

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF  
THE  
NORTH AMERICAN FREE TRADE AGREEMENT AND THE  
UNCITRAL ARBITRATION RULES, 1976

PCA CASE NO. 2018-54

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:
In the Matter of Arbitration Between: :
:
TENNANT ENERGY, LLC, :
:
Claimant, :
:
and :
:
GOVERNMENT OF CANADA, :
:
Respondent. :
:
----- -x Volume 2

Tuesday, November 16, 2021

The hearing in the above-entitled matter  
came on at 9:00 a.m. (EST) before:

- MR. CAVINDER BULL SC, President
- MR. R. DOAK BISHOP, Arbitrator
- SIR DANIEL BETHLEHEM, Arbitrator

ALSO PRESENT:

Registry, Permanent Court of Arbitration:

MR. JOSÉ LUIS ARAGÓN CARDIEL  
Legal Counsel

MS. CLARA RUIZ GARRIDO  
Assistant Legal Counsel

MS. DIANA PYRIKOVA  
Case Manager

Court Reporter:

MR. DAVID A. KASDAN  
Registered Diplomate Reporter (RDR)  
Certified Realtime Reporter (CRR)  
Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
United States of America

Technical Support - Law In Order:

MR. FARAZ KHAN

Observers:

MS. ROMANE S. DUNCAN  
MS. MARÍA GÓMEZ

APPEARANCES:

On behalf of the Claimant:

MR. BARRY APPLETON  
MR. GABRIEL MARSHALL  
Appleton & Associates International Lawyers LP  
121 Richmond St W, Suite 304  
Toronto, Ont M5H2K1

MR. EDWARD MULLINS  
MS. SUJEY HERRERA  
MS. CRISTINA CARDENAS  
Reed Smith, LLP  
1001 Brickell Bay Drive, 9th Floor  
Miami, Florida 33131  
United States of America

Client Representative:

MR. JOHN C. PENNIE

APPEARANCES: (Continued)

On behalf of Respondent:

MS. HEATHER SQUIRES  
MR. MARK KLAVER  
MS. ALEXANDRA DOSMAN  
MR. STEFAN KUUSKNE  
MR. BENJAMIN TAIT  
MS. KRYSTAL GIRVAN  
MS. JESSICA SCIFO  
MR. SCOTT LITTLE  
MR. MARK LUZ  
MR. JEAN-FRANCOIS HEBERT  
Trade Law Bureau (JLT)  
Global Affairs Canada  
125 Sussex Drive  
Ottawa, Ontario, K1A 0G2  
Canada

Core Legal, Trial Graphics

MS. GEN BARLOW

Investment Trade Policy Division, Global Affairs  
Canada:

MR. MATTHEW TONE  
MS. CALLIE STEWART

Legal Affairs Branch, Global Affairs Canada:

MR. ALAN KESSEL

Ministry of Economic Development, Job Creation and  
Trade, Government of Ontario:

MS. SAROJA KURUGANTY  
MS. MARGARET KIM  
MS. ADRIANNA MILITANO

APPEARANCES: (Continued)

Ministry of Energy, Government of Ontario:

MR. ERIK GULOIEN  
MS. KAREN SLAWNER  
MR. WILLIAM COUTTS

Independent Electricity System Operator:

MS. EVA MARKOWSKI

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P R O C E E D I N G S

1  
2 PRESIDENT BULL: Good day to everyone. Let's  
3 begin proceedings for today. This is Day 2 of the  
4 jurisdictional hearing for Tennant Energy and Government  
5 of Canada, PCA Case Number 2018-54. We have on the Agenda  
6 today two witnesses who will be examined; that's Mr. Lucas  
7 McCall and Mr. John Pennie.

8 Before we get the first witness, I had a matter  
9 of housekeeping I wanted to raise with the Parties, and  
10 principally with the Claimant. Mr. Appleton, I  
11 wondered--I wanted some clarification. The Witness after  
12 the two that we have today, after Mr. Pennie, is Mr. John  
13 Tennant, and I wanted to know whether if--if we were ahead  
14 of time, would it be possible for Mr. John Tennant to  
15 begin his examination today, or is that not possible? I'm  
16 asking this just so that we have a clear idea of how we're  
17 going to spend today. So, if you could let me know  
18 whether--what the plan is on that front.

19 I can't hear you, Mr. Appleton.

20 (Pause.)

21 MR. APPLETON: We're having a technical issue.

22 PRESIDENT BULL: Yes, we can hear you now.

23 MR. APPLETON: Excellent. Thank you very much.

24 Mr. President, we did not anticipate that we  
25 would be able to get to Mr. Tennant today, and I recall

1 that Sir Daniel was quite clear that, at least our  
2 understanding was that he did not want to break witnesses  
3 if that was not going to be necessary, and since we  
4 anticipated that Mr. Tennant's--John Tennant's testimony  
5 would take a considerable period of time, and we  
6 anticipate that Mr. Pennie's testimony will probably take  
7 a considerable period of time, I don't think that's going  
8 to be practical for today. We can reassess, but I think  
9 it would be quite difficult to do at this point.

10 PRESIDENT BULL: Okay. And that's perfectly  
11 fine, Mr. Appleton. That's in accordance with the  
12 schedule. I just wanted to check what the possibilities  
13 were.

14 So, the other matter of housekeeping is a very  
15 minor one. Whilst the Agenda doesn't provide for  
16 examination-in-chief, I will ask counsel to do the usual  
17 on direct examination very briefly before handing the  
18 Witness over for cross-examination. And if the other  
19 thing to mention is if counsel can just be mindful of the  
20 15-minute break and finding a moment for that, that would  
21 be very helpful.

22 Are there any housekeeping matters that Parties  
23 want to raise before we bring in the first witness?

24 MS. SQUIRES: No, nothing on our end.

25 MR. APPLETON: And nothing from us.

1 PRESIDENT BULL: Very good.

2 Then let's proceed with Mr. McCall. And if he  
3 can be brought into the main room, please.

4 LUCAS MCCALL, RESPONDENT'S WITNESS, CALLED

5 MS. SQUIRES: I'm going to step aside here as  
6 well. Ms. Dosman's going to do the direct examination of  
7 Mr. McCall.

8 PRESIDENT BULL: Sure. Thank you, Ms. Squires.  
9 Mr. McCall, can you see and hear me?

10 THE WITNESS: I can, thank you, yes.

11 PRESIDENT BULL: Good. Mr. McCall, were you in  
12 attendance at yesterday's proceedings?

13 THE WITNESS: No, I was not.

14 PRESIDENT BULL: Right. Mr. McCall, my name is  
15 Cavinder Bull. I'm the Presiding Arbitrator for this  
16 matter. You will see on the screen, my two colleagues on  
17 the Tribunal, Mr. Doak Bishop and Sir Daniel Bethlehem.  
18 Together, we are the Tribunal that is hearing the case.  
19 Thank you for being here today to testify. Before I hand  
20 you over to counsel for examination, I need to ask you to  
21 make an affirmation that you will tell the truth during  
22 these proceedings. And a copy of a Declaration for Fact  
23 Witness should be on your screen.

24 Can you see that?

25 THE WITNESS: I can.



1 MS. HERRERA: That is correct, Mr. President.

2 PRESIDENT BULL: Please proceed.

3 REALTIME STENOGRAPHER: I can barely hear you,  
4 Ms. Herrera.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MS. HERRERA:

8 Q. Good morning, Mr. McCall. My name is Sujey  
9 Herrera, I'm one of the attorneys representing the  
10 Claimant in these proceedings, Tennant Energy LLC. And  
11 I'll be asking you some questions this morning, so I  
12 appreciate your patience already.

13 Now, I understand from your Witness Statement  
14 that you have been working for Global Affairs Canada since  
15 2010; is that correct?

16 A. That's correct.

17 Q. Okay. If it's okay with you, I will be  
18 referring to Global Affairs Canada and its predecessor  
19 Ministries as GAC; is that okay?

20 A. Yes, thank you.

21 Q. Thank you.

22 Now, just so I understand because I'm not from  
23 Canada so, you know, I just want to be clear, GAC is, in  
24 essence, Canada's Foreign Affairs and Trade Ministry?

25 A. That's correct.

1 Q. Now, when you started with the GAC, you started  
2 in the Investment Trade Policy Division?

3 A. That's correct.

4 Q. And you served as Trade Policy Officer from  
5 November 2010 to June 2013?

6 A. That's correct.

7 Q. And then from June 2013 through August 2017, you  
8 became a Senior Trade Policy Officer?

9 A. That's correct.

10 Q. And as an Investment Trade Policy Officer, your  
11 job was to provide trade policy advice relating to  
12 Canadian international economic law controversies?

13 A. Yes, it was to provide policy advice in relation  
14 to international investment trade policy.

15 Q. And so would that include expertise and  
16 knowledge about NAFTA Chapter Eleven cases?

17 A. Yes.

18 Q. And in that context, would you be aware of  
19 ongoing developments in NAFTA Chapter Eleven cases that  
20 are underway?

21 A. Yes, particularly the ones that I was working  
22 directly on.

23 Q. Which ones were you working directly on?

24 A. Most particularly the Mesa v. Canada Case. I  
25 also contributed to other cases including the Eli Lilly

1 Case and a few others but Mesa was my main case when I was  
2 in the Investment Trade Policy Division.

3 Q. Now, in your role as Trade Policy Advisor, would  
4 you be aware of developments in other disputes involving  
5 Canada trade policies such as those that were underway at  
6 the World Trade Organization?

7 A. Peripherally. I would potentially be copied on  
8 messages, but no, I didn't provide policy advice or  
9 support any ongoing litigation or files at--dispute  
10 settlement files at the WTO.

11 Q. Got it. Sorry, I'm taking notes at the same  
12 time, so. All right.

13 Now, would you involve--sorry, would you read  
14 decisions of any disputes involving Canada that were  
15 issued from the WTO?

16 A. No.

17 Q. So, since you weren't reading decisions, you  
18 weren't analyzing WTO-related cases; correct?

19 A. No, that's correct.

20 Q. Now, you did mention that Mesa v. Canada was one  
21 of your primary cases. Would you have read decisions that  
22 were issued in Mesa v. Canada?

23 A. Yes, I would have read the majority of the ones,  
24 particularly the pleadings, less so the Procedural Orders,  
25 but in terms of the meat of the case, I would read the

1 submissions.

2 Q. And would you read them as soon as they came out  
3 or when would you have read them?

4 A. Generally, you know, within a few days of them  
5 coming out if they were critical to the case, within, you  
6 know, a day or so.

7 Q. Okay. So, about the decisions that you were  
8 reading about, would you then brief officials about those  
9 decisions?

10 A. Yes, if there's major developments, we would  
11 brief senior management on major developments.

12 Q. And what would you consider a major development  
13 that would be sufficient for you to brief officials?

14 A. Anything usually that was likely to have a large  
15 bearing on the case or attract public scrutiny or  
16 attention.

17 Q. Now, as part of your role at the GAC, were also  
18 involved in any negotiation or international trade  
19 agreements?

20 A. Yes.

21 Q. And in those negotiations, were you ever present  
22 when Government expressed their position on particular  
23 issues such as environmental issues or diversity in  
24 international trade?

25 A. Sorry, environmental issues or--I missed the

1 second part of the question.

2 Q. Diversity in international trade.

3 A. Diversity--

4 MS. DOSMAN: I stop the Witness briefly. I'd  
5 just like to recall that in Procedural Order No. 1, it's  
6 quite clear that witnesses are to be cross-examined on  
7 relevant matters that were addressed within their Witness  
8 Statements. So, if I could just ask counsel to confine  
9 your questions as agreed in Procedural Order No. 1.

10 MS. HERRERA: Ms. Dosman, his Witness Statement  
11 does talk about his background, and I am asking him about  
12 his background and his expertise on international trade  
13 issues. A big issue that Canada itself raised during its  
14 Opening is the Mesa Power arbitration and everything about  
15 the Mesa Power arbitration, and so the majority of these  
16 questions have been about his involvement, expertise--

17 REALTIME STENOGRAPHER: I'm sorry, you're going  
18 to have to slow down and speak more clearly. The majority  
19 of the questions have been related to what?

20 MS. HERRERA: His expertise, his background and  
21 expertise and his involvement in the Mesa Power  
22 arbitration.

23 MS. DOSMAN: And certainly no objection to  
24 matters that are addressed in Mr. McCall's Witness  
25 Statement, but insofar as the WTO or other policy matters

1 of the Government of Canada, that's beyond the scope.

2 PRESIDENT BULL: So, Ms. Herrera, I think you're  
3 mindful of the provision in Procedural Order No. 1 that  
4 Ms. Dosman is referring to?

5 MS. HERRERA: Yes, I am, Mr. President.

6 PRESIDENT BULL: To the extent that you're  
7 asking the Witness about his background, that's fine,  
8 but--and please bear in mind the limitation that Parties  
9 have agreed to in that Paragraph 9.11(c) of Procedural  
10 Order No. 1 that Ms. Dosman refers to. I think with that  
11 reminder, you can proceed for now.

12 MS. HERRERA: Thank you, Mr. President.

13 BY MS. HERRERA:

14 Q. Now--okay. As part of your international--as  
15 part of your role within the GAC, were you involved with  
16 Canada's position on Transparency International--in their  
17 international trade agreements?

18 A. Yes.

19 Q. And for Canada, transparency is important for  
20 purposes of attracting investment and promoting Investor  
21 faith in Canada; correct?

22 A. Yes.

23 Q. Now--let's see--now, you mentioned earlier that  
24 because the Mesa--sorry, the Mesa v. Canada Case was one  
25 of your primary cases that you would regular

1 read--regularly read the submissions in that arbitration.

2 Do you recall that testimony?

3 A. Yes.

4 Q. And so you would have read, for example, the  
5 Notice of Intent that was submitted by Mesa Power on  
6 July 6, 2011; correct?

7 A. Yes.

8 Q. And you would have read it--would you have read  
9 it shortly after then, or when would you have read it?

10 A. I would have read it shortly after it was  
11 delivered to Canada.

12 Q. Now, what was your impression of the controversy  
13 when you saw the Notice of Intent?

14 A. I can't recall my impression at the time.

15 Q. Would you have briefed officials on the--what  
16 was found in the Notice of Intent?

17 A. Yes.

18 Q. And what in particular about the Notice of  
19 Intent would have prompted you to brief officials about  
20 it?

21 A. To be honest, I can't recall many of the details  
22 of the case. It was a while ago, but, you know, we didn't  
23 receive many Notices of Intent, so it was a significant  
24 development. We would have briefed on the Parties  
25 involved, the measures involved, in this case a provincial

1 measure involved and next steps, but I don't recall any of  
2 those specific details, but that generally would have been  
3 what we would have briefed on.

4 Q. Now, in your role as Deputy Director at the GAC,  
5 do you receive reports of media articles involving  
6 Canadian trade policy controversies?

7 A. Yes.

8 Q. If it's okay with you, I'm going to refer to  
9 those reports as collection of articles as media packs.

10 A. As media?

11

12 REALTIME STENOGRAPHER: Do clarify and slow down  
13 your words, please, because I did not catch that either.

14 MS. HERRERA: Sure.

15 BY MS. HERRERA

16 Q. I said that I'm going to refer to the collection  
17 of articles as media packs, P-A-C-K-S.

18 A. Okay.

19 Q. So, what kind of information is typically  
20 included in the media packs?

21 A. It would be on a daily basis, we received--you  
22 know, the Department receives media articles of interest  
23 to the Department, and it's generally the header of the  
24 Article and a two- or three-line description of its  
25 content and a link to it.

1 Q. And does that include articles about  
2 international claims made by Investors against Canada?

3 A. Yes, I believe it would. Yes, it should.

4 Q. Now--let me see. Just a second. Now, we  
5 discussed transparency a little bit earlier and how  
6 important transparency is to Canada to promote faith in  
7 the Investment policies of Canada. Do you recall that?

8 A. Yes.

9 Q. So, if the Government of Canada denied that it  
10 engaged in internationally wrongful conduct, you would  
11 agree with me that it would be prudent for others to  
12 believe in Canada, in good faith, unless there is proof of  
13 actual wrongdoing, wouldn't you?

14 A. I think that would apply to all circumstances  
15 with regards to accusations, yes.

16 Q. All right. Because otherwise, Canada would be  
17 inundated with premature lawsuits and claims; right?

18 A. Presumably but I'm not an expert in that area.

19 Q. Got it. Were you aware that Canada denied any  
20 wrongdoing as to the Claims asserted in the Mesa Power  
21 arbitration.

22 A. Sorry, can you repeat the question, please?

23 Q. Of course.

24 Were you aware that Canada denied any wrongdoing  
25 as to the Claims asserted in the Mesa Power arbitration?

1           A.    Yes--well, no--I don't know the details of the  
2 Claim or the accusation.

3           Q.    Okay, but you testified earlier that you  
4 reviewed, as part of your role, you reviewed the  
5 pleadings, the submissions that were a filed in the Mesa  
6 Power v. Canada arbitration; correct?

7           A.    Yes.

8           Q.    Okay.  So, when you were reviewing those  
9 submissions and those pleadings, you didn't know--see that  
10 Canada denied that they did anything wrong, that they did  
11 not--

12                   (Overlapping speakers.)

13           Q.    My question to Mr. McCall was, you know, he  
14 wasn't familiar with (drop in audio), and so my follow-up  
15 question is:  Mr. McCall, you earlier testified that as  
16 part of your role at the GAC, you regularly--you read the  
17 Mesa Power submissions as they came out, so my--you recall  
18 that testimony; correct?

19           A.    Yes.

20           Q.    Okay.  So, you don't--you do not recall, even  
21 though you viewed all those submissions at the time,  
22 whether Canada, in fact, denied any international--any  
23 violation of its international obligations under the NAFTA  
24 Treaty?

25           A.    It's been more than a decade since I've read

1 most of the submissions, but I would imagine that that  
2 statement would be in our submissions, because it's our  
3 defense, so I would imagine we would defend ourselves and  
4 include lines similar to that, although, I cannot remember  
5 any of the specifics.

6 Q. Got it.

7 Now, I'm going to--actually, I will go now to  
8 your--one of the documents that you referred to in your  
9 Witness Statement, in particular it's a document called  
10 Canada's--Government of Canada Outline of Potential Issues  
11 and it has been designated as R-81. Just give me a second  
12 and I'll pull it up and I'll put it on the screen.

13 Do you have it on the screen?

14 A. I do, thank you.

15 Q. And so, this is Government of Canada Outline of  
16 Potential Issues July 31, 2012.

17 Do you see that?

18 A. I do.

19 Q. Give me one second. Now, if you go here to  
20 Paragraph--I'm going to take you to Paragraph 17, and here  
21 in this Outline of Potential Issues submitted by Canada in  
22 the Mesa Power arbitration, it says: "Moreover, Canada  
23 denies that any of the Measures mentioned in the Notice of  
24 Intent or in the invalid Notice of Arbitration breach  
25 Canada's obligations under Chapter Eleven."

