



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 3rd, 2019

1 APPEARANCES

2

3 Kate McGrann) Inquiry Counsel

4 John Mather) Associate Inquiry

5) Counsel

6

7 Michael Watson (np)) Alectra Utilities

8 Belina 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 (np)) For Town of Collingwood

19 Ryan Breedon)

20 Andrea Wheeler)

21

22 Patrick Gajos (np)) For Collus PowerStream

23) Corporation

24

25 Norm Emblem) For KPMG

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

2

3 THE HONOURABLE FRANK MARROCCO: Mr.
4 Chadwick...?

5 MR. IAN CHADWICK: Thank you.

6 THE HONOURABLE FRANK MARROCCO: I
7 think we were going to hear -- continue with Mr.
8 Chadwick.

9 MR. IAN CHADWICK: Correct, Your
10 Honour.

11 MR. RYAN BREEDON: So, Your Honour,
12 while the witness is coming up, I think we broke that
13 Mr. McDowell had not yet finished his cross-
14 examination. He's ill today, so I'm here in his
15 place, but we have no further questions for this
16 witness.

17 THE HONOURABLE FRANK MARROCCO: Thank
18 you.

19

20 IAN CHADWICK, Previously Affirmed

21

22 MR. FREDERICK CHENOWETH: I believe I
23 would be the next examiner, Your Honour.

24 THE HONOURABLE FRANK MARROCCO: Go
25 ahead, Mr. Chenoweth.

1 MR. FREDERICK CHENOWETH: Yes. Thank
2 you very much.

3

4 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

5 MR. FREDERICK CHENOWETH: Mr.
6 Chadwick, good morning.

7 MR. IAN CHADWICK: Good morning.

8 MR. FREDERICK CHENOWETH: Very good.
9 This was -- in 2010, it was your first term of -- of
10 Council?

11 MR. IAN CHADWICK: No, sir. My first
12 term began in 2003.

13 MR. FREDERICK CHENOWETH: Very good.
14 So that you would have had occasion to come to know Ed
15 Houghton as a -- as a Councillor and as a staff person
16 in the Town, I take it, as a result of your becoming a
17 Councillor in 2003?

18 MR. IAN CHADWICK: Well, sir, I
19 actually got to know Mr. Houghton through my role in
20 the media, because I interviewed him a few times as
21 the head of the Utility or as the head of Public
22 Works. And as a reporter, and later, the editor of
23 the paper. you got to know all of the department
24 heads.

25 MR. FREDERICK CHENOWETH: I'm sure.

1 And -- and that would have -- that media process of
2 yours, I think you indicated in your previous evidence
3 that you'd been twelve (12) years with the media and
4 eight (8) years with the Enterprise Bulletin?

5 MR. IAN CHADWICK: Yes, sir.

6 MR. FREDERICK CHENOWETH: And when
7 would the Enterprise Bulletin activity have started?

8 MR. IAN CHADWICK: 1991, I believe, or
9 late 1990.

10 MR. FREDERICK CHENOWETH: All right.
11 So that you had had interaction with Ed Houghton since
12 -- as a journalist since 1991?

13 MR. IAN CHADWICK: Roughly from about
14 that time. I can't remember the exact date I first
15 met him.

16 MR. FREDERICK CHENOWETH: Very good.
17 And as a Councillor, from the first time you entered
18 Council, which I think you indicated was 2003?

19 MR. IAN CHADWICK: Yes, sir.

20 MR. FREDERICK CHENOWETH: Very good.
21 And did you become aware, either as a journalist or as
22 a Councillor, that Mr. Houghton had been granted the
23 Order of Collingwood?

24 MR. IAN CHADWICK: I -- I believe so,
25 sir. I couldn't remember what -- I can't remember

1 offhand what date that was, but I recall -- he's
2 received numerous Provincial awards, as well as local
3 ones.

4 MR. FREDERICK CHENOWETH: All right.
5 And a number of those awards were for contributions to
6 the community of Collingwood, as I understand it?

7 MR. IAN CHADWICK: Yes, sir. That's
8 what the Order of Collingwood is for.

9 MR. FREDERICK CHENOWETH: Indeed. And
10 otherwise, some of them would have been in the
11 electrical distribution industry?

12 MR. IAN CHADWICK: Yes, sir. I
13 understand he's won several awards in that area as
14 well.

15 MR. FREDERICK CHENOWETH: Thank you.
16 By the time you got to the Council that you were on
17 commencing in late 2010, can you tell me what your
18 understanding was of the reputation of Mr. Houghton at
19 the commencement of that Council?

20 MR. IAN CHADWICK: Well, Mr. Houghton
21 was very well respected throughout both the electrical
22 sector -- the electrical industry sector, and the --
23 the water utility sector as well, and I believe he's
24 also won awards in the water sector as well.

25 MR. FREDERICK CHENOWETH: Good. Thank

1 you. Now, we had some questions yesterday with
2 respect to Mr. Houghton becoming the CAO in April of -
3 - of 2012.

4 MR. IAN CHADWICK: M-hm.

5 MR. FREDERICK CHENOWETH: And you
6 would have been a Councillor at that time?

7 MR. IAN CHADWICK: Yes, I was.

8 MR. FREDERICK CHENOWETH: And I had a
9 sense from the evidence I heard yesterday that with
10 Mr. -- or with Ms. Wingrove having been terminated
11 promptly from her position, that obtaining a CAO was -
12 - was an urgent and time-sensitive problem for the
13 Council of -- of Collingwood?

14 MR. IAN CHADWICK: Yes, sir, it would
15 have been.

16 MR. FREDERICK CHENOWETH: All right.
17 And as I understand it, Mr. Houghton eventually agreed
18 to step in as CAO?

19 MR. IAN CHADWICK: Yes, sir.
20 Normally, the process of hiring the CAO -- and I've
21 gone through this a couple of times as a Councillor --
22 not only -- the process takes three (3) to six (6)
23 months to find somebody, and to get them to go through
24 the interviews, and to get them to -- to move to
25 Collingwood. So in the interim, often times, somebody

1 is brought in to fill in during that process.

2 MR. FREDERICK CHENOWETH: All right.

3 And I take it Mr. Houghton filled in?

4 MR. IAN CHADWICK: Yes, sir. He did.

5 MR. FREDERICK CHENOWETH: And were you
6 aware that Mr. Houghton initially said that he would
7 not take on the job, and was, in fact, reticent to
8 take on the job?

9 MR. IAN CHADWICK: I did not know he
10 was unwilling to take on the job until I read some of
11 the -- the documents and heard some of the testimony,
12 but I know that during the time, when it was proposed,
13 I actually met with Mr. Houghton and discussed with
14 him the position, and I knew that he had some
15 reservations about it at the time, and Council's
16 relationship, and I discussed my reservations with
17 them as well.

18 MR. FREDERICK CHENOWETH: Very well.
19 And when he took on the role, he took it on for a
20 period of three (3) months?

21 MR. IAN CHADWICK: Yes, sir. It was
22 originally for a shorter -- a short-term duration.

23 MR. FREDERICK CHENOWETH: Yes. And
24 would you have become aware that he wasn't paid for
25 this role?

1 MR. IAN CHADWICK: Yes, sir, I was.

2 MR. FREDERICK CHENOWETH: All right.

3 And the salary that the previous CAO received, I had a
4 sense from the evidence I've heard, was in excess of
5 two hundred thousand dollars (\$200,000)?

6 MR. IAN CHADWICK: I believe that's
7 correct, yes.

8 MR. FREDERICK CHENOWETH: All right.
9 And Mr. Houghton received no additional salary for
10 taking on this responsibility?

11 MR. IAN CHADWICK: Not that I'm aware
12 of, no.

13 MR. FREDERICK CHENOWETH: All right.
14 I had a sense, and -- and you can tell me whether I'm
15 right or wrong on this, that Mr. Houghton took on this
16 task out of a commitment to Collingwood, and wishing
17 to serve the best interests of Collingwood when they
18 were in a little bit of a tight spot

19 Would that be fair?

20 MR. IAN CHADWICK: Yes, sir. I'd
21 agree. I always believed that Mr. Houghton had the
22 best interests of Collingwood at heart.

23 MR. FREDERICK CHENOWETH: So that --
24 that view that he had the best interests of
25 Collingwood at heart goes beyond his, I would say,

1 selfless act in taking on the role of CAO in April of
2 2011, and you're -- you you're saying that in a
3 broader sense, that your observations from the time
4 you observed him as a journalist and the time you --
5 that you would observe him as a staff when you were a
6 Councillor, was that he appeared on an ongoing basis
7 to have the best interests of Collingwood at heart?

8 MR. IAN CHADWICK: Yes, sir. I would
9 agree with that.

10 MR. FREDERICK CHENOWETH: Very good.
11 Thank you.

12 MR. IAN CHADWICK: But if I might make
13 a correction, it was April 2012. I believe you said
14 2011.

15 MR. FREDERICK CHENOWETH: Good. Thank
16 you. It was April 2012, you're correct.

17 Now you may or may not have a memory of
18 this, but I'm taking you to the Council meeting of the
19 27th of June that you would have attended, in which
20 you would have become aware at that time that the sale
21 of Collus was becoming -- was being considered by
22 Council. This was the first of a number of Council
23 meetings, the first of I think six (6) Council
24 meetings that dealt with the Collus issue.

25 Do you remember that meeting?

1 MR. IAN CHADWICK: I remember it
2 somewhat, yes.

3 MR. FREDERICK CHENOWETH: All right.
4 I may be stretching your memory, but -- and I -- I
5 fortunately don't think I have to take you to a
6 document because it's not set out in a document, but
7 there was some discussions about next steps and one of
8 the next steps was the formation of the STT team.

9 Do you remember that the formation of
10 the STT team was discussed at that June 27th meeting?

11 MR. IAN CHADWICK: Yes, I do.

12 MR. FREDERICK CHENOWETH: And it may
13 be of some assistance if you could tell the Inquiry,
14 and maybe you don't recall, if you could tell the
15 Inquiry whether you recall that Rick Lloyd was
16 directed to be on the STT team at that June 27th
17 meeting.

18 MR. IAN CHADWICK: I recall that --
19 that Mr. Lloyd, as well as former Mayor Cooper were
20 both directed to be part of that team. I believe the
21 team was being put together by the Collus Board with
22 some of its members as well, but they were the only
23 two (2) members of Council that I can recall that
24 were directed.

25 MR. FREDERICK CHENOWETH: Very good.

1 So in fact the mayor and the deputy mayor were put on
2 the STT team?

3 MR. IAN CHADWICK: Yes.

4 MR. FREDERICK CHENOWETH: And I take
5 it that Council was content at that meeting with the
6 nature of the STT team?

7 MR. IAN CHADWICK: Yes, sir. I don't
8 recall anybody disagreeing with it or raising any
9 concerns about it.

10 MR. FREDERICK CHENOWETH: All right.
11 And I asked Mr. Lloyd about this yesterday, but I take
12 it that the Council was in the practice from time to
13 time of forming subcommittees that would take on
14 particular tasks?

15 MR. IAN CHADWICK: Yes, sir. That's
16 historically been the case in Collingwood.

17 MR. FREDERICK CHENOWETH: Right. And
18 did you review the formation of the STT team as one of
19 those historic subcommittees that was tasked with
20 moving a particular matter forward?

21 MR. IAN CHADWICK: Yes, sir.
22 Traditionally those committees, and I actually served
23 on the Affordable Housing Task Force several years
24 ago, which was created by Council, don't have any
25 voting or any authority to make any -- any decisions,

1 but just simply to gather information presented to
2 Council for further decisions, is my understanding of
3 it.

4 MR. FREDERICK CHENOWETH: All right,
5 very well.

6 So you saw nothing unusual about the
7 formation of the STT team at this time?

8 MR. IAN CHADWICK: No, sir.

9 MR. FREDERICK CHENOWETH: All right.
10 Take you for a moment -- you indicated that in your
11 last evidence that you don't recall seeing the options
12 reviewed at any time, the options that were being
13 considered by the STT team.

14 MR. IAN CHADWICK: No, sir, I don't
15 recall that the S -- that the team ever presented the
16 options to Council before the discussion of the -- the
17 RFP.

18 MR. FREDERICK CHENOWETH: All right.
19 May I take you for a moment to the June 27th minutes,
20 which is BLG00002590001?

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: If we could
25 go down to the slides, and I hope I have the number

1 for the slides. Continue down.

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: It may be
6 that I don't have the number for the slides and it's
7 the slides that I wish to refer to.

8 MS. KATE MCGRANN: I believe that the
9 number for the slide is CPS4397.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: Very good.
13 Could we pull that up, please? Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: And if we
18 could go down to Slide Number 17.

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: I note that
23 you were at this meeting obviously, sir.

24 MR. IAN CHADWICK: Yes, sir.

25 MR. FREDERICK CHENOWETH: All right.

1 And do you recall if there was a slide presentation at
2 that meeting?

3 MR. IAN CHADWICK: Yes, sir.

4 MR. FREDERICK CHENOWETH: All right.

5 And it's been the evidence of a number of the parties
6 that -- that the slides -- and in fact this document
7 is marked as an exhibit -- and it would appear that
8 the -- that the slides do show a discussion with
9 respect to the various options that were being
10 recommended at that time.

11 And I've taken you to Slide Number 17.
12 Is your memory now refreshed and do you now remember
13 that the status quo option was presented in this slide
14 to Council in this in camera meeting?

15 MR. IAN CHADWICK: Yes, sir.

16 MR. FREDERICK CHENOWETH: Right. So
17 at the very least the status quo option was discussed
18 with -- with Council at that time?

19 MR. IAN CHADWICK: Yes, sir.

20 MR. FREDERICK CHENOWETH: Thank you.
21 And if we could look at Slide 19.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: And I take

1 it at that time -- this may assist your memory, that
2 clearly at the meeting of June 27th that you attended,
3 this slide was the source of the discussion of a
4 partial sale option.

5 MR. IAN CHADWICK: Yes, sir.

6 MR. FREDERICK CHENOWETH: Right. And
7 I take it -- does that refresh your memory, that that
8 option was reviewed with Council and you were there on
9 the 27th of June?

10 MR. IAN CHADWICK: Yes, sir.

11 MR. FREDERICK CHENOWETH: Right. And
12 I -- I take it the reality is that -- that the
13 strategic partnership that was eventually concluded as
14 the process is a sale of some of the shares of Collus,
15 i.e., a sale of 50 percent of the shares of Collus,
16 correct?

17 MR. IAN CHADWICK: Yes, sir, and I do
18 recall that there were discussions about the selling
19 more than 50 percent. There was a great reluctance to
20 lose control over local rates and service.

21 MR. FREDERICK CHENOWETH: Yes.

22 MR. IAN CHADWICK: And that there was
23 no willingness to sell more than 50 percent.

24 MR. FREDERICK CHENOWETH: All right.
25 And I suppose -- I guess my point really is that the

1 partial -- that the eventual result, i.e., the sale of
2 50 percent of Collus shares, is in fact one of the
3 partial sale options.

4 MR. IAN CHADWICK: Yes, sir.

5 MR. FREDERICK CHENOWETH: All right.

6 So the partial sale options included a sale of a
7 minority interest, it included a sale of more than 50
8 percent, and it would have included the sale of 50
9 percent, in the partial sale option.

10 MR. IAN CHADWICK: Yes, sir.

11 MR. FREDERICK CHENOWETH: Right. And
12 it's clear that there was a sense that, I think you
13 just told me this, that the Council was not interested
14 in selling more than 50 percent and losing some
15 control.

16 MR. IAN CHADWICK: That's correct.

17 MR. FREDERICK CHENOWETH: All right.

18 And as I understand it, and maybe you can assist me
19 with this, was there a general view at Council that
20 Council was not simply looking for an investor and
21 wanted in fact to strengthen their Collus power
22 distribution operation as a result of the outcome of
23 this process?

24 MR. IAN CHADWICK: Yes, sir. As well
25 as I can remember from that particular date that long

1 ago, there were discussions about efficiencies of
2 scale working with another company. There were
3 discussions about shared services, there were
4 discussions about working cooperatively in the
5 corporate culture.

6 MR. FREDERICK CHENOWETH: All right.
7 Would it be fair to say that Council's purpose was
8 more than to simply obtain an investor and cash; they
9 had things like scale and strategic strength that they
10 were looking for in a partner?

11 MR. IAN CHADWICK: Yes, sir. I do not
12 recall if cash was particularly an issue in those
13 discussions.

14 MR. FREDERICK CHENOWETH: Is it fair
15 to say that the -- the nature of the party that Collus
16 would team with was a greater concern than the cash?

17 MR. IAN CHADWICK: Yes, sir, much
18 greater.

19 MR. FREDERICK CHENOWETH: Thank you.
20 Just to go to another topic for a moment, I'm
21 interested in the minutes of the various in camera
22 meetings that were had at Council.

23 I had a sense that the in-camera
24 minutes were approved at a later time, as were all
25 minutes of Council.

1 MR. IAN CHADWICK: Yes, sir.
2 Sometimes the in-camera minutes would be bundled
3 together so it's -- you'd approve several at a time,
4 which could be a month or perhaps two months or even
5 longer after the particular meeting.

6 MR. FREDERICK CHENOWETH: Right. So
7 that they were -- they weren't sort of like Council
8 meetings where -- or Council minutes where they were
9 approved at the next Council meeting, they might get
10 bundled together and not approved for some substantial
11 period of time?

12 MR. IAN CHADWICK: Yes, sir, as I
13 recall they were only -- they were also approved in-
14 camera, not in public.

15 MR. FREDERICK CHENOWETH: That makes
16 sense.

17 And I take it that in-camera minutes
18 that were approved, and you may or may not recall
19 this, I expect some evidence to come forward that
20 suggests that the in-camera minutes were included in a
21 package at in-camera meetings, and that you got your
22 in-camera meeting package at the in-camera meeting.

23 MR. IAN CHADWICK: Yes, sir, that's my
24 recollection.

25 MR. FREDERICK CHENOWETH: All right.

1 So your opportunity to review those minutes would not
2 be like Council minutes that you got three or four
3 days before, they would have been presented to you at
4 the very time and at the very meeting that you're
5 required to approve them?

6 MR. IAN CHADWICK: Yes, sir. They may
7 have been put in the Council mailboxes, perhaps, the
8 day of the -- of the meeting, for people to pick up.

9 But I -- I recall them being
10 distributed at -- at the in-camera meetings as well.

11 MR. FREDERICK CHENOWETH: All right.
12 So your memory is they were disturbed at the in-camera
13 meetings and/or put in the mailbox on the day of the
14 in-camera meeting?

15 MR. IAN CHADWICK: Yes, sir.

16 MR. FREDERICK CHENOWETH: In any of
17 that it's -- it's clear that your opportunity to
18 review in-camera minutes was really significantly less
19 than your opportunity to review regular Council
20 minutes?

21 MR. IAN CHADWICK: Yes, sir.

22 MR. FREDERICK CHENOWETH: All right.
23 And you indicate that they were sometimes reviewed a
24 substantial period of time later.

25 MR. IAN CHADWICK: Yes, sir.

1 MR. FREDERICK CHENOWETH: All right.
2 I expect to -- to hear evidence through the course of
3 this hearing that suggests that the June 27th in-
4 camera minutes were not approved until three months
5 later, being September 26th, 2011. Would that
6 surprise you?

7 MR. IAN CHADWICK: No, sir.

8 MR. FREDERICK CHENOWETH: All right.
9 And it wouldn't surprise you, I take it, because
10 you've just told me that it's often the case that in-
11 camera minutes are not reviewed until a substantial
12 time later.

13 MR. IAN CHADWICK: That's correct.

14 MR. FREDERICK CHENOWETH: So that with
15 respect to in-camera minutes, your opportunity to
16 review them was different and significantly less than
17 your opportunity to review regular Council minutes.

18 MR. IAN CHADWICK: That's correct.

19 MR. FREDERICK CHENOWETH: And it was
20 often at a time distant from the actual in-camera
21 meeting, which they allegedly evidenced, correct?

22 MR. IAN CHADWICK: That's correct.

23 MR. FREDERICK CHENOWETH: All right.

24 I'm going to resist the urge to take
25 you through the various meetings of -- of Council that

1 you had the opportunity to attend. But as I
2 understand the evidence to date, it would appear that
3 there was six (6) meetings of Council at which the
4 Collus potential sale was discussed, is that your
5 memory?

6 MR. IAN CHADWICK: I can remember
7 distinctly four (4) of them.

8 MR. FREDERICK CHENOWETH: All right.

9 THE HONOURABLE FRANK MARROCCO: Mr. --
10 Mr. Chenoweth, as -- as far as I'm hearing so far, I
11 don't think anyone has taken issue with the accuracy
12 of the minutes, so if the minutes reflect six (6)
13 rather than four (4), unless somebody suggests those
14 minutes are in error, then I'm assuming the minutes
15 are correct.

16 MR. FREDERICK CHENOWETH: The minutes
17 would appear to be correct, Your Honour, and there is,
18 in fact, six (6) Council meetings that took place.

19 And you were an attendee at all of the
20 Council meetings that dealt with this Collus matter,
21 with the exception of the December 5th meeting,
22 correct?

23 MR. IAN CHADWICK: Yes, sir.

24 MR. FREDERICK CHENOWETH: All right.

25 So that -- and you would have been aware of the -- of

1 the efforts of others who were involved in this and
2 not just the six (6) meetings of Council that took
3 place?

4 MR. IAN CHADWICK: I'm a little unsure
5 of which you mean -- did you mean the strategic
6 planning team?

7 MR. FREDERICK CHENOWETH: Well, that's
8 -- that's -- that's certainly one of them. You
9 would've been aware of the efforts of the strategic
10 task team with respect to this matter.

11 MR. IAN CHADWICK: I was aware that
12 they were working on it. They did not provide
13 information directly to Council about it and we were
14 not kept up to date, but I was aware that they were
15 working on it, yes.

16 MR. FREDERICK CHENOWETH: All right,
17 thank you.

18 And you would've been aware that --
19 that the process had the benefit of -- of the wisdom
20 of Dean Muncaster and Mr. McFadden.

21 MR. IAN CHADWICK: Yes, sir.

22 MR. FREDERICK CHENOWETH: All right.
23 And what was your general view, and we've heard some
24 evidence with respect to this already, but what was
25 your general view of the business acumen of -- of Dean

1 Muncaster?

2 MR. IAN CHADWICK: As I recall Dean
3 Muncaster was highly respected throughout Ontario in
4 the business community.

5 I believe it was Canadian Tire that was
6 his business, he was well known as a -- as a business
7 person. I didn't know him personally, except for his
8 role as -- in Collus. But he got many accolades and -
9 - and with his passing many -- many of Ontario's
10 business people came out and made those accolades.

11 MR. FREDERICK CHENOWETH: So you would
12 take it as a plus, I take it, that Dean Muncaster was
13 involved in this process?

14 MR. IAN CHADWICK: Oh, very much, sir.

15 MR. FREDERICK CHENOWETH: And you were
16 comforted by the fact that he was involved?

17 MR. IAN CHADWICK: Yes, sir.

18 MR. FREDERICK CHENOWETH: And did you
19 know something of the background of David McFadden at
20 the time that this process was underway?

21 MR. IAN CHADWICK: The only thing I
22 can recall was that I believe he was involved in
23 creating one of the provincial documents, perhaps a
24 long-term energy plan. It's been a few years since
25 I've been involved in that, but I believe he was

1 involved with the provincial energy policies.

2 MR. FREDERICK CHENOWETH: All right.

3 And did you understand, and -- and you may not, but

4 did you understand that he was a -- a -- a highly

5 regarded and respected lawyer in the electrical

6 distribution industry?

7 MR. IAN CHADWICK: I've heard that, I

8 can't say exactly when I heard that, but I'd heard he

9 had a high level of respect.

10 THE HONOURABLE FRANK MARROCCO: Mr.

11 Chenoweth, as I think you know and others know, I

12 practiced law with Mr. McFadden for a considerable

13 period of time.

14 MR. FREDERICK CHENOWETH: Yes, Your

15 Honour.

16 THE HONOURABLE FRANK MARROCCO: His

17 expertise in the energy area is well known to me.

18 MR. FREDERICK CHENOWETH: All right.

19 THE HONOURABLE FRANK MARROCCO: In

20 fact, I think I've known him -- the only person I've

21 probably known longer than him of all the people here

22 is probably Mr. Marron. But in any event.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: All right.

1 In any event, I -- I take it that you
2 would've had an understanding that with Dean McFadden,
3 or David McFadden involved and with Dean Muncaster
4 involved that you -- the process had the benefit of
5 two solid individuals and trusted individuals?

6 MR. IAN CHADWICK: Yes, sir.

7 MR. FREDERICK CHENOWETH: In addition
8 to those two individuals we've spoken of the
9 involvement of the STT team, we've spoken of the --
10 the meetings, the six (6) Council meetings that --
11 that Council was involved in this matter, you would've
12 been aware that KPMG was also involved in this matter
13 as well.

14 MR. IAN CHADWICK: Yes, sir.

15 MR. FREDERICK CHENOWETH: And -- and
16 was giving advice to -- to the STT team and to the
17 Collus Board.

18 MR. IAN CHADWICK: Yes, sir.

19 MR. FREDERICK CHENOWETH: And you
20 would've been aware that there was a number of lawyers
21 involved?

22 MR. IAN CHADWICK: Yes, sir.

23 MR. FREDERICK CHENOWETH: And in fact
24 at one of the Council meetings, Ron Clark attended and
25 provided details with respect to the -- to the

1 eventual documents that were going to be executed,
2 i.e., the share purchase agreement and the unanimous
3 shareholders agreement?

4 MR. IAN CHADWICK: Yes, sir.

5 MR. FREDERICK CHENOWETH: All right.
6 Are you able to -- to give me your thoughts that you
7 would have had as a council member during the years
8 2010, 2011, and 2012, or let's just make it '11 and
9 '12, 2011 and 2012?

10 Could you give me your thoughts as to
11 your regard for the process that was undertaken here
12 given what we've described?

13 MR. IAN CHADWICK: I believe the
14 process was the correct one. And I believe the
15 process was the appropriate one. We had been warned
16 that the Provincial Governments, all three (3) parties
17 in the upcoming election, were looking at reducing the
18 number of LDCs and that it was better to look at our
19 options while it was still a seller's market as
20 opposed to a buyer's market and before anything might
21 be legislated to -- to force amalgamations of -- of
22 LDCs.

23 I believe the process was appropriate
24 because it involved a large number of people with a
25 great amount of expertise to bring forward the options

1 for a decision for council.

2 MR. FREDERICK CHENOWETH: Very good.

3 So you were comfortable with the process as a
4 councillor?

5 MR. IAN CHADWICK: Yes, sir.

6 MR. FREDERICK CHENOWETH: And can you
7 -- do you have a sense as to the result that was
8 achieved by that process? Do you have any thoughts as
9 to whether the partnership that was eventually
10 developed with PowerStream was a good result?

11 MR. IAN CHADWICK: Yes, sir, I believe
12 it was a good decision for the Town and for Collus.

13 MR. FREDERICK CHENOWETH: You mention
14 in your time line some reviews with respect to -- to
15 the results that were achieved by making PowerStream a
16 partner.

17 In particular, I'd like you to -- I'd
18 like to refer you to a third-party review of the
19 Collus PowerStream strategic partnership that appears
20 to have been created by an organization called Consol
21 Asset. And it appears to have been created eighteen
22 (18) months after the partnership began.

23 And, in particular, if you could bring
24 up document number TOC048547.

25

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: And I'd
4 like, first of all, to turn to page 4 of that report.
5 And this is the executive summary with respect to
6 that. And the first title is, "Background."

7 The purpose of this report -- at the
8 very top in the first bullet:

9 "The purpose of this report is to
10 have Consol Asset review in
11 practical terms the benefits and
12 successes that Collus Power has been
13 able to experience since a strategic
14 partnership with PowerStream in July
15 2012."

16 And going next to -- to the lower part
17 of that page under, "Benefits and successes of the
18 strategic partnership," item 1, there appears to be a
19 section that talks about complementary visions,
20 mission, and values. Take a second to review that, if
21 you would, please.

22

23 (BRIEF PAUSE)

24

25 MR. FREDERICK CHENOWETH: Was it your

1 sense as a councillor in your observation of Collus
2 and PowerStream as partners -- for the eighteen (18)
3 months after July of 2012, was it your observation
4 that they in fact did have cont -- complimentary
5 vision, mission, and values?

