

Before the

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

- - - - - x  
 :  
 In the Matter of Arbitration between: :  
 :  
 MERCER INTERNATIONAL INC., :  
 :  
                   Claimant, :  
 : ICSID Case No.  
                   and : ARB(AF)/12/3  
 :  
 GOVERNMENT OF CANADA, :  
 :  
                   Respondent. :  
 :  
 - - - - - x Volume 4

HEARING ON JURISDICTION AND THE MERITS

MAY CONTAIN RESTRICTED ACCESS AND CONFIDENTIAL  
INFORMATION

Friday, July 24, 2015

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

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

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

Also Present:

MS. ALICIA MARTÍN BLANCO  
Secretary to the Tribunal

Court Reporters:

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MR. ANDREW TREASTER  
MR. PEDRO SOTO  
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MS. LORI DI PIERDOMENICO  
MS. KRISTA ZEMAN  
MR. LOUIS-PHILIPPE COULOMBE  
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APPEARANCES: (Continued)

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

2 PRESIDENT VEEDER: Let's start Day 4, the  
3 24th of July.

4 First of all, as always, I ask the Secretary  
5 to read the timings.

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

8 The Claimant has 17 hours and 26 minutes  
9 left. The Respondent has 6 hours and 49 minutes left.

10 PRESIDENT VEEDER: Thank you for that.

11 Is there any housekeeping we need to address?

12 We ask the Claimants first.

13 MR. SHOR: Just the small matter we left  
14 unfinished from yesterday evening, was the revised  
15 Exhibit C-345. I have copies, if I may distribute  
16 them.

17 PRESIDENT VEEDER: Yes.

18 (Pause.)

19 PRESIDENT VEEDER: Anything else from the  
20 Claimant?

21 MR. SHOR: Nothing further, Mr. President.

22 PRESIDENT VEEDER: And from the Respondent?

09:00:56 1 MR. DOUGLAS: Yes, Mr. President.

2 At some point I believe we are required to  
3 make an application for extended direct, and I'm not  
4 sure when to do that, whether we should do that now,  
5 but I think now I only have in answer to some of the  
6 Witnesses, not some of the other witnesses that will  
7 be next week, so I didn't know whether we wanted to do  
8 that on a piecemeal fashion or how that might work.

9 PRESIDENT VEEDER: Well, whatever is  
10 convenient to you, but at the moment, probably not now  
11 because we're about to have this Witness  
12 cross-examined, so maybe later today.

13 MR. DOUGLAS: That sounds fine.

14 PRESIDENT VEEDER: Take it witness by  
15 witness.

16 MR. DOUGLAS: I'm in your hands.

17 PRESIDENT VEEDER: Okay. We'll come back to  
18 that.

19 Nothing else?

20 MR. DOUGLAS: No, Mr. President.

21 PRESIDENT VEEDER: Well, let's start the  
22 cross-examination of Mr. Austin.



09:01:39 1           DAVID AUSTIN, CLAIMANT'S WITNESS, RESUMED

2           PRESIDENT VEEDER: Mr. Austin, welcome back.

3 You're still testifying under the form of Declaration

4 that you made yesterday, and we are still in open

5 session.

6                           CROSS-EXAMINATION

7           BY MS. DI PIERDOMENICO:

8       Q.   Hi, Mr. Austin.

9       A.   Good morning.

10      Q.   My name is Lori Di Pierdomenico, and I'm  
11 counsel for Canada, and I think I would like to just  
12 clarify for the record, I really appreciate that you  
13 shared your notes with me today; and for the record, I  
14 do confirm that there was only highlighting in your  
15 notes.

16      A.   Thank you.

17      Q.   So, this morning I've been asked, or tasked,  
18 really, to wake up the room, so I thought what better  
19 way to do that than to ask a few questions about the  
20 Ministers' Order upon which you provided an expert  
21 report to Mercer, and this Ministers' Order was issued  
22 on May 23rd, 1991; correct?

09:02:34 1 A. It's my understanding.

2 Q. Would you like to flip to it? It's at Tab 1  
3 of the materials we provided you.

4 MS. DI PIERDOMENICO: It's, for the record,  
5 Respondent's Exhibit 100.

6 THE WITNESS: I'm sorry, it's not in my  
7 materials.

8 BY MS. DI PIERDOMENICO:

9 Q. Oh, I apologize. I'm skipping ahead.

10 MS. DI PIERDOMENICO: Thanks, Cheryl.

11 THE WITNESS: I have the Order.

12 BY MS. DI PIERDOMENICO:

13 Q. And the Ministers' Order was issued on  
14 May 23rd, 1991; correct?

15 A. That's correct.

16 Q. And it was issued to the Celgar Pulp Mill now  
17 owned by Mercer; correct?

18 A. That's correct.

19 Q. And it was issued under Section 19(1)(c) of  
20 the Utilities Commission Act as it read at the time?

21 A. I agree.

22 Q. And the effect of the Ministers' Order was to

09:03:57 1 exempt the construction and operation of Celgar's  
2 thermal power generation plant from Sections 19(1) (a)  
3 and Section 17(1); correct?

4 A. Yes.

5 Q. Would you agree that the Ministers' Order  
6 does not exempt Celgar's power generation plant from  
7 any other provision of the Act?

8 A. I agree.

9 Q. Now, my next questions will focus on the  
10 Commission's authority to regulate public utilities.  
11 The current Utilities Commission Act is at Tab 2 of  
12 the materials we just provided you. This is  
13 Respondent's 205.

14 A. Yes, I have it.

15 Q. Could you please read the definition of  
16 "public utility" at Section 1 up to the end of  
17 Subsection (a).

18 A. "'Public utility' means a person or person's  
19 lessee, trustee, receiver or liquidator who owns or  
20 operates in British Columbia equipment or facilities  
21 for the production, generation, storage, transmission,  
22 sale, delivery or provision of electricity, natural

09:05:09 1 gas, steam or any other agent for the production of  
2 light, heat, cold or power to or for the public or a  
3 corporation for compensation."

4 Q. Now, today, if Celgar sold electricity to  
5 third parties, would it fall within the definition of  
6 a "public utility" under the Act?

7 A. Not necessarily.

8 Q. Can you please explain.

9 A. Well, under the Utilities Commission Act or  
10 under other legislation, the Government has exempted  
11 certain transactions with respect to Part 3 of the  
12 Utilities Commission Act, and that's the section that  
13 essentially would regulate Celgar as a public utility.

14 For example, Celgar could sell electricity to  
15 BC Hydro and Powerex and not be regulated as a public  
16 utility.

17 Q. But that wasn't my question, Mr. Austin. My  
18 question was: If Celgar were to sell electricity to  
19 third parties, would it fall within the definition of  
20 a public utility?

21 A. Yes, insofar as it wasn't exempted, as I just  
22 described.

09:06:24 1 Q. So, I heard a "yes"?

2 A. Yes.

3 Q. Thank you.

4 Now, I think for clarity, the exemption that  
5 you just described, those apply to particular  
6 situations. They apply to BC Hydro, for example, or  
7 Powerex, so if Celgar were to sell to BC Hydro or  
8 Powerex, it would be exempt from the provision you  
9 just described; correct?

10 A. Yes, correct, but BC Hydro is, by far, the  
11 largest and usually the only buyer of electricity in  
12 the Province of British Columbia, and the same with  
13 Powerex. It's a wholly owned subsidiary of BC Hydro.

14 Q. But if Celgar were to sell to NorthPoint,  
15 would that exemption apply to Celgar?

16 A. Not the BC Hydro exemption, no.

17 Q. Is there an exemption for NorthPoint?

18 A. I don't believe there is.

19 Q. So, public utilities are generally regulated  
20 under Part 3 of the Act; correct?

21 A. That's correct.

22 Q. And a public utility will require a

09:08:02 1 Certificate of Public Convenience and Necessity to  
2 build and operate their utility plant; correct?

3 A. Unless they're exempted from doing that,  
4 which is often the case in terms of BC Hydro.

5 Q. Okay, but we're speaking generally here, and  
6 we've already explained what the exemption is.

7 And public utilities' rates must be approved  
8 by the Commission?

9 A. Yes.

10 Q. A public utility may not charge a rate other  
11 than a rate approved by the Commission; correct?

12 A. Yes.

13 Q. So, if a public utility sells off-site, is  
14 that sale regulated by the Commission?

15 A. I'm sorry, I don't understand the question.  
16 What do you mean by "off-site"?

17 Q. If the sale is to a third party, is that  
18 regulated by the Commission?

19 A. Not necessarily because if that sale is, say,  
20 for example, to someone in the United States, under  
21 the open access Transmission Tariff system in British  
22 Columbia, title to the electricity remains with the

09:09:06 1 seller when the electricity is put on transmission  
2 lines, so there's an argument to be made that if title  
3 passes in the United States, the B.C. Utilities  
4 Commission would have no jurisdiction over that sale.

5 Q. If the purchaser takes delivery in British  
6 Columbia, would that sale not be regulated by Part 3?

7 A. The answer is yes, insofar as it's not an  
8 exempt sale.

9 Q. Thank you.

10 And we've already went through the exempt  
11 sales that you were referring to earlier?

12 A. Yes.

13 Q. Thank you.

14 Do you agree the sale of electricity is a use  
15 of electricity?

16 A. No.

17 Q. When you generate electricity, you can either  
18 use it yourself or sell it; correct?

19 A. That's correct, so there's two things:  
20 Either I use it or I sell it. So, they're two  
21 separate concepts.

22 Q. So, if you're not using it yourself, are you

09:10:31 1 not using it for sales?

2 A. I'm selling it, I'm not using it. The other  
3 person who I sell it to uses it.

4 Q. Now, my questions will focus on the current  
5 legal effect of the Order. Do you agree the  
6 Ministers' Order is in effect today?

7 A. Yes.

8 Q. Thank you.

9 MS. DI PIERDOMENICO: Those are my questions.

10 PRESIDENT VEEDER: Thank you very much.

11 There may now be questions from the Claimant.

12 MR. WITTEN: None, sir.

13 PRESIDENT VEEDER: And the Tribunal has no  
14 questions, either. We thank you for coming to testify  
15 before the Tribunal. We've come to the end of your  
16 testimony.

17 THE WITNESS: Thank you very much.

18 (Witness steps down.)

19 PRESIDENT VEEDER: You may leave everything  
20 there.

21 THE WITNESS: That might get the next person  
22 in trouble.



09:11:44 1 (Laughter.)

2 PRESIDENT VEEDER: Let's resume.

3 ROBERT FRIESEN, CLAIMANT'S WITNESS, CALLED

4 PRESIDENT VEEDER: We have the next witness  
5 before the Tribunal, so we ask you to state your full  
6 name, and if you will, to read the words of the  
7 Declaration on the piece of paper before you.

8 THE WITNESS: My name is Robert Eldon  
9 Friesen.

10 I solemnly declare upon my honor and  
11 conscience that I shall speak the truth, the whole  
12 truth, and nothing but the truth.

13 PRESIDENT VEEDER: Thank you very much.  
14 There will be first questions from the Claimant.

15 MR. TREASTER: Mr. President and Members of  
16 the Tribunal, I would like to introduce you to  
17 Mr. Robert Friesen, Director of Energy Trading at  
18 Rainbow Marketing. He was formerly Director of Energy  
19 Trading at NorthPoint, where he was at from 2001 until  
20 2010.

21 Mr. Friesen submitted a witness statement in  
22 this proceeding dated December 1st, 2014.

09:15:31 1

DIRECT EXAMINATION

2 BY MR. TREASTER:

3 Q. Mr. Friesen, do you confirm your Witness  
4 Statement?

5 A. Yes.

6 Q. Do you have any corrections to that  
7 testimony?

8 A. No, I do not.

9 Q. I want to start by discussing some  
10 terminology that has been used in this proceeding.  
11 Could you please explain what you understand the term  
12 "long-term firm transmission" to mean.

13 A. Long-term firm transmission means  
14 transmission that is one year in length or longer.  
15 It's firm for serving load, and it has an attribute  
16 that it can be rolled over at the end of the term  
17 effectively for infinity.

18 Q. And does that attribute make it valuable?

19 A. That is the single distinguishing feature  
20 between long-term firm and a short-term firm.

21 Q. Mr. Michael MacDougall states that long-term  
22 firm transmission is fully subscribed in the Pacific

09:16:31 1 Northwest.

2 Do you agree?

3 A. Yes, to the best of my knowledge.

4 Q. Could you explain if there are any long-term  
5 firm transmission holders in the Pacific Northwest  
6 that sell their long-term firm transmission in  
7 increments?

8 A. Yes. There is a company in Washington by the  
9 name of Snohomish. I believe Mr. MacDougall mentions  
10 them in his Witness Statement.

11 Q. And you touched on this a little bit, but  
12 could you please explain the difference between  
13 long-term firm transmission and short-term firm  
14 transmission?

15 A. Well, long-term firm transmission, as I  
16 mentioned, is transmission that's available in yearly  
17 increments or longer. Short-term firm transmission is  
18 any transmission that's available in a term shorter  
19 than that; so, monthly, daily, weekly, hourly.

20 Q. And does short-term firm transmission have a  
21 right of renewal?

22 A. No, it does not.

09:17:29 1 Q. Can anyone looking to sell electricity  
2 purchase short-term firm transmission?

3 A. All Eligible Customers can purchase  
4 short-term firm transmission.

5 Q. Could you explain non-firm transmission  
6 access.

7 A. Non-firm transmission access is transmission  
8 access that is lower class than firm. It's generally  
9 available in also monthly, weekly, daily, and hourly  
10 increments. Most non-firm transmission is available  
11 in the hourly increment because it's put in place  
12 because of unscheduled firm transactions.

13 Monthly and daily and weekly service is  
14 sometimes available because of temperature nuances  
15 between the seasons or other capacity issues.

16 Q. Can you reserve non-firm transmission in  
17 advance?

18 A. Yes, it can be reserved in advance, in the  
19 longer periods, but as I mentioned, most non-firm  
20 transmission is hourly non-firm transmission, and you  
21 don't know whether that's available until the  
22 scheduling window on the firm transmission has

09:18:47 1 expired.

2 Q. Mr. Michael MacDougall criticizes Mr. Brent  
3 Kaczmarek for the transmission capacity chart that he  
4 used in his Second Expert Report. Are you familiar  
5 with that criticism?

6 A. Yes.

7 Q. Mr. Friesen, it would help if you could walk  
8 us through one of the monthly charts in  
9 Mr. Kaczmarek's exhibit, which is Navigant 124,  
10 specifically January of 2008.

11 Could you please tell us what this chart  
12 shows.

13 A. What this chart shows--

14 ARBITRATOR DOUGLAS: Can you just wait just a  
15 second.

16 (Pause.)

17 ARBITRATOR DOUGLAS: Okay.

18 BY MR. TREASTER:

19 Q. Mr. Friesen, you can continue.

20 A. So, what this chart shows is the capacities  
21 on the interface between B.C. and the U.S. both going  
22 in a northerly direction and a southerly direction,

09:19:59 1 the blue line being the capacity of the interface  
2 flowing north to Canada.

3 The purple line is the capacity of the  
4 interface flowing south into the USA.

5 The yellow line is an after-the-fact flow on  
6 that interface, therefore, negative being flow into  
7 the U.S. and positive being flow into B.C.

8 As I mentioned, it's after the fact, so  
9 therefore this is after all the reservations have been  
10 put in place and scheduled upon.

11 As you can see in this chart, there's space  
12 for more capacity to be scheduled in all hours in this  
13 particular month. As a matter of fact, the closest it  
14 comes in the first quarter of the chart where the  
15 yellow line approaches the purple line; and, in this  
16 case, the difference between the capacity and the  
17 after-the-fact scheduled amount is something in the  
18 Order of 300 megawatts.

19 The green indicated on the entire chart,  
20 indicates the available capacity in all the hours in  
21 this particular month.

22 Q. Mr. Friesen, in looking at this chart, could

09:21:26 1 you tell whether Celgar would be able to reserve  
2 short-term firm transmission in January 2008?

3 A. Once again, as I mentioned, this is an  
4 after-the-fact chart, so this chart doesn't tell you  
5 whether transmission could have been scheduled in any  
6 hour.

7 Q. Did you--so, does this green space represent  
8 the transmission capacity available in the reservation  
9 system?

10 A. No. As I mentioned, this after-the-fact  
11 chart does not represent the transmission reservation  
12 system.

13 Q. Did you actually look at reserving short-term  
14 firm transmission access for Celgar in 2008?

15 A. Yes. In the short-term transactions that we  
16 do, transmission is almost always one of the--well,  
17 the major issue in scheduling short-term transactions.  
18 So, the first thing that's looked at is whether  
19 there's transmission available.

20 So, what we were thinking about doing was  
21 scheduling some monthly transactions into the Mid-C,  
22 and this transmission would have been available for

09:22:45 1 that period of time. Celgar had about 40 megawatts  
2 available, in my opinion.

3 Q. And when you say "Mid-C," "into the Mid-C,"  
4 what do you mean by that?

5 A. Sorry, Mid-C area being the United States.

6 Q. Mr. MacDougall, in Paragraph 35 of his  
7 Statement--

8 PRESIDENT VEEDER: Before you leave the  
9 chart, can you just explain to me the black line. I  
10 didn't catch that. I've got the blue line and the  
11 purple line, but on this chart, what is the black  
12 line?

13 THE WITNESS: My mistake.

14 The black line is, I believe, zero. So,  
15 that's where the flow is neither positive or negative.

16 PRESIDENT VEEDER: Thank you.

17 BY MR. TREASTER:

18 Q. Mr. MacDougall, in Paragraph 35 of his  
19 Witness Statement, which we have on the screen, says  
20 that "short-term firm point-to-point service  
21 reservations can be displaced by longer duration firm  
22 reservations (e.g. monthly displaces weekly, which



09:23:47 1 displaces daily, which displaces hourly) up until the  
2 close of the relevant conditional windows."

3           Based upon the transmission that you were  
4 looking at reserving for Celgar in 2008, would this  
5 have been a concern?

6           A.    No, that wouldn't have been a concern because  
7 I think we've already agreed, looking at the  
8 testimony, is that long-term firm transmission was  
9 already reserved; so, therefore, there was no more  
10 long-term firm transmission that could have been put  
11 in a position of bumping short-term firm  
12 point-to-point.

13          Q.    Is there any increment of short-term firm  
14 transmission that can bump monthly short-term firm  
15 transmission?

16          A.    Sorry, you need to repeat the question.

17          Q.    Is there any increment of short-term firm  
18 transmission that can bump monthly short-term firm  
19 transmission?

20          A.    The only transmission that can bump monthly  
21 firm transmission--oh, is there any short-term  
22 non-firm transmission did you ask?

09:24:57 1 Q. No, short-term firm transmission that can  
2 dump a monthly firm transmission?

3 A. No, only yearly firm transmission and there  
4 is none available.

5 Q. Okay. Would Celgar run any risk if they  
6 purchased three months of short-term firm  
7 transmission?

8 A. The only risk with respect to bumping  
9 short--the only risk with respect to monthly firm  
10 transmission would be in the case where someone  
11 reserved a longer period of monthly firm transmission.  
12 In this case, if NorthPoint or Mercer had this  
13 transmission, it could only--it would only enter into  
14 a competitive phase where NorthPoint or Mercer would  
15 have to match the requested term. This would then  
16 require us to buy transmission that we didn't need in  
17 order to hold the reservation.

18 Q. Could you briefly explain flow rights with  
19 respect to long-term firm and short-term firm  
20 transmission access?

21 A. Flow rights of all firm transmissions are  
22 identical; i.e., in the event of a curtailment, all

09:26:14 1 firm transmission requests are treated equally and  
2 curtailed on a pro rata basis.

3 Q. Does non-firm transmission have the same flow  
4 rights?

5 A. Non-firm transmission does not have the same  
6 flow rights; and, in fact, as hours curtailed in its  
7 entirety before firm transmission is effected.

8 Q. Mr. Friesen, do you agree with  
9 Mr. MacDougall's conclusion in Paragraph 66 of his  
10 Statement that "it is highly unlikely that Celgar  
11 could have secured a long-term sale," and it  
12 continues. He's talking about long-term electricity  
13 sale contract.

14 Do you agree with that?

15 A. Not in my opinion.

16 Q. Why is that?

17 A. For a number of reasons. One is, most  
18 long-term sales are bilateral arrangements, therefore,  
19 the buyers and sellers generally have the conditions  
20 that they need to deal with. These are dealt with in  
21 the Contract.

22 So, there are all kinds of clauses can be

09:27:21 1 introduced; for example, what happens in the event of  
2 non-delivery, what happens in the event of no  
3 transmission. What happens in the event that a  
4 customer chooses not to take the energy.

5           In the case of a liquidated-damages  
6 provision, a formula could be set up in advance,  
7 knowing that the Contract couldn't be fulfilled in  
8 certain hours, then a formula could be in place.

9       Q.    Do you think that Celgar could have secured  
10 enough short-term firm and non-firm transmission to  
11 make such a contract viable?

12       A.    Yes, I do.

13           As a matter of fact, as NorthPoint is a small  
14 organization, and so the short-term people and the  
15 long-term people usually work together. In the case  
16 of NorthPoint, we did several transactions that were  
17 long-term transactions where we used short-term  
18 non-firm monthly non-firm energy and long-term firm  
19 energy, put it together to serve the contracts.

20       Q.    Do you have any doubts with respect to that  
21 conclusion?

22       A.    The only concern with booking short-term firm

09:28:42 1 energy trying to fill a long-term contract, I guess,  
2 is if the short-term firm starts to disappear over a  
3 period of time, where someone else is buying large  
4 quantities to fill another transaction or just to have  
5 it.

6 Q. Mr. Friesen, you just said short-term firm  
7 energy. Did you mean short-term firm transmission?

8 A. Sorry. Correct.

9 Q. Mr. Friesen, do you have any experience  
10 arranging for long-term electricity sales contracts  
11 using transmission access other than long-term firm?

12 A. Yeah.

13 As a matter of fact, I do have some  
14 experience with long-term transactions. My role is  
15 generally short-term, but there is very little  
16 difference between 11-month short-term transaction and  
17 an 18-month long-term transaction. So, I have done  
18 and participated in several long-term transactions,  
19 specifically as I mentioned, [REDACTED]

[REDACTED] I  
21 worked on those with Dean Krauss.

22 Q. If Celgar sells its electricity through

09:30:01 1 NorthPoint, do you know if it would be regulated like  
2 a public utility?

3 A. I don't know the answer to that question.

4 Q. Okay. One last question related to the price  
5 of electricity and long-term contracts. Focusing on  
6 Celgar, now that Mid-C prices are lower than they were  
7 in mid-2008, if Celgar signed a 20-year electricity  
8 sale contract, would you expect the price in that  
9 contract to reflect Mid-C spot prices?

10 A. I don't think I would expect the price of a  
11 long-term sale to affect--to, in fact, be anything to  
12 do with spot prices--the price of a long-term sale  
13 always approaches the price of new generation build or  
14 new cost of supply.

15 Q. Thank you, Mr. Friesen.

16 MR. TREASTER: No further questions.

17 PRESIDENT VEEDER: Thank you.

18 There will be now questions from the  
19 Respondent.

20 MR. COULOMBE: Thank you, Mr. President.

21 Mr. President, can we have a very short  
22 five-minute recess?

09:31:10 1 PRESIDENT VEEDER: Of course. We will take a  
2 five-minute break.

3 Please don't discuss the case or your  
4 testimony until you come back before the Tribunal.

5 (Brief recess.)

6 PRESIDENT VEEDER: Let's resume.  
7 Cross-examination.

8 MR. COULOMBE: Thank you, Mr. President.

9 CROSS-EXAMINATION

10 BY MR. COULOMBE:

11 Q. Good morning, Mr. Friesen.

12 A. Good morning.

13 Q. My name is Louis-Philippe Coulombe. I'm  
14 counsel for the Government of Canada. And you're here  
15 today because I need your help. This case is  
16 relatively complicated, there are very technical  
17 issues and I think it's fair to say that probably no  
18 one in the room has the knowledge and experience the  
19 that you have.

20 And as you know, we sought some assistance  
21 from your former colleagues at NorthPoint,  
22 Mr. Dean Krauss and Mr. Jones, but there are still

09:39:06 1 some questions that are left unanswered and this is  
2 why I need your help this morning. So, you are okay  
3 with that, I assume?

4 A. Okay.

5 Q. Okay. And thank you also for the technical  
6 explanations that you provided during the direct part  
7 of your testimony.

8 Just another further point of  
9 clarification--so, you indicate in your Witness  
10 Statement that during the ten years that you worked at  
11 NorthPoint you were responsible for marketing your  
12 client's power on spot and forward sales. Now, the  
13 spot market refers to the hourly or daily  
14 transactions; is that correct?

15 A. That's correct.

16 Q. And then the forward market is anything  
17 beyond that; that's correct as well?

18 A. I think that's a good clarification.

19 Q. Okay. And when you began discussing with  
20 Celgar in 2006 the energy brokerage services that  
21 NorthPoint would provide to Celgar, this was for  
22 Celgar's surplus sales?



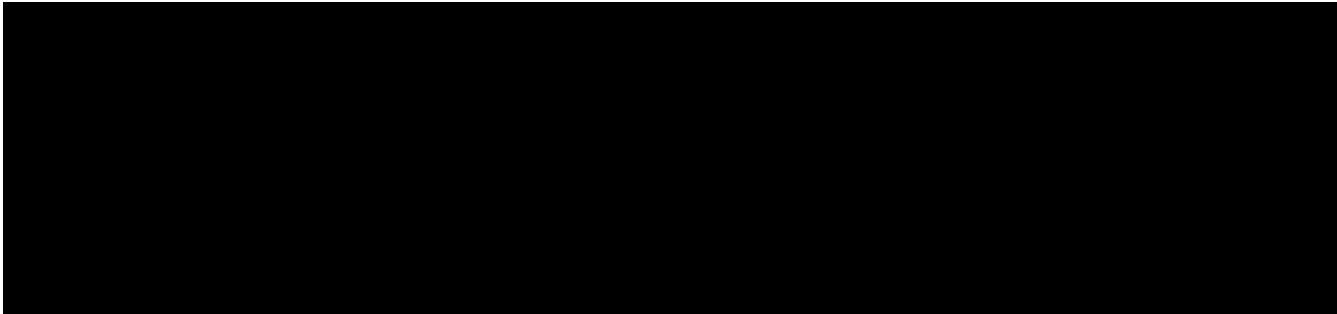
09:40:06 1 A. That's correct.

2 Q. It would be sold in increments of one hour on  
3 the spot market; correct?

4 A. It would be sold in increments that they  
5 could assure us delivery. It would probably not be  
6 much longer than one hour.

7 Q. And that was on the spot market?

8 A. That's correct.



14 A. Correct.

15 Q. And then you defined them, and I'm referring  
16 to--oh, and by the way, I trust you have the Witness  
17 Statement, your Witness Statement?

18 Just a second.

19 Right behind you there are two binders, the  
20 white binders, and one of them should be the Witness  
21 Statement binder.

22 A. I have it.

09:41:27 1 Q. You have your Witness Statement, okay.  
2 So, at Paragraph 7, that's where you indicate  
3 that the opportunities you identified were longer  
4 term, and you defined them << [REDACTED]  
5 [REDACTED] >> And that's toward  
6 the end of the paragraph.

7 MR. SHOR: The problem is--

8 MR. COULOMBE: Oh, you have the redacted  
9 version. My apologizes, Mr. Friesen, this information  
10 was confidential.

11 BY MR. COULOMBE:

12 Q. Can you read from the screen in front of you?  
13 And that's at the last sentence of the paragraph.

14 A. Okay. Yeah, I see that.

15 Q. So, apologies for the confusion.

16 << [REDACTED]  
17 [REDACTED] >>

18 A. That's correct.

19 << [REDACTED]

[REDACTED]

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

[REDACTED]

09:42:53 1 Q. You were looking for <<[REDACTED]>>.

2 And that was consistent with your  
3 responsibilities at NorthPoint; isn't that correct?

4 A. That's correct.

5 Q. So, as indicated by Mr. Dean Krauss, you were  
6 mainly responsible for transactions of up to three or  
7 four months; correct?

8 A. That's correct.

9 But as I mentioned, we were a small company.  
10 We shared responsibilities, and we worked together.

11 (Overlapping speakers.)

12 Q. So, you mentioned the longer term  
13 opportunities that you worked on a little earlier.  
14 When you did work on these, you worked together with  
15 Mr. Krauss; correct?

16 A. I think that's a possibility. I do not  
17 distinctly remember discussing this particular  
18 transaction with Mr. Krauss. More than likely it  
19 occurred.

20 Q. No, I'm referring more generally to the  
21 longer terms that you mentioned earlier. You also  
22 stated that when you did work on these--

09:43:53 1       A.   With respect to longer-term transactions, we  
2 did work together, that's correct.

3       Q.   You worked with Mr. Krauss, correct.

4           Now, you quote Mr. Merwin in your Witness  
5 Statement, and I'm at the third footnote, and that  
6 would happen to be on Page 5.  It's a long footnote.  
7 And that's right at the top of the page after the  
8 brackets.

9           PRESIDENT VEEDER:  Well, shouldn't the  
10 Witness be given an unredacted version?  This is very  
11 difficult for him.

12          MR. COULOMBE:  Yes, you're right,  
13 Mr. President.

14          MR. TREASTER:  Mr. President, he actually has  
15 one in his direct binder, which, if it's okay with  
16 Canada, he could use.

17          PRESIDENT VEEDER:  It's in the little binder,  
18 I think, to your right.  If you could be helped by  
19 somebody because it's not your job to fight your way  
20 through the bundles.  It should be the first document  
21 in that little binder.  Page 5.

22          THE WITNESS:  Okay, I missed the question.

09:45:11 1 BY MR. COULOMBE:

2 Q. Apologies for that, Mr. Friesen.

3 So, you quote Mr. Merwin at Footnote 3, so  
4 right at the top of the footnote on Page 5, and  
5 Mr. Merwin says--and correct me if I'm wrong--"our  
6 intention at that time was to execute one of these  
7 contracts in July/August 2008. FortisBC had been  
8 indicated that this would be possible even without the  
9 executed PSA and was willing to engage in a trial  
10 period while the Contract was being finalized."

11 A. Do you see this, Mr. Friesen?

12 A. I do see that.

13 Q. This means the opportunities that you had  
14 identified for Celgar at that time were on a trial  
15 basis; correct?

16 A. That was--that was perhaps Brian Merwin's  
17 opinion.

18 Q. Could you please turn to the second tab in  
19 your binder, and that would be Exhibit C-343.

20 A. The second tab?

21 Q. Excuse me, the binder that has the red cover.

22 A. Okay.

09:46:14 1 Q. These are the exhibits on which I will be  
2 relying during your cross-examination. The second tab  
3 in there should be Exhibit C-343.

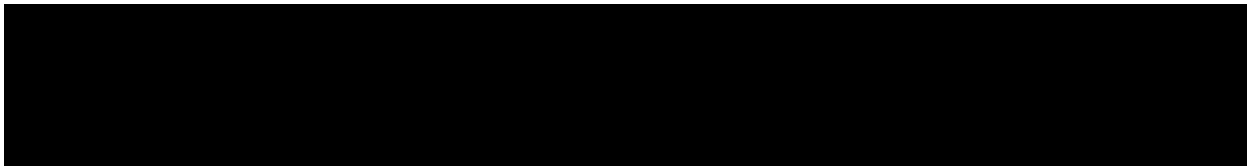
4 And just for context, Mr. Friesen, this is a  
5 very short series of e-mails that were exchanged while  
6 you were looking at NorthPoint, so if you will go  
7 chronologically at the bottom of the page, this is an  
8 e-mail from yourself to Mr. Merwin; correct?

9 A. Yes.

10 Q. And that's dated June 23rd, 2008?

11 A. Correct.

12 Q. Could you please read the e-mail.



16 Q. And now at the top of the page is another  
17 e-mail that was sent from your colleague Shelley  
18 Euteneier; is that correct?

19 A. That's correct.


20 Q. And Shelley Euteneier was informing you of  
21 the going price at the time, in this e-mail?

22 A. Sorry, I'm just confirming the dates and

09:47:22 1 times.

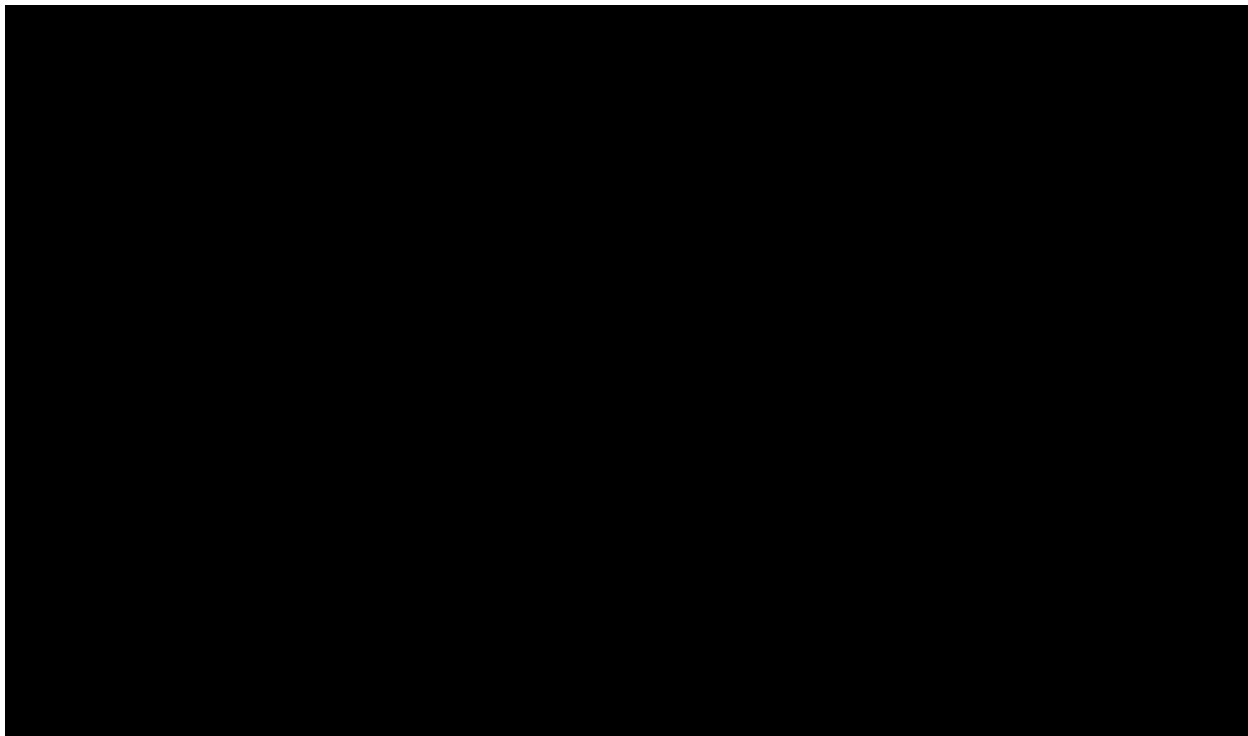
2 Q. It should be the next day, on June 24, 2008.

3 A. That's correct.

4 Q. That's correct? 

5 ; > correct?

6 A. That's correct.



19  correct?

20 A. That's correct.

21 Q. That's correct.

22 A. The high price period generally is the summer

09:48:15 1 period. In this document, July-August, there were two  
2 months that were mentioned specifically.

3 Q. And these were--I'm glad you mentioned the  
4 high prices because isn't it true that, in 2008,  
5 around this period, the prices at Mid-C were  
6 relatively high?

7 A. The prices in this period were, indeed, high.  
8 My recollection of the yearly average price in 2008, I  
9 don't have one right now.

10 Q. And Mr. Krauss indicated in his Witness  
11 Statement that the prices at Mid-C for electricity are  
12 highly correlated to the price of natural gas? Would  
13 you agree with Mr. Krauss? And I'm sorry, this is  
14 Paragraph 16 of Mr. Krauss's Witness Statement. And I  
15 believe you have a version that is being provided to  
16 you right now.

17 A. I did read that, and I generally agree until  
18 there is a separation of pricing due to demand.

19 Q. And isn't it true, Mr. Friesen, that the high  
20 prices in 2008 decreased rapidly in the Fall of 2008?

21 A. It's true the prices did come down.

22 Q. Substantially; correct?



09:49:34 1 A. Correct.

2 Q. And they have remained low; correct?

3 A. They have been lower than 2008. There is a  
4 lot of volatility in spot-market pricing.

5 Q. Could you please turn to Tab--I believe it's  
6 Tab 4, and that would be exhibit number, for the  
7 record, R-440.

8 Now, I trust, given your experience, that you  
9 will have seen these tables such as this one. Before  
10 this information was provided to us, in this case by  
11 Powerex, but it is information that is gathered by  
12 Platts, and Platts is, if I understand correctly, a  
13 company that does price assessment for a number of  
14 commodities, including electricity prices and they  
15 maintain historical price data or databases for Mid-C;  
16 correct?

17 A. Correct.

18 Q. Now, this chart indicates or provides an  
19 overview of the monthly average market prices at  
20 Mid-C. Does that seem correct?

21 A. These are, in fact, after-the-fact average  
22 monthly prices. I will have to take your word on

09:50:54 1 that.

2 Q. Okay. Can you provide me with the monthly  
3 average, so that would be in the first--or actually  
4 second column, so you have the first column is the  
5 month and then the second column and that is the heavy  
6 load hour, so that is the highest price you can get;  
7 correct?

