

Before the

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

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 In the Matter of Arbitration between: :
 :
 MERCER INTERNATIONAL INC., :
 :
 Claimant, :
 : ICSID Case No.
 and : ARB(AF)/12/3
 :
 GOVERNMENT OF CANADA, :
 :
 Respondent. :
 :
 - - - - - x Volume 6

HEARING ON JURISDICTION AND THE MERITS

MAY CONTAIN RESTRICTED ACCESS AND CONFIDENTIAL
INFORMATION

Tuesday, July 28, 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:

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Secretary to the Tribunal

Court Reporter:

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

2 PRESIDENT VEEDER: Good morning. Let's start
3 Day 6, the 28th of July.

4 First of all, I ask the Secretary to announce
5 the times.

6 MS. MARTÍN BLANCO: Times remaining are: For
7 the Claimant, 8 hours and 45 minutes; and for the
8 Respondent, 5 hours and 6 minutes. And this includes
9 the extra 30 minutes.

10 PRESIDENT VEEDER: We left over one
11 housekeeping matter from yesterday. It's at Day 5,
12 Page 1294 of the Transcript, and that was the
13 Claimant's Application for additional time to be
14 allocated to the Claimant's overall time for the
15 cross-examination of this Witness, Mr. Lague.

16 We think we've heard all the arguments from
17 both sides about this. Unless there is more to be
18 said by the Claimants or the Respondents, it will be
19 our view that an additional 30 minutes shall be
20 allocated to the Claimant's time. I take it there is
21 nothing more to be argued.

22 We ask the Claimant first.

09:00:28 1 MR. SHOR: Nothing on our side.

2 PRESIDENT VEEDER: And the Respondent.

3 MR. OWEN: Nothing from us, Mr. President.

4 PRESIDENT VEEDER: That will be added to the
5 overall Claimant's time.

6 CHRISTIAN LAGUE, RESPONDENT'S WITNESS, CALLED

7 PRESIDENT VEEDER: Now, we come to the next
8 Witness.

9 Thank you for your patience, Mr. Lague. We
10 ask you to state your full name and, if you will, to
11 read the words of the declaration of the witnesses on
12 the piece of paper before you.

13 THE WITNESS: I solemnly declare upon my
14 honor and conscience that I shall speak the truth, the
15 whole truth, and nothing but the truth.

16 PRESIDENT VEEDER: Thank you very much.

17 Before we go any further, because every word
18 you're saying is being written down, it is very
19 important that no one overspeaks; that is, when you
20 hear a question, wait until the question is finished
21 before you start answering. And counsel, I'm sure,
22 will waited until you've finished your answer before

09:01:14 1 they ask the next question. But obviously the
2 stenographer cannot write down simultaneous speech.
3 It is difficult, but we all have to try our best.

4 First of all, there will be questions from
5 the Respondent. But do we need to be in closed
6 session?

7 MR. OWEN: I was just actually going to make
8 that point. We will, Mr. President.

9 PRESIDENT VEEDER: This is going to be closed
10 session.

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

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09:01:37 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: We're in closed session.

3 DIRECT EXAMINATION

4 BY MR. OWEN:

5 Q. Good morning, Mr. Lague.

6 You're the Engineer of Projects and Energy at
7 the Skookumchuck Pulp Mill?

8 A. Yes.

9 Q. Do you affirm the contents of your Witness
10 Statement?

11 A. Yes.

12 Q. Mr. Lague, when did Tembec's Skookumchuck
13 first approach BC Hydro to renegotiate the 1997 EPA?

14 A. In late 2007.

15 Q. What were you told?

16 A. We were told at the time that it was not a
17 straight no, but that there was a process coming from
18 the BC Government for the Bioenergy Call and we should
19 participate in that process.

20 Q. Okay. Thank you. Could you turn to Tab 1 of
21 your binder, please. This is Exhibit C-345.

22 Could you provide us with your perspective on

09:02:34 1 Mr. Switlischoff's hog fuel analysis?

2 A. The <<[REDACTED]>> analysis appears to list [REDACTED]
[REDACTED] >>

4 and Mr. Switlischoff has listed them <<[REDACTED] [REDACTED]
5 [REDACTED]
[REDACTED]

7 What is not shown on the chart is the <<[REDACTED]
[REDACTED]

[REDACTED] And if one would have drawn another series
10 of bars, the <<[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] >>

13 And the other thing that it doesn't show is
14 if one was to <<[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

20 As I stated in my Witness Statement, our <<[REDACTED]
[REDACTED]
[REDACTED]

09:03:57 1 [REDACTED]>> per year, and this

2 chart here in 2008 showed that the << [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED]

5 Q. Could you tell us where the lowest quality

6 hog fuel you got was from?

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED]

10 Q. What were some of the things you found?

11 A. The << [REDACTED]

12 [REDACTED] We would find a lot of scrap

13 metal, a lot of tools, a lot of rocks, a lot of

14 gravel, and some of the things we found that might be

15 surprising were things like air conditioners and

16 engine blocks.

17 Q. Could you--are chip finds free? << [REDACTED]

18 [REDACTED] Are they

19 free?

20 << [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

09:05:08 1 MR. SHOR: I'm sorry. I don't understand the
2 term "chip finds." We were talking about the screen
3 finds as--

4 MR. OWEN: Okay. Screen finds. I'm sorry, I
5 misspoke.

6 MR. SHOR: I don't know if he was answering
7 about something different.

8 THE WITNESS: I'll clarify that I was talking
9 about screen finds, which are a byproduct of our chip
10 screening system.

11 BY MR. OWEN:

12 Q. Can you turn to Tab 2 of your binder, please.

13 This chart shows the actual availability of

14 Mr. Switlishoff's << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 MR. SHOR: I object. There is no foundation
19 for your asserting what this chart shows. If the
20 Witness wants to explain how he created it--

21 MR. OWEN: Can you stop directing my direct?
22 I've only got 10 minutes.

09:05:57 1 BY MR. OWEN:

2 Q. Can you explain this chart, Mr. Lague?

3 A. The chart shows how much << [REDACTED]
[REDACTED] and what
5 you can see there is there were [REDACTED]

[REDACTED]
[REDACTED] >> And our options there were limited
8 to either [REDACTED] [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]

11 Q. Okay. Could you turn to Tab 3, please.

12 Could you go to the third chart, the third option.

13 This is a [REDACTED] that you've
14 helped us put together at Tembec Skookumchuck with the
15 1997 EPA, << [REDACTED] [REDACTED] Can you walk us
16 through the << [REDACTED] first, please.

17 A. Yes. What we've done here is we've listed
18 the [REDACTED] with the
19 assumption that << [REDACTED] [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]

22 Q. I'm sorry. I think you're on the wrong

09:07:10 1 chart. Third page.

2 A. Yes, I am on the third page.

3 Q. I'm sorry. Okay. Go ahead, please.

4 A. The [REDACTED]

5 [REDACTED] would not have been
6 substantially different than what they were, and those
7 were listed in the exhibits that were provided from
8 our financial statements.

9 << [REDACTED] >> are calculated on the basis of
10 << [REDACTED] and I've
11 estimated that we would have used at least--and that's
12 an optimistic number--<< [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 And that's, of course, assuming that << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:08:19 1

[REDACTED]

17 Q. Mr. Lague, you << [REDACTED]

18 here?

19 A. << [REDACTED]

20 Q. Can you explain why?

21 A. Skookumchuck is under Tariff Schedule

22 RS 1823. And being a self-generator, we have the

09:09:34 1 option of invoking RS 1880 to minimize demand peaks on
2 the billing side. The peaks still occur on the energy
3 side, but the billing can be reduced by invoking that
4 schedule. << [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]
■ [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED]

9 Q. Could you turn to Tab 4, please. What are
10 these?

11 A. These are the actual demand charges that were
12 incurred and billed to Skookumchuck for the Fiscal
13 2008 and part of Fiscal 2009.

14 Q. And would they change whether you << [REDACTED]
15 [REDACTED] or not?

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

18 Q. Okay. Can you go back to Tab 3. Let's go to
19 the first chart, first scenario. Could you walk us
20 through that, please, sir.

21 A. << [REDACTED]
■ [REDACTED]

09:10:47 1 [REDACTED]
[REDACTED]

12 MR. OWEN: Thank you very much, Mr. Lague.

13 PRESIDENT VEEDER: I don't need it now, but
14 for some reason I'm missing from my file, R-592. That
15 was Tab 3 of the direct examination file. If I could
16 have copies in due course.

17 MR. OWEN: Absolutely. I apologize for that,
18 Mr. President.

19 PRESIDENT VEEDER: There will now be
20 questions from the Claimants.

21 MR. SHOR: Thank you.

22 CROSS-EXAMINATION

09:12:00 1 BY MR. SHOR:

2 Q. Good morning, Mr. Lague.

3 I want to start with the same charts that
4 Mr. Owen showed you. If you can turn to Tab 1, the
5 chart showing << [REDACTED]

6 A. In this one?

7 Q. Yes. Now, you said there's a cost associated
8 with the << [REDACTED] I want to probe that a little
9 bit.

10 As I understand it, Tembec will pay suppliers
11 << [REDACTED] correct?

12 A. Yes.

13 Q. You don't pay << [REDACTED]
[REDACTED]

15 A. << [REDACTED].

16 Q. And in your normal accounting, what cost do
17 you assign to << [REDACTED]

18 A. << [REDACTED] [REDACTED]

19 Q. So, in fact, << [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

09:12:52 1 A. << [REDACTED]

2 Q. And anything you burn in the << [REDACTED] would
3 be treated--would be accounted for by Tembec in its
4 normal accounting << [REDACTED] [REDACTED] correct?

5 A. From the << [REDACTED] you mean?

6 Q. Correct.

7 A. << [REDACTED]

■ [REDACTED]
■ [REDACTED]

10 Q. I'm asking what cost is assigned. You just
11 told me << [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED]

15 A. That would be shown on the financial
16 statements if that was the case.

17 Q. Okay. Well, we looked at the financial
18 statements that you provided, that Paper Excellence
19 provided, and << [REDACTED] [REDACTED]

20 So, is it fair to assume that << [REDACTED]
21 Tembec's accounting assigned to [REDACTED]

22 A. That would be your assumption.

09:13:43 1 Q. What's your assumption?

2 MR. DOUGLAS: Do you want to take the Witness
3 to the document if it's on the record?

4 MR. SHOR: Let me ask the questions, please.

5 BY MR. SHOR:

6 Q. Okay. What's your answer?

7 MR. DOUGLAS: It is not a memory test,
8 Mr. Shor.

9 PRESIDENT VEEDER: Let's continue. If you
10 can't answer, please say so, but if you can, please
11 do.

12 THE WITNESS: I can't say--I can't make that
13 assumption because I don't have the information.

14 BY MR. SHOR:

15 Q. Okay. So, when you did your << [REDACTED] analysis
16 that purportedly concluded that << [REDACTED]
17 [REDACTED] you didn't look at << [REDACTED] [REDACTED]
18 [REDACTED] > at all?

19 A. I did not do a << [REDACTED]
20 [REDACTED] involved myself.

21 Q. But Tembec does << [REDACTED]
22 [REDACTED]

09:14:28 1 A. It is < [REDACTED] [REDACTED]

2 [REDACTED]

3 Q. And you just left that out of your analysis?

4 A. Because I just simply don't know how much was
5 available on any given day.

6 Q. I'm not asking how much was available on any
7 given day. You performed your analysis of the

8 [REDACTED]

9 A. Yes.

10 Q. I assume not on a daily basis but over a
11 year; right, on a fiscal year basis?

12 A. Yes.

13 Q. And did you account for << [REDACTED] in that
14 analysis?

15 A. No, I did not.

16 Q. You just left them out?

17 A. It's part of the << [REDACTED] I'm just
18 using the chart that's here.

19 Q. Okay. So you agree that the--that's a fair
20 estimate of the << [REDACTED] [REDACTED]

21 [REDACTED]

22 A. Well, I'm assuming that Mr. Switlischoff had

09:15:13 1 included the [REDACTED]

2 [REDACTED] Am I

3 correct?

4 Q. Let's turn to Chart 2.

5 A. On Tab 3?

6 Q. Tab 2.

7 PRESIDENT VEEDER: It's R-591.

8 MR. SHOR: Yes, R-591.

9 BY MR. SHOR:

10 Q. Now, this chart--did you prepare this chart?

11 A. This chart?

12 Q. Yes.

13 A. No, I did not.

14 Q. And you don't know how it was prepared, do
15 you?

16 A. It was prepared by a consultant that used the
17 same data as Mr. Switlishoff.

18 Q. And did you work with the consultant in
19 preparing the chart?

20 A. No.

21 Q. So, you don't know how it was prepared?

22 A. I did not see the spreadsheet from where it

09:16:09 1 comes from.

2 Q. Okay. Now, the period where the lines < [REDACTED]
3 [REDACTED] from February to April, do you see that?

4 A. The line < [REDACTED]

5 Q. Well, both lines.

6 A. Yes.

7 Q. << [REDACTED]
8 [REDACTED]
9 [REDACTED] correct?

10 A. For part of that period.

11 Q. Okay. So--and this is just the volume--does
12 this include << [REDACTED] in here?

13 A. If they were not listed in the table, it
14 would not.

15 Q. I will represent to you that they were not
16 listed in the table. So, this wouldn't include << [REDACTED]
17 [REDACTED]

18 A. It would not. But if the Mill were shut
19 down, << [REDACTED] [REDACTED]>

20 Q. I understand that. But for the rest of the
21 period outside the shutdown period, this chart doesn't
22 include [REDACTED] that were available

09:17:06 1 to Tembec Skookumchuck?

2 A. I believe it includes << [REDACTED] that
3 were included in the table that Mr. Switlishoff
4 presented.

5 Q. I don't believe you're correct because it
6 says [REDACTED]
[REDACTED] correct?

8 A. If it was a << [REDACTED] >> as you
9 claim it could have been, it would have been included.
10 If it wasn't in the table from Mr. Switlishoff, it
11 would be in here.

12 Q. So, it's your understanding--is this table
13 produced--and you may not know since you didn't
14 produce it. Is this table produced from the data that
15 Mr. Switlishoff used or the data that Paper Excellence
16 provided to us?

17 A. I believe it includes << [REDACTED] >> that
18 were assumed by Mr. Switlishoff.

19 Q. And how do you know that?

20 A. It would have used the same spreadsheet that
21 was presented by Mr. Switlishoff.

22 Q. And how do you know that?

09:17:57 1 A. I don't know that for sure.

2 Q. So, you're just speculating?

3 A. I'm making an educated guess.

4 Q. You're speculating?

5 A. I've already answered the question.

6 Q. Now, on this chart that you didn't prepare
7 and that you don't know how it was prepared but which
8 Canada is introducing through you, the line for <<[REDACTED]>>
9 would that include <<[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

12 A. It's the <<[REDACTED] [REDACTED]

13 Q. And how do you know that?

14 A. Because there appears to be <<[REDACTED] to
15 justify that.

16 Q. Okay. Now, you talked earlier about having

17 [REDACTED]

[REDACTED] Could you [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

21 A. It is possible, but <<[REDACTED]

[REDACTED] [REDACTED] I

09:19:21 1 suppose you're suggesting << [REDACTED]

2 [REDACTED]

3 Q. What I'm suggesting is, << [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED] couldn't you?

9 A. It's technically possible.

10 Q. And did you evaluate that possibility in

11 terms of << [REDACTED] [REDACTED]

■ [REDACTED]

13 A. We did, << [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

18 Q. So, your analysis of the << [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED] I'm now asking you to assume

21 a different scenario where you're not operating under

22 the EPA. << [REDACTED] [REDACTED]

09:20:31 1 [REDACTED]

■ [REDACTED] correct?

3 A. If we don't have an EPA, [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

6 Q. I know that's your testimony but--

7 (Overlapping speakers.)

8 MR. OWEN: And can he finish his answer,

9 please?

10 THE WITNESS: Yes. [REDACTED]

■ [REDACTED]

12 BY MR. SHOR:

13 Q. I know it's your testimony that << [REDACTED] [REDACTED]

■ [REDACTED] but that just makes the

15 analysis disappear. I'm just trying to understand.

16 In evaluating << [REDACTED] [REDACTED]

■ [REDACTED]>> wouldn't you evaluate << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

22 Q. Why is that?

09:21:21 1 A. Because we've shown << [REDACTED]

2 [REDACTED]

3 Q. Where have you shown that?

4 A. In the financial statements, it shows that

5 << [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 Q. Which financial statements are you talking
9 about?

10 A. Financial statements that we supplied as a
11 response to your questions from my Witness Statement.

12 Q. You mean the cost reports--

13 A. Yes, the cost reports.

14 Q. --for the << [REDACTED]

15 (Overlapping speakers.)

16 A. The cost statements that we supplied as a
17 response of your questions from my Witness Statements.

18 Q. Okay. Now, those cost reports just showed

19 [REDACTED]

20 [REDACTED] It didn't include any << [REDACTED] did it,

21 such as << [REDACTED] [REDACTED]

22 A. I think we've shown here in--

09:22:25 1 Q. I'm just asking what was included there.

2 PRESIDENT VEEDER: Mr. Shor--stop a second.

3 We're now getting into the bad habits we had
4 yesterday.

5 MR. SHOR: I apologize.

6 PRESIDENT VEEDER: It's not a conversation.

7 It has to be a question, pause, answer, pause,
8 question. However tempting it is, we have to make
9 sure the transcript works for us later.

10 BY MR. SHOR: Let me try again.

11 BY MR. SHOR:

12 Q. Just focus on the cost reports we received
13 from Paper Excellence, not any other analysis you did,
14 those cost reports << [REDACTED]

[REDACTED]
16 A. An avoided cost is not a cost.

17 Q. But it's a benefit, is it not?

18 A. It's a benefit only in the absence of any
19 other parameter.

20 Q. Okay. So in order to determine << [REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 A. Yes.

4 Q. Okay. Does any of this analysis do that?

5 A. They all do that. If you look at the third
6 page.

7 Q. Which is the page that shows what << [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED]

10 A. If you look at the third chart, which is [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Sorry. I think I'm referring to the wrong one here.

14 The first chart, sorry. [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 PRESIDENT VEEDER: Just pause. Is that

19 C-345? Could you hold it up, please, to make sure

20 we're looking at the same? No, that looks as though

21 it is R-592.

22

1 BY MR. SHOR:

2 Q. Maybe I misunderstand, Mr. Lague, but as I
3 look at all of these charts, these are the costs--this
4 is an analysis that was done in 2015; correct?

5 A. Yes.

6 Q. Was this prepared by you, or was this
7 prepared by counsel for Canada?

8 A. This was prepared by myself in collaboration
9 with counsel for Canada.

10 Q. Who actually prepared these charts?

11 A. It was a collaborative effort.

12 Q. These were not available to you at the time
13 you were negotiating your EPA with BC Hydro, were
14 they?

15 A. No, they were not.

16 Q. And you didn't present this to BC Hydro in
17 2009, did you?

18 A. No, I did not.

19 Q. And you didn't present any similar analysis
20 to this to BC Hydro in 2009, did you?

21 A. We had conversations indicating why we were
22 seeking to renegotiate in 2007.

1 (Overlapping speakers.)

2 Q. Beg your pardon.

3 MR. OWEN: Can you please stop interrupting
4 the Witness.

5 MR. SHOR: I apologize.

6 BY MR. SHOR:

7 Q. Please continue.

8 A. I believe I answered the question.

9 Q. Okay. You had conversations, but did you
10 present any analysis with data, such as this?

11 A. We would not unless there was a
12 Confidentiality Agreement in place.

13 Q. And just--I think you told me that you needed
14 to compare--<< [REDACTED]

[REDACTED]

[REDACTED] As I understand
17 these charts, these are all different scenarios of

18 << [REDACTED] There is no scenario here
19 that shows << [REDACTED]

[REDACTED] are there?

21 A. I guess we could have made a fourth chart
22 that would have said--that would have shown << [REDACTED]

1 [REDACTED]

2 Q. And that << [REDACTED]

3 would have had << [REDACTED]

4 [REDACTED]

5 would it not?

6 A. The << [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q. So in evaluating the << [REDACTED]

11 [REDACTED] > you wouldn't have considered the << [REDACTED]

12 [REDACTED] You would have just looked at

13 Skookumchuck?

14 A. << [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. Okay. So, you didn't consider the << [REDACTED]

18 [REDACTED]

19 A. << [REDACTED] [REDACTED]

20 [REDACTED]

21 Q. What about the << [REDACTED] [REDACTED]

22 [REDACTED]

1 [REDACTED]

2 A. Skookumchuck still has an incinerator << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

9 Q. And your environmental permit allows you to
10 burn [REDACTED]

11 A. Yes.

12 Q. Now, we looked yesterday at [REDACTED]

■ [REDACTED] you prepared, I think, at the time to

14 justify the 14-megawatt GBL. I don't recall the exact

15 exhibit number, but maybe somebody could look for

16 that. One minute, please.

17 (Pause.)

18 Q. I can move on without it.

19 You had prepared a series of steam analysis,

20 I think, as part your << [REDACTED] for the

21 GBL purposes. Do you recall those?

22 A. Yes.

1 Q. And Mr. Owen took our attention to that
2 yesterday, and I think it showed roughly--you can give
3 me the exact percentages--but something like

4 << [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED]

6 sound about right?

7 A. It is an accurate ratio.

8 Q. Now, << [REDACTED] [REDACTED] could
9 all of the steam that was produced by the recovery
10 boiler, the high-pressure steam be run through the
11 turbine?

12 A. The TG2 steam turbine?

13 Q. Correct?

14 A. << [REDACTED]

15 Q. In fact, would you need to use some of that
16 high-pressure steam for the << [REDACTED] or whatever
17 they are called?

18 A. Let me clarify. << [REDACTED] [REDACTED]
19 [REDACTED]

20 Q. But some would have to go through the << [REDACTED]
21 [REDACTED] as well; right?

22 A. < [REDACTED]

1 Q. How much of that steam would be available to
2 produce electricity?

3 A. << [REDACTED]

4 Q. So would you << [REDACTED]

5 A. Roughly.

6 MR. SHOR: Just for reference, I believe that
7 document is R-195.

8 BY MR. SHOR:

9 Q. I just have one further question. If I look
10 at some of these red and green charts, I'll call them,
11 the colorful ones we have, if I look at the one that
12 says "Operating with the 1997 EPA."

13 PRESIDENT VEEDER: Would you hold it up
14 because I don't know which one.

15 MR. SHOR: [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

17 PRESIDENT VEEDER: The first page of R-592.

18 MR. SHOR: Correct.

19 BY MR. SHOR:

20 Q. Okay. Now, << [REDACTED]
[REDACTED] here, you have to make some assumptions,
22 including the assumption that [REDACTED] [REDACTED]

1 [REDACTED] correct?

2 A. Correct.

3 Q. You didn't rely on any actual data to prepare
4 this?

5 A. Oh, yes. I've been following the << [REDACTED]
6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11 Q. Here's the part I don't understand. We know
12 that during this period Tembec actually generated
13 << [REDACTED] and that's from
14 Exhibit C-236. Does that sound about right to you?

15 A. That's correct.

16 Q. Okay. And your << [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Does that sound right? Would you
20 accept my math?

21 A. I would have to run it through a calculator.

22 Q. Would you like a calculator?

1 A. I have one.

2 Q. I thought you might.

3 A. So your question again? << [REDACTED]

4 [REDACTED] megawatts, how many gigawatt hours a year
5 is that?

6 A. How many hours per year?

7 Q. You tell me.

8 A. Let's use << [REDACTED], the same as the charts
9 there. << [REDACTED].

10 Q. So if you take the << [REDACTED] that you said you
11 generated and subtract the << [REDACTED] that you said the hog
12 boiler would produce--I'm sorry--that you said the
13 recovery boiler would produce, I get << [REDACTED]-gigawatt
14 hours that the hog boiler would produce; right?

15 A. Right.

16 Q. And that's << [REDACTED] the number you used of
17 << [REDACTED], isn't it?

18 A. I'll have to admit that << [REDACTED]
[REDACTED]

20 MR. SHOR: Okay. I have no further
21 questions.

22 PRESIDENT VEEDER: Thank you.

1 Will there be questions by way of
2 reexamination?

3 MR. OWEN: If we could just have two or three
4 minutes.

5 PRESIDENT VEEDER: You can have more than
6 that. Do you want five minutes?

7 MR. OWEN: Sure, five minutes.

8 PRESIDENT VEEDER: We're going break for five
9 minutes, but please don't discuss the case or the
10 testimony before you come back before the Tribunal.

11 (Pause.)

12 PRESIDENT VEEDER: Ready.

13 MR. OWEN: We have no further questions, and
14 regrettably we may have to request that we extend the
15 break. We have got Mr. Swanson in transit over here
16 from the hotel, which is only a few blocks away. We
17 didn't quite anticipate that we would be this short
18 where Mr. Lague. So I apologize for any
19 inconvenience, Mr. President.

20 PRESIDENT VEEDER: There is no inconvenience.
21 We also did not anticipate this would go so short
22 given that we had extended an extra 30 minutes to the

1 Claimants.

2 Is there anything else we can usefully do, we
3 ask the Claimants first, if we break now?

4 MR. SHOR: I don't think we're prepared to
5 skip a witness. So, I think we have to wait for
6 Mr. Swanson.

7 PRESIDENT VEEDER: Are we talking about half
8 an hour or longer?

9 MR. DOUGLAS: No. He's on his way now. It
10 should be about 15 minutes.

11 PRESIDENT VEEDER: Let's break for
12 15 minutes. We have no further questions for you.
13 Thank you for coming before the Tribunal to testify in
14 this arbitration.

15 (Witness steps down.)

16 (Brief recess.)

17 PRESIDENT VEEDER: Let's resume.

18 DENNIS SWANSON, RESPONDENT'S WITNESS, CALLED

19 PRESIDENT VEEDER: We now have the next
20 Witness before the Tribunal.

21 So if you would, please state your name and,
22 if you will, read the words of the declaration of

1 Witnesses on the piece of paper before you.

2 THE WITNESS: My name is Dennis Swanson.

3 I solemnly declare upon my honor and
4 conscience that I shall speak the truth, the whole
5 truth, and nothing but the truth.

6 PRESIDENT VEEDER: Thank you.

7 There will first be questions from the
8 Respondent.

9 Should this be in closed or open session?

10 MR. DOUGLAS: No, I don't think so.

11 PRESIDENT VEEDER: Open session. Thank you.

12 DIRECT EXAMINATION

13 BY MR. DOUGLAS:

14 Q. Good morning, Mr. Swanson.

15 A. Good morning.

16 Q. What is your current title?

17 A. My current title is Vice President of
18 Corporate Services at FortisBC.

19 Q. What role did you hold before your current
20 title?

21 A. I was Director of Regulatory Affairs.

22 Q. Between which dates?

1 A. Between 2007 and November 2014.

2 Q. So are you familiar with Order G-48-09 and
3 the regulatory proceedings after that Order was
4 issued?

5 A. I'm very familiar with G-48-09 and the
6 proceedings after.

7 Q. Are you familiar with the Order on the screen
8 in front you, which is G-15-01, Claimant Exhibit 344?

9 A. I am.

10 Q. Are you familiar with the underlying
11 agreement between FortisBC and Celgar?

12 A. The Brokerage and Curtailment Agreements,
13 yes, I am.

14 Q. Can you explain what sales to FortisBC are
15 contemplated?

16 A. Those sales would be sales in excess of load.

17 Q. So, the sales would never--would they ever be
18 below operating load?

19 A. It wouldn't make sense for them to be below
20 operating load for the fact that the Claimant would be
21 paying FortisBC under the appropriate Rate Schedule,
22 and what FortisBC would be paying for the acquisitions

1 under those Agreements would be the same cost it would
2 pay to otherwise source that power. So that would
3 either be the lower of market or the lower of PPA from
4 BC Hydro, both of which would be lower than what the
5 Claimant would actually be paying for the replacement
6 power. So they would be losing money in effect if
7 they were selling below-load sales to Fortis.

8 Q. What is the NECP is what does it do?

9 A. The NECP is non-PPA embedded cost power. And
10 what it does is it aims to protect customers from
11 undue financial harm associated with repurposing
12 generation from being available to serve load to being
13 available to--for sale.

14 Q. How much NECP can self-generators and
15 FortisBC access?

16 A. Up to 100 percent of load.

17 Q. So under the NECP regime, could the Claimant
18 stop supplying itself with its own self-generation?

19 A. Yes. Yes, it could.

20 Q. And sell all of its self-generation?

21 A. It could.

22 Q. Are you aware of any other mill in British

1 Columbia that has this right?

2 A. No. I believe--I believe that only applies
3 in FortisBC's service territory to industrial
4 transmission customers, of which Celgar is the only
5 self-generating industrial transmission customer in
6 FortisBC's service territory.

7 Q. Is NECP embedded cost to power?

8 A. Yes, it is.

9 Q. So how much access does the Claimant have to
10 embedded cost to power while selling?

11 A. Up to 100 percent of load.

12 Q. And how is the NECP calculated?

13 A. The NECP is calculated by comparing the cost
14 of embedded cost power, including PPA, to the cost of
15 embedded cost power excluding PPA.

16 Q. Does the NECP market purchases?

17 A. No. It may include some portion of market,
18 but the NECP is really all FortisBC's resources
19 excluding PPA, so that is any excess or any
20 incremental generation FortisBC might have, any
21 purchases under long-term--other long-term power
22 purchase agreements.

1 Like, for instance, FortisBC serves it load
2 with Columbia Power. It includes other block
3 purchases, and it's all available sources: FortisBC's
4 excess generation, BC Hydro power that is not PPA
5 Power.

6 Q. Okay. What is the Waneta Dam Expansion?

7 A. The Waneta Dam Expansion is a hydroelectric
8 facility that provides FortisBC with a capacity or
9 basically the ability to store power.

10 Q. And what relationship does the dam expansion
11 have to the NECP?

12 A. The relationship between the dam and the
13 ability to store power and the NECP is that FortisBC
14 can use that ability to store power that--let's call
15 it the battery, per se--to store blocks of power
16 purchases and I guess to use it when it's required.
17 So it has the ability to reduce the cost of the NECP
18 as compared to purchasing power when power is more
19 expensive.

20 Q. So did you refer to the Waneta Dam Expansion
21 as "a battery"?

22 A. Yes. It's a capacity product for FortisBC,

1 so it's not energy. It is capacity. So the ability
2 to store energy.

3 Q. So could you store energy at one point in
4 time and make it available at another time--

5 A. Yes.

6 Q. --for your self-generator customers?

7 A. For ourselves or for our self-generator
8 customers.

9 Q. And for the use of the NECP?

10 A. Yes, and for the use of the NECP.

11 Q. Okay. So if market prices go up, would the
12 Claimant bear the full risk of the market volatility
13 when it comes to the NECP?

14 A. Not really. Because market prices move
15 around. So in some hours they are more expensive, in
16 some hours they are less expensive. Some days they're
17 more expensive, some days less.

18 What the ability to store power does is it
19 allows you to purchase blocks of power at less
20 expensive times, store it, and use it at more
21 expensive times. So it's--it has the ability to be
22 able to, I guess, shelter you from some of those

1 market excursions, including NECP.

2 Q. Could it actually allow you to take advantage
3 of that market volatility by purchasing through NECP
4 at a lower price and taking advantage of higher market
5 prices should they go up?

6 A. Yeah. If you purchased a block of power at a
7 lower price, were storing it through the use of Waneta
8 Expansion and the market prices were to go up, you
9 could then sell into that market at that higher price.

10 PRESIDENT VEEDER: Could I stop you? I
11 understand you're referring to a dam. How do you
12 store power once you've produced electricity?

13 THE WITNESS: The storage is actually the
14 water held behind the dam. So it's the capacity is
15 the ability to generate power at a point in time, not
16 the amount of energy that's produced.

17 PRESIDENT VEEDER: Thank you.

18 ARBITRATOR DOUGLAS: While we are
19 interrupting you, could I ask for a clarification?
20 You said NECP is embedded cost power.

21 THE WITNESS: Yes.

22 ARBITRATOR DOUGLAS: You're referring to that

1 as Fortis's embedded assets?

2 THE WITNESS: Yes.

3 ARBITRATOR DOUGLAS: And so it wouldn't be
4 the same as the embedded cost power that Fortis would
5 receive from BC Hydro and the PPA. We use the same
6 terms but we're talking about a different rate, aren't
7 we?

8 THE WITNESS: Yeah. The embedded cost power
9 that FortisBC receives from the PPA is but one source
10 of FortisBC's embedded cost power. So FortisBC's
11 embedded cost power includes FortisBC's generation,
12 the PPA Contract with BC Hydro, a Contract with
13 Columbia Basin Power, multiple smaller contracts or
14 purchases from other independent power producers, some
15 market purchases--it's a whole variety of resources
16 that FortisBC uses to serve its load.

17 Fortis only has about roughly a little less
18 than half of its generation required to meet its load.
19 The rest is all through purchases.

20 BY MR. DOUGLAS:

21 Q. What is the status of the NECP proceedings?

22 A. The status of the NECP proceedings are

1 currently--it's currently being held in abeyance
2 pending certain other determinations. Specifically,
3 the NECP process was underway when BC Hydro and
4 FortisBC as a co-applicant filed the new PPA, so the
5 new Power Supply Agreement between FortisBC and
6 BC Hydro.

7 When that was filed with the Commission,
8 there were certain--there is certain aspects of that
9 Agreement, including Section 2.5, which broadly is the
10 restriction on FortisBC's ability to access PPA Power
11 during times when FortisBC or a customer are buying
12 and selling at the same time.

13 During that regulatory process and regulatory
14 review of that Agreement, the NECP was held in
15 abeyance pending that outcome. During that process,
16 Celgar was challenging that Section 2.5, and broadly
17 challenging that Section 2.5 in that they wanted that
18 restriction to be removed from the Agreement; and, as
19 a result, as a result, it wouldn't have made sense to
20 proceed on with the NECP process if--because if Celgar
21 was successful in having that Section 2.5 removed from
22 the PPA, there would be no need for an NECP.

1 Q. Has the Claimant shown a desire for the NECP?
2 Have they pursued it in front of the BCUC?

3 A. Not really. They've tended to go towards the
4 removal of the restriction as opposed to the
5 acceptance of a tool to deal with the restriction.

6 Q. The restriction in Section 2.5 of the new
7 2014 PPA?

8 A. Yeah, the restriction on FortisBC's ability
9 to access PPA Power for the purposes of buying.

10 Q. In your opinion, why has the Claimant not
11 pursued the NECP?

12 A. First of all, I think the Claimant keeps
13 wanting to get more, so it keeps wanting the full
14 restriction to be removed. So, there is that issue.

15 In addition, if the Claimant--the NECP would
16 likely not result in much--in most scenarios would
17 likely not result in much of an increase in cost to
18 the Claimant in terms of what it would be paying for
19 its power because market prices are so low. So
20 FortisBC can acquire that replacement power at a
21 reasonable cost.

22 But the Claimant really hasn't pursued that,

1 I believe, because the Claimant doesn't have an
2 ability to sell its generation at a premium price. So
3 there's no financial incentive to push through and
4 take that to resolution.

5 MR. SHOR: Mr. President, can I ask if we've
6 gone past the 10 minutes allotted for direct
7 examination?

8 MR. DOUGLAS: I've got one more question.

9 PRESIDENT VEEDER: We've got one more minute.
10 Please continue.

11 BY MR. DOUGLAS:

12 Q. Is the NECP dead?

13 A. No, no. The NECP is just held in abeyance
14 pending--pending a couple of conditions that were put
15 in the Decision on the approval of the PPA. Assuming
16 that restriction in Section 2.5 isn't completely
17 removed, the NECP will be right back on.

18 MR. DOUGLAS: Thank you. Those are my
19 questions.

20 PRESIDENT VEEDER: Thank you very much.

21 There will now be questions from the
22 Claimant.

1 CROSS-EXAMINATION

2 BY MS. GEHRING FLORES:

3 Q. Hello, Mr. Swanson. My name is Gaela Gehring
4 Flores, and I represent Mercer in this arbitration.
5 If you need a break at any time during this cross,
6 just let me know.

7 So, you brought up Order G-15-01. And I
8 believe it's your testimony that--and just for the
9 Tribunal's reference, this is Exhibit C-344.

10 BCUC Order G-15-01 also signed by Peter
11 Ostergaard. It's your testimony that this Order in
12 approving the Curtailment Agreement between West
13 Kootenay Power and Celgar did not allow for below-load
14 sales?

15 A. Sorry, can you take me to that reference?

16 Q. Sure. It's Exhibit 344. It's on your
17 screen. It's the Order that you were testifying about
18 just a few minutes ago, and you said that this Order
19 does not allow for below-load sales in approving the
20 Curtailment Agreement?

21 A. It is not that it doesn't allow for
22 below-load sales, there is no specific restriction in

1 there. It just wouldn't make sense to do below-load
2 sales for the Claimant because the Claimant would be
3 losing money in doing so.

4 Q. Well, Mr. Swanson, does the Curtailment
5 Agreement approved by G-15-01 provide for below-load
6 sales by Celgar?

7 A. Not specific--it doesn't specifically provide
8 for or restrict.

9 Q. Does it--does the Curtailment Agreement--and
10 I can--let's see. Why don't we move to the Brokerage
11 Agreement, which is also approved in G-15-01, which is
12 C-193. It's Page 6 of 7 of that document.

13 While we're waiting for that, it's a graph
14 full of lots of numbers and very, very tiny numbers.
15 We'll wait for that to be pulled up in a second.

16 But do you understand how the Curtailment
17 Agreement worked between West Kootenay Power and
18 Celgar?

19 A. Generally speaking, I think I do.

20 Q. Okay. And it's your understanding that that
21 Agreement did not contemplate below-load sales?

22 A. The Curtailment Agreement was about

1 curtailing load.

