

PCA Case No. 2012-17

AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NAFTA
AND THE UNCITRAL ARBITRATION RULES, 1976

BETWEEN:

MESA POWER GROUP LLC (USA)

Claimant

- and -

GOVERNMENT OF CANADA

Respondent

ARBITRATION HELD BEFORE

PROF. GABRIELLE KAUFMANN-KOHLER (PRESIDING ARBITRATOR)

THE HONOURABLE CHARLES N. BROWER,

MR. TOBY T. LANDAU QC

held at Arbitration Place,

333 Bay Street, Suite 900, Toronto, Ontario

on Wednesday, October 29, 2014 at 9:05 a.m.

VOLUME 4

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	INDEX	
		PAGE
1		
2		
3	AFFIRMED: SHAWN CRONKWRIGHT	17
4	EXAMINATION IN CHIEF BY MS. MARQUIS	17
5	CROSS-EXAMINATION BY MR. MULLINS	17
6	RE-EXAMINATION BY MR. SPELLISCY	71
7	QUESTIONS BY THE TRIBUNAL:	75
8	FURTHER CROSS-EXAMINATION BY MR. APPLETON:	83
9		
10	AFFIRMED: GARY TIMM	89
11	EXAMINATION IN-CHIEF BY MR. DICKSON-SMITH	89
12	PRESENTATION BY MR. TIMM (CONFIDENTIAL)	93
13	CROSS-EXAMINATION BY MR. SQUIRES	94
14	REDIRECT EXAMINATION BY MR. DICKSON-SMITH	98
15	QUESTIONS BY THE PANEL	106
16		
17	AFFIRMED: SEABRON ADAMSON	121
18	EXAMINATION IN-CHIEF BY MR. APPLETON	121
19	PRESENTATION BY MR. ADAMSON	129
20	CROSS-EXAMINATION BY MR. SPELLISCY	138
21	RE-EXAMINATION BY MR. APPLETON	266
22	QUESTIONS BY THE PANEL	292
23	COMMENTS BY THE CHAIR IN RELATION	
24	TO DELOITTE LETTER	300
25		

1 Toronto, Ontario

2 --- Upon commencing on Wednesday, October 29, 2014

3 at 9:05 a.m.

4 THE CHAIR: Good morning to everyone.

5 We are starting Day 4 of this hearing. I am also
6 greeting those who are in the viewing room.

7 Before we start with Mr. Cronkwright,
8 and I apologize to you, you have to bear with us,
9 there's a procedural aspect that we have to address
10 now.

11 The Tribunal has reviewed your letters
12 of yesterday and the day before on the damage expert
13 issues, and we have the following to say to it.

14 First, with respect to the valuation
15 date for Article 1106 of the NAFTA, we understand that
16 the date of 5 August is confirmed. We do not think it
17 is necessary to remove the slight transcript passage,
18 as Canada requested. However, we would like the
19 Claimant to address, in its closing submissions, what
20 impact this change -- to address whether that has any
21 impact on the computation of the six-month time period
22 and obviously, Canada will then have an opportunity to
23 reply in its closing argument or, if it prefers, in
24 its post-hearing brief. That is for the first issue.

25 For the second one, which is the

1 change in the discount rate, we understand that Mr.
2 Low will testify, orally on this change without the
3 supporting documentations, since that was withdrawn,
4 and we also understand that Canada is prepared to
5 address this conceptually.

6 It is then afterwards up to Canada to
7 either argue that the case is unsubstantiated because
8 the documentation is missing, or to make some other
9 request for substantiation. We will, of course, be
10 open to any application that is made either in the
11 course of the closing argument or -- yes, in the
12 course of the closing argument would be the best time
13 to do it.

14 With respect to the modification of
15 the 1105 damage valuation, we have a provisional view,
16 but we would like to hear you, briefly, more on this.

17 Our provisional view is that we stick
18 with the rules on direct examination. It is true that
19 this issue was raised in the first BRG report and
20 therefore could have been addressed in the reply
21 damage expert report of the claimants and therefore
22 the expert should not be allowed to raise this in his
23 direct examination.

24 Now, we would like to hear the
25 claimants very briefly on this. Have we missed

1 something in the sense that this was not addressed, as
2 I said, in the first BRG report, and once you have
3 given us, I would say, not more than three, four, five
4 minutes in answer, then I will turn to Canada for
5 a reply.

6 Mr. Mullins, are you answering this?

7 MR. MULLINS: Thank you, Madam Chair.

8 In response to your question, as shown
9 in our letter from both Mr. -- it's from Deloitte,
10 from Mr. Low and Mr. Taylor, the BRG reiterated its
11 response -- its position, and it is also in the
12 rejoinder memorandum of Canada, that the position of
13 Deloitte that you would look at the terms in the GEIA
14 in calculating damages under 1105 would be wrong, and
15 in fact, they reiterated that the GEIA terms should
16 not be available to Mesa Power under any of the
17 claims.

18 As we talked about earlier in our -- I
19 spoke about, at the beginning of the hearing, our
20 experience in commercial arbitrations, both commercial
21 arbitrations and public international arbitrations is
22 quite often experts are allowed to tweak and analyze
23 their theories based upon the submissions of experts
24 on the other side and frequently experts are put
25 together in what we call hot tub scenarios -- and our

1 concern, and we understand the rulings of the Tribunal
2 and the provisional ruling, is that we believe that we
3 will be severely prejudiced of our due process rights,
4 our rights to put out our case, if Canada is allowed
5 to ask some questions, using the fact there is no
6 support for this, or you didn't look at this, and our
7 expert can't answer the question. We don't feel that
8 is fair and appropriate.

9 We offered Canada to say that they're
10 willing not to open that door, that's fine, but if
11 they ask a question we should be able to respond.
12 This is just a basic principle in any examinations in
13 courts or in arbitration. Counsel opens the door if
14 it gets to answer. If it can't answer it is simply
15 unfair.

16 I reiterate that all this information
17 goes to Canada's benefit. The first letter we got
18 from Canada, said they hadn't even read the -- they
19 said "Look at it. It looks like there is a lot of
20 changes here. We haven't finished reading it."

21 I said at the beginning of this hearing this is all to
22 the benefit of Canada and I still have not heard that
23 somehow Canada, these numbers are going to be to the
24 detriment of Canada. And I am concerned, that given
25 what the Tribunal has suggested, that we are going to

1 hear -- "Well, you don't have support for this because
2 something's been excluded," and now evidence is going
3 to be excluded when it essentially supports a lower
4 valuation to Canada's benefit. So I know the answer
5 is "Well, it's all gone all together and you can't
6 prove your damages claim." I think that would just be
7 completely wrong and unfair.

8 So, again, I go back to our beginning
9 point: If the answer is that Canada is not going to
10 ask any questions on these areas, particularly with
11 respect to 1105, then that will open the door; then we
12 will keep the report as it is. But if they open the
13 door, I think we should have a chance to respond.

14 THE CHAIR: We understand that you are
15 saying the second BRG report reiterated the position
16 of the first, so that is what we understand, to the --
17 this is the answer to the Tribunal's question.

18 MR. APPLETON: I think -- sorry, my
19 throat is not so good but it will better, I promise.

20 I just want to reiterate that the
21 issue here is that after raising an issue the first
22 time, the valuation experts respond with another
23 answer. They give that answer and BRG in the second
24 report refutes the entire answer in the second report
25 of the valuator's.

1 So, it is in fact opening and closing
2 the door again on the Deloitte valuator. The
3 Deloitte valuer said, "This is what we think." They
4 had some revisions, they put some things in. And
5 here, again, BRG in their second report has rejected
6 it. So by saying that yes, they rejected it the first
7 time and then you have some other information and they
8 reject it again, that's new. And they should be
9 entitled to respond to that, and by making a ruling,
10 provisionally I understand, that because they have
11 said, "We think you're wrong, you should get nothing,"
12 the first time that doesn't preclude the ability after
13 they provide more information to then say, "Well, we
14 think you should still get nothing." We think that
15 they should be entitled to respond.

16 Saying, "You are not entitled in any
17 scenario to get anything," is a pretty broad
18 statement, and when you come back with detailed
19 analysis and you say the same thing, I don't believe
20 that that means you can't comment on it. And that's
21 the difficulty that we have, is that -- and so,
22 I wanted to just underscore that, and I am very
23 thankful the Tribunal has given us the opportunity to
24 help explain it because it is particularly difficult
25 since Canada in its letter had no problem

1 characterizing -- that's its first letter --
2 characterizing the response from Mr. Low, without
3 reading it, and if in fact they had read the response
4 from Mr. Low they would have seen it -- for example,
5 they would have seen there was no requirement to be
6 able to change the Excel spreadsheets because there
7 was no new information that couldn't have been changed
8 entirely by experts with even one or two number
9 changes. And experts all the time take a number and
10 they say "assume this" and then they change it.
11 That's what experts are supposed to do because the
12 idea is to get the truth, to get a proper answer.

13 And here we have a situation where the
14 experts say, "Okay, we're prepared to acknowledge
15 something and let the Tribunal know so the Tribunal
16 doesn't have to do the math to put it together," and
17 yet we're excluding that. We've never seen that
18 occur. So that's our difficulty because it's -- it
19 responds to the second report.

20 THE CHAIR: So what I would suggest is
21 that you give us the precise references in the
22 different reports so we can trace exactly, is it
23 simply a repetition of the first position or is it
24 something new that was answered and then something new
25 that was reiterated so, that we understand exactly

1 what the flow is from one report to the other, and
2 then we can either confirm or deny, in a provisional
3 ruling.

4 MR. APPLETON: We will do that by the
5 end of the day.

6 THE CHAIR: You don't have to do it
7 right now but during a break.

8 Would Canada wish to comment at this
9 stage, or would you wish to wait for their references?

10 MR. SPELLISCY: Well, I think we can
11 offer a few comments, I guess at this stage. I think
12 they say are going to do it by today. Of course they
13 were asked to do it in that letter on Monday night,
14 and they did, they referred to a paragraph in the BRG
15 rejoinder report Mr. Low did, he referred to
16 paragraph 99. The sum total of what is there says
17 with respect to the GEIA as at the launch of our first
18 report cite.

19 So, we understand, of course that BRG
20 doesn't change its analysis at all on this issue of
21 causation from its first report to the second report.
22 There is no new information that it presents in this
23 issue at all. It just says "Huh, we made some
24 conclusions, we made our own conclusions and Deloitte
25 didn't respond." That's Deloitte's choice and counsel

1 for the Claimant has talked about the ability to tweak
2 and analyze, well, you had that. You had that in your
3 reply and you chose not to do it.

4 Now, the reality is, as you know, for
5 1105, he was wrong. Of course we would cross-examine
6 on the fact that it was wrong. Absolutely. You want
7 to correct that report, he's talking about severe
8 prejudice. That's their choice. They were -- it's
9 like the October 20th ruling of the Tribunal didn't
10 exist. They were given a choice. Do you want to keep
11 that in? We'll hold a separate hearing on quantum, or
12 you withdraw it from the record. If we had held
13 a separate -- if they had chosen let's hold a separate
14 hearing on quantum which was fully within their option
15 to do, there would be no prejudice. Then they show up
16 to this hearing trying to do what they were told they
17 could not do in writing, and they claim they will be
18 prejudiced if they are not allowed to do it. But that
19 is their choice. They put themselves voluntarily in
20 this position by saying "We choose not to bifurcate."

21 And when we talk about tweaking and
22 analyzing and doing that, the reason the Tribunal has
23 procedural rules which set out when you can do that in
24 response to what, is so that both parties' rights are
25 protected.

1 Let's remember this is not
2 a situation -- you know, they had the rejoinder report
3 of BRG in July. They waited until a week before the
4 hearing to tweak and analyze this. That's where the
5 whole issue arises.

6 We've said -- I think Mr. Appleton has
7 said, well, you wouldn't need the spreadsheets.
8 That's just not true. We've explained in our letter
9 why you do. In fact, there are so many assumptions
10 based on GEIA treatment embedded in all of the
11 analyses of Mr. Low, that then the question becomes
12 okay, he says he's removed the GEIA, but has he
13 really? Has he really? Because it is not just taking
14 out a couple of line items there. It is embedded
15 throughout his analysis without -- with respect to its
16 discount rate, its risk assumptions, its completion
17 risk, his company risk, it is embedded throughout
18 every aspect that they would be entitled to this ...

19 So to say that we wouldn't need the
20 spreadsheets, is just wrong. Of course we would. And
21 when we need them, that's when we need time to
22 analyze. Which is why we said in our letter last
23 night: Look, we're prepared to conceptually discuss
24 the idea of what is the appropriate approach, and
25 I can tell you looking at what they've said on the

1 valuation, the experts are not going to agree, as
2 a matter of conceptualization, what the appropriate
3 approach is to 1105 damages, and Mr. Goncalves, he can
4 talk about that.

5 If the question then becomes: All
6 right, what about the actual reduced calculation that
7 has been presented and Mr. Mullins continues to insist
8 that it is for our benefit. I'm happy that he's
9 looking out for Canada's interests, but the reality is
10 we like to look out for our own and we like to look at
11 that calculation and see if in fact it has been done
12 appropriately. That, if it's not done appropriately,
13 that could lead to more cross-examination needed on
14 the actual details in that spreadsheet, whether or not
15 all the assumptions based on the GEIA are actually
16 removed from that analysis.

17 So this is why we said in our letter:
18 Look, if they want to have a discussion about the
19 conceptual approach to how damages should be
20 calculated, what should be in, what should be out, we
21 can do that, but what we can't do is actually take
22 whatever new calculations they think that they can
23 offer a week before the hearing and actually analyze
24 them.

25 THE CHAIR: Thank you. I think that's

1 clear. Do my co-arbitrators have any further
2 questions?

3 So obviously we'll need to come to
4 a conclusion about this in the course of the day, and
5 the sooner the better, I assume, for the preparation
6 of your experts, as we are moving into the expert
7 examinations quite soon.

8 When can we have these additional
9 references?

10 MR. APPLETON: After lunch.

11 THE CHAIR: After lunch, yes.

12 MR. MULLINS: We will try to get it
13 done after lunch. I guess I would suggest, I think
14 the way the schedule is going to go is that it's
15 probably not likely that the damages experts will be
16 on before tomorrow.

17 THE CHAIR: That's what I think, yes.

18 MR. MULLINS: So I think if we could
19 get a ruling by the end of the day, and then we could
20 have that time. I think the rest of the time will be
21 everybody else.

22 THE CHAIR: So we should have it,
23 I would say latest after the lunch break, so during
24 a break this afternoon we can review it and then by
25 the end of the day we can give you the decision.

1 MR. APPLETON: And we will operate on
2 the assumption that we will not put the damages
3 experts on until we can get this done, so basically we
4 know that our day is filled with all of our other
5 experts, which shouldn't be a tough assumption.

6 THE CHAIR: No, I think it is
7 a reasonable assumption. So, let's get started.

8 Mr. Cronkwright, thank you for your
9 patience.

10 Is your microphone on? Now it is.

11 For the record can you please confirm
12 to us that you are Shawn Cronkwright?

13 THE WITNESS: Yes.

14 THE CHAIR: You are Director for
15 Renewables Procurement at the OPA; correct?

16 THE WITNESS: That's right.

17 THE CHAIR: And before that you were
18 Manager of Technical Services in the Electricity
19 Resources division of the OPA?

20 THE WITNESS: That's correct.

21 THE CHAIR: You have provided two
22 witness statements, two written witness statements,
23 one dated February 27, 2014 and the other one is
24 27 June, 2014?

25 THE WITNESS: Yes.

1 THE CHAIR: You are here as a witness
2 in this arbitration. As a witness you are under the
3 duty to tell us the truth. Would you please confirm
4 this is what you will do?

5 THE WITNESS: Yes.

6 THE CHAIR: Thank you. So we will
7 first have questions by Canada's counsel and then we
8 will turn to Mesa's counsel.

9 AFFIRMED: SHAWN CRONKWRIGHT

10 EXAMINATION IN-CHIEF BY MS. MARQUIS:

11 Q. Good morning, Mr. Cronkwright.
12 Do you have your witness statements in front of you?

13 A. Yes, I do.

14 Q. Could I ask you to confirm that
15 you not have any corrections.

16 A. I do not have any corrections,
17 no.

18 THE CHAIR: Mr. Mullins.

19 CROSS-EXAMINATION BY MR. MULLINS:

20 Q. Good morning, Mr. Cronkwright.

21 A. Good morning.

22 Q. You have in front of you what
23 I've been calling a notebook but my colleagues have
24 been calling are binders, so that's the big -- where
25 I grew up those were called notebooks, but we'll call

1 them binders.

2 I only have a short period of time for
3 questioning because we are timed and lucky for you
4 we've heard from two people from the Ministry of
5 Energy and we've heard from two people from the OPA,
6 so what I'd like to do is follow up on some things
7 that have come up throughout the hearing. So I really
8 would be appreciative if you could listen to my
9 question and just answer the question that I've asked.

10 If any follow-up needs to be done that
11 might be a different area, Canada's counsel will have
12 an opportunity to question you; is that fair?

13 A. Sure.

14 Q. You also find that often the
15 Tribunal will ask questions and maybe completely
16 different to what I'm asking and obviously you will be
17 answering those questions; okay?

18 A. Yes.

19 Q. Thank you. Now, you currently
20 work as a Director of Renewables Procurement in the
21 Electricity Resources branch of the Ontario Power
22 Authority; correct?

23 A. Yes.

24 Q. And is your immediate supervisor
25 JoAnne Butler?

1 A. Yes, it is.

2 Q. And she was your supervisor
3 throughout the relevant time period and to your
4 knowledge, the relevant time period is from 2008
5 until, say, summer of 2011?

6 A. Prior to me taking this role,
7 I had a previous supervisor.

8 Q. And when was that?

9 A. From 2007 until 2010.

10 Q. Who was your previous supervisor?

11 A. So I worked under Jason Chee-Aloy
12 who held this position previously.

13 Q. Can you spell his last name for
14 the record?

15 A. C-H-E-E dash A-L-O-Y.

16 Q. And we've seen his name in some
17 of the documents. That was very helpful. Thank you.

18 Now, I've asked these questions for
19 your colleagues, but as a government employee, do you
20 believe that you have to do your job with honesty,
21 forthrightness and transparency?

22 A. So I'm an employee of the Ontario
23 Power Authority which is a corporation without share
24 capital. I'm bound by the obligations of our
25 organization reporting in through my management chain

1 and our board of directors.

2 Q. Let me break down your answer.

3 So, in your position with the Ontario Power Authority
4 you try to do your job with honesty, forthrightness
5 and transparency?

6 A. Yes, and those are objectives of
7 the organization.

8 Q. And I take it you don't agree
9 that you are a government employee?

10 A. No, I'm not a government
11 employee.

12 Q. Did you believe that before this
13 arbitration?

14 A. Yes.

15 Q. You never told anybody in your
16 life, while you were working for the OPA, that you
17 were a government employee?

18 A. I work for the OPA. That's who
19 my paycheque comes from and that's who I work for.

20 Q. That's one of those questions
21 that I need to be answered. Have you ever told anyone
22 in your life while you work with the OPA that you are
23 a government employee?

24 A. Not that I'm an employee but
25 I work with the government.

1 Q. Thank you. And you then agree
2 that if the -- the OPA -- you said that -- you are
3 basically saying that the OPA is not the government,
4 per se?

5 A. That's right.

6 Q. And so anything that the OPA
7 procures would not be government procurement; is that
8 correct?

9 A. It is procurement under the
10 objects and obligations we have.

11 Q. But not government procurement
12 because OPA is not government; correct?

13 A. I'm not a government employee.
14 I don't draw a paycheque from the Ontario government.

15 Q. So the answer to my question is,
16 yes, it would not be government procurement because
17 the OPA is not the government; correct?

18 A. I'm not sure what you want me to
19 say there. I'm procuring under the obligations that
20 we have as an entity and satisfying those obligations.

21 Q. Thank you. Now, in your job at
22 the OPA, do you have experience both in the FIT
23 Program and in the implementation of the GEIA?

24 A. Yes.

25 Q. So you are familiar, generally

1 with how those were implemented in the 2009, 2010,
2 2011 area?

3 A. So with the FIT Program, yes.
4 With the GEIA, I'm responsible for implementation of
5 the directives that flow from the GEIA, but the
6 Ontario Power Authority is not a party to that
7 document.

8 Q. Did you have any participation in
9 the drafting of any directives with respect to the
10 GEIA?

11 A. The GEIA, no.

12 Q. What about the FIT, did you have
13 any role in the drafting of any directives of the FIT?

14 A. I was able to provide input and
15 recommendations to the Ministry of Energy with respect
16 to some of the FIT directives.

17 Q. Thank you. Speaking about the
18 FIT Program, you agree with me that the projects
19 varied in size; correct?

20 A. Yes, by the design of the
21 program.

22 Q. And so some projects, for
23 example, could be 50 megawatts, others would be 150
24 and more?

25 A. Yes, and some could be

1 500-kilowatts, so ...

2 Q. In fact, you are aware, as well,
3 that many developers put -- had more than one project
4 in the program; right?

5 A. That was very common.

6 Q. We've heard, for example, the
7 NextEra 6-pack; have you ever heard that term?

8 A. No, I haven't.

9 Q. You are familiar that NextEra had
10 a number of projects together?

11 A. I am aware that a lot of
12 developers had a number of projects.

13 Q. Is it true that depending on the
14 size of the project, there were different domestic
15 content requirements?

16 A. Domestic content was triggered
17 primarily off of technology, and then size based on --
18 micro FIT which was less than 10 kW had a different
19 requirement than FIT, which was greater than 10 kW.

20 Q. Do the technological requirements
21 indirectly relate to the size of the program and the
22 domestic content or no?

23 A. So there was government direction
24 for the micro FIT programs, there was a set of
25 requirements for various technologies and then for the

1 FIT program requirements for various technologies.

2 Q. I really want to focus on the FIT
3 Program so I just -- I was just asking, my
4 understanding is that some of the FIT applicants
5 required 50 per cent domestic requirement and others
6 required 25 per cent, is that's correct?

7 A. So there was a distinction
8 between wind and solar, different requirements for
9 each.

10 Q. But they were all in the FIT
11 Program?

12 A. That's right. They were all in
13 the FIT Program with different requirements based on
14 technology.

15 Q. And now, at what -- have you
16 heard of the entity called Pattern Energy?

17 A. Yes.

18 Q. Pattern ended up being part of
19 the Korean Consortium; correct?

20 A. I don't believe they are part of
21 the consortium.

22 Q. Well, they participated in it?

23 A. I believe they have partnership
24 arrangements but they are not recognized as part of
25 the consortium, my understanding.

1 Q. So the only members of the
2 Korean Consortium are KEPCO and Samsung?

3 A. I believe there are three
4 members.

5 Q. Who is the third member?

6 A. It's listed in the GEIA, the
7 three Korean entities.

8 Q. You just don't know what they
9 are; right?

10 A. Samsung, KEPCO and I can't think
11 of the third one, but there are three entities listed
12 in the GEIA as being part of that.

13 Q. And the Government of Ontario or
14 the OPA had no participation or selection of who would
15 be in the membership of the Korean Consortium; right?

16 A. No.

17 Q. And speaking about Pattern's
18 role, can you just go back and explain to us what you
19 understand to be Pattern's role vis-a-vis the
20 Korean Consortium?

21 A. My understanding is that the
22 Korean Consortium brought Pattern in as a partner to
23 be involved in the development of their wind projects.

24 Q. So for purposes of how you've
25 operated with them, you understand they're in part of

1 the Korean Consortium group but they're not
2 technically a member of the Korean Consortium; is that
3 fair?

4 A. We understand that they have been
5 brought in as a partner on the wind projects only and
6 not the solar projects.

7 Q. Thank you. That's helpful. And
8 similar to who decided who was going to be in the
9 Korean Consortium, I take it Ontario and OPA had no
10 say in Pattern becoming a partner in the
11 Korean Consortium; correct?

12 A. I can't speak for what the
13 Ontario government did. From the OPA's perspective we
14 didn't have any input in that.

15 Q. And you are aware that originally
16 Pattern was part of the FIT Program; right?

17 A. Yes, Pattern had made
18 applications under the FIT Program.

19 Q. Did they get any contracts?

20 A. Yes, they did.

21 Q. So they got contracts. And what
22 size were their contracts?

23 A. I don't have a full listing or
24 aware of that.

25 Q. Now, when they became a partner

1 in the wind portion of the Korean Consortium, did they
2 keep their contracts with the FIT?

3 A. Yes.

4 Q. All right. So they both were in
5 the FIT projects and in the Korean Consortium?

6 A. They had successful FIT projects
7 and they were partnering with the Korean Consortium
8 for negotiations.

9 Q. So they participated in both
10 projects simultaneously?

11 A. So you say "projects." They had
12 become a supplier under FIT so they had a contractual
13 relationship with the OPA as a FIT supplier.

14 Q. Right.

15 A. And my understanding is, again,
16 they had reached some type of partnership arrangement
17 with the Korean Consortium to work with respect to
18 developing the Korean Consortium's wind projects.

19 Q. Just so I understand, the
20 projects they had with the FIT Program, were they
21 included in their partnership with the
22 Korean Consortium or did they keep those separate?

23 A. Those are -- those were separate
24 from the Korean Consortium, and they were supply
25 contracts between Pattern or a project company and the

1 OPA.

2 Q. So they were simultaneously
3 participating in the FIT Programs or projects, and
4 they also were simultaneously doing other -- some
5 participation with the Korean Consortium?

6 A. So I can't say simultaneously,
7 because of timing. So they would have made FIT
8 applications prior to our being aware of their
9 involvement in the Korean Consortium. In terms of
10 what -- when they got involved with that, we don't
11 have the original dates.

12 Q. Well, you do recognize that the
13 FIT Program, the Korean Consortium was running
14 essentially simultaneously; right?

15 A. Well, there were different
16 activities going on but we weren't actively
17 negotiating with the Korean Consortium at the time
18 that the Feed-in Tariff opened up and received
19 applications on October 1st, 2009.

20 Q. The OPA had no problem with
21 Pattern being in both programs; right?

22 A. It wasn't so much a case of
23 whether we had a problem or not. They were eligible
24 to compete in the FIT Program and our understanding
25 was that the Korean Consortium had brought them in as

1 a partner and they had the ability to do so.

2 Q. When you were at the OPA, did
3 anyone ever have a discussion whether or not it would
4 be appropriate to have some kind of an opportunity for
5 other competitors of Pattern to participate in the
6 Korean Consortium partnership?

7 A. It wasn't our discussion. Again,
8 it wasn't our agreement.

9 Q. So essentially anybody that
10 Samsung wanted to do a partnership with, would be able
11 to participate in the Korean Consortium deal, and
12 there was really no other way to get into that deal;
13 right, unless Samsung agreed?

14 A. It was an agreement between the
15 Korean Consortium and the government and both of those
16 parties were bound by the terms and conditions of
17 their agreement.

18 Q. There would be no way to petition
19 the government or petition the OPA and say "Look,
20 I want to be able to get into this deal"; right?

21 A. People could do what they wanted.
22 Our instruction would have simply been: it's
23 an agreement between the government and this party,
24 you know, you're welcome to contact either party and
25 discuss it with them but we're not a party to it.

1 Q. That's the answer to my question.

2 Thank you.

3 Now, for Pattern to be in the --
4 whatever projects -- you don't know how it
5 participated in the Korean Consortium? Can you
6 explain how -- what its role was?

7 A. So, through the directives that
8 the OPA received, we were to look to sign PPAs for
9 various projects and our understanding is that Pattern
10 was a partner of the Korean Consortium for the
11 purposes of developing their wind projects.

12 Q. You understood that Pattern was
13 out looking to buy projects that had
14 essentially ranked low in the FIT process; do you
15 remember that?

16 A. We understood a lot of developers
17 were doing that.

18 Q. Pattern was doing that
19 specifically, you remember that; right?

20 A. It is anecdotal and common that
21 a lot of developers were doing that at the time.

22 Q. Including Pattern?

23 A. Presumably, yes.

24 Q. So when Pattern was working with
25 these projects and the Korean Consortium was working

1 with these projects, in the Korean Consortium deal,
2 they were not -- those projects did not have to
3 file applications; correct?

4 A. So the contracts that we were
5 looking to negotiate under the GEIA directives were
6 not part of the FIT Program so they did not apply to
7 the FIT Program. They were done separately.

8 Q. And those projects then didn't
9 have to be ranked; right?

10 A. That's right, they were
11 negotiated; they were separately directed.

12 Q. And those projects didn't have to
13 worry about satisfying criteria points; right?

14 A. They had to worry about various
15 requirements as specified, such as having site access
16 to control.

17 Q. But they weren't getting --
18 rankings were not being affected by their criteria
19 points under the FIT Rules; correct?

20 A. They weren't part of the FIT
21 Rules so they didn't have to follow that.

22 Q. And those projects in fact,
23 didn't have to be shovel-ready; correct?

24 A. No, it was a separate deal and
25 a separate negotiation for contracts separate to

1 different directions.

2 Q. So, in fact, these lower-ranked
3 projects that were not getting criteria points and
4 were not shovel-ready, those ended up being projects
5 that ended up in the program under the
6 Korean Consortium; correct?

7 A. So the Korean Consortium wasn't
8 a program. It was a discrete procurement initiative,
9 so it's not apples and oranges.

10 Q. Let me rephrase my question: The
11 projects that ended up in the Korean Consortium
12 initiative were projects that had been in the FIT
13 Program but were very low ranked and some of those
14 reasons, because they weren't shovel-ready or didn't
15 have criteria points; is that correct?

16 A. So, when those projects would
17 have been submitted into the FIT Program, they would
18 have been submitted by whoever the Applicant was at
19 the time. So their application would have had points,
20 not points, what have you, based on the Applicant
21 putting the project forward. And that's separate.

22 Q. If you go to paragraph 12 of your
23 rejoinder statement. I point to the first paragraph,
24 12 of you rejoinder; do you see it?

25 A. Yeah.

1 Q. It says:
2 "I also understand that the
3 Claimant has raised certain
4 complaints about the fact
5 that the Korean Consortium
6 was allowed to require
7 a project that had a FIT
8 contract, the 10-megawatt
9 Merlin Wind Farm, and then to
10 cancel that contract and
11 negotiate a PPA under the
12 terms of the GEIA." [As read]

13 Now, can you tell us a little bit more
14 about what the Merlin project was and who owned that
15 originally?

16 A. So the Merlin project would have
17 been successful through the FIT Program, they had then
18 become a supplier under the FIT Program, and there was
19 a request that basically the capacity in that project
20 sort of be removed from the FIT Program and be
21 included in the PPAs for the GEIA.

22 Q. In fact, Merlin was a Pattern
23 project, wasn't it?

24 A. Yes.

25 Q. And so once Pattern joined the

1 Korean Consortium initiative, it was allowed to switch
2 its contract from a FIT to the initiative; isn't that
3 correct?

4 A. No, it didn't switch the contract
5 from. We basically released the capacity for that
6 project to let it get rolled into, it didn't remain
7 a separate project. It got rolled into a GEIA
8 project.

9 Q. It is essentially the same thing,
10 more or less?

11 A. No, this was a 10-megawatt
12 standalone project and the capacity ended up being
13 part of a larger GEIA project.

14 Q. But that was a -- that's not
15 a benefit that FIT proponents had, right, to be able
16 to switch into different projects? If you look at
17 paragraph 8 of your statement specifically.

18 A. So typically we don't allow
19 suppliers to exit contracts unless it's in the benefit
20 of the ratepayer.

21 Q. So, typically -- so you made
22 an exception for Pattern in this particular situation
23 because of the Korean Consortium initiative?

24 A. Actually we felt that it was in
25 the best benefit of the ratepayer to do so.

1 Q. Thank you. Now, I'm going to
2 switch topics on you. There was a transmission
3 availability test run in 2010; right?

4 A. Yes.

5 Q. And this time though, no
6 contracts were awarded in the Bruce Region; right?

7 A. That's correct.

8 Q. So, these projects had to wait
9 for an ECT, right, that was going to be province-wide,
10 that was a provincial test?

11 A. Right. So there was no capacity
12 in the Bruce area when we ran the TAT/DAT, so they had
13 to wait.

14 Q. But in other areas that you knew
15 had that issue, right, there was sufficient capacity
16 within the area and so contracts started being awarded
17 in specific areas; correct?

18 A. Right. So subject to the rules
19 of the TAT/DAT, we awarded contracts where there was
20 capacity available.

21 Q. Ultimately, however, a conclusion
22 was made, that doing a province-wide ECT would be
23 a bad idea because this would open up way too many
24 megawatts; is that correct?

25 A. I think it's much more

1 complicated than that.

2 Q. That was one of the reasons. We
3 heard that earlier. One of the reasons was that it
4 would open up too much megawatts; could you just tell
5 us why that happened?

6 A. Could you please ask the question
7 again?

8 Q. Why don't you tell us why
9 a province-wide ECT wasn't run?

10 A. I think there were several issues
11 and I think predominantly, the government had issued
12 its long-term energy plan, and that caused the need to
13 do a reconciliation between the targets in the
14 long-term energy plan and the Feed-in Tariff program.

15 Q. That kind of -- I think that's
16 somewhat similar, so essentially you had a limitation
17 on how much megawatts and there was a concern that
18 doing a province-wide ECT would put you beyond the
19 intent for the long-term energy plan; is that fair?

20 A. Right. We had a long-term energy
21 plan and a subsequent supply mix directive that we had
22 to comply with.

23 Q. And that energy plan was entered
24 after proponents had already filed applications
25 and started -- they filed FIT applications, right, FIT

1 applications in 2009 and the plan comes in 2010;
2 right?

3 A. Some had been submitted before,
4 some were submitted after.

5 Q. Well, many, many -- in fact we
6 heard from Ms. Lo yesterday that you had many, many
7 applicants in the fall of 2009.

8 A. Yes, but I'm just clarifying that
9 although we had some before, we also had some after.
10 We continued to receive applications.

11 Q. The majority came in 2009; is
12 that fair?

13 A. I'd have to check the numbers but
14 a significant number came in 2009.

15 Q. All right. So, and so there then
16 became a discussion what to do with the Bruce Region,
17 in terms of how we're going to allocate contracts
18 there, right? Is that fair?

19 A. Yes.

20 Q. So originally the OPA recommended
21 a special TAT/DAT just for the Bruce Region to
22 allocate this capacity from the Bruce-to-Milton line;
23 right?

24 A. No, that's not correct.

25 Q. So what did I say that was wrong?

1 A. So we had originally envisioned
2 performing an ECT province wide.

3 Q. Can you look at paragraph 18 of
4 your rejoinder statement. I guess I was pointing to
5 what happened in April 2011. So why don't we read
6 what you said and you'll explain why, I guess, this
7 answer might be -- you might want to expand on it,
8 because you said in your statement:

9 "As such, as we moved into
10 April and May 2011 the OPA
11 began to recommend
12 a different process. In
13 particular, we gave a
14 proposal what we called a
15 'Special TAT/DAT process'.
16 The proposal was in essence
17 that the OPA re-run the TAT
18 process that the OPA had
19 originally executed but we
20 just wanted for the Bruce and
21 west of London regions." [As
22 read]

23 So why, when I asked that question
24 before, did you say I was wrong?

25 A. So, again, referencing

1 paragraph 18, it says as we moved into April we began
2 to recommend a different process because we had
3 an original process prior to this.