6 MR. IAN CHADWICK: Yes, sir.

7 MR. FREDERICK CHENOWETH: All right.
8 Number 2 item is that platform to leverage scale.
9 Take a moment to review that, if you would, please.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: The section
14 talks about the benefits of the platform that was
15 created by the Collus and PowerStream partnership.
16 Would you agree with the assessment that this platform
17 improved the opportunities for scale and leverage over
18 and above what Collus would otherwise have had?

19 MR. IAN CHADWICK: Yes, sir, I would.

20 MR. FREDERICK CHENOWETH: So you would
21 agree with point 2 in the executive summary?

22 MR. IAN CHADWICK: Yes, I do.

23 MR. FREDERICK CHENOWETH: Thank you.

24 Point 3 was:

25 "Complementary geographic coverage

1 and potential future diversity."

2 Read that, if you would, please.

3

4 (BRIEF PAUSE)

5

6 MR. FREDERICK CHENOWETH: Do you agree
7 with the assertion at item number 3, that the
8 complementary geographical coverage was a useful
9 element of the partnership with PowerStream?

10 MR. IAN CHADWICK: I have to -- I
11 would assume it would be. I am not aware of any
12 details of them pursuing it, but I would assume that
13 that was one (1) of the -- the decisions, one (1) of
14 the factors in the decision to partner.

15 MR. FREDERICK CHENOWETH: Right. So
16 this would have been an element that would have been
17 part of the decision and apparently was part of the
18 positive results that were occasioned by this
19 partnership?

20 MR. IAN CHADWICK: Yes, sir.

21 MR. FREDERICK CHENOWETH: All right.
22 I don't -- if you'd just take a moment to review the
23 remainders of the items. I don't think I need to take
24 you in detail through each one (1) of them. But if
25 you would look at item 4 to 9 which are on page 5 and

1 page 6 of this document. If you'd take an opportunity
2 to read those.

3 THE HONOURABLE FRANK MARROCCO: It may
4 take -- it may take Mr. Chadwick a minute to read it,
5 so --

6 MR. FREDERICK CHENOWETH: I
7 understand.

8 THE HONOURABLE FRANK MARROCCO: -- so
9 why don't we -- you read it. We'll stand down for
10 five (5) minutes. Let us know when you've completed
11 reading it.

12 MR. IAN CHADWICK: Thank you.

13 MR. FREDERICK CHENOWETH: Very good.
14 Thank you.

15

16 --- Upon recessing at 10:38 a.m.

17 --- Upon resuming at 10:41 a.m.

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH:

21 Mr. Chadwick, I take it you've had an opportunity to
22 review the executive summary as set out in the Council
23 document?

24 MR. IAN CHADWICK: Yes, I have.

25 MR. FREDERICK CHENOWETH: All right.

1 And we -- I think you were reviewing items 5 to 9 --
2 or 4 to 9 actually in that document.

3 MR. IAN CHADWICK: Yes, sir.

4 MR. FREDERICK CHENOWETH: And that --
5 would you agree -- as a councillor observing Collus
6 and PowerStream partnership in that 18 months, would
7 you agree with the assessment set out in items 4 to 9
8 of that executive summary?

9 MR. IAN CHADWICK: Yes, sir. And I
10 did have an opportunity, if I -- if I may, to speak to
11 Collus PowerStream staff during that period about the
12 results of the partnership and got very similarly
13 positive reports back from them.

14 MR. FREDERICK CHENOWETH: So the
15 Collus staff was -- was pleased with the opportunities
16 that the partnership presented?

17 MR. IAN CHADWICK: Those I spoke to,
18 yes.

19 MR. FREDERICK CHENOWETH: I wonder if
20 that third-party review, Your Honour, might be marked
21 as an exhibit in this proceeding.

22 THE HONOURABLE FRANK MARROCCO: Yes.

23 MR. FREDERICK CHENOWETH: Thank you
24 very much.

25

1 CONTINUED BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: Now, we
3 spoke at some length about the process, and you
4 indicated that -- that you thought the process that
5 was gone through with respect to the eventual
6 strategic partnership was the right process --

7 MR. IAN CHADWICK: Yes, sir.

8 MR. FREDERICK CHENOWETH: -- with the
9 right result.

10 MR. IAN CHADWICK: Yes, sir.

11 MR. FREDERICK CHENOWETH: All right.
12 And did you have occasion to review or to follow the
13 process that Council went through with respect to the
14 sale of 100 percent of the shares to EPCOR?

15 THE HONOURABLE FRANK MARROCCO: Just a
16 minute. Before we get -- I don't want to get in --
17 that's beyond my terms of reference.

18 MR. FREDERICK CHENOWETH: Well, Your
19 Honour, it would be my submission that it would be
20 difficult for this Commission to assess the
21 appropriateness of the process that was gone through
22 in the sale of the Collus shares without understanding
23 other processes that took place in the town,
24 particularly extremely similar processes, being the
25 sale of a hundred percent of the Collus PowerStream

1 shares that took place to EPCOR some years later.

2 THE HONOURABLE FRANK MARROCCO: I
3 understand what you're saying, but I don't tend to get
4 into the process that dealt with the sale of a
5 hundred percent of the company. I'm prepared to
6 receive evidence that a hundred percent sale took
7 place, what they sold it for.

8 But it's not my -- it's not my mandate
9 to review that process, and if I get into that
10 process, it will greatly expand this Inquiry, and --
11 and I don't intend to do that.

12 MR. FREDERICK CHENOWETH: Right. Just
13 to press you somewhat with respect to that matter,
14 Your Honour, it would seem to me to be a very useful
15 tool to consider contrasting the process that was used
16 in that matter with the process that was used in
17 the -- in the sale of the Collus shares on this
18 occasion, as one surely has to consider all of the
19 circumstances in order to get some -- some sense of
20 the surrounding circumstances to make a proper
21 judgment as to the appropriateness of the process of
22 the sale of 50 percent of these shares.

23 THE HONOURABLE FRANK MARROCCO: I
24 value your observations considerably but no.

25 MR. FREDERICK CHENOWETH: Very good,

1 Your Honour.

2

3 CONTINUED BY MR. FREDERICK CHENOWETH:

4 MR. FREDERICK CHENOWETH: I understand
5 that -- that you prepared a timeline with respect to
6 these matters.

7 MR. IAN CHADWICK: Yes, sir.

8 MR. FREDERICK CHENOWETH: All right.
9 And when was that timeline prepared?

10 MR. IAN CHADWICK: It was prepared
11 last year for the Inquiry. Originally, it was put
12 together, I believe, about a year before that for a
13 blog post.

14 MR. FREDERICK CHENOWETH: All right.
15 And could you pull up that timeline if you would,
16 please. It's -- it's document number CJI10832.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: Yeah, yeah.
21 I'm told by Inquiry counsel that this is the final
22 version of this document that's now pulled up, and the
23 document number with respect to that is CJI --
24 one (1), two (2), three (3), four (4), five (5) -- it
25 looks like zeros, maybe it's six (6) zeros

1 and two (2) -- six (6) zeros two (2): CJI0000002.

2 Is this the final timeline that you
3 prepared with respect to this matter?

4 MR. IAN CHADWICK: I believe it is,
5 sir. Yes.

6 MR. FREDERICK CHENOWETH: Very good.
7 And when was that final timeline prepared?

8 MR. IAN CHADWICK: There were a couple
9 of corrections made to the document sources this
10 spring, and I can't give you the exact date. But they
11 were just -- because some of the material from the
12 enterprise bulletin was no longer available online.

13 MR. FREDERICK CHENOWETH: And I take
14 it that you prepared it for the purposes of assisting
15 the Commission with respect to the times that various
16 events occurred in the sale of 50 percent of the
17 Collus shares?

18 MR. IAN CHADWICK: Yes, sir.

19 MR. FREDERICK CHENOWETH: All right.
20 And I understand that in addition, the timeline
21 contains some of your comments that are consistent
22 with the comments you've made here in the witness box
23 today with respect to the quality of the process?

24 MR. IAN CHADWICK: Yes, sir.

25 MR. FREDERICK CHENOWETH: May I ask

1 that this document be marked as the next exhibit?

2 THE HONOURABLE FRANK MARROCCO: Well,
3 I'm -- Mr. Chadwick's participation or participatory
4 rights were -- were restricted to preparing and filing
5 the timeline. I'm prepared to receive it as an
6 exhibit, but you should understand that I view it more
7 as a submission than an item of documentary evidence.

8 MR. FREDERICK CHENOWETH: Your Honour,
9 I don't think that's an unfair assessment, and I think
10 that's correct. However, that being the case, I think
11 this gentleman's opinions, particularly given his
12 proximity to the events that occurred, are -- are
13 valuable and should be before this Commission.

14 THE HONOURABLE FRANK MARROCCO: I
15 don't disagree with that, and, as I say, I'm prepared
16 to receive it as an exhibit. But just -- just so that
17 people understand, I see it more in the nature of a
18 submission.

19 And certainly much of the evidence
20 Mr. Chadwick has given has been his assessment of what
21 took place, and I'm quite -- there's no reluctance to
22 receive that. But just so that we're clear about what
23 this document is in my mind, at least, at this point.

24 MR. FREDERICK CHENOWETH: Thank you,
25 Your Honour. Your comments are useful. Thank you.

1

2 CONTINUED BY MR. FREDERICK CHENOWETH:

3

MR. FREDERICK CHENOWETH: Mr. McDowell
4 in his cross-examination of you, sir, took you to
5 Justice Cunningham's decision with respect to some
6 matters that arose in the Mississauga Inquiry.

7

MR. IAN CHADWICK: Yes, sir.

8

MR. FREDERICK CHENOWETH: Had you ever
9 had occasion -- prior to Mr. McDowell referring you to
10 those matters in your cross-examination, had you ever
11 at earlier times reviewed or had occasion to be
12 referred to that particular decision?

13

MR. IAN CHADWICK: I recall seeing
14 news media reports about the decision. I don't recall
15 seeing the decision in its entirety at any point. And
16 those, I believe, were all posted after the time I was
17 on Council, so it would be after the 2014 election.
18 That's my recollection.

19

MR. FREDERICK CHENOWETH: Right. So
20 you don't -- you don't believe that you would have
21 been familiar with the documents or the contents of
22 that document during the course of your time on
23 Council between 2010 and 2014.

24

MR. IAN CHADWICK: No, sir.

25

MR. FREDERICK CHENOWETH: All right.

1 And I was interested. You were -- I think I heard
2 from others -- educated generally at the beginning of
3 every Council session with respect to your
4 responsibilities as a councillor.

5 MR. IAN CHADWICK: To a certain
6 degree. The amount of education would depend partly
7 on the Council, partly on the available staff, and the
8 schedules of all those people involved.

9 MR. FREDERICK CHENOWETH: All right.
10 And I think the Ontario association of municipal
11 councils was one of the parties that provided you with
12 education with respect to your responsibilities?

13 MR. IAN CHADWICK: For me, I took the
14 course in -- in basic civics, if you would like to
15 call it, back in 2003. I don't recall them being
16 involved in any of the training after that.

17 MR. FREDERICK CHENOWETH: With respect
18 to the training that you received, did it also involve
19 training with respect to conflicts?

20 MR. IAN CHADWICK: Briefly, yes. They
21 would all -- there would be a short -- short time -- a
22 very short time in some cases -- given to that
23 training.

24 MR. FREDERICK CHENOWETH: All right.
25 So you regarded the training with respect to conflicts

1 as limited.

2 MR. IAN CHADWICK: Yes, sir.

3 MR. FREDERICK CHENOWETH: All right.

4 I'm interested in understanding the orientation of
5 that training.

6 Was the Municipal Conflict of Interest
7 Act a matter that would have been discussed during the
8 conflicts training?

9 MR. IAN CHADWICK: Yes, sir.

10 MR. FREDERICK CHENOWETH: All right.

11 And you tell me, would be fair to say that the focus
12 of the conflicts training that you received as a
13 councillor -- the focus was on the Municipal Conflict
14 of Interest Act?

15 MR. IAN CHADWICK: Yes, sir.

16 MR. FREDERICK CHENOWETH: Good. Your
17 Honour, I think those are all questions I have of this
18 witness.

19 THE HONOURABLE FRANK MARROCCO: Thank
20 you.

21 MR. FREDERICK CHENOWETH: Thank you.

22 THE HONOURABLE FRANK MARROCCO:
23 Just before we have the next questioner, when they --
24 when you were given some instruction about conflicts,
25 apart from the Municipal Conflict of Interest Act,

1 were you referred to anything else?

2 MR. IAN CHADWICK: Not that I recall,
3 Sir.

4 THE HONOURABLE FRANK MARROCCO: And
5 the people instructing you, did you have any sense of
6 what their background was or who they were?

7 MR. IAN CHADWICK: I believe that we
8 were given some of that by one (1) of the Town's legal
9 firm, and I can't say for sure. I suspect it might've
10 been Mr. Longo, but I -- I honestly don't recall if
11 that was him or not.

12 THE HONOURABLE FRANK MARROCCO: All
13 right.

14 MR. IAN CHADWICK: And I believe
15 otherwise, it would have been either the clerk or the
16 CAO. And at the - the AMO training, I believe it was
17 just one of their instructors. I don't believe
18 they -- I can't recall that they had any legal
19 background.

20 THE HONOURABLE FRANK MARROCCO: Thank
21 you.

22 MR. FREDERICK CHENOWETH: So just a
23 question that follows from that, Your Honour.

24 THE HONOURABLE FRANK MARROCCO:
25 Certainly.

1

2 CONTINUED BY MR. FREDERICK CHENOWETH:

3

MR. FREDERICK CHENOWETH: And I think
4 this really just confirms the evidence. So it's your,
5 at this time, vague memory that Mr. Longo may have
6 been one (1) of those that instructed people with
7 respect to their responsibilities and with respect to
8 conflicts.

9

MR. IAN CHADWICK: Yes, sir. I
10 believe he may have been.

11

MR. FREDERICK CHENOWETH: Yes. Thank
12 you very much. Those are my questions.

13

THE HONOURABLE FRANK MARROCCO: Who's
14 cross-examining next?

15

MR. GEORGE MARRON: I'll indicate I
16 have no questions. Thank you.

17

THE HONOURABLE FRANK MARROCCO: Thank
18 you, Mr. Marron.

19

MS. BELINDA BAIN: Going next, Your
20 Honour?

21

THE HONOURABLE FRANK MARROCCO: Yes.
22 I -- well, I think you're all supposed to decide on
23 your order. So if absent --

24

MS. BELINDA BAIN: All in agreement?

25

THE HONOURABLE FRANK MARROCCO: --

1 absent an agreement --

2 MS. BELINDA BAIN: Okay. Excellent.

3 THE HONOURABLE FRANK MARROCCO: -- I
4 would impose myself on the process. But this doesn't
5 seem necessary.

6 MR. FREDERICK CHENOWETH: This is
7 the -- this appears to be the regular course of the
8 agreement, and I think it's satisfactory to all
9 counsel, as I understand it, and to all participants.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you.

12 MR. FREDERICK CHENOWETH: Thank you.

13 MS. BELINDA BAIN: Thank you,
14 Mr. Chenoweth.

15

16 CROSS-EXAMINATION BY MS. BELINDA BAIN:

17 MS. BELINDA BAIN: Good morning,
18 Mr. Chadwick. My name is Belinda Bain. I'm one of
19 the lawyers for Alectra Utility Corporation,
20 previously PowerStream. I have only a few questions
21 for you this morning.

22 You told us earlier in your evidence
23 that you provided media monitoring services to
24 Compenso Communications --

25 MR. IAN CHADWICK: Yes.

1 MS. BELINDA BAIN: -- in 2011 and
2 2012; is that right.

3 MR. IAN CHADWICK: Yes.

4 MS. BELINDA BAIN: And those services
5 included scanning online resources --

6 MR. IAN CHADWICK: Yes.

7 MS. BELINDA BAIN: -- for stories and
8 articles dealing with energy and electricity issues,
9 correct?

10 MR. IAN CHADWICK: That's correct.

11 MS. BELINDA BAIN: So that essentially
12 involved you scanning the Internet for relevant
13 articles and stories, and you would then email them to
14 Mr. Bonwick on a weekly basis; is that right?

15 MR. IAN CHADWICK: That's correct.

16 MS. BELINDA BAIN: And in doing that,
17 you would simply attach the relevant stories and
18 articles to a brief covering email to Mr. Bonwick,
19 correct?

20 MR. IAN CHADWICK: That's correct.

21 MS. BELINDA BAIN: Over the course --

22 MR. IAN CHADWICK: If I may --

23 MS. BELINDA BAIN: Please, expand.

24 MR. IAN CHADWICK: -- generally what I
25 would include would be the headline and the first

1 paragraph or two with the link to the website where it
2 came from.

3 MS. BELINDA BAIN: Fair. And over the
4 course of that retainer, you never dealt with anyone
5 at PowerStream directly, did you?

6 MR. IAN CHADWICK: No, I did not.

7 MS. BELINDA BAIN: You didn't email
8 anyone at PowerStream, did you?

9 MR. IAN CHADWICK: No, I did not.

10 MS. BELINDA BAIN: You didn't speak
11 to, for example, Brian Bentz, the CEO of PowerStream?

12 MR. IAN CHADWICK: No, I didn't.

13 MS. BELINDA BAIN: You never spoke to
14 Dennis Nolan of PowerStream?

15 MR. IAN CHADWICK: No, I did not.

16 MS. BELINDA BAIN: Not John Glicksman?

17 MR. IAN CHADWICK: No.

18 MS. BELINDA BAIN: And not Eric Fagen?

19 MR. IAN CHADWICK: No.

20 MS. BELINDA BAIN: And you didn't
21 speak to anyone at PowerStream.

22 MR. IAN CHADWICK: No one at all.

23 MS. BELINDA BAIN: And you certainly
24 didn't contract directly with PowerStream, did you?

25 MR. IAN CHADWICK: No, I -- no, I did

1 not.

2 MS. BELINDA BAIN: We've heard today
3 that you were present at the January 23, 2012 Council
4 meeting where the Council members voted in favour of
5 the proposed share purchase by PowerStream, correct?

6 MR. IAN CHADWICK: That's correct.

7 MS. BELINDA BAIN: Could we pull up
8 ALE1644?

9

10 (BRIEF PAUSE)

11

12 MS. BELINDA BAIN: So, Mr. Chadwick,
13 do you recognize this as a copy of the staff report
14 which was delivered at the January 23rd, 2012 Council
15 meeting?

16 MR. IAN CHADWICK: Yes, it appears to
17 be.

18 MS. BELINDA BAIN: Can we scroll down,
19 please, to the second page?

20

21 (BRIEF PAUSE)

22

23 MS. BELINDA BAIN: So there are a
24 number of bullet points here. The first paragraph of
25 bullet points starts off:

1 "After examining several options, a
2 strategic partnership option was
3 chosen for several reasons."

4 We've gone through these reasons. I
5 don't purport to have you go through all of them
6 again.

7 The second paragraph down -- if we
8 could scroll down a bit -- is headed:

9 "The share purchase agreement and
10 shareholders agreement address the
11 requirements of the strategic
12 partner relationship, including..."

13 And then a number of bullet points.

14 I'm interested in the second one down:

15 "Provision of strategic and
16 specialized resources to Collingwood
17 Utility Services through service
18 agreements."

19 Now, we've heard about this in a
20 general sense but not much yet in the way of
21 specifics. At the time of the transaction,
22 PowerStream was obviously a much larger LDC than --
23 than Collus Power, wasn't it?

24 MR. IAN CHADWICK: Yes, it was.

25 MS. BELINDA BAIN: And it had a number

1 of resources that it could bring to the table and to
2 the people of Collingwood, correct?

3 MR. IAN CHADWICK: That's correct.

4 MS. BELINDA BAIN: And did you
5 understand that one of the resources that PowerStream
6 brought to Collingwood included a 24/7 monitoring
7 centre?

8 MR. IAN CHADWICK: Yes, I do.

9 MS. BELINDA BAIN: And that would
10 greatly improve outage response times for the people
11 of Collingwood, correct?

12 MR. IAN CHADWICK: Correct.

13 MS. BELINDA BAIN: And PowerStream
14 also brought access to engineering and construction
15 expertise, right?

16 MR. IAN CHADWICK: I understand that,
17 yes.

18 MS. BELINDA BAIN: Okay. And a much
19 better call centre that would greatly improve customer
20 service, correct?

21 MR. IAN CHADWICK: I understand that,
22 too. Yes.

23 MS. BELINDA BAIN: Looking at the
24 fourth par -- bullet down here:

25 "Continued and enhanced support for

1 the interests of the communities we
2 serve and our employees."

3 Do you see that?

4 MR. IAN CHADWICK: I do.

5 MS. BELINDA BAIN: Is it your
6 understanding, Mr. Chadwick, that PowerStream was
7 supportive of no involuntary layoffs from Collus Power
8 if the partnership were to go forward?

9 MR. IAN CHADWICK: I believe that's
10 correct, yes.

11 MS. BELINDA BAIN: And did you
12 understand that PowerStream would provide training and
13 education opportunities for Collus Power employees?

14 MR. IAN CHADWICK: Yes, I do
15 understand that.

16 MS. BELINDA BAIN: Thank you.

17 The next bullet down reads "Continued
18 and substantial presence in the communities we serve."

19 Do you see that?

20 MR. IAN CHADWICK: Yes, I do.

21 MS. BELINDA BAIN: Now, the strategic
22 partnership meant that Collus Power stayed put in its
23 old building on Stewart Road, right here in
24 Collingwood, correct?

25 MR. IAN CHADWICK: That's correct,

1 yes.

2 MS. BELINDA BAIN: And it would be
3 useful for members of Collingwood to have the easy
4 access to its utility right here in town, correct?

5 MR. IAN CHADWICK: That's correct.

6 MS. BELINDA BAIN: Finally, the last
7 bullet reads:

8 "Continued focus on maintaining and
9 enhancing the competitive
10 distribution rate and cost structure
11 of Collingwood Utility Services
12 Corp."

13 Do you see that?

14 MR. IAN CHADWICK: I do.

15 MS. BELINDA BAIN: And I take it that
16 you understood that a strategic partnership with
17 PowerStream would keep rates down for the city --
18 citizens of Collingwood?

19 MR. IAN CHADWICK: Yes, I do.

20 MS. BELINDA BAIN: And that's a good
21 thing for the Town?

22 MR. IAN CHADWICK: Very much so.

23 MS. BELINDA BAIN: And the people of
24 the Town?

25 MR. IAN CHADWICK: Yes.

1 MS. BELINDA BAIN: Can we please go to
2 ALE50215.

3 This is a May 2010 article from the
4 Canadian Business Journal, dealing with the
5 Collingwood Utilities Services. You cited this
6 article in the timeline that you prepared for this
7 inquiry, correct?

8 MR. IAN CHADWICK: Yes.

9 MS. BELINDA BAIN: Your Honour, could
10 we have this marked as the next exhibit?

11 THE HONOURABLE FRANK MARROCCO: Yes.

12 MS. BELINDA BAIN: Towards the bottom
13 of the first page, if we could scroll down, under the
14 bolded heading "Community owned means keeping the
15 public informed", the article states:

16 "Collus is a community-owned utility
17 which affords Collingwood and its
18 regional residence several benefits.
19 The first is Collus's ability to
20 control their own prices, which
21 means they are some of the lowest in
22 Ontario. In doing so, Collus is
23 committed to the local community,
24 including the advancement of
25 community goals, the local

1 environment, and citizens ability to
2 have a voice in utility decisions."

3 Do you see that?

4 MR. IAN CHADWICK: I do.

5 MS. BELINDA BAIN: And would you agree
6 that in 2010 Collus was committing to -- committed to
7 ensuring that Collingwood residents had the ability to
8 control their own prices?

9 MR. IAN CHADWICK: Yes, I do.

10 MS. BELINDA BAIN: And also to have a
11 voice in utility decisions?

12 MR. IAN CHADWICK: Yes, I do.

13 MS. BELINDA BAIN: Thank you.

14 Can we bring back up, please, CJI2, and
15 I'm not going to count the zero.

16 And if -- when we get there if you can
17 scroll to page 17, please. Down a little bit, and a
18 bit more.

19 So on page 17 of the timeline, Mr.
20 Chadwick, you discuss the November 22nd, 2011
21 community meeting.

22 MR. IAN CHADWICK: M-hm.

23 MS. BELINDA BAIN: And in particular,
24 you note Collus, Council and the SPTT, which I take to
25 be the strategic task team we've been talking about,

1 held an open public information session at the Leisure
2 Time Centre, explaining the process, explaining what
3 had been done to date and why, and asking for public
4 comment and questions. T

5 he presentation included the contents
6 and wording of the RFP sent to the potential partners,
7 the list of choices, the reasons a partnership worked
8 better, and the weighting of the decision process.
9 The SPTT members were introduced to the public and a
10 slide presentation covered the options. The current
11 politic -- political climate around LDCs and the
12 reasons for the choice of the strategic partnership.

13 If you could just scroll down a little
14 bit.

15 Roughly two hundred (200) people
16 attended, and you note other members have been
17 reported, four (4) people from the audience asked
18 questions, no one at that meeting publicly opposed the
19 sale of 50 percent of the Utility, and there were no
20 letters to the editor or editorials in the local media
21 afterwards opposing it.

22 It's your recollection Mr. -- you were
23 at the November 22nd meeting?

24 MR. IAN CHADWICK: Yes, I was.

25 MS. BELINDA BAIN: And -- and you

1 remember that meeting?

2 MR. IAN CHADWICK: I do.

3 MS. BELINDA BAIN: And to the best of
4 your recollection there were are approximately 200
5 people present at that meeting?

6 MR. IAN CHADWICK: I -- I'm guessing
7 at the number. I recall that there were quite a few
8 people in the audience, and we usually do a quick scan
9 trying to count the number by seats by the number of
10 rows. That's my recollection, going back several
11 years.

12 As I -- as I noted, other numbers have
13 been reported, there may have been less. I doubt
14 there were more though.

15 MS. BELINDA BAIN: Okay, but -- but
16 certainly in your recollection it was -- it was a full
17 room?

18 MR. IAN CHADWICK: It was -- there
19 were quite a few people there.

20 MS. BELINDA BAIN: Thank you. Could
21 we go now, please to ALE40924.0001. It's the 2013
22 annual report of Collus Power that I'm looking for.
23 There it is.

24 Mr. Chadwick, do you recognize this as
25 a copy that the 2013 Collus PowerStream Annual Report?

1 MR. IAN CHADWICK: Yes, I do.

2 MS. BELINDA BAIN: And you cite this
3 in the timeline that you prepared for the inquiry?

4 MR. IAN CHADWICK: Yes, I do.

5 MS. BELINDA BAIN: And you reviewed it
6 for purposes of -- of preparing that timeline?

7 MR. IAN CHADWICK: Yes, I believe it
8 was also provided to Council at the time.

9 MS. BELINDA BAIN: Thank you. Your
10 Honour, can we mark this as the next exhibit?

11 THE HONOURABLE FRANK MARROCCO: Yes.

12 MS. BELINDA BAIN: Thank you.

13 So this report sets out the financial
14 results of the first year of -- the first full year of
15 the strategic partnership, correct?

16 MR. IAN CHADWICK: That's correct.

17 MS. BELINDA BAIN: Collus PowerStream
18 being the outcome of the strategic partnership,
19 correct?

20 MR. IAN CHADWICK: Yes.

21 MS. BELINDA BAIN: And the strategic
22 partnership achieved significant success in its first
23 year?

24 MR. IAN CHADWICK: I believe so, yes.

25 MS. BELINDA BAIN: Okay. Can we

1 scroll down to page 2, please. Well, slides 2, it
2 might be. Keep going. That's it, thank you. So
3 we'll have to scroll down in a little bit, but so --
4 this slide is entitled 2013 At A Glance and it sets
5 out achievements of the strategic partnership in its
6 first year as -- as Collus Power.

7 Is that your understanding, sir?

8 MR. IAN CHADWICK: Yes.

9 MS. BELINDA BAIN: Okay. And if we
10 could scroll just to the bottom of this slide, I'm
11 interested in the second bullet from the bottom there,
12 Collus PowerStream customer survey results in a
13 utility pulse report card of a -- and I understand,
14 sir, that that means that there were very favourable
15 reviews in terms of customer service brought by the
16 strategic partnership Collus PowerStream, correct?

