

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 HONORABLE CHARLES N. BROWER

MR. TOBY T. LANDAU QC

held at Arbitration Place
333 Bay Street., Suite 900, Toronto, Ontario
on Tuesday, October 28, 2014 at 9:03 a.m.

VOLUME 3

PUBLIC ONLY

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Toronto, Ontario

--- Upon resuming on Tuesday, October 28, 2014

at 9:03 a.m.

THE CHAIR: On the record. Good morning to everyone. I hope everyone is fine and we are all ready to start day 3 of this hearing. Mrs. Lo, good morning.

THE WITNESS: Good morning.

THE CHAIR: For the record, can you please confirm to us that you are Susan Lo.

THE WITNESS: I am.

THE CHAIR: You're assistant Deputy Minister of the Drinking Water Management Division of the Ministry of the Environment at present; is this correct?

THE WITNESS: Yes, Ministry of the Environment and Climate Change, yes.

THE CHAIR: Thank you. At the time that we're interested in here, you were Assistant Deputy Minister of the Renewable and Energy Efficiency Division of the Ministry of Energy.

THE WITNESS: Yes, I was.

THE CHAIR: That is correct. You have given two witness statements in this

1 arbitration. The first one was dated February 27,
2 2014 and the second one was dated June 27, 2014?

3 THE WITNESS: That sounds about
4 right.

5 THE CHAIR: You confirm that you
6 have given two statements.

7 THE WITNESS: I have two
8 statements.

9 THE CHAIR: If you don't remember
10 the dates, that's fine.

11 You are here as a witness in this
12 arbitration. As a witness, you are under a duty to
13 tell us the truth. Can you please confirm that is
14 what you intend to do?

15 THE WITNESS: Yes. Yes, I do.

16 AFFIRMED: SUSAN LO

17 THE CHAIR: Thank you. So you
18 know how we will proceed. You will first be asked
19 some questions by Canada's counsel, and then we
20 will turn to Mesa's counsel.

21 THE WITNESS: Okay.

22 THE CHAIR: And the Tribunal may
23 ask questions as we go along or at the end. To
24 whom do I give the floor?

25 MS. KAM: Good morning. A new

1 face, so I will briefly introduce myself. My name
2 is Susanna Kam and I am counsel for the Government
3 of Canada.

4 EXAMINATION IN-CHIEF BY MS. KAM AT 9:04 A.M.:

5 Q. Thank you for your
6 introduction, Ms. Lo. I just have one question for
7 you. Do you have any corrections that you wish to
8 make to the witness statements that you filed in
9 this arbitration?

10 A. No, I do not.

11 Q. That is all of the questions
12 that I have.

13 THE CHAIR: Could you get closer?

14 MS. KAM: That is all of the
15 questions that I have.

16 THE CHAIR: Thank you. Could I
17 then turn to Canada's counsel, Mr. Mullins -- to
18 Mesa's counsel, sorry.

19 CROSS-EXAMINATION BY MR. MULLINS AT 9:06 A.M.:

20 Q. Good morning, Ms. Lo.

21 A. Good morning.

22 Q. Just before we start, just to
23 understand, both sides have limited amount of time
24 to ask questions, and in fact Canada's brought five
25 factual witnesses and we both have a number of

1 experts. So I would ask you to try to listen to my
2 questions and try to answer the question I am
3 asking, and if you need to explain it, that's fine,
4 but just try to listen to the question I am asking
5 so we can go through this in an efficient manner.

6 Is that fair?

7 A. That sounds fair. I will try
8 my best.

9 Q. I appreciate that. So we
10 just heard you have done two statements. What I
11 will probably end up doing is going back and forth
12 to them, so make sure they are in front of you.

13 You should have both there in the binder.

14 In addition, you will see a
15 notebook of documents, and we may not go through
16 all of those documents. I think it is the notebook
17 in front of you. It has a number of documents in
18 it.

19 A. This one?

20 Q. Correct. Yes. So put that
21 in front of you, as well. We may not go through
22 all of those documents, but I will refer to the tab
23 numbers so you will be able to find them.

24 And who assisted you in the
25 preparation of your witness statement?

1 A. I believe the Government of
2 Canada, JLT, as well as my own legal counsel.

3 Q. Okay. And you have no
4 changes to your statements and they are accurate,
5 as far as you know?

6 A. They are accurate, as far as
7 I know, yes.

8 Q. Okay. And we heard from
9 questions from the Chair that during the relevant
10 time period, you were Assistant Deputy Minister of
11 Renewables and Minister of Energy. Later you moved
12 to the Drinking Water, Environment and Climate
13 Change; correct?

14 A. Drinking Water Management
15 Division at the Ministry of Energy, yes.

16 Q. Was that a lateral move or...

17 A. Yes.

18 Q. Okay. And would that move
19 have anything to do with how this renewable energy
20 project went forward?

21 A. No. It has nothing to do
22 with that.

23 Q. Okay. And when you came into
24 your position -- and we're going to be focussed on
25 the renewable energy program -- did you make sure

1 that you understood the history and the background
2 of the program in order to do your job?

3 A. I had a good grounding, yes.

4 Q. Were you familiar, personal
5 knowledge, as well, or did you just learn it
6 through what people told you?

7 A. I learned it from a number of
8 sources.

9 Q. Were you involved at all
10 personally in the, for example, memorandum of
11 understanding and those programs before you took
12 over your position?

13 A. Which memorandum of
14 understanding are you referring to?

15 Q. The one between the Korean
16 Consortium and the Ontario government?

17 A. After I had carriage of the
18 Korean Consortium file, then I did have knowledge
19 of it. When it was being negotiated back in 2008
20 and 2009, no, I did not know about it.

21 Q. Okay. Now, because it was a
22 secret; right?

23 A. A secret to whom?

24 Q. To you, for example.

25 A. It wasn't my file and, hence,

1 I had --

2 Q. What was your position at the
3 time it was entered?

4 A. In 2008?

5 Q. Yes, ma'am.

6 A. I would have been in the
7 Ministry of Transportation. 2008? Probably in the
8 Road User Safety Division as the director of
9 policy.

10 Q. Okay. As far as you know, no
11 members of the cabinet were aware of the memorandum
12 of understanding until September 2009; is that
13 correct?

14 A. I don't think I could answer
15 that question, because I didn't personally speak to
16 each member of cabinet.

17 Q. Okay, fine. I mean, do you
18 have any knowledge, when you reviewed the file,
19 that it was well -- that any members of the cabinet
20 were aware of the memorandum of understanding prior
21 to September 2009?

22 A. I'd only be speculating.

23 Q. Okay, thank you.

24 Now, you do agree that the -- when
25 you took over, you did take over the management of

1 the GEIA when you took over; correct?

2 A. The G-E-I-A?

3 Q. Yes, ma'am.

4 A. In 2010?

5 Q. Correct.

6 A. Yes.

7 Q. You agree it was a

8 significant agreement?

9 A. Yes, it was a significant
10 agreement.

11 Q. And it had wide-ranging
12 implications to Canada in renewable energy; right?

13 A. To Canada or Ontario?

14 Q. Ontario.

15 A. Ontario.

16 Q. And you also were familiar
17 with the GEGEA?

18 A. Yes, of course.

19 Q. And can you tell us what that
20 is?

21 A. That's the Green Energy and
22 Green Economy Act that was proclaimed in 2009, in
23 May.

24 Q. And was one of the goals of
25 that Act to attract investment?

1 A. Yes, it was.

2 Q. And was that domestic and
3 foreign investment?

4 A. Yes.

5 Q. Did the government have any
6 preference as to what type of investment it was
7 seeking to encourage, foreign or domestic, or did
8 it matter?

9 A. I think at the time that the
10 GEGEA was created, the idea was to attract any
11 investment capital, and I don't think that the
12 government had a preference in terms of whether it
13 was domestic or foreign. And, in fact, there were
14 domestic content provisions that were created to
15 ensure that a certain amount would come from
16 Ontario and create jobs in Ontario.

17 Q. So you agree with me it would
18 be important to make sure that you treat
19 investments in foreign and domestic the same?

20 A. I don't know. I
21 just -- um..., that wouldn't be something that -- I
22 think it's important to be fair, and, in principle,
23 it was to try to create an excellent investment
24 climate in Ontario.

25 Q. Do you agree with me that

1 when you talk about fairness, do you agree that the
2 Ministry of Energy and the OPA should do its job
3 fairly?

4 A. I believe it does.

5 Q. Well, thank you. That's one
6 different question. But you should -- they should
7 do the job fairly, is what I asked you. You said
8 they did. I want to make sure you agree that both
9 the OPA and the Minister of Energy should do their
10 job fairly?

11 A. Yes.

12 Q. They should do it honestly
13 and objectively with high ethical standards?

14 A. With high standards, yes.

15 Q. They should do it with
16 transparency; correct?

17 A. Yes.

18 Q. Just so we understand the
19 organization of how the Minister of Energy works
20 with the OPA, do you agree the Minister of Energy
21 works very closely with the OPA; right?

22 A. Yes, we did.

23 Q. And, in fact, though, the OPA
24 though is required to follow the directives of the
25 Minister of Energy; correct?

1 A. Directions, yes.

2 Q. Directions and directives?

3 A. Directions and directives of
4 the Minister.

5 Q. Yes. I always have trouble.
6 Can you explain the difference between directions
7 and directives, if you can?

8 A. A directive has -- needs to
9 go to the LGIC and is issued with respect to supply
10 mix procurement.

11 Directives are issued by the
12 Minister for anything else -- directions, sorry.
13 So the first one is directives, LGIC; directions
14 not LGIC.

15 Q. And the OPA has to follow
16 both of them?

17 A. Yes.

18 Q. And even if they disagree
19 with them, they have no ability to not follow them;
20 right?

21 A. Personal beliefs or
22 corporate? They would follow them essentially,
23 yes.

24 Q. Okay, thank you.

25 Could you explain for us what the

1 LGIC is?

2 A. The Lieutenant Governor in
3 Council, it needs to be delivered and signed off by
4 the Lieutenant.

5 Q. That means the cabinet,
6 doesn't it?

7 A. No, no, no. That's
8 something...

9 Q. Is the cabinet involved at
10 all in directions and -- directives or directions?

11 A. I don't know whether there is
12 a formality involved with cabinet approval being
13 required.

14 I know that many significant
15 things that we dealt with at the Ministry of Energy
16 went to cabinet for information or for decision,
17 anyway.

18 Q. And despite the fact the OPA
19 has to follow the directions and directives of the
20 Ministry, you would expect that the Ministry would
21 consult with the OPA on major projects; correct?

22 A. No, not really. It depends
23 on the nature.

24 I mean, if it were a policy-type
25 of a decision that needed to be made, the OPA

1 wouldn't necessarily be involved, because the
2 government creates the policy and the government
3 would consult with other ministries, for instance,
4 but not necessarily the OPA.

5 Q. What about programs they
6 would have to administer? Wouldn't it make sense
7 for them to consult with the OPA on initiatives
8 which they would have to consult?

9 A. Not necessarily. It really
10 depends.

11 Q. Okay. Well, in fact the
12 Ministry of Energy did not consult with the OPA or
13 the OEB regarding the memorandum of understanding
14 with the Korean Consortium, did it?

15 A. I understand that that's the
16 case, but it wouldn't be a normal course of action
17 to consult with the OPA or the OEB.

18 The OEB is a semi-judicial body
19 that sets -- decides on rates paid for by
20 ratepayers, and it just really does not -- it
21 receives policy direction. The OPA receives policy
22 direction, and then carries it out, but there
23 wouldn't be any need to consult with either body.

24 If say they needed to be consulted
25 with, well, that's their opinion, but working in

1 government for 30 years, they wouldn't be a normal
2 body that one would consult with.

3 Q. Well, frequently during the
4 implementation of the FIT program the Minister of
5 Energy did consult with the OPA?

6 A. The FIT program is very
7 different, because it is operationalizing a
8 renewable energy program that was already created
9 in a higher level policy.

10 So, for instance, the Green Energy
11 and Green Economy Act, would the Ministry of Energy
12 consult with the OPA or the OEB? No. Not
13 necessarily, no.

14 Q. Okay. Well, there were parts
15 of the GEIA that the OPA had to implement, correct,
16 for example, the power purchase agreements?

17 A. Yes, but you are mistaking
18 the difference between high-level policy and
19 implementation of that policy.

20 Q. Mm-hm?

21 A. The FIT program is something
22 that was directed by the Minister to be implemented
23 by the OPA. So once you're into implementation, of
24 course they would be consulted.

25 Q. Okay. So both the GEIA and

1 the FIT program both were, in some manner,
2 implemented by the OPA; correct?

3 A. Yes.

4 Q. Thank you. Now, one of the
5 reasons we heard why the GEIA was not announced
6 until later was due to lack of cabinet approval.
7 That's what we heard in testimony yesterday.

8 In fact, there was no cabinet
9 approval of the GEIA, was there?

10 A. I don't think that cabinet
11 approval was necessary, but the GEIA investment
12 agreement, I believe that it went to cabinet
13 several times for discussion.

14 You need to recall that our
15 Minister at the time, the Minister of Energy and
16 Infrastructure, was also the Deputy Premier.

17 Q. So the answer to my question
18 was that there was no cabinet approval; correct?

19 A. Because it was not necessary.

20 Q. Remember I was asking you at
21 the beginning you said you would answer my
22 question, if you needed to explain it -- I said a
23 "yes" or "no" answer to question --

24 MR. SPELLISCY: I'm sorry. She
25 answered his question. I understand we're going to

1 move carefully, but we talked about this yesterday.
2 The witness has to be able to give an explanation.
3 I am not going to allow you to cut her off like
4 that.

5 MR. BROWER: Is your microphone
6 on?

7 THE CHAIR: I understood you,
8 Ms. Lo, to say there was no cabinet approval
9 requirement for the GEIA, but that cabinet was
10 consulted on the GEIA.

11 Is this a correct restatement of
12 what you said?

13 THE WITNESS: Yes, absolutely.
14 And it was discussed more than once at cabinet
15 meetings.

16 THE CHAIR: Thank you.

17 BY MR. MULLINS:

18 Q. And it was discussed at the
19 cabinet. Why was it discussed at the cabinet if
20 they weren't seeking their approval?

21 A. Can you ask that question
22 again? I lost the last part.

23 Q. Well, what I was asking is
24 you've said there was no cabinet approval. You
25 agree with me they were originally seeking cabinet

1 approval. That is why they brought it to cabinet;
2 correct?

3 A. That's not what I said.

4 Q. Well, I am asking you, then.
5 Why was it being discussed at cabinet if they
6 weren't seeking the approval of cabinet?

7 A. Cabinet can discuss anything
8 it chooses to discuss. I don't set the cabinet
9 agenda. I would think that as a team of cabinet
10 ministers, they would like to have a frank
11 discussion.

12 Q. There would be no reason to
13 delay, then, the implementation or perhaps the
14 signing of the GEIA for cabinet approval because,
15 as you said, it wasn't required; correct?

16 A. Cabinet approval was not
17 required, yes.

18 Q. So that would be not a
19 reason, then, to delay the signing of the GEIA;
20 correct?

21 A. That would not be a reason.

22 Q. Thank you. You also
23 are -- in fact, that was identified by the Attorney
24 General that although the cabinet was briefed,
25 there had been no cabinet approval. Do you

1 remember the Attorney General's report -- Auditor
2 report, I'm sorry, Auditor General's report. I
3 apologize.

4 Do you remember the Auditor
5 General's report?

6 A. I recall the Auditor
7 General's report.

8 Q. Do you remember they
9 recognized that there had been no cabinet approval?

10 A. They reported that as a fact,
11 but I think it was also pointed out to them that
12 cabinet approval was not required.

13 Q. And they also identified that
14 the GEIA was neither a non-competitive procurement
15 nor a sole-sourced deal. Instead, it was an
16 investment arrangement with an objective
17 establishing a sound green energy sector in
18 Ontario. Do you remember that statement?

19 A. That sounds correct.

20 Q. And, in fact, that absolutely
21 was, according to the Auditor General, the position
22 of the Minister of Energy; correct?

23 A. I don't know. That's the
24 position --

25 Q. Let's look at it. It's at

1 tab 21.

2 THE CHAIR: It may be fair, yes.

3 Are you referring to the report?

4 MR. MULLINS:

5 Q. Yes, yes. Let's go to tab 21
6 of your book.

7 A. What page?

8 Q. Go to page 108. Have you
9 found it?

10 A. Mm-hm.

11 Q. If you go to the right-hand
12 column, one-quarter of the way down.

13 A. Yes.

14 Q. And it says, "According to
15 the Ministry..." So it says:

16 "According to the Ministry
17 the sourcing agreement is
18 neither a non-competitive
19 procurement nor sole-source
20 deal. Instead, it is an
21 'investment arrangement' with
22 an objective of establishing
23 a sound green energy sector
24 in Ontario since no other
25 company has proposed to

1 invest in Ontario's renewable
2 energy sector at the size and
3 scale of the consortium and
4 its partners."[As read]

5 Do you see that?

6 A. Yes, I do.

7 Q. What I just want to make
8 clear, you agree that that was an accurate
9 statement of the position of the Ministry of
10 Energy?

11 A. Yes.

12 Q. Thank you. Now, in your
13 statement, you say that the Government of Ontario
14 was transparent as possible about the GEIA's
15 assistance and implementation?

16 A. To the extent possible, the
17 Ministry was transparent, but it is a commercial
18 arrangement, and so there were certain aspects that
19 could not be transparent.

20 Q. Okay. Until it's signed?

21 A. No. I think the commercial
22 sensitivity would extend beyond the signing.

23 Q. So your position is that it
24 was -- well, first of all, what do you mean by
25 transparent, to make sure we're on the same page?

1 A. Transparent is to release the
2 entire agreement unredacted to everybody.

3 Q. Okay. I guess I was really
4 asking what you meant by transparent, in general,
5 not specifically to this agreement. But that was
6 helpful.

7 What I was asking is: What do you
8 mean by transparent, generally, in terms of how the
9 Minister of Energy operates?

10 A. Transparency would be
11 to -- well, I can answer it in the negative. It's
12 not to keep a whole bunch of reports or analyses
13 hidden from public view. That would be not
14 transparent.

15 Transparent would be to disclose
16 everything we did and said and reported and looked
17 at.

18 Q. And I guess you kind of
19 answered my question, but I want to explore it a
20 little bit.

21 So now you're saying that not only
22 was it important for Ontario to keep the
23 negotiations non-transparent, but even after you
24 signed the agreement it was still important to keep
25 some portions secret. Is that what you're saying?

1 A. I don't think that's exactly
2 what I said. You're putting words in my mouth.

3 Q. I don't want to do that, so
4 why don't you explain what you mean?

5 A. Can you ask the question
6 again?

7 Q. Sure. Can you explain to us
8 why it was important not to have the GEIA to be
9 transparent and complete after it was signed?

10 A. After it was signed, I
11 believe that there was a lot of the agreement that
12 was made public in terms of how many megawatts and
13 what the government would get in exchange for those
14 megawatts, so, for instance, the manufacturing
15 plants and the jobs and what the Korean Consortium
16 was going to invest in Ontario. You know, it was
17 touted as the \$7 billion investment.

18 I think in terms of what was kept
19 confidential were some of the commercial terms.

20 Q. Did you make that decision of
21 what was going to be released and what was not?

22 A. I wasn't -- I didn't have
23 carriage of the GEIA in 2008 or 2009.

24 Q. Well, is the GEIA released
25 now, ma'am? It's on the website, isn't it?

1 A. I believe it was released
2 quite a while ago, quite a while ago.

3 Q. I didn't want to cut you off,
4 I'm sorry. I was told yesterday it is now
5 available on the website.

6 A. Not just now, but before.

7 Q. Okay. And so what's changed,
8 ma'am?

9 A. I think it was released back
10 in 2011.

11 Q. I understand that, but what's
12 changed? Why now is it public, but back in 2009
13 and 2010 it wasn't public?

14 A. Well, I can't speak to 2009,
15 because I didn't have carriage of the file. I
16 think you had your opportunity to ask Rick Jennings
17 yesterday.

18 In about May or June of 2010, I
19 had carriage of the file and I know that --

20 Q. Was it public when you took
21 over the file, ma'am?

22 A. It wasn't public at the time
23 that I took over the file, but I was involved in
24 the renegotiation, and right after we renegotiated
25 it, it was made public.

1 Q. Okay. So when you took over
2 the file, it was still secret, right, the entire
3 agreement.

4 A. The entire agreement? It was
5 not released. It's not that it was a secret. It
6 was a commercial deal and it was inappropriate to
7 release it.

8 I believe that it was the Korean
9 Consortium itself that felt vulnerable in terms of
10 their commercial arrangements with other
11 developers, and they didn't -- they felt that it
12 would disadvantage their negotiations with -- in
13 forming partnerships if it were released.

14 Q. So the reason why the
15 Government of Ontario when you were in charge did
16 not release the entire GEIA was to protect the
17 interests of the Korean Consortium?

18 A. I think that what had been
19 released was the most important detail, which is
20 the manufacturing plants and when they were
21 supposed to come online, the jobs numbers, the
22 number of megawatts that would receive
23 transmission, the five phases, the adder. Those
24 were all revealed, and that's what affected the
25 public in terms of how the agreement would be borne

1 by ratepayers.

2 Q. Did you make any thorough
3 analysis -- scratch that.

4 You yourself, did you make any
5 opinion as to whether or not you should release the
6 GEIA when you took over or were you just following
7 the policy that had been followed by your
8 predecessors?

9 A. I don't understand the
10 question.

11 Q. I understood when you took
12 over the file the GEIA had not been released, and I
13 also understand that you personally didn't release
14 it when you took over the file. Now I am asking
15 you: Did you make an independent analysis of
16 whether or not it should be released, or were you
17 just following the policy that had been established
18 by your predecessors?

19 A. I think that working in
20 government, you can have your own views in terms of
21 whether something should be released or not
22 released. But at the end of the day, some
23 decisions aren't made by yourself, and releasing
24 the GEIA certainly was not a decision that I could
25 make as the Assistant Deputy Minister.

1 Q. Who can make that decision?

2 A. Probably the Deputy Minister
3 and the Minister.

4 Q. Did you ask them whether or
5 not they should release the GEIA when you took
6 over?

7 A. But you seem to imply that
8 there's all sorts of hidden and veiled secrets.

9 What was released were the most
10 important aspects already. It was the
11 manufacturing. It was the adder. It was the jobs
12 creation. Those were the key aspects.

13 And every time there was a
14 separate phase of the agreement to proceed, the
15 Minister made it very transparent, in terms of
16 providing a direction to the OPA, to talk about
17 where transmission was being protected for the
18 Korean Consortium.

19 Q. Again, I really need you to
20 answer my question.

21 I asked you whether or not you
22 asked the Deputy Minister or the Minister about
23 that they should release the GEIA when you took
24 over. That was my question.

25 A. We discussed it all the time.

1 We discussed it all the time --

2 Q. Okay. And --

3 A. -- about when was the most
4 appropriate time to make the entire document
5 public. I think when I took over, one of the
6 things that we wanted to do was we wanted to
7 renegotiate it.

8 We knew that we had a strong
9 negotiating position. We wanted to renegotiate it
10 and release the amended agreement.

11 Q. Okay. And so -- fair enough.

12 Now, you also talk about, in your
13 statement and with others, that the
14 government -- the Ministry would have been open to
15 competitors to do a similar project that the Korean
16 Consortium did; correct?

17 A. Can you ask that again?

18 Q. In your statements and others
19 from Canada have said that the government would be
20 open to having similar deals with competitors of
21 the Korean Consortium, with a similar deal. Do you
22 agree with that?

23 A. Yes. Yes.

24 Q. Okay. Do you agree with me,
25 though, by not giving the entire agreement, Ontario

1 made it difficult for someone to compete with the
2 Korean Consortium, given they didn't have all of
3 the details that the Korean Consortium agreed to?
4 Wouldn't you agree with that, ma'am?

5 A. I don't believe that they
6 were in competition with the Korean Consortium.
7 Not necessarily. I mean, it -- if an investor
8 wanted to create their own deal, why wouldn't they
9 bring that proposal forward to the government?
10 And, in fact, some companies -- many companies did
11 come forward, but they didn't have the scale or
12 scope of proposal. They had very small -- like
13 small, small proposals that didn't -- that we
14 weren't interested in.

15 Q. Well, let me ask you this,
16 then. When they came to you for a proposal, did
17 you give a copy of the GEIA to them so they could
18 look at it so they can compare to their proposal?

19 A. I don't see the need to.
20 Investors come forward all the time to the
21 government with their own proposal.

22 It's not about copying somebody
23 else's proposal. It's not what investment
24 proposals are about. Different companies have
25 different strengths.

1 Q. You don't agree with me it
2 would be more easier for an investor to compete
3 with a -- well, scratch that.

4 Would it be easier for an investor
5 to come up with a proposal if it had all of the
6 details of the proposal that had already been
7 agreed to by the government?

8 A. I'd only be speculating.
9 It's up to each investor to negotiate their best
10 deal. So I don't know why we would turn over an
11 agreement for somebody else to copy.

12 Q. And you're speculating --

13 A. It doesn't make sense.

14 Q. I'm sorry, I cut you off.

15 You're speculating, because in fact the government
16 never gave a copy of the GEIA to any proponent of a
17 GEIA-like deal; isn't that correct, ma'am?

18 A. It is inappropriate to
19 provide the agreement to another competitor at the
20 time that the Korean Consortium was still working
21 out their proposal.

22 Q. No. I'm sorry, ma'am.

23 After it was signed, after it was
24 signed and proposals are coming in, we saw
25 yesterday the proposals came in after it was

1 announced, not before, because they didn't know
2 about it, ma'am.

3 I'm talking about after it was
4 signed.

5 A. Right.

6 Q. Okay. The government never
7 gave a copy of the entire GEIA to any of those
8 proponents to prepare to give a proposal; isn't
9 that correct?

10 A. That's correct.

11 Q. Thank you.

12 MR. SPELLISCY: I would just like
13 to clarify the record. I don't think what counsel
14 said is accurate there in terms of when the
15 proposals came in from what we saw yesterday.
16 Obviously Ms. Lo wasn't here yesterday and has been
17 sequestered, so she has no idea. I would like to
18 clarify the record. I don't think that is
19 accurate.

20 MR. MULLINS: The record speaks
21 for itself. All of the things I showed yesterday
22 were after September 2000.

23 BY MR. MULLINS:

24 Q. Okay. In fact, the GEIA did
25 not become public until -- I followed the lawsuit

1 in San Francisco -- in order to obtain it; correct?

2 Do you remember that?

3 A. I don't know what you're
4 referring to.

5 Q. You don't remember the 1782
6 action against Pattern where we got a copy of the
7 GEIA, and that was actually the first time we were
8 able to get a copy of it? You don't remember that?

9 A. I wouldn't know what you did.

10 Q. Okay.

11 A. When did you get it?

12 Q. 2012. Does that refresh your
13 recollection about when was the first time it
14 became public, 2012?

15 A. No, no. I thought that the
16 agreement was released after the renegotiation in
17 or about August of 2011.

18 Q. Was the amendment released at
19 the time?

20 A. The amendment was released --

21 Q. Immediately?

22 A. The amended agreement, so
23 that would be the valid agreement, was released
24 right after the negotiations in August. It was
25 made available to anyone who requested it.

1 Q. The amended?

2 A. In August, the amended
3 agreement.

4 Q. So the amended agreement was
5 made public immediately?

6 A. In August of 2011.

7 Q. Okay. And the amended
8 agreement had -- I would take it would have the
9 same type of terms that were in the original
10 agreement; they were just amended?

11 A. No. There were some really
12 major differences.

13 Q. But I guess I'm a little
14 confused, ma'am. It still was a GEIA; right? It
15 was just amended; right?

16 A. It was an amended GEIA.

17 Q. Okay. What I'm trying to
18 understand is: Why was the amended GEIA released
19 when the original GEIA was not released?

20 A. I don't know. I can't answer
21 that.

22 THE CHAIR: Can I ask this
23 differently? What were the amendments? What were
24 the main amendments?

25 THE WITNESS: The main -- so the

1 main amendment was that what we had done was
2 renegotiated the adder. So the adder originally
3 could have been maxed out at \$437 million if the
4 manufacturing were brought in at specific times.

5 And the amended agreement reduced
6 that adder to \$110 million, maximum. And so that
7 was a significant gain for the Government of
8 Ontario.

9 In exchange, the Korean Consortium
10 received an extension to the COD dates -- that's
11 the commercial operation dates -- of the first two
12 phases of the GEIA.

13 And so the extensions were for one
14 year. They needed more time to complete their
15 projects.

16 THE CHAIR: Thank you.

17 BY MR. MULLINS:

18 Q. So let me go back to that,
19 then. I thought you told us earlier that the most
20 important elements of the GEIA, the adder and
21 the -- and these manufacturing commitments were
22 already public; right? That was never -- that was
23 public. That was not held back after 2010; right?

24 A. I think in the news release
25 that was sent out when the agreement was signed at

1 the stock exchange in January of 2010, there was a
2 news release that went out that spoke of the jobs
3 and the manufacturing and the adder. So those were
4 the key elements, and they were disclosed in
5 January of 2010.

6 Q. Right. So again I go back to
7 my question followed by the Chair's question, which
8 is: If those were the changes in the amendment,
9 why was the amendment released and not the original
10 agreement?

11 A. Because it was the valid
12 agreement. Why release something that wasn't valid
13 anymore?

14 Q. I meant originally, ma'am. I
15 agree with you. I would have released the original
16 agreement.

17 A. I don't know whether
18 both -- I think you would have to go back in the
19 record to see whether both agreements were
20 released. Perhaps they were.

21 Q. No.

22 A. I don't know.

23 Q. I'm sorry?

24 A. I know the amended valid
25 agreement was released in August of 2011.

1 Q. I think you misunderstood my
2 question and maybe I didn't ask it well.

3 What I was asking is that given
4 that the amendments changed things that were
5 public, I'm still confused as to why the Ministry
6 of Energy decided to release the entire amended
7 GEIA, but to that point had not released the GEIA
8 itself. I don't understand, ma'am.

9 A. I don't understand your
10 question.

11 THE CHAIR: No. The question is:
12 Why was the GEIA, the original GEIA, not
13 released? But that to me was in a period where you
14 were not in charge of this file, because your
15 question probably refers to January 2010 and you
16 only took over in May or June 2010.

17 THE WITNESS: Right.

18 THE CHAIR: If I am correct.

19 BY MR. MULLINS:

20 Q. That's correct. But I guess
21 even when she was in charge, when she was having
22 discussions with the Minister, where I'm confused
23 is that she has told us the changes were to things
24 that were public, and so -- and then the agreement
25 gets released.

1 I don't understand why, then,
2 during the time that you were there, why the entire
3 original agreement was not released.

4 THE CHAIR: Can I clarify this,
5 because I have the same question?

6 When you were asked this by
7 counsel before, why, when you took over, did you
8 not consider releasing, and you said that was not
9 "my prerogative" and it was the Deputy Minister or
10 the Minister's decision.

11 But you added then, Well, we
12 discussed all the time when would be the
13 appropriate time to publish it.

14 And I was asking myself, Well, why
15 would you discuss this all the time? Was this such
16 an issue?

17 THE WITNESS: Well, I think the
18 government wanted to release the agreement because
19 there was nothing to hide.

20 But what was going on was that,
21 from our perspective, there was not much in terms
22 of the agreement. But from a commercial
23 sensitivity for the Korean Consortium, they did not
24 want it to be released right away, because they
25 were still negotiating with manufacturing plants

1 and they were still in deliberations with -- trying
2 to assemble partner developers to develop their
3 projects.

4 THE CHAIR: And they did not want
5 their contractual -- potential contract partners to
6 know what their own terms were or what was the --

7 THE WITNESS: Yes, because I think
8 what they didn't want to do was they wanted
9 to -- they were worried, I guess, that others --
10 they were negotiating still, for instance, with
11 First Nations in the Haldimand area, and they were
12 concerned that if First Nations, for instance,
13 found out what the commercial agreement was, then
14 they would have to -- that they would have to
15 provide a more lucrative or generous proportion to
16 First Nations or other developers.

17 So there was the commercial
18 sensitivity in it.

19 THE CHAIR: So it would affect
20 their bargaining power?

21 THE WITNESS: Yes, it would. That
22 is essentially what they were saying.

23 THE CHAIR: And you discussed this
24 with the Koreans?

25 THE WITNESS: I think the working

1 project team and -- had discussed it all the time.

2 BY MR. MULLINS:

3 Q. I take it, then, though, when
4 you got to the amended agreement, you decided that
5 those concerns no longer were something you needed
6 to concern yourself with?

7 A. I think what had happened was
8 that with the evolution of time, many of their
9 discussions and negotiations with other developers
10 and landowners and the First Nations had progressed
11 to a point where they were solidified and that the
12 concerns did not exist anymore.

13 Q. Did the GEIA itself require
14 you to keep certain terms confidential?

15 A. I don't understand your
16 question.

17 Q. Did the contract itself
18 require it to be confidential?

19 A. I don't know whether that was
20 explicit within the original GEIA. It's a
21 commercial agreement, and so even if you look at
22 FOI, there are certain exclusions, and I think
23 commercial sensitivity and confidentiality is one
24 of the provisions of which something should be
25 protected.

1 Q. Well, now it's public; right?

2 A. Because both sides allow it
3 to be.

4 Q. You understand the FOIA
5 allows private entities to decide what documents
6 will be public?

7 A. You're not saying anything
8 different than I did.

9 Q. I am asking you. I am asking
10 you: You understand that the Freedom of
11 Information policies allow a private entity to
12 decide when a document will be public record?

13 A. I think the private entity
14 makes a case with the FOI, with the Privacy
15 Commissioner, and the Privacy Commissioner listens
16 and makes a ruling on whether something should
17 remain private or not.

18 Q. Did any of that happen here,
19 ma'am, to your knowledge?

20 A. I think it did.

21 Q. You think it did or do you
22 know that it did?

23 A. I believe that the Privacy
24 Commissioner was involved. I don't know to what
25 extent, so I... Maybe I best leave it alone.

1 Q. Thank you. Was there any
2 ruling by the Privacy Commissioner regarding
3 whether or not the original GEIA and the amended
4 GEIA should be made public, to your knowledge?

5 A. No.

6 Q. Thank you. And when you
7 became familiar with the memorandum of
8 understanding, you made sure that you understood
9 that you had all of the agreements between the
10 Korean Consortium and the government, that you knew
11 about all of them; right?

12 A. I don't understand your
13 question.

14 Q. Well, to your knowledge,
15 there was the original memorandum of understanding?

16 A. Yes.

17 Q. Correct? And then the only
18 other document -- agreement was -- first was the
19 GEIA?

20 A. Mm-hm.

21 Q. Is that correct?

22 A. Yes.

23 Q. And there were no other
24 interim agreements between those two documents;
25 correct?

1 A. It wasn't during my time,
2 so -- I don't believe there were, though.

3 Q. You haven't seen anything?

4 A. I've been away for 18 months.
5 I don't remember seeing anything.

6 Q. So there wasn't a conditional
7 agreement?

8 A. I didn't take over the
9 portfolio until May or June of 2010, so what
10 preexisted me I don't necessarily know.

11 From the point at which I took
12 over in terms of the amended agreement, I'm super
13 familiar with the amended agreement, as well as the
14 PPAs.

15 Q. Okay. So far as you know,
16 there was no conditional agreement set forth in the
17 MOU; correct?

18 A. I can't answer that. I don't
19 know.

20 Q. Okay. Now, let's go to the
21 GEIA. This is in your statement. It says in the
22 GEIA there were gets and gives. And you say -- the
23 first get you mention is developing generation
24 capacity, correct, in your rejoinder statement,
25 paragraph 4?

1 A. That's a "give".

2 Q. Well --

3 A. Isn't that a give?

4 Q. Well, let's see.

5 A. The government gives

6 generation capacity. The government gets

7 manufacturing, gets the \$7 billion investment.

8 Q. Fair enough. I guess it

9 depends on which side you're on.

