

Before the

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

- - - - - x  
 :  
 In the Matter of Arbitration between: :  
 :  
 MERCER INTERNATIONAL INC., :  
 :  
                   Claimant, :  
 : ICSID Case No.  
                   and : ARB(AF)/12/3  
 :  
 GOVERNMENT OF CANADA, :  
 :  
                   Respondent. :  
 :  
 - - - - - x Volume 5

HEARING ON JURISDICTION AND THE MERITS

MAY CONTAIN RESTRICTED ACCESS AND CONFIDENTIAL  
INFORMATION

Monday, July 27, 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 Reporter:

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 Representative for Mercer International:

MR. BRIAN MERWIN

APPEARANCES: (Continued)

On behalf of the Respondent:

MR. MICHAEL OWEN  
MR. ADAM DOUGLAS  
MR. STEPHEN KURELEK  
MS. 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

C O N T E N T S

	PAGE
PRELIMINARY MATTERS:	1271
WITNESSES:	
ELROY SWITLISHOFF (recalled)	
Cross-examination by Mr. Owen	1285
Redirect examination by Mr. Shor	1314
LESTER DYCK (resumed)	
Cross-examination by Mr. Shor	1317
Redirect examination by Mr. Owen	1573
Questions from the Tribunal	1593

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 5 of this Hearing, Monday,  
4 the 27th of July.

5 As always, we ask first to the Secretary to  
6 state the timings.

7 MS. MARTÍN BLANCO: The Claimant has 13 hours  
8 and 13 minutes, and the Respondent has 5 hours and  
9 32 minutes.

10 PRESIDENT VEEDER: There is some  
11 housekeeping. We received three letters on the 26th  
12 of July, for which we're very grateful because to a  
13 certain extent there was a measure of common ground  
14 between the Parties. As we understand the Application  
15 by the Respondent for the extended  
16 examinations-in-chief of Mr. Stockard and Mr. Swanson,  
17 these are not opposed, as such, by the Claimant.

18 MR. SHOR: That's correct, Mr. President.

19 PRESIDENT VEEDER: Now, the position--

20 MR. DOUGLAS: I do apologize for  
21 interrupting. I just wanted to add one item to  
22 Mr. Swanson's extended direct, which I'm hoping the

09:00:55 1 Claimant won't oppose because it's a new piece of  
2 evidence, which is BCUC Order G-15-01. It's the new  
3 Order that the Claimant put on record a couple weeks  
4 ago, and I didn't want to be prevented from asking  
5 Mr. Swanson a couple questions on direct relating to  
6 that.

7           PRESIDENT VEEDER: Well, this may have come  
8 as a surprise to the Claimant, but do you need time to  
9 think about it, or would you like to answer?

10           MR. SHOR: I guess the question is what's the  
11 point of the advance notification if we don't get  
12 advance notification?

13           PRESIDENT VEEDER: This is post-advance  
14 notification. Does it cause you trouble? Do you want  
15 to think about it?

16           MR. SHOR: I think we're fine.

17           PRESIDENT VEEDER: You're fine. So with that  
18 enlarged--

19           MR. DOUGLAS: My apologies.

20           PRESIDENT VEEDER: That's all right.

21           The position with regard to Mr. Lague is a  
22 bit more complicated. If we look at the Claimant's

09:01:50 1 letter of the 26th of July, it appears that there is  
2 no objection as such to the so-called new documents or  
3 new demonstratives except obviously criticism as to  
4 the relevance and content.

5 MR. SHOR: That's correct. We would like to  
6 get those exhibits numbered and admitted to the record  
7 and move on from that.

8 But with Mr. Lague's direct testimony, we do  
9 object to their proposal to have it be 15 minutes. We  
10 were limited to 10 on all of ours at their request,  
11 and don't see any reason why they should get more than  
12 the 10 that the Tribunal ordered.

13 PRESIDENT VEEDER: There is another factor  
14 here, which is we held over Mr. Switlishoff and also  
15 put him in further.

16 MR. SHOR: Yes.

17 PRESIDENT VEEDER: I think we ought to sort  
18 out whether he is going to be further cross-examined  
19 by the Respondent and, if so, when? Could we give the  
20 floor to the Respondent to respond?

21 So basically it's 10 minutes as opposed to 15  
22 minutes, but also what do we do about these other

09:02:50 1 issues?

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

3 I think what we would suggest is with respect  
4 to Mr. Switlishoff, we do intend to recross-examine  
5 him. What we would suggest in order to minimize  
6 procedural disruptions is that we do so now. We hit  
7 pause on Mr. Dyck. We'll get that over. It wouldn't  
8 take too long. And then that will give  
9 Mr. Switlishoff an opportunity to look over some of  
10 the documents, consult with Claimant, and allow him to  
11 deal with the cross-examination of Mr. Lague.

12 The Claimant has indicated that they want to  
13 bring back Mr. Lague. We would oppose this. He is  
14 not a professional witness. He's not being  
15 remunerated by Canada other than his plane ticket and  
16 hotel. So our position is that, if we do  
17 Mr. Switlishoff now, the Claimant can have some time  
18 to consult with him, and then we could get on with  
19 Mr. Lague.

20 The reason why we asked for 15 minutes with  
21 Mr. Lague's testimony, we got hit with a whole bunch  
22 of information at the last minute as you saw. That

09:04:01 1 shouldn't have happened. Sometimes when you stick  
2 your hand in the hat to pull out a white rabbit, you  
3 don't know what you're going to get.

4           So, it's a very technical subject, and what I  
5 want to urge the Tribunal to do here is to really  
6 understand what Mr. Lague has to say because he is the  
7 energy guy at Skookumchuck. He knows that turbine  
8 inside and out.

9           I'm going to try and do my best to present  
10 this very complicated material to you in 15 minutes,  
11 walk you through why that hog boiler is uneconomic in  
12 every scenario the Claimant can think. I know the  
13 Claimant thinks they're right on this and I know  
14 Mr. Switlishoff has presented evidence, but it just is  
15 simply not the case. So whatever happens with  
16 Mr. Lague, I just want to make sure that this Tribunal  
17 understands the views on this issue.

18           PRESIDENT VEEDER: Just to summarize where we  
19 got to: Your proposal is that Mr. Switlishoff should  
20 come back now to be cross-examined on the new  
21 materials that you've put in. We would then in due  
22 course hear Mr. Lague with an extended direct of 15

09:05:05 1 minutes, not 10, then be cross-examined and  
2 reexamined, and then you would oppose any further  
3 cross-examination of Mr. Lague.

4 MR. OWEN: Yes, I would.

5 PRESIDENT VEEDER: It's complicated, but  
6 what's the position of Claimant?

7 MR. SHOR: We agree that Mr. Switlishoff  
8 should go first and get that out of the way. We have  
9 no objection to that. Unfortunately, Mr. Switlishoff  
10 will need to assist me in the cross-examination of  
11 Mr. Dyck. He will not have any time to review those  
12 other documents or discuss them with me before  
13 Mr. Lague goes on, who is right after Mr. Dyck.

14 So their proposal simply doesn't work. I  
15 don't get any time to consult with my Expert on the  
16 new documents. We must have overnight to do that.

17 PRESIDENT VEEDER: Let's take this in stages.

18 You wouldn't object to Mr. Switlishoff  
19 resuming his testimony under direct--on  
20 cross-examination with the new documents. We can do  
21 that today.

22 MR. SHOR: Yes.

09:06:04 1           PRESIDENT VEEDER:  Then you need overnight to  
2  consult with him?

3           MR. SHOR:  To examine Mr. Lague on those  
4  documents.

5           PRESIDENT VEEDER:  Can Mr. Lague come back  
6  tomorrow?  Can we switch the order of Witnesses?

7           MR. OWEN:  Just one minute, Mr. President.

8           (Pause.)

9           PRESIDENT VEEDER:  It's really a question of  
10 switching Mr. Lague with Mr. Swanson, I suspect.

11          MR. SHOR:  That's not what we're proposing.  
12 And I don't think we would be ready to cross-examine  
13 Mr. Swanson today.

14          PRESIDENT VEEDER:  What are you proposing?

15          MR. SHOR:  I'm proposing the same thing that  
16 happened with Mr. Switlischoff.  We'll start with  
17 Mr. Lague, and then we would reserve a little bit of  
18 cross-examination time to address the new documents  
19 with him tomorrow.

20          PRESIDENT VEEDER:  I see.  Okay.

21          MR. SHOR:  It may be the case he doesn't  
22 finish today and it won't even be an issue that way.

09:07:12 1                   PRESIDENT VEEDER: It may be a bit easier.  
2 So we would continue with the present witness, move to  
3 Mr. Lague, hopefully this afternoon. But this  
4 particular part of the cross-examination would be  
5 carved out. You could deal with it in direct and that  
6 part of the cross-examination deferred would take  
7 place tomorrow morning?

8                   MR. OWEN: I don't want to be unreasonable,  
9 so I'm willing to agree to it. But I still would like  
10 a 15-minute direct if we can get that.

11                   PRESIDENT VEEDER: Well, we haven't decided  
12 that. That's a different issue. We're just looking  
13 at the order. So, Mr. Lague could come back tomorrow  
14 morning.

15                   MR. OWEN: If it's first thing tomorrow, I  
16 don't think it will conflict with his flight.

17                   PRESIDENT VEEDER: So, back to the 15 minutes  
18 versus 10, we haven't yet had 15 minutes, have we, for  
19 any direct examination in this case.

20                   MR. SHOR: We would have liked 15 minutes for  
21 many of our direct examinations. That's what we  
22 proposed; Canada opposed it. The Tribunal ordered 10,

09:08:12 1 and we stuck with it, and they should have to stick  
2 with it too. It is what they requested.

3 PRESIDENT VEEDER: I think we've got your  
4 argument, but you can have a short reply if you want.

5 MR. OWEN: I don't think I need to say  
6 anything else.

7 PRESIDENT VEEDER: We'll just take 5 minutes.

8 (Brief recess.)

9 PRESIDENT VEEDER: Let's resume.

10 The Tribunal has deliberated on the issue of  
11 10 minutes versus 15 minutes, and it's decided in  
12 favor of 10 minutes, the reason being Mr. Lague will  
13 be inevitably cross-examined. There will obviously be  
14 an opportunity for the Respondent to conduct  
15 reexamination. There will also probably be questions  
16 from the Tribunal, in particular one member of the  
17 Tribunal. So, in a sense, we feel that Mr. Lague will  
18 have a full opportunity to address this issue without  
19 causing a breach of our precedence so far, namely,  
20 10 minutes rather than 15.

21 So, that's our Order. We understand that  
22 everything else has been agreed, and we weren't

09:13:05 1 totally clear whether Mr. Switlishoff should give  
2 evidence immediately now. Was that the proposal?

3 MR. SHOR: Yes, I think that is.

4 PRESIDENT VEEDER: And that's agreed by the  
5 Respondent?

6 MR. OWEN: Sure. That's fine.

7 PRESIDENT VEEDER: Do we need time just to  
8 sort out the new evidence with exhibit numbers and so  
9 on?

10 MR. SHOR: We do need to do that, but I just  
11 wanted to ask one clarification. My understanding  
12 from Canada's request is that the new documents, the  
13 new "white rabbits," to use Mr. Owen's term, were  
14 going to be used with Mr. Lague. Mr. Switlishoff has  
15 not seen these documents. Does Canada intend to show  
16 them to him?

17 PRESIDENT VEEDER: I'd assume they would, but  
18 let's ask the Respondent.

19 MR. OWEN: We intend not to show them to him.  
20 I thought it would be procedurally unfair to ambush  
21 the witness, given that he's sequestered on this  
22 issue--

09:13:55 1 PRESIDENT VEEDER: Yes.

2 MR. SHOR: That's what we thought.

3 MR. OWEN: Okay. So, you know, from our  
4 perspective, we wanted to be fair to Mr. Switlishoff.  
5 I have a number of questions on his new oral Expert  
6 Opinion that he presented, and we're going to deal  
7 with that through Mr. Lague. That's part of the  
8 reason why we were asking for a longer direct.

9 PRESIDENT VEEDER: Well, on your approach,  
10 would he ever have a chance to deal with the new  
11 material if he completes his evidence today? He  
12 wouldn't have seen it.

13 MR. OWEN: I guess not, and, I mean, it's  
14 sort of an awkward situation. We discussed this and  
15 how best to be fair to Mr. Switlishoff and the  
16 Claimant over the weekend when we filed our  
17 Application. We're in your hands. We certainly think  
18 that Mr. Shor will have an opportunity to go through  
19 these documents with, of course, the assistance of  
20 Mr. Switlishoff now and cross-examine Mr. Lague in  
21 detail on them. So, I think that makes things fair.

22 MR. SHOR: I think that will work for us.

09:14:56 1 I'd just ask that we number them now so we can use  
2 them during the day as necessary.

3 PRESIDENT VEEDER: Okay. Well, let's number  
4 them now and get that sorted out and get them embedded  
5 into the file. Can that be done quite quickly, or do  
6 you need a bit longer?

7 MR. OWEN: I think it's mostly done, subject  
8 to checking with our paralegal, we were thinking that  
9 probably this would happen. But maybe if we could  
10 just have 5 minutes.

11 PRESIDENT VEEDER: Let's have 5 minutes and  
12 do that and then have Mr. Switlishoff. Thank you.

13 (Pause.)

14 PRESIDENT VEEDER: Well, let's resume.

15 It looks as though the new documents are  
16 being numbered and copied and printed and distributed,  
17 and we can now proceed. We're reminded rightly that  
18 we have yet to decide the extended period of  
19 cross-examination requested by the Respondent for  
20 Mr. Switlishoff. We left this open at Day 3,  
21 Page 768. As we understood it then, there was no  
22 resistance from the Claimant to an additional

09:30:34 1 15 minutes being allocated to the Respondent to their  
2 overall time, but I think, as I recall, the Respondent  
3 wanted to reserve the right to go up to 30 minutes.

4 What is the Application now?

5 MR. OWEN: I don't think I'll need  
6 30 minutes. I have a few pages here of questions.  
7 I'm going to estimate about 20 to 25 minutes, but I  
8 don't even think that I may use all that. It depends  
9 on how quickly we move through some of this.

10 PRESIDENT VEEDER: It also depends on the  
11 answers. It always does.

12 MR. OWEN: Yes, it does.

13 PRESIDENT VEEDER: Any objection to that?

14 MR. SHOR: We would ask that--I guess two  
15 points. I guess to the extent there's an additional  
16 allocation of time, we would ask that that be limited  
17 to 15 minutes, and we also get 15 minutes for  
18 Mr. Lague on the same issue. And if he wants to go  
19 over that 15 minutes, he can use his original time  
20 allocation.

21 PRESIDENT VEEDER: When you say "for  
22 Mr. Lague," it's your cross-examination of Mr. Lague

09:31:34 1 you want to add 15 minutes.

2 MR. SHOR: On the second day when I  
3 cross-examine him on the new documents we just got  
4 today or we got yesterday.

5 PRESIDENT VEEDER: Yeah, well, we'll take it  
6 in stages. We're just going to deal with today for  
7 the moment. So, the difference is between 15 and,  
8 say, 25 minutes.

9 MR. SHOR: Yeah, we would not object to an  
10 additional allocation of 15 minutes, but if it goes  
11 over that, we would suggest that the Respondent should  
12 use their time.

13 (Pause.)

14 PRESIDENT VEEDER: We're going to take it by  
15 stages, but our ruling at the moment is not more than  
16 30 minutes will be allocated to the Respondent's time  
17 for the further cross-examination of Mr. Switlishoff.  
18 We'll see what happens, and then we'll hear the  
19 Counter-Application by the Claimant in regard to  
20 Mr. Lague at a later stage.

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

22 PRESIDENT VEEDER: So, just to summarize,

09:33:24 1 we're going to have Mr. Switlishoff now, so he'll come  
2 back before the Tribunal. He'll be cross-examined,  
3 reexamined, and then he will leave the Witness box and  
4 be out of purdah for the purpose of assisting the  
5 Claimant in regard to the Claimant's cross-examination  
6 of Mr. Lague.

7 ELROY SWITLISHOFF, CLAIMANT'S WITNESS, CALLED

8 PRESIDENT VEEDER: Thank you for your  
9 patience, sir, and thank you for returning. You are  
10 still testifying under the form of the declaration  
11 that you made last week. You understand that?

12 THE WITNESS: I understand, President Veeder.  
13 Thank you.

14 PRESIDENT VEEDER: There will be questions  
15 now from the Respondent.

16 CROSS-EXAMINATION

17 BY MR. OWEN:

18 Q. Good morning, Mr. Switlishoff.

19 A. Good morning.

20 Q. Thanks for coming back to speak with us  
21 again.

22 PRESIDENT VEEDER: Just pause for one moment.

09:34:19 1 Should this be closed or open now?

2 MR. OWEN: Thank you. It should be a closed  
3 session.

4 PRESIDENT VEEDER: We'll go into closed  
5 session.

6 (End of open session. Confidential business  
7 information redacted.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

09:34:26 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: We're closed.

3 MR. OWEN: Thank you.

4 BY MR. OWEN:

5 Q. Mr. Switlishoff, I would just like to begin  
6 with the context of your analysis and our discussions  
7 because we're coming back on a Monday morning. I  
8 think Canada has explained from our perspective that  
9 BC Hydro and Tembec Skookumchuck agreed that the 2009

10 EPA [REDACTED]

11 [REDACTED] >> Is that your understanding of our--

12 A. No, it's not.

13 Q. --of our perspective?

14 A. No, it's not.

15 Q. Sorry. I said the 2009 EPA. I meant the  
16 1997 EPA.

17 A. That's my understanding.

18 Q. Yes. I apologize.

19 And BC Hydro and Tembec then modelled how the  
20 pulp mill << [REDACTED] [REDACTED] >>

21 again, from our perspective?

22 A. I don't believe they did, but I don't know if

09:35:23 1 that is your perspective. I haven't seen that.

2 Q. But we did conclude that << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]>>

6 A. No, I did not see any analysis to support

7 that.

8 Q. Okay. Now, you've suggested that it would be

9 << [REDACTED]

■ [REDACTED] [REDACTED]>> is that right?

11 A. Yes, that's my evidence.

12 Q. Now, the 1997 EPA was concluded between

13 Purcell Power Corporation, which was an independent

14 power producer; is that right?

15 A. Yes, I believe that's correct.

16 Q. And they planned on installing a large hog

17 boiler and at the time a separate turbine; is that

18 right?

19 A. A hog boiler and a separate turbine. "Large"

20 is relative. But fair enough, a hog boiler and a

21 turbine was their project.

22 Q. Okay. Can you turn to Tab 1 of your binder.

09:36:25 1 Maybe we can look at the Contract and take a look.

2 Or, sorry, Tab 3, my apologies.

3 A. I'm there.

4 Q. So, this Contract was eventually assigned to  
5 Tembec, and the configuration was changed from having  
6 a separate turbine to the pulp mill. It  
7 would--originally, under this contract, the pulp mill  
8 would have retained its original turbine, and Purcell  
9 would have had a separate turbine and the hog boiler.

10 Is that your understanding?

11 A. Yes, that's my understanding.

12 Q. And then when Tembec took over the project in  
13 the late-1990s--and for the record, this is  
14 Exhibit R-190.

15 When Tembec took over the project in the  
16 late-1990s, what happened was they decided it would be  
17 inefficient to run two separate turbines, so they  
18 basically took the two turbines and they replaced it  
19 with one large 43 1/2-megawatt turbine; is that right?

20 A. That's what they did, but I didn't see any  
21 analysis that supported their decision.

22 Q. Okay. Let's take a look at some of the

09:37:39 1 contractual terms here. Can you turn to Section 7.1,  
2 please.

3 A. Yes, I'm there.

4 Q. Okay. Can you read out 7.1, please?

5 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 Q. Okay. That's a bit of alphabet soup, so  
12 let's try and--we know what "EPA" is, << [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]>>

16 A. I agree.

17 Q. << [REDACTED] [REDACTED]>>

18 A. I agree.

19 Q. Okay. "BCH" is obviously BC Hydro?

20 A. I agree.

21 Q. So, what this is saying is that << [REDACTED]  
22 [REDACTED]

09:38:44 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >>

5 Q. Okay. Can you take a look at the  
6 definitions, please, Section 1.10.

7 A. I'm there.

8 Q. Okay. Can we take a look at the definition  
9 of "PPC plant"?

10 A. I'm looking at it.

11 Q. << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >>; is that right?

18 PRESIDENT VEEDER: I'm sorry. The word is << [REDACTED]

19 [REDACTED] >>

20 MR. OWEN: Oh, sorry, thank you.

21 THE WITNESS: Thank you, President.

22 BY MR. OWEN:

09:39:46 1 Q. Is that right?

2 A. << [REDACTED], >> that's correct.

3 Q. << [REDACTED] >>

4 A. I would think, yes.

5 Q. Okay. Now just for additional context, let's  
6 go to Appendix 2, please.

7 A. I'm there.

8 Q. Are you familiar with this Appendix,  
9 Mr. Switlishoff?

10 A. I am, sir.

11 Q. Okay. So my understanding of this  
12 Appendix is what it does in conjunction with

13 << [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] >> is that right?

17 A. No, there are not. << [REDACTED]  
18 [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] >>

21 Q. Well, I'm not going to try and decipher these  
22 formulas here. This is very, very complicated, and

09:41:06 1 maybe we'll get to this later with Mr. Lague. But it  
2 does relate to the [REDACTED]  
3 [REDACTED] >> is that right?

4 A. That's correct.

5 Q. So, the 1997 EPA [REDACTED]  
[REDACTED]  
[REDACTED] >> is that right?

8 A. That was the purpose of the EPA with the  
9 Purcell Power Corporation as an IPP.

10 Q. And that was--that Contract was then  
11 transferred to Tembec; correct?

12 A. That is somewhat murky to me, the actual  
13 transfer procedure, but it would appear that Tembec at  
14 some point assumed the Contract in some form, yes.

15 Q. Okay. I'd like to start with--thank you very  
16 much.

17 I'd like to start with your financial  
18 analysis for Tembec's 2007-2008 fiscal year just as a  
19 base point. I'd like to focus on some of the benefits  
20 that you communicated orally in your redirect  
21 communication. Mr. Switlishoff, you determined that  
22 << [REDACTED]

09:42:39 1 [REDACTED]

2 [REDACTED]>>; is that right?

3 A. That's correct.

4 Q. And I just want to make sure we understand  
5 your methodology. At Page 754, and if you go to  
6 Tab 5, you can look at the transcript.

7 A. I'm there.

8 Q. At Page 754, Lines 7-10, you state that you  
9 [REDACTED]>>; is  
10 that right?

11 A. For that calendar year.

12 Q. Are you sure? We added it up--and I'm not  
13 trying to trick you or anything--subject to checking,  
14 the fiscal year for 2008 comes out to <<[REDACTED]>> gigawatts.

15 A. Yes. Without my spreadsheet here, then I  
16 have a difficulty confirming that, but if that's--

17 MR. SHOR: Mr. Owen, we'll stipulate that it  
18 was fiscal year.

19 THE WITNESS: Fiscal year? Thank you for  
20 correcting my memory.

21 BY MR. OWEN:

22 Q. No problem. No problem.

09:43:57 1                   And then you took out the total sales for  
2 that period, too, <<[REDACTED]>>-gigawatt hours?

3           A.    That's correct.

4           Q.    Okay.  And then I think you said that  
5 left--I'm not sure if it was maybe a typo in the  
6 transcript.  You said that that left <<[REDACTED]>>-gigawatt  
7 hours, but we did the math, and it's <<[REDACTED]>>-gigawatt  
8 hours.  And that's consistent with the rest of your  
9 math.  So I think it's <<[REDACTED]>>, subject to checking?

10          A.    I prepared an aid--I don't know if that was  
11 submitted--that I was working from.  I wonder if I  
12 might have that available to me.

13                   PRESIDENT VEEDER:  There is no objection to  
14 that, is there?

15                   MR. OWEN:  No, that's fine.

16                   PRESIDENT VEEDER:  Please, please refer to  
17 it.

18                   (Comment off microphone.)

19                   THE WITNESS:  It was in the binder that I was  
20 provided.  It was attachment right at the back.

21                   PRESIDENT VEEDER:  We'll find it.

22                   THE WITNESS:  Thank you, sir.

09:44:58 1 PRESIDENT VEEDER: It will save time if we  
2 dig this out.

3 BY MR. OWEN:

4 Q. Perhaps let's just proceed on the assumption  
5 that it's <<[REDACTED]>>. And if I followed your math through,  
6 it works out to the right number. I don't--

7 A. Thank you.

8 Q. --this isn't a material point.

9 A. Thank you.

10 Q. Okay. And then you took out <<[REDACTED]>> difference,  
11 and you multiplied it by the blended rate for  
12 industrial customers for BC Hydro?

13 A. That's correct.

14 Q. Okay. And that produced a <<[REDACTED]

15 [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] >> is that right?

19 A. That's correct.

20 Q. Okay. Mr. Switlishoff, does all the steam  
21 from Tembec Skookumchuck produces to make electricity  
22 come from the <<[REDACTED]>>?

09:45:42 1 A. <<[REDACTED]>>.

2 Q. Could you turn to Tab 6, please.

3 PRESIDENT VEEDER: If you've got the file  
4 that you wanted to look at, would you mind dealing  
5 with that now? We'll get it out of the way as to  
6 whether this figure is <<[REDACTED]>>.

7 THE WITNESS: It is <<[REDACTED]>>, quite correct. I  
8 see it here. Perhaps my font was too small on  
9 Thursday. Thank you.

10 PRESIDENT VEEDER: So that's clarified.  
11 Thank you.

12 MR. OWEN: Thank you.

13 BY MR. OWEN:

14 Q. Okay. If you could turn to Tab 6, please.

15 This is R-195.

16 A. Yes, I'm there.

17 Q. Can you look at the chart that is entitled  
18 "Thermal Energy Balance in Thousand Pounds Per Hour."  
19 It should be the first chart.

20 A. Yes, I see that.

21 Q. This is for Tembec Skookumchuck. It's from  
22 August 3, 2008. You can see the date up top.

09:46:37 1 A. I see that, yes.

2 Q. Can you tell me how much steam is coming from  
3 the recovery boiler and how much steam is coming from  
4 the hog boiler?

5 A. No, I can't. It looks like--is there any way  
6 to--

7 Q. Can we blow up--

8 A. There we go. << [REDACTED]  
[REDACTED]  
[REDACTED] >>

11 Q. Okay. So, subject to checking, I did the  
12 math here, but that works out to << [REDACTED]  
13 [REDACTED] >>

14 A. Subject to check, I'll go with you.

15 Q. Okay. So the recovery boiler of steam that  
16 is generated by Skookumchuck's normal pulp operations  
17 would have actually displaced about << [REDACTED] >> of  
18 BC Hydro's purchases, wouldn't it?

19 A. Could you state that again?

20 Q. The recovery boiler steam--they are going to  
21 still make pulp. So, they're still going to burn the  
22 black liquor. So, the steam from that turbine is

09:47:43 1 going to produce a lot of electricity, and it's going  
2 to displace a lot of BC Hydro's purchases, isn't it?

3 A. As if you could separate the amount used for  
4 the--used for the EPA from the amount used for  
5 self-supply, yes, it would supply a portion of both.

6 Q. But I just want to go back to your analysis.

7 You essentially said that, if you << [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] >>

11 But that can't possibly be right in light of the fact  
12 that << [REDACTED] >> of the steam is coming from the  
13 recovery boiler.

14 A. Well, it looks like in the financial  
15 analysis, the accounting analysis, there were also  
16 costs, I believe, from electricity and labor but,  
17 perhaps, not in the recovery boiler. And I don't have  
18 that exhibit, but I'll go with you that the recovery  
19 boiler would also displace--the electricity from the  
20 steam, from the recovery boiler would also displace  
21 the purchases that would have otherwise been made.

22 Q. Okay. So that 5.1 million figure is

09:49:08 1 overstated?

2 A. It may be, but I'd have to do further  
3 analysis to confirm.

4 Q. Okay.

5 PRESIDENT VEEDER: Sorry to intervene. Let's  
6 just go back to make sure. We're looking at Page 755  
7 of the transcript in Tab 5. We're looking at the  
8 Figure in 910 of << [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED] >>

11 THE WITNESS: That would appear not. That  
12 was all the electricity generated by Tembec  
13 Skookumchuck and the << [REDACTED]

14 [REDACTED] >>

15 PRESIDENT VEEDER: Thank you.

16 BY MR. OWEN:

17 Q. So let's turn to the second benefit because  
18 we had those sort of << [REDACTED]

19 [REDACTED] Let's go to the second benefit that you talked  
20 about, Mr. Switlishoff, orally, which was the << [REDACTED]

21 [REDACTED] >>

22 A. Yes.

09:50:16 1 Q. Okay. Now, just to go over the demand  
2 charge, this is essentially the charge that BC Hydro  
3 charges an industrial customer or any customer really  
4 for keeping a certain amount of set supply on hand.  
5 And I think the analogy that is often used is it's a  
6 capacity charger, the size of the pipe, if you like,  
7 that's got to be kept open to guarantee supply for  
8 that customer. Is that sort of an apt analogy? Am I  
9 getting that roughly right?

10 A. Roughly right. And there are different  
11 components of how a customer nominates the size of  
12 that pipe and then after that nomination is made, how  
13 the charge for that pipe is made, depending on the  
14 consumption in the current period. And I think in  
15 BC Hydro's case, the 11 past billing periods.

16 Q. Okay. Thank you. Just to get a sense of how  
17 a demand charge is actually calculated, I understand  
18 there are three variables. And the first is what's  
19 called "Contract demand," and that is set out in an  
20 electricity Supply Agreement between BC Hydro and the  
21 customer; is that right?

22 A. That's correct. The customer nominates the

09:51:27 1 amount of Contract demand they wish to be served at by  
2 BC Hydro.

3 Q. Okay. And that's--normally 50 percent of  
4 Contract demand is one number?

5 A. Of the billing component of monthly invoice,  
6 say.

7 Q. Yeah, let me back up. So the demand charge  
8 for each month is set of the highest of three numbers,  
9 and I understand the first of those numbers is  
10 essentially 50 percent of Contract demand.

11 A. Yes, I believe you're correct. It is Rate  
12 Schedule 1823 we're speaking of.

13 Q. Yes. Okay. So--and the contract demand for  
14 Skookumchuck is << [REDACTED]

15 A. Could you take me there?

16 Q. Certainly. That would be Mr. Lague's Witness  
17 Statement. Just one minute. I'll get you the  
18 reference. So, yes, if you turn to Paragraph 28,  
19 Mr. Lague's Witness Statement, he--

20 A. Where I would find that?

21 Q. It should be--I'm sorry. Tab 4 of your  
22 binder.

09:52:51 1 A. Okay. I'm there.

2 Q. Here he testifies that the Contract demand is  
3 <<[REDACTED]>>, and he does back that up with a reference to  
4 the ESA. Is that okay?

5 A. I see that. Yes, I agree.

6 Q. And it's not a huge point, but that figure  
7 would be 50 percent of <<[REDACTED]>>. So, that would be  
8 <<[REDACTED]>>; correct?

9 A. Yes, I would go with you there.

10 Q. Okay. So, that's--option one is half of  
11 Tembec's Contract demand, and that's sort of--again,  
12 it's the highest of these three things; so half of  
13 Tembec's Contract demand.

14 A. Do you have 1823 available to you?

15 Q. I regrettably don't, and I mean your counsel  
16 indicated it is a public document. And so let's move  
17 on, and I think hopefully this will jog your memory,  
18 just my understanding from my colleagues who have a  
19 lot more knowledge about this than I do.

20 The second variable is 75 percent of  
21 BC Hydro's customers' peak demand in the winter months  
22 between November and February; is that right?

09:53:58 1 A. And this is where you're taxing my memory.

2 And just remembering the windows and the percentages  
3 is what I would want confirmation on, but subject to  
4 check, I think that's generally correct.

5 Q. Okay. And the last sort of option is a peak  
6 demand for a month?

7 A. Yes, that's correct.

8 Q. So just to summarize, it's the highest of  
9 50 percent of contract demand, 75 percent of a  
10 customer's peak demand between November and February,  
11 just subject to check, and then the peak demand for  
12 each month. So it's the highest of those three.

13 A. Very good.

14 Q. Okay. Now, maybe we can save a bit of time  
15 here. You indicated that << [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] >>

21 A. That's correct.

22 Q. Okay. So, that demand charge is essentially

09:55:04 1 << [REDACTED] >>

2 A. That's what I used as a proxy, yes.

3 Q. Okay. [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] >>

12 Q. Okay. But would it make any business sense

13 for Tembec to << [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] >>

16 A. Well, if that was, in fact, its peak load.

17 Again, I didn't have peak hourly figures. So, I think

18 the peak hourly load may have been able to peak

19 << [REDACTED] [REDACTED] >>.

20 Q. Okay. So, how did you arrive at this figure

21 of << [REDACTED] >>?

22 A. Again, I used that as a proxy, as an

09:56:19 1 approximate amount. I didn't think I wanted to use <<[REDACTED]>>  
2 just for the reasons you're describing, that I thought  
3 there was a reasonable level, and that seemed to be a  
4 reasonable value for their plant load.

5 Q. Okay. Now, let's just go back to what--you  
6 characterize this as <<[REDACTED]>> If  
7 you're generating with your [REDACTED]  
8 [REDACTED]>> is that right?

9 A. Well, if you're self-supplying, then you're  
10 not drawing on BC Hydro, and if you're not drawing on  
11 BC Hydro, their meter wouldn't see an inflow to the  
12 facility. And that inflow from BC Hydro, I believe,  
13 is what would set that billing demand component for  
14 the RS 23 capacity charge.

15 Q. Okay. But just to go back to basics, the  
16 demand charge would never be less than <<[REDACTED] correct?

17 A. That's the minimum specified by the Contract.

18 Q. Yes.

19 A. Oh, I see where you're going. Yes.

20 Q. Yes. So--and this is just first step here.  
21 It couldn't possibly be an <<[REDACTED]>>  
22 because they've got an ESA. It's 50 percent of that

09:57:48 1 ESA--50 percent of the contract demand in that ESA is  
2 <<[REDACTED]>>; right?

