and listen to -- well, I hope
10 you're always listening to each other, but it won't be
11 necessary for everyone to sit through oral closing
12 submissions. Those submissions will be in writing.

13 In the month of July and the early part
14 of August, we will produce Foundation Document number
15 2, which deals with the application of the proceeds
16 from the sale. We'll follow the same process. You
17 will all get a draft version of it, and sometime in
18 August -- for your comments, and after we have your
19 comments, a -- a kind of final version of the
20 Foundation Document will be provided to all of the
21 parties participating in part 2, and it will be placed
22 on the website.

23 And we will, commencing the second week
24 in September, hear the witnesses associated with part
25 2, and then at the conclusion of that, there's a part

1 3, which perhaps doesn't affect all of you. It
2 probably affects the Town more than anyone else, which
3 is designed around the question of best practices.
4 That won't be unduly lengthy. It will be more in the
5 nature of us receiving from qualified peoples'
6 suggestions about best practices so that we can make
7 some rational suggestions to the Town about best
8 practices in the future.

9 At the conclusion of that, we will then
10 write the report and publish it, and -- and that will
11 -- will take a little while, but we will do that as
12 quickly as we can.

13 As you've heard me say in the past, we
14 do have a universe of documents here that exceeds four
15 hundred and forty thousand (440,000). So trying to
16 get some sense of what those documents say about part
17 1 and part 2 has not been a straightforward, simple
18 process. It has required a great deal of work.

19 But as you can appreciate, we are
20 ultimately able to produce a Foundation Document, and
21 I hope it's clear to everybody that the participants
22 are free to disagree with factual assertions in the
23 Foundation Document. That's one (1) of the reasons
24 we're going through this exercise, is so that people
25 have the opportunity to do that.

1 So I hope that gives you a -- a sense
2 of where we're going. Sitting in the summer, which
3 would have been my preference for part 2, is really
4 impossible, given that -- that various people have
5 holidays planned and paid for, and it's just -- it's
6 just not rational -- and myself included. I don't
7 want to put it all on the participants. And it's just
8 not sensible to try to do that.

9 In an effort to stick to the schedule,
10 we will sit longer if we have to. That's about the
11 only way we can generate extra time, but there is a
12 physical factor, as far as witnesses are concerned.
13 And it's, you know, at some point, unfair to the wit -
14 - the witness to be running a marathon at their
15 expense, and I'm conscious of that, and I'll try to
16 balance the need to complete with the -- the need not
17 to overtax the witnesses.

18 Anyway, that's where we are. We will
19 adjourn for about five (5) or ten (10) minutes so that
20 we can bring in the three (3) witnesses and -- and get
21 started with today's evidence.

22 Is there anyone that wants to say
23 anything in response to that? You can -- I'll hear
24 you now. Who's -- who want -- is there -- Mr. Watson?

25 MR. MICHAEL WATSON: Yes. Just a

1 question, Your Honour. We have been wondering with
2 respect to written submissions if you have any idea
3 what length of time we would have following the
4 completion of the hearing at the end of June to submit
5 written submissions.

6 THE HONOURABLE FRANK MARROCCO: I -- I
7 don't want to put it back on all of you, but if you
8 wanted to talk amongst yourselves and make a
9 suggestion before I do that, I'd be quite happy to
10 receive your suggestion. I -- I could inadvertently
11 set a target that was totally unreasonable and -- and
12 I wouldn't want to do that.

13 MR. MICHAEL WATSON: Thank you, Your
14 Honour.

15 THE HONOURABLE FRANK MARROCCO: So you
16 -- and you can do that as quickly as you can do that
17 and let -- let us know.

18 Mr. Bonwick...?

19 MR. PAUL BONWICK: Yes, Your Honour.
20 I do appreciate that the judicial counsel has put in a
21 tremendous amount of time. Late nights we see emails
22 coming through at 9:30, eleven o'clock, and 7:00 in
23 the morning in terms of getting us prepared, and so
24 I'm certainly prepared to cooperate with the schedule
25 any way I possibly can.

1 That being said, I just have one (1)
2 concern or question perhaps, and -- and that's related
3 to your comments specific to submitting closing
4 statements or the closing submissions.

5 My only concern related to that, Your
6 Honour, is that as a result of Council or whomever
7 asking to have the entire proceedings live streamed,
8 those that are watching it from home and trying to get
9 some semblance of what's transpired and get a fair and
10 accurate understanding of -- of the facts as -- as
11 they were, are going to not have the benefit of -- of
12 hearing closing statements. Rather, they would have
13 to try to access it off the internet, which isn't
14 always easy for everybody.

15 And so my concern simply lies that
16 we've gone through this exercise, for argument's sake,
17 for two and a half (2 1/2) or three (3) months, and
18 those that are following it won't necessarily be
19 privileged to our summation in terms of what we felt
20 actually transpired, unless they have access to the
21 internet, library, or some other place.

22 THE HONOURABLE FRANK MARROCCO: I -- I
23 appreciate that. We will post the submissions, but
24 the idea of assembling everyone to listen when in the
25 end what we will be wanting to do is read what people

1 say, it just doesn't commend itself to me, and so I
2 appreciate -- I appreciate what you're saying in terms
3 of wanting to make sure that people understand -- each
4 participant wanting to make sure that people
5 understand their view of the story. I appreciate that
6 but I intend to restrict everyone to written
7 submissions.

8 MR. PAUL BONWICK: Okay. Could I
9 raise a second point --

10 THE HONOURABLE FRANK MARROCCO:
11 Certainly.

12 MR. PAUL BONWICK: -- unless there's
13 more comment on this particular matter.

14 THE HONOURABLE FRANK MARROCCO: No,
15 no, go -- well, go ahead. What's the second point?

16 MR. PAUL BONWICK: And I -- I'm
17 sensitive in doing this because I -- I know Your
18 Honour has provided significant latitude based on my
19 lack of experience related to proceedings such as
20 this, and -- and I extend my sincere thanks for that
21 which you've given me. It is recognized.

22 That being said, without support staff
23 in the background and dealing with enquiries, I quite
24 often have to review the evidence that's provided a
25 day or two (2) before, because I'm trying to stay

1 caught up with the -- the fluid situation of a
2 particular day, and I was noticing with regards to the
3 witnesses that we have coming before us this morning
4 that, in your words, the bidders will be providing
5 statements and provide -- providing the opportunity
6 for cross-examination.

7 My concern lies, Your Honour, in the
8 fact that none of the participants work for the actual
9 bidders any longer. My concern lies with the fact
10 that it takes a team of people to put together a bid.
11 No one person within that team actually is
12 representative of the entire corporation, unless the
13 corporation, which is the bidder, identifies that
14 person as the lead, and I could use an example right
15 here.

16 I'm sure that if I -- I use Alectra,
17 Alectra would not be necessarily impressed if they had
18 put in a bid, it was their bid, and subsequent eight
19 (8) years later, a former employee was called upon as
20 one (1) member of that task team to provide evidence
21 that may not be consistent necessarily with what the
22 Corporation felt at the time or -- or feels now.

23 And so my -- my concern really lies,
24 and I'm very respectful of the time and -- and
25 sensitive to the fact I'm bring it forward now. I'm

1 very respectful of the time the three (3) witnesses
2 you've kindly provided the Inquiry, but the reality of
3 the situation is, they were not the bidders. Horizon
4 was the bidder; Hydro One was the bidder; Veridian was
5 the bidder.

6 The -- those corporations had teams, as
7 is identified, putting together the bids, there was no
8 one individual, and in fact to my mind, it would -- it
9 would be prudent to recognize the fact that what we're
10 hearing from is -- is really now third party
11 information from one member of a task team that repre
12 -- that was employed by the Corporation eight (8)
13 years ago. And so I -- I raise it as -- as an issue
14 and -- and question how we treat this as the bidder
15 bringing forward information when in fact none of the
16 people are actually employed by any of the bidders.

17 THE HONOURABLE FRANK MARROCCO: That -
18 - that goes to significance that I should attach to
19 the evidence rather than whether or not I'm going to
20 hear it. In -- in other words, it's a factor which
21 people can rely on for the purpose of suggesting that
22 the evidence ought not to be persuasive, but it
23 doesn't preclude me hearing the evidence, and I -- I
24 intend to -- to hear from them, and -- and I have now
25 the benefit of your -- of that view, because you've

1 just expressed it. And I suspect, having now some
2 familiarity with all of you, that to some extent that
3 will come out in -- in the questioning. But I now
4 have the point because you've said it, but -- but that
5 doesn't mean I won't hear from witnesses. I intend to
6 hear from them.

7 MR. PAUL BONWICK: Thank you, Your
8 Honour.

9 THE HONOURABLE FRANK MARROCCO: Okay.
10 So we'll stand down for a few minutes.

11

12 --- Upon recessing at 9:47 a.m.

13 --- Upon resuming at 9:54 a.m.

14

15 THE HONOURABLE FRANK MARROCCO: Good
16 morning and thank you all for coming. We're doing
17 this -- this isn't unheard of, but a little unorthodox
18 perhaps hearing from three (3) witnesses all at once.

19 Couple things, if -- if one (1) of you
20 is answering and someone else thinks of something they
21 want to say in connection with the question, you --
22 you should feel free to do that. We are -- we do have
23 a same-day transcript so it's important to let one (1)
24 person finish speaking before another person starts
25 speaking, otherwise, the transcript becomes a bit of a

1 scrambled egg in and -- and then we don't have a good
2 transcript. So if you could just try to remember that
3 I -- I would appreciate it.

4 Beyond that, Mr. Mather, away we go.

5 MR. JOHN MATHER: Thank you, Your
6 Honour.

7 MR. FREDERICK CHENOWETH: Just one (1)
8 point, if I might. I -- there's no name tags on the
9 witnesses, I don't know who's who. It may be of
10 assistance if the parties or counsel could identify
11 the individuals.

12 THE HONOURABLE FRANK MARROCCO: Well,
13 we'll have them identify themselves and -- and if --
14 if there's a problem you can -- then -- then -- later
15 on, just let me know and we'll ask a person to
16 identify themselves again.

17 MR. FREDERICK CHENOWETH: Thank you,
18 sir.

19 MR. JOHN MATHER: I guess my first
20 question is I will ask each of you to identify
21 yourselves and the company you worked for in 20 -- oh,
22 all right, we're going to swear you in first.

23

24 Panel:

25 NEIL FREEMAN, Sworn

1 KRISTINA JULIANA GASPAR, Sworn

2 MICHAEL CHRISTOPHER ANGEMEER, Sworn

3

4 THE HONOURABLE FRANK MARROCCO: One

5 (1) other thing, please try to speak into the

6 microphone. We've had an issue ongoing where it

7 appears the scope of the microphone isn't all that

8 broad. So try to speak into it, please.

9

10 EXAMINATION IN-CHIEF BY MR. JOHN MATHER

11 MR. JOHN MATHER: So I'm going to plan

12 on asking some introductory questions of each of you,

13 which should assist in establishing who you are and

14 what companies you worked for in 2010 to 2012.

15 Before getting into that, I just wanted

16 to explain how I will be approaching the questioning.

17 For the most part, I intend to be asking a question to

18 all of you, so I will pose a question and ask you each

19 in turn to provide a response. I will begin with Mr.

20 Angemeer and then ask Ms. Gaspar -- sorry, Mr. Freeman

21 and then ask Ms. Gaspar.

22 Depending on your answer, I may have

23 targeted follow-up questions for one of you. In the

24 event of that, I'm looking to ask just one of you a

25 question, I'll make that clear in my questioning by

1 identifying you by name.

2 Similarly to the participants when you
3 are conducting your examinations, we ask that you be
4 clear if you only want one of the panelists to answer
5 a question that you make that clear in your
6 questioning to help this process move as smoothly as
7 it can.

8 THE HONOURABLE FRANK MARROCCO: Just
9 one (1) second, before you start. Would somebody
10 actually prepare a list of the witnesses names and
11 then we can give it to whichever counsel is
12 questioning so they know who is who?

13 Okay, go ahead.

14

15 CONTINUED BY MR. JOHN MATHER

16 MR. JOHN MATHER: Okay. So I'll begin
17 with Mr. Angemeer. My understanding is you were the
18 president and CEO of Veridian until its recent merger
19 with Whitby Hydro, is that correct?

20 MR. MICHAEL ANGEMEER: That's correct.

21 MR. JOHN MATHER: Could you briefly
22 give us an overview of your experience with mergers
23 and acquisitions in the utility sector?

24 MR. MICHAEL ANGEMEER: My experience
25 with mergers and acquisitions, I was with Veridian for

1 about 15 years, and in that period I was involved in a
2 number of merger pursuits and acquisitions pursuits
3 and was successful with two acquisitions of two
4 utilities, and also with the recent merger with Whitby
5 Hydro.

6 MR. JOHN MATHER: And could you tell
7 us about your role in preparing Veridian's response to
8 the Collus RFP in 2011?

9 MR. MICHAEL ANGEMEER: As the CEO of
10 Veridian, I was involved in leading the team that
11 looked at the opportunity.

12 First I was involved in the -- the
13 pursuit and conversations that led up to the
14 opportunity and then I was involved in leading the
15 team that brought together the -- first the
16 presentation that was done to the assessment team, and
17 then the RFP response as well.

18 So I had involvement in terms of
19 preparing that response and leading the team for that
20 response.

21 MR. JOHN MATHER: Thank you.

22 So Mr. Freeman, turning to you, it's my
23 understanding that you are the principle and CEO of
24 the NBF Group, is that correct?

25 MR. NEIL FREEMAN: Correct, yes.

1 MR. JOHN MATHER: And in that role,
2 you work as a consultant to the utility energy and
3 municipal -- municipality sectors, is that fair?

4 MR. NEIL FREEMAN: That's fair, thank
5 you.

6 MR. JOHN MATHER: And in 2011 you were
7 the vice-president business development at Horizon, is
8 that correct?

9 MR. NEIL FREEMAN: That's correct.

10 MR. JOHN MATHER: Similar to what I
11 asked Mr. Angemeer, could you provide a brief overview
12 of your experience with mergers and acquisitions in
13 the utility sector?

14 MR. NEIL FREEMAN: So in the 1990s I
15 worked in strategic planning at Ontario Hydro, and I
16 was involved from the very early goings in the
17 restructuring the electric industry in Ontario in
18 terms of the evolution of the distribution sector, and
19 worked on, you know, the possible mergers, we did
20 analysis of every utility in Ontario and its
21 relationship with Ontario Hydro.

22 When Hydro One was created after the
23 merger of Ontario Hydro, I was the manager of
24 distribution business development and I was
25 essentially the -- the person that was sort of first

1 in to any municipality to talk about an acquisition by
2 Hydro One.

3 Hydro One, you know, everybody knows
4 Hydro One acquired about 80 -- or I think it was 86
5 utilities or so. There was about 170 proposals,
6 actually. So I was in many, many municipalities for
7 that period.

8 Later I was involved in the integration
9 of those utilities into Hydro One. And in 2007 I was
10 appointed to be the vice president of business
11 development at Horizon Utilities. At the time it was
12 in the middle of a merger with Guelph Hydro that
13 actually didn't materialize and subsequently we made
14 many proposals for other mergers and acquisitions.

15 And you know, coming to my -- the end
16 of my term at Horizon, I was the -- still the vice-
17 president of business development in the merger that
18 formed Alectra and I -- and particular was involved in
19 many aspects of Horizon's strategy with that merger,
20 as well as I actually led the merger team of -- of --
21 a participant for every utility for the brand --
22 branding of the new company and its affiliates.

23 MR. JOHN MATHER: And can you tell us
24 about your role in preparing Horizon's response to the
25 Collus RFP in 2011?

1 MR. NEIL FREEMAN: So my task was
2 principally to pull the proposal together and create a
3 document that would be vetted by the CEO, the CFO and
4 the board of directors. So it -- I was principally
5 responsible for assembling all the pieces and crafting
6 the strategy and the story and which would later have
7 been approved by the management and then the Board.

8 MR. JOHN MATHER: Thank you. So, Ms.
9 Gaspar, I'm turning to you. You are currently the
10 principle of Norval Consulting Limited, is that
11 correct?

12 MS. KRISTINA GASPAR: Yes.

13 MR. JOHN MATHER: And I understand
14 that you provide consulting services on mergers,
15 acquisitions and divestitures in this position?

16 MS. KRISTINA GASPAR: I do.

17 MR. JOHN MATHER: Okay. And in 2011
18 you were the manager of Strategy and Risk at Hydro
19 One, do I have that --

20 MS. KRISTINA GASPAR: Yes.

21 MR. JOHN MATHER: -- right? Sorry,
22 you just have to wait to answer then. Okay.

23 Could you tell us about your experience
24 with mergers and acquisitions in the utility sector?

25 MS. KRISTINA GASPAR: The utility

1 sector. With Hydro One I developed the go-to-market
2 strategy for them for this current round of
3 acquisitions. I was the lead for the due diligence
4 team. I was a core member of the valuation team and
5 that's across all mergers and acquisitions that they
6 were -- they were looking at.

7 In my time at Hydro One I had a
8 competitive intelligence analytics team that developed
9 all sorts of complex models on different scenarios
10 relating to mergers and acquisitions within the
11 utility space in Ontario, as well as beyond that and -
12 - so largely forward looking outward focused
13 analytics, due diligence and valuation, as well as
14 putting together -- helping to put together the -- all
15 elements of the deal.

16 MR. JOHN MATHER: Can you tell us
17 about your role in preparing Hydro One's response to
18 the Collus RFP in 2011?

19 MS. KRISTINA GASPAR: So I headed up
20 the due diligence team, I was also a core member of
21 the valuation team and led -- led an analytics team
22 that -- that put together a lot of the -- a lot of the
23 analysis that would have supported the proposal.

24 MR. JOHN MATHER: And what sort of --
25 what sort of analy -- like, can you explain what you

1 mean by the analytics and analysis that was done?

2 MS. KRISTINA GASPAR: Everything and
3 anything you can imagine that would support an
4 acquisition or a view of the world that would support
5 an acquisition. So everything from financial capacity
6 to how things would impact rates in future mergers and
7 acquisitions and scoping of lead --

8 MR. JOHN MATHER: Okay. And --

9 MS. KRISTINA GASPAR: But the -- the
10 breadth is quite wide.

11 MR. JOHN MATHER: Right. And you also
12 mentioned you were, I think, the head of the valuation
13 team. Did I have that right?

14 MS. KRISTINA GASPAR: No. I -- I was
15 a core member of the valuation team.

16 MR. JOHN MATHER: Okay.

17 MS. KRISTINA GASPAR: I headed up the
18 due diligence team.

19 MR. JOHN MATHER: And the valuation
20 team, was that the group of individuals who determined
21 what price Hydro One would offer in its RFP
22 submission?

23 MS. KRISTINA GASPAR: Yes.

24 MR. JOHN MATHER: Okay. So, I'm now
25 going to turn to the questions that I have and I will

1 pose to all of you, except where I individually ask
2 you questions. The first question I have relates to
3 when each -- each of you or your understanding of when
4 your companies first became aware of a potential sale
5 of Collus.

6 So, it's our understanding, based on
7 the documents that we have reviewed, that the chair of
8 Collus, Dean Muncaster, and the CEO, Ed Houghton, met
9 with each of the perspective bidders in July 2011.

10 So, my question to each of you is,
11 before July 2011, before those initial meetings, did
12 anyone from Collus approach you or anyone at your
13 company about the potential sale or RFP for Collus?
14 And I'll begin by asking Mr. Angemeer.

15 MR. MICHAEL ANGEMEER: Before --
16 before the period of July 2011, I would have had a
17 number of conversations with Ed Houghton, not
18 specifically set up to talk about purchase of -- or
19 some kind of a transaction with -- with Collus, but
20 just generally inquiring about the interest of Ed and
21 Collus to -- to enter into a transaction at some
22 point.

23 And in those conversations before July
24 2011 there was no -- no indication of any interest
25 before that, so the -- the meeting you mentioned, or

1 the -- yeah, the -- the first meeting you mentioned is
2 the first time that we -- or before that, as that
3 meeting was being arranged, that's the first time that
4 we go -- got an indication that there was a real
5 possibility that Collus was wanting to enter into a
6 transaction.

7 MR. JOHN MATHER: I have a follow-up
8 on that. In your conversations with Mr. Houghton
9 prior to that date that you were referencing, what
10 indication did he give you about any interest Collus
11 might have about a transaction in the future?

12 MR. MICHAEL ANGEMEER: I -- I was the
13 -- the lead on a merger pursuit for Veridian --
14 Veridian, so I would have conversations with many
15 utility CEOs over many -- over the full period that I
16 was the CEO of Veridian.

17 And every opportunity that I would
18 have, I would ask people on what their -- their vision
19 was for the utility and what their future plans were,
20 so there was no indication at any point before that.
21 There was always, you know, if -- if we do want to
22 look at something, that, you know, we -- we should
23 talk, but beyond that, there was no indication from --
24 from Ed that there was any -- any interest that I
25 remember in any of the conversations that we had.

1 But I had -- had those conversations
2 with many utility CEOs over the years because that was
3 part of my role, was to assess the marketplace and
4 determine where there might be opportunities and --
5 and what those might look like.

6 MR. JOHN MATHER: Thank you. So, Mr.
7 Freeman, the same question. Pli -- prior to July
8 2011, did you -- did anyone from Collus approach you
9 or anyone at Horizon, to your knowledge, about a
10 potential sale of Collus?

11 MR. NEIL FREEMAN: I had no prior
12 knowledge. I'll -- I'll say that my -- my job -- one
13 (1) of the key features of my job was, or key elements
14 of my job, was to be on top of what was going on in
15 the sector and -- and essentially, you know, get the
16 intelligence on what was happening.

17 I had no knowledge or indication that
18 Collus was up for a possible transaction.

19 MR. JOHN MATHER: And, Ms. Gaspar, the
20 same question with respect to Hydro One.

21 MS. KRISTINA GASPAR: I had no
22 knowledge of the potential transaction prior to --
23 prior to leading up to the July 11th -- the July 2011
24 meeting.

25 MR. JOHN MATHER: Are you aware of

1 anyone else in Hydro One being aware of a potential
2 transaction before that date?

3 MS. KRISTINA GASPAR: No. Similarly
4 though, we would have been approaching municipalities,
5 shareholders, LDCs about potential transactions
6 ourselves in an around that time.

7 MR. JOHN MATHER: Moving to the next
8 topic. The Foundation -- one (1) -- one (1) --
9 something that happened prior to the RFP being issued
10 on October 4th, 2011, was Collus engaged in a -- in a
11 pilot project to distru -- to provide its customers
12 with solar attic vents. And that's something we see
13 discussed in the Foundation Document.

14 And if we could actually pull up
15 paragraph 236 of the Foundation Document.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So, Mr. -- this
20 question's for Mr. Freeman at this point. This
21 paragraph con -- indicates that Peter Budd, who was
22 involved in the company that manufactured the fou --
23 the solar attic vents, reached out to you around
24 August 30th -- August 31st, 2011, and inquiring about
25 participating in the solar attic vent program.

1 Do you recall if you were approached
2 with the opportunity to participate in the solar attic
3 vent program prior to August 31st, 2011?

4 MR. NEIL FREEMAN: I -- I don't. I --
5 I have no other recollection than -- than this.

6 MR. JOHN MATHER: Do you know if Ed
7 Houghton approached you or anyone at Horizon about
8 participating in the solar attic vent project at any
9 point?

10 MR. NEIL FREEMAN: My recollection is
11 -- is not different in the -- was in the Foundation
12 Document.

13 MR. JOHN MATHER: And then if we could
14 go to paragraph 387 of the Foundation Document. And
15 just another specific question for Mr. Freeman. If
16 you want, you can take a look at paragraphs 387 and
17 388.

18 This reflects an email conversation
19 between you and Mr. Cananzi, who I understand was also
20 at Horizon at the time, regarding the billboards that
21 advertized the Collus PowerStream's -- that advertized
22 the solar attic vent project and indicated that Collus
23 and PowerStream were both involved.

24 Can you just explain what was happening
25 here and why you sent this email?

1 MR. NEIL FREEMAN: So, this -- this
2 date, November 23rd, was either the -- the day of the
3 day -- the next morning after the Collingwood
4 community meeting to talk about the -- the -- you
5 know, explain to the community that a deal was
6 imminent.

7 And so, I came to -- I came to the
8 meeting to observe what was going on, you know, talk
9 to people, read the room, read -- read the reaction of
10 people, frankly, to my presence, that type of thing.

11 And after the meeting was over I was
12 leaving town, and on the wall of the Gayety Theatre,
13 just over here, I noticed the billboard. And I was
14 quite shocked because I -- I thought that it was sort
15 of inappropriate that, you know, we're in the middle
16 of an RFP and -- and Collus is essentially advertising
17 jointly with PowerStream that they've got this
18 transaction going on.

19 And -- and so, I -- you know, I felt I
20 was incumbent to tell my CEO about this. And -- and
21 so, that's why I brought it to my (sic) attention. I
22 just thought, had we known this before, you know --
23 or, frankly, I thought it was the -- the bil -- the
24 billboards had just been put up and it was, you know,
25 like, a mistake that was sort of -- you know, the

1 billboard company got ahead of themselves in work
2 scheduling and -- and just put it up and they -- they
3 were supposed to wait until the decision was made, and
4 then it was a way to do what Mr. Cananzi was
5 suggesting, that was that it was sort of facilitate
6 the transaction.

7 What I learned from the Foundation
8 Document was that the billboards had actually been up
9 for, you know, a couple -- three (3) months or
10 something. And I -- and I -- had I known that, I
11 would have been obliged to tell, you know, the -- the
12 CEO. We would have told the board of directors.

13 It sort of -- it just seemed unseemly
14 that -- that there could be an RFP, and -- and then
15 this sort of public advertizing with one (1)
16 participant in the middle of an RFP.

17 And you might think, well, so what,
18 it's a different business. But I guess our
19 perspective was that there was no business with the
20 solar vents anyway. It -- it -- they worked against
21 the interests of utility, so it was all -- it was sort
22 of -- to me, it was sort of a transparent sort of
23 promotion of -- of Collus and PowerStream in the
24 middle of an RFP.

25 MR. JOHN MATHER: And why did -- was

1 it your view -- I mean, I appreciate you learn that
2 they were up a month earlier when upon reviewing the
3 Foundation Document -- but once you learned of that,
4 why did you understand that to be -- I think your --
5 the words you used were inappropriate or unseemly?

6 MR. NEIL FREEMAN: Because when
7 you're -- when you're having an RFP, you -- there --
8 you want to have the -- if you want to get the best
9 bids and you want to get the full participation of
10 participants, it's important that everybody feel --
11 and all the participants feel that -- that it's an
12 open and -- open and fair competition.

13 So it just -- it would -- just as it's
14 usually written in RFPs that, you know, you make no
15 contact with them. You don't -- you know, don't get
16 involved in, you know, advertising in the community in
17 the middle of the contest. Wait till it's over.

18 Similarly, it just seemed too obvious,
19 frankly, that -- that this advertising was taking
20 place in the middle of an RFP when it's one of the
21 bidders. It just seemed -- it -- I think, had the
22 Horizon Board of Directors known this was the case, we
23 might have evaluated whether we -- we wanted to
24 participate.

25 MR. JOHN MATHER: Earlier, I showed

1 you an email that indicated that Mr. Budd from the
2 company that manufactured the solar vents reached out
3 to you on August 31st, 2011. At that time, did you
4 know that PowerStream was participating in the solar
5 vent initiative?

6 MR. NEIL FREEMAN: I'd been told in
7 that conversation that PowerStream and other
8 utilities, including Veridian, were -- maybe
9 PowerStream wasn't included. Veridian either was or
10 was considering to be, you know, joining in. And --
11 and I presented that -- those facts to the -- the CEO.

12 But what we knew at Horizon was that,
13 you know, we were very focused and very businesslike
14 about conservation. It's -- the way the framework
15 works is the government gives, through the Ontario
16 Power Authority -- now the ISO -- gives -- creates
17 programs with targets. And so it essentially worked
18 against your -- what you'd been asked to do to
19 essentially encourage conservation that, frankly,
20 undermined your financial position.

21 So for example, why we struggled with,
22 you know, joining the scheme was that, you know, we
23 felt the subtle pressure. Mr. Cananzi referenced this
24 that -- that we should, you know -- you know, didn't
25 like wanting to have to participate under these types

1 of circumstances.

2 But what we knew is it doesn't even
3 make sense because in the -- in the regulatory
4 framework, there's a quote spoken of, I've known now,
5 that a loss revenue adjustment mechanism. So the
6 utilities are encouraged to drive conservation with a
7 recognition that you can count -- you can, you know,
8 count the -- the kilowatt hours that are saved, and
9 then you get financial compensation.

10 So having a solar attic vent that, you
11 know, is -- was suggested to actually reduce -- reduce
12 the electric load actually hurt Collus financially and
13 hurt PowerStream financially because you could never
14 get financial recovery for that. Plus you were
15 basically diverting resources that are directed to
16 government-specified programs to -- programs that sort
17 of are not -- weren't suggested.

18 MR. JOHN MATHER: So in your answer,
19 you suggested that there was a conversation where
20 you -- it was indicated that PowerStream and maybe
21 Veridian were participating.

22 MR. NEIL FREEMAN: Right.

23 MR. JOHN MATHER: Who's that
24 conversation with?

25 MR. NEIL FREEMAN: You know, I was --

1 I don't have perfect recollection. It -- I did speak
2 to Peter Budd at length. I later spoke to -- I can't
3 remember, but I -- I think I might have spoken to
4 Ed Houghton later when we talked about other things.

5 MR. JOHN MATHER: And you made a
6 reference to Mr. Cananzi's suggesting there was some
7 form of subtle pressure. Is -- did I have that right?

8 MR. NEIL FREEMAN: It was -- it was --
9 Mr. Cananzi, you know, suggests this in the -- in the
10 published material that, you know, it was like -- it
11 was like, here, participate in this. It'll look good,
12 you know, in the RFP. And that's how he read it.
13 And, you know, I don't remember directly any
14 conversations. It wasn't in what I had written down.

15 But he -- he said I -- if I -- you
16 know, I can't remember obviously the words -- but
17 it -- I don't -- I don't like having to be, you know,
18 presented with this idea in the middle of an RFP.

19 MR. JOHN MATHER: So if we could
20 scroll down here to the bottom and go to the next
21 page.

22 So this is going forward in time in
23 November 23rd, 2011 after you had seen the billboards
24 and wrote to Mr. Cananzi about what you had seen. And
25 he responds on his -- providing his views about that.

1 And at the bottom, he says: "The fix
2 is in." What did you understand him to mean when he
3 said that?

4 MR. NEIL FREEMAN: That the decision
5 had already been made and that it -- it'd been made
6 certainly long enough in time that the billboards were
7 up -- or to -- to put the billboards up.

8 And to again -- I think what our
9 thinking was that -- that, you know, the decision
10 was -- had only recently been made to put up the
11 billboards.

12 MR. JOHN MATHER: Right. But you have
13 since learned they'd been up for a while.

14 MR. NEIL FREEMAN: Yes.

15 MR. JOHN MATHER: Okay. So turning
16 now to Mr. Angemeer with respect to the solar attic
17 vents. And if we can go back up to paragraph 236 of
18 the Foundation Document.

19 In that email referencing -- Peter Budd
20 contacting Horizon, Mr. Cananzi indicates that
21 Veridian is involved and Mr. Freeman appears to have
22 had some understanding that Veridian was involved. Do
23 you know -- do you recall whether or not Veridian
24 participated in the solar attic vent project?

25 MR. MICHAEL ANGEMEER: Yes, we did.

1 MR. JOHN MATHER: And do you know when
2 Veridian was approached to participate in the solar
3 attic vent project?

4 MR. MICHAEL ANGEMEER: I'm not sure if
5 any of the documentation we provided actually has the
6 date, but I do remember conversations with Ed Houghton
7 and Peter Budd saying that this technology and about
8 the opportunity to participate in the -- in some kind
9 of a pilot project.

10 But I don't recall the date, and if
11 there's a date in what we provided, it -- it would be
12 there. But it was -- I guess it was around this time.

13 MR. JOHN MATHER: Do you recall if it
14 was before or after the meeting in July 2011 with
15 Mr. Muncaster and Mr. Houghton regarding the RFP or
16 potential RFP?

17 MR. MICHAEL ANGEMEER: I'm not sure.
18 I believe it was after, but I'm -- I'm not a hundred
19 percent sure.

20 MR. JOHN MATHER: Do you recall why
21 Veridian decided to participate in the solar attic
22 vent project?

23 MR. MICHAEL ANGEMEER: Yes. Upon
24 being contacted, there -- I guess there was two (2)
25 reasons. One was to -- you know, we were involved in

1 a -- in a process to -- to look at the transaction
2 with Collus, so that was one (1) reason.

3 The second reason was that based on my
4 assessment of the technology, it looked like there
5 was -- it was a good technology that had some promise
6 to not be immediately be included in -- in programs --
7 province-wide programs from the Ontario Power
8 Authority at the time but had some potential to -- to
9 possibly move in that direction and become a program
10 that would be adopted by many -- many utilities in the
11 future.

12 And I believe in recent conversations
13 I've had the last number of months -- maybe in the
14 last six (6) months -- that that's the case, and it's
15 moving towards some kind of an approval.

16 So I -- I felt it was enough of an
17 interest from Veridian's perspective to participate in
18 a small way. And I was invited in the launch of this
19 as well, and I was unable to attend at the point.

20 So our -- our involvement was we -- we
21 bought some of the solar vents, and that was the
22 extent of it. We didn't actually follow through
23 and -- and get them installed in houses.

24 MR. JOHN MATHER: Thank you. So you
25 identified two (2) reasons why Veridian was involved,

1 and the first reason was because the RFP was in
2 contemplation as -- at least as I understood your
3 answer.

4 What role did you think participating
5 in the solar attic vent would have in relation to a
6 potential RFP?

7 MR. MICHAEL ANGEMEER: Well, I guess
8 it was kind of the reverse. Our understanding though
9 was that PowerStream was going to be participating and
10 if we didn't then maybe that would be a negative.

11 MR. JOHN MATHER: And was that a
12 discussion that happened internally at Veridian?

13 MR. MICHAEL ANGEMEER: That was --
14 that was my decision.

15 MR. JOHN MATHER: Do you recall how
16 you became aware that PowerStream was participating?

17 MR. MICHAEL ANGEMEER: It would have
18 been a conversation with -- with Ed Houghton or -- or
19 Peter Budd.

20 MR. JOHN MATHER: Appreciating it was
21 a long time ago, do you have any recollection of what
22 they said about PowerStream's involvement, or what
23 they said about Veridian's potential involvement?

24 MR. MICHAEL ANGEMEER: It was a long
25 time ago. But I -- I think the conversation went

1 something like, well, there's this -- this
2 opportunity. There was conversation about the
3 technology and that PowerStream was -- was interested
4 in looking at this. And would we be as well?

5 MR. JOHN MATHER: Was -- do you recall
6 any suggestion that you should participate because
7 PowerStream was participating and they may also be a
8 bidder in the RFP?

9 MR. MICHAEL ANGEMEER: No.

10 MR. JOHN MATHER: So Ms. Freeman, it's
11 our understanding from our review of the documents
12 that Hydro One was not approached to participate in
13 the solar vent initiative.

14 Are you aware of Hydro One ever being
15 approached with respect to the initiative?

16 MS. KRISTINA GASPAR: I'm not.

17 MR. JOHN MATHER: So moving to a --
18 another area. The documents we have reviewed show
19 that -- and -- and there's been evidence to this
20 effect, that each bidder was invited to give a
21 presentation to the strategic task team which was a --
22 the team of individuals who were responsible for
23 preparing the RFP itself and for scoring the RFP, and
24 sorry, that each of the bidders were invited to give
25 a presentation to them before the RFP was issued in

1 September 2011, and my understanding is that each of
2 Veridian, Horizon and Hydro One gave a presentation.

3 My question to each of you, and we'll
4 go in turn with Mr. Angemeer and Mr. Freeman and Ms.
5 Gaspar, is if you understood that your company's
6 presentations at those meetings were confidential.

7 Starting with Mr. Angemeer.

8 MR. MICHAEL ANGEMEER: I reviewed the
9 letter that was sent to us about that particular
10 meeting, and I believe on that letter Mr. Muncaster
11 indicated that those -- it would be a conf -- those
12 presentations would be confidential and that there
13 would be a confident -- sorry, confidentiality
14 agreement available at the meeting to sign -- to sign,
15 for us to sign.

16 MR. JOHN MATHER: So if we could pull
17 up TOC516275. So this is a letter addressed to you,
18 Mr. Angemeer, and if you scroll down we see it's a
19 letter from Dean Muncaster and that if we -- the date
20 of the letter is September 6th, 2011. Is this the
21 letter you're referring to?

22 MR. MICHAEL ANGEMEER: Yes.

23 MR. JOHN MATHER: And scroll down, and
24 there's a reference in the last paragraph to a non-
25 disclosure agreement that should be prepared -- you

1 should be prepared to sign at the meeting.

2 This agreement is drafted to protect
3 all parties from the disclosure of highly confidential
4 and proprietary information of each party.

5 Is that what you're referring to when
6 you said the letter indicated there would be a non-
7 disclosure agreement?

8 MR. MICHAEL ANGEMEER: That's correct.

9 MR. JOHN MATHER: So Mr. Freeman, same
10 question. Did you understand the presentation that
11 Horaz -- Horizon gave to the strategic task team in
12 September 2011 was confidential?

13 MR. NEIL FREEMAN: I did.

14 MR. JOHN MATHER: And why did you
15 believe that to be the case?

16 MR. NEIL FREEMAN: I knew -- I -- I
17 didn't recall the -- the -- the confidentiality being,
18 you know, in that letter, but I recalled that we had
19 signed a confidentiality agreement.

20 I think I also took on face value that,
21 you know, you're -- that when somebody's having an
22 RFP, it's essentially understood and, you know, while
23 we often write confidentiality agreements, it -- it
24 goes without saying that the material has to be
25 confidential, or -- or frankly, the -- the vendor is

1 possibly undermining its own interest, that they --
2 they have an interest in -- in the bidders wanting to,
3 you know, not -- to give their best foot forward and
4 not walk away because they feel their -- their
5 information is being shared.

6 MR. JOHN MATHER: And Ms. Gaspar, it's
7 my understanding that you did not personally attend
8 Hydro One's presentation, is that correct?

9 MS. KRISTINA GASPAR: I did not.

10 MR. JOHN MATHER: Were you aware that
11 the presentation was happening?

12 MS. KRISTINA GASPAR: Yes.

13 MR. JOHN MATHER: Was it your
14 understanding that Hydro One's presentation to the
15 strategic task team was to be confidential?

16 MS. KRISTINA GASPAR: Yes.

17 MR. JOHN MATHER: And what was the
18 basis of your understanding?

19 MS. KRISTINA GASPAR: Similar to my
20 friend, this agreement here, it's -- it's -- it's just
21 assumed and standard practice for anything dealing
22 with any activity to be highly confidential and that's
23 just the way transactions occur.

24 MR. JOHN MATHER: So my next question
25 is after the presentations in September 2011, it will

1 be my question for each of you, is whether you or
2 anyone from your company received any feedback from
3 any of the members of the strategic task team about
4 your company's presentation.

5 I'll start with you -- and -- and
6 sorry, let me just be clear, I'm talking about between
7 the date of the presentation and when it was announced
8 that PowerStream had been selected as the preferred
9 proponent which occurred in -- publically, which
10 incurred -- or I think to you occurred in December
11 2011, so we'll say after the presentations in
12 September 2011 to when Power -- it was announced to
13 you that you were not the successful proponents.

14 So with that preamble in mind, Mr.
15 Angemeer, did you receive any feedback from the
16 strategic task team about your presentation during
17 that time period?

18 MR. MICHAEL ANGEMEER: In our review
19 of the documents within Veridian, we didn't find any -
20 - anything, I believe that indicated we received any
21 feedback.

22 And honestly, it -- if I would have run
23 into Ed Houghton in that time period that you've
24 mentioned, he might have said something like well that
25 was a good presentation, but that's -- that would be

1 the extent of it.

2 MR. JOHN MATHER: Do you have a
3 specific recollection of Mr. Houghton ever providing
4 you any comments along those lines?

5 MR. MICHAEL ANGEMEER: No, I can't --
6 I can't refer to a specific time that that might have
7 happened, but it's possible that it did.

8 MR. JOHN MATHER: Mr. Freeman, do you
9 know if Horizon ever received feedback from the
10 strategic task team about their presentation prior to
11 Horizon being advised that it was not selected as a
12 preferred proponent?

13 MR. NEIL FREEMAN: So I don't believe
14 there was any formal communication. There might have
15 been some perfunctory communication to the CEO, I
16 don't remember participating in any communication
17 about Horizon's presentation or any other
18 presentation.

19 MR. JOHN MATHER: What do you mean by
20 "perfunctory"?

21 MR. NEIL FREEMAN: Well, you know,
22 similar to -- maybe I used the word incorrectly, but
23 similar to what Mr. Veridian said, you know, the --
24 the CO's see each other a lot of meetings, sometimes
25 there's a -- meetings in the associations, hey, you

1 know, good job, you know, looking forward to your
2 presentation. It would have been at that level rather
3 than feedback on -- on what to do or the quality of
4 your presentation.

5 THE HONOURABLE FRANK MARROCCO: When
6 you said Mr. Veridian, I take it you meant Mr.
7 Angemeer --

8 MR. NEIL FREEMAN: He is Mr. -- he was
9 Mr. Veridian, he -- he -- I mean Mr. Angemeer, my --
10 my mistake, excuse me.

11

12 CONTINUED BY MR. JOHN MATHER

13 MR. JOHN MATHER: That's okay. And
14 similarly, Ms. Gaspar, are you aware of Hydro One
15 receiving any feedback on their presentation?

16 MS. KRISTINA GASPAR: I'm not aware of
17 any feedback on the -- on the presentation. We did
18 receive feedback following our submission of -- of our
19 RFP with -- in the form of clarifying questions.

20 MR. JOHN MATHER: So -- sorry, can you
21 just expand on what you mean by clarifying questions?

22 MR. KRISTINA GASPAR: So I believe
23 it's in the Foundation document, there are clarifying
24 questions to our -- our bid.

25 MR. JOHN MATHER: Give me a moment.

1 MS. KRISTINA GASPAR: But there was no
2 feedback on -- relating to the presentation that I'm
3 aware of.

4 MR. JOHN MATHER: So if we could pull
5 up paragraphs -- paragraph 408 of the Foundation
6 Document.

7 THE HONOURABLE FRANK MARROCCO: Did
8 you -- were you referring to this question of the
9 assumption of certain liabilities on the completion of
10 the transaction?

11 MS. KRISTINA GASPAR: Yes.

12

13 CONTINUED BY MR. JOHN MATHER

14 MR. JOHN MATHER: Just to double
15 confirm on that point, these paragraphs 408 and 409 --
16 sorry, if we scroll down to 409, reflect that Hydro
17 One was asked for certain elements of clarification
18 from KPMG and 409 reflects that clar -- an answer was
19 provided.

20 Is that what you're referring to?

21 MS. KRISTINA GASPAR: Correct.

22 MR. JOHN MATHER: Okay. Similar
23 question, but now with respect to the other bidders,
24 other than your company. At any time before you were
25 tol -- your company was told they were not selected as

1 the preferred proponent, did your company receive any
2 information or feedback about what the others --
3 bidders had presented to the strategic task team,
4 starting with Mr. Angemeer.

5 MR. MICHAEL ANGEMEER: I don't recall
6 anything, no.

7 MR. JOHN MATHER: Mr. Freeman?

8 MR. NEIL FREEMAN: No.

9 MR. JOHN MATHER: Ms. Gaspar?

10 MS. KRISTINA GASPAR: No.

11 MR. JOHN MATHER: So the RFP document
12 itself was issued on October 4th, 2011 and sent to
13 each of the bidders who had made a presentation.

14 Again, for each of you, could you give
15 us your impressions of the RFP document in terms of
16 the level of detail and specificity it included about
17 what it was looking for in proposals, beginning with
18 Mr. Angemeer.

19 MR. MICHAEL ANGEMEER: It's a long
20 time ago, but I -- I believe that our team that was
21 looking at the RFP looked at it and we didn't have any
22 -- I don't think we had any concerns from the -- from
23 that perspective, I think there was enough information
24 about what was being looked for that we were able to -
25 - we were able to start to prepare our RFP response.

1 MR. JOHN MATHER: Do you recall having
2 any significant outstanding questions about what
3 Collus was looking for at -- at that period of time?

4 MR. MICHAEL ANGEMEER: I believe there
5 was some documentation that indicated that, yes, we
6 did ask some questions, but I believe that was more
7 around whether the -- the deal was for a 50 percent
8 sale of the shares.

9 And I believe the question we asked was
10 around could we also put an option in for a hundred
11 percent sale.

12 MR. JOHN MATHER: And do you recall
13 getting an answer to that question that allowed you to
14 proceed with your submission?

15 MR. MICHAEL ANGEMEER: Yeah, I bel --
16 I believe that the answer was that we were -- that was
17 -- was not allowed.

18 MR. JOHN MATHER: Mr. Freeman, do you
19 recall any re -- any views you or anyone at Horizon
20 had about the level of detail or specificity set out
21 in the request for a proposal?

22 MR. NEIL FREEMAN: So, I -- with my
23 time at Hori -- Hydro One, and then -- and before
24 that, Ontario Hydro, and then at Horizon, I'd been
25 involved in preparation of many -- reviewing many

1 RFPs, many different style of RFPs, KPMG, Borden
2 Ladner Gervais.

3 You know, there's many different sort
4 of service providers, consultants, lawyers for
5 vendors. And I guess what struck me was that the --
6 first, I found it unusual that there was such a high
7 percentage for non-financial, which is certainly
8 within the -- the -- you know, the -- the rights of
9 the vendor to -- to dictate.

10 But I thought that the -- with the
11 involvement of KPMG, that the -- that the RFP, you
12 know, would have some -- possibly a stronger rigour
13 than I -- it -- it ended up producing.

14 This would have been the first we --
15 we'd seen of the -- the document. And, basically,
16 this is what we -- we needed to make responses to.
17 And I thought that having 70 percent as -- on
18 essentially soft measures that had no metrics left a
19 lot to discretion.

20 And it essentially was asking for
21 marketing information, about customer service and
22 community support and these types of things. And I --
23 I personally felt that, and still feel that these are
24 not subjects that could -- that don't have any metrics
25 or could -- metrics couldn't be developed, community

1 impact, all sorts of different measures and -- but
2 there wasn't any of that.

3 And -- and so, I think I was concerned
4 that, you know, it was -- you -- you don't know -- you
5 don't -- you don't know how -- how to succeed when
6 everything is essentially soft measures.

7 MR. JOHN MATHER: So, soft measures.
8 You referenced, I think, community impact. Is that
9 what you said, or...

10 MR. NEIL FREEMAN: Or, you know, the,
11 you know, commitment to the community, these types of
12 things that are -- that are sort of based on
13 impressions rather than, you know, you're looking at
14 Ontario Energy Board statistics about, you know,
15 response times and -- and calls answered and, you
16 know, those types of measures which, frankly, are
17 published information.

18 I -- I maybe forgot to add what
19 surprised me, as well, is that it -- it was probably
20 the only RFP that I remember where the -- the vendor
21 didn't actually even want to see your financial
22 statements. They didn't ask for them.

23 And I remember thinking we better
24 include this because, you know, maybe they just don't
25 have their act together at Collus to know what -- and

1 they -- they presume you're supposed to send this
2 stuff.

3 And so, I was a bit surprised when I
4 saw the -- the evidence that Horizon was, frankly, the
5 only utility that provided it. But it was -- it's
6 sort of like goes without saying that, in an RFP,
7 you're making a financial transaction. There's
8 certain things that people want to maybe see in your
9 financial statements.

10 Maybe there's -- there's no hidden
11 secrets, but just finding that there aren't any
12 secrets or anything that needs to be sort of stones
13 turned over, so that was a bit odd.

14 So -- but we -- we submitted the
15 documents anyway thinking, you know, we -- we don't
16 want to be disqualified for not including something
17 that maybe they thought should be included anyway.

18 So, it was -- it was a bit odd in that
19 regard, that these types of details that you would
20 normally see just weren't -- weren't asked for.

21 MR. JOHN MATHER: Any other examples
22 of details that you were expecting that weren't
23 included that you can recall?

24 MR. NEIL FREEMAN: You know, nothing
25 spe -- specifically comes to mind.

1 MR. JOHN MATHER: All right. So, you
2 said you had a concern about 70 percent of the scoring
3 going to a what you called soft factors or factors
4 that lacked metrics.

5 What did -- what did Horizon do to
6 address that concern?

7 MR. NEIL FREEMAN: Well, we -- I'm not
8 sure we did anything other than -- than put our be --
9 best foot forward. It didn't seem like it -- it was -
10 - you know, thinking back on it, it wouldn't have been
11 appropriate to say, hey, you know, are you sure you
12 don't want to put some nu -- numbers forward or -- or
13 ma -- ma -- har -- harder metrics.

14 It just sort of -- you know, we did our
15 honest best to put forward, you know, what we thought
16 was -- was important. And it very interesting later
17 to read the remarks of -- you know, that were, you
18 know, of KPMG and the other -- others who were viewing
19 it, sort of what they actually thought of those
20 things, too, but...

21 MR. JOHN MATHER: So, the RFP document
22 sets out how each component will be weighted and gives
23 a total number that add up to a hundred. Did you have
24 any understanding about, on any given non-financial
25 component, how -- how that would be scored or how the

1 number out of ten (10) would be arrived at?

2 MR. NEIL FREEMAN: I -- I don't -- I --
3 - I -- my recollection is that it -- that that wasn't
4 part of the document.

5 MR. JOHN MATHER: That's something you
6 would have expected to be part of the document?

7 MR. NEIL FREEMAN: Well, if -- if it
8 were -- if the -- the non-financial were 30 percent,
9 you might -- you might think, well, you know, like --
10 like, financial's the -- the main player, but, you
11 know, they -- they need to -- they need to understand
12 who you are and they -- they want to do it.

13 But when the -- when the non-financial
14 was, you know, 70 percent and essentially driving the
15 -- the transaction and the scoring could outweigh the
16 -- the financial, you would -- you would -- you -- I
17 would have hoped that, you know, it wasn't just a
18 beauty contest or it was -- there was something -- and
19 maybe -- you know, maybe that's the wrong term, but --
20 but maybe the beauty is in the, you know, statistics
21 or -- or response times or, you know, these other
22 things that -- you know, for example, rates was one
23 (1) of the -- the measures, but it was essentially
24 impressionistic.

25 It wasn't -- you know, these -- one (1)

1 utility has a rate base per customer of this and, you
2 know, has operating costs and administrative costs of,
3 you know, different levels. And when you put these
4 two (2) utilities together or, you know, what
5 advantage will that be for Collus, it was essentially,
6 you know, impressionistic based on the -- the
7 presentation or -- or the -- the submitted material.

8 MR. JOHN MATHER: Ms. Gaspar, turning
9 to you. Do you recall having any views or anyone at
10 Hydro One sharing views with you about the level of
11 specificity and detail in the RFP or with respect to
12 what Mr. Freeman was talking about, the weighting of
13 the financial and non-financial criteria?

14 MS. KRISTINA GASPAR: In terms of the
15 level of detail and specificity, certainly it struck
16 me and the -- and the entire valuation team that we
17 didn't really know what it is that they were asking us
18 to bid on, right.

19 It said up to 50 percent. So, does
20 that mean 10 percent? Does it mean 50 percent? Does
21 it mean you -- you'd like us to present a range of
22 options somewhere in-between there? And there wasn't
23 a lot of detail around that as well as the -- the
24 broader question of what is it that we're -- that --
25 that we're being asked to bid on, so what's in and

1 what's out, in particular with respect to Solutions,
2 right.

3 It was -- it really wasn't clear to us
4 if that was -- if that was in or out and how that
5 might -- might impact -- impact the valuation.

6 In terms of what Mr. Freeman had said,
7 you know, my view was, you know, it's the -- it's --
8 it's the -- their prerogative how much they allocate
9 to which metric.

10 And our -- our sense, both mine and --
11 and the balance of the valuation team, was that, from
12 reading it, you know, I -- I believe it was 30 percent
13 to the valuation itself and -- and an additional 30
14 percent to what I perceived as assistance with further
15 growth within the region.

16 And I interpreted that to be
17 consolidating regionally, so other utilities, which --
18 which I thought we were very well positioned to do.

19 MR. JOHN MATHER: With respect to the
20 uncertainty about whether or not Solutions was
21 included or not included, do you recall if you ever
22 got clarity on that point?

23 MS. KRISTINA GASPAR: No. I did not
24 receive clarity on that point.

25 MR. JOHN MATHER: And how did that

1 affect your -- the proposal that Hydro One put
2 forward?

3

4 (BRIEF PAUSE)

5

6 MS. KRISTINA GASPAR: It -- it left
7 uncertainty. And so, I believe, in -- in the -- in
8 the proposal that we put forward we -- we put in
9 verbiage that would indicate that this is -- the bid
10 is -- is based on limited due diligence based on the
11 materials that were provided to us.

12 And we expect that, you know, the
13 valuation would change positively or negatively
14 depending on more detailed due diligence in phase 2.

15 MR. JOHN MATHER: When you say
16 "limited due diligence," did you -- did Hydro One have
17 access to the information they needed in the data room
18 to submit a bid?

19 MS. KRISTINA GASPAR: Our bid was
20 based on all of the evi -- all of the data that was
21 provided to us, as well as responses to questions that
22 came through KPMG. And -- and with that, we felt that
23 it was limited due diligence.

24 MR. JOHN MATHER: There was more
25 information you would have liked to have?

1 MS. KRISTINA GASPAR: Yes, but we --
2 we were comfortable submitting the bid as it was,
3 given -- given that we -- we put in the text to say
4 that subsequent due diligence would be required.

5 MR. JOHN MATHER: Other than the issue
6 of whether Solutions was included or not, can you
7 recall any other pieces of information that Hydro One
8 would have preferred to know, understanding that they
9 were still comfortable submitting a bid?

10

11 (BRIEF PAUSE)

12

13 MS. KRISTINA GASPAR: It was a long
14 time ago, so I'm trying to remember if there was
15 anything big that stood out, but it -- it was probably
16 clarification on a number of things. The -- the
17 underpinning of the valuation is largely tied to the
18 rate base, and I believe we were going off of 2010
19 rate base, which was in the -- in the materials.

20 MR. JOHN MATHER: Can we pull up
21 paragraph 344 of the Foundation Document.

22

23 (BRIEF PAUSE)

24

25 MR. JOHN MATHER: So this paragraph

1 reflects that on October 21st, 2011, Hydro One sent a
2 detailed list of questions to KPMG, including a
3 request for additional financial information.

4 Do you recall Hydro One making this
5 request?

6 MS. KRISTINA GASPAR: Yes.

7 MR. JOHN MATHER: If we scroll down,
8 and bef -- actually, before we get to this, do you
9 recall if you received responses to the information
10 you requested?

11 MS. KRISTINA GASPAR: I recall
12 receiving responses and additional materials being
13 added to the data room. I do not recall if it -- they
14 were a complete set of responses. My recollection is
15 probably not.

16 MR. JOHN MATHER: So if we can scroll
17 down. So paragraph 345 says that:

18 "One (1) of the questions Hydro One
19 was asked was with bids were be --
20 to based on the share purchase of
21 Power Corp. alone or Solutions Corp.
22 as well."

23 I understand that is the question you
24 were referring to earlier, about whether you wanted to
25 know Solutions were in -- was in or out?

1 MS. KRISTINA GASPAR: That's right.

2 MR. JOHN MATHER: And then we see here
3 that Jonathan Erling, who was one (1) of the
4 consultants at KPMG, provided a draft answer within --
5 internally within Collus, and Mr. Fryer, who was the
6 CFO at the time, in response to that, indicated that
7 the Transaction will likely be the Collingwood Utility
8 Services Corp. shares sold by the Town of Collingwood.
9 It's our understanding that the Collingwood Utility
10 Services Corp. is the holding company that held both
11 Power and Solutions.

12 Was that your understanding at the
13 time?

14 MS. KRISTINA GASPAR: I don't recall
15 receiving any clarity on that. So at the time we
16 submitted our bid, it was still unclear.

17 MR. JOHN MATHER: And do you recall --
18 there's a draft answer here -- do recall receiving a
19 draft answer along the lines as set out?

20 MS. KRISTINA GASPAR: No.

21 MR. JOHN MATHER: Just a couple more
22 questions for you --

23 THE HONOURABLE FRANK MARROCCO: Just -
24 - just before you do that, did -- did you all have the
25 view -- have the view that additional information was

1 to come from KPMG, that requests for additional
2 information were to be directed to KPMG?

3 MS. KRISTINA GASPAR: Yes.

4 MR. NEIL FREEMAN: I -- I don't
5 remember that specifically, but it was -- it was clear
6 that -- that there was, like, only one (1) -- one (1)
7 -- you were directed to -- to make inquiries to one
8 (1) source, and -- and it was probably KPMG, yeah.

9 THE HONOURABLE FRANK MARROCCO: And --
10 and would -- the fact that there was only one (1)
11 source, would that be consistent with your
12 understanding of how this process should work?

13 MR. NEIL FREEMAN: It -- it's
14 generally the case, and as a condition in any RFP,
15 that -- so that bidders aren't, you know, trying to
16 get information through the side door, that type of
17 thing, yeah.

18 THE HONOURABLE FRANK MARROCCO: Mr. --

19 MS. KRISTINA GASPAR: Yes. There's --
20 there is typically only one (1) source of information,
21 and it was our understanding that that was KPMG.

22 THE HONOURABLE FRANK MARROCCO: All
23 right. Mr. Angemeer...?

24 MR. MICHAEL ANGEMEER: Yes. I believe
25 that -- that would be appropriate, to have one (1)

1 source of information. And I'm not sure whether it
2 was KPMG or not.

3 THE HONOURABLE FRANK MARROCCO: All
4 right. Thank you.

5

6 CONTINUED BY MR. JOHN MATHER:

7 MR. JOHN MATHER: So Mr. Angemeer,
8 just following up on something that Mr. Freeman said,
9 he provided his views on the 70/30 distribution of
10 financial and nonfinancial, or awaiting.

11 Do you remember having any views or
12 reaction to that when you found out how the RFP was --
13 responses were going to be scored?

14 MR. MICHAEL ANGEMEER: Well, as both
15 parties -- other parties have said, it was the --
16 Collus's -- or the Town of Collingwood's prerogative
17 to put the rating however they wanted, and we -- we
18 had the obligation to respond in that -- in that way,
19 but -- and my assessment was that it's -- the 30
20 percent was a bit low.

21 But again, we took -- we took that, and
22 we -- we tried to make sure that the rest of the 70
23 percent -- the other 70 percent was beefed up, and we
24 put our -- as Mr. Freeman said, we put our best foot
25 forward in that -- in that regard. But I -- I did in

1 -- I did seem that -- it did seem that it was a little
2 bit low.

3 MR. JOHN MATHER: Why did it strike
4 you as a bit low?

5 MR. MICHAEL ANGEMEER: Normally in a
6 sale transaction, you know, you -- you try to balance
7 the financial aspect in terms of the cash available
8 from the transaction with making sure that you're
9 picking the best partner possible.

10 So there -- there is a balance there,
11 and, you know, whether -- I don't think it was maybe
12 that far off, because again, different companies will
13 have different -- or different municipalities will
14 have different views on whether price is most
15 important, or whether the -- the partner and -- and
16 other aspects is most important.

17 So it's, you know, completely within
18 their -- their right to put the balance either way,
19 depending on how they -- how they felt about it.

20 MR. JOHN MATHER: Do you have any
21 concerns along the lines of Mr. Freeman suggested
22 about how the 70 percent nonfinancial component would
23 be scored given that may have been -- it may have
24 included areas that were hard to evaluate objectively,
25 or on a -- on a metrics basis?

1 MR. MICHAEL ANGEMEER: I -- I don't
2 recall specifically, but it is generally -- would be
3 harder to score those kinds of metrics. So we -- we
4 would have -- we would have put together some view of
5 what we thought was important in each one of those
6 metrics to put forward based on the experience of
7 Veridian and our -- our partnerships with other
8 utilities that we've -- that we've partnered with over
9 the -- other municipalities we've partnered with over
10 the years. So we -- we developed our own kind of
11 thing that we would put forward based on those --
12 those criteria.

13 MR. JOHN MATHER: So I'm now going to
14 walk through a series of documents. And as you -- as
15 you may or may not be aware, during the RFP process,
16 PowerStream had a consultant, Paul Bonwick, who
17 assisted PowerStream during the RFP.

18 And I'm going to walk through some
19 documents that indicate some of the information that
20 PowerStream or Mr. Bonwick had with respect to the RFP
21 process and ask you questions about whether or not
22 your companies had similar information or information
23 along those lines. So I will go on a document by
24 document basis, and then ask each of you about your
25 recollections.

1 So the first document that I'd like
2 pulled up is ALE244.

3

4 (BRIEF PAUSE)

5

6 MR. JOHN MATHER: So this is an email
7 dated July 22nd, 2011. So to position you in time,
8 this is around the period of time where Mr. Muncaster
9 and Mr. Houghton were having the initial meetings with
10 the potential bidders, and Mr. Bonwick writes, "Hi,
11 Brian," so Brian Bentz at PowerStream.

12 "If you have time available today,
13 please give Houghton a call -- Ed
14 Houghton a call. I met with him
15 this morning after my briefing with
16 John Glicksman."

17 Who I believe is John Glicksman who was
18 also at PowerStream.

19 "He shared with some inf -- some
20 interesting information in terms of
21 his discussions with other LDCs as
22 it relates to partnership
23 opportunities."

24 At this point in time, Mr. Angemeer, on
25 July 22nd, 2011, did you or anyone at your company

1 have the opportunity to speak with Mr. Houghton about
2 discussions he'd been having with other LDCs about
3 partnership opportunities?

4 MR. MICHAEL ANGEMEER: I don't believe
5 so.

6 MR. JOHN MATHER: Mr. Freeman, same
7 question with respect to Horizon.

8 MR. NEIL FREEMAN: No.

9 MR. JOHN MATHER: Ms. Gaspar?

10 MS. KRISTINA GASPAR: No.

11 MR. JOHN MATHER: The next email I'd
12 like to pull up his ALE246.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: This is an email
17 from Mr. Bonwick to Mr. Bentz at PowerStream dated
18 August 3rd, 2011.

19 He writes:

20 "Hi Brian: I can provide you an
21 update as it relates to Collus
22 presentation this morning."

23 And then says:

24 "Indicates he has questions."

25 From what we understand from the

1 evidence and the documents is that on August 3rd,
 2 2011, that was the first time the strategic task team
 3 met, and that was the team that was responsible for
 4 developing and scoring the RFP. And it appears that
 5 this may be a reference to that meeting, although it's
 6 not necessarily clear on the face of the document.

7 In any event, first to Mr. Angemeer,
 8 were you or anyone at your company aware that the
 9 strategic task meeting (sic) met on August 3rd, 2011,
 10 and were you offered or provided any form of update
 11 about the discussion that happened on that day?

12 MR. MICHAEL ANGEMEER: I don't recall
 13 anything like that, no.

14 MR. JOHN MATHER: Same question to
 15 you, Mr. Freeman, with respect to Horizon.

16 MR. NEIL FREEMAN: I -- we had no
 17 knowledge of this. It -- it's not -- it was -- we
 18 presumed these types of meetings for the task force
 19 was taking place, but we -- we were not informed of
 20 any content or when they took place.

21 MR. JOHN MATHER: Same question for
 22 you, Ms. Gaspar, with respect to Hydro One.

23 MS. KRISTINA GASPAR: I had no
 24 knowledge of -- of these meetings.

25 MR. JOHN MATHER: Do you know if

1 anyone at Hydro One had knowledge of these meetings?

2 MS. KRISTINA GASPAR: I don't know,
3 however, if it was anything that related to a
4 transaction, it would have filtered down to the
5 valuation team and we would have been kept abreast of any -
6 - any and all developments relating to the RFP.

7 MR. JOHN MATHER: Similar question to
8 Mr. Freeman and Mr. Angemeer. I'll start with Mr.
9 Angemeer.

10 If someone at Veridian was being
11 provided with information about when the strategic
12 task team was meeting or what they were discussing, is
13 that something that would have -- you would have
14 expected to be brought to your attention?

15 MR. MICHAEL ANGEMEER: Yes.

16 MR. JOHN MATHER: And Mr. Freeman?

17 MR. NEIL FREEMAN: At Horizon there
18 was only three (3) management people and -- and -- and
19 two (2) staff that had any knowledge of this, and so I
20 would have known.

21 THE HONOURABLE FRANK MARROCCO: Before
22 we leave that, if someone had provided you with that
23 kind of information, would that have set off any alarm
24 bells for you or would that -- would you -- how would
25 you have -- would -- how would you have reacted to

1 that? When I say "that," I mean information about the
2 deliberations of the strategic partnership task team.

3 MR. NEIL FREEMAN: So, from Horizon's
4 perspective, I -- I was, you know, having now -- with
5 the benefit of having read the foundation material and
6 -- and -- and seen the PowerStream, now Alectra,
7 submission, you know, in it -- to the Inquiry, that --
8 that -- that PowerStream expected that everybody else
9 was doing this.

10 I -- I -- I just don't buy that
11 position in that if you're in an RFP, the -- the --
12 the thing that you don't want to happen is anybody
13 accusing you of -- of having, you know, angled for
14 inside information, because the -- the taint for the
15 process would be too -- too negative, and therefore
16 the Vendor would -- would -- you know, quickly could
17 exclude you to protect the integrity of the process.

18 So, had that happened, I would have
19 either heard it from the CEO or I would have told the
20 CEO. We had a -- an -- an ad hoc committee of the
21 Board of Directors for mergers and acquisitions, we
22 called it the working group, but it was essentially
23 Board members, private sector people, with transaction
24 experience, and they -- my expectation is they would
25 have said, you know, this isn't -- there -- there's

1 something unseemly here. And if -- if these things
2 are getting out, you know, we -- we better make --
3 make this known because, while it might be working for
4 us an advantage, what else is -- what else is the --
5 the process should be tightened up.

6 THE HONOURABLE FRANK MARROCCO: Well,
7 since we started, we'll go that way.

8 MS. KRISTINA GASPAR: So your question
9 was, how would we have reacted if we had known --

10 THE HONOURABLE FRANK MARROCCO: If --

11 MS. KRISTINA GASPAR: -- that the --

12 THE HONOURABLE FRANK MARROCCO: If
13 someone --

14 MS. KRISTINA GASPAR: -- task team was
15 meeting or --

16 THE HONOURABLE FRANK MARROCCO: If --

17 MS. KRISTINA GASPAR: -- if we had
18 known that --

19 THE HONOURABLE FRANK MARROCCO: Not
20 that they were meeting, but if someone was disclosing
21 to you what they were talking about, and I'm -- I'm
22 curious whether you would have received it as
23 information, whether it would have set off any kind of
24 alarm, which is, I guess, what Mr. Freeman was talking
25 about. That's what I'm interested in.

1 MS. KRISTINA GASPAR: So I would
2 assume that, broadly speaking, in all -- all -- any
3 and all transactions, that everyone has equal access
4 to information. That's kind of the -- the baseline
5 assumption. And I would also assume that if -- if my
6 party was seeking additional information or rece -- or
7 -- or had some sort of secondary channel for -- for
8 information that others did not, that we'd be
9 disqualified.

10 You know -- and -- and we even -- we
11 even took that to the point where, you know, we didn't
12 think it was appropriate to -- to attend meetings
13 subsequent to -- subsequent to submit -- submitting
14 the RFP. I believe there was -- there was a meeting
15 and there was some question -- I think Horizon
16 attended and we didn't. We just didn't think it was
17 appropriate. We had concerns of would that be viewed
18 as -- as having influence, either positively or
19 negatively.

20 THE HONOURABLE FRANK MARROCCO: Mr.
21 Angemeer...?

22 MR. MICHAEL ANGEMEER: I guess my
23 assessment is that the -- the only reason that we
24 would be contacted by somebody on behalf of the
25 strategic task team at this time would be if there was

1 something specific in our -- in our RFP response that
2 they wanted clarification on or -- and I wouldn't
3 expect to receive any information about anybody else's
4 bids.

5 THE HONOURABLE FRANK MARROCCO: So --
6 so the -- the information -- I'm not trying to put
7 words in your mouth but I want to understand. So the
8 information -- you would have expected any
9 communication would have related to some uncertainty
10 about your own position, and -- and not anything else.

11 MR. MICHAEL ANGEMEER: Yeah. Yes. If
12 -- if the team had met and they discussed our
13 particular RFP response and they had some questions or
14 some clarifications, it may be appropriate to reach
15 out to us to -- to get that information, but
16 otherwise, I -- I couldn't see a reason why there
17 would be a communication.

18 THE HONOURABLE FRANK MARROCCO: If --
19 if that had happened, would -- would you have expected
20 that the clarification would have been communicated to
21 the other bidders or not? I -- I'm genuinely trying
22 to understand the -- the culture that takes place, but
23 if -- if they had asked you for -- Veridian, for a
24 clarification and you gave it, would you have expected
25 that to be communicated to the others or not?

1 MR. MICHAEL ANGEMEER: No, because
2 under the -- the terms of the non-disclosure
3 agreement, anything that -- that pertained to our RFP
4 response would have been information that should be
5 between us and the strategic task team.

6 THE HONOURABLE FRANK MARROCCO: Thank
7 you.

8

9 CONTINUED BY MR. JOHN MATHER:

10 MR. JOHN MATHER: MR. Freeman, will
11 you --

12 MR. NEIL FREEMAN: I'll just add,
13 usually in an RFP document, there -- the -- the
14 question and answer process will be articulated and it
15 will either specify that if you ask questions about
16 this, let -- let's say the RFP document or a specific
17 aspect of the document, that your answers will be
18 shared with everyone. That is generally the case.

19 In some cases it might say that, you
20 know, it's up to the discretion of the, you know, KPMG
21 or -- or this -- as the agent for the Vendor or BLG,
22 you know, often was a -- agent for a vendor, that it
23 was up to them to decide whether to share it with
24 everybody or to share a -- a direct question had been
25 asked of the -- of the advisor.

1 THE HONOURABLE FRANK MARROCCO: All
2 right. Thank you.

3 But you're speaking of a situation
4 where you've asked the advisor a question as opposed
5 to --

6 MR. NEIL FREEMAN: True, correct.

7 THE HONOURABLE FRANK MARROCCO: -- the
8 -- okay.

9 MR. JOHN MATHER: I'm happy to
10 continue, Your Honour. I'm just looking at the time.
11 I'm -- I'm --

12 THE HONOURABLE FRANK MARROCCO: Well,
13 I guess we -- we tend to take a break around now for
14 five (5) or ten (10) minutes and then we'll resume.

15

16 --- Upon recessing at 11:04 a.m.

17 -- Upon commencing at 11:16 a.m.

18

19 CONTINUED BY MR. JOHN MATHER

20 MR. JOHN MATHER: I'm going to
21 continue walking through some documents, as we have
22 with two already.

23 The next document, can we pull up
24 TOC59012? So if we scroll down, this is an email from
25 Mr. Bonwick to Ed Houghton on September 14th, 2011,

1 and scroll up.

2 You see that it attaches a document
3 called PowerStream competitive analysis, and we'd like
4 to open the attachment, TOC59013.

