

PCA Case No. 2012-17

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

BETWEEN:

MESA POWER GROUP LLC (USA)

Claimant

- and -

GOVERNMENT OF CANADA

Respondent

ARBITRATION HELD BEFORE  
PROF. GABRIELLE KAUFMANN-KOHLER (PRESIDING  
ARBITRATOR)

THE HONORABLE CHARLES N. BROWER

MR. TOBY T. LANDAU QC

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

VOLUME 3

PUBLIC ONLY

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17 Michael Solursh

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Toronto, Ontario

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

at 9:03 a.m.

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

THE WITNESS: Good morning.

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

THE WITNESS: I am.

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

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

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

THE WITNESS: Yes, I was.

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

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

3 THE WITNESS: That sounds about  
4 right.

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

7 THE WITNESS: I have two  
8 statements.

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

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

15 THE WITNESS: Yes. Yes, I do.

16 AFFIRMED: SUSAN LO

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

21 THE WITNESS: Okay.

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

25 MS. KAM: Good morning. A new

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

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

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

10 A. No, I do not.

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

13 THE CHAIR: Could you get closer?

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

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

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

20 Q. Good morning, Ms. Lo.

21 A. Good morning.

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

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

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

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

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

19 A. This one?

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

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

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

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

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

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

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

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

17                  A.    Yes.

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

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

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



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

3 A. I had a good grounding, yes.

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

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

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

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

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

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

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

23 A. A secret to whom?

24 Q. To you, for example.

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

1 I had --

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

4 A. In 2008?

5 Q. Yes, ma'am.

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

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

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

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

22 A. I'd only be speculating.

23 Q. Okay, thank you.

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

1 the GEIA when you took over; correct?

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

3 Q. Yes, ma'am.

4 A. In 2010?

5 Q. Correct.

6 A. Yes.

7 Q. You agree it was a

8 significant agreement?

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

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

13 A. To Canada or Ontario?

14 Q. Ontario.

15 A. Ontario.

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

18 A. Yes, of course.

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

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

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

1 A. Yes, it was.

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

4 A. Yes.

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

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

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

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

25 Q. Do you agree with me that

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

4 A. I believe it does.

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

11 A. Yes.

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

14 A. With high standards, yes.

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

17 A. Yes.

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

22 A. Yes, we did.

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

1 A. Directions, yes.

2 Q. Directions and directives?

3 A. Directions and directives of  
4 the Minister.

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

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

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

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

17 A. Yes.

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

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

24 Q. Okay, thank you.

25 Could you explain for us what the

1 LGIC is?

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

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

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

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

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

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

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

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

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

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

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

9 A. Not necessarily. It really  
10 depends.

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

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

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

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



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

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

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

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

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

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

20 Q. Mm-hm?

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

25 Q. Okay. So both the GEIA and

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

3 A. Yes.

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

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

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

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

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

19 A. Because it was not necessary.

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

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

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

5 MR. BROWER: Is your microphone  
6 on?

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

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

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

16 THE CHAIR: Thank you.

17 BY MR. MULLINS:

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

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

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

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

3 A. That's not what I said.

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

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

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

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

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

21 A. That would not be a reason.

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

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

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

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

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

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

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

19 A. That sounds correct.

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

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

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

1 tab 21.

2 THE CHAIR: It may be fair, yes.

3 Are you referring to the report?

4 MR. MULLINS:

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

7 A. What page?

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

10 A. Mm-hm.

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

13 A. Yes.

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

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

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

5                   Do you see that?

6                   A.    Yes, I do.

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

11                  A.    Yes.

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

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

20                  Q.    Okay.  Until it's signed?

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

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

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

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

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

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

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

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

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



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

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

5                   A.    Can you ask the question  
6    again?

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

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

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

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

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

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

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

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

6                   A.    Not just now, but before.

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

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

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

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

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

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

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

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

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

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

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

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

1 by ratepayers.

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

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

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

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

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

1 Q. Who can make that decision?

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

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

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

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

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

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

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

25 A. We discussed it all the time.

1 We discussed it all the time --

2 Q. Okay. And --

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

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

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

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

17 A. Can you ask that again?

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

23 A. Yes. Yes.

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

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

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

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

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

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

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

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

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

12                  Q.    And you're speculating --

13                  A.    It doesn't make sense.

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

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

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

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

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



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

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

5 A. Right.

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

10 A. That's correct.

11 Q. Thank you.

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

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

23 BY MR. MULLINS:

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

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

2 Do you remember that?

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

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

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

10 Q. Okay.

11 A. When did you get it?

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

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

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

20 A. The amendment was released --

21 Q. Immediately?

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

1 Q. The amended?

2 A. In August, the amended  
3 agreement.

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

6 A. In August of 2011.

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

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

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

16 A. It was an amended GEIA.

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

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

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

25 THE WITNESS: The main -- so the

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

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

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

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

16 THE CHAIR: Thank you.

17 BY MR. MULLINS:

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

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

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

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

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

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

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

21 Q. No.

22 A. I don't know.

23 Q. I'm sorry?

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

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

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

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

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

17 THE WITNESS: Right.

18 THE CHAIR: If I am correct.

19 BY MR. MULLINS:

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

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

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

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

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

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

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

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

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

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

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

17 So there was the commercial  
18 sensitivity in it.

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

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

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

25 THE WITNESS: I think the working



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

2 BY MR. MULLINS:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 A. I think it did.

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

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

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

5                   A.    No.

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

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

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

16                  A.    Yes.

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

20                  A.    Mm-hm.

21                  Q.    Is that correct?

22                  A.    Yes.

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

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

3                   Q.    You haven't seen anything?

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

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

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

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

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

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

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

1                   A.    That's a "give".

2                   Q.    Well --

3                   A.    Isn't that a give?

4                   Q.    Well, let's see.

5                   A.    The government gives

6    generation capacity.  The government gets

7    manufacturing, gets the \$7 billion investment.

8                   Q.    Fair enough.  I guess it

9    depends on which side you're on.

10                  A.    I guess.

11                  Q.    It's a get to the Korean

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

13                  A.    But I always have the

14    government view.

15                  Q.    Oh, fair enough.  And the get

16    was the ability to -- commitment to attract

17    manufacturing; correct?

18                  A.    Build their own or attract,

19    yes.  It had to do with jobs.

20                  Q.    Okay.

21                  A.    It didn't matter how they

22    were -- there would be jobs in the manufacturing

23    plants.  That was the main thing.

24                  Q.    Well, but you agree with me

25    that the Korean Consortium was not required to

1 actually build manufacturing plants?

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

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

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

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

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

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

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

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

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

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

15                  A.    Right.

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

21                  A.    It was about jobs.

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

24                  A.    Yes.

25                  Q.    Thank you.  Now, the original

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

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

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

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

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

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

21 Q. It is Ontario; right?

22 A. Yes.

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



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

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

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

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

14                  A.    Yes.

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

17                  A.    Yes.

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

21                  A.    Yes.

22                  Q.    Part of the reason?

23                  A.    Yes.

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

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

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

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

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

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

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

23 BY MR. MULLINS:

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

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

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

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

7 A. Probably the entire thing.

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

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

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

14 A. Yes.

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

17 A. Yes.

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

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

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

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

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

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

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

14                  A.    Yes.

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

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

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

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

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

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

9 A. Five phases.

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

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

14 Q. Five years. So 500 per year?

15 A. Right.

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

22 A. I don't think there were.

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

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

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

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

9                   A.   There were lots of projects.

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

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

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

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

2 A. Okay.

3 Q. Do you agree with that?

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

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

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

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

15 A. Yes.

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

18 A. Yes.

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

22 A. Yes.

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

25 A. There were a variety of

1 investors.

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

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

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

9 A. Yes.

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

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

17 Q. All ears?

18 A. All ears, right.

19 Q. Like Dumbo, all ears?

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

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

24 --- Laughter.

25 Q. But in fact despite being all



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

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

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

10 A. There was lots of time after.

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

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

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

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

25 What has ever stopped an investor

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

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

14 A. Correct.

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

18 A. Correct.

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

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

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

1 A. Right, correct.

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

6 A. Correct.

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

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

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

13 MR. LANDAU: Obviously.

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

16 --- Laughter.

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

1 GEIA.

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

4 THE WITNESS: Right.

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

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

12 THE WITNESS: Yes.

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

17 THE WITNESS: Right.

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

25 I mean, one might have thought

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

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

7                       MR. LANDAU:  Yes.

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

10                      MR. LANDAU:  Yes, yes.

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

15                      MR. LANDAU:  Understood.

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

20                      MR. LANDAU:  Right.

21                      THE WITNESS:  -- necessarily.

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

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

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

3 THE WITNESS: Right.

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

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

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

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

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

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

4                       MR. LANDAU:  I see.

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

12                      MR. LANDAU:  I see.  Thank you.

13      Sorry.  Go ahead.

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

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

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

25                      THE WITNESS:  That's a very

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

3 MR. BROWER: Yes.

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

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

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

25 And I ask myself: Is it



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

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

12 THE WITNESS: Yes.

13 BY MR. MULLINS:

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

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

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

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

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

25 MR. LANDAU: I think you're still

1 confidential.

2 BY MR. MULLINS:

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

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

9 A. Of course.

10 Q. Who is that?

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

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

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

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

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

24 A. Okay.

25 Q. Right. And so now it does

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

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

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

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

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

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

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

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

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

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

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

15                  THE WITNESS:  Right.

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

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

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

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

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

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

14                  THE CHAIR: Yes.

15                  BY MR. MULLINS:

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

19                  A. Yes.

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

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

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

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

2 A. Yes.

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

5 A. Sure.

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

9 A. Sure.

10 Q. And they all pay rent; right?

11 A. Yes.

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

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

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

20 A. Yes.

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

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

1 anchor tenant they were going to have during 2009?

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

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

8 Q. Thank you.

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

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

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

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

24 BY MR. MULLINS:

25 Q. Now, going back to this

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

4 A. Yes.

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

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

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

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

17 A. They, they partnered with  
18 KEPCO.

19 Q. Right.

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

23 Q. But Samsung itself had no  
24 experience?

25 A. I don't know how much



1 experience they had.

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

5 A. NextEra?

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

10 A. But they didn't.

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

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

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

18 A. There were lots of what?

19 Q. Criticisms.

20 A. Some criticism.

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

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

25 Q. And the CanWEA also said it's

1 unfair and puts Samsung ahead of local producers.

2 Do you remember that?

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

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

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

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

18 Q. They were representing  
19 competitors of Samsung?

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

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

25 Now, who was the Premier at this

1 point?

2 A. McGuinty.

3 Q. Dalton McGuinty; right?

4 A. Yes.

5 Q. Progressive, he's progressive

6 conservative. He's the opposition party; right?

7 After he calls it a sweetheart deal, he says it has

8 a bad smell to it. Do you see that?

9 A. Mm-hm.

10 Q. What he says is that:

11 "Dalton McGuinty once

12 famously promised the people

13 of Ontario that he would end

14 sole-sourced, secretive and

15 untendered contracts, yet

16 this deal with Samsung is the

17 mother of all untendered

18 contracts."

19 Was Mr. Hudac correct that Mr.

20 Premier McGuinty made that promise to the people of

21 Ontario?

22 A. I couldn't confirm one way or

23 the other. I don't have the context for what the

24 Premier, former Premier, may have promised or not

25 promised.

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

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

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

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

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

17                  A.    Right.

18                  Q.    So that's correct?

19                  A.    That's correct.

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

23                  A.    I wasn't there.

24                  Q.    But you testified --

25                  A.    It wasn't released, so in

1 that context, yes.

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

4 A. It was untendered, yes.

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

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

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

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

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

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

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

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

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

9 A. Yes.

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

12 A. I think it was closer to ten.

13 Q. Closer to 10,000?

14 A. Yes.

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

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

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

21 A. I think October.

22 Q. Of 2009?

23 A. 2009.

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

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

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

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

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

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

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

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



1 50,000 jobs.

2 Q. They are essentially the same  
3 program?

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

6 Q. Well, then --

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

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

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

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

21 A. I don't know.

22 Q. Well, there was --

23 A. I don't know.

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

1       there was for the GEIA; correct?

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

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

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

17                   Q.    You don't know?

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

1 construction and also as a spinoff.

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

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

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

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

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

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

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

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

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

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

1 ahead.

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

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

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

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

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

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

20 --- Laughter.

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

1 THE WITNESS: Okay.

2 THE CHAIR: Thank you.

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

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

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

8 BY MR. MULLINS:

9 Q. Thank you, Madam Chair.

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

14 A. I had oversight of the  
15 agreement.

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

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

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

1                   A.    Right.  Correct.

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

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

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

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

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

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

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

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

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

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

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

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

25                  Q.    And those low-ranked

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

3 A. Right.

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

7 Now, you say:

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

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

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

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

23 A. Right.

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



1                   A.    Right.

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

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

10                  Q.    Mm-hm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18                   A.    Yes.

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

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

1 Q. Mm-hm?

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

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

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

12 Q. Were you involved in the  
13 negotiations?

14 A. Yes.

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

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

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

1 BY MR. MULLINS:

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

3 A. So why wouldn't we?

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

6 A. I'm not going to.

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

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

16 MR. MULLINS: Sure.

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

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

1 review with counsel of a possible breach.

2 MR. MULLINS: That's correct.

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

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

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

12 BY MR. MULLINS:

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

15 A. Yes.

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

18 A. Yes.

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

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

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

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

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

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

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

11 A. How do you mean?

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

16 A. You didn't.

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

19 A. The original was January.

20 Q. I know. I misspoke.

21 A. Okay, okay.

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

25 The original GEIA was January

1 2010?

2 A. Yes.

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

5 When was the first amendment to  
6 the GEIA?

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

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

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

13 Q. 2013, right.

14 A. Right. After I left.

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

17 A. Pardon?

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

20 A. Yes.

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

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

25 Q. Okay.



1                   A.    Something like that.

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

6                   A.    Yes, there was.

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

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

13                  Q.    Okay.

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

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

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

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

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

4                   Q.    What --

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

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

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

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

18                  Q.    Without getting --

19                  A.    Everybody was having  
20   difficulties.

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

1 agreement was actually amended?

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

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

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

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

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

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

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

19 Q. July of --

20 A. July, right.

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

23 A. Right.

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

1 437 million to 110 million; right?

2 A. Correct.

3 Q. And I take it the Korean

4 Consortium did not want that reduction?

5 A. No, of course not.

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

9 A. It was a negotiation.

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

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

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

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

21 A. So --

22 Q. That's what you reduced?

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

25 Q. My point is you said: We

1 were negotiating what the FIT proponents already  
2 had.

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

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

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

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

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

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

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

25 Q. When they originally

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

3 A. Yes.

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

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

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

16 A. The original agreement, yes.

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

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

21 Q. Yes.

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

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

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

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

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

10 A. Right.

11 Q. Fair?

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

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

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

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

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

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

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

8 A. 437 to 110.

9 Q. To 110?

10 A. Right.

11 Q. Did it do anything else?

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

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

20 Q. So you --

21 A. -- for those four plants.

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

24 A. The first amendment, yes.

25 Q. That's when you tied it to



1 jobs?

2 A. Yes.

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

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

7 Q. The first amendment.

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

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

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

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

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

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

22 A. The four manufacturing  
23 plants, right.

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

1 go back to it.

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

6 A. Okay.

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

9 A. Yes.

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

13 A. Yes.

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

17 A. Manufacturing jobs.

18 Q. Okay?

19 A. 765.

20 Q. Thank you. Manufacturing  
21 jobs?

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

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

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

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

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

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

20                  Q.   Including proponents of the  
21  FIT program?

22                  A.   Yes.

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

1 seeing how many jobs that was creating?

2 A. Yes.

3 Q. Okay?

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

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

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

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

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

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

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

25 A. Well, there are peaks and

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

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

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

8 A. When?

9 Q. Yes.

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

13 Q. In 2014?

14 A. Yes.

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

19 A. The job counting started in  
20 2013.

21 Q. Okay.

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

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

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

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

9 Q. And opaque in other areas?

10 A. No, no.

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

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

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

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

25 Q. That was the first time you

1 thought about the ratepayers?

2 A. We think about the ratepayers  
3 constantly.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

14 Q. Okay.

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

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

25 A. Yes, the price projections

1 were for 20 years.

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

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

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

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

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

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

20 A. Four and five.

21 Q. Then you reduced phase 3?

22 A. Right.

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

25 A. Well, the original agreement

1 was for 2,500 megawatts in five phases.

2 Q. Right.

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

5 Q. Right?

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

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

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

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

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

25 Q. Mm-hm?

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

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

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

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

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

19                   A.    Right.

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

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

25                   Was there any discussion

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

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

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

14 A. In 2011?

15 Q. Yes, ma'am.

16 A. We did not.

17 Q. Thank you.

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

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

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

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

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

10 A. The MPP?

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

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

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

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

1                   jumped the queue', he said.

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

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

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

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

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

19                  A.    He was pretty what?

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

25                  A.    They delivered on those

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

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

7 Q. Well --

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

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

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

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

25 A. Right.



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

4                   A.    Right.

5                   Q.    And the reason why --

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

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

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

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

24                  A.    Right.

25                  Q.    There could have been

1 something later, but that's fine.

2 A. Yes, I don't know.

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

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

8 A. Yes, it was.

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

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

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

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

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

23 A. The FIT rules --

24 Q. Yes, correct.

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

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

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

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

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

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

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

1 electricity. It is called surplus base load.

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

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

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

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

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

1 Q. Ms. Lo --

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

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

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

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

21 A. A direction, yes.

22 Q. Okay. And I think you just  
23 said up to that point no proponent in any region  
24 had been allowed to change connection points;  
25 correct?

1                   A.    I don't know that for a fact.  
2    That's a question for the OPA.

3                   Q.    Okay.  And I guess my  
4    question to you, then, is:  Was there a specific  
5    reason that only the entities in west London and  
6    Bruce would be allowed to check -- change their  
7    connection points, and, specifically, was there any  
8    discussion about other neighbouring regions to the  
9    Bruce region to have those proponents be allowed to  
10   change their connection points?

11                  A.    I think what the government  
12    was doing was there was lots of discussion, to  
13    answer your question.

14                  Q.    Thank you.

15                  A.    The province did not want to  
16    run a province-wide ECT for fear of bringing on so  
17    many megawatts that would be surplus to our system.

18                         The reason for running a regional  
19    ECT was that the only new power -- the only new  
20    transmission source was the Bruce-to-Milton line.

21                  Q.    And what happened in Bruce  
22    was that it turned out in September 2010 that that  
23    was the location that the Korean Consortium decided  
24    to use for phase 2; correct?

25                  A.    I don't know whether it was

1 clear at the time, but I think as time has  
2 unfolded, that is where some of their projects are.

3 Q. Well, you don't remember a  
4 directive in September of 2010 in which the  
5 Minister actually set aside the 500 megawatts in  
6 Bruce region and carved that out of the --

7 A. There was a directive that  
8 was issued around that time, but I don't think the  
9 Korean Consortium had solidified what those  
10 projects were, necessarily, because we went ahead  
11 and awarded the FIT contracts before settling where  
12 the Korean Consortium was going to connect.

13 Q. That's correct.

14 A. Yes.

15 Q. But I want to make the record  
16 clear. Go to tab 16. This may refresh your  
17 recollection, because I think it is the directive I  
18 was referring to. We will pull it up. This is  
19 C-119.

20 A. Yes.

21 Q. Can you pull it up? Go to  
22 the bottom. And if I understand your -- sorry, if  
23 I understand your testimony, I think what you're  
24 saying is that the Korean Consortium hadn't  
25 actually decided where it wanted connection into

1 the Bruce region, but you do remember now, reading  
2 this document, do you not, that in this directive  
3 the Minister of Energy is saying:

4 "I now direct the OPA in  
5 carrying out the transmission  
6 availability tests and  
7 economic connection test  
8 under the FIT program rules,  
9 to hold in reserve 500  
10 megawatts of transmission  
11 capacity to be made available  
12 in the Bruce area in  
13 anticipation of the  
14 completion of the  
15 Bruce-to-Milton transmission  
16 reinforcement for phase 2  
17 projects of the Korean  
18 Consortium or its project  
19 companies." [As read]

20 A. Right.

21 Q. So now your memory is now  
22 refreshed that in September 2010, the Korean  
23 Consortium had at least narrowed down that phase 2  
24 is going to be in the Bruce and took 500 megawatts  
25 of capacity out of that region; correct?



1 A. Yes.

2 Q. That was taken out of the FIT  
3 program, and so that reduced the amount of  
4 megawatts that could be awarded in the Bruce region  
5 in the FIT program; correct?

6 A. Yes.

7 Q. Now, meanwhile -- so this  
8 actually caused a challenge, right, because now the  
9 issue, as you said, is that you originally told  
10 everybody you were going to do an ECT test;  
11 right? And that was going to be province wide.  
12 That's what you originally said the FIT was; right?

13 A. That's what the OPA said.

14 Q. Well, that's what the  
15 Minister of Energy supported; right?

16 A. It was -- the program was  
17 evolving, because I don't think the specifics of  
18 ECT were even finalized at program launch.

19 Q. Okay. Really, let me just  
20 ask you the question again.

21 A. It was forging new ground.

22 Q. Let me just ask the question  
23 again.

24 A. Go ahead.

25 Q. The original FIT rules that

1 were announced to the FIT proponents told everyone  
2 that there was going to be a province-wide ECT;  
3 correct?

4 A. I don't know  
5 whether -- um..., I think if you read the  
6 Minister's original direction in September, I don't  
7 know whether the words "ECT" were there or not.

8 Q. No, ma'am, I'm talking about  
9 the FIT rules.

10 A. Were they?

11 Q. The FIT rules. The ECT and  
12 FIT rules?

13 A. So the Minister did not  
14 direct the OPA on ETC.

15 Q. Correct, ma'am. I'm sorry, I  
16 don't think I said that.

17 What I asked you was -- and I  
18 think you have already said this, so I am surprised  
19 that you are not going back to that. I am not  
20 asking about what the Minister said.

21 I'm saying you agree with me the  
22 original FIT rules contemplated a province-wide  
23 ECT?

24 A. Yes.

25 Q. Thank you. And so what

1 happens then is that the -- I think what you also  
2 said was the problem was you didn't want to do a  
3 province-wide ECT, because that was going to  
4 generate too much megawatts; right?

5 A. Potentially. We didn't know.

6 Q. But you were concerned about  
7 it, because you're going to have all of this -- all  
8 these megawatts. What are you going to do with  
9 this?

10 A. Right.

11 Q. So you basically were trying  
12 to work this out. Then the other challenge is, you  
13 know, the Korean Consortium now has told everybody,  
14 I want to go to Bruce; correct? Now you have to  
15 figure out what you're going to do with Bruce  
16 because of all of these challenges; right?

17 A. As soon as the agreement with  
18 the Korean Consortium was signed, I think the  
19 energy planners had always predicted they would  
20 have to reserve megawatts in the Bruce because, for  
21 most people, they would know that the wind regime  
22 in the Bruce area was amongst the strongest in the  
23 province.

24 And so that was the best area  
25 where one could have a wind contract and -- highest

1 wind regime and the new trunk line transmission  
2 from Bruce-to-Milton. It was a recipe for success.

3 Q. I see.

4 A. And plus there was something  
5 in the order of 1,800 megawatts of available, of  
6 which 500 was given to the Korean Consortium,  
7 because they met their manufacturing commitments.

8 Q. Okay, ma'am. I want to make  
9 sure the record is clear.

10 It wasn't until September 17th,  
11 2010 that the Minister of Energy actually set aside  
12 500 megawatts to the Korean Consortium in the Bruce  
13 region; correct?

14 A. Correct.

15 Q. Thank you. Now, when you're  
16 dealing with these challenges you asked -- the  
17 Ministry actually asked the OPA to do a rough  
18 simulation of just doing a DAT test in the Bruce  
19 region; right?

20 A. I think it was the  
21 transmission availability test. That is TAT.

22 Q. TAT, I'm sorry. When that  
23 was run, it turned out that my clients, for  
24 example, were ranked eight and nine; is that  
25 correct?

1                   A.    They very well could have  
2    been.

3                   Q.    You can't deny that that's  
4    true; right?

5                   A.    I can't deny it.

6                   Q.    Mm-hm.  Now, you say during  
7    this process Ontario was quite concerned with  
8    trying to respect developer expectations; correct?

9                   A.    Right.

10                  Q.    And that was very important,  
11    wasn't it, ma'am?

12                  A.    It was.

13                  Q.    Now, having the FIT applicant  
14    make a connection point, that would take a lot of  
15    time, right, to change a connection point?  It  
16    would take analysis to do that; right?

17                  A.    I think you would have to ask  
18    developers.  I don't know how long it would take.  
19    It would take time.  I think the OPA had said that  
20    it would take -- I think originally they had  
21    budgeted for three weeks.

22                  Q.    Three weeks?

23                  A.    I think that was in their  
24    early presentations.

25                  Q.    And can you tell us how long,

1 in fact, was provided to the FIT applicants to  
2 change their connection points?

3 A. It was a five-day window.

4 Q. Why was the three weeks  
5 reduced to five days, ma'am?

6 A. Because we heard from  
7 CanWEA -- that's the Canadian Wind Energy  
8 Association -- who were telling us that developers  
9 had been looking at this all along to see where it  
10 was they could connect to and were basically  
11 already in a ready position.

12 They didn't need to start from  
13 scratch. They already did the analysis.

14 Q. When was that CanWEA letter,  
15 ma'am?

16 A. I believe it was near the end  
17 of May of 2011.

18 MR. APPLETON: May 27th?

19 THE WITNESS: Yes, that sounds  
20 about right.

21 MR. MULLINS: I appreciate the  
22 help from counsel. Can you give me a tab number?  
23 31. Thank you.

24 BY MR. MULLINS:

25 Q. Can you go to tab 31 of your

1 document? Is this the letter that you are  
2 referring to?

3 A. Yes.

4 Q. It is Exhibit No.  
5 R-113 -- Exhibit No. 133. She got it right.  
6 You're right, not 113, okay.

7 So this is the letter you're  
8 referring to, and this is why you rejected the  
9 recommendation of the OPA and decided to cut the  
10 change point window from three weeks to five days;  
11 is that correct?

12 A. Well, we knew it could be  
13 done in a shorter period of time, yes.

14 Q. Okay. And can you tell us  
15 how much notice the OPA gave to the FIT proponents  
16 that they would have five days and not the three  
17 weeks they had discussed before?

