
PCA CASE No. 2021-26

PERMANENT COURT OF ARBITRATION

BETWEEN:

WINDSTREAM ENERGY LLC

Claimant

- vs -

THE GOVERNMENT OF CANADA

Respondent

TRANSCRIPT OF ARBITRATION PROCEEDINGS
Held at the offices of Arbitration Place
333 Bay Street, Suite 900, Toronto, Ontario
on Monday, February 5, 2024, at 9:00 a.m.

VOLUME 1
FURTHER REVISED TRANSCRIPT
CONDENSED TRANSCRIPT WITH INDEX

TRIBUNAL:

Wendy Miles KC (Presiding Arbitrator)

Prof. John Gotanda

Rt. Hon. Beverley McLachlin

PERMANENT COURT OF ARBITRATION REGISTRY:

José Luis Aragón Cardiel

Stefan Schäferling

Helen Griffin

COURT REPORTER:

Lisa Lamberti

Arbitration Place © 2024
900-333 Bay Street Toronto, ON M5H 2R2

APPEARANCES FOR CLAIMANT:

John Terry, Counsel
Emily Sherkey, Counsel
Alexandra Shelley, Counsel
Julie Lowenstein, Counsel
Natasha Williams, Counsel
Shoshana Israel, Clerk
Nicole Wannop, Clerk
Torys LLP

Party Representative
David Mars

Fact Witnesses
Nancy Baines
Michael Killeavy

Expert Witnesses
Edward Tobis
Chris Milburn
Pierre-Antoine Tetard

APPEARANCES FOR RESPONDENT:

Rodney Neufeld, Senior Counsel
Heather Squires, Senior Counsel and
Deputy Director
E. Alexandra Dosman, Counsel
Yu Cai Tian, Counsel
Kayla McMullen, Paralegal
Darian Bakelaar, Paralegal
Christine Ayoub, Paralegal
Global Affairs Canada, Trade Law Bureau
Party Representative

Rahim Punjani, Counsel
Ministry of the Attorney General, Government of
Ontario

Expert Witness
Dr. Jérôme Guillet

Fact Witnesses
Andrew Teliszewsky
Michael Lyle

Trial Graphic Expert
Ryan Knecht
Core Legal Concepts

INDEX

	PAGE
OPENING STATEMENT BY MR. TERRY	14
OPENING STATEMENT BY MS. SHERKEY	30
OPENING STATEMENT BY MR. TERRY (cont'd)	58
OPENING STATEMENT BY MS. SHERKEY (cont'd)	83
OPENING STATEMENT BY MR. TERRY (cont'd)	160
OPENING STATEMENT BY MS. SHELLEY	189
OPENING STATEMENT BY MS. SHERKEY (cont'd)	221
OPENING STATEMENT BY MR. NEUFELD	238
OPENING STATEMENT BY MR. TIAN	304
OPENING STATEMENT BY MS. DOSMAN	341
OPENING STATEMENT BY MS. SQUIRES	415

1 Toronto, Ontario
 2 --- Upon commencing on Monday, February 5, 2024
 3 at 9:00 a.m.
 4 PRESIDING ARBITRATOR MILES:
 5 It's 9:00 a.m. So good morning, everybody. My
 6 name is Wendy Miles.
 7 To my right, we have Beverley
 8 McLachlin. To my left, John Gotanda. That is
 9 your Tribunal.
 10 And welcome. It's nice to see
 11 you all here. To those online, also welcome.
 12 I would like to introduce you
 13 to José Luis Aragón who is our PCA secretary, also
 14 to my right.
 15 Could we perhaps, Mr. Terry.
 16 MR. TERRY: Yes.
 17 PRESIDING ARBITRATOR MILES:
 18 Introduce your counsel team and also your client
 19 representatives, just if you could make that
 20 introduction, please.
 21 MR. TERRY: Certainly. Happy
 22 to and good morning, everyone.
 23 So our counsel team, I am, of
 24 course, John Terry; Emily Sherkey, also with
 25 Torsys; Alex Shelley, also with Torsys; Julie

1 hearing other testimony as opposed to openings but
 2 we are happy to -- if our friends feel very
 3 strongly about it, she can withdraw herself from
 4 the openings as well.
 5 PRESIDING ARBITRATOR MILES:
 6 Okay.
 7 And who is the client
 8 representative for the purpose of the openings;
 9 would that be Mr. Mars?
 10 MR. TERRY: For the purpose of
 11 the opening, Mr. Mars, yes.
 12 PRESIDING ARBITRATOR MILES: I
 13 see. Right. Okay. Thank you.
 14 Mr. Neufeld, could you please
 15 introduce your team. Thank you.
 16 MR. NEUFELD: Good morning,
 17 Madam President, members of the tribunal.
 18 I am Rodney Neufeld. My
 19 colleagues here is Heather Squires, Alex Dosman,
 20 and Yu Cai Tian, who is sitting back here, are
 21 counsel.
 22 We are assisted by Darian and
 23 Kayla McMullen, Darian Bakelaar. Ryan Knecht is
 24 assisting us as well, and Christine Ayoub, all
 25 from the Canadian Trade Law Bureau.

1 Lowenstein, if you can see her, also with Torsys.
 2 Oh, and also Natasha Williams, also with Torsys.
 3 All legal counsel, all lawyers.
 4 And this is Shoshana Israel,
 5 who is sitting busily chatting, working behind the
 6 screen. She is also -- she is a law clerk with
 7 Torsys. So that is our counsel team.
 8 In terms of client
 9 representatives, Mr. Mars, David Mars is our party
 10 representative. Also, our clients, there is Nancy
 11 Baines and Ian Baines are both here.
 12 And Nancy Baines, by the way,
 13 as you know, is a witness on the second day. So
 14 one of the things we just need to discuss with our
 15 friends here is whether she can -- she has an
 16 interest in being here for the openings and we
 17 thought, in the procedural order, that she is able
 18 to stay for the opening.
 19 I know our friends have a
 20 different view so we are just going to have a
 21 discussion with her to see how important it is for
 22 her to stay for the opening to see if we can
 23 resolve that one quickly.
 24 Our understanding on the
 25 procedural order is that the concern is her

1 Our clients are all sitting in
 2 the back, so the Government of Ontario and the --
 3 there is a couple of IESO representatives as well.
 4 And maybe, if you'd like their names, we can call
 5 on Mr. Rahim Punjani to introduce everybody, or is
 6 that necessary?
 7 PRESIDING ARBITRATOR MILES:
 8 Is there a principal client representative or
 9 representatives?
 10 MR. NEUFELD: Yes, that's
 11 Rahim Punjani.
 12 PRESIDING ARBITRATOR MILES:
 13 Hello. Welcome.
 14 All right, Mr. Neufeld, in
 15 terms of Ms. Baines attending opening submissions,
 16 she is not a client representative. She is a
 17 testifying witness. We do have sequestration
 18 during testimony. Do you have concerns with her
 19 being at the openings?
 20 MR. NEUFELD: Yes, we do. I
 21 think you just summed it all up there.
 22 They are client
 23 representatives for a reason. They are to be here
 24 during the openings and during, you know, during
 25 the entire proceeding. Other witnesses are to be

1 sequestered until their testimony. There is a
2 reason for that. We have prepared our openings
3 that way.

4 It would be prejudicial to us
5 if that weren't the case and that weren't
6 respected. That's the case for us. It's always
7 been the case for us. It's the way we proceeded.

8 PRESIDING ARBITRATOR MILES:
9 Okay. Thank you, Mr. Terry.

10 Is there anything in
11 particular that arises here to militate in favour
12 of us making any different decision to what's in
13 the procedural order?

14 MR. TERRY: Obviously, we
15 don't know what our friends intend to do in their
16 opening so I can't really comment on -- it won't
17 surprise you to know that Ms. Baines is aware of
18 what our opening is going to be. We have a
19 PowerPoint. There would be no surprise on that.

20 But if there's, if there's
21 something of concern in his opening with respect
22 to testimony or something he doesn't want her to
23 be aware of, I certainly don't want to cause
24 issues and have any procedural issues arise at any
25 particular time there.

1 What I could do, if you want,
2 if we could take a moment, I could speak to
3 Ms. Baines and just see. I know she wanted to be
4 here simply because she has been part of this
5 Project and is -- as a client.

6 But she certainly may be happy
7 to step out to avoid needless argument over this
8 issue.

9 Shall I chat with her?
10 PRESIDING ARBITRATOR MILES:
11 Yes. Just before you do, this is not just
12 broadcast. It's also recorded; isn't it. So she
13 can watch it after she has testified.

14 MR. TERRY: Right. Okay.
15 PRESIDING ARBITRATOR MILES:
16 Friday night viewing.

17 All right, have a quick word,
18 if you don't mind, Mr. Neufeld.

19 MR. NEUFELD: Not at all.

20 Thanks.

21 MR. TERRY: As you can see,
22 President Miles, Ms. Baines is content to just
23 withdraw for the day.

24 PRESIDING ARBITRATOR MILES:
25 Excellent. We will all meet her properly,

1 tomorrow.

2 Just to check, this is
3 available on the internet. All of the witnesses
4 from both sides are under clear instructions not
5 to be watching online as well as not in the room;
6 correct?

7 MR. NEUFELD: That's correct,
8 yes.

9 MR. TERRY: That's correct.
10 That's our understanding.

11 PRESIDING ARBITRATOR MILES:
12 Very good. Thank you.

13 And while we are on that
14 topic. Confidentiality. There are some
15 confidential subject matters, some confidential
16 documents still in these proceedings.

17 The protocol is that counsel
18 are to forewarn us, one another and tech if you're
19 approaching confidential material in your openings
20 or in any cross-examination, or in any responses
21 to Tribunal questions, which is where it might get
22 trickier.

23 What the secretariat has asked
24 me to do is signal that tech will need time to put
25 up the banner on the live stream feed to protect

1 the confidentiality.

2 So we need you, please, to
3 signal, then pause, and then Alonso, I believe,
4 will let us know, in the voiceover, when you may
5 proceed.

6 So I will ask you all to help
7 me to make sure that we follow their protocol.
8 Okay.

9 And I think that's all I had
10 from housekeeping.

11 So two hours and 30 minutes
12 each, with appropriate breaks. You all have been
13 here a long time. You know we have Lisa here
14 taking down your every word, so keep the pace
15 feasible for her to do that.

16 Mr. Terry, off you go, please.

17 MR. TERRY: Just one more
18 housekeeping matter.

19 My friend and I are -- my
20 friends and I had discussed the idea of, for our
21 closing arguments on Friday, the procedural order
22 allocates two hours each, and we had asked our
23 friends whether they would be willing to do two
24 and a half hours and they said yes, they were
25 willing do it and Mr. Neufeld can confirm.

1 So we wanted to -- no need to
 2 make a decision on that right now, if you wish to
 3 discuss it later on.
 4 But our preference would be to
 5 allow two and a half hours for closings, just to
 6 make sure that we can comprehensively deal with
 7 the issues and Tribunal questions arising.
 8 And that obviously means five
 9 hours of hearing time, so we are hopeful that can
 10 still be accommodated. We are happy to make
 11 changes in start time or anything like that, if
 12 that would be helpful to the Tribunal.
 13 PRESIDING ARBITRATOR MILES:
 14 So, just so I understand, two and a half hours to
 15 deal comprehensively with the issues and Tribunal
 16 questions?
 17 And I was assuming two hours
 18 that you were preparing to speak and then our
 19 questions on top of that.
 20 Does this two and a half
 21 include our questions?
 22 MR. TERRY: Yes. That's what
 23 we have in mind.
 24 MR. NEUFELD: Yeah, we just
 25 would like a clarification as to whether you're

1 referring to oral questions in the closing and, if
 2 that's your understanding of that, yes.
 3 PRESIDING ARBITRATOR MILES:
 4 Okay. Let's talk about it on Wednesday -- that's
 5 fine in terms of time. We can accommodate that.
 6 We are here for you.
 7 In terms of how we make sure
 8 there's plenty of time for you to interact with
 9 us, let's have a conversation about that on
 10 Wednesday evening, perhaps, and see where we are.
 11 Okay. Thanks.
 12 MR. TERRY: Okay.
 13 OPENING STATEMENT BY MR. TERRY:
 14 MR. TERRY: Tribunal members,
 15 we have an opening PowerPoint slide. As we
 16 mentioned, it should be appearing on your screens.
 17 CO-ARBITRATOR MCLACHLIN: Do
 18 you have paper copies?
 19 MR. TERRY: Yes.
 20 CO-ARBITRATOR MCLACHLIN:
 21 That's very helpful. I like to make notes on
 22 them.
 23 MR. TERRY: I am actually
 24 going to be fairly brief in introducing. Much of
 25 the work of the opening will be done by my

1 colleagues Ms. Sherkey and Ms. Shelley.
 2 And our plan, by the way, the
 3 five questions the Tribunal put to us, we plan to
 4 answer those through the opening in the place that
 5 makes most sense, if and when the topic is coming
 6 up in the opening.
 7 The first slide that we have a
 8 timeline of key events slide, is really designed
 9 to have a snapshot of -- to show a snapshot of
 10 the -- is it up on the screens?
 11 Okay, all right. Well, you
 12 can use a paper copy for now.
 13 This shows the history of this
 14 particular litigation starting with an investment
 15 made in 2010. That's when the FIT Contract is
 16 first entered into by the Government of Ontario
 17 with Windstream.
 18 Followed by the moratorium in
 19 February 2011, 14 years ago. Ontario imposed a
 20 moratorium on offshore wind -- just on offshore
 21 wind, not onshore wind -- but made the promise to
 22 Windstream, at the time, to freeze the Windstream
 23 Project, all the other offshore wind projects that
 24 were in progress would be cancelled but the
 25 Windstream Project because it was -- it had a FIT

1 contract would be frozen and allowed to be
 2 developed once the moratorium was complete.
 3 Then we have NAFTA 1, the
 4 first or Windstream I, the first NAFTA case which
 5 was decided in 2016.
 6 Canada had been arguing
 7 throughout that proceeding that the Project was
 8 frozen and would be able to proceed once the
 9 moratorium was done. And that if Windstream
 10 wasn't able to finish it and agree with the OPA on
 11 a new agreement, that was Windstream's fault but
 12 the contract was frozen.
 13 The Tribunal, consistent with
 14 that, said there was no expropriation, the FIT
 15 contract was still in force. But did find, under
 16 the FET, fair and equitable treatment, that there
 17 was a breach and awarded damages with respect to
 18 the breach damages for -- that arose out of that.
 19 But they did say, very
 20 clearly, they weren't awarding compensation for
 21 the entire value of the FIT Contract and it was
 22 possible for -- if the government and Windstream
 23 were -- could renegotiate and reactivate the
 24 contract to find additional value.
 25 So that was the finding the

1 Tribunal made with a \$30 million Award.
 2 PRESIDING ARBITRATOR MILES:
 3 Could you take me to where in the Award the
 4 Tribunal found that it could be renegotiated --
 5 renegotiated and reactivated to find additional
 6 value?
 7 MR. TERRY: Yeah. We are
 8 going to be coming to that specifically in the
 9 opening, and that might be the better place to
 10 take you through that.
 11 It's, in particular -- I can
 12 turn to the page.
 13 This is -- and you can make a
 14 note because I will get to this later on when I
 15 come back after Ms. Sherkey's made certain
 16 submissions.
 17 But, starting at page 25 of
 18 our opening materials, if you have, if you have
 19 the hard copy in front of you. We deal with the
 20 very sections of the Award there.
 21 And, in that particular
 22 section, if you look at page 32, in particular,
 23 that's one of the, that's one of the references.
 24 In paragraph 483 of the Award
 25 there, they say the FIT Contract is still in force

1 and could, in theory, be still revived and
 2 renegotiated if the parties so agree.
 3 And then the brackets at the
 4 bottom of that paragraph is another manner that
 5 the parties can create such a value by
 6 reactivating and renegotiating the FIT Contract
 7 after the Award which option is still open to
 8 them.
 9 And there's one other
 10 statement, but those are the statements that I am
 11 referring to in the Award.
 12 PRESIDING ARBITRATOR MILES:
 13 Okay. So I am aware of that final sentence in
 14 483; that the proposition you make in opening,
 15 that's what you're relying on, that final
 16 sentence, primarily?
 17 MR. TERRY: Yes. There's
 18 another reference, which I can take you to when I
 19 go through that, but that's primarily the
 20 reference I am relying on.
 21 PRESIDING ARBITRATOR MILES:
 22 All right. Thanks.
 23 MR. TERRY: Where the Tribunal
 24 recognizing that could be done.
 25 And then, going back to the

1 slide that we started with, we have a period after
 2 that where we have talked about -- we have said
 3 progress, at least from our client's perspective.
 4 In light of that finding and
 5 government representations -- and Ms. Sherkey will
 6 be taking you in detail through all the various
 7 government statements at the time that our clients
 8 rely on -- Windstream made various attempts to
 9 move the Project forward.
 10 And we know they weren't
 11 successful because the Project, then, is
 12 terminated in 2020.
 13 And Tribunal members, it
 14 obviously goes without saying that it takes
 15 significant resources and time for any Claimant,
 16 including our clients, Windstream, to proceed to
 17 an NAFTA proceeding, not just one in this case but
 18 two NAFTA proceedings.
 19 And Windstream has pursued
 20 these remedies as a last resort and there is an
 21 extensive record which, again, Ms. Sherkey will be
 22 taking you through attempts by Windstream to work
 23 with the government to move the Project forward to
 24 try to settle the matter. And all those efforts,
 25 unfortunately, have still resulted in the

1 termination.
 2 So Windstream is coming before
 3 you, and my friends suggest that Windstream is
 4 trying to relitigate what was already decided by
 5 the Tribunal and trying to get a bigger damages
 6 Award.
 7 Our position, and if we turn
 8 to the next slide, summed up here is, in my view,
 9 it's very clear that that's not an accurate
 10 reading of what Windstream is trying to, trying to
 11 achieve by bringing this litigation.
 12 First of all, all of the
 13 measures at issue in this arbitration post date
 14 the Windstream I Award.
 15 Windstream is not trying to go
 16 back and ask the Tribunal to reach a different
 17 decision on anything the Tribunal considered --
 18 the Windstream I Tribunal considered in its first
 19 Award.
 20 Secondly, Windstream I
 21 Tribunal expressly compensated Windstream only for
 22 damage to the investment, and not the full value.
 23 Third, the Windstream I
 24 Tribunal made clear that the parties still had the
 25 option to create additional value by renegotiating

1 the FIT Contract to adjust its terms to the
 2 moratorium.
 3 Three, there's nothing in the
 4 Award that relieved Ontario of its continuing
 5 obligation to freeze Windstream from the impacts
 6 of the moratorium.
 7 And, contrary to that
 8 obligation, Ontario refused to negotiate with
 9 Windstream after the Award or uphold its promise
 10 to freeze, allowing the Project to be terminated
 11 in 2020 and its full value at that time lost.
 12 Our argument is simply since
 13 that loss did not occur until 2020, this requires
 14 a valuation of the loss of the value of the FIT
 15 contract as of 2020, reduced, of course, by the
 16 damages that were previously awarded by the
 17 Tribunal.
 18 Now, I have emphasized and
 19 Windstream has always emphasized a promise to
 20 freeze.
 21 If we go to the next slide,
 22 please, what we have here and what will play, it
 23 will take about ten minutes, is the audio
 24 recording. It is part of the transcript of the
 25 first hearing. In which you hear the promise

1 being made by the government to Windstream and
 2 the, the participants in this call, as you can
 3 see, are, first of all, Mr. Baines, Mr. Mars, and
 4 Chris Benedetti, who was government relations
 5 advisor for Windstream.
 6 And then various government
 7 political staff: Craig MacLennan, chief of staff
 8 to the Minister of Energy; Brenda Lucas, who is
 9 the senior policy advisor to the Minister of the
 10 Environment; Andrew Mitchell, also senior policy
 11 advisor; and, Richard Linley, who is with Ministry
 12 of Natural Resources, also senior policy advisor.
 13 And then listening in also is
 14 Perry Cecchini who is with the OPA.
 15 I am going to stop now so we
 16 can listen to that promise and sort of understand,
 17 really, the core of Windstream's concerns, and the
 18 core, core of Windstream's case before. The core
 19 of Windstream's case now remains the promise. The
 20 promise that continues not to be fulfilled.
 21 So if you could play that,
 22 please.
 23 --- Audio recording played from 9:21 a.m. to
 24 9:33 a.m.
 25 MS. SHERKEY: We are going to

1 move now into --
 2 PRESIDING ARBITRATOR MILES:
 3 Just before you do, could I have Mr. Terry back
 4 for a moment, please.
 5 MS. SHERKEY: Of course.
 6 PRESIDING ARBITRATOR MILES:
 7 Just two process questions.
 8 The first we have the
 9 transcript of the 11 February call in the record
 10 but it finished at 1:54 p.m., and that transcript
 11 you just played went beyond what the written
 12 transcript is.
 13 Is there a reason for that?
 14 MR. TERRY: I'd have to check
 15 with my team on that. I think the idea was to try
 16 to recreate what was in the transcript previously
 17 what was played.
 18 So, if there's a discrepancy,
 19 I am not aware of it.
 20 PRESIDING ARBITRATOR MILES:
 21 Okay.
 22 And I did look on the file for
 23 this and I wasn't able to find an answer.
 24 Had the parties all consented
 25 to this conversation being tape recorded?

1 MR. TERRY: It was my -- and I
 2 want to be very careful about this, but I
 3 understand it was taped by our client at the time
 4 and there's -- in terms of Canadian law -- and,
 5 again, I want to be careful in saying this.
 6 But, in terms of Canadian law,
 7 there is no restriction on doing anything like
 8 that.
 9 MR. NEUFELD: Can we object on
 10 that, please.
 11 PRESIDING ARBITRATOR MILES:
 12 Sorry, just my question was did the parties
 13 consent? I wasn't asking about Canadian law.
 14 MR. TERRY: Sorry. There was
 15 no -- I don't believe that the government
 16 representatives were aware that the recording was
 17 being made. So there was no, there was no
 18 consent, either before or after, that I am aware
 19 of.
 20 PRESIDING ARBITRATOR MILES:
 21 Okay.
 22 Mr. Neufeld, you can come to
 23 it in your opening. I could not see anything
 24 about this in the Windstream I Award or, in fact,
 25 the Windstream I proceeding.

1 So I don't want to raise an
 2 issue that has been let lie between the parties
 3 but I did want to know if they were aware.
 4 MR. TERRY: Sure. There was
 5 no objection ever raised in previous proceedings.
 6 PRESIDING ARBITRATOR MILES:
 7 No, I could see that -- well, I couldn't see one
 8 on the earlier proceedings.
 9 Thank you.
 10 My more substantive question
 11 was, before you played the recording, you said we
 12 are going to listen to understand the core of
 13 Windstream's concern and the core, core of
 14 Windstream's case, the core of Windstream's case
 15 now.
 16 This was the 11th of
 17 February 2011?
 18 MR. TERRY: Yes, correct.
 19 PRESIDING ARBITRATOR MILES:
 20 Which was prior to the Windstream I arbitration.
 21 MR. TERRY: Correct.
 22 PRESIDING ARBITRATOR MILES:
 23 And prior to the Windstream I Award.
 24 MR. TERRY: Correct.
 25 PRESIDING ARBITRATOR MILES:

1 And this evidence was relied on in the Windstream
 2 I proceedings.
 3 MR. TERRY: Correct.
 4 PRESIDING ARBITRATOR MILES:
 5 Including for the claim that the moratorium itself
 6 was in breach of NAFTA.
 7 MR. TERRY: Yes.
 8 PRESIDING ARBITRATOR MILES:
 9 And the Tribunal in Windstream I found that the
 10 moratorium itself was not in breach of NAFTA.
 11 MR. TERRY: Right. Correct.
 12 PRESIDING ARBITRATOR MILES:
 13 But the conduct immediately following -- not
 14 necessarily immediately but following the
 15 moratorium was in breach of 1105.
 16 MR. TERRY: Yeah, they
 17 described the legal and contractual limbo because
 18 the government neither made clear, through
 19 regulations, that offshore wind was not going to
 20 be developed, nor took the steps to ensure that
 21 the -- and I don't have the words right in front
 22 of me but ensure that the Project was frozen.
 23 PRESIDING ARBITRATOR MILES:
 24 That's okay. I have them in front of me so that's
 25 all good.

1 So my question to you is this:
 2 If you were here with us, Windstream II, talking
 3 about conduct only after the Windstream I Award,
 4 which is September 2016, what's the relevance and
 5 how is a 2011 meeting conversation, which was the
 6 core of your first case, now the core of this
 7 case?
 8 MR. TERRY: It becomes and we
 9 will deal with this later on, but you can see it
 10 partly as a continued breach scenario.
 11 Even though the Tribunal, I
 12 recognize, found that the breach was legal and
 13 contractual limbo, it's also -- I mean, that
 14 particular obligation, even though it arose out of
 15 conduct prior to the Award, it was reiterated in
 16 statements that were made -- and Ms. Sherkey will
 17 take you through that -- about -- they were made
 18 by the government about the Project.
 19 It was going to be developed
 20 or the research was still being carried out so
 21 that, that promise that we made earlier was being
 22 reiterated then.
 23 But, fundamentally, we rely on
 24 the fact that that was an obligation that had been
 25 made in 2011 that remained in effect. It ceased

1 to exist. The facts, the facts, as they were
 2 found by the Tribunal, confirming that these
 3 statements were made did not cease to exist after
 4 the Award.
 5 So those facts can still be
 6 relied on by this Tribunal, just as many of the
 7 other facts are relied on that were found by
 8 Windstream I can be relied on by this Tribunal in
 9 considering this particular issue.
 10 The facts themselves remain
 11 part of the fundamental context of the particular
 12 Award. The events that we are talking about in
 13 these awards are all things that have occurred
 14 after, after the NAFTA 2016 Award. But that
 15 particular conduct, that particular promise
 16 remains afterwards.
 17 I mean, that particular
 18 promise has never been expressly revoked by the
 19 government. That particular promise, which we say
 20 gave rise to the obligation, remains as a fact.
 21 CO-ARBITRATOR MCLACHLIN: What
 22 was the promise and what words in the conversation
 23 we just heard specifically zero in on that
 24 promise? Can you articulate it in five or ten
 25 words, what that promise was, as you see it?

1 MR. TERRY: Yeah.
 2 The promise was the moratorium
 3 was going to prevent all the other projects, all
 4 the other offshore wind projects that were
 5 proceeding. That was going to stop them from
 6 proceeding. The exception was going to be the
 7 Windstream Project.
 8 That Project was going to be
 9 frozen, deferred, and then, once the moratorium
 10 was lifted, that Project would be able to proceed.
 11 CO-ARBITRATOR MCLACHLIN: I
 12 didn't hear the last part.
 13 MR. TERRY: Once the
 14 moratorium was lifted, that Project would be able
 15 to proceed. That's the nature of the promise.
 16 CO-ARBITRATOR MCLACHLIN: I
 17 understand, but I didn't hear the part about it
 18 would be able to -- that there was any
 19 proceeding -- or that the moratorium would be
 20 lifted or I didn't hear that. I heard they were
 21 going to keep it open or frozen but --
 22 MR. TERRY: They were going to
 23 keep it -- yeah, keep it frozen, ensure that the
 24 Windstream Project was kept whole.
 25 And there is a reference in --

1 my friend Ms. Sherkey was going to come to this.
 2 CO-ARBITRATOR MCLACHLIN:
 3 Okay.
 4 MR. TERRY: But the -- and
 5 perhaps it might make sense for her to get up.
 6 But, Slide 21 of our slides,
 7 we actually excerpt in writing exactly what the
 8 promise was.
 9 CO-ARBITRATOR MCLACHLIN:
 10 Thank you.
 11 OPENING STATEMENT BY MS. SHERKEY:
 12 PRESIDING ARBITRATOR MILES:
 13 Ms. Sherkey, welcome back and sorry about that.
 14 When you come to your Slide
 15 21, could you please be absolutely clear, if
 16 you're relying on the transcript, to whom are you
 17 referring. I think the cites you might have are
 18 Mr. Benedetti's statements, so I just, when you
 19 get there, just be clear.
 20 MS. SHERKEY: Sure.
 21 And, to answer your question,
 22 I believe the full transcript is at C-484. And
 23 that should include the entire phone call which
 24 has the statement you heard at the end, how long
 25 will this take. The answer, years. It should be

1 at C-484.
 2 If it is not, we will -- it is
 3 in the record, we will find it. But my
 4 understanding, it is C-484.
 5 PRESIDING ARBITRATOR MILES:
 6 Are there two copies of the transcript, one
 7 incomplete and one complete.
 8 MS. SHERKEY: It seems like
 9 maybe that is the case. I will have to explore
 10 that on break.
 11 PRESIDING ARBITRATOR MILES:
 12 All right. Thanks.
 13 MS. SHERKEY: So if we go --
 14 we are looking now at Slide 4.
 15 Our plan is to spend most of
 16 the morning with you on key facts. We will get to
 17 the NAFTA breaches, damages, and then
 18 jurisdictional challenges.
 19 We are going to stay fairly
 20 light on breaches and jurisdiction in terms of the
 21 legal issues. Our plan is to come more on to the
 22 law in closing but really focus today on the facts
 23 and the evidence before you, just so you
 24 understand the framework we have set up.
 25 So focusing on facts.

1 If you go through to Slide 6,
 2 we have split the facts into three parts. I am
 3 going to take you through the facts through
 4 Windstream I, as found by the Tribunal, to give
 5 you the relevant background and context to what
 6 they found and also what gives rise to now the
 7 measures before you.
 8 Mr. Terry will then get back
 9 up to go through the findings of the Windstream I
 10 Tribunal.
 11 And then you will hear a lot
 12 more from me to go through the events that
 13 happened post 2016 and the measures that give rise
 14 to this arbitration.
 15 So, for right now, I am going
 16 to take you through the background facts leading
 17 to Windstream I.
 18 And the first point, if we
 19 move over to Slide 8, is the context I want to
 20 bring to you in going through this happens to do
 21 with something Canada has raised in its materials
 22 before you in this arbitration where they
 23 re-raised, we say, this argument of regulatory
 24 uncertainty.
 25 And what I want to highlight,

1 as we go through the Tribunal's findings, was how
2 extensively argued this was before the Windstream
3 I Tribunal. Significant expert evidence, fact
4 evidence, pages and pages of submissions, the
5 Tribunal noted this as a disputed issue and set
6 out the parties' positions. We have given the
7 references here on this slide.

8 So this was very extensively
9 argued and Canada raised the identical arguments
10 it raises in its materials here, which is
11 regulations weren't in place and we weren't ready
12 for offshore wind.

13 And what I am going to take
14 you through now in three parts are three findings,
15 key findings, we say, by the Tribunal that, one,
16 Ontario promoted investment in offshore wind; two,
17 it found offshore wind was included in the
18 regulatory framework; and, three, it found it was
19 only after Windstream made its investment, after
20 the FIT Contract was signed that it then grew more
21 ambiguous to offshore wind due to political
22 concerns, and we are going to go through those
23 findings.

24 So starting with the
25 Tribunal's findings on the regulatory framework.

1 On Slide 9, the Tribunal
2 begins its analysis of the factual background at
3 paragraph 86 with the heading "the regulatory
4 framework governing renewable energy in Ontario".

5 So what did it find was the
6 regulatory framework? What we say is it made two
7 key initial findings.

8 So, first, between 2006 and
9 2008, there was a deferral -- there was a prior
10 moratorium, a prior deferral on offshore wind that
11 the government lifted in January 2008.

12 And what it did was the
13 Tribunal's first finding was it updated its
14 regulations, it updated wind policy 4.10.04 to
15 include offshore wind.

16 So what is this policy? I am
17 just going to review it briefly because it also
18 provides helpful context for you.

19 All subject to one
20 non-relevant exception.

21 In Ontario, all lake beds are
22 on Crown land. So a proponent needs permission
23 from the Ontario government to access that land
24 for wind testing and then Project construction and
25 operation.

1 And the process to go through
2 that access to Crown land is called the site
3 release process.

4 And so you're going to hear,
5 through this week, something called AOR status or
6 applicant of record status, and that's what is
7 being referred to. This process to get on to
8 Crown land, into the lake to build the Project.

9 And so, in March 2004, the
10 Ontario government had issued this policy 4.10.04
11 to establish a standardized set of rules for going
12 through that process.

13 And then, in 2008, when it
14 lifted the deferral, the government, as found by
15 the Tribunal, specifically updated its regulatory
16 framework and updated this policy to include
17 offshore wind.

18 The second point the Tribunal
19 found is that the government then promoted
20 offshore wind, an investment in offshore wind. It
21 quotes from the Minister of Natural Resources as
22 saying Ontario was open for business when it comes
23 to offshore wind and ensuring timely approval of
24 these applications.

25 And so the Tribunal then turns

1 to the establishment of the FIT program.

2 In 2009, Ontario announced a
3 proposal to enact the Green Energy Act, which was
4 described as sweeping new legislation to attract
5 new investment. And it was specifically promoted
6 to include offshore wind.

7 And, at paragraphs 94 and 95,
8 we have excerpted here some findings that the
9 Tribunal highlighted from Minister Smitherman, who
10 was also a witness before the Tribunal in
11 Windstream I, who expressly went out to talk about
12 how attractive this program was going to be for
13 offshore wind, wonderful opportunities for
14 offshore wind. We will make sure to move those
15 proposals along.

16 A few months later, if we turn
17 over the page, in May 2009, the Green Energy Act
18 becomes law. It introduces the FIT program and it
19 also creates the renewable energy approval which
20 you will hear about this week. We call it the
21 REA.

22 And that basically took all of
23 the various provincial environmental approvals you
24 needed for renewable energy Project and it
25 streamlined it into one process.

1 Again, as the Tribunal found,
 2 when the FIT program was launched in
 3 September 2009, it was accompanied by press
 4 release statements about promoting a stable
 5 investment environment where companies know what
 6 the rules are.
 7 That was what was being set
 8 out to Ontarians to give them confidence to invest
 9 here.
 10 And the REA regulation was
 11 also promoted to ensure a streamlined approach,
 12 providing a six-month service guarantee.
 13 So what was the regulatory
 14 framework in place for offshore wind? The
 15 Tribunal goes on to make these findings.
 16 It sets out that, under the
 17 Green Energy Act, an offshore wind proponent had
 18 to meet four requirements.
 19 PRESIDING ARBITRATOR MILES:
 20 Can I just check.
 21 With the Award, because we are
 22 in a second proceedings, I think it's really,
 23 really careful to be precise about what the Award
 24 said.
 25 MS. SHERKEY: Yes.

1 PRESIDING ARBITRATOR MILES:
 2 If I heard you correctly, you said that the
 3 Tribunal found that the new regulations were to
 4 provide a stable investment environment.
 5 When I look at paragraph 7 of
 6 the Award, the Tribunal is simply quoting a press
 7 release.
 8 MS. SHERKEY: That's what I
 9 had thought I said. That there was a press
 10 release promoting that. If I said otherwise, I
 11 apologize.
 12 And, as we have put on the
 13 slide, it was accompanied by a press release
 14 stating that the -- Ontario was promoting there
 15 was a stable investment environment.
 16 PRESIDING ARBITRATOR MILES:
 17 Okay. So then maybe elsewhere in the Award but I
 18 don't see it in paragraph 97.
 19 Is it your submission that the
 20 Windstream I Award Tribunal found, as a finding of
 21 fact, that Ontario was promoting a stable
 22 environment or that it put out this press release
 23 that said this?
 24 MS. SHERKEY: Yes. We would
 25 say, as a finding of fact, it set out that this

1 press release was issued stating this to the
 2 public.
 3 PRESIDING ARBITRATOR MILES:
 4 Okay. That's good. Thank you.
 5 MS. SHERKEY: So the Tribunal
 6 then goes on to say what does an offshore wind
 7 proponent have to meet? And it sets out these
 8 four requirements that we have excerpted on the
 9 slide.
 10 So the requirements are set
 11 out.
 12 And then the Tribunal further
 13 goes through, in terms of Number 2, the access to
 14 Crown land, what we talked about before, policy
 15 Rule 4.10.04 and the three-step process under that
 16 policy for AOR status site release.
 17 And then the Tribunal also
 18 finds, if you flip over to the next slide, what
 19 two key regulatory documents were in place.
 20 And it says there were two key
 21 regulatory documents.
 22 First, you have the REA
 23 regulation. And, as the Tribunal finds, the REA
 24 regulation established the environmental approval
 25 requirements for these renewable energy projects,

1 including offshore wind, which it defined as a
 2 class five wind facility.
 3 And the REA regulations
 4 specify that offshore wind projects had to submit
 5 an offshore wind facility report.
 6 And the second document tied
 7 with that is what's called the APRD, the approval
 8 and permitting requirements document, which
 9 specified the requirements for what that offshore
 10 wind facility report needed to include under the
 11 REA regulation.
 12 Further guidelines were to
 13 come, which we will speak about momentarily. But
 14 the rules, the requirements under the REA
 15 regulation are set out here.
 16 And then just highlighting on
 17 the next slide further findings by the Tribunal
 18 about what happened here in terms of statements
 19 given by the Minister of natural energy. Again,
 20 we say promoting offshore wind, speaking at a
 21 conference promoting that one of the most
 22 important factors for investors is certainty and
 23 knowing what the rules are.
 24 So now looking to just the
 25 Windstream Project in particular.

1 We have given a summary here
 2 of the Project. Offshore wind, off the coast --
 3 off the lake -- off Kingston, Wolfe Island,
 4 planned 300 megawatt capacity.
 5 Over on the next slide, this
 6 is a summary of Windstream and its investors. I
 7 am not going to go through this in detail.
 8 I will highlight here first
 9 just the structure for you.
 10 Windstream is a US company.
 11 It owns the subsidiary. We refer to it as WWIS,
 12 Windstream Wolfe Island Shoals, which is an
 13 Ontario company, which, in turn, owns the Project
 14 directly and is the counterparty to the FIT
 15 contract.
 16 And, as I am sure you have
 17 read in the materials, the contract is between
 18 WWIS and the OPA but the OPA becomes the IESO.
 19 So you will hear us go back
 20 and forth between OPA and the IESO, depending on
 21 the time frame.
 22 We have set out here some
 23 background on the management team and investor
 24 group. There are further details in the
 25 materials. The key point being, from our

1 perspective, that these were experienced business
 2 people and investors who have experience
 3 developing wind energy Project and in the energy
 4 environment.
 5 So, next, I want to talk about
 6 the history of how Windstream made its investment
 7 in the Project.
 8 And there's a lot more detail
 9 in the Award. What I will highlight through the
 10 slide is just a few key points of timeline and
 11 chronology.
 12 In 2008, Windstream began to
 13 invest in resource evaluation engineering. In
 14 February 2008, it applies for AOR status for the
 15 Project.
 16 And at the site where it
 17 applies for AOR status, shortly after the OPA had
 18 commissioned a study to look at 64 or 65 sites for
 19 offshore wind development, and the location of the
 20 Project was identified as one of nine as being the
 21 most favourable sites for offshore wind
 22 development.
 23 In September 2009, the FIT
 24 program is launched and the Ministry of Natural
 25 Resources writes a letter to Windstream and says,

1 and we quote it here, in order to maintain
 2 priority position in the site release process,
 3 Windstream must submit an application to the FIT
 4 program.
 5 So Windstream does in
 6 November. It posts the \$3 million letter of
 7 credit needed.
 8 In May 2010, the OPA offers
 9 Windstream a FIT Contract. And, ultimately, in
 10 August, Windstream signs that FIT Contract and
 11 posts the full \$6 million of credit.
 12 And, in the Award, at
 13 paragraphs 126 to 137, the Tribunal goes through
 14 the history of what happened between May and
 15 August between the offering of the FIT Contract
 16 and the signing.
 17 And just to highlight the key
 18 takeaway points -- and I raise this, again,
 19 because of something my friends has in their
 20 materials, which I will come to on the next slide.
 21 But just to highlight.
 22 Windstream gets offered the
 23 contract in May. It doesn't sign it back right
 24 away.
 25 The government announces that

1 it's going to be proposing or it might be
 2 proposing a 5 kilometre set back from the shore
 3 guidelines to update the regulatory framework to
 4 impose this 5 kilometre set back.
 5 So, through these months,
 6 Windstream is meeting with the OPA and Minister of
 7 Energy and government representatives to talk
 8 about this. And it was confident that it could
 9 reconfigure its Project and swap the grid cells in
 10 its applications to meet that 5 kilometre set
 11 back.
 12 And so it was speaking to the
 13 government about doing that and about adding one
 14 year to the FIT Contract. The FIT Contract
 15 provides four years to get to commercial
 16 operation, and Windstream was asking for five
 17 years, which it ultimately got.
 18 And, as found by the Tribunal
 19 in these paragraphs, Windstream was receiving
 20 reassurances from the Tribunal, their statements.
 21 When you read through the facts the Tribunal made
 22 about these meetings, it notes that one of the
 23 Ministries told Windstream its Project was
 24 special. It had these meetings. It received
 25 reassurances. It signed the FIT Contract. It got

1 the extra year.
 2 And, if we turn to the next
 3 slide.
 4 In the first arbitration,
 5 Canada argued -- and I think we have to -- sorry,
 6 don't flip forward. Just confidentiality mode.
 7 There is just a confidential line on the Award on
 8 the next slide.
 9 --- CONFIDENTIAL TRANSCRIPT COMMENCES AT 9:57 a.m.
 10 PRESIDING ARBITRATOR MILES:
 11 Alonso, we are waiting for you to give us the go
 12 ahead, please.
 13 MR. HAUSER: One second.
 14 Please, Madam President.
 15 PRESIDING ARBITRATOR MILES: I
 16 have a question while we are waiting.
 17 MS. SHERKEY: Sure.
 18 PRESIDING ARBITRATOR MILES:
 19 Is there a specific clause in the FIT that relates
 20 to the letter of credit? Or were they entirely
 21 separate instruments?
 22 MS. SHERKEY: Yes. The FIT
 23 contract required the posting of the letter of
 24 credit.
 25 PRESIDING ARBITRATOR MILES:

1 In what clause? There's a whole security
 2 provision, but I couldn't see, specifically, the
 3 requirement for a \$3 million letter of credit.
 4 MS. SHERKEY: The 3 million
 5 was with the application. So that probably was
 6 not in the FIT Contract itself because it came at
 7 the application stage. And then 6 million had to
 8 come with the FIT Contract.
 9 PRESIDING ARBITRATOR MILES:
 10 So 3 million more, 6 million total.
 11 MS. SHERKEY: Yes, 6 million
 12 total. 3 million at the application and then
 13 another 3 million for a total of 6 million, if and
 14 when, if you got the FIT Contract.
 15 I can, on a break, and I can
 16 ask my colleagues to pull it up in the meantime,
 17 get you the specific cites for that.
 18 PRESIDING ARBITRATOR MILES:
 19 That would be helpful. Thank you.
 20 MR. HAUSER: We are now
 21 confidential, Madam President.
 22 PRESIDING ARBITRATOR MILES:
 23 Thank you, Alonso.
 24 MS. SHERKEY: This is
 25 unfortunately going to be a short one because it's

1 just the one slide.
 2 So, if we turn over the slide,
 3 it is just one of the confidential paragraphs of
 4 the Award, the government had designated a line in
 5 here as confidential.
 6 And so the point being, Canada
 7 had argued that there was delay in signing the FIT
 8 contract due to regulatory risk that the Claimant
 9 perceived.
 10 And what I want to note is
 11 what the Tribunal found that I have excerpted here
 12 at paragraph 366, which the Tribunal finds that it
 13 was following the signing of the FIT Contract in
 14 August 2010, that the position of the Government
 15 of Ontario grew gradually more ambiguous towards
 16 the development of offshore wind.
 17 And it says at the highlighted
 18 portion a few lines down:
 19 "Its position started
 20 changing in the fall of
 21 2010."[as read]
 22 So we can come back out of
 23 confidentiality mode and go to the next slide.
 24 PRESIDING ARBITRATOR MILES:
 25 Alonso, are we all out?