5 MR. FREDERICK CHENOWETH: Your Honour,
6 if I may, just on a -- on a point of objection here.

7 During Inquiry counsel's introduction
8 of the -- prior to going to questioning with or cross-
9 examination with the witnesses, Mr. Mather suggested
10 that the information that he's sharing with them and
11 asking for them opinions on is information that was in
12 the hands of Mr. Bonwick and in the hands of
13 PowerStream.

14 And judicial counsel will know that I
15 submitted an inquiry a week ago asking for any
16 evidence that this document was ever shared with
17 PowerStream.

18 Subsequent response was that there is
19 no evidence that in fact it was ever shared with
20 PowerStream and so I would submit that counsel knows
21 or at this point in time there's been no evidence to
22 suggest otherwise, should not be suggesting that in
23 fact PowerStream at any time had this document in
24 their possession.

25 THE HONOURABLE FRANK MARROCCO: You --

1 you mean this memo addressed to Brian Bentz and John
2 Glicksman?

3 MR. FREDERICK CHENOWETH: Correct.

4 THE HONOURABLE FRANK MARROCCO: And
5 Dennis Nolan?

6 MR. FREDERICK CHENOWETH: Correct.

7 THE HONOURABLE FRANK MARROCCO: And
8 Mark Henderson --

9 MR. FREDERICK CHENOWETH: Correct.

10 THE HONOURABLE FRANK MARROCCO: -- at
11 PowerStream?

12 MR. FREDERICK CHENOWETH: Correct.

13 THE HONOURABLE FRANK MARROCCO: I
14 think that's an issue for me later on, I understand
15 your position.

16 MR. FREDERICK CHENOWETH: But in
17 fairness for the witnesses, the question was put to
18 them that this is in the possession of, and so it has
19 an impact on their answer, if in fact there's no
20 evidence to show that it ever was shared with the
21 people that the memo had been addressed to, then I
22 would submit that them giving evidence or comments on
23 a matter that hasn't been demonstrated will cause
24 confusion.

25 THE HONOURABLE FRANK MARROCCO: I -- I

1 don't think so, I think I have your position on
2 whether or not there's evidence that it was shared or
3 not. It -- it's addressed to whom it's addressed and
4 we'll have to decide later on who had it and who
5 didn't.

6 MR. PAUL BONWICK: Your Honour, if I
7 might just add a comment with respect to that, and I
8 may be inaccurate in this respect. I'm trying to
9 recall the evidence of Mr. Nolan yesterday, but as I
10 recall the evidence of Mr. Nolan, and it's evidence to
11 the contrary with respect to whether this was
12 delivered to PowerStream, his evidence was that --
13 elicited by Inquiry counsel, that he has -- that he
14 didn't receive it and has no information that it was
15 received.

16 THE HONOURABLE FRANK MARROCCO: Mr.
17 Mather?

18 MR. JOHN MATHER: Your Honour, I have
19 not questioned Mr. Nolan about this document at this
20 point in time.

21 MR. FREDERICK CHENOWETH: It's
22 possible my memory is inaccurate.

23 THE HONOURABLE FRANK MARROCCO: It
24 sounds like it.

25 MR. FREDERICK CHENOWETH: In that I've

1 read, in various statements alleged by the witness and
2 it may be that it'll unfold in a different way.

3 If I'm in error, then --

4 THE HONOURABLE FRANK MARROCCO: It may
5 unfold -- it may unfold exactly as -- as you think it
6 will too.

7 Now, I'll have to assess that after
8 it's unfolded, but I have your position that -- Mr.
9 Bonwick's position that there's no evidence that this
10 document addressed to Bentz, Glicksman, Henderson, and
11 Nolan was ever shared with them or anyone else at
12 PowerStream, and I'll decide that later on when I'm
13 trying to figure -- when I'm going through the
14 evidence.

15 In the meantime, continue asking the
16 questions.

17 MR. JOHN MATHER: Thank you, Your
18 Honour.

19

20 CONTINUED BY MR. JOHN MATHER

21 MR. JOHN MATHER: This is the
22 memorandum that was attached to the email we were
23 looking at, and if we scroll down, the opening
24 sentence to the -- the memorandum, sorry, that was
25 attached to the email, the opening sentence to the

1 memorandum says:

2 "Please review the following points
3 of interest as they relate to
4 presentations to date, as well as
5 profiled points of interest."

6 And just to -- because we touched it on
7 the break, this document was sent to Mr. Houghton on
8 September 14th, 2011, which we understand to be after
9 some of the presentations to the strategic task team.

10 Ms. Gaspar, I have some specific
11 questions for you with respect to the information
12 under the heading Hydro One.

13 If you need some time, please take it,
14 but if you could review those bullet points and my
15 question for you is: based on your understanding of
16 the presentation that Hydro One made to the strategic
17 task team, do these bullet points reflect what you
18 understood to be part of that presentation?

19 MS. KRISTINA GASPAR: So, I would have
20 helped put together the materials that would have went
21 into that presentation, despite the fact that I wa --
22 I was not the one presenting and I believe that they
23 are consistent with what would have been in our
24 presentation.

25 MR. JOHN MATHER: And did you

1 understand then that the information reflected in
2 these bullet points was confidential?

3 MS. KRISTINA GASPAR: Yes.

4 MR. JOHN MATHER: The last bullet
5 point says:

6 "While the Presenter demonstrated
7 integrity and in-depth knowledge of
8 the industry trends and more
9 particularly the south Georgian Bay
10 regions, the assessment committee
11 was not enamoured with the concept
12 or direction Hydro One presented."

13 We haven't heard evidence to date about
14 what is referenced to the -- what the assessment
15 committee means or who specifically is being referred
16 to there. But I would ask you whether you or anyone
17 at your company was made aware that anyone on the
18 Collus or Town side of the RFP process were not
19 enamoured with Hydro One's presentation, with the
20 concept or direction of Hydro One's presentation.

21 MS. KRISTINA GASPAR: I received no
22 feedback from anyone other than internal sources on
23 our presentation, which would have come from the
24 person who would have done the presenting and my
25 recollection is they said it went well.

1 MR. JOHN MATHER: So if we scroll down
2 I now have some questions for Mr. Angemeer.

3 So there's a heading that says Veridian
4 and I -- I understand that you've had an opportunity
5 earlier to review the bullet points, there's --
6 there's several of them, you can scroll through them
7 now.

8 But the question I have is whether
9 these bullet points reflect what Veridian presented to
10 the strategic task team in September 2011.

11 We can direct our court operator to
12 continue scrolling.

13

14 (BRIEF PAUSE)

15

16 MR. MICHAEL ANGEMEER: Could you
17 scroll, please?

18

19 (BRIEF PAUSE)

20

21 MR. MICHAEL ANGEMEER: Scroll again,
22 please.

23

24 (BRIEF PAUSE)

25

1 MR. MICHAEL ANGEMEER: Again.

2

3 (BRIEF PAUSE)

4

5 MR. MICHAEL ANGEMEER: Is that it?

6 MR. JOHN MATHER: Continue.

7 MR. MICHAEL ANGEMEER: Oh, more.

8

9 (BRIEF PAUSE)

10

11 MR. MICHAEL ANGEMEER: Scroll again,
12 please.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: So, the question is,
17 having reviewed these bullet points, does this -- do
18 these points reflect in your recollection the
19 information that Veridian presented to the Strategic
20 Task Team in September 2011?

21 MR. MICHAEL ANGEMEER: Ye -- yes.
22 Yes, they do.

23 MR. JOHN MATHER: And did you
24 understand the information in these bullet points to
25 be confidential?

1 MR. MICHAEL ANGEMEER: Yes.

2 MR. JOHN MATHER: If we could scroll
3 up higher to where it first says, "Veridian." Keep
4 going. The first bullet point says:

5 "Veridian made a very strong and
6 positive impression on the
7 assessment committee."

8 Are you aware of anyone on the
9 Strategic Task Team providing you or anyone at
10 Veridian that feedback?

11 MR. MICHAEL ANGEMEER: I'll go back to
12 my earlier testimony, that the -- you know, Ed -- Ed
13 Houghton may have indicated to me that it was a good
14 presentation, but that -- that's all I -- the only
15 recollection I have.

16 MR. JOHN MATHER: And now I have a
17 question for each of you with respect to this
18 document. With respect to your company, were you or
19 anyone at your company provided with information along
20 the lines that we see in here about the other bidders'
21 presentations at the Strategic Task Team?

22 I'll start with Mr. Angemeer.

23 MR. MICHAEL ANGEMEER: No.

24 MR. JOHN MATHER: Mr. Freeman?

25 MR. NEIL FREEMAN: No.

1 MR. JOHN MATHER: Ms. Gaspar?

2 MS. KRISTINA GASPAR: No. And I'll
3 add that, not only were we not provided feedback and
4 we did not expect to receive any feedback, but we were
5 not aware of who the other bidders were, nor did we
6 expect to be made aware of who the other bidders,
7 right.

8 We -- we had our guesses, but those
9 were strictly internal guesses.

10 MR. JOHN MATHER: Mr. Angemeer and Mr.
11 Freeman -- we'll go Mr. Angemeer first, and the Mr.
12 Freeman. Were you aware of who the other bidders were
13 in September 2011, at the time of the presentations?

14 MR. MICHAEL ANGEMEER: My recollection
15 is no, but it was a long time ago.

16 MR. JOHN MATHER: Mr. Freeman?

17 MR. NEIL FREEMAN: I -- I can't say
18 with absolute certainty. I do know that we were told
19 that it wa -- as were the others told, that it was a
20 select group of -- that rather than cast it to a wide
21 net, and so I -- I presumed that PowerStream was
22 obviously involved, and -- and Veridian and Hydro One,
23 but I couldn't be certain about that.

24 MR. JOHN MATHER: The next document
25 I'd like to look at is ALE412.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: This is an email
4 dated September 20th, 2011. It's from Mr. Bonwick to
5 John Glicksman at PowerStream copied to Brian Bentz,
6 Mark Henderson, and Dennis Nolan.

7 He opens by saying:

8 "In keeping with our discussion
9 yesterday, I would like to reaffirm
10 the initial feedback on the
11 PowerStream proposal. By all
12 accounts, our proposal was well
13 received as well as discussed in
14 very favourable terms."

15 If we go down, the next paragraph says:

16 "There was a great deal of focus on
17 the committee's desire to create a
18 partnership that provides
19 Collingwood with a 50 percent
20 ownership of the LDC.

21 This issue appears to be more
22 political than practical in terms of
23 control or value. They believe they
24 palatability is much greater from
25 the council perspective if they are

1 able to announce this type of
2 scenario rather than the perceived
3 loss of control and a less than 50
4 percent scenario.

5 I believe they are prepared to ask -
6 - acquiesce on issues like
7 PowerStream maintaining the chair
8 position and control of Board
9 provision, ensuring -- provision
10 ensuring required rights by
11 PowerStream as well as predetermined
12 shotgun value clause."

13 And then if we continue on, the -- not
14 the next paragraph, but the paragraph after that says:

15 "The assessment committee is meeting
16 next week for the purposes of a
17 strategic planning exercise in
18 relation to the RFP as well as post-
19 interview assessment of their wants
20 and needs.

21 This would provide the only
22 opportunity to shift the assessment
23 consid -- committee's focus on a 50
24 percent ownership stake, a
25 presentation by their KPMG

1 consultant, along with their CEO --
2 along with their CEO can spell out
3 the practical elements of supporting
4 a scenario whereby Collus owns less
5 than 50 percent of that."

6 The inquiry has not heard evidence yet
7 about this email from the sender or the recipients,
8 but it appears that it is reporting on considerations
9 that are happening with an -- an assessment committee
10 about -- about the possibility of a 50 per -- 50
11 percent partnership and how that will be pursued or
12 will it be pursued.

13 So, my question to each of you is, were
14 you or anyone at your company provided with
15 information about the STT's considerations regarding a
16 50/50 partnership prior to the RFP being issued on
17 October 4th, 2011? And I'll start with Mr. Angemeer.

18 MR. MICHAEL ANGEMEER: Even going back
19 to my earlier testimony, the -- I'm not sure of the --
20 the timing, but I believe we asked a question around
21 the 50 percent versus a hundred percent and told --
22 were told that we could not put a hundred percent
23 purchase into our bid, but, again, I'm not sure of the
24 timing.

25 There might be some documents that

1 reflect that.

2 MR. JOHN MATHER: Do you remember if
3 that question was posed after the RFP was issued or
4 before the RFP was issued?

5 MR. MICHAEL ANGEMEER: I don't -- I
6 don't recall, but it may be in the evidence that we've
7 submitted.

8 MR. JOHN MATHER: Mr. Freeman, the
9 same question with respect to Horizon.

10 MR. NEIL FREEMAN: So, I -- I -- if I
11 recall your question, is did we have prior knowledge
12 of the 50/50?

13 MR. JOHN MATHER: That's fair. And
14 maybe my question wasn't clear. It appears that
15 there's -- this email is discussing the assessment
16 committee's discussions about a 50 -- 50 percent
17 partnership and the basis on which it may or not
18 proceed with one (1) or whether there is opportunities
19 to consider something different.

20 Appreciating that we don't have
21 evidence on this, is that sort of information the sort
22 of information that you or someone at Horizon was made
23 aware of prior to the RFP being issued?

24 MR. NEIL FREEMAN: So, I -- I think
25 from the very beginning we -- we -- when -- when we

1 met with Mr. Muncaster and -- and Mr. Houghton in July
2 and it was spoken of us looking for a strategic
3 partner, possible RFP, that it -- it was a -- you
4 know, that it would be a 50/50 partnership.

5 I can't remember whether Mr. Houghton
6 spelled that out. I -- I think by the time of
7 September 18th, 20th, whenever the presenta -- 19th,
8 whenever the presentation was, that we -- we knew it
9 was 50 percent, but I -- but I -- I don't have
10 recollection.

11 I -- not until seeing this document
12 here had I ever heard, nor thought there would be a
13 consideration of greater than 50 percent because of
14 the emphasis that the Town had -- had provided to us,
15 maybe Mr. Houghton had provided to us, that it was --
16 you know, 50 percent was -- was -- would be sort of
17 like -- no -- no way to go bel -- for the Town to go
18 below 50 percent.

19 MR. JOHN MATHER: Ms. Gaspar, the same
20 question to you with respect to Hydro One.

21 MS. KRISTINA GASPAR: I -- I had no
22 knowledge of this.

23 MR. JOHN MATHER: And when you say,
24 "This," are you referring to the specific email?

25 MS. KRISTINA GASPAR: The contents of

1 the email.

2 MR. JOHN MATHER: And by that -- I --
3 I believe my question, I just want to make sure I'm
4 clear, is did you have any information, or did Hydro
5 One have information, about how the assessment
6 committee, as referred to here, or -- or anyone at
7 Collus or the Town were con -- approaching or cons --
8 the factors they were weighing when it came to a 50
9 percent partnership?

10 MS. KRISTINA GASPAR: Not that I'm
11 aware of. Our -- our information with respect to what
12 they were looking for would have come strictly from
13 the RFP document. And that's the basis on which the
14 valuation team, my team, was putting together our bid
15 in -- in its entirety.

16 And we were really picking at the RFP
17 document with a fine-tooth comb to try and understand
18 what was being asked.

19 MR. JOHN MATHER: So, one (1) more
20 question about this document for Mr. Freeman. If you
21 look down, there's a paragraph that starts with,
22 "Irrespective of the committee's buy-in." Do you see
23 that?

24 MR. NEIL FREEMAN: Yes.

25 MR. JOHN MATHER: Okay. So:

1 "Irrespective of the committee's
2 buy-in or reluctance on this issue,
3 the municipal council retains final
4 authority. And it is in this regard
5 we must remain mindful that at least
6 one (1) of our competitors [Horizon]
7 will submit a proposal providing a
8 50 percent ownership scenario."

9 At this point in time, September 20th,
10 2011, do you know if Horizon had turned its mind to
11 whether or not it was prepared to submit a bid with a
12 50 percent ownership scenario?

13 MR. NEIL FREEMAN: I -- I think our
14 point was that we wouldn't do anything less than
15 equal. We -- we would have preferred -- you know,
16 have the majority.

17 But having -- the key issue in -- when
18 you do a merger and what we struggled with was -- even
19 with the 50/50 was that you're putting together --
20 you're putting resources into a company and then not
21 having the ability to make sure that the company is
22 run in a way that's going to earn you the return that
23 you -- you would like to see.

24 And so, you know, with 50/50, at least
25 there was -- you were on equal footing. Having -- we

1 wouldn't have done less than 50/50.

2 MR. JOHN MATHER: And was the fact
3 that Horizon was only going to do 50/50 or was not
4 prepared to do less than that, was that something that
5 had been communicated to the Strategic Task Team in
6 the presentation to them in September to your
7 recollection?

8 MR. NEIL FREEMAN: I don't recall
9 anything specifically, but I -- I think in the -- in
10 the meeting if we had of been asked, we would have
11 said we would.

12 MR. JOHN MATHER: On this point, I
13 have a question for all of you. At the time, would
14 you -- was it your understanding that you company
15 would have preferred to have had the opportunity to
16 bid on an interest greater than 50 percent, including
17 a hundred percent? I'll start with Mr. Angemeer.

18 MR. MICHAEL ANGEMEER: Yes. We --
19 again, we asked the question whether that was
20 possible, and we were told no.

21 We felt that at 50/50, as Mr. Freeman
22 said, it may difficult to -- to get the synergies that
23 were -- would be required to make the transaction
24 work. And I -- that was part of the reason for our
25 bid being, I think, relatively low.

1 So we would have preferred a higher
2 percentage where we would have had more influence over
3 the -- the outcome in terms of the transaction and
4 the -- and the results. And that would have ensured
5 that the -- the modeling that we did for the RFP
6 response was -- would be -- there'd be less risk of
7 not -- not achieving that result.

8 MR. JOHN MATHER: Mr. Freeman, beyond
9 what you've already said about your analysis of the
10 50/50, I take it from your answer Horizon would have
11 preferred to bid for more if they could have.

12 MR. NEIL FREEMAN: That -- correct --
13 and that the other opportunity or alternative was
14 that -- that Collus could have had 50 or even
15 60 percent ownership if there was a services company
16 that essentially ran the company and had, you know,
17 objectives and we had a majority of basically the
18 operating company. So there would be an asset owner
19 and then essentially a service provider.

20 As long as that you -- you could
21 control how the performance of the company and -- and
22 make sure that the company was finding efficiencies
23 and being run in a way that -- that would essentially
24 pay back the shareholders or earn the return for the
25 shareholders.

1 MR. JOHN MATHER: Ms. Gaspar, to your
2 understanding, would Hydro One have preferred to bid
3 for more than 50 percent?

4 MS. KRISTINA GASPAR: Hydro One's
5 preference was always to acquire utilities in their
6 entirety, so a hundred percent. A hundred percent
7 would have been the ideal that we would have -- we
8 would have liked to see.

9 So when we saw up to 50 percent, you
10 know, it's a little disappointing, but we're -- we
11 would have been happy to bid on -- on anything to --
12 any -- and when I say "anything," I mean any -- any
13 percentage to help with growth.

14 MR. JOHN MATHER: So the next document
15 I would like to pull up is ALE50216.

16

17 (BRIEF PAUSE)

18

19 MR. JOHN MATHER: So these are
20 handwritten notes which you -- don't worry. I'm not
21 going to ask you to decipher. And if we scroll
22 down -- can you just scroll to the next page.

23 This is the transcript of the notes
24 that we've been provided. The Inquiry has received an
25 affidavit from Robert Hull. Robert Hull was a partner

1 at Gowlings, and Gowlings represented PowerStream with
2 respect to the RFP and the subsequent transaction.

3 And the evidence that he provided was
4 that he had conversation with David McFadden, who was
5 his partner at Gowlings, on September 28th, 2011. And
6 Mr. McFadden was also the independent director of
7 Collus Power, the LDC.

8 And Mr. Hull's evidence is that these
9 are transcripts -- I'm sorry -- this is a
10 transcription of the notes he took during this call
11 about information that Mr. McFadden provided him
12 regarding the RFP process. To orient yourself in
13 time, the RFP is issued on October 4th, 2011, so it's
14 before that.

15 Take a moment -- looking at these
16 notes -- I'm appreciating that all you have is these
17 notes. I'm going to ask some specific questions. The
18 bottom note says: "Other bidders seem okay with
19 50/50."

20 At this point in time, my question for
21 each of you is whether or not your company had an
22 understanding -- or you or anyone in your company had
23 an understanding of what the other bidders -- how the
24 other bidders were viewing a potential 50/50
25 partnership? Mr. Angemeer?

1 MR. MICHAEL ANGEMEER: I don't believe
2 so, no.

3 MR. JOHN MATHER: Ms. Gaspar?

4 MS. KRISTINA GASPAR: I had no
5 knowledge of how anyone was viewing any of the other
6 bids.

7 MR. JOHN MATHER: Mr. Freeman?

8 MR. NEIL FREEMAN: If I may just ask
9 one question first. Sorry. I don't understand who
10 Bob Hull is in relation to David McFadden.

11 MR. JOHN MATHER: So the evidence is
12 that Mr. Hull is a partner at Gowlings --

13 MR. NEIL FREEMAN: Okay.

14 MR. JOHN MATHER: at the time -- now
15 and at the time.

16 MR. NEIL FREEMAN: Right.

17 MR. JOHN MATHER: At the time,
18 Mr. McFadden was also a partner at Gowlings. But
19 Mr. McFadden, at the same time, was also a member of
20 the Collus Power Board of Directors.

21 MR. NEIL FREEMAN: And was Mr. Hull
22 acting for anyone, or he just --

23 MR. JOHN MATHER: He was representing
24 PowerStream in the RFP in the transaction.

25 MR. NEIL FREEMAN: Okay. That's what

1 I didn't understand. Sorry.

2 MR. JOHN MATHER: That's okay.

3 MR. NEIL FREEMAN: Yeah. I had no
4 knowledge that -- of what the other bidders, but it
5 would be -- it was sort of the presumption if you
6 wanted to be competitive, but I had no knowledge of
7 that.

8 MR. JOHN MATHER: So another point
9 here, it says: "Expected dates 4th and
10 November 16th." We know from other evidence that the
11 RFP was issued on October the 4th, and we know that
12 the deadline for submissions was November 16th.

13 At this point in time, September 28th,
14 2011, did you or anyone at your company know on what
15 date the RFP was going to be issued or have any
16 indication of what date the RFP was going to be
17 issued? Starting with Mr. Angemeer.

18 MR. MICHAEL ANGEMEER: I don't recall.

19 MR. JOHN MATHER: Mr. Freeman?

20 MR. NEIL FREEMAN: We only knew it was
21 coming up, and it would be -- it would be soon.

22 MR. JOHN MATHER: Ms. Gaspar?

23 MS. KRISTINA GASPAR: Similarly, I had
24 no knowledge of the specific dates, but we -- we just
25 expected it would be soon.

1 MR. JOHN MATHER: And the same
2 question but with respect to the time frame for
3 responding to the RFP, was that something you had any
4 information about prior to the RFP being issued on
5 October 4th, Mr. Angemeer?

6 MR. MICHAEL ANGEMEER: I don't recall
7 that.

8 And from the other question -- yeah --
9 I knew that it was -- it was coming out soon as well,
10 but I -- I don't think I had any dates. But I'm not
11 sure. It was a long time ago.

12 MR. JOHN MATHER: Mr. Freeman?

13 MR. NEIL FREEMAN: I didn't -- we
14 didn't know. Sorry.

15 MR. JOHN MATHER: Ms. Gaspar?

16 MS. KRISTINA GASPAR: Yeah. My
17 knowledge was limited to what was in the RFP itself,
18 and so I would have -- we would have found out the
19 dates upon receiving the RFP.

20 MR. JOHN MATHER: The last bullet that
21 I'm going to ask you about, it says: "Likely best not
22 to do in the alternative."

23 Again, I appreciate that this is just a
24 note, but with that note in mind, I'm going to ask if,
25 at that point in time, you had received any --

1 Mr. Angemeer said that they were at one point, and
2 I'll help you find the document reference -- it's our
3 understanding that Veridian made the request about an
4 alternative bid after the RFP was issued.

5 But my question for you is at this
6 point in time before the RFP is issued, were you
7 aware -- provided with any information about whether
8 or not there'd be opportunities for alternative
9 bids in terms of what level of ownership interest
10 would be -- would be bid on? Starting with
11 Mr. Angemeer.

12 MR. MICHAEL ANGEMEER: I don't recall
13 that, no.

14 MR. JOHN MATHER: Mr. Freeman?

15 MR. NEIL FREEMAN: No.

16 MR. JOHN MATHER: Ms. Gaspar?

17 MS. KRISTINA GASPAR: I don't recall
18 receiving any information about the details prior to
19 the bid.

20 MR. JOHN MATHER: Okay. The next
21 document I'd like to look at is ALE488.

22

23 (BRIEF PAUSE)

24

25 MR. JOHN MATHER: This is a memorandum

1 that we understand that the covering email indicates
2 was sent by Mr. Bonwick to individuals at PowerStream.

3 If we scroll down -- sorry -- and
4 scroll up, it doesn't say here, but the covering email
5 says the date of this memorandum is October 5th, 2011,
6 which is the day after the RFP was issued and was
7 available to all the bidders. And if we scroll down,
8 the heading Issues Clarification and Management.

9 Mr. Angemeer, if you look at the first
10 bullet point under Issue Clarification and Management,
11 it says:

12 "Working relationship from a support
13 perspective IBW versus Power workers
14 provide example where existing
15 private sector companies provide
16 support staff, a redaction, in a
17 cooperative working environment."

18 And then it says:

19 "Veridian emphasized synergies with
20 same union."

21 Was -- was that someth -- the sentence
22 "Veridian emphasized energies -- emphasized synergies
23 with same union", was that concept presented to the
24 strategic task team in Veridian's presentation in
25 September 2011?

1 MR. MICHAEL ANGEMEER: From memory
2 then the previous document that you had me review with
3 the notes from the presentation, it was -- it was in
4 there and I -- I haven't reviewed our presentation
5 recently, but I -- I certainly believe that we would
6 have emphasized that because that's -- that's
7 something that's a benefit if the union would be the
8 same as -- as the union at Collus.

9 MR. JOHN MATHER: Was that something
10 you understood to be confidential?

11 MR. MICHAEL ANGEMEER: Yes. The fact
12 that Veridian and Collus had the same union was likely
13 not confidential because I'm sure the IBW has a list
14 of the companies that they -- they deal with.

15 But the context by which it was in our
16 presentation, and we had emphasized it as a synergy,
17 that would be confidential.

18 MR. JOHN MATHER: So the next document
19 I'd like to look at is ALE819.

20

21 (BRIEF PAUSE)

22

23 MR. JOHN MATHER: So this is a draft
24 memorandum dated November 6th, 2011. It's to Brian
25 Bentz at PowerStream from Mr. Glicksman and Daniel

1 Miller, at least that's what's indicated, and there's
2 also a reference to a John McNeil at BDR who, it's our
3 understanding, PowerStream used as a consultant with
4 respect to the RFP. If -- and you can see the re
5 line, his evaluation of Collus Power/purchase of 50
6 percent equity.

7 If we could scroll -- scroll down, we
8 see there's a reference to a Method I, which sets out
9 some financial information. And scrolling down
10 further, there's then a Method II.

11 And underneath the Method II heading it
12 says:

13 "It has been suggested to us (by
14 Paul Bonwick) that we present the
15 purchase price in 'the best possible
16 light', which follows the approach
17 (apparently) taken by KPMG. This
18 involves being not so explicit about
19 the recapitalization (although we
20 would expect 50 percent) to get 50
21 percent of the special dividend
22 around or shortly after closing."

23 This would be a question for all of
24 you. Were you or anyone at your company provided with
25 information about how KPMG may have valued Collus?

1 Starting with Mr. Angemeer.

2 MR. MICHAEL ANGEMEER: I -- I don't
3 recall that we were, no.

4 MR. JOHN MATHER: Mr. Freeman?

5 MR. NEIL FREEMAN: I had no -- no, we
6 had no knowledge of this to my recollection.

7 MS. KRISTINA GASPAR: I had no
8 knowledge and to the best of my knowledge, nor did
9 anyone else.

10 MR. JOHN MATHER: Next document I
11 would like to look at is ALE916.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: If we can scroll
16 down to the bottom of the email chain, we see that Mr.
17 Fagen is -- who is at PowerStream is sending the
18 latest drafts of the RFP to certain individuals at
19 PowerStream, and as well as Mr. Bonwick.

20 And then if we scroll up, Mr. Bonwick
21 writes back to Mr. Fagen, copying Mr. Nolan and Mr.
22 Glicksman saying:

23 "Hi Eric, I sent some recommended
24 changes to Dennis today regarding
25 the information services section.

1 While the offer of back office
2 support will become a reality, I
3 highly recommend removing it at this
4 time. A general offer of our
5 support will be more warmly received
6 than telling them what we will
7 provide. The senior person for this
8 department is presently very
9 supportive. I don't want us to lose
10 that support."

11 So question for all of you, were you or
12 to your knowledge anyone at your company at any point
13 provided or made aware of any information about what
14 level of support any senior person at Collus had for
15 any particular part of the RFP responses, starting
16 with Mr. Angemeer?

17 MR. MICHAEL ANGEMEER: I don't recall
18 that, no.

19 MR. JOHN MATHER: Mr. Freeman?

20 MR. NEIL FREEMAN: No.

21 MR. JOHN MATHER: Ms. Gaspar?

22 MS. KRISTINA GASPAR: No, our -- our --
23 - our feedback and knowledge was limited to the
24 questions we provided to KPMG and their -- their
25 responses to those.

1 MR. JOHN MATHER: The next document is
2 TOC66378. If we can scroll down. So we see that this
3 is an email from Mr. Houghton, scrolling up, to Mr.
4 Bonwick and there's an attachment. And if we open the
5 attachment, which is TOC66379, and the attachment to
6 the email is a PowerPoint presentation called Collus
7 Power Corp. Communication Strategy October 26th, 2011.

8 If we could just scroll through the
9 first couple of slides. So our understanding is this
10 is a presen -- presentation that sets out some of the
11 considerations that Collus had about how to
12 communicate the RFP and potential sale.

13 Same question for everyone, did you or
14 anyone at your company, to your knowledge, ever
15 receive or have information about Collus'
16 communication strategy?

17 And before you answer the question, the
18 documents indicate that the date that the RFP was
19 publically announced that it was ongoing was November
20 18th, 2011. So my question is prior to that date.

21 So were you -- did you or anyone have
22 any information about the communication strategy for
23 Collus prior to November 18th, 2011? Starting with
24 Mr. Angemeer.

25 MR. MICHAEL ANGEMEER: I don't recall

1 that we did, no.

2 MR. JOHN MATHER: Mr. Freeman?

3 MR. NEIL FREEMAN: I don't recall.

4 MR. JOHN MATHER: Ms. Gaspar?

5 MS. KRISTINA GASPAR: No.

6 MR. JOHN MATHER: And the final
7 document I'd like to take you to is ALE1078.

8

9 (BRIEF PAUSE)

10

11 MR. JOHN MATHER: So if we scroll
12 down, this is an email from Mr. Glicksman to
13 PowerStream to other individuals at PowerStream. The
14 date of the email is November 28th, 2011. To point
15 you in time, the proposals in response to the RFP were
16 submitted on November 16th, 2011.

17 If we could scroll up. There's another
18 email from Mr. Glicksman to individuals at
19 PowerStream, and it says -- this one is addressed to
20 Mark Henderson and he -- Mr. Glicksman says:

21 "Based on a response I got from
22 Brian, I think you and I will be
23 accompanying him to a meeting in
24 Collingwood Thursday morning. Brian
25 will give us more details regarding

1 this tomorrow."

2 Then it says:

3 "Based on my discussions with Paul
4 this evening, I understand that others
5 were more detailed with respect to the
6 type and costs of operational services
7 they would offer Collus Hydro."

8 Same question for each of you, prior to
9 being advised that you were not the preferred
10 proponent, were you given any information about the
11 level of detail in respect of any of the other
12 bidder's proposals? Starting with Mr. Angemeer.

13 MR. MICHAEL ANGEMEER: I -- I don't
14 believe we were, no.

15 MR. JOHN MATHER: Ms. Gaspar?

16 MS. KRISTINA GASPAR: I had no
17 knowledge of anything anyone else was doing.

18 MR. NEIL FREEMAN: No.

19 MR. JOHN MATHER: You understand that
20 what was in your proposals would not -- would be
21 confidential as between -- as between the other people
22 submitting proposals? Starting with Mr. Angemeer.

23 MR. MICHAEL ANGEMEER: Yes.

24 MR. JOHN MATHER: Mr. Freeman?

25 MR. NEIL FREEMAN: Yes.

1 MR. JOHN MATHER: Ms. Gaspar?

2 MS. KRISTINA GASPAR: Yes.

3 MR. JOHN MATHER: So having looked at
4 a -- at a series of documents at this point and seeing
5 information that was either -- that either PowerStream
6 had or in certain instances that Mr. Bonwick had,
7 including information about -- about what an
8 assessment committee was thinking, about information
9 about what the bidders had presented at the strategic
10 task team presentations, information about
11 communication strategy, and information about other
12 bidders bids themselves, had you been aware that
13 either PowerStream or a consultant of PowerStream,
14 being Mr. Bonwick, had this information, is it your
15 expectation that your company would have participated
16 in the RFP or would have done anything differently
17 with respect to the RFP, beginning with Mr. Angemeer?

18 MR. MICHAEL ANGEMEER: Just for
19 clarification, so if we would have found this out at -
20 - at that time?

21 MR. JOHN MATHER: If you knew that
22 this was happening during -- this -- this was
23 happening during the process, yes.

24 MR. MICHAEL ANGEMEER: We -- we likely
25 would have consulted legal counsel and probably looked

1 at one (1) of three (3) possibilities. One (1) would
2 be withdrawing from the RFP. One (1) would be putting
3 a request in to make sure that all information was
4 being shared equally and -- and/or asking legal
5 counsel whether we have any grounds for any -- any
6 damages.

7 MR. JOHN MATHER: And I appreciate
8 it's a hypothetical, but would -- would you expect you
9 would have continued to participate in the RFP?

10 MR. MICHAEL ANGEMEER: Likely --
11 likely not.

12 MR. JOHN MATHER: And why not?

13 MR. MICHAEL ANGEMEER: I guess, in the
14 way that you described it and tur -- and what we've
15 seen here, there's -- there's a lot of information
16 that had been shared. And I don't know if -- if now
17 turning around and sharing all the information with
18 everybody afterwards would -- would fix the issue.

19 MR. JOHN MATHER: Mr. Freeman, the
20 same question with respect to Hy -- Horizon. If you
21 or others at Horizon had known about the information
22 that either PowerStream or Mr. Bonwick was receiving
23 that we've seen in the documents and to the extent
24 they're reflected in the documents, would you expect
25 Horizon would have continued to participate in the

1 RFP?

2 MR. NEIL FREEMAN: I would have
3 expected we would have discussed with the -- within
4 the working group of -- on how best to proceed. The -
5 - I can tell you that Horizon's board, which did not
6 have municipal politicians, was -- was mostly -- was
7 almost exclusively businesspeople.

8 And the working group included a
9 retired KPMG partner. And I think that we would have
10 looked to his guidance because I think he would have,
11 with his fifty (50), forty (40) years of transaction
12 experience, maybe provided us some guidance.

13 And maybe he might have spoken directly
14 to KPMG and either said fix up the process or start it
15 over or -- or would just -- or we're walking. And it
16 -- it might have been -- so there was an option that
17 it might have been corrected or, you know, the -- the
18 path -- you know, the dates adjusted and -- and the
19 process restarted or -- or this type of thing.

20 But I don't think that the -- the
21 Horizon Board took governance extremely seriously.
22 And, you know, we off -- we published the material,
23 you know, what the -- the expectations of Board
24 members and how the corporation may be run and, you
25 know, followed the Canadian Securities administrator

1 sort of rules, and we pub -- and we didn't take it
2 lightly.

3 And so, the -- the notion that we would
4 have participated in something that, you know, we
5 didn't have faith in would -- we -- we wouldn't just -
6 - we probably wouldn't have gone along with it. It
7 might have depended how close we were to the end and -
8 - and whether we -- we just let it go.

9 And the -- the other challenge I'll add
10 is that the sector, you know, is -- is kind of a club
11 and there's a lot of sharing of -- of information, and
12 so you -- you -- we always had to be cautious about,
13 you know, on the one (1) hand, how our reputation
14 might be affected by participating but also by not
15 participating.

16 And so, if we continued to participate,
17 it wouldn't have been that we were enthusiastic about
18 it, it would have been -- was just get through this
19 and hope -- hope that these processes are corrected in
20 the future.

21 MR. JOHN MATHER: So, I take it from
22 your answer that, in retrospect, you have concerns
23 about what's reflected or what may be reflected in the
24 -- in the documents we looked at.

25 What were those concerns?

1 MR. NEIL FREEMAN: Well, that the --
2 that -- that the -- the bidders were being brought in
3 possibly to legitimate a process that was
4 predetermined.

5 MR. JOHN MATHER: Sorry, can you
6 expand on that?

7 MR. NEIL FREEMAN: Well, the notion
8 that -- that -- you know, I can tell you that Horizon,
9 we took our procurement and these types of things
10 extremely seriously in terms of -- of having
11 procurement processes.

12 And, frankly, when I worked at Hydro
13 One, it was a similar approach, is that, if you don't
14 have a procurement process that is -- is beyond
15 question, that you basically lose confidence in the
16 marketplace and you -- you won't get the best prices
17 for -- from your suppliers.

18 The, you know, good suppliers will --
19 will sort of stop bidding if they don't feel that
20 they're -- they're getting a fair shake.

21 And an RFP process, from our
22 perspective, would be the same approach, that -- that
23 it's -- it's important that everybody feel like they -
24 - they -- that everybody have a real chance.

25 And the truth of why that's so

1 important is because you never know what could really
2 come out of the process, is that, you know, if -- if
3 there had been a full examination and maybe a metrics-
4 based examination about, you know, who's the -- who --
5 who can provide, you know, the right cost structure to
6 -- to make Collus perform, to make Collus, you know, a
7 regional utility that would have the cost structure
8 that would actually be successful with mergers of
9 other utilities, these types of things, we thought we
10 had a very good story.

11 And -- and so, that -- the sort of
12 concern would be that, if -- if it was all sort of a
13 predetermined conclusion that, you know, we either --
14 we wouldn't -- probably wouldn't have participated to
15 save ourselves the embarrassment.

16 MR. JOHN MATHER: Ms. Gaspar, the same
17 question to you. Having reviewed some of the -- the
18 documents that we've gone through, would you expect
19 that would have changed how Hydro One approached the
20 RFP or whether they would have continued to
21 participate in the RFP?

22 MS. KRISTINA GASPAR: So, I -- I can't
23 speak to what our Board of Directors and CEO and legal
24 -- chief legal counsel would have ultimately
25 determined to do; however, I would be shocked if the -

1 - their determination was to do nothing.

2 You -- you go into a process assuming -
3 - assuming that the process itself is fair and
4 rigorous and that -- that there is equal information
5 across the board being shared with -- with all the
6 bidders.

7 And so, which course of action -- and I
8 -- I believe my -- my co-panel asked -- Veridian
9 outlined a few options, but, you know, I would have
10 been shocked if -- if ultimately our -- our board
11 decided to -- to continue.

12 MR. JOHN MATHER: And a final question
13 for each of you. And then I'll have some specific
14 questions for Ms. Gaspar relating to Hydro One's
15 financial submissions.

16 Could you give us a sense of how much
17 it cost your company or what level of resources were
18 involved in participating in the RFP, beginning with
19 Mr. Angemeer?

20 MR. MICHAEL ANGEMEER: Ver -- at
21 Veridian, we didn't have a separate charge number
22 allocated for this work. But I've had conversations
23 with the -- the manager in charge of the financial
24 analysis.

25 And based on her assessment of the time

1 that she spent on the modelling, and then the time
2 that I spent, and then the time that our CFO spent,
3 and we brought a number of people to the -- to the
4 presentation, including a mayor, we -- we estimate
5 around thirty thousand dollars (\$30,000) was -- was
6 put into the -- the whole process right from the first
7 meeting with Mr. Houghton and Mr. Muncaster to the RFP
8 response.

9 And that number does not include
10 anything to do with the inquiry or -- or legal fees
11 resulting from the inquiry.

12 MR. JOHN MATHER: Mr. Freeman, the
13 same question with respect to Horizon.

14 MR. NEIL FREEMAN: So, at Horizon, we
15 used a third-party financial advisor to do the
16 valuation and the financial analysis, and it was --
17 you know, we had strong financial resources within the
18 company that -- that, you know, did the indicative
19 analysis that's -- that's in the record.

20 We hired PwC to -- to do the analysis,
21 if I recall correctly. And -- and I -- I believe that
22 alone cost more than fifty thousand dollars (\$50,000).
23 I paid that bill and -- from my own -- from my budget.
24 And so, that's why I've got that recollection.

25 But I do recall about the process, too,

1 is that the -- the cost was actually -- the -- the
2 work that PwC had to do was -- and this comes up in
3 some of the evidence, was -- was challenging for the
4 financial valuator because the data room wasn't
5 strong.

6 The -- the history that you would
7 normally expect when a utility is -- is, you know,
8 essentially on the market was there. And so, the --
9 the work that was required was actually more onerous
10 than it might have been had all the information been
11 available.

12 I do recall as well -- and I don't have
13 a perfect certainty on this -- but that the -- the
14 issue that has come up about which corporation to buy
15 and, you know, headed up at the holding company or
16 could it be at the LDC, we sort of knew internally
17 after receiving the RFP document that -- legally that
18 it would likely run into trouble with the tax rules
19 for the sale of utilities in Ontario.

20 And so I remember a lot of scurrying of
21 activity with BLG who was our -- our legal counsel but
22 in particular their tax experts on, you know, the
23 consequences of the transaction. And I think this led
24 to conversations that the CEO of Horizon might have
25 had, you know, with -- as we were preparing the RFP

1 about, you know, the holding company -- I can't
2 remember, you know, exactly what happened.

3 But the issue was that you couldn't buy
4 the LDC without paying a significant tax penalty, and
5 therefore, there was a lot of, like, expensive legal
6 help required simply to understand what we were
7 bidding on.

8 And -- and I estimate that that was
9 probably \$20,000 or 10 to \$20,000, so 50 for
10 financial. I haven't counted up the internal time,
11 but we -- you know, these things are not like light
12 exercise as they involve a lot of staff time to
13 prepare these -- the documentation, make sure it's
14 correct.

15 There's obviously the printing costs,
16 too, and there's multiple copies that had be printed.
17 And that probably could have cost a thousand dollars
18 itself. Right?

19 And so it's -- it's not, you know --
20 it's not an insignificant amount of money. Yeah.

21 MR. JOHN MATHER: You mentioned
22 information lacking in the data room or otherwise.

23 MR. NEIL FREEMAN: Right.

24 MR. JOHN MATHER: Do you recall if
25 Horizon made any requests of Collus or the Town to

1 provide information they were looking for or they
2 would prefer to have?

3 MR. NEIL FREEMAN: I think we -- we
4 asked KPMG to allow PWC to speak directly with KPMG is
5 my recollection.

6 MR. JOHN MATHER: Do you recall the
7 outcome of that request?

8 MR. NEIL FREEMAN: What I remember is
9 is that the -- in general, the response was there's
10 not much there. You know, it's -- this is what they
11 have, you know, do your best, kind of thing.

12 MR. JOHN MATHER: Sorry. Who did that
13 response come from?

14 MR. NEIL FREEMAN: From KPMG to PWC
15 and then to Horizon was my recollection.

16 MR. JOHN MATHER: Mr. Angemeer, before
17 we get to Ms. Gaspar, Mr. Freeman mentioned that
18 Horizon retained, you know, a financial advisor and
19 legal counsel as part of preparing the RFP.

20 Do you recall if Veridian retained any
21 outside advisors with respect to the RFP?

22 MR. MICHAEL ANGEMEER: I believe the
23 analysis was done by our internal team in terms of the
24 modeling. So the cost that I indicated before were
25 all internal costs -- the \$30,000 -- and that's an

1 estimate or a rough estimate.

2 But there may be additional legal costs
3 that we might have incurred similar to Horizon in
4 terms of asking some of those questions, but I can't
5 be certain.

6 MR. JOHN MATHER: Okay. And
7 Ms. Gaspar, same question that I started with
8 Mr. Angemeer and Mr. Freeman. Do you have a sense of
9 how much it cost Hydro One to participate in the RFP?

10 MS. KRISTINA GASPAR: I really have no
11 idea of what the number would be, but it was a
12 significant undertaking. We had a full due diligence
13 team. We had a valuation team. We had a external
14 advisors. You know, it was commented as some point
15 that we had more -- more people looking at it than
16 were employed entirely at Collus with all of their
17 organizations.

18 But you know, such -- if you want to do
19 a robust process and really understand what -- what
20 you're looking at and all of the risks and issues
21 involved with an acquisition, it kind of doesn't
22 really -- your efforts doesn't vary based on the size
23 of the -- of the thing you're buying. Right?

24 You still have to go through the same
25 documents regardless if it's -- there's

1 eight (8) zeros behind a number or one (1) zero behind
2 a number. It's the same -- it's the same rigour that
3 has to be applied to every acquisition, and so it was
4 a significant undertaking.

5 MR. JOHN MATHER: So I now have some
6 specific questions for Ms. Gaspar regarding the
7 Hydro One financials, so I ask Mr. Freeman and
8 Mr. Angemeer just to be patient as we walk through
9 that.

10 If we could open summary document 14
11 and go to paragraph 6.

12

13 (BRIEF PAUSE)

14

15 MR. JOHN MATHER: It's just the next
16 paragraph. So unfortunately, this is broken across
17 two (2) pages, Ms. Gaspar, but this is a summary of
18 the financial component of Hydro One's bid.

19 It sets out that Hydro One offered a
20 cash payment of 13.6 million for 50 percent of the
21 shares of Collus Power, a repayment of \$1.7 million
22 loan that Collus Power was owed to the Town, and then
23 finally -- if we scroll down -- a recapitalization
24 process whereby there'd be a dividend of \$6.4 million
25 that would be equally split between the Town and

1 Hydro One because, as I understand it, the dividend
2 would be declared after the partnership. So there
3 would be two (2) shareholders at that point.

4 To your recollection, is that an
5 accurate summary of the main components of Hydro One's
6 financial bid?

7 MS. KRISTINA GASPAR: Yes.

8 MR. JOHN MATHER: And I've done the
9 math, and you can confirm it. If you add 13.6 to 1.7
10 to 3.2, you get about 18.5. Are you -- do you get
11 18.5? Does that sound correct?

12 MS. KRISTINA GASPAR: It does.

13 MR. JOHN MATHER: So the evidence in
14 the -- that we have indicates that KPMG made certain
15 adjustments to Hydro One's financial bid after it was
16 submitted. As a starting point, were you or anyone at
17 Hydro One, to your knowledge, aware that KPMG was
18 making adjustments to Hydro One's financial bid?

19 MS. KRISTINA GASPAR: No.

20 MR. JOHN MATHER: So if we could pull
21 CPS2688 -- sorry -- 2668.

22

23 (BRIEF PAUSE)

24

25 MR. JOHN MATHER: And if we can zoom

1 so we can get a sense of this. So it's our
2 understanding, based on the evidence, that this is a
3 spreadsheet that was prepared by KPMG in which it
4 analyzed each of the financial bids of Hydro One,
5 PowerStream, Horizon, and Veridian.

6 And it's our understanding that -- or
7 at least the indication in the evidence is that this
8 is the analysis that was presented to the Strategic
9 Task Team on November 28th, 2011. And on that date,
10 the evidence indicates that's when the Strategic Task
11 Team ranked or scored the bidder's financial bids.

12 So if we look at the Hydro One column,
13 we see the figures that we saw earlier. We see the
14 13.6 for share purchase price. We see a reference to
15 the recapitalization dividend, the 3.2, going each
16 way. And then we see the 1.7 million to repay
17 shareholder loan.

18 If we scroll down, it then says "total
19 cash considerations to the Town of Collingwood"
20 14.398 million in cash, which is the three (3) figures
21 we've looked at -- the 13.6, the 3.2, and the 1.71 --
22 subtracting 4.112 million of unassumed liabilities.

23 Do you have any sense of how KPMG
24 determined there should be a subtraction of
25 4.112 million of unassumed liabilities?

1 MS. KRISTINA GASPAR: I have no idea.

2 MR. JOHN MATHER: Do you have any --

3 MS. KRISTINA GASPAR: Further, I
4 would -- I would say if there's deductions to be made,
5 I would assume that it's because they didn't disclose
6 a piece of information or they didn't have time to
7 disclose a piece of information during the -- during
8 the process. And my assumption would be that if
9 there's a deduction, it would be made across the board
10 to everybody's bid.

11 MR. JOHN MATHER: Are you aware of any
12 point that anyone at KPMG or anyone at Collus
13 approaching you or someone at Hydro One to discuss
14 certain adjustments they were intending to make to
15 Hydro One's financial proposal?

16 MS. KRISTINA GASPAR: We were asked a
17 clarifying question on our bid relating to the -- the
18 financial component of our bid, and we provided a
19 response.

20 MR. JOHN MATHER: And I'll ask you
21 some questions about that in a moment. With respect
22 to -- let me put it this way -- it's our understanding
23 that those questions occurred after the Strategic Task
24 Team was shown this presentation -- this financial
25 analysis and on the date they scored the RFP. So with

1 that in mind --

2 MS. KRISTINA GASPAR: I had no
3 knowledge of that.

4 MR. JOHN MATHER: Understood, and I
5 appreciate you wouldn't. Put it this way, was it your
6 understanding that an adjusted Hydro One offer would
7 be the financial offer that was presented to the
8 Strategic Task Team or in addition to the actual
9 Hydro One offer?

10 MS. KRISTINA GASPAR: My understanding
11 is that the offer as it was presented, perhaps with
12 the additional clarification that was requested, is
13 what would be presented. I can't imagine someone
14 modifying a bid.

15 THE HONOURABLE FRANK MARROCCO: Just -
16 - just before you move on, I don't know if modifying a
17 bid or -- is what happened, or interpreting the bid so
18 that the Strategic Partnership Task Team could better
19 understand it.

20 The question I have, though, can you
21 tell me whether it's -- it's accurate or not that
22 there was \$4.112 million of unassumed liabilities?

23 MS. KRISTINA GASPAR: I have no idea
24 where that number comes from. All the information
25 that was provided through the data room and through

1 the question and answers through KPMG, we would have
2 taken all of the -- all of the information into
3 consideration in preparing our bid.

4 That said, we -- we did know -- we --
5 we believed there were significant gaps in our
6 knowledge, and so we caveated our bid with the
7 statement that additional due diligence would be
8 required, and our -- our bid would then be adjusted up
9 or down based on what that additional due diligence
10 uncovered.

11 However, our bid as presented was based
12 on all of the knowledge we had at the time. So I
13 don't -- I don't know where --

14 THE HONOURABLE FRANK MARROCCO: So
15 somebody's look --

16 MS. KRISTINA GASPAR: -- that
17 adjustment would come from.

18 THE HONOURABLE FRANK MARROCCO: -- so
19 their -- do I understand it correctly that, from your
20 perspective, there should not have been this
21 deduction? Let, you know, let's assume they were
22 trying to interpret -- KPMG or whoever did this was
23 trying to interpret your bid for the benefit of the
24 Team.

25 Do I -- do I understand it correctly

1 that, from your perspective, they ought not to have
2 deducted this sum of money?

3 MS. KRISTINA GASPAR: Correct, unless
4 that was a deduction that would go across the board,
5 because they hadn't provided the bidders a -- a piece
6 of information, or they became aware of it later in
7 time, and so there's an adjustment to be made, and
8 that adjustment flows across every bid.

9 THE HONOURABLE FRANK MARROCCO: All
10 right. Thank --

11 MS. KRISTINA GASPAR: Right. The --
12 the assumption is equal information, so.

13 THE HONOURABLE FRANK MARROCCO: I
14 understand. Okay.

15

16 CONTINUED BY MR. JOHN MATHER:

17 MR. JOHN MATHER: So if we could turn
18 up paragraph 408 of the Foundation Document.

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: So we've -- I've
23 already taken you to these paragraphs, Ms. Gaspar,
24 earlier, when we were speaking. And these -- I
25 believe this is what you were referring to, and that

1 on November 27th -- and just to be fair to the points
2 in time, November 27th was the day before the
3 Strategic Task Team scored the financial bid.

4 So the day before that -- that meeting,
5 Mr. Rockx at KPMG sent you -- sent Hydro One some
6 questions for clarification. And if we scroll down,
7 and then we see that Hydro One provided its response
8 to KPMG on November 29th, 2011, which was the day
9 after the -- the meeting where the financial bids were
10 evaluated. And Hydro One provided a -- a series of
11 clarifications.

12 Do you know what KPMG did with the
13 clarifications you provided?

14 MS. KRISTINA GASPAR: I have no idea.

15 MR. JOHN MATHER: And sorry. When I
16 say 'you', I'm not certain it was you who sent them,
17 but what -- which Hydro One provided?

18 MS. KRISTINA GASPAR: I have -- I have
19 no idea what they -- what they did with --

20 MR. JOHN MATHER: So we see in --

21 MS. KRISTINA GASPAR: -- did with our
22 submission.

23 MR. JOHN MATHER: -- so we see in the
24 documents that KPMG did further adjustments, and one
25 (1) of -- our understanding from the documents is one

1 (1) of the reasons they did the adjustments is they
2 wanted to create an apples to apples comparison. So
3 they wanted to look at each of the present -- each of
4 the bidders financial presentations and try to make
5 them even in certain assumptions to give the best
6 comparison.

7 Is that a process you're familiar with
8 as part of an RFP?

9 MS. KRISTINA GASPAR: The assumption
10 is that if you're provided with equal information, and
11 requested to provide a bid following a specific
12 format, it's apples to apples by definition.

13 MR. JOHN MATHER: So if we can go to
14 paragraph 427 of Foundation Document 1.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So this paragraph
19 references a third KPMG bid analysis that was prepared
20 on December 2nd, 2011. This third analysis as set out
21 in this paragraph was the one that was presented to
22 the Collus Power and Collus Solutions boards of
23 directors and also to Town Council.

24 And if we could open the attachment
25 BLG209_1.

1

2

(BRIEF PAUSE)

3

4

MR. JOHN MATHER: Scroll down, please.

5

And scroll so we can see -- or zoom out, thank you, so

6

we can see the left-hand column.

7

THE HONOURABLE FRANK MARROCCO: Sorry,

8

did Mr. Bonwick step out for a minute? No, you're

9

still there. Okay.

10

11 CONTINUED BY MR. JOHN MATHER:

12

MR. JOHN MATHER: Fair enough. Okay,

13

so we see this appears to be a similar version of the

14

spreadsheet we saw earlier. If you look under total

15

cash considerations to the Town of Collingwood and

16

Hydro One, the figure is now 15.998 million in cash.

17

Do you have any understanding of how

18

KPMG determined that figure?

19

MS. KRISTINA GASPAR: I have no idea.

20

21

(BRIEF PAUSE)

22

23

MR. JOHN MATHER: And I take it from

24

your earlier answers that you -- it wasn't your -- was

25

it your expectation that the -- that an adjusted

1 figure -- or a figure that was -- was adjusted to
2 balance with the other figures, that would be
3 presented to the board of directors, or to the Town of
4 -- Council?

5 MS. KRISTINA GASPAR: I -- I don't
6 know what's meant by the term "balance."

7 MR. JOHN MATHER: Fair enough. I was
8 referring to the apples to apples comparison.

9 Did you und -- did you understand that
10 there would be some adjustments made to your bid, and
11 then that was -- that adjusted bid would be presented
12 to the board of directors and Town Council?

13 MS. KRISTINA GASPAR: My assumption --
14 our assumption was that our bid is presented as we
15 submitted it, with perhaps the clarification that we
16 provided through KPMG that you -- that you showed
17 earlier.

18 MR. JOHN MATHER: Yeah. And then if
19 we could go to paragraph 421 of the Foundation
20 Document.

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: So this is an email
25 the -- dated December 1st -- or describing an email

1 dated December 1st, 2011, from Mr. Rockx at KPMG to Ed
2 Houghton.

3 In the email, Mr. Rockx describes a
4 phone call he said he had with Rick Stevens of Hydro
5 One. Mr. Rockx says he wanted to get some clarity on
6 the Hydro One financial offer for a 50 percent
7 interest in Collus.

8 Scrolling down. Mr. Rockx explained
9 the areas over which he required some clarity but
10 Hydro One was somewhat non-committal in their
11 responses. It goes on to say:

12 "They indicated that they would
13 respond to the issues in further
14 detail if an exclusivity arrangement
15 was entered into. They also
16 indicated that some issues might be
17 negotiable."

18 Then it goes on:

19 "I indicated that the steering
20 committee and the Town require some
21 clarity on the financial offers in
22 order to make an informed decision
23 and that we would have to make some
24 assumptions about Hydro One's offer
25 if they did not provide some

1 clarification. At this time, they
2 did indicate that they would be
3 willing to look at our preliminary
4 calculation of their offer and our
5 assumed adjustments to it."

6 And then he requests with emphasis in
7 the original:

8 "Can I provide Hydro One with a one-
9 page summary of their offer to see
10 if they agree with the assumed
11 purchase price adjustments?"

12 So I have a couple questions about
13 this. As a starting point, were you aware of a
14 conversation that Mr. Stevens had with Mr. Rockx at
15 KPMG? And I believe this was early December 2011.

16 MS. KRISTINA GASPAR: I would have
17 been aware that they asked for clarification, and --
18 and he would have forwarded that request for
19 clarification to the valuation team and we would have
20 made the -- made the adjustments, passed it back to
21 him, and he would have flipped our -- our
22 clarification back.

23 MR. JOHN MATHER: Do you recall Mr.
24 Stevens ever describing to you a conversation along
25 the lines of what's described in this email?

1 MS. KRISTINA GASPAR: No.

2 MR. JOHN MATHER: Do you know -- are -
3 - are you aware, to your knowledge, if Hydro One ever
4 sought an exclusive -- exclusivity arrangement with
5 Collus or the Town as part of -- at any point in the
6 RFP process?

7 MS. KRISTINA GASPAR: So, the -- the
8 next step, should we have been chosen as the desired
9 bidder to proceed with, we would have requested
10 exclusivity for that phase.

11 MR. JOHN MATHER: So you're -- I -- I
12 understand your answer to be that after you are
13 selected as the preferred proponent, is that --

14 MS. KRISTINA GASPAR: Correct.

15 MR. JOHN MATHER: And that point that
16 Hydro One have sought exclusivity, it appears here
17 that Hydro One may or may not have requested
18 exclusivity prior to that.

19 Was that something you were aware of?

20 MS. KRISTINA GASPAR: Well, everybody
21 wants to be a sole source bidder.

22 MR. JOHN MATHER: Fair enough, but I'm
23 just asking specifically -- I just want to know your
24 recollection, and I appreciate that you -- it doesn't
25 appear that you had this -- were on this conversation

1 with --

2 MS. KRISTINA GASPAR: No.

3 MR. JOHN MATHER: -- Mr. Rockx. So
4 with that in mind, I just want to know if you have any
5 recollection of prior to Hydro One being advised it
6 wasn't the preferred proponent, Hydro One making a
7 request to Collus or KPMG or the Town for there to be
8 exclusivity with respect to discussing the potential
9 sale of Collus.

10 MS. KRISTINA GASPAR: I'm not aware of
11 that conversation.

12 THE HONOURABLE FRANK MARROCCO: But I
13 -- but I take it from your response that it -- it
14 wouldn't strike you as surprising if someone said --

15 MS. KRISTINA GASPAR: Well, it
16 wouldn't --

17 THE HONOURABLE FRANK MARROCCO: -- we
18 can -- we can deal with all these issues, but why
19 don't you --

20 MS. KRISTINA GASPAR: First --

21 THE HONOURABLE FRANK MARROCCO: -- why
22 don't you make us the successful bidder and then we'll
23 fix up all of these things that are concerning you.
24 That -- that wouldn't have struck you as --

25 MS. KRISTINA GASPAR: I don't think it

1 --

2 THE HONOURABLE FRANK MARROCCO: --

3 inappropriate or --

4 MS. KRISTINA GASPAR: Well, I don't
5 think it would have been make us the exclusive bidder;
6 it would be if we are the exclusive bidder --

7 THE HONOURABLE FRANK MARROCCO: All
8 right.

9 MS. KRISTINA GASPAR: -- right? If we
10 are the one that's selected, then, you know, we're
11 happy to negotiate and go through deeper due diligence
12 and see where -- where, you know, our -- our valuation
13 may be wrong, and -- and make adjustments.

14 However, entering into negotiations
15 prior to being selected is -- is a little
16 counterproductive.

17 THE HONOURABLE FRANK MARROCCO: Well,
18 you're --

19 MS. KRISTINA GASPAR: You've become a
20 stocking --

21 THE HONOURABLE FRANK MARROCCO: You're
22 negotiating with yourself.

23 MS. KRISTINA GASPAR: Exactly.

24 THE HONOURABLE FRANK MARROCCO: Right.

25

1 CONTINUED BY MR. JOHN MATHER:

2 MR. JOHN MATHER: And just one (1)
3 final question with respect to this email.

4 At the end, Mr. Rockx makes a request
5 of Mr. Houghton about whether he can provide Hydro One
6 with a one-page summary of their offer to see if they
7 agree with the assumed purchase price adjustments.

8 In your recollection, did you or anyone
9 at Hydro One ever receive any summary of purchase
10 price adjustments that had been made to Hydro One's
11 offer?

12 MS. KRISTINA GASPAR: No. As far as I
13 know, we -- we submitted our clarification and then we
14 waited to hear -- hear if -- if we were selected to
15 move forward.

16 MR. JOHN MATHER: Thank you. And I
17 just have a couple more questions for Mr. Angemeer
18 based on some of the things that we've discussed
19 today.

20 If we could open TOC4878.

21 THE HONOURABLE FRANK MARROCCO: Are
22 you going to be a while?

23 MR. JOHN MATHER: No. It'll be less
24 than two (2) minutes.

25 THE HONOURABLE FRANK MARROCCO: Oh, in

1 that case go right ahead.

2 MR. JOHN MATHER: 48781, apologies.

3

4 (BRIEF PAUSE)

5

6 CONTINUED BY MR. JOHN MATHER:

7 MR. JOHN MATHER: You'll see 48781.

8 I may not have the right document reference, so what

9 I'll do is I'll ask one (1) additional question and

10 then we can take a break so I can confirm that I have

11 the right document reference.

12 If we could open paragraph 339 of the
13 Foundation Document.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN MATHER: So, Mr. Angemeer,
18 you referred to a -- a couple of times when we spoke
19 this morning about a point in time where Veridian asked
20 whether or not it could make an alternate proposal to
21 purchase more than 50 percent of Collus. This
22 paragraph indicates that that request came on October
23 20th, 2011.

24 Does that accord with your
25 recollection? Is --

1 MR. MICHAEL ANGEMEER: Yes, I believe
2 that's correct.

3 MR. JOHN MATHER: Okay. And I just
4 wanted to clarify this point. Subject to potentially
5 one (1) additional question, those are my questions.

6 THE HONOURABLE FRANK MARROCCO: We'll
7 take ten (10) minutes.

8

9 --- Upon recessing at 12:29 p.m.

10 -- Upon resuming at 12:38 p.m.

11

12 CONTINUED BY MR. JOHN MATHER

13 MR. JOHN MATHER: My apologies, Mr.
14 Angemeer, I did have the correct document, so I'm
15 going to ask that it be pulled up again. TOC48781.

16 And this is an email dated June 2nd,
17 2011 from Peter Budd to Ed Houghton. As -- as we
18 covered, it's our understanding that Mr. Budd was
19 involved in the company that manufactured the solar
20 attic vents.

21 And Peter says:

22 "Ed, I would like to keep you
23 posted."

24 The subject is Veridian and then he
25 says:

1 "I would like to keep you posted
2 that Angemeer and I are trying to
3 also move his area forward and I
4 will be seeing (redacted) from
5 Oakville next week."

6 To the question of when Veridian was
7 first approached or was first considering
8 participating in the solar attic vent, does this email
9 refresh your memory at all?

10 MR. MICHAEL ANGEMEER: Can you give me
11 some context of when this date fits in with the rest
12 of --

13 MR. JOHN MATHER: Right. So June 2nd,
14 2011, this would have been a month or more before you
15 met with Dean Muncaster and Ed Houghton about the RFP
16 in July 2011.

17 MR. MICHAEL ANGEMEER: I think in my
18 earlier testimony I -- I talked about talking with
19 these -- talking about these solar attic vents and the
20 technology with -- and the opportunity that was
21 described before with both Ed Houghton and Peter Budd.

22 So -- so this -- this indicates to me
23 this is probably saying that Peter Budd and I have had
24 conversations about the product and the technology
25 before this email was written.

1 MR. JOHN MATHER: And does that --
2 does that accord with your recollection, does that
3 refresh your memory that in or around June 2011 you'd
4 had conversations with Mr. Budd about the solar attic
5 vents?

6 MR. MICHAEL ANGEMEER: That's entirely
7 possible that that's correct, yes.

8 MR. JOHN MATHER: Those are my
9 questions.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you. Cross-examination.

12 By the way, Mr. Breedon, I'm going to
13 take lunch at one o'clock, so you can -- I'm not
14 suggesting you should finish before one o'clock, but
15 I'm just telling you so you can organize your cross-
16 examination.

17 MR. RYAN BREEDON: Thank you, Your
18 Honour.

19

20 CROSS-EXAMINATION BY MR. RYAN BREEDON

21 MR. RYAN BREEDON: So Mr. Freeman, I
22 know for the benefit of the others my name is Ryan
23 Breedon and I'm counsel to the Town.

24 I have a couple of questions for Mr.
25 Freeman first of all. You testified that you were

1 involved in quite a number of transactions, both when
2 you were employed by Hydro One and then in your
3 subsequent career, correct?

4 MR. NEIL FREEMAN: That's correct.

5 MR. RYAN BREEDON: All right. Had you
6 ever dealt with Mr. Herhalt at KPMG before on any of
7 those transactions?

8 MR. NEIL FREEMAN: I -- I recall
9 meeting him in the late 1990s and we went -- I forget
10 the exact instance, but how it came about, but we went
11 to visit the Chief Administrative Officer of the City
12 of Barrie together once.

13 And -- but other than that, I just knew
14 him from around the industry. I don't remember him --
15 I -- I can tell you that while I was at Hydro One we
16 ran into -- not me, personally, but Hydro one crossed
17 paths with John Rockx on numerous transactions.

18 But I don't remember John Herhalt being
19 sort of -- at least in the working level of a
20 transaction, I don't remember him being, you know,
21 when we did RFP presentations, and you know, I -- I
22 was -- you know, I presented in Ottawa, I presented in
23 Hamilton, I presented in Thornbury, you know, like I
24 did the whole gamut and I don't -- I don't remember
25 running into him indirectly.

1 MR. RYAN BREEDON: And what about Mr.
2 Erling, who was also involved at KPMG?

3 MR. NEIL FREEMAN: I would say that I
4 -- I remember him from the sector, but I don't
5 remember him, you know -- you know, being involved in
6 often making presentations at industry events, but I
7 don't remember him directly being involved in an RFP
8 transaction, but I could be mistaken.

9 MR. RYAN BREEDON: Okay. And now I'd
10 like to talk about that billboard that -- that came up
11 earlier this morning.

12 My understanding is that you saw that
13 in November when you were here for the public meeting?

14 MR. NEIL FREEMAN: Correct.

15 MR. RYAN BREEDON: And the conclusion
16 at the time was that the fix was in, that was what the
17 emails say?

18 MR. NEIL FREEMAN: That was Mr. Mc --
19 Mr. Cananzi's words, yes.

20 MR. RYAN BREEDON: And I take it you
21 agreed with that assessment?

22 MR. NEIL FREEMAN: It seemed a
23 foregone conclusion, yes.

24 MR. RYAN BREEDON: All right.

25 And you testified, if I understand

1 correctly, that you believed that that billboard had
2 just gone up?

3 MR. NEIL FREEMAN: That's correct.

4 MR. RYAN BREEDON: And actually that
5 you thought that it had been put up early by mistake?

6 MR. NEIL FREEMAN: That I could -- I
7 was -- I was -- I was surprised that it -- you know, I
8 -- I -- I accepted Mr. Cananzi's view that it was
9 basically about conditioning the community.

10 But we -- we thought that it was just,
11 you know, getting ahead of the game a little bit, not
12 that it'd been up for months.

13 MR. RYAN BREEDON: Sure. And -- and
14 that goes to my next question.

15 You now know that in fact the billboard
16 had gone up in late September?

17 MR. NEIL FREEMAN: I -- I read that in
18 the Foundation document, yes.

19 MR. RYAN BREEDON: And had you known
20 that at the time, so back in late September, would you
21 have participated in the RFP?

22 MR. NEIL FREEMAN: I think we would
23 have -- we would have discussed it internally and it
24 wouldn't have been my decision. But similar to the
25 answer I provided to Commission counsel, you know, we

1 might have had -- there could have been multiple
2 choices, probably the KP -- retired KPMG partner that
3 was on the Horizon Board of Directors, it was very
4 involved in these -- would have -- would have, you
5 know, told KPMG to -- to fix the situation, this --
6 you know, it's unsee -- you know, it's not appropriate
7 for KPMG and they would look bad or this type of
8 thing.

9 But the -- the -- we might have not --
10 had we known that before the -- the -- we had to
11 actually submit, we might have just not submitted.
12 That would have been an option.

13 MR. RYAN BREEDON: Right. Okay, thank
14 you.

15 And now I have a couple of questions
16 for Ms. Gaspar.

17 The -- dealing with the Hydro One bid,
18 do -- do I understand that you were reporting to Mr.
19 Stevens?

20 MS. KRISTINA GASPAR: I reported to
21 Mr. Meeker, who reported to Stevens.

22 MR. RYAN BREEDON: All right, you were
23 in that group then?

24 MS. KRISTINA GASPAR: Yes.

25 MR. RYAN BREEDON: Okay. And the --

1 first of all, dealing with the non-financial
2 components of the bid, as I understand it, the Hydro
3 One bid specified that there would be no rate
4 harmonization?

5 MS. KRISTINA GASPAR: That's what I
6 recall as well.

7 MR. RYAN BREEDON: Okay. And actually
8 we can turn it up. It's the summary document 141 on
9 page 4.

10 Right. So this is the -- this is a
11 summary that Commission counsel has put together of
12 the various bids, and this is the page that deals with
13 the rate and cost structure.

14 And so you'll see that what is set out
15 here and if you want to look at the actual bid
16 documents we can pull them up. Is that Hydro One was
17 proposing to maintain the existing rates subject to
18 adjustments under incentive regulation management
19 until a rebasing is required.

20 Do you see that?

21 MS. KRISTINA GASPAR: I see that.

22 MR. RYAN BREEDON: All right. And
23 what that means is that the existing Collus rates
24 would be maintained subject to essentially a -- a CPI
25 adjustment every year?

1 MS. KRISTINA GASPAR: Subject to the
2 IRM adjustment that the -- that the Board has in
3 place.

4 MR. RYAN BREEDON: And -- and the
5 Board is the Ontario Energy Board?

6 MS. KRISTINA GASPAR: Correct.

7 MR. RYAN BREEDON: And that's an
8 inflation adjustment, essentially?

9 MS. KRISTINA GASPAR: I -- I think
10 it's -- it's a little more complicated than just
11 inflation, but it's -- it's a minor adjustment.

12 MR. RYAN BREEDON: All right. And
13 then -- and that would be for a number of years until
14 you've -- rebasing is required?