3 A. So, they never would be able to avoid that  
4 entirely.

5 Q. Yes. So, when you were doing this, you just  
6 assigned a proxy. Did you look at C-163.

7 A. Yes, I did.

8 Q. You were aware there is <<[REDACTED]  
9 [REDACTED]>>

10 A. Yes, I was. I am.

11 Q. And that <<[REDACTED]>>

12 A. Yes, there are, but it was difficult to  
13 interpret, but carry on.

14 Q. Okay. So, it was difficult to interpret, so  
15 you used a proxy?

16 A. Yes.

17 Q. Now, if you had a peak--we've already  
18 established that [REDACTED] [REDACTED]  
19 [REDACTED]>> right?

20 A. Yes, that would be correct.

21 Q. Okay. So, on your hypothesis, would what  
22 would that do--I quite agree with you on the demand

09:59:02 1 charges, but what effect would that have on the demand  
2 charge if a large portion of the self-generation  
3 was--it would reduce it, presumably, in your view?

4 A. Pardon me? It would--

5 Q. I'm sorry. I think I'm guilty of compound  
6 questions here. Let's take it one at a time.

7 So, you've indicated that a demand charge of  
8 [REDACTED]>> is a reasonable proxy because the hog boiler  
9 wouldn't be running, and you said that reflected the  
10 fact that you would be buying more. We've also just  
11 gone over that <<[REDACTED]  
12 [REDACTED] [REDACTED]>> correct?

13 A. Correct.

14 Q. So, on your theory, that would mean the  
15 [REDACTED] [REDACTED]>>

16 A. No, not necessarily. I think you've already  
17 taken me to that it would be <<[REDACTED]>> as a minimum, and I  
18 think I agree with you there, and I think that is the  
19 absolute minimum it would be.

20 Q. Okay. Now, if Tembec had a <<[REDACTED]>> Contract  
21 demand, if it was at [REDACTED]>> and it was pulling that  
22 in, that would presumably mean <<[REDACTED] [REDACTED]

10:00:23 1 [REDACTED]

2 [REDACTED] >> correct?

3 A. << [REDACTED] [REDACTED]

4 [REDACTED] >>

5 Q. Okay. And--

6 A. Subject to taking something like Rate  
7 Schedule 1880.

8 Q. Thank you. That's exactly where I was going  
9 to go.

10 So, if it's on Rate Schedule 1880, that's  
11 ad hoc power; is that right?

12 A. Yes, that's correct.

13 Q. That's essentially--normally the industrial  
14 customers are on Rate Schedule 1823. That's their  
15 sort of normal rate, but if they have a planned upset  
16 or if their generator trips and it goes down, what  
17 they can do is call a systems operator, I understand,  
18 and they can say, we need Rate Schedule 1880 because  
19 we've got a big problem here; is that right?

20 A. That's my understanding, yes.

21 Q. And on that, Rate Schedule 1880, that doesn't  
22 count toward Contract demand?

10:01:18 1 A. I believe that's correct as well.

2 Q. For Rate Schedule 1823. It's sort of like  
3 exceptional circumstances, so to speak?

4 A. To the extent that it's available, and I  
5 believe that BC Hydro is able to decline to provide  
6 that, depending on their system conditions.

7 Q. Okay. Let's change tact a little bit here.

8 Mr. Switlshoff, if a <<[REDACTED]>> is firing  
9 and it becomes unstable, how would an operator  
10 normally stabilize it?

11 A. I'm not an expert on <<[REDACTED]>> operation.  
12 I'm sorry.

13 Q. Okay. But--sorry.

14 So, you couldn't tell me if that would be a  
15 relevant consideration in your analysis of the <<[REDACTED]  
16 [REDACTED]>>?

17 A. I'm sorry; what would be?

18 Q. If <<[REDACTED]>> stability would be a relevant  
19 consideration in your analysis of Tembec Skookumchuck?  
20 You didn't look at that; correct?

21 A. I didn't look at the dynamic stability. I  
22 did reference some of Mr. Lague's statements that

10:02:36 1 indicated that the << [REDACTED] >> was  
2 somewhere between, at times, << [REDACTED] >> or at other  
3 times << [REDACTED] [REDACTED]  
4 [REDACTED] >>

5 Q. Okay. So, if it's below that << [REDACTED]  
6 [REDACTED] >>

7 A. Potentially, on a continuous basis, if it  
8 wasn't overfired with, for instance, << [REDACTED] [REDACTED]  
9 [REDACTED] >> and by  
10 that, I mean, for instance, << [REDACTED] [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 [REDACTED] >> that hadn't been  
16 run for the period that it would have been stored.

17 So, that type of [REDACTED] >> I  
18 thought, would be used in favor of running it at a  
19 << [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED]  
21 [REDACTED] >>

22 Q. Can you tell me where you accounted for the

10:04:09 1 << [REDACTED] >>

2 MR. SHOR: Mr. Chairman, can I just ask how  
3 much time is left of the half hour? My watch shows  
4 we've exceeded it.

5 PRESIDENT VEEDER: Well, the half hour was  
6 the free time allocated to the Tribunal. The  
7 Respondent can go over 30 minutes, but obviously on  
8 its own time. I think it's now 29 minutes. So, there  
9 is one more minute of free time. And then, I'm  
10 afraid, it's expensive.

11 BY MR. OWEN:

12 Q. Don't worry, Mr. Switlishoff, I won't be too  
13 much longer. I just wanted to go back.

14 Did you account--when you were doing your  
15 oral testimony, I didn't hear a figure for << [REDACTED]  
16 [REDACTED] >>.

17 A. No, I don't think I used any incremental and  
18 I'm struggling to, without those economic ledgers, the  
19 financial ledgers that were provided, if there was a  
20 value there for natural gas consumption.

21 Q. Okay. But you do know from your experience  
22 with Celgar that they try very hard to avoid firing

10:05:08 1 natural gas because it's expensive?

2 A. At times. At times it's worth it.

3 Q. Okay. So, I want to understand. The oral  
4 analysis that you provided the Tribunal, was that an  
5 analysis that << [REDACTED] [REDACTED]  
6 [REDACTED] >>

7 A. Yes.

8 Q. Okay. Okay. And I think--okay. So, let's  
9 go to Exhibit R-589, please. And that is at Tab 8.

10 A. I'm there.

11 Q. So, at Page 753 of the transcript, Lines 3-9,  
12 you indicated that you included [REDACTED] [REDACTED] >>  
13 in your calculation.

14 A. Yes.

15 Q. If this is an analysis of whether it would be  
16 << [REDACTED] >> why  
17 are you including << [REDACTED] >> This would be on the  
18 second page, Bates 165626, and here at the bottom  
19 "year-to-date actual," you << [REDACTED] >> in  
20 your Figure 6.

21 A. Right. And in my estimation, that value for  
22 that electricity, I think, at this time was at the



10:07:58 1 BY MR. SHOR:

2 Q. I think, Mr. Switlishoff, you may have been  
3 confused by something that Mr. Owen said.

4 Referring back to Tab 8, this is an analysis  
5 of how Tembec operated under the 1997 EPA; isn't that  
6 right? This a << [REDACTED]  
[REDACTED] >>

8 A. This is, yes.

9 Q. And you didn't compare that to << [REDACTED] [REDACTED]  
10 [REDACTED] >>, did you?

11 A. No, I didn't. I just used the revenue from  
12 the EPA.

13 Q. And you added to that--what did you add to  
14 that << [REDACTED]

[REDACTED]  
[REDACTED]

17 Q. So, was your conclusion that << [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 A. Well, it stands then that this analysis does,  
22 in fact, show that << [REDACTED] [REDACTED] [REDACTED]

10:09:17 1

2 Q. And that was your analysis, was it not?

3 A. That is my analysis.

4 Q. Thank you.

5 PRESIDENT VEEDER: You've come to the end of  
6 your questions?

7 MR. SHOR: I'm done.

8 PRESIDENT VEEDER: Thank you very much. The  
9 Tribunal have no questions. Thank you very much,  
10 indeed. You may leave the table and you're free now,  
11 obviously, to consult and work with the Claimant's  
12 counsel.

13 THE WITNESS: Thank you, Mr. President  
14 Veeder.

15 (Witness steps down.)

16 MR. SHOR: Five-minute break, Mr. President?

17 PRESIDENT VEEDER: Yes, of course. And then  
18 we'll resume the next Witness.

19 ^2

20 PRESIDENT VEEDER: Let's resume. We  
21 understand there's a minor procedural note.

22 MR. OWEN: The delegation of Canada has had

10:20:56 1 Ms. Diane Kissick added to it, who is an articling  
2 student with the Trade Law Bureau, so I thought I  
3 would acknowledge her presence.

4 That's all I have.

5 PRESIDENT VEEDER: That's not minor. Thank  
6 you very much.

7 Let's continue the cross-examination of  
8 Mr. Dyck.

9 Mr. Dyck, you're still testifying under the  
10 declaration you made last Friday. You understand  
11 that?

12 THE WITNESS: I understand. Thank you.

13 CROSS-EXAMINATION

14 BY MR. SHOR:

15 Q. Mr. Dyck, good morning.

16 Who is Judy Baum?

17 A. Judy Baum is someone I work with at BC Hydro.  
18 She's a technical--I guess in charge of technical  
19 oversight on the engineering side working with the  
20 Power Acquisitions Group.

21 Q. She works in your office?

22 A. She works in our--for BC Hydro, not in the

10:21:37 1 same division that I am.

2 Q. How long has she worked at BC Hydro?

3 A. I'm sorry; how long has she worked there?

4 Q. Yes.

5 A. I'm not certain. Probably 15 or more years.

6 Q. Does she work with you on GBL-related  
7 matters?

8 A. Yes. I'm sure we talk about those matters,  
9 yes.

10 Q. She's knowledgeable about BC Hydro's GBL  
11 policy?

12 A. Yes, she is.

13 Q. Could you please turn to Paragraph 6 of your  
14 Second Statement. I'm not going to ask you to read  
15 this out loud, but I want to make sure I'm correct in  
16 my understanding that essentially what you're  
17 contending here is that Order G-38-01 only applies to  
18 sales by self-generators to third parties and that it  
19 does not govern GBLs which are set when BC Hydro  
20 purchases from self-generators in EPAs?

21 A. That's true.

22 Q. Before this NAFTA case, has BC Hydro ever

10:22:41 1 stated publicly in any EPA process with a  
2 self-generator or any BCUC proceeding that Order  
3 G-38-01 did not apply to GBLs and BC Hydro EPAs?

4 A. I can't recall. You're asking if we have  
5 ever stated before that G-38-01 does not apply in our  
6 acquisitions process?

7 Q. Yes.

8 A. I think the principles of G-38-01 apply.

9 Q. That's not my question.

10 A. Then I would say--

11 Q. Have you ever stated publicly--has BC Hydro  
12 ever stated publicly that G-38-01 does not apply to  
13 GBLs in its EPAs?

14 MR. DOUGLAS: I'm not sure Mr. Dyck is aware  
15 of all the publications--

16 MR. SHOR: I'm just asking what he knows.  
17 Please don't interrupt me.

18 (Overlapping speakers.)

19 PRESIDENT VEEDER: Let's stop there.

20 If the Witness doesn't know, he can say so.

21 THE WITNESS: I can't say for certain.

22

10:23:41 1 BY MR. SHOR:

2 Q. As you sit here today, you can't identify any  
3 public statement to that effect?

4 A. Not unless you point me to one.

5 Q. Could you pull up Exhibit R-25--R-125,  
6 please. And Mr. Dyck, please turn to R-25 in your  
7 binder.

8 Could we turn to the last page of this  
9 document and maybe make it a little bigger so I can  
10 see it.

11 Focus on the penultimate paragraph.

12 A. Sorry, which paragraph? Second from last?

13 Q. Yeah.

14 Now we're focused on the language. Just to  
15 be clear, this is a Briefing Note prepared for you by  
16 Judy Baum in April 2008 when you were discussing  
17 setting Celgar's GBL, is it not?

18 A. Yes, it is.

19 Q. Could you read the last sentence, please.  
20 Read it out loud, please.

21 A. "In fact, the BCUC in its Order G-38-01 has  
22 directed BC Hydro to not purchase energy from a

10:24:50 1 proponent with self-generation if the energy is being  
2 used to serve the proponent's existing load."

3 Q. Now, Judy Baum was not indicating that  
4 G-38-01 was not applicable, was she? Quite the  
5 opposite; she was indicating that G-38-01 directed  
6 BC Hydro to address its purchases from self-generators  
7 in a certain way, wasn't she?

8 A. I think she was referring to the reference of  
9 G-38-01 in that it was trying to direct BC Hydro to  
10 protect other ratepayers from arbitrage, and 38-01 is  
11 an appropriate reference for that purposes.

12 Q. Where do you see the word "arbitrage" there?

13 A. Well, it says that "BC Hydro does not permit  
14 a customer with self-generation to sell energy that it  
15 would otherwise use to serve its own load." That  
16 infers we wouldn't pay for something that the customer  
17 normally already is doing.

18 Q. Okay. But Judy Baum's view at the time was  
19 that BCUC in its Order G-38-01 has directed BC Hydro  
20 to not purchase energy, that means BC Hydro purchases.  
21 So she understands that G-38-01 applies to BC Hydro  
22 purchases; wouldn't you agree?

10:26:18 1       A.    I believe she is still using 38-01 as a  
2   reference because the beginning of this letter talks  
3   more specifically about where do we draw the line for  
4   a Generator Baseline in order to prevent a customer  
5   from arbitraging energy that they buy from the utility  
6   and intend to sell to an EPA or to market.

7       Q.    So you understand her words that the BCUC in  
8   its Order G-38-01 directed BC Hydro to not purchase  
9   energy? You interpret that to mean that it's a  
10  reference and it doesn't direct?

11       A.    G-38-01 was written by the B.C. Utilities  
12  Commission, and it was based on a program proposed at  
13  the time to sell energy to the market. It is very  
14  specific to that program. No customer has actually  
15  ever participated in that, but in that Order there  
16  were a couple of facts that are consistent--or facts  
17  and principles that are consistent today whether 38-01  
18  is applying specifically or as just supplying and  
19  supporting a principle. That principle is to avoid  
20  arbitrage.

21       Q.    Didn't Howe Sound apply in that program that  
22  you said no one participated in?

10:27:33 1       A.   Howe Sound was, yes, at the front end and  
2 asking to sell their self-generated power, their idle  
3 capacity, to the market; but they never, in fact,  
4 entered a program like that. BC Hydro never developed  
5 a program like that where a customer would sell  
6 directly into the market. What happened instead was  
7 they sold to Powerex, which is a part of BC Hydro.

8       Q.   So G-38-01 applies when a customer sells to  
9 Powerex but not to BC Hydro?

10      A.   G-38-01 applies and was written when a  
11 customer was requesting through the Commission the  
12 ability and--the ability to sell incremental or  
13 otherwise idle generating capacity to the market.

14      Q.   Can you answer my question now?

15      A.   I think I tried. Can you please repeat your  
16 question?

17      Q.   As I understood what you were telling me,  
18 your position was that G-38-01 does not apply when a  
19 customer is selling power to BC Hydro, but it does  
20 apply when a customer is selling power to Powerex. Is  
21 that your position?

22      A.   No, that's not my position.

10:28:45 1 Q. Okay. Which part of my statement is  
2 incorrect?

3 A. G-38-01 applies or was written to apply when  
4 a self-generating customer in BC Hydro's jurisdiction  
5 was asking to sell incremental, otherwise idle,  
6 generating capacity to the market. It was based on a  
7 program to that effect. BC Hydro, in fact, never  
8 enacted such a program.

9 No other customers since have asked about it,  
10 so G-38-01 as it's written hasn't really ever applied  
11 because the program hasn't been developed, and today  
12 it still doesn't.

13 So, if G-38-01 was, you know, terminated as  
14 an Order, we still would do what we have done and some  
15 of the principles in that Order would still apply.

16 Q. Okay. So, G-38-01 applies to sales to the  
17 market. A sale to BC Hydro at a market price is not a  
18 sale to the market?

19 A. No.

20 Q. And a sale to Powerex, which is your energy  
21 trading company that sells into other markets, that's  
22 not a sale to the market either?

10:29:48 1 A. No.

2 Q. Where is the market?

3 A. The market is a point-to-point sale from the  
4 generator to some end point delivery based on a market  
5 signal, a market-driven price. Powerex does trade in  
6 the market, but, in fact, Powerex, as a subsidiary of  
7 BC Hydro, also works within BC Hydro's jurisdiction.  
8 So, in fact, when there is incremental generation  
9 being produced within BC Hydro's service area, the  
10 benefit in that sale to BC Hydro is the balancing of  
11 energy that we may or may not produce and a customer  
12 has produced in our stead.

13 Q. Okay. So when you received this e-mail from  
14 Judy Baum talking about G-38-01 directing BC Hydro not  
15 to purchase energy, you didn't tell her that G-38-01  
16 did not apply to BC Hydro procurement, did you?

17 A. Did I tell her whether 38-01 applied to  
18 BC Hydro procurement? I would have no cause to tell  
19 her that.

20 Q. Okay. Can we scroll up to the first page of  
21 this document. In fact, could you read your response  
22 to her in the second paragraph?

10:31:10 1 A. The second paragraph?

2 Q. Yes.

3 A. The single line?

4 Q. The one that is highlighted.

5 A. "One of the reference documents we will look  
6 to in support of our position is the BCUC Order  
7 38-01."

8 Q. Okay. So you're discussing Celgar's GBL and  
9 Judy Baum tells you that G-38-01 directs BC Hydro not  
10 to purchase--to purchase energy in accordance with  
11 G-38-01. Your response is that you will use G-38-01  
12 as a reference document.

13 By "reference document," do you mean that it  
14 is something you can point to when it supports your  
15 position and ignore it when it doesn't?

16 A. No. I believe I meant that as a reference to  
17 the principles that we want to adhere to, which are to  
18 avoid arbitrage.

19 Q. So it doesn't apply, but its principles  
20 apply?

21 A. Yes.

22 MR. OWEN: Mr. Shor, I think he has answered

10:32:04 1 these questions a few times, so...

2 MR. SHOR: That's not for you to decide, but  
3 thank you very much.

4 BY MR. SHOR:

5 Q. Could we turn to Exhibit C-284, please. It's  
6 in your binder. This is the BCUC's Order and Decision  
7 G-106-14 issued just about a year ago in July 2014.

8 Do you recall what this proceeding was about?

9 A. Not by the number. If you give me a moment  
10 or two to read it, I may.

11 Q. This was BC Hydro's reconsideration request,  
12 was it not?

13 A. Yes, it appears so.

14 Q. And BC Hydro had argued that a GBL in an EPA  
15 was not a rate that should be reviewed by the  
16 Commission. The Commission disagreed, and BC Hydro  
17 was asking the Commission to review that decision.

18 Is that a fair summary?

19 A. It may have been at that point in time and  
20 things have changed subsequently.

21 Q. But the Commission rejected that argument,  
22 did it not?

10:33:41 1 A. Which argument is that?

2 Q. That it was not a rate.

3 A. Initially.

4 Q. In this Decision?

5 A. Initially.

6 Q. Has there been a subsequent Decision?

7 A. That the Commission accepts that GBLs are  
8 not, in fact, a rate?

9 Q. Yes.

10 A. Yes.

11 Q. And what decision is that?

12 A. I don't know the number, but there was a  
13 reversal of their position on the determination that a  
14 GBL was, in fact, a rate.

15 Q. I'm not at all familiar with that. Can you  
16 give me some more background information on what the  
17 case was?

18 A. BC Hydro has been filing information at the  
19 BCUC's request pertaining to its use of generator  
20 baselines--GBLs as they're referred to here for  
21 contracting purposes. And there was a lot, a lot of  
22 information transacted between us or submitted by us

10:34:38 1 to the Utilities Commission in that regard, and there  
2 were a lot of questions that were answered.

3 Officially, the process was through  
4 intervenors asking for information, the Commission  
5 asking for information, and BC Hydro responding to  
6 that information, all in an effort to clarify what  
7 GBLs are and how they are used by us.

8 Q. But I didn't ask you what you submitted or  
9 what others submitted. I said, Can you please point  
10 me to a Decision where the BCUC--let me finish,  
11 please--where the BCUC--

12 MR. OWEN: I think you're talking over him.  
13 Can you please let him finish his answer.

14 MR. SHOR: I think he finished.

15 BY MR. SHOR:

16 Q. I'm asking you to point me to the decision  
17 where the BCUC actually stated or decided that a GBL  
18 is not--in a BC Hydro EPA is not a rate?

19 A. The ultimate decision and final decision on  
20 all that filing is still underway. But I'm just  
21 telling you that in the exchange of information during  
22 the exchange of information requests, the position

10:35:29 1 that the BCUC had on IRs--or, rather, on generator  
2 baselines, in fact, being a rate have been adjusted  
3 and altered.

4 The final decision and final ruling is still  
5 to come.

6 Q. Okay. So there is no final BCUC decision  
7 that it's not a rate? The only final decision so far  
8 is this one that says it is a rate; correct?

9 A. I disagree. If this is--if it's still in  
10 flux--

11 Q. The information--I'm sorry.

12 A. If it's still in flux, if there isn't a final  
13 answer to that filing, then I have to disagree because  
14 ultimately it will be determined when the final filing  
15 ruling is completed.

16 Q. Okay. So your position is that the BCUC  
17 makes a decision that it's a rate; it denies  
18 reconsideration of that decision; but as long as  
19 BC Hydro keeps making--keeps advocating the other  
20 position in a still-pending proceeding that it's  
21 BC Hydro's argument that governs rather than the  
22 earlier decision?

10:36:28 1       A.   No.  There's a lot of facts and principles  
2   based in this discussion, and the primary reason it's  
3   not a rate is because the Generator Baseline is, in  
4   fact, a term of an acquisition process--

5       Q.   I--

6       A.   --and it's part of an EPA--

7           PRESIDENT VEEDER:  Let's let the Witness  
8   finish the answer.  Please complete your answer.

9           MR. SHOR:  But I'm not asking for BC Hydro's  
10   position.  I'm asking--

11          MR. OWEN:  Can he finish the answer?  Can he  
12   please finish his response, Mr. Shor?

13          PRESIDENT VEEDER:  Please finish your answer.

14          THE WITNESS:  BC Hydro's position on what is  
15   a GBL and how it's used is the focus of that filing  
16   that you're asking about.  It's been going on for a  
17   couple of years.  What has been determined and  
18   finalized with our last submission--and I believe all  
19   the intervenors including the BCUC, I think is more  
20   clear on understanding--is that the Generator Baseline  
21   can't be in itself a rate or a tariff.  It is, in  
22   fact, an element contained in an energy purchase

10:37:32 1 agreement. It's a procurement element and term and  
2 condition of a contract. It is used in procurement.  
3 It has nothing to do directly with the rate or the  
4 tariffs that we as the utility apply to our customers.

5 BY MR. SHOR:

6 Q. And I understand full well that's BCUC's  
7 position, but that's not at all the question I asked  
8 you.

9 A. Well, that's the base--

10 Q. Can you stop interrupting me? I tried to  
11 avoid disrupting you. Please.

12 A. Certainly. My apologies.

13 Q. I understand that's BC Hydro's position. And  
14 I understand that your counsel on redirect can ask you  
15 all kinds of questions he wants about BC Hydro's  
16 position.

17 I'm asking you: Has the BCUC to this date  
18 overturned this decision in G-106-14?

19 A. As I said, I believe the final ruling on the  
20 entirety of that filing has yet to be determined and  
21 analyzed.

22 Q. Thank you very much.

10:38:29 1                   So there is no ruling. It has not yet been  
2 finalized; correct?

3           A.    As I'm aware, correct.

4           Q.    Your hope is that it comes out one way, but  
5 you don't know how it's going to come out, do you?

6           A.    I'm not a future teller, no.

7           Q.    And BC Hydro has to follow the Decisions of  
8 the Commission as they are issued. They can't decide  
9 that they are going to follow a decision that has yet  
10 to be issued, can they?

11          A.    I'm not sure I'm following your question,  
12 sir.

13          Q.    I'll withdraw it then.

14                    ARBITRATOR DOUGLAS: Can I just ask for  
15 clarification before you move on? You're talking  
16 about the filing that is ongoing. Is that a filing  
17 before the BCUC, or is that judicial review of the  
18 original Decision? What is it exactly?

19                    THE WITNESS: No, it's before the BCUC.

20                    ARBITRATOR DOUGLAS: In a separate  
21 proceeding?

22                    THE WITNESS: Yes. There's a separate filing

10:39:16 1 having to do with BC Hydro informing the Utilities  
2 Commission on our use and the definition of what is a  
3 Generator Baseline and how we use it. It's been going  
4 on for a couple of years.

5 BY MR. SHOR:

6 Q. Could we turn to Appendix A, Page 6 of 8, of  
7 the Order and Decision.

8 A. Sorry, can you tell me again the reference?

9 Q. Page 6 of 8, the fourth paragraph. I was  
10 going to ask you to read out loud the second sentence.

11 A. The second sentence of the fourth paragraph?

12 Q. The one beginning "For the self-generating  
13 customers."

14 A. Excuse me, Page 6 of 8. "For the  
15 self-generating customers, the amount that BC Hydro  
16 has an obligation to serve under Rate Schedule 1823 is  
17 set by the GBL as established in Order G-38-01. Any  
18 amount above this is available for sale to BC Hydro."

19 Q. And this is the Commission's Decision that  
20 has not yet been overturned in any other proceeding;  
21 correct?

22 A. May I take a minute to read a little further

10:40:43 1 into this document?

2 Q. Certainly.

3 A. Thank you.

4 (Pause.)

5 Q. Have you had a chance to read the context?

6 A. Yeah, I think so.

7 Q. So as you sit here today, you are advocating  
8 an interpretation of Order G-38-01 that differs from  
9 the interpretation given by the Commission that wrote  
10 G-38-01; is that correct?

11 A. I'm supporting the position that BC Hydro is  
12 taking.

13 Q. Which differs from the position that the  
14 Commission is taking; correct?

15 A. As I said, I don't believe it's ultimately in  
16 final position. It's still being determined and  
17 deliberated. There was a lot of information back and  
18 forth and a lot of misunderstanding that had, I guess,  
19 was in play, and hopefully it is becoming more clear  
20 to everyone involved that it--what it is and what it  
21 isn't.

22 PRESIDENT VEEDER: Leave aside what happened

10:42:44 1 after this Decision or this Order was made. But as of  
2 the 25th of July 2014, the date of this Order C-284,  
3 the passage which counsel just put to you, that does  
4 not accord with Hydro Quebec's position; is that  
5 correct?

6 MR. SHOR: It's not Hydro Quebec, it's BC  
7 Hydro.

8 PRESIDENT VEEDER: I'm sorry. BC Hydro.  
9 Forgive me.

10 THE WITNESS: I'm a little lost on the  
11 question I'm trying to answer at this point.

12 MR. SHOR: It wasn't my question.

13 PRESIDENT VEEDER: Let me try again.

14 THE WITNESS: Sorry.

15 PRESIDENT VEEDER: Let's look at Page 6 of 8,  
16 and you were shown the paragraph beginning "Today."  
17 And then you were referred to the next paragraph  
18 starting "Because."

19 Now, those two paragraphs, as of the 21st  
20 July 2014, in this Order did that accord with--I'll  
21 try to get it right--BC Hydro's position then, and  
22 does it accord with BC Hydro's position now?

10:44:11 1 THE WITNESS: I believe the answer is yes and  
2 yes.

3 PRESIDENT VEEDER: Thank you.

4 BY MR. SHOR:

5 Q. I'd like to move on to a new topic. We're  
6 going to start talking about how you actually set  
7 GBLs.

8 A. Okay.

9 Q. Everyone has been waiting in suspense for  
10 this.

11 Can you turn to your testimony, your First  
12 Statement, at Page 12 under the heading "D, the  
13 Development of the GBL Concept."

14 A. I'm sorry. My First Witness Statement,  
15 Page 12?

16 Q. The First Witness Statement.

17 A. Page 12?

18 Q. So, this is where you--a portion of your  
19 testimony you are presenting the concept.

20 And then can you turn to Paragraph 42. And  
21 is it fair to say you're describing the general  
22 principle here as: "A GBL is set to define the amount

10:45:26 1 of self-generation that the customer normally  
2 generates for self-supply."

3 A. Yeah. Where are you reading from? Where you  
4 quoting from?

5 Q. Paragraph 44.

6 A. 44. I thought you said 42. Pardon me.

7 Q. Oh, no, I did say 42.

8 A. Oh, okay.

9 Q. It's the last sentence, the one that begins  
10 "during."

11 That's the general principle, is it not?

12 A. Sure, yes.

13 Q. Could you turn to Paragraph 44. And here I  
14 think you get a little bit more specific. Can you  
15 read the sentence beginning--the second sentence  
16 beginning "The goal."

17 (Overlapping speakers.)

18 A. You want me to read it out loud?

19 Q. Not the last sentence. Just the penultimate  
20 sentence, please.

21 A. Out loud or to myself?

22 Q. Please read it out loud.

10:46:36 1       A.    "The goal is to define the amount of annual  
2 self-generated energy normally used by the customer to  
3 self-supply under current conditions without the  
4 prospect of a currently negotiated EPA or LDA."

5       Q.    Now, in both Paragraph 42 and 44, you use the  
6 language "normally used to self-supply." I take it  
7 that means that generation that cannot be used for  
8 self-supply cannot be part of the GBL, does it not?

9       A.    Generation that cannot be used for  
10 self-supply does not form part of the GBL?

11       Q.    Correct.

12       A.    Can you give me an example?

13       Q.    Generation in excess of load.

14       A.    Generation in excess of load in a given hour  
15 is not used for self-supply and, therefore,  
16 technically generally should be available for sale if  
17 there is more opportunity to sell, it, yes.

18       Q.    So, it cannot part of the GBL?

19       A.    Total generation considerations are part of  
20 determining what is a GBL.

21       Q.    Can generation that is surplus-to-load and  
22 cannot be used to self-supply be used in the GBL?

10:47:53 1       A.    Total generation is viewed, total normal  
2    generation, I say here typically used for self-supply,  
3    is what we're looking for, for a GBL.  Yes, there are  
4    occasions on an hour or two, in some occasions much  
5    more regularly, where there are is exported energy  
6    physically leaving the site of the self-generator  
7    where they are not using it.

8            In the determining a GBL, we have to look at  
9    the entirety of the generation and to see how it is  
10   used and at what the regularity of its output is,  
11   considering that sometimes there are exports and not  
12   always in an hour being used.  So, I'm not sure that I  
13   can answer your question specifically without looking  
14   at an exact--

15        Q.    I've got to tell you I'm totally confused by  
16    your answer.

17        A.    So, the answer isn't that simple.

18        Q.    Okay.  So--

19        A.    There are a lot of variables to determine  
20    what is necessary to look at in determining what is a  
21    baseline of normal self-generation.  Exported energy,  
22    physically not being consumed by the site, often would

10:48:55 1 not be considered as part of the Generator Baseline,  
2 but yet is considered in total generation when  
3 determining what is a Generator Baseline.

4 Q. Okay. But the test isn't normal  
5 self-generation. It is normal self-generation used  
6 for self-supply, is it not?

7 A. Generally used for self-supply, yes.

8 Q. Can you show me where you say "generally used  
9 for self-supply" in either Paragraph 42 or 44?

10 A. I'm sorry, it says "normally," not  
11 "generally" in Paragraph 44.

12 Q. So, if it's not normally used for  
13 self-supply, it cannot be part of the GBL; correct?

14 A. If it's not normally used for  
15 self-supply--there isn't an absolute answer to that.

16 Q. Okay. Let's try it this way. Can we pull up  
17 Exhibit R-14, please?

18 PRESIDENT VEEDER: Once we're doing that, do  
19 we still need to be in closed session?

20 MR. SHOR: For this general discussion, no.

21 PRESIDENT VEEDER: Let's go into open  
22 session.

10:50:08 1 (End of confidential session.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

10:50:14 1

OPEN SESSION

2 PRESIDENT VEEDER: We are now in open  
3 session.

4 BY MR. SHOR:

5 Q. Okay. We're in Exhibit R-14. If you could  
6 turn to Page 4, Paragraph 14. Now, this is the  
7 Ministry of Energy's submission by Mr. Les MacLaren in  
8 the G-48-09 proceeding. Could you read the last  
9 sentence out loud?

10 A. The last sentence of paragraph--sorry. The  
11 last sentence of Paragraph 14?

12 Q. Please.

13 A. "While it is appropriate for self-generating  
14 customers to sell to market electricity that is in  
15 excess of load, consistent with Commission Orders  
16 G-38-01 and G-17-02, it is not appropriate for  
17 customers to profit by arbitraging between low-cost  
18 Heritage Energy and market prices."

19 Q. Now, do you agree with Mr. MacLaren that  
20 self-generating customers are allowed to sell to  
21 market electricity that is in excess of load?

22 A. This document references the Rate

10:51:25 1 Schedule 3808, which is the Power Supply Agreement  
2 between BC Hydro and FortisBC. It also talks  
3 specifically about using--or looking at G-38-01 in  
4 reference to what it was intended, which is market  
5 sales. This is not referring at all to the--at least  
6 the portion that I read--to the Generator Baselines  
7 that BC Hydro establishes for the product that it is  
8 buying. It is simply saying that G-38-01, as written,  
9 does apply to these self-generators.

10 Q. Now, can you answer my question, please?

11 A. Can you please repeat your question?

12 Q. Which was, Do you agree with Mr. MacLaren  
13 that it is appropriate for self-generating customers  
14 to sell to market electricity that is in excess of  
15 load?

16 A. Yes.

17 Q. Now, when you talk about normal generation  
18 levels, you are talking about the normal level, I take  
19 it, not the targeted or optimal level; is that  
20 correct?

