

PCA Case No. 2013-22

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER
ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE 2010 UNCITRAL ARBITRATION RULES
BETWEEN:

WINDSTREAM ENERGY LLC

Claimant

- and -

GOVERNMENT OF CANADA

Respondent

TRANSCRIPT OF PROCEEDINGS
held at the offices of Arbitration Place,
333 Bay Street, Suite 900, Toronto, Ontario,
on Friday, February 19, 2016 at 9:02 a.m.

FULL TRANSCRIPT
(including confidential and
restricted access information)

VOLUME 5 - REVISED MAY 12, 2016
CONDENSED TRANSCRIPT WITH INDEX

BEFORE:

Dr. Veijo Heiskanen (President)

Mr. R. Doak Bishop

Dr. Bernardo Cremades

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APPEARANCES:

John Terry for the Claimant
Myriam Seers
Nick Kennedy
Emily Sherkey

Also present:

Various parties Deloitte
Client representative, David Mars

Sylvie Tabet for the Respondent
Shane Spelliscy
Rodney Neufeld
Heather Squires
Susanna Kam
Jenna Wates
Valantina Amalraj
Melissa Perrault
Darian Parsons

Also present:

Various parties, Berkeley Research Group,
URS, Ministry of Citizenship, Immigration and
International Trade/Ministry of Economic
Development, Employment and Infrastructure, Ministry
of the Attorney General, Crown Law Office - Civil,
Ministry of Energy, Ministry of Natural Resources
and Forestry, Ministry of the Environment and
Climate Change, Independent Electricity System
Operator (Formerly the Ontario Power Authority)

Teresa A. Forbes Court Reporter

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1 Toronto, Ontario
2 --- Upon resuming on Friday, February 19, 2016
3 at 9:02 a.m. 09:02:04
4 PRESIDENT: Okay. Good 09:02:04
5 morning, ladies and gentlemen. Welcome back. We 09:02:05
6 are at Day 5 in the hearing of NAFTA case 09:02:08
7 Windstream Energy LLC v. Government of Canada. 09:02:16
8 There was some indication last 09:02:20
9 night that we might have a procedural issue that 09:02:24
10 the Respondent would like to raise. 09:02:27
11 MR. SPELLISCY: Yes, we still 09:02:31
12 do. I did consult with my colleague Mr. Terry, 09:02:32
13 and -- and we had some discussions. I don't think 09:02:35
14 that I could say we've been able to resolve it, so 09:02:38
15 I would like to put our point on the record as 09:02:40
16 well. 09:02:43
17 MS. NETTLETON: Should we be 09:02:46
18 on the video? 09:02:47
19 PRESIDENT: This is not 09:02:48
20 confidential, I assume? 09:02:49
21 MR. SPELLISCY: No. It 09:02:51
22 happened on public session. 09:02:53
23 PRESIDENT: Okay. We go on 09:02:53
24 feed. 09:02:53
25 MR. SPELLISCY: It might be 09:02:53

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1 With respect to the 09:04:28
2 confidential documents, though -- and this is 09:04:28
3 where -- where my concern arises -- and to me, it 09:04:31
4 is a point of what is good for the goose is good 09:04:33
5 for the gander because we had yesterday Ms. Powell 09:04:37
6 introduce evidence on her experience on financing, 09:04:40
7 which had not been in her expert reports, and as I 09:04:43
8 noted, we didn't object. I think it came out in 09:04:46
9 response to a question. I had no objection to it. 09:04:48
10 The issue is, of course, is that she has not put 09:04:52
11 into the record any evidence, any of the documents 09:04:54
12 on such opinions. 09:04:57
13 If the Tribunal considers that 09:04:59
14 having us walk through her testimony with her, 09:05:04
15 pointing out, again, what her oral testimony point 09:05:07
16 out and you don't have documents to support that, 09:05:12
17 and you don't have documents in the record to 09:05:14
18 support, then I would ask that Ms. Powell come 09:05:17
19 back and we'll do that. I wouldn't find that a 09:05:20
20 particularly useful exercise, but we can do that 09:05:22
21 if the Tribunal think that it's useful. 09:05:24
22 What I would just note is that 09:05:26
23 the Tribunal has already noted that these issues 09:05:28
24 go to the weight of the opinions offered. That's 09:05:30
25 already in the Tribunal's ruling. 09:05:33

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1 boring. 09:02:54
2 [Laughter.] 09:02:55
3 PRESIDENT: Well, by 09:02:56
4 definition, perhaps. 09:02:57
5 PROCEDURAL MATTERS: 09:03:33
6 PRESIDENT: Yes, 09:03:33
7 Mr. Spelliscy. 09:03:35
8 MR. SPELLISCY: Thank you. 09:03:35
9 This actually relates to an issue that I raised 09:03:38
10 after the examination of Ms. Powell yesterday, and 09:03:41
11 I said that if certain lines continued, I would 09:03:44
12 make an objection, and those lines continued, and 09:03:48
13 so now I will put my objection formally on the 09:03:50
14 record. And it relates to the fairly frequent 09:03:53
15 lament of the Claimant at this point that it 09:03:57
16 doesn't have the documents, particularly from 09:03:59
17 Mr. Guillet, to support his opinions. 09:04:03
18 And at the end of a rushed 09:04:05
19 session yesterday with Mr. Guillet, we went 09:04:09
20 through paragraph after paragraph with counsel 09:04:12
21 putting to Mr. Guillet that he had not produced 09:04:14
22 the documents, which Mr. Guillet explained were 09:04:18
23 either confidential, already in the possession of 09:04:21
24 the Claimant's own experts, Sgurr in particular, 09:04:23
25 or public documents. 09:04:26

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1 I don't intend, and I 09:05:35
2 certainly would hope that this doesn't become a 09:05:37
3 refrain, but if it must, it must. But I would 09:05:39
4 point out that both sides have now -- and it's not 09:05:42
5 just with Ms. Powell. There's issues with the 09:05:45
6 documents presented by Sgurr, in our opinion. 09:05:48
7 There are issued with the documents presented by 09:05:51
8 4C in our opinion. 09:05:53
9 In terms of this, if -- if the 09:05:54
10 Tribunal wants, we can certainly do the same thing 09:05:56
11 with our witnesses. I don't find it particularly 09:05:58
12 useful. I think the Tribunal should take note 09:06:01
13 that the experts have offered opinions based 09:06:03
14 generally on their experience and that -- and note 09:06:05
15 that everything else will go to weight and that we 09:06:07
16 move on from this -- this refrain that they don't 09:06:09
17 have the evidence to support what they did. 09:06:13
18 I don't think it's true, but 09:06:15
19 you've also had Mr. Guillet here, who was able to 09:06:16
20 answer questions on cross. They have had his 09:06:18
21 report for months. We, of course, didn't get that 09:06:21
22 opportunity with Ms. Powell, who presented this at 09:06:23
23 the last minute. We had no notice. But, at the 09:06:25
24 same time, I would just ask that, if the Tribunal 09:06:28
25 is hearing this, that we have the same issues and 09:06:31

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1 problems with the Claimant's production and that 09:06:34
2 they understand that it should go to weight on 09:06:36
3 both sides. 09:06:38
4 Thank you. 09:06:39
5 PRESIDENT: Mr. Terry. 09:06:40
6 MR. TERRY: Yes. A number of 09:06:42
7 points. With respect to Ms. Powell, my friend 09:06:44
8 indicated his issue yesterday evening to me, and I 09:06:48
9 checked with Ms. Powell, and she indicated that 09:06:52
10 she is certainly prepared to -- if my friend has 09:06:55
11 requests for any documents or other information 09:06:58
12 with respect to what she said, she is prepared to 09:07:01
13 provide that. In fact, if you -- she indicated to 09:07:03
14 me, if you look to her witness statement and you 09:07:06
15 look to her CV, you will see there a very long 09:07:08
16 list of the various lenders and other institutions 09:07:12
17 she's acted for with respect to these projects. 09:07:16
18 It's all publicly available information. It is 09:07:18
19 all there in relation to public reports with 09:07:21
20 respect to the projects as to who the equity and 09:07:23
21 debt finances -- financiers are. 09:07:25
22 So we are happy to provide 09:07:27
23 that information. Even though it's public, we're 09:07:29
24 happy to point out where it is, and we're also 09:07:31
25 happy to have Ms. Powell return and asked 09:07:34

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1 documentation so that our experts could examine 09:08:36
2 this and respond. And the same with BRG with 09:08:38
3 respect to one particular issue there. And you 09:08:41
4 made your ruling on that. I certainly -- my only 09:08:44
5 point, as I thought I really had to on the record 09:08:47
6 put this to the witness and give him an 09:08:50
7 opportunity to say, "Yes, I would provide further 09:08:52
8 information at the time." So that's why I felt it 09:08:56
9 was necessary to go through that yesterday. 09:08:59
10 With respect to -- the other 09:09:00
11 point I would make is -- is in my respectful 09:09:03
12 submission, there is a difference between the type 09:09:06
13 of information that Ms. Powell was giving about 09:09:08
14 the nature of the lenders who provided debt and 09:09:10
15 equity financing in relation to her practice as 09:09:15
16 opposed to the very granular information in the 09:09:17
17 Green Giraffe report. You will recall the various 09:09:21
18 tables. It had very specific information with 09:09:23
19 respect to transactions, which included not only 09:09:25
20 monetary figures but various dates when certain 09:09:28
21 things occurred at a sort of granular level. But 09:09:30
22 really for -- for someone to assess that and 09:09:34
23 someone to respond to that, you need to have the 09:09:36
24 underlying data. 09:09:38
25 That's really, I think, all I 09:09:41

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1 questions with respect to that information. 09:07:36
2 As I say, last night was the 09:07:37
3 first time that that request was made. I 09:07:39
4 appreciate that this -- some of this additional 09:07:41
5 information came out in examination response to 09:07:44
6 Tribunal's questions and me asking further 09:07:46
7 questions there. As my friend noted, he didn't 09:07:49
8 object to that. So we are certainly happy to 09:07:51
9 comply with the -- with the procedural order, 09:07:55
10 which is the idea with respect to, where people 09:07:58
11 request information with respect to underlying 09:08:01
12 documents, it should be provided, and we certainly 09:08:03
13 have -- any request that my friends have made for 09:08:06
14 additional underlying documents from expert 09:08:10
15 reports, we have provided them. 09:08:12
16 I may note with respect to 09:08:13
17 Sgurr or 4C, this is the first time that I'm 09:08:15
18 hearing about any issues there, and there have 09:08:18
19 been no requests for any further underlying 09:08:20
20 documents. 09:08:23
21 On the other hand, with 09:08:23
22 respect to the report of Green Giraffe, 09:08:25
23 Mr. Guillet's report, as the Tribunal will recall, 09:08:27
24 we made very specific requests with respect to 09:08:29
25 various sections where we cited we needed further 09:08:33

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1 -- all I need to say on this. As I say, we're 09:09:45
2 happy to provide this information. Ms. Powell is 09:09:47
3 available any of the days next week if it makes 09:09:51
4 sense for her to attend. And, again, I would 09:09:54
5 point out to the Tribunal that this information as 09:09:56
6 to the various lenders is public information, and 09:10:00
7 much of it is set out already in the -- in the 09:10:03
8 expert report of Sarah Powell, in her curriculum 09:10:06
9 vitae. 09:10:09
10 PRESIDENT: Yes, 09:10:11
11 Mr. Spelliscy. 09:10:13
12 MR. SPELLISCY: Just a very 09:10:13
13 brief point on the nature of the information. I 09:10:16
14 think what -- what really sparked my concern was, 09:10:18
15 in Mr. Terry's questioning of Mr. Guillet 09:10:21
16 yesterday, he said to Mr. Guillet that, "Wouldn't 09:10:24
17 you agree with me that Sarah Powell has the best 09:10:28
18 position to provide an opinion on FIT financing 09:10:31
19 and the terms that you would get?" Now, Mr. 09:10:35
20 Guillet had a response to that, which was we can 09:10:37
21 all look back in the transcript and see. 09:10:38
22 But I think, on that, it's not 09:10:41
23 just a question of whether she has done. He has 09:10:43
24 now put Ms. Powell forward as knowledgeable and, 09:10:46
25 in fact, more knowledgeable than Mr. Guillet about 09:10:49

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1 financing, which was not something before. So 09:10:51
2 it's not a matter of knowing she has worked in the 09:10:54
3 financing thing. If he is going to be offering 09:10:57
4 her that way, then as we noted in our response to 09:10:59
5 the motion, which surprises me, because we did 09:11:02
6 mention Sgurr in our response to the motion and 09:11:04
7 the documents that were lacking there, then we're 09:11:07
8 going to be asking for things like, you know, we 09:11:08
9 want to see exactly what they asked, for the deal 09:11:10
10 sheets, the terms, all the underlying information, 09:11:13
11 which I would, really, in my view, not feel all 09:11:15
12 that comfortable asking for because, for me, it's 09:11:18
13 third-party business confidential information, 09:11:20
14 which she will require the consent of her clients 09:11:22
15 to waive. 09:11:24
16 If I was one of her clients, I 09:11:25
17 wouldn't give that consent, but if that's where 09:11:27
18 we're going on this, then we can go there. 09:11:29
19 As for, you know, whether we 09:11:32
20 can do her next week, I think that's an open 09:11:33
21 question. It would depend upon whether we get the 09:11:36
22 information in time. We're already running past 09:11:38
23 schedule. Even though we're running long days, 09:11:40
24 we're running past hours even though -- because of 09:11:43
25 the Tribunal's willingness to sit late, we're on 09:11:45

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1 a system in place for that. 09:12:56
2 In our view, subject to what 09:12:57
3 my colleagues have to say, the Tribunal doesn't 09:13:00
4 believe that, during the examination of witness, 09:13:03
5 it is necessary to go and point out item by item 09:13:05
6 the parts of the expert report for which the 09:13:09
7 underlying evidence has not been produced. That 09:13:15
8 could be done in submissions, in the post-hearing 09:13:18
9 submissions. That could be -- it could be 09:13:21
10 identified at that stage. 09:13:23
11 If there is a particular 09:13:24
12 reason for counsel to highlight some of the 09:13:26
13 underlying or the nature of the underlying 09:13:31
14 information that has been provided, you're 09:13:33
15 certainly free -- feel free to do so, but we don't 09:13:35
16 think it's necessary. What would be better is 09:13:39
17 to -- is for counsel to identify the relevant 09:13:41
18 parts of the expert report which are in -- in that 09:13:45
19 party's submission, not supported by the 09:13:49
20 underlying documentation. But I don't think we 09:13:52
21 need to do a paragraph-by-paragraph accounting 09:13:53
22 during the examination of a -- of a witness. 09:13:56
23 As to statements made by 09:13:59
24 experts or witnesses which are not supported by 09:14:03
25 underlying documentation, there is -- there are 09:14:07

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1 at least a daily schedule. 09:11:48
2 So I think there are a lot of 09:11:49
3 questions up in the air as to whether or not 09:11:51
4 that's feasible, especially since, I think, for 09:11:53
5 the information we'd ask for, she would have to 09:11:55
6 get the consent of clients. 09:11:57
7 PRESIDENT: Now, just two 09:11:59
8 reminders: There are already rulings in place, 09:12:01
9 first, as to admission of new evidence. This was 09:12:04
10 debated during the prehearing conference call, and 09:12:07
11 there was a deadline set for production of new 09:12:10
12 evidence. If either party wishes to produce new 09:12:13
13 documentary evidence, then the condition is you 09:12:15
14 would have to ask for the first consultant confer. 09:12:19
15 If there's no agreement, seek leave from the 09:12:22
16 Tribunal. There would have to be rather 09:12:26
17 compelling reasons for new evidence because there 09:12:29
18 was already an agreement and on a deadline for any 09:12:32
19 new evidence. That's one thing. 09:12:35
20 The second is there's already 09:12:36
21 a ruling in place as to how the Tribunal deal 09:12:38
22 with -- will deal with and assess the evidence 09:12:41
23 underlying some of the expert reports, which was 09:12:46
24 -- which was not made available or produced 09:12:50
25 because it was third party-confidential. There's 09:12:52

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1 procedural rules in place in the UNCITRAL rules 09:14:10
2 and in PO 1 as to how to deal with those -- those 09:14:13
3 issues. 09:14:17
4 So it seems to us that we have 09:14:17
5 already a mechanism in place to deal with all of 09:14:20
6 these issues. Perhaps the practical guidance is 09:14:23
7 there is no need to do this with each expert, to 09:14:26
8 point out during the examination as to -- to which 09:14:29
9 part of the expert report there is no underlying 09:14:33
10 evidence. 09:14:36
11 But this is all noted, and our 09:14:37
12 preference would be that this issue is addressed 09:14:42
13 in submissions because it goes to the weight of 09:14:44
14 the evidence offered by the witnesses and experts. 09:14:46
15 MR. TERRY: Thank you for that 09:14:52
16 guidance. And just, again, for the record, we 09:14:53
17 certainly remain able to assist our friends in 09:14:56
18 providing additional information if they do want 09:14:59
19 to pursue that. 09:15:02
20 MR. SPELLISCY: Thank you. 09:15:03
21 PRESIDENT: Okay. Thank you 09:15:04
22 very much. There was some indication that we -- 09:15:05
23 that the Claimant may wish to call back 09:15:08
24 Mr. Cecchini, but I also understand there has been 09:15:11
25 discussion, further discussion, this morning. Do 09:15:14

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1 we have a conclusion? 09:15:17
2 MR. TERRY: I think we need to 09:15:18
3 probably consult a little bit more just to make 09:15:20
4 sure, but I think we're heading toward a 09:15:22
5 conclusion, unless -- we actually haven't had a 09:15:24
6 chance. I gave a proposal to my friend, but we 09:15:28
7 haven't had a chance to discuss it since then. 09:15:31
8 MR. NEUFELD: So we received a 09:15:33
9 proposal this morning for Mr. Cecchini to answer 09:15:34
10 certain questions. He is here this morning. He 09:15:39
11 -- he was asked to -- to attend this morning and 09:15:45
12 has made himself available. 09:15:49
13 He is -- his availability, 09:15:51
14 going forward, is -- is in doubt. His mother is 09:15:53
15 very ill, so he is heading up to Kingston, which 09:15:57
16 is a few hours away, over the weekend to help set 09:15:59
17 up the home for her to return from the hospital. 09:16:02
18 And he is here. As of this 09:16:05
19 morning, we were given these -- these questions at 09:16:09
20 8:30 when we came in. He has consulted them now, 09:16:12
21 and he is prepared to answer these questions as 09:16:15
22 best he can. And I think that's probably the 09:16:17
23 preferred approach for him to -- for us to move 09:16:19
24 forward with his evidence. 09:16:22
25 MR. TERRY: Yes. I hadn't 09:16:26

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1 heard that response. And what -- and I'm happy to 09:16:30
2 either do that, or we had suggested some 09:16:35
3 stipulation that could answer these -- these 09:16:38
4 questions. 09:16:39
5 What I think would make most 09:16:41
6 sense, from our perspective, is we're happy to go 09:16:43
7 ahead with the examination of Mr. Cecchini, but my 09:16:46
8 colleague, Myriam Seers would be the one to do it. 09:16:49
9 She is not here right now. She is just working 09:16:52
10 with another witness in terms of preparing a 09:16:55
11 cross-examination. 09:16:56
12 So what I would suggest is 09:16:57
13 that we go ahead with Mr. -- 09:16:59
14 PRESIDENT: Mr. Roberts. 09:17:03
15 MR. TERRY: Mr. Roberts is 09:17:04
16 here, and then we can deal with -- if, in the 09:17:05
17 meantime, I might speak further with my friend, 09:17:08
18 and if there are ways in which this information 09:17:10
19 can be stipulated without the need to call the 09:17:13
20 witness, we're certainly open to that as well. 09:17:15
21 PRESIDENT: Okay. So -- but 09:17:18
22 hopefully this issue is sorted out in the course 09:17:20
23 of the morning so that he doesn't need to wait the 09:17:22
24 whole day. 09:17:24
25 MR. TERRY: Yes. We're very 09:17:24

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1 sensitive to his issues. 09:17:26
2 PRESIDENT: Very good. So we 09:17:28
3 start with the -- start with the WSP and 09:17:29
4 Mr. Roberts. 09:17:31
5 Good morning, Mr. Roberts. 09:18:12
6 THE WITNESS: Good morning. 09:18:13
7 PRESIDENT: And welcome. To 09:18:14
8 begin with, if you could please state your full 09:18:20
9 name for the record and then read the declaration 09:18:23
10 of expert witness that you should have in front of 09:18:25
11 you. 09:18:28
12 THE WITNESS: Thank you. So 09:18:28
13 my name is Andrew Roberts, and I'll read this. I 09:18:29
14 solemnly declare upon my honour and conscience that 09:18:32
15 my evidence and my opinions will be in accordance 09:18:35
16 with my sincere belief. 09:18:37
17 AFFIRMED: ANDREW ROBERTS 09:18:41
18 PRESIDENT: Thank you very 09:18:41
19 much. And the parties have agreed that experts 09:18:42
20 would be able to make a brief presentation in lieu 09:18:47
21 of direct examination, but there could be a 09:18:53
22 combination of both as well. So is there going to 09:18:55
23 be any additional direct examination in addition 09:19:01
24 to the presentation by Mr. Roberts? 09:19:04
25 MR. TERRY: We just have, I 09:19:06

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1 think, one question. 09:19:07
2 PRESIDENT: Okay. Do you want 09:19:08
3 to do it now to begin with or at the end? 09:19:09
4 MR. TERRY: Probably at the 09:19:11
5 end. 09:19:12
6 PRESIDENT: Okay. Mr. Roberts 09:19:13
7 please go ahead with your presentation. 09:19:14
8 THE WITNESS: Thank you. Good 09:19:16
9 morning. So this morning I'm going to give you a 09:19:17
10 short presentation over the next 15 or 20 minutes 09:19:19
11 or so on a permitting review for the Wolfe Island 09:19:21
12 Shoals program. It may be there may be material 09:19:25
13 that's not shown on there. 09:19:40
14 MR. TERRY: Can we just take a 09:19:41
15 break to see if we can fix this technical issue? 09:19:43
16 MS. NETTLETON: Yes. 09:19:46
17 PRESIDENT: Yes. The pictures 09:19:48
18 are nice, but it would be good to have the text as 09:19:49
19 well. 09:19:51
20 [Laughter.] 09:19:52
21 PRESENTATION BY ANDREW ROBERTS, WSP 09:20:35
22 PRESIDENT: Yes. 09:20:35
23 THE WITNESS: Okay. So it 09:20:37
24 looks like we fixed the problem here. So just a 09:20:37
25 brief agenda for the presentation: I'm going to 09:20:40

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1 tell you a little bit about WSP and the kind of 09:20:43
2 work that we do. I'm going to highlight some of 09:20:46
3 WSP's experience in renewable energy, particularly 09:20:49
4 here in Ontario. Then I'm going to give you some 09:20:53
5 highlights from the schedule that we prepared as 09:20:56
6 part of our work here for the project. We have a 09:20:58
7 response to -- to some of the URS comments that 09:21:01
8 were received. And then I'm going to give you a 09:21:04
9 detailed explanation of the Renewable Energy 09:21:06
10 Approval regulation and its requirements and the 09:21:10
11 components that make up that submission. 09:21:12
12 So WSP is a global company 09:21:15
13 with -- with lots of employees across the world. 09:21:20
14 Here in Canada we have close to 9,000 employees. 09:21:23
15 We work in many different areas in energy, and 09:21:27
16 renewable energy is one of our specialty areas of 09:21:30
17 service. 09:21:32
18 We work in three sort of major 09:21:33
19 different areas in -- in wind energy and renewable 09:21:37
20 energy. So the first part is the development 09:21:40
21 process and things like wind resource assessment 09:21:42
22 as well as a facility engineering for all the 09:21:46
23 components. We also provide construction services 09:21:49
24 and contract management during construction 09:21:52
25 process, and as well we have -- we have a practice 09:21:54

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1 perhaps 30-plus projects relating to environmental 09:23:13
2 assessments and performance permitting for wind 09:23:16
3 and solar projects as well as providing advisory 09:23:19
4 services and risk reviews for renewable projects 09:23:22
5 here in Ontario as well as the United States. 09:23:26
6 General EA practice: I have 09:23:28
7 worked on 10-plus projects in transmission and 09:23:31
8 distribution, including transformer stations and 09:23:34
9 transmission lines as well as municipal 09:23:37
10 infrastructure projects, roads and bridges, and I 09:23:39
11 have some background as well in mining baseline 09:23:43
12 studies in Manitoba and New Brunswick. 09:23:45
13 I also have a role in terms of 09:23:48
14 environmental compliance, and we're currently 09:23:50
15 doing some work on five wind projects that are 09:23:53
16 under construction, and WSP is managing the 09:23:55
17 post-REA permits as well as managing the -- the 09:24:00
18 compliance with the permit conditions during 09:24:05
19 construction. I joined Genivar, which became WSP 09:24:07
20 in 2013, and I have been practising in 09:24:12
21 environmental-related projects for about 20 years. 09:24:17
22 And my educational background 09:24:20
23 is in urban planning and as well as applied 09:24:22
24 science and management. 09:24:25
25 So specific experience with 09:24:26

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1 for -- excuse me -- provides environmental 09:21:58
2 services and permitting services. 09:22:01
3 This is a -- a list of some 09:22:04
4 highlighted projects that we've been involved in. 09:22:06
5 So, globally, WSP has some experience with the 09:22:08
6 permitting process for offshore wind in the U.K., 09:22:12
7 as well as some of the facility engineering for 09:22:15
8 offshore projects as well in the U.K. here in 09:22:18
9 Ontario, we've worked for a number of different 09:22:20
10 wind developers. I have highlighted a few here. 09:22:24
11 So I'll tell you a little bit 09:22:29
12 about myself and my role at WSP. So I'm the team 09:22:33
13 leader for approvals and permitting in WSP's 09:22:36
14 environment division. And my role there is to 09:22:40
15 design and manage environmental assessment 09:22:43
16 projects in several different areas, renewable 09:22:45
17 energy being one, transmission and distribution, 09:22:48
18 as well as municipal infrastructure projects. So 09:22:52
19 on a day-to-day basis, I coordinate 09:22:55
20 multidisciplinary project teams that include 09:22:57
21 natural scientists, archaeologists, acoustic 09:23:00
22 engineers, geoscientists, as well as consultation 09:23:03
23 experts. 09:23:06
24 In terms of my experience in 09:23:06
25 renewable energy permitting, I've worked on 09:23:10

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1 projects in the -- subject to the REA in Ontario, 09:24:30
2 I'm going to list a few here: Two projects in 09:24:34
3 Grey Highlands, Ontario; Settlers Landing, Snowy 09:24:38
4 Ridge, and then a list here for some other 09:24:43
5 projects. In these roles, I've done either 09:24:45
6 technical contributions or project management, so 09:24:47
7 a wide range of services. 09:24:50
8 Other projects in Ontario that 09:24:51
9 aren't subject to the -- to the REA process 09:24:55
10 includes the Nigig project, the Henvey Inlet Wind 09:24:57
11 Centre. It's a First Nations project in northern 09:25:03
12 Ontario. I was the project manager for that. 09:25:05
13 It's an interesting project. It's not subject to 09:25:08
14 the REA because of the First Nations ownership of 09:25:10
15 the project. It's more in line with what we call 09:25:13
16 a CEAA, or a Canadian Environmental Assessment Act 09:25:15
17 Screening. 09:25:18
18 And I've got a long background 09:25:20
19 as well with what we call Class 3 solar projects, 09:25:23
20 so ground-mount solar projects to 10 megawatts. 09:25:26
21 So I'd like to just show you a 09:25:31
22 summary of the schedule that we had produced as 09:25:34
23 part of the work. So based on our experience, 09:25:37
24 some reasonable assumptions, and a review of the 09:25:42
25 data that was presented to us as part of the 09:25:45

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1 project, and material that we got from other 09:25:48
2 subject matter experts, we saw no real material 09:25:50
3 impediments to obtain a REA in the timeline set 09:25:54
4 out. 09:25:57
5 We relied on inputs from a 09:25:58
6 number of subject matter experts, including birds 09:26:00
7 and migratory birds, bats and migratory bats, fish 09:26:03
8 and fish habitat, archeological studies, and the 09:26:06
9 suite of coastal engineering water bodies and 09:26:10
10 other technical studies. So this is -- the 09:26:13
11 graphic here is just a really sort of a rolled-up 09:26:15
12 version of the schedule that was produced as part 09:26:18
13 of the project. 09:26:20
14 It shows the major components 09:26:23
15 of the program, including the mandatory public 09:26:25
16 information centres, the length of time for 09:26:28
17 publishing notices and reports, as well as review 09:26:31
18 time for the responsible agency, which is the 09:26:35
19 Ministry of the Environment. 09:26:39
20 So the detailed project 09:26:41
21 schedule was prepared in conjunction with Sgurr 09:26:47
22 Energy, with our input, with input from Baird and 09:26:50
23 others, and it provides a reasonable and realistic 09:26:52
24 time frame for completing the permitting work and 09:26:56
25 all the studies needed to apply for the REA. 09:26:59

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1 which that takes to be -- to be resolved. 09:28:30
2 URS disagrees with WSP in the 09:28:34
3 following schedule assumptions. So the technical 09:28:38
4 review by the MOE, so, again, we based our 09:28:43
5 scheduling assumptions on the 40-day completeness 09:28:46
6 check and the six-month service guarantee or 09:28:48
7 service standard for reviewing REA completion. 09:28:51
8 These are the published numbers that the MOE 09:28:54
9 provides, and as a project planner, that's how we 09:28:57
10 plan a project, in terms of a schedule. So we 09:29:01
11 would use those -- we would use that information 09:29:04
12 to define the schedule. 09:29:06
13 The other point of 09:29:08
14 disagreement is with field studies. So URS agrees 09:29:11
15 with WSP regarding the amount of time it takes 09:29:14
16 studies to go from the fieldwork to completion of 09:29:19
17 -- of the reporting. But they disagree with us in 09:29:23
18 terms of the length of time it takes to complete 09:29:27
19 the field -- the field studies. 09:29:29
20 So URS claims that 12 months 09:29:31
21 are required to -- to complete field studies. 09:29:34
22 However, there's -- that's not our -- that's not 09:29:37
23 our opinion on -- on providing the studies. It's 09:29:42
24 very rare we would do 365 days of fieldwork. We 09:29:45
25 typically focus on the specific survey windows 09:29:49

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1 In terms of the -- in terms of 09:27:02
2 the review by the MOE, we accounted for a 40-days 09:27:05
3 completeness check, which is -- which has a 09:27:09
4 service standard that is published, as well as a 09:27:11
5 six-month Ministry review once the application had 09:27:15
6 been made. And, again, this is based on a service 09:27:18
7 standard from the MOE. 09:27:20
8 So with that, presenting here 09:27:21
9 the key milestones in the project schedule just as 09:27:27
10 a highlight. So we don't need to review all of 09:27:31
11 them, but starting in February 2011 with the 09:27:34
12 issuance of a draft project description report to 09:27:38
13 start the program, with the completion of an 09:27:40
14 appeal to the REA completed by February 2014. 09:27:45
15 So we reviewed some of the 09:27:50
16 comments in the URS second technical report, and I 09:27:57
17 have the following comments to make. 09:28:02
18 So, in general, URS agreed 09:28:04
19 with our scheduling assumptions in these three key 09:28:05
20 areas, which are the scoping work to be done with 09:28:09
21 agencies at the outset of the project, as well as 09:28:13
22 the consultation component and the timing for the 09:28:16
23 notifications and publishing of consultation or 09:28:20
24 the materials before consultation as well as the 09:28:23
25 ERT appeal happening and the period of time in 09:28:27

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1 that are available for -- for birds and for bats 09:29:54
2 and for -- for other biological studies. 09:29:57
3 So URS is claiming that -- so 09:30:00
4 Genivar, WSP's predecessor, in our proposal to 09:30:07
5 Windstream to do the permitting work that we had 09:30:11
6 suggested that there was a year of bat field 09:30:14
7 surveys that would be required in order for us to 09:30:17
8 apply for the REA. 09:30:19
9 I disagree with this. I have 09:30:21
10 reviewed that proposal, and though I wasn't part 09:30:23
11 of the company and, therefore, wasn't part of 09:30:26
12 preparing that, it clearly says that we're doing 09:30:29
13 field studies in two different survey windows 09:30:32
14 within the same year. And so that would 09:30:34
15 constitute a single year, one year's worth of 09:30:37
16 data. 09:30:40
17 We can only observe -- we can 09:30:40
18 only observe bats and birds at certain times of 09:30:43
19 the year. In particular, we would not be doing 09:30:47
20 any surveying during wintertime as -- as bats 09:30:48
21 hibernate during the winter, and we don't observe 09:30:51
22 them during that period of time. 09:30:53
23 So I'm going to give you a 09:30:54
24 brief overview of the full suite of studies that 09:31:00
25 we included in the project schedule and how they 09:31:04

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1 roll into the REA. So we have accounted for all 09:31:05
2 the studies, including the public and municipal 09:31:08
3 and aboriginal consultations, the archeological 09:31:11
4 studies, the heritage assessments, the Natural 09:31:15
5 Heritage Assessments, and the water body 09:31:18
6 assessments. And in the next few slides, I'm 09:31:20
7 going to provide a more detailed breakdown of each 09:31:23
8 stage of the preparation. 09:31:24
9 So really, in the REA process, 09:31:25
10 there are, I would say, if you wanted to simplify 09:31:28
11 it, two main activities. One is a consultation 09:31:30
12 activity, and there are regulatory timings for 09:31:33
13 posting of notices and also for publishing 09:31:37
14 material for various groups to review. 09:31:40
15 And we included these 09:31:42
16 mandatory consultation points in the project 09:31:44
17 schedule, and these -- these activities kind of 09:31:47
18 book-end the substantive reporting work that gets 09:31:51
19 done in the middle. 09:31:54
20 So the REA reporting itself, 09:31:56
21 there are a number of reports that are required to 09:32:01
22 make a complete filing, depending on the class of 09:32:04
23 the project. Rather than sort of listing all of 09:32:06
24 them, they're all listed here, and it's a complete 09:32:09
25 listing of what's required and what would be 09:32:13

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1 These studies would have been 09:33:25
2 started in around March 2011, after scoping, and 09:33:26
3 they likely would have been finalized by October 09:33:30
4 2012, after the final public meeting. And the 09:33:33
5 timing and duration of these studies in the 09:33:35
6 schedule, they are including field windows for 09:33:37
7 some of the studies. They're consistent with 09:33:40
8 Baird's experience in coastal engineering and 09:33:43
9 related work. And here is a list of the -- of the 09:33:46
10 specific reports that would have been prepared as 09:33:48
11 part of the project. 09:33:50
12 So that's all I have for the 09:33:53
13 presentation this morning. 09:33:54
14 PRESIDENT: Thank you very 09:34:00
15 much. Mr. Terry. 09:34:01
16 EXAMINATION-IN-CHIEF BY MR. TERRY: 09:34:05
17 MR. TERRY: Good morning. I 09:34:05
18 have just one question. In Canada's opening 09:34:09
19 statement, there was a suggestion that the 09:34:12
20 conclusion in the expert reports, including yours, 09:34:16
21 that there are no material impediments to 09:34:20
22 developing the project really meant whether 09:34:22
23 developing the project was possible. And he says 09:34:25
24 that's a completely -- Canada stated that that was 09:34:28
25 a completely irrelevant question. 09:34:29

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1 expected for a wind facility of this type, 09:32:15
2 starting with a project description report to kick 09:32:20
3 the project off and then culminating with a 09:32:23
4 consultation report that happens at the end of the 09:32:27
5 project. 09:32:30
6 So, really, with the exception 09:32:30
7 of the consultation report and the project 09:32:32
8 description report draft that happens at the 09:32:35
9 beginning of the project, the work can be done 09:32:36
10 concurrently in between. So the rest of the 09:32:40
11 assessments are done essentially at the same time 09:32:44
12 by different disciplines and different teams. 09:32:47
13 So I'm just going to move back 09:32:49
14 one slide. So we would have begun work on the 09:32:50
15 project in February of 2011. We would expect the 09:32:54
16 draft reports to be completed in May 2012. And 09:32:57
17 following the final public meeting, we would 09:33:01
18 likely have finalized those reports in October 09:33:05
19 2012 and then made the REA application at that 09:33:08
20 time. 09:33:10
21 So there is another suite of 09:33:10
22 additional technical studies for offshore wind 09:33:15
23 projects that were anticipated, and these are 09:33:18
24 consistent with the draft submission guidelines 09:33:20
25 for offshore wind projects. 09:33:23

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1 Just to be clear, if the 09:34:31
2 question had been posed, is it more likely than 09:34:32
3 not that WWIS would have obtained a REA within the 09:34:35
4 timelines required by the FIT contract, would that 09:34:40
5 change your opinion? 09:34:43
6 A. Given all of the 09:34:45
7 information that we've seen and the scheduling 09:34:46
8 exercise that we have performed, more likely than 09:34:48
9 not the permit would have been achieved within 09:34:52
10 those timelines. 09:34:55
11 Q. Thank you. 09:34:56
12 PRESIDENT: Thank you very 09:35:00
13 much. 09:35:01
14 And cross-examination will be 09:35:01
15 Ms. Wates. 09:35:02
16 CROSS-EXAMINATION BY MS. WATES: 09:35:13
17 Q. Good morning, 09:35:13
18 Mr. Roberts. My name is Jenna Wates, and I'm 09:35:48
19 counsel to the Government of Canada in this 09:35:51
20 arbitration. I'm going to ask you some questions 09:35:52
21 about the WSP report that the Claimant has filed 09:35:55
22 in this arbitration and that you just summarized 09:35:59
23 in your presentation. 09:36:02
24 If you don't understand any -- 09:36:03
25 one of my questions, let me know, and I'll repeat 09:36:05

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1 it or rephrase it, because it's important that we 09:36:08
2 understand each other. 09:36:10
3 And it's also important that 09:36:11
4 you answer my questions clearly and directly. So 09:36:12
5 to the extent that the answer to the question is a 09:36:15
6 yes or a no, I'd appreciate if you could state 09:36:17
7 that upfront, and then you can provide any 09:36:19
8 additional context you think is necessary, keeping 09:36:22
9 in mind that we're also on a -- on schedule today. 09:36:26
10 I will also refer to various 09:36:29
11 documents in the record, which are provided in the 09:36:32
12 binder in front of you. I'll refer to them by 09:36:36
13 both exhibit number for the record, and you can 09:36:39
14 just concern yourself with the tab numbers, and I 09:36:41
15 will direct you to -- to the documents as we go. 09:36:43
16 A. Okay. 09:36:45
17 Q. So, now, on behalf of WSP 09:36:46
18 Canada, you provided the Claimant with the report, 09:36:54
19 dated June 2015 which was filed with the Rejoinder 09:36:57
20 Memorial in this arbitration; correct? 09:37:02
21 A. That's correct. 09:37:03
22 Q. You were retained on 09:37:04
23 March 25, 2015 according to your report; correct? 09:37:05
24 A. Approximately that date, 09:37:08
25 yes. 09:37:09

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1 subject matter experts. 09:38:00
2 Q. Right. So you -- I think 09:38:01
3 you said in your report this was prepared in 09:38:03
4 consultation with or collaboration with Sgurr, 09:38:05
5 with Baird, Ocean COWI, and Weeks Marine; correct? 09:38:08
6 A. Yes. 09:38:14
7 Q. But the permitting and 09:38:14
8 approval section of the schedule that the Claimant 09:38:15
9 has put forward in this arbitration comes from -- 09:38:17
10 from the reports that you've provided -- or the 09:38:19
11 report that you provided, rather? 09:38:21
12 A. As well some of the other 09:38:22
13 reports that we refer to in our report, including 09:38:23
14 Reynolds and Kerlinger. 09:38:27
15 Q. Okay. Thank you. Now, 09:38:29
16 your report concluded that there are no material 09:38:35
17 impediments to the Claimant obtaining all permits 09:38:37
18 required for the project within three years; 09:38:40
19 correct? 09:38:42
20 A. It would be slightly less 09:38:43
21 than three years per the schedule. 09:38:44
22 Q. Okay. And on this point, 09:38:47
23 if you could turn to page 12 of your report. 09:38:49
24 A. Okay. 09:39:03
25 Q. And I'd just like to 09:39:03

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1 Q. Okay. And so this was 09:37:10
2 after the Claimant -- again, just after the 09:37:11
3 Claimant had filed its Memorial and received 09:37:13
4 Canada's Counter-Memorial in this arbitration; 09:37:16
5 correct? 09:37:18
6 A. I don't know when they 09:37:19
7 received -- 09:37:20
8 Q. Okay. 09:37:20
9 A. -- the documents, no. 09:37:20
10 Q. That's fine. And your 09:37:21
11 report responds to comments that were contained in 09:37:24
12 the first report of Canada's expert, URS, 09:37:27
13 regarding the risk associated with obtaining 09:37:29
14 permits from the project; correct? 09:37:32
15 A. Yes, that's correct. 09:37:33
16 Q. And you also developed 09:37:34
17 the permitting and approvals section of the 09:37:37
18 overall project schedule that's contained in 09:37:40
19 Appendix 4 of the Sgurr Energy report, the second 09:37:42
20 Sgurr Energy report, as I understand it. Is that 09:37:45
21 correct? 09:37:47
22 A. I want to just make sure 09:37:48
23 that it's here in the document. Oh, yes. We -- 09:37:50
24 we did the overall permitting schedule with the 09:37:54
25 rest of the team, as well, with the input from the 09:37:57

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1 point out that there you said that -- you stated 09:39:04
2 in the second sentence that: 09:39:07
3 "The project schedule 09:39:08
4 demonstrates that the 09:39:09
5 federal CEEA --" 09:39:10
6 So Canadian Environmental 09:39:10
7 Assessment Act -- 09:39:14
8 "-- and the provincial 09:39:14
9 REA would more likely 09:39:15
10 than not have been 09:39:17
11 obtained within the 09:39:18
12 three-year period to 09:39:19
13 obtain regulatory 09:39:20
14 approvals." 09:39:20
15 Do you see that? 09:39:21
16 A. On page 12? 09:39:22
17 Q. Yes. In the second 09:39:23
18 sentence, I believe. Perhaps I have the wrong -- 09:39:25
19 A. I don't see that on page 09:39:32
20 12. 09:39:33
21 Q. -- reference. Sorry, 09:39:33
22 it's in the last paragraph on the page. My 09:39:35
23 apologies. 09:39:37
24 A. Last paragraph. 09:39:38
25 Q. Yes. 09:39:39

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1 A. Yes, I see that. 09:39:47
2 Q. All right. So you said 09:39:48
3 in your report there that it was more likely than 09:39:49
4 not that the permits could have been obtained 09:39:52
5 within a three-year period, but as we saw in your 09:39:55
6 presentation this morning and in the -- consistent 09:39:59
7 with the schedule that is set out in appendix of 09:40:04
8 the Sgurr report -- 09:40:09
9 A. Yes. 09:40:10
10 Q. -- this three-year period 09:40:10
11 is inclusive of six months to complete the 09:40:12
12 Environmental Review Tribunal process for the 09:40:17
13 Renewable Energy Approval; correct? 09:40:20
14 A. I believe so, yes. 09:40:22
15 Q. Okay. So I would just 09:40:23
16 like to confirm on this issue, because we -- we 09:40:31
17 heard testimony yesterday from the Claimant's 09:40:34
18 expert, Ms. Powell, that, in her opinion, it would 09:40:37
19 be reasonable to assume that the REA could be 09:40:40
20 obtained within 36 months and that the six 09:40:43
21 months -- 09:40:46
22 A. Okay. 09:40:46
23 Q. -- ERT appeals process 09:40:47
24 would be on top of that. So... 09:40:49
25 A. I don't have the schedule 09:40:53

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1 A. Yes. 09:42:11
2 Q. It shows that the REA 09:42:11
3 activities began on February 11th, 2011. 09:42:13
4 A. Mm-hmm. 09:42:15
5 Q. And then turning to the 09:42:16
6 next page, line 67 shows that the REA is issued on 09:42:18
7 July 24, 2013. 09:42:25
8 A. Mm-hmm. 09:42:27
9 Q. And line 68 shows that 09:42:27
10 the REA appeal period begins July 24, 2013 -- 09:42:29
11 A. Correct. 09:42:33
12 Q. -- and ends August 12, 09:42:34
13 2013. And on line 69 we see that the appeal 09:42:36
14 process itself begins August 12, 2013 and ends 09:42:45
15 February 11, 2014. Do you see that? 09:42:48
16 A. I see that. 09:42:50
17 Q. So just to confirm, then, 09:42:51
18 the schedule that you provided and that's being 09:42:55
19 relied on by the Claimant in this arbitration 09:42:58
20 provides that the six months for the REA approvals 09:43:03
21 process is included in the total 36 months that 09:43:06
22 you're saying is what we should assume for the 09:43:10
23 permitting schedule. 09:43:12
24 A. Right. We have included 09:43:13
25 that. 09:43:15

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1 in front of me, so it's not in my report here. 09:40:54
2 Q. If you turn to Appendix 4 09:40:59
3 of the Sgurr Energy Report, on page 66, I believe. 09:41:00
4 A. Sixty-six? Okay. 09:41:03
5 MS. SEERS: Ms. Wates, I 09:41:05
6 actually have a large copy of the schedule. 09:41:06
7 Perhaps it would be helpful for you and for 09:41:08
8 everyone if I could distribute it, if you would 09:41:10
9 like. It's up to you. 09:41:13
10 MS. WATES: Sure. That would 09:41:14
11 be great. Thank you. 09:41:15
12 MS. SEERS: It's the very 09:41:17
13 large envelope I took down. I apologize. 09:41:19
14 MR. TERRY: It is the least we 09:41:22
15 can do, given the services that Donnie provides. 09:41:23
16 [Laughter.] 09:41:25
17 MS. WATES: And if I could 09:41:30
18 maybe ask for indulgence for a copy for myself. I 09:41:32
19 have the smaller version. 09:41:35
20 --- [Reporter's Note: Ms. Seers passes out 09:41:38
21 documents.] 09:41:39
22 MS. WATES: 09:42:01
23 Q. Now, the portion of the 09:42:01
24 schedule that I'm referring to is on page 67. I'm 09:42:02
25 looking at lines 9 -- sorry, line 9 is on page 66. 09:42:05

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1 Q. Okay. And I guess I 09:43:15
2 would just put it to you that yesterday we heard 09:43:17
3 from the Claimant's expert on environmental law 09:43:20
4 that the six months for the ERT approval process 09:43:24
5 should be added at the end so that, in fact, it 09:43:30
6 would be a 42-month period to complete all of 09:43:33
7 these activities. And if you could just tell me 09:43:35
8 how does that impact, to the best of your 09:43:39
9 knowledge, the rest of the schedule, to the extent 09:43:42
10 that the ERT appeal process is extended -- sorry, 09:43:45
11 rather, the REA process is extended by six months 09:43:52
12 so that the ERT appeal process doesn't start until 09:43:55
13 six months later, for a total of 42 months? 09:43:58
14 A. Well, I would suggest 09:44:02
15 that, based on the granularity of our schedule and 09:44:04
16 all the work that we put into it, we're 09:44:07
17 demonstrating that that's included in that time 09:44:09
18 period for our schedule. 09:44:12
19 So I can't comment on someone 09:44:15
20 else's testimony in terms of a thought about -- an 09:44:19
21 estimation of how long the schedule would take. 09:44:23
22 But based on our work and our review of the 09:44:26
23 project documentation and our understanding of 09:44:29
24 those windows, we have included all that into our 09:44:31
25 schedule work. 09:44:34

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1 Q. Okay. So then, I guess, 09:44:35
2 I'd like to just ask if that's a point of 09:44:36
3 clarification that should be corrected for the 09:44:39
4 record, because as we just went through earlier, 09:44:40
5 your report states that it would be reasonable to 09:44:44
6 assume that the permit could be obtained within 09:44:47
7 three years, but, in fact, now you are telling us 09:44:52
8 that it's 30 months? 09:44:55
9 A. That's fairly close to 09:44:55
10 three years. It's -- again, it's -- it's a 09:44:58
11 three-year window for perhaps all the permits that 09:45:03
12 might be required, including some of the permits 09:45:06
13 that you would have to get after the REA was 09:45:08
14 issued, including local permits and things like 09:45:11
15 that. 09:45:14
16 Q. But I think you would 09:45:15
17 agree with me, though, even though it's only a 09:45:15
18 matter of six months, that can be quite 09:45:18
19 significant when we're working with, you know, a 09:45:20
20 five-year total time to reach the MCOD under the 09:45:23
21 FIT contract. Wouldn't you agree? 09:45:27
22 A. Six months, based on my 09:45:30
23 experience with other projects, in developing 09:45:32
24 other projects, it's -- in a long time frame 09:45:35
25 project, that would be not particularly 09:45:40

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1 A. That's correct, yes. 09:47:20
2 Q. Okay. And are you aware 09:47:21
3 that Windstream obtained a Notification of 09:47:23
4 Conditional Approval of the connection for its 09:47:27
5 project? 09:47:28
6 A. Again, so the connection 09:47:29
7 process and application process is not my area of 09:47:31
8 expertise at all, and we have a different group 09:47:35
9 that deals with that, so I'm not aware of that -- 09:47:37
10 Q. Okay. 09:47:37
11 A. -- that fact. 09:47:39
12 Q. But it was your firm 09:47:40
13 that, you indicated in your report, managed that 09:47:41
14 process? 09:47:44
15 A. That's correct, yes. 09:47:44
16 Q. Okay. So I'd just like 09:47:45
17 to take you to that document that I referred to, 09:47:46
18 the Notification of Conditional Approval. It's at 09:47:49
19 Tab 8 of your report, Exhibit C-0382, for the 09:47:51
20 record. 09:47:55
21 A. Sorry, this -- this 09:47:57
22 binder here? 09:47:59
23 Q. Yes, that binder. Sorry, 09:47:59
24 there are many documents for you to handle over 09:48:01
25 there. Tab 8. 09:48:03

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1 significant. I wouldn't agree. 09:45:41
2 Q. Isn't it true that, in 09:45:48
3 fact, the timing of the construction, though, is 09:45:51
4 -- and financial close is contingent on this 09:45:55
5 issue? 09:45:59
6 A. That's not in my area of 09:45:59
7 expertise in terms of that, those areas. 09:46:01
8 Q. Okay. That's fine. We 09:46:03
9 can put that to someone it's more suited for then. 09:46:06
10 Thank you. 09:46:09
11 A. Sure. 09:46:10
12 Q. Now, you mentioned -- you 09:46:24
13 mentioned a proposal that was submitted by a 09:46:35
14 company called Genivar to the Claimant in response 09:46:39
15 to a RFP. 09:46:42
16 A. That's correct. 09:46:44
17 Q. If I can -- if you will 09:46:45
18 just bear with me for one moment. 09:46:57
19 Okay. So -- and your report 09:47:00
20 indicates that Genivar was retained by Windstream 09:47:03
21 also to conduct some electrical engineering work, 09:47:08
22 including applications for a System Impact 09:47:10
23 Assessment and a customer impact assessment from 09:47:14
24 the IESO and Hydro One for the project in 2009. 09:47:16
25 Is that correct? 09:47:19