15 MS. KRISTINA GASPAR: Yes, so I
16 believe rebasing is -- is done on a scheduled basis
17 and my recollection, I could be wrong, Collus was
18 scheduled to go back in in 2013.

19 MR. RYAN BREEDON: Thank you.

20 And then when the rebasing was -- was
21 performed, that -- that process involves submitting
22 all of the financial information to the Energy Board
23 and new rates would be set based on -- on that
24 information?

25 MS. KRISTINA GASPAR: Rebasing would

1 involve the complete -- implies a complete cost of
2 service application. So you put forward all of your
3 evidence relating to your -- your rate base, your
4 requested rate base calculation.

5 MR. RYAN BREEDON: All right.

6 And that would be done on the basis of
7 the Collus rate base at the time, because Collus was
8 being maintained as a separate entity, correct?

9 MS. KRISTINA GASPAR: Correct.

10 MR. RYAN BREEDON: So we've heard some
11 evidence about what Hydro One's rates were. Hydro
12 One's rates and Hydro One's costs would be irrelevant
13 to this calculation.

14 MS. KRISTINA GASPAR: Correct. So
15 similar to how at the time we had Hydro One Brampton,
16 which was sep -- a separate entity and -- and had
17 significantly lower rates than -- that Hydro One
18 networks that -- this was presented as being a similar
19 sort of arrangement where it would be kept separate.

20 MR. RYAN BREEDON: And when you say it
21 was presented as being a similar sort of arrangement,
22 do you mean in the original September meeting?

23 MS. KRISTINA GASPAR: I -- I don't
24 recall specifically if it was in the September
25 meeting, but it was -- was in our bid.

1 MR. RYAN BREEDON: Okay. And then I'd
2 like to turn back BLG number 209, please. And can we
3 scroll down? Okay.

4 Mr. Mather took you to this document
5 earlier and I appreciate that you weren't provided
6 with a copy of it at the time, correct.

7 MS. KRISTINA GASPAR: Correct.

8 MR. RYAN BREEDON: All right. You'll
9 see that there's a yellow box under the Hydro One
10 column where it says net share purchase price. Do you
11 see that?

12 MS. KRISTINA GASPAR: I do.

13 MR. RYAN BREEDON: Okay. And if we
14 look, there's a key at the top which says that the
15 green is intended to represent key areas of
16 difference, presumably between the various bids and
17 yellow is indicating further clarification required

18 And so you'll see that what has
19 happened is under the net share purchase price, the
20 author of this document, who our understanding is it's
21 Mr. Rockx, although we haven't heard from him yet, he
22 has provided that the Hydro One share purchase price
23 was \$11.088 million, and that's after taking into
24 account his deductions. And the two (2) deductions
25 you'll see which are highlighted in yellow are 1.412

1 for net regulatory liabilities and 1.1 million for
2 estimated net working capital shortfall.

3 Do you see that?

4 MS. KRISTINA GASPAR: I see that.

5 MR. RYAN BREEDON: Okay, so we'll deal
6 with the working capital shortfall first. Did anybody
7 at KPMG contact Hydro One with respect to a presumed
8 working capital shortfall?

9 MS. KRISTINA GASPAR: I don't recall
10 specifically if that was in any of the responses they
11 provided. However, all of the information that would
12 have been provided to us would have been captured in
13 our bid.

14 MR. RYAN BREEDON: Okay, I'm going to
15 turn -- we'll turn up the responses in a minute and
16 that -- that correspondence, because that deals with
17 the regulatory liabilities issue, I think.

18 But do you -- do you recall being told
19 by KPMG that it was making a \$1.1 million working
20 capital adjustment?

21 MS. KRISTINA GASPAR: No.

22 MR. RYAN BREEDON: And do you have any
23 idea of what the basis of that adjustment is?

24 MS. KRISTINA GASPAR: I do not.

25 MR. RYAN BREEDON: Thanks. The -- to

1 turn then to the regulatory liabilities issues, it
2 appears that this arises from some language in the
3 Hydro One proposal.

4 So, I want to turn that up first. And
5 then we can look at the correspondence that happened
6 afterwards. CJI7005, please.

7

8 (BRIEF PAUSE)

9

10 MR. RYAN BREEDON: This is the
11 financial proposal or the financial aspect of the
12 Hydro One bill -- bid, yes?

13 MS. KRISTINA GASPAR: Okay. Yes.

14 MR. RYAN BREEDON: Okay. And you're
15 familiar with this document?

16 MS. KRISTINA GASPAR: Yes.

17 MR. RYAN BREEDON: All right. And if
18 you need to take time to read through it, let us know,
19 and we're happy to do that. But I think the key
20 provisions that we need to look at are contained on
21 page 3. And if you could scroll down, please a little
22 bit more. Okay, just stop there.

23 So, you'll see this is the summary of
24 the Hydro One bid. And we've looked at this in other
25 context before, that essentially it was a cash payment

1 of \$13.6 million, plus a equity dividend, plus a
2 repayment of the promissary note. Do you see that?

3 MS. KRISTINA GASPAR: I do.

4 MR. RYAN BREEDON: All right. And
5 then, there are some assumptions which are set out
6 below that summary. And the third assumption is the -
7 - you'll see it says:

8 "Net balance of regulatory assets
9 and liabilities will not have
10 material value."

11 Do you see that?

12 MS. KRISTINA GASPAR: I do.

13 MR. RYAN BREEDON: Okay. And that
14 appears to have prompted a request for clarification
15 from KPMG. Now if we can turn up KPM4876.

16

17 (BRIEF PAUSE)

18

19 MR. RYAN BREEDON: And scroll down to
20 the email below this, please. All right. So, just
21 scroll up a little bit so that we can see who it's
22 sent from. All right.

23 So, you'll see this is an email from
24 Mr. Rockx to Mr. Stevens on November the 27th, 2011.
25 And then if you see below, it says, "KPMG has been

1 asked to seek clarification." And then if we could
2 scroll down a little bit, please.

3 There are then the two (2) items that
4 KPMG was seeking clarification on. Do you see that?

5 MS. KRISTINA GASPAR: I do.

6 MR. RYAN BREEDON: All right. And
7 this is the -- the request for clarification that you
8 were talking about earlier?

9 MS. KRISTINA GASPAR: Yes.

10 MR. RYAN BREEDON: All right. And the
11 two (2) items are, number 1, a question about whether
12 all of the long-term liabilities, including employee
13 future benefits, long-term net regulatory liability,
14 the Town note payable, and the Ontario infrastructure
15 debt were included in this offer without any
16 adjustment. That was sort of the first question.

17 Do you see that?

18 MS. KRISTINA GASPAR: I do.

19 MR. RYAN BREEDON: And the -- the
20 answer to that in short is, yes, correct?

21 MS. KRISTINA GASPAR: I believe we
22 were provided a written --

23 MR. RYAN BREEDON: All right. We'll
24 go -- we -- we can look at it. And then the second
25 issue is, which -- which seems to actually be related

1 to the first, you'll see that Mr. Rockx has written:

2 "Hydro One has also indicated the
3 following assumptions were built
4 into its pricing structure, the rate
5 base of \$17.9 million, and an
6 immaterial net balance of regulatory
7 assets and liabilities."

8 And then there's a question to comment
9 on the quantification of and the impact of those
10 assumptions. Do you see that?

11 MS. KRISTINA GASPAR: I do.

12 MR. RYAN BREEDON: And attached to
13 this request was a copy of the 2010 audited financial
14 statements to assist in the response. You see he says
15 that in the email?

16 MS. KRISTINA GASPAR: I -- I see the
17 sentence, yes.

18 MR. RYAN BREEDON: All right. And
19 you -- obviously, Hydro One had those financial
20 statements?

21 MS. KRISTINA GASPAR: I believe so.

22 MR. RYAN BREEDON: Sure. And just so
23 that we're on the same page, maybe we better look at
24 those. They are attached as KPM1851.

25

1 (BRIEF PAUSE)

2

3 MR. RYAN BREEDON: These are the
4 2010 audited financial statements which I understand
5 were attached to Mr. Rockx's email. And if we look
6 down at page -- page 4.

7 Right. This is the balance sheet, and
8 you'll see that there is a liability under "other" of
9 \$1.4 million?

10 MS. KRISTINA GASPAR: I see that.

11 MR. RYAN BREEDON: And if -- and that
12 refers to note 4, and note 4 is -- scroll down to
13 note 4. I'm not sure what page it's on.

14

15 (BRIEF PAUSE)

16

17 MR. RYAN BREEDON: Okay. Note 4 sets
18 out what that liability is, and it's a net regulatory
19 liability. Do you see that?

20 MS. KRISTINA GASPAR: Yes.

21 MR. RYAN BREEDON: Okay. And so the
22 question as I understand it that Mr. Rockx was asking
23 was, is Hydro One's bid going to be adjusted for this
24 \$1.4 million net regulatory liability, assuming it was
25 still on the books at closing? Correct? I mean, you

1 understand that that's what it was that he was asking?

2 MS. KRISTINA GASPAR: I see that
3 that's what you're asking me now.

4 MR. RYAN BREEDON: Okay. Well, if you
5 look at Mr. Rockx's question, that seems to be what
6 he's asking about, correct?

7 MS. KRISTINA GASPAR: Sure.

8 MR. RYAN BREEDON: Okay. Now, if we
9 look back at KPM4876, please.

10

11 (BRIEF PAUSE)

12

13 MR. RYAN BREEDON: So then this is
14 Mr. Stevens' response to that request from Mr. Rockx.
15 And were you involved in the preparation of this
16 response?

17 MS. KRISTINA GASPAR: I was.

18 MR. RYAN BREEDON: Okay. And so what
19 Mr. Stevens does is he first of all sets out again the
20 basic assumptions of how this deal was going to be
21 structured. You see that?

22 MS. KRISTINA GASPAR: Yes.

23 MR. RYAN BREEDON: Okay. And can we
24 please scroll down. And so then he says:

25 "The proposal includes the

1 assumption of the estimated pro rata
2 share of assets and liabilities,
3 based in part on the detail provided
4 in the 2010 audited financial
5 statements. And the proposal
6 includes the following long-term
7 liabilities: employee future
8 benefits, net regulatory liability,
9 and the Ontario infrastructure
10 debt."

11 You see that?

12 MS. KRISTINA GASPAR: Yes.

13 MR. RYAN BREEDON: All right. And am
14 I -- and the net regulatory liability that Mr. Stevens
15 is referring to is that \$1.4 million we just looked at
16 on the financial statements?

17 MS. KRISTINA GASPAR: I'm not sure if
18 it's limited to that or not, but our -- our bid would
19 have been based on all of the information we had
20 available to us.

21 MR. RYAN BREEDON: All right. And do
22 I understand this then to be saying that there would
23 not be an adjustment to the Hydro One purchase price
24 for those liabilities that are reflected on the
25 2010 audited financial statements?

1 MS. KRISTINA GASPAR: Correct.

2 MR. RYAN BREEDON: Okay. Those had
3 already been taken into account and reflected on the
4 \$13 million purchase price.

5 MS. KRISTINA GASPAR: All of the
6 information that would have been provided to us would
7 have been considered and been reflective of our bid as
8 it was presented and then as it was clarified here.

9 MR. RYAN BREEDON: Okay. And so if we
10 learn later that what -- that Mr. Rockx had made a
11 deduction based on the net regulatory liabilities as
12 of the 2010 financial statements -- if that's what it
13 is -- if that's what he's done, which it appears to be
14 the case -- that was a mistake because there should
15 not have been that deduction, correct?

16 MS. KRISTINA GASPAR: I would not have
17 made a deduction.

18 MR. RYAN BREEDON: Right. Well, maybe
19 to put it another way, if the financial position of
20 Collus was the same at closing as reflected in the
21 2010 financial statements, Hydro One would be writing
22 a cheque for \$13 million.

23 MS. KRISTINA GASPAR: I think it goes
24 beyond just what's in the financial statements. But
25 if -- if the -- if all of the data information were

1 reflective of what was presented to us and our
2 assumptions that were built into the bid, there --
3 there would be no adjustment.

4 MR. RYAN BREEDON: Okay. Thank you.
5 I think those are my questions.

6 THE HONOURABLE FRANK MARROCCO: All
7 right. We'll break for lunch. You're certainly
8 welcome to go to lunch together, but you should avoid
9 discussing your evidence with anybody else just to
10 avoid any awkwardness when you come back.

11

12 --- Upon recessing at 1:03 p.m.

13 --- Upon resuming at 2:03 p.m.

14

15 MR. FREDERICK CHENOWETH: Thank you,
16 Your Honour.

17

18 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

19 MR. FREDERICK CHENOWETH: Panel, my
20 name is Chenoweth, Fred Chenoweth, and I appear on
21 behalf of -- of Mr. and Mrs. Houghton, and I want to
22 thank you for coming here to help us out, so I very
23 much appreciate it.

24 I'm going to start off, if I might,
25 with a -- a question for Mr. Angemeer. And it relates

1 to a document numbered VER204. If we could pull that
2 up, please.

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And if we
7 could to the section of the document that relates to
8 an email dated February 1, 2012, that's an email from
9 Dave Clark to a variety of souls, including a
10 gentleman named Angemeer. If we could go to that,
11 first of all, scroll down. This may be it.

12

13 (BRIEF PAUSE)

14

15 MR. FREDERICK CHENOWETH: Go down
16 further, I think.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: Down
21 further.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: On there for

1 a sec.

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: It appears
6 to be an email on the second page from Dave Clark.
7 Yeah. Thank you. Yes, this is it, and I'm looking at
8 the -- I guess it's the fourth paragraph down, some --
9 some members -- well, that:

10 "PowerStream did not purchase of
11 shares of Collus Power. They
12 purchased 50 percent of the parent
13 company Collingwood Utilities
14 Services Corporation. Collingwood
15 Utility Service Corporations owns
16 Collus Power, Collus Solutions, and
17 Collus Energy."

18 I take it from this string of emails,
19 and if you need to see more of them, sir, I'm quite
20 happy to have you go over them. Have you seen all
21 you'd like to see of the string of emails?

22 MR. MICHAEL ANGEMEER: Well, I'm
23 focussing on this one right now. I might have to go
24 back up, but --

25 MR. FREDERICK CHENOWETH: Sure. All

1 right. That's fine. I'll pose my question, then. I
2 -- I take it from what I've read of these emails that
3 Mr. Clark -- and by the way, who was Mr. Clark in your
4 organization of that time?

5 MR. MICHAEL ANGEMEER: At that time,
6 he was the CFO and Executive Vice President.

7 MR. FREDERICK CHENOWETH: All right.
8 And what was your position at that time, Mr. Angemeer?

9 MR. MICHAEL ANGEMEER: I was the
10 president and CEO.

11 MR. FREDERICK CHENOWETH: Very good.
12 And I take it that Mr. Clark was raising a concern
13 about the fact that Collus appears not to have sold
14 what was in the RFP? They didn't sell 50 percent of
15 the shares of Power, they ended up selling 50 percent
16 of the shares of the holding company, CUS, correct?

17 MR. MICHAEL ANGEMEER: That's -- that
18 seems to be what indicates, yes.

19 MR. FREDERICK CHENOWETH: And he's --
20 he's expressing a concern about that? He feels -- he
21 feels concerned about the fact that you may not have
22 had an opportunity to bid on that particular deal, and
23 you bid on a different deal, either purchase of
24 Power's shares?

25 MR. MICHAEL ANGEMEER: That's correct.

1 MR. FREDERICK CHENOWETH: I'm guessing
2 that was possibly somewhat unfair?

3

4 (BRIEF PAUSE)

5

6 MR. MICHAEL ANGEMEER: That's --
7 that's correct. Yes.

8 MR. FREDERICK CHENOWETH: Thank you.

9 And -- and you were part of that -- that series of
10 emails?

11 MR. MICHAEL ANGEMEER: Yes.

12 MR. FREDERICK CHENOWETH: And could we
13 look next, then, it appears that the -- the issue
14 continued. Could we look next at email -- emails that
15 have document numbers VER207.

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: And that's
20 mercifully a little shorter. And if we could go to
21 the -- what I take to be the bottom of the -- a series
22 of emails there. And it's dated February 2nd, 2012.
23 And it's an email from Laurie McLorg. And again, it's
24 Dave Clark.

25 You're then CFO or CEO?

1 MR. MICHAEL ANGEMEER: CFO.

2 MR. FREDERICK CHENOWETH: CFO. All
3 right. Then CFO Dave Clark. And in fairness, Mr.
4 Angemeer, you don't appear to have been part of -- of
5 this particular series of emails, but in any event,
6 there's a conclusion reached here, and you're here,
7 and Mr. Clark isn't, so we'll attempt to deal with it.

8 If you could just read that series of
9 emails up to the penultimate email of 3:09 p.m. on the
10 2nd of February authored by Mr. Clark, the CFO.

11

12 (BRIEF PAUSE)

13

14 MR. MICHAEL ANGEMEER: Is it possible
15 to go back to the beginning and --

16 MR. FREDERICK CHENOWETH: Indeed.

17 MR. MICHAEL ANGEMEER: -- scroll
18 through?

19 MR. FREDERICK CHENOWETH: Why don't
20 you just -- do you want to start at the bottom where
21 they start?

22 MR. MICHAEL ANGEMEER: Is that where
23 it starts, on the bottom?

24 MR. FREDERICK CHENOWETH: Let's go
25 down to the bottom.

1 MR. MICHAEL ANGEMEER: Okay.

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: This -- in
6 this -- it's evident it appears from this particular
7 email, the one at 11:32 on the 2nd of February, that
8 Mr. Clark is preparing a commentary or memo to be
9 presented to the Board, and he's considering, it seems
10 as we go through these various emails -- he's
11 considering including in that memo the assertion that
12 -- that it was unfair or inappropriate that you didn't
13 get to bid on -- on CUS, which was eventually sold,
14 i.e., 50 percent of its shares as opposed to Power.

15 MR. MICHAEL ANGEMEER: Yes.

16 MR. FREDERICK CHENOWETH: And can we
17 look at the -- the email of -- of Mark Turney, which
18 is at 2:54 on that day.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: Mr. Turney
23 seems to say:

24 "Dave: The memo looks fine. One
25 (1) consideration would be to lead

1 point 1..."

2 Which was the point about the fact that
3 you didn't get to bill, or bid on Collus but only got
4 to bid on Power.

5 "We could leave that out but explain
6 the near neutral financial impact.
7 It may be good for our Board to see
8 that they may not have played
9 completely fair. I think Michael
10 was looking for something to be
11 mentioned about the hospital
12 donation."

13 Et cetera, which we'll leave aside for
14 the moment. But in any event, he's talking about
15 leaving out that consideration of directing the
16 Board's attention to the fact that 50 percent of -- of
17 CUS was sold, i.e., the holding company, rather than
18 Power, correct?

19 MR. MICHAEL ANGEMEER: Yes. It seems
20 that my -- my staff at the time had the opinion that
21 in our particular case there was -- there was not a
22 material impact, although it may not have been what
23 was stated in the RFP.

24 MR. FREDERICK CHENOWETH: And even
25 though it wasn't what was stated in the RFP, i.e., the

1 switch from Power to the holding company, Dave Clark,
2 you CFO, opines on that in the next email at 9:54 p.m.

3 "Now that I've looked at the numbers
4 closer, the option of us acquiring
5 at the holding company level
6 wouldn't have caused us to increase
7 our offer. I think it's an issue
8 that can be ignored."

9 That -- is that the conclusion that Mr.
10 Clark came to with respect to your particular bid?

11 MR. MICHAEL ANGEMEER: Seems to be,
12 yes.

13 MR. FREDERICK CHENOWETH: All right.
14 Thank you.

15 Mr. Freeman, you had some -- you
16 expressed some concerns through the course of your
17 evidence that you didn't have an opportunity to -- to
18 bid on the holding company.

19 MR. NEIL FREEMAN: Correct.

20 MR. FREDERICK CHENOWETH: Would you
21 agree with the analysis that it appears the CFO of --
22 of Veridian went through, that it -- that it wasn't a
23 significant issue and it didn't turn out in the final
24 analysis to be a problem?

25 MR. NEIL FREEMAN: Actually, I

1 wouldn't, because the reason why you would want
2 control of the -- of the services company or to
3 control the whole, is that if you only own the LDC,
4 you really don't have the opportunity to participate
5 in the -- in the -- the services that are being
6 provided to the -- the -- the Collus Power. And so by
7 having control or an opportunity to be in part of the
8 broader business, you actually had an opportunity to
9 shape the -- the cost structure, the other inputs that
10 go into what is sold to Collus Power.

11 So just as having, you know, a -- a
12 greater percentage would give you more influence, so
13 too would having the share in the other company, and
14 the company would be conceivably worth more, maybe not
15 valued simply on the assets in the -- the services
16 company, but by having a -- a role in the other
17 company, you would have a better control over the
18 whole -- the whole picture and -- and the cost
19 structure of Collus.

20 So, would it make a markable
21 difference? I couldn't evaluate that here, but it --
22 it -- it's not -- it -- it's not without notice.

23 MR. FREDERICK CHENOWETH: Well, Dave
24 appears to have done so, the CFO at that time, and I
25 take it he would have become -- come aware of what

1 we've become aware of through the course of this
2 Commission, that the activities of Solutions which was
3 the services -- service provider, was a neutral
4 operation. They didn't put any mark-up on the -- on
5 their cost of doing business and their cost of
6 providing those services, so that would have been
7 neutral.

8 Would you have been aware that Mr. --
9 that David, the CFO, was aware of that?

10 MR. NEIL FREEMAN: I wouldn't have
11 been aware of anything Veridian was doing. What I'm
12 saying, at Horizon, my -- my perspective would have
13 been that -- that we wanted and we -- we -- we wanted
14 to have participation in the other company, and it
15 would -- it would have been value in that.

16 MR. FREDERICK CHENOWETH: All right.
17 But you'd have to do a finan -- a financial analysis,
18 I take it, of the situation of Solutions and the
19 situations of the other company involved before you
20 could come to that conclusion?

21 MR. NEIL FREEMAN: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23 Ms. Gaspar, any thoughts on that issue?
24 Do I take it that you would concur with the CFO of
25 Veridian, that in the final analysis there wasn't a

1 great deal of difference in whether or not you were
2 bidding on 50 percent of the shares of Power or 50
3 percent of the shares of holding?

4 MS. KRISTINA GASPAR: Without detailed
5 information and -- and time, I have -- I have no idea
6 how we would have valued that or what impact on the
7 valuation changes to the -- what we thought we were
8 buying would have made.

9 MR. FREDERICK CHENOWETH: Thank you.
10 So you would have to do what Dave Clark appears to
11 have done. You would have had to have --

12 MS. KRISTINA GASPAR: I have no idea
13 what Dave Clark did.

14 MR. FREDERICK CHENOWETH: I -- I don't
15 suggest you do, but you would have had to do certainly
16 what Mr. Freeman suggested, which is to do a financial
17 analysis before you could come to that conclusion.

18 MS. KRISTINA GASPAR: I think it would
19 have been even broader than a financial analysis. It
20 probably would have also have been looking at the
21 contracts and relationships between the two (2)
22 organizations, the -- you know, whether or not -- you
23 know, how do you value the staff, how they -- how are
24 they allocated. There'd be a number of additional
25 considerations beyond just the financial contribution

1 of incoming revenue.

2 MR. FREDERICK CHENOWETH: Very good.

3 Thank you.

4 Back to you again, Mr. Angemeer. You
5 indicated, and we now know, that you had an
6 opportunity to become involved in the solar vent
7 initiative and you had at earlier times -- and I think
8 it was in June of 2011 you had an opportunity to
9 interact with -- with the owner of the -- of the
10 organization that was selling the solar vent units,
11 Mr. Budd, and you took up that opportunity that was
12 offered to you by Mr. Budd.

13 In other words, you became involved in
14 the -- in purchasing some solar units, and took some
15 involvement in the solar initiative.

16 MR. MICHAEL ANGEMEER: I believe that
17 the original contacts with Mr. Budd were around the
18 technology and he was trying to get us involved -- to
19 get Veridian involved in -- in participating in some
20 way.

21 MR. FREDERICK CHENOWETH: Yes.

22 MR. MICHAEL ANGEMEER: But I believe
23 that we didn't actually purchase any of those units
24 until the -- the time I was speaking about before,
25 where there was an indication that -- that PowerStream

1 was interested in -- in doing a pilot and would we
2 also have an interest in doing a pilot. That's my
3 recollect -- recollection, and it might not be correct
4 because it's a long time ago but that's -- that's what
5 I recall.

6 MR. FREDERICK CHENOWETH: In any
7 event, it was first offered to you by Mr. Budd in June
8 of 2011, it appears from the documents that were put
9 to you by Inquiry counsel.

10 MR. MICHAEL ANGEMEER: Yes, or -- or
11 before. We might have -- Mr. Budd and I might have
12 had conversations before that time, but that's -- that
13 seems -- based on the record it seems that that's when
14 we were having a conversation about it.

15 MR. FREDERICK CHENOWETH: You
16 eventually did become involved.

17 Did you get another invitation from
18 someone else to become involved in the solar vent
19 initiative? In other words, did Mr. Houghton suggest
20 that you might consider getting involved?

21 MR. MICHAEL ANGEMEER: That's --
22 that's -- I believe that's what occurred, yes, the --
23 that he suggested that PowerStream was getting
24 involved and would we like to get involved as well,
25 and at that time I made the decision to do that.

1 MR. FREDERICK CHENOWETH: Thank you.
2 So you knew at the time you got involved that
3 PowerStream was involved, as you've just indicated.
4 Mr. Houghton told you that.

5 MR. MICHAEL ANGEMEER: Either that
6 they were involved or they were considering being
7 involved.

8 MR. FREDERICK CHENOWETH: And I
9 understand from your earlier evidence that -- that you
10 got an invitation to attend the solar vent initiative
11 that I think took place on August 24th in Collingwood,
12 you were invited to that?

13 MR. MICHAEL ANGEMEER: That -- that's
14 my understanding, yes, that's my recollection.

15 MR. FREDERICK CHENOWETH: And you
16 chose not to go.

17 MR. MICHAEL ANGEMEER: I either chose
18 or was not able to go.

19 MR. FREDERICK CHENOWETH: Very good.

20 And did you at any time make any
21 inquiries with Mr. Houghton who had proffered you the
22 invitation, or anyone else about the -- because you
23 were buying some units, did you ever request that your
24 organization had the opportunity to put some branding
25 or signage at that particular event on the 24th of

1 August?

2 MR. MICHAEL ANGEMEER: I -- I believe
3 there was a conversation between Mr. Houghton and
4 myself in that regard.

5 MR. FREDERICK CHENOWETH: Thank you.

6 And was it suggested by Mr. Houghton
7 that you should consider some signage at that event?

8 MR. MICHAEL ANGEMEER: It's a long
9 time ago, but I -- I believe that's possible.

10 MR. FREDERICK CHENOWETH: And do you
11 recall whether you took up that invitation and had
12 signage at that event?

13 MR. MICHAEL ANGEMEER: We did not.

14 MR. FREDERICK CHENOWETH: Thank you.

15 Now, --

16 MR. MICHAEL ANGEMEER: Clarification?

17 MR. FREDERICK CHENOWETH: Yes.

18 MR. MICHAEL ANGEMEER: On the last --
19 the last answer, I believe we did not. I don't have a
20 recollection whether we actually participated in the
21 signage or not.

22 MR. FREDERICK CHENOWETH: In any
23 event, you were invited to do so?

24 MR. MICHAEL ANGEMEER: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And I'm noticing an email which is
2 CPS2297. Could we look at that just very quickly?

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: And I see
7 that you were looking at that time at 100 units with
8 respect to purchases from Peter Budd in August of
9 2011.

10 MR. MICHAEL ANGEMEER: Yes. I believe
11 we did not actually buy 100 units, I think it's a
12 number less than that.

13 MR. FREDERICK CHENOWETH: All right.

14 But in any event, that was your own --
15 that was your own choice, you made your own
16 conclusions in that respect.

17 MR. MICHAEL ANGEMEER: Yes.

18 MR. FREDERICK CHENOWETH: Now, you
19 would have been aware through the course of these
20 proceedings that there was other bidders involved?

21 MR. MICHAEL ANGEMEER: Yes.

22 MR. FREDERICK CHENOWETH: You would
23 have been aware of that as early as the occasion on
24 which you were invited to meet with Dean Muncaster and
25 Ed Houghton in July of 2011?

1 MR. MICHAEL ANGEMEER: I believe the -
2 - my recollection is that I don't believe I knew the
3 names of the other bidders, but I knew that there was
4 a selected list --

5 MR. FREDERICK CHENOWETH: Yes.

6 MR. MICHAEL ANGEMEER: -- that were
7 being entertained for possible RFP submissions.

8 MR. FREDERICK CHENOWETH: So that you
9 would have -- did -- did you -- did you know there was
10 as many as four others?

11 MR. MICHAEL ANGEMEER: I can't recall
12 if -- if the number 4 was mentioned, but I do remember
13 that it was a -- I knew it was a smaller group, it
14 wasn't just going -- our RFP was not going out to
15 everybody.

16 MR. FREDERICK CHENOWETH: Thank you.

17 And so that you would have known,
18 obviously, that there was some prospect that you may
19 become involved in an RFP process and not be the
20 successful bidder?

21 MR. MICHAEL ANGEMEER: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23 Now, you indicated that you would have
24 had occasion pre your meeting with Ed Houghton and
25 Dean Muncaster to have conversations with Ed Houghton

1 from time to time, and other CEOs in this industry
2 about the -- about what their plans were with respect
3 to their LDC.

4 MR. MICHAEL ANGEMEER: Yeah, yes.
5 Veridian was -- has a -- had a very successful history
6 of five mergers and now three -- sorry, five (5)
7 acquisitions and now three (3) mergers.

8 And part of my main responsibilities
9 was to -- to look for future mergers. So every
10 opportunity I got, whether it was at meetings of the
11 association or conferences or other time -- other
12 interactions with utilities, CEOs, or mayors, or CAOs
13 and municipalities, I would take the opportunity to
14 have a conversation about what was going on with their
15 utility and what their future plans might be.

16 That would -- that would happen with
17 everybody, including Mr. Houghton, on intervals which
18 might be once a year or twice a year.

19 MR. FREDERICK CHENOWETH: Okay. And
20 the purpose of the discussion would be, I take it, as
21 you've indicated you're looking for further
22 acquisition opportunities. The purpose of those
23 conversations would be to -- would be to suss out any
24 potential acquisition opportunities that may become
25 available.

1 That was your purpose, was to suss out
2 any potential acquisition opportunities in those
3 conversations, correct?

4 MR. MICHAEL ANGEMEER: Absolutely.
5 One of my -- one of my main responsibilities was grow
6 -- growth of Veridian and part of that is mergers and
7 acquisitions, so absolutely it was to determine which
8 utilities would be -- would be good partners, moving
9 forward and to -- to assess where they were in terms
10 of their process of assessing the industry.

11 In other places I've, you know, talked
12 to boards of directors of utilities and then done
13 other things to try to make sure that Veridian was
14 positioned as a potential ideal partner for any
15 municipality or utility that was looking to do a
16 transaction in the future.

17 MR. FREDERICK CHENOWETH: And I take
18 it your -- your discussions with Mr. Houghton were
19 always open and available to you and you discussed
20 these matters with him on an ongoing basis?

21 MR. MICHAEL ANGEMEER: Absolutely, I
22 can't -- I can't name times and dates --

23 MR. FREDERICK CHENOWETH: Yes.

24 MR. MICHAEL ANGEMEER: -- but you
25 know, over the -- over the years I'm sure I had half a

1 dozen conversations with Mr. Houghton about this --
2 this topic.

3 MR. FREDERICK CHENOWETH: Very good.
4 Thank you.

5 Mr. Freeman, you had a -- was your role
6 somewhat similar, was it -- was it integral to your
7 tasks to be looking in the industry for the potential
8 of any acquisitions or opportunities?

9 MR. NEIL FREEMAN: That would be
10 correct.

11 MR. FREDERICK CHENOWETH: I'm sorry?

12 MR. NEIL FREEMAN: That would be
13 correct.

14 MR. FREDERICK CHENOWETH: Very good.

15 And would you have had opportunities
16 through the course of the period, let's talk about
17 2010 and 2011, prior to the time that you met with Mr.
18 Houghton and Mr. Muncaster would you have had an
19 opportunity to speak to individuals like Ed Houghton
20 about what they were thinking about their particular
21 LDC?

22 MR. NEIL FREEMAN: I don't recall any
23 specific conversation with Mr. Houghton, but I -- I
24 did have those conversations in the LDC community.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And you have no memory of -- of ever
2 having any -- any difficulty or resistance having
3 those kinds of conversations with Mr. Houghton?

4 MR. NEIL FREEMAN: Personally, I -- I
5 -- I felt that Collingwood was not a utility that --
6 or I was never given the impression that Collingwood
7 would ever be soon on the market.

8 A lot has been said, you know, about
9 how many mergers have happened and -- and acquisitions
10 in Ontario and they talk about, you know, 300 to the
11 small number, but a lot of people miss out that just
12 how few actually happen.

13 That about 100 of that 300 were
14 actually municipal amalgamations that happened --
15 would have happened whether the utility industry had
16 changed.

17 In this area itself the -- the -- the
18 Municipality of Clearview, I believe it's called, that
19 Creemore used to have its own utility, Stayner used to
20 have its own utility and when -- when Simcoe County
21 was restructured in the 1990s, those two (2) came
22 together to create Clearview Hydro, which was
23 subsequently acquired by -- by Collus and my point
24 only is that when you look at the total number of
25 utilities in Ontario, there was 300. Hydro One bought

1 almost the equivalent of 100 counting some that had
2 municipal amalgamations.

3 There was about a hundred -- there --
4 there was about a hundred that were essentially forced
5 municipal amalgamations or municipal -- or -- or
6 resulted in a forced way after a voluntary municipal
7 amalgamation, and the numbers are -- are easy to add
8 up.

9 Ottawa went from five (5) to one (1).
10 Toronto went to six (6) to one (1). Chatham-Kent went
11 from about twelve (12) to one (1). And -- and Sudbury
12 and Hamilton went from five (5) or six (6) to one (1),
13 and that happened all throughout Ontario.

14 So, at the end of the day, there was,
15 you know, the example of Veridian, later, the example
16 of PowerStream where there's a few mergers, but there
17 were very few transactions really in the -- in -- out
18 of the three hundred (300).

19 It was mo -- mostly utilities like
20 Collus not doing very much, utilities selling to Hydro
21 One, or municipalities sort of voluntar -- vol --
22 coming to -- through voluntary or forced municipal
23 amalgamations.

24 MR. FREDERICK CHENOWETH: I -- I take
25 it the eighty (80) acquisitions that Ms. Gaspar spoke

1 about completed by Ontario Hydro is -- is no tiny
2 number of acquisitions in that market?

3 MR. NEIL FREEMAN: Again, there was
4 three hundred (300) and eighty-eight (88) went to
5 Hydro One. But what I was getting at was, counting,
6 like, ones that had actually municipally amalgamated
7 about the same time, the number was probably closer to
8 a hundred of the original three hundred (300).

9 MR. FREDERICK CHENOWETH: I
10 understand.

11 MR. NEIL FREEMAN: M-hm.

12 MR. FREDERICK CHENOWETH: Thank you.
13 Ms. Gaspar, did you ever have any difficulties -- and
14 maybe it wasn't part of your task, but was it also
15 your task to -- I don't want to leave you out of this.
16 Was it also your task to -- to make inquiries in the
17 industry to establish whether or not there were
18 opportunities for further acquisitions over and above
19 your eighty (80)?

20 MS. KRISTINA GASPAR: So, I didn't
21 make the -- any external contacts. However, it was
22 widely known that we were looking at acquisitions in
23 general in and around that time. And my team would
24 have been tasked with looking at everyone.

25 MR. FREDERICK CHENOWETH: Thank you.

1 So, that you didn't have occasion to talk to Mr.
2 Houghton or anyone else at Collus about what their
3 status was for the future?

4 MS. KRISTINA GASPAR: I -- I did not.

5 MR. FREDERICK CHENOWETH: Thank you.
6 I notice that the meetings that were eventually had
7 with Mr. Houghton and with Mr. Muncaster initially
8 occurred in July of 2011.

9 And you had occasion, each one (1) of
10 you, not individually, but someone from your
11 organization, to meet with -- with those two (2)
12 gentlemen to discuss the prospect of becoming involved
13 in a purchase of some or all of -- of Collus.

14 You would have had that opportunity, I
15 take it, as well, Mr. Angemeer, in July of 2011?

16 MR. MICHAEL ANGEMEER: That's correct.

17 MR. FREDERICK CHENOWETH: And was
18 there any shortage of time or difficulty for you
19 presented by the fact that you had discussions about
20 this in July and you eventually had to make a bid
21 after receiving an RFP in October? Did that create
22 any time constraints or any issues for you?

23 MR. MICHAEL ANGEMEER: Not that I
24 recall, no.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And, Ms. Gaspar, was that -- was that timing --
2 because you also had similar meetings in July of -- of
3 2011, did that timing create any difficulties for you
4 in responding to an October firth -- 4th RFP?

5 MS. KRISTINA GASPAR: The delay
6 between July and October. Is that what you're --

7 MR. FREDERICK CHENOWETH: Well --

8 MS. KRISTINA GASPAR: -- asking about
9 specifically?

10 MR. FREDERICK CHENOWETH: I'm -- I'm
11 asking about that time period. And I'm asking if --
12 if it presented any challenges to you in that you
13 might only have learned of that opportunity in July of
14 2011 and had to respond to an RFP in October.

15 Did that -- did that inadequacy of time
16 or that gap or anything of that nature create any time
17 problems for you?

18 MS. KRISTINA GASPAR: Well, we would
19 have been working on preliminary work for the
20 acquisition, for this and other acquisitions in -- in
21 and around that time.

22 MR. FREDERICK CHENOWETH: And you
23 would have commenced that, I take it, after the
24 meeting in July of 2011 with Mr. Muncaster and Mr.
25 Houghton?

1 MS. KRISTINA GASPAR: My team would
2 have done preliminary research and analysis
3 evaluations of -- of all LDCs prior to that.

4 MR. FREDERICK CHENOWETH: Oh, really?
5 So, you -- you previously did analyses of the
6 potential of purchasing other LDCs even prior to your
7 July meeting?

8 MS. KRISTINA GASPAR: Based on
9 publically available information, yes.

10 MR. FREDERICK CHENOWETH: Thank you.
11 And, Mr. Freeman, how about you? Did that --

12 MR. NEIL FREEMAN: I don't recall --

13 MR. FREDERICK CHENOWETH: Did that
14 timing create any problems for you?

15 MR. NEIL FREEMAN: None. None. None
16 that I'm aware of. It was we -- we were told -- well,
17 I believe we were told a broad sort of outline of how
18 the -- the deal would unfold, and there was sufficient
19 time.

20 MR. FREDERICK CHENOWETH: Thank you.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: Mr.
25 Freedman, you indicated that you were surprised when

1 you noted that the bid seemed to put a 30 percent
2 weight on the financial aspect of the bid and a 70
3 percent weight on the non-financial aspects of the
4 matter. That was a surprise to you?

5 MR. NEIL FREEMAN: I said that, yes.

6 MR. FREDERICK CHENOWETH: All right.
7 And I take it that you would agree with Mr. Angemeer
8 that that was within the prerogative of -- of the town
9 that owned the -- that, in essence, owned the power
10 shares and it was for them to make that choice?

11 MR. NEIL FREEMAN: I said that this
12 morning as -- in my evidence, as well, yeah.

13 MR. FREDERICK CHENOWETH: Thank you.
14 And you would have -- have known that -- what the --
15 what the score situation was. In other words, you
16 would have known the breakdown of the 70 percent unit
17 was 70:30, obviously, but you would have known what
18 the breakdown of the 70 percent portion was?

19 MR. NEIL FREEMAN: Well, only on
20 receipt of the RFP.

21 MR. FREDERICK CHENOWETH: Very good.

22 MR. NEIL FREEMAN: M-hm.

23 MR. FREDERICK CHENOWETH: But on
24 receiving the RFP, you would have known what that
25 breakdown was?

1 MR. NEIL FREEMAN: Correct.

2 MR. FREDERICK CHENOWETH: Thank you.

3 And I take it that breakdown told you some things, the
4 70:30 breakdown. It would have told you that the --
5 the vendor had a particular interest, and their
6 interest in the main was obtaining a good partner, one
7 (1) that they could work with?

8 MR. NEIL FREEMAN: As I explained this
9 morning, I said that there would have -- could have
10 been other ways to, with more precision, evaluate that
11 rather than leave it on impressionistic judgments
12 about what makes up the 70 percent.

13 MR. FREDERICK CHENOWETH: That's not
14 my question. My question is, the 70/30 split, did it
15 tell you that the vendors were particularly interested
16 in assessing the nature and quality of the partner
17 that they were considering joining with?

18 MR. NEIL FREEMAN: I would think
19 that's one (1) way to under -- to understand what they
20 were doing, yeah.

21 MR. FREDERICK CHENOWETH: Thank you.

22 MR. NEIL FREEMAN: M-hm.

23 MR. FREDERICK CHENOWETH: And was that
24 a concept that came to you when you were attempting to
25 understand the 70/30 split?

1 MR. NEIL FREEMAN: And we shaped our -
2 - our answers as best we could in the -- in -- in --
3 and trying to meet that -- those -- that -- those
4 requirements, yes.

5 MR. FREDERICK CHENOWETH: Now, you
6 talk about the term about the degree of metrics that
7 were contained in the criteria that were given to you?

8 MR. NEIL FREEMAN: Right.

9 MR. FREDERICK CHENOWETH: I -- I take
10 it you would have been at liberty to respond in a way
11 that included metrics. For instance, when you're
12 talking about rates or something of that nature, or
13 effect on the community, you would have put in some --
14 some metrics that dealt with the -- with some of the
15 issues that were raised in those criteria?

16 MR. NEIL FREEMAN: And I did. And let
17 me elaborate. The -- I should say Horizon did. I did
18 on Horizon's behalf. That -- and it is -- it does
19 come up in -- in some of the Foundation Document and
20 such that -- that, you know, for example, KPMG said,
21 Oh, Horizon has low costs and -- and -- but it really
22 didn't.

23 I would have expected that KPMG would
24 have looked at those numbers, and then provided advice
25 to the vendor about how to interpret the various date

1 that pre -- been presented.

2 I'll take -- as another example, you
3 know, it was commented by KPMG that Horizon didn't
4 bring the mayor of Hamilton and St. Catharines to the
5 meeting as if that the only bringing the mayors, as
6 had -- you know, a mayor of Veridian came and a mayor
7 of -- mayors of three (3) of the PowerStream
8 shareholders came -- is that having mayors at the
9 meeting was a way to demonstrate that you -- you're
10 involved in your communities.

11 And I think, you know, without having
12 the -- the submission in front of me, we demonstrated
13 that Horizon, you know, would be in a very
14 businesslike way, you know, did many, many things in
15 the communities of Hamilton and St. Catharines. And
16 the idea that we were supposed to ask the mayor of
17 Hamilton, you know, to come to -- to Collingwood
18 simply to demonstrate community commitment, like
19 that's the type of thing I would have thought KPMG
20 would be to balancing -- you know, Horizon does all
21 these other things; PowerStream brings the mayors to
22 the meetings -- that there was other things in --
23 Horizon wasn't devoid of having these types of things.

24 But what -- what I was surprised to see
25 in the KPMG documentation that's available in this

1 thing is -- is basically, you know, it didn't even
2 matter seeing what we said.

3 MR. FREDERICK CHENOWETH: Well,
4 forgetting about the analysis that KPMG did because
5 they put that analysis, as I understand it, to the STT
6 team, the thrust of my questions was you had an
7 opportunity to respond with the analytics that you
8 felt were appropriate, and, in fact, you did so.

9 MR. NEIL FREEMAN: Yeah. I think to
10 answer your question correctly, the -- what you're
11 really posing to me is, Mr. Freeman, why didn't you
12 just walk away when you saw this -- these fuzzy
13 metrics for the 70 percent?

14 And I guess my answer to you would be
15 that, you know, once you were in, we had -- we had to
16 decide whether we were in for it all, and we stayed
17 in. Yes.

18 MR. FREDERICK CHENOWETH: So that's a
19 decision you made of your own volition.

20 MR. NEIL FREEMAN: I don't recall that
21 being a specific decision, but there -- there probably
22 had to be a choice.

23 And a -- but to answer the question
24 fully though is that -- is that we participated and
25 then to -- to actually have to walk, it would look

1 like well, Horizon's really -- you know, isn't up to
2 the -- up to what's required to participate in these
3 transactions.

4 MR. FREDERICK CHENOWETH: Really, what
5 I was doing, Mr. Freeman, was exploring your
6 suggestion that you -- your response didn't require an
7 opportunity to use some of the metrics that you would
8 have preferred to -- to see.

9 And in fact, the reality is that you
10 responded with metrics in your response to the RFP,
11 correct?

12 MR. NEIL FREEMAN: Correct. With the
13 caveat that I don't think the metrics were actually
14 evaluated, which is -- you know, you believe -- you
15 might believe they were. So -- but thank you.

16 MR. FREDERICK CHENOWETH: Other than
17 what you've looked at with KPMG, I take it you don't
18 know anything about the deliberations of the STT team.

19 MR. NEIL FREEMAN: I've -- what I've
20 seen in the evidence with respect to Hydro One's rates
21 and other things, yes. There -- and the questions
22 that have been before us this morning.

23 MR. FREDERICK CHENOWETH: Thank you.

24

25 (BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: Could we
2 look at a document that you referred to earlier today,
3 and it's ALE 246. Could you bring that up, please?

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: This appears
8 to be an email of August 3rd, 2011 from Paul Bonwick
9 to Brian Bentz:

10 "I can provide you an update as it
11 relates to Collus presentation this
12 morning. I also have a quick
13 question."

14 Mr. Angemeer, I'll start with you, as I
15 have on a few occasions. I take it you have no idea
16 whether or not that update spoken of Paul Bonwick --
17 spoken by Paul Bonwick on those occasions went forward
18 and was passed on?

19 MR. MICHAEL ANGEMEER: This -- in the
20 evidence, this is the first I've seen of this. So
21 I -- I have no idea.

22 MR. FREDERICK CHENOWETH: Ms. Gaspar?

23 MS. KRISTINA GASPAR: The evidence is
24 the first I've seen of this.

25 MR. FREDERICK CHENOWETH: Sorry? Give

1 that again?

2 MS. KRISTINA GASPAR: The evidence is
3 the first I've seen this.

4 MR. FREDERICK CHENOWETH: Thank you.
5 Mr. Freeman.

6 MR. NEIL FREEMAN: I had no knowledge
7 of this beforehand.

8 MR. FREDERICK CHENOWETH: Thank you
9 very much. If we look at another document to which
10 Inquiry counsel referred, and that's ALE50216.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: and if we
15 could obviously go down below that to the remainder of
16 the document? Thank you.

17 And again, we've already identified
18 this document. We've talked about it, a conversation
19 had between Mr. McFadden and Robert Hull. Again, look
20 at that if you would, and I'll have a couple questions
21 for you with respect to it.

22 My thought is that the -- that the
23 documentation or the information that appears to have
24 been the subject of those conversations did not appear
25 to have -- it did not appear to be significantly

1 impactful information. Expected dates -- the 4th and
2 the 16th -- they were confirmed approximately a week
3 after this conversation took place when you would have
4 received your October 4th RFP.

5 That wouldn't have been particularly
6 impactful, I suggest. Would you agree, Mr. Angemeer?
7 In other words, the exchange of information --

8 MR. MICHAEL ANGEMEER: Yes.

9 MR. FREDERICK CHENOWETH: -- wasn't
10 impactful.

11 MR. MICHAEL ANGEMEER: Around the
12 dates?

13 MR. FREDERICK CHENOWETH: Around
14 September 28th.

15 MR. MICHAEL ANGEMEER: No, I mean --

16 MR. FREDERICK CHENOWETH: You learned
17 about that in the RFP, a matter of a week later.

18 THE HONOURABLE FRANK MARROCCO: No,
19 no. I think the witness is asking you about the
20 dates -- November dates, the other dates.

21 MR. MICHAEL ANGEMEER: About the dates
22 for the RFP open --

23 MR. FREDERICK CHENOWETH: Yes.

24 MR. MICHAEL ANGEMEER: -- open and
25 close.

1 CONTINUED BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: Correct.

3 You learned about those on the 4th.

4 MR. MICHAEL ANGEMEER: In that
5 particular case, there wouldn't have been a large
6 impact.

7 MR. FREDERICK CHENOWETH: Very good.
8 And concerns about a number of politicians on the
9 Board, was that an impactful kind of a thing for you?

10 MR. MICHAEL ANGEMEER: I acknowledge
11 in Veridian's case, we had -- we had a fairly high
12 percentage of politicians on our Board. So having
13 information about what -- what the Town of Collingwood
14 was thinking about in terms of Board and politicians
15 would have been helpful to us.

16 MR. FREDERICK CHENOWETH: Thank you.
17 It would not have been impactful information on or
18 about September 28th. Is that fair, Mr. Angemeer?

19 MR. MICHAEL ANGEMEER: It may have
20 influenced what we put in our RFP if we had known some
21 information about that -- what we put in our RFP
22 response.

23 MR. FREDERICK CHENOWETH: Ms. Gaspar,
24 did that -- is there anything in this particular note
25 that you found particularly impactful?

1 MS. KRISTINA GASPAR: I'm not sure how
2 much any of this is or isn't impactful, but certainly,
3 if we all had the same information, that would have
4 been preferable.

5 This speaks to a number of things which
6 go into that 70 percent of the valuation, right? So
7 you pointed out that -- correctly that the financial
8 component was only 30 percent.

9 This hints at some of the soft things
10 like number of politicians on the Board. I'm not sure
11 how -- how and, if any, of this would have influenced
12 our bid, but we're not in real time.

13 MR. FREDERICK CHENOWETH: Thank you.
14 Looking at a further document, ALE5133.0002. Could we
15 pull that up, please.

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: Mr. Angemeer
20 again, I'm looking at the -- this appears to be total
21 cash considerations to the Town that were being paid
22 by each of the different four (4) bidders.

23 And the reality is, in your
24 circumstances, that when one looks at the bids of the
25 four (4) bidders, your offer appears to have been the

1 lowest amongst the four (4) bidders. Is that correct?

2 MR. MICHAEL ANGEMEER: Could you
3 detail which page you're -- you're --

4 MR. FREDERICK CHENOWETH: No, I'm
5 looking at the bottom number, total cash
6 considerations of the Town.

7 MR. MICHAEL ANGEMEER: Sorry, the --
8 there's only the title page on this screen.

9 MR. FREDERICK CHENOWETH: Go up if we
10 could, please. Yes. Thank you.

11 MR. JOHN MATHER: I -- I think we're
12 looking for slide around 15.

13 MR. FREDERICK CHENOWETH: Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: I apologize.
18 In any event, you'll see across the top that there is
19 the name of the various bidders, and at the bottom,
20 there is the total cash consideration that was offered
21 by the various bidders.

22 Here, to be clear, Mr. Angemeer, that
23 the reason that you didn't have success with respect
24 to your RFP was that your bid was the lowest of any of
25 the bids?

1 MR. MICHAEL ANGEMEER: It seems to be
2 the lowest, and I think I testified earlier that the
3 reason it was low is because at 50/50, we felt the --
4 would be more of the risk in -- in getting the
5 synergies, and therefore, that's the reason we bid
6 where we did.

7 MR. FREDERICK CHENOWETH: So you
8 wouldn't have had the usual kind of control that you
9 have in these situations, and therefore made a low
10 bid. Is that fair?

11 MR. MICHAEL ANGEMEER: Yes, that's
12 fair.

13 MR. FREDERICK CHENOWETH: Thank you.
14 And Ms. Gaspar -- I'm sorry, Mr. Freeman, I noticed
15 that Horizon's bid appeared to be the second lowest?
16 I take it that's one (1) of the reasons why you were
17 not successful in the bid that you put forward?

18 MR. MICHAEL ANGEMEER: It is the
19 second lowest.

20

21 (BRIEF PAUSE)

22

23 MR. FREDERICK CHENOWETH: If we could
24 just look for a moment at -- at a document titled
25 ALE5133-000, and I don't know whether there's a one

1 (1) at the end of that, or what there is. Well, let's
2 see. It's the cumulative scores of the non-financial
3 aspects of the bid.

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And let's
8 try one (1) --

9 MR. JOHN MATHER: ALE5133.3.

10 MR. FREDERICK CHENOWETH: Thank you.
11 Very good. Pull that up if you could, please. And
12 again, I'm not sure what slide it is, but let's go
13 down to the total scores, if we could.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN MATHER: And this may not
18 also be the correct one.

19 MR. FREDERICK CHENOWETH: No, I don't
20 think it is.

21 MR. JOHN MATHER: ALE5133.2?

22

23 CONTINUED BY MR. FREDERICK CHENOWETH:

24 MR. FREDERICK CHENOWETH: Why don't we
25 do it this way, rather than search for that. I think

1 it's pretty straightforward. Starting out again with
2 Mr. Angemeer, would you have been aware that your
3 total score was something less -- and I'm talking
4 about on the nonfinancial bid, when scored, the
5 criteria relating to the 70 percent?

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: We're at
10 least on the right document. Yes, that's good. There
11 it is right there.

12 Again, it looks like Veridian would --
13 would have been approximately -- very approximately 20
14 percent below the score that was by PowerStream,
15 Veridian had three fifty-nine (359) and PowerStream
16 had five ninety-four (594) on the scoring of the nin -
17 - nonfinancial aspects of the bid.

18 MR. MICHAEL ANGEMEER: Sorry, what was
19 the question around that?

20 MR. FREDERICK CHENOWETH: It simply is
21 I -- I'm suggesting to you that the reason why you
22 were unsuccessful in your bid is because you scored
23 much less successfully than PowerStream on the
24 nonfinancial aspect of the bid.

25 MR. MICHAEL ANGEMEER: This seems to

1 indicate that, although I have no knowledge of how the
2 various Task Team members scored that 70 percent of
3 the bid.

4 MR. FREDERICK CHENOWETH: Ms. Gaspar,
5 it appears that Hydro One really appeared to be fourth
6 in line in terms of the scoring on the nonfinancial
7 aspects of the bid? I guess that's clearly one (1) of
8 the substantial reasons why Hydro One was
9 unsuccessful?

10 MS. KRISTINA GASPAR: I -- I have no
11 idea why Hydro One was not successful. I wasn't privy
12 to those discussions. I -- I see a series of numbers
13 here on -- on a sheet, but I -- I have no knowledge as
14 to what supports those.

15 MR. FREDERICK CHENOWETH: But it -- it
16 appears clear that the final evaluation that was done
17 put Hydro One fourth in line in the nonfinancial
18 aspects of the bid?

19 MS. KRISTINA GASPAR: Two eighty-eight
20 (288) is the lowest number on the sheet.

21 MR. FREDERICK CHENOWETH: Thank you.
22 And Mr. Freeman, Horizon faired a little better, but
23 not quite as well as PowerStream, correct?

24 MR. NEIL FREEMAN: I -- I guess I
25 can't accept your premise, because you didn't give me

1 a chance to answer to your previous question about Mr.
2 Hull's comments. And to what Ms. Gaspar and the three
3 (3) of us have been saying throughout, if this
4 information were shared equally and everybody knew how
5 to respond to the questions the way the vendor wanted
6 to hear the answers, then the score -- these scores
7 might have been different.

8 So to -- to -- for you to ask me to
9 acknowledge that it got a low number in a -- in a
10 framework where there's evidence now or appears to be
11 evidence that PowerStream got the highest number, but
12 it also had infi -- inside information, how to speak
13 to the vendor, accepting all that, yeah, Horizon came
14 in second, but -- but the -- the very fact that the
15 person who came in first was -- had essentially
16 coaching from someone about how to respond, it makes
17 it difficult to -- to agree that -- that I should
18 accept that, well, we -- we came in second, fair and
19 square, so that's --

20 MR. FREDERICK CHENOWETH: Did you
21 retain -- did your organization retain a consultant
22 with respect to interaction with the community, and --

23 MR. NEIL FREEMAN: As I -- sorry,
24 finish your question.

25 MR. FREDERICK CHENOWETH: Did you

1 retain a consultant who -- who assisted you with
2 respect to interaction with the community and
3 understanding the environment that existed in
4 Collingwood at the time?

5 MR. NEIL FREEMAN: As I made clear in
6 my evidence this morning, it would have been
7 inappropriate with a -- in our view, with the risk of
8 being disqualified from an RFP if we hired someone to
9 essentially, you know, make -- make these types of
10 inroads.

11 In an RFP, it's an -- as I explained
12 this morning, it's essential that -- that every --
13 everything be open and -- and to all participants on
14 an equal basis, and that that essential fairness is --
15 is critical for the process.

16 So I did, you know, become aware,
17 obviously, and of -- of what -- what -- that there was
18 a consultant. We would have not hired a consultant,
19 and the suggestions that's been put forward in the
20 PowerStream evidence or -- or initial -- introductory
21 summary, that, you know, we just expected everybody
22 would do it, I -- I think that's fundamentally wrong
23 in the sense that in an RFP, nobody would expect that
24 you would hire somebody to go around the process to
25 get it -- to get inf -- information.

1 MR. FREDERICK CHENOWETH: Very good.
2 those are all the questions I have of these witnesses.
3 Thank you very much, Your Honour.

4 THE HONOURABLE FRANK MARROCCO: Thank
5 you, Mr. Chenoweth.

6 MR. GEORGE MARRON: I have no
7 questions.

8 THE HONOURABLE FRANK MARROCCO: Mr.
9 Marron, thank you. Mr. Watson...?

10 MR. MICHAEL WATSON: Ms. Bain.

11 THE HONOURABLE FRANK MARROCCO: Or --
12 I'm -- I'm sorry, Ms. Bain.

13

14 CROSS-EXAMINATION BY MS. BELINDA BAIN:

15 MS. BELINDA BAIN: All right. Good
16 afternoon. My name is Belinda Bain. I'm one (1) of
17 the lawyers for Alectra, formerly PowerStream.

18 Mr. Freeman, I'll start off with you.
19 Could we please pull up document TOC59332. And while
20 we're doing that, Mr. Freeman, I believe you've
21 indicated earlier, you were part of the presentation
22 that Horizon made to the Strategic Task Team on
23 September 19th, 2011.

24 Is that right?

25 MR. NEIL FREEMAN: That's correct.

1 MS. BELINDA BAIN: And this document
2 that's on the screen I take it is a copy of the
3 presentation that was made at that September 19th pres
4 -- interview meeting?

5 MR. NEIL FREEMAN: Based on the cover,
6 yes.

7 MS. BELINDA BAIN: Okay. Could we
8 just scroll through so that Mr. Freeman can satisfy
9 himself that -- that is the prop -- presentation?

10 MR. NEIL FREEMAN: Yeah, I have no --
11 I have no doubt that it -- this is the correct
12 document, yeah.

13 MS. BELINDA BAIN: Did you assist in
14 preparing this presentation, Mr. Freeman?

15 MR. NEIL FREEMAN: I did.

16 MS. BELINDA BAIN: Okay. Can we go
17 down, please, to -- and sorry, just up on the cover,
18 again. So this -- you -- this presentation obviously
19 was prepared sometime in advance of the September 19th
20 meeting?

21 MR. NEIL FREEMAN: Correct.

22 MS. BELINDA BAIN: So, page 25 appears
23 to be a graph, setting out an analysis comparing
24 certain costs per customer of various LDCs, correct?

25 MR. NEIL FREEMAN: That is correct.

1 MS. BELINDA BAIN: And we see there at
2 the bottom of the graph, the names of the various LDCs
3 that have been included, being Horizon, yourself, in a
4 different colour on the left, moving across, Collus,
5 PowerStream, St. Thomas Energy, Veridian, and then
6 Hydro One.

7 You see that?

8 MR. NEIL FREEMAN: Yes.

9 MS. BELINDA BAIN: And so we've --
10 there's been some evidence earlier that -- that St.
11 Thomas Energy was perhaps to be invited in this
12 process but then did not participate.

13 But otherwise you'll agree with me that
14 these are the bidders that participated in the -- that
15 were invited to participate in the RFP, correct?

16 MR. NEIL FREEMAN: That is correct.

17 MS. BELINDA BAIN: And this
18 presentation was put together in September 2011,
19 correct?

20 MR. NEIL FREEMAN: In advance of the
21 meeting, yes.

22 MS. BELINDA BAIN: Okay. So at that
23 point there hadn't been a formal announcement of the
24 RFP, correct?

25 MR. NEIL FREEMAN: It -- it would --

1 came afterwards, I believe, yes.

2 MS. BELINDA BAIN: Okay. And so at
3 this point, even before the RFP was announced, Horizon
4 certainly knew who the bidders were going to be, to be
5 invited, correct?

6 MR. NEIL FREEMAN: So seeing this now
7 brings recollection to me that when we met with Ed
8 Houghton and Dean Muncaster, he -- we were told who we
9 thought would be invited, that they were looking for -
10 - you know, they didn't want to have a -- a wide net
11 RFP, that they -- they kind of had a sense of who were
12 the right partners, but as a special favour to St.
13 Thomas Energy, who I believe was at the time Brian
14 Hollywood or -- or someone else who was frankly a
15 friend of -- of Mr. Houghton that St. Thomas would be
16 included as well and it was on that basis that we --
17 we -- I would have speculated that these were the --
18 the competitors.

19 MS. BELINDA BAIN: Thank you for that.
20 I'm not sure I understood all of your answer, so you
21 began speaking about a meeting with Mr. Muncaster and
22 Mr. Houghton, which I take it would have been the July
23 2011 meeting?

24 MR. NEIL FREEMAN: Correct.

25 MS. BELINDA BAIN: And I think you

1 indicated that they told you at that meeting who they
2 intended to invite. Is that right?

3 MR. NEIL FREEMAN: Or Mr. Houghton
4 did, you know, after Mr. Muncaster left or some -- it
5 was -- it -- it wasn't a definitive -- as I recall, it
6 wasn't a definitive statement. It was sort of, these
7 are who we -- you know, we're not going to have a -- a
8 hundred people bid on this utility. We're going to
9 have some bigger players bid on this utility.

10 MS. BELINDA BAIN: Understood. So to
11 the best of your recollection -- recollection, at the July
12 2011 meeting, it was conveyed to you who Collus Power
13 intended to invite to bid. Is that fair?

14 MR. NEIL FREEMAN: It might have been
15 less -- less clear than that, but there was some
16 indication.

17 MS. BELINDA BAIN: Okay. And so you
18 weren't speculating. You had the information at the
19 time.

20 MR. NEIL FREEMAN: There could have
21 been other people added or deleted in -- in the
22 intervening period. I don't think I knew specifically
23 that these would be going into the meeting, that it
24 was -- it -- these are who we were led to believe
25 might likely be included.

1 MS. BELINDA BAIN: Okay, I understand.
2 There -- there may have been changes but certainly
3 this wasn't just Horizon guessing; they had been
4 informed who Collus Power at that time intended to
5 involve. Is that fair?

6 MR. NEIL FREEMAN: I -- I think that's
7 fair.

8 MS. BELINDA BAIN: Okay, thank you.
9 And so if we look a little closer at this slide -- so
10 this sets out with dollar figures, cost per customer
11 for each of the LDCs.

12 Where did Horizon get this information?

13 MR. NEIL FREEMAN: As you can see in
14 the footnote, it's -- it's Ontario Energy Board
15 yearbook data, which is essentially the data that
16 utilities file with the Ontario Energy Board. It
17 present -- it's essentially a compendium of financial
18 statements of all the utilities based on their
19 regulatory financial statements.

20 MS. BELINDA BAIN: Okay. And we
21 actually have that document, if that would be helpful
22 to pull it up. Could we pull up ALE50218, please?

23

24 (BRIEF PAUSE)

25

1 MS. BELINDA BAIN: So again we can
2 scroll through it if you want, but Mr. Freeman, this -
3 - I understand it to be a copy of the document you
4 were referring to, which is a yearbook published by
5 the OEB annually. Is that right?

6 MR. NEIL FREEMAN: So I think there's
7 maybe a small misinterpretation here. What the slide
8 says is it's 2006 to 2010, and the reason for doing an
9 average of five (5) years or four (4) years or
10 whatever the number of years provided, was that
11 utilities as has been mentioned here go through a
12 regulatory cycle and not every utility rebases in the
13 same year, and so a utility's cost structure, its
14 performance, its -- its rate of return, will vary in
15 terms of its -- its years through the cycle of the --
16 of the -- of the cost of -- essentially I think at the
17 time the cycle was every four (4) years, so a utility
18 that was sort of in its fourth year might be ground
19 down in its -- in its rate of return until it rebased,
20 whereas a utility in its first year would be a -- a --
21 you know, might have a higher rate of return.

22 And so to do a fair assessment, you
23 essentially had to look at a rolling -- or a -- a
24 group average of -- of -- of a number of years, rather
25 than a single year, because there could be exceptions.

1 In addition, a single year could have
2 exceptional results. You sell a piece of equipment or
3 a major piece of machinery, or sell some property, and
4 all of a sudden, you know, your -- your revenue looks
5 higher than it would normally. So doing it over a
6 series of years was -- was a more accurate way to por
7 -- portray the real sort of picture of the utility.

8 MS. BELINDA BAIN: That's fine, and --
9 and I'm not going to quarrel with you there. I think
10 we can all understand that if people are doing rate
11 basings at different times and have different things
12 happening in their business, taking a number of years
13 and averaging may get you a more accurate result.
14 That -- that's fine. I have no quarrel with that.

15 Just on a more general sense, Mr.
16 Freeman, when you were referring to using statistics
17 from the OEB yearbook, the document you have in front
18 of you I understand is certainly the 2010 version of
19 the OEB yearbook and -- and one (1) of the annual
20 documents would have pulled your information from. Is
21 that fair?

22 MR. NEIL FREEMAN: That's correct.

23 MS. BELINDA BAIN: Okay, thank you.
24 And this comes out on an annual basis?

25 MR. NEIL FREEMAN: Usually in

1 September or August, yes.

2 MS. BELINDA BAIN: Thank you. Could
3 we scroll down, please, to page 2? Oh, sorry, page --
4 it's page 3 of the PDF but page 1 of the report. Down
5 a little farther.

6 And so we just see there in the second
7 paragraph:

8 "The Board provides 2010 yearbook of
9 electricity distributors to inform
10 interested parties and the general
11 public with financial and
12 operational information collected
13 from electricity distributors."

14 Is that a fair description of what's
15 contained in the OEB yearbook?

16 MR. NEIL FREEMAN: Correct.

17 MS. BELINDA BAIN: And so this would
18 be available to any -- anyone in the industry or even
19 in the public who wanted to find out more detailed
20 information about the finances or the operation of any
21 LDC in Ontario, correct?

22 MR. NEIL FREEMAN: Public information
23 posted on Ontario Energy Board website.

24 MS. BELINDA BAIN: Okay. Anyone can
25 find it?

1 MR. NEIL FREEMAN: Yes.

2 MS. BELINDA BAIN: Could we go down to
3 page 4?

4

5 (BRIEF PAUSE)

6

7 MS. BELINDA BAIN: Sorry, further
8 down.

9

10 (BRIEF PAUSE)

11

12 MS. BELINDA BAIN: So, I'm -- I'm
13 referring to the page numbers at the bottom.

14

15 (BRIEF PAUSE)

16

17 MS. BELINDA BAIN: Just stop there.

18 THE HONOURABLE FRANK MARROCCO: That's
19 this page, I think you want.

20 MS. BELINDA BAIN: Can you scroll up
21 just a tiny bit more?

22

23 CONTINUED BY MS. BELINDA BAIN:

24 MS. BELINDA BAIN: So this, as I
25 understand it, is providing information with respect

1 to net property, plant, and equipment by distributor,
2 and specifically identifying certain of the LDCs and
3 providing information with respect to their net
4 property, plant, and equipment, correct?

5 MR. NEIL FREEMAN: Yes.

6 MS. BELINDA BAIN: Okay. Can we
7 scroll down then to what's page 10 at the bottom of
8 the actual pages of the -- of the presenta -- or the
9 report?

10 And this provides percentage of
11 distribution customers, correct?

12 MR. NEIL FREEMAN: Yes.

13 MS. BELINDA BAIN: Then if we could
14 go to page 13.

15

16 (BRIEF PAUSE)

17

18 MS. BELINDA BAIN: And so then, as I
19 understand it, and -- and I take it, sir, this would
20 be typical for each yearbook that you looked at,
21 correct?

22 MR. NEIL FREEMAN: Yes.

23 MS. BELINDA BAIN: And there are
24 charts and tables that set out detailed financial
25 information with columns relating to each of the LDCs,

1 correct?

2 MR. NEIL FREEMAN: Yes.

3 MS. BELINDA BAIN: So the first
4 section here relates to balance sheets, and all of the
5 LDCs are there, including all of those that were
6 participating in the -- in the RFP, correct?

7 MR. NEIL FREEMAN: Yes.

8 MS. BELINDA BAIN: Okay. And if we go
9 down further at 27.

10

11 (BRIEF PAUSE)

12

13 MS. BELINDA BAIN: We also have the
14 income statements -- detailed income statements for
15 all, correct?

16 MR. NEIL FREEMAN: Yes.

17 MS. BELINDA BAIN: Further down, page
18 55.

19

20 (BRIEF PAUSE)

21

22 MS. BELINDA BAIN: Here we get into
23 general statistics for each of the LDCs, setting out
24 information with respect to the populations, the
25 services provided, the -- the lines that are in place,

1 the total kilowatts delivered.

2 So all of this information would be
3 publically available for all utilities in Ontario,
4 correct?

5 MR. NEIL FREEMAN: Yes.

6 MS. BELINDA BAIN: Okay, thank you.

7 And so there really isn't any secret in
8 the LDC industry in terms of how a particular player
9 is performing from a financial perspective or an
10 operational perspective, is there?

11 MR. NEIL FREEMAN: The -- the -- there
12 -- there is additional data here too and there's other
13 -- there's other sources, yes, there's just lots of
14 information.

15 MS. BELINDA BAIN: And it's fair to
16 say because the energy sector is so highly regulated
17 in Ontario, there is a great deal of financial and
18 operational information that's publically available,
19 correct?

20 MR. NEIL FREEMAN: Yes.

21 MS. BELINDA BAIN: Thank you.

22 I'd like to talk to you a little bit
23 about the issue of the weighting of the RFP, and Mr.
24 Chenoweth has asked you some questions about this.

25 And so we've heard evidence, and I

1 think you've agreed, that as early as July of 2011 it
2 was made clear by Mr. Muncaster and Mr. Houghton that
3 what Collus Power was looking for was a strategic
4 partner, right? Is that correct?

5 MR. NEIL FREEMAN: Yes.

6 MS. BELINDA BAIN: They weren't just
7 looking for someone to come in and buy some or all of
8 them, correct?

9 MR. NEIL FREEMAN: Correct.

10 MS. BELINDA BAIN: And this is in the
11 context of a period of time where there's a lot of
12 consolidation going on, correct?

13 MR. NEIL FREEMAN: No.

14 MS. BELINDA BAIN: Sorry, your
15 evidence -- okay, so I understand what your view on
16 that was that you told us earlier. This is a time
17 where there is increasing regulatory burden on small
18 LDCs, correct?

19 MR. NEIL FREEMAN: My -- my view on
20 this is that the burden didn't change substantially.
21 And you -- the -- the -- it -- it -- it in fact, you
22 know, some of -- some small utilities were actually
23 very strong performers, in some cases the best
24 performers.

25 And if you look at the OEBs own

1 benchmarking and -- and performance rankings,
2 invariably, you know, Hawkesbury Hydro with 5,000
3 customers is the best performing utility in Ontario.