21 A. When I talk about the amount of energy that  
22 is normally generated, I'm thinking in context of

10:52:36 1 normal production, generation-related activity in a  
2 given recent normal year. So, it's an energy number  
3 that a generator produces over the course of a normal  
4 365 days of operation.

5 Q. Not in one hour of operation; right?

6 A. Over all the hours. There are 8760 hours in  
7 a year.

8 Q. Okay. And that 365 day-period you select,  
9 that's the baseline period you use it determine the  
10 historical level of self-supply?

11 A. Among other things, yes. We use a lot of  
12 information.

13 Q. And you look at the generation levels and the  
14 self-supply levels during that baseline period?

15 A. Yes.

16 Q. Do you consider changes in generation that  
17 occur after the baseline period?

18 A. After the baseline period. Not once it's  
19 determined and contracted for, once it is written into  
20 a contract.

21 Q. I'm just asking as part of the GBL-setting  
22 process before it's in a contract. You arrive at a

10:53:35 1 baseline period, and you focus your analysis on that  
2 baseline period, don't you? You don't look at events  
3 that happen afterwards?

4 A. We look at historic and current operating  
5 data to determine what the baseline measure is going  
6 to be. We also have a lot of discussion with the  
7 participating proponent in the Call who is looking to  
8 procure the Contract with us, and we are--maybe some  
9 forward-looking some questions and comments as well,  
10 in terms of the operation going forward, yes.

11 Q. Okay. But if there were events that you  
12 thought relevant that happened after the baseline  
13 period, you would use that information in setting the  
14 baseline period. You wouldn't--as you did for--well,  
15 that's a closed session question.

16 The baseline period would be set based on  
17 what you thought the appropriate period was that  
18 reflected normal generation?

19 A. And the best information available at that  
20 time.

21 Q. And the best information available at the  
22 time.

10:54:41 1                   And then you would confine your analysis to  
2 that baseline period; correct?

3           A.    Yes.

4           Q.    Thank you.

5                   Now, the specific formulation of the GBL  
6 concept, the one that we reviewed in Paragraphs 42 and  
7 44, when did that specific formulation originate?

8           A.    Can you take me back?  What section was this  
9 for?

10          Q.    Paragraph 44 of your First Statement.

11          A.    44.  Thank you.  Okay.  Please can you repeat  
12 the question then.

13          Q.    When did that specific formulation of the GBL  
14 concept originate?

15          A.    Probably, as far as my memory goes, back to  
16 around 2002, when we first started dealing with Load  
17 Displacement Agreements in a big way.

18          Q.    Okay.  So, that's not the principle you  
19 applied to Howe Sound in its 2001 Consent Agreement  
20 that followed Order G-38-01?

21          A.    I guess I was reading appropriate for GBL for  
22 EPAs and LDAs.  Yeah, well, okay.  Howe Sound was

10:56:19 1 selling a different product than what I was referring  
2 to, but in principle, we are--I would say generally  
3 consistent with how Howe Sound was dealt with in  
4 determining their threshold above which we could deem  
5 eligible energy for sale.

6 Q. I didn't ask if it was consistent. I asked  
7 if that principle was in place at the time.

8 A. Yes, I believe it was.

9 Q. And was it in place at the time of the 1997  
10 EPA with Purcell Power?

11 A. That EPA didn't have in the same sense  
12 Generator Baseline or obligation for the customer to  
13 self-serve as the basis for establishing what is  
14 eligible energy for sale. So, I don't think that  
15 Contract, in its details, laid out the same way at all  
16 that these principles would now do.

17 Q. So, the principle originated in 2001, is that  
18 fair to say?

19 A. The concept of a Generator Baseline, yes,  
20 around that time.

21 Q. And is it--

22 MR. DOUGLAS: Mr. Shor, sorry, if we're going

10:57:27 1 to be talking about other customers, could we go in  
2 closed session? Would that be okay?

3 MR. SHOR: I'm not talking about anything  
4 specific about other customers for a while.

5 MR. DOUGLAS: Could we, just out of  
6 sensitivity, maybe, just in case--

7 MR. SHOR: Sure. I have no objection.

8 MR. DOUGLAS: --deal with that later.

9 PRESIDENT VEEDER: Okay. Let's go into  
10 closed session.

11 (End of open session. Confidential business  
12 information redacted.)

13

14

15

16

17

18

19

20

21

22

10:57:42 1

CONFIDENTIAL SESSION

2

3 MR. DOUGLAS: Thank you.

4 PRESIDENT VEEDER: We're in closed session.

5 BY MR. SHOR:

6 Q. So, the current normal operating conditions  
7 with GBL principle you articulate in Paragraph 44, is  
8 that the same principle you applied in 2008 and 2009  
9 and concluding the Bioenergy Phase I EPAs, including  
10 Celgar's EPA?

11 A. Yes.

12 Q. And the Tembec 2009 EPA?

13 A. Yes.

14 Q. And the Howe Sound 2010 EPA?

15 A. Yes.

16 Q. Other than in your testimony, can I find this  
17 specific formulation of the GBL concept in writing at  
18 any time contemporaneous with the Howe Sound 2011 EPA?

19 A. Other than what was presented in the couple  
20 of workshops we had leading into the Bioenergy Call I,  
21 and the specific conversations we've had with  
22 customers. And I would say with BC Hydro customers,

1351

10:58:47 1 in particular, their familiarity with the term "CBL  
2 and GBL" is defined baselines. They probably are  
3 quite familiar with it because they also have such a  
4 thing as a noncontracted Generator Baselines.  
5 Reference to noncontracted Generator Baselines exists,  
6 has been filed with our Commission through our rate  
7 reviews over the years. So, there are elements of  
8 Generator Baseline information and how we got there  
9 and how it is defined in various places.

10 Q. I understand there are pieces, elements in  
11 various places, but my question was very specific:  
12 Your specific formulation that you have in  
13 Paragraph 44 of your testimony, can I find that in  
14 writing anywhere--anywhere?

15 A. I think what we said in the workshops that I  
16 mentioned to you pertaining to the Bioenergy Call 1,  
17 we weren't going to take a formulaic approach, so I  
18 would say to you there are no written formulas  
19 anywhere. We take a principle approach. We look at  
20 the same principles and look for the same definitive  
21 use of what it is a Generator Baseline is and how it  
22 is to be used. But as different and unique as each of

10:59:58 1 the customers who we interact with and develop  
2 contracts with, we have to allow enough flexibility.  
3 So, again, there is no formulaic approach to it.

4 Q. I wasn't suggesting there was a formula.

5 A. You're asking--

6 Q. Could you please not interrupt me.

7 A. Sorry.

8 Q. I was asking--you have a very specific  
9 formula of the concept, not the methodology, not the  
10 formulas, but you have a very specific description of  
11 the concept in your Paragraph 44, and I just want to  
12 know if anybody who came to you for a GBL before 2012  
13 can find that specific formulation anywhere in writing  
14 anyplace.

15 A. I'm not sure that they could. I can't answer  
16 that.

17 Q. As you sit here today, you can't identify  
18 any?

19 A. No.

20 Q. And there were no written guidelines that  
21 BC Hydro followed in setting GBLs from 2001, at the  
22 time this principle originated to 2010, were there?

11:00:57 1 A. Sorry, there were no written guidelines?

2 Q. Correct.

3 A. But there were guidelines, nonetheless.

4 Q. Are there any written procedures at all?

5 A. There is a request for information pertaining  
6 to any of the calls that suggests and asks any  
7 participating self-generating customers to provide  
8 information. I believe it's quite clear in those  
9 documents what the need for the information is for and  
10 how it is to be used. But, again, there is not a  
11 formula applied so the customer could or the  
12 submission could include a formulaic estimate of what  
13 their Generator Baseline would be, no.

14 Q. I guess I wasn't asking about the customer.  
15 I was asking whether BC Hydro had any written  
16 procedures at all governing its determination of GBLS.

17 A. Prior to 2012 you're saying?

18 Q. Yes, prior to the June 2012 GBL Guidelines.

19 A. I would say there isn't any place you could  
20 go to, to find anything in writing prior to that time,  
21 no.

22 Q. And there is no place you can go because

11:01:57 1 there is nothing no writing; right?

2 A. Aside from some internal memos, perhaps.

3 Q. Does your current normal operating conditions  
4 GBL principle dictate a specific result for any given  
5 self-generator applying for a GBL?

6 A. Sorry; can you please repeat?

7 Q. Does your current, normal operating  
8 conditions GBL principle dictate a specific single  
9 result for any given self-generator applying for an  
10 EPA?

11 A. Dictate a--I'm a little lost by the question,  
12 sir.

13 Q. Does it require one result, or does it allow  
14 for a range of results?

15 A. I think there are a range of considerations  
16 given; the result being we arrive at some number and  
17 settle on it between, in our case, BC Hydro and the  
18 proponent. I don't know that--I'm still having a  
19 challenge with your question.

20 Q. Let me try and give it this way--get at it  
21 this way: If you put two people in two different  
22 rooms and gave them each the same data set and all the

11:03:12 1 information from the self-generator, would you expect  
2 them both to arrive at same GBL or might there be some  
3 different between them allowing for a range of  
4 reasonable results?

5 A. There might be differences between them.

6 Q. So, the GBL principle affords you some  
7 discretion in setting the GBL?

8 A. Yeah. I believe I said earlier it was  
9 intended to be flexible enough to consider the number  
10 of variables of unique and different participating  
11 customer loads and generators.

12 Q. And I think you testified earlier that your  
13 GBL principle doesn't require the use of any  
14 particular formula; is that correct?

15 A. Not a specific formula, no.

16 Q. Do you always start with the level of  
17 generation?

18 A. Yeah. One of the principal bits of  
19 information and data that we would look for is the  
20 historic amount of generation that they have, that the  
21 customer, participating customer, and self-generator  
22 has self-generated over some years, in the

11:04:14 1 recent years.

2 Q. Okay. And then from that starting point, do  
3 you always have to subtract sales made under  
4 preexisting contracts?

5 A. No.

6 Q. And where can I find that rule in writing  
7 prior to 2012?

8 A. I think I said there are no such rules in  
9 writing, but the circumstances have to be discussed  
10 and agreed between BC Hydro and the participating  
11 customer self-generator.

12 Q. What about a self-generator's purchase of  
13 electricity from its utility? Do those ever count as  
14 part of the GBL?

15 A. No. We're looking generally at the  
16 generation amount, not the purchase amount for a  
17 Generator Baseline.

18 Q. Does your GBL principle specify the duration  
19 of the baseline year you must use?

20 A. The duration of the baseline year?

21 Q. Does it have to be one year? Can you use  
22 two years or three years or four years or five years?

11:05:06 1       A.    We look at any number of available years of  
2    information for a couple of reasons.  Has there been  
3    change over those years?  That might lead to  
4    conversations about why has there been change in the  
5    output of generation over the years.  It feeds the  
6    discussion that we have with the customers.

7       Q.    I guess my question was a little different.  
8    The period you focus on, we've been calling that the  
9    baseline year.

10     A.    Yeah.

11     Q.    Does that have to be 365 days?  I think you  
12    said it had to be at least 365 days.  Can it be  
13    longer?

14     A.    It always--the resulting number is always  
15    going to be an amount of energy generally measured in  
16    gigawatt hours over a 365-day period.  How you get to  
17    that average or normalized 365-day period might  
18    include information from various--and a number  
19    of years.

20     Q.    And that's the baseline period we're talking  
21    about.  So, the end result is an annual calculation.  
22    I understand that.

11:05:58 1 A. Yeah.

2 Q. But you may take three years and then divide  
3 that by three, or you may take two years and divide  
4 that by two?

5 A. Depending on the circumstances, with that  
6 proponent, yes.

7 Q. Does your principle require the use of  
8 calendar years, or can you use any period you want?

9 A. We're looking for what is generator output in  
10 a normalized year, so to determine what is normalized,  
11 we may take a data set from a season in one year and  
12 manipulate--to totalize 365 days. Sometimes there  
13 isn't a consecutive run of 365 days or 12 consecutive  
14 months; that that demonstrates what is normal. If  
15 there has been an outage, for instance, if there has  
16 been a nonrecurring event that has to be adjusted for,  
17 we would say we normalize the data for that year to  
18 represent, then, what is normal.

19 Q. I think my question was much simpler.

20 A. Well, it's--

21 Q. Let me finish, please.

22 In looking at your minimum 12-month period,

11:07:00 1 those do not have to be 12 calendar months; right? It  
2 could be April to March; correct? It doesn't have to  
3 correspond to a calendar year.

4 A. No.

5 Q. And is the baseline period end point  
6 specified anywhere in your GBL principle?

7 A. The baseline period end point? I think what  
8 we say is that we want the most recent, current, and  
9 valid information that's available at the time of  
10 negotiating or leading into the negotiation process.

11 Q. Okay. But if you end your--if you're in the  
12 midst of discussions in March, you could look at data  
13 ending in December for the prior calendar year?

14 A. Conceivably.

15 Q. Or you might--

16 A. If that's the most current available  
17 information, yes.

18 Q. Or you can end it in January or February;  
19 correct?

20 A. Perhaps.

21 Q. I'd like to explore a little the concept of  
22 normal as used in this principle. Do you know of any

11:08:00 1 pulp mill that has ever managed to achieve a  
2 consistent level of generation every day it operates  
3 over a year?

4 A. No. Kraft pulp mills, by nature, are a  
5 relatively flat load and sustain a generally flat  
6 generator output. But you're right, there is some  
7 variability of given hours over a course of day or  
8 week.

9 Q. And that's because electricity generation  
10 varies with black liquor production. Black liquor  
11 varies with pulp production. And then there are all  
12 the vagaries of mill upsets and generator upsets. So,  
13 you would expect a level of variability?

14 A. Yeah, some for sure.

15 Q. Can we turn to the Pöyry Second Expert  
16 Report. Let's first pull up Figure 2. This is a  
17 chart that, I believe, Mr. Owen used in his Opening  
18 Statement showing the daily steam generation of the  
19 Celgar Mill during 2007. Now, 2007 was the baseline  
20 year used for Celgar; correct?

21 A. Correct, yes.

22 Q. And this level shows the variability and the

11:09:22 1 steam production that we've just been discussing, does  
2 it not?

3 A. It shows recovered water steam and power  
4 water steam, yes, and pulp production as well.

5 Q. And everything was jumping up and down.

6 A. Yep.

7 Q. Okay. Could you turn to Paragraph 55 in  
8 Mr. Stockard's Report?

9 A. Paragraph 55?

10 Q. Yes. Can you turn to the--why don't you read  
11 the whole paragraph to yourself.

12 A. All right. Thank you.

13 Q. Have you read that paragraph?

14 A. I have, yes.

15 Q. Do you agree with Mr. Stockard when he  
16 testifies that the degree of variability he observes  
17 in Celgar's steam generation and power generation is  
18 normal?

19 A. Yes. I think it's quite normal--

20 Q. Thank you.

21 A. --in my experience.

22 Q. Now, because of this variability that we see

11:11:07 1 for Celgar and that we've discussed for others, that's  
2 why in computing a Generator Baseline, you look at  
3 generation levels over an extended period of time,  
4 your 365-day period; right?

5 A. Right.

6 Q. It has to be at least one year?

7 A. We'd like to see more than a year, but, yes,  
8 we need to land on a year.

9 Q. Never 24 hours or 12 hours or 1 hour?

10 A. 12 hours or 1 hour is representative of  
11 12 hours or 1 hour, not necessarily of a year.

12 Q. Thank you.

13 Do you always have to use actual historical  
14 generation, purchase, sale, load, self-supply data?

15 A. I'm not sure where you're going with the  
16 question. We like to look at data supplied by  
17 customer, by the load, metered information, the best  
18 available at the time, whatever that includes.

19 Q. There are times, aren't there, when you  
20 ignore the actual data and rely on a hypothetical  
21 model or assumptions where you think the Mill's  
22 generating history would not be representative of its

11:12:17 1 current condition?

2 A. Okay. I understand better where you're  
3 coming from now.

4 Q. Let's just call it <<[REDACTED]>>, for example.

5 A. So when we're looking for what represents a  
6 normal state of operation without the influence of  
7 a--an obligation of a contract directing how a  
8 generating customer might operate, it's possible that  
9 you can't get a set of data, recent and current  
10 information, that demonstrates how that facility would  
11 operate in the absence of an EPA or an agreement or  
12 causing them to operate differently than what they  
13 would normally do. In a case like that, as I said,  
14 the process includes then that we and the proponent  
15 would sit together to determine what is the best  
16 approach to take.

17 To determine a baseline, it is in our  
18 understanding, in our estimate, reasonable for two  
19 engineers to sit together and determine in this case  
20 through modeling the process demand and thermal demand  
21 and generator output related to that pulp-making  
22 process, a model that gets us to a baseline that we

11:13:23 1 both agree to.

2 Q. So, sometimes you use actual generation data,  
3 and sometimes you use a hypothetical model; correct?

4 A. It's possible that the information from an  
5 engineering model would contribute to the development  
6 of a baseline, yes.

7 Q. Are there any specified requirements BC Hydro  
8 has for when it has to use the actual data and when it  
9 can rely on a model?

10 A. When we can't be satisfied with or when there  
11 is not information available to satisfy the need for  
12 looking at a 365-day normalized period of data, we  
13 would look for additional information, such as that  
14 provided through a model.

15 Q. When you use a model, are you required to  
16 validate the key assumptions embedded in the model?

17 A. They are validated between the two engineers  
18 who are reviewing--producing and reviewing the model  
19 and its data.

20 Q. Do you have any written protocols on what you  
21 must validate and how?

22 A. Not that I can point you to.

11:14:29 1 Q. << [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

5 do you have any written procedures governing how you  
6 must investigate that claim?

7 A. No.

8 Q. But you must investigate it fully, no?

9 A. We would have to substantiate the Claim for  
10 sure.

11 Q. What level of diligence is required under  
12 your GBL principle to validate the Claim?

13 A. Since you're asking about a specific  
14 circumstance and pointing to a specific circumstance,  
15 I would first have to tell you that << [REDACTED]

16 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] That discussion is not one that I  
22 would have had with the customer, and I can't tell you

11:15:34 1 exactly how that conversation went.

2 Q. Okay. I was really just asking a  
3 hypothetical question. I'm trying to in this section  
4 of my examination just understand your procedures  
5 rather than what did you in a particular case.

6 A. Right.

7 Q. But I think you're saying you had no  
8 procedures.

9 A. I think what I'm saying is I heard you  
10 mention <<[REDACTED]>>, and I was referring to that  
11 situation specifically.

12 Q. Okay. My question wasn't directed at <[REDACTED]>>.  
13 I'm just saying if a mill comes to you, they've been  
14 operating for a long period of time a <<[REDACTED]>> to  
15 generate electricity and they say it's become  
16 <<[REDACTED]>>,  
17 what investigation would you have to conduct?

18 A. Well, I'm going continue to use the example  
19 in my mind when I answer your question. When they say  
20 it's not economic to run, the only reason they would  
21 tell us that is when we're--when they're beholden to a  
22 Contract that requires them to run at a certain rate.

1367

11:16:32 1           So, answer more generically then. If a  
2 customer cannot run the generation that they normally  
3 would like to or have done historically when they're  
4 not under Contract, they're free to do whatever they  
5 want to do with it. And they--if they're not  
6 contracted, they will run their generator to whatever  
7 level they deem is economic and then reasonable for  
8 their purposes and their manufacturing process.

9       Q. But if they came to you and said here's how  
10 we've been behaving for the last <<[REDACTED]>> years, but  
11 don't look at that because we think our condition has  
12 changed, you would perform a robust economic analysis  
13 to ensure that the generation was uneconomical,  
14 wouldn't you?

15       A. We would have to do an analysis and  
16 determination of their claim, yes.

17       Q. And if the mill claims that it would cease  
18 <<[REDACTED] [REDACTED]>> in  
19 the region that it had been taking for years, would  
20 you investigate whether the company had alternative  
21 disposal arrangements for that [REDACTED]>>?

22       A. We may ask about it, but, again, this is not

11:17:46 1 something that I would be personally privy to in  
2 reference to developing generator baselines or making  
3 considerations with customers who were under Contract  
4 to us.

5 Q. Is it fair to say that the GBL principle you  
6 describe is more of a general principle you seek to  
7 apply rather than a specific methodology that can be  
8 used for computing a precise GBL?

9 A. I think I answered that earlier that, yes,  
10 there were general principles that we do apply and  
11 consistently apply, but there isn't a formulaic  
12 approach to arriving at a specific GBL.

13 Q. Given the lack of specific rules or  
14 guidelines as we've discussed for computing GBLs, is  
15 there any review process internal to BC Hydro to  
16 ensure that BC Hydro treats all self-generators  
17 consistently in setting their GBLs?

18 A. I don't know that I would say there's a  
19 review process, but it's not something that's done by  
20 a single individual. So, by involving engineering as  
21 required and multiple people in the procurement  
22 process and negotiating process that are all privy to

11:18:55 1 these conversations, I think there's a balanced and  
2 equal approach to all customers who participate.

3 Q. But there is no review process?

4 A. A review of the GBL process itself?

5 Q. Once your team of all the engineers and other  
6 people you describe sets the GBL, there is no  
7 additional level of review, is there?

8 A. There's--the process is everyone agrees to  
9 what we find as a reasonable Generator Baseline  
10 including the participating generating customer, and  
11 we end up agreeing to it. It's a negotiating item.

12 Q. Are your GBL determinations ever audited by  
13 anyone?

14 A. No.

15 Q. Is there a common template you use to ensure  
16 you always look at the same types of data in all  
17 cases?

18 A. No.

19 Q. Are you required to save all your work papers  
20 so you can check what you did in one case against what  
21 happens in another case that may raise the same issue?

22 A. There is no procedural map to do any of the

11:19:48 1 things that you suggested. Generally we have our  
2 information available, but the conclusion is  
3 determined and defined in the Contract that we  
4 ultimately agree to or don't agree to.

5 Q. Does BC Hydro have any kind of internal  
6 controls in place to ensure consistent treatment?

7 A. For GBL determination?

8 Q. For GBL determinations, correct.

9 A. We have and rest with the principles that we  
10 apply when determining generator baselines. There is  
11 no formula.

12 Q. Okay. Now, Mr. MacLaren, Mr. Les  
13 MacLaren--we have a couple of McLarens here; so, it  
14 gets confusing. Mr. Les MacLaren in his testimony  
15 mentioned BCUC review as a mechanism to ensure  
16 consistencies. I'd like to see how that works in  
17 practice.

18 Now, when BC Hydro applies to the BCUC for  
19 approval of an EPA containing a GBL, do you include in  
20 your Application discussion of the precise methodology  
21 that you use to arrive at that specific GBL and the  
22 underlying worksheets, and do you provide the data you

11:20:58 1 relied on?

2 A. Any EPAs that we require to submit to the  
3 BCUC under Section 71 have not included what you just  
4 asked.

5 Q. None of that. So you don't really give the  
6 BCUC enough information to review a GBL determination,  
7 do you?

8 A. We haven't and I'm not sure we would in the  
9 future. It depends on the outcome of the proceeding  
10 we talked about earlier. But generally the details,  
11 the contents that are negotiated elements of the EPA  
12 in question are not subject to review of the  
13 Commission. The Commission is most concerned with do  
14 we prove necessary to buy the energy and have we paid  
15 a reasonable price to protect the ratepayers who we  
16 serve that are not party to the Contract itself.

17 Q. Okay. Let's take a look at an example.  
18 Before we do that, I want to make sure we're still in  
19 closed session.

20 PRESIDENT VEEDER: We're still in closed  
21 session.

22 MR. SHOR: Okay.

11:22:01 1 BY MR. SHOR:

2 Q. Let's take a look at R-192.

3 PRESIDENT VEEDER: At some point, we're going  
4 to need a mid-morning break. I don't know if this is  
5 a good time or at the end of the next section.

6 MR. SHOR: Five to ten more minutes.

7 PRESIDENT VEEDER: Take your time. Whenever.

8 BY MR. SHOR:

9 Q. Could you turn to R-192, please. This is the  
10 justification report that BC Hydro submitted to the  
11 BCUC asking for approval of the Tembec 2009 EPA;  
12 correct?

13 A. Yes, it appears so.

14 Q. Could you turn to Page 2, the first three  
15 paragraphs.

16 A. Page 2 of 13?

17 Q. Page 2 of 13.

18 A. First three paragraphs under Number 3,  
19 Generator Baseline?

20 Q. Yeah. This is all the information you  
21 provided the Commission on the GBL determination,  
22 isn't it?

11:22:54 1       A.    Pardon me.  The monitor here is showing a  
2 different page.  There we are.  Okay.

3       Q.    I'm sorry.

4       A.    Sorry about the interruption.

5       Q.    The three paragraphs under "Generator  
6 Baseline," this is the entirety of BC Hydro's  
7 submission to the BCUC on how it determined the GBL,  
8 is it not?

9       A.    I think this was a supplementary bit of  
10 information that we sent to the Commission.  I don't  
11 know if this was all we sent.  Again, I'll tell you  
12 just to be clear, I may be privy to some of the  
13 information that goes in with these submissions, but  
14 this sort of thing would be submitted by the energy  
15 procurement group who manages the contracts for energy  
16 procurement and EPAs and are the ones accountable to  
17 file under Section 71 with the BCUC.

18       Q.    Right.  But they wouldn't have determined the  
19 GBL.  So, I assume this information came from you.

20       A.    And participating members who would have been  
21 aware and familiar with the GBL determination.

22       Q.    So, whoever submits it consults with the

11:23:57 1 people who are involved in the GBL determination, and  
2 this is all the information they provided; correct?

3 A. I don't know if this is all they provided.  
4 This is all that I see in this document.

5 Q. And this text here doesn't describe for the  
6 BCUC the <<[REDACTED]>> assumptions you relied on, does it?

7 A. I don't see it, no.

8 Q. You didn't tell them you relied on <<[REDACTED]  
9 [REDACTED]>>

10 A. I haven't read the whole document. I may not  
11 be familiar with everything in it at this point, but I  
12 don't believe that we would have filed the <<[REDACTED]  
13 [REDACTED]>> with the Commission, no.

14 Q. And you didn't advise the BCUC of your  
15 conclusion that Tembec's <<[REDACTED]  
16 [REDACTED]>> did you?

17 A. Not to my knowledge, no.

18 Q. Or provide them with any analysis supporting  
19 that conclusion?

20 A. Not to my knowledge.

21 Q. Can we turn to Page 8 of 13 of this  
22 justification report?

11:25:08 1 A. 8 of 13?

2 Q. Yes. Now, we'll get into this in more detail  
3 later, but I just want to make sure that everyone has  
4 the same general understanding of Tembec's situation.

5 So, before the 2009 EPA, Tembec was operating

6 << [REDACTED]

7 [REDACTED]>>. It used it to self-supply;

8 correct?

9 A. Sorry. Before what time period?

10 Q. Before the 2009 EPA.

11 A. They were running at their discretion?

12 Q. Yes, << [REDACTED]>>

13 A. << [REDACTED] [REDACTED]

14 [REDACTED]>>

15 Q. They were producing electricity for  
16 self-supply?

17 A. They were producing electricity << [REDACTED]

18 [REDACTED]>>

19 Q. And they were using their << [REDACTED]

20 [REDACTED] [REDACTED]>>

21 A. Yes.

22 Q. << [REDACTED]

11:26:01 1 [REDACTED]

2 [REDACTED]

3 A. Yes.

4 Q. And you concluded that they would << [REDACTED]

5 [REDACTED]

6 A. That would be part of our consideration that,

7 << [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 A. May I take a minute to explain the three

14 sections--

15 PRESIDENT VEEDER: I think the Witness should  
16 be allowed to explain. Just please explain briefly.

17 MR. SHOR: I'm not asking about the chart  
18 yet. I'm trying provide the background.

19 THE WITNESS: I understand. I'm trying to  
20 give a background context, and I think I need to have  
21 everybody who is listening understand there are three  
22 specific different groups of activity that occurred in

11:27:07 1 this Tembec situation.

2 MR. SHOR: Could we do this by question and  
3 answer--

4 PRESIDENT VEEDER: No. Let's just have the  
5 Witness finish. It is more efficient.

6 THE WITNESS: Thank you.

7 Tembec, that is the Skookumchuck Pulp Mill,  
8 signed an EPA and had been discussing an EPA with  
9 BC Hydro since the '90s. The EPA came into effect in  
10 2001, I believe, and had a 20-year term with a  
11 [REDACTED]>> available to them.

12 When you're asking me questions about using  
13 the << [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 Earlier you asked me questions about the  
18 << [REDACTED] [REDACTED]>> and what did they do  
19 normally. So, the first event is they signed an EPA  
20 and they ran with it. The next event is they << [REDACTED]  
21 [REDACTED]  
[REDACTED] [REDACTED]

11:28:13 1

[REDACTED]

[REDACTED]

[REDACTED]

4           The point where I come involved in to  
5 determine what is a GBL appropriate for the next EPA  
6 isn't about comparing their previous EPA or how much  
7 they generated between 2001 and 2009. It has more to  
8 do with and exactly to do with how much would they  
9 generate in the absence of a contract. And that's, I  
10 think, where we can get a little bit confused. It is  
11 not comparing one EPA and their operating  
12 circumstances under the terms of that EPA relative to  
13 the new EPA. I think there is this middle piece that  
14 is missing. That's what I looked at. And that's what  
15 the engineering model we discussed earlier is based  
16 on.

17           BY MR. SHOR:

18           Q.    And believe me, I'm not confused. I  
19 understand this all correctly.

20           A.    No, I want to make sure everybody  
21 understands.

22           Q.    I'm getting at a completely different issue.

11:29:09 1 I want to understand--

2 A. I think it provides context.

3 Q. So under the EPA Tembec was using its hog  
4 boiler and its recovery boiler roughly to sell  
5 10.8 megawatts a year to BC Hydro [REDACTED]

6 [REDACTED]  
7 A. Again, it sounds like a simple question. If  
8 you have read Mr. Chris Lague's submission from  
9 Tembec, it is not quite as simple. There's actually  
10 four tranches of energy that they're required to  
11 manage under this Contract, and the <<[REDACTED]>> 10.8 is  
12 deemed to be sold.

13 Q. How much is used for self-supply?

14 A. <<[REDACTED]>>  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22 So, it is a complicated answer, and you cannot answer

11:30:22 1 that simple of a question--

2 Q. It's a complicated answer only because you're  
3 not answering the question. All I asked was during  
4 the period leading up to the EPA, what was Tembec's  
5 average level of generation that it actually used for  
6 self-supply? I'm not asking about tranches. I'm not  
7 asking for how it worked under the EPA. I just want  
8 to know what the historical level of self-supply was.  
9 Can you answer that question?

10 << [REDACTED]  
[REDACTED]

21 Q. Wasn't that what it was used for?

22 PRESIDENT VEEDER: Please. It is difficult



11:32:30 1 [REDACTED] [REDACTED]  
2 [REDACTED] >> 10.8 megawatts that were deemed to be sold as  
3 firm energy in the EPA.

4 Q. Okay.

5 A. So, if you want to look at simple math, they  
6 << [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

10 Q. Okay. So, there was a [REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

15 Q. Right. << [REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]



11:34:33 1 << [REDACTED]  
[REDACTED]  
[REDACTED]

4 Q. And you set the GBL on that basis, so for  
5 purposes of the 2009 EPA, they were allowed to sell  
6 that increment of power that they had previously been  
7 using for self-supply?

8 A. It's not the same power << [REDACTED]  
[REDACTED] That's  
10 why I tried to explain the three different stages of  
11 this process.

12 Q. I'm just looking at the numbers. They had << [REDACTED]  
[REDACTED]  
14 Under the new EPA, [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] The GBL was 14 instead of the << [REDACTED]  
18 [REDACTED] and that difference, that, << [REDACTED]>>, the difference  
19 between the 14 and the << [REDACTED]>>, that was available for sale  
20 to BC Hydro, and BC Hydro, in fact, purchased it;  
21 correct?

22 A. I have to say it again. It's not the right

11:35:30 1 process to compare how they operated under one  
2 contract versus the other contract. The determination  
3 of the generator baseline for their 2009 Agreement was  
4 to determine how much would they operate in the  
5 absence of an agreement, in the absence of a contract  
6 to sell or to produce any more than they normally  
7 would. So, the proper comparison is between that  
8 baseline and taking that into the new EPA. You don't  
9 compare one EPA to the other.

10 Q. No, I understand how you determine the  
11 baseline. I'm just looking at how they function under  
12 the old EPA and how they function under the new EPA.

13 The new EPA, the 2009 EPA, allowed them to  
14 sell more energy; right? 123 percent more? You went  
15 from 10.8 to 22, about; right? That was the firm  
16 energy purchase; correct?

17 A. You're still comparing the two contracts.

18 Q. That's exactly what I'm trying to do. Please  
19 let me do it.

20 A. Well, it's not a relevant comparison.

21 Q. I'll decide what's relevant, or our three  
22 guests at the front of the dais will decide what's

11:36:29 1 relevant. But that's not for you and me to decide.

2 Okay?

3 A. I appreciate that. Thank you.

4 Q. So, you went from buying 10.8 to buying

5 20-something as firm energy; correct?

6 A. We went from buying 10.8 firm energy << [REDACTED]

7 [REDACTED]

8 [REDACTED]>>, to selling anything more than 14 megawatts

9 per hour on an average in the other Contract, the new

10 Contract.

11 Q. Was what the firm energy commitment? There

12 was a number. You committed to buy--and Tembec made a

13 firm energy commitment. Wasn't it--it didn't say,

14 we'll buy everything above 14. You had a number. How

15 much did you buy?

16 A. Off the top of my head, I can't remember the

17 number.

18 Q. Well, maybe you can look at--

19 (Overlapping speakers.)

20 A. If you want me to--

21 Q. Would that be the 24.4 in the bottom chart?

22 A. Okay. Yes.

11:37:24 1 Q. So, you went from 10.8 to 24.4. And was  
2 Tembec--did Tembec install any new generation  
3 equipment? Did it have anything to increase the  
4 generation above its historical levels.