1 --- CONFIDENTIAL TRANSCRIPT ENDS AT 10:01 a.m.
 2 MR. HAUSER: The stream has
 3 now resumed. Thank you, Madam President.
 4 PRESIDING ARBITRATOR MILES:
 5 Thank you very much.
 6 Ms. Sherkey, just to my
 7 question earlier on the FIT Contract. You may be
 8 able to confirm it's clause 5.1. It might be. It
 9 just was a bit ambiguous to me.
 10 So if that is the clause that
 11 provides for the letter of credit amount, half
 12 pre, half post, just if you could confirm that.
 13 MS. SHERKEY: We will get that
 14 for you. Absolutely.
 15 PRESIDING ARBITRATOR MILES:
 16 Thank you.
 17 In fact, if you could also
 18 agree that with the government, that would be even
 19 better. Thank you.
 20 MS. SHERKEY: Yes. I expect
 21 that is something we will reach agreement about.
 22 Just a summary of some key
 23 provisions.
 24 The OPA was required to
 25 purchase all electricity from the Project at a

1 premium rate for a 20-year term subject to
2 inflation if the Project reached commercial
3 operation and the revenues would have been in the
4 billions of dollars.

5 So WWIS was required under the
6 contract to bring the Project into commercial
7 operation by May 4th, 2015, which was five years
8 after the offer date of the contract and it was
9 on -- it had to post the \$6 million credit, as we
10 were talking about, security which would be
11 forfeited if the contractual timelines weren't
12 met.

13 And the last point, because
14 it's so key to this arbitration, I just will
15 highlight, is force majeure.

16 So Windstream could invoke
17 force majeure if there were circumstances beyond
18 the parties' control, and that would delay
19 commercial operation. It would push out the
20 commercial operation date by that time of force
21 majeure, but subject to a limit.

22 If there was more than
23 24 months of force majeure, if commercial
24 operation was put off by more than 24 months, then
25 either party could terminate the FIT Contract

1 without penalty.

2 So that's where we get, and
3 you will hear a lot today about the May 4th, 2017,
4 termination date. And that's Section 10.1(g).

5 And so, just moving forward in
6 the timeline, Windstream does a whole bunch of
7 work to move the Project ahead. We have
8 summarized it on the slide. I am not going to
9 take you through the details of it. I have given
10 you excerpts to the materials.

11 But, to do even more work than
12 it had done, it needed access to the Crown land.
13 And that wasn't happening, even though Windstream
14 says it was given reassurances about this moving
15 forward. It didn't happen.

16 So, by December 2010,
17 Windstream declares force majeure. That's
18 effective as of November 22nd, 2010.

19 And then the moratorium is
20 announced.

21 And the Tribunal's findings on
22 the moratorium are set out at paragraphs 368 to
23 369 of the Award. A couple just key points.

24 The Tribunal found that in
25 January 2011, I believe it's January 6, 2011,

1 Ontario officials met to consider a number of
2 options about how to proceed with offshore wind.
3 One was the moratorium. Other options were being
4 considered.

5 Ultimately, the Tribunal finds
6 that the decision to impose the moratorium was
7 made on January 24th, at an interministerial
8 meeting.

9 And I highlight that because
10 the Tribunal, in so finding -- and this is at
11 paragraph 369 of the Award -- didn't accept the
12 evidence of Minister Wilkinson that he made the
13 decision on the spot on January 7th because of
14 drinking water concerns.

15 And I highlight that because,
16 on the next slide, Canada repeats, in this
17 arbitration, the arguments it made before
18 Windstream I --

19 PRESIDING ARBITRATOR MILES:

20 Is this confidential, the highlighted bit?

21 MS. SHERKEY: No.

22 PRESIDING ARBITRATOR MILES:

23 Okay.

24 MS. SHERKEY: That the
25 moratorium decision was made by the Minister of

1 the Environment based on the precautionary
2 principle.

3 So what I would encourage for
4 this Tribunal is to look at the findings at
5 paragraph 369 and what we have excerpted here
6 where the Tribunal finds:

7 "The government's
8 decision was driven in
9 part by that policy
10 concern."[as read]

11 But we are on to
12 paragraph 367, it also says the evidence before
13 the Tribunal suggests the decision to impose the
14 moratorium was not only driven by the lack of
15 science and goes on to note the political
16 concerns.

17 CO-ARBITRATOR MCLACHLIN: Just
18 for the record, the numbers I have are 377.

19 PRESIDING ARBITRATOR MILES:
20 377, you said 367.

21 MS. SHERKEY: 369 is their
22 finding on the evidence of Minister Wilkinson, and
23 376 and 377 are their findings here on the actual
24 moratorium.

25 Over on the next slide, the

1 promise to freeze.
 2 So we have highlighted here
 3 what the Tribunal found on the promise to freeze
 4 in the transcript.
 5 To your question, Madam
 6 President, the first bullet is the Project would
 7 be deferred frozen and on hold.
 8 Mr. Benedetti gave a recap.
 9 He said, to recap, this is my understanding and he
 10 said those words. And I believe it was
 11 Mr. MacLennan, but we will confirm, from the
 12 Ministry of Energy who responds yes.
 13 So it's Mr. Benedetti's words
 14 saying I have this understanding and
 15 Mr. MacLennan says yes.
 16 PRESIDING ARBITRATOR MILES:
 17 It is Mr. MacLennan in the transcript.
 18 MS. SHERKEY: And then the
 19 final point before I am about to sit down -- and
 20 you will hear from Mr. Terry on the Tribunal's
 21 findings -- is that we've heard again, from my
 22 friends in this arbitration, that Windstream's
 23 negotiations with the OPA that followed this did
 24 not result in a resolution because Windstream
 25 abandoned these discussions.

1 PRESIDING ARBITRATOR MILES:
 2 Sorry, Ms. Sherkey. Can we just come back, and it
 3 goes to.
 4 MS. SHERKEY: Oh, yes.
 5 PRESIDING ARBITRATOR MILES:
 6 The earlier question as well.
 7 You have said, you took us to
 8 Slide 371, and we have highlighted here what the
 9 Tribunal found on their promise to freeze. And
 10 then I think we interrupted you on the paragraph
 11 numbers.
 12 Could you please just point me
 13 precisely, where in the Award, what the Tribunal
 14 found on the promise to freeze?
 15 MS. SHERKEY: Yes. That's
 16 what we have excerpted here, which was, during the
 17 call, the government officials confirmed that the
 18 Project was not terminated and that it would go
 19 forward once the science studies had been
 20 completed.
 21 And then the Tribunal excerpts
 22 from the transcript.
 23 PRESIDING ARBITRATOR MILES:
 24 So the Tribunal -- where's the Tribunal finding of
 25 a promise to freeze? Does the Tribunal use the

1 word "promise to freeze"?
 2 MS. SHERKEY: It quotes from
 3 the transcript so we would say it made findings of
 4 fact as to the content of the transcript was said
 5 and made. And its summary of it is what we have
 6 highlighted here, that it was not terminated and
 7 it would go forward once the science studies had
 8 been completed.
 9 Which, in my submission, is
 10 the equivalent of a freeze. A freeze is a
 11 characterization but what does it mean? It means
 12 that the Project would go forward once the science
 13 studies had been completed.
 14 CO-ARBITRATOR MCLACHLIN:
 15 There is some question about -- I was puzzling, as
 16 I prepared for this, what freeze really means.
 17 It can mean -- this may go
 18 more to the law part rather than the facts.
 19 But freeze can mean that it
 20 will be -- that whatever is frozen will be
 21 jettisoned once it's unfrozen or it can mean that
 22 it's picked up and thawed out.
 23 There are different meanings
 24 here so I imagine, perhaps this will be for your
 25 friend, but we will have to tease this out.

1 MS. SHERKEY: What I would
 2 encourage is the full reading of the statement at
 3 the first arrow here which, when Mr. Benedetti
 4 says this is my understanding, the Project will be
 5 deferred, frozen, put on hold until such time as
 6 the province can establish a regulation under the
 7 REA pertaining to offshore wind and Mr. MacLennan
 8 than responds yes.
 9 And you will hear from
 10 Mr. Terry as to what Canada said before the
 11 Windstream I Tribunal which we would say is
 12 consistent with this.
 13 And so frozen, I agree,
 14 Justice McLachlin, could have multiple meanings.
 15 But there was more context around what was said on
 16 the call than just that one word.
 17 I would say it's a pithy word
 18 that's picked up but you actually have to look at
 19 the full context of what was said.
 20 CO-ARBITRATOR MCLACHLIN:
 21 Thank you.
 22 PRESIDING ARBITRATOR MILES:
 23 Is Mr. Terry going to come back in detail to the
 24 representations that you rely on here in Canada's
 25 counter-memorial in Windstream I about the use of

1 the word "frozen".
 2 MS. SHERKEY: Yes.
 3 PRESIDING ARBITRATOR MILES:
 4 Are you going to come back specifically to that?
 5 So.
 6 MS. SHERKEY: In just a
 7 moment, in about two slides.
 8 PRESIDING ARBITRATOR MILES:
 9 All right. I will wait then.
 10 MS. SHERKEY: And my final
 11 point is a quick one, which is just, in terms of
 12 what happened with the negotiations with the OPA,
 13 we don't accept my friend's characterization
 14 raised again in this arbitration. We have
 15 highlighted the history here, encourage you to
 16 read these paragraphs of the Award.
 17 But, in short, the OPA was
 18 only offering a maximum five year extension and
 19 nothing more. Windstream offered alternatives
 20 which were all rejected and the OPA always
 21 maintained its position that, at most, it would
 22 give a five-year extension regardless of the
 23 length of the moratorium.
 24 And that's what was happened
 25 that ultimately leads to Windstream bringing the

1 first NAFTA arbitration.
 2 PRESIDING ARBITRATOR MILES:
 3 Very good. Thank you.
 4 OPENING STATEMENT BY MR. TERRY (cont'd):
 5 MR. TERRY: If we could turn,
 6 please, to Slide 25.
 7 The two things I want to do
 8 before I pass the baton back to Ms. Sherkey.
 9 The first is, as Ms. Sherkey
 10 was indicating, President Miles, talk about what
 11 Canada said in its counter-memorial on Windstream
 12 I and also at the hearing, as reflected in the
 13 Tribunal Award about the Project being frozen.
 14 And then, secondly, zero in on
 15 the Tribunal's findings with respect to the
 16 breaches and value.
 17 So it's Slide 25, and you'll
 18 know in the memorials there is a lot of other
 19 detail that we include about what Canada said at
 20 the time at the Project --
 21 PRESIDING ARBITRATOR MILES:
 22 Can I ask you what my question was going to be and
 23 then perhaps you can answer that.
 24 MR. TERRY: Yes, certainly.
 25 PRESIDING ARBITRATOR MILES:

1 In the Canada's submission, including at 487, also
 2 21, 260, the other paragraphs you rely on in your
 3 proceedings, it seems to me they refer to on hold
 4 until regulatory rules and requirements are
 5 developed.
 6 Whereas, the Tribunal's
 7 finding was, during the call, government officials
 8 confirmed the Project was not terminated and it
 9 would go forward once the science studies had been
 10 completed.
 11 So when you are dealing with
 12 what Canada submitted in the first proceedings and
 13 what the Tribunal found, could you please be clear
 14 and consistent with how you have pleaded your own
 15 case here, be clear to distinguish between the
 16 findings, which are what matter to us.
 17 MR. TERRY: Yes.
 18 The -- and we have included,
 19 just in the slides, here two references, which go
 20 to the core of what was said here.
 21 This, first of all, is from
 22 the counter-memorial, Canada's counter-memorial in
 23 Windstream I, where they state, and we have
 24 highlighted the provision:
 25 "The fact is that the

1 Claimant's Project was
 2 merely frozen and can
 3 continue to be developed
 4 once the necessary
 5 science, rules and
 6 policies for offshore
 7 wind are in place."[as
 8 read]
 9 So, there in response to your
 10 question, the comprehensive science, rules and
 11 policies are in place.
 12 And in the next page, page 26,
 13 we have the Tribunal's findings -- or the
 14 Tribunal's statement as to what it is that the
 15 Respondent is saying.
 16 The Respondent states that the
 17 current legal status of the contract is that it is
 18 in force majeure.
 19 And the next line:
 20 "Given the Claimant's
 21 unique position as the
 22 only FIT Contract holder
 23 for offshore wind, its
 24 contract was frozen until
 25 the regulatory framework

Page 61		Page 62	
1	could be finalized."[as	1	informed framework for
2	read]	2	offshore wind projects in
3	The words there "regulatory	3	Ontario.
4	framework could be finalized".	4	When the decision to
5	And then there's explanation	5	implement the deferral
6	as to, as to:	6	was made, this task was
7	"The Respondent	7	expected to take
8	attributes this	8	approximately three to
9	arrangement to the fact	9	five years.
10	that the OPA was willing	10	The Respondent further
11	to preserve the	11	contends that the
12	Claimant's opportunity to	12	Claimant has been
13	pursue a contract and	13	repeatedly informed that
14	didn't want the	14	its Project is put on
15	Claimant's Project to	15	hold until the regulatory
16	fail because of	16	rules and requirements
17	government's lack of	17	for offshore wind
18	readiness to approve it.	18	projects are developed.
19	According to the	19	According to the
20	Respondent, the deferral	20	Respondent, the Project
21	is intended to last only	21	is, therefore, merely
22	as long as necessary to	22	frozen and still kept
23	conduct scientific	23	alive. That is, it has
24	research and develop and	24	not been terminated by
25	implement an adequately	25	the OPA. In addition,
Page 63		Page 64	
1	the Respondent points out	1	not been unilaterally
2	the legal status of other	2	terminated by the
3	assets of the Project	3	Government of Ontario.
4	remain unaffected."[as	4	Consequently, while the
5	read]	5	Tribunal agrees with the
6	So that is the Tribunal's	6	Claimant that the Project
7	statements with respect to what it understood the	7	can no longer be
8	Respondent to be arguing about the Project being	8	completed by the MCO, 4
9	frozen.	9	May 2017, it continues to
10	And then if we turn to the	10	remain open for the
11	next slide.	11	parties to reactivate
12	We get to the Tribunal's	12	and, as appropriate,
13	findings with respect to the breaches.	13	renegotiate the FIT
14	And, Ms. Miles, if you have	14	contract to adjust its
15	any other questions arising?	15	terms to the
16	PRESIDING ARBITRATOR MILES:	16	moratorium."[as read]
17	With respect to expropriation; correct?	17	So the first finding -- or the
18	MR. TERRY: Yes. Yes. So we	18	first set of -- the first reason it articulates as
19	are starting with expropriation and then FET.	19	to why there has been no expropriation.
20	And you can see here that the	20	The second, they say:
21	Tribunal, picking up with what Canada said about	21	"Second, and more
22	frozen:	22	importantly, in the
23	"The Claimant's FIT	23	context of the Claimant's
24	contract is still	24	expropriation claim, the
25	formally in force and has	25	Claimant's Canadian 6

Page 65

1 million security deposit
 2 is still in place and has
 3 not been taken or
 4 rendered otherwise
 5 worthless as a result of
 6 any action taken by the
 7 Government of
 8 Ontario."[as read]
 9 And just to, for efficiency
 10 here, if we go to the next page 28. You can see
 11 the part we have highlighted:
 12 "The value of the asset
 13 is still available to the
 14 Claimant as it has not
 15 been taken. The security
 16 deposit is substantial,
 17 in particular, when
 18 compared to the overall
 19 value of the investment.
 20 In the circumstances, the
 21 Tribunal is unable to
 22 conclude that the
 23 Claimant has been
 24 substantially deprived of
 25 the value of its

Page 67

1 the moratorium.
 2 "While the regulatory
 3 framework continued to
 4 envisage the development
 5 of offshore wind,
 6 additional more detailed
 7 regulations governing
 8 offshore wind
 9 specifically were never
 10 developed. Government
 11 let the OPA conduct the
 12 negotiation with
 13 Windstream, even if the
 14 decision on the
 15 moratorium had been
 16 undertaken by the
 17 government and not by the
 18 OPA, and without
 19 providing any direction
 20 to the OPA for the
 21 negotiations although it
 22 had the authority to do
 23 under the GEGEA (a power
 24 it had exercised when
 25 introducing the FIT

Page 66

1 investment."[as read]
 2 So the reason there has been
 3 no expropriation is because the Tribunal finds
 4 that, based on the \$6 million, that it is still
 5 substantial compared to the overall value of the
 6 investment and, therefore, there's no substantial
 7 deprivation to make an expropriation claim.
 8 PRESIDING ARBITRATOR MILES:
 9 And Ms. Sherkey took us, briefly, to the terms of
 10 the FIT Contract and 9.2(d)(1), in particular.
 11 Am I correct to understand
 12 that, pursuant to the terms of the FIT Contract,
 13 the government could have taken the 6 million in
 14 the event of termination in certain circumstances?
 15 So the 6 million could have been forfeited under
 16 the terms of the FIT Contract; is that right?
 17 MR. TERRY: That is my
 18 understanding; yes, that's correct.
 19 The -- if we go to the next
 20 page, 29.
 21 The Tribunal moves on from
 22 expropriation to FET and talks about the fact
 23 that, most importantly, the government did little
 24 to address the legal contractual limbo in which
 25 Windstream found itself after the imposition of

Page 68

1 program).
 2 As a result, the
 3 negotiations between OPA
 4 and the Windstream failed
 5 to produce results. By
 6 May 2012, the Project had
 7 reached a point at which
 8 it was no longer
 9 financeable.
 10 Nonetheless, the
 11 government failed to
 12 clarify the situation,
 13 either by way of promptly
 14 completing the required
 15 scientific research and
 16 establishing the
 17 appropriate regulatory
 18 framework for offshore
 19 wind and reactivating
 20 Windstream's FIT
 21 contract."[as read]
 22 So either by doing that, we
 23 would say, in accordance with the promise to
 24 freeze, or by amending the relevant regulations so
 25 as to exclude offshore wind altogether as a source

1 of renewable energy terminating Windstream's FIT
 2 contract in accordance with the applicable law.
 3 And I pause to say, and as you
 4 will hear from Ms. Sherkey, the government has
 5 never -- as of this day, the regulations have
 6 never been regulated as the Tribunal suggests the
 7 government might have done to remove offshore
 8 wind, it still is identified in the regulations
 9 as, as a, as a source of power with respect to
 10 those regulations.
 11 "For these reasons, the
 12 Tribunal finds that the
 13 government's conduct
 14 vis-à-vis Windstream
 15 during the period
 16 following the imposition
 17 of the moratorium was
 18 unfair and
 19 inequitable."[as read]
 20 So they make that finding of
 21 the FET breach.
 22 Then if you go to page 30:
 23 "The Tribunal concludes
 24 that the failure of the
 25 Government of Ontario to

1 take the necessary
 2 measures, including when
 3 necessary, by way of
 4 directing the OPA within
 5 a reasonable period of
 6 time after the imposition
 7 of the moratorium to
 8 bring clarity to the
 9 regulatory uncertainty
 10 constitutes a breach of
 11 1105 and the regulatory
 12 contractual limbo in
 13 which the Claimant found
 14 itself in the years
 15 following the imposition
 16 of the moratorium was a
 17 result of acts and
 18 omissions of the
 19 Government of Ontario
 20 and, as such, is
 21 attributable to the
 22 Respondent."[as read]
 23 And, if we go to the next
 24 slide, we talk about the damage. The Tribunal
 25 notes that the compensation to make the Claimant

1 whole.
 2 "Keeping in mind the
 3 Tribunal's determination
 4 that the Claimant has not
 5 lost the entire value of
 6 its investment as the FIT
 7 contract is still
 8 formally in force. And,
 9 accordingly, as the 6
 10 million letter of credit
 11 is still available to the
 12 Claimant and has not been
 13 lost or taken by the
 14 government. The
 15 compensation to be
 16 awarded to the Claimant
 17 must, therefore, reflect
 18 the Claimant's loss
 19 (damage to the
 20 investment) rather than
 21 the full value of the
 22 investment. The latter
 23 would be relevant only if
 24 the Claimant has lost the
 25 entirety of its

1 investment as a result of
 2 expropriation, which is
 3 not the case here."[as
 4 read]
 5 And then the next page has
 6 paragraph 483 which we talked about earlier:
 7 "While the Tribunal
 8 considers that this is a
 9 proper valuation of the
 10 Project, it should be
 11 kept in mind that, as
 12 determined above, the
 13 Claimant is not entitled
 14 to compensation for the
 15 full value of its
 16 investment. The Claimant
 17 has not lost the letter
 18 of credit which is still
 19 in place and the FIT
 20 contract is still in
 21 force and could, in
 22 theory, be revived and
 23 renegotiated if the
 24 parties so agreed."[as
 25 read]

1 And the Tribunal notes that,
 2 as we have highlighted here:
 3 "Although the FIT
 4 contract could have been
 5 reactivated and
 6 renegotiated by the
 7 parties at any time
 8 during the period from 11
 9 February 2011 until the
 10 date of this Award, as a
 11 matter of fact, this has
 12 not happened, and
 13 consequently, as of the
 14 date of this Award, the
 15 FIT Contract cannot be
 16 considered to have any
 17 value."[as read]
 18 So, and we acknowledge Canada
 19 makes the point they made the finding the FIT
 20 contract cannot be considered to have any value as
 21 of that date.
 22 And then:
 23 "It is another matter
 24 that the parties can
 25 create such value by

1 II, you're arguing that this value was created
 2 after the Award in Windstream I. There is a new
 3 value that's been created. It was worth nothing
 4 at the time of the Award, but you have, is your
 5 argument that you have done these steps, they have
 6 happened, renegotiation, et cetera, and a new
 7 value has been created?
 8 MR. TERRY: Our argument is
 9 that Windstream, our clients, have taken all the
 10 steps they possibly could to create value. And
 11 you will hear evidence about value being created.
 12 But their goal would be to
 13 create the full value of the FIT Contract. They
 14 have been -- because the government has not
 15 engaged, a lot of that value that could have been
 16 made has been blocked.
 17 And our argument is that, as a
 18 matter of fair and equitable treatment, this is
 19 where we rely on the continuing obligation, we
 20 would say, the government has in terms of the
 21 promise to freeze that arose earlier.
 22 CO-ARBITRATOR MCLACHLIN: If I
 23 have your argument, tell me if I am wrong, you are
 24 not arguing here that a new value has been
 25 created.

1 reactivating and
 2 renegotiating the FIT
 3 contract after the Award
 4 which option is still
 5 open to them."[as read]
 6 PRESIDING ARBITRATOR MILES:
 7 What, if anything, do you make of the preparatory
 8 words "it is another matter" and the fact that
 9 that sentence is in brackets?
 10 MR. TERRY: Our submission is
 11 that, if you look at the Tribunal's Award,
 12 certainly the Tribunal didn't have to say anything
 13 with respect to that issue at all. They went out
 14 of their way, in parenthesis, to say that -- to,
 15 well, I -- again, I hesitate to put too much of a
 16 gloss in terms of what they are saying.
 17 But they wanted to make the
 18 point, I would say, that the parties could create
 19 such value by reactivating and renegotiating the
 20 FIT Contract and they made clear, at the end of
 21 that sentence, which option is still open to them.
 22 CO-ARBITRATOR MCLACHLIN:
 23 Sorry to interrupt.
 24 But, just to be clear, is what
 25 you're saying is that, in this case, Windstream

1 You are arguing that you tried
 2 to get a new value created but the government did
 3 not cooperate; is that the correct view of the
 4 position you take?
 5 MR. TERRY: Our position is
 6 that, and you will hear from the witnesses, we
 7 would say that additional value, some additional
 8 value has been created from the work that
 9 Windstream has been able to do without government
 10 involvement.
 11 If the government had taken
 12 steps to reactivate, there would be more value
 13 created.
 14 And we also say that, if you
 15 look at the valuation date, the Project has simply
 16 become more valuable with the passage of time.
 17 So I -- those three responses
 18 is what I would say, just to be very clear on
 19 that, in response.
 20 CO-ARBITRATOR MCLACHLIN:
 21 Well, in due course, you will show us what this
 22 additional value is that has been created.
 23 MR. TERRY: Yes.
 24 CO-ARBITRATOR MCLACHLIN: I
 25 take it from your answer that you're saying what

1 the supposition that's in brackets in the Award
2 has come to place and a new value has been created
3 because there was nothing then. Now you have
4 created a new value; that's your position?

5 MR. TERRY: Yeah, yeah. This
6 is, this is -- I mean, the provision in the
7 parenthesis talked about the parties, plural,
8 creating such value.

9 I would say that one of the
10 parties, Windstream, through the efforts they have
11 done, have created some additional value.

12 But, just to be clear, the
13 parties themselves, together, have not reactivated
14 the FIT Contract to create additional value. We
15 are not arguing that in any way.

16 CO-ARBITRATOR MCLACHLIN:
17 Thank you.

18 MR. TERRY: So I also --
19 PRESIDING ARBITRATOR MILES:
20 Can I just come back to -- I had asked you what,
21 if anything, do you make of the prefatory words,
22 it's another matter, and the fact that the entire
23 sentence is in brackets.

24 And you came back and noted
25 that the Tribunal didn't have to say anything in

1 this respect at all. And then you said they went
2 out of their way, in parenthesis, to say and you
3 hesitated to put too much gloss on it.

4 But your submission is they
5 wanted to make the point that the parties could
6 create value by reactivating and renegotiating and
7 that the option is still open to them.

8 Coming back again, and I know
9 we are trying to read the minds of the Tribunal
10 but I want to understand your submission.

11 What, if anything, do you make
12 of the fact that the Tribunal did those things in
13 parenthesis and, with that prefatory language, "it
14 is another matter", do you read anything into the
15 manner in which they dealt with this point that
16 you say they didn't need to deal with at all?

17 MR. TERRY: I would like to
18 discuss the issue a little further and come back
19 with -- discuss with the team and come back on
20 this point.

21 At this point, the only thing
22 I would add to what I said before is of course
23 they do make the point, if you go to the top of
24 paragraph 483, the FIT Contract is still in force
25 and could, in theory, be still revived and

1 renegotiated if the parties so agreed.

2 It's not -- so the part that's
3 in parenthesis isn't the only reference that they
4 are making to this point.

5 I mean, that's the only point
6 I would make right now and, if you'd allow me, we
7 will just discuss this and maybe come back to you
8 later on to see if we have anything additional to
9 add about the words "it is another matter".

10 PRESIDING ARBITRATOR MILES:
11 When you do that also, the fact that this is in
12 the context of the damages valuation section only
13 as well.

14 CO-ARBITRATOR GOTANDA: Does
15 it matter that additional value was created for
16 the expropriation claim?

17 In other words, if the parties
18 didn't create much additional value but the
19 expropriation claim, which was never decided by
20 the Tribunal, the value just changes because of
21 the market. I can see it affecting the FET claim
22 possibly, but the expropriation claim, does that
23 matter?

24 MR. TERRY: From the
25 perspective of the expropriation claim, there was

1 a FIT Contract that our clients had. They no
2 longer have that FIT Contract. And that's not
3 something that existed in 2016.

4 So, in terms of valuing that,
5 the worth of that particular contract, it's
6 important to look at, you know, from a basic
7 damages principle, if you value that at 2020,
8 versus 2016, what is the difference in that?

9 Now you have to deal, in that
10 case, with the Tribunal's statement that, at the
11 time of the Award, the FIT Contract can't be
12 considered to have any value.

13 And it may be that if, if the
14 Tribunal were inclined to agree with us, that the
15 promise to freeze is still -- it's an ongoing
16 obligation. It didn't disappear at the time of
17 the previous agreement. It may be it may fit
18 better the FET assessment to see that, as a
19 promise that wasn't fulfilled and the government
20 having an obligation to work with Windstream and
21 achieve value. It may fit better within an FET
22 model than expropriation of value. I acknowledge
23 that.

24 But, but the fact is that we
25 had a contract. We no longer have that contract.

1 The Tribunal said what it did previously about,
 2 about this analysis. The fact is that the
 3 government held on to the \$6 million throughout
 4 this period as well. You know, that was
 5 mentioned.
 6 PRESIDING ARBITRATOR MILES:
 7 And just to make sure the transcript is clear, the
 8 Tribunal did of course decide the expropriation
 9 claim but decided against the Claimant in the
 10 first arbitration.
 11 MR. TERRY: Yes.
 12 PRESIDING ARBITRATOR MILES:
 13 So it wasn't undecided.
 14 CO-ARBITRATOR GOTANDA: That's
 15 right.
 16 MR. TERRY: Yes, yes.
 17 PRESIDING ARBITRATOR MILES:
 18 Can I just take one moment with the good lady,
 19 Ms. Lisa.
 20 --- Off-the-record discussion re breaks.
 21 PRESIDING ARBITRATOR MILES:
 22 When is a good time to take breaks? We have a lot
 23 of time today. If we go on schedule, we finish at
 24 3 o'clock or something, so we can put in sensible
 25 breaks. We have asked you a lot of questions.

1 Do you want to take a break
 2 now? Do you want to take a break at quarter to?
 3 What would you like.
 4 MR. TERRY: It would be fine
 5 to take a break now if that works for others. As
 6 you say, there have been a lot of questions so we
 7 can talk about looking at the slides going forward
 8 and how we can best organize it to finish.
 9 PRESIDING ARBITRATOR MILES:
 10 We will work on the basis of broadly 90 minutes
 11 breaks. Breaks for 15. So breaks for 15 every
 12 90, apart from the lunch break. And within
 13 reason. If someone is in full swing on something,
 14 we can get a bit of wiggle room.
 15 And if perhaps the counsel
 16 teams can get somebody to prepare a schedule that
 17 works along those lines for the rest of the week,
 18 then we all know where we stand a bit better.
 19 Yes, okay.
 20 MR. TERRY: Okay.
 21 PRESIDING ARBITRATOR MILES:
 22 All right. Perfect. We will come back at quarter
 23 to. Thank you.
 24 --- Upon recess at 10:34 a.m.
 25 --- Upon resuming at 10:49 a.m.

1 PRESIDING ARBITRATOR MILES:
 2 Welcome back.
 3 OPENING STATEMENT BY MS. SHERKEY (cont'd):
 4 MS. SHERKEY: So now I am
 5 going to cover the post 2016 time frame.
 6 A lot of slides and not so
 7 much time so I will be moving quickly through some
 8 issues, higher level on some, more detailed on
 9 others and letting you know as I do that.
 10 So going into the next slide.
 11 Here, we have just given a
 12 summary of the evidence that's before you. I am
 13 not going to walk through this in detail, but just
 14 to summarize that we have provided evidence from
 15 seven fact witnesses and two experts on the
 16 liability issues. Ms. Shelley will deal with the
 17 damages evidence.
 18 And you will hear from two of
 19 them tomorrow, Ms. Baines and Mr. Killeavy.
 20 So I have broken, if we go
 21 over to the next slide --
 22 PRESIDING ARBITRATOR MILES:
 23 And neither of those gave evidence in the earlier
 24 arbitration; did they? Ms. Baines and
 25 Mr. Killeavy?

1 MS. SHERKEY: No.
 2 Mr. Killeavy gave evidence in
 3 the Ontario application.
 4 So we have broken this into
 5 three parts. I am going to start just to help
 6 kind of create flow and navigate us as we go
 7 through to keep structure.
 8 We are going to start with
 9 Windstream's expectations coming out of the NAFTA
 10 I Award.
 11 So, if we start at Slide 38, I
 12 have given a summary here of Ms. Baines' evidence
 13 in her witness statement as to where Windstream's
 14 optimism that the Project could proceed originated
 15 from.
 16 The first two, Mr. Terry
 17 already spoke about, which was these findings he
 18 reviewed by the Windstream I Tribunal about the
 19 contract still being in force and able to be
 20 renegotiated and the statements by Canada in the
 21 proceedings.
 22 And then what I am going to
 23 focus on now is after the Award, what happened.
 24 Government statements that wind research would be
 25 finalized, the Project could be built, and the

1 government holding on to the \$6 million letter of
 2 credit.
 3 And I have highlighted here
 4 Ms. Baines' statement about their expectation
 5 being that the Ontario government would speak to
 6 them in good faith about the FIT Contract and
 7 about what could be done to proceed, about what
 8 could be done to fulfil the promise that the
 9 Project would be frozen from the effects of the
 10 moratorium.
 11 And I highlight on the next
 12 slide that Ms. Baines gives this evidence and it's
 13 represented in contemporaneous documents.
 14 We have highlighted two on
 15 this slide from Mr. Baines, sending emails after
 16 the Award talking about the contract remaining
 17 valid and in force and their intention to move the
 18 Project forward.
 19 And there's a number more
 20 highlighted in Ms. Baines -- or cited in
 21 Ms. Baines' witness statement.
 22 And this understanding, we
 23 say, was shared by the Ontario government.
 24 If you go over to the next
 25 page, this is an email dated one month after the

1 is still in force."[as
 2 read]
 3 And if you go on to the next
 4 slide, here are some further --
 5 PRESIDING ARBITRATOR MILES:
 6 Who is Erin Thompson?
 7 MS. SHERKEY: We can take a
 8 look -- I don't have the role of Erin Thompson at
 9 my fingertips but we can see if, in the documents,
 10 it's reflected as to what her role was at Energy.
 11 What I understand in terms of
 12 this saying "please see ADM and LSB approved
 13 response" is that would be associate deputy
 14 ministry and legal services branch, but I am not
 15 100 percent. That's what we could ascertain from
 16 the documents.
 17 PRESIDING ARBITRATOR MILES:
 18 Okay.
 19 And just in terms of not the
 20 part you're focusing on, but the first sentence of
 21 the paragraph you've highlighted, is it correct,
 22 in your submission, that the Tribunal considered
 23 damages to Windstream's Project as a result of the
 24 moratorium?
 25 MS. SHERKEY: The reason there

1 parties received the confidential version of the
 2 Award stating this was an approved response. And,
 3 in the highlighted portion, where they're talking
 4 about what the Tribunal found, these are
 5 representatives from the Ministry of Energy
 6 stated:
 7 "The Tribunal did not
 8 consider the value of the
 9 contract, only the
 10 specific damages to
 11 Windstream's Project that
 12 company incurred as a
 13 result of the moratorium.
 14 They determined that the
 15 Claimant hasn't lost the
 16 entire value of its
 17 investment (i.e. its
 18 Project) as there was no
 19 expropriation: The
 20 contract is still in
 21 force. The Tribunal
 22 noted that the purpose of
 23 damages is to make the
 24 Claimant whole, keeping
 25 in mind that the contract

1 was the legal and contractual limbo was because of
 2 the moratorium. So the moratorium is the impetus
 3 that ultimately leads to the limbo. But,
 4 ultimately, what the Tribunal finds is the harm
 5 arises from the limbo itself.
 6 So we would say the damage
 7 from the Project arose from the contractual and
 8 legal limbo that was put in place. That's the
 9 breach of 1105. I would just say it's nuanced
 10 because that all originates with the moratorium.
 11 CO-ARBITRATOR MCLACHLIN: It
 12 sounds like one package to me.
 13 MS. SHERKEY: That's my
 14 understanding too.
 15 And so over on the next slide.
 16 These are some further internal government
 17 documents setting out that, following the
 18 Windstream I Award, the status of the contract
 19 with the IESO -- oh, back a slide.
 20 The status of the Project
 21 didn't change. The contract remained in force
 22 majeure. It remained in force. And, consistent
 23 with that, the government never returned the
 24 \$6 million letter of credit to Windstream, which
 25 is one of the sources of Windstream's expectations

1 about the Project proceeding.
 2 I want to pause on that for a
 3 moment.
 4 We say that holding on to the
 5 \$6 million letter of credit was meaningful. It's
 6 a significant amount of money, and just for the
 7 Tribunal to understand, this is a cash
 8 collateralized letter of credit. So Windstream
 9 had to put the money into a bank and hold it
 10 there. So it's actual equity being held in a
 11 bank. It's money that couldn't be invested or
 12 used for another four years. There was interest
 13 amounts paid on it.
 14 And while it was held in that
 15 account as, Madam President, you noted, Windstream
 16 remained on the hook for the obligations under the
 17 FIT Contract. Yes, it was in force majeure, but
 18 there was still termination rights at play where
 19 they could see the loss of that money.
 20 And if the FIT Contract was
 21 worthless, if no reasonable person could believe
 22 the Project had a future, as my friend suggests in
 23 this arbitration, then there was no need for the
 24 IESO to keep this money. The money was to secure
 25 obligations under the FIT Contract.

1 And if there is a worthless
 2 FIT Contract and Windstream should have never
 3 believed that there was a path forward, then there
 4 was no purpose further for the IESO holding the
 5 security.
 6 And so we say this is a fact
 7 that supports the reasonableness and was a basis
 8 on which Windstream relied as to coming out of the
 9 Award and saying we have a path to move forward,
 10 we want to work with you, government, to do so.
 11 The holding of this money was meaningful.
 12 PRESIDING ARBITRATOR MILES:
 13 That's really helpful.
 14 Two quick questions.
 15 You said interest was payable.
 16 Interest was payable to the Claimant?
 17 MS. SHERKEY: Interest was
 18 paid by the Claimant.
 19 PRESIDING ARBITRATOR MILES:
 20 Interest was paid by the Claimant.
 21 MS. SHERKEY: Yes.
 22 PRESIDING ARBITRATOR MILES:
 23 Okay.
 24 So who received the interest?
 25 MS. SHERKEY: I'd have to --

1 we will come to this on the slide.
 2 PRESIDING ARBITRATOR MILES:
 3 Because the letter of credit was a loan so there
 4 was interest paid on the --
 5 MS. SHERKEY: It was paid in
 6 two parts, as I understand it.
 7 When the Award was paid
 8 back -- when the Award was paid by Canada to the
 9 client, there was a payout to the investors and
 10 that came at a rate of return to the investors
 11 with I think something like 12.5 percent -- or
 12 there was some amount to BMO which was the bank
 13 with it and we have an excerpt on costs here that
 14 I will take you to.
 15 And an amount to investors and
 16 then a new amount of money had to be accrued and
 17 then put back in. And that has been held at a
 18 rate of 8 percent that I believe I'd have to
 19 double-check with my client as to if it's been
 20 paid out or just accrued.
 21 But there was another rate of
 22 return to the investors at, I believe, 8 percent
 23 over those years that the letter of credit was
 24 held.
 25 PRESIDING ARBITRATOR MILES:

1 Okay.
 2 And my -- thank you.
 3 My second question was, was
 4 there provision under the FIT Contract for return
 5 of the 6 million other than upon the event of
 6 termination?
 7 You see my question. Your
 8 very helpful explanation earlier that the letter
 9 of credit had stayed, remained extant, but could
 10 it do anything else until or unless the FIT was
 11 terminated by one or the other party?
 12 MS. SHERKEY: I don't believe
 13 so. I will double-check that.
 14 Of course the parties could
 15 negotiate some ultimate resolution if there was no
 16 path forward for the Project and the FIT Contract
 17 was being terminated because, if Windstream was
 18 fully compensated, if there was nothing further
 19 for the Project, then we would say -- then what
 20 was -- we don't fully understand our friend's
 21 position as to what the risk would be to terminate
 22 if you are terminating something that no longer
 23 has value.
 24 PRESIDING ARBITRATOR MILES:
 25 Yeah, were the Claimants able to -- this goes to

1 my earlier question that I was thinking in respect
2 of the government.

3 But was the Claimant able to
4 terminate during that force majeure period to give
5 rise to the release of the --

6 MS. SHERKEY: I am just going
7 to make notes because I want to be very accurate
8 to you. I don't want to guess.

9 PRESIDING ARBITRATOR MILES:
10 Sure.

11 MS. SHERKEY: My understanding
12 is their termination right arose after the force
13 majeure period. It was a mutual right under
14 10.1(g) but we will just double-check to see if
15 there was another termination provision.

16 PRESIDING ARBITRATOR MILES:
17 Okay.

18 And, relatedly, it will be
19 interesting to know if this was raised at all in
20 the Ontario court proceedings, because I had
21 understood those proceedings were to injunct
22 termination.

23 MS. SHERKEY: Yes.

24 PRESIDING ARBITRATOR MILES:
25 So to extend termination rather than to ask any

1 court direction for early termination so as to
2 release the letter of credit.

3 MS. SHERKEY: Yes, that wasn't
4 raised. It was to enjoin termination.

5 PRESIDING ARBITRATOR MILES:
6 Okay. All right. Very good.

7 Thank you. Sorry to
8 interrupt.

9 MS. SHERKEY: So then moving
10 to the next slide.

11 So in the October 2016, after
12 the Award comes out, both the Premier of Ontario
13 and Minister of Energy makes statements about the
14 research and the moratorium. And they talk about
15 Ontario taking a cautious and responsible approach
16 to offshore wind. That's why there was the
17 moratorium in the first place. They affirm they
18 believe the moratorium was the right decision.

19 And then they say the Minister
20 of the Environment is finalizing research on the
21 issue and note a couple studies being done. And
22 both of them use that language, "finalizing
23 research".

24 And we emphasize that.
25 Because what the Ontario government didn't say

1 publicly was more research is being done. They
2 didn't say we aren't doing more research. They
3 didn't say this research may take years and never
4 get done. They said research is being finalized.

5 I would say that is a very
6 specific word.

7 And, over on the next page,
8 there was an article just shortly after this in
9 December 2016 where it was reported that the
10 Minister said a government appeal of the
11 Windstream decision could happen, asked if the
12 government could just let the wind farm be built.
13 He just said simply, yes.

14 And, again, the Minister, when
15 asked if the Project could be built, didn't say,
16 no. He didn't say no, Windstream has been fully
17 compensated. He didn't say no, we are not going
18 to deal with them. He didn't say, no, no one
19 should have such an expectation. He was asked if
20 the Project could be built and he said yes.

21 And Ms. Baines, in her witness
22 statement, explains the significance to them that
23 she was very reassured by this quote that the
24 Project could be built, that it showed a shared
25 understanding of the impact of the Windstream I's

1 findings. And, following that, later in December,
2 two studies on offshore wind were released by the
3 government.

4 So now I am going to move to
5 the second part of my submissions, which is
6 Windstream's efforts to move the Project forward.

7 And the first thing I am going
8 to do is address the third question in the list of
9 questions you provided us last week about what
10 work was done, the cost of that work, and the
11 value that added to the Project.

12 So this is a summary on Slide
13 45 of Windstream's efforts to move the Project
14 forward after the NAFTA 1 Award.

15 And I am not going to go
16 through each one, just out of time, in detail. I
17 will spend a bit more time on 1, 2 and 4 over the
18 next few slides and I am just going to walk
19 through these at a high level in terms of the
20 steps made.

21 And of course, as we just
22 talked about the \$6 million security, that was
23 still with the government. It was still on the
24 hook. Windstream was taking all steps it could to
25 try to move its Project forward to ensure it was

1 meeting its obligations under the FIT Contract.
2 And so it took steps to try to
3 further develop the Project. It took steps to try
4 to preserve its rights. And it took steps to try
5 to find other opportunities for the Project and
6 that's kind of three key things you see in these
7 seven steps.

8 So Windstream submitted an REA
9 submission. It prepared a First Nation
10 consultation report. We will spend a little bit
11 more time on that. Windstream undertook further
12 studies. There were two studies in 2017 noted
13 here.