4 And so the -- the -- the notion that
5 there was, you know, all these -- especially the small
6 utilities were all going to do something, I actually
7 didn't believe that was the case and what happened
8 actually in 1998-2000 was a unique set of
9 circumstances where municipal restructuring and
10 electricity restructuring essentially happened at the
11 same time and created a -- a -- a -- a driving force
12 for sort of change. And almost no activity happened
13 after 2000.

14 There was the merger of Hamilton and
15 St. Catharines in 2005, you know, merger of
16 PowerStream -- or that created PowerStream. There was
17 a few transactions, but we essentially went from 300
18 utilities to sort of 100 utilities, and then about 10
19 years we went down to 80 utilities.

20 But most of those small utilities were
21 places like, you know, Dutton, Ontario, which is
22 basically falling apart and the OEB had to come in and
23 make -- get somebody to take it over.

24 There weren't -- there weren't success
25 -- succession of transactions. The reason why

1 utilities like Veridian or Horizon or PowerStream
2 wanted to do mergers, because of the IRM framework
3 that has the incentive rate-making framework, was that
4 to -- you essentially need to grow to get more
5 customers to spread your fixed costs over a larger
6 base to -- to essentially maintain your rate of return
7 for your shareholder, these types of things. That's
8 why there was a broad interest.

9 The answer to your question about how
10 many consolidations was essentially answered the next
11 year, when the government actually appointed an
12 inquiry that --

13 MS. BELINDA BAIN: To a review panel,
14 I think you're referring to?

15 MR. NEIL FREEMAN: Mr. McFadden was a
16 -- a member of, and -- and the -- the reason for that
17 was to sort of get something going and -- and
18 essentially that document, you know, while it was
19 never acted on by government, had it been acted on it
20 would have been a hammer that basically forced people
21 to start doing something.

22 But nobody actually -- nobody -- there
23 was not a great volume of transactions, it was
24 essentially, you know, a -- a utility was a -- a --
25 you know, badly performing, got into trouble, you

1 know, the CEO was about to retire.

2 The -- the thing you -- that has to be
3 appreciated here is that the municipal shareholders
4 are municipal Councils, not private sector sort of
5 owners or, you know, publically traded companies that
6 were focused on performance, rate of return, these
7 types of things.

8 And so there wasn't a lot of activity
9 in the sector or any great threat to my recollection,
10 I paid very close attention to this, that there was
11 going to be a lot of change.

12 MS. BELINDA BAIN: So I think that
13 might be somewhat different than what we've heard from
14 other witnesses at this Inquiry and perhaps what's in
15 the sector review report. But we don't need to argue
16 about that here and now.

17 It's interesting you make -- you make
18 the point that you know, a number of the utilities in
19 certain -- certainly Collus, was municipally owned and
20 perhaps decisions needing to be made by those
21 individuals who weren't themselves, particularly
22 experienced in the area of -- of utilities and
23 electricity. Would you agree with that?

24 MR. NEIL FREEMAN: Yes.

25 MS. BELINDA BAIN: And perhaps in an

1 era where there's technology is changing very quickly,
2 there may well be an interest in looking outside to
3 gain some assistance with moving forward in that kind
4 of an environment. Certainly you'd agree with that?

5 MR. NEIL FREEMAN: Personally, I don't
6 believe that technology has -- was changing that
7 quickly, and when you look at the changes between 2011
8 and 20 -- 2019, where we're at, there's -- there --
9 it's essentially the -- the same sector with some --
10 some innovations. Nothing's been dramatically changed
11 in terms of -- there's obviously more renewables and
12 things like that, but it didn't change the basic
13 foundation of running a regulated electric utility.

14 MS. BELINDA BAIN: So I'd like to take
15 you back to the weighting of the RFP. If we could
16 pull up, please, -- actually, I -- I won't take you to
17 the document.

18 Certainly there was in the RFP document
19 a detailed breakdown of each of the areas that would
20 be weighted on the RFP, correct?

21 MR. NEIL FREEMAN: Yes.

22 MS. BELINDA BAIN: Okay. And one of
23 those certainly was in respect of the resources that a
24 strategic partner could bring to the table, correct?

25 MR. NEIL FREEMAN: Yes.

1 MS. BELINDA BAIN: And I take it you
2 would have understood, and -- and we can go to it if
3 you want, but Collus was looking for the bidders to
4 provide information on the resources that they could
5 bring to the table, correct?

6 MR. NEIL FREEMAN: Correct.

7 MS. BELINDA BAIN: Resources such as
8 do you have a call centre, that would be one, correct?

9 MR. NEIL FREEMAN: I don't recall, but
10 that would make sense.

11 MS. BELINDA BAIN: That would make
12 sense. Okay.

13 And the -- the billing supports in
14 place, correct?

15 MR. NEIL FREEMAN: Exactly.

16 And if I may elaborate. The -- one of
17 the critical things -- you're finding great humour in
18 this, I see -- that -- one of the great things in this
19 is -- is that if you wanted to grow the business, you
20 would actually be looking for a partner, a strategic
21 partner, that had a low-cost call centre, a low-cost
22 billing system, a low cost of administration, because
23 that's the leverage point to actually provide low-cost
24 services to the utilities that you'd want to come into
25 the Collus new regional utility.

1 MS. BELINDA BAIN: Agreed. And so
2 that would be an objective criteria, wouldn't it, the
3 cost of each of those things?

4 MR. NEIL FREEMAN: Exactly.

5 MS. BELINDA BAIN: Nothing fuzzy?

6 MR. NEIL FREEMAN: Correct.

7 MS. BELINDA BAIN: Nothing
8 impressionistic about that?

9 MR. NEIL FREEMAN: Correct.

10 MS. BELINDA BAIN: That's solid,
11 objective information they're looking for?

12 MR. NEIL FREEMAN: Yes.

13 MS. BELINDA BAIN: Okay. And given
14 that they're looking for a strategic partner, you can
15 see why it would make sense for them to be very
16 interested in those types of objective resources that
17 a potential partner could bring to the table, correct?

18 MR. NEIL FREEMAN: Yes.

19 MS. BELINDA BAIN: Thank you.

20 Mr. Freeman, I take it that while you
21 were at Horizon you had occasion to participate in
22 other RFPs for municipal LDCs as well?

23 MR. NEIL FREEMAN: Yes.

24 MS. BELINDA BAIN: How many over the
25 course of your time with Horizon?

1 MR. NEIL FREEMAN: Probably at least
2 five (5) to ten (10).

3 MS. BELINDA BAIN: Five (5) to ten
4 (10). And on how many of those was Horizon
5 successful?

6 MR. NEIL FREEMAN: Success -- so it
7 wasn't successful, except for later the -- the Alectra
8 merger.

9 MS. BELINDA BAIN: So for each of
10 those five (5) to ten (10) you were -- you were -- you
11 enumerated, Horizon wasn't successful on any of those?
12 Is that right?

13 MR. NEIL FREEMAN: Yes. If you want
14 an answer without explanation, yes, that's correct.

15 MS. BELINDA BAIN: And maybe I could
16 just move through the panel, unless -- so Ms. Gaspar,
17 turning to you, while you were at Hydro One I take it
18 you also would have participated in a large number of
19 RFPs?

20 MS. KRISTINA GASPAR: I -- I would
21 have participated in all of them during my -- that
22 were on the table during my time there.

23 MS. BELINDA BAIN: And -- and how many
24 would that have been?

25 MS. KRISTINA GASPAR: I don't recall.

1 That -- that --

2 MS. BELINDA BAIN: Can you give a
3 ballpark?

4 MS. KRISTINA GASPAR: That got to the
5 RFP stage? I -- I don't recall. There were -- there
6 were a number that closed, so. There were a number
7 that closed. There were a number that we were
8 successful with. So, certainly with those, I --

9 MS. BELINDA BAIN: But there would
10 have been a number, I take it, that you would have
11 prepared and submitted and -- and not been successful
12 on. Is that fair?

13 MS. KRISTINA GASPAR: Or -- or that
14 just didn't continue.

15 MS. BELINDA BAIN: Okay. And I think
16 that you had said earlier in your evidence when you
17 were describing the steps taken by Hydro One to
18 respond to the Collus Power RFP, that you said that
19 Hydro One approached it with the same rigour it would
20 have approached any RFP. Is that right?

21 MS. KRISTINA GASPAR: Yes.

22 MS. BELINDA BAIN: Okay. And so, for
23 each of the RFPs that you'd been involved in, all of
24 the time and expense that you were describing, that
25 would be typical for any RFP that Hydro One

1 participated in. Is that right?

2 MS. KRISTINA GASPAR: Yes.

3 MS. BELINDA BAIN: Okay. Thank you.

4 And, Mr. Veridian, if I may. You, I take it, also,
5 while you were CEO and running the business of
6 Veridian, you would have also participated in a number
7 of RFPs for Ontario LDCs?

8 MR. MICHAEL ANGEMEER: Yes. Maybe
9 I'll describe a little bit the -- the history of
10 Veridian, and that'll give you some idea of how -- how
11 we were involved in various transactions.

12 So, since Veridian was formed in 1999,
13 that was the first merger of three (3) utilities
14 together. And, in that case, there was not an RFP.
15 It was done with three (3) partners getting together
16 and deciding to do that.

17 So, what we found over the years was
18 some transactions involved, again, a sole source
19 arrangement where partners would get together and --
20 and put together a business case based on proximity or
21 other factors, that they thought that this was the
22 best thing to do. And then they would put -- take it
23 through the process of municipal approval. And other
24 ones were done through RFPs.

25 So, over that period, from 1999 until

1 now, there's been five (5) acquisitions and three (3)
2 mergers that -- that form Veridian, and -- and now the
3 new company that was formed with the last merger.

4 I think beyond those, we were probably
5 involved in -- in about a couple more RFPs beyond the
6 actual successful ones. And we were also involved in
7 some sole source situations where we were part of a
8 competition that -- that wasn't an RFP where we --
9 where we weren't successful.

10 MS. BELINDA BAIN: Okay. And thank
11 you for that. And so, each of the panel has -- has
12 described the fact that, you know, they participated
13 in a number of RFPs not always successful. And I'll
14 ask each of you -- I mean, I -- I take it that, in --
15 in a sense, when you've been unsuccessful on an RFP,
16 the time and expense in terms of putting together the
17 response is, essentially, a cost of doing business.

18 Mr. Angemeer, would you agree?

19 MR. MICHAEL ANGEMEER: Yes. It's --
20 the -- the pursuit of -- of mergers and acquisitions
21 is definitely a cost of doing business and -- and you
22 have to assess in terms of the probability and
23 likelihood of success based on whether it's a non-RFP
24 process or an RFP process before you decide to -- to
25 participate in that process.

1 And you may not participate in all RFPs
2 because of things like location or other aspects of
3 the utility that just make it not -- not a good
4 business decision to participate in those RFPs.

5 MS. BELINDA BAIN: Thank you.

6

7 (BRIEF PAUSE)

8

9 MS. BELINDA BAIN: Ms. Gaspar, I'd
10 like to ask you about the use of consultants on RFPs
11 for the sale of LDCs in Ontario. I understand that
12 Hydro One has in the past used consultants for that
13 type of a process?

14 MS. KRISTINA GASPAR: We had a
15 financial advisor on board.

16 MS. BELINDA BAIN: There's also, I
17 understand, a consultant called Bridgepoint that you
18 may have used in the past?

19 MS. KRISTINA GASPAR: Yeah, I believe
20 Bridgepoint was the consultant that was used.

21 MS. BELINDA BAIN: Okay. Thank you.

22 MS. KRISTINA GASPAR: It was a
23 consulting firm that was used.

24 MS. BELINDA BAIN: Thank you. Can we
25 pull up, please, CPS2373?

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: Now, Ms. Gaspar,
4 you told us earlier that you weren't personally
5 involved in the September 12th interview meeting that
6 Hydro One had with Collus Power, correct?

7 MS. KRISTINA GASPAR: Correct.

8 MS. BELINDA BAIN: Have you seen a
9 copy of this correspondence before? This is
10 essentially a cover letter inviting Hydro One to
11 participate in the September 12th meeting. Take your
12 ti -- take your time to review it if you haven't seen
13 it before.

14

15 (BRIEF PAUSE)

16

17 MS. BELINDA BAIN: If we could scroll
18 down a little farther, please.

19

20 (BRIEF PAUSE)

21

22 MS. BELINDA BAIN: So, I'd like to
23 draw your attention to the second last paragraph.

24 "This is not intended to be a
25 comprehensive list but should be a

1 part of the presentation to the task
2 team.

3 After the presentation, we will then
4 have an opportunity for questions
5 from both sides and disclosure of
6 other thoughts and ideas.

7 At the close of the meeting, we will
8 discuss the request for proposal RFP
9 and outline our proposed time
10 schedule."

11 I take it from that that at the
12 September 12th meeting the representatives of Hydro
13 One were provided an opportunity to ask questions and
14 were also provided information with respect to the
15 proposed time schedule of the RFP.

16 Is that your understanding, as well?

17 MS. KRISTINA GASPAR: I was not aware
18 of any proposed time schedule.

19 MS. BELINDA BAIN: Certainly, you
20 don't have any reason to doubt that that occurred
21 given that this is in the cover letter sent to Hydro
22 One?

23 MS. KRISTINA GASPAR: Well...

24

25 (BRIEF PAUSE)

1 MS. KRISTINA GASPAR: I can't imagine
2 why the information would not have been communicated
3 to myself and to the valuation team if -- if the
4 timing was known.

5 MS. BELINDA BAIN: So, you're --
6 you're indicating you don't have a recollection of
7 having received the information yourself. Is that
8 what your -- your evidence is?

9 MS. KRISTINA GASPAR: Correct.

10 MS. BELINDA BAIN: Right. But you
11 weren't present --

12 MS. KRISTINA GASPAR: Nor --

13 MS. BELINDA BAIN: You -- you weren't
14 present at the meeting?

15 MS. KRISTINA GASPAR: Correct.

16 MS. BELINDA BAIN: Okay. And you
17 don't have any evidence that -- and no one's told you,
18 no, they did match the outline in the time schedule
19 for us?

20 MS. KRISTINA GASPAR: I have no
21 recollection of -- of any discussion specific to a
22 time schedule prior to receiving information from --
23 from Collus.

24 MS. BELINDA BAIN: Thank you. Can we
25 pull up, please, ALE1099?

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: This is an email
4 from John Glicksman, of PowerStream, to Ed Houghton
5 dated December 1st which states:

6 "Ed, further to our phone discussion
7 a short while ago, attached is a
8 copy of a slide that we showed to
9 our Board and shareholders outlining
10 the premiums that we understand to
11 have historically been paid."

12 And I understand that to be in
13 connection with LDC acquisitions.

14 "As discussed, based on our
15 calculations at 8 million for 50
16 percent of the equity, this would
17 put the premium for Collus at one
18 point six zero (1.60) times book or
19 pretty well the highest that has
20 been paid in the sector."

21 Could we go now, please, to the
22 attachment, which is ALE1100?

23

24 (BRIEF PAUSE)

25

1 MS. BELINDA BAIN: So, this is a slide
2 entitled, "LDC acquisition premiums." And, as you can
3 see, it sets out various transactions by date with the
4 utility acquired, who the purchaser was, and the
5 enterprise price book value ratio or multiplier.

6 So, Ms. Gaspar, I take it you can speak
7 to the Hydro One acquisitions. And -- and take it,
8 generally, within the industry, there would be
9 interest in following purchases that had taken place
10 and the amounts that had been paid. Is that right?

11 MS. KRISTINA GASPAR: In -- in paying
12 attention to that? Yes.

13 MS. BELINDA BAIN: Yes. Okay. And
14 when you look at this chart, do the amounts set out
15 within it in terms of the enterprise book value ratio
16 look correct to you?

17 MS. KRISTINA GASPAR: I don't know.
18 The -- my -- my comment would be that that -- that's
19 not the basis on which we do valuations, then that's
20 not how we calculate how -- how much an entity is
21 worth.

22 You know, it's -- it's often quoted as
23 enterprise price to book or to -- there's a number of
24 metrics that -- that can be used, but certainly,
25 that's not how we arrive at prices.

1 MS. BELINDA BAIN: Okay. So, setting
2 aside your -- I think you're indicating that this
3 isn't how Hydro One itself would carry out its
4 valuations. Is that right?

5 MS. KRISTINA GASPAR: In my
6 experience.

7 MS. BELINDA BAIN: Okay. But you did
8 also indicate that it is a metric that -- that's
9 commonly referred to in the industry. Is that fair?

10 MS. KRISTINA GASPAR: I don't know
11 that it's common referred to in the industry. It's
12 commonly referred to in general when looking at
13 valuations of -- of any entity.

14 MS. BELINDA BAIN: Okay. So, it's a
15 meaningful statistic. Is that fair?

16 MS. KRISTINA GASPAR: I'm not sure
17 it's very meaningful in this industry.

18 MS. BELINDA BAIN: Okay. Do the
19 calculations of the multiplier look correct to you?

20 MS. KRISTINA GASPAR: That that's what
21 they -- the -- the range seems -- seems like -- like
22 it's correct.

23 MS. BELINDA BAIN: Thank you. Mr.
24 Angemeer, your thoughts on, firstly, the use of
25 enterprise to book as a means of gaining a sense of

1 the valuation of a utility?

2 MR. MICHAEL ANGEMEER: Well,
3 certainly, it's -- it's a factor. But you see there's
4 -- there's quite a range here in the transactions for
5 Veridian and for other purchasers.

6 So, there's a lot of other factors that
7 come into play when you look at a valuation in terms
8 of -- you know, this is one (1) of them, but there may
9 be other factors, such as location, the amount of
10 synergies, the demographics of staff. There's all
11 kinds of things that you look at in a -- in a
12 acquisition or a merger in determining what the
13 potential value is and what -- what potential
14 synergies could be realized in the transaction.

15 MS. BELINDA BAIN: And going back to
16 Mr. Glicksman's comment, that the 8 million paid for
17 the shares of Collus Power would represent a 1.60
18 enterprise to book multiplier, do you have any quarrel
19 with that?

20 MR. MICHAEL ANGEMEER: I haven't done
21 the math. I don't have that -- those numbers in front
22 of me, but it -- it's entirely possible that's
23 correct.

24 MS. BELINDA BAIN: And if that's
25 correct, you would agree that that is significantly

1 higher, or there -- there's two (2) that are similar,
2 but si -- significantly higher than the average shown
3 here on -- on this slide, correct?

4 MR. MICHAEL ANGEMEER: Yes, that's
5 correct. And I think the other aspect of this is when
6 the transactions occurred. So, there may have been
7 industry dynamics at any particular time that would
8 generate either a higher multiple or a lower multiple
9 depending on when the transaction was done. But
10 certainly 1.6 seems to be in the range or slightly
11 higher than the range of the average and close to the
12 highest on this list.

13 MS. BELINDA BAIN: Thank you. Those
14 are all my questions.

15 THE HONOURABLE FRANK MARROCCO: We'll
16 take the -- take ten (10) minutes. We've got Mr.
17 Fryer and Mr. Bonwick left to ask questions.

18
19 --- Upon recessing at 3:33 p.m.
20 --- Upon resuming at 3:43 p.m.

21
22 THE HONOURABLE FRANK MARROCCO:
23 Mr. Fryer?

24 MR. TIM FRYER: Thank you, Justice.

25

1 CROSS-EXAMINATION BY MR. TIM FRYER:

2 MR. TIM FRYER: For the record, I am
3 Tim Fryer, and I am representing myself in these
4 proceedings.

5 With prior witnesses at this point in
6 time, I usually explain that I have some areas that I
7 would like to be taking you through in
8 cross-examination of your testimony.

9 In this case though, I don't believe
10 there is that need for me to do that because you all
11 have been very concise in your statements. But I
12 wanted to take this opportunity though to review a
13 couple of areas of evidence with you and perhaps get
14 your reflections on them.

15 To begin with, I'll just review with
16 Ms. Gaspar and Mr. Freeman that since 2011's RFP
17 process ended, there hasn't been any occasion where
18 we've had any interactions or discussions about the
19 matter? Ms. Gaspar?

20 MS. KRISTINA GASPAR: That's correct.

21 MR. TIM FRYER: Mr. Freeman?

22 MR. NEIL FREEMAN: Correct.

23 MR. TIM FRYER: Okay. Mr. Angemeer,
24 you may recall we had a conversation back -- I believe
25 it was the 2017 Association of Municipal Ontario. I

1 would just quickly introduced myself to you. I was a
2 member of Council back then, and you'd done a
3 presentation at the -- okay.

4 So we had a quick introductory hello,
5 but that was all. And you might not even recall it.

6 MR. MICHAEL ANGEMEER: I remember
7 talking to you at some point and -- but I don't
8 remember that specific occasion. But if you say
9 that that happened in that way, then I entirely
10 believe that that's what happened.

11 MR. TIM FRYER: I noted it in my own
12 testimony that I'm a director for six (6) years on
13 another LDC, another municipally-owned LDC. So there
14 could have been occasion for us to have met. It is an
15 LDC that has similar characteristics to Collus prior
16 to the partnership; importantly, as well, a fully
17 participating member of the Cornerstone Hydro Electric
18 Concepts, CHEC, cooperative enterprise.

19 From CHEC's inception back in 2004-ish,
20 as a mechanism to help produce efficiencies in
21 determining the appropriate resources to assist us in
22 navigating the difficult regulatory landscape, it is
23 realized that you're being asked to reflect on your
24 thoughts back some eight (8) years.

25 But I would be interested in your

1 recall about Collus looking towards this concept of a
2 formal partnership with a very large electricity
3 distributor -- distribution provider knowing Collus
4 was an active member with CHEC, really another
5 application of shared shares just not with the
6 municipality.

7 Can you recall how this was
8 incorporated into your considerations? And I'd go
9 first with Ms. Gaspar, if I've been able to explain
10 it.

11 MS. KRISTINA GASPAR: So you're asking
12 how we factored CHEC into our valuation or into our --
13 our entire bid?

14 MR. TIM FRYER: There was a little bit
15 of discussion earlier about shared services, and that
16 was a mechanism that Collus used to this. And there
17 was also discussion about the long-term plan of using
18 the larger enterprise for a shared resources.

19 So I'm just asking -- and as I said, I
20 appreciate it's eight (8) years before -- if you can
21 recall how our relationship with CHEC was incorporated
22 into your offer.

23 MS. KRISTINA GASPAR: So I -- I don't
24 recall exactly. However, it would have been reflected
25 in our proposal. So if there -- if we had

1 contemplated any changes to that, it would have been
2 spelled out in our proposal.

3 MR. TIM FRYER: Okay. Very good.

4 MS. KRISTINA GASPAR: I don't -- I
5 don't specifically remember -- I don't specifically
6 remember our discussions, either within the due
7 diligence team or within the -- the valuation team.

8 And so to me if it's something that
9 doesn't stand out to me now, you know, almost a decade
10 later, it probably wasn't a significant concern then
11 either.

12 MR. TIM FRYER: And that high level
13 answer is, I think, what I would appreciate in this
14 particular case. Just if you can recall if there's
15 anything specific about it. So I guess Mr. Angemeer?

16 MR. MICHAEL ANGEMEER: I'll answer in
17 a question by -- I guess the main consideration -- I
18 think where you're going with this is, was there a
19 strategic value in Collus being part of CHEC and
20 potential future transactions or -- or shared
21 services?

22 So we would have looked at it from the
23 perspective of the -- the primary factor in terms of
24 strategic importance would be the location of Collus
25 within the Georgian Bay area and other potential

1 utilities that might have come on board over time.

2 And then the secondary factor would be
3 if the CHEC group was -- became involved in a larger
4 number of services going forward that there might be
5 an opportunity around that as well.

6 MR. TIM FRYER: Right. Thank you very
7 much. Mr. Freeman?

8 MR. NEIL FREEMAN: What -- what I
9 remember about the circumstance was that the -- the
10 arrangements that -- the contracts that Collus had in
11 place for services through CHEC were a significant
12 financial penalty on the transaction and that the --
13 to get 50 percent of Collus and then to essentially
14 have no -- or almost no flexibility. Just sort of get
15 into the cost structure of the services being provided
16 to Collus through CHEC meant that there was limited
17 scope for improving the cost structure of Collus.

18 And I said this morning that, you know,
19 one of the other options was to sort of, you know, get
20 into the -- correct me if I get the names wrong of the
21 different pieces of the Collus' structure -- but
22 essentially, the service arm that -- that, you know --
23 or the Holdco just so that you could affect those
24 decisions.

25 But what I think I remember is we went,

1 did our due diligence, and read all the agreements is
2 that not only were there financial sort of penalties
3 associated with the -- the various contracts with the
4 utilus -- or some of the other -- forgive me if I got
5 those names wrong -- that were part of supplying
6 Collus. But they were extraordinary in terms of the
7 length, in terms of the penalty payments to sort of
8 change those contracts.

9 And so that -- that sort of shaped the
10 possibilities for -- for what you'd paid for Collus.
11 And indeed, you know, what's been spoken of here --
12 what the multiples should be paid that the advice we
13 would have received -- would be that this is a very
14 limiting factor on -- on paying a high multiple for --
15 for Collus.

16 MR. TIM FRYER: Okay. So we'll leave
17 that part of the area then. I was hoping to bring up
18 CPS0006920. And we've actually seen this earlier.

19 This is the Excel... I'm sorry. I was
20 looking for the -- put down the wrong number -- I was
21 looking for the matrix that showed the Hydro One,
22 PowerStream, Veridian, and Horizon comparisons from
23 breakdown by John Rockx, the one that showed the
24 4.112 million.

25 MR. JOHN MATHER: Do you recall if

1 it's the first one that was shown today or the second
2 one?

3 MR. TIM FRYER: It was the first, I
4 believe.

5 MR. JOHN MATHER: One moment.

6 MR. TIM FRYER: Sorry about that.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: CPS2668.

11

12 (BRIEF PAUSE)

13

14 CONTINUED BY MR. TIM FRYER:

15 MR. TIM FRYER: And you'll remember
16 seeing this one earlier, and the reason I wanted to
17 bring it up is there two (2) parts because there's
18 something I referred to back earlier in evidence.

19 There was a question to Ms. Gaspar in
20 regards to under the total cash consideration to the
21 Town of Collingwood, the last line shows "less
22 4.112 million of unassumed liabilities." And you were
23 saying if trying to look at it on a level playing
24 field if something's being deducted, then you'd expect
25 that it was deducted across the board if it was

1 applicable.

2 So in the next column over, it shows
3 "less 1.412 million" in the PowerStream case. The
4 differential to that is the \$2.7 million
5 infrastructure Ontario loan that was held by Collus at
6 the time. Hydro One, according to this particular
7 chart, had indicated that it wasn't going to be
8 assumed.

9 So it had been added in under unassumed
10 liabilities. So I'm pointing that out because I'd
11 actually earlier -- it's unfortunate that we didn't
12 get a chance to have Mr. Rockx, who did this, come
13 earlier 'cause we would have had his testimony -- but
14 I'll give Ms. Gaspar to ask -- you can ask a question
15 if you would like.

16 MS. KRISTINA GASPAR: Yeah. Sorry.
17 What do you mean it was -- that we had -- Hydro One
18 had indicated that it would not be assumed?

19 MR. TIM FRYER: In this particular
20 chart that he was doing, that was the assumption he
21 had put in. I believe --

22 MS. KRISTINA GASPAR: No. My question
23 is though, you had said Hydro One had indicated?

24 MR. TIM FRYER: Yes. That's --

25 MS. KRISTINA GASPAR: Where --

1 where --

2 MR. TIM FRYER: -- that's why he added
3 it in. I believe this was an initial one, and then
4 the next one that was examined actually showed it not
5 there as 4.12. It showed the 1.412. It was just to
6 explain that this is the reason why it's showing the
7 \$4 million amount and not the 1.412.

8 And it has to do with something that
9 happened earlier in testimony, not in the case of
10 today. So it was only meant to provide clarification
11 on that point. It was -- I wasn't looking for
12 anything further than that.

13 THE HONOURABLE FRANK MARROCCO: Well,
14 now I'm confused. Well, maybe not. Did Hydro One
15 ever indicate that it was not assuming a particular
16 liability?

17 MS. KRISTINA GASPAR: Not that I'm
18 aware of.

19 MR. TIM FRYER: If I may, Your Honour,
20 I believe Mr. Rockx will be able to walk us through
21 all of that, and as I say, I think this was his first
22 matrix.

23 The next one doesn't show it as 4
24 million, it shows it as the 1.412, which most likely
25 is what your recollection is, correct.

1 MS. KRISTINA GASPAR: So I believe in
2 our clarifying response, like back in November, that
3 provided our answer and there -- there was no
4 adjustment.

5 The clarifying response we provided, I
6 believe the date was November when -- when we had that
7 exchange asking for clarification to our bid.

8 There -- there was no adjustment.

9

10 CONTINUED BY MR. TIM FRYER

11 MR. TIM FRYER: And again, this was
12 just to point that out, that that's the reason for
13 that differential in this particular slide.

14 So -- so we can move on without any
15 problem. It wasn't meant to -- to ask you to remember
16 in that regard.

17 MS. KRISTINA GASPAR: Can -- can I ask
18 a question?

19 MR. TIM FRYER: Yes, go ahead.

20 MS. KRISTINA GASPAR: You made the
21 comparison between two utilities, bids that there was
22 an adjustment to -- you're trying to assert that there
23 is a -- a -- the same adjustment to PowerStream and
24 Hydro One. I don't -- I don't see that with Horizon
25 or Veridian.

1 MR. TIM FRYER: No, and again, that
2 would be going over with Mr. Rockx.

3 My assumption is that everything, as
4 you work through the matrix, was done. And I think
5 the only other comment I'll -- I'll make about that is
6 the reason KPMG was doing that work rather than our
7 own finance department, was we were quite busy with
8 IFRS, cost of service, smart meter start up. But on
9 top of that I was scoring as well, so the analysis
10 being done on the financial was being done by an
11 independent.

12 So if we could bring up
13 ALE0005133.0002, this is the slide presentation we saw
14 earlier.

15 THE HONOURABLE FRANK MARROCCO: Let me
16 just go back to that.

17 Hydro One did not indicate that there
18 were liabilities that it was refusing to assume.

19 MS. KRISTINA GASPAR: Correct.

20

21 CONTINUED BY MR. TIM FRYER:

22 MR. TIM FRYER: So if we could bring
23 that up and there's a couple of slides I'd like to
24 just look at with you.

25 And it would be slide 15. And again,

1 the -- this is the slide you saw earlier. So my
2 intention had been originally to -- to ask you to
3 verify the amounts, but we've already established that
4 for good reason that we won't do that.

5 But -- and it has been reviewed by Mr.
6 Chenoweth. I was just going to establish with you the
7 order of -- of finish in the total cash consideration,
8 which shows Hydro One as one (1), PowerStream as two
9 (2), Horizon as three (3) and -- and Veridian as four
10 (4).

11 So just verify that with you that that
12 is the order of finish, so to speak. Anybody didn't
13 agree, just I -- I'd look for your input. Okay.

14 So based principally on this
15 comparative data, I scored the proposals.
16 Unfortunately the individual scoring of the financial
17 isn't available, but it's been shown in prior evidence
18 that all nine members scored Hydro One networks RFP
19 with the full 30 points.

20 For PowerStream, the average score was
21 10 percent lower at 27. And I provide further details
22 on that a little bit later.

23 If we look at slide 13, so again,
24 you've seen this one. There already has been
25 discussion about the scoring matrix. I expect it

1 indicates the nine members, as you -- as you can see.
2 I show the slide's detail and then also indicate to
3 you that through evidence already reviewed I am member
4 7. So I am prepared to answer any questions you may
5 have about the results that I came up with.

6 THE HONOURABLE FRANK MARROCCO: No,
7 no. No, no.

8 MR. TIM FRYER: Okay.

9 THE HONOURABLE FRANK MARROCCO: That's
10 not the way it works. You ask the questions and the
11 witnesses answer.

12 MR. TIM FRYER: Thank you.

13 THE HONOURABLE FRANK MARROCCO: So
14 stick to that format.

15 MR. TIM FRYER: I will, sir. Thank
16 you.

17

18 CONTINUED BY MR. TIM FRYER

19 MR. TIM FRYER: I'm showing it in
20 order to prove that the process for this portion of
21 the scoring, which I distinguished as 30 percent
22 strategic partner criteria and 40 percent other
23 criteria, did allow for an objective outcome.

24 To review with you specifically about
25 the strategic partner aspect of the unusual

1 transaction, this one hasn't been duplicated and in my
2 opinion probably won't, I -- I will now bring up
3 CPS0006920 that I had mistakenly brought up earlier.

4

5 (BRIEF PAUSE)

6

7 MR. TIM FRYER: And these are the
8 detailed slides for the scoring.

9 COURT OPERATOR: Sorry, 6650?

10 MR. TIM FRYER: 6920.

11

12 CONTINUED BY MR. TIM FRYER

13 MR. TIM FRYER: And if we look at the
14 slide 2, so this is the strategic and -- and
15 specialized resources slide.

16 As I noted, this was an unusual model
17 to evaluate your proposals on, and my scores were
18 based on the knowledge I had at the time, part of my
19 outcome was based on the fact that I strongly
20 considered this transaction from the very long-term
21 perspective.

22 Therefore, I formed the opinion that
23 most likely eventually the partner that Collingwood
24 aligned themselves with would ultimately own 100
25 percent.

1 So eventually matters like rate
2 harmonization would occur. You can probably
3 appreciate the situation that arose for -- for
4 Collingwood with EPCOR in 2007 wasn't anticipated back
5 then. The possible merger of -- of PowerStream more
6 likely.

7 Now, if we look at slide 7, and if you
8 refer to the first line of scores in the third column,
9 as I -- as I noted, Hydro One was scored with the 30
10 points max by all nine members, and -- and then the
11 others are shown there.

12 And as I noted earlier, it was based on
13 -- on my knowledge at the time. I was not aware of
14 the many peripheral matters that have shown up in the
15 proceedings evidence. I will leave it at that.

16 But again, ask the panel if they have
17 any -- any concerns with what they're seeing with the
18 information here as far as the comparatives go.

19 MR. MICHAEL ANGEMEER: Just a -- a
20 comment that again I'm not sure what basis the -- the
21 various people rating the RFP responses used to come
22 up with their scores.

23 THE HONOURABLE FRANK MARROCCO: I
24 think -- I think that's -- it's clear to me that none
25 of the three (3) of you were on a strategic partner

1 task team and that none of the three of you did the
2 evaluations. That's clear.

3

4 CONTINUED BY MR. TIM FRYER:

5 MR. TIM FRYER: And unfortunately I
6 can't show you the detailed slide because that hasn't
7 been able to be produced. We only see the totals and
8 I had to speak to average rather than expedite.

9 I knew I had scored Hydro One as number
10 one in -- in the financial aspect of things.

11 So if we could bring up paragraph
12 number 483 from the Foundation Document. And I don't
13 intend on referring to all the content here.

14 This is an email response from then
15 Mayor Cooper to the Town's legal counsel, providing
16 assurances as the closing procedures were underway.

17 The principle statement is the one that
18 outlines that near the bottom:

19 "The Collus Board's opinion from
20 whispers (sic) provincially that
21 small LDCs will be forced to
22 amalgamate in a few short years."

23 So again, realizing it's eight (8)
24 years ago, I wanted to ask you each to comment on what
25 you thought the lay of the land was in 2011, for

1 example, we -- we already had heard about the Ontario
2 distribution review panel.

3 With your com -- company's anticipate -
4 - were you anticipating force amalgamations or at
5 least increase uncertainty? And I start again with
6 Ms. Gaspar, if I could.

7 MS. KRISTINA GASPAR: We fully
8 anticipated significant consolidation within the
9 industry.

10 THE HONOURABLE FRANK MARROCCO: So who
11 --

12 MS. KRISTINA GASPAR: Go so far as to
13 say forced consolidation. That's probably a last
14 resort tactic by the -- the premier perhaps would have
15 authority to do that, but I -- I can't see -- I -- I
16 can't see political appetite for forced consolidation.

17 However, we did fully expect and were
18 pursuing widespread industry consolidation.

19

20 CONTINUED BY MR. TIM FRYER:

21 MR. TIM FRYER: Thank you. Mr.
22 Angemeer?

23

24 (BRIEF PAUSE)

25

1 MR. MICHAEL ANGEMEER: Can you remind
2 me, or somebody remind me the -- so we're talking
3 about 2011. And the distribution sector restructuring
4 report was what year?

5 MR. TIM FRYER: I just wondered if you
6 can recall what you considered to be the lay of the
7 land. Did you feel there was going to be forced
8 amalgamations or an increased level of uncertainty?

9 MR. MICHAEL ANGEMEER: I understand
10 that. But the actual timing of the distribution
11 sector report, was it before or after 2011?

12 MR. TIM FRYER: It came out just early
13 in 2012, but it was underway.

14 MR. MICHAEL ANGEMEER: Okay. Thank
15 you.

16 THE HONOURABLE FRANK MARROCCO: Do we
17 have the report date?

18 MR. JOHN MATHER: Just one (1) moment.
19 I'm looking it up.

20 MR. MICHAEL WATSON: Your Honour, I
21 believe that the date was -- of the report is December
22 2012. The panel was struck, I believe, in April 2012.

23 THE HONOURABLE FRANK MARROCCO: I
24 thought it was in -- I didn't think it was in 2011.
25 So, it's -- so do you have those dates then, Mr.

1 Angemeer?

2 MR. MICHAEL ANGEMEER: Yeah, that's --
3 that's fine. Thank you. The -- the view of Veridian
4 at the time was that there would be continued
5 consolidation, as I -- I mentioned before in my
6 evidence, that Veridian had been successful a number
7 of times in terms of acquisitions and mergers.

8 And we were, you know, continuing to --
9 to move in that direction. Transactions were -- were
10 difficult because there was a number of factors,
11 whether it be political or otherwise, that got in the
12 way of many municipalities acting, but we certainly --
13 we certainly believe that there would be future
14 consolidations.

15 In terms of forced consolidations which
16 ended up being described in the distribution sector
17 report, we -- we didn't really believe that there
18 would be forced conso -- consolidations.

19 We did believe -- I think there was
20 early testimony that, you know, the regulatory burden
21 on small utilities might continue to be increased over
22 a period of time and, therefore, make -- make it more
23 difficult for small utilities to -- to remain
24 separate.

25 And there's always other factors that

1 occur, as well, in terms of pressures on
2 municipalities for cash for potentially other
3 regulatory mechanisms that come into lower rates of
4 return.

5 But we didn't -- we didn't believe it
6 would be forced, but we believe there may be factors
7 which may -- may move utilities and -- and
8 municipalities to move towards further consolidations
9 but not in a -- in a very fast manner.

10

11 CONTINUED BY MR. TIM FRYER:

12 MR. TIM FRYER: Mr. Freeman, I know
13 you've made some comments earlier. Would you like to
14 add anything?

15 MR. NEIL FREEMAN: I didn't believe
16 there would be widespread consolidation, and here --
17 here are the reasons. And I didn't believe there
18 would be forced consolidations. And I'll -- I'll go -
19 - I'll comment on the -- the panel that you've
20 mentioned near the end.

21 But the regulatory framework in Ontario
22 with the Ontario Energy Board, they -- they benchmark
23 the utilities. And what's not very well understood is
24 that they actually handicap the utilities based on
25 scale. And, therefore, a larger utility is expected -

1 - as the number of customers increases the utility's
2 expected to be a better performer.

3 So, when the utilities are -- are
4 levelized on that basis, utilities, like Hawksbury,
5 which I mentioned earlier, invariably show up as the
6 best utility. And, as you'll know yourself from
7 having been CFO of Collus, there's groups of -- of
8 utilities by -- based on stretch factors.

9 And, invariably, this -- you know, the
10 -- the best -- least onerous stretch factor is with
11 the smallest utilities, less than ten thousand
12 (10,000) customers, that type of thing.

13 And every year when that data came out
14 from the Ontario Energy Board there were press
15 releases from Niagara-on-the-Lake Hydro, you know,
16 we're the best utility, this proves small utilities
17 are better.

18 So, there was that angle. Plus, there
19 was the angle of -- of the -- the sort of rough
20 politics of provincial MPPs, govern -- that the
21 government did -- never would have the stomach to
22 force consolidation.

23 Local MPPs would get involved to
24 protect the interests of their local LDCs. The
25 Electricity Distributors Association was quite active

1 in making sure that forced consolidation never
2 happened, that it would only be voluntary.

3 I will say that -- and David McFadden
4 would confirm this, that Horizon was actually very
5 instrumental in the shaping of the distribution sector
6 panel. And the -- the genius of that panel was to
7 essentially create a voluntary framework by breaking
8 up Hydro One into regional utilities that essentially
9 -- that municipalities could voluntarily fold into
10 these larger utilities.

11 And but the -- the sort of mistake of
12 that panel was that it -- the recommendation was, if
13 it doesn't all happen within two (2) years, the
14 government would legislate.

15 And so, what was otherwise a very well
16 thought out and -- and well structured program, you
17 know, sort of because of that -- that sort of
18 ultimatum of do it in two (2) years or else, it
19 essentially fell apart.

20 And -- and I, as -- as has been
21 mentioned with the other panel as it talked to people
22 throughout the sector, nobody believed the government
23 would -- would force consolidation. And maNy LDCs,
24 you know, had very good relationships with their
25 shareholders in terms of, you know, we serve the local

1 community, we're -- so it was a very difficult subject
2 to -- to encourage consolidation short of a CEO
3 deciding to retire, this type of -- of situation.

4 MR. TIM FRYER: That type of trigger.
5 So -- okay, so. And then in -- in closing, I -- I'd
6 like to thank you for your participation today and, of
7 course, all the work you did leading up to being here
8 today. It's very much appreciated.

9 I consider this to be -- be conveyed on
10 behalf of our ratepayers. I'm no longer their
11 representative, but I was back then. And I do want to
12 say that I do -- it's not lost amongst us, that's it
13 unfortunate that these are the circumstances that
14 bring you to our community, but thank you very much
15 for your help.

16 So -- so, again, thank you, Ms. Gaspar,
17 Mr. Angemeer, and Mr. Freeman. Those are all I have.

18 THE HONOURABLE FRANK MARROCCO: Thank
19 you, Mr. Fryer. Mr. Bonwick...?

20

21 (BRIEF PAUSE)

22

23 MR. PAUL BONWICK: Thank you, Your
24 Honour.

25

1 CROSS-EXAMINATION BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: Paul Bonwick,
3 participant at the inquiry. I'll maybe start left to
4 right because you've been picked on, Mr. Angemeer, as
5 the first one (1) most of the day.

6 Ms. -- Mr. Freeman, I'm just wondering.
7 I was looking at your bio there. Can you give us a
8 bit of background in terms of your education --

9 MR. NEIL FREEMAN: So, I --

10 MR. PAUL BONWICK: -- background,
11 educational background as it relates to this
12 particular sector?

13 MR. NEIL FREEMAN: So, I have a -- I -
14 - I have a B.A. and M.A. from the University of
15 Waterloo and PhD from Toronto. I've taken directors
16 college. I -- it's not on my bio, but I -- I've taken
17 select courses in finance and administration and
18 things like that.

19 MR. PAUL BONWICK: Congratulations.
20 The -- the PhD, what -- what field is that in?

21 MR. NEIL FREEMAN: PhD's in Canadian
22 government, political science. I wrote -- my PhD
23 thesis as on Ontario Hydro.

24 MR. PAUL BONWICK: Thank you.

25 MR. NEIL FREEMAN: It was published as

1 a book, yes.

2 MR. PAUL BONWICK: Based on how I've
3 viewed your comments as it relates to the various
4 pieces of information that have been shown to you
5 today, is it reasonable to conclude that you tend to
6 view things in a very analytical way as it relates to
7 the numbers, the value for the shares, sort of the
8 dollars and cents surrounding the Corporation, that --
9 that LDC?

10 MR. NEIL FREEMAN: I -- I do that.
11 And I think the very fact that I -- you know, what I
12 did at Hydro One and I did at Horizon was I -- I did
13 the same in analyzing, you know, municipi -- as was
14 provided in evidence here, did briefing notes on the
15 politics of the situation, and the decision makers and
16 those types of things, as well.

17 MR. PAUL BONWICK: I was just trying
18 to get a sense in terms of how you approach it in
19 terms of perspective. And it seemed to be very much
20 focussed on the -- the hard data. We went through
21 much of the information that's available at the OEB in
22 terms of the analytics, the financial situation,
23 rates, debts, liabilities, certainly beyond me.

24 I'm not an expert by any stretch in the
25 industry, but that's sort of the gist that I got. Was

1 that a fair sense?

2 MR. NEIL FREEMAN: I wouldn't say that
3 that's to the exclusion of other factors, unless you'd
4 like to point something out.

5 MR. PAUL BONWICK: And I -- I'm just
6 getting to that because I -- I'm looking at the
7 scoring. And -- and, in fairness, this is for all of
8 you. Have you had an opportunity to look at the
9 Strategic Task Team's makeup through the -- through
10 the information you've been provided?

11 So the Strategic Task Team was made up
12 of the chair, which was Dean Muncaster. Dean was a
13 retired former president and I think CEO of Canadian
14 Tire Corporation Canada, member-at-large was David
15 McFadden, which for most of you know Mr. McFadden, a
16 well-regarded, experienced, international -- national
17 energy lawyer. The Task Team was made up of the CO
18 for the Town of Collingwood, the Task Team was made up
19 of Mr. Doug Garbutt, the senior executive with a
20 international firm. A former mayor sat on the LDC.
21 The mayor, the chair of finance.

22 There was nine (9) members on that task
23 force. Based on the description I've provided, and
24 maybe this is an unfair question, would -- would you
25 think that that's a fairly broad team to assemble,

1 based on their varied and deep backgrounds to
2 participate in the scoring? We'll talk about the
3 scoring in a second. Right across the board, I'll
4 give that one.

5 MR. NEIL FREEMAN: I -- I would say
6 that it -- it is, as you suggested, a broad -- and it
7 includes various essentially stakeholders, and
8 notable, and reput -- local people, so.

9 MR. PAUL BONWICK: You're both welcome
10 to comment if you wish. I'm going to try to be
11 concise, because I know we've got to get Mr. Nolan in
12 here as well.

13 MS. KRISTINA GASPAR: You -- you've
14 rhymed off about five (5) -- five (5) people or -- or
15 titles --

16 MR. PAUL BONWICK: There was -- sorry.
17 There was Mr. Houghton as well, president and CEO, Mr.
18 Dunca -- Muncaster was the CEO of the board, Ms.
19 Wingrove was the CEO of the municipality, Mr. Herhalt
20 was managing part --

21 MS. KRISTINA GASPAR: Wingrove was the
22 CEO?

23 MR. PAUL BONWICK: CAO for
24 Collingwood.

25 MS. KRISTINA GASPAR: CAO?

1 MR. PAUL BONWICK: CAO. My apologies.
2 Mr. -- I just said his name.

3 THE HONOURABLE FRANK MARROCCO:
4 Herhalt.

5 MR. PAUL BONWICK: Herhalt. Thank
6 you, Your Honour. Mr. Herhalt was the managing
7 partner for KPMG. Mr. Garbutt was a retired mayor,
8 former executive -- senior executive with a
9 multinational based out of Collingwood. His -- his
10 offices were based out of Collingwood.

11 We had the chair of finance, deputy
12 mayor, same title. We had the mayor. I think there
13 was two (2) politicians, and the rest was made up from
14 staff and board members.

15 THE HONOURABLE FRANK MARROCCO: The --
16 the deputy mayor and the chair of finance are the same
17 person.

18 MS. KRISTINA GASPAR: Okay.

19 THE HONOURABLE FRANK MARROCCO: In
20 case you end up with ten (10).

21 MS. KRISTINA GASPAR: I'm trying to
22 count, here. I'm thinking, something's not adding up.
23

24 CONTINUED BY MR. PAUL BONWICK:

25 MR. PAUL BONWICK: Contrary to popular

1 belief, I wasn't brought in for the split vote.

2 MS. KRISTINA GASPAR: You -- you know,
3 I -- I don't personally know -- know any of these
4 individuals, nor -- nor do I think I should pass
5 judgment on their qualifications, given the fact that
6 I -- I don't know them. I don't know their resumes.
7 I don't --

8 MR. PAUL BONWICK: And --

9 MS. KRISTINA GASPAR: -- I don't
10 personally know their experience.

11 MR. PAUL BONWICK: -- and --

12 MS. KRISTINA GASPAR: It's -- it's
13 really not my place.

14 MR. PAUL BONWICK: That's fair. I was
15 trying to give a cross -- not on the individuals, but
16 rather, just their backgrounds and their -- their
17 former lives, in terms of give a quick -- a sense of
18 the cross-section, because you hadn't seen it in the
19 Foundation Documents to give you a sense of the cross-
20 section of the people that were involved in the
21 scoring. That was really my only intent.

22 MR. MICHAEL ANGEEMEER: It seems like a
23 good cross-section from industry, and from the
24 political world. I think if there was one (1) comment
25 in terms of what might be missing, is a -- is a large

1 utility experience. That might indicate, you know,
2 there had been involvement in mergers and acquisition
3 before, other than maybe Dave McFadden.

4 MR. PAUL BONWICK: And I -- fair
5 enough. And I'm not here to defend them or -- or
6 simply by -- by way of sharing it to give you some
7 background and sort of -- in terms of the
8 qualification.

9 Would the three (3) of you agree, and
10 by all means, challenge this, but would you -- the
11 three (3) of you agree that especially in smaller
12 communities, and I'll -- I'll use Mr. Freeman's number
13 -- I think it was his, but -- utilities under ten
14 thousand (10,000) customers.

15 Would you believe that there's a real
16 sort of cultural synergy related to the -- the owner
17 and the LDC itself that's maybe not consistent with
18 larger LDCs like Hydro One, or -- I'm not picking on
19 Alectra, but Alectra, or really large sort of
20 behemoths within the industry?

21 I can repeat the question, if you like.

22 MS. KRISTINA GASPAR: Is it -- yeah.
23 So my -- my comment would be -- I -- I wouldn't broad
24 brush stroke any -- any grouping by -- by size in
25 terms of their relationship. What -- what I've -- my

1 experience has been that different LDCs have different
2 relationships between the CEO, the board and the
3 shareholder. So it's -- yeah. So in my -- my -- I --
4 I would not -- I would not use a broad brush and --
5 and group LDCs relationships based on their customer
6 size. There -- there is a lot of variability in terms
7 of relationships between boards, senior executives
8 within LDCs, and shareholders.

9 So I'm -- I'm not comfortable saying
10 all of the ones that are under ten thousand (10,000)--

11 MR. PAUL BONWICK: Okay. Okay.

12 MS. KRISTINA GASPAR: -- are the same.

13 MR. PAUL BONWICK: And my apologies.
14 I did not try to lead you down a path where all of
15 them have this cultural dynamic that they're linked,
16 and feel that it's -- it's really a sense of
17 community, in some cases. That's what I was trying to
18 ferret out, is do you buy into that concept, or no?

19 And clearly, you're suggesting no, you
20 can't broad brush it in any way, that it needs to be
21 viewed in a very linear fashion, based on any
22 individual LDC, in your opinion, not size related?

23 MS. KRISTINA GASPAR: Yeah. I would -
24 - I would take it on a case-by-case basis.

25 MR. PAUL BONWICK: If that -- if I

1 understood you properly.

2 MS. KRISTINA GASPAR: I -- I -- yeah.
3 I -- I would look at each LDC on a case-by-case basis.
4 Every LDC has different personalities on their board,
5 different personalities in the executive suite, and
6 different personalities in -- across City -- Town
7 Council, and all of that matters.

8 MR. NEIL FREEMAN: I -- I would say
9 that the -- the assumption you're making or -- or
10 behind your question is -- is -- the answer is similar
11 to what Ms. Gaspar is suggesting, is that -- that --
12 and -- and I had the -- I have the benefit of -- I --
13 I was involved in Hydro One's eighty-eight (88).

14 I could tell you cases like the town of
15 Quinte West that was very dissatisfied with the
16 utility in Trenton and Frankford prior to the -- to
17 the acquisition by Hydro One, and -- and couldn't say
18 enough good things about it after.

19 There are cases like you're suggesting
20 in Niagara-on-the-Lake Hydro, where, you know, that
21 synergy exists, but it -- it's not uniformly the case.
22 I think the -- there is an impression that you're
23 articulating that's -- that's fair, that in the
24 smaller communities, it's the perception that it'll be
25 very difficult to make a, you know, make a change, but

1 I can tell you that in Hamilton and St. Catherine's,
2 there was a fondness for Horizon, that -- that it --
3 it served the community well, that what -- it was just
4 on a larger scale.

5 And we did -- we did annual survey
6 analysis, or maybe it was every second year, that --
7 that demonstrated that type -- that type of thing.
8 And I think you only have to read the newspapers how
9 sensitive the idea of doing, like, a sale of Toronto
10 Hydro would be even in Toronto.

11 So it's -- it's a particular attachment
12 to, you know, like, the public ownership and these --
13 let the legacy that -- that people, you know, are
14 resistant to change.

15 MR. MICHAEL ANGEMEER: So with -- with
16 Veridian, you had the best of both worlds. So we were
17 the smallest of the large utilities that were classed
18 any -- any size above a hundred thousand (100,000)
19 customers, and even though we had noncontiguous
20 service territories, we were one (1) of the most cost-
21 effective from a cost per customer perspective in
22 serving those territories.

23 So you had a lot of the benefits of a
24 large utility and one (1) of the most cost-effective
25 billing systems in the Province while still serving

1 the nine (9) communities at the time that we served
2 very effectively from a operational perspective and
3 also from a community supports purpose perspective.

4 So we felt that our -- our bid and our
5 business model was very successful, and the fact that
6 the last merger we just completed with Whitby Hydro,
7 the -- some of the Intervenors actually talked about
8 our model as being very good model, because we're able
9 to get those synergies, and get those efficiencies,
10 while at the same time providing excellent service to
11 the municipalities.

12 We had a great relationship with our --
13 with our four (4) shareholders in terms of the ability
14 to not only meet the needs of their -- from a
15 financial perspective, but also from the perspective
16 of making sure that key elements of their
17 sustainability strategies and their community support
18 strategies and sponsorships were -- were maintained.
19 And you could ask all four (4) of them, and I'm sure
20 they -- they would say they would be very happy.

21 So it's really a balance, and we -- we
22 felt we had an ideal model, because we weren't super
23 large, about the same time we weren't really small.

24 MR. PAUL BONWICK: So in this -- and
25 thank you very much for that information because we

1 tend to get things filtered through our own lenses and
2 we don't walk the paths that you folks walk on a daily
3 basis, and whether it's by reading in the newspaper or
4 following through news, we -- we tend to -- and by
5 regional experiences, I think about Wasaga Beach.

6 Are you familiar with Wasaga Beach
7 having started to go down a path of looking at selling
8 their LDC, and sort of became very controversial, and
9 I think they've backed away from that at this point in
10 time. You'll be aware of course that I believe
11 Orillia went through a process and another council
12 changed its mind in terms of the sale, if I'm not
13 mistaken.

14 Just what I'm trying to do is -- is get
15 information from you folks in terms of what you were
16 thinking the industry versus what the community may
17 have been thinking at the time.

18 In the letter, or in one of the letters
19 you've read, in the evidence there is a clear
20 statement that there was an unsettled feeling within
21 the political world based on what they were reading
22 politicians at the provincial level talking about
23 consolidation. You had the Conservatives, the
24 Liberals, the NDP, they were all talking about
25 consolidation models. It was a case of whether it was

1 going to be one (1) or fifteen (15) or thirty (30) or
2 eight (8), but --

3 And then of course would you be aware
4 that many municipal politicians have lived through the
5 life whereby they were never under the impression that
6 forced consolidation would take place and kind of woke
7 up one morning finding out that communities were in
8 fact by provincial mandate going to be put together?

9 Are you familiar with that at all?

10 MR. NEIL FREEMAN: The municipal
11 forced consolida --

12 MR. PAUL BONWICK: Munici -- municipal
13 consolidation, forced municipal consolidation. Are
14 you familiar with that, that that's transpired in the
15 province over the last number of years? Not recently,
16 mind you, but going back into the 1990s and --

17 MR. NEIL FREEMAN: I hate to sort of
18 say I know too much about that, but I -- I agree with
19 you, yes.

20 What happened was the -- the Municipal
21 Act created an environment where you either
22 voluntarily merged or the government could, you know,
23 appoint a commissioner to merge you, and -- and that
24 happened after 1996.

25 MR. PAUL BONWICK: Throughout the

1 province, in fairness.

2 MR. NEIL FREEMAN: Yes.

3 MR. PAUL BONWICK: Yeah. And we had
4 one right next door, in fairness, where there was huge
5 concern. One had huge debt, one had huge surpluses.
6 They merged them together and, as you can appreciate--

7 But the reason I paint that picture for
8 you is to try to lump it all into one basket now and
9 say, so you've had politicians that have been involved
10 that are representing the shareholder, which is of
11 course the Municipality, and they've witnessed forced
12 amalgamation. They've heard, as you've acknowledged,
13 various political parties at the government talk about
14 the need to consolidate. They hear from -- by way of
15 their boards, changes in technology. And so based on
16 that background -- and the most important part is
17 their love of their utility and ability -- desire to
18 keep control of it.

19 Does it not make sense that they might
20 want to go down the path of maintaining a strong
21 ownership structure where they're at 50 percent and
22 they haven't lost control, but yet they seem to be
23 following a path that they believe they're going to be
24 pushed down eventually? Does that make sense to you
25 when I kind of bundle it up like that?

1 MR. NEIL FREEMAN: Why --

2 MS. KRISTINA GASPAR: What's the
3 question?

4 MR. PAUL BONWICK: I asked you if it
5 made sense based on what I said, but apparently I
6 didn't say it very well.

7 MS. KRISTINA GASPAR: You said a lot,
8 so I just want to know --

9 MR. PAUL BONWICK: I tend to do that.

10 MS. KRISTINA GASPAR: -- what the
11 question is, which -- what are you asking?

12 MR. PAUL BONWICK: So I wrap -- I
13 tried to wrap it up in a bundle and say the
14 politicians, the elected officials that represent the
15 shareholder, namely the Town of Collingwood Council,
16 and at the end of the day the Board that they appoint,
17 as they went through this process, they've experienced
18 forced amalgamation, they've seen it happen right next
19 door to them, they've read about it, and their
20 colleagues have experienced it, and you acknowledge
21 that. They've understood that the province and all
22 three (3) parties that could lead this province talked
23 about the need for consolidation in the LDC sector.

24 You recognized either in a linear or in
25 a broader sense that state -- that shareholders in

1 some way, shape, or form quite often have a -- a great
2 sense of cultural synergy with their LDC.

3 And for all those reasons then, I'm
4 asking you, does it make sense that Collingwood might
5 choose to go down the path of creating a 50/50
6 partnership for the purposes of growth versus simply
7 selling off 51 percent or 100 percent or trying to
8 achieve simply greater dollar value rather than meet
9 something beyond the simple dollar calculation. That
10 was -- does that make sense to you?

11 MR. KRISTINA GASPAR: So you're asking
12 for surprise that they chose 50/50?

13 THE HONOURABLE FRANK MARROCCO: No, I
14 think that the gist of it is --

15 MR. PAUL BONWICK: Sorry, if you don't
16 understand the question.

17 THE HONOURABLE FRANK MARROCCO: -- I
18 think the gist of it is, given the factors that Mr.
19 Bonwick enumerated, does it make sense to you that a
20 municipality or town like Collingwood would opt for a
21 strategic partnership and a 50/50 model.

22 Have I got that right?

23 MR. PAUL BONWICK: Correct, yes.

24 THE HONOURABLE FRANK MARROCCO: So
25 let's start with Mr. Angemeer, you're being asked for

1 your -- whether -- I think you've got the question.

2 If you've got the question can you answer it and if

3 you can, what's your answer.

4 MR. MICHAEL ANGEMEER: Yes, it's a --

5 it's entirely appropriate I guess to -- to, first of

6 all, have an analysis of potential options for a

7 utility like -- like Collus. I know there's a number

8 of utilities across the province that go through that

9 process on a regular basis and look at options.

10 I think this was maybe a bit unique

11 because of the 50/50 nature but so other options would

12 have been to sell completely or to merge with some

13 local partners and maybe -- you mentioned Wasaga Beach

14 and other places to -- to get some critical mass and

15 to get some savings from that perspective.

16 It could have been a hybrid situation

17 where they could have merged together and found a

18 partner at the same time to help to put that

19 altogether in to one (1) transaction and -- and that

20 would have been another possibility.

21 But, certainly -- yeah, the 50 -- I

22 think the 50/50 though made it difficult for the

23 bidders in some cases because of the structure of the

24 50/50 arrangement that some of the synergies maybe

25 were more difficult to possibly to -- to attain and

1 that might have had an impact on the ability of
2 certain bidders to be able to offer a more premium
3 price.

4 THE HONOURABLE FRANK MARROCCO: Ms.
5 Gaspar, just to try to keep -- put some order into the
6 answers. Mr. Freeman, no offence intended, but I
7 guess you'll be third.

8 MS. KRISTINA GASPAR: Sure. So, yeah,
9 there -- there's many reason to choose many different
10 types of -- of structures, and -- and within the --
11 when -- when we received the bid, we were actually
12 unclear, and up until after we submitted the bid we
13 were still unclear as to what exactly was for sale,
14 because it was up to 50 percent, right.

15 So my -- my initial -- personally my
16 initial reaction when I received that was, I thought
17 that perhaps some of the competition, the front
18 runners, that you might be -- that Collus might be con
19 -- or the Town might be contemplating were EPCOR or
20 Fortis, because Fortis had -- has a history of coming
21 in and purchasing, you know, ten (10) per -- 10
22 percent initially and -- and then running and
23 operating, this sort of thing.

24 And that's -- that's something that a
25 lot of -- that -- that several utilities and -- and

1 municipalities have moved forward with.

2 So anything from, you know, an
3 operating lease model to a -- a merger to a
4 partnership to -- to a full sale, all of those are
5 reasonable things to consider. And, you know, I would
6 -- I would think that -- that it's prudent of boards
7 and of shareholders to understand what they have and
8 understand what their options are.

9 THE HONOURABLE FRANK MARROCCO: Mr.
10 Freeman?

11 MR. NEIL FREEMAN: So, I would say
12 that we thought that the decision of Collingwood was
13 admirable but maybe wasn't structured to -- correctly
14 to -- and then certainly this is the prerogative of --
15 of the vendor, but it wasn't -- wasn't going to get
16 the results that were anticipated.

17 I'll say that we actually participated
18 at Horizon in something very similar a few years
19 before with a utility a little larger than -- than
20 Collus, and the idea was that this utility wanted to
21 grow and they wanted the strength of Horizon behind
22 it, to essentially use the base of a utility not
23 unlike Collus but a little larger, to -- to
24 essentially grow. But the -- the -- and it was
25 disrupted for reasons unrelated, you know -- frankly I

1 think it was some local political scandal disrupted it
2 unrelated to the utility, and -- and -- and then other
3 things happened afterwards.

4 But back to my -- my point about how it
5 was structured, was that we perceived it as
6 Collingwood wanted to get a strategic partner, maybe
7 to Mr. Fryer's point, for a long -- a long-term
8 relationship, but the missing piece was that it would
9 take too -- because you essentially had -- you're only
10 buying 50 percent of the LDC, you -- you -- you didn't
11 get a role in the -- essentially, the services that
12 were provider to the holding company, control over the
13 decision making.

14 There wasn't enough influence over the
15 structure to essentially prepare Collus to be the type
16 of utility where it could be the hub to this other --
17 to these other satellites to grow the business.

18 And that was the -- the hesitation,
19 that -- and maybe to my point, what I made earlier
20 today about, you know, if there had been an asset
21 company and a services company and -- and, you know,
22 50/50 or -- or higher than 50 for the community on the
23 ownership but let the bigger utility have a bigger say
24 in -- in the operating framework so that the -- the
25 cost structure, the -- the positioning to essentially

1 go out and help those other communities, whether it
2 was Wasaga Beach or was -- or really of the other --
3 other CHEC members.

4 So, my -- in some, it was admirable.
5 And I think, in fairness to your question and -- and
6 to the questions maybe that Mr. Fry -- Fryer and
7 others have put forward, the -- the industry was
8 stalled. There -- there was a trickle of activity
9 after 2000 without the major impetus of municipal
10 restructuring and -- and forced incorporation of
11 utilities or divestment, and very little had happened.

12 And so, if the -- my -- my recollection
13 was, if Collus is prepared to do this, thi -- this is
14 a signal because nobody thought Collus would ever, you
15 know, make a change. It was a old style PUC with the
16 water and electric together and -- and, you know, a
17 model that, you know, in some eyes, was celebrated.
18 And therefore, for Collus to make a change, maybe that
19 -- everybody else would start thinking the same thing,
20 so we -- we were optimist about the idea.

21

22 CONTINUED BY MR. PAUL BONWICK:

23 MR. PAUL BONWICK: Can you bring up
24 CPS6920, please?

25

1 (BRIEF PAUSE)

2

3 MR. PAUL BONWICK: One (1) more point,
4 Your Honour, and I'm done. When I look at the po --
5 post-evaluation -- whoops -- I believe you were
6 provided, not the point framework, obviously, but
7 through the RFP process you were provided something
8 that was similar to this in terms of customer service
9 satisfaction, were you, nor no?

10 MR. NEIL FREEMAN: You mean as a
11 criteria?

12 MR. PAUL BONWICK: Criteria, yes.

13 THE HONOURABLE FRANK MARROCCO: Not --
14 not the results.

15 MR. PAUL BONWICK: Not the results,
16 obviously --

17 THE HONOURABLE FRANK MARROCCO: Just
18 was this one (1) of the criteria.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: This was
22 established as criteria, as I understand it. And you
23 can scan down, please, if I'm saying down pro -- yes.

24 MR. MICHAEL ANGEMEER: I believe it
25 was.

1 MR. PAUL BONWICK: And so, the next
2 one (1):

3 "Provisions for a strategic and
4 specialized resources for growing
5 the Collus business."

6 You were made aware of that. Go down.
7 "Support for employees and their careers." You were
8 obviously made aware of that. And keep going down.

9 "Competitive distribution rate and cost structure."

10 I'm not sure if understood Mr. Fryer right, but if I
11 did, I think I'm kind of in his camp, that that's
12 almost part of the financial consideration beyond the
13 sort of the other points that are included in there.

14 But keep rolling down. "Culture and --
15 and synergistic fit." And I think that's sort of --
16 if there was one (1) -- was there one (1) more?

17 Sorry. Oh, that one's the money one. The money one's
18 easy to calculate, or perhaps not based on what I've
19 just heard.

20 But to the point I'm going back to
21 again, you had KPMG. You had the Board of Collus.
22 You had the Strategic Task Team. Obviously, KPMG had
23 some influence. But the smaller community linked to
24 the LDC, this cultural synergy, can you appreciate the
25 fact that they -- everybody knows everybody that works

1 at Collus in the community, or I shouldn't say
2 everybody. That's a generalized statement.

3 But there's a -- there's a very strong
4 connection between the Town and the LDC, the
5 employees, the ability to grow that thing that they're
6 very proud of.

7 And so, can you see from their
8 perspective why this scoring, which I understand from
9 others that have presented, is not necessarily that
10 uncommon, but from a council or from a staff
11 perspective, why they might lean more heavily towards
12 the culture, what you're going to do with their
13 employees, how you're going to grow their business
14 than just simply coming in and writing a cheque?

15 Does that sort of make sense based on
16 how I've described it and locked it down?

17 MR. MICHAEL ANGEMEER: I think the --
18 and again, I talked before about the balance between
19 the financial aspect and the comfortableness with the
20 partner aspect. And, yeah, certainly, the more
21 comfortable you become with a partner, maybe, at that
22 point, you're -- you're willing to give up a little
23 bit of control, still have influence, but -- but give
24 up a little bit of control, that you'd be more
25 comfortable in -- in doing that, or accept a lower

1 price.

2 So, it -- it is definitely a balance
3 because price is important. But, you know, if you get
4 a premium price, and then the transaction fails, then
5 because of -- because of the partner you've picked,
6 that's a big -- big deal for both the utility and the
7 politicians.

8 MR. PAUL BONWICK: Do you want to
9 answer or do you want me to go to the next one (1)?

10 MS. KRISTINA GASPAR: Yeah, I'll --
11 I'll just comment that I certainly agree that price is
12 not the only factor to be considered. I don't have
13 any visibility as to --

14 MR. PAUL BONWICK: Just 70:30 split.
15 I think you're aware of that. If you're not, that's
16 what it was.

17 MS. KRISTINA GASPAR: No, no. I'm
18 just saying I -- I -- but we have -- we -- we were
19 aware of what the -- what the broad buckets were.
20 Certainly, that was spelled out in the RFP. But we
21 had no visibility in terms of -- of how those buckets
22 were assessed, right.

23 We knew, you know, 10 percent for this,
24 10 percent for that, 30 percent for this.

25 MR. PAUL BONWICK: And --

1 MS. KRISTINA GASPAR: But beyond that,
2 there was -- there was no visibility as to --

3 MR. PAUL BONWICK: And inquiry did
4 hear about that.

5 THE HONOURABLE FRANK MARROCCO: Well,
6 by the way, Mr. Freeman, do you want to answer the
7 first question before we get on to something else?

8 MR. NEIL FREEMAN: No transaction in -
9 - or no -- there's not a trans -- to my knowledge,
10 there's not a transaction that has happened in Ontario
11 where -- where the treatment of employees wasn't --
12 wasn't a critical factor, and -- and the future of the
13 employees

14 And -- and so, the -- I think it --
15 it's really about, you know, how -- what percentage
16 those factors weighed in the whole amount and that --
17 what criteria was used in the evaluation.

18 But I -- you know, whether Hydro One
19 was buying a utility with two hundred (200) customers
20 or Hamilton and St. Catharines was merging, it's like
21 front and centre in every transaction, what happens to
22 the employees and -- and the -- the relationship with
23 the community.

24

25 CONTINUED BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: I'll -- I'll close
2 out with these two (2) points. While I recognize that
3 you were not actually the bidders, as I expressed
4 earlier, or at the start of the day, that none of you
5 work for the companies that were actually bidding at
6 the time. Is that -- that's correct?

7 Did you take the time to share your
8 summary of evidence with your former employers to see
9 if it was consistent with what they felt was the case?

10 MR. JOHN MATHER: Your Honour, Mr.
11 Bonwick's referring to a confidential document that is
12 --

13 MR. PAUL BONWICK: Sorry.

14 MR. JOHN MATHER: The -- the summaries
15 of anticipated evidence are distributed on a
16 confidential basis.

17 MR. PAUL BONWICK: Okay.

18

19 CONTINUED BY MR. PAUL BONWICK:

20 MR. PAUL BONWICK: Did you take time
21 to consult your former employers in terms of
22 participating in the hearing and sharing any of the
23 thoughts with them that you might be bringing forward
24 today?

25 MR. MICHAEL ANGEMEER: I -- I went

1 through the evidence discovery process at Veridian
2 while I was still at Veridian. And that -- that was
3 done. All the evidence was produced. And the
4 anticipated testimony today was shared with the
5 successor company of Veridian, two (2) of the
6 directors.

7 MR. PAUL BONWICK: Thank you.

8 MS. KRISTINA GASPAR: So, Hydro One is
9 -- is aware that I was being called as a witness.
10 They -- Hydro One provided evidence directly. And I -
11 - because I was -- you know, because of the
12 confidential nature of -- of any merger, including --
13 merger and acquisition, including this one (1), I was
14 under a confidentiality agreement.