17 MR. IAN CHADWICK: I understand that
18 too, yes.

19 MS. BELINDA BAIN: Thank you.

20 Could we scroll onto the next slide,
21 which is a continuation of the achievements from 2013
22 towards the bottom. The second from the bottom deals
23 with a third party review.

24 I understand that to be the Consol
25 report that Mr. Chenoweth took you through previously?

1 MR. IAN CHADWICK: Yes, I believe
2 that's correct.

3 MS. BELINDA BAIN: Okay, and we don't
4 need to go through that again.

5 The next point down, first ever regular
6 annual cash dividend of \$367,000 paid to shareholders,
7 do you see that?

8 MR. IAN CHADWICK: Yes, I do.

9 MS. BELINDA BAIN: And is it your
10 understanding that there was a cash dividend paid in
11 and 2013 of \$367,000?

12 MR. IAN CHADWICK: Yes.

13 MS. BELINDA BAIN: And that's the
14 first time that the Collingwood utility had paid a
15 dividend, correct?

16 MR. IAN CHADWICK: I believe that's
17 correct, yes.

18 MS. BELINDA BAIN: And certainly the
19 Town was one of the shareholders of Collus
20 PowerStream?

21 MR. IAN CHADWICK: Yes.

22 MS. BELINDA BAIN: And so the town
23 benefitted from the payment of that dividend?

24 MR. IAN CHADWICK: It did.

25 MS. BELINDA BAIN: Thank you.

1 If we could scroll down, please, to
2 slide 6.

3 So this is a message in the annual
4 report from co-chair David McFadden. And of course,
5 we've spoken a lot about Mr. McFadden, he was on the
6 Board of Collus Power and then became the co-chair of
7 the new entity, Collus PowerStream, correct?

8 MR. IAN CHADWICK: That's correct,
9 yes.

10 MS. BELINDA BAIN: If we could scroll
11 down a little bit more, please.

12 So in his message in the 2013 Annual
13 Report Mr. McFadden notes:

14 "In addition to PowerStream's
15 contribution at the Board level, our
16 company has benefitted greatly from
17 services provided by PowerStream in
18 such areas as conservation and
19 demand management, training,
20 regulatory compliance, and the
21 provision of a 24/7 control room
22 capability."

23 Do you see that?

24 MR. IAN CHADWICK: I do.

25 MS. BELINDA BAIN: And that's

1 essentially Mr. McFadden acknowledging the benefits
2 which PowerStream brought to the table and brought to
3 Collingwood, correct?

4 MS. BELINDA BAIN: Thank you. Can we
5 go now please to BLG134_0001?

6 This is an article called Debunking the
7 Collus Myths. I believe that you're the author of
8 this article?

9 MR. IAN CHADWICK: Yes, I am.

10 MS. BELINDA BAIN: Your Honour, can we
11 mark this, please, as the next exhibit?

12 THE HONOURABLE FRANK MARROCCO: Well,
13 if -- this is Mr. Chadwick's article and he's
14 testifying, can he not just testify as to these
15 things?

16 MS. BELINDA BAIN: Well, it is itself
17 a stand-alone document, Your Honour, I can explore
18 with him the timing and -- and genesis of it if --

19 THE HONOURABLE FRANK MARROCCO: I'll
20 receive it. But I -- I view it, really, as Mr.
21 Chadwick's view. That's the way I'll approach the
22 document.

23 MS. BELINDA BAIN: Thank you, Your
24 Honour.

25

1 CONTINUED BY MS. BELINDA BAIN:

2 MS. BELINDA BAIN: Mr. Chadwick, could
3 you tell us when you wrote this article?

4 MR. IAN CHADWICK: 2015 o 2016. I'm
5 sorry, I don't have the date in front of me.

6 MS. BELINDA BAIN: And -- and why did
7 you write it?

8 MR. IAN CHADWICK: There was a lot of
9 -- of misinformation going around in Town on social
10 media, etc. about the previous sale that Council had
11 gone through and about the current sale going on.

12 There had been -- there were reports
13 that I considered to be incorrect about how they --
14 they covered that -- that sale process.

15 MS. BELINDA BAIN: Understood. Did
16 you publish this article?

17 MR. IAN CHADWICK: It was published in
18 a blog.

19 MS. BELINDA BAIN: Okay, thank you.
20 Can we please scroll down to the final paragraph?

21 And -- and sorry, just to follow up on
22 that, I understand that you have a personal blog,
23 ianchadwick.com?

24 MR. IAN CHADWICK: Yes, I do.

25 MS. BELINDA BAIN: And is that the

1 blog that this article was published on?

2 MR. IAN CHADWICK: Yes, yes it was.

3 MS. BELINDA BAIN: Thank you.

4 Was it published anywhere else?

5 MR. IAN CHADWICK: Not that I know of.

6 MS. BELINDA BAIN: Okay, thank you.

7 Can we scroll down a little further, please.

8 So in the final paragraph of this
9 article you write:

10 "It was a good deal, well-crafted,
11 legal, open, transparent, good for
12 the Town, overseen by the top
13 consultants, lawyers and experts in
14 the industry. It brought us a
15 terrific community partner who has
16 lived up to every commitment and
17 promise made during the process. It
18 paid for new recreational
19 facilities, and much of the Hume
20 Street revitalization. Council
21 should be celebrating the
22 partnership."

23 You wrote that then. Do you still
24 agree with that statement today?

25 MR. IAN CHADWICK: Very much so.

1 MS. BELINDA BAIN: And you think that
2 the Town got a good deal through it's partnership with
3 PowerStream?

4 MR. IAN CHADWICK: I do, yes.

5 MS. BELINDA BAIN: And you think that
6 PowerStream brought valuable expertise in the LDC
7 industry to Collingwood?

8 MR. IAN CHADWICK: Yes, I do.

9 MS. BELINDA BAIN: And PowerStream
10 was, in your words, a terrific community partner, is
11 that right?

12 MR. IAN CHADWICK: Yes.

13 MS. BELINDA BAIN: Thank you, those
14 are all my questions.

15 THE HONOURABLE FRANK MARROCCO: Well,
16 I'll -- I'll take the morning break. Ten (10)
17 minutes.

18

19 --- Upon recessing at 11:14 a.m.

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

21

22 THE HONOURABLE FRANK MARROCCO:
23 Fryer...?

24

25 CROSS-EXAMINATION BY MR. TIM FRYER:

1 MR. TIM FRYER: Thank you, Justice
2 Marrocco. Hello, Mr. Chadwick.

3 MR. IAN CHADWICK: Mr. Fryer.

4 MR. TIM FRYER: To begin with, I would
5 -- I'd like to examine an item that appears to differ
6 from some of your evidence in the time line. So I was
7 going to look at paragraph number 176.

8 I think you'll be familiar with this.
9 This is the details of the May 30th, 2011, council
10 meeting. And a presentation was made that included
11 the 2010 Collus audited financial statements and the
12 2011 to '13 business plan forecast of status quo
13 operations.

14 This transcript of the meetings shows I
15 outlined that these reports provided the required
16 annual analysis that is cited in the Collus
17 shareholder's direction. Would you agree with that?

18 MR. IAN CHADWICK: Excuse me one (1)
19 second. If I can -- just give me a second to read it.

20 MR. TIM FRYER: Run through it.

21 MR. IAN CHADWICK: I believe that
22 material was provided to council, yes.

23 MR. TIM FRYER: Thank you. Then if we
24 could just scroll down to 180. And this is just to
25 take a quick look at it. It -- it's some detail. It

1 goes into two (2) pages. And it's actually Mr.
2 Houghton's thoughts on -- on memories of the -- of the
3 meeting.

4 So it's not meant for questioning, it
5 was just to -- to review it just so you've seen it.

6 MR. IAN CHADWICK: M-hm.

7 MR. TIM FRYER: And then we'll go to
8 number 209.

9 THE HONOURABLE FRANK MARROCCO: Well,
10 has -- did -- did you want Mr. Chadwick to read that
11 paragraph now or just -- are you familiar with the
12 paragraph, Mr. Chadwick?

13 MR. IAN CHADWICK: Yes, I am. Thank
14 you.

15 THE HONOURABLE FRANK MARROCCO: Go
16 ahead, Mr. Fryer.

17 MR. TIM FRYER: Thank you very much.
18 And that's -- I -- I just wanted to make sure he had
19 seen it.

20

21 CONTINUED BY MR. TIM FRYER:

22 MR. TIM FRYER: So 209.

23

24 (BRIEF PAUSE)

25

1 MR. TIM FRYER: And this, again, is
2 the -- we ma -- heard many times about the June 27th
3 meeting. So this is the -- KMPG presented their
4 valuation work to date and put forth an analysis of
5 three (3) options over and above the status quo
6 summary received a month before, the majority and
7 minorities share sale and full sale were discussed.

8 The outcome of that singular discussion
9 was a decision to narrowly focus on one (1) option,
10 one (1) described as a strategic partnership for up to
11 50 percent of Collus shares.

12 Would you agree with that?

13 MR. IAN CHADWICK: I believe that was
14 correct, yes.

15 MR. TIM FRYER: Thank you. So my
16 question is, why, when considering a decision about
17 the unexpected sale of the most valuable municipal
18 asset, would council decide not to investigate if
19 there was other types of interest in the electricity
20 marketplace?

21 Since it apparently was still a
22 seller's market, there may have been a 25 to 30
23 million offer like the EPCOR transaction. That would
24 have been the proactive and prudent thing to do,
25 especially to provide assurance to your taxpayers that

1 all options had been considered.

2 I'd like your thoughts on that.

3 MR. IAN CHADWICK: I can only speak
4 for myself, Mr. Fryer, but I was certainly reluctant
5 to -- first of all, to sell a hundred percent of any
6 public utility. I still would be were I in council
7 today.

8 There was discussion around the table
9 about not losing control of services and rates which
10 generally was felt would happen if we sold more than
11 50 percent. That's my recollection of it.

12 MR. TIM FRYER: Okay. Thank you. Had
13 your campaign platform that term outline this concept?

14 MR. IAN CHADWICK: No. I -- the
15 campaign took place in 2010. This is somewhat close
16 to a year later that this had been brought up, so
17 nobody could have foreseen it because it wasn't even
18 brought to council as a possibility until May of 2011.

19 MR. TIM FRYER: Thank you. Did it
20 relate at all to your platform perhaps there was a
21 goal of reducing municipal debt levels?

22 MR. IAN CHADWICK: Not specifically,
23 no. Reducing municipal debt levels, I believe, is on
24 the radar of every candidate, and I believe it's
25 pretty much a standard plank in everybody's platform.

1 MR. TIM FRYER: Okay. Thank you. In
2 conjunction with this review then, another aspect that
3 I wanted to explore regarding your evidence is related
4 to the information provided to council during final
5 stages of approving the share sale transaction with
6 PowerStream.

7 So I wanted to bring up
8 ALE0005133.0002, and we'd look at slide 18.

9 THE HONOURABLE FRANK MARROCCO: While
10 they're doing that, Mr. Fryer, I just a question
11 arising out of what you asked about. The -- was there
12 a provision in the final documents that one (1)
13 shareholder could buy out the other?

14 MR. IAN CHADWICK: Yes, sir, I believe
15 there what was called the shotgun clause, that if one
16 (1) -- once I wanted to sell, the other one (1) had
17 the opportunity to buy that share.

18 THE HONOURABLE FRANK MARROCCO: Could
19 -- could one (1) side compel the sale?

20 MR. IAN CHADWICK: I don't -- I -- I
21 don't recall that there was any discussion about
22 compelling a selling.

23 THE HONOURABLE FRANK MARROCCO: All
24 right. Thank you. Go ahead, Mr. Fryer.

25 MR. TIM FRYER: Did -- did you read my

1 notes ahead of time?

2 THE HONOURABLE FRANK MARROCCO: No,
3 Mr. Fryer, I don't.

4 MR. TIM FRYER: Okay.

5 THE HONOURABLE FRANK MARROCCO:
6 Although I'm sure they would have been worth --

7 MR. TIM FRYER: Well, it's a -- it's a
8 little bit ahead, but --

9 THE HONOURABLE FRANK MARROCCO: I'm
10 sure they would have been worth the time, but -- but,
11 no, I didn't.

12 MR. TIM FRYER: Actually, if you just
13 put the -- the three (3) bullets on the screen, you'll
14 see -- I jokingly referred to the first bullet that
15 I'm going to come to, but you're ahead of me.

16

17 CONTINUED BY MR. TIM FRYER:

18 MR. TIM FRYER: So I -- I wanted to
19 talk about the third bullet. And, again, this is from
20 the December 5th in camera meeting --

21 MR. IAN CHADWICK: M-hm.

22 MR. TIM FRYER: -- 2011. So I wanted
23 to first consider with you the third bullet point
24 content.

25 MR. IAN CHADWICK: If I may. I was

1 not at that meeting. That was the meeting at which I
2 declared a conflict of interest, so I cannot talk
3 about any of the bullet points on this with any
4 accuracy because I didn't see them.

5 MR. TIM FRYER: Okay.

6 MR. IAN CHADWICK: I wasn't part -- I
7 didn't partake in that decision.

8 MR. TIM FRYER: Yeah, I -- I assumed,
9 since you participated in the January 23rd vote for
10 sale of -- of -- that you would have covered this
11 background because, at that point in time, you didn't
12 have...

13 But I think I can still ask you the
14 questions. I think, with your familiarity and -- and
15 particular circumstances, some of it'll be applicable;
16 if -- if not, then we'll just skip through it.

17 MR. IAN CHADWICK: Okay.

18 MR. TIM FRYER: So the first part that
19 I had asked about -- and I actually asked Mr. Lloyd
20 about this yesterday, so we know the answer, so I'll
21 just cover it with you.

22 It does say in the middle there that
23 the Town could set aside a portion of the proceeds for
24 future growth of Collus. And he explained that none
25 was -- were set aside.

1 So I'm thinking you can answer my
2 question of why no proceeds were put aside if it was
3 one (1) of the suggestions that could happen due to
4 the 60:40 fully leveraging.

5 MR. IAN CHADWICK: Sorry, I was
6 unaware of that suggestion. And as I recall the
7 process, we put the money aside, and then asked for
8 public input on how we should spend it. And we got
9 considerable amount of public input. And I'm sure
10 that will come -- come up in the next part of the --
11 the inquiry.

12 MR. TIM FRYER: Okay. So because you
13 didn't review this before, again, if -- if you -- if
14 you feel like you can't answer it, then you can just
15 tell me, but I was going to refer to the fact that it
16 said as another option that PowerStream will be there.

17 And I had said this yesterday to Mr.
18 Lloyd, that if PowerStream did put equity in, that
19 would change your 50:50 relationship. And -- and I
20 was asking the question, would it?

21 MR. IAN CHADWICK: Sorry, I was not --
22 as I said, I wasn't part of that and I -- I was not
23 part of those discussions.

24 MR. TIM FRYER: Okay. So I think then
25 what we'll do is -- the main reason I was reviewing

1 these contents of the detail is because it appears
2 that there wasn't a business plan contemplated during
3 the process that showed how the growth strategy was
4 ever going to be achieved.

5 Can you recall if there was a council-
6 approved business plan outlining expectations on
7 regional growth at some point in time?

8 MR. IAN CHADWICK: I recall that the
9 business plan was presented by Collus in May of 2011.
10 I don't recall specifically if it talked about
11 regional expansion. But I do know that regional
12 expansion had been discussed periodically over the
13 years, but I couldn't say exactly when.

14 MR. TIM FRYER: Okay. So I had
15 mentioned in my information about the May 30th meeting
16 that that was just on status quo, that business plan
17 was just status quo. And that's where the differs are
18 for your -- your evidence in your timeline.

19 So -- just to follow, here, so. So --
20 so in leaving the review topic, to the best of your
21 knowledge, as the council -- Council initiative of
22 becoming an equal partner with the larger entity
23 PowerStream finalized on January 23rd -- 23rd, 2012,
24 these critically important aspects put forward in this
25 bullet hadn't been further explored?

1 So you've already responded, "Correct,"
2 to that?

3 MR. IAN CHADWICK: Yes.

4 MR. TIM FRYER: Okay. So I wanted to
5 -- I will come back to that slide, but I wanted to
6 just quickly look at paragraph number 527.

7

8 (BRIEF PAUSE)

9

10 MR. TIM FRYER: So this is the one --
11 and -- and it -- it appears to indicate you had plans
12 for growth, but that didn't include, at least when the
13 decision was made, a funding strategy.

14 Is that correct?

15 MR. IAN CHADWICK: I'm sorry, you --
16 could you cli -- could you say that again? I --

17 MR. TIM FRYER: Well, this -- this
18 indicates that you were contemplating -- we could
19 bring up the email, but I know you're familiar with
20 email. It's -- it's up to you. You were
21 contemplating about growth strategy. And all I'm
22 saying -- but there wasn't a funding strategy that
23 you're aware of?

24 MR. IAN CHADWICK: Sorry, what -- what
25 -- funding strategy -- sorry, Tim, I don't quite

1 understand. Which funding strategy? For the growth
2 of Collus, do you mean?

3 MR. TIM FRYER: As a regional concept.

4 MR. IAN CHADWICK: I -- I was unaware
5 of any at the time.

6 MR. TIM FRYER: Okay, thank you. So
7 if we could just go back to the other slide.

8

9 (BRIEF PAUSE)

10

11 MR. TIM FRYER: And I was going to
12 look at the first bullet that Justice Marrocco was
13 asking about earlier. So this is -- is what you
14 mentioned to the -- to the judge about the shotgun
15 clause.

16 And I wasn't going to refer to what's
17 there in the -- in the bullet, but I think it is
18 important to put out there that it does speak to the
19 views on liquid -- liquidity is exactly that of ours,
20 and specifically, David McFadden's.

21 So if we could bring up ALE0003296,
22 which is the Unanimous Shareholder Agreement, and I
23 was going to bring up page 23.

24

25 (BRIEF PAUSE)

1 MR. TIM FRYER: And show article 9,
2 which is the buy/sell provisions. I wasn't going to
3 have you read through this. I -- I -- my question is
4 more of a general nature. But if we go to -- go to
5 part B, I wanted to consider it in part B that it
6 refers to twenty (20) days.

7 And I'll just say that as I said, not
8 going into depth, here -- that'll be for future
9 witnesses -- but looking at clause 9.2, I wanted to
10 consider the twenty (20) day reference.

11 That is the time period either party
12 would need to adhere to. So I was going to ask what
13 your thoughts are on this timeline for a Council to
14 complete a buy or sell transaction.

15 MR. IAN CHADWICK: I'm afraid first of
16 all, I did not see the -- the agreement at the time,
17 so I was unaware of all the conditions in it. It was
18 described in general terms only to us.

19 Twenty (20) days, I think Councils are
20 fairly mature and able to make a -- a decision. I
21 think -- I'm assuming that ahead of time that would be
22 brought forward as something that will be coming.

23 For example, the sale this year,
24 everybody knew about it -- sorry, not this year, a --
25 a previous term. The -- it was in the media. It was

1 -- it was talked about in Town. Everybody knew that
2 there was a sale coming, and the final twenty (20)
3 days are not probably the only information time that
4 they had for it.

5 But it didn't come up, so I can't
6 really speak upon what happened, because it didn't
7 come up in the past. I can only give you supposition.

8 MR. TIM FRYER: Yes.

9 MR. IAN CHADWICK: I wouldn't have had
10 a problem with twenty (20) days, assuming we had all
11 the experts, and the people giving us the right
12 advice, legal and otherwise, financial, and that sort
13 of thing.

14 MR. TIM FRYER: So you feel it could
15 be turned around in twenty (20) days, if necessary?

16 MR. IAN CHADWICK: It's only
17 guesswork. I -- I don't know what information would
18 be provided. Assuming it was all provided in time,
19 yes.

20 MR. TIM FRYER: Okay. Fair enough.
21 Upon reviewing this provision, and the other terms of
22 the Unanimous Shareholder Agreement, there were many
23 implications, and it brought uncertainty to the
24 forefront for last Council, anyway, who then decided
25 steps taken had to minimize that uncertainty.

1 The steps taken had to be handled in a
2 sensitive manner because of clause 9. So again, just
3 looking at 9.1 and the -- and the in the various terms
4 that are there, it's quite clear that it's fairly
5 extensive, and that it'd be very confidential and very
6 sensitive. So all I'm saying is that if you were
7 going to act on this, it would have to be done in a
8 sensitive manner. Would you agree?

9 MR. IAN CHADWICK: 'Sensitive' does
10 not mean 'secretive'.

11 MR. TIM FRYER: Thank you.

12 MR. IAN CHADWICK: And I believe that
13 it was done as a secretive and somewhat deceptive
14 process the last time.

15 MR. TIM FRYER: The result, though, is
16 that we all know an extremely successful Transaction
17 working within the restrictions imposed by this clause
18 was completed with EPCOR?

19 MR. IAN CHADWICK: That's not my
20 definition of successful. Someone who --

21 MR. TIM FRYER: Okay.

22 MR. IAN CHADWICK: -- a hundred
23 percent of a public asset is, to my mind, never
24 successful.

25 MR. TIM FRYER: So we have a

1 difference of opinion.

2 So moving back to the first slide, if I
3 could, again, please.

4

5 (BRIEF PAUSE)

6

7 MR. TIM FRYER: And you'll look at the
8 second bullet point.

9

10 (BRIEF PAUSE)

11

12 MR. TIM FRYER: So this note's about
13 the consideration of the services company, Collus
14 Solutions, being dissolved. As was noted earlier,
15 this back in December 2011, so you may not recall
16 this, but Council -- this is when Council was being
17 brought up to date on this consideration.

18 As well, for at least six (6) months
19 prior, there were ongoing internal discussions with
20 Collus audit committee about this, which obviously had
21 major impact in regards to completing the renewal
22 process of the affiliated companies' shared service
23 agreements.

24 Would you agree with that?

25 MR. IAN CHADWICK: I was not privy to

1 any of those discussions. They were all done in
2 Collus. And as I've said before, I did not see this
3 slide, and I was not part of that discussion.

4 MR. TIM FRYER: Okay. Some of the
5 evidence in this matter is contained in the document,
6 but we won't be getting into that now. The
7 examination of that in further evidence, such as which
8 staff had responsibility relating to it, will be
9 reviewed with later witnesses.

10 I wanted to review this particular area
11 with you, though, because of the evidence you had
12 presented, to see if you recall that there was the
13 possibility of impacts from the Unanimous Shareholders
14 Agreement, specifically section 9, and the final
15 decisions regarding the service company, which would
16 be done in order to -- for the most part, to comply to
17 new accounting principles on the future provision of
18 shared services.

19 Did you feel there was going to be an
20 impact because of those two (2) things?

21 MR. IAN CHADWICK: On shared services?

22 MR. TIM FRYER: Yes.

23 MR. IAN CHADWICK: I'm -- I'm sorry, I
24 -- I don't know. I -- as I said, I wasn't part of the
25 discussion. I wasn't part of the decision.

1 MR. TIM FRYER: Okay. And as a final
2 comment about shared services, it has also been
3 suggested during this proceeding that the decision to
4 have the share sale of the holding company take place,
5 that this caused difficulties with maintaining shared
6 services.

7 It appears, though, that most of the
8 difficulties had to do with the ever-growing
9 discontent between Collus and the Town governing
10 bodies, and their associated senior staff.

11 Would you agree?

12 MR. IAN CHADWICK: In my experience on
13 Council, there was no disagreement between Collus and
14 the Town over shared services. They seemed to be
15 working very well, and it was only when we put in a
16 new -- an interim CAO that suddenly a problem seemed
17 to occur.

18 MR. TIM FRYER: And then through the
19 next Council as well?

20 MR. IAN CHADWICK: And I wasn't part
21 of that Council, so I cannot speak to their
22 discussions.

23 MR. TIM FRYER: Okay.

24 MR. FREDERICK CHENOWETH: So, Your
25 Honour, I'm -- I'm a little lost, as I frequently am,

1 with respect to this matter. Is he talking about CAO
2 Mr. Houghton, or is he talking about a later CAO,
3 being Mr. Brown? I'm uncertain.

4 THE HONOURABLE FRANK MARROCCO: Well -
5 - well, be -- Mr. Fryer, before you ask another
6 question, which CAO were you talking about?

7 MR. IAN CHADWICK: The CAO -- the
8 interim CAO John Brown.

9 THE HONOURABLE FRANK MARROCCO: Now,
10 Mr. Chenoweth --

11 MR. TIM FRYER: And sorry, Mr.
12 Chenoweth --

13 MR. FREDERICK CHENOWETH: That's
14 helpful.

15 MR. TIM FRYER: -- sorry, that -- I --
16 I didn't catch that myself, that they're -- we're
17 talking about two (2) CAO situations.

18 THE HONOURABLE FRANK MARROCCO: Just
19 direct your questions to the witness. We're not
20 having a conversation this way, but we've now
21 clarified which CAO we're talking about.

22

23 CONTINUED BY MR. TIM FRYER:

24 MR. TIM FRYER: Yeah. So although you
25 weren't on the new Council, I believe that the

1 decision of the Collus Board in early 2015 to deny
2 Council's request for additional municipal Council
3 representation was another major factor in the growing
4 discontent between the two bodies.

5 MR. IAN CHADWICK: I was not at that
6 meeting, and I was not part of the Collus Board or
7 part of Council. So I can't really speak to the
8 details of that decision.

9 MR. TIM FRYER: Okay. So I'm going to
10 move over to another area. And if I could bring up
11 CPS0005635?

12

13 (BRIEF PAUSE)

14

15 MR. TIM FRYER: Justice Marrocco, I'll
16 just mention, these are 2015 emails, but it's
17 applicable to the 2011 valuation. That's why I'm
18 bringing them up.

19 THE HONOURABLE FRANK MARROCCO: Fine.

20

21 CONTINUED BY MR. TIM FRYER:

22 MR. TIM FRYER: And the first one, if
23 I could just show at the bottom, it's an email from
24 Jonathan Erling to Ed. I wasn't looking for a
25 question about the content. It was just to show

1 you -- and show you the -- the responding one that's
2 three (3) days later, which is a follow-up one.

3 THE HONOURABLE FRANK MARROCCO:

4 What -- well, just a second. Have you had a chance to
5 read it?

6 MR. IAN CHADWICK: I have, yes. Thank
7 you, Your Honour.

8 THE HONOURABLE FRANK MARROCCO: All
9 right. Yeah. Okay.

10

11 CONTINUED BY MR. TIM FRYER:

12 MR. TIM FRYER: And as I said, I
13 wasn't going to ask you a question specifically about
14 this one. As I said, the email to the follow-up note
15 to Mr. Houghton -- and it's just for background -- but
16 I noted the three-day differential and that the time
17 factor on this is to 10:25, I believe. I -- I don't
18 see the time on it. So -- anyway, so if we could go
19 on to CPS0005646.

20

21 (BRIEF PAUSE)

22

23 MR. TIM FRYER: And the body of the
24 email is kind of in the middle there, right there.
25 And I believe, Mr. Chadwick, you'd be familiar with

1 this one because it is in your timeline. It was used
2 in your timeline?

3 MR. IAN CHADWICK: It's in the time --
4 timeline, yes.

5 MR. TIM FRYER: So I just want to make
6 sure because there's three (3) different versions of
7 this email thread, and I'm still trying to sort that
8 out. So you've read through that.

9 I didn't bring up the actual timeline
10 to look at this because I found the use of emphasis in
11 it to be extremely poor taste. As you attested to in
12 your testimony the other day, you can relate to the
13 concern of a considerable amount of abuse from a local
14 blog.

15 Reviewing this particular email ahead
16 of the next one, which I would like to ask you
17 about -- so if you'll note the time on this one as
18 being 2:18. And if just scroll down, there's no
19 thread to it. So if -- if we could look at
20 CPS0005638?

21

22 (BRIEF PAUSE)

23

24 MR. TIM FRYER: And we'll just go to
25 the bottom part of the email. Just up a little bit.

1 Yeah, perfect.

2 So you'll see this as -- it shows it --
3 it's sent earlier that day by Pam Hogg at 10:07 a.m.,
4 and I'll give you a little time read through it, but
5 it shows it's a request for the valuation report?

6 MR. IAN CHADWICK: M-hm. Yes.

7 MR. TIM FRYER: So if we just scroll
8 up to Mr. Rockx's response and just a little higher.

9 You'll see this response was at
10 12:10 p.m., and I'll let you read through it.

11 MR. IAN CHADWICK: Yes.

12 MR. TIM FRYER: So this appears to be
13 Mr. Rockx's original response to the question asked,
14 and the email thread shows the -- the question that
15 was asked. Were you aware of this email thread when
16 you decided to utilize the 2:18 p.m. updated version,
17 which we just saw in the previous document in your
18 timeline?