2 Q. Okay. So it's your understanding that the
3 Curtailment Agreement between West Kootenay Power and
4 Celgar involved Celgar shutting down its pulp mill to
5 curtail its load?

6 A. It involved curtailing its load. How that
7 load was curtailed would be up to Celgar.

8 Q. Yeah. In fact, I think it involved West
9 Kootenay Power calling Celgar at a point when Celgar
10 was purchasing electricity from West Kootenay Power,
11 and West Kootenay Power requesting that Celgar bump up
12 its generation. Is that your understanding?

13 A. Requesting that Celgar reduce its take from
14 FortisBC in order for FortisBC to avoid higher cost
15 market purchases and then offering compensation for
16 Celgar's ability to reduce its take.

17 Q. Right. So West Kootenay Power would--so
18 let's say Celgar at a given point in time, let's
19 say--let's just start a 24-hour day. At the beginning
20 of that day Celgar would be generating
21 30 megawatts--this is just a hypothetical--and its
22 load would be 35 megawatts. Necessarily, Celgar would

1 have to purchase 5 megawatts of electricity from West
2 Kootenay Power, right, in that situation?

3 A. Right.

4 Q. Let's say--let's split the day into 8-hour
5 increments. So if the Curtailment Agreement would not
6 have been invoked and Celgar continued on that 24-hour
7 day, they are buying 5-megawatt hours of electricity
8 8 hours--for every 8 hours. So, there is three 8 hour
9 increments in a 24-hour day. So we've got 40, plus
10 40, plus 40, equals 120 megawatts; correct?

11 A. Yes. It would equal 120 megawatts.

12 Q. Okay. Now let's say in a day like that, West
13 Kootenay Power calls up Celgar?

14 A. 120-megawatt hours, sorry.

15 Q. Thank you.

16 Let's say West Kootenay Power calls up Celgar
17 and says, We'd like to invoke the Curtailment
18 Agreement. On that day, the first 8 hours goes by and
19 Celgar has been generating 30 and the load is 35. So
20 the first 8 hours they are purchasing 5-megawatt hours
21 of electricity. So they've purchased 40 in that first
22 8-hour period.

1 And then West Kootenay Power calls them up
2 and says, "We'd like to invoke the Curtailment
3 Agreement. Could you please boost your generation to
4 35"?

5 A. Again, the Curtailment Agreement is about
6 Celgar reducing its load. How Celgar does that,
7 whether it's by dialing back the Mill or increasing
8 its generation, is irrelevant. It is curtailing the
9 load taken by FortisBC, so reducing to 5.

10 Q. Just humor me here, Mr. Swanson, and let's
11 say in real life this is what actually happened, and
12 we'll go to that in a second.

13 So, West Kootenay Power would call up Celgar
14 and say, "Could you please boost your generation to
15 35." So your load is 35, and you're generating 35 for
16 the next 8 hours. So we will no longer have to sell
17 you 5-megawatt hours of electricity for that 8-hour
18 period; right.

19 Are you with me?

20 A. Sure.

21 Q. So the first 8-hour period, they purchased
22 40-megawatt hours. The second 8-hour period in the

1 24-hour day, they purchase 0 because Celgar at this
2 point has increased its generation up to its load and
3 West Kootenay Power is no longer selling electricity
4 during this 8-hour period.

5 Are you still with me?

6 A. Okay.

7 Q. Okay. In the next 8-hour period--Celgar can
8 only do this for so long. It is actually pretty hard
9 on the mill to do this. In the next 8-hour period
10 they bring down their generation to 20. Their load is
11 still 35. They now need to purchase
12 15 megawatt--15-megawatt hours of electricity from
13 West Kootenay Power over the next 8-hour period.

14 On a normal day, if the Curtailment Agreement
15 weren't invoked, Celgar would purchase 120-megawatt
16 hours of electricity from West Kootenay Power. On a
17 curtailment day they would end up purchasing
18 160-megawatt hours of electricity due to the way it
19 actually operates in fact.

20 Do you understand that that is the way it
21 actually worked?

22 A. Again, I go back to the fact this is a

1 Curtailment Agreement. This is an Agreement by which
2 Celgar will reduce its purchase from FortisBC, not
3 FortisBC increase a purchase from Celgar.

4 Q. But we just talked about--

5 A. I think you have this backwards.

6 Q. We just talked about a 24-hour period where
7 Celgar's electricity purchases from West Kootenay
8 actually increased; correct?

9 A. You talked about a 24-hour period where the
10 electricity purchases increased, that's correct.

11 Q. Right. And so let's look at this--these tiny
12 numbers on this exhibit. Let's go to--

13 Laura, could you please go to--I think it's
14 the line for November 25. Could you please, yeah,
15 blow up--right. Thank you. Is there a way to make
16 that bigger at all?

17 This, by the way, is attached to the
18 Brokerage Agreement, which was approved by Order
19 G-15-01. And this is an example of something--of the
20 way the Curtailment Agreement was actually
21 implemented, and that's what it says in the Brokerage
22 Agreement. This is actually what happened in

1 November 2000.

2 And you'll see at the top of the table there
3 are numbers at the top of the table. Those are hours
4 in the day, in a 24-hour day.

5 A. Okay.

6 Q. Now, if you look at the November 25 line,
7 you've got purchases from Celgar--by Celgar from West
8 Kootenay of [REDACTED]
9 [REDACTED], > and then
10 there's a line. That line in this chart signifies
11 < [REDACTED] hours of curtailment where West Kootenay Power calls
12 up Celgar, asks them to bump up their generation.
13 During those [REDACTED] hours, I guess--I guess during the
14 first hour of curtailment, I believe the number is
15 that Celgar started purchasing less electricity, [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 A. I see those reduced purchases from FortisBC,
19 yes.

20 Q. Okay. Now, I'm going to ask you to go--
21 Laura, if you go down below to the first
22 table on the left. Please blow up the first table on

1 the left and look at November 25.

2 It shows that Celgar's load was < [REDACTED] in the
3 middle--during curtailment it was < [REDACTED] > and it shows that
4 Celgar sold to West Kootenay Power [REDACTED]-megawatt
5 hours?

6 A. That's incorrect. It shows that the load was
7 [REDACTED] during curtailment and that Celgar reduced its
8 load by [REDACTED] hours from FortisBC, and, therefore, was
9 compensated for reducing its load. Again, this is
10 about curtailing the load that Celgar is taking from
11 FortisBC. This is not about Celgar selling power to
12 FortisBC.

13 Q. I guess that's your position, that it's all
14 about curtailment--wait just a moment--that the [REDACTED]
15 is paying Celgar for curtailment. It is not paying it
16 for its electricity generation.

17 A. That's why it's called curtailment.

18 Q. Let me get to my question, Mr. Swanson.

19 PRESIDENT VEEDER: I'm sorry, Rule Number 1,
20 we can't have people overspeaking.

21 THE WITNESS: Okay.

22 PRESIDENT VEEDER: The question finishes, you

1 answer, the answer finishes, pause, and the next
2 question will follow.

3 THE WITNESS: I apologize.

4 PRESIDENT VEEDER: Actually, it wasn't
5 addressed to you, but I'm being polite.

6 BY MS. GEHRING FLORES:

7 Q. When we were up at the numbers, at the tiny
8 numbers at the top of during curtailment, was Celgar
9 purchasing electricity during those two hours? Was it

10 [REDACTED]

11 A. Yes.

12 Q. Yes.

13 A. Celgar was purchasing.

14 Q. Celgar purchased during those two hours
15 [REDACTED]-megawatt hours of electricity; correct?

16 A. Yes, that's what the chart showed.

17 Q. And this part of the chart shows that Celgar
18 sold < [REDACTED]-megawatt hours of electricity to West
19 Kootenay Power on that day?

20 A. No. That line says curtailment to the left.
21 That line is entitled "curtailment," so, again, this
22 is about curtailing Celgar's load. If Celgar chooses

1 to curtail its load by way of generating power, that's
2 up to Celgar. Let's not forget that the simultaneous
3 buy/sell of power is a fictitious construct, and what
4 I mean by that is the electrons only flow on that line
5 in one direction. So, it's not like FortisBC is
6 delivering electricity over the lines to Celgar, and
7 at the same time, over the same line Celgar is
8 delivering electricity to FortisBC. It doesn't work
9 that way. It is like water in a hose; it only flows
10 in one direction.

11 So, this Agreement was about curtailing the
12 load, or Celgar's abilities to turn down the amount of
13 load it was drawing from FortisBC. This was not a
14 Power Purchase Agreement. I mean, it is even called a
15 Curtailment Agreement as opposed to a Power
16 Purchase Agreement. It is a different animal
17 entirely.

18 Q. Right. And just as you testified, Celgar
19 could choose to do that by increasing its generation;
20 correct?

21 A. Potentially, Celgar could have. I don't know
22 if, at that time, Celgar had the ability to increase

1 generation like you say or not. But, really, from
2 FortisBC's perspective, this is just about Celgar
3 curtailing its load.

4 Q. I understand you're saying "from FortisBC's
5 perspective," but did you just testify that Celgar
6 could choose to invoke curtailment by boosting
7 generation? Yes or no?

8 A. If Celgar had the ability to boost
9 generation, that could be a way it could achieve
10 curtailment.

11 Q. And could you please look at November 28 on
12 this chart.

13 A. I see that.

14 Q. What does negative 2 curtailment mean?

15 A. I'm not exactly sure.

16 Q. Would that mean that Celgar boosted its
17 generation so much that it had negatively curtailed
18 its load, I guess, in your terms?

19 A. But if it's a negative curtailment, wouldn't
20 that be an increase in load?

21 Q. You tell me, Mr. Swanson.

22 A. I don't know what the negative 2 stands for.

1 Q. Okay. So, as you testified, Celgar could
2 choose to boost its generation to invoke the
3 Curtailment Agreement, and West Kootenay Power would
4 pay for it; is that correct?

5 A. West Kootenay Power's only concern in a
6 Curtailment Agreement is that the load being served by
7 West Kootenay Power is curtailed. How that's
8 accomplished is entirely outside of the control of
9 FortisBC, and FortisBC doesn't care how that is
10 accomplished.

11 Q. Okay. FortisBC didn't care how it was
12 accomplished, but FortisBC--FortisBC paid for the
13 invocation of the Curtailment Agreement; is that
14 correct?

15 A. FortisBC compensated customers who curtailed
16 their load when asked to do so, yes.

17 Q. And one of the ways that Celgar could curtail
18 its load was by boosting its generation; correct?

19 A. There was nothing prohibiting that. Whether
20 or not Celgar had the ability to do that is up to
21 Celgar.

22 Q. And were you a Witness to the conversations

1 between Celgar and West Kootenay Power with respect to
2 how Celgar would actually implement the Curtailment
3 Agreement?

4 A. No, I wasn't involved in those conversations
5 between Celgar and FortisBC with regards to how Celgar
6 would implement Curtailment Agreements.

7 Q. Thank you.

8 So, you were appointed as Director of
9 Regulatory Affairs at FortisBC in 2007; is that
10 correct?

11 A. That's correct.

12 Q. And as the Director of Regulatory Affairs,
13 were you in charge of FortisBC's regulatory filings
14 and submissions before the BCUC?

15 A. I was.

16 Q. Are you an attorney, Mr. Swanson?

17 A. No, I'm not.

18 Q. Were you in charge of all of the FortisBC
19 submissions before the BCUC or just some?

20 A. They all happened under my watch.

21 Q. And as the Director of Regulatory Affairs at
22 FortisBC, were you more or less familiar with

1 FortisBC's filings before the BCUC?

2 A. Yes.

3 Q. Were you familiar with the filings--

4 A. Oh, absolutely, yes.

5 Q. Very familiar? Intimately familiar? How
6 familiar were you?

7 A. Very familiar, yes.

8 Q. Did you draft the filings before the BCUC?

9 A. Some of them I drafted. Some are drafted by
10 my employees. Sometimes I would hire external
11 assistants, but I was responsible for those filings.

12 Q. And because you were responsible for those
13 filings, you would--you reviewed them--you would
14 review them; correct?

15 A. Yes, that's correct.

16 Q. You supervised their submission; correct?

17 A. Yes, that's correct.

18 Q. Did you edit them?

19 A. Many of them I would edit, yes.

20 Q. Did you--and I think, perhaps, some of the
21 submissions actually have your signature?

22 A. Some do, indeed.

1 Q. Okay. Except for the ones that were filed by
2 external counsel; is that right?

3 A. Yeah. Typically, if we file a filing by
4 external counsel, it goes out under external counsel
5 signature. I still have responsibility for the
6 filing, though.

7 Q. And in your new title at FortisBC as Vice
8 President of Corporate Services, do you continue to be
9 in charge of regulatory filings of FortisBC before the
10 BCUC?

11 A. Not directly, no, but as an executive of
12 FortisBC, I still have some responsibility, but not
13 directly over the filings.

14 Q. Do you review them as well and approve them
15 as well?

16 A. I review most. I don't--and I approve some,
17 you might say. What I mean by that is some filings
18 require all the Executives to approve. Some filings
19 don't. It depends on the nature of the filings.

20 Q. Just for your reference, Mr. Swanson, we're
21 going to go to your Second Witness Statement.

22 A. Do you have a reference for me?

1 Q. Just starting on Page 1, and I think starting
2 at Paragraph 5 and then going about nine paragraphs,
3 all the way through Paragraph 13.

4 Those paragraphs are dedicated to recounting
5 a conversation that you had with Mr. Don Debieenne; is
6 that correct?

7 A. Just hang on one second.

8 Q. You also have the Second Statement in your
9 binder if it's easier to flip through.

10 A. Okay. I'm sorry. Your question was again?

11 Q. Those paragraphs, Paragraphs 5 through 13 of
12 your Statement, Pages 1-5 are dedicated to your
13 recounting of a conversation that you had with Mr. Don
14 Debieenne; is that right?

15 A. Some of it is recounting of conversation with
16 Mr. Don Debieenne, yes.

17 Q. I think it would take too long, but I believe
18 that every single one of those paragraphs talks about
19 your conversation with Mr. Don Debieenne, but we can
20 maybe turn to that later.

21 A. I meant not every statement. For instance,
22 the Statement in Paragraph 4 that says "FortisBC

1 engaged in extensive negotiations with Mercer," I know
2 that for a fact. That doesn't fall from a
3 conversation with Don Debieenne. That's all I was
4 trying to say.

5 Q. Sure. Sure. I was starting with
6 Paragraph 5. Excuse me.

7 A. Okay. Sorry.

8 Q. And Mr. Don Debieenne was Celgar's main point
9 of contact and Vice President of Power Supply and
10 Strategic Planning around 2007; is that right?

11 A. Yes, that's correct.

12 Q. And this portion of your testimony is found
13 under the title "FortisBC's Negotiations With Mercer
14 Concerning Its Arbitrage Project"; correct?

15 A. That's correct.

16 Q. Like we said, this section largely recounts a
17 conversation that you had with Mr. Debieenne, as you
18 say, on February 3, 2015?

19 A. I'm just looking for the February 3 date.

20 PRESIDENT VEEDER: Footnote 5 at Page 2.

21 THE WITNESS: Thank you.

22 BY MS. GEHRING FLORES:

1 Q. Yeah, and just again, you have your Statement
2 in your binder if you want to reference it on paper.

3 Was anyone else present during this
4 conversation, Mr. Swanson, that you had with
5 Mr. Debienne on February 3, 2015?

6 A. For parts of the conversation, one of my
7 employees, Corey Sinclair, was present.

8 Q. How much of the conversation was she present
9 for?

10 A. He, sorry.

11 Q. Sorry.

12 A. I believe most of the conversation.

13 Q. Is there a recording of the conversation?

14 A. No.

15 Q. Do you have a written record or transcript of
16 this conversation?

17 A. No. It was a conversation.

18 Q. Okay. And are you aware of whether
19 Mr. Debienne is a witness in this proceedings,
20 Mr. Swanson?

21 A. Mr. Debienne has been long retired now. And
22 he's not a witness in this proceeding.

1 Q. So we can't question Mr. Debienne about this
2 supposed conversation, can we?

3 A. No, but you can question me because I was
4 part of that conversation.

5 Q. Right. Did Mr. Debienne know that you were
6 planning to recount the conversation that you had with
7 him in your Witness Statement?

8 A. Yes.

9 Q. Did you give Mr. Debienne an opportunity to
10 review your Witness Statement?

11 A. Yes.

12 Q. And did he respond?

13 A. Yes. And we talked specifically about why I
14 was summarizing this area, and, you know, we talked in
15 a fair amount detail about this.

16 Q. So, that was another conversation you had?

17 A. Same conversation.

18 Q. In the same conversation?

19 A. Well, same set of conversations. It was
20 several conversations over the course of a few days,
21 but the original conversation is where this
22 information came from. Then when I summarized my

1 Witness Statement, I showed Mr. Debienne what I was
2 saying to make sure that he was--that was his
3 recollection as well.

4 Q. And did anyone witness those conversations as
5 well?

6 A. I don't recall.

7 Q. And is there any written record of those
8 later conversations?

9 A. There is not normally written records of my
10 conversations.

11 Q. How did you share your Witness Statement with
12 Mr. Debienne? Did you do it through e-mail? Did you
13 just tell him on the phone?

14 A. He came into the office a couple times, and
15 we met in our board room. We had lunch once and had a
16 discussion over lunch, but mainly in the board room at
17 FortisBC's offices.

18 Q. So, now we're talking about maybe not just
19 one conversation, but maybe three, four?

20 A. There were many conversations with
21 Mr. Debienne.

22 Q. Many. Many about what's in your Witness

1 Statement?

2 A. Yeah, about these topics that are in the
3 Witness Statement, that's correct.

4 Q. Okay. Your Statement--your Second Statement,
5 I believe, is about 15 pages; correct?

6 A. 30--yeah.

7 Q. I'm talking about your Second Statement.

8 A. Subject to check, sure.

9 Q. Okay. And you devoted, I think, about four
10 pages of a 15-page statement to a variety of
11 conversations with Mr. Debieenne; is that correct?

12 A. Yeah. It was because I had an understanding
13 of the sequence of events, and after having read
14 Mr. Merwin's Witness Statement, it appeared that he
15 was telling a different story, and so I had
16 conversations with Mr. Debieenne to ensure my
17 understanding of the sequence of events was actually
18 correct.

19 Q. Okay. And I think a lot of this conversation
20 surrounds an e-mail from Don Debieenne to Mr. Merwin.

21 MS. GEHRING FLORES: Could we go to
22 Exhibit C-214, please. And it's Bates 292757.

1 BY MS. GEHRING FLORES:

2 Q. So, is this the e-mail that you spoke with
3 Mr. Debieenne about, Mr. Swanson?

4 A. I did speak to Mr. Debieenne about this
5 e-mail, yes.

6 Q. And when you spoke to him, did you show him
7 this e-mail?

8 A. Yes.

9 Q. And in Paragraphs 11 and 12 of your Second
10 Statement, you claim that, in response to your
11 characterization of Mr. Merwin's testimony regarding
12 this e-mail, Mr. Debieenne explained that Mr. Merwin
13 misrepresented that e-mail?

14 A. You know, you're looking at one line of one
15 e-mail in a long series of conversations. And that
16 e-mail--

17 Q. Mr. Swanson, can you answer my question?

18 MR. DOUGLAS: Could you let the Witness
19 finish, please.

20 THE WITNESS: And that e-mail has a set of
21 words in it, and taken completely out of context, but
22 it says, "We have pulled together all our key people

1 on this and so far feeling like we're on terra firma,"
2 so we're on solid ground. My understanding of this
3 and from talking to Mr. Debienne, is it means we're on
4 solid ground to proceed.

5 In other words, we still have credible
6 arguments we can make as opposed to, you know, we're
7 in quicksand, and there's no continued arguments we
8 can make. It doesn't mean--it doesn't say that this
9 is a slam dunk and we're done. This says we're on
10 solid ground, and we continue to have credible
11 arguments to make.

12 BY MS. GEHRING FLORES:

13 Q. Thank, Mr. Swanson.

14 And you're asking this Tribunal to conclude
15 that Mr. Merwin, who is a Witness in this proceeding,
16 took this e-mail out of context and misrepresented it;
17 correct? That's what you're saying in Paragraphs 11
18 and 12 of your Second Statement? Is that right?

19 A. I'm saying that we communicated there was
20 regulatory risk. And, in fact, the two Parties
21 entered into an agreement that, as a condition to that
22 agreement, had regulatory approval, as a condition,

1 which is a clear recognition that there was some risk
2 associated with--

3 Q. We might get to that, Mr. Swanson, but could
4 you answer my question, please.

5 Is it your testimony that Mr. Merwin, a
6 Witness in this proceeding, misrepresented what this
7 e-mail says? Yes or no? You have your Statement
8 right there.

9 A. My testimony isn't specifically about this
10 one statement. It is about the fact that there was
11 regulatory risks, and those risks were communicated.

12 Q. And this is based on your memory of an
13 uncorroborated conversation or variety of
14 uncorroborated conversations with Mr. Debiegne, an
15 individual who cannot be questioned in this
16 proceeding; is that correct?

17 A. That is correct.

18 Q. And you want this Tribunal to believe that
19 your recounting of an unverifiable conversation
20 provides the definitive interpretation of this e-mail?

21 A. I'm not necessarily asking this Tribunal to
22 make a definitive interpretation on this e-mail. I'm

1 suggesting that there were risks associated with
2 entering into this Agreement, that both Parties
3 understood those risks going in and continued to
4 understand those risks throughout the process. That's
5 my position.

6 Q. Yeah, let's get to that. Let's turn to
7 Paragraph 5 of your Second Witness Statement. You are
8 saying that you recalled Mr. Debienne indicating that
9 he had discussed with Celgar the regulatory risks of
10 the Power Sales Agreement that FortisBC entered into
11 with Celgar in 2008; is that correct?

12 A. I'm just waiting for the--

13 Q. In the last sentence of Paragraph 5, you
14 say, "However, it is my recollection that Mr. Debienne
15 indicated at that time that he had discussed these
16 regulatory risks with Celgar."

17 A. That's correct, and then I checked that fact
18 with him after the fact.

19 Q. Right, in these many conversations you had
20 with him?

21 A. Yes.

22 Q. Were you actually present in any meeting

1 where Mr. Debieenne discussed these, as you say,
2 regulatory risks with Mr. Merwin or other Celgar
3 representatives?

4 A. No, I was not.

5 Q. Were you copied in an e-mail where
6 Mr. Debieenne discussed these, as you say, regulatory
7 risks with Mr. Merwin or other Celgar representatives?

8 A. No, I was not.

9 Q. Was this otherwise communicated to you in
10 writing by Mr. Debieenne?

11 MR. DOUGLAS: Mr. President, I'm sorry to
12 interject here. I want to make it clear for the
13 record, Claimant Exhibit C-214 is the series of
14 chopped e-mails that expand a period of years. When
15 the Claimant filed this in their Memorial, we asked
16 for document requests relating to further
17 communications between it and FortisBC, and they
18 advised us for the first time--not in the earlier
19 document production, but for the first time, that they
20 had lost years' worth of e-mails of communications in
21 a server migration, which is fine--which is fine. But
22 it's not fine to question the Witness on a lack of

1 record when the Claimant has lost all of its
2 communications with the utility. So I just want to
3 make that mark on the record right now.

4 MR. SHOR: I think we're talking about
5 internal FortisBC communications.

6 MR. DOUGLAS: She asked about communications
7 between Mr. Debiegne and Mr. Merwin.

8 PRESIDENT VEEDER: Stop a second.

9 (Tribunal conferring.)

10 PRESIDENT VEEDER: In the Tribunal's view,
11 all this goes eventually to weight, and we'll hear
12 submissions about that. So, please continue with your
13 questions.

14 BY MS. GEHRING FLORES:

15 Q. Yeah. I believe I was asking you,
16 Mr. Swanson, whether or not there were any
17 communications with you on this subject, involving
18 you. So, this--again, you testified that Mr. Debiegne
19 discussed these regulatory risks with Mr. Merwin, but
20 I'm asking you, was this discussion ever communicated
21 to you in writing?

22 A. No, this discussion was not communicated to

1 me in writing. It was communicated to me verbally.

2 Q. Did you provide a regulatory report to
3 Mr. Debienne about all of these regulatory risks that
4 you had identified?

5 A. No. What we did is--what I did is, I looked
6 at the regulatory precedence that had occurred in
7 British Columbia related to the sale of self-generated
8 power, and I had a good sense of what BC Hydro's
9 position would be if Celgar were to buy and sell power
10 at the same time, and that was informed by the fact
11 that we had a restriction in our PPA with BC Hydro
12 that stopped FortisBC from being able to buy and sell
13 at the same time. So, I could see that BC Hydro would
14 likely oppose FortisBC's access to PPA Power if that
15 were occurring.

16 So, we looked at that, and we figured there
17 is definitely some risks. I had that conversation
18 with Mr. Debienne, and he conveyed that there are
19 risks associated with the Agreement to Mr. Merwin.

20 Q. And I think it's your testimony that these
21 risks were rather significant; right?

22 A. I characterized them as a "coin toss," a

1 50/50 chance of actually being able to get these
2 agreements approved.

3 Q. But those risks--the conclusion--your
4 conclusion that those risks existed is nowhere in any
5 document; is that correct?

6 A. Well, it's a condition precedent in the Power
7 Supply Agreement between Celgar and FortisBC, so the
8 two Parties agreed that there was a condition
9 precedent in that agreement, and typically you put a
10 condition precedent in the agreement to remove risks.

11 Q. The condition precedent says there's a 50/50
12 chance that the BCUC will reject?

13 A. No, it's precedent on the BCUC approval of
14 the Agreement.

15 Q. I think I'd like to move on to the issue of
16 Celgar's ability to sell its self-generated
17 electricity while having access to embedded-cost
18 electricity. Let's turn to the Rejoinder, Canada's
19 Rejoinder, at Paragraph 155. You'll see that in a tab
20 in your binder. It's called "Rejoinder" where Canada
21 states, "The Claimant continues to perpetuate the myth
22 that BCUC Order G-48-09 restricts access to

1 embedded-cost electricity."

2 And let me show you a similar statement that
3 Canada makes in its Rejoinder, if we could turn to
4 Paragraphs 165 and 166. The Claimant alleges that
5 "The BCUC subjected Celgar to a period of
6 discrimination and regulatory uncertainty that began
7 in 2009 and continues to this day. Since
8 Order G-48-09 was issued in May 2009, Celgar has been
9 unable to access embedded-cost utility electricity
10 below its 2007 load, and thus, has been unable to sell
11 any of its below-load electricity. In light of the
12 above, this cannot possibly be true."

13 In this portion of the Rejoinder, Canada
14 continues on with this line, and they quote and
15 reference your Second Witness Statement in support of
16 the notion that Celgar's claims with respect to the
17 continuing G-48-09 restriction is untrue.

18 Are you aware of that?

19 A. I'm aware of that.

20 Q. And do you agree with these assertions that
21 Canada makes in Paragraphs 155, 165, 166, that G-48-09
22 is the--the G-48-09 restriction is a myth? It's not

1 true?

2 A. Since G-48-09--first of all, G-48-09 approved
3 an amendment to the PPA between FortisBC and BC Hydro,
4 and that amendment restricted FortisBC's access to the
5 PPA Power to be used to replace energy that FortisBC
6 or a FortisBC customer was using to, I guess, replace
7 energy for the purpose of sale or resale. So G-48-09,
8 what it did is it placed a purchase restriction upon
9 FortisBC. It also--it left some doors open. It left
10 some doors open in terms of our ability to set a
11 FortisBC GBL for Celgar and serve above that FortisBC
12 GBL.

13 Shortly after G-48-09, Mr. Merwin sends a
14 letter to Dan Egolf of Fortis stating that G-48-09 has
15 opened the door to a FortisBC GBL. And the letter
16 goes on to suggest what an appropriate GBL would be.
17 And so I do think there is plenty of options for
18 Celgar to be able to sell some generation and some
19 generation that not in excess of its dynamic load. It
20 hasn't, but the opportunity has existed.

21 Q. And the opportunity has existed for Celgar to
22 sell below its 2007 load and have access to

1 embedded-cost electricity?

2 A. To excluding PPA.

3 Q. Excluding PPA Power?

4 A. But there was also an option, I
5 believe--you've got to step back and look at.

6 MR. DOUGLAS: Let the Witness please finish
7 his answer.

8 THE WITNESS: You've got to step back and
9 take a look at what a GBL is attempting to do. It's
10 attempting to protect customers from undue harm
11 associated with a self-generating customer repurposing
12 its generation to be instead of using it to serve load
13 to using it for resale. So you're trying to protect
14 those customers from undue harm.

15 If Celgar and FortisBC were to have agreed on
16 a reasonable GBL that we could reasonably demonstrate
17 to the BCUC that it does that job of protecting
18 customers from undue financial harm, I think there's a
19 very good chance that we could have got approval of
20 that. And, in fact, we've talked several times about
21 doing exactly that. And I mean "we" as in Celgar and
22 FortisBC. If we got approval of that, that would open

1 the door to Celgar being able to sell "below-load
2 sales" while accessing embedded-cost power.

3 BY MS. GEHRING FLORES:

4 Q. While accessing whose embedded-cost power?

5 A. If we were able to demonstrate that a
6 GBL--for instance, if we had agreed on a reasonable
7 GBL that was, let's say, 40 megawatts, similar to the
8 GBL that BC Hydro had put in place for Celgar, if
9 FortisBC and BC Hydro had agreed to a 40-megawatt GBL,
10 there's a pretty good chance we could have put that in
11 front of the Commission and stakeholders and
12 demonstrated that a GBL of 40 megawatts doesn't cause
13 undue financial harm to customers, either BC Hydro's
14 customers or FortisBC customers, in which case that
15 may have satisfied the conditions under G-48-09, and
16 we might have been able to access PPA Power.

17 Q. If the BCUC had ordered FortisBC to set a GBL
18 for Celgar at a particular number, would FortisBC have
19 complied with that Order?

20 A. Yes, FortisBC complies with--attempts to
21 comply with all BCUC Orders.

22 Q. Going back to--so, we started talking about

1 G-48-09 and whether or not it is myth, and then we
2 started to talk about GBLS. Let's go to C-342. I
3 think it's in your binder.

4 My question is if the G-48-09 restriction is
5 a myth--and I think you started talking about GBLS.
6 Let me point you to this exhibit on Page 2. It's the
7 second paragraph from the bottom. This is a letter
8 from FortisBC to Celgar on October 6, 2014. In this
9 letter, FortisBC says to Celgar, "By Commission
10 Order G-188-11, Celgar is a customer served under the
11 company's Rate Schedule 31 on a net-of-load basis.
12 That is, Celgar must first use its generation
13 resources to serve its own load prior to making any
14 power in excess of load available for export to a
15 third party."

16 Are you familiar with this letter,
17 Mr. Swanson?

18 A. I was. Let me refresh my memory please.
19 This is all true because--

20 Q. Mr. Swanson, I only asked you if you're
21 familiar with this letter.

22 A. I'm familiar with the letter, but I think

1 again, you're reading very small--

2 PRESIDENT VEEDER: Stop the question. Just
3 answer that question. You're familiar with the
4 letter.

5 THE WITNESS: Yes, I am.

6 PRESIDENT VEEDER: Next question.

7 BY MS. GEHRING FLORES:

8 Q. Okay. Does G-48-09 and subsequent--and do
9 subsequent BCUC Decisions, for instance, G-188-11,
10 restrict Celgar's access to embedded-cost power while
11 selling electricity? I think it's a simple yes or no.

12 A. It's not quite as simple because--you're
13 asking does G-48-09 and does G-188-11 restrict
14 Celgar's ability to access embedded-cost power.
15 G-48-09 restricts Fortis' ability to access BC Hydro's
16 PPA.

17 Q. Okay. I thought you might say that. So,
18 let's walk through this step by step.

19 A. Okay.

20 Q. So with respect to FortisBC's resources, in
21 2009 after the BCUC issued G-48-09, which restricted
22 Celgar or prohibited Celgar from selling any PPA Power

1 to FortisBC customers, who were also selling that
2 power?

3 A. No, G-48-09 did not do that. G-48-09 amended
4 Section 2.1 of a PPA between FortisBC and BC Hydro.
5 Celgar was not a signatory of that Contract. So what
6 G-48-09 did is it altered a contract between two
7 utilities.

8 Q. And that Contract, the PPA, prohibits
9 FortisBC from selling any PPA Power to self-generators
10 in its territory who are also selling that power; is
11 that correct?

12 A. That power restricts FortisBC's ability to
13 purchase such power.

14 Q. Okay. After G-48-09, did FortisBC have any
15 way to segregate the electricity that FortisBC
16 generates itself from PPA electricity that it
17 purchased from BC Hydro?

18 A. Are you asking like in real terms could we
19 identify which electrons flow where?

20 Q. In real terms.

21 A. No. You can't identify which electrons flow
22 where. For instance, you have multiple sources of

1 energy coming into the lines, and you have multiple
2 draws out of the lines, and there is no way to color
3 code, let's say, the electrons to say this electron
4 started floating in from here and flowed out to there.

5 Q. Right. And for that reason, after the
6 issuance of G-48-09, FortisBC could not supply Celgar
7 with any electricity while Celgar was selling
8 electricity; correct?

9 A. That's incorrect.

10 Q. The day after G-48-09 was issued?

11 A. That's incorrect because there were options
12 open. There were options of setting a GBL that might
13 have been able--such a transaction. There were
14 options associated with matching block purchases that
15 could have enabled such transactions. There were no
16 options that were taken, so no such transactions
17 occurred, but those options did exist.

18 Q. But all of those options would involve hiving
19 off PPA Power; is that correct?

20 A. Not necessarily. Again, if I go back to what
21 I said about the purpose a GBL. If we could
22 demonstrate that there was no undue financial harm

1 associated with, let's say, for example, a 40-megawatt
2 GBL, if we could demonstrate there was no undue
3 financial harm to customers associated with that and
4 that it was in the public interest, the Commission
5 could have approved such a GBL and allowed access over
6 that 40 megawatts to PPA Power. The Commission--

7 Q. And G-48-09 would not have prohibited that?
8 They would have had to overturn G-48-09 to implement
9 such a GBL that allows access to PPA Power; correct?

10 A. I do not believe they would have to overturn
11 that, no. The Commission isn't bound by previous
12 regulatory decisions at all. It's not like a court.
13 They are informative, but they are only informative.
14 And we wouldn't be asking for a direct overturn of
15 that Decision because that decision was an amendment
16 to Section 2.1 of the PPA.

17 My position is you wouldn't have to amend
18 Section 2.1 of the PPA to to allow that because the
19 PPA says it restricts FortisBC's ability to purchase
20 power for the purpose of supplying self-generating
21 customers that are selling below-mill load. It all
22 comes down to the definition of what is Mill Load.

1 Mill Load can be at that point in time. Mill Load can
2 be a historic GBL that's agreed to and approved by the
3 Commission. So, again, I believe there are still
4 options to explore. And, in fact, we continued to
5 have conversations on those bases as if those options
6 were still open.

7 Q. Did G-48-09 use terms like "historical load,"
8 or did it use the term "net-of-load" on a dynamic
9 basis, Mr. Swanson?

10 A. It used both terms.

11 Q. Used both terms?

12 A. Yes.

13 Q. With respect to the type of electricity sales
14 that would be allowed?

15 A. Well, G-48-09, the actual amendment just says
16 "load." So the amendment to Section 2.1, the result
17 of G-48-09 just amended--just amended the
18 restriction--

19 Q. And what does G-48-09 say, Mr. Swanson?

20 A. G-48-09 says a lot.

21 Q. Does it use the term "net-of-load on a
22 dynamic basis" or not?

1 A. In one section it does use the term
2 "net-of-load on a dynamic basis," but there's a lot of
3 discussion about GBLs, for instance, in that same
4 Decision.

5 Q. A lot of talk of GBLs. There is a lot of
6 talk of GBLs in G-48-09?

7 A. At least the concept of GBLs, yes, there is.

8 Q. Okay. Let's back to what G-48-09 does
9 because I think you said that it only restricts
10 FortisBC. But the truth is the Orders direct
11 restriction on PPA electricity, also had the practical
12 effect of imposing a total restriction on Celgar's
13 access to embedded-cost electricity while selling
14 electricity, didn't it?

15 A. No. My position is there were still options
16 that remained open.

17 Q. Okay. And could you--and are any of those
18 options available to Celgar at the moment?

19 A. Are they available to Celgar at the moment?
20 Yeah, I think Celgar could come forward with a
21 reasonable proposal of a GBL.

22 Q. Okay.

1 A. And we could reach agreement on that and put
2 it in front of Commission for approval. There are
3 steps Celgar would have to take in order to be able to
4 do that, but there are steps Celgar would have to take
5 to be able to sell electricity anyway like, you know,
6 getting transmission capacity and entering into
7 agreement. So, there are steps it would have to take
8 first, but, yes, those options are available.

9 Q. Let me turn you to R-221. So, again, I was
10 just asking you--because you had said that G-48-09
11 only restricts FortisBC; whereas--I think our
12 understanding is that the practical effect is that it
13 imposes a total restriction on Celgar's access to
14 embedded cost of electricity while selling. So, in
15 R-221, BCUC Order G-60-14, and this is PDF Page 131 of
16 150, the first paragraph where the BCUC says, "The
17 practical effect of this Decision"--they are referring
18 to G-48-09--"was to require FortisBC's customers to
19 service 100 percent of their load from self-generation
20 prior to engaging in export sales to the extent that
21 their load would otherwise be served indirectly by
22 BC Hydro under RS3808," meaning PPA Power.

1 Do you disagree with this statement,
2 Mr. Swanson?

3 A. No. That is actually the statement I was
4 referring to where it's saying their load, and it
5 comes down to the definition of "load," whether "load"
6 is their "load" at that moment in time or whether
7 their "load" is some sort of the historic GBL.