15 And I -- actually, prior to speaking
16 with the inquiry counsel, I sought out from -- from
17 legal at Hydro one, permission for them to -- to clear
18 me from my confidentiality agreement as it pertains to
19 this, so.

20 MR. PAUL BONWICK: And I think that
21 may answer for all three (3) because I was unaware.
22 And you just reminded me that there was an NDA in
23 place, so that, in fact, would restrict you from
24 sharing in any kind of detail with any party, correct?

25 MS. KRISTINA GASPAR: Correct.

1 THE HONOURABLE FRANK MARROCCO:

2 Without the consent of the contracting party.

3 MS. KRISTINA GASPAR: Without the
4 consent, correct.

5 THE HONOURABLE FRANK MARROCCO: The
6 other party can relieve you of that burden?

7 MS. KRISTINA GASPAR: Yeah. So, I --

8 THE HONOURABLE FRANK MARROCCO: Mr.
9 Freeman, didn't -- didn't get a chance to answer.

10 MR. NEIL FREEMAN: I had no contact
11 with my -- with anyone at Alectra or Horizon with
12 respect to this Inquiry.

13

14 CONTINUED BY MR. PAUL BONWICK:

15 MR. PAUL BONWICK: Did any of your
16 companies then file any objections with the OEB
17 specific to concerns that you raised regarding the
18 scoring, the criteria, and the aspects of that at that
19 point in time?

20 I mean, Mr. Freeman, you alluded to the
21 fact you thought it was a done deal because of a
22 billboard.

23 Did -- did your organizations file any
24 objections or put any letters of note into the OEB
25 raising these concerns at that time that you're

1 familiar with?

2 MR. NEIL FREEMAN: Given the
3 information we had at that time, we did not file
4 anything that you're referring to, but we were not
5 privy to the information that has come out during this
6 inquiry.

7 MS. KRISTINA GASPAR: I would -- I
8 would echo that. We were -- we were made aware that
9 we were the unsuccess -- an unsuccessful bidder and
10 you know, it was the -- we moved on. Like, there's
11 other deals to happen, so not -- not knowing anything
12 that -- that transpired, we were just told you were
13 not successful. That -- that didn't really trigger
14 any --

15 MR. PAUL BONWICK: I wanted to give
16 all three an opportunity to speak, but more
17 specifically I think it was to Mr. Freeman in terms of
18 the -- his concern or the internal concern over the
19 billboard and internal email that said it's sort of a
20 done deal, was there any notations made or information
21 brought forward to the OEB at the time of their review
22 process that raised a concern over that?

23 MR. NEIL FREEMAN: So I -- my
24 recollection is that we -- we -- you know, there was -
25 - there -- we didn't do anything that you're

1 suggesting. But I think the -- the -- the point is,
2 as I also suggested this morning was that, you know,
3 it -- it was -- it was the -- an appearance issue, not
4 necessarily a -- a direct, you know, connection that
5 showed some sort of -- something that was amiss. And
6 therefore I -- but I think I'm aware of what I said --
7 what I said this morning was that -- is that you know,
8 there -- the assessment, I don't remember a particular
9 assessment, the -- the assessment might very well have
10 been, it's not going to help us to -- to make a formal
11 statement if in future transactions if we look like
12 we're complaining to the OEB.

13 People would have -- really have to get
14 into the weeds to understand the nature of the concern
15 and this type of thing and so we just moved on, I
16 believe.

17 THE HONOURABLE FRANK MARROCCO: When
18 you say "it was an appearance issue", you're referring
19 to the billboards?

20 MR. NEIL FREEMAN: The -- the
21 appearance of -- of -- of co-branding advertising --

22 THE HONOURABLE FRANK MARROCCO: Yes, I
23 got that.

24 MR. NEIL FREEMAN: -- with a \$100 bill
25 on it type thing.

1 THE HONOURABLE FRANK MARROCCO: I got
2 that, but you were referring to the billboards when
3 you say "it was an appearance issue".

4 MR. NEIL FREEMAN: Yeah, the -- the
5 appearance of -- of -- of the billboard somehow, you
6 know, being -- being up while the RFP hadn't actually
7 been finalized.

8 MR. PAUL BONWICK: I have no further
9 questions.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you. Any re-examination?

12 MR. JOHN MATHER: Just a few
13 questions, Your Honour.

14

15 RE-DIRECT EXAMINATION BY MR. JOHN MATHER:

16 MR. JOHN MATHER: Mr. Angemeer, Mr.
17 Chenoweth was asking you questions about whether or
18 not Veridian was invited -- invited to participate in
19 having signage at the solar launch event, and I
20 understand that your answer was they were -- they were
21 invited to do so.

22 Was Veridian invited to participate in
23 having its name on the -- or its logo on the
24 billboards that eventually went up with Collus and
25 PowerStream, to your recollection?

1 MR. MICHAEL ANGEMEER: I -- I can't
2 say for certain. All I can say for certain is that we
3 were invited by Mr. Houghton or the -- indicated to us
4 by Mr. Houghton that PowerStream was either
5 considering participating or participating and that
6 there would be a launch event, and I believe there was
7 conversation about a billboard as well.

8 But my recollection beyond that in
9 terms of why we -- we didn't have our -- our logo on
10 the billboard. I -- I really don't recall exactly
11 what happened there.

12 MR. JOHN MATHER: Mr. Chenoweth also
13 asked you some more questions about the conversations
14 that you recall having from time to time with Mr.
15 Houghton before July 2011, which I understood you to
16 be conversations in which you were seeking Mr. --
17 getting -- trying to find out from Mr. Houghton what
18 Collus' plans for the future may or may not be, or
19 what they were thinking.

20 When you were having those conv -- when
21 those conversations happened, who initiated the
22 conversation?

23 MR. MICHAEL ANGEMEER: Again, I don't
24 have specifics, times and dates of those
25 conversations, but if I had to characterize my

1 conversations with utility executives who ran smaller
2 or medium-sized utilities, it would typically be 80
3 percent me initiating the conversation and 20 percent
4 maybe them initiating the conversation about what's
5 going on in the industry or what's happening with
6 their utilities.

7 MR. JOHN MATHER: Do you remem --
8 sorry, I didn't mean to cut you off if you weren't
9 done.

10 MR. MICHAEL ANGEMEER: Yeah, so it was
11 -- again, it was part of my job to -- to have an eye
12 on what was going on in the restructuring of the
13 industry, so you know, I don't think I was being a
14 pest, but almost every conversation that I would have
15 over a period of time or if I heard something that was
16 going on in a certain utility, I might reach out
17 directly to that CEO to find out what's -- what's
18 happening around a rumour or something that might be
19 happening.

20 MR. JOHN MATHER: Fair enough.
21 And do you remember any instance where
22 Mr. Houghton initiated one of the conversations
23 specifically?

24 MR. MICHAEL ANGEMEER: In regards to
25 Collus being in a position to want to initiate a

1 transaction, or --

2 MR. JOHN MATHER: Just in general, you
3 talked about conversations with Mr. Houghton about
4 Collus', you know, what Collus' plans may or may not
5 be.

6 Do you recall any instance where Mr.
7 Houghton initiated that conversation?

8 MR. MICHAEL ANGEMEER: I imagine that
9 before the actual first meeting with Mr. Houghton and
10 Mr. Muncaster, with the lunch that we had, there --
11 there would have been some outreach by Mr. Houghton to
12 say we're going to be setting this up and here's
13 possibly what -- what we want to talk to you about.

14 But beyond that, I can't recall
15 anything else.

16 MR. JOHN MATHER: And do you remember
17 if that -- do you specifically remember that happening
18 or are you surmising based on what you think might
19 have happened?

20 MR. MICHAEL ANGEMEER: No, that must
21 have happened otherwise we wouldn't have shown up for
22 lunch.

23 MR. JOHN MATHER: So you're discussing
24 a conversation where he reaches out to you and says
25 you need to -- yeah, okay.

1 THE HONOURABLE FRANK MARROCCO: This
2 line of questioning is coming to an end.

3 MR. JOHN MATHER: Understood.

4 MR. MICHAEL ANGEMEER: Sorry.

5 MR. JOHN MATHER: Fair enough. I -- I
6 may have been the one struggling to understand.

7

8 CONTINUED BY MR. JOHN MATHER

9 MR. JOHN MATHER: Can we pull up
10 CPS2373.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: So this is one of
15 the -- this is the letter that was sent to Hydro One
16 inviting it to make a presentation. We showed a
17 similar letter to Mr. Angemeer, I understand all the
18 letters to the bidders were on the same format.

19 And if we could scroll down, Ms. Bain
20 showed Ms. Gaspar this letter. All the way to the
21 bottom, please. And made a note of the last sentence
22 in the second last paragraph that says at the close of
23 the meeting we will discuss the request for proposal
24 and out -- outline our proposed time schedule.

25 She asked Ms. Gaspar if she was aware

1 whether that occurred. Mr. Angemeer and Mr. Freeman,
2 I understand you were both at your respective
3 companies meetings.

4 Do you recall if at any point in the
5 meeting anyone from the task team provided an outline
6 of the proposed time schedule?

7 MR. MICHAEL ANGEMEER: I don't recall
8 specifically, but that could -- that could have
9 happened, but I don't recall specifically.

10 MR. JOHN MATHER: Mr. Freeman?

11 MR. NEIL FREEMAN: I -- I have no
12 solid re -- recollection. I think the -- the
13 suggestion was made we want to get this all done by
14 the end of the year kind of thing.

15 But it was sort of, you know, this
16 isn't going to linger forever, this was going to be --
17 you're going to get the stuff soon and we'll just move
18 -- and it's going to be done in a quick time period.

19 MR. JOHN MATHER: And then one final
20 question, if we could pull up paragraph 409 of the
21 Foundation document.

22 This question is for you, Ms. Gaspar, I
23 know you've been asked several questions about whether
24 or not Hydro One assumed or did not assume
25 liabilities. And we've looked at this paragraph and

1 the response that Hydro One provided and I have one
2 question about it.

3 If we could scroll down, please.
4 Continue scrolling.

5 So in this email it sets out again what
6 the base -- what the -- the offer is and then says:

7 "The proposal includes the
8 assumption of the estimated pro rata
9 shares of assets and liabilities
10 based in part on the detail provided
11 in the 2010 audited financial
12 statements."

13 Do you understand what was meant by the
14 pro rata share of assets and liabilities?

15 MS. KRISTINA GASPAR: 50 percent, or
16 up to 50 percent.

17 MR. JOHN MATHER: And in terms of some
18 of the calculations we've seen or attempted
19 adjustments we've seen, would that affect the fact
20 that there would be a 50 percent assumption of the
21 liability, would that affect the amount of assumed
22 liabilities Hydro One was proposing to take on?

23 MS. KRISTINA GASPAR: Our offer was
24 based on purchasing 50 percent. So everything we
25 looked at took that into consideration.

1 MR. JOHN MATHER: And so when you were
2 looking at the liabilities were you taking into
3 consideration 50 percent of the liabilities?

4 MS. KRISTINA GASPAR: Most likely.

5 MR. JOHN MATHER: I don't have any --
6 those are my questions.

7 THE HONOURABLE FRANK MARROCCO: Fine.
8 Thank you all very much for your participation, it's
9 been a great help to us. Thank you.

10 Mr. Watson, do you want to find Mr.
11 Nolan and --

12 MR. MICHAEL WATSON: I do, Your
13 Honour.

14 THE HONOURABLE FRANK MARROCCO: Very
15 well, we'll give you a few minutes to find him.

16 Just let us know when he's here.

17

18 (PANEL WITNESSES STAND DOWN)

19

20 -- Upon recessing at 4:55 p.m.

21 --- Upon resuming at 5:05 p.m.

22

23 DENNIS NOLAN, Previously Sworn

24

25 MR. JOHN MATHER: Good afternoon

1 again, Mr. Nolan.

2 THE HONOURABLE FRANK MARROCCO: Just
3 before you do that, we'll stop around 6:00. Did I
4 understand the message right from all of you that
5 September 1st was the deadline that you wanted for the
6 written submissions? Did I have that right?

7 MR. MICHAEL WATSON: Your Honour,
8 that's what many of us were proposing with summer
9 schedule and so on.

10 THE HONOURABLE FRANK MARROCCO: All
11 right. Well, I can't let it go to September 1st, so
12 August 31st is the deadline for the submissions.

13 MR. MICHAEL WATSON: We'll have to
14 change our plans for at least one day, Your Honour.
15 Thank you.

16 THE HONOURABLE FRANK MARROCCO: Well,
17 that way we brought this matter to a close before the
18 beginning of September. So that's -- I agree.
19 Go ahead.

20 MR. JOHN MATHER: Okay.

21

22 CONTINUED EXAMINATION-IN-CHIEF BY MR. JOHN MATHER:

23 MR. JOHN MATHER: So Mr. Nolan, I --

24 MR. DENNIS NOLAN: Sorry. I left it
25 back.

1 MR. JOHN MATHER: -- I want to ask you
2 some questions going to the RFP process, and at the
3 outset, I want to -- could you let me know when you
4 first learned that the sale that Collus was
5 considering would be a 50 percent sale, as opposed to
6 a total sale or a minority or a majority sale?

7 MR. DENNIS NOLAN: Well, that wasn't
8 confirmed until we saw the RFP documents, but I think
9 there was an indication before that.

10 MR. JOHN MATHER: Do you remember when
11 you had the first indication?

12 MR. DENNIS NOLAN: Oh, sure. Yeah.
13 I -- I can't tell you with any certainty with --
14 without a reference.

15 MR. JOHN MATHER: Did you have a sense
16 of that in June 2011 when Mr. Bonwick's retainer was
17 finalized, and there was the meeting on June 29th, do
18 you know?

19 MR. DENNIS NOLAN: No, I don't believe
20 so.

21 MR. JOHN MATHER: So it was sometime
22 before or after that.

23 MR. DENNIS NOLAN: After.

24 MR. JOHN MATHER: Okay. What was your
25 reaction when you found out what was being considered

1 or one of the options being considered was a
2 50 percent sale?

3 MR. DENNIS NOLAN: Well, I think, as
4 others have noted, it was not -- you know, there --
5 there was some novelty to it, but we understood what
6 they were looking for.

7 It was clear before that that they were
8 looking for a partnership. We didn't know until we
9 got the RFP that it was, you know, that -- you know,
10 that's exactly what they wanted.

11 So, you know, there -- there was some
12 novelty to it. Obviously, like others, we would have,
13 you know, preferred a 100 percent sale. But I think
14 we got our head around it and thought that we could
15 make it work in a -- in a cooperative way.

16 MR. JOHN MATHER: Why would -- at
17 least as you understood it -- would PowerStream have
18 preferred a hundred percent sale?

19 MR. DENNIS NOLAN: Well, obviously
20 you're increasing your -- your rate base, your number
21 of customers by that much more. And, you know,
22 that -- that had been, you know, a model both of
23 mergers and acquisition. And this is the first that
24 that would have been a partial sale.

25 But it was -- it was something that,

1 you know, was made clear that they still wanted a
2 significant interest. So we knew -- I think we had
3 the -- the direction that was definitely not going to
4 be a hundred percent sale. We had, I think, hoped
5 that they'd still be open to that possibility at -- at
6 some point but...

7 MR. JOHN MATHER: And was it --

8 THE HONOURABLE FRANK MARROCCO: Just
9 before you move on past that, was that in your -- was
10 that your impression of where the other bidders would
11 likely be coming from, too, in the sense that they
12 would want a hundred percent but a hundred percent
13 wasn't being offered?

14 MR. DENNIS NOLAN: I -- you know, I
15 can't speak for them, but I'm -- I'm pretty sure
16 that -- that that would be the -- the case for any of
17 the other bidders that bid on this RFP at their --
18 their choice.

19 THE HONOURABLE FRANK MARROCCO: Would
20 it make sense then that if you wanted a hundred
21 percent and you could buy up to 50 percent that you'd
22 like -- as least from your perspective, therefore
23 we're going to offer -- we're going to offer to buy
24 50 percent, not going to offer to buy less?

25 MR. DENNIS NOLAN: Exactly.

1 THE HONOURABLE FRANK MARROCCO: All
2 right.

3 MR. DENNIS NOLAN: The -- I think the
4 only rationale for that was, as I think it was
5 mentioned, that if there was a non-LDC coming in might
6 offer to buy -- like someone like Fortis -- they might
7 offer to buy less.

8 THE HONOURABLE FRANK MARROCCO: And
9 manage it.

10 MR. DENNIS NOLAN: Right.

11 THE HONOURABLE FRANK MARROCCO: Yes.
12 I -- that was from your evidence yesterday, I think.

13 MR. DENNIS NOLAN: No, not from my
14 evidence. It was --

15 THE HONOURABLE FRANK MARROCCO: It was
16 someone else.

17 MR. DENNIS NOLAN: -- it was from --
18 from what I heard of someone's evidence today.

19 THE HONOURABLE FRANK MARROCCO: All
20 right. Sorry. Go ahead, Mr. Mather.

21

22 CONTINUED BY MR. JOHN MATHER:

23 MR. JOHN MATHER: Had PowerStream ever
24 participated or purchased a -- had PowerStream ever
25 purchased a 50 percent interest or considering

1 purchasing a 50 percent interest in any other LDC?

2 MR. DENNIS NOLAN: No.

3 MR. JOHN MATHER: In your mind, what
4 were the challenges you saw with a 50/50 ownership
5 model?

6 MR. DENNIS NOLAN: How the governance
7 would work and then, you know, moving forward with --
8 just -- just how the governance would work, I think.

9 MR. JOHN MATHER: And can you expand
10 on that -- what issues you saw potentially with
11 respect to governance?

12 MR. DENNIS NOLAN: Well, you don't
13 have -- well, at first, I think that was a concern.
14 But I think the more we thought of it and the more I
15 thought of it, it was -- became less of a concern, and
16 I'll explain why.

17 So PowerStream at the time had
18 three (3) shareholders in Markham, Vaughan, and
19 Barrie. No one had a majority. Barrie had 20.5
20 percent of PowerStream at the time. It was a
21 unanimous shareholder agreement.

22 So the -- on a number of key rights,
23 any shareholder had essentially a veto power. There
24 had to be consensus, and we had made that work since
25 the inception of PowerStream in 2004.

1 So it was with that realization that
2 once -- you know, once that it was going to be 50/50
3 that we were that kind of a model. That could happen
4 with -- with even if -- if they -- if we had
5 51 percent, the rights would essentially likely be
6 very -- exactly the same.

7 MR. JOHN MATHER: The next questions I
8 have relate to the bidder presentations that were made
9 by PowerStream, and we understand the other bidders in
10 September 2011.

11 Do you recall PowerStream giving a
12 presentation to the Strategic Task Team in September?

13 MR. DENNIS NOLAN: This was prior to
14 the RFP.

15 MR. JOHN MATHER: Yes.

16 MR. DENNIS NOLAN: Yes, I -- I am
17 aware of that presentation. I was not present.

18 MR. JOHN MATHER: What was your
19 under -- did Mr. Bonwick assist in preparing for that
20 presentation?

21 MR. DENNIS NOLAN: I did not have a
22 lot to do with that presentation. I've seen it. I
23 assumed he had some -- some input into that
24 presentation.

25 MR. JOHN MATHER: Appreciating that

1 you did not attend the presentation, was it your
2 understanding that what PowerStream presented to the
3 Strategic Task Team was to be confidential?

4 MR. DENNIS NOLAN: That was -- was not
5 something front and centre, I think, for us of a
6 concern.

7 When I have looked at that
8 presentation, there was nothing really very
9 confidential in that presentation. I mean, it -- it
10 spoke to a lot of things that would be publicly
11 available if you looked at a Power -- what PowerStream
12 had done, and it was basically meant -- meant to show
13 directionally some of the attributes and -- and some
14 of the benefits.

15 MR. JOHN MATHER: And I'm asking what
16 your understanding was at the point in time. Did you
17 understand that, for instance, a member of the STT
18 could discuss the content of PowerStream's
19 presentation with someone outside the STT?

20 MR. DENNIS NOLAN: At the time, I
21 didn't really think about it. I wasn't involved.

22 MR. JOHN MATHER: It sounds like you
23 maybe have heard some of the evidence from the other
24 bidders today or the representatives of --

25 MR. DENNIS NOLAN: I heard some of it.

1 MR. JOHN MATHER: Okay.

2 MR. DENNIS NOLAN: Just a limited
3 amount.

4 MR. JOHN MATHER: Well, their evidence
5 was that they understood their presentations to be
6 confidential, and they wouldn't be disclosed outside
7 of the Strategic Task Team. Do you think that was a
8 reasonable expectation that they had?

9 MR. DENNIS NOLAN: I -- I think for
10 them to say that now, that sounds reasonable on their
11 part.

12 I just -- I just think that it's a bit
13 overblown. Most of the information that -- that I'm
14 familiar with now is -- was publically available
15 either with -- on the OEB website or their own
16 websites. It -- it just -- I find it a bit rich that
17 they would think that there would be no conversation
18 at all. This was an RFP process, not a tender, and
19 especially at that time.

20 On the other hand, there -- there was a
21 confidentiality agreement signed. I don't think we --
22 I mean, it wasn't like we executed it and gave it any
23 respect or anything. But we didn't -- I don't think
24 we really thought that there was confidential
25 information per se being presented.

1 MR. JOHN MATHER: So you did -- so was
2 it your understanding at the time that there was a
3 confidential agreement signed with respect to those
4 meetings?

5 MR. DENNIS NOLAN: I'm reminded of
6 that now at reviewing the -- the documents and yes.

7 MR. JOHN MATHER: Was that something
8 you recall knowing at the time though?

9 MR. DENNIS NOLAN: I -- I recall that
10 there was a confidentiality agreement that was entered
11 into.

12 MR. JOHN MATHER: Did you understand
13 that agreement to be mutual with respect to the
14 information PowerStream learned, as well as the
15 information that the Strategic Task Team learned?

16 MR. DENNIS NOLAN: No. I -- I
17 understood it to be mutual. But I -- like I said, I
18 didn't think it was anything very significant that
19 they asked for a confidentiality agreement, fine. But
20 we -- you know, I -- I maybe wrongly thought it was
21 more in terms of -- of any disclosure of -- of any
22 confidential business information that we may have
23 obtained.

24 MR. JOHN MATHER: Do you recall if you
25 reviewed the confidentiality agreement at any point?

1 MR. DENNIS NOLAN: Briefly.

2 MR. JOHN MATHER: If we could pull up
3 TOC59012.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: And just before we
8 do that, I just -- to make sure I understand this -- I
9 want to make sure I understand your evidence that you
10 understood there was a confidentiality agreement, but
11 that the matters that were discussed by PowerStream at
12 the STT meeting weren't matters that were -- that you
13 had concerns of whether or not they were kept
14 confidential?

15 MR. DENNIS NOLAN: I'm talking about
16 an expectation on our part.

17 MR. JOHN MATHER: And is that a fair
18 representation of your expectation?

19 MR. DENNIS NOLAN: I think so. I
20 mean, given the -- the content of that, you know,
21 it -- it just -- it didn't -- the issue of
22 confidentiality was not a key concern of ours going
23 into that meeting, I believe.

24 I did not attend the meeting, but when
25 I look at what -- what material was presented, you

1 know, it wasn't like you were, you know, providing,
2 you know, detailed financial information that was
3 non-public.

4 MR. JOHN MATHER: And so in that
5 sense, although there was a mutual confidentiality
6 agreement, it didn't -- it wouldn't have concerned you
7 at the time had portions of PowerStream's presentation
8 been disclosed to, for instance, other players?

9 MR. DENNIS NOLAN: So you asked my
10 recollection at the time --

11 MR. JOHN MATHER: Yeah.

12 MR. DENNIS NOLAN: -- so it was not
13 something that was front and centre with -- with me
14 because, you know, there was a confidentiality
15 agreement. Okay, fine. They wanted a confidentiality
16 agreement. Wasn't being cavalier about it, but it --
17 it just wasn't a major concern.

18 MR. JOHN MATHER: Would you have --
19 would you have been concerned had you found out that
20 information PowerStream had presented was disclosed to
21 another bidder?

22 MR. DENNIS NOLAN: If I thought truly
23 confidential information was being disclosed, perhaps
24 yes.

25 MR. JOHN MATHER: Could we pull up

1 TOC59012.

2

3 (BRIEF PAUSE)

4

5 MR. JOHN MATHER: So if we can scroll
6 down. So this is an email, dated September 14th,
7 2011. It's from Mr. Bonwick to Mr. Houghton.

8 And if we scroll up, it attaches a
9 document called PowerStream competitive analysis, and
10 so if we could open the attachment TOC59013.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: And so this is the
15 attachment to that email between Mr. Bonwick and
16 Mr. Houghton. You can see it's a memo on Compenso
17 letterhead. It says to Mr. Bentz, Mr. Glicksman, and
18 Mr. Henderson, and yourself.

19 And if we can scroll down, the first
20 sentence says:

21 "Please review the following points
22 of interest as they relate to
23 presentations to date, as well as
24 profile points of interest."

25 And you can see there's a heading

1 "Hydro One," and there's bullet points relating to
2 Hydro One, the last one saying the presenter:

3 "While the presenter demonstrated
4 integrity and in-depth knowledge of
5 the industry, trends, and more
6 particularly the south Georgian Bay
7 region, the assessment committee was
8 not enamoured with the concept or
9 direction Hydro One presented."

10 If we scroll down, there's a heading
11 called "Veridian," and it said:

12 "Veridian made a very strong and
13 positive impression on the
14 assessment committee. Once past
15 their introduction of attendees,
16 they focused on the following."

17 And then we won't go through them, but
18 there's a series of bullet points that follow with
19 respect to Veridian.

20 Were you ever, to your knowledge, sent
21 a copy of this memorandum or a version of it?

22 MR. DENNIS NOLAN: No.

23 MR. JOHN MATHER: Are you aware of
24 anyone at PowerStream receiving this memorandum or a
25 version of it?

1 MR. DENNIS NOLAN: No.

2 MR. JOHN MATHER: And if you need to
3 scroll through, let me know. But are you aware -- did
4 you ever receive the information that is generally
5 reflected in this memorandum in another format?

6 MR. DENNIS NOLAN: No, I didn't.

7 MR. JOHN MATHER: Are you aware of
8 anyone at PowerStream receiving information that is
9 generally reflected in this memorandum in another
10 format?

11 MR. DENNIS NOLAN: No, I'm not.

12 MR. JOHN MATHER: So I take it from
13 your answers at this point in time, you were not aware
14 that Mr. Bonwick had sent this document to
15 Mr. Houghton in September 2011?

16 MR. DENNIS NOLAN: That's correct.

17 MR. JOHN MATHER: Looking back, does
18 it concern you that Mr. Bonwick had the information
19 that's set out in this memorandum?

20 MR. DENNIS NOLAN: Can you scroll up
21 please to -- so I can see what the information is?
22 Yeah.

23

24 (BRIEF PAUSE)

25

1 MR. DENNIS NOLAN: If we could go
2 down, please. Oh, sorry. Well, okay. There.
3 Pardon me. Sorry.

4 And if you could go down. I just -- I
5 strongly suspect that's -- a lot of this information
6 would not be any surprise whatsoever to us.

7 MR. JOHN MATHER: What do you mean by
8 that?

9 MR. DENNIS NOLAN: That the approaches
10 of Hydro One and -- and of -- sorry. Can you go back
11 up, please? Thank you. And Veridian.

12 MR. JOHN MATHER: Sorry. I -- can you
13 just expand on what you mean?

14 MR. DENNIS NOLAN: Okay. So --

15 THE HONOURABLE FRANK MARROCCO: Did
16 you want to see more of the Veridian? Did you want to
17 see the Veridian portion again? Is that what you just
18 meant?

19 MR. DENNIS NOLAN: Your Honour, if I
20 could just start at the top again at Hydro One.
21 Thank you.

22 MR. JOHN MATHER: Feel free to direct
23 the court operator as you would like.

24 MR. DENNIS NOLAN: Oh, okay. Thank
25 you.

1 (BRIEF PAUSE)

2

3 MR. DENNIS NOLAN: I just -- that
4 Collingwood would be a regional hub. And Hydro One,
5 that's not surprising.

6

7 (BRIEF PAUSE)

8

9 MR. DENNIS NOLAN: I mean, I -- I
10 don't know that any of that information is -- is
11 terribly helpful to -- or would in any way change our
12 approach.

13 If you could go down to the Veridian,
14 please? And down more, please.

15

16 (BRIEF PAUSE)

17

18 MR. DENNIS NOLAN: Again, I don't see
19 anything there that would -- would have us adjust or
20 change our approach in -- in what we included in our
21 RFP at all.

22

23 CONTINUED BY MR. JOHN MATHER:

24 MR. JOHN MATHER: Okay. So you've
25 said that you didn't think the information was

1 surprising or helpful.

2 MR. DENNIS NOLAN: Well, I -- I just
3 don't -- I don't -- it's -- I don't think, like I
4 said, that it would cause us -- you know, a lightbulb
5 would go off, and we would then have changed our
6 approach in the RFP.

7 MR. JOHN MATHER: So I understand your
8 answer to relate to what PowerStream might have done
9 had it had this information in terms of how it would
10 have proposed its RFP.

11 Would it have changed -- would it have
12 caused you any concern about the information that
13 Mr. Bonwick was obtaining about the other -- what
14 appears to be about the other bidders, appreciating we
15 haven't heard from Mr. Bonwick yet about this
16 document?

17

18 (BRIEF PAUSE)

19

20 MR. DENNIS NOLAN: I just -- I -- I --
21 it -- it's hard for me to say because I don't know
22 what in -- the -- the information, if -- you know,
23 wherever the information is coming from, if it's --
24 it's not -- whoever is providing it is choosing it to
25 be -- to provide it, it's kind of their decision in -

1 - in thi -- in this process.

2 I -- I can certainly see the -- the
3 optics, that -- that it's of concern be -- to -- so it
4 is to think otherwise, but I just -- I -- I don't
5 think it was particularly helpful or significant.

6 MR. JOHN MATHER: When you say,
7 "Whoever is providing it is choosing to provide it,"
8 what do you mean by that?

9 MR. DENNIS NOLAN: Wherever the
10 information is coming from, wherever -- whatever this
11 perspective, I mean, it's coming from -- from
12 somewhere, obviously.

13 MR. JOHN MATHER: So, if we assume
14 that this information -- and we don't have evidence on
15 this, but if we assume this information came from the
16 presentations that Veridian and Hydro One made to the
17 Strategic Task Team, does that cause you any concern?

18

19 (BRIEF PAUSE)

20

21 MR. DENNIS NOLAN: It -- it's -- I --
22 I can see why there would be concern, but I just don't
23 know. It's -- it's not for me to comment on, the way
24 that they were running their process and what
25 information that they were providing to other bidders

1 or what their intent was.

2 I can't -- I -- I can't discern from --
3 from a document that we never -- that I -- to my
4 knowledge, we never received.

5 MR. JOHN MATHER: So, when you were
6 referring to they were running their pos -- process,
7 are you referring to Hydro One and Veridian?

8 MR. DENNIS NOLAN: No. I'm referring
9 to -- to Collus, the Town of Collingwood.

10 MR. JOHN MATHER: So, you're saying
11 you're not -- you're not aware whether or not the --
12 the disclosure of this sort of information was
13 something that Collus was okay with or comfortable
14 with, for lack of a better term?

15 MR. DENNIS NOLAN: I have no idea how
16 their committee or whatever worked, how they treated
17 confidential information, that's what I'm saying, or
18 what they perceived to be confidential.

19 MR. JOHN MATHER: Would you have
20 expected them to no -- disclose what they understood
21 to be confidential information to Mr. Bonwick?

22

23 (BRIEF PAUSE)

24

25 MR. DENNIS NOLAN: I think that's a

1 fair assumption, yes.

2 MR. JOHN MATHER: And if we can scroll
3 up, please. Sorry, scroll down a little bit further.
4 I want to look at the last point under Hydro One. It
5 says:

6 "While the presenter demonstrated
7 integrity and in-depth knowledge of
8 the industry trends, and more
9 particularly the South Georgian Bay
10 regions and the assessment -- the
11 assessment committee was not
12 enamoured with the concept or
13 direction Hydro One presented."

14 Again, we don't have Mr. Bonwick's
15 evidence on this point, but it appears that this could
16 be providing information about how the Strategic Task
17 Team received -- received Hydro One's presentation.

18 I take it that's something that
19 PowerStream would not have been aware of at this point
20 in time, September 14th, 2011?

21 MR. DENNIS NOLAN: I think that's --
22 that's fair. But I don't think we had an expectation
23 that Hydro One -- that would be em -- embraced as --
24 as a partner for this kind of arrangement.

25 MR. JOHN MATHER: Would you have found

1 it use -- did you find -- I mean, would you have found
2 it useful to know how the Strategic Task Team took in
3 -- or what their -- their high-level views were of
4 Hydro One's presentation and there's a similar overall
5 reaction point with respect to Veridian?

6

7 (BRIEF PAUSE)

8

9 MR. DENNIS NOLAN: I'm sorry, can --
10 can you give me that again, please?

11 MR. JOHN MATHER: Fair enough. So,
12 this final bullet point here provides an indication --
13 or it appears to provide an indication of what the
14 Strategic Task Team thought about Hydro One's
15 presentation.

16 MR. DENNIS NOLAN: Right.

17 MR. JOHN MATHER: Was that something
18 that, had it been conveyed to PowerStream, would have
19 been valuable to PowerStream?

20 MR. DENNIS NOLAN: I suppose it would
21 be of some interest. But, as -- as I -- to put it
22 bluntly, I don't think we were too considered about
23 Hydro One, didn't think that they would be a real
24 competitor here for the kind of arrangement that they
25 seem to be looking for.

1 MR. JOHN MATHER: I understand from
2 some of your earlier answers that certain of this
3 information is information that you would have found
4 not surprising about the -- Hydro One and Veridian. I
5 take it that is a reference to the fact that some of
6 this information may be known generally in the
7 industry. Is that what you're referring to?

8 MR. DENNIS NOLAN: Yes.

9 MR. JOHN MATHER: I -- I take it you'd
10 agree though that the Strategic Task Team's views of a
11 particular bidder's presentation, that's not something
12 that would be known generally in the industry?

13 MR. DENNIS NOLAN: I would agree with
14 that.

15 MR. JOHN MATHER: Did you understand
16 that those views were confidential?

17

18 (BRIEF PAUSE)

19

20 MR. DENNIS NOLAN: Again, I -- I guess
21 I -- I would assume they would be confidential, but
22 that -- you know, it was -- it was up to them about
23 how they ran their process and what was confidential
24 or not.

25 MR. JOHN MATHER: I'm just trying to

1 understand what you mean by that. Do you mean that it
2 was up to the Strategic --

3 MR. DENNIS NOLAN: Well --

4 MR. JOHN MATHER: -- Task Team to
5 determine whether or not they could share their
6 confidential views?

7 MR. DENNIS NOLAN: No. I -- I think
8 there's -- there -- okay. I guess what -- what I'm
9 trying to articulate is that it's -- it's their
10 process. It was an RFP process. And I'm trying to
11 think of -- of my impression at -- at the time, not
12 having seen this or being aware of this.

13 But in an RFP process that I'm familiar
14 with and it -- it's not a tender and it depends on the
15 RFP processes. The -- the rules sort of are up to the
16 party running the RFP.

17 And so, it's not unusual for there to
18 be questions to one (1) proponent or another of
19 clarification, et cetera. And -- and I don't know
20 what my expectations were here, but I wouldn't have
21 been surprised in -- in this case that certain
22 information would be used to try to get people to
23 improve their bid, for example.

24 MR. JOHN MATHER: Sorry, can you
25 explain what you mean by that, what you're

1 contemplating?

2 MR. DENNIS NOLAN: Well -- and -- and
3 I -- you know, and I -- I think this is actually what
4 happened, you know, later on when we were chosen as --
5 as the proponent to negotiate with. I mean, I think
6 they used the other bids, in particular, I think Hydro
7 One's bid, to -- as leverage to get us to increase our
8 price. That's what I mean.

9 MR. JOHN MATHER: Can you explain what
10 you're talking about when you say that they knew? I
11 take that to be Collus. Is that who you're referring
12 to in the they?

13 MR. DENNIS NOLAN: That they would --
14 yes.

15 MR. JOHN MATHER: So, are you -- can
16 you walk me through the situation you're describing
17 where you understood Collus to be using Hydro One's
18 bid to increase PowerStream's price?

19 MR. DENNIS NOLAN: I think when we had
20 the -- the meeting on, I believe it was December 1st,
21 you know, it was -- I -- I think they were using it as
22 -- as leverage to get -- to get us to increase our
23 price.

24 MR. JOHN MATHER: So, it's our
25 understanding there was a meeting on December 1st.

1 And we are jumping ahead in time --

2 MR. DENNIS NOLAN: Yes.

3 MR. JOHN MATHER: -- but I would like
4 you to ask you about this. There was a meeting on
5 December 1st as between certain representatives from
6 Collus as well as -- and I believe the deputy mayor
7 was there as well as representatives from PowerStream.

8 And at that meeting, PowerStream
9 increased the equity portion of its offer from 7.3 to
10 8 million. Is that the me -- is that the meeting
11 you're talking about?

12 MR. DENNIS NOLAN: That's correct.

13 MR. JOHN MATHER: At that meeting, did
14 -- did somebody from the Collus or Collingwood side of
15 the discussion disclose what Hydro One's financial
16 offer had been?

17 MR. DENNIS NOLAN: No. They just had
18 -- there was -- I -- I believe, my -- best of my
19 recollection, there was an -- an intimation that it
20 was higher and -- and that you needed to up your bid.

21 MR. JOHN MATHER: And so, no precise
22 number was given?

23 MR. DENNIS NOLAN: No, not that -- no.
24 I'm -- I'm fairly certain of that.

25 MR. JOHN MATHER: To the best of your

1 recollection, how was it intimated that Hydro One's
2 bid was higher?

3 MR. DENNIS NOLAN: I -- I don't have
4 any -- any more recollection than that. But I do
5 recall that -- that being a message delivered at the
6 meeting.

7 MR. JOHN MATHER: You were ana --
8 analogizing that situation to -- and I appreciate this
9 was not a memorandum you reviewed at the time, but you
10 were ana -- analogizing that situation to this
11 situation.

12 Am I to understand your suggestion is
13 that it is possible that --

14 MR. DENNIS NOLAN: Sorry. Sorry.

15 MR. JOHN MATHER: Yeah, just please
16 wait until I answer (sic) my question; it's in both of
17 our interests. To -- that this is a situation whereby
18 some -- someone on the Strategic Task Team may be
19 trying to deliver information or -- or provide
20 information such that PowerStream will change what it
21 may or may not do with respect to its RFP?

22 MR. DENNIS NOLAN: It's possible.
23 But, as I said before, none of this information would
24 have, I -- I believe, changed our approach or ha -- or
25 influenced our approach had it be conveyed to us, or

1 if it was conveyed to us.

2 MR. JOHN MATHER: Had this memorandum
3 or a version thereof been conveyed to you or you
4 received a copy of it at the time, would it have
5 changed your approach with respect to your view of Mr.
6 Bonwick and his retainer?

7

8 (BRIEF PAUSE)

9

10 MR. DENNIS NOLAN: It might have
11 raised some concern.

12 MR. JOHN MATHER: And what would those
13 concerns have been?

14 MR. DENNIS NOLAN: That the
15 information, you know, was, you know, that there --
16 that there was any -- just to how -- to how the
17 information was obtained.

18 MR. JOHN MATHER: So, you might have
19 had some concerns about how Mr. Bonwick obtained this
20 information?

21 MR. DENNIS NOLAN: I might have, yes.

22 MR. JOHN MATHER: And why would -- why
23 would you have concerns about how this information was
24 obtained?

25 MR. DENNIS NOLAN: Well, I -- I would

1 assume that -- that it would have come from -- I mean,
2 I have to be careful about, you know, now and then. I
3 didn't see this. So, you're asking me, okay, looking
4 back, if I had seen it, would I be concerned. I think
5 the answer's, yes.

6 I would assume that it -- that it came
7 from someone that had knowledge of -- of those
8 meetings.

9 MR. JOHN MATHER: And the concern
10 would then be that that person should not have
11 disclosed that knowledge to Mr. Bonwick. Is that
12 fair?

13 MR. DENNIS NOLAN: Possibly --

14 MR. JOHN MATHER: Possibly.

15 MR. DENNIS NOLAN: -- subject to what
16 I said before. If it was -- if -- if it was -- if it
17 was disclosed, you know, on -- on purpose, I guess. I
18 don't know that. It's impossible for me to know that.

19 MR. JOHN MATHER: This -- so, at this
20 point in time, mid-September 2011, around the time
21 that PowerStream gave its -- its presentation to the
22 Strategic Task Team, did you have an understanding of
23 -- actually, let me ask you -- let me ask you it this
24 way.

25 You said that you didn't know that

1 Power -- that Collus was for sure proceeding with a 50
2 percent partner until the RFP was issued?

3 MR. DENNIS NOLAN: I -- I don't think
4 we -- you know, there -- there -- you know, I think
5 there -- I'm -- I'm trying to remember. I think there
6 was -- you know, there -- there was some directional
7 indication that -- that they were looking at a
8 partnership.

9 What we didn't know is whether the RFP
10 would allow, for example, in the alternative, to -- to
11 propose some other structure.

12 MR. JOHN MATHER: Fair enough. And I
13 assume that was true when PowerStream made its pres --
14 presentation to the Strategic Task Team. It didn't
15 know yet what would be --

16 MR. DENNIS NOLAN: Correct.

17 MR. JOHN MATHER: -- what would be
18 offered to PowerStream?

19 MR. DENNIS NOLAN: I -- I think that
20 that's -- that's definitely correct because there --
21 when I -- when I did review it recently, you could see
22 with the proposed governance structure that it would
23 not reflective of a 50/50.

24 MR. JOHN MATHER: So, if we could open
25 ALE412.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, this is an email
4 from Mr. Bonwick dated September 20th, 2011. It's
5 sent to Mr. Glicksman at PowerStream. You and others
6 at PowerStream are copied.

7 Are you familiar with this email?

8

9 (BRIEF PAUSE)

10

11 MR. DENNIS NOLAN: I wouldn't have
12 recalled it, except for seeing it in the -- in the
13 production of documents.

14 MR. JOHN MATHER: I'll have some
15 questions about the content of this email. So --

16 MR. DENNIS NOLAN: Sure.

17 MR. JOHN MATHER: -- if it would
18 assist, I'm happy to let you have a moment to read it;
19 otherwise, I can continue with my questions and you
20 can --

21 MR. DENNIS NOLAN: Yep.

22 MR. JOHN MATHER: -- take your time.

23

24 (BRIEF PAUSE)

25

1 MR. DENNIS NOLAN: Sure. Go ahead.

2 MR. JOHN MATHER: Okay.

3 THE HONOURABLE FRANK MARROCCO: Well,
4 just did you read the bottom of it?

5 MR. DENNIS NOLAN: No. No, Your
6 Honour.

7

8 (BRIEF PAUSE)

9

10 MR. DENNIS NOLAN: Okay.

11

12 CONTINUED BY MR. JOHN MATHER:

13 MR. JOHN MATHER: So, if we could
14 scroll up. So, looking at the second paragraph, and I
15 appreciate there's not a lot of space between the
16 paragraphs, but it's the one that begins, "There's a
17 great deal of focus." So, it says:

18 "There's a great deal of focus on
19 the committee's desire to create a
20 partnership that provides
21 Collingwood with a 50 percent of
22 ownership of the LDC. This issue
23 appears to be more political than
24 practical in terms of control or
25 value.

1 The believe the palatability is much
2 greater from a council perspective
3 if they are able to announce this
4 type of scenario rather than
5 perceive loss of control in less
6 than a 50 percent scenario.
7 I believe they are prepared to
8 acquiesce on issues like this,
9 PowerStream maintaining the chair
10 position and control of Board
11 provision, ensuring required rights
12 by PowerStream as well as a
13 predetermined shotgun value."

14 Again, we haven't heard from Mr.
15 Bonwick about this, but it appears he is providing
16 information about what a committee, and it may be the
17 case that it's the Strategic Partnership Task Team, is
18 considering when it comes to the 50 percent
19 partnership.

20 At the time when you received this
21 email, do you know where Mr. Bonwick gathered the
22 information in that paragraph?

23 MR. DENNIS NOLAN: No.

24 MR. JOHN MATHER: Did you make any
25 inquiries of Mr. Bonwick where he gathered that

1 information?

2 MR. DENNIS NOLAN: No. And I don't
3 think I was especially focused on -- on this email or
4 his information, quite frankly.

5 MR. JOHN MATHER: Appreciating that --
6 your -- your answer that you weren't focused on this,
7 do you recall having any concern about Mr. Bonwick
8 appearing to have infor -- insight onto the
9 discussions or the deliberations of the Strategic Task
10 Team?

11 MR. DENNIS NOLAN: Honestly, I wasn't
12 dealing with -- with Mr. Bonwick, for the most part,
13 and I -- I was -- I was not overly concerned. But,
14 obviously, this information or impression is coming
15 from somewhere.

16 MR. JOHN MATHER: At the time, did
17 anyone raise any concerns to you about the nature of
18 the information Mr. Bonwick was providing with respect
19 to discussions -- appears to be discussions with the -
20 - with the Strategic Task Team?

21 MR. DENNIS NOLAN: Concerns? No.

22 MR. JOHN MATHER: If it was something
23 that you had had more focus on, do you believe it's
24 something that would have concerned you at the time?

25 MR. DENNIS NOLAN: Well, I mean, it --

1 it goes to -- I guess it was clear -- it would be
2 clear to me that -- that someone wants us to
3 understand this, they want us to have -- to have a
4 proposal that coincides with what he understands the
5 Town is looking for.

6 MR. JOHN MATHER: So, you're talking
7 again that someone may have been providing him this
8 information for the purposes of assisting PowerStream
9 in creating, you know, pro -- in -- including in their
10 bid things that would be acceptable to the task team?

11 MR. DENNIS NOLAN: Yeah. But I have
12 no idea where would -- we would have had no idea
13 whether the same information was being provided to
14 other proponents, making it clear that we're looking
15 for this 50 percent, we're looking for this kind of
16 partnership where we have concerns about loss of
17 control. I don't know that.

18 MR. JOHN MATHER: I appreciate you
19 didn't know what was being provided --

20 MR. DENNIS NOLAN: Right.

21 MR. JOHN MATHER: -- to the other
22 proponents. Would you expect that sort of information
23 to be provided to the other proponents?

24 MR. DENNIS NOLAN: I would surprised
25 and -- and I wouldn't be concerned if during the

1 process they made clear to proponents of what they
2 were looking for.

3 MR. JOHN MATHER: If they wanted --

4 MR. DENNIS NOLAN: I don't know that
5 to be the case, but all I'm saying is I -- there's no
6 way I know or we would have know what information was
7 being provided to the other proponents.

8 MR. JOHN MATHER: Do you know if the
9 information reflected in this paragraph that we just
10 read, if that was expressed directly to anyone at
11 PowerStream at any time in or around September 20th?

12 MR. DENNIS NOLAN: I'm sorry, you mean
13 --

14 MR. JOHN MATHER: Let me put it
15 another --

16 MR. DENNIS NOLAN: -- other than --

17 MR. JOHN MATHER: Other than -- so Mr.
18 Bonwick is providing you this information. Do you
19 know --

20 MR. DENNIS NOLAN: Right.

21 MR. JOHN MATHER: -- if anyone at
22 Collus or the Town provided this information to
23 PowerStream directly?

24 MR. DENNIS NOLAN: I -- I think while
25 -- like, as I said earlier, the RFP was confirmation

1 of the 50 percent, I think. That's the direction we
2 were being steered in, and until we saw it in the RFP,
3 still thought that maybe there -- there would be room
4 for options, for example.

5 MR. JOHN MATHER: Do you know if this
6 -- the considerations being contemplated in this
7 paragraph were explained to PowerStream at the -- at
8 the presentation that happened earlier in September?

9 MR. DENNIS NOLAN: I don't know if --
10 if that -- if that was something that was clarified at
11 that meeting I wasn't present. I think that it may
12 have been but you would have to ask --

13 MR. JOHN MATHER: Do you agree that
14 that would be -- to the extent the strategic task team
15 wanted to provide the bidders information about what
16 they were looking for, that would be a venue in which
17 they could do so?

18 MR. DENNIS NOLAN: Yes, that would be
19 appropriate.

20 MR. JOHN MATHER: So in this
21 paragraph, Mr. Bonwick writes:

22 "I believe they are prepared to
23 acquiesce on issues like PowerStream
24 maintaining the Chair position and
25 control of the Board."

1 Do you have a recollection of what you
2 understood Mr. Bonwick to mean by that?

3 MR. DENNIS NOLAN: Well, I can -- I
4 think it's -- it's fairly plain what he meant by that.
5 I find it kind of -- I certainly wasn't focused on
6 that at -- at the time and I find it rather hard to --
7 to believe that in a 50/50 sale that they would
8 acquiesce to giving up control of the Board.

9 MR. JOHN MATHER: Why do you find that
10 hard to believe?

11 MR. DENNIS NOLAN: It would be -- I --
12 I don't know what the rationale would be for that. I
13 mean, you would expect equal representation if it was
14 indeed 50/50. Perhaps an independent Chair or
15 something like that would be an interest so that you
16 have another mechanism in -- in case you had an
17 impasse at a Board meeting.

18 MR. JOHN MATHER: At this point in
19 time, had PowerStream formed a view of what it would
20 be looking for in terms of the Chair of the -- of a
21 Board of Directors or control of the Board in the
22 event there was a 50/50 partnership?

23 MR. DENNIS NOLAN: To the best of my
24 recollection, what -- what we -- what we were
25 considering was something like I just mentioned, that

1 -- that perhaps consideration of -- of an -- of an
2 independent Chair, and -- and I think this is from --
3 again, from my review of the documents, more than a
4 razor sharp memory of eight (8) years ago, which I
5 definitely don't have. But I do -- I did recall
6 seeing that we were -- we were willing to -- for
7 example, that Mr. Muncaster could be that independent
8 Chair.

9 MR. JOHN MATHER: Would the
10 possibility of PowerStream entering a 50/50
11 partnership while at the same time maintaining the
12 Chair position on the Board of Directors of the
13 partnership and maintaining control of the Board of
14 the partnership, is that something that would have
15 been attractive to PowerStream?

16 MR. DENNIS NOLAN: I suppose, but I
17 don't think there was any expectation of that. I
18 mean, you can -- you can make up all sorts of
19 scenarios if you want, that -- and -- and ask me if
20 that would be attractive, but I -- I think it's --

21 MR. JOHN MATHER: Well, I'm just
22 asking you about the specific scenario contemplated --

23 MR. DENNIS NOLAN: Right.

24 MR. JOHN MATHER: -- in this email.

25 MR. DENNIS NOLAN: Yeah.

1 MR. JOHN MATHER: So that would be
2 something that would be something attractive?

3 MR. DENNIS NOLAN: I suppose it would,
4 but again I -- I think it's an example of why maybe I
5 didn't think the information provided -- and that's
6 attributable to Mr. Bonwick was terribly helpful. I
7 think we would make our -- our own determination of --
8 of what would really be acceptable.

9 MR. JOHN MATHER: Was it helpful to
10 know that it was possible that whoever is being
11 contemplated here, potentially the strategic task
12 team, that they might be prepared to acquiesce on
13 issues like that? Is that helpful information?

14 MR. DENNIS NOLAN: Well again I don't
15 know that -- I don't recall ever receiving this
16 information, so I'm not sure the relevance.

17 MR. JOHN MATHER: Fair enough. I'll
18 put it to you this way. If you -- if this had come to
19 your attention or it's something you -- you were aware
20 of at that time, would that have been helpful
21 information?

22 MR. DENNIS NOLAN: As long as -- if --
23 if - if you -- if you trusted the -- this -- the
24 accuracy of it and -- and that -- that would be
25 something that -- that would actually be agreed upon,

1 you know, once it was, you know, in black and white
2 and scrutinized, perhaps.

3 MR. JOHN MATHER: Do you agree that
4 It would give you -- PowerStream a potential
5 negotiating -- negotiating advantage in the future to
6 the extent that governance issues would be negotiated
7 as part of the 50 percent sale?

8 MR. DENNIS NOLAN: I'm sorry, I -- and
9 it's late in the day, but I -- you lost me there.

10 MR. JOHN MATHER: If you know that
11 Collus or the Town may be willing to acquiesce on
12 certain governance issues, is that a negotiation
13 advantage that you might have at a future point if
14 you're negotiating the governance provisions of the --
15 of a share sale?

16 MR. DENNIS NOLAN: Well, if -- if --
17 sure, if you -- if -- if we did -- in -- in theory if
18 we did, I suppose it would be an advantage.

19 MR. JOHN MATHER: And then in the
20 centre -- in the sentence it then says:

21 "Provision ensuring rates required
22 by PowerStream."

23 And then it says:

24 "As well as a predetermined shotgun
25 value."

1 I appreciate that it doesn't appear
2 that you have much of a recollection of reading this
3 email at the time, but do you have an understanding of
4 what predetermined shotgun value means?

5 MR. DENNIS NOLAN: It doesn't make
6 sense to me --

7 MR. JOHN MATHER: What doesn't --

8 MR. DENNIS NOLAN: -- because that's
9 not how a shotgun works. Makes no sense.

10 MR. JOHN MATHER: But what doesn't
11 make sense about it?

12 MR. DENNIS NOLAN: Predetermined
13 shotgun value. It -- it doesn't make sense. A
14 shotgun is -- just doesn't work that way, that you --
15 I -- I've never seen an agreement like this.

16 So there's a good example why I'd look
17 at this and if I saw it at the time I'd kind of roll
18 my eyes and think, well, it doesn't make any sense.
19 It's not -- it's someone who doesn't understand how --
20 how that buy-sell provision would work.

21 MR. JOHN MATHER: At this point in
22 time, do you recall if PowerStream had turned its mind
23 to whether or not it would be seeking -- what it would
24 want in terms of either a buy-sell provision or other
25 exit provision in the event a 50 percent partnership

1 went forward? Is that something that had been
2 contemplated?

3 MR. DENNIS NOLAN: I don't think we
4 had -- had contemplated it as -- as yet, but obviously
5 with a 50/50 ownership you need liquidity rights. You
6 need -- in -- in the event of -- of an impasse. So
7 when -- in the draft I believe that was prepared by
8 Aird & Berlis, they proposed a shotgun and -- and I
9 think we had -- there was some discussion about the
10 time period of -- of twenty (20) days being -- being
11 an issue, or maybe I'm recollecting another
12 conversation, but the -- with Inquiry counsel. But
13 that wasn't surprising at all.

14 MR. JOHN MATHER: And we'll have some
15 more questions about the -- the shotgun provision as
16 we get to the transaction.

17 If we could scroll down. The email
18 goes on to say:

19 "The assessment committee is
20 meeting."

21 Do you see that sentence?

22 MR. DENNIS NOLAN: Sorry. Yes.

23 MR. JOHN MATHER:

24 "The assessment committee is meeting
25 next week for the purpose of a

1 strategic planning exercise in
2 relation to the RFP, as well as a
3 post-interview assessment of their
4 wants and needs. This would provide
5 the only opportunity to shift the
6 assessment committee's focus on a 50
7 percent ownership stake. A
8 presentation by their KPMG
9 consultant along with their CEO can
10 spell out the practical elements
11 supporting a scenario whereby Collus
12 owns less than 50 percent."

13 At this point in time, do you know if
14 you or anyone at PowerStream had discussions with Mr.
15 Bonwick about what PowerStream would like to see in
16 terms of either there being an alternative approach to
17 the 50 percent or something other than 50 percent
18 being offered?

19 MR. DENNIS NOLAN: No, I'm not aware
20 specifically, but as I said, and certainly until that
21 door seemed to be closed, it -- you know, it was
22 something that we would have been interested in, as I
23 think other bidders would have, in the ability to
24 propose something other than 50/50.

25 MR. JOHN MATHER: Did you -- did you

1 at any point direct Mr. Bonwick to find out more
2 information --

3 MR. DENNIS NOLAN: No. Sorry, I
4 didn't let you finish.

5 MR. JOHN MATHER: Fair enough. Again,
6 and it -- it's in both of our interest --

7 MR. DENNIS NOLAN: I apologize.

8 MR. JOHN MATHER: Did you at any point
9 direct Mr. Bonwick to obtain information about where
10 the strategic task team was sitting with respect to a
11 50/50 sale?

12 MR. DENNIS NOLAN: No.

13 MR. JOHN MATHER: Are you aware of
14 anyone at PowerStream requesting Mr. Bonwick to source
15 that type of information?

16 MR. DENNIS NOLAN: No, I'm not aware.

17 MR. JOHN MATHER: Was this the sort of
18 information you contemplated that Mr. Bonwick would
19 provide as part of his retainer with PowerStream?

20 MR. DENNIS NOLAN: I would think that
21 it -- in terms of -- that -- that it could be actually
22 a -- a good example is -- is -- is the Town giving us
23 general feedback? Is -- is the -- the Town willing to
24 -- to give up control, sell 100 percent, that sort of
25 thing. I think that had been answered and I think it

1 had been answered by, you know, by others, not by --
2 other than Mr. Bonwick.

3 MR. JOHN MATHER: So who else had
4 answered that?

5 MR. DENNIS NOLAN: The direction that
6 we've -- that we got, as I understand, from -- from
7 the preliminary meetings and from conversations I
8 think perhaps with -- from -- with Mr. Houghton that I
9 wasn't party to, but my impression is that you know,
10 the Town was not willing to sell 100 percent.

11 MR. JOHN MATHER: So if that question
12 had been answered, did you have an understanding of
13 why Mr. Bonwick was providing information about where
14 the -- the 50 percent or greater conversation was --
15 was going?

16 MR. DENNIS NOLAN: Well, I guess it
17 was still an issue of contention so he was trying to
18 address it.

19 MR. JOHN MATHER: Did you recall
20 having any concern about Mr. Bonwick advising
21 PowerStream when the "assessment" committee was
22 meeting and what the purpose of the meeting was?

23 MR. DENNIS NOLAN: Again, at the time
24 I -- I wasn't really aware of -- of you know, what he
25 was really providing, relating to the assessment

1 committee.

2 MR. JOHN MATHER: Again, was that
3 something -- was that the sort of information you
4 expected Mr. Bonwick to provide about when the -- the
5 group of individuals who would be creating the RFP
6 would meet and what they would be discussing?

7 MR. DENNIS NOLAN: Again, to the
8 extent that it was information that was properly
9 available. Or made available.

10 MR. JOHN MATHER: Sorry?

11 MR. DENNIS NOLAN: Or made available.

12 But -- sorry, I want to go back and
13 answer that question.

14 MR. JOHN MATHER: Yes.

15 MR. DENNIS NOLAN: Did I think when we
16 retained Mr. Bonwick of -- of these sorts of details,
17 absolutely not. I -- I mean, would I have
18 contemplated, you know, him -- you -- providing
19 feedback on that specific matter? Not other than in a
20 general way would have been my initial impression.

21 MR. JOHN MATHER: And I -- I don't
22 want to ask this again, but my understanding is that
23 this email didn't concern you at the time, in part I
24 take it because you didn't put a lot of focus on it,
25 to use your words?

1 MR. DENNIS NOLAN: I can't remember my
2 reaction to this email. I'm -- I'm -- I'm surmising
3 and -- and I'm telling you that at the time I wasn't
4 very much focused on Mr. Bonwick or his information.

5 MR. JOHN MATHER: Who at PowerStream
6 was focused on Mr. Bonwick or working with Mr.
7 Bonwick?

8 MR. DENNIS NOLAN: Whether focused or
9 not, the person that was the -- the point person for -
10 - for dealing with -- with his retainer more directly
11 was Mr. Glicksman.

12 MR. JOHN MATHER: I understand he was
13 the CFO?

14 MR. DENNIS NOLAN: Correct.

15 MR. JOHN MATHER: Were you aware at
16 any point that Sandra Cooper, in addition to being the
17 Mayor and a director of Collus Power was also a member
18 of the strategic task team that was developing the RFP
19 and would go on to score the RFP?

20 MR. DENNIS NOLAN: I don't know if I
21 knew at the time. I think I became aware of it at --
22 at some point, probably after. But I can't tell you
23 when I became aware of that, or if that's, you know,
24 something that through the documents I became aware
25 of. I -- I can't say for sure.

1 MR. JOHN MATHER: Do you recall at any
2 -- having a concern that the information that's being
3 provided in this email may be -- may be being provided
4 to Mr. Bonwick by his sister?

5 MR. DENNIS NOLAN: I had no reason to
6 believe that. I mean, again, it's kind of a
7 hypothetical because you know, as I say, I -- I -- I
8 don't -- I wasn't very much focused on -- on this
9 email or his information, so it wouldn't have really
10 crossed my mind.

11 MR. JOHN MATHER: So that's a little
12 different then, you had no reason to believe that the
13 information was coming from the Mayor.

14 MR. DENNIS NOLAN: Well, I also had no
15 reason to believe that.

16 MR. JOHN MATHER: And why would you
17 have no reason to believe that?

18 MR. DENNIS NOLAN: I'm -- I've
19 answered it. I -- I didn't. It didn't -- it didn't
20 cross my mind.

21 MR. JOHN MATHER: Stepping back from
22 this email, at any point did you consider whether or
23 not the information that Mr. Bonwick was providing
24 PowerStream throughout the RFP process was information
25 that he may have been obtaining from his sister?

1 MR. DENNIS NOLAN: I -- I would have
2 assumed that the information to the extent that he was
3 getting the information and -- and direction would
4 have been more the -- obtained from the CEO, Mr. --
5 Mr. Houghton.

6 MR. JOHN MATHER: What was the basis
7 of that expectation?

8 MR. DENNIS NOLAN: Because he was --
9 he was the -- the one that was running the champion of
10 this process, running this process.

11 And he was the CEO, it just wouldn't
12 have -- I mean, if you're asking me now who -- who,
13 you know, looking at this, who likely provided the
14 information, I don't know that and I don't know, you
15 know, if it was, you know, Mayor Cooper, Rick Lloyd or
16 anyone else on -- on the task force. I don't know,
17 obviously.

18 MR. JOHN MATHER: The final sentence
19 of this paragraph says:

20 "A presentation by their KPMG
21 consultant along with their CEO can
22 spell out the practical elements
23 supporting a scenario whereby Collus
24 owns less than 50 percent."

25 Do you know if anyone at PowerStream

1 asked Mr. Bonwick to do anything further about this
2 notion that there -- there might be -- there could be
3 a presentation from KPMG in the CA -- CEO spelling out
4 the practical elements supporting a scenario where
5 Collus owns less than 50 percent?

6 MR. DENNIS NOLAN: No. I have no
7 knowledge of that.

8 MR. JOHN MATHER: At any point were
9 you aware of any discussions in which -- within
10 PowerStream or with Mr. Bonwick where it was discussed
11 whether there would be any way to influ -- not
12 influence, but get them -- advise the strategic task
13 team or -- that there would be advantages to selling -
14 - selling something other than 50 percent?

15 MR. DENNIS NOLAN: No. I'm -- I'm not
16 aware of any such discussion with Mr. Bonwick.

17 THE HONOURABLE FRANK MARROCCO: I -- I
18 think we've done enough for today.

19 MR. JOHN MATHER: Yes, I was --

20 THE HONOURABLE FRANK MARROCCO: It's a
21 convenient --

22 MR. JOHN MATHER: You're -- you're
23 reading my mind, that's what I was just about to say.

24 THE HONOURABLE FRANK MARROCCO:
25 Tomorrow nine o'clock.

1 (WITNESS RETIRES)

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3 -- Upon adjourning at 6:02 p.m.

4

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6 Certified correct,

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11 Wendy Woodworth, Ms.