8 A. That is the average price for the 16 hours  
9 during the day, correct.

10 Q. That are the high, on peak; correct?

11 A. They could, in fact, be the highest prices  
12 and generally are, but not necessarily.

13 Q. Apologies, I thought you were finished.

14 If you could please answer again. I cut you  
15 in your answer.

16 A. Okay. The second column is the average price  
17 for the 16 hours in the day. I believe in Mid-C it's  
18 six days a week. They could, indeed, be the highest  
19 price but not necessarily.

20 Q. Okay. Now, could you provide me with or just  
21 indicate quickly based on this chart, what the average  
22 price was for August 2008.

09:52:01 1           And again, I understand this is the spot  
2 market, so this is not exactly the values that you  
3 were referring to, but I would just like to identify  
4 the trend here.

5       A.   No problem.

6           So, the average price after the fact in 2008,  
7 according to your chart, is \$72.14.

8       Q.   And could you provide the price in January or  
9 December of 2008?

10       A.   It was \$60.71.

11       Q.   And what about one month later in  
12 January 2009?

13       A.   39.63.

14       Q.   And then do these prices seem realistic to  
15 you? Do they correspond to your recollection of the  
16 evolution of Mid-C pricing?

17       A.   That's correct.

18       Q.   Okay. And if you could please turn to the  
19 next tab, to Tab 5, these are the recent--another  
20 chart showing other recent Mid-C prices, and we can  
21 see on this chart that the heavy load hour prices are  
22 in the 20 to \$30 range; correct?

09:53:07 1 PRESIDENT VEEDER: That's R-442.

2 MR. COULOMBE: And that would be R-442.

3 Thank you, Mr. President.

4 MR. SHOR: Can I just ask a quick question?

5 Are we getting into any restricted information in this

6 testimony, or can Mr. Merwin come back into the

7 hearing? Canada restricted him. He can't see or hear

8 ours.

9 MR. OWEN: We believe that Platts is just

10 official, so please, go ahead.

11 MR. SHOR: So, we can get Mr. Merwin?

12 BY MR. COULOMBE:

13 Q. So, you indicated that was correct, the price

14 was in the range of the 20s to the 30s--correct?--on

15 this chart.

16 (Comment off microphone.)

17 Q. Apologies, I was providing you with this

18 chart, and I was saying this chart is reflective of

19 the recent monthly average prices at Mid-C. Would

20 that be your understanding of the chart?

21 A. Taken at a moment in time, I would agree.

22 Q. Okay. Now, I would like to turn to the

09:54:33 1 question of transmission, and I'm most grateful for  
2 your presentation in the direct testimony.

3 Transmission is an important issue, isn't it?

4 A. Yes, it is.

5 Q. And, in fact, Mr. Krauss in his Witness  
6 Statement, indicates that NorthPoint--and I'm at  
7 Paragraph 13--NorthPoint selected the markets in which  
8 to invest in part based on the transmission that would  
9 be available to get to these markets, and the terms  
10 that he used are points of delivery and points of  
11 receipt, and that refers to where you get the energy  
12 and when you deliver the energy on the transmission  
13 path; correct?

14 A. Sorry, I can't read that. Do I have a copy?

15 Q. Yes, there was a soft copy that was provided  
16 to you, and that's Paragraph 13.

17 A. Okay, I read Paragraph 13.

18 Q. So, that's one of the important  
19 considerations for a broker?

20 A. Correct.

21 Q. Now, you indicated that energy could be, and  
22 was, in fact, delivered to the B.C.-U.S. border, and

09:56:00 1 that is at Paragraph 10 of your own Witness Statement.

2 A. Correct.

3 Q. So, that was correct. And the reason for  
4 selling at the B.C.-U.S. border is that it avoids  
5 having to find transmission in the U.S.; correct?

6 A. There are two reasons--well, there are  
7 several reasons. It avoids having to find  
8 transmission in the U.S., the counter-parties  
9 generally have transmission in the U.S., and,  
10 therefore, you can save the costs. And, at times,  
11 when you rebuy other people's transmission, you can  
12 get it at a discount as opposed to the regulated rate.

13 Q. Now, if you are going to send your power to  
14 the Mid-C to somewhere in the United States from  
15 British Columbia, this means you have to wheel your  
16 power over Bonneville Power Administration system;  
17 correct?

18 A. You have to use U.S. transmission, correct.

19 Q. And the first one in line or the first  
20 network on the way there is Bonneville; correct?

21 A. Correct.

22 Q. And if you don't mind, I'm going to use BPA

09:57:15 1 for Bonneville Power Administration.

2 A. No problem.

3 Q. No problem?

4 So, BPA is kind of the gateway into the  
5 United States; correct?

6 A. Yes.

7 Q. And BPA is--

8 A. Sorry. Sorry. The BPA transmission system  
9 is kind of a gateway into the U.S.

10 Q. Okay. And BPA's transmission network is  
11 severely or at least in 2008 was severely constrained,  
12 wasn't it?

13 A. I don't understand the question.

14 Q. Getting firm transmission on BPA's network  
15 was not very easy due to the very high demand and the  
16 very low offer; isn't that correct?

17 A. As the prices separate between two markets,  
18 transmission becomes more difficult to get. Correct.

19 Q. And, in fact, it was, on BPA's network in  
20 2008.

21 A. And, in fact, it is more difficult to get--I  
22 can't say whether it was difficult to get. I didn't

09:58:21 1 get to the point of trying to get it.

2 Q. Okay. If you wouldn't mind turning to Tab 7,  
3 and that would happen to be Exhibit R-27.

4 This is a relatively short fact sheet, and  
5 I'm telling you this for context, a relatively short  
6 fact sheet that was in fact publicly available and  
7 that was crafted by Bonneville Power Administration,  
8 dated March 2008, and it talks about a study that BPA  
9 wants to put in place to see what upgrades will be  
10 needed to satisfy the transmission demand.

11 And if you wouldn't mind going to the second  
12 page of that exhibit and at the third paragraph.  
13 Could you please read the third paragraph for our  
14 benefit.

15 A. "Like other transmission providers across the  
16 country, BPA has been inundated with requests for  
17 point-to-point (PTP) service. The requests currently  
18 in our queue seeking new long-term firm transmission  
19 capacity amount to several thousand megawatts."

20 Q. If you could please now turn to the next tab,  
21 Tab 8.

22 ARBITRATOR DOUGLAS: Just before you do, for



09:59:43 1 the record, it came up as R-47 when, in fact, 27, when  
2 it was actually 427. For the record.

3 MR. COULOMBE: Thank you, Mr. Douglas.

4 BY MR. COULOMBE:

5 Q. If you could please turn to the next tab--and  
6 I hope I'm going to get the exhibit number right this  
7 time--R-428. And this is a letter that was written by  
8 the Bonneville Power Administration to the Federal  
9 Energy Regulatory Commission, the FERC, and Bonneville  
10 Power Administration is petitioning the FERC for an  
11 order approving certain amendments to its Open Access  
12 Transmission Tariff, and the reason for that is in  
13 order to enable the study, the network open seasons,  
14 that we just mentioned.

15 Now, if you don't mind going to the fifth  
16 page of this document, and I'm sorry there's no page  
17 numbers on this document, but on the fifth page you  
18 will see "background of this filing" as the heading.

19 Are you there?

20 A. I'm there.

21 Q. And could you please read the first sentence  
22 below "background of this filing."

10:00:48 1       A.    "As of March 19, 2008, BPA's transmission  
2    service request contained 9,262 megawatts of requests  
3    for service on BPA's network, exclusive of requests  
4    for service on the Southern and Montana Interties".

5       Q.    So, Mr. Krauss, these documents show--sorry,  
6    Mr. Friesen--very sorry--these documents show that  
7    there was, in fact, a big queue for transmission  
8    service requests on the Bonneville system in  
9    March 2008, don't they?

10      A.    That's true, but there is no financial  
11    commitment to putting in any of these requests.

12      Q.    I'm sorry, I didn't understand your answer.

13      A.    I have seen these large numbers in a number  
14    of transmission providers when people are looking for  
15    long-term firm transmission. Thousands of megawatts  
16    stack up, and it's only later when there's charges for  
17    actually doing the studies where the numbers come down  
18    to some reasonable level.

19      Q.    When the studies are effectuated or are  
20    actually done?

21      A.    Right.

22      Q.    Okay.

10:01:59 1 A. There is no cost to putting in a request.

2 Q. But doesn't this document indicate that even  
3 if you put in a request today or if you had put in a  
4 request or someone had put in a request--

5 A. This document--

6 Q. So, this document shows that if a request had  
7 been put in March 2008 by someone wanting  
8 transmission, it would have landed in the queue after  
9 the 9,000 megawatts; correct?

10 A. That's correct.

11 Q. Thank you.

12 Now, when you indicate that power was, in  
13 fact, sold at the U.S. border and could be sold at the  
14 U.S. border, this, in fact, meant that you needed a  
15 buyer that had transmission rights on BPA's network;  
16 correct?

17 A. You needed to arrange for transmission,  
18 correct.

19 Q. Okay. And you also state in your Witness  
20 Statement--

21 MR. SHOR: Sorry, Mr. Coulombe, can you speak  
22 into the microphone? We're having trouble hearing

10:03:05 1 you.

2 MR. COULOMBE: Apologies. Sorry,

3 Mr. Freisen.

4 Everybody is Mr. Krauss today. I don't know

5 why. I'm very sorry. Something's happening in my

6 brain.

7 Yeah, please call me Mr. Friesen, if you'd

8 like.

9 BY MR. COULOMBE:

10 Q. So, Mr. Friesen, at Paragraph 8 of your

11 Witness Statement, you indicated that you had no doubt

12 you could sell Celgar's power because the quantity was

13 small compared to market demand.

14 A. That's correct.

15 Q. That's correct.

16 And you were--and you later said that the

17 prices you provided were based on Mid-C forward

18 pricing; correct?

19 A. That's correct.

20 Q. So, the market demand--and this is not an

21 economics class, but the market demand would refer to

22 every potential buyer at Mid-C; correct?

10:03:48 1 A. I suppose so.

2 Q. Okay. But you were not looking at the time  
3 for every potential buyer at Mid-C, were you? You  
4 were, in fact, looking as a supplemental condition for  
5 a buyer that would be willing to purchase and that at  
6 the B.C.-U.S. border and that had the transmission at  
7 the B.C.-U.S. border; is that correct?

8 A. It's correct to say that that's our easiest  
9 way to put together a transaction. It's not the only  
10 way. It does add value to the transaction to us if we  
11 transacted at the border.

12 Q. Now, when you made sales to the B.C.-U.S.  
13 border, you did so on an hourly basis, on a spot  
14 basis; correct?

15 A. Those were the transactions we were doing at  
16 the time, correct.

17 Q. And Mr. Krauss indicated in his Witness  
18 Statement--and I'm at Paragraph 28--that, in fact,  
19 NorthPoint has never entered into a forward sale at  
20 the B.C.-U.S. border; isn't that correct?

21 A. That's correct.

22 Q. And Mr. Krauss has also indicated that

10:05:04 1 generally, when someone buys at the B.C.-U.S. border,  
2 this buyer will want to discount in the selling price  
3 the cost of the avoided transmission on the U.S. side  
4 of the border; isn't that correct? And I'm referring  
5 to Paragraph 27 of Mr. Krauss's Witness Statement.

6 A. I'm aware of the clause. I'm not sure the  
7 word discount is fair. The buyer would have been  
8 looking for the value of the transmission that he  
9 brought to the table to be accounted for in the  
10 transaction.

11 Q. Okay. Thank you, Mr. Friesen.

12 And if you are selling or planning to sell  
13 long-term to a buyer in the United States and you  
14 don't have the firm transmission for the entire length  
15 of the Contract, doesn't that entail a risk for the  
16 buyer in terms of having your power delivered to this  
17 buyer?

18 A. As I mentioned in my direct, yes, it does add  
19 a risk. Yes, it could be covered by a clause. And  
20 generally speaking, that clause would be a liquidated  
21 damages provision such that the consumer in the event  
22 of non-delivery could buy the energy off the market

10:06:31 1 and be held whole.

2 Q. And when the buyer has to--or, sorry, when  
3 there is a failure to deliver, the buyer will arrange  
4 to find the power it needs that you couldn't deliver;  
5 isn't that correct?

6 A. Once again, there are two choices. The  
7 supplier of the energy could, in fact, try and supply  
8 the energy from another source or the buyer could buy  
9 the energy from another source.

10 Q. In any event, there is some sort of risk to  
11 the buyer in that type of scenario, isn't there?

12 A. There is no financial risk. There may be a  
13 risk of delivery.

14 Q. And wouldn't this risk be factored into the  
15 negotiations?

16 A. Yes. I've already accounted for that.  
17 Correct.

18 Q. Now, you indicated during your direct  
19 testimony that it was, if I understand correctly, it  
20 was fairly easy to find either short-term firm  
21 transmission or non-firm transmission a few days in  
22 advance, for example; is that correct?

10:07:42 1       A.    I'm not sure I used the word "easy." I said  
2    that it would be possible.

3       Q.    It's possible.

4            Now, if you have non-firm transmission rights  
5    for, let's say, tomorrow, do you know if you're  
6    going--do you know today if are going to be curtailed  
7    tomorrow?

8       A.    No. Not necessarily.

9       Q.    Just a second, Mr. Friesen.

10           (Pause.)

11       Q.    And you mentioned also that there was no  
12    difference in terms of if a holder of six months' firm  
13    transmission is together with a rights holder for a  
14    one-month firm transmission on a transmission path,  
15    there is no priority in between the two as to who gets  
16    curtailed first. Everybody has the same transmission  
17    rights in terms of flow at this point; correct?

18       A.    Firm transmission holders are curtailed based  
19    on a pro rata of the amount that they have reserved.  
20    There is no first in or first out.

21       Q.    But we're talking about the actual flows  
22    here; right? The actual scheduling on the



10:09:06 1 transmission lines.

2 A. Correct.

3 Q. We're not talking about the reservation?

4 A. Correct.

5 Q. So, if I'm a generator and I want to reserve  
6 transmission at a service provider, say, for example,  
7 Bonneville, and I want to reserve for one month and  
8 someone wants to reserve for six months.

9 A. Okay. I did cover that in my direct, but  
10 obviously I wasn't clear.

11 If a person buys monthly firm transmission  
12 service, and in the event that someone buys a  
13 six-month term or attempts to buy a six-month term,  
14 the holder of the monthly service is, at that point,  
15 if it's still outside or still in the conditional  
16 period, would be obligated to match the longer  
17 request. They wouldn't be bumped, but they would be  
18 obligated to match the request, then buy transmission  
19 that perhaps they didn't want.

20 Q. And if the buyer--if the person requesting  
21 the transmission is firm and doesn't want to go beyond  
22 one month, in this case the transmission service

10:10:35 1 provider will give the transmission to the person  
2 requesting six months; correct?

3 A. If the one-month purchaser does not match the  
4 request, he gives up his right to the one-month firm.  
5 That's correct.

6 Q. Just one second, Mr. Friesen.

7 (Pause.)

8 Q. If we could please pull the exhibit NAV-124  
9 on which you relied earlier. You have a copy in your  
10 binder that was provided to you by the Claimant's  
11 counsel. And that should be the very small binder.  
12 Apologies for the--

13 MR. COULOMBE: Could I have it on the screen,  
14 NAV-124?

15 BY MR. COULOMBE:

16 Q. Now, you explain there are many lines on this  
17 graph.

18 A. Correct.

19 Q. And now let's take--we're at January 2008, so  
20 let's just take January for now as an example.

21 So, in addition to the purple line that  
22 you've mentioned which is the--actually the derated

10:11:59 1 capacity; is that correct? That's the derated  
2 capacity?

3 A. Correct.

4 Q. So, that's the--that's when Bonneville Power  
5 Administration determines that the capacity on this  
6 day will be this rather than that for a series of  
7 considerations; correct?

8 A. Right. I believe this is an hourly chart but  
9 the premise is right.

10 Q. And this is determined by engineers who say,  
11 well, in this hour it's going to be that, because if  
12 we go beyond that there's a risk of running into a  
13 problem; correct?

14 A. It's determined by system operations,  
15 correct.

16 Q. Now, in your experience or in your knowledge,  
17 do they--will Bonneville Power Administration always  
18 go to that purple line? Will it allow the entire  
19 capacity to be used or does it not provide for a  
20 little gap just to make sure that no problem arises?

21 A. My understanding is that this is the  
22 operating capacity. Therefore, there is, to allow for

10:12:58 1 issues, there are pre-accounted for space beyond this  
2 line.

3 Q. Okay. If you could please go to the month of  
4 August--

5 PRESIDENT VEEDER: Sorry. We're going to  
6 have trouble in the Transcript later.

7 When you say "this line," what do you mean?

8 THE WITNESS: Sorry. The purple line is the  
9 operating capability of the line. It is not the  
10 absolute limit of the line. And so the system  
11 operations people know what the absolute limit is--I'm  
12 not aware of it--but that takes into account things  
13 like contingencies and other events so that the line  
14 doesn't become unstable.

15 PRESIDENT VEEDER: So, it's somewhere above  
16 the purple line but below the black line?

17 THE WITNESS: Above the purple line in  
18 negative terms; i.e., greater negative numbers.

19 PRESIDENT VEEDER: Thank you.

20 BY MR. COULOMBE:

21 Q. Do you mind going to August 2008, and that  
22 should--this will be the eighth page of the exhibit.

10:14:10 1                    Now, your counsel had you, when looking at  
2 the January chart, your counsel had you identify the  
3 available capacity, the after-the-fact reflection of  
4 what was the capacity available in January 2008.

5                    In your opinion, in August 2008, looking at  
6 this after the fact, was there a lot of capacity  
7 available, based on this chart?

8            A.    In my opinion, looking at that chart is that  
9 there is significantly less capacity available than in  
10 the January chart.

11                    It's important to remember that the  
12 horizontal lines in this chart are 300 megawatts  
13 apart; so, unless the two lines are actually touching,  
14 I suggest there are a small number of megawatts  
15 available.

16            Q.    Thank you, Mr. Friesen.

17                    MR. TREASTER: Mr. President, could we have  
18 just a couple of minutes to prepare for redirect?

19                    PRESIDENT VEEDER: Of course. How long do  
20 you want?

21                    MR. TREASTER: Five minutes is plenty.

22                    PRESIDENT VEEDER: Okay. Five minutes.

10:15:22 1 (Brief recess.)

2 PRESIDENT VEEDER: Let's resume.

3 REDIRECT EXAMINATION

4 BY MR. TREASTER:

5 Q. Mr. Friesen, I just have a couple more  
6 questions for you.

7 Canada, on cross, walked you through monthly  
8 average Mid-C prices in 2008. Does that--do those  
9 prices have anything--bear any relation to  
10 long-term--the prices you would--a customer--or a  
11 seller would achieve in long-term contracts?

12 A. Monthly forward prices or after-the-fact  
13 realtime prices don't have any bearing on a very  
14 long-term pricing. Perhaps they would have some  
15 bearing on shorter long-term pricing, but I guess the  
16 answer is no.

17 Q. Okay.

18 Mr. Friesen, could you turn to Tab 8 in your  
19 cross-examination binder. I apologize, I'm not  
20 familiar with what the exhibit number is.

21 R-428.

22 And could you turn to Page 5.

10:23:05 1 Mr. Friesen, have you ever seen this document  
2 before?

3 A. Today was the first time.

4 Q. And Canada pointed you to Number 9,262, a  
5 request in the service request queue for BPA  
6 transmission service.

7 A. Correct.

8 Q. And you mentioned that you were familiar with  
9 that number; is that right? Are you familiar with  
10 that number?

11 A. No, I'm not familiar with that specific  
12 number, how it was achieved. What I suggested was  
13 that the number of megawatts in a Request for Service  
14 queue are not, in fact--are generally overinflated  
15 because there is no cost to putting in that request.

16 Q. And do you understand that request queue to  
17 be for short-term firm transmission or long-term firm  
18 transmission?

19 A. That request queue is for long-term firm  
20 transmission.

21 Q. Mr. Friesen, if Celgar was looking for  
22 transmission access for a long-term contract, would

10:24:34 1 you expect Celgar to buy the longest duration of  
2 transmission available?

3 A. I would expect that they would buy the  
4 transmission that would be required by the length of  
5 term of the transaction that they're looking at.

6 Q. And, so, Canada gave you a hypothetical that  
7 perhaps Celgar would have bought one month of  
8 short-term transmission and another seller would have  
9 bought six months of firm transmission.

10 If Celgar was in a long-term contract, would  
11 you have expected Celgar to match that six-month  
12 short-term transmission request?

13 A. The short answer is yes, but the long answer  
14 is I would have expected that they would have reserved  
15 the whole six months in the first place.

16 Q. Now, I would like to pull up Navigant-124  
17 again.

18 Mr. Friesen, you've explained this a few  
19 times, but I just to want make sure that we really  
20 understand what this yellow line in the graph means.

21 If as a scheduler--and we understand this is  
22 after the fact--but if as a scheduler you could make a



10:26:06 1 graph to represent the amount of electricity  
2 transmission that would be available ahead of time,  
3 would you expect this yellow line to look different?

4 A. Yes.

5 Q. And how so?

6 A. Well, the transmission--the transmission  
7 based on long-term firm transmission requests would  
8 be, in most cases, larger or in a more negative  
9 direction than the actual line.

10 But you are asking me to suppose one way or  
11 the other, and the reservation system is not related  
12 to the actual flow.

13 Q. Okay. Right. Well, let's just talk about  
14 when you were looking to reserve short-term  
15 transmission for Celgar.

16 If you had reserved transmission space--and  
17 can we just go to August 2008 in this chart--if you  
18 had reserved short-term transmission for Celgar ahead  
19 of time in August 2008, would you expect Celgar to be  
20 part of the yellow line in this graph?

21 A. Yes. Yes.

22 Q. So, the space in August 2008 between the

10:27:45 1 yellow line and the purple line, does that represent  
2 all of the transmission that would have been available  
3 for Celgar to reserve?

4 A. If, in fact, they had reserved space before  
5 that, they would have, in fact, been part of the  
6 yellow line, and the space between the purple line and  
7 the yellow line at that point would still be unused  
8 transmission.

9 Q. And you said something in your direct that I  
10 just want to focus on a little more clearly. You said  
11 that the--

12 PRESIDENT VEEDER: Just pause a second. Do  
13 you mean direct?

14 MR. TREASTER: Cross, cross-examination.

15 PRESIDENT VEEDER: I think that's better.

16 MR. TREASTER: My apologies. I meant  
17 cross-examination.

18 BY MR. TREASTER:

19 Q. That I would just like to focus on a little  
20 more specifically. You mentioned that the purple line  
21 at the bottom of the graph may not, in fact, represent  
22 all of the transmission that's available?

10:28:53 1       A.    The purple line is the operating capacity of  
2    the line within the operations limits.  Inside of  
3    that, the line is capable of more transmission  
4    capability, but that is to serve reliability purposes  
5    such as contingencies, a number of other things.  That  
6    total operating capability--total transferability of  
7    the line is not represented in this graph.

8       Q.    So, Mr. Friesen are the contingencies already  
9    built into the purple line?

10      A.    Correct.

11      Q.    Thank you, Mr. Friesen.

12           MR. TREASTER:  No further questions.

13           PRESIDENT VEEDER:  Thank you very much.  The  
14    Tribunal has no questions.  We have come to the end of  
15    your testimony.

16           THE WITNESS:  Thank you.

17           (Witness steps down.)

18           PRESIDENT VEEDER:  The next witness is  
19    Mr. Les MacLaren.  So, he's the first of the  
20    Respondent's witnesses.

21           And, forgive me, I forget if he's the  
22    Application or the subject of an application for an

10:30:19 1 extended direct examination.

2 Is he the first?

3 MR. DOUGLAS: Yes, please, Mr. President.

4 PRESIDENT VEEDER: So, we need to decide that

5 now.

6 MR. DOUGLAS: If now would be the appropriate

7 time, then yes.

8 PRESIDENT VEEDER: It would be better to do

9 it before his direct examination, would you agree?

10 (Laughter.)

11 MR. DOUGLAS: I think so.

12 PRESIDENT VEEDER: Please make the

13 Application.

14 MR. DOUGLAS: We make an application for an

15 extended direct of Mr. MacLaren to discuss the issue

16 of load displacement.

17 MR. SHOR: I'm a little bewildered. I

18 thought the purpose of the Application was so that we

19 would have advance notice to be able to prepare, and

20 if I get it right now, it doesn't do me any good.

21 PRESIDENT VEEDER: Well, it's also a little

22 short. I thought he might add a little.

10:31:06 1                   Do you want a explain a little bit further  
2 what you mean by "extended direct" as regards load  
3 displacement?

4                   MR. DOUGLAS: This is fair. Canada has also  
5 attempted to identify the subject matter of its direct  
6 previously, and Mr. Shor had requested that it was  
7 premature. So, I find it a bit--

8                   PRESIDENT VEEDER: Can we dig out your letter  
9 where you describe the subject of the Application more  
10 fully in regard to Mr. MacLaren?

11                   MR. DOUGLAS: Sure. Happy to do that,  
12 although I'm not sure load displacement would be  
13 covered by that, but it has been a new issue raised in  
14 the arbitration, and we'd very much like for  
15 Mr. MacLaren to assist the Tribunal understanding it.

16                   MR. SHOR: So, we've had no notice, in other  
17 words.

18                   PRESIDENT VEEDER: Anything else he's going  
19 to deal with in extended direct, or just load  
20 displacement?

21                   MR. DOUGLAS: Just some context leading up to  
22 that, and then just load displacement.

10:32:03 1 PRESIDENT VEEDER: And overall, give us some  
2 estimate as to how long you think you might be in  
3 extended direct.

4 MR. DOUGLAS: Oh, no more than ten minutes.

5 PRESIDENT VEEDER: Ten minutes. Why don't we  
6 hear the ten minutes, and then we will hear the  
7 Respondent--sorry, the Claimant. But it's difficult  
8 to get a feel for it until we hear what he says.

9 Shall we have them now? And then we will  
10 break after his direct examination.

11 MR. DOUGLAS: That would suffice.

12 Mr. President, if I could just ask, Canada  
13 would like to do all things to accommodate the  
14 Claimant in terms of asking its application. I feel  
15 we've been trying to do that, and I do want to give  
16 them a chance, and I tried this morning, and that  
17 didn't seem to be the appropriate time, and now I'm  
18 trying and the Claimant seems to suggest it's not  
19 enough time.

20 I'm happy to follow any process or if it's  
21 appropriate to make this application and to give the  
22 Claimant sufficient time. I just feel like I'm stuck

10:33:12 1 between a rock and a hard place.

2 PRESIDENT VEEDER: No, I think we will take  
3 it witness by witness. We'll see what happens with  
4 Mr. MacLaren.

5 I mean, the idea of this extended direct  
6 application by the Respondent was to deal with any  
7 extra material that came from the extended direct  
8 examinations of the Claimant's witnesses. And at the  
9 moment I'm not quite sure how that works with load  
10 displacement and Mr. MacLaren, so we will see how it  
11 goes, and then it may be useful then to have a block  
12 application for your witnesses. But for the moment  
13 let's go with Mr. MacLaren.

14 LESLIE M. MACLAREN, RESPONDENT'S WITNESS, CALLED

15 PRESIDENT VEEDER: Good morning.

16 We ask this of all Witnesses. Please state  
17 your full name and if you will read the words of  
18 declaration for Factual Witnesses on the piece of  
19 paper before you.

20 THE WITNESS: Thank you. My name is Leslie  
21 Marshall MacLaren.

22 I solemnly declare upon my honor and

10:34:14 1 conscience that I shall speak the truth, the whole  
2 truth, and nothing but the truth.

3 PRESIDENT VEEDER: Thank you.

4 DIRECT EXAMINATION

5 BY MR. DOUGLAS:

6 Q. Hi, Mr. MacLaren.

7 A. Good morning.

8 Q. You are currently Assistant Deputy Minister  
9 of the Ministry of Energy and Mines?

10 A. That is correct.

11 Q. How long have you held that position?

12 A. Since February of 2008.

13 Q. As a result of that position, are you able to  
14 assist the Tribunal with understanding the Province's  
15 2007 Energy Plan?

16 A. Yes, I am.

17 Q. Was one of the objectives of the 2007 Energy  
18 Plan to mandate that BC Hydro become self-sufficient?

19 A. Yes, it was.

20 Q. To reach that objective, did BC Hydro have to  
21 acquire resources?

22 A. Yes, they did.



10:34:55 1 Q. Without getting into numbers, was that a--was  
2 that a significant gap?

3 A. Yes. Part of the self-sufficiency policy  
4 changed BC Hydro's planning criteria such that they  
5 had to plan their system based on historically low  
6 inflows into their system, which created a gap that  
7 they had to fill by procuring both supply- and  
8 demand-side resources.

9 Q. What type of initiatives did BC Hydro  
10 undertake to close that gap?

11 A. It started in the Energy Plan. They  
12 commenced an expression of interest and then a Request  
13 for Proposals for bioenergy projects. They also  
14 instituted a Clean Power Call in 2008 to acquire new  
15 supply from other sources, and they also ramped up  
16 their demand-side spending in order to try and close  
17 that gap.

18 Q. When you say "demand-side spending," would  
19 that include Load Displacement Agreements?

20 A. That could include Load Displacement  
21 Agreements, that's correct.

22 Q. Okay. Could you explain what "load

10:36:04 1 displacement" means?

2 A. A load displacement is a structure whereby  
3 the utility procures some incremental generation that  
4 the customer applies to their load, thereby reducing  
5 the amount of electricity that the utility has to  
6 supply.

7 Q. And that load displacement, would it be  
8 governed by a contract between utility and its  
9 customer?

10 A. Yes. And the utility would have to prove to  
11 the Utilities Commission that that acquisition was  
12 cost-effective relative to other resources available  
13 to the utility.

14 Q. Is a Load Displacement Agreement a subsidy?

15 A. No, it's not. It's a commercial transaction.  
16 It is one of the methods by which BC Hydro is trying  
17 to close its load resource gap.

18 Q. Would load displacement in FortisBC territory  
19 alter BC Hydro's contractual obligations under the  
20 PPA?

21 A. No.

22 Q. Why?

10:37:08 1       A.    That would be part of FortisBC's load  
2 resource planning.  They also have demand growth, and  
3 they might seek a Load Displacement Agreement, new  
4 supply, or demand-side measures, much as BC Hydro  
5 tries to do in its territory.

6       Q.    Would a Load Displacement Agreement between  
7 FortisBC and one of its customers assist BC Hydro in  
8 its procurement objectives?

9       A.    No, I don't think it would.  Because BC Hydro  
10 could not rely on that load displacement.  Again, it  
11 would be part of a portfolio of initiatives that  
12 Fortis would undertake to meet its customers' needs.  
13 So it could have demand growth, a Load Displacement  
14 Agreement, some new supply.  There would be a  
15 portfolio from which they could choose.

16           MR. DOUGLAS:  Those are my questions.

17           PRESIDENT VEEDER:  Thank you very much.

18           Let's take a break now, and you can consider  
19 your position.

20           MR. SHOR:  I don't think we have any  
21 objection because I think that was done within five  
22 minutes, so it wasn't extended.  So it didn't need to

10:38:10 1 apply.

2 PRESIDENT VEEDER: But you're not embarrassed  
3 by what was raised even within the five minutes? Do  
4 you want to break now? Shall we continue?

5 MR. SHOR: Let's start and I'll take a break.

6 PRESIDENT VEEDER: Okay. Let's continue.

7 CROSS-EXAMINATION

8 BY MR. SHOR:

9 Q. Good morning, Mr. MacLaren.

10 A. Good morning, Mr. Shor.

11 Q. We have the usual heavy binders for you.

12 I'd like to start by understanding the  
13 relationships between the Ministry of Energy and  
14 BC Hydro and the BCUC. As I understand it, the  
15 Minister of Energy acts as the Provincial  
16 representative--as the representative for the  
17 shareholder?

18 A. The Minister is the representative of the  
19 shareholder, and he is accountable in the Legislature  
20 for matters related to BC Hydro.

21 Q. And the profits of the BC Hydro are returned  
22 to the Government each year through an annual payment?

10:39:21 1       A.    A little bit more complicated than that, but  
2 they do pay a dividend.  But really what affects the  
3 Government's budget is its net income.

4       Q.    In recent years, the B.C. Cabinet has been  
5 the one that actually sets BC Hydro's rates?

6       A.    There have been directives issued to the  
7 Utilities Commission under Section 3 that sets  
8 BC Hydro's rates, that is correct.

9       Q.    So BC Hydro's rates are a political issue for  
10 the B.C. Government.  Is that a fair characterization?

11       A.    It--they can be.  Obviously the objective of  
12 Government as stated in the Energy Plan is to maintain  
13 competitive rates.

14       Q.    Now let's turn to the BCUC, the British  
15 Columbia Utilities Commission.  As I understand it,  
16 the BCUC also reports to the Minister of Energy?

17       A.    No.  As an administrative justice  
18 organization, the responsibility for the Utilities  
19 Commission rests with the Minister of Justice and  
20 Attorney General.

21       Q.    There is no reporting relationship to the  
22 Ministry of Energy?

10:40:20 1       A.    We certainly work with the Commission around  
2 regulatory matters.  We have just completed a review  
3 of the Commission, but the formal reporting  
4 relationship is with the Ministry of Justice.

5       Q.    And does the Ministry of Energy recommend the  
6 Commissioners for appointment?

7       A.    They are brought forward to Cabinet through a  
8 group called our Board Resourcing and Development  
9 Office that does merit-based competitions or  
10 solicitations from which they develop a list that the  
11 Cabinet decides.

12       Q.    And the Cabinet can issue direction to the  
13 BCUC.  I think you said they--

14       A.    That is correct.

15               (Overlapping speakers.)

16       Q.    This will work better if you wait for my  
17 question before answering.

18       A.    I'm sorry.

19       Q.    And the Cabinet can issue direction to the  
20 BCUC--I think you gave an example in the form of  
21 current rates--and issue rules it must follow;  
22 correct?

10:41:11 1 A. That is correct.

2 Q. And how many full-time Commissioners does the  
3 BCUC have?

4 A. They currently have one full-time  
5 Commissioner.

6 Q. So when it comes to the development and  
7 implementation of energy policy in British Columbia,  
8 that's done by the Ministry of Energy, and then it  
9 gets implemented by BC Hydro and the BCUC?

10 A. That's correct. The Ministry prepares the  
11 policy framework, those frameworks are approved by  
12 Cabinet or directed by the Minister, and then BC Hydro  
13 is expected to act within that policy framework and  
14 the Commission to regulate within that framework.

15 Q. If I build a house in Vancouver and I call  
16 BC Hydro to obtain electricity, they can't say no, can  
17 they?

18 A. It depends. If you're far enough off the  
19 grid, you have to make a contribution to connect. But  
20 yes, they have an obligation to serve within their  
21 territory.

22 Q. If I build a house in Vancouver and I call

10:42:16 1 BC Hydro to obtain electricity, they have an  
2 obligation to serve me?

3 A. Yes.

4 Q. That's part of the regulatory compact? The  
5 utility gets a monopoly, but they have to serve  
6 reliably all Eligible Customers in their service  
7 territory?

8 A. That is correct.

9 Q. And the obligation to serve extends to  
10 commercial and industrial customers as well?

11 A. That is correct.

12 Q. Who in B.C. has the power to impose  
13 limitations on the obligation to serve such that a  
14 utility could provide a customer with less than all  
15 the electricity it required?

16 A. That would be the Utilities Commission.

17 Q. Could the Government do so through an Order  
18 In Council?

19 A. It could possibly do so. That's a legal  
20 question that I'm not sure I'm qualified to answer,  
21 but the powers to direct the Commission are with  
22 respect to its powers and functions. So...



10:43:06 1 Q. Okay. But the BCUC can do so, and that's  
2 pursuant to Article 28(3) of the UCA?

3 A. I believe that's the article, yes.

4 Q. FortisBC cannot curtail itself its obligation  
5 to serve, can it?

6 A. Not--they have a similar responsibility in  
7 their service territory.

8 Q. And BC Hydro cannot itself curtail its  
9 obligation to serve an eligible customer?

10 A. I believe in cases of system emergency, they  
11 could curtail certain customers.

12 Q. Private parties cannot curtail a utilities  
13 obligation to serve in B.C.?

14 A. I'm not sure I understand your question.

15 Q. Private parties can't agree amongst  
16 themselves that the utilities obligation to serve  
17 would be limited?

18 A. I'm still not sure I understand the question.

19 Q. The limit--any limitation on an obligation to  
20 serve, that would be a regulatory matter rather than a  
21 commercial matter; correct?

22 A. There could be commercial contracts between a

10:44:19 1 utility and its customers that could allow for some  
2 curtailment in certain situations or additional  
3 generation in certain situations.

4 Q. I'm not talking about curtailments or--I'm  
5 talking about a utility avoiding an obligation to  
6 serve an Eligible Customer.

7 A. I'm not--I don't believe that that's the  
8 cases.

9 Q. Okay. Thank you.

10 Getting back to the Ministry of Energy's role  
11 in energy policy, its primacy on an energy policy also  
12 extends to policies governing the access by  
13 self-generators to utility power while they are  
14 selling their self-generated electricity?

15 A. That is an aspect of policy the Ministry has  
16 worked on, yes.

17 Q. And that directly affects how much  
18 self-generated electricity those self-generators can  
19 sell; correct?

20 A. The amount of self-generation that they can  
21 sell is determined under contractual negotiations  
22 between a utility and their customer as part of the

10:45:25 1 procurement process.