19 MR. IAN CHADWICK: I don't recall.

20 I --

21 MR. TIM FRYER: Okay.

22 MR. IAN CHADWICK: -- the emails that
23 I got were all material that was submitted to the
24 judicial Inquiry. I don't recall -- there were quite
25 a lot of them.

1 MR. TIM FRYER: Okay. So I expected
2 you may have investigated if there -- if there was
3 different versions. So you're saying that there
4 weren't different versions that you are aware of?

5 MR. IAN CHADWICK: I don't recall
6 seeing different versions.

7 MR. TIM FRYER: Yes. Thank you. So
8 you wouldn't have known about this discrepancy in
9 wording and the area that you used emphasis on in your
10 timeline. So I'll sort through that later with the
11 KPMG representatives then.

12 If we could look at the timeline,
13 CJI0000002, and I'm very close to winding down, Your
14 Honour. And it's page 42.

15

16 (BRIEF PAUSE)

17

18 MR. TIM FRYER: So just a little bit
19 further. Right there is perfect. So you'll see the
20 reference to September 30th, 2013?

21 MR. IAN CHADWICK: Yes.

22 MR. TIM FRYER: Okay. So this is
23 dated September 30th, 2013. So just for
24 clarification, my retirement was actually
25 September 30th, 2012, and I don't believe my imposed

1 six (6) week leave cost almost \$78,000 to cover my
2 workload. So perhaps this note is regarding the cost
3 incurred over the year after my retirement?

4 MR. IAN CHADWICK: I'm sorry,
5 Mr. Fryer. I don't know all the detail of it. I just
6 took it from the -- as it's noted at the bottom in the
7 footnote: "Collus PowerStream Energy Probe responses
8 as to what the costs were."

9 MR. TIM FRYER: Okay.

10 MR. IAN CHADWICK: That was a response
11 that was made to Energy Probe. So I -- I don't have
12 any other details about it, and I'm sorry if I've
13 mistaken your retirement date.

14 MR. TIM FRYER: Okay. Thank you.
15 Were you aware that I had an agreement with Collus for
16 that 12-month period to be available to provide
17 services when required?

18 MR. IAN CHADWICK: No, Sir. I'm not
19 aware of any personnel relationships or agreements.

20 MR. TIM FRYER: Okay. In spite of my
21 checking periodically, they decided not to take
22 advantage of the no-cost agreement, completely outside
23 of my control. So as a shareholder at the time, is
24 that something you think should have been done?

25 MR. IAN CHADWICK: I -- I can't answer

1 that, Tim. I'm sorry. It's -- you're asking me what
2 would -- what I would do now about information that --
3 that was going around six (6) years ago? I'm sorry.
4 I don't know.

5 MR. TIM FRYER: Okay. So I -- not my
6 final question 'cause I do have one because of some
7 cross-examination. But --

8 MR. IAN CHADWICK: May I add -- may I
9 add, by the way, that personnel relations, personnel
10 agreements -- and it just basically personnel matters
11 within Collus and then later within Collus PowerStream
12 were not brought to Council at any time. They were
13 dealt with by the Collus Board because the Collus
14 Board -- the Collus PowerStream Board, I should say,
15 would be the -- the deciding body.

16 MR. TIM FRYER: So they were
17 confidential.

18 MR. IAN CHADWICK: Yes.

19 MR. TIM FRYER: As would be somebody
20 on medical leave.

21 MR. IAN CHADWICK: I assume so, yes.

22 MR. TIM FRYER: Thank you. So during
23 your 16-month -- or the 16-month sale transaction
24 process and relating to it in the years following,
25 have you ever asked me a question to get my opinion or

1 input?

2 MR. IAN CHADWICK: I don't recall I
3 have. No.

4 MR. TIM FRYER: Thank you. So earlier
5 you spoke about the first time Collingwood was paid a
6 dividend.

7 MR. IAN CHADWICK: Yes.

8 MR. TIM FRYER: I'd like to just
9 clarify through you that previous to 2010/'14 Council,
10 the earnings generated were kept inside Collus
11 operations as further investment rather than remove
12 cash for other municipal purposes.

13 MR. IAN CHADWICK: I believe that's
14 correct. Yes.

15 MR. TIM FRYER: Okay. Thank you.
16 These are all my questions, Sir.

17

18 CROSS-EXAMINATION BY MR. PAUL BONWICK:

19 MR. PAUL BONWICK: Good morning,
20 Mr. Chadwick.

21 MR. IAN CHADWICK: Good morning.

22 MR. PAUL BONWICK: Just as a result of
23 some of the cross-examination, I thought I would
24 address a couple of issues that have come up prior to
25 getting into the other issues that I would like to

1 raise with you.

2 MR. IAN CHADWICK: Okay.

3 MR. PAUL BONWICK: Firstly, there's
4 been some discussion related to what was described as
5 a shotgun clause and more accurately described through
6 the court documents as a buy-sell provision.

7 MR. IAN CHADWICK: M-hm.

8 MR. PAUL BONWICK: Would it seem
9 reasonable to you in any agreement -- any partnership
10 agreement -- that there should be a buy-sell provision
11 based on unknown extenuating circumstances that may
12 arise?

13 MR. IAN CHADWICK: Yes, it seem --
14 seems perfectly logic, especially when you're
15 involving a public asset.

16 MR. PAUL BONWICK: Would it seem
17 reasonable to you that there are a lot of extenuating
18 circumstances that could affect LDCs moving forward?
19 More specifically, provincial legislation that may
20 create an environment where, in fact, one party or the
21 other may choose not to participate moving forward,
22 and as a result would want to exercise a buy-sell
23 provision, would that seem reasonable to you?

24 MR. IAN CHADWICK: It seems
25 reasonable, yes.

1 MR. PAUL BONWICK: Could you imagine
2 any scenario where you're entering into agreement and
3 there is no option for an exit strategy?

4 MR. IAN CHADWICK: Personally no. If
5 I was buying or selling a house, I would assume that
6 there would be some sort of exit strategy. If I'm
7 buying an airline ticket, there's -- usually you have
8 insurance to make sure if something happens. So I
9 would assume that you'd have some sort of an exit
10 strategy in a buy-sell agreement.

11 MR. PAUL BONWICK: Thank you. There's
12 been some discussion about developing or lack of
13 developing a regional growth strategy as it relates to
14 putting aside funds in order to accommodate that
15 strategy. You're familiar with that?

16 MR. IAN CHADWICK: Yes, I am.

17 MR. PAUL BONWICK: Would you comment
18 on how you might go about developing a plan to
19 accommodate future growth strategy, when in fact, you
20 don't know what the conditions of that potential
21 partnership buy-in might look like?

22 MR. IAN CHADWICK: I -- I'm sorry. I
23 don't -- I don't even think that's possible. I think
24 you have to have a lot more information about the --
25 the working partnership. You have to have more

1 information about the potential for -- for expansion.
2 All of those areas are already serviced by LDCs. You
3 know, who's looking to sell; who's looking to change
4 their structure. I don't think you can do it ahead of
5 time. I think you'd have to do it after you've gained
6 some experience.

7 MR. PAUL BONWICK: Is it reasonable
8 to suggest that each and every opportunity for
9 expansion would be unique in that particular
10 relationship with another LDC?

11 MR. IAN CHADWICK: No. It -- my
12 understanding, having spent a bit more time at it
13 than -- subsequently than I -- than I did prior to it.
14 I understand that each one is -- is dealt with
15 individually, and it depends upon a lot of
16 criterion -- criteria set out by the Ontario Energy
17 Board, by Energy Probe, and, of course, by each
18 municipality, each LDC.

19 MR. PAUL BONWICK: Your -- would you
20 be familiar with the exercise that was commenced on
21 Wasaga Beach during the last term of Council. It was
22 respecting the potential sale of their LDC.

23 MR. IAN CHADWICK: It was somewhat
24 familiar -- talking to some people who attended to it
25 and talking to -- or reading the media stories online,

1 yes.

2 MR. PAUL BONWICK: Is it fair to say
3 it was somewhat contentious?

4 MR. IAN CHADWICK: Contentious would
5 be a very good for it, yes.

6 MR. PAUL BONWICK: Potentially one of
7 the most hot-button issues they had to deal with --

8 MR. IAN CHADWICK: Yes.

9 MR. PAUL BONWICK: -- during their
10 last term of Council. But I -- I draw that to your
11 attention simply because, hypothetically, if Collus
12 PowerStream was to engage with Wasaga Beach in terms
13 of the potential sale of their LDC, it could take on
14 any number of different scenarios, whether it was
15 buying the entire LDC, whether the Wasaga Beach LDC
16 was wanting to become a full partner in Collus
17 PowerStream, with -- it could take on any number of
18 different scenarios in terms of what that might look
19 like.

20 MR. IAN CHADWICK: That is correct.

21 MR. PAUL BONWICK: And so I would
22 submit -- and if you're agreeing with me -- that it
23 would be incredibly difficult to plan on what that
24 might look like until you're actually sitting at the
25 table and discussing how that transaction might

1 unfold.

2 MR. IAN CHADWICK: I agree, yes.

3 MR. PAUL BONWICK: Thank you. During
4 your 20-year career -- and I was -- I apologize if I'm
5 narrowing it or broadening it, you identified that you
6 were a journalist, an editor; that you worked for a
7 regional newspaper, as well as a considerable amount
8 of time for the National News Agency --

9 MR. IAN CHADWICK: Yes.

10 MR. PAUL BONWICK: -- to use that word
11 lightly -- CBC.

12 MR. IAN CHADWICK: Yes. I was the
13 reporting editor for The Enterprise-Bulletin. I --
14 local correspondent for CBC Radio, and I also --
15 excuse me -- did the -- an interview on Rogers cable
16 TV for their politically-speaking show.

17 MR. PAUL BONWICK: Would it be fair to
18 say that you took your responsibilities as a
19 journalist very seriously, especially relating to
20 maintaining a very high ethical standard as it relates
21 to information you're reporting, information gathering
22 at the end of the day and simply your responsibilities
23 as a journalist?

24 MR. IAN CHADWICK: I like to believe
25 so, yes.

1 MR. PAUL BONWICK: Is it reasonable to
2 assume, based on the fact that you were elected on
3 three (3) occasions --

4 MR. IAN CHADWICK: Three (3).

5 MR. PAUL BONWICK: On three (3)
6 occasions. That you took that same level of
7 responsibility in your job as a municipal councillor?

8 MR. IAN CHADWICK: Yes, I also like to
9 believe that.

10 MR. PAUL BONWICK: Thank you. Could I
11 call on Document CJ111120, please? There's a couple
12 of zeros in there. Sorry, my apologies, CJ --
13 CJI0011121.

14

15 (BRIEF PAUSE)

16

17 MR. PAUL BONWICK: Do you recall the
18 document that's up on the screen?

19 MR. IAN CHADWICK: Not specifically,
20 but I recognize the format.

21 MR. PAUL BONWICK: If I may ask, could
22 we scroll down?

23

24 (BRIEF PAUSE)

25

1 MR. PAUL BONWICK: Not for the
2 purposes of reading but just to give a -- a flavour
3 towards what it actually is as a document.

4

5 (BRIEF PAUSE)

6

7 MR. PAUL BONWICK: Thank you. That's
8 -- that's good. Could you go to CJI0011128?

9

10 (BRIEF PAUSE)

11

12 MR. PAUL BONWICK: Please scroll down.

13

14 (BRIEF PAUSE)

15

16 MR. PAUL BONWICK: Again, thank you.
17 I think you kind of got to -- unless somebody wants to
18 read in detail, I think we've got a general
19 understanding of -- do you recognize --

20 MR. IAN CHADWICK: Yes.

21 MR. PAUL BONWICK: -- that format in
22 that document?

23 MR. IAN CHADWICK: Yes. Those are the
24 -- the news wire scans that I provided to you.

25 MR. PAUL BONWICK: Did you provide

1 those to me on a weekly basis?

2 MR. IAN CHADWICK: Yes, I did.

3 MR. PAUL BONWICK: Are you aware of
4 the distribution list that I had in terms of me
5 communicating that out to arguably seventy (70)
6 different parties and potentially more on a weekly
7 basis?

8 MR. IAN CHADWICK: No, I'm not.

9 MR. PAUL BONWICK: Are you aware of my
10 involvement -- our engagement with Upper Lakes Marine
11 and Industrial?

12 MR. IAN CHADWICK: Sorry, could you
13 say that again?

14 MR. PAUL BONWICK: Are you familiar --
15 are you aware of the fact that I was engaged with
16 Upper Lakes Marine and Industrial, my company?

17 MR. IAN CHADWICK: I -- I don't know
18 the name, I'm sorry.

19 MR. PAUL BONWICK: Are you aware of
20 the fact that I was engaged with Allied Marine and
21 Industrial?

22 MR. IAN CHADWICK: No, I'm not sure
23 about that name either.

24 MR. PAUL BONWICK: Were you aware --

25 THE HONOURABLE FRANK MARROCCO: Mr.

1 Bonwick, what was that name, Allied?

2 MR. PAUL BONWICK: Allied Marine and
3 Industrial.

4

5 CONTINUED BY MR. PAUL BONWICK:

6 MR. PAUL BONWICK: Are you aware of
7 the fact that I was engaged and provided services to
8 Port Arthur Dry Docks, or Shipyards?

9 MR. IAN CHADWICK: I don't recall
10 that, I'm sorry.

11 MR. PAUL BONWICK: Dry Docks -- Port
12 Arthur dry docks, or shipyards actually is the...

13 Are you familiar with the term "The
14 Ring of Fire"?

15 MR. IAN CHADWICK: Oh yes, very much
16 so.

17 MR. PAUL BONWICK: Are you aware of
18 the fact that it's arguably one of the largest mining
19 opportunities identified by the Canadian and
20 provincial government in terms of future opportunity?

21 MR. IAN CHADWICK: Yes, I am.

22 MR. PAUL BONWICK: Did you at any time
23 feel that you were in the employ of Upper Lakes Marine
24 and Industrial, Allied Marine and Industrial, Port
25 Arthur Shipyards?

1 MR. IAN CHADWICK: No, I wasn't -- I
2 was not.

3 MR. PAUL BONWICK: Or any of the other
4 sixty (60) or so companies that I would email on a
5 regular weekly basis?

6 MR. IAN CHADWICK: No, I was not.

7 MR. PAUL BONWICK: Could I bring up
8 CJI0011120?

9

10 (BRIEF PAUSE)

11

12 MR. PAUL BONWICK: Again, I think
13 you've got it all there, but if it's --

14 Do you recognize the document on the
15 screen?

16 MR. IAN CHADWICK: Yes, I do.

17 MR. PAUL BONWICK: Is that amount the
18 amount as per agreement, \$700 for the month?

19 MR. IAN CHADWICK: That's correct,
20 yes.

21 MR. PAUL BONWICK: So based on my
22 calculation, you were paid \$166.67 a week?

23 MR. IAN CHADWICK: That's correct,
24 yes.

25 MR. PAUL BONWICK: And you provided my

1 company, for the purposes of me providing any service
2 to a multitude of companies, that service for \$166.67
3 a week. Was that --

4 MR. IAN CHADWICK: That's correct,
5 yes.

6 MR. PAUL BONWICK: Thank you. There's
7 been some cross-examination related to the services
8 that you were providing to my company, and I'd like to
9 move to the services you provided specific to our work
10 with First Nation communities within the Atlantic
11 region.

12

13 (BRIEF PAUSE)

14

15 MR. PAUL BONWICK: Is it your opinion
16 that First Nation communities generally speaking, not
17 all of course, but First Nation communities generally
18 speaking, require assistance or education related to
19 communications or developing successful communications
20 strategy in a manner that delivers a message to
21 political levels, as well as the general public?

22 MR. IAN CHADWICK: Yes, certainly some
23 do.

24 MR. PAUL BONWICK: In your opinion,
25 would it be reasonable to state that many First

1 Nations have a high degree of mistrust in relationship
2 to government and media?

3 MR. IAN CHADWICK: Only judging by
4 what I've read in the media or online, I would suggest
5 that is very likely.

6 MR. PAUL BONWICK: Do you recall the
7 services we provided, I think to a large extent you,
8 thank you very much, provided to members of the
9 Atlantic Assembly some time ago?

10 MR. IAN CHADWICK: Yes. I created and
11 presented a workshop on media relations that went over
12 a two-day period in Moncton, New Brunswick.

13 MR. PAUL BONWICK: Based on what
14 you've read and your personal experiences within the
15 First Nation community and the lack of trust they have
16 in government and media, I'd like you to comment on
17 your personal experience in terms of what Atlantic
18 leaders felt in terms of the relationship they had
19 with me, both elected officials and staff?

20 MR. IAN CHADWICK: In my experience
21 and when I saw, especially in those -- those -- the
22 weekend in Moncton, it was very positive and very
23 respectful.

24 MR. PAUL BONWICK: You'll also be
25 aware of the fact, and there's been some comment about

1 Gemba Environmental Services, you'll also be aware of
2 the fact of course that Gemba Environmental Services
3 provided training to the Atlantic Assembly of First
4 Nations.

5 MR. IAN CHADWICK: M-hm, yes.

6 MR. PAUL BONWICK: And you'll also, I
7 assume, remember that that training that we provided,
8 and again not me, more Mr. Fisher provided, was
9 specific to how they assess and manage their fuel
10 storage systems.

11 MR. IAN CHADWICK: I personally don't
12 recall that but I'll accept that.

13 MR. PAUL BONWICK: So in both
14 instances, the intention that I brought to the table
15 was rather than provide them consulting services to do
16 the assessments or manage their media training, the
17 intention was simply to train them so that they could
18 do it on their own. I think of the story where you
19 give a man a fish and you feed him for a day and you
20 teach a man to fish and you feed him for life.

21 Is it reasonable to say that that was a
22 more appropriate level of engagement within the First
23 Nation communities?

24 MR. IAN CHADWICK: I believe what was
25 presented at that time was -- was a method to give

1 them the tools to do it on their own, yes.

2 MR. PAUL BONWICK: I only touch on it
3 because it's come up in terms of the services you've
4 provided, but I -- it leads me to the more important
5 issue.

6 When you were involved in the decision-
7 making regarding the potential for a 50 percent sale,
8 the support of a 50 percent share sale, and
9 subsequently the approval or vote on the 50 percent
10 sale to PowerStream, did your work in New Brunswick in
11 any way impact the choice you made to vote on a
12 particular matter, more specifically the sale of 50
13 percent of the shares to PowerStream?

14 MR. IAN CHADWICK: No, it did not. It
15 happened many months before anything even came to
16 Council.

17 MR. PAUL BONWICK: Did the service you
18 were providing to my company in terms of collecting
19 news clippings from across the country specific to the
20 mining and energy sector, in any way affect your
21 decision to sell 50 percent of the shares of Collus?

22 MR. IAN CHADWICK: No, it did not.
23 And just to clarify, I did not partake in the
24 decision. I par -- I only partook in the decision to
25 send out the RFP, to go through a process and send out

1 the RFP. I did not participate in the decision to
2 choose either PowerStream or the strategic
3 partnership.

4 MR. PAUL BONWICK: My apologies. I
5 think it would also be useful for the Inquiry and His
6 Honour to understand the sharing of emails and the
7 access to emails, and I ask this to you because in my
8 mind you're sort of a resident expert as a -- as a
9 journalist.

10 Is it safe to assume that any municipal
11 emails are accessible through Freedom of Information
12 request?

13 MR. IAN CHADWICK: Well, generally,
14 yes, the -- there may be some redaction for personnel
15 or personal information. Anything -- I've always
16 believed, and it's my understanding, that anything
17 sent to all of council or to all of staff or, you
18 know, to the department heads and copied to all of
19 council is a public document.

20 MR. PAUL BONWICK: So to take that a
21 step further, whether it's Deputy Mayor Lloyd,
22 Councillor Lloyd, Councillor Chadwick, Councillor
23 West, if they're sending emails to staff or to other
24 councillors, whatever the case might be, unless it's
25 redacted for personnel or legal reasons, and it would

1 have to be identified as such, anybody from the public
2 can get access to those documents. Is that fair?

3 MR. IAN CHADWICK: That's fair. And
4 my time on council, especially the last term, there
5 were people in the community filing Freedom of
6 Information Act requests quite frequently to gain
7 those -- those emails.

8 MR. PAUL BONWICK: Thank you. Are you
9 familiar with a non-disclosure agreement?

10 MR. IAN CHADWICK: Yes, I am.

11 MR. PAUL BONWICK: And what is your
12 understanding of a non-disclosure agreement?

13 MR. IAN CHADWICK: I think you'd have
14 to be a little bit more specific about that because
15 there are non-disclosure agreements for all sorts of
16 things.

17 But, generally, it's so that the two
18 (2) parties do not share information with the public
19 until such a time as a public announcement is made, if
20 that's --

21 MR. PAUL BONWICK: A fair
22 interpretation. Would it make sense that in fact you
23 cannot only share information with the general public,
24 but in fact you can't share it with other parties,
25 competitors?

1 MR. IAN CHADWICK: That would be
2 correct, yes.

3 MR. PAUL BONWICK: And so would it
4 make sense that if I -- when I engage -- which is
5 standard business practice, engage with any client and
6 sign non-disclosure agreements, that I would not be in
7 a position to share that information with you or
8 anybody else as it relates to the services I provide?

9 MR. IAN CHADWICK: That would be
10 correct, yes.

11 MR. PAUL BONWICK: Thank you. I think
12 a question that should have been asked of you some
13 time ago, but I'll put it to you right now. At any
14 time throughout your nine (9) or ten (10) or eleven
15 (11) years on municipal council did you ever feel that
16 I acted inappropriately towards you in terms of
17 requesting confidential information, asking you to
18 vote in a particular direction, leveraging you in any
19 way at all related to Town business?

20 MR. IAN CHADWICK: No, you did not.
21 And, frankly, I do not recall us having any specific
22 conversation about any specific issue or any direction
23 about council.

24 MR. PAUL BONWICK: It would be
25 interesting, I think, for His Honour to note, as well

1 as those in attendance and viewing at home, how much
2 engagement have we had since you -- since we no longer
3 were engaged in a professional capacity?

4 MR. IAN CHADWICK: I -- I'd say none,
5 but I think we actually met at Loblaws once somewhere
6 between the tomatoes and the mushrooms.

7 MR. PAUL BONWICK: Small town.

8 MR. IAN CHADWICK: But -- but, no, we
9 have not had any other engagement. We haven't had any
10 social relationships. We haven't met or talked.

11 MR. PAUL BONWICK: I think
12 specifically to the matters before the judicial
13 inquiry right now, have we had any discussions? Have
14 I asked you to say anything or do anything or --

15 MR. IAN CHADWICK: No, you have not.

16 MR. PAUL BONWICK: Thank you. I want
17 to go to -- again, as a qualidi -- qualified resident
18 expert in social media which is far beyond me, we're
19 talking about Freedom of Information and the various
20 access.

21 MR. IAN CHADWICK: M-hm.

22 MR. PAUL BONWICK: You spoke about the
23 year following the close of the sale. And if I
24 understood you properly, you thought that the
25 partnership that had been struck was moving forward

1 and extremely successful?

2 MR. IAN CHADWICK: Yes. That's my
3 belief, yes.

4 MR. PAUL BONWICK: Is it in your
5 opinion that social media has the ability to drive a
6 narrative or construct a false narrative within
7 society and whether it's here in Collingwood, the
8 Province of Ontario, Government of Canada, or anything
9 internationally, for that matter?

10 MR. IAN CHADWICK: I -- I think that's
11 probably one (1) of the major issues right now in
12 politics worldwide. And right now, there's a question
13 whether or not social media's actually destroying
14 democracy.

15 MR. PAUL BONWICK: Have you -- in your
16 experience, had you witnessed any environment -- and,
17 again, you -- you follow this pretty closely. Have
18 you ever experienced an environment where the social
19 media, the blogging, was so caustic, so negative in
20 terms of driving a specific narrative than that which
21 happened in Collingwood?

22 MR. IAN CHADWICK: Not on a local
23 basis. I think locally, that it -- it certainly was
24 unprecedented. But I would suggest that, if you look
25 at them worldwide, you pretty much find that's the --

1 the tone of the dialogue these days.

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: I'd like to close
6 out with a question that I've put to the other
7 witnesses. Based on what I've heard from you, and I'd
8 like you to confirm this, did you feel that the
9 process leading up to and the eventual sale of the 50
10 percent shares in Collus was a robust, transparent,
11 and publically engaging process?

12 MR. IAN CHADWICK: Yes, very much so.

13 MR. PAUL BONWICK: Is it your opinion
14 -- and I'll reflect back on the integrity you bring to
15 council, your integrity as a journalist for twenty
16 (20) some years.

17 Is it your opinion that the best
18 possible decision was made for the ratepayers and the
19 residents of Collingwood?

20 MR. IAN CHADWICK: Yes, I do.

21 MR. PAUL BONWICK: Thank you. That
22 concludes my comments.

23 THE HONOURABLE FRANK MARROCCO: Re-
24 direct...?

25

1 RE-DIRECT EXAMINATION BY MS. KATE MCGRANN:

2 MS. KATE MCGRANN: Mr. Chadwick, My
3 Friend Ms. Bain in cross-examination asked you some
4 questions about whether you had had any direct
5 communication with individuals at PowerStream.

6 And I believe that your evidence was,
7 no?

8 MR. IAN CHADWICK: Yes.

9 MS. KATE MCGRANN: Look at paragraph
10 262 of the Foundation Document, please.

11

12 (BRIEF PAUSE)

13

14 MS. KATE MCGRANN: Paragraph 262
15 describes a PowerStream copy of invoice 731 from
16 Compenso that included handwritten notes --
17 handwritten notes, and then transcribed here, and I'd
18 like to walk through them with you. If we could
19 scroll down so we could look at them all, please.

20 In the right-hand column we see it
21 says:

22 "Ian Chadwick does contract work for
23 him, journalist by profession, sits
24 on Collingwood Town's council, views
25 himself as a sounding board on

1 council. He sold his UPS store."

2 On the left-hand side you see notes

3 that say:

4 "I suggest we're not comfortable

5 with it. Use this service until the

6 RFP October 5th. Continue to employ

7 him creates a conflict."

8 Was this information ever brought to

9 your attention?

10 MR. IAN CHADWICK: No, it was not.

11 MS. KATE MCGRANN: Did you continue to

12 provide services to Compenco after October 5th of

13 2011?

14 MR. IAN CHADWICK: Yes, I did.

15

16 (BRIEF PAUSE)

17

18 MS. KATE MCGRANN: In your cross-

19 examine by Mr. Chenoweth, he asked you some questions

20 about whether you had spoken to Mr. Houghton before he

21 agreed to take on the role of acting CAO of the Town?

22 MR. IAN CHADWICK: Yes.

23 MS. KATE MCGRANN: And I believe that

24 you said that you had discussions with Mr. Houghton

25 about his reservations and your own?

1 MR. IAN CHADWICK: Yes.

2 MS. KATE MCGRANN: What were your
3 reservations?

4 MR. IAN CHADWICK: My reservations
5 were several areas. One (1) is just simply optics.
6 It -- having somebody come from -- internally to come
7 and do it as opposed to bringing somebody in from the
8 outside, which had been the traditional practice,
9 would be subject to community talk as it had been when
10 we promoted Gord Norris, previously clerk to CAO, a
11 similar kind of talk.

12 Also, it was about whether or not he
13 could do the job in the municipal setting because,
14 although he had been involved in -- as a CEO of -- of
15 Collus, whether or not he could transfer those skills
16 over to the CAO position and whether or not he'd have
17 the support from staff.

18 MS. KATE MCGRANN: And you mentioned
19 concerns about the optics of appointing Mr. Houghton
20 leading to community talk. What was your concern
21 about the community talk?

22 MR. IAN CHADWICK: Well, when -- when
23 council -- and I was on council at the time. When
24 council replaced CAO Jay Currier with Gord Norris, who
25 had been the clerk at the time, in to CAO, there was

1 fairly traditional typical small-town talk about
2 promoting from within and that -- that you're --
3 you're -- it's helping somebody, on your staff, as
4 opposed to bringing in the best person, et cetera.