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<u>\$</u>	53:23,25	1.60	11th 26:23	104:20,23
\$1.1	58:18	230:18	12 179:11	197 3:14
148:19	59:3	233:17	12:29	1990s
\$1.4	60:6,8,10	1.7 120:9	137:9	19:14
153:9,24	,20,25	121:16	12:38	140:9
155:15	87:18	1.71	137:10	178:21
\$1.7	89:19	121:21	12th	270:16
119:21	90:6	1/2 10:17	227:5,11	1996
\$100	108:1,2	1:03	228:12	270:24
288:24	110:13	157:12	13 212:14	1998-2000
\$11.088	119:1	10 8:19	246:23	216:8
147:23	126:25	53:1	13.6	1999
\$13	127:1,14	54:20	119:20	224:12,25
156:4,22	135:2	73:14	120:9	19th 88:7
\$13.6	136:9	116:9	121:14,21	202:23
150:1	137:5	137:7	139 3:12	203:3,19
\$17.9	151:11	212:7	14 119:10	1st 129:25
152:5	158:8	216:18	1-4 4:11	130:1
\$2.7 242:4	163:25	222:2,4,1	14.398	230:5
\$20,000	164:1	0 234:16	121:20	297:5,11
116:9	179:9,10,	246:21	141 144:8	321:20,25
\$30,000	11,12	262:20	1-4-10	322:5
114:5	181:9	275:21	4:14	<u>2</u>
117:25	185:7,19	282:23,24	14th 73:25	2
\$4 243:7	196:16	10,000	78:8	6:15,21,2
\$4.112	197:1,8	255:12	309:6	5 7:17
123:22	199:7	264:14	317:20	8:3 10:17
\$50,000	202:16	265:10	15 18:1	11:25
114:22	209:19	100	195:12	36:24
\$6.4	210:4	173:7,11	245:25	37:25
119:24	233:8	178:13	270:1	54:4
<u>1</u>	246:8	216:18	15.998	56:14
1 5:19,24	252:18	248:24	128:16	67:19
6:6,8	258:5	273:7	157 3:13	119:17
7:17,23	263:24	299:13	16 3:11	120:3
10:1	267:20,24	341:24	16th	135:24
12:20	270:1	342:10	96:10,12	147:24
14:19,23	274:19	100,000	105:16	151:3,11
15:7 16:5	279:3,18	267:18	192:2	168:21
17:9	280:2,16	11:04	170 20:5	178:21
26:13	282:9	73:16	18.5	181:11
27:8	285:13	11:16	120:10,11	210:3
30:15	320:18	73:17	18th 88:7	234:1
37:2	1.1 148:1	11:32		241:17
	1.412	163:7		246:9
	147:25			248:14
	242:3			256:13,18
	243:5,7,2			
	4			
	1.6 234:10			

262:13	27:10,24	250:25	218 4:18	2nd 127:20
284:2	28:3 32:3	252:3,11,	219 4:19	137:16
285:5	34:23	24 290:15	21st 58:1	138:13
2:03	36:14	298:16	220 4:20	161:22
157:13	40:1,20	303:10	221 4:21	162:10
2:54	41:12	309:7	222 4:22	163:7
163:18	42:25	311:15	223 4:23	<hr/> 3 <hr/>
20 15:21	43:11,12	317:20	224 4:24	3 5:6,13
198:13	47:12	325:20	225 4:25	7:1 8:20
219:8	58:1	327:4	22nd	10:17
291:3	64:7,25	2011's	64:7,25	13:1
339:10	65:18	235:16	235 3:15	14:18
20.5	66:2,9	2012 16:14	236 27:15	30:9
302:19	73:25	158:8	35:17	67:18
200 283:19	78:8	161:22	23rd 29:2	108:1
2000	80:10	252:13,22	34:23	121:20
216:13	81:20	2013	246 190:3	149:21
278:9	83:13	145:18	24th	175:7
2004	84:4	2017	171:11,25	187:7
302:25	86:17	235:25	25 203:22	200:3
2004-ish	90:10	2019 1:23	258 3:16	210:4
236:19	94:5,13	219:8	2668	224:13,15
2005	96:14	203 4:3	120:21	225:1
216:15	99:5,25	204 4:4	26th 104:7	246:9
2006 208:8	100:24	205 4:5	27 213:9	249:25
2007 20:9	104:7,20,	206 4:6	246:21	264:9,11
249:4	23	207 4:7	27th	272:22
2010 16:14	105:14,16	208 4:8	126:1,2	285:21
57:18	121:9	209 4:9	150:24	302:18
152:13	126:8	147:2	288 199:20	3.2 120:10
153:4	127:20	20th 84:4	289 3:17	121:15,21
155:4,25	130:1	88:7 90:9	28th 94:5	3:09 162:9
156:12,21	131:15	136:23	96:13	3:33
177:17	136:23	327:4	105:14	234:19
208:8	137:17	332:11	121:9	3:43
209:18	138:14,16	210 4:10	192:14	234:20
210:8	139:3	211 4:11	193:18	30 53:8
295:11	150:24	212 4:12	297 3:21	55:12,13
2011 18:8	169:8	213 4:13	29th 1:23	61:19
19:6	170:8	214 4:14	126:8	184:1
20:25	173:9,25	215 4:15	298:17	194:8
21:17	177:17	216 4:16		246:19
22:18	181:8,15	217 4:17		247:21
24:9,11,1	182:3,14,			249:9
6,24	24 190:8			270:1
26:8,23	202:23			282:24
	204:18			300
	205:23			
	206:12			
	215:1			
	219:7			

178:10,13 ,25 179:18 180:4,8 216:17 30th 27:24 31st 27:24 28:3 32:3 297:12 339 136:12 344 57:21 345 58:17 348 3:23 359 198:15 387 28:14,16 388 28:17 3rd 65:18 66:1,9 190:8 <hr/> 4 4 3:3 144:9 153:6,12, 13,17 174:12 194:22,25 195:1 208:9,17 211:3 243:23 246:10 268:13,19 4.112 121:22,25 240:24 241:22 4.12 243:5 4:55 296:20 40 109:11 247:22 408 46:5,15	125:18 409 46:15,16, 18 294:20 421 129:19 427 127:14 440,000 7:15 483 250:12 48781 136:2,7 4th 27:10 47:12 86:17 94:13 96:9,11 97:5 182:4 192:1,4 193:3 <hr/> 5 5 3:5 8:19 73:14 175:6 179:9,12 208:9 222:2,3,1 0 225:1 261:14 5,000 216:2 5:05 296:21 50 48:7 54:19,20 84:19 85:3,23 86:5,10,2 1 87:16 88:9,13,1 6,18 89:8 90:8,12 91:16 92:14 93:3,9 101:5,20	109:11 116:9 119:20 130:6 136:21 159:12 160:14,15 163:14 164:16 168:2 230:15 239:13 271:21 274:21 275:14 277:10,22 295:15,16 ,20,24 296:3 298:5 299:2 300:21,24 301:25 302:1 326:1 328:21 329:6,18 331:15 333:1 337:7 338:25 340:6,12, 17 342:14 346:24 347:5,14 50/50 86:16 87:12 88:4 90:19,24 91:1,3,21 92:10 94:19,24 196:3 273:5,12, 21 274:11,22 ,24 277:22 302:4 303:2	326:23 334:7,14, 22 335:10 339:5 340:24 341:11 51 273:7 303:5 55 213:18 594 198:16 5th 99:5 <hr/> 6 6 37:14 119:11 179:10,12 236:12 6:00 297:3 6:02 348:3 60 92:15 6650 248:9 6920 248:10 6th 40:20 100:24 <hr/> 7 7 247:4 249:7 7.3 322:9 7:00 9:22 70 49:17 52:2 53:14 61:22,23 62:22 184:2,16, 18 185:12 188:13 194:6 198:5 199:2 70/30 61:9 185:14,25 70:30	184:17 185:4 282:14 <hr/> 8 8 12:19 13:12 119:1 230:15 233:16 236:24 237:20 250:23 270:2 322:10 335:4 80 20:4 179:25 180:19 216:19 291:2 86 20:4 88 180:4 266:13 <hr/> 9 9 260:22 268:1 9:30 9:22 9:33 5:1 9:47 14:12 9:54 14:13 165:2 97 1:19 <hr/> A a.m 5:1 14:12,13 73:16,17 ability 90:21 268:13 271:17 275:1 281:5 340:23
--	---	--	--	---

able 7:20 47:24,25 85:1 171:18 237:9 243:20 250:7 268:8 275:2 329:3	336:24 accurate 10:10 120:5 123:21 209:6,13 accusing 68:13 achieve 273:8 achieving 92:7 acknowledg e 193:10 200:9 272:20 acknowledg ed 271:12 acquiesce 85:6 329:8 333:23 334:8 336:12 337:11 acquire 93:5 acquired 20:4 178:23 231:4 acquiring 165:4 acquisitio n 20:1 23:4,5 118:21 119:3 175:22,24 176:2 182:20 231:2 233:12 264:2 266:17 285:13	299:23 acquisitio ns 17:23,25 18:2,3 19:12 20:14 21:15,24 22:3,5,10 23:7 68:21 175:7 176:7 177:8 178:9 179:25 180:2,18, 22 182:20 225:1,20 230:13 231:7 253:7 across 22:5 113:5 119:16 122:9 125:4,8 195:18 204:4 241:25 261:3 266:6 274:8 act 50:25 270:21 acted 217:19 acting 95:22 253:12 action 113:7 active 237:4 255:25 activities 167:2	activity 42:22 115:21 216:12 218:8 278:8 actual 12:8 123:8 144:15 212:8 225:6 252:10 292:9 actually 10:20 12:11 13:16 17:10 20:6,13,2 0 27:14 30:8 33:11,12 36:5 37:22 50:21 52:19 58:8 112:8 115:1,9 142:4 143:11 144:7 151:25 165:25 166:8 169:23 172:20 173:11 178:12,14 180:6 188:25 189:13 207:21 215:22 216:6,8 217:11,22 219:16 220:20,23 240:18	242:11 243:4 254:24 256:4 268:7 275:11 276:17 284:3,5 285:15 289:6 321:3 325:23 336:25 341:21 ad 68:20 add 50:18 52:23 72:12 76:7 83:3 110:9 120:9 179:7 254:14 added 58:13 206:21 242:9 243:2 adding 262:22 addition 123:8 209:1 344:16 additional 55:13 58:3,12 59:25 60:1 70:6 118:2 123:12 124:7,9 136:9 137:5 168:24 214:12 address 52:6
---	--	--	---	---

342:18	258:17	117:18	336:25	4:24
addressed	administra	226:15	agreement	ALE0001100
40:17	tive 5:25	advisors	40:14,25	4:25
75:1,21	54:2	117:21	41:2,7,19	ALE0005133
76:3	140:11	118:14	42:20	.0002
77:10	administra	affect 7:1	72:3	245:13
105:19	tor	56:1	285:14,18	ALE0050218
adjourn	109:25	239:23	302:21	4:22
8:19	admirable	295:19,21	305:21	ALE1078
adjourning	276:13	affected	306:3,10,	105:7
348:3	278:4	110:14	13,19,25	ALE1099
adjust	adopted	affects	307:10	229:25
313:19	37:10	7:2	308:6,15,	ALE1100
adjusted	advance	affidavit	16 338:15	230:22
109:18	203:19	93:25	agreements	ALE244
123:6	204:20	affiliates	41:23	64:2
124:8	advantage	20:22	240:1	ALE246
128:25	54:5 69:4	afternoon	ahead	65:12
129:1,11	337:5,13,	202:16	11:15	ALE412
153:23	18	296:25	17:13	83:25
adjustment	advantages	afterwards	30:1	326:25
33:5	347:13	108:18	136:1	ALE488
124:17	advertisin	149:6	142:11	98:21
125:7,8	g 29:16	205:1	244:19	ALE50216
144:25	31:16,19	277:3	297:19	93:15
145:2,8,1	288:21	against	301:20	191:10
1	advertized	30:20	322:1	ALE50218
148:20,23	28:21	32:18	328:1	207:22
151:16	advertizin	agent	Aird 339:8	ALE5133.00
155:23	g 30:15	72:21,22	alarm	02 194:14
157:3	advice	ago 13:13	67:23	ALE5133.2
244:4,8,2	186:24	38:21,25	69:24	197:21
2,23	240:12	47:20	ALE 190:3	ALE5133.3
adjustment	advise	57:14	ALE0000244	197:9
s	347:12	74:15	4:4	ALE5133-00
120:15,18	advised	83:15	ALE0000246	0 196:25
122:14	44:11	97:11	4:5	ALE819
126:24	106:9	170:4	ALE0000488	100:19
127:1	133:5	172:9	4:7	ALE916
129:10	advising	230:7	ALE0000819	102:11
131:5,11,	342:20	250:24	4:8	Alectra
20 134:13	advisor	335:4	ALE0000916	2:7
135:7,10	72:25	agreed	4:9	12:16,17
144:18	73:4	141:21	ALE0001078	20:18
295:19	114:15	215:1	4:10	
administra		221:1	ALE0001099	
tion				
220:22				

68:6	235:2,3	23:1 74:3	44:5	158:10
202:17	247:3,4	92:9	45:7,9	159:22
222:7	303:16	113:24	47:4,5,18	160:5,8,9
264:19	323:12	114:16,19	,19	,17,25
286:11	amalgamate	,20	48:4,15	161:6,11
aligned	250:22	117:23	60:23,24	162:1,4,1
248:24	amalgamate	121:8	61:7,14	4,17,22
alleged	d 180:6	122:25	62:5 63:1	163:1,15
77:1	amalgamati	127:19,20	64:24	164:19
allocate	on 179:7	165:21,24	65:4	165:11
55:8	271:12	167:17,25	66:7,12	169:4,16,
allocated	272:18	168:17,19	67:8,9,15	22
113:22	amalgamati	183:2	70:21,22	170:10,21
168:24	ons	188:4,5	71:11	171:5,13,
allow	178:14	203:23	72:1	17
117:4	179:2,5,2	245:9	80:2,16,2	172:2,8,1
247:23	3 251:4	267:6	1	3,16,18,2
326:10	252:8	274:6	81:1,5,7,	4
allowed	amiss	309:9	11,21	173:10,17
48:13,17	288:5	analytical	82:1,11,2	,21
alluded	amongst	259:6	2,23	174:1,6,1
286:20	9:8 195:1	analytics	83:10,11,	1,21
alone	257:12	22:8,13,2	14	175:4
58:21	amount	1 23:1	86:17,18	176:4,21,
114:22	9:21	188:7	87:5	24
already	116:20	259:22	91:17,18	181:15,16
35:5	233:9	analyzed	94:25	,23 184:7
73:22	243:7	121:4	95:1	190:14,19
92:9	283:16	analyzing	96:17,18	192:6,8,1
125:23	295:21	259:13	97:5,6	1,15,21,2
156:3	305:3	and/or	98:1,11,1	4
191:17	amounts	108:4	2 99:9	193:4,10,
246:3,24	231:10,14	Angemeer	100:1,11	18,19
247:3	246:3	2:24 3:8	102:1,2	194:19
251:1	ana	16:2,20	103:16,17	195:2,7,2
alternate	323:7,10	17:17,20,	104:24,25	2
136:20	analogizin	24 18:9	106:12,13	196:1,11,
alternativ	g	19:11	,22,23	18
e 92:13	323:8,10	24 14:15	107:17,18	198:2,18,
97:22	analy	25:12	,24	25 224:8
98:4,8	22:25	35:16,25	108:10,13	225:18,19
326:10	analyses	36:4,17,2	113:19,20	232:24
340:16	183:5	3	117:16,22	233:2,20
altogether	analysis	38:7,13,1	118:8	234:4
274:19	19:20	7,24 39:9	119:8	235:23
am 155:13	22:23	40:4,7,8,	135:17	236:6
		18,22	136:17	238:15,16
		41:8	137:1,14	249:19
		43:15,18	138:2,10,	251:22
			17 139:6	252:1,9,1
			157:25	4 253:1,2

257:17	142:25	285:4	8:23 23:3	appear
258:4	151:20	anticipati	42:21	132:25
263:22	172:19	ng 251:4	43:20	157:20
267:15	188:10,14	anybody	47:6	162:4
273:25	,23 200:1	68:12	51:12	191:24,25
274:4	205:20	71:3	52:8	338:1
279:24	217:9	148:6	57:15	appearance
281:17	222:14	157:9	66:13	288:3,18,
284:25	238:13,16	246:12	67:3	21
289:16	244:3	anyone 7:2	71:10	289:3,5
290:1,23	247:4,11	8:22	72:3	APPEARANCE
291:10,24	266:10	24:12	90:14	S 2:1
292:8,20	274:2,3	26:8,9	91:9	appeared
293:4,17	282:9	27:1 28:7	93:11,12	196:15
294:1,7	283:6	43:2	106:17	199:5
angle	285:21	48:19	107:16	appearing
255:18,19	286:9	54:9	114:10	330:8
angled	289:20	64:25	167:11	appears
68:13	314:8	66:8 67:1	182:16	16:7
announce	323:16	77:11	189:18	35:21
85:1	330:6	79:16,17,	193:24	66:4
329:3	343:13	22	238:15	84:21
announced	answered	82:8,9,19	243:12	86:8
43:7,12	50:15	86:14	254:14	87:14
104:19	217:10	89:6	276:2	128:13
205:3	341:25	94:22	287:4,11,	132:16
announceme	342:1,4,1	95:5,22	25 292:15	149:2
nt 204:23	2 345:19	96:14	305:23	150:14
annual	answering	101:24	306:18	156:13
209:19,24	14:20	102:9	313:19	159:5
267:5	answers	103:12	347:1	160:13
annually	72:17	104:14,21	anyway	161:13
208:5	124:1	106:17	8:18	163:6
answer	128:24	120:16	30:20	165:21
16:22	186:2	122:12	51:15,17	166:24
17:4	200:6	135:8	apart	168:10
21:22	275:6	171:22	216:22	170:8
33:18	311:13	181:2	256:19	190:7
38:3	319:2	210:18,24	apologies	191:23
46:18	answer's	286:11	136:2	194:20,25
48:13,16	325:5	294:5	137:13	199:5,16
59:4,18,1	anticipate	310:24	262:1	200:10
9 72:14	5:18	311:8	265:13	203:22
75:19	251:3	330:17	apologize	314:14
92:10	anticipate	332:10,21	195:17	317:15
104:17	d 249:4	340:14	341:7	318:13
110:22	251:8	341:14	apparently	328:23
132:12	276:16	346:16,25	101:17	329:15
	284:15	anything	272:5	330:19

appetite 251:16	ng 38:20 87:20	198:13	articulate d 72:14	185:16
apples 127:2,12 129:8	94:16 303:25 314:14 330:5	April 252:22	articulati ng 266:23	assessment 18:16 37:4 61:19 70:23 79:10,14 82:7
applicable 242:1	approach 24:12 26:8 101:16 111:13,22 259:18 313:12,20 314:6 323:24,25 324:5 340:16	138:3 178:17 218:22 238:25 240:17	aside 164:13 232:2	85:15,19, 22 86:9 87:15 89:5 107:8 113:25 141:21 208:22 288:8,9 310:7,14 317:10,11 339:19,24 340:3,6 342:21,25
applicatio n 6:15 146:2 237:5		areas 62:24 130:9 147:15 219:19 235:6,13	aspect 62:7 72:17 149:11 184:2 198:24 234:5 247:25 250:10 281:19,20	
applied 119:3		aren't 51:11 60:15	aspects 20:19 62:16 184:3 197:3 198:17 199:7,18 226:2 286:18	
appoint 270:23 272:16	approached 28:1,7 36:2 39:12,15 112:19 138:7 223:19,20	argue 218:15		asset 92:18 277:20
appointed 20:10 217:11		argument's 10:16		assets 150:8 152:7 155:2 166:15 295:9,14
appointmen ts 6:2	approaches 312:9	arises 149:2	assemble 6:9 260:25	
appreciate 5:10,11,2 1 7:19 9:20 10:23 11:2,5 15:3 31:1 97:23 108:7 123:5 132:24 147:5 157:23 237:20 238:13 249:3 271:6 280:24 323:8 328:15 331:18 338:1	approachin g 16:16 27:4 89:7 122:13	arm 239:22	assembling 10:24 21:5	
	appropriat e 52:11 60:25 70:12,17 71:14 143:6 188:8 236:21 274:5 333:19	arranged 25:3	assert 244:22	assist 16:13 152:14 203:13 236:21 303:19 327:18
	approval 37:15 224:23	arrangemen t 130:14 132:4 146:19,21 224:19 274:24 317:24 318:24	assertion 163:11	assistance 15:10 55:14 219:3
	approved 21:7	arrangemen ts 239:10	assertions 7:22	
	approval 37:15 224:23	arrive 231:25	assess 26:3 77:7 176:9 225:22	assisted 63:17 201:1
appreciate d 218:3 257:8	approved 21:7	arrived 53:1	assessed 282:22	assisting 331:8
appreciati	approximat ely 192:2	articulate 320:9	assessing 176:10	Associate

1:7 2:4	130:24	164:16	251:15	122:11
associated	150:5	218:10	available	125:6
6:24	152:3,10	227:23	40:14	131:13,17
240:3	154:20	231:12	62:7	132:3,19
	157:2	336:19	64:12	133:10
associatio	assurances	attic	99:7	166:25
n 175:11	250:16	27:12,23,	115:11	167:1,8,9
235:25		25	155:20	,11
255:25	attach	28:2,8,22	175:25	173:19,23
	13:18	33:10	176:19	183:16
associatio	attached	35:16,24	183:9	198:2
ns 44:25	77:22,25	36:3,21	187:25	201:16
assume	152:12,24	38:5	210:18	228:17
70:2,5	153:5	137:20	214:3,18	243:18
122:5	230:7	138:8,19	246:17	249:13
124:21		139:4	259:21	269:10
245:18	attaches		304:11	270:3
294:24	74:2	attractive	305:14	280:6,8
315:13,15	309:8	335:15,20	343:9,11	282:15,19
319:21	attachment	336:2		285:9
325:1,6	74:4	attributab	average	287:8
326:13	104:4,5	le 336:6	208:9,24	288:6
assumed	127:24	attributes	234:2,11	293:25
42:21	230:22	304:13	246:20	303:17
131:5,10	267:11	audited	250:8	310:23
135:7	309:10,15	152:13	averaging	311:3,7,1
242:8,18	attain	153:4	209:13	3 316:11
294:24	274:25	155:4,25	avoid	317:19
295:21	attempt	295:11	157:8,10	320:12
303:23	162:7	August	awaiting	336:19
346:2	attempted	6:14,18	61:10	340:19
assuming	295:18	27:24	aware 24:4	341:13,16
113:2,3	attempting	28:3 32:3	26:25	342:24
153:24	185:24	65:18	27:1	344:15,21
243:15	attend	66:1,9	38:16	,23,24
assumption	37:19	171:11	39:14	347:9,16
46:9 70:5	42:7	172:1	42:10	away 15:4
122:8	70:12	173:8	45:14,16	42:4
125:12	171:10	190:8	46:3	188:12
127:9	304:1	210:1	63:15	269:9
129:13,14	307:24	297:12	66:8	awkwardnes
150:6	attended	author	79:17	s 157:10
155:1	70:16	147:20	82:8	
242:20	attende	authored	83:5,6,12	<hr/> B <hr/>
245:3	attende	162:10	87:23	B.A 258:14
266:9	ees	authority	89:11	backed
295:8,20	attention	32:16	98:7	269:9
317:1	29:21	37:8 90:4	103:13	background
assumption	67:14		107:12	11:23
s 127:5			120:17	

258:8,10, 11 264:7 271:16 background s 261:1 263:16 bad 143:7 badly 217:25 Bain 2:8 3:14 202:10,12 ,14,15,16 203:1,7,1 3,16,22 204:1,9,1 7,22 205:2,19, 25 206:10,17 207:1,8,2 0 208:1 209:8,23 210:2,17, 24 211:2,7,1 2,17,20,2 3,24 212:6,13, 18,23 213:3,8,1 3,17,22 214:6,15, 21 215:6,10, 14 217:13 218:12,25 219:14,22 220:1,7,1 1 221:1,5,7 ,10,13,19 ,24 222:3,9,1 5,23 223:2,9,1 5,22 224:3 225:10	226:5,9,1 6,21,24 227:3,8,1 7,22 228:19 229:5,10, 13,16,24 230:3 231:1,13 232:1,7,1 4,18,23 233:15,24 234:13 293:19 balance 8:16 55:11 62:6,10,1 8 129:2,6 150:8 152:6 153:7 213:4 268:21 281:18 282:2 balancing 187:20 ballpark 223:3 Barrie 140:12 302:19 base 54:1 57:18,19 146:3,4,7 152:5 217:6 276:22 295:6 299:20 based 11:18 24:6 37:3 50:12 54:6 56:10,20 58:20 63:6,11	78:15 105:21 106:3 112:4 113:25 118:22 121:2 124:9,11 135:18 145:23 155:3,19 156:11 170:13 183:8 203:5 207:18 224:20 225:23 230:14 246:14 248:18,19 249:12 254:24 255:8 259:2 260:23 261:1 262:9,10 265:5,21 269:21 271:15 272:5 280:18 281:15 292:18 295:10,24 baseline 70:4 basic 154:20 219:12 basically 5:17 33:15 49:15 92:17 111:15 142:9 188:1 216:22	217:20 304:12 basings 209:11 basis 42:18 62:25 63:24 87:17 89:13 145:16 146:6 148:23 176:20 201:14 205:16 209:24 231:19 249:20 255:4 265:24 266:3 269:3 274:9 284:16 346:6 basket 271:8 Bay 79:9 238:25 310:6 317:9 BDR 101:2 Beach 269:5,6 274:13 278:2 beauty 53:18,20 became 24:4 38:16 125:6 169:13 239:3 269:8 302:15 344:21,23	,24 become 37:9 103:2 134:19 166:25 167:1 169:6 170:16,18 174:19 175:24 201:16 281:21 becomes 14:25 becoming 181:12 beefed 61:23 bef 58:8 beforehand 191:7 begin 16:19 17:16 24:14 235:15 beginning 47:17 87:25 107:17 113:18 162:15 297:18 begins 328:16 behalf 70:24 157:21 186:18 257:10 behemoths 264:20 behind 119:1 266:10
---	--	--	---	---

276:21	219:6	24	124:23	255:2,17
bel 48:15	226:19	211:2,7,1	139:22	316:14
88:17	235:9,24	2,17,20,2	266:12	beyond
belief	236:10	3,24	benefits	15:4
263:1	241:4	212:6,13,	151:13	22:11
believe	242:21	18,23	155:8	25:23
36:18	243:3,20	213:3,8,1	267:23	92:8
37:12	244:1,6	3,17,22	304:14	111:14
40:10	252:21,22	214:6,15,	Bentz	156:24
41:15	253:13,17	21	64:11	168:25
43:20	,19	215:6,10,	65:17	225:4,5
44:13	254:5,6,1	14 217:13	75:1	259:23
45:22	5,17	218:12,25	77:10	273:9
47:20	264:15	219:14,22	84:5	280:12
48:4,6,9,	269:10	220:1,7,1	100:25	283:1
16 55:12	271:23	1	190:9	290:8
56:7	279:5,24	221:1,5,7	309:17	292:14
57:18	288:16	,10,13,19	ber 314:25	bid
60:24	290:6	,24	Berlis	12:10,18
64:17	298:19	222:3,9,1	339:8	45:24
65:4	307:23	5,23	best	54:18,25
70:14	321:20	223:2,9,1	7:3,6,7	56:9,18,1
78:22	322:6,18	5,22	31:8 42:3	9 57:2,9
84:23	323:24	224:3	52:9,15	59:16
85:5	329:1,7	225:10	61:24	86:23
86:20	330:23	226:5,9,1	62:9	89:14
89:3 95:1	333:22	6,21,24	97:21	90:11
100:5	334:7,10	227:3,8,1	101:15	91:16,25
106:14	339:7	7,22	102:8	92:11
113:8	345:6,12,	228:19	109:4	93:2,11
114:21	15,17	229:5,10,	111:16	98:4,10,1
117:22	believed	13,16,24	117:11	9 119:18
125:25	124:5	230:3	127:5	120:6,15,
131:15	142:1	231:1,13	186:2	18
137:1	256:22	232:1,7,1	206:11	122:10,17
145:16	Belinda	4,18,23	215:23	,18
151:21	2:8 3:14	233:15,24	216:3	123:14,17
152:21	202:14,15	234:13	224:22	124:3,6,8
169:16,22	,16	bells	255:6,10,	,11,23
170:22	203:1,7,1	67:24	16 267:16	125:8
172:2,9,1	3,16,22	benchmark	322:18,25	126:3
9 173:10	204:1,9,1	254:22	334:23	127:11,19
174:1,2	7,22	benchmarki	better	129:10,11
178:18	205:2,19,	ng 216:1	50:23	,14
183:17	25	benefit	69:2	143:17
189:14,15	206:10,17	10:11	123:18	144:2,3,1
202:20	207:1,8,2	13:25	152:23	5 146:25
205:1,13	0 208:1	68:5	166:17	148:13
206:24	209:8,23	100:7	199:22	149:12,24
216:7	210:2,17,			153:23

155:18	60:15	194:24	258:8	272:16
156:7	64:10	195:25	274:10	280:21
157:2	71:21	244:21	281:23,24	329:10
160:22,23	82:20	321:6	305:12,16	333:25
163:13	83:5,6,12	bigger	317:3	334:8,17,
164:3,4	94:18,23,	206:9	black	21
165:10,18	24 96:4	277:23	337:1	335:12,13
181:20	99:7			boards
184:1,2	107:9,12	bil 29:23	BLG 72:21	127:22
194:12	111:2	bill	115:21	176:12
195:24	113:6	114:23	147:2	265:7
196:5,10,	125:5	149:12	BLG0000209	271:15
15,17	127:4	164:3	_0001	276:6
197:3	173:20	288:24	4:12	Board's
198:4,17,	174:3	billboard	BLG209_1	164:16
22,24	194:22,25	29:13	127:25	250:19
199:3,7,1	195:1,19,	30:1	bluntly	Bob 95:10
8	21 204:14	141:10	318:22	Bonwick
206:8,9,1	205:4	142:1,15	board	2:10 3:16
3 237:13	220:3	286:22	21:4,7	9:18,19
244:7	274:23	287:19	30:12	11:8,12,1
268:4	275:2	289:5	31:22	6 14:7
275:11,12	284:3	290:7,10	50:14	63:16,20
300:17	293:18	billboards	68:21,23	64:10
320:23	300:10,17	28:20	85:8	65:17
321:7,18	303:9	29:24	95:20	73:25
322:20	304:24	30:8	109:5,21,	74:12
323:2	314:14	34:23	23 112:23	76:6 84:4
331:10	315:25	35:6,7,11	113:5,10	99:2
bidder	333:15	288:19	122:9	101:14
12:13	340:23	289:2,24	125:4	102:19,20
13:4,5,14	bidder's	billing	129:3,12	104:4
39:8,20	106:12	220:13,22	143:3	107:6,14
132:9,21	121:11	267:25	145:2,5,2	108:22
133:22	319:11	bio	2 163:9	128:8
134:5,6	bidding	258:7,16	164:7	190:8,16,
174:20	111:19	bit 14:25	193:9,12,	17 234:17
287:9	116:7	51:3,13,1	14 194:10	257:19,23
303:8	168:2	8 61:20	207:14,16	258:1,2,1
308:21	284:5	62:2,4	210:8,23	0,19,24
bidders	bids 13:7	142:11	226:15	259:2,17
5:13	31:9	149:22	230:9	260:5
12:4,9	58:19	150:21	239:1	261:9,16,
13:3,16	71:4 95:6	151:2	241:25	23
24:9	98:9	211:21	254:22	262:1,5,2
31:21	107:12	214:22	255:14	4,25
39:24	121:4,11	224:9	261:3,18	263:8,11,
42:2	126:9	237:14	262:14	14 264:4
46:23	144:12	246:22	265:2	265:11,13
47:3,13	147:16		266:4	,25

268:24	book	219:19	226:17,20	230:1,24
270:12,25	230:18	240:23	brief 5:4	241:8,12
271:3	231:5,15,	breaking	19:11	248:5
272:4,9,1	23 232:25	256:7	27:17	251:24
2	233:18	Breedon	56:4	257:21
273:15,19	259:1	2:19 3:12	57:11,23	279:1
,23	books	139:12,17	64:4	293:12
278:22,23	153:25	,20,21,23	65:14	307:5
279:3,12,	Borden	140:5	80:14,19,	309:3,12
15,20,21	49:1	141:1,9,1	24	311:24
280:1	bottom	5,20,24	81:3,9,14	313:1,7,1
282:8,14,	34:20	142:4,13,	84:1	6 314:18
25	35:1	19	93:17	315:19
283:3,25	94:18	143:13,22	98:23	316:23
284:1,13,	102:16	,25	100:21	318:7
17,19,20	161:21	144:7,22	102:13	319:18
285:7,20	162:20,23	145:4,7,1	105:9	324:8
286:14,15	,25	2,19	119:13	327:1,9,2
287:15	195:5,19	146:5,10,	120:23	4 328:8
289:8	204:2	20	125:20	briefing
303:19	211:13	147:1,8,1	127:16	64:15
309:7,15	212:7	3	128:2,21	259:14
311:14,18	250:18	148:5,14,	129:22	briefly
314:13,15	293:21	22,25	136:4,15	17:21
316:21	328:4	149:10,14	149:8	307:1
324:6,19	bought	,17	150:17	bring 8:20
325:11	37:21	150:4,13,	153:1,15	12:25
327:4	178:25	19	154:11	187:4
329:15,21	box 147:9	151:6,10,	158:4,13,	190:3
,25	Brampton	19,23	18,23	219:24
330:7,12,	146:15	152:12,18	159:3	220:5
18 332:18	brand	,22	161:4,17	221:17
333:21	20:21	153:3,11,	162:12	240:17
334:2	branding	17,21	163:3,20	241:17
336:6	20:22	154:4,8,1	173:4	245:12,22
340:15	171:24	3,18,23	183:22	248:2
341:1,9,1	breadth	155:13,21	189:25	250:11
4,18	23:10	156:2,9,1	190:5	257:14
342:2,13,	break	8 157:4	191:12	278:23
20	73:13	Brian	194:17	bringing
343:4,16	78:7	64:11	195:15	13:15
344:4,6,7	136:10	65:20	196:21	187:5
345:4,23	157:7	75:1 84:5	197:5,15	284:23
347:1,10,	breakdown	100:24	198:7	brings
16	184:16,18	105:22,24	207:24	187:21
Bonwick's	,25	190:9	211:5,10,	205:7
77:9	185:3,4	205:13	15 212:16	broad 16:8
284:11		Bridgepoin	213:11,20	183:17
298:16		t	226:7	217:8
317:14			227:1,15,	
			20 228:25	

260:25	78:14,17	buy-in	CAOs	215:23
261:6	79:2,4	89:22	175:12	265:17
264:23	80:5,9	90:2	capacity	266:14,19
265:4,20	81:17,24	buying	23:5	274:23
282:19	82:4	118:23	capital	cash 62:7
broader	97:20	168:8	148:2,6,8	119:20
54:24	99:10	171:23	,20	121:19,20
166:8	310:1,18	277:10	captured	128:15,16
168:19	318:12	283:19	148:12	149:25
272:25	bundle	buy-sell	career	194:21
broadly	271:25	338:20,24	140:3	195:5,20
70:2	272:13		careers	241:20
broken	burden	<hr/> C <hr/>	280:7	246:7
119:16	215:17,20	CA 347:3	careful	254:2
brought	253:20	calculate	325:2	cast 83:20
18:15	286:6	231:20	carry	Catharines
29:21	business	280:18	232:3	187:4,15
67:14	19:7,24	calculatio	case 31:22	216:15
111:2	20:10,17	n 131:4	37:14	283:20
114:3	30:18,19	146:4,13	41:15	Catherine'
248:3	166:8	273:9	60:14	s 267:1
263:1	167:5	calculatio	72:18	caught
287:21	209:12	ns 230:15	136:1	12:1
297:17	220:19	232:19	156:14	cause
brush	224:5,20	295:18	164:21	75:23
264:24	225:17,21	camp	193:5,11	242:13
265:4,20	226:4	280:11	216:7	314:4
buckets	268:5	Canada	224:14,20	315:17
282:19,21	277:17	260:14	235:9	caused
Budd 27:21	280:5	Canadian	238:14	165:6
32:1 34:2	281:13	109:25	242:3	314:12
35:19	306:22	258:21	243:9	cautious
36:7	businessli	260:13	262:20	110:12
38:19	ke 32:13	Cananzi	266:21	cavalier
137:17,18	187:14	28:19	269:25	308:16
138:21,23	businessspe	30:4	284:9	caveat
139:4	ople	32:23	300:16	189:13
169:11,12	109:7	34:9,24	320:21	caveated
,17	busy 245:7	35:20	329:17	124:6
170:7,11	buy 68:10	Cananzi's	332:5	celebrated
173:8	115:14	34:6	334:16	278:17
budget	116:3	141:19	case-by-	centre
114:23	173:11	142:8	case	220:8,21
built	215:7	CAO	265:24	283:21
152:3	265:18	261:23,25	266:3	304:5
157:2	300:21,23	262:1	cases	308:13
bullet	,24		72:19	
	301:6,7			

337:20	322:5,24	166:24	112:19	12,16
cents	337:12	167:9,24	178:16	76:21,25
259:8	certainly	255:7	219:10	157:15,18
CEO 17:18	9:24	344:13	269:12	,19,20
18:9,23	11:11	chain	314:5,11	158:6,15,
21:3 24:8	35:6 49:7	102:16	323:24	20,25
25:16	54:15	chair 24:7	324:5	159:5,25
29:20	100:5	85:7	changes	160:7,11,
30:12	157:7	260:12,21	102:24	19
32:11	168:15	262:11,16	168:7	161:1,8,1
44:15	194:2	329:9	207:2	2,19
68:19,20	205:4	333:24	219:7	162:2,16,
86:1,2	207:2	334:14,20	238:1	19,24
112:23	209:18	335:2,8,1	271:15	163:5,16,
115:24	218:19	2	changing	22 164:24
160:10	219:4,18,	challenge	219:1,6	165:13,20
161:25	23 223:8	110:9	channel	166:23
218:1	228:19	264:10	70:7	167:16,22
224:5	231:24	challenges	characteri	168:9,14
257:2	233:3	182:12	stics	169:2,21
260:13	234:10	302:4	236:15	170:6,15
261:17,18	253:12,13	challengin	characteri	171:1,8,1
,19,22	259:23	g 5:20	ze 290:25	5,19
265:2	274:21	6:4 115:3	charge	172:5,10,
291:17	276:14	Chambers	113:21,23	14,17,22,
340:9	281:20	1:18	chart	25
346:4,11,	282:11,20	champion	231:14	173:6,13,
21 347:3	315:2	346:9	242:7,20	18,22
CEOs 25:15	334:5	chance	charts	174:5,8,1
26:2	340:20	111:24	212:24	6,22
175:1,12	certainty	200:1	Chatham-	175:19
certain	83:18	242:12	Kent	176:17,23
46:9,17	115:13	286:9	179:10	177:3,11,
51:8	298:13	change	CHEC	14,25
83:23	Certificat	56:13	236:18	179:24
102:18	e 3:23	215:20	237:4,12,	180:9,12,
107:6	Certified	216:12	21 238:19	25
118:5	348:6	218:11	239:3,11,	181:5,17,
120:14	cetera	219:12	16 278:3	25
122:14	164:13	240:8	CHEC's	182:7,10,
126:16	320:19	266:25	236:19	22
127:5	CFO 21:3	267:14	Chenoweth	183:4,10,
203:24	59:6	278:15,18	2:16 3:13	13,20,24
212:2	114:2	297:14	15:7,17	184:6,13,
218:19	160:6	313:11,20	74:5	21,23
275:2	161:25	323:20	75:3,6,9,	185:2,13,
290:2	162:1,2,3	changed		21,23
291:16	,10			186:5,9
319:2	165:2,21			188:3,18
320:21				189:4,16,
				23

190:1,7,2 2,25 191:4,8,1 4 192:9,13, 16,23 193:1,2,7 ,16,23 194:13,19 195:4,9,1 3,17 196:7,13, 23 197:7,10, 19,23,24 198:9,20 199:4,15, 21 200:20,25 202:1,5 214:24 246:6 289:17 290:12 cheque 156:22 281:14 chief 1:7 112:24 140:11 choice 173:15 184:10 188:22 300:18 choices 143:2 choose 273:5 275:9 choosing 314:24 315:7 chose 171:16,17 273:12 chosen 132:8	321:4 CHRISTOPHE R 3:8 16:2 circumstan ce 239:9 circumstan ces 33:1 194:24 216:9 257:13 City 140:11 266:6 CJI0007005 4:15 CJI7005 149:6 clar 46:18 clarificat ion 46:17 57:16 71:2,20,2 4 99:8,10 107:19 123:12 126:6 129:15 131:1,17, 19,22 135:13 147:17 150:14 151:1,4,7 172:16 243:10 244:7 320:19 clarificat ions 71:14 126:11,13 clarified 156:8 333:10 clarify	137:4 clarifying 45:19,21, 23 122:17 244:2,5 clarity 55:22,24 59:15 130:5,9,2 1 Clark 158:9 159:6 160:3,12 161:24 162:3,7,1 0 163:8 165:1,10 168:10,13 classed 267:17 clause 85:12 clear 5:21 7:21 16:25 17:4,5 43:6 55:3 60:5 66:6 87:14 89:4 195:22 199:16 201:5 206:15 215:2 249:24 250:2 269:19 285:17 299:7 300:1 331:1,2,1 4 332:1 clearly 199:7 265:19 Clearview	178:18,22 close 110:7 192:25 218:10 228:7 234:11 284:1 293:22 297:17 closed 223:6,7 340:21 closer 5:15 165:4 180:7 207:9 closing 6:7,11 10:3,4,12 101:22 153:25 156:20 250:16 257:5 club 110:10 CO 260:17 coaching 200:16 co- branding 288:21 coincides 331:4 colleagues 272:20 collected 210:12 college 258:16 Collingwoo d 1:2,17,20 2:18 5:10	29:3 59:7,8,9 84:19 105:24 121:19 128:15 159:13,14 171:11 178:5,6 187:17 193:13 201:4 241:21 248:23 249:4 260:18 261:24 262:9,10 272:15 273:4,20 276:12 277:6 313:4 316:9 322:14 328:21 Collingwoo d's 61:16 Collus 2:21 18:8 20:25 22:18 24:5,8,12 ,13,19,21 25:5,10 26:8,10,1 8 27:10 28:21,22 29:16 30:23 33:12 37:2 48:3 50:25 54:5 59:5 65:21 79:18 86:4 89:7 92:14 94:7 95:20
---	--	--	--	---

100:8,12	275:18	eness	10:3 44:4	229:2
101:5,25	276:20,23	281:19	75:22	communicat
103:14	277:15	coming	200:2	ion
104:6,11,	278:13,14	9:22 12:3	254:13	44:14,15,
15,23	,18	14:16	259:3	16
106:7	280:5,21	20:15	Commission	71:9,17
112:6	281:1	96:21	142:25	104:7,16,
116:25	289:24	97:9	144:11	22 107:11
118:16	290:18	157:22	167:2	communitie
119:21,22	291:25	179:22	commission	s
122:12	292:4	275:20	er 270:23	187:10,15
127:22	298:4	281:14	commitment	264:12
130:7	316:9,13	293:2	50:11	266:24
132:5	321:11,17	300:11	187:18	268:1
133:7,9	322:6,14	301:5	committee	270:7
136:21	326:1	314:23	68:20	278:1
144:23	332:22	315:10,11	79:10,15	community
145:17	337:11	330:14	82:7	29:4,5
146:7	340:11	345:13	85:15	31:16
156:20	344:17	commenced	86:9 89:6	49:22,25
159:11,16	346:23	182:23	107:8	50:8,11
,17	347:5	commencing	130:20	142:9
160:13	Collus's	5:1 6:23	310:7,14	177:24
164:3	61:16	73:17	316:16	186:13
166:6,10,	colour	commend	317:11	187:18
19 178:23	204:4	11:1	329:16	200:22
179:20	column	comment	339:19,24	201:2
181:2,13	121:12	11:13	342:21	257:1,14
190:11	128:6	76:7	343:1	265:17
204:4	147:10	152:8	committee'	267:3
206:12	242:2	231:18	s 84:17	268:3,17
207:4	249:8	233:16	85:23	269:16
215:3	columns	245:5	87:16	277:22
218:19	212:25	249:20	89:22	280:23
220:3,25	com 251:3	250:24	90:1	281:1
223:18	comb 89:17	254:19	328:19	283:23
227:6	comes	261:10	340:6	companies
229:23	51:25	263:24	common	16:14
230:17	115:2	264:23	232:11	24:4
233:17	123:24	282:11	commonly	62:12
236:15	209:24	315:23	232:9,12	63:22
237:1,3,1	329:18	commentary	communicat	99:15
6	comfortabl	163:8	e 104:12	100:14
238:19,24	e 57:2,9	commented	communicat	218:5
239:10,13	265:9	118:14	ed	284:5
,16,17,21	281:21,25	187:3	71:20,25	286:16
240:6,10,	316:13	comments	91:5	294:3
15 242:5	comfortabl	6:18,19		company
250:19				15:21
255:7				
274:7				

20:22	127:2,6	d 145:10	342:20	ng 142:9
24:13	129:8	component	343:23	conducting
27:22	244:21	52:22,25	345:2	17:3
30:1 32:2	comparison	62:22	concerned	conf 40:11
43:2	s 240:22	119:18	5:23 8:12	conference
46:24,25	compendium	122:18	50:3	s 175:11
47:1	207:17	194:8	160:21	confidence
59:10	compensati	components	308:6,19	111:15
64:25	on 33:9	120:5	325:4	confident
66:8	Compenso	144:2	330:13,24	40:13
79:17	309:16	comprehens	331:25	confidenti
82:18,19	competitio	ive	concerning	al
86:14	n 31:12	227:25	133:23	40:6,12
90:20,21	225:8	con 27:21	concerns	41:3,12,2
91:14	275:17	89:7	47:22	5
92:15,16,	competitiv	275:18	62:21	42:15,22
18,21,22	e 22:8	conceivabl	70:17	79:2
94:21,22	74:3 96:6	y 166:14	110:22,25	81:25
96:14	280:9	concept	165:16	100:10,13
101:24	309:9	79:11,20	193:8	,17
103:12	competitor	99:23	249:17	106:21
104:14	318:24	185:24	286:17,25	284:11,16
107:15	competitor	237:1	307:13	285:12
113:17	s 90:6	265:18	324:13,19	304:3,9
114:18	205:18	310:8	,23	305:6,24
115:15	complainin	317:12	330:17,21	306:3,22
116:1	g 288:12	Concepts	331:16	307:14
137:19	complete	236:18	concise	308:23
159:13	6:5 8:16	concern	261:11	316:17,18
160:16	58:14	10:2,5,15	conclude	,21
164:17	146:1	12:7,9,23	259:5	319:16,21
165:1,5,1	completed	52:2,6	conclusion	,23 320:6
8	180:1	112:12	6:25 7:9	confidenti
166:2,13,	268:6	160:12,20	112:13	ality
14,16,17	completely	238:10	141:15,23	40:13
167:14,19	62:17	271:5	162:6	41:17,19,
225:3	164:9	287:18,22	165:9	23
277:12,21	274:12	288:14	167:20	285:14,18
285:5	completing	302:13,15	168:17	305:21
company's	5:18	304:6	conclusion	306:10,19
40:5 43:4	completion	307:22	s 173:16	,25
251:3	9:4 46:9	308:17	concur	307:10,22
comparativ	complex	311:18	167:24	308:5,14,
e 246:15	22:9	314:12	condition	15
comparativ	complicate	315:3,17,	60:14	confirm
es 249:18		22 324:11	conditioni	46:15
comparing		325:9		120:9
203:23		330:7		136:10
comparison				

256:4	124:3	consolida	21:10,14	100:15
confirmati	163:25	270:11	226:23	138:11
on 332:25	164:15	consolidat	contact	149:25
confirmed	195:20	e 271:14	31:15	215:11
192:2	238:17	consolidat	148:7	continue
298:8	241:20	ing 55:17	286:10	73:10,21
confused	246:7	consolidat	contacted	77:15
243:14	280:12	ion	36:24	80:12
confusion	295:25	215:12	70:24	81:6
75:24	296:3	251:8,13,	contacting	85:13
Congratula	335:1	16,18	35:20	113:11
tions	considerat	253:5	contacts	223:14
258:19	ions	254:16	169:17	253:21
connection	86:8,15	255:22	180:21	295:4
14:21	104:11	256:1,23	contained	327:19
230:13	121:19	257:2	149:20	continued
281:4	128:15	269:23,25	186:7	3:20
288:4	168:25	270:6,13	210:15	17:15
cons 89:7	194:21	272:23	contemplat	45:12
conscious	195:6	consolidat	ed 238:1	46:13
8:15	237:8	ions	333:6	61:6 72:9
consensus	333:6	217:10	335:22	73:19
302:24	considered	253:14,15	336:11	77:20
consent	156:7	,18	339:2,4	108:9,25
286:2,4	248:20	254:8,18	341:18	110:16
consequenc	252:6	constraint	343:18	112:20
es 115:23	282:12	s 181:22	contemplat	125:16
conservati	298:25	consult	ing	128:11
on	299:1	284:21	275:19	135:1
32:14,19	318:22	consultant	321:1	136:6
33:6	considerin	19:2	contemplat	137:12
Conservati	g 32:10	63:16	ion 38:2	161:14
ves	138:7	86:1	content	193:1
269:23	163:9,11	101:3	66:20	197:23
consid	171:6	107:13	250:13	211:23
85:23	185:17	200:21	304:18	241:14
consider	290:5	201:1,18	307:20	244:10
87:19	298:5	226:17,20	327:15	245:21
170:20	301:25	340:9	contention	247:18
172:7	329:18	346:21	342:17	248:12
257:9	334:25	consultant	contents	250:4
276:5	consistent	s 49:4	3:1 88:25	251:20
345:22	12:21	59:4	contest	253:4
considerat	60:11	226:10,12	31:17	254:11
ion 88:13	78:23	consulted	53:18	262:24
	264:17	107:25	context	278:22
	284:9	consulting		279:20
	conso			283:25
	253:18			284:19
				286:14

293:8	132:25	346:15	159:15	213:1,6,1
297:22	133:11	cooperate	correct	5
301:22	170:14	9:24	17:19,20	214:4,19
313:23	172:3	cooperatio	18:24,25	215:4,8,9
328:12	175:14	n 5:22	19:8,9	,12,18
continuing	177:23	cooperativ	21:11	219:20,24
253:8	191:18	e 99:17	41:8 42:8	220:5,6,8
contractin	192:3	236:18	46:21	,14
g 286:2	235:24	299:15	73:6	221:6,9,1
contracts	290:7,22	co-panel	75:3,6,9,	7 222:14
168:21	291:3,4,1	113:8	12 92:12	227:6,7
239:10	4	copied	116:14	229:9,15
240:3,8	292:7,24	84:5	120:11	231:16
contrary	305:17	327:6	125:3	232:19,22
76:11	339:12	copies	132:14	233:23,25
262:25	342:14	116:16	137:2,14	234:3,5
contributi	conversati	copy 147:6	139:7	235:20,22
on 168:25	ons 18:13	152:13	140:3,4	239:20
control	24:17,23	203:2	141:14	243:25
84:23	25:8,14,2	208:3	142:3	245:19
85:3,8	5 26:1	227:9	145:6	273:23
92:21	34:14	230:8	146:8,9,1	284:6
166:2,3,7	36:6	310:21	4 147:6,7	285:24,25
,17 196:8	37:12	324:4	151:20	286:4
271:18,22	113:22	copying	153:25	311:16
277:12	115:24	102:21	154:6	322:12
281:23,24	138:24	core	156:1,15	326:16,20
328:24	139:4	22:4,20	160:16,25	344:14
329:5,10	170:12	23:15	161:7	348:6
331:17	174:25	Cornerston	164:18	corrected
333:25	175:23	e 236:17	165:19	109:17
334:8,21	176:3	Corp 58:21	170:3	110:19
335:13	177:1,24	59:8,10	176:3	correctly
341:24	178:3	104:7	177:10,13	114:21
controvers	191:24	corporatio	181:16	124:19,25
ial 269:8	290:13,16	n 2:8,22	185:1	142:1
conv	,21,25	12:12,13,	189:11,12	188:10
290:20	291:1,22	22 13:12	193:2	194:7
convenient	292:3	109:24	195:1	276:13
347:21	342:7	115:14	197:18	correspond
conversati	conveyed	159:14	199:23	ence
on 28:18	206:12	259:8	202:25	148:16
32:7	257:9	260:14	203:11,21	149:5
33:19,24	318:18	corporatio	,24,25	227:9
38:18,25	323:25	ns 13:6	204:15,16	CO's 44:24
39:2 94:4	324:1,3		,19,24	cost
131:14,24	Cooper		205:5,24	112:5,7
	2:12		209:22	113:17
	250:15		210:16,21	114:22
	344:16		212:4,11,	
			21	

115:1	74:14,20	173:19	127:2	139:11,20
116:17	76:13	177:16	178:22	157:18
117:24	107:25	221:25	181:21	202:14
118:9	108:5	257:7	182:3,16	235:1,8
144:13	112:24	269:10	183:14	258:1
146:1	115:21	270:3	256:7	cross-
166:9,18	117:19	271:11	328:19	section
167:5	139:23	courses	created	263:18,23
207:10	142:25	258:17	19:22	cultural
208:13,16	144:11	court	216:11,16	264:16
220:22	170:9	80:11	270:21	265:15
221:3	191:10	248:9	creates	273:2
225:17,21	250:15	312:23	32:16	280:24
239:15,17	285:16	cover	creating	culture
245:8	339:12	203:5,17	273:5	71:22
267:20,21	counsel's	227:10	331:9	280:14
277:25	74:7	228:21	343:5	281:12
280:9	count	covered	Creemore	cumulative
cost-	33:7,8	137:18	178:19	197:2
effective	262:22	covering	criteria	curious
267:24	counted	99:1,4	54:13	69:22
costs 54:2	116:10	CPI 144:24	63:12	current
106:6	counterpro	CPS0002297	186:7,15	22:2
116:15	ductive	4:20	198:5	currently
117:25	134:16	CPS0002373	221:2	21:9
118:2	counting	4:23	247:22,23	CUS 160:16
146:12	179:1	CPS0006920	279:11,12	163:13
186:21	180:5	240:18	,18,22	164:17
203:24	County	248:3	283:17	customer
217:5	178:20	CPS2297	286:18	49:21
council	couple 6:1	173:2	critical	54:1
1:18 10:6	14:19	CPS2373	201:15	203:24
84:25	30:9	226:25	220:17	207:10
90:3	59:21	293:10	274:14	265:5
127:23	104:9	CPS2668	283:12	267:21
129:4,12	131:12	241:10	cross 74:8	279:8
236:2	135:17	CPS2688	139:15	customers
266:7	136:18	120:21	263:15,19	27:11
269:11	139:24	CPS6920	345:20	212:11
272:15	143:15	278:24	crossed	216:3
281:10	191:20	crafting	140:16	217:5
329:2	225:5	21:5	345:10	255:1,12
Councils	235:13	create	cross-	264:14
218:4	245:23	21:2	examinati	267:19
counsel	course	84:17	on	283:19
2:3,5,10,	113:7		3:12,13,1	299:21
14 9:20	165:16		4,15,16	
15:10	167:1		12:6	
17:11				

cut 291:8	137:16	deal 7:18	127:20	,17
cycle	158:8	22:15	129:25	deductions
208:12,15	161:22	29:5 48:7	130:1	122:4
,17	230:5	84:16	131:15	147:24
	309:6	100:14	230:5	deep 261:1
<hr/>	327:4	133:18	252:21	deeper
D	dates	148:5	321:20,25	134:11
daily	96:9,24	154:20	322:5	defend
269:2	97:10,19	160:22,23	decide	264:5
damages	109:18	162:7	72:23	definitely
108:6	176:22	168:1	76:4	225:21
Daniel	192:1,12,	183:18	77:12	282:2
100:25	20,21	214:17	188:16	300:3
data	252:25	282:6	225:24	326:20
56:17,20	290:24	286:21	decided	335:5
58:13	Dave 158:9	287:20	36:21	definition
115:4	159:6	328:17,18	113:11	127:12
116:22	161:24	dealing	deciding	definitive
123:25	162:3	11:23	224:16	206:5,6
156:25	163:24	42:21	257:3	degree
207:15	165:1	143:17	decipher	186:6
214:12	166:23	144:1	93:21	delay
246:15	168:10,13	330:12	decision	182:5
255:13	264:3	344:10	30:3	deleted
259:20	David 94:4	deals 6:15	35:4,9	206:21
date 25:9	95:10	144:12	38:14	deliberati
27:2 29:2	167:9	148:16	130:22	ons 68:2
36:6,10,1	256:3	287:11	142:24	189:18
1 40:19	260:14	dealt	170:25	330:9
43:7 78:4	day 11:25	140:6	188:19,21	deliver
79:13	12:2	186:14	226:4	323:19
96:15,16	29:2,3	Dean 24:8	259:15	delivered
99:5	66:11	40:19	276:12	76:12
104:18,20	99:6	138:15	277:13	214:1
105:14	126:2,4,8	173:24	314:25	323:5
121:9	163:18	174:25	decisions	demographi
122:25	179:14	205:8	218:20	cs 233:10
138:11	258:5	260:12	239:24	demonstrat
186:25	272:16	debt	declared	e
231:3	284:4	151:15	120:2	187:9,18
244:6	297:14	155:10	deducted	demonstrat
252:17,21	337:9	271:5	125:2	ed 75:23
309:23	days 5:23	debts	241:24,25	79:6
dated 64:7	6:1,3	259:23	deduction	187:12
65:17	339:10	decade	122:9	267:7
84:4	deadline	238:9	124:21	
100:24	96:12	December	125:4	
129:25	297:5,12	43:10	156:11,15	
130:1				

310:3	326:3,16,	262:11,16	168:4	147:16
317:6	19	322:6	210:19	166:21
Dennis	327:11,16	describe	212:24	168:1
3:19 75:5	,21	224:9	213:14	different
84:6	328:1,5,1	described	219:19	5:24 22:9
102:24	0 329:23	108:14	248:8	28:11
296:23	330:2,11,	131:25	250:6	30:18
297:24	21,25	138:21	308:2	49:1,3
298:7,12,	331:11,20	225:12	details	50:1 54:3
19,23	,24	253:16	51:19,22	62:12,13,
299:3,19	332:4,12,	281:16	98:18	14 77:2
300:14,25	16,20,24	describes	105:25	87:19
301:3,10,	333:9,18	130:3	246:21	160:23
13,17	334:3,11,	describing	343:16	194:22
302:2,6,1	23	129:25	determinat	200:7
2	335:16,23	131:24	ion 113:1	204:4
303:13,16	,25	223:17,24	336:7	209:11
,21	336:3,14,	321:16	determine	218:13
304:4,20,	22	descriptio	26:4	239:21
25	337:8,16	n 4:2	176:7	265:1
305:2,9	338:5,8,1	210:14	320:5	266:4,5,6
306:5,9,1	2	260:23	determined	275:9
6	339:3,22	designed	23:20	345:12
307:1,15,	340:19	7:3	112:25	differenti
19	341:3,7,1	desire	121:24	al 242:4
308:9,12,	2,16,20	84:17	128:18	244:13
22 310:22	342:5,16,	271:17	determinin	differentl
311:1,6,1	23	328:19	g 233:12	y 107:16
1,16,20	343:7,11,	desired	236:21	difficult
312:1,9,1	15	132:8	developed	91:22
4,19,24	344:1,8,1	despite	22:1,8	200:17
313:3,9,1	4,20	78:21	49:25	236:22
8	345:5,14,	detail	63:10	253:10,23
314:2,20	18	47:16	developing	257:1
315:9,21	346:1,8	48:20	66:4	266:25
316:8,15,	347:6,15	54:11,15,	344:18	274:22,25
25 317:21	department	23 106:11	developmen	difficulti
318:9,16,	103:8	130:14	t 19:7,24	es 180:13
20	245:7	155:3	20:11,17	182:3
319:8,13,	depended	195:3	developmen	difficulty
20	110:7	247:2	ts 67:6	178:2
320:3,7	depending	285:24	devoid	181:18
321:2,13,	16:22	295:10	187:23	diligence
19	56:14	detailed	dictate	22:3,13,2
322:2,12,	62:19	56:14	49:9	0 23:18
17,23	234:9	58:2	difference	56:10,14,
323:3,14,	depends	106:5		16,23
22	320:14			57:4
324:10,14	deputy			
,21,25				
325:13,15				

118:12	68:21	71:12	ed 266:15	30:8 31:3
124:7,9	95:20	84:13	distinguis	35:18
134:11	112:23	109:3	hed	45:23
238:7	127:23	135:18	247:21	46:6
240:1	129:3,12	142:23	distribute	47:11,15
direct	143:3	176:19	d 284:15	49:15
72:24	176:12	230:14	distributi	52:21
80:11	258:15	307:11	on	53:4,6
288:4	285:6	347:10	19:18,24	57:21
312:22	334:21	discussing	61:9	63:23,24
341:1,9	335:12	67:12	212:11	64:1 66:6
directed	disagree	87:15	237:3	72:13,16,
33:15	7:22	133:8	251:2	17 73:23
60:2,7	disappoint	157:9	252:3,10	74:2,16,2
directing	ing 93:10	292:23	253:16	3 76:19
164:15	discern	343:6	256:5	77:10
direction	316:2	discussion	280:9	78:7
37:9	disclose	3:5 38:12	distributo	82:18
79:12,20	122:5,7	66:11	r 212:1	83:24
253:9	316:20	84:8	237:3	88:11
300:3	322:15	175:20	distributo	89:13,17,
310:9	disclosed	229:21	rs	20 93:14
317:13	305:6	230:6	210:9,13	98:2,21
333:1	308:8,20,	237:15,17	255:25	100:2,18
342:5	23	246:25	distru	102:10
346:3	325:11,17	322:15	27:11	104:1
directiona	disclosing	339:9	diverting	105:7
l 326:6	69:20	347:16	33:15	115:17
directiona	disclosure	discussion	divestitur	119:10
lly	40:25	s 64:21	es 21:15	125:18
304:13	41:3,7	65:2	divestment	127:14
directly	228:5	87:16	278:11	129:20
34:13	306:21	106:3	dividend	136:8,11,
109:13	316:12	176:18	101:21	13 137:14
117:4	discovery	181:19	119:24	142:18
141:7	285:1	199:12	120:1	144:8
285:10	discretion	235:18	121:15	147:4,20
291:17	49:19	238:6	150:1	149:15
332:10,23	72:20	330:9,19	Doc	158:1,7
344:10	discuss	340:14	4:11,14	161:15
director	122:13	347:9	document	186:19
94:6	181:12	disqualifi	6:14,20	190:2
236:12	228:8	ed 51:16	7:20,23	191:9,16,
344:17	293:23	70:9	21:3	18 194:14
directors	304:18	disrupted	27:13,15	196:24
21:4	discussed	276:25	28:12,14	198:10
30:12	27:13	277:1		202:19
31:22		dissatisfi		203:1,12

217:18	164:12	41:2	58:24	echo 287:8
219:17,18	done 18:16	drafts	80:5	Ed
250:12	23:1	102:18	82:12	24:8,17,2
284:11	79:24	dramatical	86:19	0 25:24
294:21	91:1	ly 219:10	121:13	28:6 34:4
309:9	107:16	draw	125:24	36:6
311:14	117:23	227:23	128:14,24	38:18
314:16	120:8	drive 33:6	129:17	43:23
316:3	145:16	driving	138:18	64:13
documentat	146:6	53:14	141:11	73:25
ion 36:5	156:13	216:11	147:5	82:12
48:5	166:24	due	151:8	130:1
116:13	168:11	22:3,13,2	169:7	137:17,22
187:25	176:12	0 23:18	171:9	138:15,21
191:23	183:2	56:10,14,	190:2	173:25
documents	199:16	16,23	196:2	174:24,25
7:14,16	224:15,24	57:4	202:21	177:19
24:7	233:20	118:12	204:10	205:7
39:11,18	234:9	124:7,9	215:16	230:4,6
43:19	236:2	134:11	223:16	education
51:15	245:4,10	238:6	227:4	258:8
63:14,19	279:4	240:1	237:15	educationa
66:1	285:3	Dunca	240:18	l 258:11
73:21	286:21	261:18	241:16,18	Edwin 2:16
86:25	287:20	uplicated	242:11,13	effect
104:18	291:9	248:1	243:9	39:20
107:4	294:13,18	during	245:14	186:13
108:23,24	304:12	43:16	246:1	effective
110:24	314:8	63:15,17	248:3	267:21
112:18	347:18	74:7	249:12	effectivel
118:25	door 60:16	94:10	254:13	y 268:2
126:24,25	271:4	107:22,23	255:5	efficienci
144:16	272:19	122:7	277:19	es 92:22
170:8	340:21	222:21,22	284:4	236:20
209:20	double	287:5	319:2	268:9
263:19	46:14	331:25	332:25	efficiency
298:8	doubt	Dutton	333:8	5:14
306:6	203:11	216:21	early 6:13	effort 8:9
327:13	228:20	dynamic	19:16	efforts
335:3	Doug	265:15	131:15	118:22
344:24	260:19	dynamics	142:5	egg 15:1
dollar	dozen	234:7	173:23	eight
207:10	177:1	<hr/>	215:1	12:18
273:8,9	draft 6:17	E	252:12	13:12
dollars	59:4,18,1	<hr/>	253:20	119:1
114:5,22	9 100:23	earlier	earn 90:22	236:24
116:17	339:7	31:2,25	92:24	
259:8	drafted		easy 10:14	
donation			179:7	
			280:18	

237:20	237:2	88:24	112:15	255:14
250:23	255:25	89:1	embraced	260:17
270:2	elements	99:1,4	317:23	engaged
335:4	22:15	102:16	emphasis	27:10
eighty	26:13	104:3,6	88:14	enquiries
179:25	46:17	105:12,14	131:6	11:23
180:19	86:3	,18	emphasized	ensured
eighty-	268:16	129:24,25	99:19,22	92:4
eight	340:10	130:3	100:6,16	ensuring
180:4	346:22	131:25	employed	85:9,10
199:19	347:4	135:3	13:12,16	329:11
266:13	eleven	137:16	118:16	337:21
either	9:22	138:8,25	140:2	enter
29:2 32:9	elicited	150:20,23	employee	24:21
62:18	76:13	152:15	12:19	25:5
68:19	else 7:2	153:5	151:12	entered
70:18	14:20	158:8	155:7	130:15
72:15	27:1 68:8	159:6	employees	306:10
107:5,13	69:4	161:14,23	280:7	entering
108:22	71:10	162:9	281:5,13	134:14
109:14	77:11	163:7,17	283:11,13	335:10
112:13	102:9	165:2	,22	enterprise
160:23	106:17	173:1	employers	231:5,15,
171:5,17	157:9	190:8	284:8,21	23 232:25
234:8	170:18	230:3	enamoured	233:18
238:6,11	171:22	250:14	79:11,19	236:18
270:21	181:2	287:19	310:8	237:18
272:24	205:14	295:5	317:12	entertaine
290:4	256:18	309:6,15	encourage	d 174:7
305:15	278:19	327:3,7,1	32:19	enthusiast
338:24	283:7	5 329:21	257:2	ic 110:17
340:16	292:15	330:3	encouraged	entire
elaborate	301:16	335:24	33:6	10:7
186:17	342:3	338:3	energies	12:12
220:16	346:16	339:17	99:22	54:16
elected	else's	343:23	energy	237:13
272:14	71:3	344:2	19:2	entirely
electric	em 317:23	345:3,9,2	50:14	118:16
19:17	email	2	145:5,22	139:6
33:12	28:18,25	emails	159:17	233:22
219:13	32:1	9:21	204:5,11	236:9
236:17	35:19	141:17	205:13	274:5
278:16	64:6	159:18,21	207:14,16	entirety
electricit	65:11,16	160:2	210:23	89:15
y	73:24	161:10,14	214:16	93:6
210:9,13	77:22,25	,22	254:22	entitled
216:10	84:3 86:7	162:5,9		
218:23	87:15	163:10		
		embarrassm		
		ent		

231:2	264:11	ng 16:13	163:13	75:20,22
entity	305:19	estimate	170:16	76:2,9,10
146:8,16	330:3	114:4	181:6,20	,12
231:20	essence	116:8	248:23	77:9,14
232:13	184:9	118:1	249:1	79:13
enumerated	essential	estimated	271:24	86:6
222:11	201:12,14	148:2	289:24	87:6,21
273:19	essentiall	155:1	everybody	94:3,8
environmen	y 19:25	295:8	7:21	95:11
t 99:17	26:15	et 164:13	10:14	96:10
201:3	29:16	320:19	20:3	115:3
219:4	32:17,19	evaluate	31:10	120:13
270:21	41:22	62:24	68:8	121:2,7,1
EPCOR	49:18,20	166:21	72:24	0
249:4	50:6	185:10	108:18	146:3,11
275:19	53:14,23	248:17	111:23,24	157:9
equal 70:3	54:5	evaluated	132:20	165:17
90:15,25	68:22	31:23	174:15	171:9
113:4	92:16,19,	126:10	175:17	184:12
125:12	23 115:8	189:14	200:4	189:20
127:10	144:24	evaluation	201:21	190:20,23
201:14	145:8	101:5	278:19	191:2
334:13	149:25	199:16	280:25	200:10,11
equally	179:4	283:17	281:2	201:6,20
108:4	200:15	evaluation	everybody'	204:10
119:25	201:9	s 183:3	s 122:10	214:25
200:4	207:15,17	250:2	everyone	215:15
equipment	208:16,23	evening	5:22 6:11	223:16
209:2	216:10,17	106:4	10:24	229:8,17
212:1,4	217:4,6,1	event	11:6 70:3	235:13
equity	0,18,24	16:24	72:18	241:18
101:6	219:9	66:7	104:13	246:17
150:1	225:17	162:5	180:24	247:3
230:16	227:10	164:14	everything	249:15
322:9	239:13,22	170:7	23:2,5	253:6
equivalent	256:7,8,1	171:25	50:6	259:14
179:1	9 261:7	172:7,12,	201:13	269:19
era 219:1	276:22,24	23 173:14	245:3	284:8,15
Eric	277:9,11,	195:18	295:24	285:1,3,1
102:23	15,25	289:19	evi 56:20	0
Erling	302:23	290:6	evidence	301:12,14
59:3	303:5	334:22	5:18 8:21	,18
141:2	establish	338:25	11:24	304:23
error 77:3	246:6	339:6	12:20	305:4
especially	establishe	events	13:19,22,	307:9
216:5	d 246:3	141:6	23 39:19	315:14
	279:22	eventually	51:4 66:1	317:15
	establishi		74:16,19,	evident
			21	163:6
				evolution

19:18	341:22	265:7	335:17	expert
Ewa 2:24	examples	291:1	346:7	259:24
exact	51:21	exercise	expectatio	experts
140:10	exceeds	7:24	ns 109:23	115:22
exactly	7:14	10:16	320:20	explain
77:5	Excel	85:17	expected	16:16
116:2	240:19	116:12	53:6	22:25
134:23	excellent	340:1	67:14	28:24
220:15	excellent	Exhibit	68:8	29:5
221:4	268:10	4:2	71:8,19,2	164:5
237:24	except	Exhibits	4 96:9,25	235:6
275:13	24:1	3:3 4:1	109:3	237:9
290:10	222:7	existed	186:23	243:6
299:10	327:12	201:3	192:1	302:16
300:25	exceptiona	existing	201:21	320:25
303:6	l 209:2	99:14	254:25	321:9
examinatio	exceptions	144:17,23	255:2	explained
n 3:17	208:25	exists	316:20	130:8
16:10	exchange	266:21	343:4	185:8
74:9	192:7	exit	expecting	201:11
112:3,4	244:7	338:25	51:22	333:7
139:16	exclude	expand	expedite	explanatio
289:15	68:17	45:21	250:8	n 222:14
Examinatio	exclusion	111:6	expense	explicit
n-in-	260:3	302:9	8:15	101:18
Chief	exclusive	312:13	223:24	exploring
3:11,20	132:4	expect	225:16	189:5
297:22	134:5,6	56:12	expensive	expressed
examinatio	exclusivel	71:3	116:5	14:1
ns 17:3	y 109:7	83:4,6	experience	165:16
examined	exclusivit	101:20	11:19	284:3
243:4	y 130:14	108:8,24	17:22,24	332:10
example	132:4,10,	112:18	19:12	expressing
12:14	16,18	115:7	21:23	160:20
32:21	133:8	201:23	63:6	extend
53:22	excuse	241:24	68:24	11:20
99:14	45:10	246:25	109:12	extent
179:15	executed	251:17	232:6	14:2
186:20	305:22	331:22	263:10	37:22
187:2	executive	334:13	264:1	44:1
251:1	160:6	expectatio	265:1	108:23
320:23	260:19	n 68:24	experience	333:14
326:10	262:8	107:15	d 218:22	337:6
333:4	266:5	128:25	260:16	343:8
335:7	executives	305:8	272:17,20	346:2
336:4		307:16,18	experience	external
338:16		317:22	s 269:5	118:13

180:21	233:3	223:12	265:21	114:10
extra 8:11	238:23	232:9,15	fast 254:9	fell
extraordin	239:2	260:1	favour	256:19
ary 240:6	240:14	263:14	205:12	felt 10:19
extremely	255:10	264:4	favourable	12:22
109:21	282:12	266:23	84:14	29:19
111:10	283:12	291:20	FD0001.4	32:23
eye 291:11	factored	293:5	(Summary	37:16
eyes	237:12	307:17	4:11	49:23
278:17	factors	317:1,22	FD0001.4.1	56:22
338:18	52:3 89:8	318:11	(Summary	62:19
	224:21	325:12	4:14	91:21
	233:6,9	326:12	features	178:5
<hr/>	253:10,25	336:17	26:13	188:8
<hr/> F <hr/>	254:6	341:5	February	196:3
face 41:20	255:8	faired	158:8	268:4,22
66:6	260:3	199:22	161:22	284:9
facilitate	273:18	fairly	162:10	ferret
30:5	283:16	193:11	163:7	265:18
fact	facts	260:25	feedback	field
12:8,9,25	10:10	322:24	43:2,15,2	241:24
13:8,9,15	32:11	334:4	1 44:9	258:20
60:10	factual	fairness	45:3,15,1	fifteen
74:19,23	7:22	75:17	7,18 46:2	270:1
75:19	Fagen	162:3	47:2	fifty
78:21	102:17,21	201:14	79:22	109:11
91:2	fails	260:7	82:10	114:22
100:11	282:4	271:1,4	83:3,4	fifty-nine
142:15	fair 10:9	278:5	84:10	198:15
160:13,21	19:3,4	faith	103:23	figure
164:2,16	31:12	110:5	341:23	77:13
181:19	87:13	falling	343:19	128:16,18
188:8	111:20	216:22	feel 14:22	129:1
189:9	113:3	familiar	31:10,11	figures
200:14	126:1	127:7	42:4	121:13,20
215:21	128:12	149:15	49:23	129:2
225:12	129:7	269:6	111:19,23	207:10
248:19	132:22	270:9,14	252:7	file
259:11	164:9	287:1	265:16	207:16
263:5	193:18	305:14	312:22	286:16,23
268:5	196:10,12	320:13	feeling	287:3
270:8	200:18	327:7	269:20	filtered
280:25	206:13	familiarit	feels	67:4
285:23	207:5,7	y 14:2	12:22	269:1
286:21	208:22	farther	160:20,21	final 6:19
295:19	209:21	210:5	fees	90:3
319:5	210:14	227:18		
factor	214:15	fashion		
8:12				
13:20				

105:6	145:22	fine-tooth	292:9	218:6
113:12	149:11	89:17	298:4,11	310:16
135:3	152:13,19	finish	299:23	330:3,6
165:23	153:4	14:24	302:13	334:5
167:25	155:4,16,	139:14	309:19	344:4,6,8
199:16	25	200:24	firstly	345:8
294:19	156:12,19	246:7,12	232:24	focussed
318:12	,21,24	341:4	firth	259:20
346:18	164:6	firm	182:4	focussing
finalized	167:17	226:23	fit 280:15	159:23
289:7	168:16,19	260:20	fits	fold 256:9
298:17	,25 184:2	first 5:16	138:11	folks
finally	194:7	15:19,22	five 8:19	269:2,15
119:23	207:17,19	18:12,15	73:14	follow-up
finan	210:11	19:25	175:6	16:23
167:17	212:24	24:2,4	179:9,12	25:7
finance	214:9,17	25:1,2,3	198:16	fondness
245:7	226:15	38:1	208:9	267:2
258:17	239:12	49:6,14	222:2,3,1	foot 42:3
260:21	240:2	64:1	0 225:1	52:9
262:11,16	245:10	66:2,7	261:14	61:24
finances	246:16	82:3,4	fix 35:1	footing
210:20	250:10	83:11	108:18	90:25
financial	259:22	95:9 99:9	109:14	footnote
23:5	268:15	104:9	133:23	207:14
32:20	280:12	114:6	141:16	force
33:9,14	281:19	133:20	143:5	66:18
50:21	295:11	138:7	fixed	216:11
51:7,9	308:2	139:25	217:5	251:4
53:16	322:15	144:1	flexibilit	255:22
54:13	financiall	148:6	y 239:14	256:23
58:3	y	149:4	flipped	260:23
61:10	33:12,13	151:16	131:21	346:16
62:7	financials	152:1	flows	forced
101:9	119:7	154:19	125:8	179:4,6,2
113:15,23	financial'	158:11	fluid 12:1	2 217:20
114:15,16	s 53:10	170:7	focus	250:21
,17 115:4	finding	190:20,24	84:16	251:13,16
116:10	51:11	191:3	85:23	252:7
117:18	92:22	200:15	328:17,18	253:15,18
119:18	220:17	208:20	330:23	254:6,18
120:6,15,	270:7	213:3	340:6	256:1
18	fine 160:1	224:13	343:24	270:6,11,
121:4,11	163:24	237:9	focused	13 271:11
122:15,18	209:8,14	241:1,3	22:12	272:18
,24 123:7	253:3	243:21	32:13	278:10
126:3,9	296:7	249:8		
127:4	306:19	258:5		
130:6,21	308:15	274:5		
		283:7		

foregone 141:23	forward 12:25	fourth 159:8	157:6	15:7,17
forever 294:16	13:15	199:5,17	192:18	74:5
forget 140:9	22:12	208:18	202:4,8,1	75:3,6,9,
forgetting 188:4	34:22	frame 97:2	1 211:18	12,16
forgive 240:4	42:3 45:1	framework	234:15,22	76:21,25
forgot 50:18	52:9,12,1	32:14	243:13	157:15,18
form 34:7	5 56:2,8	33:4	245:15	,19
45:19	61:25	200:10	247:6,9,1	158:6,15,
66:10	63:6,11	217:2,3	3 249:23	20,25
225:2	135:15	254:21	251:10	159:5,25
273:1	138:3	256:7	252:16,23	160:7,11,
formal 44:14	146:2	277:24	257:18	19
204:23	176:9	279:6	262:3,15,	161:1,8,1
237:2	190:17	Frank 1:7	19	2,19
288:10	196:17	5:3	273:13,17	162:2,16,
format 127:12	201:19	9:6,15	,24 275:4	19,24
247:14	219:3	10:22	276:9	163:5,16,
293:18	239:4	11:10,14	279:13,17	22 164:24
311:5,10	276:1	13:17	283:5	165:13,20
formed 20:18	278:7	14:9,15	286:1,5,8	166:23
224:12	284:23	15:12	288:17,22	167:16,22
225:3	287:21	16:4 17:8	289:1,10	168:9,14
248:22	302:7	45:5 46:7	293:1	169:2,21
334:19	339:1	59:23	296:7,14	170:6,15
former 12:19	forwarded 131:18	60:9,18,2	297:2,10,	171:1,8,1
260:13,20	fou 27:22	2 61:3	16	5,19
262:8	foundation 6:14,20	67:21	300:8,19	172:5,10,
263:17	7:20,23	69:6,10,1	301:1,8,1	14,17,22,
284:8,21	27:8,13,1	2,16,19	1,15,19	25
formerly 202:17	5	70:20	312:15	173:6,13,
Fortis 275:20	28:11,14	71:5,18	328:3	18,22
301:6	30:7 31:3	72:6	347:17,20	174:5,8,1
forty 7:15	35:18	73:1,7,12	,24	6,22
109:11	45:23	74:25	Frankford 266:16	175:19
	46:5	75:4,7,10	frankly 29:10,23	176:17,23
	57:21	,13,25	31:19	177:3,11,
	68:5	76:16,23	32:19	14,25
	125:18	77:4	41:25	179:24
	127:14	123:15	50:16	180:9,12,
	129:19	124:14,18	51:4	25
	136:13	125:9,13	111:12	181:5,17,
	142:18	128:7	205:14	25
	186:19	133:12,17	276:25	182:7,10,
	219:13	,21	330:4	22
	250:12	134:2,7,1	Fred 157:20	183:4,10,
	263:19	7,21,24	Frederick 2:16 3:13	13,20,24
	294:21	135:21,25		184:6,13,
		137:6		21,23
		139:10		185:2,13,
				21,23
				186:5,9