8 Again, shortly after this Decision,
9 Mr. Merwin sends FortisBC a memo to that effect that
10 he believes it has left door open for a GBL, and he's
11 suggesting--in that memo he's suggesting a GBL of I
12 believe it was 3.5 megawatts.

13 Q. And then I believe Celgar actually requested
14 a GBL from the BCUC; correct? And the BCUC rejected
15 that request; correct?

16 A. Sort of. The reason I say "sort of" is
17 Celgar has never formally filed an application with
18 the BCUC to set a GBL. Celgar has asked for a GBL
19 determination, but they've asked for that in many of
20 the incorrect processes. As an example, FortisBC was
21 doing a cost of service rate design Application, and a
22 cost of rate design Application is where you take all

1 the utility's costs and you determine which customer
2 classes caused those costs, and, therefore, how much
3 is each customer class responsible for in terms of
4 cost and how much are you collecting for each customer
5 class. So it's really a cost allocation exercise. In
6 that process -- that's the process that led to
7 G-156-10. In that process Celgar requested the
8 Commission determine a GBL.

9 But my position is that would be--and my
10 position was at the time that is absolutely the
11 incorrect process to do that in because the
12 participants in that process, the other intervenors
13 and stakeholders in that process, had entered that
14 process expecting that process to be about the
15 allocation of utility costs, customer classes, not to
16 be about setting a GBL for Celgar.

17 So, it was the wrong group of Parties
18 involved in that process, in my submission. That
19 would--also Parties that say, for instance, BC Hydro
20 customers that may have an interest in how a GBL is
21 set for Celgar wouldn't have been Parties in the
22 process where Celgar made that request. So, I opposed

1 that request at that time as well.

2 Q. In Paragraphs 115 to 125 of your First
3 Witness Statement, Mr. Swanson, you address BCUC Order
4 and Decision G-188-11, and I believe that's the Order
5 where the BCUC stated that Celgar is free to sell all
6 of its generation below the BC Hydro GBL that it has
7 into the market and supply its mill from FortisBC
8 resources not including BC Hydro PPA electricity.

9 Is that your understanding as well?

10 A. I believe that's correct.

11 Q. In Paragraph 121 of your First Witness
12 Statement, you cite a portion of the G-188-11
13 Decision, specifically saying that the BCUC suggested
14 that the restriction in G-48-09 did "not preclude
15 FortisBC from establishing its own principles
16 regarding the supply of non-BC Hydro PPA Power in its
17 resource stack which establishing GBLs with
18 customers"; is that correct?

19 A. That's correct.

20 Q. But no rate has actually been established for
21 Celgar to purchase its electricity requirements from
22 FortisBC while selling its below-load electricity; is

1 that correct?

2 A. No rate has been established. It's still in
3 process. And part of the reason it's still in process
4 is there's a lot of--there's a lot of these things
5 have that have knock-on effects on each other. For
6 instance, the new PPA between BC Hydro and FortisBC
7 has a Section 2.5. That Section 2.5, as I mentioned
8 earlier, is the general restriction on FortisBC's
9 access to PPA Power when it is using that power to
10 replace energy that is being sold, either by FortisBC
11 or its customer. It also has that recognition of a
12 GBL that, if approved by the Commission, would open
13 the door and allow those such sales.

14 Celgar has been wanting that restriction
15 removed entirely from the PPA. So, we're still in
16 that process, having those discussions on whether that
17 should be removed. If that gets removed, there is no
18 reason to establish a rate to do this because there
19 would be no restriction. I believe at any point in
20 time Celgar could have stopped fighting and asking for
21 everything and accepted some of the very good deals
22 that were on the table to it and could have

1 capitalized upon that. But instead, if they keep
2 fighting to try and get everything, this is always
3 going to stay in flux until all those final
4 decisions--until the fight is actually over.

5 Q. And you reference Celgar keeps trying to
6 fight for everything. Would it be fair to say that
7 Celgar is fighting for the right to have access to
8 embedded-cost power while selling its power?

9 A. Celgar is fighting for the access to
10 embedded-cost power including PPA for 100 percent of
11 its load--

12 Q. Right.

13 A. --selling power, which is something that
14 nobody else in the Province has. So they're fighting
15 for--that's why I characterize it as they're fighting
16 for everything.

17 Q. Are they fighting for the same standard to be
18 applied to everybody?

19 A. No. They are actually--I believe they are
20 actually asking for them to be the only one to have
21 that benefit.

22 Q. Now, I understand--you've referred to the

1 NECP Rate Rider proceeding in this NECP Rate Rider
2 rate that I believe FortisBC has proposed to the BCUC
3 Commission. Now, that proceeding, the NECP Rate Rider
4 was suspended precisely because a new PPA has been
5 proposed by BC Hydro, and you just referred to the
6 Section 2.5 in that new PPA. And in that proceeding,
7 about the new PPA or the 2013 PPA, there's a
8 possibility that the BCUC could actually discard
9 Section 2.5 or the restriction in Section 2.5 with
10 respect to the FortisBC's purchases of PPA Power and
11 FortisBC's self-generators uses of that power; is that
12 correct?

13 A. That's mostly correct in that I would end
14 that FortisBC's access to that PPA Power.

15 Q. Okay. We've had that discussion. And it's
16 because of those proceedings that the BCUC suspended
17 the proceedings regarding the NECP Rate Rider that
18 FortisBC had proposed; is that correct?

19 A. It's as a result of that debate going on in
20 that proceeding and the conditions that came out of
21 that eventual Decision, the PPA Decision, and, in
22 fact, the fact that that section is still being

1 challenged today by Celgar, it is all those reasons
2 that that NECP Rate Rider is still being held in
3 abeyance.

4 But we also can't forget that the NECP Rate
5 Rider is just a formalization. It is where we made
6 formal an offer we had been making all along. And by
7 "all along," I mean shortly after G-48-09, I called
8 Mr. Merwin. I was actually in Castlegar at the time
9 standing in the park at Zuckerberg Island when I
10 called Mr. Merwin--this was immediately or quite soon
11 after G-48-09--where we were discussing what to do
12 now, what to do now post-G-48-09. And in that
13 conversation I offered to enter into a long-term block
14 purchase of power that would be very reasonably--there
15 would be a very reasonable cost associated with it,
16 probably no increment in cost due to the depressed
17 power markets, and I could enter into that block of
18 power, and we could demonstrate to BC Hydro that there
19 was no increased take of PPA because here is a block
20 of power that's used to supply Celgar while Celgar is
21 selling below its Mill Load. Mr. Merwin was not
22 interested in that offer. But that offer has been

1 made repeatedly throughout the process. It is only
2 now that we're in regulatory process where it's been
3 given the title of NECP, and now we've got a
4 regulatory process to offer that generally to
5 customers, not just to Celgar.

6 Q. But that process has been suspended pending
7 the separate process about the new 2013 PPA; is that
8 correct?

9 A. That's correct, separate but related process.

10 Q. Okay.

11 MS. GEHRING FLORES: Mr. President, could we
12 take a break at this moment?

13 PRESIDENT VEEDER: What sort of break are you
14 looking for?

15 MS. GEHRING FLORES: Just five minutes.

16 PRESIDENT VEEDER: We can take our
17 mid-morning break, if you want.

18 MS. GEHRING FLORES: That's fine.

19 PRESIDENT VEEDER: Let's take a 15 minutes.

20 We'll come back at 11:30. We say this to all
21 Witnesses, please don't discuss the case or your
22 testimony until you come back before the Tribunal.

1 (Brief recess.)

2 PRESIDENT VEEDER: Let's resume.

3 BY MS. GEHRING FLORES:

4 Q. Mr. Swanson, you mentioned that FortisBC has
5 proposed a GBL to Celgar. The GBL that FortisBC
6 proposed to Celgar was at what level? What was the
7 number?

8 A. 41 megawatts.

9 Q. That's actually higher than the GBL that
10 Celgar has with BC Hydro; correct?

11 A. That's correct. And if you look at that
12 proposal it says approximately 41 megawatts. It's
13 really meant to be a starting point for discussion.

14 Q. So the starting point for the discussion was
15 with a GBL that would not have allowed Celgar to sell
16 any additional electricity above its BC Hydro GBL; is
17 that correct?

18 A. The starting point for the discussion, that's
19 correct.

20 Q. Okay.

21 A. But FortisBC was willing to move off that
22 starting point as long as it was a reasonable GBL.

1 Q. Well, but then--and I just want to clarify,
2 particularly for the Tribunal: That might be a future
3 option for Celgar that the BCUC would have to approve;
4 correct?

5 A. Future or past option for Celgar. In both
6 cases, the BCUC would have to approve, yes, that's
7 correct.

8 Q. And with respect to the NECP Rate Rider, was
9 that available to Celgar in 2008?

10 A. Before G-48-09?

11 Q. Yes.

12 A. We had never had the discussion with Celgar
13 with a topic before G-48-09. That discussion occurred
14 shortly after G-48-09, which was in 2009.

15 Q. And again, I guess for the Tribunal's
16 understanding--because I think during your direct you
17 made it sound like the NECP Rate Rider has been
18 available to Celgar as an option the entire time. But
19 I just want to clarify: The NECP Rate Rider has been,
20 one, proposed by FortisBC in 2013; correct?

21 A. The term "NECP Rate Rider," you're quite
22 correct, is a term that's come more formally recently.

1 The original concept, which is the purchase of a
2 matching block purchase, actually the first
3 conversation of that was the one I was referring to
4 shortly after G-48-09 when I called Mr. Merwin from
5 the park beside Zukerberg Island in Castlegar.

6 Q. But that concept would have had to have been
7 developed and proposed to the BCUC and approved by the
8 BCUC; correct?

9 A. The concept was actually--was developed. It
10 would have had to have been agreed to by Celgar. We
11 could have taken that to the BCUC. And if all Parties
12 were in agreement--and there would be no reason for
13 them not to be if Celgar was amenable to that--that
14 would have been a very quick approval.

15 Because that would easily have demonstrated
16 to BC Hydro that FortisBC was not acquiring that
17 replacement power under the PPA, which was point of
18 contention. So that could have proved that that was
19 not the case, and it would have been a very easy
20 approval.

21 Q. But just talking about reality now.

22 A. I am talking about reality.

1 Q. Reality today, the NECP Rate Rider is not
2 available to Celgar because it is not an approved rate
3 by BCUC? Correct or no?

4 A. That's correct. It's being held in abeyance,
5 as I discussed, pending the outcome of the challenges
6 on Section 2.5 of the new PPA which could make the
7 NECP Rate Rider unnecessary.

8 Q. Okay. Just wanting to clarify a little bit
9 about the NECP Rate Rider. Could we turn to
10 Paragraph 29 of your Second Witness Statement.

11 It's--Laura, if you could actually grab the
12 text above the table and the table.

13 Just one very quick precision. In the table
14 you have a column labeled "Dollars Per Megawatt Hour"
15 and "Total Cost." Are those columns in U.S. dollars
16 or Canadian dollars?

17 A. Those are hypothetical numbers.

18 Q. But hypothetically, are they in U.S. dollars
19 or Canadian dollars?

20 A. Yes.

21 Q. Would you have--would there be any reason why
22 the first column, for instance, would be Canadian

1 dollars and the second column would be U.S. dollars,
2 or vice versa?

3 A. I think you're speaking to rows, not columns,
4 first of all.

5 Q. No, I mean columns.

6 A. So the column of "Customer Load"?

7 Q. No, next to that, "Dollar Per Megawatt Hour,"
8 and the column next to that is "Total Cost." Would
9 those columns in your example be Canadian dollars or
10 U.S. dollars?

11 A. It's just an example.

12 Q. When you send Celgar an electricity bill is
13 it in U.S. dollars or Canadian dollars?

14 A. Canadian dollars.

15 Q. Okay. And when FortisBC executes its
16 financial statements, is it in Canadian dollars or
17 U.S. dollars?

18 A. Canadian dollars.

19 Q. Okay.

20 A. I guess you could assume it is Canadian
21 dollars.

22 Q. Okay. I just want to establish that the

1 monetary denomination that would be applicable to the
2 NECP Rate Rider would be Canadian dollars. That's
3 all.

4 A. Yeah. This is an example of what it could
5 be. These aren't real numbers by any means.

6 Q. Right. Because the BCUC has never approved
7 it; correct?

8 A. I'm sorry?

9 Q. Because the BCUC has not approved this
10 proposal; correct?

11 A. That's not why these aren't real numbers.
12 These aren't real numbers because this is just trying
13 to show how a calculation would work. It is just
14 fictitious numbers demonstrating how a calculation
15 would work.

16 Q. Okay. And in--I guess just to give you
17 another fictitious or hypothetical example, I believe
18 you said that, if a self-generator wants to serve its
19 load while exporting power, that self-generator would
20 need to nominate the amount of electricity that it
21 wants to purchase from FortisBC in that scenario; is
22 that correct?

1 A. It would be the--yes, that's correct, because
2 it would be the easiest way for us to demonstrate
3 we're not taking increased PPA Power. So, by
4 demonstrating we're doing a matching block of power.
5 So we're purchasing the same amount as we're selling.
6 It's a clear demonstration that we haven't used PPA
7 for that purpose.

8 Q. Okay. And so if hypothetically Celgar had
9 nominated 349-gigawatt hours of electricity, under
10 this NECP Rate Rider proposal, would FortisBC go out
11 and buy a matching block of power for 349-gigawatt
12 hours, or just 85 percent of that nomination amount?

13 A. FortisBC would secure, whether that be a
14 purchase--would secure an incremental full 349, not
15 85 percent of that. Would secure that either from
16 whatever sources or resources that are available to
17 FortisBC excluding PPA Power.

18 Q. Right. And I believe in Paragraph 29, you
19 state that, "FortisBC will have to make a matching
20 purchase for the entire amount"; is that correct?

21 A. I believe so, but let me just double-check.
22 Yes, I do say that.

1 Q. And in your example, the cost of that
2 matching block--is the cost of that matching block, is
3 somehow 15 percent of that taken out to represent the
4 PPA Power?

5 A. I'm not understanding the question.

6 Q. I guess--so it's been represented that about
7 15 percent of FortisBC's resources comes from
8 BC Hydro's PPA Power.

9 A. I understand what you're asking me.

10 Q. Okay. So, I'm just trying to make sure here.
11 FortisBC, as you say in your Statement, would have to
12 buy the entire amount nominated by, in this
13 hypothetical, Celgar. They would have to go out and
14 purchase 349-gigawatt hours; is that correct? Or is
15 there some sort of accommodation for the 15 percent of
16 PPA Power?

17 A. There is really no accommodation, per se, of
18 the 15 percent PPA Power, and here is why. It is
19 because, although PPA Power on an actual basis only
20 represents about 15 percent of FortisBC's load, a lot
21 of FortisBC resources are already used up. So we
22 can't go and get more power from them.

1 So as we increase the amount of load we have
2 to serve, we can only look to the resources that are
3 available to FortisBC. For instance, FortisBC
4 generates a little less than half of its electricity
5 requirements through its own generation. We cannot go
6 and get half of this supply from FortisBC's own
7 generation because it is already being used up. It is
8 already being used to serve existing load.

9 So as we add new load associated with serving
10 Celgar, as Celgar repurposes its generation for the
11 purpose of sale, as we add new load, we have to look
12 at where we can get new sources of supply. So you can
13 only look at incremental sources of supply.

14 So that would be if we have incremental
15 generation, for instance, from our--we have
16 incremental capacity from our Waneta Expansion
17 Project, so we can use that. We can get incremental
18 purchases, but we can't--we can't get incremental of
19 the resources that are all used up, like FortisBC's
20 own generation.

21 So on that basis we only look to the
22 incremental sources available, and the incremental

1 sources are a matching block purchase or PPA. And
2 because there's a restriction in our ability to access
3 PPA, we look at a matching block purpose at this point
4 in time because the utility will add incremental
5 resources over time as the load goes up. You
6 don't--every time your load ticks up by 1-megawatt or
7 1-megawatt hour, you don't go buy a 1-megawatt hour
8 generating plant, buy or build.

9 So, there's been points in time where we have
10 excess resources available, and there's been points in
11 time where we have insufficient resources available
12 and our marginal resources are all purchased. We're
13 at a point in time right now on the energy side where
14 our marginal resources are all purchased. On the
15 capacity side we do have excess capacity.

16 There will likely be points in the future
17 where again we're energy-rich as well. That's because
18 you add generation in fairly large incremental chunks,
19 where your load is--your load is usually a little more
20 linear, your generation gets built out in separate
21 chunks. So on that basis it would be incorrect to
22 assume there is only 15 percent of BC Hydro is being

1 used to serve incremental load because on a real
2 basis, almost all incremental load that we get is
3 being served either by BC Hydro PPA or by incremental
4 purchases because all those other sources that
5 FortisBC has are used up already--

6 Q. So under--

7 A. --other than the Waneta Expansion capacity.

8 Q. Under that explanation, Celgar actually--and
9 under that NECP Rate Rider concept, Celgar gets no
10 benefit from FortisBC's existing generation; is that
11 right?

12 A. Other than the Waneta Expansion capacity, no.
13 Because if we were to allocate that generation, that
14 existing generation, to Celgar because it's all used
15 up, that means we'd have to take it away from another
16 customer and give it to Celgar for the purpose of
17 Celgar repurposing its generation from being used to
18 serve load to being used to facilitate sales
19 activities. So we'd have to take that power from
20 somebody else to give it to Celgar.

21 There is not more power we can just generate
22 from our generating resources because, for all but a

1 couple hours in a year, that resource is fully
2 utilized at this point in time.

3 Again, once we add more generation in the
4 future, that won't be the case, but at this point in
5 time that's the case.

6 Q. So among the several BCUC Decisions you
7 describe as G-48-09 and the associated proceedings
8 with that Decision in Paragraphs 76-90 of your First
9 Statement, during the G-48-09 proceedings, you were
10 FortisBC's Director of Regulatory Affairs; correct?

11 A. That's correct.

12 Q. And so we talked about this before. You were
13 pretty familiar with FortisBC's submissions before the
14 BCUC in those proceedings; correct?

15 A. That's correct.

16 Q. And I think a law firm, Farris Vaughan
17 Wills & Murphy, may have submitted some of the
18 submissions by FortisBC during G-48-09; correct?

19 A. That's correct.

20 Q. But you're very familiar with what they
21 submitted?

22 A. Yes.

1 Q. And you reviewed them?

2 A. Yes.

3 Q. And you approved them?

4 A. Yes.

5 Q. So your description in your First Statement
6 about the G-48-09 proceedings and FortisBC's
7 participation in those seems particularly deferential
8 to BC Hydro's arguments in those proceedings. And I
9 refer you to Paragraph 79-81 of your First Statement.

10 But I guess, regardless of the way you
11 characterize FortisBC's submissions before the BCUC in
12 the G-48-09 proceedings in your Statement, would you
13 describe FortisBC's contemporaneous submissions before
14 the BCUC as deferential to BC Hydro's position?

15 A. Originally FortisBC had taken a position
16 different than what BC Hydro had taken. By
17 "originally," I mean that was in the process leading
18 up to G-48-09. So we did argue that you can't be sure
19 where the electrons--where physically the electrons
20 are flowing into the system and where physically the
21 electrons are flowing out the system. So that was our
22 position.

1 During the regulatory process and the
2 resulting Decision, G-48-09, it was--I would say we
3 were corrected, that the way the Commission would look
4 at that was that, because that is our marginal
5 resource--so that's the marginal resource I've been
6 referring to--and the fact that all our other
7 resources are used up, because that is our marginal
8 resource, the practical reality is we would be
9 accessing PPA Power. And on that basis that's where
10 G-48-09 arises.

11 Q. Thanks for going ahead, Mr. Swanson. I'm
12 just asking about FortisBC's submissions before the
13 BCUC in that proceeding.

14 In that proceeding, did FortisBC argue that
15 it was proper for BC Hydro to attempt to control the
16 use of self-generated electricity by FortisBC's
17 customers?

18 A. Did FortisBC see that it was proper that
19 BC Hydro?

20 Q. Yes. Did FortisBC--

21 A. No.

22 (Overlapping speakers.)

1 Q. --argue that it was proper for BC Hydro to
2 attempt to control the use of self-generated
3 electricity by FortisBC customers?

4 A. No.

5 Q. And I think in your testimony you cite to a
6 few FortisBC's submissions in your narrative. But you
7 didn't cite to FortisBC's final argument in the
8 G-48-09 proceeding, did you?

9 A. No. I tended to cite kind of the
10 post-decision kind of.

11 We all take positions--justified positions,
12 we feel--during the regulatory process. Then you get
13 a Decision which makes a determination on those
14 issues, and then going forward after that you tend to
15 adhere to the determinations that were made and you
16 take the position now informed by the fact that
17 there's been further Decisions made.

18 Q. Sure. Let's look at one of the positions
19 that you thought was justified to bring before the
20 BCUC.

21 Could we turn to C-273, which is FortisBC's
22 final argument submitted January 23, 2009, to the

1 BCUC. Do you recognize this submission?

2 A. Yes, I do.

3 Q. Okay. And do you recall what FortisBC's
4 position was regarding the loss that BC Hydro claimed
5 it would incur if FortisBC's customers were entitled
6 to sell electricity while purchasing electricity from
7 FortisBC?

8 A. Yes. Generally speaking, FortisBC felt that
9 BC Hydro had tools at its disposal that it could
10 mitigate the loss and the loss wouldn't be to the
11 magnitude that BC Hydro was claiming.

12 Q. Could we turn to Paragraph 70 of that final
13 submission, where I believe FortisBC pointed out that
14 BC Hydro had stated before the BCUC that it would not
15 complain if a FortisBC self-generator stopped
16 generating electricity and increased its electricity
17 purchases from FortisBC, which would result in an
18 increase of FortisBC's "energy take" under the
19 BC Hydro-FortisBC Power Purchase Agreement in the same
20 manner as if the self-generator were exporting power
21 while purchases power from FortisBC. Is that correct?

22 A. That's correct.

1 Q. Now, in Paragraph 71, due to the--

2 A. Sorry. Just stepping back, that's correct.

3 In that information request, that's the question we

4 asked.

5 Q. Okay.

6 A. Is that what you were saying?

7 Q. That that's a reflection of what was stated

8 in Paragraph 70.

9 A. Yeah, what was stated was--specifically that

10 sentence says, "In that information request,

11 Exhibit C-4-5, FortisBC IR1.3.2, FortisBC queried

12 whether BC Hydro would acknowledge that if the City of

13 Nelson were to cease self-generating power...a

14 resulting increase in FortisBC's energy take under the

15 Power Purchase Agreement would impact on BC Hydro's

16 operations in essentially the same manner as if the

17 City of Nelson were exporting power for the same

18 period of time."

19 So that is a question we posed to BC Hydro.

20 Q. Okay. And then in Paragraph 71, it seems

21 like, because of what you identified as BC Hydro's

22 inconsistent position, FortisBC states that, The

1 purpose of BC Hydro's Application is not so much to
2 avoid loss as it is to prevent persons other than
3 BC Hydro from gaining a profit from export sales to
4 which BC Hydro feels it alone should be entitled.

5 You approved that part of FortisBC's final
6 submission; correct?

7 A. Yes.

8 Q. And then in Paragraph 72, you also state
9 that, "BC Hydro's"--let's say Application--"seeks not
10 merely to prevent FortisBC's customers from exporting
11 self-generated electricity from the FortisBC service
12 area, but from selling self-generated electricity
13 within or without of the FortisBC service area."

14 And you approved that statement as well?

15 A. I did.

16 Q. And let's move on to Paragraph 80 where, in
17 one of the concluding paragraphs of your submission,
18 FortisBC notes, "The Provincial Government has not
19 seen fit to implement the policy of any kind on the
20 issue that is the subject matter of this application.
21 If any such policy is to be implemented in British
22 Columbia, it should be a matter of Government

1 policymakers to address on a Province-wide basis.
2 Unless and until the Provincial Government determines
3 it is necessary or appropriate to develop such a
4 policy, FortisBC submits that its customers should be
5 free to participate in the export market as their
6 facilities, operations, and contractual arrangements
7 permit."

8 And you also approved that statement as well;
9 correct?

10 A. I did.

11 Q. So in the G-48-09 proceedings, FortisBC was
12 seeking consistent principles Province-wide; correct?

13 A. I don't think FortisBC was asking for a
14 consistent Province-wide Provincial policy. I think
15 FortisBC was saying, in absence of any policy that
16 restricts, Celgar should allowed to--to do with its
17 generation what it wants to do with its generation.

18 Q. I guess the Tribunal can see what it says and
19 whether it says a "Province-wide policy."

20 So, if the BCUC had agreed in that
21 proceeding, in G-48-09, and had simply extended the
22 G-38-01 principles to apply to the FortisBC territory

1 as well, with the Commission guidance, would you have
2 been willing to compute a GBL for Celgar?

3 A. Can we break that down? Which G-38-01
4 principle are you--that's a very broad question.

5 Q. If BCUC had agreed with your argument and
6 there should be a Province-wide principle and agreed
7 to extend the G-38-01 order to FortisBC territory,
8 would FortisBC have agreed to compute a GBL for
9 Celgar?

10 A. FortisBC didn't argue that there should be a
11 Province-wide principle. FortisBC is saying in the
12 absence of a Province-wide principle.

13 Q. Okay. So humor me with my hypo.

14 If in the G-48-09 proceeding the BCUC had
15 decided to apply Order G-38-01 to BC Hydro territory
16 and FortisBC territory, would FortisBC have refused to
17 compute a GBL for Celgar?

18 A. I don't know which principle of G-38-01
19 you're referring to. But if FortisBC received an
20 Order from the Commission, it would not have refused
21 to follow an Order of the Commission.

22 Q. Okay. In Paragraph 151 of your Statement, I

1 believe you state that Celgar's regulatory quagmire is
2 largely of its own making?

3 A. Yes.

4 Q. And I believe you make similar statements in
5 your--at Paragraph 90 of your First Statement as well.
6 Would you agree that one of the principal points that
7 Celgar has raised, as you say, repeatedly before the
8 BCUC is its entitlement to embedded cost electricity?

9 A. In part that's correct, but it goes beyond
10 that. Its entitlement to embedded cost electricity
11 with no restrictions up to 100 percent of its load and
12 its embedded cost--including BC Hydro's PPA embedded
13 cost electricity up to 100 percent of its load.

14 When I say "up to 100 percent," there were
15 times they asked for a GBL of 3.5. There were times
16 they asked for a GBL of 1.5. There was times when
17 they asked for a GBL of 0, so at or near 100 percent
18 of its load.

19 Q. I guess I'm a little confused. Because it
20 was FortisBC before the BCUC Commission in the G-48-09
21 proceedings that said that BC Hydro was making an
22 improper attempt to exert BC Hydro control over the

1 use of self-generated power by third-party customers
2 of FortisBC; correct?

3 A. Again, barring any restrictions to do so,
4 that was FortisBC's position. G-48-09 comes out,
5 which restricts FortisBC's ability to access PPA Power
6 and leaves the door open for a couple other options
7 but restricts FortisBC's abilities to access PPA
8 Power. That helps defer their informed FortisBC's
9 position going forward.

10 So as each Decision is issued, FortisBC's
11 position will change slightly if it needs to in order
12 to stay compliant with Commission Orders.

13 Q. And is it your contention that basically
14 Celgar is abusing the BCUC process?

15 A. You know, the BCUC process is--it allows a
16 lot. So it allows for intervention without much
17 restriction. Celgar is definitely making the most of
18 it. Whether that's classified as abuse of the
19 process, I don't know that I can quite go that far.

20 Q. The BCUC has actually as a general matter
21 awarded Celgar's its costs for participating as an
22 intervenor in these proceedings where you say they are

1 repeatedly bringing up the same subject; is that
2 right?

3 A. Yeah. That's a very low threshold test to
4 get recovery of costs. Pretty much everybody gets
5 recovery of their incremental costs as long as they're
6 in the guidelines, the participant assistance
7 guidelines.

8 Q. But you challenged Celgar's request for those
9 Awards; right?

10 A. We challenge not just Celgar, but any
11 intervenor's request if we see it as being outside the
12 principles of the guidelines.

13 Q. Is there any request of Celgar that you have
14 not opposed?

15 A. No. I think generally I felt that--I believe
16 their requests have generally been outside the
17 guidelines so I've challenged them, and typically the
18 Commission has agreed with some of those challenges.

19 Q. Typically. The BCUC has typically agreed
20 with FortisBC in those Awards, Decisions?

21 A. Not 100 percent, but with some of those
22 challenges.

1 Q. What percent?

2 A. I haven't calculated a percentage.

3 Q. You are testifying under oath, Mr. Swanson.

4 Would you say they've agreed with you in one instance?

5 A. Several.

6 Q. Several?

7 A. I don't know exactly how many.

8 Q. Okay. Well, I guess we'll ask counsel if we
9 might be able to submit documentation to substantiate
10 that.

11 And you testify in your Statement that
12 Celgar's participation in BCUC proceedings is costing
13 FortisBC's ratepayers a rate increase of up to
14 1.5 percent; is that correct?

15 A. It's Celgar's actions in the proceedings. So
16 it's not us paying Celgar the amount equal to 1.5. It
17 is Celgar's argue to generally expand scope in
18 processes. They've taken very extreme positions in
19 processes. They basically--there's been a lot of
20 additional information that I think has confused a lot
21 of processes.

22 And what's that done is it has lengthened the

1 process not just for Celgar but for FortisBC and for
2 all the other intervenors, which drives up the total
3 cost of FortisBC participating in regulation.

4 Q. Mr. Swanson, are you familiar with the City
5 of Kelowna proceeding where FortisBC acquired the City
6 of Kelowna utility assets for \$55 million?

7 A. I'm very aware of that proceeding.

8 Q. Could you turn to R-260, PDF Page 23. It's
9 kind of on the border of 23 and 24. Celgar intervened
10 in that proceeding, did it not, Mr. Swanson?

11 A. Yes, it did.

12 Q. And I believe in that proceeding, FortisBC
13 was seeking to include into the ratepayer base the
14 entire \$55 million cost of the purchase of the City of
15 Kelowna proceeding--the City of Kelowna's utility
16 assets; is that correct?

17 A. That was a CPCN Application, or a Certificate
18 of Public Convenience and Necessity Application, for
19 the acquisition of the City of Kelowna utility assets.
20 FortisBC was seeking many determinations, including
21 the approval of that acquisition; but as part of that
22 determination, it was seeking the inclusion of the

1 full purchase price of 55 million in rate base.

2 And the reason FortisBC was seeking such a
3 determination was, even at the full purchase price of
4 55 million, the acquisition of that utility at Fair
5 Market Value would provide positive benefits to
6 customers; and because that was the acquisition of
7 assets as opposed to the acquisition of shares, that
8 was something that needed to be--it needed to be
9 tested in British Columbia to see what amount was
10 going to be allowed into rate base.

11 Q. And the BCUC determined in that proceeding
12 that FortisBC would not be able to include the full
13 \$55 million into ratepayers' rate base. Instead they
14 said 37.7 million would be the total; is that correct?

15 A. That is correct.

16 Q. Did you include the \$17.3 million in savings
17 to ratepayers due to Celgar's challenge in this
18 Application in your calculus of how much Celgar is
19 costing ratepayers?

20 A. No, because it wasn't only Celgar taking that
21 position. It was basically all the intervenors were
22 basically--or most of the intervenors were taking that

1 position. And that was the key--that was one of the
2 key determinations that would arise out of that
3 Application, whether or not Celgar participated.

4 That was a very live issue, the issue around
5 what amount to include in rate base when you
6 acquire--when you acquire assets, and, you know, the
7 converse issue, what amount--what amount of a gain or
8 loss should be attributable to ratepayers versus the
9 utility when you sell assets is a very live issue any
10 time a transaction occurs.

11 Q. Mr. Swanson, who raised the issue in the
12 proceeding of how much of that amount would be able to
13 be included in the ratepayers rate pace? Which
14 intervenor?

15 A. That issue would have been raised--I mean
16 Celgar was one of the intervenors who raised that
17 issue, but that issue was a live issue and would have
18 been raised regardless. I mean, there is a fair
19 amount of that Application that was devoted to that
20 topic.

21 Q. Did anyone raise it until Celgar raised it?

22 A. I think Celgar might have spoken first, so

1 they might have been the first one to speak.

2 MS. GEHRING FLORES: No further questions.

3 PRESIDENT VEEDER: Thank you.

4 Are there any questions from the Respondent?

5 MR. DOUGLAS: Yes, please. Just one moment.

6 (Pause.)

7 MR. DOUGLAS: We're ready to proceed.

8 PRESIDENT VEEDER: Please proceed.

9 REDIRECT EXAMINATION

10 BY MR. OWEN:

11 Q. Mr. Swanson, you mentioned that Mr. Debienne
12 was retired?

13 A. Yes, he is.

14 Q. Do you know if he wanted to be a witness in
15 this proceeding?

16 A. No, he did not. He wanted to be retired, I
17 believe. I poked and prodded at him to try and
18 convince him that it would be helpful if he was.

19 Q. Okay. Thank you.

20 Counsel referred you to Exhibit C-214.

21 MR. OWEN: Could we have that up on the
22 screen, please.

1 This is the hodgepodge of e-mails that
2 survived the server migration, and it's the July 17
3 "terra firma" communication. So, that's the
4 communication that you referred to about regulatory
5 risk. But could we bring up now--and this was on
6 July 17, 2008.

7 Can we bring up Exhibit 242, please.

8 BY MR. OWEN:

9 Q. And just to situate the next exhibit, this is
10 covering e-mail--can you read out who is on that
11 e-mail?

12 A. That's an e-mail from Mr. Don Debieenne sent
13 to Mr. Brian Merwin on December 19, 2007.

14 Q. Okay. Can we go to the Term Sheet that's
15 attached to that e-mail, please, Exhibit 243. And can
16 we go to Page 7, please.

17 Could you read that and tell us, if you
18 recall, whether you discussed this with Mr. Debieenne?

19 A. Did you want Page 7 or Paragraph 7?

20 Q. Oh, you know what? It's Section 7. I'm
21 sorry. it is right there.

22 A. Okay. Again, did you want me to read that?

1 Q. Yes, please.

2 A. "Contractual commitments precluding peaking
3 sales from time to time. Brian, this one still causes
4 major concern from a cost perspective if we are unable
5 to peak shave and have to absorb 40-plus megawatts
6 incremental load under all circumstances, which would
7 likely be the case if you bid all the power into the
8 BC Hydro. It would work well if you held back
9 25 megawatts of the total generation--or gen for
10 export, to the market and the rest into BC Hydro.
11 That would enable 25 megawatts of Peaking Sales to be
12 accessed with some degree of certainty and would be
13 consistent with the principles in the Tolko Decision,
14 which were more restrictive; i.e., thou shall retain
15 XX megawatts for the internal Mill Load. At least
16 this way you can sell, sell, sell, until we hit some
17 bad weather in December or January. I recall we
18 talked about using the islanding provision in
19 conjunction with peaking sales, but I can't recall the
20 rationale."

21 Q. Mr. Swanson, what would the Tolko Decision
22 refer to?

1 A. The Tolko Decision refers to on--I'm drawing
2 a blank on the Decision number right now. But the
3 Decision that--the Decision that determined how much
4 of Tolko's self-generation would have to be used to
5 serve Mill Load.

6 Q. Do you recall what year that was in?

7 A. In '02. 2001, I believe.

8 Q. And did you discuss this document with
9 Mr. Debienne, do you recall?

10 A. Did I discuss the Term Sheet with
11 Mr. Debienne?

12 Q. Yeah.

13 A. Yes, I did.

14 Q. And what did he say about it, if you can
15 recall?

16 A. What did he say about the Term Sheet?

17 Q. This reference to the Tolko Decision.

18 A. Generally, when we talked about the Tolko
19 Decision and the implications it could have on this,
20 we saw that as a risk to this Agreement. Because
21 what's being suggested in this agreement was 100
22 percent of self-generation being used for the purposes

1 of sale, and the Tolko Decision clearly had some
2 threshold where--I believe it was the first two
3 megawatts in their case had to be used for
4 self-serving load first.

5 MR. OWEN: Okay. I think Mr. Douglas has a
6 few questions.

7 BY MR. DOUGLAS:

8 Q. Hi, Mr. Swanson. Can you explain what a
9 Curtailment Agreement is and why you use it?

10 A. A Curtailment Agreement is an agreement
11 whereby we can ask a customer--not just a
12 self-generating customer, any customer, to curtail its
13 load, to dial back its load it's getting from the
14 utility. And, in turn, we would compensate the
15 customer for doing so.

16 And the reason you have a Curtailment
17 Agreement is, if you were in a situation where your
18 load-- again, with FortisBC's current resource stack,
19 we're a little bit resource short, so we're having to
20 rely on purchases--block purchases, market
21 purchases, a variety of different purchases--for part
22 of our load. And to the extent you get in a situation

1 where markets go crazy, and you get the California
2 crisis, for instance, where prices are really high, if
3 we were to purchase power in those high markets, it
4 would cause significant rate increases to customers'
5 bills.

6 So, what we do is we put in place Curtailment
7 Agreements. And that is for those customers who have
8 the ability to dial back their load, we ask them in
9 those situations, we'll call them up and say, "Hey,
10 can you dial back your load?" And if they are able to
11 dial back their load and so do, we'll compensate them
12 for dialing it back. Because it's avoiding that high
13 cost purchase we might have to make, customers, in
14 general, end up being better off by us compensating a
15 single customer for turning down their load as opposed
16 to exposing us to go buy the more expensive power and
17 flow it through to customers.

18 Q. Thank you.

19 You mentioned in your testimony Section 2.5
20 of the 2014 PPA. Could you explain what that
21 provision is?

22 A. Sure. Generally, Section 2.5 of the new PPA,

1 the 2014 PPA, is the equivalent section as the
2 Section 2.1 of the old 1993 PPA, and I mean
3 equivalent, it's not identical. I mean equivalent in
4 that it's the section that restricts FortisBC's
5 ability to access PPA Power for the purpose of either
6 arbitrating or supporting arbitrage, let's say.