5 There's a lot of -- it's a small town.
6 There's a lot of coffee shop talk about these things.
7 Nowadays, of course, it's on social media. It's
8 probably more than coffee talk -- coffee table talk in
9 those days.

10 MS. KATE MCGRANN: What are the
11 implications of those kinds of discussions? Why do
12 they concern you?

13 MR. IAN CHADWICK: Well, how it
14 appears to the community is always important, and
15 trying to get the pulse of the community, trying to
16 find out how they feel about things. And if they're
17 not comfortable, it then sheds questions about the
18 credibility or the confidence of the person involved,
19 so they have to play their best game in order to be
20 able to win the community's confidence.

21 MS. KATE MCGRANN: Turn to document
22 TOC485476.

23

24 (BRIEF PAUSE)

25

1 MS. KATE MCGRANN: This is a copy of
2 the council report that my friend, Ms. Bain, brought
3 you to. And I assume that you reference this document
4 in your time line?

5 MR. IAN CHADWICK: Yes.

6 MS. KATE MCGRANN: In what context did
7 you receive a copy of this document?

8 MR. IAN CHADWICK: I believe the
9 document was -- was put online. I'm sorry, I can't
10 remember the exact source of it. I do know that when
11 it was being done, that I had talked about -- about it
12 with some of the staff at the utility. I knew it was
13 ongoing.

14 And when they got the results, they
15 were rather proud and pleased to be able to tell me
16 some of the results. I don't remember the exact date
17 that I received a copy of it though.

18 MS. KATE MCGRANN: And you don't
19 remember who you received it from?

20 MR. IAN CHADWICK: No, not offhand,
21 sorry.

22 MS. KATE MCGRANN: Look at slide 2 of
23 this document, please.

24

25 (BRIEF PAUSE)

1 MS. KATE MCGRANN: I'd like to look at
2 the first bullet point which says:

3 "The purpose of this report is to
4 have Council asset review in
5 practical terms, the benefits and
6 successes that Collus PowerStream
7 has been able to experience since
8 its strategic partnership with
9 PowerStream in July 2012."

10 Do you see that?

11 MR. IAN CHADWICK: Yes, I do.

12 MS. KATE MCGRANN: Do you see that
13 Consol has explained what the purpose of the report
14 is?

15 MR. IAN CHADWICK: Yes.

16 MS. KATE MCGRANN: Would you agree
17 with me that the purpose of this report is not to
18 assess whether the partnership was successful?

19 MR. IAN CHADWICK: I think that's a
20 question of semantics, yes.

21 MS. KATE MCGRANN: Is says that the
22 purpose --

23 MR. IAN CHADWICK: And it's open to
24 interpretation, I would think, but...

25 MS. KATE MCGRANN: Well, let's just

1 look at the language of it. It says, "The purpose is
2 to review the benefits and successes." Do you see
3 that?

4 MR. IAN CHADWICK: Yes.

5 MS. KATE MCGRANN: Do you have any
6 additional information about the purpose of this
7 report?

8 MR. IAN CHADWICK: No. I got it. I
9 saw what -- what you see here.

10 MS. KATE MCGRANN: Okay, let's --
11 we're currently on slide 4, on the bottom of the page.
12 Can we look at slide 2, please? On the paragraph
13 headed, "Third Party Reliance" It says:

14 "This report has been prepared in
15 accordance with the terms agreed to
16 with CPC and is not to be used for
17 any other purpose. Other than our
18 responsibility to CPC, neither
19 Consol Asset nor any member or
20 employee of Consol Asset undertakes
21 responsibility arising in any way
22 from reliance placed by a third
23 party on this report."

24 It goes on to say:

25 "Any reliance placed is that party's

1 sole responsibility. We understand
2 that this report may be released
3 into the public domain. Third
4 parties who access this report are
5 not a party to the engagement list
6 with CPC and, accordingly, may not
7 place reliance on this report."

8 It goes on, and I'm not going to read
9 the rest of it to you. The part that I'm interested
10 in is in the first sentence where it says:

11 "This report has been prepared in
12 accordance with the terms agreed to
13 with CPC and is not to be used for
14 any other purpose."

15 Did you have the opportunity to review
16 the terms referred to in that sentence?

17 MR. IAN CHADWICK: I didn't pay any
18 specific attention to it, no.

19 MS. KATE MCGRANN: Have you received a
20 copy of the terms referred to in that sentence?

21 MR. IAN CHADWICK: No, I'd never seen
22 them.

23 MS. KATE MCGRANN: The last question I
24 have for you is about your time line. So if we could
25 --

1 MR. IAN CHADWICK: Yes.

2 MS. KATE MCGRANN: If we could look at
3 CJI2, please.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Can we look at the
8 bottom of page 2 of this document? All the way to the
9 bottom, please.

10 Mr. Chadwick, this is the most recent
11 copy that I believe that the inquiry has of your time
12 line. It's dated September 27th, 2018.

13 MR. IAN CHADWICK: Yes.

14 MS. KATE MCGRANN: In your evidence,
15 you referenced providing additional information in the
16 spring. I would like to make sure that we have the
17 copy that you are referring to.

18 MR. IAN CHADWICK: Yes.

19 MS. KATE MCGRANN: Is this the copy
20 that you were referring to?

21 MR. IAN CHADWICK: I believe another
22 copy was sent this spring. And I will have to go back
23 and check my email records because there was a request
24 for me to update some of the information this spring,
25 which I did, and I sent it in, but I don't know if it

1 was received or not, I'm sorry. I will check.

2 MS. KATE MCGRANN: And --

3 MR. IAN CHADWICK: It's only a change
4 of, I believe, two (2), perhaps three (3), references
5 to Enterprise bulletin stories.

6 MS. KATE MCGRANN: My understanding is
7 that we received a number of documents that you've
8 identified as source documents?

9 MR. IAN CHADWICK: Yes, that's
10 correct.

11 MS. KATE MCGRANN: Those have been
12 disclosed. I don't believe we received an updated
13 copy, so we can take this conversation offline. But
14 if you could take a look and get back to us, that
15 would be appreciated.

16 MR. IAN CHADWICK: I will do it this
17 afternoon.

18 MS. KATE MCGRANN: Those are my
19 questions. Thank you.

20 THE HONOURABLE FRANK MARROCCO: Tha --
21 thank you. The next witness -- thank you, Mr.
22 Chadwick.

23 MR. IAN CHADWICK: Thank you.

24

25 (WITNESS STANDS DOWN)

1 THE HONOURABLE FRANK MARROCCO: The
2 next witness is...?

3 MR. JOHN MATHER: The next witness is
4 Jonathan Erling.

5 THE HONOURABLE FRANK MARROCCO: Is he
6 here?

7 MR. JOHN MATHER: Yes, he is.

8 THE HONOURABLE FRANK MARROCCO: All
9 right. Well, we'll stand down for a minute. And then
10 we'll get started. We'll -- we'll sit until -- until
11 1:00. And then we'll break for lunch, just so you
12 know.

13

14 --- Upon recessing at 12:26 p.m.

15 --- Upon resuming at 12:30 p.m.

16

17 JONATHAN MICHAEL ERLING, SWORN

18

19 EXAMINATION IN-CHIEF BY MR. JOHN MATHER:

20 MR. JOHN MATHER: Good afternoon, Mr.
21 Erling.

22 MR. JONATHAN ERLING: Good afternoon.

23 MR. JOHN MATHER: It's my
24 understanding that you are a managing director at
25 KPMG, is that correct?

1 MR. JONATHAN ERLING: My current title
2 is actually Executive Director.

3 MR. JOHN MATHER: Okay, and in 2011
4 was your title Managing Director?

5 MR. JONATHAN ERLING: It -- it was.

6 MR. JOHN MATHER: Can you explained to
7 the inquiry what your role was as a managing director
8 at KPMG in 2011?

9 MR. JONATHAN ERLING: So I -- I've --
10 within KPMG I am in the advisory practice, so I
11 provide consulting services.

12 And most of those services are focused
13 on the energy sector and regulated utilities.

14 MR. JOHN MATHER: Can you just give us
15 maybe an overview of the sort of advisory services you
16 would provide to clients in that sector?

17 MR. JONATHAN ERLING: So certainly we
18 have helped many utilities in Ontario with
19 restructuring processes in connection with the reform
20 of the electricity sector that began in 1998.

21 I also, from time to time, do cost
22 allocation work for utilities or look at business
23 options and what would be the benefits of
24 restructuring their operations or, for example, to
25 look for cost saving opportunities.

1 I would also do financial projections
2 for a variety of projects, generation type projects or
3 combined heat and power that -- that type of thing.

4 MR. JOHN MATHER: And have you
5 consulted on the sales -- on the sale of any LDCs or
6 other utilities?

7 MR. JONATHAN ERLING: Yes, I have.

8 You know, John Herhalt and I in the
9 early period, around the year 2000 advised a number of
10 utilities on issues associated with restructuring,
11 including decisions on whether to sell an interest in
12 a utility or to retain ownership.

13 MR. JOHN MATHER: And as part of that
14 work, have you been involved in any RFPs for LDCs or
15 other utilities?

16 MR. JONATHAN ERLING: I have. I think
17 a -- a number of other utilities that I don't recall
18 the specific utilities, but yes.

19 MR. JOHN MATHER: Yes. And prior to
20 the valuation and options analysis work that was done
21 for Collus in 2011, what work had you done in relation
22 to the Collus companies?

23 MR. JONATHAN ERLING: So, around the
24 year 2000 there was a process run by Collus at that
25 time to investigate decisions on the future of the

1 utility and it was done in collaboration with -- with
2 a task force that included representatives from the
3 Town.

4 And it was a relatively extensive
5 process in terms of educating the members of the
6 participating panel on developments in the industry
7 and, you know, what some of the options were and --
8 and then making a decision at that time to -- to
9 retain Collus.

10 MR. JOHN MATHER: And are you talking
11 about the process whereby it -- municipalities were
12 required to make their -- make LDCs into OBCA
13 corporations?

14 MR. JONATHAN ERLING: Yes, that's
15 correct. At the time, utilities needed to transform
16 themselves from utility commissions into a share
17 capital corporation. And in addition to, you know,
18 the shareholder, the City as shareholders or the Town
19 as shareholders, as the case may be, you know, not
20 only did they have to make a decision as to whether
21 they would retain ownership of the utility or look to
22 sell it or potentially amalgamate with other
23 utilities, you know, they also had to make decisions
24 about financial structure and dividend policies and
25 whether or not they would be interested in entering,

1 for example, competitive lines of business and setting
2 up related corporations to enter into those types of
3 competitive lines of business.

4 MR. JOHN MATHER: So then it's my
5 understanding that you and Mr. Herhalt consulted with
6 Collingwood on that process for the Collus companies?

7 MR. JONATHAN ERLING: When you say
8 "Collingwood", the Town of Collingwood?

9 MR. JOHN MATHER: Yes.

10 MR. JONATHAN ERLING: My recollection
11 was that there was at least one (1) or two -- two (2)
12 members of Council on the task force that was set up.
13 I think the Mayor was a member and maybe a town
14 Council member but I -- I don't recall the specific
15 list of individuals.

16 MR. JOHN MATHER: So between that work
17 and the options and value and -- the valuation and
18 options analysis work in 2011, did you do any other
19 consulting or work for the Collus companies?

20 MR. JONATHAN ERLING: I did not.

21 MR. JOHN MATHER: And then how did you
22 become involved in the preparation of the value and
23 options analysis in 2011?

24 MR. JONATHAN ERLING: So John Herhalt
25 called me up and indicated that he had received a call

1 from Ed Houghton, who was interested in, I think,
2 doing a refresh of our work in the year 2000 period
3 or, you know, looking again at -- at potential future
4 strategies for Collus.

5 You know, there had been a significant
6 amount of time had elapsed since the first study or
7 process and, you know, the industry had evolved
8 somewhat. And so I think Ed thought that -- or at
9 least as relayed to me by John, Ed thought that, you
10 know, it was probably time for the Town to -- to look
11 again at -- at the decisions it had been making.

12 MR. JOHN MATHER: And what was your
13 role to be in this review?

14 MR. JONATHAN ERLING: So my role
15 really would be to provide a perspective, I mean
16 within the KPMG group I probably focused more than
17 others on the energy sector and developments in the
18 utility sector.

19 So my role was to really review the
20 environment from a market business perspective,
21 whereas, for example, John Rockx provides specialized
22 valuations expertise.

23 MR. JOHN MATHER: And Mr. Rockx is
24 also with KPMG?

25 MR. JONATHAN ERLING: Correct.

1 MR. JOHN MATHER: And when you were
2 brought into this project, who did you understand the
3 client to be?

4 MR. JONATHAN ERLING: The direct
5 client was going to be the utility and that they would
6 sign the engagement letter and, you know, we would
7 invoice them for the fees. But my understanding that
8 we were going to be working for -- the work was being
9 done on behalf both of Collus and its shareholder, the
10 Town of Collingwood.

11 MR. JOHN MATHER: Okay, so you said
12 that Coll -- you understood the utilities, so I assume
13 that was Collus Power?

14 MR. JONATHAN ERLING: Correct.

15 MR. JOHN MATHER: Was their direct
16 client, but the -- so did you understand the Town of
17 Collingwood to be a client?

18 MR. JONATHAN ERLING: Yes.

19 MR. JOHN MATHER: And you mentioned an
20 engagement letter, is it fair to say that is where the
21 scope of KPMG's work is set out?

22 MR. JONATHAN ERLING: Yes, it is.

23 MR. JOHN MATHER: And do you recall
24 who drafted the engagement letter?

25 MR. JONATHAN ERLING: I did.

1 MR. JOHN MATHER: So if we could go to
2 paragraph 148 of the Foundation Document.

3 So this paragraph discusses an internal
4 KPMG email thread in which you to and Mr. Rockx are
5 discussing a draft engagement letter at this point in
6 time. And if you see down at the bottom of the date
7 of this email chain is February 14th, 2011.

8 MR. JONATHAN ERLING: Yes.

9 MR. JOHN MATHER: And it appears that
10 you have sent Mr. Rockx a draft engagement letter and
11 you've asked him to provide some revisions to a
12 particular part of it.

13 And you say -- and your specific
14 request was to reword the section on indicative
15 valuation, observing that Mr. Rockx probably has a
16 better sense of what we can get away with. Do you see
17 that?

18 MR. JONATHAN ERLING: I do.

19 MR. JOHN MATHER: Do you recall this
20 email thread?

21 MR. JONATHAN ERLING: Vaguely.

22 MR. JOHN MATHER: Do you recall what
23 you meant when you said that Mr. Rockx probably had a
24 better sense of what we can get away with?

25 MR. JONATHAN ERLING: Yes. I -- and -

1 - and really the context for this was that -- and it's
2 indicated, for example, in the lines that are crossed
3 out at the bottom of the paragraph which I will read:

4 "Because there have been a few
5 recent transactions in the sector,
6 these estimates of value will be
7 subject to significant uncertainty."

8 And I think that points to a very
9 important context for this review, is that, you know,
10 there had been a lull in transactions in the Ontario
11 LDC sector in the years prior to us undertaking this
12 review, which was in 2011. I don't think there had
13 been any significant transactions in the year or two
14 (2) prior.

15 And, you know, much as one can do
16 calculations of the value of the Utility based on a
17 discounted cash flow approach, which is -- which is
18 analyzing the future cash flows of the Utility and
19 discounting them back to today and saying what should
20 they be worth to an owner at a certain discount rate,
21 there always is in the calculations, uncertainty as to
22 what the appropriate discount rate to use is and what
23 assumptions about terminal value to use at the end of
24 the cash flow period, and particularly the, you know,
25 the ratio of the terminal value of the Utility to the

1 rate base of the Utility.

2 And that particular number is very
3 dependent on buyer interest at the moment in time, and
4 we had seen in the past, some periods in which buyers
5 appear to pay quite high premiums to purchase
6 utilities, and we weren't sure that those premiums
7 would still be available in the marketplace.

8 So what we wanted to flag in this
9 discussion, in my original language, was to say, you
10 know, much as we can do some very precise calculations
11 about, you know, the future cash flows, we're not
12 actually sure how that will translate to a purchase
13 price if somebody is going to buy the Utility in the
14 absence of knowing buyer behaviour in -- in making
15 offers, and because of the absence of recent
16 transactions, in our mind it wasn't -- you know, we --
17 we couldn't really be very precise.

18 MR. JOHN MATHER: So I just want to
19 break some of that down.

20 MR. JONATHAN ERLING: Sure.

21 MR. JOHN MATHER: So -- and -- and
22 starting by backing up. So looking at the first
23 sentence in this paragraph:

24 "We will prepare a" --
25 -- and then it's changed but

1 essentially:

2 "We will prepare an analysis of the
3 potential sale of the value of
4 Collus."

5 So as a starting point, one of the
6 things KPMG was going to do was provide an analysis of
7 Collus' potential sale value.

8 MR. JONATHAN ERLING: Correct.

9 MR. JOHN MATHER: And then from what I
10 understand you are saying is, you had identified that,
11 because there had been few recent transactions in the
12 LDC space, that was going to lead to significant
13 uncertainty for the reasons you've just explained.

14 MR. JONATHAN ERLING: Correct.

15 MR. JOHN MATHER: And I take it then
16 you were looking to -- for Mr. Rockx to assist you in
17 how to communicate that to Collus?

18 MR. JONATHAN ERLING: Yes.

19 MR. JOHN MATHER: Certainly. Happy
20 to be amongst the people who are speaking too loud.

21 And again just -- I think confirming
22 what you said here. So what we're looking at is --
23 the words that are struck out are the original words
24 you drafted?

25 MR. JONATHAN ERLING: I think so.

1 MR. JOHN MATHER: Do you have any
2 reason to believe they're not your words?

3 MR. JONATHAN ERLING: No.

4 MR. JOHN MATHER: Okay. And the words
5 that are underlined, do you understand those to be the
6 words that Mr. Rockx has inserted?

7 MR. JONATHAN ERLING: Well, I assume
8 so because if it was a -- you know, done as a review
9 function -- sorry, as in a revision function within
10 Word, you know, it usually underlines the changes that
11 people are making, and I'm not sure -- is this from an
12 email he -- or is it from a Word document? I guess
13 it's from an email.

14 MR. JOHN MATHER: Why don't we first
15 open KPM563, which is the documents cited, the email
16 cited here.

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: So if you look at
21 this email chain, Mr. Erling, you see that the
22 original email in the chain is from you to Mr. Rockx
23 on February 14th, 2011, and it looks at the language
24 we said before.

25 Can I leave it to you to reword the

1 section on indicative valuation? You probably have a
2 better sense of what we can get away with. Do you see
3 that?

4 MR. JONATHAN ERLING: Yes.

5 MR. JOHN MATHER: And then we have Mr.
6 Rockx sending you an email back, saying:

7 "Here are a few suggested changes."

8 Do you see that?

9 MR. JONATHAN ERLING: I do. So it
10 looks like, based on this, that -- that those changes
11 underlined were added by him,

12 MR. JOHN MATHER: Okay, excellent. So
13 if we could go back to the Foundation Document,
14 paragraph 148?

15

16 (BRIEF PAUSE)

17

18 MR. JOHN MATHER: So going back to --
19 so going back to the changes Mr. Rockx had made, he
20 takes out your language regarding there had been a few
21 recent transactions in the sector, and about that
22 meaning estimates of value would be subject to
23 significant uncertainty. And he writes --

24 "The valuation" --

25 He writes -- adds first a clause,

1 "As well a review of management's
2 multi-year projections of for
3 Collus."

4 And then he says:

5 "The valuation analysis can be used
6 to assess the financial merits of
7 the various ownership options, i.e.,
8 sell, retain, merger, for the
9 Utility."

10 And we'll get to it but this is the
11 language that ends up in the final retainer letter.

12 MR. JONATHAN ERLING: Okay.

13 MR. JOHN MATHER: Did what Mr. Rockx
14 do here address what you were looking for when you
15 said you might have a better sense of what we can get
16 away with?

17 MR. JONATHAN ERLING: Well, I don't
18 remember what my exact intent at the time was. For
19 his changes -- I would say his change -- I don't have
20 -- I don't disagree with his changes.

21 MR. JOHN MATHER: What do you mean by
22 you don't disagree with his changes?

23 MR. JONATHAN ERLING: I think they are
24 reasonable additions. I think he's pointing out that
25 we would do -- you know, we would look in some -- you

1 know, we would look at their multi-year pipe --
2 financial projections, because those are important
3 inputs to our financial analysis when John Rockx does
4 his discounted cash flow analysis, and -- and I think
5 he's also pointing out that, you know, the rationale
6 for the exercise is to provide a value or an
7 indicative value that can be used so that somebody in
8 making a decision on to sell or retain or merge can
9 say, okay, if they sell it, you know, what's a
10 potential indication of a price that might be received
11 in the marketplace.

12 MR. JOHN MATHER: And again I just
13 want to understand your view. Do you think this was
14 sending or -- or expressing the same information that
15 you had been trying to express in the words that are
16 struck out?

17 MR. JONATHAN ERLING: I think it
18 actually -- I think if you read it, it's actually
19 expressing somewhat different thoughts. So it appears
20 that, you know, we're kind of reducing the focus on
21 the uncertainty.

22 MR. JOHN MATHER: Do -- do -- did you
23 ever explain to anyone at Collus or the Town that
24 there had been few -- few recent transactions in the
25 sector and that that meant estimates of value would be

1 subject to significant uncertainty?

2 MR. JONATHAN ERLING: I didn't have
3 any direct discussions with the Town. The idea that
4 there had been few transactions is in our engagement
5 letter, as I understand it.

6 MR. JOHN MATHER: And -- and we'll
7 come to that and -- and we can see it. So in the
8 engagement letter you believe the fact that there's
9 been few transactions is referenced.

10 Do you recall having any other
11 conversations with anyone at Collus about the fact --
12 or sorry, not the fact, but about your view that any
13 estimate of value would be subject to significant
14 uncertainty?

15 MR. JONATHAN ERLING: I don't recall
16 if I had a conversation with Ed on that specific item.

17 MR. JOHN MATHER: And you said Ed.
18 Anyone else at Collus?

19 MR. JONATHAN ERLING: Ed or Tim. And
20 I don't think I ever had telephone conversations with
21 anyone other than Ed or Tim, and certainly not with
22 the Town.

23 MR. JOHN MATHER: Okay. And another
24 change that is made in this portion of the retainer
25 letter says "We will prepare," and you had originally

1 said "a high level analysis," and Mr. Rockx has
2 changed this to an analis -- "an analysis."

3 So if you're looking at the first
4 sentence on paragraph 1 -- that's quoted in paragraph
5 148.

6 First question, what did you mean when
7 you included the qualifier, "high level" to the word
8 "analysis"?

9 MR. JONATHAN ERLING: It was just
10 flagging in my mind the uncertainty.

11 MR. JOHN MATHER: So it relates to the
12 language you had below?

13 MR. JONATHAN ERLING: Yeah.

14 MR. JOHN MATHER: In your view, how
15 does it affect the meaning of this section of the
16 retainer letter to remove the words -- the qualifier
17 "high level"?

18 MR. JONATHAN ERLING: Sorry, could --
19 could you repeat the question?

20 MR. JOHN MATHER: So the word "high
21 level" -- Mr. Rockx suggests removing the "high" --
22 the word "high level," and I just wanted to understand
23 how you believe that affects the meaning of what's
24 being expressed here?

25 MR. JONATHAN ERLING: It would reduce

1 the -- the qualification of what we're doing, the
2 implied qualification, the word -- to take out the
3 word "high-level."

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: So the question I
8 asked you was whether or not you ever explained to
9 anyone at Collus that a -- the estimates of value
10 would be subject to significant uncertainty, and you
11 said you -- you didn't believe so.

12 Do you know if anyone else at KPMG
13 expressed that to anyone at Collus?

14 MR. JONATHAN ERLING: I don't know.

15 MR. JOHN MATHER: So if we could go to
16 KPM600.

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: and if we could just
21 scroll through the document, just so Mr. Erling can
22 see the full document to the signature page at the
23 end.

24 We can go a little quicker. I don't --
25 I'm not going to ask him to read it right now. I just

1 want him to get a sense of the document.

2

3 (BRIEF PAUSE)

4

5 MR. JOHN MATHER: Keep going. I just
6 want to give a full view of the document.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: So Mr. Erling, I
11 just want to confirm, is this the engagement letter
12 for the valuation and options analysis?

13 MR. JONATHAN ERLING: Yes, it is.

14 MR. JOHN MATHER: And if we could
15 scroll back up to the top, and then go down to where
16 it sets out scope of work.

17 So in this section of the letter, it
18 says, "During our work," the "our" being KPMG, "We
19 will undertake the following tasks."

20 And the first task contemplates that
21 KPMG:

22 "Will meet with senior management at
23 Collus to review the current
24 business and financial plans of the
25 Utility. During this meeting, we

1 will explore the current financial
2 and operating status of the Utility
3 and identify any issues that may
4 impact on the Utility's value to the
5 Town, either in a sale transaction
6 or a standalone entity."

7 I'm going to ask you more about that --
8 that element of your scope of work in a moment.

9 If we go down to the second bullet
10 point, we see that this -- this is the -- the bullet
11 point that we saw you and Mr. Erling (sic) drafting.

12 MR. JONATHAN ERLING: Mr. Rockx.

13 MR. JOHN MATHER: Sorry, Mr. Rockx.
14 You're Mr. Erling. Thank you. We saw you drafting,
15 and we can see that it maintained the language that
16 Mr. Rockx had suggested?

17 MR. JONATHAN ERLING: Yes. So I think
18 I said that it -- it does not specifically reference
19 that there had been few recent transactions. I think
20 there still is quite a bit of language that flags that
21 this is not going to be a precise valuation --
22 specifically the sentence:

23 "This will not be a formal
24 valuation, but rather an indicative
25 view of the potential value of the

1 Utility in a sale transaction."

2 I think the words in that phrase
3 reasonably flag to a reader that this isn't going to
4 be precise, but it can be useful for business
5 decision-making purposes.

6 MR. JOHN MATHER: Okay. What's the
7 difference between a formal valuation and -- and an
8 dic -- and -- and an indicative view of potential
9 value?

10 MR. JONATHAN ERLING: I will preface
11 my answer with -- to that question to say I am not a
12 valuator, and I don't think that there is a formal
13 definition of what a formal valuation is versus an
14 indicative view. You know, I don't think that that is
15 accepted language in the valuation community that
16 speaks to a particular type of valuation.

17 In our valuation report, there's a
18 mention of three (3) levels of a valuation report, a
19 comprehensive estimate, and a calculation, and those
20 are actual formal terms used by the Institute of
21 Valuators. John Ross would be in a better position to
22 differentiate between the three (3) levels in terms of
23 how you might characterize them.

24 MR. JOHN MATHER: Understood. And I'm
25 -- what I want to understand is, as the drafter of the

1 letter, and as a member of the KPMG team, what you
2 understood the difference -- the difference to be
3 between a formal valuation and this indicative view of
4 potential value that you were proposing to provide to
5 Collus.

6 MR. JONATHAN ERLING: I think the view
7 was that it would tend to be more of the nature of an
8 estimate -- sorry, the nature of a calculation as
9 defined by the Institute, rather than a comprehensive
10 or an estimate, and also that we would probably do the
11 less detailed analysis of the projections that had
12 been prepared by management.

13 I think in the valuation process
14 typically, it -- it's not only about doing
15 calculations of discounted cash flow, which is a
16 mechanical exercise in some sense, although it does
17 involve making some judgements as to appropriate
18 discount rates, but it also involves some due
19 diligence into the projections that are being used as
20 inputs, and the degree of due diligence will vary
21 depending on the nature of the -- the valuation
22 report.

23 So to say not a formal valuation, but
24 an indicative view, suggests on the spectrum, it's a
25 less detailed.

1 MR. JOHN MATHER: And because it's
2 less detailed, would it be fair to say that it's
3 subject to more uncertainty?

4 MR. JONATHAN ERLING: It would be fair
5 to say that. I -- I think ultimately, much as one
6 could refine the valuation by refining the cash flow
7 projections and maybe -- maybe become -- in our view,
8 more reasonable or more precise.

9 Ultimately, probably the real source of
10 uncertainty in this context was what was somebody
11 willing to pay for a Utility or a given set of
12 projected cash flows, and that was a market test, or
13 it was up to buyers. And ultimately, you really only
14 find that out through a RFP process.

15 MR. JOHN MATHER: And so I understand
16 what you're saying there is, you don't know what it's
17 going to sell for until you find out what people are
18 willing -- actually willing to pay for it?