5 A. They would be operating under the same  
6 generator assets they had previously.

7 Q. Okay. So, in order to be able to sell --  
8 increase their sales from 10.8 to 24.4, that  
9 additional energy had to come from someplace, right,

10 [REDACTED] Didn't  
11 it, in fact, all come from BC Hydro?

12 A. 10.8 plus 24--sorry, can you give me those  
13 numbers again?

14 Q. Okay. Tembec was generating--Tembec was  
15 selling 10.8 under the first Contract, 24.4 under the  
16 second. They didn't add any new assets. << [REDACTED]

17 [REDACTED] >> So, in order to be  
18 able to run their mill, they had to replace the energy  
19 they were now selling to BC Hydro; correct?

20 A. In order to run their Mill without a  
21 contract, << [REDACTED] >>  
22 and BC Hydro would serve the remainder of that load

11:38:44 1 without any absence of a contract.

2 Q. I'm just comparing how it operated under the  
3 1997 EPA and the 2009 EPA. I think it's obvious to  
4 everyone in the room if they're selling more energy to  
5 BC Hydro, they're also buying more energy from  
6 BC Hydro to meet their Mill Load of 26 megawatts,  
7 aren't they?

8 << [REDACTED]  
[REDACTED]  
[REDACTED] >>

11 Q. Can you show me where in these three charts  
12 here that increase is reflected in the energy flow  
13 diagrams you submitted to the BCUC?

14 A. These diagrams are to demonstrate the energy  
15 flow that changes with the three scenarios. They're  
16 not here to discuss what is being sold, per se, and  
17 how much is being bought. It just merely says, here  
18 is what happens when the Mill ran in 1997 without an  
19 EPA in place, after the '97 agreement with a new  
20 generator in place, what the flow of energy was, and  
21 during the 2009 agreement, what the energy flow is  
22 relative to those agreements.

11:39:56 1 Q. Okay. So --

2 A. It's not meant to compare them, per se, in  
3 terms of what the Contract differences are. It is  
4 just saying, this is how the energy flows, and these  
5 are the minimum obligations of the customer and  
6 BC Hydro to serve the difference in load.

7 Q. But the energy flows, as we just discussed,  
8 changed. There was a lot more energy flowing from  
9 BC Hydro to Tembec under the new Contract than there  
10 was under the old Contract. And my question is, where  
11 is that change in the energy flows illustrated here?

12 A. There are two changes in flows. In the  
13 middle diagram, 1997 EPA --

14 Q. That one, does it not, show BC Hydro  
15 typically selling up to 14 megawatts to the Mill?  
16 That's the arrow going from BC Hydro to plant load;  
17 correct?

18 A. Yes.

19 Q. So, that's typically up to 14.

20 Let's look at the next one, under the 2009  
21 EPA.

22 A. It says up to 12.

11:41:08 1 Q. So, this says up to 12. That makes it sound  
2 like it's going down, << [REDACTED] [REDACTED]  
3 [REDACTED] >>

4 A. Again, you're talking about two things. One  
5 is the amount of energy that we have billed the  
6 customer, and the other is simply what are we  
7 providing them in terms of physical flows. So, in  
8 << [REDACTED]  
9 [REDACTED]  
10 [REDACTED] [REDACTED]  
11 [REDACTED]  
12 [REDACTED] >>

13 Q. Okay. Let me try and get at it this way.  
14 So, we had Mr. MacLaren here, Mr. Les  
15 MacLaren, who talked about the Ministry of Energy's  
16 policy of preventing harmful arbitrage, which he  
17 described as selling more power at market prices by  
18 taking more power from BC Hydro. You have Order  
19 G-38-01, which is also aimed at preventing the same  
20 sort of harmful arbitrage.

21 So, the Commission and the Ministry of Energy  
22 are both very interested in whether power flows are

11:42:12 1 going to change such that the self-generator is taking  
2 more power from BC Hydro to sell to BC Hydro. And  
3 that's exactly what happened here, but yet you nowhere  
4 advised the Commission of that fact, did you?

5 A. Well, I don't see it happening here in the  
6 way that you described, and there was nothing then to  
7 advise the Commission on, as far as I'm aware. They  
8 asked for information, we provided it, and they  
9 accepted it.

10 Q. They didn't ask for information. This was  
11 your Application to approve the EPA, wasn't it?

12 A. I think these drawings and so forth came as a  
13 supplementary bit of information that came after the  
14 actual filing.

15 Q. Can you look at the first page of the  
16 document.

17 A. Yes.

18 Q. So, this was not the original submission of  
19 the EPA?

20 A. Well, I think in the second--what I'm  
21 thinking of is in the second paragraph. It states  
22 that they replaced the documents filed on

11:43:24 1 September 24, where this one was sent in October 28.

2 So, almost a month later.

3 Q. Okay.

4 MR. SHOR: Now would be a good time for a  
5 break, Mr. President.

6 PRESIDENT VEEDER: 15-minute break. Come  
7 back at 12:00. Please don't discuss the case outside  
8 the presence of the Tribunal.

9 (Brief recess.)

10 ^3

11 PRESIDENT VEEDER: Let's resume.

12 BY MR. SHOR:

13 Q. Mr. Dyck, I'd like to turn to Howe Sound, if  
14 we may.

15 Could you turn to Exhibit R-66 in your  
16 binder? Are you there?

17 A. I am.

18 Q. And this was the Excel spreadsheet you used  
19 to compute the Howe Sound GBL, was it not?

20 A. This is a summary of some of the information,  
21 yes.

22 Q. And you could use a spreadsheet because you

12:01:33 1 applied a formula; correct?

2 A. No. The spreadsheet was used to collect a  
3 bunch of information and data particularly to these  
4 << [REDACTED] >> and could  
5 determine from all of this information what looked  
6 like normal operations.

7 Q. Okay. But in the lower right-hand corner in  
8 the box where it shows the GBL of << [REDACTED] >> that's the  
9 GBL you assigned to Howe Sound in the EPA, is it not?

10 A. That's where it ended at, yes.

11 Q. And all the other inputs are the data you  
12 used to get to that GBL, and in between the two are a  
13 bunch of formulas; correct?

14 A. On this page, yes, it's a summary page with a  
15 lot of information.

16 Q. So the summary page with a lot of information  
17 and formulas is how you arrived at the GBL?

18 A. Not a bunch of formulas only.

19 Q. Now, Howe Sound requested a << [REDACTED] >> did  
20 it not?

21 A. In their Contract? Their EPA? I believe  
22 they went to a << [REDACTED] >> yes.

12:02:32 1 Q. So that meant you had to compute a << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >> is that correct?

5 A. I'm not--we don't determine the << [REDACTED] >>

6 when we're determining what the Contracted Generator

7 Baseline is going to be. To << [REDACTED] >> that's

8 part of what the customer or the proponent of the

9 proposal is doing when they come into the negotiations

10 with the actual terms of the EPA.

11 Q. Okay. So the second half of this spreadsheet

12 is what you refer to as seasonalizing it; correct?

13 A. Yeah.

14 Q. And the top half of this spreadsheet is kind

15 of how you arrived at the annual GBL; is that correct?

16 A. << [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:03:43 1 [REDACTED] [REDACTED]  
2 [REDACTED] >> that need to  
3 be looked at. There are other bits of information and  
4 data that were looked at.

5 I'm not sure where you're taking me when you  
6 ask about << [REDACTED] >>

7 Q. Let's start at the top of the chart, the very  
8 dates at the top. That's the << [REDACTED]  
9 [REDACTED] [REDACTED] >>

10 A. Yes.

11 Q. And your calculation under that, after  
12 operating days, you have "Total Generation." I take  
13 it your calculations << [REDACTED]

14 [REDACTED]  
15 [REDACTED] [REDACTED] [REDACTED]  
16 [REDACTED] >>

17 A. Total days that that information pertains to,  
18 yes.

19 Q. Okay. And then you make [REDACTED]  
20 [REDACTED] >>

21 A. Yes.

22 Q. Can you tell me what that is?

12:04:50 1 A. Well, there was a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. I think you have already answered this, but

7 << [REDACTED]

[REDACTED]

9 listed on the summary of the second half of this page,

10 yes--

11 Q. And that's the same--

12 A. [REDACTED]

13 (Overlapping speakers.)

14 Q. And that's the same << [REDACTED]

15 [REDACTED]>> is it not?

16 A. I believe so, yes.

17 Q. The same << [REDACTED]>> And you need to << [REDACTED]

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:05:46 1 [REDACTED]>>

2 Q. And by that you mean that, because you  
3 consider that to be an << [REDACTED]

4 [REDACTED]  
[REDACTED]  
[REDACTED]

7 A. Yes.

8 Q. And then under "Operating Days" we turn to  
9 "Total Generation." I take it these are the << [REDACTED]

[REDACTED]  
[REDACTED]

12 A. That's correct.

13 Q. And you did not start with a hypothetical  
14 typical hourly amount and multiply that by the number  
15 of hours the plant operated, did you?

16 A. << [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [REDACTED]

20 A. Yes.

21 Q. And then the next line is [REDACTED]  
[REDACTED] [REDACTED]

12:06:53 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 A. We did it for two reasons. That's one.

8 Q. What's the other reason?

9 A. The other reason is that all this << [REDACTED]

20 Q. Okay. I'm not interested in << [REDACTED] >> I just  
21 want to know how you calculated the GBL.

22 A. Well, as a utility I'm interested in billing,

12:07:50 1 so I explain there are two reasons why we have to  
2 adjust for it.

3 Q. All right. But for GBL purposes you start  
4 with << [REDACTED] [REDACTED]

5 [REDACTED]

6 A. In this case, yes.

7 Q. And that << [REDACTED] >>-gigawatt hours that they << [REDACTED]  
8 [REDACTED]

9 [REDACTED] megawatt baseline in the G-38-01 that was  
10 established in the 2001 Consent Agreement?

11 A. That was the amount they << [REDACTED] [REDACTED]  
12 [REDACTED] >>-megawatt baseline, yes.

13 Q. Okay. Did you do any analysis at the time of  
14 this EPA and when you were calculating this GBL to  
15 analyze whether the [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] >>

21 Q. Okay. So you didn't do any special test to  
22 see whether Howe Sound made << [REDACTED]

12:09:01 1 [REDACTED] [REDACTED] did you?

2 A. The choice to << [REDACTED]

3 [REDACTED]

4 [REDACTED] was a choice of

5 Howe Sound. They had to notify us << [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 Q. All right. So the only question you asked

10 was whether it was << [REDACTED] >> If it was << [REDACTED] you

11 subtracted it?

12 A. Yes.

13 Q. And that << [REDACTED] >> level, that never changed in any

14 of the annual renewals of the Consent Agreement, did

15 it?

16 A. It stayed the same.

17 Q. Doesn't your GBL methodology require you to

18 revisit the GBL each time there's a new Contract?

19 A. We would--yes. Whenever there's a new

20 Contract in place, we would review the self-supply.

21 If we were to reuse a GBL in a new or concurring EPA

22 we would revisit the GBL, yes.

12:10:03 1 Q. But you didn't do that for Howe Sound, did  
2 you?

3 << [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

10 Q. Remember we talked about earlier that you  
11 have kind of two ways to go with the GBL calculation?  
12 You can rely on actual generation data or you can rely  
13 on a hypothetical model? For each of those << [REDACTED] >>  
14 reviews, which of those two alternatives were you  
15 using?

16 A. You're comparing the EPA that we have today  
17 with the Bioenergy Call and subsequent calls to a much  
18 different type of a sales arrangement with Howe Sound.  
19 Howe Sound's Generator Baseline is not an energy  
20 annual self-supply commitment baseline the same as we  
21 have in the EPAs today, so the type of review  
22 necessary to do this--the nature of the actual

12:11:14 1 Contract, the frequency that we review those contracts  
2 to renew them--are entirely different.

3 << [REDACTED]  
[REDACTED]

11 Q. So you relied on their actual historical  
12 generation data rather than a model?

13 << [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 Q. Okay. I'm a little confused because you seem  
21 to suggest that this was some kind a different  
22 process. I thought you told me earlier this morning

12:12:20 1 that the 2001 GBL concept you articulate in  
2 Paragraph 44 of your Statement originated in 2001.

3 A. What I said was the principles are the same  
4 and consistently applied.

5 Q. Okay. So the principles were in place in  
6 2001?

7 A. Yes.

8 Q. They would have applied to each of the  
9 << [REDACTED] >> Howe Sound Consent  
10 Agreement, would they not?

11 A. The principle being that we wanted to  
12 maintain the appropriate threshold for them in order  
13 to deem what is eligible for sale, yes.

14 Q. So that principle is no different from the  
15 principle you apply in your current EPAs; correct?

16 A. But the definition of what the GBL is and  
17 what it is used for is different.

18 Q. Okay. So in what document can I find the  
19 data you relied on for each << [REDACTED] >>  
20 to conclude that the historical levels didn't justify  
21 a change in the GBL?

22 A. I don't know if I can point you to a



12:14:18 1 [REDACTED]>>

2 A. The generation measured energy in a given

3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 Q. But my question is why the <<[REDACTED]>> didn't change.

11 You're assuming it stays the same. My understanding  
12 of the GBL concept that you articulated was it has to  
13 be revisited each time there's a new Contract. You  
14 look at the total generation and how much is used to  
15 self-supply <<[REDACTED]>>. Are you telling me you didn't  
16 do that and just kept it at <<[REDACTED]>>

17 A. No. I'm telling that we reviewed <<[REDACTED]>>

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] we saw fit to  
21 keep the <<[REDACTED]>>-megawatt-per-hour threshold in place  
22 because in any of those years, [REDACTED]



12:16:18 1 Q. Okay. So, your GBL concept that you  
2 articulated in Paragraph 44 doesn't really require you  
3 to revisit the GBL each time there a contract renewal.  
4 It is only when the self-generator asks you to review  
5 it?

6 A. I'm not sure which Contract renewal you're  
7 referring to. We have a Consent-to-Sell Agreement  
8 that allows BC--Howe Sound to go to Powerex to make  
9 these sales above <<[REDACTED]>> historically, from <<[REDACTED]>>, but we  
10 don't have a Power Sales Agreement with them, per se.

11 Q. Right. But you set a baseline equivalent to  
12 a GBL of <<[REDACTED]>>, following G-38-01; correct?

13 A. We established an upper limit threshold above  
14 which we said eligible--energy that is produced above  
15 <<[REDACTED]>> megawatts per hour would be eligible to sell to  
16 Powerex, and we authorized that through this  
17 Consent-to-Sell Agreement <<[REDACTED]>>.

18 Q. And isn't that threshold exactly what a GBL  
19 does?

20 A. No, it's not exactly what a GBL does.

21 Q. What's the difference?

22 A. The difference is that the GBL that we're

12:17:18 1 referring to in our current day EPAs is a contracted  
2 energy amount that the customer, based on our  
3 assessment that--where they normally make under the  
4 normal course of their operational, daily, monthly,  
5 and annual activity. It ends up being an energy  
6 amount below the GBL that they produce each year in  
7 their self-generating facilities. We establish an  
8 amount of energy that is normally used for self-supply  
9 but is generally generated each year just to determine  
10 what is the energy GBL for a contract purposes of the  
11 EPA.

12 In Howe Sound's case, << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >> the

16 threshold that we established from them--and I call it  
17 a threshold rather than a GBL because it really simply  
18 is an upper limit to what they normally have  
19 self-generated under normal operating conditions,  
20 above which BC Hydro agreed to allow them to produce  
21 more and sell to Powerex.

22 Q. Okay. So, a GBL, as I understand it,

12:18:19 1 determines the demarcation point above which BC Hydro  
2 will buy power; correct?

3 A. Yes.

4 Q. And as you described the Powerex--or I'm  
5 sorry, as you described Howe Sound threshold, it  
6 establishes a demarcation point above which Howe Sound  
7 is able to sell its power to Powerex; correct?

8 A. Yeah.

9 Q. That doesn't sound too different to me.

10 A. They're used differently, they're determined  
11 differently, and they're applied differently.

12 Q. But applying the same principles under--

13 A. The principles apply, yes.

14 Q. But they apply the same principles under  
15 G-38-01?

16 A. The principle that BC Hydro would agree or  
17 authorize that energy be as eligible to sell, yes.

18 Q. Okay. So, they served the same purpose, and  
19 they calculated applying the same principles, but they  
20 are different?

21 A. They are different.

22 Q. Now, just to be clear, those sales to

12:19:14 1 Powerex--and let's pull up the chart again, please.

2 A. The same chart we had earlier?

3 Q. Yes. The sales to Powerex, << [REDACTED] >>.

4 A. Uh-huh.

5 Q. Howe Sound did not have enough generation  
6 capacity to meet its own load; correct?

7 << [REDACTED]

8 [REDACTED] If you look at the nameplate of both  
9 their generators, yes, they have enough nameplate  
10 capacity to meet their load.

11 Q. Okay. So, the electrons reflected in that

12 << [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] correct?

15 A. Yes.

16 Q. But contractually << [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 A. Yes. They were << [REDACTED]

21 Q. So, Howe Sound was engaging in arbitrage;

22 correct? It was buying and selling at the same time?

12:20:19 1           A.    No.  And that's the whole point of the 38-01  
2    and these agreements that we have in place.  The  
3    principle that we're upholding, as detailed in G-38-01  
4    and other of our documents and discussion of GBL, is  
5    that we're determining and agreeing between BC Hydro  
6    and the participating customer--in this case, the  
7    self-generating customer--what is the definitive line  
8    about what is normal and above which you wouldn't  
9    normally produce generation, in this case, could be  
10   deemed as eligible for sale.  The remainder, as I  
11   tried describe earlier is a billing adjustment between  
12   the two.

13                So, if this <<[REDACTED]>> is deemed as a sale,  
14   we-and it stays with the load, but it has been defined  
15   assist something they normally wouldn't produce, but  
16   yet has been deemed as a sale?  We have to bill it  
17   back as a utility so they don't get the double benefit  
18   of both offsetting their utility bills and getting the  
19   benefit of selling it to Powerex.

20            Q.    I think my question was much simpler.  I just  
21   asked were they buying and selling electricity at the  
22   same time.

12:21:22 1           A.    They were producing electricity and selling  
2    it and also consuming electricity and being billed for  
3    it at the same time.

4           Q.    And BC Hydro saw nothing wrong with that;  
5    correct?

6           A.    No, not the way we had arranged to agree to  
7    do this.

8           Q.    Now--

9                   PRESIDENT VEEDER:  Sorry, Mr. Shor.  Can you  
10   just clarify?  When you say "they," do you mean Howe  
11   Sound or do you mean--

12                   BY MR. SHOR:

13          Q.    I'm sorry.  I meant BC Hydro saw nothing  
14   wrong with that arrangement; correct?

15          A.    It's exactly what the Commission directed and  
16   allowed through 38-01, and BC Hydro did see nothing  
17   wrong with it, based on how we were treating the  
18   billing, no.

19          Q.    Yeah.  I think we got into this a little with  
20   Mr. MacLaren where we were talking about the  
21   difference between "harmful arbitrage" and  
22   "arbitrage."

12:22:04 1 A. Yeah.

2 Q. And I think he--or we defined "arbitrage" as  
3 just buying and selling at the same time, and "harmful  
4 arbitrage" was buying increased amounts.

5 This would be "arbitrage" but not "harmful  
6 arbitrage"; correct?

7 A. What this amounts to is BC Hydro is  
8 authorizing these people to sell, and at the same time  
9 it's happening all within our jurisdiction with  
10 Powerex being the trader that's accepting this  
11 <<[REDACTED]>>-megawatt hours--gigawatt hours from Howe Sound.  
12 But Powerex is part of BC Hydro, so it's all happening  
13 within our jurisdiction. So, when we allow a sale  
14 like this, the system remains in balance because  
15 BC Hydro is in control of the energy within our  
16 system. We don't see this as energy that is flowing  
17 physically out of the system until it becomes part of  
18 Powerex's portfolio, in which case those sales are  
19 marketed and distributed and moved out of our system  
20 appropriately.

21 So, with BC Hydro controlling both sides of  
22 this particular--the equation, authorizing the sale

12:23:15 1 through Powerex, another division of BC Hydro, we  
2 balance the books. We balance the--what state of  
3 normal is versus state of sale, based on our  
4 agreements between the two and defining what energy is  
5 eligible to sell and what isn't. There is--it's  
6 different than if we were allowing this energy to be  
7 sold to a third party, where we would have to replace  
8 it virtually to a customer who was physically  
9 consuming it.

10 Q. Well, wasn't Powerex exporting to power to  
11 third person?

12 A. The power became part of Powerex's portfolio.  
13 This a small amount of energy that Powerex would have  
14 dealt with. Powerex also would have reviewed with  
15 BC Hydro the amount of power that they were authorized  
16 to sell or the measured power that was measured above  
17 the <<[REDACTED]>>-megawatt per hour baseline, yes. They took it  
18 into their portfolio and transacted with that  
19 portfolio.

20 Q. Okay. I'm asking simple questions, as far as  
21 I can tell, yes-or-no questions, and I'm getting very  
22 long speeches that don't seem to answer the question.

12:24:20 1 So, your counsel can go over this with you, I'm just  
2 trying to ask you very kindly to just please answer  
3 the question I ask.

4           Would not have Powerex exported that power?  
5 They didn't put it in their portfolio and keep it, did  
6 they?

7       A.   No. They would have transacted with it at  
8 the market.

9       Q.   To a third party?

10      A.   Quite probably.

11      Q.   Thank you.

12           Now, one more question about the Howe  
13 Sound-BC Hydro-Powerex Consent Agreements. <<[REDACTED]>>  
14 agreements didn't obligate Howe Sound to make those  
15 <<[REDACTED],>> did they?

16      A.   No.

17      Q.   They were <<[REDACTED]?>>

18      A.   Yes.

19      Q.   Now, back to the calculation again before we  
20 departed from this. So, to reiterate where we were,  
21 you took <<[REDACTED]

[REDACTED]

12:25:15 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is that correct?

5 A. Yes.

6 Q. And the formula you used to get that was

7 << [REDACTED]

[REDACTED]

[REDACTED]>> yes.

10 Q. Now, if I recall correctly, we heard

11 testimony from Mr. Scouras that during this period

12 Howe Sound's generation was << [REDACTED]

12:26:21 1 [REDACTED]

2 [REDACTED]

3 Q. But you didn't make an adjustment here to  
4 [REDACTED]>> to reflect that expectation,  
5 did you?

6 A. No. In fact, we--one of the reasons we  
7 looked at it was that we also got agreement from Howe  
8 Sound, but our view was the [REDACTED]

9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]>> did it not?

22 A. It did.



12:28:20 1 [REDACTED]>

2 A. Yes.

3 Q. And you dealt the << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] correct?

7 A. Sorry. Could you repeat that question?

8 Q. You had mentioned that there was some

9 << [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]>

15 A. Yes.

16 Q. So, in summary, the methodology you used for

17 Howe Sound was to start with << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]>

21 A. As best as we could, with the information we

22 had at hand, yes.

12:29:23 1 Q. And is that your default GBL methodology, the  
2 one would you normally use absent exigent  
3 circumstances?

4 A. No. But it's an approach that we would  
5 consider and did in this case consider as the best  
6 approach.

7 Q. So, everything is case by case with no common  
8 starting point?

9 A. I think I said earlier every situation is  
10 unique, and, yes, it takes a different approach to  
11 landing at what is a reasonable and agreed-to  
12 Generator Baseline.

13 Q. Is there anything in your GBL principle that  
14 required the use of a [REDACTED]  
[REDACTED]  
[REDACTED]

17 Q. Correct.

18 A. No.

19 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] So, nothing in your concept requires

12:30:09 1 use of calendar years?

2 A. We're looking for what is a 365-day period, a  
3 year, of normal operations.

4 Q. Did you have to provide written reasons to  
5 anyone justifying the choice of baseline periods you  
6 used?

7 A. Sorry, did we have to--

8 Q. Provide written reasons.

9 A. To anyone?

10 No, I don't believe so. A lot of the work  
11 was done by Scott Janzen, their Key Account Manager,  
12 their Energy Manager, and management, in total, so  
13 there was a collaborative effort. I don't know that  
14 there was anyone else that we would have had to report  
15 to agree to these numbers.

16 Q. So, you essentially have unfettered  
17 discretion in selecting a baseline period?

18 A. Well, we don't choose it in and of ourselves.  
19 We have an agreement with the customer, the  
20 participating engineers, and the operations staff, so,  
21 again, it's a collaborative effort to come to some  
22 agreement.

12:31:03 1 MR. SHOR: Can we pull up the corrected slide  
2 we presented in our opening regarding Howe Sound's  
3 generation data.

4 BY MR. SHOR:

5 Q. We've tabulated Howe Sound's generation sales  
6 data going back 12 years. How did you know that the  
7 << [REDACTED] >> period you selected was  
8 normal?

9 A. << [REDACTED]

10 Q. The baseline period you selected.

11 A. So, how did we determine that was normal?

12 Q. Yeah.

13 A. Well, what we did is, we selected the << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] can

20 we come to something that we agree to as normal? And  
21 the answer was yes.

22 Q. Why didn't you use [REDACTED] >> rather than

12:32:07 1 << [REDACTED]

2 A. < [REDACTED] > seemed a reasonable starting point.

3 Q. But could you have << [REDACTED] >> too;  
4 right?

5 A. We may have looked at << [REDACTED] >> But the other  
6 point is that << [REDACTED]

■ [REDACTED] because we had, actually, a good record  
15 of goings-on at the facility in all those years.

16 Q. Now, I'm looking at << [REDACTED]

■ [REDACTED]

18 Now, you wouldn't have had [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

22 A. Well, we didn't consider it as a << [REDACTED]

12:33:21 1 [REDACTED]

[REDACTED]

10 Q. Okay. Let's look at the bottom line results.  
11 So, Howe Sound's GBL of <[REDACTED]>-gigawatt hours, which the  
12 is the green line reflected on the right part of the  
13 chart where it says GBL lowered in--chart got cut off.  
14 But that should be <<[REDACTED] [REDACTED] Now,  
15 am I reading this incorrectly or doesn't it show that  
16 the amount Howe Sound had <<[REDACTED]

[REDACTED]

19 A. I'm sorry. You're asking about the GBL [REDACTED]  
[REDACTED]>> or the--

21 Q. Yes. The GBL is designed to reflect the  
22 amount normally used for self-supply; correct?

12:34:32 1 A. Yeah, but that's--this doesn't accurately  
2 describe the Generator Baseline based [REDACTED] As I  
3 said earlier, <<[REDACTED]>> megawatts per hour was an <<[REDACTED]  
4 [REDACTED]>

5 Q. I'm sorry. I'm not comparing it to the 45.

6 A. But you're saying the GBL was <<[REDACTED]>>

7 Q. No, I didn't mean to say that--

8 MR. OWEN: Could you let the Witness answer  
9 the question, please.

10 MR. SHOR: There's just some confusion  
11 between us I'm trying to clarify.

12 BY MR. SHOR:

13 Q. I'm not getting into the fact at all that the  
14 GBL was [REDACTED] [REDACTED] Forget about  
15 the upper green line. Assume that box just says  
16 <<[REDACTED]>> And I'm trying to compare that <<[REDACTED]>> which is  
17 supposed to reflect the actual level of self-supply to  
18 what--or the normal level of self-supply, excuse me,  
19 I'm trying to compare that to the actual level of  
20 self-supply in each of prior years. Would you agree  
21 with me that that GBL of <<[REDACTED]  
[REDACTED] [REDACTED] prior years?

12:35:28 1 A. Definitely it's << [REDACTED]  
2 [REDACTED] [REDACTED] but those years become so far in the  
3 past and so much has changed since, they're not  
4 relevant to look at in a current GBL determination  
5 year.

6 Q. Let's keep going. It is lower--it is lower  
7 than << [REDACTED]

8 [REDACTED] [REDACTED]  
9 [REDACTED] [REDACTED] correct?

10 A. I'm sorry. The monitor is jumping.

11 Q. I know. I've got the same problem.

12 A. Sorry. Can you repeat your question then?  
13 It's back up.

14 Q. The GBL you set as reflecting the normal  
15 level of self-supply is << [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED] [REDACTED]



12:37:30 1 paper mill I believe?

2 A. Yes.

3 Q. Mr. Owen made a big deal about this in his  
4 Opening Statement. So, I just want to understand the  
5 relevance, if any. Are all three mills served, in  
6 part, by Howe Sound's self-generation from the NBSK  
7 pulp mill at the site?

8 A. All three--TMP, paper machine, and pulp mill  
9 are all served by the same generating facilities.

10 Q. And when you computed the level of generation  
11 normally used for self-supply to arrive at the GBL of  
12 <██████████>, you considered that entire load at the complex,  
13 correct, and not just the load of the NBSK pulp mill?

14 A. That's correct.

15 Q. So, the GBL considers the entire load served  
16 by a self-generator regardless of its composition;  
17 correct?

18 A. Yeah, everything behind the point of  
19 connection to the utility.

20 Q. I'd like to turn now to the GBL you  
21 calculated for Celgar. That was the 349-gigawatt  
22 hours a year GBL we've been discussing?

12:38:37 1 A. Is there a reference document that I can turn  
2 to?

3 Q. You don't have it committed to memory?

4 A. I thought you were going to refer to  
5 something.

6 Q. No, I wasn't.

7 A. Sorry. Okay.

8 Q. Do you recall Celgar's GBL?

9 A. Yeah.

10 Q. It was 349-gigawatt hours a year.

11 A. Yeah, 349.

12 Q. Now, we discussed earlier that in some cases  
13 you used actual data and in some cases you used a  
14 hypothetical model. Which methodology did you use for  
15 Celgar?

16 A. We used the data that was provided by Celgar.

17 Q. So, the actual historical data?

18 A. Yes.

19 Q. And where can I find a spreadsheet showing  
20 the calculation you used for Celgar like we just  
21 reviewed for Howe Sound?

22 A. I don't have such a spreadsheet.

12:39:19 1 Q. You didn't use one at the time? Did you  
2 provide any written calculations at all?

3 A. Back to Celgar?

4 Q. Yes.

5 A. No. We had discussions based on all the  
6 information we had been sent and ultimately agreed to  
7 the Generator Baseline on that basis.

8 Q. And was calendar year 2007 the baseline  
9 period you used in determining Celgar's GBL?

10 A. Yes.

11 Q. You used the full calendar year as the  
12 baseline, 365 days?

13 A. Based on--that was the information given,  
14 yes. I used the 2007 year of information.

15 Q. Can you turn to Page 29 of your First Witness  
16 Statement, and could we pull up the chart appearing on  
17 that page. Why don't we highlight 2007 because I  
18 think that's all we're looking on.

19 A. Okay. 29. Yeah.

20 Q. So, when you refer to the historical data,  
21 these were the data you had; correct?

22 A. This. There were a few other tables

12:40:27 1 contained in about a five- or six-page letter to us,  
2 yeah.

3 Q. This is an accurate reflection of the  
4 historical data you relied on in coming up with the  
5 349 gigawatt hour GBL; correct?

6 A. This was part of it, yes.

7 Q. And returning to your first--paragraph 44,  
8 again, where you describe the GBL concept, you state  
9 there that "The goal is to define the amount of annual  
10 self-generated energy normally used by the customer  
11 for self-supply under current conditions without the  
12 prospect of the currently negotiated EPA or LDA."

13 Does that sound right?

14 A. Yeah. Typically used for self-supply, yes.  
15 Yes.

16 Q. We're looking at 2007, if we can go back to  
17 the data table, and we're looking for the amount of  
18 self-generation Celgar actually used for self-supply  
19 in 2007; correct?

20 A. Yeah.

21 Q. Okay. Then maybe what we'll do is--

22 Amy, can you do me a favor and go to the

12:41:28 1 blackboard?

2            Could you turn to Paragraph 83 of your First  
3 Witness Statement.

4        A.    Okay.

5        Q.    It's going to take me a little longer to get  
6 there.  I just to want follow the calculations, and  
7 I'm going to ask Amy to put the numbers up on the  
8 board as we do that.  Looking at the last sentence.  
9 So, it says, "Looking at the Mill's total generation  
10 for 2007."  So, going back to your chart, that would  
11 be the 351 figure?

12       A.    Uh-huh.

13       Q.    So, that was the number you started with,  
14 351.  Let's put that up on the board.  And then it  
15 says you netted out annual sales above load.

16       A.    Yes.

17       Q.    Let's go back to the data chart, please.  
18 Now, at that time Celgar was only making sales above  
19 load; correct?

20       A.    Yes.

21       Q.    All its sales were of excess generation?

22       A.    That's right.

12:42:45 1 Q. So, that would be the 23.9 figure?

2 A. Power sales, yes.

3 Q. Okay. Can you subtract 29 from that?

4 Subtract 29. Anybody have a calculator?

5 A. Are you subtracting the power sales? It's

6 23.9.

7 Q. I'm sorry. Did I pick up the wrong number?

8 Yes, power sales 23.9. Who's got the calculator?

9 PRESIDENT VEEDER: 3510.

10 BY MR. SHOR:

11 Q. It's 350.6 minus 23.9 is 326.7, by my

12 calculation. So far that's the exact same formula you

13 used for ██████████ right? Generation minus sales;

14 correct?

15 A. Yes.

16 Q. Why didn't you stop there? Isn't that the

17 amount of self-generation Celgar actually used in 2007

18 to meet its load?

19 A. Maybe I can draw you a picture? May I use

20 the easel to draw a picture?

21 Q. It's going to be hard because you have to

22 speak into the microphone. Why don't we try doing it

12:44:08 1 with words.

2 MR. OWEN: I'd really appreciate if the  
3 Witness was given the opportunity to use the easel.

4 THE WITNESS: I can speak loud enough I'm  
5 sure for everyone if it pleases--

6 PRESIDENT VEEDER: It's a good idea, but the  
7 thing is we have to get the Witness miked up. I'm not  
8 sure we have a mike for that, do we? No. We have to  
9 move the easel around to you. Perhaps you can use  
10 that microphone there. Is that spare next to you?