18 A. I think you would have to  
19 retrace the series of events.

20 I think by the time the Minister's  
21 direction was issued to the OPA, that would have  
22 been the first time that it became public knowledge  
23 that there was a five-day change window, so that  
24 would have been July, something, the direction.

25 Q. No, ma'am. It was before

1 the -- the window was open in June. You remember  
2 that; right? The awards were entered in July, but  
3 the window was open in June.

4 A. When was the Minister's  
5 direction issued? That would have been the first  
6 time.

7 Q. That's correct. Let's pull  
8 that. What's the document number?

9 MS. HERRERA: C-46, tab 32.

10 BY MR. MULLINS:

11 Q. Let's go to tab 32. Hold  
12 that. We'll go back to that. This is a directive  
13 of June 3rd, 2011; right?

14 A. Right.

15 Q. It is C-46.

16 A. Right.

17 Q. If you go to the top of page  
18 3, five-day window; right?

19 A. Right. So this would have  
20 been the first time that the five-day change window  
21 would have been made available.

22 MR. APPLETON: Top of page 2,  
23 point number 3.

24 BY MR. MULLINS:

25 Q. You do remember, ma'am, that



1 this was issued on a Friday and the window opened  
2 on a Monday? You remember that; right?

3 A. I don't know that June 3rd  
4 was a Friday, no. I don't remember that.

5 Q. We will come back to that. I  
6 think the record is pretty clear that it was  
7 announced on a Friday and it started that Monday.  
8 You don't remember that?

9 A. I don't remember the  
10 particular day it was issued, no.

11 Q. Okay. Now, you said that the  
12 reason why then that you made it such a short  
13 period was because of the CanWEA letter; right?  
14 That was R-133.

15 A. Do you want me to refer to  
16 something?

17 Q. Let me go on and we will come  
18 back to that.

19 Ms. Lo, in fact, though, the  
20 decision to do the process, as ultimately decided,  
21 was decided on May 12, wasn't it?

22 A. I don't think it was  
23 concluded. I don't think it was fully concluded.

24 I think if you check the e-mail  
25 trail, there would be a back and forth in terms of

1 what might be best.

2 Q. Well --

3 A. Because the directive is very  
4 specific.

5 Q. If you go to tab D of your  
6 notebook, "D", as in dog, of that notebook, yes.  
7 The notebook you have open. There is letters at  
8 the beginning.

9 A. Oh, okay.

10 Q. And this is a witness  
11 statement by Mr. Cronkwright. Can you tell us who  
12 that is?

13 A. He's the director in the OPA.

14 Q. He says that:

15 "Ultimately, as I understand  
16 it, the government heard all  
17 of the possibilities and  
18 decided at a high-level  
19 meeting held May 12, 2011 to  
20 adopt a process that we  
21 eventually used to allocate  
22 the capacity on the  
23 Bruce-to-Milton line a  
24 procurement of a specific  
25 amount of capacity in the

1                   Bruce and west London region  
2                   simultaneously which would  
3                   occur after a  
4                   connection-point change  
5                   window and would allow for  
6                   generator paid upgrades."

7                   [As read]

8                   Do you see that testimony, ma'am?

9                   A.    Which number were you  
10                  referring to?

11                  Q.    I was reading 21.

12                  A.    Oh, 21.

13                  Q.    I apologize. Do you see that  
14                  testimony now?

15                  A.    Yes, I see it.

16                  Q.    Okay. So if the decision had  
17                  been made on May 12, 2011, why was that not  
18                  announced to the FIT proponents so they could be  
19                  closer to the three weeks that the OPA originally  
20                  recommended they be given the notice of a change  
21                  point window?

22                  A.    Well, this is someone in the  
23                  OPA's understanding of government decisions. I  
24                  would say that having worked in the government for  
25                  30 years, you just don't necessarily have a final

1 decision until that Minister's direction is issued.

2 And so there is often time for  
3 revisiting and revisiting. And so whereas the OPA  
4 may have understood that the decision was made,  
5 that's not necessarily when a decision might have  
6 been made.

7 Q. Why was it not -- you're  
8 saying his testimony is false?

9 A. No. That's his  
10 understanding, which is perfectly in line with the  
11 way that we would be quite close vested in  
12 government policy decisions.

13 They are not always shared with  
14 staff at the OPA.

15 Q. This was actually one of the  
16 first times the Minister of Energy was actually  
17 interfering with the FIT process; right?

18 A. Interfering? I don't think  
19 so. I think the Ministry is well within its right  
20 to make policy decisions and issue them in the form  
21 of directions to the OPA.

22 Q. It's a policy decision to  
23 decide how long a window is going to be for a  
24 change in connection?

25 A. Whether or not there is a

1 change point window would be a policy decision.

2 What the government was really looking at was  
3 trying to maintain something that very closely  
4 resembled a provincial ECT, because there are so  
5 many expectations of developers out there.

6 And so the process that we created  
7 was one that gave what they had expected. They  
8 expected a certain number of megawatts. They got  
9 that.

10 We expected not to have more than  
11 the number of megawatts that we could pay for by  
12 ratepayers. That's why we kept it. We created  
13 room for small proponents. That's why we did that.  
14 So...

15 Q. Can you just tell us, though,  
16 ma'am, do you agree with me it was ultimately the  
17 Minister of Energy's decision to only allow a  
18 five-day change in connection point window;  
19 correct?

20 A. Yes.

21 Q. And it was also the Minister  
22 of Energy's decision to provide whatever notice,  
23 the short notice that was given. That was the  
24 Minister of Energy's decision when to release the  
25 directive and give notice to the FIT proponents of

1 when that window would start?

2 A. I don't think the Minister  
3 knew exactly all of the details, but I think the  
4 main details, in terms of the direction, he was  
5 certainly accountable for.

6 Q. And well --

7 A. And had the right to make.

8 Q. Okay. And it was -- why did  
9 not either the OPA or Minister of Energy tell  
10 proponents as of May 12, 2011 that at least  
11 the government was leaning toward allowing a change  
12 of connection point window? Wouldn't that have  
13 made the process more transparent and fair?

14 A. That is not what a government  
15 does, whether it is leaning one way or the other.  
16 That would just -- and why wouldn't a proponent  
17 look at change point windows if they were in the  
18 FIT rules and contemplated since the FIT rules were  
19 published in 2009?

20 They had years to look at it.

21 Q. Ma'am --

22 A. In fact, proponents did look  
23 at it.

24 Q. Well --

25 A. If your proponent didn't,

1 then they weren't doing their homework.

2 Q. Well, my proponent didn't  
3 need to change their change point window, because  
4 they understood that if they were in line to get a  
5 FIT project, maybe they would look at it; right?  
6 Correct?

7 A. I am not aware of the  
8 specific circumstances of your proponents.

9 I, however, know that they weren't  
10 ranked very high on the provincial scheme of  
11 things. So in the provincial ranking, they were  
12 way, way, way, way down.

13 Q. But in the Bruce region they  
14 were ranked eight and nine; right?

15 A. Those are artificial rankings  
16 where the OPA sometimes just put -- if someone  
17 didn't declare where they were going to connect,  
18 they just assigned one to them.

19 Q. In all of the other regions,  
20 the contracts were awarded by region, correct,  
21 based on the rankings in the region; isn't that  
22 right?

23 A. I don't know. This is  
24 something that you would have to visit with the  
25 OPA.

1 Q. I will. I am just --

2 A. I don't know.

3 Q. You did tell us Bruce was the  
4 last region to be awarded; right?

5 A. It didn't have to do with the  
6 region. It had to do with the transmission line.

7 Q. I understand, ma'am.

8 A. I think they are very  
9 different.

10 Q. I understand the reason. I  
11 am just trying to get the facts straight.

12 Bruce was the last region to be  
13 awarded; correct?

14 A. Bruce -- so that's one  
15 electricity region. The other one is London. They  
16 were awarded at the same time. So --

17 Q. All of the other regions were  
18 awarded; right?

19 A. In the first instance.

20 Q. Right.

21 A. Whatever could be connected  
22 went ahead with the FIT contract.

23 Q. Okay. And they were done so  
24 based upon the rankings in those regions; right?

25 A. Yeah, I don't know. I didn't



1 do any -- in the Ministry of Energy, I think I told  
2 you this, we didn't -- we weren't interested in all  
3 of the detail. We weren't picking winners and  
4 losers.

5 Q. ,Well don't you think then  
6 that was a detail you might have looked into before  
7 you started issuing directives of changing that  
8 process?

9 A. What? To look at every  
10 detail of every proponent and how they would be  
11 impacted?

12 Q. No?

13 A. I don't think so. That's not  
14 what we're supposed to do.

15 Q. No, ma'am, just look at how  
16 contracts were awarded in other regions. Don't you  
17 think that would be something that might be  
18 important for you to look at before you started  
19 changing the rules on my client?

20 A. You are comparing apples with  
21 oranges.

22 Q. Mm-hm.

23 A. And whether -- whether your  
24 proponent could connect or not connect under one  
25 option or the other, we weren't -- we were devising

1 a system that was much along the lines of the  
2 original ECT, the way it was contemplated.

3 So even if there were provincial  
4 ECT that was run, if your clients are in that Bruce  
5 area and they were bumped out by a higher-ranking  
6 proponent, that's what would have happened.

7 Q. Right. Let me just ask you  
8 this. I don't want to argue with you. I just want  
9 to understand what you're saying.

10 You told us before the developer  
11 expectations were important; correct?

12 A. Right.

13 Q. I am asking you,  
14 before -- first of all, let me ask you this. Were  
15 you involved in drafting the directive?

16 A. This directive?

17 Q. The one, yeah, the June  
18 directive, 2011. Were you involved in drafting  
19 that?

20 A. We have lawyers who draft  
21 these. We provide input.

22 Q. But you were involved in the  
23 May 12th meeting; correct?

24 A. There was one May 12th  
25 meeting that I was involved with that I know of.

1                   Q.    That is the one  
2    Mr. Cronkwright is referring to?

3                   A.    It could be.

4                   Q.    Okay.  But when you became  
5    involved and the Ministry of Energy became involved  
6    in this process, did you make sure that you  
7    understood what had happened in other regions to  
8    see how FIT contracts were awarded before you  
9    started getting involved in how you were going to  
10   develop with a specific region, these two specific  
11   regions, west of London and Bruce?

12                  A.    I have a good familiarity  
13   with the FIT program and the FIT rules and...  But  
14   did I pay attention to who got contracts?  The  
15   answer is no.

16                  Q.    I didn't ask you that, ma'am.  
17   I asked you --

18                  A.    And I didn't devise the  
19   provincial ranking system or the regional ranging  
20   system, so that is something that the OPA looks  
21   after.

22                  Q.    I am using a lot of my time.  
23   This is the third time I asked this.  So listen to  
24   my question, because I don't think you are hearing  
25   my question.

1                   A.    I didn't understand your  
2 question right.

3                   Q.    That's fair.  That's why I  
4 wanted to make sure you understand it.

5                   I am asking you that when the  
6 Minister of Energy, including yourself -- Ministry  
7 of Energy, including yourself, got involved in this  
8 directive and deciding how the capacity was going  
9 to be awarded in these two regions, did you make  
10 sure you understood how the capacity had been  
11 awarded in all of the other regions when deciding  
12 this issue?

13                  A.    I have a general  
14 understanding, but I can't tell you how a  
15 particular group within the OPA evaluated the  
16 proponents one against the other.

17                  THE CHAIR:  I think the question  
18 was not exactly that.  The question is:  When you  
19 gave the input for the June 3rd, 2011 directions,  
20 were you considering how the capacity was awarded  
21 in other regions, or you were just writing this  
22 direction with respect to this region?

23                  THE WITNESS:  Oh, no, no.  The way  
24 that we were looking at this direction in June, we  
25 were looking at the pros and the cons and the risks

1 and the industry expectations, balancing off  
2 surplus base load, balancing off ratepayer costs,  
3 trying to slow down the pace of procurement. So we  
4 were looking at a whole bunch of things.

5 In the original FIT rules, the FIT  
6 rules contemplated a change window, and that's in  
7 the end what we wanted to provide for.

8 Providing a change window also  
9 allows the highest-ranked projects in the province,  
10 the most shovel-ready projects, the best projects,  
11 to be able -- a higher likelihood to get contracts.

12 And so boundaries are --

13 THE CHAIR: There is no connection  
14 where they are, because if they are highly-ranked  
15 and they have a connection and there is sufficient  
16 capacity for them, there's no need for them to  
17 change the connection points.

18 THE WITNESS: Right.

19 THE CHAIR: Do I understand --

20 THE WITNESS: But you have a  
21 project that sits on one side of a boundary and if  
22 that connection point is on the other side, why  
23 wouldn't you allow them to connect to it? Why did  
24 you assign them to one region and not the other?

25 Sometimes these wind projects and

1 the solar projects are massive geographically, and  
2 they cross boundaries, they cross regions. And it  
3 doesn't make sense to put them in either -- so they  
4 have multiple opportunities to connect.

5                   And so it is important to see,  
6 when they see -- because all of the priority  
7 rankings are posted publicly on the OPA's website.  
8 So they could see where there is best opportunity  
9 to connect to a connection point and get a  
10 contract.

11                   THE CHAIR: But they do not know  
12 where the others connect?

13                   THE WITNESS: Well, they see the  
14 others, as well. So all of the hundreds and  
15 hundreds of projects are listed --

16                   THE CHAIR: Yes.

17                   THE WITNESS: -- on the OPA's  
18 website at a static point in time. So if you open  
19 the window, then they could all decide to move to  
20 different places if they wanted to.

21                   THE CHAIR: Yes.

22                   THE WITNESS: You wouldn't know  
23 what they were doing at the moment, but you could  
24 know that in your location you had no possibility,  
25 perhaps. And, hence, it would be advantageous for

1 you to want to change your connection point.

2 THE CHAIR: Thank you.

3 BY MR. MULLINS:

4 Q. Ms. Lo --

5 THE CHAIR: That was on the  
6 Tribunal's time.

7 BY MR. MULLINS:

8 Q. Thank you, yes. Ms. Lo, in  
9 followup on the questioning from the Chair, why was  
10 only the neighbouring west of London region, then,  
11 allowed to connect into the Bruce region and not  
12 other neighbouring regions to Bruce?

13 A. I think that was the advice  
14 we had received, was that that was the only area  
15 where the Bruce-to-Milton transmission line would  
16 allow certain proponents who were essentially right  
17 beside it to be able to change and connect to it.

18 But if you were in, let's say,  
19 northern Ontario, why would you allow someone in  
20 northern Ontario to connect to the Bruce line?

21 And I just want to say one more  
22 thing. In February --

23 Q. Mm-hm.

24 A. -- we had an experience where  
25 the OPA told us that we had to award a further 900

1 megawatts through an IPA. It was an individual  
2 project assessment where those projects that we  
3 awarded, three of them, were so far from their  
4 connection -- the projects were so far from the  
5 points that they were connecting to, but the FIT  
6 rules didn't contemplate stopping that.

7                   So in one instance there was a  
8 project that was almost 100 kilometres away, and  
9 they were allowed to move forward with a FIT  
10 contract, to our strong objection.

11                   And that's how impractical it  
12 becomes. That's why it wasn't opened up to  
13 province-wide, because some developers, what they  
14 would like to do is to get a contract, and then to  
15 argue with government to say that, you know, they  
16 need more time. They need more payment, because  
17 their project is 100 kilometres away from their  
18 connection point and they would need to build an  
19 entire extension cord to plug it in somewhere.

20                   It was just unreal.

21                   Q. There are other neighbouring  
22 regions to the Bruce other than west of London,  
23 "yes" or "no"?

24                   A. Of course there are.

25                   Q. And you did not, then, decide



1 to allow any of the proponents in those regions to  
2 change their connection point to be allowed to  
3 participate in the award of contracts in the Bruce  
4 region; correct?

5 A. Because they were too far  
6 away.

7 Q. And whose advice were you  
8 relying on, ma'am?

9 A. I believe it was probably  
10 folks in our energy supply and because of what had  
11 happened in February.

12 Q. And if you were trying to  
13 meet developer expectations, why was not a comment  
14 period provided to the FIT proponents to make  
15 comments about the change in the rules done by the  
16 directive?

17 A. Essentially, CanWEA spoke on  
18 behalf of the wind association -- of the wind  
19 proponents, and essentially they were consulted and  
20 they commented, and their comments would, as they  
21 indicate, represent the majority view of their  
22 stakeholders.

23 Q. But we had already seen that  
24 at least as of May 12th, prior to the CanWEA  
25 letter, you'd already made a decision to go forward

1 with the process that was decided based upon --

2 A. We had discussions. I didn't  
3 say that the decision had been made. In fact, what  
4 I said was that until the Minister's direction is  
5 issued, a decision wasn't firm.

6 Q. And fair enough. But up to  
7 that point, neither the OPA or the Minister of  
8 Energy had ever made its decisions based solely  
9 upon the representation of the CanWEA organization;  
10 correct?

11 A. It was one -- it was one  
12 piece of advice to be contemplated in the overall  
13 mix, yes, one piece of advice, one input. For this  
14 matter, it was an important input.

15 Q. Okay. We're kind of all over  
16 the place, ma'am. I really wish you would listen  
17 to my question.

18 A. I am trying my best to listen  
19 to your questions, but your questions are all over  
20 the place.

21 Q. They are not, ma'am. They  
22 are on target.

23 A. Yes?

24 Q. Yes.

25 A. Okay.

1                   Q.    So here's the question.  I  
2   asked you why you didn't provide a comment period,  
3   and your answer to that was:  Because we got a  
4   letter from CanWEA.

5                   A.    No.  I said -- that's not  
6   what I said.  I said that CanWEA's input was very  
7   important to us, because they are essentially an  
8   industry -- an industry organization that  
9   represents the majority of wind proponents in the  
10  province.

11                  THE CHAIR:  I understood you  
12  earlier on to refer to the CanWEA letter in May to  
13  say that this justified, in your assessment, a very  
14  short window, because the operators had been or the  
15  developers had been working on connection points  
16  for some time and, therefore, could do this  
17  exercise in a short time.

18                  THE WITNESS:  Yes.

19                  THE CHAIR:  And now there is  
20  another question, if I understand it correctly,  
21  which is:  Why did you not give the developers or  
22  the proponents an opportunity to comment on the  
23  change of the FIT rules before issuing this  
24  direction on June 3rd?  Am I not --

25                  MR. MULLINS:  Right.  I thought

1 her answer was: Because we were relying on the  
2 CanWEA letter.

3 THE WITNESS: No. CanWEA is only  
4 one input.

5 THE CHAIR: I am not sure. So why  
6 did you not give an opportunity to comment to the  
7 proponents?

8 THE WITNESS: I think at that  
9 time, going back to the summer of 2011, what was  
10 also happening was that the government really  
11 wanted to have those contract awards as soon as  
12 possible, and to provide a comment period would  
13 have slowed down the awarding of contracts.

14 So the government was poisoning  
15 itself to award the contracts, and in fact they did  
16 get awarded in July/August.

17 THE CHAIR: But then if you're  
18 very much in a rush, why do you then wait between  
19 May 12 when you have the meeting and June 3rd,  
20 because there you lost three weeks?

21 THE WITNESS: Because --

22 THE CHAIR: And that could have  
23 been used for --

24 THE WITNESS: I was saying that on  
25 May 12th, I don't believe that the decision had

1       been finalized.

2                       THE CHAIR: I understand that's  
3       what -- that is what your answer --

4                       THE WITNESS: There was no  
5       directive that was written.

6                       THE CHAIR: No, but they could  
7       have been written in a shorter time than three  
8       weeks, no?

9                       THE WITNESS: And I think if  
10      you -- there were so many issues going on at the  
11      time that it was a really busy place and lots of  
12      issues to be dealt with.

13                      Governments sometimes aren't the  
14      quickest in terms of decision making and acting on  
15      those. There needed to be entire communications  
16      plans ready, because if the government were going  
17      to go ahead and see a bunch of contracts awarded,  
18      this was something that people waited four years  
19      for, and so it wanted to take the time to have, you  
20      know, whether it was the public events and the  
21      communications messages, the Qs and As, to make  
22      sure everybody was ready.

23                      THE CHAIR: So essentially your  
24      answer to the fact that you did not seek comments  
25      from proponents was because of the -- because it

1 would have delayed the process, when you wanted to  
2 award contracts as soon as possible. Is that a  
3 fair summary?

4 THE WITNESS: Right. Yes. We  
5 wanted to award contracts as soon as possible, and  
6 you would know that when things are posted for  
7 comment, you will get comments that are pro and you  
8 will get comments that are against.

9 THE CHAIR: Of course.

10 THE WITNESS: It doesn't really  
11 add so much more value, because my office in the  
12 renewable energy facilitation office were already  
13 us listening to the myriad of: Do this. Don't do  
14 that. Do this. Don't do that.

15 And then when the Wind Energy  
16 Association comes forward and provides a more  
17 comprehensive view, not a self-interested view,  
18 then that's the one -- that's the opinion that you  
19 rely on more.

20 THE CHAIR: Thank you.

21 BY MR. MULLINS:

22 Q. Thank you. Now, I have one  
23 short document for some reason with restricted  
24 access, but then I will go back -- I think we can  
25 go back on the record. So just one document I want

1 to show you.

2 --- Upon commencing confidential session at 12:30 p.m.

3 --- Upon resuming public session at 12:31 p.m.

4 MR. APPLETON: We're back on the air.

5 BY MR. MULLINS:

6 Q. Because this document is not  
7 confidential, and this is C-90 and this has your  
8 name on it.

9 If you go to the second page, May  
10 11th, does this refresh your recollection that you  
11 had a meeting with Al Wiley and Bob Lopinski to  
12 discuss their meeting with Andrew Mitchell?

13 A. It wasn't -- I have lots of  
14 meetings with proponents. That was my job.

15 Q. And is it not true, ma'am,  
16 that in that meeting that you had, they  
17 discussed -- is it fair to say they discussed if  
18 they were not allowed to change their connection  
19 point window to the Bruce region, they would not be  
20 able to get a contract in the FIT program?

21 Do you remember that, ma'am?

22 A. I think that the discussion  
23 was around: Was the government contemplating a  
24 connection change point window, in which case we  
25 couldn't -- we didn't know, and so even if we did

26

1 know, we wouldn't tell them.

2 And of course I would expect for  
3 them to come forward with their position to say  
4 that they really wanted a connection change point  
5 window, but that wouldn't sway us one way or the  
6 other.

7 Q. Well, you do remember that  
8 they told you in this meeting that if there was not  
9 going to be an interconnection adjustment window,  
10 they would be shut out of the FIT program?

11 A. I don't remember that. I  
12 actually -- I had so many meetings with developers,  
13 and each developer was always trying to get  
14 glimpses into what we were thinking or going to do.

15 But it doesn't -- it didn't factor  
16 into the decisions that would be finally made.

17 Q. Okay. And were you also  
18 aware at the time that NextEra's projects were 100  
19 kilometres away from the connection points it  
20 eventually made into the Bruce?

21 A. No, no.

22 Q. There was no discussion about how  
23 far away that was?

24 A. No. We weren't -- as I told  
25 you before, we did not dwell into the details of



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specific projects, because there were so many projects and we knew that whatever we awarded, there would be more losers than winners.

Q. Now, if you look at the time of this e-mail, it is May 11th, 9:55; correct?

A. Yes.

Q. And then you respond in the afternoon on May 12th, 6:27. Was your response before or after that meeting that Mr. Cronkwright told us about?

A. I don't know. I don't know what meeting Mr. Cronkwright was referring to.

Q. You don't remember a meeting with the OPA where you made at least a preliminary decision that you talked about earlier about what the plans are? I understand it wasn't finalized. But that meeting was likely before 6:30 in the afternoon; correct?

A. Likely.

Q. And in fact you continued to correspond with NextEra individuals all the way to 8:20 at night; correct? Do you see at the top, your last e-mail is dated -  
- time stamped 8:20?

A. Okay. That's good customer

1 service.

2 Q. Yes, ma'am. During this time  
3 period, you weren't -- do you consider NextEra a  
4 customer, ma'am?

5 A. Well, I was the renewable  
6 energy facilitator, and so it was our job to talk  
7 to proponents, farmers, wind energy associations  
8 solar, biogas, just about anyone out there.

9 Q. Can you tell us by the way,  
10 for the record, who Bob Lopinski is who is  
11 mentioned? He's cc'd in the e-mail.

12 A. He's a GR firm. So  
13 he's -- on the flip side, it says he is with  
14 counsel.

15 Q. Were you -- sorry. Correct.  
16 He was -- sorry? Was he previously, ma'am; do you  
17 know?

18 A. No.

19 Q. Wasn't he a member of the  
20 Premier's office?

21 A. I don't know.

22 Q. And he went into --

23 A. Every person in a GR firm is a  
24 former something.

25 Q. What is a GR firm, just for

1 the record?

2 A. Government relations.

3 Q. So he's a public relations  
4 person that met with you after the preliminary  
5 decision was made on May 12th?

6 A. I may have had a conversation  
7 with him. I think, in terms of "speaking with you  
8 at 9:30", it was probably via just a short  
9 teleconference.

10 Q. Oh, because he had the  
11 call-in number?

12 A. Yes.

13 Q. Isn't it a fact, ma'am,  
14 during this telephone conference you told NextEra  
15 that the Premier's office was considering changing  
16 the FIT rules to allow a connection-point window?

17 A. I would never say that.  
18 That's ridiculous. The farthest I could go is  
19 probably no decision has been made and we  
20 can't -- we can't tell you even if a decision has  
21 been made.

22 Q. And did you then -- after you  
23 gave that information to NextEra, did you then put  
24 out a notice to all FIT proponents in the Bruce  
25 region and the west of London region to tell them

1 that no decision had been made; however, that a May  
2 12th meeting had been conducted and that at least a  
3 preliminary decision was looked at?

4 A. If anyone called, they would  
5 have gotten the same message. If anyone e-mailed,  
6 they would have gotten the same message.

7 It wasn't up to us to actively  
8 publicize these conversations, because we weren't  
9 divulging confidential information.

10 Q. Was there a script prepared  
11 for all calls?

12 A. I don't think in this  
13 instance.

14 Q. Were you given all of the  
15 calls, or could it have been anybody in the  
16 Ministry of Energy could get a call?

17 A. They wouldn't want to speak  
18 to just anyone. Usually they would want to speak  
19 to one of the directors or the OPA.

