

Before the

ADDITIONAL FACILITY OF THE INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

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 In the Matter of Arbitration between: :
 :
 MERCER INTERNATIONAL INC., :
 :
 Claimant, :
 : ICSID Case No.
 and : ARB(AF)/12/3
 :
 GOVERNMENT OF CANADA, :
 :
 Respondent. :
 :
 - - - - - x Volume 2

HEARING ON JURISDICTION AND THE MERITS

MAY CONTAIN RESTRICTED ACCESS AND CONFIDENTIAL
INFORMATION

Wednesday, July 22, 2015

The World Bank Group
701 18th Street, N.W.
"J" Building
Assembly Hall B1-080
Washington, D.C.

The hearing in the above-entitled matter came
on, pursuant to notice, at 9:00 a.m. before:

- MR. V.V. VEEDER, President of the Tribunal
- PROF. FRANCISCO ORREGO VICUÑA, Co-Arbitrator
- PROF. ZACHARY DOUGLAS, Co-Arbitrator

Also Present:

MS. ALICIA MARTÍN BLANCO
Secretary to the Tribunal

Court Reporters:

MR. DAVID A. KASDAN
MS. DAWN K. LARSON
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
B&B Reporters
529 14th Street, S.E.
Washington, D.C. 20003
(202) 544-1903

APPEARANCES:

On behalf of the Claimant:

MR. MICHAEL SHOR
MS. GAELA GEHRING FLORES
MR. SAMUEL WITTEN
MS. CATHERINE KETTLEWELL
MR. ANDREW TREASTER
MR. PEDRO SOTO
MS. SHEPARD DANIEL
MR. KELBY BALLENA
MS. AIMEE REILERT
MS. BAILEY ROE
MR. CLAUDIO MATUTE
Arnold & Porter, LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
United States of America

MR. KIM C. MOLLER
Sangra Moller, LLP
1000 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
Canada V6C 3L2

Party Representatives for Mercer International:

MR. BRIAN MERWIN

APPEARANCES: (Continued)

On behalf of the Respondent:

MR. MICHAEL OWEN
MR. ADAM DOUGLAS
MR. STEPHEN KURELEK
MRS. LORI DI PIERDOMENICO
MS. KRISTA ZEMAN
MR. LOUIS-PHILIPPE COULOMBE
MR. ANDREW MASON
MS. DIANE KISSICK
MRS. CHERYL FABIAN-BERNARD
MS. SHAWNA LESAUX
MS. ANH NGUYEN
MR. ALEX MILLER
Department of Foreign Affairs,
Trade and Development, Canada
Trade Law Bureau (JLT)
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

Party Representatives:

MR. JONATHAN EADES
Government of British Columbia

MS. VICKI ANTONIADES
British Columbia Hydro and Power Authority

MS. JENNIFER CHAMPION
Lawson Lundell

MR. NATHANIEL GOSMAN
Government of British Columbia

APPEARANCES: (Continued)

On behalf of the United States of America:

MS. ALICIA CATE
MR. JOHN BLANCK
Attorney-Advisers
U.S. Department of State
Office of the Legal Adviser
2430 E Street, N.W.
SA-4 South, Suite 203
Washington, D.C. 20037-2851
United States of America

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1 P R O C E E D I N G S

2 PRESIDENT VEEDER: Good morning, ladies and
3 gentlemen. We'll start Day 2 of this Hearing, the
4 22nd of July.

5 First, we call upon our Tribunal's Secretary
6 to announce the timings.

7 SECRETARY MARTÍN BLANCO: Thank you,
8 Mr. Veeder.

9 The Claimant has 18 hours and 42 minutes
10 left, and the Respondent has 16 hours and 28 minutes
11 left.

12 PRESIDENT VEEDER: I think you received an
13 e-mail with the fuller details last night. I take it
14 there's no difficulty about the calculations? Nothing
15 from the Respondent?

16 MR. OWEN: No.

17 PRESIDENT VEEDER: Nothing from the Claimant?

18 MR. SHOR: Nothing from the Claimant.

19 PRESIDENT VEEDER: Now, as regards
20 housekeeping, there are certain matters the Respondent
21 wishes to raise.

22 MR. OWEN: Yes, just very briefly,

09:00:10 1 Mr. Veeder. We have our paralegal who will assist
2 Mr. Merwin; we talked to the Claimant about this, and
3 that's not a problem just in terms of getting to the
4 tabs in the binder, and that isn't a problem with you,
5 is it, Mr. Merwin?

6 THE WITNESS: No, that's great. I was
7 flipping through the tabs, and I noticed I was
8 struggling with it this morning. Yes, thank you.

9 PRESIDENT VEEDER: Thank you very much for
10 that because it helps.

11 MR. OWEN: It does.

12 And the other thing is, we have one
13 additional loose-leaf exhibit that we are just going
14 to distribute, and Shawna will do that now.

15 MR. SHOR: While we're waiting, Mr. Veeder, I
16 have one issue.

17 Yesterday, Mr. Douglas asked me a question
18 about some of our slides and to reconcile the numbers
19 in two different versions. Since that involved some
20 restricted access information, I'm prepared to do it,
21 but I suggest since Mr. Merwin is seated, we wait
22 until Mr. Switlishoff appears because his testimony

09:01:07 1 will be restricted access, and we can address it then.

2 PRESIDENT VEEDER: Thank you for that.

3 That's a good idea, but for the moment we're in open
4 session.

5 Do you need the document now, or can it be
6 distributed for later?

7 Just a moment. While we're waiting, I just
8 have to remind you that you're still testifying under
9 the Declaration that you made yesterday.

10 BRIAN MERWIN, CLAIMANT'S WITNESS, RESUMED

11 THE WITNESS: Thank you.

12 PRESIDENT VEEDER: We've got the document
13 now, but what exhibit number is it?

14 MR. OWEN: This is Exhibit Number 559, R-559.

15 PRESIDENT VEEDER: R-559. Thank you.
16 Anything else?

17 MR. OWEN: Not at all.

18 You're in place already. Excellent.

19 CONTINUED CROSS-EXAMINATION

20 BY MR. OWEN:

21 Q. I think we left off at R-113.

22 A. I don't--yesterday, I answered one of your

09:02:28 1 questions, and I believe I answered it incorrectly.

2 Q. Okay. Please proceed.

3 A. When we were flipping through the binders you
4 had asked me when our Blue Goose Project was
5 completed, and I read a line that said March, and
6 that's actually incorrect. It was April.

7 Q. Thank you, Mr. Merwin.

8 I think it actually stretched over the entire
9 annual shut from April to May, but thank you.

10 A. Yes, you're correct.

11 And there was one other question you'd asked
12 me about the Mill running to Blue Goose rates, and the
13 answer to that was it was running at Blue Goose rates
14 prior to the May--to the installation of the pulp
15 machine. I checked the numbers in your Tabs 40--39,
16 40, and, I think, 43. So, the numbers are pretty
17 clear in there that we were running at about 470,000
18 tonnes per year prior to the April shutdown.

19 Q. Okay. Just give me one minute, Mr. Merwin.

20 (Pause.)

21 Q. So, Mr. Merwin, your testimony is that it got
22 up to you 470,000 air-dried tonnes?

09:05:11 1 A. In January--and I believe that is Tab--

2 Q. I don't need you to take me there?

3 PRESIDENT VEEDER: We're not going to start
4 like this. Somebody finishes talking before the next
5 person starts.

6 THE WITNESS: Sorry, Mr. President.

7 PRESIDENT VEEDER: There will be
8 repercussions, so please bear that in mind.

9 BY MR. OWEN:

10 Q. Would you turn to Tab 10, please, Mr. Merwin.

11 A. Sure.

12 Q. Go to Page 3.

13 This is, just for the record, this is Pöyry
14 26, and it is your final Celgar energy project
15 analysis. And here I just direct your attention to
16 the paragraph, second from the bottom, here it says
17 that you achieved even more impressive gains. I think
18 you said that it's now producing 470,000 air-dried
19 tonnes to 490,000 tonnes as part of the year; is that
20 right?

21 A. Yes.

22 Q. And I think in December--sorry. Go ahead.

09:06:18 1 MR. SHOR: Would you stop interrupting the
2 Witness.

3 PRESIDENT VEEDER: Please finish your answer.

4 THE WITNESS: Okay, yes.

5 470,000 to 490,000 tonne rates, that's on a
6 daily basis, on maybe a couple of days' basis. We say
7 in this letter, the R-127 letter, we talk about
8 running at target rates on--what is the page?--you had
9 me read it yesterday--oh, Page 4 we talk about running
10 as Celgar moves to a higher reliability, meaning
11 running at target rates, there will be a higher
12 frequency. When I refer to "higher rates," the Mill,
13 even as early as 2006, it's showing itself to run at
14 higher rates. It's just a matter of reliability and
15 how often it runs.

16 For example, in the last three years, we've
17 only run at an average rate of 470,000 tonnes per
18 year.

19 BY MR. OWEN:

20 Q. But this is the average rate per year. I'm
21 just reading the sentence, with Celgar running at
22 equivalent of 470,000, 490,000 tonne pulp production

09:07:33 1 per year; right?

2 A. Yes.

3 Q. All right. Maybe we could get back to R-113,
4 and just give me a second to re-orient myself. I'll
5 give you the tab number.

6 So, this would be Tab 27.

7 And I don't know that I have actually many
8 more questions on this document just for now because
9 again, we were just going through the process,
10 Mr. Merwin, yesterday. I think we touched on there
11 was the RFP started February 6, there was Information
12 Session on February 20th, and then there was this
13 Registration Form that came out about a week later.
14 And I think we've seen already that you filed your
15 Registration Form. It was due on March 7th, but you
16 actually filed it March 6, and that was the two--the
17 Biomass Realization Project and the Arbitrage Project,
18 the two of them that you registered.

19 Do you recall that?

20 A. I recall that we filed them in probably in
21 around that time.

22 Q. Yes. Okay. Can we turn to Tab 28, please.

09:09:36 1 Shawna--

2 A. No, I'm there.

3 Q. So, this is an agenda for the "Bioenergy Call
4 Proponent Workshop," and you can see up in the top
5 left it's in small font, but it's Wednesday, March 26,
6 2008?

7 A. Yes, I see that, yes.

8 Q. And were you in attendance at this meeting?

9 A. I'm not sure if I was, but most likely I was.
10 I don't--

11 Q. Maybe we can refresh your memory. Just turn
12 to Tab 29, please, quickly.

13 So, this is an e-mail from you to the RFP
14 administrator saying that it's not particularly clear,
15 but it says you'll have three people attending?

16 A. Yeah, and most likely it was me attending as
17 one of the three.

18 Q. Okay. Now, I'm just going to go over this
19 agenda here, Mr. Merwin, very briefly. So, there is a
20 presentation in the morning, and you can see that it
21 covers different topics--electricity purchase
22 agreement terms, evaluation, and then there is a

09:10:40 1 Generator Baseline session.

2 A. Yes, I see that.

3 Q. And then on the bottom is the afternoon, so
4 there are one-on-one proponent sessions, so one-on-one
5 meetings, and those are the four bottom corners, and
6 they're in the Concerto and the Allegro Rooms?

7 A. Um-hmm.

8 Q. And then on the right-hand side we have a GBL
9 discussion in the Symphony Room.

10 A. Okay.

11 Q. Can you turn to Tab 30, please.

12 So, this is the morning presentation--

13 A. I'm there. Which page?

14 Q. Page 63, and this is R-117.

15 So, here we have a very brief discussion
16 about generator baselines, just the process going
17 forward?

18 A. Yes.

19 Q. Okay. And then just after this proponent
20 workshop, can you turn to Tab 32, please. You'll
21 recognize this document, I'm sure. This is R-360.

22 A. Yes.

09:12:02 1 Q. So, this is a Briefing Note Mr. Hay of your
2 company did for you on a meeting you had April 2nd
3 with Mercer; is that right? Or, sorry, with BC Hydro.

4 A. Yes, yes.

5 Q. And here you sat down with them, and you
6 discussed your proposals and your Generator Baseline?

7 A. Our gen--did we discuss--let me just see
8 where we--yes, we did. Yes, we did.

9 Q. And the third paragraph, I think you indicate
10 that you feel that your generator baseline should be
11 0 megawatts?

12 A. Yes.

13 Q. And then the final paragraph says that
14 Mr. Dyck approached you at the end of the meeting and
15 offered to be your unofficial Key Accounts Manager and
16 sort of point of contact; right?

17 A. Yeah, I remember that, actually.

18 Q. And you gave a brief report to your CEO. Can
19 you turn to Tab 33.

20 A. Okay, I'm here.

21 Q. And this is R-361. And there is sort of a
22 bit about the EcoLogo Attestation, but then have you

09:13:22 1 in the second paragraph an update about the bioenergy
2 process.

3 And here you have the second paragraph. Can
4 you just read the second sentence starting with "I
5 figured."

6 A. I'm trying to find it. Oh, there we are.
7 The first sentence was short.

8 "I figured they wanted to talk to us about
9 the fact we are planning to sell the generation that
10 currently supplies the Mill.

11 Q. So, this suggests you think that BC Hydro
12 might have had a problem with this proposal?

13 A. There was a concern that they would have an
14 issue, considering they didn't want to buy our
15 stranded power before, yeah.

16 Q. Okay. It's just the stranded power issue.

17 Okay. Can you turn to Tab 25.

18 A. Okay.

19 Q. Okay. So, this is a memo--I think it might
20 be a draft memo, but it's one that you prepared for
21 your board.

22 A. Yes.

09:14:35 1 Q. Would you turn to Item 6, please?

2 A. Page 6?

3 Q. No, Item 6. I'm sorry.

4 A. I'm sorry.

5 Q. I'll give you the Bates number. It's Page 2,
6 actually. That's easier.

7 A. Okay.

8 Q. And just for the record, this is R-276.

9 So, Mr. Merwin, Item 6 you have here Mercer
10 has registered two projects for consideration, selling
11 all of Celgar's existing generation, the arbitrage
12 opportunity, and selling the output of the "proposed
13 energy project"; is that right?

14 A. Yes.

15 Q. Okay. And can you read the last two
16 sentences of the second paragraph under Item 6,
17 please.

18 A. The last two sentences under Paragraph 6 is:

19 Q. Yeah.

20 A. "The key issue is that Celgar is unique as
21 Celgar's project must go through a third-party utility
22 (FortisBC) before it shows up on the BC Hydro system.

09:15:46 1 The challenges that exist by being in the Fortis
2 region are greatly outweighed by the opportunity that
3 exists such as the Arbitrage Project with no other
4 pulp mill in B.C."--it's not very good
5 language--"which no other pulp mill in B.C. could
6 achieve."

7 And I'd just like to point out here, that was
8 what we were thinking at the time, that no other pulp
9 mill could achieve. And in actual fact when G-48-09
10 came in, we couldn't do any, and all the other pulp
11 mills got to do something.

12 Q. Mr. Merwin, I haven't asked you a question
13 yet.

14 A. Okay. Sorry.

15 Q. Okay. You can give your responses, but
16 please let me ask questions.

17 A. Okay.

18 (Pause.)

19 Q. Okay. Sorry about that.

20 Could you turn to Tab 20, please.

21 This is a letter you received from the RFP
22 administrator May 2nd, and this is the letter about

09:17:25 1 the eligibility of the projects that I think you
2 referred to earlier; is that right?

3 A. Yes.

4 Q. And if you turn to Page 2, at the bottom
5 under the title "Celgar Green Energy Project," that's
6 where you said your Green Energy Project is okay?

7 A. Yes.

8 Q. And then BC Hydro indicated that your Biomass
9 Realization Project was not eligible to the extent
10 that you were using to serve your own load, and that's
11 at the top paragraph of Page 2.

12 A. Yes.

13 Q. And just for the record, this is R-126.

14 A. And just one other clarification on this
15 letter. This letter, May 2nd, was supposed to be a
16 letter that BC Hydro set our GBL as per the RFP
17 schedule, and instead they sent us this letter. The
18 letter should have contained our GBL, and then there
19 was a big rush over the next few weeks to get a GBL
20 ready for the RFP process because BC Hydro didn't give
21 us one. They said it was net-of-load.

22 Q. Thank you. I was just asking about whether

09:18:37 1 it was about eligibility, and we'll get into the
2 contents of this.

3 A. Okay.

4 Q. Again, just try to listen to my question and
5 answer my question, and then your counsel will have an
6 opportunity on redirect to ask you questions about
7 this and ask you questions about this letter, okay?
8 That's the way that will be asked.

9 A. Okay.

10 Q. Okay. And you reported to your CEO on this
11 letter as well.

12 Can you turn to Tab 21.

13 And this is R-279.

14 A. Yes.

15 Q. And here, this says--can you read the first
16 two sentence, please.

17 A. "Today BC Hydro sent us a letter stating that
18 our 'Arbitrage Project' was ineligible project under
19 their guidelines. It's very clear that they do not
20 like the fact that we would be buying power from
21 Fortis who is buying power from them and we are
22 turning around and selling them the power."

09:19:34 1 Q. Okay. Now, you've indicated that you were
2 summarizing BC Hydro's argument?

3 A. Yes.

4 Q. But you said just a minute ago that, you
5 know, you didn't have any inclination or there was no
6 sort of--you indicated that you didn't think that they
7 would have a problem with the Arbitrage Project. You
8 said that it was just something about it being
9 stranded power, which you didn't really understand.

10 A. No. I said their approach to not liking our
11 buying power that we've already been generating is the
12 same approach that they took to us in 2006. It's
13 stranded power. So, I was just referring to the fact
14 that that's the general approach they have taken with
15 us.

16 Q. Okay. I don't--

17 A. And just to clarify in that sentence, you
18 know, you have to understand that when I'm saying
19 this, the power that we're buying from FortisBC is
20 going to supply our pulp mill, and our generation
21 output is being sold to BC Hydro, and, yes, they
22 didn't like that.

09:20:38 1 Q. Did you--would any energy actually flow under
2 this deal, or would your electricity actually stay at
3 your Mill?

4 A. From a contracted point of view, energy--and
5 that's how energy flows in the energy world.

6 Q. I didn't ask about a contracted point of
7 view. I asked in reality.

8 A. In reality? The energy may have stayed in
9 the Mill if it's--if we're running--if it's below-load
10 energy, yeah.

11 Q. Thank you.

12 Okay. And, Mr. Merwin, let's go to--and this
13 is a loose document, so this will be easy--this is
14 your May 7th letter, and this is where you responded
15 to BC Hydro and indicated you protested a little bit
16 about the Arbitrage Project not being eligible, and
17 then you went on to provide data for the setup of a
18 generator baseline.

19 And at that time that would be very helpful
20 because you're not being a BC Hydro customer. BC
21 Hydro may not have had all the information available
22 that they would have on their own customers; is that

09:21:48 1 correct?

2 A. That's correct, but they did--they didn't ask
3 the information prior to May 2nd when they were
4 supposed to be figuring out our GBLS. And one other
5 thing I just need to point out--

6 Q. Mr. Merwin, I'm sorry, I'd like to just--I
7 didn't ask you about--I asked you a question, and
8 you're actually going on another tangent. I've got a
9 very limited amount of time, and I'm trying to be very
10 polite about this.

11 A. Okay.

12 Q. Please just try to answer the question. I
13 just asked you whether or not they'd have this
14 information, and now you're going on about the letter.
15 You've already made that point, that wasn't in a
16 response to a question I asked, and I'm trying to be
17 very fair and a polite cross-examiner. I don't want
18 to lose my temper with you. So, can we proceed on
19 that basis? I'll ask the questions, and then your
20 counsel will have an opportunity to do redirect, and
21 he can take you to these documents, and you can talk
22 about them. Okay?

09:22:41 1 A. Okay.

2 Q. Thank you.

3 Okay. Now, after the May 7th letter, you had
4 a number of calls and in-person meetings with BC Hydro
5 representatives, and there was Mr. Dyck and other
6 officials, I believe, on those calls; is that right?
7 Judy Baum?

8 A. Judy Baum, yes.

9 Q. And those calls and in-person meetings total
10 were probably about half a dozen? Does that sound
11 about right? A long time ago?

12 A. It was a long time ago, so I--there were a
13 number of meetings, but, you know, was it half a dozen
14 or is it three--I don't remember.

15 Q. Okay. Mr. Dyck's recollection is
16 approximately a half dozen, but we'll get to his
17 testimony later.

18 So, I'd just like to summarize. Mercer
19 attended two Information Sessions where GBLs were
20 discussed; correct? We looked at them, the February
21 Information Session. We also looked at the March
22 Information Session.

09:23:41 1 A. Correct.

2 Q. And you made written representations in the
3 May 7th letter to BC Hydro about what your GBL should
4 be made; right?

5 A. Yes.

6 Q. And then you also had meetings with BC Hydro
7 on April 2nd, and then there were a number of--and we
8 don't know the exact number--a number of phone calls
9 and follow-up calls and meetings with you about
10 generator baselines?

11 A. Yes.

12 Q. Okay. So, you indicated that BC Hydro wrote
13 to you on May 2nd concerning eligibility, and you
14 wrote back on May 7th. Can you turn to Tab 34,
15 please.

16 A. I'm sorry. I'm here.

17 Q. You're there?

18 A. Yes.

19 Q. Thank you.

20 Okay. So, here, you're discussing--this is
21 an e-mail from Jim McLaren, it's going to you, and in
22 the fourth paragraph you're indicating that you're

09:24:55 1 going to pick a GBL of 33 megawatts, which would
2 reflect the conditions prior to Mercer's energy
3 investments; is that right?

4 A. Yes.

5 Q. Okay. And let's just turn to your May 7th
6 letter now. This is R-127. This is the loose
7 document?

8 ARBITRATOR DOUGLAS: What was the exhibit
9 number for Tab 34?

10 MR. OWEN: Oh, I'm very sorry. This would
11 be--I lost my place here.

12 It is R-534.

13 BY MR. OWEN:

14 Q. So, in R-127, and just let me get to it now.
15 Could I have you go to--could I have you go to--pardon
16 me, Page 5, please. Table Generator Baseline. There
17 was a table Generator Baseline. It's the second table
18 down.

19 A. Yes.

20 Q. I just want to understand. So, my
21 understanding is your proposal came from this table,
22 and this is--this is--over here we have adjusted

09:26:40 1 generator baselines in the right-hand column; is that
2 right?

3 A. Adjusted Mill, annual mill load, yes.

4 Q. No--

5 A. Am I looking at Appendix 1?

6 Q. You're looking at Appendix 1, Page 5.

7 A. Top chart or the bottom one?

8 Q. Bottom chart, sir.

9 A. Okay.

10 Q. Right-hand column. Far right-hand column?

11 A. Yes.

12 Q. So, there is adjusted Generator Baseline
13 there; right?

14 A. Yes.

15 Q. And for 2006, it's 33.3; is that right?

16 A. Yes.

17 Q. That was the basis for your proposal?

18 A. As far as I can see, probably, yeah.

19 Q. Okay. And I just want to understand how you
20 got to 33.3. It says here it's an adjusted Generator
21 Baseline for natural gas use; is that right?

22 A. That is, yes.

09:27:33 1 Q. And I understand you had natural gas
2 adjustment. Here you've got a levelizing natural gas
3 adjustment, and that is for what is called your
4 "auxiliary fuel baseline," and my understanding--and
5 there are notations about this just above the table
6 and just below the table--that your auxiliary fuel
7 baseline is Celgar's estimate of what you need for
8 natural gas to deal with startups of your boiler, and
9 also process upsets, you know, if you have to fire a
10 bit in a recovery boiler--

11 A. Yes, and we periodically, especially in 2006,
12 burned a lot of gas to sell power to Alberta.

13 Q. Okay. So, this--essentially because it was
14 over the auxiliary fuel baseline, you basically adjust
15 it?

16 A. Yeah.

17 Q. Okay.

18 A. Just looking at this Number 33, yes, that's
19 an Adjusted Generator Baseline, but if you go over to
20 the historic data, and I don't have a calculator in my
21 hand, that's on Page 4, if you take, probably, I'm
22 guessing if you take the three-year average '06, '05

09:28:42 1 and '04, you also get 33, so I could have been using
2 that calculation, too, for setting--recommending the
3 GBL of 33. There is a number of ways to triangulate
4 what your GBL is, so...

5 Q. Thank you.

6 So, there are a number of ways to triangulate
7 your GBL, but you testified a few minutes ago that you
8 thought that this table, which is labeled "Generator
9 Baseline," would probably be the basis for the Call,
10 because this other table just says "Historic Data,"
11 doesn't it?

12 A. I'm looking at a table that says "Adjusted
13 Generator Baseline." That's the one you're asking me
14 about?

15 Q. In fact, at the top it says "Generator
16 Baseline"--underneath that, I'm sorry, I'm not quite
17 done. It says "Adjusted Generator Baseline for
18 Natural Gas Use" but the actual title is "Generator
19 Baseline;" is it not, sir?

20 A. The title is "Generator Baseline" but the
21 column you're referring to is an adjusted Generator
22 Baseline number.

09:29:54 1 Q. Right.

2 Okay. Just moving along here--and BC Hydro
3 ultimately set your GBL at 349-gigawatt hours or
4 40 megawatts; is that right?

5 A. Correct.

6 Q. And that was based on the basis of 2000 data,
7 and that's what you refer to as a net-of-load GBL; is
8 that right?

9 A. Yes.

10 MR. SHOR: 2007 data?

11 MR. OWEN: 2007 data, sorry.

12 THE WITNESS: If you go back to the historic
13 data on Page 4, they set it as 349, 2007, which was
14 the Mill--the annual mill load, not what our generator
15 was supplying our mill.

16 BY MR. OWEN:

17 Q. Okay. So, let's start with some of the
18 problems in your Second Witness Statement that you
19 have with this. Could you turn to your Second Witness
20 Statement, please.

21 A. Sure.

22 Q. And could you go to Paragraph 16.

09:31:11 1 A. Paragraph--

2 Q. Paragraph 16.

3 Now, you indicate here, Mr. Merwin, in
4 Paragraph 16 that you were particularly shocked and
5 disturbed when BC Hydro set your GBL on the basis of
6 your load in 2007, and this was unreasonable, in your
7 view.

8 A. Yes. It was very unreasonable.

9 Q. Okay. And you wouldn't have estimated your
10 GBL to be 40 megawatts?

11 A. No. Canada didn't estimate my GBL to be
12 40 megawatts, either.

13 Q. Okay, Mr. Merwin. I'm asking about your
14 estimation, I'm not asking about what Canada's
15 estimate is. I'm not sure what you're referring to,
16 but please answer my question; okay?

17 A. Okay.

18 Q. Then if it's responsive to questions I've
19 asked, your counsel will be able to raise it in
20 redirect.

21 Mr. Dyck has testified that you represented
22 to him that Celgar normally self-generated enough

09:32:10 1 electricity to meet its own load; is that correct?

2 A. When we were running at target rates, yes.

3 Q. Okay. And can you turn to Paragraph 18 of
4 your Witness Statement. And here, again, just answer
5 the question. I'm just interested in knowing--it says
6 here you'd only clarified that Mr. Dyck never
7 explained the normal, he meant--you basically take the
8 position here that while Mr. Dyck said these things to
9 you and asked you about normal operations going
10 forward, that you didn't understand the significance
11 of this; is that correct?

12 A. Correct.

13 Q. Okay. And you were in discussions about
14 setting your GBL?

15 A. Yes.

16 Q. Okay. And you were aware that BC Hydro was
17 looking to set it at some historic level, and they
18 were interested in buying incremental or new power?

19 A. Mr. Dyck in the first conversation said we
20 need to be net-of-load. That was our first
21 understanding of how BC Hydro was going to set our
22 GBL. And to delineate, use that as a demarcation

09:33:21 1 point for what BC Hydro would be prepared to buy from
2 us.

3 Q. I think you're referring to an initial
4 proposal Mr. Dyck made which was on the basis that
5 that was what you were doing with your utility, at the
6 time you were buying and selling net-of-load, and he
7 made that proposal because BC Hydro thought that was a
8 good starting point, but again, that wasn't my
9 question. I asked you whether or not you were aware
10 that they were--BC Hydro wanted newer incremental
11 energy. You were aware of that; right?

12 A. BC Hydro was interested in what they said,
13 purchasing incremental energy.

14 Q. Okay. Thank you.

15 (Pause.)

16 Q. Sorry about that.

17 Okay. Let's look at what the documents
18 indicate. Can you turn to--again, your May 7th
19 letter, easy one, R-127.

20 A. Okay.

21 Q. And can you turn to Page 2 of that document,
22 please. And can you read the first sentence of

09:34:59 1 Point--actually the first two sentences of Point 1,
2 please.

3 A. "The Biomass Realization Project will only
4 include electricity that Celgar currently utilizes, at
5 its option, to displace its load at the Celgar
6 Industrial Facility. The load in 2008 at the
7 Industrial Facility is approximately 43 megawatts."

8 Q. Okay. Now, just a point of clarification
9 because I think there might be some confusion over the
10 data, the 40-megawatt baseline that represented your
11 load, I think that's because it's stretched over the
12 entire year, but when you're talking here about
13 43 megawatts, you're talking about what your load is
14 during actual operating hours; is that right?

15 A. No. When it's 43, I'm talking about when the
16 Mill is running at target rates, and that's different
17 because some days the Mill might produce 1,000 tonnes
18 and its load will be lower because there's not as many
19 motors spinning as fast. It's like stepping on the
20 gas pedal, right, you burn more gas when you go
21 faster.

22 Q. So, this is what it would be operating

09:36:04 1 normally?

2 A. This is--43 is what the Mill would be running
3 when it's operating at target rates, yes.

4 Q. Okay. And can you go to Point Number 2.
5 Here you talk about the Celgar Green Energy Project.
6 Can you just read the first sentence, please.

7 A. "The Celgar Green Energy Project involves the
8 installation of a parallel 48-megawatt condensing
9 turbine"--I will start over again.

10 "The Celgar Green Energy Project which
11 involves the installation of a parallel 48-megawatt
12 condensing turbine would allow Celgar to generate up
13 to 35 megawatts of energy in excess of that which is
14 currently being supplied to offset Celgar's load."

15 Q. Okay. So, both of these suggest that you
16 normally meet your load with your existing 52-megawatt
17 turbine?

18 A. When we're running at target rates.

19 Q. It doesn't say that here.

20 A. It doesn't say that there, but I'm sure I
21 said that when we were having discussions with
22 Mr. Dyck because I say that on another page of the

09:37:15 1 letter and I refer to running at target rates.

2 Q. Can you take me to that, please?

3 A. Sure.

4 Sorry, it's Page 4, and it's the last
5 sentence in Page 4: "As Celgar moves to a higher
6 reliability, meaning running at target rates, there
7 will be a higher frequency when Celgar's load is equal
8 or greater than 43 megawatts."

9 Q. Okay. So target rates is 43 megawatts.

10 Can I just take you up a couple of sentences.

11 Can you read the two sentences, and the first one
12 starts with "historically."

13 A. Okay.

14 "Historically, under normal operating
15 conditions, Celgar's load was 38 megawatts to
16 39 megawatts."

17 Do you want the second sentence?

18 Q. Yes, please.

19 A. "In 2007, Celgar's load under normal
20 operating conditions was 43 megawatts. Depending on
21 whether the chipping plant is running, this number
22 could go as high as 45 megawatts."

09:38:28 1 Q. So, normal operating conditions your load was
2 43 megawatts?

3 A. At target rates it was 43.

4 Q. It does not say target rates here. It says
5 normal operating conditions; right?

6 A. It does, but I have a clarification at the
7 end of the paragraph explaining it.

8 Q. Okay. Let's just take a little bit more of a
9 look here at this document. Let's go to Page 6. Top
10 of Page 6 it says--could you read the first sentence,
11 please?

12 A. "We know many of our competitors' generating
13 abilities have not yet matched their mill loads."

14 Q. Okay. Is this not implying that you're
15 matching your mill load just like you said twice on
16 Page 2?

17 A. Yes, at target rates, we match our mill load
18 at target rates. We exceed our mill load at target
19 rates.

20 Q. Okay.

21 A. The drawing actually shows on the following
22 page, when we're running at target rates, and it says

09:39:44 1 the diagram represents how Celgar typically operates
2 after Mercer's capital investments, and it shows we're
3 actually exceeding our mill load, but when you go back
4 and look, if that's normal, well, it's normal certain
5 hours of the year, but that's the target, and you
6 strive to hit that target every day, but you don't hit
7 it every day.

8 Q. No, I understand that there are times you
9 don't necessarily hit that, Mr. Merwin, but again,
10 this doesn't say target rates. This says "typically."
11 The word you've used here is "typically." These are
12 your representations to BC Hydro, and you aren't a
13 customer of BC Hydro; right? You're a customer of
14 FortisBC?

15 A. Correct.

16 Q. They have less data about your mill than they
17 would about a BC Hydro customer like Howe Sound or
18 Skookumchuck?

19 A. Correct.

20 Q. Right.

21 Okay. One minute. I'm going to turn to
22 another contention now. You say that BC Hydro--the

09:40:57 1 information that BC Hydro did provide--and this is
2 back in your Witness Statement, I believe it's in
3 Paragraph 16--let me get it for you.

4 A. Which statement? First or second?

5 Q. Second.

6 A. Okay.

7 Q. And this is the bottom of Page 15--sorry,
8 Page 10, the bottom of Paragraph 15 of your Second
9 Witness Statement. And here you state that the
10 information that BC Hydro did provide concerning its
11 GBL determination standards gave the impression that
12 it would set a GBL based on a number of years which
13 seemed like three years of operational data; is that
14 right?

15 A. Yes.

16 Q. Okay.

17 A. And just to explain where that came from or
18 you don't want to know where that came from?

19 Q. I'm just asking you about what you just said
20 here, and how about we go through some documents
21 because I would like to explore that contention.

22 A. Okay.

09:41:59 1 Q. Can you turn to Tab 26, please. And this is

2 R-116.

3 A. Which page would you like me to go to?

4 Q. Yes. Sadly, I know it already. Page 22.

5 A. Okay.

6 Q. Mr. Merwin, could you read the third bullet
7 from the bottom, please.

8 A. "The initial customer's 'estimated GBLs'
9 should reflect a 365-day annual period."

10 Q. Okay. And how about the bullet right after
11 that, can you read that, please.

12 A. "The GBL start point is the same as the CBL
13 establishment year."

14 Q. And CBL is based on a one-year period, is it
15 not?

16 A. Actually, I'm not totally sure on that.
17 We're not a BC Hydro customer, so we've never
18 participated in the CBL years, but what I did know
19 about CBLs at the time was the Establishment Year was
20 2005, and that's what I put on the initial form of
21 our--that March application form.

22 Q. Right. So, you knew that the CBLs were

09:43:38 1 established based on Calendar Year 2005, normally?

2 A. Yes, but I also knew that, in 2002, BC Hydro
3 issued what the GBL Guidelines were, and they referred
4 to a three-year historic period. So, as I'm trying to
5 piece together what BC Hydro means by GBLs, I'm
6 using--and I believe that's an exhibit in here
7 somewhere, I'm not sure what exhibit number that is.
8 But in 2002, BC Hydro in their same RFP document
9 explains a--gives a little bit more information on how
10 they set GBLs.

11 Q. Okay. So, that is--what you're referring to
12 is the 2002 customer-based generation Call for Power?

13 A. Yes, where they described Generator
14 Baselines.

15 Q. Okay. And in those documents, they indicate
16 that they're requesting certain data. Maybe we could
17 go to them for a second.

18 A. Sure.

19 Q. Just a minute.

20 (Pause.)

21 Q. Perhaps in the interest of time we will come
22 back to this in a minute, but I just to want

09:45:10 1 understand, you looked at a Call for Tenders document
2 from 2002?

3 A. Correct.

4 Q. And requested certain data, and you concluded
5 that, in a separate Call for Power several years
6 later, that would be exactly what they would do. And
7 we will get to that document in a minute.

8 A. The answer is yes because my understanding is
9 these are standards, guidelines, you know, how do you
10 set a GBL in one year and then decide it's something
11 different--

12 Q. Mr. Merwin, you're talking about data
13 requests from a separate Call for Power. You're not
14 talking about standards. We will get to this in a
15 second.

16 MR. SHOR: Are arguing with the Witness?

17 MR. OWEN: I am arguing with the Witness.

18 PRESIDENT VEEDER: Let's just stop a second.
19 It think we're getting into difficulties. Mr. Merwin,
20 counsel is under very strict time constraints.

21 THE WITNESS: Okay.

22 PRESIDENT VEEDER: And he's asking you quite

09:46:00 1 specific questions, and I think it would be more
2 helpful if you just answer them directly, and if you
3 need to add anything, obviously, please feel free to
4 do so, but it's on the basis of need, not voluntary
5 addition. Your counsel will have a chance on his time
6 or her time to redirect, and then they can ask for any
7 further explanation which they think necessary for the
8 purpose of the Claimant's case, but we are all under
9 very strict time constraints, and I think we're losing
10 time, so please try and address the question, you will
11 be given a chance to finish the answer, but I think
12 you need to answer the question more directly and more
13 succinctly.

14 THE WITNESS: Sorry, Mr. President.

15 PRESIDENT VEEDER: We all do this, and
16 lawyers are the worst witnesses of all, so don't worry
17 about it.

18 THE WITNESS: I'm not a lawyer, but...

19 (Laughter.)

20 BY MR. OWEN:

21 Q. Thank you, Mr. Merwin.

22 So, can we go to R-109.

09:47:07 1 Do we have the tab number?