188:3,18	50:10	165:15,19	219:5,21,	Fryer 2:14
189:4,16,	51:24	,25	25	3:15 59:5
23	52:7	167:10,21	220:6,9,1	234:17,23
190:1,7,2	53:2,7	168:16	5	,24
2,25	54:12	177:5,9,1	221:4,6,9	235:1,2,3
191:4,8,1	55:6	2,22	,12,18,20	,21,23
4	60:4,13	178:4	,23	236:11
192:9,13,	61:8,24	180:3,11	222:1,6,1	237:14
16,23	62:21	183:11,12	3	238:3,12
193:1,2,7	65:6,8	,15	235:16,21	239:6
,16,23	66:15,16	184:5,11,	,22	240:16
194:13,19	67:8,16,1	19,22	239:7,8	241:3,6,1
195:4,9,1	7 68:3	185:1,8,1	254:12,15	4,15
3,17	69:24	8,22	257:17	242:19,24
196:7,13,	72:10,12	186:1,8,1	258:6,9,1	243:2,19
23	73:6	6	3,21,25	244:10,11
197:7,10,	82:24,25	188:9,11,	259:10	,19
19,23,24	83:11,12,	20	260:2	245:1,21,
198:9,20	16,17	189:5,12,	261:5	22
199:4,15,	87:8,10,2	19	266:8	247:8,12,
21	4	191:5,6	270:10,17	15,18,19
200:20,25	89:20,24	196:14	271:2	248:7,10,
202:1	90:13	199:22,24	272:1	12,13
free 7:22	91:8,21	200:23	275:6	250:4,5
14:22	92:8,12	201:5	276:10,11	251:20,21
312:22	95:7,8,13	202:18,20	279:10	252:5,12
Freedman	,16,21,25	,25	283:6,8	254:11,12
183:25	96:3,19,2	203:5,8,1	286:9,10,	257:4,19
Freeman	0	0,14,15,2	20	278:6
3:9 15:25	97:12,13	1,25	287:2,17,	280:10
16:20	98:14,15	204:8,16,	23	Fryer's
18:22,25	102:4,5	20,25	288:20,24	277:7
19:4,9,14	103:19,20	205:6,24	289:4	full 25:15
21:1	105:2,3	206:3,14,	294:1,10,	31:9
26:7,11	106:18,24	20	11	112:3
27:20	,25	207:6,13	Freeman's	118:12
28:4,10,1	108:19	208:2,6	264:12	246:19
5 29:1	109:2	209:16,22	friend	276:4
31:6 32:6	111:1,7	,25	42:20	fully
33:22,25	114:12,14	210:16,22	205:15	188:24
34:8	116:23	211:1	front	236:16
35:4,14,2	117:3,8,1	212:5,12,	187:12	251:7,17
1 39:10	4,17	22	209:17	fundamenta
40:4	118:8	213:2,7,1	233:21	lly
41:9,13,1	119:7	6	275:17	201:22
6	139:21,25	214:5,11,	283:21	future 7:8
44:8,13,2	140:4,8	20	304:5	23:6
1 45:8	141:3,14,	215:5,9,1	308:13	25:11,19
47:7,8	18,22	3,19	Fry 278:6	37:11
48:18,22	142:3,6,1	217:15		
	7,22	218:24		

110:20	46:1,11,2	134:4,9,1	17	d 281:2
151:13	1 47:9,10	9,23	232:5,10,	generally
155:7	54:8,14	135:12	16,20	24:20
175:9,15	55:23	143:16,20	235:16,19	60:14
176:16	56:6,19	,24	,20	63:2
181:3	57:1,13	144:5,21	237:9,11,	72:18
238:20	58:6,11	145:1,6,9	23 238:4	231:8
253:13	59:1,14,2	,15,25	241:19	311:4,9
283:12	0 60:3,19	146:9,14,	242:14,16	319:6,12
288:11	65:9,10	23	,22,25	generate
290:18	66:22,23	147:7,12	243:17	8:11
337:5,13	67:2	148:4,9,2	244:1,17,	234:8
fuzzy	69:8,11,1	1,24	20 245:19	gentleman
188:12	4,17 70:1	149:13,16	251:6,7,1	158:10
221:5	78:10,19	150:3,12	2 257:16	gentlemen
	79:3,21	151:5,9,1	261:13,21	181:12
	83:1,2	8,21	,25	genuinely
<u>G</u>	88:19,21,	152:11,16	262:18,21	71:21
gain 219:3	25 89:10	,21	263:2,9,1	genus
gaining	93:1,4	153:10,20	2 264:22	256:6
232:25	95:3,4	154:2,7,1	265:12,23	George
Gajos 2:21	96:22,23	7,22	266:2,11	2:12
game	97:15,16	155:12,17	272:2,7,1	202:6
142:11	98:16,17	156:1,5,1	0 273:11	Georgian
gamut	102:7	6,23	275:5,8	79:9
140:24	103:21,22	167:23	282:10,17	238:25
gap 182:16	105:4,5	168:4,12,	283:1	310:6
gaps 124:5	106:15,16	18 179:25	285:8,25	317:9
Garbutt	107:1,2	180:13,20	286:3,7	Gervais
260:19	112:16,22	181:4	287:7	49:2
262:7	113:14	182:1,5,8	293:20,25	getting
Gaspar	117:17	,18	294:22	5:15 9:23
3:10	118:7,10	183:1,8	295:15,23	16:15
16:1,20,2	119:6,17	190:22,23	296:4	48:13
1	120:7,12,	191:2	gathered	69:2
21:9,12,1	19	193:23	329:21,25	111:20
6,20,25	122:1,3,1	194:1	Gayety	142:11
22:19	6	196:14	29:12	170:20,23
23:2,9,14	123:2,10,	199:4,10,	general	180:5
,17,23	23 124:16	19 200:2	103:4	196:4
26:19,21	125:3,11,	222:16,20	117:9	224:15
27:3	23	,25	180:23	260:6
39:16	126:14,18	223:4,13,	209:15	290:17
40:5	,21 127:9	21 224:2	210:10	346:3
42:6,9,12	128:19	226:9,14,	213:23	gist
,16,19	129:5,13	19,22	232:12	259:25
45:14,16,	131:16	227:3,7	292:2	
22	132:1,7,1	228:17,23	341:23	
	4,20	229:1,9,1	343:20	
	133:2,10,	2,15,20	generalize	
	15,20,25	231:6,11,		

273:14,18	255:20	208:18	275:7	27:9
given 8:4	governance	grounds	319:20	38:12
11:21	109:21	108:5	320:8	44:7
52:24	302:6,8,1	group	325:17	66:11
57:3	1 326:22	18:24	331:1	68:18
62:23	337:6,12,	23:20	342:16	71:19
106:10	14	68:22	guesses	116:2
178:6	government	83:20	83:8,9	123:17
186:7	32:15	109:4,8	guessing	147:19
221:13	217:11,19	143:23	161:1	149:5
228:21	255:21	174:13	207:3	178:9,14,
263:5	256:14,22	208:24	guidance	15 179:13
273:18	258:22	239:3	109:10,12	216:7,10,
287:2	270:22	265:5		12
307:20	271:13	343:5		236:9,10
322:22	government	grouping	<hr/> H <hr/>	243:9
gives 8:1	-	264:24	ha 323:24	256:2
32:15,16	specified	groups	half 10:17	270:20,24
52:22	33:16	255:7	176:25	277:3
giving	Gowlings	grow 176:5	Hall 1:17	278:11
75:22	94:1,5	217:4	Hamilton	283:10
303:11	95:12,18	220:19	140:23	290:11,21
334:8	graph	276:21,24	179:12	292:19,21
341:22	203:23	277:17	187:4,15,	294:9
Glicksman	204:2	281:5,13	17 216:14	321:4
64:16,17	great 7:18	growing	267:1	333:8
75:2	84:16	280:4	283:20	happens
77:10	168:1	growth	hammer	283:21
84:5	214:17	55:15	217:20	happy 9:9
100:25	217:23	93:13	hand	73:9
102:22	218:9	176:6	110:13	93:11
105:12,18	220:17,18	273:6	305:20	134:11
,20 230:4	268:12	Guelph	handicap	149:19
309:17	273:1	20:12	254:24	159:20
327:5	296:9	guess	hands	268:20
344:11	328:17,18	15:19	74:12	327:18
Glicksman'	greater	30:18	handwritte	har 52:13
s 233:16	84:24	36:12,24	n 93:20	hard 62:24
goings	88:13	38:7 49:5	happen	259:20
19:16	91:16	69:24	68:12	314:21
gone 10:16	166:12	70:22	175:16	334:6,10
110:6	273:8	73:13	178:12	harder
112:18	329:2	108:13	256:13	52:13
142:2,16	342:14	159:8	272:18	63:3
go-to-	green	188:14	287:11	harmonizat
market	147:15	199:7,24	303:3	ion 144:4
22:1	ground	238:15,17	happened	249:2
govern		274:5		hate

270:17	headed	236:4	52:11	hoc 68:20
haven't	22:19	help 6:5	Hi 64:10	Holdco
79:13	23:17	17:6	65:20	239:23
100:4	115:15	93:13	102:23	holding
116:10	heading	98:2	hidden	59:10
147:21	78:12	116:6	51:10	115:15
227:12	80:3 99:8	157:22	high 49:6	116:1
233:20	101:11	236:20	193:11	160:16
271:22	309:25	257:15	238:12	164:17
314:15	310:10	274:18	240:14	165:1,5,1
329:14	hear	278:1	higher	8 168:3
having	5:6,12	288:10	82:3 92:1	277:12
14:1 31:7	6:24 8:23	296:9	208:21	holidays
33:10	13:20,24	helped	209:5	8:5
34:17	14:5,6	78:20	234:1,2,8	Hollywood
41:21	135:14	helpful	,11	205:14
48:1	200:6	193:15	277:22	home 10:8
49:17	271:14	207:21	322:20	honest
54:9	283:4	313:11	323:2	52:15
61:11	heard 7:13	314:1	highest	honestly
64:9 65:2	68:19	315:5	200:11	43:22
68:4,5,13	79:13	336:6,9,1	230:19	330:11
70:18	86:6	3,20	234:12	Honour
81:17	88:12	helping	high-level	9:1,14,19
90:17,21,	146:10	22:14	318:3	10:6
25 107:3	147:21	Henderson	highlighte	11:18
111:10	214:25	75:8	d 147:25	12:7 14:8
112:17	218:13	77:10	highly	15:6
166:7,11,	251:1	84:6	41:3	73:10
13,16	271:12	105:20	42:22	74:5
170:14	280:19	309:18	103:3	76:6,18
178:2	291:15	here's	214:16	77:18
187:8,11,	301:18	292:12	hints	139:18
23 193:12	304:23,25	Herhalt	194:9	157:16
229:7	314:15	140:6,18	hire	202:3
255:7	329:14	261:19	201:24	243:19
269:7	hearing	262:4,5,6	hired	252:20
289:19,23	9:4 10:12	he's 74:10	114:20	257:24
290:14,20	13:10,23	154:6	201:8,18	262:6
320:12	14:18	156:13	historical	279:4
330:7	284:22	160:19,20	ly 230:11	284:10
342:20	heavily	163:9,10	history	289:13
345:2	281:11	164:14	115:6	296:13
Hawkesbury	he'd 65:2	296:16	175:5	297:7,14
216:2	held 1:16	hesitation	224:9	312:19
Hawksbury	59:10	277:18	275:20	328:6
255:4	242:5	hey 44:25		HONOURABLE
head 23:12	hello			5:3
299:14				

9:6,15	279:13,17	,25	44:3	21 191:19
10:22	283:5	109:21	64:9,13,1	Hull's
11:10,14	286:1,5,8	111:8	4 65:1	94:8
13:17	288:17,22	114:13,14	73:25	200:2
14:9,15	289:1,10	115:24	78:7	humour
15:12	293:1	116:25	82:13	220:17
16:4 17:8	296:7,14	117:15,18	88:1,5,15	hundred
45:5 46:7	297:2,10,	118:3	104:3	7:15
59:23	16	121:5	114:7	36:18
60:9,18,2	300:8,19	143:3	130:2	48:10
2 61:3	301:1,8,1	167:12	135:5	52:23
67:21	1,15,19	186:17,21	137:17	86:21,22
69:6,10,1	312:15	187:3,13,	138:15,21	91:17
2,16,19	328:3	20,23	157:21	93:6
70:20	347:17,20	199:22	170:19	179:3,4,1
71:5,18	,24	200:13	171:4,21	8 180:4,8
72:6	hope 6:9	202:22	172:3,6	206:8
73:1,7,12	7:21 8:1	204:3	173:25	267:18
74:25	110:19	205:3	174:24,25	283:19
75:4,7,10	hoped	207:3,12	175:17	299:18
,13,25	53:17	217:1	176:18	300:4,12,
76:16,23	300:4	221:21,25	177:1,18,	20
77:4	hoping	222:4,11	19,23	Hurontario
123:15	240:17	240:22	178:3	1:19
124:14,18	Horaz	244:24	181:2,7	hurt
125:9,13	41:11	246:9	182:25	33:12,13
128:7	Hori 48:23	256:4	205:8,15,	Hy 108:20
133:12,17	Horizon	259:12	22 206:3	hybrid
,21	13:3 19:7	267:2	215:2	274:16
134:2,7,1	20:11,16	276:18,21	230:4	Hydro 13:4
7,21,24	26:9	286:11	261:17	17:19
135:21,25	28:7,20	Horizon's	290:3,4,1	18:5
137:6	31:22	20:19,24	5,17	19:15,21,
139:10	32:12	44:17	291:22	22,23
157:6	35:20	68:3	292:3,7,9	20:2,3,4,
192:18	40:2	109:5	,11	9,12
202:4,8,1	41:11	186:18	309:7,16	21:18
1 211:18	44:9,11	189:1	311:15	22:1,7,17
234:15,22	48:19,24	196:15	342:8	23:21
243:13	51:4 52:5	hospital	346:5	26:20
245:15	65:7	164:11	hours 33:8	27:1
247:6,9,1	66:15	hot 5:8	houses	39:12,14
3 249:23	67:17	Houghton	37:23	40:2
251:10	70:15	2:16	hub 277:16	42:8,14
252:16,23	87:9,22	24:8,17	313:4	45:14
257:18	90:6,10	25:8 28:7	huge	46:16
262:3,15,	91:3	34:4	271:4,5	48:23,24
19	92:10	36:6,15	Hull 93:25	54:10
273:13,17	108:20,21	38:18	95:10,12,	
,24 275:4		43:23		
276:9				

56:1,16	199:5,8,1		ideas 5:12	254:18,19
57:7	1,17	<u>I</u>	228:6	258:3
58:1,4,18	204:6	i.e 163:14	identified	261:3
66:22	216:2	164:17,25	13:7	264:12
67:1	222:17	IBW 99:13	37:25	276:17
78:12,16	223:17,19	100:13	191:17	282:10,11
79:12,19,	,25	I'd 9:9	identifies	284:1
20 83:22	226:12	32:6	12:13	302:16
88:20	227:6,10	48:24	identify	327:14
89:4	228:12,21	64:1	15:10,13,	336:17
93:2,4	231:7	65:11	16,20	I'm 8:15
106:7	232:3	83:25	identifyin	9:24
111:12	236:17	98:21	g 17:1	11:16,25
112:19	240:21	100:19	212:2	12:16,24,
113:14	242:6,17,	105:7	IFRS 245:8	25 13:19
118:9	23 243:14	141:9	ignored	16:11,24
119:7,18,	244:24	147:1	165:8	21:9
19	245:17	214:22	II	23:24
120:1,5,1	246:8,18	219:14	101:10,11	36:4,17,1
5,17,18	249:9	226:9	I'll	8 39:16
121:4,12	250:9	227:22	8:15,23	43:6
122:13,15	255:15	237:8	16:25	45:16
123:6,9	256:8	242:10	17:16	46:2 52:7
126:5,7,1	258:23	245:23	24:14	57:14
0,17	259:12	246:13	26:12	61:1
128:16	264:18	257:5	43:5 67:8	63:13,18
130:4,6,1	266:13,17	338:16,17	72:12	69:21,25
0,24	,20	idea 5:17	77:7,12	71:6,21
131:8	267:10	9:2 10:24	82:11,22	73:9,10,1
132:3,16,	268:6	34:18	83:2	1,20 76:8
17	283:18	118:11	86:17	77:3,12,1
133:5,6	285:8,10,	122:1	91:17	3
135:5,9,1	17 293:15	123:23	98:2	86:19,23
0	294:24	126:14,19	110:9	89:3,10
140:2,15,	295:1,22	128:19	113:13	93:20
16 143:17	310:1,2,9	148:23	122:20	94:9,16,1
144:2,16	312:10,20	168:5,12	136:9	7
146:11,12	313:4	187:16	160:1	97:10,21,
,15,17	315:16	190:15,21	187:2	24 100:13
147:9,22	316:7	199:11	190:14	126:16
148:7	317:4,13,	224:10	191:20	132:22
149:3,12,	17,23	267:9	202:18	133:10
24	318:4,14,	276:20	224:9	137:14
152:2,19	23 319:4	278:20	225:13	139:12,13
153:23	321:6,17	316:15	235:15	,15,23
155:23	322:15	331:12	238:16	148:14
156:21	323:1	ideal 93:7	242:14	153:13
178:22,25	hypothetic	176:14	245:5	155:17
179:20	al 108:8	268:22		157:24
180:1,5	345:7			159:7,19,
189:20				22 161:1

167:11	326:5	important	tly 9:10	151:12
173:1	327:18	14:23	inappropri	158:9
176:25	332:5,12	31:10	ate 29:15	163:11
177:11	335:21	52:16	31:5	175:17
182:10,11	336:16	62:15,16	134:3	213:5
183:16	337:8	63:5	163:12	285:12,13
194:1,10,	339:11	111:23	201:7	331:9
20 195:4	340:19	112:1	in-between	income
196:14	341:16	271:16	54:22	213:14
197:12	344:2,3	282:3	incentive	incoming
198:3,21	345:18	importantl	144:18	169:1
202:12,16	347:15	y 236:16	217:3	incorporat
205:20	imagine	impossible	inception	ed
209:9	23:3	8:4	236:19	237:8,21
211:12	123:13	325:18	302:25	incorporat
232:16	229:1	impressed	IN-CHIEF	ion
236:12	292:8	12:17	16:10	278:10
237:19	immaterial	impression	include	incorrectl
240:19	152:6	82:6	50:24	y 44:22
242:10	immediatel	178:6	114:9	increase
243:14,17	y 37:6	266:22	included	165:6
247:19	imminent	270:5	8:6 32:9	251:5
249:20	29:6	300:10	37:6	321:7,18,
252:19	impact	310:13	47:16	22
257:10	23:6	320:11	51:17,23	increased
258:6	50:1,8	330:14	55:21	252:8
259:24	55:5	342:9	57:6	253:21
260:5,6	75:19	343:20	62:24	322:9
261:10	152:9	impression	109:8	increases
262:21,22	164:6,22	istic	151:15	255:1
264:5,18	168:6	53:24	186:11	increasing
265:9	193:6	54:6	204:3	215:17
268:19	275:1	185:11	205:16	299:20
269:12,14	impactful	221:8	206:25	incumbent
273:3	192:1,6,1	impression	280:13	29:20
279:4,23	0	s 47:15	313:20	incurred
280:10,11	193:9,17,	50:13	includes	43:10
,20	25 194:2	improve	154:25	118:3
282:17	impasse	320:23	155:6	indeed
288:6	334:17	improving	261:7	162:16
300:15	339:6	239:17	295:7	240:11
304:15	impetus	inaccurate	including	334:14
305:13	278:9	76:8,22	6:1 32:8	independen
306:5	implies	inadequacy	51:16	t 94:6
307:15	146:1	182:15	58:2	245:11
311:11	importance	inadverten	91:16	334:14
316:8,17	238:24		107:7	
318:9			114:4	
319:25				
320:8,10,				
13 322:24				

335:2,7	indicating	210:18	58:3,9	193:13,17
in-depth	147:17	214:8	59:25	,21 194:3
79:7	229:6	231:8	60:2,16,2	200:4,12
310:4	232:2	232:9,11,	0 61:1	201:25
317:7	indication	17 234:7	63:19,22	206:18
indicate	24:24	251:9,18	64:20	207:12
56:9	25:4,10,2	259:25	67:11,23	209:20
63:19	0,23	263:23	68:1,14	210:12,20
104:18	26:17	264:20	69:23	,22
131:2	96:16	269:16	70:4,6,8	211:25
199:1	121:7	278:7	71:3,6,8,	212:3,25
232:8	169:25	291:5,13	15 72:4	213:24
243:15	206:16	310:5	74:10,11	214:2,14,
245:17	298:9,11	317:8	76:14	18 220:4
247:2	318:12,13	319:7,12	78:11	221:11
264:1	326:7	inf 64:19	79:1	228:14
indicated	indicative	201:25	81:19,24	229:2,7,2
28:22	114:18	infi	82:19	2 249:18
32:1	indirectly	200:12	86:15	259:4,21
33:20	140:25	inflation	87:21,22	260:10
40:11	individual	145:8,11	89:4,5,11	268:25
41:6	13:8	influ	94:11	269:15
43:20	246:16	347:11	97:4	287:3,5,2
48:5 59:6	265:22	influence	98:7,18	0
82:13	individual	70:18	101:9,25	305:13,25
101:1	ly 24:1	92:2	102:25	306:14,15
117:24	181:10	166:12	103:13	,22
130:12,16	individual	277:14	104:15,22	308:2,20,
,19 152:2	s 15:11	280:23	106:10	23
169:5	23:20	281:23	107:5,7,8	311:4,8,1
171:3	39:22	347:12	,10,11,14	8,21
174:23	99:2	influenced	108:3,15,	312:5
175:21	102:18	193:20	17,21	313:10,25
183:25	105:13,18	194:11	110:11	314:9,12,
202:21	177:19	323:25	113:4	22,23
206:1	218:21	infor	115:10	315:10,14
242:7,18,	263:4,15	330:8	116:22	,15,25
23 290:3	343:5	inform	117:1	316:12,17
indicates	industry	210:9	122:6,7	,21
27:21	19:17	informatio	123:24	317:16
35:20	79:8	n	124:2	319:3,6
65:24	140:14	13:11,15	125:6,12	320:22
99:1	141:6	41:4 42:5	127:10	323:19,20
120:14	175:1	47:2,23	145:22,24	,23
121:10	176:10	49:21	148:11	324:15,17
136:22	177:7	50:17	155:19	,20,23
138:22	178:15	56:17,25	156:6,25	329:16,22
160:18	180:17	57:7	168:5	330:1,4,1
247:1			183:9	4,18
			191:23	331:8,13,
			192:1,7	22

332:6,9,1 8,22 333:15 336:5,13, 16,21 341:2,9,1 5,18 342:13 343:3,8 344:4 345:2,9,1 3,23,24 346:2,3,1 4	innovation s 219:10 input 246:13 303:23 inputs 166:9 inquiries 60:7 171:21 180:16 329:25 inquiring 24:20 27:24 inquiry 1:3 2:3,4 5:16 13:2 68:7 74:7,15 76:13 86:6 93:24 114:10,11 170:9 191:10 217:12 218:14 258:3 283:3 285:16 286:12 287:6 339:12 inroads 201:10 inside 68:14 200:12 insight 330:8 insignific ant 116:20 installed 37:23 instance	140:10 186:11 291:21 292:6 304:17 308:8 instances 107:6 instrument al 256:5 integral 177:6 integratio n 20:8 integrity 68:17 79:7 310:4 317:7 intelligen ce 22:8 26:16 intend 11:6 13:24 14:5 16:17 250:13 intended 147:15 206:2,13 207:4 227:24 275:6 intending 122:14 intent 263:21 316:1 intention 246:2 interact 169:9 interactio n 200:22 201:2	interactio ns 175:12 235:18 interest 24:20,24 25:10,24 37:17 42:1,2 78:3,5 91:16 98:9 130:7 170:2 185:5,6 217:8 219:2 231:9 300:2 301:25 302:1 309:22,24 318:21 334:15 341:6 interested 39:3 69:25 170:1 185:15 210:10 221:16 236:25 340:22 interestin g 52:16 64:20 218:17 interests 5:13 30:21 255:24 323:17 internal 79:22 83:9 116:10 117:23,25 287:18,19 internally	38:12 59:5 115:16 142:23 internatio nal 260:16,20 internet 10:13,21 interpret 124:22,23 186:25 interprete d 55:16 interpreti ng 123:17 intervals 175:17 intervenin g 206:22 Intervenor s 268:7 interview 85:19 203:4 227:5 intimated 323:1 intimation 322:19 introduced 236:1 introducti on 74:7 310:15 introducto ry 16:12 201:20 236:4 invariably 216:2 255:5,9 invitation 170:17 171:10,22
--	--	--	---	---

172:11	187:10	108:18	I've 5:22	33:18,23
invite	223:23	115:14	33:4	34:5,19
206:2,13	224:11,18	116:3	37:13	35:12,15
invited	225:5,6	148:17	76:25	36:1,13,2
37:18	227:5	151:25	113:22	0 37:24
39:20,24	239:3	161:13	114:24	38:11,15,
171:12	255:23	165:7,23	120:8	20
172:23	263:20	167:23	125:22	39:5,10,1
173:24	266:13	214:23	160:2	7
204:11,15	271:9	288:3,18	165:3	40:16,23
205:5,9	304:21	289:3	176:11	41:9,14
289:18,21	involvement	307:21	189:19	42:6,10,1
,22 290:3	t 18:18	328:22	190:20,24	3,17,24
inviting	37:20	339:11	191:3	44:2,8,19
227:10	38:22,23	342:17	237:9	45:12,13,
293:16	49:11	issued	258:15,16	20,25
involve	169:15	27:9	259:2	46:4,13,1
116:12	264:2	39:25	260:23	4,22
146:1	involves	47:12	264:25	47:7,9,11
207:5	101:18	86:16	280:18	48:1,12,1
involved	145:21	87:3,4,23	281:16	8 50:7
18:1,10,1	IRM 145:2	94:13	303:22	51:21
2,14	217:2	96:11,15,	338:15	52:1,21
19:16	irrelevant	17 97:4	345:18	53:5 54:8
20:8,18	146:12	98:4,6		55:19,25
27:22	Irrespective	99:6	<hr/> J <hr/>	56:15,24
28:23	ve 89:22	326:2	job	57:5,20,2
31:16	90:1	issues	26:12,13,	5 58:7,16
35:21,22	isn't	85:6 99:8	14 45:1	59:2,17,2
36:25	10:13	118:20	291:11	1 61:6,7
37:25	14:17	130:13,16	John 2:4	62:3,20
48:25	16:7	133:18	3:11,17,2	63:13
83:22	68:25	149:1	1 15:5,19	64:6,16,1
113:18	162:7	181:22	16:10,11	7
118:21	189:1	186:15	17:15,16,	65:6,9,11
137:19	194:2	302:10	21	,16
140:1	214:7	329:8	18:6,21	66:14,21,
141:2,5,7	232:3	333:23	19:1,6,10	25
143:4	246:17	336:13	20:23	67:7,16
154:15	294:16	337:6,12	21:8,13,1	72:9,10
167:19	ISO 32:16	it'd 35:5	7,21	73:9,19,2
169:6,13,	issue	142:12	22:16,24	0 75:1
18,19	13:13	items	23:8,11,1	76:18
170:16,18	16:6 57:5	151:3,11	6,19,24	77:17,20,
,20,24	75:14	it'll	25:7	21 78:25
171:2,3,6	84:21	34:11	26:6,19,2	79:4 80:1
,7 173:20	90:2,17	77:2	5 27:7,19	81:6,16,2
174:19	99:10	135:23	28:6,13	3
181:12		266:24	30:25	82:2,16,2
			31:25	4
				83:1,10,1

6,24	24 131:23	311:2,7,1	19	6:6 9:4
84:3,5	132:2,11,	2,17	343:2,10,	137:16
87:2,8,13	15,22	312:7,12,	14,21	138:13
88:19,23	133:3	22	344:5,12,	139:3
89:2,19,2	135:1,2,1	313:23,24	15	169:8
5 91:2,12	6,23	314:7	345:1,11,	170:7
92:8	136:2,6,7	315:6,13	16,21	298:16,17
93:1,14,1	,17	316:5,10,	346:6,18	Justice
9	137:3,12,	19	347:8,19,	1:7
95:3,7,11	13 138:13	317:2,25	22	234:24
,14,17,23	139:1,8	318:11,17	joining	
96:2,8,19	140:17,18	319:1,9,1	32:10,22	<hr/> K <hr/>
,22	195:11	5,25	185:17	Kate 2:3
97:1,12,1	197:9,17,	320:4,24	jointly	key 26:13
5,20	21 230:4	321:9,15,	29:17	90:17
98:14,16,	240:23,25	24	Jonathan	147:14,15
20,25	241:5,10	322:3,13,	59:3	149:19
100:9,18,	252:18	21,25	judgment	268:16
23 101:2	284:10,14	323:7,15	263:5	302:22
102:4,10,	289:12,15	324:2,12,	judgments	307:22
15	,16	18,22	185:11	kilowatt
103:19,21	290:12	325:9,14,	judicial	33:8
104:1	291:7,20	19	1:3 9:20	kilowatts
105:2,4,6	292:2,16,	326:12,17	74:14	214:1
,11	23	,24	JULIANA	kindly
106:15,19	293:3,5,8	327:3,14,	3:10 16:1	13:2
,24	,9,14	17,22	July 6:13	kinds 63:3
107:1,3,2	294:10,19	328:2,12,	24:9,11,1	178:3
1	295:17	13 329:24	6,23	233:11
108:7,12,	296:1,5,2	330:5,16,	26:7,23	knew 32:12
19 110:21	5	22	36:14	33:2
111:5	297:20,22	331:6,18,	64:7,25	41:16
112:16	,23	21	88:1	88:8
113:12	298:1,10,	332:3,8,1	138:16	96:20
114:12	15,21,24	4,17,21	173:25	97:9
116:21,24	299:16	333:5,13,	181:8,15,	107:21
117:6,12,	300:7	20	20	115:16
16 118:6	301:22,23	334:9,18	182:2,6,1	140:13
119:5,15	302:3,9	335:9,21,	3,24	171:2
120:8,13,	303:7,15,	24	183:7	174:2,3,1
20,25	18,25	336:1,9,1	205:22	3 200:4
122:2,11,	304:15,22	7	206:11	205:4
20 123:4	305:1,4	337:3,10,	215:1	206:22
125:16,17	306:1,7,1	19	290:15	250:9
,22	2,24	338:7,10,	jumping	282:23
126:15,20	307:2,7,1	21	322:1	300:2
,23	7	339:14,23	June 5:19	321:10
127:13,18	308:4,11,	340:25		344:21
128:4,11,	18,25	341:5,8,1		
12,23	309:5,14	3,17		
129:7,18,	310:23	342:3,11,		

knowledge	KPM0004876	2:24	126:14,18	232:5,10,
26:9,12,1	4:16	KRISTINA	,21 127:9	16,20
7,22	KPM1851	3:10 16:1	128:19	235:20
66:17,24	152:24	21:12,16,	129:5,13	237:11,23
67:1,19	KPM4876	20,25	131:16	238:4
79:7	150:15	22:19	132:1,7,1	242:16,22
87:11	154:9	23:2,9,14	4,20	,25
88:22	KPMG 46:18	,17,23	133:2,10,	243:17
95:5	49:1,11	26:21	15,20,25	244:1,17,
96:4,6,24	52:18	27:3	134:4,9,1	20 245:19
97:17	56:22	39:16	9,23	251:7,12
102:6,8	58:2 59:4	42:9,12,1	135:12	261:13,21
103:12,23	60:1,2,8,	6,19	143:20,24	,25
104:14	21 61:2	45:16,22	144:5,21	262:18,21
106:17	72:20	46:1,11,2	145:1,6,9	263:2,9,1
120:17	85:25	1 47:10	,15,25	2 264:22
123:3	101:17,25	54:14	146:9,14,	265:12,23
124:6,12	103:24	55:23	23	266:2
132:3	109:9,14	56:6,19	147:7,12	272:2,7,1
191:6	117:4,14	57:1,13	148:4,9,2	0 273:11
199:1,13	120:14,17	58:6,11	1,24	275:8
248:18	121:3,23	59:1,14,2	149:13,16	282:10,17
249:13	122:12	0 60:3,19	150:3,12	283:1
283:9	124:1,22	65:10	151:5,9,1	285:8,25
310:4,20	126:5,8,1	66:23	8,21	286:3,7
316:4	2,24	67:2	152:11,16	287:7
317:7	127:19	69:8,11,1	,21	295:15,23
325:7,11	128:18	4,17 70:1	153:10,20	296:4
347:7	129:16	78:19	154:2,7,1	
known	130:1	79:3,21	7,22	<hr/> L <hr/>
29:22	131:15	83:2	155:12,17	lack 11:19
30:10	133:7	88:21,25	156:1,5,1	316:14
31:22	140:6	89:10	6,23	lacked
33:4	141:2	93:4 95:4	168:4,12,	52:4
67:20	143:2,5,7	96:23	18 180:20	lacking
69:3,9,18	148:7,19	97:16	181:4	116:22
108:21	150:15,25	98:17	182:5,8,1	Ladner
142:19	151:4	102:7	8 183:1,8	49:2
143:10	186:20,23	103:22	190:23	land
174:17	187:3,19,	105:5	191:2	250:25
180:22	25 188:4	106:16	194:1	252:7
184:14,16	189:17	107:2	199:10,19	landscape
,17,24	245:6	112:22	222:20,25	236:22
193:20	262:7	118:10	223:4,13,	language
229:4	280:21,22	120:7,12,	21 224:2	149:2
319:6,12	340:8	19	226:14,19	large
KP 143:2	346:20	122:1,3,1	,22 227:7	193:5
KPM0001851	347:3	6	228:17,23	222:18
4:17	Krajewska	123:2,10,	229:1,9,1	
		23 124:16	2,15,20	
		125:3,11	231:11,17	

237:2	222:7	65:2	255:10	lenses
263:25	238:10	183:3,6	297:14	269:1
264:19	246:22	203:24	299:17	less 85:3
267:17,24	321:4	204:2	300:22	86:4
268:23	latest	207:11	leave	90:14
largely	102:18	212:2,25	67:22	91:1,4
22:12	latitude	213:5,23	164:5,13	92:6
57:17	11:18	215:18	180:15	135:23
larger	launch	221:22	185:11	173:12
217:5	37:18	224:7	240:16	198:3,23
237:18	289:19	226:11	249:15	206:15
239:3	290:6	250:21	leaving	241:21
254:25	Laurie	255:24	29:12	242:3
256:10	161:23	256:23	164:15	255:11
264:18	lawyer	264:18	led 18:13	300:24
267:4	260:17	265:1,5,8	20:20	301:7
276:19,23	lawyers	lead 12:14	22:21	302:15
last	49:4	22:3 23:7	115:23	329:5
37:13,14	202:17	25:13	206:24	340:12
40:24	lay 250:25	163:25	left-hand	346:24
79:4	252:6	265:14	128:6	347:5
97:20	LDC 84:20	272:22	legacy	let's
172:18,19	94:7	leading	267:13	72:16
225:3	115:16	18:10,14,	legal	124:21
227:23	116:4	19 26:23	5:8,11	162:24
241:21	166:3	257:7	107:25	177:16
251:13	175:3	lean	108:4	197:1,7,1
268:6	177:21,24	281:11	112:23,24	2 273:25
270:15	210:21	learn 31:1	114:10	letter
293:21,22	214:8	156:10	115:21	40:9,10,1
310:2	230:13	learned	116:5	7,19,20,2
317:4	231:2	30:7 31:3	117:19	1 41:6,18
late 9:21	236:13,15	35:13	118:2	227:10
140:9	259:9	182:13	250:15	228:21
142:16,20	260:20	192:16	285:17	269:18
337:9	264:17	193:3	legally	293:15,17
later	265:22	298:4	115:17	,20
12:19	266:3,4	306:14,15	legislate	letterhead
15:14	269:8	lease	256:14	309:17
20:8 21:6	272:23	276:3	legitimate	letters
34:2,4	273:2	least 38:2	111:3	269:18
52:16	277:10	90:5,24	length 9:3	286:24
75:14	280:24	101:1	34:2	293:18
76:4	281:4	121:7	240:7	level 45:2
77:12	302:1	140:19	lengthy	47:16
125:6	328:22	198:10	7:4	48:20
156:10	LDCs 27:5	222:1		54:10,15
179:15	64:21	251:5		98:9
192:17				103:14

106:11	12:7,9,23	63:23	lived	lose 5:23
113:17	life 270:5	82:20	270:4	103:9
140:19	light	131:25	lives	111:15
165:5	101:16	213:25	263:17	loss 33:5
238:12	116:11	linger	Lloyd	85:3
241:23	lightbulb	294:16	346:15	329:5
252:8	314:4	linked	load 33:12	331:16
269:22	lightly	265:15	loan	lost
levelized	110:2	280:23	119:22	257:12
255:4	likelihood	liquidity	121:17	271:22
levels	225:23	339:5	242:5	337:9
54:3	likely	list 3:3	local	lot 22:22
leverage	59:7	4:1 17:10	255:23,24	44:24
220:23	97:21	58:2	256:25	49:19
321:7,22	100:12	100:13	261:8	54:23
liabilitie	107:24	174:4	274:13	108:15
s 46:9	108:10,11	227:25	277:1	110:11
121:22,25	115:18	234:12	location	115:20
123:22	206:25	listen 6:9	226:2	116:5,12
148:1,17	243:24	10:24	233:9	178:8,11
149:1	248:23	listening	238:24	215:11
150:9	249:6	6:10	locked	218:8,11
151:12	296:4	little	281:16	233:6
152:7	300:11	7:11	logo	265:6
155:2,7,2	303:5	14:17	289:23	267:23
4 156:11	346:13	62:1	290:9	272:7
241:22	limited	93:10	long 35:6	275:25
242:10	21:10	134:15	38:21,24	303:22
245:18	56:10,16,	142:11	47:19	304:10
259:23	23 97:17	145:10	57:13	312:5
294:25	103:23	149:21	83:15	328:15
295:9,14,	155:18	150:21	92:20	343:24
22	239:16	151:2	97:11	lots
296:2,3	305:2	161:20	170:4	214:13
liability	limiting	199:22	172:8	love
151:13	240:14	207:9	277:7	271:17
153:8,18,	line 101:5	210:5	336:22	low 61:20
19,24	199:6,17	214:22	longer	62:2,4
155:8,14	241:21	224:9	8:10 12:9	91:25
243:16	249:8	227:18	257:10	186:21
295:21	293:2	237:14	long-term	196:3,9
Liberals	linear	246:22	151:12,13	200:9
269:24	265:21	276:19,23	155:6	220:22
liberty	272:24	278:11	237:17	low-cost
186:10	lines 44:4	281:22,24	248:20	220:21,23
library	59:19	317:3	277:7	lower
10:21	62:21	345:11		146:17
lies 10:15		live 10:7		234:8

246:21	makers	mark-up	19	16:10,11
254:3	259:15	167:4	273:13,17	17:15,16,
281:25	makeup	Marrocco	,24 275:4	21
lowest	260:9	1:7 5:3	276:9	18:6,21
195:1,24	manage	9:6,15	279:13,17	19:1,6,10
196:2,15,	301:9	10:22	283:5	20:23
19 199:20	management	11:10,14	286:1,5,8	21:8,13,1
lump 271:8	21:7	13:17	288:17,22	7,21
lunch	67:18	14:9,15	289:1,10	22:16,24
139:13	99:8,10	15:12	293:1	23:8,11,1
157:7,8	144:18	16:4 17:8	296:7,14	6,19,24
292:10,22	manager	45:5 46:7	297:2,10,	25:7
	19:23	59:23	16	26:6,19,2
<hr/> M	21:18	60:9,18,2	300:8,19	5 27:7,19
M.A 258:14	113:23	2 61:3	301:1,8,1	28:6,13
ma 52:13	managing	67:21	1,15,19	30:25
machinery	261:20	69:6,10,1	312:15	31:25
209:3	262:6	2,16,19	328:3	33:18,23
main 53:10	mandate	70:20	347:17,20	34:5,19
120:5	270:8	71:5,18	,24	35:12,15
175:8	manner	72:6	Marron	36:1,13,2
176:5	254:9	73:1,7,12	2:12	0 37:24
185:6	manufactur	74:25	202:6,9	38:11,15,
238:17	ed 27:22	75:4,7,10	mass	20
maintain	32:2	,13,25	274:14	39:5,10,1
144:17	137:19	76:16,23	match	7
217:6	marathon	77:4	229:18	40:16,23
maintained	8:14	123:15	material	41:9,14
144:24	Mark 75:8	124:14,18	34:10	42:6,10,1
146:8	84:6	125:9,13	41:24	3,17,24
268:18	105:20	128:7	54:7 68:5	44:2,8,19
maintainin	163:17	133:12,17	109:22	45:12,13,
g 85:7	markable	,21	150:10	20,25
271:20	166:20	134:2,7,1	164:22	46:4,13,1
329:9	market	7,21,24	307:25	4,22
333:24	115:8	135:21,25	materializ	47:7,9,11
335:11,13	178:7	137:6	e 20:13	48:1,12,1
major	180:2	139:10	materials	8 50:7
209:3	marketing	157:6	56:11	51:21
278:9	49:21	192:18	57:19	52:1,21
308:17	marketplac	202:4,8,1	58:12	53:5 54:8
majority	e 26:3	1 211:18	78:20	55:19,25
90:16	111:16	234:15,22	math 120:9	56:15,24
92:17	Markham	243:13	233:21	57:5,20,2
298:6	302:18	245:15	Mather 2:4	5 58:7,16
302:19		247:6,9,1	3:11,17,2	59:2,17,2
		3 249:23	1	1 61:6,7
		251:10	15:4,5,19	62:3,20
		252:16,23		63:13
		257:18		64:6
		262:3,15,		65:6,9,11

,16	117:6,12,	301:20,22	20	39:7
66:14,21,	16 118:6	,23	334:9,18	62:23
25	119:5,15	302:3,9	335:9,21,	63:15
67:7,16	120:8,13,	303:7,15,	24	66:5
72:9,10	20,25	18,25	336:1,9,1	71:14
73:9,19,2	122:2,11,	304:15,22	7	74:6 76:8
0 74:9	20 123:4	305:1,4	337:3,10,	77:2,4,5
76:17,18	125:16,17	306:1,7,1	19	82:13
77:17,20,	,22	2,24	338:7,10,	87:6,17
21 78:25	126:15,20	307:2,7,1	21	91:22
79:4 80:1	,23	7	339:14,23	95:8
81:6,16,2	127:13,18	308:4,11,	340:25	101:25
3	128:4,11,	18,25	341:5,8,1	109:24
82:2,16,2	12,23	309:5,14	3,17	110:23
4	129:7,18,	310:23	342:3,11,	118:2
83:1,10,1	24 131:23	311:2,7,1	19	132:17
6,24 84:3	132:2,11,	2,17	343:2,10,	134:13
87:2,8,13	15,22	312:7,12,	14,21	136:8
88:19,23	133:3	22	344:5,12,	158:11
89:2,19,2	135:1,2,1	313:23,24	15	160:21
5 91:2,12	6,23	314:7	345:1,11,	164:7,8,2
92:8	136:2,6,7	315:6,13	16,21	2 174:18
93:1,14,1	,17	316:5,10,	346:6,18	175:24
9	137:3,12,	19	347:8,19,	193:19
95:3,7,11	13 138:13	317:2,25	22	197:17
,14,17,23	139:1,8	318:11,17	matrix	207:2
96:2,8,19	147:4	319:1,9,1	240:21	209:13
,22	195:11	5,25	243:22	219:2
97:1,12,1	197:9,17,	320:4,24	245:4	220:16
5,20	21 240:25	321:9,15,	246:25	224:4
98:14,16,	241:5,10	24	matter	226:1,18
20,25	252:18	322:3,13,	11:13	233:8
100:9,18,	284:10,14	21,25	75:23	234:6
23	289:12,15	323:7,15	184:4	235:24
102:4,10,	,16	324:2,12,	188:2	243:19
15	290:12	18,22	192:17	247:4
103:19,21	291:7,20	325:9,14,	235:19	254:6,7
104:1	292:2,16,	19	297:17	269:16
105:2,4,6	23	326:12,17	343:19	285:21
,11	293:3,5,8	,24	matters	290:18
106:15,19	,9,14	327:3,14,	176:20	292:4
,24	294:10,19	17,22	249:1,14	293:6
107:1,3,2	295:17	328:2,12,	266:7	306:22
1	296:1,5,2	13 329:24	307:11,12	319:6
108:7,12,	5	330:5,16,	max 249:10	323:18,21
19 110:21	297:20,22	22	may 1:23	329:16
111:5	,23	331:6,18,	12:21	331:7
112:16	298:1,10,	21	15:9	333:11
113:12	15,21,24	332:3,8,1	16:22	337:11
114:12	299:16	4,17,21		345:3,25
116:21,24	300:7	333:5,13,		maybe 32:8

33:20	,21	343:17	343:6	44:24,25
37:13	Mc 141:18	345:6	meeting	64:9
38:10	McDowell	346:12	24:25	66:18,24
44:22	2:18	meaningful	25:1,3	67:1
50:18,24	McFadden	232:15,17	26:24	70:12
51:8,10,1	94:4,6,11	means	29:4,8,11	175:10
7	95:10,18,	79:15	36:14	181:6
53:19,20	19 191:19	144:23	40:10,14	182:2
62:11	217:15	232:25	41:1	187:22
87:14	256:3	264:10	66:5,9	294:3
88:15	260:15	338:4	67:12	306:4
109:12,13	264:3	meant 45:6	69:15,20	325:8
112:3	McGrann	129:6	70:14	342:7
152:23	2:3	239:16	85:15	member
156:18	McLorg	243:10	91:10	12:20
166:14	161:23	244:15	105:23	13:11
180:14	McNeil	295:13	114:7	22:4,20
208:7	101:2	304:12	126:4,9	23:15
222:15	mean 14:5	312:18	140:9	95:19
224:8	23:1 31:1	334:4	141:13	217:16
243:14	35:2	meantime	146:22,25	236:2,17
258:3	44:19	77:15	174:24	237:4
260:24	45:9,21	measures	182:24	247:3
264:3,17	54:20,21	49:18	183:7	304:17
267:6	68:1 75:1	50:1,6,7,	187:5,9	344:17
274:10,13	93:12	16 53:23	203:4,20	member-at-
,24	146:22	mechanism	204:21	large
276:13	153:25	33:5	205:21,23	260:14
277:6,19	192:15	236:20	206:1,12,	members
278:6,18	225:14	237:16	23	43:3
281:21	242:17	334:16	227:5,11	68:23
291:4	279:10	mechanisms	228:7,12	109:24
304:23	286:20	254:3	229:14	159:9
306:20	291:8	medical	292:9	199:2
333:3	304:9	6:2	293:23	246:18
336:4	305:22	medium-	294:5	247:1
339:11	307:20	sized	298:17	249:10
mayor	312:7,13	291:2	307:12,23	260:22
114:4	313:9	Meeker	,24	262:14
187:4,6,1	315:8,11	143:21	321:20,25	278:3
6 250:15	318:1	meet	322:4,8,1	memo
260:20,21	320:1,25	173:24	0,13	75:1,21
262:7,12,	321:5,8	181:11	323:6	163:8,11,
16 322:6	325:1	186:3	333:11	24 309:16
344:17	330:25	268:14	334:17	memorandum
345:13	332:12	273:8	339:20,24	77:22,24
346:15	334:2,13		342:22	78:1
mayors	335:18		meetings	98:25
175:12			24:11	99:5
187:5,7,8			40:6	

100:24	225:3	25	96:18	233:2,20
310:21,24	233:12	52:4,13	97:6	234:4
311:5,9,1	249:5	62:25	98:12	236:6
9 323:9	268:6	63:3,6	100:1,11	238:16
324:2	276:3	112:3	102:2	249:19
memory	285:12,13	186:6,11,	103:17	252:1,9,1
76:22	mergers	14 188:13	104:25	4,20
100:1	17:22,25	189:7,10,	106:13,23	253:2
138:9	19:12,19	13 231:24	107:18,24	263:22
139:3	20:14	M-hm	108:10,13	267:15
178:1	21:14,24	180:11	113:20	274:4
335:4	22:5,10	184:22	117:22	279:24
mentioned	23:6	185:22	137:1	281:17
23:12	68:21	Michael	138:10,17	284:25
24:25	112:8	2:7,24	139:6	290:1,23
25:1	175:6,7,9	3:8 8:25	159:22	291:10,24
43:24	176:6	9:13 16:2	160:5,9,1	292:8,20
116:21	178:9	17:20,24	7,25	293:4
117:17	179:16	18:9	161:6,11	294:7
164:11	217:2	24:15	162:1,14,	296:12
174:12	225:2,20	25:12	17,22	297:7,13
208:11	253:7	35:25	163:1,15	microphone
253:5	264:2	36:4,17,2	164:9,19	16:6,7
254:20	299:23	3	165:11	middle
255:5	merging	38:7,13,1	169:16,22	20:12
256:21	283:20	7,24 39:9	170:10,21	29:15
274:13	message	40:8,22	171:5,13,	30:16,24
301:5	297:4	41:8	17	31:17,20
334:25	323:5	43:18	172:2,8,1	34:18
mercifully	met 24:8	44:5	3,16,18,2	mid-
161:20	64:14	47:5,19	4	September
merge	66:3,9	48:4,15	173:10,17	325:20
270:23	71:12	60:24	,21	Miller
274:12	88:1	61:14	174:1,6,1	101:1
merged	138:15	62:5 63:1	1,21	million
270:22	177:17	65:4	175:4	119:20,21
271:6	205:7	66:12	176:4,21,	,24
274:17	236:14	67:15	24	121:16,20
merger	meter	70:22	181:16,23	,22,25
17:18	245:8	71:11	190:19	123:22
18:2,4	Method	72:1	192:8,11,	128:16
19:23	101:8,10,	80:16,21	15,21,24	147:23
20:12,17,	11	81:1,5,7,	193:4,10,	148:1,19
19,20	metric	11,21	19	150:1
25:13	55:9	82:1,11,2	195:2,7	152:5
90:18	232:8	3 83:14	196:1,11,	153:9,24
216:14,15	metrics	86:18	18	155:15
222:8	49:18,24,	87:5	198:18,25	156:4,22
224:13		91:18	202:10	230:15
		95:1	224:8	
			225:19	

233:16	45:10	10:17	MPPs	12,13,20
240:24	142:5	30:9	255:20,23	278:9
241:22	156:14	37:13,14	multinatio	municipali
242:3,4	256:11	142:12	nal 262:9	ties 20:6
243:7,24	mistaken	morning	multiple	27:4
322:10	141:8	9:23 12:3	116:16	62:13
mind 13:8	269:13	14:16	143:1	63:9
43:14	mistakenly	29:3	234:8	175:13
51:25	248:3	64:15	240:14	179:21
90:10	mo 179:19	65:22	multiples	253:12
97:24	model	105:24	240:12	254:2,8
123:1	248:16	136:19	multiplier	256:9
133:4	268:5,8,2	141:11	231:5	268:11
269:12	2 273:21	184:12	232:19	276:1
270:16	276:3	185:9	233:18	municipali
302:3	278:17	189:22	Muncaster	ty 19:3
338:22	299:22	190:12	24:8	20:1
345:10,20	302:5	201:6,12	36:15	176:15
347:23	303:3	239:18	40:10,19	178:18
mindful	modeling	270:7	64:8 88:1	237:6
90:5	92:5	288:2,7	114:7	261:19
mine 55:10	117:24	mostly	138:15	271:11
minor	modelling	179:19	173:24	273:20
145:11	114:1	mouth 71:7	174:25	municipall
minority	models	move 17:6	177:18	y 180:6
298:6	22:9	37:9	181:7	218:19
minute	269:25	123:16	182:24	municipall
128:8	modifying	135:15	205:8,21	y-owned
148:15	123:14,16	138:3	206:4	236:13
minutes	moment	222:16	215:2	mutual
8:19	45:25	244:14	260:12	306:13,17
14:10	94:15	253:9	261:18	308:5
73:14	122:21	254:7,8	292:10	myself 6:1
135:24	164:14	294:17	335:7	8:6 172:4
137:7	196:24	300:9	munici	229:3
234:16	241:5	moved	259:13	235:3
296:15	252:18	276:1	270:12	236:1
misinterpr	327:18	287:10	municipal	
etation	money	288:15	19:3 90:3	<hr/> N <hr/>
208:7	116:20	moving	109:6	namely
miss	125:2	27:7	178:14	272:15
178:11	280:17	37:15	179:2,5,6	national
missing	month 6:13	39:17	,22 216:9	260:16
263:25	31:2	176:8	218:3,4	nature 7:5
277:8	138:14	204:4	221:22	182:16
mistake	months	219:3	224:23	185:16
29:25		302:7	235:25	186:12
			270:4,10,	

274:11	28:4,10	180:3,11	261:5	260:22
285:12	29:1 31:6	183:12,15	266:8	268:1
288:14	32:6	184:5,11,	270:10,17	347:25
330:17	33:22,25	19,22	271:2	ninety-
navigating	34:8	185:1,8,1	272:1	four
236:22	35:4,14	8,22	276:11	198:16
NBF 18:24	41:13,16	186:1,8,1	279:10	nobody
NDA 285:22	44:13,21	6	283:8	201:23
NDP 269:24	45:8 47:8	188:9,20	286:10	217:22
necessaril	48:22	189:12,19	287:2,23	256:22
y 10:18	50:10	191:6	288:20,24	278:14
12:17,21	51:24	199:24	289:4	Nolan 3:19
66:6	52:7	200:23	294:11	75:5
281:9	53:2,7	201:5	net 83:21	76:9,10,1
288:4	60:4,13	202:25	147:10,19	9 77:11
necessary	65:8	203:5,10,	148:1,2	84:6
6:8,11	66:16	15,21,25	150:8	102:21
necessitat	67:17	204:8,16,	151:13	261:11
ed 6:3	68:3	20,25	152:6	296:11,23
negative	72:12	205:6,24	153:18,24	297:1,23,
38:10	73:6	206:3,14,	155:8,14	24
68:15	82:25	20	156:11	298:7,12,
negatively	83:17	207:6,13	205:10	19,23
56:13	87:10,24	208:6	212:1,3	299:3,19
70:19	89:24	209:22,25	networks	300:14,25
negotiable	90:13	210:16,22	146:18	301:3,10,
130:17	91:8	211:1	246:18	13,17
negotiate	92:12	212:5,12,	neutral	302:2,6,1
134:11	95:8,13,1	22	164:6	2
321:5	6,21,25	213:2,7,1	167:3,7	303:13,16
negotiated	96:3,20	6	news 269:4	,21
337:6	97:13	214:5,11,	newspaper	304:4,20,
negotiatin	98:15	20	269:3	25
g 134:22	102:5	215:5,9,1	newspapers	305:2,9
337:5,14	103:20	3,19	267:8	306:5,9,1
negotiatio	105:3	217:15	Niagara-	6
n 337:12	106:18,25	218:24	on-the-	307:1,15,
negotiatio	109:2	219:5,21,	Lake	19
ns 134:14	111:1,7	25	255:15	308:9,12,
NEIL 3:9	114:14	220:6,9,1	266:20	22 310:22
15:25	116:23	5	nights	311:1,6,1
18:25	117:3,8,1	221:4,6,9	9:21	1,16,20
19:4,9,14	4 140:4,8	,12,18,23	nin 198:16	312:1,9,1
21:1	141:3,14,	222:1,6,1	nine	4,19,24
26:11	18,22	3 235:22	246:18	313:3,9,1
	142:3,6,1	239:8	247:1	8
	7,22	254:15	249:10	314:2,20
	165:19,25	258:9,13,		315:9,21
	167:10,21	21,25		316:8,15,
	177:9,12,	259:10		25 317:21
	22 178:4	260:2		

318:9,16, 20	41:6	115:7	111:7	324:17,19
319:8,13, 20	non-	209:5	216:4	,24 346:4
320:3,7	committal	Norval	347:2	obtaining
321:2,13, 19	130:10	21:10	novelty	185:6
322:2,12, 17,23	noncontigu	notable	299:5,12	314:13
323:3,14, 22	ous	261:8	November	345:25
324:10,14 ,21,25	267:19	notations	29:2	obvious
325:13,15	non-	287:20	34:23	31:18
326:3,16, 19	disclosur	note 94:18	96:10,12	obviously
327:11,16 ,21	e 72:2	97:24	100:24	34:16
328:1,5,1 0 329:23	none 12:8	150:2	104:19,23	83:22
330:2,11, 21,25	13:15	151:14	105:14,16	116:15
331:11,20 ,24	183:15	153:12,13 ,17	121:9	152:19
332:4,12, 16,20,24	249:24	193:24	126:1,2,8	174:18
333:9,18	250:1	286:24	141:13	184:17
334:3,11, 23	284:4	293:21	150:24	191:15
335:16,23 ,25	323:23	noted	192:20	201:17
336:3,14, 22	nonfinanci	184:1	244:2,6	203:18
337:8,16	al 61:10	236:11	np 2:21	219:11
338:5,8,1 2	62:22	248:16	nu 52:12	279:6,16
339:3,22	198:4,17, 24	249:9,12	numerous	280:8,22
340:19	199:6,17	299:4	140:17	299:12,19
341:3,7,1 2,16,20	non-	notes	<hr/> O <hr/>	315:12
342:5,16, 23	financial	93:20,23	Oakville	330:14
343:7,11, 15	49:7	94:10,16, 17 100:3	138:5	339:4
344:1,8,1 4,20	52:24	259:14	objection	346:17
345:5,14, 18	53:8,13	nothing	74:6	occasion
346:1,8	54:13	51:24	objections	173:23
347:6,15	144:1	113:1	286:16,24	174:24
non 40:24	184:3	221:5,7	objective	181:1,9
	197:2	304:8	221:2,11, 16 247:23	221:21
	non-LDC	Nothing's	objectivel	235:17
	301:5	219:10	y 62:24	236:8,14
	non-public	notice	objectives	occasions
	308:3	166:22	92:17	190:15,17
	non-RFP	181:6	obligation	occur
	225:23	noticed	61:18	42:23
	nor 83:5	29:13	obliged	249:2
	88:12	196:14	30:11	254:1
	102:8	noticing	obtain	occurred
	229:12	12:2	341:9	43:9,10
	263:4	173:1	obtained	122:23
	279:9	notion	306:23	170:22
	normally	110:3		181:8
	51:20			228:20
	62:5			234:6
				294:1
				o'clock

9:22	322:9,16	143:13,25	305:1	22:11
139:13,14	offered	144:7	308:15	32:15
347:25	66:10	147:1,3,1	312:2,14,	37:7
October	119:19	3	24 313:24	48:24
27:10	169:12	148:5,14	316:13	50:14
47:12	170:7	149:13,14	320:8	115:19
58:1	195:20	,22	325:3	145:5
86:17	300:13	150:13	328:2,10	151:14
94:13	326:18	153:17,21	old 278:15	155:9
96:11	340:18	154:4,8,1	one-page	178:10,25
97:5 99:5	offers	8,23	135:6	179:13
104:7	130:21	156:2,9	onerous	180:1
136:22	office	157:4	115:9	207:14,16
181:21	103:1	163:1	255:10	210:21,23
182:4,6,1	Officer	175:19	ones 180:6	214:3,17
4 192:4	140:11	203:7,16	224:24	216:3,21
odd	offices	204:22	225:6	224:7
51:13,18	262:10	205:2	265:10	226:11
OEB 208:5	officials	206:17	one's	235:25
209:17,19	272:14	207:1,8,2	22:17	242:5
210:15	oh 15:21	0 209:23	42:8,14	251:1
216:22	81:7	210:24	79:19,20	254:21,22
259:21	135:25	212:6	93:4	255:14
286:16,24	183:4	213:8	113:14	258:23
287:21	186:21	214:6	119:18	283:10
288:12	210:3	215:15	120:5,15,	onto 330:8
305:15	280:17	219:22	18 122:15	open 31:12
OEBs	298:12	220:12	130:24	74:4
215:25	312:2,24	221:13	135:10	104:4
offence	okay 11:8	223:15,22	146:11,12	119:10
275:6	14:9	224:3	153:23	127:24
offer	17:13,16	225:10	159:20	135:20
23:21	21:17,22	226:21	189:20	136:12
103:1,4	23:8,16,2	229:16	229:17	176:19
106:7	4 35:15	231:13	266:13	192:22,24
123:6,7,9	45:13	232:1,7,1	280:17	201:13
,11	46:22	4,18	317:17	300:5
130:6,24	73:8	235:23	318:4,14	309:10
131:4,9	89:25	236:3	321:7,17	326:24
135:6,11	94:18	238:3	322:15	opening
151:15	95:13,25	240:16	323:1	5:4
165:7	96:2	246:13	ongoing	77:23,25
194:25	98:20	247:8	16:6	opens 84:7
237:22	118:6	252:14	104:19	operating
275:2	125:14	257:5	176:20	54:2
295:6,23	128:9,12	262:18	Ontario	92:18
300:23,24	137:3	265:11	1:20	275:23
301:6,7	141:9	284:17	19:15,17,	276:3
		292:25	20,21,23	277:24
		297:20		
		298:24		

operation	175:10,13	ons	13:22	overtax
167:4	177:19	118:17	125:1	8:17
210:20	181:14	168:22	ours	overview
operationa	182:13	286:23	307:22	17:22
l 106:6	188:7	organize	ourselves	19:11
210:12	189:7	139:15	27:6	owed
214:10,18	228:4,13	orient	112:15	119:22
268:2	235:12	94:12	outcome	owned
operator	239:5	original	92:3	184:9
80:11	260:8	131:7	117:7	218:19
248:9	287:16	146:22	247:23	owner
312:23	340:5	169:17	248:19	92:18
opines	opposed	180:8	outline	169:9
165:2	73:4	originally	183:17	264:16
opinion	163:14	246:2	228:9	owners
164:20	298:5	Orillia	229:18	218:5
248:2,22	opt 273:20	269:11	293:24	ownership
250:19	optics	others	294:5	84:20
265:22	315:3	47:2	outlined	85:24
opinions	optimist	52:18	113:9	90:8,12
74:11	278:20	70:8	outlines	92:15
opportunit	option	71:25	250:18	98:9
ies 26:4	48:10	83:19	outlining	267:12
64:23	109:16	106:4	230:9	271:21
65:3	143:12	108:21	outreach	277:23
87:18	165:4	139:22	292:11	302:4
98:8	options	174:10	outset	328:22
175:22,24	54:22	249:11	298:3	339:5
176:2	113:9	278:7	outside	340:7
177:8,15	239:19	281:9	117:21	owns 86:4
180:18	274:6,9,1	299:4,12	219:2	159:15
opportunit	1 276:8	327:5	304:19	340:12
y 7:25	299:1	342:1	305:6	346:24
12:5	333:4	otherwise	outstandin	347:5
18:11,14	oral 6:11	14:25	g 48:2	<hr/>
25:17	order	71:16	outward	p.m
28:2 36:8	130:22	74:22	22:12	137:9,10
39:2 65:1	246:7,12	116:22	outweigh	157:12,13
80:4	247:20	204:13	53:15	162:9
85:22	275:5	253:11	overall	165:2
91:15	organizati	256:15	318:4	234:19,20
92:13	on 160:4	292:21	overblown	296:20,21
138:20	169:10	315:4	305:13	348:3
160:22	171:24	327:19	overly	page 3:2
165:17	181:11	Ottawa	330:13	4:2 34:21
166:4,7,8	200:21	140:22	ought	93:22
169:6,8,1	organizati	179:9		131:9
1 171:24				

144:9,12	57:21,25	34:11	257:6	88:3
149:21	58:17	36:2,8,21	296:8	93:25
152:23	84:15	37:17	particular	94:5
153:6,13	85:14	39:6,12	11:13	95:12,18
159:6	89:21	108:9,25	12:2	109:9
195:3,8	119:11,16	110:16	20:18	143:2
203:22	125:18	112:21	40:9 55:1	176:14
210:3,4	127:14,18	118:9	71:13	185:6,16
211:3,13,	,21	166:4	103:15	215:4
19	129:19	189:2	115:22	219:24
212:7,14	136:12,22	204:12,15	160:22	220:20,21
213:17	159:8	221:21	162:5	221:14,17
pages	210:7	225:25	163:6	247:22,25
119:17	227:23	226:1,4	164:21	248:23
212:8	250:11	227:11	165:10	249:25
paid 8:5	293:22	261:2	171:25	262:7
114:23	294:20,25	289:18,22	177:20	274:18
194:21	328:14	participat	185:5	277:6
218:10	329:22	ed 35:24	193:5,24	281:20,21
230:11,20	332:9	107:15	214:8	282:5
231:10	333:7,21	110:4	234:7	317:24
233:16	346:19	112:14	238:14	326:2
240:10,12	paragraphs	142:21	242:6,19	partnered
paint	28:16	172:20	243:15	63:8,9
271:7	46:5,15	188:24	244:13	partners
palatabili	125:23	204:14	258:12	176:8
ty 84:24	328:16	222:18,21	267:11	205:12
329:1	Pardon	224:1,6	288:8	224:15,19
panel 3:7	312:3	225:12	319:11	274:13
15:24	parent	276:17	321:6	partnershi
157:19	159:12	301:24	particular	p 64:22
217:13	partial	participat	ly 79:9	65:3 68:2
222:16	299:24	ing 6:21	185:15	84:18
225:11	participan	27:25	192:5	86:11,16
249:16	t 11:4	28:8 32:4	193:25	87:17
251:2	20:21	33:21	218:21	88:4 89:9
252:22	30:16	38:4,9,16	310:6	94:25
254:19	258:3	39:7	315:5	120:2
256:6,12,	participan	44:16	317:9	123:18
21 296:18	ts 7:21	110:14,15	parties	236:16
panelists	8:7 12:8	113:18	6:21	237:2
17:4	17:2	138:8	15:10	273:6,21
paragraph	31:10,11	169:19	41:3	276:4
27:15,21	201:13	213:6	61:15	299:8
28:14	participat	236:17	210:10	326:8
35:17	e 28:2	284:22	271:13	328:20
40:24	31:24	290:5	272:22	329:17,19
46:5	32:25	participat	partner	331:16
		ion 31:9	62:9,15	334:22
		167:14		335:11,13

,14	23	154:11	payment	275:21
338:25	262:1,5,2	158:4,13,	119:20	305:25
partnershi	4,25	18,23	149:25	perceive
ps 63:7	263:8,11,	159:3	payments	329:5
party	14 264:4	161:4,17	240:7	perceived
13:10	265:11,13	162:12	PDF 210:4	55:14
41:4 70:6	,25	163:3,20	penalties	85:2
285:24	268:24	173:4	240:2	277:5
286:2,6	270:12,25	183:22	penalty	316:18
320:16	271:3	189:25	116:4	percent
342:9	272:4,9,1	190:5	239:12	36:19
pass 263:4	2	191:12	240:7	48:7,11
passed	273:15,23	194:17	penultimat	49:17
131:20	278:22,23	195:15	e 162:9	52:2
190:18	279:3,12,	196:21	people	53:8,14
past 7:13	15,20,21	197:5,15	5:11 6:1	54:19,20
226:12,18	280:1	198:7	7:24 8:4	55:12,14
300:9	282:8,14,	207:24	10:25	61:20,23
310:14	25	211:5,10,	11:3,4	62:22
path	283:3,25	15 212:16	12:10	84:19
109:18	284:1,13,	213:11,20	13:16,21	85:4,24
265:14	17,19,20	226:7	25:18	86:5,11,2
269:7	285:7,20	227:1,15,	29:9,10	1,22
271:20,23	286:14,15	20 228:25	51:8	87:16
273:5	287:15	230:1,24	67:18	88:9,13,1
paths	289:8	241:8,12	68:23	6,18 89:9
140:17	PAUSE	248:5	75:21	90:8,12
269:2	27:17	251:24	106:21	91:16,17
patient	56:4	257:21	114:3	92:15
119:8	57:11,23	279:1	118:15	93:3,6,9
Patrick	64:4	293:12	178:11	101:6,20,
2:21	65:14	307:5	206:8,21	21 119:20
Paul 2:10	80:14,19,	309:3,12	209:10	130:6
3:16 9:19	24	311:24	217:20	136:21
11:8,12,1	81:3,9,14	313:1,7,1	249:21	159:12
6 14:7	84:1	6 314:18	256:21	160:14,15
63:16	93:17	315:19	261:8,14	163:14
76:6	98:23	316:23	263:20	164:16
101:14	100:21	318:7	267:13	168:2,3
106:3	102:13	319:18	288:13	184:1,3,1
190:8,16,	105:9	324:8	320:22	6,18
17 257:23	119:13	327:1,9,2	peoples	185:12
258:1,2,1	120:23	4 328:8	7:5	188:13
0,19,24	125:20	pay 92:24	per 54:1	194:6,8
259:2,17	127:16	payable	86:10	198:5,14
260:5	128:2,21	151:14	203:24	199:2
261:9,16,	129:22	paying	207:10	230:16
	136:4,15	116:4	267:21	239:13
	149:8	231:11		246:21
	150:17	240:14		247:21,22
	153:1,15			