2 Q. I'm not talking about BC Hydro specifically.

3 I'm talking about, in general, including a

4 self-generator that doesn't want to sell to BC Hydro.

5 A. Then could you restate your question, please.

6 Q. That their ability to sell to a third party

7 is affected by the Government's policy on access to

8 utility power while they are selling self-generated

9 electricity.

10 A. Their ability to sell to third Parties is

11 governed by the Utilities Commission Act. If they are

12 selling, they become a public utility and must either

13 set rates, seek an exemption or file a contract for

14 acceptance by the Commission.

15 Q. Except if there's an exemption such as when

16 they're selling to BC Hydro?

17 A. There is an exemption in place for private

18 parties to sell to BC Hydro, and there's an obligation

19 for BC Hydro to file those contracts with the

20 Commission.

21 Q. And if they're not selling in British

22 Columbia, then the BCUC has no jurisdiction?

10:46:27 1       A.    If they were to secure access under the Open  
2    Access Transmission Tariff, they could sell to parties  
3    outside British Columbia.

4       Q.    Thank you.  Because self-generators are not  
5    public utilities, the BCUC, in general, has no direct  
6    regulatory authority over self-generators; correct?

7       A.    Providing they are using the generation to  
8    serve their industrial load, that's correct.

9       Q.    Or selling in an exempt manner, as we  
10   discussed?

11      A.    I guess so, yeah.

12      Q.    Now, you talked briefly about load  
13   displacement before if--to the extent that Government  
14   policy requires a self-generator to use--

15            (Comment off microphone.)

16            THE WITNESS:  I'm sorry, Mr. Shor.  Could you  
17   please restate the question.

18            BY MR. SHOR:

19      Q.    Yes.  Let me figure out where I was.

20            ARBITRATOR DOUGLAS:  It could have been  
21   worse.

22            (Laughter.)

10:47:36 1 BY MR. SHOR:

2 Q. So, the BCUC has no direct authority over  
3 self-generators that are selling their electricity in  
4 an exempt manner; correct?

5 A. That's correct.

6 Q. So--but the Government can effect their  
7 ability to sell their self-generation by regulating  
8 their utilities?

9 A. That's correct.

10 Q. Now, you were personally involved in  
11 developing B.C. self-generator policy?

12 A. The policy had been generally developed  
13 before I moved into the position that I'm currently  
14 in. In response to the Pulp and Paper Task Force that  
15 sought to reprice existing electricity, there were  
16 some briefing materials prepared in the fall of 2007  
17 before I started, which led to the position that I  
18 took with the Pulp and Paper Self-Generation Working  
19 Group.

20 Q. Can we bring up Exhibit C-135, Page 2. If I  
21 gave the right number, these are going to be the  
22 meeting notes of the June 24, 2008 Pulp and Paper

10:48:48 1 Working Group. I believe that's the group you just  
2 referred to.

3           And I believe you stated--somewhere in here  
4 the policy is articulated that the Government is firm  
5 that incremental generation is and should be priced on  
6 the margin, but that you would not allow the repricing  
7 of existing generation or arbitrage against heritage  
8 prices. Is that a fair summary of B.C. self-generator  
9 policy?

10       A. It is. When read in conjunction with the  
11 third bullet, that, if, in fact--if a generator is at  
12 its end of life, either economically or otherwise, it  
13 may be in ratepayers' interest for a bilateral  
14 negotiation to secure some refurbishment of that plant  
15 in a more cost-effective manner than it would cost the  
16 utility to go out and seek other sources of new  
17 supply.

18       Q. That's fair.

19           Now, if we could just go back to the general  
20 principle rather than the end-of-life issue. You used  
21 the term "priced on the margin." By "margin," you  
22 mean market prices; correct?

10:50:13 1 A. That's correct. They would be eligible for a  
2 competitive call.

3 Q. So, as I understand the policy, new and  
4 incremental generation could be sold at market prices,  
5 but existing generation could not be sold at market  
6 prices?

7 A. That is correct.

8 Q. Now, could we pull up the transcript,  
9 Page 203, Lines 3-7.

10 A. I'm sorry. Is that in my binder, Mr. Shor?

11 Q. No. This is in the transcript.

12 Mr. Owen told us in his Opening Statement  
13 multiple times that BC Hydro had no interest in buying  
14 existing generation because it would add nothing to  
15 BC Hydro's resource portfolio.

16 Wouldn't buying the generation output from  
17 Celgar's first turbine that Celgar had been using to  
18 supply a portion of its load have added that  
19 generation and capacity and energy to BC Hydro's  
20 resource base?

21 A. No, it would not.

22 Q. When did it become part of BC Hydro's

10:51:15 1 resource base?

2 A. It is part of the complex at the Celgar Mill  
3 that was constructed to serve that load.

4 Q. So it's not Celgar's resource? It's  
5 BC Hydro's resource?

6 A. No, it's Celgar's resource. It is Celgar's  
7 self-generation.

8 Q. How did it become part of BC Hydro's resource  
9 base?

10 A. It's not part of the BC Hydro's resource  
11 base.

12 Q. It's not.

13 So procuring it would be adding something to  
14 the resource base?

15 A. Procuring it would not add to the resource  
16 base in the Province. It would not be incremental  
17 energy.

18 Q. Also, we're not just concerned with BC Hydro.  
19 It's the Province that Mr. Owen meant to refer to?

20 A. I believe that's the case. It's certainly  
21 the impact of repricing Celgar's existing generation  
22 was found to have negative impacts on BC Hydro's



10:52:11 1 customers by the Commission.

2 Q. I was going to get to that next. Thank you  
3 for taking me there.

4 So, the purpose of restricting sales of  
5 existing generation is to prevent harm to other  
6 ratepayers?

7 A. That is correct.

8 Q. And that policy is driven by the desire not  
9 to permit existing self-generators from changing their  
10 use of self-generator electricity in a way that would  
11 increase the cost to other ratepayers who would have  
12 to share in the cost of buying the marginal  
13 replacement electricity. Is that fair?

14 A. That is correct. It is linked to two things:  
15 One is self-sufficiency in acquiring new resources  
16 rather than existing; and, secondly, to ensure that  
17 the Province maintains competitive rates.

18 Q. And you apply that self-generation policy  
19 Province-wide to protect all ratepayers?

20 A. That's correct.

21 Q. Of all utilities in B.C., not just BC Hydro?

22 A. That's correct.

10:53:06 1 Q. With respect to existing generation, does  
2 Government policy restrict all sales at market prices  
3 or only the sale of existing generation being used for  
4 self-supply?

5 A. If the--if an owner of self-generation wants  
6 to sell to a third party, they require other  
7 authorizations to do so.

8 Q. Okay. Assuming they have authorization and  
9 have been selling, would your policy restrict the  
10 continued sale of that electricity?

11 A. Could you reframe your question or, perhaps,  
12 give me an example, Mr. Shor?

13 Q. I'm a self-generator.

14 A. Okay.

15 Q. And I've been generating some electricity in  
16 excess of my load. So, I've been selling that to a  
17 company. Hypothetically, we'll call it NorthPoint.

18 A. Okay.

19 Q. And then I want to negotiate an EPA with  
20 BC Hydro. Those sales of excess generation to  
21 NorthPoint, would I be able to continue making those  
22 sales, either to BC Hydro or NorthPoint, or would that

10:54:18 1 count as existing generation that I would have to use  
2 to self-supply?

3 A. If it is--under the rules, as I said today,  
4 if it is surplus to your load, you can sell it,  
5 providing you have the appropriate authorizations.

6 Q. At all times? If I had been selling it, I  
7 can continue selling it?

8 A. I would say yes.

9 Q. What if I'm already selling to BC Hydro under  
10 a contract, but the Contract expires? Can I increase  
11 my price in a new EPA?

12 A. You would be subject to a contract renewal  
13 and a subsequent negotiation.

14 Q. And a higher price would be okay, even if it  
15 harmed other ratepayers?

16 A. If it is a subject of negotiation, that  
17 Contract is accepted, and it's found to be a  
18 commercial Contract, that cost would be acceptable  
19 because it would be approved by the Commission.

20 Q. Okay. But that's the same type of harm to  
21 ratepayers; right? They'd have to pay the incremental  
22 cost?

10:55:19 1       A.    They would--if it was cost-effective for the  
2 utility to reacquire that generation through renewal,  
3 it would be the best decision for ratepayers.

4       Q.    I'd like to turn more attention on this  
5 concept of "harmful arbitrage." In your testimony in  
6 multiple places, you use the term "arbitrage." Can  
7 you just define for me your understanding of the term  
8 as you use it?

9       A.    The term, as I've used it in my testimony, of  
10 "arbitrage" is where someone takes their generation  
11 and sells it to the market or to another party and  
12 replaces it with cost-based supply to the detriment of  
13 ratepayers.

14       Q.    So that's harmful arbitrage.

15       A.    (No verbal response.)

16       Q.    You said "uh-huh." She's looking for a "yes"  
17 or a "no."

18       A.    I'm sorry.

19       Q.    The answer to your question, I think you said  
20 "uh-huh," and she would like a "yes" or a "no."

21       A.    Sorry. Yes.

22       Q.    Thank you.

10:56:30 1 Arbitrage--if I use the term "arbitrage" to  
2 mean buying and selling the same commodity at the same  
3 time, your policy is not aimed specifically at that.  
4 Your policy is aimed at preventing a more narrow  
5 subset of arbitrage that you referred to as "harmful  
6 arbitrage"; correct?

7 A. That's correct.

8 Q. And that's aimed at just preventing an  
9 increase in the use of utility energy, not--but the  
10 self-generator would still be able to maintain its  
11 historical level of usage; correct?

12 A. I think so, yeah.

13 Q. Well, let's not "think so." Let's turn to  
14 your First Statement, at Paragraph 90.

15 A. I'm sorry, Mr. Shor, the First Statement?

16 Q. Paragraph 90, I think. There, I believe you  
17 say--even though I can't see it--that a self-generator  
18 can't sell existing self-generation historically used  
19 to meet a self-generator's load.

20 A. Uh-huh.

21 Q. And that's--

22 A. I'm sorry, yes, I see that.

10:57:52 1 Q. That's the policy?

2 A. That's the policy.

3 MR. OWEN: Excuse me, Mr. Shor, I'm terribly  
4 sorry for interrupting, but there's restricted access  
5 information on this page. Mr. Merwin is here.

6 PRESIDENT VEEDER: We're still in open  
7 session. It was Paragraph 91 that was restricted.

8 MR. SHOR: I'm sorry; I didn't realize that.  
9 We'll just take it down. The paragraph we've been  
10 discussing has no restricted information.

11 PRESIDENT VEEDER: And you're not coming to  
12 Paragraph 91?

13 MR. SHOR: No.

14 BY MR. SHOR:

15 Q. Are there different self-generator policies  
16 in place when BC Hydro is the purchaser versus a third  
17 party?

18 A. There are a number of approaches that the  
19 Commission has accepted for self-generators. It has  
20 accepted generation baselines. It has looked at  
21 net-of-load concepts and is now working on an  
22 entitlement and matching-type arrangement. In each

10:59:02 1 case, what it's trying to do is trying to limit  
2 impacts on ratepayers.

3 Q. Right. But I didn't ask about which service  
4 territory the self-generator was in. I asked if it  
5 mattered who the purchaser was. Someone in FortisBC's  
6 service territory can sell to BC Hydro as well as  
7 someone in BC Hydro's service territory. The policy  
8 is not at all affected by who the buyer is, is it?

9 A. No.

10 Q. And we talked earlier about how--the way the  
11 policy gets implemented to self-generators is to limit  
12 the utilities' obligation to serve that self-generator  
13 when it's selling electricity; correct?

14 A. No. I think the way it's implemented is that  
15 in some manner the amount of incremental generation  
16 being purchased by the utility is determined.

17 Q. That's correct. I agree with that, but  
18 the--and the utility is limited--its obligation to  
19 serve is limited so that it doesn't have to serve  
20 above that level; correct?

21 A. It's about procuring additional supply and  
22 not selling more to the customer.

11:00:20 1 Q. Right. But I'm trying to understand how it  
2 gets implemented. It gets implemented for a  
3 self-generator by not allowing it to take more utility  
4 power. And since you can't--

5 A. That's correct.

6 Q. But I'm trying to understand how it gets  
7 implemented. It gets implemented for a self-generator  
8 by not allowing it to take more utility power;  
9 correct?

10 A. That's correct.

11 Q. And you do it that way because you can't  
12 regulate directly the self-generator, so you regulate  
13 the utility?

14 A. You have a look at whether the utility is, in  
15 fact, procuring incremental supply.

16 Q. I'm not talking about sales to the utility.  
17 I'm just talking about the purchases by the  
18 self-generator from its utility in order for it to  
19 sell to anyone. That is restricted by limiting the  
20 obligation to serve.

21 A. So can I maybe cite an example and see if  
22 we're talking about the same thing, Mr. Shor?



11:01:27 1 Q. Sure.

2 A. So, let's say you have a customer who  
3 traditionally has supplied 50 percent of their supply  
4 and taken 50 percent from the utility. So, if, in  
5 fact, then there is a procurement, you would want to  
6 see incremental generation from that customer that the  
7 utility could procure, and it would not be required to  
8 supply any more than 50 percent of that initial load.  
9 Are we talking about the same thing?

10 Q. Yes.

11 A. Thank you.

12 Q. So the utility's obligation to serve is  
13 limited to the original 50 percent?

14 A. That's correct.

15 Q. And that policy has been implemented by the  
16 BCUC originally in Order G-38-01; is that correct?

17 A. That policy was--with respect to a  
18 self-generator using idle self-generation to sell into  
19 a very lucrative market, it did limit BC Hydro's  
20 obligation to supply any more embedded cost supply, if  
21 that utility was going to--sorry, if that  
22 self-generator was going to go ahead and start up that

11:02:34 1 idle generation for sales.

2 Q. Let's pull up Order G-38-01. It's  
3 Exhibit C-5. And I'd like to focus on Page 2,  
4 Paragraph 1, the first three sentences. Have you  
5 found it?

6 A. I have. Thank you.

7 Q. Can you please read that out loud.

8 A. "The Commission directs BC Hydro to allow  
9 Rate Schedule 1821 customers with idle self-generation  
10 capability to sell excess self-generated electricity,  
11 provided the self-generating customers do not  
12 arbitrage between embedded cost utility service and  
13 market prices. This means that BC Hydro is not  
14 required to supply any increased embedded cost of  
15 service to a Rate Schedule 1821 customer selling its  
16 self-generation output to market. The Commission  
17 recognizes that considerable debate may ensue over  
18 whether a generator has met this principle, but the  
19 Commission expects BC Hydro to make every effort to  
20 agree on a customer baseline, based either on the  
21 historical energy consumption of the customer or the  
22 historical output of the generator."

11:03:39 1 Q. Can you just highlight the word "customer  
2 baseline"? Now, can we pull up the transcript,  
3 Page 192, Lines 10-21.

4 This is from Mr. Owen's Opening Statement  
5 where he makes much of the fact that Order G-38-01  
6 does not use the term "GBL" or "generator baseline."  
7 If we could just go back to the term it does use. It  
8 uses the term "customer baseline," doesn't it?

9 A. Yes. I see the word "customer baseline."

10 Q. And that customer baseline has become known  
11 as the "generator baseline," hasn't it?

12 A. In this context, the "customer baseline"  
13 could be either historical consumption or historical  
14 load. The concept of a generator baseline is  
15 something that BC Hydro subsequently started using in  
16 its procurement in order to demarcate between existing  
17 and incremental supply that it was procuring.

18 Q. So, your position is the term "generator  
19 baseline" and "GBL" that BC Hydro uses is unrelated to  
20 Order G-38-01?

21 A. This is a principle related to baselines  
22 based on either historical output or historical

11:05:16 1 consumption that Hydro subsequently used in its  
2 procurement. This is--in my view, Mr. Shor, this is  
3 the principle.

4 Q. Okay. We'll come back to that. Now, the  
5 G-38-01 principle--let's call it that. We won't use  
6 the term GBL--that was intended by the Commission to  
7 preserve the status quo at the time, wasn't it?

8 A. It was a short-term opportunity in a very  
9 lucrative market. It was only put in place for a  
10 year, and BC Hydro subsequently came back, and that  
11 principle was extended. But it was intended to allow  
12 generators with idle generation capability to take  
13 advantage of the California energy crisis and the high  
14 market prices in western North America.

15 Q. Again, I'll repeat my question. Was it  
16 intended by the Commission to preserve the status quo  
17 at the time?

18 A. It was intended not to cause harm to  
19 ratepayers.

20 Q. As of that time?

21 A. At that time, that's correct.

22 Q. Can we pull up C-21? This is the BCUC's

11:06:32 1 decision in the Kelowna case. And can you turn to  
2 Page 7, please? In the third paragraph--

3 A. Excuse me. Page 7 of the reasons, Mr. Shor?

4 Q. Yes. Appendix A. I think that's the  
5 reasons.

6 A. Okay. I have it now.

7 Q. Could you please read the highlighted text?

8 A. "The notion of arbitrage as used in relation  
9 to GBLs was, in fact, the preservation of the status  
10 quo such that BC Hydro's obligation to serve was  
11 limited to the load served at a particular time, and  
12 self-generators were required to continue to serve  
13 that portion of their own load, which they had served  
14 in the past."

15 Q. Now, this is the Commission referring to  
16 G-38-01, isn't it?

17 A. I will get the reference. Yep, it is.

18 Q. And it's referring to GBLs in the context of  
19 G-38-01?

20 A. Yes, it is.

21 Q. Now, with getting back to the harmful  
22 arbitrage policy, do all provinces in Canada impose

11:07:51 1 regulatory measures to restrict a self-generator's  
2 ability to sell its electricity?

3 A. I'm not aware of that. I'm not sure.

4 Q. You're not aware of the policy in Quebec at  
5 all?

6 A. No, I'm not.

7 Q. Let's assume British Columbia had made the  
8 regulatory choice to allow sales, full sales of  
9 self-generator electricity, and it wasn't worried  
10 about harmful arbitrage at all. Would the GBL still  
11 be necessary in that case?

12 A. No, it probably would not. It would--all of  
13 the generation from the generator would be priced at  
14 some kind of market rate, and then they would--much  
15 like the example we saw from Germany where they sell  
16 all and then buy all from the pool.

17 Q. So you're familiar with Germany?

18 A. I was familiar with Germany. That was part  
19 of the analysis that was done.

20 Q. And in Germany, they do allow the full sale  
21 of all electricity and allow the self-generator to  
22 backfill all its energy needs from the utility at

11:08:58 1 embedded cost rates; right?

2 A. I believe it's from the pool rather than the  
3 utility, but yes.

4 Q. Okay. So it's not a crazy policy to do that.  
5 There are some well-respected countries in the world  
6 that do that; correct?

7 A. I don't think that Germany's example on clean  
8 energy is a good one for British Columbia.

9 Q. Okay. But different countries make different  
10 choices.

11 A. That's correct.

12 Q. I want to take another hypothetical example  
13 from there where BC has made the same choice as  
14 Germany to allow the sales, but BC Hydro still just  
15 wants to buy new and incremental power. Are you with  
16 me?

17 A. Okay.

18 Q. In that circumstance, then, if a  
19 self-generator had been using some of its electricity  
20 to self-supply, BC Hydro only wanted to buy  
21 incremental, there would be some gap then that the  
22 self-generator would have available for sale to a

11:09:57 1 third party, would there not?

2 A. I'm not sure. I thought you said we were in  
3 a world where all of the generation was being sold.

4 Q. You were in a world where all the generation  
5 could be sold, but BC Hydro's procurement practices,  
6 on the other hand, told it to just buy new and  
7 incremental policy--power.

8 A. I think that's very hypothetical, Mr. Shor.  
9 If you're in that kind of model with a pool, you would  
10 be driving new supply in an entirely different way  
11 than the procurement that's done today.

12 Q. I don't want you to argue with me. I just  
13 want you to use my hypothetical.

14 A. Yeah.

15 Q. So in that case, and BC Hydro just wanted to  
16 buy the new and incremental, there would be some  
17 volume that the self-generator would have available to  
18 sell to a third party; correct?

19 A. In your hypothetical example, yes.

20 Q. Thank you.

21 And in that case, BC Hydro and its EPAs would  
22 need to allow for those sales, would it not, if that



11:10:55 1 were the Government policy?

2 A. In your hypothetical example, yes.

3 Q. Okay. So the limitations in EPAs on those  
4 third-party sales, those flow directly from the  
5 Province's regulatory policy choices, don't they?

6 A. They flow from the contractual structure  
7 that's put in place to ensure that Hydro is actually  
8 procuring incremental energy.

9 Q. Okay.

10 A. So it's an output of the policy.

11 Q. I'm talking about the limitation. Current  
12 EPAs prohibit the self-generator from selling any  
13 electricity to a third party; correct?

14 A. That's correct.

15 Q. I want to focus on that limitation and go  
16 back to my world where we're in Germany, for example,  
17 and German version of BC Hydro only wants to buy new  
18 and incremental policy. In that kind of EPA  
19 structure, you would have to allow for third-party  
20 sales, would you not?

21 A. If all generators had a right to choose  
22 whether to sell to a pool or to use it in their

11:12:05 1 industrial facility, then they would be able to sell  
2 that energy.

3 Q. Okay. So the limitation on the third-party  
4 sales flows from the policy choice the Government made  
5 to require self-supply?

6 A. I would say, Mr. Shor, it flows from the way  
7 we've chosen to procure incremental energy.

8 Q. And the requirement for self-supply?

9 A. The Exclusivity Provision ensures that  
10 BC Hydro is able to procure what is, in fact,  
11 incremental.

12 Q. I mean in the world where you can have  
13 third-party sales, why is requiring or preventing  
14 third-party sales, how does that ensure BC Hydro is  
15 only buying incremental power? In my hypothetical, I  
16 allowed for the sale of everything.

17 A. In your hypothetical example, you could do  
18 something like that.

19 Q. Okay. So in my hypothetical example, the  
20 policy or the provisions in the EPA that restrict  
21 third-party sales would be unnecessary?

22 A. I don't think you would have them in that

11:13:23 1 case, no.

2 Q. Thank you.

3 PRESIDENT VEEDER: If you're moving to a  
4 different topic, we need a mid-morning break.

5 MR. SHOR: Happy to take a mid-morning break.

6 PRESIDENT VEEDER: Let's take 10 minutes, and  
7 we'll come back at 25 past. As you've heard us state  
8 before, please don't discuss the case or your  
9 testimony until you come back before the Tribunal.

10 THE WITNESS: I will not, sir.

11 PRESIDENT VEEDER: Thank you.

12 (Brief recess.)

13 PRESIDENT VEEDER: Let's resume.

14 MR. SHOR: Thank you, Mr. President.

15 BY MR. SHOR:

16 Q. Mr. MacLaren, I'd like to get back to the  
17 conversation we were having about Order G-38-01. I  
18 think you had stated it was a very short-term measure.

19 Can we pull up Exhibit C-131, please.

20 This is a copy of the BCUC's Order G-17-02  
21 issued on March 2, 2002, so roughly a year after  
22 G-38-01.

11:31:45 1           Are you familiar with this Order?

2           A.    Yes, I've seen it.

3           Q.    Isn't it the case that what the Commission  
4 did in this Order was extend G-38-01 indefinitely?

5           A.    That is correct.

6           Q.    I'd like to turn next to the relationship  
7 between G-38-01 and the GBLs that BC Hydro applies in  
8 its procurement contract. I think you said that they  
9 shared common principles, but it wasn't tied to Order  
10 G-38-01.

11           Is that a fair characterization of your  
12 testimony?

13          A.    I think what I said, Mr. Shor, is G-38-01 had  
14 some principles associated with it that Hydro later  
15 applied to their procurement.

16          Q.    But G-38-01 doesn't govern those GBLs?

17          A.    I would say not. The concept, as I  
18 understand it, was originally used in some Load  
19 Displacement Agreements, again, to demarcate between  
20 what--to determine what was incremental for the  
21 purposes Hydro's procurement.

22          Q.    Could we pull up C-248, please. And could

11:32:57 1 you find that in your binder. This is BCUC Order  
2 G-106-14. And the accompanying Decision is dated  
3 July 25, 2014.

4 Are you familiar with this Decision?

5 A. I have reviewed it.

6 Q. And this Decision was an Order denying  
7 BC-Hydro's request for reconsideration of a prior  
8 Order; correct?

9 A. That's correct.

10 Q. And that prior Order had actually ordered  
11 BC Hydro to file its GBL Guidelines as part of a rate;  
12 correct?

13 A. That is correct.

14 Q. And BC Hydro disagreed that the GBL should be  
15 considered as part of a rate; correct?

16 A. That is correct.

17 Q. This is a recent Decision within the last  
18 year?

19 A. I'm sorry, Mr. Shor, as I see this now, I  
20 have not reviewed this document.

21 Q. Okay. Could you turn to Page 6 of 8, the  
22 third paragraph. Could you read the highlighted

11:34:06 1 language, please?

2 A. I'm sorry, Page 6 of 8?

3 Q. Page 6 of 8, third paragraph.

4 A. I don't see highlighted language here.

5 Q. Well, it's on the screen in front of you.

6 Just read the first sentence.

7 A. "By way of background, the genesis of the GBL  
8 was under Order G-38-01 which addressed BC Hydro's  
9 obligation to serve industrial customers with  
10 self-generation capacity who indicated a desire to  
11 sell some of the power they generated at market prices  
12 and increase their purchases from BC Hydro under what  
13 was then Rate Schedule 1821 and is now Schedule 1823."

14 Q. Okay. And you wouldn't disagree with the  
15 Commission that the genesis of the GBL was under Order  
16 G-38-01, would you?

17 A. No. I believe I've stated the principles  
18 there are what Hydro used.

19 Q. Thank you.

20 Can we turn to the fourth paragraph, please.

21 Now here the Commission is distinguishing, as  
22 you correctly did, the conditions in place at G-38-01,

11:35:06 1 which is when Howe Sound was trying to sell its  
2 incremental generation into the U.S. And then it is  
3 taking us into the modern era where, instead, now  
4 self-generators are selling to mostly BC Hydro;  
5 correct?

6 A. That's correct.

7 Q. Could you read the first sentence, please.

8 A. "Today, although Rate Schedule 1823 customers  
9 are not selling electricity into the market, the  
10 fundamental principles are the same, as these  
11 customers are instead selling this electricity to  
12 their monopoly utility BC Hydro through an EPA or  
13 being encouraged to displace their load through an  
14 LDA, or Load Displacement Agreement."

15 Q. Now, it's clear here the Commission is  
16 talking about BC Hydro purchases; correct?

17 A. That's correct.

18 Q. And it's saying that the GBL in those EPAs is  
19 as established in Order G-38-01; correct?

20 A. I believe I said the genesis of the GBL was--

21 Q. No. I'm asking what the Commission is  
22 saying.

11:36:17 1 A. Okay. I see what you said there.

2 Q. Do you agree?

3 A. I agree with your earlier statement, that the  
4 genesis was G-38-01--

5 Q. Do you disagree with--

6 (Overlapping speakers.)

7 A. Sorry. The genesis of the GBL was G-38-01.

8 Q. Do you agree with the BCUC--

9 MR. OWEN: I'm sorry. Just a point. Can you  
10 please not interrupt the Witness so much.

11 BY MR. SHOR: I apologize. I didn't realize  
12 I was doing that.

13 BY MR. SHOR:

14 Q. Do you agree with the BCUC that the GBL in  
15 BC Hydro procurement contracts is "as established in  
16 Order G-38-01"?

17 A. I think my testimony is the same, Mr. Shor.

18 PRESIDENT VEEDER: Just help us. Do you  
19 agree or disagree?

20 THE WITNESS: I think by the time you get to  
21 2014, everybody is using GBL for different purposes.  
22 I think the purpose for which, Mr. Chair, BC Hydro



11:37:21 1 used it was based on the principles of G-38-01 and  
2 they used it in a procurement. The fact that this  
3 says "GBL as established in G-38-01," I would disagree  
4 with.

5 BY MR. SHOR:

6 Q. But the BCUC clearly thinks that GBLs in  
7 BC Hydro procurement contracts are as established in  
8 G-38-01?

9 A. That's what they state here, yes, sir.

10 Q. And it's the Commission that wrote G-38-01,  
11 isn't it? It wasn't you?

12 A. That's correct.

13 Q. Thank you.

14 I'd like to turn to a different topic now,  
15 which is who gets to set a GBL. Doesn't the  
16 self-generators' utility have the responsibility for  
17 setting its GBL?

18 A. The GBL is a negotiated part of a contract  
19 between the utility and its customer.

20 Q. So the utility and its customer, not the  
21 purchaser of the electricity? Strike that question.

22 So in Celgar's case, it would be FortisBC?

11:38:32 1       A.    No.  In Celgar's case they chose to  
2 participate in the Bioenergy Phase I Call and  
3 negotiated a GBL with BC Hydro.  That is part of that  
4 contractual arrangement.

5       Q.    But under Order G-38-01, whose responsibility  
6 is it to set the GBL for Celgar?

7       A.    It depends who Celgar is going to be selling  
8 energy to.  In the case of its participation in the  
9 Bioenergy Phase I Call, that was with BC Hydro.

10       Q.    So they get different GBLs, depending on who  
11 they are selling to?

12       A.    They have a GBL in place today based on their  
13 sales to BC Hydro.

14       Q.    Would that govern their--well, strike that.

15                Can we pull up C-21, Page 20.  Again, this is  
16 the Kelowna decision.  If you turn to the third  
17 paragraph, please.

18       A.    Excuse me, Mr. Shor.  I'm just getting there.

19                Yes.  Would you like me to read it into the  
20 record?

21       Q.    Yes, please.

22       A.    "In the Panel's view, the notion of a GBL

11:39:47 1 representing its most basic form, the load a  
2 self-generator must serve, should be tied to an  
3 agreement with the utility."

4 Q. And they're talking about the  
5 self-generator's utility, aren't they?

6 A. In this case, yes, I believe they are.

7 Q. Thank you. So when Mercer began to explore  
8 its options for selling Celgar self-generated  
9 electricity in 2006 and 2007, they were supposed to  
10 contact their own utility, Fortis, to learn how much  
11 electricity FortisBC would supply them while they were  
12 selling their power; correct?

13 A. They did enter into discussions, yes.

14 Q. Well, I'm just talking about within the  
15 G-38-01 regime, what they were supposed to do to  
16 establish a baseline was to contact their utility;  
17 right?

18 A. Yes.

19 Q. So FortisBC was supposed to establish a  
20 baseline?

21 A. If they were going to procure energy from  
22 Celgar, yes.

11:40:46 1 Q. What if they were going to supply Celgar and  
2 allow Celgar to sell to a third party?

3 A. There would still need to be some  
4 demarcation. So there would have to be some kind of  
5 baseline.

6 Q. Through negotiations with FortisBC?

7 A. In the instance you're saying, yes.

8 Q. And would that baseline based on Celgar--be  
9 based on Celgar's then-current 2006 generation levels  
10 or its levels around the time of Order G-38-01?

11 A. In--I'm not sure how exactly Fortis would  
12 approach that because Fortis hasn't set a GBL for  
13 Celgar. In the case of the GBL that exists, it was  
14 based on what the current use of the self-generator  
15 was, and that was established in the Contract that  
16 they eventually--

17 Q. Right. That was--

18 A. --secured with BC Hydro.

19 Q. I'm sorry.

20 That was in the BC Hydro EPA which Celgar  
21 negotiated a year or two later. I want to take us  
22 back to the 2006-2007 time frame when they were in

11:41:56 1 discussions with FortisBC.

2 A. Right.

3 Q. So if FortisBC was supposed to have set a  
4 baseline around that time, what would have been the  
5 appropriate baseline year?

6 A. That would have had to have been a  
7 negotiation between Fortis and Celgar, and the results  
8 of which would have had to have some kind of further  
9 authorization of an Energy Supply Agreement. It would  
10 have had to have gone to the Commission, and the  
11 Commission would have then looked at that and  
12 determined whether it was reasonable or not.

13 Q. Okay. So why don't we pull back up C-21, my  
14 favorite Decision, the Kelowna Decision, at Page 7  
15 again. Remember we had the discussion earlier about  
16 the Commission saying that G-38-01 was intended to  
17 preserve the status quo? And I think you agreed with  
18 me it would have been at the status quo at the time  
19 the Order was issued?

20 So if that's the case, why wouldn't Celgar's  
21 GBL at this time be based on its historical energy  
22 usage as of 2001?

11:43:03 1       A.    Because if the objective of the utility is to  
2   acquire incremental energy, 2001 was not the year in  
3   which that would be accurate.

4       Q.    I'm not in that world.  I'm in the  
5   sell-to-third-party world.  We're trying to sell to  
6   the United States, okay, and we're not trying to  
7   supply BC Hydro's procurement goals of incremental  
8   power only.  We're in discussions with Fortis to sell  
9   our power to the United States.

10           What should our GBL have been based on under  
11   the principles of G-38-01, which, as you mentioned,  
12   G-38-01 was intended to allow sales to the United  
13   States; correct?

14       A.    Certainly, Mr. Shor.

15           I think the outcome of what eventually  
16   happened with G-48-09 is what you would have seen.  If  
17   Celgar would have tried to, say, export all their  
18   energy to the United States and replace it with  
19   utility supply, that's just the type of arbitrage that  
20   G-38-01 was trying to avoid.

21       Q.    Okay.

22       A.    So, I'm not sure I'm following here.

11:44:23 1 Q. I'm just trying to follow G-38-01, and I'm  
2 trying to understand how we got from a status quo  
3 preservation in 2001 when we're approaching FortisBC  
4 and all of a sudden in the BC Hydro world, it's based  
5 on 2007. But we'll get to that. Let me try it this  
6 way.

7 What should Celgar have done before its Blue  
8 Goose Project investments created incremental  
9 generation in 2007, if it had wanted to have that  
10 incremental generation treated as incremental for GBL  
11 purposes? Let's take it for the BC Hydro procurement  
12 and available for sale and not included in its GBL.  
13 What should they have done before the 2007  
14 investments?

15 A. Well, I guess they could have, as Riverside  
16 did, sought a determination of a GBL, or they could  
17 have entered into a contract that they would have  
18 taken to the Commission and justified that that  
19 Contract was within the rights and in the interest of  
20 ratepayers.

21 Q. Why wasn't it sufficient for them to contact  
22 the utility, FortisBC, and negotiate with FortisBC

11:45:35 1 over what they could sell? Isn't that what G-38-01  
2 directed them to do?

3 A. Yeah. I think it's a little bit more  
4 complicated than that, Mr. Shor, because of the  
5 historical relationship between BC Hydro and FortisBC.  
6 There's a long-standing prohibition under the PPA from  
7 1993 that Fortis can't export while its taking power  
8 under that rate, again, to protect against the type of  
9 harmful arbitrage that we've been speaking about. And  
10 there's no reason to believe that same principle would  
11 not have been extended to self-generating customers,  
12 which the Commission did in that ruling.

13 Q. Right. But that--the Commission amended the  
14 Contract to do that, didn't it? The original PPA only  
15 restricted FortisBC. It did not restrict FortisBC's  
16 customers; correct?

17 A. That's correct, and the Commission recognized  
18 that that Contract was entered into at a time when  
19 open access was just starting in a very different  
20 regulatory environment.

21 Q. So, they wouldn't have had reason to discuss  
22 self-generator sales?



11:46:40 1 A. No, I don't believe so.

2 Q. And that was in 19--what time frame are we  
3 talking about?

4 A. This is the original Rate Schedule 3808 from  
5 1993.

6 Q. 1993. So, in 1991, when the Ministry of  
7 Energy and the Ministry of Environment were issuing a  
8 Ministers' Order to Celgar, they too wouldn't have  
9 contemplated the possibility of third-party sales by a  
10 self-generator, would they?

11 A. The exemption which Celgar received at the  
12 time for the construction of operation of its  
13 generator was for use in the Mill. There are other  
14 regulatory authorizations that Celgar would have  
15 needed to sell that energy to third parties or, at  
16 that time, to export it.

17 Q. But could you answer my question, please,  
18 which asked about what the Parties would have  
19 contemplated in 1991.

20 A. I don't believe the Parties were  
21 contemplating the sale of self-generation to third  
22 parties.

11:47:36 1 Q. It was not possible at the time?

2 A. No. There was no Open Access Tariff to  
3 facilitate that.

4 Q. And it was--I mean, Canada has brought up the  
5 point that there was some Ministry statement that they  
6 would consider Applications, but as a practical  
7 matter, it wasn't happening; correct?

8 A. There have been a number of times. British  
9 Columbia has got excellent resources, and there have  
10 been times when Government has thought that they could  
11 procure electricity for long-term sale in the export  
12 market, but those have not materialized. Most of the  
13 trade is short term.

14 Q. Now, I want to go back to what we were  
15 talking about, about the Blue Goose project. And you  
16 said Celgar could have gone to the BCUC to get a GBL  
17 like Riverside had done. Was that required in any  
18 document? Was Celgar required to have done that?

19 A. Not necessarily a requirement. Certainly,  
20 the example of what Riverside did was available.

21 Q. Why wasn't it sufficient to contact FortisBC,  
22 its utility?

11:48:51 1       A.    Again, Mr. Shor, whatever arrangement they  
2    came to would still require regulatory approval.

3       Q.    So we have the Commission saying that the GBL  
4    is supposed to be set between a self-generating  
5    customer and its utility, but Celgar's GBL was set by  
6    BC Hydro, and not FortisBC; right?