4 Q. So what you're saying is
5 originally you wanted to do a province-wide ECT?

6 A. Yes.

7 Q. And then you were told by the
8 Ministry of Energy or someone that you couldn't do
9 that or how did that happen?

10 A. We understood that there were
11 different issues and factors at play so we continued
12 to try to work cooperatively to try to find
13 a solution.

14 Q. When you say you understood, you
15 understood that from whom?

16 A. From the government.

17 Q. The government being the Ministry
18 of Energy?

19 A. Yes, we worked cooperatively with
20 the Ministry of Energy.

21 Q. You've been very helpful.

22 So after that proposal is rejected
23 then your next suggestion was as reflected in
24 paragraph 18?

25 A. Right. So we had originally

1 started to work on the idea of a province-wide ECT,
2 discussions around that. And then we -- again, the
3 other thing to keep in mind here is timing.

4 Q. Yep.

5 A. So as time moved along and the
6 time required to allow us to do our process, we
7 proposed that alternate mechanism that has been
8 referred to as the special TAT/DAT and again, as time
9 continues to move on, the OPA is challenged with
10 a process that we can actually run in the time
11 required. So we are continually trying to be
12 cooperative here to run a process and move things
13 forward in the time allowed.

14 MR. MULLINS: Now, I need to go on
15 confidential mode here for a document. So are we on
16 confidential?

17 --- Upon commencing the confidential session at

18 9:48 a.m. under separate cover

19 --- Upon resuming in the public session at 9:59 a.m.

20 BY MR. MULLINS:

21 Q. Just for the benefit of the
22 public, you just said that you knew there was going to
23 be some kind of change.

24 Can you go to tab 7 of your binder.

25 And have you -- can you -- the "C" number is C-445.

1 Could you tell us what this document is, sir?

2 A. Yes, so this is a briefing deck
3 or a presentation deck that the OPA prepared for
4 a meeting with the Ministry of Energy that took place
5 on December 23rd of 2010.

6 Q. Am I correct to understand that
7 what you were trying to do -- one of the reasons you
8 were doing this -- maybe not the only reason, was to
9 try to explain how we're going to finish out this --
10 at least -- in the contracts, including the Bruce and
11 Milton regions, given these issues with the LTP and
12 these other things we've been talking about; is that
13 fair?

14 A. It was really to make sure now
15 that the long-term energy plan had been released in
16 November, to try to reconcile the government's
17 objectives in the plan with the program itself.

18 Q. And in fact, on the last page of
19 this deck it talks about the need for shareholder
20 consultation for all these initiatives you were
21 discussing with the Ministry of Energy; correct?

22 A. With respect to version 2 of the
23 program, that is correct.

24 Q. But that also included changes in
25 the FIT Rules to accommodate the LTP; correct?

1 A. Yes.

2 Q. Thank you. You say in your
3 rejoinder statement -- and I'm going -- I'm trying to
4 go chronologically, so I'm going back now to 2011.

5 At some point you say in your
6 rejoinder statement you were asked to do this dry run.
7 Can you tell us what that was? And that's on
8 paragraph 19 of your rejoinder statement.

9 A. Yes, so, the timeframe we'd been
10 talking about here, it's sort of March, April, May of
11 2011.

12 Q. Yep.

13 A. And based on the email that we
14 just discussed, there was some back and forth about
15 different options available to move forward. What's
16 referred to here as the dry run was some analysis in
17 support of those options.

18 Q. And the Ministry of Energy asked
19 you to do this dry run and wanted to find out how
20 a modified TAT/DAT would affect rankings?

21 A. Yeah, there were two main
22 concerns that we were aware of from the Ministry of
23 Energy. The first was the overall quantum of
24 megawatts. So, we talked a little bit about the
25 long-term energy plan and not only did it set out

1 total procurement targets but it also had cost
2 assumptions as well. So we understood that there was
3 a concern about quantum of megawatts awarded, impact
4 towards both the targets and impact towards cost to
5 ratepayers and separately, we understood that there
6 was some concern about being able to communicate the
7 results, and I guess some questions that had come up
8 with the second phase of the TAT/DAT versus
9 expectation.

10 So there were two sorts of --
11 a quantum and a cost impact and then a communications
12 impact with respect to ranking.

13 Q. Well, but in addition, the
14 Ministry of Energy ended up finding out how the
15 results played out for particular proponents; correct?

16 A. We didn't share that specific
17 information with them, but they understood how the
18 quantum would shake out in that process.

19 Q. And this, well, the dry run
20 results were confidential; right?

21 A. That's right.

22 Q. Because it would really be
23 an untransparent thing for the results of this dry run
24 to be released to the people making the decision or
25 proponents; right?

1 A. So our obligation was to work
2 cooperatively with the Ministry of Energy. We wanted
3 to make sure that they understood that that
4 information was confidential and they needed to treat
5 it as such.

6 Q. Well, in fact, you told Colin
7 Andersen that you were specifically concerned about
8 showing the results to the Ministry of Energy; do you
9 remember that?

10 A. Yep.

11 Q. And just for the record that's in
12 C-446, so we don't spend a lot of time on it, but
13 that's tab 10 in your notebook and that's the email
14 that I just referred to; correct?

15 A. Yes.

16 Q. And you had a conversation with
17 Mr. Andersen about this?

18 A. Yes, I did.

19 Q. And he said, "I want to see the
20 results" and you said "No." What happened?

21 A. No, the issue was with respect to
22 the information and how the information would be
23 shared.

24 Q. So there was a meeting between
25 you and the Ministry of Energy about the results

1 though; right?

2 A. That's correct.

3 Q. When was that meeting?

4 A. Umm ...

5 Q. Was it April 14th?

6 A. I'm looking in here and it looks
7 like it was either the 13th or 14th.

8 Q. I think it's around
9 April 14th because my chronology is correct; does that
10 sound about right?

11 A. Yes.

12 Q. Could you go to tab 32 of your
13 notebook?

14 Now I understand from your witness
15 statement that you did not leave the results of the
16 dry run with the Ministry of Energy; is that correct?

17 A. That's correct.

18 Q. But, in fact, sir, you showed it
19 to them at the meeting though; right?

20 A. Yes.

21 Q. So they did have an actual
22 listing of the rankings in their eyesight at the
23 meeting; correct?

24 A. Yes, with respect to a slimmed
25 down and hypothetical test.

1 Q. So if you look at this email
2 dated May 18th, it talks about -- now it says to
3 Bob Chow and Tracy Garner, who is Tracy Garner?

4 A. Tracy Garner is a planner who
5 works for Bob Chow.

6 Q. I'm sorry?

7 A. Tracy Garner is a planner who
8 works in the planning division, reporting to Bob Chow
9 or a colleague.

10 Q. She says:

11 "I see Sue ..."

12 She means Sue Lo; right?

13 A. Yes.

14 Q. (Reading):

15 "... has set up a meeting for
16 10 a.m. ..."

17 And she says "Shawn." That's you,
18 right? Shawn is you?

19 A. Yes, yes, that's me.

20 Q. (Reading):

21 "Shawn and I were talking at
22 the end of the day, and he is
23 concerned (as am I) that
24 ENE..." [As read]

25 That's the Ministry of Energy?

1 A. Yes.

2 Q. (Reading):

3 "... expects a very specific
4 outcome -- namely, they think
5 (because they never fully
6 understood what goes on in
7 our tests) that now they've
8 instituted the conn-point
9 change and the gen paid
10 connections they will get the
11 top 750 MW etc. in order with
12 no one failing (this is how
13 their first draft of the Dir.
14 sounded)."

15 Correct?

16 A. Yes, that is what it says.

17 Q. Is that an accurate reflection of
18 the conversation that you had with Tracy Garner?

19 A. Yeah, I think it's pretty
20 accurate.

21 Q. Now, Shawn, that's "he":

22 "... was referring to a
23 previous dry run." [As read]

24 That's the dry run we've just been
25 talking about?

1 A. That's correct.

2 Q. (Reading):

3 "... based on existing conn.

4 pts that you and Charlene

5 ..." [As read]

6 Who is Charlene?

7 A. Charlene is a planner as well, in

8 the planning division, working for Bob Chow.

9 Q. (Reading):

10 "...showed them at a meeting"

11 -- that is the April meeting;

12 right?

13 A. Yes.

14 Q. (Reading):

15 "... (but did not leave with

16 them)and wondering if we

17 could produce some 'variants'

18 of that."

19 So, if I understand this correctly,

20 that Shawn -- sorry, you're Shawn, talked to Tracy and

21 said that you were concerned that the Ministry of

22 Energy wanted to see if you could do another run that

23 made it look like the results of that original dry run

24 you gave them; is that accurate?

25 A. No, that wasn't driven by the

1 Ministry of Energy. That was my discussion item.

2 Q. But that was your suspicion that
3 that's what they wanted? I'm trying to understand
4 what this sentence means. Could you explain to us
5 what it meant where you said, "Wondering if we could"
6 -- who was wondering if we could propose some variants
7 of that? What does that mean, sir?

8 A. Tracy is referring to me. That
9 I was wondering if we could do that.

10 Q. So you wanted to do another dry
11 run, and try to come up and try to match the results
12 that you'd already shown the Ministry of Energy?

13 A. No.

14 Q. Please explain to me. I'm
15 confused.

16 A. I'm following the second
17 paragraph as written here. So -- so Tracy is saying
18 that I am wondering if we could get PSP to produce
19 some variants, similar type ideas as a dry run using
20 purely hypothetical scenarios with no analysis to just
21 see how applications interact.

22 Q. What do you mean at the end of
23 this -- or I'm sorry, it's not you writing this but
24 "he" is you at this last sentence:

25 "He feels showing them

1 examples is the best way to
2 reinforce to them ..."

3 -- that would be the Ministry of
4 Energy --

5 "... that their plan is not
6 fool proof, and ideally
7 prevent them from freaking
8 out later on if something
9 turns out slightly different
10 than they believe it will."

11 What did you mean by that?

12 A. So I mentioned it a little bit
13 earlier, so before the Bruce-to-Milton allocation
14 process we had completed the phase 2 TAT/DAT, so the
15 phase 2 contract awards. When we had been doing the
16 analysis on that phase 2 TAT/DAT earlier on, I think
17 we felt that based on -- you know, the analysis takes
18 several weeks but early indications were that we might
19 have 300-megawatts or so coming out of the TAT/DAT
20 process. That's input that the Ministry of Energy
21 uses with respect to forecasting and quantum and
22 pricing and so on.

23 When the final tests had been done,
24 and as I mentioned it takes several weeks, the
25 successful contracts didn't turn out to be 300; it

1 turned out to be just shy of 900. So, that's what
2 I meant by "surprises". So when we had gone back and
3 reported that concluding the TAT/DAT for phase 2, we
4 didn't have 300-megawatts as the Ministry was sort of
5 anticipating and we had earlier reported, rather than
6 300, we had 900, they were very concerned. I used the
7 words "freaked out" here, because that was megawatts
8 that were being contracted at a different time or in a
9 different expectation with respect to their
10 projections on pricing. So they were very concerned
11 that whatever comes out of this process was very well
12 understood in terms of the quantum of contracts and
13 the relative price implication. So that's part of it.

14 The other part of it is that by the
15 very nature of the testing, although we talked about
16 criteria and we talked about ranking, it's never
17 a guarantee that because you have a high ranking you
18 are going to be successful. An example would be, we
19 have two very highly ranked projects that want to
20 connect to the same point. One of them will be
21 successful, but the other one won't necessarily be
22 successful. And the government, as we understood it,
23 had a concern in terms of communicating the outcome of
24 these processes that how could it be possible that
25 a highly ranked project could be unsuccessful and we

1 were trying to demonstrate that due to the interplay
2 of the applications, you wouldn't necessarily award
3 contracts 1, 2, 3, 4, 5, 6, 7.

4 In fact, some of them could fail
5 because they were competing for the same thing and
6 that's what we were trying to demonstrate was that
7 regardless of how this played out, it was very
8 possible that high ranked projects wouldn't be
9 successful for very valid technical reasons but the
10 technical tests are quite complicated and it is hard
11 to communicate that to folks that don't have the level
12 of expertise that Bob and his staff do.

13 So that's the interplay we were
14 working on, it was quantum and communications.

15 Q. So as I understand what the email
16 indicates and I think you're saying it now, the
17 Ministry of Energy really did not have a complete
18 understanding of how all these tests really
19 interplayed; is that fair?

20 A. I'd suggest that other than
21 a very small few people, very few people understand
22 that.

23 Q. Was there any discussion at this
24 point, that maybe it would be a good idea to get
25 stakeholder comments to see what they thought might be

1 a way to solve this problem?

2 A. With this point, this is still in
3 terms of internal processes so, no.

4 Q. There was no discussion about it?

5 A. No.

6 Q. Other than the previous
7 discussion we heard earlier in December, talking about
8 stakeholder comments; right?

9 A. So generally we want to engage
10 the stakeholders on things with respect to the rules.
11 In terms of an internal process piece and
12 understanding -- no.

13 Q. Did you understand at this point
14 how fast they wanted to do this?

15 A. We understood that they wanted to
16 move with this, in light of the fact that the
17 Bruce-to-Milton approval had originally happened, the
18 sector had expected contracts to be awarded but then
19 shortly on the heels of that was appealed. So there
20 was sort of pent-up interest in this line waiting for
21 the appeal to conclude. And we did understand that
22 the appeal -- it happens here in May, that once the
23 appeal had been satisfied, that the sector and the
24 government wanted to move forward expeditiously with
25 contracts on this line.

1 Q. I guess what I'm saying is, what
2 I'm trying to understand is you're saying that
3 obviously you are trying to get the internal working
4 worked out, but given that there was a time pressure
5 don't you -- was there not any discussion at the OPA
6 to say, "Look, we need to get a stakeholder comment
7 period started right now so we can make sure that
8 everyone's expectations are being met."

9 A. No, not with respect to this.
10 No, the development community understood the line was
11 becoming available and that contracts would flow and
12 we needed to move forward with that. That was the
13 expectation.

14 Q. So no-one told the development
15 community that internally you guys couldn't figure out
16 what test to use; right?

17 A. That is not usually the thing you
18 would go out and stakeholder on. And again, we wanted
19 to make sure we understood what our plan was first
20 before we communicated that to anybody.

21 Q. If you look at paragraph 21 of
22 your statement --

23 A. Which statement?

24 Q. Oh, I apologize. Thank you.

25 Your rejoinder statement. You say:

1 "Ultimately, as I understand
2 it ..."

3 I'll wait for people to get up there:

4 "... the government heard all
5 the possibilities and decided
6 at a high level meeting held
7 on May 12th, 2011 to adopt
8 a process that we eventually
9 used to allocate capacity on
10 the Bruce-to-Milton line.
11 A procurement of a specific
12 amount of capacity in the
13 Bruce and west of London
14 regions simultaneously which
15 would occur after
16 a connection change point
17 window and which would allow
18 for generator-paid upgrades."

19 [As read]

20 Do you see that?

21 A. Yes.

22 Q. Now, by May 12th then, you
23 basically, at this point, the government has decided
24 which path to take; correct?

25 A. With respect to what we've

1 outlined here. So, again, this is very high level.
2 There is always a lot of details below that.

3 Q. Now, at this point, then, now
4 that you've internally decided which path to take, was
5 there then a discussion at the OPA or with the
6 Ministry of Energy to now tell the stakeholders which
7 program was going to be done or what the plan was?

8 A. Now, so, and again through
9 reading some of these materials, my understanding is
10 there were stakeholders plans put together and other
11 materials developed but that couldn't happen until
12 some of these decisions had been landed.

13 Q. But, May 12th then, the decision
14 has been made, so then why was it not revealed to the
15 stakeholders what the plan was going to be?

16 A. And again I would go back to,
17 this is a high level decision. These are very
18 complicated processes with lots of steps. There is
19 still a lot of, you know, the government can decide
20 from a policy perspective what they want to do, but
21 how the OPA operationalizes and puts those various
22 steps into play still takes additional work.

23 Q. Whose decision would it be to
24 announce to the stakeholders about the decision made
25 on May 12th: OPA or the Ministry of Energy?

1 A. We'd coordinate that.

2 Q. So, did you personally, in your
3 role, suggest at that time, on May 12th, to now
4 announce to the stakeholders what the decision was?

5 A. On May 12th, no, I don't believe
6 I made that.

7 Q. Did anybody at the OPA to your
8 knowledge, or the Ministry of Energy, recommend at
9 that point that now we should tell the stakeholders
10 what the decision is?

11 A. I can't speak for the entire
12 organization or the entire government. I don't know.

13 Q. Were you at the meeting, at the
14 high level meeting on May 12th, 2011?

15 A. No.

16 Q. So who was at the meeting that
17 told you that the decision was made?

18 A. I don't know. My understanding
19 is that it would have been a government meeting. Most
20 likely with folks from the Minister's office and
21 others.

22 Q. But somebody after the meeting
23 told you; correct?

24 A. Through the emails we got
25 correspondence back, I believe probably through Sue

1 Lo, that a decision had been made and there was
2 a notional policy direction where we were moving.

3 Q. Perfect. Now, were you ever
4 involved in the decision, sir, about how much notice
5 would be given to the shareholders about the change in
6 the change point window?

7 A. We had made recommendations on
8 it.

9 Q. What were your recommendations?

10 A. So going back to -- it would have
11 been even throughout 2011, I think we originally had
12 advocated in the context of a six-month ECT process
13 that we would typically look for three weeks as part
14 of the six-month process.

15 Q. While these recommendations were
16 going on and even as of May 12th, is it not true, sir,
17 that you had envisioned that -- scratch this.

18 By May 12th you understood that there
19 was going to be a change point window; right?

20 A. I'm suggesting here that we knew
21 that there were a couple of options in play and it
22 isn't until we actually heard back, that was the
23 direction they were going. I mean, I think it could
24 have been in or out at that point.

25 Q. Well, by May 12th, you knew there

1 was a --

2 A. By then yes, I --

3 Q. That's what I said. So as of May
4 12th then, is it not true that in your mind then, that
5 you expected there to be a three-week period of time
6 for people?

7 A. No.

8 Q. So you knew by May 12th, that it
9 was not going to be three weeks?

10 A. We understood that there were
11 timing preferences with respect to award of these
12 contracts and that the entire process would likely be
13 compressed.

14 Q. So was there any discussion at
15 the OPA or Ministry of Energy to make sure we got this
16 information out to the stakeholders as soon as
17 possible given that you weren't even going to give
18 them three weeks?

19 A. It certainly would have been our
20 preference. In general that's how we would normally
21 do things.

22 Q. You say your preference. Did you
23 actually make that recommendation to the Ministry of
24 Energy to get this out as soon as possible to the
25 stakeholders so they could prepare?

1 A. We would have made those
2 recommendations in general both for the stakeholders
3 and for ourselves.

4 Q. Do you know how long the notice
5 actually was?

6 A. I believe it was very short.

7 Q. It was a weekend; right? It was
8 announced on Friday and started on Monday; do you
9 remember that?

10 A. Yep.

11 Q. Were you shocked at that short
12 period of time when it happened?

13 A. I'm not sure I am shocked but
14 certainly it is short.

15 Q. That's standard business at the
16 Ministry of Energy?

17 A. A lot of announcements are made
18 on Fridays. That would be standard business.

19 Q. I see. Do you understand, sir,
20 what the reason was to make that such a short period
21 of time?

22 A. My understanding is that there
23 was a desire, as reflected in the documents to have
24 the contracts awarded as soon as possible.

25 Q. Whose desire?

1 A. The government's desire.

2 Q. Did you hear anybody else say --
3 did you hear anybody tell you ever that it was some
4 other organization that was clamouring to have
5 a weekend notice period?

6 A. No.

7 Q. You never heard that it was
8 CanWEA that was demanding this?

9 A. No, and I wouldn't have
10 necessarily heard from those folks, they wouldn't have
11 said it to me.

12 Q. Were you aware, sir, that CanWEA
13 had written a letter about this issue?

14 A. I've been made aware of it
15 through the documents provided.

16 Q. That's the first time you saw
17 that letter?

18 A. As far as I'm aware, yes.

19 Q. Were you also aware that after
20 that letter was sent, a member of CanWEA wrote -- and
21 this is at tab 29 of your notebook. Let's me see if
22 you've seen this letter before. So this is -- pull it
23 up. Do we have the "C" number on this?

24 MS. MOWATT: R-114.

25 MR. MULLINS: So this is R-114.

1 MR. APPLETON: The 27th letter?

2 MR. MULLINS: No, no, I'm pointing to

3 the -- R-114.

4 MR. APPLETON: Thank you.

5 BY MR. MULLINS:

6 Q. Have you ever seen this letter,

7 sir?

8 A. Yes.

9 Q. You didn't see this letter at the

10 time, you saw it during the process of this

11 arbitration or no?

12 A. No, my name is on it and I see

13 here in the CC that it was copied to my boss, so at

14 some point this would have probably been given to me

15 as a copy.

16 Q. Oh, I see. I missed that. That

17 is your name.

18 A. Yes.

19 Q. Oh. So that's a Shawn. You got

20 a copy at the time. Okay. Thank you for that. So,

21 what happened when you got this letter?

22 A. So, this is a letter addressed to

23 the Minister, so there was no requirement for me to

24 take action on it.

25 Q. Did you have any discussion with

1 your boss Ms. Butler about it?

2 A. I don't recall.

3 Q. Did you see, when you saw this
4 letter, that now he's referring -- the author,
5 Mr. Edey is referring to the CanWEA letter and if you
6 want to -- just for the record, the CanWEA letter,
7 which tab was that? It's tab 27 of your notebook, so
8 let's just put that on the record. And what's the
9 document there?

10 MS. MOWATT: R-113.

11 BY MR. MULLINS:

12 Q. This is R-113. So you are saying
13 that you never saw this document at the time?

14 A. I don't recall, and if I look at
15 the letter you've shown me this is a letter to the
16 Minister from the president of CanWEA and I notice
17 there is no CC of an OPA person on this, so, I don't
18 recall seeing this at the time.

19 Q. Perfect. But you did get the
20 later letter that was cc'd to your boss and did you
21 not then look to see -- "Could somebody give me a copy
22 of the letter that Mr. Edey is referring to"?

23 A. No.

24 Q. And you read this letter when it
25 came in; right?

1 A. I would have read it when it was
2 provided to me.

3 Q. And when you did that, you saw
4 that it says:

5 "The letter purports to
6 represent a majority of
7 CanWEA members that has asked
8 OPA to alter its path at this
9 late hour to open the ECT
10 process to allow certain
11 parties to make changes to
12 interconnection points.
13 I can tell you without
14 hesitation, this view
15 certainly does not reflect
16 the majority of applicants
17 with megawatts (MWs) on the
18 current cue list. In my view
19 the letter was sent without
20 appropriate consideration of
21 the impact to all CanWEA
22 members." [As read]

23 Do you remember reading that at the
24 time, sir?

25 A. Yes, I remember it.

1 Q. When you got this letter, did you
2 go down to the office to Ms. Butler and say, "Wow,
3 maybe we should do something about this"?

4 A. This would not be surprising.

5 Q. Not surprising?

6 A. No.

7 Q. So, you didn't care that, at
8 least Mr. Edey was telling you, that the process chain
9 was not reflective, in his opinion, of the majority of
10 applicants' members in the current cue list?

11 A. So he's not telling me anything.
12 He is writing to the Minister of Energy, and it
13 appears he is expressing a position that his interests
14 aren't necessarily aligned with CanWEA members. We
15 would find whether it is CanWEA or any other
16 organization, that it is very rare that you would have
17 100 per cent alignment of all of their members on any
18 policy that they deal with.

19 Q. At this point was there any
20 discussion at the OPA or the Ministry of Energy to say
21 based upon these conflicting presentations that at
22 this point, maybe we should slow down the brakes, make
23 an announcement to the stakeholders and get comment
24 because now we're getting conflicting messages? Was
25 there any discussion with anybody in any nature like

1 that, sir?

2 A. It is not uncommon for us to have
3 conflicting opinions in the administration of any of
4 these programs. It is very rare that all private
5 sector interests line up on any one issue at any time.
6 That's common.

7 Q. So the answer to my question is
8 "no"; there were no such discussions; correct?

9 A. No, I can't say there were no
10 such discussions. Generally speaking, we wanted
11 materials to be available as early as possible and if
12 the date that they were provided on the Friday was as
13 early as possible, then that's when they were
14 provided.

15 Q. I want to make sure -- we've been
16 talking -- I want to make sure we're on the same page.
17 You're not aware of any discussions that either you
18 were part of or that you heard about, at the OPA or
19 the Ministry of Energy as of May 30th, 2011, to
20 suggest that based upon the conflicting messages you
21 were receiving, that "we should pause and give
22 stakeholder comment"; is that correct?

23 A. Generally speaking, our approach
24 would be to have materials out in advance, to have
25 lots of time for people to comment on them, to run

1 a very, you know, long stretched-out process and from
2 the behind the scenes processing perspective, that
3 also helps our team. That is not always in line with
4 the government's policy objectives on this or any
5 other program, so we are always in a bind between
6 trying to take as much time as possible and at the
7 same time trying to deliver the policy objectives. It
8 is always a balancing act. That is always
9 a discussion that is underway.

10 Q. Mr. Cronkwright, remember when
11 I asked you at the beginning, I need you to answer my
12 question. This is the third time now. I am asking
13 you, was there any discussions about stopping the
14 process to give stakeholder comment period, "yes" or
15 "no"?

16 A. I can't tell you OPA-wide and all
17 staff if there was any discussions. I can't speak to
18 that.

19 Q. I'm only asking for your personal
20 knowledge, sir.

21 A. I'm not aware, because I don't
22 know of all of the discussions that happened, with all
23 of the parties at the whole organization, it is very
24 possible someone did, it's very possible that it
25 didn't.

1 gained by this last-minute
2 disruption." [As read]

3 Again, was there any discussion about
4 whether or not -- and they mention Mesa Power, my
5 client, specifically, they had bought -- had got
6 projects, were waiting and they were currently ranked
7 8th and 9th on the priority list. Was there not any
8 discussion at all about my client and how this might
9 affect them and maybe, by chance, that there might be
10 other people in the same situation that might want to
11 have a chance to have an opportunity comment on this?
12 Was there any discussion at all, sir?

13 A. So, to answer that I have to look
14 at the letter because the letter is talking about
15 changes, and the process, as envisioned, allowed for
16 connection-point changes. So this letter is arguing
17 that we shouldn't allow connection-point changes,
18 which is something that was envisioned originally, so
19 it's very strongly arguing that point, but it is
20 arguing the opposite.

21 Q. So the answer to my question is,
22 no, there were no such discussions; correct?

23 A. I think you're taking it out of
24 context. I'm suggesting to you that the letter is
25 arguing that should not follow the processes outlined

1 and instead should follow something else, because it
2 would be most likely beneficial to the Applicant.

3 Q. The answer to my question is,
4 "No, there was no discussion about my client or other
5 entities in that region that might be affected by this
6 decision after receipt of this letter," to your
7 knowledge, isn't that correct? I think it's a "yes"
8 or "no" question, sir.

9 A. I don't think I can answer it
10 that way. I think we knew that we had lots of
11 interest in the region. We knew that everybody in the
12 region was not going to be a winner and regardless of
13 what process we ran, some people were going to be
14 successful and some people weren't. That was the
15 reality of it.

16 Q. Please, could I just get
17 an answer to that question.

18 MR. SPELLISCY: I'm sorry, I don't
19 want to interrupt. But you can read the question back
20 from the record.

21 THE CHAIR: The question has been
22 asked many times and I think we have got the
23 information that we need. And I wouldn't --

24 MR. MULLINS: Can I just check with my
25 counsel.

1 THE CHAIR: Sure.

2 BY MR. MULLINS:

3 Q. Just really quick to follow up.

4 You had previously told us that the recommendation
5 about the special TAT/DAT process, that would not have
6 included any connection-point changes; correct?

7 A. That's correct.

8 MR. MULLINS: Thank you so much. No
9 further questions.

10 MR. SPELLISCY: As usual, I'll request
11 a few minutes to confer.

12 RE-EXAMINATION BY MR. SPELLISCY:

13 Q. Good morning, Mr. Cronkwright.

14 A. Good morning.

15 Q. I will just impinge upon my
16 colleague Chris here to help me pull up some
17 documents, perhaps, and I think that the first one is
18 probably just to clarify the record.

19 You mentioned in your testimony
20 a March 2011 presentation that you said laid out the
21 OPA's original proposal for how to allocate the Bruce
22 to London capacity.

23 I want to get you to confirm so the
24 Tribunal has it. If you could pull up C-0438.

25 Could we make it smaller.

1 This is an OPA proposal of March 21st,
2 2011 called "Economic Connection Test and Program
3 Evolution". Is this the document you were talking
4 about, which was the OPA's original proposal?

5 A. It is one of them. There is
6 another one earlier in March as well. I believe it's
7 the 3rd or the 5th.

8 THE CHAIR: Just to make sure that we
9 understand you correctly, this is your first proposal
10 and that's a provincial-wide ECT?

11 THE WITNESS: Are we able to flip
12 through it? I'm sorry, I don't have it in front of me
13 here.

14 MR. SPELLISCY: Bring the tab up
15 there.

16 THE CHAIR: In your witness statement
17 too, in paragraph 13 you say that when you began
18 considering options for allocating capacity of the
19 Bruce-to-Milton line, from the beginning the OPA have
20 publicly stated that it would award capacity of this
21 new line through an Economic Connection Test.

22 THE WITNESS: Sorry, are you referring
23 to the original or the --

24 THE CHAIR: To your witness statement,
25 the second one, paragraph 13.

1 THE WITNESS: Paragraph 13?

2 THE CHAIR: Page 5.

3 THE WITNESS: Yes.

4 THE CHAIR: So does this statement
5 here correspond to the presentation that was just on
6 the screen before, which is C-0438?

7 MR. SPELLISCY: I think if you go to
8 paragraph 16 he actually describes this exact
9 presentation. And I believe if you bring up slide
10 5.2. Just click through it. Keep going.

11 Sorry, we should go confidential on
12 this.

13 --- Upon resuming the confidential session at
14 10:36 a.m. now deemed public

15 Q. This brings me to
16 another question. At one point, in a rather long
17 question, the Claimant's counsel said something about
18 the Claimant's projects being ranked 8 and 9 in
19 an area.

20 Can you explain whether the OPA ranked
21 projects on an area or a provincial basis?

22 A. So, as part of the launch phase
23 of the Feed-in Tariff program, when we examined the
24 criteria, projects were ranked provincially. They all
25 came in provincially. We ranked them provincially.

1 That's the way they were done.

2 For the purposes of sharing that
3 information publicly with stakeholders with
4 communities and so on, there was a benefit to kind of
5 grouping it into clusters just for the purpose of
6 sharing information, which is where the areas were.
7 And the areas, as Bob Chow would speak to, are the
8 electrical areas. So Bruce being an electrical area,
9 London being an electrical area, Niagara to the east.
10 So those were sort of identifiers but the rankings
11 were provincial rankings based on how a proponent
12 scored in their original submission.

13 Q. And in the FIT Rules there is
14 mention of time stamp, and you just mentioned how the
15 proponents scored. Could you explain how the time
16 stamp worked for launch period applications and then
17 for post-launch-period applications?

18 A. So in the launch period we
19 purposely didn't want to rush out the door on Day 1 so
20 we gave 60 days, make your submission, we evaluated
21 them, awarded them or didn't award them, criteria
22 scores, and then what we ended up doing is -- so we
23 took a provincial ranking based on score and then we
24 converted them to a virtual time stamp separated by
25 like a second apart or something. So all of the

1 launch period criteria or the launch period projects
2 were at the top of the list. After the launch period
3 concluded, any application that came in got a time
4 stamp and it was just added to the list in time stamp
5 order.

6 Q. And there was never a separate
7 time stamp issued by area, was there?

8 A. No, there was only one time
9 stamp.

10 Q. And only one time stamp is
11 mentioned in the FIT Rules; right?

12 A. That's right.

13 MR. SPELLISCY: I think that's all the
14 questions I have. Thank you.

15 THE CHAIR: Did the co-arbitrators
16 have questions for Mr. Cronkwright?

17 QUESTIONS BY THE TRIBUNAL:

18 MR. LANDAU: Mr. Cronkwright, I've
19 just got one question which is really to better
20 understand the context of some of the events that you
21 describe.

22 Looking at your first witness
23 statement from paragraph 11 onwards, specifically 13,
24 you describe the Niagara Escarpment Commission's
25 process in terms of approving the Bruce-to-Milton

1 transmission line.

2 That, as I understand it, was
3 a process that went into a complex appeal system,
4 appeal procedure from about October 2009?

5 THE WITNESS: Yes, that's correct.

6 MR. LANDAU: Which then would have
7 been a chunk of time, putting it simply, that
8 everything was, in a sense, stuck in the NEC process
9 before you could actually -- or anybody could go
10 forward with an expanded capacity?

11 THE WITNESS: That's correct.

12 MR. LANDAU: Could you just explain
13 a little bit what that -- as far as you're able to
14 explain -- what that NEC process would have been like
15 in terms of proponents and users and people who are on
16 the outside watching. How much of it would they have
17 known? How much was in the public domain and what
18 would have been the proponent's involvement if it?

19 THE WITNESS: So, again, I think the
20 context that's important to note here is that the
21 actual transmission line itself, so that had been
22 proposed, I believe, in 2007 or earlier, by the OPA,
23 comments to Hydro One and Energy, that there was
24 a need for a transmission line.

25 That had gone through, sort of

1 approval that the line should be built. The Niagara
2 Escarpment Commission, their obligation is similar to
3 the Ministry of the Environment and so on, and their
4 concerns were, how would this transmission line affect
5 areas, sensitive areas and so on running through the
6 escarpment, and so my understanding, again is that
7 they made the determination that based on all of the
8 evidence provided to the NEC and their requirements,
9 it passed the test and that it should be approved.

10 However, any member of the public is
11 able and eligible to appeal that decision, based on
12 whatever grounds they had with the NEC. So, again, in
13 reading some of the evidence it appears that whether
14 it was home owners or local people had some concerns
15 about the transmission line. They would have made
16 an argument in front of the Escarpment Commission
17 about why the line should be there or shouldn't be
18 there, routings and so on, and the Escarpment
19 Commission would then take all of that into its
20 decision-making about whether or not the line moved
21 forward and then also some details on routing of the
22 line.

23 So, the discussion there wouldn't,
24 from my understanding, have been about electrical
25 generators so much as transmission infrastructure and

1 where the transmission infrastructure would go.

2 The impact would be that any
3 generator, whether it was the nuclear facility,
4 whether it was renewable generators, simply had to
5 wait for that process to run its course and it
6 wasn't an issue so much about generation as it was
7 an issue about the line, the towers, the impact of
8 that and that's the scope that the Escarpment
9 Commission looked at the decision regarding the line
10 on.

11 MR. LANDAU: So presumably that would
12 have been an entirely public process?

13 THE WITNESS: I assume that it would
14 be entirely public or public disclosure is part of
15 that, yes.

16 MR. LANDAU: So proponents or people
17 who had an interest in transmission capacity would be
18 well aware during that long period as to its progress
19 and when the outcome would be?