19 MR. JONATHAN ERLING: Exactly.

20 MR. JOHN MATHER: But I -- I just want
21 to confirm that it is -- that in terms of -- so this
22 is a -- an estimate. You could -- there would be more
23 certainty in the estimate of a formal valuation than
24 an indicative view of the potential value?

25 MR. JONATHAN ERLING: Yes. I don't

1 think there would be a lot more certainty because you
2 can never really address, however much work you do,
3 the uncertainty as to what a buyer might pay, and the
4 decisions they will make. And that's -- you have to
5 kind of get into their mind. And in -- in the absence
6 of recent transactions, it's -- it's hard to have a
7 clear view of that.

8 MR. JOHN MATHER: And so you already
9 mentioned that Mr. Rockx was a certified business
10 valuator. And it's my understanding that he was
11 primarily responsible for this component of the work.

12 Is that fair?

13 MR. JONATHAN ERLING: Correct. I -- I
14 leave that stuff to him.

15 MR. JOHN MATHER: Okay. And then if
16 we go down to the next bullet point under scope of
17 work, scroll down, please. The next bullet point is:

18 "We will also prepare a summary of
19 the advantages and disadvantages of
20 various ownership options from the
21 perspective of the Town, of the
22 Utility ratepayers, and local
23 ratepayers. This summary will take
24 into account both financial and
25 qualitative issues. It will address

1 the implications for a local
2 distribution Utility, of broader
3 developments in the electricity
4 sector, including the desire for a
5 smart grid and incentives for
6 renewable power generation."

7 Do you see that?

8 MR. JONATHAN ERLING: I do.

9 MR. JOHN MATHER: And I just want to
10 confirm, it's my understanding that it was this
11 component that you were primarily responsible for?

12 MR. JONATHAN ERLING: Yes.

13 MR. JOHN MATHER: And then the fourth
14 point contemplates that KPMG is going to prepare a
15 PowerPoint style report. And then the final point
16 that the KPMG will provide a presentation of that
17 report to relevant stakeholders?

18 MR. JONATHAN ERLING: That's correct.

19 MR. JOHN MATHER: And so is this -- as
20 you understood it in February 2011, the entirety of
21 the scope of work that KPMG had been retained to do?

22 MR. JONATHAN ERLING: Yes.

23 MR. JOHN MATHER: So -- and we can
24 actually scroll up to the -- up in the letter again.
25 So I said I would come back to the first bullet point,

1 if we can scroll down a bit about meetings with senior
2 management at Collus to review the current business
3 and financial plans of the Utility.

4 Do you recall how many meetings you had
5 with senior management at Collus?

6 MR. JONATHAN ERLING: We had one (1)
7 actual meeting on site, at least I did, and it was a
8 few weeks after the start of the engagement. So we
9 started the engagement. Rather than having a meeting,
10 we had a phone call and then exchanged some, you know,
11 files. They sent us some files, and we started to
12 review the files.

13 But we did that remotely, and then we
14 had one (1) meeting, you know, because of the travel
15 distance. I think we tended more to rely on the phone
16 calls, rather than in person meetings.

17 MR. JOHN MATHER: Okay. So if we
18 could go to paragraph -- actually, Your Honour, I'm
19 noting the time, and I'm about to move to --

20 THE HONOURABLE FRANK MARROCCO: Well,
21 we'll -- we'll take the lunch break; 2:15.

22

23 --- Upon recessing at 1:01 p.m.

24 --- Upon resuming at 2:15 p.m.

25

1 CONTINUED BY MR. JOHN MATHER:

2 MR. JOHN MATHER: So if we can turn up
3 paragraph 150 of the Foundation Document.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: So, Mr. Erling, if
8 you look at paragraphs 150 and 151, we see they
9 contemplate a kick-off meeting for March 11th, 2011.
10 It appears that Mr. Houghton was contemplating having
11 Mr. Muncaster and Mr. Fryer attend the meeting but in
12 paragraph 151 it looks like it was just -- it might
13 have been just Mr. Houghton and Mr. Fryer on the call.

14 To start, do you recall participating
15 in a kick-off meeting on March 11, 2011?

16 MR. JONATHAN ERLING: I certainly
17 recall participating in a kick-off call. I don't
18 recall whether or not it occurred on March 11th,
19 although I could check my time sheet to see.

20 MR. JOHN MATHER: Did you participate
21 in any other kick-off calls?

22 MR. JONATHAN ERLING: I don't
23 remember.

24 MR. JOHN MATHER: And do you remember
25 who was present for the kick-off call?

1 MR. JONATHAN ERLING: I don't
2 remember. Certainly, Ed would have been on the call.
3 I don't recall if -- if -- if Tim was on the call but
4 it wouldn't surprise me if he was.

5 MR. JOHN MATHER: Do you know if Mr.
6 Muncaster was on the call?

7 MR. JONATHAN ERLING: I don't
8 remember.

9 MR. JOHN MATHER: During the kick-off
10 call, do you recall what either Mr. Houghton or Mr.
11 Fryer said to you about what Collus was hoping to
12 achieve with the valuation and options analysis.

13 MR. JONATHAN ERLING: I don't remember
14 them specifically talking about what they were trying
15 to achieve other than, you know, what I had initially
16 indicated earlier today, you know, they felt it was
17 time to do a review of the Town's ownership position
18 in the Utility and, you know, the valuation was to be
19 done as part of that exercise.

20 MR. JOHN MATHER: What else do you
21 recall about the kick-off call?

22 MR. JONATHAN ERLING: I don't recall
23 very much about the kickoff call. I know that I have
24 provided some notes that I think were probably from
25 the kickoff call, and I transcribed them at the

1 request of counsel. But I don't really recollect much
2 of the conversation, although some of the points in
3 it, I do recollect.

4 MR. JOHN MATHER: Okay. And I
5 just -- I want to make sure I understand what you're
6 talking about. If we could scroll down to
7 paragraph 157.

8 MR. JONATHAN ERLING: Yes.

9 MR. JOHN MATHER: Just wait for it to
10 come up on the screen.

11 MR. JONATHAN ERLING: Okay.

12 MR. JOHN MATHER: It's -- this
13 paragraph references some notes that you made, and it
14 dates them just generally as the spring of 2011, then
15 we see the transcription in the document. Are these
16 the notes you were referring to?

17 MR. JONATHAN ERLING: Yes.

18 MR. JOHN MATHER: Okay. So we'll come
19 back to those in a moment.

20 MR. JONATHAN ERLING: And I -- I
21 should clarify, I was never quite -- I have the notes.
22 I wasn't sure whether they were part of the call, or
23 they were the subsequent meeting that we had with
24 Dean Muncaster and Ed on May the 12th. The notes
25 could have been from the meeting.

1 It's certainly the entry that says
2 "Tim opposed to being sold" suggest that Tim wasn't
3 part of that conversation. So that could be the
4 May 12th meeting, or it could be the March phone
5 conversation. But that would also then apply that --
6 that Tim was not part of the March phone conversation,
7 but I don't know.

8 MR. JOHN MATHER: So fair to say,
9 these are notes you took of the conversation you had
10 with Mr. Houghton?

11 MR. JONATHAN ERLING: Correct.

12 MR. JOHN MATHER: And they may have
13 been from the March 11th kickoff call, or they may
14 have been from the May 12th meeting you had in person?

15 MR. JONATHAN ERLING: Correct.

16 MR. JOHN MATHER: Did you ever speak
17 with Mr. Houghton separate and apart from the kickoff
18 call in the May 12th meeting?

19 MR. JONATHAN ERLING: It's possible.
20 I don't want to say I didn't. I don't recall having
21 another call with Ed after that first call and then
22 the subsequent meeting, but I don't -- I can't for
23 sure say one way or the other.

24 MR. FREDERICK CHENOWETH: Your Honour,
25 I wonder if my friend could assist me. I'm wondering

1 whether there was other people in the call. It may be
2 significant to other people in the call; there's other
3 people in the meeting. Mr. Houghton and Mr. Muncaster
4 were there.

5 It might be useful to learn more about
6 whether the notes reflect what Ed said or what others
7 said or what the situation is, and this witness could
8 tell us.

9 MR. JONATHAN ERLING: I'm pretty sure
10 it --

11 THE HONOURABLE FRANK MARROCCO:
12 Somebody -- just a minute.

13 MR. JONATHAN ERLING: Sorry.

14 THE HONOURABLE FRANK MARROCCO: You
15 can ask those, you know, questions when your turn
16 comes.

17 MR. FREDERICK CHENOWETH: I could.
18 Sure.

19

20 CONTINUED BY MR. JOHN MATHER:

21 MR. JOHN MATHER: Mr. Erling, I take
22 it that if -- when you look at these notes, do you
23 remember when you took them if it was based on a
24 conversation with only Mr. Houghton present or if
25 there were others present?

1 MR. JONATHAN ERLING: I don't -- I
2 can't -- I can't remember whether it's just a
3 conversation with Ed or whether others were present.
4 I mean, if it was a phone conversation, I don't
5 remember.

6 MR. JOHN MATHER: Okay. So -- sorry,
7 I don't mean to cut you off.

8 MR. JONATHAN ERLING: No, that's fine.

9 MR. JOHN MATHER: And we'll come back
10 to these in a moment. But for now, if we could go to
11 paragraph 152?

12 MR. JONATHAN ERLING: Okay.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: So this is
17 referencing an email between yourself and Mr. Rockx.
18 The date is March 23rd, 2011, so between the kickoff
19 call and what I understand to be an in-person meeting
20 on May 12th.

21 And you write Mr. Rockx -- you forward
22 Mr. Rockx some benchmarking reports and -- and then
23 you write Collus does -- doesn't rank well.

24 Do you remember sending Mr. Rockx an
25 email containing benchmarking reports?

1 MR. JONATHAN ERLING: Vaguely.

2 MR. JOHN MATHER: What is a
3 benchmarking report?

4 MR. JONATHAN ERLING: So at the
5 time -- and I think that the -- the Ontario Energy
6 Board would do an analysis of all of the utilities in
7 Ontario, and it's essentially an analysis of their
8 operating costs compared to various predictor
9 variables, such as the number of customers they serve,
10 the service area, territory size, the number of lined
11 kilometres of overhead wire that they have, and maybe
12 their energy consumption, and their demand peaks.

13 And -- and it would use those predictor
14 variables to estimate, you know, expected costs for
15 utility, and then it would compare actual costs to the
16 expected costs. And it would then, based on this
17 analysis, put utilities into a number of categories
18 and use those categories to differentiate among
19 utilities in the setting of productivity targets going
20 forward.

21 MR. JOHN MATHER: So I -- I take it
22 then when you say Collus doesn't rank well, what you
23 meant is in terms of productivity as compared to other
24 LDCs?

25 MR. JONATHAN ERLING: Correct.

1 MR. JOHN MATHER: Okay. And Mr. Rockx
2 responded, Not surprised. Do you know what he meant
3 by that?

4 MR. JONATHAN ERLING: I do not.

5 MR. JOHN MATHER: So if we could turn
6 up KPM884.

7 MR. JONATHAN ERLING: Actually, maybe
8 just as a supplementary to that single word answer, I
9 think it's worth -- worthwhile context noting that,
10 you know, there's a fair amount of disagreement about
11 the accuracy and value of the benchmarking reports.

12 And you know, there's various
13 statistical experts get hired and debate models for
14 evaluating utility performance. And, you know, for
15 any given utility, it's hard to know whether, you
16 know, a perceived higher cost or whether higher costs
17 are actually the result of, you know, poor performance
18 or other factors that haven't been taken into account
19 in the modelling work.

20 So, you know, I don't know if I regard
21 the benchmarking studies as a hundred percent
22 reliable.

23 MR. JOHN MATHER: Understood. Okay.
24 So if we could go to KPM884.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: And then if we can
4 scroll down to the original email -- sorry -- scroll
5 up.

6 So the first email in this chain is an
7 email from you to Mr. Fryer and Mr. Houghton, dated
8 April 25th, 2011. And you're requesting some -- you
9 have some questions for them, and you're seeking some
10 clarification.

11 And then if we scroll up, we see that
12 Mr. Fryer provides you with responses on May 9th,
13 2011, and -- sorry if we scroll down again -- his
14 responses appear to be in red.

15 I'm going to ask you about some of the
16 questions and responses --

17 MR. JONATHAN ERLING: Sure.

18 MR. JOHN MATHER: -- in a moment. But
19 I want to scroll up in the email chain, and we see
20 that you forward Mr. Fryer's responses to Mr. Rockx
21 and Mr. Herhalt. And you say:

22 "I don't think Tim Fryer is on board
23 with the study. Perhaps I'll
24 suggest a call with Ed and Tim
25 together."

1 Do you remember sending this email?

2 MR. JONATHAN ERLING: Vaguely, but --
3 vaguely. Certainly when I see it, it looks familiar.
4 I'll say that.

5 MR. JOHN MATHER: Do you recall what
6 you meant when you said, "I don't think Tim fryer is
7 on board with the study"?

8 MR. JONATHAN ERLING: I don't remember
9 exactly. I know -- I think if you look at the email
10 below. I think, you know, there's some evidence that,
11 you know, Tim is questioning why are we asking for
12 certain things and -- and indicating that he's -- you
13 know, it's -- you know, it would take some effort to
14 respond some of the questions, and that there are
15 other activities that are going on at the Utility that
16 are taking his time and that, you know, he was having
17 some difficulty juggling the various demands on his
18 time.

19 That may have fed into an impression
20 that, you know, he didn't think this was a -- as
21 worthwhile an exercise or as necessary as some of the
22 other things that he had on his plate, you know, in
23 the way that managers often are faced with multiple
24 priorities.

25 MR. JOHN MATHER: Fair enough. And

1 we'll look at some of those answers in a moment, like
2 I said.

3 Other than the responses you -- the
4 answers to the email questions you had below, was
5 there anything else that led you to form that
6 impression?

7 MR. JONATHAN ERLING: Not that I
8 remember.

9 MR. JOHN MATHER: Did you ever speak
10 with Mr. Fryer directly about whether or not he was in
11 favour of the valuation on -- on board with completing
12 the valuation?

13 MR. JONATHAN ERLING: I don't recall.

14 MR. JOHN MATHER: The email
15 contemplates -- you used -- doesn't contemplate. You
16 suggest a call with Mr. Houghton and Mr. Fryer.

17 Do you know if that call ever happened?

18 MR. JONATHAN ERLING: I don't recall
19 if a call happened. I think, you know, subsequent to
20 this email there -- and it was probably subsequent to
21 this email, there was, you know, I think a
22 conversation between Ed and John Herhalt directly and,
23 you know, Ed I think kind of suggested that it would
24 be good to get together in person to discuss the scope
25 of our work and the underlying assumptions.

1 You know, we had started the process
2 with a telephone call and telephone calls are never as
3 effective as an in-person meeting, and, you know,
4 have -- having spent some time going through materials
5 that had been forwarded us -- to us by management, you
6 know, it was probably an appropriate time to have a --
7 an in-person meeting.

8 MR. JOHN MATHER: And I just want to
9 clarify, did you think Ed's suggestion was in part
10 motivated by some of the concerns you had seen with
11 Mr. Fryer?

12 MR. JONATHAN ERLING: I have no idea.

13 MR. JOHN MATHER: Okay. I just wanted
14 to understand why you tied -- I asked you if Ed and --
15 if you ever had a call with Ed or Tim and then you
16 said you -- I believe you said you weren't sure, but
17 you -- you then talked then talked about a meeting,
18 that -- that Ed suggested a meeting in person.

19 I just want to understand how those two
20 (2) things related in your mind.

21 MR. JONATHAN ERLING: I -- I didn't --
22 I don't know that I made an assessment of how they
23 tied together. It wouldn't surprise me if, you know,
24 Tim -- I mean, it wouldn't surprise me if, you know,
25 Tim and I had a discussion about, you know, why are we

1 doing this valuation given that it's resulting in a
2 lot of, you know, additional work.

3 And we were probably asking more
4 questions than was necessary, given the context, but,
5 you know, the tendency at the beginning of an
6 engagement is often to ask a lot of questions because
7 you don't know what you don't know and you -- you want
8 to find out as much as you can, and then you kind of
9 narrow down the scope to focus on what you think is
10 important in that circumstance.

11 MR. JOHN MATHER: So if we could go
12 back to paragraph 157.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: These are the notes
17 we were looking at earlier.

18 MR. JONATHAN ERLING: Yes.

19 MR. JOHN MATHER: And I understand
20 that you don't recall what time you made these notes
21 and who was present, but we do see that you -- we do
22 see that Mr. Fryer appears to be discussed in these
23 notes.

24 And I was wondering, is it possible
25 that you did have a conversation with Mr. Houghton

1 after you sent that email to Mr. Rockx and Mr. Herhalt
2 about Mr. Fryer?

3 MR. JONATHAN ERLING: Is it possible?
4 It's unlikely. I mean, I don't think that my response
5 -- it's possible, but I don't recall. I mean, I don't
6 think my -- my -- the result of, you know, Tim
7 indicating that some materials were going to be
8 difficulty or time -- time -- timely -- taking time to
9 provide was -- induced me to call Ed. I -- I don't
10 think -- I don't think there's a relationship.

11 MR. JOHN MATHER: So you have no
12 recollection of that?

13 MR. JONATHAN ERLING: No.

14 MR. JOHN MATHER: Okay. So I do -- so
15 we can move on from these notes. I want to ask you a
16 few questions about some of the things in them.

17 MR. JONATHAN ERLING: Yes.

18 MR. JOHN MATHER: So the first point
19 in your notes is, "Tim opposed to being sold."

20 Do you remember what that note was
21 about?

22 MR. JONATHAN ERLING: I'm pretty sure
23 that it would -- Ed had come out and said Tim is
24 opposed to being sold. You know, that's why I wrote
25 it down. It's not something I would have surmised or

1 concluded. These are primarily kind of me
2 transcribing what I think I was being told by Ed
3 during a conversation.

4 MR. JOHN MATHER: Right. And --

5 MR. JONATHAN ERLING: And -- and, you
6 know, like, a lot of the context at that time was, Ed
7 and -- and Tim, as I understood it, were both kind of
8 nearing the end of their careers. You know, they were
9 going to be going to be eligible for retirement soon.
10 That's my recollection.

11 And -- and as -- as is the case with
12 many utilities, because Tim and Ed were the brains of
13 the organization and kind of had -- you know, the
14 management decision-makers -- and there's a reference,
15 for example, to Darius. I know that he was another
16 personnel, you know, of long-standing who was
17 effective in the engineering role, and, you know, he
18 had retired, and so I -- I -- you know, know the
19 concern that Ed had was, you know, the Utility is
20 facing a succession issue and, therefore, it's
21 probably an appropriate time to think about a new
22 direction.

23 MR. JOHN MATHER: And as you're
24 reading your notes and -- and -- are you recalling Ed
25 telling you this or are you surmising based off

1 reading the notes?

2 MR. JONATHAN ERLING: I kind of can
3 remember Ed talking about these points.

4 MR. JOHN MATHER: Okay. And do you
5 remember -- I'm going -- I'm just trying to help place
6 the origin of the notes, whether this was on a phone
7 call or a meeting in person.

8 MR. JONATHAN ERLING: I -- I'm not
9 sure. My -- my suspicion is that they are a telephone
10 call, partly because they're fairly detailed notes and
11 I tend to take more detailed notes on telephone calls
12 than in-person meetings because you don't have to look
13 somebody in the eye every three (3) minutes to kind of
14 maintain rapport; you can just kind of beaver away.

15 So usually I take -- make more detailed
16 notes on telephone conversations. That leads me to
17 conclude this is probably from a telephone
18 conversation, but I'm not 100 percent sure.

19 MR. JOHN MATHER: Do you recall what
20 led to the note, "We are painted into a corner"?

21 MR. JONATHAN ERLING: I think it -- I
22 think it was a combination of the succession issues
23 that I referred to and -- and maybe, you know, there
24 is also an element of the industry is getting more
25 difficult, you know, that the Ontario Energy Board is

1 being more demanding in terms of information that it
2 requires, and this is putting a greater workload on
3 management. You know, you have new billing rules, so
4 you have to adjust your billing and collection system.
5 And I think is the sort of evolution of demands from
6 the regulators, is kind of causing management at the
7 time to say, you know, what was sustainable in the
8 post-2000 period may no longer be sustainable in the
9 future as, you know, the demands within the industry
10 ratchet up.

11 And, you know, it's sometimes easier
12 for large utilities to address these types of demands
13 because it -- you know, they have more personnel. You
14 know, they have greater depth in their management team
15 and -- and, you know, a billing change probably takes
16 the same amount of effort for Collingwood as it does
17 for a much larger utility, but they have a much
18 smaller pool of people to -- to draw from in -- in
19 dedicating resources to make that change.

20 MR. JOHN MATHER: And then one more
21 question about these notes.

22 "Tim Fryer - he is scrambling."

23 Do you remember what that was about?

24 MR. JONATHAN ERLING: I think that was
25 to do with -- there are demands on Tim as the CFO. You

1 know, Tim was the detail guy in the organization and,
2 you know, probably did a lot of the work in terms of
3 putting together rate applications and worrying about
4 the financial statements, and I think that, you know,
5 in particular -- you know, it would be Tim's area
6 where there would be many new requirements coming down
7 the road from the Ontario Energy Board and that would
8 put extra effort or work burden on -- on Tim.

9 MR. JOHN MATHER: It sounds to me from
10 your answer that you're perhaps surmising about what
11 this is about.

12 Do you remember Ed saying those things
13 specifically to you?

14 MR. JONATHAN ERLING: In terms of the
15 interpretation of Tim, He is scrambling?

16 MR. JOHN MATHER: Yeah. Yeah.

17 MR. JONATHAN ERLING: I'm pretty sure
18 that Ed kind of talked about those types of things
19 when talking about the workload on Tim.

20 MR. JOHN MATHER: Okay. So if we
21 could go back to KPM884.

22

23 (BRIEF PAUSE)

24

25 MR. JOHN MATHER: And then if we could

1 scroll down to the -- the main email. Yes, that one
2 (1). So this was Mr. Erling's email we were looking
3 at earlier that -- where you sent Mr. Houghton and Mr.
4 Fryer some questions and sought some clarification,
5 and the responses from Mr. Fryer are in red.

6 MR. JONATHAN ERLING: Yeah.

7 MR. JOHN MATHER: And just --

8 MR. JONATHAN ERLING: Okay.

9 MR. JOHN MATHER: -- before I forget,
10 if we could mark this document as an exhibit?

11 THE HONOURABLE FRANK MARROCCO: Yes.

12

13 CONTINUED BY MR. JOHN MATHER:

14 MR. JOHN MATHER: So if you look sort
15 of mid -- near the bottom of the -- the first page
16 there's a sentence that starts, "Overall, we still."
17 Do you see that? It's right down --

18 MR. JONATHAN ERLING: Oh, yes. Yes.

19 MR. JOHN MATHER: Yeah.

20 MR. JONATHAN ERLING: Yes, I do see
21 that, yes.

22 MR. JOHN MATHER: All right. So you
23 had written:

24 "Overall, we still don't have a
25 clear picture of the financial

1 tracks -- transactions that occur
2 among Collus, the Collingwood Public
3 Utility Board, and the Town and any
4 of the operating profits that are
5 associated with these transactions."

6 And then you say:

7 "For example, the summary sheet
8 outlining cash and in kind services
9 to the Town does -- doesn't tie with
10 the numbers shown in the financial
11 statements. How do we reconcile?"

12 What are you talking about in this part
13 of the email?

14 MR. JONATHAN ERLING: Well, we just --
15 we -- we didn't see a link between numbers in the
16 financial statement and some other numbers that we got
17 in the summary sheet outlining cash and in kind
18 reserves.

19 I don't recall this -- the -- what the
20 specific issue was. But, you know, often times, when
21 you look into the financial position of a utility, you
22 -- you know, you look at a number on a financial
23 statement and you say, okay, how does that compare or
24 tie to other evidence that we have and that it -- you
25 know, we couldn't see the link. That -- that was all

1 that was indicating.

2 MR. JOHN MATHER: So, in this case,
3 what are you trying to find the link of? Like, what -
4 - what's the subject matter that you're -- you're
5 dealing with?

6 MR. JONATHAN ERLING: Transactions
7 between the utility and -- and the Town and how that
8 would impact the -- the utility's financial position.
9 So, you know, our -- our understanding was that the
10 utility provided some services to the Town and,
11 therefore, you know, it's incurring costs, you know,
12 on behalf of the Town.

13 You know, we would expect there might
14 be some revenue shown coming back or, any way, maybe
15 an offset to their expenses to reflect the fact that -
16 - that some expenses are being picked up by the Town
17 rather than by the utility's ratepayer.

18 So it really just went to the question,
19 if you took the utility outside of the Town through a
20 transaction, what impact would it have on the cost
21 profile of the utility and, therefore, potentially,
22 its market value.

23 MR. JOHN MATHER: I just want to make
24 sure I understand this. I think what you're referring
25 to is something that is -- is -- has been called the

1 shared services. Is that -- does that ring a bell to
2 you?

3 MR. JONATHAN ERLING: Ye -- yes.

4 MR. JOHN MATHER: And so the notion
5 is, is that the utility was providing certain services
6 to the Town and you were trying to determine whether
7 the Town provided either payment for those service --
8 services or something else in kind?

9 MR. JONATHAN ERLING: Yes. So I think
10 maybe an important distinction though is that when we
11 talk about the utility, there was, of course, the LDC,
12 the local distribution company, that was the wires
13 company. And then there was the separate shared
14 services entity. Now, I don't recall what the
15 specific -- exact names of the two (2) entities are,
16 but there were a number of corporations, of course.

17 So there was the LDC, or the wires
18 company. And then there was the shared services
19 entity. And there may have been a holding company, I
20 think, on top of both of them, or maybe the shared
21 services entity was the holding company. I -- I don't
22 remember.

23 So, in part, it was transactions
24 between whatever entity was providing services to the
25 -- and -- and which may have been Collus, the shared

1 services entity, and transactions between the shared
2 services entity and Collus, the LDC.

3 MR. JOHN MATHER: So I'm -- I'm just
4 trying to boil -- boil this down the best -- as best I
5 can.

6 MR. JONATHAN ERLING: Yeah.

7 MR. JOHN MATHER: The Collus entities
8 are sharing -- you know, are -- are sharing services
9 amongst themselves?

10 MR. JONATHAN ERLING: Yes.

11 MR. JOHN MATHER: They are also
12 sharing services with the Town?

13 MR. JONATHAN ERLING: Yes.

14 MR. JOHN MATHER: The effect of those
15 shared services will -- or the quantum will affect the
16 value of Collus Power. Is that fair?

17 MR. JONATHAN ERLING: Potentially,
18 yes. I mean, and, of course, the -- the impact on the
19 value depends on who's purchasing it and what changes
20 res -- result to that -- those relationships.

21 And I think, ultimately, we concluded
22 that it was -- it was hard to -- I think we concluded
23 as a result of some of these back and forth questions
24 and the subsequent meeting with Ed, that maybe it was
25 simpler to just assume that things -- that there would

1 be no net impact on the financial position of the
 2 Corporation of -- of a change or that we wouldn't take
 3 that impact into account because it was hard, at that
 4 point in time, to go through the exercise of
 5 calculating an impact without knowing the structure of
 6 an ultimate transaction and who the buyer was and what
 7 they were interested in, you know, which arrangements
 8 they were interested in -- in continuing.

9 I mean, it's certainly not out of the
 10 question that somebody could purchase the utility and
 11 still provide services to the Town. It -- it might be
 12 unusual for that to happen, but it's not out of the
 13 question.

14 So I think we concluded after some back
 15 and forth discussion that we wouldn't try to
 16 disentangle that and we would make the valuation
 17 contingent upon, you know, no impact and that each
 18 buyer would have to -- you know, each potential buyer
 19 would have to make their own assessment of that issue.

20 MR. JOHN MATHER: Again, so I just
 21 want to make sure I understand here. So it was
 22 identified that the nature of the shared services
 23 would have an impact on a potential future transaction
 24 but, at this point in time, that wasn't analyzed
 25 because there wasn't enough known about what that

1 transaction would be in order to determine the impact?

2 MR. JONATHAN ERLING: Correct.

3 MR. JOHN MATHER: Is that... So we
4 see that Tim's response to your request about -- or
5 inquiry about how you re -- reconcile these shared
6 services is:

7 "There are only a couple of the
8 amounts on the summary sheet that
9 tie directly to the FS.