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1 A. Tab No. 8, okay. 09:48:08
2 Q. Exhibit C-0382. And in 09:48:10
3 the third paragraph, it states that the -- sorry, 09:48:13
4 if you flip to the excerpt that I have included 09:48:17
5 there, in the third paragraph, it states that: 09:48:20
6 "The IESO has granted 09:48:23
7 conditional approval for 09:48:24
8 the modification 09:48:26
9 contained in the 09:48:26
10 Windstream's project 09:48:27
11 proposal." 09:48:28
12 Do you see that? 09:48:30
13 A. Which paragraph? I'm 09:48:33
14 sorry, one more time? 09:48:34
15 Q. In the third paragraph. 09:48:36
16 A. Okay. Okay. I see it, 09:48:43
17 yes. 09:48:47
18 Q. "The IESO is, therefore, 09:48:47
19 pleased to grant 09:48:48
20 conditional approval for 09:48:49
21 the modification detailed 09:48:50
22 in the attached 09:48:51
23 assessment report." 09:48:53
24 A. Okay. 09:48:57
25 Q. Okay. Now, the next 09:48:58

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1 paragraph states that the final approval to 09:49:02
2 connect the project to the grid will be granted 09:49:04
3 successfully upon completion of the IESO market 09:49:08
4 entry process, including satisfactory completion 09:49:10
5 of the requirements set out in a System Impact 09:49:13
6 Assessment Report. Do you see that? 09:49:16
7 A. I do. 09:49:18
8 Q. Okay. So recognizing 09:49:19
9 that you weren't directly involved in the 09:49:22
10 preparation of this document, but would you agree 09:49:24
11 with me that, based on this letter, it's necessary 09:49:26
12 to comply with the requirements of the System 09:49:30
13 Impact Assessment in order to have this grid 09:49:33
14 connection be effective? 09:49:36
15 A. So I would agree that 09:49:38
16 that's what it says, but I don't understand or 09:49:40
17 work in the assessment or the -- the market 09:49:44
18 connection assessment work at all. 09:49:48
19 Q. Okay. That's fine. 09:49:48
20 A. That's not my area of 09:49:49
21 expertise. 09:49:51
22 Q. That's fine. Thank you. 09:49:51
23 Now if you can just turn to 09:49:53
24 Tab 9 of your binder. 09:49:54
25 A. Okay. 09:49:58

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1 A. I see that. 09:50:49
2 Q. But my understanding from 09:50:50
3 the reports that have been filed in this 09:50:52
4 arbitration is that the Claimant's project program 09:50:54
5 is actually based on Siemens' turbines, which 09:50:57
6 would be 2.3 megawatts each; correct? Is that 09:51:01
7 your understanding as well? 09:51:05
8 A. I am not familiar with 09:51:06
9 the technology selection for the project, no. 09:51:08
10 Q. In the course of 09:51:11
11 preparing your report, you didn't familiarize 09:51:24
12 yourself with the technology that was being used 09:51:26
13 by the proponent? 09:51:29
14 A. I did not, only to the 09:51:30
15 extent that it's almost irrelevant for most of the 09:51:33
16 permitting activities that go on. The -- there is 09:51:36
17 a report that is generated, a technical report for 09:51:39
18 the wind turbines themselves. However, when -- 09:51:43
19 we're more concerned about completing the 09:51:48
20 fieldwork to site them and siting a different 09:51:50
21 model turbine is -- is similar activity. The 09:51:53
22 activities that we would do are quite the same. 09:51:57
23 Q. So I -- I understand, 09:52:00
24 then, that your opinion is that, for the purposes 09:52:01
25 of the permitting aspects, the type of turbine 09:52:03

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1 Q. And I have included here 09:49:59
2 an excerpt from the System Impact Assessment 09:50:02
3 Report referred to in the letter. This is Exhibit 09:50:04
4 C-0381 for the record. 09:50:07
5 This document was issued 09:50:10
6 November 8, 2010. Do you see that? 09:50:15
7 A. Yes. 09:50:17
8 Q. But, again, you're not -- 09:50:17
9 this is -- you're not familiar with this -- 09:50:20
10 A. No. 09:50:21
11 Q. -- document? Okay. Then 09:50:22
12 I'd just ask you to turn to the next page, the 09:50:23
13 excerpt that I have included. 09:50:27
14 A. Okay. 09:50:29
15 Q. And if you will just 09:50:29
16 follow along with me. The third paragraph there, 09:50:30
17 the project -- of the project description, it 09:50:35
18 states that: 09:50:38
19 "The development will 09:50:39
20 consist of a total of 100 09:50:40
21 Vestas V112 wind turbine 09:50:42
22 generators with the rate 09:50:45
23 of power output of 09:50:45
24 3-megawatts each." 09:50:47
25 Do you see that? 09:50:48

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1 being used isn't -- isn't relevant. 09:52:06
2 A. Correct. 09:52:10
3 Q. But just to conclude on 09:52:10
4 this point, based on the letter that we just 09:52:11
5 reviewed, it indicated that the grid connection 09:52:13
6 was contingent on the requirements set out in the 09:52:17
7 System Impact Assessment Report, which includes 09:52:21
8 using a 3-megawatt Vestas turbine, which I would 09:52:24
9 put to you is not the same turbine that is being 09:52:32
10 used in the -- in the project program that the 09:52:35
11 Claimant advanced in this arbitration. 09:52:38
12 A. I would agree that's what 09:52:40
13 it says, but I know that these -- just from 09:52:41
14 experience working with other folks in the office 09:52:46
15 that do this work that these documents are updated 09:52:49
16 and changed frequently. So that's all I can say. 09:52:51
17 Q. But you're not able to 09:52:54
18 opine on the ease with which that grid connection 09:52:57
19 would be able to be accommodated -- 09:53:02
20 A. No, no. 09:53:03
21 Q. -- with this change? 09:53:04
22 A. I can't. 09:53:06
23 Q. Okay. Thank you. I 09:53:07
24 would like to just now ask you about some general 09:53:16
25 permitting issues and just very generally 09:53:18

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1 speaking. The -- the regulatory regime that 09:53:22
2 applies to a specific offshore wind project, it 09:53:24
3 depends on the jurisdiction that is, that it is 09:53:30
4 being developed in, correct? 09:53:34
5 A. Yes. 09:53:35
6 Q. So, for example, the 09:53:36
7 Renewable Energy Approval, or REA, is a specific 09:53:38
8 permitting process that's required in Ontario; 09:53:40
9 correct? 09:53:42
10 A. That's correct. 09:53:42
11 Q. Okay. And wherever you 09:53:43
12 want to develop the offshore wind project you have 09:53:46
13 to work with the regulator and the regulatory 09:53:49
14 regime in the specific jurisdiction; correct? 09:53:51
15 A. That's correct. 09:53:54
16 Q. Okay. And the WWIS 09:53:54
17 project would have been the first offshore wind 09:53:57
18 project to be undertaken under the regulatory 09:53:59
19 regime in Ontario; correct? 09:54:01
20 A. Specifically, yes. It 09:54:03
21 would have been the first project to be undertaken 09:54:04
22 under that REA process. 09:54:07
23 Q. Okay. Now, if we could 09:54:09
24 turn to page 13 of your report. 09:54:12
25 A. Mm-hmm. 09:54:14

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1 of the permitting regime, which you just told me 09:55:13
2 varies by jurisdiction, this would, in fact, be a 09:55:17
3 first of a kind project from the permitting 09:55:19
4 perspective in Ontario; correct? 09:55:21
5 A. From the REA permitting 09:55:23
6 perspective, that's correct. 09:55:25
7 Q. Thank you. Now, in 09:55:26
8 addition to the System Impact Assessment report, 09:55:39
9 that WSP prepared -- you weren't involved in that, 09:55:42
10 but we just looked at it a few minutes ago -- in 09:55:44
11 November 2010, WSP responded to a request from -- 09:55:47
12 for proposals to provide permitting and field 09:55:50
13 investigation services for the Claimant's project; 09:55:54
14 correct? 09:55:56
15 A. That's correct. 09:55:56
16 Q. But I understand from 09:55:56
17 your report that WSP was not, in fact, awarded the 09:55:59
18 mandate and that the firm Stantec was going to be 09:56:02
19 selected by the Claimant as the permitting 09:56:05
20 consultant. Is that correct? 09:56:07
21 A. That's correct. WSP was 09:56:08
22 not selected and it's my understanding that 09:56:10
23 Stantec won that particular project. 09:56:12
24 Q. But, for the record, 09:56:14
25 Stantec isn't participating as an expert witness 09:56:17

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1 Q. And in the last paragraph 09:54:15
2 here you said: 09:54:22
3 "The project should not 09:54:23
4 be considered first of a 09:54:24
5 kind because more than 50 09:54:26
6 offshore wind projects 09:54:29
7 have been developed 09:54:30
8 globally." 09:54:31
9 But all of these projects are 09:54:32
10 outside of Ontario and, in fact, outside of North 09:54:33
11 America; correct? 09:54:36
12 A. That's correct. All of 09:54:37
13 those projects are. However, the -- the specific 09:54:38
14 comment that we were responding to really kind of 09:54:41
15 ignored the component parts that would make up the 09:54:45
16 project itself, and all of these component parts 09:54:49
17 have been permitted under separate regimes, under 09:54:51
18 separate systems, including submarine cables, wind 09:54:55
19 turbines themselves onshore, as well as in water 09:54:58
20 works like foundations for bridges or piers. 09:55:01
21 Q. So I understand that, 09:55:03
22 from the technical perspective, your opinion is 09:55:05
23 that there's -- they're very similar? 09:55:09
24 A. Yes. 09:55:12
25 Q. But from the perspective 09:55:12

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1 in this arbitration, even though they were 09:56:20
2 selected as the permitting consultant of choice 09:56:22
3 for the project. 09:56:26
4 A. That's correct. 09:56:27
5 Q. Okay. Now, I would like 09:56:28
6 to show you the RFP, which you can find at Tab 1 09:56:29
7 of your binder. This is the RFP that WSP 09:56:33
8 responded to in 2010. It's dated October 8th, 09:56:42
9 2010. Do you see that? 09:56:46
10 A. I see that. 09:56:47
11 Q. Okay. And the proposal 09:56:48
12 that WSP made in response to this RFP, you 09:56:51
13 included it at Appendix 2 to your report in the 09:56:54
14 arbitration; correct? 09:56:57
15 A. That's correct. 09:56:58
16 Q. Okay. And I would note 09:56:59
17 also for the record that the Claimant filed the 09:57:00
18 proposal as Exhibit C-0865, and at times it's 09:57:03
19 referred to that way in your report, but I will 09:57:07
20 just refer you to the appendix of what you have 09:57:09
21 there -- 09:57:11
22 A. Okay. 09:57:11
23 Q. -- today. Now, if we 09:57:12
24 turn to the proposal at Appendix 2, the cover page 09:57:17
25 indicates that it was submitted to Windstream on 09:57:24

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1 November 25, 2010. Do you see that? 09:57:27
2 A. That's the date there, 09:57:29
3 yes. 09:57:30
4 Q. Yes. And this was before 09:57:31
5 Genivar was merged with WSP; correct? 09:57:33
6 A. That's correct. 09:57:35
7 Q. Okay. So if we turn to 09:57:36
8 Section 1 of the proposal and look at page 3, 09:57:38
9 towards the bottom of the page, there is a section 09:57:46
10 called "our approach." 09:57:49
11 A. Mm-hmm, yes, I see it. 09:57:50
12 Q. And it's stated there: 09:57:52
13 "As this is the first 09:57:53
14 project of its type, 09:57:54
15 there are inherent risks 09:57:56
16 which must be carefully 09:57:57
17 evaluated and managed." 09:57:58
18 Do you see that? 09:57:59
19 A. I do. 09:58:00
20 Q. And now if we turn to 09:58:00
21 Section 2.2 on page 5, in the first paragraph, 09:58:03
22 under this heading, WSP stated in 2010: 09:58:11
23 "This project will be the 09:58:15
24 first environmental 09:58:16
25 assessment for an 09:58:17

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1 We're not providing advice to them in terms of you 09:59:15
2 need to do certain things. We're saying, "This is 09:59:19
3 our approach to it. This is how we're going to 09:59:23
4 manage the project." 09:59:25
5 Q. Okay. And you're 09:59:26
6 expressing the view that it's implicitly -- it's 09:59:27
7 important to hire someone who can manage these 09:59:29
8 risks because it is a first of a kind, and there 09:59:32
9 are these inherent risks; correct? 09:59:34
10 A. I wouldn't necessarily 09:59:36
11 agree with that statement. I said we -- there are 09:59:37
12 risks implicit in any project. 09:59:41
13 Q. Okay. 09:59:43
14 A. And the background that 09:59:44
15 Genivar had in producing the projects or in 09:59:45
16 permitting them, we're trying to -- we're trying 09:59:49
17 to demonstrate to a potential client that we 09:59:53
18 understand what the development process is; we 09:59:55
19 understand what development risks are; and we 09:59:57
20 understand how to manage those risks during the 10:00:00
21 project. 10:00:02
22 Q. Now, if we look at 10:00:02
23 Section 2.3 which is further down the page, it's 10:00:04
24 entitled "Key Strategic Issues." Do you see that? 10:00:06
25 A. I do. 10:00:09

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1 offshore wind in Canada. 09:58:18
2 Consequently, there are 09:58:20
3 inherent risks which must 09:58:21
4 be carefully evaluated 09:58:23
5 and managed. Otherwise, 09:58:24
6 there is potential for 09:58:26
7 serious project delays, 09:58:27
8 increases in capital 09:58:28
9 cost, or even the risk of 09:58:29
10 the project not obtaining 09:58:30
11 the necessary approvals." 09:58:32
12 Do you see that. 09:58:33
13 A. I see that? 09:58:33
14 Q. Okay. So this is WSP's 09:58:34
15 advice to Windstream in 2010; correct? 09:58:36
16 A. I would say what -- let's 09:58:42
17 put this in the context of what the document is. 09:58:45
18 The document is a proposal to provide services for 09:58:47
19 a project that we were competitive for. 09:58:53
20 And so, if we can show, in a 09:58:56
21 competitive advantage, that the team that we're 09:58:59
22 assembling is highly qualified, has experience in 09:59:01
23 other projects, and we can manage risk, that is -- 09:59:04
24 we're trying to -- we're trying to show our 09:59:08
25 credibility in order to complete the project. 09:59:12

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1 Q. And the first strategic 10:00:10
2 issue identified by WSP is by agencies of field 10:00:11
3 studies. Do you see that? 10:00:16
4 A. I do. 10:00:17
5 Q. And it's referring to 10:00:18
6 both federal and provincial regulatory agencies? 10:00:19
7 A. Correct. 10:00:22
8 Q. And in the bullet point, 10:00:23
9 it states that: 10:00:26
10 "There are a large number 10:00:27
11 of technical field 10:00:28
12 studies to be completed 10:00:29
13 and --" 10:00:29
14 Later. 10:00:31
15 "-- if the agencies do 10:00:31
16 not accept the 10:00:33
17 methodology, additional 10:00:34
18 work may be required 10:00:34
19 which could negatively 10:00:36
20 impact the project 10:00:36
21 schedule." 10:00:38
22 So you would agree with me 10:00:38
23 that WSP -- I realize you don't like the word 10:00:41
24 "advised," but informed Windstream perhaps in 2010 10:00:46
25 that there was a possibility that federal and 10:00:49

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1 provincial regulators could reject any 10:00:50
2 methodologies proposed by Windstream for 10:00:53
3 conducting field studies. That's what it says 10:00:56
4 there; right? 10:00:58
5 A. I would say, yes, it says 10:00:59
6 that there. But the context is that all of the 10:01:01
7 studies that we're proposing to do have 10:01:05
8 well-established methodologies and environmental 10:01:08
9 assessment in the province in the previous 10:01:11
10 permitting system under the regulation. 10:01:13
11 So the idea is that you're 10:01:17
12 fine-tuning a process to meet specific goals for 10:01:19
13 those agencies. But not necessarily -- again, the 10:01:23
14 context of producing a proposal is important in 10:01:29
15 showing the potential client that we understand 10:01:35
16 what's going on and we're trying to -- we're 10:01:38
17 trying to let them know that we can manage this 10:01:43
18 risk. We can -- we understand the risk. And I 10:01:46
19 would say perhaps that statement is maybe inflated 10:01:48
20 in order to show what we're proposing to do, we 10:01:52
21 have an advantage over our competitors in the 10:01:56
22 market. 10:01:58
23 Q. But you're at least 10:01:58
24 stating that there is a risk that the agencies 10:02:01
25 will not accept the methodologies proposed by 10:02:03

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1 the example of birds just now. 10:03:11
2 A. Yes. 10:03:13
3 Q. But isn't it true that 10:03:13
4 MNR hasn't established an approved methodology for 10:03:15
5 conducting carcass searches on water? 10:03:17
6 A. That is true, but that is 10:03:20
7 a post-REA commitment, not a -- necessarily a 10:03:23
8 commitment in terms of getting the REA approval. 10:03:27
9 And our expectation was that an approved 10:03:31
10 methodology would be developed as part of the -- 10:03:34
11 the progress on the project. 10:03:36
12 Q. But it wasn't in place at 10:03:39
13 that time? 10:03:41
14 A. It was not in place at 10:03:41
15 the time. 10:03:42
16 Q. Okay. 10:03:42
17 A. But we had full 10:03:43
18 expectations that -- that a methodology would be 10:03:45
19 developed in order to make those assessments of 10:03:47
20 post-construction bird mortality. 10:03:51
21 Q. If I can just take you to 10:03:53
22 the third issue at the bottom of the page 5 there. 10:03:55
23 A. Okay. 10:03:59
24 Q. The third key strategic 10:04:00
25 issue is identified as poor understanding by 10:04:03

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1 Windstream. That's what it says there; right? 10:02:06
2 A. I would -- I would agree 10:02:08
3 that there is some risk. The risk is -- is not 10:02:09
4 zero. But in my experience with conducting 10:02:11
5 environmental assessments, methodologies, unless 10:02:16
6 they are egregiously wrong, are accepted but 10:02:19
7 fine-tuned. 10:02:23
8 Q. And at this time, there 10:02:23
9 aren't any methodologies for -- for conducting 10:02:25
10 field studies specific to offshore wind projects 10:02:30
11 that have been approved by the regulatory 10:02:33
12 agencies; correct? 10:02:35
13 A. But the -- that's 10:02:36
14 correct, but the specific studies and 10:02:38
15 methodologies are -- are similar for -- for 10:02:40
16 onshore projects because they're outlined for us 10:02:45
17 in -- in the regulation, and they're outlined for 10:02:48
18 us in some of the guidance documentation as well. 10:02:51
19 So conducting a bird study is 10:02:53
20 similar for an onshore project or an offshore 10:02:57
21 project in terms of the types of data that are 10:03:00
22 collected. So that's the comment that I have on 10:03:02
23 that. 10:03:06
24 Q. But it's my 10:03:06
25 understanding, actually -- for example, you gave 10:03:09

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1 agencies of what is an offshore wind farm project. 10:04:06
2 And it states that: 10:04:11
3 "This could result in 10:04:12
4 delays during the report 10:04:13
5 review stage or 10:04:14
6 misunderstanding of 10:04:15
7 impacts." 10:04:16
8 Do you see that? 10:04:17
9 A. I see that. 10:04:18
10 Q. So, in 2010, WSP 10:04:19
11 recognized the possibility that the agencies could 10:04:21
12 be delayed in reviewing the permitting 10:04:24
13 applications for the project, because they had a 10:04:26
14 poor understanding of what an offshore wind 10:04:28
15 project is; correct? 10:04:31
16 A. That -- that is correct, 10:04:32
17 similar to the issues faced by the first projects 10:04:35
18 for the onshore projects in the REA process. And 10:04:40
19 we understand that the ministry and agencies deal 10:04:45
20 with this in a responsible manner and do their 10:04:48
21 best in order to -- in order to work out and work 10:04:51
22 with a proponent to -- to come to an outcome. 10:04:53
23 Q. But, here, you're 10:04:56
24 acknowledging the possibility of delays 10:05:02
25 particularly because they haven't dealt with this 10:05:03

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1 type of project before in the regulatory system; 10:05:07
2 correct? 10:05:09
3 A. We are acknowledging that 10:05:09
4 that is some uncertainty, yes. 10:05:11
5 Q. And yet in your report 10:05:13
6 and in the presentation you gave today, it 10:05:16
7 mentioned that -- let's see. It states that WSP 10:05:19
8 accounted for 40 days for a completeness check by 10:05:26
9 MOE. That's the -- screening the application to 10:05:30
10 make sure it meets the completeness requirements; 10:05:34
11 correct? 10:05:37
12 A. That's correct. 10:05:37
13 Q. So you've allowed 40 days 10:05:38
14 for that based on MOE's service standard. And you 10:05:39
15 have allowed for six months for Ministry review of 10:05:42
16 the completed REA application based on the 10:05:45
17 six-month service standard that they've published; 10:05:49
18 correct? 10:05:52
19 A. That's correct. 10:05:52
20 Q. So even though -- even 10:05:52
21 though you've acknowledged the possibility that 10:05:54
22 they will be delayed due to not being familiar 10:05:56
23 with this type of project, you haven't allowed any 10:06:01
24 extra buffer time on top of the standard to 10:06:03
25 account for that? 10:06:07

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1 so... 10:07:19
2 Q. Okay. But in the event 10:07:20
3 that a technical review or the initial screening 10:07:23
4 review is delayed, there's nothing that a 10:07:26
5 proponent or the proponent's consultant can do to 10:07:29
6 sort of speed up the process. You're kind of 10:07:33
7 stuck with the Ministry timing, aren't you? 10:07:35
8 A. We are -- yes. We are 10:07:37
9 stuck to a certain degree, but during that review 10:07:39
10 period, if there are questions, technical 10:07:42
11 questions that arise, it's up to the proponent and 10:07:44
12 the proponent's consultants to answer those 10:07:47
13 questions as quickly as possible, provide all the 10:07:49
14 additional information that's needed and sometimes 10:07:52
15 clarifying points in a report that -- that perhaps 10:07:55
16 the Ministry doesn't understand or the Ministry 10:07:58
17 would -- they have some comment on how you 10:08:02
18 approached it. 10:08:05
19 Q. So you would be working 10:08:05
20 with the Ministry to answer their questions and 10:08:07
21 help them to understand your application, which, I 10:08:09
22 understand, could take some time; correct? 10:08:12
23 A. Yes. We would assist the 10:08:15
24 Ministry in terms of providing any information 10:08:16
25 that they've asked us to provide in the filing. 10:08:19

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1 A. We have not. And the 10:06:07
2 context is important as well. When we're planning 10:06:11
3 a project, we rely on the expected review time or 10:06:14
4 the published review times for that. And it's our 10:06:17
5 understanding that their -- that the delays in 10:06:19
6 those reviews are dealt with, again, responsibly 10:06:24
7 by the contract issuer as well when it's not 10:06:28
8 within the power of the proponent to -- to make 10:06:32
9 any changes to those review guidelines. It's 10:06:35
10 essentially out of the proponent's hands at that 10:06:39
11 point when it's -- when it is being reviewed. 10:06:41
12 Q. So I take it you're aware 10:06:43
13 of the potential force majeure provisions under 10:06:45
14 the FIT contract, but that's not something that 10:06:49
15 you have special expertise in dealing with, is it? 10:06:51
16 A. It's not -- I don't have 10:06:55
17 special expertise in it, but I've certainly been 10:06:56
18 around the industry long enough to know that that 10:06:58
19 is something that developers need to utilize from 10:07:01
20 time to time when they experience delays in the 10:07:05
21 review of their applications. 10:07:08
22 Q. Then I'm sure you're also 10:07:10
23 aware that it's subject to a limit of 24 months 10:07:12
24 past the milestone date for the project? 10:07:16
25 A. That, I'm not aware of 10:07:18

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1 Q. Sorry. 10:08:22
2 A. That's okay. 10:08:23
3 Q. Didn't mean to cut you 10:08:24
4 off. The six-month service standard, that's not 10:08:26
5 enforceable by -- by proponents; correct? 10:08:28
6 A. It's correct. It's not 10:08:31
7 enforceable. It's not a statutory -- I think I am 10:08:32
8 using the correct word -- time period. 10:08:37
9 However, the MOE does place a 10:08:40
10 very high value on this, and we know this because, 10:08:41
11 if a proponent doesn't respond to a question to 10:08:46
12 the MOE within a certain amount of time and they 10:08:49
13 can't come up with an answer for something, the -- 10:08:52
14 the MOE would, what they call, stop the clock on 10:08:55
15 that review period. 10:08:58
16 So there is some weight 10:08:59
17 attributed to that six-month window. Otherwise, 10:09:00
18 we wouldn't expect the MOE to be concerned about 10:09:03
19 stopping the clock on -- on a review. 10:09:06
20 Q. Okay. Now I would like 10:09:08
21 to turn to Section 5 of your report -- or, sorry, 10:09:10
22 not your report, the proposal in the Appendix 2. 10:09:14
23 It is a bit tricky to find because the page 10:09:20
24 numbering restarts there. So if you will just 10:09:22
25 flip through to Section 5. 10:09:26

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1 A. Oh, of the actual report 10:09:27
2 itself? 10:09:29
3 Q. No, of the proposal 10:09:30
4 still. 10:09:31
5 A. The proposal, Section 5? 10:09:32
6 Q. Appendix 2. And it 10:09:33
7 restarts the numbering there with page 1. 10:09:36
8 A. Okay. 10:09:38
9 Q. So this is the section of 10:09:38
10 the proposal in 2010 that dealt with ecological 10:09:40
11 fieldwork; correct? 10:09:45
12 A. Yes. Okay. 10:09:47
13 Q. And let's turn to page 4 10:09:49
14 of this section. 10:09:51
15 A. Okay. 10:09:53
16 Q. And you'll see Section 10:09:53
17 5.2 towards the end of the page. It addresses 10:09:55
18 fisheries and benthic work specifically; correct? 10:09:59
19 A. Okay. 10:10:03
20 Q. And now if we turn to 10:10:04
21 Page 5, about four paragraphs from the bottom, it 10:10:06
22 states that: 10:10:11
23 "This is the first 10:10:13
24 project of the kind in 10:10:14
25 Canada. The level of 10:10:15

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1 A. I see that. 10:10:47
2 Q. So, again, in 2010, you 10:10:48
3 told Windstream that it wasn't clear what studies 10:10:51
4 would be required for the fisheries and benthic 10:10:53
5 work. But just a few moments ago -- 10:10:57
6 A. Right. 10:11:00
7 Q. -- and appreciating that 10:11:00
8 it's not you personally; it is WSP -- 10:11:01
9 A. Sure. 10:11:02
10 Q. -- but a few moments ago 10:11:03
11 you said that the studies were well understood. 10:11:04
12 So I'm just wondering how to reconcile those 10:11:06
13 statements. 10:11:09
14 A. I would say that the 10:11:10
15 specific sampling methodologies and assessment 10:11:11
16 methodologies are understood, I suppose. The 10:11:15
17 comment is more in the context of the overall REA 10:11:18
18 permitting system. 10:11:24
19 Q. But at the same time 10:11:24
20 didn't just another part of the proposal that we 10:11:27
21 looked at say that the ministries could, in fact, 10:11:29
22 reject the methodologies that are proposed? 10:11:33
23 A. They could reject it, 10:11:36
24 but, again, as I said before, it's usually a 10:11:37
25 fine-tuning of scope and -- but the actual 10:11:41

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1 study requirements 10:10:16
2 required by the 10:10:17
3 regulatory authorities 10:10:18
4 will be high." 10:10:19
5 Do you see that? 10:10:20
6 A. I do. 10:10:21
7 Q. And in the next paragraph 10:10:21
8 it states: 10:10:23
9 "Studies conducted for 10:10:24
10 offshore wind projects in 10:10:26
11 other parts of the world 10:10:27
12 or other studies that we 10:10:28
13 suspect may be required 10:10:29
14 include the effects of 10:10:31
15 electromagnetic fields 10:10:33
16 from transmission cables 10:10:34
17 on fish and the effects 10:10:35
18 of noise vibration from 10:10:36
19 windmills on fish." 10:10:40
20 And then in the next sentence 10:10:42
21 you'll see it says: 10:10:43
22 "It is uncertain whether 10:10:44
23 these studies will be 10:10:45
24 required." 10:10:46
25 Do you see that? 10:10:46

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1 assessment methodologies are -- again, they're 10:11:45
2 common in environmental assessment practice. 10:11:49
3 Q. Okay. Now, I would like 10:11:51
4 to turn to page 2 of your binder, please. For the 10:11:59
5 record, this is Exhibit R-0529. 10:12:07
6 MR. BISHOP: Are we talking 10:12:16
7 about tabs here? 10:12:17
8 MS. WATES: Tab 2. Tab 2. 10:12:20
9 You should be aware that the printed version in 10:12:21
10 your binder contains some confidential information 10:12:22
11 that's clearly marked with a box on page 2, but 10:12:25
12 since we're not referring to that, I'm just going 10:12:28
13 to stay in the public version -- or, sorry, stay 10:12:30
14 on the live feed. 10:12:35
15 BY MS. WATES: 10:12:36
16 Q. This is an internal 10:12:36
17 Windstream document that the Claimant has produced 10:12:38
18 to Canada in this arbitration, entitled: 10:12:41
19 "Windstream Wolfe Island 10:12:44
20 Shoals Inc. Claimant 10:12:44
21 Project Status and 10:12:48
22 Regulatory Issues." 10:12:48
23 Do you see that? 10:12:49
24 A. I see that. 10:12:49
25 Q. And the bottom of page 1 10:12:50

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1 refers to Windstream's FIT contract offer and the 10:12:51
2 need to build in four years for a May 2014 start 10:12:53
3 date, which was the Milestone Date for Commercial 10:12:56
4 Operation after the original contract offer. Do 10:13:00
5 you see that? 10:13:02
6 A. I see that. 10:13:02
7 Q. Now, we're going to turn 10:13:03
8 to page 2. It states at the bottom of the page 10:13:05
9 here that: 10:13:09
10 "One of the key concerns 10:13:09
11 was a high degree of 10:13:10
12 regulatory uncertainty 10:13:12
13 with lots of unknowns." 10:13:12
14 Do you see that? 10:13:14
15 A. I'm sorry. Where am I 10:13:15
16 looking? 10:13:16
17 Q. At the bottom of page 2. 10:13:17
18 A. Bottom of page 2? Yes. 10:13:18
19 Okay. 10:13:21
20 Q. It states there: 10:13:21
21 "A high degree of 10:13:22
22 regulatory uncertainty, 10:13:23
23 lots of unknowns." 10:13:25
24 Do you see that? 10:13:26
25 A. I see that. 10:13:27

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1 experience. Concerned 10:14:02
2 about what is beyond our 10:14:02
3 control. Also concerned 10:14:03
4 about being penalized for 10:14:05
5 being a first mover." 10:14:06
6 Do you see that? 10:14:08
7 A. I see that. 10:14:09
8 Q. So you would acknowledge 10:14:09
9 that, at least from the Claimant's perspective, 10:14:12
10 according to this document, it's describing itself 10:14:14
11 as a -- as a first mover, which would fit with the 10:14:18
12 idea that it's the first of a kind project from a 10:14:21
13 permitting perspective; correct? 10:14:24
14 A. I would agree that that 10:14:26
15 would indicate that it's a first of a kind project 10:14:28
16 under the REA regulation, yes. 10:14:30
17 Q. Okay. Okay. Now I would 10:14:32
18 like to turn to Tab 3 of your binder. 10:14:33
19 A. Okay. 10:14:37
20 Q. This tab contains some 10:14:44
21 excerpts from the Environmental Protection Act -- 10:14:47
22 actually, if you will just give me a moment to 10:14:57
23 confer with my colleagues. 10:15:00
24 [Counsel confer.] 10:15:24
25 BY MS. WATES: 10:15:24

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1 Q. Okay. And on page 3, the 10:13:31
2 fist bullet points states that: 10:13:32
3 "One of the regulatory 10:13:33
4 uncertainties is that 10:13:34
5 setback requirements 10:13:35
6 haven't been defined by 10:13:36
7 MOE for offshore wind 10:13:38
8 projects." 10:13:39
9 Do you see that? 10:13:39
10 A. I do. 10:13:40
11 Q. And in the next bullet 10:13:40
12 point: 10:13:42
13 "MOE REA process, how 10:13:43
14 long will this process 10:13:45
15 take for offshore wind 10:13:46
16 projects?" 10:13:47
17 Do you see that? 10:13:47
18 A. I see that. 10:13:48
19 Q. And the last bullet point 10:13:49
20 on the page that I'd like to show you is -- sorry, 10:13:51
21 the second-last bullet, it states: 10:13:54
22 "We will push to achieve 10:13:56
23 COD within four years. 10:13:58
24 Unlikely based on 10:13:59
25 previous approvals 10:14:00

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1 Q. Sorry. Thank you for 10:15:42
2 your indulgence just for a moment while I get 10:15:44
3 organized. 10:15:49
4 I'd like, actually, to, sorry, 10:15:50
5 go back to your report, the main WSP report -- 10:15:51
6 A. Okay. 10:15:55
7 Q. -- and turn to page 12. 10:15:55
8 In the last paragraph before Section 3.2.1.2 -- 10:16:02
9 A. Yes. 10:16:07
10 Q. -- you stated that: 10:16:07
11 "The key concept and 10:16:08
12 definition of a project 10:16:10
13 location in the REA 10:16:11
14 regulation includes all 10:16:12
15 physical aspects of the 10:16:14
16 project." 10:16:15
17 Do you see that? 10:16:16
18 A. I do. 10:16:16
19 Q. And you went on to say 10:16:17
20 that: 10:16:17
21 "There is no distinction 10:16:18
22 between onshore, 10:16:19
23 offshore, temporary, or 10:16:21
24 permanent aspects of the 10:16:23
25 project under the REA 10:16:25

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1 regulation." 10:16:25
2 Do you see that? 10:16:26
3 A. I see that, yes. 10:16:26
4 Q. And you were saying this 10:16:28
5 in response to URS' statement at paragraph 74(b) 10:16:29
6 of its report, which is excerpted there further 10:16:33
7 above on the page. It states: 10:16:36
8 "The permitting for the 10:16:39
9 construction of the 10:16:41
10 onshore facilities 10:16:42
11 necessary to store 10:16:43
12 equipment during 10:16:45
13 construction and 10:16:45
14 manufacture of the 10:16:46
15 foundations is hardly 10:16:47
16 mentioned in the 10:16:48
17 Windstream submissions." 10:16:49
18 Do you see that? 10:16:50
19 A. I see that. 10:16:51
20 Q. And so I'd just like to 10:16:52
21 confirm for the record, then, in WSP's opinion, 10:16:53
22 that the onshore -- whether or not the onshore 10:16:57
23 manufacturing facilities for the gravity-based 10:17:02
24 foundations would be permitted separately from the 10:17:04
25 main project, REA process? 10:17:07

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1 saying that the Windstream submissions hardly 10:18:22
2 addressed the onshore manufacturing permits. 10:18:26
3 Isn't that right? 10:18:31
4 A. That's what they're -- 10:18:32
5 that's what they're saying in the -- in our 10:18:34
6 response. And our scheduling activity was to 10:18:35
7 include a line item for the permits that would be 10:18:38
8 required from an existing cement manufacturing 10:18:42
9 facility. 10:18:44
10 Q. But in this response, 10:18:45
11 paragraph responding to URS pointing out that the 10:18:47
12 onshore permitting had hardly been addressed, you 10:18:51
13 had said they were ignoring the key concept and 10:18:55
14 definition of a project location under the REA, 10:18:57
15 which includes all physical aspects of the 10:19:00
16 project, and there's no distinction between 10:19:01
17 onshore and offshore. 10:19:04
18 So just in terms of clarifying 10:19:04
19 for the record that -- your position here is not 10:19:08
20 that they're together; they're separate? 10:19:11
21 A. They are -- well, URS, in 10:19:14
22 this particular comment, are -- are making really 10:19:16
23 two comments. The first comment is about a 10:19:19
24 manufacturing facility. The second comment is 10:19:21
25 specifically about a jetty and a grid connection. 10:19:24

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1 A. Yes, they would be 10:17:09
2 permitted separately. Windstream would not be the 10:17:11
3 proponent of those facilities. Those facilities 10:17:14
4 would be from a third party, from a cement 10:17:16
5 manufacturer, that would not be considered part of 10:17:19
6 the project location. 10:17:21
7 The onshore components that 10:17:23
8 we're talking about here are a submarine cable to 10:17:25
9 land transition as well as any ancillary equipment 10:17:30
10 that would be required to make the connection to 10:17:34
11 the grid as well as any storage areas for 10:17:36
12 transport or -- of the equipment. The regulation 10:17:41
13 is really clear that -- and sort of what we call 10:17:46
14 lay-down area in construction where we would store 10:17:49
15 materials to stage them, to install them are 10:17:51
16 included in the project location, because you are 10:17:56
17 essentially disturbing those areas. 10:17:58
18 Q. Okay. And so I guess I'd 10:18:00
19 just like to clarify a point for the record, then, 10:18:01
20 because yesterday we also heard from Ms. Sarah 10:18:03
21 Powell that her opinion is also that they would be 10:18:09
22 permitted separately. And she said that she was 10:18:11
23 correcting the URS report. 10:18:13
24 But based on what you have 10:18:15
25 excerpted here, paragraph 74(b), URS was actually 10:18:18

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1 So the jetty and grid connection, onshore 10:19:27
2 components, they are part of the project, and they 10:19:29
3 would -- they are assessed as part of the project 10:19:32
4 location. 10:19:34
5 The manufacturing facility, 10:19:34
6 not part of the project, third party, completely 10:19:38
7 different proponent. And it would be the same 10:19:41
8 thing as asking a wind turbine manufacturer to 10:19:43
9 permit their facility as part of the REA -- 10:19:47
10 Q. And so here you're -- 10:19:47
11 A. -- which we don't do. 10:19:48
12 Q. Sorry to interrupt. 10:19:50
13 A. That's okay. 10:19:50
14 Q. You're responding to URS' 10:19:51
15 comment that the onshore permitting was hardly 10:19:54
16 addressed, but that's not an issue that you've 10:19:57
17 addressed anywhere -- anywhere in your report, is 10:20:00
18 it? I mean, you said you included it in the 10:20:02
19 schedule, but the onshore permitting, I didn't see 10:20:05
20 that. 10:20:07
21 A. Onshore permitting is 10:20:08
22 done as part of the REA, and onshore permitting is 10:20:09
23 also done as part of the post-REA in terms of an 10:20:12
24 authorization from the Conservation Authority 10:20:18
25 under their jurisdiction, and that's normally done 10:20:20

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1 post-REA. 10:20:23
2 Q. But -- sorry I'm talking 10:20:24
3 about now, this separate permitting process that 10:20:26
4 you said would apply to the onshore manufacturing 10:20:28
5 facilities. 10:20:32
6 A. Yes. 10:20:32
7 Q. I didn't see an 10:20:33
8 explanation of the timing for that process. You 10:20:34
9 have included -- 10:20:38
10 A. Yes. 10:20:38
11 Q. -- those activities in 10:20:39
12 the schedule, but there's no explanation in the 10:20:40
13 report as to the timelines and why they were 10:20:42
14 considered reasonable. 10:20:44
15 A. No. The timelines are 10:20:45
16 not considered in the report because we're 10:20:47
17 dealing, really, with the REA component and those 10:20:51
18 components. 10:20:54
19 And, again, we're providing a 10:20:54
20 -- based on experience in the schedule how long it 10:20:57
21 takes to amend the main approval for a cement 10:21:00
22 plant, which would be, back then, called a 10:21:03
23 Certificate of Authorization or a C of A. And we 10:21:05
24 provided a timeline in the schedule based on what 10:21:08
25 we experienced with other types of facilities in 10:21:11

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1 have included that onshore component and -- as 10:22:16
2 part of -- as part of the REA process. 10:22:19
3 Q. And is -- 10:22:19
4 A. It's encapsulated in that 10:22:22
5 larger REA process. 10:22:23
6 Q. And this would be located 10:22:24
7 at the site of the onshore manufacturing 10:22:28
8 facilities for the gravity-based foundations. Is 10:22:30
9 that what -- 10:22:32
10 A. I'm not sure where it 10:22:33
11 would be located, to be honest. It -- it might 10:22:35
12 be. It might not be. I don't know. 10:22:38
13 Q. Okay. If we can turn to 10:22:42
14 page 40 of the WSP report. This is under "Wind 10:23:00
15 Farm Layout and Project Changes." You said in the 10:23:12
16 last paragraph, in the second sentence: 10:23:16
17 "Windstream conducted a 10:23:17
18 primary level of 10:23:19
19 constraints analysis in 10:23:19
20 the -- in its assessment 10:23:21
21 of the project, which is 10:23:22
22 standard in the project 10:23:24
23 development process." 10:23:25
24 Do you see that. 10:23:26
25 A. I do. 10:23:27

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1 the work that we do. 10:21:16
2 Q. But you didn't consider 10:21:17
3 it necessary to set out the rationale that was -- 10:21:18
4 or the experience that was informing that schedule 10:21:23
5 so that URS could -- could respond to it? 10:21:25
6 A. No, we didn't. No, it's 10:21:28
7 not in the report. 10:21:29
8 Q. And I'm not sure if you 10:21:30
9 are aware, but, to your knowledge, is this issue 10:21:32
10 addressed anywhere else in any of the Claimant's 10:21:35
11 expert reports? 10:21:38
12 A. Not to my knowledge, no. 10:21:39
13 I don't know. 10:21:41
14 Q. Thanks. You also -- you 10:21:41
15 mentioned permitting for the jetty, and that's not 10:21:47
16 something I'm familiar with, so if you could just 10:21:52
17 clarify what you meant with that, and whether or 10:21:54
18 not that would be included or not included, in 10:21:56
19 your opinion, in the REA. 10:21:58
20 A. Yes. If it's a structure 10:21:59
21 that you are required -- you're constructing for 10:22:01
22 the project in order to construct the project and 10:22:04
23 to maintain the project, then that would be part 10:22:07
24 of your project location or your disturbed area, 10:22:10
25 and you would -- you would include that, and we 10:22:14

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1 Q. And it then stated that: 10:23:28
2 "Finalizing the promise 10:23:30
3 layout comes later in the 10:23:31
4 process and includes 10:23:33
5 additional constraints 10:23:33
6 analysis that are 10:23:34
7 generated from 10:23:35
8 environmental studies and 10:23:36
9 other engineering 10:23:37
10 studies." 10:23:38
11 Do you see that? 10:23:39
12 A. I do. 10:23:39
13 Q. So you acknowledge, then, 10:23:40
14 that the analysis that Windstream and that WSP, on 10:23:41
15 behalf of Windstream, has conducted to this point 10:23:46
16 is a preliminary level of analysis; correct? 10:23:48
17 A. The level of analysis 10:23:52
18 that we provided, yes, would be would be a 10:23:54
19 preliminary one. 10:23:58
20 Q. And do you acknowledge, 10:23:59
21 then, that it would need to be supplemented by 10:24:01
22 additional analysis and specifically the fieldwork 10:24:03
23 component, which you can't really do until you 10:24:07
24 have your site finalized; correct? 10:24:11
25 A. You -- I'm trying to 10:24:15

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1 figure a way to explain this. We have a 10:24:17
2 preliminary site layout provided to us. This is 10:24:23
3 the normal way that we are approached with a 10:24:26
4 project, that the developer has done some 10:24:28
5 preliminary work, some basic screening work, and 10:24:30
6 provides us with a basic document that shows, 10:24:33
7 "Here is what we're thinking for our project." 10:24:37
8 From there you develop a 10:24:40
9 project description report, which defines a 10:24:42
10 project location. And you define that project 10:24:46
11 location based on a number of constraints that 10:24:49
12 you're aware of from a basic level of desktop 10:24:52
13 understanding. And then the project progresses 10:24:55
14 from there. 10:24:58
15 The detailed reports are 10:25:00
16 really to determine -- they're part of that REA 10:25:03
17 process in order to determine what the potential 10:25:09
18 environmental impacts would be, what habitat is 10:25:11
19 there, those types of items. 10:25:13
20 Q. But in this case, it's 10:25:15
21 not possible to prepare the project description 10:25:18
22 report that would be submitted to the MOE, because 10:25:22
23 you, in fact, can't state with any certainty where 10:25:25
24 the project site is; correct? 10:25:28
25 A. The material that we saw 10:25:31

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1 there's no habitat or the habitat is limited for 10:26:43
2 certain species, then that's a reasonable piece of 10:26:46
3 information to move forward to start to formulate 10:26:50
4 a project location. 10:26:55
5 And then as we move the 10:26:57
6 process along, those turbine locations are sited 10:26:59
7 accordingly. 10:27:03
8 Q. But, again, that is not 10:27:04
9 something that's been done yet. You're still at 10:27:05
10 the preliminary level of the analysis? 10:27:07
11 A. Right. And remember that 10:27:10
12 draft D R, the draft Project Description Report, 10:27:12
13 it is a draft, and it goes to the MOE for review, 10:27:15
14 to say, "Here's what we're thinking of doing for 10:27:18
15 our project. We're kicking our project off." 10:27:21
16 And that's the document that 10:27:23
17 they use in order to make some determinations, 10:27:24
18 including who you need to contact in terms of 10:27:27
19 First Nations aboriginal groups for the 10:27:30
20 consultation part. 10:27:32
21 So the project area itself, as 10:27:33
22 it's defined, would certainly have provided enough 10:27:37
23 information to get that from the Ministry. As 10:27:40
24 well as a basic understanding of the general types 10:27:44
25 of environmental impacts you could expect from the 10:27:47

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1 had a project site that was defined and had 10:25:33
2 turbine locations that were defined. And that is 10:25:36
3 the typical level of information that we receive 10:25:39
4 as a consultant doing this. 10:25:41
5 Q. I guess just the last 10:25:44
6 question on this point. In terms of the actual 10:25:48
7 fieldwork -- you mentioned, for example, bats in 10:25:51
8 your presentation -- I mean, you can't actually 10:25:54
9 physically go and conduct that work until a later 10:25:56
10 stage of the -- of the process; correct? 10:26:00
11 A. Once a project area is 10:26:02
12 defined -- really when we study bats, we study -- 10:26:06
13 it's not specific to, say, a turbine location. It 10:26:10
14 is more general in terms of a study area that it 10:26:13
15 would be conducted at. 10:26:17
16 Q. In terms of fish, for 10:26:17
17 example, or other -- other life forms or 10:26:19
18 environmental aspects that might be specific to 10:26:24
19 the project, those would need to be taken into 10:26:26
20 correct; correct? 10:26:29
21 A. Typically, yes, they 10:26:30
22 would be taken into account. But they are taken 10:26:31
23 into account in terms of that broader preliminary 10:26:34
24 desktop review of the information. 10:26:38
25 So if we detect from that that 10:26:39

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1 construction phase, from the operations phase, and 10:27:50
2 also perhaps from the decommissioning phase of the 10:27:53
3 project. 10:27:56
4 Q. And, to your knowledge, 10:27:57
5 has a draft project description report been 10:27:58
6 prepared by the Claimant and submitted to MOE? 10:28:01
7 A. No. They wouldn't have 10:28:05
8 prepared one if they had no project to prepare one 10:28:07
9 for. So it's a formal document -- I wouldn't say 10:28:11
10 a formal document. It's a document that's 10:28:14
11 contents are prescribed by the regulation that it 10:28:18
12 has to contain a certain amount of information. 10:28:20
13 Q. And you mentioned also an 10:28:22
14 Aboriginal consultations list, I believe. 10:28:28
15 A. Yes. 10:28:29
16 Q. And this is something 10:28:29
17 that a proponent has to request from the Ministry 10:28:30
18 if they want to complete the REA process; correct? 10:28:32
19 A. That is correct. That's 10:28:35
20 the first sort of touch-point with the Notice of 10:28:36
21 Project to the MOE as well as providing this draft 10:28:39
22 Project Description Report, and then the MOE makes 10:28:42
23 a determination of -- they call it the Minister's 10:28:45
24 list. You get the Minister's list of groups to -- 10:28:48
25 to consult with. 10:28:50

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1 Q. And these are 10:28:52
2 specifically Aboriginal or First Nations groups 10:28:53
3 that might have an interest or a potential 10:28:56
4 interest in the project area; correct? 10:28:58
5 A. That's correct. 10:29:00
6 Q. And, to your knowledge, 10:29:00
7 has the Claimant, Windstream, requested such a 10:29:03
8 list from the MOE in this case? 10:29:05
9 A. No, they haven't. And 10:29:08
10 they would have no reason to if they had -- if -- 10:29:10
11 the moratorium was put on the project just as they 10:29:13
12 were about to, my understanding, go into starting 10:29:16
13 the project. 10:29:20
14 Q. And, to your knowledge, 10:29:20
15 when was the moratorium or the deferral -- 10:29:23
16 moratorium on offshore wind imposed? 10:29:27
17 A. It would be the early 10:29:29
18 February. I -- don't recall the exact date. 10:29:30
19 Q. Of which year? 10:29:33
20 A. It would be -- again, I 10:29:34
21 don't recall the date. 10:29:37
22 Q. If I said it were 10:29:37
23 February 11, 2011, would you -- 10:29:39
24 A. Then -- 10:29:39
25 MR. TERRY: We wouldn't object 10:29:39

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1 Q. Okay. So from the time 10:30:28
2 that Windstream was awarded a FIT contract to -- 10:30:30
3 up to the deferral decision, to your knowledge, 10:30:34
4 they never requested an aboriginal consultation 10:30:38
5 list? 10:30:41
6 A. Not to my knowledge, no. 10:30:43
7 Q. You mentioned also the 10:30:44
8 possibility of addressing potential issues through 10:30:52
9 micrositing and removing or relocating turbine 10:30:55
10 locations and other project infrastructure. 10:30:58
11 Now, this is intended to cover 10:31:01
12 minor adjustments in the turbine locations; 10:31:04
13 correct? 10:31:06
14 A. Yes, that's correct. 10:31:06
15 Q. And you stated in your 10:31:07
16 report that, typically, REAs make allowances for 10:31:08
17 minor variations in the locations of the turbines 10:31:13
18 stated in the REA condition as a variation of plus 10:31:15
19 or minus 10 metres from the published coordinates; 10:31:18
20 correct? 10:31:22
21 A. That's correct. That's a 10:31:22
22 common deviation that is published as a condition 10:31:23
23 in the actual approval that you get from the MOE. 10:31:25
24 That allows for that, once you have crystallized 10:31:28
25 your project. 10:31:31