14 And there was also updated
15 engineering throughout that you will see also
16 reflected in the updated expert reports before
17 you. Project layout was refined. There were new
18 technologies. The industry moved, costs came
19 down, technologies were upgraded. And so you see
20 those updates in the expert reports which further
21 continued to develop the Project on the path to
22 development.

23 Windstream retained KeyBanc
24 and did a third party process. We will talk about
25 that.

1 Windstream retained government
2 relations and public relations firms. It did
3 media relation works. It attempted to negotiate
4 the government. Again, all steps it took to
5 Project development.

6 It made an application to the
7 ERRP in January 2018. It ultimately didn't get
8 that funding but I just highlight again these are
9 internal and external resources Windstream spends
10 to try to find opportunities and development for
11 the Project in this time period.

12 And it also launched the
13 Ontario application which we will talk about to
14 try to preserve its rights and preserve the value
15 it saw in its Project.

16 And, over on the next page,
17 you had asked about the Project-related costs post
18 2016. This is set out in Secretariat's expert
19 report.

20 Paragraph 6.81 of their
21 report, they highlight that they reviewed
22 financial documents, including the ledger of
23 Windstream, to quantify historical costs and they
24 give this summary. More detail of this is set out
25 in Schedule 3 to the Secretariat report.

1 And the total cost Windstream
2 spent on these various aspects, and this includes
3 the letter of credit, bank fees and interest paid
4 that I had mentioned. It's all in the schedule.
5 There's a total of 9.48 million spent in the post
6 2016 period.

7 And, Justice McLaughlin, this
8 goes to your question to Mr. Terry. This is the
9 aspect we would say in terms of value creation.
10 There are additional costs spent to move the
11 Project along.

12 CO-ARBITRATOR MCLACHLIN: Do
13 costs translate directly into value? Sometimes
14 one invests and there's no added value. I think
15 we have all had similar, that kind of experience.

16 MS. SHERKEY: We would say it
17 does. Because these are steps that take
18 development of the Project forward.

19 Windstream had spent millions,
20 up to this date in time, developing the Project.
21 It had done extensive engineering work and
22 studies. And all of that, as the Project moves
23 further along, gets more valuable as the industry
24 develops as well that increases in value.

25 And so, for example,

1 Windstream submitted the REA submission. That
2 took these expert reports done and moved it one
3 step further. It's now a Project with a submitted
4 REA. Windstream continued to update its
5 engineering.

6 You can't always isolate out
7 these aspects to say this is the exact impact on
8 value. Secretariat considered these
9 Project-related costs in its valuation.

10 But you're talking about all
11 the steps an investor is taking to move it along
12 and, ultimately, to make a Project more valuable,
13 there were discussions with third party investors,
14 as we are going to talk about.

15 So, now, if the moratorium was
16 lifted, if the Project was on hold, those
17 discussions are already further along. There is
18 already a First Nation plan developed. It all
19 moves things along the continuum.

20 CO-ARBITRATOR MCLACHLIN: That
21 argument would not pertain, I assume, to the 6
22 million. That didn't add to the value, the cost
23 of the letter of credit.

24 Anyway, that's a minor point
25 but.

1 MS. SHERKEY: Sorry, I just
 2 didn't understand.
 3 CO-ARBITRATOR MCLACHLIN:
 4 Well, in this list of 9.48 million is expense for
 5 the letter of credit.
 6 MS. SHERKEY: Yes.
 7 CO-ARBITRATOR MCLACHLIN: So.
 8 MS. SHERKEY: It was all work
 9 undertaken to maintain the Project and its value.
 10 CO-ARBITRATOR MCLACHLIN: And
 11 you maintain that that created some value because
 12 there was no value as at the time of the Award.
 13 So you say holding that letter
 14 of credit in place created value?
 15 MS. SHERKEY: Also by ensuring
 16 the Project remained in place.
 17 If they didn't keep the letter
 18 of credit, they would have no more Project and all
 19 the other work and everything that could then move
 20 forward would be gone.
 21 CO-ARBITRATOR MCLACHLIN:
 22 Okay. Thank you.
 23 PRESIDING ARBITRATOR MILES:
 24 Our questions come off your time so don't panic.
 25 You are stopping every time.

1 MS. SHERKEY: I am trying to
 2 keep track. I didn't stop one time so I am a
 3 little off. But I am trying not to leave my
 4 colleagues with no time.
 5 PRESIDING ARBITRATOR MILES:
 6 No, you're fine. José Luis will be keeping very
 7 careful track.
 8 On the interest page, net
 9 interest, the fifth item down, is there only the
 10 letter of credit interest or is there other
 11 Project loans broader interest amounts?
 12 MS. SHERKEY: I will
 13 double-check the schedule. My understanding is
 14 this is only letter of credit.
 15 PRESIDING ARBITRATOR MILES:
 16 Okay.
 17 And, in the costs after NAFTA
 18 1, is -- I am not sure if there's evidence on this
 19 or not.
 20 But of the 28 million that was
 21 paid out, that did not go toward the letter of
 22 credit financing so as to alleviate any interest
 23 costs on this?
 24 MS. SHERKEY: So this is not
 25 in evidence. I spoke to my client about this in

1 response to your question. So I ask for an
 2 indulgence to explain that and our client is here
 3 in the room if this is --
 4 PRESIDING ARBITRATOR MILES:
 5 Is Ms. Baines able to give evidence on this or is
 6 this not in her wheelhouse?
 7 MS. SHERKEY: It's Mr. Mars
 8 who has this knowledge.
 9 PRESIDING ARBITRATOR MILES:
 10 But he is not testifying.
 11 MS. SHERKEY: She has spoken
 12 to him in addressing this -- in anticipating this
 13 as we were addressing your question.
 14 PRESIDING ARBITRATOR MILES:
 15 Just a moment.
 16 Mr. Neufeld, do you have any
 17 objection to an explanation on this? It won't be
 18 treated as evidence at all. If we decided we need
 19 it, we would make accommodation.
 20 MR. NEUFELD: I suppose no
 21 objection, but we want to be able to respond to
 22 the information and have our own views already.
 23 So, no, of course we can
 24 explore it.
 25 PRESIDING ARBITRATOR MILES:

1 And if, between us, we decide this is material
 2 enough that we would like evidence on it, then we
 3 will put in place a process to get that evidence
 4 from the correct person, not somebody telling
 5 somebody else.
 6 But let's see the explanation
 7 first. Thanks.
 8 MS. SHERKEY: It would be
 9 hearsay, as I said, through Ms. Baines.
 10 Mr. Mars will be here all week
 11 and remain accessible to the Tribunal and whatever
 12 you determine.
 13 So the -- this is my
 14 understanding through the client, is that --
 15 PRESIDING ARBITRATOR MILES:
 16 Mr. Neufeld, question for you.
 17 I actually think Secretariat,
 18 they have looked at the document so I think they
 19 will have most of the answers on it anyway. I
 20 don't anticipate we will need evidence from
 21 Mr. Mars.
 22 But, just in case, do you want
 23 him to leave the room?
 24 MR. NEUFELD: So that was one
 25 consideration.

1 The other consideration that
2 we were just discussing here is how this would
3 constitute exceptional circumstances under the
4 procedural order under paragraph 9, is it? 9.8.
5 Given that the Claimant had ample opportunity to
6 do this before.

7 But those are the two things
8 playing on my mind at the moment.

9 I suppose, out of an abundance
10 of caution, Mr. Mars should leave the room and
11 then we can deal with the rest after.

12 PRESIDING ARBITRATOR MILES:
13 Okay. Let's do that just to keep it all
14 correctly -- procedurally correct.

15 Mr. Mars, could you just leave
16 for a moment. We will let you know when to come
17 back in. It will probably be three and a half
18 minutes.

19 --- Whereupon Mr. Mars exits the hearing room.

20 MS. SHERKEY: There was an
21 interest rate of 12.5 percent paid. The Award was
22 paid by Canada in March 2017.

23 My understanding is a payout
24 happened to investors in May and that was at --
25 there was a rate of interest there or return of

1 12.5 percent.

2 They then had to basically --
3 the 6 million had been reimbursed so Windstream
4 had to get \$6 million and put it back in,
5 essentially, to refund the letter of credit, which
6 it did.

7 And that the rate of return to
8 investors from that point of time of putting the
9 money up was 8 percent.

10 The 6 million was ultimately
11 returned in March 2020 is when they got it back
12 from the bank.

13 My understanding is there was
14 some payment -- there was then a payment to
15 investors in May 2020 at the 8 percent. I don't
16 know the exact mechanics. That's where I am more
17 fuzzy on the exact mechanics of what was paid.

18 But that's my understanding of
19 the general framework of the interest paid.

20 PRESIDING ARBITRATOR MILES:
21 Okay. I think you answered my question implicitly
22 but not expressly.

23 If there is finance raised to
24 put up the letter of credit in the amount of 6
25 million that's giving rise to 12.5 percent

1 interest, which seems about right on these rates
2 up to the date of the Award and after the date of
3 the Award, was any part of the 28 million paid out
4 on the Windstream Award in March 2017 then put
5 against that 6 million so as no longer to give
6 rise to any interest?

7 MS. SHERKEY: Let me just
8 double-check with Ms. Shelley.

9 PRESIDING ARBITRATOR MILES:
10 Because it seemed your answer to me was the
11 interest dropped, so perhaps it was refinanced but
12 maybe the 8 percent you talked about something
13 different. I am not sure.

14 MS. SHERKEY: Our
15 understanding is that part of the Award settlement
16 is that they took \$6 million off the Award when it
17 was paid out to put it into the bank account to
18 hold the 6 million. That was the note we took.

19 PRESIDING ARBITRATOR MILES:
20 Okay. Well, that's interesting.

21 So what's the 3.92 million
22 interest in relation to, then?

23 MS. SHERKEY: My understanding
24 of that is the 8 percent had to do with the rate
25 of return to investors of holding the money there.

1 But this might be a little bit
2 of the problem of the phone tag of explaining
3 this.

4 PRESIDING ARBITRATOR MILES:
5 Okay. All right.

6 MS. SHERKEY: I think Mr. Mars
7 will give a clearer explanation. It's not an
8 issue I confess that I have detailed knowledge of.

9 PRESIDING ARBITRATOR MILES:
10 Okay. Thank you.

11 I think we will leave it
12 there. I will have another look at the
13 Secretariat report in the break because that might
14 provide clarity to the point that's concerning me.

15 I, for one, don't need
16 anything from Mr. Mars right now.

17 But, Mr. Neufeld, that ball
18 will be in your court on response if you identify
19 any other particular gaps for us that are
20 important and, indeed, the Claimants as well. We
21 can talk about that. All right.

22 But where my mind is right now
23 is I am struggling to reconcile if, between the
24 date of the Award, the 28th of -- or the 27th of
25 September 2016, and the payout in March 2017 at

1 12.5 percent interest, that's a lot less than
 2 3.92.
 3 And then, if it's 8 percent
 4 interest thereafter, what is the 8 percent
 5 interest against? Is it on the basis that the
 6 investors put the 6 million in so, therefore, we
 7 are giving them an 8 percent effective interest on
 8 a loan from the investors?
 9 But that doesn't necessarily
 10 make sense to me either because the Award was paid
 11 to the company and the company puts up the letter
 12 of credit so why couldn't the company pass that
 13 money straight through?
 14 MS. SHERKEY: Okay.
 15 PRESIDING ARBITRATOR MILES:
 16 Do you understand the point? Okay. All right.
 17 Thanks.
 18 MS. SHERKEY: So looking at
 19 just a few of these post Award events in more
 20 detail, we are going to talk about the REA
 21 submission and the third party process.
 22 Oh, and can we get David.
 23 PRESIDING ARBITRATOR MILES:
 24 Oh, yes.
 25 MS. SHERKEY: As Mr. Terry

1 commented earlier today, Ontario never amended the
 2 regulatory framework after the Award to implement
 3 the moratorium. It's something the Tribunal had
 4 found as part of the limbo and that continued.
 5 And we had put forward an
 6 expert report from Ms. Powell in 2022, she
 7 explains there were other amendments to the REA in
 8 this time frame, post 2016, but it was never
 9 amended to address offshore wind.
 10 And Mr. Baines explains, in
 11 his witness statement, that, given that they had
 12 the FIT contracts in force and they were trying to
 13 do everything they could to move the Project
 14 forward, they made this submission under the REA.
 15 They wanted to ensure they fully complied with all
 16 requirements in place.
 17 And so this wasn't an
 18 insignificant amount of work, as set out in
 19 Ms. Baines' witness statements and in the
 20 documents attached.
 21 They re-retained Ortech who
 22 had been Project manager, a specialized
 23 engineering firm, in October. Ortech worked on
 24 this over a matter of months, between October and
 25 February, to make the submission which included

1 two reports, a Project description report and a
 2 status report.
 3 And over on the next page,
 4 this is just a summary of the cover letter where
 5 it explained that it was making the submission,
 6 that it explained that Windstream had employed
 7 numerous experts and several million dollars to
 8 meet the required technical studies and it was
 9 making the submission.
 10 And, over on the next page,
 11 this work was highlighted in this report. Ortech
 12 details, in its reports, more than 45
 13 environmental and technical studies undertaken by
 14 internationally renowned experts which reached the
 15 conclusion there was no adverse environmental
 16 impacts from the Project.
 17 --- Whereupon Mr. Mars re-enters hearing room.
 18 PRESIDING ARBITRATOR MILES:
 19 Welcome back, Mr. Mars.
 20 In this table on Slide 49,
 21 these all predate the first Award; correct?
 22 MS. SHERKEY: They all predate
 23 the first Award, yes.
 24 And then there were two -- on
 25 a couple slides back, I had noted there were two

1 2017 studies.
 2 These all predate the Award
 3 and my friends say, in their materials, is that
 4 this is just a repackaging of the Windstream I
 5 expert reports. It's not new studies. They are
 6 not proper studies. They are expert reports.
 7 And Mr. Baines addresses this
 8 in his witness statement. And what he explains is
 9 that Windstream retained world class engineering
 10 and environmental firms who conducted the very
 11 technical studies that are part of the REA
 12 process. These are studies on issues like wind
 13 resource measurement, grid connection, geophysical
 14 condition, coastal processes, waves, ice,
 15 navigation, noise, drinking water, birds, bats.
 16 It goes on.
 17 And these studies were done
 18 and then packaged as expert reports in the
 19 arbitration. But it doesn't change the nature of
 20 the work done and so they were packaged here to
 21 put forward to the government as part of the REA
 22 submission showing that the studies were done and
 23 the Project met the requirements.
 24 PRESIDING ARBITRATOR MILES:
 25 So what was new, post Award, was the repackaging

1 and the REA submission?
2 MS. SHERKEY: It was the
3 making of a REA submission to the government to
4 move the Project into that stream which still
5 contemplated offshore wind.

6 PRESIDING ARBITRATOR MILES:
7 And did the FIT Contract or any other operational
8 regulatory requirement require or mandate
9 Windstream to make the REA submission at that
10 time?

11 MS. SHERKEY: I am just
12 thinking about your question.

13 So, under the FIT Contract,
14 they were obligated to get their permits and
15 approvals. There were timelines -- there was the
16 ultimate timeline of reaching MCO. They were in
17 force majeure.

18 So it wasn't under the FIT
19 contract other than Windstream still had its
20 commitments and the \$6 million letter of credit
21 was being held. So it wanted to take every step
22 within its power.

23 I do not understand there to
24 be any timing requirements that were imposed other
25 than Windstream trying to say and take all the

1 steps that were in its power while it was trying
2 to engage the government so that nothing was left
3 at the feet of Windstream for not moving the
4 Project ahead and that it was continuing to
5 develop it, particularly as the regulations and
6 the Tribunal found, the regulations continued to
7 envisage offshore wind. They wanted to ensure
8 they complied with all requirements in place.

9 Under the REA regulation,
10 after the proponent provides a draft Project
11 description report, the next step is to get a list
12 of Aboriginal communities who may be impacted by
13 the Project.

14 It took Windstream six months.
15 It sent numerous follow-ups from the government to
16 get a response. And, ultimately, when the
17 Ministry of the Environment responds in
18 August 2017, it gives the Aboriginal consultation
19 list to Windstream.

20 So it didn't take the position
21 this list should not be provided because there's
22 no future for this Project. It didn't take the
23 position these communities shouldn't be contacted
24 or consulted because there's no Project. They
25 provided the list.

1 Ultimately, at this point of
2 time, in August 2017, Windstream is engaged in the
3 Ontario application and, as Ms. Baines sets out in
4 her witness statement, it didn't feel it was
5 respectful, at that point, to go out and engage
6 with these communities so it didn't do so.

7 But Windstream did do work to
8 advance its plans on consultation with First
9 Nation and it prepared a detailed plan of
10 consultation efforts that set out its planned
11 approach, the principles that would apply, risk
12 and mitigation strategy and various things. And
13 that's at C-2149 of the record.

14 So while consultation process
15 was ultimately not carried out, Windstream did
16 make efforts after 2016 to move along its
17 consultation plans for when the Project got
18 restarted.

19 The next point is the third
20 party process. Windstream -- and we should go
21 into confidential mode.

22 --- CONFIDENTIAL TRANSCRIPT COMMENCES AT
23 11:25 a.m.

24 MR. HAUSER: We are in
25 confidential now, Madam President.

1 PRESIDING ARBITRATOR MILES:
2 Excellent. A star, Alonso. Thank you very much.

3 MS. SHERKEY: This is just the
4 names. This is Windstream's confidential info.
5 We have kept the names of these parties out of the
6 public record.

7 And so Windstream retained
8 KeyBanc in 2017 and Windstream and KeyBanc engaged
9 with meeting with several of the leading offshore
10 wind developers. We have identified a number of
11 them here who were interested in investing in the
12 Project. They showed a shared understanding of
13 Windstream's view that the potential of the
14 Project.

15 And so there were meeting,
16 through 2016, 2017, these companies ultimately
17 negotiated and signed NDAs, a large data room was
18 launched. And that's kind of the steps of the
19 process that took place before Mr. Mars
20 discontinued the process in the fall of 2017.

21 So the full details of that
22 are set out in Mr. Mars' witness statement. I
23 would just like to respond to two points raised by
24 Canada in its materials about this process.

25 Over on the next slide, Canada

1 suggests this process was one sided, that it was
2 Windstream soliciting these companies and that
3 these potential investors only showed interest in
4 response to Windstream's press release but not the
5 public version of the Award that came out after
6 December.

7 Mr. Mars responds, in his
8 witness statement, to explain why that's not true.

9 That, yes, engagement started
10 in the fall before the Award was publicly released
11 but it was carried out through 2017 after the
12 Award was publicly released.

13 Windstream was proactively
14 approached by many of these companies, including,
15 throughout 2017, they expressed their genuine
16 interest in the Project and it was for that reason
17 that Mr. Mars engaged KeyBanc in the spring of
18 2017.

19 And we have highlighted on the
20 slide here just two emails from one of these
21 companies in 2017 after the public release of the
22 Award expressing their extreme interest in the
23 Project and asking what it would take to get the
24 deal off the street.

25 And then, lastly, on the next

1 slide, my friend also describes this process as
2 "half hearted inquiries and meeting invites". But
3 Mr. Mars also explains, in his witness statement,
4 why that's not true.

5 A couple key points.

6 First, Windstream and KeyBanc
7 spent substantial time and resources to a process
8 that took place over the better part of a year,
9 numerous meetings with third parties, NDAs were
10 signed, a large data room was launched. The data
11 room, I believe, looking at the schedule from
12 Secretariat cost, you know, \$40,000. It wasn't a
13 small undertaking. A lot of time and resources
14 were spent.

15 KeyBanc, a leading financial
16 firm, was being paid on contingency.

17 And so it would not be
18 commercially reasonable for a financial advisory
19 firm to participate in a not genuine or half
20 hearted process if it didn't actually believe it
21 was. There was a possibility of a transaction.
22 Firms don't waste their time.

23 And these third party
24 developers also invested time. They invested time
25 to look at the Project, to meet with Mr. Mars.

1 They conducted due diligence. [REDACTED]
2 [REDACTED] so we say they
3 wouldn't have invested their time in what Canada
4 describes as a half-hearted process.

5 PRESIDING ARBITRATOR MILES:
6 While we are still confidential, can I just ask a
7 couple of questions about this process.

8 There were no terms put on the
9 table for an investment deal at this time.

10 MS. SHERKEY: No, and that's
11 explained in this excerpted paragraph at 14. It
12 didn't reach that stage.

13 Mr. Mars explains, early in
14 the discussions, he told them we would expect to
15 see an investment in hundreds of millions of
16 dollars so that no one was wasting time as to what
17 the expectations were and potential partners
18 continued to be interested after that. But it
19 didn't advance, in terms of deal terms beyond
20 that.

21 PRESIDING ARBITRATOR MILES:
22 And is there any evidence in the record as to the
23 nature of any investment? For example, would it
24 have been a purchase of a Project at financial
25 completion or would it have been partnership or

1 was there any -- is there any evidence of the
2 nature of the investment? Was Windstream to stay
3 involved or not?

4 If there's no evidence, then
5 that's the answer. I don't want you to give
6 evidence on that.

7 MS. SHERKEY: Let me
8 double-check. I think a lot of it speak about
9 partnership. I don't want to say that to the
10 exclusion that there was never a talk of a
11 purchase, but the documents do speak a lot of a
12 partnership. So I just would like to go back to
13 Mr. Mars' witness statement and see if there is a
14 more specific answer to that.

15 PRESIDING ARBITRATOR MILES:
16 Okay.

17 And was there any evidence in
18 the earlier arbitration about negotiations with
19 third parties prior to the 2016 Award?

20 MS. SHERKEY: I don't believe
21 so.

22 PRESIDING ARBITRATOR MILES:
23 Okay. So this only came up for the first time
24 post the first Award.

25 MS. SHERKEY: And Bill

1 Ziegler, one of the primary investors, gave a
2 witness statement in this arbitration where he
3 says Windstream was fully committed to moving this
4 along but, when they were getting outreach from
5 other people who were interested, they were open
6 to hearing the terms and hearing what they had to
7 say. But it wasn't something they were going out
8 of their way looking for. They were more
9 responding to the interest they were getting.

10 PRESIDING ARBITRATOR MILES:
11 In the original investment Windstream planned to
12 operate.

13 MS. SHERKEY: Yes.

14 PRESIDING ARBITRATOR MILES:
15 Okay.

16 MS. SHERKEY: I think the key
17 point being this arose after Windstream I. This
18 was a full process that's completely new and
19 something that postdates the Windstream I Award.

20 This brings me to the last
21 section which I will have to move through quickly
22 but, fortunately, we actually don't disagree with
23 my friends on many of the key facts. We are quite
24 aligned on the facts. We take different
25 implications out of them but the chronology is

1 generally undisputed and we can come out of
2 confidentiality if we move the slide over.
3 --- CONFIDENTIAL TRANSCRIPT ENDS AT 11:32

4 MS. SHERKEY: So moving to the
5 next slide. Just moving quickly through this
6 chronology.

7 PRESIDING ARBITRATOR MILES:
8 Just making sure, Alonso, the banner can come off.
9 Thanks.

10 MR. HAUSER: We are back,
11 thank you, Madam President.

12 MS. SHERKEY: The Award is
13 released confidentially to the parties at the end
14 of September.

15 Immediately after Windstream
16 attempts to engage the Ministry of Energy in
17 discussions, their government relations
18 representative, Mr. Benedetti, explains the
19 meetings he had in October and November with MEI's
20 chief of staff and one with Minister of Energy
21 where he was told we are not going to meet with
22 you, is the gist of it.

23 And so over on the next page,
24 Windstream follows up in November, asks for a
25 meeting. December 6th, MEI responds and says, no.

1 We don't discuss individual contract matters. We
2 are also still reviewing the Award.

3 Over on the next page,
4 Windstream sends a follow-up letter that says we
5 think it's very important you meet with us and
6 they note that the ongoing moratorium is not in
7 the sphere of the IESO's power to resolve so they
8 don't believe meeting with the IESO alone is going
9 to achieve a result, which is why we wrote to your
10 office. So they are saying it's not going to be
11 productive to meet with the IESO. We want to meet
12 with you.

13 And the response they get is
14 two months later, on February 27th, saying, no, we
15 are not going to meet with you. And now, on the
16 this February 21st response, we are outside the
17 time frame of the set aside. There has been many
18 months to absorb the Award. Windstream is
19 continuing to ask to meet and MEI says, no, we are
20 not your contractual counterparty. Go to the
21 IESO.

22 And pausing here. So it was
23 we don't disagree on those facts.

24 Canada's response in this
25 arbitration is this was all perfectly reasonable.

1 We didn't ignore -- MEI didn't ignore Windstream.
2 They said go to the contractual counterparty which
3 is consistent with the Ministry's practice of not
4 involving itself in contractual matters.

5 And we say two things to that.

6 First, we say that's not the
7 Ministry's practice. That there are many examples
8 of it involving itself in individual contract
9 matters, and we will come to that in a little bit.

10 And, second, we don't agree
11 that this represents a meaningful or respectful
12 response to Windstream.

13 The Ministry -- Windstream had
14 already pointed out to the Ministry what good
15 would it do for us to meet with the IESO when it
16 can't implement any of the promises made by
17 Ontario, the moratorium, the government decision,
18 the promise to freeze was made by the government,
19 what can the IESO do in a meeting with us.

20 And it just simply never got a
21 response. It never got a without prejudice
22 meeting, a with prejudice meeting. It never got
23 an explanation. And this was a company that had
24 followed all the rules, done everything it could,
25 had always tried to be respectful with the

1 government and was essentially caught in the cross
 2 fires of political decisions made around it and
 3 then was just being dismissed.
 4 So that's our position on why
 5 that wasn't a meaningful response.
 6 PRESIDING ARBITRATOR MILES:
 7 And, in terms of the chronology, so I have got it
 8 right, the letters in November 6th and
 9 December 2016 from Windstream -- sorry. Yeah.
 10 And then, 15 December,
 11 Windstream follow-up. The REA -- the Project's
 12 description report under the REA, your Slide 48.
 13 MS. SHERKEY: Yeah,
 14 February 15th.
 15 PRESIDING ARBITRATOR MILES:
 16 Is submitted February 15th. So six days before
 17 the MEI response.
 18 MS. SHERKEY: Yes.
 19 PRESIDING ARBITRATOR MILES:
 20 But you'd already had a response on the 6th of
 21 December.
 22 MS. SHERKEY: Yes.
 23 And Windstream was taking
 24 every step it could to try to move the Project
 25 forward as it was attempting to engage the

1 government.
 2 PRESIDING ARBITRATOR MILES:
 3 Okay.
 4 MS. SHERKEY: And so this
 5 decision to not meet with Windstream and not
 6 engage is also reflected in the internal emails of
 7 the government.
 8 This was an email sent by the
 9 Ministry's chief of staff, who you will hear from
 10 tomorrow, on October 5th. So just days after the
 11 Windstream I Award came out.
 12 And what I just want to
 13 highlight from it is he sends to this to multiple
 14 government ministries. So this isn't an internal
 15 Energy email. It's done across all the
 16 Ministries.
 17 And he says, in the second
 18 paragraph, he gives a summary that he met with --
 19 it doesn't say Mr. Benedetti but he talks about
 20 Windstream's consultant. It's Mr. Benedetti. And
 21 he says:
 22 "I told him not to expect
 23 political government
 24 intervention at this
 25 point."[as read]

1 He goes on to say to them:
 2 "Given the bulk of the
 3 NAFTA proceeding
 4 surrounded allegations of
 5 political intervention
 6 impacting on the
 7 contractual relationship,
 8 Energy strongly suggests
 9 that no political
 10 government
 11 representatives engage in
 12 dialogue with Windstream
 13 or their
 14 consultant/lobbyists at
 15 this time."[as read]
 16 So this was a decision we say
 17 made right away, communicated right away. It was
 18 communicated to Windstream right away. It was
 19 communicated internally. There was just to be no
 20 dealing with Windstream.
 21 And not only now, we see that
 22 now here, in October 2016, but going forward.
 23 Which is reflected on the next slide in
 24 February 21st, 2017. There was a question from a
 25 reporter about meeting with the government and

1 Mr. Teliszewsky's response is:
 2 "We will not today, not
 3 ever be sitting down with
 4 them."[as read]
 5 And the problem we say with
 6 this approach is reflected on the next two Slides.
 7 There was another reporter
 8 question where the reporter says:
 9 "I just got off the phone
 10 with the IESO and they
 11 say the contract is in
 12 force majeure because of
 13 the government's
 14 moratorium and there's
 15 not much they can do. If
 16 Windstream wants to
 17 renegotiate the terms of
 18 the contract, they can
 19 talk to the IESO. But,
 20 if they want guidance on
 21 moving forward with the
 22 contract, that's an issue
 23 for the Ministry."[as
 24 read]
 25 So the IESO is saying, we

1 can't fix these political decisions that are
 2 impacting the contract.
 3 And if you go over to the next
 4 slide, we say it's like the two parties pointing
 5 their fingers at each other. MEI is the saying go
 6 to the IESO. They are your contractual
 7 counterparty. But, as Windstream pointed out back
 8 in December, there's not a productive meeting with
 9 the IESO who is not responsible for the political
 10 decisions impacting the Project's way forward.
 11 And so this brings us to the
 12 second point, which is the IESO's decision to
 13 terminate the contract.
 14 So in -- Windstream does reach
 15 out to the IESO. It reaches out to the Ministry
 16 who says go to the IESO. Windstream does. And it
 17 meets with the IESO in January.
 18 And the two key points about
 19 this meeting is the IESO confirms, at this stage,
 20 they are not going to amend the contract rights.
 21 Windstream speaks to them about an appetite to
 22 consider a class-wide amendment saying, okay, you
 23 don't want to give an amendment specifically to
 24 Windstream but we are the only offshore Project
 25 with a FIT Contract, you could issue something

1 class-wide that -- but it only affects us.
 2 And so Mr. Killeavy, who, at
 3 that time, was the IESO's director of contract
 4 management, agreed to consider what was discussed
 5 at the meeting.
 6 The other point is that
 7 Windstream's legal counsel, Ms. Helbronner -- this
 8 is at the bottom of the slide on the left -- asks
 9 the IESO directly what happens on May 5th, 2017,
 10 when that termination rate arises.
 11 So the question was put point
 12 blank to the IESO and the IESO says "we don't
 13 know. No termination decision has been made. We
 14 don't know".
 15 This is then confirmed in
 16 writing. Windstream receives this response over
 17 on the next slide on February 9th where the IESO
 18 confirms it's not willing to renegotiate the
 19 contract.
 20 And it also confirms we
 21 haven't made a decision of whether to terminate.
 22 So where does this leave
 23 Windstream?
 24 By February 2017, the IESO's
 25 not agreeing to renegotiate. It's not agreeing to

1 engage on a discussion of changing the terms of
 2 the FIT Contract to adjust it to the terms of the
 3 moratorium.
 4 MEI has refused now, on a few
 5 occasions, to meet with them saying go to the
 6 IESO. And the IESO's termination right is coming
 7 up on May 5th. They are two or three months out.
 8 So that leads Windstream, over
 9 on the next slide, to commence the Ontario
 10 application.
 11 And my friends' position, in
 12 their counter-memorial, is this exposes the
 13 Claimant's true expectations that it shows and the
 14 support goes towards supporting their limitation
 15 period argument. This goes to showing that the
 16 Claimant was well aware of the status of the
 17 Project and what they say is the real and tangible
 18 likelihood that the IESO would exercise its
 19 termination right.
 20 And what I note, going on to
 21 the next slide, is looking at the facts as they
 22 are before you, in both January and February,
 23 Windstream was told that it had not made -- that
 24 the IESO had not made a decision on whether to
 25 terminate the FIT Contract. So that's the

1 information Windstream has.
 2 And, as Ms. Baines explains,
 3 Windstream was taking steps to preserve its
 4 rights. It knew it was a possibility that the FIT
 5 contract could be terminated after May 4th. It
 6 didn't know if it would be but it couldn't wait
 7 until after that was done to then seek injunctive
 8 relief. It would be too late. So it had to act
 9 before.
 10 But it doesn't change the
 11 actual knowledge and facts that Windstream had at
 12 that time.
 13 PRESIDING ARBITRATOR MILES:
 14 If the FIT Contract was not amended to provide an
 15 extension to the milestone date for commercial
 16 operation or the date that would be an event of
 17 default, could the contract have been performed?
 18 MS. SHERKEY: No. Because at
 19 this -- I mean right now we are in February 2017
 20 and the termination right arose in May. They
 21 couldn't get the Project developed to commercial
 22 operation in three months.
 23 PRESIDING ARBITRATOR MILES:
 24 Right. Whether it was terminated or not?
 25 MS. SHERKEY: So, if it wasn't

1 terminated, they could go ahead. But you couldn't
2 spend money and get financing and go ahead with a
3 termination right looming that, at any day, could
4 be exercised.

5 So that's the key point.
6 That's the key problem. That unless the only way
7 to implement the promises made to be put on hold
8 deferred to the moratorium is to move and amend
9 that milestone date of commercial operation, such
10 that Windstream had the time it was -- it
11 originally had under the contract to build its
12 Project and bring it into commercial operation
13 before that termination right arose.

14 And we should go into
15 confidential mode.

16 PRESIDING ARBITRATOR MILES:
17 Just before we do, Alonso. It's coming right back
18 in a full circle but let me ask it here.

19 I know you have still got post
20 Award, more events.

21 But, to the point you just
22 made, the only way to implement the promises made
23 to be put on hold deferred to the moratorium is to
24 move and amend that milestone.

25 When you talk about promises

1 made to be put on hold, as I understand it, you've
2 not given us any evidence of promises made to be
3 put on hold that post date 27 September 2016;
4 correct?

5 MS. SHERKEY: They do not post
6 date. It's the February 11th, 2011, discussion,
7 which we say continues through. It wasn't
8 exhausted by the Windstream I Tribunal. It was
9 found there was a breach and there was damage.
10 The investments were harmed. But they weren't
11 lost because the contract could still be
12 renegotiated or implemented -- renegotiated to
13 implement the terms of the moratorium is the
14 wording the Tribunal uses.

15 And so we say, following that,
16 that renegotiation and that's where we get to
17 talking about a continuing breach on the legal
18 liabilities, flows from the promise to freeze.
19 That there was additional value that could be
20 created and the only reason it wasn't was because
21 Ontario continued to block the way for Windstream
22 to do it and that Windstream, as a result, lost
23 its full value.

24 PRESIDING ARBITRATOR MILES:
25 So you've said this a few times now you and

1 Mr. Terry, so just so I am absolutely clear.
2 Your continuing breach case
3 relies on breach from 2011 up and to including 27
4 September 2016?

5 MS. SHERKEY: Yeah. There was
6 a breach found as of that date for the harm done
7 to that time and the damage found. And then we
8 say that conduct continued post Award that then
9 caused further harm.

10 PRESIDING ARBITRATOR MILES:
11 Okay. But are you relying on breach events prior
12 to 27 September 2016?

13 MS. SHERKEY: No, no. The
14 measures we rely on, we say, all post date the
15 Award. It's tied to facts that predate the Award.
16 The promise predated the Award. It is a fact. It
17 is not a measure. It's what gives rise to the
18 measures.

19 CO-ARBITRATOR MCLACHLIN: Can
20 I just ask you this: The Award happened in 2016.
21 Didn't that change the gestalt, the whole context;
22 doesn't that make it difficult to assert that a
23 promise made in 2011 litigated at great length
24 would still be in force?

25 I know you say that part --

1 the contract was still in force and you've pointed
2 to a lot of evidence to that effect, but I am
3 worried about the promise, which is what you rely
4 on here. You don't rely on the contract.

5 You're saying this promise, in
6 2011, was leftover, was left intact after
7 everything that happened in and leading up to the
8 Windstream I Award.

9 It strikes me -- I'd like to
10 see evidence reaffirming that promise after.
11 Because everything seems to have changed or could
12 be argued to have changed with that Award except
13 that the contract was ongoing.

14 MS. SHERKEY: We would say,
15 though, that's tied to what the findings in the
16 Award are.

17 Windstream argued in
18 Windstream I that there was nothing left. We were
19 expropriated. Our FIT Contract might not have
20 been terminated, but it de facto was. Those were
21 the words used in Windstream I. There was an
22 effective, a de facto taking.

23 And, if that was the finding,
24 we would say then that is at an end. If it was
25 found that the Project was over, there was a de

1 fact taking and there was an expropriation and
 2 full compensation was paid, then that would have
 3 been what happened.
 4 But that's not what happened.
 5 We say the promise was made.
 6 It wasn't implemented. There was a de facto
 7 taking. Canada disagreed. It argued this was in
 8 arguing against an expropriation. It said this
 9 was a temporary deferral, a temporary measure.
 10 Mr. Terry took you through the Respondent's
 11 position on the status of the Project.
 12 Flowing from that, the
 13 Tribunal finds there is no expropriation. The FIT
 14 contract is in force. We are awarding damage to
 15 the investment, not full value. Recognizing that
 16 if the FIT Contract is renegotiated to implement
 17 the promise to freeze -- they don't use those
 18 words -- but renegotiated to adjust it to the
 19 terms of the moratorium, there could be additional
 20 value created.
 21 And we say that finding, the
 22 context of all of that is what leads to the future
 23 for the Project and something that was further
 24 taken from Windstream, something that was not
 25 awarded by the NAFTA Tribunal that then continues

1 into 2016.
 2 It doesn't exhaust the promise
 3 to freeze because we say that obligation was
 4 ongoing, tied into the Windstream I Tribunal's
 5 findings that there was an opportunity to
 6 renegotiate the Project to implement that promise.
 7 And, because it didn't happen, value was taken.
 8 CO-ARBITRATOR MCLACHLIN:
 9 Thank you.
 10 CO-ARBITRATOR GOTANDA: But
 11 how, then, following that line, you get around the
 12 jurisdiction argument that's raised by the
 13 Respondent on NAFTA?
 14 In other words, that you're
 15 basically -- your claim arose more than three
 16 years because you are relying on a 2011 promise.
 17 How do you get around that?
 18 MS. SHERKEY: At a high level,
 19 and we obviously are going to deal towards the end
 20 of the presentation with that and more in closing.
 21 A limitation period arises
 22 based on the measures as of an alleged breach. So
 23 the three-year limitation period arises from when
 24 the Claimant should have first known of the
 25 alleged breach and losses or damages from there.

1 The fact was known. The fact
 2 of the promise. The facts that the FIT Contract
 3 could be renegotiated going forward, that's all
 4 known.
 5 But that's not the alleged
 6 breach.
 7 The alleged breach relates to
 8 the termination of the FIT Contract. That the
 9 conduct of Ontario gave rise to the circumstances
 10 that terminated the contract. And it's at the
 11 termination of the contract that all that value is
 12 lost and everything is taken.
 13 And so there isn't a breach
 14 before then because, in 2016, they are still
 15 trying to renegotiate. They know it's a
 16 possibility after May 4th, 2017, that the Project
 17 might not be. But the IESO is saying we still
 18 haven't made a decision.
 19 And it's not until
 20 February 2018 when the termination decision is
 21 communicated to them that you actually have the
 22 alleged breach of the NAFTA first known.
 23 CO-ARBITRATOR GOTANDA: I am
 24 following you with respect to expropriation. It's
 25 a harder argument, isn't it, with respect to a

1 breach of fair and equitable treatment?
 2 MS. SHERKEY: I don't see the
 3 distinction because the conduct and the measures
 4 are the same.
 5 It's, ultimately, what's
 6 unfair is the conduct, the circumstances that lead
 7 to that termination.
 8 And, before that, the IESO may
 9 have decided never to terminate. All that happens
 10 after May 4th is they have the right and the
 11 possibility and all Windstream could do is
 12 speculate it may be terminated.
 13 But, until that termination is
 14 actually made, it doesn't have a claim for
 15 wrongful conduct because it hasn't lost anything
 16 yet. There is just a possibility of it.
 17 CO-ARBITRATOR GOTANDA: You
 18 would have a claim, wouldn't you, under fair and
 19 equitable treatment without the termination? Or
 20 only on the termination?
 21 MS. SHERKEY: We say only on
 22 the termination.
 23 CO-ARBITRATOR GOTANDA: Okay.
 24 MS. SHERKEY: That's when we
 25 say the breach occurs.

1 And if we go into confidential
 2 mode.
 3 --- CONFIDENTIAL TRANSCRIPT COMMENCES AT
 4 11:53 a.m.
 5 PRESIDING ARBITRATOR MILES:
 6 Somebody will deal more with what you mean by not
 7 full value of the investment being compensated in
 8 the Windstream I Award; correct?
 9 MS. SHERKEY: That's tied to
 10 what Mr. Terry's submissions were, that the
 11 Tribunal said they were awarding damage to the --
 12 PRESIDING ARBITRATOR MILES: I
 13 know what the Tribunal said.
 14 But your submission on what
 15 that means to not full value, somebody will come
 16 to that in your slides. It looks like you have a
 17 section on damages.
 18 MS. SHERKEY: We have a
 19 section on damages, yes.
 20 Are we in confidential mode?
 21 PRESIDING ARBITRATOR MILES: I
 22 am not sure. Alonso?
 23 MR. HAUSER: One second,
 24 please, Madam President.
 25 We are in confidential now,

1 Madam President.
 2 PRESIDING ARBITRATOR MILES:
 3 Thank you.
 4 MS. SHERKEY: I am just going
 5 to stay in confidential mode because we go back
 6 and forth in each slide and this is government
 7 confidentiality so I want to respect, obviously,
 8 my friend's designations.
 9 At this point, going to the
 10 limitation period of what Windstream knew when,
 11 they didn't know about a termination, we say, nor
 12 could they know before it happened. They had been
 13 told that it wasn't going to happen by the IESO in
 14 January, February, no decision had been made.
 15 They commenced the
 16 application. The parties agreed the IESO wouldn't
 17 make that decision while the application was
 18 underway.
 19 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

1 decision. This is what they do. They engage in a
 2 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 8 If you go over the next page,
 9 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 24 Moving on to the next slide.
 25 February 20th, 2018, the IESO

1 tells it we have made the decision to terminate.
 2 So we say this is the first time Windstream learns
 3 of this decision.
 4 And that's not disputed. This
 5 is the first time they have learned the decision
 6 was made.
 7 And then the parties agree
 8 that the decision doesn't take effect while the
 9 Ontario application is pending. The Ontario
 10 application is resumed. Steps are taken
 11 through 2018.
 12 [REDACTED]
 [REDACTED]
 [REDACTED]
 16 In November 2019, Windstream
 17 writes to the Ministry again requesting it get
 18 involved, that it direct the IESO. It gives
 19 notice of a potential NAFTA claim. MEI responds
 20 December 2019. Ontario has decided not to
 21 intervene in this matter, so that's what they are
 22 told.
 23 And we just note, in this
 24 context, that, at the same time the government is
 25 saying we are not intervening, you should go to

1 the IESO, Ontario is making settlement payments
2 and negotiation arrangements with other Project
3 proponents for their FIT contracts.

4 In November 2019, it's
5 reported they paid out 231 million to terminated
6 FIT 2, 3, 4 and 5 contracts and that they also
7 paid White Pines upwards of \$100 million of its
8 FIT 1 contract. Windstream also has a FIT 1
9 contract.

10 And we just note here that the
11 tribunal here ordered production of documents
12 related to these settlement payments and we didn't
13 receive any in the productions made.

14 CO-ARBITRATOR MCLACHLIN: I
15 would just like to ask about this because it was
16 -- it's been bothering me or I just seemed to be a
17 little unclear in preparing this.