1 Do you see that?

2 A. I do.

3 Q. Okay. And so--and then I'm now going to take  
4 you to Paragraph 23. And here Canada says: "In  
5 conclusion, none of the Measures identified by the  
6 Claimant in its Notice of Intent or invalid Notice of  
7 Arbitration are inconsistent with Canada's obligation  
8 under NAFTA Chapter Eleven."

9 Do you see that?

10 A. I do.

11 Q. Okay. Now, you would agree with me that the  
12 public and Investors seeing statements that are so  
13 unequivocal by Canada that they did not violate any  
14 obligations or any law, they should believe Canada; right?

15 A. Yes.

16 Q. Okay. Now, Mr. McCall, did you read the Annual  
17 Report of the Ontario Auditor General in 2010?

18 A. I did not.

19 Q. Why would you not have read it?

20 A. I don't--I don't see--I don't read the vast  
21 majority of publications by governments and certainly at  
22 the provincial level, so I don't see--at the time I  
23 presumably would have not seen it relevant to my personal  
24 or work life, so I would have made the decision conscious  
25 or otherwise not to have read the 2010 Ontario Report that

1 you referred to.

2 Q. Understood. Is that also the case in relation  
3 to the Ontario Auditor General Report of 2011?

4 A. Yes. I don't recall ever reading any Ontario  
5 Auditor General Report.

6 Q. Got it. And it's for the same reason, you don't  
7 read all publications by governments or Provincial  
8 Governments?

9 A. That's correct.

10 Q. Understood. Now, going back to your statements  
11 about your involvement with the Mesa Power arbitration.  
12 Now, I understand from reviewing your Witness Statement  
13 that the primary purpose of it was to introduce what was  
14 publicly available on the GAC's website about the Mesa  
15 Power arbitration; correct?

16 A. That's correct.

17 Q. Okay. Other than posting submissions on the GAC  
18 website, what was--did you have any other involvement with  
19 the Mesa Power arbitration?

20 A. Yes. As discussed earlier, I briefed senior  
21 officials if there was major developments in the case. I  
22 would review Canada's submissions to ensure that they were  
23 consistent with our general approach to investment trade  
24 policy that we were taking in our negotiations. I would  
25 respond to media requests and communications requests, and

1 just generally monitor the file from an investment trade  
2 policy perspective.

3 Q. Okay. Now, you mentioned earlier that you would  
4 determine if something was a major development depending  
5 on whether it would impact public relations; correct?

6 A. That would be one--one determination, yes.

7 Q. And what would be the other determinations?

8 A. Oh, well it's been a while since I've done the  
9 job, but a whole host of things in terms of, you know,  
10 implications on our relationship with the Province; or  
11 again, you know, in showing that we were, you know, being  
12 consistent with the provisions that we were negotiating in  
13 our international treaties at the time; major budget  
14 implications if there was something going to be expensive  
15 in the litigation process that we would need to flag for  
16 budget reasons; things of that nature.

17 Q. Now, just to be clear, Mr. McCall, you do not  
18 have personal knowledge of what Tennant Energy LLC knew  
19 of--

20 REALTIME STENOGRAPHER: I'm sorry, could you  
21 repeat your question. It was not clear.

22 MS. HERRERA: That's not a problem.

23

24 BY MS. HERRERA

25 Q. Mr. McCall, just to clear the record, you do not

1 personally have any knowledge about what Tennant Energy  
2 LLC would have known about the Mesa Power arbitration;  
3 correct?

4 MS. DOSMAN: If I could just recall again  
5 Paragraph 9.11(c), Ms. Herrera. Mr. McCall didn't testify  
6 about Tennant Energy's knowledge at any point in time, so  
7 if you could please confine your questions to matters that  
8 were addressed or presented in his Witness Statement, we  
9 would be grateful.

10 PRESIDENT BULL: Ms. Herrera, that seems right  
11 to me.

12 MS. HERRERA: Your Honor, he is testifying about  
13 what was available on the GAC, Government of Canada's  
14 website and Canada is using that to say that our client  
15 should have had knowledge of it, but I, of course, will  
16 limit the testimony to the President's instructions.

17 BY MS. HERRERA:

18 Q. Now, Mr. McCall, I'm looking at Paragraph 3 of  
19 your Witness Statement. Do you have that with you?

20 A. I do.

21 Q. Now, in Paragraph 3 of your Witness Statement,  
22 you list a number of documents from the Mesa Power  
23 arbitration which you indicate were available on the GAC  
24 website as of May 8, 2013; is that a correct summary of  
25 what's there?

1           A.    Yes.

2           Q.    Now, I understand that you would have read all  
3 of these document--based on your prior testimony, that you  
4 would have read all of these documents, either at the time  
5 that they were issued or shortly thereafter; correct?

6           A.    Certainly the pleadings and by the--either the  
7 Respondent or the Claimants, likely the Procedural Orders,  
8 but if they got too much into the nuts and bolts in terms  
9 of how the Tribunal functions or how the case is going to  
10 function, I--I generally often would not read those, but  
11 certainly the pleadings of the Parties that are at the  
12 first half of that page, I would have read.

13          Q.    Now, as far as determining that these were  
14 available as of May 8, 2013, I understand that that came  
15 from a screenshot of the GAC website that has been  
16 submitted as R-030; is that correct?

17          A.    Yes, that's correct.

18          Q.    Okay. Now, did you take that screenshot?

19          A.    No, I did not.

20          Q.    Okay. So, where did that screenshot come from?

21          A.    I believe it came from IT Experts within the  
22 Department.

23          Q.    And so is it fair to assume that IT Experts went  
24 back into the history of the GAC website to figure out  
25 what was there as of May 8, 2013?

1 A. Yes.

2 Q. Okay. And why would--strike that.

3 Have you--now, since you said you reviewed the  
4 documents listed there, particularly the pleadings; right?  
5 So, I assume you referred to the Notice of Intent to  
6 submit a claim to arbitration; is that correct?

7 A. That's right.

8 Q. So, did you also read the Notice of Arbitration?

9 A. Yes.

10 Q. Okay. And what about Government of Canada's  
11 Outline of Potential Issues?

12 A. Yes, I would have read that at the time.

13 Q. And the Government of Canada's Objection to  
14 Jurisdiction?

15 A. Yes, I would have read that.

16 Q. What about the Request for Bifurcation?

17 A. I would have likely read that, yes.

18 Q. And I assume also the Response on Bifurcation?

19 A. Yes, that's correct.

20 Q. But not the Procedural Orders or the  
21 Confidentiality Order?

22 A. I would have been less likely to have read  
23 those, but I likely would have read the first few  
24 Procedural Orders in the case but I can't--I can't say  
25 whether I read these exact ones, but I would have likely

1 read the first--the first two or three Procedural Orders  
2 because of their importance to getting the case up and  
3 running.

4 Q. All right. Now, Mr. McCall, do you recall  
5 whether in the documents that you did review from this  
6 list, whether any of them mentioned the Company  
7 International Power Canada?

8 A. I don't recall.

9 Q. Now, going now to Paragraph 8 of your Witness  
10 Statement, sorry (sound interference).

11 REALTIME STENOGRAPHER: I'm sorry, say the  
12 number again?

13 MS. HERRERA: Paragraph 5.

14 BY MS. HERRERA:

15 Q. Do you have it in front of you, Mr. McCall?

16 A. I do, thank you.

17 Q. Mr. McCall, now here I see that you list an  
18 additional three documents which you indicate were  
19 available on the GAC website as of September 11, 2013.

20 A. Yes.

21 Q. And this also came from a screenshot that has  
22 been attached to the record as R-030; correct?

23 A. Yes.

24 Q. And would this screenshot have been generated  
25 the same way as the other screenshots that we discussed?

1           A.    Yes.

2           Q.    Now, did you review any of these documents that  
3 are listed here?

4           A.    I would have--would have likely reviewed the  
5 Investor's answer on Canada's Preliminary Objections on  
6 Jurisdiction. I can't say for certainty whether I would  
7 have reviewed Procedural Order No. 4 or 5.

8           Q.    Do you recall whether the Investor's answer on  
9 Canada's Preliminary Objections mentioned International  
10 Power Canada?

11          A.    I can't recall.

12          Q.    Now, Mr. McCall, do you know whether any other  
13 documents were loaded to the GAC website other than these  
14 that you list here in your Declaration?

15          A.    There would have certainly been many additional  
16 documents after the time period in question here that were  
17 loaded on to the website.

18          Q.    How would we know what those other documents  
19 are?

20          A.    We would have to do something similar in terms  
21 of getting in touch with our IT colleagues to go back in  
22 time and do snapshots of the website at different moments  
23 in time after September 11, 2013.

24          Q.    Why does your Declaration only cover these two  
25 days, May 8, 2013, and September 11, 2013?

1           A.     Those were just the dates that I was asked to  
2 comment on and write a witness statement on from counsel.

3           Q.     Now, Mr. McCall, you were--since you were  
4 involved with the Mesa Power arbitration, you were at the  
5 Mesa Power NAFTA Hearing in October 2014; correct?

6           A.     That's correct, I was.

7           Q.     Were there other trade analysts that were at the  
8 Hearing?

9           A.     Not from the Federal level, although there were  
10 trade analysts from the provincial level.

11          Q.     And why would you have attended this hearing?  
12 Is it because you were in charge of--or that was one of  
13 your primary roles while you were Trade Policy Advisor at  
14 the time?

15          A.     Exactly, yes.

16          Q.     Were you there every day of the Hearing?

17          A.     I believe so. I can't recall specifically but I  
18 think I was there for every day of the Hearing. I think  
19 it lasted about four days, but from what I recall, at  
20 least three or four days, but I believe I was there for  
21 every day, yes.

22          Q.     Were you present during the examination of  
23 Ms. Sue Lo--Ms. Susan Lo, then?

24          A.     Yes, I believe I was.

25          Q.     And just to be clear, she's the former Ontario

1 Assistant to the Deputy Minister of Energy; correct?

2 A. I can't remember her role. I just remember her  
3 name and the fact that she testified.

4 Q. Now, as an Assistant Deputy Minister--if that's  
5 her role, is that a senior government position in the  
6 Canadian Government?

7 MS. DOSMAN: Ms. Herrera, really, I hate to  
8 interject again, but we're straying far beyond the scope  
9 of Mr. McCall's Witness Statement here.

10 MS. HERRERA: Mr. McCall said he was there. He  
11 said that part of his background has to do with the Mesa  
12 Power arbitration, and he has testified that he was there  
13 at the Hearing, and I'm asking him about what happened at  
14 the Hearing and the Mesa Power arbitration has been--is a  
15 subject matter of his Witness Statement.

16 MS. DOSMAN: His role and his background, yes,  
17 but as to what was said and by whom and what their roles  
18 were during the Hearing, that is entirely beyond the  
19 scope.

20 PRESIDENT BULL: Ms. Herrera, it does seem to me  
21 that what happened at the Hearing, the substance of it  
22 goes beyond the scope of the Witness Statement.

23 Now, I allowed sort of the background questions  
24 because one doesn't know what you're going to use that  
25 background for until you actually get to it, but if your

1 intent is to ask about what happened in the Mesa Hearing,  
2 then, it's not apparent to me how that relates to his  
3 Witness Statement. If it does, you can explain it to me.

4 MS. HERRERA: Yes. Yes, Mr. President. It does  
5 relate to his Witness Statement because the entire reason  
6 that his Witness Statement was put into the record was to  
7 establish what was known by a certain time in the public,  
8 and I want to put in the record of what was not known in  
9 the public, you know--they have only given us through  
10 September 2013. They haven't put in the Declaration,  
11 although he's talking about what was available, they have  
12 completely excluded everything that was not available to  
13 the public, everything that was not available to our--I  
14 apologize Mr. McCall because I'm--this is lawyer argument,  
15 but everything that was not available for our client to  
16 know about and is relevant for jurisdictional purposes for  
17 this Hearing.

18 PRESIDENT BULL: I'm just wondering whether  
19 cross-examination is really the avenue for you to make  
20 that point. I mean, the Witness is testifying about what  
21 was in the public domain and from when. He--he's not  
22 saying that's the only thing that was in the public  
23 domain. He's not saying that those were the only facts  
24 that existed.

25 So, I appreciate the point that you're trying to

1 make, and I think it can be made, but I'm not convinced  
2 that cross-examination is the avenue for you to press that  
3 point.

4 MS. HERRERA: Understood, Mr. President. I  
5 will--I will rephrase my questions.

6 PRESIDENT BULL: Thank you.

7 MS. HERRERA: Thank you.

8 BY MS. HERRERA:

9 Q. Mr. McCall, your Witness Statement does discuss  
10 documents that were loaded to the public website--I'm  
11 sorry, the GAC public website; is that correct?

12 A. That's correct.

13 Q. Do you recall whether the GAC public's website  
14 ever posted the Post-Hearing Briefs from the Mesa Power  
15 arbitration?

16 A. I can't recall.

17 Q. Do you recall whether the GAC website ever  
18 posted the video--video Transcript of the Mesa Power  
19 arbitration?

20 A. No, I don't recall ever uploading or asking that  
21 any video be uploaded. It was only ever PDF or Word  
22 documents.

23 Q. Understood.

24 MS. HERRERA: That is all I have for now but I  
25 would like to confer with my colleagues just to confirm

1 that there's no further questions.

2 PRESIDENT BULL: Certainly.

3 MS. HERRERA: Thank you.

4 (Pause.)

5 MS. HERRERA: Thank you for your patience.

6 Just one final question.

7 BY MS. HERRERA:

8 Q. Mr. McCall, you mentioned that the video would  
9 not have been posted or you don't think would have been  
10 posted. Would the paper Transcript have been posted to  
11 the GAC website?

12 A. I don't recall the Transcripts being posted, but  
13 I would have to ask my IT colleagues for a list of the  
14 documents that were posted. I don't recall posting them,  
15 but again, I just don't recall.

16 Q. Thank you, Mr. McCall. I thank you for your  
17 patience, and that's all. I don't have any further  
18 questions.

19 THE WITNESS: Okay, thank you.

20 PRESIDENT BULL: Thank you, Ms. Herrera.

21 Is there any re-examination?

22 MS. DOSMAN: No re-examination. Thank you.

23 PRESIDENT BULL: Thank you very much.

24 Can I check if my colleagues have any questions  
25 for Mr. McCall.

1 ARBITRATOR BISHOP: I have no questions.

2 ARBITRATOR BETHLEHEM: None from me, either.

3 PRESIDENT BULL: And Mr. McCall, you will be  
4 happy to hear that I have no questions for you either.  
5 So, your role in this Hearing is done. Thank you very  
6 much for your assistance.

7 THE WITNESS: You're welcome. Thank you.

8 (Witness steps down.)

9 PRESIDENT BULL: So, we are happily ahead of  
10 schedule. And can we have Mr. John Pennie on now? Is  
11 that possible?

12 I'm checking with Claimant's counsel.

13 MR. MULLINS: Yes, we are available--Mr. Pennie  
14 is available, and I think he is showing on the screen.

15 PRESIDENT BULL: Good. Very good.

16 Mr. Pennie, you can see and hear me; right?

17 THE WITNESS: I can. Good morning,  
18 Mr. President.

19 JOHN C. PENNIE, CLAIMANT'S WITNESS, CALLED

20 PRESIDENT BULL: Now, I know you were present at  
21 yesterday's proceedings, and you should be, I think,  
22 familiar with all three Members of the Tribunal by now.

23 THE WITNESS: I am, and thank you, Sir Daniel  
24 and Mr. Bishop for giving us a chance to discuss our  
25 concerns.

1 PRESIDENT BULL: Very good.

2 Mr. Pennie, can you just state your full name  
3 for the record, please.

4 THE WITNESS: John C. Pennie.

5 PRESIDENT BULL: What does "C" stand for?

6 THE WITNESS: Craigans.

7 PRESIDENT BULL: Thank you.

8 REALTIME STENOGRAPHER: Sorry, could you spell  
9 that, please?

10 THE WITNESS: C-R-A-I-G-A-N-S.

11 REALTIME STENOGRAPHER: Thank you.

12 PRESIDENT BULL: Mr. Pennie, I'm going to ask  
13 you to make a declaration before you give your testimony.  
14 It's on the screen, and if you could do that out loud,  
15 please.

16 THE WITNESS: Yes, Mr. President.

17 I solemnly declare upon my honor and conscience  
18 that I will speak the truth, the whole truth, and nothing  
19 but the truth.

20 PRESIDENT BULL: Thank you, Mr. Pennie.

21 Mr. Mullins, over to you.

22 (Pause.)

23 MR. MULLINS: Whenever the Panel is ready, we  
24 will go back on the record.

25 PRESIDENT BULL: Mr. Mullins, if you're

1 comfortable and you're ready, then you can proceed.

2 MR. MULLINS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MULLINS:

5 Q. Mr. Pennie, do you have a copy of your  
6 Declaration (CWS-1) in front of you, sir?

7 A. I do.

8 Q. Do you have any updates to your Declaration now  
9 that you've had a chance to review it?

10 A. I do have two--excuse me, three sentences.

11 Q. Can you walk us through that, Mr. Pennie.  
12 In Paragraph 48?

13 A. In Paragraph 48, the first line from the bottom  
14 of the paragraph on Page (drop in audio).

15 Q. Would you start reading it for us so we can  
16 follow you.

17 A. It says: "Skyway 127 in December 2011 in trust  
18 for the benefit of the undesignated--still undesignated  
19 holding company."

20 Q. What correction do you want to make on that  
21 sentence, Mr. Pennie?

22 (Overlapping speakers.)

23 A. "Skyway 127" should say "Premier."

24 Q. Okay. Is there any other corrections you want  
25 to make?

1           PRESIDENT BULL: I'm sorry, I didn't quite  
2 understand that correction.

3           BY MR. MULLINS:

4           Q. Mr. Pennie, let me just walk you through it so  
5 we're clear.

6           The sentence we're talking about says: "John  
7 Tennant held the Skyway 127 Shares from I.Q. Properties  
8 and the ones later issued to him from Skyway 127 in  
9 December 2011 in trust for the benefit of the still  
10 undesignated (sound interference)." Are there corrections  
11 you want to make to that sentence?

12          A. Yes. Where it says "Skyway 127," it should say  
13 "Premier," so the Shares are from Premier, not from Skyway  
14 127.

15          And for the benefit of the undesignated--still  
16 undesignated holding company which was actually designate.

17          Q. And what was the designated Holding Company?

18          A. Tennant Travel.

19          Q. Are there any other changes you want to make to  
20 your statement, Mr. Pennie?

21          A. Paragraph 51 of the same page.

22          Q. Yes.

23          A. It should have said "since April" instead of  
24 June at the beginning of the sentence.

25          Q. Thank you, Mr. Pennie. Is there any other

1 changes you would like to make?

2 A. Yes.

3 Paragraph 103 on Page 23.

4 Q. Okay.

5 A. The first sentence refers to June 2015, and it  
6 should be August 15, 2015.

7 Q. Okay. With those changes in mind, Mr. Pennie,  
8 do you have any other changes you would like to make?

9 A. I do not.

10 Q. So, the (drop in audio) testimony is your  
11 testimony in this case?

12 A. Yes.

13 Q. And just with the Chair's allowance, just for  
14 the record, can you tell us a little bit about who you are  
15 and your background, just so we can introduce the Witness.