7 It has a section in it that says if we can
8 come to an agreement on a GBL and what that GBL in
9 front of the Commission and the Commission were to
10 approve that GBL, that will be the new definition of
11 "load." So, it has a specific carve-out that
12 allows--contemplates a GBL-type process to allow sales
13 less than net-of-load.

14 Q. So, the ability, if I understand you
15 correctly, to set a GBL is an express term of the new
16 PPA under Section 2.5?

17 A. Yeah. My position is there was a credible
18 argument to make in the old PPA, even after G-48-09 to
19 do so, but in the new PPA there's an express provision
20 that allows that to occur.

21 Q. And what has the Claimant's approach been to
22 Section 2.5? What is their view of it?

1 A. Their view is that there should be no
2 Section 2.5, it should be removed entirely, not the
3 carve-out section that allows a GBL necessarily, but
4 the whole restrictions should just simply be removed
5 from the PPA.

6 Q. And "whole restriction" meaning 100 percent
7 PPA Power they should be able to access for any
8 purpose?

9 A. Yes.

10 Q. And as a result of that challenge, how does
11 that relate to the NECP proceedings?

12 A. As you continue to challenge that term, the
13 NECP proceedings--it wouldn't make sense to proceed
14 with the NECP proceedings. I mean, you could, but you
15 could get all the way done and design an NECP. And
16 then if that clause comes out, there is no restriction
17 on access to PPA, so there is no need for an NECP.
18 So, you would have incurred all the costs of
19 finalizing and going through the regulatory process
20 associated with determining an NECP that may not
21 actually be necessary. So, it's being held pending
22 that determination. Once that determination is final,

1 if the Section 2.5 remains intact, then the NECP will
2 proceed.

3 Q. And the Claimants agree to suspend the NECP
4 pending their challenge of Section 2.5?

5 A. Yes.

6 Q. Now, you mentioned in your testimony that you
7 had--I think you mentioned this a couple of times--a
8 conversation with Mr. Merwin from Zuckerberg Park?

9 A. Zuckerberg or Zuckerberg, yes.

10 Q. Zuckerberg.

11 Could you just have a look at Paragraph 35 of
12 your Second Witness Statement, please.

13 A. I see that.

14 Q. Is that a reference to the conversation you
15 were mentioning at Zuckerberg Park?

16 A. Yes.

17 MS. GEHRING FLORES: Sorry, which paragraph?

18 MR. DOUGLAS: Paragraph 35 of his Second
19 Witness Statement.

20 BY MR. DOUGLAS:

21 Q. Mr. Swanson, when why did Board of Directors
22 sign the Power Supply Agreement with the Claimant in

1 2007 or '8?

2 (Comment off microphone.)

3 MR. SHOR: I object to this as well beyond
4 the scope of our cross-examination. This Agreement
5 wasn't discussed at all in the cross-examination.

6 PRESIDENT VEEDER: I don't recall it being
7 discussed. But tell us why you're raising this.

8 MR. DOUGLAS: It was what led up to G-48-09,
9 and I believe that Mr. Swanson did testify about some
10 of the conditions associated with that agreement.
11 I'll move on to G-48-09 in a second, but I'm happy to
12 ask a different question.

13 PRESIDENT VEEDER: Ask a different question.

14 MR. DOUGLAS: Sure.

15 BY MR. DOUGLAS:

16 Q. Mr. Swanson, why did FortisBC support the
17 Claimant in the G-48-09 proceedings?

18 A. Surprisingly here, maybe not so surprisingly,
19 you're not the first person to ask me that question.
20 We really looked at the situation when we were
21 starting off down the road of the G-48-09 proceedings
22 and the associated agreements. We looked at the

1 situation that we knew this was likely going to be a
2 battle between what Celgar wanted to do and what
3 BC Hydro didn't want to have happen.

4 And so we're in a situation where we're about
5 to be in a battle between our customer and our
6 supplier, and so we had a fair amount of discussions
7 internally about which side of the battle do we want
8 to find ourselves upon. And really what drove our
9 decision process was when we analyzed if we supported
10 what Celgar was asking for, it provided some fairly
11 significant rate mitigation benefits to our customers.

12 So, there were benefits in it that our
13 customers would receive that would help to keep bills
14 lower. So, you're looking at the situation, and you
15 say you can either support your supplier, and there is
16 no benefits, or you can support your customer and get
17 benefits for all your customers. So, the Decision
18 actually came quite easily to us where we decided to
19 support Celgar in its efforts for the benefit of all
20 FortisBC customers.

21 Q. And do you agree or disagree with
22 Order G-48-09?

1 A. Just like--first of all, G-48-09 is an Order
2 of the Commission. We follow Orders of the
3 Commission. We're a regulated utility. We don't have
4 a lot of choice. But, really, when you step back and
5 you say, why did the Commission make the Order it made
6 in G-48-09, from Celgar's perspective, I believe it
7 was clear that doing what Celgar asked for provided
8 benefit to Celgar.

9 From FortisBC's perspective, I believe it was
10 clear that doing what Celgar asked for provided
11 benefit to FortisBC and its customers, including
12 Celgar, but all FortisBC customers. I think from
13 BCUC's perspective, they've got a broader mandate.
14 They're not just looking out for FortisBC's customers,
15 they are looking out for the public interest. So,
16 what's in the public interest of all ratepayers or all
17 customers of British Columbia?

18 And when you look at it from that
19 perspective, and you take into account the arguments
20 BC Hydro is making, I believe that the BCUC found
21 that, in the broader public interest of all ratepayers
22 in British Columbia, their decision was appropriate.

1 And on that basis, I would have to agree that, if
2 those are the facts, that that Decision made sense.

3 Q. Did the Claimant ever ask the BCUC to
4 reconsider Order G-48-09?

5 A. Sort of. Sort of. The Claimant never filed
6 an Application for reconsideration. So, it never
7 filed a specific Application for reconsideration for a
8 review and variant of G-48-09. There is specific
9 sections of the Utilities Commission Act that allow an
10 Application for reconsideration. I believe it is
11 Section 99 of the Utilities Commission Act allows
12 people to put forward an Application for
13 reconsideration of a Commission Decision. So, that
14 was never done of G-48-09 by Celgar.

15 Celgar did ask for the Decision to be
16 reconsidered in other processes, so not in a
17 reconsideration Application, but in other processes.
18 I believe it might have been in that cost of service
19 rate design process I spoke about earlier, that cost
20 allocation process. I believe Celgar asked the
21 Commission to change its determination or reconsider
22 G-48-09 in that process. That's not the normal form

1 and not, in my opinion, the correct place to make such
2 a request.

3 Q. Okay. So if I understood you, did the
4 Claimant follow the usual process to have G-48-09
5 reconsidered?

6 A. Not the usual process in terms of an
7 Application for reconsideration under Section 99 of
8 the Utilities Commission Act.

9 Q. And had they--and hypothetically speaking,
10 that reconsideration question was denied, would they
11 have further recourse to some other type of relief?

12 A. Not through the BCUC, but they would through
13 the B.C. Court of Appeal. They could seek leave to
14 appeal the Decision after an unsuccessful
15 reconsideration.

16 Q. To your knowledge, did the Claimant seek
17 leave to appeal G-48-09 to the British Columbia Court
18 of Appeal?

19 A. I don't know. I don't believe they did on
20 G-48-09. They--yeah, not on G-48-09.

21 Q. We're just going to pull up the exhibit on to
22 the screen, Mr. Swanson. This is R-273. I believe

1 you mentioned this in your testimony. Could you
2 explain what this document is this?

3 A. This is a memo from Mr. Brian Merwin to
4 Mr. Dan Egolf of FortisBC, dated January 12, 2010, a
5 memo entitled "Setting a Generator Baseline for
6 Celgar."

7 Q. The top of Page 3, there's a reference to
8 BCUC 3808 Decision. Which Decision is that a
9 reference to?

10 A. That is G-48-09.

11 Q. Okay. And how is Mr. Merwin characterizing
12 G-48-09 to FortisBC in this memorandum?

13 A. Mr. Merwin makes two characterizations there.
14 The first characterization refers to the BCUC
15 approving a contract change that prevents FortisBC
16 from providing power to Celgar when Celgar is selling
17 its generation. That is not entirely correct. It
18 prevents FortisBC from acquiring power from BC Hydro
19 for that same purpose.

20 The second characterization there is--he
21 says, "However, the BCUC also opened the door to
22 establishment of a GBL for Celgar in referencing

1 Celgar's replacement of its 3.5-megawatt generator in
2 1993 with a 52-megawatt generator in 1994. The BCUC
3 set." And it goes on from there. So, he is saying
4 G-48-09 opened the door for determination of a GBL for
5 Celgar.

6 Q. And in your view, did FortisBC agree this
7 interpretation, the latter part?

8 A. With the latter part, yes, FortisBC did agree
9 with that interpretation. And it comes down to the
10 definition, as I mentioned earlier, the definition of
11 what is "load"? Is "load" a GBL load? Is "load" a
12 load at that moment in time? So, we agreed there was
13 sufficient room to make such an argument.

14 Q. So, from FortisBC's perspective, could the
15 Claimant have two GBLs, one with BC Hydro and one with
16 FortisBC?

17 A. Yeah, I don't see why not.

18 Q. How would those two GBLs work together?

19 A. Obviously, the details of how it would work
20 together would be something that would have to be
21 fleshed out through probably another process, but
22 there's a couple options.

1 So, there's one option being--you know, if
2 you step back again, what is the purpose of the GBL?
3 A GBL is intended to ensure no undue financial harm to
4 other ratepayers from the repurposing of generation.
5 So let's say a GBL of 40 was determined. I keep using
6 40 because that's the one BC Hydro used. But let's
7 say a GBL of 40 was determined for Celgar, and we
8 could demonstrate--we could reasonably demonstrate to
9 the BCUC that that 40 holds all--holds everybody
10 harmless. So, there is no undue financial harm to
11 anybody by setting a GBL at 40. If that were the
12 case, it could open the door where we could access PPA
13 Power to serve anything, any sales above that 40 GBL.
14 So, there's that avenue that might be opened.

15 Another avenue that might be opened is, let's
16 say we came up with a FortisBC GBL that was less than
17 the Celgar GBL, let's say, 30 for sake of argument.
18 Another interpretation could be any sales between 30
19 and 40 FortisBC might be able to supply using non-PPA
20 sources. Then anything above their load or above
21 their net-of-load or the higher threshold we'd be able
22 to serve using all resources. So, it's hard to say

1 exactly how it would work, but definitely the door was
2 open to make credible arguments on at least both those
3 possibilities.

4 Q. Would it be possible to have a FortisBC GBL
5 that is lower than 40 but that still takes PPA Power
6 after the amendment to the 1993 PPA?

7 A. Our position is potentially, and that is,
8 again, stepping back, even if it was a number lower
9 than 40, if it was a number that you could reasonably
10 demonstrate that it wasn't causing undue financial
11 harm to other ratepayers, that could very well have
12 been possible. Again, it's a--you know, it's a
13 sliding scale. The closer you get to zero, the less
14 likely. The closer you are to the actual Mill Load,
15 the more likely. How far along that scale you could
16 push that envelope, I'm really not sure, but it
17 definitely would be possible.

18 Q. And would that FortisBC GBL be something that
19 would be determined through negotiations?

20 A. That's generally been FortisBC's position.
21 Because if you simply apply a calculation--a
22 mathematical calculation, there's going to be so many

1 different opinions on what goes into that calculation.
2 We can find ourselves right back in the same argument
3 we had that led up to G-48-09. A better approach
4 would probably be discussions, so discussions with
5 Celgar, negotiation of a reasonable GBL, and, you
6 know, possibly even discussions with BC Hydro.

7 Because if the three Parties supported a GBL
8 and went to the Commission, and the three Parties were
9 all saying, "Look, Commission, we can hold customers
10 essentially harmless by putting this in place, or
11 there's no undue harm, undue material financial harm,"
12 it would be hard for the Commission not to approve
13 such a GBL. So, I think any GBL, the best way of any
14 FortisBC GBL, the best way to put that in place is
15 through negotiation, but it would have to be--it would
16 have to be a reasonable GBL because you couldn't sell
17 a zero GBL. There is no way you could get approval of
18 that.

19 Q. So, it would have to be reasonable.

20 Could we turn to Page 4 of R-273. You see
21 there's a chart in the middle entitled "Celgar's
22 Historic Data." Can you please explain to me, what is

1 Mr. Merwin in this memorandum representing about a GBL
2 in 2007 for the Celgar Mill?

3 A. For the Celgar Mill in 2007, he's suggesting
4 a Generator Baseline unadjusted of 41.7 megawatts.

5 Q. Which would be higher than, I think, the GBL
6 that you had proposed in later proceedings?

7 A. Yes.

8 Q. And would be higher than the GBL in the
9 BC Hydro EPA?

10 A. That's correct.

11 Q. Was that the GBL that Mr. Merwin was
12 proposing in this memorandum?

13 A. No, it was not. In the memo Mr. Merwin was
14 proposing, I believe it was a 3.5-megawatt GBL.

15 Q. If we could just go back to Page 3, and at
16 the very top it says, "In referencing Celgar's
17 replacement of its 3.5 megawatt generator in 1993 with
18 a 52-megawatt generator in 1994." And then he
19 states--I might have the wrong page. Actually, it
20 might be Page 5. Sorry.

21 A. In the conclusion, I think.

22 Q. Yes, my apologies. I believe it's the

1 portion that's underlined. Could you read that for
2 me, the portion that is underlined?

3 A. "A GBL of 3.5 megawatts is the obvious, fair,
4 historical GBL, considering the incremental nature of
5 Celgar's generation and the historic treatment of its
6 competitors."

7 Q. So, on what basis is Mr. Merwin proposing a
8 3.5-megawatt GBL here?

9 A. I believe it's on the basis of a time further
10 back in history before they added their incremental
11 generation and on the basis of redesignating that
12 generation to be from a repurposing that generation
13 from being used to serve load to being available for
14 sale.

15 Q. In FortisBC's view, was this proposal
16 reasonable?

17 A. No. Post-G-48-09, I don't believe we could
18 have convinced anybody that this proposal was
19 reasonable and would protect other customers from
20 undue financial harm.

21 Q. So, sorry, it was not reasonable, so in your
22 view it would not protect other ratepayers from undue

1 harm. Is that FortisBC ratepayers?

2 A. That would be ratepayers in general. So, if
3 we brought forward a GBL of 3.5 megawatts and wanted
4 to still be able to access PPA Power from BC Hydro,
5 that's not far off of what the original agreement that
6 led to G-48-09, which basically allowed 100 percent of
7 the generation to be used. So 3.5 megawatts is still
8 most of the generation to be used for sale. So, we
9 weren't successful the first time, I don't believe it
10 would be reasonable to expect that we could be
11 successful the second time with that number.

12 Q. Did Mr. Merwin ever change perspectives on
13 the 3.5-megawatt GBL for Celgar?

14 A. Yes. There has been other numbers suggested
15 as a GBL for Celgar. I believe I referred to them
16 earlier. There was a number of 1.5 megawatts and a
17 number of zero as well.

18 Q. Did Mr. Merwin ever propose a GBL, a FortisBC
19 GBL that you consider to be reasonable?

20 A. No. I mean, we've had several discussions
21 over the years of, could we find a GBL that they would
22 be happy with and that we would see as reasonable,

1 but, no, there was never a GBL that we thought we
2 could defend.

3 Q. In your view, why does the Claimant not have
4 a FortisBC GBL today?

5 A. I think because the GBL they're seeking is
6 one that is not reasonable, is one that we couldn't
7 defend, and, therefore, we've been unable to agree to
8 that GBL and bring it forward, bring it forward to the
9 BCUC. You know, had they come forward and picked a
10 GBL that was reasonable and that we could reasonably
11 demonstrate that no undue financial harm principle
12 with, they very well could have a GBL today.

13 Q. The Claimant asked you some questions about--
14 I believe it was your submission that--in G-48-09 that
15 BC Hydro was controlling FortisBC resources, and I
16 want to flesh that out for a moment.

17 Under the 1993 PPA, what level of capacity
18 was BC Hydro committed to provide FortisBC?

19 A. 200 megawatts.

20 Q. And was that amount fixed at 200 megawatts
21 each year under the Contract?

22 A. That was 200 megawatts in every hour of every

1 day in every year under the original PPA.

2 Q. So FortisBC could take 200 megawatts of every
3 single hour of every single day under the 1993 PPA?

4 A. Yes.

5 Q. Okay. So, under the '93 PPA, does that mean
6 BC Hydro had to have that amount available at all
7 times?

8 A. Yes, because we could call on it with no
9 notice. We didn't use it all the time, but we could
10 pick up the phone and effectively have call and have
11 power at any point in time.

12 Q. Is there a nominating procedure under the
13 1993 PPA?

14 MR. SHOR: Again, I think we're getting well
15 beyond the scope of anything that was discussed in the
16 cross-examination.

17 PRESIDENT VEEDER: Where is this going?

18 MR. DOUGLAS: I just have a couple more
19 questions, but there were questions asked to the
20 Witness about the relationship of the PPA between
21 BC Hydro and FortisBC and how it affects the Claimant.
22 I'm just following up on that relationship. I've got

1 about two more questions after this one on it.

2 PRESIDENT VEEDER: Okay. Please continue.

3 BY MR. DOUGLAS:

4 Q. I think my question was whether there is a
5 nominating procedure under the 1993 PPA.

6 A. There was, but, I mean, we'd send an e-mail
7 nominating 200 megawatts, so it had no further effect
8 than the Contract itself.

9 Q. So, regardless of how FortisBC decided to
10 draw on PPA Power--sorry. Strike that. I've already
11 asked.

12 Does load displacement in FortisBC territory
13 affect BC Hydro 's contractual obligations under the
14 PPA?

15 A. No. The 200 megawatts has to be available if
16 and when we call upon it.

17 Q. Ms. Gehring Flores asked you questions about
18 the Claimant recovering its costs in various BCUC
19 proceedings. Was this a reference to a general
20 provincial program that facilitates the participation
21 of intervenors in BCUC proceedings?

22 A. Under the Utilities Commission Act, there's

1 provisions that allow intervention and allow cost
2 recovery to remove the financial barriers of
3 intervention to allow people who may not have the
4 financial means to participate in regulatory
5 processes.

6 Further to that, the BCUC has developed PACA
7 Guidelines. I'm not quite sure what "PACA" stands
8 for. It's something like participant award cost, but
9 anyways they developed guidelines that determine the
10 general guidelines for cost recovery. So, it leaves
11 out incremental cost. You had to participate in the
12 process, you had to have added some value; very low
13 threshold test because the idea is you don't want to
14 eliminate people from being able to intervene. It is
15 to make the process a little more all-inclusive. So,
16 yes, there is that program.

17 Q. And who funds the program?

18 A. It is paid by the Utility, but it goes into
19 the utility rates, and it is funded by customers
20 through their power bills.

21 Q. Has the Claimant availed itself of that
22 program?

1 A. Yes, as discussed with the Claimant's legal
2 counsel.

3 Q. Can you give an indication for this Tribunal
4 of the level of costs that FortisBC takes on each year
5 as a result of the Claimant's participation at the
6 BCUC?

7 A. As stated in my Witness Statement, through
8 the expanded process--the length and process, the
9 change of type of process from, say, a written process
10 to an oral hearing, Celgar typically argues for an
11 oral hearing. But through that expanded process and
12 through all the effort that goes into that expanded
13 process from all the intervenors, not just Celgar, but
14 all the effort that goes into the expanded processes
15 that Celgar has argued for, including FortisBC's
16 effort, we estimated the cost to be about 4.5 to
17 \$5ish million per year, which is about a 1.5 customer
18 rate increase.

19 We're a fairly small utility. So, as you do
20 a regulatory process, a single oral hearing is usually
21 in excess of \$2 million, excluding the utilities costs
22 of that process. So, you know, you're talking

1 \$2 million or \$3 million for an oral hearing. We only
2 have revenue of 350 million, so every \$3.5 million is
3 a 1 percent rate increase because we are a smaller
4 utility. So that's why 1.5 percent sounds like a lot
5 for the regulation, but it's a factor of--the fact
6 we're a smaller utility that makes it so high as well.

7 Q. And that cost gets passed on to ratepayers?

8 A. Yes, that cost is borne by ratepayers.

9 Q. Okay. Can we pull up transcript reference
10 773:5?

11 And I apologize for the length. And
12 Professor Vicuña, you asked Mr. Switlischoff a question
13 about the regulatory proceedings, and this was your
14 question posed, and I'm sorry to pull up the
15 transcript. With your permission, I'd like for
16 Mr. Swanson to read the question and to read the
17 answer and to provide the Tribunal with his views on
18 the regulatory proceedings after G-48-09.

19 PRESIDENT VEEDER: Just give us the reference
20 again. Day 3, 773?

21 MR. DOUGLAS: The page is 773, starting at
22 Line 5, to 774, ending at Line 5. Just feel free to

1 take a moment and if we need to switch pages.

2 THE WITNESS: Can I see Line 5? It starts at
3 Line 6 on my screen.

4 MR. DOUGLAS: It starts at Line 5 in our
5 screen.

6 THE WITNESS: Oh, that's weird. I'll look up
7 there. I've read that.

8 BY MR. DOUGLAS:

9 Q. Mr. Switlishoff characterizes the regulatory
10 proceedings as having been--well, as the Claimant as
11 having been tortured and held in regulatory limbo. I
12 was just wondering whether you would agree with the
13 Claimant's perspective on the proceedings after
14 G-48-09.

15 MR. SHOR: Again, I do have to ask what this
16 has to do with the cross-examination. This seems to
17 be asking one Witness whether he agrees with something
18 that happened in another cross-examination.

19 (Tribunal conferring.)

20 PRESIDENT VEEDER: You're absolutely right.
21 It does not arise out of your cross-examination, but
22 it does arise out of a question from the Tribunal.

1 And the Tribunal might well be minded to ask the same
2 question of this Witness. So, you'll have a chance to
3 respond to it, but we do allow the question.

4 THE WITNESS: I'm sorry, could you repeat the
5 question.

6 BY MR. DOUGLAS:

7 Q. I think I'm just maybe asking whether you
8 agree with Mr. Switlshoff's characterization of the
9 proceedings after G-48-09.

10 A. They've been long, but I wouldn't
11 characterize it quite the same way. If we start at
12 Line 15, we have--first, we have G-48-09 that said
13 net-of-load. That's quoting a sentence out of
14 G-48-09. I think G-48-09 said FortisBC cannot access
15 PPA Power from BC Hydro for the purpose of serving a
16 self-generating customer who is selling below-load.
17 It left the door open as we've discussed for some
18 options. Those options being the GBL option that
19 we've talked about at length. It also, as I suggested
20 when I made that call from Zuckerberg Island, I
21 believe there was an opening there to do a matching
22 block purchase. So there were some options there.

1 Then we get to 202-12 that he's saying that
2 said all embedded-cost price but we'll leave the
3 tariff to some future determination. 202-12 does give
4 Celgar the access to sell up to 100 percent of its
5 load while acquiring embedded-cost electricity from
6 the utility excluding PPA. So that goes back
7 to--that's the NECP concept. That's also the same
8 concept--when I say "matching block purchase," it's
9 not that different really. So, what we've done now is
10 we've formalized that concept a little more than it
11 was originally presented, but that's--that process, I
12 would say, isn't in regulatory limbo. It's the fact
13 that Celgar has continued to challenge that
14 Section 2.5 of the PPA and wants that restriction
15 removed is why this isn't proceeding.

16 Again, if Celgar is successful in having that
17 restriction 100 percent removed so there is absolutely
18 no restrictions on FortisBC's access to PPA, you won't
19 need a rate that determines how you would--how you
20 would determine what it would cost to exclude PPA. If
21 you didn't have to exclude PPA, you wouldn't have a
22 cost associated with it or a calculation to determine

1 if there's a cost associated with it.

2 So, it makes sense that would you hold this
3 off in abeyance until you determine whether it's
4 actually required. There is no point in proceeding
5 with a regulatory process that comes up with an answer
6 to a problem you might not end up having at the end of
7 the day.

8 So, I don't think it is in regulatory limbo.
9 I just think it's playing out its normal course given
10 the fact that there has been challenges to one of the
11 underlying contracts being the PPA agreement itself
12 and that restriction.

13 So, the final comment there, near final
14 comment, so the access--seller's access to replacement
15 power for any self-generated power remains undoable at
16 this time. Again, there's some steps that would have
17 to occur, but we could still go find a reasonable GBL.
18 And if Celgar, FortisBC, and BC Hydro were all in
19 front of the Commission saying, "This protects our
20 ratepayers, this is in everybody's best interest,
21 there is no undue financial harm," I think that would
22 be a quick process to enable that to happen.

1 In any event, once we finish with the
2 challenge to Section 15, once Celgar's challenge has
3 played its course out and that has played its course
4 out through the BCUC and potentially I think
5 they've--I think they've sought leave through the
6 Court of Appeals just in case that is unsuccessful,
7 once that is played out and we determine whether or
8 not there is a restriction, if that restriction
9 remains, then I would expect we'll be right back on
10 course in finalizing that rate. We're a long ways
11 down the road to finalizing that rate in terms of
12 there's been a lot of evidence and a lot of
13 information on the record of that. It's just been
14 held before we go into the final stages pending the
15 determination to see if it's actually required.

16 Q. So summing all that up, has the process that
17 the Claimant has endured been tortured?

18 A. I wouldn't say it is tortured. I would say
19 it's following the most logical course given the
20 underlying challenge to that provision of the PPA, to
21 that Section 2.5 of the PPA. It wouldn't make sense
22 to, like I say, to continue on with these other

1 processes if that restriction were removed.

2 Q. In your view, did G-48-09 restrict the
3 Claimant's access to embedded-cost power?

4 A. G-48-09, no. G-48-09 restricted FortisBC's
5 access to BC Hydro's PPA. Again, there's a couple
6 options. There's the GBL option that would allow --
7 if approved would allow the Claimant access to some
8 embedded-cost power, including PPA.

9 There is also--as we discussed, if there was
10 a FortisBC GBL that was lower than a BC Hydro GBL,
11 there's a potential for matching block purchase. So,
12 for the amount over the lower GBL could be purchased
13 through a matching block. The amount above the higher
14 number could be--sorry. The amount over the lower
15 block could be accessed with FortisBC embedded-cost
16 power excluding PPA, and then the amount of the higher
17 number could be accessed using all resources. So,
18 there were still options available. So, it hasn't
19 blocked that from happening.

20 MR. DOUGLAS: Those are my questions. Thank
21 you.

22 PRESIDENT VEEDER: Thank you. I allow you to

1 cross-examine further on the one question relating to
2 the passage in the transcript, Day 3, Page 773.

3 MR. SHOR: I would like to follow up on the
4 options available to Celgar that you discussed.

5 RECROSS-EXAMINATION

6 BY MR. SHOR:

7 Q. But I just want to set the groundwork because
8 as I understand it, the G-48-09 directly restricted
9 FortisBC. That's your testimony. You couldn't buy
10 power from BC Hydro; correct?

11 A. Under certain conditions.

12 Q. Under certain conditions. And indirectly
13 under those same conditions, you couldn't sell PPA
14 Power to Celgar?

15 A. If we couldn't buy it, we couldn't sell it to
16 anybody.

17 Q. Just wanted to make sure of that because you
18 just always seem to focus on one half of the equation
19 and not the second half of the equation. They are
20 equal, are they not?

21 A. Well, the reason is specifically G-48-09
22 changed a provision in a Power Purchase Agreement

1 between FortisBC and BC Hydro. That's all it really
2 did.

3 Q. I'm just talking about the effects. I know
4 what it did, but it had other effects, didn't it?

5 A. Yes, it had other implications.

6 Q. Thank you. Okay. So that restricts Celgar
7 from having access to BC Hydro power while it is
8 selling power. Is there any other person in British
9 Columbia, any other pulp mill that has no access to
10 BC Hydro power while selling power?

11 MR. DOUGLAS: I don't believe that was his
12 testimony, Mr. Shor, that it restricts Celgar from
13 having access to BC Hydro power while it is selling
14 power. I think he's actually testified the opposite.

15 MR. SHOR: You think under G-48-09 we can get
16 access to PPA Power while selling power?

17 MR. DOUGLAS: Don't ask me.

18 MR. SHOR: Maybe if you don't interrupt.

19 PRESIDENT VEEDER: Let's not argue. Put the
20 question again. Let's continue.

21 BY MR. SHOR:

22 Q. So is there any person in British Columbia

1 that has no access to BC Hydro power, either through
2 the PPA if they're in FortisBC's service territory or
3 directly if they're in BC Hydro's service territory
4 while they're selling power?

5 A. I don't believe there is anybody in British
6 Columbia who has that absolute restriction including
7 Celgar. I believe--

8 Q. G-48-09--

9 MR. DOUGLAS: Please let the Witness finish
10 his answer.

11 THE WITNESS: Again, I spoke to the fact that
12 there were--G-48-09 left some options available, and
13 Mr. Merwin spoke to that same fact in that e-mail that
14 there were options available that would allow it to
15 access some PPA Power.

16 BY MR. SHOR:

17 Q. So it's is your testimony those options to
18 get a FortisBC GBL would have allowed access not just
19 to FortisBC power but also to PPA Power?

20 A. Again, yeah, that is my testimony. In fact,
21 if you step--that's where I was talking about if you
22 step back and you look at what the GBL is trying to

1 accomplish, it is trying to protect ratepayers, all
2 ratepayers from undue financial harm.

3 If we had a reasonable GBL that we could
4 reasonably demonstrate that that was the case with,
5 that we would be protecting all ratepayers, BC Hydro
6 and FortisBC's ratepayers from undue financial harm, I
7 believe that could have been approved. And if that
8 was approved, that would allow access to some--not all
9 but some PPA Power just like every other mill in
10 British Columbia.

11 Q. Let's just explore that option--

12 MR. DOUGLAS: Mr. President, I'm not quite
13 sure this is the exact questions that the Claimant's
14 already asked. We've redirected on it, and I know
15 there is some allowance for some additional questions
16 to be asked. What's the scope there for him to
17 explore these first?

18 PRESIDENT VEEDER: We'll allow him to go
19 further. Please continue.

20 BY MR. SHOR:

21 Q. I want to go down this road of the reasonable
22 GBL that you said could you have negotiated. I just

1 want to understand the context. So in 2009, G-48-09
2 was issued. And then you had some discussions with
3 Celgar and you proposed a GBL for Celgar of 41. I
4 believe that was your testimony.

5 A. A whole lot happened between G-48-09 and that
6 suggestion, and that wasn't--that was in response to
7 an information request for, I said, approximately 41.
8 And that was the basis for a starting point for those
9 exact discussions.

10 Q. That's the only proposal that FortisBC has
11 ever made to Celgar, and that occurred in 2012, didn't
12 it?

13 A. And so as I was saying, that would be a
14 starting point for those exact discussions to
15 determine a GBL that may, in fact, allow Celgar access
16 to some PPA if it was approved.

17 Q. And that proposal was made in 2012,
18 three years after BCUC Order G-48-09; correct?

19 A. That information request was answered at that
20 time, but the discussion of GBLs and appropriate GBL
21 for Celgar has happened right since G-48-09 was
22 issued.

1 Q. But the only proposal that FortisBC has ever
2 made is the 41 that came in 2012; correct? That's the
3 only number you ever gave to Celgar.

4 A. I'm struggling here because I don't know if I
5 can answer that question.

6 PRESIDENT VEEDER: Stop the question. We're
7 still in open session. Is there a problem?

8 MR. SHOR: Not a problem. It's not a
9 problem.

10 MR. DOUGLAS: There is no problem from
11 Canada's perspective.

12 PRESIDENT VEEDER: Is that what you're
13 hinting at or not? Is it difficult for you to answer
14 the question because we're in open session?

15 THE WITNESS: No. I actually don't know the
16 implications of whether or not we're in open session.
17 We had some off the record discussions. I don't know
18 how much more can I say about that.

19 BY MR. SHOR:

20 Q. But as far as you can recall, the only
21 concrete number you ever proposed to Celgar was in
22 that information request which occurred in 2012?

1 MR. DOUGLAS: Mr. President, I believe the
2 Witness is indicating that those conversations
3 transpired but they were held in confidence and that
4 he cannot discuss them.

5 PRESIDENT VEEDER: It does sound like that.
6 Is that what you're saying?

7 THE WITNESS: That's what I'm saying.

8 MR. SHOR: They were held in confidence
9 between who?

10 THE WITNESS: I'm struggling a bit because
11 I'm not sure how much I'm allowed to answer. I'll
12 take a risk and I'll answer. There is a three-party
13 discussion. There's a three-party discussion between.

14 PRESIDENT VEEDER: Stop a second. Does it
15 include anybody from the Claimants?

16 THE WITNESS: Yes.

17 PRESIDENT VEEDER: Maybe you should just take
18 time out just to talk about this.

19 MR. SHOR: You don't need to leave.

20 PRESIDENT VEEDER: No, no. Claimants can
21 waive this. We'll find out about the other party in a
22 minute.

1 MR. SHOR: Claimant doesn't care.

2 PRESIDENT VEEDER: Claimants can waive. So
3 the third party we can probably leave out. Can we?

4 THE WITNESS: There was a third party at the
5 table, and we won't mention who that third party was.

6 So we did have tri-party discussions on
7 whether or not there was a GBL that could be--a
8 reasonable GBL that could be determined that could,
9 guess, split the difference a little bit between the
10 three parties, and get to us a point where we could go
11 forward with an Application and conclude this matter.

12 That--I believe that discussion may have
13 actually been initiated by Celgar. The three Parties
14 met at Mr.--I think it Mr. Moller's office, and had
15 started to have discussions about what range of GBLs
16 would be reasonable. It was only at the point that
17 Celgar seemed to retract from their initial suggestion
18 of saying "how do we saw the baby in three" so to
19 speak to being "by sawing it in three, we really mean
20 sawing it in two, and you two Parties decide how
21 you're going to share the pain of giving us everything
22 we wanted" that those discussions fell down.

1 BY MR. SHOR:

2 Q. Again, the discussions are interesting. I'm
3 just asking of the concrete proposals that came from
4 FortisBC. The only one that you seem to be able to
5 refer to is the 41 that occurred in 2012.

6 A. We talked about ranges. We didn't talk about
7 actual numbers. And even the characterization of the
8 41 as a concrete proposal was an answer to an
9 information request, and it said approximately that
10 amount. It was a point for--a starting point for a
11 discussion about what is reasonable.

12 Q. But that--

13 MR. DOUGLAS: Mr. President--

14 MR. SHOR: Please stop interrupting me.
15 Please stop interrupting me.

16 MR. DOUGLAS: I just want to let that you
17 know the third party in those negotiations was
18 BC Hydro, and counsel for BC Hydro has said that
19 they're willing to waive any privilege associated with
20 those.

21 PRESIDENT VEEDER: Thank you. It was pretty
22 obvious, but it is helpful to have this on the table.

1 BC Hydro has also waived any restriction. So, I think
2 you're free to answer the questions as you wish.

3 BY MR. SHOR:

4 Q. In the 2012 time frame of that information
5 request, weren't you also in discussions with BC Hydro
6 over the negotiation of a replacement to the 1993 PPA?
7 Because that expired in 2013; correct?

8 A. We were in negotiations with BC Hydro for
9 replacement of PPA for many years. That was a long
10 negotiation.

11 Q. And that's a very important Contract for you?

12 A. It is a very important Contract for us, yes.

13 Q. So the negotiation over the FortisBC-Celgar
14 GBL involved BC Hydro? I think that he was the third
15 party in the discussions.

16 A. Yes, it naturally would.

17 Q. So before could you do anything to set a GBL
18 for Celgar, you had to talk to BC Hydro, didn't you?

19 A. Not as a condition, but it definitely made
20 life easier. If we're going to put an Application in
21 front of the BCUC and suggest that this is a
22 reasonable GBL that protects ratepayers, all

1 ratepayers, FortisBC's ratepayers, BC Hydro's
2 ratepayers, and provide something for Celgar, if we
3 were going to be able to go in front of the BCUC and
4 represent that, which is the easiest way to get
5 approval, yeah, involving all three Parties makes
6 sense. No less sense than it would have made if it
7 was just involved, say, BC Hydro and FortisBC and
8 excluded Celgar. That wouldn't make sense. It would
9 excluding any of the other three--

10 Q. So, given the circumstances, you weren't
11 about to set a GBL for Celgar that BC Hydro wouldn't
12 agree with. Is that a fair characterization?

13 A. If it was a reasonable GBL and if we felt it
14 was a reasonable GBL, yeah, we would be willing to
15 defend that position. It was just easier if we got
16 all the Parties on side.

17 Q. Okay. And is it fair to say that BC Hydro
18 had already set a GBL so they were--did they indicate
19 that they would agree to a GBL lower than had already
20 been set?

21 A. They didn't agree to one, but they were
22 willing to--the fact we all met to decide if there was

1 options available and what range of GBL would be
2 reasonable indicates that there is some interest in
3 that discussion.

4 Q. Okay. I want to go back to the discussion of
5 the new PPA. I'm sorry. One further question on
6 that.

7 PRESIDENT VEEDER: Stop one moment. These
8 discussion, these tri-party discussions, when did they
9 start? A year rather than the precise time.

10 THE WITNESS: Definitely post G-48-09 but
11 also definitely quite a while ago. So, they weren't
12 recent. I would say it was probably in--it would have
13 been '9-'10, in that time frame.

14 PRESIDENT VEEDER: Thank you. So, just
15 before you raise the next topic, you said you want to
16 go back to the discussions of the new PPA. That goes
17 a long way away from what we were starting with--

18 MR. SHOR: No, because it was the
19 Paragraph 2.5 that he referred to as giving the other
20 avenue. There were different avenues that Celgar had
21 out. One was this FortisBC to the 2 GBL scenario and
22 then the other he specifically talked about not

1 objecting in the 2.5 and that led to the suspension of
2 the NECP Rate Rider. And I wanted to get into that
3 because I don't think that discussion is entirely
4 clear.