20 There were multiple channels that  
21 they could have come through.

22 Q. It is possible, then, that  
23 the proponents calling the Minister of Energy could  
24 have talked to many people, not just you?

25 A. If they talked to my staff,

1 my staff would have told me about it.

2 Q. I understand, ma'am. I am  
3 asking you --

4 A. Anyone can call anybody.  
5 So...

6 Q. Correct. You don't know,  
7 sitting here today, whether or not proponents of  
8 the FIT program called the Minister of Energy or  
9 the OPA about any decisions that the Ministry of  
10 Energy was contemplating regarding a connection  
11 change point window; correct?

12 A. Proponents most certainly did  
13 call. I can be confident of that, because our  
14 phones were always ringing off the hook.

15 Q. And without a strict script,  
16 you can't tell us that everyone got the same  
17 message; correct?

18 A. My staff are pretty good. I  
19 think that --

20 Q. They are not perfect; right?  
21 They could have said something slightly different  
22 to one person than they told to someone else;  
23 correct?

24 A. I don't control the actions  
25 of all of my staff or the exact words of all of my

1 staff, but I know that my staff are savvy enough to  
2 be able not to divulge confidential information.

3 And so --

4 Q. I'm sorry, you can't tell us  
5 today that only your staff are the ones that got  
6 calls; right?

7 A. Right. That's what I said in  
8 the first place, is that they could have called the  
9 OPA, they could have called -- but I think the  
10 answer, you know, unless you can prove otherwise, I  
11 don't think that anyone said anything that was out  
12 of what the expected answer should be, in that  
13 everyone knew that until that Minister's direction  
14 went out, there was no decision.

15 And, anyway, these decisions were  
16 very tightly closed. So in terms of writing the  
17 directions, in terms of who we talked to, there's a  
18 small circle. Not everyone is in the tent.

19 Q. Yes. So there was no meeting  
20 of the people in the tent to make sure you got your  
21 story straight; right?

22 A. There were lots of e-mails.

23 Q. We haven't been provided all  
24 of those e-mails, ma'am. Are you telling me there  
25 is an e-mail we don't have where there was a script

1 put down, so if anybody called --

2 A. There wasn't a script.

3 Q. Just let me finish my

4 question. There was not a script; right?

5 A. There was not a script.

6 Q. And there is not an e-mail  
7 somewhere sent forth to anybody who might get a  
8 call about this to make sure everybody got the same  
9 message; isn't that right? Does that e-mail exist?

10 A. There wasn't a script.

11 Q. Okay. And there wasn't a  
12 meeting where everybody got together, in case  
13 somebody gets a phone call, we want to make sure we  
14 get the story straight; correct?

15 A. The phone calls were  
16 happening all the time on multiple issues, and so  
17 if we needed to huddle together just on this issue,  
18 we would have -- and other issues, we would have  
19 been huddling together all the time.

20 Q. Was there any discussion,  
21 ma'am, of: Maybe it would be a good idea to put  
22 out a notice that everybody could read that says  
23 the same message? Was that discussion ever had  
24 with anybody internally at the Minister of Energy?

25 A. Until the direction was

1 issued, nobody knew -- staff did not know the  
2 direction we were taking.

3 Q. And whatever you told the  
4 NextEra people, there was no public announcement in  
5 a written form to all of the FIT proponents of what  
6 you told NextEra people; correct?

7 A. Well, anyone that would have  
8 called in and been told the same message, that the  
9 government hadn't made a decision, that we were  
10 considering. That is generally -- there's  
11 a -- wind proponents talk to each other, and  
12 obviously they were also talking to CanWEA and so  
13 it prompted CanWEA to write to us.

14 So there must have been lots of  
15 dialogue in industry amongst GR firms and everyone  
16 who was paying attention.

17 Q. In fact, you got other  
18 letters from other people saying that CanWEA was  
19 not representing the position of all of its  
20 members, didn't you?

21 A. One can never represent the  
22 views of every, everybody. But CanWEA did  
23 represent the majority, the vast majority, of the  
24 wind developers out there.

25 Q. Your obligation is not just



1 to represent -- not just to meet the expectations  
2 of the majority, but to meet the fair  
3 representations of all proponents. Don't you  
4 agree, Ms. Lo?

5 A. We were being fair. We  
6 were -- we devised a Minister's direction that  
7 contemplated ratepayers', developers' expectations.  
8 We capped the megawatts to ward off the  
9 uncertainty.

10 We allowed a certain number of  
11 megawatts of connection at each connection point to  
12 protect the very -- the smallest of the generators,  
13 and it was as close to an ECT as the FIT rules  
14 possibly contemplated. And so I think in my  
15 estimation, we -- we were fair.

16 Q. You agree that due process  
17 and fairness is not just given to the majority, but  
18 given to all; right?

19 A. As a principle, I would agree  
20 with that. Where there is someone says that they  
21 needed to award contracts by a certain time, then  
22 you do what you can.

23 Q. And can you turn to - this  
24 is confidential. We will go on confidential. This  
25 is C-629.

1 --- Upon commencing restricted confidential session at 12:44 p.m.  
2 now deemed public

3 BY MR. MULLINS:

4 Q. C-29. This is tab 27. This  
5 is an e-mail from you to Andrew Mitchell; right?

6 A. I don't know what I am  
7 looking at.

8 Q. I'm sorry.

9 A. C?

10 Q. Tab 27, ma'am.

11 A. Oh, I thought you said "C".

12 Q. The "C" is the document  
13 number. I get in trouble when I don't mention  
14 that. So the doc number is C-629, but it was under  
15 tab 27 in your notebook.

16 A. Okay.

17 Q. Do you recognize this  
18 document?

19 A. Yes.

20 Q. Can you tell us what this  
21 document is? It's an e-mail; right?

22 A. It is an e-mail to Andrew  
23 Mitchell. Andrew Mitchell was the director of  
24 policy in the Minister's office.

25 Q. What does "B club" mean in

1 the "re" line?

2 A. That was just a name we used  
3 for the highest-level meetings with --

4 Q. Breakfast club or something?

5 A. Yes. It was the breakfast  
6 club.

7 Q. Good movie, okay.

8 --- Laughter.

9 THE WITNESS: But there was a  
10 breakfast club, but there was not any breakfast  
11 served.

12 --- Laughter.

13 BY MR. MULLINS:

14 Q. Well, it is the government.  
15 Who was at the breakfast club?

16 A. Usually it was the -- the  
17 secretary of the Cabinet was Shelly Jamieson.  
18 There was also the Premier's chief of staff. There  
19 was our deputy.

20 There would be the cabinet office  
21 deputy, sometimes the Finance Ministry's deputy,  
22 and whoever was making the presentations.

23 Q. Now, this was, again, after  
24 the meeting that Mr. Cronkwright mentions in his  
25 witness statement, right, because it is pretty late

1 at night? It is at again 8:20.

2 This is -- meanwhile you are  
3 still -- this is also a time you are communicating  
4 by e-mail to NextEra. Remember that? This is all  
5 of the May 12th late night -- early evening,  
6 rather; right? Do you see the time, 8:20?

7 A. That was pretty common.

8 --- Upon commencing confidential session now deemed public

9 THE CHAIR: Fine. I would suggest  
10 that we take the break now, because it has been  
11 quite a long stretch for you, Ms. Lo. Can we defer  
12 the re-direct until after lunch?

13 MR. SPELLISCY: Give us a minute  
14 here, because I am conscious of course of Ms. Lo's  
15 time, and if we don't have many questions at all,  
16 then we can do it, but we may do it quickly.

17 If the Tribunal plans on having a  
18 number of questions, though, then I would say we  
19 take our lunch break.

20 THE CHAIR: I don't think we have  
21 many questions, because a lot of ground has been  
22 covered, and I don't think so. So why don't you  
23 check how many you have, and then maybe we can  
24 conclude now?

25 MR. SPELLISCY: Just give us two

1 minutes.

2 THE CHAIR: Yes.

3 MR. SPELLISCY: Professor

4 Kaufmann-Kohler and members of the Tribunal, we do  
5 not have any re-direct questions, so we won't ask  
6 Ms. Lo any questions.

7 THE CHAIR: Thank you, sir. Then  
8 let me see whether we still have questions. Judge  
9 Brower?

10 QUESTIONS BY THE TRIBUNAL:

11 MR. BROWER: Since I was taken to  
12 tab 27, which we have just been discussing, I  
13 looked at tab 28, which I turned to by mistake at  
14 the beginning. Obviously the point is being made  
15 by the claimant that the period of May 12, this  
16 meeting, and May 13th was critical in some way or  
17 very busy with respect to decisions made or  
18 contemplated with respect to the five-day window.

19 Here at tab 28, which is Exhibit  
20 C-0674, the F.A. Wiley, vice president development  
21 Canada, NextEra Energy Resources, Juno Beach,  
22 Florida, addresses an e-mail to you May 13, 2011,  
23 10:12 a.m., addresses you as "Sue":

24 "Per our discussion this  
25 morning, please find attached

1 a list of NextEra's six  
2 projects remaining in the FIT  
3 queue. Thanks."

4 Could you tell us what the  
5 discussion was in the morning and why he was -- if  
6 you know why he was sending you a list of NextEra's  
7 six projects remaining in the FIT queue, and do you  
8 know why he used the expression "remaining in the  
9 FIT queue", which suggests, just facially on a  
10 reading, that some had been taken out of the FIT  
11 queue?

12 THE WITNESS: Mm-hm. So let me  
13 try to answer the question this way. I think what  
14 Al Wiley was doing was sending me projects that  
15 were in the FIT queue because others had probably  
16 received a contract. NextEra probably received  
17 contracts during the initial award of FIT contracts  
18 in April of 2010.

19 So these were the ones that  
20 remained in a queue to be decided upon when  
21 transmission became available.

22 The reason he was sending me the  
23 contracts is out of self-interest, just as any  
24 other proponent that would have reached out to us.  
25 They would have wanted us to understand why they

1 wanted something, that they wanted -- so NextEra  
2 would have wanted me and my staff to understand  
3 that they definitely favour a connection change  
4 point window.

5 In terms of receiving the details,  
6 I would have -- upon receiving his e-mail, what I  
7 would have done is I would have instantly forwarded  
8 that to my staff to say, you know: Here's some  
9 information about NextEra's projects.

10 MR. BROWER: Mm-hm. But what was  
11 the discussion that morning?

12 THE WITNESS: Oh, the discussion I  
13 believe was over the telephone, and it would have  
14 been a short discussion where he would have  
15 probably espoused the merits of why Ontario should  
16 include a connection change point window. That's  
17 probably what it was.

18 I don't even remember the exact  
19 sentences that he would have said, but I would know  
20 that we had similar conversations with other  
21 proponents who reached out to us, and all of them  
22 wanted contracts should be awarded as soon as  
23 possible, and certainly before the government would  
24 go into an election mode, because 2011 in the fall,  
25 that was the set time for another provincial

1 election.

2 MR. BROWER: And why would that  
3 affect the timing of awarding contracts?

4 THE WITNESS: Because the --

5 MR. BROWER: Why do they want to  
6 get in before the election?

7 THE WITNESS: Yes. Because the  
8 government would want to award the contracts  
9 before, well before, the writ was dropped, because  
10 a writ period is a period of time before the actual  
11 election itself, where the Ministers are no longer  
12 really holding their portfolios, but they have gone  
13 to seek re-election, if they so choose.

14 So the business of the government  
15 goes just into a caretaker mode during the writ  
16 period. And so the election was going to be in  
17 October or before, and they wanted -- because the  
18 opposition was saying that they were going to  
19 cancel the FIT program, that's where I think there  
20 was a lot of lobbying on government to award these  
21 contracts so that another government couldn't come  
22 in and not award them.

23 MR. BROWER: And I think maybe you  
24 have answered my next question, which was at tab 27  
25 that we've been looking at, Exhibit C-0629, the



1 e-mail at the bottom in which you are addressing  
2 Andrew, Andrew Mitchell of the -- is that the  
3 Ministry of Environment and Energy --

4 THE WITNESS: Energy and  
5 Infrastructure.

6 MR. BROWER: Energy and  
7 Infrastructure, right, thank you.

8 You say "that", referring to the  
9 idea of setting aside the entire London/London east  
10 for KC, Korean Consortium. You say:

11 "That would help to pace the  
12 contract awards a bit  
13 better."

14 Do I correctly understand that is,  
15 meaning it might get to award contracts faster?

16 THE WITNESS: I think what I was  
17 trying to say was that if we set aside London and  
18 London east, all 350 megawatts, then that means  
19 that we wouldn't -- because the Korean Consortium  
20 were slow in terms of figuring out where they could  
21 connect in that entire region.

22 And so by holding the London and  
23 London East and just not awarding FIT contracts in  
24 that area, what it would do would be to slow down  
25 the pace of contract awards.

1                   And as I said previously, we  
2                   wanted to slow down the pace of contract awards,  
3                   because this particular set of contract awards were  
4                   being done at the prices for FIT that were set in  
5                   2009.

6                   So they were still fairly  
7                   attractive FIT prices, and I think one of our main  
8                   considerations was that we really wanted to slow  
9                   down the pace of procurement. So it would be fewer  
10                  megawatts to be awarded, and that would slow it  
11                  down, because once we entered into the two-year FIT  
12                  review, which happened almost immediately after the  
13                  contract awards for Bruce-to-Milton, we could look  
14                  at making tweaks, substantial tweaks, to the  
15                  program to lower the prices of the technologies.

16                  MR. BROWER: Do I understand from  
17                  what you say that the then-Ontario government --

18                  THE WITNESS: Yes.

19                  MR. BROWER: -- was interested in  
20                  as many contracts as possible being signed, as they  
21                  were up for re-election?

22                  THE WITNESS: Well, I think the  
23                  landscape changes. The Ontario government was  
24                  certainly interested in making a splash in terms of  
25                  awarding contracts.

1 MR. BROWER: Right.

2 THE WITNESS: Because awarding  
3 contracts, as you know, it is like ribbon cutting.

4 MR. BROWER: Right.

5 THE WITNESS: All sorts of good  
6 news, and government could talk about its millions  
7 and millions of dollars in investment that it would  
8 attract.

9 But, you know, did it matter  
10 whether we awarded 1,000 megawatts or 800? I think  
11 there would be very little difference in terms of  
12 the splashiness of the news. It was still really  
13 good news to be awarding contracts.

14 MR. BROWER: Right. Did that  
15 government get re-elected?

16 THE WITNESS: Yes, they did, and  
17 they are still in power. They got re-elected twice  
18 since then.

19 MR. BROWER: Okay, that's it.

20 THE CHAIR: I am a little  
21 confused, and maybe I have misunderstood you, but  
22 you will clarify it for me.

23 When I asked you why you didn't  
24 ask for comments of the proponents to the FIT rule  
25 changes with respect to the connection window, you

1 said that this would have taken too much time and  
2 therefore -- and you were eager to award the  
3 contracts as soon as possible.

4 Now, in answer to Judge Brower's  
5 questions about the e-mail in tab 27, C-629, where  
6 you said that would help to pace the contract  
7 awards a bit better, you say: That is because we  
8 wanted to slow down the contract awards.

9 So now I don't know if you want to  
10 accelerate or did you want to slow it down, or one  
11 has nothing to do with the other?

12 THE WITNESS: So it is competing;  
13 right? So what we were trying to do, we had made  
14 proposals to the government at the time to do the  
15 FIT review earlier, and the government did not want  
16 to do that before the reelection.

17 So there were opposing forces. In  
18 terms of getting these contracts out, for the  
19 government it was imperative that we award these  
20 contracts before the election, before the writ  
21 drops.

22 In terms of exactly how many  
23 megawatts would be procured, there was a desire not  
24 to award all of the contracts that could connect,  
25 and that's why we capped the number of megawatts in

1 the Minister's direction. I think it was 750 and  
2 300 megawatts, because if more projects could have  
3 connected, we didn't want to pay for the additional  
4 megawatts that would come on stream, because they  
5 were surplus to what Ontario's energy needs were in  
6 the future, the projections.

7 THE CHAIR: Thank you.

8 MR. BROWER: Excuse me. I can't  
9 help saying that reminds me of the story told about  
10 old Joe Kennedy, the father of Jack Kennedy, when  
11 he was running for president of the United States.  
12 He said: I will pay everything to get elected, but  
13 not a nickel for a landslide.

14 --- Laughter.

15 THE WITNESS: Yes. Exactly right.

16 MR. BROWER: So it seems to me --

17 THE WITNESS: It's kind of like  
18 that.

19 MR. BROWER: -- it is a bit of an  
20 example of -- you're in the civil service.

21 THE WITNESS: Yes, I am.

22 MR. BROWER: Right, of the civil  
23 service trying to deal sensibly with what  
24 government wants.

25 THE WITNESS: Right.

1 MR. BROWER: Okay.

2 THE CHAIR: Follow-up question?

3 MR. MULLINS: I do.

4 MR. SPELLISCY: There was no  
5 re-direct and now I am wondering about re-cross.

6 THE CHAIR: I usually would allow  
7 a follow-up question, provided it is specifically  
8 linked to a question by the Tribunal. Both parties  
9 have that right.

10 I think the Tribunal is done with  
11 its questions, although I have not checked my own  
12 notes to make sure by covered everything. Let me  
13 just check. We have covered all of my questions,  
14 so if you have follow-up, please go ahead.

15 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

16 Q. Just one follow-up question  
17 from the questions of Judge Brower.

18 Ms. Lo, talking about this  
19 critical time period in May of 2011 and to June  
20 2011, did you have other e-mail communications with  
21 other FIT proponents or was it only with NextEra?

22 A. It would have been -- to  
23 answer your question simply, we would have had lots  
24 of contact with many proponents, I think.

25 Q. Specifically, though, ma'am,

1 e-mails exchanged back and forth like we have seen  
2 with the NextEra.

3 A. No, I don't know. I don't  
4 know what was provided. I don't know what was  
5 pulled. I think we provided you everything that  
6 was in our record.

7 Q. Well, that is where I am  
8 headed, ma'am, because we don't have any other  
9 e-mails other than the ones produced with respect  
10 to NextEra.

11 And what I am asking is, for the  
12 record, do you have any knowledge that there would  
13 be other e-mails around the same time period with  
14 FIT proponents during this time period that we have  
15 not been provided? So I am asking you if those  
16 documents exist.

17 A. I think we provided all of  
18 the documents that we had in our possession. There  
19 would always be ongoing conversations. My staff  
20 and I were always at regular forum with the  
21 industry and having regular meetings with  
22 stakeholder groups. So --

23 Q. Did you look for e-mails with  
24 other FIT proponents, ma'am?

25 A. I think in a normal search

1 process, an independent third person looks at all  
2 of my e-mail and creates the package for you.

3 So they didn't want me to look for  
4 my own e-mails, because it is better to have a  
5 third party look at all of my e-mails and transmit  
6 the entire set to you.

7 MR. MULLINS: Thank you very much.

8 THE CHAIR: Any follow-up  
9 questions on Canada's side?

10 MR. SPELLISCY: No. I did just  
11 want to clarify for the public record on Exhibit  
12 C-0681, because the claimant's counsel expressed  
13 confusion at it being identified as confidential,  
14 and of course that is the claimant's  
15 confidentiality designation, not Canada. So I just  
16 wanted to be clear on that.

17 THE CHAIR: Thank you. That's  
18 clear. Fine. So this completes your examination,  
19 Mrs. Lo. Thank you very much. It was a long  
20 morning, but we got to the end of it. Thank you.

21 THE WITNESS: Thank you.

22 THE CHAIR: We will now take a  
23 one-hour break. Is that fine? And we will resume  
24 at 2:15, or would you prefer resuming at 2:00? We  
25 will then go over to Mr. MacDougall; is that



1 right? What is the preference?

2 MR. APPLETON: Full hour. It has  
3 been a very full morning.

4 THE CHAIR: You want a full hour?

5 MR. MULLINS: Whatever is good for  
6 the Panel.

7 MR. APPLETON: What would you  
8 like?

9 THE CHAIR: Well, we're here at  
10 your disposal.

11 --- Laughter.

12 MR. SPELLISCY: Sort of.

13 THE CHAIR: Sort of? Don't say  
14 that. Let's say 2:15, then.

15 --- Luncheon recess at 1:15 p.m.

16 --- Upon resuming at 2:19 p.m.

17 --- Upon resuming public session

18 THE CHAIR: Are we ready to start  
19 again? Good afternoon, sir.

20 THE WITNESS: Good afternoon.

21 THE CHAIR: Are we ready or not?

22 MR. MULLINS: We're ready.

23 MR. SPELLISCY: We're ready.

24 THE CHAIR: Good. For the record,  
25 can you please confirm to us, sir, that you are Jim

1 MacDougall.

2 THE WITNESS: Yes, my name is Jim

3 MacDougall.

4 THE CHAIR: Your current position  
5 is president of Compass Renewable Energy  
6 Consulting?

7 THE WITNESS: Yes, that's correct.

8 THE CHAIR: During the time that  
9 we're interested in here, you were manager of the  
10 Feed-in Tariff at the OPA?

11 THE WITNESS: Yes, that's correct.

12 THE CHAIR: You have filed one  
13 witness statement in this arbitration dated 27th of  
14 February 2014?

15 THE WITNESS: Yes.

16 THE CHAIR: And as you know, you  
17 are heard as a witness in this arbitration. As a  
18 witness you are under the duty to tell us the  
19 truth. Can you please confirm that this is what  
20 you intend to do?

21 THE WITNESS: Yes, it is what I  
22 intend to do.

23 AFFIRMED: JIM MACDOUGALL

24 THE CHAIR: Thank you. Now you  
25 know how we will proceed? You will first be asked

1 questions, introductory questions, by Canada's  
2 counsel, and then we will turn to Mesa's counsel.

3 THE WITNESS: Yes.

4 THE CHAIR: To who do I give the  
5 floor?

6 MS. MARQUIS: Myself.

7 EXAMINATION IN-CHIEF BY MS. MARQUIS:

8 Q. Good afternoon. Good  
9 afternoon. I am Laurence Marquis, counsel for  
10 Canada. Mr. MacDougall, I have just one question  
11 for you. You have your witness statement in front  
12 of you. Are there any corrections that you need to  
13 bring?

14 A. No, there are not.

15 MS. MARQUIS: Thank you. I turn  
16 the floor to you.

17 THE CHAIR: Mr. Mullins, your  
18 turn.

19 CROSS-EXAMINATION BY MR. MULLINS: AT 2:21 P.M.

20 Q. Good afternoon,  
21 Mr. MacDougall.

22 A. Good afternoon.

23 Q. I will have more than one  
24 question. I am going to be referring to your  
25 witness statement, February 27th, 2014, and you

1 have confirmed it is accurate and complete and no  
2 biases, as well as it can be; correct?

3 A. That's right, yes.

4 Q. We have a number of witnesses  
5 to go through, including experts, so it will be  
6 really helpful to me if you could listen to my  
7 question and try to answer it. If you need to  
8 follow up on an answer, that's fine. If you want  
9 to go to a different area, I would ask you to wait  
10 to your counsel, or Canada's counsel will ask you  
11 questions, because they are entitled to do so on  
12 re-direct.

13 But I really have a limited amount  
14 of time and we have a number more witnesses to go  
15 through, including experts. Is that fair?

16 A. Yes.

17 Q. Thank you. Now, you  
18 currently are the president of Compass Renewable  
19 Energy?

20 A. Yes, that's right.

21 Q. And what is that, sir?

22 A. So I act as a consultant  
23 primarily to assist developers of renewable energy  
24 projects to advance their projects through the  
25 Feed-in Tariff contracts, to bring them to

1 operation primarily in the Province of Ontario.

2 Q. Okay. You answered my  
3 question. Is it only Canada or...

4 A. We do consulting work outside  
5 of Canada. We have worked with US clients,  
6 European clients, but the majority of the work that  
7 Compass Renewable Energy Consulting is involved in  
8 is with Ontario clients.

9 Q. Well, Ontario clients or  
10 clients doing work in Ontario?

11 A. Both. The majority of the  
12 work is done in Ontario.

13 Q. Okay. When you say  
14 "majority", 80 percent?

15 A. Probably 90.

16 Q. Ninety percent, okay. Before  
17 you started your consulting program, you were  
18 manager of the Feed-In Tariff program in the OPA?

19 A. Yes.

20 Q. And you in fact are the only  
21 employee of Compass Renewable Energy; right?

22 A. No. There are three  
23 employees of Compass Renewable Energy.

24 Q. And they help you with  
25 consulting?

1                   A.    That's correct, yes.

2                   Q.    And have you done work for

3   NextEra?

4                   A.    I have not.

5                   Q.    Or the Korean Consortium?

6                   A.    No, I have not.

7                   Q.    And do you consult with the

8   government?

9                   A.    I have secured a consulting

10   contract with the Ontario Power Authority, but as

11   of yet I have not done any consulting work through

12   that contract.

13                  Q.    When was that contract

14   entered, sir?

15                  A.    The contract was entered into

16   in June of -- approximately June of 2014.

17                  Q.    That was after you did your

18   witness statement?

19                  A.    That's correct, yes.

20                  Q.    And how are you going to

21   consult with the government and also act as a

22   consultant for people doing work with the

23   government?

24                  A.    So I'm not working for the

25   government.

1 Q. Okay?

2 A. That contract is with the  
3 Ontario Power Authority.

4 Q. Okay.

5 A. And the capacity in which the  
6 work would be delivered through the Ontario Power  
7 Authority has provisions to ensure that there are  
8 no conflicts of interest --

9 Q. Right.

10 A. -- in the event that the work  
11 I was doing for the Ontario Power Authority  
12 overlapped with work I would be doing with a  
13 client.

14 Q. How do you avoid the conflict  
15 of interest?

16 A. So I only have -- well there  
17 are hundreds of feed-in tariff developers in  
18 Ontario.

19 Q. Right.

20 A. Developing all sizes of  
21 projects.

22 Q. Right.

23 A. I don't represent all of  
24 them.

25 Q. Right.

1                   A.    I represent maybe a dozen.  
2    So to the extent that I don't represent a client,  
3    doing work for them as a consultant, then there  
4    wouldn't be a conflict with me doing work with the  
5    government in assessing that client's project.

6                    It might help to describe the  
7    nature of the consulting work that I may be doing  
8    for the Ontario Power Authority.