10 I didn't think this was going to be
11 such an in-depth analysis. My
12 understanding from Ed was this was
13 just going to be a general overview.
14 It would take a great deal of my
15 time to go through this in detail."

16 Do you see that?

17 MR. JONATHAN ERLING: Yeah, I do.

18 MR. JOHN MATHER: So I take it from
19 Tim's answer here and your answer to my earlier
20 question, the information you sought here you never
21 received?

22 MR. JONATHAN ERLING: Correct.

23 MR. JOHN MATHER: So if we can scroll
24 down some further -- a bit further, sorry. So if we
25 look -- and I appreciate it's maybe difficult to find

1 yourself in this email, but there's a sentence that
2 starts, "By implication, I think we need to get an
3 assessment."

4 MR. JONATHAN ERLING: Where is that?

5 MR. JOHN MATHER: So it's be -- if you
6 see there's an answer in red that says, "Two hundred
7 thousand (200,000) for" --

8 MR. JONATHAN ERLING: Okay. Yeah, I
9 got it.

10 MR. JOHN MATHER: Yeah. And then
11 beneath that. Okay. So it says:

12 "By implication, I think we need to
13 get an assessment of the additional
14 costs in water and/or at the Town if
15 the LDC was sold separately -- sorry
16 -- sold and operated independently.
17 However, we will have to rely on you
18 for making this assessment given our
19 lack of direct knowledge or your
20 operations. Can you put some
21 thought into this?"

22 MR. JONATHAN ERLING: Yes.

23 MR. JOHN MATHER: Why did you want to
24 know more? Why did you want this information?

25 MR. JONATHAN ERLING: Well, I -- it

1 goes to the -- the point. If -- if the Town of
2 Collingwood sold Collus and a new purchaser came in
3 and purchased the whole thing, and -- and then we're -
4 - we're not interested in providing services to the
5 water utility, and that potential would have cost
6 implications for the water utility, and it would cause
7 -- could potentially cau -- cause its costs to
8 increase. So that would be kind of a diseconomy
9 (phonetic) from a transaction.

10 So I think my thinking at the time was
11 oh, you know, I got concerned about that and I said,
12 you know, if we -- if we want to do an analysis of a
13 potential transaction, we have to think through all
14 these issues and I think I -- you know, I kinda later
15 concluded, you know, in conversation with others, that
16 it wasn't possible to do that analysis part because we
17 didn't know what the new circumstances might be, and
18 to my earlier point, we didn't know whether somebody
19 might be willing to continue the arrangement in which
20 there were shared services.

21 And you know, it was hard to get the
22 information to figure out how much cost would
23 increase.

24 You would have to almost go through an
25 exercise of -- of getting into the operations of the

1 utility and deciding who does what and, you know, how
 2 much workload do they, you know, how much of their
 3 time is occupied with this element of their workload
 4 and, you know, or that task. And that was just more
 5 of a detailed operational analysis than was really
 6 envisioned as part of this scope, which is why we
 7 backed away from trying to do that.

8 I mean, we've done analyses of
 9 potential merger or transactions in other
 10 circumstances, and you have to go through on a
 11 department by department basis and have discussions
 12 with line personnel and -- and you know, go through
 13 the details of making an assessment of -- of what a
 14 transaction could potentially mean on the structure of
 15 the organization and how it operates.

16 MR. JOHN MATHER: So again, I -- I
 17 take it this is an instance again where you see
 18 there's going to be -- there may be a potential impact
 19 to the water in a transaction where the utility is
 20 sold, but at this point in time you -- it was
 21 determined that you cannot do that assessment without
 22 more information about what the transaction would look
 23 like?

24 MR. JONATHAN ERLING: Yes. And -- and
 25 certainly, you know, I think -- you know, I -- I would

1 think that one of the elements that might impact a
 2 decision-maker in this circumstance would be if you
 3 continue an ownership share, as the City, you know,
 4 you continue to own part of the utility, you may be in
 5 a better position to have these types of shared
 6 service arrangements continued because you can -- you
 7 continue to have an equity interest in the
 8 corporation, and hence, input into its decision-
 9 making.

10 So, I mean, that's my kind of read of
 11 the situation. I'm not su -- you know, I don't know
 12 what motivated people's decisions, but it -- it would
 13 seem logical to me that, you know, this was one of the
 14 factors that would suggest that -- that a partial sale
 15 might be one thing you would look at.

16 MR. JOHN MATHER: Okay. But again,
 17 you hadn't completed that -- you never completed the
 18 analysis you were -- you were looking at here.

19 MR. JONATHAN ERLING: No, we -- you
 20 know, we decided that we'd make an assumption that
 21 there wasn't going to be a cost impact from a
 22 transaction on these arrangements.

23 MR. JOHN MATHER: And so you see after
 24 you make the -- raise this question, Mr. Fryer
 25 responds as noted above:

1 "I do not have planned any time to
2 go over this in depth. We are just
3 about to go live on the MDMR
4 production system and I will need --
5 need to prioritize my time on this."

6 MR. JONATHAN ERLING: Correct.

7 MR. JOHN MATHER: So I take it you
8 didn't receive the information that you had requested
9 here?

10 MR. JONATHAN ERLING: I don't think
11 that I did.

12 MR. JOHN MATHER: So in both instances
13 we've looked at where you've identified a potential
14 impact on shared services, either with the Town or
15 with water or other entities, had you been provided
16 the information you requested would you have been
17 able, at least, to begin the analysis of the potential
18 impact of either a whole or partial sale of -- of the
19 utility?

20 MR. JONATHAN ERLING: I -- I think we
21 would still have had to do quite a bit of work, I
22 think we would've -- you know we might've gotten some
23 information, financial information on the deemed value
24 of transactions.

25 You know, my guess is that we would've

1 had to, you know, had interviews with people that, you
2 know, this is not a large utility. You know, there's
3 probably lots of activities, you know, there's --
4 people fulfil many roles, you know, many people -- a
5 given person will -- will fulfil many hats or wear
6 many hats in the organization.

7 That's just the nature of small
8 organizations, people do lots of different things
9 because there's not many people about and -- and
10 disentangling people's workloads probably would've
11 taken a bit of time and their workloads probably were
12 not that well documented that we could have just
13 gotten some information and presto come up with a
14 pretty good analysis of the -- the cost impact,
15 particularly again given that the cost impact depends
16 on what changes you make to the organization in
17 consequence, and you know, that's speculative.

18 So I don't think -- you know, I think
19 probably it was a reasonable decision to kind of
20 exclude that.

21 MR. JOHN MATHER: So when you're
22 having these conversations about whether or not to
23 include this analysis or whether it's possible to get
24 enough information to complete the analysis who -- who
25 are you having these conversations with?

1 MR. JONATHAN ERLING: Myself, perhaps,
2 I'm just think -- you know, and to -- you know,
3 potentially John Rockx, potentially John Herhalt, I
4 don't remember any specific conversations along those
5 lines. But kind of my own reflection, internal
6 discussions amongst the team.

7 MR. JOHN MATHER: Did you share these
8 considerations with Mr. Houghton or Mr. Fryer?

9 MR. JONATHAN ERLING: I don't recall.

10 MR. JOHN MATHER: Do you recall if you
11 shared these considerations with anyone at the Town?

12 MR. JONATHAN ERLING: I didn't have
13 any direct discussions with persons at the Town.

14 MR. JOHN MATHER: Okay.

15 MR. JONATHAN ERLING: We may have had
16 these kinds of discussions, for example, at the
17 meeting on May 12th, which was when Ed and Dean
18 Muncaster were there and I probably opened it by
19 saying, you know, we were thinking of doing -- trying
20 to do this and do an analysis of -- of, you know, the
21 impact of changing the shared service arrangements
22 and, you know, the conclusion of the discussion was
23 let's just assume that for the purposes of what we
24 were trying to do, which was to get an indicative
25 value of the utility, these sorts of factors would be

1 an adjustment because they would be an adjustment to
2 operating costs, but I don't know that they would
3 change fundamentally the -- the approximate value of
4 the utility.

5 MR. JOHN MATHER: So it sounds like
6 you're recalling you had this discussion at a meeting
7 with Mr. Muncaster and Mr. Houghton. Is -- do I have
8 that correct?

9 MR. JONATHAN ERLING: I don't know
10 that I recall that, but I'm -- I -- I can't imagine it
11 wasn't part of the discussion, just because of when
12 that meeting occurred and it was all -- after all of
13 this back and forth on this issue.

14 So I'd be surprised if it did not
15 happen, we didn't have some discussion of that at the
16 meeting.

17 MR. JOHN MATHER: Do you recall at
18 that meeting, and again specific recollection, whether
19 Mr. Muncaster or Mr. Houghton said anything to you
20 about the shared services and what role they should
21 play in your work?

22 MR. JONATHAN ERLING: I don't
23 remember.

24 MR. JOHN MATHER: Okay. Do you recall
25 if it was you or someone from KPMG who had suggested

1 we don't need to or we won't be able to complete this
2 analysis at this stage, or if it was someone from
3 Collus who said you don't need to worry about this
4 analysis at this stage, or something else?

5 MR. JONATHAN ERLING: I -- I just -- I
6 don't remember. I mean it was a -- I actually do not
7 remember the discussion that occurred very much at the
8 May 12th meeting.

9 It -- it was many years ago. I
10 remember being impressed meeting Dean Muncaster and I
11 -- I don't recall very much about the meeting.

12 MR. JOHN MATHER: So if we could
13 scroll down this e-mail, I just have -- keep going
14 down to the bottom.

15 So at the end of this e-mail, and just
16 to put us in time, this is before the meeting you were
17 discussing in May, you said to Mr. Houghton and Mr.
18 Fryer:

19 "Perhaps we could schedule a call
20 later in the week to touch base on
21 these items. Alternatively, would
22 it make sense to schedule a meeting
23 in person?"

24 And you responded, as noted, I expect
25 the next -- sorry, you didn't respond. Mr. Fryer

1 responded:

2 "As noted, I expect the next few
3 weeks to be excessively hectic, so
4 I'm hoping I have provided some
5 information that you can apply."

6 Do you remember reading that response
7 from Mr. Fryer?

8 MR. JONATHAN ERLING: Vaguely.

9 MR. JOHN MATHER: And --

10 MR. JONATHAN ERLING: I think -- I
11 think that -- probably that response was to say -- I
12 think I interpreted that response to mean that there
13 wasn't going to be a lot more information available in
14 the -- you know, in the way that, you know, maybe
15 there wasn't the documentation of workloads or
16 transfer prices that you -- you might hope for or, you
17 know, in an ideal world have.

18 And you know, it -- it -- you know, I
19 think his response here suggests that he wasn't eager
20 to have either a meeting or a call.

21 And so that's what I would have
22 interpreted his response to mean. That -- that kind
23 of we had the information that we were going to get
24 easily, that's how I -- I interpreted that response.

25 MR. JOHN MATHER: Did that response

1 prompt in any way the comment you make when you
2 forward this email chain to Mr. Herhalt and Mr. Rockx,
3 and say you're not sure if Mr. Fryer's onboard?

4 MR. JONATHAN ERLING: I'm sure it did.
5 I'm sure it was a factor in that characterization.

6 MR. JOHN MATHER: Have you -- at this
7 point in time, had you undertaken similar valuations
8 and options analysis for other LDCs?

9 MR. JONATHAN ERLING: Well, I don't
10 typically do the valuations. John Herhalt -- sorry,
11 John Rockx does the valuations. We certainly had done
12 options analysis for utilities. I think the
13 distinguishing feature of Collus is that it included a
14 water utility.

15 At the time of the restructuring of the
16 Ontario electricity sector in 2000, I think there were
17 only three (3) or four (4) utilities out of three
18 hundred (300) in Ontario that also included a water
19 utility, Sault Ste. Marie, Peterborough, Windsor
20 Utilities, and Collingwood. So it was a unique
21 structure. It was one (1) of the few remaining joint
22 water and electricity utilities, and so there weren't
23 many instances of this -- this type of shared service
24 arrangement.

25 I'm not familiar -- I was never

1 familiar in depth with Peterborough. I know that
2 EnWin had also set up a -- a similar -- EnWin, which
3 is Windsor Utilities Commission -- had set up a
4 similar structure in the sense that they had a -- set
5 up an entity that would provide services -- management
6 type services to both the water and, LDC and that
7 required them to have more companies in their
8 corporate structure to facilitate that type of shared
9 service arrangement.

10 So your -- to your question is, had we
11 kind of considered this issue of joint services -- I
12 think that was your question -- no, I hadn't really
13 thought about that in terms of an options analysis.

14 MR. JOHN MATHER: And actually, that -
15 - that wasn't my question, although that information
16 was -- was helpful. My question was: had you
17 undertake -- had you been involved with similar
18 options analysis and valuations for other LDCs?

19 I understand from your answer something
20 that made Collus unique was that water was still
21 within the -- within the corporate structure. Is that
22 right?

23 MR. JONATHAN ERLING: Correct.

24 MR. JOHN MATHER: Other than that, had
25 you con -- other than that unique element, had you

1 undertaken similar options analysis evaluations for
2 other LDCs?

3 MR. JONATHAN ERLING: Yes.

4 MR. JOHN MATHER: And had you been
5 involved in other valuations of other LDCs?

6 MR. JONATHAN ERLING: Yes.

7 MR. JOHN MATHER: And was the
8 information that you were seeking in this email the
9 sort of information you would expect to receive based
10 on your prior experience?

11

12 (BRIEF PAUSE)

13

14 MR. JONATHAN ERLING: I don't know
15 that I'm close enough to the valuations work to have
16 an opinion on that. I would refer that question to
17 John Rockx.

18 MR. JOHN MATHER: Okay.

19 MR. JONATHAN ERLING: I mean, I -- I
20 think the other thing you have to take into account
21 is, you know, the scale of we -- we -- we're -- we
22 work with diff -- utilities of very different scales,
23 you -- you know, that some utilities are much bigger.
24 They tend to have more formalized arrangements. Some
25 utilities are smaller.

1 And -- and Collus would be, you know,
2 not the smallest, but it's -- it's not one (1) of the
3 bigger utilities in -- in the Province, you know,
4 versus EnWin Utilities, which is a much larger
5 utility, or Windsor -- Windsor Utilities Commission.

6 MR. JOHN MATHER: Now if we could go
7 to KPM --

8 THE HONOURABLE FRANK MARROCCO: Just -
9 - just before you do that, I -- I'm just trying to
10 understand shared services shared amongst what
11 entities?

12 MR. JONATHAN ERLING: Typically, a
13 water utility and an electric utility. That would --
14 so, for example, Windsor Utilities Commission set up a
15 shared services entity. I think it's called EnWin.

16 THE HONOURABLE FRANK MARROCCO: I -- I
17 --

18 MR. JONATHAN ERLING: And --

19 THE HONOURABLE FRANK MARROCCO: -- I'm
20 not interested in --

21 MR. JONATHAN ERLING: -- okay.

22 THE HONOURABLE FRANK MARROCCO: --
23 what it's called. I -- I was just trying to -- these
24 -- these are services then shared between the water
25 utility and the electrical --

1 MR. JONATHAN ERLING: Yes.

2 THE HONOURABLE FRANK MARROCCO: -- the
3 -- the water and the electrical utility?

4 MR. JONATHAN ERLING: Yes. Sir, you
5 might envision, like --

6 THE HONOURABLE FRANK MARROCCO: So
7 would these services be provided by people?

8 MR. JONATHAN ERLING: Yes.

9 THE HONOURABLE FRANK MARROCCO: So
10 would you ask the people what percentage of the time
11 do you spend on water, and what percentage of the time
12 do you spend on electrical?

13 MR. JONATHAN ERLING: That would be
14 certainly one (1) thing you would do. Now there's
15 maybe certain things that they do that would be kind
16 of common activities. You know, if you think about
17 you may have a shared services entity provides billing
18 services for both the water utility and the LDC. And
19 at some point in time that shared services entity may
20 need to upgrade its billing system, and that upgraded
21 billing system will serve both utilities.

22 So when they're working on upgrading
23 the billing system, that's really a common cost. It's
24 -- it's not specifically for the water utility, it's
25 not specifically for electric utility, it's to upgrade

1 a service that will then be used to support both.

2 So in -- in that case the allocation of
3 costs between the two lines of business may involve
4 some judgement, and it may be, in some respects,
5 arbitrary.

6 THE HONOURABLE FRANK MARROCCO: So you
7 portion those costs between the two?

8 MR. JONATHAN ERLING: You would have
9 to go through an apportionment process, correct.

10 But --

11 THE HONOURABLE FRANK MARROCCO: But is
12 that really much of a process or do -- or do you just
13 make a decision about how you're going to apportion
14 them? How much of a process would it really be?

15 MR. JONATHAN ERLING: I understand. I
16 -- I don't think -- I don't think it's a conceptually
17 different -- difficult thing to do. And -- and
18 certainly at the granular level, when you go through
19 and analyze activity by -- activity or a person by
20 person, it's not difficult. It just, you know, it
21 takes a bit of effort.

22 Now, the other thing I would point out,
23 I just want to make clear here, is that when you have
24 a structure that's providing shared services and
25 you're, you know, you have to allocate costs, that's

1 just a cost allocation exercise, you have a certain
2 pool of costs, who do you apportion them to, who do
3 you charge them to?

4 I mean, what we're talking about here
5 is slightly different, it's saying, okay, if you no
6 longer had a shared services entity and you had to
7 create separate stand-alone entities, how would you go
8 about it and what would you do, and would they each
9 buy, you know, you would give the old one billing
10 system to one entity and you knew -- you know, the
11 other entity would go out and buy a new one.

12 If it -- if -- if one of the entities
13 gets absorbed by a large utility as part of a purchase
14 and sale transaction, the buyer may bring capabilities
15 and just extend the scope of the activities already be
16 -- being provided at its own utility.

17 And the sense that if you are purchased
18 by another utility and they have a billing system,
19 well they can just add additional customers. Well,
20 that's oversimplifying, but they can migrate the
21 customer base of the purchased utility into their
22 system and maybe there's not a lot of incremental
23 costs.

24 So it's -- partly it's an exercise and
25 how do you fairly apportion costs, but it's also an

1 exercise of how would you restructure the operations
2 and -- if you were going to change the structure and
3 maybe what would happen -- I think one of the things
4 that we started to think about in terms of the water
5 utility was if you no longer could have Collus as --
6 as shared service entity, maybe the logical thing to
7 do would be therefore to, you know, consolidate some
8 services between the Town and the water utility.

9 You know, the Town would provide some
10 services, the water utility, rather than Collus
11 providing services to the water utility.

12 So as you -- we started to get into it
13 and think about the -- there are a lot of different
14 scenarios we could look at and it might depend on the
15 nature of the transaction and the nature of the
16 purchaser.

17 That -- that's all I was trying to --

18 THE HONOURABLE FRANK MARROCCO: Thank
19 you.

20

21 CONTINUED BY MR. JOHN MATHER:

22 MR. JOHN MATHER: If we could go to
23 KMP917. And if we could scroll down. And scroll
24 down. Okay, that's what I want.

25 So we see this is a -- starts as an e-

1 mail chain between Mr. Herhalt and Mr. Erling. Sorry,
2 Mr. Houghton. Thank you very much. And if we could
3 scroll up.

4 And so we see that they are discussing
5 the ongoing work that is -- that KPMG is doing for the
6 valuation, the options analysis, and Mr. Herhalt,
7 scroll up, says, you know:

8 "I will give you a call tomorrow
9 after your time. I don't think
10 things have gone off the rails.
11 Some of Jonathan's queries are
12 related to the part of the
13 assignment that was to explore other
14 potential options and the
15 quantitative and qualitative pros
16 and cons."

17 So it looks like they're discussing
18 some of the questions you may have had.

19 And then we'll come back to that, but
20 if we scroll up further, we see that you then email
21 Mr. Rockx about the email chain between Mr. Herhalt
22 and Mr. Houghton.

23 So I take it that -- did Mr. Herhalt
24 blind copy you on the email?

25 MR. JONATHAN ERLING: Sorry. When you

1 say "blind copy" -- well, I guess he forwarded -- it
2 looks like he forwarded his response to Ed to me.

3 MR. JOHN MATHER: Right. So -- so in
4 any event, Mr. Herhalt had sent you the email chain
5 between him and Mr. Houghton.

6 MR. JONATHAN ERLING: Yes. So I
7 probably became aware that Ed had had a conversation
8 with John as a result of seeing that email. So Ed had
9 probably gotten a little impatient 'cause, you know,
10 sometimes when I get into an engagement, I maybe try
11 to get into too much detail, and, you know, it's the
12 nature of engagements. You ask more questions at the
13 beginning than less because you don't know what you
14 don't know. And so you try to find out as much as you
15 can, and then think about what the appropriate scope
16 should be in the circumstances. I --

17 MR. JOHN MATHER: And -- sorry. I
18 didn't mean to cut you off.

19 MR. JONATHAN ERLING: No. I -- so Ed
20 probably got a little frustrated and maybe Tim did,
21 too, because we were asking a lot of questions, and,
22 you know, that's -- they have other things to worry
23 about than satisfying us in terms of answering our
24 questions, and I understand that.

25 MR. JOHN MATHER: Fair enough. And my

1 question to start was -- I just wanted understand --
2 it looks like you received a copy of Mr. Herhalt and
3 Mr. Houghton's email chain. Is that --

4 MR. JONATHAN ERLING: Yes.

5 MR. JOHN MATHER: Okay. So if we
6 scroll down, we see that Mr. Herhalt writes to
7 Mr. Houghton:

8 "My suggestion is that we first
9 focus on getting the valuation done
10 and clear up any information and
11 questions on that. For the other
12 options and pros and cons piece,
13 let's talk about the high-level
14 approach to that and some of the
15 parameters so we don't go into too
16 much detail."

17 MR. JONATHAN ERLING: Yeah. And I
18 think I would characterize the "high-level" is we
19 weren't going to try to quantify the potential value
20 of -- or the potential costs of losing the joint
21 provision of services on a shared service basis,
22 partly to reflect the fact, as I noted earlier, when
23 you started to think about it, it was hard to really
24 do an analysis without knowing the nature of the
25 buyer; what decisions were going to be made on how you

1 might restructure things; and doing a much more
2 detailed operational analysis.

3 So I think in the context, it was
4 probably reasonable to just say we're not going to
5 consider it as part of this initial valuation if you -
6 - you know, and if you want to go further, you can
7 make your own assessment and the buyer can make their
8 assessment of the potential implications of the shared
9 service arrangements, depending on what they were
10 thinking about in terms of structuring a transaction.

11 MR. JOHN MATHER: Right. And you --
12 you walked us through that.

13 MR. JONATHAN ERLING: Yes.

14 MR. JOHN MATHER: Other than that
15 piece of analysis that it -- it was determined would
16 not be complete, is there anything else that was not
17 done in order to make the options analysis a
18 high-level analysis, as opposed to what you might've
19 been contemplating?

20 MR. JONATHAN ERLING: Well, I don't
21 remember any other specific inclusion -- exclusions,
22 but that doesn't -- I -- I can't say for sure there
23 weren't other things that we didn't do. I just don't
24 remember any others things that we didn't do.

25 MR. JOHN MATHER: And similarly,

1 Mr. Herhalt says that, let's talk about the high-level
2 approach to that and some of the parameters so we
3 don't go into too much detail. I take it from your
4 answer, some of the detail might relate to the shared
5 services analysis which we spoke about.

6 MR. JONATHAN ERLING: Yes, absolutely.
7 That was probably the key issue.

8 MR. JOHN MATHER: Was there anything
9 else that would fall under the "too much detail"
10 bucket?

11 MR. JONATHAN ERLING: Not that I
12 remember. I mean, I -- I remember that the -- the
13 shared service arrangements and the -- you know, the
14 inter-company transactions were my major question at
15 the time.

16 MR. JOHN MATHER: Right. So if we
17 could scroll up. So we see you emailing Mr. Rockx
18 about the email chain below, and you say to Mr. Rockx:

19 "Can't we just give them 1.3 times
20 book value multiple and be done with
21 it?"

22 MR. JONATHAN ERLING: Yes.

23 MR. JOHN MATHER: What did you mean by
24 that?

25 MR. JONATHAN ERLING: Well, in

1 doing -- so what I meant by that was that -- so what
2 John Rockx typically does when he does a valuation is
3 he will do a -- he'll do a -- a number of different
4 methodologies. I think he's laid them out in his
5 report.

6 But typically he'll do what's called a
7 discounted cash flow analysis, and so he'll -- he'll,
8 you know, do five (5) or ten (10) years projection of
9 dividends and earnings of the utility. And at the end
10 of the period -- and then -- so you have a forecast of
11 cash flows for a period of time, and you can discount
12 those cash flows at a discount rate. And it will come
13 up with a present value, and that will tell you the
14 value of those cash flows, and it's an -- you know, a
15 major contributor to the value of the enterprise.

16 At the end of the period of the --
17 projection period of ten (10) years, you know, you
18 have a -- what -- what I called earlier a terminal
19 value which is the ending value of the utility. And
20 you're not going to continue your projections of cash
21 flows into the future, you know, in perpetuity because
22 you don't have the basis of making very long-term
23 projections.

24 So you have to, at the end of the
25 ten (10) year period, come up with an idea of what is

1 the utility worth then? And you'll do, typically,
2 some kind of estimate based on a -- a multiple
3 approach. You'll look at, you know, a multiple of
4 value compared to rate base, which is the invested
5 capital in the utility, or you'll look at a multiple
6 to value of the cash flows in that terminal year. And
7 so you use a multiple approach to come up with the
8 terminal value, and then -- then you can complete your
9 DCF.

10 You've got the cash flows over the
11 first ten (10) years, and then you have the terminal
12 value at the end, which is kind of what -- you know,
13 you could think about the terminal value as if, okay,
14 you kept the utility for ten (10) years, and then you
15 sold it. Well, the terminal value represents what you
16 would sell it for.

17 So, you know, both of those will
18 contribute to today's value in -- you know, in finance
19 terms from the utility. Sometimes when you want to do
20 something more streamlined or more quickly, you
21 would -- rather than do the projection of cash flows
22 into the future, you would just say, what's the value
23 of the utility today as -- as a ratio of the invested
24 capital today?

25 So you don't bother doing the cash flow

1 analysis over the next ten (10) years and poking and
2 prodding at the utility management's cash flow
3 projections. You just look at the invested capital
4 today and then apply a multiple, which I am suggesting
5 here at 1.3.

6 And it's kind of a -- you know, when
7 you're looking at options and you don't have a lot of
8 time, it's a -- a rule of thumb to come up with a --
9 I'll use the words quick and dirty, but that's not the
10 right connotations. It's a -- you know, a rough
11 initial estimate of -- of value.

12 And you can do that in the utility --
13 and -- and people often look at utility transactions
14 to say what's the ratio of book value -- sorry -- of
15 ratio of enterprise value on the sale transaction to
16 the -- to the book value of assets? And, you know,
17 it's -- you know, people look at that multiple all the
18 time because it's an easy and quick metric.

19 And the reason that it's useful in the
20 utility's sphere is that the rates that you earn based
21 on the utility regulation process are based on your
22 invested capital. You know, rates are set to allow
23 you the opportunity to earn a certain percentage
24 return on -- on your invested capital. So the value
25 of a utility is traditionally very proportional to,

1 you know, the starting invested -- the starting
2 quantum of invested capital.

3 The reason that you would want to maybe
4 look at a cash flow projection and make it a lot more
5 complicated to do the evaluation is that, you know,
6 there are other things than just starting invested
7 capital that influenced the -- the value to a buyer.
8 It's how quickly the utility is growing, and therefore
9 how quickly profits are growing.

10 You know, you might do an assessment
11 of, can you take operating costs out of the utility as
12 a buyer, and that will also increase your profits
13 because there is some lag in the rate-setting process.
14 And, in general, operating costs are passed through,
15 but in the short term, they are not. And, therefore,
16 in the short-term, as a buyer, if you can make
17 significant cost reductions in the operations of the
18 utility, that can increase the value of that utility
19 to you.