2 One minute.

3 Actually, we will come back to it later. Can
4 you get it, please.

5 Okay. Finally, just the last bullet here,
6 Mr. Merwin, let's go back to the exhibit that we're
7 on. It indicates that GBLs may have to be adjusted
8 for unique customer services, or unique customer
9 circumstances; is that right?

10 A. Yes.

11 Q. Okay. And here it refers to 1880 ad hoc
12 sales. Are you familiar with what BC Hydro's Rate
13 Schedule 1880 is?

14 A. Yes, that's their Stand-by Contract or
15 Stand-by Agreement for when a generator fails.

16 Q. Okay. And my understanding of that is it's
17 for--if there's problems, if there's like a force
18 majeure event at a pulp mill at one of your
19 competitors or if there are serious process upsets or
20 slowdowns, they could go on Rate Schedule 1880; is
21 that right?

22 A. Correct, yes.

09:48:14 1 Q. All right. Thank you.

2 Just one minute.

3 (Pause.)

4 Q. I'm going to save us some time.

5 Mr. Merwin, I would now like to discuss the
6 claim that you wouldn't have indicated that 2007
7 represented normal operating conditions going forward
8 as you didn't have sufficient information on whether
9 your operations were normal. Do you remember that?
10 This is in Paragraph 19 of your Second Witness
11 Statement.

12 A. Sure. Okay.

13 Q. Now, you observed that you just installed
14 Project Blue Goose and that you didn't have sufficient
15 experience to determine the reliability of the plant
16 configuration; is that right?

17 A. Yes.

18 Q. So, I understand your contention is the plant
19 may not have been as reliable as it could have been;
20 is that right?

21 A. Yes.

22 Q. And I think we've heard earlier that, to the

09:49:24 1 extent that the plants' unreliable, that means you
2 might have less black liquor, you know, pulp--there
3 might be problems on the pulping line; is that right?

4 A. Yes.

5 Q. So, if you have less black liquor and things
6 aren't as reliable as they could be, that would
7 suggest your generation levels are lower?

8 A. Yes.

9 Q. So, to the extent that BC Hydro set your GBL
10 in 2007 data and there was some unreliability because
11 you were still sorting things out from Blue Goose,
12 that would mean they set your GBL too low?

13 A. Is that a question?

14 Q. Well, I'm just trying to understand because
15 you present that as if it's--it might mean that your
16 GBL was set too high.

17 Now, let's assume for a minute that BC Hydro
18 believed that 2007 was a normal year or something that
19 after you'd completed all of these upgrades--the Blue
20 Goose upgrades, and you said you had all of them
21 running--in that particular case, BC Hydro thinks that
22 2007 normal, you're saying, well, there's a problem

09:50:44 1 with that, we weren't necessarily reliable. My
2 understanding is if you weren't necessarily reliable,
3 that's going to lead to a lower level, and, in fact,
4 your generation levels increased in 2008 and 2009,
5 didn't they?

6 That is a compound question, you're right.

7 MR. SHOR: It was just a long speech followed
8 by an unrelated question.

9 PRESIDENT VEEDER: Why don't we start that
10 point again.

11 MR. OWEN: I'm ad-libbing here, so I will be
12 a little bit more discreet.

13 BY MR. OWEN:

14 Q. I guess my point is, if what you're saying
15 is, you know, wasn't quite as reliable as it could be
16 because you were still sorting out process issues,
17 that would mean you were generating less electricity;
18 correct?

19 A. That would mean we were--if we were running
20 at a higher reliability which means more days at
21 target rates, we would be generating--we would have
22 generated more electricity if we ran it more days at

09:51:44 1 targeted rates, yes.

2 Q. Okay, thank you.

3 Just one minute.

4 (Pause.)

5 Q. So, maybe just to go through the data just a
6 little bit, could you go to Annex A of your Second
7 Witness Statement, please.

8 A. Okay. Of my First Witness Statement?

9 Q. You have two, and I think you corrected your
10 Annex A. I don't think it's a material correction. I
11 think it was just a natural gas correction, so I
12 thought I would go to that one for the sake of
13 accuracy, even though I don't think I'm referring to
14 the number that you corrected.

15 So, again, I just want to go through what
16 happened at the Mill. So, in 2007, let's look at TG2,
17 and TG3. Now, TG3 comes on line, my understanding is,
18 in September 2010; right?

19 A. Yes.

20 Q. So, I'm not going to take you to that and
21 have a condensing turbine added on top.

22 MR. OWEN: And actually, I'm just realizing,

09:53:31 1 I would like to stop here. This is restricted access
2 information, so I'm not going to go through these
3 numbers if counsel has no objection. Mr. Gosman can
4 stay. I'm--but I don't want him looking at--

5 MR. SHOR: They're blacked out on the chart.

6 MR. OWEN: They're blacked out on the chart?

7 Good. Okay.

8 BY MR. OWEN:

9 Q. So, let's just go through what the turbo
10 generator was doing. In 2005, it was at
11 300,192 megawatts?

12 A. Yes.

13 Q. Okay. That was coming out of bankruptcy.
14 And then in 2006 it's 290,413 megawatts hours; right?

15 A. 290,413, correct.

16 Q. And then you get to three, let's use gigawatt
17 hours, 350 gigawatt hours in 2007?

18 A. Yes.

19 Q. And it goes up from there. It's 374 gigawatt
20 hours in 2008; right?

21 A. Yes.

22 Q. And 2009, when there is a bit of a downturn,

09:54:28 1 you're still above what you were in 2007, you're at
2 just--you could call it 360 gigawatt hours; is that
3 right?

4 A. Yes.

5 Q. Okay. Let's move on to Paragraph 27 of your
6 Second Witness Statement, sir.

7 Now, here you talk about how NorthPoint and
8 FortisBC's sales arrangements incentivized your
9 surplus generation; is that right?

10 A. Yes.

11 Q. Okay. And let's just look at how these
12 agreements worked in practice, and I'm going to ask
13 you a little bit about this. Your arrangement with
14 FortisBC under the Brokerage Agreement, my
15 understanding is that if you had surplus energy, and
16 that it went on to Fortis's system, then it was
17 essentially you got around \$29 a megawatt hour; is
18 that right?

19 A. Yes, the same rate as the 3808. It's always
20 set. It adjusts up as the 3808, yeah.

21 Q. Exactly. Okay. And that would happen if you
22 just exceeded your load, essentially that adjustment

09:56:15 1 would go to you; is that right?

2 A. Yes.

3 Q. And then in Paragraph 52 of your First
4 Witness Statement, you testify NorthPoint--and let's
5 go to Paragraph 52 of your First Witness Statement. I
6 will take you there.

7 A. Okay.

8 Q. So, here you talk about NorthPoint worked on
9 an--

10 MR. OWEN: Again, Mr. Gosman, are you here?

11 No, he's not? Good.

12 BY MR. OWEN:

13 Q. NorthPoint worked on--yes, we should turn off
14 the feed. We should close. I'm about to read
15 restricted access information.

16 PRESIDENT VEEDER: So, go into closed
17 session?

18 MR. OWEN: Yes, please.

19 PRESIDENT VEEDER: Let's go into closed
20 session.

21 (End of open session. Confidential business
22 information redacted.)

09:57:13 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: We're in closed session.

3 MR. OWEN: Thank you.

4 BY MR. OWEN:

5 Q. So, in Paragraph 52, you indicated the

6 arrangement with NorthPoint worked << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >> is that right?

10 A. Yes.

11 Q. And << [REDACTED]

[REDACTED] >>

13 A. Yes.

14 Q. Okay. << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >> is that right, sir?

18 A. Yes.

19 << [REDACTED]

[REDACTED]

[REDACTED] >>

22 A. Yes.

09:58:00 1 Q. Okay.
2 (Pause.)
3 MR. OWEN: We can go to open session again,
4 sir.
5 (End of confidential session.)
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09:58:21 1 OPEN SESSION

2 BY MR. OWEN:

3 Q. Okay.

4 PRESIDENT VEEDER: Wait a moment.

5 (Pause.)

6 PRESIDENT VEEDER: We're now in open session.

7 MR. OWEN: Thank you, Mr. President.

8 BY MR. OWEN:

9 Q. So, my understanding, Celgar would make a
10 decision whether or not to commit based on the amount
11 of steam; is that right?

12 A. Actually, it would be a combination of the
13 amount of steam. If it was available, and if the
14 price was high enough, we would burn gas or burn extra
15 black liquor in that hour.

16 Q. Okay.

17 Now, Mr. Merwin, let's look at the way that
18 you say that these contracts incentivized you. This
19 is in Paragraph 28 of your Second Witness Statement.

20 Okay. So, first, in Paragraph 28 you
21 indicate that Celgar incurred costs of running its hog
22 boiler to produce electricity; is that right?

10:00:58 1 A. Yes.

2 Q. Okay. And second, you claim that Celgar
3 burned discretionary natural gas to produce
4 electricity; is that right?

5 A. Yes.

6 Q. Okay. Now, I understand your--the Claimant's
7 contention to be that if you subtracted all of the
8 NorthPoint and FortisBC sales from total generation
9 you go from 350 gigawatt hours roughly to 327 gigawatt
10 hours; is that right?

11 A. Yes. I think so, yes.

12 Q. Okay. Check the math later?

13 A. I'd have to check the math later.

14 Q. And just to get a sense of what we're looking
15 at, can you turn to Tab 37. And I need you to go to
16 Page 59. So, this is a monthly report dated
17 December 2007, and it's Pöyry 123 is the exhibit
18 number. And this table on the far right-hand
19 column--do you have it, sir? It's monthly power
20 costs.

21 A. Oh, sorry. I'm on 58 of 79. Sorry.

22 Q. No problem.

10:02:20 1 A. Yes, I'm here.

2 Q. Okay. So, far right-hand column, it's got a
3 year to date, and here we have power sales to FortisBC
4 and they're 13,834--or 39,848 megawatt hours. So,
5 let's say 13.8 gigawatt hours; is that right?

6 A. Yes.

7 Q. And just below it we've basically got sales
8 to NorthPoint 10 gigawatt hours; is that right?

9 A. Yes.

10 Q. So, Fortis was a little over half of your
11 export sales in 2007?

12 A. Yes.

13 Q. Okay.

14 Now, I would like to start with your
15 contention about the burning of discretionary natural
16 gas.

17 You say in Paragraph 28 of your Second
18 Witness Statement that you burn discretionary natural
19 gas when market prices were high enough; is that
20 right?

21 A. Correct.

22 Q. Okay. So, let's start with the overall

10:03:15 1 picture concerning your natural gas consumption. Can
2 you turn to Paragraph 27 of your First Witness
3 Statement.

4 A. Paragraph or Page 27?

5 Q. Paragraph.

6 A. Okay.

7 Q. And we can just see here that it indicates
8 that while you've cut natural gas consumption
9 significantly at the Celgar Mill since the 2000 price
10 hike--that's referring to the California energy
11 crisis--it's not been eliminated fully. And it says
12 here a minimal amount of natural gas is needed to keep
13 the Mill--by the Mill to keep certain equipment
14 operational, much like the function of a pilot light
15 in a home kitchen stove, and to supplement the
16 generational electricity when the Mill experiences
17 operational upsets.

18 And you say: "Since 2003, the Mill's natural
19 gas consumption has been limited to this type of
20 provisional usage."

21 Is that correct?

22 A. Yes.

10:04:19 1 Q. Okay. Now, I understand, you know, I'm just
2 trying to get the overall picture. Generally, you're
3 trying to save on burning natural gas; right?

4 A. Yes, except when there is an opportunity to
5 generate additional profits off our generator, and
6 that's what we were focused on since purchasing the
7 Mill.

8 Q. Okay. And we've seen already from R-127 that
9 your baseline for natural gas usage was 400,000
10 gigajoules, right? For startups and process upsets
11 and--that's what your estimate of regular natural gas
12 usage was.

13 A. That's what we were targeting, but in our
14 agreement with Hydro, it was set for 600,000, our
15 baseline, yes.

16 Q. Yes.

17 Okay. Can you turn to Annex A, and just,
18 again, to get the overall picture--Annex A of your
19 Second Witness Statement or your First Witness
20 Statement--I think either would do. So, here for
21 2007, just looking at natural gas use, it's 303,000
22 gigajoules; is that right?

10:05:47 1 A. Yes.

2 Q. Okay. That's significantly lower than in
3 previous years.

4 A. And it was lower because we were operating
5 more reliably and had more black liquor to use
6 discretionarily.

7 Q. Okay, good.

8 Well, let's get a bit more specific. Can you
9 turn to your May 7, 2008 letter, or R-127 again.

10 A. I couldn't find it.

11 Q. Okay. And can you go to Page 5, please. And
12 could you read the notation at the bottom of the
13 table, please, the second table, the Generator
14 Baseline table, and there it indicates it takes 21
15 gigajoules of electricity to increase 1 megawatt hour;
16 is that right?

17 A. That is correct.

18 Q. Okay. So, in 2006, the price you received
19 from FortisBC was--for electricity exports was \$27.25
20 a megawatt hour.

21 A. Correct.

22 Q. Would it make sense to burn natural gas at

10:07:03 1 that price?

2 A. No.

3 Q. Okay. So, you didn't burn it for FortisBC?

4 A. No.

5 Q. Okay. Okay. And can you turn--

6 A. Actually, that's actually incorrect. We did
7 burn a little bit of gas to export to FortisBC. And
8 the reason why is we were on a time-of-use rate in
9 2007. And when we purchased power from FortisBC
10 during the daytime, it was about \$150 a megawatt hour.
11 So, what we would do in certain months is we would
12 fire some extra gas, and make--as we transitioned from
13 importing power at night to being at--you never can
14 get to a perfect zero, so we would always burn a
15 little bit of gas to make sure we got over that. Not
16 always, but I checked some data, and in 2007 we burnt
17 gas a little bit because we would be exporting maybe 1
18 or 2 megawatts in an hour to Fortis, and we would burn
19 a little bit of gas just to make sure we didn't go in
20 and purchase some high-cost power from Fortis.

21 Q. In the middle of the night?

22 A. No.

10:08:31 1 Q. In the daytime?

2 A. In the daytime.

3 Q. Okay. All right. And that would occur
4 because you had a process upset?

5 A. No.

6 Q. Or you were just a little bit under?

7 A. No. We just wanted to ensure--the operator,
8 it was just kind of a--operator practice. Some of the
9 operators would flick on a gas jet just to give that
10 extra--

11 (Overlapping speakers.)

12 Q. Sorry. Sorry, that was my fault.

13 Go ahead.

14 A. Okay. An operator would flip on a gas jet or
15 two to give a little bit of an extra punch while we
16 transitioned from importing 16 megawatts of power from
17 FortisBC to going to a slight export, and it's always
18 used--it wasn't significant, but over a year it can
19 add up because it's 1-2 megawatts an hour.

20 Q. Okay. Okay. So, you were aiming to sort of
21 get yourself just over so that you weren't drawing
22 load from--you weren't drawing electricity from

10:09:43 1 FortisBC. So, it was just to sort of avoid that
2 time-of-use rate during peak hours--

3 A. Yeah.

4 Q. --if you were a little bit lower? Okay.

5 A. Yeah.

6 Q. Okay. So, that's not necessarily a lot of
7 electricity, though?

8 A. No.

9 Q. Okay.

10 A. A few thousand megawatts, maybe, at the most.

11 Q. Okay. And--how much?

12 A. A few thousand megawatts.

13 Q. Okay. And--I'm just trying to unpack this
14 here--if you've got these high time-of-use rates, my
15 understanding is sometimes they were as high as
16 150 megawatt hours or \$150 a megawatt hour; is that
17 right?

18 A. Yeah, and maybe even a bit higher. I can't
19 remember exactly how high they went, but yeah.

20 Q. Okay. But that was--you were firing that gas
21 not to necessarily get exports and export to FortisBC,
22 because when you were exporting to FortisBC, once you

10:10:37 1 went a little bit over you were only getting \$29. You
2 were making those exports and you were burning that
3 natural gas to avoid that cost of paying that high
4 premium rate, weren't you?

5 A. No, we weren't--yes, yes, we were. We were
6 doing it to avoid paying the premium rate, but it was
7 really that extra--like, it wasn't 21 gigajoules for
8 all the megawatts. When we changed from purchasing 16
9 to exporting one, you know, we were burning just
10 enough gas to, you know, keep us in balance and a
11 little bit over.

12 Q. I've got that. And I guess what I'm saying,
13 though, is, you know, you weren't being incented by
14 that \$29 little fee that you were getting just over
15 that. You were just trying to get it just above so
16 you were not paying 150 bucks; right? That is a
17 little bit different.

18 A. Yeah, we were--our incentive was we avoid
19 paying 150-plus dollars, yeah.

20 Q. Thank you.

21 Okay. So, can you turn to Pöyry's Second
22 Expert Report at Page 35.

10:11:51 1 PRESIDENT VEEDER: Is there a tab number?

2 MR. OWEN: No, there is not a tab number. I
3 believe you have copies of the Expert Reports that
4 were distributed.

5 THE WITNESS: What page number were you
6 asking for?

7 BY MR. OWEN:

8 Q. Could you go to Paragraph 12, please.

9 A. Okay.

10 Q. So, let me know when you have that. That's
11 Paragraph 12 of the Second Expert Report. And this is
12 just a summary of Mr. Stockard's findings, but I just
13 want to start with what hub does Celgar purchase its
14 natural gas from?

15 A. It's the--I'm trying to remember the
16 eco--either the eco or the--

17 Q. Station two?

18 A. Station two, yes. Thank you.

19 Q. Okay. And what Mr. Stockard did was he
20 looked at what the natural gas prices were based on
21 public data at the station two hub, and he found that,
22 during 2007, the lowest price at the station two hub

10:13:31 1 was \$4.19 a gigajoule; okay?

2 A. Okay, but that's not what we were buying our
3 natural gas at.

4 I don't know if we were buying at the time in
5 the market. Those costs are reflected in, like,
6 Tabs 38 through 40--something of these binders here, in
7 one of the pages. So, I'm not sure if that's the
8 right gas price, but--

9 (Overlapping speakers.)

10 Q. Go ahead. Please finish, Mr. Merwin.

11 A. We would be buying, sometimes we would buy at
12 the spot rate, and sometimes we would buy under fixed
13 contracts.

14 Q. Okay.

15 A. So, I don't know what--if, you know, I would
16 agree that that's a good reference point for the
17 market which we would be buying from.

18 Q. Okay. Okay. And you would have
19 transportation costs from the hub to the Mill; was
20 that right?

21 A. Yes, we bought at the wellhead.

22 Q. And how much would those be, roughly?

10:14:36 1 A. You know what? I don't know what they are
2 off the top of my head.

3 Q. Okay.

4 A. But again, they would be on a monthly basis.
5 They would be reflected in those tabs that I think you
6 have as Tabs 40 onwards in these binders, the
7 operating reports.

8 Q. Okay. Well, we can look into that. I don't
9 have that information. I haven't looked at it for the
10 purpose of my cross-examination.

11 A. Okay.

12 Q. So, let's just move on.

13 What Mr. Stockard did was he looked at your
14 NorthPoint sales transactions, and he used the figures
15 that you had in terms of 21 gigajoules of natural gas
16 burned to make 1 megawatt hour, and we went over that
17 a minute ago.

18 A. Yeah.

19 Q. And he compared it to the price here, and the
20 price doesn't include the transportation cost to you,
21 but it also, to be fair to you, it doesn't--you know,
22 you were buying under contract sometimes, so it might

10:15:32 1 not be exact--but he found that market pricing only
2 would have been supportive for 1.22 gigawatt hours of
3 electricity.

4 A. Okay.

5 Q. Now, do you have any evidence as to whether
6 you were actually burning discretionary natural gas in
7 those hours?

8 A. Any evidence in this--in here?

9 Q. Anywhere.

10 Because it's very, very sporadic. And I
11 understand your contention that you burn natural gas.
12 We're talking now, you know, 1.24 gigawatt hours, it's
13 just a little over 1,000 megawatt hours, where it
14 actually would have been supportive, and I don't think
15 either you or I could say whether you were burning
16 natural gas in those hours; right?

17 A. Unless I had the data in front of me,
18 correct. But there is a daily report that you
19 guys--I'm sure was in our document package to you guys
20 that showed the hours when we were exporting, and you
21 could see a little chart in a day, on a daily basis.

22 Q. Yeah. And we've looked at that, and we know

10:16:39 1 when you were exporting. The issue is we just don't
2 know, you know, whether natural gas usage really
3 related to that. And, in fact, you know, Mr. Stockard
4 did his best. He looked at, you know, the fuel mix
5 that you were using on those days, but it's just not
6 clear; is that right?

7 A. I would agree with you that, you know, unless
8 you had--somebody went through and looked at every
9 single day's report and analyzed it, it's not
10 available here, no.

11 Q. Okay.

12 A. If it's okay, you had asked me to look at
13 this, and I agree Mr. Stockard's, you know, that give
14 and take on the gas transportation, it's probably, you
15 know, all things being equal, it's probably a good
16 number for the comparison.

17 But the fact is when we were working to get
18 into the Mid-C--not the Mid-C, but the Alberta
19 markets, it's one thing to be able to look after the
20 fact, but the way it works for getting into Alberta is
21 you--<< [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

10:18:01 1 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] >>

15 Q. Okay. Thank you.
16 Now, I'd like to turn back to Paragraph 28 of
17 your Second Witness Statement, and here you say
18 without NorthPoint-FortisBC's sales arrangements you
19 < [REDACTED] And you testify that
20 this is because there are < [REDACTED] ,
21 [REDACTED] ;> is that right?

22 A. Yes.

10:19:25 1 Q. Okay. Can you turn to Tab 36, please.

2 MR. OWEN: And just for the record, this is
3 Pöyry 114, and this is your fuel plan from the
4 Bioenergy Call.

5 BY MR. OWEN:

6 Q. Can you turn to Page 10, please.

7 Now, here on the right-hand side, Mr. Merwin,
8 we have--sorry, bottom of the page there is a chart,
9 and it's labeled "2005 to 2007 Total Fibre Consumed,"
10 and on the right-hand side we have hog fuel biomass.

11 Incidentally, hog fuel--the reason why it's
12 called hog fuel is it's ground in a horizontal
13 grinder. So, that's Mercer trivia for the Tribunal.
14 I found it interesting.

15 Anyways, hog fuel we have Category A,
16 Category B, and Category C, and we have figures for
17 2005 to 2007; is that right?

18 A. Yes, we do. And those figures are estimates
19 because we generated our own hog fuel.

20 Q. Okay. Well, let's take a look at what--there
21 is a description on the next page.

22 A. Okay.

10:20:54 1 Q. So, under hog fuel biomass, you say that
2 Category A fibre represents biosolid sludge that is
3 being incinerated in the power boiler.

4 A. Yes.

5 Q. Okay. Now, biosolid sludge is--you wouldn't
6 sell that to other mills as hog fuel; right?

7 A. No. Biosolid sludge is from our wastewater
8 treatment plant.

9 Q. Yes, that's my understanding, too. Okay.

10 And then--and, so, at that time, you had to
11 burn that in your hog boiler to get rid of it; right?

12 A. No, we didn't.

13 Q. Okay.

14 A. We chose to burn it in our hog-fuel boiler at
15 the time. But earlier we used to distribute it as a
16 soil amendment in the, you know, probably five years
17 earlier, and actually today, since 2011, we have
18 been--we haven't burned it in our boiler because it's
19 not very efficient to burn.

20 Q. Okay. And in 2007, were you distributing
21 7,000 tonnes of this as a soil amendment?

22 A. No, we were not. We--at that point in time

10:22:02 1 we had chosen, because of the boiler was running, we
2 had chosen to incinerate it, and--yes.

3 Q. Okay. And let's just keep going here. Can I
4 take you back to Page 11, Category C fuel represents
5 the volume of hog fuel generated in the woodroom.
6 Now, that's your room where you take pulp logs and you
7 chip them to get wood chips; is that right?

8 A. Correct.

9 Q. So, you have leftover hog when you run those
10 pulp logs through the chipper?

11 A. We have--could you repeat that question?

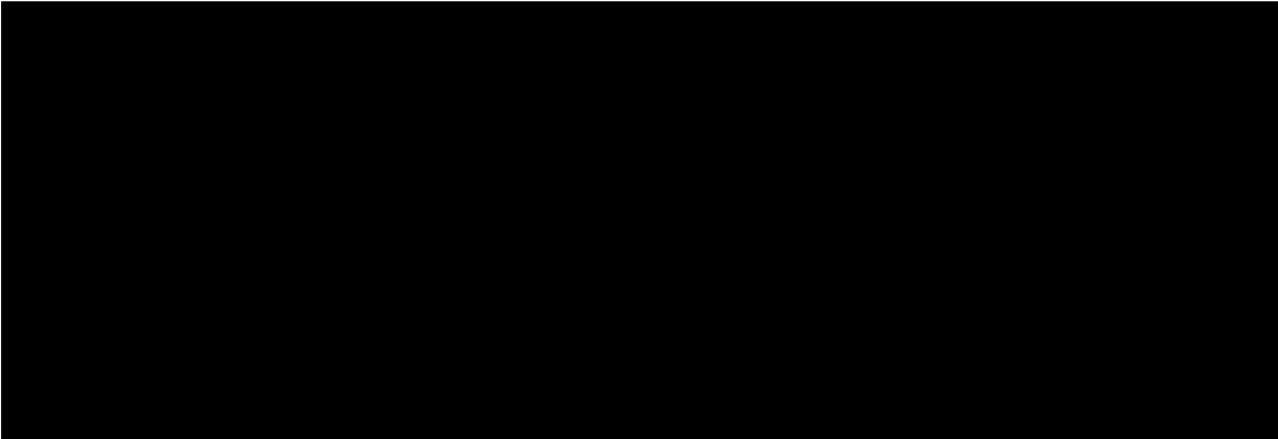
12 Q. Leftover hog? When you run the wood
13 chip--pulp logs through the wood chipper?

14 A. Yes.

15 So, what happens is the bark, you can't use
16 the bark in our pulping process, so the bark is
17 removed, and that's what's really the hog and little
18 chunks of wood that don't meet our pulping process.
19 So, yeah, we have leftover waste material from our
20 chipping operations.

21 Q. Okay. And I want to ask you about Category
22 B. It says here that it represents the portion of

10:23:05 1 bark waste consumed from Celgar's change in log
2 specifications to now consumed wood down to a 3-inch
3 top. I think that just means you were in, perhaps in
4 the woodroom, you were--you changed where you started
5 processing the log for wood chips; is that right?



13 Q. Okay. But if I'm just going over this, this
14 is all of your hog fuel for 2007. So, you didn't
15 purchase any hog fuel in 2007?

16 A. No. We didn't purchase any, and there is an
17 interesting discrepancy in the data on this table. We
18 did--oh, I guess this is category--oh, you're going to
19 get to Category C. Sorry.

20 Q. I think I just did, because Category A was
21 sludge--let me just go back and make sure I got this
22 right. Category A is your biosolid sludge, Category C

10:24:27 1 is your woodroom hog, and then Category B is the
2 change in specifications we just discussed?

3 A. Yes, yes, absolutely. You're correct.

4 Q. Okay. So, there was no hog fuel purchased,
5 there were no hog fuel costs in 2007?

6 A. There was opportunity cost in 2007, because
7 this doesn't represent the full amount of hog fuel
8 that we would produce.

9 Q. Okay. But we're talking about a cost here.
10 You didn't say opportunity cost in your Witness
11 Statement; right?

12 A. I meant cost, and that was a cost because,
13 you know, basically, every day in 2007, we would send
14 out eight or so truckloads, and I think that was the
15 same for 2006. Half our hog fuel production would be
16 sent on a, I guess, a back haul. One of the sawmills
17 we would buy chips from is right next to a power
18 plant, so we would put our excess hog fuel. 



21 Q. So, you're talking now about revenue?

22 A. Well, in the way we refer to that is in

10:25:52 1 our--it shows up in our wood statements in--because

2 it's < [REDACTED]

4 Q. Okay. But I would just like to go back to
5 your Witness Statement and just take a look here at
6 how this is presented. Paragraph 28--

7 PRESIDENT VEEDER: Which Witness Statement?

8 MR. OWEN: I'm sorry, Second Witness
9 Statement of Mr. Merwin.

10 Thank you, Mr. President.

11 BY MR. OWEN:

12 Q. Here you state, Mr. Merwin, that there are
13 costs, and you talk about hog fuel costs and
14 operational and maintenance costs?

15 A. Yes.

16 Q. Associated with running a power boiler?

17 A. Yes.

18 Q. And you have your MBA, and I know you know
19 the difference between costs and revenue.

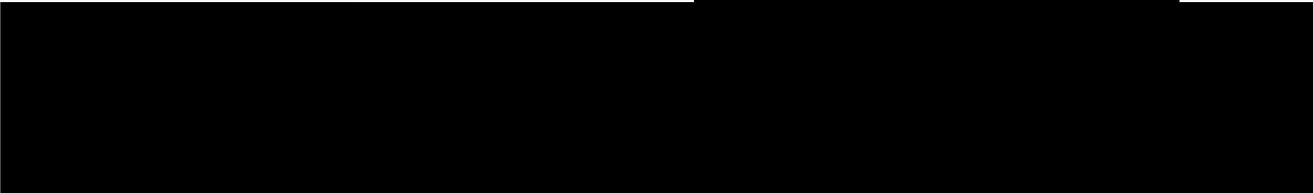
20 A. Um-hmm.

21 Q. And now you're talking about revenue. You're
22 not talking about hog fuel costs. You're talking

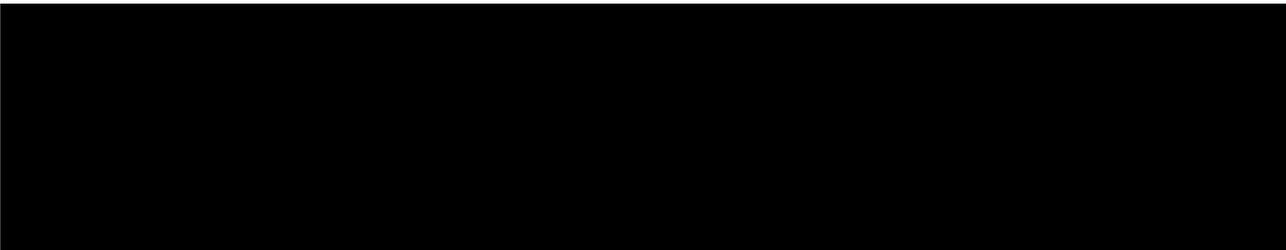
10:26:46 1 about selling the hog someplace else; right?

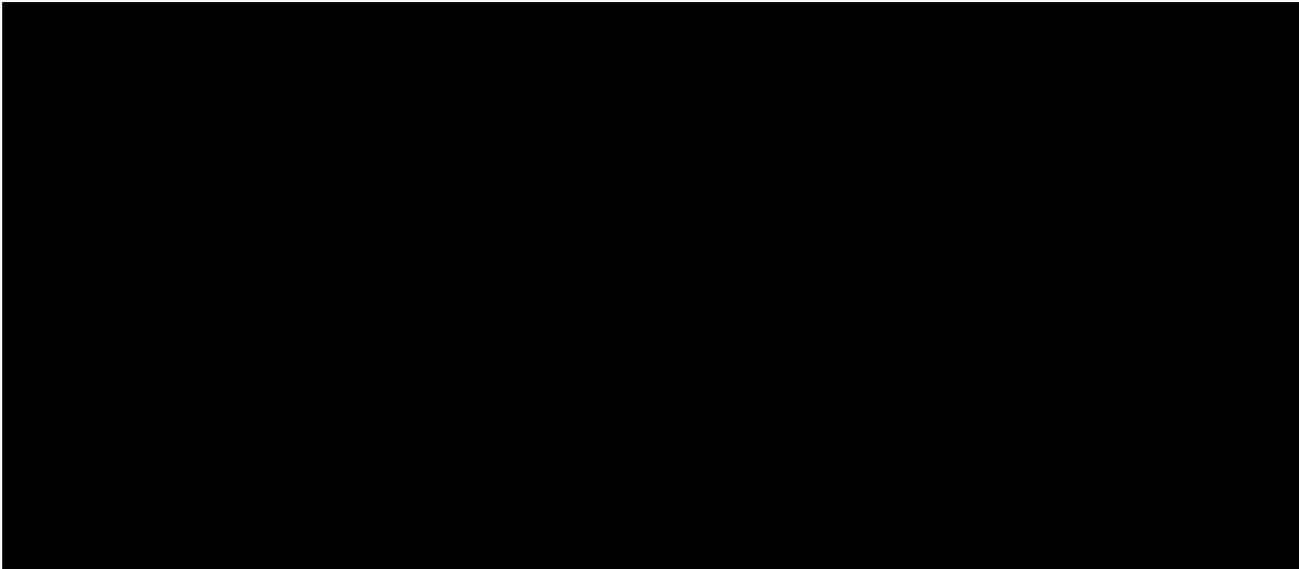
2 A. I'm talking about--yes, I'm talking about
3 selling the hog fuel somewhere else, but in our
4 operating statements which are in exhibits or in your
5 tabs, I guess, starting at 39, in those operating
6 statements, the adjustment for delivering the hog
7 fuel, to Avista in this case, is an adjustment in
8 cost. So, yes, it's cost. That's how we accounted
9 for it. So, when I'm referring to it, it's a cost.

10 And just, while you're checking it, it's
11 in--I'm hoping--I haven't looked in detail which
12 offering statements you have--because there's long
13 ones and then there's short ones. There is the
14 63-page one, and there is



18 Q. For, sorry, what kind of services?





10 Q. Okay. Let's keep going.

11 Now, you then go on--you then go on to talk

12 about how you'd



13



14 Mr. Merwin, are you aware of an NBSK pulp

15 mill that runs without any power boiler whatsoever? A

16 hog boiler or a power boiler?

17 A. Yes.

18 Q. Where?

19 A. We--and it was only a short time--we, and I

20 guess it was last year, we did a study at our

21 Rosenthal Mill at exactly doing this very thing. Even

22 though electricity prices are much higher in Germany,

10:29:33 1 our Rosenthal boiler, we examined the benefits of
2 burning the biosolids, and we thought there was a
3 business case there, so we examined--and this is, of
4 course, where there is very high value for power--we
5 examined the business case for [REDACTED]
6 [REDACTED] when you start looking at the maintenance and the
7 re-lifing costs.

8 Q. Okay. But your Rosenthal Mill is, my
9 understanding from your Witness Statements is,
10 probably your most efficient--I think there's
11 something about punching above its weight; is that
12 right?

13 A. Yes. It definitely does punch above its
14 weight.

15 Q. Yes. It's a very reliable mill. Very
16 modern.

17 A. Yes. Yes.

18 Q. Okay. And you've testified that Celgar in
19 2007, you know, it was reliable, but, you know, there
20 were still problems, you know, you were still working
21 some of the kinks out of Blue Goose and things like
22 that; right?

10:30:22 1 A. Absolutely.

2 Q. Okay. Now, are aware of an NBSK mill in
3 British Columbia that runs without a power boiler?
4 Nothing. It doesn't use it at all. It's just shut
5 down.

6 A. Not in British Columbia, no.

7 And just--let's just be clear--in British
8 Columbia, most pulp mills require very significant
9 amounts of incremental steam to support their process.
10 They're not as efficient as Celgar. And the amount
11 of--so, if you start looking at the maintenance costs
12 and, you know, now that you brought up the burning the
13 biosolid sludge in your boiler, one of the things it
14 does is it's quite gross if it has lots of lime in it.
15 And our boiler, all the tubes in the walls were
16 leaking, it needed to be fixed. You know, the other
17 alternative at Celgar would be to not make the
18 reinvestment and put in either a small package boiler
19 to make--because it's only 20 tonnes of steam this
20 boiler would make.

21 So, yeah. [REDACTED]

22 [REDACTED],> but at the time our focus

10:31:39 1 was on maximizing power generation and moving our
2 mills--and this is for all of our mills--moving them
3 to their maximum potential in how much power they'd
4 generate.

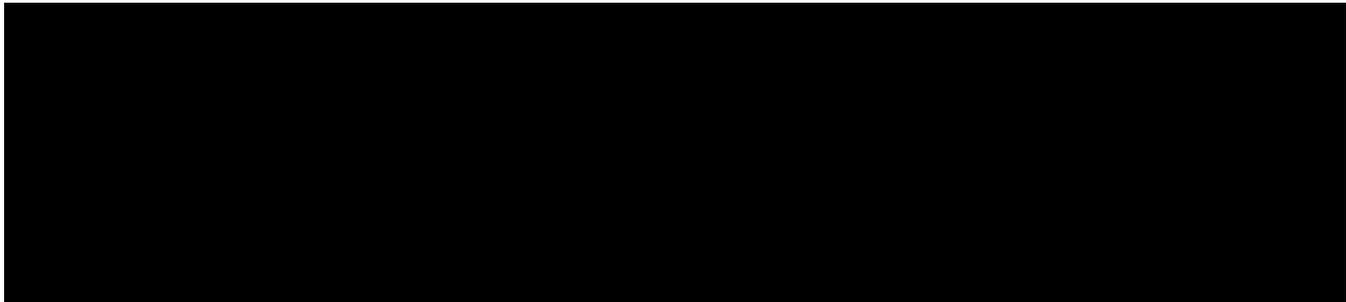
5 Q. And you were going to--so, how were you going
6 to deal with process upsets? Because we've already
7 gone over the fact that natural gas is very expensive
8 and you need to burn 21 gigajoules of it in your
9 recovery boiler to make 1 megawatt hour.