16 A. Well, I'm 82 years old. I'm still working. I  
17 have been in business for 62 years. I've founded  
18 businesses in five different industries. My first, while  
19 I theoretically retired at the turn of the century, the  
20 business I was in, and that was around the time that the  
21 Ontario Power Authority--excuse me, not the Ontario--Hydro  
22 I--well, the Ontario--Ontario Hydro was being broken up by  
23 the Government into three businesses. And as a result of  
24 that, they were seeking private capital to help them  
25 rebuild the infrastructure that had been neglected and was

1 causing black-outs due to lack of power supply and so on  
2 in the preceding 20 years where they hadn't invested in  
3 the infrastructure, so they were trying to correct that.

4 And secondly, they wanted to foster renewable  
5 energy, so that was when I became interested in this.

6 So, you want me to talk about the program--

7 Q. I think that was helpful, Mr. Pennie, and with  
8 the Chair's discretion, just if you could just briefly  
9 talk a little bit about your experience in the renewable  
10 energy business just so we have your background for the  
11 record.

12 A. So, around 2003, I was sitting down for dinner  
13 with some friends of mine, and we were talking about the  
14 renewable energy portfolio that Ontario was trying to  
15 build, and so we decided that--(sound interference) we  
16 decided that we would try with an entry into the program  
17 that was being offered at the time which was a tender for  
18 contracts, and so we purchased 180-acre property for about  
19 \$750,000, and we put a Met Tower, or a tower to measure  
20 the wind density, and arranged for a connection to the  
21 Hydro I grid, and did a bid on it at the time they were  
22 being accepted, which was I think a two-year period this  
23 was over.

24 And so, when the Contracts were awarded, we  
25 didn't get a contract. And, of course, we wanted to know

1 why, so I did visit with the Ministry of Energy and found  
2 that our price was too high, and that was because the wind  
3 on the property that we had selected, although it seemed  
4 to be significant, wasn't as good as the wind 20 miles  
5 west of here, and so because the wind wasn't (unclear)  
6 enough, our price was too high, so we decided that since  
7 they announced the RESOP Program, which was Renewable  
8 Standard Offer Program--Renewable Energy Standard Offer  
9 Program, that we would like to see if we could participate  
10 in that to recover some of the money that we had spent.

11 And so, we identified a higher wind regime in  
12 the Grand Valley area which was at a 1500-foot elevation,  
13 and our initial property was a 950-foot elevation above  
14 sea level.

15 And so, we put in a Met Tower there and found  
16 the wind was about 40 percent stronger. And so we then  
17 leased a number of properties and decided to go ahead and  
18 participate in the RESOP Program when it opened for  
19 applications, so one of the criteria of the RESOP Program  
20 was that the maximum size of any project was 10 megawatts,  
21 and so I believe we prepared two projects of 10 megawatts  
22 each. They were close to each other in that area.

23 While we were doing that, Derek Tennant, my  
24 cousin, had indicated he was very interested in what we  
25 were doing, the impact of renewable energy on the

1 environment and so on, so we discussed doing some  
2 additional sites where he would raise the capital for  
3 those projects. The first two that we were doing were  
4 under the name of Windrush Energy, so there were several  
5 other projects assembled. His daughter was brought in to  
6 do the land leases, and Derek focused on raising the money  
7 for the land leases, and I was responsible for preparing  
8 the RESOP applications and so on.

9           So, when the first RESOPs opened, there were  
10 nine contracts awarded, and we got three of the nine, so  
11 we had learned our lesson well on the first project where  
12 we weren't successful in number one, in getting the right  
13 energy regime; number two, having the structure of the  
14 Project suitable for Contract.

15           So, that was the beginning of it. We did a  
16 total of nine RESOP projects over the next few years, and  
17 we got seven RESOP contracts.

18           So, the first three did go through the  
19 completion over a period of about seven years due to the  
20 very lengthy process of public meetings, and negotiations  
21 with First Nations, and they ultimately got built and are  
22 running today.

23           So, when the FIT Program replaced the RESOP  
24 Program--FIT is Feed-In-Tariffs--with fixed-priced  
25 contracts. This was designed for larger projects.

1 Typically--I can't remember the minimum size, it was  
2 between 30 and 50 megawatts, I think--but it looked like  
3 an economical size would be 100 megawatts, and so we had  
4 envisioned to do one like that. And we ordered additional  
5 Met Towers to measure the wind in other areas and  
6 discovered that the wind in the Bruce area was very good,  
7 and some were better in the Grand Valley area.

8 So, we also learned that the Province was  
9 building an additional transmission line from the Bruce  
10 Nuclear Plant to Milton, which is on the outskirts of the  
11 greater Toronto area.

12 MS. SQUIRES: I'm sorry, Mr. Pennie and  
13 Mr. Mullins, I don't mean to interject here, but would  
14 note that direct examination was meant to be quite brief,  
15 and the Witness has had an opportunity to provide direct  
16 testimony in his Witness Statement that Claimant has  
17 provided in written submissions. A lot of it speaks to  
18 that type of material, and I just wonder how long this  
19 direct testimony will continue in this regard.

20 MR. MULLINS: I was actually going to wrap him  
21 up. I really just wanted him to talk about his wind  
22 program and I think we got to the Skyway project. And  
23 with that, I'm fine with moving on.

24 PRESIDENT BULL: Good.

25 BY MR. MULLINS:

1 Q. Okay. Thank you so much, Mr. Pennie. With  
2 that, I will turn you over to cross-examination.

3 PRESIDENT BULL: Thank you, Mr. Mullins.

4 I'm just waiting to see who will do the  
5 cross-examination.

6 MS. SQUIRES: That will be me. We're doing a  
7 bit of changing seats around here, but it's me again this  
8 morning.

9 PRESIDENT BULL: That's fine, Ms. Squires,  
10 whenever you're ready.

11 MS. SQUIRES: Great, thank you very much.

12 CROSS-EXAMINATION

13 BY MS. SQUIRES:

14 Q. Good morning, Mr. Pennie, how are you today?

15 A. Excellent, thank you. How are you?

16 Q. I'm good, thank you.

17 My name is Heather Squires. As you know from  
18 hearing the Opening Statements yesterday, and I'm counsel  
19 for the Government of Canada in this proceeding. I'm  
20 going to ask you a few questions today so that my team and  
21 the Tribunal can better understand the Witness Statement  
22 (CWS-1) that you have put forward in the arbitration on  
23 behalf of the Claimant. If you don't understand a  
24 question that I'm asking, please let me know, I will  
25 repeat it or rephrase it. It's really important that we

1 understand each other going forward this morning.

2           It's also important you answer my questions, so  
3 to the extent that there is a "yes" or "no" answer to my  
4 question, I would appreciate if you could give that first  
5 and I will give you the necessary time to provide any  
6 context or fuller answer that you may wish to provide.

7           I would also note that I am going to be  
8 referring to numerous documents throughout the course of  
9 our morning together. Some of them have been designated  
10 as confidential by the Claimant, so in that regard we will  
11 be cutting the feed from time to time. But I'll let you  
12 know when that happens.

13           Also, if you have any trouble seeing a document  
14 on front of you--in front of you, if you would like to see  
15 another portion of a document or anything in that regard,  
16 please just let me know, and we will do our best to assist  
17 you in that regard.

18           Does that sound good?

19           A. Yes, certainly. Thank you, Ms. Squires.

20           Q. Okay. Perfect.

21           I want to start just asking you a couple  
22 questions about the corrections that you made to your  
23 Witness Statement there a few moments ago.

24           And maybe just generally speaking, can you  
25 provide me with a little bit of understanding as to why

1 these were corrections were made now instead of through  
2 filing a Reply Witness Statement with the Claimant's  
3 Reply?

4 A. Well, I guess that's a matter for my lawyers to  
5 advise on.

6 Q. Were you asked to provide a Reply Witness  
7 Statement, Mr. Pennie?

8 A. No.

9 Q. Okay. One other point that I would just like a  
10 little bit of clarification on, and that was the change of  
11 a date that you made, and you said in Paragraph 51 of your  
12 Witness Statement that you changed June 2011 to become  
13 April 2011; is that correct?

14 A. Yes, that's correct.

15 Q. Okay. Now, I'm wondering if we can, Gen, if you  
16 can haul up for me the Claimant's Reply Memorial, and I  
17 want to turn to Paragraph 154.

18 (Pause.)

19 Q. 154. There we go. And I want to highlight the  
20 last sentence of that paragraph. Wait, that's perfect,  
21 Gen. Yep, that's great.

22 Now, can you see that okay, Mr. Pennie?

23 A. I can see what you've pulled up, yes.

24 Q. Okay. So now, the paragraph in your Witness  
25 Statement originally said, "since June 2011, the interest

1 of Tennant Energy have effectively controlled the Skyway  
2 127 investment." You've now changed that to say, "since  
3 April 2011, the interest of Tennant Energy have  
4 effectively controlled the Skyway investment." The  
5 Claimant's Reply Memorial says, "because of this  
6 arrangement, Tennant Travel, now Tennant Energy, have  
7 effectively--effective voting control of Skyway 127 since  
8 December of 2011," so I'm a little bit confused, or  
9 seeking a bit of clarity. Is it April, is it June, or is  
10 it December?

11 A. Well, my recollection is that John Tennant, the  
12 title to the Shares, at the time that Derek Tennant was  
13 unable to fulfill his obligation to repay John Tennant for  
14 \$200,000 that John Tennant had loaned to Derek, and the  
15 date of that default was April. I don't remember the  
16 exact day, April of 2011.

17 Q. Okay. So, if I understand correctly, then, this  
18 Reply Memorial is also an error that effective voting and  
19 control would have been as of April some Date 2011?

20 A. Well, John Tennant received additional Shares  
21 during the--in June, I believe it was, so I'm not sure  
22 what your question is.

23 Q. That's okay, Mr. Pennie. Perhaps we can move  
24 on. I was trying to seek some clarity on the dates but  
25 perhaps that will come out as we move through our

1 questions this morning as well, so thank you. Gen, you  
2 can remove that exhibit from the screen, thank you.

3 All right, Mr. Pennie. You spent a bit of time  
4 this morning discussing some projects you had discussed  
5 for the RESOP and some renewable energy programs that  
6 Ontario had in place, and I see in your Witness Statement  
7 (CWS-1), and through that testimony, that you would  
8 consider yourself an experienced wind developer; is that  
9 right?

10 A. Yes.

11 Q. And I also noticed in your Witness Statement  
12 that you sat on the Ontario ISO Renewable Energy Standing  
13 Committee. Can you tell me about that Committee, who was  
14 on is it, the years it was active?

15 A. Well, I don't remember the years it was active,  
16 but other representatives in the industry from the Ontario  
17 Power Authority, I think Hydro One and a few other  
18 developers were on that Committee.

19 Q. Now, Mr. Pennie, you're a Canadian citizen;  
20 correct?

21 A. I am.

22 Q. Are you an American citizen as well?

23 A. No.

24 Q. And you're a member of the Tennant Energy Board  
25 of Management; correct?

1 A. I am.

2 Q. Were you ever a member of the Board of  
3 Management of Tennant Travel?

4 A. No.

5 Q. So, Tennant Travel--can you tell me when you  
6 became a Member then of the Board of Tennant Energy?

7 A. When my wife and I exchanged our Shares in  
8 Skyway 127 for Shares in Tennant Energy, which was I think  
9 in 2015. Maybe it was 2014. I'm not sure.

10 Q. Okay. So, you became a Member of the Board in  
11 Tennant Energy at the same time you transferred your  
12 Shares in Skyway 127 to Tennant Energy; is that correct?

13 A. Yes, that's correct.

14 Q. Now, you're also a Member of the Board of  
15 Skyway 127?

16 A. Yes. I'm a Director and (inaudible.)

17 Q. And your--

18 REALTIME STENOGRAPHER: I'm sorry, excuse me.  
19 Excuse me. "I'm a Director" and what?

20 THE WITNESS: Secretary.

21 REALTIME STENOGRAPHER: Thank you.

22 BY MS. SQUIRES:

23 Q And what was involved in being a Corporate  
24 Secretary, Mr. Pennie?

25 A. I maintained the Minute Book records of the

1 Company and the Share Register.

2 Q. When you updated those Shareholder Registers,  
3 were they shared with the other Shareholders?

4 A. Yes, sometimes.

5 Q. And there would have been Shareholder Meetings  
6 from time to time; correct?

7 A. Just of the principals that were running the  
8 business. GE and Premier didn't take an active role on  
9 that.

10 Q. So, I think we'll come back to GE in Premier in  
11 a moment, but I take note of your comment there.

12 Who was responsible for recording minutes of  
13 those meetings?

14 A. I would be.

15 Q. And Shareholder votes would have taken place at  
16 those meetings as well?

17 A. Well, it was rather informal, you know. I don't  
18 think we did it that way.

19 Q. When would voting have taken place, Mr. Pennie?

20 A. Well, if your question is did we vote on  
21 everything that was going on in the business, no, we  
22 didn't. We had discussions. We had a consensus but we  
23 didn't do voting.

24 Q. Mr. Pennie, the Claimant's submissions in the  
25 arbitration referred to a voting bloc. Am I to assume

1 that that was more of a consensus building exercise rather  
2 than a voting bloc?

3 A. Well, it would be both.

4 Q. Okay. So, votes did take place?

5 A. They may have. I don't remember specifically.

6 Q. If Shareholders were absent from a meeting,  
7 would you let them know of voting results?

8 A. Yes.

9 Q. And if Shareholders were planning on not voting  
10 in a particular meeting, how was that communicated to you?

11 A. GE never wanted to attend any meetings. Our  
12 main interest was turbine contracts and providing  
13 financing.

14 Q. I'm sorry, who--and this was GE, you said?

15 A. Yes.

16 Q. And in terms of documents of how that was  
17 communicated to you, do you have any documents evidencing  
18 GE taking on this passive role?

19 A. No.

20 Q. So, that was an oral agreement?

21 A. Yes.

22 Q. Okay, Mr. Pennie, you mentioned earlier that  
23 John Tennant received his initial Shares in Skyway 127 due  
24 to a default on a personal loan that John had given to  
25 Derek's Holding Company, I.Q. Properties; is that right?

1 A. That is correct.

2 Q. And the Shares were collateral for that loan?

3 A. (Unclear) That loan was granted back in 2009, I  
4 think.

5 Q. Now, Derek then defaulted on that loan on  
6 April--or I.Q. Properties--I apologize. I.Q. Properties  
7 defaulted on that loan on April 19, 2011; correct?

8 A. Yes.

9 Q. And so at that point, if I understand correctly,  
10 John Tennant was then in a position to call for those  
11 Shares if he wanted to; correct?

12 A. Well, he did. He told me verbally he wanted the  
13 Shares.

14 Q. So, he told you--was there any documentary  
15 record of that?

16 A. Did he send me an e-mail or anything, no. We  
17 talked on the phone.

18 Q. And what day was that, Mr. Pennie, that he told  
19 you that?

20 A. I believe it was on the day the note was in  
21 default.

22 Q. So, April 19, 2011?

23 A. That sounds right.

24 Q. Okay. I want to take you to your Witness  
25 Statement (CWS-1), and I'm not going to put it up on the

1 screen because there is a bit of Confidential Information  
2 in that paragraph but I think we can discuss it without  
3 perhaps bringing it up and having to cut the feed, and I  
4 want to turn to Paragraph 48 of your Witness Statement.

5 A. Yes.

6 Q. So, if we look at the first line, the second  
7 sentence, it notes there that John Tennant first acquired  
8 the rights to Derek Tennant's interest in Skyway 127 on  
9 April 19, 2011.

10 Do you see that?

11 A. Yes, I see it.

12 Q. So, in your Witness Statement there, you note  
13 that he acquired the right to the Shares, but I want to  
14 make sure right now that you're testifying that he--he  
15 called the Shares on that day, not just that he had the  
16 right to the Shares?

17 A. Yes, he wanted the Shares. If I used  
18 inappropriate language, I apologize.

19 (Overlapping speakers.)

20 A. He had the Shares--he had access to the Shares  
21 that were to be transferred to him.

22 Q. No need to apologize, Mr. Pennie. That's fine.

23 Okay. So, he had the right to the Shares. He  
24 told you orally on April 19 that he would like to have the  
25 Shares. As Corporate Secretary of Skyway 127, you

1 received the direction to do that Share Transfer then on  
2 June 20, 2011; is that right?

3 A. Yes. We were pretty busy at the time with our  
4 RESOP projects and so on, and so I didn't get to do all  
5 the documentation right away.

6 Q. Okay. So, as of this date, then, as of  
7 June 20th, that is the date that John Tennant is finally  
8 holding shares in Skyway 127, and it's reflected in the  
9 corporate records; correct?

10 A. Well, he was holding them since April, but that  
11 was when, as a transfer agent, I--being the Secretary, I  
12 was essentially (unclear) when it was entered into the  
13 Minute Book.

14 Q. Okay. So if I can--just to confirm, then, your  
15 testimony this morning is that the Shares were not entered  
16 into the Minute Book until June 20, 2011, but John Tennant  
17 had the Shares prior to that in April of 2011?

18 A. No. He was the de facto owner of the Shares as  
19 of April 19, 2011. The fact I didn't get it entered into  
20 the paperwork for two months, I guess it was, was the fact  
21 that we were busy and, you know, it's a family--a lot of  
22 our businesses are family enterprises, so--and that was my  
23 job to get it done, but I didn't get it done right away.

24 Q. Okay. So, Derek is--in this intervening time  
25 period, I.Q. Properties is still holding the legal title

1 to the Shares; John Tennant has de facto ownership or  
2 beneficial ownership of the Shares; and then John Tennant  
3 received the legal title to the Shares when you registered  
4 them or transferred them on June 20th; is that correct?

5 A. Well, I'm not a lawyer. I believe that he had  
6 legal ownership of the Shares in April 19. We had to  
7 locate a Share Certificate. We were busy doing other  
8 things. The record-keeping was in June.

9 Q. Mr. Pennie, could John Tennant have voted any  
10 Shares in Skyway 127 prior to June 20, 2011?

11 A. Yes.

12 Q. Even though he was not on the Shareholder  
13 ledger.

14 A. Well, he is a de facto owner of the Shares.

15 Q. Do you have any documents evidencing that he  
16 voted Shares or that he obtained ownership of the Shares  
17 any time before June 20, 2011?

18 A. Well, he obtained ownership when Derek defaulted  
19 on the loan in April 19th, 2011. Was that your question?

20 Q. Not my question. I understand that to be your  
21 position. My question is a little bit about more of the  
22 evidence demonstrating that, but I think we can move on  
23 because you did say something that was a bit interesting  
24 to me about the timing of registering the Shares in the  
25 ledger on June 20th and that you were quite busy.

1                   I want to take a minute to look at--we're going  
2 to go into confidential session here. I apologize. So,  
3 we'll take a moment to cut the feed.

4                   MS. SQUIRES: If someone can let me know when  
5 we're ready to proceed.

6                   (End of open session. Attorneys' Eyes Only  
7 session begins.)