18 We have this February 20th,
19 2018, notification that IESO has decided to
20 terminate the contract.

21 MS. SHERKEY: Yes.

22 CO-ARBITRATOR MCLACHLIN: And
23 then we have a 2020 actual termination.

24 So my question is: Why isn't
25 this notice in February 2018 knowledge that

1 knowledge IESO, i.e. the government, is going to
2 terminate, given the jurisprudence that the
3 knowledge doesn't have to be complete and the de
4 facto event doesn't have to occur. You know all
5 the case law on that.

6 So my question is why isn't
7 the termination date February 20th, 2018?

8 MS. SHERKEY: From a
9 limitation period standpoint, it doesn't matter
10 because we are in time if it runs from
11 February 2018.

12 So, from a limitations
13 standpoint, in terms of there could be arguments
14 as to it hasn't crystallized yet and there's cases
15 to that effect, we don't need to go there. We are
16 in time from the February 2018.

17 We say this does matter from
18 the damages standpoint. The breach -- the
19 valuation date runs from February 2020 because
20 that's when the termination date actually takes
21 effect. That's when the loss occurred. And
22 Ms. Shelley can correct me if I am wrong, but I
23 believe both parties have used a February 2020
24 valuation date.

25 CO-ARBITRATOR MCLACHLIN:

1 Okay. That helps me understand the significance
2 of those dates. Thank you.

3 PRESIDING ARBITRATOR MILES:
4 Can I just ask a question about this 231 million.

5 The 231 million to pay for the
6 terminated FIT 2, 3 and 5 contracts, am I correct
7 that there were 758 contracts in total?

8 MS. SHERKEY: 758 terminated.

9 We don't know -- it was a very large payment made
10 to some of them and smaller to others. We don't
11 know the breakdown.

12 PRESIDING ARBITRATOR MILES:
13 You don't know the breakdown.

14 But the average, if one
15 averaged it, would be \$305,000 per contract.

16 MS. SHERKEY: What I would say
17 is the math, I haven't done that math but I assume
18 that's correct.

19 We don't know the size. Like
20 it would impact, based on different size of
21 projects. Some could have been paid much less and
22 some much more.

23 And, as we noted on this
24 slide, as these are FIT 2, 3, 4, 5 contracts --
25 Windstream had a FIT 1 -- the IESO still had a

1 termination for convenience clause so it could
2 terminate pre notice to proceed, a termination
3 right that doesn't exist in Windstream were the
4 FIT 1 contracts that was waived in 2011, which
5 impacts the value as well to be paid to these
6 contracts.

7 PRESIDING ARBITRATOR MILES:
8 All right. But were any of those contracts in
9 force majeure?

10 MS. SHERKEY: I am not sure.

11 PRESIDING ARBITRATOR MILES:
12 Okay.

13 MS. SHERKEY: And there's just
14 not evidence as to the size. And, again, that's
15 where I note we asked for production of documents
16 related to these to be able to test that further
17 and see further and we didn't get any documents.

18 PRESIDING ARBITRATOR MILES:
19 And is there evidence as to the stage in
20 development?

21 MS. SHERKEY: No, we don't
22 have that.

23 PRESIDING ARBITRATOR MILES:
24 Including White Pines?

25 MS. SHERKEY: White Pines was

1 mid construction for a much smaller, as we have
2 noted here, contract with nine turbines for 8.45
3 megawatts -- 18.45.

4 PRESIDING ARBITRATOR MILES:
5 So well past development stage, past financial
6 close, midway through construction.

7 MS. SHERKEY: Midway through
8 construction.

9 PRESIDING ARBITRATOR MILES:
10 But not yet grid connection or operational.

11 MS. SHERKEY: I am not sure
12 about the grid connection --

13 PRESIDING ARBITRATOR MILES:
14 It can't have been connected if it wasn't fully
15 constructed.

16 MS. SHERKEY: Yes. But they
17 would have had the grid connection approval like
18 Windstream did.

19 PRESIDING ARBITRATOR MILES: I
20 understand. Thanks.

21 MS. SHERKEY: And so I am
22 going to move quickly. I am getting short on time
23 and I want to make sure I don't eat up all of my
24 colleagues' time.

25 So I am going to move quickly

1 through the next part. But just to note that it
2 was after this Windstream abandons the
3 application, and commences the termination
4 decision takes effect in February 2020. And we
5 say Ontario is responsible for the events giving
6 rise to the termination.

7 The termination right only
8 arose because of the conduct of Ontario. It
9 continued to apply the moratorium to the Project.
10 It did no research, despite statements to the
11 contrary that it was finalizing research and that
12 the pretense of the moratorium was for research.
13 It took no steps to lift it.

14 So Windstream was maintained
15 in a state of force majeure so that the
16 termination right could arise and MEI refused --
17 we saw that November 2019 letter. Ontario made a
18 decision to not intervene. It refused to get
19 involved. It refused to direct the IESO. It
20 refused to take any steps.

21 And so, because of those two
22 things, we say it is because of the conduct of the
23 Ontario government that the IESO's termination
24 right arose and it was exercised.

25 And that's also, on this

1 slide, we have highlighted that when you look
2 through the IESO's termination reasons, [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 And we have
6 that in more detail in our written submissions. I
7 am going to pass over that for now.

8 And I am just going to
9 highlight quickly here.

10 MR. NEUFELD: Sorry, can I
11 just interrupt. We are still in confidential?

12 MS. SHERKEY: Yes.

13 MR. NEUFELD: And you mean to
14 be.

15 MS. SHERKEY: Yes.

16 MR. NEUFELD: Because none of
17 this is confidential.

18 MS. SHERKEY: This slide was
19 confidential.

20 MR. NEUFELD: Sorry.

21 PRESIDING ARBITRATOR MILES:
22 We were going in and out so we decided to stay in.

23 MS. SHERKEY: This slide is
24 confidential.

25 And now when we talk about

1 control over the IESO, Canada has designated our
2 evidence from Mr. Killeavy and Mr. Smitherman as
3 confidential so we have going to stay in
4 confidential mode.

5 And so just highlighting, over
6 on the next slide, that there really is no dispute
7 here that the IESO does control the -- the Ontario
8 government controls the IESO and could have
9 directed it. It chose not to.

10 We have put forward
11 unchallenged evidence on this. I highlight here
12 the expert report of Sarah Powell who says this
13 power exists, goes into detail of the times it has
14 been used in relation to specific contracts and
15 reaches her conclusion directing the IESO to amend
16 Windstream's contract would not have been
17 exceptional.

18 Mr. Smitherman, who is also
19 not being cross-examined, provided his evidence on
20 this issue, as former Minister of Energy and the
21 times he directed the IESO in relation to specific
22 contractual matters.

23 And Mr. Killeavy, who you will
24 hear from tomorrow, was former director of
25 contract management at the IESO and he also

1 explains his experience with the directive powers
2 at the IESO and sets out a number of specific
3 examples where Ontario has exercised it in
4 relation to specific contractual matters.

5 So my friend, if you go over
6 on the next slide, says Ontario did have this
7 power. This is why I say it's not disputed they
8 have it. But they say we didn't have an
9 obligation to exercise it and our practice,
10 Ontario's practice was to defer to the IESO.

11 We say we have put extensive
12 evidence in this record of all the times the IESO
13 has had established patterns of intervening
14 directly into contractual affairs.

15 Over on to the next three
16 slides.

17 We highlight a few examples,
18 which I am not going to have time to go through,
19 but they are there and they are in the record as
20 well.

21 And so my last point, and just
22 to conclude this, is just talking about Ontario's
23 need for energy and Canada asserts, in its
24 counter-memorial, well, there was no need to
25 redirect -- to direct the IESO to renegotiate this

1 contract because, by September 2016, Ontario had
2 its supply of energy. We were good. We didn't
3 need this contract. We were moving away from
4 long-term contracts and so we also didn't need to
5 do the research.

6 I note two things.

7 First is there is no evidence
8 before you on why Ontario is not conducting
9 research and tying it to this issue. There is
10 just no evidence whatsoever as to why it is not
11 doing any further research to lift what was
12 supposed to be a temporary deferral.

13 And, lastly, we note that this
14 policy in 2016, that came out in the 2017 Ontario
15 Long-Term Energy Plan was short lived. That
16 before the contract termination was actually
17 implemented, Ontario has identified that it needs
18 the energy, it's facing serious energy needs and
19 it's reverted to long-term contracts, like
20 Windstream's, to procure this energy and it has
21 still refused to engage Windstream even in those
22 circumstances.

23 So just highlighting this over
24 the next few slides, Mr. Chee-Aloy gave an expert
25 report in the Ontario application in 2018 saying

1 this move away from long-term contracts to
2 market-based approaches isn't going to last.
3 Ontario is going to need the energy.

4 That's confirmed as you look
5 on the slide on 84 by IESO's planning outlook that
6 came out in 2021. The IESO has identified it is
7 going to be facing energy shortfalls after 2026,
8 increasing sharply in 2029.

9 Mr. Chee-Aloy, Power Advisory,
10 is given another report to you in this arbitration
11 that's unchallenged saying, because of this,
12 Ontario has moved away from its market-based
13 approaches. And this happened before the
14 termination decision took effect in 2019. And
15 it's reverted back to long-term contracts.

16 And this is confirmed itself
17 by Ontario over the next slide.

18 Recently, in July 2023, it's
19 announced its powering Ontario's growth plan to
20 deal with the energy shortfall that it's going to
21 be experiencing by going to procuring long-term
22 contracts, including wind, as well as other energy
23 sources.

24 So Windstream has attempted to
25 engage the government again as it's procuring

1 projects for wind energy for other renewable
2 energy sources -- and this is over on the next
3 slide -- to say let's meet with us, let's talk
4 about our Project, we think we can -- it will
5 address your energy needs and there has just been
6 a complete refusal to meet or engage about the
7 Project.

8 So those complete our summary
9 of the factual circumstances and we are going to
10 shift now to breaches.

11 PRESIDING ARBITRATOR MILES:
12 Just in terms of the market mechanism, I
13 understand your submission on the use of
14 market-based contracts versus long-term contracts.

15 But is not another
16 market-based mechanism the level of tariff in the
17 long-term contract?

18 MS. SHERKEY: I don't know if
19 that would be considered a market-based approach,
20 but there would be, in there, procurement of
21 long-term contracts at different tariff rates than
22 what was set out previously in the FIT program.

23 PRESIDING ARBITRATOR MILES:

24 Right. It's an economic factor --

25 MS. SHERKEY: Yes --

Page 157

1 PRESIDING ARBITRATOR MILES:
2 -- that the government would take into account in
3 considering its energy needs.
4 MS. SHERKEY: And Windstream
5 has given proposals to meet with them and there
6 has been no engagement whatsoever to discuss
7 updates to the Project in terms of something like
8 that. Those meetings haven't happened.
9 PRESIDING ARBITRATOR MILES:
10 Is there any evidence in the record -- and I don't
11 want you to give evidence from the bar.
12 Is there any evidence in the
13 record that Windstream approached the government
14 about the tariff terms?
15 MS. SHERKEY: There was
16 evidence in the Ontario application and it's
17 identified in Mr. Chee-Aloy's 2018 report through
18 Mr. Mars that Windstream was open to discussing
19 price with the government and so that was evidence
20 in the Ontario application which is in the record
21 here.
22 PRESIDING ARBITRATOR MILES:
23 Okay. All right.
24 So you're done.
25 MS. SHERKEY: Yes.

Page 159

1 PRESIDING ARBITRATOR MILES:
2 All right. So 55 minutes we have been going for
3 an hour 20. How do you feel about a micro break
4 of five minutes so Lisa can just wiggle her
5 fingers.
6 MS. SHERKEY: I am eight
7 months pregnant. I will never complain about
8 washroom breaks.
9 PRESIDING ARBITRATOR MILES:
10 Okay. We will make it ten.
11 Okay. So we will just take a
12 very, very short break. We will take a very, very
13 short break, comfort break, ten minutes -- not
14 even ten, eight. I am going to say 12:20 we will
15 be back. Okay? Then you will 50 minutes to run
16 and we will have a lunch break.
17 MS. SHERKEY: Great.
18 PRESIDING ARBITRATOR MILES:
19 Excellent. Thank you very much.
20 --- Upon recess at 12:12 p.m.
21 --- Upon resuming at 12:21 p.m.
22 PRESIDING ARBITRATOR MILES:
23 Who is speaking for the Claimant?
24 MR. TERRY: I am.
25 PRESIDING ARBITRATOR MILES:

Page 158

1 PRESIDING ARBITRATOR MILES:
2 Thank you very much, Ms. Sherkey.
3 Just a quick time check.
4 Mr. Terry or Ms. Sherkey, how
5 much longer in your total outline is there to go
6 just so I can manage the morning and manage Lisa's
7 kind hands.
8 MR. TERRY: I think
9 Ms. Sherkey has been checking time for our
10 presentation.
11 MS. SHERKEY: Fifty minutes,
12 assuming we are on time, which my stopwatch put me
13 relatively on time but we can check.
14 MR. ARAGÓN CARDIEL: By my
15 count, you have used one hour and 35 minutes.
16 PRESIDING ARBITRATOR MILES:
17 And you have until an hour, fifty-five. There you
18 go, bonus.
19 MS. SHERKEY: I was talking
20 fast for a reason.
21 PRESIDING ARBITRATOR MILES:
22 We did come out of confidential?
23 MS. SHERKEY: Not yet. We can
24 come out now but we should move the slide.
25 --- CONFIDENTIAL TRANSCRIPT ENDS AT 12:00 p.m.

Page 160

1 Mr. Terry. We will proceed and Mr. Neufeld needs
2 to check his watch. Okay.
3 MS. SQUIRES: Yes.
4 PRESIDING ARBITRATOR MILES:
5 Is that okay?
6 MS. SQUIRES: Yes.
7 OPENING STATEMENT BY MR. TERRY (cont'd):
8 MR. TERRY: Just to give a
9 road map for our last 55 minutes of the
10 presentation, I am going to talk a bit about the
11 actual NAFTA breaches, our theory of breach,
12 particularly on fair and equitable treatment. I
13 am also going to respond to two of the questions
14 that you had asked.
15 Then Ms. Shelley is going to
16 speak about damages and then Ms. Sherkey is going
17 to return to talk about the jurisdictional
18 questions.
19 So in terms of I want to focus
20 in on fair and equitable treatment. I brought up
21 our slide that deals with that.
22 And I won't take the Tribunal
23 through the jurisprudence on fair and equitable
24 treatment. I think you're familiar with that.
25 Certainly reading the Award itself gives you some

1 examples or some sense as to the approach.
 2 And it's important here
 3 because, in some of the questions, we sort of --
 4 we have attacked it from a few different angles.
 5 But key, key in terms of your determination here
 6 is what the Tribunal said about the option to
 7 renegotiate and reactivate to add value.
 8 We say, based on fair and
 9 equitable treatment, the government had an
 10 obligation to do that. It wasn't just an option
 11 and Canada says it was an option. We didn't have
 12 to do it and we don't owe you anything.
 13 The way we come at saying it
 14 was an obligation is there are really two ways we
 15 argue that that arises in this case.
 16 The first is based expressly
 17 on the promise to freeze, which you have heard
 18 about, and we say that, in accordance with that
 19 promise to freeze, the government had to, in
 20 accordance with what the State said about keeping
 21 the Project whole after the moratorium, et cetera,
 22 the government had to take steps and we have got
 23 evidence that the government was able to direct
 24 the IESO, had to take steps to freeze the Project
 25 and, therefore, create value that way. That's one

1 path.
 2 The other, the other way we
 3 say, in terms of -- the other legal argument is
 4 the continuing breach framework.
 5 So the Tribunal, in the first
 6 Award, said that the reason why it was, why there
 7 was a breach of FET was the government had put
 8 Windstream in a case of legal and contractual
 9 limbo and we say they continued to do that after
 10 the first NAFTA Award and that's resulted in these
 11 damages.
 12 And we say that, consistent
 13 with that, what the, what the government should
 14 have done, and it had an obligation to do, was
 15 have discussions with Windstream in order to
 16 determine whether the Award can be reactivated
 17 renegotiated.
 18 So let's start with the first
 19 path of the promise to freeze.
 20 Now, President Miles, you, in
 21 particular, have raised questions, well, isn't
 22 that something that predated the NAFTA Award and,
 23 therefore, we can't really be dealing with that.
 24 Our answer to that is, is we
 25 are complaining about measures, all the measures

1 which we say gave rise to a breach were all things
 2 that occurred after 2016.
 3 The termination occurred in
 4 2020. The government breached its obligations
 5 post 2016 by failing to take steps to prevent that
 6 termination from occurring.
 7 Our argument is that the
 8 promise to freeze itself is part of the context of
 9 the relationship of the parties that you have to
 10 understand when you're looking at fair and
 11 equitable treatment and what is the fair and
 12 equitable treatment that was owed by the
 13 government to Windstream in this case.
 14 And there's nothing -- the
 15 Tribunal didn't make any findings. They didn't
 16 say, well, there was not -- there was never a
 17 promise to freeze. They didn't do anything to --
 18 that you could argue eliminated the ability for
 19 Windstream to rely on that and for us to rely on
 20 that in terms of this proceeding in saying what
 21 was the obligation owed, the fair and equitable
 22 treatment obligation.
 23 Certainly, we can't, in this
 24 proceeding, and this Tribunal can't make findings
 25 with respect to breaches that post dated --

1 alleged breaches that post dated 2016, but all of
 2 the breaches that were -- all of the measures that
 3 we are alleging breached the obligation occurred
 4 post 2016.
 5 So we distinguish between this
 6 Tribunal has to, in determining what fair and
 7 equitable treatment obligation was owed by the
 8 government, the Tribunal isn't limited to just --
 9 PRESIDING ARBITRATOR MILES:
 10 You meant to say pre; didn't you --
 11 MR. TERRY: Sorry.
 12 PRESIDING ARBITRATOR MILES:
 13 You said this Tribunal can't make findings with
 14 respect to breaches that post dated. You meant
 15 pre.
 16 MR. TERRY: Yes. Thank you
 17 very much. I appreciate that.
 18 Yes, pre.
 19 But it can, in terms of
 20 determining the fair and equitable treatment
 21 obligation, look to sets of facts that occurred
 22 before 2016. We don't think there is a line
 23 between pre and post 2016 on that.
 24 So our argument on the promise
 25 to freeze is simple in that respect. That it

1 wasn't just an option to reactivate but the
2 government had an obligation, in accordance with
3 fair and equitable treatment, in accordance with
4 the promise to freeze, they had the obligation to
5 work with Windstream to try to renegotiate and
6 reactivate the contract. And that, and that, in
7 that way, add value to the contract.

8 And because they didn't do
9 that, we say that that's, that additional value,
10 as valued by the experts, can be taken into
11 account.

12 CO-ARBITRATOR MCLACHLIN: It
13 seems the Tribunal on Windstream I saw it more as
14 an option that could, they used the conditional
15 term, be explored to revive the contract or
16 whatever. But they never spoke of an ongoing
17 obligation to do this.

18 So how do you match the
19 language that we looked at early in the argument
20 which is so conditional in brackets, et cetera, et
21 cetera, with this ongoing obligation? Wouldn't
22 you expect the Tribunal in Windstream I to have
23 said it differently if that was what they thought?

24 MR. TERRY: Certainly, there
25 is -- I admit fully the Tribunal did not -- it was

1 conditional. They were not saying you,
2 government, now have an obligation to go out. I
3 mean, the Tribunal itself wasn't saying that.

4 But the issue is squarely put
5 before you, as Tribunal members. There's nothing
6 that they said, in my submission, that binds you
7 in this respect. They didn't say there wasn't an
8 obligation going forward. They went out of their
9 way, as we discussed earlier, to state that
10 additional value could be created if these things
11 were to occur.

12 And so the real question is
13 before you, Tribunal members, you know, was there,
14 if you look at fair and equitable treatment, did
15 that obligation -- did the promise -- I mean, do
16 you simply ignore the promise to freeze now? We
17 would say no. We think the promise to freeze is
18 still part of the factual matrix in deciding -- in
19 applying fair and equitable treatment.

20 So you then have to decide,
21 well, you know, was there an obligation on the
22 government to do anything or could the government
23 simply leave it to the IESO to eventually
24 terminate the contract.

25 So I think the issue is really

1 before you to determine whether or not -- I don't
2 think that the Tribunal before didn't deal with
3 this issue. The Tribunal said what it said. They
4 acknowledged that there was additional value that
5 hadn't been awarded that could be created. But
6 they certainly didn't go further than that which
7 is why we are sort of before you with our
8 argument.

9 PRESIDING ARBITRATOR MILES: I
10 just want to understand what the investment was
11 that the first Award was based on and what the
12 investment is that these second proceedings is
13 based on.

14 And, in that respect, in your
15 submission, what was the investment that was
16 protected and valued in the first arbitration?

17 MR. TERRY: We have a slide
18 that deals with this in response to your first
19 question, which is Slide 89.

20 And tell me if this isn't
21 getting to what you're looking for in that
22 question.

23 But we point to three aspects
24 of the investment. And, really, our submission
25 was the same in Windstream I, unless my team

1 corrects me as it is in Windstream II in terms of
2 what the investment is.

3 First of all, there is
4 Windstream Wolfe Island Shoals, the enterprise
5 owned by Windstream that meets the definition of
6 investment under NAFTA.

7 And it has continued to exist
8 and be owned by Windstream post 2016. Nothing has
9 changed in that regard. So Windstream Wolfe
10 Island Shoals is the enterprise that is part of
11 the investment.

12 Secondly, there is the Project
13 and the Project again, as we said in the
14 Windstream I proceeding, it fits within the
15 definition of investment under the NAFTA as an
16 interest arising from the commitment of capital.

17 And we explain that it
18 includes various components: The FIT Contract
19 itself, the WWIS -- or the Windstream Wolfe Island
20 Shoals work product and data, meteorological
21 tower, turbine supply agreement, land leases, all
22 the various interests that arise from that.

23 And then the third one is the
24 FIT Contract itself. And we say that constitutes
25 personal property under Ontario law.

1 And we have another slide that
 2 just expands on that because I know you had a
 3 specific question as to whether it was a vested
 4 right.
 5 And that slide is -- I am just
 6 going to jump around a little bit.
 7 Yeah, that slide is Slide 99.
 8 And of course the question of whether the contract
 9 is a vested property right is a question of
 10 Ontario law. And we have expert evidence on this
 11 question that came from Sarah Powell who, you may
 12 recall, is an expert in this area -- a lawyer with
 13 expertise in this area.
 14 She had two expert reports in
 15 Windstream I that dealt with this issue and I
 16 believe this is the only expert evidence, yeah,
 17 from either side with respect to this issue.
 18 So she says, and we have
 19 highlighted the provisions here from her first
 20 expert report, 2014, that the FIT Contract is a
 21 valuable asset, constitutes intangible personal
 22 property which could be the subject matter of the
 23 security interest, would be transferable on
 24 bankruptcy, the trustee in bankruptcy of the
 25 contracting party under the laws of Ontario and

1 Canada and applicable in Ontario.
 2 And then, if you turn to the
 3 next page, we go on to explain -- and this is,
 4 this was in a supplementary report she did again
 5 in the first proceeding.
 6 We explained that it's not a
 7 contingent interest and she disagrees with the
 8 statement Canada had made, not based on expert
 9 evidence but the statement Canada made it was a
 10 contingent interest. And she explains why the NTP
 11 prerequisites are not true conditions precedent as
 12 part of her explanation.
 13 But that's -- so, so that's
 14 what we put forward in terms of explaining why,
 15 why the FIT Contract fits the requirements, the
 16 definition of being an investment. And, again,
 17 the three aspects of the investment remain: We
 18 have the enterprise, we have the Project itself,
 19 and we have the contract.
 20
 21 PRESIDING ARBITRATOR MILES:
 22 Thank you for that.
 23 So can we come back to Slide
 24 89.
 25 MR. TERRY: Yes, certainly.

1 PRESIDING ARBITRATOR MILES:
 2 Which of those chevrons in these proceedings has
 3 Secretariat valued?
 4 MR. TERRY: Just give me a
 5 moment here. I just want to make sure...
 6 Yeah, they have and you will
 7 be hearing from Secretariat so obviously you can
 8 put the question to them.
 9 But they, they focused on the
 10 value of the Project and of course, as you see,
 11 the enterprise Project -- the FIT Contract was
 12 actually part of the Project so that's what they
 13 focussed on in terms of their valuation.
 14 PRESIDING ARBITRATOR MILES:
 15 Okay.
 16 And which, if any, of those
 17 chevrons did the Tribunal, in the first Award,
 18 value and compensate for?
 19 MR. TERRY: Then I will just
 20 make sure that we have a consensus.
 21 Yeah, as we read the decision,
 22 they describe there being damage to the Project
 23 and they -- and they value the Project as of the
 24 date of expropriation but then they admitted --
 25 you know, we have gone through the statement where

1 they say additional value could be found in the
 2 reasons we have described.
 3 That's -- and we are happy,
 4 obviously, to, you know, President, to look more
 5 carefully at the wording but that's.
 6 PRESIDING ARBITRATOR MILES: I
 7 know you say damage to the Project versus the
 8 value on expropriation. And I understand that
 9 there are temporal arguments as to valuation date
 10 you're making now.
 11 Putting those aside for a
 12 moment -- these might be questions for
 13 Ms. Shelley.
 14 But putting aside the temporal
 15 element for a moment, what measure, in your
 16 submission, did the first Award use to quantify
 17 the damage to the Project?
 18 MR. TERRY: What damages
 19 methodology, when you say measure?
 20 PRESIDING ARBITRATOR MILES:
 21 No, what measure. What measure?
 22 MR. TERRY: Sorry?
 23 PRESIDING ARBITRATOR MILES:
 24 Do you accept the measure they looked to, to
 25 assess the damage, was the value of the Project?

1 MR. TERRY: The -- yes, they
 2 looked to the value -- they looked at comparable
 3 projects and they were looking at the value of the
 4 Project as of that, as of the valuation date, yes.
 5 PRESIDING ARBITRATOR MILES:
 6 And they valued the entire Project, your second
 7 chevron, at 31 million Canadian dollars?
 8 MR. TERRY: Yes. They valued
 9 the entire Project at 31.2, whatever the precise
 10 number, a little less than 31.2 million as, again,
 11 as of the valuation date and with the caveat about
 12 added value.
 13 PRESIDING ARBITRATOR MILES:
 14 Okay. And then they compensated the entire value
 15 of the Project, less the 6 million letter of
 16 credit.
 17 MR. TERRY: Correct.
 18 PRESIDING ARBITRATOR MILES:
 19 So then my question to this Slide 89 is what is
 20 the extant or surviving investment in terms of the
 21 Project as at the 28th of September 2016?
 22 MR. TERRY: Again, I will just
 23 discuss with the team.
 24 PRESIDING ARBITRATOR MILES:
 25 It may be that Ms. Shelley is going to address

1 precisely this; in which case, we can wait until
 2 then.
 3 MR. TERRY: Ms. Shelley may be
 4 able to add to this when she goes through the
 5 damages in detail, but -- and as of the date after
 6 the Tribunal made the Award, of course, the
 7 Project, as we say, was still existing.
 8 Windstream was still existing.
 9 The -- and it might be helpful
 10 if you just read back to me your specific question
 11 again to make sure I am answering it properly.
 12 PRESIDING ARBITRATOR MILES:
 13 So I am looking to understand precisely what your
 14 case is on the investment that existed that hadn't
 15 previously been made whole by the first Award as
 16 at the 28th of September 2016, the day after the
 17 Award.
 18 And the reason why I am
 19 pressing it is because I get different answers
 20 from your submission.
 21 Sometimes, you say the
 22 Project. And I am trying to understand, if it is
 23 the Project, what is left of the Project that you
 24 haven't already been made whole from.
 25 But, sometimes, you say the

1 investment, post the first Award, is the FIT
 2 contract, as a separate asset, if you like, or
 3 investment.
 4 I think we can agree WWIS is
 5 the owner of the Project.
 6 MR. TERRY: Yes.
 7 PRESIDING ARBITRATOR MILES:
 8 That any value to it is limited to the value of
 9 the Project or any other asset. So that's not a
 10 duplicative value, I don't think.
 11 But, if I am wrong, tell me
 12 that.
 13 So if the Award has made whole
 14 the value of the Project, but for the 6 million
 15 letter of credit, what is the investment that is
 16 taken through after the Award date?
 17 MR. TERRY: Again, it's hard,
 18 it's hard to -- well, two things.
 19 The investment itself, I
 20 think, has to be -- and we are happy to address if
 21 there is any sort of inconsistency in the
 22 submission, that the investment really has to be
 23 looked at as one package here.
 24 I mean, there is the Project
 25 owned by the enterprise Windstream Wolfe Island

1 Shoals. The Project itself includes the FIT
 2 contract.
 3 The Tribunal was, in terms of
 4 finding that the Project has been damaged, that
 5 investment had been damaged, in our submission,
 6 the Tribunal made Windstream whole for that damage
 7 that had occurred to the investment. But the
 8 investment didn't cease to exist at that
 9 particular time.
 10 The Tribunal made Windstream
 11 whole for the damage to the investment and then
 12 said there could be additional value added.
 13 The value is not able to be
 14 added, the additional, you know, investment, if
 15 you call it the added value, because of the
 16 actions, we say, of Ontario not allowing it to be
 17 added.
 18 And that's why, that's why we
 19 focus on the FET obligation that the government
 20 actually had an obligation, in terms of that
 21 particular investment. So it's not -- that, that
 22 investment, the conditional one that would have
 23 arisen if Ontario government had, had worked with
 24 Windstream to reactivate and renegotiate the
 25 contract, that certainly didn't exist at the time

1 of the Tribunal's finding and it has not been able
 2 to come to full existence despite of the efforts
 3 of Windstream.
 4 PRESIDING ARBITRATOR MILES:
 5 Okay. Thank you.
 6 I have taken you off your
 7 slides. You are on this very exciting diagram at
 8 95. Thank you.
 9 MR. TERRY: Yeah.
 10 And, really, that, I think,
 11 concludes, unless you have questions on Slide 95.
 12 I think I will move on to damages at this point in
 13 time.
 14 The only, the only thing I
 15 would say about Slide 95 is it is just a graphical
 16 representation of what we have been saying to you
 17 in terms of our argument. That it's not an
 18 obligation to go create new value.
 19 This was an existing Project
 20 and existing value that would have been unlocked
 21 simply if Canada fulfilled its promise.
 22 So, obviously, Ontario didn't
 23 have an obligation to go and work with Windstream
 24 to actually build the Project, et cetera.
 25 It had an obligation, we say,

1 to unblock so that Windstream could carry out the
 2 work and carry out the Project. And the way it
 3 would do that, as we said, is to uphold the
 4 promise to freeze and intervene appropriately to
 5 do that.
 6 So, at this point, we will
 7 turn over just to Ms. Shelley to talk about
 8 damages.
 9 PRESIDING ARBITRATOR MILES:
 10 Is someone going to talk about expropriation? You
 11 are running out of time.
 12 MR. TERRY: We are running low
 13 on time but we were going to leave that to legal
 14 argument at the closing argument but we could
 15 address it further, if you wish.
 16 PRESIDING ARBITRATOR MILES:
 17 Mr. Neufeld, do you mind terribly if, because we
 18 have interrupted quite a bit, I would like to hear
 19 them on expropriation. So, if they run ten
 20 minutes over, could you give us an indulgence?
 21 MR. NEUFELD: I don't mind at
 22 all.
 23 PRESIDING ARBITRATOR MILES:
 24 Thank you.
 25 Slide 97.

1 And, here, we are just talking
 2 about the FIT; right? In terms of the
 3 expropriation case, or not?
 4 MR. TERRY: Yes. We are
 5 talking about the FIT for expropriation.
 6 But, of course, again, to
 7 separate, needless to say, it's -- without a
 8 Project itself, FIT, the contract itself wouldn't
 9 have any value.
 10 I think, again, to move -- we
 11 have Slide 97, we have just set out some of the
 12 NAFTA provisions which are well known on
 13 expropriation.
 14 In the next slide, we set out
 15 the test for expropriation, de facto taking as
 16 identified by the Tribunal.
 17 And then, after this, we had
 18 the question I had already took you to which are
 19 vested property right question. I don't know if
 20 you have any questions on this but we could skip
 21 over that.
 22 So then, so in our
 23 expropriation -- our argument on expropriation is
 24 similar to our FET obligation argument.
 25 And keep in mind that, when we

1 are talking about fair and equitable treatment,
 2 our argument, again, is the damage we are talking
 3 about, is the actual termination of the Project.
 4 So, in each case, the measure
 5 which we are complaining about which causes the
 6 damage is the same.
 7 Now, this -- we have the same
 8 question being raised by Canada here which we
 9 discuss in the third bullet. There's no
 10 deprivation because the FIT Contract had no value,
 11 as the Windstream Tribunal found, so there's
 12 nothing left to lose.
 13 And then we have the same
 14 point about the Tribunal that we point out,
 15 otherwise, the Tribunal had recognized there was
 16 additional value to be ordered, or that could be
 17 renegotiated.
 18 Expropriation, as I said
 19 before in response to question from Professor
 20 Gotanda, the path is in our -- is different with
 21 respect to expropriation than for fair and
 22 equitable treatment.
 23 Fair and equitable treatment,
 24 we can see an obligation, we say, that arises
 25 under fair and equitable treatment, the promise to

1 freeze.
 2 In expropriation, a promise to
 3 freeze can't be taken into account in the same, in
 4 the same way. You have to look at resort, in my
 5 submission, to a simple question. The question of
 6 commit with an updated valuation, one that moves
 7 from a 2016 valuation to a 2020 valuation.
 8 And we recognize, in saying
 9 that, the Tribunal, at the time, said that the FIT
 10 contract had no value at the time it was making
 11 its Award. But, again, recognize there could be
 12 additional value that was added.
 13 In this particular case, the
 14 reason that, as in other cases of expropriation
 15 that investment Tribunals deal with, the reason in
 16 which that additional value has not been added,
 17 the Project hasn't been able to proceed is because
 18 we say the government has blocked it or not taken
 19 the steps required to allow the Project to
 20 proceed.
 21 We also point out here that
 22 there's the arguments about the police powers
 23 doctrine. The public purpose exception don't
 24 apply to this context.
 25 But the path to finding

1 damages here is one, quite simply, we say, where
 2 you have to -- the FIT Contract was clearly not
 3 terminated at the time of the 2016 decision.
 4 Clearly terminated at some later date. 2020 is
 5 the date agreed upon by the parties.
 6 And you do the valuation,
 7 then, as of 2020, keeping in mind also the -- that
 8 the government, throughout this period, held on to
 9 the \$6 million security.
 10 So Windstream continued to be
 11 in a position where it was not able to -- the FIT
 12 contract remained in effect. Windstream had to --
 13 Windstream had its own obligations to have to
 14 comply with the obligations under the FIT
 15 contract. The government treated the contract as
 16 in effect. And then, in 2020, it was terminated.
 17 So the role of the Tribunal
 18 here is to, is to, is to determine whether or not
 19 that contract, at the time it was expropriated,
 20 the FIT Contract had terminated in 2020 has value,
 21 in addition to what the Tribunal already awarded
 22 in 2016.
 23 But we acknowledge that, in
 24 doing so, you can't rely on the promise to freeze
 25 in the same way as you can under the fair and

1 equitable treatment provision.
 2 CO-ARBITRATOR GOTANDA: How
 3 does it go to the argument or could you address
 4 the argument that you don't have reasonable
 5 investment-backed expectations?
 6 Or do you -- if I understand
 7 your reading your claims correctly, you don't
 8 believe that that's a requirement, if I
 9 understand.
 10 But, if it is, what
 11 expectations -- do those expectations arise post
 12 2016? Does it matter that those expectations do
 13 or don't?
 14 MR. TERRY: Yeah, you have
 15 seen our submissions. We don't say that test
 16 applies.
 17 If it does apply, though,
 18 then, yeah, we would rely on -- Ms. Sherkey took
 19 you through all the various expectations. You
 20 will be hearing from Ms. Baines tomorrow about the
 21 expectations Windstream had, post 2016.
 22 And there is -- there were --
 23 you know, she will talk about the various
 24 representations that were made, the expectations
 25 they had arising out of what had been said by the

1 government during -- while the NAFTA Tribunal was
 2 hearing from witnesses and also, after that date,
 3 the various representations being made.
 4 So we would argue that, if
 5 that test were going to be applied, there are
 6 reasonable investment-backed expectations.
 7 We would also argue that,
 8 again, if the promise to freeze, for the same
 9 reasons, we say, can be taken into account, even
 10 though that promise to freeze predated 2016, that
 11 can also be relied upon as a reasonable
 12 investment-backed expectation.
 13 PRESIDING ARBITRATOR MILES:
 14 So you took us to paras 284 and 285 of the Award
 15 at Slide 98 where the Tribunal set out the test
 16 but you didn't take us to paragraph 290 of the
 17 Award which is the Tribunal's reasoning on why an
 18 expropriation has not taken place.
 19 And the Tribunal says, at
 20 paragraph 219 --
 21 MR. TERRY: Sorry, I think we
 22 have that at page 27 of our slides.
 23 PRESIDING ARBITRATOR MILES:
 24 Oh, perfect.
 25 MR. TERRY: Yes.

1 PRESIDING ARBITRATOR MILES:
 2 Excellent.
 3 MR. TERRY: Yes, this is the
 4 one.
 5 PRESIDING ARBITRATOR MILES:
 6 Exactly. You came to this in opening.
 7 So can we just come back to
 8 this on expropriation in particular.
 9 MR. TERRY: Sure.
 10 PRESIDING ARBITRATOR MILES:
 11 What I am interested is the first part that's
 12 highlighted at the FIT. Then it says:
 13 "Second and more
 14 importantly."[as read]
 15 I am just interested in those
 16 words "and more importantly".
 17 So, at the sixth line in
 18 paragraph 290:
 19 "And, more importantly,
 20 in the context of the
 21 expropriation claim in
 22 the earlier proceeding,
 23 the Claimant's 6 million
 24 security is still in
 25 place and has not been

1 taken or rendered
 2 otherwise worthless as a
 3 result."[as read]
 4 And then, at the end, it --
 5 and then the discussion that's not highlighted is
 6 about the consequences of termination in respect
 7 of that \$6 million being returned.
 8 And then the final sentence
 9 says:
 10 "It, therefore, cannot be
 11 said that the Claimant
 12 has been substantially
 13 deprived of its
 14 investment."[as read]
 15 And what I want to understand
 16 from you is what do you say to the construction of
 17 paragraph 290 as being a finding that the only
 18 thing that fell short of expropriation was the 6
 19 million?
 20 MR. TERRY: Yes, and,
 21 President Miles, I want to be wholly fair about
 22 this because I also took you to paragraph 291, the
 23 second page there, where they make the same point.
 24 They sort of conclude their whole statement. They
 25 say the Tribunal is unable to conclude the

1 Claimant has been substantially deprived.
 2 I acknowledge the words "more
 3 importantly" as well.
 4 Certainly, the Tribunal wanted
 5 to make, wanted to make this point clear as well
 6 as the point that it hadn't yet been expropriated
 7 because there was, in fact -- and, again, it is
 8 consistent with their, their determination that,
 9 as of that time, you know, the contract, apart
 10 from the \$6 million letter of credit, the
 11 contract, at that particular time, doesn't have
 12 further value.
 13 They also -- and, again, in
 14 fairness, they also go on to point out later on
 15 that the \$6 million is a substantial amount
 16 compared with the sunk costs of the investment.
 17 PRESIDING ARBITRATOR MILES:
 18 Understood. Understood.
 19 MR. TERRY: Yes.
 20 PRESIDING ARBITRATOR MILES:
 21 And the 291 is interesting because they use the
 22 language of taking, this affects proprietary
 23 language. The value is still available as has not
 24 been taken, i.e. the security deposit.
 25 Okay. So that is where your

1 slide number, the diagram.
 2 MR. TERRY: Yes, was it 95;
 3 was that it?
 4 PRESIDING ARBITRATOR MILES:
 5 Yeah. 95, yes.
 6 That's where this becomes
 7 everything, really, doesn't it, because it's value
 8 created or an opportunity to create value after
 9 the date of that Award.
 10 MR. TERRY: Correct.
 11 And as I said before, we have
 12 the two paths, you know, with the fair and
 13 equitable treatment path, with the promise to
 14 freeze or continuing breach, keeping contract in
 15 limbo as fitting more, more squarely with that
 16 diagram.
 17 But, yes, that's exactly
 18 right, Madam President, is we are looking at value
 19 which the Tribunal said could be created post
 20 Award, conditional, as Justice McLachlin said.
 21 And we put a point on it by
 22 saying, yeah, if you look at the international
 23 obligations here, there actually is an obligation
 24 to -- Ontario can't just sit back and let things
 25 play out. Ontario has an obligation, in

1 accordance with the promise to freeze, to go
 2 further and block investment so it can be made.
 3 PRESIDING ARBITRATOR MILES:
 4 And we don't know, from 290, 291, if the Ontario
 5 Tribunal would have found expropriation if there
 6 were not a letter of credit? If it were just the
 7 FIT with no letter of credit.
 8 MR. TERRY: Yes. I think
 9 that's fair to say. Looking at my team members as
 10 well, I don't think we know what the Tribunal
 11 would have done in that circumstance.
 12 PRESIDING ARBITRATOR MILES:
 13 Okay.
 14 And despite the "more
 15 importantly", they do have the two items, the FIT
 16 and letter of credit as two distinct items.
 17 MR. TERRY: Yes.
 18 PRESIDING ARBITRATOR MILES:
 19 All right. Okay. Thank you.
 20 MR. TERRY: Yes, we will turn
 21 to damages now.
 22 PRESIDING ARBITRATOR MILES:
 23 Yes, thank you, Mr. Terry.
 24 OPENING STATEMENT BY MS. SHELLEY:
 25 MS. SHELLEY: Good afternoon.

1 We have talked a lot about
 2 value creation this morning and a portion of my
 3 submissions is intended to focus on the world
 4 after finding a breach and what this Tribunal
 5 would undertake in terms of the causation and
 6 damages.
 7 And so, if there are lingering
 8 questions about the value creation, I am happy to
 9 address those. But I am operating on the
 10 assumption that those have now been answered.
 11 So I will move through my
 12 section in three parts, beginning, first, with the
 13 standard of reparation.
 14 It is agreed between the
 15 parties that the standard of compensation under
 16 customary international law is reparation. We
 17 find that in the Chorzow Factory decision, and
 18 that's cited by both the Claimant and the
 19 Respondent.
 20 So what we are trying to do
 21 here is wipe out all the consequences of the
 22 illegal act and reestablish the situation which
 23 would, in all probability, have existed if the act
 24 had not been committed.
 25 And this was the standard also

1 adopted by the Tribunal in Windstream I. I don't
 2 think there is any controversy on that.
 3 So then we can move forward
 4 now to our but-for counterfactual to consider
 5 what the world would have looked like without the
 6 alleged acts.
 7 The but-for scenario developed
 8 by the Claimant properly assumes that the
 9 Government of Ontario adhered to its international
 10 obligations and acted in good faith; and also that
 11 Windstream reacted as a diligent and reasonable
 12 investor.
 13 If we can go over the page to
 14 Slide 108.
 15 Obviously, damages are an
 16 approximation of the loss to the Claimant so the
 17 Tribunal will have to accept certain assumptions
 18 and assess the reasonableness of the but-for
 19 counterfactual scenario. This exercise will
 20 involve conjecture as to how the Project would
 21 have evolved but for the actual behaviour of the
 22 parties.
 23 And so if we can move forward.
 24 There we go, one slide.
 25 Here is what the Claimant puts

1 forward as what would have happened in the but-for
 2 world.
 3 So but-for the actions of the
 4 Government of Ontario following Windstream I, the
 5 IESO would not have had the ability to terminate
 6 the FIT Contract; the moratorium would have been
 7 lifted; the Project would have been built and
 8 achieved commercial operation; and the Project
 9 would have generated the revenues guaranteed to it
 10 under the FIT Contract.
 11 And moving forward to Slide
 12 110.
 13 The but-for counterfactual is
 14 that the Project was feasible. Technically, from
 15 a regulatory standpoint, from a financial
 16 feasibility perspective, and the Tribunal in
 17 Windstream I agreed with that. In finding that
 18 the Project had value and that there had been a
 19 breach, they also accepted that the Project was
 20 feasible. And, on that basis, they awarded
 21 damages to the Claimant.
 22 And they certainly didn't do
 23 that in a vacuum. There was an extensive
 24 evidentiary record before them on those issues.
 25 There were 12 combined experts between the two

1 parties on feasibility. There were over 2,000
 2 pages on feasibility analysis.
 3 So they made that with a full
 4 record before them.
 5 And if we go over the page.
 6 PRESIDING ARBITRATOR MILES:
 7 Just so I am clear on your 110.
 8 It's not quite right, is it.
 9 To the contrary, the Windstream I determined that
 10 the Project had value and awarded damages of
 11 31.2 million.
 12 It determined it had value at
 13 31.2 million but subtracted 6 million so awarded
 14 damages in the sum of 25.2 million.
 15 MS. SHELLEY: That's right.
 16 It had value 31.2 million, less the \$6 million
 17 letter of credit which was subtracted.
 18 Again, considering what was
 19 before the Tribunal in Windstream I and what
 20 Windstream's experts had concluded on feasibility,
 21 the reasons that the Project could have been
 22 brought to commercial operation, but for the FIT
 23 contract deadline -- sorry, by the FIT Contract
 24 deadline but for the moratorium, was because the
 25 Project did not face regulatory uncertainty.