20 MR. JOHN MATHER: It sounds from all
21 of that that you -- that your suggestion to Mr. Rockx
22 -- I think you said a quick and easy -- you know,
23 here's a quick -- is this a quick and easy way we
24 could determine the value --

25 MR. JONATHAN ERLING: Yes, exactly.

1 MR. JOHN MATHER: -- as a --

2 MR. JONATHAN ERLING: I mean, if -- if
3 you want to know -- you know, if you're making a
4 decision as to sell or -- or retain and you want to
5 have a number in mind as to what can you think you can
6 sell it for, to do a multiple of rate bases is not a
7 bad way of doing it, and it's sometimes the approach
8 we've used in -- in very high level analyses where
9 somebody just wants to know, you know, am I going to
10 get \$10 million of the utility or am I going to get 15
11 million, you know.

12 I don't need to know whether it's 11.35
13 versus 11.89. I just want to know is it 10 million or
14 is it 15 million, an order of magnitude type estimate
15 as to how much cash would potentially be achieved by
16 selling the utility.

17 MR. JOHN MATHER: And do you know if
18 Mr. Rockx took that approach or took a different
19 approach?

20 MR. JONATHAN ERLING: Well, he
21 certainly didn't do anything as simplistic as just
22 take a one point three (1.3) book value multiple. You
23 know, I'm not the valuations guy, so I always, you
24 know, kid John Rockx about, you know, the nature of
25 valuations and say, you know, you can just take a

1 multiple of ra -- rate base, and you've got your
2 value, you don't need to do all this fancy analysis
3 about discount rates. But John Rockx properly ignores
4 me and does a proper valuation.

5 MR. JOHN MATHER: Okay. So if we
6 could turn up paragraph 159 of the Foundation
7 Document.

8 MR. JONATHAN ERLING: Yes.

9 MR. JOHN MATHER: Sorry, we'll just
10 wait for it to come up on the screen, as well. So
11 this paragraph contemplates a meeting with Mr.
12 Houghton on May 12th, 2011, which I think you've
13 already spoken to us about.

14 I believe you said you recalled Mr.
15 Muncaster was there. Do you remember if anyone else
16 was in attendance at the meeting?

17 MR. JONATHAN ERLING: I am pretty sure
18 it was only Ed and -- and Dean Muncaster. I thought
19 Tim might have been there. But I looked back at some
20 emails, and, you know, there was an email from Tim
21 saying, I'm going to be out of town, I can't be there.

22 I think I suggested, well, should we
23 postpone the meeting. I suggested that to somebody.
24 And then, no, the thought was we would proceed just in
25 terms of -- because timing was an issue.

1 MR. JOHN MATHER: And now, you've
2 already said that you don't have a strong recollection
3 of that meeting, but what do you recall about it?

4 MR. JONATHAN ERLING: I -- I don't
5 really recall very much. I just recall seeing --
6 meeting Dean Muncaster in the flesh. I mean, he was a
7 famous business personality.

8 I recall kind of -- what I do recall is
9 that, you know, Ed was mollified, I think, that we
10 were going to proceed and not get caught up into some
11 unnecessary detail. I think we kind of went away with
12 the agreement that, you know, we would take a certain
13 approach to the valuation, one (1) of which was to not
14 look at the specific dollar impact of a potential loss
15 of synergy.

16 And then -- and then I wouldn't try to
17 quantify a dollar value of that for the Town in the
18 options analysis.

19 MR. JOHN MATHER: You said that you --
20 you had the impression that Ed was mollified by the
21 decision not to do the shared services analysis.

22 Do you remember what for -- what led
23 you to form that impression?

24

25 (BRIEF PAUSE)

1 MR. JONATHAN ERLING: Well, I just --
2 I remember the tone of the meeting was positive at the
3 end, so that's -- that's kind of what I remember. I
4 don't know what adduced me to -- to conclude that.

5 MR. JOHN MATHER: Was it anything that
6 Ed said at the meeting?

7 MR. JONATHAN ERLING: Oh, I -- I don't
8 remember.

9 MR. JOHN MATHER: Moving now to
10 paragraph 1 -- sorry, pull up KPM926.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN MATHER: So this is an email
15 that was sent. It appears to be in advance of the
16 meeting because you're reporting on, it looks like, a
17 conversation you had with Mr. Houghton about what the
18 focus of the discussion of the meeting would be.

19 And you say, once --

20 "The focus of our discussion to --
21 today on what need -- on what we
22 needed to complete the val -- what
23 we needed to complete the valuation,
24 first priority.

25 And then, once we have what we need

1 for that, we'll explore with them
2 the depth he is looking for in the
3 alternative options and other
4 analysis of both qual --
5 quantitative and qualitative. My
6 sense is he wants that piece at a
7 pretty high level."

8 Looking at this email, do you recall
9 what Mr. Houghton said about the depth he was looking
10 for in the alternative options and other analysis at
11 the meeting?

12 MR. JONATHAN ERLING: No.

13 MR. JOHN MATHER: So if we can go to
14 paragraph 159 of the Foundation Document. So this is
15 the paragraph we were previously looking at. And if
16 you look midway through the paragraph, it says:

17 "The following day, Mr. Erling
18 advised Mr. Herhalt that he thought
19 the meeting went okay."

20 Do you remember what you meant by that?

21 MR. JONATHAN ERLING: Well, okay. I
22 usually tend to be a little understated. I don't say
23 the meeting went great. I'm not that sort of person.
24 I think it -- I think that probably meant I thought it
25 went well, the -- when I said it went okay. I didn't

1 want to kind of over commit to how well the meeting
2 went, so I probably just said, oh, it went okay.

3 MR. JOHN MATHER: And then you say:

4 "We agreed to stay away from the
5 detailed operational impacts of
6 losing synergies between the water
7 and electricity operations (and with
8 the Town), so our job has actually
9 become easier."

10 I take it that is what we've been
11 talking about in terms of --

12 MR. JONATHAN ERLING: Yes.

13 MR. JOHN MATHER: -- not doing the
14 shared services --

15 MR. JONATHAN ERLING: Yes.

16 MR. JOHN MATHER: -- analysis?

17 MR. JONATHAN ERLING: Not getting into
18 this very detailed nitty-gritty analysis of what the
19 cost impacts might be and specifically who was shared
20 and what their workloads were relative between the two
21 (2), water and LDC lines of business.

22 MR. JOHN MATHER: Okay. So we then
23 see at the end of this email -- it says:

24 "In a separate email conversation,
25 John Rockx indicated that KPMG was

1 required to complete a draft
2 valuation by the following week."

3 Do you see that?

4 MR. JONATHAN ERLING: Yes.

5 MR. JOHN MATHER: Do you recall
6 receiving a direction along those lines?

7 MR. JONATHAN ERLING: No. Direction
8 from whom?

9 MR. JOHN MATHER: From anyone at
10 Collus.

11 MR. JONATHAN ERLING: I don't recall.

12 MR. JOHN MATHER: Do you remember what
13 the time line for the project was?

14 MR. JONATHAN ERLING: At that time or
15 --

16 MR. JOHN MATHER: At that --

17 MR. JONATHAN ERLING: -- in the
18 original scope?

19 MR. JOHN MATHER: We'll start with at
20 that time.

21 MR. JONATHAN ERLING: I don't recall.
22 I mean, I think -- I certainly got the impression they
23 wanted things reasonably quickly. I don't recall what
24 the scope was, what scope we committed to in the
25 letter, although I -- there is a copy of the letter at

1 hand, I could look at it, but I don't know what we
2 said.

3 MR. JOHN MATHER: Understood. So I'm
4 now going to ask you some questions about the options
5 analysis you prepared. Your Honour, I'm happy to go
6 into it and keep going or -- or would you like to take
7 a break?

8 THE HONOURABLE FRANK MARROCCO: Why
9 don't we just keep going? We'll stop about a quarter
10 to 4:00 instead.

11 MR. JOHN MATHER: Sounds good. Okay,
12 sounds good.

13 THE HONOURABLE FRANK MARROCCO: Is
14 that...?

15

16 CONTINUED BY MR. JOHN MATHER:

17 MR. JOHN MATHER: So if we could go to
18 paragraph 165.

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: So this paragraph
23 just references that on May 24th, 2011, KPMG delivered
24 a slide presentation to Collus entitled -- entitled,
25 "Collingwood utility services review of options." You

1 can see the email reference there shows that you sent
2 the email and the attachment to Mr. Houghton, Mr.
3 Fryer, Mr. Rockx, and Mr. Herhalt. Do you see that?

4 MR. JONATHAN ERLING: Yes.

5 MR. JOHN MATHER: Okay. And so if we
6 could pull up the attachment KPM1032.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: So this is the
11 attachment to that email. Is this the presentation
12 that you prepared for Collus? We can --

13 MR. JONATHAN ERLING: Well, I -- I
14 assume.

15 MR. JOHN MATHER: Okay. We can scroll
16 through it if you need to see it.

17 MR. JONATHAN ERLING: Well, I will
18 trust you.

19 MR. JOHN MATHER: I -- I would just
20 like to confirm that I'm showing you the presentation
21 you prepared. So if you could just take a quick look
22 at the screen and -- and confirm it, that would be
23 great.

24 MR. JONATHAN ERLING: Yes, I think it
25 is.

1 MR. JOHN MATHER: Okay. And is this
2 presentation the summary of advantages and
3 disadvantages of various ownership options that was
4 contemplated by the retainer?

5 MR. JONATHAN ERLING: Yes.

6 MR. JOHN MATHER: Okay. And then
7 other than speaking with Mr. Houghton, Mr. Fryer, and
8 Mr. Muncaster at Collus, did you speak with anyone
9 else at Collus or the Town before delivering this
10 presentation?

11 MR. JONATHAN ERLING: No.

12 MR. JOHN MATHER: So if we can go
13 through the slides, you see there's a background
14 slide. Go to the next slide; a report structure
15 slide; an industry environment slide. And then if we
16 could stop here on the transfer tax slide.

17 So I understand that this slide is
18 talking about the potential for certain tra --
19 transfer taxes that may or may not be payable in the
20 event of a transaction. Is that fair?

21 MR. JONATHAN ERLING: Correct.

22 MR. JOHN MATHER: And if we look in
23 the second paragraph, note -- you say:

24 "From time to time, the provincial
25 government has introduced time

1 limited exemptions or 'holidays'
2 from a certain transfer tax for
3 sales of municipally owned utilities
4 to -- to entities owned by
5 municipalities or by the province,
6 e.g., Hydro One. No such exemption
7 is currently in force, although we
8 expect that exemption may again be
9 introduced after the next provincial
10 election."

11 Do you see that?

12 MR. JONATHAN ERLING: I do.

13 MR. JOHN MATHER: And I understand
14 that you subsequently corrected this portion of the
15 slide deck. Is that correct?

16 MR. JONATHAN ERLING: Yes. That --
17 the last sentence of that paragraph was incorrect. I
18 had overlooked that there had been a change in
19 regulation that continued the exemption from the
20 transfer tax requirement for publicly owned utilities,
21 so transactions with municipally owned LDCs and with
22 Hydro One were certainly still possible without
23 triggering a transfer tax.

24 MR. JOHN MATHER: So the exemption --
25 and there was an exemption in place.

1 MR. JONATHAN ERLING: There was an
2 exemption.

3 MR. JOHN MATHER: Okay. And if we
4 scroll down, we see the -- you say:

5 "The presence of the transfer tax
6 means that if a sale transaction is
7 completed, it would make sense until
8 a new exemption is introduced to
9 complete the transaction."

10 I take it, based on what you said --

11 THE HONOURABLE FRANK MARROCCO:

12 Contemplated.

13

14 CONTINUED BY MR. JOHN MATHER:

15 MR. JOHN MATHER: Sorry, contemplated.
16 I take it then what you said that the exemption was in
17 place, this portion of the slide deck, was -- was not
18 actually applicable.

19 MR. JONATHAN ERLING: Portions of the
20 slide -- portions of this slide deck were not
21 applicable, so some of the language still is
22 applicable.

23 MR. JOHN MATHER: But --

24 MR. JONATHAN ERLING: We didn't change
25 all of it. We changed some of it.

1 MR. JOHN MATHER: But the suggestion
2 to wait to do a transaction until a --

3 MR. JONATHAN ERLING: Correct. That
4 was no longer a limitation. Certainly it was not a
5 limitation in doing a sale transaction with a private
6 -- sorry, a public sector entity or a municipally
7 owned LDC, which were, you know, the relevant buyers
8 at the time.

9 MR. JOHN MATHER: And my recollection
10 is you made the changes to this -- this portion of the
11 analysis in July.

12 Does that sound correct?

13 MR. JONATHAN ERLING: That sounds
14 correct.

15 MR. JOHN MATHER: Okay. So if we
16 could scroll down. We see more slides about the smart
17 grid, financial pressures, regulatory environment,
18 implications of the industry environment, and then we
19 get to a slide that says "Restructuring Options."

20 So in this slide you identify two (2)
21 major options. The first is the status quo option.
22 The second is the sale option, and then within the
23 sale option you also identify other -- two (2) other
24 forms of sales. One (1) would be a complete sale and
25 then the other would be either the sale of a majority

1 or a minority interest.

2 Have -- have I got that correct?

3 MR. JONATHAN ERLING: Correct.

4 MR. JOHN MATHER: How did you
5 determine what options you would analyze?

6 MR. JONATHAN ERLING: I think it was
7 probably -- I don't remember specifically. You know,
8 we probably got -- we probably had some discussion
9 with Ed in the meeting about what options were
10 relevant, but that's a -- because it was many years
11 ago, I can't say that for sure.

12 You know, typically we might say, you
13 know, other options would be for Collingwood to go on
14 and acquisition spree and buy other utilities. I
15 don't think -- or it might look at merging with
16 another nearby utility.

17 MR. JOHN MATHER: So when --

18 MR. JONATHAN ERLING: And I think
19 those were in the circumstances not relevant.

20 MR. JOHN MATHER: So when it says
21 below:

22 "We assume that the Town is not
23 interested in expanding its
24 ownership interest by purchasing
25 other utilities or entering into

1 merger discussions with other
2 utilities."

3 ...that's what you're referring to?

4 MR. JONATHAN ERLING: Yes.

5 MR. JOHN MATHER: Do you recall if
6 either Mr. Houghton, Mr. Muncaster, or Mr. Fryer told
7 you what options they wanted analyzed or not analyzed?

8 MR. JONATHAN ERLING: I don't recall.
9 I mean, I'm sure we had discussions with them about
10 what were relevant options to consider, and I think
11 reasonably these were the relevant options to
12 consider.

13 MR. JOHN MATHER: Other than the
14 options that are identified on this slide, were you
15 asked to consider any other options?

16 MR. JONATHAN ERLING: No.

17 MR. JOHN MATHER: Did you consider any
18 other options?

19 MR. JONATHAN ERLING: No.

20 MR. JOHN MATHER: So if we can keep
21 going through the slide deck, we see there is a
22 utility valuation slide -- which we'll stop here. And
23 at the top on the slide it says:

24 "In theory regul -- regulated
25 utilities should sell at values

1 close to their book value since they
2 are regulated based on their actual
3 costs and by applying a regulated
4 return on their investment capital.
5 In practice, utilities often trade
6 at a premium above book value."

7 Do you see that?

8 MR. JONATHAN ERLING: Yes. And it's
9 similar to some discussions we had earlier today, just
10 a few minutes ago on, you know, valuation issues for
11 regulated utilities.

12 MR. JOHN MATHER: And so you're -- it
13 looks here that -- from what I understand this is,
14 that when a utilities -- when a regulated utility is
15 for sale, in theory it should just be at a -- at a
16 book value because its -- their costs are regulated,
17 but often they trade at a premium above that.

18 MR. JONATHAN ERLING: Yeah. I think
19 in practice, it's probably fair to say it is rare that
20 a utility doesn't trade at a significant premium to
21 its book value. So that's really more the norm than
22 something that would be unusual, but the value is
23 based on the -- on the book value or it's a -- it's a
24 function of book value.

25 I think -- you know, I have discussions

1 with valuations people about why that is the case.
 2 You know, in part it's -- you know, I think regulators
 3 tend to err on overestimating required returns for
 4 investment because the consequences of -- the
 5 consequences of underestimating required returns would
 6 be significant and undesirable, and so, you know,
 7 investors probably are willing to live with somewhat
 8 lower returns than utilities -- regulators allow
 9 utilities to earn and, therefore, that tends to bump
 10 up the price that they're willing to pay to earn those
 11 -- to -- to purchase those regulated returns.

12 And the other issue is, yeah, the
 13 potential to reduce costs more quickly than the
 14 regulator may project and the ability to, you know,
 15 achieve other benefits from purchases of the utility.

16 MR. JOHN MATHER: So because an LDC is
 17 a regulated utility, is there any -- does that mean
 18 there's any -- is any limit placed on what a buyer of
 19 that utility could offer to pay for the utility?

20 MR. JONATHAN ERLING: Well, in
 21 practice, yes. I mean, in theory, anybody could offer
 22 to pay whatever they want if they're irrational but,
 23 you know, there's a limitation on what they would be
 24 willing to pay because the returns are regulated and -
 25 - and therefore under the control of another entity,

1 i.e., the utility regulator. So there's -- you know,
2 it's not like buying Apple or Google, you know, that
3 they come up with new product line that -- that's, you
4 know, going to be marketed and make -- make huge
5 profits. You're buying a regulated business and that
6 inevitably puts a cap on -- on the potential returns.
7 Regulators do not take into account the fact that you
8 purchase the utility at a premium above book value.

9 I mean, you know, if you purchase a
10 premium for a 50 percent -- if you purchase a utility
11 for a 50 percent premium over book value, you don't
12 then get to earn a return on that 50 percent premium
13 that you paid. Regulators only recognize actual
14 historic cost of the assets in place.

15 So, absolutely there's a limitation on
16 what -- what a utility will sell for.

17 MR. JOHN MATHER: But -- so it sounds
18 like you are describing a -- a kind of a business --
19 or value limitation. The OEB doesn't limit what
20 someone can buy a utility for, does it?

21 MR. JONATHAN ERLING: Generally, no.
22 You know, they do have to approve merger transactions
23 or purchase transactions. I don't -- I don't think --
24 I don't recall specifically what they look at.

25 I don't think they're there to protect

1 the interests of utility buyers. They're there to
2 protect the interests of consumers.

3 So if a purchaser of a utility wants to
4 pay too much, I don't think they're too concerned
5 about that in general. They would only be concerned
6 if -- by purchasing at a very inflated price, the
7 utility buyer thereby signals that it's going to do
8 something that the regulator thinks is undesirable.

9 MR. JOHN MATHER: So if we can keep
10 scrolling through the slides -- so we see operating
11 synergies, operating dis-synergies, and rate
12 harmonization. And we see affiliate relationships,
13 and I'm not going to ask you to go into this 'cause I
14 think we've talked a lot about it, but this is
15 relating to the effect on shared services.

16 Is that fair?

17 MR. JONATHAN ERLING: It is.

18 MR. JOHN MATHER: Okay.

19 MR. JONATHAN ERLING: And -- and we
20 have talked a lot about the shares service issue.
21 So --

22 MR. JOHN MATHER: And I just have a --
23 a few brief questions on the slide then. You say in
24 this slide:

25 "Any such impacts would ultimately

1 need to be examined as part of the
2 financial analysis from the Town's
3 perspective of any proposed
4 transaction."

5 MR. JONATHAN ERLING: Correct.

6 MR. JOHN MATHER: After preparing this
7 presentation, were you ever asked to analyze the
8 impacts of the shared services? Or put it another
9 way, were you ever asked to do this analysis at any
10 point in time for Collus?

11 MR. JONATHAN ERLING: No.

12 MR. JOHN MATHER: Are you aware of
13 anyone at KPMG being asked to do this analysis for
14 Collus?

15 MR. JONATHAN ERLING: I -- I am not
16 aware.

17 MR. JOHN MATHER: If we keep going
18 through the slides and then -- so we see issues
19 related to ownership options one (1); the issue
20 related to ownership options two (2); three (3); keeps
21 going. We'll keep flipping through just so we can see
22 them.

23 Okay. So we'll stop here. And so we
24 see on -- this is slide 17, the evaluation of the
25 status quo option. And if we go down to slide 18, the

1 evaluation of the sale option. Do you see that?

2 MR. JONATHAN ERLING: Yes.

3 MR. JOHN MATHER: So when you are
4 assessing the advantages and disadvantages of these
5 two (2) options, whose perspective did you have in
6 mind?

7 MR. JONATHAN ERLING: The
8 shareholder -- the -- the Town. It'd be the Town as
9 the shareholder of the utility; it's the owner of the
10 utility. So it's the Town's decision as to the future
11 ownership of the utility, and you have to take the
12 perspective of the Town. It holds the equity interest
13 in the utility. It's -- it's their business to
14 dispose of, if they want to dispose of it, or to
15 retain it, if they wish to retain it.

16 MR. JOHN MATHER: So if you are
17 analyzing this from the perspective of the Town, why
18 didn't you speak with anyone at the Town about the
19 potential advantages or disadvantages of the two (2)
20 options?

21 MR. JONATHAN ERLING: Well, I assumed
22 that the presentation was prepared for a committee or
23 group that would include the Town because the Town
24 would have to be part of any discussion on the
25 disposition of shares in the utility. It's not --

1 it's not the role of utility management to make those
2 decisions. I mean, the utility management, you know,
3 could certainly have a view and make recommendations
4 to the Town.

5 The Board of Directors, you know, is
6 there to represent the interests of the shareholder,
7 and, you know, the Board often makes decisions on
8 behalf of the Town, as its representative or its --
9 you know, as the governance body that has been
10 entrusted to make decisions about the future of the
11 utility.

12 But when it comes to big decisions
13 about sell or retain, I think the general governance
14 principle would be that the Town needs to become
15 involved directly in those discussions.

16 MR. JOHN MATHER: Did you consider at
17 any point up to preparing this presentation whether or
18 not you should speak with anyone at the Town about
19 what -- what they make -- they may be considering
20 about options or what they may be looking for in the
21 future of Collus?

22 MR. JONATHAN ERLING: I think I
23 reasonably assumed that -- that any issues that the
24 Town might have, Ed would make me aware of them. I --
25 I didn't view it at the time that we needed to have

1 direct discussions with the Town. I think we wrote
2 the presentation in a way that was clearly written for
3 the Town's consumption and that spoke to the Town's
4 perspective in making this decision.

5 And so -- you know, our understanding
6 that we were putting together this presentation so
7 that the Town would have available an analysis by an
8 independent, hopefully objective third-party of the
9 considerations that it should evaluate in making
10 ownership decisions that, you know, the advantage of
11 coming to KPMG is that, you know, I think -- you know,
12 we are a third party. And if we put this together,
13 you know, we have to make -- meet certain tests of
14 objectivity and -- and balance in the presentation of
15 the options.

16 And I -- I you know, we certainly tried
17 to do that. And therefore, you know, that's --
18 that -- that was the process.

19 MR. JOHN MATHER: It sounds to me you
20 were relying on Mr. Houghton to provide you the Town's
21 perspective; is that fair?

22 MR. JONATHAN ERLING: Absolutely.
23 And -- and I -- you know, certainly, my experience
24 with Ed through the earlier process in -- in the year
25 2000 was that -- I think of many utility managers that

1 I have met with over the years. Ed was very good at
2 interacting with the Town and getting input from the
3 Town because what I remember about the earlier process
4 was that the Town was clearly in on the deliberations
5 about the future of the utility.

6 And, you know, as part of that process,
7 you know, Ed wanted to have external advisors, and he
8 wanted to make sure that the Town representatives were
9 brought up to speed by external advisors on all the
10 relevant issues that you needed to think about in
11 making a decision as the Town. And that takes a bit
12 of education because it's a unique industry, and there
13 were certain legal restrictions on what they could do
14 and certain considerations that are outside of, I
15 think, the normal realm of what municipalities
16 normally have to concern themselves with.

17 You know, it's -- it's a specific
18 industry; it has specific rules; it has specific
19 norms. And so you have to educate people on those
20 considerations if you're going to bring them in and
21 having them take a meaningful part in the
22 decision-making process. You can't just bring them in
23 and not make sure that they're comfortable with the
24 relevant issues that they need to deliberate on.

25 MR. JOHN MATHER: So -- and I think

1 you said earlier, you expected that this presentation
2 would be shared with people in the town. Did you ever
3 present this presentation or discuss your analysis
4 with anyone at the Town?

5 MR. JONATHAN ERLING: No.

6 MR. JOHN MATHER: We saw that you sent
7 this presentation to Mr. Houghton and Mr. Fryer at
8 Collus. Do you know who they shared the presentation
9 with?

10 MR. JONATHAN ERLING: I do not. I --

11 THE HONOURABLE FRANK MARROCCO: Before
12 you -- oh, sorry.

13 MR. JONATHAN ERLING: Sorry.

14 THE HONOURABLE FRANK MARROCCO: Go
15 ahead and finish your answer.

16 MR. JONATHAN ERLING: I -- I do
17 recall -- I mean, I think we had got some comments
18 back on the initial draft, and I -- I do recall an
19 email, I think, from Tim that suggested it had been --
20 you know, that he had gotten some comments from other
21 people specifically, perhaps, on the transfer tax
22 issue. So I had gotten the impression it had been
23 shared, for sure.

24 MR. JOHN MATHER: And we will go to
25 that at a -- at a certain point.

1 THE HONOURABLE FRANK MARROCCO: I
2 wanted to ask you about the transfer tax. On
3 slide 20, evaluation of sale option, do you have that
4 slide in front of you?

5 MR. JONATHAN ERLING: I -- I think --
6 yes, I do.

7 THE HONOURABLE FRANK MARROCCO: It
8 says the disadvantage is transfer tax payable. Should
9 I -- should I understand what you said earlier that
10 I -- that that's not correct?

11 MR. JONATHAN ERLING: That is not
12 correct. So in the subsequent revision of this
13 presentation, that disadvantage moves to the bottom of
14 the list, and it's reworded -- I think it's reworded
15 to say if you sold to a private sector buyer.

16 So it's -- it's still there, but it's
17 much less relevant because it -- it only applies if
18 it's sold to a private sector buyer. So that was a
19 correction between the draft and the final.

20 THE HONOURABLE FRANK MARROCCO: So the
21 transfer tax is only payable if you sell to a private
22 sector buyer.

23 MR. JONATHAN ERLING: Correct.

24 THE HONOURABLE FRANK MARROCCO: Thank
25 you.

1 MR. JONATHAN ERLING: And now there's
2 specific regulations as to who it applies to. Like, I
3 have had discussions with people, is it applicable to
4 a sale to EPCOR -- which is not a private sector
5 entity, but is not based in Ontario. And I have
6 gotten different views as to whether --

7 THE HONOURABLE FRANK MARROCCO: Not
8 what I was asking. If -- I understand what you're
9 saying there. If you're -- we're dealing with a sale
10 to PowerStream. Is PowerStream a private sector
11 buyer?

12 MR. JONATHAN ERLING: No.

13 MR. JOHN MATHER: So, Your Honour, I'm
14 happy to continue or --

15 THE HONOURABLE FRANK MARROCCO: No,
16 no. It's -- we have to -- as I explained yesterday, I
17 think we have to be out of here by 4:00 because of
18 certain work that the Town is going to be doing in the
19 building. So it's a quarter to 4:00. We didn't take
20 a break. So I think we'll stop now. So we're
21 stopping.

22 MR. JONATHAN ERLING: We're stopping.
23 So that means --

24 THE HONOURABLE FRANK MARROCCO: You're
25 coming back.

1 MR. JONATHAN ERLING: I'm coming back.

2 Well, I --

3 THE HONOURABLE FRANK MARROCCO:

4 Counsel will work it out with you to try and make it
5 as convenient as possible.

6 MR. JONATHAN ERLING: Well, of course,
7 I'm delighted to be coming back.

8 THE HONOURABLE FRANK MARROCCO: Well,
9 we're delighted to have you back.

10 MR. JONATHAN ERLING: Thank you.

11 THE HONOURABLE FRANK MARROCCO: Oh,
12 one thing I should -- you shouldn't -- you probably
13 know this, but you shouldn't discuss your evidence
14 with anyone during the time that we're down because it
15 could lead to some sort of misunderstanding about
16 whether someone was influencing your evidence or not.

17 MR. JONATHAN ERLING: Can I discuss it
18 with my lawyer?

19 THE HONOURABLE FRANK MARROCCO:
20 Discuss it with your lawyer but -- well, your lawyer
21 understands the ethical bounds that he's or she's
22 governed by.

23

24 (WITNESS RETIRES)

25

1 --- Upon adjourning at 3:47 p.m.

2

3 Certified Correct,

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7 _____

8 Wendy Woodworth, Ms.

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