7       A.    That's correct.  Celgar bid into a BC Hydro  
8    Call--a BC Hydro Call for Power.

9       Q.    And is that consistent with B.C.  
10   self-generator policy?

11      A.    Yes.  It was--the Green Energy Project was  
12   incremental generation that was offered in the  
13   procurement.

14      Q.    But BC Hydro could have determined how much  
15   it wanted to purchase without defining Celgar's  
16   self-supply obligation.  Wasn't the self-supply  
17   obligation supposed to be defined by FortisBC?

18      A.    In the structure of the procurement that  
19   Celgar entered into, it was explicitly designed for  
20   incremental supply, and, therefore, a GBL was  
21   established.

22      Q.    Now, when the PPA--the 1993 PPA expired in

11:50:17 1 2013, did it not?

2 A. Yes.

3 Q. And a new PPA was put in place and approved  
4 by the Commission in 2014?

5 A. I believe that's the date, yes.

6 Q. And through that Commission process, wasn't  
7 the document amended specifically to require  
8 FortisBC's involvement in setting Celgar's GBL?

9 A. Can you provide a citation to that, please?

10 Q. Yes. It's Document R-221. This is  
11 Decision G-60-14, yet another "G" number, at Page 108.

12 A. Okay.

13 Q. Could you highlight the language--the  
14 paragraph that begins "further the amendments"?

15 A. I'm sorry, sir, I don't see a paragraph that  
16 begins with "further the amendments."

17 Q. Or a sentence that begins "further the  
18 amendments."

19 I think it's in the second paragraph, the  
20 second full paragraph, I'm sorry. Fifth line down.

21 A. Oh, I see it now.

22 Q. Can you read that sentence, please.

11:52:18 1       A.    It says: "Further the amendments would  
2    require that GBLs be agreed to between the  
3    self-generating customers and its utility and would  
4    remove the requirement that GBLs be established based  
5    on BC Hydro's unilaterally determined and unapproved  
6    guidelines."

7       Q.    So, the utility referred to in the first  
8    clause was Fortis?

9       A.    Yes.

10      Q.    So, the Commission was unhappy with the  
11    arrangement that had happened before, where BC Hydro  
12    unilaterally determined, through its unapproved  
13    guidelines, setting Celgar's GBL, wasn't it?

14      A.    I'm not sure whether the Commission was happy  
15    or not, Mr. Shor.

16      Q.    They wanted a change?

17      A.    This amendment would allow a different  
18    structure, is my understanding.

19      Q.    Now, when BC Hydro set Celgar's GBL, it set  
20    it as of the time of Celgar's negotiations with  
21    BC Hydro in 2008, using a 2007 baseline.

22            Is that your understanding?

11:53:19 1 A. That's my understanding.

2 Q. So, Celgar's post-G-38-01 investments in  
3 incremental generation, through its Project Blue  
4 Goose, were treated by BC Hydro as existing  
5 generation, subject to a self-supply requirement  
6 rather than new or incremental generation available  
7 for sale?

8 A. I'm sorry. I missed where the question was.  
9 I thought you were describing it.

10 Q. Correct. Okay. I'll read it again.

11 So, Celgar's post-G-38-01 investment, in its  
12 incremental generation through Project Blue Goose, was  
13 treated by BC Hydro as existing generation--subject to  
14 the self-supply requirement rather than new or  
15 incremental generation available for sale; correct?

16 A. Correct. That was the generation at such  
17 time as Celgar chose to bid into Hydro's procurement.

18 Q. Now, why shouldn't--in view of the overall  
19 purpose of the GBL, why shouldn't Celgar get credit  
20 for the time it spent negotiating with its own  
21 utility, FortisBC, as it was supposed to do under  
22 G-38-01, at least with respect to sales to third

11:54:24 1 parties, if not BC Hydro?

2 A. My understanding, Mr. Shor, is Project Blue  
3 Goose was an investment to bring the Mill up to  
4 functioning, and the result of that was an increased  
5 generation. They did that without any EPA or  
6 incentive from a third party, and when BC Hydro goes  
7 to procure, they're looking for incremental supply,  
8 and Celgar had chosen to make those investments with  
9 the resulting increase in their power generation.

10 Q. So, it's not whether it's new or incremental?  
11 It is whether the self-generator would have made the  
12 investment by itself?

13 A. They did, in this case, and then when  
14 BC Hydro issued its Call, it was for incremental  
15 generation. So, the result was that that Project Blue  
16 Goose was not seen as incremental.

17 Q. Okay. So, Celgar got no credit for the time  
18 it was negotiating with FortisBC?

19 A. I'm not sure what the credit for time would  
20 be, sir.

21 Q. Well, maybe if I give an example, that will  
22 help. You're familiar with the Riverside (Tolko)

11:55:34 1 proceedings before the BCUC in 2001, where the  
2 Commission established a GBL for Riverside?

3 A. That's correct.

4 Q. Now, Tolko got a baseline of 2 megawatts in  
5 2001, didn't it?

6 A. That's my understanding, yes.

7 Q. And that wasn't based on its generation level  
8 in 2001 or 2000, was it?

9 A. My understanding is that there had been some  
10 discussions for a period of time before that, before  
11 establishing the GBL.

12 Q. Right. So, that the 2-megawatt level was the  
13 1998 level, which was at the time it began negotiating  
14 with West Kootenay Power over selling power; correct?

15 A. I'm not sure if it was a 1998 level, but my  
16 understanding is that the investment had been made,  
17 and the Commission, at the end of the day, determined  
18 that the 2 megawatts was appropriate.

19 Q. Could we pull up Mr. Bursey's Witness  
20 Statement, at Pages 25 and 26? I'm sorry, his Expert  
21 Report.

22 A. All right. I have it, Mr. Shor.



11:56:56 1 Q. It is Paragraph 89, if you could read  
2 Paragraphs 88 and 89.

3 A. Read them or read them into the record, sir?

4 Q. Why don't you read them to yourself, and then  
5 I'll ask you questions about it.

6 A. Okay.

7 (Pause.)

8 A. Okay. I see it.

9 Q. Paragraph 89, do you agree with Mr. Bursey  
10 that the baseline was based on 1998 generation levels?

11 A. As I see it here, yes.

12 Q. And you agree with Mr. Bursey?

13 A. Yes.

14 Q. Thank you.

15 Now, I want to get back to the  
16 harm-to-ratepayers argument, which is the basis for  
17 setting GBLs. Is there--as I understand it, the  
18 policy seeks to preserve for the ratepayers the  
19 benefits of the self-generators--self-generation;  
20 right? They don't have to backfill that power?

21 A. I think what we're trying to preserve is the  
22 benefit of the low value of B.C.'s assets to all

11:58:37 1 customers.

2 Q. Okay. But if the self-generator hadn't  
3 invested in generation, that additional cost, would it  
4 be borne by all ratepayers?

5 A. If they hadn't invested, then there would be  
6 some load that the utility would serve, that's  
7 correct.

8 Q. Okay. So, once the investment is made, and  
9 there's load displacement by the self-generator, that  
10 provides a benefit to other ratepayers?

11 A. It means that there would be less load to  
12 serve, but self-generators, especially industrial ones  
13 add generation for many reasons, not just to displace  
14 load.

15 Q. I'm asking about the effect on other  
16 ratepayers. Other ratepayers benefit from that, don't  
17 they?

18 A. They have--there is less load for the utility  
19 to serve, that's correct.

20 Q. And that provides a benefit to other  
21 ratepayers, does it not?

22 A. Yes.

11:59:27 1 Q. Because there can't be harm to ratepayers  
2 from withdrawing the benefit unless there was a  
3 benefit before; correct?

4 A. Correct.

5 Q. Okay. Now, that other benefit--that benefit  
6 the ratepayers got, what right do they have to that  
7 benefit? Do they pay for Celgar's self-generation in  
8 any way?

9 A. No, they didn't.

10 Q. And didn't Order G-38-01 mean that  
11 self-generators themselves were entitled to the  
12 benefit of all new and incremental generation after  
13 its issuance?

14 A. If they choose to invest and increase the  
15 generation in their system, they get to use it.

16 Q. Do they get to sell it?

17 A. If they reach a contract that the Commission  
18 determines is in a public interest, yes.

19 Q. So I just want to understand what I've been  
20 referring to as the "vesting period" for these  
21 benefits. And let me give you an example. Suppose I  
22 have a pulp mill, and it installs 50 megawatts of

12:00:36 1 generation on December 31. It becomes operational on  
2 December 31, and on January 1, I approach the folks at  
3 BC Hydro and ask for an EPA. Now, they are a little  
4 hung over from their New Year's party, but they give  
5 me the EPA I want on January 1. Does my GBL include  
6 the 50 megawatts I just installed?

7 A. Not if you've installed it to serve your  
8 load, no. So, if you're adding--if you're adding  
9 50 megawatts to sell to BC Hydro, selling to  
10 procurement process--

11 Q. No. I approached them after I installed it.  
12 I installed it on December 31. I did it in secret.  
13 BC Hydro didn't know about it, but I approached them  
14 on January 1 and say, I want to sell it to you. And  
15 I've been using it to self-supply for one day. Is  
16 that enough of a period of time that the rights of the  
17 other ratepayers to the benefit vest, and it doesn't  
18 get included in my GBL?

19 A. If, in fact, you want to sell it and BC Hydro  
20 had a procurement process that started January 1,  
21 then, no, December 31 would be existing  
22 self-generation.

12:01:53 1 Q. So, the harm to ratepayers is based on one  
2 day?

3 A. It's a rather extreme example you're using,  
4 Mr. Shor.

5 Q. What's the harm?

6 A. So, in the example you have, you've gone in  
7 secret and added your 50 megawatts to use in your  
8 industrial facility. If you've just done 50 megawatts  
9 for sale, then BC Hydro may or may not choose to use,  
10 it, and you can maybe sell it to a third party if you  
11 constructed it for sale, if you receive the necessary  
12 authorizations.

13 Q. So, the GBL depends on my intent and why I  
14 constructed it?

15 A. The GBL in the BC Hydro case is meant in  
16 procurement to define what's incremental. And in the  
17 case of you having installed by December 31 a  
18 generator for your own use, if BC Hydro was procuring  
19 after that point, then they would be looking for  
20 something incremental to the 50 megawatts you  
21 installed.

22 Q. Even though there is no harm to ratepayers

12:03:01 1 from my sale?

2 A. I'm not sure what--

3 Q. I thought the whole reason for requiring  
4 continuation of self-supply is because other  
5 ratepayers would be harmed by having to backfill that  
6 power. Where is that harm in my example?

7 A. Your one-day example?

8 Q. Yes.

9 A. If BC Hydro then had to go ahead and supply  
10 that and you were diverting it, then it would have to  
11 acquire incremental resources.

12 Q. From one day?

13 A. You don't acquire power generation for one  
14 day, Mr. Shor.

15 Q. Okay. I'd like to turn to a different topic.  
16 Has the B.C. Government developed and implemented its  
17 no harmful arbitrage policy, how high a priority was  
18 ensuring that treatment afforded all self-generators  
19 was consistent in establishing their baselines? Was  
20 it the highest priority? Not a priority?

21 A. I think that equal treatment was priority.  
22 Our regulatory system is based on fairness. The Pulp

12:04:23 1 and Paper Self-Generation Working Group that I worked  
2 with, along with the Council of Forest Industries, was  
3 across the range of customers, and they were all  
4 informed of what Government's policy was through that  
5 process.

6 Q. Okay. You said it was a priority, but I  
7 tried to get a sense for how high a priority it was.  
8 Would you characterize it as a top priority or a low  
9 priority or somewhere in between?

10 A. It is probably a high priority.

11 Q. In light of that high priority, what person  
12 or entity in the B.C. Government was assigned  
13 responsibility for ensuring consistent treatment?

14 A. I don't think the consistent treatment was  
15 something that necessarily the Ministry itself was  
16 doing. So, for example, in the procurement that  
17 BC Hydro did undertake, those contracts were filed  
18 under Section 71, and the Commission looked at the  
19 results of those negotiations and the GBLs that were  
20 established and accepted those contracts.

21 Q. So the Commission was responsible for  
22 ensuring consistent treatment?

12:05:34 1 A. The Commission reviewed those EPAs.

2 Q. I'm asking who was responsible for ensuring  
3 consistent treatment.

4 A. I think it would be a combination of policy  
5 from Government implementation from BC Hydro and then  
6 acceptance or not acceptance by the Commission at the  
7 end of the day when those contracts were filed.

8 Q. Well, we're in Washington, and the old story  
9 about Government here is, if everyone is in charge, no  
10 one is in charge. So I'm asking you, was there--did  
11 anyone have responsibility, any one entity have that  
12 responsibility?

13 A. Ultimately it would be the Commission in  
14 determining whether they found the contracts to be in  
15 the public interest.

16 Q. Okay. And yet many EPAs with BC Hydro GBLs  
17 were excluded from Commission review, were they not?

18 A. Some EPAs, Bioenergy Phase II, for example,  
19 were excluded, although a number of those projects  
20 were green fields and not self-generated.

21 Q. And the Howe Sound EPA was excluded, was it  
22 not?



12:06:30 1       A.    I'd have to recall.  Can you give me the  
2   reference on that?

3       Q.    It came under--I forget what it was  
4   called--but the integrated power offer.

5       A.    Yes.  The integrated power offer ones were  
6   exempted as well.

7       Q.    So the entity responsible for ensuring  
8   consistent treatment would not have included Howe  
9   Sound in its insurance?

10      A.    No.  The preapproval of the Commission was  
11   not required for that Contract.

12      Q.    Did you promulgate any law or regulation  
13   requiring consistent treatment?

14      A.    Not to my knowledge.

15      Q.    And did you promulgate any law or regulation  
16   defining the self-generator policy, the anti-harmful  
17   arbitrage policy we discussed earlier?

18      A.    We didn't pass a law, per se, Mr. Shor.  We  
19   had the examples of G-38-01, and certainly the  
20   majority of self-generators heard the policy firsthand  
21   at the Self-Generator Working Group after the Pulp and  
22   Paper Task Force.

12:07:35 1 Q. But there was nothing carrying the force of  
2 law?

3 A. No.

4 Q. Was that because the Government wanted to  
5 maintain flexibility to adapt self-generator policy  
6 should circumstances change?

7 A. I don't believe there would have been a  
8 conscious need for flexibility. I believe in my  
9 Witness Statement, Mr. Shor, I thought with the small  
10 number of customers and the different circumstances of  
11 each that some flexibility would be a good idea. I've  
12 already put that on the record.

13 Q. Going back to the steps you took to ensure  
14 consistency, did you require the GBL-setting process  
15 to be transparent?

16 A. No.

17 Q. Did you promulgate any rules or standards at  
18 all?

19 A. There were rules established in BC Hydro's  
20 procurement documents that indicated that the  
21 procurement was meant to be incremental electricity,  
22 and the GBLs were the demarcation point negotiated

12:08:37 1 between the generator and the procurer to define that.

2 Q. But those terms, "new" and "incremental,"  
3 weren't defined at all, were they?

4 A. From the portions of the Call documents I  
5 saw, I think people would understand what that was.

6 Q. And did it cover how to handle existing  
7 contracts?

8 A. I don't recall.

9 Q. Did you require that BC Hydro provide written  
10 reasons to be prepared for its GBL determinations?

11 A. No, we did not.

12 Q. Did the Minister of Energy, someone in your  
13 office, or anyone else review GBL determinations?

14 A. No.

15 Q. Was there review by anyone other than  
16 BC Hydro in the case of GBLs that didn't go to the  
17 Commission?

18 A. No.

19 Q. What about recordkeeping? Did the Ministry  
20 require that all records and documents concerning GBL  
21 determinations be retained so they could be subject to  
22 audit or a later review for consistency?

12:09:46 1       A.   All of the contractual documents that  
2 BC Hydro would have would be preserved for the  
3 purposes of managing those contracts and the costs  
4 associated with those contracts might be subject to  
5 review by the Commission at a future date.

6       Q.   Can you point me to any document issued by  
7 the BCUC or the Ministry of Energy or BC Hydro between  
8 2001 and 2010 and when all the GBLs at issue here were  
9 set that explains the GBL method to all  
10 self-generators?

11       A.   I can't point you to a document.

12       Q.   And BC Hydro ultimately developed guidelines  
13 that it filed to the Commission in June 2012; is that  
14 correct?

15       A.   I believe that time frame is correct.

16       Q.   Has the BCUC yet approved BC Hydro's GBL  
17 Guidelines?

18       A.   I believe there have been some proceedings  
19 around the contracted and noncontracted GBLs.

20       Q.   Do you agree that approved written guidelines  
21 are helpful in ensuring consistent treatment?

22       A.   They can be.

12:10:50 1 Q. And yet 14 years after G-38-01 written GBL  
2 Guidelines still have net to be approved in British  
3 Columbia; is that correct?

4 A. I believe that's the case.

5 Q. Who benefits from the absence of written  
6 guidelines?

7 A. I'm not sure anyone specifically benefits,  
8 Mr. Shor.

9 Q. Doesn't the Government benefit by having the  
10 ability to influence determinations for particular  
11 self-generators?

12 A. I don't see that.

13 Q. Doesn't BC Hydro benefit by not having its  
14 freedom to act constrained?

15 A. It retains the flexibility to adapt to the  
16 varying circumstances of different self-generators,  
17 different configurations, and to determine how it  
18 acquires incremental energy.

19 Q. Doesn't BC Hydro have an incentive to set the  
20 GBL as high as possible? I mean, the lower the GBL,  
21 the more it has to spend to buy or make replacement  
22 power.

12:11:51 1       A.    It negotiates to purchase a quantity of power  
2   that's incremental according to its procurement  
3   documents.

4       Q.    Was consideration given to having an  
5   independent body or person establish GBLs?

6       A.    BC Hydro's more recent procurements, I know  
7   the 2008 Clean Call had a fairness adviser that was  
8   part of the process.  I'm not sure that--I would need  
9   to look back into records whether there was one for  
10  the Bioenergy Phase I Call.

11      Q.    Do you know if this person reviewed  
12  BC Hydro's GBL determinations?

13      A.    I'm not positive that they did.

14      Q.    Now, BCUC Order G-38-01 contemplates that a  
15  GBL would be negotiated between a self-generator and  
16  its utility, does it not?

17      A.    Yes.

18      Q.    Is negotiation a process the Government  
19  normally uses to ensure consistent treatment?  You  
20  don't negotiate your taxes with the B.C. Government,  
21  do you?

22      A.    No, I don't.

12:12:50 1 Q. And do you negotiate your utility bill with  
2 BC Hydro?

3 A. No, I don't.

4 Q. What actions did the Ministry implement  
5 to--what actions did the Ministry take to implement  
6 its high priority that GBLs treatment be consistent?

7 A. What we did is we created a policy framework  
8 where there was a load resource gap. BC Hydro was  
9 entering into competitive procurement, and under those  
10 competitive procurements, the terms and conditions  
11 were set out and that included the energy be  
12 incremental. And that's how the GBLs were set. So I  
13 guess, Mr. Shor, it was in some respects, BC Hydro  
14 that determined that.

15 Q. Can we pull up C-1? It was BC Hydro that  
16 determined it alone.

17 A. Through its negotiation.

18 Q. Okay. Can we pull up text of C-1, please.  
19 C-1, Exhibit C-1.

20 A. Sorry.

21 Q. Could you turn to Article 1503(2).

22 A. Mr. Shor, do I have that document?

12:14:08 1 Q. Yes, it's the North American Free Trade  
2 Agreement. I don't think we gave you the whole one.  
3 I hope we didn't give you the whole thing. I don't  
4 know if it's in your binder or not, but we'll put it  
5 up on the text. Now, this is the NAFTA obligation  
6 Canada undertook in the case of State enterprises.  
7 Can you read Paragraph 2, please?

8 A. "Each Party shall ensure, through regulatory  
9 control, administrative supervision, or the  
10 Application of other measures that any state  
11 enterprise that it maintains or establishes acts in a  
12 manner that is not inconsistent with the Party's  
13 obligations under Chapters 11, investment, and 14,  
14 financial services, wherever such enterprise exercises  
15 any regulatory, administrative, or other governmental  
16 authority that the Party has delegated to it, such as  
17 the power to expropriate, grant licenses, approve  
18 commercial transactions, or impose quotas, fees, or  
19 other charges."

20 Q. Now, I believe your testimony was you left it  
21 to BC Hydro. So, would you agree that B.C. took no  
22 measures to ensure as required by this obligation?



12:15:49 1 A. Sorry. Could you rephrase the question?

2 Q. Probably not. I believe your testimony was  
3 that the GBL determination issue was left to BC Hydro.

4 A. If I could just add, Mr. Shor, in the normal  
5 course also reviewed by the Commission with the  
6 exception of the contracts that we discussed that were  
7 exempt from Commission review.

8 Q. So the Commission was responsible for  
9 ensuring? That was the measure that B.C. took?

10 A. I would defer to someone with more legal  
11 expertise, Mr. Shor, to opine on that.

12 Q. Okay. Thank you.

13 MR. SHOR: Now might be a good time to break.

14 PRESIDENT VEEDER: How we doing? How much  
15 longer? Again, we're not pressing you, just for  
16 planning purposes.

17 MR. SHOR: Half hour, 20 minutes.

18 PRESIDENT VEEDER: Do you want to break for  
19 lunch, or do you want to break for five minutes?

20 MR. SHOR: My colleagues reminded me that I  
21 am just examining Mr. MacLaren on GBL policy issues.

22 I have another colleague who will examine him on

12:17:06 1 Ministers' Order issues. So, it's a half hour for me,  
2 and then probably a half hour.

3 PRESIDENT VEEDER: That's fine. There is no  
4 problem. What kind of break are you looking for now?

5 MR. SHOR: Maybe a five-minute break.

6 PRESIDENT VEEDER: Okay. Let's break for  
7 five minutes.

8 (Brief recess.)

9 PRESIDENT VEEDER: Let's resume.

10 BY MR. SHOR:

11 Q. Mr. MacLaren, I want to go back to Order  
12 G-38-01. Did the Ministry of Energy support the  
13 BCUC's approach in that case of limiting the utility's  
14 obligation to serve a self-generator to its historical  
15 electricity usage?

16 A. I wasn't part of the Ministry at that point.  
17 My understanding is that Ministry staff did  
18 participate in the workshops.

19 Q. The Ministry didn't direct the BCUC to adopt  
20 an alternative principle, did they?

21 A. No. The BCUC responded to the Application  
22 and made its ruling.

12:29:02 1 Q. That was because only an increase in  
2 self-generator purchases from BC Hydro could cause  
3 harm to other ratepayers?

4 A. That's correct.

5 Q. I'd like to turn next to Order G-48-09, my  
6 favorite "G" Order. Now, in that proceeding commenced  
7 by--that proceeding was commenced by BC Hydro to amend  
8 its 1993 PPA with FortisBC; and the Ministry  
9 intervened in that proceeding, did it not?

10 A. It did.

11 Q. Did BC Hydro obtain the Ministry's approval  
12 before bringing that proceeding?

13 A. I'm not sure. Not to my recollection.

14 Q. Did you understand at the time of the  
15 intervention by the Ministry of Energy that the  
16 net-of-load standard BC Hydro was proposing for  
17 FortisBC's self-generators was a different regulatory  
18 standard than the one in Order G-38-01?

19 A. I believe, Mr. Shor, that our intervention  
20 was premised on BC Hydro not knowing what FortisBC's  
21 customers was doing. Fortis was supporting in that  
22 case the City of Nelson's Application; and the way to

12:30:29 1 be sure that it was incremental energy was to be of  
2 net-of-load standard, which we did put in our  
3 submission.

4 Q. And you understood that was a different  
5 standard from the historical usage standard in  
6 BC Hydro's service territory?

7 A. That was the--yes, we did.

8 Q. And it was more restrictive in that it  
9 prevented all arbitrage, rather than just harmful  
10 arbitrage; correct?

11 A. I don't think I would characterize it that  
12 way. Ultimately, the net-of-load standard that was  
13 implemented was reflected in Celgar being  
14 self-sufficient at the time. And the City of Nelson,  
15 as a municipal distribution utility with loads that  
16 vary, may, in fact, on a dynamic basis have surplus  
17 above their load. So I'm not sure it really made a  
18 lot of difference at that time.

19 Q. But Celgar wasn't self-sufficient at the  
20 time, was it? It was still purchasing power from  
21 FortisBC?

22 A. At times it was. It had invested in Project

12:31:37 1 Blue Goose at that point.

2 Q. Right. But it was not entirely  
3 self-sufficient, was it?

4 A. I understand that there are some--were still  
5 some transactions between the two.

6 Q. Okay. So that means by putting them on a  
7 net-of-load standard, you were affording them less  
8 access to embedded-cost utility power than they had  
9 before?

10 A. Okay.

11 Q. And yet the Ministry of Energy supported that  
12 more-restrictive standard?

13 A. I'm not sure it was more restrictive, but--

14 Q. It had a more-restrictive effect on Celgar,  
15 we just established, didn't we?

16 A. To the extent that it was still purchasing  
17 some from its utility, yes.

18 Q. Okay. Can we pull up R-14, please. I  
19 believe that's in your binder. This is the final  
20 submission of the Ministry of Energy in the G-48-09  
21 proceeding, and it's dated January 23, 2009.

22 A. I have it.

12:32:48 1 Q. I don't have a page reference.

2 Page 4, Paragraph 14. Could you read the  
3 text that is highlighted on the monitor? It is the  
4 last sentence in Paragraph 14.

5 A. "While it was appropriate for self-generating  
6 customers to sell to market electricity that is in  
7 excess of load consistent with Commission Orders  
8 G-38-01 and G-17-02, it is not appropriate for  
9 customers to profit by arbitraging between low-cost  
10 heritage energy and market prices."

11 Q. The net-of-load and allowing sales only in  
12 excess of load, that wasn't consistent with Commission  
13 Order G-38-01, was it?

14 A. It was consistent on a principles basis, if  
15 you read the rest of the sentence there, Mr. Shor, on  
16 profiting from arbitraging between low-cost energy and  
17 market prices.

18 Q. But I thought it was only harmful arbitrage  
19 that was prevented. And here you were preventing all  
20 arbitrage, weren't you?

21 A. At the time of being essentially  
22 self-sufficient, I don't believe it's--

12:34:12 1 Q. And so that's--

2 (Overlapping speakers.)

3 A. I don't believe it's inconsistent.

4 Q. And the only reason it is not inconsistent is  
5 because you viewed that small amount that Celgar was  
6 purchasing from FortisBC as being immaterial?

7 A. It was--we were--I believe it's referenced in  
8 this submission that BC Hydro was unable to determine  
9 the loads of the various customers in this case, and  
10 that's why this was the way to preserve those  
11 principles.

12 Q. So would it be fair to say that you had no  
13 idea at the time what Celgar's purchases from FortisBC  
14 were?

15 A. I personally did not.

16 Q. And you signed this submission?

17 A. I did.

18 Q. Could you turn to your Witness Statement,  
19 First Statement, at Paragraph 100, please.

20 A. I have it, Mr. Shor.

21 Q. Do I understand you correctly to be arguing  
22 that the historical usage standards from G-38-01 could

12:35:33 1 not be applied in FortisBC's territory for two  
2 reasons: The lack of FortisBC support; that was one.  
3 And, two, BC Hydro couldn't do the GBL calculations  
4 itself?

5 A. Yes.

6 Q. Let's examine those two reasons you provide.  
7 So, first, the lack of FortisBC support. Is FortisBC  
8 allowed to set self-generator policy in B.C.?

9 A. No. But they could enter into contracts with  
10 a self-generating customer and file them--or could be  
11 contractual relationships between them.

12 Q. Have you finished your answer?

13 A. Yes, I have.

14 Q. Isn't it true that at the outset of the  
15 G-38-01 proceeding BC Hydro objected to Howe Sound's  
16 plan to sell its self-generator electricity? It  
17 didn't want them selling anything; correct?

18 A. That may be. I'm not sure, sir.

19 Q. That was before your time?

20 A. It was at a period when I was not employed in  
21 the Ministry.

22 Q. But the BCUC has the power to order BC Hydro



12:36:59 1 and FortisBC to do things they don't want to do;  
2 correct?

3 A. They have--they can issue regulatory  
4 directives, that's correct.

5 Q. And the BCUC directed BC Hydro to compute  
6 self-generator baselines in its service territory,  
7 didn't it?

8 A. It directed BC Hydro to negotiate with  
9 customers and determine some kind of customer  
10 baseline--

11 Q. And its--

12 A. Sorry.

13 MR. DOUGLAS: Mr. Shor, please allow the  
14 Witness to finish.

15 MR. SHOR: I apologize.

16 THE WITNESS: Based on either historical  
17 generation or historical load.

18 BY MR. SHOR:

19 Q. And the BCUC could have ordered FortisBC to  
20 issue the same directive to FortisBC, could it not?

21 A. If there was a FortisBC customer wanting to  
22 do something similar, yes, could.

12:37:42 1 Q. You have no reason to believe FortisBC would  
2 not comply with such an Order, do you?

3 A. No. The utilities generally do comply with  
4 orders of the Commission.

5 Q. And then the BCUC could have reviewed that  
6 baseline; correct?

7 A. It could have.

8 Q. Let's consider your second reason that  
9 BC Hydro lacked the data. Isn't it true that BC Hydro  
10 did compute a GBL for Celgar right around the time you  
11 were making your submission to the BCUC?

12 A. As part of the procurement process, yes, they  
13 would have been computing a GBL.

14 Q. So, all BC Hydro had to do was ask and Celgar  
15 provided all the necessary data, didn't they?

16 A. They would have had to provide the data to  
17 determine what was incremental generation for the  
18 purposes of the procurement.

19 Q. And Celgar provided that data.

20 A. I'm assuming they did, as the Parties agreed  
21 on the GBL.

22 Q. And in your experience, isn't it one of the

12:38:35 1 core functions of a regulatory commission to ensure  
2 that it has access to all of the data needed to do  
3 their regulatory tasks?

4 A. Yes.

5 Q. And when regulators request data, they can  
6 get it under oath?

7 A. Yes, they can.

8 Q. And they have ways of verifying its accuracy?

9 A. They will have technical analysts that will  
10 look at it.

11 Q. But asking for data or having the BCUC  
12 request and vet the data were not options the Ministry  
13 of Energy considered?

14 A. Not to my knowledge.

15 Q. I'd like to turn to Exhibit R-49, please.  
16 Now, I believe this is a letter you, on behalf of the  
17 Ministry of Energy, wrote to the BCUC in June 2012, is  
18 it not?

19 A. It is.

20 Q. And this was the compliance proceeding  
21 following Order G-188-11 in which Fortis was proposing  
22 a stepped rate to allow Celgar to buy some electricity

12:39:51 1 while selling its own electricity?

2 A. That is correct.

3 Q. And you were concerned that FortisBC had  
4 proposed a structure that would allow Celgar to engage  
5 in harmful arbitrage, weren't you?

6 A. We were concerned that we didn't have  
7 sufficient information to determine whether there  
8 would be harmful arbitrage associated with the  
9 proposed structure.

10 Q. Could you turn to Page 3?

11 Let's blow up the paragraphs under the  
12 heading "The Need for Common Principles." Now, here,  
13 the Ministry is--you, on behalf of the Ministry, are  
14 advocating for a uniform self-generator policy  
15 Province-wide, aren't you?

16 A. That was our submission.

17 Q. So, you obviously thought it was possible to  
18 implement a Province-wide self-generator policy,  
19 notwithstanding any differences between Fortis and  
20 BC Hydro; correct?

21 A. Yes.

22 Q. Am I correct that this was the first time the

12:41:00 1 Ministry had asked BCUC to consider a Province-wide  
2 uniform policy?

3 A. To my knowledge, yes.

4 Q. So, when the proposal to the BCUC from  
5 BC Hydro was to treat Fortis self-generators more  
6 restrictively than a BC Hydro service territory, the  
7 Ministry supported that proposal?

8 A. We supported that proposal as it was the  
9 basis on which we could definitively determine what  
10 would be incremental.

11 Q. But when it looked like Celgar might be  
12 treated more liberal in this proceeding, only then did  
13 the Ministry advocate a uniform Province-wide policy;  
14 correct?

15 A. We saw this as an opportunity, given the  
16 Commission's consideration of these matters and  
17 suggested that they look at the possibility of a  
18 Province-wide principle.

19 Q. And this advocacy of a uniform policy came  
20 only after Celgar had notified Canada of its NAFTA  
21 claim; correct?

22 A. I believe that timing would be correct,

12:42:04 1 Mr. Shor. Yes.

2 Q. The notice was filed on January 26, 2012.

3 A. Yes.

4 Q. Now, I'd like to consider what would have  
5 happened if things had gone differently. Let's assume  
6 that in Order G-48-09 the BCUC had issued the same  
7 order to Fortis that it had issued to BC Hydro in  
8 G-38-01, that it directed Fortis to establish a GBL  
9 for Celgar, based on Celgar's historical usage of  
10 embedded cost power, including both BC Hydro PPA Power  
11 and power from FortisBC's other resources. Assume,  
12 finally, that the FortisBC issued that GBL, the  
13 BC Hydro approved it, just as it approved Riverside's  
14 GBL in 2001.

15 If that were the case, Celgar would have been  
16 subject to the same regulatory standard for access to  
17 embedded cost power as every other self-generator in  
18 the Province, would it not?

19 A. I'm just taking a minute to try and  
20 understand your scenario.

21 Q. It was a little complicated. I probably  
22 should have put it on a slide. Instead of issuing

12:43:18 1 Order G-48-09 with a net-of-load standard, they issued  
2 the same Order and the same policy direction as in  
3 G-38-01, and it applies both to FortisBC power and  
4 BC Hydro PPA Power. Fortis sets--

5 A. So, there would have been--excuse me. Okay.  
6 There would have been a small component of utility  
7 supply to Celgar from Fortis that would have  
8 incorporated both Fortis's resource stack and  
9 potentially--

10 Q. Right. They wouldn't have had to--  
11 (Overlapping speakers.)

12 A. And potentially from Rate 3808. Excuse me.

13 Q. And they wouldn't have had to try to separate  
14 the two?

15 A. Yes, that's my hypothetical.

16 Q. Okay. So, that would have been the same  
17 regulatory standard that applies--

18 A. That would have been--  
19 (Overlapping speakers.)

20 Q. So, that would have been the same regulatory  
21 standard that applies in BC Hydro's service territory;  
22 correct?

12:44:22 1       A.   For the purposes of any incremental supply,  
2   it would have locked in historical generation and  
3   potentially some small amount of supply from the host  
4   utility.

5       Q.   Just as happened in BC Hydro's territory?

6       A.   That's the model that Howe Sound had.

7       Q.   And the term "NECP Rate Rider" then never  
8   would have never seen the light of day, would it?

9       A.   That would depend on whether Celgar continued  
10   to try to take the base amount of self-generation and  
11   move it to other markets.  You might have still ended  
12   up with a similar situation.

13      Q.   I agree with that.  But assuming they would  
14   have lived with that GBL that was set on the same  
15   basis as everyone else, and not be subject to the  
16   G-48-09 net-of-load standard, then there would be no  
17   need for an NECP Rate Rider?

18      A.   It's not been my experience, Mr. Shor, that  
19   your client would have been content with that, but--

20      Q.   Well, maybe if they had been treated fairly,  
21   then your experience would be different.

22           And Celgar, today and for the last six years,



12:45:35 1 would have had access to some embedded cost utility  
2 energy while selling its self-generated electricity,  
3 would it not?

4 A. Assuming that they entered into the Green  
5 Energy Project in the Bioenergy Call, is that your  
6 premise, Mr. Shor?

7 Q. Yes.

8 A. They would have had access, and they, as I  
9 understand it, with seller consumer energy, do have  
10 access right now under the arrangements of BC Hydro.

11 Q. Who provides Celgar embedded cost utility  
12 power in that example?

13 A. I believe it's an accounting transaction,  
14 Mr. Shor, to deal with the GBL and an expansion of the  
15 load at the plant where, in effect, Celgar is paying  
16 the equivalent of BC Hydro's industrial energy  
17 transfer.

18 Q. But there's no sale of electricity from  
19 BC Hydro to FortisBC--let me finish the question. But  
20 there's no sale of electricity by BC Hydro to Celgar,  
21 is there?

22 A. There is no power sales agreement. There is

12:46:40 1 a--it is a contractual arrangement that allows for  
2 some flexibility for Celgar's load to grow above what  
3 the GBL level was.

4 Q. But there are no sales of embedded cost  
5 utility power, are there?

6 A. There are credits based on the embedded  
7 utility--I'm sorry. There are credits based on the  
8 utilities embedded cost of power.

9 Q. Is BC Hydro permitted to make sales to Celgar  
10 of electricity? Celgar's in FortisBC's service  
11 territory, aren't they?

12 A. They are.

13 Q. So BC Hydro is not allowed to serve them, are  
14 they?

15 PRESIDENT VEEDER: We're going to have to be  
16 much more disciplined if we want a transcript that is  
17 usable after today. It can't be a conversation  
18 however tempting that might be. This applies to all  
19 of us. So I think question, pause, answer, pause,  
20 next question.

21 BY MR. SHOR:

22 Q. I'll repeat my last question. So BC Hydro

12:47:54 1 does not make sales of electricity to Celgar, do they?

2 A. They do not.

3 Q. Thank you.

4 And would it also be true today that there be  
5 no NECP Rate Rider, no restricted access for Celgar  
6 that is different if the B.C. Government in 2001 or  
7 any time before 2009 had enacted a statute or  
8 regulation establishing a uniform province-wide  
9 arbitrage standard for self-generators?