20 THE WITNESS: And would have followed
21 it. And that's why we understood that even from -- if
22 we look at the timing, the decision I believe was
23 rendered in September, so presumably generators would
24 have thought, okay, this line has been approved and
25 then in very, very short order --

1 MR. LANDAU: So September '09, so you
2 are talking about the first decision before the
3 appeal?

4 THE WITNESS: That's right. So when
5 the Niagara Escarpment Commission made their decision,
6 I would expect the generators looked upon that
7 favourably and then in very short order, I think it
8 was October of 2009, it was appealed, so people had
9 sort of gotten ready to move and then had to sort of
10 sit back and wait while that process ran its course.

11 MR. LANDAU: I see. Thank you very
12 much.

13 THE CHAIR: You said in your witness
14 statement, in the first one, in paragraph 17, and you
15 repeated it in another fashion orally, that the June
16 3rd direction required the -- you said -- and you
17 wrote, the June 3rd directions require the OPA to
18 conduct what amounted to a regionalized and modified
19 ECT, and you also said today that the
20 June 3rd direction, parts of it did not need -- parts
21 of the content of this direction actually did not need
22 a direction because they were in compliance with the
23 actual rules. So I was interested in understanding
24 better what was not in accordance with the rules? Was
25 it just the timing or was it something different?

1 THE WITNESS: So there are a couple of
2 pieces to it. Again, when I talk about modified, all
3 of the portions of the ECT that would have talked
4 about clustering and build out and expansion --

5 THE CHAIR: So the whole part is
6 economic justification of expansion which is the
7 second step, if I understand it correctly, that is not
8 being pursued?

9 THE WITNESS: So that was not being
10 pursued in this process. So there would have been
11 proponents expecting that process to happen. It
12 wasn't going to happen so we wanted that communicated
13 in the policy direction.

14 As well, the fact that this was only
15 going to take place in the Bruce and west of London
16 areas and it wasn't going to happen province wide.
17 So, again, to clearly communicate that. And the third
18 piece was the capacity allocation.

19 So, the fact that there was more
20 capacity available, but that that capacity was being
21 assigned to other projects, that required a direction
22 so that it was clear that it wasn't going to be
23 awarded through a FIT; it was going to be awarded
24 through other mechanisms.

25 THE CHAIR: And was that derogation

1 from the FIT Rules?

2 THE WITNESS: So what the FIT Rules
3 didn't talk about, because when they were designed, it
4 didn't talk about the interplay of any other
5 procurement initiatives. So people in the FIT program
6 were following the FIT Rules. If you were involved in
7 any other OPA procurement exercise you would have been
8 following the rules at the time that applied to you.

9 We wanted that it -- you know, the
10 government state its policy clearly, that in the
11 context of what we were doing here, the megawatt
12 allocation would be up to a certain point, because the
13 understanding is that the line would technically
14 enable more than that and the government had made
15 a decision that some of that capacity would be held
16 aside for the Korean Consortium, we wanted that to be
17 communicated in the directive so that FIT applicants
18 understood that this is what was being allocated under
19 the FIT program.

20 THE CHAIR: In your second witness
21 statement, in paragraph 4, you say the OPA is
22 typically directed to use one of three different
23 mechanisms to procure electricity: competitive
24 procurement; standard offer programs; and sole or
25 single-source contract.

1 I understand that the FIT falls in the
2 second category and the GEIA in the third one?

3 THE WITNESS: That's correct.

4 THE CHAIR: You're directed by the
5 government.

6 THE WITNESS: Yes.

7 THE CHAIR: Because here it says it is
8 typically directed but we do not know who directs?

9 THE WITNESS: Right, so the OPA
10 receives all of our procurement directions from the
11 Ministry of Energy under the Electricity Act. So we
12 would get directives to procure certain assets or
13 certain types of assets or classes of assets.

14 THE CHAIR: And when you would receive
15 these directions, would anything be specified about
16 the interaction of these different mechanisms?

17 THE WITNESS: So, at this time frame,
18 there wouldn't be very much, if any. Sometimes but
19 not often. So we would get a direction on a certain
20 program that would specify parameters around that
21 program, and it wouldn't necessarily speak to other
22 initiatives. So we had several directives at the same
23 time that were all in place and all valid and we were
24 trying to implement all of them.

25 THE CHAIR: And did it occur that you

1 had conflicts or overlaps between different
2 mechanisms?

3 THE WITNESS: So, I would suggest that
4 up until this point, there hadn't been very many where
5 we had been able to manage them. So the example would
6 be, we previously had two directives at the same time.
7 One was for renewable energy supply 3, a competitive
8 procurement for renewables.

9 A different one was for combined heat
10 and power. And what we had done in that instance, in
11 order to kind of manage it, we looked at basically
12 where we felt the interest was in renewable supply.
13 Where we felt the interest was in combined heat and
14 power and we actually split the province in half and
15 then we said in this program you are only allowed to
16 compete on these circuits, and on this program you are
17 only allowed to compete here.

18 That's the way we had done it before.
19 We hadn't really seen it, other than that, up until
20 this point.

21 THE CHAIR: Thank you. No further
22 questions on either side.

23 Is there a follow-up question on your
24 part, Mr. Appleton?

25 MR. APPLETON: Yes, Mr. Cronkwright,

1 I'm sorry. I'm going to ask him from here if that's
2 all right.

3 THE CHAIR: Yes of course. Speak
4 close to the mic.

5 FURTHER CROSS-EXAMINATION BY MR. APPLETON:

6 Q. All right, sorry,
7 Mr. Cronkwright, I'm already getting a cold situation
8 like you.

9 I just want to ask a question arising
10 from the questions that Mr. Landau raised about the
11 Niagara Escarpment Commission and that process. This
12 was a new area of discussion that we hadn't otherwise
13 gone into and I wanted to make sure that the Tribunal
14 was clear and everyone was clear.

15 Just to make sure that we understand
16 the facts, the Ontario Energy Board approves the line
17 in 2008, I believe, that's what you -- you referred to
18 2008 in your witness statement. That's when this line
19 was first approved; correct?

20 A. So, the Ontario Energy Board
21 would be looking to approve it on behalf of the
22 ratepayers and whether that's economically justified
23 based on the argument. So they would have said
24 economically or system-wide it's approved.

25 Q. So that's a "Yes"?

1 A. But they don't have any control
2 over environmental aspects.

3 Q. I didn't ask you that question.
4 I just said "That's a yes?" The reason I'm asking is
5 I just want to confirm my understanding here, so it
6 would be much easier if you just answer -- if I ask
7 you if the Ontario Energy Board approved it, and the
8 date, that's all I want.

9 The reason it's all I want is I want
10 to understand the dates for everybody. We're not
11 asking you about the policy reasons. I just want to
12 confirm the dates. So, when you made reference to
13 2008, you were making reference to when that was first
14 approved; right?

15 A. So, I don't think I actually said
16 2008 at all.

17 Q. I believed you did but --

18 A. 2007, I believe or earlier. So
19 all of the evidence that we would have made is filed
20 publicly and that would all be available on the public
21 record with respect to filing any Ontario Energy Board
22 decisions.

23 Q. That's what I've been checking
24 and that's why I'm asking these questions. So would
25 it surprise you if the Ontario Energy Board had

1 approved this in 2008? Would it surprise you?

2 A. Nothing would surprise me if
3 I found it but there's material filed with respect to
4 the line.

5 Q. This was just with respect to
6 a series of dates. I didn't really want to go there
7 so let's move along.

8 I understand that the next step was
9 that there was an environmental assessment and that
10 took place in 2009 or it was approved in 2009; would
11 that be roughly consistent with your understanding?

12 A. So, I don't know the specific
13 details of that because it pre-dated me coming in this
14 role but that would be roughly the timeframe.

15 Q. All right. And then there was
16 a hearing that took place after this environmental
17 assessment and I understand, is that the hearing that
18 you're talking about when you refer to a process of
19 the Niagara Escarpment Commission?

20 A. No.

21 Q. So, because I understand that the
22 Ministry of Natural Resources directed the Niagara
23 Escarpment Commission to issue development permits.
24 This is how the Ministry of Natural Resources can
25 direct the OPA to do things, and that was the basis of

1 the appeal done; is that correct?

2 A. It could be. You have the
3 evidence in front of you. I'm just suggesting that
4 the issue that came up to play for us was the appeal
5 and its implication as opposed to what pre-dated it.

6 Q. I'm just trying to understand
7 about the nature of the uncertainty. So there was
8 an appeal and I assume that that meant there was some
9 type of a hearing presumably?

10 A. Presumably.

11 Q. And then a decision-maker -- do
12 you know who the decision-maker was that everyone was
13 waiting for?

14 A. I believe the Niagara Escarpment
15 Commission makes recommendations or makes an output
16 and then that has to go to a level of the government
17 for final decision.

18 Q. So there had been some hearing of
19 some form and then people were waiting for the
20 decision.

21 A. That's my understanding.

22 Q. And people can wait for some
23 period of time?

24 A. Yes.

25 Q. So I just wanted to explain that.

1 I think the uncertainty here that you are referring
2 to, is while people are waiting for the decision on
3 the appeal to take place, it wasn't as if there was
4 some other iterative process here and that's -- is; is
5 that correct?

6 A. I'm not familiar with the
7 intricacies of their process but we understood that
8 between the Niagara Escarpment Commission and the
9 proper regulatory bodies it was with them for review
10 of the approval decision.

11 Q. That's what everyone was waiting
12 for. That was the decision that you had referred to?

13 A. Right. That's what everybody was
14 waiting for.

15 MR. APPLETON: All right. Thank you.

16 THE CHAIR: Fine. So this ends your
17 testimony, Mr. Cronkwright. Thank you very much.

18 We'll now take a break. And we will
19 resume at 11:15; is that right? And then we will hear
20 Mr. Timm.

21 MR. APPLETON: Excellent.

22 --- Recess taken at 10:57 a.m.

23 --- Upon resuming at 11:23 a.m.

24 --- Upon resuming the public session at 11:23 a.m.

25 THE CHAIR: Are we ready to resume?

1 It looks like we are. Good morning, sir.

2 THE WITNESS: Good morning.

3 THE CHAIR: For the record, you're
4 Gary Timm?

5 THE WITNESS: Yes, I am.

6 THE CHAIR: You are a partner with
7 Deloitte in Ottawa?

8 THE WITNESS: Yes, I am.

9 THE CHAIR: You have filed one expert
10 report in this arbitration dated 28 April 2014.

11 THE WITNESS: That's correct.

12 THE CHAIR: You are here as an expert
13 witness in this arbitration. As an expert witness you
14 are under a duty to make only such statements that are
15 in accordance with your sincere belief. Can you
16 please confirm that this is what you intend to do?

17 THE WITNESS: Yes.

18 AFFIRMED:GARY TIMM

19 THE CHAIR: You will first be asked
20 questions by Mesa's counsel and I also recall that the
21 experts have an opportunity to make a presentation, as
22 part of the direct examination, which should not last
23 more than 20 minutes. That is what we have in the
24 rules.

25 MR. DICKSON-SMITH: Thank you, Madam

1 Chair.

2 THE CHAIR: Please.

3 EXAMINATION IN-CHIEF BY MR. DICKSON-SMITH:

4 Q. Good morning, Mr. Timm. As Madam
5 Chair asked, you have submitted one expert report in
6 this arbitration on April 28th?

7 A. That's correct.

8 Q. Can you turn to tab A of your
9 binder. I think you will find your expert report
10 there.

11 A. Yes.

12 Q. Thank you, and can you turn to
13 appendix B in your report. You will find your CV.
14 That is your CV; correct?

15 A. That's correct.

16 Q. You are an advisor with Deloitte
17 Financial Advisory Group in Ottawa, Canada; is that
18 correct?

19 A. That is correct.

20 Q. Your CV states that you have
21 worked exclusively, or you've worked in the
22 investigative accounting area, amongst others;
23 correct?

24 A. That is correct.

25 Q. So can you tell us how government

1 process review that you cover in your expert report is
2 related to the area of investigative accounting?

3 A. Yes, in terms of process reviews
4 we undertake them either -- I'll call it after the
5 fact or before the fact. In other words, the after
6 the fact is where an allegation or something,
7 complaints come forward with respect to some process
8 such as procurement, we'll get involved and do
9 an investigation around that complaint to assess the
10 merits of that complaint.

11 On the before aspect of a process,
12 we'll get involved in terms of undertaking fairness
13 monitoring of the process and overseeing processes
14 such as procurement.

15 Q. Thank you. You are a chartered
16 accountant?

17 A. That's correct.

18 Q. And you are a certified fraud
19 examiner?

20 A. Yes, that's correct.

21 Q. And you are a chartered
22 accountant with a specialist designation in
23 investigative and forensic accounting; correct?

24 A. Yes, that's correct.

25 Q. And you have a certification in

1 financial forensics?

2 A. That is correct.

3 Q. Now, your CV also states at items
4 1 to 3, down the middle of the page, that you
5 have been a fairness monitor for public works in
6 government services, Canada. So can you tell us what
7 a fairness monitor does?

8 A. A fairness monitor will observe
9 the process in the case of the three that are listed.
10 Our team would have been involved in terms of looking
11 at the process, making sure that it was fair,
12 transparent, more as an observer throughout the
13 process, from start of when the RFP would have been
14 issued through to the evaluations through to -- that
15 whole process until the evaluation is completed.

16 Q. Thank you, why is a fairness
17 monitor relevant to public sector purchasing processes?

18 A. In this case it would be to
19 ensure the transparency to provide comfort and
20 assurance that the process would be undertaken in
21 a fair and independent manner.

22 Q. Thank you. And have you done any
23 other work for the Mesa Power Group?

24 A. No, I have not.

25 Q. Have you done any other work for

1 the Government of Canada?

2 A. Yes, I have.

3 Q. Can you briefly describe that
4 work?

5 A. It's from investigations on
6 behalf of the Federal Government to doing various
7 financial-type consulting with the government. I've
8 worked on commissions of inquiry on behalf of the
9 government as well.

10 Q. Now, at this stage you are
11 permitted to give a 20-minute presentation to set out
12 your conclusions to your report, and your methodology.
13 Do you have a presentation?

14 A. Yes, I do.

15 Q. I think you'll find that
16 presentation at Tab C of your binders.

17 A. Yes.

18 MR. DICKSON-SMITH: I'd just like to
19 go to confidential mode.

20 --- Upon resuming the confidential session at
21 11:28 a.m. under separate cover

22 PRESENTATION GIVEN BY MR. TIMM (CONFIDENTIAL)

23 --- Upon resuming the public session at 11:35 a.m.

24 BY MR. DICKSON-SMITH:

25 Q. Thank you, we are public.

1 Mr. Timm, do you have any corrections
2 to make to your expert report?

3 A. No, I don't.

4 MR. DICKSON-SMITH: Okay, thank you,
5 I'll now turn matters over to Canada for their
6 cross-examination.

7 CROSS-EXAMINATION BY MS. SQUIRES:

8 MS. SQUIRES: Good afternoon, or good
9 morning for a few more minutes, Mr. Timm.

10 THE WITNESS: Good morning.

11 BY MS. SQUIRES:

12 Q. So you've now had the advantage
13 of sitting in the room for the last couple of days and
14 you've heard this introduction several times now but
15 for the sake of completeness I'll run through it.

16 As you know, my name is Heather
17 Squires and I'm counsel for the Government of Canada
18 in these proceedings. I'm going to ask you a few
19 questions so we can understand the conclusions that
20 you've made in your report.

21 If you don't understand the questions
22 let me know, I can rephrase it. It is important that
23 we understand each other. In that regard, it is also
24 important that you answer with a "yes" or "no" if
25 you're able and then I'll provide you with time to

1 provide context or further explanation, if you feel
2 that's required.

3 Now, I'd like to start today by
4 getting a better idea of your background. I know
5 counsel for the Claimant has asked you a few questions
6 in that regard. Your CV indicates that you are part
7 of the Financial Advisory Group at Deloitte; correct?

8 A. That's correct.

9 Q. Your work is focused mainly on
10 public sector, pharmaceutical, financial services,
11 high tech and manufacturing sectors; correct?

12 A. That's some of the areas, yes.

13 Q. Well, you don't regularly advise
14 clients on electricity procurement; correct?

15 A. In terms of electricity, no.

16 Q. And specifically on OPA
17 procurement programs?

18 A. No.

19 MS. SQUIRES: Now, I'm going to go in
20 confidential session for a minute here.

21 --- Upon resuming the confidential session at
22 11:39 a.m. under separate cover

23 --- Upon resuming the public session at 11:44 a.m.

24 BY MS. SQUIRES:

25 Q. I'd like to turn to tab 8 in your

1 binder and that is Exhibit R-073. Sorry, there are
2 a lot of binders on the go.

3 Now this is the request for quote, or
4 RFQ, that the OPA put out in order to hire a fairness
5 monitor to assist in the FIT Program's criteria
6 review; is that correct?

7 A. That's correct.

8 Q. I understand from Annex A of your
9 report that this document was not listed in your scope
10 of review; correct?

11 A. That is correct.

12 Q. Now, under the "Task" heading
13 there in that document, the OPA indicated it was
14 looking for an entity to act as a fairness monitor at
15 point 3; correct?

16 A. Both at point 3 and actually in
17 the heading title under "Request for quote" it says:

18 "Fairness monitor required in
19 assisting..." [As read]

20 So it is clearly right at the top as
21 well.

22 Q. So your report then takes issue
23 with LEI's role as a fairness monitor given it had
24 additional roles in the evaluation process that, in
25 effect, the role of a fairness monitor is incompatible

1 with the additional roles that are listed in this RFQ;
2 correct?

3 A. In terms of the additional roles,
4 as you put it, yes, we take issue in terms of the
5 roles versus a fairness monitor, that's correct.

6 Q. Now, I'd like to turn to
7 paragraph 5.1 of your report, which is in the other
8 binder, and I want to look at the first sentence there
9 in paragraph 5.1. It indicates that you conclude
10 that, based on your review of the LEI report:

11 "We have identified a number
12 of issues which cause us to
13 question whether the OPA
14 evaluation was fair and
15 consistent." [As read]

16 Correct?

17 A. Correct.

18 Q. So you don't actually conclude
19 though that any fairness issues existed, just that you
20 questioned the process; correct?

21 A. Because of the limited
22 documentation or information we had, we could only
23 question. We couldn't conclude. That's correct.

24 Q. Nor do you conclude that if
25 the fairness monitor as you described in your report

1 and as you described it earlier today was used at the
2 conclusion of LEI or the conclusion of OPA's process
3 would have been any different; correct?

4 A. We can't tell, based on what
5 information we had.

6 Q. So you don't actually conclude in
7 your report that the OPA's use of LEI in this way
8 impacted Mesa in terms of the ultimate outcome for the
9 TTD and Arran projects; correct?

10 A. Okay, we don't know what impact
11 there may have been on, whether it be Mesa or any
12 other applicants, whether it could be positive or
13 negative so we can't conclude on that.

14 MS. SQUIRES: Those are all the
15 questions that I have for you, Mr. Timm.

16 THE CHAIR: Thank you. Any questions
17 in redirect?

18 MR. DICKSON-SMITH: I do. I have two
19 questions.

20 REDIRECT EXAMINATION BY MR. DICKSON-SMITH:

21 MR. DICKSON-SMITH: Hello, Mr. Timm,
22 once again.

23 Now, counsel for Canada referred you
24 to a document, the RFQ which is at tab -- the request
25 for quote, that was at tab 8 of Canada's binder.

1 R-073. This RFQ, or request for quote, came after you
2 prepared your report; correct?

3 THE WITNESS: I received it after that
4 date, that's correct.

5 BY MR. DICKSON-SMITH:

6 Q. And it was part of Canada's
7 responsive submission to your report; is that correct?

8 A. Yes, I don't know that for a fact
9 but I just know that I've got it after the issuance of
10 our report.

11 Q. Ms. Squires also took you through
12 your observations with respect to the LEI report;
13 correct?

14 A. That's correct.

15 Q. Now, bear with me, I'm going to
16 do some crude maths here. So, you understand from
17 this week that the total megawatt capacity that was
18 aimed under the FIT Program was 10,700-megawatts,
19 according to the LTEP?

20 A. I would have heard that this
21 week, yes.

22 Q. Okay, and you've also tried to
23 put a value on this using Samsung's 2,500-megawatts
24 that was valued at roughly 18 billion of revenue.

25 A. If that's what it is.

1 THE CHAIR: I'm just not sure how does
2 this relate to the cross-examination?

3 MR. DICKSON-SMITH: I'm just merely
4 trying to establish with the witness the magnitude of
5 this program and what he thought was appropriate. I'm
6 not asking him to verify these numbers at all.

7 MR. SPELLISCY: I don't think we asked
8 any questions about the magnitude of the FIT Program
9 or anything -- certainly the word Samsung wasn't even
10 used.

11 THE CHAIR: That is why I was not
12 sure, but maybe you get to your question and we will
13 see what it relates to in the cross-examination.

14 MR. DICKSON-SMITH: I'll get there
15 very quickly, Madam Chair.

16 BY MR. DICKSON-SMITH:

17 Q. So, on that basis, let's go back
18 to the Samsung, it's about 2,500-megawatts and that's
19 about a quarter of the capacity that was aimed for
20 under the LTEP, about 10,700; correct?

21 A. If those numbers are correct,
22 that is correct.

23 Q. So if I was roughly to, in
24 a crude way, extrapolate that, multiply that by four,
25 it will be about 18 billion, is what we're looking at

1 of the value of the FIT Program?

2 A. So assuming the numbers are
3 correct and 4 times 18 billion or whatever, sure, in
4 that neighbourhood of 18.

5 THE CHAIR: Have you, in the course of
6 your report, reviewed the value of the FIT Program?

7 THE WITNESS: No, I haven't. No.

8 MR. DICKSON-SMITH: Sorry, Madam
9 Chair, what I'm trying to get at with this witness is
10 to establish what Mr. Timm's view, in response to
11 Ms. Squires about the fairness of the program in light
12 of the magnitude of the program, in terms of the...

13 THE CHAIR: So maybe we could ask the
14 question in the following fashion: Does your fairness
15 assessment vary depending on the value involved in
16 a program or in an application?

17 THE WITNESS: Okay, in...

18 THE CHAIR: Is that what you're having
19 in mind? Not exactly.

20 MR. DICKSON-SMITH: Can I just quickly
21 ask, ma'am?

22 THE CHAIR: Yes.

23 BY MR. DICKSON-SMITH:

24 Q. Given the large amount at stake
25 in the FIT Program, wouldn't you expect a process that

1 was more robust than you observed in this process,
2 from your review?

3 A. Okay, from the limited review of
4 documentation that we did have to look at, certainly
5 you would expect when the reserves magnitude have
6 request system in place. In terms of what was here,
7 it was done over a very short period of time and it
8 seemed to be very quick. Even the audit that was done
9 by LEI, when they did an audit of some samples, like
10 here it was just one person, one for each evaluation
11 criteria.

12 In the LEI they actually did two
13 people and then compared and still came up
14 with differences and had to go through that. That's
15 the kind of thing one would expect, where it would be
16 more robust than just one person looks and you're in
17 or out.

18 So I don't know if that's what you are
19 dealing with but in terms of the process, you would
20 expect the kind of dollars that you are dealing with
21 and if I look at a fairness monitor, where I've been
22 involved in that, they've varied from hundred
23 thousands and millions and the robustness of those
24 systems do vary somewhat just because of the
25 significance of what's involved.

1 So, here again I have limited
2 information but I would suggest that you would
3 normally have more than one person look at it or to
4 have some information, so that the robustness, I think
5 would be more than what was here but...

6 Q. So what would you expect,
7 Mr. Timm, more staff? More independence in terms of
8 the fairness?

9 A. Well, I guess the other thing in
10 terms of -- there could be more staff certainly, if
11 that was required. Or it could be the same staff
12 doing just a longer period of time to do it but making
13 sure what happens. In terms of other things, there
14 could be other things but I, at this stage...

15 THE CHAIR: Why did you not address
16 this in your report?

17 THE WITNESS: That's -- yes.

18 THE CHAIR: Because it was not asked
19 or because it does not refer to you when you reviewed
20 the process?

21 THE WITNESS: Again, we were looking
22 at just the particular process that was undergone.
23 No, we did not address that.

24 BY MR. DICKSON-SMITH:

25 Q. Finally, Mr. Timm, who does

1 a fairness monitor protect?

2 A. Well, it actually protects all
3 parties, really, in terms of both the proponents, from
4 a point of view of their comfort in making sure that
5 the process is done in an independent and fair manner,
6 and also for the parties that are writing out the
7 procurement in -- as done, it protects them as well to
8 make sure that the process was done appropriately as
9 well.

10 MR. DICKSON-SMITH: Thank you,
11 Mr. Timm.

12 MR. SPELLISCY: Professor
13 Kaufmann-Kohler, if I could just for a second, because
14 counsel for the Claimant had introduced a question
15 that was essentially, I guess, a statement to which
16 the witness didn't know, and it was talking about the
17 RFQ as part of Canada's response on submissions in
18 your report; is that correct? He said, "Yes, I don't
19 know." We can clarify the record. It was not part of
20 the rejoinder. It was part of the counter-memorial
21 documents. You will find that at the index of
22 exhibits as well as in our counter memorial.

23 THE CHAIR: Having seen the number of
24 the exhibit, I thought that it could not be
25 a rejoinder exhibit, indeed. It's just agreed on the

1 Claimant's side because it is R-73.

2 MR. DICKSON-SMITH: So sorry, Madam
3 Chair, we stand corrected.

4 THE CHAIR: So the question then is to
5 Mr. Timm: You have not listed these documents among
6 those in your report that you have reviewed; but does
7 it mean that you have not seen this request for quote
8 at the time you wrote your report?

9 THE WITNESS: That's what that would
10 mean, that's correct.

11 THE CHAIR: So, if you now look at
12 that, and especially at the part that is entitled
13 "Tasks" having seen these tasks which, for instance,
14 include providing advice, does that change your report
15 in one way or another?

16 THE WITNESS: No, it wouldn't change
17 our findings or our conclusions either way, because
18 again --

19 THE CHAIR: So your witnesses would go
20 to the tasks as they were defined, here?

21 THE WITNESS: Again, this is
22 reviewing, it is normal to do that. Our issues were
23 that, effectively, LEI was helping to define the task,
24 put them in and then determining whether that was fair
25 or not and that's not appropriate to do that because

1 you are not independent at that stage.

2 THE CHAIR: I thought -- that was my
3 point.

4 THE WITNESS: So that's why my
5 conclusion would not change.

6 THE CHAIR: Would not change. Yes.

7 Any questions from my co-arbitrators
8 side? Yes, please.

9 QUESTIONS BY THE PANEL:

10 MR. LANDAU: Mr. Timm, I'd like to
11 understand, just a little bit further, the task that
12 you've actually done, as an expert task.

13 As I understand it, you've looked at
14 the role of the LEI and you've looked at the role of
15 the OPA, in particular respects and for each of those
16 you've emphasised that you've done a process of
17 evaluation, a process evaluation but not the end
18 result.

19 THE WITNESS: Correct.

20 MR. LANDAU: So I want to understand
21 a bit further what that means in real terms to look at
22 the evaluation of the process, but not take into
23 account the end result. If we could focus on the OPA
24 part of your report.

25 As I understand it, you are not

1 an expert in electricity procurement?

2 THE WITNESS: That's correct.

3 MR. LANDAU: And you wouldn't have any
4 particular experience or expertise in how an entity
5 such as the OPA might exercise its discretion with
6 respect to electricity procurement; you are just
7 looking at process in the abstract?

8 THE WITNESS: That's correct. That's
9 correct.

10 MR. LANDAU: But if you're not looking
11 at the actual evaluation of OPA in the end, what I'm
12 having trouble understanding is how can you look at
13 the process in the abstract without, for example,
14 factoring in OPA discretion? Isn't there an OPA
15 discretion on how to evaluate each of the conditions?

16 A. There certainly could be
17 discretion and, in fact, one of the examples, as were
18 under "Successful", there needed to be some more
19 definition of successful which the OPA did do and we
20 did look at that.

21 So there is discretion that can occur,
22 but for example, we're looking at: Did they undertake
23 the process in line with what the FIT Rules seem to
24 say, in reviewing those questions.

25 So, for example, on the experience

1 criteria, where there was a requirement for
2 a statement to be made as to the group or individuals
3 on experience, that was one of the process items.
4 But, in fact, when you look at the FIT Rules, that
5 wasn't really necessary.

6 What we see there is that the
7 26 per cent of the proponents that put in, apparently
8 they failed just because they didn't give statements.
9 So that becomes something you say: Is the process fair
10 then? So you don't always have to understand
11 electricity to look at the process.

12 MR. LANDAU: Let's look at that part
13 of your report, if we may, which is Section 6 and, in
14 particular, if we start with 6.4 of your report, you
15 set out the relevant FIT Rule for this additional
16 criteria. Section 13.4(a)(3).

17 So there we have what is the test
18 that's set out in the FIT Rules, but presumably you
19 would have to be taking a view as to how to read that
20 rule and, in particular, what would be the extent of
21 OPA's discretion in applying that rule.

22 THE WITNESS: And we would look at the
23 questions or tests put around that rule, that's
24 correct.

25 MR. LANDAU: In the end it will be for

1 OPA, won't it, to take a view as to whether or not the
2 criteria has been satisfied?

3 THE WITNESS: In terms of their
4 evaluation?

5 MR. LANDAU: Yes?

6 THE WITNESS: That's correct.

7 MR. LANDAU: Wouldn't it be possible
8 that even if they break that evaluation into a number
9 of different criteria, some criteria might be more
10 significant to the OPA than others?

11 THE WITNESS: That's definitely
12 possible.

13 MR. LANDAU: So it is possible that
14 the OPA could come to criteria number 2 in their
15 criteria in their list and if it's not satisfied that
16 might trump all the other criteria for them?

17 THE WITNESS: And that's fine. Except
18 if it's a criteria that is kind of a question that
19 creates a criteria that is not really here, in other
20 words, you require a statement, then I would suggest
21 that that's reasonably clear that that's not required
22 here and if people get eliminated, the parties get
23 eliminated, then that's probably unfair that they
24 didn't know they had to put in a statement.

25 MR. LANDAU: Can I ask you then just

1 to look at -- if we stick to this one for a moment.
2 If we actually look at the FIT Rules themselves which
3 presumably you are familiar with?

4 THE WITNESS: From reviewing them,
5 yes.

6 MR. LANDAU: If you go back to your
7 binder, and look at tab 2, I think you've got the FIT
8 Rules there, at least one version of them. If
9 you look at internal 27, the page is at the top.

10 THE WITNESS: Yes.

11 MR. LANDAU: You can see 13.4 at the
12 bottom of that page "Criteria"; do you have that?

13 THE WITNESS: Yes, I do.

14 MR. LANDAU: So you would be familiar
15 with -- these are the criteria that you would have
16 been assessing in your report?

17 THE WITNESS: That is correct.

18 MR. LANDAU: So look at the bottom of
19 page 28. It says:

20 "For each criteria set out in
21 Section 13.4a, where the
22 Applicant has provided
23 evidence satisfactory to the
24 OPA acting reasonably ..."

25 [As read]

1 How did you interpret that:

2 "... evidence satisfactory to
3 the OPA acting reasonably..."

4 [As read]

5 Wouldn't that give the OPA some
6 discretion?

7 THE WITNESS: And as I indicated there
8 was, I think, some discretion that they would have
9 had. Absolutely, so long as it's not in any way
10 taking away from what the proponents are putting in,
11 or adding something extra that the proponents, on the
12 surface, if one were to read 13(a), sub 1 to 4,
13 because typically, for instance, when we're doing
14 fairness monitoring, when we're going through it, if
15 there is something that wasn't as clear as it should
16 have been for the proponents, and notwithstanding that
17 entity or department wants a certain thing, usually
18 you've got to err in some fashion that you are not
19 being unfair to the proponents because you weren't
20 asking for that in the first place.

21 All I'm saying is I don't disagree.
22 It's just that looking at the process there are some
23 things that may stick out that say it's not
24 necessarily -- it wouldn't have been on the surface
25 that a proponent would have known they had to put in,

1 don't know what those adjustments were and to the
2 extent that there was any adjustments made, then the
3 question becomes: How does that impact the rest of the
4 population, all the other applications, should they
5 have been looked at for those adjustments. So that's
6 where the concern comes in which is: Was that done or
7 not? We don't know. So it's just a concern that -

8 THE CHAIR: Is it a concern about
9 consistency of the process?

10 THE WITNESS: Well, it could be.
11 Again, we don't know the adjustments so it could be
12 the consistency. It could be, again, could it affect
13 rankings. I don't know. It's just because there are
14 apparent adjustments, we don't know what they are, we
15 can't comment one way or the other. It just creates
16 a concern.

17 THE CHAIR: Okay. No further
18 questions, "yes" or "no"?

19 MR. DICKSON-SMITH: Yes. We have one
20 arising from Mr. Landau's.

21 THE CHAIR: It has to be related to
22 from the Tribunal's question.

23 MR. DICKSON-SMITH: Thank you, Madam
24 Chair.

25 If you recall, Mr. Timm, Arbitrator

1 Landau questioned your -- asked you about your
2 expertise and experience with how the OPA might
3 exercise its discretion; do you recall that?

4 THE WITNESS: Yes.

5 BY MR. DICKSON-SMITH:

6 Q. Can you briefly comment on your
7 expertise on the review of government's review
8 processes, and as a fairness monitor?

9 A. Okay, in terms of that, what
10 typically a fairness monitor would do is whatever the
11 parties, in this case we'll say the government
12 department, if they're putting something in place or
13 in this case, exercising that discretion, as
14 a fairness monitor we would look at it and we would
15 say: Does that appear to be fair and transparent for
16 the proponents?

17 If that was the case, then fine, it
18 moves on. Otherwise we may indicate that there is
19 a fairness issue here and you've got to take care of
20 it. That would be the extent of what a fairness
21 monitor typically what we would do. We don't
22 determine how you resolve it. It goes back to the
23 department to deal with and therefore exercise their
24 discretion.

25 Q. Sorry, Mr. Timm, my question was

1 actually what your experience is as a government
2 process reviewer.

3 MR. MULLINS: Sorry, could I ask,
4 Mr. Timm, can we try it this way. I think the
5 question was not so much how you did your work as
6 a fairness monitor. Explain to the Tribunal, what
7 industries and areas and how long you were a fairness
8 monitor, that kind of background so we have your
9 understanding of your expertise. That's what we're
10 asking.

11 THE CHAIR: I think we have reviewed
12 Mr. Timm's CV and I think we have the information we
13 need with respect to his prior experience. You have
14 also in your direct examination, and in response, in
15 part, to cross-examination questions that elaborated
16 on this.

17 MR. MULLINS: We'll withdraw the
18 question then. Thank you.

19 THE CHAIR: Thank you. No further
20 questions, then thank you very much. This ends your
21 examination, Mr. Timm.

22 THE WITNESS: Thank you.

23 THE CHAIR: It is now 10 past 12:00.

24 We can start with the next expert or
25 we can take a somewhat earlier lunch break than usual,

1 which depends not only on us but also on the logistics
2 of knowing whether lunch is ready or not. It would be
3 preferable to break now, in my view.

4 MR. APPLETON: I believe it would be
5 preferable too, since we've decided not to proceed
6 with evaluation witnesses so that the only other
7 witness to be done today is Mr. Adamson.