10 A. I guess.

11 Q. It's a get to the Korean

12 Consortium, but a give by the government; correct?

13 A. But I always have the

14 government view.

15 Q. Oh, fair enough. And the get

16 was the ability to -- commitment to attract

17 manufacturing; correct?

18 A. Build their own or attract,

19 yes. It had to do with jobs.

20 Q. Okay.

21 A. It didn't matter how they

22 were -- there would be jobs in the manufacturing

23 plants. That was the main thing.

24 Q. Well, but you agree with me

25 that the Korean Consortium was not required to

1 actually build manufacturing plants?

2 A. Right. It would make sense
3 they would not be required to build them because,
4 if you look at who builds these manufacturing
5 plants, what you want is state-of-the-art
6 manufacturers who are the best in class in terms of
7 manufacturing those products. You don't want a
8 newbie.

9 Q. Yes, you do not want a newbie
10 like Samsung; right?

11 A. No. No. They attracted
12 world-class manufacturers like Siemens for the
13 windmill blades, like CS Wind for the towers and
14 Celestica for the modules.

15 Q. Well, they had an advantage,
16 though, right, because they had a contract;
17 right? Do you agree with me, ma'am, it was easier
18 for Samsung to attract that world-class assistance
19 when they already had a contract with Ontario?

20 A. It was required of them.
21 That was the "get".

22 Q. But you didn't answer my
23 question. Do you agree?

24 A. Was it easier? I don't know
25 whether it was easier for them.

1 Q. Well, once you have a
2 contract with the government where you're setting
3 aside 2500 megawatts of capacity where you don't
4 have to compete with anybody else, it's a lot
5 easier to attract investors; correct? Don't you
6 agree with that, ma'am?

7 A. It was -- they faced
8 different challenges, that's all I can say. I
9 don't know whether it was easier. That's like
10 comparing apples and oranges.

11 Q. Right. They faced a
12 different challenge. They didn't face the
13 challenge of competition with the other FIT
14 proponents; correct?

15 A. Right.

16 Q. Thank you. And, in addition,
17 the Korean Consortium also is not required to
18 operate a manufacturing facility. Not only didn't
19 they have to build it, they didn't have to operate
20 it either; right?

21 A. It was about jobs.

22 Q. So the answer to my question
23 is, yes, they did not have to operate it; correct?

24 A. Yes.

25 Q. Thank you. Now, the original

1 agreement required the Korean Consortium to provide
2 evidence that there were foreign manufacturing
3 plants established, according to your statement?

4 A. Right, yes, by certain time
5 lines.

6 Q. That is not entirely true,
7 Ms. Lo, because isn't it a fact that for the solar
8 inverter they were permitted to designate a company
9 that had already been established in Ontario? Do
10 you remember that, ma'am?

11 A. I think SMA was the solar
12 inverter company and they weren't established,
13 because I went to the Don Mills plant when it was
14 announced. It was a partnership through Celestica,
15 and there were new jobs being created there.

16 Q. Where is Celestica located,
17 ma'am?

18 A. The one that -- the plant we
19 had visited was at Don Mills, so Eglinton and Don
20 Mills.

21 Q. It is Ontario; right?

22 A. Yes.

23 Q. And you don't remember that
24 was already in existence at the time the GEIA was
25 entered?

1 A. Well, Celestica was in
2 existence, of course. It's been there for years,
3 but this was a new venture, a new partnership.
4 These were new jobs that were being created.

5 Q. But at least for purposes of
6 the GEIA, they could rely on Celestica in terms of
7 meeting its commitments; correct?

8 A. Well, they signed a
9 commercial agreement with Celestica and I believe
10 it was SMA.

11 Q. Okay, thank you. Do you
12 agree with me, ma'am, that the FIT program also
13 attracted jobs to Ontario; correct?

14 A. Yes.

15 Q. And, in fact, there was a
16 local content requirement?

17 A. Yes.

18 Q. And that was the whole
19 purpose, right, of the local content requirement,
20 to try to attract jobs into Ontario?

21 A. Yes.

22 Q. Part of the reason?

23 A. Yes.

24 Q. And so for purposes of the
25 GEIA and this renewable energy project, at least

1 you were getting the -- the statement, you said you
2 were getting these jobs, you were getting that
3 through the FIT program, as well; correct?

4 A. Well, definitely through the
5 FIT program we would get jobs and many of them were
6 in construction.

7 They weren't necessarily in the
8 manufacturing sector, and the government was very
9 concerned with building a green tech sector.

10 Q. By the way, ma'am, were you
11 in any discussions of whether or not any of the
12 renewable energy projects would be in violation of
13 NAFTA?

14 MR. SPELLISCY: I would just
15 caution the witness again of course she can't
16 disclose any solicitor-client communications or
17 anything that she may have discussed with lawyers.
18 She can acknowledge if they occurred, but she
19 cannot disclose any of the conversations she may
20 have had with lawyers.

21 THE WITNESS: Okay. What was your
22 question again?

23 BY MR. MULLINS:

24 Q. My question is: Were you
25 involved in any discussions about whether or not

1 any portion of the renewable energy project was in
2 violation of NAFTA?

3 A. No. Actually, I don't even
4 understand your question.

5 Q. What part didn't you
6 understand, ma'am?

7 A. Probably the entire thing.

8 Q. Okay. Well, let me break it
9 down.

10 A. I didn't know what you were
11 asking. Sure. Break it down, please.

12 Q. Do you know what NAFTA is?
13 Do you know what NAFTA is?

14 A. Yes.

15 Q. Okay. Do you know what a
16 violation is?

17 A. Yes.

18 Q. Did you have any discussions
19 with anybody about violating -- that the renewable
20 energy program violated NAFTA?

21 A. Probably with legal counsel,
22 but I don't remember the exact conversations.

23 Q. Okay, thank you. I'm not
24 asking for the substance, but this was back when
25 you first got involved; correct?

1 A. No. No. I don't think we
2 had any conversations about potentially violating
3 NAFTA until this particular challenge was launched,
4 which was a little bit surprising.

5 Q. Okay, thank you. Now, you
6 talk about -- going back to the gets and gives, one
7 of the gives was the priority transmission
8 guarantee of economic adder, right, or two gives,
9 actually?

10 A. Two things. Those are two
11 things, yes.

12 Q. Okay. Those are the gives;
13 right? I got that right this time?

14 A. Yes.

15 Q. But you agree with me that
16 for the first 500 megawatts, the Korean Consortium
17 was not required to meet any manufacturing
18 commitment; correct? It may help you to -- go
19 ahead. I didn't want to cut you off. Go ahead and
20 answer.

21 A. That may have been. I think
22 this was the way the original agreement was
23 structured, yes.

24 Q. Okay, thank you. If you need
25 to go to the agreement -- but if you're able to

1 answer the question, it will make things a lot
2 faster. Thank you.

3 And also, and I think you alluded
4 to this earlier, this was not just -- let me go
5 back here.

6 This GEIA was not -- they weren't
7 building 2500 megawatts all at one time, right,
8 capacity? This was a multi-year deal; correct?

9 A. Five phases.

10 Q. Five phases. How long was
11 that going to take, originally?

12 A. I think it would happen over
13 five years.

14 Q. Five years. So 500 per year?

15 A. Right.

16 Q. Okay. And so it's not
17 that -- when you talk about the size and scope of
18 the project, right, you agree with me that there
19 were FIT projects, at least for approximately 500
20 megawatts, that were being proposed in any given
21 time?

22 A. I don't think there were.

23 Q. You don't have any memory of
24 that?

25 A. No. I do have memory of it.

1 There wasn't -- there weren't any
2 wind projects that were greater than -- I thought
3 it was 100-and-something megawatts.

4 Q. Per project. But, for
5 example, my client, you don't remember my client
6 having two projects worth approximately
7 500 -- well, more than that. Four projects worth
8 500 megawatts?

9 A. There were lots of projects.

10 Q. Right. Well, my point is
11 each investor -- some investors had more than one
12 project. So totally they would have more -- they
13 could have approximately 500 megawatts, for
14 example, Mesa; correct?

15 A. It's not something that we
16 paid close attention to. There were lots of
17 investors, lots of projects, in fact, hundreds and
18 hundreds and hundreds and thousands of projects, if
19 you count the small and medium projects. There
20 were thousands.

21 Q. My point, though, is when you
22 compare it, when you break it down -- for example,
23 the 500 megawatts that the Korean Consortium had in
24 the first year is comparable to the four projects
25 my client, for example, proposed through the FIT

1 program, just when you look at 500 versus 500?

2 A. Okay.

3 Q. Do you agree with that?

4 A. It's comparing megawatts,
5 yes.

6 Q. Thank you. And so we're
7 clear, neither this priority access or this adder
8 that was in the agreement, none of that was ever
9 provided to any of the FIT proponents; correct?

10 A. Right. It was a different
11 program.

12 Q. Thank you. We talked a
13 little bit about this, but, again, the FIT program
14 had a local content requirement?

15 A. Yes.

16 Q. And both the FIT program and
17 the GEIA had 20-year FIT contracts?

18 A. Yes.

19 Q. Both the FIT program and the
20 GEIA were being paid the same amount of money per
21 megawatt, with the exception of the adder?

22 A. Yes.

23 Q. Both the FIT program and the
24 GEIA had foreign investors?

25 A. There were a variety of

1 investors.

2 Q. So the answer to my question
3 is, yes, both the GEIA and FIT program had foreign
4 investors?

5 A. They had it, but not
6 exclusively.

7 Q. Both the FIT program and the
8 GEIA had -- were renewable energy projects?

9 A. Yes.

10 Q. Thank you, ma'am. And you
11 agree with me that there was nothing prohibiting
12 Ontario from entering into a GEIA-like agreement
13 with a competitor of the Korean Consortium;
14 correct?

15 A. I think it was announced by
16 the Premier that Ontario would be --

17 Q. All ears?

18 A. All ears, right.

19 Q. Like Dumbo, all ears?

20 A. I wouldn't say that of the
21 Premier, no.

22 Q. Well, I'm not from here, so I
23 can.

24 --- Laughter.

25 Q. But in fact despite being all

1 ears, apparently your hands were tied, because you
2 never entered a single agreement like the GEIA with
3 any competitor of the Korean Consortium; correct?

4 A. We didn't, partially because
5 nobody came forward with another proposal to the
6 scale and scope as the Korean Consortium did.

7 Q. Well, they didn't know about
8 it until September 2009, right, because you kept it
9 secret; correct?

10 A. There was lots of time after.

11 Q. Okay. And afterwards you
12 kept the agreement itself confidential, correct, at
13 least while you were there; right?

14 A. Keeping a commercial
15 agreement is very different from other proponents
16 coming forward to make a proposal to government.

17 What was really happening was that
18 it was the economic environment, because in
19 2008/2009 there was a huge global recession and
20 investors just were not lining up at anyone's doors
21 to make major investments anywhere.

22 So you have to take a look at the
23 economic climate. It wasn't because they couldn't
24 see the GEIA.

25 What has ever stopped an investor

1 from coming forward to make a proposal to the
2 government before? They do it all the time. But
3 when you're in a financial crunch, then when Lehman
4 Brothers even goes out of business back in that
5 same time frame, then the investment capital is
6 very scarce and they are not lining up at your
7 door. That is the whole idea of the GEIA.

8 Q. Okay. Now, ma'am, when the
9 FIT was announced, simultaneously the Ministry of
10 Energy issued a directive setting forth a reserve
11 of 240 megawatts and 260 megawatts in various
12 counties in Ontario, and that was for the Korean
13 Consortium; correct?

14 A. Correct.

15 Q. And so none of the FIT
16 proponents could use that capacity that had been
17 set aside for the Korean Consortium; correct?

18 A. Correct.

19 Q. And that was done before the
20 GEIA was signed; correct?

21 A. I think at that time it was
22 in September of 2009 and the memorandum of
23 understanding was in place.

24 Q. I understand, but the GEIA
25 wasn't signed; correct?

1 A. Right, correct.

2 Q. And so at the time this is
3 set aside, there was no binding contract between
4 the Korean Consortium and the Government of
5 Ontario; correct?

6 A. Correct.

7 Q. You talk about in your
8 statement --

9 MR. LANDAU: Are you moving on to
10 another subject?

11 MR. MULLINS: It is kind of
12 related, but go ahead. You can ask.

13 MR. LANDAU: Obviously.

14 MR. MULLINS: You can interrupt
15 any time you want.

16 --- Laughter.

17 MR. LANDAU: Sorry. I'm sorry if
18 I broke the flow. I just wanted to ask, actually.
19 This is a question which you may not be able to
20 answer, because it is before the time that you had
21 responsibility, but it is something which you talk
22 about in your first statement and that is the
23 period of September 2009, when there was
24 simultaneously a launch of the FIT program and, at
25 the same time, there was the announcement of the

1 GEIA.

2 So the two tracks, then, sort of
3 become, in a sense, on the radar at the same time.

4 THE WITNESS: Right.

5 MR. LANDAU: And you talk a little
6 bit in your first statement about the coordination
7 between those two, the two tracks.

8 One question I've got is: In
9 September 2009 there's a public directive to the
10 OPA to set aside approximately 500 megawatts, which
11 is for the Korean Consortium?

12 THE WITNESS: Yes.

13 MR. LANDAU: That is, according to
14 your testimony, in anticipation of a contract that
15 will be concluded after, still to be finally
16 concluded, but gets concluded in January 2010?

17 THE WITNESS: Right.

18 MR. LANDAU: Given that we're now
19 in parallel tracks at that point, and given that
20 there is -- for the GEIA to operate, if it is going
21 to be concluded, it will have to operate on the
22 basis of a reserve capacity, why was it that there
23 is only a directive or public announcement for 500
24 megawatts at that point?

25 I mean, one might have thought

1 there would be a clear statement, because the FIT
2 program is now up and running, that 2,500 are
3 subject to be reserved.

4 THE WITNESS: The -- what was
5 going on with the GEIA was that the agreement would
6 be for 2500 megawatts in total.

7 MR. LANDAU: Yes.

8 THE WITNESS: But the way it was
9 to be developed was in five phases.

10 MR. LANDAU: Yes, yes.

11 THE WITNESS: And the Korean
12 Consortium weren't entitled to future priority
13 access until they delivered on certain
14 manufacturing commitments.

15 MR. LANDAU: Understood.

16 THE WITNESS: So if they didn't
17 commit to it, if they didn't deliver on the
18 manufacturing, then they wouldn't get the next
19 phase --

20 MR. LANDAU: Right.

21 THE WITNESS: -- necessarily.

22 MR. LANDAU: I understand that in
23 terms of how the GEIA operates.

24 But looking at it through the
25 perspective of FIT participants, obviously for a

1 FIT participant it would have an impact on their
2 overall assessment --

3 THE WITNESS: Right.

4 MR. LANDAU: -- as to how much
5 capacity is going to be taken out and reserved for
6 other users in some other program.

7 So it would have been relevant for
8 them, wouldn't it, to know there is a first phase
9 of 500, and that's in these particular regions, but
10 subject to various conditions being fulfilled in
11 the future, other capacity will be taken out from
12 other regions?

13 THE WITNESS: Yes. That's exactly
14 what was going on with the transmission folks was
15 that they were trying to figure out how to fit the
16 priority transmission for the Korean Consortium
17 together with the other FIT proponents.

18 And it was something where it was
19 a little bit in motion, because the Korean
20 Consortium knew that they wanted to build the first
21 phase in Haldimand and Chatham-Kent, but the future
22 phases were a little bit more up in the air in
23 terms of where they would be located.

24 So it wasn't decided. I don't
25 think the Korean Consortium had negotiated with

1 either landowners or other developers to pursue
2 their future phases as clearly, and so it wasn't
3 certain how to protect capacity for their projects.

4 MR. LANDAU: I see.

5 THE WITNESS: And you will
6 remember that the transmission capacity was also
7 something that was dynamic in terms of it being
8 developed. And, you know, when you look at 2009,
9 there was certain available transmission, but then
10 in 2010-2011, it changes again as new transmission
11 comes on board.

12 MR. LANDAU: I see. Thank you.

13 Sorry. Go ahead.

14 MR. BROWER: You and other
15 witnesses on behalf of Canada have made the point
16 that only Samsung and the Korean Consortium came
17 forward with such a deal.

18 Let's assume for the sake of
19 argument that Mesa or some other company had also
20 come with a deal to provide 2500 megawatts and
21 bring in something of the same magnitude as the
22 Samsung deal.

23 Would the Ministry have taken on
24 two such deals with the FIT program in progress?

25 THE WITNESS: That's a very

1 interesting question, because I think the
2 answer -- it is hypothetical, but --

3 MR. BROWER: Yes.

4 THE WITNESS: -- it would really
5 depend on timing. I think what was going on back
6 in 2009 was that when the FIT program was launched,
7 I don't think anyone had envisaged how -- how
8 wildly successful it would be to attract so
9 many -- so many proponents.

10 And so I would say that after the
11 FIT program was launched with 10,000 megawatts of
12 projects waiting in a queue, I think that to sign
13 another framework agreement for that, of that
14 magnitude, probably we would have to look carefully
15 at, because 2500 megawatts is a lot. It is a large
16 amount of generation to procure.

17 MR. BROWER: Right. I think one
18 of the witnesses for Canada testified yesterday
19 that the GEIA was a marquis project. I think that
20 was the term used. And it's clear from all of the
21 discussion in the record that this was regarded as
22 the -- at least by the Deputy Prime Minister,
23 Mr. Smitherman, as a "big deal", as we would call
24 it, a big win for Ontario.

25 And I ask myself: Is it

1 counterintuitive to think there could possibly be
2 two such deals, particularly given the fact that
3 the FIT program was in progress for, you say,
4 10,000 and 2,500 disappeared potentially or it
5 became contractually -- Ontario became
6 contractually bound as of January 2010 to provide
7 2,500 to -- to take another 2,500 off the grid, as
8 it were, and have the FIT program still operating.
9 That's why I raise the question.

10 I think you answered it very well.
11 It is an interesting question.

12 THE WITNESS: Yes.

13 BY MR. MULLINS:

14 Q. Thank you. Just a couple of
15 follow-up questions, Ms. Lo.

16 First, you just testified that you
17 didn't think people would know how successful the
18 FIT program would be.

19 Could you go to tab 41 of your
20 binder in front of you? If you go to the second
21 page, I'm sorry, it is confidential, document 673.

22 --- Upon commencing confidential session under
23 separate cover

24 --- Upon resuming public session at 10:24 a.m

25 MR. LANDAU: I think you're still

1 confidential.

2 BY MR. MULLINS:

3 Q. Thanks. Now, this is an
4 e-mail from February 2009, If you look on the
5 second page, Bates number 48955.

6 Scroll down. And you see here
7 Mr. Yoo from Samsung is writing Pearl Ing. Do you
8 know who Pearl Ing is, ma'am?

9 A. Of course.

10 Q. Who is that?

11 A. She was the director of the
12 renewable energy facilitation office.

13 Q. Now, we didn't get an answer
14 to this question. The question was: Are there any
15 specific reasons why the MEI does not want to
16 release the MOU?

17 The MOU is referring to the
18 memorandum of understanding, right, between the
19 Korean Consortium and Ontario; right?

20 A. So to be clear, this MOU is
21 different from the previous document you showed me.

22 Q. I understand that. I'm
23 moving to this document now.

24 A. Okay.

25 Q. Right. And so now it does

1 look like -- do you agree with me at least on
2 February 2009 Samsung wanted to know why it was the
3 Minister of Energy that wanted to keep the MOU
4 confidential; right?

5 A. "Any reason you are planning
6 to release when we get to conditional agreement?"

7 This was way before my time. It
8 is February 2009.

9 Q. I understand, ma'am, but you
10 have been talking about, you know, conditions in
11 2009. So I guess my question is, just so we can
12 pinpoint this at least as of February 2009, it
13 doesn't look like it was Samsung that was looking
14 to keep this deal private? It was Ontario?

15 A. I can't comment. I really
16 wasn't there, and if you look at the timing, it was
17 February 2009 and that's before the GEA, the GEGEA,
18 was proclaimed.

19 So this was really early days. I
20 think in terms of the MOU, when you don't even have
21 the GEGEA, I would say that whatever -- and I
22 wasn't privy to the rest of the responses back and
23 forth, so I have no context for this discussion.

24 Q. Well, we weren't given the
25 answer, either.

1 A. Well, nor was I part of that
2 e-mail chain, so I can't comment.

3 Q. So the record is clear,
4 though, it was after the GEIA was signed that now
5 the parties switched and it was now the Ministry of
6 Energy that wanted to -- sorry, Samsung wanted to
7 keep it confidential and -- right? Is that what
8 you're saying, because that is what you told us the
9 reason why it was --

10 A. No, I didn't say that.

11 THE CHAIR: It seems to me that
12 what I hear from the witness, which is also my
13 reaction when I look at this, the witness was not
14 there at the time.

15 THE WITNESS: Right.

16 THE CHAIR: This is a question
17 from Samsung's legal department, and we do not have
18 the context here, because the rest is redacted. It
19 is very difficult to give a specific meaning to
20 this question and I don't think it is fair to ask
21 the question to this witness, because she was not
22 there at the time.

23 THE WITNESS: See, at this time
24 Pearl Ing wasn't even the director of the renewable
25 energy facilitation office.

1 MR. MULLINS: I understand, but in
2 fairness, Madam Chair, the witness sometimes talks
3 about -- and I think it was pointed out by
4 Arbitrator Landau. She has comments about the
5 period of time before she was there I had asked
6 before.

7 So I think in fairness, I am
8 allowed to ask. If she doesn't know, she
9 can -- she has some knowledge of stuff before she
10 got there.

11 THE CHAIR: You are allowed to
12 ask, but she is allowed to answer.

13 MR. MULLINS: Say "I don't know".

14 THE CHAIR: Yes.

15 BY MR. MULLINS:

16 Q. Fair enough. I think we have
17 covered it. That's fine. You used the term
18 "anchor tenant" in your statement?

19 A. Yes.

20 Q. Did you come up with that
21 term?

22 A. No. I believe that term was
23 used many times well before I used it.

24 Q. Yes. Now, when I
25 hear -- well, anchor tenant, we often hear that,

1 for example, an anchor tenant in a mall; right?

2 A. Yes.

3 Q. So an anchor tenant of a mall
4 would be like Macy's in my country?

5 A. Sure.

6 Q. And then you have other
7 stores that come in, correct, and they are all
8 tenants; right?

9 A. Sure.

10 Q. And they all pay rent; right?

11 A. Yes.

12 Q. They all pay. They all have
13 leases; correct?

14 A. That's one way to interpret
15 it, yes.

16 Q. Okay. And the idea of an
17 anchor tenant is that once you put in the anchor
18 tenant, then it is supposed to attract other
19 tenants?

20 A. Yes.

21 Q. Okay. And so but despite the
22 fact that the -- but the memorandum of
23 understanding was signed in December of 2008.

24 So why was not the Government of
25 Ontario telling everyone about this wonderful

1 anchor tenant they were going to have during 2009?

2 A. I think the only thing that
3 was signed was an MOU, and an MOU doesn't have any
4 guarantees. It is very different from an actual
5 agreement.

6 So, you know, it wasn't a sure
7 thing.

8 Q. Thank you.

9 MR. SPELLISCY: Counsel, we have
10 been going for about an hour and a half, and I had
11 a large cup of coffee this morning, and so I was
12 wondering if there is time for a break at some
13 point.

14 MR. MULLINS: I am fine to take a
15 break now.

16 THE CHAIR: I thought it was a
17 little early, if we think about the rest of the
18 morning, because then the rest of the morning gets
19 very long. Is it fine if we -- can you take maybe
20 one more topic?

21 MR. MULLINS: Yes, sure. I was
22 going to go through my notes during the break.
23 Let's see here. I am trying to make it shorter.

24 BY MR. MULLINS:

25 Q. Now, going back to this

1 anchor tenant, I take it you believe that Samsung,
2 the idea was that Samsung would boost investor
3 confidence because it is Samsung; right?

4 A. Yes.

5 Q. But you agree with me that
6 there are other companies in the world that could
7 have done a similar operation; correct?

8 Well, first of all, let me ask
9 you: There are other companies that could have
10 entered into the GEIA and made the same proposals?

11 A. I don't think there was
12 anything stopping any other major blue-chip company
13 to come forward.

14 Q. And, in fact, at the time,
15 Samsung had no experience in renewable energy;
16 correct?

17 A. They, they partnered with
18 KEPCO.

19 Q. Right.

20 A. And KEPCO is the Korea
21 Electric Power Corporation, and so the KEPCO I
22 believe had very solid technical experience.

23 Q. But Samsung itself had no
24 experience?

25 A. I don't know how much

1 experience they had.

2 Q. Okay. But there were other
3 companies that had experience in renewable energy,
4 for example, NextEra; right?

5 A. NextEra?

6 Q. Right. There was energy
7 companies around the world that could have
8 partnered with other entities and come up with the
9 same proposal; correct?

10 A. But they didn't.

11 Q. I understand, but they could
12 have?

13 A. Yes, they could have, would
14 have, maybe should have.

15 Q. Okay. Now, at the time that
16 this GEIA was signed, in fact there were a lot of
17 criticisms of it; correct?

18 A. There were lots of what?

19 Q. Criticisms.

20 A. Some criticism.

21 Q. Well, in fact, the leader of
22 the opposition party called it a sweetheart deal?

23 A. He did. That is what leaders
24 of the opposition do.

25 Q. And the CanWEA also said it's

1 unfair and puts Samsung ahead of local producers.

2 Do you remember that?

3 A. I don't know what CanWEA
4 released publicly.

5 Q. Well, let me pull up -- take
6 a look at tab 8 of your notebook. I am in Ms. Lo's
7 binder. This is document number C-513. And if you
8 look at two-thirds of the way down, it says:

9 "The Canadian Wind Energy
10 Association said the deal was
11 unfair and put Samsung ahead
12 of local producers of
13 renewable energy."

14 A. It says that, but that's what
15 they would need to say, because they represent the
16 wind producers. So that's their memberships and
17 they are speaking on their behalf.

18 Q. They were representing
19 competitors of Samsung?

20 A. Of Samsung, exactly. So
21 these statements are exactly what you would expect.

22 Q. Well, the other thing it
23 says -- let me get another article. Tab 8, same
24 article.

25 Now, who was the Premier at this

1 point?

2 A. McGuinty.

3 Q. Dalton McGuinty; right?

4 A. Yes.

5 Q. Progressive, he's progressive
6 conservative. He's the opposition party; right?

7 After he calls it a sweetheart deal, he says it has
8 a bad smell to it. Do you see that?

9 A. Mm-hm.

10 Q. What he says is that:

11 "Dalton McGuinty once
12 famously promised the people
13 of Ontario that he would end
14 sole-sourced, secretive and
15 untendered contracts, yet
16 this deal with Samsung is the
17 mother of all untendered
18 contracts."

19 Was Mr. Hudac correct that Mr.
20 Premier McGuinty made that promise to the people of
21 Ontario?

22 A. I couldn't confirm one way or
23 the other. I don't have the context for what the
24 Premier, former Premier, may have promised or not
25 promised.

1 Q. Well, assuming that Mr. Hudac
2 didn't misquote the Premier, you would agree with
3 me that this was a sole-sourced contract, the GEIA?

4 A. No. I think that in a
5 previous statement that you showed me, it's a
6 commercial agreement.

7 Q. I'm sorry. Sole-sourced
8 means that the only person -- only one entity. It
9 wasn't set up for bid; right? That is what
10 sole-sourced means; right?

11 A. Sole-sourced -- I don't know.
12 Sole-sourced has different implications, too.

13 Q. Well, I understand
14 sole-sourced to mean that you didn't -- that the
15 Government of Ontario did not set this deal up for
16 bid?

17 A. Right.

18 Q. So that's correct?

19 A. That's correct.

20 Q. So it would be sole-sourced.
21 Do you also agree, up to at least September 2009,
22 it was a secret; correct?

23 A. I wasn't there.

24 Q. But you testified --

25 A. It wasn't released, so in

1 that context, yes.

2 Q. Okay. And it was also
3 untendered, meaning it as again --

4 A. It was untendered, yes.

5 Q. Okay, thank you. And tab 13,
6 not only was the progressive party upset, but
7 members of the Premier's own party were upset;
8 correct? If you look at a comment from two senior
9 McGuinty aides, he says that:

10 "This thing was presented as
11 a fait accomplis."

12 Does this refresh your
13 recollection it wasn't just the progressive party
14 that was upset with this deal?

15 A. I don't know who the one
16 liberal who is quoted in this actually is. So I
17 don't have the context for the discussion at
18 cabinet that took place.

19 It is also not unusual for more
20 than 20 cabinet members to be sitting in a room and
21 disagreeing over whatever decision the government
22 is going to move forward with. It would be more
23 unusual for consensus.

24 Q. But despite all of this
25 criticism -- well, the criticism did start back in

1 2009, correct, when it became publicly released; do
2 you remember that?

3 A. I don't think that's -- I
4 don't think that's actually correct. I don't
5 know -- Ministers talk to Ministers. I don't know
6 when they started talking about it.

7 Q. Okay. Now, when the FIT
8 program launched, it was very successful; correct?

9 A. Yes.

10 Q. In fact, you had 9,000
11 megawatts in applications; does that sound right?

12 A. I think it was closer to ten.

13 Q. Closer to 10,000?

14 A. Yes.

15 Q. Okay. And you got those
16 starting when?

17 A. Starting when? What is your
18 question?

19 Q. When did the applications
20 start coming in?

21 A. I think October.

22 Q. Of 2009?

23 A. 2009.

24 Q. Okay. And so is the 10,000
25 the ultimate amount of FIT applications or is that

1 all at the beginning? I am trying to remember.
2 Please explain for the Tribunal and for myself.
3 Over what time period did you get all of these FIT
4 applications which total close to 10,000 megawatts?
5 A. The FIT directive was issued
6 in September. I think the window opened in
7 October, in the beginning, and it closed in
8 December. So over the period from October to
9 December, those applications would have been made.
10 Q. Okay. So before the GEIA was
11 signed?
12 A. The GEIA was signed in
13 January.
14 Q. Of 2010?
15 A. Right.
16 Q. So the answer to my question
17 is "yes"?
18 A. Right. The applications came
19 in, not the contract awards.
20 Q. Right. I understand.
21 A. Right.
22 Q. Even before you got involved
23 or during your administration, did you ever
24 ascertain how many jobs the FIT program generated?
25 A. Yes.

1 Q. Can you tell us what that
2 was?

3 A. Well, it was moving. I think
4 the government had talked about 50,000 jobs in
5 terms of renewables, and that was through the FIT
6 program combined with the GEIA, combined with
7 conservation initiatives, combined with
8 transmission buildout, 50,000. And we were also
9 tracking manufacturing jobs, as well.

10 Q. Did Ontario ever break out
11 how many jobs you were generating for the FIT
12 program versus the GEIA?

13 A. It was very -- we were. We
14 were counting the Korean Consortium agreement jobs
15 very carefully, too. And I think there were even
16 some news releases where the progress of the job
17 creation had been announced, because I seem to
18 remember some sort of a pie chart.

19 Q. It's fair to say that the FIT
20 program was more successful in generating jobs than
21 the GEIA; correct?

22 A. No. I don't think
23 that -- that wasn't -- the point was that each was
24 not in competition with the other, but all of the
25 elements of the GEGEA was supposed to create the

1 50,000 jobs.

2 Q. They are essentially the same
3 program?

4 A. No. They are not the same
5 program.

6 Q. Well, then --

7 A. Because the GEGEA had
8 manufacturing targets, and so -- so the GEIA had
9 manufacturing targets.

10 So you will see that we were very
11 closely counting the jobs at the four manufacturing
12 plants, as well.

13 The FIT jobs did not have elements
14 of directly creating -- a FIT project was just a
15 FIT project in terms of being essentially a
16 construction project, a power purchase agreement.

17 Q. Well, let me follow up two
18 questions. First, you do agree with me there were
19 more jobs generated through the FIT program than
20 there was through the GEIA; correct?

21 A. I don't know.

22 Q. Well, there was --

23 A. I don't know.

24 Q. Let me ask you this. There
25 was more megawatts through the FIT program than

1 there was for the GEIA; correct?

2 A. I don't know how many more
3 megawatts. It could have been, but they supported
4 each other, too, because if you're in -- if you're
5 a FIT proponent and you have your modules coming
6 from the Celestica plant, then how are you supposed
7 to count those jobs if you attribute it to one or
8 the other?

9 Q. Fair enough. Good point.
10 And the other question I have for you, then, just
11 so we're clear, the Government of Ontario and the
12 Minister of Energy never separately kept track of
13 the number of jobs generated by the two different
14 programs; correct?

15 A. I think we were counting
16 jobs. Maybe it was broken out.

17 Q. You don't know?

18 A. I think it was. I think if
19 you go back to the records, I haven't been there
20 for 18 months, but we were counting all sorts of
21 jobs. And some of the standard ways to count jobs
22 had to do with the multiplier effect that the
23 Ministry of Finance uses as a standard accounting
24 in terms of how many jobs are created in design, in
25 the engineering, in the manufacturing, in the

1 construction and also as a spinoff.

2 Q. So just so we're clear --

3 A. There was lots of
4 calculations that were done.

5 Q. Sitting here today, you can't
6 tell us then how many jobs were created by GEIA and
7 how many jobs were created by the FIT program;
8 right?

9 A. I think you could subtract
10 them. I think you can figure it out, because
11 originally 16,000 jobs were attributable to the
12 GEIA.

13 Q. Okay. So if I do the math
14 then --

15 A. But it wasn't -- it is
16 complicated, because --

17 Q. Let's do the math. You
18 suggested it: 50,000 minus 16; right? So that is
19 34,000 for the FIT and 16,000 for the GEIA?

20 A. No. No, because you forgot
21 all of the other stuff, like transmission and the
22 conservation. Those were jobs in there, as well.

23 So it is not just 50 is equal to
24 16 plus 34. That's not the math.

25 Q. Okay. Thank you, ma'am. Go

1 ahead.

2 MR. BROWER: Just a second. I
3 think as the Auditor General pointed out, some jobs
4 are more jobs than other jobs, as we all know.

5 Some were for construction, which
6 I think you pointed out are generally finished in
7 three years, and others might be longer term. It's
8 pretty hard to -- to me it seems pretty hard to
9 figure out actually the -- how should I say -- the
10 quantum of employment that would have been involved
11 in either.

12 THE WITNESS: Yes. It's a very
13 complex and difficult exercise to count jobs.

14 MR. MULLINS: I am going to go to
15 a new area.

16 THE CHAIR: Is this a good time
17 for a break?

18 MR. BROWER: I want to go to a new
19 area, too.

20 --- Laughter.

21 THE CHAIR: So once you're all
22 back from this new area, we will resume at 11:00.
23 I should caution you you should please, Ms. Lo, not
24 speak to anyone about the case, about your
25 testimony during the break.

1 THE WITNESS: Okay.

2 THE CHAIR: Thank you.

3 --- Recess at 10:46 a.m.

4 --- Upon resuming at 11:05 a.m.

5 THE CHAIR: Are you ready to start
6 again? Ms. Lo, are you ready? Mr. Mullins, then
7 you can continue.

8 BY MR. MULLINS:

9 Q. Thank you, Madam Chair.

10 Ms. Lo, now turning to your time period, you were
11 responsible to make sure that the Korean Consortium
12 was meeting its obligations under the GEIA;
13 correct?

14 A. I had oversight of the
15 agreement.

16 Q. Okay. And that included
17 making sure they met their obligations?

18 A. How so? They are responsible
19 for meeting their obligations. We oversee what
20 they do.

21 Q. Correct. Well, I'm going to
22 get to the part -- you mentioned earlier that there
23 were amendments made. But before I get there, you
24 kept track of how they were meeting their
25 obligations?

1 A. Right. Correct.

2 Q. And so you were aware that
3 they had -- while they were meeting their
4 obligations, they were, for example, buying
5 projects that originally had been proposed for the
6 FIT program; correct?