1 ATTORNEYS' EYES ONLY SESSION

2 SECRETARY ARAGÓN CARDIEL: You can go ahead,  
3 Ms. Squires.

4 MS. SQUIRES: Okay, thank you.

5 I want to pull up Exhibit C-116, Gen, if you can  
6 do that.

7 BY MS. SQUIRES:

8 Q. Now, this is a shareholder ledger, and you  
9 signed it, Mr. Pennie. You're familiar with this  
10 document?

11 A. Yes.

12 Q. And towards the top there we can see--and we can  
13 highlight it for you to make it a little easier--the date  
14 of this ledger is June 9, 2011.

15 Do you see that?

16 A. Yes, I see it.

17 Q. Okay. So, as a matter of just the calendar,  
18 this is sometime between April and June 20th, 2011, we  
19 have a shareholder ledger.

20 A. Right.

21 Q. And I want to move to the bottom of that ledger  
22 there--Gen will highlight--there's a Share Transfer going  
23 on right at bottom, and we see here that Premier Renewable  
24 is transferring Shares to GE Energy.

25 Do you see that?

1           A.    I see it.

2           Q.    So, Mr. Pennie, can you explain to me why you  
3 were too busy to register this de facto transfer of Shares  
4 to John Tennant until June 20, yet you had time to  
5 register this Share transfer on June 9?

6           A.    I think I didn't have the Share Certificates  
7 signed back by Derek, and Prem--GE were in a big rush to  
8 get this done, and it was an oversight.

9           Q.    Okay. So, you did not have the Share  
10 Certificate signed by Derek as of June 9, 2011.

11          A.    I didn't have it in my possession, no.

12          Q.    Okay. So, you could not transfer the Shares  
13 then without that; correct?

14          A.    Well, I preferred to have the Share Certificates  
15 so I could put it in the Minute Book, and then note it in  
16 the Register.

17          Q.    Mr. Pennie, let's turn to Paragraph 48 of your  
18 Witness Statement (CWS-1), and we'll stay in confidential  
19 just for a minute because I know there are a few things in  
20 that paragraph that are designated. And I want to look at  
21 the third line from the top there. And it says--there you  
22 note (reading): John Tennant told me that he was holding  
23 the Skyway 127 shares as a bare trustee for a corporation  
24 to be named.

25                   Do you see that?

1 A. I do.

2 Q. How did he tell you this? Was that a phone?

3 E-mail, in person--

4 (Overlapping speakers.)

5 A. John Tennant lives in California and was living  
6 in California since the mid-90s, I think it was. So, most  
7 of our dealings--in fact, I would say 99 percent of our  
8 dealings were on the phone.

9 Q. Okay. So, it would be fair to say, then, that  
10 this was an oral conversation then?

11 A. Yes.

12 Q. Okay. When did this conversation take place,  
13 Mr. Pennie?

14 A. He told me that he wanted at the time of him  
15 getting the Shares, and that was back in April, that he  
16 wanted to hold these as a Trustee for a corporation, a  
17 holding company that he would acquire or whatever and he  
18 couldn't name it then, and so he said he was a Trustee for  
19 the Share--he wanted to be the Trustee for the Shares.

20 Q. I appreciate that, Mr. Pennie. I'm trying to  
21 get a bit more of a sense as to exactly when this  
22 corporation was named. So, at this point in time when  
23 you're speaking to Mr. Tennant, he's saying that the  
24 Corporation has not yet been named. So, I'm trying to get  
25 a sense in the chronology of when this conversation took

1 place.

2           Could you have a more specific date you can give  
3 me or a bit more precision on this claim that you're  
4 making?

5           A.     The conversation I had with John Tennant on the  
6 phone would have been on the day that the note was in  
7 default, and at that time there were a number of things  
8 discussed. He wanted the Shares--he felt he was entitled  
9 to the Shares as of that date, and he wanted to be  
10 consulted in any major decisions, as the new Shareholder,  
11 but he didn't want to hold the Shares in his personal  
12 name. He wanted them as his Trustee so that he could find  
13 a corporation to hold the Shares, so that was all in the  
14 conversation that we had.

15           Q.     Okay. And this was the conversation on the day  
16 of the default you said, on April 19, 2011.

17           A.     It would have been, yes.

18           Q.     Okay. So, if I understand correctly--and please  
19 do correct me if I'm not right on this--on  
20 April 29--sorry, on April 19, 2011, John Tennant is  
21 now--has de facto control over Shares that Derek  
22 Tennant--or I.Q. Properties still has the legal title to,  
23 and John Tennant is then in turn holding those Shares in  
24 Trust for another entity that has not yet been named.

25           A.     When you said I.Q. Properties had the legal--I

1 forgot your term, but you said something about a legal  
2 hold on the Shares or whatever, I don't think that's  
3 correct, but I'm not a lawyer. I think John Tennant has  
4 the legal hold, but that's for a lawyer to decide.

5 Q. Okay. Perhaps I can rephrase a bit then to use  
6 the words that you used earlier.

7 As of April 19, 2011, Derek Tennant had not yet  
8 signed the Share Certificates--correct?--to transfer.

9 A. Yeah, he had to sign the Share Certificates.

10 Q. Okay. So, on that date, the Share Certificates  
11 had not yet been signed, yet John Tennant has some sort of  
12 ownership not through the certificates to the Shares and  
13 then he is, in turn, then holding those Shares as a  
14 Trustee for a corporation that has not yet been named and  
15 you have been told this on the phone in an oral  
16 conversation.

17 A. Yeah. That was my understanding that the Shares  
18 were effectively his as of that date.

19 Q. Okay. Now, Mr. Pennie, I want to move to  
20 something that you said in your corrections earlier today  
21 while we're on the same paragraph, and towards the end  
22 there you corrected the sentence to say that John  
23 Tennant--I'm sorry, I'm going to get the exact correction.  
24 Give me one moment here. A lot of paper flying around  
25 these days.

1           ARBITRATOR BISHOP: Are you leaving the subject  
2 of his statement about what John Tennant told him about  
3 being a Trustee? Are you leaving that subject now?

4           MS. SQUIRES: No, I'm not. In fact, I'm moving  
5 in that same paragraph just to try and figure out those  
6 dates--

7           (Overlapping speakers.) (sound interference).

8           ARBITRATOR BISHOP: Okay--

9           MS. SQUIRES: --a little more clarity on those  
10 dates.

11           If you just give me one second. My colleague  
12 has unplugged my monitor. Give me one second.

13           Okay. Long legs sitting next to me here.

14           (Laughter.)

15           BY MS. SQUIRES:

16           Q. Okay. So, you corrected your Witness Statement  
17 (CWS-1) this morning, Mr. Pennie, to say that towards the  
18 end, and I believe this is what you said: The ones later  
19 issued to him by Premier Renewable in December 2011 in  
20 trust for the benefit of, and instead of "still under  
21 designated Holding Company," that should have said  
22 "Tennant Travel Services"; that was your correction?

23           A. It still was undesignated, I think, at that  
24 time, but I don't remember.

25           Q. Okay. So, I'm sorry. My apologies, then.

1           So, your testimony is that, by December 2011,  
2 the Trustee was still undesignated; is that right?

3           A.    I don't remember, but I think that was the case.

4           Q.    Okay. Now, we're going to move on, if you could  
5 just give me--bear with me for one moment.

6           MS. SQUIRES: Yes, we can move away from this  
7 exhibit, Gen. You can feel free to take it down.

8           We will move on to another topic now.

9           ARBITRATOR BETHLEHEM: Ms. Squires, before you  
10 do, I got the impression that Mr. Bishop wanted to ask a  
11 question on this paragraph, and I did as well, just a  
12 point of clarification.

13          MS. SQUIRES: Certainly.

14          ARBITRATOR BISHOP: Yes, I did want to ask a  
15 question, if I could.

16          ARBITRATOR BETHLEHEM: Shall we go back into  
17 confidential session, because where are we on  
18 confidential...

19          SECRETARY ARAGÓN CARDIEL: We have not left it  
20 yet, so please proceed.

21          ARBITRATOR BISHOP: Okay. Mr. Pennie, on this  
22 statement, in Paragraph 48 of your Witness Statement,  
23 where it says: "John Tennant told me that he was holding  
24 the Skyway 127 shares as a bare trustee for a corporation  
25 to be named," did he in that conversation with you use the

1 term "bare trustee"?

2 THE WITNESS: I think he did, but I can't  
3 remember.

4 ARBITRATOR BISHOP: Why did you put the term  
5 "bare trustee" in this sentence?

6 THE WITNESS: So I thought that that refers to  
7 the Trustee bearing the Shares.

8 ARBITRATOR BISHOP: Well, I guess that gets to  
9 my next question, which was: What does the term "bare  
10 trustee" mean, as you understand it?

11 THE WITNESS: That I'm holding on to a piece  
12 paper supposedly as a Trustee.

13 ARBITRATOR BISHOP: I'm sorry? I didn't hear  
14 that.

15 THE WITNESS: I'm holding on to a piece of paper  
16 as a Trustee, but I'm not a lawyer. I'm not sure. But  
17 that is a term that I had heard before.

18 ARBITRATOR BISHOP: Okay. Did he tell you in  
19 this conversation why he wanted to hold the Shares as a  
20 Trustee?

21 THE WITNESS: Yeah. He was uncertain as to  
22 whether--when he acquired the Shares as to the value of  
23 them and whether there might be any tax implications, so  
24 he wanted to get them into a corporation--well, possibly  
25 value of the Shares might change at the time it went to a

1 corporation, so we were uncertain about that, and he  
2 didn't have time to talk to an auditor; and so, he just  
3 wanted to make sure that he was a Trustee and it would end  
4 up in a corporation and that there wouldn't be an issue,  
5 possible issue, concerning capital gains transferring back  
6 and forth.

7 ARBITRATOR BISHOP: So, he told you that he  
8 wanted to act as a Trustee essentially for tax purposes?

9 THE WITNESS: Well, we didn't know if there  
10 would be tax implications but just in case, yes.

11 ARBITRATOR BISHOP: Did he tell you what the  
12 terms of the Trust were going to be?

13 THE WITNESS: No. Discussed terms. He was they  
14 were transferred to a company that he would name in the  
15 future.

16 ARBITRATOR BISHOP: So, he simply told you that  
17 was--he wanted to hold the Shares as a Trustee but didn't  
18 give you any other details about this Trust; is that  
19 correct?

20 THE WITNESS: Well, other than as a Trustee, he  
21 was going to vote the Shares, if necessary, and he wanted  
22 to be consulted in terms of the management of the  
23 business.

24 ARBITRATOR BISHOP: Okay. Thank you. That's  
25 all I have at the moment.

1           ARBITRATOR BETHLEHEM: I had the same questions  
2 as Mr. Bishop, and I'm not going to repeat them. But,  
3 Mr. Pennie I'd just like to ask you in respect of this  
4 paragraph, there are a number of statements of facts, your  
5 assertion of facts, to which you reference the Shareholder  
6 ledger (C-116) and other documents. But there are a  
7 number of other statements in which you don't reference  
8 anything, and they seem to go to the intention or the  
9 understanding of John Tennant, for example. If you have a  
10 look at the penultimate sentence, you say: Eventually  
11 John Tennant used the existing California limited  
12 liability corporation set up by his brother Jim Tennant to  
13 acquire and maintain.

14           My question to you is a general question: I  
15 mean, it looks here as if you are testifying as a matter  
16 of fact to a number of issues that may not be within your  
17 own direct knowledge, and we have Witness Statements from  
18 Mr. Tennant. I'm just wondering why you are addressing  
19 these issues in your Witness Statement and where all of  
20 this information does come from. Are you testifying that  
21 all of this detail is within your own direct knowledge?

22           THE WITNESS: I'm just going to read here.

23           (Witness reviews document.)

24           THE WITNESS: Yes. I believe all of this was in  
25 my direct knowledge.

1           ARBITRATOR BETHLEHEM: So, including all  
2 the--for example, the second sentence: John Tennant first  
3 acquired the rights to Derek Tennant's 11.3 percent on the  
4 19th of April, et cetera.

5           I'm not going to press the point. I just--  
6           (Overlapping speakers.)

7           THE WITNESS: (Unclear.)

8           ARBITRATOR BETHLEHEM: --it's a very important  
9 paragraph, and Mrs. Squires has taken you--Ms. Squires has  
10 taken you to it in some detail, and Mr. Bishop has asked a  
11 number of questions, so I would just like to clarify the  
12 point.

13           THE WITNESS: So, Sir Daniel, if your question  
14 is was I aware that he was acquiring the Shares in  
15 April 19th as a result of his loan default, the answer  
16 would be yes, if that's the question.

17           ARBITRATOR BETHLEHEM: The question also goes to  
18 the generality of this paragraph that you are testifying  
19 to circumstances or understandings or intentions on behalf  
20 of other people who have given Witness Statements in these  
21 proceedings, and yet they are not referenced to any  
22 documentation. So the question is: Is everything in this  
23 paragraph within your direct knowledge? You can take a  
24 moment to read the paragraph again, if you would like.

25           THE WITNESS: Thank you.

1 (Witness reviews document.)

2 THE WITNESS: I believe I was--this was on my  
3 direct knowledge, yes.

4 ARBITRATOR BETHLEHEM: Okay. Thank you very  
5 much.

6 PRESIDENT BULL: Mr. Pennie, I have a question  
7 before I think--before I suggest that we take a break.  
8 I'm still unclear what you wish the third last sentence of  
9 Paragraph 48 to read. So, you made some amendments to  
10 that. That's the sentence and if the person with control  
11 of the share screen could highlight it--yes, that's the  
12 sentence.

13 Mr. Pennie, you can see the sentence  
14 highlighted?

15 THE WITNESS: I can.

16 PRESIDENT BULL: Right. You've made some  
17 amendments. I got the first one.

18 (Overlapping speakers.)

19 PRESIDENT BULL: So, Mr. Pennie, I want some  
20 clarity on this. So, I understand that the sentence  
21 should read: "John Tennant held the Skyway 127 shares  
22 from I.Q. Properties and the ones later issued to him from  
23 Premier in December 2011."

24 Have I got that right so far?

25 THE WITNESS: Yes, Mr. President. That's

1 correct.

2 PRESIDENT BULL: And then from December 2011,  
3 could you tell us how the sentence should read?

4 THE WITNESS: "In Trust for the benefit of the  
5 undesignated holding company." The word "still" I think  
6 is mis--doesn't clarify it probably.

7 PRESIDENT BULL: So, we should delete the word  
8 "still," and it should read the "undesignated holding  
9 company."?

10 THE WITNESS: Yes. I believe that would be more  
11 accurate.

12 PRESIDENT BULL: Right.

13 And did you want to insert the reference to  
14 Tennant Travel?

15 THE WITNESS: Well, the reference is not in the  
16 previous sentence.

17 PRESIDENT BULL: Okay. So, the sentence should  
18 read at the end: "In December 2011, in Trust for the  
19 benefit of the undesignated holding company," full stop;  
20 correct.

21 THE WITNESS: Yes, sir.

22 PRESIDENT BULL: Thank you, Mr. Pennie. I just  
23 wanted that clear for myself.

24 THE WITNESS: Yes, Mr. President.

25 PRESIDENT BULL: Ms. Squires, would it be

1 convenient to take a 15-minute break now?

2 MS. SQUIRES: I think so if I could just ask one  
3 quick question from what Mr. Pennie said in response to  
4 Arbitrator Bishop's question. I promise it will not take  
5 long.

6 PRESIDENT BULL: No, no, that's fine,  
7 Ms. Squires. Go ahead.

8 MS. SQUIRES: Okay.

9 BY MS. SQUIRES:

10 Q. Mr. Pennie--

11 MS. SQUIRES: Gen, if you could remove that  
12 exhibit from the screen, I think that would be great so I  
13 can see Mr. Pennie. There we go.

14 BY MS. SQUIRES:

15 Q. Mr. Pennie, when Arbitrator Bishop asked you  
16 what your understanding was of the term "bare trustee,"  
17 you said that you thought it meant he was holding--and I'm  
18 quoting you here--"holding on to a piece of paper  
19 supposedly as a Trustee." Was there any paper evidencing  
20 the Trust or not?

21 A. No.

22 Q. All right.

23 MS. SQUIRES: Those are my questions. I think  
24 it's a great time to take a break. We'll see you in 15  
25 minutes.

1           PRESIDENT BULL: Let's do that. Let's take that  
2 15-minute break, please.

3           THE WITNESS: Thank you.

4           (Recess.)

5           PRESIDENT BULL: Right. I think we're all back.  
6           Can I just remind everybody that moving forward  
7 from this point, we are not in confidential session unless  
8 counsel requests it.

9           Ms. Squires, whenever you're ready.

10          MS. SQUIRES: Thank you.

11          And, unfortunately, because I am going to move  
12 to some of the Shareholder Ledgers that the Claimant has  
13 designated confidential, we're going to have to cut the  
14 feed.

15          SECRETARY ARAGÓN CARDIEL: You may proceed,  
16 Ms. Squires.

17          MS. SQUIRES: Great. Thank you so much.

18          BY MS. SQUIRES:

19          Q. Let's turn to Exhibit C-117, Mr. Pennie. It's  
20 going to come up on your screen.

21          Now, this is the Shareholder Ledger for Skyway  
22 127 that's dated June 20, 2011. Do you see the date there  
23 on the top?

24          A. I do.

25          Q. And if we scroll down, you can see this is where

1 those Shares are being registered in the Share Ledger from  
2 I.Q. Properties to John Tennant; correct?

3 A. Yes.

4 Q. Now, nowhere in this Shareholder Ledger does it  
5 identify Tennant Travel Services as a beneficial owner; is  
6 that correct?

7 A. No.

8 Q. So, just John Tennant?

9 A. Right. John Tennant as Trustee.

10 Q. Okay. You would agree with me that the  
11 Shareholder Ledger does not recognize him as a Trustee;  
12 correct?

13 A. No.

14 As my understanding of Ontario law is that you  
15 don't register a Trusteeship. You register the name of  
16 the Trustee, and John Tennant was the Trustee. So, if I'm  
17 deficient in my knowledge, then I apologize, but that's  
18 why I registered it as John H. Tennant as the Trustee  
19 owning the Shares.

20 Q. Okay. Was the existence of the Trust registered  
21 in any other corporate documents or anywhere else?

22 A. No.

23 Q. Let's turn to Exhibit C-115. This is another  
24 Share Ledger. And this one is dated January 15, 2015, so  
25 we've moved ahead a few years here. And at the bottom

1 there, if you scroll down, it's noting that John Tennant  
2 is transferring 875,000 Shares to Tennant Travel Services.

3 Do you see that?

4 A. Yes.

5 Q. So these are the Shares in Skyway 127 Inc. that  
6 John Tennant was allegedly holding in trust. They're now  
7 being transferred to Tennant Travel outright; is that  
8 correct?

9 A. That's my understanding.

10 Q. So, what happened, to your knowledge,  
11 Mr. Pennie, what happened in January 2015 that triggered  
12 John Tennant to transfer the Shares outright instead of  
13 continuing to hold them in Trust?

14 A. Because he all along intended to put them into a  
15 company rather than continue to hold them personally as a  
16 Trustee.