10 So, how are you going to deal with process
11 upsets?

12 A. How are we going to deal with process upsets?

13 Q. If you [REDACTED]
14 [REDACTED],> how are you
15 going to deal with process upsets?

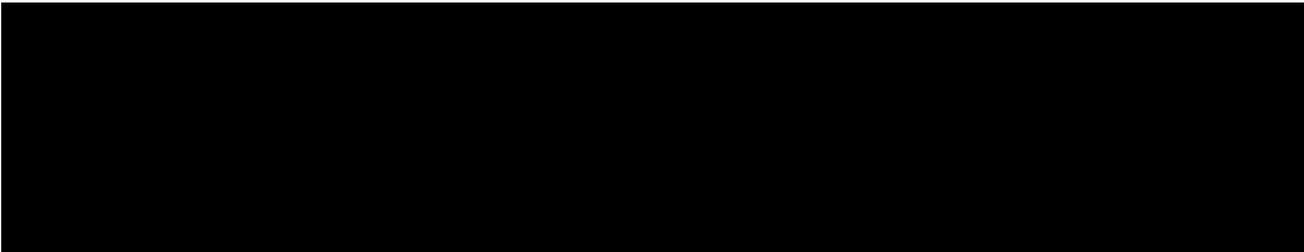
16 A. We would deal with process upsets the same
17 way we dealt with process upsets in 2007. < [REDACTED]
18 our power boiler was shut down for--I'm just going



10:32:35 1 So, how we managed with process upsets
2 was--and again, we're talking about 20 tonnes of steam
3 which equates to--20 tonnes is about 40 gigajoules of
4 gas. And we were burning gas also and we were burning
5 gas in our power boiler to sort of sweeten the very
6 wet biosolids.

7 So, net-net, we probably wouldn't have burnt
8 any more gas to deal with the process upset in 2007 if
9 we had [REDACTED]

10 Q. Okay. So, when you're saying [REDACTED]



15 [REDACTED] we had a lot of tube leaks and they had
16 to go in and--because if you have a tube leak and you
17 have basically water spraying into the boiler, that's
18 not a really good thing. You're supposed to--tube
19 leak means the steam is made in the tubes, and you've
20 got to keep--you want to keep the steam pressurized in
21 the tubes and that doesn't work so well with the leak.

22 Q. Okay. I would have been more focused--you

10:33:49 1 are responding to my questions, you're getting a
2 little bit off topic.

3 A. Okay.

4 Q. And if you can just sort of keep to the
5 question.

6 Can you turn to Pöyry's Second Expert Report,
7 please?

8 PRESIDENT VEEDER: At some stage we are going
9 to need a mid-morning break, so you decide in the next
10 few minutes.

11 MR. OWEN: Okay. Maybe we'll just finish
12 this line of cross.

13 PRESIDENT VEEDER: Please.

14 BY MR. OWEN:

15 A. Sorry, what paragraph would you like me to go
16 to?

17 Q. I'm just getting it myself.

18 A. Okay.

19 Q. I would like to take you to Page 25, Figure 2
20 at the top.

21 So, this is your steam production for 2007.

22 The top line is your recovery boiler steam, and the

10:34:50 1 bottom line is your hog boiler steam. You can see the
2 only time that it's really at zero is during your
3 annual shut in April and May.

4 A. Yes. So--

5 Q. Yes?

6 A. Yes.

7 Q. Okay. And for the remainder of the year,
8 starting in about June, you know, there is a couple of
9 spikes there, I think that might be dealing with
10 process upsets. But you're--starting in June you're
11 basically just producing a very, very minimal amount
12 of steam. And my understanding, and if we look at
13 your natural gas usage that seems to confirm it,
14 you're basically just keeping that power boiler warm,
15 and if, you know, you have problems and, like you did
16 in August, you know, you see a little spike, a little
17 uptick and that's to give a little bit more steam to
18 the process; is that right?

19 A. Yes.

20 And I just to want say in that hot standby,
21 all of that time we were selling, instead of
22 eight truckloads a day, it was probably more like

10:35:48 1 16 truckloads a day of hog. It's a cost savings. We
2 didn't need it.

3 Q. Okay. It's revenue; right?

4 A. It--well, it's a revenue that offsets cost
5 and in our company we refer to it as a cost reduction.

6 Q. Okay. And you were on hot standby--< [REDACTED]
7 [REDACTED] --it was on
8 hot standby from June, and then I think it goes
9 roughly through to--there is big spike at the
10 beginning of November, but then it also comes back
11 down and sort of flatlines for a little bit, it's sort
12 of mid-November; is that right?

13 A. Yes.

14 Q. Okay. Okay. One minute.

15 (Pause.)

16 MR. OWEN: Perhaps now would be a good time.

17 PRESIDENT VEEDER: We'll break for 10

18 minutes. We will come back at 10 to 11:00.

19 (Brief recess.)

20 PRESIDENT VEEDER: Let's resume.

21 BY MR. OWEN:

22 Q. Mr. Merwin, could I get you to turn to

10:55:01 1 Tab 10, please. And this is Pöyry 26.

2 A. And what page or paragraph?

3 Q. Just give me one second. It would be Page 5,
4 please.

5 A. We have a question which--

6 Q. Tab 10.

7 A. Not this tab? Which Tab 10?

8 Q. Tab 10 of the first--

9 NEW SPEAKER: Cross-examine binders?

10 MR. OWEN: Yes.

11 BY MR. OWEN:

12 Q. Mr. Merwin, I'd like to draw your attention
13 to the second paragraph. Here you indicate that your
14 current boiler provides a number of important roles,
15 and this is your Celgar energy project final analysis
16 again from October 2007. Here you indicate that it
17 serves as a backup for the combustion of concentrated
18 noncondensable gases. Now, my understanding, these
19 are gases that must be incinerated onsite for
20 environmental reasons; is that correct?

21 A. Correct.

22 Q. Okay. And as a condition of your permit,

10:56:26 1 environmental permit, as I understand, you'd normally
2 have to have an incinerator and a backup incinerator;
3 is that right?

4 A. Correct. And we installed a new backup
5 incinerator with our Green Energy Project.

6 Q. Okay. I did not ask you that question.

7 A. Oh, okay. Sorry, sir.

8 Q. I'm aware of that, actually.

9 A. Sorry, sir.

10 Q. But--so, you're jumping ahead again.

11 Okay. And you also indicate here that you
12 dispose of hog fuel from your woodroom in your power
13 boiler; is that right?

14 A. Where do I--just--where do I say that? Just
15 so I can see it.

16 Q. The second sentence. Or, sorry, the third
17 sentence, the last sentence of the paragraph.

18 A. I'm just looking, trying to find the
19 right paragraph. The opportunity where we say--the
20 improved combustion of wood waste?

21 Q. No. The second paragraph, so it's a small
22 paragraph.

10:57:16 1 A. Oh.

2 Q. And it says--the sentence starting with:
3 "Second, it provides a place for incineration of the
4 Mill's effluent treatment sludge, chip screen fines,
5 and the woodroom's hog fuel."

6 Is that right?

7 A. Correct. Yes.

8 Q. Okay. Can you turn to your First Witness
9 Statement please, sir.

10 A. Okay.

11 Q. Could you go to Paragraph 24. Here you
12 indicate "pulp production processes use significant
13 quantities of thermal energy"--so, the pulping process
14 again--"thus, the amount of steam required to run a
15 pulp mill will affect how much electricity it
16 generates." Then you say: "In the middle of winter,
17 the Mill requires more heat, and, therefore, increased
18 amounts of steam that are directed to the Mill's
19 heating needs."

20 Is that right?

21 A. That's right, yes.

22 Q. So, your hog boiler would provide some of

10:58:21 1 that normally, would it not?

2 A. Not when we're running at targeted rates. It
3 wouldn't be necessary. But when we're not running at
4 targeted rates, yes.

5 Q. So, some of the time?

6 A. Yes.

7 Q. And you weren't always hitting your targeted
8 rates?

9 A. Yes.

10 Q. Okay. Can you go to Paragraph 36 of your
11 First Witness Statement. And I'd just like to direct
12 your attention to the last sentence, and this is--it
13 starts on Page 17 with "although" just at the very
14 bottom. And it continues on to Page 18. And here it
15 indicates that "Celgar was engaged early on with
16 limited sales of electricity with its utility West
17 Kootenay Power (later FortisBC) and those sales were
18 non-firm and < [REDACTED] .">

19 Is that right?

20 A. Yes.

21 Q. Okay. Can you just--can you go to Tab 48,
22 please. This is R-351. And these are a series of

11:00:06 1 memoranda that you did. They were produced to us sort
2 of as a bundle so that's why they are all one exhibit,
3 and they're from 2006. Can you go to Bates
4 Number 280445, please. 280445.

5 And look at the bottom table under the
6 heading "power exports." Here you set out the number
7 of megawatt hours produced, and the price you received
8 from Fortis. And it's, I think it's \$27.25.

9 Can you read the--and I'm just looking at
10 the--I want to look at the paragraph below, and you
11 say there's a large spread between total cost of
12 electricity and the price it receives for power sales.
13 And can you read the second sentence please?

14 A. [REDACTED]
15 [REDACTED]
16 [REDACTED]">

17 Q. Okay. You can go ahead and read the second
18 one.

19 A. "It is very apparent Celgar is disadvantaged
20 when it's compared to its peers."

21 Q. Okay. So, this is indicating that there is
22 < [REDACTED]

11:01:24 1 [REDACTED].> Now, this is, I note, March 27, 2006. This is
2 before you got on to a time-of-use rate. So, I'll be
3 fair to you there; right? But this is indicating that
4 you're < [REDACTED]

5 [REDACTED]

6 A. Well, as we bought the Mill, they were just
7 flowing the power to FortisBC and not really focused
8 on making it reliable and building it to be a nice
9 product to sell. And that's what we did afterwards.

10 Q. Okay. Okay.

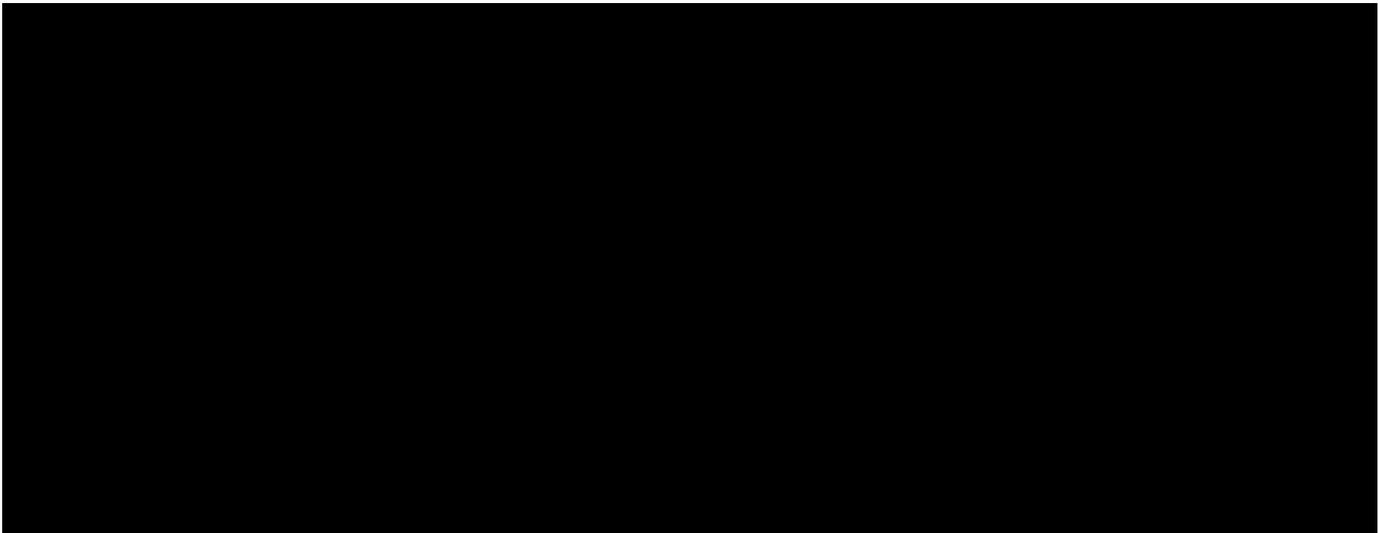
11 Mr. Merwin, you claimed in Paragraph 27 of
12 your Second Witness Statement that the FortisBC and
13 NorthPoint Contracts weren't ad hoc electricity sales
14 because they were made in accordance with contractual
15 commitments. And I don't think there's any dispute
16 that your brokerage agreements are contracts. But
17 that doesn't mean that the sales were made regularly,
18 consistently, every day. Did you have to sell
19 electricity under those Contracts? Was there an
20 obligation?

21 A. No, there wasn't an obligation to sell a
22 certain volume, but it was a contract nonetheless that

11:02:36 1 we would make opportunities as they arose, because
2 we--when we discussed with NorthPoint, we weren't
3 comfortable because of the reliability to sell more
4 than a one-hour or a two-hour window, and you can't
5 really get a good price for that.

6 Q. Okay. Okay. And, again, I don't think there
7 is any dispute that they are contracts.

8 But can you turn to Tab 32, please. This is
9 the memo prepared by Adrian Hay that we looked at
10 earlier, April 2, concerning the contracts of the
11 Bioenergy Call. I'd just like to direct you to the
12 third paragraph. And just in the middle of the
13 paragraph it says, starting with the sentence
14 "what's"--starting with "what's more," it says:



11:04:13 1 [REDACTED]

2 Is that correct?

3 A. That is correct, yes.

4 Q. So, you're taking the position there [REDACTED]

5 [REDACTED];> is that

6 correct?

7 A. As per the forms that we had filled out in
8 March 2007, we cited the Contracts that we had in
9 place and each of the two forms, biomass realization
10 and the other one we filled out, and showed the three
11 sort of buckets of energy obligations we had, and on
12 each one we explained when they would expire, and they
13 were all before the EPA.

14 Q. My question is about this meeting and this
15 document which occurred after March. This is in
16 April?

17 A. Yes.

18 Q. And you're saying that you had [REDACTED]
19 [REDACTED] right?

20 A. [REDACTED]

21 [REDACTED] and that's what we were--I'm sure we
22 were discussing because those forms were the basis of

11:05:08 1 the discussion and we could turn and look at them and
2 at the end on the table it says when we expect those
3 obligations to end and where they sit.

4 Q. Okay. But you're talking about your
5 Generator Baseline set right now in 2007.

6 But let's move on, because, again, I'm just
7 conscious of time. Maybe we can finish up by lunch,
8 I'd hope. Paragraph 29 of your Second Statement.

9 So, here you're saying that the Mill could
10 run in thermal balance; is that right?

11 A. Yes, I do say that.

12 Q. Okay. Now, thermal balance, I understand
13 that what you mean by that is it would produce enough
14 steam for its pulp production processes only; is that
15 right?

16 A. Correct, yes.

17 Q. Okay. So, in 2007 you were generally--you
18 were aiming to sort of meet your load, and you were
19 generating to essentially offset your electricity
20 load; is that right?

21 A. No. We were generating to maximize our power
22 generation.

11:06:35 1 Q. Okay. But you were--your generation
2 levels--let's put it this way. I'll rephrase my
3 question so you can agree with me and we'll get on.

4 Your overall generation levels were a little
5 bit above your load. You generated 350,000 gigawatts
6 and your load was 349, and sometimes you were above
7 and sometimes you were below.

8 A. Sometimes we were above and sometimes we were
9 below, but our focus was to maximize our generator
10 output that year. And in the year--in some days we
11 were above, and the days we couldn't maximize, we were
12 below.

13 Q. Okay. Now--and you testified earlier you
14 were on a time-of-use rate; right?

15 A. Yes.

16 Q. And sometimes those time-of-use rates got
17 very, very expensive.

18 A. Yes.

19 Q. And later on, in G-156-10, you were moved
20 to--and I don't want to get into the details of this,
21 but you were you were moved to RS 31, which is a
22 standard flat industrial rate, and that was because

11:07:39 1 you didn't have a signed contract, and your load
2 factor was off and the BCUC looked at it and removed
3 you from RS 33 to RS 31; is that right?

4 A. Correct. Yes.

5 Q. Okay. So--and you complained that that's
6 pretty expensive for you, being on RS 31?

7 A. Yes. And just--sorry.

8 Q. Just want to keep to the questions and let
9 Mr. Shor get to the rest afterwards.

10 So, my understanding is, if you had to
11 operate in thermal balance and you give a number--and
12 I'm sorry, Mr. Gosman, could you just--

13 MR. OWEN: Could we go closed just for one
14 minute?

15 PRESIDENT VEEDER: Yes.

16 (End of open session. Confidential business
17 information redacted.)

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11:08:21 1

CONFIDENTIAL SESSION

2 MR. OWEN: So, I just referred--

3 PRESIDENT VEEDER: One minute. We're now in
4 closed session.

5 MR. OWEN: Okay. Thank you, Mr. President.

6 BY MR. OWEN:

7 Q. So just--if you could go to the chart on your
8 next page, Page 17 of your Second Witness Statement,
9 you have here--you have here some data points.

10 You haven't provided backup for this, have
11 you?

12 A. No, I haven't. But I believe, based on some
13 of the documents I've seen, you guys could have
14 calculated it in these bundles.

15 Q. Mr. Merwin, you don't have stuff on return of
16 condensate and was going in the system and flowing in
17 the system in actuality in the information that we
18 have.

19 A. Well, that information is unnecessary because
20 I provided an extremely conservative steam balance
21 calculation just based on the amount of steam we were
22 venting.

11:10:24 1 So, basically the way it works is all the
2 steam we produce goes through our turbine, and out the
3 back end comes--you make low--high-pressure steam goes
4 in the turbine and out the back end goes low-pressure
5 steam. All the low-pressure steam that you need for
6 your process is used in the process and what is in
7 excess of your needs for your process is vented. And
8 the venting data, which would provide an extremely
9 conservative--these are extremely conservative numbers
10 because it's just based on venting data, not the
11 proper mass energy balance, because we were steam-vent
12 limited at that point in time, so we had to weigh
13 steam in our process because we couldn't vent enough
14 at that point in time.

15 So, yeah. So, these are very conservative
16 numbers, and the steam-venting numbers are available
17 in the monthly energy manager reports that are in the
18 Pöyry--in the Pöyry statements.

19 Q. Well, let's just get to the practical
20 implications of operating in thermal balance. So,
21 you're in a time-of-use right now. You've got very,
22 very high costs for buying power in the day. If you

11:11:51 1 reduced your steam to thermal balance, does that not
2 mean you're now buying power between your electrical
3 load and what you're not--no longer producing the
4 steam; is that not correct?

5 A. Not necessarily. That's not correct, because
6 most of our exports had to do with the steam we were
7 venting.

8 So, very simply, if--so, there's two vents in
9 a pulp mill. There's two kinds of vents in a pulp
10 pulp mill. There is the low-pressure vent when you
11 flow it through, and that's where we were limited.
12 And Mr. Stockard says we were vent-limited and,
13 therefore, we wouldn't have done what we did, what I
14 said we would do.

15 And in actual fact, there's a high-pressure
16 vent right in front of the turbine, so if you don't
17 need the steam and somehow you realize you're going to
18 start giving the milk away for free, like, that's bad
19 business practice just to give power away for free.
20 So, yeah, we would have vented like from a--if we knew
21 we weren't able to sell our power and give it away, we
22 would have vented it.

11:13:05 1 Q. Of the high-pressure steam header, did you do
2 do that frequently before?

3 A. Well, we were focused at that point in time
4 on maximizing our generation because it was ours to do
5 what we wanted with it.

6 Q. Okay. I didn't ask that, but...

7 A. Okay.

8 Q. But in terms of your low-pressure vents, my
9 understanding was that you were receiving community
10 complaints just about using venting steam from your
11 low-pressure vents.

12 A. Yeah, because our low-pressure vents didn't
13 have mufflers on them.

14 Q. Okay. And my understanding is the steam
15 coming off of a high-pressure vent is very, very
16 powerful. Like, you haven't run it through the
17 turbine yet.

18 A. We haven't run it through the turbine, but I
19 believe there's a muffler on it, and in 2010 we had to
20 run our high-pressure steam vent for, I believe, a
21 month to clean out some pipes. And, you know, it can
22 be done, and I don't recall getting any complaints at

11:13:56 1 that time.

2 Q. Now, you were generating most of your
3 electricity, about 96 percent of your electricity, off
4 of black liquor; correct?

5 A. Yeah. That would be a good approximation.

6 Q. Okay. And black liquor is basically tied to
7 pulp production?

8 A. Yes. It's the fuel, yeah.

9 Q. All right. So if--and just doing the rough
10 numbers here, if you were, just the steam coming off
11 of the black liquor, if you were to apply that 350
12 gigawatt hours, the black liquor, that would be about
13 336 gigawatt hours coming off of your--96 percent of
14 350. I don't have a calculator.

15 A. Sorry. I'd have to sit down and do the
16 calculation for that to say yes or no.

17 Q. Okay. But here you're--what I'm saying is,
18 if you were--let's assume that it's higher than this
19 number, <<[REDACTED]>> which you've got here. You have to burn
20 your black liquor. You don't have--you have an hour
21 or two of storage for your black liquor; is that
22 correct?

11:15:04 1 A. The storage tank is--from empty to full is
2 about nine hours.

3 Q. Nine hours? Okay. Well, nine hours. But
4 it's not a lot.

5 And I guess what I'm saying is, you would be
6 reducing your pulp production to get down to <<[REDACTED]>>?

7 A. No, we wouldn't.

8 Q. You wouldn't be?

9 A. No. We--if we found--if we knew what we knew
10 now and we were giving--we end up giving that power
11 away, and have it go against our GBL, we would have
12 vented. Because how do you say our power sales--and
13 we would have kept running at those rates and run at
14 our steam balance and the vent in front of our
15 generator we would have vented that excess steam,
16 because the only reason you need to run that steam
17 through the generator is to vent--is to make power.
18 The only reason for--when you're venting steam,
19 low-pressure steam, when you're venting low-pressure
20 steam--is for the purpose of profiting from generating
21 power. And if we're not getting a profit from those
22 power sales, we'd vent the high-pressure steam,

11:16:20 1 because there is no process benefit to us in our mill.

2 Q. I don't think you've had much of a practice
3 of venting high-pressure steam, do you?

4 A. No. Because we were focused on maximizing
5 our generation at the time.

6 Q. Okay. And like I said, if you were--if you
7 had a certain amount of black liquor, you had to burn
8 your black liquor.

9 Would you agree with me on that?

10 A. Yes, I do agree with you on that.

11 Q. Okay. And would you reduce pulp production
12 to--you know, I think in terms of revenues--and I'm
13 just talking about 2007--we've got 23.8 gigawatt hours
14 or something like of that electricity sales, and then
15 you've got all of your pulp production. I think
16 revenues from energy sales are pretty minimal compared
17 to your pulp revenues at that point; is that not
18 correct?

19 A. They are still revenues, though. But yes.

20 Q. Of course.

21 (Overlapping speakers.)

22 Q. Sorry.

11:17:19 1 Go ahead, Mr. Merwin.

2 A. Thank you.

3 They are still energy revenues, but, yes,
4 they are minimal relative to our overall pulp
5 revenues.

6 Q. Okay. One minute.

7 (Pause.)

8 Okay. Could you turn to R-559, please.
9 That's the document we distributed earlier on this
10 morning.

11 A. It's dated June 7, 2008. Yes.

12 Q. In my understanding, now, Mr. Merwin, you've
13 said that Celgar was given a net-of-load GBL?

14 A. Correct.

15 Q. And that prevented you from arbitraging
16 power; right?

17 A. That prevented us--and actually, I say it at
18 the very end of the document.

19 Q. Sorry. Can I get you to answer the question
20 as opposed to flipping to the end of the document?

21 A. Oh, yes. That prevents us from arbitraging
22 with BC Hydro, selling our below-load power to

11:19:44 1 BC Hydro, but it--the GBL did not prevent us from
2 doing what we wanted with our self-generation. And
3 this document was the bid document that I had to give
4 our CEO so he would sign off on all the important
5 terms that we were proposing to BC Hydro. And at the
6 very last line, I say: "We, Celgar, should be able to
7 do"--"electricity below or GBL and the electricity
8 below is Celgar's to do what it wishes with."

9 So, that's how we understood GBLs to work.

10 Q. Mr. Merwin, I'm aware of that page. I
11 haven't asked you to turn to that page. I'm sorry.

12 A. Oh, okay.

13 Q. But would you please answer questions.
14 You're, you know, you're taking me to a page, and I
15 know that, you know, you've gone over the documents
16 and you know where there are good spots for you in the
17 documents. And Mr. Shor can take you to those, okay,
18 on redirect. But please just answer my questions.

19 A. Sorry. On this one I thought I was being
20 helpful to answer the question.

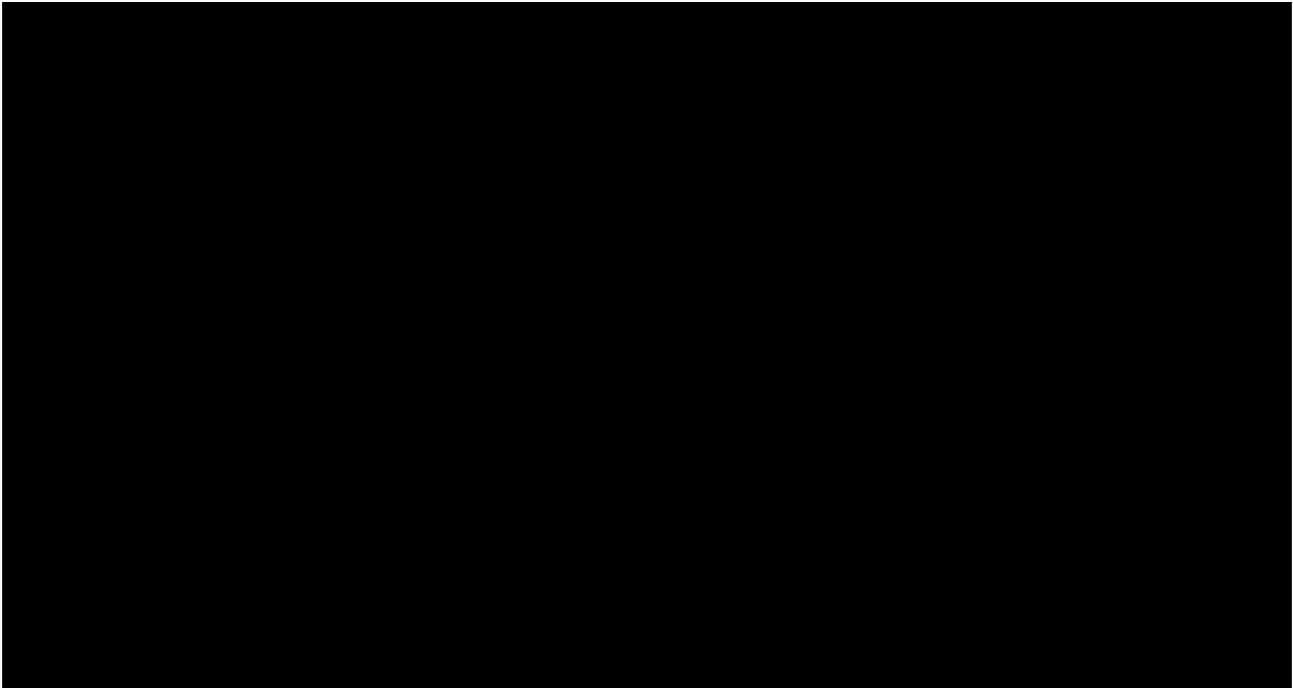
21 Q. Okay.

22 Now, I'm just going to get my copy of R-559.

11:20:55 1 Can you turn to Bates 071678, please.

2 A. I'm there.

3 Q. Can you read the last paragraph, please.



15 Yeah.

16 Q. Now, my understanding is actually--this is
17 just a small error, but it was [REDACTED]

18 A. Yeah. [REDACTED]
19 [REDACTED].> Yeah.

20 Q. Okay. Okay. So, this indicates that you
21 will have an opportunity to arbitrage power?

22 A. We will have an opportunity in the future

11:22:39 1 because the baseline sets, the baseline with BC Hydro
2 would set a level that--would set a level that if we
3 would grow in the future, and we were still expecting
4 to grow in the future, just as we hope to grow
5 production at our three mills still today in the
6 future.

7 Q. Absolutely. And I think in 2010 you actually
8 generated about half a million tons of pulp. You had
9 a good year that year--

10 A. We hit--

11 Q. --in terms of production.

12 A. We hit the 500,000 tons that year, yes.

13 Q. Okay.

14 Okay. Let's turn now to EPA negotiations.

15 Can you turn to Tab 50, please. I think we might
16 even--we might even be into the second binder.

17 A. Sorry. What page?

18 Q. Sorry. Just give me a minute. Tab 50,
19 please, the very first one.

20 A. Tab 50. What page?

21 Q. I'm not quite there yet. I'll give you a
22 page in a second.

11:24:14 1 So this is a Specimen EPA for the Bio Call;
2 right?

3 A. Yes.

4 Q. Okay. And that was distributed to you--you
5 can see it down at the bottom there--May 7, 2008?

6 A. Yes.

7 Q. Okay. So, that was a little over a month
8 before you submitted your formal bid on June 10, 2008;
9 is that right?

10 A. Correct, yes.

11 Q. And did you attend the information session
12 concerning the Specimen EPA on May 2008, 2008?

13 A. I'm sure I did.

14 Q. Okay. Now, in Paragraph 10 of your Second
15 Witness Statement, you testified that you reviewed the
16 specimen at EPA, and you'll probably be able to just
17 recall this without going there. But you construed
18 the provision to apply only when BC Hydro committed to
19 purchasing all of the Seller's electricity; is that
20 correct?

21 A. Could you ask the question again. I was
22 looking over here.

11:25:07 1 Q. Sure.

2 We're talking about the Exclusivity Clause,
3 and you testified that you construed the provision to
4 apply only when BC Hydro committed to purchase all of
5 the Seller's electricity; is that correct?

6 A. Yes. There was a GBL, and, basically, the
7 exclusivity above the GBL is--we're saying we will be
8 exclusive to the power you're buying.

9 Q. Okay. Can you turn to Appendix 15 of the
10 Specimen EPA.

11 Okay. So, here we have two definitions right
12 at the top. I'll just direct you to those. "Eligible
13 energy," which means each hour after the COD, the
14 amount of metered energy delivered to the seller.
15 Energy that is deemed to be at the POI in that hour.
16 And then energy--subparagraph (b) energy that is
17 deemed to be eligible energy in the hour pursuant to
18 Section 7.8. Then we have a separate definition--so,
19 that's "eligible energy" under the contract for sale.
20 And then we have a separate definition of "energy,"
21 and that means electric energy expressed in
22 megawatt hours generated by the Seller's plant,

11:26:40 1 excluding station service; is that right?

2 A. Correct, yes.

3 Q. Can you turn to Section 7.4 of the Specimen
4 EPA, please?

5 PRESIDENT VEEDER: Assuming closed session,
6 apparently. Can this be open?

7 MR. OWEN: I'm sorry. This can be open, yes.
8 Thank you.

9 PRESIDENT VEEDER: Let's open then.

10 MR. OWEN: Thank you.

11 (End of confidential session.)

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11:27:03 1

OPEN SESSION

2 PRESIDENT VEEDER: We're in open session.

3 MR. OWEN: Thank you.

4 BY MR. OWEN:

5 Q. Okay. So this is 7.4 of the Specimen EPA,
6 and it states here at the top, "The seller shall not
7 at any time during the term commit, sell, or deliver
8 any energy to any person other than the buyer under
9 this EPA," and then it goes on to list a few
10 exceptions; is that correct?

11 A. Yes. Yes, that's correct.

12 Q. Can you please tell me how you construed this
13 to not apply as an Exclusivity Clause to BC Hydro?
14 What words did you rely on?

15 A. What words did I rely on?

16 Q. Yes.

17 A. Well, first of all, we took this bid very
18 serious, and our legal counsel reviewed this document
19 extensively, and that reflects what my comments are in
20 that exhibit we referred to earlier. But if we go to
21 "energy" and go--well, what do they mean by "energy"
22 excluding station service? And you go to "station

11:28:18 1 service," which is--"station service" means "energy
2 required to service the Seller's plant, including
3 energy required for fuel preparation." So, that is
4 our below-GBL energy. And we had no obligation at
5 that time to use it for anything but--that was our
6 below--that was our below-GBL energy, and that was our
7 understanding of the Contract at the time.

8 Q. Okay. Thank you.

9 Can you turn to Tab 51, please?

10 A. Okay. What page would you like me to go to?

11 Q. One minute. I'd like to turn now to your
12 negotiation to the EPA with the power acquisitions
13 group at BC Hydro?

14 A. Okay. That is Tab 51?

15 Q. No, it's not. This was introducing the
16 Specimen EPA. I'm going to leave that for a second.

17 Now, just give me a sense of the timing here.
18 And after you submitted your bid on June 10, 2008, it
19 was short-listed; is that correct?

20 A. Yes.

21 Q. Okay. And then you went on to have a series
22 of negotiations in August 2008. That's sort of when

11:30:32 1 they started that over the terms of conditions of the
2 EPA; is that right?

3 A. The first negotiations were in August,
4 correct.

5 Q. Okay. And, again, just to get a sense of the
6 timelines, the EPA was ultimately submitted to the
7 Board of Directors on November 19, 2008?

8 A. Yes.

9 Q. Okay.

10 A. As far as I was told.

11 Q. Okay.

12 A. The BC Hydro Board of Directors, as far as I
13 know, yeah. It was approved, reviewed by them on the
14 19th, yeah.

15 Q. Okay.

16 A. My understanding was it was to be submitted
17 on November 7. That was the original timeline, I
18 understood.

19 Q. Okay.

20 Okay. And now, in Paragraph 13 of your
21 Witness Statement, you indicate that BC Hydro made an
22 amendment--

11:31:17 1 A. Which ones?

2 Q. Your Second Witness Statement, sir.

3 A. Okay.

4 Q. Take a look. You indicate here that BC Hydro
5 made an amendment to the final text to be presented to
6 the Board of Directors on November 19; is that
7 correct?

8 A. Yes.

9 Q. Okay. And you said this was an 11th-hour
10 amendment?

11 A. The change--it was--so are you talking about
12 change to Version 7 of the EPA or when they dropped
13 the bomb on us on the Friday, November 7, that we're
14 now going to have this new restriction in our EPA?

15 Q. Okay. What I'm referring to is, I guess,
16 what you just referred to as "the bomb." They're
17 saying that the Exclusivity Clause needs to remain in.
18 That was the final text to be submitted to the Board
19 of Directors, and I believe that was sent to you on
20 November 7, as you've indicated; is that right?

21 A. Yes.

22 Q. Okay. Can you--and you remember this well

11:32:43 1 because it interrupted one of your vacations, I heard?

2 A. Yes, it did.

3 Q. Okay. Can you turn to Tab 52, please.

4 So this is--and you can see this down at the
5 bottom. This is a Version 8 of the EPA, and you
6 testify in your Witness Statement that this is the one
7 that they made the last-minute amendment to?

8 A. I'm sure it is. If the--Version 8--or is
9 Version 8 the one that--so they sent us--so just to be
10 clear--

11 Q. Yeah.

12 A. We had our meeting on October--we had our
13 meeting in October, near the end of October, and we
14 negotiated the final terms. We were all in agreement
15 on what the terms in the EPA would be.

16 Q. Yeah.

17 A. Version 7 was sent to us on--

18 (Pause.)

19 A. Can I finish what I was saying now?

20 Q. Absolutely. Go ahead.

21 A. Okay. So BC Hydro, the way the meetings
22 typically worked is BC Hydro controlled the pen on the

11:34:48 1 EPA, and we would sit, have our meeting with them.
2 We'd agree to terms, and then they would send us an
3 EPA, how it reflected, what was agreed to, and any
4 things that BC Hydro wanted to keep in.

5 And we received that. I believe it was
6 October 28 or 29. We actually got a corrupted
7 version, so it took us a day, and Mr. Kincaid, from
8 BC Hydro, had to send us that same version again. We
9 then looked at the EPA, and there was one word we
10 changed. And there were a couple of other small words
11 we changed.

12 But in the Section 7.4 that we had agreed to
13 at the meeting, it still said "hourly GBL" on the
14 exclusivity, and we changed that to reflect, to say
15 "seasonal" because it was a seasonal EPA. And we
16 thought the deal was done, and we were going to get
17 our Letter of Intent on Friday. And that's not what
18 happened.

19 Q. Okay. And we can walk through that in a
20 second.

21 So Version 8 was a final text. And we
22 can--let's just turn to Tab 7.4.

11:36:21 1 So, here we have the Exclusivity Clause, and
2 its unmarked now. Can we turn to Tab 54?

3 A. I'm just looking at 7.4. Okay. Tab 54 now?

4 Q. Yeah. And this was what you were just
5 talking about. This version was the one that was
6 forwarded--BC Hydro forwarded you on October 28. And
7 I think if we turn to "exclusivity" in 7.4(b), you've
8 got that change that you noted, "hourly" to
9 "seasonal"; is that right?