9                   Q.    Okay, sure.

10                  A.    So the work that Compass bid  
11    on was reviewing projects to ensure that the  
12    project was primarily compliant with the domestic  
13    content provisions of the feed-in tariff contracts.

14                  So in that capacity, Compass would  
15    review the documentation submitted by a supplier to  
16    confirm that the documentation was compliant with  
17    the contractual requirements of the feed-in tariff  
18    contract.

19                  Q.    That's the work you bid on  
20    for the government; right?

21                  A.    That's the work that I bid on  
22    for the Ontario Power Authority.

23                  Q.    And so you --

24                  A.    In 2014.  So it doesn't show  
25    up anywhere on my witness statement.



1                   Q.    I understand.  Well, your  
2   witness statement was dated February 2014.  When  
3   did you do the bid?

4                   A.    Probably March or April.

5                   Q.    So pretty soon after you did  
6   your witness statement, you bid for a project with  
7   the OPA?

8                   A.    Yes.

9                   Q.    And I am confused, though.  
10  You say your work, you haven't started that work  
11  yet?

12                   A.    No, I haven't.

13                   Q.    But the plan is that you are  
14  going to consult with the OPA to help them make  
15  sure that the domestic content requirements are  
16  complied with?

17                   A.    That's the majority of the  
18  scope of the work.

19                   Q.    Okay.  Otherwise, the work  
20  you're doing with FIT project people, your clients,  
21  that's not going to be dealing with the issue about  
22  the content requirements?

23                   A.    No.  The work that I would be  
24  doing with, as I said, the dozen or so clients  
25  would be -- part of it could be assisting them with

1 their domestic content documentation. That's quite  
2 possible.

3 Q. So there would be an overlap,  
4 then, through what you're working on with the OPA  
5 and what you are going to be doing for your  
6 clients?

7 THE CHAIR: I'm sorry, but I think  
8 he just answered that he would not act for these  
9 clients, on mandates for the OPA or vice versa, to  
10 avoid conflicts of interest.

11 THE WITNESS: That's right. I  
12 would declare a conflict of interest if I was asked  
13 to review documentation --

14 BY MR. MULLINS:

15 Q. Oh, I see.

16 A. -- from one of my clients.

17 Q. I apologize. I understand  
18 now. You're saying the subject area could overlap,  
19 but for a specific client you wouldn't do it. I  
20 apologize.

21 A. Right.

22 Q. I understand, yes. Thank  
23 you.

24 Now, when you were with the  
25 Feed-in Tariff program, your department was

1 responsible for coordinating and administering the  
2 Ontario FIT program?

3 A. That's correct.

4 Q. And it was your  
5 responsibility to conduct those assessments of  
6 applications made by the renewable energy power  
7 purchase agreement proponents in an open,  
8 transparent, accountable and effective way?

9 A. Yes.

10 Q. And that would be true for  
11 all parties involved in the FIT process; correct?

12 A. Yes, that's correct.

13 Q. Including FIT proponents who  
14 didn't get a contract?

15 A. Yes, that's correct.

16 Q. And you believe, do you not,  
17 that all OPA employees have a duty and an  
18 obligation to make their decisions fairly?

19 A. Yes.

20 Q. Objectively, honestly and  
21 high ethical standards?

22 A. Yes.

23 Q. Openness and transparency?

24 A. Yes.

25 Q. Without -- with impartiality?

1 A. Yes.

2 Q. And transparency means to you  
3 being open and forthright?

4 A. Yes.

5 Q. And giving all information  
6 possible?

7 A. Yes, within the context of  
8 the FIT program administration.

9 Q. And you would expect in fact  
10 that the people you work with in the Ministry of  
11 Energy would also have these exact same duties and  
12 obligations as we just described them?

13 A. They wouldn't be involved in  
14 the administration of FIT applications, but  
15 otherwise the principles --

16 Q. The principles we talked  
17 about would apply to the Ministry of Energy?

18 A. Yes.

19 Q. Okay. Now, in your initial  
20 statement, paragraph 15, you say that:

21 "... the Ministry of Energy's  
22 main goal was to allow  
23 'shovel-ready' projects to  
24 'float to the top'. 'Quick  
25 wins' for the program meaning

1                   immediate investment in  
2                   development, were seen as  
3                   crucial for the government's  
4                   strategy of creating jobs in  
5                   the renewable energy  
6                   sector..."

7                   Correct?

8                   A.    Yes, that's correct.

9                   Q.    And you agree that' not only  
10                  the main goal for the Minister of Energy, but that  
11                  was also a goal for the OPA?

12                  A.    Yes.  In designing the rules,  
13                  yes.

14                  Q.    And, in addition, another  
15                  proponent or component of the FIT program was to  
16                  make sure that participants would bind themselves  
17                  to immediate instruction activity; correct?

18                  A.    Yes, as quickly as possible.

19                  Q.    As quickly as possible.  So  
20                  despite that it may be years before the energy  
21                  actually gets generated, they wanted immediately to  
22                  go out and buy land and start working on the  
23                  project; correct?

24                  A.    Yes.

25                  Q.    Or leasing land?

1 A. Yes.

2 Q. Buy it. So the OPA and the  
3 Ministry of Energy knew during this process that  
4 FIT proponents were doing this; right?

5 A. Yes.

6 Q. In fact -- and so it was not  
7 lost on the OPA or the Ministry of Energy that  
8 proponents were spending substantial sums in  
9 preparation of participating in the FIT program,  
10 was it?

11 A. Yes. They were continuing  
12 their prior investments and making new investments.

13 Q. And making new investments,  
14 so it was costing a lot of money. It would;  
15 correct?

16 A. Yes.

17 Q. Thank you. Thank you. And  
18 that's frankly what "shovel-ready" meant; right?  
19 So the idea was you're ready to start building?

20 A. Yes.

21 Q. So it was important for the  
22 OPA and the Ministry of Energy to make sure they  
23 didn't make special arrangements with competitors,  
24 because there were substantial rights being  
25 affected by decisions made by the OPA and the

1 Ministry of Energy, don't you agree?

2 A. Yes. They wanted short-term  
3 investment. They wanted to stimulate job creation.

4 Q. Both in respect to, for  
5 example, the Korean Consortium and the FIT  
6 proponents?

7 A. I am not as familiar with the  
8 time lines for the Korean Consortium projects, but  
9 certainly within the FIT program, yes.

10 Q. And you were involved  
11 somewhat, though, with the Korean Consortium  
12 projects or...

13 A. Very little.

14 Q. Okay.

15 A. Early, early on.

16 Q. Were you involved at all in  
17 how the FIT -- sorry, the GEIA -- I am going to  
18 call it the GEIA. Are you okay with that?

19 A. Yes.

20 Q. Okay, good. So are you  
21 familiar at all with how the participants in the  
22 Korean Consortium were able to obtain projects to  
23 fulfil their obligations on the GEIA?

24 A. Sorry, the GEIA being the  
25 Green Energy and Economy Act or the Green Energy

1 Investment Act.

2 Q. That's why people have a  
3 problem with "GEIA".

4 The green energy investment  
5 agreement with the Korean Consortium.

6 A. Right.

7 Q. I can call it the Korean  
8 Consortium agreement, if you like.

9 MR. APPLETON: No, no.

10 BY MR. MULLINS:

11 Q. Can I use GEIA?

12 A. That's fine, yes.

13 Q. Are you familiar, generally,  
14 with how the members of the Korean Consortium were  
15 able to attain projects to fulfil their obligations  
16 under the GEIA?

17 A. I am not at all familiar with  
18 that.

19 Q. You are not aware of them  
20 buying FIT projects in the program -- sorry, FIT  
21 projects ranked lower in order to satisfy their  
22 obligations?

23 A. I heard something, that that  
24 was their approach, but...

25 Q. Do you remember who told you



1 that?

2 A. Sorry?

3 Q. You said you heard it. Do  
4 you remember how you heard it?

5 A. Probably wind industry  
6 stakeholders.

7 Q. They were complaining about  
8 this or they were commenting?

9 A. Noting that that was the kind  
10 of target market for the Korean Consortium group,  
11 to seek projects that were lower on the list.

12 Q. The idea was these projects  
13 were not ever going to realistically get a FIT  
14 contract. So these were sort of the target market  
15 for the Korean Consortium to buy out their projects  
16 in order to basically satisfy the GEIA?

17 A. Yes, that's how I heard that  
18 they were in the market looking for site  
19 acquisition.

20 Q. And many of those projects  
21 were low ranked, because they weren't shovel ready;  
22 isn't that right?

23 A. Very likely that that's why  
24 they were lower ranked, yes.

25 Q. So the irony of this is that

1 while it was very important to the government and  
2 the OPA to have shovel-ready projects, it turns  
3 out, though, that non-shovel-ready projects were  
4 getting -- essentially participating in the  
5 renewable energy because they were being bought out  
6 by the Korean Consortium; is that correct?

7 A. Yes. So, you're right, the  
8 FIT was are focussed on shovel ready and the GEIA  
9 had other criteria, I suppose. I wasn't...I wasn't  
10 involved in the GEIA, so I wasn't sure what the  
11 mechanics of that were going to end up looking  
12 like.

13 Q. I appreciate your explanation  
14 there.

15 Now, going back to the comments  
16 you said about the participants, if you go to your  
17 statement, paragraph 5, you say:

18 "After I left the OPA and  
19 formed Compass Renewable  
20 Energy Consulting Inc. I was  
21 contacted by a number of  
22 industry participants that  
23 had questions about the OPA  
24 FIT Contract award process as  
25 it related to capacity

1                   recently made available for  
2                   the new Bruce to Milton  
3                   transmission project."

4                   Can you remind us when you left  
5                   the OPA?

6                   A.    It was June of 2011.

7                   Q.    Okay.  So you left right  
8                   about when the Bruce awards were made?

9                   A.    Correct.

10                  Q.    Okay.  And you say here there  
11                  were concerns expressed about the process and  
12                  whether it was fair and transparent.  Do you see  
13                  that?

14                  A.    Yes.

15                  Q.    Okay.

16                  A.    Yes.

17                  Q.    So can you tell us what those  
18                  concerns were and who made them?

19                  A.    Well, the questions were  
20                  around how, you know, decisions were ultimately  
21                  made around the contract award for the  
22                  Bruce-to-Milton allocation and whether there was  
23                  any, you know, untoward discussions within  
24                  government and within the Ontario Power Authority  
25                  about how that allocation process went.

1                   And I responded that I was unaware  
2 of any untoward dealings. It was simply a matter  
3 of decisions around the process, and then the  
4 execution of the process and the resulting  
5 megawatts of capacity to be contracted under that  
6 process.

7                   Q. How soon after you left did  
8 these conversations begin?

9                   A. So my first day out of the  
10 OPA was, I believe, June 17th.

11                  Q. Yes?

12                  A. Of 2011.

13                  Q. Mm-hm.

14                  A. And the process was being  
15 administered in early June of 2011. So certainly  
16 in the month of June, people were -- that was a  
17 timely topic of discussion. So people were asking  
18 what was going on and how did this play itself out.

19                  Q. The phone was ringing off the  
20 hook?

21                  A. No, I wouldn't say that, but  
22 probably two or three calls in the month of June.

23                  Q. Two or three?

24                  A. Yes, from different parties.

25                  Q. What parties?

1                   A.    Companies --

2                   MR. SPELLISCY:  Well, sorry.  Hold  
3   on here.  I don't know if this isn't something that  
4   has been addressed.  I am not sure if  
5   Mr. MacDougall would like to go in a confidential  
6   session to discuss who his clients are.

7                   It is not something that has been  
8   addressed or dealt with before.  It is up to  
9   Mr. MacDougall, but I do recognize who his  
10  clients -- who might have reached him might be  
11  confidential business information to Compass  
12  Renewable.

13                  MR. MULLINS:  Referring to a  
14  statement he made was not marked "confidential".  I  
15  was specifically asking who was calling and what  
16  they said, so...

17                  THE WITNESS:  Well, there is one  
18  that I can recall that was immediate, which was  
19  Leader Resources.

20                  BY MR. MULLINS:

21                  Q.    Mm-hm?

22                  A.    A gentleman named Chuck Edey  
23  called me and asked me, in the context of working  
24  with another consultant, how the process played  
25  itself out.

1                   Q.    But he wasn't the only one to  
2 complain; right?

3                   A.    Frankly, his was the only  
4 company who I recall offhand.  The majority of my  
5 clients ended up being solar developers, and still  
6 are solar developers.  So I frankly don't work with  
7 a lot of wind developers.  And the majority of the  
8 capacity that was awarded in the Bruce-to-Milton  
9 area were from wind developers.

10                  But there were questions, again,  
11 about both the process and also, you know, the  
12 establishment of the megawatt caps associated with  
13 the allocation and where those numbers came from  
14 and why.

15                  Q.    And what did you tell them?

16                  A.    Well, frankly, I told them  
17 that the primary driver, as I saw it, was that the  
18 FIT program that I had been working on was an open  
19 procurement under the rules.  Yet the previous  
20 energy policy of the province, the long-term energy  
21 plan, placed a specific cap on the renewable  
22 procurement targets, and that for months I had  
23 recognized that the program and the long-term  
24 energy plan themselves were incompatible; they were  
25 inconsistent.

1                   So my comments were more along the  
2 lines, in that regard -- especially to the solar  
3 developers, were in the lines of: The megawatt  
4 caps associated with the Bruce-to-Milton allocation  
5 were deliberate to ensure that the province's  
6 liability and obligations, as a result of contract  
7 awards, would be capped.

8                   Q. Well, the other challenge was  
9 that there was capacity that was set aside for the  
10 Korean Consortium; correct?

11                  A. That certainly played into  
12 where those numbers were set.

13                  Q. Because had the Korean  
14 Consortium agreement never been entered into, there  
15 would have been more capacity available for FIT  
16 proponents in the Bruce region; correct?

17                  A. I would suggest throughout  
18 the province, yes.

19                  Q. But specifically in the  
20 Bruce?

21                  A. Yes, I believe there was an  
22 allocation for the Korean Consortium in the Bruce  
23 area.

24                  Q. You remember in September  
25 2010 that is exactly what happened. There was a

1 directive that set aside 500 megawatts in the Bruce  
2 region?

3 A. Right.

4 Q. Thank you. Now, why did you  
5 leave the OPA, Mr. MacDougall?

6 A. A number of reasons. I had  
7 been at the Ontario Power Authority for almost six  
8 years and so I had -- well, I hadn't kept a job for  
9 more than six years in my career prior to that.

10 But part of it was to use my  
11 expertise in understanding how the FIT program  
12 operated to assist clients to navigate the FIT,  
13 program from a contractual perspective or from a  
14 program, kind of next steps perspective.

15 So it was an opportunity to  
16 venture out in my career and work in the industry,  
17 but from a different capacity.

18 Q. It was just a coincidence  
19 that it was around the same time period that the  
20 FIT program was going through this process in this  
21 Bruce-to-Milton region?

22 A. Yes, very much so.

23 Q. Okay. But you did leave  
24 before the awards actually were entered; correct?

25 A. Yes. I believe the awards



1       were in July, and, as I said, my last day was  
2       around the 14th of June at the OPA, yes.

3                       Q.    So contrary to your  
4       statement, you can't know for a fact whether or not  
5       the entire process was completed in a fair manner,  
6       because you left before it was over; right?

7                       A.    Yes, that's true.

8                       Q.    Thank you.  Now, you talk  
9       about in your witness statement that the concept of  
10      offering a connection point change window in  
11      advance of running the ECT had been a part of the  
12      FIT rules; right?

13                      A.    Yes.

14                      Q.    Just so we're all on the same  
15      page, the ECT you're referring to had been a  
16      province-wide ECT?

17                      A.    Yes, that's correct.

18                      Q.    That never was run; right?

19                      A.    Yes, that's correct.

20                      Q.    There never was an idea there  
21      would be a connection change point window just for  
22      limited regions; right?

23                      A.    No.

24                      Q.    Okay.  And so what happens  
25      then is we sort of have a congruence -- confluence,

1 thank you, of events. So you have the  
2 Bruce-to-Milton line coming online. You have the  
3 capacity set aside for the Korean Consortium into  
4 Milton. You have the long-term energy plan coming  
5 on.

6 This issue, I think you talked a  
7 little bit about this. So there was a challenge of  
8 what to do with the west of London and the Bruce  
9 area; right?

10 A. Yes.

11 Q. And is it not correct that up  
12 to this point -- we're now into 2011 -- all of the  
13 other regions had contracts awarded?

14 A. Yes, that's correct.

15 Q. And the way those were  
16 awarded is that -- were these TAT and DAT tests.  
17 Why don't you explain what those are?

18 A. Sure. So those are grid  
19 connection capacity tests, first the transmission  
20 level, to ensure that there was adequate  
21 transmission capacity to connect a project to the  
22 grid.

23 And then for projects that  
24 connected at the distribution level, the lower  
25 voltage distribution system, then projects also had

1 to be able to physically connect onto the  
2 distribution system.

3 Q. And so what happens is, under  
4 the FIT rules, what could happen is that you could  
5 obtain a FIT contract -- well, obviously you can  
6 get it without an ECT, because many projects did;  
7 correct?

8 A. Correct.

9 Q. So what happens is these  
10 tests were run and you felt satisfied to award  
11 contracts in the other regions; correct?

12 A. Yes. The only one I am  
13 thinking might have been restricted would be the  
14 northwest of Ontario, but, generally, yes.

15 Q. So had you followed the same  
16 process in the other regions that was happening in  
17 the Bruce region, then under a normal process you  
18 would have awarded contracts in the Bruce region on  
19 the same process you did the other regions; right?

20 A. Well, the other regions of  
21 the province had contracts awarded outside of the  
22 ECT process. It wasn't an ECT process. There was  
23 capacity available and so contracts were awarded.

24 Q. Right.

25 A. The Bruce region was the

1 first part of the province that had connection  
2 constraints that were subsequently alleviated by  
3 new transmission. So it was the first part of the  
4 province that had an allocation process that was  
5 triggered by new connection capability being  
6 available.

7 Q. You do remember, though, in  
8 December of 2010, there was a ranking of the  
9 proponents in the Bruce project; remember that?

10 A. December 2010 or December  
11 2009?

12 Q. 2010, because the awards were  
13 entered in July. It is the December time  
14 period. You remember there was a ranking that was  
15 published?

16 A. Right. So the ranking  
17 probably took place in December 2009, and was made  
18 public in 2010.

19 Q. Oh, I'm sorry. Fair enough.  
20 Got it.

21 And so those were all published to  
22 the FIT proponents, right, in December 2010?

23 A. That's correct.

24 Q. And had you followed the  
25 process in the other regions, you would simply have

1 awarded the contracts at that point?

2 A. Understood, yes, that's  
3 correct.

4 Q. Okay. But the problem was  
5 that you had an issue, as we're talking about what  
6 to do with the Bruce area, and we also had this  
7 issue with the Korean Consortium, right, because  
8 they had been promised 500 megawatts in the Bruce?

9 A. Yes, that's right.

10 Q. That was kind of bad luck for  
11 the people that picked Bruce; right?

12 A. Yes.

13 Q. I mean, because if you'd  
14 happened to pick some other area, you probably  
15 would have had a contract. But if you're on the  
16 short end of that stick and hit the Bruce region,  
17 you were shut out. Now you have to deal with this  
18 new process; right?

19 A. Yes, amongst the other -- I  
20 guess it was 1,500 megawatts in total --

21 Q. Yes?

22 A. -- of Bruce -- sorry, of  
23 Korean Consortium capacity reserve, so 500 in the  
24 Bruce and 1,000 elsewhere.

25 Q. Right. I think it was 500

1 and 1,200. Does that sound more accurate?

2 A. I don't know exact numbers,  
3 but I'm saying there were 1,500 megawatts of  
4 capacity reserved for the Korean Consortium, which  
5 had, to your point, 500 megawatts of impact on the  
6 Bruce and 1,000 megawatts of impact elsewhere.

7 Q. Your department or the OPA's  
8 recommendation of how to solve this was to do a  
9 modified TAT, DAT, right, and you were asked by the  
10 Minister of Energy to do a rough estimate? Do you  
11 remember that?

12 A. Yes.

13 Q. Can you tell us a little bit  
14 about what that was?

15 A. So the Ministry was asking us  
16 to ensure that any contract award in the Bruce area  
17 would be megawatt limited. That was the -- it  
18 seemed to be the highest priority, that the overall  
19 contract awards should not exceed or should not be  
20 excessive.

21 There was a more recent concern,  
22 within Energy around the total cost of the Feed-in  
23 Tariff program, and so the primary driver of  
24 concern from the Ministry of Energy was, Let's make  
25 sure we know what we're going to get out of this

1       once we execute an offer, a series of contracts,  
2       because of the Bruce-to-Milton transmission  
3       capacity.

4                   Q.    And you do remember, do you  
5       not, sir, that there were a number of e-mail  
6       correspondence between the OPA and the Minister of  
7       Energy in which the Minister -- sorry, the OPA,  
8       rather, was recommending that this modified test  
9       that you ran would be followed, but that was not  
10      accepted by the Ministry of Energy; correct?

11                   A.    Yes.  There was a -- yes, a  
12      negotiation around that.

13                   Q.    And who made the decision at  
14      the Ministry of Energy to reject the recommendation  
15      of the OPA?

16                   A.    I honestly don't know.  I  
17      believe a conduit to our group was through Sue Lo,  
18      but I don't know whether it was Sue's decision or  
19      her Deputy Minister's decision.

20                   Q.    Was the OPA ever notified by  
21      Ms. Lo or anyone why the recommendation of the OPA  
22      was rejected?

23                   A.    I'm not aware of what the  
24      detailed rationale was for that.

25                   Q.    The answer is to your

1 knowledge --

2 A. I don't know.

3 Q. Fair enough. Now, the other  
4 thing, once you learned -- you learned on May 12  
5 what the decision was; right?

6 A. There was continued e-mail  
7 exchange after May 12th, but in and around May  
8 12th. May 20th, in there, there was still --

9 Q. The decision was made?

10 A. -- back and forth. Okay.  
11 Yeah. Approximately May 12th the decision was  
12 made.

13 Q. Thank you. And around that  
14 time period, there also was talk about how much  
15 notice to give; right?

16 A. Yes.

17 Q. And you do remember that,  
18 frankly, the proponents were given three days'  
19 notice? Do you remember that?

20 A. I don't remember that  
21 explicitly, but I do know it was a short period of  
22 time, and the window itself was a short period of  
23 time.

24 Q. And that was both -- that was  
25 contrary to the recommendation of the OPA, as well;



1 right?

2 A. I recall that the original or  
3 some of the original discussions around the extent  
4 of the connection point change window was proposed  
5 to be 15 or 20 days. I don't actually know the  
6 specific number of days right now.

7 Q. Well, can you go to tab 17 of  
8 your notebook? This is C-78. I want to give you a  
9 calendar. This is just for demonstrative aid. I  
10 will reflect this is an accurate representation.  
11 We got it off the Internet what the dates are.

12 Okay. So what I have given you is  
13 first I have given you a calendar just so you can  
14 look at it. So this is a June 2011 calendar, so we  
15 can get the dates straight. Can you identify what  
16 we see at tab 17, C-78?

17 A. Yes.

18 Q. Can you tell us what it is,  
19 sir?

20 A. It's an OPA web posting of  
21 the details of the methodology that was being  
22 implemented for the allocation of the  
23 Bruce-to-Milton capacity.

24 Q. Can you tell us the date this  
25 was issued?

1                   A.    It is dated June 3rd, 2011.

2                   Q.    Can you look on the calendar  
3   and tell us what date June 3rd, 2011 was?

4                   A.    June 3rd was a Friday.

5                   Q.    Can you tell us the timing  
6   when the window was going to start?

7                   A.    So the window opened on June  
8   6th and closed on June 10th.

9                   Q.    Five days?

10                  A.    Yes.

11                  Q.    So we can't tell when this  
12   was posted, right, what time of day on June 3rd,  
13   can we?  I don't see it.

14                  A.    I don't think so.

15                  Q.    Do you remember?

16                  A.    I don't.

17                  Q.    Okay.  And when that was  
18   posted, this was the first -- first and only  
19   official announcement of when there was going to be  
20   a five-day change window?

21                  A.    To my knowledge, this is  
22   the -- was the announcement.

23                  Q.    And, again, this was contrary  
24   to the OPA's recommendation about how long the  
25   window should be and how much notice should be

1 given?

2 A. I would think so. As I said,  
3 I don't recall what we suggested or what we  
4 recommended.

5 Q. So just so the record is  
6 clear, the OPA did not have any criticisms of the  
7 fact that the proponents were being told on a  
8 Friday that a change point window was going to  
9 start on Monday?

10 A. I imagine that there would  
11 have been criticism that that's inadequate notice.

12 Q. You think it is adequate  
13 notice, sir?

14 A. There had been a lot of  
15 discussion about the possibility, but it is fairly  
16 short.

17 Q. It is not adequate notice, is  
18 it, sir? It is a weekend?

19 A. It is not very adequate.

20 Q. It is not very adequate.

21 Now, the Ministry of Energy is the one that  
22 controlled this decision, right, about how much  
23 notice to give and how long the period is going to  
24 be; right?

25 A. Yes, we had exchanged

1 proposed schedules with the Ministry, and the  
2 Ministry ultimately decided on this schedule  
3 process.

4 Q. And you remember that it  
5 actually -- the OPA had originally recommended two  
6 to three weeks for a change window?

7 A. Yes.

8 Q. Now, in fact, you also  
9 remember that -- Mr. Cronkwright, he's your boss;  
10 right?

11 A. He was, yes.

12 Q. And you remember he notified  
13 or stated that the schedule was extremely  
14 aggressive. Do you remember that?

15 A. Yes. This, as well as all  
16 the other process steps that were required in  
17 support of this whole process.

18 Q. Were you ever given a reason  
19 why the OPA's recommendation regarding this  
20 specific timing was rejected?

21 A. No. The main rationale was  
22 we want contract offered in June. The main  
23 rationale I heard through Shawn was that they, the  
24 government, wanted to see contracts offered in  
25 June.

1                   Q.    Were you ever told why, if  
2   the decision such was made in May, why they waited  
3   to June and give a weekend's notice regarding the  
4   change in connection window?

5                   A.    No, not for this particular  
6   decision.

7                   Q.    Were you ever given an  
8   explanation why only two areas in the province were  
9   allowed to change windows and no other area in the  
10  province was allowed to do that?