1 Sarah Powell gave us that
 2 evidence.
 3 That Windstream had the
 4 capability to complete the Project. It would have
 5 received the AOR status that Ms. Sherkey spoke
 6 about this morning. There were favourable wind
 7 resources at the Project site. The Project site
 8 was appropriate for Project development. We heard
 9 that this morning as well. The design, strategy
 10 and implementation plans were all feasible. There
 11 were no material impediments on the REA
 12 application and permits and the Project was
 13 financeable so it was not an issue.
 14 And since 2016, the conditions
 15 for the development of the Project have actually
 16 improved. So all of that remains equal but now
 17 costs have decreased, technology has advanced.
 18 To the extent the Project was
 19 feasible in 2016, it remains feasible to date. We
 20 put forward additional feasibility and technical
 21 expertise in this matter, several experts and
 22 reports, none of whom are being cross-examined.
 23 Canada has not put forward any of its own evidence
 24 in this hearing on those issues.
 25 So we are left with the

1 evidence we have.
 2 PRESIDING ARBITRATOR MILES:
 3 But in terms of the overall feasibility for the
 4 government, we have at least the expert opinion of
 5 Mr. Guillet, don't we, that, because of the tariff
 6 rates, it put it potentially at greater risk.
 7 I may be overstating, but
 8 conditions may have improved in terms of reducing
 9 cost and advancing technology, and greater
 10 learning but they may have worsened because the
 11 government could purchase energy at a much lower
 12 price.
 13 MS. SHELLEY: Yes.
 14 Mr. Guillet has made some comments on financing
 15 feasibility and on the construction schedule. I
 16 think we will hear from him more on Wednesday
 17 about that. But Mr. Guillet is sort of being put
 18 forward as a damages expert.
 19 So, in the but-for counter
 20 factual, we developed a timeline for the Project
 21 and we had to make some reasonable assumptions to
 22 do so.
 23 But the timeline below sets
 24 out that the Project could achieve the commercial
 25 operations in advance of the milestone commercial

1 operation date, the MCO.
 2 And so we have here, instead
 3 of the termination happening on February 18th,
 4 2020, a Project restart. The moratorium has been
 5 lifted. The studies that the research that were
 6 required has been done. And, thereafter, the
 7 Project engages in permitting, regulatory
 8 activities, environmental studies, engineering
 9 development and design. There is a very, very
 10 detailed schedule put forward by the Wood Group.
 11 That schedule sees construction completed and
 12 commercial operation take place as of December
 13 20th, 2024.
 14 Ian Irvine, who was an expert
 15 in the first hearing and has put forward another
 16 expert report in this matter, calls that a
 17 worst-case scenario schedule.
 18 So, you know, there's lots of
 19 float built in, and that still sees us achieve
 20 commercial operation in advance of the revised
 21 milestone completion date. That operation happens
 22 in December. The MCO takes place the following
 23 January, so a month and a half later.
 24 PRESIDING ARBITRATOR MILES:
 25 And are you able to tell me where, between Project

1 restart and commercial operation date, financial
 2 close would occur?
 3 MS. SHELLEY: Yes.
 4 February 20th, 2023. So about three years after
 5 the Project restart.
 6 PRESIDING ARBITRATOR MILES:
 7 Thank you.
 8 MS. SHELLEY: You're welcome.
 9 So if we could advance forward
 10 to Slide 114.
 11 This deals with the period
 12 between the revised milestone completion date and
 13 the long stop date that the supplier event of
 14 default.
 15 And you will have seen, in the
 16 parties' submissions, that there was an 18-month
 17 buffer there which was afforded to us under 9.1(j)
 18 of the FIT Contract and also under Section 8.1(d).
 19 So 9.1(j) provides that a
 20 supplier event of default occurs if commercial
 21 operation has not occurred on or before the date
 22 18 months outside of the milestone date for
 23 commercial operation. So, at the 18-month long
 24 stop date, Ontario could unilaterally terminate
 25 the contract.

1 What Section 8.1(d) is it
 2 gives the supplier, Windstream, the right to
 3 purchase additional time beyond the milestone
 4 completion date at a rate of 15 cents per
 5 kilowatt, supplied by the contract capacity of 300
 6 megawatts.
 7 So, in other words, Windstream
 8 is entitled to the 18-month buffer but it must buy
 9 that time at a prescribed rate.
 10 And, if we go over the slide,
 11 you will see that that has sort of always been the
 12 position we understood.
 13 Canada's previous
 14 representations during Windstream I, in both its
 15 rejoinder and in its oral opening, indicated that
 16 the OPA's unilateral right to terminate arose
 17 18 months after the milestone date had passed.
 18 At the top of the slide, you
 19 will see the Claimant had five years to bring the
 20 Project into commercial operation. If the
 21 Claimant failed to do so, then it would be subject
 22 to reduction in the term of its FIT Contract and
 23 if that failure persisted for an additional
 24 18 months, the OPA retained the unilateral right
 25 to terminate.

1 At the bottom of the slide,
 2 you will see the same thing.
 3 If you look at Article 9 of
 4 the FIT Contract, after 18 months of the missing
 5 the commercial operation date, the contract could
 6 be unilaterally terminated by the OPA.
 7 And we heard for the first
 8 time in Canada's rejoinder in this dispute that it
 9 now takes the position that the Claimant does not
 10 have what they have described as the luxury of a
 11 guaranteed additional 18 months past MCO and we
 12 understand that they take that position based on a
 13 decision out of the Ontario Supreme Court from
 14 2019. It's the Grasshopper solar decision. That
 15 decision did go on to the Court of Appeal and it
 16 was upheld.
 17 But that decision does not
 18 apply to the Claimant's FIT Contract. The FIT
 19 contract being interpreted in Grasshopper was a
 20 FIT 4 and our contract was a FIT 1 or a FIT 1.3,
 21 more specifically. And the relevant provisions
 22 differ materially between those contracts.
 23 The FIT 4 contract did not
 24 include the supplier right in 8.1(d) to buy time.
 25 That was removed in FIT 2, 3 and 4.

1 In those provisions, it was
 2 entirely at the discretion of the OPA if they
 3 wished to extend beyond the milestone completion
 4 date. And that's simply not the case in our
 5 client's FIT Contract, whereby they have the
 6 right, -- we saw this language in 8.1(d), shall
 7 have the option so we say Grasshopper has no
 8 applicability here.
 9 PRESIDING ARBITRATOR MILES:
 10 Just so I understand, your entire but-for premise
 11 is based on but-for the government breach in not
 12 restarting FIT Contract as at the 18th of
 13 February 2020.
 14 MS. SHELLEY: But for the
 15 government not undertaking the work it said it was
 16 going to do and continuing to apply the moratorium
 17 to the Project and failing to direct the IESO not
 18 to terminate the contract, we would have been in
 19 the world where we would have been able to restart
 20 the Project and build it.
 21 PRESIDING ARBITRATOR MILES: I
 22 think your but-for goes slightly further than
 23 that. It then requires the government to
 24 affirmatively restart the contract at the 18th --
 25 MS. SHELLEY: It requires the

1 government to lift the moratorium so that the
 2 Project could proceed.
 3 CO-ARBITRATOR MCLACHLIN:
 4 Well, I have similar concern to understand.
 5 Because your argument on the
 6 but-for seems to proceed not only response,
 7 negotiation, but a successful negotiation whereby
 8 the Project moves forward.
 9 So insofar as you put your
 10 case on the duty to listen, to come forward with
 11 negotiation positions, be open, if I can put it
 12 that way, does it get you where you need to get
 13 for the but-for?
 14 Because the but-for goes
 15 beyond the negotiation and says you are going to
 16 get a new deal here.
 17 MS. SHELLEY: If you just give
 18 me one moment. I am going to consult with my
 19 colleagues on that.
 20 PRESIDING ARBITRATOR MILES:
 21 And if you could just remind me what the date is
 22 of the original FIT.
 23 MS. SHELLEY: The date of
 24 execution? August 2010. It was offered in
 25 April 2010 but not executed until August.

1 So, in response to your
 2 question, Justice McLachlin, in the but-for
 3 scenario, we are assuming that we would have been
 4 able to renegotiate, reactivate the contract, that
 5 Ontario would have acted in good faith, the IESO
 6 would have negotiated with us and we would have
 7 had a live contract to proceed with.
 8 PRESIDING ARBITRATOR MILES:
 9 So these dates are very, very specific. You must
 10 be assuming an extension to the commencement date
 11 or the running of the five-year period under the
 12 FIT.
 13 This 18 February 2020, it's
 14 not just lifting the moratorium. It's lifting the
 15 moratorium plus, is it changing -- what is it
 16 specifically? Does it have to change the
 17 commencement date of the FIT?
 18 MS. SHELLEY: So the
 19 Project -- and Secretariat sets this out in
 20 their -- I will find the cite for you.
 21 But Secretariat sets this out
 22 in their report. They have a chart and it shows
 23 that the Project resumes on February 18th, 2020.
 24 The original MCO was May 4th, 2015, so before all
 25 of this happened. And then we had some periods of

1 force majeure.
 2 So we had a period from
 3 November 22nd, 2010, to February 10th, 2011.
 4 Because of issues with the AOR, we couldn't do the
 5 testing we needed to do so we entered into force
 6 majeure. And then, of course, we have the period
 7 thereafter of the moratorium.
 8 So taking that time out of the
 9 five-year period, we then have a second adjustment
 10 and we -- Secretariat can get into this when they
 11 give the evidence so I am not up here giving the
 12 evidence.
 13 But we then have a second
 14 period of 185 days of force majeure for REA
 15 appeal, so there is six months accounted for in
 16 there. And you get to the January 1st, 2025, by
 17 adding all that time together.
 18 So you take out, really, what
 19 you had at the beginning of the Project was before
 20 force majeure began in November of 2010. I think
 21 about six months of time. And then, thereafter,
 22 you have the remaining term of the contract to
 23 complete this, including an additional six months
 24 of REA force majeure.
 25 So we have just brought the

1 original milestone completion date forward.
 2 PRESIDING ARBITRATOR MILES:
 3 But you'd have to amend clause 8.1 which is the
 4 term.
 5 MS. SHELLEY: Yes.
 6 PRESIDING ARBITRATOR MILES:
 7 In order to accommodate effectively what you're
 8 arguing, the window claim. So you just want to
 9 shift that window along.
 10 MS. SHELLEY: Right. We want
 11 to have the five years once the moratorium has
 12 been lifted.
 13 PRESIDING ARBITRATOR MILES:
 14 To toll the FIT. But you can't really toll an
 15 FIT. You need to change the term or the effective
 16 date.
 17 MS. SHELLEY: Right. We are
 18 not changing the term. We would have the same
 19 amount of time that we originally had. It would
 20 be we were insulated from the moratorium from that
 21 time, so we would restart once the moratorium was
 22 lifted.
 23 Yes, sorry, the date would
 24 change on the term but not the timing of the term,
 25 yeah.

1 PRESIDING ARBITRATOR MILES:
 2 Okay.
 3 MS. SHELLEY: So if we move
 4 now on to the actual damage itself and how that
 5 has been estimated or assessed in this case. I am
 6 at Slide 118 now.
 7 In terms of process, once
 8 causation has been established, the Tribunal's
 9 task here will be to assess the extent of the loss
 10 to Windstream.
 11 Windstream bears the burden of
 12 establishing the quantum of damage that would
 13 satisfy the full reparation standard, for which we
 14 need only provide a basis for which the Tribunal
 15 can, with reasonable confidence, estimate the
 16 extent of that loss.
 17 And if we go forward one
 18 slide. This summarizes sort of the expert reports
 19 and witnesses from each side so, in respect of
 20 damages, the Claimant and the Respondent have each
 21 put forward two reports.
 22 The Claimant has put forward
 23 Secretariat, assisted by Pierre-Antoine Tetard,
 24 who you will hear from Wednesday.
 25 And the Respondent has put

1 forward Dr. Jérôme Guillet who was also a witness
 2 in Windstream I and who you will also hear from on
 3 Wednesday.
 4 And before we discuss the
 5 damages in the present case, I wanted to recap
 6 what the Tribunal found in Windstream I.
 7 So, in Windstream I, the
 8 Tribunal selected a valuation of 21 million euros.
 9 That was based on a set of seven comparable
 10 transactions. And those transactions dated from
 11 2009 to 2013. So the decision was rendered in
 12 September of 2016 but the comparables being
 13 considered ranged from 2009 to 2013.
 14 And then, as you can see in
 15 the top excerpt on that slide, the Tribunal
 16 selected the midpoint of the range so they had
 17 arrived at a range of 18 to 24 million euros.
 18 They selected the midpoint of 21 million euros.
 19 And then they went on to select a quantification
 20 date and they said that the damage had
 21 crystallized to Windstream as of the date of the
 22 Award so they quantified the loss as of
 23 September 2016.
 24 And, as a final step, they
 25 then used a 2016 euro to Canadian exchange rate

1 and converted the Award from 21 million euros to
 2 31.2 million Canadian dollars.
 3 In the present case, the
 4 Claimant's damages expert, Secretariat, has
 5 prepared both comparables valuation, which, as we
 6 saw in Windstream I, and a discounted cash flow
 7 valuation. And, in fact, has done -- you'll see
 8 both transaction structuring and risk adjusted
 9 approaches on the DCF.
 10 And they have used a valuation
 11 date of February 18th, 2020, which is the date of
 12 the termination of the FIT Contract, and the
 13 Respondent's expert has used the same date.
 14 And in addition to conducting
 15 a valuation of the Project under comparables and
 16 under the DCF, Secretariat also carried out
 17 several responsibility checks on their overall
 18 conclusions, such as an analysis of offshore wind
 19 lease transaction, in the US and the period
 20 leading up to the valuation date; an analysis of
 21 onshore wind transactions in Ontario; an analysis
 22 of valuation metrics derived from share prices of
 23 publicly-traded companies that hold similar assets
 24 to the Project.
 25 And these were not done to

1 derive the fair market value of the Project but,
 2 rather, to provide comfort that they had not
 3 understated or overstated the value of the
 4 Project.
 5 On the slide, you have
 6 Secretariat's conclusion under each of their
 7 methodologies. For the comparables valuation, the
 8 valuation range is between 281.8 million, and
 9 these are Canadian dollars, and in the -- up to
 10 297.7 million Canadian dollars.
 11 And, under the DCF model, the
 12 range is between 291.4 and 333 million Canadian
 13 dollars.
 14 PRESIDING ARBITRATOR MILES:
 15 Just in terms of what's valued here, this is the
 16 Project.
 17 MS. SHELLEY: Yes.
 18 PRESIDING ARBITRATOR MILES:
 19 So there's no different valuation or value for
 20 loss as a result of breach of the fair and
 21 equitable treatment versus expropriation loss.
 22 MS. SHELLEY: It's a single
 23 value for both breaches on the basis that the harm
 24 is the same.
 25 So the termination of the FIT

1 contract is what gives rise to the harm and that
 2 is being -- which is why the valuation date is the
 3 date of the termination.
 4 And what you lost in both
 5 cases is the ability to build the Project.
 6 PRESIDING ARBITRATOR MILES:
 7 So your expropriation case, as I understand from
 8 Mr. Terry, is the expropriation of the FIT
 9 contract.
 10 MS. SHELLEY: Right. And the
 11 FIT Contract is a component of the Project that's
 12 being valued.
 13 PRESIDING ARBITRATOR MILES:
 14 Precisely. A component of the Project that's
 15 being valued.
 16 MS. SHELLEY: Um-hmm.
 17 PRESIDING ARBITRATOR MILES:
 18 So if you're claiming damages for expropriation of
 19 the FIT Contract as a component of the Project
 20 that's been valued, is that not different to a
 21 damages claim for the entire value of the Project?
 22 MS. SHELLEY: Sorry, can I get
 23 that one more time?
 24 PRESIDING ARBITRATOR MILES:
 25 Right. So you're bringing two causes of action.

1 MS. SHELLEY: Um-hmm.
 2 PRESIDING ARBITRATOR MILES:
 3 One is FET. For the FET breach, you're claiming
 4 for the loss of the Project.
 5 MS. SHELLEY: Yes.
 6 PRESIDING ARBITRATOR MILES:
 7 Your expropriation claim, as I understand it, is
 8 for the expropriation of the FIT Contract.
 9 You just said, and I think
 10 it's right, that the FIT Contract is a component
 11 of the Project.
 12 MS. SHELLEY: Um-hmm.
 13 PRESIDING ARBITRATOR MILES:
 14 But you only value one thing and that's the
 15 Project.
 16 MS. SHELLEY: One moment to
 17 consult with Mr. Terry.
 18 My understanding, and
 19 Mr. Terry apologizes if this was not communicated,
 20 is that we do claim an expropriation of the
 21 Project and not just the component of the FIT
 22 contract, which is why we have done a single
 23 valuation for both breaches. It's all bound up
 24 together. The Project relies on the FIT Contract.
 25 So if we want to move --

1 PRESIDING ARBITRATOR MILES:
 2 It might have been, in fairness to Mr. Terry, that
 3 at Slides 99 and 100, where you're talking about
 4 the FIT Contract capable of being expropriated,
 5 that was answering our question on that specific
 6 point rather than a characterization of what your
 7 case was.
 8 MR. TERRY: Yes.
 9 And I think if you look to
 10 where we set out the various breaches in our
 11 materials, that we are very clear about it. But
 12 I -- but I don't think we -- we, on our team, have
 13 ever really made a difference between the FIT
 14 contract and the Project in terms of valuation.
 15 They really are bound up
 16 together. Without, without the FIT Contract, the
 17 Project itself can't be pursued. So we have
 18 always, we have always, in terms of our pleadings
 19 and setting out exactly what we say as either
 20 being expropriated or what we have lost as a
 21 result of the fair and equitable treatment breach,
 22 we have always treated the FIT Contract and the
 23 Project together as one set of investments which
 24 is -- which we've lost the value of.
 25 PRESIDING ARBITRATOR MILES:

1 So they are bound up together without the FIT
 2 contract. The Project itself can't be pursued.
 3 Would you say without the FIT
 4 contract, the Project can't have any value? Maybe
 5 think about that.
 6 MR. TERRY: We will think
 7 further about it.
 8 PRESIDING ARBITRATOR MILES:
 9 So you haven't distinguished valuation for
 10 expropriation and valuation from FET?
 11 MS. SHELLEY: We have not. It
 12 is a single valuation for both.
 13 PRESIDING ARBITRATOR MILES:
 14 Right. But the premise of your case is that the
 15 earlier Award did so distinguish.
 16 MS. SHELLEY: The premise --
 17 so the earlier Award found that there was still
 18 value -- sorry, not that there was still value but
 19 that value could be created because the contract
 20 had not been expropriated. And that they assessed
 21 the harm to the investment under the FET breach.
 22 And that harm, as Mr. Terry put earlier, you know,
 23 was assessed as the value of the Project.
 24 I am not sure if that answers
 25 as your question.

1 PRESIDING ARBITRATOR MILES:
 2 It's enough. Thanks.
 3 MS. SHELLEY: Okay, thanks.
 4 CO-ARBITRATOR GOTANDA: I just
 5 want to clarify, because I think I read this in
 6 your pleadings.
 7 But it is also your view that
 8 the time alone could create value because of the
 9 market, the time period and the market shift.
 10 In other words, it's not just
 11 that the parties have to come together and create
 12 value. It's that the market can change between
 13 the time, up to the date of expropriation
 14 valuation, the date of valuation and, therefore,
 15 that alone could create value too.
 16 MS. SHELLEY: So that's right.
 17 The market changed sort of pretty significantly
 18 between the comparables used 2009 to 2013 in the
 19 first proceeding and the 2020 valuation date.
 20 Of course the parties have to
 21 come together for there to be a Project, but the
 22 value has -- without sort of any steps, the value
 23 of the Project increases because of the market
 24 factors.
 25 And I will take you to that

1 momentarily.
 2 So if we can just go over -- I
 3 am nearing the end here -- to Slide 122. This is
 4 Dr. Guillet's comparables valuation. He does one
 5 methodology. And he assesses that there has been
 6 no change in the value of the Project over sort of
 7 the nine years from February 2011. He indicates
 8 his initial report used a February 2011 valuation
 9 date and the new valuation date of February 2020.
 10 And that's despite his own
 11 data sort of showing that there has been changes
 12 in the metrics he uses over that time period.
 13 So he had provided summary
 14 tables assessing the value of the projects on a
 15 weighted basis prior to 2015 and post 2015 for
 16 both early and late stage projects and those,
 17 respectively, increased 3.7 times and 3.4 times
 18 but his evidence is that there has been no change
 19 in value.
 20 And this goes to your
 21 question, Professor Gotanda, and we say, absent
 22 the breaches, the Project would have appreciated
 23 in value in February 2020 but there are also
 24 market value drivers.
 25 So there are decreased costs

1 that fell significantly and Dr. Guillet has agreed
 2 with that. There is more capital available. A
 3 larger universe of both investors and lenders and
 4 Dr. Guillet agrees with that.
 5 And the Windstream power
 6 purchase agreement increased -- has an
 7 inflationary index in the contract so it increased
 8 to \$254 per megawatt hour in that time, whereas
 9 market power purchase agreement prices decreased
 10 and so it's at a premium now, which Dr. Guillet
 11 has recognized, projects with a higher tariff can
 12 sometimes command a premium.
 13 CO-ARBITRATOR MCLACHLIN: But
 14 you don't know what you would have been able to
 15 negotiate, assuming -- we already covered this.
 16 Any -- that higher premium
 17 might have fallen if you had been able to complete
 18 a successful negotiation and the government taking
 19 into account falling prices would have said we
 20 can't pay you for that bonus.
 21 Anyway, just an observation.
 22 MS. SHELLEY: Right. You mean
 23 would not have --
 24 CO-ARBITRATOR MCLACHLIN:
 25 Well, your whole case is that there would have

1 been a negotiation and that you would have
 2 achieved success in that negotiation.
 3 Had you achieved success, it
 4 may well have been that one condition of achieving
 5 success would be a lowering of the price, if
 6 you're right that the price had gone up.
 7 MS. SHELLEY: Right.
 8 I understand that, in our
 9 but-for scenario, we are going with the price that
 10 is stated in the contract. We have got the time
 11 moving forward and the freeze and effects from the
 12 moratorium, but no suggestion that the price would
 13 have been amended in the contract.
 14 So I just want to close out
 15 this section and then I will pass it back to
 16 Ms. Sherkey to take us to the very end.
 17 This is to address the
 18 Tribunal's question number 5 which was about the
 19 appropriate method of valuation.
 20 And the Tribunal inquired, if
 21 they find a breach, could they apply a different
 22 methodology here for the calculation of damages
 23 that was applied by the Tribunal in Windstream I.
 24 And we discussed that the
 25 Tribunal in Windstream I used the comparables

1 method and they assessed the damage to the
 2 investment as a result of a breach of 1105 for
 3 FET.
 4 And our position is this
 5 Tribunal can make its own assessment as to what
 6 methodology is appropriate for a breach in 2020,
 7 both on the FET and expropriation basis.
 8 You will hear expert evidence
 9 about the use of the two different methodologies
 10 for valuation and how that plays out in today's
 11 climate or in the 2020 climate, rather.
 12 And so we say it's up to the
 13 Tribunal, once having heard the expert evidence,
 14 to make that assessment, notwithstanding that both
 15 of the approaches developed by Secretariat yield
 16 similar valuation ranges for a 2020 valuation.
 17 So you'd find yourself in the
 18 same sort of range anyway.
 19 PRESIDING ARBITRATOR MILES:
 20 But what about the issue of res judicata.
 21 MS. SHELLEY: Ms. Sherkey is
 22 going to come back up in jurisdiction and deal
 23 with res judicata.
 24 PRESIDING ARBITRATOR MILES:
 25 But it's not a jurisdictional point on this in

1 particular.
 2 What our Question 5 was
 3 getting at was, if the Tribunal has taken the
 4 Project at its stage of development, determined on
 5 the evidence, as a finding of fact, that it was
 6 early stage development, determined on the expert
 7 opinion, having weighed up both parties' experts'
 8 lengthy submissions, that it should value this
 9 early stage development Project on the face of
 10 market comparables; that that would give it the
 11 best fair market value.
 12 What has changed between now
 13 and then for us to revisit that finding? Has the
 14 Project moved?
 15 MS. SHELLEY: No but the
 16 market has changed.
 17 PRESIDING ARBITRATOR MILES:
 18 But that's not the point; is it, to the choice of
 19 valuation methodology?
 20 The valuation methodology, in
 21 the Tribunal's earlier decision, was based on a
 22 timing factor for the stage of the development.
 23 If the stage of the
 24 development hasn't changed, then what does it
 25 matter if the market's changed?

1 MS. SHELLEY: I think the
 2 evidence before the Tribunal in Windstream I was,
 3 at the time, the way those projects were valued,
 4 for an early stage, which is the language they
 5 used, Project, was to use a comparables and not a
 6 DCF.
 7 And I think that you may hear
 8 differently from our experts as to, you know, in
 9 the present day, rather, in 2020, when we are
 10 valuing this Project, what the process for valuing
 11 what they have called an early stage Project is.
 12 CO-ARBITRATOR GOTANDA: I know
 13 your colleague will address the collateral
 14 estoppel, but I am teeing this up for her.
 15 This goes directly to the
 16 requirements to apply collateral estoppel, doesn't
 17 it, that the Tribunal, actually -- it was
 18 addressed, decided, and, therefore, are we bound
 19 actually by it?
 20 But my question, then, for you
 21 is are we bound not only by just the comparables
 22 method, but the actual way that they approached
 23 that, and because it seems that the Tribunal took
 24 a specific approach to looking at certain
 25 comparables and are we bound by that?

1 And the question, then, would
 2 be why -- you know, why not?
 3 And I think there are
 4 arguments on both sides. I just wanted to hear
 5 from your side what that would be.
 6 MS. SHELLEY: And when you say
 7 the specific approach, do you mean by looking at
 8 the four sort of milestones, the grid access and
 9 the price certainty and those; is that what you're
 10 referring to?
 11 CO-ARBITRATOR GOTANDA:
 12 That -- along with they did not look, for example,
 13 at or take into account the US market. They
 14 specifically looked, if I recall correctly, and
 15 correct -- this is where I am trying to -- correct
 16 me if I am wrong here.
 17 They specifically looked at
 18 sort of European comparables in a certain time
 19 frame. And, to some extent, it would make no
 20 sense for us to be bound just by those.
 21 But, in other ways, one could
 22 make the argument that that approach itself, we
 23 would be estopped and perhaps -- or perhaps that's
 24 just too narrow a view of estoppel. And that's
 25 sort of what we are trying to figure out and want

1 your help.
 2 MS. SHELLEY: No, I understand
 3 that.
 4 I think there was no US market
 5 at the time of that valuation work done in 2016.
 6 I think the first Project launch thereafter, so I
 7 think that was one consideration why it was
 8 primarily European projects.
 9 You will hear now that that is
 10 no longer the present day case. There is projects
 11 in Taiwan. There's projects in America. So there
 12 are more comparables, a larger universe, so I
 13 would say you are most certainly not estopped by
 14 that criteria.
 15 Ms. Sherkey, I pass it back to
 16 you to take us home.
 17 CO-ARBITRATOR MCLACHLIN:
 18 Thank you.
 19 PRESIDING ARBITRATOR MILES:
 20 Thank you very much, Ms. Shelley.
 21 OPENING STATEMENT BY MS. SHERKEY (cont'd):
 22 MS. SHERKEY: I am hoping I
 23 can be relatively quick because I think the
 24 substance of much of these points has already been
 25 addressed through the submission and I will just

1 give it a framework.
 2 But maybe I can launch
 3 directly into what you were just talking about
 4 before we switched topics which, on res judicata,
 5 we say, firstly, the DCF approach applied. You
 6 are right. The Project, at the same stage, in
 7 relation to a 2016 valuation date based on 2009 to
 8 2013 data.
 9 So now we are valuing a
 10 Project in 2020 where the market has changed in
 11 terms of the appropriateness of DCF as a way of
 12 valuing earlier stage projects, as Ms. Shelley
 13 did.
 14 So we say it's different
 15 circumstances, different issues because you are
 16 valuing a Project in 2020.
 17 And the question, then, is DCF
 18 appropriate at that stage of development on the
 19 evidence before you. And so that hadn't been
 20 determined by the Tribunal before.
 21 PRESIDING ARBITRATOR MILES:
 22 Okay. Can I just try one more time on this.
 23 So there's three different
 24 variables or factors in your valuation approach.
 25 One is your valuation methodology; one is your

1 date of valuation; and one is what information is
 2 available at that date.
 3 So if you have -- if we are
 4 bound by the earlier Tribunal's Award that we must
 5 use the market comparables approach, that doesn't
 6 mean we can't use market comparables at 2020.
 7 MS. SHERKEY: Yes.
 8 PRESIDING ARBITRATOR MILES:
 9 And Professor Gotanda says perhaps US comparables,
 10 et cetera, may be the outliers Secretariat would
 11 like us to look at, maybe not. And it also
 12 doesn't mean you can't look at other factors that
 13 come into play. For example, decreasing prices.
 14 So all of that information can
 15 be taken into account if you change the date of
 16 valuation, which is a legal question, not a
 17 damages question as to when the date of valuation
 18 is.
 19 MS. SHERKEY: Yeah.
 20 PRESIDING ARBITRATOR MILES:
 21 But I think what concerns us is what has changed
 22 that would release us from a finding by the
 23 earlier Tribunal that the first of those factors,
 24 which is just the methodology and we have three
 25 available to us under the international valuation

1 standards, this Tribunal said, no, we use the
 2 market comparable.
 3 What releases us from that
 4 finding?
 5 MS. SHERKEY: So, firstly, we
 6 would say, just in terms of the Tribunal's
 7 comfort, this is why we have given the comparables
 8 methodology. As Ms. Shelley says, it's in the
 9 same range. So, ultimately, if that's where you
 10 land, you have that approach. We say it's in the
 11 same range and that's available to you.
 12 The change is -- and I think I
 13 am just going to repeat. It's not in terms of the
 14 finding of the early stage to late stage. You
 15 have that finding by the Tribunal before as to
 16 where it is and how it characterized it.
 17 But they made that on the
 18 time, on evidence before them, that DCF was not
 19 used to value projects in that stage. Whereas
 20 now, you're at a valuation date of 2020 and what
 21 we expect you'll hear from the experts is DCF is
 22 used.
 23 So it's now a change in the
 24 market as to what approach applies on a Project at
 25 that stage.

1 CO-ARBITRATOR GOTANDA: But --
 2 and maybe this is too fine a splitting of hairs in
 3 the end and so it actually doesn't help you.
 4 Is there a difference in terms
 5 of applying collateral estoppel as opposed to res
 6 judicata's claim. One is issue of preclusion; one
 7 is claim. We are talking about issue preclusion
 8 here.
 9 MS. SHERKEY: Yes, issue
 10 preclusion.
 11 CO-ARBITRATOR GOTANDA: And
 12 the issue preclusion requirements, though, here,
 13 if they were valuing, one way to look at it is --
 14 and they were valuing a fair and equitable
 15 treatment, not an expropriation.
 16 MS. SHERKEY: Yes.
 17 CO-ARBITRATOR GOTANDA: So, if
 18 there's an expropriation, are we bound by that
 19 under collateral estoppel?
 20 Another way though to look at
 21 it is that they value -- what they were trying to
 22 do was value sort of the loss to the entire
 23 Project at that time. So the -- so perhaps
 24 another way to look at it is it doesn't matter.
 25 We are doing the same thing here so we are bound

1 by that.
 2 So which, which is it, in this
 3 case, and tell us why we are not bound under the
 4 collateral estoppel sort of principles here. It
 5 was an issue that was before the Tribunal. It was
 6 sort of decided, why aren't we bound by that?
 7 MS. SHERKEY: Just give me one
 8 moment. I just want to speak to Mr. Terry.
 9 I mean, I think my response
 10 is, as I want to address the question, but it
 11 falls back to what we have already said in this
 12 sense, that this was an issue decided by the
 13 Tribunal on a 2016 valuation on the evidence
 14 before them as to how these projects were valued
 15 at that stage, at that time, and that has changed.
 16 And so we say, on a 2020
 17 valuation, that was not determined by the
 18 Tribunal, ultimately, as to what valuation is
 19 appropriate in the current market circumstances
 20 for a Project at that stage. It's a new issue.
 21 But and, again, if the
 22 Tribunal does not agree, we have the comparables
 23 approach in the same range.
 24 And I expect to move through
 25 and, as I said, I think a lot of these submissions

1 have already been addressed.
 2 So the first is my friend's
 3 argument that the claims are time-barred. And I
 4 did address this in response to a question from
 5 Professor Gotanda, so if you look at Slide 128.
 6 I have here a visualization of
 7 the submissions I already made, that the question
 8 is when Windstream acknowledged, first, should
 9 have or did acquire knowledge of the alleged
 10 breach and then that it incurred loss or damage.
 11 And so we say that arose at
 12 February 20th, 2018, after the cut-off date.
 13 And, following on that -- and
 14 this goes over to the next slide in response to
 15 the Tribunal question.
 16 When you look at the measures
 17 -- you asked for this on a measure by measure
 18 basis. The measures are that Ontario created the
 19 conditions leading to termination so it continued
 20 to apply the moratorium and failed to do the work
 21 necessary to lift it.
 22 We don't say that itself is a
 23 breach; that, in 2016, applying to it the
 24 moratorium or, in 2017, applying it to the Project
 25 was a breach.

1 We say the Project, the
 2 termination right only arose, the only reason the
 3 IESO could terminate is because this continued to
 4 apply to the Project with Ontario's refusal to
 5 engage with Windstream and direct the IESO, as we
 6 say it had to, to implement the promise to freeze
 7 or to renegotiate the contract to resolve the
 8 legal limbo.
 9 And that only became a breach
 10 when the Project was terminated.
 11 And so that all occurred after
 12 December 22nd, 2017.
 13 And I emphasize -- and I
 14 highlight this point in Mobil II because my friend
 15 says, well, you knew that they were -- I made this
 16 point earlier in the facts. There was a real and
 17 tangible likelihood of breach. That's where it
 18 was going. That's why you were taking the steps
 19 with the Ontario application.
 20 And I highlight here the law
 21 that it's not -- the loss has to have occurred.
 22 You can't speculate that it's possible to, it's
 23 might, that it may occur. Windstream knew it was
 24 a possibility. But it had been told, as I took
 25 you through in the record, by the IESO, again and

1 again, that the termination decision had not been
 2 made.
 3 The IESO may have decided
 4 never to terminate. It had to do with
 5 multifactorial analysis. Until the decision was
 6 made, it was nothing more than a possibility and
 7 Windstream couldn't have known more than that.
 8 Particularly, as it asked the
 9 IESO directly "what will you do on May 4th?" And
 10 it was told directly "we don't know".
 11 So we will spend more time on
 12 the law in closing on these issues, but that's a
 13 summary of the position.
 14 Looking at res judicata.
 15 As you noted, Professor
 16 Gotanda, there are two issues of res judicata. We
 17 actually say they are both res judicata. They are
 18 just different branches of it. So one is claim
 19 estoppel and one is issue estoppel.
 20 Claim estoppel or cause of
 21 action estoppel is on Slide 131. And the parties
 22 agree on the principles that the triple identity
 23 test must be met and it stops the entire cause of
 24 action from being asserted.
 25 And just looking through what

1 these are, no dispute on identity of the parties.
 2 The parties in the two proceedings are the same.
 3 What we say is there is no
 4 identity of cause of action. The proceeding must
 5 be based on the same cause of action, or the same
 6 measure. It's the same legal grounds, distinct
 7 between the two claims.
 8 And we say here this case is
 9 about the termination of the FIT Contract, which
 10 was not and could not have been before Windstream
 11 I. In fact, the Tribunal determined that the FIT
 12 contract was in force and finding no
 13 expropriation.
 14 And so this question of
 15 whether the termination of the FIT Contract
 16 amounted to a breach of the NAFTA has not been
 17 determined.
 18 And, if you look at the next
 19 slide -- I am going to go to the next slide and
 20 then come back -- my friend raised a point in
 21 their rejoinder that the breach here is not
 22 actually the FIT Contract. They say that we are
 23 not challenging the termination of the FIT
 24 contract itself as a breach of the NAFTA. That's
 25 not the cause of action alleged and the Tribunal

1 has no jurisdiction over that claim.
 2 And I confess I don't follow
 3 the argument because, in our submission, we could
 4 not have been clearer that this claim is about the
 5 termination of the FIT Contract. The measures
 6 challenged are the reason Ontario is responsible
 7 for that.
 8 And I have highlighted here on
 9 the screen our Notice of Arbitration and that is
 10 the list of measures challenged.
 11 So it's the failure to direct
 12 the IESO not to terminate. It's the failure to
 13 direct the IESO to ensure the Project will be
 14 deferred, frozen. (C) and (d) are the points I
 15 made about applying and continuing the moratorium
 16 to create the conditions to terminate. And (e) is
 17 the decision of the IESO to terminate.
 18 So we say everything here, and
 19 it's, we say, clear through our submission is
 20 about the termination.
 21 And that just was not and
 22 could not have been determined by the NAFTA 1
 23 Tribunal.
 24 And going back to the previous
 25 slide, identity of object. The relief sought and

1 determined in both proceedings must be the same.
 2 We acknowledge the same relief
 3 was argued for in both proceedings, the loss of
 4 the full value of investment. But, as Mr. Terry
 5 already took you through, we say that is not what
 6 was awarded.
 7 And turning to issue estoppel.
 8 The parties then agree on the
 9 test. Professor Gotanda, you touched on it. This
 10 is the three-part test that parties agreed to.
 11 Issue -- the issue itself was
 12 distinctly put in issue. It was actually decided
 13 and it wasn't obiter. It was necessary to the
 14 claims.
 15 And my friend has four
 16 arguments on what issues are estopped.
 17 Just going through them, the
 18 first is that they say Windstream is barred from
 19 challenging the failure to lift the moratorium
 20 because that seeks to relitigate the question of
 21 whether imposing the moratorium is wrongful. We
 22 say that's not true.
 23 We aren't challenging the
 24 imposition of the moratorium as wrongful or not.
 25 We aren't saying that applying it to Windstream

1 itself was a breach of the NAFTA. I am just
2 repeating myself from a few minutes ago. Is that
3 it created the circumstances to terminate the FIT
4 contract. That has not been determined.

5 My friend says that Canada --
6 that Windstream is barred from challenging the
7 termination of the FIT Contract which post dates
8 the NAFTA 1 Award, saying that this requires
9 reliance on the promise to freeze, which
10 essentially is now exhausted.

11 And Mr. Terry has already
12 explained to you our position that that's a
13 background fact that was -- the Tribunal didn't
14 find the promise didn't exist or wasn't made. It
15 found it did. It found a breach at a point of
16 time.

17 And we say there are
18 continuing obligations past that and whether that
19 is true, whether that breaches the NAFTA and
20 whether Ontario is responsible for the termination
21 of the FIT Contract as a result are new issues
22 that have not yet been determined.

23 And the third and fourth issue
24 touch on what we have already talked about in
25 terms of can Windstream argue it suffered a loss?

1 Has there been a substantial deprivation? Can it
2 seek damages? Essentially all turn on this
3 question of was Windstream fully compensated or
4 not?

5 And we have already given our
6 submissions to you as to why that was not true.
7 Why the Tribunal recognized there was additional
8 value that could be created. And we say the wrong
9 was the blocking of that. And, again, that issue
10 hasn't been determined.

11 On abuse of process --
12 CO-ARBITRATOR GOTANDA: Before
13 you turn to abuse of process, I just want to
14 clarify one thing.

15 It's your position, if I
16 understand correctly, that res judicata is not a
17 jurisdictional issue?

18 MS. SHERKEY: It's an
19 admissibility issue.

20 CO-ARBITRATOR GOTANDA: Right.
21 But it doesn't go to the Tribunal's jurisdiction,
22 then.

23 MS. SHERKEY: Right.

24 CO-ARBITRATOR GOTANDA: Thank
25 you.

1 MS. SHERKEY: But it's
2 admissibility of the claim.

3 PRESIDING ARBITRATOR MILES:
4 Is that disputed?

5 MS. SHERKEY: I don't believe
6 it is.

7 PRESIDING ARBITRATOR MILES:
8 No, I don't think it is. But we will hear from
9 Mr. Neufeld. Thank you.

10 MS. SHERKEY: I believe it's
11 addressed in the written materials.

12 MR. NEUFELD: Excuse me.
13 Before we go to a new subject,
14 can we just get a read out of the time and find
15 out how much further we will need today?

16 MR. ARAGÓN CARDIEL: By my
17 count, excluding Tribunal questions, it's an
18 important part, the Claimant has used 2 hours and
19 16 minutes.

20 MR. NEUFELD: Okay. Thank
21 you.

22 MS. SHERKEY: I think we will
23 come in under time. I am very close to the end.

24 We say abuse of process just
25 doesn't apply. It's not a tool where the strict

1 requirements of res judicata are not met.

2 It applies where res judicata
3 doesn't apply often because of procedural
4 manipulation of the Claimant. So the identity of
5 the parties isn't the same because the Claimant in
6 some way hid or obscured its position.

7 There is one case where the
8 Claimant settled with the other side. So there
9 was a settlement. There wasn't a judicial
10 determination. Then they tried to bring the same
11 claim.

12 Res judicata doesn't apply
13 because you don't have a judicial finding but
14 abuse of process applies because they are trying
15 to relitigate something that was settled between
16 the parties.

17 So it applies to prevent
18 abuses, bad faith attempts to get around it. But,
19 here, we say it just -- the Respondent's just
20 raising it in circumstances where it doesn't meet
21 res judicata. It just has no application.

22 And the last point is my
23 friend's claim on prima facie damages. And we
24 also say there is nothing here beyond the res
25 judicata claim.