17 Q. So, Mr. Tennant's intention--again, forgive me  
18 if this is not a question that you have knowledge to,  
19 that's a fine answer, but John Tennant's intention was to  
20 hold--put the Shares into a holding company all along; is  
21 that what you're saying?

22 A. Yes. I had knowledge of that because that's  
23 what he told me.

24 Q. Okay. Now, Marilyn Field is your wife; correct?

25 A. She is.

1 Q. And so you and Marilyn also transferred shares  
2 to Tennant Travel on this day; correct?

3 A. We did.

4 Q. And you're not holding those Shares in Trust for  
5 Tennant Travel prior to this, though; correct?

6 A. No. They are held personally.

7 Q. Can you tell me why both of you transferred your  
8 Shares on that day?

9 A. Well, we were part of the family. John Tennant  
10 and Derek Tennant and Jim Tennant are cousins of mine  
11 through my mother, and so we have been in a number  
12 of--particularly Derek and I have been in a number of  
13 business partnerships previously, and we like to keep the  
14 voting together, so that was why--that was our motive to  
15 do that.

16 Q. Okay. What did you receive in exchange for  
17 those Shares? I know you mentioned earlier that this was  
18 when you received a spot on the Board of the Claimant.  
19 What else did you receive, if anything, for that transfer?

20 A. Marilyn received 22.5 percent of the Tennant  
21 Travel Shares, and I received the same amount.

22 Q. So--I'm sorry, can you repeat that for me,  
23 Mr. Pennie?

24 A. Marilyn received 22.5 percent of the Tennant  
25 Travel Shares, and I received the same amount.

1 Q. And so, in return for transferring your Shares  
2 to Tennant Travel--I'm sorry, can you give me one second,  
3 Mr. Pennie.

4 A. Certainly, Ms. Squires.

5 (Pause.)

6 Q. Okay. So, Mr. Pennie, apologies for that.

7 So, if I understand correctly, you and Marilyn  
8 both received shares in Tennant Travel; is that correct?

9 A. Yes, I'm confirming that.

10 Q. Okay. And who gave you those Shares?

11 A. It would have been generated by Jim Tennant.

12 Q. Okay. So, Jim Tennant gave you and your wife  
13 shares in Tennant Travel?

14 A. Yes.

15 Q. And this is in 2015; correct?

16 A. Yes.

17 Q. And we don't have any documents demonstrating  
18 this. Was that all done orally, Mr. Pennie?

19 A. Yeah, I don't think that we had the paperwork  
20 because the intention was to change the name of the  
21 company.

22 Q. Okay, no documents.

23 Okay. I'm going to ask you one more question on  
24 this, Mr. Pennie. Are you still an owner of Tennant  
25 Travel Services or Tennant Energy as it's now known?

1 A. I am.

2 Q. And who are the owners?

3 (Overlapping speakers.)

4 Q. Sorry.

5 A. John Tennant has 45 percent, and Jim Tennant has  
6 10 percent, and Marilyn and I each have 22.5 percent.

7 There has been no change.

8 Q. Okay. Thank you, Mr. Pennie.

9 Let's stay on these ledgers for one more minute,  
10 and let's turn to C-118, which is another--the ledger from  
11 November 25, 2009, and I see you have 5.6 percent shares  
12 in Skyway 127 at this time; correct?

13 A. Yes.

14 Q. And you maintain this 5.6 percent ownership  
15 until December 2011; is that right?

16 A. Can you show me December 2011?

17 Q. Absolutely.

18 Let's go to Exhibit C-114. And if we look  
19 there, the line with your name, we see now you've moved up  
20 to 11.3 percent.

21 A. Yes.

22 Q. Okay. So, I'm sorry for the jumping around, but  
23 I do want to move to C-116 for a minute, and we will come  
24 back to this shortly after, but let's go to C-116. This  
25 is the June 9, Shareholder Ledger. And if we look at the

1 bottom there, it notes that Premier Renewable is  
2 transferring shares to GE Energy.

3 Do you see that?

4 A. Yes.

5 Q. And that's bringing GE Energy's ownership in  
6 Skyway 127 Inc. up to 50 percent; correct?

7 A. Correct.

8 I might mention GE Energy was a New York-based  
9 company.

10 Q. Okay. I see that there in the ledger  
11 recognizing New York.

12 At Paragraph 59 of your Witness Statement,  
13 Mr. Pennie, you say that GE became a 50 percent partner in  
14 Skyway 127 on December 30, 2011. Am I correct to say that  
15 that should, in fact, say June 9, 2011?

16 A. It would seem so.

17 Q. Okay. I would like to go back to that December  
18 ledger that was Exhibit C-114.

19 Now, at this time, in December 2011, Derek  
20 Tennant and I.Q. Properties no longer owned shares in  
21 Skyway 127 Inc.; is that right?

22 A. Correct.

23 Q. And this document is still noting that  
24 50 percent ownership by GE Energy; correct?

25 A. Yes.

1 Q. Okay. So, let's move ahead, then, to the next  
2 ledger we have on the record and that's the one dated  
3 January 15, 2015. So, three or four years later. We will  
4 move on that. That's C-115, Gen. Perfect.

5 Now, we see at this point in time, GE is no  
6 longer a shareholder in Skyway 127 Inc.; is that right?

7 A. Correct.

8 Q. Okay. And we see here towards the bottom, if  
9 you can just scroll down, Gen, you are transferring  
10 437,500 Shares to Tennant Travel. We spoke about that a  
11 few minutes ago; is that right?

12 A. Yes.

13 Q. So--and that represents 11.3 percent; correct?

14 A. Yes.

15 Q. So, we just looked at the December ledger, and  
16 you had 437,500 Shares or 11.3 percent. This document is  
17 showing you transferring that same amount of shares to  
18 Tennant Energy, but if we look at the ledger, it's showing  
19 that you still have 93,750 Common B Shares and 875,000  
20 Common Shares or 25 percent ownership in Skyway. Where  
21 did those additional shares come from, Mr. Pennie?

22 A. Can we go to the previous Minute Book record?

23 Q. Sure, the December 2011? So, that's Exhibit  
24 C-114, Gen.

25 So, we see here that you have 437,500.

1 A. If we look at the transfers down below.

2 Q. Yeah.

3 A. So there is the answer, came from Premier  
4 Renewable.

5 Q. So, I'm not sure if that's the answer, actually,  
6 Mr. Pennie. When we're seeing--so this is the ledger,  
7 you're getting in this one 218,700--it's cut off on my  
8 screen but 218,700 Shares, and that's bringing your total  
9 to, if we scroll up, 11.3 percent, so 437,500. So, as of  
10 this date, December 2011, you have 437,500 Shares in  
11 Skyway 127 Inc.; correct?

12 A. Right.

13 Q. So, let's go to the January 2015 ledger again.  
14 That's C-115, Jen.

15 In this ledger, we see you transferring that  
16 exact amount of shares that you had in December 2011 to  
17 Tennant Travel Services, but the ledger is still showing  
18 you, though, as having around 93,000 Common B Shares and  
19 875,000 Common Shares, so my question to you is: Where  
20 did those Shares come from? Because you seem to have  
21 gotten additional shares in Skyway 127 Inc. somewhere  
22 between December 2011 and January 2015? We don't have a  
23 ledger for that, so I'm wondering where those Shares came  
24 from.

25 A. Often the top of my head I can't recall, but it

1 seems to me we're missing a page here.

2 Q. Okay. Apologies to jumping back one more time.  
3 Let's go back to that December ledger. Sorry, my mistake.  
4 Before I move here, I do want to make a note, you agree  
5 that Derek Tennant has the same amount of shares as you do  
6 in January 15, 2015; correct?

7 A. Is that the date above?

8 Q. Yes, we can scroll up so you can see.

9 A. Yes, I agree.

10 Q. Okay. So, we discussed a minute ago that Derek  
11 did not have any shares in December 2011, so in addition  
12 to you receiving shares in that intervening period, Derek  
13 also received some shares in that period; correct?

14 A. Yes.

15 Q. Okay. Let's go back to the December ledger (C-  
16 114).

17 Mr. Pennie, here we see that GE Energy has  
18 187,500 Common B Shares and 1,750,000 Common Shares. If  
19 you divide that number by two, it works out to the same  
20 amount of shares that yourself and Derek Tennant then had  
21 in January 2015.

22 Did the Shares that you received come from  
23 General Electric?

24 A. Must have. I think we're missing a page here.

25 Q. We're missing a ledger. So, somewhere in

1 between December 30, 2015 and January 2015, there is a  
2 ledger reporting a Shareholder transaction whereby shares  
3 went from GE Energy to you and Derek Tennant; is that  
4 correct?

5 A. Well, that seems to be the obvious conclusion.  
6 I don't remember. There was a lot of transactions between  
7 Premier and GE over this issue and that issue and so on  
8 and so forth. So, I don't remember that precisely, and I  
9 have to refer to the record.

10 Q. Okay. And can you confirm for me again, both  
11 you and Derek are not American nationals; correct?

12 A. We're not.

13 Q. Now, I'm going to turn to Paragraph 67 of your  
14 Witness Statement (CWS-1), and haul this up on the screen,  
15 stay in confidential for just a minute.

16 A. Paragraph what?

17 Q. Paragraph 67.

18 A. Okay.

19 Q. It says there on June 30, 2016, GE Energy later  
20 transferred its Shares in Skyway 127 to Tennant in  
21 exchange for consideration, and it mentions the right to  
22 sell turbines.

23 Do you see that?

24 A. Yes.

25 Q. GE didn't own any shares in June 2016, so this

1 is, in fact, an incorrect date?

2 A. Shall we go back to the Share Register?

3 Q. Absolutely the January one, or the December?

4 A. The one after 2015.

5 Q. Okay. The January 2015 ledger. The C-115, Gen.  
6 If we look at this ledger, we do not see GE Energy  
7 anywhere.

8 A. Looks like that may have been an error in my 67;  
9 it should be 2015. I'd have to check to the registers  
10 more precisely.

11 Q. Are you aware--and I appreciate that you might  
12 not have the document--we don't have any documents--the  
13 ledgers to present to you, Mr. Pennie, unfortunately, in  
14 that intervening period. Do you know if GE held any  
15 shares after 2014?

16 A. After 2014?

17 Q. Yes.

18 A. When was the transfer to Tennant Travel? When  
19 was the date of that?

20 Q. So, my understanding from the ledgers,  
21 Mr. Pennie, is that, and from your testimony just now, is  
22 that a logical conclusion is that the GE Shares were  
23 transferred to yourself and Derek sometime between  
24 December 2011 and January 2015 and then in turn you  
25 transferred some shares to Tennant Travel in January 2015

1 retaining some shares which, in fact, you then perhaps  
2 transferred to Tennant Travel in a ledger later on, but we  
3 don't have any ledger after December 2015.

4           And my question is we don't have any record of  
5 any shares going directly from GE Energy to Tennant Travel  
6 Services, and I'm trying to establish if that did, in  
7 fact, occur, and if you have any knowledge of that.

8           A.    Yes, it did occur, and I don't know why you  
9 don't have that exhibit.

10          Q.    Okay. Do you recall when that occurred?

11          A.    Not precisely, no.

12          Q.    Okay.

13          A.    It was certainly after 2014. I think it was  
14 more--it may have been 2016. I don't recall.

15          Q.    And I don't mean to belabor this point much  
16 further, but if GE was to transfer shares to Tennant  
17 Energy in 2016, if GE did not own shares on January 15,  
18 2015, so there also must be a shareholder somewhere where  
19 GE regained shares in Skyway 127 and then transfers them  
20 on to Tennant Energy; correct?

21          A.    That actually--my recollection is that did  
22 occur.

23          Q.    So, there was a break in GE's ownership of the  
24 Shares whereby yourself and Derek owned the Shares?

25          A.    I don't know. I would have to see the missing

1 pages.

2 Q. Okay. I appreciate that, Mr. Pennie. Just a  
3 few more moments in confidential session. I want to take  
4 a minute to explore the way in which decisions were made  
5 or voting took place at Skyway 127 because as you  
6 mentioned, a lot of this was done orally given that this  
7 was a family business, and we don't have any documents on  
8 the record, so I have a few questions for you.

9 Let's look at the Claimant's Reply submission,  
10 and I want to look at Paragraph 154.

11 ARBITRATOR BETHLEHEM: Ms. Squires, can I just  
12 clarify, when you talk about the Claimant's Reply  
13 submissions you're, in fact, talking about the document  
14 that's described as Counter-Memorial on Jurisdiction?

15 MS. SQUIRES: I am, in fact. It has a dual  
16 title.

17 BY MS. SQUIRES:

18 Q. If we look at this paragraph, it says there the  
19 Claimant is talking about when Tennant Energy--when John  
20 Tennant, my apologies, obtained additional shares in  
21 Skyway 127 in December 2011, and it's noting that John  
22 Tennant informed yourself and Derek Tennant that the trust  
23 would continue to vote the Shares with Derek and John  
24 Pennie to control the Company.

25 Do you see that?

1           A.    I see that.

2           Q.    So, this paragraph is saying that Derek, John  
3 and yourself were voting shares in a common manner in  
4 December 2011; correct?

5           A.    Well, if we agreed to vote together, it isn't  
6 automatic.

7           Q.    All right.  If you agreed.

8                    Now, a few minutes ago, we looked at Exhibit  
9 C-114, and that was the ledger from December 30, 2011, and  
10 we established that Derek did not appear on that ledger.

11                   So, Derek could not be part of a voting bloc at  
12 that time if he did not have any shares in the company to  
13 vote; is that correct?

14           A.    No, he could not.

15           Q.    Okay.  So, is that paragraph in the Reply  
16 incorrect?

17           A.    I don't know the answer because I don't  
18 remember, and I don't have the other Share Registers to  
19 refer to to clarify these dates, so I don't know the  
20 answer.

21           Q.    Okay.  Perhaps I can take you a minute,  
22 Mr. Pennie, to Derek's Witness Statement (CWS-3), it may  
23 help refresh your memory a little bit, and we'll turn to  
24 Paragraph 25.

25                   So, Derek is saying there that he knows that in

1 April 2011, you, your wife Marilyn would pool your votes  
2 in Skyway 127 together with John Tennant. Do you see  
3 that?

4 A. I see that.

5 Q. So, is the voting bloc that is discussed  
6 throughout the Claimant's submissions in this arbitration,  
7 is it Derek, John and yourself or is it Marilyn, John  
8 Tennant and yourself?

9 A. Well, in Tennant Energy, Derek did not have any  
10 shares in Tennant Energy, so it was my wife and I and John  
11 Tennant and Jim Tennant.

12 Q. Paragraph 25, Mr. Pennie is referring to both in  
13 Skyway 127, so the voting bloc for Skyway 127, was that  
14 yourself, John Tennant, and Marilyn; is that correct? Am  
15 I reading that right?

16 A. John Tennant was a Trustee.

17 Q. Okay.

18 A. I'm getting confused. I don't understand the  
19 question.

20 Q. I guess I'm trying to figure out which three  
21 individuals were part of the voting bloc that alleged  
22 control over the--over Skyway 127, but we can move on, if  
23 you like.

24 A. You're getting me confused about who owned  
25 shares when because there were a number of transfers back

1 and forth between GE, Premier, and the individual  
2 Shareholders, so to answer that other than John Tennant  
3 had control of--as a Trustee of the Shares that went to  
4 him from Derek--or not from Derek but from I.Q. Properties  
5 on April 26, 2011, that would be correct.

6 Q. Okay. So, I agree with you, Mr. Pennie, it is a  
7 little bit confusing, given the few documents that we have  
8 on the record and the corrections that are being made  
9 throughout the various submissions, but let's go back to  
10 Exhibit C-114 for a minute.

11 This is that December 30th, 2011 Shareholder,  
12 and as I mentioned back at the very beginning of our time  
13 this morning, control over Skyway 127 as pleaded by the  
14 Claimant was in December 30th, 2011, so at this time. And  
15 I want to look at this because I note there that yourself,  
16 Marilyn and John Tennant, you make up about 45.2 percent  
17 of the Shares in a company; correct?

18 A. Can you blow that up? I can't see it.

19 Q. Yes, absolutely. I appreciate it's quite small.

20 A. Yes.

21 Q. So, you don't make up 50 percent of the voting  
22 shares in the Company; correct? Just a question of math,  
23 that 42.5 is less than 50; correct?

24 A. Correct.

25 Q. So, you owned less than GE Energy which owned

1 50 percent; correct?

2 A. Yes.

3 Q. Now, you say that GE was a silent partner, but  
4 at Paragraph 51 of your Witness Statement (CWS-1), you  
5 note that GE continued its commitment to provide equity  
6 for the entire project; correct?

7 A. Let me look at Paragraph 51.

8 Q. Absolutely. Take your time.

9 A. Sorry, now what is the question?

10 Q. So, my question is, we see that GE is holding  
11 50 percent shares, and you noted at Paragraph 51 that GE  
12 continued its commitment to provide equity for the  
13 Project, so I want to make sure I understand that GE is  
14 providing--they are providing the full equity for the  
15 Project; correct?

16 A. Not the full equity. We already had equity in  
17 it, but yes, they were providing a majority of the equity.

18 Q. So, if I understand correctly again, your  
19 statement is GE was providing funding for the Project but  
20 it did not exercise any votes or participate in any  
21 Shareholder Meetings; is that correct?

22 A. No, I didn't participate in the meetings.

23 Q. And you have no documentation demonstrating GE's  
24 failure to participate?

25 A. No.

1 Q. Okay. And again, was there any document that  
2 demonstrated this voting bloc? Was this written down, or  
3 was that an oral agreement?

4 A. It was oral. It's family business.

5 Q. Okay. So, the voting bloc was oral, GE Energy's  
6 decision not to vote was also communicated to you orally?  
7 Is that right?

8 A. They didn't really have an interest in  
9 participating in the details of the business. They had an  
10 interest in providing funding of turbines, so no, they  
11 didn't want to be involved in voting or discussions.

12 Q. I think we can move out of the confidential  
13 session now and we'll get away from these tiny Shareholder  
14 Ledgers for a few minutes. If I could just know when  
15 we're out.

16 (Attorneys' Eyes Only session ends.)

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OPEN SESSION

SECRETARY ARAGÓN CARDIEL: We're back live.

MS. SQUIRES: Okay, thank you.

BY MS. SQUIRES:

Q. Really just a few more questions for you, Mr. Pennie, I appreciate that this has been going on for quite some time. You testified that you were aware that the Mesa arbitration was ongoing; is that right?

A. Yes.

Q. And can you tell me why you did not attend the Mesa Hearing in 2014?

A. Well, the press coverage of the Mesa allegations, some of the allegations, and then in different things that I read, for example, in the Globe and Mail in the middle of July 2011 (R-059), the Minister of Energy, Brad Duguid, had said everything was done properly, so Mesa was making allegations. They were behind us in the queue. I had a letter from Joanne Butler, the Vice President of OPA, saying that in the next round we were still in the queue. We were higher ranked than Mesa, so I wasn't concerned about people behind me of what their complaints were because they didn't get a contract. I wasn't complaining I didn't get a contract; I was expecting to get one in the next round. So no, I didn't follow that.