8 Mr. Timm, with the estimate that we
9 had for examination of Mr. Timm, from Canada,
10 I believe was either two hours or three hours, so it
11 went considerably shorter. So it would seem to me
12 that we might as well take the lunch. We could even
13 have a -- whatever you want. Mr. Adamson is here and
14 we certainly could proceed now, so what would you
15 like?

16 THE CHAIR: Any preference on Canada's
17 side?

18 MR. SPELLISCY: Is lunch ready?

19 THE CHAIR: That is what I don't know.

20 MR. MULLINS: While we're waiting,
21 Madam Chair, given the progress of the hearing, if we
22 do the damages experts tomorrow, I would suspect that
23 we would be able to do our closings on Friday and just
24 for scheduling purposes, but at least on our side we
25 feel that that's, timing wise, but I would turn the

1 questions over to Canada to see if there is
2 something that I'm missing.

3 THE CHAIR: I think we should wait for
4 Saturday.

5 MR. MULLINS: Well, in terms of travel
6 and...

7 THE CHAIR: No, if we can do it on
8 Friday, of course it would be welcome. I think there
9 will be time. Would you complain?

10 MR. SPELLISCY: I think our position
11 was always that this could be done for Friday.
12 I think it is unfortunate that we will have paid for
13 the room for Saturday and that we will have done all
14 of that even though Canada months ago said this could
15 be done by Friday so there will be costs associated
16 with that.

17 THE CHAIR: So you will make
18 submissions and when time comes to it but right now
19 you are not objecting to being at home over the
20 weekend.

21 MR. SPELLISCY: I am not objecting to
22 being home. If this ever gets out to my wife and
23 children, I am not objecting to be at home on the
24 weekend.

25 THE CHAIR: This is a public hearing.

1 MR. MULLINS: Just because the
2 comments made about the cost, we obviously do not
3 believe we should be charged with the costs of
4 an extra day for the room. I have much experience
5 with arbitrations and where there is more witnesses on
6 the other side, the fact that they hadn't had to
7 cross-examine five fact witnesses is not our fault.

8 So, at the end of the day, if they're
9 not using their time as much as they have, but we can
10 deal with that later, if there is any suggestion that
11 we should pay for another day of the room.

12 THE CHAIR: Don't provoke them
13 because --

14 MR. MULLINS: I do have a client in
15 the background, in fact, behind me but...

16 THE CHAIR: We can have this debate
17 later. For the time being we will hear this
18 afternoon, Mr. Adamson. Then we will hear tomorrow,
19 the damages experts. We will have a discussion about
20 that a little later today.

21 I assume that this will leave you
22 enough time tomorrow afternoon to work on the
23 finalisation of your closing statements and then we
24 can do the closings on Friday.

25 I think, unless you tell me otherwise,

1 I think we can all rely on this timing from now on and
2 make any appropriate changes to flight tickets and
3 hotels and the like. Are we all agreed on this,
4 Mr. Spelliscy?

5 MR. SPELLISCY: I would agree in
6 principle. The only question I would have would be
7 the transcript from Thursday's proceedings. I note
8 that we didn't actually get a transcript from today's
9 proceedings until this morning which could make
10 preparation of any closing arguments on testimony.

11 So if the court reporter is willing to
12 somehow try and get that out earlier, even in rough
13 version, then I think that would assist the parties in
14 preparing their closing arguments on Thursday night
15 for the Thursday testimony, for Friday.

16 THE CHAIR: Is this noted on the court
17 reporter's side, we should get at least rough
18 transcript fairly soon after the close of the hearing
19 today and tomorrow.

20 MR. APPLETON: Of course, Madam
21 President, the issue of course is that Canada still
22 has a fair bit of unused time and they have Mr. Lo.
23 And if Canada tells us they reasonably believe they'll
24 finish Mr. Lo in the morning, we certainly would
25 reasonably expect that we would finish Mr. Goncalves

1 in the afternoon. But if Canada, I believe has eight
2 hours or seven hours, if they were to use seven hours
3 then that of course would be impossible because then
4 Mr. Goncalves would actually either testify very late
5 tomorrow evening or he would be testifying of course
6 on Friday.

7 THE CHAIR: Yes, of course. I mean,
8 everything is possible but it doesn't seem reasonably
9 foreseeable to me, and since everyone has agreed to
10 the suggested timing, I understand that this will not
11 happen and I'm looking to Mr. Spelliscy. I think
12 he...

13 MR. SPELLISCY: I can't imagine
14 an eight-hour cross-examination of Mr. Lo.

15 MR. APPLETON: Okay.

16 THE CHAIR: Good. Then let's start
17 again at 1:15. Maybe we can say 1:30?

18 MR. APPLETON: Sure, thank you.

19 --- Lunch recess at 12:15 p.m.

20 --- Upon resuming at 1:34 p.m.

21 THE CHAIR: So we can resume. I hope
22 you all had a good lunch.

23 For the record, can you confirm that
24 you are Seabron Adamson?

25 THE WITNESS: Yes.

1 THE CHAIR: You are vice-president at
2 Charles River Associates?

3 THE WITNESS: Yes.

4 THE CHAIR: And you have provided us
5 with one expert report dated April 27th, 2014.

6 THE WITNESS: Yes.

7 THE CHAIR: You are here as an expert
8 witness in this arbitration and in this capacity you
9 are under a duty to make only such statement in
10 accordance with your sincere beliefs. Can you please
11 confirm that this is your intention?

12 THE WITNESS: Yes, it is.

13 AFFIRMED: SEABRON ADAMSON

14 THE CHAIR: Thank you. So we will
15 first have questions in direct by Mesa's counsel
16 Mr. Appleton, and I assume a presentation that should
17 not last over 20 minutes.

18 THE WITNESS: Yes.

19 MR. APPLETON: Thank you very much,
20 Madam President.

21 EXAMINATION IN-CHIEF BY MR. APPLETON:

22 Q. Mr. Adamson, good afternoon.
23 Thank you. I know that you've been here through the
24 hearing. It is your turn now. So you know how the
25 routine goes so I'm not going to explain the general

1 process. I'll ask a couple of questions; Canada will
2 ask a few questions when I'm done. The Tribunal can
3 ask you any questions at any time they like.

4 A. Yes.

5 Q. I'm going to ask you some
6 questions about your expert report. I'm going to
7 confirm that's the expert report dated April 27th,
8 2014?

9 A. Yes.

10 Q. Now I see that you filed
11 a correction to your expert report on October 15th.
12 Do you have any further corrections to make to your
13 expert report?

14 A. Yes, I do.

15 Q. Could you tell us?

16 A. If you turn to the expert report,
17 on page 19 there is a typographical error that makes
18 the sentence meaningless. The sentence should read:

19 "In the remainder of this
20 section I show that
21 the manufacturing commitments
22 of the Korean Consortium
23 heralded by Canada as the
24 basis of superior treatment
25 of Canada under the GEIA ..."

1 [As read]

2 That should read, "heralded by Canada

3 as the basis of the superior treatment of the

4 Korean Consortium under the GEIA."

5 That makes it make sense.

6 THE CHAIR: Can you just tell us which

7 number it is?

8 THE WITNESS: I'm sorry, paragraph 19.

9 THE CHAIR: Paragraph 19. So, we

10 understood page 19.

11 THE WITNESS: I'm sorry, I thought

12 I said paragraph. Page 9, paragraph 19.

13 MR. APPLETON: We have that in here.

14 THE CHAIR: "The treatment of the

15 Korean Consortium under the GEIA."

16 THE WITNESS: Yes.

17 THE CHAIR: Is that what you meant

18 instead of "of Canada"?

19 THE WITNESS: Yes.

20 BY MR. APPLETON:

21 Q. So could you just confirm now

22 that we're looking at it all together.

23 How does your paragraph 19 read now,

24 sir?

25 A. Well, starting with the sentence

1 here I've highlighted:

2 "In the remainder of this
3 section I show that the
4 manufacturing commitments of
5 the Korean Consortium
6 heralded by Canada as the
7 basis of the superior
8 treatment of the
9 Korean Consortium under the
10 GEIA." [As read]

11 Q. Read the rest.

12 A. And then the rest of the
13 sentence.

14 Q. Just read the rest of the
15 sentence.

16 A. (Reading):
17 "... amount to little or
18 nothing more than the
19 Domestic content requirements
20 imposed on FIT participants
21 such as Mesa." [As read]

22 Q. Great. Thank you very much.
23 Do you have any other corrections to
24 make?

25 A. No, sir.

1 Q. So, Mr. Adamson, could you just
2 tell as you little bit about your educational
3 background.

4 A. Yes. Starting from the more
5 recent, I have a master's degree in economics from
6 Boston University. I have a master's degree in
7 technology and policy, focusing on energy, from the
8 Massachusetts Institute of Technology. I have
9 a master's degree in applied physics and
10 an undergraduate degree in physics from Georgia Tech.

11 Q. I'm still with you, sir.

12 THE CHAIR: We're listening.

13 THE WITNESS: It's okay. I was
14 waiting for Mr. Appleton to get back to his soothing
15 tea.

16 BY MR. APPLETON:

17 Q. Excellent. And I see here you
18 are currently a vice-president at Charles River
19 Associates which is an international economic
20 consulting firm. You previously were a senior
21 consultant. Can you tell us about your role at
22 Charles River Associates?

23 A. Yes, I'm a vice-president in
24 CRA's energy practice, based in Boston, and work on
25 energy, economics, consulting projects around North

1 America, Europe, and sometimes other locations.

2 Q. And what was your experience
3 prior to joining Charles River Associates?

4 A. I started my consulting career in
5 the United Kingdom. I joined a firm called London
6 Economics in 1992, when I just finished grad school at
7 MIT. I later started the US office of London
8 Economics in Cambridge Massachusetts.

9 I then co-founded another economic
10 consulting group called Frontier Economics which still
11 exists and is headquartered in London. I then joined
12 another firm called Tabors Caramanis which was sold to
13 CRA at which time I joined CRA for the first time.

14 From 2008 to 2010, I left CRA and
15 joined a large alternative investment firm called
16 Tudor Investment Corporation, before I started working
17 with CRA again.

18 Q. And I see that you are an adjunct
19 lecturer at Tulane University; what do you teach
20 there?

21 A. I usually only teach one class
22 a year. Tulane is actually in New Orleans. I live in
23 Boston. I usually only teach one graduate course
24 a year in the energy programs which is part of the
25 business school.

1 Q. Can you tell us about your energy
2 experience in Ontario.

3 A. Over the years I've done a pretty
4 considerable amount of work in Ontario, really
5 starting from the period of the initial restructuring
6 of the electricity sector in Ontario.

7 I've testified before the Ontario
8 Energy Board. I've been a witness in a contract
9 arbitration case in Ontario. I've advised on a lot of
10 regulatory issues with respect to the market rules in
11 Ontario. And I've also assisted clients who were
12 evaluating thermal power project investments in
13 Ontario.

14 Q. And can you tell us about your
15 experience generally with renewable energy.

16 A. Yes. My firm and I do a lot of
17 work in the renewable energy space. Most of my
18 renewable energy work has been in the United States.
19 I've advised people who were wind farm, wind project,
20 mainly, developers. I've worked with banks who
21 provide the financing of these assets, and we also
22 work with some -- I also work with companies who are
23 the buyers of wind energy, like utilities.

24 Q. Now, I just want to go through
25 a couple of the things that the Tribunal has asked

1 experts to be able to do when they come here. So
2 first of all, the Tribunal has asked that experts
3 bring their preparatory files. Did you bring those
4 files with you today?

5 A. Yes, I brought my -- my set of
6 documents is here with all the ...

7 Q. Sir, that's the witness binder,
8 is it not?

9 A. Yes.

10 Q. Sorry, I've asked you, did you
11 bring your preparatory files you used to prepare your
12 reports?

13 A. Yeah, that's all related here.
14 The -- there's a few other things that I've looked at
15 recently, but the materials that are in the report are
16 here.

17 Q. So somewhere here with you you
18 have everything?

19 A. Background, yeah --

20 Q. We're going to ask every expert
21 the same question so ...

22 A. Okay.

23 Q. Now, as you know the Tribunal has
24 permitted experts to give a presentation, not lasting
25 more than 20 minutes to discuss their conclusions of

1 their expert reports and their methodology.

2 Do you have such a presentation today,
3 sir?

4 A. Yes, I do.

5 Q. All right. So, your 20 minutes
6 will begin now. I understand that your presentation
7 is -- actually it won't begin yet -- your presentation
8 is set out in the binder at tab E, but for ease again
9 we're going to put an extract so the members of the
10 Tribunal and Canada can take notes as you go along,
11 and Ms. Qi perhaps you'll give a copy to Mr. Adamson
12 to make it easier for him --

13 A. That would be ...

14 Q. -- and we'll project this for you
15 on the screen.

16 THE CHAIR: We need one more. Oh, we
17 have one more. Thank you.

18 BY MR. APPLETON:

19 Q. Now, Mr. Adamson, you can --
20 sorry, your presentation of 20 minutes will begin now,
21 sir?

22 PRESENTATION BY MR. ADAMSON AT 1:42 P.M.

23 A. Okay, thank you. I'd just like
24 to start with a summary of what I looked at, the
25 issues I examined and the methodology used.

1 In terms of methodology, it's really
2 pretty straightforward. I'm an economist and I did
3 an economic analysis of these issues based on really
4 pretty standard micro economic concepts.

5 What did I look at? First, what were
6 the competitive market conditions of wind power
7 development in Ontario? How did the overall market
8 work. Second, and probably the most information in
9 this report that you have seen, is what were the
10 competitive conditions between FIT and GEIA
11 competitors? We had these two tracks, as they've been
12 described, and what were the competitive conditions
13 between those two?

14 Third, what was the financial and
15 regulatory treatment of the two sets of competitors
16 between FIT and GEIA?

17 And finally, I had some brief comments
18 in my expert report with respect to information
19 release, the timing of transmission information
20 associated with the transmission availability test.

21 So, just to sort of start with the
22 conclusions, to provide a high-level summary, in my
23 expert opinion, FIT and GEIA wind developers provided
24 the same product -- exactly the same product -- and
25 were in competition with each other for scarce

1 transmission capacity.

2 Second, the so-called investment
3 requirements under the GEIA imposed on the
4 Korean Consortium placed no material or significant
5 economic burden on the Korean Consortium over what was
6 already required of FIT developers.

7 Third, FIT developers and competitors
8 such as Mesa were therefore in a very similar
9 competitive circumstances in the market with the
10 Korean Consortium.

11 Fourth, the Korean Consortium and its
12 JV partner, Pattern Energy, sorry, joint-venture
13 partner Pattern Energy, who was the team they firmed
14 up here with in Ontario as a project developer, under
15 the GEIA received superior economic treatment than the
16 FIT suppliers.

17 And finally, with respect to the
18 limited issues I identified, the changing transmission
19 rules and the information availability process and
20 last-minute changes to the regulatory process,
21 undermined the credibility of the OPA process, and
22 sort of undermined its integrity, from my perspective.

23 So, again, kind of on slide 3,
24 starting back with the start, as we've heard, again,
25 so I won't belabour it, what happens? Wind farms are

1 connected -- large-scale wind farms are connected to
2 the IESO controlled transmission grid in Ontario.

3 Power flows through the grid, again,
4 as you've by now heard -- flows through the grid
5 instantaneously. It can't be stored, at a reasonable
6 cost anyway -- so as the wind blows, wind farms turn,
7 the wind turbines turn, power is generated, it flows
8 through the grid and is used by load, used by
9 customers.

10 All sales under the rules are made
11 through the IESO grid to customers who pay all the
12 costs.

13 In terms of the actual payment flows
14 in the contracts, the wind generators are paid what's
15 called the "Hourly Ontario Energy Price" which is
16 a price that's set by the IESO every hour, and it
17 changes, as the title suggest, every hour, and they're
18 paid that amount and then they're paid an additional
19 amount under the PPA, which basically tops them up to
20 get to the specified contract price in the FIT.

21 Now, those amounts all come from
22 customers, both the HOEP price, and the contract
23 payment that makes up the FIT total price. The FIT
24 contract payment comes through a thing called the
25 "Global adjustment charge" which is imposed on all

1 costs paid by ratepayers and it changes quite
2 frequently as well.

3 It helps pay for all of these types of
4 costs for renewable energy we've been hearing and some
5 other things.

6 One thing that has kind of changed is
7 that originally started out as seeming like a pretty
8 small amount and then later grew into a pretty big
9 chunk of people's bills.

10 Now, that's for the FIT. For the GEIA
11 only, there was also an additional provincial payment,
12 the economic development adder, which would be paid on
13 top of the FIT contract price.

14 So, let's move on to thinking about
15 the competitive circumstances between FIT and
16 GEIA competitors. They provided the same product,
17 power is power, it flows through the grid, electrons
18 move, power flows, it is like water in the river, you
19 can't tell me whose water it is.

20 They all had to be connected to the
21 IESO grid. The contract forms between the FIT and
22 GEIA were very similar to identical, the GEIA made
23 that clear, and they had the same local content rules.
24 We'll talk about those in a minute.

25 What other indicators can we get off

1 of the competitive circumstances? First off, Pattern
2 Energy, who was the company who was the joint-venture
3 development partner in Ontario, specifically viewed
4 Mesa and other FIT developers as its competitors to
5 sell wind energy in the province. Third, it also
6 emerged from Pattern and from the deposition of Colin
7 Edwards of Pattern, that FIT projects had actually
8 been brought by Pattern and the Korean Consortium and
9 re-labelled as GEIA projects. So they had started out
10 as FIT projects and in some cases, relatively
11 lowly-ranked projects, and had been put into projects
12 that became -- incorporated into projects that became
13 GEIA projects, including, as far as I know, the only
14 GEIA project which has actually hit commercial
15 operation to date, which is South Kent.

16 Fourth, what was the manufacturing
17 commitment for the GEIA for the Korean Consortium
18 posed really no substantial economic burden on the
19 Korean Consortium. Its real requirement was to
20 designate manufacturing partners, which just meant
21 identifying a company that manufactured things, and
22 didn't require the creation of any jobs specifically.

23 Even later, after they amended it,
24 they put on another reporting requirement but it still
25 didn't say that Korean Consortium had to hire anyone,

1 all they had to do was identify the jobs created by
2 their suppliers.

3 And both the FIT and the GEIA
4 competitors had local reporting requirements. I'll
5 move on.

6 So the quick summary of just left
7 versus right, FIT versus GEIA. Qualification, well,
8 FIT projects had to fit FIT Rules of course but as
9 we've seen, FIT projects could be turned into GEIA
10 projects, exactly the same projects, and a number of
11 them have been done so.

12 The domestic content rules were the
13 same, specified in the GEIA and in FIT Rules.

14 For the Ontario suppliers, really the
15 only difference with the GEIA is I had to go to my
16 suppliers and say, oh, would you be my partner?
17 Meaning I can identify you which, at least in my
18 opinion, didn't pose any significant economic burden.

19 There is a reporting difference that
20 the Domestic content requirement under the FIT, above
21 already mentioned, and then later under the amended
22 and restated GEIA, they did add this job reporting
23 requirement finally in Section 9.3.2.

24 Just to summarize and we can move on,
25 onto the treatment. What were the differences.

1 Obviously transmission access, we've talked about
2 that. FIT had to have a competitive process,
3 competitive process for securing transmission access
4 under the entirety of the FIT Rules. In some places
5 that was hard. The GEIA, there was kind of
6 a guaranteed priority access. There was a free lane
7 marked off on the highway.

8 On the economic development adder,
9 clearly the FIT didn't have one; that was not a FIT
10 concept.

11 In the GEIA there was one, the
12 government originally estimated that as having a value
13 of over 400 million, I think the precise number was
14 437 million. That was later capped down to
15 110 million in the amended GEIA. Still a large amount
16 of money.

17 And finally, under the GEIA, the
18 Government of Ontario agreed to, and was obligated to
19 work, through a special working group, with assistance
20 on siting and a whole bunch of other issues that are
21 required to build a wind project. That same exact
22 process was not part of the FIT process.

23 That provides just a quick summary, so
24 that concludes my presentation.

25 Q. Thank you, Mr. Adamson. Now, I'm

1 going to ask you some questions about issues that have
2 arisen since the filing of your report.

3 A. Uh-hmm.

4 Q. There's a copy of the rejoinder
5 memorial in front of you. Do you see that? It's
6 right in front of you.

7 A. Oh, this one?

8 Q. Yes. Canada has stated in its
9 rejoinder memorial, at paragraphs 126 to 129, they've
10 commented on your expert report. I'm just going to
11 read something out of paragraph 126 where they say:

12 "The Claimant relies on the
13 Adamson report to argue that
14 the Korean Consortium and FIT
15 proponents were afforded
16 treatments in like
17 circumstances. However shown
18 below this report is
19 inaccurate, cites to the
20 wrong version of the GEIA and
21 misinterprets the GEIA's
22 obligations." [As read]

23 Do you have any comments make on this?

24 A. Yes, I believe that this comment
25 is inaccurate. I actually cite multiple versions of

1 the GEIA in my expert report which we can flip through
2 and see. And the original GEIA which is the one
3 I originally started the analysis on in the expert
4 report, is the GEIA that was in place until 2011,
5 until an amending agreement. So much of the time of
6 what we've been talking about, that was the contract
7 that was in place. There were later changes of more
8 or less difference, but that was the deal.

9 Q. Do you have any other comments
10 you'd like to make now? I'm sure you'll have an ample
11 opportunity to be questioned on some of these things
12 in any event by Canada, but do you have any other
13 comments you'd like to make?

14 A. Only that I did review both --
15 all three GEIA versions, the original GEIA, the
16 amending agreement which just consists of a whole
17 bunch of changes, sort of slightly out of context, and
18 in the amended and restated GEIA, which was the 2013
19 GEIA. So I did review all three of those in coming to
20 my conclusions.

21 MR. APPLETON: Well, thank you very
22 much. That concludes our comments, Mr. Adamson.
23 We'll turn this over to Canada now.

24 MR. SPELLISCY: Just give me one
25 minute.

1 THE CHAIR: Sure.

2 Fine. Now we're ready Mr. Spelliscy.

3 CROSS-EXAMINATION BY MR. SPELLISCY:

4 Q. Good afternoon, Mr. Adamson.

5 A. Good afternoon.

6 Q. As Mr. Appleton noted, you've
7 heard the spiel many times before but for the record
8 my name is Shane Spelliscy and I'm counsel for the
9 Government of Canada.

10 I am going to be asking you some
11 questions today. I'm not sure how long we're going to
12 go today but if you need a break at any time, let me
13 know, and I'll try and find an appropriate time to do
14 so as quickly as possible. Hopefully it won't be too
15 long that we'll need to do that.

16 If you don't understand one of my
17 questions, let me know. I'll try to ask it again in
18 a way that you do understand. We want to make sure
19 that we understand each other and I want to make sure
20 I understand what your opinions are actually in your
21 report.

22 I think you've heard counsel on both
23 sides say it, but obviously we are trying to create
24 a clear record here so to the extent that the answer
25 to one of my questions is a "yes" or "no," it would be

1 great if you could give that answer first and then
2 explain that context if necessary.

3 It is not a "yes" or "no" you can of
4 course answer in a way that you best see fit.

5 Now, first I would like to -- you gave
6 a little bit of information about some of the work
7 that you were doing in Ontario. I'd like to clarify
8 that in the 2008 to 2011 timeframe while the claimants
9 were making their FIT applications, you were not
10 advising them in any role; correct?

11 A. No, sir.

12 Q. Great. And in fact, I've looked
13 through the experience described in your report and
14 I've listened this morning, during any of that
15 application time period you weren't advising FIT
16 proponents on the FIT program; correct?

17 A. No, sir.

18 Q. So, that I understand the basis
19 of your report, it is the documents that you were
20 given to review in the context of this arbitration;
21 correct?

22 A. Yes.

23 Q. Now those documents are, at least
24 I think you partially listed in Appendix A but I think
25 you mentioned you reviewed some other documents this

1 morning, including the amending agreement to the GEIA,
2 which is not in the appendix.

3 A. I did review the amending
4 agreement at the time. I did make a reference to it.
5 It is not in this binder.

6 Q. But otherwise the scope of the
7 documents reviewed is listed in Appendix A to your
8 report?

9 A. The scope of the documents
10 I relied on. I mean, obviously there was a lot of
11 other documents that didn't have anything to do with
12 my testimony which I, you know, looked at enough to
13 see whether I wanted to look at them, and general
14 background information, of course, about the Ontario
15 system --

16 Q. Right.

17 A. -- which, well, many -- looking
18 at which long pre-dates this arbitration.

19 Q. Right. Right, so Appendix A,
20 those are the documents that you relied upon in giving
21 the opinions that are in your report though?

22 A. Yes.

23 Q. Now, in the presentation that we
24 just went through, there was -- you had a slide at the
25 beginning and you had mentioned that the areas that

1 their FIT applications." [As
2 read]

3 And it's this last sentence again that
4 I'd like to explore with you now.

5 To be clear, I think you clarified
6 this, so the record is clear, because you weren't
7 involved with the Claimant at the time, you actually
8 have no idea what the Claimant or its consultants
9 understood about the TAT table and the information in
10 there at that time; correct?

11 A. No, I was not involved with
12 Mesa's application process.

13 Q. And you would have had no idea
14 what any of the FIT applicants understood about the
15 TAT tables because you weren't involved, correct, at
16 the time?

17 A. My statement was a general one,
18 based on -- having seen the documents and what was
19 provided, it did not seem very clear to me.

20 Q. But you are also aware that the
21 OPA gave numerous public presentations about the FIT
22 Program; correct?

23 A. Yes, I know there were various
24 public presentations and webinars, I think is the
25 correct phrase.

1 Q. I think Bob Chow could explain
2 better but we'll leave it there.

3 A. I think that's the correct
4 buzzword of today.

5 Q. Right, right, you never attended
6 any of those presentations; did you?

7 A. I did not attend.

8 Q. So you have idea what the OPA
9 said about those TAT Tables at the time they did those
10 presentations; correct?

11 A. I wasn't there.

12 Q. Let's turn in your binder there
13 in front of you; it's the white binder. It's tab 1.
14 It's Exhibit R-179, for the record.

15 A. Hold on one second.

16 Q. This is one of these webinars
17 that we're talking about from the Ontario Power
18 Authority dated October 20th, 2009 and it's called:

19 "Feed-in Tariff program
20 transmission and distribution
21 technical information
22 session." [As read]

23 Do you see that?

24 A. Yes.

25 Q. Now, this isn't a document that

1 you list in Appendix A so you didn't review this
2 document in rendering your opinion on what FIT
3 proponents would have known about the TAT Tables?

4 A. Sorry, no, I did not.

5 Q. You are aware that the claimants'
6 FIT applications were made in late November, November
7 25th, 2009; you probably heard it this week?

8 A. I know November -- roughly around
9 November 2009. I certainly won't say I know the date.

10 Q. So you are not sure that, sitting
11 here right now, whether or not the applications were
12 made before or after this presentation?

13 A. I don't know the date.

14 Q. But you would agree that if the
15 applications were made after this presentation, the
16 claimants could have been aware of what was in this
17 presentation; right?

18 A. That is possible.

19 Q. In your report in this
20 section you also talk about what you believe FIT
21 proponents would have understood about transmission
22 available in the context of the Bruce-to-Milton
23 application process, and I want to turn to that
24 because it's a related topic, and particularly in
25 paragraph 124 you talk about circuit called the L7S

1 circuit.

2 Are you aware that during the
3 Bruce-to-Milton allocations proponents of projects
4 could ask questions of the OPA and the OPA posted
5 answers to those questions on the web?

6 A. I know there was a Q & A process
7 generally.

8 Q. Right. You are aware that one
9 occurred during the change window?

10 A. A specific Q & A process? No,
11 I know there was a general Q & A process. I'm not
12 sure that I can tie the -- I can't -- I am not sure
13 that I can tie in my knowledge that there was a Q & A
14 process with the fact that it was specifically
15 operational during the change window.

16 Q. I guess I just want to understand
17 the limits of what your opinion was based on, your
18 conclusion regarding Mr Bob Chow's statement that this
19 wasn't sufficiently communicated. So, in offering
20 that conclusion, you didn't look at the PowerPoint
21 presentation that was made on transmission
22 availability and you didn't review the questions and
23 answers about transmission availability that the OPA
24 publicly posted during the Bruce-to-Milton allocation?

25 A. I didn't review that. I did

1 review the -- I did review the document -- the
2 question and answer document that was an exhibit to
3 Mr. Chow's testimony.

4 Q. Let's take a look at that. I'm
5 not sure if this is the one that you're talking about,
6 but if you go to tab 5 in your binder which is Exhibit
7 C-0291, for the record -- in the white binder.

8 A. White binder. I'm sorry. Binder
9 congestion.

10 Q. It is a hazard of this job.
11 Is this the document you reviewed in
12 the context of offering your opinion?

13 A. Yes.

14 Q. So, let's take a look at the
15 second page of this document. If you look at the
16 third question on that second page, it says -- this is
17 a question from the public:

18 "The L7S" -- well, question
19 from a developer --
20 "The L7S circuit has 477" --
21 you probably know it better
22 than I "conductor size on the
23 first 30 kilometres of the
24 Seaforth transmission station
25 but only 211 on the final

1 section." [As read]

2 And then it asked:

3 "What is the 30-megawatt
4 circuit limit listed in the
5 table based upon? If we were
6 to connect to this
7 section with the highest
8 conductor size what is the
9 available injection
10 capacity?" [As read]

11 And you will see that the answer
12 publicly posted is:

13 "The value on the circuit
14 table is intended to reflect
15 the weakest point on the
16 circuit." [As read]

17 Correct?

18 A. That is what this says but think
19 about when this is offered. June 8th, 2011. We'd had
20 the notice on June 3rd. The window had opened on the
21 6th. The 3rd I believe was a Friday, as I indicated,
22 I was on a calendar the other day and I looked up on a
23 calendar when I prepared my report. The window opened
24 on a Monday so that must have been the 6th. The
25 8th was a Wednesday. This seems to have been provided

1 in the middle of the connection window change period
2 and, kind of, even worse, what about if somebody had
3 already, kind of, made a change and, based on this or
4 other information in this, on the Monday or the
5 Tuesday. Are they supposed to now go back and change
6 this? I mean you've offered this information but kind
7 of smack dab in the middle of the process.

8 Q. Mr. Adamson, that's why I asked
9 if you had reviewed the earlier PowerPoint
10 presentation.

11 So let's maybe go back to that.

12 A. I'm sorry, could you give me the
13 tab on that.

14 Q. We are back to tab 1 and we are
15 back to R-179.

16 I want you to turn into slide number 7
17 which is listed in the lower left-hand corner of the
18 slides. Again, for the record this is a November 2009
19 presentation. This slide is called the "TAT
20 Availability Tables"; do you see that?

21 A. Yes.

22 Q. And in the first bullet there it
23 says:

24 "The TAT Tables are developed
25 to provide a general

1 indication of the
2 transmission system's
3 capability." [As read]

4 Correct?

5 A. Yes.

6 Q. And then if you look at the first
7 sub bullet there, and you look at the last one, sort
8 of after the semicolon, it says:

9 "For lines - the most
10 limiting sections."

11 Correct?

12 A. Yes.

13 Q. And if you look at the third
14 bullet on that page, it then tells people:

15 "As such, information
16 provided by the tables are
17 indicative in nature and is
18 not necessarily the basis for
19 determining the TAT outcome."

20 [As read]

21 Do you see that?

22 A. Yes.

23 Q. So you would agree that on March
24 2010 the OPA was giving, in a public presentation,
25 developers' comments that this is the most limiting

1 section on lines and in fact these are just general
2 indications and it's just indicative; correct?

3 A. Well, clearly -- it was clearly
4 made clear it was indicative, although, to the extent
5 that all of the information is rather indicative, it's
6 then kind of hard to see how anyone made much of
7 a decision upon it.

8 Q. They could ask, couldn't they?

9 A. They could ask, but practically
10 I think that could have been a pretty limiting process
11 for both the developers and, actually, for the OPA.
12 I mean, if you had to ask about every element of the
13 transmission data, that could be a lot of data.

14 Were you supposed to go back and
15 submit a question for: What is this guy doing? What's
16 this point? What does that mean? What element is
17 that? You know, my general comment was this seems to
18 provide a relatively weak information set for people
19 to make transmission connection decisions. Yeah,
20 I guess you could go ask and I guess, you know, one
21 could have asked probably many, many, many, many
22 questions, but so if it's indicative, I guess it was
23 indicative.

24 My comment there is, it makes it
25 pretty hard to actually make many decisions. On the

1 second -- on the point under the first point, so the
2 "based on ratings of equipment", based on ratings of
3 equipment and interregional power transfer
4 constraints, for lines, the most limiting sections --
5 I'm not sure that's utterly clear, is that on
6 a specific -- is that referring to a circuit which is
7 what was referred to in the table?

8 Is that referring to transmission
9 constraints that had to be modelled in order to -- as
10 part of a regional or interregional power transfer
11 constraint? That's not completely clear to me.

12 Q. So you're -- sorry, just so that
13 I understand your opinion. You're looking at this
14 presentation now and your answer is it's not
15 completely clear to you that the OPA was saying the
16 most limiting sections and what that meant. It is
17 completely clear to you that the OPA is giving
18 proponents fair warning that the information on the
19 table is indicative and you also did testify that of
20 course you could ask, though you wonder about the
21 practicalities of how the OPA would have handled such
22 requests; is that what you're saying?

23 A. Given the voluminous nature of
24 all the individual requests, yes.

25 Q. But you could have asked if you

1 had wanted to.

2 A. One could, I presume one could
3 have asked.

4 MR. LANDAU: There is one question I'd
5 like to ask on this.

6 This question is not meant to be rude
7 if it sounds a bit rude but just to be clear: what I
8 wasn't clear about in my own mind is, on the last last
9 part of your report when you talk about access to
10 information, what is your expertise on that part of
11 the process and from what are you deriving these
12 opinions as to how people could have understood
13 something and whether they had enough information?
14 Because the rest of the report I had understood much
15 more as an economic analysis --

16 THE WITNESS: Right.

17 MR. LANDAU: -- and I wasn't quite
18 sure how that met with the last part, which looked
19 more like a process opinion that you are giving?

20 THE WITNESS: Well, my response is
21 really two. Given that I work pretty much as a,
22 significantly as a power market economist. One thing
23 that we look at in the context of these markets
24 a great deal is around the economics and the
25 regulatory processes of interconnection, connecting

1 generators to the grid. Because that really affects
2 the viability of -- and economics of projects in many
3 cases.

4 Now, while I have some technical
5 background, I am clearly not a professional electrical
6 engineer until so I don't do engineering studies, but
7 I have worked with providing a number of clients who
8 are looking at these types of questions trying to
9 judge the relative economics of different
10 interconnection options. Because that might affect
11 the price they are going to get paid; that might
12 affect the cost of connecting their facility.

13 So that has sort of played a role in
14 my work. So I have worked with clients who are trying
15 to understand how these types of interconnection
16 decisions and interconnection options may include
17 connecting to different points on the grid, affect,
18 for example, the financial and economic viability of
19 a project. That was the second part of your question,
20 sir, and I'm afraid I probably have forgotten the
21 first part now.

22 MR. LANDAU: It is a testament to
23 a bad question because there was only one part.

24 THE WITNESS: Sorry, but I do remember
25 now actually, sorry.

1 The other thing is from a -- but the
2 real -- the real thrust of my comment did have kind of
3 an economic objective which is these are, these are
4 really complicated markets, right, very
5 multi-dimensional markets with lots and lots of
6 different options for market participants, and they
7 have trouble, even in an ideal world assessing all
8 those options very quickly.