5 PRESIDENT VEEDER: So, you're getting to the
6 2.5.

7 MR. SHOR: That's the 2.5.

8 PRESIDENT VEEDER: Please continue.

9 BY MR. SHOR:

10 Q. Okay. Before I go to the 2.5, so you
11 conferred with BC Hydro over setting a GBL. Does
12 BC Hydro confer with FortisBC when it sets GBLs for
13 its customers?

14 A. There would really be no reason because
15 FortisBC doesn't supply any power to BC Hydro. So,
16 there is more of a reason for us to consult with
17 BC Hydro because it's an affected Party as a result of
18 setting a GBL with the FortisBC customer.

19 Q. Okay. Now, let's go to 2.5 in the new PPA.
20 As I understand what transpired in those proceedings,
21 you and BC Hydro agreed to a new EPA, and there was a
22 restriction provision governing your ability to access

1 power while selling to self-generators; is that
2 correct?

3 A. Generally speaking, with that carve-out
4 principle unless a Commission approved GBL.

5 Q. Okay.

6 A. But yes.

7 Q. And then Celgar intervened in that proceeding
8 and objected to the fact that the provision in there
9 contemplated that BC Hydro would negotiate Celgar's
10 GBL with FortisBC and left Celgar out; right? So,
11 Celgar complained and they wanted to be included in
12 the process; correct?

13 A. That was one of the arguments that was made,
14 but they also wanted the restriction removed entirely.

15 Q. And the Commission accepted the argument that
16 Celgar should be included and rejected the argument
17 that the GBL restriction should be removed, and
18 ultimately approved the 2013 PPA; correct?

19 A. Not exactly. Ultimately approved the 2013
20 PPA, but that Section 2.5 is still a little bit in
21 limbo.

22 Q. But it was amended by the Parties to address

1 Celgar's concern about not being included in the
2 discussions.

3 A. That part, I believe, is correct, yes.

4 Q. Okay. And you say it's in limbo because
5 Celgar appealed; correct?

6 A. The triggering point wasn't the appeal. The
7 triggering point is way back during the original
8 process. Celgar has been arguing that that
9 Section 2.5 should be removed. And as long as it
10 continues to argue that, until that determination is
11 made whether or not the restriction is removed, it
12 wouldn't make sense to--to continue on with the other
13 processes until you determine whether or not the
14 Section 2.5 restriction remains.

15 Q. See, I don't think that's really accurate,
16 and let me take you through that. Because my
17 understanding of what happened is the Commission
18 approved the PPA. It's in effect. Paragraph 2.5 is
19 in full effect today, isn't it?

20 A. It is in full effect today, but it is still
21 being--it is still up for determination of whether
22 it's going to remain in effect moving forward.

1 Q. Let's talk about the processes that continue.
2 In fact, what the Commission said was there need to be
3 these GBL processes, and one thing it required was
4 BC Hydro to file its GBL Guidelines for approval.
5 That's one thing the Commission required. And that is
6 still pending; correct?

7 A. That is still in process as well as the other
8 condition being FortisBC's self-generator guidelines.

9 Q. I want to talk about that.

10 A. And those are two items that were put in
11 place because, in part--to your point, in part, Celgar
12 is arguing they want to be included, but also, in
13 part, because Celgar was arguing that restrictions
14 shouldn't exist in their entirety. So, that process
15 of determining whether or not Section 2.5 is going to
16 remain in effect is still ongoing as well.

17 Q. Because what the Commission directed FortisBC
18 to do was, I believe the term it used was--to
19 "formulate high level principles governing
20 self-generators in its service territory"; correct?

21 MR. DOUGLAS: I don't believe I ever
22 discussed the FortisBC self-generator policy at all.

1 I think this is just a complete open recross.

2 MR. SHOR: We are just in the never-never
3 land where if we appeal, we get criticized; if we
4 don't appeal, we get criticized. I'm just trying to
5 understand exactly where the proceedings are because
6 you have said that they have been suspended because of
7 us. And I want to flush that out.

8 PRESIDENT VEEDER: Mr. Shor, this may not be
9 a matter for this Witness. It may be a matter for
10 submission because there is no reason why he should be
11 the Expert on the status of those proceedings or the
12 process.

13 MR. SHOR: He's a participant in those
14 proceedings.

15 PRESIDENT VEEDER: He's a factual Witness.

16 MR. SHOR: I just have two follow-up
17 questions.

18 PRESIDENT VEEDER: Two follow-ups. But let's
19 keep it brief.

20 BY MR. SHOR:

21 Q. Has FortisBC filed those principles yet?

22 A. Yes. We're actually awaiting a Decision.

1 Q. Okay. So, it's--to understand where things
2 are, kind of six years after G-48-09 put a restriction
3 on self-generators in FortisBC's service territory,
4 the Commission is only now asking FortisBC to provide
5 principles governing self-generators in its service
6 territory?

7 A. Again, as I had mentioned earlier there were
8 options along the way, but as long as Celgar continues
9 to ask for--ask for "the moon," so to speak, these
10 processes are going to keep dragging. And every time
11 there's a decision--and there has been several that I
12 believe have been fairly decent decisions for Celgar
13 or they've achieved some things, they still want
14 everything. So, they still keep fighting that; and,
15 as a result of the fact they keep fighting that, this
16 process is going to keep going until they either get
17 everything they want or they stop fighting for
18 everything they want.

19 The regulatory process is very nonrestrictive
20 and allows people to keep coming back. There is
21 no--there is no restrictions that says, okay, you
22 argued this once, now go away. You can't come back

1 and argue it tomorrow.

2 Q. I just want to be clear. So, six years after
3 the restriction, we are now at the point--

4 MR. DOUGLAS: A third question now.

5 PRESIDENT VEEDER: Mr. Shor, that is more
6 submission. Let's move on to the next question.

7 MR. SHOR: I have no further questions.

8 PRESIDENT VEEDER: There will be questions
9 from the Tribunal.

10 THE WITNESS: Thank you.

11 QUESTIONS FROM THE TRIBUNAL

12 ARBITRATOR ORREGO VICUÑA: Well, I certainly
13 did not intend that my question to Mr. Switlishoff
14 would end up before the Court of Appeals in British
15 Columbia and the terms of debate we have heard. We
16 have all sort options apparently for the future.

17 But I have one that I hope will be equally
18 simple for Mr. Swanson. In his capacity of director
19 for regulatory affairs of Fortis. Now, we have not
20 heard much about Fortis itself, and there is one
21 question that came to my mind. Aside the restrictions
22 from the BCUC and whatnot that affect also Fortis, if

1 I understand rightly, aside those restrictions, Fortis
2 can sell embedded power electricity, electricity at
3 embedded costs, rather, and at the same time it can
4 buy from generators. That was one of the issues that
5 was raised about why was this happening and that it
6 was an accounting device and all sort of arguments.

7 But my point is very simple: If Fortis can
8 sell at embedded cost and can buy at some other cost,
9 that was the issue, what does Fortis do with that
10 power that has lost? Does it sell it to the market,
11 or does it distribute it again in some other way or
12 what?

13 THE WITNESS: So to be clear, FortisBC buys
14 embedded-cost power from the PPA, from BC Hydro, and
15 it can sell to customers for the purpose of serving
16 load, not for the--FortisBC can't buy it from BC Hydro
17 for the purpose of facilitating arbitrage. So, in the
18 case where we have an increase--what it's trying to
19 restrict is us increasing the amount of power we
20 purchase off BC Hydro to facilitate that type of
21 arbitrage transaction. So, we wouldn't actually be
22 buying that embedded-cost power, that incremental

1 embedded-cost power. We're not allowed to buy it.
2 So, we wouldn't be buying it in order to facilitate
3 those types of transactions, but we can buy it to
4 facilitate normal load growth that is not associated
5 with the reselling of power into markets. So we can
6 resell it to our customers for the purpose of
7 servicing their load as long as it's not related to
8 arbitrage. If it's related to arbitrage, then we're
9 not allowed to buy it.

10 ARBITRATOR ORREGO VICUÑA: But my question
11 is, what do you do with the power you buy from the
12 generators? One thing is to sell, either under PPA or
13 any other way. But once the entity will sell
14 electricity back to Fortis or actually even explain
15 there was kind of a mechanism for returning some
16 amount of electricity, a drawback, what does Fortis do
17 with that power?

18 THE WITNESS: So Fortis wouldn't actually be
19 buying that power from the PPA, that amount. As an
20 example, if a self-generating customer was selling 10
21 below its load, FortisBC wouldn't be buying that 10
22 from BC Hydro. It doesn't have anything to do with it

1 because it didn't actually buy that portion. So,
2 there isn't this excess power that we'd have to do
3 anything with because we wouldn't have actually
4 purchased it from BC Hydro.

5 Sorry. Am I misunderstanding the question?

6 ARBITRATOR ORREGO VICUÑA: No. I'm not
7 certain about the question myself. Of course, this is
8 very complicated. But in short, Fortis does not make
9 a profit out of this two-way transactions, whichever
10 they be. Even aside the PPA, because you explained
11 that there are other sources that are brought into the
12 overall scheme.

13 THE WITNESS: Yeah. So, as a public utility,
14 the way you make profit is quite different than a
15 normal company. We make a profit by earning a return
16 on our investment. So just like a bond, we get a
17 return on our equity investment.

18 Fortis takes in this--takes in power whether
19 you it's from BC Hydro's PPA or other sources, we'll
20 buy that power and then we resell it to customers, and
21 it's a flow through that cost. So the cost comes in
22 to FortisBC and it goes to FortisBC's customers. What

1 gets added on to that cost is the other costs of
2 operating the utility. So we don't actually earn a
3 profit off the flowing through of that electricity
4 from purchasing it and selling it. We earn a positive
5 margin that pays for our other costs of operation.
6 So, it has nothing to do with the profitability of
7 FortisBC. All of that cost just flows through into
8 customer rates.

9 ARBITRATOR ORREGO VICUÑA: Okay. Thank you.
10 We'll see it before the Court of Appeals then.

11 (Laughter.)

12 PRESIDENT VEEDER: Professor Douglas.

13 ARBITRATOR DOUGLAS: I have some questions
14 that won't up in the Court of Appeals. You mentioned
15 that the matching block option. I just want to
16 understand a little bit more about how could you
17 demonstrate to the BCUC that that power that you
18 proposed to sell to Celgar after G-48-09 is not being
19 sourced from the PPA. How would you actually
20 demonstrate that to regulatory--

21 THE WITNESS: And you're touching on kind of
22 one of the key conundrums of the whole thing in that

1 you can't demonstrate from a physical flow of
2 electrons that that electron didn't flow in from
3 BC Hydro and flow to Celgar.

4 ARBITRATOR DOUGLAS: They're not color coded.

5 THE WITNESS: No.

6 ARBITRATOR DOUGLAS: Not in BC.

7 THE WITNESS: No. What you do is, let's say,
8 Celgar was selling 10 megawatts below its Mill Load.
9 We could go buy 10 megawatts or demonstrate that we've
10 entered into an agreement with another Party to
11 acquire 10 megawatts. At the same time Celgar is
12 selling the 10 megawatts and we can say, "See, this 10
13 is offsetting that." So, although the physical
14 electrons may have flowed from BC Hydro's system over
15 here, we've made a matching purchase, and by that
16 matching purchase, we haven't increased our take from
17 PPA.

18 ARBITRATOR DOUGLAS: But isn't that risky
19 because you need to have made that matching purchase
20 before you go to the regulator and say, "Look, we have
21 a matching purchase?"

22 THE WITNESS: Yeah, that's, in fact, what we

1 had proposed. What we had proposed is we would go out
2 and look for a matching block of power and we would
3 present that matching block of power to Celgar or to
4 any self-generating customer and we'd say, "Here's the
5 matching block of power. There is or there isn't an
6 incremental cost"--most of the time there may not be
7 with where power markets are today and where power
8 markets have been for the last number of years--"here
9 is that matching block. Do you want to enter into
10 this Agreement?" If they do, then we'd say, "Okay.
11 You sign saying that you're going to take this and
12 you're going to pay for any incremental costs if there
13 are, and there may not be, but you're going to pay for
14 any incremental costs, and now you can go and enter
15 into your transaction to sell that 10 because we've
16 just bought the 10."

17 So, you can demonstrate to the other
18 ratepayers and the BCUC that nobody is being harmed by
19 this transaction because we've taken it form here, we
20 sold it to there, and they, in turn, have sold it to
21 another Party.

22

1 ARBITRATOR DOUGLAS: In terms of the way it
2 is priced because you said that is not so different to
3 the NECP--it's not so different to the NECP.

4 THE WITNESS: No.

5 ARBITRATOR DOUGLAS: Presumably it's not
6 simply the price of the block that you sourced from
7 somewhere else. It's a blended rate.

8 THE WITNESS: It's the difference in the
9 price of the block versus the price of the resource we
10 would have taken if we got it from PPA. So if we went
11 and bought a block of power in today's markets, we
12 bought, let's say, 10 megawatts for a year, or
13 whatever that works out to in megawatt hours, and we
14 compared that to what we would have had to pay for the
15 same block of BC Hydro, if there was an incremental
16 cost, then that would be the cost that gets added on
17 to Celgar.

18 Again, in many circumstances, there probably
19 wouldn't be much, if any, of an incremental cost, due
20 to the fact that power markets have been so low.

21 In fact, FortisBC, the way we operate our
22 system, we do exactly that on a regular basis. We,

1 instead of taking BC Hydro PPA, we go out and buy
2 these blocks because they're lower cost than the PPA
3 Power. And so we buy these blocks, and we flow those
4 cost savings on to FortisBC customers through our
5 rate-setting process.

6 ARBITRATOR DOUGLAS: Last question. In
7 relation to the 2.5, the Clause 2.5 proceedings that
8 are ongoing, what's at stake there? If 2.5 goes, does
9 that mean that B.C.'s moving towards the German
10 situation where there's no restrictions on the
11 arbitrage at Heritage Power, or is it not quite that
12 dramatic?

13 THE WITNESS: If 2.5 gets removed completely,
14 then there would be no restriction--there would at
15 least be no restrictions on FortisBC acquiring PPA
16 Power for the purposes of supplying a mill, for
17 instance, that was selling below Mill Load. The
18 effect of that could very well be an opening--at least
19 in FortisBC's service territory, it could very well be
20 an opening of that avenue.

21 I personally don't think that's where this is
22 going. I think 2.5 will survive the challenge and

1 will remain there. But if it did get removed, that's
2 where that heads.

3 PRESIDENT VEEDER: Any questions arising from
4 these questions and answers from the Tribunal? The
5 Claimant first.

6 MR. SHOR: Yes, I have a couple.

7 FURTHER RECROSS-EXAMINATION

8 BY MR. SHOR:

9 Q. I want to get back to the Mr. Douglas's
10 question about the blended rate, because I thought
11 that was an excellent question, and I want to be
12 completely clear on this.

13 If Celgar wants to sell 10 megawatts of
14 power, you buy a block of 10 megawatts of power, and
15 they pay, if there is an incremental cost, the
16 incremental cost of that entire megawatts; correct?

17 A. Yes, because that's the next resource that's
18 available.

19 Q. So they don't get a blended rate at all that
20 considers the embedded costs of FortisBC's other
21 generating resources, do they?

22 A. In some respects they do. So, for instance,

1 with respect to the capacity portion, the Waneta
2 Expansion capacity where we have remaining capacity
3 available, that would be used to able to make that
4 block purchase less expensive. So we can buy a
5 non-firm block of power, which is a cheaper product,
6 and through the use of Waneta Expansion, which acts as
7 a battery, we can store it--we can make it firm.

8 So we can buy the cheap product, and with the
9 use of FortisBC's excess capacity generation, we can
10 make it firm, make it worth more to the Claimant, or
11 to be used. The reason it doesn't blend in with
12 FortisBC's other existing generation resources is,
13 again, I mentioned, those are all fully utilized.

14 So we can't get power. If Celgar is going to
15 increase its load, it not like we can get more power
16 from those generation assets. In order to blend that
17 cost, what we would be saying is we're taking that
18 power away from other customers to facilitate this
19 transaction. And, again that, goes against the undue
20 financial harm.

21 Q. So Celgar is treated differently from all
22 other customers in that all other customers get to

1 benefit from the low cost of those other resources,
2 but Celgar would not; correct?

3 A. No, no. It's not a Celgar solution. It's
4 any self-generating customer of FortisBC, which there
5 are others--

6 Q. Okay.

7 A. --would have certain restrictions on them in
8 terms of all the existing resources, again, are used
9 up. So if we were to go out and buy new resources for
10 any self-generator for the purposes of facilitating
11 below-load sales, there's a cost-causation principle
12 that's typical in regulation, that says if you're
13 causing costs on the system, you ought to be the one
14 to pay for costs on the system. And that principle
15 holds true for all customers and all customer classes,
16 regardless of they're self-generating customers or
17 they're Celgar's.

18 Q. So if I were to build a new industrial plant
19 in FortisBC service territory that required
20 20 megawatts, would I get the benefit of the other
21 embedded cost, or would I be viewed to have caused
22 those costs, and, therefore, I get something, like the

1 NECP Rate Rider, I just get the additional costs?

2 A. No. You wouldn't get an NECP Rate Rider if
3 you're a new--if this was truly a new load growth, new
4 load growth is exempted from that. If you were
5 repurposing generation that used to be used to serve
6 load and repurposing it for sale, then that applies,
7 but no new load, normal load growth is exempt from
8 that. Again, for all customer classes, all customers.

9 Q. All customers. Now, back to the purchases,
10 the matching purchases. I think your examples, you
11 keep saying prices have been low and they would be
12 low, so there's no incremental cost. And I understand
13 your references are to current--

14 A. Current and past.

15 Q. Current and past Mid-C prices for short-term
16 power sales. Here's my question. I just want to get
17 to my question, so please don't interrupt me.

18 A. Okay.

19 Q. If Celgar were to come to you and said they
20 wanted to buy a block of 40 megawatts of power for
21 20 years, not for a week, not for an hour, not for a
22 month, but for 20 years, those Mid-C prices wouldn't

1 at all be the price at which you would have to procure
2 that power, would it?

3 A. I've actually never contended that it was a
4 Mid-C price. We would buy--I'm not a power purchase
5 expert by any means, but I don't believe you can buy a
6 20-year block or a long-term block on Mid-C. Mid-C is
7 an hour-by-hour, spot-market type, as far as I
8 understand. So when you buy a block of power, you
9 would actually go to somebody who is willing to sell a
10 block of power, and you would negotiate a purchase.
11 Again, we do this to serve our own load quite often.

12 Q. Okay. What prices are you currently paying
13 for 10- and 20-year blocks of power?

14 A. We don't--nobody I know of really purchases
15 10- and 20-year blocks of power. I don't know if
16 there's a market for that.

17 Q. Okay. So as you sit--so then if Celgar
18 wanted to enter into a 20-year power sale agreement
19 and wanted to come to you and buy power under the NECP
20 Rate Rider for that 20 years, you wouldn't be able to
21 tell them what the price is, because you don't think
22 you would get a 20-year deal; right?

1 A. I don't think at this point--I mean, we could
2 look, but we haven't, because it's not normal course
3 for us to look for a 20-year deal. What we would do
4 is enter into blocks of power similar to what we enter
5 into now for purchase, to run the utility now. And
6 those blocks would have to be renewed.

7 But again, we have that ability with Waneta
8 Expansion to store that power. We have that battery,
9 let's call it, where we can still buy the cheaper,
10 non-firm product and firm it up. So there is still
11 benefit, significant benefit to be added.

12 Q. So they would sell long term. You would fill
13 it with short-term power, and if the market went
14 haywire and prices increased, you would have--you
15 would be subjecting Celgar to all the risk of that
16 market price increase; correct?

17 A. No, not really. That's the benefit of that
18 Waneta Expansion capacity, because we could store it.
19 You could buy the power when it's lower priced in
20 order to supply Celgar, and if the market goes crazy,
21 they could actually sell it into those high markets,
22 and they can earn a margin off--off playing that

1 market game because we have the ability to store
2 power, given that we have excess capacity.

3 So that is--that is why--part of why we
4 contend that this is embedded cost power. Is we're
5 using some of our embedded resources in order to make
6 this an appealing product.

7 Q. Okay. Now, I think you said a minute ago
8 that there is no market, or you're not aware of 10- or
9 20-year Power Purchase Agreement?

10 A. I said I'm not an expert in power purchasing,
11 so I'm not aware of them.

12 Q. Aren't all the EPAs with BC Hydro that are at
13 issue in this proceeding 10- to 20-year agreements?

14 A. They very well may be, but those aren't the
15 types of agreements that we enter into.

16 Q. And you're not at all familiar with the
17 prices in those agreements? You would know the public
18 information?

19 A. I am, but those prices, I don't believe are
20 reflective of any sort of market rate.

21 Q. They're not reflected of a market price for a
22 10- or 20-year power in British Columbia?

1 A. They're reflective of a longer-run marginal
2 cost type of power. I don't believe they're
3 reflective of what--real power that's available to
4 FortisBC. BC Hydro has certain restrictions on the
5 types of power it can buy. FortisBC doesn't have
6 those same restrictions. So we don't have to pay
7 anywhere near those types of prices because we're not
8 having to buy that same bioenergy type product. We
9 can buy any kind of power.

10 MR. DOUGLAS: Mr. President, I'm kind of
11 happy to let this sort of keep going, but kind of not
12 really. This is Mr. Shor's third cross-examination of
13 Mr. Swanson. It's 1:30. It's been a long day.

14 MR. SHOR: I just have one follow-up
15 question, if I could finish.

16 PRESIDENT VEEDER: Is it a follow-up or the
17 last question?

18 MR. SHOR: It's hopefully the last question.

19 PRESIDENT VEEDER: Okay. Let's get to the
20 last question.

21 BY MR. SHOR:

22 Q. What is FortisBC's long-run marginal cost of

1 power?

2 A. That's an interesting question. We've used
3 as a proxy a portion of BC Hydro's calculation because
4 we really--because we don't have the same restrictions
5 on what type of power we purchase, it's not so easy to
6 calculate what our long-run marginal cost of power is.
7 It's definitely higher than our current price. It's
8 not as high as B.C.'s long-run marginal cost.

9 Q. You don't have a number in mind? You can't
10 give me a range of numbers? Would it be 80 to 100?

11 A. I can't--

12 MR. DOUGLAS: Sorry, Mr. President. I
13 just--we should just cut this off at some point. Be
14 Canada's submission, please.

15 PRESIDENT VEEDER: That was probably the last
16 question, wasn't it?

17 MR. SHOR: Yes.

18 PRESIDENT VEEDER: Any questions from the
19 Respondent?

20 MR. DOUGLAS: One moment, please.

21 (Pause.)

22 MR. DOUGLAS: No further questions,

1 Mr. President.

2 PRESIDENT VEEDER: The Tribunal has no
3 further questions either.

4 Thank you very much for being so patient.

5 We've come to the end your testimony.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 PRESIDENT VEEDER: We're now going to break
9 for lunch, and we'll come back at 25 to 3:00.

10 (Whereupon, at 1:34 p.m., the Hearing was
11 adjourned until 2:35 p.m., the same day.)

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02:40:13 1 A. Yes, I have.

2 Q. Do you affirm the contents of that Witness
3 Statement here today?

4 A. I do.

5 MR. KURELEK: Okay. Before I ask my last
6 question, a for Claimant's counsel: Do you have a
7 cross binder for Mr. Krauss? I just want to add--he
8 needs a copy of his Witness Statement here.

9 MS. GEHRING FLORES: We do.

10 MR. KURELEK: So you do?

11 MS. GEHRING FLORES: We do have a cross
12 binder for him, yes.

13 MR. KURELEK: Okay. Thank you.

14 BY MR. KURELEK:

15 Q. My final question, Mr. Krauss, is if there
16 are any errors that you wish to correct related to
17 your Witness Statement?

18 A. Yes. There are some I would like to bring
19 clarity on. Firstly, in Paragraph Number 3, "2008"
20 should read "2010." In Paragraph 10, "46" should read
21 "40." And finally in Schedule 1, I note where the
22 tables are titled "Scheduled," that should read

02:41:22 1 "Delivered" to reflect the types of transmission that
2 was utilized to deliver the energy on.

3 MR. KURELEK: Thank you, Mr. Krauss.

4 Those are my questions for now.

5 PRESIDENT VEEDER: Thank you very much.

6 There will now be questions from the

7 Claimant.

8 MS. GEHRING FLORES: Yes, Mr. President.

9 CROSS-EXAMINATION

10 BY MS. GEHRING FLORES:

11 Q. Hello, Mr. Krauss.

12 A. Hi.

13 Q. My name is Gaela Gehring Flores, and I'm
14 counsel for Mercer International in this arbitration.

15 You have a cross binder in front of you there. It
16 doesn't have many documents in it.

17 So I think you said you are currently
18 Director of Business Development and Contract Services
19 at NorthPoint; is that correct?

20 A. Yes.

21 Q. And from 2006 to 2008, were you Director of
22 Power Marketing and Contract Management at NorthPoint?

02:42:15 1 A. Yes.

2 Q. And you worked at NorthPoint since its
3 inception in 2001; is that correct?

4 A. That's correct.

5 Q. When Robert Friesen started working at
6 NorthPoint as well?

7 A. Yes. Both Robert and I were in the company
8 before it became NorthPoint Energy.

9 Q. From 2006-2008 in your title at the time, you
10 were generally responsible for longer-term
11 transactions in excess of three months; is that right?

12 A. Yes. That was the understanding that we had.

13 Q. Now, Mr. Friesen actually testified before
14 the Tribunal last week. Actually, let me back up a
15 second.

16 You're aware that Mr. Friesen is a Witness
17 who was presented by Mercer in this arbitration?

18 A. I am.

19 Q. Okay. And Mr. Friesen testified before the
20 Tribunal last week, and he mentioned that he had
21 worked on some--a couple of long-term electricity
22 sales agreements with you. I believe they involved

02:43:20 1 sales into Alberta. Do you recall working with
2 Mr. Friesen on some long-term electricity sales?

3 A. I do. There was one in particular that we
4 did in late 1999 for delivery in 2000 or 2001. So
5 that was quite early.

6 Q. And with respect to those long-term sales, do
7 you recall if those contracts used transmission access
8 other than long-term firm?

9 A. If you're speaking about the transaction that
10 we sold into Alberta, there was limited amount of
11 long-term firm service into Alberta which we owned at
12 the time. So, monthly non-firm service was the only
13 service that was available, so whoever had that was
14 equivalent to having long-term firm.

15 Q. Okay. So you entered into--NorthPoint--and
16 you Mr. Friesen arranged for long-term electricity
17 sales into Alberta using not only long-term firm
18 transmission but also non-firm monthly transmission;
19 is that correct?

20 A. You said two different things there. So you
21 said "long term non-firm" and "monthly long firm." Do
22 you mean the same thing?

02:44:54 1 Q. Sorry if I misspoke. The Contract used
2 long-term firm and non-firm monthly transmission?

3 A. I'm not exactly sure whether or not that was
4 how it was structured. All I know is it was a
5 contract to deliver physical energy to Alberta.

6 Q. But you don't recall what transmission was
7 used for those contracts? Because I think just a
8 moment ago you mentioned that you did end up using
9 non-firm transmission?

10 A. I believe we did because I believe at that
11 time that was all that was available.

12 Q. In Paragraph 18 of your Statement, if you
13 want to refer to it, you say that, "Non-firm
14 transmission service holders are sometimes forced off
15 the transmission network by firm transmission holders
16 during periods of high transmission service demand."

17 Do you see that?

18 A. Yes.

19 Q. And I believe, just to clarify, when you're
20 talking about times of high transmission service
21 demand, I think you're talking about times of
22 curtailment; is that right?

02:46:14 1 A. Or oversubscription, yes.

2 Q. And due to that, the use of the transmission
3 on the line needs to be curtailed; correct?

4 A. Yes.

5 Q. And I think--as your Statement puts
6 forward--in that case, when there is curtailment,
7 non-firm transmission holders get bumped off; is that
8 correct?

9 A. Yes.

10 Q. Does that--does the same hold true if someone
11 has short-term firm transmission access?

12 A. No. If holders of long-term firm
13 transmission service have the service and short-term
14 firm--"firm" is firm service. So if there was a
15 curtailment required by the transmission service
16 provider, it would be done on a pro rata basis.

17 Q. Mr. Krauss, have you reviewed Mr. Friesen's
18 Witness Statement?

19 A. I have taken a look at it, yes.

20 Q. Just going to his Witness Statement at
21 Paragraph 8, Mr. Friesen says, "By mid-2008, there
22 were < [REDACTED] >> power contracts that we were

02:47:32 1 planning to broker for Celgar. At the time I did not
2 believe that we would have any difficulty selling all
3 of Celgar's self-generated electricity as the quantity
4 was very small compared to the market demand."

5 Mr. Krauss, do you have any reason to
6 disagree with Mr. Friesen's statement at Paragraph 8?

7 A. I must admit when he says the quantity was
8 very small, I'm not certain what that quantity was.
9 Because my experience with the Marketing Services
10 Agreement and with the transactions we were
11 undertaking with Celgar, that we were talking about
12 very, very small amounts of energy that we were
13 transacting.

14 So if he's talking about 5 megawatts versus
15 40 or 50 megawatts and compared to the market demand,
16 I actually can't comment on that because I'm not sure
17 what he means by the "market demand."

18 Q. Okay.

19 A. I'm not sure what he means.

20 Q. Okay. And in Paragraph 9 of Mr. Friesen's
21 statement, he says, "I understand in the arbitration
22 proceeding Canada has called into question whether

02:48:45 1 transmission access would have been available for
2 sales of Celgar's self-generated electricity outside
3 of British Columbia and whether Celgar would have been
4 able to enter into electricity sales contracts that
5 would have been economically efficient. I disagree
6 with Canada's position and can confirm that the
7 << [REDACTED] electricity sales contracts for
8 destinations in the [REDACTED]. I had identified in 2008 for
9 Celgar's self-generated electricity were very real
10 electricity sales opportunities with transmission
11 access that would have allowed for both Celgar and
12 NorthPoint to profit."

13 Do you have any reason to disagree with that
14 statement?

15 A. Not on the face of it. What's missing from
16 this is the amount of risk associated with the types
17 of transmission access that would be required to
18 undertake a transaction like this. And that isn't
19 spoken to in here.

20 Q. And then at Paragraph 11 of Mr. Friesen's
21 statement, he says, "I note that Mr. Rosenzweig, in
22 his Expert Report, states 'I have been informed that

02:49:56 1 firm transmission access out of B.C. is 100 percent
2 subscribed and has been 100 percent subscribed for
3 several years.' Mr. Rosenzweig has been misinformed.
4 From the time I began working with Celgar to broker
5 its electricity sales until present day, there has
6 always been firm transmission access available out of
7 British Columbia for periods of up to 12 months."

8 And do you have any reason to disagree with
9 this statement, Mr. Krauss?

10 A. First of all, when the statement is made, it
11 says, "there has always been firm transmission access
12 available out of British Columbia," I can't comment on
13 that because I don't know what the context is. If
14 that means from the time he started doing it in 2006,
15 I never watched the OASIS systems to see if it was
16 available every day or if there was a time when you
17 would look for firm transmission access, whether there
18 would be an occurrence of one month in there where
19 there was zero. I wasn't that closely involved in
20 knowing that, so I can't say--I can't agree or
21 disagree with the Statement that there has "always
22 been." I am aware that there has been monthly firm,

02:51:07 1 and I believe there still is.

2 Q. Okay.

3 A. At times.

4 MS. GEHRING FLORES: Thank you, Mr. Krauss.

5 Those are all my questions.

6 PRESIDENT VEEDER: Thank you very much.

7 Will there be any questions from the

8 Respondent?

9 MR. KURELEK: Yes, just a few.

10 REDIRECT EXAMINATION

11 BY MR. KURELEK:

12 Q. I would like to start off by asking Chris, if

13 you could, to call up the MSA that Mr. Krauss

14 referenced, and it's Exhibit R-349. This is the MSA

15 between NorthPoint and Celgar.

16 And, Mr. Krauss, can you read the

17 section--well, we'll wait until we get there. I think

18 it is Page 3, Section 4.1. It's a very short section

19 of the MSA.

20 Now, if you could read--

21 (Overlapping speakers.)

22 Q. Can you see that?

02:52:56 1 risk, and Mr. Krauss is talking about that very thing.

2 PRESIDENT VEEDER: Let's see where it goes.

3 You can reserve your position. We'll come back to it,

4 if need be.

5 BY MR. KURELEK:

6 Q. So, if you want to continue, Mr. Krauss.

7 A. I believe that's all I had to say on that

8 matter.

9 Q. Okay. A related question, because you had
10 raised in your cross-examination this issue of risk to

11 NorthPoint. Are there any other risks that might

12 arise from NorthPoint if it undertook a long-term

13 energy sales agreement on Celgar's behalf, the type

14 that would be longer than a year?

15 A. Yes. I believe there would be a number of

16 additional risks. The first one would be in the area

17 of transmission or delivery risk, and this would be

18 the case where Celgar would not be able to perform or

19 deliver or we would not have access to the

20 transmission or we would get curtailed or bumped. So,

21 in that case, there would be a responsibility for

22 NorthPoint to go and buy replacement power, and if we

02:53:56 1 couldn't find replacement power, then we would be
2 subject to some type of financial settlement with the
3 buyer.

4 The second one I would talk about would be
5 reputational risk. In the event that we would
6 continue to fail to deliver power, then it would be
7 difficult for us to find buyers to continue our level
8 of business.

9 Another one would be in the area of credit
10 risk. [REDACTED]

[REDACTED]

[REDACTED]. So, in a multi-year transaction, it

13 would likely be something that we would like to
14 investigate, particularly in the event Celgar's
15 industry is--their main line of business is pulp
16 business, and if something happened and the pulp
17 business went away, we would likely want to have some
18 assurance that we wouldn't be left standing there
19 holding the financial bag, so to speak.

20 And in addition, the buyer would be looking
21 for some additional--we would be looking for
22 additional credit assurance from the buyer in the

02:54:57 1 event if an energy transaction was sold at the high
2 prices that were in place at that time. And where
3 prices--if prices did fall, there would be an
4 incentive for the buyer to try and get out of the
5 Contract. So, we would want some assurance from the
6 buyer that they had the wherewithal to continue to pay
7 us.

8 Another one would be in our area of our
9 internal governance policies. So, in order for us to
10 have a transaction like this, we would have to have
11 two things, and they would both have to be in place.
12 The first one would have to be a more than reasonable
13 assurance of transition access to a counterparty, and
14 the second one would be an offsetting purchase
15 agreement. So, the Marketing Services Agreement or
16 agreement with Celgar would likely constitute the
17 offsetting purchase agreement, so we could check that
18 box off.

19 However, the more than reasonable assurance
20 of transmission access brings in to question the whole
21 idea of non-firm versus firm transmission. So, that
22 would be something we'd have to take a pretty hard

1815

02:56:07 1 look at. And generally in these type of credit
2 transactions, when you're selling forward energy, it's
3 generally a firm product, and we generally try and
4 line up firm transmission with firm energy such that
5 you try and minimize the risks associated with the
6 transaction.

7 The last one in the area of our internal
8 governance policies is that if a transaction was made,
9 for example, to sell all of Celgar's output for a
10 year, possibly two, it would likely exceed our
11 personal--the personal trading limit that I had and
12 that Mr. Friesen had in place such that we would have
13 to go to our next level of approval, which would be
14 our President/CEO. And as soon as you do that,
15 there's an additional level of scrutiny and risk
16 assessment that would be involved. If it was a
17 multi-year deal, for example, you would likely go
18 beyond his level, and then we have to go to our Board
19 of Directors. So, the level of scrutiny and risk
20 assessment that has to go into those kind of
21 transactions increases with every level of authority.

22 And, finally, what I'll add is, because of

02:57:12 1 the--those limitations, the ultimate decision isn't
2 necessarily mine to make or Mr. Friesen's. It could
3 be up to our Board of Directors.

4 Q. Thank you. I only have one more question, I
5 believe, and it's related to Claimant's counsel's
6 reference to Mr. Friesen's evidence. I just want to
7 fill this out a bit.

8 Do you ever recall Mr. Friesen coming to you
9 on behalf of Celgar to try to execute a [REDACTED]

[REDACTED]

12 A. I have no recollection of that happening.

13 MR. COULOMBE: Mr. President, if you don't
14 mind, I would also have a question for Mr. Krauss.

15 PRESIDENT VEEDER: There is no objection.
16 Normally, it is one counsel, but you've both done it.
17 No objection. Please continue.

18 MR. COULOMBE: Guilty again, I assume.

19 BY MR. COULOMBE:

20 Q. Mr. Krauss, Counsel for Claimant pointed you
21 in the direction of Paragraph 11 of Mr. Friesen--his
22 Witness Statement, and if you wouldn't mind, I would

02:58:26 1 like to look at it again with you.

2 MR. COULOMBE: Chris, if you wouldn't mind
3 bringing it on the board. It's Paragraph 11 of
4 Mr. Friesen's statement. Thank you.

5 BY MR. COULOMBE:

6 Q. Mr. Friesen says essentially that there has
7 always been firm transmission access out of British
8 Columbia.

9 Can you see this?

10 A. I can, yes.

11 Q. Does that mean that there is transmission
12 availability?

13 MR. SHOR: Objection to the form of the
14 question.

15 MR. COULOMBE: I'm sorry.

16 MR. SHOR: You're asking a leading question.

17 PRESIDENT VEEDER: It's a little bit leading.
18 You know where it's going.

19 BY MR. COULOMBE:

20 Q. So, can you explain whether we can read into
21 this statement whether there is transmission beyond
22 the border?

02:59:12 1 A. Now, "beyond the border," are you talking
2 about on BPA's system south of the B.C.-U.S. border?