7 A. You know what? I
8 didn't -- ours was an end result oversight in terms
9 of what they had to meet. And so we weren't
10 looking over their shoulders seeing who they were
11 talking to or what projects they were buying up or
12 who they entered into a partnership with.

13 Quite frankly, those types of
14 arrangements were outside of what we were concerned
15 with.

16 Q. Was that something the OPA
17 would be more able to answer those questions?

18 A. Those are commercial
19 arrangements that they make on their own. The OPA
20 has certain rules around projects in terms of
21 ownership and things like that, but --

22 Q. So you weren't keeping track
23 of whether or not they were using the same type of
24 projects that had been proposed for the FIT
25 program?

1 A. Did you say "were" or
2 "weren't"?

3 Q. Were. Well, either way. I
4 am asking you: Sitting here, you personally, do
5 you know for a fact whether or not the Korean
6 Consortium began to purchase projects that had been
7 ranked low in the FIT program in order to satisfy
8 its obligations under the GEIA?

9 A. I think they -- so it wasn't
10 something that we paid close attention to, but we
11 were aware that they were in discussions with all
12 sort of developers.

13 Q. Okay. And some of
14 these -- so, in other words, you generally were
15 aware that, for example, they were purchasing
16 low-ranked projects that really had no realistic
17 opportunity to become part of the FIT program in
18 order to satisfy their obligations under the GEIA.

19 You are generally aware of that,
20 aren't you?

21 A. It would make sense, but I'm
22 not aware or unaware. It is something that we just
23 didn't pay attention to. It wasn't really our
24 business.

25 Q. And those low-ranked

1 projects, for example, would not have been
2 shovel-ready; correct?

3 A. Right.

4 Q. Thank you. Now, you say in
5 your statement that -- and I want to talk to you
6 about paragraph 5 of your rejoinder statement.

7 Now, you say:

8 "By the spring and summer of
9 2010 the Korean Consortium
10 was experiencing difficulties
11 meeting the deadlines in the
12 GEIA."

13 Can you explain to us what
14 deadlines it was having trouble meeting?

15 A. I think the particular
16 deadlines were the commercial operation dates. So
17 those are the CODs, phases 1 and 2.

18 Q. So just to put that in
19 layman's terms, like me, I take it what you mean is
20 that they were given -- for example, phase 1 was
21 the 500 megawatts that originally was set aside
22 back in 2009; right?

23 A. Right.

24 Q. And phase 2 was the next 500
25 megawatts?

1 A. Right.

2 Q. And if I understand what
3 you're saying is that despite the fact that they
4 set aside those megawatts, they were having trouble
5 meeting those obligations; right?

6 A. I think the Korean Consortium
7 were having trouble meeting the deadlines, but also
8 so many FIT proponents were having trouble meeting
9 the deadlines, too.

10 Q. Mm-hm.

11 A. Everybody was having trouble
12 meeting deadlines, because the renewable energy
13 approval process took more time than they would
14 have thought.

15 Q. Okay. So the Korean
16 Consortium was experiencing the same kind of
17 difficulties that the FIT proponents were doing?

18 A. Generally, yes. And, in
19 addition, the Korean Consortium was even dealing
20 with more difficulties, in that they were trying to
21 negotiate with First Nations and they were
22 negotiating a very complex deal with the Six
23 Nations, and Six Nations were trying to get a
24 larger equity share and more profit from the Korean
25 Consortium.

1 And so that took a lot of
2 negotiation back and forth in terms of what value
3 there would be for First Nations.

4 Q. Well, the FIT proponents also
5 had to deal with local native populations, as well,
6 in order to find the land they were going to use,
7 didn't they?

8 A. They didn't have to negotiate
9 nearly to the same extent, because the Six Nations
10 were very savvy in the way that they negotiated,
11 because they ended up negotiating an entire solar
12 project to own outright.

13 Q. In fact, we saw earlier that
14 they were talking to the Six Nations back in 2009;
15 right?

16 A. Yes. You can talk to First
17 Nations for a long, long time and not come to any
18 resolution.

19 Q. Right. Just so we're clear,
20 because of the size of the priority access given to
21 the Korean Consortium, it ends up being a bigger
22 problem for them, but both the proponents in the
23 FIT program and the GEIA members of the Korean
24 Consortium had similar issues trying to find land
25 for their projects; correct?

1 A. If your question is about
2 locating projects, there were different
3 complexities. Some developers already had amassed
4 land; others had not. And so it was really --

5 Q. Like my client; right? My
6 client already had land?

7 A. Yeah, I wouldn't know about
8 that.

9 Q. Okay. Well, now going back
10 to your statement, now, it says:

11 "As a result, an opportunity
12 arose to renegotiate the
13 deadlines and reduce the
14 terms of the EDA prior to
15 Ontario having to pay
16 anything under it. We took
17 that opportunity."

18 A. Yes.

19 Q. Okay. And so you had an
20 opportunity to tell the Korean Consortium that: We
21 are not going to proceed with this GEIA unless you
22 agree to make changes; correct?

23 A. I don't think it was as blunt
24 as that. It's a delicate negotiation, because we
25 also didn't want to see the entire GEIA nullified.

1 Q. Mm-hm?

2 A. We didn't want them to leave
3 the province.

4 Q. Well, you do agree with me,
5 though, that despite that it was "delicate", if the
6 Korean Consortium refused to make changes to the
7 agreement, then you could have held them in breach?

8 A. It's debatable. I mean,
9 there is entire teams of lawyers saying what is or
10 what is not in breach. So I am not a lawyer
11 myself.

12 Q. Were you involved in the
13 negotiations?

14 A. Yes.

15 Q. Did you ever have any
16 discussions with anyone about whether or not the
17 Korean Consortium was in breach of the GEIA?

18 MR. SPELLISCY: I would just
19 caution the witness not to disclose any
20 communications with counsel, obviously, with
21 solicitor-client privilege.

22 THE WITNESS: It's a legal
23 agreement and, of course, we have access to an
24 entire legal counsel, not only in the provincial
25 government, but also OPA's counsel.

1 BY MR. MULLINS:

2 Q. And I'm going to cut you off.

3 A. So why wouldn't we?

4 Q. Right. And I don't want you
5 to have to reveal attorney-client privilege.

6 A. I'm not going to.

7 Q. I agree. I don't want to
8 mess up our record here. But just so we're clear,
9 you did, then -- the Ministry of Energy started to
10 investigate with its counsel, without giving us the
11 substance, about whether or not the Korean
12 Consortium was in breach of the GEIA in the spring,
13 summer of 2010; correct?

14 MR. SPELLISCY: I'm sorry. Give
15 me one second to look at this question.

16 MR. MULLINS: Sure.

17 MR. SPELLISCY: I think I have to
18 object to this question. I think what they talked
19 about with counsel, I think the question asks for
20 what was the content of the discussions with
21 counsel in the spring and summer of 2010 and I
22 don't think --

23 THE CHAIR: Yes. I don't know
24 exactly what the question was aiming at. I
25 understood it more to be whether there had been

1 review with counsel of a possible breach.

2 MR. MULLINS: That's correct.

3 THE CHAIR: And I think you can
4 answer, but then what you should not answer,
5 because then it would disclose attorney-client
6 privileged information, is what the content of this
7 review.

8 So the question is: Was there a
9 review?

10 THE WITNESS: Of course we looked
11 at it, because we went into a negotiation.

12 BY MR. MULLINS:

13 Q. And you wanted to figure out
14 your leverage?

15 A. Yes.

16 Q. And you exercised that
17 leverage with the Korean Consortium?

18 A. Yes.

19 Q. And the Korean Consortium
20 originally backed off its position that it wanted
21 to keep the terms of the GEIA as originally agreed
22 to; correct?

23 A. No. No. The Korean
24 Consortium wanted extensions of their phase 1 and 2
25 commercial operation dates. This is something that

1 was provided to all FIT proponents in a -- by the
2 OPA at the Ministry's request.

3 So what they wanted was the same
4 treatment as every FIT proponent had received.

5 Q. That's kind of ironic, isn't
6 it?

7 A. You figure out whether it is
8 ironic. I don't...

9 Q. Okay. How many amendments
10 were there, total?

11 A. How do you mean?

12 Q. Well, how many amendments to
13 the GEIA had there been? So we have the original
14 one. The original GEIA was September -- I don't
15 want to cut you off.

16 A. You didn't.

17 Q. I just want to break it down
18 chronologically.

19 A. The original was January.

20 Q. I know. I misspoke.

21 A. Okay, okay.

22 Q. I speak quickly, so I am
23 going to slow down and make sure I get this right.
24 I apologize. It's my fault.

25 The original GEIA was January

1 2010?

2 A. Yes.

3 Q. Okay. Now, I get ahead of
4 myself. This is my problem.

5 When was the first amendment to
6 the GEIA?

7 A. It was in 2011. It would
8 have been July/August of 2011.

9 Q. Okay. And there was a third
10 amendment; correct?

11 A. The third amendment -- yes,
12 there has been. The third amendment is in 20 --

13 Q. 2013, right.

14 A. Right. After I left.

15 Q. It is in your statement,
16 so --

17 A. Pardon?

18 Q. I think you referred to it in
19 your statement?

20 A. Yes.

21 Q. Do you remember the month,
22 just for the record?

23 A. The month? I would say
24 around May, June.

25 Q. Okay.

1 A. Something like that.

2 Q. But I am confused, then. You
3 say by spring and summer they were experiencing
4 difficulties. So there was an extension actually
5 given in 2010; right?

6 A. Yes, there was.

7 Q. Because you said the first
8 amendment was in 2011, so there was actually an
9 extension given without a formal amendment?

10 A. No, no, no. This says by the
11 spring and summer of 2010 they were starting to
12 experience difficulties in meeting deadlines.

13 Q. Okay.

14 A. And so that started a
15 conversation. The CODs that we were talking about
16 were in the future. They had CODs for phases 1 and
17 2, March of 2014 and December of 2014. And so that
18 had not arrived yet, that time.

19 We were talking about something
20 that was going to happen in the future.

21 Q. I'm sorry. I was confused.
22 That's why I went through this chronology.

23 So what you're saying is that by
24 summer of 2010, they are having difficulties, but
25 this negotiation lasted a year?

1 A. No. No. They were
2 experiencing difficulties. We didn't go to the
3 table to negotiate until spring or summer of 2011.

4 Q. What --

5 A. We listened to their
6 problems, but it is about listening to any other
7 developer who was having trouble.

8 Q. So what you're saying, then,
9 is that you knew as early as 2010 that they were
10 having difficulties, but you didn't amend the
11 agreement until a year later; is that correct?

12 A. Starting to experience
13 difficulties is one thing. Not knowing the quantum
14 of their difficulties as they present themselves is
15 another thing.

16 We weren't ready to negotiate with
17 them until later.

18 Q. Without getting --

19 A. Everybody was having
20 difficulties.

21 Q. I understand. Without
22 revealing the contents of your attorney-client
23 communications, when did you start investigating
24 whether or not they were in breach of the GEIA,
25 starting between the summer 2010 until the

1 agreement was actually amended?

2 A. There's not a particular time
3 that one would start investigating. It was such a
4 busy -- a busy division and a busy office. We were
5 thinking about everything all of the time.

6 Q. Okay. So during the entire
7 year you were looking at it?

8 A. Peripherally. We didn't
9 focus on it until 2011.

10 Q. That's when it became a
11 critical moment; correct?

12 A. In 2011 we wanted to put some
13 closure to it, yes.

14 Q. And that coincides, in fact,
15 with the awarding of the contracts in the Bruce
16 region; correct?

17 A. Lots of things coincided.
18 The Bruce was in --

19 Q. July of --

20 A. July, right.

21 Q. The same month you amended
22 the GEIA.

23 A. Right.

24 Q. Thank you. Now, in the first
25 amendment, there was a reduction of the adder from

1 437 million to 110 million; right?

2 A. Correct.

3 Q. And I take it the Korean

4 Consortium did not want that reduction?

5 A. No, of course not.

6 Q. But despite that, you told
7 them that if they didn't reduce the adder, you were
8 going to terminate the agreement; correct?

9 A. It was a negotiation.

10 Q. And so you may not have said
11 that in so many terms, but that was essentially the
12 message given by Ontario?

13 A. We were negotiating something
14 that everybody else already got. All of the FIT
15 proponents already got a one-year extension.

16 We were taking the opportunity to
17 reduce the adder.

18 Q. Yes. The FIT proponents
19 didn't get the adder. You were negotiating the
20 adder; right?

21 A. So --

22 Q. That's what you reduced?

23 A. The GEIA already had the
24 adder. We reduced the adder by 75 percent.

25 Q. My point is you said: We

1 were negotiating what the FIT proponents already
2 had.

3 A. Already had in terms of
4 contract extensions of a year.

5 Q. I see. Okay. Now, at this
6 point -- your footnote says:

7 "To date there has been no
8 payment of the EDA."

9 Has the -- let me ask you this,
10 first. When was the adder supposed to be paid?

11 A. The adder is paid when they
12 start producing electricity.

13 Q. Okay. So it's true, then,
14 when the parties entered the GEIA, that they
15 assumed that an adder would have been paid, for
16 example, in 2010 or 2011?

17 A. Why would they assume
18 that? No. No. The adder is paid when they
19 deliver the first and second phases of the power
20 purchase agreements. When they actually connect
21 those particular wind and solar projects to the
22 grid and they start generating electricity, then
23 there's an adder on to each kilowatt-hour that --
24 that's the adder.

25 Q. When they originally

1 entered -- when you originally entered the GEIA,
2 Ontario and the Korean Consortium --

3 A. Yes.

4 Q. -- when were they supposed to
5 have phase 2 done?

6 A. I think phases 1 and 2, as I
7 said previously, was March 31st of 2014 and
8 December of 2014. So why would they be paid before
9 that? I think it was something like that. I will
10 go back to the agreement to check.

11 Q. All right. So if I take it
12 what you're saying is, then, under the original
13 agreement they are not supposed to be paid -- they
14 weren't going to be paid the adder until 2014;
15 correct?

16 A. The original agreement, yes.

17 Q. Okay. And there's been no
18 payment as of date; correct?

19 A. Well, as of today, what is
20 it? It's October.

21 Q. Yes.

22 A. I think it has started, and
23 so this is subsequent to me leaving the post.
24 There was supposed to be job counting for the
25 entire year of 2013 at the four manufacturing

1 plants, and then if the job count on average was
2 greater than 765 jobs at the four plants, then they
3 would be paid the adder.

4 Q. Because under the original
5 agreement, it wasn't tied to jobs, was it?

6 A. Well, it was tied to
7 manufacturing plants.

8 Q. When you amended the
9 agreement, you changed it to jobs?

10 A. Right.

11 Q. Fair?

12 A. Right. We wanted to change
13 it to jobs because that's what the government
14 really cared about, was job creation.

15 Q. You didn't go back to the FIT
16 proponents and tell them they would be entitled to
17 an adder if they could show how many jobs they
18 could generate, did you?

19 A. They weren't required to
20 bring in manufacturing. It was a totally different
21 program.

22 Q. The answer to my question is,
23 no, you didn't go to the FIT proponents and tell
24 them now that you have now changed the deal with
25 the Korean Consortium and they are entitled to an

1 adder based on jobs. You didn't do that, did you?

2 A. No, because it's a different
3 program.

4 Q. All right. So let's go back
5 to this chronology we are trying to do here. So
6 the 2011 amendment reduced the adder from -- what
7 was it again, from...

8 A. 437 to 110.

9 Q. To 110?

10 A. Right.

11 Q. Did it do anything else?

12 A. It extended commercial
13 operation dates for phases 1 and 2, and it looked
14 at the adder. Instead of spreading the adder over
15 five phases, it looked at paying out the adder over
16 the first two phases, but it was maxed out at 110.

17 And instead of just creating
18 manufacturing plants, it was actually looking at
19 counting jobs --

20 Q. So you --

21 A. -- for those four plants.

22 Q. I'm sorry. You did that
23 under the first amendment in 2011?

24 A. The first amendment, yes.

25 Q. That's when you tied it to

1 jobs?

2 A. Yes.

3 Q. What were the jobs they were
4 supposed to generate under the first amendment?

5 A. The first amendment or
6 second? What are you -- what's your question?

7 Q. The first amendment.

8 A. The first amendment is
9 January -- is 2011. You mean the original
10 agreement?

11 Q. No. I don't want to confuse
12 you.

13 A. I think you're confusing
14 yourself.

15 Q. I'm not confusing myself.
16 I'm on top of at least this part of my outline.

17 A. Okay, ask your question
18 again, please.

19 Q. All right. I will. I think
20 what you told us was that the original agreement
21 was not tied to jobs. It was tied to these --

22 A. The four manufacturing
23 plants, right.

24 Q. Okay. So I moved on from
25 that. So let's leave that alone for now. We may

1 go back to it.

2 Now I am going to the first
3 amendment. I want to call the first amendment the
4 2011, first amendment, so you understand the first
5 amendment.

6 A. Okay.

7 Q. It reduced the adder from 437
8 to 110?

9 A. Yes.

10 Q. Okay. It now changed the
11 adder to not be tied to manufacturing, but actually
12 to jobs. Is that what you're saying?

13 A. Yes.

14 Q. Now, how many jobs was it
15 supposed to -- were the Korean Consortium supposed
16 to then --

17 A. Manufacturing jobs.

18 Q. Okay?

19 A. 765.

20 Q. Thank you. Manufacturing
21 jobs?

22 A. Manufacturing jobs at the
23 four plants. So the four plants were still in
24 play, but it happened to be tied to jobs
25 specifically.

1 Q. Where did you get that
2 number? It's in the agreement, but how did you
3 guys come up with that number?

4 A. I think we worked with the
5 Ministry of Economic Development and Trade and
6 looked at job creation in those four plants.

7 So they were towers, blades, solar
8 inverters and solar modules. And to produce the
9 megawatts that they would need to produce, we
10 received advice in terms of how many jobs we could
11 expect at each particular plant.

12 Q. And you didn't look at what
13 manufacturing jobs were being generated by the FIT
14 program, correct, in comparison?

15 A. We were tracking jobs in
16 general. We were tracking all sort of jobs
17 using -- using multipliers, and even calling out to
18 companies who indicated to us that they've set up
19 shop in Ontario.

20 Q. Including proponents of the
21 FIT program?

22 A. Yes.

23 Q. Okay. So then essentially,
24 then, I guess what you're saying is that you were
25 looking at the entire renewable energy program and

1 seeing how many jobs that was creating?

2 A. Yes.

3 Q. Okay?

4 A. Not just renewable energy,
5 but also everything affiliated with the Green
6 Energy and Green Economy Act. So much of that was
7 in transmission and conservation.

8 Q. Now, before we leave the
9 first amendment, was there any other provisions of
10 that amendment that were, you know, major changes?

11 A. The main thing was the adder,
12 the COD dates, the 900 jobs.

13 Q. You say 900 jobs. I thought
14 you said it was 765?

15 A. Eighty-five percent of 900 is
16 765. That was the advice we had received from our
17 colleagues at the Ministry of Economic Development
18 and Trade was that peak jobs is 900.

19 Eighty-five percent is the average
20 that we should hold them accountable to.

21 Q. Okay. I may have missed the
22 85 percent. So you're saying they didn't actually
23 have to do 900 jobs. All they had to do was 85
24 percent of that?

25 A. Well, there are peaks and

1 valleys with any manufacturing, and so 900 was the
2 peak, and if they averaged out at 765, then they
3 would be entitled to the full adder.

4 If they did not, then the adder
5 would be decreased in a prorated way.

6 Q. Again, with this amendment,
7 when they be entitled to the adder? When?

8 A. When?

9 Q. Yes.

10 A. Phases 1 and 2 come into
11 commercial operation when they are actually
12 producing electricity to the grid.

13 Q. In 2014?

14 A. Yes.

15 Q. Okay, got it. Perfect. Were
16 they required to give reports about how the
17 progress was going, or it was wait till 2014 and
18 see what happens?

19 A. The job counting started in
20 2013.

21 Q. Okay.

22 A. And so the Ministry of Energy
23 retained the advice of a consultant, Ernst & Young,
24 to help us figure out how to create the reporting
25 so that it would be clear and transparent for the

1 four plants, knowing that if the payout of the
2 adder is \$110 million, we wanted clear accounting
3 and clear accountability.

4 Q. Right. It is important for
5 the GEIA to be clear and transparent; right?

6 A. In the job counting that was
7 related to \$110 million, the government wanted to
8 be clear.

9 Q. And opaque in other areas?

10 A. No, no.

11 Q. Thank you. Now, why then do
12 we have an amendment in 2013?

13 A. The amendment in 2013, I was
14 not -- I was initially involved in some of the
15 scoping, but, again, it probably had to do with
16 commercial operation dates of the subsequent
17 phases, phases 3, for example, and four.

18 And they probably couldn't -- so
19 in the first renegotiation in 2011, we decided only
20 to deal with phases 1 and 2, even though the Korean
21 Consortium wanted to talk about the future phases.

22 So in the second renegotiation,
23 we, again, had good leverage in terms of
24 negotiating something in the favour of ratepayers.

25 Q. That was the first time you

1 thought about the ratepayers?

2 A. We think about the ratepayers
3 constantly.

4 Q. Well, what did you get for
5 the ratepayers in 2013?

6 A. In 2013 -- and I should be
7 clear that I wasn't at the conclusion of the
8 negotiation this time, but I was involved in making
9 recommendations to government in terms of how the
10 renegotiation should take place.

11 What we did was we negotiated that
12 phases 4 and 5 of the GEIA would be eliminated.
13 And we negotiated that phase 3 would be reduced
14 to -- from 500 down to, I think it was, 300
15 megawatts.

16 Q. And this is about the time
17 that the FIT program was abolished; right?

18 A. It's not abolished for
19 microFIT and the small contracts. That still runs.

20 For the largest of the contracts,
21 yes, that's roughly the time.

22 Q. And is it just a coincidence,
23 ma'am, that the first amendment was -- well, let me
24 ask you this. You do remember the Bruce region was
25 the last region to be awarded FIT contracts?

1 A. That's probably -- that's
2 about right.

3 Q. Right. And is it just a
4 coincidence, then, that the first amendment is the
5 same month that the last FIT contract was awarded,
6 and the second amendment was done when the FIT
7 program was ended? Those are coincidences, or was
8 there some consideration of those events when the
9 amendments were made?

10 A. No, I don't -- I think it
11 probably is a little bit -- you have to take a look
12 again at the context of what was happening.

13 And so the government launched a
14 FIT program in September of 2009. It started
15 awarding the large contracts in April of 2010. It
16 was wildly popular and it was
17 driving -- electricity prices fit together with the
18 agreement with the Korean Consortium was driving
19 prices higher for ratepayers.

20 And so the cost projections were
21 revealed very transparently through the long-term
22 energy plan in November of 2010.

23 The government became very clear
24 with Ontarians that its electricity plan would
25 result in an increase of 7.9 percent over the first

1 five years, and then it would decrease, but all in
2 all, it was a 3.5 percent increase over the next 20
3 years, of which 56 percent was due to renewables.

4 So the government became very
5 clear and indicated that in the long-term energy
6 plan.

7 Q. I am going to follow up with
8 something you just said. I got a little confused.
9 How was the rate prices being driven up by the
10 Korean Consortium when they were not generating
11 electricity? Can you explain how that works?

12 A. These are price projections.
13 These are price projections.

14 Q. Okay.

15 A. In advance of prices
16 actually -- in advance of FIT prices actually or
17 FIT projects actually being connected, there's a
18 whole bunch of other work in terms of the
19 transmission system that would need to be operated
20 and whatnot.

21 Q. So is it true, then, the
22 prices are going up in anticipation of the projects
23 coming online? Is that what you're saying, or am I
24 wrong in that?

25 A. Yes, the price projections

1 were for 20 years.

2 Q. So they immediately started
3 going up even though the electricity is not being
4 generated, or no?

5 A. They ramp up. I think the
6 original price calculations were a little bit
7 steeper in the first five years, thinking that the
8 FIT projects and the Korean Consortium projects
9 would come online a lot faster than they actually
10 did.

11 So the price projections didn't
12 yield out, actually.

13 Q. Okay. Can I go back to the
14 third amendment? You said you eliminated phase
15 3. What did that effectively mean?

16 A. I didn't say we eliminated
17 phase 3.

18 Q. I'm sorry, you eliminated
19 four and five?

20 A. Four and five.

21 Q. Then you reduced phase 3?

22 A. Right.

23 Q. Got it. Can you tell us what
24 that meant in terms of the megawatts?

25 A. Well, the original agreement

1 was for 2,500 megawatts in five phases.

2 Q. Right.

3 A. So eliminating phases 4 and 5
4 would remove 1,000 --

5 Q. Right?

6 A. -- megawatts, and cutting
7 down phase 3 to 300 megawatts. So 1,200 megawatts
8 were eliminated, but phases 1 and 2 were slightly
9 higher than 500.

10 Q. Okay. So can you just tell
11 us, then, what the ultimate megawatts that they are
12 getting now?

13 A. I think it was 1,300 and
14 something; 1,300 and change.

15 Q. Okay. Now, at no time in any
16 of these amendments, either amendment, was the
17 priority access eliminated, other than reduction in
18 the number; correct? The actual priority access
19 given to the Korean Consortium, they got to keep
20 that; right?

21 A. I think by the time they
22 negotiated the agreement, they already knew very
23 well phase 1 and 2 -- I mean, access is a very
24 early planning thing.

25 Q. Mm-hm?

1 A. And that would have been
2 handled years and years ago. That would have been
3 handled back in --

4 Q. Was there any discussion,
5 either internally at the Ministry of Energy or with
6 the Korean Consortium, of taking back some of the
7 capacity they had been given in 2011 and providing
8 it to the wildly successful FIT program?

9 A. The priority access was for
10 manufacturing, and so that part of the deal, that
11 part of the give and get, was fulfilled.

12 So why would the government
13 attempt to claw something back? That wouldn't be
14 negotiating in good faith.

15 Q. I see. Well, you told us,
16 though, you had taken -- you'd changed the deal
17 from focussing on the four manufacturing plants to
18 actually looking at jobs; correct?

19 A. Right.

20 Q. And so I am asking
21 you -- good faith or not, I just asked you a
22 question.

23 Did you talk internally that in
24 2011 -- let me ask you this first.

25 Was there any discussion

1 internally in 2011 of reducing the capacity given
2 to the Korean Consortium that you eventually gave
3 them in 2013?

4 A. I don't believe there was.
5 That wasn't the direction of government at the
6 time.

7 Q. Okay. Was there any
8 discussion internally or Korean Consortium
9 of -- well, you answered my question. So the
10 answer is, no, you didn't think about taking back
11 some of the capacity given to the Korean Consortium
12 and giving it to the FIT proponents that were
13 seeking projects; correct?

14 A. In 2011?

15 Q. Yes, ma'am.

16 A. We did not.

17 Q. Thank you.

18 Do you know whether or not the
19 Korean Consortium will be on track to meet its
20 current obligations?

21 A. I have left, again, as I
22 said, for the past 18 months. So I am not sure
23 what the progress of anybody's contracts are at
24 this point. I think the OPA would be most
25 familiar.

1 Q. Do you know if they are on
2 track to get their adder?

3 A. I know that the adder for
4 2013, the job counting was completed and so that's
5 one year. But the jobs are also counted for 2014
6 and 2015, and so that hasn't arrived yet.

7 Q. And do you know a guy
8 named -- just a second -- Peter Tabuns. Ever heard
9 of that name?

10 A. The MPP?

11 Q. No, he's an energy critic,
12 NDP energy critic.

13 A. He's an MPP, yes, of course.

14 Q. Oh, I see, got it. Were you
15 aware, if you could go to tab 12, in January 2010,
16 MPP Tabuns said -- you see he is identified on the
17 first page. If you go to the second page at the
18 top, and this is the record R-78, it says:

19 "Samsung was allowed to jump
20 the queue ahead of everyone
21 else with just a promise to
22 build manufacturing plants in
23 the future, said Tabuns. 'If
24 they don't deliver on the
25 promise, they will still have

1 jumped the queue', he said.

2 'I think that is a big
3 problem for those who are
4 interested in investing in
5 Ontario.'" "

6 Do you agree with me that
7 Mr. Tabuns was right on target, wasn't he? Isn't
8 that exactly what happened, ma'am?

9 A. Mr. Tabuns is an energy
10 critic. His job is to criticize the actions of the
11 government, and at that time it was the McGuinty
12 government.

13 So whether I agree or disagree
14 with him is irrelevant.

15 Q. Well, I can understand why
16 you, at the time, might disagree, but looking back
17 on it, it looks like he was pretty prescient, don't
18 you think?

19 A. He was pretty what?

20 Q. He looked like he predicted
21 pretty well about what happened, don't you agree?
22 Isn't this exactly what happened is that Samsung
23 was allowed to jump ahead by making promises that
24 ultimately they weren't able to keep?

25 A. They delivered on those

1 promises, by the way, because they delivered the
2 four manufacturing plants, and in 2013, the first
3 year of job counting, they delivered numbers that
4 were higher than the 765.

5 So I think it is misleading for
6 you to say that they didn't deliver.

7 Q. Well --

8 A. That was the essence of the
9 agreement.

10 Q. I see. Well, but we talked
11 about the amendments that were made and the other
12 things they didn't deliver on; right?

13 A. The agreement was amended.
14 So what? Many agreements are amended. And by the
15 way, Tabuns also said that if the NDP were in
16 power, I believe he said something along the lines
17 of the NDP wouldn't kill the Samsung deal. It was
18 the Conservatives who would kill it, but the NDP
19 were pro renewables.

20 Q. Let's talk about how Ontario
21 operated the FIT program that you also talk about
22 that in your statement. Now, originally the FIT
23 program contemplated using an economic connection
24 test that was going to be province-wide; correct?

25 A. Right.

1 Q. So the record is clear,
2 sometimes it gets confusing, Ontario never did
3 that, right, a province wide ECT?

4 A. Right.

5 Q. And the reason why --

6 A. Actually, you should check
7 with the OPA, because I don't know what they did or
8 didn't do, because the economic connection test is
9 something that is very technical that they had
10 purview of. So I -- sitting at my chair at the
11 Ministry of Energy, it wouldn't be something that
12 we would conduct. It would be something that the
13 OPA would conduct.

14 Q. I understand. Well, we will
15 show you some e-mails, but, ma'am, you do remember
16 sitting here today that, as of the award of the
17 contracts in the Bruce region, there had not been a
18 province-wide ECT?

19 A. Right. That was more of a
20 regional ETC.

21 Q. Correct. So your memory is
22 that there had never -- up to July 2011, there was
23 not a province-wide ECT?

24 A. Right.

25 Q. There could have been

1 something later, but that's fine.

2 A. Yes, I don't know.

3 Q. That's fine. At least we're
4 on the same page.

5 Even during the 2010 long-term
6 energy plan, it was still contemplated there could
7 be a province-wide ECT?

8 A. Yes, it was.

9 Q. And pursuant to the
10 province-wide ECT, after its run, that's when the
11 proponents could change their connection points?

12 A. I think they changed their
13 connection points before its run, because otherwise
14 why would it make sense?

15 Q. Well, we will go through the
16 OPA with the rules.

17 A. The window opens before ECT
18 is run. That's what the FIT rules contemplated.

19 Q. Well, we will talk that with
20 the OPA, but let me just ask you. You do recognize
21 it was tied -- the changing of the connection
22 points was tied to a province-wide ECT; right?

23 A. The FIT rules --

24 Q. Yes, correct.

25 A. -- I don't -- you would have

1 to ask the OPA how they expressed that particular
2 rule.

3 Q. Okay. You don't remember
4 anything in the FIT rules that ever contemplated
5 that -- well, let me ask you this.

6 You do remember that prior to the
7 regional ECT, as you call it, no entity in any of
8 the other regions, besides Bruce and west of
9 London, were able to change their connection
10 points; right?

11 A. I don't know. I don't think
12 so.

13 Q. And nothing in the FIT rules
14 contemplated that only two regions out of the
15 entire province would change or have the proponents
16 change their connection points where other members
17 were not allowed to change their connection points?

18 A. I should provide some
19 context. I think there is an important point that
20 needs to be expressed. So after the long-term
21 energy plan was articulated in November of 2010,
22 what came to light in 2011 from the IESO -- so
23 that's the operator of the electricity
24 system -- the IESO brought to the government's
25 attention a situation of an oversupply of

1 electricity. It is called surplus base load.

2 And the IESO had created a report
3 that talked about surplus generation, particularly
4 in the future years, in 2015, 2016. It might have
5 even been late 2014.

6 So what the government came to be
7 concerned about was the fact that the way that we
8 had envisaged bringing all of this renewable power
9 to connect to the grid and closing down coal, it
10 wasn't matching up perfectly in terms of what was
11 happening, supply and demand that Rick probably
12 talked about.

13 And so what we knew had to happen
14 was that we would have to slow down the pace of
15 procurement. So that is really what was going on.

16 So all in early 2011, I think the
17 record will show that we were worried about all of
18 the renewable energy coming into the grid. And it
19 wasn't just the Korean Consortium. It was also FIT
20 proponents, and it was causing ratepayer impacts,
21 and also the fact that it would be surplus to
22 Ontario's needs and that would be problematic, as
23 well.

24 So I think it was the way the
25 situation evolved --

1 Q. Ms. Lo --

2 A. -- in terms of not running a
3 province-wide ECT, because running a province-wide
4 ECT would mean you would just bring on
5 unquantifiable megawatts of power.

6 Q. I have a limited time period,
7 and I appreciate the witness trying to give context
8 to her answers, but I would ask those kind of
9 questions could be done -- you know, re-cross
10 could -- sorry, re-direct, rather, by my colleagues
11 on the other side of the table. I have limited
12 time, Ms. Lo.

13 Now, I don't think that long
14 answer you gave actually answered my question,
15 which was -- well, let's break it down and make it
16 easier.

17 You do remember that there was a
18 directive that was issued that allowed proponents
19 in two regions, west of London and Bruce, to change
20 their connection points; correct?

21 A. A direction, yes.

22 Q. Okay. And I think you just
23 said up to that point no proponent in any region
24 had been allowed to change connection points;
25 correct?

1 A. I don't know that for a fact.
2 That's a question for the OPA.

3 Q. Okay. And I guess my
4 question to you, then, is: Was there a specific
5 reason that only the entities in west London and
6 Bruce would be allowed to check -- change their
7 connection points, and, specifically, was there any
8 discussion about other neighbouring regions to the
9 Bruce region to have those proponents be allowed to
10 change their connection points?

11 A. I think what the government
12 was doing was there was lots of discussion, to
13 answer your question.

14 Q. Thank you.

15 A. The province did not want to
16 run a province-wide ECT for fear of bringing on so
17 many megawatts that would be surplus to our system.

18 The reason for running a regional
19 ECT was that the only new power -- the only new
20 transmission source was the Bruce-to-Milton line.

21 Q. And what happened in Bruce
22 was that it turned out in September 2010 that that
23 was the location that the Korean Consortium decided
24 to use for phase 2; correct?

25 A. I don't know whether it was

1 clear at the time, but I think as time has
2 unfolded, that is where some of their projects are.

3 Q. Well, you don't remember a
4 directive in September of 2010 in which the
5 Minister actually set aside the 500 megawatts in
6 Bruce region and carved that out of the --

7 A. There was a directive that
8 was issued around that time, but I don't think the
9 Korean Consortium had solidified what those
10 projects were, necessarily, because we went ahead
11 and awarded the FIT contracts before settling where
12 the Korean Consortium was going to connect.

13 Q. That's correct.

14 A. Yes.

15 Q. But I want to make the record
16 clear. Go to tab 16. This may refresh your
17 recollection, because I think it is the directive I
18 was referring to. We will pull it up. This is
19 C-119.