10 A. I think that's speculative, Mr. Shor. I  
11 don't know what the answer is.

12 Q. Could we pull up Exhibit R-41, please. Now,  
13 following G-48-09 and several other regulatory  
14 proceedings, Celgar approached the Ministry of Energy  
15 to try and solve its problem, and they gave you this  
16 briefing note, didn't they?

17 A. Yes, I recall seeing this note, Mr. Shor.

18 Q. And it was called "Leveling the Playing  
19 Field"?

20 A. Yes, that's the title I see.

21 Q. Could you turn to the last page of the  
22 document. Now, Canada made much in its Opening

12:49:27 1 Statement--there was this nice chart that looked like  
2 a series of bouncing balls showing all of the GBLs  
3 Celgar had requested at different periods of time.  
4 But isn't the first solution that Celgar proposed to  
5 you to establish a uniform standard was to put  
6 everyone else on the net-of-load standard?

7 A. That is one option Celgar did mention, yes.

8 Q. And that was the first option they proposed  
9 in this document, isn't it?

10 A. That's correct.

11 Q. Thank you.

12 Now, when Celgar approached you about  
13 leveling the playing field, did anyone investigate its  
14 claim?

15 A. In what respect, Mr. Shor?

16 Q. As I understand it, Celgar had claimed that  
17 other mills were receiving preferential treatment and  
18 that they were unhappy with the way their GBL was set.  
19 Did anyone at the Ministry look into that?

20 A. We did do some analysis of what different  
21 levels of GBL would imply in terms of impacts. We  
22 were, I think, forced to acknowledge that Celgar being

12:50:39 1 in a different utilities service territory would be  
2 subject to different programs and different terms and  
3 things like some of the power smart--sorry,  
4 demand-side investments that BC Hydro did to--in their  
5 service territory would not necessarily be available  
6 to Celgar.

7 Q. And I think you mentioned you evaluated some  
8 of the impacts. That was the financial impacts on  
9 BC Hydro of lowering Celgar's GBL?

10 A. That is correct.

11 Q. Did you review the calculation of Celgar's  
12 GBL?

13 A. I did not.

14 Q. Did anyone in the Ministry review the  
15 calculation of the GBL?

16 A. Not to my knowledge.

17 MR. SHOR: I have no further questions.

18 PRESIDENT VEEDER: Thank you. I think it  
19 might be convenient if we broke for lunch now if you  
20 want a clean start after lunch.

21 MS. GEHRING FLORES: Yes, Mr. President. I  
22 just have one issue of procedure. Mercer just

12:51:53 1 discovered that Canada and its counsel and--well, in  
2 Canada's breakout room, they have video and audio feed  
3 of this room. We were not informed of that. We do  
4 not have the same access in our breakout room.

5 I understand that the feed is cut when we're  
6 in closed session. So there are no issues raised with  
7 respect to people who are unauthorized to see  
8 confidential, restricted-access information seeing it  
9 in the room. However, as an issue of procedural  
10 fairness, it is troubling that Canada has had this  
11 access this entire week and we have had none. We,  
12 therefore, request that unless and until we have the  
13 same sort of access in our breakout room, their access  
14 be shut off.

15 PRESIDENT VEEDER: Just tell me why is it  
16 troubling?

17 MS. GEHRING FLORES: Simply because they have  
18 a procedural convenience that we do not. Their  
19 attorneys and their Witnesses can be working in their  
20 breakout room with access to the Hearing and they can  
21 see Witnesses and they can be working in their  
22 breakout room and not in the Hearing room.

12:53:11 1               PRESIDENT VEEDER: But they could be in this  
2 room working away.

3               MS. GEHRING FLORES: They could be, yes.  
4 Yes. It's a matter of convenience.

5               PRESIDENT VEEDER: Well, this isn't something  
6 known to the Tribunal. But is that the position? Is  
7 there a feed to the breakout room?

8               MR. DOUGLAS: Yes. I was not aware the  
9 Claimant did not have that. There is not an army of  
10 Canadian lawyers in the breakout room while we are in  
11 session. We are all here.

12              ARBITRATOR DOUGLAS: What about your parents?  
13 (Laughter.)

14              MR. DOUGLAS: Who told you?

15 (Laughter.)

16              PRESIDENT VEEDER: But there is no--you  
17 confirm there is no risk of closed session being  
18 improperly seen in your breakout room? There is no  
19 feed? If the session is closed here, the feed is  
20 closed to your breakout room?

21              MR. DOUGLAS: My understanding is that the  
22 feed shuts off during confidential and

12:54:01 1 restricted-access information, and no Witnesses of  
2 Canada are in that room while we're not in closed  
3 session either. So there is no--they're not watching  
4 the Hearing from that room.

5 PRESIDENT VEEDER: Please confirm that when  
6 we come back.

7 MR. DOUGLAS: I actually--I do confirm.

8 MR. SHOR: There's an issue there because  
9 we're not closing the Hearing for confidential  
10 information.

11 PRESIDENT VEEDER: Can we leave that just to  
12 be checked out between the Parties? We don't want  
13 something inappropriate to be taking place, but this  
14 needs to be confirmed when we come back. In the  
15 meantime, we're going to see if we can't make  
16 arrangements to have the feed made to Mercer's room.  
17 We don't know if that's technically easy or possible,  
18 but we'll investigate that. So, for the moment, let's  
19 break for lunch. We'll come back at 5 to 2:00, and  
20 we'll resume this matter then.

21 MS. GEHRING FLORES: Thank you,  
22 Mr. President.



12:55:00 1                   PRESIDENT VEEDER: Again, please don't  
2 discuss the case or your testimony until you come  
3 back.

4                   (Whereupon, at 12:55 p.m., the Hearing was  
5 adjourned until 1:55 p.m., the same day.)

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02:02:30 1 Q. Good afternoon.

2 I'm going to pick up where my colleague Mike  
3 Shor left off and ask you just a few questions about  
4 the 1991 Ministers' Order which you mentioned for  
5 several pages of your Second Witness Statement.

6 A. Yes.

7 Q. And you explained in your Statement that the  
8 Ministry of Energy found this order among its archived  
9 documents after Mercer filed its Memorial in this  
10 arbitration in March 2014; is that correct?

11 A. That's correct.

12 Q. You also explained your understanding that  
13 this order created some legally binding commitments on  
14 Celgar, and I'd like to begin my questions by  
15 exploring that issue with you.

16 A. Okay.

17 Q. You are familiar with the Ministers' Order;  
18 is that correct?

19 A. I am.

20 Q. Okay. If we could call up R-100, please.

21 Okay, if I could direct your attention to the  
22 first page of the Order itself, so it would be the

02:03:24 1 page after this letter. Okay. At the bottom of this  
2 page and going into the second page, there are three  
3 conditions that are set forth and organized as A, B,  
4 and C; and, in the interest of time, I'll just--I will  
5 call them up so you can see them, but there are three  
6 different sources here. It says: "Celgar shall cause  
7 the project to be designed, located, constructed and  
8 operated in accordance with the Applications," and  
9 then it goes on to talk about undertakings made by or  
10 on behalf of Celgar in the July 1990 Stage 2 reports,  
11 and finally statements made by or on behalf of Celgar  
12 in community and technical hearings from September  
13 through November 1990.

14 Do you see those, sir?

15 A. I see those three sections, yes.

16 Q. Thank you.

17 And is it your testimony that all three of  
18 these conditions are binding on Celgar today?

19 A. Yes.

20 Q. Mr. MacLaren, Canada has argued in this  
21 proceeding that--and I'll quote from their  
22 Counter-Memorial: "These conditions were specifically

02:04:28 1 included in the Ministers' Order to ensure that Celgar  
2 honored its commitment to remain 100 percent energy  
3 self-sufficient under normal operating conditions."

4 Do you agree with Canada's assertion?

5 A. That is the wording as I recall from the  
6 Application.

7 Q. This commitment allegedly arose because  
8 Celgar made several statements in its application and  
9 the related documents that we looked at during the  
10 review process that led to the Ministers' Order; is  
11 that correct?

12 A. My understanding is that's correct.

13 Q. Let's focus specifically on what Canada might  
14 consider to be the alleged self-sufficiency commitment  
15 that is found in the Ministers' Order, and we'll look  
16 at those, and I'll have a question afterwards. But if  
17 we could call up R-102.

18 This is Celgar's--as you see, it's Celgar's  
19 Stage 2 Report, Volume 1, and if we could go to  
20 Page 35. And the highlighted language, this is under  
21 Celgar response, and it's on your screen, or if you  
22 would like to look at it in hard--as you see fit.

1111

02:05:51 1                    So, this is Page 35, and I'll just read the  
2 language because I'm only referring to these two  
3 sentences here. Under Celgar response: "The  
4 modernized mill as designed, will be 90 percent energy  
5 self-sufficient. This is a large improvement over the  
6 existing mill, that produces only 11 percent of the  
7 energy it requires."

8                    Do you see that language?

9            A.    I do.

10           Q.    Okay. Let's turn then, same document, and if  
11 we could look at Page 17 of the very same report,  
12 there's a section. The heading you'll see is "mill  
13 water, steam, and power requirements." The third  
14 paragraph begins with a somewhat different number. It  
15 says: "A turbo-generator will be installed to provide  
16 up to 90 percent of the Mill's electrical power."

17                    Do you see that?

18           A.    Yes, I do.

19           Q.    Okay. So, let's go to another one of the  
20 documents that was before the Ministers when they  
21 issued their Order. And if we could go now to R-97,  
22 Page 12, this is the first of the three documents

02:07:03 1 mentioned in the Ministers' Order, the Application.

2 And it will be Page 12 of R-97.

3 A. I'm sorry, I think I'm looking at a different  
4 document.

5 Q. R-97--well, this is the first page, and our  
6 colleague is locating Page 12 so we can highlight it.  
7 There you go.

8 And there's language, and it's in the second  
9 paragraph; the last sentence of that second paragraph  
10 starts with the words "The steam."

11 A. I see that.

12 Q. Okay. "So, the steam, when passed"--there  
13 you go--no, this is a slightly different quote--right,  
14 this is the next one--let's just go back.

15 Apologies, Mr. MacLaren.

16 A. I believe I see the bolded text at the end of  
17 the second paragraph.

18 Q. Okay, great, so let's just keep going.

19 Okay, great. So, this is the paragraph we've  
20 been talking about: "The heat generated in burning  
21 the black liquor will be used to produce steam. This  
22 steam, when passed through a turbo-generator will

02:08:29 1 under normal conditions supply 100 percent of the  
2 modernized mill's electrical power requirements."

3 Do you see that?

4 A. I do.

5 Q. Okay. And actually, I have two more  
6 formulations to show you and then we'll move on. If  
7 we could look at the same exhibit--this is R-97,  
8 Page 13, there is language--there you go. This is the  
9 right page, and if we could highlight the paragraph  
10 that says: "It is estimated that"?

11 A. The bolded language, I see it.

12 Q. Yes. Okay, great. And I'll read this to  
13 keep us moving: "It is estimated that the expanded  
14 Mill will require 50 megawatts of power and will be  
15 capable of generating 50 megawatts, which will make  
16 the Mill 100 percent self-sufficient under normal  
17 operating conditions. A tie line to the local utility  
18 will be retained."

19 A. I see that.

20 Q. And one last, again, in R-97, if we could go  
21 to one last quotation, at the bottom of Page 20, there  
22 is a statement, the "additionally" statement:



02:09:53 1 "Additionally, the pulp Mill will be essentially  
2 self-sufficient in energy as purchased power will be  
3 significantly reduced after the implementation of the  
4 electric generation project."

5 A. I see that.

6 Q. Okay. So, when faced with these five  
7 different statements and other statements that were  
8 before them, did the Ministers who issued this 1991  
9 order include any language in the Order to indicate  
10 which of these formulations was binding on Celgar?

11 A. To my knowledge, the approval was for the  
12 Project to be operated in accordance with the  
13 Application.

14 Q. The first--Mr. MacLaren, the first document  
15 that we looked at--and we could go back to R-100, if  
16 that would be convenient.

17 A. Sure.

18 Q. If we could go back to that, please.  
19 And--right. It's the first page we looked at. There  
20 you go.

21 So, the bottom of this page and the very top  
22 of the next page indicates that Celgar shall cause the

02:11:07 1 Project to be designed, located, constructed and  
2 operated in accordance with--okay, so we have this  
3 page, and, yes, side by side would be great.

4 So, we have (a), (b), and (c), and the way  
5 the decision was structured we have three different  
6 sources of authority that were presented to the  
7 Ministers, and they endorsed them all; isn't that  
8 accurate?

9 A. They all formed part of the Order, that is  
10 correct.

11 Q. Okay. Thank you. I think we can move on.

12 But, actually, you didn't respond to my  
13 question. I see it. If we could go back to that.  
14 When the Ministers issued the Order, did they decide  
15 which among the five different formulations that were  
16 before them about the alleged commitment was going to  
17 be the one that would bind Celgar going forward?

18 A. I did not see anything specific in the Order.

19 Q. Thank you.

20 Okay. One final question before we move on  
21 and this is, again, about the Order. You've indicated  
22 that you are familiar with it. Are you personally

02:12:15 1 aware of any inspection or monitoring by the Ministry  
2 of Energy to determine whether Celgar had been  
3 conducting itself, meaning self-supplying, in the  
4 manner in which Canada now argues it was required to  
5 do?

6 A. I'm not personally aware of any monitoring.

7 Q. Okay. Thank you.

8 All right. Moving on, I'd like to move to a  
9 slightly different issue here.

10 At what point did the Ministry of Energy  
11 first become aware of Celgar's intent to engage in  
12 arbitrage or below-load sales of electricity?

13 A. I think it would have been through the pulp  
14 and paper task force and the desire of pulp mills in  
15 the Province to take their existing or have their  
16 existing self-generation repriced.

17 Q. And--

18 A. So, that would have been before I moved to  
19 the position I'm in, that I understand the Ministry,  
20 from seeing briefing materials, responded in late  
21 2007.

22 Q. And you moved to your current position in

02:13:31 1 early 2008?

2 A. In February 2008, that's correct.

3 Q. Okay. So, at least as of that time and for  
4 some time before it, the Ministry was aware that  
5 Celgar wanted to engage in arbitration?

6 A. We were aware that the recommendation was to  
7 reprice their existing electricity.

8 Q. Okay. So, with that in mind, we've just  
9 looked at the Ministers' Order, which Canada in this  
10 proceeding indicates is binding and restricts such  
11 sales. At any time during those years starting 2006,  
12 '7--maybe earlier--we don't know--but no later than  
13 February of 2008--at any time did the Ministry of  
14 Energy point out to Celgar that there was a Ministers'  
15 Order that was relevant to the issue of arbitration?

16 A. Not to my knowledge. The Ministry was not  
17 responsible for the order at that point, either.

18 Q. Okay. We'll come to that in a moment because  
19 your Statement addresses responsibility, but I'd like  
20 to address a couple of issues before we get to that,  
21 but thank you very much for explaining.

22 So, in the--and this is my last set of

02:14:44 1 questions, Mr. MacLaren--in your Witness Statement,  
2 you mentioned three reasons, three excuses that the  
3 Ministers' Order was not invoked in earlier BCUC  
4 proceedings that were before this arbitration, and I'd  
5 like to address each of these three--and these are,  
6 for your reference, and you may be pulling these out  
7 yourself, and for the convenience of the Tribunal,  
8 it's Paragraphs 36, 37, and 38 of Mr. MacLaren's  
9 Second Statement.

10           And actually, if it would be helpful, we  
11 could call them up and look at them on the  
12 screen--yes, it's Mr. MacLaren's Second Witness  
13 Statement, Paragraphs 36, 37, and 38.

14           Okay. Yes, we can take these one at a time  
15 because these are directly related to our earlier  
16 conversation.

17           You explain in Paragraph 36 of your  
18 Statement--this is Reason Number 1 that this matter  
19 was never raised with Celgar through all these  
20 years--"the Ministry of Energy was no longer  
21 responsible for compliance and enforcement of  
22 Disposition Orders following the repeal of Part 2 of

02:16:21 1 the UCA in 1995. Instead, the Ministers' Order became  
2 the responsibility of the Environmental Assessment  
3 Office under the EAA. To my knowledge, the  
4 Environmental Assessment Office does not normally  
5 monitor or participate in proceedings before the  
6 BCUC."

7 Did I read that correctly?

8 A. You did.

9 Q. Okay, thank you.

10 So, in your view, after this transfer in the  
11 mid-Nineties, there was no way that the Ministry of  
12 Energy could have raised the issue of the Ministers'  
13 order before the BCUC; is that correct?

14 A. Whether there was no way or not, I  
15 wouldn't--I wouldn't say. I wasn't at  
16 the--responsible for this piece of legislation at that  
17 time, so I don't know what the Ministry would have  
18 done.

19 Q. Well, let's just look at your own statement.  
20 You indicate that, as of this reorganization within  
21 the Government, the Ministers' order became the  
22 responsibility of the Environmental Assessment Office,

02:17:24 1 and that's the reason that you've explained that the  
2 Ministry of Energy would not have raised this issue,  
3 the Ministers' Order in terms of its order?

4 A. That's correct.

5 Q. Okay. So, my question for you is very  
6 straightforward: After this responsibility, after  
7 this reorganization with the Environmental Assessment  
8 Office having a leading role as of the mid-Nineties,  
9 was there anything stopping the Ministry of Energy  
10 from raising the Ministers' Order either with the  
11 BCUC, with Celgar, with anybody? Was there any reason  
12 after the EAO administratively began coordinating this  
13 oversight that the Ministry of Energy could not--were  
14 they precluded in any way from raising the issue?

15 A. I'm not sure they would have been precluded,  
16 but the issue only came to the fore approximately 12  
17 years later, and there may have been people that were  
18 on the file that would be moving on to other roles or  
19 other duties and would not have the institutional  
20 memory associated with the energy Project review  
21 process.

22 Q. And "12 years later," later than what?

02:18:33 1 A. Later than the date that the Order was  
2 transferred to the Environmental Assessment Office.

3 Q. Just a second, please.

4 (Pause.)

5 Q. Okay, thank you, Mr. MacLaren.

6 You made a comment, and I guess before we  
7 move on and address one final aspect of Paragraph 36,  
8 you just made a comment, and you said that--oh, it  
9 only came to the fore approximately 12 years later,  
10 okay.

11 So, 12 years after this internal  
12 reorganization in the B.C. Government, Celgar began  
13 raising and coming in, Mr. Merwin and others, came in  
14 and met with you repeatedly and asked for these  
15 below-load sales; is that right?

16 A. My meetings with Mr. Merwin commenced later  
17 in 2008.

18 Q. Okay.

19 A. But the task force with the pulp sector as a  
20 whole had made the representations in the fall of  
21 2007.

22 Q. Okay. That's helpful.



02:19:43 1                   So, in this it sounds like there are two  
2 phases. One was from the reorganization within the  
3 B.C. Government in 1995-96 to 2007 or '8 whenever the  
4 issue started coming up, and then once the issue began  
5 being really front and center in these repeated  
6 meetings with you on the issue and the proceedings  
7 related to Celgar at the BCUC, there was really, in  
8 your view, no reason to raise it during those first 12  
9 years. But then from '07 until this arbitration  
10 started, the Ministers' Order wasn't raised, period,  
11 even after the Celgar had been coming in to you and  
12 raising the issue; is that correct?

13           A.    That's correct.

14           Q.    Okay.

15           A.    It was in response to the Claimant's Memorial  
16 and the assertions that they never made any  
17 representations as to the use of the--of the  
18 generation that we went and looked at the archival  
19 material.

20           Q.    Okay.

21           A.    And as I state, we wish it would have come up  
22 earlier, but it was in response to the Claimant's

02:20:48 1 Memorial.

2 Q. Thank you.

3 So, there were--the Ministers--I'm sorry.

4 Okay.

5 (Pause.)

6 Q. You raised again the issue of wishing that  
7 the matter had come up earlier, meaning that the  
8 Ministers' Order had been found in the archives  
9 earlier. The reason that you decided to examine  
10 archived documents was because the Claimant asserted  
11 that it had never committed to voluntarily  
12 self-supply. That's your Statement; is that correct?

13 A. I believe that's earlier in my Witness  
14 Statement.

15 Q. Okay. But we've just--I just wanted--I'm a  
16 little confused because you've also said that the  
17 Memorial wasn't actually the first time that Celgar  
18 explained its understanding that it wasn't under a  
19 self-supply obligation. It had come up since you took  
20 office in this office--

21 A. Correct.

22 Q. --in '08. Okay.

02:21:52 1           There are quite a few examples in the record  
2 of meetings that you had with Celgar beginning in 2008  
3 going forward. At this point, in the interest of  
4 time, I could go through each of them and show you  
5 exhibits, or we could just agree that you had numerous  
6 opportunities from 2008 forward. It's up to you.

7       A.    That is correct.

8       Q.    I'm sorry?

9       A.    I will admit that we had meetings with  
10 Mercer.

11       Q.    And meetings about the very issue of the  
12 Ministers' Order, and it was not raised, and you did  
13 not raise it with Celgar--

14       A.    The meetings were not--

15           MR. OWEN: I'm sorry, there seemed to be two  
16 questions there. I'm not sure, maybe just one at a  
17 time.

18           PRESIDENT VEEDER: Let's stop, because it was  
19 interrupted. Please put the questions separately and  
20 start again.

21           MR. WITTEN: I shall do so. I shall try to,  
22 Mr. Chairman.

02:22:48 1 BY MR. WITTEN:

2 Q. Okay. We've established Point 1, and that's  
3 that the archives search happened after the statements  
4 that Celgar made--Mercer made in this arbitration.  
5 You found the archived documents, and you wished that  
6 there had been--you had that before because you think  
7 it may have been relevant to the conversations that  
8 you had.

9 A. That is correct.

10 Q. Okay. So, my question is actually a very  
11 narrow one. From 2008 forward or perhaps 2006-2007,  
12 while these proceedings were taking place involving  
13 this issue, while you were having these meetings,  
14 while Celgar was coming in to speak with you, the  
15 Ministers' Order was in force. Canada may or may not  
16 have developed the current interpretation, but it just  
17 wasn't raised. That's my only point. It just wasn't  
18 raised from 2008 until the arbitration was filed or  
19 any time earlier.

20 A. No, it was not.

21 Q. Okay. Thank you.

22 Okay. And I guess before--I'd like to go

02:24:05 1 back to your Witness Statement and look at reasons  
2 number--in your Paragraphs 37 and 38--

3 MR. WITTEN: But not quite yet, Laura.

4 BY MR. WITTEN:

5 Q. At the time that these conversations were  
6 happening and the proceedings were going on, did you,  
7 or to your knowledge anyone else in the Ministry of  
8 Energy decide to examine archives to see if there were  
9 any Ministers' Order or any other representations that  
10 might have been relevant?

11 A. This is prior to the commencement of the  
12 arbitration?

13 Q. Correct.

14 A. No, we did not.

15 Q. Okay. All right--let's--actually, just to  
16 finish out Paragraph 36, and then we'll touch very  
17 briefly on the last two, 37 and 38, your testimony has  
18 been that there was this administrative reorganization  
19 under the statute in the mid-Nineties, after which the  
20 Environmental Assessment Office had lead  
21 responsibility; that's correct?

22 A. That is correct.

02:25:10 1 Q. And did the Ministry of Energy, to your  
2 knowledge, participate, or was it only  
3 environment--Department of Environment--Ministry of  
4 Environment staff involved in the Environmental  
5 Assessment Office?

6 A. The Ministry does in some instances where  
7 their energy projects participate in the review  
8 process as members of what are called Project Review  
9 Committees, where we provide policy context for  
10 different proposals.

11 Q. Okay.

12 A. And try and help the Environmental Assessment  
13 Office understand the energy-related aspects of an  
14 application.

15 Q. And just for the record, you said the  
16 Ministry. You meant the Ministry of Energy, your  
17 current Ministry?

18 A. Yes.

19 Q. Okay. So, thank you. I think we've covered  
20 this. So, moving on to the last two reasons,  
21 Paragraph 37, if we could call that up and just take a  
22 quick look.

02:26:15 1 "Second, the BCUC proceedings in which the  
2 Ministry of Energy initially intervened did not  
3 directly concern the Celgar pulp mill's  
4 self-generation. BCUC Order G-48-09 was issued in  
5 response to BC Hydro's application for an amendment to  
6 its 1993 PPA with FortisBC." And then it's this next  
7 sentence that is the foundation: "The Claimant's  
8 proposal to engage in sales of its self-generation was  
9 not the question the Commission panel had been tasked  
10 with deciding in that proceeding."

11 Did I read that accurately?

12 A. That is my testimony.

13 Q. Okay. So, let's just look at this.

14 The proceeding that is discussed in this  
15 paragraph in the second sentence, is BCUC Order  
16 G-48-09, so we're talking about the proceedings that  
17 led to G-48-09; is that correct?

18 A. That is correct. That was the amendment of  
19 the 1993 PPA in response to the contract filed by the  
20 City of Nelson.

21 Q. And that's a proceeding that you discussed  
22 with Mr. Shor at some length earlier today; is that

02:27:23 1 right?

2 A. That's correct.

3 Q. Okay. And Celgar intervened in that  
4 proceeding; is that correct?

5 A. Yes.

6 Q. Okay. And when it intervened, it made no  
7 secret of the fact that it was intervening because it  
8 wished to engage in arbitration; is that correct?

9 A. That's correct. The Contract it had reached  
10 with FortisBC had been filed and subsequently  
11 withdrawn.

12 Q. And given that Celgar's self-generation was,  
13 therefore, very much at issue in the G-48-09  
14 proceeding, was there anything precluding the Ministry  
15 of Energy from raising the Ministers' Order at that  
16 time?

17 A. Not precluding, other than we hadn't gone  
18 back and looked for it yet.

19 Q. Finally, if we could look at Paragraph 38 of  
20 Mr. MacLaren's Second Statement--and this is actually  
21 my last question, Mr. MacLaren.

22 Looking at 38: "The BCUC proceedings that



02:28:32 1 followed BCUC Order G-48-09 were, broadly speaking,  
2 disputes between FortisBC and the Claimant. The  
3 Ministry did not consider it necessary to participate  
4 in these proceedings as an intervener, with the  
5 exception of the proceeding concerning FortisBC's  
6 matching methodology, which focuses only on the design  
7 of a rate for Celgar should it wish to sell"--I think  
8 it would be "sell its self-generation."

9 So, did I read that correctly?

10 A. Yes, and I will apologize for the bad  
11 editing.

12 Q. That's fine. We're all there.

13 So, the thrust of this, Mr. MacLaren, is that  
14 this proceeding involved disputes between FortisBC and  
15 Celgar, and that the Ministry of Energy did not think  
16 it necessary to intervene with the exception of the  
17 issue that you highlight in your second sentence of  
18 the matching methodology; is that correct?

19 A. That's correct. And I discussed that  
20 submission with Mr. Shor earlier.

21 Q. And since you and the Ministry of Energy were  
22 unaware at the time of the Ministers' Order, I assume

02:29:47 1 you didn't raise it in these proceedings either; is  
2 that correct?

3 A. That's correct.

4 Q. Okay. And there was nothing precluding you  
5 or anyone else in the Ministry of Energy from raising  
6 it during those proceedings; is that correct?

7 A. If we had gone back and looked in the  
8 archives, we no doubt would have raised it.

9 Q. Okay. But--

10 (Overlapping speakers.)

11 A. My apologies.

12 Q. And one--thank you. I have two questions.  
13 One is the question that I had started to ask you but  
14 then we both spoke.

15 The first question is: In connection with  
16 these proceedings, the proceedings that followed  
17 48-09, you didn't look in the archives at that time,  
18 it was only after the arbitration was filed; is that  
19 correct?

20 A. That's correct, and the rest of my statement  
21 was, had we looked and found it, we would have brought  
22 it forward.

02:31:01 1 Q. Okay. If I could have one minute,  
2 Mr. President. I want to consider a final question.

3 PRESIDENT VEEDER: Certainly.

4 (Pause.)

5 BY MR. WITTEN:

6 Q. So, Mr. MacLaren, a lot of--your testimony on  
7 this particular narrow subject of the Ministers' Order  
8 addresses when it was located, and I guess the  
9 question is--and this is, in a way, slightly broader,  
10 but also it will help us have some insight into how  
11 the Ministry operates--is the Ministry of Energy's  
12 enforcement policy driven by when it decides to look  
13 for documents along these lines? In other words, in  
14 this case, the Ministers' Order was found in response  
15 to the arbitration, and then certain assertions were  
16 made by the Government of Canada. Is that the way  
17 enforcement policy is developed by the Government of  
18 Canada through looking for documents late in the  
19 process like this?

20 A. I'm sure you will no doubt explore this in  
21 more detail with Canada's legal expert witness, but  
22 the advice that I have is that the Order continues and

02:33:01 1 the enforcement rests with the Ministry of  
2 Environment, and there are certain provisions in the  
3 most recent version of the Environmental Assessment  
4 Act to which this Order is a successor under now that  
5 Act that could impose some enforcement related to this  
6 Order.

7 MR. WITTEN: I have no further questions,  
8 Mr. President.

9 PRESIDENT VEEDER: Thank you very much.

10 Are there any other questions from anybody  
11 else on the Claimant's side, or is that it?

12 MR. WITTEN: We're finished.

13 PRESIDENT VEEDER: Thank you.

14 Any re-examination?

15 MR. DOUGLAS: Yes, please, Mr. President.

16 REDIRECT EXAMINATION

17 BY MR. DOUGLAS:

18 Q. Hi, Mr. MacLaren.

19 A. Mr. Douglas.

20 Q. Does the Ministry regulate customer's access  
21 to utility supply?

22 A. No, they do not.

02:33:55 1 Q. Who regulates the obligation to serve?

2 A. It's the B.C. Utilities Commission.

3 Q. You said in your testimony that there are  
4 different contexts in which a GBL can be used. Can  
5 you elaborate on that.

6 A. Well, the context in which BC Hydro uses it  
7 is procurement, and it is used in a negotiated  
8 contract to define what is existing generation and  
9 what is incremental, the context--before it was called  
10 a GBL, but a customer baseline is something like  
11 G-38-01, where it was used to limit the utility's  
12 obligation to serve when a customer was exporting  
13 energy, so it's been used in a couple of different  
14 contexts.

15 Q. Does the Claimant have a GBL with BC Hydro?

16 A. Yes, it does, under its Bioenergy Phase I  
17 EPA.

18 Q. Was that GBL negotiated?

19 A. Yes, it was.

20 Q. Has the Claimant sought another different GBL  
21 from FortisBC?

22 A. Yes, and also from the Province in a number

02:35:12 1 of different quantities and over different time  
2 periods.

3 Q. What purpose does that GBL serve?

4 A. Potentially, it could serve as a demarcation  
5 between what amount below the BC Hydro GBL that the  
6 Claimant would use to serve its load, and some amount  
7 that it might be able to sell to third parties.

8 MR. DOUGLAS: Is it possible to have--to  
9 bring up the document, R-373. And if you could go to  
10 Page 23, this is the Claimant's submission to the BCUC  
11 in the G-156-10 proceedings.

12 BY MR. DOUGLAS:

13 Q. At Page 23, you'll see there's an application  
14 and interpretation of Order G-38-01, Mr. MacLaren.

15 A. Yes.

16 Q. Could you read the first two sentences of  
17 Paragraph 58.

18 A. "Order G-38-01 should be interpreted in the  
19 context of the circumstances of the self-generation  
20 customer that was before the Commission panel in that  
21 proceeding. Howe Sound Pulp and Paper Limited was  
22 seeking an opportunity to sell output from its 'idle'

02:36:38 1 generation."

2 Q. And if we could go to the next paragraph,  
3 please. It might be--I'm trying to avoid having you  
4 read the whole paragraph into the record.

5 Could you examine that paragraph for me,  
6 Paragraph 59.

7 (Witness reviews document.)

8 A. I see it now, thank you.

9 Q. So, is the Claimant drawing a distinction  
10 between what it is asking the BCUC to do here from  
11 G-38-01?

12 A. It appears so, yes.

13 Q. And what is that difference?

14 A. It's trying to, it appears here, construe an  
15 argument where G-38-01 is a prohibition against  
16 arbitrage, not necessarily a prohibition against  
17 sales.

18 Q. There is a discussion here about idle  
19 generation capability. Could you explain what that  
20 means.

21 A. That would mean that a self-generator had  
22 generating assets which they were currently not using

02:38:25 1 to serve their load so, they would be termed as idle.

2 Q. And is the Claimant asking for the same  
3 principle to be applied to it here?

4 A. No. The Claimant here in this case is  
5 taking--wanting to take generation that it is using in  
6 its industrial process and its pulp mill and sell  
7 that.

8 Q. And do you know the level of the GBL the  
9 Claimant was seeking in this proceeding?

10 A. I would have to check. There were a number  
11 of different GBLs, 01.5, 3 to 20 all stick in my mind  
12 from various documents I've examined.

13 Q. Why don't we just turn quickly to Paragraph 9  
14 on Page 3.

15 A. Ah, this appears to be the 1.5-megawatt GBL  
16 associated with the generating assets in place before  
17 the upgrade of the facility in the early 1990s.

18 Q. And if you see there is also a different GBL  
19 than the 1.5 mentioned on the fourth line down?

20 A. I see it. It says zero as well.

21 Q. What does that sentence say?

22 A. "Celgar believes it is entitled to a GBL of



02:39:48 1 zero megawatts but has elected a GBL of  
2 1.5 megawatts."

3 Q. Okay. Let's come back to a completely  
4 different kind of GBL, the one in the context of  
5 procurement that you mentioned.

6 Does a GBL in the context of a procurement  
7 contract define a utility's obligation to serve?

8 A. No, it does not. It defines a historical  
9 baseline of a generator for the purposes of creating a  
10 demarcation point between what is existing and what is  
11 going to be incremental for the purposes of  
12 procurement.

13 Q. Is the relationship between customer and  
14 utility--pardon me--in the relationship between  
15 customer and utility, what contractual arrangement  
16 defines a utility's obligation to serve?

17 A. Could you repeat the question, please?

18 Q. Yes. Sorry.

19 In the relationship between customer and  
20 utility, what contractual arrangement defines a  
21 utility's obligation to serve?

22 A. That would be the utilities tariff as

02:40:47 1 approved by the British Columbia Utilities Commission.

2 Q. Does a utility have an absolute obligation to  
3 serve?

4 A. No.

5 Q. What are some of the limits on a utility's  
6 obligation to serve?

7 A. Well, first, the Commission can determine  
8 whether there is an obligation to serve or not. In  
9 some instances where there are long distances between  
10 the customer's facilities and the grid itself, there  
11 may be instances where, unless a significant  
12 contribution to system extension is provided, the  
13 utility would not be required to serve that customer.

14 Q. Okay. Mr. Shor took you to G-38-01. If you  
15 were to apply those principles today, the principles  
16 in G-38-01, what year would you select for a baseline?

17 A. Excuse me, with respect to Celgar's  
18 facilities?

19 Q. I'm talking about if you--in any Industrial  
20 Facility in BC Hydro territory or to ask that the  
21 principles of G-38-01 be applied to it today, what  
22 baseline year would you choose?

02:41:59 1       A.    I would choose today.  This is--today is what  
2   the existing historical use of a generator would be  
3   and if there was a procurement to acquire incremental  
4   supply, then today would be the demarcation point.

5       Q.    Mr. Shor today suggested that G-38-01  
6   establishes a 2001 status quo.  Would you agree with  
7   that interpretation of that Order?

8       A.    No, I would not.  And I believe G-38-01  
9   established some principles by which the utility and  
10  its self-generators could operate together, and those  
11  principles have been built upon through a number of  
12  proceedings since then, but it is not--they're the  
13  principles on which we have a number of policies and  
14  procedures today.

15       Q.    Mr. Shor asked you whether the program under  
16  G-38-01 has been extended indefinitely, and you  
17  confirmed that was the case?

18       A.    It was initially for a one-year period, and  
19  BC Hydro was required to report back.  It reported  
20  minimal, if any, uses intended, but requested that the  
21  program be extended, and it was.

22       Q.    Has any mill, since 2001, used the program?

02:43:12 1 A. Not to my knowledge.

2 Q. So, is the G-38-01 program different than  
3 GBLs in the context of procurement?

4 A. G-38-01 defines something different. It  
5 defined or determined that BC Hydro should not be  
6 obligated to increase supply to self-generating  
7 customers when they were selling for export. GBL,  
8 since then, as I noted earlier, has been used on  
9 procurement to make a definition between what is  
10 existing and what is incremental for the purposes of  
11 procurement.

12 Q. You mentioned in your testimony that the  
13 Claimant would not be content with having the G-38-01  
14 standard applied to them today or, I think your words  
15 were, or just applied to them. Could you elaborate on  
16 that, please.

17 A. Well, the idea of preventing harmful  
18 arbitrage that the Commission articulated in that  
19 decision, if the Claimant were to take all of your  
20 generation to export and require utilities to purchase  
21 incremental supply, that would be harmful arbitrage.

22 Q. What section of the Utilities Commission Act

02:44:37 1 governs the BCUC's oversight of electricity  
2 procurement by a utility in British Columbia?

3 A. That would be Section 71.

4 Q. Would Order G-38-01 have been issued under  
5 the same provision?

6 A. No.

7 Q. Could you pull up R-221, please, and go to  
8 Page 108.

9 Mr. Shor took you to a sentence in this  
10 decision--this is BCUC Order G-16-14, Page 108, and  
11 had you review a couple sentences from that paragraph.

12 And I hate to do this, but can you read the  
13 paragraph in full, beginning with "with regard to  
14 Celgar's concerns."