9 If the information set isn't as clear
10 as possible, it just seems to me that that type of
11 lack of clarity of information reduces potentially the
12 efficiency of the providence.

13 Am I going to be able to make the
14 right choices if all the information's not there? And
15 to me, and if I get back to the kind of final
16 conclusion of that segment, it didn't really seem to
17 me that that supported the most efficient process by
18 which everyone had to make these economic decisions.
19 And because they're economic decisions as well as ...

20 (Court reporter appealed.)

21 THE WITNESS: I said they're economic
22 decisions as well as purely technical decisions.

23 They are costs (unclear) and therefore
24 affect that project viability.

25 MR. APPLETON: Keep closer to the

1 microphone.

2 THE WITNESS: I think, yes, well,
3 I think the difficulty is, when looking at that
4 gentleman, I need to --

5 MR. APPLETON: We'll work it out.
6 Just keep it close.

7 THE WITNESS: Okay, thank you.

8 BY MR. SPELLISCY:

9 Q. Let's turn to the second point
10 that you make at the end of this section in your
11 report and about what you call in paragraph 130 your
12 opinion, "the sudden changes to the FIT Program."

13 In particular, if you go to
14 paragraph 133 you say that:

15 "It is important to allow
16 enough time to ensure that
17 all bidders can reasonably
18 evaluate the full information
19 provided in the context of
20 a change window." [As read]

21 Is that correct?

22 A. Yes, that's the sense.

23 Q. So I just want to understand that
24 sentence and I won't spend a lot of time on it. But
25 in light of documents that you reviewed as well as a

1 history of what was happening in Ontario, because
2 I note in this section that you referred to certain
3 parts of Canada's counter memorial in this arbitration
4 but I didn't see any documents in Appendix A that were
5 actually from the relevant time period about what was
6 being told to FIT Program developers.

7 So I guess my question is: Before
8 reaching your conclusion that you reached here, you
9 did not go back and actually review contemporaneous
10 documents about what developers would have understood
11 about the connection-point changes at the time?

12 A. Well, I reviewed and referred to
13 the document which was the ministerial direction or
14 directive -- direction. Thank you. Requiring --
15 requiring the OPA to start this process, which
16 provided the structure of what the OPA was to do.
17 I -- that was also later updated into the FIT Rules
18 themselves, kind of translated into that.

19 And then I had reviewed the counter
20 memorials which, you know, referenced the other
21 testimony of the parties about this question.

22 So, I guess I haven't listed, you
23 know, any of the other information, but certainly, you
24 know, Canada's counter memorial listed the positions
25 of its experts, and so you know, that's what I --

1 that's what I -- that's the documents I directly
2 relied on for my information here. But as my comment
3 shows, I mean, you know, the other part of the -- of
4 the conclusion here is really kind of supported by
5 something that's a little more general than FIT here,
6 which is personal experience with kind of utility
7 competitive type mechanisms, such as RFPs, which is
8 something I have interacted with a lot. My firm's
9 even helped run RFP processes for utilities, for
10 example.

11 So, you know, it was that -- that part
12 was also more of a general comment about, in my
13 experience, how those types of processes run and
14 contrasting it, and comparing it with the very short
15 notice made here, under the Ministerial award.

16 Q. So you looked at
17 the June 3rd directive?

18 A. Uh-hmm.

19 Q. I think you said earlier that you
20 looked at a calendar to see when that happened and
21 when the change window was, but you didn't go back and
22 look at any of the documents from the preceding years
23 as to what had been told to developers about what to
24 expect with respect to this change to the window;
25 correct?

1 A. Well, there was information
2 about -- there was things like in the FIT Rules about
3 process. Yes.

4 Q. Well, let me -- because I'm
5 trying to understand sort of the basis more for your
6 opinion here. You would agree that the planning to
7 develop the Bruce-to-Milton line had been ongoing for
8 a while; are you aware of that?

9 A. Yes.

10 Q. Probably 2006, 2007, 2008
11 something in that time frame?

12 A. Planning transmission lines is
13 often a rather excruciatingly long process.

14 Q. I think Bob Chow could tell you
15 stories. And you would also agree that since that had
16 been introduced the wind industry had been aware of
17 the coming into this line, since the time of its
18 initial development; is that correct?

19 A. I haven't polled the wind
20 industry but I can imagine that's true.

21 Q. That would be something that
22 they'd be aware of, wouldn't it?

23 A. Yes.

24 Q. Now, I want you to turn to tab 7
25 in that big white binder in front of you. And for the

1 record this is document C-0034. It is a March 23rd,
2 2010 presentation by the OPA and it is called the
3 "Economic Connection Test Process"; do you see that?

4 A. Yes.

5 Q. If you could turn to what is
6 slide number 14 in this presentation. I wanted you to
7 look at the first bullet there. And the first bullet
8 says:

9 "After an Applicant receives
10 a TAT result, they may
11 request a change in
12 connection-point for their
13 project." [As read]

14 Do you see that?

15 A. Yes.

16 Q. And the third bullet says:

17 "Such changes in order for
18 the application is just" --
19 if you look at the last
20 clause -- "such a change must
21 be requested prior to the ECT
22 application deadline." [As
23 read]

24 Do you see that?

25 A. Yes.

1 Q. Now, if you look at the next
2 slide, we'll get through these, I promise -- if you
3 look at the next slide, which is slide number 15.

4 A. Yes.

5 Q. You will see at the very top
6 bullet it says:

7 "ECT application deadline is
8 contemplated to be June
9 4th of 2010." [As read]

10 Do you see that?

11 A. Yes.

12 Q. Let's go a little further in this
13 webinar that the OPA gave and go to slide number 23.

14 I want you to look at the first bullet. It says:

15 "Transmission capability
16 which may become available
17 between the end of the TAT
18 for the launch period
19 applications and the ECT
20 start date (August 2010) will
21 be allocated based on time
22 stamp priority during what is
23 called the IPA." [As read]

24 Do you see that?

25 A. Yes.

1 Q. We're almost done with this. If
2 you look at the next bullet, it says:

3 "This" -- meaning the above
4 bullet -- "may include
5 capacity made available due
6 to the new Bruce-to-Milton
7 transmission line." [As read]

8 Do you see that?

9 A. Yes.

10 Q. So the OPA then was telling FIT
11 applicants and developers in March 2010 that if they
12 wanted to change their connection points in order to
13 access the capacity made available on the
14 Bruce-to-Milton line they would have to be ready to do
15 so by June of 2010; would you agree with that?

16 A. And this was with respect to
17 a prospective June 2010 ECT, I believe. I haven't
18 gone through this whole document obviously.

19 Q. Sure. If you look at the first
20 bullet on the page it says:

21 "The ECT start date will
22 start in August of 2010." [As
23 read]

24 That's that first bullet on slide 23,
25 so it would be in August 2010, the ECT, but the change

1 in connection-points we just saw on the previous
2 slides was due by June of 2010?

3 A. My understanding is they never
4 held an August 2010 ECT.

5 Q. That's correct, but I want -- and
6 we're going to get to that in a second. I want to
7 know if you would agree with me that the OPA is, in
8 March of 2010, telling developers that if they wanted
9 to change their connection points, in order to get
10 onto that Bruce-to-Milton line which might be awarded
11 in the August 2010 ECT, they would have to be ready to
12 change by June of 2010?

13 A. It actually doesn't tell anyone
14 when to get ready. It says:

15 "You may become available and
16 the start date, the ECT start
17 date will be allocated based
18 on the time stamp." [As
19 read]

20 I think you are actually reading
21 something slightly more into it than that, than what
22 the document says.

23 Q. Let's go back to slide 14, the
24 first slide we looked at. I want you to look at the
25 third bullet on slide 14. It says:

1 "In order for the application
2 to be assessed based on
3 a revised connection-point
4 ... a change must be
5 requested prior to the ECT
6 application deadline." [As
7 read]

8 Do you see that?

9 A. Yes.

10 Q. If you go to the next slide --
11 this is the one we looked at before -- the first
12 bullet there says, on slide 15, that the ECT
13 application deadline is June 4th; do you see that?

14 A. Yes.

15 Q. So now we're back on slide number
16 23, they're saying for that ECT, which may include the
17 Bruce-to-Milton line, those two slides together tell
18 us, do they not, that you would have to be ready by
19 June 4th if you wanted to request a change in
20 connection-point and get capacity, should that ECT run
21 and should that Bruce-to-Milton line capacity come on
22 line; correct?

23 A. You can take that as a logical
24 conclusion about a potential August ECT that never
25 happened and I believe you're trying to kind of

1 stretch that to say well that put everybody on notice,
2 either indefinitely forever or the fact that this had
3 been released, put everybody on notice for the
4 Bruce-to-Milton allocation process, which wasn't

5 Q. I'm just trying to focus on your
6 testimony on change in connection points and how much
7 notice would have been needed. And so you've said it
8 was a logical conclusion that developers could reach,
9 so if you were a prudent developer at that time, if
10 you were paying attention to what the OPA said, you
11 see this March presentation; you would agree with me,
12 that at that point you start comparing your
13 interconnection strategy, where you might change,
14 thinking about that anyways, in March of 2010;
15 correct?

16 A. At that time, in March 2010,
17 thought that you might benefit from a connection-point
18 change, then logically you could start doing all the
19 analysis maybe then at that time.

20 Q. Right.

21 A. But perhaps later you didn't
22 think you were going to have to make a change. It
23 sort of depends on where you think you are and where
24 you think other people are going to be. So, I mean,
25 this, to me, seems pretty specific around an August

1 2010 ECT, an Economic Connection Test, which is kind
2 of a -- it is not a very technical conclusion but kind
3 of a big deal under the FIT Rules and was an ECT.

4 We get to June. We don't have an ECT,
5 and finally we have an official notice on the Friday
6 for a Monday. So everyone's supposed to either be
7 doing lots of time-consuming, costly analysis all the
8 time or sounds like they really, really got to
9 scramble.

10 Q. Well, you said you wouldn't know,
11 and I think you said that you would agree, at the
12 beginning anyway, that if you thought you might
13 benefit from a connection-point change, you would
14 start preparing in March of 2010.

15 A. For the August 2010 ECT.

16 Q. Right.

17 A. Which never even happened.

18 Q. Which didn't happen. So now
19 nobody would have known that the August 2010 ECT
20 wasn't going to happen prior to that. They would have
21 started preparing; correct?

22 A. They could have. They could have
23 started preparing for an August 2010 ECT with the
24 expectation that an ECT would actually happen. Now,
25 it doesn't actually happen despite the fact that that

1 was a whole component of the FIT Rules.

2 Q. Uh-hmm.

3 A. We now have kind of a roll-up
4 through the spring and into the early summer of 2011.
5 We don't have an ECT. There's never an ECT. And all
6 of a sudden, there's a date announced, very, very
7 short notice. My experience in these processes is,
8 when you require somebody to do something in kind of a
9 regulatory process, you have to kind of give them
10 adequate notice. You don't just sort of expect that
11 they'll know to do everything under your rather -- we
12 could do anything we want at any moment, so you better
13 be ready.

14 Q. Well, let's go through the
15 history because I think you said you didn't go back to
16 look at this, because I think we agree that the
17 Bruce-to-Milton line didn't receive its approvals in
18 the summer of 2010; correct? You've heard the
19 testimony on that earlier?

20 A. Yeah. I don't remember the exact
21 date, but that sounds right.

22 Q. Right. So if it didn't receive
23 the approvals, obviously the capacity couldn't be
24 allocated on it; correct?

25 A. Yes. I mean, it would not have

1 made much sense to allocate capacity on a line that
2 had not yet had all the siting completed.

3 Q. Right. So now let's go and
4 follow on this to the rankings that were published by
5 the OPA for the projects which didn't receive FIT
6 contracts after the first connection test. And you
7 are aware those came out in December of 2010; correct?

8 A. Are you trying to steer me to a
9 different tab or should I --

10 Q. I will. I'm just asking you
11 first: Are you aware that rankings of the projects
12 came out in December of 2010?

13 A. Yes, I know there was a ranking.

14 Q. Great. Let's go to Tab No. 21.
15 I think that's one of our favourite documents in this
16 arbitration because it is so small.

17 A. Is that the three font?

18 Q. The three font. Now, again, this
19 is not a document that's listed in your scope of
20 review, so in coming to your opinion on the sudden
21 change, this is not a document that you relied upon;
22 correct?

23 A. I had seen this. I didn't
24 specifically rely upon it in coming to that
25 conclusion.

1 Q. So now I want to understand
2 because these rankings, they make clear on these
3 rankings where are all the projects that are remaining
4 are electing to connect on the transmission grid, at
5 least the project from the launch period; correct?

6 A. Yeah. There is a connection
7 point in very, very small font.

8 Q. Yes. You had talked about
9 needing the information as to whether you needed to
10 change connection points. These December 2010
11 rankings would have given developers the information
12 to assess, preliminarily, do I have a problem here;
13 correct?

14 A. I think it would have been the
15 starting point for that analysis. I don't think it
16 would have been the end point.

17 Q. Fair enough. Now, if you look on
18 the Bruce Region page, which is the first page in --
19 and I can probably have it blown up on the screen
20 there. For the record it's --

21 A. I think we've seen it, but I
22 think that would still be helpful.

23 Q. -- c-0073.

24 A. Maybe, Chris, just bring up the entire
25 top portion up there, from the notes right down to the

1 Bruce area. Just that, right there. Can we call it
2 out even more so that we can actually see it? Scroll
3 over to the right. All right. Looking at the second
4 sentence here -- a little bit to the left, Chris --
5 where it says:

6 "Additional capability which
7 will be made available by the
8 Bruce-to-Milton transmission
9 line will be allocated during
10 the ECT." [As read]

11 Correct?

12 A. Yes.

13 Q. And if you scroll up just a
14 little bit and over to the left, here it says:

15 "Connection --"

16 If you keep going to the left. Keep
17 going:

18 "-- FIT applicants will have
19 the opportunity to request a
20 change in connection points
21 prior to the ECT." [As read]

22 Correct?

23 A. Yes, that's what it says.

24 Q. So in December of 2010, again,
25 the OPA is informing people that there will be an ECT

1 upcoming to allocate the Bruce-to-Milton capacity and
2 that they will allow a change in connection points
3 prior to that ECT; correct?

4 A. Well, it says:

5 "FIT applicants will have the
6 opportunity to request a
7 change in connection point
8 prior to the ECT." [As read]

9 Q. Uh-hmm?

10 A. Which is consistent with the FIT
11 Rules.

12 Q. Yeah.

13 A. It didn't tell them when the ECT
14 was going to be.

15 Q. No. Fair enough. But, at this
16 point, if you were thinking you now had the
17 information on where other developers were going to
18 connect; correct?

19 A. Yes, you had the connection
20 points.

21 Q. So at this point, you now had
22 further information available to you to plan your
23 interconnection strategy, looking at the Bruce,
24 knowing, again, that the OPA is saying there will be
25 an ECT upcoming for the new Bruce-to-Milton line;

1 isn't that right?

2 A. You have the information to start
3 comparing yourself to others. Like I said, I think
4 these connection-point data would only be a starting
5 point, one small subset of the data, probably not all
6 of it, but, you know, if you took this to say "Oh, you
7 know, people will have the opportunity to change
8 connection point" which was kind of clear under the
9 FIT Rules, so that's not exactly new information. But
10 this is prior to an ECT, and OPA didn't seem to have
11 ever indicated to people when there was actually going
12 to be an ECT.

13 Q. No.

14 A. Which, in fact, there never was.

15 Q. Right. Well, they had indicated
16 in the March presentation. You saw that they expected
17 the first ECT to be run in August; correct? Of 2010?
18 We saw that; right?

19 A. Yes, but then they never did it.

20 Q. They never did it.

21 A. So now we're kind of over into
22 the next year, 2011. They were going to have an ECT.
23 It didn't happen. Now we just have kind of a broad
24 notice that there can be one, which there clearly can,
25 because it's allowed under the rules and it's -- it's

1 really (a) never happens, and when there is any
2 Bruce-to-Milton allocation process, it happens on
3 really short notice.

4 So, again, I mean, it just doesn't
5 seem very practical that, you know, people were going
6 to be on permanent standby waiting, waiting, doing
7 everything all the time, waiting for an ECT. It's
8 like waiting for Godot. I mean, you know, we wait and
9 we wait and we wait.

10 Q. But is it your testimony that,
11 with all these notices, prudent developers wouldn't be
12 preparing their interconnection strategies for the
13 Bruce-to-Milton line should any ECT be run? They were
14 just going to wait until the OPA gave notice; is that
15 your testimony?

16 A. Well if you thought that the OPA
17 would run an adequate process that would give people
18 some notice and let people know when things were going
19 to happen, then people, perhaps, could have actually
20 done their homework when it was due. It would be on
21 the information of the time, so they wouldn't
22 constantly have been redoing it. That seems to be, to
23 me, a fair process and an adequate process.

24 I mean, I was here the other day when
25 Mr. MacDougall himself said he thought this was a

1 rather inadequate process. You know, I guess you
2 could try to interpret that, because there was the
3 possibility, because they'd had one but it never
4 happened, that people were on that should be, you
5 know, have -- sleep with their boots on and their
6 coats on so they could run out the door at any moment,
7 but that doesn't seem very practical. I think that
8 type of analysis actually would be kind of costly for
9 people to do.

10 Q. Uh-hmm. Perhaps we can come to
11 another document. It's tab 9.

12 MR. LANDAU: Are you still on the
13 same --

14 BY MR. SPELLISCY:

15 Q. I'm on the same topic. If you
16 could come to Tab No. 9, which is Exhibit R-113. It
17 is the May 27 CanWEA letter to the Minister, and we've
18 looked at this letter a lot. I'm sure that you've
19 seen it. If you look down to the third paragraph
20 there, you will see what it says. It says:

21 "Over the past several
22 months, our members have
23 collectively invested
24 significant time and money to
25 prepare the respective

1 interconnection strategies."

2 [As read]

3 Do you see that?

4 A. Yes.

5 Q. So isn't that indication to you
6 that, in fact, the developers in the industry were, as
7 you say, sleeping with their boots on?

8 A. I don't think that necessarily
9 says that. They've expended and invested significant
10 time and money to prepare their respective
11 interconnection strategies. That doesn't necessarily
12 tell me that they were doing, really, the kind of
13 detailed transmission interconnection engineering
14 analysis which might require kind of more significant
15 expenditures to go out and hire engineering
16 consultants to do specific analyses which then could
17 be outdated.

18 Q. Well, let's then look at the
19 first paragraph of this letter. Pull it back up.

20 It says:

21 "CanWEA is writing to express
22 the view of the majority of
23 our members that the
24 Government of Ontario and the
25 Ontario Power Authority

1 follow through with the
2 established Feed-in Tariff
3 process by immediately
4 opening the window for
5 point-of-interconnection
6 changes to enable the next
7 round of FIT contracts to be
8 issued in June of this year."

9 [As read]

10 Do you see that?

11 A. Yes.

12 Q. So this letter is written on May
13 27, 2011; correct?

14 A. Yes.

15 Q. They're talking about awarding
16 the members. The membership of CanWEA is saying that
17 they're asking you to open the window immediately to
18 award contracts in June of this year, the month that's
19 going to start in four days; correct?

20 A. Yes.

21 Q. So isn't that an indication to
22 you that, in fact, at this time, developers were ready
23 to change the interconnection points for the
24 Bruce-to-Milton allocation process?

25 A. I would take that to say that

1 some developers may have been and wanted to push that
2 very hard. The fact that CanWEA says the majority of
3 its members do doesn't necessarily make for everyone.
4 I would think, personally, that a regulatory process
5 needs to look after everyone and not just the majority
6 of members of a trade association, which probably
7 doesn't have any legal authority to represent anybody.

8 We heard that not everybody within
9 CanWEA actually necessarily agreed with the comments
10 expressed in this letter. You know, it's a letter
11 from a trade association. You know, I think one would
12 kind of take that as what it is.

13 Q. Uh-hmm. I'm just a little
14 confused, I guess, by one of our your last comments.
15 You've got significant experience with regulatory
16 programs. I think you said that in your testimony.

17 A. Uh-hmm.

18 Q. Is it your opinion that, in
19 developing regulatory programs, the governments can
20 make everybody happy all of the time?

21 A. No. They can't make everybody
22 happy all of the time; clearly, that's not what it's
23 about, but I think an effective regulatory process is
24 about ensuring that things are fair for everyone, and
25 that, you know, you give people kind of due notice.

1 You give them time to respond. You give them time to
2 comment. It's not about necessarily making everybody
3 happy, and everyone goes home smiling, but a
4 regulatory process, as least from my perspective, in
5 my experience, at least ought to have some element of
6 predictability, some sense of, you know, everybody
7 kinds of gets to have their say. They didn't have a
8 comment process, which Mr. MacDougall, once again,
9 sort of seemed a bit dismayed about.

10 You know, it doesn't seem like this
11 organization would not have necessarily had the
12 authority to express the opinion of every member. You
13 know, it's a comment from a trade association, but the
14 regulator is not trying to make everybody happy. The
15 regulator, I would think, or an agency conducting,
16 such a process as the OPA was in this case, does have
17 kind of necessity to do things in a fair way and in a
18 way that actually allows people to participate without
19 having their interests being ignored or not being able
20 to make the right decision simply because you announce
21 on Friday you are going to do something on Monday, and
22 then you want to do it in a hurry because of some kind
23 of political reason. That seems like kind of a weak
24 process, and that's really kind of what my conclusion
25 in my report was.

1 Q. I have just a couple of more
2 questions on this, and I know Mr. Landau had his
3 finger on the buzzer, so give me just a couple more
4 minutes.

5 You are aware, Mr. Adamson, of how
6 many developers actually changed their connection
7 points during this five-day window?

8 A. I don't know. I don't know the
9 number.

10 Q. You are not aware that 39
11 developers changed their connection points?

12 A. No, I don't know the exact
13 number.

14 MR. SPELLISCY: I will accede the
15 floor to Mr. Landau.

16 MR. LANDAU: Sorry if my being poised
17 on the buzzer has put you under pressure.

18 I wanted to follow up on one of your
19 answers in that line of questions, when we talk in a
20 pejorative sense of expecting people to be sleeping
21 with their boots on. If you put yourself in the
22 position of being in December 2010, and you are in a
23 competitive process, as a proponent in the FIT
24 program. You're given information in December 2010
25 which lists -- we've got a ranking that you're

1 provided with, which we've seen, by OPA. You know
2 about the Bruce-to-Milton line that's not yet on
3 stream but will be, or most likely will be. You know
4 the capacity, the extra capacity, transmission
5 capacity that's going to be made available. What
6 I don't understand is why, in that setting, would you
7 not, acting reasonably, it being a competition
8 overall, why would you not start work at your
9 interconnection strategy if you are being told that
10 there will be an opportunity to change connection
11 points?

12 You've said, well, you wouldn't want
13 to do something which would become outdated, or you
14 would only want to invest the time and energy on that,
15 but on the basis of the information at the time. So
16 what I'm unclear about is: What further information
17 might change? How could it become outdated, and how
18 could it become not worthwhile to start your strategy?

19 THE WITNESS: Well, as I mentioned,
20 the transmission information one might rely on is far
21 greater than just this kind of set of interconnection
22 points; right? And there is all kinds of potential
23 changes to the transmission grid which aren't even
24 controlled by the OPA. It's controlled by the IESO.
25 It has its own kind of information process like the

1 transmission grid.

2 So I agree with you that you might
3 think about -- particularly, you know, depending on
4 one's competitive position, you might think about what
5 your kind of strategy is.

6 I was really mainly referring, though,
7 to -- I think it's one thing to be, you know -- if you
8 were a developer having a group saying, you know, we
9 think we might want to change based on the broad set
10 of conditions that you mentioned; right? I think it
11 might be another to undertake the costs to do the
12 details to really prepare. Now, maybe some people
13 did. I think it would have been a little more simpler
14 and straightforward to have had announcement prior to
15 the process that would've had enough time for everyone
16 to kind of have done it once.

17 I mean, most of these wind developers
18 are not particularly large organizations. These
19 aren't like giant utilities that have huge engineering
20 staff. They are kind of going to go with Hay
21 Engineering Consultants and stuff to do these kinds of
22 technical analyses.

23 So I agree. I think people were
24 probably constantly thinking about this and their kind
25 of competitive position. I'm not sure that that would

1 provide enough for me to really think about a specific
2 connection-point change for my project, given that
3 I think some other things could shift in between, like
4 some other transmission data.

5 MR. LANDAU: Could you give me just a
6 few examples of other things that might shift?

7 THE WITNESS: Well, we've been talking
8 about Bruce-to-Milton. That was a big line and a big
9 project. That's years. That's like building a new
10 highway; right? It takes years of siting, studies,
11 approvals, everything else. But the ISO can make
12 other changes to the transmission system which are not
13 as big as that; right? There are lots of other
14 smaller changes to the existing transmission system
15 which can affect flows and which could affect the
16 transmission availability-type tests, which are quite
17 detailed, that Mr. Chow and his group would have been
18 running.

19 So that could have changed. Just in
20 my view of having worked with a lot of wind
21 developers, these are often relatively small
22 organizations. It's not like a giant utility. They
23 kind of need to do everything once or a relatively
24 small numbers of times.

25 To me, it would have been more

1 efficient from a process standpoint to have had enough
2 kind of standard regulatory notice and then just let
3 people do it. Clearly people could anticipate;
4 probably some may have anticipated. My only comment
5 was that that seemed a bit like a second best.

6 MR. LANDAU: Just putting aside for a
7 moment your view about how it should have been done -
8 and forgive me because you are speaking to a layman --
9 give me some concrete examples of things that might
10 have changed. All you've said so far is there could
11 have been other changes to the transmission system.
12 Could you just give me some concrete examples so I can
13 understand, then, a further?

14 THE WITNESS: Right.

15 MR. LANDAU: What are the parameters
16 that might have changed to justify not doing the work
17 at that stage?

18 THE WITNESS: Well, over a period of
19 months or -- and, you know, remember, going back to
20 this case, you are really talking about 2010 into
21 2011, over a year. For example, someone thinks, well,
22 I've seemed to notice the IESO says it's going to
23 bring another transformer into operation at a
24 substation. I don't kind of want to be too simple
25 now, but, you know, the big thing is you see the

1 substation; right?

2 MR. LANDAU: You could never be too
3 simple.

4 THE WITNESS: All right. Well, I
5 don't want to try to oversimplify. But those big
6 things you see at a substation, you know, there is a
7 lot of equipment other than just adding lines that
8 affects how power flows. Okay? Rather than just the
9 giant highway projects. There is lots of changes to
10 the Infrastructure. You have changes in switchgear.
11 You might have had changes in transformers.
12 Sometimes, in some systems, you even have changes in
13 announced operating procedures in
14 transmission-constrained regions, what are called
15 protection schemes, and stuff like that.

16 I would think, you know, people might
17 anticipate that those type things can happen as well.

18 Remember, now we're talking over -- if
19 it was a period of a month only or so, I think the
20 comment would be absolutely right and very little
21 probably would practically change, but over a year, I
22 think you could foresee some changes could happen
23 that, you know, could be material. And then, I guess,
24 there would be an economic tradeoff of constantly
25 doing it versus the cost of doing it.

1 I don't want to kind of belabour it
2 that it made the entire thing completely impossible.

3 BY MR. SPELLISCY:

4 Q. I was going to move now to the
5 majority part of your opinion, which is the Green
6 Energy Investment Agreement, so if the Tribunal has
7 any questions on any of this, if they want to ask,
8 that's fine with me now.

9 THE CHAIR: No, I think we can move
10 on.

11 BY MR. SPELLISCY:

12 Q. In Section 2.8 of your report,
13 which begins on page 10, and I'll ask it not to come
14 up on the screen just because I think there is some
15 confidential information in there.

16 A. I'm sorry. Can you give me the
17 section --

18 Q. Section 2.A of your report, which
19 starts on page 10.

20 A. Okay.

21 Q. It is titled "The Exclusive and
22 Confidential Development of the GEIA."

23 And if you go to paragraph 23 in this
24 section, you say:

25 "The exclusive nature of the

1 MOU, the framework agreement
2 in the GEIA, along with the
3 strict confidentiality
4 provisions clearly prevented
5 any competing entities, such
6 as Mesa and its partners,
7 from entering into the same
8 economic transaction." [As
9 read]

10 I just want to understand your opinion
11 and your basis for that. And, again, obviously, for
12 the record, you don't know what the Claimant
13 understood about the GEIA at the time that this is all
14 happening because you weren't working for the
15 Claimant; right?

16 A. No, I was not working with Mesa
17 at that time. But your question was: What did I base
18 my comment on?

19 Q. We'll get to some specific
20 questions on it, but I just wanted to understand what
21 this opinion was about. You are aware that the FIT
22 Program did not open for applications until October
23 1st of 2009; correct?

24 A. Yes.

25 Q. And because you've been sitting

1 here, and I don't know if you were aware of it
2 before -- I don't think you refer to it in your
3 documents -- but you are also aware that the
4 negotiations with the Korean Consortium were publicly
5 disclosed in an announcement by the Minister of Energy
6 on September the 26th, 2009; correct?

7 A. Yes. I think we all heard and
8 read about the Toronto Star article and the subsequent
9 press release from the Ministry.

10 Q. And I want to understand first
11 how you say that the confidentiality provisions could
12 have prevented competing entities from entering into
13 the transaction. So FIT proponents would have known
14 prior to even making an application that some sort of
15 deal was being negotiated with the Korean Consortium;
16 correct?

17 A. Well, they knew before they may
18 have made the submission, not necessarily before they
19 started the process of preparing for it. Before the
20 submission, they may have known that there was the
21 Toronto Star article and the, very shortly following
22 press release.

23 Q. The press release. And we've
24 seen it. We can try to find it if we have to. But
25 they've seen also that there was a press release, and

1 then a few days later, there was a direction from the
2 Minister of Energy directing the OPA to hold 500
3 megawatts of capacity in reserve for proponents who
4 have entered into a framework agreement; correct? Do
5 you remember that?

6 A. Yes. There was a Ministerial
7 direction -- I just keep saying direction -- to the
8 OPA to withhold certain amounts of capacity. I don't
9 remember the exact dates.

10 Q. But before the launch of the FIT
11 program; do you recall that?

12 A. Well, I mean, it was after the --

13 Q. Press releases?

14 A. -- after the press release
15 obviously. The submissions to the FIT Program were
16 due very much around the same time.

17 Q. Now, we've also seen -- and we
18 can pull it up if we need to, but since you've been
19 here, you are aware that, on October 31st of 2009,
20 which is before the launch period applications close,
21 there were press reports mentioning that the deal with
22 Samsung included priority access to the transmission
23 grid; correct?

24 A. Can you take me to those? I just
25 want to make sure I'm actually sure which one you're

1 talking about.

2 Q. It's at tab 12 in your binder,
3 which, for the record, it's R-178. It's another
4 Toronto Star article. If you look at the last
5 paragraph here, and in the last clause it says:

6 "Foreign firm which would
7 also get priority access to
8 Ontario grid space." [As
9 read]

10 It's easier to look up on the screen?

11 A. Yes, I think that would be
12 easier. Again, we have the font issue.

13 Q. And you see the last clause
14 there. It says:

15 "Which would also get
16 priority access to grid
17 space." [As read]

18 Correct?

19 A. Yes.

20 Q. I think even in your introduction
21 remarks, but certainly in your report as well, you
22 would agree that priority access to grid space would
23 have been something very important for a developer;
24 correct?

25 A. I mean, access to the

1 transmission grid was really important, given the
2 structure of the industry and the FIT.

3 Q. Right. And priority access would
4 have been -- if somebody else was getting priority
5 access, that would have been even more important to
6 the others, correct, who weren't getting that priority
7 access?

8 A. Yeah, it certainly could have
9 been an issue.

10 Q. So this comes out October 31, you
11 already acknowledged that the claimants made their FIT
12 applications sometime in November of 2009. So you
13 would agree with me, then, that, at that time, the
14 claimants at least could have known that Samsung
15 Korean Consortium was negotiating a deal with the
16 government and that it at least possibly included
17 priority transmission access; right?

18 A. Well, they could have known that
19 was after the Ministry of Energy announcement. From
20 this, I guess, if they read the Toronto Star, they
21 could have taken this as a general indication of
22 priority access to Ontario grid space, which is a very
23 kind of general statement that doesn't tell them about
24 quantities or where the transmission space was being
25 reserved.

1 Q. Fair enough. But at that time,
2 anyways, they could have at least known that that was
3 the deal; that was potentially part of the deal at
4 that time; correct?

5 A. They could have known this
6 information as of these dates.

7 Q. Right. Correct. Great. So at
8 that time, the Claimant could have known this, and if
9 they were aware of this, you would agree that they
10 certainly could have approached the Government of
11 Ontario about trying to negotiate their own investment
12 agreement in exchange for priority transmission
13 access; right?

14 A. Just to make sure I understand
15 your question, which is that you're saying because
16 this came out, and there was this article in the
17 newspaper, that a FIT developer could have gone to the
18 government and asked for a priority access. Is that
19 your question?

20 Q. They could have approached the
21 government and proposed an investment agreement that
22 would include priority transmission, because there was
23 nothing stopping them; correct?

24 A. I assume there was nothing
25 legally stopping them, no.

1 Q. Right. Now, you also are aware
2 that the GEIA was publicly announced by the government
3 on January 21st of 2010 when it was signed; correct?

4 A. I believe there was a press
5 release around that date. I don't know the exact
6 date.

7 Q. But around January of 2010;
8 correct?

9 A. Yeah, that makes sense.

10 Q. We haven't talked about this yet,
11 but the Claimant made several other applications to
12 the FIT Program, and that was in May of 2010; correct?
13 Were you aware of that?

14 A. I'm not exactly sure about the
15 date of other applications.

16 Q. So --

17 A. I believe there were some early
18 on, but I don't know the dates of those.

19 Q. But you would agree with me that
20 at least they could have gone -- you said there was
21 nothing legally preventing them from going and
22 approaching the government after reading these
23 articles prior to making their FIT applications, but
24 certainly also after January of 2010, when the Green
25 Energy Investment Agreement is publicly announced,

1 they could have also approached the government at that
2 time to try and negotiate an investment agreement;
3 correct?

4 A. There clearly was no legal bar to
5 them approaching the government, which I assume almost
6 anyone could approach the government.

7 Q. Uh-hmm.

8 A. I don't think there was much
9 information out there in detail about the investment
10 agreement that would have indicated to everybody what
11 the components of such an agreement would have been
12 like because there was no announcement of agreement,
13 and there was no release of the agreement.

14 Q. Uh-hmm.

15 A. I believe that the GEIA itself,
16 the text of the agreement, wasn't released until
17 significantly later, as I remember, well after 2010.

18 Q. Right. But let's go to another
19 document in your binder, which is Tab No. 20 in your
20 big white binder. No, not in --

21 A. Oh, I'm sorry. Wrong colour.

22 Q. Now, this is the January 21, 2010
23 backgrounder, it's called, from the Ministry of
24 Energy.

25 It's called "Ontario Delivers \$7

1 Billion Investment of Green Investment," And I think
2 it's R076, for the record.

3 Now, here this is a backgrounder, and
4 it describes, and it gives notice that Ontario is
5 negotiating an agreement with the consortium. It says
6 who those partners are; correct?