11                  A.    Yes.  The main reason was  
12  that the province wanted to limit the -- any  
13  further contract award beyond what was going to be  
14  allocated in the Bruce-to-Milton area.

15                  Q.    Well, just help me on Ontario  
16  geography.

17                  A.    Sure.

18                  Q.    The west of London area is  
19  not the only area that borders Bruce; right?

20                  A.    No, it's not.

21                  Q.    So there are other areas that  
22  theoretically could have changed or connection  
23  windows to join onto this Bruce line; correct?

24                  A.    I think so.  I'm not -- yes,  
25  I don't know geographically whether --

1                   Q.    Were you ever given an  
2    explanation as to why it was that only the west of  
3    London FIT proponents were allowed to change their  
4    connection points and people in other neighbouring  
5    areas around the Bruce region were not allowed to  
6    do that?

7                   I understand the limits of the  
8    province wide. I just wondered other neighbours.

9                   A.    Again, it's my understanding  
10   that based on the operation of the transmission  
11   network, that the Bruce-to-Milton line actually  
12   enables capacity in both the Bruce area and the  
13   west of London area.

14                  Q.    Where is Milton?

15                  A.    Where is Milton?

16                  Q.    Yes, sir.

17                  A.    It is the -- well,  
18   northwestern Ontario. Sorry, northwest of Toronto.

19                  Q.    So it is neither in the Bruce  
20   nor the west of London region; correct?

21                  A.    I don't believe so.

22                  Q.    Let's put a map up of  
23   Ontario.

24                  Q.    Just give me a moment. We  
25   call this an ELMO. Here we go.

1 --- Map given to the witness.

2 Q. So just going back to my  
3 question. So the west of London region is south of  
4 Bruce; right?

5 A. Sorry, the west of London  
6 region is, yes, southwest.

7 Q. So Milton would that be in  
8 the Niagara region or the central region?

9 A. I would assume it's in the  
10 central region.

11 Q. Okay. Do you know why it was  
12 that FIT proponents in the central region and the  
13 Niagara region were not allowed to switch their  
14 connection points?

15 A. I do not.

16 Q. You never were told?

17 A. No.

18 Q. Did you ever ask?

19 A. No.

20 Q. Never concern you?

21 A. No. It wasn't a concern.

22 Q. Don't you think it would have  
23 been more fair for the people, the proponents in  
24 the central and Niagara region, to have the same  
25 opportunity that was given to the proponents in the

1 west of London region?

2 A. I assume it is more to do  
3 with the dynamics of the transmission upgrade  
4 associated with the Bruce-to-Milton line, but I  
5 don't know.

6 Q. As far as you know, there was  
7 no analysis done of that; correct?

8 A. It wouldn't have been done by  
9 our group. It would have been done by the power  
10 system planning group around the impacts of the  
11 Bruce-to-Milton line.

12 Q. You were never given analysis  
13 by the power -- what do you call it?

14 A. Power system planning group.

15 Q. They never gave you anything  
16 that explained to you why it only had to be the  
17 west of London compared to these other areas;  
18 correct?

19 A. That's correct.

20 Q. No one from the Ministry of  
21 Energy told you why it had to be; right?

22 A. That's correct.

23 Q. Isn't it a fact, sir, that  
24 you were told one of the reasons that the west of  
25 London was attractive was that there were some



1 high-powered proponents in that area; right?

2 A. That certainly wasn't a part  
3 of any discussion about why the Bruce-to-Milton was  
4 allocated the way it was.

5 Q. You never heard the reason  
6 they did it was because NextEra had lobbied for  
7 that?

8 A. I heard that after the fact,  
9 after I left the OPA.

10 Q. What did you hear, sir?

11 A. That they secured a number of  
12 contracts all in the same geographic area and that  
13 they were able to bundle them together to make the  
14 connection economic, to make the, you know, case  
15 for investing in the connection, that the  
16 aggregation of the number of contracts that they  
17 were awarded enabled that connection onto the grid,  
18 into the Bruce-to-Milton connection point.

19 Q. And when had they done that?

20 A. I assume it would have been  
21 through the Bruce-to-Milton allocation process.

22 Q. All right. So during this  
23 May period --

24 A. Sorry?

25 Q. -- or before? You were

1 telling us how you heard what -- I'm trying to  
2 figure out when -- not when you heard it. When did  
3 you hear they had done what they did, if that makes  
4 sense?

5 A. I assumed it was through this  
6 Bruce-to-Milton allocation process that they  
7 bundled their projects together and proposed them  
8 to be eligible on the Bruce-to-Milton connection.

9 Q. Who did you hear that they  
10 had proposed that to?

11 A. Again, probably other wind  
12 developers. I don't know any --

13 Q. They were complaining  
14 about --

15 A. I can guess at individuals'  
16 names, but I don't know --

17 Q. They were complaining about  
18 what NextEra had done?

19 A. Frankly, one of them that I  
20 heard about and learned a little bit about the  
21 technical -- well, one of the parties was actually  
22 working with NextEra, but honestly at this point  
23 I'm not sure if those projects were part of the  
24 projects enabled by the Bruce-to-Milton line.

25 Q. And what did this party tell

1     you?

2                   A.    Well, they were asking  
3     questions about how they could or how likely it was  
4     that their subsequent projects could be eligible to  
5     connect in a future FIT ground.  So they had one  
6     project that they had partnered with NextEra on,  
7     and they had one project they were exploring the  
8     viability of into a future FIT procurement for this  
9     period.

10                  Q.    Right.  For the projects in  
11     Bruce that were awarded in July of 2011, you had  
12     heard, after you left, that the NextEra had somehow  
13     bundled its projects so it could be part of that  
14     allocation; right?

15                  A.    Yes.

16                  Q.    And you understood that they  
17     had talked to people in the government about that  
18     or...

19                  A.    No.  Just that I think it was  
20     referred to as, like, the NextEra six-pack or  
21     something like that.

22                  Q.    The NextEra -- what is the  
23     NextEra six-pack?

24                  A.    This is, again, you know, in  
25     a conference talking to someone, you hear people

1 talking, you know, They did really well with -- but  
2 they did this six-pack approach. And I interpreted  
3 that that meant there were six projects they  
4 bundled together to share a common connection,  
5 whose connection would be relatively expensive, but  
6 shared across six projects would make a connection  
7 economically viable.

8 Q. And you had heard that they  
9 had bundled these projects earlier on because they  
10 knew this change window was coming; right?

11 A. I didn't -- I didn't know  
12 when it happened. I don't know if they were  
13 planning to do so.

14 Q. It would take a long time to  
15 plan something like that; right? You can't do that  
16 over a weekend; right?

17 A. Correct.

18 Q. Now, you talk in your  
19 statement -- well, first off, this change in the  
20 FIT rules for this Bruce-to-Milton line, that  
21 required a directive from the Ministry of Energy or  
22 a direction? I always get them backwards.

23 A. It required a D-word from the  
24 Ministry of Energy.

25 Q. Yes. So what does that mean?

1                   A.    So without being a lawyer, my  
2    understanding that -- well, the OPA had to or it  
3    was authorized to procure electricity as a result  
4    of directives from the Ministry -- sorry, the  
5    Minister of Energy.

6                    And material changes to the FIT  
7    program that we were either contemplating or making  
8    were largely driven by directives from the  
9    Minister.

10                  Q.    Well, in fact this was the  
11    only time that the Ministry of Energy actually, up  
12    to this point, had issued a directive that required  
13    a change in the FIT rules; right?

14                  A.    I believe so.  Up until  
15    then --

16                  Q.    And you go through your  
17    statement in quite a number of detail the process  
18    of how rule changes were made generally in the FIT  
19    process; right?

20                  A.    Mostly I'm -- I think I am  
21    describing the development of the first draft of  
22    the FIT rules as opposed to rule amendments that  
23    took place subsequent to the launch.

24                  So most of what I described is how  
25    we got to the first set of FIT rules.

1 Q. You talk about how lawyers  
2 drafted them?

3 A. Yes.

4 Q. And you talk about how there  
5 was substantial comment period?

6 A. Yes.

7 Q. And you talk about how the  
8 proposals were put on websites?

9 A. Yes.

10 Q. And so all of these  
11 stakeholders could provide comments?

12 A. Yes.

13 Q. And then when you got the  
14 comments, you could consider them?

15 A. Yes.

16 Q. And you did consider them?

17 A. Yes.

18 Q. And this went on for months?

19 A. Yes, it did.

20 Q. Okay. And there were other  
21 changes made to the rules before June 2011?

22 A. There were I believe some  
23 minor changes. I don't recall exactly what was  
24 changed when.

25 Q. You gave comment period even

1 for the minor changes; correct?

2 A. Sometimes, yes.

3 Q. And so stakeholders would  
4 have a chance to comment on those; right?

5 A. Sorry. I don't believe that  
6 there was any rule changes between September 30th,  
7 2009 and July -- sorry, 2011.

8 Q. You don't remember a change  
9 in October 29th of 2010? There's a 1.3.2 version  
10 of the FIT rules. I could show you tab 7 --

11 A. Sure.

12 Q. -- to refresh your  
13 recollection?

14 A. Sure, sure.

15 Q. If you look at tab 7. Sorry,  
16 it is C-242, tab 7 of your notebook.

17 A. Yes.

18 Q. Just look at the first page,  
19 sir. Can you tell us the date?

20 A. Yes, October 29th, 2010.

21 Q. You do now remember there was  
22 a change in the FIT rules?

23 A. Yes, yes.

24 Q. There was a comment period  
25 for those FIT rules?

1                   A.    I don't believe so.  If this  
2   rule change that is highlighted on the cover was  
3   the major or the only rule change that was being  
4   implemented, then there would not have been much  
5   discussion about what was changing.

6                   Q.    You do remember that there  
7   was a five-month advance notice of changes, though,  
8   don't you?

9                   A.    Okay.  Sorry.

10                  Q.    Go ahead?

11                  A.    This is the rule change where  
12   we prohibited behind-the-meter connections?  I  
13   can't recall which rule change this was.

14                  Q.    There was discussion of hub  
15   casings.

16                  A.    Oh, sorry.  So the domestic  
17   content amendments, right.

18                  Q.    Right.  So there was a  
19   comment period for that, wasn't there?

20                  A.    Sorry.  Yes.  So it would  
21   have been the FIT contract rather than the FIT  
22   rules.

23                  Q.    Okay.

24                  A.    But the FIT contract  
25   provisions relating to domestic content did evolve



1 regularly to allow for the refinement of the  
2 domestic content requirements.

3 Q. And there was a comment  
4 period provided for that; right?

5 A. Yes, definitely.

6 Q. A substantial comment period?

7 A. That's very possible. For  
8 domestic content changes, they were slow to  
9 implement.

10 Q. Because at the end of the  
11 day, something like that was a major change in the  
12 program; right?

13 A. There was a major change in  
14 the kind of impacts on manufacturers who had set up  
15 investments in Ontario to meet the domestic content  
16 requirements.

17 Q. And you agree with me that  
18 the June 3rd change was a major change in the FIT  
19 process, don't you think?

20 A. June 3rd, 2011.

21 Q. Right. I mean, especially  
22 for people that are proponents of the Bruce region?

23 A. Yes.

24 Q. That was a major change?

25 A. Yes.

1                   Q.    So was there any discussion  
2    at the OPA about whether or not there should be a  
3    comment period for that change?

4                   A.    I don't recall it  
5    specifically, but in general we -- where possible,  
6    we liked to post drafts of evolving changes for  
7    stakeholder comment, even if it's a two-week  
8    period, and allow us the opportunity to review  
9    comment before instituting the change.

10                  Q.    And you like to do that  
11    because that would give stakeholders the  
12    opportunity to react.  That would be a fair  
13    process; correct?

14                  A.    Yes.

15                  Q.    But that didn't happen with  
16    the June 2011 change, did it?

17                  A.    No.  The changes were  
18    implemented --

19                  Q.    Immediately?

20                  A.    -- immediately.

21                  Q.    And so were you ever given a  
22    reason why the OPA did not follow its normal  
23    process of posting the changes before they were  
24    implemented?

25                  A.    No, other than there was a

1       desire to offer the contracts kind of shortly after  
2       the capacity became available as possible.

3                   Q.    And you would agree with me  
4       that the OPA notified stakeholders of changes much  
5       less significant than this one and gave notice;  
6       correct?

7                   A.    Yes, in other cases there was  
8       much more notice offered.

9                   Q.    On matters of much less  
10      significance than this one; right?

11                  A.    Yes.

12                  Q.    Now, can we go to tab 14 of  
13      your notebook?

14                  MR. APPLETON:  This could be  
15      confidential.  Let's just look at the document 270.

16                  MR. MULLINS:  Just hold for a  
17      moment.  Some documents are confidential, sir.  
18      Just give us a moment to make sure.

19                  MR. APPLETON:  This is a public  
20      document obtained by Freedom of Information.

21                  MR. MULLINS:  Tab 14?

22                  MR. APPLETON:  Tab 14.  The public  
23      can see this.

24                  MR. MULLINS:  Tab 17.4

25                  MR. APPLETON:  Tab 17.  It is not

1 the same.

2 MR. MULLINS: I'm sorry. Tab 14.

3 14 is fine?

4 MR. APPLETON: I don't know. I  
5 think to be safe, we should go to restricted access  
6 just...

7 MR. SPELLISCY: I'm sorry, the  
8 document is not confidential.

9 MR. MULLINS: I am looking at tab  
10 14, 270. I actually had the wrong binder.

11 MS. MARQUIS: It is 270?

12 MR. MULLINS: C-270.

13 MS. MARQUIS: It is not  
14 confidential.

15 MR. APPLETON: It is marked in one  
16 way, so the document is restricted, as highly  
17 confidential, attorney's eyes only, a document  
18 coming from -- is that from NextEra? And so unless  
19 it has been ruled by the Tribunal to be public, and  
20 since I am not sure, I would rather just not go  
21 there for a moment, rather just go off the record,  
22 close off for this one page.

23 If you would rather that we take a  
24 short hiatus and check, we can do that, too.

25 THE CHAIR: Should we go off the

1 public for this document or do we need -- otherwise  
2 we will simply postpone the question.

3 MR. MULLINS: What is confusing is  
4 there is a discussion about this conversation in  
5 the witness's statement, and so it is actually  
6 quoted out in his statement. That is why I am  
7 trying to make sure --

8 MR. APPLETON: It has been ruled  
9 on by the Tribunal and they have decided it is no  
10 longer a highly restricted document and, therefore,  
11 is now public.

12 MR. MULLINS: Got it.

13 MR. APPLETON: Okay, sorry it is a  
14 little confusing.

15 MR. MULLINS: That makes sense,  
16 because it is in his statement, okay, got it.

17 BY MR. MULLINS:

18 Q. Mr. MacDougall, can you tell  
19 us who Nicole Geneau -- do you know her?

20 A. Yes.

21 Q. Can you tell us who she is,  
22 and tell me how to pronounce her name?

23 A. Nicole Geneau. She was an  
24 employee of Florida Power & Light when I first met  
25 her, later NextEra.

1 Q. How did you meet her?

2 A. I think I met her at her  
3 employer before NextEra, Florida Power & Light. I  
4 believe she worked for the Ontario Centres of  
5 Excellence, but I am speculating. I don't recall  
6 what her previous employment was.

7 Q. If you look at tab 14, C-270,  
8 there is an e-mail chain here where you try to set  
9 up or she is trying to set up a meeting with you.

10 A. Yes.

11 Q. And you were going to do that  
12 at a coffee shop?

13 A. Yes.

14 Q. Then you ended up moving it  
15 to your office?

16 A. Yes.

17 Q. What she wanted to talk to  
18 you about was NextEra's ability to change its  
19 connection points line; right?

20 A. No. The meeting was to  
21 discuss the assignment of a series of FIT  
22 applications from one legal entity to another.

23 Q. Well, if you look at your  
24 witness statement on May 31st, 2011, and I think  
25 it -- I have a copy of the full e-mail.

1                   You quote out an e-mail to her,  
2                   and she writes you --

3                   MR. BROWER:   Where is this?

4                   MR. MULLINS:   Paragraph 43 of  
5                   Mr. MacDougall's statement.

6                   MR. SPELLISCY:  I think this is  
7                   confidential actually, now.

8                   MR. MULLINS:   Oh, this part is  
9                   confidential?  I was pointing -- yes, actually, I  
10                  was pointing to his witness statement.  Is this  
11                  part to be marked confidential?

12                  THE CHAIR:   Yes.

13                  MR. MULLINS:   Okay.

14                  MR. APPLETON:  Okay.  Yes.  So we  
15                  have to go into a confidential record.

16                  --- Upon resuming the confidential session

17                  --- Upon resuming public session at 3:25 p.m.

18                  RE-EXAMINATION BY MR. SPELLISCY:

19                  Q.    Good afternoon,

20                  Mr. MacDougall.

21                  A.    Good afternoon.

22                  Q.    Are we out of confidential  
23                  session or are we still on?

24                  I just have been told to lean  
25                  forward so they can hear me.  I have a couple of

1 questions for you.

2 At one point -- actually, at  
3 several points you were asked about the connection  
4 point change window and the notice of it, and they  
5 took you to an e-mail right at the very end.

6 Can you explain for the Tribunal  
7 what had been told to developers since the  
8 beginning on how the Bruce-to-Milton capacity would  
9 be allocated and whether it would have allowed for  
10 a change window in that allocation.

11 A. So the details around how the  
12 capacity allocation process would have evolved were  
13 not ironclad at the launch of the FIT program. It  
14 was a process that evolved over time.

15 The power system planning group  
16 that I mentioned earlier were the group that were  
17 spending substantial amounts of time designing, you  
18 know, the detailed mechanics of how the capacity  
19 allocation processes would roll out, would advance,  
20 whether that was through an ECT or through another  
21 capacity allocation process.

22 But throughout the discussions  
23 around allocating new capacity, the expectation was  
24 that there would be an opportunity for applicants  
25 within the FIT program to propose to connect on to



1 a different part of the grid to reflect -- or to  
2 reflect their preferences and to allow them to  
3 specify connection points to the grid where new  
4 capacity might be available or where capacity may  
5 be available as a result of other projects dropping  
6 away, but that in advance of a capacity allocation  
7 process, the ECT or other, there was an expectation  
8 that the process would be preceded by an  
9 opportunity for an applicant to modify their  
10 proposed connection point, that primarily being  
11 driven by new information about the grid, new  
12 information about other generators connecting onto  
13 the grid and grid availability.

14 So instead of connecting on the  
15 east-west road, I am going to connect on the  
16 north-south road, because I know there is already  
17 projects on the east-west road.

18 So in going through a capacity  
19 allocation process, the OPA messaging and the  
20 industry expectation was that projects would be  
21 able to specify different connection points than  
22 those contained in their original application.

23 This is further reinforced by an  
24 option for an applicant in the FIT program to not  
25 specify a connection point when they wish to

1 connect onto the grid.

2                   They could choose to not pick any  
3 particular point and say, I wish to be connected if  
4 and when new capacity becomes available in that  
5 area, at which point I would specify the connection  
6 point that would make the most sense at that time  
7 in the future.

8                   So throughout the principles baked  
9 into the FIT program, there was always this notion  
10 of you can apply. You can demonstrate your  
11 interest, and then as time went by and grid  
12 resources became available for connection capacity,  
13 you could, in future, specify where on the grid you  
14 wanted to connect or where on the grid you wanted  
15 to change your proposed connection to.

16                   So that was definitely one of the  
17 principles around future expansion of the grid and  
18 optimizing grid connection amongst developers.

19                   Q. All right, thank you. And  
20 specifically were developers told that the  
21 Bruce-to-Milton line coming in would be one of  
22 those capacity expansions you were talking about  
23 that would allow for a change in connection points?

24                   A. Yes. The process for the  
25 Bruce-to-Milton was expected to be like one of

1 those future capacity-enabled areas where projects  
2 could propose to connect or change their connection  
3 points.

4 Q. How long or do you know  
5 approximately when developers would have been aware  
6 of the Bruce-to-Milton line?

7 A. Sorry, the Bruce-to-Milton?

8 Q. The Bruce-to-Milton, in  
9 general, was coming?

10 A. Oh, it was discussed in early  
11 2009 when we were essentially kind of designing the  
12 FIT program and forecasting for developers what we  
13 thought the total grid capacity was.

14 We were saying that we believe  
15 that there are approximately 2,400 megawatts of  
16 capacity available now for projects to connect onto  
17 the grid, but that the Bruce-to-Milton would enable  
18 an additional 1,500 megawatts to be connected onto  
19 the grid.

20 So it was before the FIT program  
21 was even launched there was a signal that, well,  
22 while the FIT program didn't have a formal capacity  
23 cap, there was this expectation of 2,400 megawatts  
24 at launch, and then 1,500 megawatts upon  
25 Bruce-to-Milton capacity becoming available to the

1 province.

2 Q. So knowing of the connection  
3 point change window that was being contemplated and  
4 knowing the Bruce-to-Milton line, in your  
5 experience of the OPA, were developers preparing  
6 their connection point changes for when that line  
7 came into service?

8 A. Some were, for sure. There  
9 was discussion of -- I didn't look at any specific  
10 applications, but there was discussion of people  
11 who strategically proposed to connect out of the  
12 Bruce area, because the Bruce area was known to be  
13 constrained, but they had a project site that  
14 perhaps was near the boundary of the Bruce and  
15 other areas, and that they would propose a  
16 connection point not in the Bruce area at launch,  
17 because they knew they would not be successful  
18 because the Bruce area was constrained at launch,  
19 but there was an intention to then, upon the Bruce  
20 capacity being made available, to modify their  
21 connection point and to connect into the Bruce  
22 where this new capacity would enable generation  
23 projects to connect onto the grid.

24 Q. So I think at one point you  
25 were asked, and then pressed, about whether or not

1 having a connection window announced on a Friday,  
2 and then going to a Monday, was adequate notice and  
3 I think you said it didn't seem adequate.

4 But you would agree that  
5 developers could have been preparing for this for a  
6 long time; correct?

7 A. Definitely, yes.

8 Q. Now, I want to come back to  
9 some of your other testimony, which was with  
10 respect to what you heard at conferences, and that,  
11 about NextEra.

12 I just want to be clear. While  
13 you were at the OPA, while you were actually  
14 employed at the OPA, you never heard anyone  
15 discussing or deciding or anybody talking about  
16 favouring NextEra?

17 A. That's absolutely correct.

18 Q. So what you heard was  
19 actually other developers and rumours and talking  
20 at conferences, but nobody actually even connected  
21 with government decision-making saying that?

22 A. No.

23 Q. And in fact at the time you  
24 had already left the OPA.

25 Now, for -- and just let me ask

1 another thing. The counsel for the claimant kept  
2 asking you whether or not you were given a reason  
3 for certain things on the June 3rd direction.

4                   You noted that the June 3rd -- I  
5 think you said you left on June 14th of 2011.

6                   A. That's right.

7                   Q. Can you explain for the  
8 Tribunal whether you had carriage of the June 3rd  
9 direction, whether that was your responsibility or  
10 was it somebody else's?

11                   A. So in part because of my  
12 prior notice of departure from the OPA, there was a  
13 desire to have me less involved in the finalization  
14 of some of the elements of this particular  
15 exercise, because it was going to continue beyond  
16 my departure.

17                   But the lead on the discussions  
18 with government around the Bruce-to-Milton process,  
19 the timing, you know, the documentation  
20 requirements, the communication materials, was all  
21 being led by my boss, Shawn Cronkwright.

22                   Q. And one more question on sort  
23 of roles and responsibilities at the OPA, because  
24 you were also asked the technical  
25 connection -- question of why the Bruce-to-Milton

1 line only was allowed -- or the Bruce-to-Milton  
2 allocation only considered the Bruce and the west  
3 of London areas.

4 And I think you referred to the  
5 power system planning group. Who is the head of  
6 that group?

7 A. That is Bob Chow.

8 Q. In fact, he would be the one  
9 to be able to answer questions about whether or not  
10 what capacity was freed up; correct?

11 A. Yes.

12 Q. That wouldn't have been  
13 something that you would have been involved in?

14 A. No.

15 Q. Just give me one second and  
16 see if my counsel have anything else to add. That  
17 is all that I have. Thank you.

18 MR. MULLINS: Madam Chair, I know  
19 how you feel about re-cross. I do have to clarify  
20 something for the record based on a question asked  
21 by Canada's counsel.

22 THE CHAIR: Yes, please do.

23 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

24 Q. Thank you. Mr. MacDougall, I  
25 thought I was done. I want to follow up just on

1 the sort set of questions posed by Canada's  
2 counsel.

3                   You were asked about the -- it was  
4 known that there was a Bruce-to-Milton line coming  
5 and people could change their connection points,  
6 but just so the record is clear, what the  
7 stakeholders originally were told was that there  
8 would be a change in connection point window as  
9 part of the province-wide ECT; right?

10                   A. Yes. The original design  
11 anticipated a province-wide allocation.

12                   Q. I'm sorry, I didn't mean to  
13 cut you off. That is what I thought you said  
14 during the cross-examination.

15                   And so then the actual -- if I  
16 remember, I thought you had testified that the only  
17 official notice about the change that was set forth  
18 in the directive of June 3rd, 2011, C-77, which is  
19 tab 16, by the OPA was found at tab 17, C-78, which  
20 was the same day; right?

21                   A. That's the directive, you're  
22 saying?

23                   Q. Yes. The notice on the  
24 Ontario Power Authority is June 3rd, and that's the  
25 same date of the directive. You can look at it.



1           A.    Right.  Yes, I think you used  
2    the word "formal", but that was the official or the  
3    kind of putting it into firm effect on the June 3rd  
4    OPA notice.  And there had been developer  
5    expectations, is what I think I was answering,  
6    developer expectation was that an allocation would  
7    be preceded by a connection point change window.

8           But the kind of final decision and  
9    process and details was spelled out in that OPA  
10   notice that came out on June 3rd.

11          Q.    The only official or  
12   unofficial notice given by the OPA to stakeholders  
13   that there would be a connection point change  
14   window for the Bruce-to-Milton line came on June  
15   3rd, 2011; isn't that true?

16          A.    Yeah, for that particular  
17   exercise, that was the trigger.

18          Q.    And in fact -- I'm sorry.  In  
19   fact, it required a directive by the Ministry of  
20   Energy to change the rules; isn't that correct?

21          A.    There was often a lot of  
22   discussion around what required a directive and  
23   what didn't, and I don't want to speculate as to  
24   whether it was absolutely necessary, but...