3 Q. I'm talking after the Canadian-U.S. border,
4 so, yes, I would assume.

5 A. My understanding is that all of the firm--all
6 the transmission has been sold from the B.C.-U.S.
7 border has long-term firm such that there is--the only
8 thing that's available in BPA's system, as I
9 understand, is that which gets reposted when the
10 holders of the firm transmission service do not
11 schedule energy on it.

12 MR. COULOMBE: I have no further questions.

13 MR. KURELEK: Nor do I.

14 PRESIDENT VEEDER: The Tribunal has no
15 questions either.

16 Thank you very much for coming. We have come
17 to the end of your testimony.

18 MS. GEHRING FLORES: Mr. President, could I
19 just have one follow-up question on that last
20 question?

21 PRESIDENT VEEDER: If it doesn't set a
22 precedent because otherwise we get into the system of

03:00:20 1 recross, redirect, re-recross, re-redirect.

2 MS. GEHRING FLORES: Yes. Understood.

3 PRESIDENT VEEDER: Is it a short and useful
4 question?

5 MS. GEHRING FLORES: Yes, I believe so. I
6 believe it clarifies things.

7 PRESIDENT VEEDER: Go ahead.

8 RECROSS EXAMINATION

9 BY MS. GEHRING FLORES:

10 Q. So, Mr. Krauss, I believe you just said that
11 all the transmission south of B.C., that all firm
12 transmission is fully subscribed or it's all--it's not
13 available; correct?

14 A. That's my understanding, correct.

15 Q. What about short-term firm transmission?

16 A. I don't know what the availability is of
17 short-term firm. I haven't actually looked at that.

18 MS. GEHRING FLORES: Okay. Thank you.

19 PRESIDENT VEEDER: Now, we have come to the
20 end. Thank you very much.

21 (Witness steps down.)

22 PRESIDENT VEEDER: Can we proceed with the

03:01:13 1 next witness immediately, or should we have a short
2 break?

3 MR. OWEN: Give us a couple minutes.

4 PRESIDENT VEEDER: Two minutes. Okay.

5 (Brief recess.)

6 DAVID BURSEY, RESPONDENT'S WITNESS, CALLED

7 PRESIDENT VEEDER: Let's resume.

8 We have the next Witness before the Tribunal.
9 Please state your full name and, if you will, read the
10 words on the declaration on the piece of paper before
11 you.

12 THE WITNESS: Yes. My name is David Bursey.

13 I solemnly declare upon my honor and
14 conscience that my statement will be in accordance
15 with my sincere belief.

16 PRESIDENT VEEDER: Thank you.

17 There will first be questions from the
18 Respondent.

19 MR. DOUGLAS: Just briefly.

20 DIRECT EXAMINATION

21 BY MR. DOUGLAS:

22 Q. Hi, Mr. Bursey.

03:05:17 1 Are you a senior member of the regulatory bar
2 of British Columbia?

3 A. Yes. Thank you.

4 MR. DOUGLAS: Sorry.

5 (Comments off microphone.)

6 MR. DOUGLAS: I've lost him already.

7 THE WITNESS: I was trying to be modest.

8 BY MR. DOUGLAS:

9 Q. Are you appearing as an expert in domestic
10 regulatory law in B.C. to assist the Tribunal today?

11 A. Yeah.

12 Q. Yesterday we heard about the reconsideration
13 of BCUC Order G-19-14.

14 A. Yes.

15 Q. Could you explain what a reconsideration is
16 in the BCUC context?

17 A. There's a procedure that's provided for under
18 the Utilities Commission Act Section 99 to apply to
19 the Commission to have a decision reconsidered, and
20 the Commission has established guidelines for how that
21 procedure would occur.

22 Under those guidelines, there's a two-step

03:06:16 1 process for a reconsideration. First, the applicant
2 would file an Application for reconsideration, and the
3 Commission would decide under Phase I whether or not a
4 reconsideration should proceed. In that phase,
5 Parties to the original proceeding would have a chance
6 to debate whether or not the reconsideration should
7 proceed. If the Commission decides that a
8 consideration should proceed, then they proceed to
9 Phase II, which is an actual reconsideration of the
10 Decision.

11 Q. Can you explain what the G-19-14 proceeding
12 was about?

13 A. The G-19-14 proceeding concerned an
14 Application by BC Hydro to amend tariff supplement to
15 its Industrial Tariff 1823. The 1823 Tariff deals
16 with the sale of BC Hydro power to its industrial
17 customers, and it's a incentive rate. So, there's a
18 charge for the first 90 percent of the power at one
19 rate, a lower rate, and then the last 10 percent of
20 the power is at a much higher rate. Respectively it's
21 around \$34 for the first Tier 1 block of the power and
22 then about \$74 for Tier 2 power. And this is an

1823

03:07:42 1 incentive rate to try to encourage industrial
2 customers to conserve energy because the more energy
3 they conserve at the margin, the Tier 2 rate, the less
4 they have to pay at that rate.

5 So, the Tariff Supplement concerned how
6 BC Hydro would determine the customer baseload for
7 that rate. Every year that baseload is adjusted. So,
8 there's an annual adjustment to the baseload.

9 BC Hydro filed its baseline determination
10 guidelines. And in the proceeding, the Commission
11 considered both that baseline calculation but also the
12 baselines that BC Hydro uses in its load displacement
13 contracts and in the Energy Purchase Agreements, what
14 we've been calling EPAs in this proceeding.

15 The Commission was looking at the two
16 different types of GBLs, and it called one the
17 uncontracted GBL, which is determining the amount of
18 customer baseload for the--determining what charges
19 would apply under the 1823 rate, and it also referred
20 to the contracted GBLs, which are the rates--not the
21 rate but the baseline that BC Hydro would establish
22 under a load-displacement Contract or an energy

03:09:14 1 purchase Contract to determine how much excess energy
2 would be available.

3 Q. Okay.

4 A. The Commission decided that both those
5 guidelines should be put into that Tariff Supplement
6 to the 1823 rate.

7 Q. What was the reconsideration about?

8 A. BC Hydro was concerned about the Contracted
9 GBL rates being put into the Tariff Supplement because
10 they did not relate to the 1823 rate, and BC Hydro
11 took the position that it was not a rate.

12 Q. And what is the status of the
13 reconsideration?

14 A. The Commission has gone through the Phase I
15 and we're in the Phase II stage of that
16 reconsideration. So, the BCUC issued a
17 reconsideration Phase I Decision, in which it
18 explained the scope of reconsideration. And in that
19 reconsideration, it agreed that a GBL in the context
20 of an EPA or a LDA, Energy Purchase Agreement or Load
21 Displacement Agreement, is not a rate. But then the
22 issue is where would these GBL Guidelines be situated.

03:10:37 1 So, the reconsideration deals with the
2 distinction between--

3 MR. SHOR: Mr. Chairman, I'm going to
4 interrupt here because this is an extended direct of
5 which we had no notification. We're talking about
6 Orders that we don't have in front of us. We were not
7 notified that there was going to be extended direct of
8 this Witness or the topic. So, I think we should stop
9 it.

10 MR. DOUGLAS: It wasn't intended to be
11 direct. My clock says we are about 15 seconds over
12 from the five-minute mark. And I have no further
13 questions after this.

14 PRESIDENT VEEDER: Well, let's stop there.
15 Thank you very much. But do you have the documents to
16 which you've referred? Are they in evidence before
17 us?

18 MR. DOUGLAS: Yes.

19 PRESIDENT VEEDER: 19-14. G-19-14. What is
20 the reference?

21 MR. DOUGLAS: I will look it up,
22 Mr. President.

03:11:27 1 PRESIDENT VEEDER: And Tariff 1823 as well.

2 MR. DOUGLAS: Yes, Mr. President.

3 THE WITNESS: The reconsideration letter is
4 C-284. Not the reconsideration--BCUC's Decision on
5 the reconsideration.

6 PRESIDENT VEEDER: There will now be
7 questions from the Claimant.

8 MR. SHOR: Can we have five minutes?

9 PRESIDENT VEEDER: Of course. Yeah. We'll
10 take a five-minute break. We say this to all
11 Witnesses, please don't discuss the case of your
12 testimony away from the Tribunal.

13 (Brief recess.)

14 PRESIDENT VEEDER: Let's resume.

15 MR. DOUGLAS: Just for the record because the
16 President asked. It is--R-204 is Order G-19-14. That
17 was the original decision. And then Claimant's
18 Exhibit 284 was G-106-14, which is the BCUC's
19 reconsideration determination.

20 CROSS-EXAMINATION

21 BY MR. SHOR:

22 Q. Mr. Bursey, can you please turn to

03:15:53 1 Exhibit C-284, the Commission's Decision in G-106-14
2 at Page 7 of 8? I believe--

3 A. I have that page.

4 Q. I believe it was your testimony that the
5 Commission agreed with BC Hydro that contracted GBLs
6 were not rates?

7 A. I was referring to the sentence at the top of
8 Page 7.

9 Q. I'm just asking what your testimony was. Was
10 your testimony that the BCUC in this Decision agreed
11 with BC Hydro that contracted GBLs are not rates?

12 A. Yes.

13 Q. Could you please turn to the bottom of Page 7
14 of 8 where it says "Commission summary determination
15 on Phase I." Could we blow up that?

16 Do you want to read that again and reconsider
17 your testimony?

18 A. Sorry. You're talking about the section that
19 says 3.0?

20 Q. Above that. Under "Commission Summary
21 Determination on Phase I." In the first paragraph,
22 isn't it saying that "The Panel finds that, although

03:17:05 1 BC Hydro disagrees with the Commission's conclusion
2 that contracted GBL are rates, BC Hydro did not claim
3 the Commission made an error"?

4 Do you see that?

5 A. I see that.

6 Q. And then in the highlighted language it says
7 "For the reasons stated above, the Panel determines
8 that BC Hydro's reconsideration Application claims of
9 error were not substantiated"?

10 A. I see that.

11 Q. Isn't that rejecting BC Hydro's claim that
12 contracted GBLs were not rates?

13 A. I'm referring to the--if you look at the
14 bottom of Page 6, there's a--the very last paragraph
15 starts "In the TS 74 Decision, the Commission agreed
16 with BC Hydro that in considering when a GBL is a
17 rate, it is necessary to look at the use to which a
18 GBL is being put to and the specific context for that
19 use."

20 Q. Could you keep reading please the next two
21 sentences?

22 A. I was heading that way. "The Commission

03:18:18 1 acknowledges that a GBL in the context of an EPA or an
2 LDA is not a rate." That's what I was referring to.

3 Q. Could you read the next sentence after that,
4 please?

5 A. "However, when establishing this GBL,
6 BC Hydro is simultaneously determining the GBL
7 (baseline) that will apply to RS 1823 under TS 74 used
8 in the GBL mechanism, which is a rate."

9 Q. "Which is a rate" is what they said; right?

10 A. The 1823 TS 74 is a rate.

11 Q. What the Commission is saying that GBL serves
12 two purposes: It determines the amount of energy that
13 BC Hydro will buy, and it determines the self-supply
14 obligation and limits the obligation to serve. And it
15 is saying one of those is a rate and one isn't;
16 correct?

17 A. I'd prefer to go back. I think you're
18 paraphrasing it a little too simply.

19 Q. But the Commission denied the request for
20 reconsideration?

21 A. No. It allowed the question to
22 reconsideration. The request for reconsideration

03:19:17 1 focused on where the Contracted GBL Guidelines should
2 be situated.

3 Q. Right. But not whether they should be filed
4 as a rate. Just where; correct?

5 A. Well, that's an issue, the reconsideration
6 about what to do with the Contracted GBLs Guidelines.
7 If we go back to the first decision, there's a number
8 of passages that can help explain context by that.

9 Q. Could you turn to Paragraph 68 of your
10 Witness Statement, please. Do you have it?

11 A. Not yet.

12 Q. I'm sorry. Your Expert Report. I've been
13 corrected.

14 A. Yes.

15 Q. Now, you state there that "The BCUC only has
16 the power to approve energy supply Contracts"--which
17 we're calling EPAs--"it does not have the power to
18 change their terms."

19 Is that your testimony?

20 A. No, that's not my testimony. What it says
21 there is "The BCUC role in reviewing energy supply
22 Contracts under Section 71 is to review the Contract

03:20:43 1 in the public interest and then accept it or declare
2 it unenforceable in whole or in part."

3 I'm taking issue with the word "approve."

4 The BCUC doesn't approve the contracts. They come
5 into effect according to their own terms.

6 Q. So it's your testimony that they can approve
7 it, but they can't change it?

8 A. Correct.

9 Q. Now, Mr. Bursey, in my regulatory experience
10 with the U.S. Federal Government, the power to approve
11 a contract effectively is the same as the power to
12 change it. Is your experience in B.C. different?

13 A. Well, my experience with Section 71 relates
14 to what the wording of Section 71 says. The word
15 "approve" doesn't appear in Section 71. It says the
16 obligation is to file. And under regulatory law in
17 Canada, in B.C., there's the concept of positive
18 allowance schemes and negative allowance schemes,
19 positive approval schemes and negative allowance
20 schemes. And this is a negative allowance scheme. I
21 referred that to--there's the Bell Canada Decision,
22 which I cite in my Report, that deals with that.

03:21:52 1 Q. My question was much simpler.

2 A. No, it wasn't actually.

3 Q. I'm trying to ascertain whether the
4 Commission, if it does not approve of a particular
5 term in an energy Contract, can tell the Parties it
6 doesn't approve of that term and ask them to change it
7 or they will not approve it. Doesn't that cause them
8 to change it?

9 A. The BCUC has the power to disallow a part,
10 but it cannot prescribe what the terms the Parties are
11 to agree to. That's for the Parties to agree to.

12 Q. And if tells the Party it's going to disallow
13 a Contract because of a particular term, doesn't that
14 usually, in your experience, cause the Parties to
15 change that term?

16 A. It would depend on whether or not there's
17 some other--enough of a bargain to be left to deal
18 with it.

19 Q. That's a possible outcome?

20 A. That's a possible outcome, yes.

21 MR. SHOR: Thank you. I have no further
22 questions.

03:22:48 1 PRESIDENT VEEDER: Are there any questions
2 from the Respondent?

3 MR. DOUGLAS: Yes, just briefly.

4 REDIRECT EXAMINATION

5 BY MR. DOUGLAS:

6 Q. I'm just looking at Paragraph 68.

7 Mr. Bursey, you mentioned, I think, in your testimony
8 that an EPA comes into effect according to its own
9 terms. Can you elaborate on that for me?

10 A. Yes. The Parties negotiate the Contract, and
11 they determine the effective date. And it is possible
12 and often the case that the Contract would come into
13 effect before it is actually filed with the
14 Commission. The Contract is then filed with the
15 Commission, and the Commission decides whether it is
16 in the public interest. If it decides it is not in
17 the public interest according to the criteria set out
18 in Section 71, then it may disallow the Contract. But
19 the Contract is in effect, can be in effect at that
20 time if, according to the terms of the Contract, it
21 comes into effect prior to that acceptance by the
22 BCUC.

03:23:54 1 Q. Are you familiar with the--do you know when
2 the Claimant's EPA with BC Hydro came into effect?

3 MR. SHOR: We are going far beyond the scope
4 of my cross-examination.

5 MR. DOUGLAS: It's my last question.

6 MR. SHOR: It doesn't matter. It had nothing
7 to do with my cross-examination.

8 PRESIDENT VEEDER: It sounds a long way. But
9 is there a basis for this question in reexamination?

10 MR. DOUGLAS: We're talking about the
11 relationship between the BCUC review under Section 71
12 and when the legal effect of a contract takes place.
13 And the Witness had testified that an EPA takes effect
14 legally according to its terms.

15 PRESIDENT VEEDER: Go ahead.

16 MR. DOUGLAS: So my only question was whether
17 he was familiar with--

18 PRESIDENT VEEDER: Stop now. Just ask your
19 question.

20 MR. DOUGLAS: Okay. Sorry.

21 BY MR. DOUGLAS:

22 Q. Are you familiar with the legal date on which

03:24:39 1 the Claimant's EPA with BC Hydro came into effect?

2 A. I'd have to look at the Contract.

3 Q. One moment.

4 PRESIDENT VEEDER: We can do that. That's

5 not--

6 MR. DOUGLAS: Take two seconds.

7 PRESIDENT VEEDER: Okay. Two seconds.

8 MR. DOUGLAS: Literally two seconds.

9 (Comments off microphone.)

10 BY MR. DOUGLAS:

11 Q. Just by looking at the front page of the
12 Claimant's EPA with BC Hydro, can you determine the
13 date that that agreement legally came into effect?

14 MR. SHOR: Okay. That's a leading question
15 and far beyond the scope of anything I dealt with at
16 cross. He's obviously been prompted.

17 PRESIDENT VEEDER: We don't need this. I
18 mean, I'm sorry to say this, but I don't mean to
19 be--but we don't need your expertise to tell us the
20 answer to that question.

21 MR. DOUGLAS: Fair enough.

22 PRESIDENT VEEDER: Move on.

03:25:53 1 MR. DOUGLAS: I'm done, Mr. President.

2 PRESIDENT VEEDER: Well, thank you very much.
3 It's been very brief, but thank you for testifying
4 before the Tribunal.

5 THE WITNESS: Thank you very much.

6 PRESIDENT VEEDER: You can leave everything
7 there. Just leave everything.

8 (Witness steps down.)

9 PRESIDENT VEEDER: Can we move to the next
10 Witness, or do you need a bit more time?

11 MR. OWEN: A couple minutes.

12 PRESIDENT VEEDER: Let's take a couple of
13 minutes.

14 (Brief recess.)

15 PRESIDENT VEEDER: Before we move to the next
16 Witness, could we clarify where we are? Because we
17 may have not noted that Mr.--or Denise Mullen was not
18 being called, or is that Witness being called out of
19 order?

20 MR. OWEN: It's my understanding that the
21 Claimant is not calling Ms. Mullen.

22 MR. SHOR: That's correct.

03:31:07 1 PRESIDENT VEEDER: Okay. So we have
2 obviously Mr. Stockard, and then we have
3 Mr. MacDougall. Again, just for planning
4 purposes--this is not going to hold you to it--but how
5 long are you going to take with Mr. Stockard?

6 MR. SHOR: It's an excellent question. I
7 think we will get through both Mr. Stockard and
8 Mr. MacDougall today, and I've spoken with counsel for
9 Canada. It's a function of the schedule, I think,
10 we've been--we haven't been using the time that was
11 allocated, so there is extra time in the schedule. I
12 think you cut back our time so--but the current
13 thinking is we're likely to finish with these
14 Witnesses today. We will do the Damages Witnesses on
15 Wednesday.

16 PRESIDENT VEEDER: That's tomorrow.

17 MR. SHOR: That's tomorrow. And then I think
18 the Parties would like to have Thursday to prepare
19 their Closing Statements and reconvene on Friday to
20 present them.

21 Is that a fair characterization?

22 MR. OWEN: That would be acceptable to us,

03:32:19 1 Mr. President.

2 PRESIDENT VEEDER: That strikes us as a very
3 sensible idea.

4 Again, let's see how it goes. We don't want
5 to curtail the examination, cross-examination,
6 reexamination of Witnesses, but we'll see where we
7 stand tonight.

8 JAMES STOCKARD, RESPONDENT'S WITNESS, CALLED

9 PRESIDENT VEEDER: So we have the next
10 Witness before us. So if you could state your full
11 name and read the words of the declaration on the
12 piece paper before you.

13 THE WITNESS: James Andrew Stockard.

14 I solemnly declare upon my honor and
15 conscience that my statement will be in accordance
16 with my sincere belief.

17 PRESIDENT VEEDER: Thank you.

18 There will be questions first from the
19 Respondent.

20 MR. OWEN: Thank you.

21 DIRECT EXAMINATION

22 BY MR. OWEN:

03:32:58 1 Q. Mr. Stockard, you're a Senior Consultant with
2 Pöyry; is that correct?

3 MR. SHOR: Just a minute. I want to make
4 sure we're in closed session.

5 PRESIDENT VEEDER: No, we're in open session
6 at the moment. So I think if you need it closed,
7 we'll close it; is that right? Do you need it closed?

8 MR. OWEN: We probably should go into closed
9 session, a few questions.

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

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

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03:33:21 1 CONFIDENTIAL SESSION

2 BY MR. OWEN:

3 Q. Mr. Stockard, you worked with Pöyry. Can you
4 tell us a little bit about Pöyry?

5 A. Pöyry is a global firm that specializes in
6 management consulting and engineering services across
7 a wide variety of industries.

8 Q. And can you tell us how that firm started as
9 a consulting firm?

10 A. The firm started from Mr. Jaakko Pöyry, who
11 was an engineer and started an engineering services.
12 As the company grew, it grew through expansion and
13 acquisition and went into other diversified fields.

14 Q. And does it have any particular expertise?

15 A. Yes. Mr. Pöyry started off actually
16 designing pulp and paper mills.

17 Q. Could we have Exhibit R-591, please.

18 Can you tell me who prepared this,
19 Mr. Stockard?

20 A. I did.

21 Q. And in this demonstrative, could you tell me
22 what data you relied on?

03:34:35 1 A. This would be the << [REDACTED]
2 information that was supplied by Tembec through APP,
3 Paper Excellence.

4 Q. Did it include << [REDACTED] in this data?

5 A. No, this is only for the << [REDACTED]

6 Q. Why did you choose this period of time as
7 opposed to the fiscal year?

8 A. I chose this period of time because this
9 would be the situation, the reality that they know
10 they would be facing leading up to the << [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

12 Q. Okay. And were there any considerations in
13 terms of the data that led you to choose this?

14 A. The considerations I did with the data was
15 actually to look at it both from the [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] And then I also
19 did the [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] And that would be developed both from
22 << [REDACTED]

03:35:49 1 Q. Mr. Stockard, you heard Mr. Merwin earlier
2 last week testify that he would--without the
3 NorthPoint and the FortisBC contracts, he would simply
4 vent high-pressure steam off the high-pressure header.
5 Can you tell us a little bit about that and what your
6 views are on that?

7 A. My view on that would be a waste of good
8 energy. The operation at Celgar is probably the most
9 unique the operations I've reviewed in the course of
10 this filing, as this facility is very much linked
11 between the kraft pulping operations as well as the
12 chemical recovery cycle. All of which is the main
13 driver for the energy generation at the plant for
14 producing power.

15 By venting high-pressure steam, it would not
16 be available for power generation. But at the same
17 token, also venting the steam would mean additional
18 costs in terms of securing incremental fuel as well as
19 procuring more treated water to run the boiler
20 operations. If the processes between the kraft
21 pulping and the steam generation plant, namely the
22 recovery boiler, were more in balance, there wouldn't

03:37:00 1 be such a need to vent the steam.

2 MR. OWEN: Okay. No further questions.

3 PRESIDENT VEEDER: There will now be
4 questions from the Claimant.

5 CROSS-EXAMINATION

6 BY MR. SHOR:

7 Q. Put the chart up--may we keep the chart up on
8 the board?

9 I just want to understand the data on this
10 chart. So Mr. Lague testified that << [REDACTED] were
11 included and you're telling me he was wrong and [REDACTED]
12 [REDACTED] > are not included in here; is that correct?

13 A. The << [REDACTED] were not included on this as
14 the << [REDACTED] were not within the data set provided
15 by Paper Excellence.

16 Q. Okay. And are the lines--does that
17 include--if I look onto the red line, for example, the

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 A. It would be [REDACTED]

22 Q. Okay. So to get to a << [REDACTED]

03:38:12 1 there would be << [REDACTED]

2 A. To get to a << [REDACTED] you would--

3 (Overlapping speakers.)

4 A. [REDACTED] [REDACTED] [REDACTED]

5 Q. I apologize.

6 A. To get to the << [REDACTED] [REDACTED]

7 [REDACTED]

8 that Mr. Switlishoff reports.

9 Q. Right. So if I wanted to look at a red line

10 that would show << [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] that red line would be

12 higher, correct?

13 A. That red line would be higher because of the

14 << [REDACTED]

15 [REDACTED] [REDACTED]

16 Q. Okay. Now, I notice you prepared this chart

17 for 2008 and 2009. You also had available data for

18 Tembec's Fiscal Year 2008, did you not?

19 A. Yes.

20 Q. Where is the chart for that?

21 A. I did not submit it. It was a part of the

22 data. However, for Fiscal 2008, I could duplicate the

03:39:04 1 analysis.

2 Q. And isn't it the case that prices were lower
3 in 2008 than they were in 2009 << [REDACTED]

4 A. The escalation in << [REDACTED] in many cases were
5 coming through some curtailments, so yes, there was a
6 low weighted cost. So from memory, the cost was
7 << [REDACTED]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

11 Q. Okay. So if we were to look at this same
12 chart for the prior fiscal year, [REDACTED]

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

16 Q. Thank you. I'm done with that exhibit.

17 Now, I think you told Mr. Owen that Pöyry is
18 a global engineering and consulting firm with a
19 specialty in forest products generally and pulp and
20 paper specifically?

21 A. Yes.

22 Q. And you personally have experience in the

03:40:04 1 operation of NBSK pulp mills, having project
2 experience of roughly 30 kraft mills, I think you said
3 in your statement?

4 A. I don't recall exactly. If you could show me
5 there. I've been to over 100 different facilities
6 globally.

7 Q. If you look in your binder at Paragraph 3 of
8 your first Expert Report.

9 A. Where exactly would you like me to look?

10 Q. Paragraph 3. I'm sorry, Paragraph 2. And
11 it's 50, not 30. No, 30. Paragraph 2.

12 A. I've worked with or visited over 50 pulp and
13 paper facilities in North America and Europe. I have
14 project experience at approximately 30 kraft mills.

15 Q. Thank you. Now, during a call we had with
16 the Tribunal, Mr. Owen argued that Independent Experts
17 needed to be impartial. Have you presented an
18 impartial analysis in your testimony?

19 A. I believe I have.

20 Q. You're not simply an advocate for Canada?

21 A. No, sir.

22 Q. You're not simply presenting evidence and

03:41:23 1 analyses that support Canada's position?

2 A. No, sir.

3 Q. So if a common issue arose that affected
4 multiple mills, you applied the same analysis and
5 looked at the same data across those mills?

6 A. Subject to the availability of information, I
7 would have done that. And I've made those requests of
8 Canada for seeking equivalent information and
9 datasets.

10 Q. So, would you say that you strive to take a
11 fair and even-handed approach?

12 A. I was trying to be fair in all cases.

13 Q. And am I correct that Canada tasked you with
14 determining whether or not BC Hydro followed a
15 consistent principle for determining GBLs for
16 different pulp mills in British Columbia?

17 A. I was reviewing the principles and the
18 guidelines that BC Hydro was going through in terms of
19 trying to see if the estimates and the conclusions
20 made were reasonable based off of the stated evidence.

21 Q. Were you trying to determine whether they
22 followed a consistent principle?

03:42:19 1 A. Yes.

2 Q. I take it your first task then was to
3 identify the principle whose consistent application
4 you were going to test for; correct?

5 A. Yes. Try to understand exactly what the
6 process was so that I could actually go through and
7 assess in a similar fashion as BC Hydro.

8 Q. Could you turn to Paragraph 49 of your First
9 Report, please. Can you just take a look at that. I
10 want to ask you the question: Is this the GBL
11 principle you applied in your analysis?

12 A. Yes, for the main part. The context being
13 that in part of this process BC Hydro was looking to
14 procure incremental energy for the Province.

15 Q. Okay. Now, in Footnote 28, I think you
16 provide two sources for the principle. One is the
17 BC Hydro Information Report dated June 2012, and the
18 other is Mr. Dyck's Witness Statement at Paragraph 44?
19 Do you see that in Footnote 28?

20 A. Yes.

21 Q. Now, let's consider Mr. Dyck's Witness
22 Statement first. Did Mr. Dyck provide any source or

03:43:41 1 reference for his GBL principle in Paragraph 44, if
2 you recall?

3 A. Not that I can recall without reviewing his
4 testimony.

5 Q. So you obtained your understanding of the
6 principle directly from Mr. Dyck?

7 A. No, sir.

8 Q. Just from a review of his testimony?

9 A. No, sir.

10 Q. You cited Mr. Dyck, Paragraph 44, as the
11 source. What does that mean?

12 A. I cited Mr. Dyck as a source in terms of the
13 process he was relating, as he recalled it. I also
14 looked through the information I was being provided at
15 the time, the contemporaneous, more information
16 available in order to understand the process as if I
17 was trying to go through it myself.

18 Q. Okay. I don't want to understand the
19 process. I'm just asking about the GBL principle that
20 you were testing to see whether it was consistently
21 applied. What was your sources for identifying what
22 that principle was. It was Mr. Dyck's Witness

03:44:39 1 Statement, Paragraph 44, and the June 2012 Information
2 Report; correct?

3 A. Those would be--those are chief sources for
4 it, yes.

5 Q. Okay. Now, Mr. Dyck's Witness Statement,
6 Paragraph 44, was written in 2014, was it not?

7 A. Correct. That was why I was seeking other
8 information sources to understand it correctly.

9 Q. And the June 2012 Information Report
10 obviously was issued in June 2012; correct?

11 A. As the Report states.

12 Q. So, because you relied on 2012 and 2014
13 sources for the GBL principle whose Application you
14 tested, your analysis would not have allowed you to
15 ascertain whether or not that principle was created
16 post hoc to justify previous determinations, would it?

17 A. No. I would not agree with that statement as
18 I also looked at some of the information session
19 material that was made available and the questions
20 that were asked as a part of the RFP Administrator
21 Process and in terms of being the most contemporaneous
22 at the time frame.

03:45:44 1 Q. But you didn't cite that as a source in your
2 First Expert Report, did you?

3 A. No, I did not cite it.

4 Q. Okay. Now, have an engineering degree;
5 correct?

6 A. Correct.

7 Q. As an engineer, when you go to build
8 something, do you draft the plan before you build it
9 or afterwards?

10 A. Generally, you're going to start drafting it
11 beforehand.

12 Q. So, correspondingly, if you were asked to
13 examine whether a project was built according to
14 design specifications, you would not rely on drawings
15 created after the Project was built, would you?

16 A. I would have to rely on some of those
17 drawings because even to design projects change in the
18 course of as they are being built.

19 Q. But I'm talking about design drawings made
20 after it was built. You wouldn't rely on that to see
21 if it was built according to the specification, would
22 you?

03:46:26 1 A. I'm not sure I understand the question
2 because the drawing that I would be examining would be
3 what is meant to have actually been built.

4 Q. No, but I'm giving you a different example.

5 A. That's what I'm trying to understand.

6 Q. If you were to examine whether a project was
7 built according to design specifications, and someone
8 gave you drawings that they said they made five years
9 after the project was built, would you rely on those
10 drawings to determine whether the Project was built
11 according to design specifications?

12 A. As long as what it was that I was assessing
13 was still in the same state as when it was built at
14 the end of--how can I say this? Upon it was actually
15 completed and not changed in between.

16 Q. But if the specifications were not provided
17 until after the project was built, how could it
18 possibly have governed how the project was built?

19 A. From an engineering principle, the
20 specifications are defined before I start building.

21 Q. But my hypothetical was different. My
22 hypothetical was you don't get the specifications

03:47:28 1 until after.

2 A. And, again, from a specification point and
3 BC Hydro seeking to procure new energy--

4 Q. I wasn't asking about that.

5 A. I'm just putting it in the same time frame
6 and--as I believe you're trying to do the comparison.

7 Q. Okay. Let's look at an example. I was
8 wondering if you'll indulge me. There should be a tab
9 in your binder called DX2. And I just wanted to walk
10 through a GBL calculation with you for a hypothetical
11 mill.

12 MR. OWEN: Sorry. We haven't seen this
13 before. What is this?

14 MR. SHOR: This is just a hypothetical, a
15 demonstrative.

16 MR. OWEN: Just a hypothetical? Is this
17 like--is this another "white rabbit," Mr. Shor?

18 MR. SHOR: No, it's just a hypothetical.

19 PRESIDENT VEEDER: In this case, you can't
20 say it is "just" a hypothetical. Is this the first
21 time we've seen it?

22 MR. SHOR: Yeah. I'm just putting numbers up

03:48:17 1 on a board and asking him to try and compute a GBL.

2 MR. OWEN: Mr. President, this has really got
3 to stop. Like, I mean, honestly, I've been patient.
4 I really feel that I have.

5 MR. SHOR: It is clearly a demonstrative
6 exhibit. It's not--

7 (Overlapping speakers.)

8 PRESIDENT VEEDER: We can't--sorry, we can't
9 argue. Just please explain what this is.

10 MR. SHOR: I just want to walk us all through
11 the process of if you're given some data, how you come
12 up with a GBL. This is purely hypothetical data that
13 is just an example of some numbers, so I think we want
14 to get a sense. I want to give everybody a sense for
15 how much variability there could be in determining
16 what the GBL would be.

17 PRESIDENT VEEDER: So, it's not put in as
18 evidence.

19 MR. SHOR: It's not put in as evidence. It's
20 purely a demonstrative exhibit.

21 PRESIDENT VEEDER: And it's not meant to
22 reflect any existing material in evidence.

03:49:04 1 MR. SHOR: It is not meant to reflect
2 anything.

3 PRESIDENT VEEDER: And this "Hypochuck Mill"
4 is a complete fiction.

5 MR. SHOR: It's not Skookumchuck, let's say
6 that, yes.

7 PRESIDENT VEEDER: Well, let's ask the
8 Respondent. Basically, this material could be put
9 orally. And it would be much more difficult and time
10 consuming. What's the prejudice--

11 MR. OWEN: I guess so.

12 PRESIDENT VEEDER: Let me finish.

13 MR. OWEN: Sir, please.

14 PRESIDENT VEEDER: What's the prejudice in
15 having this material put to the Witness?

16 MR. DOUGLAS: GBL. This is--it's almost like
17 a game show. The Witness is here to testify to his
18 expertise, not to have hypotheticals put up.

19 MR. OWEN: Mr. Stockard's Expert Report is an
20 assessment of the Generator Baselines that were set
21 for the various comparators that the Claimant
22 identified, and he did look at the Standard, that's

03:49:50 1 true, but now he's being ambushed. And this is--

2 MR. SHOR: He's not being ambushed.

3 MR. OWEN: Can you let me finish, please,
4 sir. You have a very bad habit that way.

5 Now he's being ambushed with this
6 hypothetical example. It is not something that he has
7 had time to consider. It is not something that he's
8 actually looked at in his Expert Report. If Mr. Shor
9 wants to put questions to him about what happened with
10 Skookumchuck, Canfor, real-world situations, that's
11 fine, but Hypochuck--Hypochuck? Okay. Sorry. It
12 doesn't exist in the real world, and I fear that this
13 is just another game to twist the Witness into knots
14 with clever questions, and let's concentrate on what
15 he should be cross-examining on, which is the Expert
16 Report.

17 PRESIDENT VEEDER: One moment.

18 (Tribunal conferring.)

19 PRESIDENT VEEDER: We have one question.

20 Is--this Hypochuck Mill is slightly relevant of
21 another mill, but do these figures--are they taken
22 from anywhere--

03:51:48 1 MR. SHOR: They are not--

2 PRESIDENT VEEDER: --similarity, or are you
3 going to say that they are analogous to another mill?

4 MR. SHOR: No. I'm just using this as a
5 hypothetical example.

6 PRESIDENT VEEDER: A complete hypothetical.

7 MR. SHOR: A complete hypothetical.

8 PRESIDENT VEEDER: Well, we're going to let
9 you go ahead.

10 But can we say to the Witness, if you can't
11 answer, you must say so. If your answer needs more
12 time, you must say so. If you can't understand the
13 question, please say so.

14 THE WITNESS: Very well.

15 PRESIDENT VEEDER: Let's see where it goes.

16 BY MR. SHOR:

17 Q. So Mr. Stockard, what I presented here is
18 some data for a hypothetical mill. I provided
19 generation data, purchase data, calculated the
20 self-supply, which is referred to as "generation to
21 load." I've given you the load. I've given you
22 five years' worth of data, and I just want to

03:52:33 1 understand the process you went through in evaluating
2 all the other mills you evaluated to understand
3 whether the GBL calculation was reasonable, so I was
4 going present these data to you and ask you to walk us
5 all through what you think a reasonable GBL for a mill
6 with these data characteristics would be.

7 And if it helps, I'm willing to give you some
8 of my assumptions, which are that the Mill only burns
9 hog fuel in its boiler, it's never sold electricity,
10 it has always used its generation to meet its own
11 load, it has no force majeure shutdowns or sales or
12 other complicating events. I just want to know, in
13 light of these generation data, what you think the
14 reasonable GBL would be.

15 A. I would need to think about it; however, I
16 also need additional assumptions. This has nothing to
17 do with the configuration of the facility, let alone
18 what exactly is providing the energy for the power
19 generation.

20 Q. I told you it was just exclusively a hog
21 boiler.

22 A. A hog boiler from one facility to the other

03:53:31 1 as compared to these comparators are very different.
2 Specifically, for the Celgar facility, it does not go
3 to power generation. So, when you say a "hog boiler,"
4 that, in this case, could mean absolutely nothing
5 here.

6 Q. Okay. So, you can't just look at actual
7 generation load, purchase data, self-supply obligation
8 and reach any conclusion at all about what the range
9 of reasonable results for a GBL would be?

10 A. I would not because I would be going for and
11 looking for additional information as it relates to
12 the process implications.

13 Q. So, you can't tell me looking at these
14 incomes whether would you use a one-year average or a
15 two-year average or a three-year average?

16 A. There is no way for me to assess what could
17 be considered normal, what the configuration of the
18 facility, what are the circumstances for the
19 production. As I said, there is a lot of assumptions
20 and information that you have suggested here by a
21 series of numbers, but are not available.

22 Q. Okay. Now, you're aware, are you not, that

03:54:36 1 one of the points in dispute in this arbitration is
2 whether Celgar sales of self-generated electricity to
3 NorthPoint and FortisBC should have been included in
4 Celgar's GBL; correct?