15 A. "With regard to Celgar's concerns, the panel  
16 first accepts BC Hydro's submissions. Second, the  
17 panel notes that in its supplemental submission of  
18 January 27, 2014, Celgar reiterated its early  
19 alternative proposal. Specifically, Celgar requested  
20 in Paragraph 110 that Section 2.5 be amended to align  
21 the GBL process in the Fortis service area more  
22 closely with BC Hydro's GBL process. Further, the

02:46:12 1 amendments would require that GBLs be agreed to  
2 between the self-generating customers and its utility,  
3 and would remove the requirement that GBLs be  
4 established based on BC Hydro's unilaterally  
5 determined and unapproved guidelines. The Panel  
6 finds, to a large extent, the new amendments  
7 approximate Celgar's proposal and address its earlier  
8 objections. Therefore, there is no reason for  
9 Celgar's claim of procedural unfairness."

10 Q. You can stop there.

11 A. Thank you.

12 Q. Sorry for that.

13 In your view, who is the BCUC characterizing  
14 here?

15 A. As I read that, it appears to me that the  
16 BCUC is using Celgar's characterization of BC Hydro's  
17 guidelines.

18 Q. So, in your reading of this, it is not the  
19 BCUC that stated--BCUC's view that there were  
20 unilaterally determined and unapproved guidelines?

21 A. No, I don't--I believe they're characterizing  
22 how Mercer characterized the guidelines.

02:47:24 1 Q. Does BC Hydro sign EPAs to incentivize  
2 industrial customers?

3 A. An EPA is an incentive for incremental  
4 generation for procurement, correct.

5 Q. So, one of the purposes of an EPA is to  
6 incentivize a customer to change its behavior?

7 A. Correct.

8 Q. And Mr. Shor asked you some questions today  
9 about what he called the "vesting period," and what  
10 harm there would be to ratepayers if a hypothetical  
11 mill invested in generation on its own initiative one  
12 day and then asked BC Hydro to procure electricity  
13 from that generation through an EPA the next day. In  
14 that hypothetical, did that EPA incentivize the Mill  
15 to change its behavior?

16 A. No, it did not.

17 Q. What would you call it if BC Hydro procured  
18 electricity from that unincentivized investment?

19 A. That would be the arbitrage we had been  
20 trying to avoid through much of this--as described in  
21 much of this discussion.

22 Q. Could it be characterized as a subsidy?

02:48:33 1 A. Yes.

2 Q. What did BC Hydro seek to do in its 2008  
3 application to amend the PPA?

4 A. They sought to amend the provisions that had  
5 been in place for 15 years that precluded what was  
6 West Kootenay and became Fortis from either storing or  
7 exporting energy under the PPA and extended that to  
8 self-generating customers wanting to sell.

9 Q. In the context of amending the PPA, why was  
10 net-of-load appropriate?

11 A. I believe as I stated earlier that BC Hydro  
12 did not have access to the data on the loads of the  
13 various customers and the only way to be--ensure that  
14 sales would not be arbitrated would be to adopt a  
15 net-of-load standard, and eventually the Ministry  
16 supported that as well in our submissions.

17 Q. If an individual customer in FortisBC  
18 territory came with the data needed to establish a  
19 GBL, could one be set under the amended PPA?

20 A. I don't know. Sorry.

21 Q. Okay. Did the amendment to the PPA forego  
22 the ability of customers in FortisBC territory to



02:50:19 1 negotiate a GBL with FortisBC?

2 A. No, it did not.

3 Q. How about the ability to negotiate a GBL with  
4 BC Hydro?

5 A. No. In fact, Celgar did negotiate a GBL with  
6 BC Hydro.

7 Q. So, the Claimant's GBL and its EPA with  
8 BC Hydro is an example of that kind of arrangement?

9 A. That's correct.

10 Q. Is the Claimant's GBL a net-of-load GBL?

11 MR. SHOR: Can I object to the leading nature  
12 of all of these questions, please.

13 PRESIDENT VEEDER: Well, the objection is  
14 noted. We've made the point before, that leading  
15 questions produce an answer which carries less weight  
16 than a non-leading question, and you may want to bear  
17 that in mind.

18 MR. DOUGLAS: I will bear that in mind.

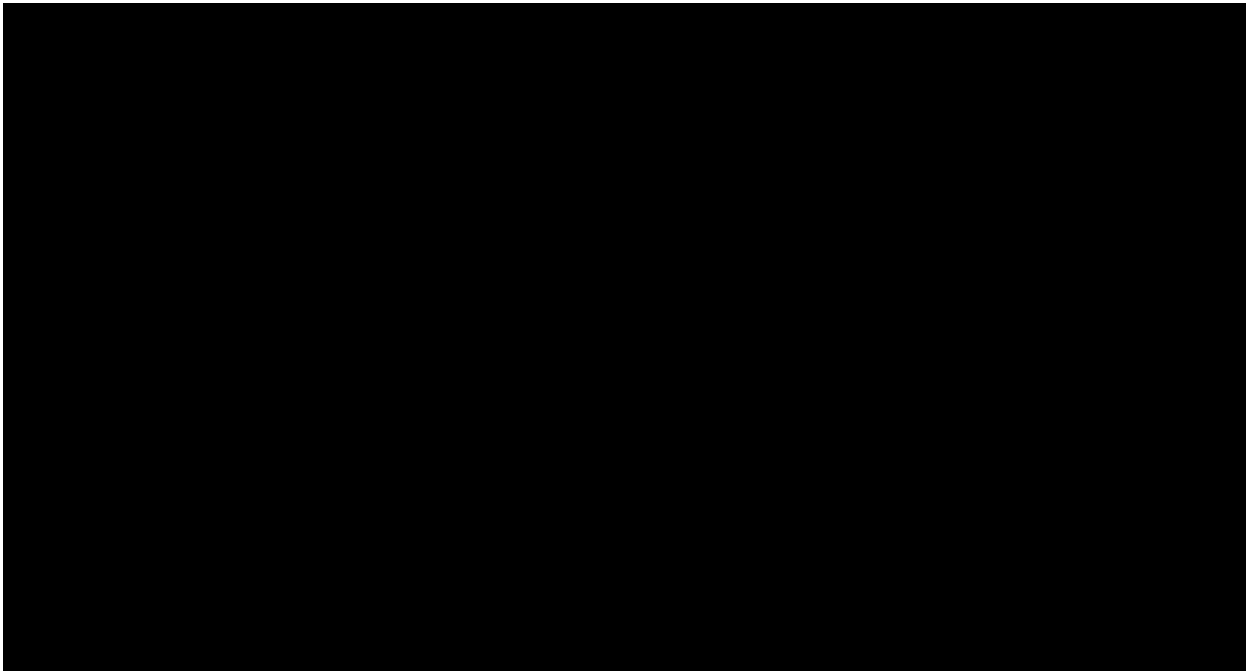
19 PRESIDENT VEEDER: I know shortage of time  
20 means that you are tempted to ask leading  
21 questions--this applies to both sides--but it's  
22 unwise.

02:51:47 1 BY MR. DOUGLAS:

2 Q. Would you characterize the Claimant's GBL as  
3 a net-of-load GBL?

4 A. It is a negotiated number based on the load  
5 from 2007, so is it net-of-load? It is based on what  
6 the Green Energy Project would provide as incremental  
7 compared to the load in 2007.

8 Q. Now, can you explain in its most basic  
9 form--and I know you're not the one to speak to this,  
10 but Mr. Shor did ask you about it, but can you explain  
11 the concept of Seller-Consumed Energy?





6 Q. Did Order G-48-09 place an absolute bar on  
7 the Claimant's access to embedded-cost power under any  
8 circumstances?

9 A. Could you repeat the question, please?

10 Q. Did G-48-09 place an absolute bar on the  
11 Claimant's access to embedded-cost power in any  
12 circumstances?

13 A. No.

14 Q. The Claimant took you to a submission made by  
15 the Ministry in G-202-12. Can you explain for the  
16 Tribunal what concerns the Ministry had with the  
17 proposed NECP?

18 A. Yes. Our concerns were that, much as the  
19 G-48-09 may have--was put in place to avoid arbitrage  
20 against BC Hydro supply under Rate 3808, that a  
21 similar potential for arbitrage existed under the  
22 non-PPA embedded-cost power in Fortis's service

02:54:39 1 territory; so, our concern was the potential for  
2 Fortis ratepayers to be impacted.

3 Q. When a utility is procuring electricity from  
4 sellers of electricity, does the BCUC ensure there is  
5 consistent treatment under our procurement process?

6 A. It evaluates the contracts that are submitted  
7 and determines whether they're reasonable and in the  
8 public interest.

9 Q. When a utility is providing service to its  
10 customers, is the BCUC's role to examine fair and  
11 non-discriminatory treatment?

12 A. Yes. The Commission's role includes fair,  
13 just and reasonable and not unduly discriminatory in  
14 terms of its oversight of rates.

15 Q. Do different utilities provide different  
16 services to their customers?

17 A. That is correct. Different utilities have  
18 different customer makeups, different historical  
19 generation, that they have acquired or have  
20 constructed themselves, and different geography; so,  
21 those mixed together may result in differences in  
22 rates which exist today between BC Hydro and FortisBC,

02:55:57 1 but also different programs that the utility has for  
2 its customers.

3 Q. Does the BCUC need to ensure that services  
4 offered by one utility are consistent with the  
5 services provided by another utility?

6 A. No, it does not, and I believe I had a quote  
7 from G-100-12--so, G--yeah, G-102-12, I believe it  
8 was--where the Commission actually stated that, that  
9 it's not uncommon that there would be differences  
10 between two utilities.

11 Q. I believe my colleague, Mr. Owen, has a  
12 couple of questions for you.

13 BY MR. OWEN:

14 Q. I just have a few.

15 Mr. MacLaren, Mr. Shor raised the fact that  
16 Celgar first approached its utility FortisBC to sell  
17 electricity in--or concerning electricity sales in  
18 2007 before the Bioenergy Call.

19 Do you recall that?

20 A. Yes.

21 Q. Okay. Did FortisBC, to the best of your  
22 knowledge, enter into negotiations concerning or was

02:57:07 1 it interested in purchasing power or electricity from  
2 a new condensing turbine that Celgar was going to  
3 install?

4 A. I'm not aware of them having an interest in  
5 that.

6 Q. What's your--to your knowledge, what was the  
7 nature of the transaction that FortisBC and Celgar  
8 started discussing in 2007? What electricity was it  
9 for?

10 A. The transaction, as I understood it, was for  
11 the existing generation of the turbine at that time to  
12 be sold to third parties, and to be replaced by  
13 electricity from FortisBC which, at least in part, if  
14 not in whole, would have been sourced through the 3808  
15 rate from BC Hydro.

16 Q. So, that would be what the Claimant then  
17 later on called the Arbitrage Project?

18 A. That's my understanding, yes.

19 Q. And let's just move forward a little under a  
20 year to 2008. Now, Celgar's in the Bioenergy Call,  
21 and BC Hydro is negotiating with it. What  
22 electricity, what projects does it determine are

02:58:17 1 eligible for that Call?

2 A. It determines that only the Green Energy  
3 Project or the incremental amount of generation from  
4 construction of new facilities is eligible, consistent  
5 with the terms of the Call itself.

6 Q. So, did it set a GBL with respect to the  
7 Arbitrage Project?

8 A. No, it set a GBL based on the actual  
9 generation in the Year 2007 before they entered into  
10 the Contract.

11 Q. For the Green Energy Project?

12 A. To acquire the Green Energy Project, that's  
13 correct.

14 Q. Now, there was a parallel drawn to the  
15 G-113-01 proceeding involving Tolko (Riverside). To  
16 the best of your knowledge, can you tell us a little  
17 bit about the background of that, what happened before  
18 G-113-01 was issued?

19 A. My understanding is that there had been some  
20 ongoing discussions between FortisBC and Tolko related  
21 to the expansion of its facilities and its desire to  
22 sell above what its current amount of generation of

02:59:21 1 two megawatts was.

2 Q. Okay. And G-113-01 came after BCUC Order  
3 G-38-01?

4 A. That is correct. They are numerically done,  
5 so it would have been later.

6 Q. Exactly.

7 And it involved sort of the idea of export  
8 sales as well?

9 A. It actually exempted Tolko from regulations  
10 of utility to allow for sales to third parties.  
11 Whether that was export or not did not matter at that  
12 point.

13 Q. Okay. And did it concern the same  
14 electricity? Were there two pockets of electricity  
15 like the Arbitrage Project and the Green Energy  
16 Project?

17 MR. SHOR: Again, I'm going to object to the  
18 highly leading nature of these questions.

19 PRESIDENT VEEDER: They're very leading.

20 Can you rephrase that last one?

21 MR. OWEN: Sure.

22 BY MR. OWEN:



03:00:21 1 Q. To the best of your knowledge, were there two  
2 turbo-generators that did--were there two turbines or  
3 two projects?

4 A. To the best of my knowledge, there was an  
5 existing amount of generation and an incremental  
6 addition.

7 Q. Excellent. Thank you.

8 Sorry. Maybe one or two more.

9 PRESIDENT VEEDER: One moment.

10 (Laughter.)

11 PRESIDENT VEEDER: No, just one moment. He  
12 has a few more.

13 ARBITRATOR ORREGO VICUÑA: Oh, I'm sorry.

14 PRESIDENT VEEDER: He's resumed.

15 MR. OWEN: I actually don't think I have any  
16 further questions. My colleague is reminding me of  
17 something and--

18 PRESIDENT VEEDER: Do you want to take time  
19 out to discuss it with him? Because--

20 MR. OWEN: No, no, no. We've just had a  
21 chat, and I think we're good here. Thank you, Mr.  
22 Chair.

03:01:16 1           PRESIDENT VEEDER: Thank you very much.

2           There will be questions from the Tribunal.

3                   QUESTIONS FROM THE TRIBUNAL

4           ARBITRATOR ORREGO VICUÑA: Mr. MacLaren, in  
5 various parts of both your Statements you describe  
6 which are the functions and the role of the various  
7 bodies, including in particular the BCUC, and other  
8 elements of the whole regulatory scene that has the  
9 responsibility for the power energy market.

10           Now, I still have one doubt. Of course, the  
11 BCUC and the utilities general have to deal with the  
12 question of distribution and the question of rates for  
13 consumers and the rest of it.

14           How far do those regulatory powers extend,  
15 say, upstream to the transmission? Because we have  
16 heard various things about transmissions, access to  
17 transmission, no access to transmission and so forth.  
18 And above all, how extended is it in respect of the  
19 generators themselves? Are they subject to these  
20 various regulatory bodies as such in terms that they  
21 cannot operate, say, independently?

22           You have mentioned, just to clarify that, of

03:02:53 1 course, there is the possibility of the regulator  
2 operating through its utilities entities in which they  
3 will condition, you cannot, say, sell embedded-cost  
4 energy or you cannot buy this or you're cannot to do  
5 that. And that, of course, has an incidence on the  
6 generator.

7 But aside that, say, indirect route, is it  
8 extended throughout the generators' activity? Or that  
9 is fairly independent until it begins to roll into the  
10 transmission and onward?

11 THE WITNESS: Okay. Yes, the Utilities  
12 Commission's regulatory powers extend to large  
13 industrial customers, and there are tariffs about how  
14 those customers are connected and the rates under  
15 which they are served.

16 On the generation side, the acquisition of  
17 new supply starts generally with the utilities plan to  
18 determine what their needs are, and then what mix of  
19 resources will be acquired to serve those needs.

20 The regulatory structure for a generation  
21 project itself is generally an environmental one and a  
22 safety one as opposed to a B.C. Utilities Commission

03:04:18 1 one. The acquisition of, say, a contract from a third  
2 party must be filed with the Commission, and it can  
3 have a look at that, and it can declare the Contract,  
4 it can accept it for filing or it can declare it  
5 unenforceable in whole or in part. But it can't  
6 necessarily dictate the terms of the Contract with the  
7 generator. That's the structure on the acquisition  
8 side.

9 ARBITRATOR ORREGO VICUÑA: Okay. So, if I  
10 understood you rightly, the Commission can finally  
11 determine whether a contract can be approved or not.

12 THE WITNESS: That's correct. In the terms  
13 of the section of the Act in our jurisdiction, it's  
14 whether the Contract is accepted or it's rejected in  
15 whole or in part.

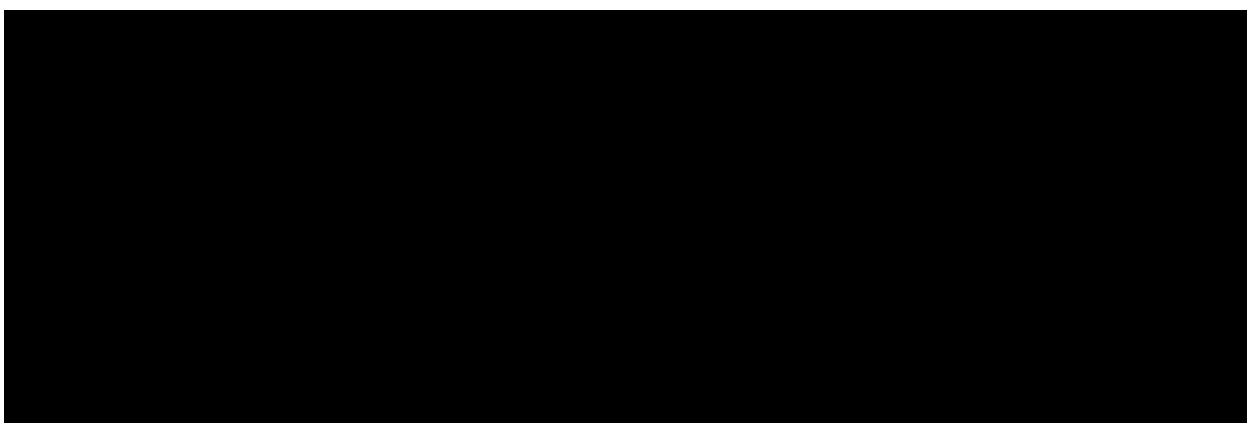
16 ARBITRATOR ORREGO VICUÑA: I see. Okay.  
17 Thank you.

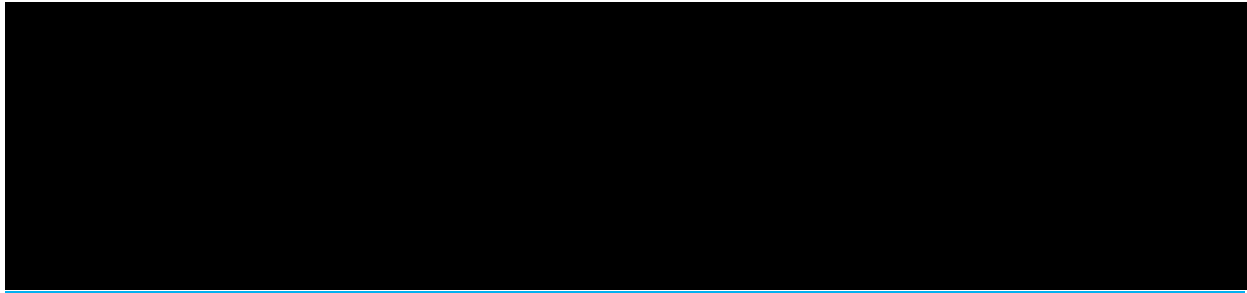
18 ARBITRATOR DOUGLAS: Way back at Page 1057 of  
19 the Transcript, just for the record, you're talking  
20 about Fortis's ability to sell to the market while it  
21 was taking power from BC Hydro at the embedded-cost  
22 rate, and I think you said that initially that was

03:05:36 1 prohibited, but there was a modification that allowed  
2 that.

3           Now, I just want to--wonder if you could  
4 elaborate on that, on how that relationship evolved,  
5 and what impact it would have had, if any, on Celgar's  
6 ability to take embedded-cost power from its utility.

7           THE WITNESS: I believe the relationship I  
8 was speaking with both Mr. Shor and Mike about was the  
9 evolution of the Celgar facility after the EPA was  
10 entered into, and the fact that its load had  
11 increased, thereby making it impossible for them to  
12 meet the supply obligation on their Contract with BC  
13 Hydro, and so the Parties entered into an accounting  
14 transaction. So, it allows--it's not a supply  
15 contract; it's an accounting transaction.





6           ARBITRATOR DOUGLAS: Okay. You've testified  
7 as to two different purposes served by the GBLs. And  
8 if I understood you correctly, in the EPA, the  
9 objective of the EPA is to incentivize an expansion in  
10 production capacity, so the GBL is set to essentially  
11 ensure that, its new capacity, and that's the purpose  
12 of the EPA in the first place.

13           Am I summarizing your evidence?

14           THE WITNESS: That is correct.

15           ARBITRATOR DOUGLAS: How then do you contrast  
16 that--I know you went through this in some detail but  
17 I would just like to hear a little bit more  
18 elaboration on it--how then do you characterize the  
19 purpose of the GBL in the Fortis-Celgar relationship?

20           THE WITNESS: As I understand it--and it's  
21 gone through a couple of different machinations--is  
22 there would be a different GBL below the BC Hydro one

03:08:11 1 for the purposes of the EPA that would define a  
2 certain amount that would be used by Celgar that they  
3 would generate themselves for use in their facility.  
4 And between that and the BC Hydro GBL, they would be  
5 available to sell. And then there would be the  
6 matching methodology that Fortis had proposed to  
7 supply to Celgar to replace the energy that they're  
8 selling.

9 ARBITRATOR DOUGLAS: Logically, can one be  
10 set without the other? Without knowing the other?

11 THE WITNESS: Although the GBL for the  
12 purposes of BC Hydro's EPA is known, and it is up to  
13 Fortis and its customers Celgar to then negotiate  
14 something in between, and then they've been instructed  
15 to bring that to the Commission, and the Commission  
16 will ultimately determine whether the arrangement  
17 they've come up with is in ratepayers' interests.

18 PRESIDENT VEEDER: I just have one question.  
19 If you could turn to your Second Witness Statement, to  
20 Paragraph 28 at Page 10.

21 THE WITNESS: Yes, Mr. Chairman.

22 PRESIDENT VEEDER: And you see that you begin

03:09:33 1 to describe your written testimony regarding the 1991  
2 Order. That's in our Exhibits R-100 of the 28th of  
3 May 1991. And then you say in the second sentence:  
4 "I do not have direct knowledge of the events that  
5 took place during the review of Celgar's Energy  
6 Project Certificate Application in 1990, but I have  
7 reviewed certain documents relating to that  
8 application and the relevant legislation for the  
9 purpose of providing some background below. I will  
10 also explain the Ministry's understanding of the  
11 obligations the Ministers' Order currently imposes on  
12 the Claimant's operations of the Celgar Pulp Mill."

13 Now, you have been asked several questions by  
14 both sides of the room about your understanding of the  
15 obligations imposed by the Order, but can we take it  
16 that it's based on a reading of the wording of the  
17 Order and of the certain documents to which you have  
18 referred, and you're still not referring to any  
19 personal knowledge?

20 THE WITNESS: That is correct, Mr. Chairman.  
21 I started in the B.C. public service in September of  
22 1991, so this would have taken place prior to my



03:10:50 1 employ.

2 PRESIDENT VEEDER: And the certain  
3 documents--it's more a question for counsel--we can  
4 assume that the relevant documents on which you've  
5 looked for the purpose of your written and oral  
6 testimony are all exhibits in this arbitration? You  
7 don't have a private file in your back pocket?

8 THE WITNESS: No, I don't, Mr. Chairman.

9 PRESIDENT VEEDER: Thank you very much.

10 THE WITNESS: You're welcome.

11 PRESIDENT VEEDER: We have, I'm afraid, your  
12 habit has been picked up by my colleague. So, we have  
13 another question.

14 I'm sorry about this.

15 ARBITRATOR DOUGLAS: I'm sorry. I've gone  
16 back to the Transcript--in relation to my first  
17 question again, I have just gone back to the  
18 Transcript. I just to want make sure that we're  
19 speaking about the same thing. This is what you say:  
20 "There is a long-standing prohibition under the PPA  
21 from 1993 that Fortis can't export while it's taking  
22 power under that rate"--I assume that means the

03:11:43 1 embedded-cost rate--"again to protect against the type  
2 of harmful arbitrage we have been speaking about, and  
3 there is no reason to believe that the same principle  
4 would not have been extended to generator customers,  
5 which the Commission did in that ruling."

6           And then you talk about an amendment to that  
7 relationship to the PPA to allow Fortis presumably to  
8 do that.

9           And my question was whether they had any  
10 impact on the Fortis-Celgar relationship.

11           THE WITNESS: I think what I was describing  
12 is the long-standing prohibition was from the 1993  
13 PPA, which prohibited Fortis from either storing or  
14 exporting while they were taking power under that  
15 rate, so that rate was to serve their load.

16           The amendment that occurred, which is what BC  
17 Hydro applied for, is to extend at least the export  
18 provision that was in place for Fortis to those  
19 customers of Fortis with self-generation, so they  
20 would also not--so now Fortis cannot take, under the  
21 rate 3808, from BC Hydro while one of their  
22 self-generating customers is exporting. So, it's

03:12:54 1 extending the same principle that had been in place  
2 since 1993 to a different group of customers in  
3 Fortis's territory, if that's helpful.

4 ARBITRATOR DOUGLAS: Thank you very much.

5 PRESIDENT VEEDER: The Tribunal has concluded  
6 its questions.

7 But are there any questions from the Parties  
8 arising from the Tribunal's questions?

9 We ask the Claimant first.

10 MR. SHOR: Yes, I would like to follow up on  
11 Mr. Douglas' questions about the two GBLs.

12 RECROSS-EXAMINATION

13 BY MR. SHOR:

14 Q. So, as I understand your testimony, a  
15 self-generator could have one GBL defining what BC  
16 Hydro would purchase and another GBL defining what  
17 some third party might purchase between the two?

18 A. That's my understanding of what is being  
19 proposed in terms of the NECP and Rate Rider and  
20 replacement power structure.

21 Q. So, this two-GBL policy doesn't exist as yet?

22 A. It would depend on whether the arrangements

03:13:57 1 that Celgar can negotiate with Fortis are approved by  
2 the Commission.

3 Q. Does anyone have two GBLs?

4 A. Not that I'm aware of.

5 Q. Now--

6 A. And then, perhaps, Mr. Shor, GBL is not the  
7 right term. I think of a GBL more in the context of  
8 procurement on the part of BC Hydro than defining some  
9 kind of mix of sales versus self-supply for a  
10 self-generator.

11 Q. Well, but I think it's your testimony that  
12 you can have one GBL defining what you can sell to  
13 third parties and another GBL defining what BC Hydro  
14 would purchase. Is that also true for BC Hydro  
15 customers?

16 A. I'm not aware of that.

17 Q. Why wouldn't it be true?

18 A. I guess if one of them asked for it, the  
19 contractual arrangement could be construed that they  
20 could do something like that. We have not seen any of  
21 the other self-generators seeking to sell power below  
22 their GBL, to my knowledge.

03:15:01 1 Q. Well, isn't that because BC Hydro's EPAs  
2 expressly prohibit that?

3 A. And the EPA with Celgar expressly prohibits  
4 that, but also includes a Side Letter should the  
5 Commission allow that to occur.

6 Q. Right. And the Side Letter is for a  
7 substitute GBL, not two GBLs, isn't it? In other  
8 words, the BC Hydro purchase obligation in the Celgar  
9 EPA is fixed at 238 megawatts--238 gigawatt hours a  
10 year; correct?

11 A. Yeah.

12 Q. So, if it got a new GBL, that wouldn't affect  
13 the purchase obligation, that would just allow Celgar  
14 to sell between the two. But it would just be one  
15 GBL. There wouldn't be two GBLs?

16 A. There would still be a GBL in the Contract  
17 with BC Hydro that would define a certain amount.

18 Q. A certain amount for what? 238 is the  
19 purchase amount. That's already defined.

20 A. Okay, unless the Contract was amended to  
21 remove the term GBL that is embedded in the Contract.  
22 Then there would still be a GBL. It's a term of the

03:16:09 1 Contract.

2 Q. Okay. So, you've got these two different  
3 GBLs, one set under G-38-01 for third-party sales,  
4 another GBL set under procurement policy for BC Hydro  
5 purchases. Are the principles at all different? Why  
6 would the numbers be different?

7 A. I'm not sure I follow you, Mr. Shor.

8 Q. If you could have two--

9 MR. DOUGLAS: I think the Witness has  
10 answered the question.

11 MR. SHOR: "I don't understand your question"  
12 is not really an answer.

13 PRESIDENT VEEDER: Please continue. It's  
14 difficult enough.

15 BY MR. SHOR:

16 Q. I'm trying to understand whether, in your  
17 two-GBL world where that hasn't existed before and  
18 which no one has yet taken advantage of--

19 MR. OWEN: Excuse me, is there a question  
20 here?

21 MR. SHOR: If you'd let me finish I might get  
22 to it.

03:17:04 1                   PRESIDENT VEEDER: I think a little more  
2 sympathy. It's a difficult area, and Professor  
3 Douglas has raised the question, and I think it should  
4 be pursued.

5                   BY MR. SHOR:

6           Q. I'm just trying to understand the  
7 circumstances under which the two GBLs you hypothesize  
8 could possibly be different. Because aren't the  
9 principles under G-38-01 and under BC Hydro  
10 procurement practices exactly the same? Isn't it the  
11 same new and incremental in both cases?

12          A. I think what I was trying to explain as a  
13 hypothetical situation is that there would be--there  
14 is a GBL in existence. There might be some other  
15 baseline set below that GBL that creates a demarcation  
16 between self-supply and sales to third parties other  
17 than BC Hydro.

18          Q. Okay. And what principles would govern the  
19 setting of that GBL?

20          A. That is subject to negotiation at this point  
21 between Fortis and Celgar.

22          Q. Okay. So, no principles exist yet?

03:18:07 1 A. Well, there are--

2 Q. This is purely hypothetical?

3 A. Well, no, there is the NECP process and  
4 matching methodology process.

5 Q. But that's a rate. That doesn't set GBLs at  
6 all, does it?

7 A. It would set--it allows a nomination up to a  
8 certain volume, which I understand could be as much as  
9 100 percent of the customer's load, to be replaced by  
10 a supply from the utility, subject to certain  
11 conditions that protect ratepayers.

12 Q. But that's simply an election on the part of  
13 the self-generator as to how much it wants to sell.  
14 That's not the utility telling it--setting a limit, is  
15 it? It's an election.

16 A. Okay. I will take that point. It's an  
17 election.

18 Q. So, what principles would be different for  
19 the two different GBLs you hypothesize?

20 A. I think what I was trying to get at is there  
21 is--if it's an election as opposed to a GBL, to take a  
22 certain percentage of a self-generator's supply to



03:19:13 1 market or for export, shall we say--there still needs  
2 to be mechanisms in place that haven't been put in  
3 place yet in order to ensure that ratepayers are fully  
4 protected.

5 Q. Would the different GBLs have different  
6 levels of harmful arbitrage associated with them? I'm  
7 still not clear why they would be different.

8 A. I'm not sure we've sorted that quite out yet,  
9 Mr. Shor.

10 Q. Thank you.

11 PRESIDENT VEEDER: Any questions from the  
12 Respondent?

13 MR. DOUGLAS: Just one moment, please.

14 (Pause.)

15 FURTHER REDIRECT EXAMINATION

16 BY MR. DOUGLAS:

17 Q. Do any other industrial customers outside of  
18 FortisBC territory currently have the right to set two  
19 GBLs?

20 A. Not to my knowledge.

21 Q. Thank you.

22 PRESIDENT VEEDER: Thank you very much.

03:20:48 1 We've come to the end of your testimony.

2 THE WITNESS: Thank you, Mr. Chairman.

3 (Witness steps down.)

4 PRESIDENT VEEDER: And we will take a  
5 15-minute usual mid-afternoon break before the next  
6 witness.

7 (Brief recess.)

8 PRESIDENT VEEDER: Let's resume. We have the  
9 next witness before us.

10 JAMES SCOURAS, RESPONDENT'S WITNESS, CALLED

11 PRESIDENT VEEDER: Sir, if you'll state your  
12 full name and read the words on the declaration for  
13 Factual Witnesses before you.

14 THE WITNESS: My name is James Scouras. And  
15 I solemnly declare upon my honor and conscience that I  
16 shall speak the truth, the whole truth, and nothing  
17 but the truth.

18 PRESIDENT VEEDER: Thank you very much.

19 There will first be questions from the  
20 Respondent.

21 MR. OWEN: Thank you, Mr. President. I only  
22 have a few questions.

03:43:57 1

DIRECT EXAMINATION

2 BY MR. OWEN:

3 Q. Mr. Scouras, you're currently the Regional  
4 Relationship Manager with BC Hydro's Aboriginal  
5 Relations Department; is that right?

6 A. That's correct.

7 Q. But before that, between 2001 and 2013, you  
8 were involved in power acquisitions?

9 A. That's correct.

10 Q. And eventually you became the Manager of  
11 Commercial Acquisitions for BC Hydro's  
12 planning--Energy Planning and Economic Development  
13 Group?

14 A. That is correct.

15 Q. Okay. And do you confirm the contents of  
16 your Witness Statements?

17 A. Yes.

18 MR. OWEN: Thank you. Your witness.

19 MS. GEHRING FLORES: Thank you, Mr. Owen.

20 CROSS-EXAMINATION

21 BY MS. GEHRING FLORES:

22 Q. Good afternoon, Mr. Scouras. My name is

03:44:35 1 Gaela Gehring Flores, and I'm counsel for Mercer in  
2 this proceeding.

3 A. Good afternoon.

4 Q. And I think a binder is being brought to you  
5 now. The first tab of your binder is your First  
6 Statement. If you could turn to Paragraph 29 just for  
7 your reference.

8 In that paragraph you say that with respect  
9 to the 2002 Call for Tenders, the 2002 BC Hydro Call  
10 for Tenders, in accordance with BC Hydro's policy, a  
11 GBL was set with proponents based on the annual  
12 self-generation normally used by the customer to  
13 supply its load under prevailing conditions and absent  
14 the existence of an energy supply Contract that might  
15 distort the customers' normal operations.

16 Is that still your testimony, Mr. Scouras?

17 A. That is my testimony.

18 Q. Could you tell me what document I could find  
19 that policy that you refer to in Paragraph 29,  
20 BC Hydro's policy?

21 A. So BC Hydro's policy in respect to this item  
22 is--this is a procurement activity. We're doing a

03:46:03 1 rescind a procurement, and this policy is in respect  
2 of procurement and in respect to purchasing energy  
3 that's in relation to a GBL.

4 Q. Thank you, Mr. Scouras.

5 I actually asked in what document can I find  
6 that policy that you refer to in Paragraph 29?

7 A. Let me give this a quick read, if you don't  
8 mind.

9 Q. Sure.

10 A. Do you mind if I ask you what time reference  
11 you're speaking about?

12 Q. I believe you yourself in that paragraph you  
13 are talking about the 2002 Call for Tenders?

14 A. Right. Right. So I cannot direct you to a  
15 policy document that is specific to that in that time  
16 frame.

17 Q. So--so BC Hydro had a policy in 2002 with  
18 respect to its GBL methodology; is that correct?

19 A. What BC Hydro had was--this was subsequent to  
20 the 38-01 proceeding that had occurred in the Province  
21 where the Commission had made a determination in  
22 respect to self-generators that wanted to sell their

03:47:25 1 power to other parties, and BC Hydro's obligation to  
2 serve those customers.

3 So, stemming from that was some directions in  
4 respect to BC Hydro's obligation to serve as well as  
5 some different touch points in respect to what should  
6 be considered in respect to generators that are  
7 selling power and buying power at the same time from  
8 BC Hydro.

9 Q. So, the 2002 BC Hydro policy comes from  
10 G-38-01?

11 A. No. The BC Hydro policy doesn't come from  
12 G-38-01. That was a decision in respect to a specific  
13 situation. The policy itself was about arbitrage and  
14 about the opportunity for folks to be able to take  
15 power from BC Hydro and sell it at the same time.

16 Q. Could I turn you to Paragraph 26 of your  
17 Statement.

18 Could we call that up, please.

19 Paragraph 26 of your Statement, first  
20 sentence, I believe you say "Consistent with the  
21 directives of the BCUC in Order G-38-01, BC Hydro  
22 developed the GBL concept."

03:48:50 1 Are you retracting that now?

2 A. No, but I think you asked me specifically for  
3 a policy. The original question I think you asked was  
4 could I provide a written policy in respect to this?  
5 And what I'm saying is that we were guided by  
6 principles that formed our perspective on this, and  
7 one of those items is what I state here that--is that  
8 consistent with provincial policy as well as other  
9 items that we needed to take into account that guided  
10 us as part of a procurement activity to develop a GBL  
11 concept.

12 Q. But you didn't write that policy down in the  
13 context of the 2002 Call for Tenders, did you?

14 A. Not that I'm aware of.

15 Q. Would anyone have been aware of that?

16 A. At that time--at that time my role was  
17 supplementing the customer-based generation call. I  
18 was not responsible for all aspects of it, nor did I  
19 interface with the executive in all matters pertaining  
20 to that Call.

21 Q. But you were aware of the policy?

22 A. I was aware of the approach that we were

03:49:54 1 taking and the policy that generally we were looking  
2 to purchase new energy, and that's why we were doing  
3 the Call.