25          Q.    Ultimately somebody made the

1 decision that in order to do what wanted to be  
2 accomplished, there had to be a directive from the  
3 Minister of Energy; correct?

4 A. Often.

5 Q. That's what happened?

6 A. No. If it -- if changes to  
7 program procurements are accompanied by a  
8 directive, then what that, in part, accomplishes is  
9 it reduces backlash for political lobbying back to  
10 government.

11 So I don't want to say that a  
12 rule -- the rule change that was effected for the  
13 purposes of the Bruce-to-Milton allocation required  
14 a directive. I'm not sure if it legally required a  
15 directive.

16 Q. You mean to say it --

17 MR. SPELLISCY: Can the witness  
18 finish his answer?

19 MR. MULLINS: I'm sorry. I  
20 thought he was done.

21 THE WITNESS: I don't know if it  
22 legally required a directive, but the main impetus  
23 of accompanying changes like this with a  
24 Ministerial directive was to try to mitigate  
25 against political lobbying back to government,

1 say: The OPA's you know, out of control. The OPA  
2 needs to be told what to do. You should tell them  
3 what to do.

4 So often changes like this were  
5 accompanied by directives to manage stakeholder  
6 reactions.

7 BY MR. MULLINS:

8 Q. So this is the last question.  
9 So you're saying the debate was whether or not you  
10 needed to do a directive versus the OPA just  
11 changing the rules on their own?

12 A. Yes. There was discussions  
13 around to what extent rule changes could be made on  
14 our own, which ones would be better accompanied by  
15 a directive.

16 Q. Well, to accomplish what was  
17 accomplished on June 3rd, 2011 would require either  
18 a rule change or directive?

19 A. It would require the rule  
20 change, for sure.

21 Q. Yes. And then the question  
22 is whether or not, in addition to a rule change, we  
23 need a directive, and the directive essentially  
24 accomplished the rule change?

25 A. It provided political cover

1 for a rule change, right.

2 Q. And the directive required  
3 the OPA to change its rules?

4 A. I believe so. That's my  
5 understanding of how the directives have force in  
6 law. That's my understanding.

7 MR. MULLINS: Thank you very much,  
8 sir.

9 THE CHAIR: Okay. Do you --

10 MR. SPELLISCY: I am not sure how  
11 you feel about re-re-direct, but I am not sure the  
12 record got a lot clearer there.

13 THE CHAIR: No, but that was my  
14 point yesterday about re-direct.

15 MR. SPELLISCY: I think we muddied  
16 things a little.

17 THE CHAIR: I should say I am not  
18 attaching much weight to these answers about the  
19 need for a rule change or a need for a directive,  
20 because Mr. MacDougall is an engineer. So these  
21 are legal issues.

22 But if you want to -- if you feel  
23 that you need to clarify something, then of course  
24 I should let you do it.

25 MR. SPELLISCY: Give me one

1 second. Hold on.

2 RE-RE-EXAMINATION BY MR. SPELLISCY:

3 Q. The only reason -- and I  
4 apologize for getting up again, I just -- because  
5 there was a question asked, and the question was  
6 phrased: The only official or unofficial notice  
7 given to stakeholders that there would be a  
8 connection point change window in advance of the  
9 Bruce-to-Milton directive was this June 3rd.

10 And I think the answer said, Well,  
11 for this specific exercise. But I would just like  
12 to ask Mr. MacDougall to look at a document to see  
13 if it reflects his recollection on unofficial  
14 notice, if that is what this is.

15 If we could pull up and put C-0073  
16 on the screen, it is our favourite document,  
17 because it is the one in about two-point font.

18 If we could blow up the first part  
19 there, and if we could look at -- if you look at  
20 the third note there, it says -- can you read that  
21 out, Mr. MacDougall?

22 A. Sure. So:

23 "FIT applicants will have the  
24 opportunity to request a  
25 change of connection point

1                   prior to the ECT. Connection  
2                   point changes could impact  
3                   the ECT outcome for other  
4                   applicants requesting a  
5                   nearby connection point."

6                   Q.    If you could read out the  
7 head note on the Bruce region right there starting  
8 with 1,200 megawatts?

9                   A.    "1,200 megawatts of  
10                   additional capability will be  
11                   made available by the  
12                   Bruce-to-Milton transmission  
13                   line will be allocated during  
14                   the ECT."

15                  Q.    Right. So you would agree  
16 that this is the December 21st or December 2009  
17 ranking that actually claimant's counsel took you  
18 to, and you would agree this is actually notice  
19 from the OPA that there would be a change in  
20 connection point for the Bruce-to-Milton  
21 allocation?

22                  A.    Yes. And if I can --

23                  Q.    Sure.

24                  A.    I heard the question being  
25 that the June 3rd was the only official notice. I

1 didn't hear the unofficial or official.

2 Q. That is why I stood up.

3 A. And so I answered in the  
4 context of it was the only "official" notice that  
5 came out on that day for that Bruce-to-Milton  
6 process.

7 MR. SPELLISCY: Thank you.

8 THE CHAIR: Thank you. That's  
9 clear. No questions on Judge Brower's side. You  
10 have questions, yes, please.

11 QUESTIONS BY THE TRIBUNAL:

12 MR. LANDAU: Just to follow up on  
13 the same issue, I would like you to have a look at  
14 document R-113, which I don't think is in the  
15 binder in front of you. It is tab 31 of the binder  
16 for Ms. Lo. Is there a way that that can be put  
17 up?

18 MR. SPELLISCY: I can pull it up  
19 on the screen.

20 MR. APPLETON: Tab 31.

21 MR. LANDAU: Can it be shown so  
22 that the header is also there? Now, I don't know  
23 if you can read that document or not.

24 THE WITNESS: That's a little  
25 better.





1                   our members have collectively  
2                   invested significant time and  
3                   money to prepare their  
4                   respective interconnection  
5                   strategies. Once the updated  
6                   Transmission Availability  
7                   Tables are made available,  
8                   our members can be ready to  
9                   act quickly and respond  
10                  within the window of time  
11                  communicated to our members  
12                  of the OPA. For these  
13                  reasons, a majority of our  
14                  members believe the window  
15                  only needs to be open for a  
16                  short period of time."

17                   Are you able to give some meaning  
18                  to that in terms of what the time scales are that  
19                  are being contemplated?

20                   THE WITNESS: I recall that in  
21                  various presentations, again, from Bob Chow's  
22                  group, the power system planning group, there were,  
23                  again, proposed processes that would be followed in  
24                  the context of the ECT, the Economic Connection  
25                  Test.

1                   And my recollection is that we  
2                   were advocating or proposing that an ECT would be  
3                   preceded by -- and this is where I'm going to  
4                   estimate -- like a 15-business-day connection point  
5                   change window, so that the ECT would be run  
6                   subsequent to participants in the ECT being  
7                   notified that they would have an opportunity to  
8                   modify their proposed connection points for their  
9                   projects, but they would have to do so within I  
10                  believe it was about a 15-business-day window.

11                  So it was on the basis of - I  
12                  believe that this message from this paragraph is on  
13                  the basis of how wind developers in this case  
14                  understood the OPA's prior communication vis-à-vis  
15                  the priority ranking tables that were just shown on  
16                  the overhead, but as well as presentations that  
17                  were publicly made by Bob Chow's group to the FIT  
18                  stakeholders around how they would operationalize  
19                  the ECT; and that, again, our signalling was that  
20                  the ECT would take place, but prior to its running  
21                  we would offer, again, approximately a  
22                  15-business-day window in which to change  
23                  connection points.

24                  MR. LANDAU: Right. We have heard  
25                  testimony from Ms. Lo about the significance that

1 was taken as far as the Ministry was concerned,  
2 significance that was drawn from this presentation,  
3 this letter from CanWEA, in particular, the point  
4 that it was being stated that over a period of  
5 time -- it is described here as "past several  
6 months" -- significant time and money had been  
7 already expended to prepare strategies on  
8 interconnection points.

9                   From your recollection, would it  
10 be reasonable in all of the circumstances, given  
11 that, to think that five days actually would be  
12 sufficient?

13                   THE WITNESS: So as I have stated  
14 earlier, there was knowledge of a pending  
15 allocation of Bruce-to-Milton capacity in  
16 particular, because the transmission line was  
17 nearing completion in as early as mid-2009.

18                   So the regulatory processes and  
19 final hurdles took significant time. It took until  
20 May of 2011 to get final environmental approval  
21 from all of the regulatory bodies.

22                   So stakeholders who were involved  
23 in the FIT would have anticipated that there would  
24 be capacity coming available in the Bruce area as  
25 early as mid -- well, even prior to 2009, 2006,

1 2007, 2008. But certainly once the FIT program was  
2 formalized in 2009, they would have known that the  
3 Bruce capacity would be coming available soon, just  
4 a matter of when. That soon ended up almost two  
5 years, but it was coming.

6           So I would interpret that this  
7 letter is suggesting our members have been waiting  
8 years for an opportunity to bid their projects into  
9 the Bruce allocation, and that in order to have  
10 assessed options around viability and optimization  
11 of connection points, whether it is a five-day  
12 window or 15-day window is irrelevant.

13           It would take months to optimize a  
14 connection point change. So, again, whether a  
15 five-day window was afforded or a 15-day window was  
16 afforded, if you hadn't done the preparatory work  
17 leading up to that window, there was no way you  
18 were going to get it done in that short time frame,  
19 given the complexities of the power system and  
20 transmission network, which, again I think Bob Chow  
21 can speak more definitively to.

22           MR. LANDAU: Yes. Then I want to  
23 ask you a more general question which you may or  
24 may not be able to answer.

25           THE WITNESS: Okay.

1                   MR. LANDAU: You describe in your  
2 witness statement, in the first part of it, your  
3 involvement in the design and implementation of the  
4 FIT program.

5                   THE WITNESS: Yes.

6                   MR. LANDAU: When did you first  
7 hear about the contract with the Korean Consortium,  
8 the GEIA, if you can remember?

9                   THE WITNESS: I believe it would  
10 be -- would have been summer of 2009.

11                   MR. LANDAU: And -

12                   THE WITNESS: Well in advance of  
13 the FIT program launch.

14                   MR. LANDAU: So that the time  
15 frame, speaking very roughly, you're describing a  
16 period of, for example, public consultation March  
17 to June 2009?

18                   THE WITNESS: Yes.

19                   MR. LANDAU: And your consulting  
20 stakeholders, you're consulting with the Ministry,  
21 as I understand your evidence?

22                   THE WITNESS: Yes.

23                   MR. LANDAU: You're working  
24 towards the launch and the launch is, by directive,  
25 September 2009?

1 THE WITNESS: Yes, sir.

2 MR. LANDAU: In that period,  
3 you're designing the structure?

4 THE WITNESS: Yes.

5 MR. LANDAU: Basically the  
6 mechanism for the FIT program. So you hear about  
7 the Korean Consortium contract, and do you remember  
8 before September 2009 the kinds of detail you might  
9 have heard? Did you know -- what did you know  
10 about it?

11 THE WITNESS: About the Korean  
12 Consortium contract?

13 MR. LANDAU: Yes, yes.

14 THE WITNESS: Well, I was aware  
15 that it was a framework. So it was a commitment to  
16 2,500 megawatts to be developed over five phases.

17 And I was aware that it would  
18 necessarily compete with connection capacity for  
19 the broader FIT program and the FIT programs  
20 contract award capacity.

21 So I was aware that the two would  
22 be running in parallel, and, you know, as one of  
23 the lead spokespeople for the FIT program, I wasn't  
24 terribly pleased by the competing development  
25 opportunities that were running in parallel.

1                   MR. LANDAU: Can you explain that?  
2     Why not? Why were you not pleased? What I am  
3     driving at is, as somebody who is involved in  
4     designing the FIT program, what kind of impact did  
5     you see from the existence of a contract with the  
6     Korean Consortium?

7                   THE WITNESS: Well, certainly  
8     leading into the FIT program design, we knew that  
9     there were thousands and thousands of megawatts of  
10    interest of project development in Ontario, as  
11    witnessed by some of the prior renewable energy  
12    procurement activities.

13                   So I knew that there would be more  
14    demand for FIT contracts than there would be supply  
15    of contract capacity.

16                   So my professional reaction was  
17    this just creates less supply of FIT contracts  
18    availability, because a portion of the available  
19    grid capacity will necessarily need to be allocated  
20    to the Korean Consortium.

21                   In discussions at the time, I  
22    recall that the planners didn't know where 2,500  
23    megawatts were going to fit on the grid, on the  
24    existing grid, and of course nor whether the Korean  
25    Consortium had projects that, you know, were

1 readily available to be developed onto the grid.

2 But certainly the existence of the  
3 Korean Consortium commitment through the framework  
4 agreement created greater pressure on the FIT  
5 program and less capacity available through the FIT  
6 program to offer contracts.

7 MR. LANDAU: Prior to its launch  
8 in September 2009, was there any -- was it  
9 perceived there was any need to restructure or  
10 change the FIT program in order to accommodate the  
11 existence of the Korean Consortium contract?

12 THE WITNESS: So what I recall was  
13 that -- again, I think Bob Chow can probably answer  
14 better, but that there was a belief that, you know,  
15 the first two phases of the Korean Consortium  
16 commitment could be accommodated while still  
17 allowing for that, you know, approximately 2,400  
18 megawatts of FIT capacity to be procured.

19 And maybe you can help me. I am  
20 trying to recall the timing of the KC, Korean  
21 Consortium, announcement vis-à-vis the FIT launch,  
22 but in any event, the --

23 MR. LANDAU: I am focussed on  
24 September 2009.

25 THE WITNESS: I just don't recall



1       when was the Korean Consortium commitment made  
2       public, and was that well in advance? Was it in  
3       advance of when I would have been exposed, you  
4       know, and had discussions around it?

5                       I do recall, though, that at FIT  
6       launch applicants were aware that there was a  
7       commitment to the Korean Consortium and the 2,500  
8       megawatts.

9                       And so, I mean, this is getting  
10      into my judgment, but -- so there should have been  
11      an acknowledgement or a knowledge of the existence  
12      of these parallel procurement activities, and  
13      certainly there was knowledge of it by the  
14      development community, many of whom who were not  
15      pleased that this commitment was being made outside  
16      of the FIT construct.

17                      But, again, if I am recalling the  
18      dates correctly, there should have been industry  
19      knowledge of the Korean Consortium commitment prior  
20      to a September finalization of the rules and  
21      contracts under the FIT program and the  
22      October/November launch period.

23                      MR. LANDAU: Yes. Thank you. I  
24      have no other questions.

25                      THE CHAIR: All of my questions

1 have just been asked, so I have no questions  
2 either. Do you have any follow-up?

3 MR. BROWER: Yes. I think you  
4 said in words or substance that as the person  
5 basically in charge of the FIT program, you were I  
6 think you said not best pleased by -- the record  
7 might knowing smile just resulted from the  
8 witness -- by the arrival or the existence of your  
9 knowledge of the Korean Consortium.

10 Could you explain that a little  
11 bit further why you were not best pleased?

12 THE WITNESS: Sure. So we had  
13 been designing and developing a FIT program of  
14 course in response to government policy, that the  
15 prior renewable procurement exercises should be  
16 expanded and should be made much more aggressive.

17 The accompanying domestic content  
18 provisions to the FIT program were something of a  
19 question mark, and so we would hear within the OPA  
20 that solar module manufacturers would arrive, blade  
21 manufacturing would arrive, wind turbine  
22 manufacturing would arrive in the province.

23 And the FIT program had  
24 contractual obligations that many of those  
25 components would have to be machined and

1 manufactured in Ontario in order for the supplier  
2 to be in compliance with their FIT contracts and to  
3 be eligible, et cetera.

4                   So what I'm getting at is the main  
5 or one of the main reasons that we were given as to  
6 why we're bringing the Korean Consortium to Ontario  
7 is to ensure that we have a customer for that large  
8 volume of procurement of wind and solar equipment.

9                   So the challenge, you know, as one  
10 of the lead spokespeople and one of the designers  
11 of the FIT program, was designing the FIT  
12 procurement with all of the prioritization  
13 mechanisms and knowing that there would be a  
14 significant amount of competition for the capacity  
15 available under the FIT -- under the FIT program,  
16 that this new effort, this parallel initiative, was  
17 going to displace some of that capacity that was to  
18 be made available.

19                   As I said, the reason we were  
20 given was that well these guys will ensure that the  
21 domestic content provisions will be satisfied,  
22 because we have a significant customer who will be  
23 able to lock down that equipment manufacturing  
24 commitment by the solar module manufacturers or the  
25 wind equipment manufacturers.

1                   So there was this, again, parallel  
2                   effort being undertaken. We felt like we were  
3                   driving the FIT program, and then the Korean  
4                   Consortium arrangement was handed to us and said,  
5                   Okay, well, it has to fit within this -- with this  
6                   larger envelope, so find a way to see the two  
7                   co-exist.

8                   So it was a surprise. It was a  
9                   bit of a disappointment, partly because we just  
10                  didn't see it coming, or certainly I didn't see it  
11                  coming from my capacity and my role. But we  
12                  adapted to it. We, again, tried to advise  
13                  stakeholders, and the government obviously did, as  
14                  well, that there were these two parallel  
15                  procurement efforts that would be executed in that  
16                  same window, both for renewable contracts, for wind  
17                  and solar capacity.

18                  MR. BROWER: I want to go to the  
19                  five-day window for a moment, because when you were  
20                  being cross-examined, you made it clear that you  
21                  said precisely 15 to 20 days were recommended by  
22                  OPA.

23                  This was discussed with the  
24                  Ministry, and the reason that Mr. Spelliscy asked  
25                  to re-direct you is because in response to

1 cross-examination, you had said that five days was  
2 not adequate, and he brought that up to you and you  
3 said, I think, in response to him, Well, five days,  
4 15 days, it didn't make any difference.

5 If it didn't make any difference,  
6 why was OPA arguing for 15 or 20 days to the  
7 Ministry in the discussions that went on?

8 THE WITNESS: Well, again, two  
9 things I was trying to respond to there. One, lead  
10 time in advance of a window, as well as the window  
11 itself.

12 MR. BROWER: Right.

13 THE WITNESS: And for other  
14 changes, such as changes to the domestic content  
15 requirements and refinements to those contractual  
16 obligations, we would spend more time giving  
17 advance notice of upcoming change, and then post a  
18 draft change, and then welcome comments on the  
19 change.

20 Those changes were typically, at  
21 least from our side, perceived to be less urgent.  
22 There were refinements requested to accommodate the  
23 manufacturing capabilities that were planning to  
24 come into the province of the wind blade  
25 manufacturers or the nacelle assembly operations.

1                   So there was a greater opportunity  
2 to -- or less urgency with getting an amendment in  
3 place and in effect.

4                   So we would provide and afford  
5 greater lead time, and then greater comment period,  
6 and then ultimately an implementation period.

7                   So, yes, there was a significant  
8 amount of complexity associated with a connection  
9 point change strategy which could have been  
10 assessed and reviewed months or, you know, years  
11 ahead of an ultimate connection point change  
12 window.

13                   But it is just I'd say it wasn't  
14 our normal practice to post something on Friday,  
15 indicate it starts on Monday and closes the  
16 following Friday, again, out of really professional  
17 courtesy to an industry who may have been waiting  
18 for two years or a year and a half for the  
19 Bruce-to-Milton capacity to be made available.

20                   It doesn't mean that the  
21 ten -- five-day or ten-day or 15-day window would  
22 have resulted in a different outcome or a  
23 different -- or an opportunity, an adequate  
24 opportunity, for an applicant to actually do the  
25 analysis and get studies completed and identify

1 different connection points than they would have if  
2 they had a five-day window, but it is just more  
3 from an optics perspective, from a perception  
4 perspective, we preferred to have a greater notice  
5 period, and then a greater opportunity to act.

6           As I said, under this scenario  
7 there was an urgency on the government, an urgency  
8 on the government side, as is common with many  
9 government decisions, to execute once a decision is  
10 made. But often it takes far longer than is needed  
11 or seems warranted to actually make the decision.

12           So in this scenario we were -- you  
13 know, had draft schedules looking at starting  
14 things in April, starting things in May. It got  
15 pushed out to June. But the end date was regularly  
16 reaffirmed as being: It can't go past June 30th.  
17 It has to be done in June.

18           So there was always, as with  
19 many -- again, many government decisions, there's  
20 no pressure to make the decision, but once it is  
21 made, it has to be executed overnight. So that  
22 was, I would suggest, the scenario that we ran up  
23 against is we wanted to provide and afford a  
24 greater period of time in which to administer our  
25 program, but ultimately decisions were made to move

1 quickly, and it appears to be, you know, reinforced  
2 by the CanWEA message that the wind industry itself  
3 was advocating for -- I forget the words.

4 MR. BROWER: The majority of its  
5 members. It is repeated twice in that indication.

6 THE WITNESS: Right.

7 MR. BROWER: Had you not received  
8 a directive from the Ministry for this five-day  
9 window, do I understand from your testimony that  
10 ordinarily it would have been the case that the OPA  
11 would have put a rule change out for comment and  
12 received -- solicited comments on the rule change  
13 from the stakeholders?

14 THE WITNESS: Depending on the  
15 rule change.

16 MR. BROWER: Right.

17 THE WITNESS: There were some  
18 where we were trying to close loopholes, in which  
19 case it was impossible to put a notice out.

20 MR. BROWER: Sure. Of course.

21 THE WITNESS: Otherwise, it draws  
22 attention to the loophole.

23 MR. BROWER: Right.

24 THE WITNESS: So there were  
25 circumstances where we would just announce, you



1 know, effective this minute, this rule is in  
2 effect.

3 MR. BROWER: Right.

4 THE WITNESS: But certainly in  
5 making decisions around FIT rules or FIT contract  
6 language that was not time-sensitive or urgent, we  
7 preferred to post a draft and seek comment, and  
8 then implement 20 days, 20 days, 20 business days  
9 each.

10 MR. BROWER: Is my understanding  
11 correct that while the FIT rules in some form  
12 originally foresaw the possibility of a change of  
13 connection point, what was foreseen in those rules  
14 was a change in connection point potentially within  
15 the district, like Bruce or west of London, for  
16 example, or the others?

17 THE WITNESS: I don't believe that  
18 there was ever any deliberate restriction on  
19 connection point changes. Transmission and zones  
20 are -- again, this is Bob's area of expertise, but  
21 they are kind of electrical constructs as opposed  
22 to hard and fast geographic boundaries often times.

23 So, no, there was -- to my  
24 recollection, there was no explicit limitation on  
25 how the economic connection test and the connection

1 point change window would be operationalized.

2 As I mentioned, applicants were  
3 entitled to submit an application with no  
4 connection point specified. So in that scenario,  
5 if we were to have had such a restriction, the OPA  
6 would have to make a judgment and say, Well, your  
7 project site is here, so we deem that your  
8 connection point would have been in this region,  
9 which we didn't want to do.

10 So I don't believe that there was  
11 any -- well, definition around how the details of  
12 the economic connection test would be administered  
13 in regards to limitations on connection point  
14 changes.

15 MR. BROWER: Well, eventually we  
16 all have to be sure on that, because a point has  
17 been made by the -- by Mesa throughout these  
18 proceedings that the FIT rules, as I recall the  
19 presentation, and everything that was involved in  
20 applying them up until much later, was that  
21 interconnection -- change of connections were  
22 anticipated or limited to being within the -- you  
23 call it region or district, such as Bruce and  
24 northwest and so forth.

25 And, therefore, when there was

1     some indication that the Bruce-to-Milton line would  
2     be available for connection, nothing said that it  
3     would be possible to connect from out of the Bruce  
4     region to the Bruce-to-Milton line.

5                     And what was shown here before in  
6     the minuscule type that was blown up did talk  
7     about, you know, connections to the Bruce-to-Milton  
8     line, but it didn't indicate from where.

9                     So as the designer of the program,  
10    you don't recall that there was any express or  
11    implied restriction in the FIT rules limiting  
12    potential future interconnections to within the  
13    region?

14                    THE WITNESS:  Yes.  The entire ECT  
15    process that was anticipated, you know, in the  
16    rules only constitutes three or four paragraphs,  
17    but it is an incredibly -- was to be an incredibly  
18    complex and detailed administrative process that  
19    was going to be developed subsequent.

20                    MR. BROWER:  Well, it got to be  
21    more than a few paragraphs when you look at what  
22    was required for the people to submit an  
23    application.

24                    THE WITNESS:  Yes.  And that was  
25    just, you know, for the purposes of the

1 application, and then for the purposes of  
2 operationalizing the economic connection test,  
3 there would have been or there were continued  
4 discussions internally, again mainly led by the  
5 power system planning group, around how to optimize  
6 the grid to accommodate the vision of the Minister  
7 at the time for as much renewable energy as  
8 possible.

9                   So that process was anticipated to  
10 evolve post first draft of the rules, and again Bob  
11 Chow's group did a number of public presentations  
12 around what that detailed process would look like,  
13 as stakeholder outreach post-launch, but how the  
14 OPA would administer the ECT in, you know,  
15 subsequent months or years.

16                   So that part of it wasn't fully  
17 developed. As I said, there was no -- to my  
18 knowledge, there was no explicit restriction on how  
19 connection point changes could be permitted or  
20 prohibited or limited. But, in general, with the  
21 FIT rules and the FIT contract, if it's -- if it is  
22 not prohibited, then people can do it.

23                   So until -- unless and until  
24 there's, you know, specifically a rationale and a  
25 reason and, you know, here is how the process will

1 play out and likely, you know, a rule amendment to  
2 accompany that, then we were, you know, working to  
3 evolve all of those processes post-launch and  
4 pre first ECT or next round of capacity allocation.

5 MR. BROWER: Okay, thank you very  
6 much.

7 THE CHAIR: I have just one  
8 follow-up question. When you answered a question  
9 from one of my colleagues about the fact that you  
10 learned about the existence of what you called  
11 framework agreement with the Korean Consortium in  
12 the fall of 2009 before the launch of the FIT  
13 program, you said you were surprised and  
14 disappointed.

15 You also said that you tried to  
16 advise stakeholders of these two parallel  
17 procurement efforts.

18 How did you advise stakeholders of  
19 these two parallel procurement approaches?

20 THE WITNESS: So the primary  
21 communication around the existence of the framework  
22 agreement was delivered by government. It was at  
23 that point a government framework agreement between  
24 Ontario government and the Korean government and  
25 its agents or its organizations.