1 Q. So, you followed the proceeding in the media,  
2 but you did not--

3 A. I didn't follow it in the media. Sometimes I  
4 would see it in the media.

5 Q. Okay. Are you aware that the Mesa Tribunal held  
6 that all the measures at issue in this arbitration were  
7 consistent with the NAFTA?

8 A. Can you ask that question again?

9 Q. I'm asking if you're aware that the Tribunal in  
10 Mesa Power held that all of the Measures that Tennant  
11 Energy says violate Article 1105 of the NAFTA were, in  
12 fact, consistent with the NAFTA?

13 A. I'm not a legal expert. I can't answer that.  
14 Our case is not the Mesa case. Ours is a totally  
15 different case.

16 Q. Okay. Did you read the Mesa Award (RLA-001)  
17 when it came out?

18 A. I think I did review it, but I don't remember  
19 anything about it.

20 Q. Okay. Let's turn to Exhibit C-027.

21 Now, this document was filed as an exhibit with  
22 the Claimant's submissions in the--this arbitration. It  
23 will give Gen a minute to get it up there.

24 (Pause.)

25 MS. BARLOW: Just a moment. I'm just having a

1 little bit of technical difficulty.

2 MS. SQUIRES: No worries.

3 (Pause.)

4 MS. SQUIRES: Would it help, Gen, if I moved on  
5 a little further and come back to this one or is it a  
6 problem over all with accessing exhibits?

7 MS. BARLOW: Unfortunately, it was a problem  
8 over all but let me go ahead and restart my program. I  
9 should have it up in a couple of seconds.

10 MS. SQUIRES: Okay.

11 (Pause.)

12 BY MS. SQUIRES:

13 Q. Here we go. So, this is Exhibit C-027, and it  
14 was filed with the Claimant's submission in this  
15 arbitration, and in this index, it was filed as dated  
16 September 1st, 2011, and it was entitled "Skyway 127  
17 Project history attachments only." And I'm wondering if  
18 you could help me understand this document a little bit,  
19 Mr. Pennie.

20 Maybe we will just skip ahead to Page 4 to  
21 start.

22 Now, this is a letter that you received from  
23 Joanne Butler at the Ontario Power Authority on July 4,  
24 2011, indicating that Skyway 127 was not successful in  
25 receiving a contract on that date; is that right?

1           A.    That said that but--I can't read it, but it also  
2 says as I recall, they were still in the--at this time,  
3 the Project will remain in the priority ranking and  
4 proceed to the Economic Connection Test the following--no.  
5 Any way, it says that we're going to remain in the  
6 priority ranking.

7           Q.    Okay. Now, let's scroll up one page, and this  
8 is a list, it's dated June 6, 2011, and it reflects  
9 circuit availability of certain connection points and it  
10 lists transmission areas. Are you familiar with this  
11 document?

12          A.    I am.

13          Q.    Okay. And we will go up one more page to  
14 Page 2.

15                   Now, this is an OPA document from June 4th,  
16 2011, and it lists off projects that were ranked in the  
17 Bruce Transmission area.

18                   Do you see that?

19          A.    Yes.

20          Q.    And we see there that someone has drawn blue  
21 lines to strike out certain projects. At the bottom of  
22 the page there, it notes that the blue line means FIT  
23 Awards July 4th, 2011, after deduction for West of London.

24                   Do you see that?

25          A.    Yes.

1 Q. So, the ones crossed out by the blue lines,  
2 those are the ones that got FIT Contracts on July 4th by  
3 switching into the Bruce from the West of London Region;  
4 is that correct?

5 A. I don't remember if they were all switched over,  
6 but anyway, yes, they got Contracts.

7 Q. Now, we see that someone has highlighted the  
8 Skyway 127 Project there (drop in audio)--that was you?

9 A. That was me.

10 Q. So, did you create this document in  
11 September 2011, Mr. Pennie?

12 A. I printed it out from the OPA, and then I marked  
13 it up, yes.

14 Q. Okay. So, you would have also highlighted Mesa  
15 Power in the 9th spot at the same time in September 2011?

16 A. Yes, I did.

17 Q. Okay. So, this document then, in  
18 September 2011, you are comparing which document, which  
19 projects got contracts on July 4th, 2011, and you're aware  
20 that you did not get a project, and that Mesa Power also  
21 did not get a project because of that July 9, 2011  
22 Contract Award; is that correct?

23 A. What date did you say?

24 Q. July 4th, 2011.

25 A. Yeah, July 4th, 2011, I did not get a contract

1 or Skyway did not get a contract.

2 Q. Okay. Let's turn now to RLA-001, and I  
3 appreciate that this is a legal authority, but it's the  
4 Mesa Award, which, in this arbitration, is a little bit of  
5 an authority and a little bit of an exhibit, it's a bit of  
6 an anomaly, and I want to turn to Paragraph 678. The last  
7 sentence of this paragraph, you can see that the Tribunal  
8 is noting with respect to meeting that NextEra had with  
9 the Ministry of Energy in events of the June 3rd  
10 direction, they're noting that Mesa had not established  
11 that the content of these meetings differed in any  
12 relevant manner from the many meetings which the Ministry  
13 conducted in the normal course with Investors in the FIT  
14 Program.

15 Do you see that?

16 A. I see what it says.

17 Q. And I want to turn to Exhibit C-121, and I will  
18 have a question--I'm going to go to a couple of exhibits  
19 and then I will have a question for you to connect the  
20 dots. Let's turn to Exhibit C-121.

21 This is the public hearing Transcript of the  
22 Mesa Power Hearing, and if you scroll down to the third  
23 page, Gen, you can see that this is the day that Susan Lo  
24 was cross-examined and her testimony starts there around  
25 Page 5.

1           And you recall who Susan Lo is, Mr. Pennie?

2           A.    She was a Deputy Minister of Energy.

3           Q.    Let's turn--let's have a look at what Sue says  
4 there at a couple points, and let's turn to Page 159, Gen.  
5 I want to look at Line 13 to 14.

6           Sue was saying there, "I had a lot of meetings  
7 with proponents. That was my job."

8           Do you see that?

9           A.    I do.

10          Q.    And if we turn, just going a little bit further  
11 in her testimony at Page 183 at Line 19 to 22, she's  
12 saying: "My staff and I were always in regular forum with  
13 the industry and having regular meetings with Stakeholder  
14 groups."

15          Do you see that?

16          A.    Yes.

17          Q.    Mr. Pennie, that's a few examples showing  
18 meetings between fit Applicants and the Government,  
19 including Ms. Sue Lo herself, who the Claimant has taken  
20 particular issue with. Can you explain to me why Skyway  
21 127 did not reach out to take advantage of these  
22 opportunities that were available to FIT Proponents to  
23 learn more about the program or decisions that were being  
24 made?

25          A.    Well, I would take exception that we didn't

1 reach out.

2           Number 1, I attended all of the sessions in  
3 person which were day-long sessions, and I think the first  
4 round of sessions conducted by the OPA was 10 days over  
5 two weeks. That's my recollection anyway. I attended any  
6 conference calls the OPA had and identified myself as  
7 being on those conference calls.

8           In addition to that, I was in contact with Colin  
9 Anderson, the President of the OPA, usually by phone. I  
10 was in contact with Shawn Cronkwright who was in charge of  
11 the FIT Program, and Jim MacDougall, another officer of  
12 the OPA, constantly to make sure that we were complying  
13 and that what we needed to do to be successful.

14           Q. Mr. Pennie, I note that in response to your  
15 question that you've listed out quite a few individuals  
16 who were witnesses in the Mesa arbitration.

17           In the context of your discussions with those  
18 individuals, did you ever ask about the reasoning behind  
19 the June 3rd direction, about the Mesa Power arbitration  
20 or anything in that respect?

21           A. Can you rephrase that question?

22           Q. Yes.

23           In answering my question, you referred to  
24 numerous individuals who you had contact with over the  
25 years, including Shawn Cronkwright, Jim MacDougall and

1 Colin Anderson at the OPA. Now, Shawn and Jim were both  
2 witnesses in the Mesa proceeding and testified quite  
3 heavily to meetings that they had with FIT Proponents, and  
4 I'm wondering in your conversations with them, did you  
5 ever inquire as to the nature of decisions that were being  
6 made with respect to the FIT Program, about the Mesa  
7 arbitration, specifically given you knew it was ongoing?  
8 I'm wondering if you ever took--if you ever used those  
9 meetings as opportunities to learn about the Mesa  
10 proceeding or how decisions were being made within the  
11 Government?

12 A. Hmm, so we had a relationship with those  
13 individuals and with the OPA over many of our RESOP  
14 projects that had been going on for almost ten years, and  
15 we were still expecting until the FIT Program was  
16 terminated in 2013 that we might receive a contract  
17 because we were next in the queue and there was  
18 450 megawatts still available. So, in any conversations I  
19 had, I did not say anything such as you're suggesting. I  
20 did say is everything being--continue to be according to  
21 the FIT Rules, and I was assured it was. Was there  
22 anything that I had to know that was different that may  
23 have occurred that I should be aware of, and I was assured  
24 not, that I did not have--that that was not the case or I  
25 didn't need any additional information.

1           So, that was the way I characterized it because  
2 I was trying to be polite, courteous, and continue as a  
3 potential firm to get another contract.

4           Q.    Okay.  So, you would agree with me, then, that  
5 these individuals from the OPA were happy to meet and to  
6 discuss and answer your questions as addressed.

7           A.    Yeah, in regard to this--in regard to the FIT  
8 Program Rules, but I was not aware that there were  
9 conversations going on that were getting around the FIT  
10 Program Rules and that they were actually carried out.  In  
11 fact, it's part of a conspiracy, and I wasn't aware of the  
12 Breakfast Club, and I wasn't aware until 2020 about code  
13 words about projects and so on.

14           So, I wasn't aware that IPC where Mike Crawley,  
15 the President of IPC, International Power Corporation, who  
16 was the President of the Ontario Liberal Party and then  
17 subsequently the President of the Canadian Liberal Party,  
18 was able to get preferential treatment out of the West of  
19 London zone through the Breakfast Meeting decisions.  I  
20 was not aware of any of that.

21           Q.    Okay.  Okay, Mr. Pennie, I'm going to ask you  
22 something different.  I may come back to that in a second,  
23 but give me a minute to sort my thoughts while I ask you  
24 about something else.

25           Let's turn to the Canada's Counter-Memorial in

1 the Mesa proceedings and it's Exhibit C-117--C-177.

2 Sorry, Gen. It helps if you have the exhibit number,  
3 C-177.

4 And I want to look at Paragraph 159.

5 A. What is the date of this?

6 Q. February 28, 2014. You can see there in the top  
7 right-hand corner.

8 A. Yes.

9 Q. Okay. And we'll look at Paragraph 159.

10 So, these are Canada's arguments in the  
11 arbitration, and it's making reference there to the Skyway  
12 127 Wind Energy Project, making this reference on  
13 February 28, 2014. It's noting there that Skyway also  
14 submitted a letter from GE as supplier.

15 Do you see that?

16 A. Yes.

17 Q. And at the end of the sentence, we can see that  
18 Canada is citing to Footnote 371, and if, Gen, if I could  
19 take you down to 371, you see that there is a letter  
20 there--there we go--from GE to Premier Renewable on that  
21 date, November 29--November 27--sorry--2009.

22 Do you see that?

23 A. Yes.

24 Q. Now, Mr. Pennie, you were the individual who  
25 provided consent for the OPA to release the Skyway 127 FIT

1 Application for use in the Mesa proceeding; is that  
2 correct?

3 A. I don't remember doing that, no.

4 Q. Okay. The FIT Application when submitted to the  
5 Ontario Power Authority, that was submitted on a  
6 confidential basis; correct? The OPA could not just  
7 distribute it to whoever they wanted?

8 A. Right.

9 Q. So, someone at Skyway 127 would have had to  
10 consent for Canada to be able to obtain the FIT  
11 Application for use in Mesa Power; correct?

12 A. Yes.

13 Q. To your recollection, then, no one at Skyway  
14 when providing that consent asked how the Skyway 127  
15 application may be relevant to this arbitration?

16 A. I don't even recall giving that permission.

17 Q. Okay. But someone would have.

18 A. Well, maybe it was Pim de Ridder. I don't know.

19 Q. Mr. Pennie, your first request for information  
20 with respect to the Mesa case was when you sought out  
21 Mr. Appleton in June of 2015; is that correct?

22 A. I don't remember. It was not prior to that, no.

23 Q. Your Witness Statement (CWS-1) notes that your  
24 first--you first sought out Mr. Appleton in June of 2015.  
25 Is that date still correct?

1           A.    Yes.

2           Q.    Now, did you read any pleadings that were  
3 available in that case prior to meeting with Mr. Appleton,  
4 or is that the first time you obtained any documents for  
5 the arbitration, for the Mesa Power arbitration?

6           A.    Well, we're talking over a period of basically,  
7 I don't know, seven or eight years, and there are many,  
8 many documents, thousands of documents, and to remember  
9 exactly when I read any specific document, I can't other  
10 than the only document that impressed me with shocking  
11 revelations was one I read after August 15th, 2015, the  
12 hearing brief of Mesa Power (C-017). So, prior to that, I  
13 might have read something, but it wouldn't have been much  
14 before, I don't think, March of 2015, but anyway, that was  
15 the only one I found shocking. Otherwise, it was just any  
16 document that I had looked at, it seemed like Canada was  
17 denying, denying, denying, and Mesa was accusing,  
18 accusing, accusing, so that didn't help me at all.

19          Q.    Okay. What date did you retain counsel--retain  
20 Mr. Appleton and Mr. Mullins as your counsel in this  
21 arbitration?

22          A.    Hmm. I think it was 2017.

23          Q.    Do you know what date that would be in 2017?

24          A.    I don't remember, no.

25          Q.    I believe yesterday your counsel said it was

1 March 2017. Does that sound right?

2 A. Yeah, that's probably correct.

3 Q. Okay. The Notice of Arbitration--or the Notice  
4 of Intent--my apologies--was filed by Tennant Energy on  
5 March 2nd, 2017. So, am I correct to say that counsel was  
6 retained and the NoA was filed within a one-day period?

7 A. Well, that would have been around the same time,  
8 yes.

9 Q. Okay, so the NoI was put together in one night.

10 A. Well, I don't know that.

11 Q. Okay, Mr. Pennie.

12 Can you give me one moment? I'm going to  
13 consult with my colleague.

14 We may be done here this morning, which would make a  
15 very early finish to the day for some us. Some us are  
16 into the evening for sure, but could you give me one  
17 moment, Mr. Pennie.

18 (Pause.)

19 Q. All right, Mr. Pennie, I think I am finished  
20 with you for now. We will hand it over to the Tribunal  
21 for questions or your counsel for redirect.

22 (Overlapping speakers.)

23 A. (Unclear.)

24 Q. I appreciate the time, Mr. Pennie, and I know  
25 it's so hard to do this virtually, but I do appreciate

1 that.

2 A. Thank you, Ms. Squires.

3 PRESIDENT BULL: Thank you, Ms. Squires.

4 Mr. Pennie, I have a question, and it's just a  
5 detail I wanted to clarify. You were asked some questions  
6 about the media reports on the Mesa Power arbitration;  
7 right? You recall that?

8 THE WITNESS: Yeah.

9 PRESIDENT BULL: So, what I wanted to ask you  
10 was you said that you saw some of these media reports, and  
11 my question is: When you noticed media reports about the  
12 Mesa Power case, would you have read those media reports  
13 that you noticed? Or would you not have read the text of  
14 the articles that you saw?

15 THE WITNESS: Well, one I do remember which I  
16 read was a Globe and Mail (R-059) which reported on what  
17 you call notice of--I forgot what it was that Mesa files  
18 initially, but it was--I do remember it was around the  
19 middle of July in 2011 after the Contracts had been let,  
20 that--and Globe and Mail, Mr. President, is Canada's  
21 premier business newspaper, so usually their reporting is  
22 fairly good and usually balanced, so they had some claims  
23 that Mesa was making, that T. Boone Pickens was making, a  
24 big picture of him.

25 And then they had a quote, a fairly extensive

1 quote from Brad Duguid, the Minister of Energy, saying  
2 that this is all unfounded--I'm characterizing here--all  
3 unfounded, that everything in the FIT Program had been  
4 followed by the rule of law, and so--but I've been dealing  
5 with the Government of Ontario all my life, and so I had  
6 no reason to suspect that anything was happening in terms  
7 of what I later learned was a conspiracy.

8           So, you know, I read about it and moved on with  
9 things like we were in the process of having to renew our  
10 leases on 6,800 acres because we had this letter from  
11 Joanne Butler, so we decided to focus on that; they had to  
12 be renewed for another three years, under the expectation  
13 we were still in the priority ranking, as I had marked up  
14 that document that Ms. Squires showed us (C-027). So,  
15 Mesa was lower in the queue than us. They were making  
16 some complaints because they didn't get a contract. I  
17 didn't see that to be anything but complaints. And the  
18 Minister of Energy was assuring us that is--that's all it  
19 is, is complaints, so--disappointment, you know, so what?  
20 You didn't get a contract, so now you're going to sue  
21 people? That didn't make sense to me, so I didn't feel  
22 there was anything valuable in following that.

23           PRESIDENT BULL: So, Mr. Pennie, coming back to  
24 my question, it seems that when you saw that one  
25 particular article that you've just been talking about (R-

1 059), you did read it in full; right?

2 THE WITNESS: I did.

3 PRESIDENT BULL: Right. So, you would have seen  
4 more than one article about the Mesa Power case; right?

5 THE WITNESS: Well, there are other articles. I  
6 don't think I read them all in detail, no.

7 PRESIDENT BULL: That's what I wanted to know.  
8 Thank you.

9 Do my colleagues have any questions before I ask  
10 counsel to re-examine?

11 QUESTIONS FROM THE TRIBUNAL

12 ARBITRATOR BISHOP: I think I may have one  
13 question about--if we can take him back to Paragraph 48  
14 for a moment of his Witness Statement.

15 ARBITRATOR BETHLEHEM: And that just was the  
16 confidential one, wasn't it, in case, Doak, you want to go  
17 into confidential mode?

18 ARBITRATOR BISHOP: Well, perhaps we need to.  
19 I'm not sure.

20 PRESIDENT BULL: Perhaps that would just be  
21 safer.

22 MS. SQUIRES: That is correct. That is a  
23 confidential paragraph in the Witness Statement.

24 ARBITRATOR BISHOP: Okay.

25 (End of open session. Attorneys' Eyes Only

1 session begins.)

1 ATTORNEYS' EYES ONLY SESSION

2 ARBITRATOR BISHOP: Just tell me when I go  
3 forward.

4 SECRETARY ARAGÓN CARDIEL: Bear with me, please.

5 ARBITRATOR BISHOP: Sure.

6 Maybe it will take longer to go into  
7 confidential session than my question will last.

8 SECRETARY ARAGÓN CARDIEL: Please go ahead,  
9 Mr. Bishop.

10 ARBITRATOR BISHOP: Yes.

11 The third line from the bottom of  
12 Paragraph 48--I know you were asked about this earlier,  
13 but it says that John Tennant held the Skyway 127 Shares  
14 issued to him from now Premier in December 2011 in Trust  
15 for the benefit of a still undesignated Holding Company.  
16 And I know you were asked about that. Did you say that at  
17 that point in December 2011 there was no designated  
18 Holding Company for the Shares to be held in Trust for?  
19 Is that correct?