4 Q. Was it an approach or it was a policy?

5 A. My Witness Statement, I define it as a  
6 policy, so it was a policy.

7 Q. But at least at the time for the 2002 Call  
8 for Tenders, it was a secret policy to anybody else?

9 A. So I think--respectfully, I think that's  
10 putting words in my mouth.

11 You asked me--this line of questioning was:  
12 Is there a written policy available at this point in  
13 time in respect to this policy? I said I cannot--the  
14 direct question--and I said I cannot present that  
15 here. That doesn't mean it's a secret. It means that  
16 I can't produce this policy at this point in time.

17 Q. But someone might be able to produce a  
18 document that has the 2002 policy in it?

19 A. I cannot conjecture if someone would or  
20 cannot. I'm saying I cannot.

21 Q. But here today you're not aware of any  
22 written document with the BC Hydro 2002 policy in it?



03:51:08 1 A. Not that I recall.

2 Q. Is there something else that the policy  
3 provided for other than--I think it's quite clear that  
4 it's been stated many times that this policy has  
5 something to do with procurement. Did the policy--did  
6 the policy in 2002 define what "normal operations"  
7 would be in the context of determining a  
8 self-generator's GBL?

9 A. So, the policy in respect to--again, it was  
10 Item 29?

11 Q. Yes. I believe it's Paragraph 29 of your  
12 Statement.

13 A. Right. So the policy would not--a policy  
14 would not get into the mechanics of how to set a  
15 procurement activity. Policy is an objective that the  
16 company would have. In respect to the actual  
17 procurement itself is where the terms of how the GBL  
18 in the 2002 customer-based generation would be  
19 determined, and it was defined that it was based on an  
20 annual amount of self-generation, the current at the  
21 self-generation facility that would be normally used  
22 to supply their load under prevailing business

03:52:34 1 conditions. So, that was the methodology we adopted.

2 A policy is more of a broad spectrum, this is  
3 what we want to accomplish; and that would be applied  
4 against several different mechanisms or activities  
5 across BC Hydro.

6 Q. So the methodology you were using defined  
7 "normal operations" at the time, but the policy didn't  
8 because that was broader, if I understand you  
9 correctly?

10 A. I think I would characterize it there was a  
11 policy we knew we were trying to accomplish, and it  
12 was something to be considered when we're designing  
13 the Call. The GBL is one item of several that would  
14 have been addressed within a procurement, and there  
15 was a methodology defined and worked out with  
16 our--with self-generators.

17 If we look back at that context, this had  
18 been the first time in B.C. that we had started trying  
19 to work on procuring this type of energy from  
20 self-generators. So there was a lot of iteration and  
21 there was a lot of working collaboratively with  
22 potential self-generators in how to develop the

03:53:34 1 methodology and how to work on different elements of  
2 the call, the terms. There was a lot of interaction  
3 at that point in time.

4 Q. So self-generators knew at all times what the  
5 policy was--

6 A. In 2002?

7 Q. --and exactly what the methodology was  
8 starting in 2002?

9 A. Well, I think you're asking me that all--can  
10 you repeat that question?

11 Q. You had mentioned that there was a lot of  
12 interaction with self-generators on developing the  
13 policy and the methodology, so my question is--

14 A. Yes.

15 Q. --so self-generators were made aware at all  
16 times what this policy was and the methodology related  
17 with that policy?

18 A. All the self-generators that were  
19 participating in the 2002 customer-based generation  
20 that were interested and there were successive stages.  
21 We participated in several discussions and there was  
22 at least a couple workshops. So, all the folks that

03:54:26 1 were interested in that procurement voiced their  
2 perspective on a number of things: Liquidated  
3 damages, GBL, the risk allocation, fuel supply. Those  
4 items were discussed at length with everybody that was  
5 interested in that procurement.

6 Q. But nothing was written down?

7 A. There was items written down. The workshop  
8 minutes--in fact, as I recall, we--I may be incorrect,  
9 but I believe at that time we were still providing  
10 transcripts of the different discussions and there was  
11 tracking of the different items that people had  
12 brought up, who was resolving them, some were  
13 allocated to folks that wanted to be potential  
14 self-generators. It was the first time in our  
15 jurisdiction that we had started trying to figure out  
16 how to make this work and it was more collaborative in  
17 nature.

18 Q. Did you cite those transcripts you're  
19 referring to in your First or Second Witness  
20 Statement, Mr. Scouras?

21 A. Not that I recall.

22 Q. Now, let's jump ahead to 2008. You reference

03:55:30 1 Exhibit R-116 in, I think, Footnotes 44 and 45 your  
2 First Statement, just for some context, if you want a  
3 reference. So, we're calling up R-116.

4           And I'll represent that I've done a text  
5 search of this document and "GBL" only appears on two  
6 pages. I'm sure your counsel can check me on that,  
7 but I believe it is just Pages 21 and 22.

8           Can we go to Page 21, please, of this  
9 document. It's in your binder as well. You'll see  
10 it's kind of towards the end if you want to look at it  
11 in hard copy.

12           So the first time "GBL" is referenced in  
13 these materials--oh, I'm sorry, Mr. Scouras. Could  
14 you identify what these materials are and if you  
15 recognize them, what this is?

16       A.    What tab are they in?

17       Q.    It's Tab R-116.

18       A.    Thank you.

19       Q.    It's the second or penultimate tab.

20       A.    I have to look at these on the hard copy. I  
21 find it a bit awkward looking at the screen.

22       Q.    Understood.

03:57:02 1 Do you recognize this document, Mr. Scouras?

2 A. Yes.

3 Q. And I believe it's a PowerPoint presentation  
4 from BC Hydro dated February 20, 2008, from an  
5 information session. And as I stated, I did a text  
6 search, and I believe the first time that GBL is  
7 mentioned is on Page 21. But there doesn't seem to be  
8 any substantive reference to GBL there. It is just  
9 referring to registration and submission of GBL data  
10 to BC Hydro.

11 So let's turn to Page 22, where we've got a  
12 bit more discussion. So, would this be a document  
13 where BC Hydro's policy that it apparently developed  
14 in 2002 is memorialized?

15 A. Could you explain what you mean by  
16 "memorialized"? Sorry.

17 Q. Written down.

18 A. Okay. Well, this--first of all, I do  
19 recognize this. This is materials that we presented  
20 as part of the 2008 Bioenergy Call. It was a session  
21 that was intended for all folks that were considering  
22 being registered in this Call. This is a walk-through

03:58:24 1 of the key elements timeline for folks to understand,  
2 develop a perspective if they wanted to participate in  
3 the Call.

4 With the RFP that was also issued for this,  
5 there was more of a description over time. We  
6 introduced--we introduced a submission guide for  
7 registrants that included information about what they  
8 needed to provide us as part of the GBL.

9 So, this is not intended to be a policy  
10 statement. This is intended to be an instructional  
11 amount of information that provides prospective  
12 bidders an opportunity to decide if this procurement  
13 is something they're interested in registering for and  
14 participating.

15 Q. So if I understand you correctly, and correct  
16 me if I'm wrong, in 2008 there is still no written  
17 policy? There is still no written policy from  
18 BC Hydro with respect to its GBL methodology; is that  
19 correct? Or are you saying that--because I think you  
20 just said this isn't the policy. This document is not  
21 the policy; correct?

22 A. And you asked me, I think that there's--and I

03:59:29 1 just want to be--I think your question was, was this  
2 intended to memorialize the policy, write down the  
3 policy?

4 Q. Okay. Mr. Scouras, is this the policy?

5 A. This is a procurement--this is the  
6 procurement approach being applied in the  
7 Customer-Based Generation Call. But when you asked me  
8 where the policy existed, was it written down, when we  
9 moved from 2002 to 2008, a number of things had  
10 changed in the regulatory landscape in B.C., including  
11 the 2007 Energy Plan had been introduced with Special  
12 Direction 10 that directed specifically that BC Hydro  
13 would accomplish a number of things with respect to  
14 self-sufficiency. There had been different regulatory  
15 filings.

16 So, this reflects--this reflects our idea of  
17 how do we procure a new and incremental supply within  
18 that context.

19 Q. Did these materials explain anywhere that, if  
20 a self-generator already had decided to build a  
21 new--some new generation, it would not be eligible?

22 A. No. But in the submission--in the original



04:00:38 1 RFP that was issued, the definition of "customer"  
2 included "customers" as well as other customers of  
3 other utilities, and it was clear that GBL was  
4 applicable to all customers. So the item was clearly  
5 enunciated from the beginning in that we were focused  
6 on the--

7 Q. Mr. Scouras, excuse me. My question is:  
8 Does this, this document, this piece of paper, this  
9 page--

10 A. Right.

11 Q. --does it explain that, if a self-generator  
12 already had decided to build new generation, it would  
13 not be eligible? Yes or no.

14 A. I'll give this a read.

15 Q. I'm sorry. What was your--

16 A. I'll give it a read. Sorry.

17 Q. Mr. Scouras, I'm asking about this one page,  
18 22.

19 A. I'm just reading it here. Sorry. You asked  
20 me a specific question what it said. I want to make  
21 sure I can give you the best answer I can.

22 Okay. Sorry. What was your question again?

04:01:56 1 Q. Does this page explain that, if the  
2 self-generator already had decided to build new  
3 generation, whether it would be eligible?

4 A. All right. Well, the first bullet defines  
5 that the purpose of the GBL is to define incremental  
6 generator output that can be considered for  
7 prospective energy sale--sorry.

8 The very first bullet defines that the  
9 purpose of the GBL is to define incremental generator  
10 output that can be considered for a prospective energy  
11 sale.

12 Q. So if I, as a self-generator, install a  
13 turbine today and I go to this information session  
14 tomorrow, what am I supposed to think? Is that  
15 incremental or no?

16 A. So, I think, if you're asking me in that  
17 scenario, I would ask how does this apply to me? And  
18 this is the slide that introduced the subject. Lester  
19 Dyck, who is our Expert on this, was the person who  
20 was available to speak with all Parties.

21 So using that scenario, you're asking me how  
22 I would treat that? I would ask that question, how it

04:03:10 1 applied to my scenario. And we went on to--we said  
2 that the GBL may need to be adjusted for unique  
3 customer circumstances.

4           So, in fact, I would take from this slide  
5 absolutely that this is a very material element of  
6 this call that something I should be really dialed in  
7 on, how does it fit with my project if I built a  
8 turbine yesterday and I want to sell the output  
9 tomorrow.

10       Q.    So it would just depend? You would have to  
11 decide in consultation with Mr. Dyck?

12       A.    Well, Mr. Dyck was the Expert who would have  
13 applied this. But you're asking me in your scenario,  
14 this is something that I would come away from this--

15       Q.    And what is the--

16       A.    So I wasn't finished, but I, just with your  
17 counsel, I didn't know if it was rude--

18           (Overlapping speakers.)

19       Q.    No, no, no, you can--

20       A.    Should I stop when you guys are talking?

21       Q.    No. No. You can keep going if you weren't  
22 finished.

04:04:00 1 A. Actually, I've lost my train of thought.

2 It's okay.

3 Q. What if a self-generator is just  
4 contemplating installing new generation, hasn't  
5 installed it yet? Is this supposed to tell them  
6 whether or not their energy will be available--or  
7 sorry--eligible? Excuse me.

8 A. Well, eligibility was a separate aspect of  
9 registration. This is designed to introduce the  
10 subject, introduce how it fit into the Call, introduce  
11 the types of things that folks need to think about.

12 The aspect of whether it was eligible, how it  
13 was taken into account, was part of the registration  
14 submission. There was a detailed form about data we  
15 needed to see--we wanted to see on how much generation  
16 existed currently, what load was, what fuel was being  
17 used was a very important characteristic.

18 This was really setting the stage. This was  
19 not intended to be a definitive answer. This is not  
20 a--we had very much deliberately moved to a Request  
21 for Proposals where we could have more dialogue with  
22 people. This is designed to say, you know, is this

04:05:09 1 the kind of process I'm generally interested in and do  
2 I want to put my money down to register for this and  
3 keep going?

4 And of the number of people that came to  
5 this, to our workshop, some folks decided that this  
6 was not something they wanted to pursue.

7 This was not intended to be a definitive  
8 answer. This was intended to bring people together  
9 and help them understand if there was something they  
10 were interested in pursuing.

11 Q. So if I as a self-generator am interested in  
12 installing new generation and I wanted--I would like  
13 to be considered as eligible for purchase under one of  
14 these Power Calls, how would I--how I would assure  
15 with BC Hydro that that generation would be considered  
16 incremental or eligible?

17 A. Well, that was part of the registration  
18 package. There was requests for people to provide  
19 data on the current levels of generation, current  
20 levels of load, and very important to us was fuel.  
21 That was part of the registration package that people  
22 were asked to fulfill and that was part of the

04:06:15 1 exercise we established.

2           If you go back to the earlier slide of dates  
3 that people would get indications from us and our  
4 perspective on whether it was incremental or what the  
5 GBL was, that was part of the run-up to people  
6 deciding if they wanted to make a submission.

7       Q.    Does this document define or explain what  
8 BC Hydro considers to be normal operations?

9       A.    This document is not intended to identify  
10 normal operations. This document is a PowerPoint--

11       Q.    Could you answer my question, Mr. Scouras?

12       A.    Sure.

13       Q.    Does it explain or define "normal operation"?

14       A.    This document in front of me, no.

15       Q.    And so, referring to this policy or  
16 methodology or approach to GBLs that supposedly  
17 started in 2002, did this policy allow for FortisBC's  
18 self-generators to have two GBLs?

19       A.    Sorry; I don't think I understand the  
20 question.

21       Q.    I'm not exactly sure I do either.

22            I'm following up on some discussions from the

04:07:40 1 last witness, but in your experience, has BC Hydro  
2 ever contemplated the concept of a self-generator  
3 having two GBLs?

4 A. I can only speak--and I'm not trying to be  
5 difficult. When you say am I aware of any BC Hydro  
6 process, I can speak--

7 Q. In your experience?

8 A. In my experience.

9 So, I think for us in establishing the  
10 procurements that I've been involved in, our goal is  
11 to establish a GBL in terms of procuring new supply  
12 for that activity at play, and it's really based on a  
13 concept of what's behind the meter, is what you're  
14 doing, and we're purchasing something on the other  
15 side of the meter. So, in the activities that I've  
16 been involved in, there is one GBL, one contracted GBL  
17 for an EPA.

18 Q. And if a self-generator were to come to you  
19 and say "but I have another GBL," that would be kind  
20 of anathema to your understanding of BC Hydro's GBL  
21 Approach; correct?

22 A. Sorry, what do you mean?

04:08:48 1 Q. Anathema? You couldn't--contrary to it.

2 A. Each of these facilities you're asking is  
3 contrary. I don't know if it's contrary. What it  
4 would do is stimulate a conversation: "Can you  
5 explain to us why you have a GBL?" I mean, it could  
6 be, in this case--I'm speaking hypothetically. There  
7 may be some point in a forum where someone has another  
8 thing that's been called a GBL. It could mean the  
9 same thing. It could mean something different, but it  
10 would be something under what we've talked--a unique  
11 customer circumstances that we would pursue to  
12 understand.

13 The real piece that we would be focused  
14 on--these are the mechanisms and points of  
15 demarcation. The point that we're focused on in these  
16 procurements is getting new incremental energy that is  
17 helping us keep the lights on in our Province.

18 Q. You're familiar with the Tolko (Riverside)  
19 facility?

20 A. Yes.

21 Q. And if--

22 A. Sorry, I'm aware of it. I haven't been



04:09:52 1 intimately involved in it.

2 Q. Okay. And are you aware that they have a GBL  
3 that was assigned to them by the BCUC, or at one point  
4 they had a GBL that was assigned to them by the BCUC?

5 A. I'm aware--again, generally aware that there  
6 was a BCUC proceeding and in that proceeding there was  
7 a GBL, but I don't know the nature of that. It was in  
8 relationship to Riverside and a relationship to West  
9 Kelowna. So, I don't know the context of West  
10 Kelowna, sorry, was there--whether their local  
11 utility. I don't know the exact nature of how  
12 that--that 2 megawatts GBL.

13 Q. And if Tolko (Riverside) were to come to  
14 BC Hydro and say "We have this 2-megawatt GBL"--

15 A. Right.

16 Q. --would BC Hydro propose to give them a  
17 different GBL?

18 A. I think--

19 Q. For a procurement by BC Hydro?

20 A. I think the way--the way we would look at  
21 that--and I think I understand your question--that it  
22 really fits this last bullet that is on the screen.

04:11:06 1 If someone like Riverside came to us, and they had  
2 unique circumstances, where the Commission had made  
3 some determination about--through a separate  
4 regulatory proceeding that affected how we would set  
5 the GBL, we would take that into account.

6 Does that mean that we could end up setting a  
7 GBL that is different than the outcome of a different  
8 regulatory proceeding? I would say that probably that  
9 could happen, depending on the nature of what that  
10 proceeding was and what the actual details of that  
11 activity was, but it would be one of the unique items  
12 that we would be looking at.

13 Q. But that's never happened, as far as you  
14 know; correct?

15 A. Actually, when you think about Tolko and the  
16 Standing Offer Program with Riverside, we have had to  
17 discuss that with them. So, it's jogged my memory,  
18 but I didn't consider it as being a GBL. But, yeah, I  
19 dealt with that as managing the Standing Offer  
20 Program.

21 Q. And did you assign them a different GBL? You  
22 said you discussed it with them. Did you assign them

04:12:06 1 a different GBL?

2 MR. COULOMBE: Just quickly one word of  
3 caution; we're not discussing any confidential  
4 information here, are we?

5 THE WITNESS: Actually, that, I'm not sure  
6 of.

7 MS. GEHRING FLORES: No. No.

8 MR. COULOMBE: Okay. Thank you.

9 THE WITNESS: So then--okay.

10 MS. GEHRING FLORES: Yeah. I guess--

11 THE WITNESS: So, I'm clear to discuss that  
12 then? That is fine with my counsel as well?

13 MR. DOUGLAS: Do you believe you're  
14 discussing confidential information?

15 THE WITNESS: Well, I think that I'm not sure  
16 because the load--if we get into actually the numbers  
17 involved in the Standing Offer Program, that affects  
18 the actual output of that facility and their  
19 commercial--like who they are and what they're doing  
20 there, and I think that does compromise some of the  
21 data that I became party to as part of managing the  
22 Standing Offer Program.

04:12:53 1 MS. GEHRING FLORES: Then we can go ahead and  
2 close the proceedings if the Witness wants to discuss  
3 confidential information. I'm not really--I'm not  
4 requesting it.

5 THE WITNESS: Well, if I can answer the  
6 question in more generalities, then I'm happy to  
7 proceed on that basis. It's just, I think, the  
8 actual--

9 PRESIDENT VEEDER: You should feel free to  
10 answer the questions the way you want to answer it,  
11 and if that means we're going to close the session,  
12 we'll go into closed session--

13 THE WITNESS: Okay.

14 PRESIDENT VEEDER: --so don't put it  
15 backwards.

16 THE WITNESS: Okay.

17 PRESIDENT VEEDER: Do you feel the need to  
18 speak in closed session?

19 THE WITNESS: I think I probably do, given  
20 the type of information on that facility and that  
21 self-generator and the assurances I gave them. I  
22 think I would probably be more comfortable in that

04:13:31 1 setting.

2 PRESIDENT VEEDER: Let's move into closed  
3 session then. Just wait one moment.

4 (End of open session. Confidential business  
5 information redacted.)

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04:13:36 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: We're in closed session.

3 THE WITNESS: Oh, okay.

4 So, again, as I said, your line of  
5 questioning jogged something that occurred over the  
6 last decade, so I apologize for any previous answer.  
7 I hadn't quite gone to it right away. Tolko at  
8 Riverside has a specific GBL that was applied to them  
9 in a separate regulatory forum. In the Standing Offer  
10 Program, they were looking to sell us a certain amount  
11 of energy, and in that we didn't consider--we ended up  
12 establishing a GBL and working with them that was  
13 <<[REDACTED]>> than the GBL that had been established earlier,  
14 and the reason was because the original GBL was based  
15 on West Kelowna and their relationship at that point  
16 in time.

17 Subsequent to that, West Kelowna was sold to  
18 Fortis, so there was some transactions that occurred,  
19 and Riverside's amount of self-generation had  
20 increased independent of any other activities. So, we  
21 established the--as I recall, we established the GBL  
22 for them under current, normal conditions. We

04:14:48 1 established it for the Standing Offer Program. As I  
2 recall--and this is from my memory--that it was closer  
3 to <█> megawatts.

4 BY MS. GEHRING FLORES:

5 Q. I just want to be sure that I understand your  
6 views on the GBL and Exclusivity Provisions contained  
7 in BC Hydro's EPAs with self-generators.

8 Is it BC Hydro's position that, throughout  
9 their various procurements, BC Hydro required that it  
10 be the exclusive purchaser of all electricity eligible  
11 or available for sale?

12 A. Do you mind repeating that again just so I  
13 get that right?

14 Q. Is it your understanding that, through the  
15 Exclusivity Provision, or just generally, BC Hydro  
16 required that it be the exclusive purchaser of all  
17 electricity available for sale?

18 A. From 2006 kind of forward, that's correct.  
19 In some of our earlier procurements, we had developed  
20 a concept called a "split bid," where we tried to work  
21 with--to give more flexibility within the marketplace,  
22 and what we had found was that introduced

04:16:09 1 several--more than several pages into our contracts,  
2 and the feedback we got from generators in the  
3 Province was that it didn't add very much value, and  
4 that the complexity associated with--both the  
5 complexity for the developer to portion out their bid  
6 was high and that the value to us was low.

7           So, after that feedback and after that  
8 discussion, from that point--2006, 2007 forward--all  
9 of our procurements have an Exclusivity Provision that  
10 maintains the integrity of that procurement and  
11 simplifies the procurement for developers.

12       Q.    And in your EPAs, all of your EPAs have GBLS  
13 in them, correct, for self-generators?

14       A.    No.

15       Q.    Sorry; for all of your self-generators.

16       A.    All self-generators--

17       Q.    With EPAs.

18       A.    Yeah. To my knowledge, that's correct in our  
19 service area.

20       Q.    And just so I understand, everything below  
21 the GBL the self-generator is obligated to put towards  
22 self-supply; is that correct?



04:17:20 1 A. Below the GBL.

2 In our service area, I believe that's  
3 correct.

4 Q. And anything above the GBL is purchased by  
5 BC Hydro?

6 A. Anything above the GBL, if we have a  
7 procurement that's ongoing would be considered new and  
8 incremental, and if we needed the supply, then it  
9 would be eligible for something for us to purchase.  
10 But just one point; just because it's above the GBL,  
11 it doesn't mean that we necessarily buy it.

12 Q. Is there any--can you point me to any EPA  
13 with the self-generator that has a GBL where BC Hydro  
14 has not agreed to purchase everything above the GBL?

15 A. If we have EPAs with them, then we've agreed  
16 to purchase what's above the GBL.

17 Q. Okay. And so all these questions are in the  
18 context of EPAs--

19 A. Yeah.

20 Q. --with self-generators?

21 A. Yeah, right.

22 Q. So, if you have an EPA with the

04:18:22 1 self-generator--

2 A. Right.

3 Q. --that has a GBL, everything below--as we've  
4 discussed--the self-generator is obligated to put  
5 towards self-supply; and everything above the GBL,  
6 BC Hydro purchases? Is that correct?

7 A. I'm trying to make sure that I don't--just  
8 give me a second. I just want to make sure that I  
9 don't forget something.

10 Q. Sure.

11 A. If they have an EPA with us, and everything  
12 that is below the point of being defined "the GBL" and  
13 we have an Exclusivity Provision in that  
14 Contract--because, again, I think there are still a  
15 couple of contracts with other self-generators in the  
16 Province that are of a different vintage. So, it has  
17 to be comparable to that same contract class, those  
18 terms. If those contracts exist, an Exclusivity  
19 Provision is the same. And that's correct, that they  
20 are required to serve their own supply, and then  
21 we--their own load--and we purchase what is in excess  
22 of that.

04:19:34 1 Q. And I believe in your Witness Statement--and  
2 it's certainly your counsel's contention--that  
3 BC Hydro has an Exclusivity Clause in every EPA; is  
4 that correct?

5 A. From 2007 forward, that's my understanding.

6 Q. And BC Hydro allowed no room for third-party  
7 sales, correct, in its EPAs with self-generators since  
8 2007?

9 A. The standard terms--so, can you repeat that  
10 question again?

11 Q. Since 2007, in BC Hydro's EPAs with  
12 self-generators, no third-party sales are allowed;  
13 correct?

14 A. No, I don't think that's correct because the  
15 one--and the matter that brings us here. Mercer's  
16 Contract and our Side Letter need to be taken together  
17 in context of their Contract, and that does make  
18 provision for below-GBL sales to be excluded from the  
19 Exclusivity Clause under certain circumstances.

20 Q. Okay. Let's talk about that then. Now, the  
21 Side Letter Agreement that you just referenced  
22 provides that BC Hydro will amend the Exclusivity

04:21:08 1 Provision in the EPA in the event that the BCUC issues  
2 an Order allowing Celgar to sell electricity below its  
3 GBL; is that correct?

4 A. Can you repeat that last sentence again,  
5 please?

6 Q. Yeah. Let me make sure I say it correctly.

7 So, the Side Letter that you just referenced  
8 provides that BC Hydro will amend the Exclusivity  
9 Provision in the EPA in the event that the BCUC issues  
10 an Order that allows Celgar to sell electricity below  
11 its GBL.

12 A. No. I think what it does is it--if the Side  
13 Letter--it's a subtlety, but I think it's different;  
14 that if the BCUC provides direction whereby Fortis and  
15 Celgar can come to an agreement on how Fortis would  
16 serve Celgar for supply that is being sold to a third  
17 party at the same time--and by virtue of that, that  
18 renders one of the clauses in Section 7.4  
19 inoperable--then we'll sit down and we'll negotiate a  
20 new clause that acknowledges that.

21 So, I think the only distinction I would make  
22 is it's based on what the Commission's Decision is in

04:22:36 1 respect of Fortis and Celgar's relationship.

2 Q. But in any event, the operative relationship  
3 or the relevance of the Side Letter Agreement is that,  
4 if it's activated, if BC Hydro actually acts in  
5 accordance with the Side Letter Agreement, Celgar will  
6 be able to sell its below-GBL electricity; is that  
7 correct?

8 A. The Side Letter Agreement is an agreement  
9 that, if a certain set of circumstances arise, then  
10 Section 7.4 with the Exclusivity Provision will be  
11 modified to expand the--that energy that is exempt  
12 from the Exclusivity Provision to include that which  
13 is aligned with the--with below-GBL energy.

14 Q. And has that--has the Side Letter Agreement  
15 been invoked yet?

16 A. Well, from what I understand--again, this  
17 is--so I'm--my job was to purchase the power. That's  
18 what we do, and then recently I moved into a different  
19 role. But as this moved into contract management, the  
20 Contract gets signed, people manage it. I've been  
21 less intimately involved, and I'm aware of what's  
22 occurring with our major contracts.

04:24:00 1                   And from what I understand, in December,  
2 Mercer contacted our Contract Management Group. Now,  
3 there is also conversations going on between these  
4 folks all the time. It is--you know, it's a lot of  
5 things that need to happen in terms of metering and  
6 not metering, but he contacted us in December to begin  
7 discussions on this, subject to another BCUC Decision,  
8 and we started looking at that internally and started  
9 connecting with Fortis on that. And then soon  
10 thereafter, these proceedings have been--these  
11 proceedings commenced.

12                   So, I don't know if that satisfies the  
13 measure of it being invoked. I know that Mercer has  
14 contacted us saying that "we'd like to have those  
15 discussions start," but at the same time that these  
16 proceedings have started, and it seems that this  
17 proceeding has trumped that one in terms of energy and  
18 activity.

19           Q.    So, in your opinion--and I think it's implied  
20 in your Statement as well--it's the NAFTA proceedings  
21 that have stopped BC Hydro from activating the Side  
22 Letter Agreement?

04:25:06 1       A.   Well, first of all, I don't think it's--I  
2 don't think it's--"activating" isn't probably the term  
3 that I would use.  From what I understand, there is  
4 two things that have to happen:  Celgar and FortisBC  
5 have to come to an agreement on a tariff of how this  
6 would work.

7           We would be--for us, it's an accounting,  
8 understanding how that--what that tariff looks like.  
9 We'd be aligned with that tariff.  From our  
10 understanding, that hasn't occurred.  But absolutely,  
11 with the proceeding, with this proceeding going  
12 forward, B.C. Hydro takes that very seriously, and  
13 that has been the focus of our efforts.

14       Q.   So, you--that is actually helpful.

15           You understand that FortisBC has no tariff or  
16 rate for Celgar if it engages in below-load sales of  
17 its electricity?  Is that your understanding?

18       A.   At a very peripheral level, from what I  
19 understand, Mercer and Celgar--Mercer and Fortis have  
20 been working on how that tariff would work, but they  
21 have not come to agreement, and that is kind of the  
22 depth of my understanding of that.

04:26:13 1 Q. And because Celgar doesn't have a rate yet,  
2 BC Hydro can't simply amend the Exclusivity Provision  
3 to say "Celgar, when you're able, you can sell below  
4 GBL"?

5 A. Well, I think the approach we took was--when  
6 we did the Side Letter--is we couldn't anticipate what  
7 decision the Commission would make, and we can't  
8 anticipate what this tariff would look like between  
9 Fortis and Mercer. The fix in that Contract may be as  
10 simple as what you're talking about. It may be  
11 something different. And until we understand what is  
12 being considered, we can be involved in those  
13 discussions, but unless we know what that looks like,  
14 you could have a big miss in terms of how you draft  
15 that clause.

16 Q. Are you aware--does the Side Letter provide  
17 that BC Hydro doesn't have to act to engage the Side  
18 Letter and to amend the EPA if Mercer were to bring a  
19 NAFTA claim? Is there a provision like that in the  
20 Side Letter?

21 A. Could you refer me to the Side Letter?  
22 Sorry. I know it's in my Witness Statement.



04:27:33 1 Q. I'm sure your counsel can show you on  
2 redirect. I think we can--

3 MR. OWEN: I'm sorry; you've asked a lot of  
4 questions about the Side Letter. If you're going to  
5 continue this line of questioning--

6 MS. GEHRING FLORES: Yeah. I'm going to move  
7 on.

8 BY MS. GEHRING FLORES:

9 Q. So, actually, I'm going to go back. And I  
10 think--are we off--I know we're in closed session now,  
11 but I don't think...

12 A. I was only concerned about the few sentences  
13 with respect to--

14 Q. Okay. I think we can go back to open  
15 session.

16 A. Sorry.

17 PRESIDENT VEEDER: Let's go back into open  
18 session. Just wait a minute.

19 (End of confidential session.)

20

21

22

04:28:09 1 OPEN SESSION

2 PRESIDENT VEEDER: Yes.

3 MS. GEHRING FLORES: Okay.

4 BY MS. GEHRING FLORES:

5 Q. Let's go back to the GBL and the Exclusivity  
6 Provisions that exist in EPAs with BC Hydro and  
7 self-generators. I think we had talked about the fact  
8 that in these EPAs the electricity that is above the  
9 GBL is considered eligible electricity and is  
10 purchased by BC Hydro, and that which is below it must  
11 go to the self-generator self-supply.

12 Is that a fair characterization?

13 A. In general, correct.

14 Q. Okay. And I understand in paragraph--around  
15 paragraph--or starting with Paragraph 52 of your  
16 Second Witness Statement--and you can refer to it  
17 there, if you wish--and particularly in Paragraph 53,  
18 you take some umbrage with Mr. Kaczmarek's damages  
19 analysis, I think particularly because he assumes  
20 because BC Hydro would have purchased Celgar's  
21 below-GBL electricity; is that right?

22 A. Correct.

04:29:26 1 Q. Mr. Scouras, are you a Damages Expert?

2 A. No, I'm not.

3 Q. Okay. I think I read in your--I think I read  
4 in your resume that you took a financial analysis and  
5 accounting course in 2004.

6 Are you an accountant?

7 A. No, I'm not.

8 Q. Okay. Are you a lawyer?

9 A. No, I'm not.

10 Q. Do you understand the notion of a but-for  
11 damages scenario? Have you heard that terminology  
12 before?

13 A. I've read it in Mr. Kaczmarek's filings. But  
14 I'm not--

15 Q. Do you understand--do you understand what it  
16 means?

17 A. Since you're asking this question, I'm  
18 probably assuming I don't.

19 PRESIDENT VEEDER: None of the lawyers  
20 understand it either.

21 (Laughter.)

22 THE WITNESS: I have a six-year old that

04:30:24 1 would love me to use that word, though.

2 (Laughter.)

3 BY MS. GEHRING FLORES:

4 Q. Do you understand that Mr. Kaczmarek, in his  
5 damages analysis, is starting from a point where he is  
6 assuming that the Tribunal has found liability in  
7 favor of Mercer? Do you understand that?

8 A. I'll take it on--I'll take it on, you know,  
9 you sharing that perspective that that's a matter of  
10 fact. My comments were here--were speaking more from  
11 the context of, at that time and place, as the person  
12 responsible for buying the electricity, is that  
13 something that I would have done? So, that's the  
14 context I'm speaking to.

15 Q. Okay. Moving on to another topic, BC Hydro's  
16 Bioenergy Phase I procurement wasn't a subsidy, was  
17 it?

18 A. No.

19 Q. Okay. So, the price that BC Hydro agreed to  
20 pay for its electricity and the price you agreed to  
21 pay the other successful--"you"--BC Hydro agreed to  
22 pay other successful bidders was determined through a

04:31:49 1 competitive bidding process followed by negotiations;  
2 correct?

3 A. That's correct.

4 Q. And those prices reflect a fair market price,  
5 in your Opinion?

6 A. I think those prices reflect what was the  
7 competitive, cost-effective energy for the purchase at  
8 that point in time.

9 Q. And BC Hydro didn't pay in excess of that  
10 competitive price, did it?

11 A. Sorry; BC Hydro didn't pay in excess of that  
12 competitive price?

13 Q. Or BC Hydro didn't pay anything in excess of  
14 a fair market price?

15 A. The target call was for 1,000 gigawatt hours,  
16 and we purchased less than that, based on the fact  
17 that we thought the energy we were purchasing was  
18 where--what was cost-effective.

19 Q. But the prices that you were paying for that  
20 electronic, those were--

21 A. Cost-effective.

22 Q. And, in other words, a fair market price?

04:32:52 1       A.    They were at reasonable market price.  It was  
2 something we felt comfortable with.  Whether fair or  
3 not fair, it, to me, seems like it's not--beauty is in  
4 the eye of the beholder.  They were what the market  
5 gave us and we thought was a reasonable price to pass  
6 on to ratepayers to get the supply we needed.

7       Q.    And, in fact, to obtain BCUC approval for the  
8 four Bioenergy Phase I EPAs, BC Hydro had to  
9 demonstrate to the BCUC that it was paying a fair  
10 market price; correct?

11       A.    We had to demonstrate that the process we had  
12 run was as we said it was going to be run.  We had to  
13 demonstrate that the energy was new and incremental  
14 and that these were reasonable prices to be passed on  
15 to the ratepayers for this new and incremental energy.

16       Q.    And the BCUC had to approve these contracts,  
17 even though this was in the context of a procurement  
18 for BC Hydro; right?

19       A.    I think there's a subtlety there that's at  
20 play there.  And I'll share what I can about this.  
21 But, again, I pointed out I'm not a lawyer; I'm not a  
22 regulatory lawyer.

04:34:06 1           So, in that context, what the BCUC--we have  
2 the requirement to follow these contracts under a  
3 section of the Act. They have an ability to disallow  
4 the contracts, so to say these contracts, this  
5 process, we believe is either in the ratepayers'  
6 interest or not in the ratepayers' interest.

7           If they agree that the contracts are in the  
8 ratepayers' interest, then those costs get folded into  
9 the rate base. But that's what that--as I understand  
10 it, that's the purpose of us making these--they don't  
11 get into--that's their mandate in respect to that  
12 item.

13           Does that answer your question?

14       Q.    Yes.

15           Now, when BC Hydro was before the BCUC and  
16 justifying the prices that it was paying for these  
17 four EPAs, did it ever qualify those prices and tell  
18 the BCUC that the electricity that it was buying could  
19 not be sold as green energy in the United States?

20       A.    Well, to be honest with you, I think the  
21 answer to that is in this filing, the answer--well,  
22 give me a second to think about that.

04:35:33 1 I mean, there is two elements to that. In  
2 respect--and there are separate items we would have  
3 talked to the Commission about. Are you asking  
4 specifically to the filing of these EPAs?

5 Q. Yes.

6 A. Okay. Because I'm getting a bit confused  
7 with some of the things that we discussed over  
8 time--in respect to the Integrated Resource Plan.

9 But to be clear, the B.C. Government chose to  
10 define an independent standard of what would be clean  
11 energy, so through the 2007 Energy Plan and then  
12 Special Direction 10, which was brought into  
13 legislation, we were required to go and ensure that  
14 BC Hydro, B.C. is self-sufficient, and that those  
15 resources were from clean resources, and that they had  
16 to be GHG-free.

17 There is a number of provisions. Those were  
18 the items that would have guided the BCUC, and those  
19 are the items that we would have had to demonstrate in  
20 our filing. Whether this energy was green or not in  
21 California was not relevant to this proceeding because  
22 we were buying purely for domestic consumption for our



04:36:45 1 rates, ratepayers.

2 Q. And BC Hydro didn't discount the price that  
3 it was paying to the four EPA winners because their  
4 electricity could not be sold in the United States as  
5 green energy; correct?

6 A. That is actually not correct.

7 Q. No? Okay. So, BC Hydro paid less for the  
8 four EPAs because--specifically because it could not  
9 be sold in the United States as green energy?