11 MR. SHOR: Yeah, but it looks like it's tied  
12 down.

13 PRESIDENT VEEDER: Try and do it without, and  
14 if it's trouble--

15 THE WITNESS: Over there?

16 PRESIDENT VEEDER: Try and do it just orally  
17 and we'll see.

18 THE WITNESS: Okay. So, let me start. As  
19 I've said a few times based on your questions, there  
20 isn't a simple mathematical formula that you use to  
21 address--to produce a Generator Baseline. One area  
22 that we haven't talked a lot about yet is the

12:45:13 1 definition of what is normal, what is a state of  
2 normal operation for a pulp mill and the fact we did  
3 mention earlier that they are all quite unique. Howe  
4 Sound has a much bigger load because of the different  
5 types of processes it has behind the meter than, for  
6 instance, Celgar does.

7           One of the things that you may have already  
8 heard--I don't know what you have been listening to in  
9 the last few days in terms of your reference to  
10 generation inside of a kraft pulp mill facility, but  
11 there a strong linkage between and a strong  
12 correlation between the output of a back-pressure  
13 extraction turbine generator and the pulp mill  
14 process.

15           We have roughly half of the volume of a tree  
16 going through the process and half of it comes out  
17 pulp and the other half comes out recovered liquors,  
18 which is the fuel for the recovery boiler. The  
19 recovery boiler produces the steam--and it's very high  
20 pressure and high temperature, much greater than what  
21 the pulp-making process requires. So, the primary  
22 purpose of the turbine in these older mills is to run

12:46:21 1 this high-pressure, high-temperature steam into the  
2 front of a turbine to regulate the steam to the  
3 extraction ports that can take the now reduced  
4 pressure steam into the process.

5           When you think of that as a closed-loop kind  
6 of process, we have an electrical mill load. We have  
7 a steam and a thermal load in the process. And the  
8 regulator of that is the turbine generator  
9 configuration of any particular mill.

10           What you'll see--and I was going to try to  
11 draw it for you--is when you've got high-pressure  
12 steam coming out of the turbine generator extraction  
13 ports at the necessary medium and lower pressures that  
14 send it back to process, that generator turns at a  
15 particular rate and produces a certain amount of  
16 megawatts per hour as it's spinning. The pulp mill  
17 and the kraft pulp mill, different than a TMP, runs  
18 quite stably when it's running at targeted rates.

19           The electrical load--there is thousands of  
20 horsepower of fan and pump motor loads and compressed  
21 air loads that can cycle on and off in the background  
22 in part of this bigger entire load. So, the pulp mill

12:47:45 1 electrical load can and does move over the hours, and  
2 it can vary in megawatts per hour as does the  
3 generator move, not necessarily on the same hour. So,  
4 there are swings between the generator output and the  
5 electrical load of the host facility.

6           What I see when I'm looking at the historic  
7 data chart here, I see that in 2007 Celgar made some  
8 very good investments in their facility over the  
9 prior years, and in 2007 the performance of those  
10 investments proves out that more often than not the  
11 generator cycles above what the load can take in that  
12 same given time period.

13           So, when you're looking at the total data set  
14 over the years, if you were to draw that, you would  
15 see a wavy curve over the average where there is more  
16 output exceeding the load consumption in a given hour  
17 than there is consumption from the utility.

18           MR. OWEN: Mr. Dyck, I'm sorry.

19           MR. SHOR: Does this answer the question?

20           PRESIDENT VEEDER: It does.

21           MR. OWEN: You can engage in karaoke if you'd  
22 like.

12:49:01 1 THE WITNESS: Are you following,  
2 Mr. President?

3 PRESIDENT VEEDER: Maybe finish this sentence  
4 or this paragraph, and then if you want to use the  
5 board with the portable microphone, let's do that.  
6 It's up to you. It is whatever--what you said so far  
7 is very clear.

8 THE WITNESS: Okay. Perhaps I can just take  
9 the microphone up to the front and finish there.  
10 Thank you.

11 PRESIDENT VEEDER: Make sure it's on. You've  
12 got to keep it where it was because counsel has to see  
13 it.

14 (Witness at easel.)

15 (Comments off microphone.)

16 THE WITNESS: So, is that big enough where  
17 you can see?

18 So, I've drawn here a rough timeline for a  
19 year. On the lower axis you've got January to  
20 January. On the vertical we've got megawatts. It's  
21 not shown in this chart, but included in the same  
22 letter from Celgar to BC Hydro, it describes a

12:51:03 1 constant, which is the Mill's normal operating hours.  
2 They're stated as 8,400 hours a year, is what they  
3 normally operate to out of the 8,760 hours in a given  
4 year. It's not different than the graph you were  
5 looking at before with me, where there is some  
6 variability.

7 BY MR. SHOR:

8 Q. The Pöyry graph?

9 A. Yes. The Pöyry graph we were referring to  
10 earlier. There is a lot of up and down. My drawing  
11 won't be quite as erratic as that. But what we have  
12 is 8,760 hours from here to there. So, we have, on  
13 average, a generator profile that probably looks  
14 something like that, where we may have some short  
15 duration outages for maintenance perhaps. We also,  
16 often in the case of the difference between  
17 8,760 hours and 8,400 is generality assumed, I  
18 believe, to be planned maintenance outages, perhaps  
19 some extended outages, but over the course of the  
20 year, their operation of the generator will look  
21 fairly constant over the 8,400 hours.

22 So, let's just say the hours here combined

12:52:22 1 with these is the difference between 84- and 8,760.

2 When I looked to the all the information that was  
3 provided, including this table, as well the whole  
4 letter, and in speaking with Celgar, my view is to  
5 determine what does normal operations look like, not  
6 just isolating one particular set of data from  
7 another.

8           When I look at this Mill, given all the  
9 advantages they now have after making the improvements  
10 that they told us about in 2005 and '06, the Blue  
11 Goose Project, I believe, is the reference for the  
12 suite of projects they finished, I look at their  
13 operations, and they stated that their normal state of  
14 operations during normal production hours, which I  
15 believe to be the 8,400 hours a year that they operate  
16 to, was, in fact, something like 43-megawatts per  
17 hour.

18           And in fact, in the back of that letter I'm  
19 referencing, there are even diagrams similar to the  
20 ones we reviewed that BC Hydro submitted that show 43  
21 to 48 megawatts per hour is sort of the normal output  
22 and, coincidentally, and maybe not coincidentally, the

12:53:34 1 Mill Load. They're very closely matched. So, what  
2 you may find is the Mill Load wanders in around that  
3 same line of generator output. When I see what's  
4 normal, normal is 43 megawatts over 8,400 hours.

5 These lower hours--

6 MR. SHOR: Can I ask a question on that?

7 PRESIDENT VEEDER: Let him finish.

8 THE WITNESS: So, that's a normal state of  
9 generator output, and the load is 43-ish megawatts as  
10 well. So, when I look at a set of data like we're  
11 looking at on this table, it's not at simple to say  
12 you generated 350 and you consumed 349, although  
13 they're a very close match. What is important to look  
14 at is, what does a normal set of operation look like?

15 And to me, and based on the information that  
16 Mr. Merwin wrote to us and the discussions that we  
17 had, normal looks like 43 megawatts per hour over  
18 8,400 hours. And when you consider that, the actual  
19 generator output exceeds the Mill Load consumption.  
20 They've gotten to a point, it appears, where the  
21 megawatt hours consumed per ton have improved. Their  
22 electrical load productivity has increased. Their

12:54:53 1 generator output has also increased along with it,  
2 because they're making more product.

3           So, they're making more fuel in the form of  
4 black liquor. They're producing more product.  
5 They're making the product more efficiently, and now  
6 they've come such a close match that the generator  
7 output almost exactly matches the consumption of the  
8 electrical load over the normal operating hours.

9           So, it's not quite as simple, as I was saying  
10 to you before, as taking the total generation minus  
11 the sales, because in this case, normal looks like a  
12 very balanced, self-sufficient generator facility  
13 against the load.

14           BY MR. SHOR:

15       Q.   But in fact, if you draw the 43 line, they're  
16 not going to hit that every day, are they?

17       A.   No.   Sometimes they will be over.

18       Q.   Sometimes they will be over?

19       A.   Sometimes they will be under.

20       Q.   Sometimes they will be under.   And when  
21 they're under, you don't subtract that, do you?

22       A.   The range could be 3, 4, 5 megawatts in a

12:55:54 1 given hour.

2 Q. Let's go back to what you--why don't you sit  
3 down now.

4 PRESIDENT VEEDER: Could we just put DD1 on  
5 that?

6 THE WITNESS: DD1?

7 PRESIDENT VEEDER: Demonstrative 1. We'll  
8 take a photograph, and we'll distribute it to the  
9 Parties. But also, somebody needs to move the board,  
10 otherwise we'll never see you again.

11 MR. SHOR: I want to go back to--

12 PRESIDENT VEEDER: Just one moment. Do you  
13 need the chart?

14 MR. SHOR: Let's just put it on the side. I  
15 may use it.

16 BY MR. SHOR:

17 Q. That was all fascinating, but I want to go  
18 back to what you actually said you did at the time,  
19 which is in Paragraph 83.

20 So, returning to the calculation, you said  
21 you started with--

22 A. I'm sorry--

12:56:38 1 Q. The page before.

2 MR. SHOR: Amy, can you help?

3 Q. So, what you said you did was start with  
4 total generation for 2007, netted out the annual  
5 sales. We have that. Now, to get to the 349 you  
6 used, you have to add back in the purchases from  
7 FortisBC; right? The 22.5? 22.6? That's the only  
8 way to get to 349; correct? That's what you say here,  
9 isn't it?

10 A. Where is "here"?

11 Q. It is the last sentence in Paragraph 83.

12 A. Yeah. Netting out the sales above the load,  
13 right.

14 Q. Okay. So, we add back in the FortisBC  
15 purchases, the 22.6.

16 A. That's not how I arrived at it, though, or  
17 the basis for how I arrived at it. So, you can go  
18 ahead and do your math, but--

19 Q. That's not what you say here?

20 A. Well, in--to put it in context--

21 Q. No, I'm just asking you what you say you  
22 actually did here.

12:57:51 1       A.   Well, I did a lot of calculations to  
2 determine what is the appropriate baseline, but as I  
3 also said, I considered a lot of variables.  It wasn't  
4 as simple as a mathematic formula like that.

5       Q.   That's not what you say in the last sentence,  
6 is it?  It says--

7       A.   Well, the last sentence--

8       Q.   --you take the annual sales above load--or  
9 I'm sorry.  It says you took the total generation.  
10 That's the first number--

11       A.   Yeah.

12       Q.   --350?  You netted out annual sales above  
13 load and purchases.

14               That means you subtracted sales and you added  
15 purchases.  Isn't that what that means?

16       A.   I subtracted the amount of sales that were  
17 net of the load, net of the gross load over the year.  
18 Because that's the basis on which they had  
19 historically been selling their power.

20       Q.   Right.  That was the 23.9.  And then you  
21 added back in the purchases from Fortis.  How else do  
22 you get to the 349?

12:58:48 1       A.    349, if you refer back to the drawing that I  
2 look at--and I just did--is the sum total of total  
3 generation over the year and net output greater than  
4 net consumption over the year.

5       Q.    What's the formula for net output greater  
6 than net consumption?

7       A.    It's the amount of energy that the Mill  
8 basically consumed, is where you end up at 349.

9       Q.    Sales minus purchases?

10      A.    But it's the total generation.

11            (Comments off microphone.)

12            PRESIDENT VEEDER: Please, let's speak--let's  
13 not over-speak, because it is impossible for the  
14 shorthand writer. It is now 1:00, so at some  
15 convenient moment, we need to break.

16            BY MR. SHOR:

17      Q.    I'm just trying to understand the math. All  
18 right?

19            You used actual data. You told us that. You  
20 used 2007. You told us that.

21      A.    Yeah.

22      Q.    Here it says you started with total

12:59:44 1 generation and you netted out annual sales above load  
2 and purchases. Isn't the formula you used total  
3 generation minus sales plus purchases? That's the  
4 only way to get to 349.

5 A. Generation, net of consumption.

6 Q. Okay. And what's the formula for generation,  
7 net of consumption?

8 A. Total generation minus load.

9 Q. That would be one.

10 A. That's the difference that was being sold,  
11 1.366 or something like that.

12 Q. Okay. And--

13 A. That's--

14 Q. We have Dr. Rosenzweig here. I'm sure he'll  
15 tell us this is an identity. But aren't we taking  
16 about exactly the same thing and just using different  
17 formulas to get there?

18 A. Perhaps. But we get to 349, which is, in our  
19 view, appropriate as the baseline for this Mill.

20 Q. But to get there, you have to take total  
21 generation and subtract sales and add purchases.  
22 That's the only way the math works; correct?

01:00:48 1 A. You can get there by using that math, yes.

2 Q. And you told me before that there is no  
3 reason to add in purchases from utility to determine  
4 the self-supply obligation; correct?

5 A. What did I say before?

6 Q. I think you told us earlier, when doing your  
7 GBL calculations, you would never add in purchases  
8 from the utility to determine what its normal level of  
9 self-supply was--self-generation?

10 A. I don't recall saying that. I may have said  
11 in ██████████ >> case we did <<██████████>>, similarly,  
12 for netting sales out.

13 Q. The transcript will show what you actually  
14 said.

15 MR. SHOR: Now would be an appropriate point  
16 to break.

17 PRESIDENT VEEDER: Let's break for lunch.  
18 We'll come back at 5 past 2:00. Again, please don't  
19 discuss the case or your testimony until you come  
20 back.

21 (Whereupon, at 1:01 p.m., the Hearing was  
22 adjourned until 2:05 p.m., the same day.)



02:10:47 1 exports is sales minus purchases--or sales minus  
2 purchases; correct?

3 A. Yes. I'm referring, however, not to the math  
4 in the equation that you've drawn there. I've just  
5 said that the gross generator output over the year  
6 shows that they're a net exporter of 1,366 megawatt  
7 hours. Acknowledging, though, that they had sold  
8 23,926 and purchased 22,560.

9 Oh, I'm sorry, was I speaking too quickly?

10 I said that the result--or what I was saying  
11 here is that the net export, which is gross generation  
12 over gross consumption, is 1,366 megawatt hours, and I  
13 also acknowledge in this sentence that they have sold  
14 23,926 megawatt hours and purchased 22,560 megawatt  
15 hours.

16 Q. Okay. So I'm still confused. You started  
17 with 350.6, like in my chart. The only other two  
18 numbers I see on this line are the 23.9 and the 22.5  
19 on my chart. This is the calculation you made, isn't  
20 it?

21 MR. OWEN: I think you have asked this  
22 question several times of the Witness.

02:12:08 1 PRESIDENT VEEDER: Please continue.

2 MR. SHOR: I don't think I've gotten a clear  
3 answer but thank you for pointing that out to me.

4 THE WITNESS: I looked at total generation  
5 and total consumption based on the drawing that I made  
6 earlier, understanding that some hours there is  
7 greater generation output than the load can consume in  
8 that hour. And that's the principle I was addressing  
9 when I came up with this scenario.

10 BY MR. SHOR:

11 Q. Okay. Let's try it this way. If this isn't  
12 the calculation you used, maybe, perhaps, you can walk  
13 me through the one you used. Okay.

14 So we start with 356. Tell me what your  
15 calculation is, please. What's the next number I add  
16 to the chart?

17 A. I'm sorry. What are you starting with?

18 Q. Starting where you started in Paragraph 83.  
19 Total generation.

20 A. Total generation, 350,641. Total  
21 consumption--

22 Q. Wait. Hold on. What do I do? Do I add

02:14:00 1 that?

2 A. Subtract it.

3 Q. Total consumption. That's load; right?

4 A. That's the load of the mill, yeah.

5 Q. And that's what? 349?

6 A. 349,275.

7 Q. What do I do next?

8 A. Well, you arrive at something called a net  
9 export number of 1,366 megawatt hours.

10 Q. 350.6 minus 349.3 equals 1.3 gigawatt hours;  
11 right? What do I do with that?

12 A. Where do you want to get to with it?

13 Q. I want to get to the GBL, just like you did.

14 A. Well, what I was trying to determine was,  
15 based on normal operations, I looked at the 350 that  
16 you wrote down there and said, How much does this mill  
17 normally generate in a year? And I took from it how  
18 much does it normally consume? The result is it  
19 generates more than it consumes. So the net result is  
20 that they're a net exporter of 1,366 megawatt hours in  
21 the year.

22 Q. So if I understand you correctly, you didn't

02:15:37 1 use a calculation at all. You just looked at total  
2 generation, saw that it exceeded load, and, therefore,  
3 decided that load should be the GBL?

4 A. No. I--there was other information that was  
5 provided in my consideration for what was used in  
6 determining what the GBL appropriately would be.

7 Q. Please, take me through the calculation you  
8 describe in Paragraph 83. It starts with total load.  
9 What do I do after that?

10 PRESIDENT VEEDER: Could I interrupt?  
11 Because we do have the Figures in R-182. Is it not  
12 worth going to that exhibit? Because the Witness is  
13 using the figures that we see in that exhibit.

14 R-182. It is footnoted at Page 32 of the  
15 First Witness Statement in the paragraph that you have  
16 highlighted.

17 MR. SHOR: Okay.

18 PRESIDENT VEEDER: If you look at that,  
19 you'll see the same figures that we've just heard.

20 BY MR. SHOR:

21 Q. So, in fact, this wasn't a calculation you  
22 used at all, was it? It was back in my DX6, wasn't

02:16:48 1 it? This is just to confuse us.

2 A. No, I'm not trying to confuse anyone.

3 There were some handwritten notes in this  
4 page that were my handwriting. I went through any  
5 number of calculations and considerations. I did  
6 certainly try here to figure out what the net sales  
7 were over the course of the year, understanding what  
8 normal generation output was versus what normal load  
9 was in 2007.

10 The number I was looking for was how much  
11 does this load consume relative to how much it  
12 produces on the generator? And I end up with a net  
13 number of 1,366. Total purchases and total sales  
14 calculations gets you there as well, as you have  
15 demonstrated on your chart earlier.

16 But the point here is not just how does the  
17 math and the total number of sales get you there  
18 because--when I said the consideration that I have to  
19 look at here is under what circumstances were you  
20 selling and under what circumstances were you  
21 purchasing?

22 Q. We'll get to that.

02:17:59 1 A. Okay.

2 Q. I just want to understand is this the formula  
3 you used or--in DX6, or was it the formula you started  
4 to give me in the new exhibit that doesn't ever get me  
5 to 349?

6 A. I think I had said earlier that 349 is the  
7 GBL that I arrived at using other considerations than  
8 just simple math, and there isn't the formulaic  
9 approach getting to a GBL. The variables I was  
10 thinking about here included, yes, I understand they  
11 sold some net that was net of their physical load and,  
12 yes, I understood that they consumed some when they  
13 were unable to produce as much as they normally do.  
14 Nonetheless, I wanted to find out just by using this  
15 math that you see on the page here to determine if  
16 they were a net exporter or not.

17 Q. Okay. So I think we're clear on the  
18 arithmetic now. That was the testimony you gave in  
19 your First Witness Statement at Paragraph 83. And  
20 then if I recall, in our Counter-Memorial we pointed  
21 out that there is no justification for adding back in  
22 the purchases from FortisBC, so you came up with

02:19:14 1 another explanation.

2           Could you turn to Paragraphs 24-25 of your  
3 Second Witness Statement. Now, in Paragraph 24 you  
4 take issue with stopping at 326.7. And I believe it's  
5 your testimony that that was not appropriate to stop  
6 there because Mr. Merwin had made other  
7 representations; is that correct?

8           A. Yes.

9           Q. Now, isn't it true that BC Hydro had already  
10 decided that Celgar's GBL should be set equal to its  
11 load in April 2008 before you received Mr. Merwin's  
12 May 2008 letter that you're referring to here?

13          A. I don't know that we came to that ultimate  
14 determination. But where we were was that was the  
15 basis on which Celgar had been selling to the market,  
16 and our first assumption was that it had been working  
17 fine until now, it must be--it may be a reasonable  
18 place to think that they could continue to sell on  
19 that same basis.

20          Q. Let's look at Exhibit R-125 again.

21          A. R-125.

22          Q. Yes. This is the Briefing Note prepared by

02:20:37 1 Judy Baum for you. Could you turn to the third page  
2 of the Briefing Note and please read the first  
3 sentence in the last paragraph?

4 A. I'm sorry; which page are we looking to?

5 Q. The third page, the first sentence in the  
6 last paragraph.

7 A. Okay. "To avoid setting a precedent for  
8 arbitrage, it is recommended that BC Hydro limit the  
9 purchase of energy from Celgar in its first project to  
10 the quantity above the Mill Load."

11 Q. Okay. So this was the recommendation from  
12 Judy Baum in the Briefing Note, and that was a  
13 net-of-load GBL; correct?

14 A. You can describe it that way, yes.

15 Q. And the concern--she was advocating  
16 preventing all arbitrage, not what we've called  
17 harmful arbitrage, because this wouldn't let Celgar  
18 continue to purchase at historical levels, would it?

19 A. This would prevent arbitrage, yes.

20 Q. Not just harmful arbitrage, all arbitrage?

21 A. All arbitrage.

22 Q. And can you scroll down a couple--scroll up a

02:21:49 1 couple of paragraphs above where there's a cost figure  
2 of \$15 million or so.

3 Do you see that?

4 A. That's the fourth paragraph from the top?

5 Q. Yes. So here, BC Hydro is calculating that,  
6 if Celgar got to do what it would want to do, how much  
7 that would cost BC Hydro; right?

8 A. It's providing an example of what we're  
9 trying to avoid.

10 Q. Okay. But you--one of the factors you  
11 considered was the cost to BC Hydro?

12 A. What's being considered in this paragraph,  
13 the example provided in dollars and cents is the  
14 result of--the basis of this is to say BC Hydro should  
15 not be in a position to pay for something that the  
16 mill is doing anyway. And if we were to, this could  
17 result in this sort of a situation and then they  
18 provide an example in the math there.

19 Q. When we were going over your First Witness  
20 Statement, the GBL principle as you articulated it, I  
21 don't recall it mentioning that one factor considered  
22 was the cost to BC Hydro. Am I remembering that

02:23:02 1 correctly?

2 A. Yeah. The cost itself--we're talking here  
3 about energy, what is normally produced and normally  
4 purchased.

5 Q. But the cost to BC Hydro is not a  
6 consideration in setting a GBL, is it?

7 A. The GBL establishes a framework from which  
8 both BC Hydro and the generating customer can  
9 determine what is incremental, and that's what we're  
10 talking about purchasing is the incremental energy and  
11 at what price that will come.

12 Q. Is the cost to BC Hydro a factor considered  
13 in setting a self-generator's GBL? Yes or no.

14 A. A cost of which? The cost to generate the  
15 self-supply up to the GBL amount? Is that what you're  
16 referring to?

17 Q. Yes.

18 A. No. The cost of that doesn't really bear on  
19 what is normal. It's--we're talking about an energy  
20 number.

21 Q. But for Celgar you considered that cost. You  
22 considered what it would cost to provide the

02:23:55 1 replacement power if their GBL was lower, did you not?

2 A. No. No. What this paragraph is talking  
3 about is that there would be a detrimental impact to  
4 BC Hydro and its ratepayers to the effect in this  
5 example using that number could be \$15 million a year.  
6 It is simply there as a discussion point. It is there  
7 as an impact.

8 Q. So you didn't consider that at all? It is  
9 just there for fun?

10 A. What it's considering is what happens when we  
11 agree to pay for something that is happening anyway,  
12 and that's what we're trying to avoid.

13 Q. Now, I think your testimony was that for  
14 Celgar you based the GBL determination on the actual  
15 level of generation and then made some calculations.  
16 Could you show me where in this Briefing Note any of  
17 Celgar's actual generation and sales and load data is  
18 mentioned?

19 A. This Briefing Note doesn't include any  
20 specific information about Celgar in terms of the data  
21 used in determining their GBL.

22 Q. Let's address Mr. Merwin's representations to

02:25:03 1 you in his May 2012 letter that you say you relied on  
2 in Paragraphs 24 and 25 in your Second Witness  
3 Statement which you don't mention at all in your First  
4 Witness Statement.

5 Can you please pull up R-127. Is this the  
6 letter on which you relied?

7 A. Yes, this is it.

8 Q. And is the handwriting on this letter your  
9 handwriting?

10 A. It is.

11 Q. Now, did Mr. Merwin tell you anywhere in this  
12 letter that the Celgar Mill typically generates  
13 349-gigawatt hours a year for self-supply over the  
14 course of a year?

15 A. That doesn't say it that way, no.

16 Q. In fact, Page 7, I think Mr. Merwin is  
17 pointing out that, after the capital investments in  
18 Project Blue Goose, he tells you that the mill  
19 typically generates 48 megawatts for  
20 self-supply--48 megawatts self-supply for export, and  
21 use 43 for self-supply; correct?

22 A. Right.

02:26:18 1 Q. Now, these figures in megawatts are hourly  
2 figures, are they not?

3 A. Megawatts per hour, I assume, yes.

4 Q. So, Celgar would generate 43 megawatts in an  
5 hour, not for--for self-supply, not in a week, not in  
6 a month, and not in a year; correct?

7 A. Correct.

8 Q. Didn't you testify earlier that GBLs cannot  
9 be based on one hour's levels?

10 A. Right.

11 Q. But for Celgar you relied on the 43--

12 A. No.

13 Q. --one hour's typical generation?

14 A. Not entirely. I was actually--that's the  
15 purpose of the drawing I made earlier.

16 Q. We'll get to the drawing you made earlier,  
17 but I'm just trying to understand--you said you relied  
18 on the 43. How do you get from 43 megawatts an hour  
19 to 349,000 megawatts a year?

20 A. 43 is--was my understanding, and based on  
21 this diagram and other information provided by  
22 Mr. Merwin and Celgar, in this document, representing

02:27:24 1 43 megawatts is the normal run rate, which also  
2 represented here for 8,400 hours is the presumed  
3 amount of time. So, when you the multiply  
4 43 megawatts per hour times 8,400 hours of normal run  
5 rate period, you end up with a number in excess of 349  
6 gigawatt hours. I believe it probably works out to  
7 something like 360-odd gigawatt hours in a year.

8 Q. 361.2.

9 A. Right. So, what we determined from that is  
10 this generator normally operates at 43 megawatts per  
11 hour over a normal operating period of 8,400 hours in  
12 a year, and we're just trying to avoid setting up an  
13 opportunity for the self-generator to arbitrage the  
14 utility supply power from what it is that we're  
15 buying.

16 So, we're saying that any amount of energy  
17 they produce greater than what they can consume is  
18 eligible for sale, which kind of gets me back to what  
19 you were asking about earlier: Are they a net  
20 exporter over the year?

21 And, in this case, they are actually a net  
22 exporter based on that calculation of 43 times

02:28:31 1 8,400 hours in the year by 361 minus 349, which is the  
2 most they consume in that year.

3 Q. Okay. Let's break that down a little bit.  
4 So, you multiplied 43 by 8,400. Did anyone at Celgar  
5 tell you that Celgar typically generates 43 megawatts  
6 8,400 hours a year?

7 A. What they do say in this document is and in  
8 discussions is that the range of generation could be  
9 typically as low as 39 and could be as high as the  
10 upper 40s.

11 Q. Okay. Could you answer my question, please?

12 A. Not specifically, no.

13 Q. Nobody told you that.

14 Okay. And, in fact, you got 361.2 from your  
15 calculation, but we know from the actual generation  
16 that Celgar's total generation actually was only  
17 350.6. Didn't that tell you that your calculation was  
18 incorrect for 2007?

19 A. No. I'm still addressing principles here. I  
20 haven't landed on something. But what I'm explaining  
21 to you, or trying to explain, is that, regardless  
22 whether I take the approach of what the average amount

02:29:39 1 of output over the planned 8,400 hour operating year  
2 is, or if I take the actuals, in both cases, the  
3 Celgar Mill produces more generated energy than it  
4 consumes in a given year; both of which point me back  
5 to the perspective that the Mill Load should be the  
6 appropriate Generator Baseline, then, because that is  
7 how much, over the course of the year, they actually  
8 make for self-supply.

9 Q. Okay. So, the 361.2 was irrelevant because  
10 the Mill didn't actually generate 361.2, did it?

11 A. I haven't seen a year--I haven't seen any  
12 data where they produced exactly 361.

13 Q. Okay. And 8,400 hours is the number of hours  
14 the Mill physically is running during a year; correct?

15 A. That's what this information tells us,  
16 operating hours.

17 Q. So, your GBL assumption is that, in every  
18 single hour the plant is running, it is generating in  
19 its typical level of 43 megawatts for self-supply?

20 A. I think I would describe it more as averaging  
21 into that neighborhood, that range.

22 Q. It doesn't--

02:30:42 1       A.   Its' not exactly at 43, nor is the Mill Load  
2 always exactly at 43.  They meander a bit.

3       Q.   So, what was your basis for assuming that it  
4 would run at 43, 8,300 a year?  That was an average?

5       A.   8,400 hours a year.  That's basically what  
6 we're being told in this document.

7       Q.   Now, for Howe Sound, did you use--

8           PRESIDENT VEEDER:  Can I just chase that up?

9           MR. SHOR:  Sure.

10          PRESIDENT VEEDER:  Because if you look at  
11 Page 2 of this letter, in the middle of the page,  
12 Paragraph 1, you're told that the load in 2008 of the  
13 industrial facility is approximately 43 megawatts, and  
14 then there is some handwriting, "TML"--I think that is  
15 plus or minus--"43 megawatts, at 8,500 equals 365,  
16 500 megawatts."

17          THE WITNESS:  Yes, that's my--yes.

18          PRESIDENT VEEDER:  So, is that the source of  
19 the 43 that you have just referred, or is that  
20 something else?

21          THE WITNESS:  It's referred to here--it is  
22 referred to in the back drawings that we were just

02:31:51 1 looking at.

2 PRESIDENT VEEDER: This is Page 7?

3 THE WITNESS: On Page 7, yes, correct.

4 And I'm not sure if it is captured again as  
5 exactly 43 in this document.

6 PRESIDENT VEEDER: I can't see it. But my  
7 next question is, when you looked to Page 7--

8 THE WITNESS: Yes.

9 PRESIDENT VEEDER: --you were using  
10 8,400 hours a year, and in the manuscript, at  
11 Page 2--I don't know if it's your handwriting--

12 THE WITNESS: Yes.

13 PRESIDENT VEEDER: --we see the figure of  
14 8,500 hours.

15 THE WITNESS: Yes.

16 PRESIDENT VEEDER: Why the difference, if you  
17 know?

18 THE WITNESS: Probably an error on the 8,500  
19 because the tables that are presented from the  
20 customer, or from Celgar here, rather, are showing  
21 8,400. It is an error on my part on that calculation.

22 BY MR. SHOR:

02:32:48 1 Q. So, 43 megawatts an hour was Celgar's typical  
2 targeted generation. It wasn't the average that it  
3 achieved. We know it's not the average because when  
4 you multiply 43 times the 8,400 or 8500--you  
5 keep--seem to change it--you get a number that's  
6 higher than Celgar's actual generation; right?

7 A. For 2007, correct.

8 Q. Okay. So, you know that this number is not  
9 the average, and you know this number is not--so, you  
10 know this number is a target. This is what they're  
11 trying to achieve?

12 A. As are the 8,400 hours in the--

13 Q. Did you base anyone else's GBL on the target  
14 they were trying to achieve, rather than what they  
15 actually achieved?

16 A. I didn't base their entire GBL on the  
17 targeted amount. It was just something, some  
18 supporting evidence that showed that it's consistent  
19 with generator output that is greater than Mill Load.

20 MR. SHOR: Now, if we could return to the  
21 squiggly line diagram. Can somebody pull that back?

22 BY MR. SHOR:

02:33:53 1 Q. This is what we've marked as Exhibit DD1.  
2 Now, I think when you were testifying earlier, you  
3 showed that Celgar's generation would fluctuate, and  
4 we saw that in the Pöyry chart. It fluctuated. And  
5 then you said that you thought what was happening was  
6 that, in any given hour, its load and generation were  
7 kind of fluctuating together; is that fair?

8 A. There's a correlation between the operating  
9 load at the pulp manufacturing process and the  
10 generators' output, yes.

11 Q. Right. You were having one line kind of  
12 follow another line; correct?

13 A. Yes.

14 Q. But, in fact, at the time you were evaluating  
15 Celgar's GBL and generation information, you only had  
16 annual data. You didn't have hourly or weekly or  
17 monthly data, so you had no idea what was actually  
18 happening in any hour, did you?

19 A. Oh, but I did, to the degree that I had  
20 numerous conversations with Mr. Merwin as well, so he  
21 was providing additional insight into the information  
22 that he sent to me in writing.

02:35:04 1 Q. And in those conversations, he gave you  
2 Celgar's hourly data for the 365-day period?

3 A. No. But when we discussed issues about under  
4 what circumstances were you selling and under what  
5 circumstances were you buying and how do we define  
6 "normal," those were the sort of discussions we were  
7 having. And the result of those discussions gets me  
8 to this view of and this perspective of the operation  
9 of their mill.

10 Q. Now, could you turn to Mr. Switlishoff's  
11 Second Expert Statement on Paragraph 57. Now,  
12 Mr. Switlishoff went back and actually looked at the  
13 hourly data.

14 A. Sorry. Pardon me, his First or Second  
15 Statement?

16 Q. Second Expert Statement, Paragraph 57.

17 A. 57. Thank you.

18 PRESIDENT VEEDER: We're still in closed  
19 session. That's still what you want, is it?

20 MR. SHOR: Correct. Although Mr. Merwin can  
21 be here for this if he is here. Is Brian here?

22 BY MR. SHOR:

02:36:18 1 Q. Now, Mr. Switlishoff testifies that he looked  
2 at the hourly data, which would be reflected in your  
3 squiggly line, and he found that Celgar met its load  
4 only 63 percent of the time, and in 37 percent  
5 of hours, it did not. Do you have any reason for  
6 disagreeing with his testimony?