20 THE WITNESS: Yeah. I don't think it was  
21 designated at that point, but I can't remember.

22 ARBITRATOR BISHOP: Okay. And when was a  
23 holding company designated as the beneficiary of this oral  
24 trust, as you understand it?

25 THE WITNESS: Well, either around that time or

1 subsequent to that, John had had a discussion with his  
2 brother, Jim, about acquiring Tennant Travel, and whenever  
3 that happened, he informed me of that.

4 ARBITRATOR BISHOP: Do you remember when that  
5 was?

6 THE WITNESS: I don't.

7 ARBITRATOR BISHOP: You may not--you may know or  
8 you may not know this, the answer to this question, but  
9 can there be a trust for the benefit of an unknown  
10 beneficiary?

11 THE WITNESS: I'm sorry, Mr. Bishop. I'm not a  
12 lawyer. I don't think I can answer that question.

13 ARBITRATOR BISHOP: That's fair enough. Thank  
14 you. Those are the only questions I have.

15 ARBITRATOR BETHLEHEM: I have a number of  
16 questions or rather a question, but I don't know whether  
17 the material--I don't think any of it refers to  
18 Confidential Material, but perhaps we might just  
19 conveniently stay in confidential mode, and I wonder  
20 whether I could prevail, Ms. Squires, on your technical  
21 colleagues to put relevant material on the screen, if I  
22 could do that.

23 MS. SQUIRES: Yes, not a problem at all.

24 ARBITRATOR BETHLEHEM: Mr. Pennie, I want to  
25 just try and sort of clarify something or give you an

1 opportunity to address this, and let me sort of preface my  
2 question by saying that I fully understand what you said  
3 in your Witness Statement about when you came to know  
4 certain things on reading the Mesa Power--or seeing the  
5 Mesa Power Transcript or evidence. I understand that  
6 entirely and the dates associated with that.

7           What I'd like to do is just to take you quickly  
8 seriatim through a number of paragraphs in your Witness  
9 Statement and then just ask you a straightforward  
10 question, and I wonder, first of all, if we could call up  
11 Paragraph 32 of the Witness Statement, and you'll see  
12 there in the second sentence that it says, you say, "While  
13 we had placed into the group of successful candidates  
14 during the dry run, we were unfairly not awarded the FIT  
15 Contract."

16           You see that?

17           THE WITNESS: I see that.

18           ARBITRATOR BETHLEHEM: Could I then ask if we  
19 could call up Paragraph 42.

20           And you'll see the last sentence there: "While  
21 we had placed into the group of successful candidates  
22 during the dry run, we were unfairly treated and not  
23 awarded the FIT Contract," and those are both referenced  
24 in 2010.

25           Do you see that?

1 THE WITNESS: Yes.

2 PRESIDENT BULL: If we could then go to  
3 Paragraph 61, please.

4 Now, this is a slightly different formulation,  
5 which you'll see the last sentence: "So while we were not  
6 rejected on July 4th, 2011, we did not receive a contract  
7 on that date."

8 You see that?

9 THE WITNESS: I do.

10 ARBITRATOR BETHLEHEM: And then if we could go  
11 to Paragraph 75, please: "On June 3, 2011, the OPA issued  
12 a new set of rules to award Contracts to the FIT Program.  
13 The OPA did this without any prior notice being given to  
14 us. These new rules made significant changes to the FIT  
15 Program and the already existing rankings in the different  
16 regions."

17 You see that?

18 THE WITNESS: I do.

19 ARBITRATOR BETHLEHEM: And then to Paragraph 81,  
20 and you'll see there it says: "The June 11, 2011 Ontario  
21 Minister direction to reduce the amount of available  
22 transmission for the FIT Program went entirely against my  
23 expectation of how a FIT Program was to operate. It was  
24 grossly unfair and lacked even-handedness."

25 Do you see that?

1 THE WITNESS: I do.

2 ARBITRATOR BETHLEHEM: And then the last one  
3 that I'd like to take you to is to Paragraph 86 at the top  
4 of the next page: "Yet, in the Bruce Milton Transmission  
5 Project rule change on June 30, 2011, the Applicants could  
6 change to interconnect points outside the region.  
7 Unexpectedly and unfairly, they could suddenly be long  
8 transmission lines" et cetera, and you see that?

9 THE WITNESS: I see that.

10 ARBITRATOR BETHLEHEM: And, Mr. Pennie, my  
11 question to you, and it's straightforward and there's  
12 nothing sort of hidden in it. I just want to bring these  
13 issues to the fore so that your counsel and counsel for  
14 Canada can address these in due course, and I take it from  
15 these statements and other statements in your Witness  
16 Statement that in the period June to December 2011, you  
17 had, if I could put it in these terms--this is not your  
18 language--but an acute perception of unfairness and  
19 improper treatment. Is that an accurate reading of all of  
20 these statements?

21 THE WITNESS: Well, Sir Daniel, could I just  
22 explain something about the FIT Program in order to answer  
23 your question?

24 ARBITRATOR BETHLEHEM: Please do.

25 THE WITNESS: So in all of the meetings that I

1 attended and in the written material about the FIT  
2 Program, one of the guiding principles--there were two  
3 guiding principles in terms of connection--number 1. We  
4 could not aggregate former RESOP projects into a larger  
5 project like if you had--such as NextEra had six RESOP  
6 projects in the London zone that they didn't get contracts  
7 for, and they were able--they were allowed to aggregate  
8 those from six, 10 megawatts into sixty--I don't remember  
9 what the final number was, unfortunately, but anyway they  
10 were able to aggregate those into a larger project. So,  
11 that was a change that basically occurred through the  
12 Breakfast Club that I didn't know about. The second  
13 principle was that--and they drew charts and a lot of--I  
14 think we spent two days on this in the FIT sessions--that  
15 if the closest project to the transmission had priority  
16 over the other projects, so that is specifically why we  
17 set out to accumulate 6,800-acres at some expense, in the  
18 millions, in the Bruce area just northeast of the Bruce  
19 nuclear plant where a transmission line with two circuits  
20 on it went through, and we actually had transmission  
21 towers on lands that we leased.

22           So, our conclusion was we are the closest  
23 because we had zero connection distance to transmission.  
24 So, those were the principles.

25           So, the fact that all of a sudden the London

1 Transmission Zone was allowed in was a bit of a surprise.

2 But, so, yes, I was concerned about that and  
3 surprised about it, and I did feel it was unfair, but I  
4 was less concerned about that when I was told I was still  
5 in the priority ranking. I was next in the priority  
6 ranking according to my analysis of the contracts that had  
7 been let, and I knew that there was still 450 megawatts of  
8 available transmission in the Bruce and was assured by  
9 Colin Anderson and others that I spoke to in the OPA that  
10 they were still expecting another round of applications,  
11 so I wasn't concerned about leases' issues. They were  
12 behind me in priority ranking. I wasn't concerned about  
13 other projects; I was concerned about ours, and it looked  
14 like we were right there ready to go in the next round.

15 So, even though that was unfair, I was less  
16 concerned about it at that time. I didn't know the  
17 reasons of how it became unfair until 2015, and that was  
18 shocking.

19 ARBITRATOR BETHLEHEM: Mr. Pennie, thank you  
20 very much.

21 And, Ms. Squires, we can take the--we can clear  
22 the screen, I think, now.

23 Thank you, Mr. Pennie. That's very helpful in  
24 response. And, as I say, I did not want to draw you in  
25 necessarily into the fuller explanation which is set out

1 in your Witness Statement very clearly.

2 I just wanted to get your response, which I now  
3 have--thank you--about your sense of unfairness already in  
4 this period of June-December 2011. So, thank you very  
5 much. That's the only question that I have. Apologies  
6 for taking so much time.

7 THE WITNESS: Thank you, Sir Daniel.

8 PRESIDENT BULL: Is there any re-examination,  
9 Mr. Mullins?

10 MR. MULLINS: There is, but...

11 I wonder if this would be a good time to take  
12 our lunch break because I need to put some papers  
13 together, if that would work out. Otherwise, I would have  
14 to break my examination in the middle.

15 PRESIDENT BULL: Good. Then let's do that.

16 And just for our planning purposes, Mr. Mullins,  
17 would you have an estimates of how long you might be? I  
18 won't hold you to it.

19 MR. MULLINS: I have it. That's one of the  
20 things I need to figure out. It will take a little bit,  
21 so I'll have a better answer after lunch.

22 PRESIDENT BULL: Okay. Then let's take the  
23 half-hour break now, and we can come back after that.

24 MR. MULLINS: Actually, I think we scheduled a  
25 little bit longer than that. We have to get our--we had

1 some issues with our technology here, so I was wondering  
2 if we can take--I think we had scheduled at least 45  
3 minutes.

4 PRESIDENT BULL: You're right, Mr. Mullins.  
5 Thank you for reminding me. It is supposed to be a  
6 45-minute break, so let's do that, and we can come back.

7 MR. APPLETON: President Bull, I'm sorry. I  
8 barged in on Mr. Mullins' line here.

9 I'm told from our IT team that they would like  
10 to test out the microphone placement again, and that would  
11 need a few more minutes, and that's why I'm going to ask  
12 if a team is available at the PCA side or wherever to get  
13 this done and whether we might have another 15 minutes in  
14 the lunch period just so that we can get that technical  
15 part done so the microphones are working again. They  
16 think they have an idea, but they need to check it on the  
17 other side, and we don't want to have everybody on at that  
18 time, as you understand.

19 SECRETARY ARAGÓN CARDIEL: We will reach out to  
20 you very shortly, Mr. Appleton.

21 MR. APPLETON: But I'm asking the President if  
22 we could have an hour so that we have the 15 minutes in  
23 there so that we can get that fixed up.

24 ARBITRATOR BETHLEHEM: May I just ask a question  
25 on this? I mean it seems as if the technology is actually

1 now, with Mr. Mullins having moved seats, is actually  
2 working fine. I'm just wondering why we're extending a  
3 break in the middle of examination of a witness.

4 MR. APPLETON: It will only take 15 minutes and  
5 we have the people here. We're concerned that we won't  
6 have the IT people that know the set up at the end of the  
7 day because they started in the early morning, and so I'd  
8 like to make sure that if we have to have a part replaced,  
9 we can still it today. Otherwise, it could cause  
10 lingering problems as we go along because why I'd like to  
11 try to get it now because, by the time we are finished, I  
12 don't think we're going to have that person available.  
13 That's the only reason I'm asking for the extra--I'm only  
14 asking for 15 minutes.

15 PRESIDENT BULL: Okay. Let's do this. Let's  
16 take a 45-minute break, and I think--try and do what you  
17 can in that time period.

18 MR. APPLETON: Thank you.

19 (Recess.)

20 PRESIDENT BULL: I think we should proceed. In  
21 the interest of efficiency, let's move ahead.

22 And whilst we don't have live stream obviously,  
23 the recording will be available to the public, so we can  
24 proceed now with the redirect by Mr. Mullins.

25 So, let's have Mr. Pennie back on screen.

1                   Whenever you're ready, Mr. Mullins, please go  
2 ahead.

3   REDIRECT EXAMINATION

4                   BY MR. MULLINS:

5           Q.     Good afternoon, Mr. Pennie. Are you prepared to  
6 go forward?

7           A.     I am.

8           Q.     Remind us that you are the--can you tell us if  
9 you have an issue? You said you're 82 years old?

10          A.     Yes, I am.

11          Q.     Okay. Well, if you get tired, just tell me. I  
12 don't feel it's too long, but if you need to take a break,  
13 just tell me, okay?

14          A.     I will.

15          Q.     Mr. Pennie, I want to go through some testimony  
16 because I want to make sure that the record is clear.

17                   As I understand your testimony--and you tell me  
18 if I get this wrong--in April--on April 19, Mr. Tennant  
19 acquires the Shares as a bare trustee for a trust to be  
20 held in the future. Is that--is that your memory?

21          A.     The Trust was as of the date of April 19th  
22 for--to be designate--to be deposited or transferred to a  
23 company to be designated in the future, is my  
24 understanding.

25          Q.     Perfect.

1           What we're trying to do is pin down when that  
2 company was designated. And, in fact, if I recollect from  
3 Arbitrator Bishop, he asked you do you remember when that  
4 was, and you say "I don't remember." I wonder if we show  
5 you some documents that may help refresh your  
6 recollection. Is that possible?

7           A.    Yes.

8           Q.    Well, I want to show you is a--the Witness  
9 Statement that actually Ms. Squires showed you, could we  
10 put on the screen Witness Statement 3, CWS-3 Witness  
11 Statement. And if we go to Paragraph 25, and if I look in  
12 the record, Ms. Squires asked you to turn to Paragraph 25,  
13 and she read from you the second sentence in Paragraph 25,  
14 where it says John Pennie and his wife Marilyn Field would  
15 pool their votes in Skyway 127 together with my brother  
16 John's Trust voting power in Skyway 127, and you remember  
17 she asked you that; right?

18          A.    She did.

19          Q.    Is that a true statement, Mr. Pennie? That  
20 sentence? Is that what happened?

21          A.    Are we talking about the whole thing or the last  
22 sentence or what?

23          Q.    Let's just go one by one. The second sentence  
24 that she pointed to you, that's a true statement; right?

25          A.    Yes.

1 Q. Okay. She didn't go to the sentence right  
2 before it in the same paragraph, where your cousin Derek  
3 said: "I spoke with John Pennie and my brother John after  
4 designation of Tennant Travel Services for the Share  
5 Transfer on April 26, 2011."

6 Is that a true statement? Or does this refresh  
7 your recollection of when that conversation occurred?

8 A. It probably could have been. I don't remember,  
9 it's so long ago.

10 Q. Okay. The prior Paragraph 24 says: "John  
11 Pennie, my brother John and me got out of phone"--she  
12 didn't show you this paragraph either--"John Pennie, my  
13 brother John and me got on the phone to confirm the  
14 arrangement on April 26, 2011," and then it says: "My  
15 brother John said he was holding the Shares in Trust for  
16 Tennant Travel Services LLC. He explained the decision to  
17 use Jim Tennant's company as a listed company Tennant  
18 Travel." At least according to Derek Tennant, that  
19 occurred on April 26, 2011.

20 Do you have any reason to believe that that did  
21 not happen, Mr. Pennie?

22 A. Well, I know what was described happened, and  
23 since he says that was the date, I have no reason to  
24 believe that wasn't the date.

25 Q. Okay. So, when you go back to your Witness

1 Statement you corrected today, and if you go to  
2 Paragraph 51, where you talked about--we corrected the  
3 date April 2011, Paragraph 51--I will wait until we get it  
4 up on the screen for a second.

5 ARBITRATOR BETHLEHEM: That's got Confidential  
6 Information in it, doesn't it?

7 MR. MULLINS: I don't think--oh, maybe it does.

8 VOICE: We will give you the public version.

9 MR. MULLINS: The section I'm going to ask you  
10 doesn't have Confidential Information.

11 I was going to ask about the first sentence.

12 BY MR. MULLINS:

13 Q. The sentence we corrected, you changed that to  
14 April 2011, it says: "Since April 2011, the interest of  
15 Tennant Energy has effectively control of Skyway 127  
16 investment."

17 Can you explain why--what you mean by that?

18 A. Up through the Shares of John Tennant was  
19 holding in trust that were to be exchanged for Shares of  
20 Tennant Energy.

21 Q. And again, according to you, if you go to  
22 Paragraph 47, that occurred on April 19, 2011?

23 A. Yes.

24 Q. And you talk about--the next paragraph: "At the  
25 time we were very busy with Skyway with the FIT

1 Applications and John's shares were out registered in the  
2 Skyway 127 Corporate Books until June 2011." Can you  
3 explain about that, what was going on then?

4 A. We had already seven RESOP projects we were  
5 managing. We were waiting on the FIT Awards. We had  
6 other decisions to consider such as dealing with, I think  
7 it was, 50 landowners about renewing their leases for  
8 another three years, and so we were pretty busy.

9 Q. And you were shown some documents that showed  
10 that Mr. Tennant, as Trustee, held a minority shareholder  
11 interest and eventually got a larger share interest. Why  
12 would you say that Tennant Energy controlled effectively  
13 Skyway 127, given the shareholder interest it had? How do  
14 you explain that to the Tribunal?

15 A. Well, it was in an agreement we had with John  
16 that he would have--since he had become a significant  
17 shareholder, that he would have I wouldn't say "veto  
18 power" but certainly be consulted on any major decisions,  
19 and that we would, as a family, try to work together and  
20 follow those wishes.

21 Q. And so you're saying, because of that, Tennant  
22 Energy controlled it in terms of ultimately having the  
23 final decision-making? I'm trying to understand your  
24 testimony.

25 A. Well, definitely when Marilyn and I put our

1 shares into Tennant Energy was in control but by verbal  
2 agreement, it had the same effect prior to that.

3 Q. That's good.

4 Now, during--what is your position with Skyway  
5 127?

6 A. I'm the Director and the Corporate Secretary,  
7 and I manage--when there was a project, I managed the  
8 Project.

9 Q. And who was responsible for dealing with the  
10 day-to-day situations of Skyway 127?

11 A. I was.

12 Q. Again, in conjunction with this arrangement you  
13 just talked about?

14 A. Well, I wouldn't review day to day with Derek or  
15 John, and I would deal with day to day. Periodically, we  
16 would have one discussion about any other longer-term  
17 issues.

18 Q. Now, we--you spoke about what happened in 2011  
19 when--July 4, 2011, you discovered that there were FIT  
20 Contracts that were being awarded but Skyway 127 did  
21 not--Skyway 127 was not awarded one. Did you have any  
22 discussions internally about suing Canada at that point?

23 A. No, because we didn't see any need--because we  
24 didn't get a contract, what do you sue about? I didn't  
25 get a contract? I'm disappointed? You can't sue about

1 being disappointed.

2 Q. And however, Arbitrator Sir Daniel was asking  
3 about, well, you must have realized that there was  
4 disappointment and perhaps unfairness. Did you do  
5 anything to investigate this unfairness that might be  
6 present?

7 A. Yes. I did contact executives at the OPA over  
8 the next period of time, and--you know, as I had described  
9 earlier, tried to diplomatically determine from them if  
10 there are any things that I should be concerned about,  
11 whether there were any things going on that required my  
12 attention concerning the FIT process.

13 Q. What was the response?

14 A. Everything was fine. Everything was being  
15 followed according to the rule of law, according to the  
16 FIT policies.