10 A. Yeah. That's correct, just what I told you a
11 minute ago.

12 Q. Okay.

13 Okay. Now, you've testified that this
14 version is a final text that would go to the BC Hydro
15 Board of Directors.

16 A. Yeah.

17 Q. Okay. Can you go to Page 17, please.

18 A. This--

19 Q. Can you go to Page 17, please?

20 A. These were just small wording changes.
21 That's drafting changes. There was no substantive
22 changes. That was the Agreement.

11:37:44 1 Q. I'd like you to go to 17, please. Page 17.

2 A. Okay. Of Tab 54?

3 Q. Of this tab, please.

4 Here in "buyer capacity rates," we have all
5 sorts of redline, do we not?

6 A. Okay.

7 Q. Okay. And can you turn to Page 27, please.

8 Or, actually, just turn to Page 18, and let's look at
9 Section D here, and here we have more redline, and we
10 have a stroked-out note to draft BCH to confirm; is
11 that right?

12 A. Which? Sorry.

13 Q. Page 18 at the top, subparagraph (d).

14 A. Yeah. Those were drafting--the way the
15 Agreement--and I just described earlier, the way the
16 Agreements with BC Hydro and the negotiations worked
17 was they would send us a version, and if there were
18 any sort of final changes--you know, to reflect what
19 was discussed and agreed at the meeting, all of those
20 changes--I'm sure if we go to the final version that
21 we signed, all of those changes were accepted. The
22 substantial negotiation was on Section 7.4, and that

11:39:16 1 occurred on October 20.

2 Q. I'm just concerned--you know, I'm just trying
3 to explore this, that this was a final text that was
4 going to go to the Board of Directors because you used
5 that language in the Witness Statement to make this
6 sound very, very serious.

7 Can you go to Page 27, please, sir?

8 A. Okay.

9 Q. Now, here at the bottom of Page 27, there's
10 bracketed text, and then that continues and the
11 bracket ends on the top of Page 28, and there's a note
12 there, and it says "to be confirmed," does it not?

13 A. Yes. And was that--I'm not sure. Was that
14 in the earlier version or not?

15 Q. Well, this is the version that you've
16 testified was the final text going to a Board of
17 Directors. So, is it usual for a final text going to
18 a Board of Directors to have a "Note: To be
19 confirmed" in it, in your experience?

20 A. Possibly.

21 Q. Okay. And there's a covering e-mail. Let's
22 look at that. That is Tab 55, and that's C-283.

11:40:32 1 A. Uh-huh.

2 Q. So, this is from Mr. Kincaid to you, and,
3 indeed, it's dated the 28th.

4 And here, he says, "Brian, please find
5 attached a clean and redline version of the latest
6 Contract draft. Please note that this remains subject
7 to review and revision by BC Hydro and its advisors."

8 A. Yeah, it says that--

9 Q. That doesn't say--sorry, go ahead.

10 A. And it also provides some insight into sort
11 of the one outstanding issue that was discussed at the
12 meeting, and it was the E-tagging.

13 Q. So it wasn't the final text?

14 MR. SHOR: Was there a question? We can't
15 hear you.

16 BY MR. OWEN:

17 Q. So it wasn't the final text?

18 MR. SHOR: Was that a question or?

19 BY MR. OWEN:

20 Q. I'm asking the question, it was not the final
21 text? I'm just trying to understand this because it
22 is saying this is still subject to revision and

11:41:21 1 review.

2 A. Okay. I said okay. There were some drafting
3 changes for it to be the very final text. But I'd
4 like to point out that I believe all of those changes
5 were--all of the changes in the final draft that were
6 sent on Friday, with the exception of Section 7.4,
7 were just accepted by BC Hydro. I believe. I'm going
8 by memory because there wasn't--I don't recall any
9 outstanding issues besides 7.4 on that Friday.

10 BY MR. OWEN:

11 Q. I'm just--you know, I'm puzzled, then,
12 because I just took you to bracketed text that said
13 "to be confirmed," and that's not redlined out or
14 corrected.

15 A. And I guess it was confirmed.

16 Q. Okay. All right. Well, let's look at your
17 contention. Let's look at the rest of this
18 Exclusivity Clause exchange. Can you turn to Tab 56,
19 please.

20 This is Version 5 of the draft EPA, which
21 BC Hydro forwarded to you on September 25, 2008, and
22 here, if you just turn very quickly to 7.4 of the EPA,

11:42:48 1 the Exclusivity Clause is not redlined.

2 A. Yes. That's when they sent it to us with
3 this version, and very quickly, we sent them a new
4 version with that redlined, and then we had a meeting
5 to discuss it.

6 Q. Okay. Thank you, Mr. Merwin. You're jumping
7 ahead a little bit, so I'm going walk you through some
8 of that.

9 Okay. Can you turn to Tab 58, please. And
10 this is what you just referred to. I think this is
11 the version you sent to BC Hydro on October 8, 2008.
12 And if you go to 7.4, indeed, the Exclusivity Clause
13 is redlined, and this is your redline to create an
14 exception for below-GBL sales; is that right?

15 A. Just flipping to it right now. Yes.

16 Q. Okay. Can you go to Tab 59, please.

17 MS. GEHRING FLORES: Was there a question?

18 MR. OWEN: Tab 59.

19 MS. GEHRING FLORES: Was there a question
20 associated with that last document?

21 MR. OWEN: I just had him confirm that that
22 was the document that he forwarded back to BC Hydro on

11:44:09 1 October 8, 2008.

2 MS. GEHRING FLORES: Okay.

3 MR. OWEN: With a proposed redline, his
4 proposed change.

5 BY MR. OWEN:

6 Q. Okay. This is a letter from BC Hydro to you
7 dated October 17, 2008; is that right? This is
8 Tab 59, and it's Exhibit R-134.

9 A. Yeah.

10 Q. In the last bullet here, it is in terms of
11 Section 7.4(b). And it indicates "your ability to
12 sell power below-GBL regardless of mill load remains a
13 concern for us"; right?

14 A. Yes. It says that. But also in my e-mail or
15 phone call discussions with Mr. Kincaid, just before
16 this letter was sent, he made the general comment that
17 changes to the EPA are quite light, and that is
18 reflected in some e-mails.

19 Q. But this--I didn't ask you about those
20 e-mails, but this document, this letter, indicates
21 that as of--

22 A. Yeah.

11:45:13 1 Q. This document, this letter, as of October 17,
2 indicates there isn't an agreement--isn't an agreement
3 between the Parties at this point; is that correct?

4 A. That is correct.

5 Q. Okay. Now, a few days later you had a
6 meeting with BC Hydro, on October 21; is that right?

7 A. That is correct.

8 Q. Now, Mr. Scouras has testified that BC Hydro
9 and Celgar agreed at the meeting to negotiate a Side
10 Letter; is that right?

11 A. We--what we agreed to at that meeting was we
12 agreed--the concern of BC Hydro's at the meeting was
13 that we were going to use that language in the EPA and
14 use it in--the utilities commission proceeding that we
15 were both in, in 2008, at the time, the G-48-09
16 process. Okay.

17 Q. Yes.

18 A. There was a concern about that, and what was
19 agreed to, and it was actually our--I believe it was
20 our counsel's idea was, we would just agree to a Side
21 Letter that we would not use what's in this agreement
22 against one another. And that is what we had agreed

11:46:26 1 to, and I remember the person who was going
2 to--because was such--it seemed like a benign thing.
3 The person that was going to draft it--and we had
4 agreed what the language would say, what the language
5 said in the version that Mr. Kincaid sent us on the
6 28th.

7 We had agreed to that. And what we had
8 agreed to was basically it was going to just be a
9 simple letter saying that neither Party is going to
10 use what's in this agreement against one another
11 because it was recognized we had the ability to sell
12 our below-load power.

13 Q. So you were essentially leaving the issue to
14 the British Columbia Utilities Commission, were you
15 not?

16 A. We were leaving the issue because, as of--at
17 that point in time, we could sell our below-load
18 power, yeah. And BC Hydro recognized that until--

19 Q. Okay. Wait, wait, wait.

20 A. Okay. Sorry.

21 Q. Just try and keep to the questions.

22 So, this issue of below-load sales was going

11:47:34 1 to be left through the Side Letter Agreement for the
2 BCUC to decide--

3 MR. SHOR: I think there is some confusion
4 here. It sounds like there are two different side
5 letters that you both are talking about. I just
6 wanted to clarify that.

7 MR. OWEN: I'm sorry. I don't think so. And
8 please don't interrupt my cross-examination.

9 BY MR. OWEN:

10 Q. Now--

11 THE WITNESS: Am I allowed to answer that
12 question? Because you said you don't--

13 PRESIDENT VEEDER: Let's move on.

14 THE WITNESS: Move on? Okay.

15 BY MR. OWEN:

16 Q. Okay. So my understanding is that Side
17 Letter Agreement was proposed to essentially resolve
18 the issue--or are you saying that it's a different
19 Side Letter Agreement? Is that--

20 A. Well, now that you're asking, it was an--we
21 had agreed to a very simple "neither Party is going to
22 use this against each other," and we called it a Side

11:48:28 1 Letter, but what--and it didn't seem unusual that they
2 didn't--they sent the EPA and not the Side Letter. It
3 didn't seem like a big deal because the language in
4 the EPA that BC Hydro sent on the 28th or 30th--and
5 this is prior to them sitting down with the Government
6 on the 3rd.

7 So, I'm guessing what happened was there was
8 a change of heart and a different kind of letter was
9 sent. It was still called a Side Letter, but it was
10 far different than anything we had agreed to in our
11 negotiations.

12 Q. Okay. Let me just see. Can you turn to
13 Tab 60, please.

14 A. I'm actually on it.

15 Q. Okay. So, this is your e-mail of November 8
16 essentially reporting on the Side Letter Agreement and
17 the change to the EPA that you received on November 7;
18 is that right?

19 A. Yes.

20 Q. Okay. Now, just give me one minute.

21 Can you look at the first paragraph, the last
22 sentence. Here you characterize this issue as a

11:49:49 1 "wrinkle" and note that BC Hydro's position is "not
2 unexpected"; correct?

3 A. I'm just reading it. Sorry. I was looking
4 at the wrong paragraph. It's the first paragraph.

5 Q. First paragraph, yes.

6 A. Yes, I do say that, but I also--you're
7 forgetting that there was another e-mail on November 4
8 that would have provided a lot of context to this.

9 Q. Mr. Merwin, I'm not asking you about an
10 e-mail from November 4. And certainly Mr. Shor, if
11 the e-mail is on the record, he can bring this back to
12 you in redirect. Okay?

13 A. Okay.

14 Q. Okay. So this goes on to say in this Report
15 that approximately four weeks ago--so that would be in
16 the middle of October or even earlier, you had reached
17 an agreement on how this issue would be addressed;
18 right?

19 A. Yeah.

20 Q. Okay. And then it goes on to say--and I'd
21 like to direct you to the second paragraph. You
22 indicate that you reached an agreement with BC Hydro

11:51:03 1 four weeks before this e-mail that would leave the
2 issue to the BCUC to decide by negotiating a Side
3 Letter Agreement; is that right? That is how you
4 characterize this?

5 A. Yeah. That is how I characterize it, but
6 when I got back do my past e-mails, it was on that
7 October 28. So it was probably 2 1/2 weeks before we
8 had had the Agreement.

9 Q. Okay. So maybe time frame is slightly out?

10 A. Yeah.

11 Q. But this suggests that the only date between
12 BC Hydro and yourself is whether it was still
13 necessary to retain the Exclusivity Clause in the
14 Contract.

15 My understanding is that the way that this
16 was sawed off, this is essentially a drafting issue.
17 You know, is this dealt with a Side Letter Agreement
18 and is it left to the BCUC, their end? Essentially,
19 if the BCUC rules against you, you're out of luck. Or
20 is it dealt with by how it--retaining the Exclusivity
21 Clause in the Contract, and you have the Side Letter
22 Agreement on top of that?

11:52:03 1 A. No. That's not--there's a big difference
2 between what was sent on November 7. Because after
3 November 7, what the Side Letter said--and this not
4 drafting--we would need to apply to the BCUC to modify
5 the language. That's what we negotiated while I was
6 on vacation for the following days. We--the language
7 at the end of the day was soft, much softer than what
8 BC Hydro sent on Friday.

9 Q. This indicates in the third paragraph, it
10 says, second sentence, "They, however, indicated they
11 were prepared to live by the principles we established
12 several weeks ago and leave this to the BCUC to
13 decide," does it not?

14 A. Sorry. I'm just--I wasn't looking at the
15 paragraph. Yes, it does.

16 Q. Okay. So the principles remain the same?

17 A. The principles were somewhat the same, but
18 they had a much different language in the Contract.

19 Q. Okay, as often Parties do in contractual
20 negotiations.

21 And I'm just looking at the bottom paragraph
22 here. It should be noted, "Discussions continue to be

11:53:24 1 very amicable"; is that right?

2 A. Yes. And I'd like to say we have an EPA with
3 BC Hydro, and the operational discussions that we have
4 from day to day are still very amicable on our
5 Contract.

6 Q. Okay. Now, let's move on to regulatory risk
7 a little bit.

8 ARBITRATOR DOUGLAS: Just before you do, can
9 I just ask for an exhibit number for that e-mail.

10 MR. OWEN: Certainly. That is 528, R-528,
11 Professor Douglas.

12 THE WITNESS: What tab should I be looking
13 at?

14 BY MR. OWEN:

15 Q. Give me a second here.

16 Okay. Let's start with the basics. You
17 testified that BC Hydro agreed to leave the issue of
18 below-GBL sales to the BCUC in the Side Letter
19 Agreement. We've just gone over that at a broad
20 level. I understand you--some things, but I just want
21 to understand now your interactions with Fortis.

22 A. Uh-huh.

11:54:33 1 Q. My understanding of your testimony is, is
2 that FortisBC started discussing regulatory risk with
3 you once the City of Nelson deal came up, and that
4 would be in June and July of 2008; is that right?

5 A. Yes.

6 Q. Okay. So, they discussed--they started to
7 discuss the possibility of BCUC action. I think that
8 became more and more likely, and then eventually the
9 Application happened to the BCUC in September 16,
10 2008, does that sound right?

11 A. Yes. But the Application, we had a fair bit
12 of confidence because Mr. Debiegne said we were on
13 terra firma. He checked with his guys, and he said
14 that in his e-mail to me and verbally.

15 Q. Is that when he started discussing G-38-01
16 and precedents like that?

17 A. Well, initially, he didn't really--he
18 indicated that BC Hydro were going to cite some
19 precedents, but in that period leading up to
20 September 15, yeah, then I became aware of G-38-01 as
21 being an issue.

22 Q. And what about the Riverside decision,

11:55:49 1 G-113-01? Was that discussed?

2 A. I'm trying to remember. It may have.

3 Q. Okay.

4 A. It may have been discussed.

5 Q. But that's the start of your regulatory risk
6 discussions with FortisBC; is that right?

7 A. I think maybe even when we first sat down,
8 Fortis mentioned that we would need to get approval
9 from the BCUC, but the past experience has always
10 been--just like our 2000 purchase agreement with
11 Fortis, where we actually were selling below-load
12 power for a limited time to FortisBC. It's not a big
13 deal. Past experience showed you could actually start
14 selling power, and the BCUC would approve it. They
15 would accept it for approval. So, it wasn't a big--it
16 was identified. You always identify risks.

17 Q. Okay.

18 A. So, yeah, I wouldn't want to say it's not
19 identified, but the magnitude of the risk, you know,
20 you have to measure.

21 Q. Mr. Swanson--and he did talk to Mr. Debienne,
22 they said--and Mr. Debienne is not a witness, of

11:57:09 1 course. But they indicated that there was a
2 50 percent regulatory risk and that they talked to you
3 about the relevant regulatory precedents, G-38-01 and
4 G-113-01 early on, in October 2007.

5 Is that correct or no?

6 A. I don't recall that, and I don't--I don't
7 remember meeting Mr. Swanson until much, much later.
8 My principal contacts at FortisBC were Don Debiegne
9 and Dan Egolf and Corey Sinclair.

10 Q. Yes. Okay.

11 A. And I don't recall ever meeting--and I don't
12 think we ever met until much later-- Mr. Swanson. You
13 know, I don't recall that.

14 Q. Okay. Well, let's just take a look at some
15 e-mails. Can you turn to Tab 64, please.

16 A. Sure.

17 Q. This is Exhibit C-214. And could I get you
18 to go to Bates 292771.

19 A. Sorry. Maybe I'll let you...

20 Q. It's towards the end.

21 I'd like you to--direct you to the top of the
22 page dated September 26, and this is e-mail from Don

11:58:42 1 Debienne, and it's looking at the deal in-house, and
2 he's saying, you know, sort of they're going to do
3 some in-house-regulatory research. And he talks about
4 that; is that right?

5 A. Yes. Yeah. And that's sort of what I said
6 earlier.

7 Q. Okay. And could you turn to--and forgive me,
8 there is only Bates numbers here--292770, page just
9 before. And here this is October 24, 2007. He's
10 talking about a conference call with regulatory
11 external counsel tomorrow, and they're talking about
12 the interpretation of the act and how it might apply
13 to what both of you want to do.

14 A. Yep.

15 Q. Okay. And then he asks you if you were
16 available the next two days.

17 A. Yeah. And I guess we must have had a call.

18 Q. Okay.

19 A. So it wasn't a big issue, and we carried on
20 with our negotiations.

21 Q. So, there wasn't that discussion about a
22 50 percent regulatory risk? They didn't discuss the

11:59:49 1 relevant?

2 A. If there was a 50 percent regulatory risk, I
3 am sure I would have e-mailed it to my senior team--

4 Q. Okay.

5 A. --that I report to.

6 Q. I just wanted to clarify something. These
7 e-mails all run together, and I think one of the
8 reasons is these were produced maybe for one of the
9 BCUC proceedings; is that right? Did you put them
10 together?

11 A. Yes.

12 Q. And that's because you lost all of your
13 e-mails in a server migration; is that right?

14 A. Correct.

15 Q. Okay. So we don't really have your
16 contemporaneous e-mails from this time period? We
17 have these, but we don't necessarily have all of them?

18 A. I believe you have all of my e-mails to Don
19 Debienne.

20 Q. You know that none of them were lost in the
21 server migration?

22 A. I have these, and basically I remember

12:01:02 1 assembling these for a BCUC proceeding, and it was
2 just a cut-and-paste of all the e-mails from Don
3 Debienne. So conclusively I couldn't say every e-mail
4 is here, but I'm pretty darn sure it is.

5 Q. Okay.

6 A. But, you know, there is that possibility.

7 Q. Okay.

8 Okay. Let's go to what you were talking
9 about earlier. So, could you turn to Bates Number
10 292757, please, so earlier on in this same document.
11 And I want you to go to the top of that page in an
12 e-mail sort of split. At the top of the page is a
13 text, and then on the next page, you can see there the
14 header. So, there is an e-mail from July 17 from
15 Mr. Debienne. It's to you, and it says, "FYI, public
16 domain stuff. We pulled together our key people on
17 this end, and so far we're feeling like we're on terra
18 firma"; right?

19 A. Yes.

20 Q. So, this would be July 17. Now, I'd like to
21 get a sense of where we are in terms of what was
22 received.

12:02:29 1 So, before this, on June 24, Nelson, the City
2 of Nelson had filed its agreement. They were a little
3 bit ahead of you guys, I understand.

4 A. And it was quite a different agreement than
5 what we were talking about.

6 Q. Yeah.

7 A. But, yeah, they filed an agreement and--

8 Q. That attracted BC Hydro's attention; right?

9 A. Yes.

10 Q. Okay. And then BC Hydro--if we go up one, we
11 have BC Hydro's e-mail. And we don't have the letter
12 here. But it says, "Please find attached"--this is
13 July 16. And this is on Bates 292756, and it
14 says, "Please find attached BC Hydro's letter to the
15 BCUC dated July 16, 2008, re: the FortisBC umbrella
16 agreement."

17 And that's the Nelson agreement; right?

18 A. Yeah.

19 Q. So essentially we have--this came in on
20 July 16, sort of in the afternoon, and then a day
21 later we have Don Debiegne sending a one-line e-mail
22 saying that you're on terra firma; right?

12:03:33 1 A. Yes.

2 Q. All right. That was the assessment that you
3 were relying on?

4 A. That was their assessment at the time.

5 Q. Okay.

6 Okay. Let's go to Tab 65, please. This is a
7 presentation entitled "Celgar Electricity
8 Opportunities," from July 2007, and this was
9 presented--was this presented to your Board of
10 Directors?

11 A. You know what? It could very well be, but
12 normally--and maybe this a common practice today. It
13 normally says "To the Board of Directors," but it may
14 be.

15 Q. Yeah. Okay.

16 A. It's definitely an internal management
17 presentation, for sure.

18 Q. Okay. Well, let's turn to Page 9, please.

19 A. Uh-huh.

20 Q. And here we have a discussion of the
21 electricity arbitrage opportunity or Arbitrage
22 Project, and under "Risks," it indicates "FortisBC

12:04:50 1 purchases a portion their electricity supply from
2 BC Hydro at \$29 a megawatt hour and resells it at \$36
3 a megawatt hour. These purchases would significantly
4 increase with this transaction"; correct?

5 A. Yes.

6 Q. Okay. An agreement is reached with Fortis,
7 it would require BCUC approval, at which point
8 BC Hydro will aggressively challenge the Contract
9 claim claiming harm to its ratepayers."

10 A. Uh-huh. Yes.

11 Q. Go ahead, Mr. Merwin.

12 A. Sorry.

13 Q. Please go ahead.

14 A. I just was saying yes.

15 Q. Good.

16 So, you are aware that BC Hydro would have a
17 real problem with this type of transaction at this
18 time? It says they would aggressively challenge the
19 Contract.

20 A. Yes. And then in the second paragraph, I put
21 the next layer how BC Hydro will aggressively
22 challenge us, and they will block transmission out of

12:05:51 1 B.C. And this all comes back to our 2006 experience--

2 Q. Mr. Merwin, I am sorry, you are not answering
3 my question. Okay. You are now going to a different
4 paragraph, and you're talking about something entirely
5 different. And to be honest--

6 A. I'm sorry. I was just providing some
7 context.

8 PRESIDENT VEEDER: Let's stop this. Just
9 answer the question, but do you remember the question?

10 THE WITNESS: Could you re-ask it?

11 PRESIDENT VEEDER: Do you remember the
12 question?

13 MR. OWEN: I think I got--

14 THE WITNESS: No.

15 PRESIDENT VEEDER: Okay. Well, let's ask the
16 question.

17 BY MR. OWEN:

18 Q. Well, my point here was, you were aware that
19 Hydro would be--aggressively challenge this. It would
20 be a big problem for them early on?

21 A. We were aware of that, yes.

22 Q. Okay. Okay. Can you turn to the next page,

12:06:38 1 please.

2 A. Sure.

3 Q. And here you state: "There's a risk the BCUC
4 will rule in favor of BC Hydro Complaint and prevent
5 Celgar from executing." Then you say under
6 that, "There's a risk that the B.C. Government could
7 step in with an OIC, or an Order in Council
8 regulation, and prevent Celgar from executing"; is
9 that right?

10 A. Yes.

11 Q. Okay. And, again--

12 A. Can I provide some context?

13 Q. Yes, you may.

14 A. Okay. Thank you.

15 Again, this was at the point when we assumed
16 we were the only pulp mill in British Columbia that
17 would be allowed to buy electricity for our pulp mill
18 while simultaneously selling it. In 2007, we had no
19 idea that others could do exactly what we were talking
20 about.

21 Q. Okay. I don't think there is any pulp mill
22 in British Columbia that just basically gets to sell

12:07:38 1 everything and buy anything, but that's--I'm not going
2 to--I don't want to argue with you, so I'm going to
3 move on.

4 Can you turn to Tab 66, please.

5 A. Okay.

6 Q. This is an e-mail from Don Debienne, and it's
7 dated December 19, 2007, and it's forwarding you a
8 revised term sheet; is that right?

9 A. Yes.

10 Q. Okay. If you turn to Tab 67. And
11 that's--sorry, for the record, that is R-242.

12 And if you turn to Tab 67, this is--

13 A. Sorry, I went to Tab 68.

14 Q. Tab 67 indicates this is--and this is R-243.
15 This is the draft of the term sheet, and in here you
16 are having a discussion about peaking sales, and
17 peaking sales, I understand it, was sort of the time
18 of the year when demand is high on Fortis's system,
19 and I think they wanted the right to sort of scale
20 back on that demand under the Contract, under the term
21 sheet; is that right?

22 A. They wanted to shave off their highest cost

12:09:01 1 purchases and have an agreement with us at a certain
2 price--

3 Q. Okay.

4 A. --To shave off those purchases. So, but in
5 the end that peaking sales would--we were looking to
6 enter into a long-term agreement with another buyer.
7 The final agreement gave us a lot of flexibility in
8 that. If it was available, we could do it, but if--we
9 were contractually bound, that would be unavailable
10 for Fortis.

11 Q. Can you turn to Section 7.1, which concerns
12 peaking sales, please. And I'd like to direct your
13 attention that to the bottom of this provision, and
14 there's some redline there. It just in some bold and
15 then there's some redline there, and it starts with
16 "Brian."

17 And so this is Don Debienne talking to you in
18 this redline; is that right?

19 A. I would assume so, yeah, because it was him
20 who was sending me this--these contracts, yeah.

21 Q. Okay. So he says, "This one still causes a
22 major concern from a cost perspective, if we were

12:10:16 1 unable to peak shave and have to absorb
2 40-plus megawatts of incremental load under all
3 circumstances, which would likely be the case if you
4 bid all the power into BC Hydro"--I think he means
5 Bioenergy Call there.

6 A. Uh-huh.

7 Q. "It would work well if you held back
8 25 megawatts of the total generation for export to the
9 market and the rest to BC Hydro. That would enable
10 25 megawatts of peaking sales to be assessed with some
11 degree of certainty, and would be consistent with the
12 principles of the Tolko Decision, which were more
13 restrictive; i.e., thou shalt retain XX megawatts for
14 internal mill load."

15 A. Yeah. That's what it says.

16 Q. So this refers to BCUC Order G-113-01, does
17 it not? That's the Tolko (Riverside) Decision?

18 A. I guess it would, but at the time I wasn't--I
19 don't think I was familiar with the decision. I was
20 familiar with Tolko at the time.

21 Q. Okay. So, he's talked about how--in a very
22 sort of colloquial way how--

12:11:18 1 A. Uh-huh.

2 Q. --you know, there is this Tolko Decision, and
3 it requires you to retain megawatts, essentially have
4 a baseline because that's what happened in that
5 particular decision. He didn't raise any questions
6 about it. This just came up. He seems to assume that
7 you know exactly what he's talking about.

8 A. Yes. He was referring to what Tolko
9 (Riverside) could buy and sell some of their power.
10 And that's--everyone knows that Tolko (Riverside) had
11 some ability to sell their power.

12 Q. It says "thou shalt retain" some megawatts
13 for internal mill load.

14 A. Uh-huh.

15 Q. That means there was a baseline established,
16 just like there was a baseline established for Howe
17 Sound in G-38-01.

18 This is referring to a decision concerning
19 regulatory risk, isn't it, sir?

20 A. I wouldn't say it's--let me have a look here
21 again, but I wouldn't say it's referring to a
22 regulatory risk. It's referring to the cost to

12:12:21 1 FortisBC--

2 Q. That's not--I'm sorry.

3 A. --because the discussions were always on cost
4 to FortisBC. And we carried on with our discussions,
5 and it was not an issue anymore for them.

6 Q. He clearly assumes that you know about this
7 regulatory order and that you're very familiar with
8 it.

9 A. He clearly talks about--well, he does use the
10 word "Tolko Decision," so, you know, I was aware of
11 what Tolko was doing at the time.

12 Q. Okay, Mr. Merwin.

13 MR. OWEN: Perhaps this would be a good time
14 for lunch, Mr. President. I'm just cognizant of the
15 time and the amount of time I've taken with
16 Mr. Merwin, and perhaps this would afford me an
17 opportunity to economize.

18 PRESIDENT VEEDER: Well, that's the
19 Application which never fails, but I'm not sure lunch
20 is ready, is it at quarter past 12:00?

21 MR. OWEN: Is it? I wasn't aware that it
22 was--

12:13:26 1 (Comment off microphone.)

2 PRESIDENT VEEDER: Usually, it's at
3 lunchtime. I'm told that in another 15 minutes, lunch
4 will be ready.

5 MR. OWEN: Okay.

6 PRESIDENT VEEDER: Can you go on for a few
7 more minutes or that is awkward?

8 MR. OWEN: Yes. Certainly. Certainly.

9 PRESIDENT VEEDER: Let's try and break at
10 12:30 then.

11 BY MR. OWEN:

12 Q. Okay. Mr. Merwin, I am going to--

13 PRESIDENT VEEDER: Forgive me. I've just
14 been told lunch is ready. Does that change your
15 approach?

16 MR. OWEN: That would. It might just make
17 this a little bit more focused.

18 PRESIDENT VEEDER: Let's break now. We'll
19 come back at quarter past 1:00. Again, as with
20 before, please don't discuss the case or your
21 testimony away from the Tribunal. Thank you.

22 (Whereupon, at 12:16 p.m., the Hearing was

12:14:28 1 adjourned until 1:15 p.m., the same day.)

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1 AFTERNOON SESSION

2 PRESIDENT VEEDER: Let's resume.

3 MR. OWEN: Thank you, Mr. President.

4 CONTINUED CROSS-EXAMINATION

5 BY MR. OWEN:

6 Q. Mr. Merwin, how are you? You had a good
7 lunch. Sorry you had to spend it alone again.

8 A. That's all right.

9 Q. So, I just want to return now a bit to the
10 regulatory proceedings and just briefly touch on
11 G-48-09, and that was issued in May 2009; right?

12 A. Yes.

13 Q. And you characterized that BCUC Decision as
14 imposing a net-of-load standard; correct?

15 A. Yes.

16 Q. And in Paragraph 124 of your First Witness
17 Statement, you said that Celgar Mill was the only pulp
18 mill against which there has been taken regulatory
19 action to foreclose embedded-cost utility purchase to
20 meet load while self-generating electricity; is that
21 right?

22 A. I didn't look at it, but I'm sure--

01:21:34 1 Q. Yes, yes, absolutely.

2 (Overlapping speakers.)

3 Q. You've taken--you're only the pulp mill
4 against which there's--regulatory action was taken to
5 foreclose embedded-cost utility purchases to meet load
6 while "self-generating electricity"; is that right?

7 A. That sounds about right, yeah.

8 Q. I'd like to turn to G-188-11, and that was a
9 complaint that Celgar lodged against FortisBC.

10 A. Which tab?

11 Q. Oh, sorry, I'm signaling a change of subject.

12 A. Okay.

13 Q. I haven't got a tab yet.

14 A. Okay.

15 Q. Now, here the BCUC agreed that you are
16 entitled to some amount of power of Fortis's
17 embedded-cost power while selling power; is that
18 right?

19 A. Yes.

20 Q. Okay. And it directed FortisBC to develop a
21 rate for Celgar and other FortisBC self-generators
22 based on Rate Schedule 31, but excluding BC Hydro PPA

01:22:36 1 Power?

2 A. Correct.

3 Q. Okay. This meant that you could add this
4 right now to buy all the power requirements from
5 FortisBC and sell all those generation to third
6 parties; is that right?

7 A. That's what it was hopefully going to do, but
8 it never got that far.

9 Q. Okay. And that's because the NECP rate
10 proceeding was suspended?

11 A. Correct.

12 Q. Can you turn to Tab 81, please.

13 A. Eighty-one?

14 Q. Eighty-one.

15 A. Ah, it's this one.

16 Q. So, this is a memorandum dated December 7 you
17 prepared for your Board of Directors; correct?

18 A. Yes.

19 Q. And here--just let's go to the second
20 paragraph for a second.

21 Earlier, we covered briefly this change from
22 Rate Schedule 33 to Rate Schedule 31, and you

01:24:04 1 indicated that was because there are two provisions of
2 the electric tariff that do not comply with; there was
3 one that wasn't an executed or signed agreement
4 between and you FortisBC, and I know there was an
5 agreement that you were quite close on and sort of
6 operating on the principles on, there was that
7 problem, and the BCUC also found that there wasn't a
8 good load factor; is that right?

9 A. And they moved us from embedded-cost rate
10 RS 33 to RS 31.

11 Q. Okay. So, here we have your
12 characterization. The negotiations were frustrated by
13 Fortis's adversarial monopolistic behavior against
14 Celgar which included imposing a rate on Celgar that
15 increased Celgar's annual power purchase costs from
16 1 million per year to 3 million per year. Is that
17 what you were referring to?

18 A. No.

19 Q. Okay.

20 A. That's part of the story.

21 Q. Okay. Let's move down to the third
22 paragraph, and you characterized G-188-11 as a major

01:25:06 1 victory; is that right?

2 A. Yes.

3 Q. Okay. Let's look at some the reasons below
4 this that you give.

5 So, the first one is Celgar is able to buy
6 all its power requirements from Fortis and free to
7 sell all of its output generation to third parties;
8 right?

9 A. Yes.

10 Q. Turn over to the second page, next page,
11 please.

12 Now, let's look at the second point. Here
13 you report that the BCUC has found that you're
14 entitled to some of FortisBC's embedded-cost power and
15 some marginal power. Now, I want to make sure the
16 Tribunal understands this.

17 By FortisBC's embedded-cost power, you're
18 referring to its hydroelectric facilities, like its
19 own resource stack, probably its long-term PPA with
20 Brilliant; is that right?

21 A. Yes.

22 Q. And by marginal cost power, you're referring

01:25:56 1 to market purchases they might make on Mid-C?

2 A. Yes.

3 Q. Okay. Now, you indicate that you believe
4 that the marginal cost to FortisBC will effectively be
5 equivalent to what you can receive on the market; is
6 that right?

7 A. The marginal cost to FortisBC, it all depends
8 if they're buying long-term or they're buying
9 short-term.

10 Q. Okay. It says here, just I would direct you
11 to the last sentence of this. It says here: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >>

15 Does it say that, sir?

16 A. Yes, it does.

17 Q. Okay. And you [REDACTED]

[REDACTED] >>; is that

19 right?

20 A. We wanted the same access to embedded-cost

21 power as everyone else has, << [REDACTED]

[REDACTED] >> that's just getting embedded-cost power

01:26:56 1 like everyone else.

2 Q. Now, let's look at Point 3: "The 93 PPA
3 electricity will be excluded from the new rate," and
4 you indicate this will result in a slightly higher
5 cost. Can you describe to me the type of economic or
6 financial analysis you did to determine that that
7 would be a higher cost.

8 A. The analysis is basically that component,
9 it's marginal-cost power, so they were either going to
10 be buying it on long-term contracts or at the market
11 as you asked me earlier and that is market power.
12 They were going to be buying market power.

13 Did that answer your question?

14 Q. I'm not sure that it entirely did.

15 A. Could you ask me again.

16 Q. I'm just asking you: Did you do a financial
17 or economic analysis to confirm this conclusion?

18 A. We wouldn't need to because it's very clear
19 that it's going to be market power, and the market,
20 just to be clear, the Mid-C market, you know, at times
21 has been as, you know, in the early thousands had been
22 well over multiple hundreds of dollars per hour, so

01:28:14 1 it's very different than embedded-cost power, which is
2 what everybody else in British Columbia has access to.

3 Q. Okay. Now, let's just move underneath this.
4 Under Point 2, you had indicated you needed to
5 determine the amount of FortisBC's embedded-cost power
6 you were entitled to under the new rate, so let's turn
7 to the section below under "next steps," and it's
8 entitled "improved negotiating position with
9 FortisBC."

10 A. Yeah.

11 Q. Here, you indicate that you << [REDACTED]

[REDACTED]
[REDACTED] >> is that right?

14 A. Yes, and << [REDACTED]

[REDACTED]
16 Can I--

17 Q. No, I did not ask you about the << [REDACTED]
[REDACTED] >>. Mr. Shor could ask you about that.

19 A. I was asking the President if it's okay if I
20 explain.

21 PRESIDENT VEEDER: Answer the question, and
22 then let's see where we go.

01:29:16 1 THE WITNESS: Okay.

2 BY MR. OWEN:

3 Q. And when FortisBC is an applicant in a BCUC
4 proceeding, it normally bears part of the costs for
5 intervenors, doesn't it?

6 A. It bears the cost subject to the BCUC
7 reviewing whether or not that intervener
8 developed--provided value to the Hearing. There's a
9 whole set of guidelines that the panel or the Tribunal
10 decides and assesses, yes. And then if they decide
11 that intervenor has given value, then FortisBC is
12 ordered to pay part of the cost of that intervenor.

13 Q. Normal course because the BCUC is a public
14 interest-type proceeding, and they want to encourage
15 participation from, you know, B.C. pensioners
16 association, other public interest groups. The normal
17 practice is for an applicant like FortisBC or BC
18 Hydro, the larger utilities they normally bear part of
19 the cost. That would be the normal practice, wouldn't
20 it?

21 A. No. The practice is to assess each
22 ratepayer--there's a whole multiple pages--two pages

01:30:24 1 of rules describing how each intervenor is assessed,
2 whether they deliver value in a proceeding, and we
3 were there multiple times, and every time--maybe not
4 every time, but almost every time, the Utilities
5 Commission assessed and decided we had done that. We
6 had met the threshold.