1                   And so primarily in presenting how  
2     the FIT program was going to be administered and  
3     how it was going to be executed, there were many  
4     questions about: How will FIT accommodate this  
5     competing procurement exercise?

6                   And we I believe through some of  
7     the stakeholder discussions indicated, and through  
8     in fact some of the directives there were specific  
9     capacity allocations dedicated to the Korean  
10    Consortium in order to reserve capacity for them.

11                   So our main means and vehicle for  
12    communication was through the connection capacity  
13    tables that we would update that would account for  
14    the electrical capacity that was being made  
15    unavailable for FIT applicants through the updated  
16    capacity tables.

17                   So we would indicate that as  
18    commitments are made to the Korean Consortium, the  
19    capacity of those projects will be reflected in  
20    upgraded -- updated connection capacity tables,  
21    and, as these projects materialize, stakeholders  
22    will be informed of their impact on grid  
23    availability.

24                   So it was indicating that not all  
25    of the projects were defined in terms of their

1 geographic locations, but, as they were, we would  
2 update the tables to reflect that capacity so as to  
3 advise stakeholders that that capacity would not be  
4 available for FIT contracts if it was going to be  
5 made available for KC projects.

6 THE CHAIR: I understand the point  
7 easily about the reduction of capacity on the grid  
8 in general, but geographically you did not know  
9 where the impact would be felt, is that right, at  
10 least not at the beginning in September or October  
11 2009?

12 THE WITNESS: That's correct. The  
13 projects -- my recollection is that the projects  
14 that were to be developed by the Korean Consortium  
15 were specifically identified subsequent to the FIT  
16 program launch.

17 THE CHAIR: Do you remember when  
18 that was?

19 THE WITNESS: I do not.

20 THE CHAIR: Yes. We will check it  
21 then.

22 THE WITNESS: There were leads  
23 in -- Shawn was -- anyway, they were more  
24 knowledgeable about the KC, on discussions.

25 THE CHAIR: Thank you very much.

1 If there is nothing further, then we can --

2 MR. MULLINS: Madam Chair, I  
3 apologize. I do have one follow-up question based  
4 on questions from the Tribunal.

5 THE CHAIR: Yes.

6 MR. MULLINS: I will do it from  
7 here to make it quick. If the witness could turn  
8 to tab 16, which is document C-77. This is the  
9 June 3rd directive. We can put it up. I am  
10 interested in the second page, paragraph 3.  
11 Tab -- I'm sorry, tab 16.

12 MR. LANDAU: Sixteen?

13 MR. MULLINS: Document number  
14 C-77.

15 MR. BROWER: In his volume?

16 THE CHAIR: Sixteen.

17 MR. MULLINS: Sixteen in  
18 Mr. MacDougall's volume.

19 MR. BROWER: Fifteen?

20 MR. MULLINS: Sixteen; one-six.

21 MR. BROWER: Sixteen.

22 MR. MULLINS: I misspoke earlier,  
23 I apologize.

24 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

25 Q. This is the June 3rd, 2011



1 directive, number C-0077, for the record. Now I'm  
2 specifically looking at paragraph 3 on page 2.

3 And I would like to follow up on  
4 Arbitrator Brower's question about the rule changes  
5 and whether or not they were there. It indicates  
6 that there was a directive here indicating that  
7 only where the proponent wishes to change a  
8 connection point to a connection point in one of  
9 these two areas.

10 I was wondering why, if the idea  
11 was always that you could change different areas,  
12 why it was necessary to have a directive make that  
13 explicit.

14 THE CHAIR: I don't think the  
15 witness has said that it was necessary to have a  
16 directive; right? That is a whole question that we  
17 had and I would leave open for the time being.

18 Now, once I have said that, what  
19 is the question that remains?

20 BY MR. MULLINS:

21 Q. I guess the question is: If  
22 it had always been contemplated there would be a  
23 switch between regions, why was a directive -- I'm  
24 not saying it had to be a directive, but why was  
25 there a directive written that made it explicit a

1 connection point could be done through one of these  
2 two areas?

3 A. So one part of the answer is  
4 that the government did want to limit the total  
5 contract awards to a finite quantum, as we see in  
6 parts 4 and 5.

7 So certainly there was a desire to  
8 limit contract award results to show up in the  
9 Bruce -- for projects to end up in the Bruce  
10 transmission area or the west of London  
11 transmission area. I'm not sure if that is your  
12 question, but...

13 Q. I guess that answers why it  
14 was only those two areas, but I guess the question  
15 is: Does the witness remember any discussion about  
16 making explicit that you could change your  
17 connection point to one of those two areas? That  
18 is the language I was focussing on as opposed to  
19 saying just change your connection point.

20 A. So the only part of the  
21 discussion that I would have been involved in was  
22 really the outcome has to be finite. The outcome  
23 of the allocation process has to be finite and, as  
24 prescribed here, shall not exceed, you know, 1,050  
25 megawatts in aggregate between the two areas.

1                   So I believe that is part -- forms  
2 part of the rationale for why there is an explicit  
3 reference to the Bruce and west of London  
4 transmission areas.

5                   MR. MULLINS: No further  
6 questions. Thank you.

7                   THE CHAIR: Thank you. Fine. So  
8 that completes your examination, Mr. MacDougall.  
9 Thank you very much for your explanations.

10                  THE WITNESS: Thank you.

11                  THE CHAIR: We will now take a  
12 15-minute break and resume to hear Mr. Chow, who is  
13 the next witness; is that right?

14                  MR. SPELLISCY: I guess I have a  
15 question on the rest of the afternoon. It is 4:30.  
16 We have both Mr. Chow and Mr. Cronkwright here.  
17 Perhaps the claimant -- can we send Mr. Cronkwright  
18 home, or do we think we are going to get to both of  
19 them this evening?

20                  THE CHAIR: I very much doubt it,  
21 but let's try and do some estimates.

22                  What is the estimate on the  
23 cross-examination of Mr. Chow?

24                  MR. MULLINS: Recognizing we have  
25 been using our time --

1                   THE CHAIR: There are a few things  
2                   that sometimes you could keep for submissions,  
3                   because remember you have three hours of closing on  
4                   Saturday, and then you have to post-hearing briefs.  
5                   So sometimes I feel that you could save time by  
6                   doing that.

7                   I am of course saying this to both  
8                   parties.

9                   MR. APPLETON: Could the secretary  
10                  perhaps give us a little time update? That might  
11                  help us.

12                  MR. DONDE: I would need a minute  
13                  to get that.

14                  THE CHAIR: He will give it to  
15                  you.

16                  MR. APPLETON: I think that would  
17                  affect our decision as to how long we would go.

18                  THE CHAIR: Fine. Now, does it  
19                  make sense that we consider starting with  
20                  Mr. Cronkwright tonight? My answer, thinking out  
21                  loud, is no.

22                  MR. SPELLISCY: I am being advised  
23                  Mr. Cronkwright might need to leave by 5:00 for  
24                  child care reasons today. So it is 4:30 now. He  
25                  might be able to stretch it a little, but if we're

1 going to have Mr. Chow now --

2 THE CHAIR: So I can only support  
3 the purpose of his leaving, and so obviously  
4 that -- we would then hear him tomorrow morning  
5 first thing. Is that acceptable to the claimants,  
6 as well?

7 MR. MULLINS: Yes. The next  
8 witness is Mr. Chow, of course.

9 THE CHAIR: Yes, yes. We were  
10 just thinking ahead.

11 MR. MULLINS: That's fine. The  
12 answer is that by some miracle we end up finishing  
13 earlier than we expected, we will set the limit. I  
14 can't -- I am pretty confident we will not finish  
15 Mr. Chow by five o'clock. So I think  
16 Mr. Cronkwright could leave.

17 THE CHAIR: Mr. Cronkwright can go  
18 home, yes. Yes.

19 MR. MULLINS: Yes.

20 THE CHAIR: And he should come  
21 back tomorrow morning at 9:00, yes.

22 MR. DONDE: The claimants have  
23 used about eight hours and 57 minutes. And --

24 THE CHAIR: I think that is all we  
25 need for now. We will check on the respondents

1 afterwards. That gives you -- I mean, if  
2 Mr. Cronkwright is not heard today, I don't need  
3 your estimate now. You can think about it over the  
4 break.

5 So let's resume at a quarter to  
6 5:00.

7 MR. MULLINS: Sure.

8 --- Recess at 4:26 p.m.

9 --- Upon resuming at 4:51 p.m.

10 THE CHAIR: Fine. Are we ready  
11 again? Yes. On the claimant's side, as well?

12 So, Mr. Chow, thank you for being  
13 with us. For the record, can you please confirm  
14 that you are Bob Chow?

15 THE WITNESS: Yes, I confirm I am  
16 Bob Chow.

17 THE CHAIR: You're director of  
18 transmission integration at the OPA?

19 THE WITNESS: Yes, ma'am.

20 THE CHAIR: You have produced two  
21 witness statements in this arbitration dated  
22 February 27 of this year and June 27 of this year?

23 THE WITNESS: I did.

24 THE CHAIR: Yes. You are here as  
25 a witness. As a witness, you are under a duty to

1 tell us the truth. Can you please confirm this is  
2 what you intend to do?

3 THE WITNESS: I will.

4 AFFIRMED: BOB CHOW

5 THE CHAIR: Thank you. So you  
6 know how we proceed. Ms. Squires will first ask  
7 you questions in direct on behalf of Canada and  
8 then we will turn to the investor's counsel,  
9 please.

10 EXAMINATION IN-CHIEF BY MS. SQUIRES:

11 Q. Good afternoon, Mr. Chow. I  
12 just have one question for you and that is whether  
13 you have any corrections to make to your witness  
14 statements.

15 A. I don't have any corrections.

16 MS. SQUIRES: Thank you.

17 THE CHAIR: Mr. Mullins.

18 CROSS-EXAMINATION BY MR. MULLINS 4:53 P.M.:

19 Q. Good afternoon, Mr. Chow.

20 A. Good afternoon, sir.

21 Q. What you don't know is we  
22 have limited time here to ask questions, and you  
23 are witness number 3 or 4 today. I lost count. So  
24 you are number 4, and we have limited time. So I  
25 would ask you to listen to my questions and try to

1 answer them, and if there is some followup, you can  
2 do so, but if you could listen to my question and  
3 try to answer it; is that fair?

4 A. Yes.

5 Q. If there is any  
6 clarification, your counsel will have a chance to  
7 do so on re-direct, okay?

8 A. Sure.

9 Q. It may very well be the  
10 Tribunal will ask you questions, as well, and you  
11 will be able to answer those.

12 So you have your two witness  
13 statements in front of you, and then there is a  
14 notebook on the corner, if you would pull it in  
15 front of you. Oops, the other one. That notebook  
16 has exhibits that we may or may not -- likely not  
17 going to a lot of those. I may go to those, and so  
18 having that it in front of you will be helpful.

19 Can you just remind us for the  
20 record what your role was at the OPA during the  
21 relevant time period? And the relevant time period  
22 for us essentially is from September 2009 to July  
23 2011.

24 A. At that time, I was still the  
25 director of transmission integration at the OPA. I



1 have not changed the job since then.

2 Part of my job is to do  
3 transmission planning and also the regional  
4 planning, and in support of the procurement, of  
5 which the FIT program is one, as related to the  
6 connection availability and also the expansion of  
7 the system.

8 Q. Mr. Chow, did you work both  
9 dealing with the FIT program and the Korean  
10 Consortium agreement, as well, in terms of the  
11 implementation of that?

12 A. My responsibility was to look  
13 after the connection part both for that program and  
14 any other procurement.

15 Q. So, in other words, not only  
16 did you work with the connection points for the FIT  
17 program. You were also working with connection  
18 points for the Korean Consortium, as well?

19 A. Yes.

20 Q. Got it. And there's been  
21 some discussion about the ECT and connection  
22 points. We have had testimony, so we are on the  
23 same page and make sure you agree, that there  
24 originally was going to be a province-wide ECT;  
25 right?

1 A. Yes.

2 Q. That never was run; right?

3 A. Sorry?

4 Q. That never was run, the  
5 province-wide ECT?

6 A. There was never a  
7 province-wide ETC.

8 Q. Do you remember, specifically  
9 with respect to the province-wide ECT, whether or  
10 not that the OPA ever made an explicit statement to  
11 stakeholders that a stakeholder would be able to  
12 switch from one region to another region, an  
13 explicit statement?

14 A. Well, we have always said  
15 that there's ability to change connection point.  
16 It's not related to region, because region in terms  
17 of connection point is really electrical  
18 definition.

19 When there is a connection to the  
20 part of the system, then they define what the  
21 region is. The region isn't defined by itself  
22 without relation to the connection to the network.

23 Q. Well, for example, sir, you  
24 do remember -- if you could look at tab 1 of the  
25 notebook in front of you, and this is for the

1 record C-258. If I could point you to the 5.4(a)  
2 of the FIT rules, you do remember that -- this  
3 talks about the economic connection test. That is  
4 the ECT; right?

5 A. Yes.

6 Q. It says it will be run for  
7 each region of the province at least every six  
8 months?

9 A. Region in that sense is we  
10 define certain electrical region across Ontario.  
11 It depends on the characteristic of the  
12 transmission system. It is much easier  
13 administratively to look at different parts of the  
14 system where then the project connected to that  
15 part have -- you could, say, have similarity and  
16 opportunity among them that's similar.

17 Q. The contract -- do you  
18 remember that the west of London and the Bruce area  
19 contracts were the last FIT projects to be awarded;  
20 right?

21 A. They are the last after the  
22 Bruce-to-Milton allocation, yes.

23 Q. Correct.

24 A. Yes.

25 Q. In fact, the other regions

1 were awarded before that?

2 A. Well, all the regions gone  
3 through TAT/DAT across Ontario, so we don't make  
4 distinction about which region undergo TAT/DAT. We  
5 do a TAT/DAT for the whole system as part of the  
6 launch period.

7 Q. And at each one of those  
8 contract awards, they were ranked per region,  
9 weren't they?

10 A. They are still based on  
11 provincial ranking. For the purpose of showing  
12 them to be helpful to participants, we group them  
13 into regions. And there are certain projects that  
14 do not have connection points, which is the enabler  
15 class. We put them where they are physically  
16 located. Again, a lot of it is just for  
17 information purpose.

18 Ultimately, the ranking is based  
19 on provincial ranking.

20 Q. I understand, sir, but I am  
21 just trying to understand your answer. It is true  
22 that the proponents were ranked in regions,  
23 correct, as well as the province wide?

24 A. Well, again, as I said, I  
25 mean for information purposes we group the

1 one -- the different projects under regions. The  
2 ranking would be in the order of which they are  
3 provincial ranking in the region.

4 Q. And in those particular  
5 regions, prior to the Bruce-to-Milton and the --  
6 sorry, scratch that.

7 Prior to the Bruce and west London  
8 regions, then awards were entered based on the  
9 rankings in the particular region; correct?

10 A. I don't quite understand the  
11 question. Award was?

12 Q. Sure. I will rephrase it.

13 Prior to the awards in the west  
14 London and Bruce regions, the awards of the  
15 contracts were awarded in the other regions based  
16 on the rankings in the regions?

17 A. I still don't fully  
18 understand the question. If I could put it this  
19 way, after the provincial-wide TAT and DAT we did  
20 for the launch period, the project that did not  
21 receive the contract after that group were placed  
22 in different regions of which then, for purpose of  
23 being helpful with the information, we grouped them  
24 in those regions.

25 Those regions obviously have

1 project that currently cannot be connected.

2 Q. Okay. But essentially those  
3 that were not awarded contracts, the ones that were  
4 awarded contracts had ranked higher in the region;  
5 correct?

6 A. They would be the one that  
7 actually passed TAT/DAT. They were high on  
8 provincial ranking and they have the contract.

9 Q. They were also higher in the  
10 region; correct?

11 A. That is somewhat evolving,  
12 because they are highest ranking in the sequence of  
13 which the provincial ranking was provided to us.

14 Q. The answer to my question --

15 A. We did not do the TAT/DAT  
16 based on regional ranking. We did it across  
17 Ontario wide based on provincial ranking.

18 Q. Okay. But you did rank them,  
19 as well, and award them in the areas where they  
20 were highly ranked in the area; correct?

21 A. But, again, they win the  
22 contract because they have the ability to connect  
23 and they are high on provincial ranking. After  
24 those contracts are identified, they are shown as  
25 part of a certain region for information purposes.

1 But it is nothing in the region ranking that were  
2 contributing for rewarding of the contract.

3 Q. Now, you mentioned earlier  
4 that the -- let me make sure I understand. There  
5 never was an explicit statement that a FIT  
6 proprietorship from one region could connect to  
7 another region; right?

8 A. There is no explicit  
9 statement that you say you could or you cannot.  
10 Our assumption is, where it is possible and there  
11 is allowance for change of connection point, and  
12 people connect to wherever electrically it makes  
13 the most sense to connect.

14 It is not on a region basis. It  
15 is where on the transmission system you could  
16 connect.

17 Q. That would then mean someone  
18 in a region, for example, bordering the Bruce could  
19 connect into Bruce; is that what you're saying?

20 A. Well, if someone have the  
21 capability to go from one region to another because  
22 the connection point is easy to access, then they  
23 certainly have the ability to do so.

24 The change in connection point,  
25 the basis of it is to allow a greater opportunity

1 to connect to where the spaces are. I mean, this  
2 is why that was provided.

3 Q. I guess what I'm asking is  
4 that -- but that was all, again, originally told to  
5 stakeholders as part of a province-wide ECT?

6 A. The ECT process, it is  
7 intended to be applied province wide.

8 Q. Right. So that never  
9 happened, but you're saying when we told about the  
10 ECT we thought was going to happen, we were going  
11 to allow people to change their connection points?

12 A. As part of the ECT process,  
13 one of the provisions allowed a change of  
14 connection point.

15 So we run ETC. There would have  
16 been allowance as part of that process for anybody  
17 in Ontario to change connection point.

18 Q. Okay. And as part of the  
19 ECT?

20 A. As part of the ETC.

21 Q. So I guess, then, that would  
22 mean that somebody in, for example, the Niagara  
23 region then could connect to the Bruce region; is  
24 that what you're saying?

25 A. It could, but it would not be



1 practical. Why would somebody in Niagara connect  
2 to the Bruce?

3 I mean, you know, you could. You  
4 could have northern Ontario connecting to the  
5 Bruce, but --

6 Q. So when the change was made  
7 in June of 2011, the OPA, pursuant to the direction  
8 by the Minister of Energy, only limited the ability  
9 for proponents in the Bruce and London region to  
10 change their connection points; correct?

11 A. I believe that's contained in  
12 the directive.

13 Q. And so there was no ability  
14 for other proponents in other regions that  
15 neighboured the Bruce region to connect into Bruce;  
16 correct?

17 A. Not in accordance to the  
18 directive.

19 Q. Was there any discussion at  
20 the OPA whether or not it would be fair to allow  
21 other proponents in neighbouring regions to also  
22 connect into the Bruce region?

23 A. Not with myself.

24 Q. Okay. Well, you're one that  
25 was in charge of the connection points, weren't

1     you?

2                     A.    In what sense?  I design the  
3     process.  I discussed the implication of the  
4     process.  Many of the policy matters I am not  
5     involved in.  I am more concerned about the  
6     operationalizing of the process.

7                     Q.    Now, do you remember, at the  
8     time that NextEra was allowed to connect to the  
9     Bruce region, how far away it was from the Bruce  
10    region, this project?

11                    A.    Sorry, I didn't get that  
12    question.

13                    Q.    Do you remember how far away  
14    NextEra was from the Bruce region where it was  
15    allowed to connect for the connection points?

16                    A.    NextEra had a number of  
17    projects.  I am not sure which one do you -- are  
18    you focussing on?

19                    Q.    Do you know what the NextEra  
20    six-pack is, sir?  Have you ever heard that term?

21                    A.    Sorry, I've never --

22                    Q.    Never heard that term,  
23    NextEra six-pack?

24                    A.    No.

25                    Q.    Okay, thank you.  Weren't you

1 aware that NextEra was 100 kilometres away from the  
2 connection points that it eventually got in June  
3 2011?

4 A. Again, it is up to NextEra.  
5 It is not for me to comment on how NextEra connects  
6 to the project.

7 Q. Now, you also were aware or  
8 involved with the ability of the Korean Consortium  
9 to connect; correct?

10 A. In accordance with the  
11 agreement, the GEIA.

12 Q. And were you aware of how the  
13 Korean Consortium was purchasing projects in  
14 Ontario in order to comply with its agreement with  
15 Ontario?

16 A. No, sir, I am not aware of  
17 that.

18 Q. You're not aware that they  
19 were buying low-ranked projects in the area to  
20 satisfy its obligations under the GEIA?

21 A. No, I am not aware of that.

22 Q. Okay. Now, you participated  
23 in the GEIA working group, did you not?

24 A. Yes. I participate in the  
25 assessing whether potential connection points are

1 capable of connecting the project.

2 Q. What was the GEIA working  
3 group, sir?

4 A. It is a working group that  
5 consists of people that look at the various  
6 proposals of the project from the Korean Consortium  
7 and agree on connection points that they propose.

8 Q. What people?

9 A. Sorry, can you repeat?

10 Q. You said it consists of  
11 people that will look at various proposals. What  
12 people?

13 A. The Korean Consortium.

14 Q. Well, who was part of the  
15 working group, besides yourself and the Korean  
16 Consortium people?

17 A. Again, I don't know the  
18 people's name in the Korean Consortium side.

19 Q. Well, would you tell us  
20 essentially what their roles were?

21 A. No, I don't.

22 Q. What about the government  
23 side? Were you the only government person involved  
24 in the group?

25 A. I'm not a government person

1 I'm from the OPA. Shawn my colleague is also one.

2 Q. Okay.

3 A. Beyond that, I don't really  
4 remember the rest.

5 Q. So from the OPA side, it was  
6 just you and Mr. Cronkwright, and then some members  
7 of the Korean Consortium.

8 And you were helping them figure  
9 out where they could connect to the grid. This was  
10 not something that you did for FIT proponents, did  
11 you?

12 A. Well, as per the agreement,  
13 the Korean Consortium has a priority access on the  
14 grid. The system we provide is they have a number  
15 of potential connection points which we would look  
16 at, whether it is capable of connecting the project  
17 or not. We do not propose any particular location  
18 for them.

19 Q. So this was a benefit given  
20 to the Korean Consortium pursuant to the agreement  
21 and not shared with the FIT proponents; right?

22 A. And that is not for me to  
23 comment. I carry out the work of looking at the  
24 connection points.

25 Q. Okay. So far as you know,

1       only the Korean Consortium got the benefit of the  
2       working group and not members of the FIT program;  
3       right?

4                   A.     Under that agreement, yes, we  
5       have been helpful on that.

6                   Q.     Can you pull out tab 8 of  
7       your notebook, sir?

8                   MR. SPELLISCY:   The exhibit number  
9       for the record?

10                  MR. MULLINS:   I'm sorry, C-73.

11                  BY MR. MULLINS:

12                  Q.     Can you tell us what this  
13       document is?

14                  A.     I believe it is a listing of  
15       the projects in the Bruce area.

16                  Q.     And you see that it is,  
17       actually, the number -- they are all here listed by  
18       area; correct? Do you see there's a number of --

19                  A.     Yes, the first page I was  
20       looking at is the Bruce area, and then after that  
21       central and so on.

22                  Q.     And so these other areas were  
23       awarded contracts in the rankings pursuant to these  
24       areas; correct?

25                  A.     Again, I don't understand the

1 question about awarding the contract.

2 Q. Well, when you looked at  
3 these various areas, for example, the Niagara area,  
4 when these contracts were awarded, one of the  
5 things you looked at is how they ranked within this  
6 area, for example, right, if you look, for example  
7 at page 6?

8 A. I have to apologize. The  
9 font is very small. That is why I'm having  
10 difficulty reading this.

11 Q. I apologize. We will try to  
12 expand it here on the page.

13 THE CHAIR: If you can look at it  
14 on the screen, we will try to enlarge it.

15 MR. APPLETON: We will try to  
16 enlarge it with the computer.

17 BY MR. MULLINS:

18 Q. So what I am asking you, I  
19 don't know if -- can you see it better there on the  
20 screen?

21 A. Yes.

22 Q. So, for example, there is an  
23 area ranking, isn't there, on the side, in addition  
24 to the province-wide ranking?

25 A. Yes. I believe I answered

1 that question earlier. The provincial-wide ranking  
2 is the ranking that we actually use in priority in  
3 terms of looking at the project.

4 The area ranking is for the  
5 purpose of -- for listing purposes to indicate the  
6 well -- the priority of a group of project in that  
7 area.

8 Q. In that area. So, for  
9 example, those with their higher rank in the  
10 Niagara area, for example, were more likely to get  
11 the contracts than those lower ranked; correct?

12 A. But, again, the true ranking  
13 that we used for assessment is the provincial-wide  
14 ranking.

15 So we could have a project that is  
16 highly ranked in one region, but it is low in  
17 provincial ranking. It is really still on the  
18 basis of provincial ranking that we look at this.

19 And obviously the grouping of a  
20 project, a certain group of projects in an area,  
21 won't get order based on the provincial ranking.

22 Q. Where does it say that in the  
23 FIT rules, sir?

24 A. With the FIT rule, it is  
25 always in terms of the -- in the launch period, the



1 ranking is based on the criteria shovel readiness  
2 criteria. After the launch period, it would be in  
3 the order of the time stamp. So that would be the  
4 provincial ranking.

5 Q. Where does it say in the FIT  
6 rules that a province-wide ranking might overcome a  
7 region-wide ranking or area ranking?

8 A. Again, the regional ranking  
9 is for the purpose of information presentation. It  
10 is not used for any purpose in terms of ranking on  
11 a regional basis. It is still a provincial ranking  
12 that matters.

13 Q. So the answer is there is  
14 nothing in the FIT rules that specifically says  
15 what you just told us; correct?

16 A. I think the FIT rules still  
17 look at in terms of where the project comes in,  
18 either in the launch period because of shovel  
19 readiness, or after that based on time stamp. And  
20 that gives the provincial ranking.

21 So when we execute the actual  
22 testing, it will be in the sequence given to us by  
23 our electricity resources department in the order  
24 of provincial ranking.

25 Q. You are aware, though, that,

1 for example, the Korean Consortium taking priority  
2 access in the Bruce area affected the ability of  
3 projects in the Bruce region to obtain FIT  
4 contracts; correct?