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1 to that. 10:29:39
2 MS. WATES: Yeah. We all 10:29:42
3 stipulate to that. 10:29:43
4 THE WITNESS: Then I would, 10:29:44
5 yes. Yes, I would agree. 10:29:45
6 So that -- and that's 10:29:46
7 consistent with our project schedule starting 10:29:47
8 around that time. 10:29:49
9 BY MS. WATES: 10:29:50
10 Q. And are you aware -- 10:29:50
11 well, if we -- if we look back to the RFP that -- 10:29:54
12 that was submitted, it was put out in October 10:29:58
13 2010. 10:30:01
14 A. Okay. 10:30:01
15 Q. Correct? 10:30:03
16 A. Yes. 10:30:03
17 Q. And are you aware of when 10:30:04
18 Windstream was awarded its FIT contract? 10:30:09
19 A. I do not have that date, 10:30:12
20 no. 10:30:14
21 Q. Are you aware of when the 10:30:14
22 first FIT contracts were awarded? 10:30:18
23 A. Somewhere, if I recall, 10:30:19
24 around 2010/2009 area. I don't recall the dates 10:30:22
25 when they were first issued. 10:30:26

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1 Q. But if the variance is 10:31:32
2 more than 10 metres, then you would have to apply 10:31:34
3 for an amendment to your REA; correct? 10:31:36
4 A. That's correct. 10:31:39
5 Q. And that would need to be 10:31:39
6 screened and reviewed and approved by the MOE; 10:31:42
7 correct? 10:31:44
8 A. That's correct. 10:31:45
9 Q. Okay. And you don't rule 10:31:45
10 out, in your report, the possibility that a 10:31:48
11 variation in the turbine location could be 10:31:51
12 required through a mitigation measure of greater 10:31:53
13 than 10 metres; correct? 10:31:55
14 A. No. Again, it's going to 10:31:57
15 be something very site-specific once we get into 10:31:59
16 doing the work or some engineering or technical 10:32:03
17 concern that arises during, say, the detail design 10:32:07
18 phase of the project. That's when those issues 10:32:10
19 typically would appear. 10:32:13
20 Q. And, again, you're not at 10:32:17
21 that stage of the -- your level of analysis is not 10:32:18
22 at that stage? 10:32:22
23 A. No. Our level of 10:32:23
24 analysis, really, is for what is the work that we 10:32:24
25 need to do in order to make a complete REA filing. 10:32:27

1 Q. Okay. I'd just like to 10:32:31
2 discuss now the fieldwork and studies necessary to 10:32:37
3 complete the natural heritage requirements of the 10:32:39
4 REA. 10:32:41
5 A. Okay. 10:32:42
6 Q. The schedule that you've 10:32:42
7 developed allows approximately eight months for 10:32:44
8 avian studies, seven months for bat studies, and 10:32:48
9 two months for fish studies; correct? 10:32:50
10 A. That's correct. 10:32:52
11 Q. And you spoke in your 10:32:53
12 presentation -- you address specifically the -- 10:32:54
13 the bat studies, that you consider that time 10:32:58
14 reasonable. But taking into account the overlap 10:33:01
15 that's in the schedule for some of these studies, 10:33:10
16 it's a total of nine months that we're working 10:33:12
17 with for all of the natural heritage studies; 10:33:16
18 correct? 10:33:18
19 A. If there's overlap -- 10:33:19
20 Q. We can look at that if 10:33:21
21 you'd like. 10:33:22
22 A. Okay, sure. 10:33:22
23 Q. It' in the large schedule 10:33:23
24 that my friend provided to you. 10:33:26
25 A. Yes. 10:33:28

1 with a period of approximately nine months; 10:34:20
2 correct? 10:34:22
3 A. I'm looking at the 10:34:23
4 overlap here. It would be helpful if you could 10:34:29
5 refer to specific lines so that I can track -- 10:34:33
6 Q. Yes, line 27 -- 10:34:36
7 A. Twenty-seven. 10:34:38
8 Q. -- line 29 and line 31. 10:34:38
9 A. Okay. 10:34:44
10 Q. So it's the three areas 10:34:44
11 of -- of field studies that you have opined on, 10:34:46
12 the birds, bats, and fish, as I understand they're 10:34:48
13 referred to. 10:34:53
14 A. Yes. Right. Okay. 10:34:53
15 Well, the longest activity is line 27. That goes 10:34:54
16 the latest. And so it overlaps the other one. So 10:34:56
17 that is the period of time for those studies. 10:35:01
18 Q. Right. And it starts a 10:35:03
19 little bit later than the other ones; correct? 10:35:04
20 A. Yes. Right. Okay. 10:35:07
21 Q. So if we look at the 10:35:08
22 activity that starts the earliest, that's the bat 10:35:09
23 studies, February 11, 2011. 10:35:12
24 A. Okay. 10:35:12
25 Q. And the activity that 10:35:13

1 Q. If we look at line 27. 10:33:28
2 A. Okay. 10:33:31
3 Q. It has avian studies 10:33:32
4 beginning on March 2, 2011 -- 10:33:34
5 A. Right. 10:33:36
6 Q. -- ending November 16, 10:33:36
7 2011, so approximately eight months? 10:33:38
8 A. Okay. 10:33:41
9 Q. Bat field studies on 10:33:41
10 February 11, 2011, ending September 8, 2011, 10:33:43
11 approximately seven months? 10:33:47
12 A. Okay. 10:33:48
13 Q. And line 31 indicates 10:33:48
14 that the aquatic field studies begin June 7, 2011 10:33:50
15 and end July 31, 2011, approximately two months. 10:33:54
16 So you see all of those times? 10:33:58
17 A. I do. 10:33:59
18 Q. Okay. And taking into 10:34:00
19 account the overlap that you see in the schedule 10:34:01
20 there, it spans -- the total natural heritage time 10:34:03
21 pans from February 11, 2011 to November 16, 2011; 10:34:08
22 correct? From the activity that begins the 10:34:12
23 earliest to the one that ends the latest? 10:34:16
24 A. Yes. Okay. Yes. 10:34:19
25 Q. Okay. So we're dealing 10:34:19

1 ends the latest is November 16, 2011, with the 10:35:14
2 bird studies. 10:35:18
3 A. Okay. Okay. I see that. 10:35:19
4 Q. Okay. So you'd agree 10:35:26
5 with me that there is approximately nine months? 10:35:27
6 A. Approximately. 10:35:29
7 Q. -- allowed for field 10:35:30
8 studies in total; correct? 10:35:31
9 A. Yes. But it ends at the 10:35:33
10 same time regardless of when we're starting. It's 10:35:35
11 still ending latest in October -- November, I'm 10:35:38
12 sorry. 10:35:42
13 Q. Okay. So I'd just like 10:35:43
14 to see how this compares with the estimated time 10:35:44
15 in the proposal that WSP provided in 2010. So if 10:35:48
16 you can turn back to Appendix 2 of the WSP report 10:35:52
17 and look at Section 5. I'd like to look at the 10:36:00
18 bird studies specifically. 10:36:08
19 So looking at Section 5, page 10:36:12
20 1 -- 10:36:15
21 A. Okay. 10:36:16
22 Q. -- the fourth paragraph 10:36:16
23 under Section 5.1.1, Bird survey, it states that: 10:36:18
24 "The present proposal 10:36:23
25 aims for a one-year bird 10:36:24

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1 survey." 10:36:26
2 A. Okay. 10:36:26
3 Q. Do you see that? And 10:36:27
4 then page -- I'm sorry. 10:36:31
5 A. Yes, I see that. 10:36:34
6 Q. Okay. Page 3 of the 10:36:35
7 section in the fifth paragraph, under Section 5.2, 10:36:38
8 "Bat Survey," this is the one you were referring 10:36:45
9 to in your presentation. I believe -- 10:36:46
10 A. Okay. Yes. 10:36:48
11 Q. -- it says it performed 10:36:49
12 during a one-year survey. And you've clarified 10:36:50
13 your opinion on that in the presentation, I 10:36:56
14 believe. 10:36:58
15 So if we can turn to page 4 10:36:58
16 now. We see, in Section 5.2, again, the fisheries 10:37:00
17 and benthics work. And on pages 5 and 6, there's 10:37:04
18 a list of points, and it sets out a schedule. 10:37:12
19 Point 2 on page 6 says: 10:37:16
20 "Field inventory is 12 10:37:19
21 weeks over one year." 10:37:20
22 Do you see that? 10:37:21
23 A. I do. 10:37:22
24 Q. So, in 2010, WSP proposed 10:37:23
25 to conduct the field studies over -- you know, 10:37:29

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1 data for birds -- 10:38:35
2 A. Yes. 10:38:36
3 Q. -- according to the 10:38:36
4 seasonality? 10:38:37
5 A. Yes. One -- I'm trying 10:38:38
6 to find a way to explain. It says one season or 10:38:41
7 one -- two seasonal surveys within the span of a 10:38:44
8 year. 10:38:48
9 Q. I'd just like to show you 10:38:49
10 Exhibit C-1426 at Tab 4. It's a document called 10:38:50
11 "Wind Turbines and Birds: A Guidance Document for 10:38:50
12 Environmental Assessment," published by 10:39:01
13 Environment Canada and the Canadian Wildlife 10:39:02
14 Service in April 2007. 10:39:06
15 You're familiar with this 10:39:06
16 document? 10:39:08
17 A. I have some familiarity 10:39:08
18 with it, but, again, I rely, as a project manager, 10:39:11
19 on my biology team and -- and others for this 10:39:13
20 particular guidance. 10:39:18
21 Q. If we turn to page 26 of 10:39:25
22 the document and look at the title to Section 8.5, 10:39:27
23 it's called "Special Considerations Relating to 10:39:36
24 Offshore Projects." Do you see that? 10:39:39
25 A. I see that. 10:39:40

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1 whether or not you're actually conducting field 10:37:32
2 studies for all 12 months, it's a 12-month period; 10:37:34
3 correct? 10:37:37
4 A. It would -- it would -- 10:37:37
5 you would be sampling in or doing the work in the 10:37:40
6 appropriate seasons during a one-year period, yes. 10:37:43
7 Q. Over the course of one 10:37:46
8 year? 10:37:47
9 A. Yes. 10:37:47
10 Q. Okay. And in the 10:37:48
11 schedule that's been submitted for this 10:37:50
12 arbitration, the period is shortened from 12 10:37:52
13 months to nine months; correct? 10:37:55
14 A. It still covers -- that's 10:37:57
15 correct, but the period of the studies being done 10:38:01
16 are hitting the survey windows that are required 10:38:05
17 -- that we have to do that work. 10:38:09
18 So we -- for birds, we 10:38:12
19 typically look at spring and -- and fall. Spring 10:38:15
20 season is when they're migrating, and breeding 10:38:18
21 birds are there, and fall migration. So -- so 10:38:20
22 it's encapsulated. So the actual time duration is 10:38:24
23 shorter, but it's still within that one year of 10:38:27
24 data. 10:38:31
25 Q. Okay. So one year of 10:38:32

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1 Q. And now if we look at 10:39:41
2 page 27, the third paragraph from the bottom of 10:39:43
3 the page, it states: 10:39:46
4 "Because of the potential 10:39:49
5 for large year-to-year 10:39:50
6 variation in activities, 10:39:51
7 preconstruction baseline 10:39:53
8 surveys --" 10:39:55
9 Sorry. 10:39:55
10 "-- preconstruction 10:39:56
11 baseline studies should 10:39:57
12 extend over at least two 10:39:58
13 years." 10:40:00
14 Do you see that? 10:40:00
15 A. Okay. I do see that, 10:40:01
16 yes. 10:40:03
17 Q. So, according to this 10:40:03
18 document, the guidance from Environment Canada and 10:40:07
19 Canadian Wildlife Service is that bird studies 10:40:12
20 should be conducted over the course of two years 10:40:16
21 as opposed to one year; correct? 10:40:18
22 A. That's what the document 10:40:21
23 says, yes. 10:40:22
24 Q. And if we go back to the 10:40:23
25 2010 WSP proposal at page -- Appendix 2 of your 10:40:25

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1 report and look at the first page of Section 5, 10:40:31
2 and we will look at the beginning of the third 10:40:47
3 paragraph. It states there -- 10:40:48
4 A. Sorry, we're in -- 10:40:52
5 Q. I'm in Appendix 2 of the 10:40:53
6 report, the 2010 proposal -- 10:40:55
7 A. Okay. 10:40:56
8 Q. -- and Section 5 of the 10:40:57
9 proposal. 10:40:58
10 A. Section 5. 10:40:59
11 Q. It's where the page 10:41:00
12 numbering restarts. 10:41:01
13 A. Yes, okay. 10:41:02
14 Q. If we look at the 10:41:03
15 beginning of the third paragraph there, it states: 10:41:04
16 "Federal guidelines 10:41:07
17 concerning bird surveys 10:41:07
18 for offshore wind 10:41:09
19 projects indicate that, 10:41:10
20 because of the potential 10:41:11
21 for large year-over-year 10:41:12
22 variations in activities, 10:41:15
23 preconstruction baseline 10:41:16
24 studies should extend 10:41:17
25 over at least two years." 10:41:18

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1 Q. Survey? Okay. Services. 10:41:58
2 "-- and MNR early on in 10:41:59
3 the process and negotiate 10:42:00
4 a single year 10:42:01
5 preconstruction survey." 10:42:02
6 A. Yes. 10:42:04
7 Q. Do you see that? 10:42:04
8 A. I do. 10:42:05
9 Q. Okay. So what I 10:42:05
10 understand WSP, in 2010, is saying here that 10:42:11
11 regulators normally require two years of bird 10:42:14
12 studies and that you would have to negotiate 10:42:18
13 specifically to get it down to one year of bird 10:42:21
14 studies; correct? 10:42:23
15 A. That's correct. But 10:42:24
16 we're talking two jurisdictions here. So Canadian 10:42:25
17 Wildlife Service is the federal agency. So that 10:42:29
18 would be the Canadian Environmental Assessment Act 10:42:32
19 requirement. 10:42:35
20 And it is a guideline. It's 10:42:36
21 not -- it's not a document that we're -- we're 10:42:39
22 compelled to use, although -- so that's something 10:42:42
23 to consider as well. 10:42:46
24 So in terms of the REA, we 10:42:47
25 think that it would be reasonable for a single 10:42:51

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1 And there WSP is citing to the 10:41:19
2 Wind Turbines and Birds Guidance Document. Do you 10:41:25
3 see that. 10:41:27
4 A. I do. 10:41:27
5 Q. And that's the exhibit 10:41:28
6 that we -- that we just looked at; correct? 10:41:29
7 A. Okay. Yes. 10:41:31
8 Q. And just back in the main 10:41:32
9 text of that paragraph, you stated: 10:41:34
10 "Since the installation 10:41:37
11 of turbines foundation 10:41:38
12 systems could begin 10:41:39
13 during summer of 2012 --" 10:41:40
14 According to the RFP documents 10:41:43
15 at that time. 10:41:45
16 A. Okay. 10:41:45
17 Q. "-- the project timeline 10:41:46
18 is not compatible with a 10:41:47
19 two-year bird survey." 10:41:48
20 And it indicates that: 10:41:50
21 "WSP's intent was to 10:41:51
22 engage both CWS --" 10:41:52
23 That is Canadian Wildlife. 10:41:55
24 A. Canadian Wildlife 10:41:56
25 Services. 10:41:58

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1 year of bird data. And, again, we relied on other 10:42:54
2 reports to support this and including Kerlinger 10:42:58
3 for -- for this information. 10:43:03
4 Q. Okay. But -- and you 10:43:04
5 mentioned that the Canadian Wildlife Service 10:43:09
6 represents a different -- and MNR, you know, 10:43:13
7 they're different jurisdictions, federal and 10:43:14
8 provincial; correct? 10:43:17
9 A. Yes. 10:43:18
10 Q. And you mentioned the 10:43:18
11 Canadian Environmental Assessment process, which I 10:43:19
12 involve -- I understand is an environmental 10:43:26
13 screening. Is that correct? 10:43:27
14 A. That's correct. 10:43:28
15 Q. And this would be 10:43:29
16 required -- if it's engaged, it would be required 10:43:30
17 in order to construct the project; correct? 10:43:35
18 A. It would be required, 10:43:37
19 yes. 10:43:38
20 Q. So to the extent that MNR 10:43:38
21 only required one year of avian studies, if -- the 10:43:41
22 federal regulators required two, then that would 10:43:45
23 be on the critical path in the project schedule; 10:43:48
24 correct? 10:43:51
25 A. We would have to look and 10:43:51

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1 see what room there was in the schedule between 10:43:52
2 completing the first year of bird data work, and 10:43:57
3 if another year was required, we've got 12 months' 10:44:00
4 worth of review from -- and an appeal at the ERT. 10:44:04
5 So it seems to me there would be adequate time, 10:44:08
6 within that overall project schedule that you 10:44:11
7 could get those studies to line up at the end, if 10:44:13
8 the requirement was for an additional year of bird 10:44:16
9 data. 10:44:19
10 PRESIDENT: Ms. Wates, how 10:44:22
11 long do you think you still need? We'll be 10:44:23
12 breaking fairly soon depending on how much you 10:44:28
13 need. 10:44:31
14 MS. WATES: I think I should 10:44:32
15 only need another 10 to 15 minutes perhaps. But 10:44:33
16 we can break and resume afterwards. 10:44:36
17 PRESIDENT: If it expedites 10:44:39
18 matters. Okay. Let's break for -- because we 10:44:41
19 will still have, I suppose, redirect and possibly 10:44:44
20 questions from the Tribunal. So let's break for 10:44:48
21 15 minutes now, and we will continue at 11:00. 10:44:51
22 MS. WATES: Thank you. 10:44:54
23 -- Recess taken at 10:47 a.m. 10:47:02
24 -- Upon resuming at 11:02 a.m. 11:01:47
25 PRESIDENT: Okay. We will go 11:02:31

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1 this arbitration that the screening time can take, 11:03:48
2 in fact, between one to nine months, with an 11:03:51
3 average of six months for Class 3 and 4 onshore 11:03:54
4 wind projects. Are you -- is that consistent with 11:03:57
5 your experience? 11:03:59
6 A. It's consistent with some 11:04:00
7 of our experience on projects. However, I would 11:04:02
8 like to say that, again, from a project-planning 11:04:05
9 perspective, we need to use the published 11:04:08
10 standards for our schedules. And that's what was 11:04:10
11 used for in this case. 11:04:14
12 Q. And, I mean, that's from 11:04:15
13 the screening perspective. But then from the 11:04:17
14 perspective of technical review, she's indicated 11:04:19
15 that it's taken between 5 and 20 months. Is that 11:04:24
16 also consistent with your experience? 11:04:29
17 A. Not in my experience in 11:04:32
18 terms of a 20-month turnaround, no. Certainly 11:04:34
19 sometimes on the shorter end of five months, yes. 11:04:37
20 Sometimes a little longer. It really depends on 11:04:40
21 the project and the issues that are there. 11:04:44
22 Q. So you have been involved 11:04:45
23 in onshore wind projects, for example, where the 11:04:47
24 technical review of the application by MOE took 11:04:49
25 longer than six months? 11:04:52

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1 on, Ms. Wates. 11:02:33
2 BY MS. WATES: 11:02:35
3 Q. Thank you. I just have 11:02:35
4 one more brief set of questions. You referred to 11:02:38
5 the 40-day screening review service standard. We 11:02:42
6 talked about that. That's for screening 11:02:47
7 applications for the REA; correct? 11:02:50
8 A. Yes. 11:02:52
9 Q. And the six-month service 11:02:52
10 standard for the technical review of applications, 11:02:54
11 that you relied on both of those in making the 11:02:56
12 schedule. We had discussed that; correct? 11:02:59
13 A. That's correct. 11:03:01
14 Q. Now, you said that, for 11:03:10
15 the purpose of scheduling, you rely on the service 11:03:15
16 standards from the Ministry. But in your -- in 11:03:18
17 your experience as a permitting consultant, it can 11:03:20
18 actually take much longer than that, can't it? 11:03:24
19 A. It can take longer, and 11:03:26
20 on the other hand, it can take shorter as well. 11:03:28
21 Q. But in terms of the 11:03:31
22 service standards, it's possible that it can, in 11:03:34
23 fact, take much longer. 11:03:38
24 And the director, in fact, of 11:03:39
25 the approvals program of the REA has attested in 11:03:45

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1 A. Yes, in some cases. 11:04:54
2 Q. Significantly longer than 11:04:55
3 six months? 11:04:57
4 A. Sometimes. 11:04:57
5 Q. Approximately how long 11:04:59
6 would you say is the longest time that it's taken, 11:05:01
7 in your experience? 11:05:03
8 A. I have worked on many 11:05:04
9 projects, and I can't really recall in terms of a 11:05:06
10 specific time frame, to be honest with you, in 11:05:09
11 terms of the longest one, no. 11:05:13
12 Q. Maybe not specifically 11:05:15
13 the longest one, but on the upper end of the 11:05:17
14 range, if you were to estimate, in your 11:05:20
15 experience, doing permitting and working with the 11:05:22
16 Ministry, how long would you estimate it could 11:05:25
17 take? 11:05:31
18 A. Again, I really can't 11:05:32
19 give an estimate, because every project is going 11:05:34
20 to be different, and the types of questions and 11:05:37
21 things that the Ministry needs to review are going 11:05:39
22 to be different and, and sometimes it's a case 11:05:43
23 where a project has a lot of public opposition in 11:05:44
24 an area, and those comments need to be reviewed 11:05:49
25 very carefully. And that takes additional time. 11:05:52

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1 Or there is a specific technical item that is 11:05:55
2 potentially problematic and needs to be reviewed. 11:06:00
3 So, again, I can't provide an estimate until we do 11:06:05
4 the work. 11:06:09
5 Q. Right. I appreciate that 11:06:10
6 it has to be assessed on a project-by-project 11:06:11
7 basis, but for the projects that you've already 11:06:14
8 dealt with the permitting for -- 11:06:17
9 A. Yes. 11:06:19
10 Q. -- I'd like to just ask 11:06:19
11 again if you can -- you said it sometimes can take 11:06:22
12 longer than six months. 11:06:25
13 A. Yes. 11:06:26
14 Q. And I'd just like to 11:06:26
15 know, in your experience, what the upper end of 11:06:27
16 that range has been. You don't have to identify a 11:06:29
17 specific project, but for an onshore wind project 11:06:32
18 generally, one that's been more difficult, how 11:06:35
19 long has that technical review process taken? 11:06:37
20 A. It's taken additional 11:06:40
21 three to six months, depending on the project, 11:06:42
22 yes. 11:06:45
23 Q. So 10 months, then, if we 11:06:45
24 -- you said an additional three to six months? 11:06:49
25 A. Yes. 11:06:52

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1 REA? 11:07:38
2 A. Yes. 11:07:39
3 Q. Okay. And in the case of 11:07:40
4 the first offshore wind project in Ontario, 11:07:42
5 planned for 300 megawatts -- 11:07:45
6 A. Yes. 11:07:48
7 Q. -- in your experience 11:07:48
8 dealing with onshore wind projects, would you 11:07:51
9 expect much public opposition to this project? 11:07:54
10 A. I would expect, actually, 11:07:56
11 less, only because onshore wind projects tend to 11:07:59
12 affect many different landowners and stakeholders. 11:08:03
13 And in this particular case, 11:08:07
14 we're far away from any property owners. So on 11:08:09
15 that aspect, I think the volume of comments that 11:08:12
16 would have to be dealt with by -- by 11:08:14
17 directly=affected stakeholders and property owners 11:08:18
18 would be much, much less. In terms of providing 11:08:20
19 comment on other aspects of the project, because 11:08:24
20 it's an offshore project, that's an unknown. But 11:08:26
21 -- so from that perspective, I would expect less 11:08:30
22 interest in the project from people that would be 11:08:33
23 directly affected or close to the turbines because 11:08:35
24 there really aren't very many people close by the 11:08:38
25 site. 11:08:41

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1 Q. In fact -- I'm sorry. I 11:06:52
2 just want to correct that. Did you say three to 11:06:54
3 six months? 11:06:56
4 A. Yes. 11:06:57
5 Q. So then adding on the 11:06:57
6 additional six months, it would be 12 months, in 11:06:58
7 fact, one year of technical review? 11:07:00
8 A. Yes. 11:07:02
9 Q. Just checking my -- I'm 11:07:02
10 not a mathematician. I became a lawyer because 11:07:05
11 sometimes even basic math evades me. 11:07:09
12 PRESIDENT: That's in the 11:07:12
13 transcript. 11:07:14
14 BY MS. WATES: 11:07:15
15 Q. Okay. So in your 11:07:15
16 experience, it can take potentially as long as a 11:07:16
17 year. You mentioned that sometimes public 11:07:19
18 opposition can play into that process. 11:07:22
19 A. Yes. 11:07:25
20 Q. And I understand that 11:07:26
21 there's some public consultation involved. 11:07:28
22 A. Correct. 11:07:31
23 Q. So this public opposition 11:07:31
24 that you referred to, would it be coming in 11:07:34
25 through the public consultation process of the 11:07:36

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1 Q. Thank you. Are you 11:08:41
2 familiar with the environmental registry of the 11:08:42
3 Ontario Government? 11:08:46
4 A. Yes. 11:08:46
5 Q. And are you aware of the 11:08:47
6 EBR posting that was made to -- with the decision 11:08:50
7 of the deferral on February 11, 2011? 11:08:54
8 A. No, I haven't seen that 11:08:56
9 particular posting. 11:09:00
10 Q. Okay. Perhaps we could 11:09:00
11 pull that up so that we can just look at what 11:09:01
12 public comment there has been. 11:09:06
13 A. Okay. 11:09:08
14 MS. WATES: Donnie, would you 11:09:08
15 be able to pull up Exhibit C-0725? 11:09:09
16 BY MS. WATES: 11:09:09
17 Q. So we'll see this is 11:09:19
18 MOE's decision posting, dated February 11, 2011. 11:09:23
19 A. Okay. 11:09:28
20 Q. If we scroll down -- 11:09:28
21 that's good there -- the third paragraph: 11:09:30
22 "In light of the comments 11:09:35
23 received in response to 11:09:37
24 MOE and MNR's postings 11:09:38
25 and, in particular, the 11:09:39

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1 identified need for 11:09:40
2 further study, Ontario is 11:09:41
3 not proceeding with any 11:09:42
4 development of offshore 11:09:43
5 wind projects until the 11:09:44
6 necessary scientific 11:09:46
7 research is completed and 11:09:46
8 an adequately informed 11:09:48
9 policy framework can be 11:09:49
10 developed." 11:09:50
11 And if we -- if we scroll down 11:09:52
12 to the second page -- yes, keep going -- it says, 11:09:53
13 "Comments received on the proposal: 1,403." Do 11:10:01
14 you see that. 11:10:04
15 A. I do. 11:10:04
16 Q. And if we keep scrolling, 11:10:05
17 down, under "Effects of the Consultation on the 11:10:09
18 Decision," it states that: 11:10:14
19 "A majority of 11:10:18
20 respondents expressed 11:10:19
21 concern that either the 11:10:19
22 proposed 5-kilometre 11:10:20
23 exclusion zone may not be 11:10:21
24 far enough from the 11:10:26
25 shoreline to provide 11:10:26

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1 with my colleagues. Those are all of our 11:11:35
2 questions for the witness. 11:11:44
3 PRESIDENT: Thank you, 11:11:47
4 Ms. Wates. 11:11:49
5 Any questions in redirect? 11:11:51
6 MS. SEERS: Yes, we do. If we 11:11:54
7 could ask the Tribunal's indulgence of a few 11:11:55
8 minutes to gather our thoughts and documents, that 11:11:57
9 would be much appreciated. 11:12:00
10 PRESIDENT: Five minutes? 11:12:02
11 MS. SEERS: Thank you. 11:12:04
12 --- Recess taken at 11:12 a.m. 11:12:05
13 --- Upon resuming at 11:14 a.m. 11:14:09
14 PRESIDENT: Okay. We will go 11:14:12
15 on, Ms. Seers. 11:14:13
16 CROSS-EXAMINATION BY MS. SEERS: 11:14:13
17 Q. Yes. Good morning, 11:14:15
18 Mr. Roberts. Just a few questions for you. 11:14:16
19 A. Sure. 11:14:20
20 Q. You'll recall that 11:14:20
21 Ms. Wates asked you a question about delays by the 11:14:21
22 MOE in processing screening and technical reviews, 11:14:25
23 and she suggested to you that it had taken between 11:14:31
24 5 and 20 months turnaround in certain cases. 11:14:34
25 In your experience, how has 11:14:38

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1 adequate protection, or 11:10:27
2 there were significant 11:10:29
3 areas of scientific 11:10:30
4 uncertainty." 11:10:31
5 So this is indicated as being 11:10:32
6 the majority of respondents that MOE received 11:10:33
7 during the public consultation. 11:10:37
8 So given the comments that 11:10:39
9 were received by the MOE on this proposal, you 11:10:44
10 don't consider that there would be a high level of 11:10:47
11 engagement from the public and opposition to the 11:10:51
12 project on a project-specific basis? 11:10:54
13 A. Project-specific basis, I 11:10:56
14 think that that proposal is maybe a little 11:10:59
15 different than the actual project itself. 11:11:01
16 And I have seen projects, 11:11:03
17 onshore projects, that have generated many more 11:11:06
18 comments for their postings. So that level of 11:11:08
19 interest for a project of 300 megawatts would be 11:11:13
20 about what we would expect for that. 11:11:17
21 Again, it's the specific 11:11:20
22 landowner comments that we normally deal with that 11:11:23
23 are -- to us, are the more thorny issues to deal 11:11:25
24 with for the developer. 11:11:29
25 Q. Just one moment to confer 11:11:30

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1 the OPA dealt with the issue of excessive 11:14:39
2 permitting delays by the MOE in the context of the 11:14:43
3 FIT program? 11:14:46
4 A. So they deal with it in a 11:14:47
5 reasonable manner, when -- by either using force 11:14:49
6 majeure or using other tools to grant 11:14:53
7 across-the-board extensions for certain projects 11:14:56
8 to allow them to deal with these -- these delays 11:14:58
9 in a technical review, if there's an item that has 11:15:02
10 to be reviewed in detail. So that's the normal 11:15:07
11 tool they use, but they don't impose on the 11:15:11
12 developer to have to sort of eat that time. It's 11:15:13
13 looked after. It's been our experience. 11:15:18
14 Q. So it's not -- it's 11:15:20
15 not -- the developer doesn't get penalized for 11:15:22
16 that? 11:15:26
17 A. No, they don't get 11:15:26
18 penalized for that. They get penalized for things 11:15:27
19 that they do, if they're delaying things on their 11:15:30
20 own, but if this there acting reasonably, 11:15:34
21 producing what they need to do, working with the 11:15:37
22 regulators, then -- then they're not penalized for 11:15:39
23 that in terms of their contract. 11:15:41
24 Q. Okay. Has MOE -- and 11:15:47
25 this is, I suppose, a similar -- in a similar 11:15:48

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1 vein, but have MOE proponents and the OPA, in your 11:15:50
2 experience, worked together in a pragmatic and 11:15:54
3 coordinated approach in dealing with these kinds 11:15:58
4 of issues? 11:16:00
5 A. It's difficult to answer, 11:16:01
6 because a developer often only sees the government 11:16:05
7 as an agency and arms of the government. So they 11:16:08
8 -- in the past, they have acted reasonably in 11:16:13
9 terms of giving that relief when there are -- are 11:16:15
10 difficulties with the process. 11:16:19
11 Q. Right. Okay. Your 11:16:20
12 indulgence for one moment. I apologize. The rest 11:16:36
13 is my own handwriting. 11:16:43
14 You'll recall, Mr. Roberts, 11:16:45
15 that Ms. Wates asked you a question about 11:16:46
16 post-construction monitoring for birds and 11:16:49
17 specifically about bird carcass searches. 11:16:51
18 A. Yes. 11:16:54
19 Q. And you answered that the 11:16:55
20 Ministry and agencies deal with this in a 11:16:56
21 responsible manner and do their best in order to 11:16:58
22 work with the proponent to come to an outcome. 11:17:00
23 A. Yes. 11:17:02
24 Q. And so to be clear, for 11:17:02
25 the record, in preparing your report, you relied 11:17:08

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1 sufficient copies for the Tribunal. I need the CV 11:18:36
2 as well. Thank you. 11:18:40
3 BY MS. SEERS: 11:18:43
4 Q. Okay. So with the 11:18:43
5 benefit of Dr. Kerlinger's CV, Mr. Roberts, would 11:18:45
6 you please briefly explain for the Tribunal 11:18:48
7 Dr. Kerlinger's experience and expertise in 11:18:52
8 connection with birds and the impact from offshore 11:18:54
9 wind turbines or wind turbines generally on birds. 11:19:00
10 A. So -- 11:19:03
11 MS. WATES: Excuse me. Sorry, 11:19:04
12 just before the witness answers that question, if 11:19:05
13 I can object. This, as Ms. Seers -- as my friend 11:19:07
14 stated, Dr. Kerlinger's report and his CV are 11:19:11
15 already in the record, and it's not clear to me 11:19:15
16 what the benefit of having the witness read into 11:19:19
17 the record -- 11:19:21
18 PRESIDENT: I tend to sustain 11:19:23
19 that objection. There was no questions about 11:19:24
20 Dr. Kerlinger's report on cross-examination. So 11:19:26
21 this is on record. I don't think we need to get 11:19:29
22 into this. 11:19:31
23 MS. SEERS: Okay. Thank you, 11:19:32
24 Mr. President. 11:19:32
25 For the clarity of the record, 11:19:33

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1 on the expert report of Dr. Paul Kerlinger; 11:17:11
2 correct? 11:17:14
3 A. That's correct. And 11:17:15
4 Dr. Kerlinger had proposed a number of different 11:17:16
5 methodologies in order to conduct those carcass 11:17:19
6 searches post-construction. So one of those 11:17:22
7 methods or some combination thereof would -- would 11:17:25
8 seem to be reasonable to put forward as something 11:17:28
9 to do the environmental monitoring. 11:17:32
10 Q. Okay. Thank you. And I 11:17:34
11 note for the record that Dr. Kerlinger's report 11:17:36
12 was submitted by the Claimant in this proceeding 11:17:39
13 along with its Memorial and that the Respondent 11:17:42
14 has chosen not to cross-examine Dr. Kerlinger, but 11:17:45
15 I will be handing -- or my colleague will be 11:17:48
16 handing up Dr. Kerlinger's CV since his evidence 11:17:51
17 has now been raised via Mr. Roberts. 11:17:56
18 And I would ask you, 11:18:03
19 Mr. Roberts, could you please, with the benefit of 11:18:04
20 Dr. Kerlinger's CV, who is not unfortunately in 11:18:08
21 the room, could you perhaps, once everyone has 11:18:11
22 their documents in order -- it should just be the 11:18:14
23 CV. And I suppose you have been handed the report 11:18:25
24 itself as well. 11:18:32
25 MS. NETTLETON: I don't have 11:18:34

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1 there were questions about carcass searches, and 11:19:35
2 the matter is dealt with in Dr. Kerlinger's report 11:19:39
3 and Mr. Roberts -- Mr. Roberts' report addresses 11:19:41
4 that matter relying on Dr. Kerlinger's report, 11:19:47
5 who, of course, is not being cross-examined. 11:19:49
6 PRESIDENT: Go ahead. 11:19:53
7 BY MS. SEERS: 11:19:55
8 Q. You will recall also, 11:19:55
9 Mr. Roberts, that Ms. Wates asked you a question 11:19:56
10 about fish and benthic life form studies. 11:19:59
11 A. Yes. 11:20:03
12 Q. And you noted that the 11:20:03
13 assessment of these matters by the Ministry are 11:20:05
14 understood. And to be clear, for the record, in 11:20:08
15 preparing your reports -- your report in 11:20:12
16 connection with fish and aquatic studies, you 11:20:14
17 relied on the expert opinions of Ms. Joanne Lane? 11:20:18
18 A. That's correct. It was 11:20:21
19 contained in Baird's report. 11:20:22
20 Q. Correct. So she has 11:20:23
21 submitted expert opinions in each of the two Baird 11:20:26
22 reports that are before the Tribunal in this 11:20:29
23 proceeding, as I understand it. 11:20:30
24 A. Yes. 11:20:32
25 Q. And I note, for the 11:20:32

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1 record, that Canada has also declined to 11:20:35
2 cross-examine Ms. Lane, and I will save you the 11:20:37
3 trouble of being handed her CV, but it is in the 11:20:40
4 appendices to the Baird report. 11:20:44
5 And I would just confirm 11:20:47
6 again, for the record, Mr. Roberts, that the 11:20:48
7 questions that were put to you about fish studies 11:20:51
8 and aquatic studies are within the expertise of 11:20:55
9 Ms. Lane, and you relied on that? 11:20:58
10 A. That is correct. 11:21:00
11 Q. Okay. 11:21:01
12 MS. WATES: Again, just a 11:21:05
13 brief objection. For the record I was asking 11:21:06
14 Mr. Roberts specifically about the content of the 11:21:08
15 WSP proposal in 2010, which addressed these 11:21:12
16 issues, and which was appended to his report. 11:21:15
17 MS. SEERS: Okay. 11:21:19
18 BY MS. SEERS: 11:21:21
19 Q. You'll recall, 11:21:22
20 Mr. Roberts, that Ms. Wates took you to references 11:21:24
21 in the Genivar proposal that referred to one-year 11:21:26
22 surveys? 11:21:31
23 A. Yes. 11:21:31
24 Q. And you answered that the 11:21:32
25 Genivar proposal had studies conducted over 11:21:34

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1 A. Right. 11:22:49
2 Q. Give or take. And so do 11:22:49
3 you know why or can you -- I know you weren't 11:22:53
4 involved in preparing this proposal, but can you 11:22:57
5 offer up a possible explanation for us 11:22:59
6 non-biologists as to why something could be stated 11:23:02
7 to take six months in a Gantt chart and be 11:23:04
8 explained as taking a year in the verbiage that 11:23:08
9 accompanied the proposal? 11:23:11
10 A. Because those studies 11:23:12
11 conducted during that time period for two specific 11:23:14
12 windows in the spring and in the fall would 11:23:17
13 constitute a year of data, because those are the 11:23:20
14 survey windows that we use. We don't survey 11:23:23
15 during the wintertime. So the spring season is 11:23:25
16 important, and the fall season are important. The 11:23:28
17 other seasons are not important for -- for the 11:23:31
18 survey. 11:23:34
19 Q. Okay. And so -- just so 11:23:35
20 we're all clear for the non-biologists in the room 11:23:36
21 with, when biologists say "one year," they don't 11:23:40
22 necessarily mean what lay people understand to be 11:23:42
23 12 months; is that correct? 11:23:45
24 A. That's correct, yes. 11:23:46
25 Q. Now, Ms. Wates also asked 11:23:47

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1 various seasons in the course of a year? 11:21:38
2 A. That's correct. 11:21:40
3 Q. And if I could take you 11:21:41
4 to the actual schedule, project -- proposed 11:21:42
5 project schedule -- or permitting project schedule 11:21:46
6 that Genivar proposed, you will find that at 11:21:48
7 Appendix C to the Genivar proposal. I 11:21:51
8 unfortunately don't have it, so -- but it's Gantt 11:21:54
9 charts. 11:22:14
10 A. Okay. 11:22:14
11 Q. And if you look at line 6 11:22:14
12 on the second page of the appendix, so the second 11:22:20
13 Gantt chart, there should be, if my notes are 11:22:24
14 accurate, a line entry for avian field surveys. 11:22:26
15 A. Yes. Line 5. 11:22:31
16 Q. Oh, line 5. Okay. 11:22:33
17 A. Mm-hmm. 11:22:33
18 Q. And would you understand 11:22:35
19 that to mean bird field studies, avian field 11:22:36
20 studies? 11:22:39
21 A. Yes, that's right. 11:22:40
22 Q. Okay. And how many days 11:22:40
23 are stated to be reserved there for? 11:22:42
24 A. 186 days. 11:22:45
25 Q. So about six months? 11:22:47

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1 you a question about potential public opposition 11:23:54
2 to the project so-called NIMBY opposition, not in 11:23:57
3 my backyard. 11:24:03
4 A. Yes. 11:24:04
5 Q. And you'll recall you 11:24:04
6 said that you would expect less NIMBY opposition 11:24:06
7 for this particular project. In light of the 11:24:09
8 location of this particular project, could you 11:24:14
9 maybe comment on why that would be in the context 11:24:18
10 of where it's physically located and what the 11:24:21
11 surrounding area is like there? 11:24:24
12 A. So it is located far 11:24:27
13 offshore with the 5-kilometre buffer. It's away 11:24:30
14 from -- it's away from people who would be 11:24:33
15 directly affected or have specific concerns about 11:24:35
16 the project in terms of perhaps how it looks or -- 11:24:38
17 or noise issues, the normal sort of things that 11:24:42
18 people get concerned about when a wind project is 11:24:45
19 proposed near them. 11:24:50
20 And the other item that we 11:24:50
21 hear about all the time is people are concerned 11:24:54
22 about property values with a project near them. 11:24:57
23 And so we would anticipate, based on the fact that 11:24:59
24 there are very few land owners near the project, 11:25:03
25 that we would receive none of those complaints or 11:25:06

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1 very few. 11:25:09
2 Q. And are you aware, in 11:25:10
3 terms of the public opposition that had been 11:25:11
4 expressed to certain offshore wind projects in 11:25:14
5 certain parts of Ontario, are you aware of what 11:25:18
6 the local attributes may have been for those areas 11:25:21
7 in the locations of those proposed projects? 11:25:25
8 A. So the one that was sort 11:25:27
9 of topical because it was close to Toronto was one 11:25:29
10 off the Scarborough Bluffs, and I don't recall the 11:25:32
11 distance from the shoreline. But when viewing the 11:25:35
12 artist's rendering of what they would look like, 11:25:40
13 it was almost purely a visual -- a visual, 11:25:42
14 esthetic-type of an argument that people are 11:25:49
15 making. 11:25:51
16 Q. And for the benefit of 11:25:52
17 the Tribunal members who are not from Toronto, 11:25:53
18 could you explain what the Scarborough Bluffs are? 11:25:55
19 A. Scarborough Bluffs are -- 11:25:57
20 it's a prominent shoreline of Lake Ontario. It's 11:25:59
21 like a cliff sort of a thing made out of -- it's 11:26:02
22 quite scenic to go -- to go watch. There's a 11:26:05
23 marina at the bottom of it. 11:26:08
24 And there was a proposed 11:26:10
25 project offshore, and I don't recall the distance. 11:26:11

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1 So I guess my question to you 11:27:37
2 in follow-up to Ms. Wates' question is: In the 11:27:39
3 but-for scenario in which your report is situated, 11:27:44
4 we're not talking -- your report doesn't -- 11:27:47
5 doesn't describe for us what actually happened to 11:27:50
6 the Windstream project. It -- I think it -- fair 11:27:52
7 to say -- seeks to describe what would have 11:27:56
8 happened to the Windstream project had the 11:27:58
9 moratorium not been imposed on it. 11:28:01
10 So in that but-for scenario, 11:28:05
11 in your experience, when would a project 11:28:13
12 description report have been submitted more likely 11:28:16
13 than not? 11:28:19
14 A. More likely than not 11:28:19
15 within the first month or two after the project 11:28:21
16 was awarded. 11:28:24
17 Q. Okay. And even in the 11:28:25
18 real world, though, this document that I've just 11:28:27
19 circulated, which I described as a letter from 11:28:31
20 Ortech to Windstream -- could you turn to page 2? 11:28:35
21 So this is a letter where 11:28:42
22 Ortech or Windstream's project managers make a 11:28:48
23 recommendation. You will see that. And they make 11:28:51
24 a recommendation for a REA project team; right? 11:28:56
25 And perhaps you could explain the recommendation 11:29:08

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1 Q. So it's a scenic. In 11:26:14
2 your experience, is it a common recreational area? 11:26:16
3 A. Yes. 11:26:21
4 Q. And how about -- do you 11:26:21
5 have any knowledge about other proposed offshore 11:26:24
6 wind projects in the province perhaps in other 11:26:26
7 lakes? 11:26:29
8 A. Not in the -- I'm aware 11:26:30
9 of some of the ones that were proposed, but none 11:26:32
10 of the specific details on those projects. 11:26:34
11 Q. Are you aware of any 11:26:36
12 proposed for the -- roughly around the Windsor 11:26:38
13 area, for example, or Leamington area? 11:26:40
14 A. That's not one of the 11:26:42
15 ones I was familiar with, no. 11:26:44
16 Q. Okay. Ms. Wates asked 11:26:46
17 you a question about whether a project description 11:26:51
18 report had been submitted by Windstream, and 11:26:54
19 perhaps I could ask my colleague to circulate the 11:26:57
20 document that will go along with this question 11:27:02
21 while I pose it, but it's Exhibit C-0473, which is 11:27:06
22 a letter from Leah Deveaux at Ortech to 11:27:10
23 Windstream, dated February 8, 2011. So that's 11:27:16
24 three days before the moratorium was made public 11:27:20
25 anyway. 11:27:25

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1 at the top for REA/permitting services, Option 1? 11:29:13
2 A. So Stantec were to be 11:29:18
3 engaged immediately, be awarded the project, and 11:29:24
4 one of their very first tasks would have been to 11:29:27
5 complete the project description report in order 11:29:30
6 to submit that and the Notice of Project to the 11:29:34
7 MOE in order to get the Minister's list of 11:29:36
8 Aboriginal groups to be consulted. 11:29:40
9 Q. Are you familiar with 11:29:41
10 Stantec? 11:29:42
11 A. Yes. 11:29:44
12 Q. Can you describe for the 11:29:44
13 Tribunal who they are? 11:29:46
14 A. Stantec are -- again, 11:29:48
15 they're an international consult consulting 11:29:49
16 company, much like WSP. Stantec have done, I 11:29:51
17 would say, the bulk of the permitting work in 11:29:56
18 Ontario for wind power projects. They have an 11:30:00
19 excellent pedigree for doing this type of work. 11:30:05
20 Q. By the bulk of the 11:30:07
21 permitting work, do you mean a majority of the 11:30:08
22 permitting work? 11:30:11
23 A. I would say -- it would 11:30:12
24 be hard to make a percentage. 11:30:15
25 Q. A lot? 11:30:16

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1 A. I would say yes. Yes. A 11:30:17
2 lot, yes. 11:30:19
3 Q. And my last question is: 11:30:20
4 Do you have any reason to believe, sitting here 11:30:21
5 today and looking at this document, that but for 11:30:24
6 the moratorium, this would not have been carried 11:30:28
7 out, and that Stantec would not have completed the 11:30:32
8 work as contemplated? 11:30:36
9 A. No. Stantec would have 11:30:38
10 completed the work as contemplated, for sure, yes. 11:30:39
11 Q. If I may have one moment 11:30:42
12 to confer with my colleague. 11:30:43
13 [Counsel confer.] 11:32:20
14 BY MS. SEERS: 11:32:22
15 Q. I'm bringing my mobile 11:32:22
16 transcript here. My apologies. Just a minor 11:32:24
17 point of clarification. 11:32:35
18 A moment ago I asked you: 11:32:37
19 "So in the but-for 11:32:38
20 scenario, in your 11:32:40
21 experience, when would a 11:32:41
22 project description 11:32:42
23 report have been 11:32:43
24 submitted, more likely 11:32:43
25 than not?" 11:32:45

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1 first month or so of when the project starts. 11:33:22
2 Q. And for the clarity of 11:33:26
3 the record, could I please ask you to identify the 11:33:27
4 line that you referred to? It's a complex 11:33:30
5 document. 11:33:33
6 A. Yes. So the line is line 11:33:33
7 no. 10. 11:33:35
8 Q. Line no. 10 in the 11:33:35
9 Windstream project schedule. 11:33:36
10 Thank you, Mr. Roberts. Those 11:33:42
11 are my questions. 11:33:43
12 A. Thank you. 11:33:45
13 PRESIDENT: Thank you, 11:33:46
14 Ms. Seers. There are no questions from the 11:33:48
15 members of the Tribunal. So you are released, 11:33:51
16 Mr. Roberts. So thank you very much for your 11:33:54
17 time. 11:33:56
18 THE WITNESS: Thank you. 11:33:56
19 PRESIDENT: Can we just 11:35:39
20 clarify who the next witness is? Do we have -- is 11:35:40
21 there a need to examine Mr. Cecchini? 11:35:43
22 MR. NEUFELD: Mr. Cecchini is 11:35:48
23 here and prepared to speak to the questions that 11:35:49
24 were put to him this morning. He has also 11:35:51
25 reviewed a chart which helps to hone in on the 11:35:54

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1 And you said: 11:32:46
2 "More likely than --" 11:32:47
3 So just to clarify, we're 11:32:48
4 talking about the but-for scenario that begins 11:32:49
5 February 11, 2011 -- 11:32:51
6 A. Right. Yes. 11:32:53
7 Q. -- that your report 11:32:53
8 addresses? 11:32:54
9 A. Right. 11:32:55
10 Q. Right. And then you 11:32:56
11 said: 11:32:58
12 "More likely than not 11:32:58
13 within the first month or 11:32:58
14 two after the project was 11:33:00
15 awarded." 11:33:01
16 A. Awarded to the 11:33:02
17 consultant. 11:33:05
18 Q. Oh, so the -- after the 11:33:05
19 project, being the Stantec engagement, for 11:33:07
20 example -- 11:33:10
21 A. Yes. 11:33:10
22 Q. -- was awarded? 11:33:10
23 A. Yes. And in our 11:33:11
24 schedule, if I might refer to that, we have that 11:33:13
25 draft being completed, yes, in the -- within the 11:33:16

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1 500-megawatt projects, which is what the 11:35:58
2 Claimant's desire was. I strongly suggest that we 11:36:00
3 not prolong this any more and that we rely on him 11:36:03
4 while he is here and deal with this evidence now. 11:36:06
5 PRESIDENT: Yes. Assuming 11:36:12
6 there are questions from the Claimant. 11:36:13
7 MR. TERRY: Yes, we have -- 11:36:16
8 sorry. We just need a moment to get organized. 11:36:18
9 My friend -- when we last spoke over the break 11:36:21
10 there was a possibility this would be resolved 11:36:24
11 without calling him, so we just need a moment to 11:36:26
12 be able to clarify the questions. 11:36:29
13 PRESIDENT: Okay. 11:36:31
14 MR. TERRY: A five-minute 11:36:32
15 break of some sort would assist. 11:36:34
16 PRESIDENT: Five minutes. We 11:36:36
17 will continue at 11:40. 11:36:37
18 --- Recess taken at 11:36 a.m. 11:36:40
19 --- Upon resuming at 11:56 a.m. 11:46:04
20 PRESIDENT: Okay. So, 11:56:54
21 Mr. Cecchini, welcome back. 11:56:58
22 THE WITNESS: Thank you. 11:57:00
23 PRESIDENT: You have been 11:57:00
24 called for additional questioning by the Claimant. 11:57:01
25 I should remind you that you are still bound by 11:57:05