7 Q. Okay. I'm sure maybe some of the other
8 witnesses can come to this, but essentially this is
9 something about bringing << [REDACTED]

[REDACTED]

[REDACTED] >> isn't it?

12 A. No, it's not. And I'd like to explain now.

13 Q. Go ahead.

14 A. Celgar's rate went up in 2011, the rate that
15 we were buying power from Fortis, from about a million
16 dollars a year, and it's actually over \$4 million a
17 year.

18 Any time, any of these actions that we were
19 participating in impacted our rate because now we're
20 paying over \$4 million a year in costs per year. It's
21 not a negotiation with your utility. It's if Fortis
22 is deciding to buy other utility assets and there is

01:31:45 1 an increased costs to us, 1, 2 percent, 5 percent, it
2 has a 40, 50, hundred thousand dollar a year
3 additional charge on us.

4 So, all of the proceedings we were
5 participating in had significant financial impact on
6 our purchases from Fortis, so that is very easily how
7 we justified participating, and--

8 Q. So--go ahead.

9 A. Thank you. I think I finished.

10 Q. So, Number 3, << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] >>

14 A. Yeah. For example, their acquisition of the
15 City of Kelowna's power assets, which we were the only
16 ones who raised this issue, and FortisBC was trying to
17 put a \$55 million acquisition on to its rate base,
18 which would have increased our rates, and we were the
19 only ones who highlighted this to the Utilities
20 Commission, and they reduced the amount that Fortis
21 was allowed to put on the rate base by I think over
22 30 percent.

01:33:03 1 So, yeah, those types of issues, you know,
2 you have to be active to manage your utility costs in
3 B.C.

4 << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] >>

10 Q. Okay. Let's turn now to the NECP.

11 So, there are two actions just very briefly
12 after G-188-11 that I'd like to discuss, the first is
13 G-202-12, and there's the NECP Rate Rider proceeding
14 that was suspended as you indicated. And that did
15 away with your rate.

16 In BCUC order G-202-12, that approved
17 FortisBC's proposal to let a self-generator such as
18 Celgar nominate up to 100 percent of its load for
19 service; is that right?

20 A. I don't think that was Fortis's proposal, but
21 it approved--did you say 188-11?

22 Q. No, I said 202-12. They came back and they

01:34:23 1 said, you know what, any self-generator can nominate
2 up to 100 percent of its load for service; that's
3 right?

4 A. I believe so.

5 Q. Now, FortisBC then developed a detailed
6 proposal for this rate, which it referred to as the
7 non-PPA, so that's non-BC Hydro PPA embedded-cost
8 power Rate Rider; is that right?

9 A. They developed a rate proposal to go in front
10 of the Utilities Commission, yes.

11 Q. Okay. And essentially, my understanding of
12 the NECP Rate Rider is it gives you a rate based on
13 all of FortisBC's embedded-cost resources, its
14 hydroelectric dams, everything else besides BC Hydro's
15 PPA Power; is that right?

16 A. No, that's not right.

17 Q. Why is it not right?

18 A. Okay. The reason it's not right is what it
19 was placing on us was actually a market rate, and that
20 is when you go through, and I believe probably in one
21 of these documents--I'd have to flip through to find
22 which one--I don't want to get ahead of myself--but we

01:35:41 1 very clearly said that essentially what FortisBC was
2 proposing in their Rate Rider, and you also have to
3 keep in mind that FortisBC, during this period, had
4 proposed a stand-by rate for us, too, three times, and
5 it was declared discriminatory and unjust. So, they
6 had proposed a rate that was essentially a market
7 rate, and we were very clear on that, so it was not
8 based on embedded-cost rates. It was a market rate.

9 Q. Part of the power would be sourced from
10 embedded-cost sources; yes?

11 A. Part of the power would be sourced, but we
12 would be paying a market rate for that power, so it
13 doesn't really matter where it's sourced from. If
14 you're paying the market rate, it's a market rate.

15 Q. What does Non-Embedded-Cost Power stand for?
16 What does an embedded-cost power stand for?

17 A. What does embedded-cost power stand for?

18 Q. Yeah.

19 A. Embedded-cost power is the sum--the cost from
20 all of their assets sort of put into a pool, all of
21 their power resources put into a pool, and, you know,
22 you got \$10 power, you've got \$50 power, and you got

01:37:03 1 \$100 power in there, and you kind of average that out,
2 that is embedded cost.

3 Now, what Fortis was proposing was they would
4 be taking the power from that resource base and
5 charging us embedded costs; and, you know, at the
6 time, FortisBC talked about it being about the same as
7 embedded costs, which is not true because it would be
8 in this year in these hours potentially, but it's
9 market. So, as soon as the market price changed, so
10 did our cost, and that's not embedded costs power.
11 Our costs would change with the market, completely
12 with the market.

13 PRESIDENT VEEDER: Can I intervene because
14 I'm not sure I've understood your answer. You say
15 what Fortis was proposing is that they would be taking
16 the power from that resource base and charging us
17 embedded costs.

18 Do you mean embedded costs?

19 THE WITNESS: No. They would be charging us
20 market costs.

21 PRESIDENT VEEDER: Exactly. Thank you.

22 THE WITNESS: Thank you.

01:38:09 1 BY MR. OWEN:

2 Q. Just one minute, Mr. Merwin.

3 (Pause.)

4 Q. All right. Let's move forward a little bit.

5 The NECP rate, the floor of that rate--let's
6 see if we can agree on this--was Rate Schedule 31; is
7 that right?

8 A. I believe so, yes.

9 Q. Okay. And when you entered into your 2008
10 PSA, Power Supply Agreement, between FortisBC and
11 yourself, and you were hoping that you would be able
12 to sell, and then there is G-48-09, the vast majority,
13 36 megawatts of the 40 megawatts available under that
14 Power Supply Agreement was going to be Rate Schedule
15 31; is that right?

16 A. Correct, yes.

17 Q. Okay. And FortisBC explained that the NECP
18 rate would only be higher than Rate Schedule 31 in the
19 event there was an additional cost or delta there in
20 terms of, you know, the resources that were used to
21 form that rate.

22 So, basically, you know, if Rate Schedule 31

01:40:17 1 was high enough, there would be no additional cost to
2 you; is that correct?

3 A. If the market price they were buying at was
4 below RS 31, then it would have been RS 31. If the
5 market price they were buying at was over, the Rate
6 Rider essentially made it that we were paying the
7 market price.

8 Q. And, to be clear, our contention is that
9 that's not the case, that it's not just a market rate,
10 but what I want to explore with you--can I turn you to
11 Tab 87, please. So, this is a letter from FortisBC,
12 dated June 4, 2014.

13 Can you turn to Page--

14 MR. OWEN: And sorry, for the record, it's
15 Exhibit 501, R-501.

16 BY MR. OWEN:

17 Q. And just turn to the first page of text.
18 It's actually entitled Page 2 up at the top. And I
19 would like you to look at the second paragraph, the
20 last sentence, and it says here: "As FortisBC has
21 confirmed on a number of occasions, even if the
22 requested NECP Rate Rider were in effect, given the

01:41:33 1 state of power markets for the foreseeable future,
2 there would be no charge attributable to NECP Rate
3 Rider even if the self-generated customer were
4 exporting power not in excess of its load."

5 So, they're saying there is no additional
6 charge above RS 31?

7 A. Well, they're speculating--if I was able to
8 predict what the market would do all the time in the
9 future, I would be betting the market, but no one can
10 predict what the market is going to do for the
11 foreseeable future.

12 So, the point is what they're saying is they
13 have a prospective that the market rates are going to
14 be low for the foreseeable future. And they're also
15 stating that there is a lack of urgency here to
16 resolve this.

17 And we're talking about short-term market.
18 Having the ability to enter into long-term
19 negotiations is a lot different because FortisBC and
20 every utility has a long run marginal cost.

21 Q. Okay, but for the next five years, it would
22 be fine?

01:42:43 1 A. I'm not going to speculate, and that is--

2 Q. And you--sorry, go ahead.

3 A. That is the fundamental issue with the NECP
4 Rate Rider. It was a market rate.

5 Q. It was not a market rate, but I'm not going
6 to argue with you. I just did. I'm sorry.

7 Okay. And Celgar never would have taken the
8 position that five years into the future it would be
9 fine in terms of market rates?

10 A. Five years in the future?

11 Q. Yeah.

12 A. It might be, but that's speculating. That is
13 not an embedded-cost rate. That's a market rate.

14 Q. You wouldn't speculate like that?

15 A. (Witness shrugs.)

16 Q. Could you answer?

17 A. Not on setting our embedded-cost rate for the
18 power that we're going to buy for our power plant.
19 So, the power that we're going to be buying for our
20 pulp mill so that we can sell the power out of our
21 power plant for the next 15 or 20 years.

22 Q. Okay. And you talked about the suspension of

01:43:59 1 the NECP. Could you turn to Tab 88, please.

2 A. Tab 88? Okay.

3 Q. And here this is the BCUC Order G-107-14, and
4 this is the Order suspending the NECP proceedings.

5 Could you turn to Recital H, please. It's on the
6 second page.

7 A. Yes, I'm there.

8 Q. Here it indicates that Celgar--

9 MS. GEHRING FLORES: Excuse me, is there an
10 exhibit number?

11 MR. OWEN: Sure. Exhibit R-463.

12 BY MR. OWEN:

13 Q. Here it indicates Celgar's submission filed
14 on June 10th also supported FortisBC's position that
15 it should be suspended, qualified that it didn't
16 interrupt with your retroactive application of rates,
17 which was essentially the refund that you might get if
18 you get a stand-by rate, is my understanding. So you
19 supported this suspension of the NECP?

20 A. And we supported it on the basis that there
21 was--the other issue that was in front of the
22 Utilities Commission was we had raised the issue,

01:45:10 1 well, we're entitled to embedded-cost power. Why is
2 there a restriction on a portion of the embedded-cost
3 power resource stack? So, yes, we did, but we
4 qualified it, and I believe in our letter, which I'm
5 sure is an exhibit in this proceeding, we provided a
6 lot more of an explanation behind that as well. We,
7 I'm sure, in that letter, we stated our opinion just
8 as I stated here, what an NECP Rate Rider really
9 meant.

10 Q. So, we don't know if this would be a good
11 deal--you don't know if this would have been a great
12 deal for your company. This BCUC proceeding could
13 have gone forward and you could have a rate right now?

14 A. Well, if the BCUC proceeding went forward, I
15 would say it's not possible that we would have a rate
16 right now because we still don't have a stand-by right
17 yet.

18 Q. I know there are all sorts of issues around
19 that stand-by rate to you. Okay. We don't have to
20 get into the stand-by rate for purposes of this
21 proceeding.

22 Mr. Merwin, I would just like to touch

01:46:14 1 briefly on the data discrepancy identified by Pöyry,
2 the Second Expert Report.

3 A. Yes.

4 Q. You testified yesterday that was due to the
5 breakdown of a meter on your generator.

6 A. Yes.

7 Q. Can you tell me exactly when that problem
8 started?

9 A. Exactly when that problem started? When I
10 saw it in the Witness Statements, I went back and
11 looked at my old e-mails. So, I'm thinking it was in
12 the first half of the year, maybe.

13 I honestly--I don't know the exact date, but
14 I can check.

15 Q. Okay. And when did it get fixed?

16 A. I believe we replaced the meter. And this is
17 just looking at my past e-mails, I saw an e-mail
18 stating that the meter was going to be replaced in
19 early--early--early in 2008.

20 Q. Okay. You don't mind if we chat with
21 FortisBC about this just to confirm everything and
22 wrap this issue up?

01:47:14 1 A. Sure, no problem.

2 Q. Okay. I would like to turn now to just a few
3 other things, Mr. Merwin. Could you turn to Tab 94,
4 please. Exhibit R-341.

5 Actually, earlier you testified--just trying
6 to remember. Earlier you testified that you knew that
7 BC Hydro would oppose the Arbitrage Project; is that
8 right? From your 2002--your 2007 Board of Directors
9 briefing? Do you remember that?

10 A. Yeah.

11 Q. Okay. And, so, you knew that your Arbitrage
12 Project would cause some problems as early as 2007?

13 A. They've always stopped us from selling our
14 power or BC Hydro has. So, yeah, there was going to
15 be problems.

16 Q. So, when BC Hydro raised objections before
17 the BCUC to transactions with the City of Nelson and
18 Celgar in June 2008, that wasn't a surprise then?

19 A. It wasn't a surprise?

20 Q. It wasn't a surprise.

21 A. In the way they went about it, it was.

22 Q. Okay. This is a letter sent to Erica

01:48:26 1 Hamilton at the BCUC, the Secretary of the Commission,
2 concerning it, and it was filed after the City of
3 Nelson agreement was filed with the BCUC.

4 The first paragraph you note that you will be
5 filing an agreement shortly, but I would like to take
6 you to the last paragraph. Here, you state, I quote:
7 You do not understand "why BC Hydro has taken an
8 interest in these agreements."

9 A. That's what I say, yes.

10 Q. Okay. That doesn't seem consistent with the
11 fact that you knew that BC Hydro would likely oppose
12 this project?

13 A. Yes, I guess--I guess so, but the manner in
14 which they took their actions was not--was not how we
15 were expecting it. It would be their normal course of
16 action, walking, blocking transmission, doing those
17 kinds of activities.

18 Q. They can just block transmission?

19 A. Yes, they can.

20 Q. Okay. Now, Mr. Merwin, you also testified
21 earlier and we touched on this, we looked at
22 Mr. Gandossi's testimony, and we saw that when Celgar

01:49:43 1 acquired the Mill in 2005, its analysis focused on the
2 pulp production, and it didn't separately analyze the
3 electricity sales; is that right?

4 A. Correct.

5 Q. Okay. Can you turn to Tab 95, please. This
6 is a letter I believe you've seen before, it was sent
7 to Minister Coleman. Are you familiar with this
8 letter? It was just before January 2012, just before
9 your NAFTA Notice of Intent was filed.

10 A. I'm trying to remember. There is not
11 a--there is no--there is no heading on my version or
12 address or to whom--I'm sorry, so I just--

13 Q. No problem. Let me just see if I can help
14 you with that.

15 Can you turn to Tab 97, please.

16 A. Okay.

17 Q. So, here we have an exchange of e-mails about
18 Mercer's Briefing Note, and here, if I could direct
19 you to the bottom--sorry, Tab 97. And you know what?
20 I'm sorry I don't have the R-number, but I will get it
21 for the record. I think it might be R-46. But at the
22 bottom here you've got an e-mail to Minister Coleman

01:50:58 1 and you guys were exchanging Briefing Notes with the
2 Ministry of Energy and Mines at the time.

3 Does that ring a bell?

4 A. We were--at this point in time, we were--I
5 don't think on January 23rd we were exchanging a
6 Briefing Note.

7 Q. Okay. I've got--go up to Les MacLaren, near
8 the top here, January 24th, forward a conference call
9 tomorrow regarding Celgar's energy issues. Here is
10 Mercer's BN. "I will seek a more detailed version,
11 Les."

12 Does that refresh your memory?

13 A. Okay. But I'm just trying to...

14 Q. Well--

15 A. I'm just looking at this and I would like to
16 be able to say yes or no, but I don't see--our normal
17 Briefing Notes have a heading on the top, so I'm not
18 totally sure whether we sent this or not and whether
19 or not this was to Minister Coleman.

20 Q. Maybe we could look into it and find the
21 relevant reference and find everything.

22 Can you go back and look at the Briefing Note

01:52:08 1 at Tab 95, please.

2 A. I'm there.

3 Q. Okay. I would just like to draw your
4 attention to the first paragraph under "discussion."
5 And here it says: "While this is a significant
6 competitive disadvantage, prior to the Commission
7 proceedings that began in 2008 and culminated in 2009,
8 there was one offsetting benefit to being a FortisBC
9 customer, that Celgar had the ability to sell any or
10 all of its generation output and FortisBC had an
11 obligation to serve Celgar's mill load while it did
12 so. These principles were foundational to our
13 purchase of the Mill in 2005."

14 Is that a true statement, sir?

15 A. Well, based on--I guess it wasn't.

16 Q. Okay. I would just like to turn to one more
17 thing. You testified earlier that BC Hydro's GBL of
18 40 megawatts was unreasonable, and you never would
19 have estimated that such a number could be a GBL; is
20 that right?

21 A. Yes.

22 Q. Can you go back to Tab 16, please.

01:53:29 1 A. Tab 60 or 16?

2 Q. 16.

3 Now, you had discussions with < [REDACTED]
4 about both your Arbitrage and your Green Energy
5 Project. Can you turn to Page 17, please.

6 A. I'm there.

7 Q. Can you read the first bullet underneath
8 "discussion."

9 A. "Celgar has also been studying a larger
10 opportunity which would essentially be an additional
11 40-megawatt hours more than the first project."

12 Q. That was your estimate for the Arbitrage
13 Project?

14 A. That was when--that was--there was the
15 Biomass Realization Project and there was the Green
16 Energy Project, and that is how we were splitting the
17 Projects, and we were consistent when we split the
18 Projects in 2008 in new applications.

19 Q. Thank you, Mr. Merwin.

20 MR. OWEN: Your witness.

21 PRESIDENT VEEDER: Do you need a short break
22 to get organized?

01:54:57 1 MR. SHOR: I don't because I'm not doing
2 anything.

3 PRESIDENT VEEDER: I wasn't looking at you.

4 (Laughter.)

5 MS. GEHRING FLORES: Yes, that would be very
6 appreciated.

7 PRESIDENT VEEDER: Just for planning
8 purposes, how long do you think you might be?

9 MS. GEHRING FLORES: I don't think I will go
10 much over--for my break or for the redirect?

11 PRESIDENT VEEDER: For the redirect.

12 MS. GEHRING FLORES: I don't think I plan on
13 going much over 15 minutes.

14 PRESIDENT VEEDER: Would you like a break?
15 I'm not insisting.

16 MS. GEHRING FLORES: I think I would just
17 like five minutes.

18 PRESIDENT VEEDER: Let's have a five-minute
19 break.

20 MS. GEHRING FLORES: Yes.

21 (Brief recess.)

22 PRESIDENT VEEDER: Let's resume.

02:06:05 1 We're still in open session. So, if you want
2 us to go into closed session, you must say so.

3 MS. GEHRING FLORES: Thank you.

4 REDIRECT EXAMINATION

5 BY MS. GEHRING FLORES:

6 Q. Mr. Merwin, I would like to direct you to
7 Pöyry Exhibit 25. It's going to come up on our
8 screens. It's at Page 31 Table 12. About five or six
9 lines down--

10 A. Yes, I see that. The energy benefits for the
11 Blue Goose Project which are based on reducing some
12 purchases, but also increase--it's basically
13 increasing our generation, the benefits of increasing
14 our generation output.

15 Q. Thank you.

16 Also, there was a lot of discussion during
17 your cross about BC Hydro labeling Celgar's
18 self-generated electricity as stranded. Could you
19 please explain the context or why BC Hydro told Celgar
20 that its electricity was stranded.

21 A. Why BC Hydro explained that our electricity
22 was stranded was, very simply, they did not want us

02:07:32 1 selling our power into the market. They believed that
2 this power should flow into the Fortis system and
3 displace FortisBC purchases--FortisBC purchases, and
4 that basically means they get to reduce the amount of
5 3808 power they provide FortisBC.

6 Q. So, when you asked them if you could sell
7 your electricity to third parties, what did they say?

8 A. They said it was--they said it was stranded.

9 Q. Could you pull up, please, Exhibit R-127. I
10 believe it's Page 4 of that document. Page 4.

11 A. Yeah.

12 Q. And there was a lot of talk about Celgar's
13 normal generation levels. Did BC Hydro measure your
14 normal or your optimal level of generation in 2007
15 when calculating your GBL?

16 A. They measured our optimal.

17 Q. How much did Celgar actually self-supply in
18 2007?

19 A. Can you zoom in on the historic data? I
20 can't see it very well. Sorry.

21 In 2007, we self-supplied--I'm just looking
22 at this. Just give me one second.

02:09:24 1 We self-supplied--you would have to calculate
2 it. It would be 349,275 minus 22,560. That's what we
3 self-supplied our power plant.

4 Q. Thank you, Mr. Merwin.

5 I would like to pull up Exhibit R-134, and
6 that's Page 2.

7 You had referred to--sorry, that's C-134.
8 Excuse me. You had referred during your
9 cross-examination to a document, a BC Hydro document
10 from 2002 that referred to a period of multiple years
11 that they would consider to establish a GBL. And I
12 believe--I'm pulling up C-134 at Page 2.

13 Is this the document that you were referring
14 to?

15 A. I'm just--just give me a second. It's hard
16 to see.

17 Yes.

18 Q. And could you read that line.

19 A. "Historical operating data for each electric
20 generator in megawatt hours as daily average listed by
21 month for a minimum of three years that represent
22 long-term normal operating conditions, or the total

02:11:03 1 length of time the generator has been installed and
2 operating, whichever is less."

3 Q. Thank you.

4 Right now, I would like to pull up Page 31 of
5 Canada's PowerPoint presentation; and on this page it
6 says: "Mr. Merwin did not have sufficient information
7 on whether Celgar's operations were normal in 2007,"
8 and then to the right it says "Wrong."

9 A. Yes.

10 Q. Could you please explain whether you thought
11 BC Hydro would be requiring you to project into the
12 future your generation capacity to establish your GBL
13 in 2008?

14 A. Why we would be required to project it? I
15 have never heard of that, projecting into the future.
16 It was always historical. So, I guess that's how they
17 based setting our GBL by projecting into the future.
18 But that's a new--that's new to me.

19 Q. Could you please turn to Page 30 of the
20 PowerPoint. You will see it says: "BC Hydro included
21 exports in the GBL which was self-generation that is
22 not used for self-supply," and that is--over to the

02:12:38 1 right, it says "Wrong."

2 A. Well--

3 Q. Could you please explain whether the sales of
4 electricity in 2000 that Mr. Owen was asking you
5 about, were those--2007--were those sales of
6 electricity in 2007 above or below load?

7 A. Those were above load. There was, I think in
8 the earlier chart it was like 22,000 megawatt hours.
9 We would have to go back to--actually, I have it right
10 in front of me.

11 In 2007, we exported above load 22,560
12 megawatt hours.

13 Q. Thank you.

14 And I would like to turn now to--is it
15 possible to use above-load power to self-supply?

16 A. Absolutely not. It's impossible. You either
17 generate it at that point--you have a limited number
18 of hours. Like I said, you can fill up the gas tank,
19 but the gas tank holds only nine hours of power. So,
20 if you are going to sell your power, you have to sell
21 it now.

22 So, to sort of say you can keep it in the

02:13:50 1 bank for a time when you don't need the power, it
2 doesn't work that way. We were selling that power at
3 that point in time, and that was all above load.

4 Q. Thank you.

5 I would like to point you to Canada's
6 PowerPoint at Page 66. It says: "The Claimant argues
7 that BC Hydro has prohibited the Claimant through the
8 Exclusivity Provision from selling its below-GBL
9 electricity. This is false."

10 Now, there was some discussion about the BCUC
11 Decision G-188-11 and a Side Letter. Could you please
12 explain your correspondence with BC Hydro after the
13 issuance of G-188-11?

14 A. Yes. I think I also talked about this in
15 my--when I first--in my direct.

16 When we received the G-188-11, we contacted
17 BC Hydro and sent them a letter asking them to change
18 the provision of the EPA as per the Side Letter. That
19 was in early December. The decision was late November
20 of 2011. We heard nothing back from BC Hydro. And on
21 either January 23rd or 26th--I can't remember the
22 exact date--but of 2012, we sent another letter to BC

02:15:26 1 Hydro via e-mail asking them to make this change, and
2 both correspondences have gone unanswered.

3 Q. And by "make this change," what do you mean?
4 What were you asking them to do?

5 A. We were asking them to change the Exclusivity
6 Provision of 7.4 as per the Side Letter. And that
7 would be--essentially, that is allowing--having the
8 language in there that would allow to us sell our
9 below-GBL power.

10 Q. So, what is prohibiting Celgar today from
11 selling its below-GBL electricity?

12 A. Well, there is a number of things. The first
13 one is what we just talked about here, this provision
14 in our EPA.

15 The second thing is we don't have a rate to
16 buy power. There is not a rate to buy embedded-cost
17 power from our utility FortisBC.

18 And just recently, FortisBC has again
19 referred to us being on the net-of-load standard in
20 the most recent proceedings that we're participating
21 in.

22 Q. Thank you.

02:16:40 1 And the net-of-load standard you're referring
2 to is from what BCUC Decision?

3 A. G-48-09.

4 Q. I would like to direct you to Page 89 of
5 Canada's PowerPoint. Now, you've just talked a lot
6 about the NECP Rate Rider and the type of rates that
7 it would give Celgar.

8 A. Okay. Yes, I did talk about that.

9 Q. Now, do you agree that this slide represents
10 what the NECP Rate Rider would, I guess what the NECP
11 Rate Rider would represent to Celgar?

12 A. When I'm looking--I'm just trying to digest.
13 I haven't seen this graph before--so, when I'm looking
14 at the Mid-C price in 2009-2010, the Rate Rider
15 basically, in those particular years, because the
16 market rate happened to be below the embedded-cost
17 rate, yeah, I guess--I guess the cost, the cost would
18 have been the same as RS 31.

19 But the point here is it's a market rate, and
20 the market rate means next year there could be extra
21 demand on the system, you know, there could be a
22 California energy crisis--who knows? Something that,

02:18:14 1 you know, exposes us to the market.

2 So, it has a huge--and I'm just reading the
3 top right now--"it has no effect on our ability to
4 sell--the order has no effect on FortisBC's ability to
5 sell non-PPA-embedded-cost power."

6 Yeah. It does affect--I'm just trying still
7 to digest the--can I have one second to sort of look
8 at the graph?

9 Q. Yes.

10 (Witness reviews document.)

11 A. Well, I don't agree with what they're saying.

12 Q. Why?

13 A. Because it has a huge effect, because when
14 you're entering into power contracts, long-term power
15 contracts, potentially we could be--you see that green
16 line there--potentially, the NECP Rate Rider could be
17 higher than that--than that green line, and that's a
18 risk to us that no other embedded-cost customer in
19 British Columbia would be exposed to, because, again,
20 we're being exposed to the market.

21 Q. Thank you, Mr. Merwin.

22 MS. GEHRING FLORES: Those are all my

02:19:51 1 questions.

2 ARBITRATOR DOUGLAS: Sir, could I just ask
3 straightaway a follow-up question on that graph, if
4 you wouldn't mind.

5 QUESTIONS FROM THE TRIBUNAL

6 ARBITRATOR DOUGLAS: When you said that
7 potentially the NECP rate could be higher than the
8 green energy prices, on what basis do you say that?

9 THE WITNESS: On what basis? In--so, if you
10 look at what drives the NECP rate is the orange, or I
11 guess it would be called yellow, the yellow costs, and
12 that's the Mid-C cost. Okay? And when the Mid-C cost
13 is below RS 31, the NECP is RS 31. But when that
14 yellow cost is above RS 31, which--and the basis for
15 this is you just have to look in 2000 and, you know,
16 any of the period back before 2009, there were periods
17 of time where the prices were significantly higher,
18 like, for example, the first part of the decade.
19 Mid-C prices were well over the green--higher than the
20 green line, which would have then meant the red
21 bars--or, I mean, the blue bars--would have--the NECP
22 Rate Rider would have been whatever the yellow bar is.

02:21:18 1 Did I answer that?

2 ARBITRATOR DOUGLAS: Yes, you did.

3 THE WITNESS: Okay, thank you.

4 ARBITRATOR DOUGLAS: This is really the focus
5 of the question I did want to ask you about, I guess:
6 The commercial decision to allow the NECP procedure to
7 be suspended, or at least not object to its
8 suspension.

9 What is the calculation you make? I mean,
10 you talked a lot about not wanting to expose yourself
11 as a company to the uncertainties of the market going
12 forward, but how do you project that? Are you locked
13 in to purchasing a certain quantity through the NECP,
14 and that translates to an exposure long term?

15 Or--what I'm getting at is, is there not a
16 benefit nonetheless of having the ability to buy at
17 that rate, which wouldn't be as beneficial as the
18 position in the arbitration, but nonetheless is a
19 better position to be in as a company? That's what
20 I'm driving at.

21 THE WITNESS: Okay. So, the NECP Rate Rider,
22 if we look in the last couple of years, you know, it

02:22:24 1 would have been--it would have been the same as the
2 chart says. But the fact is, that is the market cost,
3 and we have no interest in buying--no customer in
4 British Columbia buys market power. And what we have
5 been talking about here is our access to embedded-cost
6 power, and that's sort of the big issue in our minds.
7 And embedded-cost power is a lot different the NECP
8 Rate Rider.

9 And you had asked about our not standing
10 against it. You know, there were a number of other
11 participants in the process; and, when we agreed to
12 it, we didn't expect it would be another--initially
13 another number of years in delay. So, you know, this
14 NECP Rate Rider, if it had gone its normal course,
15 what usually happens or what's happened as we've--my
16 experience from the stand-by rate that we have been
17 dealing with Fortis on, is Fortis proposes a rate, we
18 don't exactly--we propose a different rate and argue
19 on the basis on the merits of whether that rate is
20 just, not discriminatory, and all of the things that a
21 utilities commission reviews. And that process would
22 have went on.

02:24:04 1 So, the rate that Fortis was proposing hadn't
2 been--gone through its--the arbitrator's review yet.
3 So it was--there was a proposal, and all the other
4 parties had agreed and, you know, we felt, you know,
5 we can agree there and, you know, hopefully get back
6 on track through the other process. But clearly we
7 haven't.

8 PRESIDENT VEEDER: Please.

9 ARBITRATOR ORREGO VICUÑA: Mr. Merwin, I have
10 one question of clarification. If you go to your
11 First Witness Statement at Page 44, in the context of
12 the negotiations that led to the EPA and the Side
13 Letter, well, in that page by the end of the first
14 paragraph immediately above Paragraph 102, you
15 mentioned the thought that BC Hydro might have thought
16 that self-generations in British Columbia could only
17 sell to BC Hydro or Powerex and that such producers
18 were in a kind of captive supplier situation.

19 That is the remark I would like to ask you
20 about, because then you explained that the initiative
21 by BC Hydro of prohibiting any sales to third parties
22 came along and how all of that ended in the Side

02:26:00 1 Letter.

2 On the other hand, I must also mention that,
3 in the letter of May 7, 2008, that has been amply
4 discussed, at the very end, there is also a reference
5 that we have the ability to sell our self-generation
6 and will do so whether or not BC Hydro deems it
7 eligible for the Bioenergy Call processes.

8 So, in short, was the company looking at the
9 idea of saying, well, either we sell here to BC Hydro
10 or, if not, we are free to sell elsewhere? Of course,
11 then the GBL came along and also that question of
12 below and above.

13 But not only that, at some other point you
14 mentioned that there were restrictions in terms of
15 using the transmission lines in the context of having
16 sold electricity to Alberta, I think.

17 Well, the question, or, rather, the request
18 for clarification is: Do you envisage that the policy
19 as a whole was restricting suppliers such as the
20 company of reaching elsewhere than BC Hydro and the
21 immediate, say, context of the EPA and other
22 arrangements? Or whether that was totally separate as

02:27:48 1 an issue?

2 THE WITNESS: Okay. So, when we were--when,
3 just going back to that letter when we said that we
4 advised BC Hydro we could sell our power elsewhere,
5 our intention had always been--and I think I described
6 earlier--you first start with the utility in your
7 backyard, which was FortisBC. They had no interest in
8 buying our power.

9 You go to the next utility down the
10 transmission line, and that was BC Hydro. And there
11 was interest in buying our power, but they had very
12 clearly had some limited interest, and our intent
13 always was to sell as much power to BC Hydro as we
14 could as possible because it's, you know, you have to
15 pay for transmission. And then what BC Hydro wouldn't
16 buy, when I referred to "we will sell the rest of our
17 power," is essentially, well, if, you know, we have
18 given you the offer to buy it, you didn't want to buy
19 it, so we're going to sell that elsewhere.

20 And the restriction came as part of G-48-09
21 that said no, we can't sell that below-load power to
22 anyone.

02:29:22 1 Did that answer?

2 ARBITRATOR ORREGO VICUÑA: Yes, thank you.

3 THE WITNESS: Thank you.

4 ARBITRATOR DOUGLAS: Maybe I misunderstood
5 something that was said by the Claimants in opening,
6 but wasn't BC Hydro under an obligation? I thought
7 you said they were under obligation to buy it in that
8 situation?

9 THE WITNESS: Under obligation to buy from
10 us?

11 ARBITRATOR DOUGLAS: Yes.

12 THE WITNESS: BC Hydro didn't have an
13 obligation to buy power from us. The obligation that
14 BC Hydro had at the time was to source the lowest cost
15 power from the market. So, they would have a Power
16 Call, and people put in their bids for power, and, you
17 know, there's prices from, I don't know, from \$100 to
18 \$130, and they look at each bidder and essentially
19 select the price of power that they're prepared to
20 procure.

21 They had an obligation to meet a self-supply
22 requirement in the Province, so that's why they were

02:30:34 1 having all these power calls, to kind of fill up their
2 resource base. And, so, they had an obligation to
3 procure power at the lowest and most cost-effective
4 price.

5 ARBITRATOR DOUGLAS: And there was something
6 about the exclusivity of BC Hydro in doing so. Or
7 maybe I've got that confused with another--

8 MR. SHOR: I can address that, if it would
9 help.

10 ARBITRATOR DOUGLAS: Sure.

11 MR. SHOR: Paragraph 7.4 of the 2009 EPA
12 between Celgar and BC Hydro has an Exclusivity Clause.
13 That was what a lot of the questioning this morning
14 was about. That provides that--in the case of
15 Celgar's EPA, BC Hydro buys 238 gigawatt hours a year
16 of firm energy. Celgar has a GBL of 349, and it's not
17 permitted to sell that 349 to anybody else. That's
18 what we referred to as the Exclusivity Clause.

19 MR. DOUGLAS: And may I just, to clarify, the
20 Exclusivity Clause is not just with the below-GBL
21 sales, it's also with the above-GBL. It means that
22 you are the exclusive purchaser. And the Exclusivity

02:31:52 1 Clause is a standard term in all of the EPAs that BC
2 Hydro signs with all of its mills.

3 PRESIDENT VEEDER: Any questions arising from
4 the Tribunal's questions?

5 We ask--

6 MS. GEHRING FLORES: I have just one
7 follow-up question, please, from Professor Douglas'
8 question about the NECP Rate Rider proceeding and its
9 suspension.

10 FURTHER REDIRECT EXAMINATION

11 BY MS. GEHRING FLORES:

12 Q. Could you tell me why the BCUC came to the
13 Parties and proposed suspending the NECP Rate Rider
14 proceeding?

15 A. From what I recollect, we had--the BCUC had
16 decided to go down a new path, and that was the path
17 of setting GBL policy at--with BC Hydro and with
18 FortisBC. So, that's why they suspended it, because
19 instead of looking at entitlement, they're now looking
20 at GBL policy.

21 Q. And do you know where that proceeding is now?

22 A. The NECP Rate Rider proceeding is

02:33:03 1 indefinitely suspended, and the GBL Guidelines
2 proceeding has been underway, I guess, for over a
3 year, but it's, you know, just slowly starting to
4 move. So, it's--I don't know, is it going to be
5 another seven years of process? I don't know.

6 Q. Thank you.

7 PRESIDENT VEEDER: Any questions arising from
8 the Tribunal's questions from the Respondent?

9 MR. DOUGLAS: No, Mr. President.

10 PRESIDENT VEEDER: Thank you very much. We
11 have come to the end of your testimony.

12 THE WITNESS: Thank you.

13 PRESIDENT VEEDER: We'll take a very short
14 break, maybe five minutes--60 seconds each before the
15 next witness.

16 MR. SHOR: Mr. Chairman, I assume we will be
17 in closed session.

18 (Witness steps down.)

19 (Brief recess.)

20 (End of open session. Confidential business
21 information redacted.)

22

02:41:46 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: Let's resume.

3 ELROY SWITLISHOFF, CLAIMANT'S WITNESS, CALLED

4 Good afternoon, sir. We ask you to state
5 your full name, and if you will, to read the words of
6 the declaration for an expert witness on the piece of
7 paper before you.

8 THE WITNESS: Yes, Mr. President. My name is
9 Elroy Switlishoff. I solemnly declare upon my honor
10 and conscience that my statement will be in accordance
11 with my sincere belief.

12 (Comments off microphone.)

13 PRESIDENT VEEDER: There will first be
14 questions from the Claimant.

15 MR. SHOR: I think, Mr. The President, before
16 we begin, we had said that we would take some time to
17 respond to Mr. Douglas' question from yesterday about
18 the data.

19 PRESIDENT VEEDER: Just a second. I want to
20 make sure that we're in closed session. We are.

21 Do we need to do that now? Because the
22 Witness is waiting. Unless it has to do with the

02:41:37 1 Witness, we'll come back to it.