10 A. No. No. I'm happy to have this discussion,  
11 but this would need to be in a closed forum. << [REDACTED]

12 [REDACTED] >>

13 PRESIDENT VEEDER: Let's stop there. If you  
14 need to be in a closed forum, we'll close the Hearing.  
15 Just one moment.

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

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04:37:35 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: It's closed. Please  
3 proceed.

4 THE WITNESS: Okay. << [REDACTED]

[REDACTED]

13

[REDACTED]

04:38:30 1 So, as a result of the procurement, << [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

6 Q. Based on the fact that they could not sell  
7 their electricity as--

8 A. No. Based on the fact that--

9 Q. Let me just ask the question.

10 My question was, did BC Hydro discount the  
11 prices of any of the four EPAs, based on the fact that  
12 one of the self-generators or all of the  
13 self-generators--or any of the self-generators could  
14 not sell their electricity in the United States as  
15 green in the United States? Did that happen?

16 A. I'm sorry; I'm confused. We're buying the  
17 energy.

18 Q. Right. And you went to the BCUC, and you  
19 justified the fairness of the prices that you were  
20 paying.

21 A. Right.

22 Q. At any point in that justification, did

04:39:36 1 BC Hydro say, "We're actually going to pay less for  
2 this electricity because these self-generators can't  
3 sell this electricity in the United States as green"?

4 A. No, we wouldn't say that because--sorry; I  
5 was confused by the question. That's not--we were  
6 buying the energy and all the attributes associated,  
7 << [REDACTED]  
8 [REDACTED].>>

9 MS. GEHRING FLORES: No further questions.

10 PRESIDENT VEEDER: Thank you very much.

11 Is there any reexamination from the  
12 Respondent?

13 MR. DOUGLAS: May we have just two minutes to  
14 confer, please?

15 PRESIDENT VEEDER: Of course.

16 MR. DOUGLAS: Thank you.

17 (Pause.)

18 MR. DOUGLAS: Excuse me, Mr. President. My  
19 apologies. We'd like to confer with one of our  
20 Experts on a particular matter. Could we have  
21 five minutes instead of two?

22 PRESIDENT VEEDER: Let's take five minutes.

04:41:13 1 MR. DOUGLAS: Okay. We will not--my  
2 apologies.

3 PRESIDENT VEEDER: Please don't discuss the  
4 case or your testimony away from the Tribunal.

5 THE WITNESS: Okay.

6 MS. GEHRING FLORES: And when we return, will  
7 we be open or closed?

8 PRESIDENT VEEDER: Well, they're going to  
9 decide that, and they'll tell us.

10 MR. DOUGLAS: Yes.

11 (Brief recess.)

12 PRESIDENT VEEDER: Let's resume.

13 The first question is, are we in open session  
14 or closed session?

15 MR. DOUGLAS: Open, please.

16 PRESIDENT VEEDER: Let's go to open session  
17 which we are.

18 (End of confidential session.)

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04:49:45 1

OPEN SESSION

2 PRESIDENT VEEDER: Please proceed.

3 MR. DOUGLAS: We have no questions,

4 Mr. President.

5 PRESIDENT VEEDER: Don't proceed.

6 We have no questions, too. So thank you very  
7 much for coming to testify. We've come to the end of  
8 your testimony. So, please leave the table and leave  
9 everything.

10 (Laughter.)

11 THE WITNESS: Happy to do that.

12 (Witness steps down.)

13 PRESIDENT VEEDER: Now, we understand the  
14 next Witness is here. Why don't we proceed with the  
15 next Witness.

16 MR. OWEN: He is. We'll get him.

17 (Pause.)

18 LESTER DYCK, RESPONDENT'S WITNESS, CALLED

19 PRESIDENT VEEDER: Let's resume. We're in  
20 open session.

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

04:50:44 1 Witnesses on the table before you.

2 THE WITNESS: My name is Lester Dyck. I  
3 solemnly declare upon my honor and conscience that I  
4 will--I shall speak the truth, the whole truth, and  
5 nothing but the truth.

6 PRESIDENT VEEDER: Thank you very much.

7 There will first be questions from the  
8 Respondent.

9 DIRECT EXAMINATION

10 BY MS. ZEMAN:

11 Q. Good afternoon, Mr. Dyck.

12 A. Good afternoon.

13 Q. You are Sector Manager of Pulp & Paper and  
14 Customer Generation in the Key Accounts Management  
15 Division of BC Hydro; is that correct?

16 A. Correct.

17 Q. Okay.

18 MS. ZEMAN: And I think before I ask my next  
19 question, I would ask that we go to closed session.

20 PRESIDENT VEEDER: We're going to go to  
21 closed session. Please wait one moment.

22 (End of open session. Confidential business

04:51:30 1 information redacted.)

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04:51:30 1

CONFIDENTIAL SESSION

2 PRESIDENT VEEDER: We're in closed session.

3 MS. ZEMAN: Thank you.

4 BY MS. ZEMAN:

5 Q. Do you have any corrections to make to your  
6 Witness Statements?

7 A. Yes. I have two, actually, in my First  
8 Witness Statement.

9 Q. Okay.

10 A. I believe they are in Paragraph 100 and 101.

11 Q. Sorry. Just to go back, you filed two  
12 Witness Statements in this proceeding?

13 A. Correct. This is the first one I'm referring  
14 to.

15 (Comments off microphone.)

16 Q. So what is the correction you'd like to make  
17 to Paragraph 100?

18 A. In Paragraph 100, I believe I'm referring to  
19 the EPA price changes in the Tembec Skookumchuck's  
20 EPA. << [REDACTED]

[REDACTED]

[REDACTED]

04:52:43 1 [REDACTED]

2 [REDACTED].>>

3 Q. Okay.

4 Can you bring up the Witness Statement just  
5 so we can clarify exactly how you'd like to correct  
6 it.

7 Are you referring to the second sentence of  
8 that paragraph?

9 A. Yes. Where I say the [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]>>

13 Q. Okay.

14 A. That's what I prefer it to say and I meant it  
15 to say.

16 Q. Okay. Now, you mentioned you had a second  
17 correction to make?

18 A. Yes. It's in the following paragraph, 101.

19 The first opening of the paragraph reads [REDACTED]

20 [REDACTED]>> I believe it should read "continuing to

21 << [REDACTED]>>

22 Q. Okay. Thank you.

04:54:03 1 MS. ZEMAN: I have no further questions from  
2 the Respondent.

3 PRESIDENT VEEDER: Thank you very much.

4 Claimant will have questions.

5 CROSS-EXAMINATION

6 BY MR. SHOR:

7 Q. Good morning, Mr. Dyck. I apologize in  
8 advance for probably ruining your weekend. You're  
9 going to be sequestered, I fear.

10 Since 2007, you've been the person  
11 responsible for overseeing BC Hydro's relationship  
12 with self-generating customers in the pulp and paper;  
13 is that correct?

14 A. As a sector manager, yes.

15 Q. And you are oversaw the setting of GBLs for  
16 Celgar in its 2009 EPA, for Tembec in its 2009 EPA,  
17 and for Howe Sound in its 2010 EPA?

18 A. Yes.

19 Q. So finally we have a face to associate with  
20 an acronym.

21 And you also had responsibility for Load  
22 Displacement Agreements with companies in the pulp and

04:55:03 1 paper sector?

2 A. In conjunction with the work I do with all  
3 the pulp and paper customers since about 2001, the  
4 contract work in the developing of many of those  
5 opportunities and funding those projects is a Power  
6 Smart program, and Power Smart is a separate  
7 department within BC Hydro. So, we work  
8 collaboratively with them as a Key Accounts Group.

9 Q. So you have knowledge of the Load  
10 Displacement Agreements?

11 A. I do.

12 Q. Thank you.

13 And a Load Displacement Agreement is a  
14 contract BC Hydro enters into with a self-generator;  
15 correct?

16 A. A load displacement?

17 Q. It doesn't have to be a self-generator, but  
18 it's a contract you enter into with a customer where  
19 you promise to pay them money to install or increase  
20 their generation, and they promise to use the new  
21 generation to self-supply to meet their own load?

22 A. Yes. It's a front-loaded contract that we

04:55:59 1 offer to customers for purposes of developing new and  
2 incremental generation to offset their load, correct.

3 Q. And load displacement saves BC Hydro and its  
4 ratepayers money because you don't have to buy the  
5 electricity that you would otherwise use to  
6 self-supply that self-generator at your high marginal  
7 cost?

8 A. Yes. Load Displacement Agreements are part  
9 of a larger DSM, or Demand-side Measures Plan, that is  
10 part of our Integrated Resource Plan, so it is part of  
11 our Generation Resource Stack as part of our overall  
12 acquisitions program, and we fund those programs  
13 effectively because they are a lower-cost option than  
14 the next alternative.

15 (Comments off microphone.)

16 Q. So you're paying for a service that has value  
17 to you?

18 A. Yes.

19 Q. What is BC Hydro's current projection of its  
20 long-run marginal cost for electricity?

21 MR. DOUGLAS: Is there a document you could  
22 take the Witness to?

04:57:14 1 MR. SHOR: Just asking if he knows.

2 THE WITNESS: Off the top of my head--I could

3 guess.

4 BY MR. SHOR:

5 Q. Does \$129 sound about right, megawatt?

6 Could we pull up R-221?

7 A. Thank you.

8 Q. Page 28. This not in your binder.

9 This is a BCUC Decision dated 2014?

10 A. I'm looking. I don't see a numeric value in

11 anywhere in here. It's a bunch of text. I believe

12 this document is looking at RS-3808.

13 Q. We may have the wrong page.

14 PRESIDENT VEEDER: Can you give us the

15 exhibit number again?

16 MR. SHOR: I believe it's R-221. You know

17 what? There may be different page numbers. So, let's

18 try Page 19. There's a confusion between the PDF and

19 the document number. Let's try Page 19 of the

20 document.

21 (Pause.)

22 BY MR. SHOR:

04:57:24 1 Q. In the fourth paragraph, a figure of  
2 12.97--12.97 cents--

3 A. Per kilowatt hour, yes. I see it there.  
4 Okay.

5 Q. So, per megawatt hour, that would be \$129.70?

6 A. That's what I'm reading here, yes.

7 Q. And was the BC Hydro's long-run marginal cost  
8 for electricity projection roughly the same in the  
9 2008-2010 time frame?

10 A. I can't tell you that. I don't know that off  
11 the top of my head.

12 Q. When you enter into a Load Displacement  
13 Agreement, why do you need the self-generator to  
14 promise contractually to self-supply?

15 A. The Load Displacement Agreement affords them  
16 some up-front capital to invest this capital directly  
17 into their generator facilities. These generator  
18 facilities are located behind what's an existing load  
19 on the BC Hydro's transmission system. The customer  
20 actually gets two and possibly, I guess, three areas  
21 of benefit by building generation through a Load  
22 Displacement Agreement. One is they get the capital

05:00:07 1 that helps gain approval of the capital expenditure  
2 that wouldn't otherwise be approved by that customer's  
3 board and their Shareholders.

4 Q. I'm sorry, Mr. Dyck, my question was why do  
5 you promise--why do they have to promise contractually  
6 to self-supply?

7 A. Well, because it is a Load Displacement  
8 Agreement, the benefit for BC Hydro is it takes load  
9 off of our system. The benefit for the customer is it  
10 reduces the amount of energy that they have to  
11 purchase from BC Hydro. It has to--all that energy  
12 and capacity that comes along with that project, in  
13 balance, provides a benefit mutually to both the  
14 customer and to BC Hydro.

15 Q. And in the absence of a contractual  
16 commitment, would they be required to self-supply?

17 A. No. If there is no contractual commitment,  
18 they aren't--to the degree that some of these  
19 customers don't have generation to begin with, so then  
20 there isn't an issue. If a customer has a history  
21 operating a generator within inside their load, they  
22 have established what would be considered a



05:01:10 1 non-contract Generator Baseline, and there is nothing  
2 holding them to any particular amount of energy that  
3 they have to offset in any given year or not.

4           If, in some year, they decided not to  
5 generate or to generate more, they would probably have  
6 to come to BC Hydro through the Load Interconnection  
7 Group to make sure their system can tolerate the  
8 change in their operations.

9           Q.    I'm not sure you answered my question, so  
10 I'll ask it again:  In the absence of a contractual  
11 commitment, would they be required to self-supply?

12           A.    Only to the degree that they want to  
13 self-supply, and they would--they're not bound to  
14 supply any amount of energy in any particular year,  
15 no.

16           Q.    Thank you.

17                   How many B.C. self-generators has BC Hydro  
18 paid to provide load-displacement services?  Order of  
19 magnitude?

20           A.    There probably are a half dozen or so.

21           Q.    And that would include Howe Sound?

22           A.    Howe Sound is one, yes.

05:02:18 1 Q. Canfor would be another?

2 A. Correct.

3 Q. Weyerhaeuser Domtar?

4 A. Domtar is another.

5 Q. The Conifex sawmill?

6 A. Yes.

7 Q. And then the Nechaeko sawmill?

8 A. The Nechaeko, yes.

9 Q. Do you recall how much each was paid,  
10 roughly?

11 A. In terms of capital dollars or in dollars per  
12 year of energies--

13 Q. Capital dollars.

14 A. I believe Canfor was in the neighborhood of  
15 \$49 million. I think the Weyerhaeuser Domtar project,  
16 which was around 2002, would have been in neighborhood  
17 of [REDACTED]>>, pardon me.  
18 The Nechaeko--I can't remember, maybe <<[REDACTED] [REDACTED]>>.

19 And which were others were you asking?

20 Q. Howe Sound?

21 A. Howe Sound wasn't given--they were given an  
22 <<[REDACTED]>> loan, a construction loan.

05:03:10 1 Q. It was [REDACTED]>>?

2 A. <<[REDACTED]>>, yes.

3 Q. And I believe BC hydro valued the value of  
4 that at <<[REDACTED]>> million? Does that sound about right?

5 A. The value of the interest?

6 Q. The value of the <<[REDACTED]>> to Howe  
7 Sound.

8 A. I guess if it stretched over the duration of  
9 a <<[REDACTED]>> term, it could be, but I can't--but you  
10 can't quote me on a number. I don't know that number.

11 Q. Can we pull up Exhibit C-97, please. Page 1.

12 A. Sorry.

13 Q. I think it's in your binder.

14 You'll get some exercise flipping that back  
15 and forth.

16 Can you look for the number <<[REDACTED]>> in  
17 there.

18 A. I see a number of <<[REDACTED]>>.

19 Q. <<[REDACTED]>>

20 And could you just read what it says with  
21 respect to that number.

22 A. In the middle of the page, I'm reading: "the

05:04:46 1 total loan amount of [REDACTED] [REDACTED] [REDACTED]  
2 [REDACTED]>> The total <<[REDACTED]>> totaled  
3 <<[REDACTED]>>, and the resulting electricity value was  
4 <<[REDACTED]>> per megawatt hour."

5 Q. Thank you.

6 Now, these amounts you mentioned--the  
7 49 million for Canfor, the <<[REDACTED]>> for Howe Sound  
8 and the rest, are those objectionable transfers of  
9 wealth from BC Hydro to self-generators for nothing in  
10 return?

11 A. No, not at all. If I understand your  
12 question--can you repeat the question, please?

13 Q. Are those objectionable transfers of wealth  
14 from BC Hydro to self-generators for nothing in  
15 return?

16 A. I'm not sure I understand the question well  
17 enough, but I'll try to answer how I understand it.

18 Are they objectionable transfers of wealth?  
19 No. They are valued to BC Hydro. We're getting  
20 something new of value into our system, and the value  
21 is a better value, a lower cost to our ratepayers than  
22 another alternative or next alternative to acquire new

05:06:00 1 power into the system would be, so we're paying for  
2 some new energy and capacity on our system.

3 Q. Thank you.

4 Now, Canfor received both an EPA and a  
5 revised Load Displacement Agreement in 2009, did it  
6 not?

7 A. Sorry, Canfor received--

8 Q. Canfor Prince George.

9 A. They received both a--

10 Q. A new EPA and a revised Load Displacement  
11 Agreement.

12 A. Yes, their Load Displacement Agreement was  
13 revised.

14 Q. And the GBL--I'm sorry, I didn't mean to  
15 interrupt?

16 A. And later on we did enter into an EPA with  
17 them as well, correct.

18 Q. The original LDA was signed in 2004, but then  
19 it was revised so as << [REDACTED] >>  
20 obligation in 2009.

21 A. That's right.

22 Q. And then you also entered into the EPA at the

05:06:49 1 same time, both documents were signed on the same date  
2 in 2009; is that correct?

3 A. In around the same time, yes.

4 Q. And the GBL in the a EPA--sorry for all the  
5 acronyms--was set at << [REDACTED]

7 A. That's correct.

8 Q. << [REDACTED]

11 A. Through the LDA we compensated them to build  
12 the generating facility and deliver us a set amount of  
13 energy. That amount of energy was locked in as the  
14 GBL for the EPA, so in that sense we're paying them or  
15 we did pay them to build the generator and paid them  
16 to produce incrementally above that initial agreement  
17 at their cost to buy new fuel and provide more energy  
18 to us.

19 Q. So, Canfor has no uncompensated self-supply  
20 obligation; correct.

21 A. They have no un--well, are you talking just  
22 about the P.G. Mill itself?

05:07:50 1 Q. Yes, just P.G. Mill?

2 A. Okay. So, they only operate one generator,  
3 and that's the same one that we have the LDA and the  
4 EPA located at.

5 Q. So, they have no uncompensated self-supply  
6 obligation; correct?

7 A. Well, I can't say that exactly because the PG  
8 Mill and the Intercon Mill are located behind the same  
9 point of metering, so effectively we treat them like  
10 one site.

11 Q. Okay. So, the one site has no uncompensated  
12 load displacement?

13 A. Yes.

14 Q. Thank you.

15 And the same is true for the Conifex sawmill;  
16 is it not?

17 A. The Conifex sawmill.

18 Q. They have an EPA and an LDA--

19 A. They do.

20 Q. --on the same day.

21 A. Yes.

22 Q. << [REDACTED]





04:57:24 1 Q. If I'm looking at the value of the load  
2 displacement they provide today, that would be the  
3 same?

4 A. Sure. If they're offsetting at that  
5 particular amount of energy today the same as they had  
6 in the past, it would be valued at today's dollars on  
7 today's energy value, I suppose, yes.

8 Q. How much has BC Hydro paid Celgar for  
9 load-displacement services?

10 A. How much--BC Hydro doesn't have a Load  
11 Displacement Agreement with Celgar.

12 Q. How much did FortisBC pay Celgar for load  
13 displacement?

14 A. I'm not sure that they had a Load  
15 Displacement Agreement with Fortis, either.

16 Q. Do BC Hydro and its ratepayers benefit from  
17 Celgar's self-supply?

18 A. Celgar isn't a directly supplied customer of  
19 BC Hydro's. They are a customer of FortisBC.

20 FortisBC is a customer of BC Hydro's, so,  
21 indirectly, we supply some of the energy that  
22 ultimately would end up at the gate of Celgar's pulp

05:10:31 1 mill. Any amount of change or incremental generation,  
2 decremental generation that they may or may not  
3 produce at their site, directly effects Fortis. How  
4 it affects Fortis' purchases may directly affect  
5 BC Hydro's supply to Fortis, and I don't believe there  
6 is a direct correlation to anything that they do to  
7 BC Hydro that affects us directly or only indirectly  
8 through the PPA.

9 Q. If there is no direct effect, why did  
10 BC Hydro go to the Commission in 2009 to amend the PPA  
11 when Celgar sought to withdraw its load displacement?

12 A. Well, I wasn't part of the regulatory  
13 proceedings at that time. I can only tell you  
14 second-hand what I am aware of. So your question was  
15 why did BC Hydro go to the regulatory process?

16 Q. Why did BC Hydro go to the Public Utilities  
17 Commission and asking them to restrict  
18 Celgar--restrict FortisBC from supplying Celgar with  
19 PPA Power if you didn't think there was going to be an  
20 effect on BC Hydro?

21 A. Well, I don't think BC Hydro put that kind of  
22 a restriction on Celgar directly. I think what we

05:11:47 1 said was, if Celgar--and again, these are my words,  
2 based on my understanding--if Celgar was to sell some  
3 of its energy, self-generated energy, below its  
4 physical load on the Fortis's system, that would be  
5 between Fortis and Celgar, being that Celgar--Fortis,  
6 rather, is Celgar's supplying utility.

7           What we were concerned with, however, was  
8 that if there was arbitrage opportunity in that  
9 circumstance that came to light, then Fortis would  
10 then have to show BC Hydro that any replacement energy  
11 that they had agreed to offset Fortis's now newly sold  
12 energy shouldn't be coming from BC Hydro at the  
13 risk--at the cost of doing the repairs.

14       Q.    I understand that's what you asked for. I'm  
15 just trying to understand the reasons why you were  
16 asking for that--let me finish the question, please.

17       A.    Sorry.

18       Q.    And was it because you understood that there  
19 could be a direct effect on BC Hydro and its  
20 ratepayers if by Celgar selling its self-generated  
21 electricity, FortisBC would draw more power under the  
22 PPA and you would have to backfill that power with

05:13:04 1 more expensive high marginal-cost power. That was a  
2 concern, wasn't it?

3 A. That--that is the concern, yes.

4 Q. And at the time, I believe, BC Hydro told the  
5 Commission that they thought the cost to its  
6 ratepayers would be about \$14 million? Does that  
7 sound about right?

8 A. I can't comment on the value. I said I  
9 wasn't part of the ongoing discussions at that time.

10 Q. Fair enough.

11 So, if--I'm trying to understand if Celgar's  
12 sales of its self-generated electricity can impose a  
13 cost on BC Hydro, then the fact that it's using it to  
14 self-supply must provide a benefit to BC Hydro and its  
15 ratepayers; isn't that correct?

16 A. The direct benefit, I think, would be to its  
17 own utility, Fortis, given that it operates in  
18 Fortis's supply area, its operational jurisdiction,  
19 the direct impact would be to Fortis. If there is  
20 truly new incremental energy from anyone in Fortis's  
21 jurisdiction entering into the system, Fortis then  
22 would get the benefit of not having to buy as much

05:14:16 1 from their other sources or produce as much from their  
2 own sources.

3 Q. Okay--I'm sorry, I didn't mean to interrupt.  
4 Were you done?

5 A. I think so.

6 Q. Okay. So, that's the direct effect on  
7 Fortis, but there is also an indirect effect on  
8 BC Hydro?

9 A. There may be, depending on what Fortis  
10 chooses to replace that new energy or lack of new  
11 energy with. They would buy some. I believe their  
12 portfolio includes BC Hydro, some external purchases  
13 from market and a good portion of their own supply.

14 Q. I guess I'm a little confused then, because I  
15 understood you were saying there would be harm to  
16 BC Hydro if Celgar ceases to self-supply. It must  
17 mean that there must be a benefit to BC Hydro from  
18 Celgar supplying. You can't have harm without the  
19 benefit; right?

20 A. I think that has--there is potential risk  
21 that BC Hydro would supply--would have to supply or be  
22 expected to supply FortisBC with more energy than they

05:15:16 1 otherwise would.

2 Q. And the fact that Celgar prevents them from  
3 having to do that provides a benefit to BC Hydro and  
4 its ratepayers?

5 A. It provides a stable planning environment for  
6 the utilities to understand that they have to buy more  
7 or not. How much they have to supply on a daily,  
8 hourly and annual and multiple-year basis goes into  
9 the planning of the utilities. It definitely changes  
10 the plans and it may put more pressure on Fortis to  
11 ask for more energy than they had contracted with or  
12 had anticipated--

13 (Overlapping speakers.)

14 Q. I understand the plan. I'm not asking about  
15 the plans. I understand utilities have planning  
16 needs. We all have planning needs. I'm just trying  
17 to understand the benefits and the costs here.  
18 BC Hydro asserted to the Commission that it would be  
19 harmed if Celgar provided load-displacement services,  
20 so I assume to some extent, BC Hydro and its  
21 ratepayers are getting a benefit when Celgar does  
22 provides load displacement.

05:16:12 1 A. Status quo--

2 MR. DOUGLAS: Mr. President, I mean, for the  
3 record, Mr. Dyck is an expert on GBLs and works for  
4 the Key Accounts Management Group at BC Hydro,  
5 not--he's made it clear he's not an expert on the PPA  
6 and the relationship between FortisBC and BC Hydro.  
7 I'm happy to let him continue, but I just wanted to  
8 make that clear. I did ask Mr. MacLaren some  
9 questions on direct. The Claimant did not pursue that  
10 with Mr. MacLaren, and they seek to now with Mr. Dyck.  
11 I just wanted to put that on the record. Thank you.

12 PRESIDENT VEEDER: It's on the record.

13 But continue.

14 THE WITNESS: Sorry, you asked a question  
15 just again.

16 MR. SHOR:

17 Q. Before the interruption.

18 I was trying to understand how you could be  
19 harmed unless you're benefiting.

20 A. Clearly, I haven't been successfully  
21 answering your question. I don't know that you  
22 inherit a benefit when you assume a static normal

05:17:28 1 state of operations for so many years. So, I don't  
2 know that we would attribute a benefit. We could only  
3 see that there is a downside if they stopped doing  
4 what they had been doing historically. And I think  
5 that's the best answer I can give to you.

6 Q. So, because the benefit has been provided for  
7 a long period of time, you discount it; is that what  
8 you're saying?

9 A. No, you assume it's the state of normal  
10 operations and that's what you're planning on going  
11 forward, but I don't know that I should say anymore  
12 than that. I think that that's the best answer I can  
13 give.

14 Q. Is it fair to say that BC Hydro's rates are  
15 lower than they would otherwise be for its own  
16 customers because of this long-standing load  
17 displacement by Celgar?

18 A. I don't think I would say that.

19 Q. Well, let me put it this way: If Celgar had  
20 not installed self-generation in 2000--in 1993 and  
21 instead had taken all its power from FortisBC and  
22 FortisBC, in turn, had to backfill all that power from



05:18:20 1 BC Hydro through the PPA, would BC Hydro's rates be  
2 higher than they are today?

3 A. I don't know that.

4 Q. You can't speculate at all?

5 A. No. I'm not prepared to speculate on that.

6 Q. Why wouldn't they be?

7 A. I don't know.

8 Q. You don't know how rates work?

9 A. I have an understanding of how rates work or  
10 are developed.

11 Q. If BC Hydro's costs would go up, wouldn't  
12 that increase the rates?

13 A. As costs go up, rates can change, yes.

14 Q. And BC Hydro's costs would be higher if it  
15 had to supply more power to Fortis under the PPA,  
16 would it not?

17 A. We probably would be selling to Fortis a  
18 little bit more energy.

19 Q. And, indeed, that's the reason for the  
20 G-48-09 proceeding because you wanted to save your  
21 ratepayers those higher costs?

22 A. Our job as a utility is to minimize the rate

05:19:05 1 increases to our ratepayers, yes.

2 Q. So, if Celgar had not been self-supplying the  
3 rates would be higher than they otherwise would--than  
4 they are today; isn't that a fact?

5 A. Again, I'm not going to comment. I don't  
6 know that to be a fact, no.

7 Q. You're familiar, I take it, with the GBL and  
8 Exclusivity Provisions in Section 7.4 of Celgar's 2009  
9 EPA?

10 A. I have some familiarity with the actual  
11 contract, although I didn't have a direct hand in  
12 negotiating through the Contract provisions of that  
13 type.

14 Q. But you understand that they effectively  
15 require Celgar to use 349-gigawatt hours a year, its  
16 GBL, for self-supply because the Contract prohibits  
17 Celgar, unless the Side Letter is activated, from  
18 selling that electricity to anyone else; correct?

19 A. All I know is that the 349-gigawatt hours is  
20 a threshold that we established, and we've called it a  
21 contracted Generator Baseline, a contracted GBL, and  
22 the Power Acquisitions Group, who actually develop,

05:20:25 1 negotiate and manages the EPA, agrees that any energy  
2 above that threshold, that 349 baseline, is eligible  
3 to sell.

4           What they do with their energy below the 349  
5 is, in my opinion, something that they can deal with  
6 between themselves and Fortis because that's the load  
7 that was represented in the FortisBC's jurisdiction.

8       Q.   Really? Your Exclusivity Provision in 7.4  
9 does not preclude Celgar from selling that electricity  
10 to anyone else?

11       A.   Again, I'm not familiar on all of the words.  
12 I know that there is an exclusivity--

13       Q.   Shall we bring up the provision? Would that  
14 help?

15       A.   You know, you can if you want. I can try to  
16 comment. But I wasn't party to the development of  
17 that clause, I didn't participate in the negotiations  
18 of it, so I'm probably not the right person to ask.

19       Q.   So, you set GBLs, but you don't have the full  
20 understanding on how they're used?

21       A.   I set a GBL to determine and to help the  
22 negotiating team, the people that are managing the EPA

05:21:31 1 contracts, that's within BC Hydro's Energy Acquisition  
2 Group, to define what is a normal Generator Baseline;  
3 and there, in this case, you're referring to Celgar's,  
4 it was 349, and that defines what is then eligible  
5 energy for these folks to bring into their contract  
6 negotiations.

7 Q. Okay. So, as far as you understand, the GBL  
8 just sets the demarcation point above which BC Hydro  
9 would buy the power and what Celgar does with the rest  
10 of its power is not of concern?

11 A. So long as BC Hydro isn't negatively impacted  
12 by what they do with the rest of the power, yes.

13 Q. Okay. I just want to understand.

14 So, on the load-displacement side, you paid  
15 for load displacement from Howe Sound, Canfor,  
16 Weyerhaeuser Domtar, and you're not aware that you  
17 require Celgar to provide load displacement; right?

18 A. Until all of this began a few years ago, I  
19 wasn't aware of Celgar and the implications of them  
20 operating in the neighboring jurisdiction at all, no.

21 Q. Okay.

22 Can you turn to Paragraph 28 of your First

05:22:55 1 Statement?

2 A. Which paragraph, please?

3 Q. Twenty-eight.

4 You talk about incentives, a financial  
5 incentive in the last sentence under an LDA. So, the  
6 purpose of an LDA is to incentivize new generation; is  
7 that accurate?

8 A. Yes.

9 Q. And do you, as part of the Power Smart  
10 Program, do you require the self-generator or the  
11 potential self-generator, to prove or to establish to  
12 you that they wouldn't otherwise--it wouldn't  
13 otherwise be economic for them to install that  
14 generation itself?

15 A. They do have to show us the financials, the  
16 technical engineering, the Scope of Work, and often,  
17 as a part of the Power Smart Program, we also--we  
18 actually work together with them right from the early  
19 stages of developing the Project.

20 Inasmuch as we find out about the technical  
21 and the financial cost to build a proposed project, we  
22 also learn from the customer by working with them what

05:24:28 1 the hurdles are that they will have to encounter and  
2 overcome to get their capital project approved.

3           Generally speaking, if the Project was very  
4 cost-effective in offsetting our rates alone, the  
5 customers would be doing it on their own and we  
6 wouldn't be participating if it was that  
7 cost-effective.

8       Q.   Well, sometimes companies have trouble  
9 raising capital, don't they?

10      A.   Sometimes they do.

11      Q.   So, it may be cost effective but they just  
12 haven't done it yet too, also?

13      A.   That's not highly likely. I think that to  
14 the degree that, I mean, a load displacement project  
15 could be a brand new greenfield project, in which case  
16 it's very, very expensive, and most of the large  
17 industrial pulp and paper-based industries that we  
18 deal with over the past number of years haven't  
19 exactly been flush with capital or cash, and they need  
20 to see some very quick returns on their investments to  
21 compete with other projects in the Mill. I don't  
22 think that any one of them could find a load

05:25:27 1 displacement project that sees a two or, you know,  
2 two-and-a-half year kind of a simple payback on their  
3 own, given the rates that they are offsetting.

4 Q. So, in order to determine whether an  
5 incentive is necessary, you basically assume that if  
6 they haven't built it yet, then an incentive is  
7 necessary?

8 A. Again, they have to come to us with a lot of  
9 information, including costs, and we do have  
10 discussions about the costs. And we don't--I should  
11 also clarify with you, we never, in any case, pay for  
12 the full financial cost of the public capital project  
13 either. We pay a portion of it.

14 Q. No, I understand that.

15 Is there anything in the Power Smart rules  
16 and regulations that would require you to or that  
17 would make a project ineligible if you were to  
18 conclude that it was likely that the self-generator  
19 would make the investment itself?

20 A. There have been projects turned down, so, if,  
21 by that, I can say they're ineligible because we  
22 didn't provide enough funding to make the customer

05:26:30 1 agree to building it, then yes, that has happened.

2 Q. Okay, but that wasn't my question.

3 Could you read back the question, please?

4 (Whereupon, the Court Reporter read back the  
5 previous question.)

6 THE WITNESS: I can't point to any specific  
7 rule or regulation within the Power Smart Programs, to  
8 answer that question, so I have to answer I don't know  
9 exactly for sure.

10 BY MR. SHOR:

11 Q. So, as you sit here today, you're not aware  
12 that that would render the Project ineligible?

13 A. I can't say definitely, no.

14 Q. So, isn't the real difference, then, between  
15 why Howe Sound, Canfor, Weyerhaeuser, Conifex and at  
16 Nechaeko were eligible for BC Hydro incentive was that  
17 they all came to you and asked you to pay for their  
18 generation before they built it, but Celgar built it  
19 on its own?

20 A. I'm not sure I understand the question. Can  
21 you please repeat it?

22 Q. Celgar's not eligible for one of these, for a



05:27:57 1 load-displacement incentive, or for an EPA with  
2 respect to its original generation because it built it  
3 on its own; correct?

4 A. Celgar is eligible to sell incremental power  
5 from its original generation or its new generation  
6 beyond what it did historically.

7 I believe also you may want--I need to  
8 clarify: They're eligible to sell that to BC Hydro if  
9 BC Hydro has a program that they're qualified to  
10 participate in. BC Hydro does not fund Load  
11 Displacement Agreements through Power Smart Program to  
12 customers that operate in other jurisdictions who are  
13 not a BC Hydro customer.

14 Q. Right, but you can go to the Commission and  
15 have them curtail their utility power if they try and  
16 end their load displacement?

17 A. We have an agreement between BC Hydro and  
18 FortisBC, so between us there is a supply-customer  
19 arrangement. Fortis--or rather, Celgar isn't directly  
20 a part of that arrangement that BC Hydro has with  
21 FortisBC.

22 Q. So, you can provide--you can obtain benefits

05:29:14 1 from Celgar's self-generation, but you're prohibited  
2 from paying for it because they're not a customer?

3 A. I think I said before, the benefit for Celgar  
4 to BC Hydro isn't in a direct line of sight. Our  
5 dealings are--BC Hydro's dealings, as far as  
6 utility-supplied power, are directly between BC Hydro  
7 and Fortis.

8 Q. We had the whole discussion before about  
9 direct and indirect. We all understand that?

10 A. Yeah.

11 Q. There is a direct impact on FortisBC and an  
12 indirect impact on BC Hydro?

13 A. Right.

14 Q. BC Hydro's position, because Celgar is a  
15 customer of BC Hydro, they can't receive any benefits  
16 for providing load displacement, but when they cease  
17 to provide that load displacement, you can stop it;  
18 correct?

19 A. So, BC Hydro, as a separate standing-alone  
20 utility, has a demand-side measures plan and program  
21 that gets approved through the Utilities Commission in  
22 our Resource Plan.

05:30:14 1 Fortis, as a utility themselves, may or may  
2 not have a plan like that, but they certainly could  
3 develop one.

4 Q. Okay, so--

5 A. In that case, Celgar would be in line to  
6 participate in their program. But we are not a  
7 direct-supplying utility to Celgar, so they  
8 don't--they're not eligible for load displacement  
9 programs through Power Smart.

10 Q. So, because any benefit Celgar supplies to  
11 you is indirect, they're not eligible to be  
12 compensated for it?

13 A. Except for the compensation in the EPA that  
14 they have with us.

15 Q. But that's not for the load displacement.  
16 That's for the 238, not for the 349.

17 A. Sure.

18 Q. Okay. But you still seem to think that BC  
19 Hydro can impose a--no, strike that.

20 Okay. But the indirect relationship between  
21 you and Celgar doesn't stop you from trying to  
22 influence how Celgar is affected by FortisBC; correct?

05:31:24 1       A.    I don't believe any of the dealings between  
2 BC Hydro and Fortis regarding the Power Purchase  
3 Agreements between the two utilities gives any direct  
4 consideration to what any of the customer loads within  
5 Fortis's jurisdiction--

6       Q.    Well, I understand you may not have given it  
7 any consideration, but you certainly understood that  
8 Order G-48-09 would have an effect on Celgar, didn't  
9 you?

10       A.    It probably does, but only because it has an  
11 effect on their utility.  It doesn't directly tell  
12 them how they have to operate or not.  It tells their  
13 utility what they're allowed and not allowed to do in  
14 front of the B.C. Utilities Commission.

15           MR. SHOR:  Mr. President, now may be a good  
16 point to break.

17           PRESIDENT VEEDER:  Let's break now, then, and  
18 we will resume at 9:00 on Monday morning.

19           We would ask you not to discuss the case or  
20 your testimony until you come back on Monday morning.

21           THE WITNESS:  Certainly.  All right.

22           PRESIDENT VEEDER:  Thank you very much.

05:32:28 1                   THE WITNESS: Thank you.

2                   (Whereupon, at 5:32 p.m., the Hearing was  
3 adjourned until 9:00 a.m., Monday, July 27, 2015.)

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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

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DAVID A. KASDAN

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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.

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DAWN K. LARSON