7 A. No.

8 Q. But in effect, you set the GBL as if Celgar  
9 met its load 100 percent of the time, didn't you?

10 A. I based my GBL determination on a total  
11 generation over the year, over the total consumption  
12 in the year.

13 Q. Right. You looked at load and you looked at  
14 generation, and because you saw that load was less  
15 than generation, you landed on--

16 MR. OWEN: I'm sorry, Mr. Shor. You have  
17 restricted access information up on the screen. Can  
18 we have Mr. Merwin leave, please?

19 MR. SHOR: Can we turn that off? We don't  
20 need it on the screen.

21 BY MR. SHOR:

22 Q. I'm sorry. Let me ask the question again.

02:37:22 1           So, you looked at load and you looked at  
2 generation, and because you saw that load was less  
3 than generation, you landed on generation without  
4 examining how the--whether the Mill actually  
5 used--actually self-supplied at that level?

6       A.    We had a long discussion about what was  
7 normal. "Normal" means that in those 8,400 hours, as  
8 it is shown in this table--some years it might be more  
9 or less--but when the Mill is operating normally, it  
10 is generating more, on average, than it is consuming.

11       Q.    That's when it is generating normally in an  
12 hour, but not when it is generating normally over a  
13 year; right? Because you agreed that the Pöyry chart,  
14 which showed the fluctuation, that reflected normal  
15 variability. And if that reflects normal variability,  
16 then the 349 was not the level of normal self-supply,  
17 was it?

18       A.    Actually, in my view, it would be because I  
19 think the Mill, whether it runs with a contract for  
20 sale in place or doesn't, it would continue to operate  
21 at that level where it is in some hours exporting, and  
22 you said, I think, the numbers you gave were 60-odd

02:38:41 1 percent of the time it was producing more than it  
2 could consume. And what were the--what were the  
3 numbers that you gave to me?

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

5 A. Just a minute ago you were saying that some  
6 percentage of the time the Mill was--

7 Q. I'm sorry. That was Mr. Switlishoff's  
8 testimony.

9 A. Right.

10 Q. And it was at 63 percent of the hours, the  
11 Mill managed to fully self-supply, and in 37 percent  
12 or more than a third of the time it did not, it was  
13 generating less than its load.

14 A. Right. But I think that Report doesn't show  
15 by how much it was overgenerating over the load and  
16 how little.

17 Q. Why does that matter?

18 A. Well, I think it is virtually impossible, as  
19 much as you might want to try, I guess, as a mill  
20 operator to make a perfect match. You couldn't. It  
21 is like putting the cruise control on your car and  
22 hitting some undulating terrain, where the motor works

02:39:33 1 harder and it works less hard when it's going  
2 downhill. You can't make a perfect match every hour.  
3           The fact is, as I understood it and do still  
4 understand, is that the mill is trying hard to be  
5 self-sufficient all of the time, but it is not always  
6 a perfect match. And, on average, when you smooth out  
7 the exports and imports, there are more exports than  
8 there are imports. And that's a state of normal  
9 operations for the Mill, and that is the basis on  
10 which we want to look at Generator Baseline. It's to  
11 say what is normal for an operation.

12       Q.   Okay. So, if I understand it, is the Mill  
13 wasn't achieving its self-supply target a third of the  
14 time, but, on average, it was, so you can disregard  
15 the actual data for self-supply and resort to the  
16 average?

17       A.   So, we're looking at normal operating hours,  
18 and I would say that--I haven't got a percentage, but  
19 you said 33 or--so, for one-third of the time they  
20 were importing?

21           If you take into account those 360 hours that  
22 are net of the total hours in a year, I would assume

02:40:39 1 that that is downtime for the plant. And if you take  
2 43 megawatts out for 360 hours, you'd be eating up a  
3 significant portion of that which you're saying is  
4 normal consumption. So, you can't--again, the--if you  
5 break out the areas of the year where they are not  
6 operating normally in those 8,400, and you take the  
7 full load away and the full generation away for those  
8 maintenance shutdown periods, a significant amount of  
9 that percentage of time is in under unusual or not  
10 normal operating circumstances, and there has to be a  
11 different accounting for that.

12 Q. Well, let me just touch on that. I thought  
13 when we looked at Howe Sound, [REDACTED]

[REDACTED]

[REDACTED]

16 MR. OWEN: I'm sorry, could we have  
17 Mr. Merwin leave the room, please.

18 (Mr. Merwin exits room.)

19 BY MR. SHOR:

20 Q. You said the annual shutdowns you considered  
21 for Celgar abnormal. Isn't it the case that for [REDACTED]

[REDACTED]

02:41:46 1

[REDACTED]

[REDACTED]

3           A.    What is normal in terms of my view of  
4 Celgar's operation is they are operating normally for  
5 approximately 8,400 hours a year. We're trying to  
6 distinguish--you're trying to distinguish the  
7 difference between what amount of energy that they're  
8 selling and what amount of energy that they're buying,  
9 and all I'm saying is that in a normal 8,760-hour year  
10 as they describe it for about 360 of those hours  
11 they're down for maintenance and maybe some unplanned  
12 upsets.

13                    What isn't described in  
14 Mr. Switlishoff's--the Statement that you took me to  
15 earlier was how much volume--how many megawatts in  
16 those hours is there. It's just a percentage of  
17 below-load or overload. It doesn't tell me how much  
18 below and over. What I was looking at before is that  
19 most of the time they are over under normal operating  
20 circumstances. When they're not operating normally,  
21 they may be buying some energy to back up their  
22 normally operating generator. And that doesn't need

02:43:00 1 to be considered because it's not a normal purchase,  
2 and there is not a normal operating circumstance.

3 Q. Hold on. The purchases Celgar was making  
4 from FortisBC during the course of the year were not  
5 normal?

6 A. No. It was normal that they bought. It was  
7 not during normal operating conditions that they were  
8 buying.

9 Q. So, 2007, the year you actually used, had  
10 some periods of time that didn't reflect normal  
11 operating conditions?

12 A. No. It's quite normal for a year to have  
13 downtime.

14 Q. I'm sorry. I didn't mean to interrupt.

15 A. Predominantly that is plant maintenance, and  
16 there will be some periods of the year where there is  
17 periodic upsets.

18 Q. Do you adjust the GBL upwards to reflect that  
19 downtime or not?

20 A. The downtime--

21 Q. It's a yes-or-no question, please.

22 A. There are a lot of adjustments for the GBL.

02:43:52 1 Q. Is that one of them?

2 A. That's a consideration.

3 Q. Was it? So, the year wasn't normal for  
4 Celgar? You adjusted--you effectively, by using the  
5 average they were trying to achieve, you effectively  
6 adjusted their GBL upward by treating the downtime as  
7 abnormal, didn't you?

8 A. No. The GBL of 349 is an average output of  
9 about 40 megawatts per hour over 8,760 hours, which is  
10 365 days. Nobody operates at a steady consistent  
11 level for 365 days. So, I would say that under normal  
12 operating conditions, which they're saying is about  
13 8,400, and they're also saying at about 43 megawatts  
14 per hour over the 8,300 or 8,400 represents normal  
15 state of operations. It is still normal to take the  
16 mill down for maintenance schedules and all those  
17 sorts of things.

18 Q. Do you adjust for that or not?

19 A. The adjustment is taken out of the total  
20 maximum. We're looking at the difference between  
21 43 times 8,400 versus 40 times 8,760.

22 Q. I'm completely confused now because I had

02:45:03 1 understood from the start of this that you  
2 started--and this was your First Statement--you used  
3 the annual figures, that line from 349 and the 351  
4 with the 23 and the 26. And to make your new argument  
5 in your Second Statement you keep having to talk about  
6 hourly figures that you multiply by numbers that are  
7 8,400 or 8,500. Why can't you answer my questions  
8 dealing with the annual figures that you actually had  
9 before you when you made your determination?

10 A. I'm sorry. The question is why can't I  
11 answer the question?

12 Q. Why aren't using the annual figures?

13 A. We're getting to--the GBL is an annual  
14 number.

15 Q. That's what I thought.

16 A. It is. And so I'm looking at annual totals.  
17 And I do and I did look at the total amount of  
18 generation, the total amount of consumption, and  
19 determine that 2007 is a good year that represents a  
20 normal operating year.

21 Q. Let's try this another way. Can you turn to  
22 your First Witness Statement at Paragraph 31. Can you

02:46:28 1 read the first sentence beginning with "the principal  
2 objective"?

3 A. "Principal objective in the introduction of a  
4 GBL in an EPA for the purchase of energy from  
5 self-generating customers is that all else remains the  
6 same for both the utility and the customer. This  
7 means the utility continues to bill for--"

8 Q. Just the first sentence.

9 A. All right. Sorry.

10 Q. Thank you. So for all else to remain the  
11 same, if Celgar was selling self-generated electricity  
12 in excessive load to NorthPoint and FortisBC before  
13 its EPA, that volume should remain and be permitted to  
14 be sold to somebody after the EPA; correct?

15 A. Not the same volume.

16 Q. Not the same?

17 A. The same circumstances perhaps but not the  
18 same volume.

19 Q. So for Celgar all else didn't remain the  
20 same?

21 A. Well, it would remain the same. We would be  
22 perfectly happy for them to sell us energy in the same

02:47:26 1 circumstances that they sold to NorthPoint or to  
2 FortisBC, which is net-of-load.

3 Q. Actually, you didn't allow that though  
4 because you set the GBL--they were selling 23. And,  
5 in effect, since you adjusted total generation for the  
6 net sales, you only bought 1.3. Why couldn't they  
7 sell you the same 23 they were selling before?

8 A. Mr. Merwin asked me the same question.

9 Q. It's a good question.

10 A. He said we should be able to allow to be sold  
11 23 megawatts the same as we did last year. And the  
12 year before, they sold some amount, not the same 23  
13 but something else. But the all else remaining equal  
14 portion of this statement means that under what  
15 circumstances were you selling those different amounts  
16 in a given year. And it was always that it was net of  
17 their load. They were selling physical exports. And  
18 what I answered to him was, I'd buy--we would be  
19 interested in potentially buying through this EPA  
20 under the same circumstances that you were selling  
21 historically that same energy. It doesn't matter that  
22 it's 23 or 26 or 40. It matters that it was net of

02:48:33 1 the load.

2 Q. But, in fact, your GBL of 349 did not allow  
3 Celgar to continue to sell that 23. If its generation  
4 pattern in--after the EPA had been exactly the same it  
5 was in 2007, exactly the same as the baseline period  
6 you used, they had 23 that was available for sale  
7 because it was in excess of their load. And your GBL  
8 didn't permit them to sell that to you, did it?

9 A. The 23 was not a relevant factor. The fact  
10 was that they were selling above load, net-of-load.

11 Q. Can you please answer my question?

12 A. Well, it wasn't energy that BC Hydro would  
13 consider buying.

14 Q. BC Hydro didn't buy it.

15 So, you didn't maintain the status quo for  
16 Celgar, did you? You increased their self-supply  
17 obligation above the level at which they were  
18 self-supplying in 2007. And you eliminated their  
19 ability to sell what they previously had been selling,  
20 didn't you?

21 A. No. We were interested in buying anything  
22 greater than what they normally make.

02:49:35 1 Q. Isn't it a fact--

2 A. If that happened to be greater than their  
3 load, we would be interested in that too. We were  
4 also not interested in paying for anything that they  
5 normally do make. That is the other side of that  
6 coin. And that's the line we're trying to draw with a  
7 GBL.

8 Q. Isn't it a fact that you cut out Celgar's  
9 sales to NorthPoint and FortisBC without buying that  
10 power yourself?

11 A. I'm not sure what you mean--

12 Q. The 23. You prevented Celgar from selling  
13 that to NorthPoint and FortisBC, and you didn't buy it  
14 yourself?

15 A. The act of preventing them from doing  
16 anything didn't enter into the discussion or into the  
17 Contract that we had with them. We were only  
18 incenting them to make more than they normally make.

19 Q. NorthPoint is a competitor to Powerex, which  
20 is owned by BC Hydro, is it not?

21 A. Powerex is a part of BC Hydro, yes, and  
22 NorthPoint could be seen as a competitor, yes.

02:50:29 1 Q. You didn't just prevent harmful arbitrage,  
2 increased arbitrage, you prevented all arbitrage based  
3 on 2007 levels, didn't you, just as Judy Baum  
4 suggested you do in her April 2008 Briefing Note?

5 A. Yes, when we're buying net of the load,  
6 arbitrage doesn't occur.

7 Q. That meant you also required Celgar to  
8 provide an increased level of self-supply above what  
9 it had provided to itself in 2007; isn't that correct?

10 A. What it does is suggest to Celgar that they  
11 could continue to be self-sufficient and sell us  
12 anything net of their self-sufficiency.

13 Q. You required Celgar to do better in order  
14 just to stay even.

15 A. Okay. Can I say this then: The below-GBL  
16 needs of Celgar as a mill come from Fortis. BC Hydro  
17 is not the supplying utility. We didn't prevent them  
18 from doing anything with Fortis below the GBL. All we  
19 said was we're interested and we would agree that  
20 energy greater than your normal output, which is also  
21 greater than your load, would be eligible to be  
22 submitted into the proposal for selling to BC Hydro

02:51:36 1 under this EPA.

2 Q. I'm sorry. Didn't the Exclusivity Clause in  
3 Paragraph 7.4 or whatever it was prevent Celgar from  
4 selling its below-level electricity to anyone?

5 A. I think we went through that on Friday, and I  
6 think you also asked Mr. Scouras that probably because  
7 I think that is probably more his bailiwick than mine.

8 Q. So, you don't really know that it didn't  
9 prevent Celgar from doing anything with FortisBC.  
10 That's what you just said, but you don't really know  
11 that to be true, do you?

12 A. The intent remains the same as what I just  
13 said. BC Hydro was trying to encourage and develop  
14 opportunities for customers to sell more than they  
15 normally have made. The definition of that is the  
16 division line is the Generator Baseline.

17 Q. Could we turn to Mr. Scouras' First Witness  
18 Statement in Paragraph 44, please. Now, here  
19 Mr. Scouras is describing an addendum to the RFP.  
20 This is the Bioenergy Phase I RFP under which Celgar  
21 was awarded an EPA. That addendum, according to  
22 Mr. Scouras provided that energy that had been sold to

02:52:59 1 third parties could be treated as incremental and  
2 eligible for sale under the program rules.

3 My question to you is why wasn't Celgar  
4 allowed to do what Addendum 8 says they could do?

5 A. Are you referring still to Paragraph 44?

6 Q. 44, the clause that begins with the two  
7 little (ii)s. It says that "incremental generation  
8 including generation from existing installed capacity  
9 that had been sold to third parties."

10 Why wasn't Celgar's sales to NorthPoint and  
11 FortisBC eligible for sale under Addendum 8?

12 A. Well, it was. I think they submitted that in  
13 their initial submission to the Bioenergy 1 call; that  
14 is, Celgar submitted it, that they were and had been  
15 selling under Contract to NorthPoint and/or Fortis but  
16 also that those contracts would be terminated prior to  
17 COD of the upcoming pending EPA. And what we said was  
18 then, if that energy that you had been selling is no  
19 longer required to sell, those contracts are  
20 terminated, we would make--we would consider that  
21 energy that you had been selling eligible for the  
22 call. And I explained to you the basis on which they

02:54:40 1 were selling to Fortis was on a net-of-load basis, and  
2 that is how BC Hydro would also be interested in  
3 buying the energy.

4 Q. So the 23.3 that they were selling to  
5 NorthPoint and to FortisBC you reduced to 1.3 and  
6 allowed them to sell that. Is that effectively what  
7 happened?

8 A. The 23.3 by itself is not relevant. It is  
9 the fact that they sold it when they were net-of-load.  
10 We would be prepared to buy on the same basis.

11 Q. Should we turn to Addendum 8 and see where it  
12 says that?

13 A. Turn away. I mean, this is not my document.  
14 This is Power Acquisition's document.

15 Q. All right. Let's turn to Exhibit R-121.

16 A. R-121.

17 Q. Page 4, Paragraph 8, please. R-121. Now,  
18 can you show me where here it says that you will allow  
19 those--you will treat that third-party sales volume as  
20 incremental only when it's net-of-load or whatever  
21 qualifications you just put on it?

22 A. Okay. Sorry. I've been reading. Can you

02:56:45 1 please repeat your question?

2 Q. I'll put it this way: The terms of your own  
3 Power Call required you to treat Celgar sales to  
4 FortisBC and NorthPoint as incremental and eligible  
5 for sale to BC Hydro, and yet you didn't do so; isn't  
6 that correct?

7 A. The description here is referring to  
8 incremental self-generation, incremental to the GBL.

9 Q. I beg your pardon, but that's not what it  
10 says at all. It says incremental generation includes  
11 generation from existing installed capacity--Celgar's  
12 1993 turbine--that has been sold to third parties.  
13 Didn't Celgar meet that qualification, to have that  
14 electricity treated as incremental?

15 A. And we said--

16 Q. Yes or no, please.

17 A. If it is incremental to what they normally  
18 produce--

19 Q. That's not what it says, Mr.--

20 MR. OWEN: Could you please let the Witness  
21 answer, Mr. Shor.

22 PRESIDENT VEEDER: I think the Witness should

02:57:51 1 be allowed to finish. Please finish your answer.

2 THE WITNESS: I've repeated it I know a few  
3 times, and I apologize to be repetitious, but energy  
4 that BC Hydro would be interested in buying is that  
5 energy which was incremental to what is--has been  
6 normally generated. In this case you're asking me to  
7 tell you that the same amount of energy that they sold  
8 previously should be eligible to sell in our call  
9 based on what it says here.

10 BY MR. SHOR:

11 Q. I'm not asking you to tell me anything. I'm  
12 just reading the words on your own RFP that defines as  
13 incremental "preexisting generation that has been sold  
14 to third parties."

15 And that's not what you did for Celgar, is  
16 it? It's an easy question. Yes or no, please.

17 A. The question is sometimes easier than the  
18 answer. I can read what it says, but this doesn't  
19 entirely describe that energy which is defined as  
20 "incremental" or otherwise. This is one--

21 Q. I think it really does.

22 A. --portion of the RFP clarification, as it's

02:58:54 1 called. So, I've--in my portion of the work that I  
2 did in determining what GBLs were, was looking to  
3 determine what was incremental to what had been  
4 generated. To that degree, yes, energy that you had  
5 been selling or that Celgar, rather, had been selling  
6 to Fortis or to NorthPoint would be eligible,  
7 technically, under the same basis that they had been  
8 selling it to either of those two parties.

9 Q. Where does it say that?

10 A. Well, that's what I'm saying. That's my  
11 interpretation of it.

12 Q. Okay. So, you didn't follow the language  
13 here. You followed your own interpretation of the GBL  
14 process that had a different definition of incremental  
15 generation that was only anything net-of-load for  
16 Celgar. Is that accurate? You didn't follow this  
17 definition at all? You ignored it?

18 A. I think this document also references the  
19 fact that there will be adaptations specific to the  
20 customers' needs or their unique characteristics.  
21 That definitely is also part of the EPA terminology,  
22 the terms of the Agreement and so forth.

03:00:22 1 Q. So, you didn't follow this definition because  
2 you thought there were other considerations for  
3 Celgar?

4 A. Celgar was unique, as were each of the other  
5 proponents in the Call. There were some  
6 considerations that had to be made for Celgar that  
7 didn't have to be made for others and vice versa.

8 Q. Is there any other self-generator for whom  
9 you created an exception to this definition of  
10 "incremental generation governing third-party sales,"  
11 or was that just for Celgar?

12 A. I don't think we made an exception for them  
13 or anyone else.

14 Q. Okay. I'd like to turn to the "limitations  
15 period." You may not know what that means, but many  
16 of us do.

17 During your negotiations with Celgar of the  
18 2009 EPA, did you disclose to Celgar the terms of your  
19 1997 EPA with Purcell and Tembec?

20 A. Did I disclose to Celgar--

21 Q. To Celgar. To Mr. Merwin.

22 A. --the terms of that '97 agreement?

03:01:16 1 Q. Correct.

2 A. I don't believe I did.

3 Q. Because they were confidential?

4 A. They were confidential.

5 Q. How about the 2009 Tembec EPA? That hadn't  
6 even happened yet, right, so you didn't disclose that?

7 A. Right.

8 Q. And the Howe Sound EPA. That too happened  
9 later, so you wouldn't have disclosed that.

10 What about Canfor's 2004 Load Displacement  
11 Agreement? Did you disclose those terms to Celgar?

12 A. The 2004 Load Displacement? I don't recall  
13 having a discussion about Canfor's Load Displacement  
14 Agreement.

15 Q. How about Canfor's 2009 Amended Load  
16 Displacement Agreement and the EPA?

17 A. You're asking if I disclosed that  
18 information?

19 Q. If you disclosed how the GBLs in those  
20 Agreements were calculated to Mr. Merwin.

21 A. I wouldn't have disclosed specific  
22 information about any one customer to any other

03:02:08 1 proponent in the Call. There was public information  
2 available on the load displacement amounts because  
3 there was publication publicized, I guess, about the  
4 Load Displacement Agreements and their nature, both  
5 to--regarding BC Hydro's announcements, as well as, in  
6 that case, Weyerhaeuser Domtar, they also announced,  
7 as did Canfor, how big a project they put in,  
8 BC Hydro's contribution to that project and the amount  
9 of energy they were producing.

10           So, I didn't share anything that was  
11 confidential. I may have talked about referencing  
12 documents or information that was already public.

13       Q.    But the precise amounts of the Load  
14 Displacement Obligation and the GBs and the data that  
15 went into that, none of that would have been available  
16 to Mr. Merwin; correct?

17       A.    Shouldn't have been.

18       Q.    Because the LDAs and EPAs all contain  
19 confidentiality provisions which you honored and you  
20 would you expect your counter-parties to honor;  
21 correct?

22       A.    Yes.

03:03:02 1 PRESIDENT VEEDER: I'm sorry; did you say  
2 "shouldn't have been" or "couldn't have been"?

3 THE WITNESS: I say "shouldn't have been."

4 PRESIDENT VEEDER: Thank you.

5 BY MR. SHOR:

6 Q. So, as far as you know, and based on your  
7 interactions with Mr. Merwin, Mercer did not have any  
8 knowledge on how BC Hydro actually would treat others  
9 in setting their GBLs at the time you set Celgar's  
10 GBL; correct?

11 A. Unless they were talking between each other,  
12 you know, I don't know that they would or wouldn't  
13 have information on the others. It didn't come from  
14 me.

15 Q. It didn't come from you, and the  
16 confidentiality provisions would have precluded others  
17 from providing that information?

18 A. That's the intent. We hope so.

19 MR. SHOR: Can we pull up Canada's  
20 Counter-Memorial, Paragraph 330, please, the  
21 penultimate sentence?

22 THE WITNESS: Do I have that in my binder?

03:03:58 1 BY MR. SHOR:

2 Q. I don't think so.

3 This is Paragraph 330 of the written brief  
4 provided by Canada.

5 Can you read the highlighted sentence,  
6 please?

7 A. "The GBL, however, remains of no force until  
8 it, like other EPA terms and conditions, receives the  
9 approval of the BCUC."

10 Q. Do you agree with that characterization made  
11 by Canada in its Counter-Memorial?

12 A. May I read the entirety of the--

13 Q. Certainly.

14 A. Okay.

15 Q. Do you agree?

16 A. Please repeat the question.

17 Q. Do you agree with Canada's statement in that  
18 sentence?

19 A. Yes, insomuch as the GBL is contained as a  
20 term of the EPA, and once the EPA is approved, if it  
21 has to be filed, in fact, with the BCUC, it remains as  
22 part firm term and commitment within the Contract.

03:05:23 1 Q. Now, we talked earlier about G-38-01 and  
2 whether or not it governed EPAs or not. Can you read  
3 the sentence preceding that?

4 A. "Rather than G-38-01"--

5 Q. There's no "than" there. So, why don't you  
6 start again.

7 A. Sorry. "Rather, Order G-38-01 sets out a  
8 rule that BC Hydro follows when it enters into an EPA  
9 to acquire self-generated energy. The negotiation of  
10 a GBL ensures that the proposed acquisition is less  
11 likely to harm other ratepayers."

12 Q. So, it appears that Canada, at the time of  
13 its Counter-Memorial also agreed with the BCUC that  
14 Order G-38-01 sets out a rule that BC Hydro follows  
15 when it enters into an EPA, doesn't it?

16 A. Yeah, I think it references G-38-01 as a  
17 reference to the importance of managing against the  
18 opportunity to arbitrage.

19 Q. It actually uses the word "rule," not  
20 "reference," doesn't it?

21 A. It sets out a rule in the document, yes, that  
22 is referenced--

03:06:21 1 Q. That BC Hydro follows. You have to follow  
2 it. You don't have a choice of disregarding the rule  
3 or the reference, do you?

4 A. Not when we're selling the type of product  
5 that's contemplated in 38-01, which is not the case in  
6 the EPAs necessarily.

7 Q. But this refers to EPAs, doesn't it--

8 A. It does.

9 Q. --when it enters into an EPA?

10 So, at this time Canada was taking the  
11 position that G-38-01 sets out a rule BC Hydro follows  
12 when it enters into an EPA, wasn't it?

13 Put another way, the position that G-38-01  
14 doesn't have anything to do with EPAs is something  
15 that they invented for the Rejoinder Memorial, isn't  
16 it?

17 A. I don't think that they reinvented it. I  
18 think if there were any reference to G-38-01, it's  
19 just supporting the notion of BC Hydro and any utility  
20 that's regulated to avoid harm to other ratepayers  
21 through opportunities to arbitrage. That is a basis  
22 of our GBL establishment. It is referred to in 38-01.

03:07:35 1 But I said earlier, if 38-01 didn't exist, we would  
2 still have those same obligations as a utility, and we  
3 would still abide by them.

4 So, 38-01 by itself doesn't direct us to do  
5 anything or doesn't have the authority to tell us how  
6 to do things. In fact, it just suggests that we need  
7 to avoid arbitrage however we agree to setting a  
8 baseline with our customers.

9 Q. That's your position and you're sticking with  
10 it; right?

11 A. That's the way I see it.

12 MR. SHOR: Can we take a break now,  
13 Mr. Chairman?

14 PRESIDENT VEEDER: How long do you need?

15 MR. SHOR: 10 minutes.

16 PRESIDENT VEEDER: Is this the mid-afternoon  
17 break?

18 MR. SHOR: I think the mid-afternoon break  
19 would be great.

20 PRESIDENT VEEDER: Let's take a 15-minute  
21 break. Then we'll come back at 25 past 3:00.

22 (Brief recess.) ^5

03:15:52 1 PRESIDENT VEEDER: Let's resume.

2 BY MR. SHOR:

3 Q. Now, Mr. Dyck, in your binder you should have  
4 a tab called "Mercer Memorial." And I'd like you to  
5 look at the last page, which is Figure 21 from  
6 Mercer's Memorial. This is a chart we prepared  
7 juxtaposing the GBL calculation in reference to  
8 historical self-supply levels for both Howe Sound and  
9 Celgar.

10 Now, my understanding is correct for we went  
11 through Howe Sound and showed that Howe Sound's

12 [REDACTED]  
13 [REDACTED] >>

14 Would you agree that, if we look at the same  
15 kind of data for Mercer, we would see that its GBL was  
16 set at a level higher than its actual self-supply  
17 level in any year?

18 A. You suggested that it was higher than any  
19 other years that Celgar that had been generating?

20 Q. Any self-supply level Celgar had actually  
21 achieved in any year. And I'm referring you to the  
22 chart, that purple box at the top are the purchases

03:26:10 1 from FortisBC?

2 A. Right.

3 Q. I think you agreed with me that that is not  
4 generation--self-generation that Celgar used for  
5 self-supply; correct?

6 A. But your question was that the last year, and  
7 your chart was the highest of any year--

8 Q. No, your GBL. Your GBL was set at a level  
9 higher than the actual level of self-supply Celgar had  
10 ever achieved in any calendar year; correct?

11 A. GBL was set higher than the self-supply in  
12 previous years, yes.

13 Q. In every previous year?

14 A. You're right.

15 Q. Thank you.

16 I'd like to turn now to Tembec Skookumchuck.

17 Now, unlike the Celgar and Howe Sound EPAs, Tembec's

18 EPA [REDACTED]

[REDACTED] >> correct?

20 A. In the terms of the EPA, [REDACTED]

[REDACTED]

22 Q. I want to start a discussion at the same

03:27:08 1 point we began with both Howe Sound and Celgar. The  
2 Mill's actual generation levels current as of the time  
3 the EPA was being negotiated. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

7 Can we pull up Figure 25 from Page 194 of the  
8 Reply. And that would be your tab, Mercer's Reply  
9 Page 194.

10 Now, these charts were taken from information  
11 we got from BC Hydro. Do you agree that << [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 Q. I think we talked about earlier it was  
20 selling 10.8 to BC Hydro. [REDACTED]

[REDACTED]  
[REDACTED]

03:28:23 1 [REDACTED]

[REDACTED]

3 A. Yes, as they are operating under the terms  
4 of the 2001 EPA.

5 Q. Now, Tembec was a bidder in the Bioenergy  
6 Phase 1 RFP, was it not?

7 A. Yes.

8 Q. And you would have needed to establish a GBL  
9 for Tembec as part of that process?

10 A. Yes.

11 Q. Can we pull up Exhibit C-143, second  
12 paragraph. That's in your binder as well.

13 Now this is the letter from the EPA  
14 administrator advising Tembec of the EPA that was set  
15 for it at that time in May 2008. Can you tell me what  
16 that GBL was? I believe it's << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

03:29:46 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] >> And isn't it true that at the  
5 beginning of the RFP process the first GBLs that were  
6 set were set based on 2005 baseline years?

7 A. The 2005 baseline year is relevant to all  
8 BC Hydro customers because it was the CBL  
9 determination year.

10 Q. Okay. And Tembec was a BC Hydro customer?

11 A. You're right.

12 Q. So if I take << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 A. All right.

18 Q. Which is the same as the << [REDACTED]

[REDACTED]

[REDACTED] Do you agree?

21 A. It appears so, yes.

22 Q. Okay. And that was--so the formula was

03:31:09 1 generation minus sales, the same formula you used for

2 [REDACTED] correct?

3 [REDACTED]

4 [REDACTED]

5 (Overlapping speakers.)

6 A. I'm sorry. << [REDACTED] [REDACTED]

7 [REDACTED] >

8 Q. So that's total generation minus sales, the

9 same formula we saw << [REDACTED]

10 A. Yes. But I think--yes, to arrive at that

11 < [REDACTED] >> that's how you get there.

12 Q. And you were looking at the historical level

13 of self-supply?

14 A. I believe what was being looked for was, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

03:32:29 1 [REDACTED]

2 [REDACTED] So you  
3 were following Addendum 8. You didn't have a special  
4 definition of "incremental" under Addendum 8 like you  
5 did for Celgar. You allowed them in this  
6 calculation--you took [REDACTED]

7 [REDACTED]

8 [REDACTED] correct?

9 A. Yes. That's the formula that was used here.

10 Q. But you did not set the GBL in the << [REDACTED]

11 [REDACTED]

12 A. No.

13 Q. In fact, you didn't << [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] > did you?

17 A. No.

18 Q. In fact, you didn't rely on any actual  
19 historical generation or consumption data at all in  
20 setting Tembec's GBL; correct?

21 A. Because in all the years that you quoted,

22 they were << [REDACTED]

03:33:29 1

2 [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED]  
4 Q. Now, can we pull up the text of Order  
5 G-38-01. That is Exhibit C-5. And if you look at the  
6 PDF on Page 2, the first paragraph, could you read the  
7 line starting with "The Commission directs" and going  
8 down to "output of the generator."

9 A. Okay. "The Commission directs BC Hydro to  
10 allow Rate Schedule 1821 customers with idle  
11 self-generation capability to sell excess  
12 self-generated electricity provided the  
13 self-generating customers do not arbitrage between  
14 embedded cost utility service and market prices. This  
15 means that BC Hydro is not required to supply any  
16 increased embedded cost of service to RS 1821 customer  
17 selling its self-generation output to the market. The  
18 Commission recognizes that considerable debate may  
19 ensue over whether a self-generator has met this  
20 principle, but the Commission expects BC Hydro to take  
21 every effort to agree on a customer baseline, based  
22 either on the historical energy consumption of the  
customer or the historical output of the generator."

03:34:59 1 Q. Okay. Now, I want to focus on that last  
2 language where they say "the customer baseline is to  
3 be based either on the historical energy consumption  
4 or the historical output of the generator." BC Hydro  
5 didn't do either of those things for Tembec, did it?

6 Yes or no works really, really well for all  
7 of us.

8 A. The Tembec situation doesn't apply in his  
9 case because we're dealing with the situation where  
10 there's a general--there's an EPA in place. So the  
11 answer would be no, we didn't apply it this way.

12 Q. Okay. And where in G-38-01 does the  
13 Commission say you apply different rules when there's  
14 an existing EPA in place?

15 A. The Commission doesn't address how to do  
16 these things. It only suggests that we must agree  
17 with customers that this should be done.

18 Q. Okay. So that was a BC Hydro invention.  
19 That was not anything the Commission directed?

20 A. The Commission directs us to meet with our  
21 customers and, based on historic generation or  
22 consumption levels, to agree on a generator baseline--

03:36:01 1 Q. Right. You--

2 A. --or a baseline of sorts.

3 Q. << [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED] though Order G-38-01 doesn't

7 provide for any special treatment for existing

8 Contracts, does it?

9 A. So earlier in the day we had this discussion

10 and I said there were three kind of separate groups of

11 activity. Tembec was operating under their '97/2001

12 agreement for X number of years. Our GBL

13 determination guidelines say we're supposed to try to

14 determine what this customer would do in the absence

15 of an agreement rather than comparing one agreement

16 operationally to another.