2 MR. SHOR: We can come back to it.

3 PRESIDENT VEEDER: Come back to it.

4 MR. SHOR: May I begin?

5 DIRECT EXAMINATION

6 BY MR. SHOR:

7 Q. Good morning, Mr. Switlishoff.

8 Can you please state your full name for the
9 record.

10 A. Good afternoon. My name is Elroy
11 Switlishoff.

12 Q. Did you present written testimony in this
13 proceeding?

14 A. Yes. I made two statements.

15 Q. Would you like to make any corrections?

16 A. Not to my statements, but I would like to
17 highlight a correction in the Mercer Reply Memorial,
18 and that's on Figure 26, which appears on Page 204,
19 Column D. The 2007 value, which appears as
20 <<[REDACTED]>> megawatts, should, in reality, be <<[REDACTED]>> megawatts.

21 Q. Thank you, Mr. Switlishoff, for correcting my
22 error.

02:42:41 1 I'd like to first address BC Hydro setting of
2 Celgar's GBL. What are the main requirements of
3 BC Hydro's GBL principle, as you understand it?

4 A. My understanding of the GBL concept is that
5 it's intended to reflect the amount of self-generation
6 on an annual basis. That's used for self-supply under
7 normal conditions.

8 Q. In his Second Statement at Paragraph 23,
9 Mr. Dyck of BC Hydro justifies his use of a load-based
10 GBL by stating that Mr. Merwin told him that the
11 Celgar Mill typically generated 48 megawatts in 2007.
12 Because 48 megawatts is greater than Celgar's load,
13 Mr. Dyck contends that Celgar met its annual load of
14 349 gigawatt hours in 2007.

15 In your view, is that analysis consistent
16 with BC Hydro's GBL principle?

17 A. No.

18 Q. In what ways is it inconsistent?

19 A. Mr. Dyck's inconsistency lies in that the
20 48 megawatts was an optimal number, maximum number, if
21 you will. It didn't reflect annual operations, annual
22 normal operations.

02:43:52 1 Q. Was it an annual figure or an hourly figure?

2 A. It was an annual figure. The--sorry. Which
3 figure was that?

4 Q. The 48.

5 A. The 48 megawatts was an hourly figure.
6 Again, hourly optimal operations, not annual.

7 Q. Can't I just multiply 48 by the number
8 of hours the plant operates in a year to get the
9 annual generation level?

10 A. No. No, you cannot. The Mill is subject to
11 significant process variability: the steam
12 generation, firing rates, process variability,
13 generator availability, that the annual amount is
14 significantly less than 48 megawatts.

15 Q. Does Mr. Dyck's analysis account for that
16 normal generation variability at all?

17 A. No, it does not.

18 Q. What was the Mill's actual self-supply level
19 in 2007?

20 A. The Mill's actual self-supply level was
21 approximately 327 gigawatt hours in 2007, not 349 as
22 claimed by Mr. Dyck.

02:44:52 1 Q. Now, Mr. Stockard also tries to explain the
2 GBL calculation in another way. He contends it was
3 not appropriate to deduct Celgar sales to FortisBC and
4 NorthPoint from its total generation because he
5 concludes in Paragraph 86 of his Rejoinder testimony
6 that the Mill would operate no differently without
7 those sales contracts. I also believe Mr. Owen spent
8 about an hour this morning going over the same issues.

9 Is that analysis consistent with the GBL
10 principle?

11 A. No, I do not believe it's consistent.
12 There's no way that generation could have been used to
13 serve load. The generation for those sales contracts
14 all occurred when the load was already all being
15 served. So there was no possible way for it to serve
16 any more load.

17 Q. Is Mr. Stockard's analysis relevant at all as
18 you understand the GBL principle?

19 A. No, not according to the GBL principle as
20 proposed by Mr. Dyck.

21 Q. I'd like to turn now to the Tembec
22 Skookumchuck Mill. Mr. Lague, Mr. Dyck, and

02:45:58 1 Mr. Stockard, in their Rejoinder testimony, all
2 contend that without an EPA, Tembec would have << [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] >>

7 What kind of economic or financial analysis
8 did Tembec provide to BC Hydro to support that
9 hypothesis?

10 A. I saw no analysis by Tembec to substantiate
11 that claim.

12 Q. What analysis did BC Hydro perform at the
13 time?

14 A. I did not see any analysis from BC Hydro to
15 support Tembec's unsubstantiated claim.

16 Q. Is that consistent with the current normal
17 GBL concept?

18 A. Not if it has the integrity that Mr. Dyck
19 attributes to it. It's intended to reflect the
20 annual--the amount of generation on an annual basis
21 that's used for self-supply. BC Hydro appears to have
22 abandoned a much higher level that Tembec was using

02:47:02 1 for self-supply in favor of a much lower value, based
2 on an unverified and untested hypothesis.

3 Q. Didn't the current owners of Skookumchuck
4 provide financial data << [REDACTED]
5 [REDACTED] >> I believe those are marked as
6 Exhibits R-587 through R-589.

7 A. Yes. They provided that, the financial
8 analysis. When I combined that with the generation
9 and sales data that I was provided, I found that it
10 was << [REDACTED]
11 [REDACTED] >> even absent an
12 EPA.

13 Q. Is there other evidence that Tembec would
14 have continued to << [REDACTED] >> absent
15 an EPA?

16 A. Yes, ample evidence. First and foremost,
17 they continued to do so. And, second, Mr. Lague
18 provides << [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] >>

02:48:16 1 Q. Have you prepared a visual aid that
2 illustrates that point?

3 A. Yes, sir, I have.

4 Q. I think it's the last tab in your binder.

5 Can we pull up the chart for <<[REDACTED]>> Is this the graph
6 you prepared using Tembec's data?

7 A. Yes, sir, it is.

8 Q. Could you please explain what it shows?

9 A. Yes. Along the bottom we have individual <<[REDACTED]
10 [REDACTED]>> suppliers, and as we move from left to right for
11 each suppliers, there are two bars, a green bar and a
12 red bar. The green bar is the individual amount
13 supplied by each supplier, and the red bar is the
14 cumulative total as we go from left to right. There
15 are also two lines associated with each supplier, a
16 green line, which is the individual cost at each
17 supplier, and more importantly, the blue line, which
18 represents the weighted average cost as each supplier
19 is added to the mix.

20 Q. <<[REDACTED]
[REDACTED]
[REDACTED]

02:49:22 1 [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] >>

5 Q. Now, the first column in your chart is

6 labeled [REDACTED] [REDACTED]

■ [REDACTED] >> There's a sample at the

8 back. It's a by-product of a pulp mill's chip input

9 stream. << [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] >>

13 MR. DOUGLAS: Mr. President, can I just--and

14 I apologize to interject. I've hit stop on my own

15 clock here. This document is not part of the record.

16 It is not evidence. It is something that was created

17 for the purpose of direct, and I guess, you know,

18 we're just a bit concerned. It's very detailed, and

19 I'm not opposed necessarily, but I would like to be

20 able to share it with the rest of Canada's Witnesses,

21 in particular, Mr. Lague, who can have the details of

22 this data and can examine it, which I think would

02:50:28 1 assist the Tribunal when he comes to testify.

2 MR. SHOR: We certainly have no objection.

3 PRESIDENT VEEDER: No objection to that? It
4 certainly is a demonstrative.

5 MR. SHOR: Yes. It is based on the data we
6 got from Paper Excellence that was submitted late in
7 the proceeding, so we couldn't have prepared this
8 before.

9 PRESIDENT VEEDER: And the references you
10 give in the bottom right, should address the
11 Witness--do we find all the source materials in those
12 references in the bottom right-hand corner?

13 MR. SHOR: But for one point that I will get
14 to in my next question.

15 PRESIDENT VEEDER: I see. So, yes, but not
16 quite?

17 MR. SHOR: Yes, but not quite.

18 MR. DOUGLAS: Which makes me nervous.

19 PRESIDENT VEEDER: Yes. I think in the
20 future when we have a demonstrative as complicated as
21 this, it would be, I think, courteous to give it to
22 the other side in advance.

02:51:15 1 MR. DOUGLAS: I think this is what's called a
2 white rabbit.

3 PRESIDENT VEEDER: It could be grayish, at
4 least. This not an easy graph to take in immediately
5 if you're cross-examining a witness in a few moments.

6 MR. SHOR: We are happy to provide the
7 underlying data. This is just a spreadsheet that was
8 prepared on Excel using the data we got from Canada.

9 PRESIDENT VEEDER: The word "just" is
10 inappropriate, but we'll see what your next point is.

11 MR. SHOR: Okay.

12 BY MR. SHOR:

13 Q. We talked about [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] >>

16 A. I got that quantity by speaking to Mr. Wayne
17 Mercer, who was the fiber supply manager for Tembec
18 Skookumchuck from 1990-2013.

19 Q. Can you turn to your next slide in your
20 binder. And this is--is this the chart--the same
21 chart you prepared for 2009?

22 A. It is, sir.

02:52:08 1 Q. Does it also show significant quantities of

2 << [REDACTED] >>

3 A. Yes. It shows that there's approximately

4 << [REDACTED] >> but with the caution that this data, the pulp

5 mill was shut down for two months in this period, so

6 that takes two months out, and there were an

7 additional two months where the data was unavailable

8 because the company << [REDACTED] >> so

9 August and September weren't available to put in the

10 data set. So I extrapolated--I made a notation there

11 that the volume should be upscaled by 50 percent to

12 account for the two-thirds of a year operation.

13 Q. Could we pull up Slide 5 from the

14 Respondent's presentation, opening presentation?

15 MR. DOUGLAS: Mr. President--sorry to

16 interject again. My clock does say that the 10-minute

17 mark has been reached.

18 MR. SHOR: This is my last question,

19 Mr. President.

20 MR. DOUGLAS: And that's fine, so long as

21 similar courtesies are extended to Canada.

22 PRESIDENT VEEDER: I'll stop you. I'll stop

02:53:07 1 you. We've been courteous, I think, to both sides.

2 We had another two minutes left. But our clock may be

3 somewhat different.

4 MR. SHOR: He's counting the time he

5 interrupts me.

6 BY MR. SHOR:

7 Q. Now, the red squiggly line on this chart

8 represents, according to Mr. Owen, the transmission

9 path from Celgar to the United States. Is this the

10 only transmission path available?

11 A. No, sir. There's a path directly south, in

12 the middle of the border of British Columbia, with

13 Washington State, much closer.

14 MR. SHOR: I have no further questions.

15 PRESIDENT VEEDER: Thank you very much.

16 There will now be questions from the Respondent.

17 MR. DOUGLAS: Just before we move on to the

18 cross, I'm being informed that there may be some data

19 on these charts that are not part of the record. I'm

20 not quite sure yet what those parts are or how to

21 explain it because this has just been provided to me.

22 But I'd like to reserve the right to examine that in

02:54:08 1 greater detail and then to highlight that should the
2 need arise.

3 PRESIDENT VEEDER: Your position is reserved.
4 And let us know by the end of the day where you stand.

5 MR. DOUGLAS: I will do that. Thank you very
6 much.

7 PRESIDENT VEEDER: And we're still in closed
8 session, if you want to go to open session.

9 MR. DOUGLAS: Yes. No, remaining in closed
10 session is just fine.

11 Could we distribute the--oh, do you want
12 5 minutes?

13 Oh, we just might need 5 minutes to
14 distribute the binders for his cross-examination.

15 PRESIDENT VEEDER: Okay. This has to be
16 5 minutes, though.

17 MR. DOUGLAS: Yes. We can, I think, maybe
18 all of us, just stay where we are, if you want. It
19 will just take two seconds to get organized.

20 (Pause.)

21 MR. DOUGLAS: Canada is ready to resume
22 whenever the Tribunal is.

02:59:29 1 PRESIDENT VEEDER: Let's resume.

2 MR. DOUGLAS: Wonderful.

3 CROSS-EXAMINATION

4 BY MR. DOUGLAS:

5 Q. Apologies in advance for four binders. Many
6 of the documents are simply just large, and we'd
7 rather include all of them. I see you've been well
8 set up. You have--surrounded. If you need any
9 assistance, I'm happy to have somebody provide you.
10 I've also provide you with a couple copies of your
11 Expert Reports, as well as a calculator, which I hope
12 we won't need, but we'll see.

13 You filed two Expert Reports in this
14 arbitration; is that correct?

15 A. That's correct.

16 Q. Okay. And you are President and principal
17 engineer of Jetson Consulting Engineers Limited?

18 A. I am.

19 Q. Okay. Which you incorporated in 2006?

20 A. I did.

21 Q. And your company is located in Castlegar,
22 British Columbia?

03:00:20 1 A. It is.

2 Q. Which is the same town as where the
3 Claimant's mill is located?

4 A. That's correct.

5 Q. What population, roughly, is the town of
6 Castlegar?

7 A. 7,000.

8 Q. I Googled it. You actually got it bang on,
9 so...

10 A. Thank you.

11 Q. You've been in a business relationship with
12 the Claimant since you incorporated Jetson Consulting?

13 A. And before.

14 Q. And before.

15 So since before 2006?

16 A. Correct.

17 Q. And you mention in your Report that in 2006
18 you provided the Claimant with transmission line
19 analysis?

20 A. I did.

21 Q. And between 2007-2010, you worked on various
22 technical and contractual arrangements that were

03:00:59 1 necessary for the Claimant's Green Energy Project?

2 A. That's correct.

3 Q. And In 2009 you provided the Claimant with an
4 invoice you modeled for its EPA with BC Hydro?

5 A. That's correct.

6 Q. And the Claimant continues to engage you for
7 various engineering and technical function at its pulp
8 mill?

9 A. That's also correct.

10 Q. Okay. So, outside of this arbitration, you
11 continue to have a business relationship with the
12 Claimant?

13 A. That's correct.

14 Q. Okay. In 2009, you were engaged by the
15 Claimant to provide assistance with regulatory
16 initiatives?

17 A. Yes, I was. It was delicate as I was also
18 working for the B.C. Utilities Commission at the time.

19 Q. And the first time that the Claimant engaged
20 you was during FortisBC's Cost of Services
21 Application?

22 A. For regulatory matters?

03:01:49 1 Q. Uh-huh.

2 A. I would have to confirm that. Subject to
3 check, I'll go you with that far.

4 Q. Okay. But you facilitated or worked with
5 them on the Cost of Services Application?

6 A. Yes, I did. That, I can confirm.

7 Q. And those were the proceedings that
8 culminated in BCUC Order G-156-10?

9 A. That's correct.

10 Q. Okay. And you were hired by the Claimant to
11 assist in its complaint to the BCUC regarding a
12 General Services Agreement with FortisBC?

13 A. Yes, I was.

14 Q. Okay. And those proceedings culminated in
15 G-188-11?

16 A. I believe so.

17 Q. Okay. Were you involved in the proceedings
18 that led to Order G-202-12?

19 A. That would have been the--G-202-12 was the
20 100 percent NECP--or 100 percent embedded-cost, if can
21 I shorthand it. I was peripherally involved, I
22 believe, yes.

03:02:40 1 Q. Okay. And I mean in terms your involvement
2 with 156-10 and 188-11, would you have reviewed drafts
3 of submissions?

4 A. Yes.

5 Q. Okay. And would you have assisted in
6 responses to information requests?

7 A. That seems plausible, yes.

8 Q. Okay. Did you participate or were you
9 involved with the Claimant in the proceedings that
10 culminated in BCUC Order G-110-12?

11 A. G-110-12. Could you refresh my memory as to
12 that?

13 Q. What it was about? I think it was a
14 proceedings that considered FortisBC's 2012-2013
15 revenue requirements Application.

16 A. That sounds familiar, yes.

17 Q. And did you participate in the
18 reconsideration of Order E-29-10? That was the
19 Section 71 review of the capacity purchase agreement
20 between FortisBC and the Waneta Power Corporation?

21 A. Yes, I believe I would have.

22 Q. Okay. Did you participate in the proceedings

03:03:44 1 that led to Orders C-4-13 and G-191-13?

2 A. Again, I don't have those committed to
3 memory, so could you please--

4 Q. I'm not sure if I--

5 A. Are you trying to establish that I've worked
6 on a lot of proceedings?

7 Q. Yes. With the Claimant.

8 And did you participate in the proceedings
9 that led to Order G-40-12? And this one was the BCUC
10 review of the Conifex EPA.

11 A. No, I don't think I participated in that
12 proceeding.

13 Q. Okay.

14 FortisBC purchases electricity from BC Hydro?

15 A. FortisBC--yes. Yes, they do.

16 Q. That's through a Power Purchase Agreement?

17 A. Yes, they do.

18 Q. And in 2008, it was the '93 PPA that was in
19 force?

20 A. Pardon me? Could you ask the question again?

21 Q. Sorry.

22 In 2008, it was the 1993 PPA that was in

03:04:46 1 force; is that right?

2 A. Yes, I believe that's correct.

3 Q. Okay. And the 1993 PPA prevented FortisBC
4 from arbitraging PPA Power?

5 A. As I understand it, yes.

6 Q. Okay. But there was no provision in the PPA
7 that would prevent customers of FortisBC from
8 arbitraging PPA Power?

9 A. As I understand it, that's correct.

10 Q. Okay. And the City of Nelson and FortisBC
11 signed an Umbrella Agreement?

12 A. I believe that to be true.

13 Q. Okay. And the Umbrella Agreement would have
14 allowed the City of Nelson to buy all of its
15 electricity for--it needs from FortisBC?

16 A. I believe that was its purpose.

17 Q. And sell its self-generation to market?

18 A. I believe that was its purpose.

19 Q. Okay. And FortisBC and the City of Nelson
20 filed the Umbrella Agreement with the BCUC on June 24,
21 2008?

22 A. I can't confirm the date, but I can confirm

03:05:35 1 they filed something in 2008.

2 Q. Okay. And would that have initiated the
3 G-48-09 proceedings?

4 A. Yes, I believe that would have--that
5 precipitated the G-48-09. Well, that--was that
6 G-48-09? Yes, okay.

7 Q. Yeah. Or would it have been the BC Hydro's
8 Application to amend the PPA that would have initiated
9 it?

10 A. There we go.

11 Q. Okay. And which would have happened in about
12 September of 2008?

13 A. Thank you.

14 Q. We can confirm that.

15 So, on August 21, 2008--testifying is
16 always--it's not supposed to be a memory test, but
17 roughly there--the Claimant signed a Power Supply
18 Agreement with FortisBC?

19 A. I believe, yes, they did.

20 Q. Okay. And at the time the Claimant was using
21 its self-generation to supply its own mill needs?

22 A. A portion thereof.

03:06:43 1 Q. Okay. And under the PSA, the Claimant
2 planned to stop using its self-generation to serve its
3 mill needs so that it could buy from FortisBC?

4 A. I believe that was its intent.

5 Q. Okay. So that it could sell its
6 self-generation to market?

7 A. Yes, I believe that's its intent.

8 Q. Okay. And the Claimant participated as an
9 intervenor in G-48-09 proceedings?

10 A. Yes, I believe they did.

11 Q. Okay. And the because the Umbrella Agreement
12 raised similar issues to the Claimant's Power Supply
13 Agreement?

14 A. The Nelson Hydro Umbrella Agreement?

15 Q. Correct.

16 A. Yes, I believe that's correct.

17 Q. Nelson FortisBC Agreement, Umbrella
18 Agreement. I think you said "hydro."

19 A. Nelson Hydro. Also the City of Nelson.

20 Q. Are they also called Nelson Hydro?

21 A. Yes, they are.

22 Q. There is too many "Hydros."

03:07:36 1 And BC Hydro was concerned in those
2 proceedings that the City of Nelson Agreements and the
3 Power Supply Agreements could result in the arbitrage
4 of PPA Power?

5 A. Yes, I believe BC Hydro was.

6 Q. Okay. So, it, as we confirmed, brought its
7 Application to amended the PPA?

8 A. Okay. That's correct.

9 Q. Yeah. Okay. And that was to prevent the
10 arbitrage of PPA Power by FortisBC customers?

11 A. Yes, I believe that's correct.

12 Q. Okay. And the BCUC agreed to amend the PPA?

13 A. Yes, I believe they did.

14 Q. And that was G-48-09?

15 A. I believe that's correct.

16 Q. All right. And you state in your Expert
17 Report that the BCUC established a defined--pardon
18 me--established and defined a net-of-load regulatory
19 standard?

20 A. Yes, they did, net-of-load on a dynamic--the
21 BCUC defined "net-of-load" on a dynamic basis
22 standard.

03:08:43 1 Q. And that the PPA amendment prohibited
2 self-generators in FortisBC territory from accessing
3 embedded-cost utility electricity?

4 A. Could you restate that, please.

5 Q. Oh, sure. Sorry.

6 PRESIDENT VEEDER: I think it's easier if you
7 just show the Witness the paragraph.

8 MR. DOUGLAS: Oh, I'm happy to. I'm actually
9 quoting from his own Expert Report.

10 PRESIDENT VEEDER: Yeah, but you haven't
11 given him the paragraph.

12 MR. DOUGLAS: Oh, sure. It's Paragraph 65 of
13 his Report.

14 THE WITNESS: Oh, thank you. It's nice to
15 have a cheat sheet.

16 BY MR. DOUGLAS:

17 Q. Oh, sure. Sorry. I didn't mean to--you're
18 welcome to.

19 A. Yes, okay. Thank you very much.

20 Q. Okay. And so you state that the PPA
21 amendment prohibited self-generators in FortisBC
22 territory from accessing the embedded-cost utility

03:09:26 1 electricity?

2 A. Yes.

3 Q. Okay. And you say whether or not that
4 electricity comes from BC Hydro?

5 A. Sorry. Did I say which electricity came from
6 BC Hydro?

7 Q. Sorry. That the embedded-cost utility
8 electricity that they are prohibited from accessing,
9 you state that it--that is either BC Hydro electricity
10 or FortisBC electricity. So, you state it's a
11 restriction on both.

12 A. The net effect was it was a prohibition on
13 BC Hydro electricity. I think that was the stated.
14 And, well, actually, it just says "embedded-cost
15 electricity" in the decision.

16 Q. Uh-huh. So--

17 A. So it would have been both.

18 Q. Okay.

19 So, as you confirm what you say in your
20 Expert Report, that G-48-09--

21 (Overlapping speakers.)

22 BY MR. DOUGLAS:

03:10:27 1 Q. Let's just say that in your Expert Report,
2 you characterized G-48-09 as a prohibition on
3 self-generators in FortisBC territory from accessing
4 embedded-cost utility electricity, whether that is
5 embedded-cost utility electricity coming from BC Hydro
6 or whether it's coming from FortisBC.

7 A. I agree.

8 Q. Okay.

9 (Comments off microphone.)

10 BY MR. DOUGLAS:

11 Q. Sorry. And you contrast this with G-38-01,
12 which allows the simultaneous purchase and sale of
13 electricity by a self-generator in BC Hydro service
14 territory?

15 A. Yes, I did.

16 Q. Okay. And the BCUC addressed the Claimant
17 directly in G-48-09?

18 Why don't we turn to it?

19 A. Yes. I'm just trying to memorize--

20 Q. Of course. It's--

21 A. --or recall the exact wording of the words in
22 G-48-09, if you could take me to my own testimony.

03:11:31 1 Q. Absolutely. Well, how about we go to the
2 Order itself, which is Tab 41, R-32?

3 MR. SHOR: A minor correction, Adam. You
4 keep referring to Celgar as the Claimant. The
5 Claimant is Mercer. Celgar is not the Claimant.

6 MR. DOUGLAS: Sorry. An old habit from the
7 office.

8 THE WITNESS: Page, please.

9 BY MR. DOUGLAS:

10 Q. Page 30.

11 A. I'm there. I'm there.

12 Q. At Page 30?

13 A. Yes.

14 Q. You're fast.

15 The BCUC acknowledged that the Claimant
16 installed generation equipment in 1994 and in 2008?

17 A. Yes, I see that.

18 Q. Okay. And then queried what portion of this
19 increased generation capacity should be available for
20 export?

21 A. Yes, I see that as well.

22 Q. But says that it has insufficient information

03:12:30 1 to make a determination.

2 A. I see that as well.

3 Q. Okay. And states that the treatment of
4 incremental generation can be dealt with in the future
5 on a case-by-case basis?

6 A. I see that as well.

7 Q. Okay. The Claimant did not ask the BCUC to
8 reconsider its Order in G-48-09?

9 MR. SHOR: Again, it's not the Claimant.

10 MR. DOUGLAS: Is there--I mean, I can try to
11 keep focus on that, but is there really a distinction?
12 Is there a difference?

13 MR. SHOR: Yes, they are two different
14 companies.

15 PRESIDENT VEEDER: I think the task of
16 counsel is heavy enough. We understand the
17 difference. And your position is preserved.

18 So, do your best, but we understand what
19 you're getting at.

20 MR. SHOR: Okay.

21 BY MR. DOUGLAS:

22 Q. So, I forget whether there was an answer to

03:13:26 1 my question, but I asked whether the Claimant did not
2 ask the BCUC to reconsider Order G-48-09.

3 A. No, it did not.

4 Q. Okay. And it did not appeal the Order to the
5 courts of British Columbia?

6 A. No, I do not believe it did.

7 Q. And would that be because the Claimant
8 interpreted G-48-09 as extending the GBL methodology
9 to the FortisBC area?

10 A. I can't confirm that.

11 Q. Okay. Could you turn to R-2--sorry, the
12 Tab 43. This is R-280. It's at Page 5, please. And
13 if you go to the very bottom.

14 A. I'm there.

15 Q. And it states, in summary, "Celgar asserts
16 that it is appropriate to establish a FortisBC GBL for
17 its self-generators because doing so would be
18 consistent with the direction of the Commission in
19 Order G-38-01, the principles of which have been
20 expressly extended to FortisBC customers by Order
21 G-48-09"?

22 A. I see that.

03:14:35 1 Q. And so the Claimant saw G-48-09 as an
2 invitation to return to the BCUC to have a GBL set?

3 A. It saw G-48-09 as an invitation to have a GBL
4 set?

5 Q. Uh-huh.

6 A. I can't confirm that. I thought--my
7 impression was that Celgar thought that G-48-09 put it
8 on a net-of-load on a dynamic basis.

9 Q. Okay. Could you turn to Tab 45, please.

10 A. Yes, I'm there.

11 Q. Could you go to Page 36. This is R-373.
12 This is a submission from the Claimant--Celgar--to the
13 BCUC. And if you look down at Paragraph 86, below the
14 bold--actually, if you could pull up the bold as well.

15 The Claimant cites Paragraph 30 of the
16 Decision that we reviewed. Is that right?

17 A. That's correct.

18 Q. And then it says that "Celgar viewed the
19 Commission Panel's statements on Page 30 as an
20 invitation to Celgar to return to the Commission Panel
21 to have a GBL set or approved."

22 A. I see that as well.

03:16:05 1 Q. Okay. So, my question was, that the Claimant
2 saw G-48-09 to as an invitation to the return to the
3 BCUC to have a GBL set?

4 A. That appears to be what Celgar viewed, yes.

5 Q. Okay.

6 A. I don't know if I participated in this draft,
7 but I agree.

8 Q. Okay. So, when you state in your Expert
9 Report that there is a difference between G-48-09 and
10 G-38-01, that is not in line with the Claimant's
11 interpretation in this submission; is that correct?

12 A. No, I don't think that's correct. I think
13 that G-48-09 was quite clearly net-of-load on a
14 dynamic basis. And G-38-01 set a baseline. So your
15 question, again, was--

16 Q. We reviewed G-48-09, where it said that
17 determinations could be made on a case-by-case basis,
18 which you've confirmed.

19 A. Did it say "case-by-case basis"? I was
20 looking for those words, and I didn't see that in
21 G-48-09.

22 Q. Sure. If you want to return to Tab 41.

03:17:11 1 A. Thank you.

2 Q. Uh-huh. On Page 30.

3 A. Yes, I'm there. And the "case-by-case" is
4 where?

5 Q. At the very bottom paragraph.

6 A. Thank you. I was looking for that. I see
7 that.

8 Q. And the Claimant interpreted this provision
9 as an invitation to the return to the BCUC to have a
10 GBL set?

11 A. That's what you've taken to me on
12 exhibit--Tab 45. Yes, that's correct.

13 Q. Tab 45, which is R-73, at Page 36.

14 And, again, that's in contrast with what you
15 state in your Expert Report, at least at this time.

16 A. Which--sorry; could you point out to me
17 exactly where that contrast--what contrast you're
18 pointing to?

19 Q. If you turn to Paragraph 65 of your First
20 Expert Report.

21 A. Yes, sir.

22 Q. It states that--you contrast G-48-09 with

03:18:41 1 G-38-01; is that right?

2 A. That's correct.

3 Q. And you state that G-38-01 allows the
4 simultaneous purchase and sale of electricity by
5 self-generator and BC Hydro service territory?

6 A. Yes, I did.

7 Q. And which you confirmed is the GBL
8 methodology?

9 A. Yes.

10 Q. And you contrast this with G-48-09?

11 A. Yes.

12 Q. Which is the net-of-load standard, as you
13 state in your Expert Report?

14 A. Yes.

15 Q. Okay. But the Claimant was seeking to have
16 the GBL methodology applied at the BCUC and had a
17 different interpretation of G-48-09; is that right?

18 A. Yes. I saw that--I see that G-48-09, still
19 see that G-48-09 as applied to Celgar was
20 fundamentally inconsistent with G-38-01.

21 Q. But pursuant to G-48-09, the Claimant sought
22 to have a GBL set in front of the BCUC?

03:19:42 1 A. This is what this says, that that's what
2 Celgar thought they should do, but from my
3 perspective, it was an inconsistency.

4 Q. Okay. For that reason the Claimant
5 approached its utility, FortisBC, to negotiate a GBL?

6 A. They first approached FortisBC in 2007, I
7 believe, if not 2006, but I'm not certain if this
8 precipitated a request to FortisBC to set a GBL.

9 Q. Okay. Why don't we turn to Tab 17, which is
10 Respondent's Exhibit 273.

11 A. Page?

12 Q. The first page.

13 And, again, Mr. Switlishoff, if you'd like
14 some assistance with the binders, that's fine.

15 A. I'm happy.

16 Q. Okay. This is a memo written by Brian Merwin
17 to Dan Egolf at FortisBC?

18 A. I see that.

19 Q. And it is titled "Setting a GBL for Celgar"?

20 A. I see that.

21 Q. Could you turn to Page 3 of the document,
22 please?

03:21:01 1 A. I have.

2 Q. Okay. Mr. Merwin is explaining here his
3 interpretation of G-48-09?

4 A. Yes.

5 Q. And he explains that G-48-09 leaves the door
6 open for a GBL with FortisBC?

7 A. Where do you see the--I'm just looking for
8 the words that you're taking me to.

9 Q. It says, in the second line, "However, the
10 BCUC also opened the door to the establishment of a
11 GBL for Celgar."

12 A. That's correct.

13 Q. Okay. And the reference to BCUC 38-08
14 Decision, that would be a reference to G-48-09; is
15 that right?

16 A. I believe that's correct.

17 Q. So, again, the Claimant believed that G-48-09
18 enabled the setting of a GBL with FortisBC?

19 A. I'm interpreting that it's FortisBC, but it
20 doesn't really say it's FortisBC, does it?

21 Q. But the memo is from Brian Merwin to Dan
22 Egolf at FortisBC?

03:22:18 1 A. It is.

2 Q. Okay. So, I'm not sure where we're
3 disagreeing. Are they not writing to FortisBC to ask
4 for a GBL?

5 A. It opened the door for the establishment of a
6 GBL, but whether that was set with Fortis or with the
7 utilities commission or with Hydro is, I don't think,
8 entirely clear just from his statement.

9 Q. Okay.

10 A. They recognized they needed a GBL, but I
11 don't think the relationships are altogether clear.

12 Q. Okay. So if you turn--why don't we just turn
13 to Page 4.

14 A. I'm there.

15 Q. There's a table of GBLs written by date.

16 A. I see that.

17 Q. And do you see the 2007 figure?

18 A. I see that.

19 Q. It states "41.7: megawatts"?

20 A. It does.

21 Q. Does it use the term "adjusted" generation
22 baseline--Generator Baseline?

03:23:28 1 A. My copy says at the top of that column
2 "unadjusted."

3 Q. Okay. Thanks.

4 And this 41.7-megawatt GBL is higher than the
5 40-megawatt GBL set by BC Hydro during the Claimant's
6 EPA?

7 A. Yes. 41.7 is greater than 40.

8 Q. Okay. But in this document, the Claimant was
9 asking FortisBC to set a GBL at 3.5 megawatts?

10 A. Could you take me to that, please?

11 Q. Oh, sure. Page 5.

12 A. I see that.

13 Q. Okay. Which it considered to be more
14 reflective of the Mill's generation history?

15 A. Yes.

16 Q. In particular, reflective of the generation
17 equipment that was installed at the Mill in 1994?

18 A. That's correct.

19 Q. And this is the same generation equipment
20 that the BCUC referred to in Order G-48-09 at Page 30?

21 A. I believe it would be.

22 Q. Okay. But the Claimant was not able to reach

03:24:30 1 an agreement on the level of the GBL with FortisBC?

2 A. I think that's correct.

3 Q. Okay. Because FortisBC would not address the
4 GBL issue in a meaningful fashion?

5 A. Do I say that?

6 Q. I'm not sure you do. But if you want to turn
7 to Tab 43, which is Respondent Exhibit 280.

8 A. I'm there. Page?

9 Q. Page 27.

10 A. I'm there.

11 Q. It's the sort of penultimate paragraph,
12 second one up from the bottom that starts with
13 "FortisBC engaged." Towards the end, it states that
14 "FortisBC appeared less willing to address Celgar's
15 power exports and the GBL in a meaningful fashion.
16 While discussions were initiated by Celgar and were
17 ongoing, they broke down without FortisBC
18 incorporating any analysis of the effect of a Fortis
19 GBL into its RDA"?

20 A. I see that.

21 Q. So FortisBC and the Claimant were having
22 issues setting a GBL; is that right?

03:26:23 1 A. That's what this would lead me to believe,
2 yes.

3 Q. And in a submission like this, then, the
4 Claimant was asking the BCUC to set a GBL between
5 FortisBC and the Claimant; is that right?

6 A. I'm sure you'll take me there.

7 Q. Oh, sure. We can go to Tab 42, please, which
8 is Respondent Exhibit 371.

9 A. I'm there.

10 Q. If you look at the first page, the Claimant
11 writes, "In this letter, we are seeking a decision
12 from the Commission Panel that the appropriateness and
13 determination of a Generator Baseline for Celgar's
14 pulp mill"; is that right?

15 A. That's correct.

16 Q. Okay.

17 A. Sorry. I thought it was in the document you
18 referred me to earlier.

19 Q. That's fine. And the top of the next
20 paragraph says, "Celgar wishes to establish a GBL in
21 order that it may sell self-generated power that
22 exceeds such baseline while purchasing energy from

03:27:37 1 FortisBC"?

2 A. I see that.

3 Q. Okay. And if you turn the page on Number 2,
4 we've already reviewed this quote but it states
5 that, "Order G-48-09 imported principles governing
6 sales of self-generation that previously applied only
7 to BC Hydro service area, requiring Celgar to obtain a
8 GBL in order to establish the "load" that it is
9 required to serve before it may export power"?

10 A. I see that.

11 Q. That would be a reference to the GBL
12 methodology?

13 A. Yes, that would be.

14 Q. In your Expert Report, you state that G-38-01
15 vested BC Hydro with enormous discretion?

16 MR. SHOR: Do you have a paragraph reference?

17 MR. DOUGLAS: Sure, First Expert Report,
18 Paragraph 50.

19 THE WITNESS: I see that.

20 BY MR. DOUGLAS:

21 Q. And you state that it did not define "how
22 idle" or "surplus" generation was to be identified.

03:29:01 1 A. I agree.

2 Q. Or the time period that should serve in
3 determining a baseline?

4 A. I see that.

5 Q. And without parameters, you state that the
6 BC Hydro set GBLs on a case-by-case basis?

7 A. Yes.

8 Q. That's at Paragraph 54, sorry.

9 A. Yes.

10 Q. And at Paragraph 52, you stated that you
11 would have expected BC Hydro to issue written
12 procedures setting the parameters for its GBL
13 computations?

14 A. Yes, I did.

15 Q. Okay. The Claimant in its Application to the
16 BCUC reviewed BC Hydro's approach to establishing
17 GBLs?

18 A. Sorry; could you rephrase?

19 Q. Sure. Why don't we turn to Tab 43. This is
20 Respondent's Exhibit 280.

21 A. I'm there.

22 Q. We'll go to Page 5.

03:29:57 1 A. I'm there.

2 Q. Sorry. I think I have the wrong page
3 reference. It's Page 10-11.

4 A. Same exhibit?

5 Q. Same exhibit. My apologies.

6 A. No trouble. I'm there.

7 Q. At the bottom of Page 10 it states that
8 "Celgar believes the following observations about GBLs
9 are supported by the basic terms of EPAs between
10 BC Hydro and self-generating customers as described
11 above"?

12 A. I see that.

13 Q. And then it goes on to explain a bit about
14 the GBL methodology that, "GBLs may be set based on
15 historical capacity and energy components?"

16 A. I see that.

17 Q. And that "GBLs provide ineffective means to
18 prevent arbitrage between embedded-cost power and
19 market prices"?

20 A. I see that.

21 Q. If you look to Page 11 under Number 4, it
22 states that "GBLs may be a negotiated amount and give

03:31:29 1 consideration to the unique circumstances of the
2 self-generation customer"?

3 A. I see that.

4 Q. And it cites Domtar, Canfor, Tembec, and Howe
5 Sound as examples?

6 A. It does.

7 Q. Okay. And at the top of the paragraph down
8 at the bottom it states that "Celgar supports the
9 approach taken by BC Hydro"?