7 A. Yes.

8 Q. And then in the bottom paragraph
9 that says "stimulating manufacturing," it says:

10 "In addition to the standard
11 rates for electricity
12 generation, the consortium
13 will be eligible for an
14 economic development adder."

15 [As read]

16 Correct?

17 A. Yes.

18 Q. And then it actually says what
19 the adder is contingent upon, and on the next page, if
20 we scroll down to "ratepayer impacts," it says what
21 the net present value of the adder is; correct?
22 \$437 million. The first paragraph under "ratepayer
23 impact."

24 A. Yes. There's 437 million NPV
25 listed.

1 read]

2 Do you see that?

3 A. Yes.

4 Q. And then in the last sentence, it
5 talks about there was a 500-megawatt cluster that will
6 be built in the Chatham, Kent, Haldimand counties in
7 Southern Ontario. I think you comment upon that in
8 your report, and you say that capacity had been
9 reserved for the Korean Consortium in September of
10 2009; correct?

11 A. Yes.

12 Q. The next line there says:

13 "Assurance of transmission in
14 subsequent phases." [As
15 read]

16 Do you see that?

17 A. Yes.

18 Q. So at this point, developers are
19 being told, are they not, that there is 2,500
20 megawatts and that, as long as Samsung meets its
21 commitments, it will be assured transmission capacity
22 for those 2,500 megawatts; correct?

23 A. Here is where I think it gets a
24 little trickier. It says:

25 "Assurance of transmission in

1 subsequent phases is
2 contingent on the delivery of
3 four manufacturing plant
4 commitments mentioned
5 earlier." [As read]

6 Okay?

7 Q. Uh-hmm.

8 A. And those clearly are the four
9 that were listed on the top of the preceding page;
10 right? And that part starts and the very bottom is on
11 the front of the first page:

12 "It's contingent upon the
13 consortium manufacturing
14 partners operating four
15 manufacturing plants
16 according to the following
17 schedule..." [As read]

18 So you can say everyone knew that
19 additional subsequent phases of access of transmission
20 was contingent on the delivery of the four
21 manufacturing plant commitments, but there's not very
22 much information here to tell me, if I was a potential
23 competitor, what those commitments were. All it tells
24 me is, really, what was at the top of the other page.
25 It doesn't tell me what I would have to do or kind of

1 not do in order to meet the requirements, because at
2 this point I haven't seen the agreement. I won't see
3 the agreement for a very long time. So it provides a
4 fair amount of information, but it provide some
5 information here, but it doesn't tell me contractually
6 what I would have to do, and it doesn't allow, in my
7 opinion, people to say, "Boy, we could put together a
8 set of partners and do that." It doesn't give any
9 indication of the details of what those commitments
10 actually were.

11 Q. Let me understand your opinion
12 here, then, Mr. Adamson. You've got experience with
13 commercial transactions. Do parties typically release
14 the terms of those transactions to other parties who
15 might be interested in negotiating the same
16 transaction such that they could never get a better
17 deal? Is that typical in your experience?

18 A. Well, remember, we're not talking
19 about me contracting with you to buy a building across
20 the street. We're talking about a pretty large policy
21 initiative here that, by their own admission, had a
22 value of \$7 billion that was completely tied to a
23 governmental decision. So we're not talking about you
24 and me selling an office building here. We're talking
25 about a major, major agreement that was going to cost

1 ratepayers a lot of money even by the terms of this
2 press release.

3 So the fact that such a huge agreement
4 was entered into and then with -- and as we found out
5 in the Auditor General's report, with very little
6 economic or business case analysis put out there, you
7 then expect people to come up, but you won't tell them
8 what the deal was. I don't see that that's
9 necessarily very practical.

10 Q. So your opinion is that, when the
11 government negotiates a deal with an investor, that it
12 has to disclose that deal to everybody in its full
13 commercial terms, but you would agree that would
14 pretty much handicap the government in any future
15 possible negotiations; correct?

16 A. Well, first, in a practical case,
17 from the documents we've seen and what we've heard
18 this week, the government wasn't looking to a second
19 case, but you laid out the hypothesis that other
20 people could have come and asked for the same deal,
21 but in this case, they didn't even know what the deal
22 was, so it would have been very hard to ask for it. I
23 suspect if you had gone and said, "Give me a copy of
24 the GEIA," you would have not have gotten it. So I
25 think you've really laid out a very unrealistic

1 hypothetical here.

2 Q. So let me just understand, then.
3 When you wrote in your opinion that it clearly
4 prevented people from negotiating a deal, you said the
5 same deal. What you really meant is nothing prevented
6 an investor, a developer from going and trying to
7 negotiate a similar deal with the government; they
8 just couldn't negotiate the exact same deal with the
9 government?

10 A. Well, they clearly couldn't have
11 negotiated the exact same deal, and they certainly
12 weren't told what the terms of this deal was, so that,
13 I think, stands to reason. I think, though, there is
14 some things here that maybe might have even sort of
15 indicated that, boy, maybe the obligations under these
16 manufacturing commitments, which, as I said, were
17 unspecified, would be very different than what was out
18 there, so there really wasn't a signal to what an
19 extraordinary deal this was.

20 It says "creating jobs." There would
21 be more than 16,000 Green Energy jobs. If I thought I
22 had to create 16,000 jobs, I might think that was very
23 costly. Well, what did we find out? Even later, in
24 the restated GEIA, I'm only responsible for 765, and I
25 don't even have to employ them.

1 The \$7 billion of renewable energy
2 generation investment, I don't think that number
3 actually appears in the final document. Later, it
4 says:

5 "These manufacturing
6 facilities will produce wind
7 turbine towers, wind blades,
8 solar converters, and solar
9 assembly, creating more than
10 1,440 manufacturing jobs."

11 [As read]

12 Well, that's very overstated over what
13 was, in fact, in the actual document.

14 So it doesn't seem to me there was a
15 whole lot of transparency here around what the deal
16 was, which I can imagine would have put off some
17 people thinking, "We could do this." You know, why
18 not take the alternative approach and have said,
19 "We're looking at deals, but when we sign them, can
20 somebody else top it?"

21 Q. You think that that's the
22 approach the government should take, that, when
23 somebody comes to a deal, what's fair is for
24 government to take that proposal and then see if
25 anybody else can beat it? Do you think that that

1 would get commercial deals done? That's your opinion?

2 A. Clearly, we had a deal here that
3 was developed in pretty considerable secrecy. I'm not
4 necessarily advocating you would have said, "Here's
5 where we are at each stage of the negotiation." Hold
6 it up. "Do you want it? Do you want it? Do you want
7 it?" But had you announced what roughly you were
8 looking for in terms of arrangement and put that out
9 there, I think you might have had considerable
10 competition, because there are other companies other
11 than Samsung who could have undertaken such an
12 activity, with pretty considerable experience in the
13 renewable energy sector. And what you did was you
14 came to an agreement with the first one who turned up.

15 Q. But to be clear -- and it is your
16 opinion; I think you've said this -- nothing prevented
17 any other company from coming to try to negotiate with
18 the government; correct?

19 A. I don't imagine that there was
20 any legal way that anyone could have been prevented
21 from coming to the government and saying, "Here is a
22 proposal."

23 Q. want to now move on to talking
24 about the reasons for the GEIA, and I think I didn't
25 ask a question on it, but you raised some of the same

1 comments you asked in your report just a second ago,
2 so I'd like to first understand the limits of what
3 your opinion is.

4 In paragraph 25 of your report, you
5 say that our you're going to analyze the argument that
6 the manufacturing obligations of the GEIA justified
7 differential treatment. I think you've said something
8 similar in your presentation this morning, that that's
9 what you did. Then at paragraph 26 --

10 A. Hold on. Can you just give me
11 one second?

12 Q. If you'd like to read it.

13 A. I just want to get to the right
14 page.

15 Q. The page for you is page 29.

16 A. Yeah, I know. I've got it now.
17 I just wasn't there at that moment.

18 Q. And at paragraph 26, you say in
19 your opinion:

20 "... if the GEIA imposed
21 costly burdens on the
22 Korean Consortium, superior
23 treatment could make economic
24 sense." [As read]

25 Do you see that?

1 A. Yes.

2 Q. But you would agree that, when
3 making decisions, government have to have other policy
4 considerations other than just economics; right?

5 A. Well, the economic costs and
6 benefits can include values for other policy
7 objectives. For example, I may make an economic
8 decision that affects the environment, and I might
9 have to include an economic cost for what my pollution
10 might entail. That doesn't completely take it outside
11 the realm of economics, of course; right? I would
12 want to consider that.

13 So from an economic analysis -- and
14 I'm doing an economic analysis of A and B -- then I am
15 making a comparison of were there very, very costly
16 burdens that were very different? Because we have
17 noticeably different treatment.

18 Q. But in paragraph 25, you're
19 analyzing the theory that the manufacturing
20 obligations of the Korean Consortium under the GEIA,
21 whether or not it's true, that that makes a supply of
22 wind energy under the GEIA fundamentally different
23 than the supply of wind energy under the FIT Program;
24 do you see that?

25 A. Yes. The broad thrust of what

1 I'm analyzing here is really the competitive
2 conditions between FIT components and GEIA components
3 -- sorry, GEIA competitors and FIT competitors. It's
4 getting to be a tongue-twister.

5 So one difference which was raised by
6 Canada, I believe, was that, well, the GEIA is so
7 different because it is this investment agreement that
8 has these manufacturing obligations, so to do an
9 economic analysis, I kind of want to have an economic
10 theory that I can test.

11 Q. Uh-hmm. So I want to, then,
12 understand because, in your scope of review, you do
13 list the witness statement of Sue Lo, the first
14 witness statement of Sue Lo, and you have been here
15 during the testimony. So I want to understand the
16 limit on what you were doing there, which is you have
17 heard the testimony that, in signing the GEIA, one of
18 the things the government saw as an advantage was
19 because they were uncertain as to how much interest
20 the program would actually generate; do you recall
21 that?

22 A. I recall that, but let's place
23 that in the right context. The GEIA is signed in
24 January 2010. I think we all agree that the first
25 round of FIT applications had happened by then. There

1 had been a very large number of FIT applications that
2 had happened by then; right? I believe that the quote
3 that was used the other day was -- maybe I didn't
4 quite get the quote exactly right, but a very large,
5 more than expected, unexpectedly high volume of FIT
6 applications that happened. It was a very large
7 quantity of megawatts that were being offered.

8 So before this was actually signed,
9 you kind of actually had a data point from the FIT
10 Program, which was that interest was really, really
11 high.

12 Q. Let me ask you a couple of
13 questions on that.

14 A. Okay.

15 Q. You would agree that's happening
16 in 2010, but you would also agree that the
17 negotiations with Samsung happened in 2008; correct?

18 A. I'm sorry. You said that's
19 happening in 2010?

20 Q. The signing was in 2010.

21 A. The signing was in 2010.

22 Q. The negotiations started in 2008.

23 A. Right, but, sorry, just to make
24 sure I understand your reference, but the actual FIT
25 applications started not in 2010.

1 Q. Right. The signing of the GEIA
2 was in 2008?

3 A. The signing of the GEIA was in
4 January 2010.

5 Q. And negotiations started in 2008,
6 and they went all the way up to 2010; correct? You're
7 aware of that?

8 A. Yes.

9 Q. You would also agree that, at
10 least in 2008 and 2009, there is a financial crisis
11 going on; correct?

12 A. There was indeed a financial
13 crisis.

14 Q. I think we can all agree on that.

15 A. I think we can all agree on that.

16 Q. And we can all agree that, during
17 that point, financing credit for large infrastructure
18 projects were difficult to obtain; correct?

19 A. I think you're making a very
20 broad statement there. Let's place this in the
21 context. First off, from 2008, really the kind of
22 financial crisis is really just then picking up wind.
23 Sorry, no pun intended. It really wasn't. It was
24 strengthened.

25 The summer of 2008 was a period of

1 extremely high energy prices around the world. You
2 may remember the summer of 2008 was the peak oil price
3 that we've ever seen, over \$145 a barrel. I think it
4 got to 147, 148.

5 As importantly for the context of the
6 particular industry we're talking about here, in the
7 summer of 2008, natural gas prices in North America,
8 really, really shot up, sky rocketed really, really
9 high. Now, when natural gas prices are high,
10 electricity market prices are high, in general, in
11 many markets because the marginal fuel for generating
12 electricity is natural gas. So power prices
13 throughout North America tended to go up. In many
14 cases went up a lot in that whole period. Remember,
15 this is before the Shell thing. This is a whole
16 different era in terms of gas supply in North America.

17 So in 2008, power prices being really,
18 really high. There was a really strong interest, to
19 my knowledge, in investing in the renewable energy
20 sector because the cost of conventional alternatives,
21 which in many markets are gas, fire, thermal power
22 plants, had shot up. In 2008, at least, there was a
23 tremendous amount of interest in -- and gas prices
24 were still relatively high in 2009, much higher than
25 now. So it's particularly in 2008 and into 2009.

1 There was still a lot of interest in the renewable
2 energy sector.

3 Q. But I think we've heard
4 Mr. Pickens testify that, by the summer of 2009, gas
5 prices had dropped and that financing for renewable
6 deals was becoming harder; correct?

7 A. By the summer of 2009, gas prices
8 had indeed dropped, and I think we had a combination
9 of some downturns in gas demand, and we had a lot of
10 supply coming into the market.

11 Q. Right.

12 A. And the gas market isn't really a
13 Canadian market or an American market. It's a pretty
14 integrated market, so those prices kind of follow each
15 other. It's really kind of a North American gas
16 market with little regional variations.

17 In the context of applications for
18 FIT, do think about kind of what's on offer here.
19 Yeah, there truly was a credit crisis and a financial
20 crisis. I spent most of those couple of years sitting
21 in front of a Bloomberg terminal, which is those
22 things you see for investments.

23 But in the FIT Program, you had a
24 pretty attractive set of deals here; right? Another
25 part of what happens in a financial crisis is you have

1 a decline in interest rates, and you were going to
2 offer a very attractive price in the FIT Program,
3 which I believe we've also heard, locked in for a very
4 considerable period of time in a country which, to my
5 memory, had actually one of the best -- Canada had one
6 of the best credit ratings around then. You were
7 actually doing pretty good. Compared to most of the
8 world, you were looking really sharp. Tied in at a
9 time when there is not many long-term investments
10 necessary to put money to work locked in, guaranteed
11 against a fixed and quite attractive price.

12 So certainly by 2009, we had FIT
13 applications, and people obviously perceived, despite
14 the recession, that they were going to be able to
15 raise finance to build wind farms, or at least some
16 fraction of them ought to have perceived that they
17 could raise finance to build wind farms, and I think
18 it was because, actually, you had a very attractive
19 investment vehicle in a sense of these PPAs, and it
20 sort of almost doesn't matter what I think or we
21 think. I mean, the market demonstrated that lots of
22 people were willing to turn out.

23 Q. Well, I guess I'm trying to
24 understand, because you say it doesn't matter what you
25 or I think, but you would agree that, in trying to

1 launch a Green Energy sector, it would matter what the
2 government thought about what their prospects were;
3 correct?

4 A. If the government launches a
5 government program, then what the government thinks is
6 obviously important.

7 Q. So when you hear the testimony of
8 Ms. Lo and Mr. Jennings saying that they weren't
9 certain people were going to show up to this program,
10 you have no reason to question that testimony; do you?

11 A. No. Other than, perhaps, before
12 they agreed to this, they could have opened their
13 eyes, but obviously I don't know what Ms. Lo was
14 thinking at that time.

15 Q. And so, essentially, I guess your
16 opinion that you are giving me here is that the
17 government should have had more confidence in the FIT
18 Program; correct? And, in your view, it didn't need
19 the Green Energy Investment Agreement; is that what
20 you're saying?

21 A. You know, that's not really the
22 conclusion I come to. My conclusion is really about,
23 again, the comparison of the competitors. I don't
24 really come to any conclusion, and I don't actually
25 analyze the economic costs and benefits of actually

1 either of these programs. You can look at all kinds
2 of costs and benefits; right? Environmental benefits,
3 right, for having Wind Energy? Could be; probably is.
4 Right?

5 So there are lots and lots of
6 different economic costs and benefits. I actually
7 don't analyze that. Remember, I'm kind of really
8 looking at: What are the competitive circumstances?
9 This is really the question I was tasked with. What
10 are the competitive circumstances of GEIA competitor,
11 the Korean Consortium, and the FIT competitors?

12 So I have not actually done an
13 analysis that says, "I think that this was a great
14 thing," or, "I don't think that this was a great
15 thing." It's not in here, because I haven't done it,
16 and I don't reach a conclusion on that.

17 MR. SPELLISCY: Right.

18 THE CHAIR: Mr. Spelliscy, are you
19 going to move to another area now? Because we have
20 been going over two hours now, so we should have a
21 break.

22 MR. SPELLISCY: We can have a break.
23 That's fine. Sure.

24 THE CHAIR: How much more time do you
25 think you will need?

1 MR. SPELLISCY: If they're long
2 answers, it's going to take a while.

3 THE CHAIR: Yes, I know.

4 MR. SPELLISCY: If they are shorter
5 answers, I only have a few more pages.

6 THE CHAIR: But there are pages.

7 MR. SPELLISCY: Yes, I'm not trying to
8 cut the witness off at all. If he wants to offer the
9 context, that's fine, but, I mean, we've had some
10 quite long answers --

11 THE CHAIR: Yes.

12 MR. SPELLISCY: -- and so it's taking
13 a little bit longer than I would have hoped. It's
14 hard to judge where we are going after this, but I'm
15 guessing I'm two-thirds of the way through.

16 THE CHAIR: That's an indication.
17 Thank you. Let's take ten minutes now and resume at
18 3:45. Is that fine? I should please ask you: You've
19 been here earlier during the hearing, so you know that
20 you should not speak to anyone during the break about
21 your testimony.

22 THE WITNESS: Yes, I will not speak to
23 anyone about my testimony.

24 THE CHAIR: Thank you.

25 --- Recess taken at 3.35 p.m.

1 --- Upon commencing at 3:55 p.m.

2 THE CHAIR: Are we ready to start
3 again? It seems like we are.

4 Mr. Adamson, you're ready.

5 Mr. Spelliscy, you are as well. All
6 right. Good.

7 BY MR. SPELLISCY:

8 Q. I'd like to turn now to some of
9 the benefits that you say were granted to the
10 Korean Consortium out of the GEIA, and I can
11 understand your opinion there. So let's turn to that
12 now.

13 We talked a few minutes ago about the
14 priority transmission access, and I think you
15 identified that as a benefit under the Green Energy
16 Investment Agreement; correct?

17 A. Yes.

18 Is this on? It had a green light.

19 THE CHAIR: Press the button.

20 THE WITNESS: Okay.

21 BY MR. SPELLISCY:

22 Q. Priority transmission access.

23 A. I'm sorry. With the button
24 thing -- can you just repeat the question again.

25 Q. Sure. You would agree -- your

1 opinion was that the priority transmission access was
2 one of the primary benefits under the Green Energy
3 Investment Agreement; correct?

4 A. Yes, it was a the ... one.

5 Q. Now, you understand that the
6 Korean Consortium did not get 2500-megawatts of
7 priority access immediately, did they? They got it in
8 five phases; right?

9 A. Yes. There were phases applied
10 to phases.

11 Q. And then in paragraph 93 you
12 acknowledge that -- of your report -- you acknowledge
13 that the Korean Consortium would only be granted the
14 access in later phases, Phases 2 through 5, if
15 a manufacturing partner was in operation; correct?

16 A. Yes.

17 Q. Now, I'm going to pause very
18 briefly here because you also note in your report that
19 this was not a precondition for Phase I priority
20 access projects, but you're aware that the
21 Phase I projects were in Haldimand County, Essex
22 Chatham-Kent; correct?

23 A. Yes, in that region.

24 Q. In that region; right. So that's
25 not the region where the claimants apply for projects;

1 correct?

2 A. I don't believe so. I'm not --
3 I won't opine too much on Ontario geography but
4 remembering a map --

5 Q. Right.

6 A. -- so...

7 Q. So you don't have an opinion,
8 then, on whether or not that initial Phase I access
9 actually impacted the claimants at all; is that your
10 testimony?

11 A. I don't know whether it did.
12 That would depend on the pattern of transmission
13 constraints and the network, which would require an
14 engineering analysis.

15 Q. Coming back, then, to phases 2
16 and beyond, where we just talked about the priority
17 access was dependent upon a manufacturing partner, and
18 so that I understand, and if you understand, in order
19 to get power purchase agreement under the Green Energy
20 Investment Agreement for a phase 2 project, the
21 Korean Consortium was required to be able to identify
22 a partner that was actually manufacturing wind
23 turbines or towers or solar, I guess, in Ontario at
24 the time; correct?

25 A. Right. Let me just flip back to

1 the GEIA.

2 Q. Sure. If you want to -- you can
3 use yours or it's at, in our book for the Tribunal, at
4 tab 17.

5 A. I'll use your book.

6 Q. Tab 17. It is Exhibit C-0322.

7 This is a Green Energy Investment
8 Agreement, the original one.

9 A. Okay. I'm there. Now...

10 Q. Section 7.4.

11 A. Section 7.4.

12 Q. It says --

13 A. Can you give me a second to read
14 the beginning?

15 Q. Sure.

16 A. Okay.

17 Q. So it says there that the
18 government of Ontario's undertaking in Article 7.3C,
19 that article says:

20 "To provide priority access
21 to the bulk transmission
22 system." [As read]

23 And then it goes back to 7.4:

24 "In respect of the priority
25 access for phases 2 to 5 is

1 conditional upon at least one
2 manufacturing partner during
3 the previous phase -- during
4 the previous phase commencing
5 manufacturing of
6 a component." [As read]

7 Correct?

8 A. Yes.

9 Q. So, in order to get a PPA,
10 a power purchase agreement for phase 2 project, in
11 order to get that -- they had to get the access first;
12 then they get the power purchase agreement; they had
13 to have at least one manufacturing partner to commence
14 manufacturing; correct?

15 A. Yes, as defined.

16 Q. As defined. And that wasn't
17 a requirement for FIT Program proponents to get power
18 purchase agreement, was it?

19 A. Those specific terms were not.

20 Q. So FIT proponents could get
21 a power purchase agreement with nobody manufacturing
22 in Ontario, even though later on they would have to
23 meet domestic content requirements; correct?

24 A. Can you say that again?

25 Q. FIT proponents could get a power

1 purchase agreement from the OPA, even if nobody was
2 manufacturing equipment in Ontario at that time that
3 they got the contract; correct?

4 A. A FIT proponent would have to
5 submit a domestic content plan and, in order to fulfil
6 it's PPA, would have to be able to demonstrate that it
7 had met the domestic content requirement.

8 Q. A domestic content plan, that
9 comes at the notice to proceed stage; were you aware
10 of that?

11 A. Yes.

12 Q. And that happened after the
13 contract has been issued; correct?

14 A. Yes.

15 Q. Okay. So FIT proponents could
16 get a contract for -- a FIT contract without having
17 anybody manufacturing capacity -- manufacturing
18 equipment in Ontario at the time of contract; correct?

19 A. That is possible, yes.

20 Q. That is possible.

21 A. Although I will note that people
22 were manufacturing components and that people were
23 planning to manufacture components for FIT projects.

24 Q. Right. But having an actual
25 person that you could designate or point to that

1 you -- that the Korean Consortium could point to, it
2 was only a condition upon the Korean Consortium
3 getting PPAs. It was not a condition upon FIT
4 proponents getting PPAs?

5 A. The "pointing to" component,
6 I think the actual word it uses is "identifies" --
7 "pointing to" is kind of the same idea, I suppose.
8 But that was specific -- that specific language was
9 specific to the GEIA, not to the FIT.

10 Q. And getting a FIT contract, that
11 allowed you to lock in your connection points to the
12 transmission system; correct?

13 A. Okay, that allowed you to...

14 Q. Basically you picked connection
15 points in your FIT contract; they were specified. You
16 then had -- assuming you could actually, technically,
17 but from the OPA's perspective, that got you those --
18 that transmission capacity on that connection-point;
19 correct?

20 A. At the time that -- by the time
21 you got to a contract award --

22 Q. A contract.

23 A. -- then you had a designated
24 connection-point. Kind of would have to.

25 Q. Right. So let me try and

1 understand something with you here. I want to come --
2 so in your report, and you talked about this, you
3 comment that the FIT contracts and the Green Energy
4 Investment Agreement PPAs were substantially the same.

5 And I think if we have tab 17 open
6 still, which is the Green Energy Investment Agreement,
7 we could turn to Section 9.1.

8 If you look about halfway down that
9 paragraph, on the right-hand side, there is a sentence
10 that starts -- it's just got the one word, "such."
11 And then it says:

12 "Such PPA shall be
13 substantially in the form of
14 the FIT contract and used by
15 the OPA at the time such
16 PPA..." [As read]

17 Do you see that?

18 A. I'm sorry. Could you give me
19 the --

20 Q. Section 9.1. Paragraph 9.1.

21 A. Oh, I'm sorry. No wonder I'm not
22 seeing "such."

23 Q. About halfway down on the right
24 side, there's the word "such," and that starts the
25 sentence I'm talking about there.

1 A. Okay.

2 Q. So it says -- so it actually --
3 you commented that they were substantially the same.
4 And you went through some analysis in your report to
5 be substantially the same. But the Green Energy
6 Investment Agreement itself requires them to be
7 substantially the same; correct?

8 A. Yes.

9 Q. Now then it goes on to say that
10 shall be:

11 "Substantially in the form of
12 a FIT contract... at the time
13 such PPA is being entered
14 into as amended to give
15 effect to the terms and
16 conditions." [As read]

17 But:

18 "At the time that such PPA is
19 being entered into." [As
20 read]

21 Do you see that?

22 A. Yeah.

23 Q. If you could continue to reading
24 the sentence.

25 A. Being entered into as amended to

1 give effect.

2 Q. Okay. So, in fact, what this
3 says is for the Korean Consortium PPAs, they will take
4 the form of whatever FIT contract is currently in
5 force at the time that those -- that the
6 Korean Consortium's PPAs are signed; correct?

7 A. Yes.

8 Q. Okay. Now, you understand that,
9 in fact, then, they're taking -- actually, I'll just
10 go down a little bit further. And it says:

11 "Subject to -- "

12 If you keep going down, right before
13 the enumerated sections there:

14 "Such agreement will be the
15 aggregate of, for wind, the
16 price specified in the
17 current price schedule." [As
18 read]

19 Do you see that?

20 A. Yes.

21 Q. So for Korean Consortium PPAs for
22 phase 2 and beyond --

23 A. Uh-hmm.

24 Q. -- they are going to be whatever
25 the FIT contract and whatever the price schedule is at

1 the time that they entered into those PPAs; correct?

2 A. Yes.

3 Q. Now, price digression, reduction
4 of prices in FIT programs, that is a standard part of
5 FIT Programs, isn't it?

6 A. Can you start again?

7 Q. Price digression or regression,
8 the price starts out high in a FIT program and then it
9 ends up in subsequent years --

10 A. Changes.

11 Q. -- it comes down; correct?

12 A. Yes.

13 Q. Okay. So the Korean Consortium
14 in here is accepting a risk -- they are committing to
15 a specific amount of development and accepting the
16 risk that their future PPAs might be at a lower price
17 than what they're getting in their first PPAs; right?

18 A. Yes, as FIT proponents would be
19 at the time of entering into FIT projects at the same
20 time.

21 Q. Right.

22 A. Because you're using the same
23 price schedule.

24 Q. Right. Now, of course, FIT
25 proponents at the time that they're applying, they

1 hadn't committed to a certain amount of capacity in
2 advance, had they? They commit to the capacity at the
3 time they're making their application; correct?

4 A. Yes.

5 Q. Now, you are aware that there was
6 to be a FIT review at least every two years; correct?

7 We can go to the clause in the FIT
8 Rules if you'd like.

9 A. Yes, there was a FIT review.
10 I can't remember what the exact original date was,
11 but, yes, every two years.

12 Q. And so that review would include
13 a review of the price schedule; right?

14 A. It could do.

15 Q. FIT Program is launched in
16 October of 2009; correct?

17 A. Yeah. Right.

18 Q. So two years later would be
19 October of 2011; correct?

20 A. Yes.

21 Q. Okay. So knowing that, you would
22 agree, then, that given what's in the GEIA about the
23 pricing they are going to receive, the
24 Korean Consortium would have had a significant
25 incentive to obtain their PPAs prior to that first FIT

1 review; correct? Because, otherwise, the prices are
2 going down, right?

3 A. Their prices could go down.

4 Q. Could go down?

5 A. Not clear that they had to go
6 down.

7 Q. True. But you would agree,
8 considering how FIT programs work around the world,
9 that they would have been incentivized at least to
10 get -- they know what the prices are when they signed.
11 They would have been incentivized to get their PPAs as
12 quickly as possible; right?

13 A. What if the prices went up?
14 Prices could go up.

15 Q. Is it your experience with FIT
16 programs around the world that prices go up?

17 A. They could have. There was --
18 I mean, it was to be set against a -- against
19 a target. I'm not saying that they necessarily do,
20 but they could do.

21 Q. Do you have experience with FIT
22 Programs around the world and how they operate?

23 A. I have some knowledge of the
24 German one --

25 Q. Okay.

1 A. -- of the German FIT program.
2 They are -- which now is under pressure because the --
3 because the rate impacts are very high.

4 Kind of a -- I mean, there have been
5 some FIT-like programs, but there haven't been that
6 many that I think one could do like a real analysis of
7 them, but remember that the FIT review process was
8 designed to continue the incentive to invest.

9 Q. In terms of the FIT review
10 process, is it your testimony that your understanding
11 was that there was no mention of the prices
12 potentially going down as part of that process?

13 A. No. The prices could go down.

14 Q. So --

15 A. But if you were going to continue
16 a FIT program, my only comment was that the prices had
17 to reflect changing expectations of what it would cost
18 to bring in new renewable capacity.

19 Q. But you would agree with me that
20 if you are the Korean Consortium, when you signed the
21 GEIA you've got this clause in that says your prices
22 will match the current FIT contract with the risk, the
23 risk that price will go down, you would be
24 incentivized to try and get your PPAs as soon as
25 possible, would you not?

1 A. If you thought that the prices
2 were definitely going to go down, yes.

3 Q. And in that sense because for
4 phases 2 through 5 they needed to have at least one
5 manufacturing partner operating to get those PPAs, you
6 would agree, then, that they were incentivized through
7 the GEIA to bring in or to be able to identify that
8 manufacturer prior to 2011; correct?

9 A. If you thought that -- if you
10 thought that was a primary risk, that may be the case.

11 Q. And, in fact, Samsung is able to
12 identify Siemens as a partner in Ontario in 2010;
13 correct?

14 A. Do you want to take me to
15 a document?

16 Q. Sure. If you to go tab 22 in the
17 binder. It is Exhibit C-0594. It appears to be
18 a press release. It says, "Siemens" from the Board of
19 the Business and Trade Press. It's entitled, "Siemens
20 Selects Tillsonburg, Ontario, As New Home for Canadian
21 Wind Turbine Blade." It's dated in Tillsonburg,
22 Ontario, on December 2nd, 2010.

23 And you will see in that first
24 paragraph --

25 A. Ah, good.

1 Q. -- it talks about it being the
2 company's first manufacturing plant in Canada, how it
3 represents an investment in excess of \$20 million.

4 Then in the second paragraph -- and it
5 is expected to create 300 jobs, an additional 600
6 related jobs for construction and commissioning.

7 And the second paragraph there, that
8 says:

9 "This new manufacturing
10 facility in Tillsonburg is
11 intended to allow Siemens to
12 help Samsung and Pattern
13 Energy meet their
14 contractual...commitments."

15 [As read]

16 Do you see that?

17 A. Yes.

18 Q. So in December of 2010, Siemens
19 comes in to make its first investment into Canada, it
20 says, in order to help Samsung and Pattern Energy meet
21 their commitments; correct?

22 A. Yes, but can you scan down
23 further? I mean, I can read it out, but it is very
24 hard to see.

25 Go down a little.

1 In the last paragraph, according to
2 Bill Smith, senior vice-president, energy sector,
3 Siemens:

4 "We're extremely pleased that
5 we are opening our first
6 Canadian facility in Ontario.
7 Through its Green Energy Act
8 and the associated
9 Feed-in Tariff program,
10 Ontario has become one of the
11 most supportive provinces of
12 wind and other renewable
13 forms of energy and solar."

14 [As read]

15 I take that to also mean that they
16 were probably looking to fit demand for their
17 products, as well.

18 And, in fact, I understand from other
19 trade press articles that they had been looking at
20 facilities in Ontario before the GEIA was signed.
21 They had been trying to site a facility in Ontario
22 before the GEIA was signed.

23 Now, they picked Tillsonburg in
24 December 2010.

25 Q. But you were here. You heard the

1 testimony of Ms. Lo and Mr. Jennings. Having
2 an anchor tenant like Samsung, which would allow the
3 FIT manufacturers to benefit from the manufacturing as
4 well. That was one of the point of the GEIA; wasn't
5 it?

6 A. That was her character --
7 I believe that was Ms. Lo's characterisation of the
8 program. She -- but, I mean, that, in itself, is not
9 in the GEIA, that it's "an anchor tenant."

10 I don't remember that. I don't
11 remember the word "anchor tenant" being used in the
12 GEIA.

13 Q. Fair enough. But you understand
14 that the government has -- the testimony has been that
15 that's one of the reasons, for exactly the reason
16 that's being talked about here. And you would also
17 agree, would you not, that they say here they're
18 coming to help Samsung; correct?

19 A. Can you put that back up,
20 actually?

21 Q. Sure. We can put that back up,
22 please.

23 A. Sorry. We lost it a little -- we
24 lost it a little early.

25 Q. It's the second -- after all the

1 explanation about the jobs and the investment in
2 Ontario, it's the second paragraph; it's the first
3 sentence:

4 "It's intended to allow
5 Siemens to help Samsung and
6 Pattern Energy meet their
7 contractual requirements."

8 [As read]

9 Do you see that?

10 A. (Reading):

11 "It is intended to allow
12 Siemens to help Samsung and
13 Pattern Energy meet their
14 contractual requirements."

15 [As read]

16 Right?

17 And then later, further back down...

18 Q. Yes.

19 A. We talk about -- they talk
20 about -- Siemens talks about, through its associated
21 Feed-in Tariff program, Ontario has already become one
22 of the most supportive provinces of wind and other
23 renewable forms of energy, such as solar.

24 And now I just -- we combine that with
25 the fact that they announce this in December. The

1 GEIA wasn't even signed until January.

2 Q. No. This is December of 2010.

3 The GEIA was signed in January of 2010, a year
4 earlier.

5 A. Yes. December. Sorry. I wasn't
6 complete in my reference.

7 It was signed in December 2010.

8 Q. Yes.

9 A. The GEIA was signed in January.

10 Q. 2010?

11 A. 2010. So we've got approximately
12 10 months, 11 months. Right.

13 But that Siemens had been looking to
14 site a facility for wind turbine blade manufacturing
15 before the GEIA was signed.

16 Q. But they didn't site it until
17 after the GEIA was signed; correct? And they sited it
18 specifically in reference to Samsung and Pattern
19 Energy; right?