20 A. Yes.

21 Q. Can you pull it up? Go to
22 the bottom. And if I understand your -- sorry, if
23 I understand your testimony, I think what you're
24 saying is that the Korean Consortium hadn't
25 actually decided where it wanted connection into

1 the Bruce region, but you do remember now, reading
2 this document, do you not, that in this directive
3 the Minister of Energy is saying:

4 "I now direct the OPA in
5 carrying out the transmission
6 availability tests and
7 economic connection test
8 under the FIT program rules,
9 to hold in reserve 500
10 megawatts of transmission
11 capacity to be made available
12 in the Bruce area in
13 anticipation of the
14 completion of the
15 Bruce-to-Milton transmission
16 reinforcement for phase 2
17 projects of the Korean
18 Consortium or its project
19 companies." [As read]

20 A. Right.

21 Q. So now your memory is now
22 refreshed that in September 2010, the Korean
23 Consortium had at least narrowed down that phase 2
24 is going to be in the Bruce and took 500 megawatts
25 of capacity out of that region; correct?

1 A. Yes.

2 Q. That was taken out of the FIT
3 program, and so that reduced the amount of
4 megawatts that could be awarded in the Bruce region
5 in the FIT program; correct?

6 A. Yes.

7 Q. Now, meanwhile -- so this
8 actually caused a challenge, right, because now the
9 issue, as you said, is that you originally told
10 everybody you were going to do an ECT test;
11 right? And that was going to be province wide.
12 That's what you originally said the FIT was; right?

13 A. That's what the OPA said.

14 Q. Well, that's what the
15 Minister of Energy supported; right?

16 A. It was -- the program was
17 evolving, because I don't think the specifics of
18 ECT were even finalized at program launch.

19 Q. Okay. Really, let me just
20 ask you the question again.

21 A. It was forging new ground.

22 Q. Let me just ask the question
23 again.

24 A. Go ahead.

25 Q. The original FIT rules that

1 were announced to the FIT proponents told everyone
2 that there was going to be a province-wide ECT;
3 correct?

4 A. I don't know
5 whether -- um..., I think if you read the
6 Minister's original direction in September, I don't
7 know whether the words "ECT" were there or not.

8 Q. No, ma'am, I'm talking about
9 the FIT rules.

10 A. Were they?

11 Q. The FIT rules. The ECT and
12 FIT rules?

13 A. So the Minister did not
14 direct the OPA on ETC.

15 Q. Correct, ma'am. I'm sorry, I
16 don't think I said that.

17 What I asked you was -- and I
18 think you have already said this, so I am surprised
19 that you are not going back to that. I am not
20 asking about what the Minister said.

21 I'm saying you agree with me the
22 original FIT rules contemplated a province-wide
23 ECT?

24 A. Yes.

25 Q. Thank you. And so what

1 happens then is that the -- I think what you also
2 said was the problem was you didn't want to do a
3 province-wide ECT, because that was going to
4 generate too much megawatts; right?

5 A. Potentially. We didn't know.

6 Q. But you were concerned about
7 it, because you're going to have all of this -- all
8 these megawatts. What are you going to do with
9 this?

10 A. Right.

11 Q. So you basically were trying
12 to work this out. Then the other challenge is, you
13 know, the Korean Consortium now has told everybody,
14 I want to go to Bruce; correct? Now you have to
15 figure out what you're going to do with Bruce
16 because of all of these challenges; right?

17 A. As soon as the agreement with
18 the Korean Consortium was signed, I think the
19 energy planners had always predicted they would
20 have to reserve megawatts in the Bruce because, for
21 most people, they would know that the wind regime
22 in the Bruce area was amongst the strongest in the
23 province.

24 And so that was the best area
25 where one could have a wind contract and -- highest

1 wind regime and the new trunk line transmission
2 from Bruce-to-Milton. It was a recipe for success.

3 Q. I see.

4 A. And plus there was something
5 in the order of 1,800 megawatts of available, of
6 which 500 was given to the Korean Consortium,
7 because they met their manufacturing commitments.

8 Q. Okay, ma'am. I want to make
9 sure the record is clear.

10 It wasn't until September 17th,
11 2010 that the Minister of Energy actually set aside
12 500 megawatts to the Korean Consortium in the Bruce
13 region; correct?

14 A. Correct.

15 Q. Thank you. Now, when you're
16 dealing with these challenges you asked -- the
17 Ministry actually asked the OPA to do a rough
18 simulation of just doing a DAT test in the Bruce
19 region; right?

20 A. I think it was the
21 transmission availability test. That is TAT.

22 Q. TAT, I'm sorry. When that
23 was run, it turned out that my clients, for
24 example, were ranked eight and nine; is that
25 correct?

1 A. They very well could have
2 been.

3 Q. You can't deny that that's
4 true; right?

5 A. I can't deny it.

6 Q. Mm-hm. Now, you say during
7 this process Ontario was quite concerned with
8 trying to respect developer expectations; correct?

9 A. Right.

10 Q. And that was very important,
11 wasn't it, ma'am?

12 A. It was.

13 Q. Now, having the FIT applicant
14 make a connection point, that would take a lot of
15 time, right, to change a connection point? It
16 would take analysis to do that; right?

17 A. I think you would have to ask
18 developers. I don't know how long it would take.
19 It would take time. I think the OPA had said that
20 it would take -- I think originally they had
21 budgeted for three weeks.

22 Q. Three weeks?

23 A. I think that was in their
24 early presentations.

25 Q. And can you tell us how long,

1 in fact, was provided to the FIT applicants to
2 change their connection points?

3 A. It was a five-day window.

4 Q. Why was the three weeks
5 reduced to five days, ma'am?

6 A. Because we heard from
7 CanWEA -- that's the Canadian Wind Energy
8 Association -- who were telling us that developers
9 had been looking at this all along to see where it
10 was they could connect to and were basically
11 already in a ready position.

12 They didn't need to start from
13 scratch. They already did the analysis.

14 Q. When was that CanWEA letter,
15 ma'am?

16 A. I believe it was near the end
17 of May of 2011.

18 MR. APPLETON: May 27th?

19 THE WITNESS: Yes, that sounds
20 about right.

21 MR. MULLINS: I appreciate the
22 help from counsel. Can you give me a tab number?
23 31. Thank you.

24 BY MR. MULLINS:

25 Q. Can you go to tab 31 of your

1 document? Is this the letter that you are
2 referring to?

3 A. Yes.

4 Q. It is Exhibit No.
5 R-113 -- Exhibit No. 133. She got it right.
6 You're right, not 113, okay.

7 So this is the letter you're
8 referring to, and this is why you rejected the
9 recommendation of the OPA and decided to cut the
10 change point window from three weeks to five days;
11 is that correct?

12 A. Well, we knew it could be
13 done in a shorter period of time, yes.

14 Q. Okay. And can you tell us
15 how much notice the OPA gave to the FIT proponents
16 that they would have five days and not the three
17 weeks they had discussed before?

18 A. I think you would have to
19 retrace the series of events.

20 I think by the time the Minister's
21 direction was issued to the OPA, that would have
22 been the first time that it became public knowledge
23 that there was a five-day change window, so that
24 would have been July, something, the direction.

25 Q. No, ma'am. It was before

1 the -- the window was open in June. You remember
2 that; right? The awards were entered in July, but
3 the window was open in June.

4 A. When was the Minister's
5 direction issued? That would have been the first
6 time.

7 Q. That's correct. Let's pull
8 that. What's the document number?

9 MS. HERRERA: C-46, tab 32.

10 BY MR. MULLINS:

11 Q. Let's go to tab 32. Hold
12 that. We'll go back to that. This is a directive
13 of June 3rd, 2011; right?

14 A. Right.

15 Q. It is C-46.

16 A. Right.

17 Q. If you go to the top of page
18 3, five-day window; right?

19 A. Right. So this would have
20 been the first time that the five-day change window
21 would have been made available.

22 MR. APPLETON: Top of page 2,
23 point number 3.

24 BY MR. MULLINS:

25 Q. You do remember, ma'am, that

1 this was issued on a Friday and the window opened
2 on a Monday? You remember that; right?

3 A. I don't know that June 3rd
4 was a Friday, no. I don't remember that.

5 Q. We will come back to that. I
6 think the record is pretty clear that it was
7 announced on a Friday and it started that Monday.
8 You don't remember that?

9 A. I don't remember the
10 particular day it was issued, no.

11 Q. Okay. Now, you said that the
12 reason why then that you made it such a short
13 period was because of the CanWEA letter; right?
14 That was R-133.

15 A. Do you want me to refer to
16 something?

17 Q. Let me go on and we will come
18 back to that.

19 Ms. Lo, in fact, though, the
20 decision to do the process, as ultimately decided,
21 was decided on May 12, wasn't it?

22 A. I don't think it was
23 concluded. I don't think it was fully concluded.

24 I think if you check the e-mail
25 trail, there would be a back and forth in terms of

1 what might be best.

2 Q. Well --

3 A. Because the directive is very
4 specific.

5 Q. If you go to tab D of your
6 notebook, "D", as in dog, of that notebook, yes.
7 The notebook you have open. There is letters at
8 the beginning.

9 A. Oh, okay.

10 Q. And this is a witness
11 statement by Mr. Cronkwright. Can you tell us who
12 that is?

13 A. He's the director in the OPA.

14 Q. He says that:

15 "Ultimately, as I understand
16 it, the government heard all
17 of the possibilities and
18 decided at a high-level
19 meeting held May 12, 2011 to
20 adopt a process that we
21 eventually used to allocate
22 the capacity on the
23 Bruce-to-Milton line a
24 procurement of a specific
25 amount of capacity in the

1 Bruce and west London region
2 simultaneously which would
3 occur after a
4 connection-point change
5 window and would allow for
6 generator paid upgrades."

7 [As read]

8 Do you see that testimony, ma'am?

9 A. Which number were you
10 referring to?

11 Q. I was reading 21.

12 A. Oh, 21.

13 Q. I apologize. Do you see that
14 testimony now?

15 A. Yes, I see it.

16 Q. Okay. So if the decision had
17 been made on May 12, 2011, why was that not
18 announced to the FIT proponents so they could be
19 closer to the three weeks that the OPA originally
20 recommended they be given the notice of a change
21 point window?

22 A. Well, this is someone in the
23 OPA's understanding of government decisions. I
24 would say that having worked in the government for
25 30 years, you just don't necessarily have a final

1 decision until that Minister's direction is issued.

2 And so there is often time for
3 revisiting and revisiting. And so whereas the OPA
4 may have understood that the decision was made,
5 that's not necessarily when a decision might have
6 been made.

7 Q. Why was it not -- you're
8 saying his testimony is false?

9 A. No. That's his
10 understanding, which is perfectly in line with the
11 way that we would be quite close vested in
12 government policy decisions.

13 They are not always shared with
14 staff at the OPA.

15 Q. This was actually one of the
16 first times the Minister of Energy was actually
17 interfering with the FIT process; right?

18 A. Interfering? I don't think
19 so. I think the Ministry is well within its right
20 to make policy decisions and issue them in the form
21 of directions to the OPA.

22 Q. It's a policy decision to
23 decide how long a window is going to be for a
24 change in connection?

25 A. Whether or not there is a

1 change point window would be a policy decision.

2 What the government was really looking at was
3 trying to maintain something that very closely
4 resembled a provincial ECT, because there are so
5 many expectations of developers out there.

6 And so the process that we created
7 was one that gave what they had expected. They
8 expected a certain number of megawatts. They got
9 that.

10 We expected not to have more than
11 the number of megawatts that we could pay for by
12 ratepayers. That's why we kept it. We created
13 room for small proponents. That's why we did that.
14 So...

15 Q. Can you just tell us, though,
16 ma'am, do you agree with me it was ultimately the
17 Minister of Energy's decision to only allow a
18 five-day change in connection point window;
19 correct?

20 A. Yes.

21 Q. And it was also the Minister
22 of Energy's decision to provide whatever notice,
23 the short notice that was given. That was the
24 Minister of Energy's decision when to release the
25 directive and give notice to the FIT proponents of

1 when that window would start?

2 A. I don't think the Minister
3 knew exactly all of the details, but I think the
4 main details, in terms of the direction, he was
5 certainly accountable for.

6 Q. And well --

7 A. And had the right to make.

8 Q. Okay. And it was -- why did
9 not either the OPA or Minister of Energy tell
10 proponents as of May 12, 2011 that at least
11 the government was leaning toward allowing a change
12 of connection point window? Wouldn't that have
13 made the process more transparent and fair?

14 A. That is not what a government
15 does, whether it is leaning one way or the other.
16 That would just -- and why wouldn't a proponent
17 look at change point windows if they were in the
18 FIT rules and contemplated since the FIT rules were
19 published in 2009?

20 They had years to look at it.

21 Q. Ma'am --

22 A. In fact, proponents did look
23 at it.

24 Q. Well --

25 A. If your proponent didn't,

1 then they weren't doing their homework.

2 Q. Well, my proponent didn't
3 need to change their change point window, because
4 they understood that if they were in line to get a
5 FIT project, maybe they would look at it; right?
6 Correct?

7 A. I am not aware of the
8 specific circumstances of your proponents.

9 I, however, know that they weren't
10 ranked very high on the provincial scheme of
11 things. So in the provincial ranking, they were
12 way, way, way, way down.

13 Q. But in the Bruce region they
14 were ranked eight and nine; right?

15 A. Those are artificial rankings
16 where the OPA sometimes just put -- if someone
17 didn't declare where they were going to connect,
18 they just assigned one to them.

19 Q. In all of the other regions,
20 the contracts were awarded by region, correct,
21 based on the rankings in the region; isn't that
22 right?

23 A. I don't know. This is
24 something that you would have to visit with the
25 OPA.

1 Q. I will. I am just --

2 A. I don't know.

3 Q. You did tell us Bruce was the
4 last region to be awarded; right?

5 A. It didn't have to do with the
6 region. It had to do with the transmission line.

7 Q. I understand, ma'am.

8 A. I think they are very
9 different.

10 Q. I understand the reason. I
11 am just trying to get the facts straight.

12 Bruce was the last region to be
13 awarded; correct?

14 A. Bruce -- so that's one
15 electricity region. The other one is London. They
16 were awarded at the same time. So --

17 Q. All of the other regions were
18 awarded; right?

19 A. In the first instance.

20 Q. Right.

21 A. Whatever could be connected
22 went ahead with the FIT contract.

23 Q. Okay. And they were done so
24 based upon the rankings in those regions; right?

25 A. Yeah, I don't know. I didn't

1 do any -- in the Ministry of Energy, I think I told
2 you this, we didn't -- we weren't interested in all
3 of the detail. We weren't picking winners and
4 losers.

5 Q. ,Well don't you think then
6 that was a detail you might have looked into before
7 you started issuing directives of changing that
8 process?

9 A. What? To look at every
10 detail of every proponent and how they would be
11 impacted?

12 Q. No?

13 A. I don't think so. That's not
14 what we're supposed to do.

15 Q. No, ma'am, just look at how
16 contracts were awarded in other regions. Don't you
17 think that would be something that might be
18 important for you to look at before you started
19 changing the rules on my client?

20 A. You are comparing apples with
21 oranges.

22 Q. Mm-hm.

23 A. And whether -- whether your
24 proponent could connect or not connect under one
25 option or the other, we weren't -- we were devising

1 a system that was much along the lines of the
2 original ECT, the way it was contemplated.

3 So even if there were provincial
4 ECT that was run, if your clients are in that Bruce
5 area and they were bumped out by a higher-ranking
6 proponent, that's what would have happened.

7 Q. Right. Let me just ask you
8 this. I don't want to argue with you. I just want
9 to understand what you're saying.

10 You told us before the developer
11 expectations were important; correct?

12 A. Right.

13 Q. I am asking you,
14 before -- first of all, let me ask you this. Were
15 you involved in drafting the directive?

16 A. This directive?

17 Q. The one, yeah, the June
18 directive, 2011. Were you involved in drafting
19 that?

20 A. We have lawyers who draft
21 these. We provide input.

22 Q. But you were involved in the
23 May 12th meeting; correct?

24 A. There was one May 12th
25 meeting that I was involved with that I know of.

1 Q. That is the one
2 Mr. Cronkwright is referring to?

3 A. It could be.

4 Q. Okay. But when you became
5 involved and the Ministry of Energy became involved
6 in this process, did you make sure that you
7 understood what had happened in other regions to
8 see how FIT contracts were awarded before you
9 started getting involved in how you were going to
10 develop with a specific region, these two specific
11 regions, west of London and Bruce?

12 A. I have a good familiarity
13 with the FIT program and the FIT rules and... But
14 did I pay attention to who got contracts? The
15 answer is no.

16 Q. I didn't ask you that, ma'am.
17 I asked you --

18 A. And I didn't devise the
19 provincial ranking system or the regional ranging
20 system, so that is something that the OPA looks
21 after.

22 Q. I am using a lot of my time.
23 This is the third time I asked this. So listen to
24 my question, because I don't think you are hearing
25 my question.

1 A. I didn't understand your
2 question right.

3 Q. That's fair. That's why I
4 wanted to make sure you understand it.

5 I am asking you that when the
6 Minister of Energy, including yourself -- Ministry
7 of Energy, including yourself, got involved in this
8 directive and deciding how the capacity was going
9 to be awarded in these two regions, did you make
10 sure you understood how the capacity had been
11 awarded in all of the other regions when deciding
12 this issue?

13 A. I have a general
14 understanding, but I can't tell you how a
15 particular group within the OPA evaluated the
16 proponents one against the other.

17 THE CHAIR: I think the question
18 was not exactly that. The question is: When you
19 gave the input for the June 3rd, 2011 directions,
20 were you considering how the capacity was awarded
21 in other regions, or you were just writing this
22 direction with respect to this region?

23 THE WITNESS: Oh, no, no. The way
24 that we were looking at this direction in June, we
25 were looking at the pros and the cons and the risks

1 and the industry expectations, balancing off
2 surplus base load, balancing off ratepayer costs,
3 trying to slow down the pace of procurement. So we
4 were looking at a whole bunch of things.

5 In the original FIT rules, the FIT
6 rules contemplated a change window, and that's in
7 the end what we wanted to provide for.

8 Providing a change window also
9 allows the highest-ranked projects in the province,
10 the most shovel-ready projects, the best projects,
11 to be able -- a higher likelihood to get contracts.

12 And so boundaries are --

13 THE CHAIR: There is no connection
14 where they are, because if they are highly-ranked
15 and they have a connection and there is sufficient
16 capacity for them, there's no need for them to
17 change the connection points.

18 THE WITNESS: Right.

19 THE CHAIR: Do I understand --

20 THE WITNESS: But you have a
21 project that sits on one side of a boundary and if
22 that connection point is on the other side, why
23 wouldn't you allow them to connect to it? Why did
24 you assign them to one region and not the other?

25 Sometimes these wind projects and

1 the solar projects are massive geographically, and
2 they cross boundaries, they cross regions. And it
3 doesn't make sense to put them in either -- so they
4 have multiple opportunities to connect.

5 And so it is important to see,
6 when they see -- because all of the priority
7 rankings are posted publicly on the OPA's website.
8 So they could see where there is best opportunity
9 to connect to a connection point and get a
10 contract.

11 THE CHAIR: But they do not know
12 where the others connect?

13 THE WITNESS: Well, they see the
14 others, as well. So all of the hundreds and
15 hundreds of projects are listed --

16 THE CHAIR: Yes.

17 THE WITNESS: -- on the OPA's
18 website at a static point in time. So if you open
19 the window, then they could all decide to move to
20 different places if they wanted to.

21 THE CHAIR: Yes.

22 THE WITNESS: You wouldn't know
23 what they were doing at the moment, but you could
24 know that in your location you had no possibility,
25 perhaps. And, hence, it would be advantageous for

1 you to want to change your connection point.

2 THE CHAIR: Thank you.

3 BY MR. MULLINS:

4 Q. Ms. Lo --

5 THE CHAIR: That was on the
6 Tribunal's time.

7 BY MR. MULLINS:

8 Q. Thank you, yes. Ms. Lo, in
9 followup on the questioning from the Chair, why was
10 only the neighbouring west of London region, then,
11 allowed to connect into the Bruce region and not
12 other neighbouring regions to Bruce?

13 A. I think that was the advice
14 we had received, was that that was the only area
15 where the Bruce-to-Milton transmission line would
16 allow certain proponents who were essentially right
17 beside it to be able to change and connect to it.

18 But if you were in, let's say,
19 northern Ontario, why would you allow someone in
20 northern Ontario to connect to the Bruce line?

21 And I just want to say one more
22 thing. In February --

23 Q. Mm-hm.

24 A. -- we had an experience where
25 the OPA told us that we had to award a further 900

1 megawatts through an IPA. It was an individual
2 project assessment where those projects that we
3 awarded, three of them, were so far from their
4 connection -- the projects were so far from the
5 points that they were connecting to, but the FIT
6 rules didn't contemplate stopping that.

7 So in one instance there was a
8 project that was almost 100 kilometres away, and
9 they were allowed to move forward with a FIT
10 contract, to our strong objection.

11 And that's how impractical it
12 becomes. That's why it wasn't opened up to
13 province-wide, because some developers, what they
14 would like to do is to get a contract, and then to
15 argue with government to say that, you know, they
16 need more time. They need more payment, because
17 their project is 100 kilometres away from their
18 connection point and they would need to build an
19 entire extension cord to plug it in somewhere.

20 It was just unreal.

21 Q. There are other neighbouring
22 regions to the Bruce other than west of London,
23 "yes" or "no"?

24 A. Of course there are.

25 Q. And you did not, then, decide

1 to allow any of the proponents in those regions to
2 change their connection point to be allowed to
3 participate in the award of contracts in the Bruce
4 region; correct?

5 A. Because they were too far
6 away.

7 Q. And whose advice were you
8 relying on, ma'am?

9 A. I believe it was probably
10 folks in our energy supply and because of what had
11 happened in February.

12 Q. And if you were trying to
13 meet developer expectations, why was not a comment
14 period provided to the FIT proponents to make
15 comments about the change in the rules done by the
16 directive?

17 A. Essentially, CanWEA spoke on
18 behalf of the wind association -- of the wind
19 proponents, and essentially they were consulted and
20 they commented, and their comments would, as they
21 indicate, represent the majority view of their
22 stakeholders.

23 Q. But we had already seen that
24 at least as of May 12th, prior to the CanWEA
25 letter, you'd already made a decision to go forward

1 with the process that was decided based upon --

2 A. We had discussions. I didn't
3 say that the decision had been made. In fact, what
4 I said was that until the Minister's direction is
5 issued, a decision wasn't firm.

6 Q. And fair enough. But up to
7 that point, neither the OPA or the Minister of
8 Energy had ever made its decisions based solely
9 upon the representation of the CanWEA organization;
10 correct?

11 A. It was one -- it was one
12 piece of advice to be contemplated in the overall
13 mix, yes, one piece of advice, one input. For this
14 matter, it was an important input.

15 Q. Okay. We're kind of all over
16 the place, ma'am. I really wish you would listen
17 to my question.

18 A. I am trying my best to listen
19 to your questions, but your questions are all over
20 the place.

21 Q. They are not, ma'am. They
22 are on target.

23 A. Yes?

24 Q. Yes.

25 A. Okay.

1 Q. So here's the question. I
2 asked you why you didn't provide a comment period,
3 and your answer to that was: Because we got a
4 letter from CanWEA.

5 A. No. I said -- that's not
6 what I said. I said that CanWEA's input was very
7 important to us, because they are essentially an
8 industry -- an industry organization that
9 represents the majority of wind proponents in the
10 province.

11 THE CHAIR: I understood you
12 earlier on to refer to the CanWEA letter in May to
13 say that this justified, in your assessment, a very
14 short window, because the operators had been or the
15 developers had been working on connection points
16 for some time and, therefore, could do this
17 exercise in a short time.

18 THE WITNESS: Yes.

19 THE CHAIR: And now there is
20 another question, if I understand it correctly,
21 which is: Why did you not give the developers or
22 the proponents an opportunity to comment on the
23 change of the FIT rules before issuing this
24 direction on June 3rd? Am I not --

25 MR. MULLINS: Right. I thought

1 her answer was: Because we were relying on the
2 CanWEA letter.

3 THE WITNESS: No. CanWEA is only
4 one input.

5 THE CHAIR: I am not sure. So why
6 did you not give an opportunity to comment to the
7 proponents?

8 THE WITNESS: I think at that
9 time, going back to the summer of 2011, what was
10 also happening was that the government really
11 wanted to have those contract awards as soon as
12 possible, and to provide a comment period would
13 have slowed down the awarding of contracts.

14 So the government was poisoning
15 itself to award the contracts, and in fact they did
16 get awarded in July/August.

17 THE CHAIR: But then if you're
18 very much in a rush, why do you then wait between
19 May 12 when you have the meeting and June 3rd,
20 because there you lost three weeks?

21 THE WITNESS: Because --

22 THE CHAIR: And that could have
23 been used for --

24 THE WITNESS: I was saying that on
25 May 12th, I don't believe that the decision had

1 been finalized.

2 THE CHAIR: I understand that's
3 what -- that is what your answer --

4 THE WITNESS: There was no
5 directive that was written.

6 THE CHAIR: No, but they could
7 have been written in a shorter time than three
8 weeks, no?

9 THE WITNESS: And I think if
10 you -- there were so many issues going on at the
11 time that it was a really busy place and lots of
12 issues to be dealt with.

13 Governments sometimes aren't the
14 quickest in terms of decision making and acting on
15 those. There needed to be entire communications
16 plans ready, because if the government were going
17 to go ahead and see a bunch of contracts awarded,
18 this was something that people waited four years
19 for, and so it wanted to take the time to have, you
20 know, whether it was the public events and the
21 communications messages, the Qs and As, to make
22 sure everybody was ready.

23 THE CHAIR: So essentially your
24 answer to the fact that you did not seek comments
25 from proponents was because of the -- because it

1 would have delayed the process, when you wanted to
2 award contracts as soon as possible. Is that a
3 fair summary?

4 THE WITNESS: Right. Yes. We
5 wanted to award contracts as soon as possible, and
6 you would know that when things are posted for
7 comment, you will get comments that are pro and you
8 will get comments that are against.

9 THE CHAIR: Of course.

10 THE WITNESS: It doesn't really
11 add so much more value, because my office in the
12 renewable energy facilitation office were already
13 us listening to the myriad of: Do this. Don't do
14 that. Do this. Don't do that.

15 And then when the Wind Energy
16 Association comes forward and provides a more
17 comprehensive view, not a self-interested view,
18 then that's the one -- that's the opinion that you
19 rely on more.

20 THE CHAIR: Thank you.

21 BY MR. MULLINS:

22 Q. Thank you. Now, I have one
23 short document for some reason with restricted
24 access, but then I will go back -- I think we can
25 go back on the record. So just one document I want

1 to show you.

2 --- Upon commencing confidential session at 12:30 p.m.

3 --- Upon resuming public session at 12:31 p.m.

4 MR. APPLETON: We're back on the air.

5 BY MR. MULLINS:

6 Q. Because this document is not
7 confidential, and this is C-90 and this has your
8 name on it.

9 If you go to the second page, May
10 11th, does this refresh your recollection that you
11 had a meeting with Al Wiley and Bob Lopinski to
12 discuss their meeting with Andrew Mitchell?

13 A. It wasn't -- I have lots of
14 meetings with proponents. That was my job.

15 Q. And is it not true, ma'am,
16 that in that meeting that you had, they
17 discussed -- is it fair to say they discussed if
18 they were not allowed to change their connection
19 point window to the Bruce region, they would not be
20 able to get a contract in the FIT program?

21 Do you remember that, ma'am?

22 A. I think that the discussion
23 was around: Was the government contemplating a
24 connection change point window, in which case we
25 couldn't -- we didn't know, and so even if we did

26

1 know, we wouldn't tell them.

2 And of course I would expect for
3 them to come forward with their position to say
4 that they really wanted a connection change point
5 window, but that wouldn't sway us one way or the
6 other.

7 Q. Well, you do remember that
8 they told you in this meeting that if there was not
9 going to be an interconnection adjustment window,
10 they would be shut out of the FIT program?

11 A. I don't remember that. I
12 actually -- I had so many meetings with developers,
13 and each developer was always trying to get
14 glimpses into what we were thinking or going to do.

15 But it doesn't -- it didn't factor
16 into the decisions that would be finally made.

17 Q. Okay. And were you also
18 aware at the time that NextEra's projects were 100
19 kilometres away from the connection points it
20 eventually made into the Bruce?

21 A. No, no.

22 Q. There was no discussion about how
23 far away that was?

24 A. No. We weren't -- as I told
25 you before, we did not dwell into the details of

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specific projects, because there were so many projects and we knew that whatever we awarded, there would be more losers than winners.

Q. Now, if you look at the time of this e-mail, it is May 11th, 9:55; correct?

A. Yes.

Q. And then you respond in the afternoon on May 12th, 6:27. Was your response before or after that meeting that Mr. Cronkwright told us about?

A. I don't know. I don't know what meeting Mr. Cronkwright was referring to.

Q. You don't remember a meeting with the OPA where you made at least a preliminary decision that you talked about earlier about what the plans are? I understand it wasn't finalized. But that meeting was likely before 6:30 in the afternoon; correct?

A. Likely.

Q. And in fact you continued to correspond with NextEra individuals all the way to 8:20 at night; correct? Do you see at the top, your last e-mail is dated -
- time stamped 8:20?

A. Okay. That's good customer

1 service.

2 Q. Yes, ma'am. During this time
3 period, you weren't -- do you consider NextEra a
4 customer, ma'am?

5 A. Well, I was the renewable
6 energy facilitator, and so it was our job to talk
7 to proponents, farmers, wind energy associations
8 solar, biogas, just about anyone out there.

9 Q. Can you tell us by the way,
10 for the record, who Bob Lopinski is who is
11 mentioned? He's cc'd in the e-mail.

12 A. He's a GR firm. So
13 he's -- on the flip side, it says he is with
14 counsel.

15 Q. Were you -- sorry. Correct.
16 He was -- sorry? Was he previously, ma'am; do you
17 know?

18 A. No.

19 Q. Wasn't he a member of the
20 Premier's office?

21 A. I don't know.

22 Q. And he went into --

23 A. Every person in a GR firm is a
24 former something.

25 Q. What is a GR firm, just for

1 the record?

2 A. Government relations.

3 Q. So he's a public relations
4 person that met with you after the preliminary
5 decision was made on May 12th?

6 A. I may have had a conversation
7 with him. I think, in terms of "speaking with you
8 at 9:30", it was probably via just a short
9 teleconference.

10 Q. Oh, because he had the
11 call-in number?

12 A. Yes.

13 Q. Isn't it a fact, ma'am,
14 during this telephone conference you told NextEra
15 that the Premier's office was considering changing
16 the FIT rules to allow a connection-point window?

17 A. I would never say that.
18 That's ridiculous. The farthest I could go is
19 probably no decision has been made and we
20 can't -- we can't tell you even if a decision has
21 been made.

22 Q. And did you then -- after you
23 gave that information to NextEra, did you then put
24 out a notice to all FIT proponents in the Bruce
25 region and the west of London region to tell them

1 that no decision had been made; however, that a May
2 12th meeting had been conducted and that at least a
3 preliminary decision was looked at?

4 A. If anyone called, they would
5 have gotten the same message. If anyone e-mailed,
6 they would have gotten the same message.

7 It wasn't up to us to actively
8 publicize these conversations, because we weren't
9 divulging confidential information.

10 Q. Was there a script prepared
11 for all calls?

12 A. I don't think in this
13 instance.

14 Q. Were you given all of the
15 calls, or could it have been anybody in the
16 Ministry of Energy could get a call?

17 A. They wouldn't want to speak
18 to just anyone. Usually they would want to speak
19 to one of the directors or the OPA.

20 There were multiple channels that
21 they could have come through.

22 Q. It is possible, then, that
23 the proponents calling the Minister of Energy could
24 have talked to many people, not just you?

25 A. If they talked to my staff,

1 my staff would have told me about it.

2 Q. I understand, ma'am. I am
3 asking you --

4 A. Anyone can call anybody.
5 So...

6 Q. Correct. You don't know,
7 sitting here today, whether or not proponents of
8 the FIT program called the Minister of Energy or
9 the OPA about any decisions that the Ministry of
10 Energy was contemplating regarding a connection
11 change point window; correct?

12 A. Proponents most certainly did
13 call. I can be confident of that, because our
14 phones were always ringing off the hook.

15 Q. And without a strict script,
16 you can't tell us that everyone got the same
17 message; correct?

18 A. My staff are pretty good. I
19 think that --

20 Q. They are not perfect; right?
21 They could have said something slightly different
22 to one person than they told to someone else;
23 correct?

24 A. I don't control the actions
25 of all of my staff or the exact words of all of my

1 staff, but I know that my staff are savvy enough to
2 be able not to divulge confidential information.

3 And so --

4 Q. I'm sorry, you can't tell us
5 today that only your staff are the ones that got
6 calls; right?

7 A. Right. That's what I said in
8 the first place, is that they could have called the
9 OPA, they could have called -- but I think the
10 answer, you know, unless you can prove otherwise, I
11 don't think that anyone said anything that was out
12 of what the expected answer should be, in that
13 everyone knew that until that Minister's direction
14 went out, there was no decision.

15 And, anyway, these decisions were
16 very tightly closed. So in terms of writing the
17 directions, in terms of who we talked to, there's a
18 small circle. Not everyone is in the tent.

19 Q. Yes. So there was no meeting
20 of the people in the tent to make sure you got your
21 story straight; right?

22 A. There were lots of e-mails.

23 Q. We haven't been provided all
24 of those e-mails, ma'am. Are you telling me there
25 is an e-mail we don't have where there was a script

1 put down, so if anybody called --

2 A. There wasn't a script.

3 Q. Just let me finish my

4 question. There was not a script; right?

5 A. There was not a script.

6 Q. And there is not an e-mail
7 somewhere sent forth to anybody who might get a
8 call about this to make sure everybody got the same
9 message; isn't that right? Does that e-mail exist?

10 A. There wasn't a script.

11 Q. Okay. And there wasn't a
12 meeting where everybody got together, in case
13 somebody gets a phone call, we want to make sure we
14 get the story straight; correct?

15 A. The phone calls were
16 happening all the time on multiple issues, and so
17 if we needed to huddle together just on this issue,
18 we would have -- and other issues, we would have
19 been huddling together all the time.

20 Q. Was there any discussion,
21 ma'am, of: Maybe it would be a good idea to put
22 out a notice that everybody could read that says
23 the same message? Was that discussion ever had
24 with anybody internally at the Minister of Energy?

25 A. Until the direction was

1 issued, nobody knew -- staff did not know the
2 direction we were taking.

3 Q. And whatever you told the
4 NextEra people, there was no public announcement in
5 a written form to all of the FIT proponents of what
6 you told NextEra people; correct?

7 A. Well, anyone that would have
8 called in and been told the same message, that the
9 government hadn't made a decision, that we were
10 considering. That is generally -- there's
11 a -- wind proponents talk to each other, and
12 obviously they were also talking to CanWEA and so
13 it prompted CanWEA to write to us.

14 So there must have been lots of
15 dialogue in industry amongst GR firms and everyone
16 who was paying attention.

17 Q. In fact, you got other
18 letters from other people saying that CanWEA was
19 not representing the position of all of its
20 members, didn't you?

21 A. One can never represent the
22 views of every, everybody. But CanWEA did
23 represent the majority, the vast majority, of the
24 wind developers out there.

25 Q. Your obligation is not just

1 to represent -- not just to meet the expectations
2 of the majority, but to meet the fair
3 representations of all proponents. Don't you
4 agree, Ms. Lo?

5 A. We were being fair. We
6 were -- we devised a Minister's direction that
7 contemplated ratepayers', developers' expectations.
8 We capped the megawatts to ward off the
9 uncertainty.

10 We allowed a certain number of
11 megawatts of connection at each connection point to
12 protect the very -- the smallest of the generators,
13 and it was as close to an ECT as the FIT rules
14 possibly contemplated. And so I think in my
15 estimation, we -- we were fair.

16 Q. You agree that due process
17 and fairness is not just given to the majority, but
18 given to all; right?

19 A. As a principle, I would agree
20 with that. Where there is someone says that they
21 needed to award contracts by a certain time, then
22 you do what you can.