5 A. Yes. I mean, all projects  
6 compete for connection across Ontario. Obviously a  
7 project given priority will have an impact on other  
8 projects.

9 Q. And so -- thank you. So  
10 let's talk a little bit about the Bruce region. In  
11 fact, in September 2010 there was a directive  
12 limiting the amount of capacity specifically in the  
13 Bruce region; correct? Do you remember that?

14 A. Say that again.

15 Q. Tab 5 of your notebook. For  
16 the record, it is C-119.

17 A. That is in 2011, I believe.

18 Q. No, I'm sorry. Tab 5 is  
19 September 17th, 2010. Do I read that wrong?

20 A. Sorry. This is Korean  
21 Consortium, sorry.

22 Q. There is a later one.

23 A. There is a later one.

24 Q. I was asking about the  
25 September one, exactly.

1                   So in this letter, then, you see  
2 where they reserve 500 megawatts in the Bruce area?

3                   A.    Yes.

4                   Q.    And so that affected the  
5 ability of the projects in the Bruce region to  
6 obtain contracts; right?

7                   A.    Well, of the total capacity,  
8 then 500 megawatts would be held in priority for  
9 the Korean Consortium.

10                  Q.    So had that not happened,  
11 more projects that were located in the Bruce region  
12 would have been able to obtain contracts; right?

13                  A.    That's probably true.

14                  Q.    Okay, and so what I want to  
15 talk to you about, then, sir, is about the capacity  
16 in the Bruce region.

17                  Now, first, if you go -- now we  
18 are going into confidential.

19 --- Upon resuming confidential session at 5:16 p.m.

20 --- Upon resuming public session at 5:26 p.m.

21                  BY MR. MULLINS:

22                  Q.    If you go to tab 13.

23                  A.    Yes.

24                  Q.    You mentioned the reactor  
25 switching. So if I am reading this chart

1 correctly, isn't it correct that there was 140  
2 megawatts that would have been available in the  
3 Bruce region had the OPA decided to do the reactor  
4 switching; correct? Is that what this says?

5 A. Again, the page is showing  
6 the potential that one can get if one apply all of  
7 those measures that is listed in this page.

8 MR. SPELLISCY: I'm sorry, are we  
9 in confidential session, because there is  
10 confidential information on this page as shown by  
11 the boxes.

12 MR. APPLETON: So take it off the  
13 slide for a minute. Thank you. Now, are we in  
14 confidential?

15 MR. SPELLISCY: No, we came out.

16 MR. APPLETON: Are we showing  
17 confidential documents? So perhaps we might switch  
18 to confidential.

19 --- Upon resuming confidential session at 5:27 p.m.

20 --- Upon resuming public session at 5:35 p.m.

21 THE WITNESS: The static VAR  
22 compensator is one of the measures as part of the  
23 2010 long-term energy plan priority project for us  
24 to take a look at in order to increase the Bruce  
25 capacity.

1                   We did take a look at it. It  
2                   increases roughly the numbers by 200 megawatts,  
3                   depending how hard we push the system. The cost is  
4                   in the order of about \$100 million.

5                   The decision of whether to do it  
6                   or not wasn't made, because it all depends on the  
7                   value you get out from that.

8                   So, again, a lot of this whole  
9                   series of options was to get -- to explore, to look  
10                  at the numbers that you can get out of it, in some  
11                  cases what is the cost of it.

12                  In this particular case, it would  
13                  have been cost \$100 million for 200 megawatts of  
14                  increase in the Bruce.

15                  BY MR. MULLINS:

16                  Q.    Or 230 megawatts; right?

17                  A.    230, depending on how it is  
18                  pushed.

19                  Q.    Okay. So fair enough. So  
20                  then if I understand, then, while it chose not to  
21                  do so... Just a second.

22                  Can you also turn to tab 20? This  
23                  is confidential.

24                  --- Upon resuming confidential session at 5:37 p.m.

25                  --- Upon resuming public session at 5:40 p.m.

1 MR. MULLINS: Now, actually --

2 THE CHAIR: We are back in public  
3 now.

4 MR. LANDAU: But you haven't  
5 announced it.

6 THE CHAIR: We should be back in  
7 public. Technicians in public?

8 MR. LANDAU: Yes.

9 MR. MULLINS: Right. This is not  
10 confidential?

11 MR. LANDAU: Right.

12 BY MR. MULLINS:

13 Q. Are you ready?

14 A. Yes.

15 Q. All right. Actually, I want  
16 you to go to page 6 of this document. And, again,  
17 can you identify that this is the running of the  
18 TAT data; correct? Is that what this is?

19 A. Again, I believe this is a  
20 listing -- again, you have to correct me, because I  
21 can't read it.

22 Q. I was hoping you could read  
23 it on the screen.

24 A. My belief is this is a list  
25 that have failed -- all of those projects failed

1 the original TAT/DAT during the launch period. So  
2 they are all projects that are waiting for  
3 additional capacity to connect or ECT.

4 Q. Perfect. So if you go to the  
5 first, this is in the west of London area where it  
6 says International Power Canada; right?

7 A. Okay, yes.

8 Q. Can you tell us what the  
9 province ranking is for that project?

10 A. That's --

11 Q. You have to scroll down. Can  
12 you scroll down?

13 A. That would be on the second  
14 column.

15 Q. Yes. What is the province  
16 ranking for that project?

17 A. Second and third.

18 Q. Okay. But it wasn't awarded  
19 a contract, right, at this time?

20 A. Yes.

21 Q. And the reason why it wasn't  
22 awarded a contract is because in the west of London  
23 area, there wasn't any transmission capacity;  
24 right?

25 A. Right.

1                   Q.    Okay, thank you.  I want to  
2    check with my colleagues and see if I have any  
3    additional questions.  I will turn over the  
4    witness.

5                   THE CHAIR:  We're waiting to see  
6    whether there are other questions.

7                   MR. SPELLISCY:  Give us just one  
8    minute.  I'm looking to see if there are any  
9    questions.

10                  THE CHAIR:  I'm letting the  
11   witness know so he knows what is going on.

12   RE-EXAMINATION BY MR. SPELLISCY AT 5:44 P.M.:

13                  Q.    Thank you.  Just a few  
14   questions.  The skies are darkening already, so I  
15   will try to get you out of here soon, Mr. Chow.  I  
16   just wanted to clarify on the record the document  
17   we were looking at there just now, the one with the  
18   tiny, tiny font, this is the ranking of the  
19   projects that failed the TAT and the DAT  
20   originally; correct?

21                  A.    I believe so.

22                  Q.    Now, you had been asked some  
23   questions earlier about how contracts were awarded,  
24   prior to this ranking.  I think you had explained  
25   that the TAT/DAT was run for the entire province.



1                   Could you just walk us through how  
2                   that would have happened? In which order would you  
3                   have considered projects for contracts and how  
4                   would that have related, if at all, to the areas in  
5                   which they were eventually put?

6                   A. I am happy to do so. The  
7                   ranking that are given to us, us in terms of this  
8                   transmission group, to look at whether the system  
9                   is capable of connecting the project. We see that  
10                  list from the electricity resources folks.

11                  So they do the ranging based on  
12                  shovel-readiness, time stamp, many other factors  
13                  they would decide.

14                  So once the ranking come to us,  
15                  which is provincial ranking from one to as many  
16                  projects there is, we would execute in the sequence  
17                  of which the project is ranked.

18                  So you have to do project one  
19                  before we do project two. We don't go to region A  
20                  and region B. So the way it is done is because  
21                  sometimes project can affect each other, so we do  
22                  it in a sequence of when the project come in to us.

23                  So that's why provincial ranking  
24                  is very important, because we do do it in that  
25                  sequence.

1                   Now, obviously there are places in  
2 Ontario where there is absolutely no relationship  
3 to each other, northern Ontario and southern  
4 Ontario. One can, through processing, speed up the  
5 process, if time is an issue, to do some of the  
6 projects kind of in mutually exclusive way, but it  
7 always come back to is the provincial ranking that  
8 matters.

9                   MR. SPELLISCY: Thank you. I  
10 don't have any other questions.

11                  THE CHAIR: Okay. Any questions  
12 from my co-arbitrators?

13                  MR. LANDAU: Just one.

14                  THE CHAIR: Let me just check.

15                  MR. LANDAU: Just one.

16 QUESTIONS BY THE TRIBUNAL AT 5:47 P.M.:

17                  MR. LANDAU: I just have one  
18 question in terms of internal organization within  
19 OPA. What was your relationship with Jim  
20 MacDougall? Can you just explain who was doing  
21 what and how you're related to each other?

22                  THE WITNESS: Jim or Shawn, which  
23 you will be listening to next day, they are in a  
24 division called electricity resources. They are  
25 the people that does the actual procurement. They

1 are responsible for the procurement. So they have  
2 the rules, the qualification of applicants, and so  
3 on.

4 Now, as part of any procurement,  
5 you have to have the ability, even if they meet all  
6 the criteria and the priorities, to see if they can  
7 connect, because there is not much point getting a  
8 project contracted in an area where there is no  
9 capacity to transmit it.

10 So that is our job, to do that  
11 screening before they let the contract, to see if  
12 that project is in the right location in order to  
13 allow it to freely deliver the energy to the  
14 system.

15 Now, so that process, once they  
16 have done all of the checking and ranking, they  
17 come to us. We do the assessment as part of  
18 TAT/DAT, and then we send the result back to them,  
19 which then they go and do the process for the  
20 contracting.

21 MR. LANDAU: Thank you.

22 THE CHAIR: You have explained  
23 that you would receive the applications according  
24 to their provincial ranking and that is how you  
25 would treat them.

1                   I am not clear. You said that the  
2 regional ranking was for information purposes. I  
3 am not sure I understand this, because if only the  
4 provincial ranking was relevant, then you could  
5 have stopped there and not have a regional ranking.

6                   So you had a regional ranking.  
7 What was the purpose?

8                   THE WITNESS: I think the purpose  
9 is to help people see themselves, and most people see  
10 themselves, because the capability is organized on  
11 regional basis, to see who around them and who is a  
12 different priority to them are remaining looking  
13 for capacity.

14                   It is an exercise where people  
15 could do it themselves. They could go to the  
16 provincial ranking and draw their own grouping.

17                   For purpose of being helpful, we  
18 organize them into the different regions where we  
19 believe the project would be connecting to.

20                   Now, in some cases, because they  
21 are enabler projects that have not decided  
22 connection point, we would just artificially put  
23 them in the location of the project even though  
24 they may change the connection point later on and  
25 go to a different region.

1                   So it again is for display  
2           purposes to allow people quickly to look at who is  
3           in the region that they are competing for and in  
4           what order.

5                   As you notice in all of those  
6           columns, there is an indexing of the regional list,  
7           one to end, but the provincial ranking numbers is  
8           always there.

9                   You could be very high on the  
10          region ranking and you could be very low in  
11          provincial ranking. Again, that information is  
12          always kept. So we don't suddenly decide that only  
13          this group of projects have a priority among  
14          themselves. It is still based on provincial  
15          ranking.

16                   THE CHAIR: And the information  
17          that you give has value for the proponents in  
18          respect of connection point change, or why would  
19          they be interested in knowing who is around them  
20          and what ranking?

21                   THE WITNESS: And there is many  
22          reasons why people want to have information. Some  
23          people may want a decision to stay on. They know  
24          capacity is coming. They want to know how many  
25          people is ahead of them, how big they are within

1       that grouping.

2                       Of course it is never a sure  
3       thing, because people can drop out, too. So it is  
4       as much information we provide that everybody have  
5       the same information.

6                       As you know, there is always  
7       limitation how much information can we have, what  
8       is useful, what is not useful. So in our judgment,  
9       it is useful to do the provincial ranking, at the  
10      same time group them into regional rankings, so  
11      people have a better view of who is actually  
12      competing with them, because a lot of them are  
13      there still looking for future capacity to allow  
14      them to connect as in the case of the Bruce.

15                      And for change in connection  
16      point, again, it is quite useful, but it is -- none  
17      of the information we provide on, let's say, just a  
18      continuous listing of provincial level, that they  
19      couldn't themselves get that information out,  
20      extracting that information out.

21                      THE CHAIR: I am looking for  
22      something that struck me in your witness statement.  
23      Let me see whether I have it. You very much insist  
24      on the location of the circuit as opposed to the  
25      physical location, and that is why you say the

1 region is not that important, because you could  
2 connect to another region.

3 Yet it has a bearing, because you  
4 cannot connect -- I mean, you can connect to  
5 another region provided you are close to the  
6 border, or not?

7 THE WITNESS: Yes. It is  
8 absolutely critical that the connection point  
9 determine the ultimate region to be tested.

10 So until there is a connection  
11 point, a project is -- it is not really in a  
12 region. I mean, you have to know where it  
13 connects.

14 It matters very much whether it is  
15 on this side of the station or that side of the  
16 station that determine the region.

17 Now, we happen to be in the Bruce  
18 area and the west of London area where projects can  
19 go back and forth. In many areas that is not a  
20 possibility. So, you know, it is somewhat  
21 impractical sometimes to say project move between  
22 region.

23 It is only in the rare instances,  
24 which this case in the Bruce happened to be one, of  
25 which there is a choice. And that choice has to be

1 made in respect of a connection point, because I  
2 cannot -- I say just because you are located  
3 physically in the Bruce that you actually then are  
4 connected electrically in that particular Bruce.  
5 It could be connected elsewhere.

6 THE CHAIR: Elsewhere close to  
7 where you are?

8 THE WITNESS: But could be a  
9 different region electrically.

10 THE CHAIR: It could be a  
11 different region, yes.

12 THE WITNESS: That's why we want  
13 to make it really, really clear it is really the  
14 connection point that matters at the end of the  
15 day, not where they are physically located, because  
16 there is many reasons why a developer may want to  
17 connect at different points on the system.

18 THE CHAIR: Thank you, Mr. Chow.  
19 That is all.

20 MR. BROWER: I have a question.  
21 When the applications are rated on a provincial  
22 basis or a regional basis -- when applications are  
23 rated by OPA on a province-wide basis or on a  
24 regional basis under the FIT rule criteria, there  
25 is no element in that rating of proximity to or



1 access to a connection point?

2 THE WITNESS: No, sir. What the  
3 FIT rule have is if you are rated on a  
4 provincial-wide basis, let's say on a launch period  
5 based on shovel readiness, there would be a rank  
6 based on that, and that is on the whole Ontario.

7 There is no connection to what  
8 region you are, where you are connected. Those are  
9 just a provincial ranking based on the rule that  
10 you have.

11 MR. BROWER: Right, okay.

12 THE WITNESS: So if is it based on  
13 time stamp, exactly same thing apply. You could be  
14 could be a project in any region.

15 So provincial level, the notion of  
16 a region do not apply.

17 MR. BROWER: Right.

18 THE WITNESS: It's only for  
19 purpose of allocating them on a listing, on looking  
20 at regional capability, that we start looking at it  
21 when we start testing them.

22 Now, the regional capability  
23 require you to know where they're connected to  
24 define the region they are in.

25 For listing purposes, we make a

1 certain assumption what grouping makes sense to  
2 people looking at the listing. So where they are  
3 connecting, of course where we find the region they  
4 are in, and also for project that do not have a  
5 connection point, we allocate them to the area  
6 where they are physically located, okay? There  
7 would be no other better way of doing that.

8 So that's why there is a  
9 distinction of putting them in region for  
10 information display purposes. There are  
11 requirements to test them on the regional  
12 capability, but we need to know the exact  
13 connection point, and then there is the  
14 provincial-wide ranking that determines how the  
15 project are ranked in sequence.

16 MR. BROWER: Now, with all  
17 respect, I am more confused than I was before.

18 The province-wide ranking is done  
19 without respect to proximity to a connection point?

20 THE WITNESS: Yes.

21 MR. BROWER: To the connection  
22 point?

23 THE WITNESS: Yes, sir.

24 MR. BROWER: But the regional  
25 ranking is done with some consideration of

1 proximity to a connection point?

2 THE WITNESS: Again, for the  
3 purpose of information display, there is no  
4 regional ranking, per se. There is only a  
5 provincial ranking.

6 The testing is in the sequence of  
7 provincial ranking. Regional ranking is for  
8 information purposes.

9 MR. BROWER: Right.

10 THE WITNESS: So, therefore, it is  
11 there to -- for illustration purpose of grouping  
12 the provincial project into different regions.

13 MR. BROWER: But your provincial  
14 ranking does not equate to your regional ranking,  
15 does it?

16 THE WITNESS: They do in a sense  
17 that the regional ranking, it just order projects  
18 from the provincial ranking that happen to be  
19 residing in this region.

20 So you could have a project that  
21 provincial ranking is 100, 101, 102, but they are  
22 only three projects in a region. They would be  
23 ranked in a region 1, 2 and 3, but provincial-wide  
24 they are still 100, 101, 102.

25 MR. BROWER: But the regional

1 ranking is determined simply by the number of  
2 projects in that area? How do you get to one, two,  
3 three?

4 THE WITNESS: I think what it is  
5 is that if you have a provincial ranking, you know  
6 where the project is connected or you assume to be  
7 placed in certain region. You can take that group  
8 of projects. Then you look at provincial ranking  
9 and you say: Here's the sequence.

10 But the sequence itself is based  
11 on the original provincial ranking.

12 MR. BROWER: So if you only had  
13 three projects in your region notionally, it will  
14 be ranked one, two, three in the region because  
15 there are only three, but they will be ranked in  
16 the order of their provincial rankings?

17 THE WITNESS: Yes.

18 MR. BROWER: Thanks, okay.

19 THE WITNESS: Yes.

20 MR. MULLINS: Madam Chair, if the  
21 Panel is done asking questions, I have one  
22 follow-up based on Judge Brower's questions, but I  
23 don't want to interrupt if there is no questions.

24 THE CHAIR: No. Why don't you ask  
25 it now?

1 FURTHER CROSS-EXAMINATION BY MR. MULLINS:

2 Q. Thank you. Unfortunately, I  
3 don't have a copy of this document, so I am going  
4 to put it up on the screen, the first page.  
5 Hopefully you will be able to read it Mr. Chow.

6 For the record, this is C-617, and  
7 the title is "FIT - Application Review Test and  
8 Standard Responses."

9 Do you recognize this document,  
10 sir?

11 A. I don't, sir.

12 Q. Well, it is an OPA document;  
13 right? This is a document that talks about the  
14 standard response from the FIT team. Do you  
15 remember that?

16 A. Sorry, sir, there are a lot  
17 of documents in the OPA. I am not familiar with  
18 this one.

19 Q. Okay. Well, let me turn to  
20 page 33.

21 MR. BROWER: Of?

22 MR. MULLINS: Of this document.  
23 Unfortunately it is not in the notebook. It is  
24 C-617. If we can make that bigger?

25 BY MR. MULLINS:

1                   Q.    And you see at the bottom it  
2    is signed the FIT team.  This is from the OPA, and  
3    it says:  Priority rankings, provincial rank versus  
4    transmission area rank.  And it says:

5                                "In both the provincial rank  
6                                and the transmission area  
7                                rank, launch projects were  
8                                ranked based on their shovel  
9                                readiness at the time of the  
10                               application."  [As read]

11                   That's correct; right?  Can you  
12    read that?

13                   A.    Which paragraph?  Sorry, sir.

14                   Q.    It is right under the heading  
15    "Priority Rankings":

16                                "In both the provincial rank  
17                                and the transmission area  
18                                rank, launch projects were  
19                                ranked based on their shovel  
20                                readiness at the time of  
21                                application."

22                   Do you see that?

23                   A.    Yes.  Again, it is in the  
24    context -- I don't know the context.  I presume  
25    this must be the launch period projects.

1 Q. It says:  
2 "However, different  
3 transmission areas have  
4 different capabilities to  
5 incorporate new generation  
6 based on transmission and  
7 distribution limits and  
8 existing load demands."

9 You agree with that; right?

10 A. Yes.

11 Q. It says:  
12 "This means that the  
13 transmission area rank is a  
14 better indicator of whether  
15 or not a particular project  
16 will be offered a FIT  
17 contract as it is specific to  
18 the area in which the project  
19 is located and would be  
20 built."

21 Do you see that, sir?

22 A. Yes.

23 Q. Now, you agree with that;  
24 right?

25 A. I don't agree with it. I'm

1 just saying there is the impression that's the  
2 case. I said many times already today it is  
3 provincial ranking that we do the testing on --

4 Q. Uh-huh.

5 A. -- for a lot of the display  
6 purposes we use in the area.

7 There is an area limit that  
8 matters once we know where the project is  
9 connected.

10 Q. Well, let's see what the FIT  
11 team continue to say. It says:

12 "For example, a 5-megawatt  
13 project located in the  
14 Niagara region that is  
15 awaiting ECT might have a  
16 transmission area rank of 25  
17 and a provincial rank of 200.  
18 The viability of the  
19 5-megawatt project, though,  
20 will be based on the need for  
21 and the ability to connect  
22 the 5 megawatts in the  
23 Niagara region.

24 "The provincial rank is based  
25 upon the application date of



1                   the particular project in  
2                   relation to all other  
3                   projects awaiting ECT in the  
4                   province as a whole - but the  
5                   assessment of whether the  
6                   project will pass ECT and  
7                   receive a contract will be  
8                   based on the regional  
9                   requirements and limitations  
10                  only."

11                  Do you see that, sir?

12                  A.    Yes.  And there is nothing  
13                  said there that is different than what I said.  If  
14                  you were competing in that region, yes, the people  
15                  that are in that region is what you are competing  
16                  against.

17                  The testing, the priority is still  
18                  based on provincial-wide ranking.

19                  Q.    Okay.  Thank you.  I'm sorry,  
20                  I didn't want to cut you off.  So you agree this is  
21                  an accurate statement, those few paragraphs?

22                  A.    Based on the comment I  
23                  made --

24                  Q.    Yes.

25                  A.    -- referred to today.

1                   Q.    Sorry.  I didn't mean to cut  
2    you off.  Thank you.

3    FURTHER QUESTIONS BY THE TRIBUNAL:

4                   THE CHAIR:  Last question at least  
5    on my part.  We had a discussion with  
6    Mr. MacDougall before about the five-day connection  
7    point change window from June 5th -- 6th to June  
8    10, 2011 that was announced on the 3rd of June.

9                   And the question was:  Was it a  
10   sufficient notice time on the one hand and was it a  
11   sufficient length for the window itself?

12                   Some say it is.  Some say it  
13   isn't.  What would you say from your perspective?

14                   THE WITNESS:  From my perspective,  
15   obviously people would want a longer time to  
16   evaluate the change connection point, but we did  
17   receive 30 -- I think more than 30 requests for  
18   change of connection point, including Mesa.

19                   I think it is -- for people that  
20   understand the system and have major projects, they  
21   would be for sure looking at that possibility  
22   before this five days.  I don't think it is  
23   reasonable to do the kind of study required in five  
24   days.

25                   So a lot of the time, I think

1 number of major players and people that is  
2 knowledgeable would have been doing a lot of study  
3 in preparation for that, knowing that version of  
4 ECT which allows change of connection point as part  
5 of this process, they would be ready for it.

6 And because of the indication of  
7 more than 30 requests for change of connection  
8 point, many people is aware of that and did -- had  
9 done their homework.

10 So the five-day becomes more of a  
11 processing time.

12 THE CHAIR: What was the reason  
13 for them doing their homework before the notice?

14 THE WITNESS: I think a lot of it,  
15 everybody understand the change of connection  
16 points allow people to have a better ability when  
17 information is available to connect to the circuit  
18 that in fact have the capacity.

19 The initial application is based  
20 on, I will say, a blind understanding of where the  
21 connection capacity is. So after the first round,  
22 people now know where the capacity might be. There  
23 is no guarantee, but a better understanding.

24 So once they have that  
25 information, it becomes their choice of looking at

1     what options are available to them. It could be  
2     simply a connect to the line next to it, that is  
3     close by, because you happen to pick the wrong  
4     line, or it could be looking at alternative  
5     location for connection.

6                     I think that is -- for a large  
7     project, that is fair.

8                     THE CHAIR: Okay, thank you. I  
9     have no further questions. There seem to be no  
10    further questions from any side. So that concludes  
11    your examination, Mr. Chow, and we thank you very  
12    much for your explanations.

13                    THE WITNESS: Thank you very much.

14                    THE CHAIR: That leads us to the  
15    end of this day, as well. Is there any question  
16    about organization that we need to address before  
17    we close for the day on the claimant's side?

18                    MR. MULLINS: Just if we could get  
19    an estimate of time.

20                    THE CHAIR: Yes. We will mail it  
21    fairly soon so that you know for your preparations  
22    tonight.

23                    MR. MULLINS: Yes, ma'am, that's  
24    why we're asking.

25                    THE CHAIR: Is there anything on

1 the respondent's side, Mr. Spelliscy? You are  
2 hidden.

3 MR. SPELLISCY: No. I think we  
4 have a letter to go to the Tribunal. It is now ten  
5 after 6:00. So we might be a little bit past 7:00  
6 by the time we get back to the hotel and put it to  
7 bed.

8 THE CHAIR: That's fine. It is  
9 not a strict limit, considering that we are  
10 finishing a little later than we anticipated.

11 Tomorrow morning we will start  
12 with Mr. Cronkwright, and then we will already get  
13 to the experts, and that will first be Mr. Timm  
14 from Deloitte, and I don't know what we have  
15 scheduled for tomorrow. Have we scheduled the next  
16 one, as well? Yes, Mr. Adamson.

17 MR. APPLETON: Mr. Adamson.

18 THE CHAIR: As well, I think.

19 MR. APPLETON: It is possible we  
20 can get to Mr. Low. You never know, but experts  
21 tend to take time. It depends on Canada.

22 THE CHAIR: Mr. Low would be  
23 available in case he is needed?

24 MR. MULLINS: Yes.

25 MR. APPLETON: Yes.

1                   THE CHAIR: Fine. Then I wish you  
2 all a good evening and we will see each other  
3 tomorrow.

4 --- Whereupon the hearing adjourned at 6:09 p.m.,  
5 to be resumed on Wednesday, October 29, 2014 at  
6 9:00 a.m.

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I HEREBY CERTIFY THAT I have, to the best  
of my skill and ability, accurately recorded  
by Computer-Aided transcription and transcribed  
therefrom, the foregoing proceeding.

Teresa Forbes, CRR, RMR,  
Computer-Aided Transcription