20 A. I don't -- well, it says the site
21 was selected for a number of reasons, such as
22 excellent access to major highways and wide roads to
23 transport the blades, which are very long -- we know
24 that; right? -- in addition to close proximity to the
25 market.

1 You see, from this, they already
2 referenced the Feed-in Tariff program. I would say
3 the market could be more than just Samsung.

4 They didn't necessarily say they were
5 building it only for Samsung. They were building
6 a facility to serve the demand for wind turbine
7 blades, which is also FIT.

8 Q. But you understand, Mr. Adamson,
9 that one of the goals that the government's
10 procurement initiatives here were to encourage job
11 growth and investment as quickly as possible; correct?

12 Correct?

13 A. Sorry, can you repeat?

14 Q. We've heard the testimony.
15 You've been here hearing it, and you've seen it;
16 you've seen it in the witness statements, that one of
17 the goals of Ontario in these initiatives is to create
18 jobs and encourage investment quickly; correct?

19 A. That was the stated goal.

20 Q. Okay. And Siemens is saying
21 they've come in, in 2010 to help Samsung. Then they
22 talk about the FIT Program; correct?

23 A. Well, they talk about the FIT
24 Program in the same -- in the same thing. But the
25 same gentlemen -- again, we lost that piece of

1 paper --

2 MR. SPELLISCY: Put that back up,
3 please. Keep it up for now.

4 THE WITNESS: -- had previously said
5 they were trying to site a facility for two years
6 before picking the Tillsonburg site. I guess I would
7 raise the question of why were they trying to site
8 a facility that was designed only to help Samsung
9 when, at that time, there was no Samsung agreement?

10 THE CHAIR: Excuse me. Could I just
11 ask for a clarification? Where does it say two years?

12 THE WITNESS: That's actually in
13 a different interview.

14 THE CHAIR: Because here it does not
15 say two years.

16 THE WITNESS: No, it does not in
17 this --

18 THE CHAIR: Here it says:

19 "Tillsonburg was the best
20 selection from among a number
21 of sites Siemens considered
22 since first making the
23 announcement to open
24 a Canadian operation in
25 August of 2010." [As read]

1 Which is after the signature of the
2 GEIA.

3 THE WITNESS: (Reading):
4 "First making the
5 announcement to open
6 a Canadian operation..." [As
7 read]

8 THE CHAIR: Yes.

9 THE WITNESS: And I agree that that
10 seems to be when the announcement was made. I just
11 note that they seem to have been trying to site
12 a facility well before that and well before January of
13 2010.

14 THE CHAIR: Fine, but that is
15 certainly not to be seen from this press release,
16 which says:

17 "The sites Siemens considered
18 since August of 2010." [As
19 read]

20 Or am I misreading?

21 THE WITNESS: (Reading):
22 "Tillsonburg was the best
23 selection from a site
24 considered since first making
25 the announcement." [As read]

1 No. You're reading that correctly.

2 I read another...

3 THE CHAIR: You have another source?

4 THE WITNESS: Quoting something that
5 was just on the web saying that they had been looking
6 for two years to site this.

7 THE CHAIR: Okay.

8 BY MR. SPELLISCY:

9 Q. And so you --

10 A. And it's kind of interesting, in
11 a way, that what did Samsung do? Which was trying to
12 make wind turbines, but ended up signing a deal with
13 Siemens, which is a competitor in the global market
14 for making renewable energy equipment.

15 Q. In your opinion, you reference --
16 you say "demand" -- in paragraph 41 of your opinion,
17 you talk about plans for people to come -- other
18 manufacturing is what you mentioned.

19 You say:

20 "Demands with even larger FIT
21 components has directly
22 stimulated new
23 manufacturing." [As read]

24 A. Uh-hmm.

25 Q. Now, in paragraph 42, you then go

1 and talk about some actual, I think, wind power, rotor
2 blades, turbines. Anything you cite there is from
3 2012; correct?

4 A. The wind power things I quote in
5 paragraph 42 are, in fact, from 2012.

6 The one in 2011 with Canadian Solar
7 about -- was actually made in October 2009, and that
8 was prior to the GEIA.

9 Q. Right. But for wind, there was
10 nobody until 2012 in the FIT Program; correct?

11 A. Well, these are ones I found that
12 I could tie to dates, so I won't say that all these
13 people didn't have plans. These are the ones that
14 I happened to come across basically in the trade press
15 that had dates.

16 Q. So you looked, and you couldn't
17 find anything earlier than 2012, then; correct?

18 A. Well, the solar one was in 2009.

19 Q. Right. And I'm asking about the
20 wind.

21 A. About the wind?

22 Q. The wind turbines.

23 A. Okay.

24 Q. And so the wind -- you looked in
25 the trade press, you said. And the wind turbine

1 manufacturing you were able to identify coming to
2 Ontario for the FIT Program was in 2012; correct?

3 A. I looked some; but, I mean, there
4 is not an exclusive -- there is not an exhaustive
5 catalogue of these types of announcements. So
6 I won't -- I -- you know, I can't say that I or
7 someone working for me found every one.

8 Q. The examples you provide on the
9 wind turbine, that is about two years after Siemens
10 comes to Ontario and invests the money that we just
11 saw earlier related to what it said, its desire to
12 help Samsung; correct?

13 A. Again, we lost that. Remember,
14 what they're actually saying in this...

15 Q. I'm just asking about the timing,
16 I guess. We've had you read the document several
17 times. But you could do it again if you'd like.
18 We've read the document. It says, Help Samsung. It
19 says, FIT proponents below.

20 I'm guess I'm just asking you about --
21 that's about two years before any of the other
22 projects that you were able to identify in your report
23 that came, what you say, solely for the FIT Program?

24 A. Sorry. There is something in the
25 text, which I think it may be irrelevant.

1 Q. Is it relevant to my question or
2 something else?

3 THE CHAIR: Is it something that we
4 have not yet seen in the text?

5 THE WITNESS: Well, yes. It is really
6 about the question about the timing. You are saying
7 that Siemens was making -- was announcing their site
8 selection; right?

9 Okay, and they, you know, had a site
10 selection process, and they make the announcement.
11 I don't remember that document saying that the timing
12 of when the actual investment would occur, and that's
13 why I was asking.

14 MR. MULLINS: Madam Chair, is it just
15 possible that counsel could give a copy of the
16 document to the witness so can he testify?

17 MR. SPELLISCY: He has a copy.

18 THE WITNESS: I have it.

19 MR. MULLINS: Okay.

20 THE WITNESS: It's just -- it's just
21 extremely hard to read --

22 MR. MULLINS: Oh, I see.

23 THE WITNESS: -- because it's very,
24 very tiny.

25 BY MR. SPELLISCY:

1 Q. That's why we're putting it up on
2 the screen.

3 A. Okay. Hold on. Give me one
4 second.

5 THE CHAIR: So we are still on tab 22?

6 MR. MULLINS: Yes.

7 THE CHAIR: Yes.

8 MR. APPLETON: Perhaps, Mr. Spelliscy,
9 we could have it copied here and they could make it
10 larger and it could be seen?

11 MR. SPELLISCY: It's probably not
12 going to work because it is a full page of text, but
13 I'm sure we can manage with this?

14 THE WITNESS: Just back up one more
15 point. Again. Again.

16 It says:

17 "The blade factory will be
18 established and represents
19 an investment." [As read]

20 I agree. And they make the
21 announcement of the -- that they made the site.

22 But your comments -- your statement,
23 however, was around the investment, and I don't think
24 it actually gives the exact timing of an investment.

25 BY MR. SPELLISCY:

1 Q. You're not aware of when that --
2 are you aware that this manufacturing facility is
3 operating now?

4 A. Yes, I believe it is, but it's
5 now 2014.

6 Q. You have no knowledge of when it
7 actually became operational; is what you're saying
8 because you don't change order --

9 (Simultaneous speakers - unclear)

10 A. I don't know exactly when they
11 first started production.

12 Q. Let me ask you something else,
13 I think along relatively the same lines, which is in
14 your report, you note that Samsung has announced four
15 manufacturing partners in Ontario for wind and for
16 solar projects; correct?

17 A. Yes, do you want to take me to
18 the paragraph number, please?

19 Q. Sure. Paragraph 40 of these
20 reports.

21 A. Yes.

22 Q. Now, you said something during
23 your opening remarks today that there's only one, that
24 you know of, only one Korean Consortium project that
25 is currently operating in Ontario; correct?

1 A. One of the wind farm projects.

2 Q. One of the wind farm projects.

3 Are you aware of other
4 Korean Consortium projects operating in Ontario?

5 A. Of the wind farm projects?

6 Q. Right.

7 A. No. As far as I know, they are
8 not operating. The Samsung renewable energy website
9 doesn't state they're operating as far as I know.

10 Q. So Samsung has been able to bring
11 four manufacturing plants to Ontario to identify four
12 partners, people who have partnered with Samsung, even
13 though it only has right now one operating wind farm;
14 correct?

15 A. It has announced its designation
16 of the four manufacturing partners, which, as
17 I indicate, really indicate -- indicates that they've
18 been indicated.

19 Q. But you would agree that from
20 a government's perspective as to what they're looking
21 to accomplish -- you say they've been indicated. You
22 would agree that jobs are jobs for government,
23 regardless of who creates them; correct?

24 A. Well, I guess the same job may be
25 a job as far as the government.

1 Q. Sure.

2 A. But that's not really -- that's
3 not really the tenor of the conclusion. Right?

4 The tenor of the conclusion isn't,
5 would there be jobs, because we know there will be
6 jobs from -- from building things. Right?

7 I mean, to me, at least -- and I've
8 tried to lay this out. But it sort of stands to
9 reason, you were going to build a lot of wind farms.
10 We'll just stick with the wind farm part.

11 You are going to build a lot of wind
12 farms. That was going to require equipment which
13 isn't just lying around. Someone has to make it.
14 Making it was, we're going to require employees;
15 that's jobs.

16 So, if there's demand for equipment,
17 there is -- and with domestic content or other
18 requirements that it be Ontario, there would have to
19 be demand for equipment in Ontario; and that would
20 drive employment.

21 Now, what -- so those two things, to
22 me, seem to be floating the same -- going the same
23 way, FIT and GEIA. We're going to add demand for
24 a lot of wind farm construction, and that was going to
25 create demand for equipment. It had to be

1 Ontario-based, and that was going to drive jobs.

2 Now, what's kind of interesting,
3 another feature that's kind of interesting to me, as
4 you say, the GEIA had a -- had a job objective, which
5 I -- which I think -- which I think is, you know,
6 an announced job objective, which I think is true, and
7 that the government wanted to create jobs, which I'm
8 sure is true, but the FIT Program was creating many,
9 many jobs, many more jobs, many more jobs by the
10 statement of the OPA.

11 And by the -- in the OPA -- and I will
12 take you to the document so that I can make sure that
13 it's quoted correctly.

14 I'm sorry. I seem to have lost my...

15 The OPA and its two-year review of the
16 FIT program -- and I'm still just trying to find the
17 tab.

18 There we go. Tab 18 of the blue
19 binder. that's C-0609, I believe, direct and indirect
20 jobs. And this actually a Ministry document, not
21 an OPA document. This is the Feed-in Tariff program
22 two-year review report. And it says "Direct and
23 Indirect Jobs."

24 "The FIT Program has
25 contributed to Ontario's

1 manufacturing base. Since
2 2009, it is estimated that
3 the program has created
4 almost 2,000 direct
5 manufacturing jobs." [As
6 read]

7 Q. So the FIT Program was a success?

8 A. The FIT Program was a success,
9 yes.

10 Q. Yes.

11 A. And it created jobs by the
12 Ministry's own analysis.

13 Q. Right. It's own analysis two
14 years later; right? Actually, slightly more than two
15 years later; correct?

16 Isn't it a relevant question what the
17 Ministry would have thought when it was signing the
18 GEIA, not what it learned later about the success of
19 the FIT Program? Don't you agree with that?

20 A. What the Ministry thought and
21 what they privately thought and what the Minister
22 thought, I simply can't say.

23 Q. So --

24 A. What we have is evidence that
25 both created jobs. Both were designed to create jobs.

1 And they created jobs for the very obvious mechanism
2 that both required demand for equipment.

3 Q. But you would agree with me that
4 the only entity that had an obligation under
5 a contract to be able to identify manufacturing
6 partners, in order to get its contracts, was the
7 Korean Consortium. I think you already agreed with me
8 on that.

9 A. Right. But I also identified
10 what that actually included, and the very low
11 threshold of what that actually included. What did
12 that mean under the GEIA?

13 I'm sure you're aware of it, so
14 I don't know that we need to actually go back here.
15 You had to identify manufacturing partners. They had
16 to be people who manufactured. You had to identify
17 them.

18 You did not have to say that -- prove
19 that they were new jobs. You wouldn't have to prove
20 that they were jobs that would not have existed anyway
21 for any other reason; you had a commitment to identify
22 manufacturing plans.

23 Q. Now, I want to understand the
24 limits of that because you said this morning that you
25 reviewed the amended and restated GEIA.

1 A. Right.

2 Q. But I just wanted to ask
3 a question about your report here.

4 A. Uh-hmm.

5 Q. Your report analyzes the
6 manufacturing commitments in the original GEIA and
7 that's it; correct?

8 A. No. I referred to the amended
9 GEIA as well, and I state that it added the job
10 reporting requirement.

11 Q. But you don't analyze the
12 sections of the amended and restated GEIA, do you?
13 You analyze the sections of the original GEIA with the
14 manufacturing provisions; right?

15 A. Well, remember, most of the
16 definitions here are pretty -- are the same, so
17 I actually did; right?

18 What's the definition of
19 a manufacturing partner? Okay? What did you have to
20 do to identify a manufacturing partner?

21 I did review those things, and
22 I referred to the amended and restated GEIA, which is
23 now the 2013 version, in my report.

24 Q. I understand you referred to it.
25 I saw it in a footnote. My question was -- and in

1 a paragraph, paragraph 95, I believe.

2 My question is: In analyzing the
3 economic development adder, did you analyze it as it
4 was stated in the amended and restated GEIA with the
5 conditions therein?

6 A. Yes. I'm able to analyze that
7 too. Obviously, I mean, the document changed between
8 the versions. But it did not change my fundamental
9 opinion around the competitive circumstances.

10 And as I -- as I had stated early on,
11 the original GEIA was the GEIA in place for
12 a considerable period of time. But even after -- even
13 with the restated and amended -- amended and restated
14 GEIA, right, many of the same characteristics still
15 hold.

16 Q. I'm not sure I'm understanding.
17 If many of the same characteristics still hold and you
18 were recognizing that there was an amended and
19 restated GEIA, but you didn't analyze the actual
20 amended and restated GEIA, you just looked at -- you
21 looked at and thought, I don't think it changed, and
22 so you decided to just discuss the original GEIA?

23 A. Well, the explanation of the
24 designation terms, are -- are pretty much the same.
25 So -- and that was the one I started with, so that's

1 the one I -- I didn't want to go back and repeat -- as
2 I said, I didn't want to go back and repeat the entire
3 thing?

4 But the amended and restated GEIA has
5 really pretty much the characteristics, in my opinion,
6 of the original. It's -- it's just plainly there.

7 Q. Now, I just want to clarify one
8 thing because you said, I didn't want to go back and
9 re-do. But the amended and restated GEIA, that was
10 public before you began writing your opinion in this
11 case; correct?

12 A. The -- sorry. Can you just
13 repeat that?

14 Q. Well, you said you didn't want to
15 go back, so I want to understand why you would have
16 had to go back. I mean, the amended and restated
17 Green Energy Investment Agreement was out there and
18 available prior to your starting to write your opinion
19 in this case?

20 A. Yes, and I reviewed both at the
21 time, as I -- as we stated early on.

22 What I didn't -- when I said I didn't
23 want to go back, I didn't want to go back and say,
24 "I amended" -- go back in text and say, "I analyzed
25 this term. I analyzed these provisions," and then go

1 back and repeat all of that with the -- basically the
2 same provisions to the amended and restated GEIA,
3 because they were kind of the same provisions.

4 I mean, when I said I didn't want to
5 go back, it's not that I hadn't reviewed it the first
6 time; it is just that I didn't want to go back and
7 repeat all the text, which would have made the report
8 very hard to read, because the analysis of those
9 provisions in the GEIA and the amended and restated
10 GEIA is very parallel. It would have been a very
11 repetitive report, I would think.

12 Q. I guess I just don't understand
13 why you wouldn't have just looked at the amended and
14 restated GEIA, which was the one in force at the time
15 you were writing your report.

16 A. Well, because it was also my
17 understanding of what -- that it was also important of
18 not just what had happened in 2013; right? I believe
19 it was actually after the arbitration had already
20 commenced, considerably after, and after there had
21 already been a big stink.

22 But, also, what was the GEIA and, in
23 fact, during the critical periods, time. And that was
24 the amended one. And then I -- but I've looked at
25 both. And I said -- I -- I noted that -- that there

1 were those changes, but that I didn't think that
2 they -- they did not change my conclusion.

3 Q. Right.

4 A. I mean, I guess I could have
5 photocopied all those sections or cut and paste and
6 repeated it all with amended and restated GEIA each
7 time, but that would have been rather duplicative.

8 Q. But you do understand that the --
9 or do you understand that the economic development
10 adder which you analyzed in your report, that it
11 hadn't been paid at the time that the amended and
12 restated Green Energy Investment Agreement was signed?
13 You understand that; right?

14 A. In 2013?

15 Q. In 2013.

16 A. No, I don't believe anything
17 had -- there was -- there was nothing to have been
18 paid.

19 Q. Right. And so, in fact, you've
20 got -- I just want to understand why this is in your
21 report. You analyze the terms and conditions that
22 would apply to allow the economic development adder to
23 be paid in an agreement -- the original GEIA that is
24 no longer in force.

25 And I want to understand why you

1 considered that an appropriate approach as opposed to
2 just looking at the amended and restated GEIA, which
3 would be the one which you would have understood that
4 the EDA would have been paid under.

5 A. What the one -- I think we're
6 somewhat going in circles.

7 My understanding is that the original
8 GEIA, the January 2010 GEIA, was the one that was in
9 force at that time and the one that followed from the
10 negotiations that had started as early as 2008.

11 2009 was a pretty important period in
12 the market; right? Negotiations are leading up to the
13 GEIA, launching of the FIT Program; right?

14 That original GEIA, which was at the
15 time when many things are happening in the FIT Program
16 as well, was in force, all the way until there was
17 an amending agreement, which changed something,
18 some -- swapped out some terms. And then in 2013, you
19 now have a new public amended and restated GEIA.

20 So my understanding is that was the
21 agreement in play during the -- a considerable period
22 of time and a pretty considerable period of time of
23 importance to what we're talking about here, which
24 isn't only now, but was also about then.

25 Q. I understand that. I guess

1 I'm -- you've got, I think, an analysis in your report
2 of the economic development adder from an agreement
3 which you understood had been superseded before the
4 economic development adder had been paid; is that
5 accurate?

6 A. Well, but I also had an analysis
7 of all other -- lots of other aspects of the original
8 GEIA, not just the -- not just the economic
9 development adder.

10 I noted that the economic development
11 adder was later capped down to \$110 million NPV
12 instead of the -- well, actually there wasn't a cap on
13 the original one; there was only the Ministerial
14 statement that said it was a net present value of
15 \$437 million. But that number didn't actually --
16 wasn't actually in there as a cap.

17 But I did note in my report that there
18 actually was a cap now in place in the amended and
19 restated GEIA, down to \$110 million.

20 Q. Which is a cap, but this terms of
21 how the EDA would actually be calculated and paid and
22 what the conditions for it were, which are in the
23 amended and restated GEIA, you never analyzed that?
24 Or you believed they were just the same?

25 A. I don't believe they're entirely

1 the same because, clearly, the dates shifted. Why
2 don't we -- why don't we go do that?

3 Q. I'm loathe to spend more time on
4 it, I guess. I think we're getting relatively late
5 here. So let's -- I've got two small topics to ask
6 you about.

7 You talk about the advantage of - in
8 Section 7.3A of your report, you mention that the --
9 one of the advantages of the GEIA was that it -- there
10 was a facilitation for it obtaining the necessary
11 regulatory approvals and permits; paragraphs 97 to
12 100, I think.

13 A. 97 through 100?

14 Q. 97 through 100. And you've got
15 a heading called -- actually, it's 7.3C, I believe:

16 "Access to governmental
17 resources just to surmount
18 regulatory and citing
19 purposes." [As read]

20 Do you see that?

21 A. Yes.

22 Q. But I just want to clarify one
23 thing here. You did not actually do any analysis of
24 whether, in fact, the Korean Consortium's projects
25 under the GEIA have been delayed or have run into

1 regulatory hurdles. You are just looking at the text
2 of the GEIA here; correct?

3 A. At that time I had not -- at that
4 point, I -- as I state here -- I'm looking at the
5 GEIA. As we now know, the Korean Consortium
6 projects -- or we heard from Ms. Lo, they have been
7 delayed.

8 Q. Faced hurdles?

9 A. Faced hurdles, which are some --
10 which I believe she stated were due to the
11 environmental assessment points.

12 I mean, this analysis is based on the
13 text. I mean, we now have heard that the GEIA wind
14 farm projects, I believe is what she specifically
15 referred to, have been delayed.

16 I note, actually, that there's more
17 FIT wind farm projects -- there's more greater
18 capacity of FIT wind farm projects actually in
19 commercial operation by a large margin right now in
20 Ontario than there are GEIA projects, despite --
21 despite the priority access. So FIT actually kind of
22 made it to market first, despite not having a
23 consortium.

24 Q. So you would agree, then, that it
25 turned out that this -- whatever this was, didn't turn

1 out to the benefit of the Korean Consortium or didn't
2 benefit them in a way that you say that it was
3 intended to?

4 A. Well, we don't know that because
5 we don't -- we don't know what would have happened
6 otherwise. I mean, we don't know what the
7 counter-factual case for the Korean Consortium would
8 have been without this help, right, so ...

9 Q. One last topic, everyone will be
10 thankful to hear. You have a section right at the
11 very end, almost the very end: "Flexibility and
12 adjusting target generation capacity," Section 7.D.
13 It starts at paragraph 101.

14 I'd like to understand your opinion
15 here because this is -- this is something that plays
16 into other aspects. You say in paragraph 103 of your
17 report:

18 "Article 3.4 of the GEIA
19 allowed." [As read]

20 What you say is 10 per cent
21 flexibility, and you say in the first paragraph:

22 "In project capacity."

23 Do you see that?

24 A. Can you -- I'm sorry.

25 Can you give me the -- I must have ...

1 Q. Paragraph 103.

2 A. 103. I'm sorry. I heard the --

3 I heard the wrong paragraph.

4 Q. Sure.

5 A. Okay.

6 Q. And you say that the GEIA gave

7 them a 10 per cent flexibility in "project capacity."

8 Do you see that?

9 A. In 102 or -- in 102 or 103?

10 Sorry. Just which one?

11 Q. In 103 --

12 A. 103.

13 Q. -- in the very first line of 103.

14 A. Yes. Okay. 103.

15 Q. You say:

16 "The ability to invoke the

17 10 per cent flexibility in

18 project capacity." [As read]

19 A. Uh-hmm.

20 Q. (Reading):

21 "Was a unilateral right

22 provided solely to the

23 Korean Consortium." [As

24 read]

25 Do you see that?

1 A. Yes.

2 Q. Now, let's go to our GEIA and
3 look there because you don't quote the actual
4 Section here. So it's at tab 17 again. It is
5 Exhibit C-0322, Article 3.4.

6 A. Sorry. You said tab 17?

7 Q. Yes.

8 A. I'm going to use your...

9 Q. If you'll follow at 3.4, it says
10 in the first line that:

11 "The Korean Consortium may
12 adjust the targeted
13 generation capacity for each
14 phase." [As read]

15 Correct?

16 Of the project, each phase; right?

17 A. Yes.

18 Q. And then at the end of the
19 paragraph, it says that:

20 "Such adjustments are..."

21 At the very end:

22 "... subject to targeted
23 generating capacity of
24 2500-megawatts overall for
25 the project." [As read]

1 Right?

2 A. Yes.

3 Q. So, in fact, this capacity
4 expansion option that you talk about here, it doesn't
5 allow the Korean Consortium to increase the overall
6 size of its project, does it?

7 A. Let me just read this one time
8 through.

9 Can you just --

10 Q. This doesn't allow them to
11 increase the generation capacity of their project by
12 10 per cent, does it?

13 A. Well, it allows them to adjust --
14 adjust the phases.

15 Q. Right, but they still have only
16 2500 megawatts of generation overall for the project;
17 correct?

18 A. It is a very complicated -- it is
19 very complicated wording, and I won't offer a legal
20 opinion on it. But it does say:

21 "Subject to a targeted
22 generation capacity of
23 2500-megawatts overall for
24 the project." [As read]

25 Q. I want to understand this, just

1 to compare, because you conclude, you say, "This
2 wasn't available to FIT proponents." But you are
3 aware that in each phase the Korean Consortium was
4 limited up to 500 megawatts of transmission capacity;
5 correct?

6 A. The Korean Consortium was limited
7 to 500 megawatts of, I believe, what's called priority
8 access.

9 Q. Transmission?

10 A. Transmission capacity.

11 Q. So...

12 A. That may not -- sorry. Go ahead.

13 Q. Right. So, in terms of getting
14 that priority access, FIT applicants, on the other
15 hand, they could develop their projects to be as big
16 as they wanted, couldn't they? They could do multiple
17 projects for more than 500 megawatts if they wanted;
18 correct?

19 A. They could make bigger projects;
20 but then, again, they don't have the priority and
21 guaranteed transmission access, which makes -- what
22 really makes those projects viable.

23 Q. When you say "viable," you are
24 aware that lots of developers got awarded FIT
25 contracts without priority transmission access? I'm

1 not sure what you mean meant by --

2 A. Yeah, but, I mean, it may -- the
3 lack of transmission access may prevent projects from
4 just growing without -- individual projects from
5 growing without limit.

6 Q. But there was no maximum size
7 capacity for FIT proponents was there?

8 A. I'm not aware of one.

9 Q. So then, unlike the
10 Korean Consortium, which had 500 megawatts of reserved
11 capacity, FIT proponents could just bid for whatever
12 their optimal size of their project, how many
13 megawatts they could feel they could fit on their
14 land, assuming they could get -- and assuming they
15 could get access; correct?

16 A. Assuming they could get
17 transmission access. Remember the constraint on
18 the -- the constraint on the basic design of the FIT
19 Program is, you set a price and then it's a question
20 of getting -- it's a question of getting quantities
21 into it; right? And the quantities were really set by
22 the transmission availability; right?

23 Q. I'm just trying to understand
24 because you've given a comment about value of this
25 capacity for each phase. And so let me ask you this

1 question: So if a FIT proponent decided at the time
2 that it had a 400-megawatt project and it wanted to
3 put in 440-megawatt application, it could have done so
4 at the time, correct, if that's what it felt was in
5 its interest, right?

6 A. Yes, but I don't believe it could
7 have, having already made an application of just
8 what -- its capacity.

9 Q. But it could have put in another
10 application; right?

11 A. It could have put in another
12 application, but that might -- that would probably
13 very likely have a different time stamp. A different
14 time stamp helps drives -- drives you around
15 transmission access.

16 Q. But there was no cap on what FIT
17 proponents could do?

18 A. I don't believe there was a --
19 I don't believe there was a specific megawatt target
20 around the:

21 "This project shall be less
22 than X." [As read]

23 Q. Right. But there was for the
24 Korean Consortium; correct?

25 A. There was for the aggregate part.

1 Q. There was for each phase too;
2 correct?

3 A. Well, there was for the phase,
4 although you did have the flexibility among the
5 phases.

6 Q. Right, which, you would agree,
7 essentially gave flexibility the Korean Consortium of
8 the sort had already by FIT proponents who could
9 propose whatever they wanted, would you not?

10 A. Well, again, the FIT proponents
11 could propose whatever they wanted. But when you came
12 in later, you are down -- you were later and later in
13 the transmission evaluation process.

14 Q. But FIT proponents could have put
15 in a bunch of applications for more than 400 megawatts
16 at the same time, too; correct?

17 A. They could be, but there were
18 a whole set of requirements about posting amounts and
19 stuff, so it's not like costing -- so, I mean, you
20 would have wanted a system -- I assume that the OPA
21 would not have wanted a system, as well, where
22 everyone just put in thousands of FIT projects that
23 had -- that were -- that were -- that were made.

24 Q. But I'm just sitting here trying
25 to -- FIT proponents could do that; correct?

1 A. FIT proponents could put in
2 multiple -- could put in multiple -- could put in
3 multiple projects and many did.

4 Q. Many did. And some of those
5 projects could have added up to more than
6 400 megawatts of capacity; correct?

7 A. Yes.

8 Q. Yes. And the Korean Consortium,
9 when it's doing its phases, to get that capacity, it's
10 got a limit of 500 megawatts, 400 of wind; correct?

11 A. Yes, coupled with the, of course,
12 the golden ticket of the guaranteed transmission
13 access.

14 MR. SPELLISCY: Thank you. That's all
15 the questions I have.

16 THE CHAIR: Thank you.

17 Any redirect questions on Mesa's side?

18 MR. MULLINS: We do. Could we just
19 have five minutes for personal break for the rest
20 room?

21 THE CHAIR: Yes. That's quite
22 explicit.

23 MR. MULLINS: I appreciate it. Thank
24 you.

25 THE CHAIR: I thought you would say

1 that you need to prepare your questions.

2 --- Recess taken at 4:56 p.m.

3 --- Upon resuming 5:01 p.m.

4 THE CHAIR: Mr. Spelliscy, can we
5 start again? Yes?

6 MR. SPELLISCY: Yes.

7 THE CHAIR: Yes. Yes. Good.

8 MR. APPLETON: (Sotto voce.)

9 RE-EXAMINATION BY MR. APPLETON:

10 Q. All right, Mr. Adamson, I'm going
11 to try to get my voice back. So I have a couple of
12 questions for you, hopefully which won't take too
13 long.

14 I'll try to make reference when I can
15 to documents that are before you and probably with
16 respect to the white binder to make it easier for
17 everyone. And each time I'll talk about an exhibit
18 number so we have it in the record. Okay?

19 Now, do you remember -- you've had a
20 lot of testimony, so I'll try to give a reference and
21 hope that you can remember what we've been talking
22 about today.

23 A. I'll try.

24 Q. At the beginning, Mr. Spelliscy
25 asked you about the TAT availability tables. Do you

1 remember there was a discussion about that?

2 A. Yes.

3 Q. Okay. And he suggested that you
4 didn't look at a document back from November of 2009,
5 when you were making your conclusions and your expert
6 report. But he didn't actually take you to the TAT
7 table that you said you looked at in your expert
8 report. It's in the binder. TAT -- oh, it's in our
9 binder? All right. Well, I am already wrong.

10 I thought maybe we might look at -- if
11 you look at our binder that we gave you -- that's the
12 first binder -- it's Exhibit C-166 and at tab 31.

13 All right. If we could just look at
14 the TAT table. I'll just wait until you get there --
15 go to the front page, please. You see this is the
16 transmission availability table circuit?

17 A. Yes.

18 Q. All right. Now, could you turn
19 to page 2 of that document?

20 First, let's just get the date, which
21 is right in there. Do you see where it says where the
22 revision date is?

23 A. Revised June 3rd, 2011.

24 Q. Right. And does that date ring
25 a bell here for any reason?

1 A. Well, yes. I think this is now
2 the famous date. This is the -- this is the date of
3 the announcement of the -- announcement of the window.

4 Q. Of what type of window?

5 A. Of the connection-point change
6 window.

7 Q. What does the TAT table tell you
8 about?

9 A. Well, the TAT table tells you --
10 I mean, in -- a TAT table tells you in simplified
11 terms about availability of -- of transmission
12 capacity in -- at specific points.

13 Q. Okay. So if you were going to do
14 an interconnect change, it would be reasonable to
15 presume you'd look at a TAT table; correct?

16 A. Well, yes.

17 Q. All right. Now, let's just go
18 back down to those little notes at the bottom. So
19 could you look at a section which we're just going to
20 highlight for you over here? It's the line that
21 I thought was going to be yellow, but it is coming out
22 blue. Right here, sir. It's the information that my
23 colleague will get the -- no, no, no. Please. You're
24 going to -- all right.

25 Can you just -- no. You've done too

1 much. Could you start in there and read the
2 section -- the second -- third line at the end, starts
3 "the information." Just read that line.

4 A. (Reading):
5 "The information provided in
6 the transmission availability
7 tables is a result of
8 collaborative efforts by the
9 independent electricity
10 system operator,
11 transmitters, local
12 distribution companies and
13 the OPA." [As read]

14 Q. And just read the next line.

15 A. (Reading):
16 "Although the information has
17 been developed with the best
18 of information available at
19 the time, the possibility of
20 errors exists." [As read]

21 Q. Great. Thank you.

22 So if you were a FIT Applicant and
23 you've just been told that there is a change of
24 connection points and you've been given a limited time
25 to be able to deal with this, would -- and you would

1 see from the TAT table here that it says it's been
2 developed with the best possible information
3 possible -- or, sorry, develop the best information
4 available at the time, would you think that the
5 entities identified here, the IESO transmitters, local
6 distribution companies, and the OPA, would be the
7 right types of people to give you the information that
8 you might need?

9 A. I think they would be pretty much
10 almost the only people because they run the
11 transmission grid. The IESO is the operator of the
12 transmission grid. The transmission company,
13 Hydro One, I mean, those are the people who would have
14 the information about the state of the transmission
15 system.

16 Q. And if it was revised as of the
17 day that they've asked for the changes, would that
18 have any impact on your presumption of reliability of
19 the table?

20 A. Well, it would certainly make
21 me -- it would certainly make me think that that was
22 very fresh data if it's from that day.

23 Q. So, would that perhaps have been
24 a reason why you would look here rather than looking
25 in other places?

1 A. Well, you had the information --
2 you would have the information here, which is stated
3 to be the best available, as of the day. Literally
4 the day -- the Friday before the Monday window opened.
5 So, I mean, that, I presume, would be as late as they
6 could have released this unless they sent it out over
7 a weekend.

8 Q. I'm not going to go there.
9 You've worked with a lot of the different energy
10 regulatory bodies in different jurisdictions over your
11 career?

12 A. I work with clients in regulatory
13 proceedings, some of which are around transmission
14 stuff; others are not. I tend not to work for the
15 regulators.

16 Q. I'll rephrase the question.

17 Have -- you've been involved in
18 regulatory systems in a number of jurisdictions
19 dealing with energy; correct?

20 A. Yes. And as I -- as I mentioned,
21 my firm even helped clients run like RFP processes,
22 which are then subject to state regulatory review
23 but -- so, yes.

24 Q. So would you normally expect
25 a document like this to be relied upon?

1 A. Yeah. I mean, you know, in my
2 experience from like an RFP-type process, that would
3 be what people rely upon. You would have checked it
4 a hundred ways to -- a hundred ways to the middle if
5 you can, as many ways as you can.

6 I mean, that would be the
7 information -- that would be the official information
8 you're giving out, what other information could
9 someone else use.

10 Q. Back to your personal knowledge,
11 based as an expert in the field, have you ever heard
12 of a rule change like this done with notice over
13 a weekend?

14 A. No. I characterized it in my
15 expert report as rather extraordinary, and I stand by
16 that as rather extraordinary.

17 And I think we heard from other
18 witnesses how unusual they felt it was, like
19 Mr. MacDougall felt it was, not just after the lack of
20 comment period.