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1 the declaration you made on Wednesday. 11:57:08
2 THE WITNESS: I understand. 11:57:10
3 PREVIOUSLY AFFIRMED: PERRY CECCHINI 11:57:11
4 PRESIDENT: And it will be 11:57:11
5 Ms. Seers. Please go ahead. 11:57:12
6 CONTINUED CROSS-EXAMINATION BY MS. SEERS: 11:57:15
7 Q. Good morning, 11:57:15
8 Mr. Cecchini. 11:57:15
9 A. Good morning. 11:57:16
10 Q. We appreciate you coming 11:57:16
11 back again. 11:57:18
12 A. Okay. 11:57:19
13 Q. Mr. Cecchini submitted 11:57:19
14 several letters addressed to Berkeley Research 11:57:23
15 Group, Mr. Goncalves -- 11:57:27
16 A. Yes. 11:57:29
17 Q. -- in relation to this 11:57:29
18 case. And just to put them on the record, my 11:57:30
19 colleagues over on Canada's side have assisted 11:57:34
20 with the exhibit numbers. 11:57:38
21 A. Mm-hmm. 11:57:40
22 Q. There is actually a new 11:57:40
23 exhibit -- 11:57:42
24 A. Yes. 11:57:43
25 Q. -- which will be, if 11:57:44

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1 letter was, in turn, an update to an earlier 11:58:36
2 letter submitted with Canada's Counter-Memorial, 11:58:38
3 which is R-0395, for the record. 11:58:41
4 A. Okay. 11:58:45
5 Q. If we could pull up 11:58:45
6 Exhibit 398. My apologies. 11:58:48
7 So if we could ask Donnie, who 11:58:52
8 has very graciously agreed to assist here, to pull 11:58:56
9 up the newest exhibit, so that's R-0660. 11:59:00
10 A. Mm-hmm. 11:59:00
11 Q. Okay. So, Mr. Cecchini, 11:59:09
12 as I understand it, in this letter, you have 11:59:14
13 provided some data points to Mr. Goncalves -- 11:59:16
14 A. Yes. 11:59:20
15 Q. -- which ultimately, if 11:59:20
16 Donnie could scroll down, you ultimately use, to 11:59:25
17 conclude -- if you could scroll down more please, 11:59:33
18 thank you -- that -- as I understand the last 11:59:36
19 paragraph, you're concluding that 68 percent of 11:59:43
20 the total capacity of wind projects -- onshore 11:59:47
21 wind projects is delayed. Is that -- is that the 11:59:53
22 thrust of this letter? I think that is how 11:59:57
23 Mr. Goncalves interprets it, in any event, in his 12:00:00
24 report. 12:00:03
25 A. I would say that what the 12:00:03

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1 we're following the exhibit order, the next number 11:57:46
2 for the Respondents is, I believe, R-0660. And 11:57:48
3 that is a letter that was provided to us, I 11:57:53
4 believe, on Monday. 11:57:56
5 A. Mm-hmm. 11:57:58
6 Q. That is from you to 11:57:58
7 Mr. Goncalves. 11:58:00
8 A. It would have been on 11:58:03
9 Tuesday. 11:58:04
10 Q. On Tuesday. Okay. Thank 11:58:04
11 you. 11:58:06
12 PRESIDENT: Just to confirm 11:58:06
13 this is a public viewing. There is no 11:58:08
14 confidential information? 11:58:11
15 MS. SEERS: No confidential 11:58:12
16 information. 11:58:13
17 PRESIDENT: Okay. Thank you. 11:58:13
18 BY MS. SEERS: 11:58:15
19 Q. So that -- so February 11:58:16
20 16? 11:58:20
21 A. Yes. 11:58:21
22 Q. And there's a previous 11:58:21
23 version of that letter, or the new letter is an 11:58:24
24 update to the letter that was submitted with 11:58:27
25 Canada's Rejoinder, which is R-0635, and that 11:58:30

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1 letter says is that, of the 20 projects that 12:00:05
2 remain in development, 19 of the 20 are past their 12:00:07
3 Milestone Date of Commercial Operation. 12:00:12
4 Q. Okay. 12:00:13
5 A. And those 19 represent 68 12:00:13
6 percent of the total capacity of the 20 projects. 12:00:17
7 So 16 represent 68 percent. One project which is 12:00:22
8 not delayed represents 32 percent. 12:00:25
9 Q. Okay. And that's the... 12:00:27
10 A. That's the one you talked 12:00:30
11 to me about a few days ago. 12:00:31
12 Q. Right. Now, do those 12:00:33
13 figures account for extensions or force majeure, 12:00:35
14 or are you giving us figures that don't take into 12:00:39
15 account those things? 12:00:42
16 A. Those relate to their 12:00:42
17 Milestone Date of Commercial Operation as of the 12:00:44
18 time we compiled the letter. 12:00:47
19 Q. Okay. So -- 12:00:47
20 A. So that there's 19 of the 12:00:49
21 20 projects are past their Milestone Date of 12:00:51
22 Commercial Operation. 12:00:54
23 Q. So they're past their 12:00:54
24 Milestone Date of Commercial Operation as of the 12:00:56
25 date of the letter. 12:00:58

1 A. As of the date of the 12:00:59
2 letter. 12:01:00
3 Q. So if any extensions have 12:01:00
4 been granted before then... 12:01:02
5 A. It would -- if there were 12:01:04
6 extensions to the Milestone Date of Commercial 12:01:06
7 Operation, they're already in that calculation. 12:01:08
8 Q. Okay. And we requested 12:01:11
9 from the OPA, you will recall, production 12:01:13
10 information relating to those projects and their 12:01:19
11 various dates. 12:01:22
12 A. And I produced -- and I 12:01:22
13 attached some information to the letter. 12:01:24
14 Q. You provided some 12:01:26
15 information, sir. 12:01:27
16 A. Yes. 12:01:29
17 Q. But certainly not all of 12:01:30
18 the information that was requested. 12:01:33
19 A. I provided the 12:01:34
20 information, in determination of senior management 12:01:36
21 of the OPA and counsel, as to what we could 12:01:39
22 release. 12:01:41
23 Q. Right. You provided that 12:01:42
24 information on Tuesday? 12:01:43
25 A. On Tuesday, yes. 12:01:46

1 Q. Right. Okay. You 12:01:47
2 weren't here, sir, but yesterday we heard 12:01:54
3 testimony from Ms. Sarah Powell -- 12:01:59
4 A. Okay. 12:02:01
5 Q. -- who stated that the 12:02:02
6 real problems in permitting have -- that she has 12:02:04
7 seen in her experience have been with the smaller 12:02:08
8 projects, under 50 megawatts in size. So that's 12:02:12
9 her experience. 12:02:17
10 So my question to you is: 12:02:19
11 When you make the statements and provide the data 12:02:20
12 that you do in your letter regarding delay or 12:02:24
13 projects being past their MCOB, did you include 12:02:28
14 smaller projects under, say, 0.8 megawatts, 1.5 12:02:35
15 megawatts, 4 megawatts? Did you include those? 12:02:41
16 A. You received the entire 12:02:44
17 list of wind projects over 500 kilowatts that were 12:02:45
18 essentially still in development. That means they 12:02:52
19 haven't been terminated. They were contracts that 12:02:55
20 were accepted. And they the list doesn't include 12:02:57
21 projects in commercial operation. So you have the 12:03:00
22 entire list of the -- you have the 19 projects 12:03:02
23 that are delayed. We didn't put in the one 12:03:05
24 project that is not yet delayed. 12:03:08
25 Q. So you gave us -- 12:03:10

1 A. We gave you a list of 19 12:03:11
2 of the 20 projects, the 19 projects that are past 12:03:13
3 their MCOB. 12:03:16
4 Q. So you gave us a list of 12:03:17
5 projects that were delayed, but you didn't give us 12:03:19
6 a list of projects that were not delayed. Is 12:03:21
7 that -- 12:03:23
8 A. We didn't give you the 12:03:23
9 one. The list that's attached includes the 19 12:03:25
10 projects that are past their Milestone Date of 12:03:28
11 Commercial Operation. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]. 12:03:37
15 Q. Okay. I am just trying 12:03:38
16 to understand, sir, of this data that -- it is 12:03:39
17 difficult because we don't have it. 12:03:42
18 A. Yes. 12:03:44
19 Q. So are you saying that 12:03:45
20 there is -- so we do have the list of 19. 12:03:46
21 A. Yes, yes. 12:03:50
22 Q. Can you maybe just 12:03:51
23 explain then how -- there were 70 projects help us 12:03:53
24 understand, please, what the information is. 12:03:58

1 A. We contracted in 12:04:01
2 2010/2011 for 70 -- sorry, we issued contract 12:04:06
3 offers -- 12:04:09
4 Q. Right. 12:04:09
5 A. -- for 70 wind power 12:04:10
6 projects that were greater than 500 kilowatts. 12:04:12
7 Q. Right. 12:04:15
8 A. Okay. Over the five and 12:04:15
9 a half years since the launch of the project, 12:04:18
10 almost six years now, one of those 70 was not 12:04:20
11 accepted. 12:04:25
12 Q. Right. 12:04:26
13 A. So 69 contracts were 12:04:26
14 signed. In the intervening years -- 12:04:28
15 Q. I'm sorry to stop you. I 12:04:31
16 want to take notes to make sure that I understand. 12:04:33
17 A. Okay. Sure. 12:04:36
18 Q. So you offered 70 12:04:36
19 contracts for onshore wind? 12:04:38
20 A. Onshore wind. 12:04:43
21 Q. Total? 12:04:44
22 A. Total. 12:04:44
23 Q. Okay? 12:04:45
24 A. Sixty-nine of the seventy 12:04:46
25 were accepted. 12:04:47

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1 Q. Sixty-nine were accepted. 12:04:47
2 So there were 69 contracts with the OPA? 12:04:49
3 A. With the OPA. 12:04:51
4 Q. Okay. 12:04:51
5 A. You're going to have to 12:04:53
6 bear with me because I'm trying to remember if it 12:04:54
7 is 11 or 12. 12:04:57
8 Q. Yes. 12:04:57
9 A. But I think it's 12 12:04:58
10 projects. 12:04:59
11 Q. Twelve projects? 12:04:59
12 A. -- were terminated in the 12:05:00
13 intervening years. So since we signed those 12:05:03
14 contracts, 12 projects are not in the -- are not 12:05:06
15 in place. 12:05:09
16 Q. So now we have 57 -- 12:05:10
17 A. Fifty-seven projects. 12:05:12
18 Q. -- left? 12:05:13
19 A. Of those 57 projects, 37, 12:05:14
20 as of today, are in commercial operation. 12:05:17
21 Q. Okay. 12:05:19
22 A. Twenty are not. 12:05:20
23 Q. So 37 out of 57 are in 12:05:22
24 commercial operation and have been built. 12:05:25
25 A. Yes. 12:05:28

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1 A. So that's the -- what we 12:06:35
2 call the long-stop date. That is the day that is 12:06:36
3 18 months past the MCOB, or perhaps longer, if 12:06:39
4 force majeure relief was granted. 12:06:44
5 Q. So that -- and that's the 12:06:45
6 date we've referred to as the supplier default 12:06:46
7 date. Just so -- 12:06:48
8 A. Yes. 12:06:49
9 Q. So they're not 12:06:50
10 approaching that. Are they still in development, 12:06:51
11 sir? 12:06:53
12 A. To the best of my 12:06:53
13 knowledge, generally, people tell me when they're 12:06:55
14 not in development. 12:06:57
15 Q. Yes. 12:06:58
16 A. And nobody has told -- 12:06:58
17 those 19 projects are still in development. 12:07:00
18 Q. Okay. And, roughly, do 12:07:02
19 you know how many of those are under construction? 12:07:04
20 A. Well, what I would use as 12:07:07
21 a kind of a judgment is that, if you look on that 12:07:09
22 list -- and I don't have the exact number. If you 12:07:14
23 look at the list, you will see NTP and pre-NTP. 12:07:17
24 Q. Yes. 12:07:20
25 A. Generally that is a good 12:07:21

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1 Q. And does that include, 12:05:28
2 sir, the six Korean Consortium projects? 12:05:31
3 A. No. The Korean 12:05:35
4 consortium projects were not FIT projects and so 12:05:37
5 are not included in this table. 12:05:40
6 Q. Okay. So 37 out of 57 12:05:42
7 projects have achieved commercial operation? 12:05:49
8 A. Yes. 12:05:52
9 Q. And 20, the remaining -- 12:05:53
10 well, one is not delayed for the reasons we 12:05:56
11 discussed elsewhere. 12:05:59
12 A. One was never signed. 12:06:02
13 Q. It's within its MCOB? 12:06:03
14 A. One is within its MCOB. 12:06:05
15 Q. Yes, okay. And the other 12:06:07
16 19 are past the MCOB? 12:06:09
17 A. Are past their MCOB. 12:06:13
18 Q. And are they under -- can 12:06:15
19 you tell us whether they're under force majeure, 12:06:21
20 whether they're subject to further extension? 12:06:23
21 They're not being cancelled, I assume? 12:06:26
22 A. Well, none of those 19 12:06:28
23 have reached the point where we have a termination 12:06:30
24 right under 9.1(j). 12:06:33
25 Q. Okay. 12:06:35

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1 indicator of projects that are in the position to 12:07:23
2 begin construction, because you can't get NTP 12:07:26
3 unless you have completed the approvals process. 12:07:30
4 Q. So you would expect that 12:07:32
5 the NTP projects would be under construction or on 12:07:33
6 the brink of commencing construction potentially? 12:07:38
7 A. Or they're trying to get 12:07:40
8 financing or they're dealing with their own other 12:07:41
9 issues. 12:07:44
10 Q. Right. 12:07:44
11 A. But we have issued NTP. 12:07:44
12 That doesn't necessarily mean they're under 12:07:46
13 construction, however. 12:07:48
14 Q. They're at an advanced 12:07:49
15 development stage? 12:07:51
16 A. They're more advanced 12:07:51
17 than the pre-NTP stage. 12:07:53
18 Q. Right. Let me consult 12:07:55
19 the list. We won't disclose... 12:07:56
20 [Counsel confer.] 12:08:08
21 THE WITNESS: If you need to 12:08:15
22 look at it. 12:08:16
23 MS. SEERS: Yes, yes. I 12:08:17
24 apologize. So am I permitted to refer to any of 12:08:18
25 these projects so long as I don't refer to their 12:08:24

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1 names? 12:08:28
2 MS. SQUIRES: The entire chart 12:08:30
3 is restricted access. So to the extent you're 12:08:31
4 referring to anything in the chart, it should be 12:08:34
5 -- we should clear the room. 12:08:35
6 MS. SEERS: So I can't refer 12:08:37
7 to, say, Project No. 1 on the list. 12:08:38
8 THE WITNESS: I wouldn't be 12:08:40
9 able to -- because you have my list. 12:08:41
10 [Laughter.] 12:08:43
11 PRESIDENT: Let's go off 12:08:45
12 stream. Let's go off stream first and then we 12:08:46
13 will discuss what the next step is, if any. 12:09:00
14 Now will you be able to ask 12:09:12
15 questions about the document without disclosing 12:09:13
16 the contents? 12:09:15
17 MS. SEERS: My proposal would 12:09:21
18 have been to -- what I am looking at is a list of 12:09:22
19 19 projects, and they're identified, and they 12:09:27
20 have -- there is information provided as to 12:09:30
21 whether they are pre or post NTP, Notice to 12:09:31
22 Proceed. 12:09:35
23 And there is a date, contract 12:09:35
24 date, milestone date, and then status, and 12:09:38
25 contract capacity. So my proposal would have 12:09:42

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1 request. This information, particularly if we're 12:12:04
2 going to be talking about names, they feel is very 12:12:08
3 sensitive to them. They understand that we only 12:12:10
4 have a restricted access. They have made a 12:12:12
5 request that, if there isn't an objection, it 12:12:14
6 would be their preference that experts clear the 12:12:17
7 room as well, particularly the experts who are 12:12:19
8 obviously working in the permitting field. It is 12:12:21
9 a request. They understand. The information is 12:12:24
10 quite sensitive to them. 12:12:26
11 MS. SEERS: Could I perhaps 12:12:29
12 renew the proposal to refer to them by number on 12:12:30
13 the list? 12:12:32
14 PRESIDENT: Is that agreeable 12:12:41
15 referring only by number or not? 12:12:43
16 MR. SPELLISCY: I think the 12:12:48
17 IESO's concern is that it's sensitive to the 12:12:50
18 contractors who are on here, and they're very 12:12:53
19 concerned, especially since we do have experts who 12:12:55
20 are working in the Ontario market, that 12:12:57
21 information might be revealed to those experts 12:12:59
22 working in the Ontario market. 12:13:01
23 And so they're asking that, if 12:13:02
24 possible, if we could clear the room, except for 12:13:05
25 counsel. 12:13:06

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1 been, for efficiency purposes, to refer to them by 12:09:45
2 number perhaps, and not identify them by name. I 12:09:48
3 leave that up to you. 12:09:52
4 MR. NEUFELD: Isn't it safer 12:09:54
5 to clear the room? 12:09:55
6 PRESIDENT: Okay. So counsel 12:09:56
7 and experts will only remain. 12:09:59
8 MS. SEERS: Perhaps in the 12:10:01
9 interim we can make a copy of this. 12:10:02
10 PRESIDENT: Yes, it would be 12:10:04
11 good for the witness to have a copy so he knows 12:10:06
12 what we're talking about. 12:10:09
13 Can I please ask everybody 12:10:14
14 except counsel and experts to leave the room? 12:10:16
15 Each counsel ensure only the authorized people are 12:10:21
16 sitting on your side. 12:10:24
17 MS. SEERS: Sorry, can I just 12:10:46
18 a quick question. Can I ask him how many are -- 12:10:47
19 --- Off the record discussion 12:11:16
20 PRESIDENT: Okay. Let's go 12:11:16
21 on. It will be restricted at the highest level of 12:11:17
22 security. 12:11:28
23 MR. SPELLISCY: I have been 12:11:34
24 asked by the IESO to raise a request and that... 12:11:34
25 The OPA has asked me for a 12:12:01

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1 PRESIDENT: Is that acceptable 12:13:06
2 to the Claimants? 12:13:07
3 MR. TERRY: That's acceptable. 12:13:09
4 MS. SEERS: Yes. 12:13:10
5 PRESIDENT: Then clear the 12:13:11
6 room. 12:13:12
7 MR. SPELLISCY: We appreciate 12:13:13
8 it. 12:13:14
9 --- Restricted Confidential transcript begins 12:14:22
10 PRESIDENT: Just for the 12:14:22
11 record, we are receiving a copy of a new exhibit 12:14:23
12 which will be R-658, if that's correct? 12:14:25
13 MS. SEERS: Yes, that's 12:14:30
14 correct. 12:14:32
15 PRESIDENT: Let's break for a 12:14:38
16 technical issue being sorted out. 12:14:39
17 EXHIBIT NO. R-658: 12:14:44
18 Letter dated February 16, 12:14:55
19 2016 12:14:57
20 --- [Reporter's note: Technical issue.] 12:15:08
21 PRESIDENT: We will go on. It 12:15:28
22 is perhaps a bit too confidential now: 12:15:44
23 DR. CREMADES: It is so 12:15:52
24 confidential we cannot read it. 12:15:52
25 [Laughter.] 12:15:54

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] 12:24:48

6 Q. So -- right. Okay. 12:24:50

7 Let's move beyond this topic, then, and go to -- 12:24:55

8 MR. TERRY: I think we can go 12:25:01

9 back on the feed. 12:25:02

10 MS. SEERS: We can go back on 12:25:02

11 the feed. I don't know that... 12:25:06

12 [Laughter.] 12:25:06

13 MS. NETTLETON: Are we going 12:25:07

14 on and off a little bit? 12:25:08

15 MS. SEERS: No. 12:25:10

16 --- Restricted Confidential transcript ends 12:25:21

17 PRESIDENT: Let's go on. 12:25:21

18 MS. NETTLETON: There is 12:25:24

19 actually no one in the viewing room, we 12:25:25

20 established. 12:25:27

21 [Laughter.] 12:25:27

22 MS. NETTLETON: But at least 12:25:28

23 the video record will be accurate. 12:25:30

24 MS. SEERS: Thank you. 12:25:32

25 PRESIDENT: Let's go on. We 12:25:37

1 don't need to have the audience to go on. 12:25:38

2 BY MS. SEERS: 12:25:40

3 Q. Yes. No, right. So we 12:25:40

4 pulled some data from the IESO website, OPA/IESO 12:25:42

5 website. 12:25:46

6 A. Okay. 12:25:46

7 Q. And as we understand it, 12:25:47

8 anyway, over the course of the FIT program, there 12:25:48

9 have been 28 onshore wind projects that are over 12:25:53

10 50 megawatts. Does that sound roughly correct to 12:25:59

11 you? 12:26:01

12 A. I have a different 12:26:02

13 number. I think it's -- my number is 20. 12:26:05

14 Q. Twenty, actually, so... 12:26:07

15 A. Again, I wouldn't be 12:26:11

16 counting any of the -- what do you call it -- the 12:26:13

17 Korean Consortium. 12:26:19

18 Q. How many of those are 12:26:20

19 there? 12:26:21

20 A. I think there are 20. 12:26:22

21 Q. How many of the Korean 12:26:27

22 consortium contracts? 12:26:28

23 A. Oh, I don't manage those 12:26:29

24 projects personally, so I don't know. I know 12:26:30

25 there are several, but I don't know the exact 12:26:33

1 number. 12:26:35
 2 Q. Okay. Well, from the 12:26:35
 3 data that we have been able to glean from the IESO 12:26:37
 4 website -- I will just put it to you, and then you 12:26:39
 5 can tell me if you agree. 12:26:42
 6 A. Yes. 12:26:43
 7 Q. -- it would appear that 12:26:43
 8 there are 28 projects, onshore wind projects over 12:26:45
 9 50 megawatts, and it would appear that 26 of them 12:26:52
 10 out of those 28 -- 12:26:58
 11 MR. SPELLISCY: Maybe we can 12:27:00
 12 just pause because I don't think the Tribunal, the 12:27:01
 13 witness, or anybody else has access to what you 12:27:03
 14 are reading, and we can bring it. 12:27:05
 15 MR. TERRY: Yep. Why don't we 12:27:09
 16 bring up the website? 12:27:10
 17 PRESIDENT: The website is not 12:27:18
 18 on evidence -- 12:27:19
 19 MS. SEERS: No. 12:27:21
 20 MR. TERRY: By agreement of 12:27:23
 21 counsel. 12:27:25
 22 PRESIDENT: Okay. 12:27:26
 23 MS. SEERS: Perhaps we can -- 12:27:26
 24 our proposal would be to convert this into a 12:27:27
 25 printed version perhaps and file it as an exhibit. 12:27:30

1 PRESIDENT: If that is agreed 12:27:32
 2 between the parties. 12:27:33
 3 MS. SEERS: Yes. So perhaps 12:27:34
 4 scroll down. 12:27:41
 5 MR. MARS: Go back to where 12:27:52
 6 you were. Stop there. You have to open up the 12:27:54
 7 little plus signs, you see '15, '14, 2013, and 12:27:56
 8 the -- 12:28:00
 9 BY MS. SEERS: 12:28:01
 10 Q. So perhaps we should do 12:28:01
 11 this year by year as efficiently as we can and try 12:28:05
 12 to count the -- okay. So perhaps -- I think it 12:28:06
 13 would be better to start at the bottom, though. 12:28:12
 14 MR. GUILLORY: What year? 12:28:13
 15 MS. SEERS: 2010. 12:28:18
 16 MR. MARS: It would start 12:28:22
 17 2012. 12:28:24
 18 THE WITNESS: I have numbers, 12:28:26
 19 actually, that I -- I actually know the numbers. 12:28:27
 20 BY MS. SEERS: 12:28:30
 21 Q. You actually know the 12:28:32
 22 numbers? 12:28:33
 23 A. I actually know the 12:28:33
 24 numbers, and what you have there is combination of 12:28:34
 25 different procurements, so those numbers won't be 12:28:37

1 right. 12:28:37
 2 Q. Right. 12:28:37
 3 A. Like Greenwich, for 12:28:39
 4 example, is a renewable energy supply contract. 12:28:39
 5 Q. Okay. So can you tell 12:28:42
 6 us, then how many -- how many onshore wind 12:28:43
 7 projects over 50 megawatts have been awarded for 12:28:47
 8 the duration of the FIT program? 12:28:55
 9 A. Twenty. 12:28:57
 10 Q. [REDACTED]
 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED] 12:29:41
 7 Q. Okay. So if you would 12:29:41
 8 just give me one moment to confer with my 12:29:42
 9 colleagues? 12:29:46
 10 A. Sure. 12:29:47
 11 [Counsel confer.] 12:30:20
 12 PRESIDENT: Let's do this in 12:30:20
 13 an organized way. The Tribunal has a bit of a 12:30:21
 14 concern for the efficiency of this process now and 12:30:25
 15 the -- so let's try to conclude this. We are 12:30:28
 16 falling behind in the program. 12:30:34
 17 MS. SEERS: We have no further 12:30:35
 18 questions. Thank you, Mr. President. 12:30:36
 19 PRESIDENT: Thank you very 12:30:38
 20 much. 12:30:39
 21 Any questions that the 12:30:40
 22 Respondent would like to put to the witness? 12:30:42
 23 MR. NEUFELD: One second. 12:30:50
 24 [Counsel confer.] 12:30:53
 25 MR. NEUFELD: No. No 12:30:56

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1 questions. 12:30:57
2 PRESIDENT: Thank you. So I 12:30:57
3 believe neither party wants to keep Mr. Cecchini 12:31:01
4 sequestered after this, so this concludes -- 12:31:06
5 MR. TERRY: That's correct. 12:31:09
6 PRESIDENT: And so this 12:31:09
7 concludes your examination. Thank you very much 12:31:10
8 for your time, Mr. Cecchini. 12:31:12
9 THE WITNESS: Thank you. 12:31:14
10 DR. CREMADES: All the best 12:31:15
11 for your family. 12:31:16
12 PRESIDENT: Yes. Best wishes. 12:31:18
13 Now we have half an hour left, 12:31:22
14 so I would suggest we start with the expert 12:31:25
15 presentation. We have that before the lunch 12:31:29
16 break. So it will be Mr. Kolberg. 12:31:30
17 Okay. Good afternoon, 12:33:48
18 Mr. Kolberg. 12:33:50
19 THE WITNESS: Good afternoon. 12:33:51
20 PRESIDENT: And welcome. 12:33:52
21 THE WITNESS: Thank you. 12:33:53
22 PRESIDENT: Can you please 12:33:54
23 state your full name for the record and then read 12:33:56
24 the declaration of an expert witness that you have 12:33:58
25 in front of you? 12:34:00

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1 MS SEERS: One question that 12:34:50
2 we will put to him after his presentation 12:34:50
3 PRESIDENT: After the 12:34:52
4 presentation? 12:34:53
5 MS SEERS: Yes 12:34:54
6 PRESIDENT: Okay Please go 12:34:54
7 ahead, Mr Kolberg 12:34:55
8 PRESENTATION BY MARK KOLBERG, BAIRD AND ASSOCIATES 12:34:57
9 THE WITNESS: Thank you As I 12:34:57
10 said, my name is Mark Kolberg I'm here to 12:34:57
11 present my professional expert opinion on several 12:35:00
12 aspects of the Windstream project within the Lake 12:35:03
13 Ontario/Great Lakes context 12:35:08
14 A brief overview, I will touch 12:35:08
15 on my qualifications I will address the -- our 12:35:11
16 opinion in no impact from construction of the 12:35:16
17 Windstream project on drinking water; that there 12:35:18
18 is an appropriate navigation allowance In my 12:35:20
19 view, the Windstream project is not first of kind; 12:35:23
20 and that the waves and the coastal processes and 12:35:28
21 ice are well understood for this -- for this site 12:35:31
22 With respect to my 12:35:35
23 qualifications, I'm a licensed professional 12:35:36
24 engineer in the Province of Ontario I have over 12:35:39
25 33 years of direct coastal engineering experience 12:35:41

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1 THE WITNESS: My name is Mark 12:34:01
2 Kolberg. It's spelled incorrectly on my name tag. 12:34:03
3 I don't know if it is shown correctly here. It's 12:34:06
4 without a H. 12:34:08
5 I solemnly declare upon my 12:34:08
6 honour and conscience that my evidence and my 12:34:08
7 opinions will be in accordance with my sincere 12:34:14
8 belief. 12:34:16
9 AFFIRMED: MARK KOLBERG 12:34:17
10 PRESIDENT: Thank you very 12:34:17
11 much. You are here to defend two expert reports 12:34:17
12 prepared by Baird. 12:34:21
13 THE WITNESS: Yes. 12:34:21
14 PRESIDENT: The first one 12:34:22
15 dated August 13, 2014 and the second one June 16, 12:34:23
16 2015. That's correct? 12:34:28
17 THE WITNESS: That is correct. 12:34:29
18 PRESIDENT: And you have 12:34:31
19 prepared a short presentation that we should be 12:34:32
20 able to complete before the lunch break. 12:34:37
21 THE WITNESS: Oh, yes. Yes. 12:34:39
22 PRESIDENT: Are there -- just 12:34:40
23 to clarify the protocol, are there any questions 12:34:41
24 on direct from the Claimant that you would like to 12:34:44
25 put to the expert? 12:34:48

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1 on the Great Lakes. That is all I do. I am not a 12:35:45
2 generalist. I am a coastal engineer. I work 12:35:49
3 primarily in the Great Lakes, but I have also 12:35:52
4 worked internationally as well. 12:35:53
5 In that role, as a recognized 12:35:55
6 specialist, I was retained by the Ontario Ministry 12:35:57
7 of Natural Resources for over seven years to aid 12:36:00
8 them with the preparation of the technical guide 12:36:03
9 for the Great Lakes St. Lawrence River shorelines. 12:36:06
10 This guide is in support of the provincial policy 12:36:10
11 statement for the Province of Ontario. 12:36:12
12 I've also done similar roles 12:36:14
13 in preparing guidelines for the Ministry of 12:36:16
14 Environment and the federal Department of 12:36:19
15 Fisheries and Oceans. 12:36:19
16 I work for Baird and 12:36:22
17 Associates. We are a specialized coastal 12:36:24
18 engineering company. That is basically what we 12:36:26
19 do. We work worldwide. We have offices around 12:36:28
20 the world. This shows some of the projects we 12:36:30
21 have worked on. All those dots are projects that 12:36:33
22 we have worked on. So we have a great deal of 12:36:35
23 international experience. 12:36:37
24 We also started on the Great 12:36:38
25 Lakes. So you see that concentration of dots 12:36:42

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1 where we are right now, North America, this is a 12:36:43
2 showing of all of the projects we worked on in the 12:36:47
3 Great Lakes. This is my area where I work 12:36:51
4 primarily, but as I mentioned, I do work 12:36:53
5 internationally as well. 12:36:55
6 We provide these services to a 12:36:55
7 wide range of very notable clients including the 12:36:58
8 U.S. Army Corps of Engineers, the International 12:37:01
9 Joint Commission, Federal Emergency Measures 12:37:05
10 Agency, U.S. Bureau of Ocean Energy Management, 12:37:07
11 formerly called Mineral Management Service. The 12:37:11
12 U.S. Department of Justice, we're expert witnesses 12:37:14
13 to; expert witnesses to Canada Department of 12:37:16
14 Justice. We worked with Fisheries and Oceans 12:37:18
15 Canada, the Ministry of Natural Resources, 12:37:20
16 Ministry of the Environment, and conservation 12:37:22
17 authorities. 12:37:24
18 As experts, Baird was retained 12:37:24
19 by the Ministry of Natural Resources to prepare a 12:37:30
20 document back in 2011 called "Offshore Wind Power 12:37:32
21 Coastal Engineering Report." It was basically a 12:37:38
22 synthesis of current knowledge at the time and 12:37:39
23 identifying what were -- what were people's 12:37:41
24 understanding in -- who are in the business, let's 12:37:44
25 say, about what some of the issues might be. 12:37:47

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1 the shoreline here from Toronto. And a number of 12:38:55
2 other projects. 12:38:56
3 I think of particular 12:38:58
4 importance to this consideration is that Baird has 12:39:01
5 prepared more source water protection studies than 12:39:08
6 any other consultant in Ontario. Source water 12:39:12
7 protection studies are this precautionary tool 12:39:16
8 that MOE uses to identify zones to protect the 12:39:21
9 drinking water. We have done studies for over 50 12:39:25
10 municipal intakes in Ontario, an additional six in 12:39:29
11 the United States, actually. Through that 12:39:32
12 process, we developed a rapport with the Ministry 12:39:34
13 of Environment in terms of helping establish 12:39:37
14 technical rules to better the process. 12:39:39
15 And as part of our work, our 12:39:42
16 ongoing work, we do numerical modelling and 12:39:44
17 assessment of impacts to receiving water so the 12:39:48
18 release of contaminants to receiving water, 12:39:51
19 whether it be sewage, thermal discharge. 12:39:55
20 Presently we're working on the sewage treatment 12:39:57
21 plant, the main sewage treatment plant for 12:40:00
22 Toronto, which is going under a massive expansion 12:40:02
23 at the Ashbridges Bay treatment plant. 12:40:05
24 So these are the types of work 12:40:07
25 we do that are relative to this issue of 12:40:08

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1 We have also prepared 12:37:49
2 documents for Fisheries and Oceans Canada on 12:37:53
3 habitat assessment and dredging impacts as well. 12:37:55
4 These are just some of the projects we have worked 12:37:58
5 on. 12:38:00
6 Again, Baird, the company I 12:38:01
7 work for, for the International Joint Commission, 12:38:08
8 we were the lead group for the coastal working 12:38:12
9 group on Lake Ontario. Again, following up on 12:38:14
10 that, for FEMA, we did the Lake Ontario Wave and 12:38:18
11 Surge Study, and presently we're working for 12:38:21
12 Environment Canada on the Great Lakes Integrated 12:38:23
13 Coastal Framework. 12:38:26
14 I'm not going to go into all 12:38:26
15 of the projects I've worked on. Again, 33 years, 12:38:29
16 that's all I do. My CV lists the many, many 12:38:31
17 projects. 12:38:34
18 I recently was the project 12:38:35
19 manager for the biggest breakwater that has been 12:38:37
20 built in the Great Lakes in the last -- we don't 12:38:39
21 even know -- maybe 20, 30 years. I'm working on 12:38:42
22 the remediation of sediments in Port Hope Harbour, 12:38:44
23 which is a \$1.5 billion dollar project. The 12:38:46
24 Canadian government is cleaning up low-level 12:38:49
25 radioactive waste in Port Hope, which is just down 12:38:52

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1 contamination in drinking water. It's is 12:40:11
2 something we work in quite closely. 12:40:13
3 So something came up the other 12:40:15
4 day in Mr. Wilkinson's testimony about 12:40:20
5 precautionary -- the precautionary principle, 12:40:23
6 which I disagree with, not that it is being used 12:40:26
7 but the interpretation and how you define it. 12:40:29
8 There's no one definition of 12:40:32
9 precautionary principle. It's a -- it's an 12:40:34
10 approach, and I believe that that approach is 12:40:38
11 actually being applied in this process through 12:40:41
12 some of the things that MOE does already. They 12:40:44
13 have guidelines for source water protection. They 12:40:46
14 have guidelines for drinking water standards. 12:40:48
15 They have guidelines for levels of contaminants. 12:40:50
16 These are all precautionary principles, 12:40:52
17 precautionary approaches. 12:40:55
18 So this notion of a 12:40:56
19 precautionary principle, which is an overarching 12:40:58
20 belief in environmental studies, is being applied, 12:41:02
21 and then the onus -- the burden of proof on the 12:41:06
22 proponent is something we accept. We were 12:41:10
23 willing, through the course of this work, to do 12:41:13
24 the studies that are required. 12:41:15
25 So bottom line for that: We 12:41:17

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1 believe that the contaminant concentrations in the 12:41:19
2 lake bed sediments at the project site are quite 12:41:21
3 low and disturbance of those sediments would 12:41:24
4 actually not pose a problem for -- or cause a 12:41:26
5 threat to the drinking water. 12:41:29
6 Our report went into great 12:41:30
7 detail of how we derived this conclusion, based 12:41:35
8 on, albeit, not 100 percent complete evidence. We 12:41:39
9 have evidence, though. We have science to base 12:41:44
10 our opinion on as to why we have this opinion. 12:41:46
11 So we believe that it's more 12:41:49
12 likely than not that this is going to be the case, 12:41:53
13 based on the information we have at hand. There 12:41:55
14 are samples that were available to anybody who 12:41:58
15 knows where to look for them that have been taken 12:42:00
16 at this site. So based on that, if you look at 12:42:02
17 the contaminant levels, they're actually quite 12:42:05
18 low. Most of them are below the -- what's called 12:42:08
19 the lowest effects level threshold, which if it's 12:42:10
20 below that, you can literally just dump it in the 12:42:13
21 lake, and MOE doesn't really mind. It's clean, 12:42:15
22 considered to be clean. You can open-water dump 12:42:17
23 it. 12:42:19
24 Some of them are above 12:42:20
25 background level. Some of these contaminants 12:42:23

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1 occur naturally. So to say that there's 12:42:25
2 contaminants in the sediment is true. Some of 12:42:27
3 them are natural. Arsenic naturally occurs in the 12:42:29
4 sediments. So it's a question of what level 12:42:32
5 they're at. 12:42:34
6 None of the contaminant levels 12:42:35
7 in those two samples that we looked at that were 12:42:36
8 available are -- reach the level of what is called 12:42:38
9 the severe effects level thresholds. So they're 12:42:41
10 small. So they're low-level contaminants. 12:42:44
11 The second point is that we're 12:42:46
12 only dredging small amounts in relation to the 12:42:48
13 area that we're dealing with. The area of the 12:42:50
14 turbine layout is roughly 6,100 hectares, and 12:42:53
15 we're dredging small volumes for each turbine. 12:42:57
16 So there's only a small volume 12:43:00
17 that we're actually starting to disturb, and we're 12:43:02
18 only shifting it. We're not lifting it through 12:43:04
19 the water column. We're just moving it to the 12:43:06
20 side. So it's a small volume, and above that 12:43:08
21 small volume, less than 5 percent actually gets 12:43:11
22 put up into the water column. Actually, the 12:43:14
23 number that typically is used is 1 percent. We 12:43:17
24 conservatively assume 5 percent might be put into 12:43:20
25 the water column. U.S. Army Corps of Engineers 12:43:23

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1 suggests it might be less than 1 percent. 12:43:25
2 The second point -- the third 12:43:27
3 point, then, is, of that small volume, of that 12:43:29
4 small percentage, the actual contaminants, whether 12:43:32
5 it be arsenic or mercury, actually most of it 12:43:35
6 remain bound to the particle. It's just the 12:43:39
7 nature of it. They don't dissolve into the water. 12:43:41
8 Only a small fraction of the contaminants actually 12:43:44
9 dissolve into the water. 12:43:47
10 For our analysis, to come to 12:43:48
11 our final conclusion that it's not a problem, we 12:43:49
12 assumed 100 persons of the contaminants would 12:43:52
13 dissolve in the water, so, again, taking a 12:43:54
14 conservative view that we would lose those 12:43:57
15 contaminants to the actual dissolve in the water. 12:43:58
16 There is a long ways between 12:44:00
17 where the turbines are and where the nearest 12:44:03
18 intake is. On this graphic, you can see the 12:44:05
19 turbine layout. The closest one is 12 kilometres 12:44:08
20 away. The furthest one is 24. And there's an 12:44:11
21 incredible volume of water between the two. If 12:44:16
22 you do the math, which we did in our report, the 12:44:20
23 low-level contaminants, the small volume, the 12:44:23
24 small percentages, within about less than 1 12:44:27
25 percent of the volume of water available to us, we 12:44:32

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1 would dilute those contaminants to a point where 12:44:34
2 you could actually drink the water. It meets the 12:44:37
3 MOE drinking water standards. 12:44:40
4 It would not approach the -- 12:44:41
5 no. Granted, these studies aren't complete, but 12:44:44
6 the evidence that we have before us suggests to 12:44:46
7 us, based on our expertise and experience, that 12:44:50
8 this would have been manageable, and we could have 12:44:52
9 demonstrated this. 12:44:55
10 This kind of construction 12:44:56
11 activity goes on around -- on the Great Lakes 12:45:01
12 where trenches are dredged; things are put in the 12:45:03
13 water that are much closer to intakes than is 12:45:08
14 being proposed at Wolfe Island Shoals. 12:45:11
15 For instance, here you can see 12:45:14
16 we're in Toronto. Offshore of Toronto, there is 12:45:16
17 Toronto Islands that little feature that sort of 12:45:20
18 sticks -- it doesn't go there. 12:45:22
19 There is a deep lake water 12:45:25
20 cooling pipe's open cut trench that was dug. That 12:45:27
21 material was dredged and simply piled up beside 12:45:29
22 it, and it's half a kilometre away from a drinking 12:45:32
23 water intake. 12:45:35
24 I mentioned the Ashbridges Bay 12:45:35
25 sewer waste water outfall that's labelled on that 12:45:38

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1 drawing on the top right corner. That's less than 12:45:41
2 5 kilometres away from the main water intake. 12:45:43
3 Ten minutes? My good friend 12:45:46
4 Myriam. 12:45:51
5 So it happens. So we use that 12:45:52
6 analysis -- desktop analysis to show the dilution 12:45:56
7 of it just wouldn't be a concern. It doesn't 12:46:00
8 indicate it's a concern to us. We also did some 12:46:02
9 initial modelling. This was presented in the 12:46:04
10 report. We have that figure there. 12:46:06
11 The green element there is 12:46:07
12 actually the outer envelope of the sediment 12:46:12
13 particles. It's actually releasing a model that 12:46:14
14 releases the particles near the bottom and then 12:46:17
15 tracks where it would go based on the currents 12:46:19
16 that go back and forth. The first image there is 12:46:21
17 just upon release; after three days, because the 12:46:23
18 current are going back and forth; and then after 12:46:26
19 eight days. And we assume three days of dredging 12:46:28
20 and then another eight days. By this point, those 12:46:31
21 fine silt particles have already hit the bottom. 12:46:34
22 These conclusions are 12:46:37
23 consistent with MOE's own modelling report that 12:46:38
24 was draft issued in 2012. That concluded the same 12:46:40
25 thing. 12:46:44

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1 this assessment, it was 12:47:47
2 concluded that any 12:47:47
3 impacts from construction 12:47:48
4 of an offshore windmill 12:47:49
5 would be quite small." 12:47:51
6 Now, they're not modelling 12:47:52
7 this particular one, but they're doing the process 12:47:53
8 and demonstrating the capabilities of experts to 12:47:54
9 come to these conclusions. 12:47:59
10 There's also a discussion 12:48:00
11 paper from MOE that said, if you should be outside 12:48:02
12 this 5 kilometre zone, then you are probably not 12:48:07
13 going to have impacts. Well, we're 12 kilometres 12:48:12
14 away from the nearest one. 12:48:15
15 This discussion paper also 12:48:17
16 said that, if you are outside that exclusion zone, 12:48:18
17 you should do some site-specific studies and 12:48:20
18 assess the potential impacts. This is what was 12:48:22
19 proposed to do in the project schedule. We would 12:48:25
20 do those studies, get that information. So we 12:48:27
21 were -- I put to you that we were doing what MOE 12:48:32
22 thought we should be doing. 12:48:34
23 Source water protection: This 12:48:35
24 is a mechanism that is a living mechanism. It's 12:48:39
25 not static. It defines zones to protect the 12:48:43

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1 Something else that came up 12:46:44
2 that never had originally entered our report 12:46:48
3 because we didn't believe it to be an issue, but 12:46:51
4 in response to Mr. Wilkinson's evidence regarding 12:46:54
5 algae blooms, algae is driven by nutrients: 12:46:57
6 fertilizer from farms, leaky sewage systems, golf 12:47:01
7 course runoff, urbanized areas, these kind of 12:47:06
8 things. 12:47:09
9 And where you have warm 12:47:09
10 shallow water, it gets even worse. Like, in the 12:47:10
11 western end of Lake Erie, which is the next lake 12:47:13
12 down, very shallow at the west end. That's the 12:47:15
13 one that Mr. Wilkinson said you can see from 12:47:19
14 space. You can. It's a big problem. 12:47:21
15 We're talking about wind 12:47:23
16 turbine towers. They have no nutrient value that 12:47:25
17 are contributing to the water column. So, 12:47:27
18 therefore, we're of the opinion that it does not 12:47:30
19 increase the risk. 12:47:32
20 I mentioned the MOE report. I 12:47:33
21 won't get into it. They did what we would have 12:47:36
22 done in the modelling. MOE's own experts modelled 12:47:39
23 it, and I'd just draw your attention to the last 12:47:43
24 line: 12:47:45
25 "Based on the results of 12:47:46

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1 water. Rule 130 says you can do more. You can 12:48:45
2 evaluate more things by doing numerical modelling 12:48:51
3 and looking at other activities to get a better 12:48:54
4 understanding. So that source water protection 12:48:56
5 mechanism, that precautionary principle of looking 12:48:58
6 at what protects the drinking water, could be 12:49:01
7 applied here. 12:49:03
8 This is an unfortunate 12:49:04
9 comparison, I believe, to Walkerton. In my 12:49:08
10 opinion, the two are so different that I just had 12:49:13
11 to highlight some elements of it. 12:49:16
12 We're talking about low 12:49:18
13 contaminant concentrations that are diluted by 12:49:20
14 large volumes of water. The Walkerton inquiry 12:49:22
15 concluded there were high levels of deadly 12:49:25
16 bacteria. We're in 20 metres of water, 12 to 24 12:49:27
17 kilometres away from the nearest intake. In 12:49:31
18 Walkerton, it went directly into the intake well 12:49:34
19 of a municipal water supply. 12:49:37
20 As I mentioned, we have 12:49:38
21 established source water protection procedures. 12:49:40
22 At Walkerton, there was a failure. This was the 12:49:43
23 Walkerton inquiry, Walkerton inquiry that said 12:49:45
24 they -- they failed to use the chlorinators. And, 12:49:49
25 again, MOE has the capacity to review water 12:49:54

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1 quality studies, and Walkerton was concluded there 12:49:56
2 was ineffective MOE plan inspection. 12:49:58
3 Navigation: This has been 12:50:00
4 raised. We -- we contend that the 1,200- to 12:50:04
5 1,500-metre-wide navigation channel, which is 12:50:09
6 shown as the -- on the left portion there, the 12:50:12
7 upper leg, which is adjacent to the turbine site, 12:50:14
8 the 1,200- to 1,500-metre-wide navigation 12:50:18
9 allowance is sufficient. It compares to just 12:50:21
10 upstream where the -- where you have two-way 12:50:27
11 traffic -- we talked one-way traffic -- two way 12:50:30
12 traffic in channels that are 150 to 140 metres 12:50:32
13 wide. Typically it's less on the Great Lakes. 12:50:36
14 You must understand that the 12:50:39
15 Great Lakes St. Lawrence Seaway system is not the 12:50:41
16 open ocean. It's an inland waterway that extends 12:50:43
17 some 3,700 kilometres from the Gulf of St. 12:50:47
18 Lawrence all the way up to Lake Superior. 12:50:50
19 It's been established for 50 12:50:52
20 years these type of widths for channels for safe 12:50:54
21 operation. They're based on Canadian guidelines. 12:50:57
22 Every vessel that's a vessel 12:50:58
23 going through this system has to have a pilot on 12:51:01
24 it, a person who knows the local condition. It's 12:51:02
25 a mandatory they be piloted, and the vessels on 12:51:05

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1 small speck in the middle there represents a small 12:52:17
2 pleasure craft in scale to the other turbines. 12:52:21
3 There's plenty of room to navigate through. Of 12:52:24
4 course, the turbines will be all marked in 12:52:26
5 accordance with Canadian and international 12:52:28
6 standards. 12:52:30
7 Quickly, applying a label 12:52:30
8 "first of kind," in my opinion, is not 12:52:37
9 particularly relevant or accurate. All the 12:52:38
10 elements of the marine component of this, which 12:52:41
11 I'm dealing with -- I don't deal with bats. I 12:52:44
12 deal with marine components. 12:52:47
13 Dredging, stone bedding, 12:52:49
14 concrete piers, these have all been used many, 12:52:51
15 many times in the Great Lakes. Even URS 12:52:53
16 acknowledges these are not untested technologies, 12:52:56
17 and these are combined. I mean, you typically 12:52:59
18 build something on a marine setting by dredging, 12:53:01
19 putting stone bedding, building something on top 12:53:05
20 of it. So this is a common approach. This has 12:53:05
21 been dealt with in our report. 12:53:08
22 And cabling, I mean, we talked 12:53:09
23 about cabling. There's lots of cables in the 12:53:11
24 Great Lakes. That's not -- it's not untested as 12:53:13
25 well. 12:53:15

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1 the St. Lawrence system are limited. They can 12:51:08
2 only be so big because the locks are so big. So 12:51:10
3 they're called seaway max. They're not the size 12:51:14
4 of ships you see on the ocean. They're two and a 12:51:17
5 half times narrower. They're one and a half times 12:51:19
6 shorter. So they're not your PanMax or your 12:51:22
7 Valemax or your T1 super class tankers that are in 12:51:24
8 the open ocean. 12:51:28
9 So just a quick comparison: 12:51:28
10 On the top right, there's the two-way lane traffic 12:51:31
11 that is common, maybe 240 metres on the Great 12:51:34
12 Lakes St. Lawrence Seaway. Two-way -- ships going 12:51:39
13 back and forth this way. Where, adjacent to the 12:51:40
14 Windstream project, there's, at minimum, 1,200 12:51:43
15 metres and upwards of 1,500 metres for one-way 12:51:46
16 traffic. Vessels are only allowed to go one way 12:51:48
17 in this section of the seaway. 12:51:51
18 So we add up the ship lane, 12:51:52
19 which, on the seaways, are 250 to 450 metres, and 12:51:55
20 given a buffer -- an additional buffer of 800 to 12:52:00
21 1,000 metres gives you your 1,200 to 1,500, which 12:52:04
22 is available on the seaway. 12:52:07
23 Navigation through we don't 12:52:08
24 believe is going to be a -- likely than not, it 12:52:11
25 won't be an issue that cannot be dealt with. That 12:52:15