1 This is a hearing on the
 2 merits. We are not at the jurisdictional phase.
 3 So the standard is very low. It has to be
 4 possible that the facts alleged may constitute a
 5 loss. We say we have proven a loss but it's
 6 certainly as, if you look at the Notice of
 7 Arbitration, we have alleged something that may
 8 constitute a loss.
 9 And, essentially, my friend's
 10 position turns on their res judicata arguments.
 11 They say Windstream is barred from asserting value
 12 beyond what's been awarded. So we just say there
 13 is nothing substantive here beyond its res
 14 judicata claim to be resolved.
 15 And those are my submissions
 16 on jurisdiction.
 17 PRESIDING ARBITRATOR MILES:
 18 Thank you very much. Is that done?
 19 MS. SHERKEY: We are done.
 20 PRESIDING ARBITRATOR MILES:
 21 Excellent. Thank you very, very much. And thank
 22 you for tolerating our many questions with such
 23 goodwill and helpfulness.
 24 Shall we come back at half
 25 past?

1 MR. NEUFELD: Yes, that's
 2 fine.
 3 --- Off-record discussion re timing
 4 --- Upon luncheon recess at 1:56 p.m.
 5 --- Upon resuming at 2:33 p.m.
 6 PRESIDING ARBITRATOR MILES:
 7 Welcome back, everybody, and thank you for taking
 8 a shorter break.
 9 Mr. Neufeld if you could,
 10 please.
 11 OPENING STATEMENT BY MR. NEUFELD:
 12 MR. NEUFELD: Thank you very
 13 much.
 14 Good afternoon, Madam
 15 President and members of the Tribunal.
 16 After growing accustomed to
 17 doing this virtually, it's a pleasure to be here
 18 in person and an honour to be here too. And thank
 19 you for taking the time for coming here to Toronto
 20 in February for the purpose of this NAFTA hearing.
 21 Canada can be a pretty cold chilly place and
 22 February is not usually the time that people
 23 choose to come to Canada.
 24 But you should be rest assured
 25 that Warton Willie, that's the Canadian cousin to

1 Punxsutawney Phil, emerged from his hole three
 2 days ago and he said it will be an early spring
 3 and we will emerge from the deep freeze soon.
 4 CO-ARBITRATOR MCLACHLIN:
 5 That's not what I heard. You shot your
 6 credibility.
 7 MR. NEUFELD: I'd would also
 8 like to thank you for the questions that you
 9 provided in advance of the hearing. They
 10 certainly helped us to focus our arguments.
 11 As I will lay out in more
 12 detail shortly, Canada will be answering some of
 13 them. We will touch on others. But we also plan
 14 to revert to them in our closing arguments later.
 15 Now, as I sat listening to the
 16 Claimant's opening argument this morning, I felt a
 17 lot like Bill Murray playing the weatherman in
 18 Groundhog Day. I have a feeling we have been here
 19 before.
 20 After all, we stood in this
 21 very room almost seven years ago to the day. We
 22 heard from the Claimant, just like we did today,
 23 about how it was treated unfairly and how it was
 24 indirectly expropriated. Because, as it said
 25 today, it all begins with the offshore wind

1 moratorium.
 2 The same promises to keep its
 3 FIT Contract frozen. The same lack of direction
 4 to the OPA, now IESO. We listened to the same
 5 recording on the speaker. Well, most of it, as
 6 you noted, if not quite exactly the same.
 7 And that 2011 fact scenario
 8 remains, indeed, the core concern.
 9 We heard also about Canada's
 10 representations to the Windstream Tribunal this
 11 morning, Windstream I Tribunal.
 12 Now, none of this, none of
 13 these things are measures arising before -- sorry,
 14 the measures rising after the Windstream Award.
 15 It all happened before.
 16 So what are we doing here?
 17 Why didn't the Claimant just
 18 ask the Tribunal to read the transcript?
 19 Why did we spend so much time
 20 this morning talking about pre Award facts?
 21 Following a two-week hearing
 22 and millions of dollars in arbitration fees, legal
 23 fees, we received an Award which put an end to the
 24 dispute that had dragged on for six years.
 25 The Claimant takes a different

1 position.
 2 According to the Claimant,
 3 that's not what the Award did at all. We heard it
 4 again here today. It says the Award merely
 5 compensated it for the damage to its investments,
 6 not for its inability to develop the Project.
 7 Because its FIT Contract remained in place, it
 8 could still be reactivated and renegotiated.
 9 Well, to get there, the
 10 Claimant takes the Tribunal's comment that it
 11 remained open to the parties to reactivate,
 12 renegotiate the FIT Contract and ascribes to it an
 13 obligation.
 14 And it founds its entire claim
 15 on that.
 16 As Ms. Sherkey said again this
 17 morning, the Claimant relies on the same promises,
 18 just that they were not exhausted by the first --
 19 by the Windstream I Tribunal.
 20 The wrongful acts, according
 21 to the Claimant, was that Ontario allowed the FIT
 22 contract to be terminated. The termination
 23 followed the payment of a \$25 million Award and
 24 was done in accordance with the terms of the
 25 contract and the applicable law, and it included

1 the return of the Claimant's \$6 million security
 2 deposit.
 3 Yet, yet the Claimant still
 4 submits that it breached the NAFTA because Ontario
 5 had an obligation to prevent the termination from
 6 happening in the first place.
 7 And despite the Award's clear
 8 determination that the Award had no value --
 9 sorry, the FIT Contract had no value, the
 10 Claimant's view is that it is still owed hundreds
 11 of millions of dollars in compensation for the
 12 FIT's contract potential or unlocked value.
 13 Well, the Claimant's position
 14 is wrong.
 15 In reality, the Claimant has
 16 been fully compensated for the limbo created by
 17 the moratorium in 2011 that made it impossible, as
 18 of May 2012, to develop its Project.
 19 It may not be satisfied with
 20 the amount it was awarded but it has no basis to
 21 demand more. Its FIT Contract was and has
 22 remained valueless.
 23 As my colleagues and I will
 24 explain to you over the next couple of hours,
 25 whether the claim is assessed from an

1 admissibility or a jurisdictional perspective, on
 2 liability or from the point of view of damages
 3 owing, it has no basis in law or in logic.
 4 So this is how we have
 5 organized our presentations.
 6 First, I will spend about ten
 7 minutes summarizing the relevant facts, which
 8 start with the Windstream I Award, and focus on
 9 the months following.
 10 It's not a long story. It
 11 essentially boils down to the Claimant's refusal
 12 to accept that the Award brought an end to the
 13 dispute and Ontario and the IESO having to respond
 14 to that unreasonable position.
 15 Then I will spend some time
 16 examining what the Claimant has presented as a
 17 breach.
 18 I will show that the Claimant
 19 has recycled its complaint in Windstream I by
 20 complaining about all the same measures, the
 21 moratorium, the failure to do the science, the
 22 failure to direct the IESO. And then it's
 23 attached it to the decision to terminate the FIT
 24 contract.
 25 All of the measures, with the

1 exception of the termination, have existed since
 2 2011. And although the right of the termination
 3 is what rendered the Project non-financeable as of
 4 May 2012, the termination did not actually occur
 5 until after. So the Claimant uses it as a hook to
 6 fish out and reargue its previous complaint from
 7 Windstream I.
 8 Afterwards, Canada will turn
 9 to its admissibility and jurisdiction arguments.
 10 I will first address admissibility, both with
 11 respect to res judicata, collateral estoppel or
 12 issue -- claim estoppel and issue estoppel,
 13 explaining that the Claimant cannot reopen a claim
 14 that it has previously brought and how the
 15 determinations of the Windstream I Tribunal bind
 16 this Tribunal.
 17 Then my colleague Mr. Tian
 18 will turn to the limitation period to explain that
 19 the decision to terminate the FIT Contract cannot
 20 be used to toll the strict three-year timeline.
 21 Following Mr. Tian, Ms. Dosman
 22 will present Canada's arguments with respect to
 23 liability. First, she will explain that there has
 24 been no indirect expropriation. She will show you
 25 how the Claimant seeks compensation for the same

1 investment it presented in Windstream I, including
2 its \$6 million security deposit despite it being
3 repaid, returned.

4 And then Ms. Dosman's
5 submissions will touch on your fourth question
6 regarding the status of the FIT Contract and will
7 show that it did not grant WWIS an entitlement to
8 build and operate a wind farm.

9 Her presentation will then
10 address the Tribunal's first question, and show
11 that the Claimant has failed to establish that,
12 following the Windstream Award, it had an
13 investment capable of expropriation.

14 Then Ms. Dosman will turn to
15 Article 1105, the provision that incorporates a
16 customary international law minimum standard of
17 treatment.

18 She will explain that there is
19 nothing untoward about the IESO's decision to
20 terminate the FIT Contract, which had been in
21 extended force majeure since 2010 when it could
22 not access its Project site, and there was no
23 obligation on Ontario to intervene in that
24 decision. Or direct the reactivation
25 renegotiation of the FIT Contract.

1 And, finally, Ms. Squires, she
2 will speak to damages. She will explain that the
3 Claimant has founded its damages case on the wrong
4 but-for analysis and will tell you why the
5 Claimant's damages claim fails for want of
6 causation.

7 Ms. Squires will address your
8 fifth question and explain why the Windstream I
9 Tribunal's chosen valuation methodology does not
10 bind this Tribunal, at least in terms of its
11 chosen valuation methodology.

12 With respect to the Claimant's
13 arguments concerning the DCF, she will also very
14 briefly show you why the established line of
15 jurisprudence with respect to valuation makes the
16 Claimant's position untenable.

17 So, as you can see, there are
18 many ways for you to reach a conclusion in this
19 arbitration. Unlike for Warton Willie, the
20 conclusion is always the same. The Claimant has
21 always been fully compensated and it has no right
22 to additional damages.

23 Okay, let's turn to the facts.

24 The story starts with the
25 release of the Award on September 30th, 2016, and

1 largely takes place in the period of
2 September 2016 to May 2017. Again, it's not a
3 long story. It's not all that complicated. In
4 fact, nothing really happened.

5 This is precisely why the
6 claim is built on omissions, a series of omissions
7 rather than acts.

8 PRESIDING ARBITRATOR MILES: I
9 am sorry, I was waiting for the timeline to come
10 up.

11 MR. NEUFELD: It's way over on
12 the side.

13 The Tribunal dismissed the
14 expropriation claim because the Claimant had not
15 been substantially deprived of its investment.
16 There are two reasons, we talked about them this
17 morning already.

18 One reason was that the
19 Claimant's FIT Contract was still formally in
20 force and had not been unilaterally terminated.

21 Consequently, while it agreed
22 with the Claimant that the Project could not be
23 able to be completed -- could not be completed by
24 the milestone date of the commercial operation of
25 the MCO, it continued to remain open for the

1 parties to reactivate and, as appropriate,
2 renegotiate the FIT Contract to address its terms
3 to the moratorium.

4 You'll recall that I mentioned
5 in my introduction just a moment ago that the
6 Claimant hangs its entire case on a sentence of
7 the Award. Well, this is it.

8 According to the Claimant,
9 this sentence indicates that the Tribunal declined
10 to Award damages based on the full value of its
11 investment and it created an expectation that the
12 Project had a future.

13 That's quite a stretch.

14 A determination that it
15 remained open for the parties to act is not
16 exactly a finding that Ontario had an obligation
17 to act.

18 Mr. Terry admitted as much
19 this morning. Yet, the Claimant still advances an
20 absurd interpretation of the sentence to launch
21 its entire claim.

22 Such an interpretation is
23 simply not available. Not on those words and not
24 on the additional context that follows which
25 provides the second most important reason there

Page 249

1 had been no substantial deprivation, which was the
 2 Claimant's \$6 million security deposit which was
 3 still in place. It was neither rendered worthless
 4 nor had it been taken.
 5 The Tribunal held that if the
 6 FIT Contract were to be terminated pursuant to
 7 Section 10.1(g), the security deposit would be
 8 returned to the Claimant.
 9 Note, it didn't so much as
 10 hint that termination pursuant to Section 10.1(g)
 11 would be expropriatory. Of course it wouldn't.
 12 Section 10.1(g) allowed the
 13 IESO or WWIS to terminate the FIT Contract if the
 14 commercial operation of the Project was delayed by
 15 more than 24 months past its MCOD.
 16 Now keep in mind what this
 17 meant in September 2016.
 18 The Claimant's FIT Contract
 19 had been in force majeure since 2010 and its
 20 Project was already past its MCOD. This was
 21 May 4th, 2017.
 22 This meant that the section
 23 10.1(g) termination right would arise on May 4th,
 24 2017.
 25 It also meant the Project

Page 251

1 not applied for a FIT Contract. Its RFP contract
 2 was for a gas-fired plant.
 3 And the Tribunal granted the
 4 claim that Canada had breached the minimum
 5 standard of treatment. This was not due to the
 6 imposition of the moratorium itself but due to its
 7 continued impact on the Project in 2011 to 2012
 8 which left the Claimant in a legal and contractual
 9 limbo.
 10 The wrongful act was Ontario's
 11 failure within a reasonable period of time, after
 12 the moratorium in February 2011, to bring clarity
 13 to the regulatory uncertainty surrounding the
 14 status and the development of the Project created
 15 by the moratorium.
 16 Now, to remedy the breach,
 17 Canada was ordered to pay just over \$25 million,
 18 which was calculated by taking the full value of
 19 the Project, minus the \$6 million security deposit
 20 because it remained available to the Claimant.
 21 This section of the Award
 22 includes some clarifications on that sentence I
 23 mentioned earlier that the Claimant uses to launch
 24 its whole case.
 25 Here, the Tribunal reasoned

Page 250

1 could not be financed as of May 4th, 2012, because
 2 no bank would risk backing a Project with the
 3 timeline to operation than ran past May 4, 2017,
 4 when it could have been terminated.
 5 This was a point that
 6 Windstream I Tribunal specifically agreed with.
 7 Holding that, by May 4th,
 8 2012, the ongoing force majeure had delayed
 9 commercial operation for more than 24 months after
 10 the original MCOD which, in turn, triggered the
 11 right of the OPA to unilaterally terminate the FIT
 12 contract.
 13 Consequently, in the absence
 14 of any further amendments to the FIT Contract to
 15 address the suspension, as of this date, the
 16 Project effectively became non-financeable.
 17 What are the other
 18 dispositions of the Award?
 19 Well, the Tribunal dismissed
 20 the national treatment and most favoured nation
 21 claims.
 22 With respect to national
 23 treatment, it's because TransCanada was not in
 24 like circumstances and could not have been treated
 25 more favourably than Windstream. TransCanada had

Page 252

1 that it should be kept in mind, as determined
 2 above, the Claimant is not entitled to
 3 compensation for the full value of its investment.
 4 The Claimant has not lost the letter of credit
 5 which is still in place and the FIT Contract is
 6 still in force and could, in theory, be revived
 7 and renegotiated if the parties so agreed.
 8 This sentence is not unlike
 9 the one that the Claimant relies upon to launch
 10 its claim that the Tribunal declined to Award
 11 damages based on the full value of the
 12 Windstream -- of Windstream's investment. But the
 13 Claimant doesn't rely on this sentence in the same
 14 way, at least not in its written submissions.
 15 This is because the Award
 16 continues that further adjustment must be made to
 17 reflect the value of the letter of credit,
 18 \$6 million, and then it provides that:
 19 "The Tribunal does not
 20 consider it appropriate
 21 or necessary to make any
 22 further adjustments to
 23 reflect the fact that the
 24 FIT Contract is still
 25 formally in place;

Page 253

1 although the FIT Contract
2 could have been
3 renegotiated, reactivated
4 by the parties at any
5 time during the period
6 from February 11, 2011,
7 until the date of this
8 Award, as a matter of
9 fact, this has not
10 happened and,
11 consequently, the FIT
12 contract cannot be
13 considered to have any
14 value."[as read]
15 Now you also mentioned this
16 morning, I believe, the in parenthesis part:
17 "It is another matter
18 --[as read]
19 I will just read from the
20 screen, although I am going blind:
21 "-- that the parties can
22 create such value by
23 reactivating and
24 renegotiating the FIT
25 contract after the

Page 255

1 included discussions over whether the payment
2 should be made to the Claimant or the enterprise.
3 With Ontario, the Claimant
4 sought a meeting to discuss its Project. The
5 responses from Minister Thibeault and his chief of
6 staff, Mr. Teliszewsky, were consistent. Take up
7 any issue about the FIT Contract with the IESO,
8 the contractual counterparty.
9 The Claimant did meet with the
10 IESO. That was on January 12th, 2017. At that
11 meeting and the follow-up letter of February 9th,
12 the IESO stated clearly that it would not provide
13 any extensions to the contract and that it would
14 not waive its termination right.
15 The Claimant also wrote to the
16 Ministry of the Environment, in an effort to
17 advance its Project. We heard a little bit about
18 that this morning too.
19 It sent a letter that it
20 erroneously calls an updated REA submission on
21 February 15th, 2017, which was actually just a
22 repackaged collection of the expert reports that
23 are filed in the Windstream I arbitration.
24 The Environment Ministry's
25 response made clear it didn't endorse the studies

Page 254

1 Award."[as read]
2 If you are looking for
3 Canada's view on this, it's an obiter comment and
4 nothing more about what the parties could do in
5 the future.
6 The Claimant's interpretation
7 of the Award does not withstand scrutiny.
8 The Tribunal valued its entire
9 investment and awarded it that amount less
10 \$6 million with the express intent of making the
11 Claimant whole.
12 The Claimant may not be happy
13 with what it was awarded but it has been fully
14 compensated.
15 And it was awarded
16 considerably more than its sunk costs.
17 So that's where we were at on
18 September 30th.
19 The next few months involved
20 communications between the Claimant and Canada,
21 between the Claimant and Ontario.
22 With Canada, the Claimant took
23 up matters of confidentiality designations with
24 payment of the Award, including negotiations over
25 timing of the payment and interest on it. It also

Page 256

1 that Windstream had provided. But, more
2 importantly, Ontario had not yet established the
3 requirements specific to offshore wind. Meaning
4 that no approval framework existed. In fact,
5 still to this day, no approvals framework for
6 offshore wind exist.
7 On March 14, 2017, Canada paid
8 the Award.
9 For Canada and Ontario, this
10 brought an end to the dispute. After all, we
11 thoroughly litigated the moratorium and its impact
12 on the Project. We were ordered to pay damages
13 with respect to the impact of the moratorium on
14 the Project and we made good on that obligation.
15 And although the FIT Contract
16 remained formally in force, at that point, it had
17 been in force majeure for nearly 7 years which, by
18 the way, was caused not by the moratorium but by
19 the Claimant's inability to acquire Crown land for
20 its Project site.
21 Then just five weeks before
22 the right to terminate the FIT Contract arose on
23 May 4th, 2017, the Claimant launched a domestic
24 application to the Ontario court for an order
25 restraining the IESO from exercising its

1 termination right.
 2 PRESIDING ARBITRATOR MILES:
 3 Can I just come back and just get something clear
 4 and it's the same point I was discussing a couple
 5 of times with the Claimant counsel.
 6 "After all, we thoroughly
 7 litigated the moratorium
 8 and its impact on the
 9 Project and were ordered
 10 to pay damages with
 11 respect to the impact of
 12 the moratorium."[as read]
 13 Again, and it's the same point
 14 I raised with the Claimant counsel.
 15 That's not quite right, is it,
 16 because damages were payable as a consequence of
 17 the conduct following the moratorium, not the
 18 moratorium itself.
 19 MR. NEUFELD: I think I said
 20 the effects of the moratorium and I agree with
 21 you. It is about the effects of the moratorium.
 22 It's the limbo -- oh, sorry, I think I said
 23 impact.
 24 PRESIDING ARBITRATOR MILES:
 25 You said impact. You said the moratorium and its

1 impact.
 2 It's not the impact of the
 3 moratorium. It's the impact of the conduct that
 4 followed the moratorium.
 5 MR. NEUFELD: Agreed. It's
 6 leaving them in limbo, in legal and contractual
 7 limbo. It's not resolving the issue either way.
 8 They could have terminated the contract. They
 9 could have allowed it to proceed. But it's this
 10 quagmire they were in, not knowing and spending
 11 money because of it. And that was the breach, as
 12 we understand.
 13 So where was I? I had
 14 mentioned the domestic application and, in that
 15 application, the Claimant didn't seek damages
 16 because it had waived its right in the Windstream
 17 I proceedings.
 18 That waiver is here on the
 19 screen, provides that:
 20 "Windstream and WWIS
 21 waive their rights to
 22 initiate any proceedings
 23 with respect to the
 24 measures of Canada
 25 alleged to be a breach in

1 Windstream I, except for
 2 proceedings for
 3 injunctive declaratory
 4 and extraordinary relief
 5 not involving the payment
 6 of damages before a court
 7 under the laws of
 8 quantity."[as read]
 9 So the Claimant sought an
 10 order preventing the IESO from terminating the FIT
 11 contract because it would amount to a breach of
 12 good faith and Canada's NAFTA obligations, but it
 13 did not seek damages.
 14 The Claimant pursued its
 15 domestic application over the next two years. All
 16 the while, the IESO agreed not to cancel the FIT
 17 contract.
 18 The domestic application never
 19 did produce a court decision but it did drag the
 20 IESO's decision on termination out to
 21 February 20th, 2018, and the actual termination
 22 further still because, after the IESO's decision,
 23 the Claimant filed an Amended Notice of
 24 Application on April 20th, 2018.
 25 PRESIDING ARBITRATOR MILES:

1 Mr. Neufeld, just so I can understand this
 2 properly.
 3 There was no obligation as a
 4 consequence of either the court proceeding or the
 5 FIT terms for the government to have tolled the
 6 contract pending those proceedings they agreed to
 7 do that.
 8 MR. NEUFELD: They agreed to
 9 do that. That was an agreement struck between the
 10 IESO and the Claimant.
 11 PRESIDING ARBITRATOR MILES:
 12 Okay.
 13 MR. NEUFELD: The Claimant
 14 filed its Amended Notice of Application on
 15 April 20th, 2018. Rather than seeking a
 16 declaration that the IESO may not make a decision
 17 to exercise its termination rights, the amended
 18 application sought a declaration preventing the
 19 IESO from acting on the decision that it had now
 20 made, it had now exercised.
 21 When Ontario elected a new
 22 government led by Conservative premier Doug Ford
 23 on June 7, 2018, the moratorium on offshore wind
 24 remained in place. This was at no way at odds
 25 with the government's intentions which was elected

1 on a platform to reduce energy spending.
 2 In that vein, the new
 3 government decided to cancel one FIT 1 Project,
 4 the partially built White Pines wind Project, as
 5 well as all FIT 2, 3, 4 and 5 projects that had
 6 yet to receive a notice to proceed.
 7 It also repealed the Green
 8 Energy Act and it restored municipal authority
 9 over designing the Project.
 10 But the new government didn't
 11 need to consider the termination of the Claimant's
 12 FIT Contract because the IESO had already made its
 13 decision, which was tied up in litigation.
 14 In the end, the Claimant
 15 didn't see its domestic application through and we
 16 never did get a court decision. It discontinued
 17 its domestic application on January 15th, 2020, to
 18 pursue this claim. Indeed, just within a week of
 19 that, the Claimant filed its Notice of Intent.
 20 Its discontinuance of the
 21 domestic application resulted in the IESO's
 22 termination of the FIT Contract a month later on
 23 February 18, 2020, and the subsequent return of
 24 the \$6 million security shortly after. Then the
 25 Claimant filed a supplementary Notice of Intent on

1 March 25th and here we are with its claim of
 2 December 22nd, 2020.
 3 So those are the facts, short
 4 and sweet.
 5 Now let's look at the claim.
 6 At paragraph 206 of the reply,
 7 the Claimant identifies the following measures as
 8 measures challenged in this arbitration.
 9 And it argues at paragraph 208
 10 that its complaint in this arbitration is that the
 11 failure to lift and the continued application of
 12 the moratorium to WWIS created the conditions
 13 necessary to allow the IESO to terminate the FIT
 14 contract and that these measures and the resulting
 15 termination of the FIT Contract violate Articles
 16 1110 and 1105 of the NAFTA.
 17 So it's challenging a
 18 composite measure that includes, and I quote:
 19 "The resulting
 20 termination of the FIT
 21 contract."[as read]
 22 At paragraph 292 of the same
 23 submission, the Claimant makes clear that it is
 24 not alleging that the continued application of the
 25 moratorium to the Project is itself a breach of

1 NAFTA, or that the failure to do the work
 2 necessary to lift the moratorium is itself a
 3 breach of the NAFTA.
 4 Instead, it describes those
 5 measures as part of the conduct that makes Ontario
 6 liable for the resulting termination of the FIT
 7 contract.
 8 However, the termination of
 9 the FIT Contract was an act undertaken by the
 10 IESO, not by Ontario.
 11 And the Claimant doesn't
 12 challenge the IESO's decision as a breach of
 13 contract or as unlawful. It merely challenges the
 14 legitimacy of the decision because it relied on
 15 Ontario's conduct.
 16 Indeed, throughout its
 17 pleadings, the Claimant points only to Ontario's
 18 conduct, not the IESO's.
 19 As you heard very clearly from
 20 Ms. Sherkey again this morning, Ontario left the
 21 moratorium in place, Ontario did no scientific
 22 research, Ontario did not direct the IESO.
 23 And, in its memorial, it
 24 states clearly that the IESO's ability to
 25 terminate the FIT Contract arose only because of

1 the moratorium and the conduct of the Ontario
 2 government, including its refusal to direct the
 3 IESO in its negotiations with Windstream.
 4 In sum, the Claimant presents
 5 the termination of the FIT Contract by the IESO as
 6 the result, the result or the natural outcome of
 7 the consequence or the consequence of the acts and
 8 omissions of Ontario.
 9 It wasn't a breach per se.
 10 And, yet, it lists the termination of the FIT
 11 contract as a measure forming part of the breach.
 12 And you heard it took until 1:37 today but
 13 Ms. Sherkey said she is so confused. This case is
 14 all about the termination.
 15 Well make no mistake what the
 16 Claimant is doing here. It is sidestepping the
 17 question of whether the IESO's termination was
 18 wrongful and, instead, using the termination as a
 19 hook to fish out all of the old claims it made in
 20 Windstream I: The moratorium, the failure to do
 21 the science, the lack of direction and, as I will
 22 show later when I argue admissibility, these are
 23 measures that were dealt with by the Windstream I
 24 Tribunal.
 25 The Claimant is keen to revive

1 all of these old claims because, without them,
2 what does it have? It has a decision by a state
3 enterprise to exercise its contractual termination
4 right of a contract that was determined to have no
5 value.

6 And even if it succeeded in
7 convincing you that the termination was wrongful,
8 where would that get it?

9 It would have a FIT Contract
10 and extended force majeure and a jurisdiction that
11 has no Crown land application process for the
12 Claimant to gain access to a site, no approvals
13 process to assess and permit the Project and, on
14 top of that, a moratorium on offshore wind.

15 The Claimant's damages case
16 makes its motives abundantly clear. As
17 Ms. Squires will explain in greater detail, the
18 Claimant quantifies its alleged damages on the
19 basis of every measure that Ontario has ever
20 adopted with respect to offshore wind since 2010
21 in reverse.

22 Its damages case relies on its
23 access to Crown land having been granted, the
24 moratorium having been lifted and approvals
25 framework for offshore wind being in place, all

1 reversals for acts and omissions that were not
2 even held to be wrongful by the Windstream I
3 Tribunal.

4 And then for the date of the
5 breach, what does it use? It uses termination of
6 the FIT Contract. The termination is nothing but
7 a hook to resubmit all of Ontario's past but
8 continuing conduct.

9 Now that we have examined the
10 facts and the complaints, I will turn to the law.
11 I will turn to res judicata.

12 The Claimant argues -- I will
13 start that over again.

14 First, I will start with the
15 law on res judicata and then explain why this
16 claim, as just described, is precluded.

17 If the Tribunal disagrees with
18 Canada's analysis of the claim, and is of the view
19 that there is a new cause of action that is not
20 precluded by res judicata, I will argue that the
21 Tribunal must still make an assessment of what is
22 admissible.

23 That assessment cannot permit
24 the Claimant to use the IESO's termination of the
25 FIT Contract as a hook to readmit all of the

1 continuing conduct of the Government of Ontario.

2 Finally, irrespective of what
3 the Tribunal determines on claim preclusion, I
4 will highlight a number of findings that bind this
5 Tribunal on the basis of issue estoppel,
6 collateral estoppel.

7 So the law is agreed that the
8 disputing parties agree that res judicata requires
9 the triple identity test and we agree that the
10 first part of the test is met. We have an
11 identity of the parties.

12 However, the parties disagree
13 over whether there is cause of action. The same
14 cause of action or legal ground, petitum, and we
15 also disagree over whether there is an identity of
16 object or relief, or, in Latin, the causa petendi.

17 I am going to do these in
18 reverse order. I will take the object first.

19 The Claimant protests that its
20 claim does not share the same identity of object
21 as the Claimant in Windstream I. Yet, it has laid
22 out the exact same request for relief using the
23 exact same method of evaluation it did in
24 Windstream I.

25 It calls on the Tribunal to

1 apply a DCF analysis and it uses the same but-for
2 scenario as Ms. Squires will soon show.

3 The Claimant argues that it
4 does not matter because the Windstream I Tribunal
5 didn't Award the relief that it requested.

6 Well, the Claimant simply
7 confuses relief awarded with relief sought.

8 It cannot avoid the doctrine
9 of res judicata simply because it's unhappy with
10 what the Windstream I Tribunal awarded.

11 The decision it relies on, two
12 decisions in Mobil versus Canada is entirely
13 misplaced.

14 In Mobil I, the Tribunal held
15 that although future damages could not be assessed
16 at the time due to level of uncertainty, it would
17 certainly arise if the offending measure remained
18 in place. It specifically held that the Claimants
19 can claim compensation in a new NAFTA arbitration
20 proceedings for losses that have accrued but are
21 not actual in the current proceedings.

22 Now that sentence troubled us
23 a lot, I can tell you, on behalf of Canada. And
24 Ms. Squires was part of that team so you can ask
25 her questions directly about it. Oh, she is not

1 here right now for those questions but she will
 2 come back.
 3 Unlike in Mobil I, which had
 4 not definitively settled the Claimant's
 5 entitlement to seek future losses, the Windstream
 6 I Tribunal did. They awarded damages making the
 7 Claimant whole.
 8 The Tribunal made no finding
 9 of a continuing breach.
 10 Rather, it held that Ontario
 11 failed to resolve the regulatory uncertainty
 12 within a reasonable period of time.
 13 And it made no finding that
 14 the future damages would accrue upon termination
 15 of the FIT Contract. To the contrary.
 16 It found, one, that the
 17 Claimant's \$6 million security would be returned
 18 to it. And, two, the FIT Contract had no value.
 19 In sum, the claim that the
 20 Claimant makes shares the same object with the
 21 claim it brought in 2013, a matter that was
 22 conclusively determined by the Windstream I
 23 Tribunal.
 24 Okay. Let's turn to the cause
 25 of action then.

1 And, to do that, let's just
 2 simply compare what was argued in Windstream I
 3 with what was argued in Windstream II.
 4 In Windstream II, the
 5 Claimant's complaint is that Ontario --
 6 PRESIDING ARBITRATOR MILES:
 7 Ms. Squires, coming back in. Were you looking for
 8 more water?
 9 MS. SQUIRES: Yes.
 10 PRESIDING ARBITRATOR MILES:
 11 We don't want you dying in a desert here.
 12 MR. NEUFELD: It is dry; isn't
 13 it.
 14 So, in this claim, the
 15 Claimant's complaint is that Ontario failed to
 16 complete the work necessary to lift the
 17 moratorium. Ms. Sherkey showed us that again this
 18 morning.
 19 In Windstream I, the Claimant
 20 challenged precisely the same measure and argued
 21 that Canada breached the NAFTA by failing to
 22 complete the research that it planned as a
 23 scientific rationale for imposing the moratorium.
 24 Second, the Claimant
 25 challenges Ontario's application that the

1 moratorium was part of the breach.
 2 In Windstream I, the Claimant
 3 argued that indefinite term moratorium breached
 4 NAFTA because it was prevented from accessing its
 5 Project site, developing the Project and meeting
 6 the FIT Contract timelines.
 7 Third, it argues Ontario's
 8 failure to direct the IESO and not to terminate
 9 the FIT Contract was part of the breach.
 10 This was also something it
 11 alleged in Windstream I when it argued that
 12 Ontario failed to ensure that the OPA amended the
 13 FIT Contract to ensure the Project would be frozen
 14 rather than cancelled.
 15 Fourth, the Claimant says that
 16 the breach includes Ontario's failure to direct
 17 the IESO to amend the FIT Contract and defer the
 18 Project.
 19 In Windstream I, it argued the
 20 same thing. Submitted that the government never
 21 directed the OPA to modify the FIT Contract to
 22 constrain the OPA's termination rights under the
 23 FIT Contract.
 24 Fifth, is the IESO's FIT
 25 contract termination but let's just park that one

1 for a minute.
 2 And, finally, the sixth
 3 measure it complains of is that the IESO failed to
 4 amend the FIT Contract to defer the Project.
 5 Well, here too. In Windstream
 6 I, the Claimant argued the same thing. Submitting
 7 that the OPA rejected the Claimant's proposals to
 8 amend the FIT Contract to ensure that it would not
 9 be subject to termination while the moratorium
 10 remained in effect.
 11 So as a review of five of the
 12 six Windstream II measures shows, all of these
 13 measures currently -- all the measures currently
 14 challenged were previously challenged as well.
 15 The only thing that has changed is the passage of
 16 time and release of the Award.
 17 Using the Award, the Claimant
 18 attempts to draw an artificial line between
 19 Windstream I and Windstream II measures. Its
 20 argument that all of the measures it challenges
 21 arose after the claim, yet, that's just claim
 22 splitting.
 23 As one NAFTA Tribunal has
 24 held, it's impermissible to parse two sets of
 25 claims in two sets of arbitrations so as to

1 artificially distinguish one case from the other.
 2 But what about the termination
 3 of the FIT Contract?
 4 This event didn't occur prior
 5 to the Award. How could it be part of the same
 6 cause of action?
 7 Well, as I have already
 8 pointed out, the Claimant doesn't argue that the
 9 IESO's decision to terminate the FIT Contract was
 10 wrongful. Rather, it presents the termination as
 11 the result of Ontario's wrongful actions.
 12 But even if the Tribunal
 13 rejects Canada's assessment, it must recognize
 14 that the Claimant had challenged, in Windstream I,
 15 the OPA's refusal to ensure that the FIT Contract
 16 would remain in force and not be subject to
 17 termination.
 18 So it had already challenged
 19 the same course of conduct by the state
 20 enterprise, just not the result of the conduct.
 21 Its actual decision to terminate.
 22 An idea -- the idea that an
 23 event occurring later in time should be considered
 24 part of the same or an earlier cause of action is
 25 not unheard of in the application of res judicata.

1 In Apotex III, the Tribunal
 2 was also faced with changed circumstances.
 3 The Apotex I and II Tribunals
 4 looked at whether tentatively approved drug
 5 applications -- they call ANDAs -- could
 6 constitute investment.
 7 By the time the Apotex III
 8 Tribunal was established, these applications had
 9 been finally approved and the new claim was
 10 brought on the basis of finally approved ANDAs.
 11 The Claimant argued that these
 12 weren't just applications. They were
 13 authorizations.
 14 And it argued, not unlike what
 15 we are hearing here, that the Tribunal, Apotex I
 16 and II, could not have decided those issues. They
 17 were only tentatively approved. They weren't
 18 finally approved. How could it be the same cause
 19 of action?
 20 Well, despite those evolved
 21 circumstances, the Apotex III Tribunal held that,
 22 if you factor in the reasons applicable to the
 23 factual issue that the parties put distinctively
 24 in issue, the Tribunal had decided the matter and
 25 that decision was equally applicable to the

1 finally approved ANDAs.
 2 The Tribunal said that it was
 3 impossible to parse the two sets of claims and the
 4 two arbitrations so as to artificially distinguish
 5 one case from the other.
 6 Case law in the US and Canada
 7 also provides guidance on how to apply res
 8 judicata. In their decisions, Canadian courts
 9 have emphasized whether there was already a full
 10 and fair opportunity to litigate the matter
 11 foreclosing additional legal theory.
 12 They have asked whether facts
 13 are related in time, space, origin or motivation.
 14 They set a test for the cause
 15 of action whether the primary right and duty are
 16 the same in each case and have stressed that the
 17 court must compare the substance of the actions
 18 and not the form.
 19 Well, as you heard this
 20 morning from the Claimant, it maintains that all
 21 of the measures it invokes arose after the Award
 22 and, therefore, not part of Windstream I. But
 23 this new legal theory is foreclosed because it had
 24 the opportunity to litigate all of this. It had
 25 the opportunity to litigate these measures, even

1 the IESO's termination right.
 2 The IESO's termination right
 3 was precisely what led the Windstream I Tribunal
 4 to find -- prevented the contract in the first
 5 place.
 6 The ultimate termination is
 7 clearly related in time, space, origin and
 8 motivation to Windstream's 2013 cause of action.
 9 The substance of the actions
 10 at issue is exactly the same. It's just the form.
 11 The actual termination that is different.
 12 Also, the Claimant has had
 13 full and fair opportunity to arbitrate the matter
 14 and it cannot now rearbitrate it just because time
 15 has passed and a new legal theory has popped into
 16 its head.
 17 The Claimant's complaint
 18 before and after the Award demonstrate that its
 19 complaint has remain exactly the same. Note, for
 20 example, how the Claimant presented its amended
 21 application to the Ontario courts.
 22 Recall from my factual
 23 overview the Claimant refiled an amended
 24 application on April 20th, 2018.
 25 That sought a declaration

1 stopping the IESO from exercising the termination
2 decision. A decision that it had made by that
3 point because it made it two months earlier on
4 February 20th, 2018.

5 And the Claimant argued that
6 using the moratorium as the basis for the
7 termination violated the IESO's obligation to act
8 in good faith and contrary to Canada's NAFTA
9 obligations.

10 Again, the Claimant didn't
11 claim for damages because, in its words, and this
12 is what it said to the Court:

13 "When Windstream brought
14 the arbitration,
15 Windstream and WWIS had
16 waived their respective
17 rights to bring claims
18 for damages in Canadian
19 courts related to
20 measures that were at
21 issue in the NAFTA
22 arbitration."[as read]

23 The Claimant could not have
24 been clearer. It was of the view that the NAFTA
25 waiver in Windstream I prevented it from seeking

1 damages from the IESO's decision to terminate the
2 FIT Contract.

3 It could ask for declaratory
4 relief but not damages because it was of the view
5 that the IESO's decision to terminate was related
6 to the measures that were at issue in this
7 arbitration.

8 I am using the wrong word
9 there. I am using the word "related" but that's
10 not what the waiver provides.

11 The waiver is with respect to
12 the measures. I should not have said "related"
13 there.

14 The decision to terminate is
15 with respect to the measures that were at issue in
16 the NAFTA arbitration.

17 PRESIDING ARBITRATOR MILES:
18 Just two questions. Do we have a Slide 27?

19 MR. NEUFELD: We had a black
20 screen there -- so when we were discussing -- so
21 our Slide 27 was just a black screen because we
22 didn't have the -- we had the Zoom set up and four
23 very busy screens, and Mr. Terry and I spoke
24 earlier and thought we didn't want the busy
25 screen.

1 So our solution was to put up
2 a black screen and that's what Slide 27 was.

3 But, in the end, we resolved
4 the issue to have the speaker on the screen and
5 not need the black screens.

6 PRESIDING ARBITRATOR MILES:
7 All good. Understood.

8 My second question, which is
9 probably more important is, is your submission,
10 therefore, in relation to res judicata, that it
11 doesn't much matter, under international law and
12 Canadian law, if it were applicable, it doesn't
13 much matter whether or not the Claimant did
14 actually bring the claim for loss arising out of
15 termination but whether or not it could have.

16 MR. NEUFELD: So we haven't
17 specifically argued that, no, I wouldn't say. I
18 mean, I understand that's a part of res judicata
19 and that it has been presented in cases in the
20 past.

21 What we have argued is they
22 did bring a dispute with respect to the
23 termination right. Of course that right hadn't
24 been exercised yet. That right was only exercised
25 on February 20th, 2018.

1 And that, when that right was
2 exercised, we know that the Claimant felt the same
3 way about it, as it submitted to the Court. That
4 is what I just presented now.

5 I am also tripping up on a
6 little term you said, if applicable, when it came
7 to Canadian law. I think it's worth pausing here
8 just to say res judicata is a general principle
9 which is why Canadian law, US law, any law that
10 applies res judicata is important because this is
11 how general principles work. They are applied by
12 nations around the world, so they are relevant in
13 that sense.

14 Now note also how the Claimant
15 has presented its claim, its current claim post
16 termination.

17 The Claimant complains about,
18 and I quote, "the very conduct that was already
19 found to breach the NAFTA" and it submits that the
20 government was still refusing to meet with
21 Windstream.

22 According to the Claimant, the
23 government's decision not to intervene and, again,
24 I quote, "failed to insulate the Project and the
25 FIT Contract from the moratorium and related

1 delays and resolve the legal and contractual limbo
2 that the Tribunal in Windstream I found the
3 government had created".

4 Well, the Claimant can't have
5 it both ways. It can't complain about the same
6 conduct and then, out of the other side of its
7 mouth, argue that it amounts to a new measure.

8 This is true for the
9 continuation of the moratorium, not doing the
10 science, or not meeting with Windstream and not
11 directing the IESO to defer the Project or keep it
12 frozen. But it applies also to the termination
13 decision as well.

14 Which is a measure related --
15 or, sorry, with respect to Windstream I measures
16 over which it has waived its right to seek
17 damages.

18 Now, ultimately, you should
19 have in mind the guidance of the Apotex III
20 Tribunal and provided with a fact scenario that
21 was very analogous to the one that we are dealing
22 with here. Using its words but replacing the
23 case-specific references, the Tribunal's reasoning
24 applies squarely here.

25 The Tribunal says shorn of all

1 semantic technicalities, it's worth asking the
2 simple question after reading the relevant
3 packages from the Windstream I Award: How would
4 that Tribunal respond to the specific claims made
5 by the Claimant in this arbitration.

6 That question admits of only
7 one answer. The Windstream I Tribunal would say
8 that it had already decided the essential issues
9 relating to these claims in its Award.

10 Now, in the alternative.

11 If the Claimant -- if the
12 Tribunal disagrees with Canada and finds that the
13 IESO's termination of the FIT Contract has been
14 presented as a breach of NAFTA -- I submit it
15 hasn't been; and, second, constitutes a cause of
16 action separate from the cause of action in
17 Windstream I, the Claimant still can't use it as a
18 hook to bring back its old claims.

19 The termination by the IESO
20 can't be used to reconsider the wrongfulness of
21 the moratorium by Ontario or its failure to direct
22 the IESO to keep the contract frozen.

23 Even if you find that the
24 IESO's termination of the FIT Contract was
25 wrongful, damages wouldn't be assessed on the

1 basis of the moratorium being lifted or the
2 Project being able to proceed. The result is that
3 only the IESO's decision to terminate would
4 constitute an admissible measure in this
5 arbitration.

6 Which the Claimant doesn't
7 directly challenge. It says it is but at the same
8 time it's not.

9 Now, on top of that, it hasn't
10 even attempted to prove that the termination
11 decision is attributable to Canada. The IESO made
12 the decision. The IESO is a non-share held
13 corporation with an independent legal personality.

14 It acts independently to
15 support the goal of ensuring adequate electricity
16 supply. It is not an agent of the Crown and the
17 fact it was created by statute is not a sufficient
18 basis for attribution of its conduct to the state.