17 Q. And did you ask them, "Well, what about IPC?  
18 What happened there?" Did you have any discussions of  
19 IPC?

20 A. I didn't have discussions about a specific  
21 company or competitor.

22 Q. When did you learn that IPC--that there had been  
23 a special arrangement with respect to IPC where they  
24 specifically made sure that--IPC was not going to be shut  
25 out of the FIT Awards? When did you learn that,

1 Mr. Pennie?

2 A. In at least the Post-Hearing Brief (C-017)  
3 became it publicly available of August 2015.

4 Q. At least that's when you looked at it; right?

5 A. Well, that's when it was available. It wasn't  
6 available before that--

7 Q. Okay.

8 A. --I recall.

9 Q. You also mentioned an article in the paper--I  
10 think it's the Globe and Mail--maybe we could pull that  
11 up. It's R-59.

12 This is a--you mentioned this article. Is this  
13 the article you're talking about?

14 A. This is the article, yes.

15 Q. Okay. And you mentioned that you saw some  
16 discussion. I'm going to point you to--I think you  
17 mentioned the Energy Minister Brad Duguid.

18 A. Yes. That's in here somewhere.

19 Q. I think we've highlighted for you there.

20 Is that the statement that you--

21 (Overlapping speakers.)

22 A. Yes.

23 The statement goes on the quote, "Ontario is a  
24 global leader in clean energy development, et cetera, et  
25 cetera, and our planning is creating thousands of jobs",

1 and it then goes on to say he rejected and makes the point  
2 that had been unfairly treated; that OPA runs an open,  
3 fair, and transparent process to award clean-energy  
4 contracts in the Feed-in-Tariff Program, and all companies  
5 are treated equally the same opportunities to participate,  
6 regardless of whether they are Ontario-based or  
7 internationally-based.

8           So, that was confirmed when I talked to folks at  
9 the Ontario Power Authority over the months following.

10           Q.    And this wasn't your first rodeo. Did you have  
11 any prior experience with Ontario in believing what they  
12 told you?

13           A.    Well, as I said, I have been in business 62  
14 years, and I have never run into a government ultimately  
15 saying things that were done by the rule of law and in  
16 actual fact discovering later that there was a conspiracy,  
17 that there were secret--secret meetings with [REDACTED]  
18 [REDACTED] and so on. All this to subvert the rights  
19 of the people following the rules of the program, so that  
20 was a shock. I never run into that before in 62 years. I  
21 worked with government people in Japan and England, in the  
22 United States and Canada, and never ran into that before.

23           Q.    And you--so you read this newspaper article (R-  
24 059), you tell us specifically who you spoke to after  
25 these articles come out and you find out that Mesa Power

1 had sued?

2 A. I can't tell you specific dates, but I could  
3 tell you people I did speak to were Colin Anderson, the  
4 President of the OPA; Shawn Cronkwright, who was in charge  
5 of the FIT Program; and Jim MacDougall. I spoke to  
6 Jim--well, I had spoken with Jim a number of times over  
7 the next year or so, and Jim left the OPA and I spoke  
8 to--talked to him after he left the OPA. Nobody ever gave  
9 me an indication of anything but basically what Brad  
10 Duguid said.

11 Q. Do you know Mr. Pickens?

12 A. No, I do not.

13 Q. Did you know anybody at Mesa Power?

14 A. I believe Mr. Pickens passed away. Isn't that--

15 Q. Well, yeah.

16 At that time, did you talk to anybody at Mesa  
17 Power about the Claim?

18 A. I did not talk to anybody in Mesa Power about  
19 the Claim.

20 Q. And--

21 A. What I would like to explain, they're a  
22 competitor, and they were behind me in the queue, so why  
23 would I have an interest in that? I'm ahead of them in  
24 the queue.

25 Q. And meanwhile--so you're now in the time period,

1 so did you understand that it was impossible for Skyway  
2 127 to get a contract in July 2011? Is that your  
3 understanding?

4 A. It was impossible? Absolutely not. I thought  
5 it was 90 to 100 percent possible because I knew certain  
6 things. I knew there was still allegedly 450 megawatts  
7 available because I had attended an ICO meeting, and there  
8 are other documents--I can't remember them--saying there  
9 were 400 megawatts. Only 750 megawatts was allocated to  
10 the new contracts.

11 And I had a letter from the OPA Vice President  
12 Joanne Butler saying we were still in the ranking, so--

13 Q. Can you--sorry to cut you off.

14 A. I was 90 to 100 percent sure we would get a  
15 contract in the next FIT round.

16 Q. And when you--after--during this time period,  
17 did Skyway do any further investments in this period after  
18 July of 2011 based on your belief that you had a  
19 90 percent chance of getting a contract despite your not  
20 being in July 2011?

21 A. Yeah, we committed to about a quarter million  
22 dollars in additional lease payments and continuation of  
23 the met tower and Skyway 127 location.

24 Q. And was GE still a participant in the deal at  
25 that point?

1 A. Yes.

2 Q. And you talked--sorry. Go ahead, Mr. Pennie.

3 A. GE still believed that we had a chance, too.

4 Q. And we talked about--you were shown some  
5 documents that shows the Share Registry--showing the Share  
6 Registries showing the ownership levels of GE at various  
7 times, and I guess your testimony is that GE came in and  
8 out at one point?

9 A. Well, not at one point. Over a period of time  
10 there were shares going back and forth primarily related  
11 to the issues with Premier who didn't perform well and so  
12 on and on forth, and GE desired to have a bigger position  
13 in order to continue to provide the opportunity for  
14 turbine availability.

15 Q. At any time whether--when they were at--in the  
16 Project, were they--did they ever act out as other than as  
17 a passive investor in terms of what you talked about  
18 earlier?

19 A. No, they did not.

20 Q. You were--I'm sorry to jump around--the  
21 challenges of redirect--go somewhat chronologically, so  
22 we're now in 2013. At some point in 2015, the Shares are  
23 transferred by yourself and your wife and your--and  
24 Mr. Tennant to Tennant Travel. Do you remember that?

25 A. Yes.

1 Q. Okay. And had you talked to an attorney about a  
2 NAFTA claim prior to doing that?

3 A. Prior to...

4 Q. Prior to transferring the Shares of Tennant  
5 Energy in January 2015, had you spoken to an attorney  
6 about a NAFTA claim in January 2015?

7 Let me try to clarify it for you.

8 You testified that you met with Mr. Appleton, or  
9 hired Mr. Appleton in May 2017; correct? March of 2017 I  
10 misspoke.

11 (Overlapping speakers.)

12 A. Yes, that's when we hired him.

13 Q. Okay. I will make sure I get the dates.

14 A. 2017, I believe--

15 (Overlapping speakers.)

16 A. If you said 2017, that's correct.

17 Q. You met Mr. Appleton when?

18 A. In June, middle of June, 2015.

19 Q. Prior to meeting Mr. Appleton, had you spoken to  
20 anybody about bringing a NAFTA claim in June 2015? A  
21 lawyer.

22 A. No.

23 Q. And so, the transfer in January 2015 to Tennant  
24 Energy, why was that done, Mr. Pennie?

25 A. Well, family business, and we wanted to

1 consolidate everything under one holding company.

2 Q. Now, going back--sorry for jumping around--going  
3 back to the 2013 time period, so after--so, you now  
4 learned that they shut down the program in June 2013. Why  
5 did Tennant Energy not sue then?

6 A. Well, I continued my contacts with the OPA. We  
7 still were doing projects, so I didn't want to become  
8 adversarial with the RESOP projects, and I was still  
9 getting the same assurances that there was more  
10 confirmation that there was still availability of capacity  
11 in the Bruce Zone, so that potentially in the future the  
12 Government might decide to release that, and so I wanted  
13 to maintain the business or maintain Skyway 127 as a  
14 corporation and be ready.

15 Q. And you testified you had not--you didn't know  
16 about the, for example, the IPC issue at that point  
17 because you learned that, really, two years later, over  
18 two years later; is that right?

19 A. That's correct.

20 Q. At some point, though, you did reach out to  
21 Mr. Appleton. What prompted that, Mr. Pennie?

22 A. Around the beginning of June in 2015, Chuck  
23 Eddy, who was the President--

24 REALTIME STENOGRAPHER: Sorry, could you say  
25 that name again?

1 THE WITNESS: Chuck, C-H-U-C-K, E-D-D-Y, I  
2 believe.

3 A. Chuck Eddy was the President of CANWEA, which is  
4 the Canadian Wind Energy Association of which we were a  
5 member, and he had involvement with the Mesa Group, so he  
6 called me and said that I should look into the Mesa Power  
7 Hearing, and that the attorney for Mesa Power was Appleton  
8 & Associates. So I contacted Appleton & Associates. And  
9 around June 15th and 16th, Derek and I met with him in his  
10 office to see if we could find out what Mr. Eddy was  
11 referring to, specifically whether there was any judgment  
12 or whether there was any additional information, and  
13 Mr. Appleton said everything was confidential and that he  
14 couldn't really tell us anything, but if we wanted to find  
15 out anything, we should look on the PCA website.

16 So, looking at the PCA website didn't help a lot  
17 because the real revelation came still full of  
18 accusations, still full of stuff that Canada was denying  
19 and everything, and I don't remember the names of all of  
20 the documents, but it wasn't until August 15th when the  
21 PCA website had a redacted version of the Hearing, and I  
22 was able to see the testimony of Sue Lo the Deputy  
23 Minister, and Shawn Cronkwright, Jim MacDougall; Bob Chow,  
24 who I didn't know personally, but had heard him speak in  
25 meetings where he spoke.

1           And what I saw there, even though it was  
2 redacted was pretty shocking.

3           Q.     Right.

4           And can you tell us what you saw there that was  
5 so shocking that was different from what you saw before?

6           A.     Well, I saw that IPC, International Power  
7 Corporation, the President Mike Crawley was also the  
8 President of the Ontario Liberal Party and the Federal  
9 Liberal Party. They had gotten preferential treatment out  
10 of the West of London Zone, and they had--they had  
11 projects that didn't get contracts in the first go-round  
12 of that zone, and I think they were blocked because in  
13 June--in 2011--I'm trying to think of the date--it might  
14 have been May; I'm not sure--the Minister of Energy had  
15 issued a directive reserving 500 megawatts in the West of  
16 London Zone for the Samsung Consortium, so it appeared  
17 that he got blocked by that earlier, in contracts earlier,  
18 so he was allocated given secret access to the Breakfast  
19 Club which I had no idea even existed, senior officials to  
20 connect into the Bruce, which was given in a five-day  
21 window to change a connection point way back in June of--I  
22 think it was June 4th, 2011. So, he had used that special  
23 access to get contracts, and I wasn't aware of that until  
24 then.

25          Q.     Thank you.

1           If I could just take a break, I would like to  
2 talk with my counsel to see if there is anything else.

3           PRESIDENT BULL: Certainly, Mr. Mullins.

4           MR. MULLINS: Thanks so much.

5           (Pause.)

6           MR. MULLINS: That's all my questions for now.  
7 Thank you, Mr. Pennie, for your time. I know it's been a  
8 long day, morning or afternoon.

9           THE WITNESS: Thank you, Mr. Mullins. And thank  
10 you, Mr. President.

11           PRESIDENT BULL: Let me just check with my  
12 colleagues to see if they had any questions arising from  
13 the redirect.

14           ARBITRATOR BISHOP: I have no questions.

15           ARBITRATOR BETHLEHEM: Neither do I.

16           PRESIDENT BULL: Then, Mr. Pennie, it looks like  
17 your testimony is done for this arbitration. Thank you  
18 very much for being here and for answering counsel's  
19 questions.

20           MS. SQUIRES: I apologize to interject. I'm  
21 wondering about the opportunity for recross. I know the  
22 Procedural Order 1 does contemplate the possibility of  
23 that for issues arising in the redirect at the Tribunal's  
24 discretion, and I'm wondering if it's possible to ask just  
25 one brief question.

1 PRESIDENT BULL: What is it concerning?

2 MS. SQUIRES: The most recent information that  
3 Mr. Pennie provided about the new knowledge he could only  
4 have learned in August 2015 with respect to IPC.

5 PRESIDENT BULL: Ms. Squires, I will allow you  
6 to ask that question and then Mr. Mullins will, of course,  
7 have an opportunity to redirect after that.

8 So, Mr. Pennie, my apologies. I jumped the gun.  
9 Ms. Squires has a question or two for you.

10 THE WITNESS: Thank you.

11 RE-CROSS-EXAMINATION

12 BY MS. SQUIRES:

13 Q. Again, apologies for making you sit through this  
14 a little bit longer, Mr. Pennie.

15 I do want to confirm, your testimony just a  
16 moment ago to Mr. Mullins' questions was that what you  
17 specifically could not learn until August 2015 was that a  
18 particular company, IPC, with connections to the Liberal  
19 Party of Canada or Liberal Party of Ontario got  
20 preferential treatment in 2001 and, therefore, they were  
21 able to get a FIT Contract; is that right? 2011. Sorry.  
22 Is that correct?

23 A. I believe that's what I said.

24 Q. Okay. And I'm wondering if we could haul  
25 up--and I could get some help with the exhibit number--the

1 Mesa--the Reply Memorial filed in the Mesa arbitration.  
2 Give me just one second, and I will get an exhibit number.

3 VOICE: It should be R-78.

4 MS. SQUIRES: R-78.

5 VOICE: No, sorry.

6 MS. SQUIRES: No, that might not be right.

7 Apologies for this.

8 VOICE: C-182.

9 BY MS. SQUIRES:

10 Q. C-182.

11 And you want to turn to Paragraph 778. And I  
12 want to take a look at this paragraph here.

13 So, here Mesa Power is referring to a Witness  
14 Statement of Peter Wolchak, and Peter Wolchak is a  
15 journalist who made a Witness Statement. If you want  
16 confirmation, I could take you to the paragraph that's  
17 provided in his Witness Statement. He is noting here a  
18 relationship between NextEra and the Government of Ontario  
19 that was not one-sided, and that the evidence demonstrates  
20 that NextEra received significant beneficial treatment.  
21 And if you go down a little bit further, it said NextEra  
22 made corporate donations to the Ontario Liberal Party  
23 around the time of June 3rd, 2011, which reached maximum  
24 donations around the time of the June 3rd rule change.

25 So, here we see an example of Mesa alleging a

1 FIT Proponent with connections to the Liberal Party of  
2 Ontario having insider connections leading to a rule  
3 change, and I want to be very clear of what your testimony  
4 is.

5 Is it that you identify--you learned that IPC  
6 was another political favorite in 2015, or that you did  
7 not know if there was favorable treatment towards anyone  
8 in 2015--until 2015?

9 A. First of all, as you can see, this is  
10 Paragraph 778, so no, I did not review this document in  
11 that detail, and I missed this or didn't see it, and I  
12 don't know when exactly I looked at it briefly. So no, I  
13 didn't know about that.

14 Q. Thank you, Mr. Pennie. Those are all my  
15 questions, and I do appreciate your time.

16 PRESIDENT BULL: Mr. Mullins, anything to follow  
17 up on?

18 MR. MULLINS: Not on that.

19 PRESIDENT BULL: Thank you.

20 Then, Mr. Pennie, thank you again for your  
21 assistance and your testimony.

22 THE WITNESS: Again, Mr. President, Sir Daniel  
23 and Mr. Bishop, I appreciate the opportunity to try to  
24 shed some daylight on our findings and the fact that I  
25 believe that you do have jurisdiction in this matter.

1           PRESIDENT BULL: Right. Thank you.

2           (Witness steps down.)

3           PRESIDENT BULL: So, that, I think, brings us to  
4 the end of today's work. Tomorrow, we have--

5           ARBITRATOR BETHLEHEM: Mr. President, can I just  
6 raise a question. We had reflected through earlier--this  
7 is the Tribunal--as to whether there may be any questions  
8 we want to put to both Parties so they have them in mind  
9 of advance of their closing. I do have one question or  
10 one issue that I would like to raise, if you would permit  
11 me to do so, although otherwise I'm happy to defer to  
12 another day.

13           PRESIDENT BULL: No, no, I had not forgotten,  
14 and I was leading up to that, but--let me explain that to  
15 the Parties.

16           As I was saying, we have two witnesses we will  
17 deal with tomorrow, so the Tribunal is aware we're still  
18 in the midst of hearing from the Witnesses, but as  
19 proceedings go ahead, there are some questions that come  
20 to mind or issues that the Tribunal may have. And whilst  
21 they are fresh in our minds, we might want to put them to  
22 the Parties, not necessarily for an immediate response but  
23 for you to follow up on in due course. And in that vein,  
24 Sir Daniel had mentioned that he has some matters to  
25 highlight to the Parties, and perhaps I give him the

1 floor.

2 QUESTIONS FROM THE TRIBUNAL

3 ARBITRATOR BETHLEHEM: Thank you very much. And  
4 I'm looking here at Ms. Squires and Mr. Mullins, so I'm  
5 addressing you.

6 I should say that I expressly do not invite an  
7 answer now--this is for Friday--and I also expressly say  
8 that I don't know whether the point that I'm about to  
9 raise is relevant or if it's relevant, in which direction  
10 it goes. It's just that it's a point that occurs to me in  
11 the light of Mr. Pennie's evidence, you know, with a  
12 caveat I might have missed it in the pleadings or perhaps  
13 just sort of hidden away. There is a point that I would  
14 like to put to you in the interest of transparency of at  
15 least one Member of the Tribunal to whom this occurs.

16 In the Claimant's written pleadings, there is  
17 quite a lot of reference, for good and proper reasons, to  
18 the definitional parts of Chapter Eleven, Article 1139,  
19 and in particular to the definitions of "investment" and  
20 most particularly to the definitions of "an investment of  
21 an investor of a Party" and the definition of "an investor  
22 of a Party." And the definition of "an investment of an  
23 investor of a Party" includes the language of "means an  
24 investment owned or controlled directly or indirectly by  
25 an investor of such a Party."

1           Now, there is in the Respondent's pleadings a  
2 passing reference--I think it's in two footnotes, but  
3 there is no elaboration--to Philip Morris against  
4 Australia--that's RLA-141--where there was quite a lot of  
5 discussion about "control over," I think around about  
6 Paragraph 508.

7           Now, in the light of Canada's First Objection  
8 under 1116(a) or 1116(1), I would like to know whether  
9 there is any issue that the Tribunal ought to be aware of  
10 arising out of the testimony that we've heard in relation  
11 to ownership and control because, as I say, it seems to be  
12 an issue that's buried away but has not been addressed in  
13 the pleadings of the Parties at least quite in these  
14 terms, so I would invite you to file that away in your "to  
15 address" box for Friday, if you could please just clarify  
16 for me. And the relevant provisions, I think, as far as I  
17 can see them, would be the implications of the definition  
18 in 1139 for the language in 1101.

19           Thank you.

20           PRESIDENT BULL: Can I check if Mr. Bishop wants  
21 to raise anything today?

22           ARBITRATOR BISHOP: Not at this time,  
23 Mr. President. Thank you.

24           PRESIDENT BULL: Good.

25           Then I think we're done for today, and we can

1 adjourn and resume with tomorrow's proceedings at the same  
2 time that we began proceedings today. Thank you,  
3 everyone. See you tomorrow.

4 MS. SQUIRES: Thank you.

5 MR. APPLETON: Thank you.

6 (Whereupon, at 1:57 p.m. (EST), the Hearing was  
7 adjourned until 9:00 a.m. (EST) the following day.)

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a horizontal line.

DAVID A. KASDAN