23 Q. And can you turn to - this
24 is confidential. We will go on confidential. This
25 is C-629.

1 --- Upon commencing restricted confidential session at 12:44 p.m.
2 now deemed public

3 BY MR. MULLINS:

4 Q. C-29. This is tab 27. This
5 is an e-mail from you to Andrew Mitchell; right?

6 A. I don't know what I am
7 looking at.

8 Q. I'm sorry.

9 A. C?

10 Q. Tab 27, ma'am.

11 A. Oh, I thought you said "C".

12 Q. The "C" is the document
13 number. I get in trouble when I don't mention
14 that. So the doc number is C-629, but it was under
15 tab 27 in your notebook.

16 A. Okay.

17 Q. Do you recognize this
18 document?

19 A. Yes.

20 Q. Can you tell us what this
21 document is? It's an e-mail; right?

22 A. It is an e-mail to Andrew
23 Mitchell. Andrew Mitchell was the director of
24 policy in the Minister's office.

25 Q. What does "B club" mean in

1 the "re" line?

2 A. That was just a name we used
3 for the highest-level meetings with --

4 Q. Breakfast club or something?

5 A. Yes. It was the breakfast
6 club.

7 Q. Good movie, okay.

8 --- Laughter.

9 THE WITNESS: But there was a
10 breakfast club, but there was not any breakfast
11 served.

12 --- Laughter.

13 BY MR. MULLINS:

14 Q. Well, it is the government.
15 Who was at the breakfast club?

16 A. Usually it was the -- the
17 secretary of the Cabinet was Shelly Jamieson.
18 There was also the Premier's chief of staff. There
19 was our deputy.

20 There would be the cabinet office
21 deputy, sometimes the Finance Ministry's deputy,
22 and whoever was making the presentations.

23 Q. Now, this was, again, after
24 the meeting that Mr. Cronkwright mentions in his
25 witness statement, right, because it is pretty late

1 at night? It is at again 8:20.

2 This is -- meanwhile you are
3 still -- this is also a time you are communicating
4 by e-mail to NextEra. Remember that? This is all
5 of the May 12th late night -- early evening,
6 rather; right? Do you see the time, 8:20?

7 A. That was pretty common.

8 --- Upon commencing confidential session now deemed public

9 THE CHAIR: Fine. I would suggest
10 that we take the break now, because it has been
11 quite a long stretch for you, Ms. Lo. Can we defer
12 the re-direct until after lunch?

13 MR. SPELLISCY: Give us a minute
14 here, because I am conscious of course of Ms. Lo's
15 time, and if we don't have many questions at all,
16 then we can do it, but we may do it quickly.

17 If the Tribunal plans on having a
18 number of questions, though, then I would say we
19 take our lunch break.

20 THE CHAIR: I don't think we have
21 many questions, because a lot of ground has been
22 covered, and I don't think so. So why don't you
23 check how many you have, and then maybe we can
24 conclude now?

25 MR. SPELLISCY: Just give us two

1 minutes.

2 THE CHAIR: Yes.

3 MR. SPELLISCY: Professor

4 Kaufmann-Kohler and members of the Tribunal, we do
5 not have any re-direct questions, so we won't ask
6 Ms. Lo any questions.

7 THE CHAIR: Thank you, sir. Then
8 let me see whether we still have questions. Judge
9 Brower?

10 QUESTIONS BY THE TRIBUNAL:

11 MR. BROWER: Since I was taken to
12 tab 27, which we have just been discussing, I
13 looked at tab 28, which I turned to by mistake at
14 the beginning. Obviously the point is being made
15 by the claimant that the period of May 12, this
16 meeting, and May 13th was critical in some way or
17 very busy with respect to decisions made or
18 contemplated with respect to the five-day window.

19 Here at tab 28, which is Exhibit
20 C-0674, the F.A. Wiley, vice president development
21 Canada, NextEra Energy Resources, Juno Beach,
22 Florida, addresses an e-mail to you May 13, 2011,
23 10:12 a.m., addresses you as "Sue":

24 "Per our discussion this
25 morning, please find attached

1 a list of NextEra's six
2 projects remaining in the FIT
3 queue. Thanks."

4 Could you tell us what the
5 discussion was in the morning and why he was -- if
6 you know why he was sending you a list of NextEra's
7 six projects remaining in the FIT queue, and do you
8 know why he used the expression "remaining in the
9 FIT queue", which suggests, just facially on a
10 reading, that some had been taken out of the FIT
11 queue?

12 THE WITNESS: Mm-hm. So let me
13 try to answer the question this way. I think what
14 Al Wiley was doing was sending me projects that
15 were in the FIT queue because others had probably
16 received a contract. NextEra probably received
17 contracts during the initial award of FIT contracts
18 in April of 2010.

19 So these were the ones that
20 remained in a queue to be decided upon when
21 transmission became available.

22 The reason he was sending me the
23 contracts is out of self-interest, just as any
24 other proponent that would have reached out to us.
25 They would have wanted us to understand why they

1 wanted something, that they wanted -- so NextEra
2 would have wanted me and my staff to understand
3 that they definitely favour a connection change
4 point window.

5 In terms of receiving the details,
6 I would have -- upon receiving his e-mail, what I
7 would have done is I would have instantly forwarded
8 that to my staff to say, you know: Here's some
9 information about NextEra's projects.

10 MR. BROWER: Mm-hm. But what was
11 the discussion that morning?

12 THE WITNESS: Oh, the discussion I
13 believe was over the telephone, and it would have
14 been a short discussion where he would have
15 probably espoused the merits of why Ontario should
16 include a connection change point window. That's
17 probably what it was.

18 I don't even remember the exact
19 sentences that he would have said, but I would know
20 that we had similar conversations with other
21 proponents who reached out to us, and all of them
22 wanted contracts should be awarded as soon as
23 possible, and certainly before the government would
24 go into an election mode, because 2011 in the fall,
25 that was the set time for another provincial

1 election.

2 MR. BROWER: And why would that
3 affect the timing of awarding contracts?

4 THE WITNESS: Because the --

5 MR. BROWER: Why do they want to
6 get in before the election?

7 THE WITNESS: Yes. Because the
8 government would want to award the contracts
9 before, well before, the writ was dropped, because
10 a writ period is a period of time before the actual
11 election itself, where the Ministers are no longer
12 really holding their portfolios, but they have gone
13 to seek re-election, if they so choose.

14 So the business of the government
15 goes just into a caretaker mode during the writ
16 period. And so the election was going to be in
17 October or before, and they wanted -- because the
18 opposition was saying that they were going to
19 cancel the FIT program, that's where I think there
20 was a lot of lobbying on government to award these
21 contracts so that another government couldn't come
22 in and not award them.

23 MR. BROWER: And I think maybe you
24 have answered my next question, which was at tab 27
25 that we've been looking at, Exhibit C-0629, the

1 e-mail at the bottom in which you are addressing
2 Andrew, Andrew Mitchell of the -- is that the
3 Ministry of Environment and Energy --

4 THE WITNESS: Energy and
5 Infrastructure.

6 MR. BROWER: Energy and
7 Infrastructure, right, thank you.

8 You say "that", referring to the
9 idea of setting aside the entire London/London east
10 for KC, Korean Consortium. You say:

11 "That would help to pace the
12 contract awards a bit
13 better."

14 Do I correctly understand that is,
15 meaning it might get to award contracts faster?

16 THE WITNESS: I think what I was
17 trying to say was that if we set aside London and
18 London east, all 350 megawatts, then that means
19 that we wouldn't -- because the Korean Consortium
20 were slow in terms of figuring out where they could
21 connect in that entire region.

22 And so by holding the London and
23 London East and just not awarding FIT contracts in
24 that area, what it would do would be to slow down
25 the pace of contract awards.

1 And as I said previously, we
2 wanted to slow down the pace of contract awards,
3 because this particular set of contract awards were
4 being done at the prices for FIT that were set in
5 2009.

6 So they were still fairly
7 attractive FIT prices, and I think one of our main
8 considerations was that we really wanted to slow
9 down the pace of procurement. So it would be fewer
10 megawatts to be awarded, and that would slow it
11 down, because once we entered into the two-year FIT
12 review, which happened almost immediately after the
13 contract awards for Bruce-to-Milton, we could look
14 at making tweaks, substantial tweaks, to the
15 program to lower the prices of the technologies.

16 MR. BROWER: Do I understand from
17 what you say that the then-Ontario government --

18 THE WITNESS: Yes.

19 MR. BROWER: -- was interested in
20 as many contracts as possible being signed, as they
21 were up for re-election?

22 THE WITNESS: Well, I think the
23 landscape changes. The Ontario government was
24 certainly interested in making a splash in terms of
25 awarding contracts.

1 MR. BROWER: Right.

2 THE WITNESS: Because awarding
3 contracts, as you know, it is like ribbon cutting.

4 MR. BROWER: Right.

5 THE WITNESS: All sorts of good
6 news, and government could talk about its millions
7 and millions of dollars in investment that it would
8 attract.

9 But, you know, did it matter
10 whether we awarded 1,000 megawatts or 800? I think
11 there would be very little difference in terms of
12 the splashiness of the news. It was still really
13 good news to be awarding contracts.

14 MR. BROWER: Right. Did that
15 government get re-elected?

16 THE WITNESS: Yes, they did, and
17 they are still in power. They got re-elected twice
18 since then.

19 MR. BROWER: Okay, that's it.

20 THE CHAIR: I am a little
21 confused, and maybe I have misunderstood you, but
22 you will clarify it for me.

23 When I asked you why you didn't
24 ask for comments of the proponents to the FIT rule
25 changes with respect to the connection window, you

1 said that this would have taken too much time and
2 therefore -- and you were eager to award the
3 contracts as soon as possible.

4 Now, in answer to Judge Brower's
5 questions about the e-mail in tab 27, C-629, where
6 you said that would help to pace the contract
7 awards a bit better, you say: That is because we
8 wanted to slow down the contract awards.

9 So now I don't know if you want to
10 accelerate or did you want to slow it down, or one
11 has nothing to do with the other?

12 THE WITNESS: So it is competing;
13 right? So what we were trying to do, we had made
14 proposals to the government at the time to do the
15 FIT review earlier, and the government did not want
16 to do that before the reelection.

17 So there were opposing forces. In
18 terms of getting these contracts out, for the
19 government it was imperative that we award these
20 contracts before the election, before the writ
21 drops.

22 In terms of exactly how many
23 megawatts would be procured, there was a desire not
24 to award all of the contracts that could connect,
25 and that's why we capped the number of megawatts in

1 the Minister's direction. I think it was 750 and
2 300 megawatts, because if more projects could have
3 connected, we didn't want to pay for the additional
4 megawatts that would come on stream, because they
5 were surplus to what Ontario's energy needs were in
6 the future, the projections.

7 THE CHAIR: Thank you.

8 MR. BROWER: Excuse me. I can't
9 help saying that reminds me of the story told about
10 old Joe Kennedy, the father of Jack Kennedy, when
11 he was running for president of the United States.
12 He said: I will pay everything to get elected, but
13 not a nickel for a landslide.

14 --- Laughter.

15 THE WITNESS: Yes. Exactly right.

16 MR. BROWER: So it seems to me --

17 THE WITNESS: It's kind of like
18 that.

19 MR. BROWER: -- it is a bit of an
20 example of -- you're in the civil service.

21 THE WITNESS: Yes, I am.

22 MR. BROWER: Right, of the civil
23 service trying to deal sensibly with what
24 government wants.

25 THE WITNESS: Right.

1 MR. BROWER: Okay.

2 THE CHAIR: Follow-up question?

3 MR. MULLINS: I do.

4 MR. SPELLISCY: There was no
5 re-direct and now I am wondering about re-cross.

6 THE CHAIR: I usually would allow
7 a follow-up question, provided it is specifically
8 linked to a question by the Tribunal. Both parties
9 have that right.

10 I think the Tribunal is done with
11 its questions, although I have not checked my own
12 notes to make sure by covered everything. Let me
13 just check. We have covered all of my questions,
14 so if you have follow-up, please go ahead.

15 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

16 Q. Just one follow-up question
17 from the questions of Judge Brower.

18 Ms. Lo, talking about this
19 critical time period in May of 2011 and to June
20 2011, did you have other e-mail communications with
21 other FIT proponents or was it only with NextEra?

22 A. It would have been -- to
23 answer your question simply, we would have had lots
24 of contact with many proponents, I think.

25 Q. Specifically, though, ma'am,

1 e-mails exchanged back and forth like we have seen
2 with the NextEra.

3 A. No, I don't know. I don't
4 know what was provided. I don't know what was
5 pulled. I think we provided you everything that
6 was in our record.

7 Q. Well, that is where I am
8 headed, ma'am, because we don't have any other
9 e-mails other than the ones produced with respect
10 to NextEra.

11 And what I am asking is, for the
12 record, do you have any knowledge that there would
13 be other e-mails around the same time period with
14 FIT proponents during this time period that we have
15 not been provided? So I am asking you if those
16 documents exist.

17 A. I think we provided all of
18 the documents that we had in our possession. There
19 would always be ongoing conversations. My staff
20 and I were always at regular forum with the
21 industry and having regular meetings with
22 stakeholder groups. So --

23 Q. Did you look for e-mails with
24 other FIT proponents, ma'am?

25 A. I think in a normal search

1 process, an independent third person looks at all
2 of my e-mail and creates the package for you.

3 So they didn't want me to look for
4 my own e-mails, because it is better to have a
5 third party look at all of my e-mails and transmit
6 the entire set to you.

7 MR. MULLINS: Thank you very much.

8 THE CHAIR: Any follow-up
9 questions on Canada's side?

10 MR. SPELLISCY: No. I did just
11 want to clarify for the public record on Exhibit
12 C-0681, because the claimant's counsel expressed
13 confusion at it being identified as confidential,
14 and of course that is the claimant's
15 confidentiality designation, not Canada. So I just
16 wanted to be clear on that.

17 THE CHAIR: Thank you. That's
18 clear. Fine. So this completes your examination,
19 Mrs. Lo. Thank you very much. It was a long
20 morning, but we got to the end of it. Thank you.

21 THE WITNESS: Thank you.

22 THE CHAIR: We will now take a
23 one-hour break. Is that fine? And we will resume
24 at 2:15, or would you prefer resuming at 2:00? We
25 will then go over to Mr. MacDougall; is that

1 right? What is the preference?

2 MR. APPLETON: Full hour. It has
3 been a very full morning.

4 THE CHAIR: You want a full hour?

5 MR. MULLINS: Whatever is good for
6 the Panel.

7 MR. APPLETON: What would you
8 like?

9 THE CHAIR: Well, we're here at
10 your disposal.

11 --- Laughter.

12 MR. SPELLISCY: Sort of.

13 THE CHAIR: Sort of? Don't say
14 that. Let's say 2:15, then.

15 --- Luncheon recess at 1:15 p.m.

16 --- Upon resuming at 2:19 p.m.

17 --- Upon resuming public session

18 THE CHAIR: Are we ready to start
19 again? Good afternoon, sir.

20 THE WITNESS: Good afternoon.

21 THE CHAIR: Are we ready or not?

22 MR. MULLINS: We're ready.

23 MR. SPELLISCY: We're ready.

24 THE CHAIR: Good. For the record,
25 can you please confirm to us, sir, that you are Jim

1 MacDougall.

2 THE WITNESS: Yes, my name is Jim

3 MacDougall.

4 THE CHAIR: Your current position
5 is president of Compass Renewable Energy
6 Consulting?

7 THE WITNESS: Yes, that's correct.

8 THE CHAIR: During the time that
9 we're interested in here, you were manager of the
10 Feed-in Tariff at the OPA?

11 THE WITNESS: Yes, that's correct.

12 THE CHAIR: You have filed one
13 witness statement in this arbitration dated 27th of
14 February 2014?

15 THE WITNESS: Yes.

16 THE CHAIR: And as you know, you
17 are heard as a witness in this arbitration. As a
18 witness you are under the duty to tell us the
19 truth. Can you please confirm that this is what
20 you intend to do?

21 THE WITNESS: Yes, it is what I
22 intend to do.

23 AFFIRMED: JIM MACDOUGALL

24 THE CHAIR: Thank you. Now you
25 know how we will proceed? You will first be asked

1 questions, introductory questions, by Canada's
2 counsel, and then we will turn to Mesa's counsel.

3 THE WITNESS: Yes.

4 THE CHAIR: To who do I give the
5 floor?

6 MS. MARQUIS: Myself.

7 EXAMINATION IN-CHIEF BY MS. MARQUIS:

8 Q. Good afternoon. Good
9 afternoon. I am Laurence Marquis, counsel for
10 Canada. Mr. MacDougall, I have just one question
11 for you. You have your witness statement in front
12 of you. Are there any corrections that you need to
13 bring?

14 A. No, there are not.

15 MS. MARQUIS: Thank you. I turn
16 the floor to you.

17 THE CHAIR: Mr. Mullins, your
18 turn.

19 CROSS-EXAMINATION BY MR. MULLINS: AT 2:21 P.M.

20 Q. Good afternoon,
21 Mr. MacDougall.

22 A. Good afternoon.

23 Q. I will have more than one
24 question. I am going to be referring to your
25 witness statement, February 27th, 2014, and you

1 have confirmed it is accurate and complete and no
2 biases, as well as it can be; correct?

3 A. That's right, yes.

4 Q. We have a number of witnesses
5 to go through, including experts, so it will be
6 really helpful to me if you could listen to my
7 question and try to answer it. If you need to
8 follow up on an answer, that's fine. If you want
9 to go to a different area, I would ask you to wait
10 to your counsel, or Canada's counsel will ask you
11 questions, because they are entitled to do so on
12 re-direct.

13 But I really have a limited amount
14 of time and we have a number more witnesses to go
15 through, including experts. Is that fair?

16 A. Yes.

17 Q. Thank you. Now, you
18 currently are the president of Compass Renewable
19 Energy?

20 A. Yes, that's right.

21 Q. And what is that, sir?

22 A. So I act as a consultant
23 primarily to assist developers of renewable energy
24 projects to advance their projects through the
25 Feed-in Tariff contracts, to bring them to

1 operation primarily in the Province of Ontario.

2 Q. Okay. You answered my
3 question. Is it only Canada or...

4 A. We do consulting work outside
5 of Canada. We have worked with US clients,
6 European clients, but the majority of the work that
7 Compass Renewable Energy Consulting is involved in
8 is with Ontario clients.

9 Q. Well, Ontario clients or
10 clients doing work in Ontario?

11 A. Both. The majority of the
12 work is done in Ontario.

13 Q. Okay. When you say
14 "majority", 80 percent?

15 A. Probably 90.

16 Q. Ninety percent, okay. Before
17 you started your consulting program, you were
18 manager of the Feed-In Tariff program in the OPA?

19 A. Yes.

20 Q. And you in fact are the only
21 employee of Compass Renewable Energy; right?

22 A. No. There are three
23 employees of Compass Renewable Energy.

24 Q. And they help you with
25 consulting?

1 A. That's correct, yes.

2 Q. And have you done work for

3 NextEra?

4 A. I have not.

5 Q. Or the Korean Consortium?

6 A. No, I have not.

7 Q. And do you consult with the

8 government?

9 A. I have secured a consulting

10 contract with the Ontario Power Authority, but as

11 of yet I have not done any consulting work through

12 that contract.

13 Q. When was that contract

14 entered, sir?

15 A. The contract was entered into

16 in June of -- approximately June of 2014.

17 Q. That was after you did your

18 witness statement?

19 A. That's correct, yes.

20 Q. And how are you going to

21 consult with the government and also act as a

22 consultant for people doing work with the

23 government?

24 A. So I'm not working for the

25 government.

1 Q. Okay?

2 A. That contract is with the
3 Ontario Power Authority.

4 Q. Okay.

5 A. And the capacity in which the
6 work would be delivered through the Ontario Power
7 Authority has provisions to ensure that there are
8 no conflicts of interest --

9 Q. Right.

10 A. -- in the event that the work
11 I was doing for the Ontario Power Authority
12 overlapped with work I would be doing with a
13 client.

14 Q. How do you avoid the conflict
15 of interest?

16 A. So I only have -- well there
17 are hundreds of feed-in tariff developers in
18 Ontario.

19 Q. Right.

20 A. Developing all sizes of
21 projects.

22 Q. Right.

23 A. I don't represent all of
24 them.

25 Q. Right.

1 A. I represent maybe a dozen.
2 So to the extent that I don't represent a client,
3 doing work for them as a consultant, then there
4 wouldn't be a conflict with me doing work with the
5 government in assessing that client's project.

6 It might help to describe the
7 nature of the consulting work that I may be doing
8 for the Ontario Power Authority.

9 Q. Okay, sure.

10 A. So the work that Compass bid
11 on was reviewing projects to ensure that the
12 project was primarily compliant with the domestic
13 content provisions of the feed-in tariff contracts.

14 So in that capacity, Compass would
15 review the documentation submitted by a supplier to
16 confirm that the documentation was compliant with
17 the contractual requirements of the feed-in tariff
18 contract.

19 Q. That's the work you bid on
20 for the government; right?

21 A. That's the work that I bid on
22 for the Ontario Power Authority.

23 Q. And so you --

24 A. In 2014. So it doesn't show
25 up anywhere on my witness statement.

1 Q. I understand. Well, your
2 witness statement was dated February 2014. When
3 did you do the bid?

4 A. Probably March or April.

5 Q. So pretty soon after you did
6 your witness statement, you bid for a project with
7 the OPA?

8 A. Yes.

9 Q. And I am confused, though.
10 You say your work, you haven't started that work
11 yet?

12 A. No, I haven't.

13 Q. But the plan is that you are
14 going to consult with the OPA to help them make
15 sure that the domestic content requirements are
16 complied with?

17 A. That's the majority of the
18 scope of the work.

19 Q. Okay. Otherwise, the work
20 you're doing with FIT project people, your clients,
21 that's not going to be dealing with the issue about
22 the content requirements?

23 A. No. The work that I would be
24 doing with, as I said, the dozen or so clients
25 would be -- part of it could be assisting them with

1 their domestic content documentation. That's quite
2 possible.

3 Q. So there would be an overlap,
4 then, through what you're working on with the OPA
5 and what you are going to be doing for your
6 clients?

7 THE CHAIR: I'm sorry, but I think
8 he just answered that he would not act for these
9 clients, on mandates for the OPA or vice versa, to
10 avoid conflicts of interest.

11 THE WITNESS: That's right. I
12 would declare a conflict of interest if I was asked
13 to review documentation --

14 BY MR. MULLINS:

15 Q. Oh, I see.

16 A. -- from one of my clients.

17 Q. I apologize. I understand
18 now. You're saying the subject area could overlap,
19 but for a specific client you wouldn't do it. I
20 apologize.

21 A. Right.

22 Q. I understand, yes. Thank
23 you.

24 Now, when you were with the
25 Feed-in Tariff program, your department was

1 responsible for coordinating and administering the
2 Ontario FIT program?

3 A. That's correct.

4 Q. And it was your
5 responsibility to conduct those assessments of
6 applications made by the renewable energy power
7 purchase agreement proponents in an open,
8 transparent, accountable and effective way?

9 A. Yes.

10 Q. And that would be true for
11 all parties involved in the FIT process; correct?

12 A. Yes, that's correct.

13 Q. Including FIT proponents who
14 didn't get a contract?

15 A. Yes, that's correct.

16 Q. And you believe, do you not,
17 that all OPA employees have a duty and an
18 obligation to make their decisions fairly?

19 A. Yes.

20 Q. Objectively, honestly and
21 high ethical standards?

22 A. Yes.

23 Q. Openness and transparency?

24 A. Yes.

25 Q. Without -- with impartiality?

1 A. Yes.

2 Q. And transparency means to you
3 being open and forthright?

4 A. Yes.

5 Q. And giving all information
6 possible?

7 A. Yes, within the context of
8 the FIT program administration.

9 Q. And you would expect in fact
10 that the people you work with in the Ministry of
11 Energy would also have these exact same duties and
12 obligations as we just described them?

13 A. They wouldn't be involved in
14 the administration of FIT applications, but
15 otherwise the principles --

16 Q. The principles we talked
17 about would apply to the Ministry of Energy?

18 A. Yes.

19 Q. Okay. Now, in your initial
20 statement, paragraph 15, you say that:

21 "... the Ministry of Energy's
22 main goal was to allow
23 'shovel-ready' projects to
24 'float to the top'. 'Quick
25 wins' for the program meaning

1 immediate investment in
2 development, were seen as
3 crucial for the government's
4 strategy of creating jobs in
5 the renewable energy
6 sector..."

7 Correct?

8 A. Yes, that's correct.

9 Q. And you agree that' not only
10 the main goal for the Minister of Energy, but that
11 was also a goal for the OPA?

12 A. Yes. In designing the rules,
13 yes.

14 Q. And, in addition, another
15 proponent or component of the FIT program was to
16 make sure that participants would bind themselves
17 to immediate instruction activity; correct?

18 A. Yes, as quickly as possible.

19 Q. As quickly as possible. So
20 despite that it may be years before the energy
21 actually gets generated, they wanted immediately to
22 go out and buy land and start working on the
23 project; correct?

24 A. Yes.

25 Q. Or leasing land?

1 A. Yes.

2 Q. Buy it. So the OPA and the
3 Ministry of Energy knew during this process that
4 FIT proponents were doing this; right?

5 A. Yes.

6 Q. In fact -- and so it was not
7 lost on the OPA or the Ministry of Energy that
8 proponents were spending substantial sums in
9 preparation of participating in the FIT program,
10 was it?

11 A. Yes. They were continuing
12 their prior investments and making new investments.

13 Q. And making new investments,
14 so it was costing a lot of money. It would;
15 correct?

16 A. Yes.

17 Q. Thank you. Thank you. And
18 that's frankly what "shovel-ready" meant; right?
19 So the idea was you're ready to start building?

20 A. Yes.

21 Q. So it was important for the
22 OPA and the Ministry of Energy to make sure they
23 didn't make special arrangements with competitors,
24 because there were substantial rights being
25 affected by decisions made by the OPA and the

1 Ministry of Energy, don't you agree?

2 A. Yes. They wanted short-term
3 investment. They wanted to stimulate job creation.

4 Q. Both in respect to, for
5 example, the Korean Consortium and the FIT
6 proponents?

7 A. I am not as familiar with the
8 time lines for the Korean Consortium projects, but
9 certainly within the FIT program, yes.

10 Q. And you were involved
11 somewhat, though, with the Korean Consortium
12 projects or...

13 A. Very little.

14 Q. Okay.

15 A. Early, early on.

16 Q. Were you involved at all in
17 how the FIT -- sorry, the GEIA -- I am going to
18 call it the GEIA. Are you okay with that?

19 A. Yes.

20 Q. Okay, good. So are you
21 familiar at all with how the participants in the
22 Korean Consortium were able to obtain projects to
23 fulfil their obligations on the GEIA?

24 A. Sorry, the GEIA being the
25 Green Energy and Economy Act or the Green Energy

1 Investment Act.

2 Q. That's why people have a
3 problem with "GEIA".

4 The green energy investment
5 agreement with the Korean Consortium.

6 A. Right.

7 Q. I can call it the Korean
8 Consortium agreement, if you like.

9 MR. APPLETON: No, no.

10 BY MR. MULLINS:

11 Q. Can I use GEIA?

12 A. That's fine, yes.

13 Q. Are you familiar, generally,
14 with how the members of the Korean Consortium were
15 able to attain projects to fulfil their obligations
16 under the GEIA?

17 A. I am not at all familiar with
18 that.

19 Q. You are not aware of them
20 buying FIT projects in the program -- sorry, FIT
21 projects ranked lower in order to satisfy their
22 obligations?

23 A. I heard something, that that
24 was their approach, but...

25 Q. Do you remember who told you

1 that?

2 A. Sorry?

3 Q. You said you heard it. Do
4 you remember how you heard it?

5 A. Probably wind industry
6 stakeholders.

7 Q. They were complaining about
8 this or they were commenting?

9 A. Noting that that was the kind
10 of target market for the Korean Consortium group,
11 to seek projects that were lower on the list.

12 Q. The idea was these projects
13 were not ever going to realistically get a FIT
14 contract. So these were sort of the target market
15 for the Korean Consortium to buy out their projects
16 in order to basically satisfy the GEIA?

17 A. Yes, that's how I heard that
18 they were in the market looking for site
19 acquisition.

20 Q. And many of those projects
21 were low ranked, because they weren't shovel ready;
22 isn't that right?

23 A. Very likely that that's why
24 they were lower ranked, yes.

25 Q. So the irony of this is that

1 while it was very important to the government and
2 the OPA to have shovel-ready projects, it turns
3 out, though, that non-shovel-ready projects were
4 getting -- essentially participating in the
5 renewable energy because they were being bought out
6 by the Korean Consortium; is that correct?

7 A. Yes. So, you're right, the
8 FIT was are focussed on shovel ready and the GEIA
9 had other criteria, I suppose. I wasn't...I wasn't
10 involved in the GEIA, so I wasn't sure what the
11 mechanics of that were going to end up looking
12 like.

13 Q. I appreciate your explanation
14 there.

15 Now, going back to the comments
16 you said about the participants, if you go to your
17 statement, paragraph 5, you say:

18 "After I left the OPA and
19 formed Compass Renewable
20 Energy Consulting Inc. I was
21 contacted by a number of
22 industry participants that
23 had questions about the OPA
24 FIT Contract award process as
25 it related to capacity

1 recently made available for
2 the new Bruce to Milton
3 transmission project."

4 Can you remind us when you left
5 the OPA?

6 A. It was June of 2011.

7 Q. Okay. So you left right
8 about when the Bruce awards were made?

9 A. Correct.

10 Q. Okay. And you say here there
11 were concerns expressed about the process and
12 whether it was fair and transparent. Do you see
13 that?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. So can you tell us what those
18 concerns were and who made them?

19 A. Well, the questions were
20 around how, you know, decisions were ultimately
21 made around the contract award for the
22 Bruce-to-Milton allocation and whether there was
23 any, you know, untoward discussions within
24 government and within the Ontario Power Authority
25 about how that allocation process went.

1 And I responded that I was unaware
2 of any untoward dealings. It was simply a matter
3 of decisions around the process, and then the
4 execution of the process and the resulting
5 megawatts of capacity to be contracted under that
6 process.

7 Q. How soon after you left did
8 these conversations begin?

9 A. So my first day out of the
10 OPA was, I believe, June 17th.

11 Q. Yes?

12 A. Of 2011.

13 Q. Mm-hm.

14 A. And the process was being
15 administered in early June of 2011. So certainly
16 in the month of June, people were -- that was a
17 timely topic of discussion. So people were asking
18 what was going on and how did this play itself out.

19 Q. The phone was ringing off the
20 hook?

21 A. No, I wouldn't say that, but
22 probably two or three calls in the month of June.

23 Q. Two or three?

24 A. Yes, from different parties.

25 Q. What parties?

1 A. Companies --

2 MR. SPELLISCY: Well, sorry. Hold
3 on here. I don't know if this isn't something that
4 has been addressed. I am not sure if
5 Mr. MacDougall would like to go in a confidential
6 session to discuss who his clients are.

7 It is not something that has been
8 addressed or dealt with before. It is up to
9 Mr. MacDougall, but I do recognize who his
10 clients -- who might have reached him might be
11 confidential business information to Compass
12 Renewable.

13 MR. MULLINS: Referring to a
14 statement he made was not marked "confidential". I
15 was specifically asking who was calling and what
16 they said, so...

17 THE WITNESS: Well, there is one
18 that I can recall that was immediate, which was
19 Leader Resources.

20 BY MR. MULLINS:

21 Q. Mm-hm?

22 A. A gentleman named Chuck Edey
23 called me and asked me, in the context of working
24 with another consultant, how the process played
25 itself out.

1 Q. But he wasn't the only one to
2 complain; right?

3 A. Frankly, his was the only
4 company who I recall offhand. The majority of my
5 clients ended up being solar developers, and still
6 are solar developers. So I frankly don't work with
7 a lot of wind developers. And the majority of the
8 capacity that was awarded in the Bruce-to-Milton
9 area were from wind developers.

10 But there were questions, again,
11 about both the process and also, you know, the
12 establishment of the megawatt caps associated with
13 the allocation and where those numbers came from
14 and why.

15 Q. And what did you tell them?

16 A. Well, frankly, I told them
17 that the primary driver, as I saw it, was that the
18 FIT program that I had been working on was an open
19 procurement under the rules. Yet the previous
20 energy policy of the province, the long-term energy
21 plan, placed a specific cap on the renewable
22 procurement targets, and that for months I had
23 recognized that the program and the long-term
24 energy plan themselves were incompatible; they were
25 inconsistent.

1 So my comments were more along the
2 lines, in that regard -- especially to the solar
3 developers, were in the lines of: The megawatt
4 caps associated with the Bruce-to-Milton allocation
5 were deliberate to ensure that the province's
6 liability and obligations, as a result of contract
7 awards, would be capped.

8 Q. Well, the other challenge was
9 that there was capacity that was set aside for the
10 Korean Consortium; correct?

11 A. That certainly played into
12 where those numbers were set.

13 Q. Because had the Korean
14 Consortium agreement never been entered into, there
15 would have been more capacity available for FIT
16 proponents in the Bruce region; correct?

17 A. I would suggest throughout
18 the province, yes.

19 Q. But specifically in the
20 Bruce?

21 A. Yes, I believe there was an
22 allocation for the Korean Consortium in the Bruce
23 area.

24 Q. You remember in September
25 2010 that is exactly what happened. There was a

1 directive that set aside 500 megawatts in the Bruce
2 region?

3 A. Right.

4 Q. Thank you. Now, why did you
5 leave the OPA, Mr. MacDougall?

6 A. A number of reasons. I had
7 been at the Ontario Power Authority for almost six
8 years and so I had -- well, I hadn't kept a job for
9 more than six years in my career prior to that.

10 But part of it was to use my
11 expertise in understanding how the FIT program
12 operated to assist clients to navigate the FIT,
13 program from a contractual perspective or from a
14 program, kind of next steps perspective.

15 So it was an opportunity to
16 venture out in my career and work in the industry,
17 but from a different capacity.

18 Q. It was just a coincidence
19 that it was around the same time period that the
20 FIT program was going through this process in this
21 Bruce-to-Milton region?

22 A. Yes, very much so.

23 Q. Okay. But you did leave
24 before the awards actually were entered; correct?

25 A. Yes. I believe the awards

1 were in July, and, as I said, my last day was
2 around the 14th of June at the OPA, yes.

3 Q. So contrary to your
4 statement, you can't know for a fact whether or not
5 the entire process was completed in a fair manner,
6 because you left before it was over; right?

7 A. Yes, that's true.

8 Q. Thank you. Now, you talk
9 about in your witness statement that the concept of
10 offering a connection point change window in
11 advance of running the ECT had been a part of the
12 FIT rules; right?

13 A. Yes.

14 Q. Just so we're all on the same
15 page, the ECT you're referring to had been a
16 province-wide ECT?

17 A. Yes, that's correct.

18 Q. That never was run; right?

19 A. Yes, that's correct.

20 Q. There never was an idea there
21 would be a connection change point window just for
22 limited regions; right?

23 A. No.

24 Q. Okay. And so what happens
25 then is we sort of have a congruence -- confluence,

1 thank you, of events. So you have the
2 Bruce-to-Milton line coming online. You have the
3 capacity set aside for the Korean Consortium into
4 Milton. You have the long-term energy plan coming
5 on.

6 This issue, I think you talked a
7 little bit about this. So there was a challenge of
8 what to do with the west of London and the Bruce
9 area; right?

10 A. Yes.

11 Q. And is it not correct that up
12 to this point -- we're now into 2011 -- all of the
13 other regions had contracts awarded?

14 A. Yes, that's correct.

15 Q. And the way those were
16 awarded is that -- were these TAT and DAT tests.
17 Why don't you explain what those are?

18 A. Sure. So those are grid
19 connection capacity tests, first the transmission
20 level, to ensure that there was adequate
21 transmission capacity to connect a project to the
22 grid.

23 And then for projects that
24 connected at the distribution level, the lower
25 voltage distribution system, then projects also had

1 to be able to physically connect onto the
2 distribution system.