19 The Claimant has made no
20 effort to show that the IESO was acting with
21 delegated government authority in its role as a
22 FIT Contract counterparty when it terminated the
23 FIT Contract.

24 So that concludes my remarks
25 on res judicata. If you have further questions, I

1 will turn to that issue estoppel after.

2 PRESIDING ARBITRATOR MILES: I
3 do. Thank you, Mr. Neufeld.

4 Just coming back to a point
5 you made earlier, the Claimant can't have it both
6 ways. It can't complain about the same conduct
7 and then, out of the other side of its mouth,
8 argue that it amounts to a new measure.

9 Could the same not be said for
10 Canada's affirmative defence in the first
11 arbitration to the claim for expropriation? That
12 there hasn't been an expropriation, that there
13 can't be an expropriation because the Feed-In
14 Tariff contract is extant at the time, which the
15 Tribunal found to be so and found in Canada's
16 favour for no expropriation.

17 Now to argue that it was
18 always effectively terminated or known to be
19 terminable always existed at the time and should
20 have been resolved in that Tribunal, are you not
21 at risk of, in your submission, doing exactly what
22 you are criticizing the Claimant of doing?

23 MR. NEUFELD: I think the
24 difference is that -- so I -- first, I'd really
25 like to go back to Canada's arguments on

1 expropriation in Windstream I. I recall the FIT
2 contract not being an investment, not being
3 capable of being expropriated. I recall it not
4 being substantially deprived. I recall far less
5 strenuously arguing the point you are making now,
6 assuming we did.

7 The difference there is that
8 there is a finding by the Tribunal as of May 4th,
9 2012, that the contract is no longer financeable.

10 We can all agree it's a force
11 majeure. We can all agree that the contract
12 exists, the Tribunal has no power over that
13 contract. It's a NAFTA Tribunal. It's not a
14 court of law. It can't do anything about it.

15 And there's no -- there's
16 never been a dispute that the contract was in
17 existence, you know, in effect.

18 The question goes to what,
19 what was in existence? You know, it was a
20 contract in extended force majeure, as the
21 Tribunal found, and it couldn't be financed much,
22 much sooner than that. Much prior, you know, long
23 before the Award was issued.

24 And that was a finding that
25 the Tribunal made. So I am not sure -- I mean,

1 first of all, we are not relying on that argument
2 and don't need to, what we advance in Windstream I
3 in any way.

4 I also, in my mind, it's tying
5 back to this discussion around freeze and what is
6 frozen and, if it ties into that, then I think it
7 could provide a more detailed answer.

8 But I -- if it's just simply
9 Canada argued that the contract was in effect and,
10 therefore, not expropriated, I am not sure that
11 got us anywhere in Windstream I in the first
12 place.

13 The finding was that it had no
14 value as of May 2012. So, on the worth of the
15 contract, you know, sure, it exists but what
16 rights exist under it is the question.

17 PRESIDING ARBITRATOR MILES:
18 It may or may not have been your primary argument
19 but paragraph 290 of the Award suggests to me it
20 did get you to a successful outcome in relation to
21 expropriation:

22 "The Tribunal has
23 carefully reviewed the
24 relevant evidence and
25 finds that, on the facts,

1 no expropriation has
2 taken place. First, the
3 FIT Contract is still
4 formally in force and has
5 not been unilaterally
6 terminated by the
7 government.

8 Consequently, while we
9 agree that it can't be
10 completed by the date, it
11 continues to remain
12 opened."[as read]

13 And then secondly to the
14 letter of credit.

15 So.

16 MR. NEUFELD: Again, I don't
17 think it was part of our arguments that we ran in
18 Windstream I. I do think it was a fact recognized
19 and we don't dispute it to be true and the fact
20 that the Tribunal recognized it, absolutely.

21 Ultimately, you know, time-bar
22 would apply in the same way. You have an act that
23 well proceeds any three-year time limit which my
24 colleague Mr. Tian can speak to.

25 Our main arguments, as I

1 recall them, was the not -- there was no
2 substantial deprivation and the FIT Contract not
3 having a value as well as the police power
4 arguments that we ran.

5 CO-ARBITRATOR GOTANDA: So
6 following up, though, on that.

7 The Tribunal then goes on and
8 talks about the security deposit, which we have
9 talked considerably about.

10 The Tribunal could have -- and
11 I could have -- I guess my question to you is
12 could the Tribunal have ordered the return of the
13 security deposit or could they have, as we have
14 seen in other cases. I note they probably
15 couldn't have done that.

16 But what they probably could
17 have done was conditioned the 31 million on the
18 return of -- on the 6 million going back?

19 In other words, you get the 31
20 million but if you get the 6 million in by date X,
21 then you have to return that.

22 That would have ended
23 everything just about; wouldn't it? Why didn't
24 they do that and, instead, they crafted it in this
25 way so it's to leave that door open; didn't they?

1 And so it's not unreasonable
 2 for Claimant to walk through it, given the precise
 3 language or what is your view on that?
 4 MR. NEUFELD: Well, I think
 5 it's an unreasonable interpretation so I disagree
 6 that it's reasonable for them to walk through. I
 7 don't think it's reasonable at all.
 8 However, I do hear you that
 9 the Tribunal could have used different language.
 10 I note that -- well, a couple
 11 things.
 12 One, the Tribunal doesn't have
 13 powers like a court has. It couldn't just annul
 14 the contract or, you know, do things that a court
 15 can do. It's limited.
 16 It's limited also to the
 17 parties that are before it. The IESO is not a
 18 party before the Tribunal. IESO is the
 19 contractual counterparty.
 20 It's limited because the
 21 termination right -- and it force majeure. Force
 22 majeure has clear provisions and those clear
 23 provisions show that the right of termination
 24 under force majeure hadn't arisen yet.
 25 So what would the Tribunal do

1 then? It would be issuing an order that is
 2 contrary to the terms of the contract? Like it
 3 sort of stacked that way.
 4 I get why -- I mean there are
 5 other questions in my mind. Why didn't the
 6 Tribunal wait another six months. You know, why
 7 didn't, why didn't, why didn't. We can blue sky
 8 all we want.
 9 But what we have are those
 10 words and I do think it's unreasonable to
 11 interpret those words the way that the Claimant
 12 has. I think it's terrible.
 13 PRESIDING ARBITRATOR MILES:
 14 You think it's, what? I just missed the last
 15 sentence.
 16 MR. NEUFELD: I said I think
 17 it's unreasonable to interpret the words in 290
 18 the way the Claimant has interpreted them.
 19 PRESIDING ARBITRATOR MILES:
 20 Of course it's not 290 in isolation. It's 290
 21 read together.
 22 MR. NEUFELD: Right, right.
 23 PRESIDING ARBITRATOR MILES:
 24 With --
 25 MR. NEUFELD: 484.

1 PRESIDING ARBITRATOR MILES:
 2 483.
 3 MR. NEUFELD: The damages
 4 section, yeah.
 5 PRESIDING ARBITRATOR MILES:
 6 Yes, the bracketed language.
 7 MR. NEUFELD: I do find that
 8 language really clarifies things.
 9 You can't, you know, this came
 10 up in the office. When, when we got wind of, oh,
 11 there's going to be another claim here and you go
 12 immediately to the Award and you read the
 13 paragraph and go, come on. You know, that's the
 14 reaction.
 15 And I -- you know, anyway. We
 16 are here. We are here. I am not going to express
 17 my frustrations any more than that.
 18 And I will turn to collateral
 19 estoppel, if the Tribunal permits.
 20 PRESIDING ARBITRATOR MILES:
 21 Just I think you said it but I just want to be
 22 absolutely clear. I have got Article 10 in front
 23 of me in the FIT.
 24 Unless the parties mutually
 25 agreed, there was no way either party could have

1 terminated their FIT at that time.
 2 MR. NEUFELD: Oh, I didn't --
 3 did I say that?
 4 PRESIDING ARBITRATOR MILES:
 5 No, I did.
 6 MR. NEUFELD: Okay.
 7 PRESIDING ARBITRATOR MILES:
 8 You said the IESO -- I thought you said the IESO
 9 couldn't terminate at the time of the earlier
 10 arbitration.
 11 MR. NEUFELD: Sure.
 12 So the unilateral termination
 13 rights arrive on May 4th, 2017 -- or May 5th, I
 14 guess. They last for 24 months after. So I
 15 suppose that would be May 5th, 2017, at which
 16 point, under the contract, either party could
 17 unilaterally terminate the contract. That's true,
 18 as a matter of straight reading of the contract.
 19 Whether, you know, a
 20 discussion could have taken place and an agreement
 21 could have been struck between the parties and,
 22 you know, those discussions did take place during
 23 the negotiations and, you know, that's reliving
 24 pre Award facts which I really am trying not to
 25 get into in any way.

1 But it -- there's a
2 discretion, of course, between two contractual
3 parties. You can come to an agreement on some
4 things. But the unilateral right that exists in
5 Section 10.1(g) has a time limit and that is
6 24 months after the milestone date of operation
7 which was May 2015 and then 24 months after that
8 is May 2017.

9 On that, the Tribunal, there
10 is a few typos in the Award that you have to be
11 careful of. I don't know if you have noticed them
12 but describing that the 24-month period as the --
13 it's things that we should have caught as well.

14 PRESIDING ARBITRATOR MILES:
15 As we have already strayed a little bit outside,
16 will you indulge me just a tiny bit further.

17 The force majeure event was
18 the moratorium.

19 MR. NEUFELD: No.

20 PRESIDING ARBITRATOR MILES:
21 What was the force majeure event?

22 MR. NEUFELD: The force
23 majeure event was the failure to get access to the
24 site.

25 So, in November, I guess

1 November 10th -- oh, you know what. I am going to
2 deflect all of this to Ms. Dosman and she is going
3 to address this.

4 PRESIDING ARBITRATOR MILES:
5 You are going to come to this. Oh, good. Because
6 clearly I need --

7 MR. NEUFELD: It's the Crown
8 land application process that prevents -- there is
9 no process and they don't have access, they can't
10 get access to the site to do any of the work.
11 They can't do the wind testing. They can't do any
12 of the permitting work.

13 Then they apply, the Claimant
14 applies for force majeure on that basis. It's
15 granted in December but back dated to November --
16 December 22nd.

17 PRESIDING ARBITRATOR MILES:
18 Perhaps you will come to this as well.

19 But there was never any issue
20 between the parties as to the validity of the
21 force majeure event?

22 MR. NEUFELD: The contractual
23 parties? None.

24 PRESIDING ARBITRATOR MILES:
25 Thank you.

1 MR. NEUFELD: The claim for
2 force majeure was submitted and then the IESO even
3 agreed to back date it to November. It was
4 submitted December 22nd, as I recall off the top
5 of my head, and it was back dated.

6 PRESIDING ARBITRATOR MILES:
7 Who was in control of access to Crown land?

8 MR. NEUFELD: The MNR.

9 PRESIDING ARBITRATOR MILES:
10 So there was no question at all about whether the
11 event was -- the IESO was treated as entirely
12 separate party for this purpose.

13 MR. NEUFELD: Absolutely.

14 PRESIDING ARBITRATOR MILES:
15 Right. Okay. Thanks.

16 MR. NEUFELD: Okay. Then I
17 just have a few remarks on collateral estoppel and
18 we will conclude on an issue of jurisdictional
19 burden.

20 So even if the Tribunal
21 disagrees with us on claim conclusion, res
22 judicata, the Claimant is still estopped from
23 making certain of its claims.

24 The parties appear to agree on
25 the test for the application of this issue as

1 well. The test applies whether a right question
2 or fact was, one, distinctly put in issue in
3 Windstream I; two, decided by the Windstream I
4 Tribunal; and, three, that its resolution by the
5 Windstream I Tribunal was necessary to resolving
6 the claim before it.

7 I will focus first on
8 determinations related to valuation before turning
9 to the promises to freeze and not terminate the
10 contract.

11 The Claimant argues, and I
12 quote from paragraph 91 of its reply, that the
13 Windstream I Tribunal did not agree that the full
14 value of the FIT Contract was lost and, on that
15 basis, did not grant Windstream the relief it was
16 seeking. As already shown, it's patently false.

17 The Windstream I Tribunal, in
18 fact, determined that the FIT Contract was not
19 worth anything at all. There was no determination
20 of existing unlocked value and there was no
21 obligation on Ontario to ensure that new value was
22 created. That's absurd.

23 The obligation was to pay the
24 Award and make the Claimant whole. And the only
25 remaining value was in the \$6 million security

1 deposit which the IESO returned upon termination.
 2 Second, the Claimant is
 3 estopped from reopening the Tribunal's
 4 determination that the \$6 million security
 5 represented a significant portion of the
 6 Claimant's overall investment.
 7 The Tribunal considered that
 8 its investment included its sunk costs which may
 9 not have even exceeded the \$6 million set and then
 10 the value created by the Claimant by developing
 11 its Project. The overall value determined was
 12 \$31 million.
 13 Again, this is a finding that
 14 binds this Tribunal. It's not open to the
 15 Claimant to argue that the FIT Contract was worth
 16 more because it had additional unlocked value.
 17 You can consider whether value
 18 has been created after the Award. You can
 19 consider whether the \$6 million was repaid or not.
 20 But you can't open this determination.
 21 Likewise, the Claimant is
 22 estopped from reopening the question of the
 23 damages it suffered due to the government's
 24 moratorium.
 25 These damages arose as of

1 May 4th, 2012, when the Windstream I Tribunal held
 2 the Project had become non-financeable. You are
 3 bound by that finding and the assessment of
 4 damages awarded on that basis.
 5 And, fourth, the Claimant
 6 isn't allowed to open -- reopen the use of the DCF
 7 method of valuation to calculate its damages.
 8 Now, I am not going to say
 9 anything more about that one because that relates
 10 to your fifth question which Ms. Squires is going
 11 to take afterwards.
 12 Finally, the Claimant is
 13 estopped from arguing, as it does at paragraph 236
 14 of its reply, that Ontario promised that the FIT
 15 contract would be frozen or insulated from the
 16 effects of the moratorium and that the moratorium
 17 would not mean the termination of the Project.
 18 The Claimant distinctly put
 19 this matter at issue in Windstream I and it
 20 argued -- when it argued that Ontario should have
 21 carried out its promises to ensure that the
 22 Project was frozen and not cancelled following the
 23 moratorium.
 24 Which it could have done by
 25 removing the contractual deadlines.

1 And it argued that, by
 2 May 4th, 2012, Ontario had definitively refused to
 3 fulfil its promise to ensure that the Project was
 4 frozen and not cancelled.
 5 Again, the Windstream I
 6 Tribunal agreed with the Claimant, holding that,
 7 as a matter of fact, the FIT Contract had not been
 8 reactivated or renegotiated at any time during the
 9 period from February 11th, 2011 until the date of
 10 this Award.
 11 And this was a necessary
 12 premise to its determination that the FIT Contract
 13 cannot be considered to have any value and that no
 14 further adjustments need to be made to reflect the
 15 FIT Contract which was still formally in place.
 16 Now note the Tribunal didn't
 17 hold that the non-reactivation of the contract
 18 amounted to a breach or would amount to a breach
 19 in the future.
 20 These findings were necessary
 21 to resolve the dispute and this Tribunal is
 22 prevented from reopening them.
 23 Now, lastly --
 24 PRESIDING ARBITRATOR MILES:
 25 But did they hold that the non-reactivation would

1 not amount to a breach in the future?
 2 MR. NEUFELD: They did not.
 3 That is what I am saying. They made no finding.
 4 PRESIDING ARBITRATOR MILES:
 5 Either way.
 6 MR. NEUFELD: Either way.
 7 Before turning the floor to
 8 Mr. Tian, I would like to address the question of
 9 burden with respect to jurisdiction. Not
 10 admissibility but jurisdiction.
 11 And I want to be clear that
 12 burden rests squarely with the Claimant.
 13 The requirements to meet are
 14 laid out in NAFTA Articles 116 through 1121. And,
 15 contrary to what the Claimant has argued, these
 16 requirements do not represent jurisdictional
 17 defences that Canada must raise. To describe the
 18 jurisdictional requirements in this way wholly
 19 mischaracterizes these provisions on the basis --
 20 and the basis on which Canada consents to this
 21 arbitration.
 22 The burden rests with the
 23 Claimant to meet each, each of these requirements
 24 and these provisions. This includes, for example,
 25 the requirement to identify the alleged breach, of

1 which its alleged loss or damage arose, and the
 2 requirement to set out the factual basis of the
 3 claim.
 4 Yet, the Claimant hasn't even
 5 presented a coherent or logical factual basis of
 6 its claim or its alleged breach or its alleged
 7 loss.
 8 Instead, it claims, from the
 9 basis of its misinterpretation of one sentence in
 10 the Windstream I Award, that Ontario had an
 11 obligation to renegotiate the FIT Contract. And
 12 then it uses the termination of that contract to
 13 fish out Ontario's omissions previously challenged
 14 that were not found to be in breach of the NAFTA.
 15 Its cases that although those
 16 omissions did not constitute a breach of NAFTA
 17 during the first six-and-a-half years that they
 18 were applied during the contract's seven-year
 19 force majeure term, they do now.
 20 And its case is that, although
 21 the Windstream I Tribunal held that the FIT
 22 contract had no value, Ontario had an obligation
 23 to create or unlock that value.
 24 The Claimant's burden also
 25 includes waiting six months prior to filing its

1 Notice of Arbitration and demonstrating that it
 2 has met the requirement of Article 1121 and that
 3 this claim is not with respect to the measures it
 4 alleged breached the NAFTA in the Windstream I
 5 arbitration, in contradiction to the waiver it
 6 filed in that arbitration.
 7 Consequently, it cannot
 8 continue its dispute with respect to the measures
 9 it challenged in Windstream I, including the
 10 moratorium, the failure to direct the IESO to
 11 amend the FIT Contract, but also the decision to
 12 terminate the FIT Contract.
 13 After all, as the Claimant's
 14 own words in its domestic application or amended
 15 domestic application of April 20th, 2018, show, it
 16 waived the right to seek damages for the decision
 17 to terminate the FIT Contract because it's related
 18 to the measures it challenged in Windstream I.
 19 That waiver applies to actions
 20 in domestic court, but to future NAFTA claims as
 21 well.
 22 In fact, the Claimant has
 23 failed to establish your jurisdiction on this
 24 basis and, as just described and as will be
 25 described now by Mr. Tian with respect to time

1 limitation too.
 2 His presentation will be a
 3 little over 20 minutes, so I don't know if you
 4 want to break now or then but it would probably be
 5 a good -- I don't know, I will leave it in your
 6 hands as to whether you would like to break now or
 7 Mr. Tian can speak for 20 minutes or so.
 8 PRESIDING ARBITRATOR MILES: I
 9 just have a quick question before you sit down.
 10 On Slide 40.
 11 So the 1116 point, date on
 12 which the investor first acquired or should have
 13 first acquired knowledge of the alleged breach, I
 14 understand your point is the Claimant had
 15 knowledge from May 4, 2012, that the Project was
 16 non-financeable.
 17 But is it not open to the
 18 Claimant, at least as a jurisdictional point, for
 19 the purpose of 1116, to say it was knowledge that
 20 the FIT was non-financeable and not going to be
 21 negotiated and, indeed, terminated.
 22 That was the necessary
 23 knowledge for the Claimants bringing -- now you
 24 might not agree that that's a valid claim.
 25 MR. NEUFELD: Um-hmm, um-hmm.

1 PRESIDING ARBITRATOR MILES:
 2 But there's two additional elements to that
 3 knowledge that weren't known earlier.
 4 MR. NEUFELD: So while I am
 5 itching to answer that question, I fear that it is
 6 going to steal Mr. Tian's thunder who is dealing
 7 with the jurisdictional claim on time limitation.
 8 So I would rather turn it over to him, if that's
 9 okay with you.
 10 PRESIDING ARBITRATOR MILES:
 11 This's fine. He has got a heads-up. Very good.
 12 All right, so I was planning
 13 to stop at 4. Let's just keep going because,
 14 otherwise, we might push too late at the end of
 15 the day.
 16 OPENING STATEMENT BY MR. TIAN:
 17 MR. TIAN: Madam President,
 18 members of the Tribunal, it is truly an honour to
 19 appear before you. As Mr. Neufeld noted, my task
 20 today is to give you some context on the
 21 Tribunal's jurisdiction *ratione temporis* or the
 22 lack thereof.
 23 That is, after all, one of the
 24 fundamental questions that must be answered for
 25 Canada's consent to this arbitration.

1 We see that reflected in
2 Articles 1116(2) and 1117(2) of the NAFTA. They
3 establish a clear and rigid three-year limitation
4 period for an investor to bring a claim under
5 Chapter 11.

6 1116(2) states that an
7 investor may not make a claim if more than three
8 years have elapsed from the date on which the
9 investor first acquired, or should have first
10 acquired, knowledge of the alleged breach and
11 knowledge that the investor has incurred loss or
12 damage.

13 And Article 1117(2) is to the
14 same effect for enterprises that investor owns or
15 controls.

16 In this regard, the question
17 before this Tribunal is straightforward: Has the
18 Claimant first acquired knowledge of the alleged
19 breach of Articles 1105 and 1110 and the resulting
20 loss or damage within the three years limitation
21 period, that is within three years of its
22 submission of its claim to arbitration.

23 If the answer to this question
24 is no and the Claimant's knowledge predates the
25 undisputed critical date of December 22nd, 2017,

1 then its case cannot stand for failure to
2 establish the Tribunal's jurisdiction.

3 Now, the Claimant is asking
4 you to believe that it only knew the alleged
5 breach and loss no earlier than February 2018 when
6 it was informed of the termination of the FIT
7 contract by IESO.

8 In essence, it wants the
9 Tribunal to accept that the moment when its
10 damages materialized in the full extent, that it
11 -- when it was informed of the termination of the
12 FIT Contract. That moment triggers its knowledge
13 of the alleged breach.

14 Yet, this is in blunt
15 disregard of the fact that the challenged measures
16 took place prior to February 2018 and the Claimant
17 knew them.

18 It is the measures that form
19 any alleged breach, not the damages.

20 This is why the Tribunal must
21 examine the underlying challenged measures to
22 determine the Claimant's knowledge of the alleged
23 breach.

24 To use the words of the
25 Infinito tribunal to which the Claimant refers,

1 the first step in the analysis is to identify when
2 a given act or omission was performed. And that,
3 of course, refers to the measures.

4 So what are the measures that
5 are alleged to have breached Articles 1105 and
6 1110?

7 The Claimant challenges
8 certain measures taken by Ontario and IESO as
9 early as 2011 as breaching the NAFTA. It tries to
10 package all these individual measures as one
11 single composite act.

12 CO-ARBITRATOR MCLACHLIN: Can
13 I just stop you.

14 Going back to Article 1116 and
15 1117, there's two parts: Breach, measures,
16 whatever you want, and then knowledge that the
17 investor has incurred loss.

18 And, as I understood their
19 submission, they said that they didn't know that
20 they were going to suffer this loss until they
21 knew about termination.

22 So I just want you to keep
23 that in mind. I know you are talking about
24 measures now but you're going to have to, I think,
25 address that other point; aren't you?

1 MR. TIAN: Absolutely. I plan
2 to address the breach first and the knowledge in
3 the second place.

4 CO-ARBITRATOR MCLACHLIN:
5 Good. I just wanted to know where you were.

6 MR. TIAN: The legal test is
7 the knowledge of the breach, the alleged breach
8 and the loss.

9 CO-ARBITRATOR MCLACHLIN: Yes.

10 MR. TIAN: So, Madam
11 President, members of the Tribunal, no matter the
12 characterization of the measures as composite,
13 previous Tribunals, such as in Bilcon and Rusoro
14 have indicated the proper approach is to analyze
15 each measure individually for time-bar purposes.

16 From this perspective, the
17 Claimants still acquired knowledge of the alleged
18 breach prior to the critical date.

19 I would like to take a minute
20 to break down the six challenged measures.

21 The first four are of Ontario
22 and I will demonstrate now that they are all
23 time-barred.

24 The last two are of the IESO
25 and, that, I will address in the second part to

1 show that they cannot be used to toll the
 2 limitation period.
 3 As stated by Mr. Neufeld, the
 4 four Ontario measures form the essence of the
 5 Claimant's complaint. The Claimant has repeatedly
 6 emphasized that it challenges Ontario's actions as
 7 enabling the IESO to cancel the FIT Contract.
 8 It is strikingly noticeable
 9 that 24 percent of the Claimant's slides in the
 10 morning contain, as heading, "Ontario-caused
 11 termination of the FIT Contract". This could not
 12 be clearer.
 13 The IESO's actions are,
 14 therefore, presented as consequences that
 15 naturally flow from Ontario's measures.
 16 To use the Claimant's own
 17 words:
 18 "In this arbitration,
 19 Windstream is challenging
 20 the deliberate decision
 21 by the Ontario government
 22 not to intervene on
 23 Windstream's behalf with
 24 the IESO and its conduct
 25 that created the

1 circumstances that
 2 permitted the IESO to
 3 terminate the FIT
 4 contract."[as read]
 5 Those measures are part of the
 6 conduct that made Ontario liable for the
 7 termination of the FIT Contract. Ontario created
 8 the circumstances that allowed the IESO to
 9 terminate the FIT Contract and that is what is
 10 alleged to be a breach of the NAFTA.
 11 The Claimant, therefore,
 12 fundamentally challenges the circumstances that
 13 Ontario created as breaching Articles 1105 and
 14 1110 and it is these measures, A to D, that form
 15 the very circumstances the Claimant challenges.
 16 Not any other measure.
 17 Of fundamental importance to
 18 the legal test --
 19 PRESIDING ARBITRATOR MILES:
 20 Can I just ask a question, please.
 21 So you leap from 1116 and 1117
 22 reference to breach, the alleged breach. From
 23 that to measures, which one measure would be the
 24 constituent parts that comprise a breach, a breach
 25 being a cause of action.

1 You make that leap entirely on
 2 the basis of paragraph 236 of the Infinito Award;
 3 is that right? Did I follow your reasoning?
 4 You tell us we have to look,
 5 for 1116 and 1117, at the individual measures and
 6 break them down one by one rather than look at the
 7 cause of action. And you rely on Infinito, I
 8 think, to get us to the conclusion that breach
 9 means measure; is that right?
 10 MR. TIAN: To answer your
 11 question, Madam President, I think the measure
 12 constitutes the core of any alleged breach because
 13 they are what form the cause of action that are
 14 before you.
 15 PRESIDING ARBITRATOR MILES:
 16 Well, you might have three measures one day and
 17 they don't cause a cause of action. Two years
 18 later, you have two more measures and the five,
 19 the composite five measures may form a cause of
 20 action; yes?
 21 MR. TIAN: In the hypothetical
 22 world, a composite measure could amount to a NAFTA
 23 breach; that is correct.
 24 However, we have to look at
 25 whether that has been alleged and whether that has

1 been substantiated.
 2 And I will address, in later
 3 part of my argument, although it has been put
 4 forward to you that all the six measures
 5 constitute a composite measure, the Claimant has
 6 failed to substantiate that argument and it makes
 7 no submission to the time-bar requirements that
 8 flow from that argument.
 9 PRESIDING ARBITRATOR MILES:
 10 So just so I understand what your argument is, on
 11 your Slide 48, where you have the six items and
 12 you create a red box around the top four and say
 13 they are out of bounds.
 14 That, I had understood you to
 15 be making the argument that, if any of the
 16 individual components of a cause of action
 17 happened before the three years, they are out.
 18 MR. TIAN: Yes because you
 19 analyzed each measure individually for time-bar
 20 purposes in case of a composite measure, that
 21 is --
 22 PRESIDING ARBITRATOR MILES: I
 23 thought the exchange we just had when I said to
 24 you, in three events, hypothetically, happened two
 25 years ago but that didn't constitute a cause of

1 action, and then two new events happened this year
2 and, collectively, the composite of the five
3 events create a cause of action, that what we
4 would look to, for the purpose of Article 1116 and
5 1117, is the composite of the five events.

6 I thought you agreed with me.
7 Do you not agree with me?

8 MR. TIAN: For any composite
9 measure, our position is that you have to break
10 down individual measure individually for time-bar
11 purposes. That means --

12 PRESIDING ARBITRATOR MILES:
13 And that's on the basis of Infinito; that's where
14 you get that?

15 MR. TIAN: That's on the basis
16 of Bilcon and Rusoro.

17 PRESIDING ARBITRATOR MILES:
18 Both of my co-arbitrators are hot-buttoning.

19 MR. TIAN: In any event --

20 PRESIDING ARBITRATOR MILES:
21 Just let the Tribunal perhaps ask what they want
22 to ask. Just wait and listen to the question
23 carefully and answer the question.

24 CO-ARBITRATOR GOTANDA: That
25 would mean, then, and maybe this is the case, that

1 you couldn't bring a claim because it hasn't
2 ripened yet, as in the case of, let's say,
3 expropriation, it's not terminated. The contract
4 is still in effect.

5 So you can't bring the claim
6 but the events that give rise to that, the
7 reasonable, I am going to follow your reasonable
8 investment-backed expectations, in order to build
9 that claim, you have got to rely on a measure that
10 happened way earlier; that means you have a wrong
11 but no remedy but maybe that's just the case.

12 Is that your view?

13 MR. TIAN: In case of a
14 composite measure, if we are going to look at the
15 measure as a whole, the ILC articles on state
16 responsibility make clear that the breach is dated
17 to the first act in that series.

18 So, in that case, indeed, the
19 breach would have to be dated to the first half.

20 CO-ARBITRATOR MCLACHLIN:
21 Well, my question isn't the breach a breach of
22 contract and don't you have to have both a
23 wrongful act and knowledge of damages? And then
24 the first knowledge of that breach would be when
25 you have all those things in place?

1 That that is the way I have
2 always thought about it.

3 I think you are trying -- you
4 are telling me something different and, if you
5 are, I need to understand exactly what it is,
6 whether I am wrong in what I think -- how I think
7 about this.

8 PRESIDING ARBITRATOR MILES:
9 And just to help you out a little bit, I think, in
10 our minds, there are two separate questions for
11 you.

12 The first question is do the
13 individual elements of a cause of action that
14 don't, in themselves, constitute a cause of action
15 expire at three years. Question one.

16 Question two. If,
17 irrespective of what you submit is the answer to
18 question one, I understand your second point is
19 that doesn't arise here. You say, on these facts,
20 that's not the case. It doesn't arise because
21 everything you knew and should have known and had
22 to know to bring this claim, you knew. I think
23 that's your case.

24 But there's a question before
25 that. Is it always the case that individual

1 elements of a cause of action will expire at three
2 years under 1116 and 1117.

3 MR. TIAN: May I please
4 address the first question by Justice McLachlin.

5 Our understanding is that the
6 Claimant's case is not a breach of contract.
7 Otherwise, we won't be here in front of an
8 international Tribunal.

9 CO-ARBITRATOR MCLACHLIN: It's
10 a breach of NAFTA.

11 MR. TIAN: Yes, it's a breach
12 of NAFTA.

13 And that knowledge can very
14 well be different and, indeed, in this case, it is
15 different than its knowledge of the breach of
16 contract.

17 And, in fact, the contract, on
18 February 2018, was rightfully terminated so there
19 is no question of breach.

20 To your question, Madam
21 President, if we are going to look at each measure
22 individually for time-bar purposes, these measures
23 that happen prior to the three-year limitation
24 period would indeed expire. Otherwise, the
25 Claimant would always be free to point to a later

1 event in a way that would toll the limitation
 2 period.
 3 PRESIDING ARBITRATOR MILES: I
 4 am sorry. I haven't got you.
 5 If we have a gold mine and a
 6 government takes measures in respect of that gold
 7 mine to interfere with its operations, turns off
 8 the power, creates roadblocks, won't grant visas.
 9 And a Claimant says you have expropriated the gold
 10 mine and a Tribunal says no, you haven't; okay.
 11 And then, five years later,
 12 the government says, because of all of those
 13 things that happened earlier -- failure to get
 14 proper visas, failure to have proper access
 15 permits -- we are going to terminate your
 16 concession agreement for your gold mine and have
 17 taken it away so the taking has occurred.
 18 You say 1116, 1117 wouldn't
 19 permit a Tribunal to look at the whole of the
 20 conduct, only that final, final event?
 21 MR. TIAN: Well, because the
 22 first series of events, the not granting visa,
 23 the --
 24 PRESIDING ARBITRATOR MILES:
 25 It doesn't matter what they are.

1 MR. TIAN: The meddling with
 2 the gold mine. They would inform the Claimant's
 3 knowledge of an alleged breach of NAFTA.
 4 So, at that point, before the
 5 actual taking, the Claimant would have or should
 6 have knowledge that an alleged breach of NAFTA may
 7 have happened and in that --
 8 PRESIDING ARBITRATOR MILES:
 9 So what if it's a different breach? What if my
 10 first breach was FET and there has been no
 11 expropriation, no expropriation is claimed? Then
 12 it's taken.
 13 You're saying you still can't
 14 use those individual events as part of your
 15 subsequent expropriation claim under NAFTA; is
 16 that how you're saying 1116 and 1117 works?
 17 MR. TIAN: Can I take back
 18 your question and consult with my colleagues?
 19 PRESIDING ARBITRATOR MILES:
 20 Yes, Justice McLachlin may have a have a better
 21 question so you go ahead.
 22 CO-ARBITRATOR MCLACHLIN: I
 23 will try.
 24 It seems to me you have got to
 25 have knowledge of the breach and that you'll

1 suffer loss, a breach of NAFTA, and that that will
 2 cause you loss. So some acts might take place
 3 before the limitation period.
 4 But the person, the party,
 5 injured party might be not sure they're injured.
 6 They think, well, this permit was not granted but
 7 maybe they, the government, will make it up to me
 8 later. So then limitation period comes down and
 9 then, later, the government doesn't make it up to
 10 them.
 11 It seems artificial that they
 12 couldn't say, when that last thing happens, I am
 13 barred from, because one of the elements, I didn't
 14 know that element, the damage element, when --
 15 before the limitation period was up.
 16 So that would seem unfair to
 17 me, that you would make a -- you would say to a
 18 party then you can't look at that wrong. It's
 19 gone.
 20 And surely the whole purpose
 21 is to see what the wrong is and the effect and
 22 what you have to know, I think it gets back to the
 23 question of what you have to know.
 24 And I agree with you it's the
 25 first knowledge; right. The cases are clear.

1 It's the first knowledge but that knowledge has to
 2 be of a NAFTA wrong and that's going to cost you.
 3 So it seems to me that's
 4 what's being argued here, to some extent. That,
 5 whether -- I am not saying whether I think it's
 6 right or wrong. I haven't made that decision.
 7 But they are saying there were
 8 these acts, these, these omissions. Then the
 9 limitation period comes down. Then we have a
 10 termination, and we realize, oh my goodness, those
 11 acts and omissions which we thought were not going
 12 to amount to anything are now costing us a lot.
 13 If I am not mistaken, that's
 14 the way the argument has been put to us.
 15 So it seems to me unfair, I
 16 won't go further than that, to say that when the
 17 wrongful acts or omissions, before the limitation
 18 period ripen into what is required for that
 19 knowledge, which is after the limitation period,
 20 you don't have complete knowledge until you have
 21 that damage component. That's what's bothering
 22 me.
 23 PRESIDING ARBITRATOR MILES:
 24 So we are going to take the break so you can
 25 discuss, if you need to.

1 But coming back to the primary
 2 question I think all of the discussion has stemmed
 3 from just the very first simple question.
 4 Articles 1116 and 1117 reference to knowledge of
 5 alleged breach.
 6 Is it your argument that
 7 knowledge of alleged breach means knowledge of any
 8 element of breach, so measure being any element of
 9 breach, and, if so, how do you get there?
 10 The only case you have in this
 11 deck is the Infinito case. And I understand it's
 12 a wholly separate point as to whether or not those
 13 circumstances exist on the facts in this case.
 14 But I want to understand your legal theory before
 15 we move into this particular case.
 16 All right.
 17 So we will come back at, what
 18 are we, 4:04. Shall we come back at twenty past,
 19 okay, just to give you time to have a think about
 20 that.
 21 All right. Thanks.
 22 MR. TIAN: Thank you.
 23 --- Upon recess at 4:04 p.m.
 24 --- Upon resuming at 4:22 p.m.
 25 PRESIDING ARBITRATOR MILES:

1 Mr. Tian, we are ready when you are.
 2 MR. TIAN: Great. Thank you.
 3 I would like to come back to
 4 the last question that Justice McLachlin posed as
 5 to whether it is -- whether it poses a question of
 6 fairness when a Claimant does not have actual
 7 knowledge of an alleged breach of losses, and then
 8 another subsequent measure future in the time will
 9 give the Claimant that actual knowledge.
 10 I think the answer to your
 11 question lies in the language of 1116(2) and
 12 1117(2) which provides that not only we are
 13 concerned here about actual knowledge but also
 14 about constructive knowledge.
 15 To quote:
 16 "Or should have first
 17 acquired."[as read]
 18 In that sentence, previous
 19 Tribunals, such as in Grand River, have held that
 20 constructive knowledge does not give Claimants
 21 carte blanche to wait and to -- I am using its
 22 word -- willfully abstain from inquiry in order to
 23 avoid actual knowledge.
 24 From that perspective, a
 25 reasonable and sophisticated Claimant, as is

1 Windstream in this case, exercising reasonable
 2 care ought to conduct further inquiries so as to
 3 establish whether or not there is an alleged
 4 breach.
 5 And any failure to conduct
 6 those further inquiries would, of course, inform
 7 the Claimant's constructive knowledge.
 8 CO-ARBITRATOR MCLACHLIN:
 9 Okay. Thank you.
 10 MR. TIAN: As to your
 11 question, Madam President, whether knowledge of
 12 facts that form an alleged breach prior to the
 13 limitation period, Canada submits that one must
 14 enquire whether those facts could independently
 15 amount to an alleged breach.
 16 And, in this case, they are.
 17 Because, as I will demonstrate, Windstream have
 18 alleged and challenged exact same measures
 19 independently in the Windstream I proceedings.
 20 Therefore, they have the knowledge, in this case,
 21 actual knowledge of those facts amounting to an
 22 alleged breach.
 23 For the sake of argument, if
 24 we are in a hypothetical scenario where there are
 25 facts, background facts, that do not necessarily

1 amount to an alleged breach, in and of themselves,
 2 and only with other measures amount to a breach
 3 later on.
 4 In that case, those facts do
 5 not have an impact on the limitation period
 6 because they are not alleged or could not be
 7 individually alleged breaches.
 8 PRESIDING ARBITRATOR MILES:
 9 Thank you.
 10 MR. TIAN: So of fundamental
 11 importance to the legal test is the notion of the
 12 first acquisition of knowledge, which must be
 13 given a meaning.
 14 The Tribunal must, therefore,
 15 look at the earliest moment in time where the
 16 Claimant has acquired actual or constructive
 17 knowledge of these measures.
 18 As the Mobil II Tribunal held,
 19 an investor cannot acquire knowledge of the same
 20 matter on more than one occasion. And that
 21 remains true in this case.
 22 The Claimant cannot credibly
 23 advance that it only acquired knowledge for the
 24 first time of the alleged breach in February 2018
 25 when it is well aware of all Ontario's measures

1 prior to the critical date. This simply defies
 2 logic.
 3 Now when did the Claimant
 4 actually acquire knowledge of the alleged breach?
 5 And I will answer this question by demonstrating
 6 that, at various points prior to the critical
 7 date, the Claimant has acquired knowledge of these
 8 measures.
 9 August 19th, 2014, the
 10 Claimant submitted its memorial Windstream I.
 11 Paragraph 505 lists the four interrelated issues
 12 in that case.
 13 It specifically challenged the
 14 moratorium itself and Ontario's failure to keep
 15 Windstream whole. Or, in other words, its failure
 16 to direct the OPA to freeze the FIT Contract.
 17 These are the exact same
 18 measures from Ontario that the Claimant knew and
 19 challenged in Windstream I and again in the
 20 present case as measures (b), (c) and (d).
 21 It is clear that the Claimant
 22 knew, back in 2014, at least, that these measures
 23 formed an alleged breach. It cannot escape from
 24 that knowledge.
 25 October 12th, 2016. The

1 Claimant's witness Mrs. Baines admitted that no
 2 further scientific studies are being planned to
 3 lift the moratorium. In other words, the
 4 Claimants knew of the challenged measure (a).
 5 August 25th, 2017, the
 6 Ministry of Environment informed the Claimant that
 7 it could not confirm whether or when Ontario will
 8 be revisiting the February 2011 decision on the
 9 moratorium. That also reinforces the Claimant's
 10 knowledge of the challenged measure (b).
 11 The Claimant also challenges
 12 the continuous effect of these same one-time
 13 measures. However, through its own admission, it
 14 has also precisely acquired knowledge of their
 15 continuing effect before the Windstream I
 16 proceedings.
 17 For instance, in that
 18 proceeding, it knew that the moratorium was an
 19 indefinite term, and that Ontario had not given
 20 any indication as to when and, indeed, whether the
 21 moratorium might be lifted.
 22 It knew that Ontario failed to
 23 complete the necessary research in the four years
 24 and four months since issuing the policy decision.
 25 Further, it knew that Ontario

1 did not direct the OPA to freeze the Project
 2 pending the moratorium through, for instance,
 3 removing the force majeure limitation or
 4 restraining the OPA's termination right for the
 5 Project.
 6 All these examples clearly
 7 demonstrate that the Claimant first acquired
 8 knowledge of Ontario's measures that it now
 9 challenges, as well as their continuous effect
 10 well before the critical date.
 11 In other words, the
 12 circumstances that Ontario created through these
 13 measures existed well before the critical date and
 14 did not suddenly become wrongful in February 2018
 15 when the IESO indicated its termination of the FIT
 16 contract.
 17 The fact that some of them
 18 continued beyond the critical date and even into
 19 this day changes nothing to the Claimant's first
 20 acquisition of knowledge.
 21 They certainly do not reset
 22 the limitation period.
 23 Investment jurisprudence has
 24 been consistent in rejecting Claimants attempts
 25 to base claims on the most recent alleged

1 transgression when they had knowledge of earlier
 2 breaches and injuries.
 3 As the Apotex II Tribunal
 4 correctly held, nothing in the text or
 5 jurisprudence of NAFTA Chapter 11 suggests that a
 6 party can evade NAFTA's limitation period by
 7 asserting that a measure at issue was part of a
 8 continuous breach or part of a single continuous
 9 action.
 10 By pointing to the date when
 11 it was informed of the FIT Contract's
 12 cancellation, the Claimant now asks the Tribunal
 13 to toll the limitation period into its subsequent
 14 knowledge of the alleged breach.
 15 Yet, the critical notion of
 16 Articles 1116(2) and 1117(2) is that one of the
 17 first acquisition of knowledge, not subsequent
 18 acquisition, not repeated acquisition, not
 19 ultimate acquisition of such knowledge. And this
 20 has been the consistent position of all three
 21 NAFTA Parties, including in this case.
 22 As the United States noted in
 23 its 1128 submission, where a series of similar and
 24 related actions by a respondent state is at issue,
 25 an investor cannot evade the limitations period by

1 basing its claim on the most recent transgression
 2 in that series. To allow an investor to do so
 3 would render the limitations period ineffective.
 4 Mexico similarly noted that it
 5 supports Canada's position, reaffirming that once
 6 the limitation period commenced to run, neither
 7 the continuation of an alleged violation nor
 8 subsequent or additional facts can reset, extend
 9 or interrupt it.
 10 Indeed, the limitation period
 11 is clear and rigid once it first commences to run.
 12 And that is once the Claimant first acquires the
 13 knowledge.
 14 Otherwise, as the Spence
 15 Tribunal noted, it would effectively denude the
 16 limitation clause of its essential purpose, of
 17 drawing a line and a prosecution of historic
 18 claims and encourage attempts at the endless
 19 parsing up of a claim into either finer
 20 subcomponents of breach at the time.
 21 And let's turn to the
 22 Claimant's knowledge of its loss or damage.
 23 The Claimant, again, would
 24 have you believe that it only knew its loss on
 25 February 2018 when it was informed of the IESO's

1 decision to cancel the FIT Contract.
 2 Nevertheless, its own
 3 pleadings in Windstream I tell a completely
 4 different story.
 5 It claimed back then that the
 6 Project cannot be developed in time. It was no
 7 longer financeable. As a result, the Project has
 8 been effectively cancelled and is now
 9 substantially worthless, as are Windstream's
 10 investments in WWIS and the FIT Contract.
 11 That date when its investment
 12 became worthless occurred as of May 22nd, 2012,
 13 according to the Claimant.
 14 The Claimant's expert,
 15 Deloitte, in Windstream I also supported that
 16 assertion. And the Claimant had continuously
 17 referenced the moratorium as crystallizing a de
 18 facto cancellation of its Project.
 19 The Claimant's witness
 20 Mr. Mars testified that its damages was
 21 irreparable. If Claimants reiterated this
 22 qualification in its pleadings, stating that even
 23 if the moratorium was lifted and even if
 24 moratorium was not permanent, sorry, Windstream's
 25 loss is.