10 A. I see that.

11 Q. That "GBLs are not to be determined by any
12 set formula"?

13 A. I see that.

14 Q. In that same paragraph, do you see a
15 reference to 1.5.A, "Megawatts"?

16 A. I see that.

17 Q. Is that the requested GBL?

18 A. I'm not sure that's a request for a GBL, but
19 that's the statement of the average annual energy over
20 a period of time.

21 Q. And that period of time is 1990-1992?

22 A. That's correct.

03:32:30 1 Q. And the date of this Application is
2 March 15, 2010?

3 A. It is.

4 Q. So before when we reviewed your criticism of
5 the GBL methodology, it would be safe to say that the
6 Claimant, at least in this submission, did not agree
7 with your current criticism?

8 A. Sorry: My current criticism that there were
9 no principles?

10 Q. Sorry. I was not very specific.
11 We reviewed Paragraph 50 of your First Expert
12 Report where you stated that--Paragraph 52,
13 rather--that you expected BC Hydro to have issued
14 written procedures setting the parameters for its GBL
15 computations?

16 A. Yes.

17 Q. And you criticize BC Hydro for setting GBLs
18 on a case-by-case basis?

19 A. Do I criticize them for that?

20 Q. Yeah. Paragraph 54 of your Expert Report.

21 A. They are--proceeded to set the GBLs on an
22 entirely ad hoc basis making case by case

03:33:45 1 determinations unguided and unfettered by any written
2 process or methodology. Yes, I believe it's not the
3 case by case. I'm criticizing there but the unguided
4 and unfettered by any written process.

5 Q. Okay. Would you agree that GBLs can be a
6 negotiated amount?

7 A. Yes.

8 Q. And that would give consideration to the
9 unique circumstances of the negotiating mill?

10 A. Yes. They should be.

11 Q. And that GBLs should not be determined by any
12 set formula?

13 A. Formulaically I believe it would be too
14 constrictive.

15 Q. The Claimant wanted a--or looked for a GBL of
16 1.5 megawatts so that it could exercise the Side
17 Letter Agreement it signed with BC Hydro?

18 A. I think it was looking to exercise the Side
19 Letter Agreement and the GBL issued by the Commission
20 would give the Side Letter that effect, yes.

21 Q. So it would allow the Claimant to sell
22 electricity below the 40-megawatt BC Hydro GBL and

03:35:00 1 above the, if they were granted, a 1.5-megawatt GBL
2 above the 1.5-megawatt FortisBC GBL; is that right?

3 A. That's my understanding of the effect of the
4 Side Letter, yes.

5 Q. Okay. The purpose of the proposed
6 1.5-megawatt FortisBC GBL was different than the
7 BC Hydro 40-megawatt GBL?

8 A. They could be.

9 Q. How so?

10 A. One was an amount above which BC Hydro wanted
11 to purchase, and the other one--the BC Hydro GBL was
12 an amount above which BC Hydro would purchase, and the
13 FortisBC GBL, the amount between that and the BC Hydro
14 GBL, which presumably would be higher, would be the
15 amount that the Mill would be able to do with as they
16 wished.

17 Q. Okay. So the BC Hydro GBL determines the
18 amount of electricity to be sold to BC Hydro?

19 A. Yes, I believe that's correct.

20 Q. Okay.

21 A. Well, it's--it determines two things. No, it
22 doesn't determine the amount to be sold to BC Hydro.

03:36:17 1 It determines the amount of generation. The

2 self-generation that the Mill had to self-supply.

3 Q. Could you turn to Tab 44 for me, which is

4 Respondent 372.

5 A. I'm there.

6 Q. Just give me one moment, please. sorry.

7 (Pause.)

8 Q. Mr. Switlshoff, I'm just going to pause for

9 one second.

10 MR. DOUGLAS: Mr. President, my colleagues
11 are having difficulties deciphering the new evidence
12 that was provided at the direct testimony. I believe
13 there may be some spreadsheets or further detail or
14 data to go along with it. Kind of wondering whether
15 the Claimant could provide us with that information
16 now. I've lost two of my colleagues to the back of
17 the room trying to figure this out.

18 PRESIDENT VEEDER: Let's take a broader
19 picture. Will you be here tomorrow?

20 THE WITNESS: Yes, I will, sir.

21 PRESIDENT VEEDER: So we do have overnight.

22 The Witness can come back and deal with this tomorrow.

03:37:36 1 So we do have a bit of time to sort this out.

2 But can you assist the Respondent's with that
3 request? I'm asking the Claimants.

4 MR. SHOR: Certainly. We can provide--we're
5 happy--this is an Excel spreadsheet that's tied to a
6 data table. We're happy to the provide the data
7 table.

8 PRESIDENT VEEDER: Let's start with that.
9 Let us know how you're getting on by 5:30 and then
10 you've got the evening, I think, to continue any
11 further work. And then the Witness can come back
12 tomorrow to be cross examined about it.

13 MR. DOUGLAS: Sounds like a wonderful way to
14 spend an evening.

15 PRESIDENT VEEDER: And the night, too.

16 Not pressing you at all, but just give us
17 some idea of planning. Apart from this item, how much
18 further will you be? You've got quite a few documents
19 left in your four bundles.

20 MR. DOUGLAS: Quite a ways. We will extend
21 in to tomorrow I imagine.

22 PRESIDENT VEEDER: In any event. Okay. No

03:38:31 1 worry. That's the only answer we were--

2 MR. DOUGLAS: My hope is no. Would it just
3 be possible to get the Excel spreadsheets now if it's
4 not an inconvenience to the Claimant?

5 PRESIDENT VEEDER: We don't want to lose time
6 with the Witness. Do you need it for the rest of your
7 cross examination?

8 MR. DOUGLAS: I have some other materials to
9 go through.

10 PRESIDENT VEEDER: Please go to the other
11 material. In the meantime, behind the scenes, I'm
12 sure the spreadsheet will be sent over to your
13 colleagues.

14 MR. DOUGLAS: That sounds great. Thank you
15 very much. I'll leave it to my colleagues, too.

16 Just one moment, Mr. President.

17 (Pause.)

18 BY MR. DOUGLAS:

19 Q. So Mr. Switlishoff, I'm just looking at the
20 Transcript where we left off. I believe you had
21 testified that the BC Hydro GBL determines the amount
22 of self-generation that the Mill has to self-supply.

03:39:45 1 A. Yes, that's correct.

2 Q. Okay. And I was taking you to Tab 44.

3 A. I'm there.

4 Q. Which is R-372. And at Page 2, if you could.

5 And for the record--and you can confirm for me,

6 Mr. Switlshoff--these are a response by the Claimant

7 to the BCUC on their information from information

8 requests by the BCUC.

9 A. That's correct.

10 Q. Okay. If you could look to the bottom of

11 Page 2 for me, please.

12 A. I'm there.

13 Q. Here the Claimant states that the purpose of

14 a BC Hydro GBL is to determine the amount of

15 electricity sold to BC Hydro?

16 A. Yes. The beginning of the paragraph begins,

17 they are intended to serve two different purposes.

18 And I see where you have taken me to.

19 Q. And it doesn't say anything about

20 self-supply; is that correct?

21 A. Not in that reference. However, I think I've

22 taken you to what I believe to be the proper

03:41:09 1 interpretation of the GBL.

2 Q. Okay. And it states here that the purpose of
3 the FortisBC GBL is to determine the load requirements
4 to be met by FortisBC?

5 A. That's what it states there, yes.

6 Q. Okay. Could you turn to Page 18 for me of
7 the same document, R-372?

8 A. I'm there.

9 Q. This is a question from the BCUC to the
10 Claimant asking whether a FortisBC GBL should be set
11 with the same considerations as a BC Hydro GBL?

12 A. I see that.

13 Q. And at the bottom, the Claimant responds that
14 a broader set of considerations or a broader--broader
15 set of considerations should be given to broader
16 circumstances than those relevant to the BC Hydro GBL?

17 A. I see that.

18 Q. So the Claimant's proposed 1.5-megawatt GBL
19 was based on broader circumstances than those given to
20 a BC Hydro GBL?

21 A. I don't see that.

22 Q. Well, these are part of the proceedings

03:42:35 1 dealings with the request for a 1.5 GBL?

2 A. Okay.

3 Q. We can confirm that if you--

4 A. No, I think you're correct.

5 Q. So these are responses to information
6 requests as part of G-156-10?

7 A. Yes, I think that's correct.

8 Q. Okay. And in the midst of that quest, what
9 the Claimant is asking the BCUC to do is to consider
10 broader circumstances than those for consideration in
11 the setting of a BC Hydro GBL?

12 A. Celgar is saying that they think a broader
13 set of circumstances should be considered, yes.

14 Q. Okay. The Claimant believed that it was
15 possible that FortisBC would be required to purchase
16 an increased amount of PPA Power from BC Hydro in
17 order to source a 1.5-megawatt GBL?

18 A. I think that would be true.

19 Q. Okay.

20 A. You probably have a reference for me.

21 Q. Would you like to look at it? It's the same
22 document, Page 21.

03:44:00 1 At the very bottom, the Claimant responds to
2 the BCUC that it is possible that FortisBC may
3 purchase more power from BC Hydro under Rate
4 Schedule 3808, which is PPA Power; is that correct?

5 A. It is PPA Power, but it says that's not its
6 only alternative. I think there are credible
7 scenarios that would not require RS 3808 purchases.

8 Q. That's correct. And what are one of those
9 options?

10 A. Such as--I'll continuing reading, "FortisBC
11 purchasing the power from the market or simply
12 purchasing from the Zellstoff Celgar, the electricity
13 between the FortisBC GBL and the BC Hydro GBL."

14 Q. So purchasing power from the market was a
15 credible source of replacement electricity to support
16 a 1.5-megawatt GBL?

17 A. That appears to have been the response here,
18 yes, and I agree.

19 Q. After G-48-09, the BCUC wrote to BC Hydro
20 suggesting that it may be helpful to establish GBL
21 Guidelines?

22 A. Yes. In fact, that may have been part of the

03:45:14 1 decision itself.

2 Q. And you state in your First Expert Report
3 that the purpose of written policies is to ensure
4 consistent and uniform treatment?

5 A. Yes, I did.

6 Q. And to constrain the discretion of the
7 decision maker?

8 A. Yes, I did.

9 Q. That's at Paragraph 57 of your First Expert
10 Report, if you would like to refer to it.

11 A. Thank you.

12 Q. And in your Report, you have criticized
13 BC Hydro for not having GBL Guidelines early on?

14 A. That's correct.

15 Q. Okay. Because guidelines are necessary to
16 determine GBLs in a fair and equitable manner?

17 A. Yes, I agree.

18 Q. Okay. Could you please turn to--well, same
19 document, Tab 44, R-372.

20 A. I'm there.

21 Q. Okay. At Page 19.

22 A. I'm there.

03:46:09 1 Q. On the top of the page, do see a reference by
2 the Commission to letter number L-106-09 to BC Hydro?

3 A. I do.

4 Q. And there's a quote stating that the
5 Commission believes that it may be helpful and timely
6 to develop guidelines for the establishment of GBLs?

7 A. I see that.

8 Q. To assist efficiency and consistency in the
9 determination and review of GBLs?

10 A. I see that as well.

11 Q. Okay. And down at the bottom, Q.6.5, the
12 BCUC asks the Claimant: "Are GBL Guidelines
13 appropriate for the FortisBC service area. If so,
14 what process should the Commission adopt for reviewing
15 draft GBL Guidelines for FortisBC?"

16 A. I see that.

17 Q. And it states here that Celgar does not
18 believe that GBL Guidelines are necessary to determine
19 a fair and equitable FortisBC GBL for Celgar in this
20 proceeding?

21 A. I see that.

22 Q. And the determination of a GBL cannot be done

03:47:06 1 by formula so GBL Guidelines may not be of much
2 assistance in any event?

3 A. I see that.

4 Q. So the Claimant in this submission disagreed
5 with your Expert Report and what you just testified,
6 which is that GBL guidelines are necessary to
7 determine that GBLs are fair and equitable?

8 A. I think that mischaracterizes it in that this
9 process, which I believe was G-156-10, was going
10 through a very fulsome examination of the entire
11 background of Celgar's--of everybody's cost of service
12 in the FortisBC territory, so I think almost every
13 factor would have been brought to the surface in this
14 process. So I think that the key words in the
15 reference you took me to would be in Line 26, the "in
16 this proceeding" because I think "this proceeding" was
17 a very rich proceeding in terms of background
18 information, and from what I--from what I remember,
19 went on for over a year-and-a-half with numerous
20 rounds of information requests and evidence provided
21 by Fortis and Celgar in terms of its operational
22 information.

03:48:41 1 Q. And you confirmed at the start of your
2 testimony that you assisted the Claimant in these
3 proceedings?

4 A. Yes, I did.

5 Q. Would you have assisted with these
6 information requests?

7 A. Yes, I would have.

8 Q. So you assisted in a response to a request
9 whether GBL Guidelines would be appropriate, and the
10 answer was no, and in this proceeding, you claim that
11 they are necessary to ensure fair and equitable
12 treatment?

13 MR. SHOR: That's a mischaracterization of
14 what it says. It said it would be inappropriate in
15 this proceeding.

16 THE WITNESS: I concur.

17 BY MR. DOUGLAS:

18 Q. With me?

19 A. No, with Mr. Shor.

20 PRESIDENT VEEDER: That's a bit too easy.

21 MR. SHOR: If it's a choice between the two
22 of us, you know which way it's going to go.

03:49:33 1 PRESIDENT VEEDER: You might want to put the
2 question again, if you want to pursue this point.

3 BY MR. DOUGLAS:

4 Q. The Claimant was pursuing a GBL in these
5 proceedings; is that correct?

6 A. In the G-156-10 proceedings, there was
7 probably a request for a GBL, but I think you took me
8 there already, yes.

9 Q. That was the 1.5-megawatt GBL?

10 A. Yes. I think you took me there.

11 Q. And you have testified in your Expert Report
12 that GBLs are--GBL Guidelines are necessary to ensure
13 fair and equitable treatment?

14 A. Yes, I did.

15 Q. But in the pursuit of a GBL, the Claimant in
16 these proceedings did not believe that GBL Guidelines
17 were necessary to ensure fair and equitable treatment;
18 is that correct?

19 A. By "these proceedings" you mean the G-156-10
20 proceedings?

21 Q. Yes.

22 A. In the G-156-10 proceedings, as I've

03:50:34 1 explained, there was the information provided, and
2 that was on the public record, was fulsome enough that
3 the discussion would have provided, and the
4 investigation during the Hearing, would have provided
5 their own guidelines, would have proved to be--but
6 their own guidelines, yes. That would be--that would
7 be a determination by the Commission in a public arena
8 as compared to the BC Hydro process that was not
9 transparent or public in any way.

10 Q. And in Order G-156-10, the BCUC did not agree
11 to set a GBL between the Claimant and FortisBC?

12 A. I recall that you're correct in that
13 assertion, yes.

14 Q. But encouraged the Claimant and FortisBC to
15 agree on a GBL?

16 A. Yes, I believe that is also correct.

17 Q. All right. But the Claimant was still not
18 able to reach an agreement on a GBL with FortisBC?

19 A. The two Parties were not able to agree,
20 that's correct.

21 Q. So it filed another Application with the
22 BCUC? These would be the G-188-11 proceedings.

03:51:54 1 A. And we're talking about the Complaint?

2 Q. We're talking about the Complaint.

3 A. The Complaint proceeding and that was, I
4 believe, a complaint to execute a GSA, not to set
5 a--sorry, for the acronym. That was failure to
6 execute a General Service Agreement and not a failure
7 to set a GBL.

8 Q. Give me one moment, please.

9 A. Certainly.

10 (Pause.)

11 Q. If you could turn to--sorry, caught you while
12 you're drinking water.

13 A. Go ahead.

14 Q. Do you have enough water? Okay.

15 Tab 47 for me, please.

16 A. I'm there.

17 Q. This is Respondent Exhibit 264.

18 A. Page, please?

19 Q. This is a submission made by the Claimant to
20 the BCUC. It's the Complaint that you referred to
21 that initiated G-188-11. Is that correct?

22 A. That's correct.

03:53:19 1 Q. Okay. And on Page 2, there's the heading
2 "requested relief"?

3 A. I see that.

4 Q. It is states "establishment of a General
5 Services Agreement."

6 A. It does.

7 Q. And it states under Number 1 that Celgar is
8 seeking a GSA that includes a Generator Baseline of
9 1.5 megawatts or such other level as may be
10 established in accordance with applicable regulatory
11 parameters?

12 A. That is the relief--one of the points of the
13 relief requested.

14 Q. Okay. So a request for a GBL was part of
15 these GSA proceedings; is that correct?

16 A. Oh, yes, it was, but you--the first paragraph
17 it's the Complaint was not that there was not a GBL.
18 The Complaint was that there was not a General Service
19 Agreement.

20 Q. And the Claimant in these proceedings again
21 said that a GBL should be set using BC Hydro's GBL
22 methodology? If you look down to the paragraph at the

03:54:27 1 bottom, the Claimant says, "With respect to the GBL, a
2 component of the GSA, Celgar recognizes that the
3 process followed by BC Hydro in its service area and
4 that Celgar recommends be followed in FortisBC's
5 service area, is not based on a set formula"?

6 A. I see that.

7 Q. And it states that "there is room for
8 disagreement and negotiation as to what constitutes an
9 appropriate GBL for Celgar's mill as for any mill"?

10 A. Yes, it does.

11 Q. In these proceedings, Celgar proposed that
12 FortisBC could secure additional energy from non-PPA
13 resources for the purpose of serving the proposed GBL?

14 A. Likely it did, yes.

15 Q. If you look at Page 3, I believe it is?

16 A. I see where you're taking me to, the second
17 paragraph.

18 Q. It says "this could be achieved in many ways.
19 One such method would be for FortisBC to secure
20 additional energy from non-38-08 resources, which is
21 PPA Power, for the purpose of servicing Celgar's
22 load"?

03:55:46 1 A. Yes, that's where I was also looking.

2 Q. And it says "the cost of which would simply
3 be rolled into its rate base along with all other
4 resources--sorry, sources of power that FortisBC
5 procures to service customer needs"?

6 A. I agree. I see that.

7 Q. Okay. The Claimant argued in these
8 proceedings that "additional energy could be
9 notionally matched to and served from additional
10 third-party purchases"?

11 A. You'll take me there?

12 Q. Sure. Respondent Exhibit 376 at Tab 48.

13 A. Page?

14 Q. Page 21. The second bullet.

15 A. Yes, I see that.

16 Q. Would you mind reading it this time?

17 A. "FortisBC's concerns regarding jeopardizing
18 its access to 3808 power may be addressed through
19 ensuring that any additional Celgar load served by
20 FortisBC following the establishment of a FortisBC GBL
21 is notionally matched to and served from additional
22 third-party energy purchases."

03:57:36 1 Q. And the Claimant pointed out in these
2 proceedings that "due to market conditions, FortisBC
3 could purchase power from third-party sources without
4 incurring an additional cost."

5 Why don't we turn to Page 46?

6 A. Thank you.

7 Q. I believe it starts at Line 9.

8 A. I see that.

9 Q. Could you read that for me?

10 A. "The evidence before the Commission is that
11 FortisBC can purchase power from third-party sources
12 for less than the rate at which it will charge Celgar
13 under RS 31 over the next five years, based on current
14 market conditions."

15 Q. And this document is dated August 15, 2011?

16 A. It is.

17 Q. So you were here during the Tribunal's
18 question of Mr. Merwin this afternoon?

19 A. I was.

20 Q. And they asked questions pertaining to the
21 cost of market purchases?

22 A. Yes, they did.

03:58:35 1 Q. Okay. And this confirms Mr. Merwin's
2 understanding that market purchases would be low or be
3 below Rate Schedule 31?

4 A. I don't believe that's what Mr. Merwin said.

5 Q. I thought I got it right. I'm sorry.

6 A. I think what--my understanding--my
7 recollection of Mr. Merwin is that--from Mr. Merwin's
8 testimony is that was a fleeting opportunity. That
9 wasn't necessarily a risk that Mr. Merwin's company
10 was willing to take in the long-term.

11 Q. Okay. But at least what is being represented
12 here is that projected for the next five years, no
13 such risk would exist?

14 A. I don't believe that's the evidence that
15 Celgar led in this proceeding. It might have been
16 Fortis' own evidence in this proceeding that yielded
17 that conclusion.

18 Q. But the evidence suggests that market prices
19 were below the Claimant's normal industrial rate, Rate
20 Schedule 31?

21 A. I would agree that there was evidence that
22 was present, that that's the case, yes.

04:00:14 1 Q. If you look down to Line 28, please.

2 A. I'm there.

3 Q. It states that, "Given current market
4 circumstances, there is no harm to other customers
5 over the next five-year period, even in the incurrence
6 of FortisBC of additional costs associated with
7 purchases of power that will facilitate compliance
8 with Order G-48-09"?

9 A. I see that.

10 Q. Okay. So, this is a representation by the
11 Claimant to the BCUC that the costs of market power
12 will be low for the next five years?

13 A. That's what it is.

14 Q. Okay. You confirmed at the outset of your
15 testimony that you assisted the Claimant with the
16 G-188-11 proceedings?

17 A. I did.

18 Q. In Order G-188-11, the BCUC agreed that the
19 Claimant is entitled to some amount of FortisBC's
20 non-PPA embedded-cost power when it is also selling
21 power?

22 A. I believe it did.

04:01:31 1 Q. Okay. And it directed FortisBC to develop a
2 rate for Celgar and other self-generators based on
3 Rate Schedule 31 but excluding PPA Power?

4 A. I believe it did.

5 Q. Okay. And this meant that the Claimant could
6 now buy all of its power requirements from FortisBC
7 and sell all of its generation to Third Parties?

8 A. No, it did not.

9 Q. Okay.

10 A. That was Order G-202-12, I believe that gave
11 it all. I think G-188-11 was some.

12 MR. DOUGLAS: Might we take a break at some
13 point? I'm happy do that at the Tribunal's
14 discretion.

15 PRESIDENT VEEDER: Let's take 15 minutes now.
16 We'll come back at 4:20.

17 MR. DOUGLAS: Okay.

18 PRESIDENT VEEDER: And again, you've heard
19 this before. Please don't discuss the case or your
20 testimony away from the Tribunal.

21 THE WITNESS: Yes, Mr. President.

22 (Brief recess.)

04:09:33 1 PRESIDENT VEEDER: Let's resume.

2 MR. DOUGLAS: Thank you very much,
3 Mr. President.

4 BY MR. DOUGLAS:

5 Q. So, I believe we were just talking about
6 Order G-188-11. And you probably heard testimony
7 today from Mr. Merwin about how he considered the
8 Order to be "a major victory."

9 A. I've heard that reference, yes.

10 Q. Why don't we turn to that document for a
11 moment. It's Tab 76. It's Respondent Exhibit 531.

12 A. I'm there.

13 Q. And, of course, we see at the bottom of
14 Page 1 the reference to it being "a major victory"?

15 A. I see that.

16 Q. And Mr. Merwin states that "Celgar is able to
17 buy all of its power requirements from FortisBC and
18 free to sell the output of all of its generation to
19 third parties"?

20 A. I see that.

21 Q. Okay. If you could turn to Page 2 for me,
22 please.

04:23:03 1 A. I'm there.

2 Q. You see under "Next Steps," it states

3 [REDACTED] >>

4 A. I see that.

5 Q. And the document states that Celgar has

6 responded by << [REDACTED]

7 [REDACTED] >>

8 A. I see that as well.

9 Q. And the first reference there is to

10 << [REDACTED]

11 [REDACTED] >>

12 A. I see that.

13 Q. I think at the outset of your testimony you

14 confirmed that you were engaged by Celgar, by the

15 Claimant, for these proceedings?

16 A. Yes, I was.

17 Q. Okay. And in the second point it says

18 "Challenging FortisBC's 1 billion Waneta Dam

19 Expansion"?

20 A. Yes.

21 Q. And I believe also at the start of your

22 testimony you confirmed that you were hired by the

04:24:03 1 Claimant to assist in these proceedings?

2 A. I did.

3 Q. Okay. How about Number 3, which is a bit

4 << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]>>

8 Did you participate in any of those
9 proceedings?

10 A. I think in procedural areas, if it was to do
11 with B.C. Utilities Commission's Applications, then I
12 would likely have been involved in this time. But I
13 was not involved in with--rather, yes, I was involved
14 with another ratepayer group called the Industrial
15 Consumers Group.

16 Q. Okay. In these proceedings?

17 A. I'd have to check where my involvement was
18 for Celgar and where it was on behalf of the
19 Industrial Consumers Group, which also included Celgar
20 in their membership.

21 Q. Okay. Thank you.

22 Turning then to G-202-12, which you state at

04:25:23 1 Paragraph 85 of your First Expert Report, confirm that
2 the Claimant can have 100 percent access to non-PPA
3 embedded-cost power?

4 A. I do.

5 Q. Okay. And non-PPA embedded-cost power is
6 referred to as the NECP?

7 A. It is.

8 Q. Okay. And in other words a self-generator in
9 a FortisBC territory can buy as much or as little NECP
10 as it chooses?

11 A. G-202-12 allowed that.

12 Q. Okay. Or it can elect to self-supply and not
13 purchase any NECP?

14 A. That is correct.

15 Q. Okay. You criticize the NECP in your First
16 Report at Paragraph 86 and call it a "made-for-Celgar"
17 rate?

18 A. In Fortis's initial Application, yes.

19 MR. SHOR: What paragraph?

20 MR. DOUGLAS: I thought I said Paragraph 86.
21 Apologies.

22 A. In its first Application, yes.

04:26:26 1 BY MR. DOUGLAS:

2 Q. Would the rate not be applicable to other
3 self-generators in FortisBC territory?

4 A. I don't believe there were any at the time.

5 Q. The City of Nelson?

6 A. The municipalities were a separate class.

7 Q. Okay. Or Tolko?

8 A. I don't think it was yet in Fortis's
9 territory. I think it was still in City of Kelowna
10 territory.

11 Q. In 2012?

12 A. You're correct. It would have been.

13 Q. Okay. So it was not a "made-for-Celgar"
14 rate? It would have been applicable to other people
15 or other mills or other self-generators?

16 A. I believed it was specifically no other party
17 had made Application for the NECP or had expressed
18 interest.

19 Q. Okay. But they could if they elected to?

20 A. Any party that was eligible for the NECP, I
21 think the NECP was a Rate Rider on Rate Schedule 34.
22 Nelson wasn't a participant in Rate Schedule 34. It

04:27:35 1 was not receiving its power under Rate Schedule 34.

2 Q. Do you mean Rate Schedule 31?

3 A. No. It was--NECP was a Rate Schedule for the
4 step rate proceeding. It was a combined step rate and
5 rate--NECP Rate Rider, so the NECP Rate Rider has
6 always been expressed as a Rate Rider on RS 34, which
7 is the step rate. When the B.C. Utilities Commission
8 declined to approve FortisBC's Step Rate Application,
9 it also declined the Rate Rider, and now the Rate
10 Rider effectively has no home. I suppose it would
11 ultimately default to a Rate Rider on Rate
12 Schedule 31, but I don't think that declaration has
13 been made by the Utilities Commission or Application
14 made by Fortis.

15 Q. Okay. Thanks. Sorry; just one moment.

16 (Pause.)

17 Q. And you criticized the NECP because FortisBC
18 proposed to charge the Claimant the full incremental
19 cost of electricity it must purchase to support the
20 NECP. Again, that's a Paragraph 86 of your First
21 Report.

22 A. Yes, I agree with that.

04:29:17 1 Q. Rather than have the incremental cost
2 included in FortisBC's rates and shared amongst all
3 ratepayers?

4 A. Yes, I agree with that as well.

5 Q. So you believe that any costs associated with
6 the Claimant's below-GBL sales should be distributed
7 amongst all FortisBC ratepayers?

8 A. Yes, I do.

9 Q. Okay. Just to confirm, the Claimant has a
10 right to sell 100 percent of its electricity through
11 the NECP?

12 A. Through the G-202-12 Decision, yes.

13 Q. Okay. Would Tembec or Howe Sound, as
14 BC Hydro customers, have that same right?

15 A. I believe G-38-01 does not give them that
16 same right.

17 Q. And you in your Report--again, I think it's
18 at Paragraph 86--criticize the cost of power that the
19 Claimant would have to buy to replace its sold
20 electricity?

21 A. What do I criticize about it? I'm sorry.

22 Q. Sorry; that the cost of the power of the NECP

04:30:29 1 might be higher than FortisBC's regular rates.

2 A. By their "regular rates," do you mean their
3 embedded-cost rates minus the PPA component?

4 Q. Yeah, Rate Schedule 31.

5 A. Rate Schedule 31 includes the PPA component?

6 Q. I believe so.

7 A. So with or without?

8 Q. Sorry; I'm fumbling over my words.

9 So the NECP--you criticize it as a cost
10 because it may be higher than Rate Schedule 31; is
11 that correct?

12 A. That's correct.

13 Q. Okay. Would you agree there would only ever
14 be an NECP rate charge if there is an incremental cost
15 associated with the NECP?

16 A. An incremental to what?

17 Q. Rate Schedule 31.

18 A. I'm just struggling to remember the
19 formulation of the--but all in? Yes, okay, I'll go
20 with that.

21 Q. Okay. So if the NECP is lower than Rate
22 Schedule 31, then there would be no additional cost

04:31:47 1 associated with the NECP?

2 A. It would be capped at the higher of RS 31 or
3 market.

4 Q. Earlier on in your testimony, we reviewed
5 some submissions from the Claimant to the BCUC, and
6 those submissions were that FortisBC can purchase
7 power from third-party sources for less than Rate
8 Schedule 31 for the next five years?

9 A. I remember you took me to that evidence, and
10 it's the evidence--well, you actually didn't take me
11 to the evidence. You took me to the closing
12 statements, final submissions, that referenced
13 evidence.

14 Q. And that was R-376 at Tab 48 at Page 46. We
15 don't have to go there. Just saying that for the
16 record.

17 MR. DOUGLAS: One of my colleagues over the
18 break told me that I've been sniffing a lot. I'm
19 sorry. Maybe I shouldn't draw attention to it. I
20 just caught myself doing it. I've been battling a bit
21 of a cold.

22 PRESIDENT VEEDER: No need to apologize.

04:33:07 1 We're all suffering.

2 (Laughter.)

3 MR. DOUGLAS: Okay. Fair enough.

4 PRESIDENT VEEDER: In one way or another.

5 MR. DOUGLAS: My feelings are hurt.

6 (Laughter.)

7 THE WITNESS: Touché.

8 MR. DOUGLAS: That's right.

9 BY MR. DOUGLAS:

10 Q. And you confirmed at the outset that you were
11 hired by the Claimant to assist in the G-202-12
12 proceedings?

13 A. Yes, I believe I was.

14 Q. Okay. In your Opinion--again, this is at
15 Paragraph 85 of your Second Expert Report--you state
16 that BC Hydro had--sorry; I'll allow you to get there.

17 A. Go ahead. I'm there.

18 Q. You state that BC Hydro had enormous
19 discretion to define and apply conditions of its
20 choosing when setting GBLs?

21 A. I was almost there.

22 Q. Sorry.

04:34:12 1 A. In Paragraph 85, did you say?

2 Q. Yes. Did I get it wrong? Of your Second
3 Report.

4 PRESIDENT VEEDER: Three lines up from the
5 bottom, Page 38, Paragraph 85.

6 THE WITNESS: Oh, okay. It's Paragraph 87 in
7 my document.

8 MR. SHOR: There was a corrected version and
9 an uncorrected version.

10 MR. DOUGLAS: So I can blame you for that?

11 (Comments off microphone.)

12 MR. SHOR: I'm sorry; just to clarify.

13 PRESIDENT VEEDER: Paragraph 85 is of the
14 corrected version, so I wonder if you're looking at
15 the corrected version.

16 THE WITNESS: Obviously not, President
17 Veeder.

18 MR. DOUGLAS: My apologies. Perhaps we could
19 dig up the corrected version. With the Tribunal's
20 permission, maybe we could fumble our way through it,
21 whenever there's a reference to the Second Report,
22 while we dig that out. I don't think there's going to

04:35:17 1 be too many references.

2 MR. SHOR: I may be able to help. I think
3 the main difference between the corrected version and
4 the uncorrected version is just the paragraph numbers.

5 MR. DOUGLAS: Okay.

6 MR. SHOR: So if it's the end, add two.

7 MR. DOUGLAS: Sure. Could we do that?

8 BY MR. DOUGLAS:

9 Q. So of the corrected version, it would be
10 Paragraph 85?

11 A. I'm with you.

12 Q. Okay. And you state that BC Hydro had
13 enormous discretion to define and apply conditions of
14 its choosing when setting GBLs?

15 A. I said that, and choosing to include or
16 exclude certain data.

17 Q. And have you in your Expert Report--again,
18 this is a reference to actually your first one at
19 Paragraph 213--in a similar manner state that BC Hydro
20 had unfettered discretion to set GBLs in any way that
21 it chose?

22 A. Yes. That's likely true.

04:36:09 1 Q. Okay.

2 A. I see that it is.

3 Q. And that BC Hydro exercised--this is at
4 Paragraph 183 of your First Report.

5 A. Very good.

6 Q. BC Hydro exercised nearly unfettered
7 discretion in establishing the GBL for the Claimant;
8 is that correct?

9 A. Yes, it did.

10 Q. And that it exercised that discretion less
11 favorably for Celgar than for others?

12 A. Unfettered discretion for the Claimant, as
13 you say, Celgar, Tembec, and Howe Sound, and it
14 exercised that discretion less favorably for Celgar
15 than for the others, yes.

16 Q. Okay. And you state at Paragraph 182 that
17 BC Hydro gave the Claimant the highest possible GBL?

18 A. That's correct.

19 Q. The Province released an Energy Plan in 2007?

20 A. I'm familiar with it.

21 Q. And one of the objectives was for BC Hydro to
22 achieve electricity self-sufficiency by 2016?

04:37:17 1 A. It was.

2 Q. And the Energy Plan provided for the issuance
3 of an expression of interest followed by Call for
4 Proposals for electricity derived from biomass?

5 A. Yes, it did.

6 Q. And BC Hydro then issued a Request for
7 Expressions of Interest for its Bioenergy Call for
8 Power Phase I?

9 A. Yes, it did.

10 Q. That was followed by a Request for Proposals?

11 A. Yes, it was.

12 Q. And what proposals were to procure
13 electricity so that BC Hydro could become
14 self-sufficient?

15 A. I would think that's the reason they were out
16 for power, yes.

17 Q. BC Hydro issued its Request to Proposals for
18 Call for Power on about February 6, 2008?

19 A. That sounds right.

20 Q. Okay. They set out to acquire about 1,000
21 gigawatt hours of electricity per year of firm energy?

22 A. That also sounds correct.

04:38:12 1 Q. Okay. And to qualify, projects needed to be
2 either for new self-generation or incremental
3 self-generation?

4 A. Pardon me?

5 Q. To qualify for the Call, projects needed to
6 either be for new self-generation or incremental
7 self-generation?

8 A. I believe that's how they characterized it,
9 yes.

10 Q. Okay. And a GBL was a requirement for this
11 kind of project at a facility seeking to sell
12 incremental self-generation?

13 A. I believe it was.

14 Q. Okay. And one of the primary purposes of the
15 GBL was to define incremental generation output that
16 BC Hydro would consider purchasing?

17 A. The GBL would set the obligation of
18 self-supply.

19 Q. One of the purposes--at least that we saw, if
20 you remember, from an earlier submission that the
21 Claimant made to the BCUC--one of the purposes of a
22 GBL was to define incremental generator output that

04:39:13 1 BC Hydro would consider purchasing?

2 A. Above the GBL is what BC Hydro was interested
3 in purchasing. So the GBL itself defined the
4 self-supply obligation.

5 Q. Okay. So BC Hydro used the GBL concept to
6 incentivize new generation?

7 MR. SHOR: Are you asking what actually
8 happened or what was intended?

9 MR. DOUGLAS: Why don't we turn to
10 Paragraph 25 of his First Expert Report--Second Expert
11 Report, which Mr. Shor might help me out with the
12 corrected version.

13 MR. SHOR: That number probably didn't
14 change.

15 THE WITNESS: Is it before or after the
16 table?

17 MR. SHOR: May I give him a corrected
18 version?

19 MR. DOUGLAS: If you have one, that would be
20 great. Thank you so much.

21 There is no secret notes on there, is there?

22 THE WITNESS: Thank you.

04:40:23 1 BY MR. DOUGLAS:

2 Q. So Paragraph 25 of your Second Report.

3 A. I'm there.

4 Q. You state that BC Hydro has used the GBL
5 concept to incentivize new generation?

6 A. Has used the GBL concept to incentivize new
7 generation. Okay.

8 Q. All right.

9 A. And restrict the self-generators' use of its
10 own self-generation.

11 Q. Yep. I see that you say that.

12 And so you've confirmed that BC Hydro had a
13 goal of procuring 1,000 gigawatts per year of
14 electricity?

15 A. Gigawatt hours, yes.

16 Q. Gigawatt hours. Yes. Thank you.

17 And BC Hydro ultimately acquired about 579
18 gigawatt hours of electricity through the Call?

19 A. I understand that to be correct.

20 Q. Okay. So it met only about 58 percent of its
21 target?

22 A. That sounds right.

04:41:18 1 Q. But you argued earlier that BC Hydro had
2 unfettered discretion when setting GBLs?