248:25	performed	285:17	pertained	239:21
271:21	145:21	person	72:3	259:4
273:7	performer	12:11,14	pertains	pilot
275:14,22	255:2	14:24	285:18	27:11
277:10	performers	15:15	pest	36:9
282:23,24	215:23,24	19:25	291:14	170:1,2
291:3	performing	79:24	Peter	placed
295:15,16	214:9	103:7,14	27:21	6:21
,20,24	216:3	200:15	34:2	places
296:3	217:25	262:17	35:19	176:11
298:5	perfunctor	325:10	36:7	216:21
299:2,13,	y	344:9	38:19	274:14
18	44:15,20	personalit	137:17,21	plain
300:4,12,	perhaps	ies	138:21,23	334:4
21,24	7:1 10:2	266:4,5,6	173:8	plan 5:17
301:25	14:18	personally	phase 5:16	16:11
302:1,20	123:11	42:7	56:14	237:17
303:5	129:15	49:23	132:10	planned
326:2	204:11	140:16	PhD	8:5
328:21	218:14,20	178:4	258:15,20	planning
329:6,18	,25	219:5	,22	19:15
331:15	235:13	227:4	PhD's	85:17
333:1	251:14	263:3,10	258:21	340:1
337:7	275:17	275:15	phone	plans
338:25	280:18	perspectiv	130:4	25:19
340:7,12,	308:23	e 24:9	230:6	175:2,15
17 341:24	334:14	30:19	physical	290:18
342:10,14	335:1	37:17	8:12	292:4
346:24	337:2	47:23	picked	297:14
347:5,14	342:8	68:4	258:4	plant
percentage	period	84:25	282:5	212:1,4
49:7 92:2	18:1 20:7	99:13	picking	play 233:7
93:13	24:16	111:22	62:9	played
166:12	25:15	124:20	89:16	164:8
193:12	43:17,23	125:1	264:18	player
212:10	48:3 64:8	167:12	picture	53:10
283:15	177:16	214:9,10	166:18	214:8
perception	182:11	238:23	209:7	players
266:24	206:22	248:21	271:7	206:9
perfect	215:11	259:19	piece	308:8
34:1	224:25	267:21	122:6,7	playing
115:13	253:22	268:2,3,1	125:5	241:23
perform	291:15	5 274:15	209:2,3	please
112:6	294:18	281:8,11	277:8	16:5,8
performanc	339:10	300:22	pieces	64:13
e 92:21	peripheral	315:11	21:5 57:7	
208:14	249:14	329:2		
216:1	permission	persuasive		
218:6		13:22		

78:2,13	70:11	338:21	s 213:24	74:24
80:17,22	74:6,21	340:13	por 209:6	75:18
81:12	76:20	341:1,8	portion	possibilit
128:4	79:5 82:4	344:9,16,	184:18	ies 108:1
147:2	90:9,14	22 345:22	247:20	240:10
149:6,21	91:12	347:8	312:17	possibilit
150:20	94:20	pointed	322:9	y 25:5
151:2	96:8,13	194:7	portions	86:10
154:9,24	97:25	pointing	308:7	274:20
158:2	98:1,6	242:10	portray	300:5
190:3	99:10	points	209:7	335:10
194:15	103:12	78:2,5,14	pos 316:6	possible
195:10	105:14	,17 79:2	pose 16:18	19:19
197:11	107:4	80:5,9	24:1	26:18
202:19	118:14	81:17,18,	160:1	44:7 62:9
203:17	120:3,16	24 126:1	posed 87:3	76:22
207:22	122:12	246:19	posing	88:3
210:3	131:13	249:10	188:11	91:20
219:16	132:5,15	280:13	position	101:15
226:25	136:19	284:2	21:15	139:7
227:18	137:4	309:21,24	32:20	162:14
229:25	164:1,2	310:1,18	64:7	172:9
230:21	178:23	political	68:11	174:7
278:24	204:23	84:22	71:10	233:22
279:23	205:3	251:16	75:15	249:5
293:21	218:18	253:11	76:1	323:13,22
295:3	220:23	258:22	77:8,9	336:10
309:21	230:18	263:24	85:8	possibly
311:21	235:5	269:21	156:19	9:25 37:9
312:2,11	236:7	271:13	160:8	42:1
313:14	243:11	277:1	291:25	49:12
317:3	244:12	328:23	329:10	111:3
318:10	260:4	politician	333:24	161:2
323:15	269:9	s 109:6	335:12	274:25
Pli 26:7	277:4,7,1	193:8,12,	positioned	292:13
plus 33:14	9 279:3,6	14 194:10	55:18	325:13,14
150:1	280:20	262:13	176:14	post 10:23
255:18	281:22	269:22	positionin	85:18
po 279:4	286:19	270:4	g 277:25	posted
point 8:13	288:1	271:9	positive	137:23
11:9,15	294:4	272:14	82:6	138:1
14:4 15:8	300:6	282:7	310:13	210:23
24:22	304:16	politics	positively	post-
25:20	306:25	255:20	56:13	evaluatio
27:20	311:13	259:15	70:18	n 279:5
28:9	317:4,15,	popular	possession	post-
28:9	19	262:25		interview
37:19	318:5,12	population		
46:15	325:20			
55:22,24	334:18			
64:24	337:13			

340:3	227:6	171:3	344:5	44:12
potential	233:17	179:16	345:24	47:1 57:8
24:4,13	302:23	187:7,21	346:25	90:15
26:10,22	304:11	198:14,15	347:10	91:15
27:1,5	326:1	,23	PowerStrea	92:1,11
36:16	344:17	199:23	m's 28:21	93:2
37:8	Power/	200:11	38:22	106:9
38:6,23	purchase	201:20	304:18	132:13
64:10	101:5	202:17	308:7	133:6
94:24	PowerPoint	204:5	321:18	189:8
104:12	104:6	216:16	practical	299:13,18
133:8	Power's	217:1	84:22	preliminar
175:24	160:24	230:4	86:3	y 131:3
176:2,14	PowerStrea	240:22	328:24	182:19
177:7	m 2:21	242:3	340:10	183:2
183:6	28:23	244:23	346:22	342:7
221:17	29:17	246:8,20	347:4	premier
233:13	30:23	249:5	practice	251:14
238:20,25	32:4,7,9	289:25	42:21	premise
274:6	33:13,20	290:4	practices	199:25
337:4	38:9,16	299:17	7:3,6,8	premium
potentiall	39:3,7	301:23,24	pre 174:24	230:17
y 137:4	43:8	302:17,20	187:1	275:2
254:2	63:16,17,	303:9,11	preamble	282:4
302:10	20	304:2,11	43:14	premiums
336:11	64:11,18	306:14	precise	230:10
power	65:17	307:11	322:21	231:2
32:16	68:6,8	308:20	precision	preparatio
37:7	74:3,13,1	309:9	185:10	n 48:25
43:12	7,20,23	310:24	preclude	154:15
58:21	75:11	311:8	13:23	prepare
59:11	76:12	314:8	predetermi	17:10
94:7	77:12	317:19	ned 85:11	47:25
95:20	83:21	318:18,19	111:4	116:13
99:13	84:5,11	322:7,8	112:13	277:15
104:7	85:7,11	323:20	329:13	prepared
119:21,22	94:1	325:21	337:24	9:23,24
127:22	95:24	326:13,18	338:4,12	40:25
159:11,16	99:2	327:5,6	prefer	41:1 85:5
160:15	100:25	329:9,12	117:2	90:11
163:14	101:3	331:8	preferable	91:4
164:4,18	102:17,19	332:11,23	194:4	121:3
165:1	105:13,19	333:7,23	preference	127:19
166:6,10	107:5,13	334:19	8:3 93:5	203:19
168:2	108:22	335:10,15	preferred	223:11
184:9	121:5	337:4,22	43:8	247:4
206:12	159:10	338:22		278:13
207:4	169:25	340:14,15		329:7
215:3	170:23	341:14,19		
223:18		342:21		

333:22	,17 46:2	305:5	255:14	231:25
336:12	47:13	309:23	pressure	pricing
339:7	54:7	315:16	32:23	152:4
preparing	65:22	presented	34:7	primary
18:7,19	78:16,18,	32:11	pressures	238:23
20:24	21,24	34:18	254:1	principall
22:17	79:19,20,	47:3	presumably	y 21:2,4
39:23	23 82:14	79:12	147:16	246:14
115:25	85:25	80:9	presume	principle
117:19	88:8 91:6	81:19	51:1	18:23
124:3	99:24	99:23	presumed	21:10
163:8	100:3,4,1	107:9	66:18	250:17
203:14	6	121:8	83:21	printed
303:19	104:6,10	123:7,11,	148:7	116:16
prerogativ	114:4	13 124:11	presumptio	printing
e 55:8	122:24	127:21	n 96:5	116:15
61:16	190:11	129:3,11,	pretty	prior 25:9
184:8	202:21	14	198:1	26:7,11,2
276:14	203:3,9,1	140:22,23	230:19	2,23 27:9
pres 203:3	4,18	146:18,21	300:15	28:3
326:13	204:18	156:8	previous	44:10
presen	228:1,3	157:1	100:2	74:8
104:10	236:3	163:9	200:1	86:16
presence	245:13	181:19	previously	87:11,23
29:10	293:16	182:12	3:19	97:4
present	303:12,17	187:1	183:5	98:18
54:21	,20,22,24	281:9	296:23	104:20,23
101:14	304:1,8,9	304:2	price	106:8
127:3	,19 308:7	305:25	23:21	132:18
207:17	317:17	307:25	62:14	133:5
229:11,14	318:4,15	308:20	101:15	134:15
303:17	319:11	310:9	121:14	177:17
333:11	325:21	317:13	131:11	183:3,6
presenta	326:14	presenter	135:7,10	229:22
88:7	333:8	79:6	147:10,19	235:5
212:8	340:8	310:2,3	,22	236:15
presentati	346:20	317:6	155:23	246:17
on 18:16	347:3	presenting	156:4	266:16
39:21,25	presentati	78:22	231:5,23	285:15
40:2	ons	79:24	275:3	303:13
41:10	40:6,12	presently	282:1,3,4	private
42:8,11,1	42:25	103:8	,11	68:23
4	43:11	president	321:8,18,	99:15
43:4,7,16	78:4,9	17:18	23	218:4
,25	82:21	20:10,17	prices	privileged
44:10,17,	83:13	160:6,10	111:16	10:19
18	107:10	260:13	privy	
45:2,4,15	127:4	261:17		
	140:21	press		
	141:6			
	303:8			

199:11	173:20	345:24	promotion	, 22
287:5	235:4	346:10	30:23	246:15
pro 155:1	249:15	processes	prompted	248:17
279:23	proceeds	110:19	150:14	propose
295:8,14	6:15	111:11	prop 203:9	326:11
331:9	process	320:15	properly	340:24
probabilit	5:7 6:16	procuremen	266:1	proposed
y 225:22	7:18 17:6	t	343:8	228:9,15,
probably	37:1	111:9,11,	property	18 293:24
7:2 50:19	60:12	14	209:3	294:6
57:15	63:15,21	produce	212:1,4	314:10
58:15	68:15,17	6:14 7:20	proponent	326:22
60:8	69:5	236:20	43:9	339:8
107:25	72:14	produced	44:12	proposing
110:6	79:18	250:7	47:1	144:17
112:14	94:12	285:3	106:10	295:22
116:9,17	107:23	producing	132:13	297:8
138:23	109:14,19	49:13	133:6	proprietary
143:2	111:3,14,	product	320:18	y 41:4
168:20	21 112:2	138:24	321:5	prospect
180:7	113:2,3	production	proponents	174:18
188:21	114:6,25	327:13	43:13	181:12
222:1	118:19	proffered	331:14,22	protect
225:4	119:24	171:21	,23	41:2
238:10	122:8	profile	332:1,7	68:17
248:2	127:7	309:24	proposal	255:24
249:2	132:6	profiled	21:2	proud
251:13	145:21	78:5	22:23	281:6
344:22	174:19	program	48:21	prove
problem	176:10	27:25	56:1,8	247:20
15:14	201:15,24	28:3 37:9	84:11,12	proves
165:24	204:12	256:16	90:7	255:16
244:15	224:23	programs	122:15	provide
problems	225:24,25	32:17	136:20	12:5,20
182:17	226:13	33:16	149:3,11	16:19
183:14	235:17	37:6,7	154:25	19:11
procedures	247:20	project	155:5	21:14
250:16	269:11	27:11	228:8	27:11
proceed	272:17	28:8,22	237:25	65:20
48:14	274:9	35:24	238:2	85:21
87:18	279:7	36:3,9,22	293:23	99:14,15
109:4	285:1	promise	295:7	103:7
132:9	287:22	37:5	331:4	112:5
proceeding	298:2	promissary	proposals	117:1
326:1	305:18	150:2	20:5,14	127:11
proceeding	315:1,24		47:17	130:25
s 10:7	316:6		105:15	131:8
11:19	319:23		106:12,20	
	320:10,13			
	332:1			

135:5	228:13,14	province	publish	160:23
190:10	239:15	267:25	7:10	169:23
220:4,23	244:3,5	270:15	published	181:13
243:10	259:14	271:1	34:10	purchased
246:21	260:10,23	272:21,22	50:17	159:12
314:25	279:6,7	274:8	109:22	301:24,25
315:7	285:10	province-	208:4	purchaser
318:13	294:5	wide 37:7	258:25	231:4
323:19	295:1,10	provincial	PUC 278:15	purchasers
333:15	331:13,19	255:20	pull 21:2	233:5
340:4	,23	269:22	27:14	purchases
341:19	332:7,22	270:8	40:16	173:8
343:4	336:5	provincial	46:4	231:9
provided	345:3	ly 250:20	57:20	purchasing
6:20	346:13	provision	65:12	169:14
11:18,24	provider	85:9	73:23	183:6
13:2	92:19	329:11	93:15	275:21
36:5,11	167:3	337:21	120:20	295:24
46:19	237:3	338:20,24	144:16	302:1
51:5	277:12	,25	158:1	purpose
56:11,21	providers	339:15	194:15	13:21
59:4 61:9	49:4	provisions	197:11	175:20,22
66:10	provides	149:20	202:19	176:1
67:11,22	84:18	280:3	207:22	268:3
82:19	210:8	337:14	219:16	325:17
83:3	212:10	proximity	226:25	339:25
86:14	318:12	224:20	229:25	342:22
88:14,15	328:20	prudent	293:9	purposes
93:24	providing	13:9	294:20	85:16
94:3,11	12:4,5	276:6	307:2	273:6
98:7	34:25	pub 110:1	308:25	331:8
101:24	44:3 82:9	public	pulled	pursued
103:13,24	90:7	30:15	64:2	86:11,12
109:12	167:6	141:13	137:15	pursuing
122:18	211:25	210:11,19	209:20	251:18
123:25	212:3	,22	purchase	pursuit
125:5	250:15	267:12	24:18	18:13
126:7,10,	268:10	publically	58:20	25:13
13,17	308:1	43:9	86:23	225:20
127:10	314:24	104:19	101:15	pursuits
129:16	315:7,25	183:9	121:14	18:2
142:25	317:16	214:3,18	131:11	pushed
147:5,22	329:15	218:5	135:7,9	271:24
148:11,12	330:18	305:14	136:21	putting
151:22	331:7	publicly	147:10,19	13:7
155:3	332:18	304:10	,22	22:14
156:6	342:13,25		155:23	
166:6	343:18		156:4	
186:24	345:23		159:10	
208:10				
213:25				

89:14	72:14,24	264:21	189:21	
90:19,20	73:4	266:10	191:20	<u>R</u>
108:2	75:17	272:3,11	200:5	raise 11:9
225:16	78:15	273:16	202:2,7	13:13
PwC 114:20	80:8	274:1,2	214:24	330:17
115:2	81:16	278:5	228:4,13	raised
117:4,14	82:17	283:7	234:14,17	186:15
	86:13,20	294:20,22	247:4,10	286:17
<u>Q</u>	87:3,9,11	295:2	278:6	287:22
qualificat	,14 88:20	323:16	289:9,13,	324:11
ion 264:8	89:3,20	342:11	17 290:13	raising
qualificat	91:13,19	343:13	294:23	160:12
ions	94:20	questioned	296:6	286:25
263:5	95:9	76:19	298:2	ran 92:16
qualified	97:2,8	questionin	303:7	140:16
7:5	98:5	g 14:3	320:18	291:1
quality	101:23	16:16,25	327:15,19	319:23
45:3	103:11	17:6,12	339:15	range
185:16	104:13,17	74:8	question's	54:21
quantifica	,20 106:8	293:2	27:20	232:21
tion	108:20	questions	quick	233:4
152:9	111:15	16:12,23	190:12	234:10,11
quarrel	112:17	23:25	236:4	ranked
209:9,14	113:12	24:2	263:17	121:11
233:18	114:13	45:19,21,	294:18	rankings
question	118:7	24 48:2,6	quickly	216:1
7:3 9:1	122:17	56:21	7:12 9:16	rata 155:1
10:2	123:20	58:2,18	68:16	295:8,14
13:14	124:1	59:22	173:2	rate 54:1
14:21	135:3	63:21	219:1,7	57:18,19
15:20	136:9	65:24	236:1	144:3,13
16:17,18,	137:5	71:13	Quinte	146:3,4,7
25 17:5	138:6	72:15	266:15	152:4
24:2,10	142:14	77:16	quite 9:9	208:14,19
26:7,20	151:11,16	78:11	11:23	,21
28:15	152:8	80:2	23:10	209:10
40:3	153:22	94:17	29:14	217:6
41:10	154:5	103:24	140:1	218:6
42:24	157:25	113:14	159:19	249:1
43:1	160:1	118:4	199:23	280:9
46:8,23	185:14	119:6	233:4	299:20
48:9,13	188:10,23	122:21,23	245:7	rate-
54:24	190:13	126:6	255:25	making
58:23	198:19	131:12	273:1	217:3
65:7	200:1,24	135:17	330:4	ratepayers
66:14,21	217:9	137:5	quote 33:4	257:10
67:7 69:8	238:17	139:9,24	quoted	rates 23:6
70:15	241:19	143:15	231:22	
	242:14,22	157:5		
	244:18	188:6		
	260:24			

53:22	162:6	179:17	reasons	117:6,20
144:17,23	reaches	183:4	5:24 7:23	131:23
145:23	292:24	186:21	36:25	140:8
146:11,12	reacted	188:11	37:25	144:6
,17	67:25	189:1,4	127:1	146:24
186:12	69:9	199:5	196:16	148:9,18
189:20	reaction	214:7	199:8	170:5
254:3	29:9	237:4	254:17	172:11
259:23	61:12	253:17	273:3	174:11
337:21	275:16	263:13,21	276:25	177:22
rather	298:25	264:19	rebased	181:24
10:12	318:5	265:16	208:19	183:12
13:19	344:2	268:21,23	rebases	188:20
45:2	reading	278:2	208:12	206:5
50:13	55:12	283:15	rebasing	220:9
83:20	269:3,21	287:13	144:19	222:25
85:2	338:2	288:13	145:14,16	223:5
164:17	347:23	290:10	,20,25	235:24
185:11	reaffirm	304:8,21	recall	236:5
197:25	84:9	305:24	28:1	237:1,7,2
208:24	real 25:4	336:8	35:23	1,24
245:6	111:24	342:24,25	36:10,13,	238:14
250:8	194:12	345:9	20 38:15	240:25
263:16	209:7	reason	39:5	252:6
273:8	264:15	37:2,3	41:17	290:10,14
329:4	318:23	38:1	47:5	292:6,14
334:6	reality	70:23	48:1,12,1	294:4,7,9
rating	13:2	71:16	9 51:23	303:11
61:17	103:2	91:24	54:9	306:8,9,2
249:21	189:9	166:1	55:21	4 323:5
ratio	194:23	195:23	57:7	330:7
231:5,15	realizatio	196:3,5	58:4,9,11	335:5
rational	n 303:1	198:21	,13	336:15
7:7 8:6	realized	208:8	59:14,17,	338:22
rationale	233:14	216:25	18 63:2	342:19
301:4	236:23	217:16	66:12	345:1
334:12	realizing	228:20	76:9,10	recalled
razor	250:23	241:16	87:6,11	41:18
335:4	really 8:3	243:6	91:8	327:12
re 48:19	12:23	244:12	96:18	recapitali
101:4	13:10	245:6	97:6	zation
294:12	54:17	246:4	98:12,17	101:19
reach	55:3	271:7	102:3	119:23
71:14	89:16	275:9	103:17	121:15
291:16	112:1	345:5,12,	104:25	rece 70:6
reached	118:10,19	15,17	105:3	receipt
27:23	,22 166:4	reasonable	114:21,25	184:20
32:2		259:5	115:12	receive
		276:5	116:24	9:10
		305:8,10		

43:15	326:21	174:2	34:6	reflect
45:18	recessing	205:7	40:24	46:16
47:1	14:12	206:11	66:5 98:2	78:17
55:24	73:16	218:9	101:2,8	80:9
71:3	137:9	229:6,21	121:14	81:18
76:14	157:12	243:25	136:8,11	87:1
83:4	234:19	278:12	298:14	236:23
104:15	296:20	287:24	319:5	reflected
135:9	recipients	289:25	referenced	79:1
311:4	86:7	290:8	32:23	108:24
received	recognitio	294:12	50:8	110:23
43:2,20	n 33:7	308:10	79:14	155:24
44:9 58:9	recognize	322:19	references	156:3,20
69:22	13:9	323:1,4	127:19	237:24
76:15	284:2	334:1,24	referencin	311:5,9
79:21	recognized	338:2	g 25:9	332:9
84:13	11:21	recollecti	35:19	reflection
93:24	272:24	ons 63:25	referred	s 235:14
97:25	recollect	recommend	79:15	reflective
103:5	170:3	103:3	89:6	156:7
192:4	recollecti	recommenda	136:18	157:1
229:7	ng 339:11	tion	190:2	326:23
240:13	recollecti	256:12	191:10	reflects
275:11,16	on	recommende	232:9,11,	28:18
316:4	28:5,10	d 102:23	12 241:18	46:18
317:17	34:1	record	referring	58:1
324:4	38:21	114:19	40:21	refresh
329:20	44:3 53:3	170:13	41:5	138:9
receiving	58:14	235:2	46:8,20	139:3
7:5 45:15	79:25	recovery	58:24	refusing
58:12	81:18	33:14	88:24	245:18
59:15,18	82:15	redacted	125:25	regard
97:19	83:14	138:4	129:8	51:19
98:18	88:10	redaction	155:15	61:25
108:22	91:7	99:16	208:4	90:4
115:17	102:6	Re-direct	209:16	172:4
181:21	114:24	3:17	211:13	244:16
184:24	117:5,15	289:15	217:14	regarding
229:22	120:4	reduce	250:13	28:20
310:24	132:24	33:11	284:11	36:15
311:8	133:5	re-	287:4	86:15
336:15	135:8	examinati	288:18	94:12
recent	136:25	on 289:11	289:2	102:24
17:18	139:2	refer 44:6	316:6,7,8	105:25
18:4	145:17	249:8	319:7	119:6
37:12	170:3	reference	321:11	286:17
recently	171:14		refers	regardless
35:10	172:20		153:12	
100:5				
270:15				

118:25	related	255:15	344:1	tives
regards	10:2,5	relect	remind	228:12
12:2	11:19	206:11	252:1,2	304:24
241:20	67:3 71:9	relevance	reminded	322:5,7
291:24	151:25	336:16	285:22	represente
region	264:16	relieve	306:5	d 94:1
55:15	265:22	286:6	removing	representi
310:7	relates	reluctance	103:3	ng 95:23
regional	24:2	90:2	renewables	235:3
112:7	64:22	rely 13:21	219:11	271:10
220:25	65:21	remain	repay	reput
256:8	157:25	90:5	121:16	261:8
269:5	158:7	253:23	repayment	reputation
313:4	190:11	remainder	119:21	110:13
regionally	213:4	191:15	150:2	request
55:17	258:11	remarks	repeat	48:21
regions	259:3,6	5:4 52:17	264:21	58:3,5
79:10	relating	remem	report	98:3
317:10	22:10	291:7	7:10	108:3
regular	46:2 67:6	remember	210:4	117:7
274:9	113:14	15:2	212:9	131:18
regulated	122:17	25:25	218:15	133:7
214:16	146:3	34:3,13,1	252:4,11,	135:4
219:13	198:5	6 36:6	17,21	136:22
regulation	212:25	44:16	253:17	150:14
144:18	310:1	50:20,23	reported	151:7
regulatory	342:25	57:14	143:20,21	152:13
33:3	relation	60:5	reporting	154:14
148:1,17	38:5	61:11	86:8	171:23
149:1	85:18	87:2 88:5	143:18	228:8
150:8	95:10	115:20	repre	293:23
151:13	340:2	116:2	13:11	requested
152:6	relationsh	117:8	represent	58:10
153:18,24	ip 19:21	140:14,18	147:15	123:12
155:8,14	99:12	,20,24	233:17	127:11
156:11	237:21	141:4,5,7	272:14	132:9,17
207:19	264:25	174:12	representa	146:4
208:12	268:12	236:6,8	tion	requesting
215:17	277:8	238:5,6	307:18	341:14
236:22	283:22	239:9,25	334:13	requests
253:20	relationsh	241:15	representa	60:1
254:3,21	ips	244:15	tive	116:25
relate	168:21	288:8	12:12	131:6
78:3	256:24	291:21	257:11	require
303:8	265:2,5,7	292:16,17	representa	130:20
309:22	relatively	298:10		189:6
314:8	91:25	326:5		required
	releases			

7:18 57:4	82:17,18	223:18	176:5	201:1
85:10	87:9	responded	responsibl	retained
91:23	88:20	189:10	e 21:5	117:18,20
115:9	89:11	responding	39:22	343:16
116:6	94:2 97:2	97:3	66:3	retainer
124:8	101:4	182:4	rest 61:22	298:16
130:9	106:5,11	responds	138:11	324:6
144:19	107:17	34:25	262:13	341:19
145:14	108:20	response	restarted	344:10
147:17	114:13	8:23	109:19	retains
189:2	117:21	16:19	restrict	90:3
329:11	122:21	18:7,17,1	11:6	retire
337:21	133:8	9,20	285:23	218:1
requiremen	135:3	20:24	restructur	257:3
ts 186:4	148:7	22:17	ed 178:21	retired
research	165:10	47:25	restructur	109:9
183:2	173:8,16	50:15	ing 19:17	143:2
resistance	175:2	53:21	216:9,10	260:13
178:2	189:20	59:6	252:3	262:7
resistant	191:21	71:1,13	278:10	RETIREs
267:14	195:23	72:4	291:12	348:1
resort	200:22	74:18	result	retrospect
251:14	201:2	92:6	10:6 92:7	110:22
resources	211:25	105:15,21	209:13	return
33:15	212:3	114:8	resulted	90:22
90:20	213:24	117:9,13	179:6	92:24
113:17	219:23	122:19	resulting	208:14,19
114:17	228:14	126:7	114:11	,21 217:6
219:23	286:12	133:13	results	218:6
220:4,7	302:11	152:14	92:4	254:4
221:16	305:23	154:14,16	209:2	revenue
236:21	306:3,13	189:6,10	247:5	33:5
237:18	310:19	193:22	276:16	169:1
248:15	318:5	225:17	279:14,15	209:4
280:4	323:21	244:2,5	resume	reverse
respect	324:5	250:14	73:14	38:8
5:19 6:7	341:10	295:1	resumes	review
9:2 26:20	respectful	responses	263:6	11:24
35:16	12:24	49:16	resuming	39:11
39:15	13:1	56:21	14:13	43:18
46:23	respective	58:9,12,1	137:10	78:2,14
54:11	294:2	4 61:13	157:13	80:5
55:1,19	respond	103:15,25	234:20	100:2
63:20	61:18	130:11	296:21	217:13
65:7	130:13	148:10,15	retain	218:15
66:15,22	182:14	249:21	200:21	227:12
76:7,8,11	186:10	responsibi		235:12,15
78:11	188:7	lities		
	200:5,16	175:8		

247:24	68:11	195:24	305:16	role 18:7
251:2	70:14	201:8,11,	Rick 130:4	19:1
287:21	71:1,13	23	346:15	20:24
309:21	72:3,13,1	204:15,24	rights	22:17
326:21	6 79:18	205:3,11	49:8	26:3 38:4
335:3	85:18	213:6	85:10	166:16
reviewed	86:16	214:23	302:22	177:5
24:7	87:3,4,23	219:15,18	303:5	277:11
39:18	88:3	,20	329:11	roll
40:8	89:13,16	223:5,18,	339:5	338:17
81:17	92:5	20,25	rigorous	rolling
100:4	94:2,12,1	224:14	113:4	208:23
112:17	3 95:24	225:8,15,	rigour	280:14
246:5	96:11,15,	24	49:12	room 29:9
247:3	16	228:8,15	119:2	56:17
306:25	97:3,4,17	235:16	223:19	58:13
323:9	,19	246:18	risk 21:18	115:4
reviewing	98:4,6	249:21	92:6	116:22
31:2	99:6	279:7	196:4	123:25
48:25	101:4	282:20	201:7	333:3
306:6	102:18	289:6	risks	rough
RFP	103:15	298:2,8	118:20	118:1
18:8,17	104:12,18	299:9	Robert	255:19
20:25	105:15	300:17	93:25	round 22:2
22:18	107:16,17	303:14	191:19	rules
23:21	108:2,9	305:18	robust	110:1
24:13	109:1	313:21	118:19	115:18
27:9	111:21	314:6,10	Rockx	320:15
29:16	112:20,21	320:10,13	126:5	rumour
30:14,16,	113:18	,15,16	130:1,3,5	291:18
24	114:7	323:21	,8 131:14	run 43:22
31:7,20	115:17,25	326:2,9	133:3	90:22
34:12,18	117:19,21	332:25	135:4	92:23
36:15,16	118:9	333:2	140:17	109:24
38:1,6	122:25	340:2	147:21	115:18
39:8,23,2	127:8	343:5	150:24	runners
5 41:22	132:6	344:18,19	152:1	275:18
45:19	138:15	345:24	153:22	running
47:11,15,	140:21	RFPs 31:14	154:14	8:14
21,25	141:7	49:1	156:10	140:25
49:11	142:21	221:22	240:23	219:13
50:20	160:14	222:19	242:12	224:5
51:6	164:23,25	223:23	243:20	275:22
52:21	174:7,14,	224:7,24	245:2	315:24
54:11	19 181:21	225:5,13	Rockx's	316:6
54:11	182:4,14	226:1,4,1	153:5	320:16
60:14	184:20,24	0	154:5	346:9,10
61:12	189:10	rhymed		
63:15,17,	192:4,17,	261:14		
20 66:4	22	rich		
67:6	193:20,21			

Ryan 2:19	276:4	86:4	249:9	147:3
3:12	298:4,5,6	90:8,12	250:9	149:21
139:17,20	299:2,13,	329:4,6	scores	150:19,21
,21,22	18,24	335:22	197:2,13	151:2
140:5	300:4	340:11	200:6	153:12
141:1,9,1	334:7	346:23	248:17	154:24
5,20,24	337:7,15	347:4	249:8,22	158:11
142:4,13,	341:11	scenarios	scoring	162:17
19	same-day	22:9	39:23	203:8
143:13,22	14:23	335:19	52:2	208:2
,25	Sandra	schedule	53:15	210:3
144:7,22	2:12	8:9 9:24	66:4	211:20
145:4,7,1	344:16	228:10,15	198:16	212:7
2,19	sat 260:20	,18	199:6	227:17
146:5,10,	satellites	229:18,22	245:9	293:19
20	277:17	293:24	246:16,25	295:3
147:1,8,1	satisfacti	294:6	247:21	309:5,8,1
3	on 279:9	297:9	248:8	9 310:10
148:5,14,	satisfy	scheduled	260:7	311:3,20
22,25	203:8	145:16,18	261:2,3	317:2,3
149:10,14	save	scheduling	263:21	328:14
,17	112:15	5:20,23	281:8	339:17
150:4,13,	saved 33:8	6:4 30:2	286:18	scrolling
19	savings	scheme	scrambled	80:12
151:6,10,	274:15	32:22	15:1	101:9
19,23	saw 51:4	science	screen	104:3
152:12,18	93:9	258:22	195:8	130:8
,22	121:13	scope 16:7	203:2	295:4
153:3,11,	128:14	239:17	scroll	scrutinize
17,21	141:12	scoping	34:20	d 337:2
154:4,8,1	188:12	23:7	40:18,23	scurrying
3,18,23	245:13	score 63:3	46:16	115:20
155:13,21	246:1	184:15	58:7,16	se 305:25
156:2,9,1	248:8	198:3,14	73:24	search
8 157:4	298:8	200:6	74:1	197:25
	302:4,10	246:20	77:23	sec 159:1
	333:2	344:19	80:1,6,17	second
	338:17	scored	,21 81:11	6:23
	scale	52:25	82:2	11:9,15
	254:25	61:13	93:21,22	17:9 37:3
	267:4	62:23	99:3,4,7	151:24
	scan	121:11	101:7	159:6
	279:23	122:25	102:15,20	196:15,19
	scandal	126:3	104:2,8	200:14,18
	277:1	198:4,22	105:11,17	210:6
	scenario	199:2	119:23	227:23
	85:2,4	246:15,18	121:18	241:1
			126:6	261:3
			128:4,5	

267:6	seek 151:1	338:15	221:15	19 253:24
293:22	seeking	select	225:15	September
328:14	70:6	83:20	232:25	6:24
secondary	151:4	258:17	259:18	40:1,20
70:7	290:16	selected	260:1	41:12
239:2	338:23	43:8	263:17,19	42:25
secret	seem 52:9	44:11	265:16	43:12
214:7	62:1	46:25	271:19,24	73:25
secrets	94:18	132:13	272:5,25	78:8
51:11,12	271:22	134:10,15	273:2,4,1	80:10
section	318:25	135:14	0,19	81:20
102:25	seemed	174:4	281:15	83:13
158:7	30:13	sell	298:15	84:4 88:7
213:4	31:18,21	160:14	300:11,20	90:9 91:6
263:20	141:22	209:2,3	308:5	94:5
sector	184:1	274:12	338:6,9,1	96:13
17:23	259:19	341:24	1,13,18	99:25
19:13,18	340:21	342:10	sensible	142:16,20
21:24	seems	selling	8:8	146:22,24
22:1	151:25	160:15	sensitive	192:14
26:15	154:5	169:10	11:17	193:18
68:23	160:18	179:20	12:25	202:23
99:15	163:9,23	269:7	267:9	203:3,19
110:10	164:19	273:7	sent 28:25	204:18
141:4	165:11	347:13,14	40:9	210:1
214:16	170:13	semblance	47:12	227:5,11
218:4,9,1	196:1	10:9	58:1 78:7	228:12
5 219:9	198:25	send 51:1	99:2	297:5,11,
230:20	232:21	sender	102:23	18
252:3,11	234:10	86:7	126:5,16	303:10,12
253:16	263:22	sending	150:22	309:6
256:5,22	seen	102:17	228:21	311:15
258:12	34:23,24	senior	293:15	317:20
272:23	49:15	103:7,14	310:20	327:4
sectors	68:6	260:19	311:14	332:11
19:3	108:15,23	262:8	327:5	333:8
Securities	159:20	265:7	sentence	series
109:25	189:20	sense 7:16	77:24,25	63:14
seeing	190:20,24	8:1 33:3	99:21	107:4
88:11	191:3	55:10	152:17	126:10
107:4	227:8,12	113:16	293:21	161:9,21
138:4	240:18	118:8	309:20	162:5,8
188:2	246:24	121:1,23	337:20	199:12
205:6	263:18	201:23	339:21	209:6
241:16	272:18	205:11	346:18	310:18
249:17	295:18,19	209:15	sep 146:16	seriously
327:12	303:22	220:10,12	separate	109:21
335:6	320:12		113:21	111:10
	325:4		146:8,16,	serve

256:25	80:6	120:3	250:22	sides
served	275:25	187:8	257:2	228:5
267:3	294:23	218:3	shortage	sign
268:1	shake	230:9	181:18	40:14,15
service	111:20	256:25	shorter	41:1
49:4,21	shape	265:8	6:3	signage
92:19	166:9	268:13	161:20	171:25
146:2	273:1	272:25	shortfall	172:7,12,
159:15	shaped	276:7	148:2,6,8	21 289:19
167:3	186:1	302:18	shortly	signal
239:22	240:9	shares	101:22	278:14
245:8	shaping	48:8 59:8	shotgun	signed
267:20	256:5	119:21	85:12	41:19
268:10	share	159:11	329:13	305:21
279:8	58:20	160:15,16	337:24	306:3
services	72:23,24	,24	338:4,9,1	significan
21:14	121:14	163:14	3,14	ce 13:18
59:8,10	147:10,19	168:2,3	339:8,15	significan
92:15	,22 155:2	184:10	showed	t 11:18
102:25	166:13	233:17	31:25	48:2
106:6	284:7	237:5	129:16	116:4
159:14	295:14	259:7	230:8	118:12
166:2,5,1	320:5	295:9	240:21,23	119:4
5 167:3,6	337:15	sharing	243:4,5	124:5
213:25	shared	54:10	288:5	165:23
220:24	42:5	74:10	293:16,20	238:10
237:15	64:19	108:17	showing	239:11
238:21	72:18	110:11	243:6	251:8
239:4,11,	74:16,19	264:6	247:19	300:2
15	75:20	284:22	shown	306:18
277:11,21	76:2	285:24	122:24	315:5
serving	77:11	sharp	234:2	significan
267:22,25	108:4,16	335:4	241:1	tly
sets 52:22	113:5	sheet	246:17	146:17
101:8	200:4	153:7	249:11,14	191:25
104:10	237:5,15,	199:13,20	259:4	233:25
119:19	18 238:20	sheets	292:21	234:2
153:17	285:4	213:4	shows	Simcoe
154:19	shareholde	shift	241:21	178:20
207:10	r 121:17	85:22	242:2	similar
231:3	217:7	340:5	243:24	19:10
295:5	265:3	shocked	246:8	42:19
setting	271:10	29:14	si 234:2	44:22,23
203:23	272:15	112:25	sic 29:21	46:22
213:23	302:21,23	113:10	66:9	63:22
232:1	shareholde	short	250:20	67:7
292:12	rs 27:5	151:20	323:16	111:13
several	92:24,25	230:7		

118:3	12:1 13:3	small	160:13	325:7
128:13	73:3	37:18	163:13	331:2,7
142:24	143:5	178:11	164:17	338:19
146:15,18	167:18	208:7	166:10	someone's
,21 177:6	184:15	215:17,22	sole	301:18
182:2	249:3	216:5,20	132:21	someth
234:1	257:3	250:21	224:18	99:21
236:15	259:15,22	253:21,23	225:7	something's
266:10	274:16	255:16	solid	241:24
276:18	321:16	268:23	221:10	262:22
279:8	323:8,10,	smaller	294:12	sometime
293:17	11,17	174:13	Solutions	6:17
318:4	situations	264:11	55:1,20	203:19
similarly	167:19	266:24	57:6	298:21
17:2 27:3	196:9	280:23	58:21,25	somewhat
31:18	225:7	291:1	59:11	130:10
45:14	six 37:14	smallest	127:22	161:2
96:23	179:10,12	255:11	159:16	177:6
simple	230:18	267:17	167:2,18	218:13
7:17	236:12	smart	somebody	somewhere
273:9	size	245:8	17:9	54:22
simply	118:22	smoothly	70:24	315:12
10:15	264:24	17:6	201:24	330:15
116:6	265:6,22	soft 49:18	216:23	sorry
166:15	267:18	50:6,7	252:2	16:20
187:18	slang 5:7	52:3	322:14	21:21
198:20	slide	194:9	somebody's	39:24
264:6	195:12	solar	41:21	40:13
273:6,8	197:12	27:12,23,	124:15	43:6
281:14	207:9	25	somehow	45:20
sincere	208:7	28:2,8,22	289:5	46:16
11:20	230:8	30:20	someone	77:24
single	231:1	32:2,4	14:20	94:9 95:9
208:25	234:3	33:10	67:10,22	96:1
209:1	244:13	35:16,24	69:13,20	97:14
sir 15:18	245:13,25	36:2,21	87:22	99:3
159:19	246:1,23	37:21	122:13	111:5
212:19	248:14,15	38:5	123:13	117:12
247:15	249:7	39:13	133:14	120:21
sister	250:6	137:19	170:18	126:15
345:4,25	slides	138:8,19	181:10	128:7
sit 6:11	104:9	139:4	200:16	175:6
8:10	245:23	169:6,10,	201:8	177:11
sitting	248:8	14,15	205:14	190:25
5:25 8:2	slide's	170:18	215:7	195:7
341:10	247:2	171:10	301:6,16	196:14
situation	slightly	289:19	304:19	198:18
	234:10	sold 59:8	323:18	200:23

202:12	183:17	sources	119:6	88:6
203:17	206:6	79:22	127:11	238:2
210:3	208:18	214:13	177:23	282:20
211:7	209:7	south 79:9	188:21	spelling
215:14	216:12,18	310:6	229:21	347:3
240:19	217:17	317:9	236:8	spent
241:6	218:4	space	238:15	114:1,2
242:16	239:14,19	22:11	286:17	split
248:9	240:2,7,9	328:15	335:22	119:25
261:16	255:19	spe 51:25	343:19	185:14,25
273:15	256:11,17	speak	specifically 24:18	263:1
280:17	259:7,25	16:5,8	51:25	282:14
284:13	264:7,16,	34:1 65:1	60:5 63:2	spoke 34:2
291:8	19 269:8	112:23	79:15	136:18
293:4	270:17	117:4	91:9	179:25
297:24	275:23	177:19	132:23	304:10
301:20	280:13,15	200:12	146:24	spoken
312:2,3,1	281:15	231:6	148:10	33:4 34:3
0,12	287:19	246:12	182:9	88:2
317:3	288:5	250:8	206:22	109:13
318:9	294:15	287:16	212:2	190:16,17
320:24	316:12	300:15	238:5	240:11
323:14	320:15	speaking	247:24	sponsorshi
332:12	331:22	14:24,25	287:17	ps 268:18
337:8	341:17,24	70:2 73:3	291:23	spread
339:22	343:3	125:24	292:17	217:5
341:3	sorts 22:9	169:24	294:8,9	spreadshee
343:10,12	50:1	205:21	340:20	t 121:3
sort 5:8	335:18	285:15	specificit	128:14
19:25	343:16	speaks	y 47:16	square
22:24,25	sought	194:5	48:20	200:19
29:14,25	132:4,16	special	54:11,15	St
30:5,13,1	285:16	101:21	specifics	187:4,15
5,21,22	souls	205:12	290:24	204:5,10
33:16	158:9	specialize	specified	205:12,15
49:3	sound	d 248:15	144:3	216:15
50:12	120:11	280:4	specify	267:1
51:6,12	sounds	specific	72:15	283:20
52:14,19	76:24	10:3	speculated	staff
70:7	304:22	28:15	205:17	11:22
87:21	305:10	44:3,6	speculatin	67:19
88:16	source	71:1	g 206:18	99:16
96:5	60:8,11,2	72:16	spell 86:2	116:12
110:1	0 61:1	78:10	340:10	164:20
111:19	132:21	88:24	346:22	168:23
112:11,12	224:18	94:17	spelled	233:10
115:16	225:7	96:24		262:14
140:19	341:14	113:13		
146:19,21				
151:16				
179:21				

281:10	106:12,22	188:16	41:11	340:1
stage	120:16	Stayner	42:15	341:10
223:5	131:13	178:19	43:3,16	344:18
stake	198:1	steered	44:10	347:12
85:24	starts	333:2	47:3	strategies
340:7	14:24	steering	66:2,9	268:17,18
stakeholder	89:21	130:19	67:11	strategy
rs 261:7	162:23	step 128:8	68:2	20:19
stalled	state	132:8	70:25	21:6,18
278:8	272:25	Stepping	72:5	22:2
stand	stated	345:21	78:9,16	104:7,16,
14:10	164:23,25	steps	80:10	22 107:11
238:9	statement	223:17	81:19	streamed
296:18	124:7	Stevens	82:9,21	10:7
standard	206:6	130:4	85:17	Street
42:21	250:17	131:14,24	88:2 91:5	1:19
start 17:9	269:20	143:19,21	99:24	strength
43:5	281:2	150:24	107:9	276:21
47:25	288:11	154:14,19	121:8,10	stretch
67:8	statements	155:14	122:23	255:8,10
82:22	10:4,12	stick 8:9	123:8,18	259:24
86:17	12:5	247:14	126:3	strictly
91:17	50:22	stocking	202:22	83:9
109:14	51:9 77:1	134:20	215:3	89:12
157:24	152:14,20	stomach	219:24	strike
162:20,21	153:4	255:21	220:20	62:3
190:14	155:5,16,	stones	221:14	133:14
202:18	25	51:12	238:19,24	string
217:21	156:12,21	stood	247:22,25	159:18,21
245:8	,24	57:15	248:14	stroke
251:5	207:18,19	stop	249:25	264:24
258:3	213:14	111:19	260:9,11	strong
273:25	235:11	149:22	273:21	82:5
278:19	295:12	211:17	277:6	114:17
284:4	states	297:3	280:3,22	115:5
312:20	230:5	story 11:5	303:12	215:23
started	statistic	21:6	304:3	271:20
5:5 8:21	232:15	112:10	305:7	281:3
69:7	statistics	straightfo	306:15	310:12
118:7	50:14	rward	315:17	stronger
269:7	53:20	7:17	317:16	49:12
starting	209:16	198:1	318:2,14	strongly
40:7 47:4	213:23	strategic	319:10	248:19
96:17	status	19:15	320:2	312:5
98:10	181:3	39:21	323:18	struck
102:1	stay 11:25		325:22	49:5
103:15	stayed		326:14	
104:23			329:17	
			330:9,20	
			333:14	
			336:11	

54:15	submission	subsequent	sudden	131:9
133:24	23:22	ly 20:13	209:4	135:6,9
252:22	45:18	178:23	sufficient	144:8,11
structure	48:14	substantia	183:18	149:23
112:5,7	68:7	l 199:8	suggest	150:6
144:13	126:22	substantia	74:22	201:21
152:4	187:12	lly	168:15	284:8
166:9,19	submission	215:20	170:19	summation
208:13	s 6:7,12	subtle	192:6	10:19
239:15,17	9:2,5	32:23	suggested	summer 8:2
,21	10:4,23	34:7	33:11,17,	297:8
271:21	11:7	subtractin	19 62:21	super
274:23	96:12	g 121:22	74:9	268:22
277:15,25	113:15	subtractio	101:13	suppliers
280:9	174:7	n 121:24	168:16	111:17,18
326:11,22	297:6,12	succeed	170:23	supplying
structured	submit 9:4	50:5	172:6	240:5
154:21	56:18	success	261:6	support
256:16	70:13	195:23	288:2	11:22
276:13	74:20	216:24	suggesting	23:3,4
277:5	75:22	222:6	13:21	49:22
structures	90:7,11	225:23	30:5 34:6	99:12,16
275:10	143:11	successful	74:22	103:2,5,1
struggled	submitted	18:3	139:14	0,14
32:21	51:14	43:13	198:21	268:17
90:18	54:7	112:8	265:19	280:7
struggling	59:16	133:22	266:11,19	supported
293:6	74:15	174:20	288:1	22:23
STT 188:5	87:7	175:5	suggestion	supporting
189:18	105:16	196:17	9:9,10	86:3
304:17,19	120:16	199:11	39:6	340:11
307:12	129:15	222:5,7,1	189:6	346:23
STT's	135:13	1	294:13	347:4
86:15	143:11	223:8,11	323:12	supportive
stuff 51:2	223:11	225:6,9,1	suggestion	103:9
294:17	275:12	3 253:6	s 7:6,7	supports
style 49:1	submitting	268:5	201:19	199:14
278:15	10:3	287:13	suggests	220:13
subject	57:2,9	successful	34:9	268:3
137:4,24	70:13	ly 198:23	suite	suppose
144:17,24	106:22	succession	266:5	318:20
145:1	145:21	216:25	sum 125:2	335:16
191:24	subsequent	successor	summaries	336:3
257:1	12:18	285:5	284:14	337:18
325:15	57:4	Sudbury	summary	supposed
subjects	70:13	179:11	119:10,17	30:3 51:1
49:24	74:18		120:5	
	94:2			
	140:3			

187:16	312:6	synergy	138:18	91:5
sure	surprised	100:16	176:11	99:24
11:3,4	50:19	264:16	191:18	107:10
12:16	51:3	266:21	256:21	121:9,10
36:4,17,1	142:7	273:2	268:7	122:23
9 52:8,11	183:25	280:24	272:22	123:8,18
61:1,22	187:24	system	281:18	126:3
62:8	320:21	220:22	292:3	180:14,15
86:19,23	331:24	systems	talking	,16 199:2
89:3	surprising	267:25	43:6	202:22
90:21	133:14		54:12	228:1
92:22	313:5		69:21,24	250:1
97:11	314:1	<hr/>	138:18,19	260:9,11,
100:13	319:4	table 3:1	151:8	17,18,22
108:3	339:13	219:24	164:14	280:22
116:13	surroundin	220:5	186:12	294:5
142:13	g 259:8	221:17	198:3	303:12
152:22	survey	222:22	236:7	304:3
153:13	267:5	tables	252:2	305:7
154:7	suspect	212:24	269:22,24	306:15
155:17	14:1	tactic	307:15	315:17
159:25	312:5	251:14	321:10	317:16
176:13,25	suss	tags 15:8	322:11	318:2,14
194:1,10	175:23	taint	331:6	319:10
197:12	176:1	68:14	target	320:4
205:20	sustainabi	taking	9:11	323:18
232:16	lity	31:19	targeted	325:22
249:20	268:17	66:19	16:23	326:14
256:1	swear	147:23	targets	329:17
268:16,19	15:22	209:12	32:17	330:9,20
275:8	switch	235:7	task 12:20	331:10
280:10	165:1	296:2	13:11	333:14
298:12	Sworn	talk 9:8	21:1	336:11
300:15	3:8,9,10,	20:1	39:21	341:10
307:8,9	19 15:25	24:18	41:11	344:18
326:1	16:1,2	25:23	42:15	346:16
327:16	296:23	29:4,8	43:3,16	347:12
328:1	synergies	141:10	44:10	tasked
336:16	91:22	177:16	47:3	180:24
337:17	99:19,22	178:10	66:2,9,18	tasks
344:25	196:5	181:1	67:12	177:7
surmising	233:10,14	186:6	68:2	tax
292:18	268:9	214:22	69:14	115:18,22
344:2	274:24	261:2	70:25	116:4
surpluses	synergisti	271:13	72:5	team
271:5	c 280:15	292:13	78:9,17	12:10,11,
surprise		talked	80:10	20 13:11
184:4		34:4	81:20	18:10,15,
273:12			82:9,21	16,19
				20:20

22:4,8,20	305:7	5:7,12	328:24	169:3
,21	306:15	20:16	334:20	171:1
23:13,15,	315:17	53:19	338:24	172:5,14,
18,20	317:17	129:6	340:16	25
39:21,22	318:2,14	186:6	341:21	174:16,22
41:11	320:4	316:14	terribly	177:4,25
42:15	323:18	terms 9:23	313:11	180:12,25
43:3,16	325:22	10:19	336:6	181:5,25
44:10	326:14	11:2	territorie	183:10,20
47:3,20	329:17	18:18	s	184:13
54:16	330:10,20	19:18	267:20,22	185:2,21
55:11	331:10	47:15	testified	189:15,23
66:2,3	333:14	54:14	139:25	191:4,8,1
67:5,12	336:12	55:6 62:7	141:25	6 193:16
68:2	341:10	64:20	196:2	194:13
69:14	344:18	72:2	testimony	195:10,13
70:25	347:13	84:14,22	82:12	196:13
71:12	teams 13:6	92:3 98:9	86:19	197:10
72:5	Team's	111:10	138:18	199:21
78:9,17	260:9	117:23	235:8	202:3,4,9
80:10	319:10	118:4	236:12	205:19
81:20	technology	176:9	242:13	207:8
82:9,21	36:7	193:14	243:9	209:23
89:14	37:4,5	199:6	253:20	210:2
91:5	39:3	208:15	285:4	214:6,21
99:24	138:20,24	214:8	text 57:3	221:19
107:10	169:18	219:11	thank 6:5	224:3
117:23	219:1,6	225:16,22	9:13	225:10
118:13	271:15	231:15	14:7,16	226:5,21,
121:9,11	ten 8:19	233:7	15:5,17	24 229:24
122:24	53:1	238:23	18:21	232:23
123:8,18	73:14	240:6,7	19:4 21:8	234:13,24
124:24	137:7	253:7,15	26:6	239:6
126:3	222:2,3,1	254:1	37:24	247:12,15
131:19	0 234:16	256:25	61:4 72:6	251:21
180:23	255:11	258:8	73:2	252:14
183:1	262:20	259:18,19	77:17	253:3
188:6	264:13	,22	125:10	257:6,14,
189:18	265:10	263:17,25	128:5	16,18,23
199:2	275:21	264:7,25	135:16	258:24
202:22	tend 73:13	265:6	139:10,17	262:5
228:2	259:5	268:13	143:13	268:25
229:3	269:1,4	269:12,15	145:19	285:7
238:7	272:9	279:8	157:4,15,	289:10
250:1	tender	282:21	22 159:7	296:8,9
260:11,17	305:18	284:21	161:8	297:15
,18,25	320:14	287:17	165:14	312:11,21
280:22	term	290:9	167:22	,24
294:5		295:17	168:9	thanks
303:12		306:21		11:20
304:3		314:9		

148:25	89:21	300:5	267:18	211:21
that'll	101:1,8,1	they're	threat	Tire
224:10	0 104:4	108:24	218:9	260:14
Theatre	105:17	111:20	throughout	title
29:12	108:15	221:11,14	179:13	195:8
themselves	110:11	249:17	200:3	262:12
15:13,16	116:15,16	265:15	256:22	titled
30:1	117:9	271:21,23	270:25	196:24
107:12	118:25	281:5	345:24	titles
218:21	122:4,9	they've	thrust	261:15
248:24	125:7	29:17	188:6	TOC0048781
theory	147:9,14	269:9	Thursday	4:13
337:17	152:8	271:11,12	105:24	TOC0059012
there'd	162:6	272:17,18	ti 227:12	4:6
92:6 98:8	179:16	,19,21	tied 57:17	TOC0059332
119:24	195:8	thi 278:13	tightened	4:21
168:24	196:25	315:1	69:5	TOC0516275
therefore	200:10	third	till 31:17	4:3
68:15	204:10	13:10	Tim 3:15	TOC4878
116:5	208:6	127:19,20	234:24	135:20
196:5,9	214:12,13	150:6	235:1,2,3	TOC48781
248:22	215:11	249:8	,21,23	137:15
253:22	219:1,8,1	275:7	236:11	TOC516275
254:25	1 225:1	third-	237:14	40:17
278:18	226:16	party	238:3,12	TOC59012
288:6	231:23	114:15	239:6	73:24
300:22	233:3,4,6	thirty	240:16	307:3
thereof	,10 234:1	114:5	241:3,6,1	309:1
324:3	238:14	270:1	4,15	TOC59013
there's	241:17	Thomas	242:19,24	74:4
6:25	245:23	204:5,11	243:2,19	309:10
11:12	253:25	205:13,15	244:10,11	TOC59332
15:8,14	255:7	Thornbury	,19	202:19
33:4	264:15	140:23	245:1,21,	TOC66378
36:11	274:7	thoughts	22	104:2
39:1,19	275:9	167:23	247:8,12,	TOC66379
40:24	281:3	228:6	15,18,19	104:5
44:25	283:9,10	232:24	248:7,10,	today
49:3	287:10	236:24	12,13	64:12
51:7,10	309:25	284:23	250:4,5	102:24
59:18	310:1,10,	thousand	251:20,21	135:19
60:19	18 318:4	7:15	252:5,12	190:2
68:25	320:8	114:5,22	254:11,12	241:1
74:21	328:15,16	116:17	257:4	243:10
75:19	,18 332:5	255:11	Timothy	257:6,8
76:2 77:9	338:16	264:14	2:14	
80:3,5,6	thesis	265:10	tiny 180:1	
87:15	258:23			
	they'd			
	35:13			

259:5	281:11	26:18,22	ion 94:10	try 8:8,15
277:20	town	27:2	transcript	10:13
284:24	1:2,17	29:18	s 94:9	15:2
285:4	2:18	30:6 37:1	transparen	16:5,8
301:18	7:2,7	46:10	t 30:22	62:6
304:24	29:12	51:7	transpired	89:17
347:18	59:8	53:15	10:9,20	127:4
today's	61:16	59:7	270:14	176:13
8:21	79:18	62:6,8	287:12	197:8
tol 46:25	88:14,17	67:4	treat	261:10
tomorrow	89:7	68:23	13:14	265:14
106:1	116:25	91:23	treated	271:8
347:25	119:22,25	92:3 94:2	316:16	275:5
top 26:14	121:19	95:24	treatment	320:22
147:14	127:23	109:11	283:11	trying
195:18	128:15	115:23	tremendous	7:15 10:8
245:9	129:3,12	140:20	9:21	11:25
312:20	130:20	141:8	trends	57:14
topic 27:8	132:5	176:16	79:8	60:15
177:2	133:7	233:14	310:5	71:6,21
Toronto	139:23	234:9	317:8	76:8
179:10	151:14	239:12	Trenton	77:13
258:15	184:8	248:1,20	266:16	124:22,23
267:9,10	193:13	274:19	tribunal	138:2
total	194:21	282:4	5:25	169:18
52:23	195:6	283:8,10,	trickle	186:3
121:18	241:21	21 292:1	278:8	241:23
128:14	260:18	339:16	tried	244:22
178:24	266:6,14	transactio	61:22	259:17
194:20	272:15	ns 27:5	272:13	262:21
195:5,20	273:20	42:23	trigger	263:15
197:13	275:19	70:3	257:4	265:17
198:3	281:4	140:1,7,1	287:13	269:14
214:1	316:9	7 179:17	trouble	273:7
241:20	331:5	189:3	115:18	290:17
246:7	332:22	216:17,25	217:25	319:25
298:6	337:11	217:23	true 73:6	320:9,10
totally	341:22,23	224:11,18	326:13	323:19
9:11	342:10	231:3	truly	326:5
totals	Town's	233:4	308:22	342:17
250:7	250:15	234:6	trusted	tubbing
touched	traded	238:20	336:23	5:9
78:6	218:5	253:9	truth	tur 108:14
towards	trans	288:11	111:25	turn 16:19
37:15	283:9	transcript		23:25
237:1	transactio	3:23		40:4
254:8	n	14:23,25		125:17
	24:19,21	15:2		144:8
	25:6,11	93:23		147:2
		transcript		

148:15	217:7	und 129:9	212:19	126:25
149:1,4	218:7	undermined	215:15	128:17
150:15	221:16	32:20	226:11,17	137:18
165:23	259:16	underminin	230:10,12	141:12
turned	275:10	g 42:1	252:9	147:20
51:13	typical	underneath	273:16	171:14
90:10	212:20	101:11	276:7,8	201:3
338:22	223:25	underpinni	279:22	228:16
Turney	typically	ng 57:17	281:8	304:2,16
163:17,22	60:20	understand	288:14	306:2
turning	291:2	11:3,5	289:20	321:25
18:22	<hr/>	21:13	293:6,17	325:22
21:9	ultimately	28:19	294:2	338:3
35:15	7:20	31:4 35:2	295:13	342:12
54:8	112:24	41:10	297:4	343:22
108:17	113:10	53:11	303:9	understand
222:17	248:24	58:23	304:17	s 331:4
twelve	ultimatum	65:25	306:12	understood
179:11	256:18	71:7,22	307:8,9	38:2 40:5
twenty	unable	75:14	314:7	41:22
339:10	37:19	78:8 79:1	319:1,15	78:18
twice	unanimous	80:4	320:1	100:10
175:18	302:21	81:24	323:12	123:4
type 29:10	unassumed	89:17	331:3	205:20
60:16	121:22,25	95:9 96:1	338:19	206:10
85:1	123:22	99:1	342:6	220:2
106:6	241:22	106:4,19	344:12	254:23
109:19	242:9	116:6	understand	266:1
143:7	unavailabl	118:19	ing 10:10	272:21
187:19	e 5:25	120:1	17:17	280:10
226:13	unaware	123:19	18:23	290:15
255:12	285:21	124:19,25	24:3,6	293:3
257:3,4	uncertaint	125:14	35:22	299:5,17
267:7	y 55:20	129:9	38:8	305:5
277:15	56:7 71:9	132:12	39:11	306:17
288:15,25	251:5	141:25	40:1	307:10
329:4	252:8	143:18	42:7,14,1	316:20
341:15	unclear	144:2	8 52:24	321:17
types	59:16	153:4,22	57:8	334:2
32:25	275:12,13	154:1	59:9,12	undertakin
49:22	uncommon	155:22	60:12,21	g 118:12
50:11,16	281:10	171:9	78:15	119:4
51:19	uncovered	180:10	91:14	underway
66:18	124:10	185:19,25	93:2	250:16
111:9		188:5	94:22,23	252:13
112:9		207:1	98:3	unduly 7:4
187:23		208:3	101:3	unfair
201:9		209:10,18	104:9	8:13
		211:25	121:2,6	161:2
			122:22	
			123:6,10	

163:12	276:23	318:2	0 20:21	23:12,15,
260:24	unorthodox	usual	21:24,25	19 54:16
unfold	14:17	196:8	22:11	55:5,11,1
77:2,5	unreasonab	usually	25:15,19	3 56:13
183:18	le 9:11	31:14	26:2	57:17
unfolded	unrelated	72:13	30:21	67:5
77:8	276:25	209:25	51:5 54:1	89:14
unfortunat	277:2	235:6	59:7,9	114:16
e 242:11	unsee	utilities	112:7	118:13
257:13	143:6	2:7 18:4	115:7	131:19
unfortunat	unseemly	20:5,9,11	159:15	134:12
ely	30:13	32:8 33:6	175:15	168:7
119:16	31:5 69:1	37:10	176:15	194:6
246:16	unsettled	54:4	178:5,15,	229:3
250:5	269:20	55:17	19,20	233:1,7
unheard	unsuccess	63:8 93:5	206:8,9	237:12
14:17	287:9	112:9	208:12,17	238:7
uniformly	unsuccessf	115:19	,20 209:7	valuations
266:21	ul 198:22	159:13	216:3	231:19
union	199:9	175:12	217:24	232:4,13
99:20,23	225:15	176:8,12	219:13	valuator
100:7,8,1	287:9	178:25	220:25	115:4
2	unusual	179:19,20	226:3	value
unique	49:6	207:16,18	231:4	41:20
216:8	247:25	208:11	233:1	84:23
274:10	248:16	214:3	254:25	85:12
unit	320:17	215:22	255:6,16	150:10
184:16	update	216:6,18,	264:1	167:15
units	65:21	19,20	266:16	168:23
169:10,14	66:10	217:1	267:24	231:5,15
,23	190:10,16	218:18,22	271:17	233:13
171:23	upon 5:1	220:24	274:7	238:19
173:7,11	12:19	224:13	276:19,20	259:7
universe	14:12,13	239:1	,22	273:8
7:14	31:2	244:21	277:2,16,	328:25
University	36:23	253:21,23	23 282:6	329:13
258:14	73:16,17	254:7,23,	283:19	337:25
unless	97:19	24	291:1,16	338:4,13
10:20	137:9,10	255:3,4,8	utility's	valued
11:12	157:12,13	,11,16	208:13	101:25
12:12	234:19,20	256:8,10	255:1	166:15
125:3	296:20,21	264:13	utilus	168:6
222:16	336:25	267:17	240:4	variabilit
260:3	348:3	274:8	<hr/> V <hr/>	y 265:6
unlike	urge 5:11	275:25	valuable	varied
	useful	278:11	318:19	261:1
		291:2,6	valuation	variety
		utility	22:4,13,2	158:9
		17:23	1	
		19:2,13,2		

various	30:20	121:5	99:13	25:18
8:4 77:1	32:2	136:19	269:16	visit
144:12	35:17	137:24	273:6	140:11
147:16	37:21	138:6	veto	vol 179:21
163:10	137:20	165:22	302:23	volition
186:25	138:19	167:11,25	vetted	188:19
195:19,21	139:5	169:19	21:3	volume
199:2	venue	175:5	vice	217:23
203:24	333:16	176:6,13	20:10,16	voluntar
204:2	Ver 113:20	179:15	160:6	179:21
224:11	VER0000204	187:6	vice-	voluntarily 256:9
231:3	4:18	198:12,15	president	270:22
240:3	VER0000207	204:5	19:7	voluntary
249:21	4:19	217:1	view 11:5	179:6,22
259:3	VER204	224:4,6,1	13:25	256:2,7
261:7	158:1	0,12	23:4 31:1	vote 263:1
271:13	VER207	225:2	55:7	
vary	161:15	233:5	59:25	
118:22	verbiage	240:22	63:4	
208:14	56:9	244:25	142:8	
Vaughan	Veridian	246:9	201:7	
302:18	13:4	253:3,6	215:15,19	
vendor	17:18,25	267:16	253:3	wa 78:21
41:25	18:10	285:1,2,5	259:6	83:19
49:9	25:13,14,	289:18,22	324:5	wait 21:22
50:20	16 32:8,9	310:11,12	334:19	30:3
68:16	33:21	,19	viewed	31:17
72:21,22	35:21,22,	312:11,16	70:17	323:16
185:5	23	,17	259:3	waited
186:25	36:2,21	313:13	265:21	135:14
200:5,13	37:25	315:16	viewing	walk 42:4
276:15	38:12	316:7	52:18	63:14,18
vendors	40:2	318:5	94:24	119:8
49:5	43:19	319:4	95:5	188:12,25
185:15	44:23	Veridian's	views	243:20
vent 27:25	45:6,9	18:7	34:25	269:2
28:3,8,22	63:7	37:17	48:19	321:16
32:5	67:10	38:23	54:9,10	walking
33:10	71:23	99:24	61:9,11	73:21
35:24	80:3,9	193:11	62:14	109:15
36:3,22	81:19	verify	318:3	wall 29:12
38:5	82:3,5,10	246:3,11	319:10,16	warmly
39:13	83:22	version	320:6	103:5
138:8	98:3	6:17,19	visibility	Wasaga
169:6,10	99:19,22	128:13	282:13,21	269:5,6
170:18	100:12	209:18	283:2	274:13
171:10	113:8,21	310:21,25	vision	278:2
vents	117:20	324:3		wasn't
27:12,23		versus		
		86:21		

32:9	Watson 2:7	40:3	331:14,15	314:23
34:14	8:24,25	43:11	West	315:9,10
50:2	9:13	69:7	266:15	whether
53:3,17,2	202:9,10	73:14	we've	13:19
5 54:22	252:20	76:4	10:16	31:23
55:3	296:10,12	83:11	16:6	35:23
87:14	297:7,13	133:22	63:8,9	43:1 48:7
115:4	ways	137:6	87:6	55:20
128:24	185:10	148:5,15	93:24	57:6
133:6	website	151:23	108:14,23	58:24
164:25	6:22	157:7	112:18	61:1
165:22	210:23	162:7	121:21	62:11,14,
167:25	305:15	164:13	125:22	15 63:21
174:14	websites	234:15	135:18	69:22,23
180:14	305:16	240:16	146:10	72:23
187:23	we'd 49:15	261:2	149:24	76:2,11
192:9	70:8 74:3	294:17	167:1	79:16
199:11	weeds	296:15	191:17,18	80:8
206:5,6	288:14	297:3,13	204:9	87:18
207:3	week 5:24	339:14	214:25	88:5
218:8	6:23	well-	218:13	90:11
222:7,11	74:15	regarded	234:16	91:19
225:8	85:16	260:16	235:18	94:21
238:10	138:5	Wendy	240:18	98:7
242:7	192:2,17	348:11	246:3	108:5
243:11	339:25	we're 5:10	261:11	110:8
244:15	weighed	7:24 8:2	294:25	112:20
249:4	283:16	13:9	295:18,19	123:21
263:1	weighing	14:16	342:6	135:5
276:13,15	89:8	15:22	347:18	136:20
277:14	weight	29:15	whatever	151:11
283:11,12	184:2,3	54:24,25	208:10	168:1,22
298:7	weighted	93:10	315:10	172:11,20
300:13	52:22	109:15	316:16	175:10
304:21	219:20	134:10	whatsoever	178:15
305:22	weighting	149:19	312:6	180:17
308:1,16,	54:12	152:23	whenever	188:16
17 330:11	214:23	194:12	88:7,8	190:16
333:11	219:15	195:11	whereas	196:25
334:5	welcome	198:9	208:20	225:23
339:13	157:8	202:20	whereby	253:11
342:9,24	261:9	206:7,8	86:4	269:3,25
344:3	we'll 5:6	219:8	119:24	274:1
345:8	6:16	252:2	270:5	278:1
watching	14:10	255:16	323:17	283:18
10:8	15:13,15	257:1	340:11	289:17
water		268:8	346:23	294:1,23
278:16		288:12	wherever	307:13
Waterloo		292:12		316:11
258:15		300:23		320:5
				326:9

331:13	131:3	60:12	231:21	Yep 327:21
338:23	281:22	91:24	wrap	yesterday
344:8	335:6	113:22	272:12,13	76:9 84:9
345:22	337:11	115:2,9	write 7:10	301:12
347:11	341:23	182:19	41:23	yet 86:6
whichever	342:10	185:7	writes	147:21
17:11	Wingrove	245:4,6	64:10	271:22
whispers	261:19,21	257:7	65:19	314:15
250:20	wish	284:5	102:21	326:15
Whitby	261:10	299:15	333:21	339:4
17:19	wit 8:13	302:7,8,2	writing	you'll
18:4	withdrawin	4	6:8,12	136:7
268:6	g 108:2	338:14,20	156:21	144:14
white	witness	worked	281:14	147:8,18,
337:1	8:14 77:1	15:21	written	25 149:23
whoever	192:19	16:14	9:2,5	152:1
124:22	285:9	19:15,19	11:6	153:8
314:24	348:1	30:20	31:14	195:18
315:7	witnessed	32:17	34:14	204:13
336:10	271:11	111:12	138:25	241:15
whole	witnesses	316:16	151:22	255:6
114:6	3:7 5:5,9	workers	152:1	269:10
140:24	6:6,24	99:13	297:6	275:7
166:3,18	8:12,17,2	working	wrong	yourself
283:16	0 12:3	6:3 68:22	53:19	94:12
whom 76:3	13:1	69:3	134:13	134:22
whomever	14:5,18	99:12,17	145:17	204:3
10:6	15:9	109:4,8	201:22	229:7
whoops	17:10	140:19	239:20	255:6
279:5	74:9	148:2,6,8	240:5,20	309:18
who's 8:24	75:17	,19	wrongly	yourselves
15:9	202:2	182:19	306:20	9:8 15:21
33:23	218:14	344:6	wrote	you've
112:4	235:5	works	34:24	7:13
wide 23:10	247:11	32:15	258:22	11:21
83:20	296:18	247:10		13:2,25
205:10	woke 270:6	280:25	<hr/> Y <hr/>	14:4
widely	wondered	338:9	Ye 81:21	43:23
180:22	252:5	world 5:8	yearbook	73:4 80:4
widespread	wondering	23:4	207:15	92:9
251:18	9:1 258:6	263:24	208:4	134:19
254:16	Woodworth	269:21	209:17,19	145:14
William	348:11	worlds	210:8,15	171:3
2:18	work 7:18	267:16	212:20	175:21
willing	12:8 19:2	worry	yellow	189:17
	30:1	93:20	147:9,17,	202:20
		worth	25	215:1
		166:14		225:15

246:24 254:13,19 258:4 260:10 261:13 269:19 271:9,12 274:1,2 282:5 294:23 313:24 <hr/> <div>Z</div> <hr/> zero 119:1 230:18 zeros 119:1 zoom 120:25 128:5				
---	--	--	--	--