21 It seems like even they were --
22 thought it was very unusual. And I've certainly
23 personally never seen anything like it.

24 Q. Okay. We can take this slide
25 down.

1 Would it be reasonable, in your
2 opinion, for a FIT participant, during the
3 interconnect change -- sorry. Actually, that's not --
4 scratch that. I don't need to worry about that.

5 You were shown an exhibit by
6 Mr. Spelliscy. We don't need to go there unless we
7 need to look at it again. It was a presentation at
8 tab 7 of Canada's book about the ECT. And do you
9 remember it was a large slide deck?

10 A. Yes, although, if you don't mind.
11 I'm going to open it.

12 Q. Sure, and you could be my guest.
13 I'm not going to ask you specific questions about the
14 document. I just wanted to -- it's whatever you feel
15 comfortable with.

16 A. Yes. Okay.

17 Q. All right. Now, just to be
18 clear, was there ever an ECT run in the August of
19 2010...

20 A. No, and I believe we discussed
21 that there was no ECT.

22 Q. Was there ever a province-wide
23 one ECT?

24 A. No.

25 Q. So this PowerPoint that we were

1 talking about -- he took you to slide 23, if you'd
2 like to see that.

3 A. Uh-hmm.

4 Q. So we just looked at that. This
5 PowerPoint must be talking about something that didn't
6 happen.

7 A. Yes.

8 Q. Okay. Now, Mr. Landau had asked
9 you a question. I believe it is part of your "boots
10 on" question. And if you were a developer in December
11 2010, that you might not think -- sort of that
12 might -- you not be thinking about your strategy; do
13 you remember those questions?

14 A. Yes.

15 Q. But if you were a wind power
16 developer currently ranked in the region where your
17 rank was within the capacity that was available, okay,
18 so you've got this entrance --

19 A. Yes.

20 Q. -- would you have any reason to
21 change your connection-point?

22 A. No, especially since you're
23 now -- if you have -- if you have very up-to-date
24 information. So, clearly, the need to change depended
25 on where you were.

1 Q. And perhaps who you were?

2 A. Well, and when I say "Where you
3 were," where you were both on the grid and where you
4 perceived you might end up in terms of ranking.

5 Q. And, of course, if you were under
6 the GEIA or you were a joint-venture partner of the
7 GEIA or you were purchased by the GEIA, you would
8 never have to worry about this, would you?

9 A. Well, no. Then you're -- then
10 you're in the guaranteed "express lane" that no-one
11 else can drive in, but that would be completely
12 outside of this entire process so...

13 Q. Okay. Now, same question that
14 Mr. Landau asked you: You are already here in the
15 Bruce Region and your -- and your current
16 connection-point shows that you are ranked 8th and
17 9th.

18 A. Uh-hmm.

19 Q. Okay. Would it be reasonable not
20 to go look at some other region at that -- in that
21 position if you're ranked 8th and 9th in the region
22 and you are ranked within the capacity that was
23 available?

24 A. Well, yes. I mean, remember,
25 getting offered a contract is about capacity. It's

1 about being in -- that they can offer you a contract
2 because capacity is there.

3 And if you -- if you -- if you had
4 a strong sense that your capacity was going to be
5 within the available transmission capacity at that
6 point, then you wouldn't want to -- you wouldn't want
7 to disrupt that. You'd want to keep that.

8 Q. Okay. Now, you were asked by
9 Mr. Spelliscy about Mesa's FIT applications in
10 November 2009. Do you know when Mesa actually began
11 investing in Canada?

12 A. No, no, I don't. I -- I'm --
13 I would assume, just from knowledge of wind power
14 development, that it would have had to have been
15 before the -- certainly would have had to have been
16 well before you made the application; but I don't have
17 any knowledge of what -- when they actually started
18 spending money.

19 Q. Well, were you here for
20 Mr. Robertson's testimony when he talked about when
21 they had started leasing lands?

22 A. I don't believe I was. I was
23 here for part of Mr. Robertson's testimony; but, as I
24 remember, he talked a lot -- he was up for a long
25 time.

1 Q. He was up for a long time.
2 I understand. But you would expect that this might
3 occur before Mesa made its applications, which
4 contained hundreds of wind leases. That's annexed to
5 the application; correct?

6 A. Well, you had to secure all kind
7 of inputs and land leases or control, that would be
8 one of them. So, I mean, typically, in my experience,
9 before a project comes close to being to an investment
10 decision, sometimes that's literally years of work, in
11 every jurisdiction I've heard of but ...

12 Q. Now, if you had an exclusive
13 contract for which you did not have to compete to get
14 guaranteed access to transmission capacity, would that
15 make it easier for you to attract a well-known
16 joint-venture partner?

17 A. Well, certainly. I mean, I think
18 we -- we've all agreed that transmission capacity was
19 the big constraint here. And if you had that, you
20 could -- I suspect you could have gone to any numbers
21 of participants in the equipment market or developers.
22 And you would have -- would you have had a relatively
23 easy time attracting anyone.

24 Q. And, by the way, did you know
25 what company Mesa was intending to partner with when

1 it came in on this -- in its FIT applications?

2 A. Yes, I did, for example, hear
3 that. I had heard that before, but that was through
4 the partnership with GE.

5 Q. Who is GE, sir?

6 A. General Electric.

7 Q. Are they a well-known company?

8 A. Well, yes, I believe GE is one of
9 like the 50 largest companies in the world. Probably
10 a little more material to this, though, is that GE has
11 historically been one of the largest manufacturers of
12 wind turbine equipment in the world.

13 Q. So they actually have a track
14 record of doing wind turbines, but they weren't -- but
15 they weren't part of the GEIA, were they?

16 A. They weren't part of the GEIA.
17 I mean, GE has been involved in the wind business --
18 I don't know when they started because it predated
19 when I was ever involved in wind farm projects.

20 But I've worked on wind farm projects
21 for which they were the equipment supplier. And
22 I worked on, for example, the financing. But
23 I believe they were one of the handful of largest
24 wind -- wind farm -- wind turbine equipment
25 manufacturers in the world.

1 Q. And we heard that Siemens was
2 involved. Would you say that -- I don't want you to
3 pick favourites. But, I mean, at least GE is as well
4 known as Siemens?

5 A. Yes, and especially in North
6 America.

7 Q. Okay. Now -

8 A. Siemens is quite well known...

9 Q. I'm sorry. I want to let you
10 finish.

11 Mr. Spelliscy noted that there was
12 a financial crisis in 2008. I think we have all taken
13 account of that.

14 Did you have any evidence that Ontario
15 analyzed that the Korean Consortium was going to be
16 able to meet its commitments under the GEIA?

17 A. I don't have any personal
18 information of that. The only thing I could rely upon
19 in answering that was the evidence we have read and
20 heard about the Auditor General's report, which said
21 that there was not a substantive business plan
22 analysis or economic analysis.

23 Q. Do you think it would be fair to
24 rely on the analysis of the Auditor General?

25 A. I'm not an auditor. But

1 I would -- I would assume the Auditor General, which
2 from the description, seems to have had a pretty
3 detailed investigatory process, talking about the
4 number of people they talked to and stuff. I would
5 think that, had it been there, they -- I would assume
6 they would have found it.

7 Q. And you saw that the Ministry had
8 an opportunity to give comments to this?

9 A. Yes.

10 Q. But did the Ministry disclose
11 that they had done independent analysis?

12 A. Well, the Auditor General
13 concluded that no independent economic or financial
14 analysis of this had been done at all.

15 Q. Okay. Now, in fact, were you
16 here when Ms. Lo was testifying?

17 A. Yes, I believe -- I believe for
18 all of it.

19 Q. Do you recall what she said about
20 the Korean Consortium's ability to comply with its
21 manufacturing commitments under the GEIA, at least the
22 initial -- under the initial GEIA --

23 A. Uh-hmm.

24 Q. -- do you recall what she said as
25 to whether the Korean Consortium was able to comply?

1 A. In terms of the timing?

2 Q. Yes.

3 A. I believe -- I believe she --
4 I believe she said that there had been hurdles.
5 I don't want to put words in her mouth. I can't
6 remember the exact...

7 Q. Would it be fair to say, just to
8 summarize it, that they did not comply and that they
9 needed to amend the GEIA?

10 A. Well, certainly the amended --
11 the GEIA was amended -- I believe she said that they
12 did not comply because of -- I used the words
13 "hurdles," but I don't think she used -- setbacks or
14 delays.

15 Q. Let's go to another part that
16 Mr. Spelliscy asked you about. You were asked about
17 Samsung being an anchor tenant.

18 Do you remember that?

19 A. Yes.

20 Q. Doesn't an anchor tenant usually
21 bring in other tenants?

22 A. I'm sorry. Could you repeat
23 that?

24 Q. Doesn't an anchor tenant usually
25 bring in other tenants to a mall or some other

1 facility?

2 A. Well, I think that's the whole
3 concept he was speaking of.

4 Q. All right. So using that
5 analogy, a tenant would be another developer?

6 A. Well, I think a tenant would
7 be -- they would be developers. They might be other
8 manufacturing entities. Based on what Ms. Lo said in
9 her initial statement, it seemed to be a rather
10 sweeping concept.

11 Q. Okay. Do you know how well the
12 FIT Program was doing in terms of number of
13 applications, when the Samsung deal was reached?

14 A. Yeah. Well, I -- I referred
15 to -- I think later in my interaction with
16 Mr. Spelliscy, that -- that by the time the FIT
17 probe -- the time before -- before the GEIA was
18 actually signed, we had already had the FIT launch and
19 that they'd had a rather overwhelming number of
20 applications.

21 I remember that number being around --
22 and I don't have it in front of me -- being around the
23 order of 9,000 megawatts.

24 Q. And if I recall, I believe Ms. Lo
25 might have said there was 10,000 megawatts up to

1 December of 2009 and it is roughly the same range. Is
2 that within your recollection or --

3 A. Yeah. Well, I -- I remembered
4 9,000, but 9,000 and something.

5 Q. Now, Mr. Spelliscy said to you
6 that there was no cap for FIT proponents, but didn't
7 the FIT proponents have to compete for power purchase
8 agreements?

9 A. Well, yes. I mean, and they
10 more -- they had to compete with each other through
11 the entire process, especially for the transmission
12 access.

13 Q. Okay. Now, I'm going to ask you
14 to go to one of the binders, but I don't know which
15 binder it is. I know it's going to be to tab 24.
16 It's the one with the FIT Rules.

17 MR. APPLETON: Is it the white binder?

18 The white binder. Excellent.

19 BY MR. APPLETON:

20 Q. So we are just going to go to the
21 FIT rules for a moment.

22 And when you get there, I'm going to
23 ask that you turn to page 9 of the FIT Rules,
24 Section 5.4.

25 MR. BROWER: Give us the tab.

1 MR. APPLETON: Pardon me?

2 MR. BROWER: Give us the tab.

3 MR. APPLETON: Yes. It is tab 24.

4 And it is document R-003.

5 MR. BROWER: All right. Thank you.

6 BY MR. APPLETON:

7 Q. Let me know when you get there.

8 Take your time.

9 THE WITNESS: I'm here.

10 BY MR. APPLETON:

11 Q. Now, would you agree with me that

12 this section, Section 5.4 of the FIT Rules,

13 specifically relates to the ECT process?

14 A. Yes. The heading, I mean, it

15 starts with ECT.

16 Q. Okay. Now, can you tell me

17 whether there's any language in Section 5.4 that says:

18 "All projects will undergo

19 a connection-point change

20 before an ECT is run"? [As

21 read]

22 THE CHAIR: Is this a question for the

23 witness?

24 MR. APPLETON: Yes.

25 THE CHAIR: Or is this a question for

1 us to...

2 MR. APPLETON: No. It's a question --
3 well, it's a -- I'm asking --

4 THE CHAIR: Article 5.4 of the FIT
5 Rules which he...

6 MR. APPLETON: Well, he was taken
7 through and asked about this question -

8 MR. LANDAU: It can be done in
9 submissions.

10 MR. APPLETON: Pardon me?

11 MR. LANDAU: It can be done in
12 submissions.

13 THE CHAIR: Yes, I think so.

14 MR. APPLETON: All right. Well,
15 I still think it's --

16 THE CHAIR: It's clear to us --

17 MR. APPLETON: I'll just move along on
18 that.

19 THE CHAIR: What the contents of 5.4
20 is.

21 MR. APPLETON: For the record, I just
22 want to say I believe it's appropriate to take out of
23 the examination that was done by Mr. Spelliscy because
24 he took him through this part. But I'm happy to take
25 it into the closing without any problem.

1 MR. SPELLISCY: To be clear, I did not
2 take him to the FIT Rules at all.

3 MR. APPLETON: No. That was --

4 MR. SPELLISCY: But I don't think it
5 matters.

6 MR. APPLETON: That was exactly my
7 point. You asked him the question about the ECT
8 without taking him to this rule, and that was exactly
9 the problem, why I wanted to address this, because
10 I believe it's appropriate to mark it, but I think
11 everyone has my point.

12 THE CHAIR: I think so, yes.

13 BY MR. APPLETON:

14 Q. Let's go to the next tab, tab 11.
15 That is Exhibit R-068. This is the press
16 backgrounder.

17 A. Yes.

18 Q. Can you remember being asked
19 questions about this?

20 A. Yes.

21 Q. Now, first of all, if you
22 remember at the bottom of the press backgrounder, it
23 says that there is an assurance of 2500 megawatts.
24 That's assurance to the Korean Consortium of 2500
25 megawatts.

1 Do you see that?

2 A. I'm sorry. I think this is the
3 wrong...

4 THE CHAIR: We're in the press
5 release. And you wanted to refer to the backgrounder.

6 MR. APPLETON: I'm sorry. Maybe my
7 colleagues can assist me while I get the right number.

8 It is the January 21, 2010 press
9 backgrounder.

10 MR. LANDAU: It is tab 20.

11 MR. APPLETON: Thank you very much,
12 Arbitrator Landau.

13 Tab 20. And, therefore, to correct
14 the record, that means it is R-076. And if we could
15 go there -- I know the document quite well. I just
16 don't know where it's located.

17 THE WITNESS: Could you start again
18 with your question?

19 BY MR. APPLETON:

20 Q. Of course. Of course. There was
21 a section that you were taken to about assured
22 transmission.

23 A. Uh-hmm.

24 Q. Let's see if I can find that.
25 I believe it's near the end.

1 MR. LANDAU: On the second page?

2 MR. APPLETON: Yes. On the second
3 page. Thank you.

4 BY MR. APPLETON:

5 Q. I believe it's the bottom of the
6 second page under "More Renewable Energy."

7 A. Yes.

8 Q. Oh, yes, I've been over all this.

9 A. I remember this. Yeah.

10 Q. I've been impatient, and I've
11 already highlighted it.

12 Okay. Do you believe that there is
13 a difference between assured transmission and priority
14 transmission?

15 A. I'm not even -- I'm not even
16 quite sure what "assurance of transmission" exactly
17 means. I mean, "assurance of transmission" isn't kind
18 of a phrase that's been used in this as far as I know
19 and certainly isn't a kind of a term used in the
20 electricity industry.

21 "Assurance in transmission," I mean,
22 it doesn't necessarily connotate (sic) what a -- the
23 guaranteed access was. I don't -- I don't really know
24 that assurance of transmission is really kind of
25 a term of art.

1 Q. So this wouldn't tell you that --
2 this would give you the information that you would be
3 able to go to the front of the line and -- is that
4 what you're saying? Or are you saying something
5 different?

6 A. I don't think it tells me -- I'm
7 not sure it tells me a whole lot of anything, to be
8 honest. But...

9 Q. Okay.

10 A. But from my reading of it, it
11 certainly doesn't tell you the -- it doesn't tell you
12 the details of what the Korean Consortium actually
13 received.

14 Q. Now, you've read this before;
15 yes?

16 A. Yes.

17 Q. You've commented on this?

18 A. Yes.

19 Q. Okay. Is there any mention in
20 this press backgrounder that the Government of Ontario
21 would establish a special procedure to facilitate
22 government approvals for the members of the
23 Korean Consortium?

24 A. Not that I'm -- not that I'm
25 aware of. I don't remember that being in here. I'll

1 scan it again, but I certainly don't remember that
2 being in here.

3 Q. Is there anything in here about
4 the right of the members of the Korean Consortium to
5 increase their project size by 10 per cent without any
6 further government approval, within a phase?

7 A. No. That -- I don't see that in
8 here either, and I don't remember that being in here.

9 Q. Does it say anywhere in this
10 document that Samsung did not have to meet any special
11 requirements for its first 500 megawatts of priority
12 access?

13 A. No. It's completely silent on
14 the Phase I.

15 Q. Does this document say anywhere
16 that the Korean Consortium could use its preferred
17 transmission access to buy out failed FIT projects and
18 convert them into FIT contracts under the GEIA?

19 A. No, and I don't remember that
20 ever being that kind of possibility. I never remember
21 seeing it in any -- any OPA or Ministry document.

22 Q. So the public wouldn't be aware
23 of that from reading this press backgrounder on
24 January 21, 2010?

25 A. No. I mean, the only way I was

1 aware of that was, first off, from the deposition of
2 Mr. Edwards from Pattern Energy and then through some
3 research, looking at the -- looking at projects they
4 had bought that I knew had been for FIT projects,
5 because they had been listed as FIT projects, and then
6 matching them up in -- matching them up in trade press
7 articles as being acquired by Pattern.

8 Q. All right.

9 A. For example, like the ACCIONA
10 wind farm, that I -- that I dug up. But that
11 wasn't -- that I've never seen in a -- in any official
12 document.

13 Q. All right. So, following up on
14 Mr. Spelliscy's question about what FIT applicants
15 knew in 2009 --

16 A. Uh-hmm.

17 Q. -- they didn't know that Ontario
18 would limit capacity in 2010 with the LTEP, did they?

19 A. I don't think the LTEP had
20 even -- had even -- that wasn't even released then.
21 I mean, that was -- that -- there wasn't a -- there
22 was no -- there was no LTEP as of that time.

23 Q. If I recall, I believe it's 2011.

24 A. I think that 2011 is when the
25 LTEP, I think, came out.

1 Q. I think so.

2 A. I mean --

3 THE CHAIR: November of 2010.

4 BY MR. APPLETON:

5 Q. November 2010.

6 A. Late 2010. So I think there may
7 actually -- there may have been a statement around
8 a long-term plan being required earlier than 2010, but
9 I don't believe that was in 2009.

10 Q. And they also didn't know, then,
11 in 2009 that the Korean Consortium would pick the
12 Bruce Region almost a year later, in 2010, did they?

13 A. I don't think that was -- that
14 certainly wasn't disclosed in these documents.

15 MR. APPLETON: I don't think I have
16 anything further. No.

17 Thank you. We're all done. Thank
18 you.

19 QUESTIONS BY THE PANEL:

20 THE CHAIR: Thank you. Do my
21 co-arbitrators have questions for Mr. Adamson? No?

22 And I just have one. In your report,
23 if you look at paragraph 70 and following, you speak
24 of the scale of the GEIA and the FIT Program and you
25 say they are the same scale.

1 And then in paragraph 74, you
2 specifically say:

3 "Both FIT and GEIA targets
4 are the amalgamation of
5 smaller individual wind farm
6 projects."

7 I was surprised by this approach.
8 Would you not make a distinction, due to the fact that
9 the GEIA is one developer that is the consortium; and
10 in the FIT Program, you have many developers?

11 I understand that some may have in
12 their portfolios several projects. But overall, you
13 have many developers, and would that not cast
14 a different light on the comparison of the two?

15 THE WITNESS: Well, clearly with
16 the -- with the GEIA, you had a single consortium tied
17 to its JV partner. I mean you have --

18 THE CHAIR: It has a partner -- it has
19 a partner, yes, but it was one consortium.

20 THE WITNESS: It was one consortium
21 tied -- tied -- tied to its JV partner, as opposed to
22 potentially a -- multiple sets of companies.

23 THE CHAIR: Yes.

24 THE WITNESS: And I guess, for the
25 purposes of really, of comparing, that didn't really

1 seem to be a greatly distinguishing feature as far as
2 I was concerned --

3 THE CHAIR: So you...

4 THE WITNESS: -- because -- I'm sorry.
5 I didn't mean to cut you off.

6 THE CHAIR: No. You looked at that --
7 you took all the FIT operators or developers
8 collectively?

9 THE WITNESS: Uh-hmm.

10 THE CHAIR: And you compared them
11 collectively, when we speak about scale, with the
12 consortium?

13 THE WITNESS: Well, yes, and that was
14 partially driven around this idea of identifying -- we
15 were trying to bring on megawatts. You were trying to
16 develop equipment manufacturing. So one potential
17 metric of what you were trying to do, I would
18 denominate kind of in megawatts, right? It is kind of
19 also --

20 THE CHAIR: But there's a difference
21 in how you count the megawatts, whether you count it
22 by project or by program.

23 THE WITNESS: Right, but some form of
24 aggregation. The -- the other one -- remember, this
25 is really an analysis tied to one thing, which is, are

1 these -- are these two parties similar in a market?
2 Which is kind of like a competitive analysis, like --
3 sort of like you have -- like almost a competition
4 policy or antitrust-type concept; right

5 And economically, you can have
6 competitors of very, very different sizes, right,
7 unless there is something that guarantees that, for
8 example, like a natural monopoly-type situation. So
9 I mean, economically, just even from a kind of a very
10 basic theoretical basis, I mean, small competitors may
11 be able to do what large competitors can do, unless,
12 you know, like I said, unless there is some
13 overwhelming market advantage to being the sole large
14 competitor, like in a natural monopoly.

15 You've got to know that this industry
16 doesn't fit those characteristics. Even
17 Professor Hogan, who -- Bill Hogan, who is
18 a Professor at Harvard and a very well-known guy. I
19 mean, he did a report, and he said, you know, in his
20 belief, which is also my belief, but that was a report
21 done for Canada under a WTO proceeding, that there
22 weren't really large economies of scale in here, in
23 this industry --

24 THE CHAIR: I read that, yes.

25 THE WITNESS: Okay.

1 THE CHAIR: And I understood the -- I
2 understood that part, yes.

3 THE WITNESS: Okay. So I shall not --

4 THE CHAIR: Yes. Thank you.

5 There is another question that I have.
6 If you look at your presentation of today on slide 4,
7 it may be linked to the -- what we just addressed or
8 it may not. I'm not certain.

9 In the third bullet point, you
10 highlight the fact that FIT projects could be counted
11 as GEIA projects, Korean Consortium and Pattern Energy
12 acquired lowly ranked FIT project and made them into
13 successful GEIA projects.

14 I am not sure I understand what the
15 relevance of this acquisition of low-ranked FIT
16 project is in your analysis.

17 THE WITNESS: Well, in the analysis of
18 competitive circumstances, it's just really
19 demonstrating that these were very, very similar
20 things; right?

21 I mean, so -- I mean, the heading here
22 is "Analysis of Competitive Circumstances." These
23 were clearly competing types of projects if -- if one
24 could buy the other and transfer it into the other
25 category. So that was kind of the first point.

1 The second point --

2 THE CHAIR: That arises from the mere
3 fact that they're generating electricity from wind
4 power; no?

5 THE WITNESS: Right, and they met all
6 the other -- all the other general criteria around
7 access -- connection to the grid, contract type, all
8 that kind of stuff, right. So -- so that point is
9 actually very simple.

10 The second point was really just
11 an illustration of this -- of the value of this
12 guaranteed transmission access. You had projects that
13 were very lowly ranked; and then shortly after
14 acquisition, could skip a queue, go around the top and
15 suddenly you're successful.

16 So, that's just an illustration of
17 that point.

18 THE CHAIR: Thank you.

19 No. That's fine.

20 MR. BROWER: It occurs to me that the
21 emphasis is on lower -- acquisition of lower-ranked
22 was also a price issue because if you've got a very
23 low rank, your chances are not very good; and so as
24 between sticking with that and selling out for a price
25 which the acquirer would regard as a low price for

1 what it's getting, that's why the emphasis on lower
2 price, because --

3 THE WITNESS: Because now the rank
4 doesn't matter. Rank doesn't matter because
5 transmission -- if transmission acts as a guarantee,
6 rank doesn't matter.

7 So buy -- as you say, buy lower-ranked
8 ones if people think that they have to sell them off,
9 sell the projects off, and automatically they can be
10 successful because they can go in the other lane.

11 MR. BROWER: Yeah, but they'll
12 presumably sell out for lower prices than
13 higher-ranked people because they're looking at
14 probably nothing on the one hand and recouping at
15 least some of their investment on the other hand.

16 THE WITNESS: Yeah. I mean,
17 I definitely agree with you in theory. I don't have
18 numbers about how they sold these projects out,
19 because that's not public. But, I mean, that would be
20 the obvious strategy. If you buy low ones, take them
21 over into your other category; and suddenly they can
22 be successful.

23 MR. BROWER: So that, arguably, could
24 lower the consortium's cost of -- right down the line.

25 THE WITNESS: I suspect they -- I

1 would guess, just knowing how wind farm development
2 works in some other jurisdictions, if you have
3 projects that you think are relatively low-ranked --
4 you've sunk a bunch of money in into this, into leases
5 and to studies and consultants and all the costs
6 associated with developing a project.

7 If you then think you have a pretty
8 low chance of being successful, I mean, I've literally
9 sunk all the money; what am I willing to take?
10 I suspect, you know, this was actually a rather
11 canny strategy to, in effect, actually avoid a lot of
12 costs. Because I -- those guys -- those guys had sunk
13 it all, getting as far as they had. These were
14 already projects -- FIT projects that had already been
15 submitted; just buy them out. Right?

16 THE CHAIR: Fine.

17 MR. BROWER: That's it.

18 THE CHAIR: Thank you very much.

19 We have no further question. And that
20 completes your examination, which lasted longer than
21 what we actually anticipated. We thank you for your
22 explanations.

23 THE WITNESS: Thank you, ma'am.

24 Thank you gentlemen.

25 THE CHAIR: So, now we're going to

1 hear Mr. Low? No. Now we are going to --

2 THE WITNESS: Now we're going to ...

3 THE CHAIR: Now we're going to address
4 the question about the damage computation for
5 article 1105 because we need to resolve this tonight
6 for the expert examinations tomorrow morning.

7 Do you have the reference that the
8 Tribunal asked for?

9 MR. APPLETON: Yes.

10 MR. MULLINS: We have a letter from
11 Deloitte.

12 THE CHAIR: Thank you.

13 This is more detailed than what I had
14 expected, which is, of course, not a blame. But
15 I think it means that we should take -- well --

16 MR. APPLETON: It speaks for itself.

17 THE CHAIR: I think we need to read
18 it. Yes.

19 But now I suggest we take a 15-minute
20 break and so we can read it, and then Canada can read
21 it as well. And we'll reconvene at six o'clock and
22 take it from there.

23 MR. APPLETON: Thank you.

24 --- Recess taken at 5:42 p.m.

25 --- Upon resuming at 6:12 p.m.

1 COMMENTS BY THE CHAIR IN RELATION TO DELOITTE LETTER:

2 THE CHAIR: This took a little longer
3 than what we expected, and I -- we apologize for
4 keeping you waiting.

5 What the Tribunal suggests to do is
6 give its proposed solution; and then obviously we will
7 listen to Canada, which has not had an opportunity to
8 react to this letter. But if you -- without wanting
9 to curtail your opportunities, we thought maybe if we
10 make a proposal, possibly everybody can agree with it.

11 It seems to us, from reading this
12 letter, that the criticism in BRG-1 was about the
13 assumption of same treatment between GEIA and FIT
14 participants.

15 The idea that is expressed in BRG-2 is
16 the same. It is expressed in, like in like
17 circumstances. But if you look at the quotes that we
18 are -- have here, it does not say anything different.

19 So, that is -- would lead us to say
20 that the rules do not allow to raise this now.

21 At the same time, if we consider all
22 the circumstances, we think we could proceed in the
23 following fashion. And it also takes into account
24 Canada's mention that we could possibly conceptually
25 address matters.

1 What the Tribunal would propose is
2 that we do proceed as follows. In direct -- and
3 essentially there is two elements to this proposal.
4 And direct examination, the expert could address these
5 matters conceptually but, however, without going into
6 details of calculation or supporting materials that
7 are not in the record, but just in terms of concepts.

8 Then in cross-examination. Canada
9 can, of course cross-examine the expert on this
10 conceptual aspect, and the expert can answer. It goes
11 without saying, to the extent that Canada feels it can
12 do so, under the circumstances.

13 And the third aspect of the proposal
14 is that if Canada feels it needs more in terms of
15 evidence with respect to this issue, then it could
16 apply for further procedures. And the Tribunal will,
17 of course, consider the application and deal with it
18 in a manner -- in consultation with the parties to
19 find a solution.

20 So, that would be -- that would be the
21 Tribunal's proposal in the hope that this is fair to
22 everyone and allow us to make at least some progress
23 tomorrow.

24 Can I give the floor, first, to Canada
25 maybe this time, because you have not had

1 an opportunity to react yet on this letter.

2 MR. SPELLISCY: Thank you, Madam
3 Chair. I don't think I need to react on the letter --

4 THE CHAIR: No.

5 MR. SPELLISCY: -- itself.

6 On the question of the proposed
7 process, as you've noted, we said we are prepared to
8 address these issues conceptually. And so while we
9 regret they were raised at this late stage, we are
10 prepared to do it.

11 On your last point, Canada feels it
12 needs more in terms of evidence.

13 Is there -- not exactly sure what the
14 Tribunal is thinking in this regard. And in terms of
15 when we would have to make such an election.

16 THE CHAIR: Certainly not before the
17 examination, and that's all I can say right now
18 because we have not discussed it. But we would
19 certainly tell you when you have to tell us.

20 MR. SPELLISCY: Okay. And would --
21 okay. Well, I don't want to push too far into the
22 details. And you will have noted from our letter as
23 well that there is a question whether, depending on
24 the conceptual approaches, whether even further
25 evidence would be necessary. Because obviously there

1 is a huge divergence here in the conceptual
2 approaches.

3 And if the Tribunal -- and this is why
4 I ask the question. Because I think if the Tribunal
5 would agree with the conceptual approach of Canada's
6 expert, then much of this in the need for other
7 evidence becomes irrelevant.

8 If they were to agree with the
9 conceptual approach of the Claimant's expert, then
10 I think we would need that further evidence. And so
11 I just want to make sure that in thinking about it,
12 that we would somehow have the opportunity at some
13 later point to say, if the Tribunal were to get
14 there -- and obviously you've got to decide liability
15 first, even.

16 So I don't want to say that we want,
17 oh, to reserve another hearing date at this point.
18 I don't think we're there yet. I think that that's
19 far too far in advance.

20 But I'd like to make sure that the
21 Tribunal understands that we would reserve our right
22 to seek to examine Mr. Low on his calculations, if
23 that became necessary in the future.

24 THE CHAIR: That is the type of
25 application we had in mind, yes.

1 Mr. Mullins, you may speak.

2 MR. MULLINS: Yes. Just to follow up
3 on counsel's comments, we did read Canada's concept
4 about having some kind of idea where the Tribunal's
5 headed.

6 I'm sure the Tribunal is experienced,
7 as some of us are, about awards. And I think that
8 nobody is going to want to get into an issue about
9 whether or not there has been some kind of interim
10 award or can this be confirmed or something.

11 I think we're probably -- at least
12 when I'm an arbitrator, I've been told not -- to make
13 sure that those don't happen, that there should be one
14 final award.

15 And I'm concerned if there's some kind
16 of indication about rulings, that we'll then find
17 ourselves in a question about whether or not there's
18 an award that can be confirmed or something.

19 I really would caution that
20 the parties in a Tribunal avoid that. I think that
21 what seems to make more sense to me is -- and we can
22 talk later about whether or not we believe it would be
23 appropriate.

24 But if he -- but if counsel for Canada
25 feels that they need more time or something, if that

1 happens, it will be limited to the issues, very
2 limited, not open up, you know, liability, not open up
3 anything else, no other experts, the narrow issues and
4 that that be closed; and then the Tribunal can issue
5 the award, instead of having some kind of an interim
6 issue.

7 Maybe that wasn't a concern. But when
8 I read it, that's the first thing that was a red flag
9 to me. Because I've been in these situations, and it
10 can be very expensive causes litigation. And I think
11 we want to avoid all of that.

12 THE CHAIR: But what I would like to
13 know right now is whether you agree with the
14 Tribunal's proposal.

15 MR. MULLINS: I think at this point,
16 obviously we can live with the proposal.

17 If -- and we reserve the right to
18 object to an idea of a further proceeding, if that's
19 where Canada goes, but I did want to put on the record
20 now my concerns about some kind of interim ruling.

21 THE CHAIR: That was not the idea?
22 Yes.

23 MR. APPLETON: Thank you. And I just
24 wanted to clarify in relation to what Mr. Spelliscy
25 had to say, that, of course, if the Tribunal

1 determines that the valuation approach taken by
2 Mr. Low with respect to MFN, for example, is correct,
3 there is no impact whatsoever.

4 In fact, as I read it, there is no
5 impact with respect to the Article 1103, the
6 Article 1102 or the Article 1106 damages. There's
7 only issue, as I understand it, that if, in fact, some
8 of those damages were to be found, or those
9 violations, then you would never actually have to
10 worry about these issues because they would be double
11 counting -- I'm sorry. I'll keep as close as I can --
12 double counting.

13 So in many respects, this may not
14 actually be a practical problem. So that's why we're
15 prepared to examine and attempt to try to find this,
16 because I think that maybe the problem will go away.
17 And so that's really the key thing here.

18 THE CHAIR: Thank you. So we've noted
19 the comments, and for now what we need to know is that
20 we will proceed along these lines tomorrow.

21 What the Tribunal would like to do
22 tomorrow, as well, after we've heard the experts, is
23 have a brief discussion on the post-hearing briefs.
24 The Tribunal may have a few indications it wishes to
25 give you, and obviously we need to discuss time

1 limits.

2 You will then be able to already take
3 these indications up for your closing statements or
4 keep them for post-hearing submissions, whatever you
5 prefer. But I would -- if we could have this
6 discussion tomorrow, it would -- we could close it.
7 And then we have only the oral arguments left for
8 Friday.

9 And I think we can now confirm that we
10 will end on Friday night. And so we'll also give
11 the -- tell the arbitration place that this is -- that
12 this is so.

13 Are there any other comments,
14 questions that we need to address now before we
15 adjourn for the day on the Claimant's side?

16 No?

17 MR. APPLETON: I think not.

18 THE CHAIR: On the Respondent's side?

19 No?

20 Then I wish everyone a good evening,
21 and we'll see each other tomorrow morning at
22 nine o'clock.

23 Are we still on the record? Yes,
24 I wanted to give you the floor. Are we still on the
25 record for the time because it may be useful for

1 everyone to have it right now.

2 MR. DONDE: The Claimants have 4 hours
3 and 53 minutes left, while the Respondents have
4 8 hours and 10 minutes left.

5 MR. SPELLISCY: One heck of a closing.

6 THE CHAIR: Good evening.

7 --- Whereupon the matter was adjourned at 6:24 p.m.

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CERTIFICATE

I HEREBY CERTIFY THAT I have, to the
best of my skill and ability, accurately recorded by
Computer-Aided Transcription and transcribed
therefrom, the foregoing proceeding.

Lisa M. Barrett, RPR, CRR, CSR
Computer-Aided Transcription