3 A. That's correct.

4 Q. And that it could set GBLs in any way that it
5 chose?

6 A. It appears it did.

7 Q. If BC Hydro had unfettered discretion, why
8 would it not have set GBLs differently and procured
9 more electricity in the Call?

10 A. It already--in which case? In which case?

11 Q. In all cases. Or in the case of the
12 Claimant.

13 A. In Celgar's case by setting the GBL where
14 they did, they effectively got all the rest of the
15 electricity under the GBL stranded to have the--have
16 Celgar--have the requirement to self-supply. So, by
17 stranding it for self-supply, they had no requirement
18 to pay for it. They chose as high a number to strand
19 as much at Celgar's load as they could without any
20 payment.

21 Q. So your position is that BC Hydro did not
22 procure the Claimant's electricity below the GBL so it

04:42:40 1 could force it to displace its load?

2 A. So it could--yes. Yes. As we saw, it was
3 even more than its load. That was--it was able to
4 use the self-generation that the customer--that Celgar
5 used for supplying their own load was only 327
6 gigawatt hours. So, they not only--they not only used
7 the generation, they actually used the load.

8 Q. Okay. So the Claimant was one of four
9 proponents to win a contract during the Call for
10 Power?

11 A. Yes, I believe that's correct.

12 Q. And BC Hydro agreed to procure 238 gigawatt
13 hours of electricity per year from the Claimant?

14 A. Yes, I think so.

15 Q. So, out of a total 579 gigawatt hours, that's
16 about 41 percent of the total if they procure?

17 A. That sounds correct.

18 Q. And your evidence is that BC Hydro should
19 have procured more from the Claimant?

20 A. No, that's not my evidence. My evidence is
21 that the GBL was set inappropriately high.

22 Q. My apologies, Mr. Switlishoff. I got

04:44:19 1 distracted.

2 A. No trouble. My evidence is that the GBL was
3 set inappropriately high.

4 Q. Okay. Coming back to an earlier point when
5 you mentioned that BC Hydro intentionally set the GBL
6 high so that it could force the Claimant to displace
7 load, how does stranding help BC Hydro's resource
8 needs?

9 A. Well, you said--how does stranded help B.C.'s
10 resource needs? This would have been, to BC Hydro,
11 new generation. This wasn't something that was in
12 their island. It was in FortisBC's island.

13 Q. I think the question--sorry--I was asking
14 Mr. Switlishoff--I'm sorry if I wasn't clear--was how
15 does stranding help BC Hydro's resource needs?

16 A. How does stranding help the BC Hydro's
17 resource needs? That--well, by requiring the--by
18 requiring Celgar to supply all of its own load, even
19 that which it had not through self-generation in the
20 past, it then forced Celgar to put that quantity to
21 towards their own load where they hadn't been doing so
22 in the past. So, that would relieve the obligation of

04:46:05 1 the utility to supply that component.

2 Q. Is BC Hydro Celgar's utility?

3 A. No, it's not.

4 Q. Would any load displacement by Celgar then
5 not benefit FortisBC rather than BC Hydro?

6 A. It would also likely benefit FortisBC, but I
7 think what we've heard is that the FortisBC--one of
8 their possible sources was BC Hydro's PPA power. So,
9 by requiring Celgar to serve that which it had not
10 been in the past, it effectively reduced Fortis's
11 purchases of PPA power.

12 Q. When you state in "one of their possible
13 sources was BC Hydro's PPA power," was PPA power under
14 the PPA supplemental power to FortisBC's generation
15 resources?

16 A. Is it supplemental? I think it forms a core
17 of their resource portfolio. In fact, if we look at
18 200 megawatts potentially and Fortis's own resource
19 portfolio at the time, it would have formed as big a
20 component as either their own generation or their
21 purchased generation from any other source. So, it
22 was as big a component as any other.

04:48:51 1 Q. So it would not have comprised only
2 15 percent of their generation resources?

3 A. Of energy perhaps but not of capacity.

4 MR. SHOR: What year are you referring to,
5 Adam? It's changed over time.

6 MR. DOUGLAS: I'd have to go back and look.
7 Apologies. Just one moment, Mr. Switlishoff.

8 (Pause.)

9 BY MR. DOUGLAS:

10 Q. Just so I understand your evidence is that
11 when BC Hydro set the GBL, they were looking to force
12 the Claimant to self-supply rather than looking to
13 simply procure incremental generation?

14 A. Setting the GBL? Yes, that appears to be the
15 case.

16 Q. So your evidence is that there was
17 incremental generation that would meet the terms of
18 the Call, but BC Hydro elected not to buy it in order
19 to force the Claimant to self-supply?

20 A. I don't know if I said that.

21 Q. Okay. That's what I'm asking. I'm trying to
22 understand your position.

04:51:01 1 A. Yeah, I don't think I said that, no.

2 Q. So the Claimant did not have any incremental
3 generation beyond what was procured by BC Hydro in the
4 Call?

5 A. If the GBL was lower, I would think they
6 would have bid that into the Call.

7 Q. They did bid that into the Call, but BC Hydro
8 determined that it was not incremental generation.

9 A. So what is your question?

10 Q. My question is, if--I'm just trying to
11 understand your evidence, which is--I thought you were
12 saying that BC Hydro refused to procure electricity
13 from the Claimant in order to force it to self-supply.

14 A. No. I said they set the GBL. They didn't
15 refuse to procure.

16 Q. Oh, refused to procure a certain amount had
17 the GBL been lower.

18 A. I don't know if they refused to procure a
19 certain amount.

20 Q. Okay.

21 A. They set an amount for the self-supply
22 obligation of Celgar.

04:52:05 1 Q. Mr. Merwin proposed a 33-megawatt GBL.

2 A. I'll trust you to be correct.

3 Q. And BC Hydro set the GBL at 40 megawatts; is
4 that correct?

5 A. Oh, I thought you meant in this proceeding he
6 suggested a 33-megawatt.

7 Q. No, in the Bioenergy Call for Power.

8 A. Okay. Subject to check, I'll agree.

9 Q. And then BC Hydro set it at 40.

10 A. That I'll agree with, yes.

11 Q. So, it made a determination not to procure
12 those 7 megawatt hours of electricity?

13 A. Actually they set the GBL at 349 gigawatt
14 hours, which on an 8,760-year basis is 40 megawatts an
15 hour roughly.

16 Q. Fair enough. I brought you a calculator if
17 you want to make sure.

18 A. I'm pretty good on that one.

19 Q. Okay. But there was a certain amount of
20 energy that BC Hydro did not procure from the
21 Claimant?

22 A. Through their constraint on setting the GBL,

04:53:03 1 yes, that would stand.

2 Q. Okay. And is your evidence that they did not
3 procure that electricity in order to force the
4 Claimant to self-supply?

5 A. Sorry, no. My evidence is, again, is they
6 forced the self-supply component so they didn't have
7 to pay for it.

8 Q. So, the GBL--

9 A. --is the amount they have to self-supply.
10 So, by setting that at a high level, you don't have to
11 pay for any of that. BC Hydro didn't have to pay for
12 any of that.

13 Q. On the flip side, though, above, there is an
14 amount that BC Hydro decided not to procure from the
15 Claimant?

16 A. No, it procured all of the amount above the
17 GBL.

18 Q. But not the 33-megawatt proposal that
19 Mr. Merwin submitted to the Call?

20 A. If you characterize it that way. That's not
21 the way I characterize it.

22 Q. Okay.

04:54:05 1 (Pause.)

2 Q. I'm sorry.

3 A. No trouble.

4 Q. I didn't mean to hit start and stop.

5 A. No problem.

6 Q. And you conclude that the Claimant should
7 have been assigned a GBL that is zero?

8 A. I don't think I claimed that.

9 Q. Would you turn to Paragraph 215 of your First
10 Expert Report, please.

11 A. I'm there.

12 Q. You state that it is your professional
13 opinion, in the third line down, that the GBL should
14 have been zero.

15 A. If it was afforded treatment aligned with the
16 best treatment afforded to any other pulp mill, yes,
17 that's what it would have been assigned.

18 Q. Okay. And BC Hydro would have procured all
19 of the electricity above the 0-megawatt GBL?

20 A. I'm not certain what they would have done.

21 Q. But the purpose to set a GBL in an EPA is to
22 identify, in part, the amount above which BC Hydro

04:55:41 1 will procure?

2 A. That was the--one of the terms in the Call, I
3 believe, yes.

4 Q. So, with a zero GBL, BC Hydro would procure
5 the electricity above the zero GBL as defined in the
6 Contract?

7 A. It may have, depending on its bid parameters.

8 There were bids beyond the 579 they procured
9 that they chose not to procure, and I don't know what
10 price threshold they set as their price versus volume
11 acceptability, but there were bids that were denied
12 even though they hadn't met their volume objective.

13 Q. And would one of the reasons why they denied
14 some of those proposals perhaps be because that
15 electricity was not incremental generation?

16 A. I don't think they provided reasons.

17 Q. And you have correctly pointed out that, in
18 your contention, the 1997 EPA with Tembec was the best
19 treatment afforded to another and that to bring the
20 treatment in line, the Claimant should have been
21 provided with <<[REDACTED]>>

22 A. That's my assessment of Tembec's GBL in the

04:57:08 1 1997 EPA, yes.

2 Q. Did that '97 EPA have a GBL?

3 A. It didn't define it as such, but it had no
4 requirement for any self-supply.

5 Q. Was not--1997 was the concept of GBLs even
6 invented?

7 A. In '97, no, but I think the EPA was finally
8 implemented in 2001, in September following G-38-01.

9 Q. But the date of the Contract is 1997?

10 A. The date of the Contract with Purcell was
11 1997.

12 Q. Okay. Yes, its predecessor.

13 So, BC Hydro--so, it was signed prior to the
14 concept of GBLs coming into creation?

15 A. I don't know if I'd characterize Purcell as a
16 predecessor to--

17 Q. Sorry, that may be my bad.

18 A. Okay.

19 Q. But the EPA was signed in 1997, and the GBL
20 concept came after that date?

21 A. The first--the '97 EPA, yes, was signed, but
22 I don't think it was given effect. I think there were

04:58:25 1 a number of circumstances in the 1997 EPA that weren't
2 met, and I think the commercial operation date was one
3 of them that should have made the 1997 EPA null.

4 Q. So, does the Commercial Operation Date start
5 the Effective Date of the Contract?

6 A. No. It's the date defined in the Contract.

7 Q. Okay. And do you know what that date is in
8 the 1997 EPA?

9 A. It was in <<[REDACTED]>>, I believe. I think it was
10 <<[REDACTED]>>.

11 Q. Sure. Why don't we turn to Tab 21. We could
12 take a look. At Respondent's Exhibit 190.

13 A. I'm there. Page please?

14 Q. These are longer page numbers. At the bottom
15 it is Page 16996.

16 A. I'm there.

17 Q. My apologies, Mr. Switlishoff. I'm going to
18 actually take you to 971, first.

19 A. 16971?

20 Q. Yes, 16971.

21 A. Yes, I'm there.

22 Q. And under Section 2.1 it states that the EPA

05:00:08 1 shall come into force on the date of this EPA.

2 A. That's correct.

3 Q. And now, if we look back to the previous
4 page, which was 16996, we see a series of signatures.

5 It states that each Party's duly authorized
6 representative has executed this EPA on the date set
7 forth below.

8 A. I see that.

9 Q. So, the date of the EPA is September 1997?

10 A. Yes, and the section I was taking you to was
11 2.3, which said it was << [REDACTED]

[REDACTED]
[REDACTED] >>

14 Q. So, the EPA came into force before the
15 concept of GBL, though; is that right?

16 A. It was executed, yes. I don't know if it
17 came into force.

18 Q. Okay. There was no need for it to have a GBL
19 since the concept wasn't invented?

20 A. Oh, fair enough. I see the interpretation
21 you're making. I think that's--yeah, I'll, consistent
22 with 2.1, it comes into force of the date of this EPA,

05:01:27 1 and that is the date of this document.

2 Q. The Claimant submitted two proposals into the
3 Bioenergy Call for Power.

4 A. Yes, I believe they did.

5 Q. And the first was called the Biomass
6 Realization Project?

7 A. One of them was called that.

8 Q. Okay. This is also known as the Claimant's
9 Arbitrage Project?

10 A. Yes, I believe that is.

11 Q. And it proposed to sell all of its
12 electricity from its Celgar Mill's 52-megawatt
13 extracting turbine?

14 A. The amount below the GBL, if you will, or was
15 it all? I'm not--I'd have to check on that, if it was
16 the entire amount.

17 Q. Subject to check, they were looking to sell
18 all of their 52-megawatt electricity?

19 A. I'll accept your characterization, yes.

20 Q. And, in effect, this would have been a zero
21 GBL?

22 A. That would be correct.

05:02:23 1 Q. And the second project they submitted into
2 the Call was the Green Energy Project.

3 A. I agree.

4 Q. Okay. Which proposed to sell electricity
5 from a yet-to-be-installed new condensing turbine.

6 A. A portion, yes.

7 Q. Okay. BC Hydro determined that the
8 Claimant's Arbitrage Project was not eligible under
9 the terms of the Call for power?

10 A. I believe that's what they claimed.

11 Q. And BC Hydro said that if the Claimant
12 intended to submit a proposal that included
13 electricity from the 52-megawatt turbine a GBL would
14 need to be established?

15 A. Yes, that sounds correct.

16 Q. And BC Hydro determined that electricity from
17 the Green Energy Project would be eligible?

18 A. That also sounds correct.

19 Q. From the new turbine that would be installed?

20 A. Which was, I believe, the Green Energy
21 Project.

22 Q. Yes.

05:03:14 1 A. (Witness nods.)

2 Q. The Claimant does not allege in this
3 arbitration that BC Hydro was required to have
4 purchased electricity from its Arbitrage Project?

5 A. Sorry, could you say that again?

6 Q. Yes.

7 A. I believe that's correct, but could you say
8 that again.

9 Q. Oh, yes, sure, that the Claimant does not
10 allege in this arbitration that BC Hydro was required
11 to have purchased electricity from its Arbitrage
12 Project?

13 A. I believe that's correct.

14 Q. Okay. But before you claimed that BC Hydro
15 was required to give the Claimant a GBL of zero?

16 A. If it was to be afforded the best--the
17 same--the treatment as the best other comparator, yes.

18 Q. Is that not just the same thing as the
19 Arbitrage Project?

20 A. If you characterize it as such.

21 Q. Do you characterize it as such?

22 A. No, I don't. I don't--I didn't draw a

05:04:07 1 equivalence between those two.

2 Q. But would a zero megawatt GBL be any
3 different than the Arbitrage Project?

4 A. No, as you say, I think they would end up at
5 the same--what precisely is your question?

6 Q. Just that the 0-megawatt GBL that you propose
7 in your Expert Report--I'm just asking whether that's
8 different than the Arbitrage Project that the Claimant
9 submitted into the Bioenergy Call for Power process.

10 A. Yes, it is.

11 Q. How so?

12 A. Pardon me?

13 Q. How so?

14 A. Oh, how so, the 0-megawatt GBL is--a
15 0-megawatt GBL would allow Celgar to do anything
16 between zero and its BC Hydro GBL with that power, but
17 the arbitrage--and that didn't necessarily have to go
18 to BC Hydro. The Arbitrage Project was something that
19 was bid in--sorry, the Biomass Realization Project was
20 something separate that was bid in to the BC Hydro
21 Call.

22 Q. So, we--

05:05:30 1 A. It could have. It could have had the same
2 effect, but they weren't exactly the same thing.

3 Q. Okay. But when you state at Paragraph 215 of
4 your First Expert Report, you state that BC Hydro
5 should have set the GBL at zero in order to have the
6 same treatment as the '97 EPA with Tembec or part of
7 it?

8 A. Yes, I say that.

9 Q. And so would have then purchased the
10 electricity above that 0-megawatt GBL in an EPA?

11 A. Would BC Hydro have purchased it?

12 Q. That's one of the purposes of setting the GBL
13 for the purpose of an EPA.

14 A. So, BC Hydro had the option to purchase as
15 much as they wanted.

16 Q. Okay.

17 A. Or as little.

18 Q. And you've confirmed that Mr. Merwin
19 submitted a proposed 33-megawatt GBL into the Call
20 process?

21 A. Yes, I believe that's what he did.

22 Q. Which is higher than the zero GBL you allege

05:06:47 1 in this arbitration?

2 A. It's higher than what Celgar's GBL should
3 have been set at if they were afforded the same
4 treatment.

5 Q. And BC Hydro disagreed and set the GBL at 349
6 gigawatt hours of electricity per year?

7 A. They did.

8 Q. Which is roughly a GBL of 40 megawatts?

9 A. That's roughly correct.

10 Q. In your view, this is the highest possible
11 GBL that BC Hydro could have set for the Claimant?

12 A. It is.

13 Q. And to set the GBL, BC Hydro--and this is at
14 Paragraph 184 of your First Expert Report.

15 A. I'm there.

16 Q. You state that the GBL BC Hydro applied to
17 Celgar a net-of-load standard?

18 A. Yes, they did.

19 Q. And at Paragraph 185, you state that it is
20 difficult to conceive that BC Hydro could have
21 computed a GBL for Celgar using anything other than
22 the net-of-load standard defined by the BCUC in Order

05:08:05 1 G-48-09?

2 A. I see that.

3 Q. But the GBL was set on May 30, 2008?

4 A. Subject to check, I'll take that.

5 Q. That's R-181.

6 A. Thank you.

7 Q. And that was almost one year before G-48-09
8 was issued? Oh, did you want to take a look at that?

9 You can. It's Tab 12. It's Respondent Exhibit 181.

10 I'm sorry, I should have given you a chance to look.

11 A. Thank you.

12 Fair enough.

13 Q. So, this is a May 30, 2008, letter from the
14 BC Hydro to the Claimants setting a GBL?

15 A. It is.

16 Q. And this was set a year before G-48-09 was
17 issued?

18 A. It was.

19 Q. So, how is it, then, that BC Hydro could have
20 computed--I'm quoting from you--computed a GBL for
21 Celgar using anything other than the net-of-load
22 standard defined by BCUC Order G-48-09 when the GBL

05:09:13 1 came first and G-48-09 came later, a year later?

2 A. Yes, that sure begs the question with me as
3 well, and seeing that BC Hydro brought the complaint
4 on the PPA, the complaint on the PPA that resulted in
5 G-48-09, it's apparent to me that they were supporting
6 a net-of-load determination.

7 Q. So, they set the GBL to be consistent with
8 their application to the BCUC? Is that what you're
9 saying?

10 A. Yes.

11 Q. Okay.

12 A. Well, I think that's a fair characterization.

13 Q. And what date did they submit their
14 application to the BCUC?

15 A. I don't have that date in front of me.

16 Q. I believe earlier in your testimony we
17 confirmed it was September 2008.

18 A. Okay. Thank you.

19 Q. I'll try to find that exhibit. I'm sorry,
20 Mr. Switlishoff.

21 So, again, though, the application, then,
22 came after the GBL was set for the Claimant?

05:10:32 1 A. I'd just like to read the paragraph here in
2 front of my--

3 Q. Please.

4 (Witness reviews document.)

5 A. Yes.

6 So, I think that it was--it had in mind the
7 net-of-load concept in setting Celgar's GBL and in its
8 complaint for the PPA.

9 Q. Okay. And the complaint in the PPA was filed
10 on September 16, 2008. If you want to take a look,
11 that's Tab 39.

12 A. If there's anything more, I will take your
13 word on that.

14 Q. Okay. It's R-250.

15 So, again, though, the GBL was set on May 30,
16 2008, which came before the application in September?

17 A. I agree, May is before September.

18 Q. So, again looking at your statement here that
19 Celgar--you say it's difficult to conceive how BC
20 Hydro could have computed the GBL for Celgar using
21 anything other than a net-of-load standard as defined
22 by the BCUC in Order G-48-09, so your chronology is a

05:11:51 1 bit off there.

2 A. Well, my chronology with the BCUC Order may
3 be, but...

4 PRESIDENT VEEDER: I think let's let the
5 Witness finish.

6 THE WITNESS: Okay, my chronology may be, but
7 I do believe that it's consistent with BC Hydro's PPA
8 application.

9 BY MR. DOUGLAS:

10 Q. But again, we've confirmed that the
11 application came in September 2008, when the GBL was
12 set in May 2008?

13 A. Yes, I agree, and then one begs the question
14 just how did the BCUC arrive at the same result as BC
15 Hydro?

16 Q. So, the BC Hydro elected a net-of-load
17 methodology to set the GBL and then was consistent
18 with that in its BCUC application?

19 A. It appears the BCUC was consistent in its
20 decision with BC Hydro's application of the GBL to
21 Celgar.

22 Q. Okay. Since its GBL was set, Celgar's mill

05:12:58 1 load has grown?

2 A. Yes, it has.

3 Q. So, for example, in 2007, the Mill's annual
4 load was 360 gigawatt hours?

5 A. Sorry, in 2007?

6 Q. Did I say 2007, so I'm getting tired. 2011.
7 You can see on the screen. I apologize that this is
8 not in your binders.

9 A. I can't really see what the load was in 2011.

10 Q. That is a good question. Well, we are in--

11 A. I can't see it there, either.

12 Q. This was a trick.

13 (Laughter.)

14 MR. DOUGLAS: Give me one moment, please.

15 (Pause.)

16 PRESIDENT VEEDER: Didn't we have this as
17 Annex A to Mr. Merwin's Witness Statement?

18 MR. DOUGLAS: It's very possible, and I've
19 just lost track of where the unredacted version is.

20 ARBITRATOR DOUGLAS: It's in the redacted.

21 MR. DOUGLAS: Oh, perfect. Can we just refer
22 to that?

05:14:25 1 PRESIDENT VEEDER: Yeah, why not.

2 MR. DOUGLAS: Oh, sure. That works for me.

3 THE WITNESS: And now, yes, I can confirm
4 that.

5 BY MR. DOUGLAS:

6 Q. Okay. So, the Mill's annual load in 2011 was
7 360 gigawatt hours?

8 A. I'll go with you there.

9 Q. Okay. And in 2012 its annual Mill load was
10 373 gigawatt hours?

11 A. And I'll join you there as well.

12 Q. These mill loads are higher than the
13 Claimant's GBL of 349 gigawatt hours?

14 A. They are.

15 Q. Did the Claimant's GBL rise with the increase
16 in these mill loads?

17 A. No, it did not.

18 Q. So, under its EPA, the Claimants' GBL has
19 remained consistent at 349 gigawatt hours?

20 A. Why would it not? Sorry, yes, it has.

21 Q. So, the Claimant is able to sell electricity
22 above the GBL but below its increased mill load?

05:15:18 1 A. After the EPA was, I guess, consummated, yes,
2 it appears to have.

3 Q. So, the Claimant does not have a net-of-load
4 GBL?

5 A. Yes, it does. That's how--it was as of when
6 the Contract was signed. Again, that's how it was
7 determined. It was net-of-load.

8 Q. So, net-of-load, it wouldn't grow with the
9 load of the Mill?

10 A. No, it didn't. It was at the time that the
11 Contract was executed.

12 Q. Okay. So, your evidence is that the GBL was
13 set at the mill load in 2007?

14 A. That's correct.

15 Q. Okay. But the mill load increased
16 afterwards, and the GBL remained consistent?

17 A. Yes, it did.

18 Q. Okay. BC Hydro used 2007 as the baseline
19 year on which to assess the Claimant's GBL?

20 A. Yes, it did.

21 Q. And, in your Report, you state that this
22 choice of year was adverse to the Claimant? It's at

05:16:23 1 Paragraph 208 of your First Report.

2 A. Yes, that sounds right.

3 Q. Okay. Because it included in the GBL the
4 Claimant's generation output resulting from the Blue
5 Goose Project?

6 A. Yes, it did.

7 Q. And, in your view, the Blue Goose Project
8 resulted in incremental generation?

9 A. Yes, that's my view.

10 Q. That should have been eligible in the
11 Bioenergy Call for Power as incremental generation?

12 A. Yes.

13 Q. So, prior to 2005, the Claimant regarded
14 purchasing the Mill as an excellent opportunity?

15 A. Okay.

16 Q. Why don't I take you to Mr. Gandossi's
17 Witness Statement. You should have--this will be the
18 only time we do this, I think, the white binders.

19 A. The white binders.

20 Q. Cheryl or Shawna, can you make sure he has
21 the Witness Statements for me, please?

22 Sorry, one second. There's more binders.

05:17:21 1 A. All I need is more chairs.

2 Q. That's right.

3 (Pause.)

4 Q. Maybe we could just pull it up on the screen.

5 A. Sure, that will work for me.

6 Q. It's up to you. What's your preference?

7 A. The screen, please. Thank you very much.

8 Q. This is Paragraph 34 of Mr. Gandossi's
9 testimony. You can see on the third line down he
10 states that Mercer considered the Celgar Mill an
11 excellent opportunity.

12 A. Thank you for taking me there.

13 Q. You're welcome.

14 And its strategy was to make the acquisition
15 at a good price?

16 A. I don't see that there.

17 Q. That's okay.

18 And he states that at Paragraph--my apology,
19 that's because it's Paragraph 35. Next paragraph.
20 Sorry. I'm not following my reference here. They
21 wanted to make the acquisition at a good price?

22 A. Yes, it was their strategy, it seems.

05:19:00 1 Q. Okay. And this is the quote here to start:

2 "The work of making Celgar the best it could be."

3 A. I see that.

4 Q. And he also states that, in advance of
5 purchasing the Mill, the Claimant identified about
6 \$20 million--that's what he says--in profit
7 improvement initiatives?

8 A. I see that.

9 Q. Including de-bottlenecking capital projects,
10 and improving energy and chemical savings?

11 A. I see that.

12 Q. And the Claimant purchased the Celgar Mill in
13 2005?

14 A. They did.

15 Q. Okay. And shortly therefore retained the
16 company Pöyry to fast track cost estimates and
17 quantify justifications for the Blue Goose Project?

18 Why don't we turn to Tab 82.

19 This is Pöyry Exhibit 25.

20 A. I see that.

21 Q. If I could have you turn to Page 148428.

22 A. I'm there.

05:20:29 1 Q. And my apologies. Just to clarify what this
2 document is, this is a Project Performance Analysis
3 conducted by Pöyry for the Celgar Mill; is that
4 correct?

5 A. I'm not--can't confirm that. It has a
6 Zellstoff Celgar letterhead. It doesn't look like a
7 Pöyry Report.

8 Q. I am mistaken. It is an internal report of
9 Zellstoff Celgar, which makes more sense because the
10 Pöyry logo is not on there. My apologies.

11 Again, so, Paragraph or Page, rather, 148428.

12 A. I am there.

13 Q. This is a discussion of the Blue Goose
14 Project?

15 A. It is.

16 Q. And it's discussing the Project background?

17 A. Yes, it is.

18 Q. And under 2005 it states: "Promptly after
19 assuming ownership in February of 2005, Pöyry was
20 retrained to fast track cost estimates and to quantify
21 the justifications for this Blue Goose capital
22 project."

05:21:56 1 A. I see that.

2 Q. "And this was in order to allow the Mercer
3 Board of Directors to review it in June of 2005 with
4 subsequent commissioning of new facilities during the
5 planned October 2006 maintenance outage."

6 A. I see that.

7 Q. Okay. And Blue Goose was intended to
8 increase pulp production by about 400--increase pulp
9 production to 475,000 air-dried metric tonnes per
10 year?

11 A. I don't see that there.

12 Q. Sure.

13 If you turn to Page 447.

14 A. I'm there.

15 Q. You see under "projected basis"?

16 A. I'm there.

17 Q. And the table is referring to the Blue Goose
18 Project benefit summary?

19 A. Before and after, yes. I see that.

20 Q. So it was projected to have 475?

21 A. I see that.

22 Q. And the actual in 2010 was over 500,000?

05:23:10 1 A. I see that.

2 Q. Air-dried metric tonnes, ADMT?

3 A. I see that.

4 Q. And the Blue Goose Project was presented to
5 the Mercer Board of Directors in August of 2005?

6 A. Is that back on--

7 Q. It's actually on a different page, I'm sorry.
8 It's on Page 8430.

9 A. 843--okay. I've got that, and that looks
10 correct.

11 Q. Okay. And the investment in Blue Goose was
12 made in 2005-2006?

13 A. And 2007, I believe.

14 Q. 2007. When did BC Hydro Request Expressions
15 of Interests to establish a Call for Power?

16 A. I think the RFEOI, was that in
17 February 2000--well, you could tell me.

18 Q. How about March 2007?

19 A. Thank you.

20 Q. Does that sound about right? So, this was
21 two years after the Claimant's decision to undertake
22 Blue Goose?

05:24:21 1 A. It appears, yes.

2 Q. Okay. Now, you agreed earlier, and we
3 referred to Paragraph 25 of your Second Report that
4 BC Hydro uses GBLs to incentivize new generation?

5 A. Did I say that?

6 Q. We can take a look. I think you can--

7 A. Something along those lines, but take me
8 there.

9 Q. Sure.

10 It's Paragraph 25 of your Second Report?

11 A. Thank you.

12 Q. So, you have agreed, in part, that GBLs are
13 used by BC Hydro to incentivize new generation? Was
14 that right?

15 A. The GBL concept, yes, and, in part, it's
16 there, and restrict the self-generator's use of its
17 own self-generation, yes.

18 Q. Yes.

19 A. I think we have to complete the package.

20 Q. I know you feel you do, which is fine.

21 But the Claimant--

22 A. Strongly.

05:25:38 1 Q. I'm sorry?

2 A. Thank you.

3 Q. Did the Claimant need the GBL incentive to
4 undertake Blue Goose?

5 A. No, it does not appear it did.

6 Q. But your claim, when it came to the GBL, was
7 that GBL should have accounted or pardon me, BC Hydro
8 should have accounted for the GBL when setting it?

9 A. Yes, very much so because I think the GBL was
10 intended to--one of the factors in setting the GBL was
11 the status quo was set in the year prior to
12 approaching, first approaching your customer
13 approaching its utility; and, in this case, it was
14 Celgar that approached Fortis in 2007 for the sales.
15 That would have meant that 2006 would have been the
16 base year.

17 MR. DOUGLAS: It might be a good time. I'm
18 happy to keep going. I know there has been some 5:30
19 discussion typically. And I'm fine stopping here or I
20 could keep progressing. I'm in the Tribunal's hands.

21 PRESIDENT VEEDER: Let's stop here and we
22 will resume again at 9:00 tomorrow morning.

05:27:09 1 MR. DOUGLAS: Sounds great.

2 PRESIDENT VEEDER: But just for planning
3 purposes, we're running slightly behind the proposed
4 Joint Hearing Schedule, aren't we?

5 MR. DOUGLAS: How much longer am I going to
6 be?

7 PRESIDENT VEEDER: I didn't say that, but I
8 will now.

9 Again, we're not pressing you. It's your own
10 time, but just we got to plan tomorrow because we have
11 a videoconference with Mr. Allan. I suspect that's a
12 fixed time, is it?

13 MR. DOUGLAS: It is a fixed time, and we are
14 happy to accommodate the Claimant in that regard, but
15 perhaps it might interrupt one cross-examination with
16 another, and I think Canada's position is that would
17 be fine.

18 PRESIDENT VEEDER: What is the time fixed for
19 Mr. Allan tomorrow?

20 MS. GEHRING FLORES: It's 1:30.

21 PRESIDENT VEEDER: 1:30.

22 As regards arrangements for Mr. Allan, does

05:28:06 1 he have one bundle from you and six from you? What
2 are we doing about documents?

3 MR. DOUGLAS: Yes, on our part.

4 MS. GEHRING FLORES: With respect to
5 Claimants, he will have access to the documents that
6 he needs, yes.

7 MR. DOUGLAS: I believe there will be
8 representatives from both Canada and the Claimant
9 present with Mr. Allan tomorrow in Victoria.

10 PRESIDENT VEEDER: So, he has access to all
11 the documents that both sides need?

12 MR. DOUGLAS: Correct.

13 PRESIDENT VEEDER: Okay. One moment.

14 MR. SHOR: Mr. President, before we adjourn--

15 PRESIDENT VEEDER: We're not adjourning.

16 (Tribunal conferring.)

17 PRESIDENT VEEDER: We will start at 9:00
18 tomorrow.

19 So, you were going to add something. Please
20 do.

21 MR. SHOR: Yes, Mr. President. I was going
22 to answer Mr. Douglas' question yesterday about the

05:29:23 1 data discrepancy on the Howe Sound charts we
2 presented. I've handed out a revised color chart.

3 PRESIDENT VEEDER: Revised from the one you
4 gave us before?

5 MR. SHOR: Yes. And I would just like to
6 explain, and this will give you some idea how I spent
7 many months--

8 (Pause.)

9 PRESIDENT VEEDER: Yes.

10 MR. SHOR: This will give you some idea of
11 how I spent many months in 2013. We obtained
12 documents from Canada with a variety of data, and the
13 documents were not always consistent, so we put
14 together this chart which was replicated from our
15 original Memorial with the best data we had at that
16 time. One of the things that was interesting to us is
17 that we had the spreadsheet on which the GBL
18 determination was based--that was the first chart you
19 were trying to reconcile. But then we also had
20 received from BC Hydro the generation data over a
21 five-year period.

22 Now, the spreadsheet shows that Howe Sound

05:30:58 1 had that << [REDACTED]
2 [REDACTED]>> If we can pull up the data we had from BC
3 Hydro, the spreadsheet. The data we got from BC Hydro
4 showed that << [REDACTED] [REDACTED]

5 [REDACTED]>>. That was just one of the
6 reconciliation problems we had.

7 It's Exhibit C-236. It's actually an active
8 spreadsheet, so you can't look at it in hard copy.

9 This is the spreadsheet we got from Canada,
10 and, as you can see, the << [REDACTED] is in the wrong year or
11 is in a different year than the other spreadsheet.
12 What happened when we prepared our chart, the 2007
13 data matched the 2008 data were different.

14 PRESIDENT VEEDER: Can I stop you, when you
15 say your chart, this is Figure 17, Page 247 of your
16 Memorial?

17 MR. SHOR: Correct.

18 PRESIDENT VEEDER: You there see the << [REDACTED]>>.
19 It's dated to 2008?

20 MR. SHOR: We put the << [REDACTED]>> in the year it was
21 in the BC Hydro spreadsheet. Since we filed this
22 chart, we have additional data on the record because

05:32:26 1 we got statements from Mr. Fominoff and Mr. Lamarche
2 who presented from Howe Sound their own data, so we
3 have a little bit better data. So what we did was
4 correct the chart using the data from Mr. Fominoff and
5 moving the <<[REDACTED]>> over to the year in which it appears
6 in BC Hydro's data rather than the year of the
7 spreadsheet.

8 We don't really know where to put it because
9 we have two data sources, and they're inconsistent.
10 It doesn't matter for calculation of the GBL. It
11 doesn't matter what year it's in because it's a
12 three-year average. So, this is our best guess as to
13 what the actual data are.

14 The error we had made in our earlier
15 spreadsheet was, since the <<[REDACTED]>> was not in the right
16 year, we needed to add it back in, and we didn't.

17 So, that's the correction we're making here.

18 I know that was very confusing.

19 PRESIDENT VEEDER: Thank you very much for
20 that.

21 MR. DOUGLAS: Mr. President, if I may, just
22 in a similar regard, I think Professor Douglas, you

05:33:45 1 asked me for a reference in my opening to
2 Mr. Swanson's Witness Statement, and I said I would
3 get it to you, and late last night I was in my room
4 and it struck me like a lightning bolt. The
5 references are Paragraphs 25 to 40 of his Second
6 Witness Statement, and there you will find a lengthy
7 discussion about the NECP, the sources of electricity
8 for the NECP and the costs associated to the Claimant
9 with the NECP.

10 You're welcome.

11 PRESIDENT VEEDER: Thank you for that, too.

12 If there is nothing else, we will stop here,
13 and we will start again at 9:00 tomorrow morning. And
14 again, please don't discuss the case or your testimony
15 until you come back before the Tribunal.

16 THE WITNESS: Yes, President Veeder.

17 Understood.

18 MR. SHOR: Mr. Veeder, if I may make one more
19 request?

20 PRESIDENT VEEDER: Is this off the record or
21 on the record?

22 MR. SHOR: It's on the record. We're having

05:34:57 1 a hard time with the binders Canada has gave us,
2 because there's no index with the exhibit numbers so
3 we've looked for the tabs and then we can't find them
4 in our own documents. So we would formally like to
5 request that when we get binders with exhibits that
6 they have an index that tells us not just a tab number
7 but what the exhibit number is.

8 PRESIDENT VEEDER: That is a very good idea,
9 isn't it?

10 MR. DOUGLAS: Yes, that sounds fine. I would
11 be happy to get you a transcript for the binders.

12 MR. SHOR: Thank you.

13 PRESIDENT VEEDER: And again, I think just
14 for good practice, whenever you introduce a tab number
15 for the Transcript, just give the exhibit number as
16 well.

17 MR. DOUGLAS: I thought I was doing quite
18 well.

19 PRESIDENT VEEDER: You are.

20 MR. DOUGLAS: Thank you very much.

21 PRESIDENT VEEDER: Excellent.

22 (Whereupon, at 5:35 p.m., the Hearing was

05:35:38 1 adjourned until 9:00 a.m. the following day.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAWN K. LARSON