17 Q. But that's the part I'm trying to get at, in

18 the absence of an agreement part. Where here does it

19 talk about anything in the absence of an agreement?

20 A. Well, it doesn't say that here and--

21 Q. Thank you. That's all I need to know.

22 A. All right.

03:37:00 1 Q. So for Tembec you applied--as I recall, it's  
2 an << [REDACTED]  
3 [REDACTED] and it averages out to 14 megawatts over the  
4 course of a year; is that correct?

5 A. Sorry. For Tembec [REDACTED]  
6 [REDACTED]  
7 [REDACTED] and the  
8 average is 14?

9 A. No. For Tembec, we used a [REDACTED] >>  
10 model of the process to determine how much they  
11 normally would generate.

12 Q. I'm just asking what the GBL was. The GBL  
13 was 14, on average.

14 A. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 Do you remember what the two << [REDACTED] >> numbers  
22 are?

03:37:41 1 A. No, not off the top of my head, no.

2 Q. Okay. Well, we'll get to that later. I'm  
3 sure I have that somewhere.

4 Now, let's look at the impact of that  
5 14-megawatt average GBL. Before the 1997 EPA, I think  
6 you told me that Tembec was selling--<< [REDACTED] [REDACTED] >>  
7 its 10.8-megawatt obligation to BC Hydro on firm  
8 energy << [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

11 A. Before the '97 EPA?

12 Q. Under the 1997 EPA, before the 2009 EPA.

13 A. Yeah, so they were selling 10.8 on a firmly  
14 committed basis, << [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

17 Q. Okay. So, the sales to BC Hydro, though,  
18 were about 10.8?

19 A. [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED]

21 Q. Okay. Can we turn to Exhibit C-34.

22 Somewhere in here, it says this--this is an e-mail for







03:42:05 1 Q. Was that a "yes"?

2 A. Yes.

3 Q. Okay. So, they went from being able to sell  
4 10.8 to being able to sell 24.4. That's 126 percent  
5 increase, if you trust my math. And I think you told  
6 me before that Tembec hadn't installed any new  
7 generation equipment or assets to produce those  
8 incremental sales above the 10.8; correct?

9 A. That's true.

10 Q. So, that additional 13.6 megawatts of sales  
11 came from increased purchases of low-priced RS 1823  
12 embedded cost power from BC Hydro, did they not?

13 A. It came from the difference in the construct  
14 between the 1997/2001 Agreement versus the more  
15 current and consistent agreement that we have with all  
16 the other customers. << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] > with the

21 14 megawatts per hour before there's any eligible

22 energy to be sold.

03:43:05 1 Q. Okay.

2 A. They are completely upside down from one  
3 another, so it's very difficult to compare one to the  
4 next.

5 Q. I agree with your characterization that it  
6 was upside down.

7 A. Yeah.

8 Q. But I want to understand the power flows or  
9 the contractual power flows. I understand actual  
10 power flows don't--so, the << [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] >> wouldn't they?

14 A. Yes. The power flow changes.

15 Q. Did they change in the way I described?

16 Tembec was allowed to make increased sales to  
17 BC Hydro by virtue of the fact that it was allowed to  
18 purchase increased volumes of embedded cost power from  
19 BC Hydro?

20 It's not a hard question, and I know you know  
21 the answer.

22 [REDACTED] [REDACTED]

03:44:07 1 [REDACTED]

2 [REDACTED]

3 Q. Right. And they would have increased to  
4 cover that 13.6 of incremental sales; correct?

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. Okay. So, Tembec was permitted to engage in  
12 increased arbitrage above its historical levels as of  
13 the time of the EPA?

14 A. The historical levels that you're referring  
15 to are not relevant in the determination of the GBL.

16 Q. Did I ask that?

17 A. No--

18 Q. How about answering the question?

19 A. --but it's implied in the question, I guess.

20 Q. Just please answer the question I ask, rather  
21 than the question you want to answer. It will go a  
22 lot of easier.

03:45:06 1 A. Sorry. My apologies. Please restate the  
2 question, and I'll answer it.

3 Q. So, Tembec was permitted to engage in  
4 increased arbitrage above its historical levels as of  
5 the time of the new EPA?

6 A. I won't agree to the answer because I don't  
7 believe they've committed any arbitrage.

8 Q. Do you believe they have-- again, I want to  
9 distinguish between "arbitrage" and "harmful  
10 arbitrage." They were able to buy more and sell  
11 electricity simultaneously, weren't they?

12 A. The new agreement allows for a different  
13 exchanges of energy, and, yes, [REDACTED]

[REDACTED]  
[REDACTED] which is what I  
16 said earlier, yes.

17 Q. They bought more and they sold more; correct?

18 A. Yes.

19 Q. So, that's increased arbitrage, isn't it?

20 A. I'm not defining it as "arbitrage," but I  
21 agree that they [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

03:46:02 1 Q. Can we agree on the meaning, that we are  
2 going to apply the English language to this  
3 discussion? The meaning of "arbitrage" is buying and  
4 selling at the same time. Accept that as the  
5 definition.

6 A. Yes.

7 Q. Was Tembec allowed to engage in increased  
8 arbitrage?

9 A. By that definition, [REDACTED]  
[REDACTED]

11 Q. And those sales included below-load  
12 electricity that did not actually flow to BC Hydro;  
13 correct?

14 A. I'm sorry, below?

15 Q. It included sales of below-load electricity,  
16 so there wouldn't have been actual power flows to  
17 BC Hydro or across the point of interconnection?

18 A. Under the old agreement or the new one?

19 Q. Under the new agreement.

20 [REDACTED]  
[REDACTED]  
[REDACTED]



03:47:41 1 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Does that sound correct?

5 A. That could well be.

6 Q. Do you want to check? I can give you the  
7 reference.

8 A. I agree.

9 Q. You agree, those are the numbers?

10 A. I agree, yes.

11 Q. Now, is it even physically possible for the  
12 Skookumchuck Mill to transfer <<[REDACTED]>> of power  
13 to BC Hydro?

14 A. Physically or to generate that--

15 Q. Physically to transfer. I'm talking about  
16 the transformer capability of the point of  
17 interconnection.

18 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. --transfer.

03:48:25 1 A. And transfer.

2 Q. You're agreeing to buy << [REDACTED]

4 A. Yes.

5 Q. Is Tembec even physically capable of  
6 transferring that power? I'm not talking about  
7 generation. I'm talking about the capability of the  
8 transformer at the point of interconnection.

9 A. So, you're talking about physical export at  
10 that level?

11 Q. I'm sorry?

12 A. You're talking about physically exporting--

13 Q. Yes. Can they physically export--can they  
14 physically export << [REDACTED]

15 A. I don't know for certain. You might want to  
16 ask Mr. Lague when he comes to sit.

17 Q. Well, no.

18 A. But I can't tell you that answer for sure.

19 MR. SHOR: Well, how about we look at the  
20 EPA, Exhibit C-145, Appendix 4-10. And that is PDF  
21 Page 85, Bates Number 139797. And there's a reference  
22 in the chart. Can we blow that up?

03:49:32 1 BY MR. SHOR:

2 Q. Do you see the line << [REDACTED]

3 [REDACTED]

4 A. Yep.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. Now, we talked about the difference between  
12 the actual power flows and contractual power flows,  
13 but don't you typically require for contractual power  
14 flows that there be available a contractual path, at  
15 least for the deemed deliveries? Doesn't it have to  
16 be theoretically possible?

17 A. I don't know the answer to that. You're not  
18 talking in an area that I would have been involved  
19 with in the contract-development terms, but what I  
20 will say what I do know; that if they show that they  
21 have generator capacity--which is what we're  
22 measuring, is the total generator output above the

03:50:36 1 GBL, that can be made--whether it's [REDACTED] [REDACTED]  
2 [REDACTED] and it's eligible for sale, we will  
3 accept and buy it.

4 The physical characteristics of the plant on  
5 our low--on our system don't have as much to do with  
6 the billing formula used to determine how much we're  
7 buying versus how much they're self-supplying as the  
8 physical characteristics might imply.

9 Q. So, you're in the--the major accounts  
10 representative for pulp and paper industry at  
11 BC Hydro; correct?

12 A. Yes.

13 Q. And you negotiate all the EPAs with that  
14 important sector of the B.C. economy, don't you?

15 A. I don't negotiate any of the EPAs.

16 Q. You just set the GBLs?

17 A. I work with the acquisitions group to  
18 understand the normal operations and help to establish  
19 GBLs.

20 Q. As you sit here today, you can't identify any  
21 other EPA or any other GBL that you set.

22 Let's put it that way. So, you're not

03:51:35 1 constrained in setting a GBL by the physical transfer  
2 capacity of the self-generator?

3 A. The generator to operate at the level that  
4 they've contracted for must meet the requirements of  
5 the interconnection and operating system guidelines of  
6 BC Hydro. But that's not the same number as the  
7 megawatts per hour that we were buying necessarily.  
8 So, the two aren't--there are physical constraints and  
9 limitations here that are demonstrated at--shown to be  
10 <<[REDACTED]>>. But if we're buying energy above a  
11 Generator Baseline that happens to be below the Mill  
12 Load and the difference between the Generator Baseline  
13 and the total capacity of the generator is greater  
14 than <<[REDACTED]>> but yet we're not physically leaning  
15 on the system for more than <[REDACTED]>>, then both are  
16 acceptable.

17 Q. So when Mr. Owen complains about Celgar  
18 wanting to sell power through notional power flows  
19 that don't reflect the physical reality, that same  
20 discussion doesn't apply to Tembec, which is able to  
21 engage in power sales for notional power flows that  
22 they physically can't even deliver; correct?

03:52:51 1       A.    If Celgar's Generator Baseline was below  
2    their--lower than their actual production has been  
3    historically and their GBL was lower than their Mill  
4    Load, there would be a wider acceptable range of  
5    megawatt or capacity on the system available to them.  
6    But the physical load on the system wouldn't change.  
7    It would only be a matter that the GBL would be lower.  
8    And I think that's what you're getting to.

9       Q.    In your experience, is it unusual for  
10   BC Hydro to agree to purchase more power from a  
11   self-generator than it physically is capable of  
12   delivering?

13       A.    All of our generator customers who have EPAs  
14   with us have to submit their proposed project or their  
15   changing operations to BC Hydro interconnections  
16   department where they do system impact studies.  What  
17   they look at is what are the physical attributes of  
18   this generator under the Project that they proposed to  
19   bring in and to see if they meet the requirements of  
20   the system to operate within the parameters of what  
21   the system can allow and tolerate.  Those numbers are  
22   not the same as what the EPA suggests they're selling

03:54:02 1 on a per-megawatt-hour basis, but they do have to  
2 comply with the interconnection requirements, the  
3 protection control systems that our system relies on  
4 to run reliably.

5 Q. Again, to repeat my question, you may not  
6 have understood it. In your experience, is it unusual  
7 for BC Hydro to agree to purchase more power from a  
8 self-generator than it physically is capable of  
9 delivering?

10 A. We will never contract for more power than  
11 the generator is capable of generating. We don't  
12 consider necessarily just the physical attributes of  
13 physical delivery into our system as the entirety of  
14 the generation that we're buying.

15 Q. Try it a third time.

16 In your experience, is it unusual for  
17 BC Hydro to agree to purchase more power from a  
18 self-generator than it physically is capable of  
19 delivering? Yes or no, please.

20 A. I believe we probably have some contracts,  
21 more than one, where a customer is selling us more  
22 than what the--the amount between the Generator

03:55:18 1 Baseline and the top of what we're buying on a firm  
2 energy basis is greater than what the system could  
3 tolerate in a physical sense probably.

4 Q. Which other parties would those be?

5 A. Well, I'm trying to think of what the total  
6 generation is. Let me ask you a question.

7 Q. No, you don't get to ask me questions.

8 A. I want to clarify the question so I can  
9 properly, I guess, answer the question.

10 Q. I was just asking, you had said there was one  
11 other. I'm asking who that--

12 PRESIDENT VEEDER: Just allow the Witness to  
13 speak. What's the clarification you're seeking?

14 THE WITNESS: For clarification, thank you.  
15 If there's a 40-megawatt Mill Load and normally the  
16 Mill Load is self-sufficient to 20 megawatts with  
17 self-generation and the host facility puts in a  
18 60-megawatt generator unit, so it's selling the  
19 increment of what it had been generating at 20 to 40  
20 plus another 30, let's say. So the total generation  
21 is greater than the Mill Load was on the system. Is  
22 that the situation you're describing?

03:57:13 1 BY MR. SHOR:

2 Q. No, that has nothing do with what I'm asking.  
3 I'm just asking for an example of a mill other than  
4 Tembec that BC Hydro permitted to sell power to  
5 BC Hydro in excess of the transfer capability not in  
6 excess of generation capability, in the excess of the  
7 amount of power that the mill was physically able to  
8 transfer to BC Hydro.

9 A. I can't think of one honestly.

10 Q. I didn't think you would be able to.

11 Now, I'd like to turn next to the  
12 justification you provide for rejecting Tembec's  
13 actual generation data. And, perhaps, we can begin by  
14 understanding how Tembec was configured. Tembec was  
15 an integrated Forest Products company, was it not?

16 A. Yes.

17 Q. In the east Kootenay region it operated not  
18 only the Skookumchuck Mill--Skookumchuck Pulp Mill but  
19 also two nearby sawmills, one at Elko and one at Canal  
20 Flats; correct?

21 A. Yes.

22 Q. And also had a finger joint mill at Cranbrook

03:58:12 1 too in the vicinity; correct?

2 A. I believe so.

3 Q. And isn't there a symbiotic relationship  
4 between sawmills and pulp mills? They each kind of  
5 need each other for input products?

6 A. That's true.

7 Q. The sawmills harvest timber and produce logs.  
8 When they saw those logs, they produce lumber, wood  
9 chips, bark, sawdust shavings, and other wood residue?

10 A. Yes.

11 Q. And that bark and other residue is called hog  
12 fuel?

13 A. Yes.

14 Q. We've come to know and love hog fuel very  
15 well.

16 A. Right.

17 Q. The pulp mills need the wood chips to produce  
18 pulp; correct?

19 A. Yes.

20 Q. They wood chips are, in fact, a fairly high  
21 value product such that sawmills generally need to  
22 sell their wood chips to be profitable?

03:58:53 1 A. Yes.

2 Q. And sawmills also need to dispose of their  
3 hog fuel?

4 A. Yes, generally.

5 Q. They can't store it indefinitely because of  
6 the fire hazard?

7 A. That's right.

8 Q. You get huge mountains and it's organic  
9 material; so it becomes self-combustible?

10 A. It can be, yes. Yeah.

11 Q. And if the pulp mill can take the hog fuel,  
12 that also helps the sawmill; correct?

13 A. Yes. It eliminates the liability that they  
14 would have if they keep it.

15 Q. Now, the Skookumchuck Pulp Mill at the time  
16 you were negotiating the 2009 EPA had generating  
17 assets including its recovery boiler, which burned the  
18 black liquor from the pulp operations, a hog fuel  
19 boiler that could also burn natural gas, and a  
20 43.5-megawatt turbine generator; correct?

21 A. Yes.

22 Q. And that turbine generator was referred to as

03:59:44 1 STG II?

2 A. The large one, yes.

3 Q. STG I was the old 14-megawatt turbine that  
4 Tembec took out of service in 2001?

5 A. Yes.

6 Q. Now, to produce the steam to generate the  
7 <<[REDACTED]> megawatts or so of electricity that Skookumchuck  
8 was generating, it burned black liquor, it burned  
9 natural gas, and it burned hog fuel in varying  
10 proportions; correct?

11 A. Yes, mostly recovered liquor and hog fuel.

12 Q. And Skookumchuck got its hog fuel, in part,  
13 from its own sawmills?

14 A. [REDACTED]

15 Q. And, in part, internally?

16 A. I'm not sure what their contractual or  
17 internal--

18 Q. Have you been to a pulp mill, Mr. Dyck?

19 A. Yes, I've been to most of them in the  
20 Province.

21 Q. So you know when the wood chips come in, they  
22 are screened first?

04:00:31 1 A. Yes.

2 Q. And the part--the little bits of wood that  
3 fall out are screen fines?

4 A. Yes.

5 Q. And all pulp mills generate screen fines;  
6 correct?

7 A. Yes.

8 Q. That's the self-generated hog fuel I was  
9 talking about.

10 A. Right.

11 Q. So, Tembec would burn its internally  
12 generated screen finds, would it not?

13 A. Generally, yes.

14 Q. And, in part, they [REDACTED]  
[REDACTED]  
[REDACTED]

17 correct?

18 A. <[REDACTED]>

19 Q. But if I understand your testimony correctly,  
20 BC Hydro concluded that, based on current conditions  
21 as of 2008 and 2009, Skookumchuck would <<[REDACTED]>

22 [REDACTED]

04:01:15 1 A. << [REDACTED] [REDACTED]

2 definitely.

3 Q. That's correct. [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

6 A. Right.

7 Q. And, second, it's your contention that it

8 [REDACTED]

■ [REDACTED]

10 A. Yes.

11 Q. And you concluded that Skookumchuck [REDACTED]

■ [REDACTED] because Mr. Chris Lague of

13 Tembec told you that << [REDACTED]

■ [REDACTED] [REDACTED]

15 A. Yes.

16 Q. What was your understanding of what he meant

17 by < [REDACTED] >>?

18 A. Well, that discussion came about as a result

19 of [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

04:02:17 1 [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

5 Q. But I want to understand specifically what

6 [REDACTED] meant. Do you think

7 he meant that [REDACTED]

■ [REDACTED]

■ [REDACTED]

10 A. He was saying, I believe, that << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] And at this point, [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

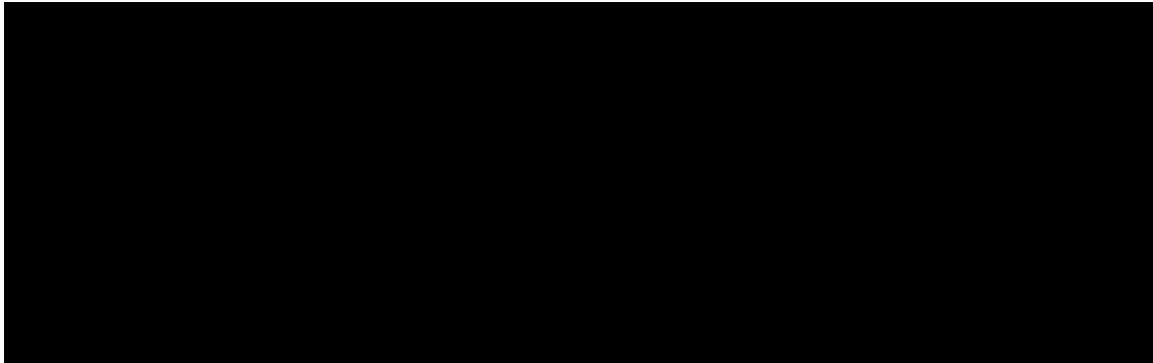
■ [REDACTED]

■ [REDACTED]

20 Q. But I'm still trying to understand kind of

21 the [REDACTED]

22 Mr. Lague was telling you about when he said it was



- [REDACTED]

15 Q. So, if I understand that correctly, on the

16 [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

22 A. Yes.

04:04:38 1 Q. Is that correct?

2 A. My understanding also was << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

6 Q. So you understood at the time then << [REDACTED]

■ [REDACTED] > Mr. Lague was [REDACTED]

■ [REDACTED]

■ [REDACTED]

10 A. I'm pretty sure he accounted for that. But

11 [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

16 Q. What did you mean by "pretty sure he

17 accounted for that"? Did you ask?

18 A. Well, Mr. Lague is pretty thorough in all of

19 his analysis and detail. He also fully understands

20 [REDACTED]

■ [REDACTED]

■ [REDACTED]



04:06:40 1 would have questioned them, and would have got the  
2 information necessary. They're the ones that asked me  
3 to come and look at the situation.

4 Q. So, someone else had to do the due diligence.

5 Did you check whether they did or not?

6 A. That's not for me to challenge what that  
7 group has decided.

8 Q. You don't know that group decided. You're  
9 just relying on what Mr. Lague told you, aren't you?

10 A. As were they, yes.

11 Q. Now, we've asked for all the documents from  
12 Tembec in connection with all the documents from  
13 BC Hydro in connection with the setting of Tembec's  
14 GBL, and I'm going to represent to you that there are  
15 no documents at all showing that the Power of  
16 Contracts Group, or whoever you mentioned, [REDACTED]

[REDACTED]

[REDACTED]

19 Do you have other information?

20 A. Other information pertaining to what?

21 Q. Any analysis at all that BC Hydro, whatever  
22 the division, whatever the office, performed on

04:07:37 1 [REDACTED]

[REDACTED]

4 Q. In order for you to set the GBL.

5 A. The GBL for the new agreement?

6 Q. For the new agreement.

7 << [REDACTED]

[REDACTED]

22 Q. So, you can't point to any analysis that



04:09:27 1           In our initial discussion, when I brought  
2 up--when we were just talking generally about how you  
3 approach GBLS, I think I asked you a series of  
4 questions about when you have a hypothetical model and  
5 what level of diligence do you have to apply and do  
6 you have to validate the claims.

7           Do you recall that discussion?

8       A.    Yes.

9       Q.    And didn't you tell me that you have to use  
10 due diligence and that you have to validate claims and  
11 you have to substantiate claims, for example, claims  
12 that << [REDACTED]

13       A.    I don't recall saying that.

14       Q.    Well, the transcript will show it.

15       A.    Yes.

16       Q.    But I want to be clear.

17            So, the due diligence you actually applied  
18 was zero?

19       A.    That I applied personally was zero. The due  
20 diligence that might have been considered by the  
21 Acquisitions Group may have been beyond that.

22       Q.    But you have no idea what that was?

04:10:19 1 A. I can't tell you what that was.

2 Q. Now, we talked about, [REDACTED]

3 that your understanding was that Mr. Lague just

4 counted < [REDACTED] [REDACTED]

■ [REDACTED]

6 Do you know whether he counted in his

7 analysis << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

11 A. No. That's a question better left for him.

12 Q. But you didn't ask him if he--but you didn't

13 ask him if he included that?

14 A. I did not ask him that.

15 Q. And you didn't check with the Power

16 Acquisition Group to see if they included that in

17 their due diligence, did you?

18 A. I didn't ask them either.

19 Q. It makes a lot of my questions easier. I can

20 skip a lot.

21 Have you reviewed Chris Lague's Witness

22 Statement, or is that confidential and you're not

04:11:34 1 allowed to see it?

2 A. No, I've read it.

3 Q. At the time you made your GBL determination,  
4 what was your understanding of the minimum firing rate  
5 of a hog boiler at Skookumchuck?

6 A. At the time of the negotiation?

7 Q. Yes.

8 A. At the time of the negotiation, I was aware  
9 that the hog boiler would have to run a summary, but I  
10 wasn't--I wouldn't be--have been able to tell you the  
11 percentage of design rate capacity it had to run at,  
12 at that time.

13 Q. Okay. Can we turn to R-193, please. Page 2,  
14 fifth paragraph. Now, this is a letter from Mr. Lague  
15 to Matt Steele. Just go back to the first page and  
16 see what group he's in.

17 Is Matt Steele in your group?

18 A. Yes, he is.

19 Q. So, this is the letter Mr. Lague sent you,  
20 outlining his various scenarios on why he should have  
21 a GBL << [REDACTED] I think, is what he proposed; correct?

22 A. Yes.

04:12:42 1 Q. And could we turn to Page 2 of the fifth  
2 paragraph.

3 Now, here Mr. Lague is telling BC Hydro [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Does that refresh your recollection at all as  
9 to whether Mr. Lague gave you any information--

10 A. Well, I'm certain--

11 Q. I haven't finished my question.

12 Does that help refresh your recollection on  
13 whether Mr. Lague gave you any indication of what the  
14 << [REDACTED]

15 A. Yes. I did receive this memo. You pointed  
16 me to something that slipped my memory. So, yes, I've  
17 seen this note before, and it was well before we  
18 spoke.

19 Q. And the number he gave you was << [REDACTED] >>;  
20 correct?

21 A. That's what--that's what it was in this memo,  
22 yes.

04:13:48 1 Q. Did you evaluate at all [REDACTED]

2 [REDACTED] Do you know what I  
3 mean by that?

4 A. Running it <[REDACTED]>

5 Q. Right. <<[REDACTED]

6 A. <<[REDACTED] no, I didn't discuss  
7 <<[REDACTED]

8 Q. Okay. So, if the Mill had [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] > correct?

12 A. Potentially yeah.

13 Q. But you didn't evaluate the possibility of  
14 the Mill doing that, did you?

15 A. No.

16 Q. Now, when Mr. Lague told you that he needed

17 <<[REDACTED]>>

18 I think you said--is that what he told you?

19 A. That's a number that rings to my mind, yeah.

20 Q. Did you do anything at all to verify,  
21 substantiate, understand the source of that number?

22 A. I personally did not.

04:14:44 1 Q. And you don't know if anyone else in BC Hydro  
2 did?

3 A. No, I don't know.

4 Q. So, you don't know whether << [REDACTED]

■ [REDACTED]  
■ [REDACTED] > You didn't get into that level of  
7 analysis?

8 A. I did not.

9 Q. Can we turn to R-189, please. Can you  
10 describe what this document is when you find it?

11 A. I don't have it in my binder.

12 PRESIDENT VEEDER: It doesn't appear to be in  
13 the binder.

14 THE WITNESS: No.

15 MR. SHOR: Okay. Can we distribute copies?

16 Maybe we can take a five-minute break and  
17 we'll make some copies.

18 PRESIDENT VEEDER: Let's take a five-minute  
19 break. I'm not pressing you at all, but just tell us  
20 your rough time limit.

21 MR. SHOR: I'm just getting warmed up.

22 PRESIDENT VEEDER: Just getting warmed up?

04:16:06 1 MR. SHOR: I think I probably have 15 to 20  
2 minutes more.

3 PRESIDENT VEEDER: Again, without tying you  
4 down at all, reexamination, do you have any rough  
5 estimate? Are we going to finish tonight with  
6 Mr. Dyck or not? That's the question.

7 MR. OWEN: 20 minutes was your estimate?

8 MR. SHOR: About that. Even faster if he  
9 just answers yes or no.

10 PRESIDENT VEEDER: That's not allowed.

11 MR. OWEN: I think I might be--I don't know  
12 that we'll--we'll probably finish with Mr. Dyck.

13 PRESIDENT VEEDER: Let's see how it goes.  
14 Let's take five minutes anyway. Five minutes.

15 (Brief recess.) ^6

16 PRESIDENT VEEDER: We've now gone to the new  
17 document. Just help us with the exhibit number.

18 MR. SHOR: This is Exhibit R-189.

19 PRESIDENT VEEDER: 189. Thank you.

20 BY MR. SHOR:

21 Q. Before turning to that, Mr. Dyck, I wanted to  
22 ask you several questions. Tembec is located in the

04:25:49 1 East Kootenay region of British Columbia?

2 A. Yes.

3 Q. And Bill Bennett is one of the two MLAs from  
4 that area, is he not?

5 A. I think so, yes.

6 Q. And "MLA" stands for a Member of the  
7 Legislative Assembly, your Parliament?

8 A. Yes.

9 Q. And he's a fairly senior official in the  
10 Liberal Party, is he not?

11 A. Yes.

12 Q. And he's been a Minister in government for  
13 umpteen years? I don't know if that's a word or not.

14 A. He's been around a while.

15 Q. And he's been Minister of Energy and Minister  
16 of Tourism and Minister of--just about everything?

17 A. Correct.

18 Q. Do you know if Minister Bennett contacted  
19 anyone about Tembec while you were discussing  
20 BC Hydro--while you were discussing Tembec's GBL?

21 A. I don't know of any involvement with  
22 Mr. Bennett--

04:26:40 1 Q. Did you receive direction from--

2 A. I wasn't aware of any involvement of  
3 Mr. Bennett's or any discussions with him or anyone  
4 else.

5 Q. Did you receive direction from anyone at  
6 BC Hydro to go easy on Tembec or to give them what  
7 they were asking for or anything like that?

8 A. No, not me.

9 Q. Do you know if anybody else did?

10 A. No, I didn't hear of any.

11 Q. Okay. Let's turn to Exhibit R-189, and I'd  
12 like you to turn to Page 2, the very bottom paragraph.  
13 Now, here, as I understand it, BC Hydro was performing  
14 an--Tembec had come in and said [REDACTED]

[REDACTED]

[REDACTED] > So, you were evaluating the

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] correct?

22 A. This is--yeah, this evaluation was done by

04:27:54 1 David Keir--he's the Rates Group Manager. So, he was  
2 evaluating it for purposes of their CBL and the impact  
3 it would have on our billing.

4 Q. Okay. But he copied you as well because he  
5 knew it would--

6 A. Correct.

7 Q. He copied you as well because he knew you  
8 would be interested in it because it potentially would  
9 affect your GBL analysis; correct?

10 A. He copied me because I was involved with the  
11 Tembec scenario, yes.

12 Q. Okay. So, Tembec was proposing to << [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] correct?

17 A. Yeah. He's comparing one versus--the two  
18 scenarios.

19 Q. Right.

20 A. Yes.

21 Q. A "before" and an "after"?

22 A. Yes.

04:28:44 1 Q. Now, one of the things he compared was [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] correct?

5 A. Yes, that's one of the things he's driving at  
6 here.

7 Q. What number did he come up with? I believe  
8 it's in the penultimate sentence of Page 2.

9 A. So, [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

15 Q. Do you know what assumption he used as the  
16 RS 1823 price Tembec would be paying?

17 A. [REDACTED] [REDACTED]

[REDACTED]

19 Q. << [REDACTED] [REDACTED]

20 A. Yep. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] > but I'm looking

04:30:12 1 for that here in David's work. << [REDACTED]

2 [REDACTED]

3 Q. Okay. I think you're right. I think

4 Mr. Switlishoff testified that the << [REDACTED]

5 [REDACTED] > Do you know if he would be

6 including a [REDACTED] >> in here?

7 A. At < [REDACTED] >> This came out in April '09. < [REDACTED]

8 [REDACTED] >> The reason he's

9 looking at that is because it has to do with the CBL

10 determination.

11 Q. Okay. I'd like to pass out another exhibit,

12 which is one from this morning.

13 Do I have those?

14 (Comment off microphone.)

15 MR. OWEN: Mr. Chair, Mr. Dyck has been

16 sequestered and has not had an opportunity to see any

17 of this. Now, I was fair to Mr. Switlishoff. He was

18 sequestered on this issue. Mr. Shor can pose

19 questions on these exhibits, but I'd just like to

20 noted for the record that he's putting documents in

21 front of Mr. Dyck that he has never had a chance to

22 prepare for and has never seen. And I would expect

04:31:41 1 that my opposing counsel would extended the same  
2 courtesy to my Witness as I extended to his Expert.

3 PRESIDENT VEEDER: Well, what would you  
4 suggest that he should do?

5 MR. SHOR: These are your exhibits.

6 PRESIDENT VEEDER: Wait a second.  
7 What do you suggest he should do?

8 MR. OWEN: These are documents that he can  
9 certainly question Mr. Lague about.

10 MR. SHOR: Yeah, but I want to know how this  
11 Witness dealt with them and whether he ever saw  
12 anything like this before. He was the one who set the  
13 GBL. What Mr. Lague does after the fact is completely  
14 irrelevant.

15 PRESIDENT VEEDER: Let's not argue the point  
16 now, but how many of these documents are you going to  
17 put to this Witness?

18 MR. SHOR: There's two or three.

19 PRESIDENT VEEDER: Two or three. Let's see  
20 how it goes.

21 (Comments off microphone.)

22 PRESIDENT VEEDER: As always, if you don't

04:32:21 1 know or if you can't answer the question, just please  
2 say so up front.

3 THE WITNESS: I will, thank you.

4 PRESIDENT VEEDER: And there's certainly the  
5 difficulty if you haven't seen a document at all ever  
6 before.

7 (Comments off microphone.)

8 PRESIDENT VEEDER: You do not yet have copies  
9 of these.

10 MR. SHOR: We have copies. I'm just looking  
11 for the exhibit number. This is Exhibit R-593. This  
12 is Skookumchuck's monthly demand.

13 PRESIDENT VEEDER: This looks like a  
14 demonstrative rather than a contemporary document.

15 MR. SHOR: I think that's right.

16 PRESIDENT VEEDER: Is that right?

17 MR. OWEN: It is.

18 BY MR. SHOR:

19 Q. Now, Mr. Dyck, I'm going represent to you  
20 that, as Canada has represented to me, that this table  
21 reflects the actual demand charge that BC Hydro billed  
22 to Tembec in each month of Tembec's Fiscal Year 2008

04:33:40 1 and 2009. Does that look about right to you?

2 A. I haven't looked at a recent history of the  
3 demand charges, so I can't comment. It could be or it  
4 may not be. I can't say.

5 Q. But in 2008 and 2009, Tembec was operating  
6 under the 1997 EPA and the 2001 ESA, and the demand  
7 charge they were being billed would have reflected its  
8 Contract demand and other variables as of that time;  
9 correct?

10 A. Yes.

11 Q. Now, if Tembec under the 2009 EPA--I'm sorry,  
12 not under the 2009 EPA. But if you were evaluating  
13 the scenario where Tembec << [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

17 A. Are you describing a scenario where there is  
18 no EPA in place?

19 Q. Correct.

20 A. Their generation level would come down to  
21 whatever it is, and we would be billing them for the  
22 difference in demand and energy.

04:34:44 1 Q. Okay. And would you expect the demand charge  
2 to be the same as it was in 2008 and 2009, or would  
3 you expect it to increase << [REDACTED]

■ [REDACTED]

5 A. I expect that they would << [REDACTED]  
■ [REDACTED] at about  
7 14 megawatts per hour, and if their plant load is  
8 about 25, 25.5, the difference is what they would be  
9 charged for on demand charge basis.