3 Q. And so what happens is, under
4 the FIT rules, what could happen is that you could
5 obtain a FIT contract -- well, obviously you can
6 get it without an ECT, because many projects did;
7 correct?

8 A. Correct.

9 Q. So what happens is these
10 tests were run and you felt satisfied to award
11 contracts in the other regions; correct?

12 A. Yes. The only one I am
13 thinking might have been restricted would be the
14 northwest of Ontario, but, generally, yes.

15 Q. So had you followed the same
16 process in the other regions that was happening in
17 the Bruce region, then under a normal process you
18 would have awarded contracts in the Bruce region on
19 the same process you did the other regions; right?

20 A. Well, the other regions of
21 the province had contracts awarded outside of the
22 ECT process. It wasn't an ECT process. There was
23 capacity available and so contracts were awarded.

24 Q. Right.

25 A. The Bruce region was the

1 first part of the province that had connection
2 constraints that were subsequently alleviated by
3 new transmission. So it was the first part of the
4 province that had an allocation process that was
5 triggered by new connection capability being
6 available.

7 Q. You do remember, though, in
8 December of 2010, there was a ranking of the
9 proponents in the Bruce project; remember that?

10 A. December 2010 or December
11 2009?

12 Q. 2010, because the awards were
13 entered in July. It is the December time
14 period. You remember there was a ranking that was
15 published?

16 A. Right. So the ranking
17 probably took place in December 2009, and was made
18 public in 2010.

19 Q. Oh, I'm sorry. Fair enough.
20 Got it.

21 And so those were all published to
22 the FIT proponents, right, in December 2010?

23 A. That's correct.

24 Q. And had you followed the
25 process in the other regions, you would simply have

1 awarded the contracts at that point?

2 A. Understood, yes, that's
3 correct.

4 Q. Okay. But the problem was
5 that you had an issue, as we're talking about what
6 to do with the Bruce area, and we also had this
7 issue with the Korean Consortium, right, because
8 they had been promised 500 megawatts in the Bruce?

9 A. Yes, that's right.

10 Q. That was kind of bad luck for
11 the people that picked Bruce; right?

12 A. Yes.

13 Q. I mean, because if you'd
14 happened to pick some other area, you probably
15 would have had a contract. But if you're on the
16 short end of that stick and hit the Bruce region,
17 you were shut out. Now you have to deal with this
18 new process; right?

19 A. Yes, amongst the other -- I
20 guess it was 1,500 megawatts in total --

21 Q. Yes?

22 A. -- of Bruce -- sorry, of
23 Korean Consortium capacity reserve, so 500 in the
24 Bruce and 1,000 elsewhere.

25 Q. Right. I think it was 500

1 and 1,200. Does that sound more accurate?

2 A. I don't know exact numbers,
3 but I'm saying there were 1,500 megawatts of
4 capacity reserved for the Korean Consortium, which
5 had, to your point, 500 megawatts of impact on the
6 Bruce and 1,000 megawatts of impact elsewhere.

7 Q. Your department or the OPA's
8 recommendation of how to solve this was to do a
9 modified TAT, DAT, right, and you were asked by the
10 Minister of Energy to do a rough estimate? Do you
11 remember that?

12 A. Yes.

13 Q. Can you tell us a little bit
14 about what that was?

15 A. So the Ministry was asking us
16 to ensure that any contract award in the Bruce area
17 would be megawatt limited. That was the -- it
18 seemed to be the highest priority, that the overall
19 contract awards should not exceed or should not be
20 excessive.

21 There was a more recent concern,
22 within Energy around the total cost of the Feed-in
23 Tariff program, and so the primary driver of
24 concern from the Ministry of Energy was, Let's make
25 sure we know what we're going to get out of this

1 once we execute an offer, a series of contracts,
2 because of the Bruce-to-Milton transmission
3 capacity.

4 Q. And you do remember, do you
5 not, sir, that there were a number of e-mail
6 correspondence between the OPA and the Minister of
7 Energy in which the Minister -- sorry, the OPA,
8 rather, was recommending that this modified test
9 that you ran would be followed, but that was not
10 accepted by the Ministry of Energy; correct?

11 A. Yes. There was a -- yes, a
12 negotiation around that.

13 Q. And who made the decision at
14 the Ministry of Energy to reject the recommendation
15 of the OPA?

16 A. I honestly don't know. I
17 believe a conduit to our group was through Sue Lo,
18 but I don't know whether it was Sue's decision or
19 her Deputy Minister's decision.

20 Q. Was the OPA ever notified by
21 Ms. Lo or anyone why the recommendation of the OPA
22 was rejected?

23 A. I'm not aware of what the
24 detailed rationale was for that.

25 Q. The answer is to your

1 knowledge --

2 A. I don't know.

3 Q. Fair enough. Now, the other
4 thing, once you learned -- you learned on May 12
5 what the decision was; right?

6 A. There was continued e-mail
7 exchange after May 12th, but in and around May
8 12th. May 20th, in there, there was still --

9 Q. The decision was made?

10 A. -- back and forth. Okay.
11 Yeah. Approximately May 12th the decision was
12 made.

13 Q. Thank you. And around that
14 time period, there also was talk about how much
15 notice to give; right?

16 A. Yes.

17 Q. And you do remember that,
18 frankly, the proponents were given three days'
19 notice? Do you remember that?

20 A. I don't remember that
21 explicitly, but I do know it was a short period of
22 time, and the window itself was a short period of
23 time.

24 Q. And that was both -- that was
25 contrary to the recommendation of the OPA, as well;

1 right?

2 A. I recall that the original or
3 some of the original discussions around the extent
4 of the connection point change window was proposed
5 to be 15 or 20 days. I don't actually know the
6 specific number of days right now.

7 Q. Well, can you go to tab 17 of
8 your notebook? This is C-78. I want to give you a
9 calendar. This is just for demonstrative aid. I
10 will reflect this is an accurate representation.
11 We got it off the Internet what the dates are.

12 Okay. So what I have given you is
13 first I have given you a calendar just so you can
14 look at it. So this is a June 2011 calendar, so we
15 can get the dates straight. Can you identify what
16 we see at tab 17, C-78?

17 A. Yes.

18 Q. Can you tell us what it is,
19 sir?

20 A. It's an OPA web posting of
21 the details of the methodology that was being
22 implemented for the allocation of the
23 Bruce-to-Milton capacity.

24 Q. Can you tell us the date this
25 was issued?

1 A. It is dated June 3rd, 2011.

2 Q. Can you look on the calendar
3 and tell us what date June 3rd, 2011 was?

4 A. June 3rd was a Friday.

5 Q. Can you tell us the timing
6 when the window was going to start?

7 A. So the window opened on June
8 6th and closed on June 10th.

9 Q. Five days?

10 A. Yes.

11 Q. So we can't tell when this
12 was posted, right, what time of day on June 3rd,
13 can we? I don't see it.

14 A. I don't think so.

15 Q. Do you remember?

16 A. I don't.

17 Q. Okay. And when that was
18 posted, this was the first -- first and only
19 official announcement of when there was going to be
20 a five-day change window?

21 A. To my knowledge, this is
22 the -- was the announcement.

23 Q. And, again, this was contrary
24 to the OPA's recommendation about how long the
25 window should be and how much notice should be

1 given?

2 A. I would think so. As I said,
3 I don't recall what we suggested or what we
4 recommended.

5 Q. So just so the record is
6 clear, the OPA did not have any criticisms of the
7 fact that the proponents were being told on a
8 Friday that a change point window was going to
9 start on Monday?

10 A. I imagine that there would
11 have been criticism that that's inadequate notice.

12 Q. You think it is adequate
13 notice, sir?

14 A. There had been a lot of
15 discussion about the possibility, but it is fairly
16 short.

17 Q. It is not adequate notice, is
18 it, sir? It is a weekend?

19 A. It is not very adequate.

20 Q. It is not very adequate.

21 Now, the Ministry of Energy is the one that
22 controlled this decision, right, about how much
23 notice to give and how long the period is going to
24 be; right?

25 A. Yes, we had exchanged

1 proposed schedules with the Ministry, and the
2 Ministry ultimately decided on this schedule
3 process.

4 Q. And you remember that it
5 actually -- the OPA had originally recommended two
6 to three weeks for a change window?

7 A. Yes.

8 Q. Now, in fact, you also
9 remember that -- Mr. Cronkwright, he's your boss;
10 right?

11 A. He was, yes.

12 Q. And you remember he notified
13 or stated that the schedule was extremely
14 aggressive. Do you remember that?

15 A. Yes. This, as well as all
16 the other process steps that were required in
17 support of this whole process.

18 Q. Were you ever given a reason
19 why the OPA's recommendation regarding this
20 specific timing was rejected?

21 A. No. The main rationale was
22 we want contract offered in June. The main
23 rationale I heard through Shawn was that they, the
24 government, wanted to see contracts offered in
25 June.

1 Q. Were you ever told why, if
2 the decision such was made in May, why they waited
3 to June and give a weekend's notice regarding the
4 change in connection window?

5 A. No, not for this particular
6 decision.

7 Q. Were you ever given an
8 explanation why only two areas in the province were
9 allowed to change windows and no other area in the
10 province was allowed to do that?

11 A. Yes. The main reason was
12 that the province wanted to limit the -- any
13 further contract award beyond what was going to be
14 allocated in the Bruce-to-Milton area.

15 Q. Well, just help me on Ontario
16 geography.

17 A. Sure.

18 Q. The west of London area is
19 not the only area that borders Bruce; right?

20 A. No, it's not.

21 Q. So there are other areas that
22 theoretically could have changed or connection
23 windows to join onto this Bruce line; correct?

24 A. I think so. I'm not -- yes,
25 I don't know geographically whether --

1 Q. Were you ever given an
2 explanation as to why it was that only the west of
3 London FIT proponents were allowed to change their
4 connection points and people in other neighbouring
5 areas around the Bruce region were not allowed to
6 do that?

7 I understand the limits of the
8 province wide. I just wondered other neighbours.

9 A. Again, it's my understanding
10 that based on the operation of the transmission
11 network, that the Bruce-to-Milton line actually
12 enables capacity in both the Bruce area and the
13 west of London area.

14 Q. Where is Milton?

15 A. Where is Milton?

16 Q. Yes, sir.

17 A. It is the -- well,
18 northwestern Ontario. Sorry, northwest of Toronto.

19 Q. So it is neither in the Bruce
20 nor the west of London region; correct?

21 A. I don't believe so.

22 Q. Let's put a map up of
23 Ontario.

24 Q. Just give me a moment. We
25 call this an ELMO. Here we go.

1 --- Map given to the witness.

2 Q. So just going back to my
3 question. So the west of London region is south of
4 Bruce; right?

5 A. Sorry, the west of London
6 region is, yes, southwest.

7 Q. So Milton would that be in
8 the Niagara region or the central region?

9 A. I would assume it's in the
10 central region.

11 Q. Okay. Do you know why it was
12 that FIT proponents in the central region and the
13 Niagara region were not allowed to switch their
14 connection points?

15 A. I do not.

16 Q. You never were told?

17 A. No.

18 Q. Did you ever ask?

19 A. No.

20 Q. Never concern you?

21 A. No. It wasn't a concern.

22 Q. Don't you think it would have
23 been more fair for the people, the proponents in
24 the central and Niagara region, to have the same
25 opportunity that was given to the proponents in the

1 west of London region?

2 A. I assume it is more to do
3 with the dynamics of the transmission upgrade
4 associated with the Bruce-to-Milton line, but I
5 don't know.

6 Q. As far as you know, there was
7 no analysis done of that; correct?

8 A. It wouldn't have been done by
9 our group. It would have been done by the power
10 system planning group around the impacts of the
11 Bruce-to-Milton line.

12 Q. You were never given analysis
13 by the power -- what do you call it?

14 A. Power system planning group.

15 Q. They never gave you anything
16 that explained to you why it only had to be the
17 west of London compared to these other areas;
18 correct?

19 A. That's correct.

20 Q. No one from the Ministry of
21 Energy told you why it had to be; right?

22 A. That's correct.

23 Q. Isn't it a fact, sir, that
24 you were told one of the reasons that the west of
25 London was attractive was that there were some

1 high-powered proponents in that area; right?

2 A. That certainly wasn't a part
3 of any discussion about why the Bruce-to-Milton was
4 allocated the way it was.

5 Q. You never heard the reason
6 they did it was because NextEra had lobbied for
7 that?

8 A. I heard that after the fact,
9 after I left the OPA.

10 Q. What did you hear, sir?

11 A. That they secured a number of
12 contracts all in the same geographic area and that
13 they were able to bundle them together to make the
14 connection economic, to make the, you know, case
15 for investing in the connection, that the
16 aggregation of the number of contracts that they
17 were awarded enabled that connection onto the grid,
18 into the Bruce-to-Milton connection point.

19 Q. And when had they done that?

20 A. I assume it would have been
21 through the Bruce-to-Milton allocation process.

22 Q. All right. So during this
23 May period --

24 A. Sorry?

25 Q. -- or before? You were

1 telling us how you heard what -- I'm trying to
2 figure out when -- not when you heard it. When did
3 you hear they had done what they did, if that makes
4 sense?

5 A. I assumed it was through this
6 Bruce-to-Milton allocation process that they
7 bundled their projects together and proposed them
8 to be eligible on the Bruce-to-Milton connection.

9 Q. Who did you hear that they
10 had proposed that to?

11 A. Again, probably other wind
12 developers. I don't know any --

13 Q. They were complaining
14 about --

15 A. I can guess at individuals'
16 names, but I don't know --

17 Q. They were complaining about
18 what NextEra had done?

19 A. Frankly, one of them that I
20 heard about and learned a little bit about the
21 technical -- well, one of the parties was actually
22 working with NextEra, but honestly at this point
23 I'm not sure if those projects were part of the
24 projects enabled by the Bruce-to-Milton line.

25 Q. And what did this party tell

1 you?

2 A. Well, they were asking
3 questions about how they could or how likely it was
4 that their subsequent projects could be eligible to
5 connect in a future FIT ground. So they had one
6 project that they had partnered with NextEra on,
7 and they had one project they were exploring the
8 viability of into a future FIT procurement for this
9 period.

10 Q. Right. For the projects in
11 Bruce that were awarded in July of 2011, you had
12 heard, after you left, that the NextEra had somehow
13 bundled its projects so it could be part of that
14 allocation; right?

15 A. Yes.

16 Q. And you understood that they
17 had talked to people in the government about that
18 or...

19 A. No. Just that I think it was
20 referred to as, like, the NextEra six-pack or
21 something like that.

22 Q. The NextEra -- what is the
23 NextEra six-pack?

24 A. This is, again, you know, in
25 a conference talking to someone, you hear people

1 talking, you know, They did really well with -- but
2 they did this six-pack approach. And I interpreted
3 that that meant there were six projects they
4 bundled together to share a common connection,
5 whose connection would be relatively expensive, but
6 shared across six projects would make a connection
7 economically viable.

8 Q. And you had heard that they
9 had bundled these projects earlier on because they
10 knew this change window was coming; right?

11 A. I didn't -- I didn't know
12 when it happened. I don't know if they were
13 planning to do so.

14 Q. It would take a long time to
15 plan something like that; right? You can't do that
16 over a weekend; right?

17 A. Correct.

18 Q. Now, you talk in your
19 statement -- well, first off, this change in the
20 FIT rules for this Bruce-to-Milton line, that
21 required a directive from the Ministry of Energy or
22 a direction? I always get them backwards.

23 A. It required a D-word from the
24 Ministry of Energy.

25 Q. Yes. So what does that mean?

1 A. So without being a lawyer, my
2 understanding that -- well, the OPA had to or it
3 was authorized to procure electricity as a result
4 of directives from the Ministry -- sorry, the
5 Minister of Energy.

6 And material changes to the FIT
7 program that we were either contemplating or making
8 were largely driven by directives from the
9 Minister.

10 Q. Well, in fact this was the
11 only time that the Ministry of Energy actually, up
12 to this point, had issued a directive that required
13 a change in the FIT rules; right?

14 A. I believe so. Up until
15 then --

16 Q. And you go through your
17 statement in quite a number of detail the process
18 of how rule changes were made generally in the FIT
19 process; right?

20 A. Mostly I'm -- I think I am
21 describing the development of the first draft of
22 the FIT rules as opposed to rule amendments that
23 took place subsequent to the launch.

24 So most of what I described is how
25 we got to the first set of FIT rules.

1 Q. You talk about how lawyers
2 drafted them?

3 A. Yes.

4 Q. And you talk about how there
5 was substantial comment period?

6 A. Yes.

7 Q. And you talk about how the
8 proposals were put on websites?

9 A. Yes.

10 Q. And so all of these
11 stakeholders could provide comments?

12 A. Yes.

13 Q. And then when you got the
14 comments, you could consider them?

15 A. Yes.

16 Q. And you did consider them?

17 A. Yes.

18 Q. And this went on for months?

19 A. Yes, it did.

20 Q. Okay. And there were other
21 changes made to the rules before June 2011?

22 A. There were I believe some
23 minor changes. I don't recall exactly what was
24 changed when.

25 Q. You gave comment period even

1 for the minor changes; correct?

2 A. Sometimes, yes.

3 Q. And so stakeholders would
4 have a chance to comment on those; right?

5 A. Sorry. I don't believe that
6 there was any rule changes between September 30th,
7 2009 and July -- sorry, 2011.

8 Q. You don't remember a change
9 in October 29th of 2010? There's a 1.3.2 version
10 of the FIT rules. I could show you tab 7 --

11 A. Sure.

12 Q. -- to refresh your
13 recollection?

14 A. Sure, sure.

15 Q. If you look at tab 7. Sorry,
16 it is C-242, tab 7 of your notebook.

17 A. Yes.

18 Q. Just look at the first page,
19 sir. Can you tell us the date?

20 A. Yes, October 29th, 2010.

21 Q. You do now remember there was
22 a change in the FIT rules?

23 A. Yes, yes.

24 Q. There was a comment period
25 for those FIT rules?

1 A. I don't believe so. If this
2 rule change that is highlighted on the cover was
3 the major or the only rule change that was being
4 implemented, then there would not have been much
5 discussion about what was changing.

6 Q. You do remember that there
7 was a five-month advance notice of changes, though,
8 don't you?

9 A. Okay. Sorry.

10 Q. Go ahead?

11 A. This is the rule change where
12 we prohibited behind-the-meter connections? I
13 can't recall which rule change this was.

14 Q. There was discussion of hub
15 casings.

16 A. Oh, sorry. So the domestic
17 content amendments, right.

18 Q. Right. So there was a
19 comment period for that, wasn't there?

20 A. Sorry. Yes. So it would
21 have been the FIT contract rather than the FIT
22 rules.

23 Q. Okay.

24 A. But the FIT contract
25 provisions relating to domestic content did evolve

1 regularly to allow for the refinement of the
2 domestic content requirements.

3 Q. And there was a comment
4 period provided for that; right?

5 A. Yes, definitely.

6 Q. A substantial comment period?

7 A. That's very possible. For
8 domestic content changes, they were slow to
9 implement.

10 Q. Because at the end of the
11 day, something like that was a major change in the
12 program; right?

13 A. There was a major change in
14 the kind of impacts on manufacturers who had set up
15 investments in Ontario to meet the domestic content
16 requirements.

17 Q. And you agree with me that
18 the June 3rd change was a major change in the FIT
19 process, don't you think?

20 A. June 3rd, 2011.

21 Q. Right. I mean, especially
22 for people that are proponents of the Bruce region?

23 A. Yes.

24 Q. That was a major change?

25 A. Yes.

1 Q. So was there any discussion
2 at the OPA about whether or not there should be a
3 comment period for that change?

4 A. I don't recall it
5 specifically, but in general we -- where possible,
6 we liked to post drafts of evolving changes for
7 stakeholder comment, even if it's a two-week
8 period, and allow us the opportunity to review
9 comment before instituting the change.

10 Q. And you like to do that
11 because that would give stakeholders the
12 opportunity to react. That would be a fair
13 process; correct?

14 A. Yes.

15 Q. But that didn't happen with
16 the June 2011 change, did it?

17 A. No. The changes were
18 implemented --

19 Q. Immediately?

20 A. -- immediately.

21 Q. And so were you ever given a
22 reason why the OPA did not follow its normal
23 process of posting the changes before they were
24 implemented?

25 A. No, other than there was a

1 desire to offer the contracts kind of shortly after
2 the capacity became available as possible.

3 Q. And you would agree with me
4 that the OPA notified stakeholders of changes much
5 less significant than this one and gave notice;
6 correct?

7 A. Yes, in other cases there was
8 much more notice offered.

9 Q. On matters of much less
10 significance than this one; right?

11 A. Yes.

12 Q. Now, can we go to tab 14 of
13 your notebook?

14 MR. APPLETON: This could be
15 confidential. Let's just look at the document 270.

16 MR. MULLINS: Just hold for a
17 moment. Some documents are confidential, sir.
18 Just give us a moment to make sure.

19 MR. APPLETON: This is a public
20 document obtained by Freedom of Information.

21 MR. MULLINS: Tab 14?

22 MR. APPLETON: Tab 14. The public
23 can see this.

24 MR. MULLINS: Tab 17.4

25 MR. APPLETON: Tab 17. It is not

1 the same.

2 MR. MULLINS: I'm sorry. Tab 14.

3 14 is fine?

4 MR. APPLETON: I don't know. I
5 think to be safe, we should go to restricted access
6 just...

7 MR. SPELLISCY: I'm sorry, the
8 document is not confidential.

9 MR. MULLINS: I am looking at tab
10 14, 270. I actually had the wrong binder.

11 MS. MARQUIS: It is 270?

12 MR. MULLINS: C-270.

13 MS. MARQUIS: It is not
14 confidential.

15 MR. APPLETON: It is marked in one
16 way, so the document is restricted, as highly
17 confidential, attorney's eyes only, a document
18 coming from -- is that from NextEra? And so unless
19 it has been ruled by the Tribunal to be public, and
20 since I am not sure, I would rather just not go
21 there for a moment, rather just go off the record,
22 close off for this one page.

23 If you would rather that we take a
24 short hiatus and check, we can do that, too.

25 THE CHAIR: Should we go off the

1 public for this document or do we need -- otherwise
2 we will simply postpone the question.

3 MR. MULLINS: What is confusing is
4 there is a discussion about this conversation in
5 the witness's statement, and so it is actually
6 quoted out in his statement. That is why I am
7 trying to make sure --

8 MR. APPLETON: It has been ruled
9 on by the Tribunal and they have decided it is no
10 longer a highly restricted document and, therefore,
11 is now public.

12 MR. MULLINS: Got it.

13 MR. APPLETON: Okay, sorry it is a
14 little confusing.

15 MR. MULLINS: That makes sense,
16 because it is in his statement, okay, got it.

17 BY MR. MULLINS:

18 Q. Mr. MacDougall, can you tell
19 us who Nicole Geneau -- do you know her?

20 A. Yes.

21 Q. Can you tell us who she is,
22 and tell me how to pronounce her name?

23 A. Nicole Geneau. She was an
24 employee of Florida Power & Light when I first met
25 her, later NextEra.

1 Q. How did you meet her?

2 A. I think I met her at her
3 employer before NextEra, Florida Power & Light. I
4 believe she worked for the Ontario Centres of
5 Excellence, but I am speculating. I don't recall
6 what her previous employment was.

7 Q. If you look at tab 14, C-270,
8 there is an e-mail chain here where you try to set
9 up or she is trying to set up a meeting with you.

10 A. Yes.

11 Q. And you were going to do that
12 at a coffee shop?

13 A. Yes.

14 Q. Then you ended up moving it
15 to your office?

16 A. Yes.

17 Q. What she wanted to talk to
18 you about was NextEra's ability to change its
19 connection points line; right?

20 A. No. The meeting was to
21 discuss the assignment of a series of FIT
22 applications from one legal entity to another.

23 Q. Well, if you look at your
24 witness statement on May 31st, 2011, and I think
25 it -- I have a copy of the full e-mail.

1 You quote out an e-mail to her,
2 and she writes you --

3 MR. BROWER: Where is this?

4 MR. MULLINS: Paragraph 43 of
5 Mr. MacDougall's statement.

6 MR. SPELLISCY: I think this is
7 confidential actually, now.

8 MR. MULLINS: Oh, this part is
9 confidential? I was pointing -- yes, actually, I
10 was pointing to his witness statement. Is this
11 part to be marked confidential?

12 THE CHAIR: Yes.

13 MR. MULLINS: Okay.

14 MR. APPLETON: Okay. Yes. So we
15 have to go into a confidential record.

16 --- Upon resuming the confidential session

17 --- Upon resuming public session at 3:25 p.m.

18 RE-EXAMINATION BY MR. SPELLISCY:

19 Q. Good afternoon,

20 Mr. MacDougall.

21 A. Good afternoon.

22 Q. Are we out of confidential
23 session or are we still on?

24 I just have been told to lean
25 forward so they can hear me. I have a couple of

1 questions for you.

2 At one point -- actually, at
3 several points you were asked about the connection
4 point change window and the notice of it, and they
5 took you to an e-mail right at the very end.

6 Can you explain for the Tribunal
7 what had been told to developers since the
8 beginning on how the Bruce-to-Milton capacity would
9 be allocated and whether it would have allowed for
10 a change window in that allocation.

11 A. So the details around how the
12 capacity allocation process would have evolved were
13 not ironclad at the launch of the FIT program. It
14 was a process that evolved over time.

15 The power system planning group
16 that I mentioned earlier were the group that were
17 spending substantial amounts of time designing, you
18 know, the detailed mechanics of how the capacity
19 allocation processes would roll out, would advance,
20 whether that was through an ECT or through another
21 capacity allocation process.

22 But throughout the discussions
23 around allocating new capacity, the expectation was
24 that there would be an opportunity for applicants
25 within the FIT program to propose to connect on to

1 a different part of the grid to reflect -- or to
2 reflect their preferences and to allow them to
3 specify connection points to the grid where new
4 capacity might be available or where capacity may
5 be available as a result of other projects dropping
6 away, but that in advance of a capacity allocation
7 process, the ECT or other, there was an expectation
8 that the process would be preceded by an
9 opportunity for an applicant to modify their
10 proposed connection point, that primarily being
11 driven by new information about the grid, new
12 information about other generators connecting onto
13 the grid and grid availability.

14 So instead of connecting on the
15 east-west road, I am going to connect on the
16 north-south road, because I know there is already
17 projects on the east-west road.

18 So in going through a capacity
19 allocation process, the OPA messaging and the
20 industry expectation was that projects would be
21 able to specify different connection points than
22 those contained in their original application.

23 This is further reinforced by an
24 option for an applicant in the FIT program to not
25 specify a connection point when they wish to

1 connect onto the grid.

2 They could choose to not pick any
3 particular point and say, I wish to be connected if
4 and when new capacity becomes available in that
5 area, at which point I would specify the connection
6 point that would make the most sense at that time
7 in the future.

8 So throughout the principles baked
9 into the FIT program, there was always this notion
10 of you can apply. You can demonstrate your
11 interest, and then as time went by and grid
12 resources became available for connection capacity,
13 you could, in future, specify where on the grid you
14 wanted to connect or where on the grid you wanted
15 to change your proposed connection to.

16 So that was definitely one of the
17 principles around future expansion of the grid and
18 optimizing grid connection amongst developers.

19 Q. All right, thank you. And
20 specifically were developers told that the
21 Bruce-to-Milton line coming in would be one of
22 those capacity expansions you were talking about
23 that would allow for a change in connection points?

24 A. Yes. The process for the
25 Bruce-to-Milton was expected to be like one of

1 those future capacity-enabled areas where projects
2 could propose to connect or change their connection
3 points.

4 Q. How long or do you know
5 approximately when developers would have been aware
6 of the Bruce-to-Milton line?

7 A. Sorry, the Bruce-to-Milton?

8 Q. The Bruce-to-Milton, in
9 general, was coming?

10 A. Oh, it was discussed in early
11 2009 when we were essentially kind of designing the
12 FIT program and forecasting for developers what we
13 thought the total grid capacity was.

14 We were saying that we believe
15 that there are approximately 2,400 megawatts of
16 capacity available now for projects to connect onto
17 the grid, but that the Bruce-to-Milton would enable
18 an additional 1,500 megawatts to be connected onto
19 the grid.

20 So it was before the FIT program
21 was even launched there was a signal that, well,
22 while the FIT program didn't have a formal capacity
23 cap, there was this expectation of 2,400 megawatts
24 at launch, and then 1,500 megawatts upon
25 Bruce-to-Milton capacity becoming available to the

1 province.

2 Q. So knowing of the connection
3 point change window that was being contemplated and
4 knowing the Bruce-to-Milton line, in your
5 experience of the OPA, were developers preparing
6 their connection point changes for when that line
7 came into service?

8 A. Some were, for sure. There
9 was discussion of -- I didn't look at any specific
10 applications, but there was discussion of people
11 who strategically proposed to connect out of the
12 Bruce area, because the Bruce area was known to be
13 constrained, but they had a project site that
14 perhaps was near the boundary of the Bruce and
15 other areas, and that they would propose a
16 connection point not in the Bruce area at launch,
17 because they knew they would not be successful
18 because the Bruce area was constrained at launch,
19 but there was an intention to then, upon the Bruce
20 capacity being made available, to modify their
21 connection point and to connect into the Bruce
22 where this new capacity would enable generation
23 projects to connect onto the grid.

24 Q. So I think at one point you
25 were asked, and then pressed, about whether or not

1 having a connection window announced on a Friday,
2 and then going to a Monday, was adequate notice and
3 I think you said it didn't seem adequate.

4 But you would agree that
5 developers could have been preparing for this for a
6 long time; correct?

7 A. Definitely, yes.

8 Q. Now, I want to come back to
9 some of your other testimony, which was with
10 respect to what you heard at conferences, and that,
11 about NextEra.

12 I just want to be clear. While
13 you were at the OPA, while you were actually
14 employed at the OPA, you never heard anyone
15 discussing or deciding or anybody talking about
16 favouring NextEra?

17 A. That's absolutely correct.

18 Q. So what you heard was
19 actually other developers and rumours and talking
20 at conferences, but nobody actually even connected
21 with government decision-making saying that?

22 A. No.

23 Q. And in fact at the time you
24 had already left the OPA.

25 Now, for -- and just let me ask

1 another thing. The counsel for the claimant kept
2 asking you whether or not you were given a reason
3 for certain things on the June 3rd direction.

4 You noted that the June 3rd -- I
5 think you said you left on June 14th of 2011.

6 A. That's right.

7 Q. Can you explain for the
8 Tribunal whether you had carriage of the June 3rd
9 direction, whether that was your responsibility or
10 was it somebody else's?

11 A. So in part because of my
12 prior notice of departure from the OPA, there was a
13 desire to have me less involved in the finalization
14 of some of the elements of this particular
15 exercise, because it was going to continue beyond
16 my departure.

17 But the lead on the discussions
18 with government around the Bruce-to-Milton process,
19 the timing, you know, the documentation
20 requirements, the communication materials, was all
21 being led by my boss, Shawn Cronkwright.

22 Q. And one more question on sort
23 of roles and responsibilities at the OPA, because
24 you were also asked the technical
25 connection -- question of why the Bruce-to-Milton

1 line only was allowed -- or the Bruce-to-Milton
2 allocation only considered the Bruce and the west
3 of London areas.

4 And I think you referred to the
5 power system planning group. Who is the head of
6 that group?

7 A. That is Bob Chow.

8 Q. In fact, he would be the one
9 to be able to answer questions about whether or not
10 what capacity was freed up; correct?

11 A. Yes.

12 Q. That wouldn't have been
13 something that you would have been involved in?

14 A. No.

15 Q. Just give me one second and
16 see if my counsel have anything else to add. That
17 is all that I have. Thank you.

18 MR. MULLINS: Madam Chair, I know
19 how you feel about re-cross. I do have to clarify
20 something for the record based on a question asked
21 by Canada's counsel.

22 THE CHAIR: Yes, please do.

23 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

24 Q. Thank you. Mr. MacDougall, I
25 thought I was done. I want to follow up just on

1 the sort set of questions posed by Canada's
2 counsel.

3 You were asked about the -- it was
4 known that there was a Bruce-to-Milton line coming
5 and people could change their connection points,
6 but just so the record is clear, what the
7 stakeholders originally were told was that there
8 would be a change in connection point window as
9 part of the province-wide ECT; right?

10 A. Yes. The original design
11 anticipated a province-wide allocation.

12 Q. I'm sorry, I didn't mean to
13 cut you off. That is what I thought you said
14 during the cross-examination.

15 And so then the actual -- if I
16 remember, I thought you had testified that the only
17 official notice about the change that was set forth
18 in the directive of June 3rd, 2011, C-77, which is
19 tab 16, by the OPA was found at tab 17, C-78, which
20 was the same day; right?

21 A. That's the directive, you're
22 saying?

23 Q. Yes. The notice on the
24 Ontario Power Authority is June 3rd, and that's the
25 same date of the directive. You can look at it.

1 A. Right. Yes, I think you used
2 the word "formal", but that was the official or the
3 kind of putting it into firm effect on the June 3rd
4 OPA notice. And there had been developer
5 expectations, is what I think I was answering,
6 developer expectation was that an allocation would
7 be preceded by a connection point change window.

8 But the kind of final decision and
9 process and details was spelled out in that OPA
10 notice that came out on June 3rd.

11 Q. The only official or
12 unofficial notice given by the OPA to stakeholders
13 that there would be a connection point change
14 window for the Bruce-to-Milton line came on June
15 3rd, 2011; isn't that true?

16 A. Yeah, for that particular
17 exercise, that was the trigger.

18 Q. And in fact -- I'm sorry. In
19 fact, it required a directive by the Ministry of
20 Energy to change the rules; isn't that correct?

21 A. There was often a lot of
22 discussion around what required a directive and
23 what didn't, and I don't want to speculate as to
24 whether it was absolutely necessary, but...

25 Q. Ultimately somebody made the

1 decision that in order to do what wanted to be
2 accomplished, there had to be a directive from the
3 Minister of Energy; correct?

4 A. Often.

5 Q. That's what happened?

6 A. No. If it -- if changes to
7 program procurements are accompanied by a
8 directive, then what that, in part, accomplishes is
9 it reduces backlash for political lobbying back to
10 government.

11 So I don't want to say that a
12 rule -- the rule change that was effected for the
13 purposes of the Bruce-to-Milton allocation required
14 a directive. I'm not sure if it legally required a
15 directive.

16 Q. You mean to say it --

17 MR. SPELLISCY: Can the witness
18 finish his answer?

19 MR. MULLINS: I'm sorry. I
20 thought he was done.

21 THE WITNESS: I don't know if it
22 legally required a directive, but the main impetus
23 of accompanying changes like this with a
24 Ministerial directive was to try to mitigate
25 against political lobbying back to government,

1 say: The OPA's you know, out of control. The OPA
2 needs to be told what to do. You should tell them
3 what to do.

4 So often changes like this were
5 accompanied by directives to manage stakeholder
6 reactions.

7 BY MR. MULLINS:

8 Q. So this is the last question.
9 So you're saying the debate was whether or not you
10 needed to do a directive versus the OPA just
11 changing the rules on their own?

12 A. Yes. There was discussions
13 around to what extent rule changes could be made on
14 our own, which ones would be better accompanied by
15 a directive.

16 Q. Well, to accomplish what was
17 accomplished on June 3rd, 2011 would require either
18 a rule change or directive?

19 A. It would require the rule
20 change, for sure.

21 Q. Yes. And then the question
22 is whether or not, in addition to a rule change, we
23 need a directive, and the directive essentially
24 accomplished the rule change?

25 A. It provided political cover

1 for a rule change, right.

2 Q. And the directive required
3 the OPA to change its rules?

4 A. I believe so. That's my
5 understanding of how the directives have force in
6 law. That's my understanding.

7 MR. MULLINS: Thank you very much,
8 sir.

9 THE CHAIR: Okay. Do you --

10 MR. SPELLISCY: I am not sure how
11 you feel about re-re-direct, but I am not sure the
12 record got a lot clearer there.