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1 So, in my opinion, it is -- 12:53:15
2 applying this kind of label does no real -- 12:53:17
3 doesn't serve a purpose. 12:53:20
4 So the waves are understood. 12:53:21
5 There was some question that we don't understand 12:53:23
6 the waves. We have prepared the U.S. -- for the 12:53:25
7 U.S. Army Corps of Engineers, which is the wave 12:53:30
8 standard for Lake Ontario, for the wave 12:53:33
9 information system. It's validated with measure 12:53:35
10 waves, and additional field studies are not 12:53:37
11 required. 12:53:40
12 Baltic waves where they have 12:53:41
13 wind turbines are similar to Lake Ontario. That 12:53:44
14 was shown in our first report. We're well aware 12:53:46
15 -- there's -- the point was made that the seas are 12:53:48
16 different somehow. We're well aware of that. In 12:53:50
17 the Great Lakes, there are more seas. In the 12:53:52
18 ocean, they're seas and swells. This difference 12:53:55
19 is well known, has been considered in all of our 12:53:58
20 deliberations. This is not something that's new 12:54:02
21 to us. 12:54:03
22 Obviously the Great Lakes are 12:54:03
23 less severe than the North Sea. This issue was 12:54:05
24 raised, and this is just -- this is true. 12:54:07
25 And the last point is there's 12:54:08

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1 no evidence to support a URS claim that there is 12:54:12
2 this issue of somehow rogue waves or confusing 12:54:14
3 seas that are somehow special to the Great Lakes. 12:54:18
4 This is -- I have no other way 12:54:21
5 of putting it. This is false. There is no 12:54:22
6 evidence to support that whatsoever. 12:54:24
7 There is a notion about the 12:54:26
8 wave impacts on the U.S. There's the wave array, 12:54:28
9 all those dates. The wave rows from our wave 12:54:33
10 hindcast shows the waves coming from the 12:54:36
11 southwest. So they don't direct to the U.S., and 12:54:39
12 by the time you go through the wind turbine array, 12:54:41
13 they really don't change. We're 8 kilometres away 12:54:43
14 from the U.S., and from our own studies that we 12:54:48
15 have done on the U.S. shore for the IJC, it's 12:54:50
16 almost all bedrock. It is not even sensitive to 12:54:54
17 any changes, even if there was a change. 12:54:56
18 Ice: I don't think there is 12:54:58
19 really a contention with ice. We all understand 12:55:00
20 Canada has ice. Canadians know ice. There's ice 12:55:04
21 codes. We don't believe that anybody's really 12:55:08
22 contending that there is not a good understanding. 12:55:10
23 There is no doubt that the schedule allows for a 12:55:12
24 detailed design. It has to be considered. 12:55:15
25 So, to summary -- I'm looking 12:55:18

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1 Government of Canada, Mr. Spelliscy suggested that 12:56:30
2 the conclusion in expert reports that there are no 12:56:32
3 material impediments to developing the project 12:56:36
4 really meant whether developing the project was 12:56:39
5 possible. And he says that is a completely 12:56:41
6 irrelevant question to this arbitration. 12:56:46
7 So to be clear, Mr. Kolberg, 12:56:47
8 if the question had been posed to you: Is it more 12:56:49
9 likely than not that the coastal engineering 12:56:53
10 issues that are considered in your report, whether 12:56:57
11 you had answered the question on a more likely 12:57:02
12 than not standard as opposed to no material 12:57:04
13 impediment standard, would that change your 12:57:07
14 opinion? 12:57:09
15 A. Absolutely not. I think 12:57:10
16 I could just as readily use the term "more likely 12:57:12
17 than not" based on our expertise and experience in 12:57:14
18 the Great Lakes; that the issues more likely than 12:57:16
19 not would not -- would more likely than not would 12:57:19
20 have allowed the project to proceed. 12:57:22
21 Q. Thank you. 12:57:24
22 PRESIDENT: Thank you, 12:57:25
23 Ms. Seers. This will be a convenient time to 12:57:26
24 break for lunch. We will continue at two o'clock, 12:57:29
25 and if I could ask Mr. Kolberg not to speak with 12:57:31

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1 at Myriam with my time -- I believe myself and 12:55:21
2 Baird are qualified to talk about the Great Lakes. 12:55:26
3 I believe that there is evidence to show that the 12:55:29
4 disturbance of the lake bed sediment from the 12:55:33
5 Windstream construction would not be a threat to 12:55:35
6 drinking water; that applying the existing MOE 12:55:37
7 precautionary principles, a science-based approach 12:55:40
8 is being applied, and the onus is on the proponent 12:55:43
9 to prove that. We agree. 12:55:47
10 The navigation: There's a 12:55:48
11 standard Great Lakes St. Lawrence Seaway ship lane 12:55:50
12 and buffer, something that's unique to this area. 12:55:52
13 To reiterate, I don't think 12:55:56
14 "first of a kind" is an appropriate or useful 12:55:57
15 label and the waves, coastal processes, and ice 12:56:00
16 conditions are reasonably well quantified and well 12:56:02
17 understood to have proceeded into detail design. 12:56:05
18 PRESIDENT: Thank you, 12:56:10
19 Mr. Kolberg. 12:56:10
20 Ms. Seers, there was one 12:56:18
21 question, I believe? 12:56:19
22 EXAMINATION-IN-CHIEF BY MS. SEERS: 12:56:24
23 BY MS. SEERS: 12:56:24
24 Q. Thank you, Mr. Kolberg. 12:56:25
25 In his opening statement on behalf of the 12:56:28

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1 anybody about your -- about your testimony during 12:57:34
2 the lunch break. 12:57:37
3 THE WITNESS: Absolutely. 12:57:38
4 PRESIDENT: A special room has 12:57:39
5 been reserved for you so you can enjoy your lunch 12:57:41
6 in peace and quiet. 12:57:47
7 THE WITNESS: For a change. 12:57:48
8 Thank you. 12:57:49
9 PRESIDENT: Yes. I thought 12:57:49
10 you might appreciate the opportunity. 12:57:50
11 --- Lunch recess taken at 12:57 p.m. 12:57:52
12 --- Upon resuming at 2:01 p.m. 14:01:59
13 PRESIDENT: Thank you. 14:02:01
14 Welcome back. And it will be cross-examination 14:02:02
15 conducted by Ms. Squires. 14:02:07
16 CROSS-EXAMINATION BY MS. SQUIRES: 14:02:10
17 Q. Good afternoon, 14:02:10
18 Mr. Kolberg. How are you? 14:02:13
19 A. I'm fine. Thank you very 14:02:14
20 much. 14:02:15
21 Q. Good. As Mr. President 14:02:15
22 has mentioned, my name is Heather Squires, and I'm 14:02:17
23 counsel for the Government of Canada in this 14:02:20
24 arbitration. I'm going to ask a few questions so 14:02:22
25 I can understand a bit better the contents of the 14:02:25

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1 expert reports you filed in the arbitration. 14:02:27
2 If you don't understand a 14:02:29
3 question that I've asked, let me know. I can 14:02:30
4 rephrase it, ask it again. It's important we 14:02:32
5 understand each other. 14:02:35
6 In that regard, it's also 14:02:35
7 important if you could answer my questions, if 14:02:37
8 they are a yes or no question, with that first, 14:02:39
9 and then I can provide you time for relevant 14:02:41
10 context and that sort of thing. 14:02:43
11 You'll also note that in front 14:02:46
12 of you there's a white binder. It has numerous 14:02:48
13 documents in it. They're labelled by tab number, 14:02:50
14 so I'll be referring to those throughout the 14:02:52
15 course of the next hour and just so you know where 14:02:54
16 to find them. 14:02:57
17 The documents will also appear 14:02:58
18 on the screen here to your right. So some of them 14:02:59
19 might be small. It might be easier to look up, up 14:03:04
20 there. I'll leave it you to decide. 14:03:06
21 I don't think we'll be going 14:03:09
22 through any confidential today, but to the extent 14:03:10
23 that we are, we might need to cut you the feed, 14:03:11
24 but you don't need to concern yourself with that 14:03:13
25 at all. 14:03:15

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1 start to ask you a couple of questions about your 14:04:07
2 comments on the project being a first of a kind. 14:04:09
3 And this morning you've heard 14:04:11
4 Mr. Roberts from WSP indicate that, in his 14:04:14
5 opinion, the project is first of a kind with 14:04:17
6 respect to permitting. Do you remember that? 14:04:19
7 A. Yes, I remember that. 14:04:21
8 Q. Okay. So you would also 14:04:22
9 agree with Mr. Roberts, then, that first of a kind 14:04:23
10 would make a permitting process somewhat 14:04:26
11 uncertain? 14:04:28
12 A. We're going to the 14:04:31
13 context here. I think that's the issue. In my 14:04:34
14 opinion "first of a kind" is a label that I don't 14:04:36
15 necessarily agree with, so if Mr. Roberts said so, 14:04:39
16 that's his opinion. My opinion the elements of 14:04:41
17 the project that are within my purview, which is 14:04:45
18 the coastal marine components, they're not first 14:04:48
19 of a kind. 14:04:52
20 Q. Okay. But in terms of 14:04:52
21 the permitting process, some of those components 14:04:54
22 that you are an expert in, so the coastal 14:04:56
23 processes, the clean water issues, those are a 14:05:00
24 part of the Renewable Energy Approval; correct? 14:05:02
25 A. I believe so, yes. 14:05:04

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1 Now, you provided two reports 14:03:16
2 in this arbitration; correct? 14:03:19
3 A. Correct. 14:03:20
4 Q. And the first is dated 14:03:21
5 August 13, 2014; correct? 14:03:22
6 A. Correct. 14:03:25
7 Q. And the second one was 14:03:25
8 filed June 16, 2015? 14:03:27
9 A. Correct. 14:03:29
10 Q. Now, you were not 14:03:30
11 retained by the Claimant prior to February 11, 14:03:32
12 2011; correct? 14:03:35
13 A. No. 14:03:36
14 Q. Okay. Now, the section 14:03:38
15 -- in the reports that you have provided, your 14:03:41
16 sections in particular deal with drinking water 14:03:44
17 issues, the project layout as it pertains to the 14:03:46
18 shipping lanes, coastal processes, and wind, 14:03:49
19 weather, and ice. Those are your particular areas 14:03:52
20 of the report; correct? 14:03:54
21 A. With respect to, when you 14:03:56
22 say mine, Baird and Associates, yes. There was 14:03:58
23 components on marine archeology and fisheries 14:04:00
24 handled by other experts. 14:04:04
25 Q. Okay. So I just want to 14:04:05

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1 Q. All right. Let's move 14:05:05
2 on, then, to talk a bit about the comments you've 14:05:09
3 made on drinking water and possible contamination 14:05:11
4 to drinking water. And I would like to take you 14:05:14
5 to page 26 of your second report. 14:05:16
6 A. Yes. 14:05:28
7 Q. I'm going to look at the 14:05:28
8 first sentence under Section 4.3. 14:05:30
9 A. Yes. 14:05:33
10 Q. Now, you indicate here 14:05:33
11 that: 14:05:35
12 "It's expected that the 14:05:35
13 level of contaminants 14:05:36
14 entering the water column 14:05:38
15 as a result of 14:05:40
16 disturbance of sediment 14:05:40
17 due to preparation of the 14:05:40
18 project turbine 14:05:40
19 foundations would pose no 14:05:43
20 threat to drinking 14:05:44
21 water." 14:05:45
22 Is that correct? 14:05:45
23 A. That's what it says, yes. 14:05:46
24 Q. And if we turn over to 14:05:47
25 page 27, to the next page, you draw this 14:05:48

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1 conclusion from specific project characteristics, 14:05:52
2 such as the low concentration of contaminants in 14:05:55
3 the water -- in the project area, sorry, the total 14:05:57
4 volume of dredge material, the short duration of 14:06:00
5 dredging, those sort of things; correct? 14:06:03
6 A. Yes. 14:06:05
7 Q. So the conclusion that 14:06:06
8 you've made in this report, then, is specific to 14:06:07
9 the Windstream project itself; correct? 14:06:10
10 A. Most certainly, yes. 14:06:12
11 Q. So, now, you weren't here 14:06:13
12 for it, but you're aware because you mentioned it 14:06:17
13 in your presentation this morning, but Minister 14:06:20
14 Wilkinson, the former Ministry of Environment, in 14:06:23
15 his testimony, indicated that he had concerns with 14:06:25
16 the impact offshore wind farms would have in the 14:06:27
17 Great Lakes in general as they pertained to 14:06:30
18 drinking water, not simply Windstream's project. 14:06:32
19 So I want to clarify, then, exactly what you have 14:06:34
20 concluded in your report in the context of those 14:06:37
21 comments from him. 14:06:39
22 You don't conclude in your 14:06:39
23 report that water quality issues may not arise 14:06:42
24 with an offshore wind farm in any other area of 14:06:44
25 the Great Lakes; correct? 14:06:47

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1 Q. Now, you noted this study 14:07:41
2 was done by MOE. 14:07:42
3 A. Yes. 14:07:45
4 Q. And given it's dated 14:07:46
5 December 20 -- December 2012, you would agree 14:07:47
6 that, in fact, the Ministry of Environment did do 14:07:50
7 studies on drinking water post the deferral on 14:07:53
8 February 11, 2011; correct? 14:07:56
9 A. I'm aware of this study, 14:07:58
10 and the date on it is December, as a draft, in 14:07:59
11 2012. 14:08:02
12 Q. Okay. Which would date 14:08:02
13 post the deferral? 14:08:03
14 A. To be honest, the dates 14:08:04
15 with the deferrals and the moratoriums, you would 14:08:07
16 have to clarify that to me. This -- the date is 14:08:10
17 pretty obvious on -- on this one. It is December 14:08:12
18 2012. And I'm not quite clear what the date -- 14:08:16
19 the other date you're asking me. 14:08:19
20 Q. It's February 11, 2011. 14:08:20
21 It's -- everybody in this room, it's their 14:08:24
22 favourite date. 14:08:25
23 A. Then I think we all know 14:08:25
24 that it is after this date. When this report was 14:08:26
25 started and when the Ministry had their -- had 14:08:29

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1 A. No. My report does not 14:06:48
2 conclude that, but I would probably have the same 14:06:49
3 conclusion in other -- other areas. 14:06:51
4 Q. So -- 14:06:54
5 A. But my report strictly 14:06:55
6 deals with Windstream. 14:06:56
7 Q. Okay. So you can let me 14:06:57
8 know whether you agree or not with the next 14:07:00
9 statement, then, that, depending on the particular 14:07:03
10 circumstances of a project, there may, in fact, be 14:07:04
11 issues with drinking water. 14:07:07
12 A. Well, certainly. If 14:07:09
13 there are -- if there are contaminants or if there 14:07:10
14 are particular issues that it's close by, yes. 14:07:12
15 That's a very open-ended statement, but I would 14:07:14
16 agree with you. 14:07:16
17 Q. Okay. Now, in your 14:07:17
18 presentation as well you mentioned -- and we can 14:07:18
19 go back to it, if it helps the Tribunal. You 14:07:21
20 mention specifically on the slide entitled "Our 14:07:27
21 Conclusion's Consistent with MOE Approach and 14:07:31
22 Conclusions." You refer to a report dated 14:07:34
23 December 2012, a Nettleton report that dealt with 14:07:35
24 the Mike 3 model. Do you remember that? 14:07:39
25 A. Yes. 14:07:40

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1 started this report, I couldn't tell you. 14:08:32
2 Q. Okay. But, at minimum, 14:08:33
3 they concluded it post that date I just spoke 14:08:34
4 about? 14:08:36
5 A. Post that date? Yes this 14:08:36
6 report concludes that. 14:08:38
7 Q. Okay. Now, you also 14:08:39
8 briefly touched on the issue with the drinking 14:08:40
9 water in Walkerton. Now, Mr. Kolberg, do you 14:08:42
10 recall how many people died from drinking water -- 14:08:46
11 drinking water from their own taps in that -- in 14:08:48
12 that -- in that tragedy? 14:08:50
13 A. The specific number? No. 14:08:51
14 Q. Does around seven or 14:08:53
15 eight sound about right? 14:08:55
16 A. I'm sure -- I'm sure 14:08:57
17 you're asking me so I'm sure you know the number, 14:08:58
18 so I'm going to say, yes, it sounds right. 14:09:00
19 Q. And you would agree with 14:09:02
20 me that, seven or eight deaths from drinking 14:09:03
21 water, that's enough to make a politician sit up 14:09:06
22 and take notice, isn't it? 14:09:10
23 A. What -- you want my 14:09:11
24 opinion on what makes a politician take notice? I 14:09:11
25 cannot speak to what Mr. Wilkinson believes as a 14:09:15

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1 politician. I can tell you what I believe. 14:09:17
2 Technically there is no parallel between Walkerton 14:09:19
3 and this situation. I cannot enter 14:09:22
4 Mr. Wilkinson's mind. 14:09:24
5 Q. Okay. I understand -- I 14:09:25
6 understand that you don't want to draw the 14:09:27
7 parallel, and my point is more on that it's an 14:09:28
8 event someone might take notice to. But that's 14:09:30
9 fine. 14:09:33
10 Let's talk for a minute now 14:09:33
11 about the project layout, and I want to get into 14:09:38
12 some of the shipping lane issues. Now, the 14:09:40
13 project layout that we have before us, that is -- 14:09:47
14 sorry, now, the project layout has been revised 14:09:50
15 between the layout that was put forward in your 14:09:52
16 first report -- so I'll call that the 2010-2014 14:09:55
17 layout -- and the layout put forward in the time 14:09:58
18 of your reply; correct. 14:10:01
19 A. Yes. There were changes 14:10:02
20 to the layout, yes. 14:10:03
21 Q. Okay. Now, those changes 14:10:04
22 result from the -- the project, as it was designed 14:10:07
23 by Windstream at the time, had turbines placed in 14:10:11
24 an international shipping lane. Is that correct? 14:10:13
25 A. The 2014 layout or the 14:10:15

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1 earlier layout? 14:10:20
2 Q. Yes. 14:10:20
3 A. Yes. There was -- there 14:10:21
4 was -- there was some encroachment into the -- 14:10:22
5 into the shipping lane. 14:10:24
6 Q. Okay. So now in your 14:10:25
7 2015 layout, you've moved those turbines out of 14:10:26
8 the shipping lane and put them adjacent to the 14:10:29
9 existing navigational route. Is that correct? 14:10:32
10 A. Me personally didn't move 14:10:34
11 them, yes, but they had -- the layout was adjusted 14:10:35
12 in 2015 due to a number of reasons, I believe, but 14:10:39
13 certainly recognition of a shipping lane would 14:10:43
14 have been one -- one aspect. 14:10:44
15 Q. Okay. Now, in your view 14:10:47
16 then, this modification, as it pertains to the 14:10:49
17 shipping lane, is to ensure safe navigational 14:10:51
18 passage; correct? I mean you wouldn't have that 14:10:54
19 if this were in the shipping lane? 14:10:59
20 A. No. Again, stating the, 14:11:01
21 obvious if they were in the shipping lane, that 14:11:02
22 would be an encumbrance, yes. 14:11:05
23 Q. Okay. So up until the 14:11:08
24 time that you pointed out this error in your first 14:11:09
25 report, because you did note there that they were 14:11:11

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1 in the shipping lane, Windstream was proceeding 14:11:12
2 with a project layout that actually had turbines 14:11:15
3 placed in a shipping lane; correct? Up until 14:11:16
4 2014? 14:11:18
5 A. I couldn't speak to the 14:11:19
6 -- the inner thinking of Windstream with respect 14:11:20
7 to what they knew and didn't know and what they 14:11:23
8 were proposing. Certainly the layout that I saw 14:11:25
9 in 2014 created an issue with shipping lanes. 14:11:28
10 For all I know they may have 14:11:35
11 already known that, but we certainly worked with 14:11:37
12 them to point out an allowance for a shipping lane 14:11:39
13 that would, in our opinion, be workable. 14:11:43
14 Q. Okay. So I want to 14:11:45
15 explore a bit, then, your conclusions with regard 14:11:48
16 to that new layout and why you feel that is an 14:11:51
17 appropriate shipping lane plus buffer, as you put 14:11:54
18 it. 14:11:56
19 And in your presentation this 14:11:57
20 morning, you indicated that you've come to the 14:11:58
21 conclusion that that existing navigation route is 14:12:00
22 enough, because in other areas of the Great Lakes, 14:12:03
23 there's a much smaller shipping lane. So I think 14:12:05
24 you said around 250 to 450 metres. 14:12:08
25 So if we take that amount and 14:12:10

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1 we add what you said is an acceptable buffer of 14:12:12
2 700 to 1,000 metres -- 14:12:15
3 A. 800. 14:12:17
4 Q. 800, sorry, to 1,000 14:12:19
5 metres, then we land within that existing 14:12:19
6 navigational route. So we land somewhere between 14:12:22
7 the 1,200 and 1,500 of the navigational route. Is 14:12:24
8 that correct? 14:12:27
9 A. Yes. 14:12:27
10 Q. Okay. So this buffer, 14:12:27
11 then, that you've created is based on your opinion 14:12:30
12 of working the math so that it fits within that -- 14:12:32
13 that area? 14:12:35
14 A. No. The -- the math 14:12:36
15 works out that a shipping lane of 250 to 450 14:12:39
16 metres is very consistent with what is practiced 14:12:44
17 on the Great Lakes St. Lawrence Seaway System, and 14:12:46
18 a buffer of 800 to 1,000 metres, in our opinion, 14:12:49
19 is sufficient. The math worked out to be that. 14:12:52
20 Q. Okay. So the buffer is 14:12:54
21 included within that existing navigational route? 14:12:55
22 A. Yes. 14:12:57
23 Q. Okay. Now, so your 14:12:58
24 report does note that the navigational route 14:13:00
25 itself is the 1,200 to 1,500 metres. So just so 14:13:03

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1 we're on the same page, that is the navigational 14:13:06
2 route width; correct? 14:13:09
3 A. That is the navigational 14:13:10
4 allowance. Again, the semantics about what you 14:13:11
5 are calling a route and what I might call a route, 14:13:14
6 I'm not clear. 14:13:16
7 Q. Well, the allowance, I 14:13:17
8 think, is what -- 14:13:18
9 A. Yes. It's the allowance. 14:13:18
10 It includes the ship lane and a buffer. 14:13:19
11 Q. Okay. But in that 14:13:21
12 navigational allowance, as you've put it, boats 14:13:22
13 can be found anywhere in that region; correct? 14:13:24
14 You're not constrained to the middle of that? 14:13:27
15 A. No. I mean, the boat 14:13:30
16 can, if it wants to, can go anywhere it wants 14:13:33
17 really, but if it's being piloted, as mandatory on 14:13:35
18 the Great Lakes St. Lawrence Seaway, the vessel 14:13:38
19 has to be -- it would be within that channel. 14:13:41
20 And what the -- the point 14:13:46
21 we're making here is, as the project moved 14:13:47
22 forward, could you provide a safe navigation 14:13:48
23 allowance adjacent to a wind farm? And we're 14:13:50
24 saying, yes, you can, because you would have a 14:13:53
25 ship lane that's consistent with what is done 14:13:55

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1 as we've agreed boats can be found anywhere within 14:14:57
2 that area; correct? They're allowed to go 14:15:00
3 anywhere between -- 14:15:03
4 A. Today? 14:15:03
5 Q. Today. 14:15:04
6 A. Yes. 14:15:04
7 Q. And so your proposition 14:15:05
8 that an adequate buffer can be obtained if, when 14:15:07
9 those boats are going through that lane, they -- 14:15:10
10 to use your words, inherently know to stay towards 14:15:12
11 the middle? 14:15:15
12 A. Well, the actual ship 14:15:16
13 doesn't know anything. The pilot would be 14:15:18
14 constrained to a ship channel that is standard on 14:15:20
15 the Great Lakes St. Lawrence Seaway system, 250 to 14:15:24
16 450 metres wide for one-way vessel traffic. 14:15:27
17 Q. Yes. Right now they know 14:15:30
18 they -- 14:15:31
19 A. That would be asking -- 14:15:31
20 that would be asking no more of the pilot than the 14:15:33
21 pilot does anywhere on that system. 14:15:34
22 Q. That might be in 14:15:37
23 practice, but they do know, in fact, that they 14:15:38
24 could expand where they go in that route up to 14:15:40
25 1,200 to 1,500 metres; correct? 14:15:42

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1 virtually everywhere on the Great Lakes St. 14:13:58
2 Lawrence Seaway plus a buffer which -- which 14:14:02
3 people would, I think, inherently know that you 14:14:03
4 would want to separate yourself a little bit from 14:14:05
5 a -- from a wind turbine farm. 14:14:07
6 So I think you're comparing 14:14:08
7 what someone could do today versus what someone 14:14:11
8 would be allowed to do in the future with the 14:14:14
9 project. There's no doubt the project constrain 14:14:16
10 the existing condition, but the allowance is 14:14:19
11 appropriate for a navigation system. 14:14:23
12 Q. Okay. So, again, I just 14:14:26
13 want to clarify, then, what your conclusion is. 14:14:28
14 So the navigational route itself is 1,200 to 1,500 14:14:31
15 metres wide? 14:14:34
16 A. Yes. The dimensions, as 14:14:35
17 shown on the figure I presented, are 1,200 right 14:14:36
18 where it exits the St. Lawrence Seaway system, 14:14:39
19 because there's a shoal right there that's 14:14:42
20 physically -- you can't go any -- any wider. And 14:14:45
21 then it spreads out a little bit. So generally 14:14:47
22 it's 1,500 metres, but to be fair, it is 1,200 to 14:14:49
23 1,500 metres. 14:14:53
24 Q. Okay. So even if we take 14:14:53
25 the 1,200, then we -- so 1,200 to 1,500, boats -- 14:14:54

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1 A. No. Once again, I think 14:15:44
2 we're sort of mixing the present situation where 14:15:46
3 they have room to do that. But if the wind farm 14:15:50
4 was established and it went to the permitting 14:15:53
5 agencies, we believe that the case can be made, 14:15:55
6 more likely than not, that that -- the navigation 14:15:58
7 ship lane would be -- would be -- I'm going to use 14:16:02
8 the word constrained to 250 to 450 metres, as it 14:16:05
9 is almost everywhere on the seaway, and that the 14:16:08
10 pilots would now, in the future, when the turbines 14:16:11
11 are in place, would know that, and they wouldn't 14:16:13
12 willy-nilly drive all over the place. 14:16:16
13 Q. Okay. So then your 14:16:18
14 conclusion is that, for this project to proceed as 14:16:20
15 you have proposed, it would require the Canadian 14:16:24
16 authorities that deal with shipping routes to 14:16:27
17 agree to constrain it from the existing 1,200 to 14:16:29
18 1,500 meter to what you would feel would be more 14:16:32
19 consistent with what's in the Great Lakes. It 14:16:35
20 would require that? 14:16:37
21 A. There's no doubt this 14:16:38
22 would require a permit approval from the navigable 14:16:39
23 authorities. We're clear on that, and there's 14:16:44
24 time allowed for that in the schedule. Yes, 14:16:45
25 you're absolutely correct. 14:16:47

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1 Q. And that permit would 14:16:48
2 require the constraining of the shipping lane? 14:16:49
3 A. That would require a 14:16:51
4 modification to the way it is right now. 14:16:53
5 Q. Okay. Just one second. 14:16:54
6 Okay. Now, I want to talk for 14:17:00
7 a minute about the -- the shipping channels in the 14:17:03
8 Great Lakes in general and the different 14:17:06
9 constraints that are on them. 14:17:07
10 And if we turn to page 52 of 14:17:09
11 your second report -- actually, sorry, we don't 14:17:12
12 need to go. We're going to go to page 55. 14:17:22
13 A. Okay. It's closer to the 14:17:23
14 end. Okay. 14:17:29
15 Q. Exactly. That's what -- 14:17:30
16 that's what you think. 14:17:30
17 [Laughter.] 14:17:31
18 THE WITNESS: I'm -- I'm here 14:17:31
19 as long as you need me. 14:17:32
20 BY MS. SQUIRES: 14:17:33
21 Q. Now, on page 55, you note 14:17:33
22 that: 14:17:36
23 "The navigational channel 14:17:37
24 of the 1,200 to 1,500 14:17:39
25 metres is substantially 14:17:40

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1 channel that's between the Detroit River Channel 14:18:26
2 -- in the Detroit River Channel between Windsor 14:18:30
3 and Detroit; correct? 14:18:33
4 A. Yes. 14:18:34
5 Q. And you indicate that 14:18:35
6 it's 700 metres wide? 14:18:35
7 A. At that particular point, 14:18:36
8 yes, it's 700 metres wide. 14:18:38
9 Q. Okay. And at that 14:18:39
10 particular point, it's constrained on one side by 14:18:40
11 the City of Windsor and one side by the City of 14:18:42
12 Detroit; correct? 14:18:44
13 A. Yes. 14:18:45
14 Q. Okay. Now if we turn to 14:18:45
15 Figure 5.5 on page 59, this is a particular part 14:18:47
16 of the shipping route in the channel on the St. 14:18:54
17 Clair River; correct? 14:18:58
18 A. Correct. 14:18:58
19 Q. And you note here that 14:18:59
20 it's 300 metres wide. 14:19:00
21 A. Yes. 14:19:01
22 Q. And, again, it's also 14:19:02
23 constrained one side by a community and the other 14:19:03
24 side by a naturally-occurring hazard or land mass; 14:19:06
25 correct? 14:19:10

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1 wider than is typically 14:17:42
2 safely used for two-way 14:17:43
3 traffic vessels at many 14:17:44
4 other locations 14:17:46
5 throughout the Great 14:17:46
6 Lakes St. Lawrence Seaway 14:17:49
7 system." 14:17:49
8 Correct? 14:17:50
9 A. Yes. That -- that route 14:17:50
10 beside where the proposed project would be, at 14:17:53
11 1,200 to 1,500 metres, is wider than many, many, 14:17:55
12 many other places on the Great Lakes St. Lawrence 14:17:59
13 Seaway system, yes. 14:18:02
14 Q. Okay. Let's -- let's 14:18:03
15 turn the page to page 56 and have a look at a 14:18:03
16 couple of those. You provided some graphics. 14:18:06
17 A. Yes. 14:18:08
18 Q. So I want to start with 14:18:08
19 the example at Figure 5.2. 14:18:11
20 A. Five? Sorry? 14:18:14
21 Q. 5.2, so we're on the next 14:18:17
22 page. Sorry, yes, next page, the top image there. 14:18:19
23 A. Mm-hmm. 14:18:22
24 Q. So this is the shipping 14:18:23
25 lane or the navigational route or navigational 14:18:24

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1 A. Yes. It's land on one 14:19:10
2 side, and it's land on the other side, yes. 14:19:12
3 Q. Okay. Now, for both of 14:19:13
4 these, then, the shipping channel width is 14:19:15
5 determined by the presence of land on each side; 14:19:18
6 correct? It's not -- it's simply not possible to 14:19:20
7 have those shipping lanes wider; correct? 14:19:22
8 A. Correct. 14:19:24
9 Q. But if we're talking 14:19:24
10 about the decision on where to place a manmade 14:19:26
11 item, like a wind turbine, the regulatory 14:19:28
12 authorities actually have discretion on where they 14:19:31
13 can put it; correct? 14:19:33
14 A. Correct. I mean, the 14:19:34
15 regulatory agencies always have -- have -- they 14:19:37
16 can deny or approve as they see fit, I guess. 14:19:39
17 That's why they're called the regulatory 14:19:43
18 authority. 14:19:45
19 Q. Right. So when you 14:19:45
20 mention, then, that the positioning of the 14:19:46
21 turbines could be adjusted to provide for 14:19:48
22 sufficient width for seaway traffic in accordance 14:19:50
23 with these other examples, in those circumstances, 14:19:53
24 though, the regulatory authorities had no way to 14:19:56
25 make the shipping lanes wider; correct? 14:19:58

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1 A. There was no need to make 14:20:00
2 them wider, no. And they were constrained by the 14:20:02
3 land, as we saw, yes. 14:20:05
4 Q. No need but also no 14:20:07
5 ability to make it wider? 14:20:08
6 A. I agree. There was land 14:20:09
7 on both sides. There was no way they could have, 14:20:11
8 yes. 14:20:13
9 Q. Now, in your second 14:20:13
10 report, when you indicated that the turbines could 14:20:16
11 be positioned safely, not only did you refer to 14:20:18
12 the existing seaway width but you also referred to 14:20:21
13 some standard international practices and Canadian 14:20:24
14 navigational regulations, so I'd like to look at 14:20:28
15 both of those things. 14:20:31
16 A. Mm-hmm. 14:20:31
17 Q. And let's talk about 14:20:33
18 international practice first, and we'll turn to 14:20:33
19 Tab 1 in your binder. This is Exhibit R-506 for 14:20:35
20 the record. 14:20:46
21 A. Yes. 14:20:50
22 Q. It's a document from the 14:20:51
23 United Kingdom's Maritime and Coast Guard Agency, 14:20:52
24 speaking specifically about offshore renewable 14:20:55
25 energy projects. Do you see that? 14:20:57

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1 what it calls a turbine boundary. Do you see 14:21:42
2 that? 14:21:44
3 A. Mm-hmm. 14:21:44
4 Q. And there's a gap between 14:21:44
5 these two things identified as B on the graphic. 14:21:46
6 A. Mm-hmm. 14:21:48
7 Q. See that? And B on the 14:21:49
8 image, then, refers to what they call the turbine 14:21:51
9 boundary to the nearest shipping route edge; 14:21:54
10 correct? 14:21:56
11 A. Correct. 14:21:56
12 Q. So they're proceeding 14:21:57
13 from the outside edge of the existing navigational 14:21:58
14 channel in this report; correct? 14:22:00
15 A. They're -- they're 14:22:02
16 proceeding from the outside of the ship lane; yes. 14:22:03
17 Q. Okay. Now, if we just 14:22:06
18 turn to the next page -- 14:22:07
19 A. Mm-hmm. 14:22:09
20 Q. -- it lists off distances 14:22:10
21 recommended for this boundary in the first column 14:22:11
22 there of that table; correct? 14:22:13
23 A. Yes. 14:22:15
24 Q. And it notes that, 14:22:15
25 anything less than 1 nautical mile from the edge 14:22:16

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1 A. Yes. 14:20:59
2 Q. And I'm going to get you 14:20:59
3 to move to Annex 3, which is on page 11. 14:21:00
4 A. Yes. 14:21:09
5 Q. And here they're 14:21:10
6 discussing a template for assessing distances 14:21:13
7 between wind farm boundaries and shipping routes. 14:21:15
8 Do you see that? 14:21:18
9 A. Yes. 14:21:18
10 Q. And it indicates there in 14:21:18
11 the first paragraph that: 14:21:20
12 "The Greater Wash wind 14:21:22
13 farm developers sought 14:21:23
14 guidance from the 14:21:24
15 Maritime and Coast Guard 14:21:27
16 Agency so they could take 14:21:27
17 early recognition of the 14:21:28
18 factors involved when 14:21:30
19 planning a turbine layout 14:21:31
20 within their allocated 14:21:32
21 water space." 14:21:33
22 Do you see that? 14:21:34
23 A. Yes. 14:21:34
24 Q. And if we look at page 14:21:34
25 12, this figure shows the shipping route width and 14:21:37

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1 of the shipping channel, they see that as high or 14:22:20
2 high risk. 14:22:22
3 A. That's what this table 14:22:23
4 says, yes. 14:22:24
5 Q. Yes, okay. And the risk 14:22:25
6 only becomes low when you get greater than 2 14:22:27
7 nautical miles; correct? 14:22:30
8 A. According to this table, 14:22:31
9 yes. 14:22:32
10 Q. That's all we're looking 14:22:32
11 to confirm, I know the table says that, so we're 14:22:34
12 good. 14:22:36
13 Now, let's turn to Tab 3 in 14:22:37
14 your binder. And this is Exhibit C-1414, for the 14:22:39
15 record. And this is the Revised Navigational Risk 14:22:47
16 Assessment for the Cape wind project off the coast 14:22:51
17 of Massachusetts; correct? 14:22:54
18 And we're going to turn to 14:22:55
19 page 4 of Appendix C, and I would tell everyone 14:22:56
20 the easiest way to find that is actually go to the 14:22:59
21 back of the report and come back a few pages. 14:23:01
22 Appendix C is the last appendix. 14:23:04
23 Donnie, if you need help 14:23:09
24 finding that it's page 125 in the PDF. 14:23:10
25 MR. GUILLORY: Thank you. 14:23:13

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1 THE WITNESS: I see -- 14:23:15
2 attachment or appendix? 14:23:16
3 BY MS. SQUIRES: 14:23:16
4 Q. It's in the appendix, 14:23:16
5 Appendix C. If it helps you, it's going to be on 14:23:18
6 the screen here as well. 14:23:20
7 A. That's attachment C. 14:23:25
8 Q. Yes. 14:23:26
9 A. Oh, I thought you said B. 14:23:27
10 Okay. And what page, sorry? 14:23:29
11 Q. Page 4 of that appendix. 14:23:30
12 A. C-4. 14:23:32
13 Q. That's right. 14:23:34
14 Now, if we look towards the 14:23:35
15 bottom -- if you can scroll down there, Donnie -- 14:23:38
16 the last underlined sentence there notes that: 14:23:41
17 "No examples were found 14:23:44
18 of an operating or 14:23:45
19 planned wind farm in 14:23:46
20 Europe that located the 14:23:47
21 proposed facility 14:23:48
22 directly adjacent to 14:23:49
23 shipping channels." 14:23:51
24 Correct? 14:23:52
25 A. Yes, that's what that 14:23:52

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1 completed for the project; correct? 14:24:37
2 A. Yes. As part of the 14:24:39
3 application to the regulatory authorities, a risk 14:24:41
4 assessment would be carried out. 14:24:45
5 Q. All right. And this is 14:24:47
6 part of the Navigation Protection Act; correct? 14:24:50
7 A. The Navigation Protection 14:24:52
8 Act is the encompassing legislation. 14:24:54
9 Q. Now, this -- this is a 14:24:57
10 permit or authorization that would be required 14:24:58
11 from the federal government, not the provincial 14:25:00
12 government; correct? 14:25:02
13 A. It is a federal agency, 14:25:03
14 yes. 14:25:04
15 Q. So this permitting 14:25:04
16 process is entirely separate from the Renewable 14:25:05
17 Energy Approval? 14:25:08
18 A. Yes. 14:25:09
19 Q. Now, to your knowledge, 14:25:09
20 should Windstream proceed through that process, it 14:25:13
21 would be the first wind farm to proceed through 14:25:15
22 seeking approval under the Navigation Protection 14:25:18
23 Act for an offshore wind farm; correct? 14:25:21
24 A. I believe so, yes. 14:25:23
25 Q. All right. Now, I want 14:25:24

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1 says. 14:23:53
2 Q. And it further notes in 14:23:54
3 the first paragraph under that heading that: 14:23:55
4 "The Middlegrunden wind 14:23:57
5 farm in Copenhagen has a 14:23:59
6 0.25 nautical mile buffer 14:24:01
7 from the shipping 14:24:02
8 channel." 14:24:03
9 Do you see that? 14:24:03
10 A. Yes, yes. 14:24:04
11 Q. And in the next 14:24:04
12 paragraph, it notes that the Nysted offshore wind 14:24:05
13 farm in Denmark has a 1.0 nautical mile buffer 14:24:09
14 from the existing shipping channel in that area; 14:24:13
15 correct? 14:24:15
16 A. Yes. 14:24:16
17 Q. So these are examples, 14:24:16
18 then, of international practice where a buffer 14:24:18
19 zone from the edge of the shipping lane has been 14:24:20
20 employed or recommended; correct? 14:24:22
21 A. Yes. 14:24:25
22 Q. Now, I want to turn to 14:24:26
23 the Canadian navigation regulations that you 14:24:29
24 talked about. And you've indicated that a 14:24:31
25 navigational risk assessment would need to be 14:24:35

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1 to go through a couple of sections in that. And I 14:25:25
2 appreciate you're not a lawyer, but we'll take 14:25:27
3 some time and go through those. 14:25:29
4 A. I consider myself lucky. 14:25:31
5 Q. I can assure you I'm also 14:25:33
6 not a navigation lawyer, so we might be on the 14:25:36
7 same page here. 14:25:39
8 A. Sorry, where am I going? 14:25:40
9 Q. We are going to Section 14:25:41
10 6 -- Section 5, sorry. 14:25:43
11 A. Of what tab? 14:25:43
12 Q. Which is on page 3, tab 14:25:43
13 5. 14:25:43
14 A. Tab 5? Okay. 14:25:43
15 Q. And for the record, this 14:25:46
16 is R-004. 14:25:47
17 A. And, sorry, what... 14:25:49
18 Q. Section 5 is on page 3. 14:25:50
19 A. Page 3 is a table of 14:25:56
20 contents. 14:25:58
21 Q. There is two page 3s. 14:25:58
22 A. Okay. Sorry. 14:26:00
23 Q. The second page 3. 14:26:01
24 A. The second page 3. 14:26:02
25 Q. It's an easy-to-use piece 14:26:04

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1 of legislation. 14:26:06
2 A. Yes. Im on page 3. 14:26:07
3 Q. All right. So if we look 14:26:08
4 at Section 5 there, it indicates that: 14:26:09
5 "An owner who proposes to 14:26:12
6 construct within a 14:26:13
7 navigable water must give 14:26:15
8 notice to the Minister." 14:26:17
9 Correct? 14:26:19
10 A. Yes. 14:26:20
11 Q. And that would be the 14:26:20
12 Minister of Transport; correct? 14:26:22
13 A. Yes. 14:26:23
14 Q. And if we move down to 14:26:23
15 Section 5.6, it indicates there that: 14:26:25
16 "Certain information must 14:26:34
17 be provided to the 14:26:35
18 Minister." 14:26:36
19 Correct? 14:26:37
20 A. Correct. 14:26:37
21 Q. And then -- and that a 14:26:38
22 notice, then, is posted in the Canada Gazette? 14:26:40
23 A. Yes. 14:26:43
24 Q. And then Section 7 -- 14:26:43
25 sorry, Subsection 5.7 then indicates that that 14:26:46

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1 giving that approval, if 14:27:28
2 it wishes to exercise 14:27:29
3 that right, designate an 14:27:30
4 area contiguous with the 14:27:32
5 work that is necessary 14:27:34
6 for safety of persons and 14:27:35
7 navigation." 14:27:37
8 Correct? 14:27:37
9 A. Correct. 14:27:38
10 Q. So it contemplates having 14:27:39
11 some sort of buffer around the works, which in 14:27:40
12 this case would be the wind farm; correct? 14:27:42
13 A. Yes. 14:27:46
14 Q. All right. Now, the 14:27:46
15 Navigation Protection Act does not specify 14:27:48
16 predetermined buffer zones or how those would be 14:27:51
17 in place; correct? 14:27:53
18 A. That's correct. 14:27:54
19 Q. Okay. So when you 14:27:55
20 mentioned in your report, then, that turbines 14:27:57
21 could be positioned in accordance with Canadian 14:28:01
22 regulations, it's under the understanding that 14:28:03
23 there's still a lot of discussions to be had with 14:28:06
24 the regulatory authorities about how it actually 14:28:07
25 will be implemented; correct? 14:28:11

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1 notice goes out for individuals to comment on. 14:26:50
2 A. Correct. 14:26:53
3 Q. Okay. And now if we turn 14:26:53
4 over to Section 6 on the next page, Section 6.1 14:26:56
5 indicates that: 14:27:03
6 "The Minister will only 14:27:03
7 issue the approval -- you 14:27:05
8 can only construct the 14:27:07
9 work -- 14:27:08
10 Sorry. 14:27:08
11 "-- once a Minister 14:27:09
12 issues that approval; 14:27:09
13 correct? 14:27:10
14 A. Correct. Correct, sorry. 14:27:11
15 Q. And Subsection 6.3 then 14:27:14
16 says: 14:27:16
17 "The Minister can refuse 14:27:16
18 to do that if he or she 14:27:17
19 believes that it's not in 14:27:19
20 the public interest." 14:27:20
21 Correct? 14:27:21
22 A. Correct, yes. 14:27:22
23 Q. Okay. Now, Subsection 14:27:23
24 6.6 also indicates that: 14:27:26
25 "The Minister may, in 14:27:27

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1 A. There -- there would be 14:28:13
2 discussions, yes. That would be the purpose of 14:28:13
3 submitting an application and doing the risk 14:28:16
4 management study and presenting the evidence. 14:28:18
5 Yes. 14:28:20
6 Q. Okay. And you indicated 14:28:21
7 in your report that consultations would take place 14:28:22
8 with interested stakeholders, for example, not 14:28:25
9 just with Transport Canada, but with the St. 14:28:28
10 Lawrence Seaway Management Corporation; correct? 14:28:32
11 A. Correct. 14:28:32
12 Q. Now, the St. Lawrence 14:28:33
13 Seaway Management Corporation, that's a binational 14:28:36
14 entity; correct? It's made up of -- I believe 14:28:37
15 it's agencies or state-owned enterprises from both 14:28:39
16 Canada and the United States; correct? 14:28:43
17 A. I'm not qualified to 14:28:44
18 answer what the composition of the St. Lawrence 14:28:46
19 Seaway system is. 14:28:49
20 Q. Okay. But you're -- 14:28:49
21 you're aware of that corporation because you did 14:28:50
22 refer to it in your report? 14:28:50
23 A. Oh, definitely. 14:28:50
24 Definitely. I'm aware of the organization. I 14:28:52
25 don't know of their corporate bylaws, though. 14:28:53

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1 Q. Okay. But you -- it's 14:28:56
2 made up of both -- somebody from Canada and the 14:28:56
3 United States; correct? 14:28:58
4 A. Again -- 14:29:00
5 Q. It would seem reasonable 14:29:03
6 the entity that's managing a binational seaway -- 14:29:04
7 A. I'm not going to say 14:29:07
8 reasonable or unreasonable because I don't know. 14:29:10
9 So if it is, it is. If it isn't, it isn't. I 14:29:11
10 know there is different groups for different parts 14:29:13
11 of the seaway. This one may or may not be. I'm 14:29:15
12 not -- I can't recall. 14:29:19
13 Q. Okay. Okay. Well, to 14:29:20
14 the extent that any of those groups, then, that 14:29:21
15 would be operating in the seaway or have any kind 14:29:23
16 of management or control over the seaway involve 14:29:25
17 the United States, those consultations then 14:29:28
18 necessarily would involve discussions with them; 14:29:30
19 correct? Or you would assume they would be 14:29:32
20 interested in providing their opinion? 14:29:34
21 A. I would be -- yes, I 14:29:36
22 would assume they would be interested in providing 14:29:37
23 their opinion. I think the Americans do that, 14:29:39
24 yes. 14:29:41
25 [Laughter.] 14:29:44

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1 issuance of leases for offshore wind development. 14:30:30
2 Do you see that? 14:30:32
3 A. Yes. 14:30:33
4 Q. And if we turn over to 14:30:33
5 page 2, it indicates there in the first paragraph 14:30:35
6 that the: 14:30:41
7 "World Shipping Council 14:30:42
8 represents over 29 14:30:43
9 shipping companies that 14:30:44
10 carry over 95 percent of 14:30:45
11 the United States' 14:30:47
12 international 14:30:48
13 containerized trade." 14:30:48
14 Do you see that? 14:30:50
15 A. Yes. 14:30:50
16 Q. And if we look to the 14:30:51
17 bottom of page 2, in the bolded and underlined 14:30:53
18 text, they're calling for an adequate buffer zone 14:30:55
19 between the proposed wind farm lease areas and the 14:30:59
20 existing Maritime traffic separation lanes. Do 14:31:01
21 you see that? 14:31:04
22 A. Mm-hmm, yes. 14:31:04
23 Q. And if we move to page 3, 14:31:05
24 they note there in the second full paragraph that: 14:31:09
25 "Buffer zones are 14:31:13

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1 BY MS. SQUIRES: 14:29:45
2 Q. We're not in 14:29:45
3 confidential, so you know. 14:29:46
4 [Laughter.] 14:29:47
5 BY MS. SQUIRES: 14:29:47
6 Q. Now, no offence to 14:29:47
7 Mr. Bishop here. 14:29:51
8 [Laughter.] 14:29:51
9 MR. BISHOP: None taken. 14:29:52
10 THE WITNESS: He's from Texas. 14:29:56
11 BY MS. SQUIRES: 14:29:57
12 Q. All right. Now, other 14:29:58
13 key stakeholders, then, would likely include 14:29:59
14 shipping organizations, people that use the 14:30:02
15 waterway, those sort of individuals; correct? 14:30:05
16 A. I would assume so, yes. 14:30:07
17 Q. All right. Now let's 14:30:08
18 turn to Tab 2 in your binder. This is Exhibit 14:30:09
19 R-0611, for the record. And this is a document 14:30:18
20 from the World Shipping Council that was submitted 14:30:21
21 to the Bureau of Ocean Energy Management for the 14:30:24
22 United States Department of the Interior. Do you 14:30:26
23 see that? 14:30:29
24 A. Yes. 14:30:29
25 Q. And it relates to the 14:30:29

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1 essential to safe 14:31:14
2 navigation because they 14:31:15
3 provide an area of open 14:31:16
4 water to which transiting 14:31:17
5 ships can divert if the 14:31:19
6 ship loses power, loses 14:31:20
7 steering, or suffers some 14:31:22
8 sort of engineering 14:31:24
9 issue." 14:31:26
10 A. Yes. 14:31:27
11 Q. Now, if we turn to page 14:31:27
12 4, they note there, again in bold and underlined 14:31:30
13 text that: 14:31:39
14 "The majority of vessel 14:31:39
15 masters stated that a 14:31:40
16 2-nautical-mile limit or 14:31:42
17 2 nautical miles would be 14:31:43
18 the minimum buffer zone 14:31:43
19 between commercial 14:31:45
20 vessels and wind farms, 14:31:46
21 in their opinion." 14:31:47
22 Do you see that? 14:31:48
23 A. Can I answer a question 14:31:48
24 at this point, or are we just going to agree all 14:31:49
25 with what is written here? 14:31:52

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1 Q. I'm going to get to a 14:31:52
2 question right now. 14:31:54
3 A. Well, I think I'm going 14:31:54
4 to point out that the Shipping Council are the 14:31:55
5 shipping people. So they're going to give you the 14:32:00
6 maximum. They're all relating back to this U.K. 14:32:02
7 document, which you originally started with there, 14:32:06
8 and I thought I was going to get a chance to 14:32:08
9 provide an opinion, but I'm going to jump in here. 14:32:11
10 So everybody who builds on that is looking at a 14:32:15
11 U.K. document that was prepared for the United 14:32:17
12 Kingdom context in the open ocean for vessels, as 14:32:21
13 I mentioned in my presentation, that aren't -- 14:32:24
14 that are much larger than the vessels that can 14:32:27
15 reach -- that can get onto the seaway. 14:32:30
16 The seaway allows seaway max 14:32:32
17 vessels physically limited. They're only 23.8 14:32:34
18 metres wide, 235 metres long, whereas the biggest 14:32:37
19 ships plying the waters are more two and a half 14:32:41
20 times wider, one and a half times longer. 14:32:45
21 So the buffers that this U.K. 14:32:47
22 guideline talk -- talk about in the open ocean, in 14:32:50
23 the North Sea, for much bigger vessels are not 14:32:53
24 directly relevant to the unique condition of the 14:32:57
25 Great Lakes St. Lawrence Seaway system. 14:33:00