5 A. Yes, I believe that was one of the points
6 raised.

7 Q. And in your Second Report you performed an
8 extensive analysis of Celgar's contention that it
9 would not have produced that electricity absent its
10 contracts with FortisBC and NorthPoint?

11 A. I looked at the facility and the way it was
12 configured, and based off of the pulp generation and
13 the daily pulp generation and what that equated to in
14 power generation, it was my conclusion that they would
15 have been generating this energy without an incentive.

16 Q. Okay. Could you turn to Paragraph 15 of your
17 Second Statement.

18 Now, Mr. Merwin presented a thermal balance
19 analysis in his testimony, and I take it you're
20 contending that the only way to substantiate the
21 figures provided for thermal balance is through a
22 detailed mass and energy balance?

03:55:52 1 A. The--in context of what I was referencing in
2 Mr. Merwin's Second Statement, it was a presentation
3 of, as I recall, three years of information, and what
4 he determined was the actual generation and what
5 he--as what attributed energy generation for--in
6 excess of thermal balance. But there was no
7 additional information or context in terms of how he
8 had arrived at it.

9 Q. Okay. And to substantiate the figures he
10 provided, you would need a detailed mass and energy
11 balance; correct?

12 A. I would have liked to have understood what it
13 is he did and the assumptions he made.

14 Q. Again, I'll repeat the question. To
15 substantiate the figures he provided--I'm just using
16 your words--you would need a detailed mass and energy
17 balance; correct?

18 A. To substantiate in great detail would be
19 that, but also to understand what he did, I would need
20 that.

21 Q. And so why is it important to substantiate
22 Mr. Merwin's thermal balance analysis?

03:56:49 1 A. Because for what he was--I do not know what
2 it was he was reporting was thermal balance.

3 Q. Okay. Now, the Tembec Skookumchuck Mill also
4 made a << [REDACTED] claim in connection with
5 obtaining a GBL in 2009, did it not?

6 A. It did.

7 Q. Could you show me where in your reports you
8 discussed the << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 A. I reviewed what his << [REDACTED] were, as
16 well as what was stated to be the << [REDACTED] for
17 the plant.

18 Q. But you did not have a detailed << [REDACTED]
[REDACTED] correct?

20 A. Detailed would be the diagrams that he
21 provided, which was there both on [REDACTED], >> as
22 well as identifying << [REDACTED]

03:57:42 1 [REDACTED] [REDACTED]

2 [REDACTED] [REDACTED]

3 Q. I'm still not sure--did you have a detailed
4 << [REDACTED] for Tembec Skookumchuck? Yes
5 or no?

6 A. The << [REDACTED] that Mr. Lague provided was
7 sufficient for me to understand how the facility was
8 operating.

9 Q. But it wasn't the detailed << [REDACTED] [REDACTED]
10 [REDACTED] you criticized Mr. Merwin for not providing?

11 A. The diagram I'm referring to, Mr. Merwin
12 provided no diagram in support of his claim.

13 Q. And Mr. Lague just provided a diagram, not a
14 detailed << [REDACTED] correct?

15 A. The diagram contains the information.

16 Q. Could you turn to Paragraph 85 of your Second
17 Report. Here, you talk about the possible need of the
18 auxiliary boiler in winter months to provide
19 additional heat for the plant; am I correct?--for the
20 Celgar plant?

21 A. Yes.

22 Q. Where in your reports did you evaluate the

03:58:56 1 operational benefit for the Tembec Skookumchuck Mill

2 [REDACTED] [REDACTED]

3 A. I did not need to assess that there because
4 they have an additional boiler that was shown on the
5 [REDACTED] that Mr. Lague provided BC Hydro.

6 Q. Now, on Paragraph 14 of your Second Report--

7 A. I'm sorry; what paragraph?

8 Q. Paragraph 14.

9 A. And Second Report?

10 Q. Second Report. All my questions are going to
11 be related to the Second Report.

12 A. Here--

13 Q. If I understand it correctly, you're
14 describing numerous operational benefits Celgar would
15 have obtained from running a second boiler in addition
16 to its recovery boiler; correct?

17 A. Yes. These are all observations of
18 statements made within energy managers' reports and
19 other documents at the time of how the hog boiler was
20 being used and substantiated for its operation.

21 Q. And the purpose of your testimony here is to
22 point out that the pulp mill would not shut down its

04:00:08 1 second boiler without first considering all the
2 operational benefits of the second boiler, in addition
3 to its electricity output; correct?

4 A. Not limited to that. In some cases
5 statements were being made that the boiler was
6 required for environmental permit reasons as well as
7 for process upsets, which was indicated by the
8 continuous firing of natural gas in the summer months
9 to keep it on hot idle.

10 Q. Now, for Tembec Skookumchuck, the hog boiler
11 was their second boiler; right? They had a recovery
12 boiler and a hog boiler?

13 A. As well as a smaller natural gas boiler.

14 Q. Can you show me where in your reports you
15 analyze the operational benefits to the Tembec
16 Skookumchuck kraft pulp mill of << [REDACTED]

[REDACTED]
18 A. I did not note anything in my second Expert
19 Report. I noted the aspects of the costs of the
20 operation in my first Expert Report for the
21 Skookumchuck Mill in relation to << [REDACTED]

[REDACTED]

04:01:39 1 Q. The costs but not the operational benefits.

2 A. The operational benefits for them differs
3 from the Skookumchuck Mill versus Celgar.

4 Q. I know. But you didn't analyze for the
5 Skookumchuck Mill any of operational benefits they
6 would have received--let me finish my question.

7 But for the Skookumchuck Mill, you did not in
8 either of your Reports analyze the operational
9 benefits in addition to generating electricity that
10 Tembec Skookumchuck would have obtained from << [REDACTED]
[REDACTED] did you?

12 A. I did not--I discounted it and did not
13 explicitly state it as the boiler is not needed for
14 that operation.

15 Q. But you're talking about here
16 additional--let's look at what you talk about.

17 In Paragraph 14 you say that "The Celgar
18 secondary boiler provided disposal for hog fuel
19 generated on-site that would have to be disposed of in
20 a landfill or otherwise removed."

21 Is that a reference to screen finds?

22 A. It is more than just screen finds.

04:02:53 1 Q. But it would include screen finds?

2 A. It should include screen finds. I'm not sure
3 what exactly in this number. Is this in reference to
4 the << [REDACTED] tonnage?

5 Q. I'm not asking for any number at all. I'm
6 just saying that you're saying that there's an
7 operational benefit to Celgar of being able to burn
8 hog fuel that it produces itself in its secondary
9 boiler. And I'm asking why wouldn't Tembec
10 Skookumchuck receive the same benefit from its ability
11 to << [REDACTED]

12 [REDACTED]

13 A. Because for one, the operations are different
14 as Celgar has a wood room. It is an on-site operation
15 that is used for them to process logs and generate
16 chips, which in the normal course of a sawmill
17 operation, this is what is occurring as it produces
18 lumber. So, they would be generating a substantially
19 higher volume of hog fuel at Celgar than at
20 Skookumchuck. That is completely reliant on purchased
21 chips and must go out and source this material to
22 bring it to the site adding additional cost.

04:04:01 1 Now, as for the << [REDACTED] I believe you
2 were asking about how else they could do it. I
3 believe Mr. Lague had indicated beforehand about the
4 operation of that hog boiler. And as I stated
5 previously, a hog boiler from one facility to the
6 other is not the same. The capacities are different.
7 The operation is different. And I believe, as
8 Mr. Lague stated this morning, they had other measures
9 of << [REDACTED] at
10 Skookumchuck.

11 Q. I think if I recall his testimony was they
12 << [REDACTED]

[REDACTED]

14 Q. Yes. Now, you were talking earlier with
15 Mr. Owen about Mr. Mercer's claim that he would vent
16 the excess steam and avoid producing the electricity.
17 You call that wasted energy I think?

18 A. It would be wasted from what is happening.
19 However, if the process can't take it, they have to
20 vent it.

21 Q. Okay. So why would Tembec Skookumchuck have
22 << [REDACTED]

04:05:00 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 [REDACTED]

04:05:58 1 Q. Did you analyze those costs?

2 A. I wouldn't know those costs. I have
3 analyzed--those costs for the facility. I did not
4 analyze it at that low of a level. I would know that
5 from my operational experience, not to underutilize
6 essentially a piece of asset that would be, as I said,
7 rough numbers off my head, they might use it < [REDACTED]

8 [REDACTED]
9 Q. Okay. On Page 11 and 13 of your Second
10 Report, Pages 11-13, you report the results of your
11 attempt to substantiate Celgar's reported annual
12 generation data to mill monthly and daily reports; is
13 that correct?

14 A. You're referring to--

15 Q. Pages 11-13 under your heading "Load Data
16 Irregularities."

17 A. Yes. This was my review of the daily
18 statistics collected as well as additional information
19 collected at Celgar and monthly statistics and then
20 comparing it to the information provided in
21 Mr. Merwin's Second Witness Statement.

22 Q. So you were trying to substantiate the annual

04:07:21 1 date that Celgar had provided and trying to reconcile
2 it with its monthly and daily data?

3 A. I was more confirming it to ensure that as I
4 looked at the daily information, everything was adding
5 up.

6 Q. Now, BC Hydro also based Howe Sound's GBL on
7 its generation data. Where in your Reports can I find
8 the same analysis to validate the data for Howe Sound
9 that you did for Celgar?

10 A. I requested daily information; however, it
11 was not available.

12 Q. It was produced to us.

13 A. In terms of all of this?

14 Q. For Howe Sound.

15 A. Can you direct me to it?

16 Q. It wouldn't do any good if I could. I
17 wouldn't ask you to do it now. BC Hydro did not have
18 data on Howe Sound's generation levels at the time of
19 its EPA?

20 A. For the daily level? They would have some of
21 it. You're speaking to generation?

22 Q. Generation and self-supply and load and

04:08:22 1 everything. They would have everything, wouldn't
2 they?

3 A. They would have that information, yes.

4 Q. And you didn't obtain that?

5 A. I do not remember the exhibit number exactly
6 right now.

7 Q. No. But you--

8 A. I reviewed the information as I stated in my
9 Report at that level.

10 Q. For Howe Sound you reviewed the monthly and
11 daily data to see if it tied with the numbers that
12 BC Hydro relied upon?

13 A. Relied upon the information in Figure 11 of
14 my First Witness Statement.

15 Q. Could you tell me what page that is on?

16 A. 50.

17 Q. In your First Witness Statement?

18 A. Figure 11.

19 Q. I'm sorry. I'm on the wrong page. I looked
20 at Paragraph 50. You did not attempt to go behind the
21 data on which BC Hydro relied for Howe Sound, but you
22 did for Celgar?

04:09:40 1 A. There was not additional production
2 information or other metrics for the facility that I
3 was using in my assessment available.

4 Q. Again, could you answer my question, please.

5 A. I did not because there was not additional
6 daily production information and other metrics that I
7 was assessing that was available.

8 Q. Did you ask for it?

9 A. Yes.

10 Q. And they didn't provide it to you?

11 A. I do not recall the exact answer.

12 Q. Now, on Pages 23-42 of your Second Report,
13 for some 19 pages, you have a very technical
14 analysis--or at least it seemed technical to me--of
15 everything from daily natural gas prices, market
16 electricity prices, steam generation level, all of
17 which you used to evaluate Mr. Merwin's claim that
18 Celgar would not have produced discretionary
19 electricity it was generating to sell to FortisBC and
20 NorthPoint; correct?

21 A. It was more than that. It was also to
22 illustrate how the actual facility runs and how

04:10:43 1 lengthy the pulp production process is to power
2 generation specific to that site.

3 Q. Where in your Report can I find the same
4 level of detail or analysis of Tembec's claim that
5 absent an EPA << [REDACTED] [REDACTED]

6 [REDACTED]
7 A. It would be a part of their--the information
8 relied upon in the fact that they have a condensing
9 turbine that would be there for them to utilize. So,
10 ergo their production variation is going to differ
11 than that of Celgar's.

12 Q. Where is your analysis of their information?

13 A. I do not have the daily production numbers.

14 Q. Did you ask for it?

15 A. I do not recall right now.

16 Q. Did you ask Mr. Lague for it?

17 A. No, I did not ask Mr. Lague as he would not
18 necessarily have that. I don't know. That was a part
19 of his model.

20 Q. And did you ask him for the underlying data
21 in his model?

22 A. I did not look at Mr. Lague's model

04:12:55 1 << [REDACTED]

2 Q. So it was not at all part of your analysis?

3 A. That specific piece of information was not a
4 part of my analysis here. My analysis is, as I
5 stated, using some of the assumptions that I've seen
6 through the documentations and things I do in the
7 normal course of my business.

8 Q. You decided to rely on assumptions instead of
9 actual data from Tembec?

10 A. Well, I relied upon the statements and the
11 conclusions that are both purported by Mr. Lague as
12 well as what is stated in BC Hydro's analysis of the
13 situation at the time.

14 Q. Okay. So when Mr. Merwin said something, you
15 analyzed it in detail and went to the underlying data,
16 but when Mr. Lague said something, you relied on his
17 statements?

18 A. No. I did actually try to do an analysis and
19 see if I would come to the same conclusion.

20 Q. Without asking him for the data on which he
21 relied?

22 A. It was not in the evidence at the time. And

04:13:46 1 again, in terms of what was being validated, I was
2 going through the validation process in terms of can I
3 duplicate the analysis going through the principles
4 that were being discussed, namely the observations

5 << [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11 Q. Could you turn to Paragraph 83 of your Second
12 Report. Here you evaluate whether Celgar's pulp mill
13 would have alternative customers for its own produced
14 hog fuel and point out there would be alternative
15 disposal costs that would have to be considered in any
16 economic analysis; is that correct?

17 A. Yes. It was a matter of I did not see an
18 analysis on cost-benefit by Mr. Merwin in terms of
19 running the hog fuel boiler or not.

20 Q. And you point out that you're not aware of
21 local facilities that would have purchased this hog
22 fuel; correct?

04:15:10 1 A. At the time, no.

2 Q. Okay. Where in your reports do you analyze

3 whether << [REDACTED]

■ [REDACTED] which is

11 what I would say is incorrect.

12 Q. And where can I find that analysis in your

13 Report? What their alternative disposal options were?

14 A. Can you repeat the question?

15 Q. Where in your Reports can I find your

16 analysis of the alternative disposal options that

17 would have been available to << [REDACTED]

■ [REDACTED]

19 A. I did not focus on either of those facilities

20 and do an analysis of all the options available. I

21 understood from my familiarity with the region in

22 terms of options that could be used to dispose of

04:17:05 1 A. They were still permitted.

2 Q. That's not my understanding. But okay.

3 And with respect to << [REDACTED] did you look
4 into whether they would be permitted to actually
5 << [REDACTED] and what that would cost?

6 A. Yes, I did look into the options for

7 << [REDACTED] They were there. I have some numbers on
8 [REDACTED] but I don't have them on the top of my
9 head. Again, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. Are you sure of that? Did you examine--I
14 mean, my understanding is that the Tembec Skookumchuck
15 mill has a fiber manager and that fiber manager is
16 responsible not only for the fiber at the--

17 MR. OWEN: Are you giving evidence?

18 MR. SHOR: I'm asking a question. Do you
19 mind?

20 MR. OWEN: You're saying your understanding
21 is--

22 MR. SHOR: Then I was going to ask him if his

04:18:04 1 understanding is the same if that's okay with you, or
2 would you like to write my questions for me?

3 PRESIDENT VEEDER: Let's please stop this.
4 Please continue with the question.

5 BY MR. SHOR:

6 Q. Did you talk to the fiber manager at
7 Skookumchuck?

8 A. At the point in time--not at the point in
9 time in question.

10 Q. In preparing your Report, did you talk to
11 anyone at Skookumchuck to understand how operationally
12 they actually handled << [REDACTED]

[REDACTED]

[REDACTED]

15 A. The information that I've seen would be that,
16 [REDACTED]

[REDACTED] But that does not necessarily
18 mean that the fiber manager at Skookumchuck has << [REDACTED]

[REDACTED]

20 Q. But you don't know that for a fact, do you?

21 A. I know that from the public documents that
22 are out there, that I'm sorry to say is not in

04:19:00 1 evidence, these were separate businesses for Tembec,
2 and these operations would have been managed
3 separately.

4 Q. So it's your testimony that << [REDACTED]
5 [REDACTED] would have
6 been a decision that was made exclusively by the pulp
7 mill and they would have ignored completely the
8 << [REDACTED]

9 [REDACTED] Is that your testimony?

10 A. The Skookumchuck Pulp Mill does not own the
11 sawmills.

12 Q. It did at the time, didn't it? It is all
13 owned by the same parent company, is it not?

14 A. That would be a separate decision. That
15 would not be under the purview of the pulp mill.

16 Q. So, it would have to go up the food chain.
17 So, before the general manager of the sawmill, of the
18 pulp mill made a decision << [REDACTED]
19 wouldn't he have to consult with some VP higher up in
20 corporate who would also consider the effect on the
21 sawmills?

22 A. I do not know the chain of command that would

04:19:52 1 have gone through to make that final decision.

2 Q. Okay. So you don't really know whether
3 Tembec would have considered [REDACTED]

4 [REDACTED] You're just speculating.

5 MR. DOUGLAS: Mr. President, Mr. Lague was
6 here this morning and does work at Tembec. And I find
7 it odd that those questions weren't posed to--

8 PRESIDENT VEEDER: That's a matter for
9 submission later, as you know. Please let the
10 questions continue.

11 THE WITNESS: As part of my evidence and
12 statements being made, << [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 BY MR. SHOR:

17 Q. I'm talking about the whole period from 2008
18 through 2009. Did you come across any documents
19 indicating that Tembec or that BC Hydro performed any
20 analysis of << [REDACTED]

21 [REDACTED]

22 [REDACTED]

04:20:56 1 A. I do not recall.

2 Q. Did you see any evidence of such an analysis
3 by Tembec?

4 A. The analysis of the implication of--can you
5 state the question a little clearer, please?

6 Q. I won't take that personally.

7 Did you see any analysis of such--did you see
8 any evidence of such an analysis by Tembec? And by
9 "such an analysis," I was referring to an analysis of
10 << [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

13 A. My review of the information was information
14 that was specific to the Skookumchuck Mill. Anything
15 that would have been at a corporate level, I think is
16 where you're going, I did not see anything.

17 Q. So, if I can summarize your Second Report,
18 you present 35 pages of data and technical analysis to
19 analyze how Celgar was likely to operate this plant
20 without sales contracts, but when it comes to Tembec
21 Skookumchuck, you essentially accepted Mr. Lague's
22 statement that [REDACTED] [REDACTED]

04:22:17 1 without substantiation or analysis; correct?

2 A. No. That's--I would not portray it that way
3 at all. In terms of assessments of the operations, in

4 terms of what << [REDACTED]
5 I went through and assessed it in terms of having that

6 [REDACTED]
7 [REDACTED]

8 Q. I have one final set of questions.

9 In the case of Skookumchuck, the
10 discretionary electricity at issue in the << [REDACTED]
11 was electricity the Mill was actually using for
12 self-supply to meet its load, was it not?

13 A. I'm sorry; which electricity are you
14 referring to?

15 Q. Under the 1997 EPA. << [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] was it not?

19 A. What was not sold to BC Hydro was--

20 Q. Was used by Skookumchuck mill to meet its own
21 load.

22 A. No, I can't--I'm not sure at this point in

04:23:35 1 time on the question. It was a--between the
2 contractual stipulations and what was occurring for
3 the facility the <<[REDACTED]>> 10.8 megawatts --

4 Q. Went to BC Hydro?

5 A. Went to BC Hydro. <<[REDACTED]
[REDACTED]

[REDACTED] So, I don't know what
8 generation level on an average you're referring to.

9 Q. Okay. But anything above what was being sold
10 to BC Hydro was being used to meet the Mill's load?

11 A. Anything above what was being sold to
12 BC Hydro was--

13 Q. Was being used for load displacement;
14 correct?

15 A. <<[REDACTED]
[REDACTED]

17 Q. Where did it go? Was it sold to a third
18 party?

19 A. As I looked at the BC Hydro information,
20 <<[REDACTED]

[REDACTED]
[REDACTED]

04:24:33 1 Q. I think Mr. Dyck told us yesterday that there
2 << [REDACTED] So, apart
3 from the 10.8, what would the Tembec Skookumchuck Mill
4 have used its < [REDACTED] > generation for, if not to
5 self-supply its own load?

6 A. Would be actually--again, it would be
7 BC Hydro power that they would--that they purchased,
8 and then BC Hydro would--I'm sorry, Tembec would be
9 buying it back.

10 Q. I'm talking about the Mill's generation.

11 A. I am too.

12 Q. Okay. So, my understanding--and we went
13 through this with Mr. Dyck--the Mill typically
14 generated around < [REDACTED] > megawatt hours. It sold 10.8 to
15 BC Hydro. So, it had << [REDACTED] of
16 self-generation. My question to you is, what were
17 they using that < [REDACTED] for?

18 A. The Mill Load itself was << [REDACTED] 24. So, a
19 << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1888

04:26:00 1 Q. So, the portion that was going to BC Hydro, I
2 already took care of. The rest of it was being used
3 << [REDACTED] correct? It was << [REDACTED]
I
4 think is what you just said.

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

8 Q. I'm not talking about what they have to buy.
9 I'm talking about their self-generation, again, in my
10 example. I believe it was 26, but I'll take your 24.
11 Mill Load was 24. Tembec was generating << [REDACTED] selling
12 10.4 to BC Hydro. << [REDACTED] minus 10.4 is << [REDACTED] The Mill
13 Load is 24. Isn't the 19.6 going to meet the Mill
14 Load, and they're buying << [REDACTED]
[REDACTED] from BC Hydro?

16 A. Can I have the numbers one more time?

17 Q. I was afraid you were going to ask that.
18 Mill Load is << [REDACTED] Sales to BC Hydro are 10.8.

19 A. One second, please.

20 Q. I'm sorry. Generation is << [REDACTED] Mill Load is
21 24, sales to BC Hydro are 10.8. So, the Mill has
22 << [REDACTED] what it's required to supply

04:27:20 1 to BC Hydro of the << [REDACTED] minus the 10.8; correct?

2 A. There would be some left over for that.

3 Q. Okay. And where is that going,
4 contractually?

5 A. << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] I'm asking

10 where the << [REDACTED] or whatever it is--<< [REDACTED]
[REDACTED] >> the 10.8 they're
12 selling to BC Hydro, where is that going? << [REDACTED] minus
13 10.8 is << [REDACTED] That is self-generated electricity that
14 BC Hydro wasn't taking?

15 A. Yes. And then for the << [REDACTED] Tembec would
16 then be buying << [REDACTED] megawatts to meet their
17 Mill Load.

18 Q. Okay. So, the << [REDACTED] and the << [REDACTED] both would be
19 used to meet Mill Load? This isn't a trick question.

20 The << [REDACTED] isn't
21 it?

22 A. It's--the << [REDACTED] is going to be there. It's

04:28:54 1 going to be used on-site and not--

2 Q. Used on-site for what? To self-supply;
3 correct?

4 A. For generation of the plant.

5 Q. Right. I'm sorry. For the what?

6 A. Generation of the plant. I mean, to meet the
7 Mill Load.

8 Q. To meet the Mill Load of the pulp mill. It's
9 being used for self-supply. That wasn't so hard, was
10 it?

11 A. I just try to go through your numbers.
12 That's all.

13 Q. In the Skookumchuck case, what we're talking
14 about is electricity that was used for self-supply and
15 otherwise would have been includable in their GBL;
16 correct?

17 A. No. Because, again, the supposition there is
18 the fact that these assets would be preexisting,
19 absent what happened in '97--or later, when Tembec
20 acquired.

21 Q. But the assets were preexisting, weren't
22 they? They were installed in 2001?

04:29:45 1 A. They would not have been preexisting without
2 the Agreement back in '97.

3 Q. So, in setting Skookumchuck's GBL, BC Hydro
4 looked back at a Baseline as of before 1997?

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

[REDACTED] And during the time frame that led up to
12 the << [REDACTED]
[REDACTED]
[REDACTED]

15 Q. It didn't really disappear, did it?

16 A. For the level to << [REDACTED]
[REDACTED] that is, I believe
18 what Mr. Lague has stated in his testimony.

19 Q. I think the evidence was that in his
20 << [REDACTED]
[REDACTED]
[REDACTED]

04:31:00 1 [REDACTED]

2 A. Sorry; can you show me where that is that
3 you're referring to?

4 Q. I'll move on.

5 Okay. So, it's your testimony that the hog
6 boiler that was installed in 2001 under the 1997 EPA
7 and the turbine generator, the 43.5-megawatt turbine
8 generator that was installed in 2001 and that operated
9 continuously with shutdown periods from 2001 to 2009,
10 that was not a preexisting asset for purposes of the
11 GBL determination as of 2009?

12 A. It was a preexisting asset that << [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 Q. The plant hadn't shut down, had it?

18 A. The plant had shut down when the pulp mill
19 went down.

20 Q. When the pulp mill went down, but after the
21 pulp mill came back up again, they continued to
22 operate the hog boiler, did they not?

04:32:06 1 A. As memory serves, << [REDACTED] [REDACTED]

[REDACTED]

3 Q. Now, in Celgar's case, all the electricity it
4 was selling to both NorthPoint and FortisBC was
5 surplus electricity, that is, electricity in excess of
6 their load. Is that your understanding?

7 A. It was electricity that, in a given day or
8 hour, it was not being able to be consumed at the
9 site, so it was compensated by FortisBC. If the
10 opportunity coincided with NorthPoint, it would be
11 incentivized that way.

12 Q. Why was it not being able to be consumed at
13 the site?

14 A. Because the load itself, the plant was
15 running efficiently enough that the--as Mr. Merwin
16 stated, as the operations improved from Blue Goose,
17 the generating capabilities of the site exceeded what
18 the consumption was.

19 Q. So, it was surplus to the load?

20 A. It was, in a given hour, it could not be
21 consumed at the site. It was overgeneration.

22 Q. Okay. It was overgeneration.

04:33:02 1 So, does that mean it was electricity that
2 could have been used by Celgar to meet its load?

3 A. It was being used at that basis.

4 Q. I thought you just said it couldn't be used
5 on that basis because it was surplus and could not be
6 consumed at the--

7 A. It could not be consistently produced due to
8 the production process of the kraft mill.

9 Q. When it was produced, it couldn't be consumed
10 at the Mill?

11 A. It couldn't be consumed at the Mill. And the
12 Mill was compensated for it.

13 Q. Okay. So, they were able to sell it because
14 it was surplussed to their load?

15 A. In a given hour.

16 Q. And is it your understanding that in a GBL
17 calculation, you should include electricity that is
18 surplussed to the Mill's Load?

19 A. In the GBL calculation, in the context of
20 what BC Hydro was going through to look for
21 procurement, they were, in essence, as I looked at the
22 facility as well, the variability being demonstrated

04:33:55 1 for what that generator could do over a period of
2 time, it would come out to be 40 megawatts.

3 Q. Could you answer my question, though, please?
4 I'm talking about the surplus electricity. If it is
5 surplus to the load and can never be used to
6 produce--can never be used for self-supply, how can it
7 get included in the GBL?

8 A. It--if it was surplus electricity and can
9 never be consumed at the site--

10 Q. Correct?

11 A. --if it was surplus electricity, it was being
12 compensated, and it was--compensation was coming
13 because the facility was out of balance; namely that
14 the pulp production rates that went above to the point
15 to where there was more steam that could be consumed
16 and the facility itself, at a given point in time, did
17 not have a load.

18 Q. So, a pulp mill with excess generation is out
19 of balance?

20 A. That would be the reason why they were
21 venting steam, as well as other reasons to--that's how
22 the facility operated. They were trying to get it

04:34:54 1 into balance and run it at a sustainable rate so they
2 could reliably export power; however, they had not
3 achieved those things yet.

4 Q. They weren't trying to make some extra money
5 by selling power?

6 A. No. Because this generation, because of the
7 tight linkage between the pulp mill and the chemical
8 recovery process, it was going to be generation that
9 was going to be needed. I mean, there was a detriment
10 to not having the steam available to the manufacturing
11 process, namely, you run the risk of not producing
12 pulp.

13 Q. Okay. My understanding from all the
14 testimony of the last few days, that when the mill was
15 running optimally, when it was hitting its targets, it
16 was generating 48 megawatts and using 43 megawatts to
17 self-supply, and it had 5 megawatts available for sale
18 that it sold when it could, is your testimony
19 different that the mill optimally would only generate
20 43, and when it was generating 48, it was out of
21 balance?

22 A. I don't believe. I believe you're

04:35:51 1 referencing Mr. Merwin's May 2008 letter to BC Hydro,
2 the line diagram.

3 Q. Yes, and Mr. Dyck's testimony.

4 A. This is how, being reflected, what would be
5 typically. As I look at that balance and I look at
6 those numbers, it is not based off of 48 megawatts, as
7 what their actual generation was, was lower than that.
8 However, on an hourly basis, as you can see in my
9 Report, the generator actually generated substantially
10 more electricity, but in the times when the pulp mill
11 was not running efficiently, was not meeting
12 production rates, generation had a substantial
13 shortfall.

14 Q. Okay. And is it your testimony that the GBL
15 is to be based on hourly data or an annual period?

16 A. This was being assessed over a 365-day
17 period.

18 Q. And over the 365-day period in calendar year
19 2007, was the Mill generating enough electricity to
20 meet its load?

21 A. It was--on an annual basis, it was in
22 balance, with a slight excess in generation. So, it

04:36:49 1 was--the GBL, again, to average out the variability
2 with--attributed to the process, would come out to be
3 40 megawatts.

4 Q. The Mill didn't, in fact, average out its
5 variability. The Mill was operating under normal
6 operating conditions through the year. I think that's
7 a conclusion you draw in your testimony. That
8 variability was normal; correct?

9 A. It was the new normal for the facility and
10 not related to the previous historical demonstration.

11 Q. So, over 365 days, sometimes the Mill
12 generated in excess of its load; sometimes it
13 generated below its load?

14 A. Correct. And the load was not a stagnant
15 number either. Some days the load was--

16 Q. And that was--

17 PRESIDENT VEEDER: I think you're both
18 talking very quickly, which is making it hard for the
19 shorthand writer, but also, we can't have
20 overspeaking.

21 BY MR. SHOR:

22 Q. Okay. So, the Mill's normal operations were

04:37:41 1 not to meet its load on all days?

2 A. I would not characterize it that way. If the
3 Mill was running reliably and if the Mill was hitting
4 the targeted production that it would be, it would be
5 generating to meet its load.

6 Q. But that's would be, could be, should be.
7 I'm asking what it actually was doing.

8 What was a normal level at which it was
9 operating that year? In fact, it didn't hit its
10 target every day, and many days it generated less.

11 A. Because it generated less pulp.

12 Q. And isn't--in effect, aren't you then
13 advocating setting the GBL not at the levels it
14 actually achieved, but at some different level above
15 what it normally achieved, its average?

16 A. It would be the demonstrated practice over
17 the year, which, again, the normal operations
18 reflected.

19 Q. But the demonstrated practice over the year,
20 wasn't it--the amount of generation that the Mill
21 actually used for self-supply was not 349. It was
22 326.7; isn't that correct?

1900

04:38:42 1 A. No. Again, the generation that was occurring
2 there, running the way it did, it would have been used
3 for self-supply. But at times, you purport that at
4 some days they're running higher, so they're running
5 more pulp than they should be, by your same situation.
6 So, if they weren't running as fast, they would
7 actually be averaging out to the same generation
8 level.

9 Q. But doesn't that theory propose operating the
10 Mill in some way other than the way it was operating?
11 The way it was operating only produced 326 for
12 self-supply. Your supposition that under some other
13 set of conditions, it might meet 349 on a regular
14 basis, that wasn't, in fact, how it operated in 2007,
15 was it?

16 A. It operated in terms of generating
17 350 gigawatt hours--I'm sorry, a little over
18 350 gigawatt hours, and 349 gigawatt hours was what it
19 needed to actually--was its Mill Load, as stated in
20 Mr. Merwin's Annex A.

21 Q. Right. And how many of the 350 megawatts
22 that it generated did it actually use for self-supply

04:39:47 1 in that year?

2 A. From the way that the situation was
3 occurring, from the--financially what it looked like,
4 it was going towards the self-supply. So, all of it
5 except what was needed for Mill Load.

6 Q. Then why did they have to buy power from
7 FortisBC? What was that used for?

8 A. Why did they buy power from FortisBC?

9 Q. Yeah. Was that not used for self-supply?

10 A. That was attributed to Mill Load, but at the
11 same time, the load was not--the Mill was not running
12 at times. That was Mr. Merwin's, I believe, reason
13 for using 8,400 hours.

14 Q. Okay. So, when you said 349 was used for
15 load, you didn't mean 349 of the 350 that they
16 actually generated; right? That was some hypothetical
17 how it might have operated if it smoothed out its
18 peaks and smoothed out its valleys and operated
19 better?

20 A. That would be the same kind of smoothing out,
21 the peaks and valleys, as you put it, on the 2007 Line
22 Diagram that said this is how it typically operated,

1902

04:40:49 1 which it did not generate--if you want to take the
2 [REDACTED] megawatts and do that over the course of
3 [REDACTED] hours and do the same thing on consumption,
4 again, it does not come out to the numbers that were
5 demonstrated.

6 Q. So, the GBL was based not on Tembec's actual
7 daily generation or actual annual generation. It
8 required some smoothing out to get to that number. Is
9 that your testimony?

10 A. Not Tembec.

11 Q. I'm sorry. Celgar.

12 A. Because that would be reflective of the
13 variability from the procurement process, in terms of
14 that variability, again, being attributed to the
15 manufacturing process where this facility is the only
16 one that would be subject to that extreme variability
17 going towards its generation.

18 MR. SHOR: I have no further questions.

19 PRESIDENT VEEDER: Thank you very much.

20 We're going to take a break now. But some estimate of
21 how long the redirect might take?

22 MR. OWEN: 20 minutes maybe.

04:41:49 1 PRESIDENT VEEDER: Let's take a 10-minute
2 break. You've heard this before, but don't discuss
3 your testimony or the case until you come back before
4 the Tribunal.

5 (Brief recess.)

6 PRESIDENT VEEDER: Let's resume.

7 REDIRECT EXAMINATION

8 BY MR. OWEN:

9 Q. Hi, Mr. Stockard.

10 A. Hello.

11 Q. I don't have too many questions for you,
12 you'll be happy to know.

13 Can we get R-196, please.

14 Do you recognize this, Mr. Stockard?

15 A. Yes.

16 Q. Okay. And could you just explain briefly for
17 the Tribunal how this differs from what we have in
18 Paragraph 29 of Mr. Merwin's Witness Statement?

19 MR. SHOR: Again, was this something I
20 covered in cross? I don't recall ever referring to
21 this diagram.

22 THE WITNESS: Yes. Yes, you did.

05:01:38 1 PRESIDENT VEEDER: I think you're going to
2 find that you did, but let's wait another few
3 questions.

4 THE WITNESS: I don't have Mr. Merwin's
5 statement in front of me.

6 MR. OWEN: We can pull that up. How about
7 pulling up Paragraph 29 of Mr. Merwin's Witness
8 Statement, please?

9 This is restricted access, so it should be
10 closed. And it will be the next page, I'm sorry.
11 Yep.

12 PRESIDENT VEEDER: This is his First Witness
13 Statement.

14 BY MR. OWEN:

15 Q. So, does this refresh your memory,
16 Mr. Stockard?

17 A. Yes, it does.

18 Q. Can you tell me what this table is?

19 A. What it lists is from Mr. Merwin--from
20 Annex A would be the actual energy generation would be
21 the center column. And then in the first--I'm
22 sorry--the second and fourth column would be his

05:04:22 1 [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

10 Now, on the far right is actually the
11 consumers, and this is where the steam is going. Now,
12 you can see this in the broad context of some of the
13 other testimony. This is what would be going to the
14 pulping or the digester area, what would be going to
15 the pulp drier. The hog boiling utilities, as there
16 is some parasitic load there, the evaporation plant,
17 the--essentially the area that is used to prepare the
18 fuel for the recovery boiler, and again for the
19 low-pressure header it's duplicated for the consumers
20 on that header.

21 There is actually more, if I recall, down at
22 the bottom?

1907

05:05:22 1 Q. I'm just going to caution you, we're very
2 short on time, and I know you can talk about this
3 stuff for hours. I've talked to you.

4 A. But can we go to the next page then?

5 Q. No, no, we--I'm going to restrain you,
6 please. I did want to bring it up just to highlight
7 one thing, though, just to clarify for the Tribunal.

8 At the top there is the hog boiler. Maybe we
9 can just pull this up, because Mr. Shor was asking you
10 about this. There is the hog boiler, there's the
11 recovery boiler, and then we have the power boiler.
12 Can you just explain that?

13 A. This was my point I was trying to make to
14 Mr. Shor to where the operation at Celgar is not the
15 same for Skookumchuck when we're talking hog
16 boiler-to-hog boiler. In brevity, I will try this:

17 The power boiler is a small natural gas unit
18 there that the operation had beforehand. Celgar
19 doesn't have access to this type of equipment. The
20 hog boiler at Skookumchuck is roughly << [REDACTED] the
21 size of what is at Celgar. And also the key
22 difference here being the hog boiler at Skookumchuck

05:06:23 1 << [REDACTED]

2 unlike Celgar, which you can see in the 2007 line
3 diagram in what Mr. Merwin provided BC Hydro.

4 The contribution to steam generation at
5 Celgar comes from its small hog boiler, but the actual
6 power generation is only attributable to the recovery
7 boiler.

8 Q. Okay. Thank you. One last, final question.
9 Can you go to Paragraph 9 of your Second Expert
10 Report, please.

11 A. I'm there.

12 Q. Could you just give me the percentage there,
13 your conclusion about how often Celgar was above its
14 load?

15 A. Above the GBL BC Hydro assessed was
16 79 percent of the time in 2007.

17 Q. Now, you looked at the hourly data for this;
18 right?

19 A. Right.

20 Q. Did Mr. Switlishoff present any of the hourly
21 data to back up his figures?

22 A. No. There was nothing that I saw.

05:07:33 1 MR. OWEN: Thank you. No further questions.