13 THE CHAIR: No, but that was my
14 point yesterday about re-direct.

15 MR. SPELLISCY: I think we muddied
16 things a little.

17 THE CHAIR: I should say I am not
18 attaching much weight to these answers about the
19 need for a rule change or a need for a directive,
20 because Mr. MacDougall is an engineer. So these
21 are legal issues.

22 But if you want to -- if you feel
23 that you need to clarify something, then of course
24 I should let you do it.

25 MR. SPELLISCY: Give me one

1 second. Hold on.

2 RE-RE-EXAMINATION BY MR. SPELLISCY:

3 Q. The only reason -- and I
4 apologize for getting up again, I just -- because
5 there was a question asked, and the question was
6 phrased: The only official or unofficial notice
7 given to stakeholders that there would be a
8 connection point change window in advance of the
9 Bruce-to-Milton directive was this June 3rd.

10 And I think the answer said, Well,
11 for this specific exercise. But I would just like
12 to ask Mr. MacDougall to look at a document to see
13 if it reflects his recollection on unofficial
14 notice, if that is what this is.

15 If we could pull up and put C-0073
16 on the screen, it is our favourite document,
17 because it is the one in about two-point font.

18 If we could blow up the first part
19 there, and if we could look at -- if you look at
20 the third note there, it says -- can you read that
21 out, Mr. MacDougall?

22 A. Sure. So:

23 "FIT applicants will have the
24 opportunity to request a
25 change of connection point

1 prior to the ECT. Connection
2 point changes could impact
3 the ECT outcome for other
4 applicants requesting a
5 nearby connection point."

6 Q. If you could read out the
7 head note on the Bruce region right there starting
8 with 1,200 megawatts?

9 A. "1,200 megawatts of
10 additional capability will be
11 made available by the
12 Bruce-to-Milton transmission
13 line will be allocated during
14 the ECT."

15 Q. Right. So you would agree
16 that this is the December 21st or December 2009
17 ranking that actually claimant's counsel took you
18 to, and you would agree this is actually notice
19 from the OPA that there would be a change in
20 connection point for the Bruce-to-Milton
21 allocation?

22 A. Yes. And if I can --

23 Q. Sure.

24 A. I heard the question being
25 that the June 3rd was the only official notice. I

1 didn't hear the unofficial or official.

2 Q. That is why I stood up.

3 A. And so I answered in the
4 context of it was the only "official" notice that
5 came out on that day for that Bruce-to-Milton
6 process.

7 MR. SPELLISCY: Thank you.

8 THE CHAIR: Thank you. That's
9 clear. No questions on Judge Brower's side. You
10 have questions, yes, please.

11 QUESTIONS BY THE TRIBUNAL:

12 MR. LANDAU: Just to follow up on
13 the same issue, I would like you to have a look at
14 document R-113, which I don't think is in the
15 binder in front of you. It is tab 31 of the binder
16 for Ms. Lo. Is there a way that that can be put
17 up?

18 MR. SPELLISCY: I can pull it up
19 on the screen.

20 MR. APPLETON: Tab 31.

21 MR. LANDAU: Can it be shown so
22 that the header is also there? Now, I don't know
23 if you can read that document or not.

24 THE WITNESS: That's a little
25 better.

1 our members have collectively
2 invested significant time and
3 money to prepare their
4 respective interconnection
5 strategies. Once the updated
6 Transmission Availability
7 Tables are made available,
8 our members can be ready to
9 act quickly and respond
10 within the window of time
11 communicated to our members
12 of the OPA. For these
13 reasons, a majority of our
14 members believe the window
15 only needs to be open for a
16 short period of time."

17 Are you able to give some meaning
18 to that in terms of what the time scales are that
19 are being contemplated?

20 THE WITNESS: I recall that in
21 various presentations, again, from Bob Chow's
22 group, the power system planning group, there were,
23 again, proposed processes that would be followed in
24 the context of the ECT, the Economic Connection
25 Test.

1 And my recollection is that we
2 were advocating or proposing that an ECT would be
3 preceded by -- and this is where I'm going to
4 estimate -- like a 15-business-day connection point
5 change window, so that the ECT would be run
6 subsequent to participants in the ECT being
7 notified that they would have an opportunity to
8 modify their proposed connection points for their
9 projects, but they would have to do so within I
10 believe it was about a 15-business-day window.

11 So it was on the basis of - I
12 believe that this message from this paragraph is on
13 the basis of how wind developers in this case
14 understood the OPA's prior communication vis-à-vis
15 the priority ranking tables that were just shown on
16 the overhead, but as well as presentations that
17 were publicly made by Bob Chow's group to the FIT
18 stakeholders around how they would operationalize
19 the ECT; and that, again, our signalling was that
20 the ECT would take place, but prior to its running
21 we would offer, again, approximately a
22 15-business-day window in which to change
23 connection points.

24 MR. LANDAU: Right. We have heard
25 testimony from Ms. Lo about the significance that

1 was taken as far as the Ministry was concerned,
2 significance that was drawn from this presentation,
3 this letter from CanWEA, in particular, the point
4 that it was being stated that over a period of
5 time -- it is described here as "past several
6 months" -- significant time and money had been
7 already expended to prepare strategies on
8 interconnection points.

9 From your recollection, would it
10 be reasonable in all of the circumstances, given
11 that, to think that five days actually would be
12 sufficient?

13 THE WITNESS: So as I have stated
14 earlier, there was knowledge of a pending
15 allocation of Bruce-to-Milton capacity in
16 particular, because the transmission line was
17 nearing completion in as early as mid-2009.

18 So the regulatory processes and
19 final hurdles took significant time. It took until
20 May of 2011 to get final environmental approval
21 from all of the regulatory bodies.

22 So stakeholders who were involved
23 in the FIT would have anticipated that there would
24 be capacity coming available in the Bruce area as
25 early as mid -- well, even prior to 2009, 2006,

1 2007, 2008. But certainly once the FIT program was
2 formalized in 2009, they would have known that the
3 Bruce capacity would be coming available soon, just
4 a matter of when. That soon ended up almost two
5 years, but it was coming.

6 So I would interpret that this
7 letter is suggesting our members have been waiting
8 years for an opportunity to bid their projects into
9 the Bruce allocation, and that in order to have
10 assessed options around viability and optimization
11 of connection points, whether it is a five-day
12 window or 15-day window is irrelevant.

13 It would take months to optimize a
14 connection point change. So, again, whether a
15 five-day window was afforded or a 15-day window was
16 afforded, if you hadn't done the preparatory work
17 leading up to that window, there was no way you
18 were going to get it done in that short time frame,
19 given the complexities of the power system and
20 transmission network, which, again I think Bob Chow
21 can speak more definitively to.

22 MR. LANDAU: Yes. Then I want to
23 ask you a more general question which you may or
24 may not be able to answer.

25 THE WITNESS: Okay.

1 MR. LANDAU: You describe in your
2 witness statement, in the first part of it, your
3 involvement in the design and implementation of the
4 FIT program.

5 THE WITNESS: Yes.

6 MR. LANDAU: When did you first
7 hear about the contract with the Korean Consortium,
8 the GEIA, if you can remember?

9 THE WITNESS: I believe it would
10 be -- would have been summer of 2009.

11 MR. LANDAU: And -

12 THE WITNESS: Well in advance of
13 the FIT program launch.

14 MR. LANDAU: So that the time
15 frame, speaking very roughly, you're describing a
16 period of, for example, public consultation March
17 to June 2009?

18 THE WITNESS: Yes.

19 MR. LANDAU: And your consulting
20 stakeholders, you're consulting with the Ministry,
21 as I understand your evidence?

22 THE WITNESS: Yes.

23 MR. LANDAU: You're working
24 towards the launch and the launch is, by directive,
25 September 2009?

1 THE WITNESS: Yes, sir.

2 MR. LANDAU: In that period,
3 you're designing the structure?

4 THE WITNESS: Yes.

5 MR. LANDAU: Basically the
6 mechanism for the FIT program. So you hear about
7 the Korean Consortium contract, and do you remember
8 before September 2009 the kinds of detail you might
9 have heard? Did you know -- what did you know
10 about it?

11 THE WITNESS: About the Korean
12 Consortium contract?

13 MR. LANDAU: Yes, yes.

14 THE WITNESS: Well, I was aware
15 that it was a framework. So it was a commitment to
16 2,500 megawatts to be developed over five phases.

17 And I was aware that it would
18 necessarily compete with connection capacity for
19 the broader FIT program and the FIT programs
20 contract award capacity.

21 So I was aware that the two would
22 be running in parallel, and, you know, as one of
23 the lead spokespeople for the FIT program, I wasn't
24 terribly pleased by the competing development
25 opportunities that were running in parallel.

1 MR. LANDAU: Can you explain that?
2 Why not? Why were you not pleased? What I am
3 driving at is, as somebody who is involved in
4 designing the FIT program, what kind of impact did
5 you see from the existence of a contract with the
6 Korean Consortium?

7 THE WITNESS: Well, certainly
8 leading into the FIT program design, we knew that
9 there were thousands and thousands of megawatts of
10 interest of project development in Ontario, as
11 witnessed by some of the prior renewable energy
12 procurement activities.

13 So I knew that there would be more
14 demand for FIT contracts than there would be supply
15 of contract capacity.

16 So my professional reaction was
17 this just creates less supply of FIT contracts
18 availability, because a portion of the available
19 grid capacity will necessarily need to be allocated
20 to the Korean Consortium.

21 In discussions at the time, I
22 recall that the planners didn't know where 2,500
23 megawatts were going to fit on the grid, on the
24 existing grid, and of course nor whether the Korean
25 Consortium had projects that, you know, were

1 readily available to be developed onto the grid.

2 But certainly the existence of the
3 Korean Consortium commitment through the framework
4 agreement created greater pressure on the FIT
5 program and less capacity available through the FIT
6 program to offer contracts.

7 MR. LANDAU: Prior to its launch
8 in September 2009, was there any -- was it
9 perceived there was any need to restructure or
10 change the FIT program in order to accommodate the
11 existence of the Korean Consortium contract?

12 THE WITNESS: So what I recall was
13 that -- again, I think Bob Chow can probably answer
14 better, but that there was a belief that, you know,
15 the first two phases of the Korean Consortium
16 commitment could be accommodated while still
17 allowing for that, you know, approximately 2,400
18 megawatts of FIT capacity to be procured.

19 And maybe you can help me. I am
20 trying to recall the timing of the KC, Korean
21 Consortium, announcement vis-à-vis the FIT launch,
22 but in any event, the --

23 MR. LANDAU: I am focussed on
24 September 2009.

25 THE WITNESS: I just don't recall

1 when was the Korean Consortium commitment made
2 public, and was that well in advance? Was it in
3 advance of when I would have been exposed, you
4 know, and had discussions around it?

5 I do recall, though, that at FIT
6 launch applicants were aware that there was a
7 commitment to the Korean Consortium and the 2,500
8 megawatts.

9 And so, I mean, this is getting
10 into my judgment, but -- so there should have been
11 an acknowledgement or a knowledge of the existence
12 of these parallel procurement activities, and
13 certainly there was knowledge of it by the
14 development community, many of whom who were not
15 pleased that this commitment was being made outside
16 of the FIT construct.

17 But, again, if I am recalling the
18 dates correctly, there should have been industry
19 knowledge of the Korean Consortium commitment prior
20 to a September finalization of the rules and
21 contracts under the FIT program and the
22 October/November launch period.

23 MR. LANDAU: Yes. Thank you. I
24 have no other questions.

25 THE CHAIR: All of my questions

1 have just been asked, so I have no questions
2 either. Do you have any follow-up?

3 MR. BROWER: Yes. I think you
4 said in words or substance that as the person
5 basically in charge of the FIT program, you were I
6 think you said not best pleased by -- the record
7 might knowing smile just resulted from the
8 witness -- by the arrival or the existence of your
9 knowledge of the Korean Consortium.

10 Could you explain that a little
11 bit further why you were not best pleased?

12 THE WITNESS: Sure. So we had
13 been designing and developing a FIT program of
14 course in response to government policy, that the
15 prior renewable procurement exercises should be
16 expanded and should be made much more aggressive.

17 The accompanying domestic content
18 provisions to the FIT program were something of a
19 question mark, and so we would hear within the OPA
20 that solar module manufacturers would arrive, blade
21 manufacturing would arrive, wind turbine
22 manufacturing would arrive in the province.

23 And the FIT program had
24 contractual obligations that many of those
25 components would have to be machined and

1 manufactured in Ontario in order for the supplier
2 to be in compliance with their FIT contracts and to
3 be eligible, et cetera.

4 So what I'm getting at is the main
5 or one of the main reasons that we were given as to
6 why we're bringing the Korean Consortium to Ontario
7 is to ensure that we have a customer for that large
8 volume of procurement of wind and solar equipment.

9 So the challenge, you know, as one
10 of the lead spokespeople and one of the designers
11 of the FIT program, was designing the FIT
12 procurement with all of the prioritization
13 mechanisms and knowing that there would be a
14 significant amount of competition for the capacity
15 available under the FIT -- under the FIT program,
16 that this new effort, this parallel initiative, was
17 going to displace some of that capacity that was to
18 be made available.

19 As I said, the reason we were
20 given was that well these guys will ensure that the
21 domestic content provisions will be satisfied,
22 because we have a significant customer who will be
23 able to lock down that equipment manufacturing
24 commitment by the solar module manufacturers or the
25 wind equipment manufacturers.

1 So there was this, again, parallel
2 effort being undertaken. We felt like we were
3 driving the FIT program, and then the Korean
4 Consortium arrangement was handed to us and said,
5 Okay, well, it has to fit within this -- with this
6 larger envelope, so find a way to see the two
7 co-exist.

8 So it was a surprise. It was a
9 bit of a disappointment, partly because we just
10 didn't see it coming, or certainly I didn't see it
11 coming from my capacity and my role. But we
12 adapted to it. We, again, tried to advise
13 stakeholders, and the government obviously did, as
14 well, that there were these two parallel
15 procurement efforts that would be executed in that
16 same window, both for renewable contracts, for wind
17 and solar capacity.

18 MR. BROWER: I want to go to the
19 five-day window for a moment, because when you were
20 being cross-examined, you made it clear that you
21 said precisely 15 to 20 days were recommended by
22 OPA.

23 This was discussed with the
24 Ministry, and the reason that Mr. Spelliscy asked
25 to re-direct you is because in response to

1 cross-examination, you had said that five days was
2 not adequate, and he brought that up to you and you
3 said, I think, in response to him, Well, five days,
4 15 days, it didn't make any difference.

5 If it didn't make any difference,
6 why was OPA arguing for 15 or 20 days to the
7 Ministry in the discussions that went on?

8 THE WITNESS: Well, again, two
9 things I was trying to respond to there. One, lead
10 time in advance of a window, as well as the window
11 itself.

12 MR. BROWER: Right.

13 THE WITNESS: And for other
14 changes, such as changes to the domestic content
15 requirements and refinements to those contractual
16 obligations, we would spend more time giving
17 advance notice of upcoming change, and then post a
18 draft change, and then welcome comments on the
19 change.

20 Those changes were typically, at
21 least from our side, perceived to be less urgent.
22 There were refinements requested to accommodate the
23 manufacturing capabilities that were planning to
24 come into the province of the wind blade
25 manufacturers or the nacelle assembly operations.

1 So there was a greater opportunity
2 to -- or less urgency with getting an amendment in
3 place and in effect.

4 So we would provide and afford
5 greater lead time, and then greater comment period,
6 and then ultimately an implementation period.

7 So, yes, there was a significant
8 amount of complexity associated with a connection
9 point change strategy which could have been
10 assessed and reviewed months or, you know, years
11 ahead of an ultimate connection point change
12 window.

13 But it is just I'd say it wasn't
14 our normal practice to post something on Friday,
15 indicate it starts on Monday and closes the
16 following Friday, again, out of really professional
17 courtesy to an industry who may have been waiting
18 for two years or a year and a half for the
19 Bruce-to-Milton capacity to be made available.

20 It doesn't mean that the
21 ten -- five-day or ten-day or 15-day window would
22 have resulted in a different outcome or a
23 different -- or an opportunity, an adequate
24 opportunity, for an applicant to actually do the
25 analysis and get studies completed and identify

1 different connection points than they would have if
2 they had a five-day window, but it is just more
3 from an optics perspective, from a perception
4 perspective, we preferred to have a greater notice
5 period, and then a greater opportunity to act.

6 As I said, under this scenario
7 there was an urgency on the government, an urgency
8 on the government side, as is common with many
9 government decisions, to execute once a decision is
10 made. But often it takes far longer than is needed
11 or seems warranted to actually make the decision.

12 So in this scenario we were -- you
13 know, had draft schedules looking at starting
14 things in April, starting things in May. It got
15 pushed out to June. But the end date was regularly
16 reaffirmed as being: It can't go past June 30th.
17 It has to be done in June.

18 So there was always, as with
19 many -- again, many government decisions, there's
20 no pressure to make the decision, but once it is
21 made, it has to be executed overnight. So that
22 was, I would suggest, the scenario that we ran up
23 against is we wanted to provide and afford a
24 greater period of time in which to administer our
25 program, but ultimately decisions were made to move

1 quickly, and it appears to be, you know, reinforced
2 by the CanWEA message that the wind industry itself
3 was advocating for -- I forget the words.

4 MR. BROWER: The majority of its
5 members. It is repeated twice in that indication.

6 THE WITNESS: Right.

7 MR. BROWER: Had you not received
8 a directive from the Ministry for this five-day
9 window, do I understand from your testimony that
10 ordinarily it would have been the case that the OPA
11 would have put a rule change out for comment and
12 received -- solicited comments on the rule change
13 from the stakeholders?

14 THE WITNESS: Depending on the
15 rule change.

16 MR. BROWER: Right.

17 THE WITNESS: There were some
18 where we were trying to close loopholes, in which
19 case it was impossible to put a notice out.

20 MR. BROWER: Sure. Of course.

21 THE WITNESS: Otherwise, it draws
22 attention to the loophole.

23 MR. BROWER: Right.

24 THE WITNESS: So there were
25 circumstances where we would just announce, you

1 know, effective this minute, this rule is in
2 effect.

3 MR. BROWER: Right.

4 THE WITNESS: But certainly in
5 making decisions around FIT rules or FIT contract
6 language that was not time-sensitive or urgent, we
7 preferred to post a draft and seek comment, and
8 then implement 20 days, 20 days, 20 business days
9 each.

10 MR. BROWER: Is my understanding
11 correct that while the FIT rules in some form
12 originally foresaw the possibility of a change of
13 connection point, what was foreseen in those rules
14 was a change in connection point potentially within
15 the district, like Bruce or west of London, for
16 example, or the others?

17 THE WITNESS: I don't believe that
18 there was ever any deliberate restriction on
19 connection point changes. Transmission and zones
20 are -- again, this is Bob's area of expertise, but
21 they are kind of electrical constructs as opposed
22 to hard and fast geographic boundaries often times.

23 So, no, there was -- to my
24 recollection, there was no explicit limitation on
25 how the economic connection test and the connection

1 point change window would be operationalized.

2 As I mentioned, applicants were
3 entitled to submit an application with no
4 connection point specified. So in that scenario,
5 if we were to have had such a restriction, the OPA
6 would have to make a judgment and say, Well, your
7 project site is here, so we deem that your
8 connection point would have been in this region,
9 which we didn't want to do.

10 So I don't believe that there was
11 any -- well, definition around how the details of
12 the economic connection test would be administered
13 in regards to limitations on connection point
14 changes.

15 MR. BROWER: Well, eventually we
16 all have to be sure on that, because a point has
17 been made by the -- by Mesa throughout these
18 proceedings that the FIT rules, as I recall the
19 presentation, and everything that was involved in
20 applying them up until much later, was that
21 interconnection -- change of connections were
22 anticipated or limited to being within the -- you
23 call it region or district, such as Bruce and
24 northwest and so forth.

25 And, therefore, when there was

1 some indication that the Bruce-to-Milton line would
2 be available for connection, nothing said that it
3 would be possible to connect from out of the Bruce
4 region to the Bruce-to-Milton line.

5 And what was shown here before in
6 the minuscule type that was blown up did talk
7 about, you know, connections to the Bruce-to-Milton
8 line, but it didn't indicate from where.

9 So as the designer of the program,
10 you don't recall that there was any express or
11 implied restriction in the FIT rules limiting
12 potential future interconnections to within the
13 region?

14 THE WITNESS: Yes. The entire ECT
15 process that was anticipated, you know, in the
16 rules only constitutes three or four paragraphs,
17 but it is an incredibly -- was to be an incredibly
18 complex and detailed administrative process that
19 was going to be developed subsequent.

20 MR. BROWER: Well, it got to be
21 more than a few paragraphs when you look at what
22 was required for the people to submit an
23 application.

24 THE WITNESS: Yes. And that was
25 just, you know, for the purposes of the

1 application, and then for the purposes of
2 operationalizing the economic connection test,
3 there would have been or there were continued
4 discussions internally, again mainly led by the
5 power system planning group, around how to optimize
6 the grid to accommodate the vision of the Minister
7 at the time for as much renewable energy as
8 possible.

9 So that process was anticipated to
10 evolve post first draft of the rules, and again Bob
11 Chow's group did a number of public presentations
12 around what that detailed process would look like,
13 as stakeholder outreach post-launch, but how the
14 OPA would administer the ECT in, you know,
15 subsequent months or years.

16 So that part of it wasn't fully
17 developed. As I said, there was no -- to my
18 knowledge, there was no explicit restriction on how
19 connection point changes could be permitted or
20 prohibited or limited. But, in general, with the
21 FIT rules and the FIT contract, if it's -- if it is
22 not prohibited, then people can do it.

23 So until -- unless and until
24 there's, you know, specifically a rationale and a
25 reason and, you know, here is how the process will

1 play out and likely, you know, a rule amendment to
2 accompany that, then we were, you know, working to
3 evolve all of those processes post-launch and
4 pre first ECT or next round of capacity allocation.

5 MR. BROWER: Okay, thank you very
6 much.

7 THE CHAIR: I have just one
8 follow-up question. When you answered a question
9 from one of my colleagues about the fact that you
10 learned about the existence of what you called
11 framework agreement with the Korean Consortium in
12 the fall of 2009 before the launch of the FIT
13 program, you said you were surprised and
14 disappointed.

15 You also said that you tried to
16 advise stakeholders of these two parallel
17 procurement efforts.

18 How did you advise stakeholders of
19 these two parallel procurement approaches?

20 THE WITNESS: So the primary
21 communication around the existence of the framework
22 agreement was delivered by government. It was at
23 that point a government framework agreement between
24 Ontario government and the Korean government and
25 its agents or its organizations.

1 And so primarily in presenting how
2 the FIT program was going to be administered and
3 how it was going to be executed, there were many
4 questions about: How will FIT accommodate this
5 competing procurement exercise?

6 And we I believe through some of
7 the stakeholder discussions indicated, and through
8 in fact some of the directives there were specific
9 capacity allocations dedicated to the Korean
10 Consortium in order to reserve capacity for them.

11 So our main means and vehicle for
12 communication was through the connection capacity
13 tables that we would update that would account for
14 the electrical capacity that was being made
15 unavailable for FIT applicants through the updated
16 capacity tables.

17 So we would indicate that as
18 commitments are made to the Korean Consortium, the
19 capacity of those projects will be reflected in
20 upgraded -- updated connection capacity tables,
21 and, as these projects materialize, stakeholders
22 will be informed of their impact on grid
23 availability.

24 So it was indicating that not all
25 of the projects were defined in terms of their

1 geographic locations, but, as they were, we would
2 update the tables to reflect that capacity so as to
3 advise stakeholders that that capacity would not be
4 available for FIT contracts if it was going to be
5 made available for KC projects.

6 THE CHAIR: I understand the point
7 easily about the reduction of capacity on the grid
8 in general, but geographically you did not know
9 where the impact would be felt, is that right, at
10 least not at the beginning in September or October
11 2009?

12 THE WITNESS: That's correct. The
13 projects -- my recollection is that the projects
14 that were to be developed by the Korean Consortium
15 were specifically identified subsequent to the FIT
16 program launch.

17 THE CHAIR: Do you remember when
18 that was?

19 THE WITNESS: I do not.

20 THE CHAIR: Yes. We will check it
21 then.

22 THE WITNESS: There were leads
23 in -- Shawn was -- anyway, they were more
24 knowledgeable about the KC, on discussions.

25 THE CHAIR: Thank you very much.

1 If there is nothing further, then we can --

2 MR. MULLINS: Madam Chair, I
3 apologize. I do have one follow-up question based
4 on questions from the Tribunal.

5 THE CHAIR: Yes.

6 MR. MULLINS: I will do it from
7 here to make it quick. If the witness could turn
8 to tab 16, which is document C-77. This is the
9 June 3rd directive. We can put it up. I am
10 interested in the second page, paragraph 3.
11 Tab -- I'm sorry, tab 16.

12 MR. LANDAU: Sixteen?

13 MR. MULLINS: Document number
14 C-77.

15 MR. BROWER: In his volume?

16 THE CHAIR: Sixteen.

17 MR. MULLINS: Sixteen in
18 Mr. MacDougall's volume.

19 MR. BROWER: Fifteen?

20 MR. MULLINS: Sixteen; one-six.

21 MR. BROWER: Sixteen.

22 MR. MULLINS: I misspoke earlier,
23 I apologize.

24 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

25 Q. This is the June 3rd, 2011

1 directive, number C-0077, for the record. Now I'm
2 specifically looking at paragraph 3 on page 2.

3 And I would like to follow up on
4 Arbitrator Brower's question about the rule changes
5 and whether or not they were there. It indicates
6 that there was a directive here indicating that
7 only where the proponent wishes to change a
8 connection point to a connection point in one of
9 these two areas.

10 I was wondering why, if the idea
11 was always that you could change different areas,
12 why it was necessary to have a directive make that
13 explicit.

14 THE CHAIR: I don't think the
15 witness has said that it was necessary to have a
16 directive; right? That is a whole question that we
17 had and I would leave open for the time being.

18 Now, once I have said that, what
19 is the question that remains?

20 BY MR. MULLINS:

21 Q. I guess the question is: If
22 it had always been contemplated there would be a
23 switch between regions, why was a directive -- I'm
24 not saying it had to be a directive, but why was
25 there a directive written that made it explicit a

1 connection point could be done through one of these
2 two areas?

3 A. So one part of the answer is
4 that the government did want to limit the total
5 contract awards to a finite quantum, as we see in
6 parts 4 and 5.

7 So certainly there was a desire to
8 limit contract award results to show up in the
9 Bruce -- for projects to end up in the Bruce
10 transmission area or the west of London
11 transmission area. I'm not sure if that is your
12 question, but...

13 Q. I guess that answers why it
14 was only those two areas, but I guess the question
15 is: Does the witness remember any discussion about
16 making explicit that you could change your
17 connection point to one of those two areas? That
18 is the language I was focussing on as opposed to
19 saying just change your connection point.

20 A. So the only part of the
21 discussion that I would have been involved in was
22 really the outcome has to be finite. The outcome
23 of the allocation process has to be finite and, as
24 prescribed here, shall not exceed, you know, 1,050
25 megawatts in aggregate between the two areas.

1 So I believe that is part -- forms
2 part of the rationale for why there is an explicit
3 reference to the Bruce and west of London
4 transmission areas.

5 MR. MULLINS: No further
6 questions. Thank you.

7 THE CHAIR: Thank you. Fine. So
8 that completes your examination, Mr. MacDougall.
9 Thank you very much for your explanations.

10 THE WITNESS: Thank you.

11 THE CHAIR: We will now take a
12 15-minute break and resume to hear Mr. Chow, who is
13 the next witness; is that right?

14 MR. SPELLISCY: I guess I have a
15 question on the rest of the afternoon. It is 4:30.
16 We have both Mr. Chow and Mr. Cronkwright here.
17 Perhaps the claimant -- can we send Mr. Cronkwright
18 home, or do we think we are going to get to both of
19 them this evening?

20 THE CHAIR: I very much doubt it,
21 but let's try and do some estimates.

22 What is the estimate on the
23 cross-examination of Mr. Chow?

24 MR. MULLINS: Recognizing we have
25 been using our time --

1 THE CHAIR: There are a few things
2 that sometimes you could keep for submissions,
3 because remember you have three hours of closing on
4 Saturday, and then you have to post-hearing briefs.
5 So sometimes I feel that you could save time by
6 doing that.

7 I am of course saying this to both
8 parties.

9 MR. APPLETON: Could the secretary
10 perhaps give us a little time update? That might
11 help us.

12 MR. DONDE: I would need a minute
13 to get that.

14 THE CHAIR: He will give it to
15 you.

16 MR. APPLETON: I think that would
17 affect our decision as to how long we would go.

18 THE CHAIR: Fine. Now, does it
19 make sense that we consider starting with
20 Mr. Cronkwright tonight? My answer, thinking out
21 loud, is no.

22 MR. SPELLISCY: I am being advised
23 Mr. Cronkwright might need to leave by 5:00 for
24 child care reasons today. So it is 4:30 now. He
25 might be able to stretch it a little, but if we're

1 going to have Mr. Chow now --

2 THE CHAIR: So I can only support
3 the purpose of his leaving, and so obviously
4 that -- we would then hear him tomorrow morning
5 first thing. Is that acceptable to the claimants,
6 as well?

7 MR. MULLINS: Yes. The next
8 witness is Mr. Chow, of course.

9 THE CHAIR: Yes, yes. We were
10 just thinking ahead.

11 MR. MULLINS: That's fine. The
12 answer is that by some miracle we end up finishing
13 earlier than we expected, we will set the limit. I
14 can't -- I am pretty confident we will not finish
15 Mr. Chow by five o'clock. So I think
16 Mr. Cronkwright could leave.

17 THE CHAIR: Mr. Cronkwright can go
18 home, yes. Yes.

19 MR. MULLINS: Yes.

20 THE CHAIR: And he should come
21 back tomorrow morning at 9:00, yes.

22 MR. DONDE: The claimants have
23 used about eight hours and 57 minutes. And --

24 THE CHAIR: I think that is all we
25 need for now. We will check on the respondents

1 afterwards. That gives you -- I mean, if
2 Mr. Cronkwright is not heard today, I don't need
3 your estimate now. You can think about it over the
4 break.

5 So let's resume at a quarter to
6 5:00.

7 MR. MULLINS: Sure.

8 --- Recess at 4:26 p.m.

9 --- Upon resuming at 4:51 p.m.

10 THE CHAIR: Fine. Are we ready
11 again? Yes. On the claimant's side, as well?

12 So, Mr. Chow, thank you for being
13 with us. For the record, can you please confirm
14 that you are Bob Chow?

15 THE WITNESS: Yes, I confirm I am
16 Bob Chow.

17 THE CHAIR: You're director of
18 transmission integration at the OPA?

19 THE WITNESS: Yes, ma'am.

20 THE CHAIR: You have produced two
21 witness statements in this arbitration dated
22 February 27 of this year and June 27 of this year?

23 THE WITNESS: I did.

24 THE CHAIR: Yes. You are here as
25 a witness. As a witness, you are under a duty to

1 tell us the truth. Can you please confirm this is
2 what you intend to do?

3 THE WITNESS: I will.

4 AFFIRMED: BOB CHOW

5 THE CHAIR: Thank you. So you
6 know how we proceed. Ms. Squires will first ask
7 you questions in direct on behalf of Canada and
8 then we will turn to the investor's counsel,
9 please.

10 EXAMINATION IN-CHIEF BY MS. SQUIRES:

11 Q. Good afternoon, Mr. Chow. I
12 just have one question for you and that is whether
13 you have any corrections to make to your witness
14 statements.

15 A. I don't have any corrections.

16 MS. SQUIRES: Thank you.

17 THE CHAIR: Mr. Mullins.

18 CROSS-EXAMINATION BY MR. MULLINS 4:53 P.M.:

19 Q. Good afternoon, Mr. Chow.

20 A. Good afternoon, sir.

21 Q. What you don't know is we
22 have limited time here to ask questions, and you
23 are witness number 3 or 4 today. I lost count. So
24 you are number 4, and we have limited time. So I
25 would ask you to listen to my questions and try to

1 answer them, and if there is some followup, you can
2 do so, but if you could listen to my question and
3 try to answer it; is that fair?

4 A. Yes.

5 Q. If there is any
6 clarification, your counsel will have a chance to
7 do so on re-direct, okay?

8 A. Sure.

9 Q. It may very well be the
10 Tribunal will ask you questions, as well, and you
11 will be able to answer those.

12 So you have your two witness
13 statements in front of you, and then there is a
14 notebook on the corner, if you would pull it in
15 front of you. Oops, the other one. That notebook
16 has exhibits that we may or may not -- likely not
17 going to a lot of those. I may go to those, and so
18 having that it in front of you will be helpful.

19 Can you just remind us for the
20 record what your role was at the OPA during the
21 relevant time period? And the relevant time period
22 for us essentially is from September 2009 to July
23 2011.

24 A. At that time, I was still the
25 director of transmission integration at the OPA. I

1 have not changed the job since then.

2 Part of my job is to do
3 transmission planning and also the regional
4 planning, and in support of the procurement, of
5 which the FIT program is one, as related to the
6 connection availability and also the expansion of
7 the system.

8 Q. Mr. Chow, did you work both
9 dealing with the FIT program and the Korean
10 Consortium agreement, as well, in terms of the
11 implementation of that?

12 A. My responsibility was to look
13 after the connection part both for that program and
14 any other procurement.

15 Q. So, in other words, not only
16 did you work with the connection points for the FIT
17 program. You were also working with connection
18 points for the Korean Consortium, as well?

19 A. Yes.

20 Q. Got it. And there's been
21 some discussion about the ECT and connection
22 points. We have had testimony, so we are on the
23 same page and make sure you agree, that there
24 originally was going to be a province-wide ECT;
25 right?

1 A. Yes.

2 Q. That never was run; right?

3 A. Sorry?

4 Q. That never was run, the
5 province-wide ECT?

6 A. There was never a
7 province-wide ETC.

8 Q. Do you remember, specifically
9 with respect to the province-wide ECT, whether or
10 not that the OPA ever made an explicit statement to
11 stakeholders that a stakeholder would be able to
12 switch from one region to another region, an
13 explicit statement?

14 A. Well, we have always said
15 that there's ability to change connection point.
16 It's not related to region, because region in terms
17 of connection point is really electrical
18 definition.

19 When there is a connection to the
20 part of the system, then they define what the
21 region is. The region isn't defined by itself
22 without relation to the connection to the network.

23 Q. Well, for example, sir, you
24 do remember -- if you could look at tab 1 of the
25 notebook in front of you, and this is for the

1 record C-258. If I could point you to the 5.4(a)
2 of the FIT rules, you do remember that -- this
3 talks about the economic connection test. That is
4 the ECT; right?

5 A. Yes.

6 Q. It says it will be run for
7 each region of the province at least every six
8 months?

9 A. Region in that sense is we
10 define certain electrical region across Ontario.
11 It depends on the characteristic of the
12 transmission system. It is much easier
13 administratively to look at different parts of the
14 system where then the project connected to that
15 part have -- you could, say, have similarity and
16 opportunity among them that's similar.

17 Q. The contract -- do you
18 remember that the west of London and the Bruce area
19 contracts were the last FIT projects to be awarded;
20 right?

21 A. They are the last after the
22 Bruce-to-Milton allocation, yes.

23 Q. Correct.

24 A. Yes.

25 Q. In fact, the other regions

1 were awarded before that?

2 A. Well, all the regions gone
3 through TAT/DAT across Ontario, so we don't make
4 distinction about which region undergo TAT/DAT. We
5 do a TAT/DAT for the whole system as part of the
6 launch period.

7 Q. And at each one of those
8 contract awards, they were ranked per region,
9 weren't they?

10 A. They are still based on
11 provincial ranking. For the purpose of showing
12 them to be helpful to participants, we group them
13 into regions. And there are certain projects that
14 do not have connection points, which is the enabler
15 class. We put them where they are physically
16 located. Again, a lot of it is just for
17 information purpose.