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1 A. Yes. And we -- we have 14:34:01
2 -- as you pointed out, we have a buffer of 800 to 14:34:03
3 1,000 metres in addition to the ship lane. 14:34:07
4 Q. All right. And you refer 14:34:09
5 back to the U.K. report that I pointed to, or it 14:34:10
6 might have been in one of the other reports that 14:34:12
7 you indicated you didn't get a chance to respond 14:34:14
8 to, so I will give you a chance now to respond if 14:34:15
9 you wish to elaborate further on my question. 14:34:18
10 But if we take just the 14:34:20
11 Middlegrunden wind farm in particular, that wind 14:34:21
12 farm is in fairly shallow water; correct? 14:34:24
13 A. I don't recall all of the 14:34:27
14 details of that one. 14:34:28
15 Q. Okay. To the extent that 14:34:28
16 a wind farm is in shallow water, you would expect 14:34:29
17 those boats to be much smaller; correct? 14:34:32
18 A. No, not necessarily. It 14:34:34
19 depends on the depth of the navigation channel. 14:34:35
20 Q. Okay. So if -- well, if 14:34:37
21 -- if it's in, say, between -- around six -- 4 to 14:34:37
22 6 metres of water, you would expect those to be 14:34:40
23 smaller vessels; correct? 14:34:42
24 A. Well, those vessels 14:34:43
25 wouldn't even go there. The draft on a seaway 14:34:45

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1 So the examples that you have 14:33:02
2 provided now, including this one here, are open 14:33:04
3 ocean. They're going back to that document. You 14:33:07
4 talked about the case in Denmark where they, I 14:33:10
5 noted there, they had 25,000 to 40,000 -- whatever 14:33:12
6 the number was, a lot of vessel traffic. Seaway 14:33:15
7 has, what, 1,700 a year? So the classification of 14:33:18
8 the system is different. It's a unique system. 14:33:22
9 So to continue down this path 14:33:25
10 that you are leading me, and I don't know where 14:33:29
11 it's ending, but certainly I wanted to get that 14:33:32
12 point that the Great Lakes St. Lawrence Seaway 14:33:34
13 system is different. So it would require a 14:33:37
14 different viewpoint than the U.K. guidelines, 14:33:39
15 which you are building on here. 14:33:42
16 Q. Okay. I agree with you. 14:33:43
17 It's fair to say that it's not the open ocean, 14:33:45
18 absolutely, and that the vessels are smaller. We 14:33:47
19 agree there. 14:33:49
20 A. Okay. Good. 14:33:50
21 Q. But to the extent, then, 14:33:51
22 that a buffer would be required, whether it's a 14:33:53
23 large one or a small one, that's still a relevant 14:33:56
24 question regardless of where the boats are 14:33:58
25 operating; correct? 14:34:00

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1 vessel that's allowable in -- in the Great Lakes 14:34:48
2 is 27 feet or 8.3 metres or something like that. 14:34:50
3 So it's not going to go where it's 6 metres buffer 14:34:54
4 or no buffer. It will run aground before it hits 14:34:58
5 a turbine. 14:35:00
6 Q. But to the extent that 14:35:01
7 those examples in the U.K. are actually referring 14:35:02
8 to much smaller boats, then they would be relevant 14:35:04
9 to what you said, the St. Lawrence Seaway? 14:35:06
10 A. No, I don't think I can 14:35:09
11 agree with that. I think the U.K. guidelines are 14:35:10
12 based on vessel traffic where you'll actually 14:35:12
13 going to have vessels, not -- it's not a guideline 14:35:16
14 for canoes and kayaks up the river. It's for 14:35:17
15 ocean-going vessels. So it's intended to 14:35:21
16 provide -- as you would note in that document, 14:35:24
17 it's a prescriptive -- it says right there it's 14:35:28
18 not a prescriptive tool. It's a template. 14:35:32
19 And it says right in that 14:35:36
20 document that it's supposed to be applied with 14:35:37
21 intelligent flexibility. In my interpretation, in 14:35:40
22 my expertise, in my opinion, that intelligent 14:35:45
23 flexibility is what we're talking about when we 14:35:48
24 look at the Great Lakes St. Lawrence Seaway 14:35:50
25 system. 14:35:52

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1 So to isolate the two and say 14:35:52
2 one is applicable directly and have the World 14:35:55
3 Shipping Council say that that's what they agree 14:35:58
4 with, they have a vested interest, in my opinion, 14:35:59
5 to agree with that. It's not even for the Great 14:36:02
6 Lakes St. Lawrence Seaway system. 14:36:05
7 So there is no doubt. I think 14:36:06
8 we all agree you have to have a ship lane and a 14:36:08
9 buffer, and that has been provided. And I cannot 14:36:10
10 guarantee that the Canadian Coast Guard would say 14:36:14
11 that that's enough, but in our opinion, it's more 14:36:16
12 likely than not that that would be -- that's a 14:36:18
13 workable solution. 14:36:21
14 Q. And, again, to confirm 14:36:22
15 your opinion, it involves constraining that 14:36:23
16 existing navigational channel? 14:36:24
17 A. Yes. It would demarcate 14:36:28
18 a position for the ships to go in a route that 14:36:31
19 they just finished coming out of the seaway at 150 14:36:34
20 metres wide for two vessels in 150 to 450 metres 14:36:37
21 for one vessel. So, in a way, they're not really 14:36:41
22 being constrained from what they just came from. 14:36:44
23 They're actually getting more space. But it is 14:36:46
24 certainly -- now they can go like this. They 14:36:48
25 would just go normally down the ship lane, and 14:36:53

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1 standards for an adequate ship lane, and they have 14:37:56
2 contemplated issues of loss of power possibly. In 14:37:59
3 addition to that, there's the buffer. So there is 14:38:03
4 a space. But, no, the pilot's not going to fix a 14:38:05
5 vessel that has lost power. That's -- that's an 14:38:08
6 event that happens. There's no doubt. And it's a 14:38:12
7 risk. But it's no greater risk than exists today. 14:38:15
8 Q. Okay. If you can just 14:38:19
9 give me one second, I'm just going to consult with 14:38:21
10 my colleagues. 14:38:23
11 That's it for me, Mr. Kolberg. 14:38:50
12 I will turn you over to your counsel and the 14:38:52
13 Tribunal's capable hands. 14:38:55
14 A. Thank you. 14:38:57
15 PRESIDENT: Thank you very 14:38:57
16 much, Ms. Squires. 14:38:58
17 Any questions in redirect? 14:38:59
18 MS. SEERS: Yes. 14:39:01
19 PRESIDENT: Okay, Ms. Seers. 14:39:02
20 RE-EXAMINATION BY MS. SEERS: 14:39:08
21 Q. Good afternoon, 14:39:08
22 Mr. Kolberg. 14:39:27
23 A. Ms. Seers. 14:39:28
24 Q. Ms. Squires took you to 14:39:29
25 the provisions in the document at Tab 3, which 14:39:34

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1 then you would have the buffer. The buffer is 14:36:55
2 there for them to go like that if they want. But, 14:36:57
3 again, these are piloted vessels. These are 14:36:59
4 qualified, experienced experts on the local area. 14:37:02
5 They would do what was appropriate and what is 14:37:04
6 reasonable. 14:37:07
7 Q. One final question before 14:37:08
8 I consult with my colleagues, and it's on that 14:37:09
9 issue of piloted vessels. You would agree with me 14:37:11
10 that, to the extent a vessel was piloted, that 14:37:14
11 will help with manmade areas? These individuals 14:37:16
12 are trained in the area; they know the waterways. 14:37:18
13 But if a vessel is piloted and it runs out of 14:37:20
14 power, having a pilot will give you no help; 14:37:23
15 correct? If there's a mechanical failure, the 14:37:25
16 pilot will not help you? 14:37:28
17 A. No. You would ask the 14:37:30
18 mechanic to fix that. But, no, the pilot is there 14:37:31
19 to guide you through -- imagine you're a captain 14:37:34
20 on a vessel coming from Cape Town, South Africa. 14:37:38
21 How much do you know about the Great Lakes St. 14:37:41
22 Lawrence Seaway system? You have to take on a 14:37:44
23 pilot. 14:37:45
24 Now, the ship lane at 250 to 14:37:45
25 450 metres is the Canadian -- fits the Canadian 14:37:52

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1 is -- let me find the exhibit reference for the 14:39:39
2 record -- is C-1414, which is the Revised 14:39:43
3 Navigational Risk Assessment for the Cape wind 14:39:48
4 project, Nantucket Sound. 14:39:50
5 A. Yes. 14:39:51
6 Q. I don't believe, however, 14:39:52
7 you were provided with an opportunity to explain 14:39:54
8 the context of this document or the significance, 14:39:56
9 if any, to your analysis. So I wanted to provide 14:40:00
10 you with the opportunity to do so, if you would 14:40:03
11 like to. 14:40:06
12 A. Well, I think -- I think 14:40:06
13 I did. I think I wanted to point out that the 14:40:07
14 reliance of many of these offshore wind projects 14:40:10
15 that are in the open ocean are looking to that 14:40:15
16 U.K. document as a template, and it's -- it's a 14:40:18
17 reasoned thing to do. 14:40:23
18 But we're not in the open 14:40:24
19 ocean, and we're not there. So to look to that 14:40:26
20 and somehow imply that what they did there would 14:40:29
21 be applicable for Windstream on the Great Lakes 14:40:32
22 St. Lawrence Seaway, I thought -- and, again, I 14:40:36
23 apologize for interrupting, but I thought it was 14:40:38
24 going down a place that was going to lose sight of 14:40:40
25 what we're dealing with here, and that's -- my 14:40:42

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1 role here was to provide a context for the Great 14:40:45
2 Lakes, Lake Ontario context. 14:40:47
3 Q. Right. Okay. 14:40:49
4 And you'll recall that 14:40:50
5 Ms. Squires asked you, I believe, a number of 14:40:51
6 questions that dealt with issues surrounding 14:40:54
7 consultations with various stakeholders and 14:40:58
8 regulatory approvals. 14:41:00
9 A. Yes, yes. 14:41:02
10 Q. In your experience, are 14:41:02
11 those the kinds of issues that would typically be 14:41:06
12 dealt with pragmatically with stakeholders and 14:41:08
13 regulators? 14:41:12
14 A. Well, in my opinion, 14:41:13
15 people who work for the regulators and agencies, 14:41:15
16 they're reasonable people. They have a job to do. 14:41:20
17 But when presented with fact-based arguments and 14:41:23
18 evidence that shows things are reasonable and can 14:41:29
19 be mitigated and can be dealt with, they deal with 14:41:31
20 them in a reasonable way. 14:41:34
21 And I have no reason to 14:41:37
22 believe that they would act -- they wouldn't act 14:41:39
23 in a reasonable and pragmatic manner. 14:41:42
24 MS. SEERS: Thank you. Those 14:41:45
25 are our questions. 14:41:45

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1 here to defend both reports, because we understand 14:44:24
2 you were not involved in the preparation of the 14:44:27
3 first report, or only the second one. Can you 14:44:30
4 clarify that first? 14:44:32
5 THE WITNESS: So you are 14:44:33
6 correct; I was not involved in the preparation of 14:44:34
7 the first report. However, I have read it and 14:44:37
8 agree with the findings of that report, and I was 14:44:39
9 involved in the preparation of the second report. 14:44:43
10 PRESIDENT: And you are here 14:44:45
11 to defend both reports? 14:44:46
12 THE WITNESS: Yes. 14:44:48
13 PRESIDENT: Okay. Very good. 14:44:48
14 So we understand you have prepared a presentation. 14:44:51
15 Will there also be questions by counsel in 14:44:57
16 addition to the presentation? 14:45:00
17 MS. WATES: We don't 14:45:02
18 anticipate so, but we can see his presentation. 14:45:03
19 PRESIDENT: You reserve the 14:45:06
20 right to do so? 14:45:07
21 MS. WATES: Yes, exactly. 14:45:08
22 Thanks. 14:45:09
23 PRESIDENT: Very good. So, 14:45:09
24 Mr. Rose, please go ahead. 14:45:10
25 PRESENTATION BY MARC DANIEL ROSE, URS 14:45:13

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1 PRESIDENT: Thank you, 14:41:48
2 Ms. Seers. No questions from the Tribunal. 14:41:49
3 THE WITNESS: Thank you. 14:41:55
4 PRESIDENT: Mr. Kolberg, so 14:41:56
5 that's the end of your examination. Thank you 14:41:57
6 very much. 14:41:59
7 THE WITNESS: Thank you. 14:42:00
8 PRESIDENT: So I suppose we 14:42:14
9 don't need a break. We can go straight with -- 14:42:15
10 continue straight with Mr. Rose. 14:42:17
11 Good afternoon, Mr. Rose. 14:43:53
12 THE WITNESS: Good afternoon. 14:43:55
13 PRESIDENT: Can I ask you to 14:43:55
14 state your full name for the record and then read 14:43:57
15 the expert's declaration that you have in front of 14:44:00
16 you? 14:44:05
17 THE WITNESS: Certainly. My 14:44:05
18 name is Marc Daniel Rose. I solemnly declare upon 14:44:06
19 my honour and conscience that my evidence and my 14:44:09
20 opinions will be in accordance with my sincere 14:44:12
21 belief. 14:44:14
22 AFFIRMED: MARC DANIEL ROSE 14:44:17
23 PRESIDENT: Thank you very 14:44:17
24 much. Your company, URS, has submitted two expert 14:44:18
25 reports. What was not clear to us whether you are 14:44:21

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1 THE WITNESS: So I'm -- I'm 14:45:13
2 giving a presentation or the start of a 14:45:14
3 presentation on behalf of myself and my two 14:45:16
4 colleagues, who are at the table at the back, 14:45:19
5 Gareth Clarke and Franz Barillaro. 14:45:21
6 So just to start, a little bit 14:45:23
7 about myself, I am a Registered Professional 14:45:29
8 Planner in Ontario with AECOM. And just to 14:45:32
9 clarify why AECOM is there and not URS, AECOM 14:45:35
10 purchased URS or acquired URS in late 2014, which 14:45:41
11 is part of the reason I wasn't involved in the 14:45:46
12 preparation of the first report. 14:45:48
13 So I worked for legacy AECOM. 14:45:50
14 We are now all considered AECOM, but for the 14:45:54
15 purposes of the report, we kept it simple and 14:45:57
16 called ourselves URS. 14:46:01
17 I have approximately 16 years 14:46:03
18 conducting environmental assessments in Ontario. 14:46:05
19 Ten of those are related to the power sector, 14:46:09
20 specifically wind, and some other types of power. 14:46:12
21 I'm also AECOM's power sector market lead in 14:46:18
22 Ontario, which is a business development role. So 14:46:21
23 my job right now is to secure business with 14:46:25
24 various power producers to do work like Renewable 14:46:28
25 Energy Approvals. 14:46:33

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1 Obviously I'm not wearing that 14:46:33
2 hat today. I'm wearing the hat of my experience 14:46:35
3 as a project manager, as a consultant project 14:46:38
4 manager for our clients, including Renewable 14:46:42
5 Energy Approval developers. 14:46:49
6 And in that role, I have 14:46:50
7 worked on 400 megawatts -- well, worked on 800 14:46:51
8 megawatts of onshore wind projects, successfully 14:46:56
9 permitted 400 megawatts of wind power projects 14:47:00
10 under the REA. Those were all FIT contracts. And 14:47:03
11 in that role, I was acting as consultant project 14:47:06
12 manager, and these included projects for NextEra, 14:47:09
13 which is one of the largest, if not the largest, 14:47:12
14 renewable energy developers in North America. 14:47:16
15 They have 10,000 megawatts of installed capacity. 14:47:19
16 So I worked on three of their projects starting in 14:47:22
17 2010, so the same time period we're talking about: 14:47:25
18 Bluewater, which is 60-megawatt project; Goshen, a 14:47:29
19 90-megawatt project; and Jericho, which is 150 14:47:32
20 megawatts, so what Sarah Powell would call 14:47:35
21 large-scale wind. 14:47:39
22 And more recently I worked 14:47:39
23 with Samsung and Pattern -- they were referred to 14:47:42
24 previously as part of that Korean Consortium -- on 14:47:45
25 a 100 megawatts onshore wind project that recently 14:47:49

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1 I should also mention that I 14:48:52
2 was involved in Toronto Hydro's offshore 14:48:55
3 anemometer project, and we kind of talked around 14:48:59
4 this issue earlier today with the project on the 14:49:00
5 Scarborough Bluffs. So, in fact, it wasn't 14:49:03
6 actually a wind farm that was being proposed. The 14:49:04
7 project was to get approval to install the wind -- 14:49:07
8 the meteorological tower to measure the wind 14:49:12
9 speed. So I was involved in that project. 14:49:16
10 And then I also have 14:49:18
11 experience obtaining approvals and permits for 14:49:20
12 lake fill projects in the lake, primarily around 14:49:23
13 downtown Toronto. 14:49:26
14 So just as an overview of my 14:49:28
15 presentation, I'm going to start by talking about 14:49:31
16 our approach to reviewing the submission from 14:49:33
17 Windstream. We're then going to get into project 14:49:37
18 risks, and we have broken out the presentation at 14:49:41
19 this point. I'm going to be talking specifically 14:49:44
20 about development risks related to environmental 14:49:46
21 and permitting issues, and then I'm going to give 14:49:49
22 my testimony. 14:49:51
23 And Gareth Clarke and Franz, 14:49:52
24 who are presenting later -- I think they're Sunday 14:49:54
25 and Monday -- will then be presenting the rest of 14:49:57

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1 received its REA approval. 14:47:52
2 I'm also acting as a project 14:47:55
3 director, so it's more of a strategic advisory 14:47:57
4 role, for an additional 400 megawatts of onshore 14:48:00
5 wind projects, and these that are projects 14:48:03
6 currently ongoing. One is another 100-megawatt 14:48:05
7 wind project for Samsung and Pattern, and the 14:48:08
8 second is a project we have heard about a couple 14:48:11
9 of times, the Henvey Inlet wind project, which is 14:48:14
10 a 300-megawatt onshore project. I imagine there's 14:48:17
11 some confusion at this point how so many 14:48:20
12 consultants are working on the same project. 14:48:22
13 [Laughter.] 14:48:25
14 THE WITNESS: So just by way 14:48:26
15 of explanation, this project has been going on 14:48:27
16 since about 2010, let's say. There's been three 14:48:29
17 developers. My understanding is Genivar had 14:48:35
18 worked with the original developer, which is -- 14:48:38
19 PRESIDENT: The next second 14:48:40
20 generation of experts. 14:48:41
21 THE WITNESS: Yes. Exactly. 14:48:42
22 Yes. And so AECOM is currently working with 14:48:43
23 Pattern Development, which is developing the 14:48:47
24 project right now and working through the 14:48:50
25 approvals process. 14:48:51

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1 the presentation, Gareth focusing on development 14:49:59
2 risks related to project design, construction 14:50:03
3 risk, and the project schedule. And Franz will be 14:50:06
4 talking about commercial and financial issues as 14:50:08
5 well as project costs. 14:50:12
6 So in terms of the URS 14:50:13
7 approach, we looked at three key issues: First 14:50:17
8 one being overall project risk, and what we were 14:50:22
9 really looking at is what were the development and 14:50:25
10 construction risks, including environmental and 14:50:27
11 permitting related, that Windstream faced in 14:50:30
12 developing the project as it was proposed at that 14:50:32
13 time? 14:50:35
14 And considering that, we also 14:50:36
15 thought about what is the impact on the schedule. 14:50:39
16 Would the project have had a reasonable chance of 14:50:43
17 reaching that MCOB date in accordance with the FIT 14:50:45
18 contract? 14:50:49
19 And the third are the costs 14:50:49
20 assumptions made in the Deloitte report 14:50:52
21 appropriate for a project of this type? And as I 14:50:54
22 mentioned, my test or my -- yeah my testimony is 14:50:57
23 really focusing on project risk and a little bit 14:51:02
24 how that influences project schedule. 14:51:05
25 So in getting into in the 14:51:08

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1 environmental and permitting issues, the first 14:51:20
2 point I would like to make -- and I don't think 14:51:22
3 this is -- anybody's challenging this is that, at 14:51:24
4 the date that the project -- at the date we were 14:51:29
5 assuming the project has restarted, there hadn't 14:51:33
6 been any actual fieldwork done to date. 14:51:36
7 And what that means is there's 14:51:38
8 really no in-depth understanding of what the 14:51:41
9 issues and risks are. 14:51:44
10 So as you start to do 14:51:45
11 fieldwork, you start to understand what the nature 14:51:47
12 of the site is like, what some of those issues 14:51:49
13 might be, and really get a better handle on what 14:51:52
14 impact that might have on schedule. 14:51:57
15 We have also talked a fair 14:51:59
16 amount about this notion of first of a kind. I 14:52:02
17 know Sarah Powell has acknowledged that this is a 14:52:05
18 first of a kind for REA. That's certainly -- 14:52:07
19 sorry, for offshore wind under the REA, and that's 14:52:11
20 certainly our opinion. There is no offshore wind 14:52:14
21 project in Ontario -- and I'm sure you guys know 14:52:16
22 that at this point -- that has gone through an REA 14:52:20
23 process, or, for that matter, a federal 14:52:22
24 environmental assessment. 14:52:26
25 And it's also important to 14:52:27

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1 permitting schedule would be drawn out. And I 14:53:35
2 take from that my own experience in dealing with 14:53:38
3 these three NextEra projects, and I mentioned the 14:53:41
4 size of them, so all fairly large, but still 14:53:44
5 smaller than what was proposed here. 14:53:46
6 Our original schedule that we 14:53:48
7 got in the RFP, we got that in around March 2010, 14:53:50
8 and it had asked for construction by mid-2011. 14:53:57
9 So that was obviously a very 14:54:01
10 aggressive schedule. It was early days in the 14:54:04
11 REA. I don't think anybody really appreciated how 14:54:07
12 complicated it would be, and Sarah Powell has 14:54:11
13 acknowledged that there was a steep learning curve 14:54:14
14 with the REA. And, in fact, in those three 14:54:16
15 examples, the shortest time we were able to get an 14:54:19
16 REA was three years, and I think the longest was 14:54:22
17 over four years, and those were all onshore, with 14:54:26
18 fairly good guidance material by around 2011/2012. 14:54:30
19 So talking about the permits 14:54:35
20 that would be required -- and I don't think 14:54:39
21 there's much of a debate about this -- there would 14:54:40
22 be permits required at both the provincial and the 14:54:44
23 federal level. The Renewable Energy Approval, 14:54:48
24 obviously being the big one at the provincial 14:54:50
25 level. There's also the Public Lands Act, which 14:54:55

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1 note -- and I think we all know this by now -- the 14:52:30
2 provincial regulators had not finalized the 14:52:32
3 guidance material for offshore wind. 14:52:35
4 And Sarah Powell also talked a 14:52:37
5 lot about how this was intended to be a 14:52:40
6 streamlined process. The REA is supposed to move 14:52:42
7 things along quickly, and the way it typically 14:52:44
8 does that is by providing a very prescriptive set 14:52:46
9 of requirements for the developers to follow so 14:52:50
10 they know exactly what is expected of them. 14:52:55
11 In this case, that wasn't 14:52:57
12 fully developed. There was a little bit of that 14:53:00
13 information there in terms of the regulation about 14:53:02
14 what was required. There wasn't a fully fleshed 14:53:05
15 out set of guidance material. And, in fact, this 14:53:07
16 is a similar situation that we found ourselves in 14:53:10
17 developing onshore wind where the guidance 14:53:12
18 material was coming, and it obviously came faster 14:53:16
19 than it did for offshore, or it never came for 14:53:19
20 offshore. And during that interim period, it was 14:53:21
21 a little bit of a struggle to figure out exactly 14:53:24
22 what was required. 14:53:27
23 And so the overall conclusion 14:53:28
24 here related to this first of a kind nature of the 14:53:30
25 project is that the overall approvals and 14:53:33

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1 is related to the Crown land authorization that we 14:54:57
2 talked about. Oil and gas -- Oil, Gas, and Salt 14:54:59
3 Resources Act and possible permits under 14:55:03
4 endangered species. And on top of that we have 14:55:05
5 just heard about federal permits related to 14:55:07
6 navigable waters. There was approval required 14:55:11
7 under the Canadian Environmental Assessment Act 14:55:14
8 and, likely, permits or authorizations, certainly 14:55:17
9 for Fisheries Act and potentially for the Species 14:55:20
10 at Risk Act. 14:55:23
11 And the one thing I'd like to 14:55:24
12 point out is, if you look at the approval and 14:55:25
13 permitting requirements document that MNR put out, 14:55:29
14 it does actually link the two in the sense that it 14:55:33
15 says, for offshore specifically, you need to get 14:55:37
16 your federal permits related to navigable waters, 14:55:40
17 related to fisheries, related to species at risk 14:55:43
18 before we're going to give you a Renewable Energy 14:55:46
19 Approval. So it did tie them in that way. 14:55:49
20 So a few major issues that we 14:55:52
21 feel the Claimant failed to consider, first one 14:55:59
22 being the timing of the field studies. So when we 14:56:02
23 look at the original submission back from 2010, 14:56:05
24 the fieldwork schedule was approximately 12 14:56:10
25 months. That's now been shortened to nine months. 14:56:13

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1 Our feeling is that, given the unknowns of this 14:56:17
2 process, given the fact it was the first time 14:56:20
3 anybody had done a project like this, and 14:56:22
4 certainly based on our experience dealing with the 14:56:25
5 regulators for onshore wind, they were being very 14:56:27
6 conservative in their requirements, and they were 14:56:30
7 asking for a fair amount of data, and it was 14:56:34
8 certainly important, especially in this case, 14:56:37
9 where the guidance wasn't clear, to be talking 14:56:39
10 with them early on and making sure there was 14:56:42
11 buy-in to what that methodology was. So there's a 14:56:45
12 big question there as to whether they would have 14:56:48
13 accepted what was put forward. 14:56:50
14 And what I would like to 14:56:53
15 mention is Mr. Roberts referred to the fact that 14:56:55
16 this was -- I think he called it a planning 14:57:00
17 schedule, and a planning schedule to me means 14:57:02
18 something you would put together at the beginning 14:57:04
19 of the project to kind of sketch out how you're 14:57:06
20 going to try and hit the date you need to hit. 14:57:09
21 My experience, as I mentioned, 14:57:11
22 with these NextEra projects, the date we were 14:57:15
23 supposed to hit was a construction date of a year 14:57:19
24 and a half after -- or less after permitting 14:57:21
25 started, and, in the end, we ended up three to 14:57:24

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1 I'm not going to talk in 14:58:35
2 detail about Navigable Waters Protection Act. My 14:58:37
3 colleague Gareth is going to talk about that. We 14:58:40
4 just note that it is required, and placement of 14:58:43
5 turbines may be affected by the nearby shipping 14:58:47
6 lane. It would have been a negotiation, again, 14:58:50
7 like all these discussions with agencies, about 14:58:52
8 what would have been approved. 14:58:55
9 I do want to point out that, 14:58:57
10 in terms of permitting the onshore foundation 14:59:02
11 manufacturing facility, Sarah Powell and both 14:59:05
12 Mr. Roberts acknowledged that this is separate 14:59:10
13 from the REA. That was URS' position in the first 14:59:12
14 report, and so we still believe that is the case. 14:59:17
15 So our feeling is that Ms. Powell is actually 14:59:21
16 correcting the opinion of WSP when it was 14:59:24
17 responding to our first report saying that, no, 14:59:30
18 everything should be linked here. 14:59:33
19 Last point I want to make here 14:59:35
20 is that, with regard to fisheries windows -- and 14:59:37
21 this can influence when you do work in the water, 14:59:40
22 because of effects, potential effects on fish and 14:59:43
23 fish habitat, there could have been an impact on 14:59:46
24 the construction schedule, and we identified that 14:59:48
25 as a fairly high risk. 14:59:51

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1 four years out just to get the Renewable Energy 14:57:26
2 Approval. So -- and part of that was due to 14:57:29
3 needing to go back and work with the regulators on 14:57:33
4 what their requirements were for fieldwork as well 14:57:35
5 as data analysis, et cetera. 14:57:39
6 I also note that no time was 14:57:40
7 allowed for additional fieldwork following 14:57:43
8 confirmation of the final layout. The reality for 14:57:46
9 these projects, certainly for onshore, and I 14:57:49
10 suspect it's the same for offshore, is that things 14:57:52
11 change. They are iterative processes. The 14:57:54
12 layouts change. We just heard testimony from Mr. 14:57:58
13 Kolberg about how a navigable waters issue that 14:58:01
14 came up was identified in 2014 changed the entire 14:58:06
15 layout. 14:58:10
16 So every time the layout 14:58:10
17 changes, you have to re-examine whether you need 14:58:12
18 to do additional fieldwork. You're redoing your 14:58:15
19 noise reports. There may be all kinds of 14:58:19
20 implications from that, and that was one of the 14:58:20
21 other reasons we experienced such a delay on these 14:58:22
22 other projects. It's very, everything is kind of 14:58:26
23 tied together. So one thing changes, and you may 14:58:28
24 end up having to do a bunch of other steps as a 14:58:31
25 result. 14:58:35

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1 So, in conclusion, given the 14:59:53
2 fact that there was really no fieldwork done, no 14:59:58
3 discussions had happened with the agencies at a 15:00:02
4 level where there was any certainty about what 15:00:06
5 kind of fieldwork would be required, what kind of 15:00:09
6 analysis would necessarily be required, especially 15:00:12
7 related to the offshore components, we felt that 15:00:15
8 there's many aspects of the project environmental 15:00:18
9 related that are at a preliminary stage: so 15:00:22
10 coastal processes, species at risk, certainly 15:00:27
11 including fish and fish habitat, cultural heritage 15:00:29
12 and archeology, migratory birds, radar 15:00:32
13 interference, bats, chemical contaminants, noise, 15:00:35
14 and the stakeholder issue. 15:00:38
15 And we're not -- we're not 15:00:40
16 saying that these all will pose a problem. But we 15:00:41
17 just don't know at this point or we wouldn't have 15:00:46
18 known at the point when the project had restarted. 15:00:48
19 And the Claimant's experts acknowledge the fact 15:00:52
20 that further technical work is required. 15:00:55
21 So with that, that ends my 15:00:59
22 presentation. 15:01:03
23 PRESIDENT: Thank you, 15:01:04
24 Mr. Rose. 15:01:05
25 MS. WATES: We don't have any 15:01:09

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1 direct examination. 15:01:10
2 PRESIDENT: Thank you very 15:01:11
3 much. And then there'll be cross-examination by 15:01:12
4 Ms. Seers. 15:01:13
5 CROSS-EXAMINATION BY MS. SEERS: 15:01:13
6 Q. We apologize. The 15:01:28
7 binders are on their way. We don't need them for 15:01:30
8 the beginning. So let's just get started in the 15:01:32
9 interests of time. 15:01:35
10 So good afternoon, Mr. Rose. 15:01:37
11 A. Good afternoon. 15:01:39
12 Q. My name is -- we have met 15:01:40
13 actually. 15:01:40
14 A. Yes, we have. 15:01:41
15 Q. I'm Myriam Seers, counsel 15:01:42
16 for the Claimant. So I take it, sir, that you are 15:01:44
17 a senior environmental planner with AECOM? 15:01:46
18 A. That's correct. 15:01:48
19 Q. And you have a master of 15:01:49
20 environmental studies in planning from the 15:01:51
21 University of Waterloo? 15:01:52
22 A. That is correct. 15:01:53
23 Q. And a bachelor of 15:01:54
24 environmental studies from York University? 15:01:56
25 A. Yes. 15:01:57

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1 project? 15:02:52
2 A. That's correct, yes. 15:02:52
3 Q. So -- and that's -- for 15:02:53
4 that project, you're seeking to secure approvals 15:02:55
5 under a CEAA-like approvals process? 15:02:57
6 A. It's complicated, as 15:03:01
7 Ms. Powell mentioned. 15:03:03
8 Q. Yes. Right. A little 15:03:04
9 bit like a REA, but sort of different? 15:03:04
10 A. It's a little bit -- 15:03:06
11 MS. WATES: Just to register 15:03:08
12 an objection. If you could allow the witness just 15:03:09
13 to finish his statements. 15:03:11
14 MS. SEERS: Certainly. 15:03:13
15 THE WITNESS: Sure. And I 15:03:13
16 don't know how much detail we need to go into. 15:03:15
17 BY MS. SEERS: 15:03:16
18 Q. We don't need to go into 15:03:16
19 any detail. I'm just walking through your 15:03:17
20 experience. 15:03:18
21 A. Sure. 15:03:19
22 MS. WATES: I'm sorry. Just 15:03:19
23 the witness needs to be aware that he's allowed to 15:03:19
24 provide additional context to his answers to the 15:03:21
25 extent that it's relevant. 15:03:24

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1 Q. And I see from your CV, 15:01:58
2 and you just explained to us that you have been 15:02:00
3 involved in permitting for various onshore wind 15:02:02
4 projects in Ontario. 15:02:06
5 A. Mm-hmm. That's correct, 15:02:07
6 yes. 15:02:07
7 MS. SEERS: Could we please 15:02:08
8 cut the feed? 15:02:09
9 --- Confidential transcript begins 15:02:10
10 MS. NETTLETON: Okay. 15:02:20
11 BY MS. SEERS: 15:02:25
12 Q. So there is no actual 15:02:25
13 confidential information here. I just want to 15:02:26
14 talk about specific projects, and there are some 15:02:28
15 sensitivities around that kind of thing, given 15:02:30
16 that we may share some clients in common. 15:02:32
17 A. Sure. Yes. Mm-hmm. 15:02:32
18 Q. I don't want there to be 15:02:36
19 any suggestion of anything confidential. But we 15:02:37
20 won't talk about anything confidential, but we 15:02:40
21 will proceed. 15:02:42
22 A. Sure. 15:02:43
23 Q. So I understand from your 15:02:43
24 CV that you are providing strategic advice to 15:02:46
25 Pattern in connection with the Henvey Inlet 15:02:49

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1 THE WITNESS: Why don't I 15:03:25
2 clarify -- 15:03:26
3 MS. SEERS: I'm not suggesting 15:03:26
4 otherwise, Ms. Wates. 15:03:28
5 THE WITNESS: So I can clarify 15:03:28
6 about the Henvey process. That project -- and 15:03:29
7 Ms. Powell mentioned this yesterday, is under a -- 15:03:35
8 a very different regime. It's on First Nation -- 15:03:39
9 the wind component part of the project is on First 15:03:41
10 Nation land. 15:03:44
11 The -- the province has said 15:03:46
12 they have no jurisdiction over the project, so 15:03:48
13 it's not required to go through a REA. The 15:03:51
14 federal government has transferred the authority 15:03:55
15 to the First Nation through this First Nation Land 15:03:58
16 Management Act, and, therefore, the First Nation 15:04:01
17 itself has created a -- effectively a regulatory 15:04:05
18 framework for deciding on this process on their -- 15:04:09
19 on the assessment. 15:04:15
20 So I worked with your 15:04:16
21 colleague Dennis Mahoney on developing a framework 15:04:20
22 for how that EA would unfold in addition to some 15:04:26
23 other lawyers, and obviously our clients at 15:04:29
24 Pattern and Nigig, which is the First Nation 15:04:32
25 company, and effectively it's REA-like. It's 15:04:35

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1 CEAA-like. It's a bit of a blend. 15:04:41
2 Q. Right. 15:04:43
3 A. It's not totally like 15:04:43
4 anything. And then there's the whole separate 15:04:44
5 permitting portion for the transmission line, 15:04:48
6 which is approximately 90 kilometres. 15:04:51
7 Q. Okay. So but just to be 15:04:53
8 clear, I just wanted to -- I am just looking to 15:04:54
9 move forward through your experience -- 15:04:56
10 A. Sure. 15:04:56
11 Q. -- and we don't -- if we 15:04:57
12 need to get into details, perhaps we can do so 15:04:59
13 later. 15:05:01
14 A. No problem. 15:05:01
15 Q. But I'm not looking to do 15:05:01
16 that right now. 15:05:02
17 So what I understand though is 15:05:04
18 that is that proponent received a FIT contract for 15:05:06
19 its project in 2010. Is that consistent with your 15:05:08
20 understanding? 15:05:11
21 A. I don't actually know 15:05:12
22 when they received the FIT contract. 15:05:13
23 Q. You don't know? Okay. 15:05:13
24 A. I do know they have one. 15:05:14
25 Q. It's just beginning this 15:05:15

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1 interesting point. So I mentioned how our 15:06:11
2 original -- those three projects were worked on 15:06:13
3 early on in the -- in the process. Those are 2010 15:06:16
4 projects. It took quite a bit of time. 15:06:20
5 What we have realized is, as 15:06:22
6 developers -- the developers have learned the 15:06:25
7 process. Consultants have learned the process. 15:06:26
8 The agencies have certainly learned the process. 15:06:28
9 And we're able to turn things around much quicker 15:06:31
10 now than back in 2010. 15:06:34
11 Q. And you list also in your 15:06:37
12 CV, and you mention that you manage the REI and 15:06:39
13 permitting process for the Bluewater, Jericho, and 15:06:43
14 Bornish projects for NextEra? 15:06:47
15 A. That's correct. 15:06:49
16 Q. Now, am I right -- 15:06:49
17 A. Sorry, did you say 15:06:49
18 Bornish? 15:06:50
19 Q. Yes. Is that wrong? 15:06:50
20 A. That's not correct. 15:06:51
21 Q. Which are the three? 15:06:52
22 A. Bluewater, Goshen, and 15:06:53
23 Jericho. 15:06:56
24 Q. Goshen? Okay. 15:06:56
25 A. Mm-hmm. 15:06:58

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1 process that you're describing -- 15:05:17
2 A. Sure. 15:05:17
3 Q. -- just beginning it now. 15:05:18
4 A. Just beginning? Well, 15:05:21
5 like I mentioned, there's been three developers 15:05:23
6 who've worked on that project with Nigig. 15:05:26
7 Q. Right. Okay. It's in an 15:05:28
8 ongoing -- 15:05:29
9 A. So, arguably, it started 15:05:30
10 back, yes, 2010, and it's kind of evolved. And 15:05:32
11 Pattern has now picked it up from Blue Earth, who 15:05:35
12 picked it up from EDF -- GDF, I think, actually. 15:05:38
13 Q. Okay. So it's been a bit 15:05:42
14 of a long road? 15:05:43
15 A. It's an evolution, yes. 15:05:44
16 Q. It's a process. And 15:05:46
17 you're currently managing the REA and permitting 15:05:48
18 process for the 100-megawatt Bell River wind 15:05:50
19 project for Samsung and Pattern as well? 15:05:55
20 A. That's correct. And that 15:05:56
21 received its REA earlier this year. 15:05:58
22 Q. Right. Okay. So -- and 15:05:59
23 it did that within the time frames of the 15:06:04
24 applicable PPA, I take it? 15:06:06
25 A. Yes. Which is an 15:06:08

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1 Q. Now, am I right -- and I 15:06:58
2 may not be -- that those -- those projects had a 15:06:59
3 lot of complexities? Like, for example, I think 15:07:06
4 some of them had transmission issues associated 15:07:08
5 with them. Are you aware of that? 15:07:13
6 A. I wouldn't say there was 15:07:16
7 anything particularly onerous about the 15:07:17
8 transmission line. I don't believe -- Goshen had 15:07:19
9 a very short -- well, sorry. Goshen had about a 15:07:23
10 20-kilometre transmission line. I think Bluewater 15:07:27
11 had about the same. They're all within the 15:07:29
12 municipal right-of-way. 15:07:33
13 Q. Fairly standard? 15:07:35
14 A. I didn't see them -- I 15:07:36
15 didn't see the transmission being -- 15:07:37
16 Q. They're on farm land? 15:07:38
17 A. Yes, on farm land. 15:07:40
18 Q. In an area with -- we 15:07:41
19 have been talking about NIMBYs, and that's 15:07:43
20 certainly an area where those -- those folks are 15:07:45
21 out in droves. Would you agree with that? A lot 15:07:47
22 of NIMBYs? 15:07:49
23 A. There are -- there area a 15:07:49
24 lot of folks who oppose projects in those areas, 15:07:51
25 yes. 15:07:54

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1 Q. And there was municipal 15:07:54
2 opposition in the case of those projects as well? 15:07:55
3 A. There was municipal 15:07:57
4 opposition. I'm not sure this has been explained. 15:07:58
5 I think it has. But the Renewable Energy Approval 15:08:01
6 process basically strips out any Planning Act 15:08:05
7 approval. 15:08:07
8 So previous to the REA being 15:08:08
9 in place, a -- a municipality can -- could put in 15:08:10
10 place zoning or official plan -- official plan 15:08:14
11 requirements that would restrict where wind farms 15:08:20
12 would go. That's been removed out of the REA. 15:08:22
13 That's part of this whole streamlining process. 15:08:25
14 Q. I think there -- am I 15:08:27
15 right that there were archeology issues in those 15:08:30
16 projects? 15:08:32
17 A. On some of those projects 15:08:33
18 there were, mm-hmm. 15:08:34
19 Q. Yes. Because of 15:08:35
20 archeological -- what kind of archeological issues 15:08:36
21 that were in the farm land, kind of -- anyway, can 15:08:39
22 you explain? 15:08:44
23 A. There were archeological 15:08:45
24 finds, yes. 15:08:47
25 Q. Right. 15:08:48

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1 A. Yep. 15:08:48
2 Q. Okay. And that's complex 15:08:48
3 because there are particular rules that apply? 15:08:50
4 A. I wouldn't say it's 15:08:53
5 complex. The rules are fairly straightforward. 15:08:54
6 If you identify something at a desktop level, it's 15:08:56
7 called a Stage 1. You do a Stage 2 archeological 15:09:00
8 assessment where you end up doing fieldwork. If 15:09:03
9 it still becomes an issue, there are two more 15:09:06
10 stages of archeological assessment, with the Stage 15:09:09
11 4 being effectively removal of those artifacts, in 15:09:14
12 which case you can basically go wherever you want, 15:09:18
13 so you can mitigate the impact. 15:09:20
14 Q. There were radar issues, 15:09:23
15 I understand, from an airport? 15:09:26
16 A. For Goshen, I recall the 15:09:29
17 radar issues. I don't recall off the top of my 15:09:31
18 head for the other two projects. 15:09:33
19 Q. Noise issues? 15:09:35
20 A. There were definitely 15:09:36
21 noise issues, yes. 15:09:37
22 Q. All three of those 15:09:38
23 projects, though, got REAs? 15:09:39
24 A. They did. 15:09:41
25 Q. They all got appealed to 15:09:42

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1 the ERT? 15:09:43
2 A. That's correct. 15:09:44
3 Q. Those appeals got 15:09:45
4 dismissed? 15:09:46
5 A. Mm-hmm. 15:09:47
6 Q. All of them. And the 15:09:48
7 projects got built. 15:09:50
8 A. They did. And as I 15:09:52
9 mentioned at the beginning, the original project 15:09:53
10 schedule was, I believe -- I think the RFP came 15:09:55
11 out in February 2010, construction by June 2011. 15:09:59
12 So things come up. I think that was my point -- 15:10:05
13 Q. Right. 15:10:09
14 A. -- is onshore, offshore 15:10:09
15 at least we know with onshore what the issues are 15:10:11
16 that are coming up. And it just pushes the -- 15:10:14
17 Q. Right. But -- 15:10:14
18 A. It pushes the project 15:10:17
19 out. The layout changes. You end up doing more 15:10:19
20 work. 15:10:21
21 Q. Understood, Mr. Rose. 15:10:21
22 But they got built within the parameters of the 15:10:22
23 FIT contract, all three of them -- 15:10:26
24 A. They did. That's 15:10:26
25 correct. 15:10:26

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1 Q. -- even though they were 15:10:29
2 past their original MCOs? 15:10:30
3 A. Mm-hmm, they did. 15:10:32
4 Q. And that's because the 15:10:33
5 OPA adopted a pragmatic approach in dealing with 15:10:34
6 project proponents to ensure that FIT contracts -- 15:10:38
7 that FIT projects got built even in the face of 15:10:42
8 regulatory delays. Is that correct? 15:10:45
9 A. I would assume that's 15:10:47
10 correct. I don't know the OPA's process in and 15:10:50
11 out. 15:10:54
12 Q. Okay. I understand also 15:10:54
13 that you assisted Ontario Power Generation with an 15:11:00
14 environmental effects assessment relating to the 15:11:04
15 Darlington B. Project environmental assessment? 15:11:07
16 A. I was involved with the 15:11:09
17 socioeconomic assessment. 15:11:11
18 Q. The socio-economic 15:11:12
19 aspect? 15:11:14
20 A. Yes, yes. 15:11:14
21 Q. And this will seem 15:11:15
22 obvious to most of us in this room who are from 15:11:16
23 Ontario, but can you explain for the Tribunal what 15:11:17
24 the Darlington facility is? 15:11:19
25 A. Darlington is a 15:11:24

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1 nuclear-generating facility on the shores of Lake 15:11:25
2 Ontario, about an hour north of where Toronto is. 15:11:29
3 Q. So it's a three -- 15:11:34
4 A. Or west I guess, not 15:11:35
5 north. 15:11:37
6 Q. West, yes. It's a 15:11:37
7 3,500-megawatt nuclear power plant. 15:11:39
8 A. Mm-hmm. 15:11:41
9 Q. Correct? 15:11:41
10 A. Yes. 15:11:42
11 Q. Located immediately 15:11:42
12 adjacent to Lake Ontario? 15:11:44
13 A. That's correct. 15:11:46
14 Q. And do you know how far 15:11:46
15 from the lake the closest reactor is? 15:11:48
16 A. Not off the top of my 15:11:50
17 head, I don't. 15:11:54
18 Q. It's very close, though, 15:11:54
19 right? 15:11:56
20 A. I mean, the site's 15:11:56
21 adjacent to the lake. 15:11:57
22 Q. Like, it's not -- it's 15:11:57
23 probably -- I don't know, but it's feet, not -- 15:11:58
24 anyway, it's -- 15:12:03
25 A. I don't know. 15:12:04

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1 Q. You wouldn't disagree 15:12:04
2 that it's very close? 15:12:05
3 A. It's close. The site is 15:12:06
4 adjacent to the lake, yes. 15:12:07
5 Q. Okay. You mentioned 15:12:08
6 earlier that the guidance documents that MOE was 15:12:11
7 putting out in connection with the REA wasn't or 15:12:17
8 weren't clear in the early days for onshore wind; 15:12:21
9 right? 15:12:24
10 A. Well, there were no 15:12:25
11 guidance documents. 15:12:26
12 Q. There were no -- but you 15:12:27
13 -- okay. But you started the REA processes -- 15:12:27
14 A. We started the REA 15:12:30
15 process. 15:12:33
16 Q. -- in any event? 15:12:33
17 A. Yes. And in fact -- 15:12:33
18 Q. And you moved -- 15:12:33
19 A. -- for the NextEra 15:12:34
20 projects, I believe they started without FIT 15:12:36
21 contracts. 15:12:37
22 Q. Right. 15:12:37
23 A. So we were doing work 15:12:38
24 early on to try and understand what those 15:12:40
25 requirements were, talking with the agencies, and 15:12:42

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1 I would say before the guidance documents came out 15:12:46
2 and even as they were evolving, it was challenging 15:12:49
3 to figure out exactly what -- what the agencies 15:12:53
4 would want. 15:12:56
5 We would try and confirm the 15:12:57
6 expectations on field studies. We would do some 15:12:59
7 work. They would get back to us saying, it's not 15:13:02
8 exactly what we want, and the same thing happened 15:13:05
9 even while we were doing our assessment 15:13:07
10 identifying mitigation measures. 15:13:09
11 So this is another example of 15:13:11
12 this iterative process where it's not -- it's not 15:13:13
13 straightforward. It's -- there was a lot of 15:13:16
14 conversation, I guess, two days ago, about the 15:13:19
15 environmental assessment process and how this was 15:13:22
16 effectively an environmental assessment. 15:13:24
17 This is very prescriptive. So 15:13:27
18 they're looking for something specific. Under an 15:13:29
19 environmental assessment, at least for wind power, 15:13:32
20 the developer was doing a self-assessment. So 15:13:35
21 they basically came up with their own approach. 15:13:38
22 This was very different. 15:13:42
23 Q. So it sounds like, from 15:13:42
24 what you're describing, that you're -- you've got 15:13:44
25 kind of a good track record at getting projects 15:13:47

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1 built, even though things may be a little bit 15:13:50
2 difficult in the -- in the early days? 15:13:52
3 A. I would agree, yes. 15:13:54
4 Q. And so I assume, then, 15:13:55
5 that on the projects that you've worked on, I 15:13:57
6 think this is consistent with what you're saying, 15:13:59
7 that roadblocks were -- you know, they were dealt 15:14:02
8 with. You -- you didn't simply abandon the 15:14:05
9 project every time a regulator gave you a hard 15:14:08
10 time; right? 15:14:10
11 A. We would certainly work 15:14:11
12 through the roadblocks. 15:14:12
13 Q. Right. 15:14:12
14 A. I guess the question is: 15:14:14
15 How many road blocks do you come up with, and how 15:14:15
16 long does it take to resolve them. 15:14:18
17 Q. Right. But I'm guessing, 15:14:19
18 Mr. Rose, that, when roadblocks did come up, you 15:14:20
19 didn't throw up your hands and say, "Okay. This 15:14:24
20 project is dead." That's not what your clients 15:14:27
21 pay you for. 15:14:28
22 A. That's correct. 15:14:29
23 Q. You're working towards 15:14:30
24 actually getting these project built, and you did? 15:14:33
25 A. That's correct. 15:14:35

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1 Q. Right. Okay. Among your 15:14:36
2 professional -- we are still off feed. We can go 15:14:43
3 back on now. Thank you. 15:14:46
4 --- Confidential transcript ends 15:14:56
5 BY MS. SEERS: 15:14:56
6 Q. I understand that you are 15:14:56
7 a member of the Canadian Wind Energy Association? 15:14:58
8 A. I am, yes. 15:15:02
9 Q. And that's an 15:15:03
10 organization otherwise known as CanWEA? 15:15:05
11 A. Mm-hmm, that's correct. 15:15:07
12 Q. We've heard a bit about 15:15:08
13 it this week. 15:15:10
14 A. Yes. 15:15:10
15 Q. That's an advocacy 15:15:11
16 association for the wind project development 15:15:12
17 industry in Ontario? 15:15:15
18 A. That's correct. And I 15:15:15
19 belong to it as my role as a business developer. 15:15:16
20 Q. Right. And that included 15:15:19
21 the offshore wind development industry, at least 15:15:21
22 when there was one, before the moratorium? 15:15:23
23 A. I wasn't part of it, or 15:15:25
24 the firm wasn't part of it at that time. 15:15:27
25 Q. Okay. CanWEA counts 15:15:29