2 MR. SHOR: Can I have just one follow-up
3 questions on the chart? Just one.

4 PRESIDENT VEEDER: I knew this would be a
5 precedent.

6 MR. SHOR: Just one question. I was looking
7 for this before and I couldn't find it, so I just want
8 to ask one question.

9 PRESIDENT VEEDER: There is no objection to
10 this?

11 MR. OWEN: No.

12 PRESIDENT VEEDER: I like it when you say it
13 with enthusiasm.

14 (Laughter.)

15 PRESIDENT VEEDER: Please proceed.

16 RECROSS-EXAMINATION

17 BY MR. SHOR:

18 Q. I just love flowcharts so I was fascinated by
19 this.

20 I may be missing something, but on the
21 right-hand side it shows the << [REDACTED]

[REDACTED]

05:08:15 1 correct?

2 A. On a << [REDACTED] basis.

3 Q. And the recovery boiler << [REDACTED]

4 is that correct?

5 A. I can't see it.

6 Q. So my question to you is: How could the

7 plant << [REDACTED]

8 [REDACTED]

9 A. This is << [REDACTED] [REDACTED]

10 Q. So this doesn't tell me--

11 A. So that would be the other page I was

12 referring to as part of this exhibit.

13 PRESIDENT VEEDER: Let's look at the other

14 page if it helps.

15 BY MR. SHOR:

16 Q. Okay. So here the [REDACTED] is?

17 A. It is difficult to read from here.

18 Q. Okay. Well, look on the right. << [REDACTED]

19 [REDACTED] I think.

20 MR. DOUGLAS: Can we make it bigger for the

21 Witness?

22 MR. SHOR: Make it bigger for me.

05:09:17 1 PRESIDENT VEEDER: We can't see it.

2 BY MR. SHOR:

3 Q. It shows the << [REDACTED] Can
4 we look at the figure for the recovery boiler? << [REDACTED].

5 [REDACTED] So how could the plant << [REDACTED]
6 [REDACTED]

7 [REDACTED]

8 A. In this situation this was << [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 Q. But this is the only evidence that Mr. Lague
14 submitted << [REDACTED] isn't it? This is what
15 you relied on?

16 A. No. This is reflective of << [REDACTED]

17 [REDACTED] and this is what Mr. Lague was

18 discussing with BC Hydro in terms of how the operation
19 typically runs. There is additional information, as I
20 recall, of the table that would go to << [REDACTED]

21 Q. Could you tell me what you specifically

22 relied on in concluding that the plant << [REDACTED] [REDACTED]

05:12:08 1 A. I don't remember all of the diagrams that
2 were there.

3 Q. So as you sit here today, can you point us to
4 any diagram or data that Tembec provided that
5 contradicts the assertion << [REDACTED] [REDACTED]

6 [REDACTED]

7 MR. OWEN: Perhaps I can jog the Witness'
8 memory and bring up R-193?

9 PRESIDENT VEEDER: So you're going to refer
10 us to R-193?

11 MR. OWEN: R-193.

12 MR. SHOR: Sure.

13 PRESIDENT VEEDER: Let's dig that out.

14 THE WITNESS: In context, this was the
15 discussion describing << [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 MR. OWEN: Okay. Could we get Bates
19 Number--what is it? Okay. There is a lot of
20 different pages. Sorry, Bates Number 021001.

21 MR. SHOR: I'm confused on who is asking the
22 questions here.

05:13:37 1 PRESIDENT VEEDER: It is to jog the Expert
2 Witness's memory, but this doesn't look as though this
3 is what we need.

4 THE WITNESS: That would be the diagram for
5 TG-1.

6 MR. SHOR: What does this show? << [REDACTED]

7 THE WITNESS: No, this would not be.

8 MR. DOUGLAS: Page 9.

9 THE WITNESS: You need to keep going. There
10 was two tables that were referencing it, and I believe
11 the latter half of March. So, that would be the
12 diagrams I was referencing for TG-2, and that is one
13 of the tables. And it's--what was the date of this
14 exhibit? It would be on the front page.

15 MR. SHOR: I think this is all 2009.

16 PRESIDENT VEEDER: Yeah.

17 THE WITNESS: So, it's a later exhibit in the
18 latter half--at the end of March.

19 BY MR. SHOR:

20 Q. But why doesn't the earlier exhibit show us

21 << [REDACTED]

[REDACTED]

05:14:48 1

[REDACTED]

19 A. Well, I would need exhibits.

20 PRESIDENT VEEDER: Just what exhibits are you
21 looking for?

22 THE WITNESS: There is a March discussion

1916

05:15:59 1 document that has additional information, and it's
2 where I was pulling out these numbers that I discuss
3 in Paragraphs 99-102.

4 BY MR. SHOR:

5 Q. Is it cited in Paragraphs 99-102? Maybe we
6 can find the number there.

7 PRESIDENT VEEDER: Can the Respondent's help
8 on this? Obviously, R-139 is not it.

9 MR. DOUGLAS: R-197.

10 PRESIDENT VEEDER: R-197. Let's dig that
11 out.

12 BY MR. SHOR:

13 Q. I'm sorry. Where is R-197 cited in your
14 Report?

15 PRESIDENT VEEDER: Let's not worry about
16 that. Let's just dig out R-197 to see if it works or
17 not.

18 THE WITNESS: Right. So, this is the--this
19 is what I was going towards.

20 PRESIDENT VEEDER: Stop there. This is
21 R-197. And is that in your Report? Can you just
22 check whether it's a footnoted reference.

05:16:50 1 THE WITNESS: This would be going to
2 Pöyry 129.

3 BY MR. SHOR:

4 Q. And the paragraphs you refer to don't cite
5 Pöyry 129, do they?

6 A. Yes, Footnote 122 is in Paragraph 101--

7 Q. Okay. I see that.

8 A. --where I describe what was happening.

9 Q. So, is it fair to say that under certain
10 conditions << [REDACTED]

[REDACTED]

[REDACTED]

13 A. That would--well, again, they << [REDACTED]

[REDACTED]

[REDACTED]

16 Q. Okay. But they would have to--they would
17 have--

18 << [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Q. I mean all we've heard over the last

05:17:55 1 several days is how expensive it is to burn natural
2 gas, and nobody ever wants to do it.

3 A. It is expensive to burn natural gas in a
4 liquor boiler and the hog boiler. This other boiler
5 is a little--would be relatively more efficient.

6 Q. So in order to keep the plant << [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] correct?

10 A. I would have to look at the numbers again
11 closer.

12 Q. At times?

13 A. Again, I would need to look at numbers again
14 closer.

15 Q. And do you know if those << [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

18 A. Are you referring to--I'm allowed to--I don't
19 know where we are on this. You mean the cost
20 statements?

21 Q. No. Mr. Lague testified that << [REDACTED]

■ [REDACTED]

1919

05:18:51 1 [REDACTED] And in that analysis,
2 do you know whether he included << [REDACTED]

■ [REDACTED] [REDACTED] [REDACTED] [REDACTED]
■ [REDACTED]
■ [REDACTED]

6 A. I do not know.

7 MR. SHOR: I have no further questions.

8 PRESIDENT VEEDER: That was more extensive
9 than we intended. Do the Respondent's--

10 MR. OWEN: No further questions.

11 MR. DOUGLAS: I have no further questions.

12 PRESIDENT VEEDER: And the Tribunal has no
13 questions.

14 Thank you very much. We've come to the end
15 of your testimony.

16 (Witness steps down.)

17 PRESIDENT VEEDER: Now, is there time for one
18 more Witness?

19 MR. SHOR: Let's go for it.

20 MR. OWEN: Why don't we just do him first
21 thing in the morning. That would be my preference.

22 You know, I'm sorry, did I--I mean, we've got 10

1920

05:19:51 1 minutes left and...

2 PRESIDENT VEEDER: We can do the direct
3 examination.

4 MR. DOUGLAS: Well, Mr. President, Mike
5 MacDougall was originally scheduled to go, I think,
6 late tomorrow, given the speed through. I think our
7 preference would be to start in the morning if that
8 worked for everybody's schedule.

9 PRESIDENT VEEDER: It just that I recall you
10 both wanted a whole day for damages.

11 MR. SHOR: Yeah. And we told you first thing
12 this morning at around 9:30 that we thought we would
13 get to him today, and you said he would be available.
14 He was walking around in his shorts, but you'd call
15 him, I think was your exact response.

16 MR. DOUGLAS: And kudos to you. I actually
17 thought you were kidding when you thought we would get
18 to Mike today because he was wondering the streets
19 around. Mr. MacDougall's testimony is related to
20 damages, so he doesn't really fall outside of that
21 category, but if the Tribunal's preference is to have
22 him go today, that's fine.

1921

05:20:40 1 PRESIDENT VEEDER: Well, we can certainly
2 start him today. How long will his cross-examination
3 last, do we know?

4 MS. GEHRING FLORES: Not very long,
5 Mr. President.

6 PRESIDENT VEEDER: It makes me very
7 suspicious.

8 MS. GEHRING FLORES: 15 minutes.

9 Just for the record, my cross-examinations
10 have been short.

11 (Laughter.)

12 MS. GEHRING FLORES: So, I think--and just
13 judging from the time that we actually have left, it
14 has to be. I have to take a very short time.

15 PRESIDENT VEEDER: We'll start him. Let's at
16 least have the direct examination. So, let's start.

17 MR. DOUGLAS: Very well.

18 (Pause.)

19 MICHAEL MACDOUGALL, RESPONDENT'S WITNESS, CALLED

20 PRESIDENT VEEDER: Let's resume.

21 We have the next Witness before us.

22 So, if you'd like to give your full name and

1922

05:23:40 1 then, if you will, to read the wording on the
2 declaration before you.

3 THE WITNESS: My full name is Michael William
4 MacDougall, and I solemnly declare upon my honor and
5 conscience that I shall speak the truth, the whole
6 truth, and nothing but the truth.

7 PRESIDENT VEEDER: Thank you.

8 There will be questions first from the
9 Respondent.

10 MR. COULOMBE: Thank you, Mr. President. And
11 just confirm we have 15 minutes of direct with
12 Mr. MacDougall; correct?

13 PRESIDENT VEEDER: Yes.

14 DIRECT EXAMINATION

15 BY MR. COULOMBE:

16 Q. Mr. MacDougall, good afternoon.

17 Could you please state your current
18 occupation for the record.

19 A. I'm the Director of Trade Policy and
20 Information Technology with Powerex Corporation.

21 Q. Thank you. And you submitted a Witness
22 Statement in this arbitration?

05:24:20 1 A. I did.

2 Q. Do you have any corrections you would like to
3 make to your Witness Statement?

4 A. Yes. I have four different topics that I'd
5 like to address. The first is in Paragraphs 37--now,
6 for the recorder, do you want me to go through each
7 one individually, or can I lump them together?
8 There's three paragraphs where I want to make a
9 similar change? What's your preference?

10 PRESIDENT VEEDER: Take your own course,
11 whichever you want.

12 THE WITNESS: Very well.

13 In Paragraphs 37, 38, and Paragraph 47, where
14 I refer to "firm transmission service," it should say
15 "long-term firm." The next correction is in
16 Footnote 49.

17 MS. GEHRING FLORES: Could the Witness just
18 slow down just a moment so we can start noting this.
19 Thanks.

20 THE WITNESS: Absolutely. So, do you have
21 the three paragraphs?

22 MS. GEHRING FLORES: Thank you.

05:25:49 1 THE WITNESS: So, Footnote 49, the date
2 there, June 13, 2008, should read "December 30, 2008."
3 And then I turn to Paragraph 72, and in the list of
4 states, "Nevada" should be included in that list of
5 states that have either an REPS or RES. And then the
6 last correction is in Footnote 72. Where it reads
7 "Section 2," it should be "Section 2 and 3." And
8 that's all the corrections I have.

9 BY MR. COULOMBE:

10 Q. Thank you, Mr. MacDougall.

11 Now, in terms of the questions that I have
12 for you today, if you could please explain to the
13 Tribunal whether there are any challenges associated
14 with trying to secure a long-term electricity sales
15 Contract--and by long-term," I mean in the range of 2
16 to 20 years--if the seller does not have long-term
17 firm transmission rights?

18 A. Yes. So, when making long-term sales,
19 particularly if what the buyer is looking for is
20 what's called "firm energy," there's an inherent
21 component of the capability of being able to deliver
22 that to the buyer so that they get the benefit of

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05:27:33 1 their purchase. And if a party doesn't have long-term
2 firm, based on their relative priority order of
3 transmission underneath the Open Access Tariff, you
4 run the risk of not being able to deliver. And what
5 happens in that case is, the buyer is faced with
6 needing replacement power to make up for that
7 inability to deliver.

8 So, when you're looking at these long-term
9 firm energy sales, and the buyer is looking for the
10 capacity benefit of that, they often request long-term
11 firm transmission or a plan to acquire long-term firm
12 transmission in order to backstop that sale.

13 Q. Can you explain whether the lack of long-term
14 firm transmission would have an impact on the price
15 that would be obtained in such long-term contracts?

16 A. Yes. Because, as I mentioned in the first
17 question, if there's a risk that there will be
18 nondelivery, there's basically--within these contracts
19 there tends to be financial consequences, so
20 liquidated damages for that non-delivery. So you've
21 got one of two effects. Either for the seller, if
22 they don't have that capability to fulfill their

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05:28:53 1 obligations and they need to pay liquidated damages,
2 that obviously affects the economics of their sale.
3 So, the net back is less because they are going to be
4 paying for the replacement power. And so, the
5 frequency of which they don't deliver has a negative
6 consequence.

7 There's a key issue where the tendency is
8 that the unavailability of transmission obviously
9 tends to be correlated with periods of high demand and
10 hence higher prices. So, therefore, there tends to be
11 higher damages when you're dealing with the fact that
12 you didn't have the long-term transmission and you
13 were trying to pick it up on an as-available basis.

14 Beyond that, if the buyer knows they're going
15 to be faced with having to be curtailed, they either
16 need to have backstop capacity, or they have the
17 trouble of getting that replacement power. Because
18 even if you keep someone whole financially, they still
19 needed power in order to keep the lights on. So,
20 there's a consequence to the buyer of that inability
21 to deliver beyond the immediate financial damages that
22 would be faced, which the seller can keep whole, or if

05:30:03 1 the buyer accepts that risk, that will factor into
2 their economic decision on the price they're willing
3 to pay for that Contract.

4 Q. Could you also indicate whether there are any
5 challenges associated with trying to secure, let's
6 say, for example, a two-year Contract? So for a
7 British Columbia generator to secure a two-year
8 Contract with a delivery at the border with the United
9 States?

10 A. So, to actually have the sale point, the
11 transactional sale point at the border, the challenge
12 with that is really trying to find the customer that's
13 going to accept that because, as I stated in my
14 Witness Statement, there was basically two Parties,
15 Powerex and Snohomish that had long-term firm
16 transmission rights away from the border. All the
17 other Parties that were coming there were coming with
18 non-firm access basically, short-term access.

19 And so, if you're--again, in that situation
20 where what you're doing is trying to get a long-term
21 purchase, a multiyear purchase of energy, the buyer
22 now is actually the one on the hook. Not only do

05:31:13 1 they--the seller in Canada could actually deliver to
2 the border, but the liquidated damages cut both ways.
3 So, not only does the buyer have to pay the Party that
4 they couldn't take the energy from, they still have to
5 buy the replacement power themselves.

6 So, when you look at that, the likelihood of
7 a buyer putting themselves in that position and not
8 asking for a severely discounted price is a very
9 unlikely situation. The Canadian border does not have
10 sort of a liquid market. Mid-C is liquid market for
11 sort of term, longer term energy in the Pacific
12 Northwest.

13 Q. That was my next question. So, there is no
14 liquid market.

15 So, Chris, would you mind pulling
16 Mr. Friesen's Witness Statement. We'll go to
17 Paragraph 11 of Mr. Friesen's Witness Statement.
18 Mr. Friesen indicates that--in this paragraph that
19 there has always been firm transmission access
20 available out of British Columbia for periods of up to
21 12 months. And you brought nuances to this
22 characterization. If you could please explain what

05:32:21 1 your criticism of this is.

2 A. Certainly. And I did address this in my
3 statement. So, the first issue is by using the phrase
4 "up to 12 months," one year and longer is the sort of
5 baseline for long-term firm transmission. So by
6 looking at the "up to," it could be any period short
7 of that full year. It could be 11 months. It could
8 be 10. And so we don't dispute that there's times
9 where, especially on the B.C. side, there is
10 capability. The issue is it's actually constrained on
11 the U.S. side of the border. That's where the--not
12 congestion but basically the oversubscription the
13 long-term service is. And so, therefore, what we're
14 talking about is short-term service. The phrase "up
15 to" is indicative of short-term service. And it could
16 be read to say "this is from the B.C. side of the
17 border," but the fact is you need to get the
18 electricity to the point of use within the U.S., and
19 that U.S. side was constrained.

20 Q. You indicate in your Witness Statement that
21 Mr. Kaczmarek has misinterpreted Exhibit NAV 124, and
22 that should be Tab 2 of the binder that we've provided

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05:33:45 1 you with. And we've--if you'll allow me just for the
2 context so we don't spend too much time on this.
3 We've already seen this; so we don't need an
4 explanation, I think, unless there is any objection as
5 to what this is. I think we understand that above the
6 zero is going into Canada, and below is going into the
7 U.S., that the yellow line is actual usage or
8 utilization of the lines, and that the purple line is
9 actual capacity on Bonneville system. Now, for the
10 Tribunal's sake, could you please explain what exactly
11 is Mr. Kaczmarek's mistake?

12 A. So my understanding of what Mr. Kaczmarek
13 took is he took the rated capacity which is in this
14 particular graph, the label at minus 3,150 megawatts.
15 It doesn't actually show as a line.

16 The rated capacity is sort of the maximum
17 limit, and it's calculated through a process
18 undertaken by the Western Electric Coordinating
19 Council for the transmission path, and it takes into
20 the account the impact of operation of that line on
21 the neighboring transmission providers as well as the
22 path operator. So, that becomes the maximum reliable

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05:34:59 1 limit for the path operation.

2 But then the second line, the purple line,
3 which is labeled the "B.C. capacity," that's the
4 actual operating capacity of the line. So, can you
5 see in the footnote, it reads, "Capacities are those
6 recorded by and used for scheduling and are based on
7 electrical limits." That's the actual scheduling or
8 commercial capability of the line. That is determined
9 by--the Bonneville engineers takes into account, you
10 know, ambient temperature, loads, lines out of
11 service, in service, et cetera.

12 But basically my understanding is he took the
13 rated capacity, labeled that as the red dashed line in
14 Figure 4 as "Capacity." Took the purple line, called
15 that "Utilization" and then looked at the gap between
16 the utilization and the capacity and said that was
17 space. What that really is is the amount of derated
18 capability from the maximum, and it actually says
19 nothing at all about how much space was available for
20 commercial use.

21 Q. Thank you. And, finally, could you indicate
22 whether BC Hydro has an Open Access Transmission

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05:36:05 1 Tariff that is in accordance with the Federal Energy
2 Regulatory Commission's rules, and whether under this
3 tariff BC Hydro can just simply block transmission at
4 its wish?

5 A. No. So, as I noted again in my Witness
6 Statement, BC Hydro does have an Open Access Tariff.
7 It has had recognition from the Federal Energy
8 Regulatory Commission since 1998, that it met the
9 reciprocity standards of FERC, and that was a
10 condition of Powerex getting market-based rate
11 authority, that the BC Hydro tariff met those same
12 standards as what FERC has proposed for all the
13 jurisdictional utilities. And that gets reaffirmed.
14 Every time BC Hydro makes a tariff change, Powerex
15 makes a filing with FERC regarding that change and
16 gets a ruling that it still continues to be consistent
17 with or superior to.

18 The framework of the Open Access Tariff is to
19 provide nondiscriminatory access process in order to
20 try and acquire transmission and tries to put
21 individual market participants on the same footing as
22 any affiliate of the transmission provider as well as

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05:37:22 1 other market participants. So, for BC Hydro to take
2 an action against an individual entity, they would be
3 subject to a claim of discrimination inconsistent with
4 their tariff and, therefore, would be subject to
5 complaint at the regulatory body, in this case the
6 BCUC.

7 MR. COULOMBE: I have no further questions at
8 this point.

9 PRESIDENT VEEDER: Thank you. Is your
10 estimate still the same?

11 MS. GEHRING FLORES: Yes, Mr. President.

12 PRESIDENT VEEDER: Let's proceed.

13 CROSS-EXAMINATION

14 BY MS. GEHRING FLORES:

15 Q. I'm losing all my manners.

16 Hello, Mr. MacDougall, and good afternoon.

17 My name is Gaela Gehring Flores, and I represent

18 Mercer International in this arbitration.

19 I think I'd like to call up--you already have
20 it in your binder. It is NAV-124. If I could call it
21 up on the screen as well. As was mentioned, we all
22 have seen this before, and you're familiar with this

05:38:40 1 exhibit?

2 A. Yes, I am.

3 Q. Okay. So, I understand your criticism of
4 Navigant's interpretation of this data, but I'd like
5 to see if there's a particular difference or if
6 there's--if this is a distinction without a difference
7 or if there's no "there" there.

8 So, right now we're looking at, I believe,
9 January, and I heard something about an accelerated
10 capacity. I'm not sure what. But could you--do you
11 agree, Mr. MacDougall, that basically the space
12 between the purple line and the yellow line is the
13 transmission that was available after the fact,
14 meaning after it was reserved and used?

15 A. That--the yellow line represents the net
16 flows on the facility after the fact, after all
17 scheduling activity and operations has occurred.

18 Q. And what about the space between the yellow
19 line and the purple line? Does that represent the
20 transmission that went unused?

21 A. So you need to distinguish--and as I
22 addressed in my Witness Statement, there's the

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05:40:15 1 difference between the transmission space that was
2 unused on the operational basis after the fact and
3 what was available for commercial use. So,
4 transmission schedules have to be put in ahead and no
5 later than 20 minutes prior to the operating hour.
6 The release of non-firm happens at a time frame before
7 that. So, the fact is what you see here, as I said,
8 is an after-the-fact view. What you don't see here
9 and you cannot tell is whether there is any commercial
10 ATC available to--

11 Q. What is "ATC"?

12 A. Available transmission capacity. So non-firm
13 available transmission capacity that someone could
14 have actually acquired and scheduled on.

15 Q. Right.

16 A. You can't tell that from this graph.

17 Q. And I believe you say that in Paragraph 46 of
18 your Statement where you say "this chart," and you're
19 referring to one of the charts of NAV-124 does not
20 reflect what transmission capacity was available on a
21 day-ahead or hour-ahead basis to be purchased from
22 BPA?

05:41:28 1 A. That's correct.

2 Q. Right. So, I think we're on the same page.

3 And Mr. Friesen explained during his testimony that

4 these charts are after the fact. This is after the

5 transmission has been reserved and used.

6 And the space between the yellow and purple

7 line is the transmission that was not used, which it

8 was just highlighted green?

9 A. Yes.

10 Q. Agreed?

11 A. Yes.

12 Q. Okay. So--and before the fact, before the

13 transmission is actually reserved and used, I

14 understand that power traders with access to the

15 reservation system, which is called OASIS--

16 A. That's correct.

17 Q. --they can see what's available for

18 reservation ahead of time; is that correct?

19 A. That's right. The transmission providers

20 will post any available transmission capability.

21 Q. Right.

22 And I believe you've discussed how non-firm

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05:42:39 1 transmission becomes available or how you might see it
2 in the reservation system, and that transmission might
3 come available just an hour before it's available;
4 correct?

5 A. That's correct.

6 Q. Can you also see non-firm transmission
7 availability in the reservation system a day before
8 it's available?

9 A. I recall that BPA would release non-firm.
10 I'm not 100 percent sure of the exact time when that
11 was released, but it was--after the daily scheduling
12 was done, there is a potential release of non-firms
13 for the next day.

14 Q. Have you used the OASIS system before,
15 Mr. MacDougall?

16 A. Personally, I have not.

17 Q. So, are you familiar with the details of when
18 certain non-firm or even short-term firm transmission
19 becomes available on the reservation system?

20 A. I'm generally familiar with the rules.
21 They've changed from time to time, from Bonneville, in
22 particular, in terms of when they release and the

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05:44:01 1 manner in which it's released, as well as sort of the
2 tiebreaker mechanisms as well.

3 Q. Okay. And just so everybody is clear, again,
4 NAV-124 actually shows what happened after the fact,
5 after everything was reserved, after everything was
6 used. If you could see this graph before the fact on
7 the OASIS system, would the yellow line be higher--let
8 me rephrase that.

9 Would the green space be larger?

10 A. Not necessarily.

11 Q. Not necessarily.

12 A. So, what you're not seeing here is the fact
13 that power flows in both directions, and their
14 schedule is on a commercial basis, crossing each
15 other. So, it's what's known as "counterflow." And
16 the challenge that you might have is, at one point in
17 the hour there, there may show zero scheduling
18 capability because it's all booked in one direction,
19 and then at, say, the last minute, at T minus 20, a
20 counterflow schedule comes in. When Bonneville then
21 goes to operate the system, it will actually show net
22 less energy flowing on that line, but at the time

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05:45:29 1 someone was looking to go purchase that, it would show
2 that there was none available. So, this includes all
3 the operational back and forth that goes on, not just
4 the commercial availability.

5 Q. And this is on the basis of your experience
6 of actually using the OASIS system?

7 A. It is my experience with the rules
8 surrounding firm/non-firm transmission capacity and
9 the release of that capacity.

10 Q. Are you aware that there is a Witness who has
11 been presented to the Tribunal in this proceeding who
12 is intimately familiar with the OASIS reservation
13 system?

14 A. I'm not familiar with who that Witness is.

15 Q. Have you read the statement of Mr. Robert
16 Friesen?

17 A. I read Mr. Friesen's statement.

18 Q. So, I think--I think you're trying to say
19 that NAV-124 doesn't necessarily show what the
20 reservation system shows; correct?

21 A. That is correct.

22 Q. Are you aware which Witness in this

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05:46:37 1 proceeding was actually looking at the reservation
2 system in mid-2008 to see what short-term firm
3 transmission was available for reservation?

4 A. So, I'm presuming it's Mr. Friesen, by the
5 nature of your question.

6 Q. You might be right.

7 A. But the point that I've made in my statement
8 is, we acknowledge that there were periods of time
9 during the course of the year when there is available
10 transmission, whether it be short-term firm,
11 short-term--or non-firm. The fact is B.C. was a major
12 buyer, and when the predominant flows are into British
13 Columbia, the fact is, all that space is available on
14 a non-firm basis, going in the opposite direction.

15 The key point that we've pointed out is,
16 there are then times when it is highly constrained in
17 the other direction. And part of the reason that it
18 has this ebb and flow is the business of Powerex. We
19 buy from the states when the power prices are lower.
20 We use that to meet BC Hydro's load, and then that
21 excess energy that we then have we can sell back at
22 other periods of time, when the prices are higher,

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05:47:51 1 using the firm rights that we have.

2 And, hence, this isn't about whether there is
3 a period here or a period there, but if you look
4 through NAV-124, you can see that there are multiple
5 periods of time where, for substantive amounts of
6 time, that system is apparently constrained even after
7 the fact. And I think you would also find, if the
8 data was available, which unfortunately, it's not,
9 that there was also multiple periods where there was
10 no ATC available to be scheduled.

11 Q. Let's look at it. Okay.

12 So, here we have January, and this is what
13 was available after the fact. This is what was not
14 reserved and not used; correct? That's January 2008?

15 A. No. Again, I disagree with the term
16 "reserved" because this isn't telling us that. This
17 is telling us actual flows.

18 Q. Right.

19 A. Not reservations.

20 Q. It had to be reserved to be used; correct?

21 A. But like I pointed out to you earlier, if
22 you're trying to flow north to south, you could

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05:48:56 1 potentially be full on reservations until such time as
2 the south-to-north schedule comes in to offset that.
3 So, the fact is, this doesn't tell you the total
4 number of north-to-south reservations that were on the
5 system. This just shows you the net flows.

6 So, that's--

7 Q. It shows you what was used?

8 A. After netting the power.

9 Q. Okay. So, let's go to the next month,
10 January, February, 2008. Just the next page in
11 NAV-124. It seems like a lot of space between the
12 yellow and purple lines there.

13 A. Yep.

14 Q. Okay. And next page. March 2008.
15 Definitely a lot of space there; correct?

16 A. There's space, yes.

17 Q. April. Let's keep going. A lot of space
18 there too; right?

19 A. Sure.

20 Q. May. Okay. In May, we've got--I can see
21 that there is a point where the yellow and purple
22 lines start to come together there. But the lines

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05:50:12 1 actually have to touch in a particular day or
2 particular hour, so, I'm not--

3 A. No. That's--that's your error. When you try
4 and say that the only time there's no space available
5 is when the lines touch--because, again, as I pointed
6 out, this is the-after-the-fact flow. If those lines
7 are touching or the yellow is exceeding the purple,
8 Bonneville is in jeopardy of violating a reliability
9 limit.

10 So, they don't go there, and they take steps,
11 such as curtailing schedules and other operator
12 actions to make sure that doesn't happen. So, the
13 piece that you're missing to try to say what was
14 available is the actual commercial ATC.

15 Q. Okay.

16 A. You can't tell from this graph what the
17 commercial ATC is. You can infer from the times where
18 there's a lot of space that there might have been
19 commercial ATC on a non-firm basis.

20 Q. Well, let's just--

21 A. But the minute you get into these periods
22 where you've got the lines coming closer together, you

05:51:12 1 can't tell. And you can't go to the point where you
2 say, well, the only time it zeros is when they touch.

3 Q. You can't tell unless you are sitting in
4 front of the reservation system, trying to reserve
5 transmission; correct? At that time or before that
6 time; correct?

7 A. Well, I mean, there's a lot of people that
8 are doing that, including folks at Powerex.

9 Q. Right.

10 Next, let's go to the next month. A lot of
11 spaces there; right?

12 Next month--I can't quite see what month
13 we're on.

14 A. July.

15 Q. So, now we're in July. And then August.
16 August is the one that you included in your Report, I
17 believe?

18 A. That's correct.

19 Q. July and August show a slightly more
20 complicated picture; right?

21 A. That's correct.

22 Q. Not a lot of space there. July and August.

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05:52:04 1 And then--I just want to go through the rest of the
2 month so people can appreciate how much space is
3 available on which months, and then we're going to go
4 back to July.

5 So, lots of space, lots of space, lots of
6 space. And then so now we're into '09. Let's go
7 back. Let's go back to July 2008.

8 A. If you do actually look through all of them,
9 you'll notice that December '09, and I think there
10 were a couple of other periods of time where those
11 lines got very close. So, the other challenge with
12 this is trying to establish a pattern from a brief
13 piece of experience. But let's go back to July.

14 Q. Yeah. So, July 2008 and August 2008, we've
15 seen--and the Tribunal has the exhibit there, they can
16 see that there's not a lot of space there. Again,
17 we've talked about how this is an after-the-fact
18 scenario. This shows actual use; correct?

19 A. Actual flows, yes.

20 Q. And is there a witness who has been presented
21 before this Tribunal in this proceeding who says that
22 short-term firm transmission was available in

05:53:22 1 mid-2008?

2 A. Can you be more specific?

3 Q. Does Mr. Friesen testify that when he was
4 sitting at NorthPoint and he was assessing what
5 transmission was available before the fact, not after
6 the fact--because I realize that July and August look
7 a little scary--but Mr. Friesen testifies that he had
8 looked into the situation and that it was available
9 before the fact?

10 A. For what time period on what days?

11 Q. For mid-2008. And we're talking about June,
12 July, August.

13 A. And it was actually a short-term firm you're
14 talking about?

15 Q. Yes.

16 A. And that there was a positive quantity in
17 those three months?

18 Q. Mr. Friesen has testified that it was
19 available, that he was assessing the reservation
20 system and it was available.

21 A. So, my understanding is that is an unlikely
22 scenario, based on the fact that I know Powerex also

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05:54:41 1 looked at short-term firm, not me personally, but
2 staff at Powerex, and some of the reservations that I
3 saw had a range that went from zero to some number,
4 and it wasn't for a three-month period. It was based
5 on certain small blocks of time. So, I'm not aware of
6 a three-month block of short-term firm that went
7 through this time period.

8 Q. But this isn't based on your firsthand
9 knowledge, is it?

10 A. It's not based on my firsthand knowledge.

11 MS. GEHRING FLORES: Thank you. No further
12 questions.

13 PRESIDENT VEEDER: Thank you.

14 Any questions from the Respondent by way of
15 reexamination?

16 MR. COULOMBE: Can we get a short break
17 before the reexamination?

18 PRESIDENT VEEDER: It would have to be short,
19 yes.

20 MR. COULOMBE: About 10 minutes, would that
21 be all right?

22 PRESIDENT VEEDER: Can you do it in fewer?

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05:55:28 1 MR. OWEN: Seven?

2 MR. COULOMBE: We'll try. Seven.

3 PRESIDENT VEEDER: Do try, because it's
4 getting late.

5 MR. COULOMBE: Thank you, Mr. President.

6 (Brief recess.)

7 PRESIDENT VEEDER: Let's resume.

8 Before we start, can you tell us roughly how
9 long you might be in reexamination?

10 MR. COULOMBE: Not more than five minutes.

11 PRESIDENT VEEDER: Please proceed.

12 REDIRECT EXAMINATION

13 BY MR. COULOMBE:

14 Q. Mr. MacDougall, this is a bit of a
15 two-pronged question. Can you explain whether you
16 think the Claimant is suggesting that you could
17 have--that there would have been a number of these
18 short-term firm transmission rights available, and the
19 second prong is, are there any--can you explain
20 whether there are substantial risks associated with
21 conducting a long-term power sale over the course
22 of years hooking up together this type of transmission

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06:06:36 1 product, short-term transmission product?

2 A. So, with respect to the first question, if
3 there was a persistent set of firm rights available,
4 then one would conclude that it would have been
5 available on a long-term basis, so then you would have
6 seen it in some of the other offerings of Bonneville
7 Power. So, of course, the first issue is our own
8 experience in trying to acquire the long-term firm
9 rights showed that basically the one piece that was
10 available we managed to acquire and we're still
11 waiting for service to commence under that. And then
12 the various other open seasons that happened in the
13 balance of the '08 request plus the '09 and '10
14 ultimately were not met, and those open seasons were
15 closed without any facility upgrades being done. So,
16 I think it's unlikely that there was a persistent set
17 of short-term firm transmission that was posted on
18 OASIS during that period of time.

19 And then with respect to the second prong,
20 again, as I explained earlier, the fact is the
21 curtailments that you're going to face when you get
22 into this commitment, the Parties are going to be

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06:07:55 1 looking for your capability to deliver, and there's
2 either going to be a financial consequence to you as a
3 seller or to the buyer, depending on that allocation
4 of risk in these types of transactions. And like I
5 said, it goes beyond the financial, and it goes to the
6 actual operational risks that the buyers face when
7 they have to make--find replacement power when these
8 curtailments occur.

9 And, you know, again from these graphs, it's
10 not surprising that there's lots of space in June.
11 The Northwest is awash in power with all the hydros
12 running. A lot of times the gas plants are shut off,
13 but where you see the compression and the tightness in
14 that market is in times like August when you're
15 dealing with high temperatures, heat waves and such
16 and times in December when you're dealing with the
17 opposite, the heating load, the cold snaps, and those
18 lines get compressed and get congested. So it becomes
19 not only a financial risk, but it becomes potentially
20 a liability risk to lean on that type of short-term
21 product for what would be classed as a long-term-firm
22 type of transaction.

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06:09:12 1 MR. COULOMBE: Thank you, Mr. MacDougall.

2 PRESIDENT VEEDER: Are you done?

3 MR. COULOMBE: These were all my questions.

4 Thank you.

5 PRESIDENT VEEDER: And the Tribunal has no
6 questions.

7 Thank you. We've come to the end of your
8 testimony.

9 THE WITNESS: Thank you.

10 (Witness steps down.)

11 PRESIDENT VEEDER: We've also come to the end
12 of the day, and so we start tomorrow at 9:00 with the
13 Quantum Expert Witnesses.

14 MR. DOUGLAS: Pardon me, Mr. President. I do
15 want to clarify just one point. Mr. Rosenzweig is
16 Canada's Expert when it comes to quantum, but he is
17 also Canada's Expert when it comes to Dr. Fox-Penner
18 and when it comes to Mr. Switlishoff. And in some of
19 the procedural discussions there was always talk of
20 splitting the Experts into different ways because
21 Dr. Rosenzweig was responding to three.

22 So, I only bring this up just so you're

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06:10:05 1 aware, I guess, if there is some discussion tomorrow
2 relating to Mr. Switlischoff or relating to
3 Dr. Fox-Penner because the scope of Mr. Rosenzweig's
4 expertise is beyond just quantum.

5 PRESIDENT VEEDER: You're telling us it is
6 more than arithmetic?

7 MR. DOUGLAS: He is much more than just an
8 expert mathematician.

9 PRESIDENT VEEDER: I'm sure Mr. Kaczmarek is
10 too.

11 That causes no difficulty to the Claimants,
12 does it?

13 MR. SHOR: No. I think what Mr. Douglas said
14 is exactly correct. We will have questions for
15 Mr. Rosenzweig that address both quantum and some of
16 the other issues he discussed in his testimony.

17 PRESIDENT VEEDER: Fine. Well, unless there
18 is more housekeeping, we'll start at 9:00 tomorrow.
19 Thank you.

20 (Whereupon, at 6:11 p.m., the Hearing was
21 adjourned until 9:00 a.m. the following day.)

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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