10 Q. Okay. And so--

11 A. So, << [REDACTED] >> would be--

12 Q. You wouldn't expect it to increase over 2008,  
13 2009 levels << [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] I'm not asking for an exact amount.

16 MR. OWEN: You've already asked this  
17 question, Mr. Shor.

18 BY MR. SHOR:

19 Q. I'm not asking for an exact amount. I'm just  
20 asking--

21 A. No. You are saying that--

22 Q. --expected to be the same or increase?

04:35:33 1 (Overlapping speakers.)

2 Q. I'm not asking for an exact amount. I'm  
3 asking whether it would be your expectation as the Key  
4 Accounts Manager responsible for Tembec, if they're in  
5 a situation where they're operating under the 1997  
6 EPA, and basically most of the time generating about

7 << [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 demand charges from BC Hydro to decrease, increase, or  
12 stay the same?

13 A. If they were running in the absence of an EPA  
14 << [REDACTED] > as we  
15 defined through the GBL determination, they would be  
16 making about 14 megawatts per hour on a total plant  
17 load of about 25. So, << [REDACTED], >> therefore,  
18 would be the difference between the two. They would  
19 be being charged for << [REDACTED]

[REDACTED]

21 Q. Okay. But as compared to the situation  
22 before under the 1997 EPA [REDACTED]

04:36:42 1 [REDACTED] > would you expect the [REDACTED] to  
2 increase, decrease, or stay the same?

3 A. I don't know that it's--I don't understand  
4 what the comparison is. << [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. Okay. Well, let's try this another way. So,  
10 under the 2009 EPA, I take it Tembec has a new ESA to  
11 go along with that?

12 A. Their ESA remains the same. They have a  
13 contract demand of, I believe, [REDACTED] >> on their  
14 electricity Supply Agreement. That's the ESA.

15 Q. Okay. So, the new ESA has a contract demand  
16 of << [REDACTED] [REDACTED]

17 A. I believe their ESA has had a contract demand  
18 of << [REDACTED] .>>

19 Q. Okay. Because the billing component is  
20 50 percent of the contract demand?

21 A. There is something--what you're referring to  
22 is something called a minimum demand bill, and it's

1559

04:37:50 1 based on ratchets set in the previous winter or  
2 50 percent of the contract demand amount. So, there  
3 are minimum demand charges we will apply, regardless  
4 of what the physical demand measure is.

5 Q. Okay. So, I'll go back to my initial  
6 question. Tembec is self-supplying < [REDACTED]

■ [REDACTED]

8 MR. OWEN: Mr. President? He's asked this  
9 question twice already. He's got a response he  
10 doesn't like, which is--

11 MR. SHOR: He hasn't answered--

12 (Overlapping speakers.)

13 PRESIDENT VEEDER: Let's continue. Please  
14 continue.

15 MR. SHOR: Thank you.

16 BY MR. SHOR:

17 Q. All right. I'm trying make this easy.

18 So, Tembec's operating under the 1997 ESA,

19 << [REDACTED]

■ [REDACTED] > That is Scenario 1. Scenario 2,

21 Tembec is self-supplying 14 and buying all the rest

22 from BC Hydro. Do the demand charges increase,

04:38:44 1 decrease, or stay the same?

2 A. I can't give you the answer because I don't  
3 know what the demand charge formula was under the 1997  
4 Agreement. << [REDACTED]

5 [REDACTED] What I do know is they will have been  
6 billed, based on the minimum demand requirements, at  
7 least of the contract demand or based on the formula  
8 that they were being billed under. I can tell you,  
9 though, that in the absence of that agreement, they  
10 would be billed based on a contract demand variable or  
11 the actual demand peak being measured in the  
12 neighborhood of 10 MVA.

13 Q. Okay. So, would you agree with me that, all  
14 other things being equal, if a self-generator goes  
15 from taking X level of power from BC Hydro and changes  
16 to take 2X level of power, that all other things being  
17 equal, the demand charge would increase?

18 A. No, I disagree.

19 Q. I'd like to just show the Witness these  
20 exhibits, which are R-592, and I'm really not going to  
21 ask you to study them carefully. I just want to know  
22 whether you've seen anything like this before and

04:40:09 1 whether you relied on this in your GBL determination.

2 MR. SHOR: Would the Tribunal like copies as  
3 well?

4 MR. OWEN: Mr. Shor, if it will help, I'm  
5 willing to stipulate that the Witness has not seen  
6 them. That was part of my objection.

7 MR. SHOR: I want to ask him a couple more  
8 questions about whether he's seen anything like that  
9 or whether he engaged in any kind of analysis. If  
10 you'll stipulate that this is all after the fact that  
11 you've produced this and there's nothing--

12 MR. OWEN: Of course it is. We produced it  
13 to respond to Mr. Switlishoff's faulty analysis.

14 MR. SHOR: So nothing contemporaneous like  
15 this was ever reviewed by BC Hydro?

16 MR. OWEN: Just the R-189 which is an  
17 eight-page memo by Mr. Kier.

18 MR. SHOR: Which contains no analysis of the  
19 << [REDACTED] correct?

20 MR. OWEN: Which does if you actually read  
21 it.

22 MR. SHOR: Yeah. Okay. If Canada is willing

04:41:12 1 to stipulate that the Witness has never seen these  
2 documents or anything like these documents, that's all  
3 I wanted.

4 PRESIDENT VEEDER: Thank you. We'll leave it  
5 there. Just for good order sake, these are not  
6 marked. How do we mark them?

7 MS. REILERT: This is Exhibit R-592.

8 PRESIDENT VEEDER: All three pages?

9 MS. REILERT: Yes.

10 BY MR. SHOR:

11 Q. Mr. Dyck, can you turn to Paragraph 106 of  
12 your First Statement. And in the first sentence, the  
13 clause beginning with the (2).

14 Do you see that?

15 A. Yes.

16 Q. And you say there that "Tembec was facing the

17 [REDACTED]  
[REDACTED]  
[REDACTED]

20 Do you see that language?

21 A. I do.

22 Q. To which plant are you referring there? The

04:42:38 1 Skookumchuck Pulp Mill?

2 A. Yes.

3 Q. Was it your contention that the pulp mill

4 [REDACTED]

5 A. No, but in order to << [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] > I suppose you could run it somewhat

9 < [REDACTED] >> but generally [REDACTED]

10 [REDACTED] [REDACTED] or have impact as well.

11 Q. Okay. But the pulp mill doesn't use << [REDACTED]

12 [REDACTED] > does it?

13 A. It can << [REDACTED]

14 [REDACTED] >

15 Q. Okay. So << [REDACTED] > would never cause a

16 pulp mill to shut down, would they?

17 A. No, but it does << [REDACTED]

18 [REDACTED]

19 Q. So what are you referring to here that the

20 impact of << [REDACTED] >> resulted in a plant

21 shutdown?

22 A. I think I'm referring here to the impact that

04:43:57 1 << [REDACTED]

[REDACTED]

3 Q. Which plant shutdown are you talking about?

4 A. Well, I think they took a plant shutdown, and

5 << [REDACTED]

[REDACTED] > So, the

7 reference here, I believe, has to do with both of

8 those things. You're talking about the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] > So they did take a mill closure, but

13 they also had at issue the << [REDACTED]

[REDACTED]

15 Q. So, it's your contention that << [REDACTED]

[REDACTED] > led Tembec to take a shutdown of the pulp mill?

17 A. I don't think that's what I'm saying here.

18 Q. I'm trying to figure out what you are saying.

19 Why don't you tell me which plant shutdown you're

20 referring to. If you're not referring to the pulp

21 mill, what are you referring to?

22 MR. OWEN: Could you let him finish the

04:45:27 1 answer, Mr. Shor, please?

2 THE WITNESS: I think that the plant was shut  
3 down, the manufacturing plant was shut down because  
4 they were running in a downward economic--through a  
5 downward economic trend. And at the same time the [REDACTED]  
6 [REDACTED] > they were incurring were causing them to  
7 << [REDACTED] [REDACTED] [REDACTED]  
8 [REDACTED] [REDACTED] around the same  
9 time as they shut the plant down. So, that may be  
10 incorrect to say the [REDACTED] was causing the plant  
11 shutdown, but << [REDACTED]

12 [REDACTED] [REDACTED]  
13 [REDACTED]

14 BY MR. SHOR:

15 Q. So this precise statement is highly  
16 exaggerated, is it not?

17 A. Perhaps it could have been stated a little  
18 more accurately.

19 Q. Perhaps it could have been stated accurately?

20 A. Yeah.

21 Q. Okay. So, I want to understand the context  
22 for Tembec coming to you << [REDACTED] [REDACTED]



04:47:23 1 A. Correct.

2 Q. But you published the results of the Power  
3 Call in 2009 that showed an average firm energy price  
4 of over \$100 a megawatt hour; right?

5 A. Yes. I was nodding. I apologize.

6 Q. Tembec << [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED] they were getting paid;  
11 correct?

12 A. A new contract would have << [REDACTED]

13 Q. Right. So, they understood that, if they  
14 could get a new contract, they could--and they  
15 approached you for a new contract and they wanted two  
16 things: << [REDACTED]

[REDACTED]  
18 A. I think it's also noteworthy to mention that  
19 they had been talking with the Power Acquisitions  
20 Group for some time prior to the launch of the  
21 Bioenergy Call I, [REDACTED]

[REDACTED]

04:48:34 1 Q. I want to talk about hardships not under the  
2 EPA--but also at the same time, this was right after  
3 the 2008, middle of 2008 there was a housing-led  
4 recession?

5 A. Uh-huh.

6 Q. Was there not?

7 A. Yes.

8 Q. And that hit sawmills particularly hard  
9 because housing construction essentially evaporated,  
10 and Tembec operated sawmills, and they were in a  
11 situation where their pulp mill was losing money. So,  
12 they shut down--in early 2009 they shut down both the  
13 sawmills and the pulp mill together; right?

14 A. I'm not sure the timing of the sawmill--

15 Q. It was about a three-month period sometime in  
16 2009.

17 A. All right.

18 Q. That's what you're referring to here, the  
19 plant shutdown; right?

20 A. Yes. I'm referring to the pulp mill, not  
21 referencing the sawmills.

22 Q. Okay. But they shut down the pulp mill and

04:49:22 1 the sawmills at the same time for the reason we  
2 discussed before, because you can't operate sawmills  
3 unless you can get rid of the hog fuel, unless you can  
4 get rid of the wood chips. And you if you shut down  
5 the pulp mill, you wouldn't have anything to do  
6 with--you wouldn't be able to--and if you're going to  
7 shut--it would probably work the other way.

8 If you were going to shut down the sawmills  
9 due to a reduced demand for lumber, you had to shut  
10 down the pulp mill because otherwise there would be no  
11 wood chips.

12 A. Okay.

13 << [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]

16 Q. And they saw that their competitors were  
17 getting << [REDACTED] >> the price they were getting  
18 under the EPA.

19 A. That didn't absolve them from their  
20 obligation to the EPA however.

21 Q. I understand, << [REDACTED]  
[REDACTED]

04:50:10 1 A. Which they had a reserve notice to us prior  
2 to the launch of the--

3 (Overlapping speakers.)

4 PRESIDENT VEEDER: I'm awfully sorry; just  
5 for the sake of the shorthand writer, we've got to  
6 have this as question and answer not as a  
7 conversation.

8 THE WITNESS: I apologize.

9 MR. SHOR: Okay.

10 PRESIDENT VEEDER: I know it's difficult, but  
11 it's crucial for the transcript.

12 THE WITNESS: I understand.

13 BY MR. SHOR:

14 Q. << [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 A. I'm sure they had good reason to tell us what  
22 they did, and I believe it was the truth.

04:51:13 1 Q. I'd just like to make sure we all have a  
2 correct understanding of Tembec's treatment compared  
3 to Celgar's treatment.

4 So Celgar had surplus electricity that it had  
5 been selling to FortisBC and BC Hydro--FortisBC and  
6 NorthPoint and had made investments leading to  
7 increased generation in 2007, Project Blue Goose,  
8 2007, its baseline year, and yet you treated all of  
9 that as preexisting self-supply and not incremental  
10 energy; correct?

11 A. Yes.

12 Q. And Tembec on the other hand made no new  
13 investment during or after its baseline year of <<[REDACTED]>>  
14 added no new or incremental power, and you treated all  
15 of the generation from the <<[REDACTED]

[REDACTED]  
[REDACTED] as new or incremental;  
18 correct?

19 A. I would maintain, as I said earlier, that the  
20 <<[REDACTED] [REDACTED] They were  
21 <<[REDACTED] [REDACTED]

[REDACTED]

04:52:22 ■

2 Q. But was my statement was correct, that it was  
3 all treated as new or incremental, even though they  
4 had actually been

5

6 A. The two don't relate. What was treated as  
7 new or incremental was that amount of energy that they  
8 would produce above the GBL.

9 Q. In my description of Celgar's situation and  
10 Tembec's situation, does that seem at all backwards to  
11 you?

12 A. No, they're not related at all. They're not.  
13 They're separate and different situations.

14 MR. SHOR: I have no further questions.

15 PRESIDENT VEEDER: Thank you very much.

16 Do you want a five-minute break, or shall we  
17 continue?

18 MR. OWEN: I think so. I think Mr. Dyck  
19 would probably want a five-minute break too.

20 PRESIDENT VEEDER: Let's take a five-minute  
21 break, and then we'll resume.

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

04:53:11 1 PRESIDENT VEEDER: Thank you.

2 (Brief recess.) ^7

3 PRESIDENT VEEDER: Let's resume now.

4 This will be questions from the Respondent.

5 REDIRECT EXAMINATION

6 BY MR. OWEN:

7 Q. Hi, Mr. Dyck.

8 Could we get up Exhibit C-284, please. This  
9 is a BCUC Order G-106-14 that Mr. Shor took you to.

10 Could we go to Page 7 of 8 under the heading 3.0.

11 Could we call out--so this is--Mr. Dyck, could you  
12 read out what's underneath that heading, please?

13 ARBITRATOR DOUGLAS: Did you say C-124 or  
14 C-24?

15 MR. OWEN: C-284.

16 ARBITRATOR DOUGLAS: That has come up on the  
17 transcript as C-24.

18 THE WITNESS: "The Commission Panel is  
19 persuaded on a prima facie basis that the Commission  
20 may have made an error with regard to whether the  
21 Contract GBL Guidelines should be filed pursuant to  
22 TS 74--"that's Transmission Rate 74. "The Panel

05:01:03 1 accepts and is aware that there may be other  
2 alternatives to where they may be filed."

3 BY MR. OWEN:

4 Q. Can you tell us what TS 74 is?

5 A. That's the regulatory transmission service  
6 rate filed. Basically the rate that we're dealing  
7 with when we deal with these transmission service  
8 customers.

9 Q. Okay. And can you--could we go down to the  
10 bottom of Page 8, please?

11 A. Yes.

12 Q. So this is under "Commission Determination."  
13 And here could you just read that, please.

14 A. "Accordingly, the Panel accepts that BC Hydro  
15 has established a prima facie basis for reconsidering  
16 where the updated Contracted GBL Guidelines should  
17 reside. Therefore, Phase II of the reconsideration  
18 process will proceed within this narrow scope only."

19 Q. Okay. So was this the ongoing process you  
20 were referring to?

21 A. Yes.

22 Q. I'd like to turn now to the Bioenergy Call

05:02:05 1 for Power Phase I. Mr. Shor asked you a number of  
2 questions. Is the Bioenergy Call for Power Phase I,  
3 was it a regulatory process?

4 A. It was an acquisition process by BC Hydro  
5 part of I believe falling on the Government's Energy  
6 Plan. And acquisitions generally are part of  
7 regulatory oversight, but I believe this call was  
8 exempt from having to file under the Commission? No,  
9 sorry, that's the next one.

10 I'm not sure what you mean by definition of a  
11 "regulatory process" then.

12 Q. I think--I'll move along.

13 You are the sector manager for pulp and  
14 paper?

15 A. Yes.

16 Q. Okay. And customer generation and key  
17 accounts management division. How many pulp and paper  
18 customers with generation does BC Hydro have roughly?

19 A. How many pulp and paper customers with  
20 generation? There are, I believe, nine sites that  
21 would have self-generation, nine or ten.

22 Q. Okay. So a universe of nine or ten.

05:03:27 1                   Can you tell us a bit about key accounts  
2 managers and what they do with those pulp mills?

3       A.    Sure.  A key accounts manager's job is to  
4 maintain a high degree of communication with the  
5 customers in an effort to, I guess, be the conduit  
6 between BC Hydro as the utility serving those  
7 customers and the customer to BC Hydro.  It has become  
8 increasingly important because these customers we've  
9 been discussing today are both suppliers of BC Hydro  
10 as well as customers of BC Hydro, with the exception  
11 of Celgar.

12            The key account manager then is responsible  
13 to understand and deal with negotiations, project  
14 development, changes to the electricity service  
15 agreements, and any contractual interplay that we have  
16 between us and the customers, and to act as BC Hydro's  
17 liaison with those customers on everything to do with  
18 BC Hydro.

19       Q.    Can you give us a sense of how often they  
20 would be in contact with the customers?

21       A.    Depending on the circumstances, sometimes a  
22 key account manager can be in touch with a single

05:04:31 1 customer on a daily basis. Generally I would say at  
2 least once or more times a week, but definitely very  
3 regularly throughout the year.

4 Q. So are they familiar with their business  
5 then? Is that a fair characterization?

6 A. To the degree that power supply impacts their  
7 business costs, the operations of the business are  
8 also quite a familiar topic because we are constantly  
9 looking for opportunities for customers to conserve  
10 their energy use through the Power Smart programs that  
11 we offer. So, yes, they're familiar operationally and  
12 to the degree that the utility's supply costs impacts  
13 their business.

14 Q. And did you offer to be the unofficial key  
15 accounts manager for Celgar?

16 A. I did.

17 MR. SHOR: All these questions are highly  
18 leading. It might be time for your usual  
19 announcement.

20 PRESIDENT VEEDER: I think the admonition has  
21 been given, and I think both sides have been equally  
22 guilty, so let's leave it there.

05:05:36 1 Please continue.

2 MR. OWEN: Thank you.

3 BY MR. OWEN:

4 Q. And did Mr. Merwin take you up on that offer?

5 A. I believe he did. He called me a number of  
6 times after that offer.

7 Q. And in your view--well, let's move on.

8 Let's go--could we bring up R-189, please.

9 So you've seen this document; right? I think  
10 a few minutes ago actually.

11 A. Yes.

12 Q. It's written by Mr. Keir. Can you tell me  
13 what Mr. Keir would know about Tembec and why he might  
14 be writing this?

15 A. Mr. Keir was a key accounts manager, and at  
16 one time was Tembec's key account manager. At the  
17 time he wrote this, however, he was no longer a key  
18 accounts manager but, in fact, is the transmission  
19 services rates manager.

20 Q. Okay. Can you explain why it would not be  
21 relevant to compare Tembec's operations under the 1997  
22 EPA including its purchases and how much they might

05:07:00 1 make for self-supply as compared to its operations  
2 under the 2009 EPA?

3 A. Comparing the two contracts and their  
4 purchases relative to each of those contracts is your  
5 question? Yeah, I think I alluded to it before.

6 Under the old Agreement, their [REDACTED]  
7 [REDACTED] under that Agreement was to deliver  
8 10.8 megawatts of firm energy supply <<[REDACTED]  
9 [REDACTED]> to BC Hydro. They also were obligated under the  
10 terms of that Contract to [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 As such, the generator, as we saw earlier,  
15 typically generated on an average of <[REDACTED]>-plus megawatts  
16 per hour, which is [REDACTED]> therefore,  
17 any <<[REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 The new EPA, instead of having the <<[REDACTED]  
22 [REDACTED] [REDACTED]

05:08:19 1

[REDACTED]

8           So, I hope I've explained enough to  
9 understand that the contracts are entirely different.  
10 One we're basing under a formula that is driven by  
11 this EPA in order to bill them as a utility, and the  
12 utility billing formula under the new EPA is quite  
13 different. So is the obligation to serve the load  
14 entirely different under the new EPA.

15           Does that answer the question?

16       Q.    I think it does. Just for clarity, could we  
17 bring up Mr. Lague's Witness Statement at Page 10.  
18 Try to bring it up on the screen. If you happen to  
19 have it there, you might have it in the binder. Can  
20 we just zoom in on the picture at the top.

21           Mr. Dyck, could you just walk us through  
22 these tranches? Because I think at around Page 1500

05:09:49 1 of the transcript Mr. Shor asked you about

2 [REDACTED]

3 A. Right.

4 Q. Under the EPA. And I think the first time  
5 you got it right, and the second time there is  
6 something slightly different. But can you just walk  
7 us through--

8 MR. SHOR: I object to that question. It is  
9 coaching.

10 PRESIDENT VEEDER: That's a little bit  
11 extreme.

12 MR. OWEN: That is leading. I will withdraw  
13 that.

14 PRESIDENT VEEDER: Yes.

15 BY MR. OWEN:

16 Q. Can you walk us through the tranches here.

17 A. All right. Tranche 1, which is the green  
18 square to the bottom, defines or captures the

19 << [REDACTED] And then

20 the larger Tranche 2, the yellow box, defines the

21 << [REDACTED] [REDACTED]

[REDACTED] with that yellow box of energy.

05:10:44 1 My understanding, though, is that under the  
2 terms of this agreement they have to accomplish two  
3 things: << [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]  
■ [REDACTED] > That's the yellow--sorry, the red  
12 Tranche 3. And if they could make anything << [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

16 Q. So if you were to << [REDACTED]  
■ [REDACTED]

18 A. No. I think I was trying to explain that  
19 earlier that << [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

05:12:00 1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Q. Now, what is BC Hydro trying to achieve in  
9 entering into an EPA with a self-generator?

10 A. They are trying to leverage, I guess, the  
11 available capacity that a customer self-generator  
12 might have by encouraging them to produce more than  
13 they otherwise would at a price that is fair and  
14 reasonable to BC Hydro relative to other supply side  
15 options.

16 So if we can buy the power at a good price  
17 and encourage a customer through the terms and  
18 conditions of the EPA to generate more than they  
19 otherwise would, then we could construct an EPA on  
20 that basis.

21 Q. Now, in your assessment, the assessment BC  
22 Hydro did, Mr. Shor mentioned that there was no new

05:13:24 1 assets built. But what was happening with the << [REDACTED]

2 [REDACTED]

3 A. Sorry, can you repeat the question?

4 Q. Sure. No problem. Sorry.

5 Mr. Shor has mentioned that there were no new  
6 generation assets built, but what was happening with  
7 the [REDACTED]

8 A. At the time of the termination or after the  
9 termination?

10 Q. Yes. At the time of the negotiation of the  
11 2009 EPA?

12 A. Up until the time that the new EPA took  
13 effect, << [REDACTED] [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q. At the termination of the 1997 EPA, what was  
19 your assessment of what would have happened, or  
20 BC Hydro's assessment of what would have happened?

21 A. The 1997 Agreement terminates, and the  
22 customer operates without an agreement at that point.

05:14:49 1 The assessment would be that the customer would, for  
2 the most part, << [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Q. Mr. Dyck, would BC Hydro want to purchase  
10 electricity on a sporadic basis, like occasionally,  
11 once a month, or from a self-generator like this?

12 A. BC Hydro wouldn't be in the market for that  
13 sort of thing. That's why, if we draw back to  
14 Figure 1 you showed earlier, the non-firm sales would  
15 go to Powerex. They may be interested and they may  
16 not, depending on what the market conditions are at  
17 the time. But a non-firm product like that that comes  
18 in sporadically is not generally sought after. It's  
19 not firm. It can't be built into our resource stack.  
20 We look for firm energy there. So, it's generally not  
21 very desirable.

22 Q. Okay. Thank you.

05:16:04 1 MR. OWEN: Could we bring up R-67, please. I  
2 would like to focus in on the top.

3 BY MR. OWEN:

4 Q. So, this is an e-mail from Mr. Janzen, the  
5 Key Accounts Manager at Howe Sound, to you. Mr. Shor  
6 started talking to you about times frames. Can you  
7 just read this, please?

8 A. The entirety there? [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 Q. Okay. Let's turn to Celgar now.

17 Have you encountered--are there BC Hydro  
18 customers that are like Celgar in terms of their  
19 self-generation?

20 A. There are none like Celgar.

21 Q. So, no BC Hydro customers operate to meet  
22 their load without an EPA?

05:17:34 1 A. No, they don't.

2 MR. OWEN: Can we bring up R-125, please.  
3 Could we go to the second--the second page, please.  
4 Actually, the page after the next page, the actual  
5 note. Yes, thank you.

6 BY MR. OWEN:

7 Q. Now, Mr. Shor took you to the fourth  
8 paragraph and pointed out that there was certain costs  
9 associated here. Let's go back up to the first  
10 paragraph, and maybe that can give a little bit more  
11 context here.

12 So, can you just read the first couple of  
13 sentences there?

14 A. "Zellstoff Celgar Limited Partnership  
15 (Celgar) has submitted two potential projects in  
16 response to BC Hydro's Bioenergy Request for  
17 Proposals, RFP. The first project, Biomass  
18 Realization Project, involved the sale of energy from  
19 an existing 52-megawatt generator from the Celgar  
20 Mill, while the second project, Celgar Green Energy  
21 Project, will be a new 35-megawatt generator to be  
22 installed at the Mill location. BC Hydro has no issue

05:18:52 1 with the second project, but has concerns with the  
2 first."

3 Q. So, when we were talking with those costs  
4 earlier, which project did they relate to?

5 A. The costs? I think if we're talking about  
6 the cost of Blue Goose, those are costs that would  
7 have been incurred prior to and would have been  
8 included in their 2007 operation. The cost of an  
9 incremental project, which are the second 35-megawatt  
10 plant, would not yet have been incurred and were  
11 proposed to being built.

12 Q. Okay. But what two projects are referred to  
13 here? I know it's been a long day, Mr. Dyck--

14 A. Yeah, sorry.

15 Q. --so, no worries.

16 What are the two projects that are referred  
17 to here?

18 A. Well, there's the Biomass Realization  
19 Project, which includes--that's the energy coming from  
20 the existing or already existing 52-megawatt  
21 generator, and then there's the Green Energy Project,  
22 which is the new--proposed new generator.

05:19:53 1 Q. Okay. So, we're really talking about Biomass  
2 Realization Project; is that right?

3 A. In terms of establishing the normal  
4 operations for the facility at the time of  
5 negotiations, yes.

6 Q. I'm going to move on. I just wanted to get a  
7 sense of where this Briefing Note actually fell within  
8 the Bioenergy Call for Power.

9 MR. OWEN: Can we bring up R-126, please --  
10 scratch that.

11 Just go back to the note.

12 BY MR. OWEN:

13 Q. Let's just take a look at the date on it.  
14 Can you read the date at the bottom there,  
15 Mr. Dyck?

16 A. 09-April-'08.

17 MR. OWEN: Can we bring up R-126.

18 BY MR. OWEN:

19 Q. It should be up in front of you, Mr. Dyck.  
20 Do you recognize this document?

21 A. Yes, I've read this before.

22 Q. And what is this letter to Zellstoff Celgar

05:20:48 1 to Mr. Merwin--what is it doing?

2 A. It's describing the eligibility of either or  
3 both of the projects written from--to Mr. Merwin.

4 I'm not sure I'm following the question,  
5 though. What is the--

6 Q. I guess, just timing-wise, this is about  
7 eligibility?

8 A. Yes.

9 Q. We haven't even--had--had you made a GBL  
10 determination yet?

11 A. No. This is May 2, 2008.

12 Q. Okay. So, when Mr. Shor suggested the  
13 April 9th memo was relevant to your Generator Baseline  
14 set, BC Hydro hadn't even determined about the  
15 eligibility of the projects. That wouldn't come until  
16 about a month later; is that right?

17 A. That's true. There was a little bit of  
18 unclarity on the supply from the original 52-megawatt  
19 generator and its eligibility for the Call initially.

20 Q. I'm going to try one or two other things.  
21 Bear with me. I know you're tired.

22 MR. OWEN: Could we bring up Figure 5 of the

05:22:13 1 Second Pöyry Report, please.

2 BY MR. OWEN:

3 Q. So this is the TG2 output at Celgar in 2007  
4 against compared to the average load, 40 megawatts.  
5 And we can see there, there's the variability that  
6 ticks up and down.

7 Hypothetically, if this was a BC Hydro  
8 customer and the red line, the plant load, was at 60,  
9 and all other things being equal, you were assessing  
10 the GBL, was in similar set of circumstances to  
11 Celgar, how would you--what would you--what would be  
12 the sort of level that you would probably go to first  
13 for the GBL?

14 A. You said if the plant load was at 60? First  
15 of all, first cut would be that all of this generation  
16 would be considered as normal self-supply. There  
17 would have to be some discussion about, was it a  
18 normal operating year, and was there any unusual  
19 nonrecurring events, but generally speaking, they  
20 would have a GBL that amounts to the total amount of  
21 generation in that normalized data set.

22 Q. So, basically, everything under the blue

05:23:38 1 line; is that right?

2 A. Yeah.

3 Q. Okay. So, let's assume now that the red line  
4 is parked where it is and now we're talking about  
5 Celgar. And let's assume that you start shaving some  
6 of the peaks here, and you start getting rid of some  
7 of the times that it ticks a little bit up above and a  
8 little bit--you know, and you're not looking at--so  
9 much at a blow. Let's say you start getting rid of  
10 all of the exports like Mr. Shor does. Is that the  
11 normal generation pattern?

12 A. If we get rid of all their exports? Are you  
13 asking if that--

14 Q. Yes. If you were--

15 A. --represents a normal generation?

16 Q. If you were to engage in the formulaic  
17 approach that Mr. Shor had?

18 A. My belief is that the blue line already  
19 demonstrates what the normal generation is. The red  
20 line is an--first of all, a Generator Baseline is an  
21 energy amount, so if you were to fill in all the  
22 energy below that blue line, that's how much they

05:24:50 1 normally make. That would be the basis of their total  
2 generation output.

3 If we draw the red line where we did, at  
4 40-megawatts on average per hour over 8,760, <

■ [REDACTED]

■ [REDACTED] > So, the net result is that they're  
7 net exporter. The answer to your question, though, I  
8 believe, was the blue line does represent normal  
9 generator output under normal operating conditions.

10 Q. Okay. One minute.

11 MR. OWEN: Thank you, Mr. Dyck. You look  
12 tired.

13 PRESIDENT VEEDER: We don't have many  
14 questions, but the Tribunal has some.

15 Please.

16 QUESTIONS FROM THE TRIBUNAL

17 ARBITRATOR ORREGO VICUÑA: I have one  
18 question, Mr. Dyck.

19 We have read and heard much about the  
20 different circumstances that characterize the  
21 different companies or projects within the area of  
22 BC Hydro and the regulatory scheme of the BCUC. If

05:26:08 1 you were asked, which in your view, is the fundamental  
2 different circumstances that would explain that in  
3 some cases companies are allowed to buy and sell at  
4 the same time, the kind of arbitrage that we have  
5 talked about, or one company is not permitted to do  
6 that, it's cut short from there, which would be the  
7 fundamental circles, of course, technical and others  
8 we know about, but which, in your mind, would be the  
9 core difference that would justify a different  
10 outcome?

11 THE WITNESS: The ability for a customer to  
12 both buy and sell at the same time? Within BC Hydro's  
13 service area, we've been doing this with our own  
14 customers. I think I touched on it a bit earlier,  
15 where we are both the supplier to this customer to the  
16 degree we have an electricity service agreement with  
17 them. And we've also asked them to behave differently  
18 and generate more than they normally would as a  
19 customer, and now become a supplier to us. But  
20 because that's all happening in our service area, it's  
21 simpler to manage.

22 We can determine that the value coming from

05:27:31 1 the customer, as a supplier, meets our requirements.

2 The product that they are selling meets our  
3 requirements, and the benefit to us is that we supply  
4 less from our own resources or acquire it from a--we  
5 don't have to acquire it from a higher resource.

6           One of the challenges that happens is that,  
7 if we're dealing with the case, in Celgar's case, when  
8 they're from another jurisdiction, it's the other  
9 utility that actually is our customer. And they have  
10 a history of selling firm energy to the market. That  
11 means physical exports. So, the historic behaviors of  
12 the two different customers vary. BC Hydro doesn't  
13 have any tariffs, any programs, or even any appetite  
14 from any of the customers to actually take any  
15 generation physically to the market to make a market  
16 sale. We don't have that circumstance going on in our  
17 service area. Yet, in Celgar's case, that's exactly  
18 what they had been doing. They've been selling that  
19 off-load.

20           So, we're now taking two situations that are  
21 quite dissimilar, but BC Hydro is trying, through the  
22 EPA, to encourage both types of generator activities

05:28:47 1 to increase what they normally had been doing. It's  
2 the--it's the related activity that we're measuring  
3 and billing for. I think what we're trying to do--and  
4 it becomes a challenge--is to say, we want to measure  
5 what you had been doing in the absence of an agreement  
6 or any obligation, establish that as a baseline for  
7 the framework of the Contract, and encourage an  
8 increased generation or a different behavior.

9 And I'm sorry for rambling. I have gotten a  
10 little long in the day. Does that answer your  
11 question, or is there something else I can provide  
12 you?

13 ARBITRATOR ORREGO VICUÑA: That's all right.  
14 Thank you.

15 PRESIDENT VEEDER: Are there any questions  
16 arising from the Tribunal's questions?

17 MR. SHOR: None from Claimant.

18 MR. OWEN: None from us.

19 PRESIDENT VEEDER: We've come to the end of  
20 your testimony. Thank you very much.

21 THE WITNESS: Thank you.

22 PRESIDENT VEEDER: You may leave the table.

05:29:46 1 THE WITNESS: It's been a long day. Thank  
2 you.

3 (Witness steps down.)

4 PRESIDENT VEEDER: We'll stop there, and  
5 we'll start with the next Witness at 9:00 tomorrow  
6 morning.

7 (Whereupon, at 5:30 p.m., the Hearing was  
8 adjourned until 9:00 a.m. the following day.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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