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1 question very poorly. 15:16:33
2 A. Okay. 15:16:33
3 Q. I'm asking you if you -- 15:16:34
4 if you are aware of that. 15:16:35
5 A. I'm aware of it now. 15:16:36
6 Yes, I am. 15:16:37
7 Q. Okay. And are -- do you 15:16:38
8 know whether CanWEA is aware of that? 15:16:39
9 A. I have no idea whether 15:16:40
10 CanWEA is aware of it. 15:16:42
11 Q. Okay. That was the 15:16:43
12 thrust of my question. Okay. 15:16:44
13 And do you think this 15:16:46
14 announcement would surprise CanWEA's members? 15:16:47
15 A. I don't know. 15:16:50
16 Q. You don't know? Okay. 15:16:51
17 You say in your report that 15:16:53
18 the loss of six months of force majeure for the 15:16:54
19 ERT proceeding -- I think I have this right -- 15:16:58
20 will reduce the attractiveness of the project for 15:17:01
21 lenders. Is that what you say? 15:17:04
22 A. I'm not a lender expert, 15:17:07
23 so I don't want to talk to that. I think that 15:17:11
24 was -- 15:17:13
25 Q. But it's in your report. 15:17:14

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1 amongst its members a lot of the players in the 15:15:32
2 onshore and offshore wind development industry, 15:15:34
3 though; right? 15:15:36
4 A. I would agree with that 15:15:36
5 statement. 15:15:37
6 Q. Siemens, for example, 15:15:38
7 Vestas, GE, EDF? 15:15:38
8 A. Mm-hmm. 15:15:41
9 Q. So how active are you in 15:15:41
10 CanWEA? 15:15:43
11 A. I participate in what 15:15:43
12 they call Ontario caucus calls or meetings where 15:15:46
13 it's various -- I guess a monthly call with 15:15:51
14 various members of the organization about policy 15:15:55
15 issues that arise -- issues that arise. 15:15:59
16 Q. Are you aware, sir, are 15:16:03
17 you aware that CanWEA is aware that the Government 15:16:04
18 of Canada, on Monday, in its opening statement, 15:16:13
19 announced for the first time that it is not 15:16:16
20 planning to proceed with offshore wind research? 15:16:19
21 A. Just to clarify, you're 15:16:22
22 asking me if I'm aware if CanWEA is aware of that? 15:16:24
23 Q. I'm asking you -- 15:16:28
24 A. Is that -- am I right? 15:16:30
25 Q. Pardon me. I phrased the 15:16:31

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1 A. There are lots of things 15:17:15
2 in my -- in the report. I don't necessarily speak 15:17:16
3 to all of -- to them all. If it is environmental 15:17:18
4 permitting related, I can speak to it. But 15:17:22
5 otherwise, it would have been Jerome from Green 15:17:24
6 Giraffe. 15:17:27
7 Q. No, this is in the URS 15:17:27
8 report. Should we speak to Mr. Barillaro about 15:17:29
9 that, then? 15:17:32
10 A. Yes, I would think so. 15:17:32
11 Q. Okay. We'll do that. I 15:17:33
12 take it, though -- we will see how that goes in a 15:17:37
13 few days. 15:17:39
14 MR. TERRY: Tell him not right 15:17:40
15 now, Mr. Barillaro. 15:17:41
16 [Laughter.] 15:17:42
17 BY MS. SEERS: 15:17:43
18 Q. I take it that, as an 15:17:43
19 environmental planner, you don't have any specific 15:17:45
20 expertise with respect to noise measurement, noise 15:17:47
21 modelling, or acoustics? 15:17:50
22 A. I would consider myself a 15:17:51
23 generalist. 15:17:53
24 Q. Right. 15:17:53
25 A. What I would say is, like 15:17:54

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1 Mr. Roberts explained, AECOM has a team of 15:17:56
2 internal experts, noise among them. 15:18:00
3 Q. You're not one of them? 15:18:03
4 A. I'm not an expert. 15:18:04
5 Q. Okay. 15:18:04
6 A. I've been on numerous 15:18:05
7 phone calls. I would say they're mostly phone 15:18:08
8 calls with -- 15:18:11
9 Q. Mr. Rose, I don't mean to 15:18:11
10 cut you off, but my question was very simple. 15:18:13
11 A. Okay. 15:18:13
12 Q. You are not one of those 15:18:15
13 experts? 15:18:16
14 A. No. 15:18:16
15 Q. Okay. Could you turn up 15:18:16
16 Tab 1 of your binder, please? Here you have the 15:18:19
17 CV of Payam Ashtiani of Aercoustics, who has filed 15:18:22
18 an expert report in this proceeding on behalf of 15:18:27
19 Windstream, but is not -- do you have it? It 15:18:30
20 should be Tab 1. 15:18:34
21 A. Tab 1? There we go. 15:18:47
22 Yes. 15:18:47
23 Q. Okay. So Mr. Ashtiani on 15:18:48
24 -- from Aercoustics has filed an expert report in 15:18:49
25 this proceeding, not being cross-examined by -- by 15:18:51

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1 we fully reject it, and we have not accepted 15:19:49
2 what's in these reports. 15:19:52
3 MS. SEERS: No, Mr. Spelliscy, 15:19:53
4 I don't believe I was insinuating something. I'm 15:19:55
5 stating a matter of fact. 15:19:59
6 PRESIDENT: There's a point to 15:19:59
7 the objection. In this instance, I don't think we 15:20:02
8 need an expert to give an opinion whether somebody 15:20:03
9 else is an expert. 15:20:06
10 MS. SEERS: Well, okay. I 15:20:07
11 will simply then ask him whether he -- to confirm 15:20:07
12 that he is not an expert and that other experts 15:20:11
13 have, in fact, filed expert reports in this 15:20:14
14 proceeding. 15:20:17
15 MS. WATES: I'm sorry to 15:20:17
16 interrupt, for the record. You know, actually we 15:20:18
17 are presenting Mr. Rose as an expert in certain 15:20:21
18 areas -- perhaps he's not speaking to others. 15:20:25
19 MS. SEERS: And noise is not 15:20:25
20 one of them. 15:20:25
21 MS. WATES: But I'm just 15:20:26
22 asking, when you make comments like that, if you 15:20:27
23 could restrict it to the specific topics that 15:20:29
24 you're referring to. Thank you. 15:20:31
25 MS. SEERS: Okay. I was 15:20:32

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1 Canada. My question is simply: You don't 15:18:53
2 disagree that Mr. Ashtiani is an expert on noise? 15:18:57
3 A. No, I do not disagree. 15:19:01
4 Q. Okay. And if you turn to 15:19:03
5 Tab 2 -- 15:19:04
6 A. Mm-hmm. 15:19:04
7 Q. -- you'll see the CV of 15:19:10
8 Mr. Brian Howe, who also has submitted two expert 15:19:11
9 reports for Windstream in this proceeding, also 15:19:14
10 not being crossed. Same question: You don't 15:19:18
11 disagree that Mr. Howe is an expert on noise, do 15:19:19
12 you? 15:19:21
13 MR. SPELLISCY: Before the 15:19:22
14 witness answers, just a point of procedure. 15:19:23
15 There's no issue obviously that they haven't been 15:19:24
16 called. I'm not sure what the insinuation is. 15:19:27
17 The parties agreed beforehand that the failure to 15:19:30
18 call an expert would not draw any sort of 15:19:32
19 inference whatsoever. 15:19:34
20 We obviously had a limited 15:19:35
21 amount of time. If we wanted to be here for two 15:19:37
22 months instead of two weeks, potentially we could 15:19:40
23 have cross-examined all these people. 15:19:42
24 But if the insinuation is that 15:19:43
25 the person is not here for some particular reason, 15:19:47

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1 referring to noise, but thank you for that. 15:20:34
2 BY MS. SEERS: 15:20:38
3 Q. Let's move on to drinking 15:20:38
4 water. You are not an expert in drinking water? 15:20:39
5 A. I'm not an expert in 15:20:44
6 drinking water. 15:20:45
7 Q. Okay. 15:20:45
8 A. But this water is quite 15:20:46
9 good. 15:20:48
10 Q. And there are more CVs in 15:20:48
11 there, but no one wants to look at them, so that 15:20:49
12 is fine. We will just move on through the list. 15:20:52
13 You're not an expert in fish? 15:20:54
14 A. No I'm not an expert in 15:20:57
15 fish. 15:20:59
16 Q. You're not an expert in 15:20:59
17 birds? 15:21:00
18 A. No I'm not an expert in 15:21:00
19 birds. 15:21:03
20 Q. You're not an expert in 15:21:03
21 bats? 15:21:04
22 A. No. 15:21:04
23 Q. And you're not a lawyer? 15:21:05
24 A. Definitely not. 15:21:06
25 Q. You're probably feeling 15:21:07

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1 grateful for that right now. 15:21:08
2 A. That is for sure. 15:21:10
3 Q. So you mentioned this in 15:21:11
4 your presentation, and I'm, frankly, a little 15:21:13
5 perplexed. You say that URS is maintaining its 15:21:18
6 original conclusion that the onshore manufacturing 15:21:22
7 facilities are subject to a REA, when you have 15:21:26
8 heard expert evidence -- and I think you were in 15:21:29
9 the room, Mr. Rose -- from Ms. Powell that says 15:21:31
10 that's not the case. And the Ministry has also 15:21:35
11 confirmed that that's not the case. And you're 15:21:37
12 not a lawyer, and I'm not aware of any lawyer at 15:21:39
13 URS who has given a legal opinion as to whether 15:21:42
14 that -- that onshore foundation facility requires 15:21:46
15 a REA. 15:21:52
16 So I would put to you, sir, 15:21:53
17 that it's not appropriate for URS to be 15:21:54
18 maintaining that conclusion. 15:21:58
19 A. Well, I would say a 15:22:01
20 couple of things. First thing, in my 15:22:02
21 presentation -- and I don't know if we can go back 15:22:04
22 to it -- I explicitly said our opinion in the 15:22:05
23 first report was that it was not part of the REA. 15:22:08
24 Q. Your opinion in the first 15:22:11
25 report -- 15:22:13

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1 Q. -- page 91. 15:23:11
2 A. Yes. 15:23:11
3 Q. My mistake. Sorry about 15:23:12
4 that. 15:23:13
5 So I see -- it's very small 15:23:18
6 unfortunately, but the permitting work begins on 15:23:20
7 February 11, 2011, I think, with the scoping work 15:23:25
8 at line 8. Do I read it correctly? 15:23:28
9 A. Yes. 15:23:32
10 Q. And then it contemplates 15:23:34
11 the REA being issued April 16, 2014, at line 11? 15:23:36
12 A. Mm-hmm. 15:23:41
13 Q. Okay. And so you've 15:23:42
14 allowed three years and three months for 15:23:43
15 permitting; right? 15:23:46
16 A. Yes, that's correct. 15:23:48
17 Q. And you have allowed an 15:23:52
18 additional six months for the ERT appeal process. 15:23:54
19 A. I'm sorry. How many? 15:24:00
20 Q. I believe it's six 15:24:02
21 months. 15:24:03
22 A. That's correct, yes. 15:24:04
23 Q. Thank you. Now, for 15:24:07
24 comparison purposes, just so we all have the 15:24:10
25 various schedules that are floating around in 15:24:14

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1 A. Was that the onshore 15:22:13
2 manufacturing facility was not part of the REA. 15:22:14
3 Q. I see. Okay. So you're 15:22:16
4 maintaining that opinion that it is not? 15:22:17
5 A. Yes, I agree. It's not 15:22:19
6 part of the REA. 15:22:20
7 Q. Okay. Good. I'm glad 15:22:21
8 that confusion has been resolved. And I apologize 15:22:22
9 if I misunderstood your presentation. 15:22:26
10 A. That's okay. 15:22:28
11 Q. If you turn up page 86 of 15:22:29
12 your second report, please, which is the schedule 15:22:31
13 regarding permitting. This is the one that 15:22:33
14 starts -- has an assumed start date of February 15:22:51
15 11, 2011. 15:22:54
16 A. Okay. 15:22:56
17 Q. Do you see that? Okay. 15:22:56
18 So the -- 15:22:58
19 A. Sorry, your page 87? 15:22:59
20 Q. Pardon me. 15:23:01
21 A. You're looking at the 15:23:06
22 Gantt chart. 15:23:07
23 Q. I'm actually looking at 15:23:07
24 the Gantt chart, which -- I apologize -- is -- 15:23:09
25 A. Ninety-one. 15:23:09

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1 front of us, if you could -- do you have 15:24:16
2 Windstream's schedule? There should be the large 15:24:17
3 version. 15:24:20
4 A. Yes. 15:24:20
5 Q. So in Windstream's 15:24:21
6 schedule, it begins -- the permitting work begins 15:24:45
7 at line 10, on February 11, 2011, also with the 15:24:48
8 project description report. 15:24:53
9 A. Mm-hmm. 15:24:54
10 Q. Right? And it 15:24:55
11 contemplates the REA being issued July 24, 2013, 15:24:56
12 at line 67, which was a little bit less compressed 15:25:01
13 than the URS schedule. So you may have to find 15:25:06
14 it. 15:25:08
15 A. Yes, I see it. 15:25:09
16 Q. You see it? Okay. So it 15:25:09
17 allows approximately two years and six months for 15:25:11
18 permitting; right? 15:25:14
19 A. I would have to calculate 15:25:16
20 the dates, but... 15:25:18
21 Q. Sound about right? 15:25:20
22 A. I would assume that's 15:25:21
23 correct. 15:25:22
24 Q. And then an additional 15:25:23
25 six months for the ERT appeal? 15:25:24

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1 A. Mm-hmm. 15:25:26
2 Q. Brings us to three years. 15:25:27
3 So I'm confused about your schedule, though, 15:25:29
4 Mr. Rose, because -- I guess I'm wondering: Are 15:25:31
5 you using hindsight and incorporating permitting 15:25:34
6 delays into this schedule, or is this the schedule 15:25:38
7 that you would have put together in 2011? Is this 15:25:40
8 a hindsight schedule or no hindsight schedule? 15:25:45
9 A. I would say this is a 15:25:47
10 similar schedule to what Mr. Roberts prepared, 15:25:49
11 so -- 15:25:52
12 Q. A hindsight schedule? 15:25:52
13 No? 15:25:52
14 A. -- a planning schedule. 15:25:52
15 So it doesn't really reflect 15:25:55
16 all the risk that might happen. 15:25:58
17 Q. Okay. But my question 15:26:00
18 is: Are you using 2015 knowledge to put together 15:26:01
19 this schedule, or are you pretending you're back 15:26:04
20 in 2011? 15:26:07
21 A. I was pretending I'm back 15:26:08
22 in 2011. 15:26:10
23 Q. So you're pretending 15:26:10
24 you're back in 2011, and your opinion is that the 15:26:12
25 permitting would take three years and three 15:26:15

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1 A. I wouldn't disagree with 15:27:14
2 you, no. 15:27:16
3 Q. And they're, in fact, as 15:27:16
4 you will have heard earlier, the consultant that 15:27:19
5 Windstream was preparing to retain as of a few 15:27:22
6 days before the moratorium was announced? 15:27:24
7 A. I did hear that, yes. 15:27:29
8 Q. Okay. So the -- their 15:27:30
9 proposal for the record is C-0873, and the 15:27:33
10 schedule is at Appendix 2. And if everything went 15:27:36
11 according to plan, you will have a little sticky 15:27:40
12 there to help you find it. 15:27:43
13 A. Appendix -- oh, I see. 15:27:46
14 Q. Two. It should be a 15:27:47
15 longer sheet. 15:27:49
16 A. Yes. 15:27:50
17 Q. Okay. You should have a 15:27:51
18 red sticky and a longer -- yes, exactly. Okay? 15:27:55
19 A. Mm-hmm. 15:28:10
20 Q. So they have the project 15:28:10
21 starting in January 2011, so that's line 2. That 15:28:11
22 is really just a month off from our but-for 15:28:19
23 scenario schedule. 15:28:22
24 A. Mm-hmm. 15:28:22
25 Q. So it's not that -- that 15:28:23

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1 months? 15:26:19
2 A. That's correct. 15:26:20
3 Q. Okay. Are you aware 15:26:21
4 that, in November 2010, Windstream received a 15:26:24
5 number of proposals from environmental consultants 15:26:27
6 to conduct the environmental permitting work for 15:26:31
7 the project? 15:26:33
8 A. I am aware. 15:26:34
9 Q. Okay. And I'm going to 15:26:36
10 take you through some of those to see how they 15:26:38
11 compare -- 15:26:40
12 A. Sure. 15:26:40
13 Q. -- because you would 15:26:40
14 agree with me that those -- they were actually 15:26:41
15 prepared in November 2010. So it's about three 15:26:43
16 months away from your -- from your schedule that 15:26:46
17 you say you're preparing in the same sort of 15:26:50
18 no-hindsight mind-set that they were. 15:26:54
19 So let's take a look at them. 15:26:58
20 If you turn to the Tab 7, you've got the first 15:27:00
21 one, which is from Stantec. 15:27:04
22 A. Mm-hmm. 15:27:06
23 Q. And you wouldn't disagree 15:27:07
24 with me, Mr. Rose, that Stantec is one of the most 15:27:08
25 experienced environmental consultants in Ontario? 15:27:12

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1 far off. And they have the REA issued, if you go 15:28:24
2 down to line 50 -- MOE approval, they call it -- 15:28:28
3 in August 2012. 15:28:32
4 A. Mm-hmm. 15:28:34
5 Q. So they allow, again, 15:28:34
6 wearing their, you know, we're in November 2010 15:28:37
7 hat, not knowing that MOE is going to be causing 15:28:40
8 permitting delays in the future, they're saying 15:28:43
9 they should allow one year and seven months from 15:28:47
10 project start to the issuance of the REA; right? 15:28:49
11 A. It appears that way, yes. 15:28:53
12 Q. And so that's obviously 15:28:55
13 substantially less than what you've allowed and, 15:28:57
14 in fairness, also substantially less than what 15:28:59
15 Windstream has allowed in its schedule? 15:29:02
16 A. Mm-hmm, that's correct. 15:29:04
17 Q. Okay. If you go to Tab 15:29:05
18 8, please. And this is a proposal, which you cite 15:29:07
19 in your report actually, and we reviewed -- or 15:29:13
20 Ms. Wates reviewed earlier with Mr. Roberts. It's 15:29:16
21 dated November 25, 2010. 15:29:19
22 If you go to the sticky of the 15:29:22
23 appendix, this is a Gantt chart. They also have 15:29:25
24 the project starting in January. And we're going 15:29:33
25 to assume that's 2011, given when they were 15:29:39

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1 writing it. And if you go down to line 21, you 15:29:42
2 see receipt of REA. 15:29:49
3 A. Mm-hmm. 15:29:51
4 Q. And that's in October 15:29:51
5 2012. 15:29:53
6 A. Okay. 15:29:54
7 Q. So that allows about one 15:29:55
8 year and nine months for the REA to be issued from 15:29:58
9 the time the project is initiated? 15:30:02
10 A. Mm-hmm. 15:30:05
11 Q. Correct? 15:30:06
12 A. That's correct. 15:30:06
13 Q. And also, obviously, 15:30:07
14 there's substantially less time than you've 15:30:08
15 allowed in your schedule and even that Windstream 15:30:10
16 has allowed in its schedule; correct? 15:30:12
17 A. That's correct. 15:30:14
18 Q. One more, Tab 9. SLR -- 15:30:15
19 pardon me. I should have asked you. Genivar, 15:30:20
20 experienced environmental consultants in Ontario, 15:30:22
21 in your view? 15:30:24
22 A. Yeah. They had done wind 15:30:26
23 or were doing wind at that time. 15:30:28
24 Q. And you -- in fact, you 15:30:30
25 cite their proposal in your report. So you must 15:30:31

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1 the SLR folks split off. 15:31:26
2 Q. Okay. So you know them? 15:31:28
3 A. I know them, yes. 15:31:29
4 Q. Okay. They know what 15:31:30
5 they're doing? 15:31:31
6 A. Again, generally 15:31:32
7 speaking, I don't know them as a company that does 15:31:33
8 wind. 15:31:35
9 Q. Okay. If you go to the 15:31:37
10 last page, similar kind of Gantt-chart-type 15:31:37
11 schedule project schedule that you see in the 15:31:42
12 others. And they have -- they also have the REA 15:31:43
13 work starting in January 2011. That's on line 2, 15:31:47
14 REA process; right? 15:31:51
15 A. Mm-hmm. 15:31:54
16 Q. And if you go down to 15:31:54
17 line 13, you will see the review process ending in 15:31:59
18 July 2012? 15:32:01
19 A. Correct. 15:32:03
20 Q. Okay. And so that allows 15:32:04
21 about one year and six months for the REA process; 15:32:07
22 right? 15:32:10
23 A. That's correct. 15:32:11
24 Q. Again, I don't need to 15:32:12
25 repeat it again, but substantially less time than 15:32:13

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1 consider them to have some degree of experience or 15:30:33
2 expertise? 15:30:36
3 A. Well, I think we were 15:30:37
4 doing that primarily because they were giving 15:30:38
5 evidence here. WSP is Genivar. 15:30:40
6 Q. Okay. So you were doing 15:30:43
7 it because Mr. Roberts is giving evidence? 15:30:44
8 A. Primarily. 15:30:45
9 Q. Even though Mr. Roberts 15:30:46
10 was not involved in the earlier proposal. 15:30:47
11 A. It's a Genivar product. 15:30:50
12 Q. Okay. 15:30:50
13 A. I would assume they would 15:30:51
14 stand by their product. 15:30:52
15 Q. Okay. Well, let's move 15:30:54
16 on to the next tab, which is SLR consulting 15:30:56
17 proposal. Also experienced environmental 15:31:00
18 consultants in Ontario? 15:31:03
19 A. They are, although I 15:31:05
20 don't know SLR for doing any wind. 15:31:07
21 Q. Okay. Well, they were 15:31:15
22 making this proposal for Windstream at the time? 15:31:16
23 A. Yeah. I mean, SLR -- 15:31:18
24 that was our old office location. I used to work 15:31:19
25 for a company called Gartner Lee, and a bunch of 15:31:22

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1 you have allowed in your schedule and that 15:32:16
2 Windstream allowed in its schedule? 15:32:18
3 A. That's correct. I guess 15:32:19
4 the one point I would make is -- and we talked 15:32:20
5 about this. With the NextEra RFP, we got a 15:32:22
6 similar, I would say, even more aggressive RFP. 15:32:26
7 We responded to the RFP. 15:32:29
8 Q. Right. 15:32:29
9 A. Generally if you want to 15:32:31
10 win the work, you're going to show a timeline that 15:32:32
11 meets their requirements. 15:32:35
12 Q. Right. 15:32:35
13 A. And so it -- 15:32:39
14 Q. But then you -- 15:32:39
15 A. -- doesn't surprise me 15:32:39
16 that they're all showing a schedule that meets 15:32:40
17 Windstream's requirements at the time. 15:32:43
18 Q. But in your case with the 15:32:45
19 NextEra projects, again, you showed a schedule 15:32:47
20 that met the requirements. You got hired. You 15:32:48
21 got the -- 15:32:51
22 A. Correct. 15:32:51
23 Q. You worked with the 15:32:52
24 agencies. You got the project built. 15:32:53
25 A. We did get the projects 15:32:55

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1 built in about three times as long as we initially 15:32:57
2 thought. 15:33:00
3 Q. Right. But the OPA 15:33:01
4 worked with you to accommodate the permitting 15:33:02
5 delays pragmatically; right? 15:33:05
6 A. Well, they didn't work 15:33:08
7 with us. They would've worked with the developer, 15:33:10
8 yes. 15:33:12
9 Q. They worked with your 15:33:12
10 client. They worked with NextEra. And you got 15:33:13
11 the projects built. 15:33:13
12 A. We did get those NextEra 15:33:14
13 projects built, yes. 15:33:17
14 Q. Okay. I'd like to talk 15:33:18
15 about the critical path for your schedule. 15:33:19
16 A. Sure. 15:33:22
17 Q. If you could go to C-96 15:33:22
18 -- pardon me. I apologize. It's Tab 9. I really 15:33:27
19 do apologize. I have an incorrect reference. 15:33:51
20 A. That's okay. 15:33:54
21 Q. With respect to 15:33:56
22 permitting, I understand that your schedule 15:33:57
23 assumes the same time periods roughly as the 15:33:59
24 Windstream schedule for a few items. So the -- 15:34:03
25 and correct me if I'm wrong, because I may be 15:34:08

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1 looks like, the -- line 24 of the Windstream 15:34:58
2 schedule for a total of 56 days. So that's the 15:35:02
3 same amount of time; right. 15:35:06
4 A. That is correct. And I 15:35:07
5 would note the next line in that report, which 15:35:09
6 says: 15:35:12
7 "Subsequent work might be 15:35:12
8 required to refine the 15:35:14
9 scope of work for the 15:35:15
10 field studies." 15:35:16
11 And certainly, as I mentioned 15:35:17
12 during my presentation, that is certainly what we 15:35:19
13 typically experienced. 15:35:22
14 Q. Right. Okay. And you 15:35:24
15 still got the projects built? 15:35:25
16 A. Still got the projects 15:35:27
17 built. 15:35:29
18 Q. Okay. The real 15:35:29
19 discrepancy, I guess, though, is field studies; 15:35:32
20 right? 15:35:35
21 A. That would be correct. 15:35:36
22 Q. And I will get to field 15:35:38
23 studies, but just to run through the other items 15:35:40
24 that form the critical path, this is actually 15:35:42
25 quite critical in the critical path because it 15:35:44

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1 wrong, but I think it assumes about the same time 15:34:09
2 periods for the scoping work; right? 15:34:12
3 A. I believe so. I would 15:34:14
4 have to look to check. 15:34:15
5 Q. Okay. But you don't 15:34:16
6 disagree with... 15:34:18
7 A. Again, I would have to -- 15:34:21
8 Q. Can you look? 15:34:21
9 A. I can look, sure. 15:34:21
10 Q. Why don't we pull out the 15:34:22
11 schedule? 15:34:24
12 A. Sure. 15:34:24
13 Q. I think you have a 15:34:24
14 section which sets it out rather succinctly right 15:34:25
15 before the schedule. So the schedule is -- we 15:34:28
16 were on it. It was on page 91. And you've got 15:34:31
17 the REA work on -- starting on page 86, 15:34:34
18 permitting. 15:34:41
19 So you say: 15:34:50
20 "In line with 15:34:51
21 Windstream's assumptions, 15:34:52
22 URS assumes that this 15:34:53
23 work will start 15:34:54
24 immediately." 15:34:55
25 Then you are adopting, it 15:34:57

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1 informs when you get to the REA, which takes you 15:35:46
2 to the Notice to Proceed, which takes you to 15:35:49
3 financial close and construction; right? So it's 15:35:53
4 actually really quite material to the schedule 15:35:56
5 when you get to that REA; right? 15:35:59
6 A. Correct. 15:36:02
7 Q. Right. So if we shorten 15:36:02
8 that time frame, if the -- if it turns out the 15:36:04
9 Tribunal accepts an earlier REA date, for example, 15:36:09
10 in this but-for scenario, that actually has quite 15:36:11
11 a substantial impact on the following steps in the 15:36:14
12 critical path. Would you agree? 15:36:17
13 A. I would agree. 15:36:19
14 Q. Right. Okay. So we 15:36:20
15 needed to get this right. 15:36:21
16 A. Mm-hmm. 15:36:22
17 Q. And so I think the other 15:36:23
18 steps -- again, you will correct me if I'm wrong 15:36:27
19 here, but the steps that follow the field studies, 15:36:29
20 I also think, as I read it anyway, Windstream and 15:36:33
21 Windstream's experts and URS are on the same page, 15:36:38
22 roughly. 15:36:40
23 So you've got consultations, 15:36:40
24 which is the next item, and you say -- I think you 15:36:44
25 adopt the duration of the activities proposed by 15:36:46

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1 Windstream of five months; right? 15:36:49
2 A. That's correct. 15:36:53
3 Q. And then you've got the 15:36:53
4 REA application, and I guess you have a comment in 15:36:58
5 there about the optimism of it, and yet you seem 15:37:01
6 to have incorporated that time frame in your 15:37:05
7 schedule; right? 15:37:07
8 A. We have, and as you note, 15:37:10
9 we say that we think it's optimistic. 15:37:14
10 Q. Okay. But you're still 15:37:16
11 -- that's the schedule you're proposing? 15:37:17
12 A. Mm-hmm. 15:37:18
13 Q. Then you have the ERT 15:37:19
14 appeal, which shouldn't be controversial because 15:37:20
15 it's a six-month statutory appeal period. So 15:37:22
16 really what we're arguing about here is a very 15:37:24
17 discrete point, which is field studies. 15:37:27
18 A. Mm-hmm. 15:37:29
19 Q. And that is, I take it, 15:37:29
20 birds studies, bat studies, fish studies, and 15:37:32
21 maybe terrestrial studies. 15:37:36
22 A. I would say generally. I 15:37:38
23 think, as I mentioned before, it's a very 15:37:39
24 iterative process. We feel there hasn't been 15:37:42
25 enough time allocated to account for layout 15:37:48

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1 could break at any time when it's convenient. 15:38:43
2 MS. SEERS: Sure. Certainly. 15:38:46
3 Should I -- well, this is a -- 15:38:49
4 PRESIDENT: No rush, but 15:38:50
5 whenever there is a change of subject. 15:38:51
6 MS. SEERS: This is actually, 15:38:53
7 unfortunately, rather technical, so if you would 15:38:54
8 rather have a break now, we can do that now and 15:38:57
9 come back to it. 15:38:59
10 PRESIDENT: Very good. So we 15:39:00
11 will break for 15 minutes and continue at 3:50. 15:39:02
12 MS. SEERS: Okay. Thank you. 15:39:09
13 --- Recess taken at 3:39 p.m. 15:39:10
14 --- Upon resuming at 3:53 p.m. 15:53:57
15 PRESIDENT: Ms. Seers, please. 15:54:06
16 BY MS. SEERS: 15:54:08
17 Q. Thank you. We were about 15:54:09
18 to embark upon a review of various schedules, so 15:54:10
19 let's all bear with each other. It is a little 15:54:15
20 bit technical. 15:54:17
21 And so if you look at your 15:54:18
22 schedule, which, again, is at page 91 of your 15:54:25
23 second report, as I understand it, the 12 months 15:54:31
24 that you say are required for field studies are 15:54:39
25 lumped together into the schedule with field study 15:54:42

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1 changes like the one we discussed about 15:37:50
2 navigation. 15:37:52
3 So, yes, it starts with the 15:37:53
4 field studies. It has broader implications. 15:37:55
5 Q. Okay. Well, just to 15:37:59
6 identify the precise discrepancies, if you turn up 15:38:00
7 Windstream's schedule, and just to be very -- 15:38:03
8 because it's so critical to the critical path, to 15:38:05
9 be very, very granular about what it is that we're 15:38:08
10 talking about here. Okay? 15:38:10
11 A. Mm-hmm. 15:38:10
12 Q. So if you look at the 15:38:11
13 Windstream -- or the Windstream's experts -- we 15:38:13
14 will just call it the Windstream schedule, but you 15:38:15
15 understand it is Windstream's experts that put it 15:38:16
16 together; right? You understand that, sir? 15:38:19
17 A. Oh, sorry. Yes, I do 15:38:25
18 understand that. 15:38:26
19 Q. I'm calling it the 15:38:26
20 Windstream schedule. 15:38:28
21 A. Yes. 15:38:28
22 Q. I don't mean to suggest 15:38:29
23 that Windstream put it together. 15:38:29
24 A. I understand. 15:38:31
25 PRESIDENT: Ms. Seers, we 15:38:42

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1 reports, subsequent activities, and MNR approval. 15:54:46
2 Is that correct? All in one lumped line? 15:54:50
3 A. I believe so. I'm more 15:54:53
4 familiar with, like, kind of a more detailed 15:54:54
5 version of this schedule. 15:54:58
6 Q. You're more familiar with 15:54:59
7 a more detailed version of the schedule? 15:55:00
8 A. There -- yes. I recall 15:55:02
9 seeing a broken out or similar -- more similar to 15:55:04
10 what Windstream's experts had prepared. 15:55:07
11 Q. Has that been made an 15:55:11
12 appendix to your report or otherwise produced? 15:55:13
13 A. I'm not sure. 15:55:15
14 Q. You don't know? Okay. 15:55:16
15 Well, I can tell you that we haven't seen it, so 15:55:17
16 it hasn't been. 15:55:19
17 A. Oh, okay. So use this. 15:55:19
18 Q. So we're working with 15:55:21
19 what we have here, which is what you put in your 15:55:22
20 report. 15:55:24
21 A. Sure. 15:55:25
22 Q. So if I understand it, 15:55:25
23 we're at line -- what I've just described is at 15:55:28
24 line 9? 15:55:30
25 A. Mm-hmm. 15:55:31

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1 Q. So, really, you're 15:55:32
2 actually showing 657 days there. Is that right? 15:55:35
3 A. That's correct. 15:55:42
4 Q. So of those 657 days, 15:55:43
5 there's a year in there, 12 months, that are -- 15:55:47
6 that is consumed with 12 months of field studies 15:55:50
7 where no subsequent permitting related work is 15:55:54
8 happening. Is that right? 15:55:58
9 A. Sorry, can you repeat 15:55:59
10 that again? 15:56:01
11 Q. So of those 657 days in 15:56:01
12 your schedule, in this line item here, line 12 -- 15:56:07
13 pardon me, line -- 15:56:10
14 A. Line 9? 15:56:11
15 Q. -- 9, 12 months of that, 15:56:12
16 so 365 days, is field studies; right? 15:56:15
17 A. That's correct. 15:56:20
18 Q. And it doesn't -- you'll 15:56:20
19 correct me if I'm wrong, but it doesn't look like 15:56:22
20 anything else in the permitting rubric is 15:56:23
21 happening at the same time. Is that right? 15:56:28
22 A. As the 12-month -- 15:56:30
23 Q. As the field studies? 15:56:33
24 A. From this schedule, 15:56:34
25 that's how it appears, yes. 15:56:35

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1 before the appeal can be brought, you have to get 15:57:38
2 the REA. 15:57:41
3 So these are all -- the steps 15:57:43
4 have to happen sequentially, and so the -- the 15:57:45
5 field studies push you back. So let's look at the 15:57:48
6 field study component specifically, then. 15:57:50
7 A. Sure. 15:57:53
8 Q. Because I think that's 15:57:53
9 really, as we established, the only thing that we 15:57:54
10 disagree on, because the other time, as I 15:57:56
11 understand it, anyway -- you'll tell me if I'm 15:57:58
12 wrong -- that they're the same in this schedule. 15:58:00
13 A. Assuming that, as I 15:58:04
14 explained earlier, nothing else changes, layout -- 15:58:06
15 there's no other changes to the project. 15:58:10
16 Q. I am just comparing your 15:58:12
17 schedule and Windstream's schedule? 15:58:14
18 A. Sure. Based on the 15:58:15
19 schedule -- 15:58:16
20 Q. So they're the same 15:58:17
21 except for field studies? 15:58:17
22 A. Yes. I think the field 15:58:18
23 studies would be from a permitting perspective -- 15:58:19
24 Q. From a permitting 15:58:21
25 perspective, okay. And so just to -- so we know 15:58:22

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1 Q. And on this schedule, I 15:56:36
2 see that there is certain things happening on -- 15:56:37
3 above there with the Long Island various items 15:56:41
4 there. But, otherwise, that's really -- it looks 15:56:44
5 like you're allowing for a year -- 15:56:46
6 A. Mm-hmm. 15:56:48
7 Q. -- to go by where really 15:56:49
8 all you're doing is going out and studying things, 15:56:51
9 like birds and bats and fish. Is that right? 15:56:53
10 A. From this schedule, 15:56:59
11 that's how it appears, yes. 15:57:00
12 Q. Your schedule? 15:57:01
13 A. Mm-hmm. 15:57:02
14 Q. Right. Okay. And on the 15:57:03
15 path here, if we're talking about the path in 15:57:08
16 terms of one task leading to another task leading 15:57:10
17 to another task, et cetera, that's what is holding 15:57:13
18 up the following step, which looks like it's 15:57:16
19 consultations, on line 10, and then the REA 15:57:21
20 application, on line 11, and then the ERT appeal. 15:57:24
21 And I take it the REA would have been issued at 15:57:29
22 the -- I guess at the end of the REA application. 15:57:32
23 It's not shown separately, but is that right? 15:57:34
24 A. That's correct. 15:57:36
25 Q. Because it would be 15:57:37

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1 that you've allowed for 12 months, so 365 days. 15:58:24
2 Just to identify the discrepancy, if you look up 15:58:28
3 at Windstream's schedule, you will see line 27. 15:58:30
4 Just identify what these items are, because 15:58:35
5 Windstream's schedule is a lot more detailed, so 15:58:37
6 just to make sure we're comparing apples and 15:58:39
7 apples here. 15:58:43
8 A. Yes. 15:58:43
9 Q. On Windstream's schedule 15:58:43
10 you have -- line 27 is avian field surveys. Do 15:58:44
11 you see that? 15:58:48
12 A. I do. 15:58:48
13 Q. And that allows for eight 15:58:49
14 months of avian field surveys occurring from March 15:58:52
15 of 2011 to November 2011; right? 15:58:57
16 A. That's right. I would 15:59:02
17 just point out Mr. Roberts talked about spring and 15:59:04
18 fall survey windows. 15:59:09
19 Q. Right. So that's what is 15:59:11
20 being reflected here, the spring and the fall? 15:59:13
21 A. Yeah. And so what I was 15:59:14
22 going to say was that -- and if you look back at 15:59:16
23 the Genivar report, again WSP, same company, it 15:59:19
24 identified winter raptor surveys. Winter raptors 15:59:23
25 are hawks, owls. And that's typically something 15:59:27

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1 that is required under REA, and that happens in 15:59:30
2 usually January/February timeline. It's early -- 15:59:34
3 it's early winter. 15:59:40
4 Q. Okay. Well, we will get 15:59:42
5 to the Genivar proposal in a moment -- 15:59:43
6 A. Sure, sure. 15:59:45
7 Q. -- but I want to focus on 15:59:45
8 the Windstream schedule for now. So the avian 15:59:47
9 field surveys, that's the birds? 15:59:50
10 A. That's correct. 15:59:52
11 Q. Then we have a few lines 15:59:52
12 down, line 29, we have the bat field surveys which 15:59:54
13 is -- allows for about seven months; right? 15:59:58
14 A. That's correct. 16:00:01
15 Q. And then line 31, you've 16:00:02
16 got aquatic field surveys, which is fish and those 16:00:05
17 other aquatic species. It allows about 54 days; 16:00:10
18 right? 16:00:14
19 A. That's correct. 16:00:15
20 Q. And I know you have 16:00:15
21 something to say about that, so we'll get to that 16:00:16
22 later. I'm just really setting this out for the 16:00:18
23 record. 16:00:21
24 A. Yes. 16:00:21
25 Q. And line 35, you've got 16:00:21

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1 terrestrial fieldwork, which is about two months. 16:00:23
2 A. That's correct. 16:00:27
3 Q. Right? Okay. So by my 16:00:27
4 calculation, the earliest of these studies begins 16:00:31
5 in about February 2011, for the bat field surveys, 16:00:33
6 and the latest ends in November 2011, for the 16:00:39
7 avian field surveys; right? 16:00:42
8 A. That's correct. 16:00:44
9 Q. It's about eight and a 16:00:44
10 half months. So we have eight and a half months 16:00:46
11 on this schedule, 12 months on your schedule; 16:00:49
12 right? 16:00:52
13 A. Mm-hmm. 16:00:53
14 Q. Okay. Now -- and you 16:00:53
15 explained the need for 12 months for field studies 16:00:53
16 and the aquatic study at paragraph 280 of your 16:00:56
17 report; right? You want to pull it up? 16:00:59
18 A. That's correct. 16:01:08
19 Q. So you start in -- I 16:01:15
20 appreciate the discussion starts with fish, but I 16:01:19
21 would like to focus on birds first. So that's 16:01:20
22 actually paragraph 281. 16:01:23
23 And in fairness to you, 16:01:32
24 actually you don't mention birds specifically, but 16:01:36
25 if you go to the reference, which is to the 16:01:40

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1 Genivar proposal, so your reference, you say: 16:01:43
2 "URS' assumption of a 16:01:46
3 minimum field study 16:01:47
4 duration of 12 months is 16:01:49
5 further corroborated by 16:01:50
6 Genivar, now WSP." 16:01:51
7 A. Mm-hmm. 16:01:52
8 Q. So you're referring -- 16:01:53
9 your reference for that information is the Genivar 16:01:55
10 proposal; right? 16:01:57
11 A. That's correct. 16:01:59
12 Q. Okay. So let's go to 16:01:59
13 that, which we have seen already. But it's at Tab 16:02:01
14 8. It's Exhibit C-0865. 16:02:06
15 If you go to page 57, it 16:02:24
16 should be flagged for you. 16:02:29
17 A. Am I looking at the 16:02:35
18 schedule again? 16:02:36
19 Q. There are no page 16:02:37
20 numbers. There was a page number when I was 16:02:37
21 preparing this. 16:02:39
22 A. I'm looking at the Gantt 16:02:40
23 charts again? 16:02:42
24 Q. Yes. So if you see it, 16:02:42
25 the Gantt chart, at line 5, do you see line 5? 16:02:45

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1 A. Public Meeting No. 1? 16:02:54
2 Q. Pardon me. It's page 2 16:02:55
3 of the Gantt chart which talks about these field 16:02:56
4 studies, so line 5, avian field studies. 16:03:03
5 A. Yes. 16:03:07
6 Q. So it says 186 days; 16:03:07
7 right? 16:03:09
8 A. That's correct. 16:03:09
9 Q. So that's not -- 16:03:10
10 obviously that's not 12 months; right? 16:03:12
11 A. That is not 12 months, 16:03:15
12 no. 16:03:17
13 Q. So your reference in your 16:03:17
14 report for the 12 month field studies for birds is 16:03:19
15 based on this proposal which is not actually 16:03:22
16 provided for 12 months; right? 16:03:27
17 A. The text does describe 12 16:03:28
18 months. I agree -- 16:03:30
19 Q. Can you show me where in 16:03:31
20 the text it describes 12 months? I think I can 16:03:33
21 help you. 16:03:35
22 A. You're going to have to 16:03:35
23 give me a moment. 16:03:36
24 Q. Sure. But I can help you 16:03:37
25 because we can turn to the actual reference that 16:03:38

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1 you cite -- 16:03:40
2 A. Sure. 16:03:41
3 Q. -- which is page 6, I 16:03:42
4 think. 16:03:46
5 A. Yes, there is a reference 16:04:02
6 to two weeks over one year for field. 16:04:02
7 Q. So it's section -- you 16:04:06
8 cite the section as -- so this document is 16:04:06
9 confusing actually because the page numbers 16:04:09
10 restart by section. So if you go to Section 5.2, 16:04:11
11 at page 6 of that section, you will see there is 16:04:14
12 a -- I see where you likely got this reference 16:04:24
13 from. There's a No. 2 there. Do you see that? 16:04:29
14 A. Yes, that's correct. 16:04:33
15 Q. Field inventories, 12 16:04:34
16 weeks over a year. Do you see that? 16:04:36
17 A. I do. 16:04:40
18 Q. So is that the reference? 16:04:40
19 Is that where you got your information? 16:04:42
20 A. I believe that would have 16:04:44
21 been the reference, yes. 16:04:45
22 Q. So just to be very clear, 16:04:46
23 when you were putting together this Gantt chart to 16:04:47
24 put together the schedule for this proposal to 16:04:49
25 come to the conclusion that Windstream couldn't 16:04:53

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1 did mention I'm not a biologist. We do have 16:06:25
2 biologists on staff. 16:06:29
3 Q. Right. Right. But -- 16:06:30
4 A. I did ask the question -- 16:06:30
5 can I finish? 16:06:31
6 Q. Sorry. 16:06:32
7 A. I did ask the question, 16:06:33
8 when we were reviewing this team of a biologist 16:06:34
9 who used to be employed at an agency, a relevant 16:06:36
10 agency -- I can't recall if it's DFO or MNR -- 16:06:41
11 what he would expect. And he said a four-season 16:06:45
12 sampling protocol. 16:06:49
13 Q. Right. Okay. But that 16:06:51
14 biologist is not -- 16:06:52
15 A. He is not here. 16:06:53
16 Q. So you are here. 16:06:54
17 A. I am here. 16:06:55
18 Q. And so I am asking you, 16:06:55
19 who signed this report and who is the expert 16:06:56
20 witness in this proceeding -- 16:06:58
21 A. Yes. 16:06:59
22 Q. -- what -- if this is the 16:07:01
23 information that you relied upon. I guess you 16:07:03
24 also had a conversation with somebody else? 16:07:05
25 A. That's correct. 16:07:07

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1 build this project on time, this is the 16:04:55
2 information that you relied on to prepare that? 16:04:57
3 A. Let me just look for a 16:05:03
4 second. So there's a paragraph on page 5 which 16:05:05
5 talks about -- this is one, two, three, four, 16:05:57
6 five, six: 16:06:01
7 "This project is the 16:06:01
8 first of its kind in 16:06:03
9 Canada. The level of 16:06:04
10 study requirements 16:06:05
11 required by the 16:06:05
12 regulatory authorities 16:06:06
13 will likely be high. As 16:06:08
14 such, the scenario 16:06:09
15 presented involved one 16:06:10
16 year of field work to 16:06:12
17 complete a baseline that 16:06:13
18 will cover at least one 16:06:14
19 year of different 16:06:15
20 hydraulic biologic and 16:06:16
21 meteorologic. 16:06:21
22 Q. So there's also that 16:06:21
23 information, so that paragraph there and the one 16:06:21
24 on the next page; right? 16:06:23
25 A. Yeah. And I would add I 16:06:24

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1 Q. So if I were to put to 16:07:07
2 you, though, you were -- I think you were here 16:07:09
3 when Mr. Roberts was testifying about this very 16:07:11
4 topic this morning. 16:07:13
5 A. I was here. 16:07:14
6 Q. So -- and Mr. Roberts' 16:07:15
7 evidence is that, actually, the explanation for 16:07:18
8 this apparent discrepancy to lay people, like me, 16:07:21
9 between saying one year in the text of something 16:07:25
10 and then putting six months in a Gantt chart is 16:07:28
11 that, actually, for biologists, a year doesn't 16:07:31
12 mean 12 months; it means seasons. And I think 16:07:35
13 that's probably consistent with what you just 16:07:38
14 said? 16:07:41
15 A. I think he was -- and we 16:07:41
16 would have to go back to the transcript. I 16:07:42
17 thought he was referring to birds for that 16:07:44
18 particular discussion. 16:07:46
19 Q. Well, that's actually 16:07:47
20 what we're talking about. 16:07:48
21 A. I thought we were talking 16:07:49
22 about fish. 16:07:50
23 Q. No. We're actually 16:07:50
24 talking about birds. 16:07:52
25 A. Are we still talking 16:07:52

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1 about birds? 16:07:54
2 Q. Yes, we're talking about 16:07:54
3 birds, which is line 6 of the Gantt chart. 16:07:56
4 A. Okay. 16:07:58
5 Q. But do we need to start 16:08:00
6 over? 16:08:01
7 A. No, no. That's okay. 16:08:02
8 Q. So you did actually -- 16:08:04
9 this is actually fish, that paragraph there that 16:08:07
10 you took -- 16:08:11
11 A. Yes. You're right. 16:08:11
12 Q. -- that you were talking 16:08:12
13 about actually. But you're right there. But when 16:08:13
14 we were looking at the Gantt chart, it was birds. 16:08:16
15 So, actually, if we're talking 16:08:18
16 about birds and you put a year, what is -- can you 16:08:21
17 point me to the reference? Because you cite this 16:08:25
18 proposal. 16:08:28
19 A. Sure. 16:08:28
20 Q. So I would like you to 16:08:29
21 point us to the reference where you got your 16:08:30
22 information. 16:08:32
23 A. So I don't think there's 16:08:33
24 anything specific in this proposal that talks -- 16:08:35
25 Q. There is nothing in this 16:08:37

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1 project area.
2 "During early winter --"
3 Which I take to be the
4 following year.
5 "-- four automatic survey 16:09:08
6 stations will be set up 16:09:13
7 in order to verify the 16:09:14
8 presence of targeted key 16:09:15
9 specie of owls." 16:09:16
10 Q. Okay. And so I take it 16:09:18
11 that your conclusion is that you need to account 16:09:20
12 for the presence of winter raptors for the purpose 16:09:22
13 of putting together this schedule? 16:09:26
14 A. Yes. 16:09:28
15 Q. And your basis for is 16:09:29
16 that is this Genivar proposal given to Windstream 16:09:32
17 in 2010? 16:09:34
18 A. And my, you know, 16:09:35
19 knowledge of REA requirements and what is required 16:09:38
20 under the Natural Heritage Assessment. 16:09:42
21 Q. Your knowledge of this 16:09:45
22 particular project area? 16:09:46
23 A. I wouldn't say I'm overly 16:09:48
24 knowledgeable of this. 16:09:51
25 Q. Right. 16:09:53

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1 proposal? 16:08:38
2 A. -- however, if you look 16:08:38
3 at wintering birds -- and this is the point I made 16:08:39
4 earlier about winter raptors -- there is a 16:08:41
5 section: 16:08:44
6 "Wintering birds, song 16:08:44
7 birds, raptors, water 16:08:46
8 fowl are not usually 16:08:48
9 expected to be of major 16:08:48
10 concern in the case of 16:08:49
11 offshore projects. 16:08:51
12 However, both Wolfe 16:08:52
13 Island and Amherst 16:08:53
14 Islands had some of the 16:08:55
15 highest recorded 16:08:55
16 densities of over 16:08:56
17 wintering raptors. 16:08:58
18 Favourable habitats for 16:08:59
19 the various species will 16:09:02
20 be identified during the 16:09:02
21 first year of 16:09:03
22 spring-to-fall surveys 16:09:04
23 conducted on the study 16:09:06
24 area. Survey stations 16:09:07
25 will cover the whole