18 Ultimately, the ranking is based
19 on provincial ranking.

20 Q. I understand, sir, but I am
21 just trying to understand your answer. It is true
22 that the proponents were ranked in regions,
23 correct, as well as the province wide?

24 A. Well, again, as I said, I
25 mean for information purposes we group the

1 one -- the different projects under regions. The
2 ranking would be in the order of which they are
3 provincial ranking in the region.

4 Q. And in those particular
5 regions, prior to the Bruce-to-Milton and the --
6 sorry, scratch that.

7 Prior to the Bruce and west London
8 regions, then awards were entered based on the
9 rankings in the particular region; correct?

10 A. I don't quite understand the
11 question. Award was?

12 Q. Sure. I will rephrase it.

13 Prior to the awards in the west
14 London and Bruce regions, the awards of the
15 contracts were awarded in the other regions based
16 on the rankings in the regions?

17 A. I still don't fully
18 understand the question. If I could put it this
19 way, after the provincial-wide TAT and DAT we did
20 for the launch period, the project that did not
21 receive the contract after that group were placed
22 in different regions of which then, for purpose of
23 being helpful with the information, we grouped them
24 in those regions.

25 Those regions obviously have

1 project that currently cannot be connected.

2 Q. Okay. But essentially those
3 that were not awarded contracts, the ones that were
4 awarded contracts had ranked higher in the region;
5 correct?

6 A. They would be the one that
7 actually passed TAT/DAT. They were high on
8 provincial ranking and they have the contract.

9 Q. They were also higher in the
10 region; correct?

11 A. That is somewhat evolving,
12 because they are highest ranking in the sequence of
13 which the provincial ranking was provided to us.

14 Q. The answer to my question --

15 A. We did not do the TAT/DAT
16 based on regional ranking. We did it across
17 Ontario wide based on provincial ranking.

18 Q. Okay. But you did rank them,
19 as well, and award them in the areas where they
20 were highly ranked in the area; correct?

21 A. But, again, they win the
22 contract because they have the ability to connect
23 and they are high on provincial ranking. After
24 those contracts are identified, they are shown as
25 part of a certain region for information purposes.

1 But it is nothing in the region ranking that were
2 contributing for rewarding of the contract.

3 Q. Now, you mentioned earlier
4 that the -- let me make sure I understand. There
5 never was an explicit statement that a FIT
6 proprietorship from one region could connect to
7 another region; right?

8 A. There is no explicit
9 statement that you say you could or you cannot.
10 Our assumption is, where it is possible and there
11 is allowance for change of connection point, and
12 people connect to wherever electrically it makes
13 the most sense to connect.

14 It is not on a region basis. It
15 is where on the transmission system you could
16 connect.

17 Q. That would then mean someone
18 in a region, for example, bordering the Bruce could
19 connect into Bruce; is that what you're saying?

20 A. Well, if someone have the
21 capability to go from one region to another because
22 the connection point is easy to access, then they
23 certainly have the ability to do so.

24 The change in connection point,
25 the basis of it is to allow a greater opportunity

1 to connect to where the spaces are. I mean, this
2 is why that was provided.

3 Q. I guess what I'm asking is
4 that -- but that was all, again, originally told to
5 stakeholders as part of a province-wide ECT?

6 A. The ECT process, it is
7 intended to be applied province wide.

8 Q. Right. So that never
9 happened, but you're saying when we told about the
10 ECT we thought was going to happen, we were going
11 to allow people to change their connection points?

12 A. As part of the ECT process,
13 one of the provisions allowed a change of
14 connection point.

15 So we run ETC. There would have
16 been allowance as part of that process for anybody
17 in Ontario to change connection point.

18 Q. Okay. And as part of the
19 ECT?

20 A. As part of the ETC.

21 Q. So I guess, then, that would
22 mean that somebody in, for example, the Niagara
23 region then could connect to the Bruce region; is
24 that what you're saying?

25 A. It could, but it would not be

1 practical. Why would somebody in Niagara connect
2 to the Bruce?

3 I mean, you know, you could. You
4 could have northern Ontario connecting to the
5 Bruce, but --

6 Q. So when the change was made
7 in June of 2011, the OPA, pursuant to the direction
8 by the Minister of Energy, only limited the ability
9 for proponents in the Bruce and London region to
10 change their connection points; correct?

11 A. I believe that's contained in
12 the directive.

13 Q. And so there was no ability
14 for other proponents in other regions that
15 neighboured the Bruce region to connect into Bruce;
16 correct?

17 A. Not in accordance to the
18 directive.

19 Q. Was there any discussion at
20 the OPA whether or not it would be fair to allow
21 other proponents in neighbouring regions to also
22 connect into the Bruce region?

23 A. Not with myself.

24 Q. Okay. Well, you're one that
25 was in charge of the connection points, weren't

1 you?

2 A. In what sense? I design the
3 process. I discussed the implication of the
4 process. Many of the policy matters I am not
5 involved in. I am more concerned about the
6 operationalizing of the process.

7 Q. Now, do you remember, at the
8 time that NextEra was allowed to connect to the
9 Bruce region, how far away it was from the Bruce
10 region, this project?

11 A. Sorry, I didn't get that
12 question.

13 Q. Do you remember how far away
14 NextEra was from the Bruce region where it was
15 allowed to connect for the connection points?

16 A. NextEra had a number of
17 projects. I am not sure which one do you -- are
18 you focussing on?

19 Q. Do you know what the NextEra
20 six-pack is, sir? Have you ever heard that term?

21 A. Sorry, I've never --

22 Q. Never heard that term,
23 NextEra six-pack?

24 A. No.

25 Q. Okay, thank you. Weren't you

1 aware that NextEra was 100 kilometres away from the
2 connection points that it eventually got in June
3 2011?

4 A. Again, it is up to NextEra.
5 It is not for me to comment on how NextEra connects
6 to the project.

7 Q. Now, you also were aware or
8 involved with the ability of the Korean Consortium
9 to connect; correct?

10 A. In accordance with the
11 agreement, the GEIA.

12 Q. And were you aware of how the
13 Korean Consortium was purchasing projects in
14 Ontario in order to comply with its agreement with
15 Ontario?

16 A. No, sir, I am not aware of
17 that.

18 Q. You're not aware that they
19 were buying low-ranked projects in the area to
20 satisfy its obligations under the GEIA?

21 A. No, I am not aware of that.

22 Q. Okay. Now, you participated
23 in the GEIA working group, did you not?

24 A. Yes. I participate in the
25 assessing whether potential connection points are

1 capable of connecting the project.

2 Q. What was the GEIA working
3 group, sir?

4 A. It is a working group that
5 consists of people that look at the various
6 proposals of the project from the Korean Consortium
7 and agree on connection points that they propose.

8 Q. What people?

9 A. Sorry, can you repeat?

10 Q. You said it consists of
11 people that will look at various proposals. What
12 people?

13 A. The Korean Consortium.

14 Q. Well, who was part of the
15 working group, besides yourself and the Korean
16 Consortium people?

17 A. Again, I don't know the
18 people's name in the Korean Consortium side.

19 Q. Well, would you tell us
20 essentially what their roles were?

21 A. No, I don't.

22 Q. What about the government
23 side? Were you the only government person involved
24 in the group?

25 A. I'm not a government person

1 I'm from the OPA. Shawn my colleague is also one.

2 Q. Okay.

3 A. Beyond that, I don't really
4 remember the rest.

5 Q. So from the OPA side, it was
6 just you and Mr. Cronkwright, and then some members
7 of the Korean Consortium.

8 And you were helping them figure
9 out where they could connect to the grid. This was
10 not something that you did for FIT proponents, did
11 you?

12 A. Well, as per the agreement,
13 the Korean Consortium has a priority access on the
14 grid. The system we provide is they have a number
15 of potential connection points which we would look
16 at, whether it is capable of connecting the project
17 or not. We do not propose any particular location
18 for them.

19 Q. So this was a benefit given
20 to the Korean Consortium pursuant to the agreement
21 and not shared with the FIT proponents; right?

22 A. And that is not for me to
23 comment. I carry out the work of looking at the
24 connection points.

25 Q. Okay. So far as you know,

1 only the Korean Consortium got the benefit of the
2 working group and not members of the FIT program;
3 right?

4 A. Under that agreement, yes, we
5 have been helpful on that.

6 Q. Can you pull out tab 8 of
7 your notebook, sir?

8 MR. SPELLISCY: The exhibit number
9 for the record?

10 MR. MULLINS: I'm sorry, C-73.

11 BY MR. MULLINS:

12 Q. Can you tell us what this
13 document is?

14 A. I believe it is a listing of
15 the projects in the Bruce area.

16 Q. And you see that it is,
17 actually, the number -- they are all here listed by
18 area; correct? Do you see there's a number of --

19 A. Yes, the first page I was
20 looking at is the Bruce area, and then after that
21 central and so on.

22 Q. And so these other areas were
23 awarded contracts in the rankings pursuant to these
24 areas; correct?

25 A. Again, I don't understand the

1 question about awarding the contract.

2 Q. Well, when you looked at
3 these various areas, for example, the Niagara area,
4 when these contracts were awarded, one of the
5 things you looked at is how they ranked within this
6 area, for example, right, if you look, for example
7 at page 6?

8 A. I have to apologize. The
9 font is very small. That is why I'm having
10 difficulty reading this.

11 Q. I apologize. We will try to
12 expand it here on the page.

13 THE CHAIR: If you can look at it
14 on the screen, we will try to enlarge it.

15 MR. APPLETON: We will try to
16 enlarge it with the computer.

17 BY MR. MULLINS:

18 Q. So what I am asking you, I
19 don't know if -- can you see it better there on the
20 screen?

21 A. Yes.

22 Q. So, for example, there is an
23 area ranking, isn't there, on the side, in addition
24 to the province-wide ranking?

25 A. Yes. I believe I answered

1 that question earlier. The provincial-wide ranking
2 is the ranking that we actually use in priority in
3 terms of looking at the project.

4 The area ranking is for the
5 purpose of -- for listing purposes to indicate the
6 well -- the priority of a group of project in that
7 area.

8 Q. In that area. So, for
9 example, those with their higher rank in the
10 Niagara area, for example, were more likely to get
11 the contracts than those lower ranked; correct?

12 A. But, again, the true ranking
13 that we used for assessment is the provincial-wide
14 ranking.

15 So we could have a project that is
16 highly ranked in one region, but it is low in
17 provincial ranking. It is really still on the
18 basis of provincial ranking that we look at this.

19 And obviously the grouping of a
20 project, a certain group of projects in an area,
21 won't get order based on the provincial ranking.

22 Q. Where does it say that in the
23 FIT rules, sir?

24 A. With the FIT rule, it is
25 always in terms of the -- in the launch period, the

1 ranking is based on the criteria shovel readiness
2 criteria. After the launch period, it would be in
3 the order of the time stamp. So that would be the
4 provincial ranking.

5 Q. Where does it say in the FIT
6 rules that a province-wide ranking might overcome a
7 region-wide ranking or area ranking?

8 A. Again, the regional ranking
9 is for the purpose of information presentation. It
10 is not used for any purpose in terms of ranking on
11 a regional basis. It is still a provincial ranking
12 that matters.

13 Q. So the answer is there is
14 nothing in the FIT rules that specifically says
15 what you just told us; correct?

16 A. I think the FIT rules still
17 look at in terms of where the project comes in,
18 either in the launch period because of shovel
19 readiness, or after that based on time stamp. And
20 that gives the provincial ranking.

21 So when we execute the actual
22 testing, it will be in the sequence given to us by
23 our electricity resources department in the order
24 of provincial ranking.

25 Q. You are aware, though, that,

1 for example, the Korean Consortium taking priority
2 access in the Bruce area affected the ability of
3 projects in the Bruce region to obtain FIT
4 contracts; correct?

5 A. Yes. I mean, all projects
6 compete for connection across Ontario. Obviously a
7 project given priority will have an impact on other
8 projects.

9 Q. And so -- thank you. So
10 let's talk a little bit about the Bruce region. In
11 fact, in September 2010 there was a directive
12 limiting the amount of capacity specifically in the
13 Bruce region; correct? Do you remember that?

14 A. Say that again.

15 Q. Tab 5 of your notebook. For
16 the record, it is C-119.

17 A. That is in 2011, I believe.

18 Q. No, I'm sorry. Tab 5 is
19 September 17th, 2010. Do I read that wrong?

20 A. Sorry. This is Korean
21 Consortium, sorry.

22 Q. There is a later one.

23 A. There is a later one.

24 Q. I was asking about the
25 September one, exactly.

1 So in this letter, then, you see
2 where they reserve 500 megawatts in the Bruce area?

3 A. Yes.

4 Q. And so that affected the
5 ability of the projects in the Bruce region to
6 obtain contracts; right?

7 A. Well, of the total capacity,
8 then 500 megawatts would be held in priority for
9 the Korean Consortium.

10 Q. So had that not happened,
11 more projects that were located in the Bruce region
12 would have been able to obtain contracts; right?

13 A. That's probably true.

14 Q. Okay, and so what I want to
15 talk to you about, then, sir, is about the capacity
16 in the Bruce region.

17 Now, first, if you go -- now we
18 are going into confidential.

19 --- Upon resuming confidential session at 5:16 p.m.

20 --- Upon resuming public session at 5:26 p.m.

21 BY MR. MULLINS:

22 Q. If you go to tab 13.

23 A. Yes.

24 Q. You mentioned the reactor
25 switching. So if I am reading this chart

1 correctly, isn't it correct that there was 140
2 megawatts that would have been available in the
3 Bruce region had the OPA decided to do the reactor
4 switching; correct? Is that what this says?

5 A. Again, the page is showing
6 the potential that one can get if one apply all of
7 those measures that is listed in this page.

8 MR. SPELLISCY: I'm sorry, are we
9 in confidential session, because there is
10 confidential information on this page as shown by
11 the boxes.

12 MR. APPLETON: So take it off the
13 slide for a minute. Thank you. Now, are we in
14 confidential?

15 MR. SPELLISCY: No, we came out.

16 MR. APPLETON: Are we showing
17 confidential documents? So perhaps we might switch
18 to confidential.

19 --- Upon resuming confidential session at 5:27 p.m.

20 --- Upon resuming public session at 5:35 p.m.

21 THE WITNESS: The static VAR
22 compensator is one of the measures as part of the
23 2010 long-term energy plan priority project for us
24 to take a look at in order to increase the Bruce
25 capacity.

1 We did take a look at it. It
2 increases roughly the numbers by 200 megawatts,
3 depending how hard we push the system. The cost is
4 in the order of about \$100 million.

5 The decision of whether to do it
6 or not wasn't made, because it all depends on the
7 value you get out from that.

8 So, again, a lot of this whole
9 series of options was to get -- to explore, to look
10 at the numbers that you can get out of it, in some
11 cases what is the cost of it.

12 In this particular case, it would
13 have been cost \$100 million for 200 megawatts of
14 increase in the Bruce.

15 BY MR. MULLINS:

16 Q. Or 230 megawatts; right?

17 A. 230, depending on how it is
18 pushed.

19 Q. Okay. So fair enough. So
20 then if I understand, then, while it chose not to
21 do so... Just a second.

22 Can you also turn to tab 20? This
23 is confidential.

24 --- Upon resuming confidential session at 5:37 p.m.

25 --- Upon resuming public session at 5:40 p.m.

1 MR. MULLINS: Now, actually --

2 THE CHAIR: We are back in public
3 now.

4 MR. LANDAU: But you haven't
5 announced it.

6 THE CHAIR: We should be back in
7 public. Technicians in public?

8 MR. LANDAU: Yes.

9 MR. MULLINS: Right. This is not
10 confidential?

11 MR. LANDAU: Right.

12 BY MR. MULLINS:

13 Q. Are you ready?

14 A. Yes.

15 Q. All right. Actually, I want
16 you to go to page 6 of this document. And, again,
17 can you identify that this is the running of the
18 TAT data; correct? Is that what this is?

19 A. Again, I believe this is a
20 listing -- again, you have to correct me, because I
21 can't read it.

22 Q. I was hoping you could read
23 it on the screen.

24 A. My belief is this is a list
25 that have failed -- all of those projects failed

1 the original TAT/DAT during the launch period. So
2 they are all projects that are waiting for
3 additional capacity to connect or ECT.

4 Q. Perfect. So if you go to the
5 first, this is in the west of London area where it
6 says International Power Canada; right?

7 A. Okay, yes.

8 Q. Can you tell us what the
9 province ranking is for that project?

10 A. That's --

11 Q. You have to scroll down. Can
12 you scroll down?

13 A. That would be on the second
14 column.

15 Q. Yes. What is the province
16 ranking for that project?

17 A. Second and third.

18 Q. Okay. But it wasn't awarded
19 a contract, right, at this time?

20 A. Yes.

21 Q. And the reason why it wasn't
22 awarded a contract is because in the west of London
23 area, there wasn't any transmission capacity;
24 right?

25 A. Right.

1 Q. Okay, thank you. I want to
2 check with my colleagues and see if I have any
3 additional questions. I will turn over the
4 witness.

5 THE CHAIR: We're waiting to see
6 whether there are other questions.

7 MR. SPELLISCY: Give us just one
8 minute. I'm looking to see if there are any
9 questions.

10 THE CHAIR: I'm letting the
11 witness know so he knows what is going on.

12 RE-EXAMINATION BY MR. SPELLISCY AT 5:44 P.M.:

13 Q. Thank you. Just a few
14 questions. The skies are darkening already, so I
15 will try to get you out of here soon, Mr. Chow. I
16 just wanted to clarify on the record the document
17 we were looking at there just now, the one with the
18 tiny, tiny font, this is the ranking of the
19 projects that failed the TAT and the DAT
20 originally; correct?

21 A. I believe so.

22 Q. Now, you had been asked some
23 questions earlier about how contracts were awarded,
24 prior to this ranking. I think you had explained
25 that the TAT/DAT was run for the entire province.

1 Could you just walk us through how
2 that would have happened? In which order would you
3 have considered projects for contracts and how
4 would that have related, if at all, to the areas in
5 which they were eventually put?

6 A. I am happy to do so. The
7 ranking that are given to us, us in terms of this
8 transmission group, to look at whether the system
9 is capable of connecting the project. We see that
10 list from the electricity resources folks.

11 So they do the ranging based on
12 shovel-readiness, time stamp, many other factors
13 they would decide.

14 So once the ranking come to us,
15 which is provincial ranking from one to as many
16 projects there is, we would execute in the sequence
17 of which the project is ranked.

18 So you have to do project one
19 before we do project two. We don't go to region A
20 and region B. So the way it is done is because
21 sometimes project can affect each other, so we do
22 it in a sequence of when the project come in to us.

23 So that's why provincial ranking
24 is very important, because we do do it in that
25 sequence.

1 Now, obviously there are places in
2 Ontario where there is absolutely no relationship
3 to each other, northern Ontario and southern
4 Ontario. One can, through processing, speed up the
5 process, if time is an issue, to do some of the
6 projects kind of in mutually exclusive way, but it
7 always come back to is the provincial ranking that
8 matters.

9 MR. SPELLISCY: Thank you. I
10 don't have any other questions.

11 THE CHAIR: Okay. Any questions
12 from my co-arbitrators?

13 MR. LANDAU: Just one.

14 THE CHAIR: Let me just check.

15 MR. LANDAU: Just one.

16 QUESTIONS BY THE TRIBUNAL AT 5:47 P.M.:

17 MR. LANDAU: I just have one
18 question in terms of internal organization within
19 OPA. What was your relationship with Jim
20 MacDougall? Can you just explain who was doing
21 what and how you're related to each other?

22 THE WITNESS: Jim or Shawn, which
23 you will be listening to next day, they are in a
24 division called electricity resources. They are
25 the people that does the actual procurement. They

1 are responsible for the procurement. So they have
2 the rules, the qualification of applicants, and so
3 on.

4 Now, as part of any procurement,
5 you have to have the ability, even if they meet all
6 the criteria and the priorities, to see if they can
7 connect, because there is not much point getting a
8 project contracted in an area where there is no
9 capacity to transmit it.

10 So that is our job, to do that
11 screening before they let the contract, to see if
12 that project is in the right location in order to
13 allow it to freely deliver the energy to the
14 system.

15 Now, so that process, once they
16 have done all of the checking and ranking, they
17 come to us. We do the assessment as part of
18 TAT/DAT, and then we send the result back to them,
19 which then they go and do the process for the
20 contracting.

21 MR. LANDAU: Thank you.

22 THE CHAIR: You have explained
23 that you would receive the applications according
24 to their provincial ranking and that is how you
25 would treat them.

1 I am not clear. You said that the
2 regional ranking was for information purposes. I
3 am not sure I understand this, because if only the
4 provincial ranking was relevant, then you could
5 have stopped there and not have a regional ranking.

6 So you had a regional ranking.
7 What was the purpose?

8 THE WITNESS: I think the purpose
9 is to help people see themselves, and most people see
10 themselves, because the capability is organized on
11 regional basis, to see who around them and who is a
12 different priority to them are remaining looking
13 for capacity.

14 It is an exercise where people
15 could do it themselves. They could go to the
16 provincial ranking and draw their own grouping.

17 For purpose of being helpful, we
18 organize them into the different regions where we
19 believe the project would be connecting to.

20 Now, in some cases, because they
21 are enabler projects that have not decided
22 connection point, we would just artificially put
23 them in the location of the project even though
24 they may change the connection point later on and
25 go to a different region.

1 So it again is for display
2 purposes to allow people quickly to look at who is
3 in the region that they are competing for and in
4 what order.

5 As you notice in all of those
6 columns, there is an indexing of the regional list,
7 one to end, but the provincial ranking numbers is
8 always there.

9 You could be very high on the
10 region ranking and you could be very low in
11 provincial ranking. Again, that information is
12 always kept. So we don't suddenly decide that only
13 this group of projects have a priority among
14 themselves. It is still based on provincial
15 ranking.

16 THE CHAIR: And the information
17 that you give has value for the proponents in
18 respect of connection point change, or why would
19 they be interested in knowing who is around them
20 and what ranking?

21 THE WITNESS: And there is many
22 reasons why people want to have information. Some
23 people may want a decision to stay on. They know
24 capacity is coming. They want to know how many
25 people is ahead of them, how big they are within

1 that grouping.

2 Of course it is never a sure
3 thing, because people can drop out, too. So it is
4 as much information we provide that everybody have
5 the same information.

6 As you know, there is always
7 limitation how much information can we have, what
8 is useful, what is not useful. So in our judgment,
9 it is useful to do the provincial ranking, at the
10 same time group them into regional rankings, so
11 people have a better view of who is actually
12 competing with them, because a lot of them are
13 there still looking for future capacity to allow
14 them to connect as in the case of the Bruce.

15 And for change in connection
16 point, again, it is quite useful, but it is -- none
17 of the information we provide on, let's say, just a
18 continuous listing of provincial level, that they
19 couldn't themselves get that information out,
20 extracting that information out.

21 THE CHAIR: I am looking for
22 something that struck me in your witness statement.
23 Let me see whether I have it. You very much insist
24 on the location of the circuit as opposed to the
25 physical location, and that is why you say the

1 region is not that important, because you could
2 connect to another region.

3 Yet it has a bearing, because you
4 cannot connect -- I mean, you can connect to
5 another region provided you are close to the
6 border, or not?

7 THE WITNESS: Yes. It is
8 absolutely critical that the connection point
9 determine the ultimate region to be tested.

10 So until there is a connection
11 point, a project is -- it is not really in a
12 region. I mean, you have to know where it
13 connects.

14 It matters very much whether it is
15 on this side of the station or that side of the
16 station that determine the region.

17 Now, we happen to be in the Bruce
18 area and the west of London area where projects can
19 go back and forth. In many areas that is not a
20 possibility. So, you know, it is somewhat
21 impractical sometimes to say project move between
22 region.

23 It is only in the rare instances,
24 which this case in the Bruce happened to be one, of
25 which there is a choice. And that choice has to be

1 made in respect of a connection point, because I
2 cannot -- I say just because you are located
3 physically in the Bruce that you actually then are
4 connected electrically in that particular Bruce.
5 It could be connected elsewhere.

6 THE CHAIR: Elsewhere close to
7 where you are?

8 THE WITNESS: But could be a
9 different region electrically.

10 THE CHAIR: It could be a
11 different region, yes.

12 THE WITNESS: That's why we want
13 to make it really, really clear it is really the
14 connection point that matters at the end of the
15 day, not where they are physically located, because
16 there is many reasons why a developer may want to
17 connect at different points on the system.

18 THE CHAIR: Thank you, Mr. Chow.
19 That is all.

20 MR. BROWER: I have a question.
21 When the applications are rated on a provincial
22 basis or a regional basis -- when applications are
23 rated by OPA on a province-wide basis or on a
24 regional basis under the FIT rule criteria, there
25 is no element in that rating of proximity to or

1 access to a connection point?

2 THE WITNESS: No, sir. What the
3 FIT rule have is if you are rated on a
4 provincial-wide basis, let's say on a launch period
5 based on shovel readiness, there would be a rank
6 based on that, and that is on the whole Ontario.

7 There is no connection to what
8 region you are, where you are connected. Those are
9 just a provincial ranking based on the rule that
10 you have.

11 MR. BROWER: Right, okay.

12 THE WITNESS: So if is it based on
13 time stamp, exactly same thing apply. You could be
14 could be a project in any region.

15 So provincial level, the notion of
16 a region do not apply.

17 MR. BROWER: Right.

18 THE WITNESS: It's only for
19 purpose of allocating them on a listing, on looking
20 at regional capability, that we start looking at it
21 when we start testing them.

22 Now, the regional capability
23 require you to know where they're connected to
24 define the region they are in.

25 For listing purposes, we make a

1 certain assumption what grouping makes sense to
2 people looking at the listing. So where they are
3 connecting, of course where we find the region they
4 are in, and also for project that do not have a
5 connection point, we allocate them to the area
6 where they are physically located, okay? There
7 would be no other better way of doing that.

8 So that's why there is a
9 distinction of putting them in region for
10 information display purposes. There are
11 requirements to test them on the regional
12 capability, but we need to know the exact
13 connection point, and then there is the
14 provincial-wide ranking that determines how the
15 project are ranked in sequence.

16 MR. BROWER: Now, with all
17 respect, I am more confused than I was before.

18 The province-wide ranking is done
19 without respect to proximity to a connection point?

20 THE WITNESS: Yes.

21 MR. BROWER: To the connection
22 point?

23 THE WITNESS: Yes, sir.

24 MR. BROWER: But the regional
25 ranking is done with some consideration of

1 proximity to a connection point?

2 THE WITNESS: Again, for the
3 purpose of information display, there is no
4 regional ranking, per se. There is only a
5 provincial ranking.

6 The testing is in the sequence of
7 provincial ranking. Regional ranking is for
8 information purposes.

9 MR. BROWER: Right.

10 THE WITNESS: So, therefore, it is
11 there to -- for illustration purpose of grouping
12 the provincial project into different regions.

13 MR. BROWER: But your provincial
14 ranking does not equate to your regional ranking,
15 does it?

16 THE WITNESS: They do in a sense
17 that the regional ranking, it just order projects
18 from the provincial ranking that happen to be
19 residing in this region.

20 So you could have a project that
21 provincial ranking is 100, 101, 102, but they are
22 only three projects in a region. They would be
23 ranked in a region 1, 2 and 3, but provincial-wide
24 they are still 100, 101, 102.

25 MR. BROWER: But the regional

1 ranking is determined simply by the number of
2 projects in that area? How do you get to one, two,
3 three?

4 THE WITNESS: I think what it is
5 is that if you have a provincial ranking, you know
6 where the project is connected or you assume to be
7 placed in certain region. You can take that group
8 of projects. Then you look at provincial ranking
9 and you say: Here's the sequence.

10 But the sequence itself is based
11 on the original provincial ranking.

12 MR. BROWER: So if you only had
13 three projects in your region notionally, it will
14 be ranked one, two, three in the region because
15 there are only three, but they will be ranked in
16 the order of their provincial rankings?

17 THE WITNESS: Yes.

18 MR. BROWER: Thanks, okay.

19 THE WITNESS: Yes.

20 MR. MULLINS: Madam Chair, if the
21 Panel is done asking questions, I have one
22 follow-up based on Judge Brower's questions, but I
23 don't want to interrupt if there is no questions.

24 THE CHAIR: No. Why don't you ask
25 it now?

1 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

2 Q. Thank you. Unfortunately, I
3 don't have a copy of this document, so I am going
4 to put it up on the screen, the first page.
5 Hopefully you will be able to read it Mr. Chow.

6 For the record, this is C-617, and
7 the title is "FIT - Application Review Test and
8 Standard Responses."

9 Do you recognize this document,
10 sir?

11 A. I don't, sir.

12 Q. Well, it is an OPA document;
13 right? This is a document that talks about the
14 standard response from the FIT team. Do you
15 remember that?

16 A. Sorry, sir, there are a lot
17 of documents in the OPA. I am not familiar with
18 this one.

19 Q. Okay. Well, let me turn to
20 page 33.

21 MR. BROWER: Of?

22 MR. MULLINS: Of this document.
23 Unfortunately it is not in the notebook. It is
24 C-617. If we can make that bigger?

25 BY MR. MULLINS:

1 Q. And you see at the bottom it
2 is signed the FIT team. This is from the OPA, and
3 it says: Priority rankings, provincial rank versus
4 transmission area rank. And it says:

5 "In both the provincial rank
6 and the transmission area
7 rank, launch projects were
8 ranked based on their shovel
9 readiness at the time of the
10 application." [As read]

11 That's correct; right? Can you
12 read that?

13 A. Which paragraph? Sorry, sir.

14 Q. It is right under the heading
15 "Priority Rankings":

16 "In both the provincial rank
17 and the transmission area
18 rank, launch projects were
19 ranked based on their shovel
20 readiness at the time of
21 application."

22 Do you see that?

23 A. Yes. Again, it is in the
24 context -- I don't know the context. I presume
25 this must be the launch period projects.

1 Q. It says:
2 "However, different
3 transmission areas have
4 different capabilities to
5 incorporate new generation
6 based on transmission and
7 distribution limits and
8 existing load demands."

9 You agree with that; right?

10 A. Yes.

11 Q. It says:
12 "This means that the
13 transmission area rank is a
14 better indicator of whether
15 or not a particular project
16 will be offered a FIT
17 contract as it is specific to
18 the area in which the project
19 is located and would be
20 built."

21 Do you see that, sir?

22 A. Yes.

23 Q. Now, you agree with that;
24 right?

25 A. I don't agree with it. I'm

1 just saying there is the impression that's the
2 case. I said many times already today it is
3 provincial ranking that we do the testing on --

4 Q. Uh-huh.

5 A. -- for a lot of the display
6 purposes we use in the area.

7 There is an area limit that
8 matters once we know where the project is
9 connected.

10 Q. Well, let's see what the FIT
11 team continue to say. It says:

12 "For example, a 5-megawatt
13 project located in the
14 Niagara region that is
15 awaiting ECT might have a
16 transmission area rank of 25
17 and a provincial rank of 200.
18 The viability of the
19 5-megawatt project, though,
20 will be based on the need for
21 and the ability to connect
22 the 5 megawatts in the
23 Niagara region.

24 "The provincial rank is based
25 upon the application date of

1 the particular project in
2 relation to all other
3 projects awaiting ECT in the
4 province as a whole - but the
5 assessment of whether the
6 project will pass ECT and
7 receive a contract will be
8 based on the regional
9 requirements and limitations
10 only."

11 Do you see that, sir?

12 A. Yes. And there is nothing
13 said there that is different than what I said. If
14 you were competing in that region, yes, the people
15 that are in that region is what you are competing
16 against.

17 The testing, the priority is still
18 based on provincial-wide ranking.

19 Q. Okay. Thank you. I'm sorry,
20 I didn't want to cut you off. So you agree this is
21 an accurate statement, those few paragraphs?

22 A. Based on the comment I
23 made --

24 Q. Yes.

25 A. -- referred to today.

1 Q. Sorry. I didn't mean to cut
2 you off. Thank you.

3 FURTHER QUESTIONS BY THE TRIBUNAL:

4 THE CHAIR: Last question at least
5 on my part. We had a discussion with
6 Mr. MacDougall before about the five-day connection
7 point change window from June 5th -- 6th to June
8 10, 2011 that was announced on the 3rd of June.

9 And the question was: Was it a
10 sufficient notice time on the one hand and was it a
11 sufficient length for the window itself?

12 Some say it is. Some say it
13 isn't. What would you say from your perspective?

14 THE WITNESS: From my perspective,
15 obviously people would want a longer time to
16 evaluate the change connection point, but we did
17 receive 30 -- I think more than 30 requests for
18 change of connection point, including Mesa.

19 I think it is -- for people that
20 understand the system and have major projects, they
21 would be for sure looking at that possibility
22 before this five days. I don't think it is
23 reasonable to do the kind of study required in five
24 days.

25 So a lot of the time, I think

1 number of major players and people that is
2 knowledgeable would have been doing a lot of study
3 in preparation for that, knowing that version of
4 ECT which allows change of connection point as part
5 of this process, they would be ready for it.

6 And because of the indication of
7 more than 30 requests for change of connection
8 point, many people is aware of that and did -- had
9 done their homework.

10 So the five-day becomes more of a
11 processing time.

12 THE CHAIR: What was the reason
13 for them doing their homework before the notice?

14 THE WITNESS: I think a lot of it,
15 everybody understand the change of connection
16 points allow people to have a better ability when
17 information is available to connect to the circuit
18 that in fact have the capacity.

19 The initial application is based
20 on, I will say, a blind understanding of where the
21 connection capacity is. So after the first round,
22 people now know where the capacity might be. There
23 is no guarantee, but a better understanding.

24 So once they have that
25 information, it becomes their choice of looking at

1 what options are available to them. It could be
2 simply a connect to the line next to it, that is
3 close by, because you happen to pick the wrong
4 line, or it could be looking at alternative
5 location for connection.

6 I think that is -- for a large
7 project, that is fair.

8 THE CHAIR: Okay, thank you. I
9 have no further questions. There seem to be no
10 further questions from any side. So that concludes
11 your examination, Mr. Chow, and we thank you very
12 much for your explanations.

13 THE WITNESS: Thank you very much.

14 THE CHAIR: That leads us to the
15 end of this day, as well. Is there any question
16 about organization that we need to address before
17 we close for the day on the claimant's side?

18 MR. MULLINS: Just if we could get
19 an estimate of time.

20 THE CHAIR: Yes. We will mail it
21 fairly soon so that you know for your preparations
22 tonight.

23 MR. MULLINS: Yes, ma'am, that's
24 why we're asking.

25 THE CHAIR: Is there anything on

1 the respondent's side, Mr. Spelliscy? You are
2 hidden.

3 MR. SPELLISCY: No. I think we
4 have a letter to go to the Tribunal. It is now ten
5 after 6:00. So we might be a little bit past 7:00
6 by the time we get back to the hotel and put it to
7 bed.

8 THE CHAIR: That's fine. It is
9 not a strict limit, considering that we are
10 finishing a little later than we anticipated.

11 Tomorrow morning we will start
12 with Mr. Cronkwright, and then we will already get
13 to the experts, and that will first be Mr. Timm
14 from Deloitte, and I don't know what we have
15 scheduled for tomorrow. Have we scheduled the next
16 one, as well? Yes, Mr. Adamson.

17 MR. APPLETON: Mr. Adamson.

18 THE CHAIR: As well, I think.

19 MR. APPLETON: It is possible we
20 can get to Mr. Low. You never know, but experts
21 tend to take time. It depends on Canada.

22 THE CHAIR: Mr. Low would be
23 available in case he is needed?

24 MR. MULLINS: Yes.

25 MR. APPLETON: Yes.

1 THE CHAIR: Fine. Then I wish you
2 all a good evening and we will see each other
3 tomorrow.

4 --- Whereupon the hearing adjourned at 6:09 p.m.,
5 to be resumed on Wednesday, October 29, 2014 at
6 9:00 a.m.

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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.

Teresa Forbes, CRR, RMR,
Computer-Aided Transcription