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1 A. But winter raptors are 16:09:53
2 required as part of the NHA. 16:09:55
3 Q. Okay. Did you -- you're 16:09:57
4 aware, sir -- let's back up. 16:09:58
5 I think you confirmed already 16:10:00
6 you're not a bird expert; right? 16:10:01
7 A. I am not a biologist. 16:10:02
8 Q. Okay. You're not a bird 16:10:04
9 biologist. Did you, in preparing this report that 16:10:05
10 you filed in this case -- 16:10:07
11 A. Hmm-hmm. 16:10:09
12 Q. -- which talks about 16:10:10
13 birds and field studies for birds, were you aware 16:10:11
14 that there had been an expert report submitted by 16:10:14
15 Windstream -- on behalf of Windstream, rather, by 16:10:17
16 a Dr. Paul Kerlinger? 16:10:19
17 A. I heard it this 16:10:20
18 afternoon. 16:10:23
19 Q. You heard it this 16:10:24
20 afternoon. So actually when you prepared your 16:10:25
21 expert report, you had not reviewed that expert 16:10:26
22 report from Dr. Kerlinger? 16:10:29
23 A. I don't recall. 16:10:31
24 Q. And, in fact, you heard 16:10:32
25 about it today, so you have never reviewed that 16:10:34

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1 expert report? 16:10:36
2 A. I don't recall if I 16:10:37
3 reviewed it. 16:10:38
4 Q. You don't recall if you 16:10:39
5 reviewed it? Perhaps my colleagues can assist me 16:10:40
6 in pulling up Dr. Kerlinger's report for the 16:10:43
7 witness and the Tribunal. I don't have copies. 16:10:45
8 They should be in the first book of expert reports 16:10:50
9 filed by the Claimant. The reference would be CER 16:10:54
10 - Kerlinger. 16:11:01
11 So we're going to be at 16:11:21
12 paragraph 28 on page 11 of that report. 16:11:23
13 You see paragraph 28, Mr. 16:11:37
14 Rose? 16:11:43
15 A. Oh, page 11. Sorry. I 16:11:44
16 was on page 28. Yes, I see it. 16:11:46
17 Q. It's called -- there's a 16:11:55
18 called "Diurnal and Nocturnal Raptors." Do you 16:11:56
19 see that? 16:12:01
20 A. I do. 16:12:01
21 Q. Same kind of raptors you 16:12:01
22 were just talking about? 16:12:04
23 A. That's correct. 16:12:06
24 Q. Okay. If you go to the 16:12:06
25 bottom, the punch line, if you will, without 16:12:08

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1 the MNR is going to tell you, we want to see the 16:13:01
2 proof that -- show me you've done the studies and 16:13:04
3 confirm with me that they're not there. 16:13:08
4 Q. Okay. Why don't we move 16:13:10
5 on to fish, which is right above in your 16:13:14
6 discussion here, what you call "Environmental 16:13:20
7 Studies Program Risk," which really drives this 12 16:13:23
8 months that you put in the schedule, which is 16:13:25
9 different than Windstream's. 16:13:30
10 So I'm at, yes, paragraph 280. 16:13:57
11 So you say: 16:14:01
12 "A minimum of four 16:14:01
13 seasons of fieldwork 16:14:03
14 extending over 12-months 16:14:04
15 period would be expected 16:14:06
16 by the Department of 16:14:07
17 Fisheries and Oceans for 16:14:08
18 projects that require 16:14:09
19 offshore infills of fish 16:14:10
20 habitat." 16:14:12
21 And you further state that: 16:14:12
22 "The timeline proposed by 16:14:14
23 Windstream is inadequate 16:14:16
24 to provide sufficient 16:14:17
25 information for the DFO's 16:14:18

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1 getting into the details, unless you need to, with 16:12:10
2 the exception of some species, mostly during the 16:12:14
3 migration season, virtually no raptors will be 16:12:17
4 presents within the WIS turbine area. Do you see 16:12:20
5 that? 16:12:22
6 A. I do see that. 16:12:22
7 Q. And I take it, since you 16:12:24
8 are not a bird expert, you have no reason to 16:12:25
9 disagree with that? 16:12:26
10 A. I have no reason to 16:12:27
11 disagree with that. I guess what I would add is 16:12:29
12 that that's likely not going to satisfy MNR that 16:12:32
13 you don't have to do studies. 16:12:35
14 Q. Okay. 16:12:35
15 A. And MNR -- the agencies 16:12:36
16 are the ones who are going to determine whether 16:12:39
17 you need to do studies and what those studies look 16:12:41
18 like. 16:12:43
19 And I've been on calls with 16:12:44
20 MNR, with our experts, some of whom have 30 years 16:12:46
21 of biology experience, and, like lawyers, they 16:12:49
22 don't always agree. 16:12:53
23 Q. Right. 16:12:54
24 A. So sometimes you have an 16:12:55
25 expert saying, "We don't need to do studies," and 16:12:58

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1 habitat alteration 16:14:21
2 assessment tool." 16:14:23
3 And your reference for that 16:14:24
4 information, sir, is a document from the 16:14:26
5 Department of Fisheries and Oceans website, which 16:14:29
6 is Exhibit R-0359, I believe. It's Footnote 128 16:14:31
7 in your report. Is that correct? 16:14:40
8 A. That is correct. 16:14:43
9 Q. Okay. And I have 16:14:43
10 included that document at Tab 10 of your binder, 16:14:44
11 and I reviewed it, and I was just wondering if you 16:14:54
12 could help point us to the section of that 16:14:56
13 document that provides the information you lay out 16:14:58
14 in your report. It's a pretty short document. I 16:15:01
15 think I can help you. I have reviewed it. It's 16:15:37
16 not there. 16:15:39
17 A. I would agree with that 16:15:40
18 statement. 16:15:41
19 Q. Now, if you turn the next 16:15:42
20 tab, you've got an excerpt, the next tab in your 16:15:43
21 binder. You have an expert from the expert report 16:15:47
22 of JoAnne Lane or the expert opinion of Joanne 16:15:53
23 Lane, submitted on behalf of Windstream in this 16:15:56
24 proceeding as part of the Baird report. 16:15:59
25 And I don't believe you 16:16:01

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1 disagreed with me that you are not a fish expert, 16:16:02
2 and Ms. Lane is a fish expert. 16:16:05
3 A. I know Ms. Lane. She is 16:16:07
4 a fish expert. 16:16:09
5 Q. Right. Okay. And Ms. 16:16:10
6 Lane concludes, as you'll see -- and perhaps it's 16:16:11
7 useful, given that we have conflicting information 16:16:15
8 here, to go through what Ms. Lane has to say. 16:16:18
9 She's got -- if you turn to page 90 of her report, 16:16:22
10 she states: 16:16:30
11 "Habitat assessment would 16:16:31
12 form the focus of the 16:16:32
13 fieldwork, but would also 16:16:33
14 include limited fish 16:16:34
15 sampling in near-shore 16:16:36
16 areas where cables emerge 16:16:38
17 and near Pigeon Island at
18 the proposed location of
19 extension for substation.
20 Underwater cameras would
21 be mobilized to film
22 habitat at depths and
23 locations corresponding
24 to proposed locations of
25 turbines -- June to July

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1 A. That's correct. I would 16:17:46
2 note that neither of these projects are REAs. And 16:17:46
3 as I just mentioned, the REA, being a prescriptive 16:17:50
4 and streamlined process, it's the agencies that 16:17:54
5 are going to tell you what the field requirements 16:17:57
6 are. 16:17:59
7 Q. So your evidence is that 16:17:59
8 the REA, being a prescriptive and streamlined 16:18:01
9 process, would have taken longer than the DFO 16:18:03
10 process? 16:18:06
11 A. I think some of the fish 16:18:06
12 requirements would have been part of the REA 16:18:08
13 process. 16:18:09
14 Q. I understand that. 16:18:10
15 That's perhaps the case, but I want to know 16:18:11
16 whether your evidence is that the REA, being 16:18:12
17 prescriptive and streamline, whether that would 16:18:14
18 have led to the permitting process under the REA 16:18:17
19 with respect to fish being longer than the DFO's 16:18:20
20 process? 16:18:24
21 A. It's unknown without 16:18:24
22 talking to the agencies, and as far as I know, 16:18:25
23 nobody -- I mean, this -- this talks about March 16:18:28
24 to May to commence discussion with agencies. I 16:18:30
25 don't think we have the answer to that. I don't 16:18:33

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1 2011 (2 months)."
2 And then she allows six months 16:16:53
3 for analysis reporting, discussions with the 16:16:56
4 agencies, and preparation and submission of 16:16:57
5 applications for authorizations and permits; 16:16:58
6 right? 16:17:02
7 A. That is correct. 16:17:02
8 Q. Okay. And then on page 16:17:03
9 91, she gives examples of projects that she was 16:17:04
10 personally involved with where the timing was 16:17:07
11 consistent with the timing in the project schedule 16:17:11
12 that she contributed to for this proceeding; 16:17:13
13 right? 16:17:17
14 A. That is correct. 16:17:18
15 Q. She mentioned 16:17:20
16 specifically, for example, the western beaches, 16:17:21
17 water course facility, fieldwork analysis, and 16:17:23
18 consultation had been done within six months. And 16:17:26
19 the new nuclear -- the new nuclear project at 16:17:29
20 Darlington, which I take it you also worked on in 16:17:33
21 a different capacity -- 16:17:36
22 A. Mm-hmm. 16:17:38
23 Q. -- on Lake Ontario which 16:17:38
24 involved 40 hectares of landfill into Lake 16:17:40
25 Ontario; right? 16:17:44

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1 know the answer. I don't think Joanne Lane knows 16:18:36
2 the answer. 16:18:38
3 Q. Well, Joanne Lane has 16:18:38
4 provided her opinion -- 16:18:40
5 A. That's correct. 16:18:40
6 Q. -- and we don't disagree 16:18:41
7 she is the fish expert. 16:18:43
8 A. That's correct. And that 16:18:44
9 she would need to talk to the agencies to confirm 16:18:45
10 what the requirements are. 16:18:47
11 Q. I don't think there's a 16:18:48
12 dispute that -- 16:18:49
13 A. Okay. 16:18:50
14 Q. -- cooperation amongst 16:18:51
15 agencies is. And we have been talking about 16:18:52
16 pragmatism and cooperation quite a lot the last 16:18:54
17 few days. 16:18:56
18 If you -- actually before we 16:18:57
19 move, there's more about fish, but I'd like to 16:19:00
20 just conclude this segment about field studies, 16:19:02
21 because we skipped over bats and terrestrial. 16:19:05
22 A. Sure. 16:19:08
23 Q. So if we go to bats, the 16:19:09
24 Windstream schedule for bats allows seven months 16:19:20
25 for bat field surveys. And I'm just trying to 16:19:24

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1 find the reference here because I know you have 16:19:26
2 one in your report. Oh, yes. So it's paragraph 16:19:28
3 282 of your report. 16:19:38
4 So here, again, you're relying 16:19:39
5 on Genivar and you say: 16:19:42
6 "Genivar further suggests 16:19:45
7 the need for a 12-month 16:19:46
8 survey period for bats 16:19:48
9 compared to approximately 16:19:50
10 seven months as now 16:19:51
11 suggested by Windstream." 16:19:52
12 And the Footnote 130 is to the 16:19:53
13 Genivar proposal, Section 5.1.2, on page 3. So 16:19:57
14 let's turn that up, please. 16:20:02
15 A. Sure. Sorry, which tab 16:20:04
16 is it again? Is it eight? 16:20:16
17 Q. Tab 8. 16:20:18
18 A. 5.1.2 on page? 16:20:19
19 Q. Three. 16:20:22
20 A. Oh, the numbering starts 16:20:25
21 again. 16:20:27
22 Q. Yes. It's very 16:20:27
23 confusing. Andrew, you should tell your 16:20:28
24 predecessor firm that they have confusing 16:20:30
25 documents. 16:20:33

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1 A. Well, I think -- yeah, I 16:21:19
2 think the bats is reasonable at seven months. 16:21:19
3 Q. The bats is reasonable at 16:21:21
4 seven months. 16:21:23
5 A. Again, not being a 16:21:28
6 biologist, I'm not a bat expert. 16:21:29
7 Q. You're not a bat expert. 16:21:31
8 But in case we ever have the need for a bat 16:21:31
9 expert -- 16:21:34
10 A. Don't call me. 16:21:34
11 Q. -- we also have a report 16:21:35
12 from Dr. Reynolds in the record if it's useful for 16:21:37
13 you to review it. 16:21:39
14 So -- and just to close the 16:21:41
15 loop on bats, just for the record, the Genivar 16:21:44
16 proposal on which you relied to put 12 months into 16:21:49
17 your schedule, if you turn up the Gantt chart that 16:21:52
18 is at the end, page 2. 16:21:56
19 And just before we go to this, 16:22:03
20 I mean, you -- I just want to confirm you actually 16:22:04
21 relied entirely on this proposal in putting 16:22:06
22 together this schedule with respect to bats; 16:22:09
23 right? You didn't have any other sources? 16:22:11
24 A. No, I didn't have any. 16:22:14
25 Q. You didn't have any other 16:22:15

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1 So on page 3 -- and perhaps 16:20:34
2 you can point us to the information you were 16:20:37
3 relying on when you prepared this report. 16:20:39
4 A. We were looking at, one, 16:20:44
5 two, three, four, the fifth -- fifth paragraph 16:20:46
6 down on page 3: 16:20:50
7 "Pre-construction 16:20:50
8 acoustic bat surveys will 16:20:53
9 be performed during a 16:20:54
10 one-year survey." 16:20:55
11 Q. Okay. So that's the -- 16:20:55
12 A. So I think what we were 16:20:58
13 just trying to point out is there is an 16:20:59
14 inconsistency between what Genivar had proposed 16:21:01
15 originally and what they were now saying, and I 16:21:04
16 don't disagree with seven months. 16:21:06
17 Q. You don't disagree with 16:21:08
18 seven months? 16:21:09
19 A. So if that saves some 16:21:09
20 time. 16:21:11
21 Q. Yes, it does. 16:21:12
22 A. Okay. 16:21:13
23 Q. Okay. Great. So you're 16:21:13
24 -- so you're changing your schedule so that the 16:21:15
25 bats, at least, can be seven months? 16:21:17

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1 sources. So really, I mean, could we -- you say 16:22:16
2 seven months is reasonable, but would the amount 16:22:19
3 of time that's in this Gantt chart be reasonable 16:22:21
4 then, if that's what you relied on? Maybe you can 16:22:23
5 -- it's line 7, bat field surveys. 16:22:29
6 A. Sorry, which tab is it? 16:22:34
7 Q. So it's Tab 8. 16:22:36
8 A. Tab 8. 16:22:39
9 Q. And you will see the 16:22:39
10 longer sheets with the red flag at the top. That 16:22:40
11 is the Gantt chart. Are you there? 16:22:43
12 A. Seven, you mean? 16:22:56
13 Q. Yes, line 7. Bat field 16:22:57
14 surveys. Is that the bat field studies that we 16:22:59
15 have been talking about? 16:23:01
16 A. That's correct. 16:23:02
17 Q. Okay. So how much time 16:23:03
18 do they actually allow? 16:23:04
19 A. It's 120 days. 16:23:05
20 Q. So four months? 16:23:07
21 A. Yeah. 16:23:09
22 Q. And you relied on this 16:23:10
23 proposal to put in 12 months in your report. 16:23:11
24 A. Well -- 16:23:15
25 Q. But now you have agreed 16:23:15

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1 that seven months is reasonable, because that's 16:23:17
2 what is in Windstream's schedule; right? 16:23:19
3 A. Mm-hmm. 16:23:22
4 Q. Okay. Just to close the 16:23:22
5 loop, terrestrial -- remind me how much time you 16:23:25
6 had allowed for terrestrial field studies in 16:23:28
7 your -- 16:23:32
8 A. I don't recall, not with 16:23:32
9 the level of detail shown in this. 16:23:33
10 Q. Did you -- did you 16:23:35
11 consider terrestrial field studies? 16:23:36
12 A. Yes, we did. 16:23:37
13 Q. Okay. So but you don't 16:23:38
14 know what you relied on? 16:23:40
15 A. Not... 16:23:42
16 Q. Did you maybe rely on the 16:23:43
17 Genivar proposal? 16:23:45
18 A. I don't recall. 16:23:46
19 Q. Okay. So just so we have 16:23:47
20 it for the record, the Genivar proposal, if you go 16:23:49
21 to line 13, it refers to terrestrial fieldwork. 16:23:52
22 Is that terrestrial studies? Is that the same 16:23:59
23 thing? 16:24:02
24 A. I would assume so, yes. 16:24:04
25 Q. Okay. That's 40 days? 16:24:05

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1 A. Yes. 16:24:07
2 Q. Okay. So if you had, in 16:24:07
3 fact, relied on this, you would have put 40 days 16:24:10
4 in your schedule? 16:24:12
5 A. Yes. 16:24:13
6 Q. Okay. Let's move on to 16:24:13
7 the other discussion that you have about fish 16:24:23
8 that's immediately following this discussion of 16:24:25
9 the field studies. Now you move on, and you talk 16:24:29
10 about timing restrictions, which is actually -- 16:24:33
11 could impact construction. So it's quite an 16:24:39
12 important topic, right, in the schedule? 16:24:42
13 A. I would agree. 16:24:45
14 Q. Okay. So you mention at 16:24:46
15 paragraph 286 that this issue is, in fact, so 16:24:50
16 important in your opinion that it bears mentioning 16:24:56
17 twice because the consequences of this risk 16:25:01
18 materializing are so significant as to warrant 16:25:04
19 some repetition; right? 16:25:06
20 A. Yes. 16:25:08
21 Q. Okay. And then you state 16:25:11
22 that: 16:25:13
23 "Should the aquatic field 16:25:13
24 survey identify 16:25:15
25 environmental issues, the 16:25:16

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1 authorities, DFO and 16:25:18
2 MNRF --" 16:25:20
3 Which I take it to mean are 16:25:20
4 department of Fisheries and Oceans, the federal 16:25:22
5 government, and Ministry of Natural Resources and 16:25:24
6 Forestry, the provincial government? 16:25:26
7 A. That's correct. 16:25:27
8 Q. "-- may limit 16:25:28
9 construction activities 16:25:28
10 during critical life 16:25:29
11 processes of fish 16:25:31
12 species, including fish 16:25:32
13 spawning but also time 16:25:34
14 periods for migration and 16:25:35
15 young of year 16:25:36
16 development." 16:25:37
17 And you mention timing 16:25:38
18 windows; right? 16:25:39
19 A. Mm-hmm. 16:25:40
20 Q. Now, I don't see a 16:25:40
21 reference to a document in this section of your 16:25:43
22 report. Did I miss it? 16:25:46
23 A. Well, there is a 16:25:49
24 reference to our first report, but there is no 16:25:52
25 other reference. 16:25:54

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1 Q. Okay. But you weren't 16:25:55
2 involved in the first report; right? 16:25:57
3 A. That's correct. 16:25:59
4 Q. Okay. But you prepared 16:26:00
5 this report, this part of this report? 16:26:01
6 A. I was involved in 16:26:03
7 preparing this report. That's correct. 16:26:04
8 Q. Okay. I just want to 16:26:06
9 know who -- so you're here answering questions 16:26:07
10 about it, so are you the person who's responsible 16:26:09
11 for the accuracy of the information in this 16:26:11
12 section? 16:26:13
13 A. Yes. 16:26:14
14 Q. Okay. So I want to know, 16:26:15
15 then, from you, sitting here, what information you 16:26:17
16 relied on in preparing this section of your 16:26:20
17 report? 16:26:22
18 A. Those are general timing 16:26:23
19 windows proposed by MNR. 16:26:24
20 Q. They're general timing 16:26:27
21 windows proposed by MNR? 16:26:28
22 A. Mm-hmm. 16:26:29
23 Q. Okay. And you say that 16:26:30
24 -- further on, I think, you say -- the conclusion, 16:26:35
25 I guess, of this portion of your report is: 16:26:42

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1 "Until site studies have 16:26:44
2 been conducted, it is 16:26:45
3 difficult to assess the 16:26:47
4 risks to the project. 16:26:48
5 However, should this risk 16:26:49
6 materialize, the impact 16:26:50
7 on schedule would be very 16:26:52
8 high." 16:26:53
9 Right? 16:26:54
10 And I have to tell you, sir, 16:26:55
11 that I'm perplexed by that comment, because I take 16:26:56
12 it that you're not saying the risk is high. 16:26:59
13 You're saying -- you're just saying you have no 16:27:03
14 idea if the risk will materialize. But if it 16:27:05
15 didn't materialize, the impact would be high. Is 16:27:08
16 that what you're saying? 16:27:10
17 A. I think what we're saying 16:27:10
18 is, if the agencies applied those timing windows, 16:27:11
19 the risk would be high. 16:27:14
20 Q. If the agencies -- but 16:27:16
21 you don't know if they're going to apply them, so 16:27:17
22 you don't know -- 16:27:19
23 A. It's unknown until you've 16:27:20
24 done the site studies and until you've negotiated 16:27:21
25 with the agencies. 16:27:24

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1 A. Sure. Sure. 16:28:11
2 Q. So you -- I just want to 16:28:12
3 understand. You relied on Joanne Lane's report to 16:28:13
4 come to your conclusion, and yet she is the 16:28:15
5 expert, and you're not. But you come to a 16:28:18
6 different conclusion than her, having relied on 16:28:20
7 nothing other than her report, and certainly not 16:28:23
8 any additional expertise from you. 16:28:26
9 I'm just very -- I don't 16:28:28
10 understand, sir. Can you... 16:28:30
11 A. Like I said, I'm relying 16:28:32
12 on the fact that site studies haven't been done; 16:28:34
13 that JoAnne Lane is hypothesizing about what is 16:28:37
14 likely there without doing the field studies -- 16:28:41
15 Q. Okay. 16:28:41
16 A. -- and what the outcome 16:28:43
17 of discussions with two ministries might be in the 16:28:46
18 future based on those field studies. 16:28:51
19 Q. So -- but I take it you 16:28:52
20 don't disagree, sir, that Ms. Lane has substantial 16:28:54
21 knowledge and expertise in connection with the 16:28:58
22 fish species that are present in Lake Ontario? 16:29:01
23 A. She is a knowledgeable 16:29:05
24 fisheries biologist. 16:29:07
25 Q. Right. 16:29:07

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1 Q. So in preparing this 16:27:25
2 report, though, you didn't really know which it 16:27:26
3 would be? 16:27:29
4 A. Like I said, without -- 16:27:31
5 this would be something you would consider knowing 16:27:33
6 it's a possibility. 16:27:35
7 Q. Okay. 16:27:36
8 A. So, I mean, you could 16:27:37
9 look at it the other way and say, "I could pretend 16:27:38
10 there's no timing windows," and then find yourself 16:27:40
11 in deep trouble when you actually try to build it. 16:27:43
12 Q. Okay. Did you look, in 16:27:45
13 preparing this portion of your report, at any of 16:27:48
14 the available information regarding what fish 16:27:50
15 species are likely to be present in the project 16:27:55
16 area? 16:27:57
17 A. I looked at the 16:27:58
18 information that was provided by Baird and Joanne 16:27:59
19 Lane. 16:28:03
20 Q. You looked at the 16:28:03
21 information that was provided by Baird and Joanne 16:28:05
22 Lane? 16:28:07
23 A. Mm-hmm. 16:28:08
24 Q. Okay. But -- well, let's 16:28:08
25 go to Joanne Lane's report, then? 16:28:09

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1 A. However, she hasn't done 16:29:09
2 any studies in that -- as far as I'm aware, she 16:29:11
3 has not completed any fieldwork. 16:29:13
4 Q. No. And there's no, 16:29:14
5 there's no dispute there -- 16:29:17
6 A. Okay. 16:29:18
7 Q. -- that Windstream was 16:29:18
8 not permitted to conduct fieldwork, so none of the 16:29:19
9 expert reports contain, as far as I'm aware, 16:29:22
10 fieldwork. 16:29:24
11 But the task at hand was to -- 16:29:25
12 the task that we're all faced with in this portion 16:29:28
13 of this case, sir, is to ascertain likelihoods, 16:29:31
14 because that's the -- that's the exercise. 16:29:36
15 And so the question that was 16:29:38
16 posed to Ms. Lane was whether there were any 16:29:40
17 material impediments, and we have heard a lot 16:29:42
18 today about the likelihood test and so on, 16:29:45
19 whether -- so far that's been same. 16:29:50
20 And so, as I understand 16:29:53
21 Ms. Lane's report, what she did was she undertook 16:29:55
22 an analysis based on available information and her 16:29:58
23 own knowledge and expertise about the fish species 16:30:01
24 that were likely to be presents in the area, based 16:30:05
25 on knowledge that she has, and there are a lot of 16:30:08

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1 references in her report. 16:30:11
2 And so I take it, sir, that 16:30:12
3 you don't have any -- and I think you have 16:30:14
4 confirmed this -- you don't have any better 16:30:16
5 information that would conflict with the 16:30:18
6 information on which Ms. Lane relied? 16:30:21
7 A. I do not. 16:30:24
8 Q. Okay. And I don't think 16:30:25
9 I need to do this for the record, but, of course, 16:30:36
10 Ms. Lane's report actually directly responds to 16:30:38
11 the first URS report on these timing window 16:30:42
12 issues, and I think the record is there about that 16:30:45
13 issue. 16:30:50
14 The next topic I had in my 16:30:51
15 list is shipping lanes, but I think you mentioned 16:30:55
16 we should be speaking to Mr. Clarke about that. 16:30:57
17 A. Mr. Clarke would be, yes, 16:30:59
18 the right person. 16:31:02
19 Q. Paragraph 279 of your 16:31:03
20 report, if you could pull that up. So you -- 16:31:09
21 there is a paragraph there. I guess I just would 16:31:24
22 appreciate -- I guess I'm just also confused about 16:31:28
23 this paragraph. 16:31:32
24 You talk about -- I think it's 16:31:32
25 about intake protection zones. And I guess it's 16:31:36

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1 Can you please tell us who we 16:32:27
2 should be asking questions about this? 16:32:28
3 A. I think it would be 16:32:29
4 Gareth. 16:32:31
5 Q. Gareth? Okay. We will 16:32:31
6 ask him. 16:32:37
7 Paragraph 270, then, of your 16:32:38
8 report, are you the right person to be asking 16:32:45
9 questions about that paragraph? 16:32:48
10 A. Yes. 16:32:49
11 Q. First of a kind 16:32:50
12 permitting risks, so I guess the thrust of this 16:32:55
13 section -- and we heard this concept actually from 16:33:01
14 the side of Canada's experts quite a lot in this 16:33:01
15 proceeding of the -- the idea that something is 16:33:04
16 first of a kind and whether that makes -- whether 16:33:07
17 that's significant. 16:33:10
18 And so I guess what I would 16:33:12
19 like to ask you is: You're not suggesting, I take 16:33:13
20 it, that there's no experience with building 16:33:19
21 structures in Lake Ontario; right? 16:33:23
22 A. No, I'm not suggesting 16:33:25
23 that. 16:33:26
24 Q. Or permitting them? 16:33:26
25 A. No. 16:33:28

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1 about drinking water ultimately. 16:31:40
2 A. I'm sorry. Where are 16:31:41
3 you? 16:31:43
4 Q. At paragraph 279. There 16:31:43
5 is a paragraph, and then there's -- on the next 16:31:46
6 page, there's A to E. 16:31:48
7 A. Mm-hmm. 16:31:50
8 Q. So and the thrust of the 16:31:51
9 discussion in these paragraphs is drinking water, 16:31:53
10 I guess, and sediment. 16:31:55
11 A. Yes. I -- I did not 16:31:58
12 prepare Section 279. 16:32:01
13 Q. Who prepared Section 279? 16:32:04
14 A. I think that would have 16:32:06
15 been Gareth or Franz. 16:32:07
16 Q. I thought Mr. Barillaro 16:32:11
17 was a financing expert. Is he also a drinking 16:32:12
18 water expert? 16:32:19
19 [Laughter.] 16:32:19
20 THE WITNESS: As far as I am 16:32:21
21 aware, he is not a drinking water expert. 16:32:22
22 BY MR. SEERS: 16:32:23
23 Q. It's an unusual 16:32:23
24 combination of expertise, but perhaps not 16:32:25
25 unprecedented. 16:32:26

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1 Q. And you're not suggesting 16:33:28
2 that Ontario's no experience with wind turbines 16:33:29
3 obviously because of your personal experience? 16:33:32
4 A. That's correct. 16:33:34
5 Q. And you're not suggesting 16:33:34
6 that permitting gravity-based foundations in Lake 16:33:36
7 Ontario is not done or is novel? 16:33:40
8 A. I'm not aware. I can't 16:33:43
9 speak to that. 16:33:46
10 Q. You are not aware of 16:33:47
11 that, so you can't speak to that at all? 16:33:48
12 A. No, I can't speak to 16:33:48
13 whether gravity-based foundations have been used 16:33:49
14 in Lake Ontario. 16:33:51
15 Q. You don't know? 16:33:52
16 A. I don't know. 16:33:52
17 Q. Okay. Who at URS knows 16:33:53
18 that? 16:33:55
19 A. I don't know if that's a 16:33:55
20 Gareth question. 16:33:59
21 Q. So -- and you're also -- 16:34:01
22 you're not saying that Ontario doesn't have 16:34:13
23 experience laying underwater cable or permitting 16:34:14
24 underwater cable? 16:34:17
25 A. No, I'm not saying that. 16:34:19

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1 Q. And are you aware that 16:34:21
2 the Wolfe Island project that's immediately 16:34:23
3 adjacent to this proposed project has an 16:34:25
4 underwater cable? 16:34:28
5 A. I am aware. 16:34:28
6 Q. You're aware of that? 16:34:29
7 Okay. So I guess -- I mean, I'm sure you'll 16:34:30
8 disagree with me, but I think you'll -- you won't 16:34:34
9 be surprised that this -- the proposition I am 16:34:37
10 going to put to you is that there is nothing 16:34:39
11 really first of a kind about this. It's just that 16:34:41
12 you're merging a lot of these various components 16:34:44
13 together. 16:34:47
14 A. You're merging these 16:34:48
15 various components together in an approvals 16:34:49
16 process that has not been used for offshore wind. 16:34:53
17 Q. Right. 16:34:55
18 A. And I think that was the 16:34:56
19 difficulty. 16:34:57
20 Q. You don't disagree with 16:34:58
21 me, though, that the relevant regulators were 16:34:59
22 working together with proponents at the time 16:35:04
23 pragmatically to get projects built? 16:35:06
24 A. From what I heard from 16:35:08
25 Ms. Dumais, they were starting down that process, 16:35:10

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1 A. It's hard to pretend I 16:36:10
2 didn't know what was happening, but -- 16:36:12
3 Q. I appreciate that's the 16:36:14
4 difficulty of the exercise. 16:36:15
5 A. I was -- yeah. I was 16:36:16
6 putting myself in the mindset of what was the 16:36:16
7 regulatory framework at that time. What guidance 16:36:19
8 material was available at that time? 16:36:22
9 Q. Right. 16:36:23
10 A. What amendments to the 16:36:24
11 REA process? 16:36:25
12 Q. So you only referred, or 16:36:25
13 you tried, anyway, to only refer to -- okay. And 16:36:26
14 you appreciate that there's a difference there -- 16:36:29
15 and I think you criticized, in fact, Windstream's 16:36:31
16 experts for having used hindsight because they 16:36:34
17 took a bit of a different approach using the 16:36:36
18 benefit of hindsight in creating schedules, 16:36:38
19 knowing what we know now. 16:36:41
20 A. I don't recall saying 16:36:44
21 that. 16:36:45
22 Q. You don't recall -- 16:36:45
23 A. I think they -- they -- 16:36:47
24 they used a -- I think they called it a planning 16:36:49
25 schedule, which is something that would have been 16:36:53

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1 from a provincial perspective. I don't know about 16:35:12
2 the -- the federal regulators. 16:35:17
3 Q. You don't have any 16:35:20
4 expertise with the federal regulators; right? 16:35:21
5 A. I wouldn't say I don't 16:35:23
6 have expertise. I'm not aware if they were 16:35:25
7 engaged in discussions. 16:35:26
8 Q. Well, exactly. You're 16:35:28
9 not aware, so you can't give -- well, I would 16:35:29
10 suggest that you can't give evidence about it if 16:35:30
11 you're not aware? 16:35:31
12 A. No, I'm not aware if they 16:35:32
13 were involved in discussions on offshore wind in 16:35:33
14 Ontario. 16:35:37
15 Q. Okay. I just have one 16:35:37
16 more question for you, then. In the -- I think 16:35:38
17 you said that the schedule that you put together 16:35:41
18 was based on no hindsight. So you are putting 16:35:45
19 yourself back in 2011? 16:35:48
20 A. As best possible in 2015. 16:35:51
21 Q. As best possible. So I 16:35:53
22 take it, when we're asking questions of URS, then, 16:35:54
23 in connection with your reports, that we should 16:35:58
24 assume that none of the post-2011 information was 16:36:01
25 known. Is that what we should assume? 16:36:07

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1 developed at the beginning of the project. 16:36:55
2 Q. What is the -- can you 16:36:58
3 help us understand what you mean "planning 16:37:00
4 schedule." Are you saying this is a planning 16:37:01
5 schedule? 16:37:03
6 A. I'm referring to what 16:37:03
7 Mr. Roberts -- that was the language Mr. Roberts 16:37:04
8 used. 16:37:09
9 Q. Okay. Well, I just want 16:37:09
10 to clarify. I suppose we have clarified for the 16:37:10
11 record, that when we're asking questions of URS, 16:37:13
12 we're talking about 2000 -- we're frozen in time 16:37:15
13 with the knowledge we had on February 11, 2011. 16:37:19
14 When we're asking questions of everyone on the 16:37:22
15 Windstream experts side, we're using current 16:37:25
16 information; right? 16:37:27
17 A. Well, like I said, you 16:37:29
18 know, we were trying to think back to what the 16:37:32
19 regulatory framework was. 16:37:35
20 Q. I appreciate what -- and 16:37:35
21 that's what you said. 16:37:37
22 MR. SPELLISCY: I'm sorry. 16:37:37
23 The reporter is doing an admirable job here in 16:37:37
24 keeping it, but I am sure she's struggling because 16:37:41
25 there's a lot of interruption and talking over 16:37:43

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1 going. So she is doing a great job. I can see in 16:37:45
2 the transcript. But I think it would be better if 16:37:47
3 question and answer, and that would be my 16:37:51
4 objection. 16:37:52
5 PRESIDENT: That's correct. 16:37:53
6 So it's -- it's been a long day, but let's 16:37:53
7 question and then answer and vice versa. 16:37:56
8 MS. SEERS: Okay. 16:38:00
9 BY MS. SEERS: 16:38:00
10 Q. Certainly. I apologize 16:38:01
11 if I interrupted you, sir. 16:38:02
12 A. No offence taken. 16:38:04
13 Q. Were you finished your 16:38:05
14 answer? 16:38:07
15 A. I don't remember where I 16:38:07
16 was. 16:38:08
17 Q. Okay. But I think we 16:38:08
18 were talking about -- we were simply confirming 16:38:10
19 that, when we are engaging in this exercise of 16:38:12
20 comparing these various expert reports, the ones 16:38:17
21 that are from URS -- the two that are from URS, 16:38:20
22 utilized no hindsight, whereas can you confirm -- 16:38:27
23 A. I wouldn't say they 16:38:31
24 utilized no hindsight. And maybe I misunderstood 16:38:32
25 your previous question. 16:38:35

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1 Ms. Seers, she referred you to 16:51:54
2 a request for proposals that Windstream had put 16:52:00
3 out in October 2010 and a series of responses -- 16:52:04
4 proposals that were received. Do you recall that? 16:52:08
5 A. Yes. 16:52:10
6 Q. If I can ask Donnie to 16:52:10
7 pull up this document, Exhibit C-0374. There is 16:52:16
8 -- no, there is not any confidential information, 16:52:31
9 I believe, in this document. I'd just like to 16:52:33
10 make sure before we get started. 16:52:35
11 Okay. So if we can just 16:52:37
12 review the first page. And if, Donnie, you can 16:52:39
13 blow up the information there. We will just 16:52:44
14 scroll down a bit more. 16:52:46
15 You see the date there that 16:52:47
16 the RFP was issued? 16:52:49
17 A. Yes, I do. 16:52:51
18 Q. And that date is? 16:52:52
19 A. October 8, 2010. 16:52:54
20 Q. And the date that the 16:52:56
21 responses were due? 16:52:57
22 A. November 26, 2010. 16:52:58
23 Q. Okay. And if we turn to 16:53:00
24 -- at Attachment B of this document, Donnie, page 16:53:06
25 12 of 16, but the numbering restarts along the 16:53:16

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1 Like I said, we know -- I know 16:38:36
2 what I know, so I can't unforget it. I was trying 16:38:40
3 to look at what were the regulations in place at 16:38:43
4 that time, in 2010 and 2011. 16:38:46
5 Q. Okay. Thank you. Those 16:38:49
6 are our questions today. Thank you. 16:38:52
7 PRESIDENT: That's the end of 16:39:00
8 your cross? 16:39:02
9 MS. SEERS: Yes. Thank you, 16:39:03
10 Mr. President. 16:39:05
11 PRESIDENT: Thank you very 16:39:06
12 much, Ms. Seers. 16:39:07
13 Any questions in redirect? 16:39:08
14 Would you like to have a short break to confer? 16:39:11
15 Five minutes. 16:39:13
16 --- Recess taken at 4:39 p m. 16:39:14
17 --- Upon resuming at 4:50 p m. 16:50:58
18 PRESIDENT: Okay. So we go on 16:51:06
19 and it will be Ms. Wates, please. 16:51:08
20 RE-EXAMINATION BY MS. WATES: 16:51:21
21 Q. Hello, Mr. Rose. 16:51:21
22 A. Hello. 16:51:46
23 Q. Just a few brief 16:51:46
24 questions arising out of Ms. Seers' questions and 16:51:48
25 your responses. 16:51:53

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1 way, so... 16:53:19
2 Okay. Good. And if we can -- 16:53:30
3 if we can just move to page 12 of the attachment. 16:53:33
4 And if we see in the top left-hand corner, it 16:53:48
5 gives the name of the attachment. Could you just 16:53:52
6 read that? 16:53:55
7 A. "Project Information 16:53:56
8 Package for REA RFP for Wolfe Island Shoals 16:53:57
9 Offshore Wind Farm." 16:54:03
10 Q. Okay. And if we scroll 16:54:03
11 down to the page, we can stop there, and up a 16:54:06
12 little bit. If you could just read to yourself 16:54:15
13 that section. 16:54:19
14 A. Section 7? 16:54:22
15 Q. Yes. What is the timing 16:54:23
16 of the construction of the facility that is 16:54:24
17 provided there? 16:54:26
18 A. Construction begins in 16:54:28
19 summer of 2012 and completed in the early spring 16:54:31
20 of 2015. 16:54:33
21 Q. Now, I believe you said 16:54:35
22 in your cross-examination, generally, if you want 16:54:42
23 to win the work, you are going to show a timeline 16:54:45
24 that meets their requirements. Do you recall 16:54:48
25 that? 16:54:50

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1 A. I do recall that. 16:54:51
2 Q. And so I'm just -- in 16:54:51
3 your opinion, would any proponent responding to 16:54:56
4 this RFP have given a schedule that did not meet 16:55:00
5 Windstream's requirements in terms of starting 16:55:03
6 construction in the summer of 2012? 16:55:06
7 A. Not if they wanted to win 16:55:07
8 the work. 16:55:09
9 Q. Thank you. 16:55:10
10 Now, Ms. Seers made much of 16:55:21
11 the fact that you're not a specialist in bats, 16:55:25
12 birds, and fish. I'm sure you recall that. 16:55:28
13 A. I do recall. 16:55:31
14 Q. And you recall that you 16:55:32
15 said at the beginning of your presentation that 16:55:35
16 you are, in fact, a generalist -- 16:55:37
17 A. That's correct. 16:55:38
18 Q. -- in the environmental 16:55:39
19 permitting process; correct? 16:55:40
20 A. Correct. 16:55:41
21 Q. Okay. And did you 16:55:42
22 consult your colleagues who are specialists in 16:55:47
23 these specific areas when you were reviewing the 16:55:50
24 first URS report and when you were assisting or 16:55:54
25 being involved in the preparation of this second 16:55:59

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1 yourself Sections 138 -- sorry, paragraphs 139 and 16:57:26
2 140. 16:57:31
3 A. Okay. 16:57:36
4 Q. And perhaps also we could 16:57:41
5 review the URS schedule at page 91, if you just 16:57:51
6 want to turn there. 16:57:57
7 A. Okay. 16:58:06
8 Q. And then back to 16:58:06
9 paragraph 139. I would just like to ask you to 16:58:11
10 confirm if URS ever took a position or provided an 16:58:20
11 opinion on how long the technical fieldwork would 16:58:24
12 take for birds, bats, and fish individually. 16:58:29
13 A. Birds, bats -- we looked 16:58:35
14 at what was in the 2010 report -- sorry the 2010 16:58:39
15 program and then what was in the submission, the 16:58:45
16 2015 program. 16:58:49
17 Q. Right. And I see in 16:58:51
18 paragraph 140 that -- or in these two paragraphs 16:58:52
19 together that Windstream itself had envisaged a 16:58:56
20 period of 12 months to conduct field studies and 16:58:59
21 that they had provided no explanation as to why 16:59:02
22 these times were reduced or the original estimates 16:59:03
23 were too long; correct? 16:59:06
24 A. That's correct. 16:59:07
25 Q. Now, on page 91, is there 16:59:07

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1 URS report? 16:56:01
2 A. I did. 16:56:02
3 Q. And perhaps, actually, we 16:56:03
4 can pull up the presentation that Mr. Rose gave at 16:56:10
5 the beginning, Donnie. I would like to ask him a 16:56:13
6 question arising out of that presentation. If you 16:56:16
7 can just -- I'm not sure which side, but I think 16:56:19
8 towards the front. If we could scroll down one. 16:56:21
9 Another one. 16:56:24
10 Okay. Great. If you can just 16:56:25
11 review this slide and recall who specifically 16:56:31
12 questions related to the design of the project 16:56:38
13 schedule should be directed to. 16:56:40
14 A. That was to Gareth. 16:56:42
15 Q. Thank you. Now, I 16:56:44
16 believe you have the two reports there in front of 16:56:50
17 you? 16:56:53
18 A. Yes. 16:56:54
19 Q. I would like you to turn 16:56:54
20 to the Rejoinder report, dated November 6, 2015. 16:56:57
21 Do you have it there? 16:57:05
22 A. I do. 16:57:05
23 Q. If you could read -- turn 16:57:06
24 to page 31, and Section 3.38 on environmental 16:57:08
25 permitting. And if you could just read to 16:57:22

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1 a specific line item for birds, bats, and fish 16:59:22
2 individually? 16:59:26
3 A. No, there is not. 16:59:27
4 Q. And I guess my question, 16:59:28
5 then, would be: To the extent that you have a 16:59:35
6 12-month fish study and a seven-month bat study, 16:59:40
7 does it make any difference that you have a 16:59:44
8 seven-month bat study if the longest study is 12 16:59:47
9 months? 16:59:50
10 A. That would be correct. 16:59:50
11 Q. Okay. 16:59:52
12 A. Sorry. 16:59:56
13 Q. It was more of a yes or 16:59:57
14 no. 16:59:59
15 A. Oh. 16:59:59
16 Q. Or it does or doesn't? 17:00:00
17 A. Sorry, can you repeat the 17:00:01
18 question? 17:00:03
19 Q. Sure. I perhaps wasn't 17:00:03
20 as clear as I could have been. So to the extent 17:00:04
21 that you have -- 17:00:07
22 MS. SEERS: Ms. Wates, I 17:00:08
23 apologize. We have not objected, but you're 17:00:09
24 leading the witness quite substantially. So -- 17:00:12
25 MR. SPELLISCY: I think we 17:00:16

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1 have all been very permissive on redirect. I 17:00:17
2 could have objected dozens of times myself. 17:00:20
3 MS. SEERS: Okay. Well, I -- 17:00:22
4 okay. It's late in the day, but I raise the 17:00:23
5 objection. 17:00:24
6 PRESIDENT: I think we have 17:00:24
7 the answer. 17:00:25
8 MS. WATES: Okay. 17:00:26
9 MS. SEERS: Yes. Also quite 17:00:26
10 submissive. 17:00:33
11 BY MS. WATES: 17:00:33
12 Q. You had started to 17:00:33
13 explain, as well, although weren't necessarily 17:00:34
14 allowed to provide all the context, that -- about 17:00:36
15 your opinion as to whether or not this project 17:00:41
16 could be considered first of a kind and why. And 17:00:44
17 I would just like for you to be able to provide 17:00:51
18 that additional context to the Tribunal. 17:00:53
19 A. Sure. As I explained in 17:00:55
20 my presentation, first offshore wind farm in 17:00:58
21 Ontario, first offshore wind farm under the REA. 17:01:03
22 We, certainly understood -- well, we had a 17:01:08
23 reasonably good understanding of the requirements 17:01:11
24 onshore. I think offshore is a -- was a different 17:01:13
25 scenario. 17:01:15

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1 opinion, are preliminary desktop studies generally 17:02:21
2 acceptable to the regulator or -- 17:02:25
3 A. No, they are not. 17:02:27
4 Q. Those are all my 17:02:30
5 questions. Thank you. 17:02:33
6 PRESIDENT: Thank you, 17:02:34
7 Ms. Wates. 17:02:35
8 The Tribunal has no questions, 17:02:37
9 Mr. Rose. So that concludes your examination. 17:02:38
10 Thank you very much for your time. 17:02:41
11 THE WITNESS: Thank you. 17:02:43
12 PRESIDENT: So that means we 17:02:48
13 are approaching the short weekend. 17:02:49
14 [Laughter.] 17:02:53
15 PRESIDENT: Before -- before 17:02:54
16 closing, the Tribunal wanted to raise a couple of 17:02:56
17 points for planning purposes for next week. 17:03:00
18 The parties requested that the 17:03:03
19 Tribunal will indicate whether it will have any 17:03:07
20 questions by Wednesday evening or Wednesday next 17:03:10
21 week, February 24. And the Tribunal will have a 17:03:15
22 few questions, not necessarily as many as before 17:03:18
23 the hearing. The purpose of the hearing is to 17:03:21
24 narrow down the questions to a subset, but we will 17:03:24
25 have a few. And we will provide them on Wednesday 17:03:28

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1 And just because you've done 17:01:16
2 pieces of permitting for various parts of that 17:01:18
3 type of project, when you pull it all together, 17:01:21
4 it's a different project, and the agencies are not 17:01:23
5 going to see it as, oh, well, we permitted a 17:01:28
6 foundation for something else. Therefore, we're 17:01:31
7 comfortable with a wind farm. They're going to 17:01:33
8 want to understand what the project is that 17:01:36
9 they're permitting, not these individual 17:01:39
10 components. They're going to want to understand 17:01:41
11 it as a whole and what the impacts are. 17:01:43
12 Q. I just have one final 17:01:46
13 question, which is perhaps a series of questions. 17:01:47
14 How would you characterize the types of studies 17:01:56
15 that Claimant's counsel described to you have been 17:02:02
16 conducted in this arbitration, in terms of bats, 17:02:04
17 birds, and fish? 17:02:08
18 A. To date, what types of 17:02:09
19 studies? 17:02:11
20 Q. Yes, how would you 17:02:12
21 characterize them? 17:02:13
22 A. I'd say there's no field 17:02:14
23 studies completed, and anything would have been 17:02:16
24 very preliminary desktop studies. 17:02:18
25 Q. Okay. And in your 17:02:20

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1 so that you will have -- you will have them on 17:03:34
2 time for closing. 17:03:37
3 We also suggest that we 17:03:39
4 discuss already on Wednesday, if the parties are 17:03:41
5 ready, whether there is any need in the parties' 17:03:45
6 view for post-hearing submissions. We are not 17:03:48
7 suggesting in any way that, in the Tribunal's 17:03:51
8 view, there should be. But it would be good to 17:03:54
9 have the parties' reflections on the issue on 17:03:58
10 Wednesday rather than leaving that until Friday. 17:04:03
11 We can obviously revisit the issue on Friday 17:04:09
12 evening. But that is a request from the Tribunal. 17:04:12
13 Then, on Friday, we would 17:04:15
14 suggest -- we have the planning from the parties 17:04:18
15 three hours for each party and possibly half an 17:04:23
16 hour for rebuttal. 17:04:26
17 The Tribunal's suggestion is 17:04:29
18 we start early at eight o'clock so that we would 17:04:31
19 be able to finish by 3:30 at the latest in the 17:04:34
20 afternoon. That would facilitate certain 17:04:38
21 logistical arrangements on the part of the 17:04:41
22 Tribunal. And if that is agreeable to the 17:04:43
23 parties, that would be -- that would be 17:04:49
24 appreciated. 17:04:52
25 So unless there is anything, 17:04:53

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1 we leave these thoughts to you, and if we could 17:04:58
2 then come back to this on Sunday. 17:05:01
3 MR. TERRY: Enjoy the weekend. 17:05:04
4 PRESIDENT: Anything else 17:05:06
5 either party would like to raise at this point? 17:05:07
6 MR. TERRY: Nothing from us. 17:05:11
7 PRESIDENT: And the 17:05:13
8 respondent? 17:05:13
9 MR. NEUFELD: Nothing from us. 17:05:14
10 PRESIDENT: Okay. You will 17:05:16
11 receive the accounting in terms of time at the end 17:05:16
12 of today. I think we are pretty close to the time 17:05:21
13 budget of six effective hours for each day. And 17:05:25
14 we note that there is some buffer in the program 17:05:32
15 because, for Wednesday, only half a day is 17:05:34
16 planned. We do not encourage that there should be 17:05:38
17 any spillover on Sunday, Monday, or Tuesday, but 17:05:42
18 just to confirm there is some flexibility in terms 17:05:45
19 of the program as long as we finish on time on 17:05:49
20 Wednesday. 17:05:53
21 Of course, the incentive there 17:05:54
22 is that the sooner we finish, the more you will 17:05:58
23 have time for preparing your closing statements. 17:06:00
24 MR. TERRY: And might I ask 17:06:04
25 respectfully, may there be a possibility -- and 17:06:05

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1 again, no need to give guidance now, but if we 17:06:09
2 were able to finish early on Wednesday, that the 17:06:12
3 Tribunal questions might be available, if there 17:06:15
4 are going to be questions, also somewhat early 17:06:17
5 that afternoon? 17:06:20
6 PRESIDENT: Yes. They will be 17:06:21
7 available Wednesday, by the time we finish the 17:06:22
8 session. 17:06:27
9 MR. TERRY: Excellent. Thank 17:06:27
10 you very much. 17:06:28
11 PRESIDENT: If not sooner, but 17:06:29
12 we may leave them until Wednesday so that we hear 17:06:30
13 all the experts before we finalize the list of 17:06:33
14 questions. 17:06:35
15 Thank you very much. And on 17:06:36
16 that happy note, enjoy the rest of the evening and 17:06:38
17 tomorrow. Thank you. 17:06:42
18 --- Whereupon hearing adjourned at 5:06 p m. 17:06:48
19
20
21
22
23
24
25

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