1 Windstream has lost the entire
 2 value of its Project.
 3 The Claimant even added that
 4 there is no prospect of recovering in value even
 5 if the moratorium is lifted.
 6 All these statement are from
 7 Windstream I, well before the critical date. They
 8 speak volumes of the Claimant's actual knowledge
 9 of its loss before the Windstream I proceedings.
 10 Nothing can allow it to
 11 disavow such knowledge of its loss. Not Canada's
 12 arguments to the contrary in Windstream I. Not
 13 anything else. Once you know something, you
 14 cannot unknow it.
 15 The Tribunal must ask itself
 16 how can a Claimant that believed its Project was
 17 de facto cancelled and substantially worthless, as
 18 of May 2012, now maintain that it had absolutely
 19 no knowledge of any loss back then?
 20 At best, this should strike
 21 the Tribunal as odd.
 22 Further, as investment
 23 jurisprudence has confirmed, the legal test is not
 24 whether the Claimant has concrete knowledge of the
 25 actual amount of loss.

1 Previous Tribunals such as
 2 Mobil II, Grand River, Apotex and Bilcon have all
 3 accepted the simple knowledge that loss or damage
 4 has been caused even if its extent or
 5 quantification is still unclear is sufficient to
 6 trigger the limitation period.
 7 And that goes to your
 8 question, Justice McLachlin.
 9 CO-ARBITRATOR MCLACHLIN: Yes,
 10 it does.
 11 MR. TIAN: On this point, the
 12 Claimant has acknowledged that the Windstream I
 13 Tribunal awarded its damages to its investment in
 14 February 2016.
 15 Therefore, its knowledge of
 16 such loss alone is sufficient to trigger the
 17 limitation period prior to the critical date.
 18 It cannot seek today to double
 19 recover the exact same damage that was awarded to
 20 it by the Windstream I Tribunal.
 21 PRESIDING ARBITRATOR MILES:
 22 Just on that, coming back to a question Justice
 23 McLachlin asked you before the break.
 24 The language in Articles 1116
 25 and 17 talk about knowledge of the alleged breach,

1 which is what I have been focusing on before the
 2 day, and knowledge that its occurred loss. And,
 3 your last five to ten minutes, you have been
 4 seeking to prove knowledge of loss.
 5 But was your last submission a
 6 submission that it is enough for me to prove loss,
 7 I don't have to prove knowledge of breach?
 8 MR. TIAN: Yes, you need both
 9 elements to satisfy Article 1116.
 10 PRESIDING ARBITRATOR MILES:
 11 You need knowledge of breach as well as knowledge
 12 of loss.
 13 MR. TIAN: Yes.
 14 And I would add that that
 15 knowledge doesn't have to be actual. It can very
 16 well be, as per the language of Article 1116(2)
 17 and 1117(2), be constructive.
 18 But, in this case, the
 19 Claimant has actual knowledge of both loss and the
 20 alleged breach well before the critical date.
 21 The Claimant argued this
 22 morning that Windstream I Award changed its
 23 perception of the loss. That it only suffered a
 24 part of that loss.
 25 However, there are inherent

1 flaws in that logic. The fact that the Windstream
 2 I Tribunal disagreed with its characterization of
 3 the loss has no bearing on its own knowledge.
 4 That Tribunal's Award cannot
 5 magically erase the Claimant's knowledge of its
 6 loss.
 7 Also, the Claimant's knowledge
 8 of the loss extended even beyond the Windstream I
 9 proceedings.
 10 CO-ARBITRATOR MCLACHLIN: Just
 11 a question.
 12 We are relying on wrongs,
 13 alleged wrongs, omissions, failure to instruct,
 14 after 2016. So doesn't the damage, loss, have to
 15 relate to those wrongs or omissions?
 16 And, if that is the case, how
 17 can you rely on admissions in the pleadings of
 18 Windstream I before 2016?
 19 I may have this wrong but that
 20 is my question.
 21 MR. TIAN: To answer your
 22 question, Canada's position is that, in this case,
 23 we need to look at the facts that underline
 24 those -- this knowledge and this knowledge of its
 25 loss and alleged breach.

1 So these same failure to
 2 direct, the continuation of the moratorium,
 3 failure to conduct the science, they are the same
 4 fact that existed well before the Windstream I
 5 Award. It hasn't changed.
 6 CO-ARBITRATOR MCLACHLIN: So
 7 it sounds like an echo of the Claimant's
 8 continuous breach argument.
 9 Okay. I think I have your
 10 position. Thank you.
 11 MR. TIAN: And that, in a way,
 12 should inform the Claimant's knowledge.
 13 So the IESO's termination
 14 right arose on May 4th, 2017, thereby confirming a
 15 definitive end to any possibility to finance the
 16 Claimant's Project from May 2012.
 17 And the Claimant did not only
 18 suspect this termination right would arise on that
 19 date. It knew with absolutely certainty.
 20 To use the words of the
 21 Windstream I Tribunal, according to the Claimant,
 22 this right will inevitably arise by May 4th, 2017.
 23 This is why, in March 2017,
 24 the Claimant actively sought to prevent the IESO
 25 from exercising its termination right when it

1 initiated the domestic application.
 2 Otherwise, Windstream would
 3 have spent money, hired counsel and launched a
 4 full scale application against the IESO for
 5 something they don't even know would cause them
 6 harm.
 7 And of course Windstream can't
 8 cannot be faulted for bringing the domestic
 9 application. But it also cannot use the domestic
 10 application to escape from its knowledge.
 11 Now I will turn to the second
 12 set of measures, those two last measures from the
 13 IESO.
 14 As to measure (f), the IESO
 15 clearly confirmed to the Claimant, on
 16 February 19th, 2017, before the critical date that
 17 it is not prepared to amend the FIT Contract to
 18 provide an extension, nor to waive its right to
 19 terminate the FIT Contract pursuant to
 20 Section 10.1(g).
 21 And that letter, by the way,
 22 is signed by Mr. Killeavy, now the Claimant's
 23 witness.
 24 Therefore, only the challenged
 25 measure (e), the actual termination, occurred

1 after the critical date, not any other.
 2 Yet these additional factual
 3 details do not alter the essence of the Claimant's
 4 case. That is Ontario's actions created the
 5 circumstances, the conditions for the IESO to
 6 terminate the FIT Contract.
 7 For time-bar purposes,
 8 investment Tribunals have refused to look at
 9 subsequent events that are not legally significant
 10 or distinct. And, accordingly, the Tribunal need
 11 not analyze the IESO's measures in this case.
 12 As the Spence Tribunal held,
 13 the limitation period starts running when a
 14 Claimant is deemed to have first acquired
 15 knowledge of the breaches that form the essence of
 16 their claims.
 17 This Tribunal must reject the
 18 Claimant's attempt to use these IESO measures as a
 19 hook to resubmit all of Ontario's past conduct
 20 that it knew and litigated at length in the first
 21 arbitration.
 22 The Claimant has not put
 23 forward a single authority that supports its
 24 attempt to parse its claim into numerous pieces in
 25 an attempt that resets the limitation period.

1 As the Grand River Tribunal
 2 cautioned, such a position would render the
 3 limitations provisions in effective in any
 4 situation involving a series of similar and
 5 related actions by a Respondent state since a
 6 Claimant would be free to base its claim on the
 7 most recent transgressions, even if it had
 8 knowledge of earlier breaches and injuries.
 9 PRESIDING ARBITRATOR MILES:
 10 Have any of the cases, any of the prior awards
 11 that you rely on that have concluded that the
 12 event in issue, for limitation purposes, was not
 13 legally significant or distinct?
 14 Have any of those cases
 15 involved an event that was the termination of the
 16 equivalent of a consensual agreement with the
 17 government or government entity.
 18 MR. TIAN: I can confirm that
 19 and come back to you.
 20 PRESIDING ARBITRATOR MILES:
 21 Just as I have interrupted you, the critical date,
 22 as you've characterized it, is not disputed.
 23 MR. TIAN: It's not disputed.
 24 CO-ARBITRATOR MCLACHLIN: The
 25 22nd.

1 MR. TIAN: December 22nd,
 2 2017.
 3 PRESIDING ARBITRATOR MILES:
 4 It's taken us three years from the 22nd of
 5 December 2020.
 6 MR. TIAN: Exactly.
 7 So even if IESO's termination
 8 occurred after the critical date, it does not
 9 impact the essence of the claim, thereby, has no
 10 bearing on the Tribunal's jurisdiction *ratione*
 11 *temporis*.
 12 That means that the IESO's
 13 action does not form the basis of a new,
 14 independent or self-standing cause of action.
 15 The Claimant has failed to
 16 allege that the IESO's termination of the FIT
 17 contract independently breaches Articles 1105 or
 18 1110.
 19 The Spence Tribunal similarly
 20 noted that acquiring further knowledge of one
 21 claim does not generate a new, independently
 22 actionable breach separable from the conduct that
 23 preceded it, of which the Claimants were aware.
 24 Instead, the Claimant relies
 25 on the theory of composite breach. It tries to

1 amalgam the five time-barred Ontario and IESOs
 2 measures with the actual termination in an attempt
 3 to circumvent the limitation period.
 4 Yet, the Claimant has not
 5 meaningfully explained how the measures it
 6 challenges form a composite breach. Just as the
 7 Claimant in *Infito*, Windstream has failed to
 8 properly substantiate its composite breach
 9 argument. It makes no submissions on the effect
 10 of a composite breach on the time-bar requirement.
 11 Further, Canada disagrees with
 12 the Claimant's characterization of a composite
 13 breach. But that disagreement is ultimately
 14 irrelevant.
 15 Even if the Claimant was able
 16 to explain why we are looking at a composite
 17 breach, any such breach would have to be assessed
 18 with a date where the Claimant knew of the first
 19 act in the series of measures.
 20 The ILC articles on state
 21 responsibility provide guidance on how to analyze
 22 a composite measure.
 23 In Article 15.2, the ILC makes
 24 clear that the breach is dated to the first of
 25 acts in the series, not the last.

1 The first act, in our case, is
2 undoubtedly prior to the critical date, as all of
3 the complaint of Ontario's measures predate the
4 Windstream I Award.

5 Madam President, members of
6 the Tribunal, as you have heard, the Claimant's
7 case fundamentally rests on its challenge of
8 Ontario's measures that are all time-barred.

9 No matter its characterization
10 of the measures, it has acquired knowledge of the
11 alleged breach and loss prior to the critical
12 date.

13 That means the Claimant has
14 failed to meet its burden to establish the
15 Tribunal's jurisdiction *ratione temporis*. Its
16 case must, therefore, be dismissed.

17 I thank you and I will give
18 the floor to my colleague Ms. Dosman who will
19 present Canada's arguments on liability.

20 PRESIDING ARBITRATOR MILES:

21 Thank you.

22 OPENING STATEMENT BY MS. DOSMAN:

23 Good afternoon. Before I
24 proceed to submissions on liability, I would like
25 to address the Tribunal's question on force

1 majeure.

2 WWIS's notice of force
3 majeure, under the FIT Contract, is Exhibit
4 C-0408. And I have asked for it to be pulled up
5 on the screen.

6 Okay. So, zooming in, we can
7 see the date of the document is December 2010.
8 The date of force majeure is November 2010. We
9 can see under a little box, "type of force
10 majeure", they have identified
11 certificate/permitting/licensing, with further
12 details given in Exhibit A.

13 So let's go down to page 3 of
14 the PDF.

15 We have here, in these
16 paragraphs, a description of events leading to the
17 force majeure.

18 In paragraph 3, it's noted
19 that Windstream will be required to complete a
20 site release process.

21 It's also noted that
22 Windstream was aware, as of the date of the
23 signing of the FIT Contract, that a site release
24 process had yet to be issued for offshore wind
25 projects.

1 If we can scroll down to
2 page 5, paragraph 13. In the summary, the force
3 majeure notice states that:

4 "The key items that are
5 being held up by the
6 absence of a site release
7 process." [as read]

8 Again, that was known to WWIS
9 prior to entering into the contract.

10 Are:

11 "(a), wind testing, and
12 (b), discussion of a
13 reconfiguration which is
14 required to define the
15 Project area and to plan
16 field studies for
17 engineering and the
18 REA." [as read]

19 Just so you -- so the IESO
20 accepted this notice of force majeure.

21 And so that you have it handy,
22 the FIT Contract defines force majeure at
23 Section 10.3. And the relevant subsection is (i).

24 And it is uncontested that
25 this force majeure notice remained in effect at

1 all times from 2010 through to the termination of
2 the FIT Contract.

3 With that, I will turn to --
4 PRESIDING ARBITRATOR MILES:
5 Just before you do.

6 MS. DOSMAN: Yes, please.
7 PRESIDING ARBITRATOR MILES:
8 It caught my eye in the paragraph. You popped up
9 quite quickly. It said "in addition".

10 And the discussion of
11 regulatory impediments has a para 2 beforehand
12 which says a situation that has resulted in force
13 majeure is unique among those entering into FITs,
14 WWIS Project is subject to several regulatory
15 processes such as REA that allow it --

16 MS. DOSMAN: Um-hmm --
17 PRESIDING ARBITRATOR MILES:
18 In addition, it requires land tenure.

19 MS. DOSMAN: Yes.
20 PRESIDING ARBITRATOR MILES:
21 So I understood from your answer earlier and your
22 answer just now that this was the land tenure
23 issue was the basis for the force majeure so it's
24 not what this says.

25 MS. DOSMAN: No, it's actually

1 prior to land tenure.
 2 So land tenure was required
 3 but this process, the site release process was a
 4 multi-stage process with the Ministry of Natural
 5 Resources whereby an applicant of record, so you
 6 had to go through this process that had not fully
 7 been established for offshore wind. You had to
 8 become an applicant of record which would allow
 9 you priority access for testing on the Project
 10 site.
 11 It was not land tenure. Land
 12 tenure was a separate issue whereby a lease would
 13 have to be entered into with regard to a
 14 disposition for the Project area.
 15 PRESIDING ARBITRATOR MILES: I
 16 understand.
 17 So a site release process,
 18 proper noun, is the lack of that is the force
 19 majeure event?
 20 MS. DOSMAN: Yes. Well, the
 21 lack of a process, yes.
 22 PRESIDING ARBITRATOR MILES:
 23 And what about the recent request by Windstream to
 24 allow retesting, reconfiguration of the Project
 25 area being refused?

1 MS. DOSMAN: Yes.
 2 So there were several problems
 3 with Windstream's -- so they did put in an
 4 application for applicant of record status.
 5 As a result of discussions,
 6 the government wanted to impose or was considering
 7 imposing a 5 kilometre set back from the shore.
 8 So, in their applicant of
 9 record application, WWIS had identified a Project
 10 location on grid cells, parts of Crown land, that
 11 would have been within the 5 kilometres.
 12 So they were in discussions
 13 with MNR, and this was, I believe, in the summer,
 14 early fall. They wanted to change their applicant
 15 of record application for new grid cells. And
 16 perhaps I can get into the details tomorrow. I
 17 can bring it up a bit later.
 18 But, essentially, they needed
 19 to move the location of the Project. They were
 20 okay with moving the location of the Project, but
 21 they had not reached agreement on that with the
 22 Ministry of Natural Resources.
 23 PRESIDING ARBITRATOR MILES:
 24 Okay. So the next paragraph you took us to was 13
 25 and the wind testing, the discussion of

1 reconfiguration, they were a consequence of the
 2 absence of the site release process.
 3 MS. DOSMAN: Correct, yeah.
 4 PRESIDING ARBITRATOR MILES:
 5 The site release process is the event that gives
 6 rise to the force majeure and a bunch of other
 7 claims fall on --
 8 MS. DOSMAN: Exactly. They
 9 did not have access to the site in order to even
 10 begin initial testing on the proposed site.
 11 PRESIDING ARBITRATOR MILES:
 12 Okay.
 13 And then, on the first page of
 14 that document, there were types of force majeure,
 15 took us to the X on
 16 "certificate/permitting/licensing". There was
 17 also "other".
 18 MS. DOSMAN: I believe they
 19 mean please read all of Exhibit A. That's all
 20 that the document tells us, in any event.
 21 PRESIDING ARBITRATOR MILES:
 22 Okay. So that the site release process would be a
 23 certificate/permitting/licensing issue?
 24 MS. DOSMAN: I wouldn't like
 25 to speculate.

1 PRESIDING ARBITRATOR MILES:
 2 No, okay. If not, it's an other.
 3 MS. DOSMAN: Yes. I think --
 4 PRESIDING ARBITRATOR MILES:
 5 That's fine.
 6 MS. DOSMAN: I think that
 7 might be please don't just look at the tick box.
 8 Please read our submission.
 9 PRESIDING ARBITRATOR MILES:
 10 Okay.
 11 MS. DOSMAN: Okay. Moving
 12 on --
 13 PRESIDING ARBITRATOR MILES:
 14 Sorry, and although this is Ontario header.
 15 MS. DOSMAN: So this is the
 16 form, yeah.
 17 PRESIDING ARBITRATOR MILES:
 18 Yeah, this is Windstream document.
 19 MS. DOSMAN: Absolutely, yes.
 20 Yes, absolutely.
 21 PRESIDING ARBITRATOR MILES:
 22 Understood.
 23 All right. Thanks.
 24 MS. DOSMAN: No problem.
 25 Turning to liability.

1 First, I am going to explain
 2 this afternoon that the Claimant has failed to
 3 establish an indirect expropriation. And then I
 4 am going to demonstrate that the Claimant has also
 5 failed to establish a breach of the minimum
 6 standard of treatment.
 7 Turning first to the
 8 Claimant's allegations on expropriation.
 9 As the Windstream I Tribunal
 10 acknowledged, Article 1110 of the NAFTA sets out
 11 the criteria for legality of expropriation and
 12 defines the modalities of compensation, but does
 13 not provide criteria for determining whether or
 14 when an expropriation has taken place.
 15 As a result, recourse to
 16 customary international law is required. The
 17 reference there is to Canada's Rejoinder at
 18 paragraph 146.
 19 As to the content of customary
 20 international law on this point, the three NAFTA
 21 Parties recently set out their shared
 22 understanding in Annex 14(b) of the Canada-United
 23 States-Mexico, or CUSMA.
 24 The Tribunal should,
 25 therefore, apply the recently reaffirmed approach

1 to determine whether an indirect expropriation has
 2 taken place.
 3 It should ask, as a threshold
 4 matter, whether the impugned measures interfere
 5 with a property right or interest in an
 6 investment.
 7 If so, it should conduct a
 8 fact-specific analysis considering factors
 9 including the economic impact of the measure, the
 10 Claimant's reasonable investment-backed
 11 expectations and the character of the government
 12 action.
 13 Turning to the threshold
 14 question. We have two elements here. The
 15 Claimant must hold a property right or property
 16 interest in an investment.
 17 Now, the Claimant acknowledges
 18 that it must have had a vested property right or
 19 interest that is capable of expropriation. And
 20 the reference there is to the Claimant's Reply
 21 memorial at paragraph 326.
 22 It is their burden to
 23 establish.
 24 Now the only evidence we have
 25 on the record on this point is the -- what were

1 the property rights at interest here, are from the
 2 first expert report of Ms. Powell.
 3 And I'd like to call that up.
 4 You were brought to it this morning. Let's go
 5 back to it. Paragraphs 130 and 131. Apologies,
 6 these are not in the slides.
 7 Paragraphs 130 and 131 of the
 8 Powell --
 9 PRESIDING ARBITRATOR MILES:
 10 Were you brought off mic?
 11 MS. DOSMAN: I have. Oh,
 12 dear.
 13 We were brought here this
 14 morning and let's come back to it.
 15 These are unfortunately not in
 16 the slides but, at paragraphs 130 and 131, this is
 17 the evidence we have with respect to the FIT
 18 contract as personal property.
 19 I will note, first of all,
 20 Ms. Powell is here relying on conversations with
 21 her law firm partner, Jay Swartz, who is an expert
 22 in insolvency matters. So this is not her direct
 23 knowledge.
 24 I will also note that these
 25 two paragraphs concern from a bankruptcy

1 perspective.
 2 Relying on Mr. Swartz,
 3 Ms. Powell comes to the conclusion that the FIT
 4 contract could be the subject of a security
 5 interest or could be transferable in bankruptcy.
 6 Fine.
 7 But we are not in the
 8 bankruptcy context.
 9 We know that Canadian property
 10 law is highly context-specific.
 11 We are here in the context of
 12 a claim for expropriation in violation of the
 13 NAFTA, and we must identify something of value
 14 that was alleged to be expropriated.
 15 I will come back to some
 16 remarks from cases on these matters.
 17 For example, the Tribunal in
 18 Merrill and Ring noted that there must be an
 19 actual and demonstrable entitlement of the
 20 investor to a certain benefit under an existing
 21 contract or legal instrument. Expropriation
 22 cannot affect potential interests.
 23 And, as the Tribunal in
 24 Generation Ukraine held, it is important to be
 25 meticulous in identifying the rights duly held by

1 the Claimant at the particular moment when
 2 allegedly expropriatory acts occurred.
 3 In the context, then, of a
 4 claim involving a contract, the key is what was
 5 the Claimant entitled to under that contract.
 6 The Emmis Tribunal noted that
 7 it's the asset itself, the property interest or
 8 shows an action and not its contractual source
 9 that is the subject of an expropriation claim.
 10 Now the Claimant protests -- I
 11 am skipping forward a little bit.
 12 The Claimant protests that
 13 Canada is focusing on the wrong aspect of the FIT
 14 contract and that what matters is the contract as
 15 a whole rather than what entitlements WWIS held
 16 under that contract.
 17 But the Claimant itself
 18 complains that, as a result of the termination of
 19 the FIT Contract, there is no remaining "right to
 20 build and operate a wind farm".
 21 Canada's point here is that
 22 the FIT Contract did not entitle the supplier to a
 23 right for its Project to reach commercial
 24 operation.
 25 Of course, if a Project

1 reached commercial operation, the IESO was
 2 required to buy the energy produced at a certain
 3 price for a certain amount of time.
 4 But there was no guarantee
 5 that a supplier would reach that stage. In fact,
 6 the FIT Contract contains a long list of
 7 termination rights. It also lists the many
 8 requirements necessary for the IESO to issue a
 9 notice to proceed.
 10 So I have done my best.
 11 Perhaps I will come back more in closing on the
 12 Tribunal's fourth question.
 13 But, essentially, the Claimant
 14 is required to establish a vested property right.
 15 The only evidence we have is hearsay and from the
 16 wrong context.
 17 PRESIDING ARBITRATOR MILES:
 18 Okay.
 19 CO-ARBITRATOR GOTANDA: Then I
 20 am going to jump a little ahead then.
 21 MS. DOSMAN: Okay.
 22 CO-ARBITRATOR GOTANDA: Why
 23 isn't a vested property right, a well recognized
 24 property right, they have got the contract but
 25 they could lose it, vested, subject to

1 defeasance.
 2 Versus a contingent right is
 3 they don't get the contract until they meet
 4 certain rights.
 5 I am going to also argue that
 6 a contingent right, in and of itself, can be a
 7 very valuable right that's recognized under -- I
 8 am sure in the Canadian law as well there is some
 9 US law and Mexican law.
 10 So the fact that it's
 11 contingent doesn't mean it isn't valuable.
 12 But why isn't this a vested
 13 right subject to defeasance and not a
 14 contingent?
 15 MS. DOSMAN: So I think --
 16 CO-ARBITRATOR GOTANDA:
 17 Remember, it's the condition precedent versus a
 18 condition subsequent.
 19 MS. DOSMAN: Perhaps just a
 20 little context for answering the question.
 21 International law does not
 22 create property rights. And so it's undisputed,
 23 as between both disputing parties, that a property
 24 is a matter of domestic law.
 25 And I think even in the

1 phrasing of your question, there's good reason for
 2 that. For example, I am not sure what "subject to
 3 defeasance" means. We should have before us
 4 evidence --
 5 CO-ARBITRATOR GOTANDA: You
 6 can lose it. Right. It's yours but you can lose
 7 it. Versus contingent means you don't have it
 8 yet, right, until the condition is satisfied.
 9 The key is where is the
 10 condition? If it's on the front-end, it's a
 11 contingent right. If it's on the back end, it's
 12 defeasance.
 13 MS. DOSMAN: So two points.
 14 First, just to conclude on my
 15 preliminary remarks which is that property law is
 16 very complicated. We know that from the Saulnier
 17 case. Especially in Canada. A thing can be
 18 property for one purpose and not for others.
 19 So the context is important
 20 and we don't have that context here. We don't
 21 have evidence about what context we are in or what
 22 property rights would attach in the relevant
 23 context.
 24 To your second question,
 25 whether the right was contingent or subject to

1 defeasance, what they didn't have was a right to
2 build a wind farm.
3 They had a right to if they
4 got, if they got there, what the contract gave
5 them was a very advantageous price and term for
6 which to sell the energy to the IESO and the IESO
7 is required to take it.

8 We are not saying this was an
9 invalid contract. We are saying that the rights
10 granted under it did not extend as far as the
11 Claimants suggest.

12 PRESIDING ARBITRATOR MILES:
13 Can I come back to your Slide 93. And to the
14 agreement on interpretation for expropriation.

15 MS. DOSMAN: Yes.

16 PRESIDING ARBITRATOR MILES: I
17 understand the Claimants have made a series of
18 arguments in response to this that they don't
19 apply, they don't retroactively effect NAFTA. But
20 my question was slightly different.

21 Did you argue that they would
22 apply in the first arbitration?

23 MS. DOSMAN: I will have to
24 check because I wasn't here.

25 I believe that they did

1 mention CUSMA Annex 14-B which would not have
2 been in force at that time. It was maybe under
3 negotiation. I will have to check on that.

4 PRESIDING ARBITRATOR MILES: I
5 think it is August 2014 --

6 MS. DOSMAN: I think it did.

7 PRESIDING ARBITRATOR MILES:
8 When you say "it" did, do you mean "it" being
9 Canada or "it" being the Tribunal?

10 MS. DOSMAN: Sorry, I think we
11 are talking about different things.

12 I thought we were talking
13 about the Annex in CUSMA that sets out the
14 relevant --

15 PRESIDING ARBITRATOR MILES:
16 Yes, that's exactly what we are talking about.

17 Did Canada rely on Annex 14-B
18 in the first proceedings.

19 MS. DOSMAN: We relied on
20 similar annexes, for example, in the US model BIT.
21 It has the same approach that was later adopted in
22 CUSMA.

23 PRESIDING ARBITRATOR MILES:
24 Okay.

25 So the Tribunal did not rely

1 on CUSMA for its finding as to --

2 MS. DOSMAN: Correct.

3 PRESIDING ARBITRATOR MILES:
4 As to what test needs to be applied.

5 MS. DOSMAN: Yes.

6 PRESIDING ARBITRATOR MILES:
7 To what extent, if at all, in particular, given
8 how much you rely on res judicata, are we bound by
9 the Tribunal's decision as to what test we should
10 apply to expropriation?

11 MS. DOSMAN: Yeah. Our view
12 is that they went straight to substantial
13 deprivation. There is no question of that.

14 They didn't complete the
15 analysis because, looking only at the element of
16 substantial deprivation, it was clear that no
17 expropriation was made out.

18 Again, I don't want to go
19 farther than that. I don't know what they were
20 thinking. I don't see, in the Award, a clear
21 determination that this threshold issue is not
22 relevant.

23 PRESIDING ARBITRATOR MILES:
24 Okay.

25 So then that, I think, brings

1 me to my final question in the chain.

2 Are there any elements in the
3 criteria that you set out based on the Annex in
4 your Slides 93, 94 and 95 and in both your
5 submissions, in your submission, new to what
6 already existed in the law? So are they
7 descriptive or prescriptive?

8 MS. DOSMAN: So these elements
9 are meant to be, as I understand it, a reflection
10 of customary international law.

11 So given the fluid -- you
12 know, the imprecise nature, the CUSMA parties set
13 out to define exactly -- and I believe if we pull
14 up the entire text, we will see their exact
15 intention in reflecting customary international
16 law in the Annex.

17 PRESIDING ARBITRATOR MILES:
18 Okay.

19 So it's not your submission
20 that the criteria required to establish
21 expropriation are created by the CUSMA Annex?

22 MS. DOSMAN: Correct.

23 Absolutely.

24 PRESIDING ARBITRATOR MILES:
25 Okay. Very good. Thank you.

Page 361

1 MS. DOSMAN: Yes.
 2 So we are still in the
 3 threshold question here but we have only looked at
 4 the first element whether there is a property
 5 right or interest.
 6 I'd like to look now at the
 7 second.
 8 CO-ARBITRATOR MCLACHLIN: Can
 9 I just ask you, is interest different than
 10 property right? You have talked a lot about -- is
 11 interest different than property right?
 12 MS. DOSMAN: This is a
 13 question I unfortunately have had to pose to
 14 myself many times.
 15 But, no, they are used
 16 together, right or property -- sorry, interest or
 17 right.
 18 So the second element of this
 19 threshold issue is whether the Claimant has
 20 identified an investment capable of expropriation.
 21 And we went over some of this
 22 ground this morning. I think it's worth doing
 23 again.
 24 I'd like to recall what the
 25 alleged -- what the investment was in Windstream

Page 363

1 comparables analysis of early stage projects, the
 2 Tribunal found the overall value of the investment
 3 was just over \$31 million Canadian, including all
 4 of the elements there that we see on the left.
 5 However, of that total value,
 6 6 million remained available to the Claimant, the
 7 security deposit, which was still held by the
 8 IESO.
 9 So that amount would be
 10 deducted from the damages Award, leaving an amount
 11 of just over \$25 million.
 12 This has been --
 13 PRESIDING ARBITRATOR MILES:
 14 Yes.
 15 MS. DOSMAN: Yes?
 16 PRESIDING ARBITRATOR MILES:
 17 Yeah.
 18 So is it right that the
 19 Tribunal didn't value the FIT Contract?
 20 Because it says, at
 21 paragraph 483, this is the full value of the
 22 investment. The Claimant has not lost its letter
 23 of credit which is still in place, and the FIT is
 24 still in force. Could, in theory, be
 25 renegotiated.

Page 362

1 I.
 2 There were three overlapping
 3 elements -- and I am not sure what the slide
 4 number is but we can fast forward to it.
 5 There were three overlapping
 6 elements, as we heard from Mr. Terry: There was
 7 WWIS, the Ontario enterprise; there was the
 8 Project, which was said to comprise the FIT
 9 contract, the letter of credit, work product,
 10 data, the onshore meteorological tower, et cetera;
 11 and then, third, the FIT correct.
 12 So the third component is, in
 13 fact, fully under the umbrella of the Project.
 14 So we know that the Windstream
 15 I Tribunal found Canada to be in breach. How did
 16 it value the investment?
 17 It did not separately value
 18 WWIS and it did not separately value the FIT
 19 contract, although it made clear that, in the real
 20 world, the contract had no value as at the date of
 21 the Award.
 22 It determined the value of the
 23 investment of the value of the Project, including
 24 the FIT Contract and the security deposit.
 25 On the basis, then, of a

Page 364

1 Consequently, in order to
 2 quantify the damage for the breach, a further
 3 adjustment must be made to reflect the value of
 4 the letter of credit.
 5 On the other hand, it's not
 6 appropriate to make an adjustment in respect of
 7 the FIT because, as at the date of this Award,
 8 it cannot be considered to have any value.
 9 Why is that not valuing the
 10 FIT Contract and valuing the letter of credit?
 11 I take your point at Slide 101
 12 that the valuation of the entirety of the Project
 13 had, as a fundamental element, and it went,
 14 indeed, to what methodology we use as to what
 15 elements went into that Project. So I accept all
 16 of that. That the Tribunal considered the FIT
 17 element in order to value the entire enterprise.
 18 But then insofar as it then
 19 subcontracted the value of certain elements, is
 20 that not at least a semblance of an attempt to
 21 value those elements in their subtraction?
 22 MS. DOSMAN: Yes. I mean,
 23 there's no dispute that the FIT Contract was the
 24 element that they would have seen compared to the
 25 other elements that would have had value, I

1 believe.
 2 And I think, if we go to the
 3 next slide, we will just see another kind of
 4 nuance that helped me to understand what the first
 5 Tribunal meant when it was talking about the
 6 Claimant's investment.
 7 And it wrote that:
 8 "Although it accepted
 9 that the Claimant's
 10 investment consisted not
 11 only of the sunk costs
 12 and the security deposit,
 13 but also of a value
 14 created by the Claimant
 15 in developing the
 16 Project. The value of
 17 the asset that is still
 18 available, i.e. the
 19 security deposit, is
 20 substantial."[as read]
 21 So what I mean by they didn't
 22 separately value the FIT Contract is they didn't
 23 put a number on how much of that value of that 25
 24 million remaining, how much of that was
 25 development value, how much of that -- they

1 approximated some sunk costs.
 2 PRESIDING ARBITRATOR MILES:
 3 Oh, I see.
 4 MS. DOSMAN: Certainly, the
 5 FIT Contract was part of the Project in their
 6 valuation. I just mean they didn't give it a
 7 particular figure.
 8 PRESIDING ARBITRATOR MILES:
 9 But they couldn't have and wouldn't have because
 10 they used a market comparable methodology.
 11 MS. DOSMAN: Right. Yes, yes.
 12 PRESIDING ARBITRATOR MILES:
 13 Had they used a sunk cost or investment cost
 14 methodology, then they could have done that.
 15 MS. DOSMAN: Perhaps, yes.
 16 PRESIDING ARBITRATOR MILES:
 17 Also, if they used a DCF, subcontracting FIT from
 18 a DCF net present value wouldn't make a lot of
 19 sense; would it?
 20 MS. DOSMAN: No, it would not.
 21 PRESIDING ARBITRATOR MILES:
 22 All right.
 23 CO-ARBITRATOR GOTANDA: So
 24 wouldn't it make more sense that they actually
 25 took the value of the FIT Contract as part of the

1 Project, as illustrated on your slide, because
 2 that's the only way that they could have then used
 3 a comparable analysis.
 4 Because, without the FIT
 5 contract, you can't compare it to other -- in
 6 other words, if you don't have the FIT, you don't
 7 have -- you don't have anything and you can't
 8 compare it; right?
 9 MS. DOSMAN: I think that is
 10 something that we will come back to in damages.
 11 Because that is one of the elements that makes a
 12 differentiator as to the value of a Project.
 13 Where are you in the PPA or the FIT Contract.
 14 CO-ARBITRATOR GOTANDA: So
 15 wouldn't the Tribunal then saying we are looking,
 16 really, here to what's left to take out further,
 17 like in the future or something. Because the
 18 contract's still there.
 19 So we grapple with this and
 20 the questions all morning and now are really
 21 focused on sort of what was the Tribunal trying to
 22 say was left here.
 23 MS. DOSMAN: Yeah.
 24 PRESIDING ARBITRATOR MILES: I
 25 mean, the Tribunal's clearly saying there is

1 something the Claimant hasn't lost yet.
 2 MS. DOSMAN: Yes.
 3 And our answer to that is,
 4 what it hasn't lost is the \$6 million security
 5 deposit, as we believe it makes clear there.
 6 The value of the asset that is
 7 still available to the Claimant, as it has not
 8 been taken, the security deposit is substantial,
 9 the value of the asset.
 10 PRESIDING ARBITRATOR MILES:
 11 You have got 291 up.
 12 MS. DOSMAN: Yes.
 13 PRESIDING ARBITRATOR MILES:
 14 Right, yeah. And it's the penultimate sentence of
 15 291.
 16 Is it -- this comes back to
 17 our very first questions this morning to
 18 Mr. Terry.
 19 MS. DOSMAN: Um-hmm, yeah,
 20 yeah.
 21 PRESIDING ARBITRATOR MILES:
 22 The security deposit was a requirement under the
 23 FIT Contract.
 24 MS. DOSMAN: Correct.
 25 PRESIDING ARBITRATOR MILES:

1 So although the Tribunal seemed to create two
 2 pieces of the orange which it took out, they were
 3 really two obligations under -- maybe not two
 4 obligations but a contract and an obligation that
 5 existed under a contract.
 6 MS. DOSMAN: I am not sure I'd
 7 agree.
 8 PRESIDING ARBITRATOR MILES:
 9 Okay.
 10 MS. DOSMAN: They were valuing
 11 the investment as a whole. We know that. The
 12 Project.
 13 And I think the Tribunal was
 14 concerned, both in its expropriation analysis and
 15 for proper damages purposes, to extract the value
 16 of the asset that remained to them. That was the
 17 only thing that remained in the real world.
 18 So -- and bear in mind, the 31
 19 million is the but-for world; right.
 20 In the real world, the 6
 21 million existed. It was in the Royal Bank of
 22 Scotland. And so that couldn't properly be
 23 considered as something that had been lost.
 24 CO-ARBITRATOR MCLACHLIN: They
 25 are saying it's obvious, I think, that they had

1 invested 6 million.
 2 MS. DOSMAN: Um-hmm.
 3 CO-ARBITRATOR MCLACHLIN: It
 4 happened to be called a letter of credit.
 5 MS. DOSMAN: Um-hmm.
 6 CO-ARBITRATOR MCLACHLIN: But
 7 it was still an investment. They had come up with
 8 the money and so it was part of the investment for
 9 purposes of the analysis.
 10 MS. DOSMAN: Right. Exactly.
 11 CO-ARBITRATOR MCLACHLIN: Is
 12 that right?
 13 MS. DOSMAN: Exactly.
 14 As the Claimant had identified
 15 in its list of components in the Project, the
 16 letter of credit is included there.
 17 And, because it hadn't been
 18 taken, it was substantial enough compared to the
 19 overall value of the investment that the Tribunal
 20 could not determine -- you see there in the last
 21 sentence.
 22 "The Tribunal is unable to
 23 conclude that the Claimant has been substantially
 24 deprived of the value of its investment." Why?
 25 The value of the asset that is still available to

1 it, the security deposit, is substantial compared
 2 to the overall value of the investment.
 3 CO-ARBITRATOR MCLACHLIN: Does
 4 that mean they have been deprived of, going back
 5 to Slide 102 -- we will leave the FIT Contract
 6 aside because they dealt with that, but the data,
 7 the meteorological tower, the turbine supply and
 8 the land leases?
 9 MS. DOSMAN: No. I mean, my
 10 view is they really -- they looked at that piece
 11 and in the context of their valuation of the
 12 breach for FET -- or for MST.
 13 And having come to that view
 14 that the overall value was 31 million, they didn't
 15 have to go further than substantial deprivation.
 16 They still had 6 of 31. That's not enough to
 17 constitute substantial deprivation such that an
 18 expropriation can have taken place.
 19 Does that -- I want to make
 20 sure I am answering your question.
 21 CO-ARBITRATOR MCLACHLIN: You
 22 probably are. It's probably my fault.
 23 But it seems to me you would
 24 look at all of the elements at Slide 102; wouldn't
 25 you?

1 I don't want to belabour this.
 2 It's my understanding.
 3 So, when you're looking at
 4 what the investment was, you would look at WWIS
 5 and you say, well, that just duplicates the
 6 Project so we are not going to do anything there.
 7 There is no substantial deprivation there at all.
 8 The FIT Contract, we later
 9 find, it had no value. So that's not a
 10 substantial deprivation.
 11 The work product, the
 12 \$6 million letter of credit is because of they had
 13 to pay that out and it's not available to them and
 14 it's being held.
 15 So that is available as a
 16 substantial deprivation.
 17 But what I am wondering about
 18 is what about the work product, the data, the
 19 meteorological tower, the turbines, supply
 20 agreement and the land leases?
 21 Did the Tribunal conclude that
 22 the Claimant had been deprived of those or did
 23 they just sort of lump it into the 25 million?
 24 And, if they lumped it into 25 million, it kind of
 25 doesn't seem to follow the methodology that I have

1 been trying to follow you as describing.
 2 MS. DOSMAN: Yes. Okay, and
 3 perhaps it's helpful to go through how they came
 4 to the 31 million in a very high level because
 5 Ms. Squires is the expert on this.
 6 They conducted a comparable
 7 transactions analysis, so they looked at other
 8 early stage projects because they are valuing the
 9 Project as a whole, all of the elements.
 10 CO-ARBITRATOR MCLACHLIN:
 11 Okay.
 12 MS. DOSMAN: And they found
 13 comparable to other, you know, where they are at
 14 in their risk profile, et cetera, this whole
 15 Project, we are going to say, 31 million, based on
 16 the evidence of Dr. Guillet who you will hear from
 17 this week as well.
 18 CO-ARBITRATOR MCLACHLIN: And,
 19 in doing that, we have compensated for the work
 20 product, the data, the meteorological tower.
 21 MS. DOSMAN: The entire
 22 investment minus the 6.
 23 CO-ARBITRATOR MCLACHLIN: And
 24 that's what the 25-plus represents.
 25 MS. DOSMAN: Exactly. It

1 represents the value of the investment minus the
 2 \$6 million letter of credit.
 3 CO-ARBITRATOR MCLACHLIN:
 4 Yeah. Okay. Thank you.
 5 MS. DOSMAN: And just maybe
 6 one point.
 7 They didn't quantify like sunk
 8 costs with respect to each item. Like they went
 9 for DCF, that was rejected. So they went for --
 10 the Tribunal adopted a comparables approach,
 11 rather than a sunk costs approach.
 12 And perhaps also, on
 13 expropriation more generally, Tribunals tend to
 14 look at the value of the investment as a whole,
 15 rather than looking at each individual element.
 16 CO-ARBITRATOR MCLACHLIN:
 17 Okay.
 18 PRESIDING ARBITRATOR MILES:
 19 They did a sunk cost reality check.
 20 MS. DOSMAN: Did you?
 21 PRESIDING ARBITRATOR MILES:
 22 No, I didn't.
 23 MS. DOSMAN: I have done
 24 that -- oh, sorry.
 25 PRESIDING ARBITRATOR MILES: I

1 didn't on this Tribunal. But that Tribunal, at
 2 paragraph 481, talked about the sunk cost reality
 3 check.
 4 MS. DOSMAN: Yes. They used
 5 it, as you say, as a check.
 6 CO-ARBITRATOR GOTANDA: So, if
 7 I understand correctly -- and I am hoping you
 8 agree with me -- the FIT Contract, the Tribunal
 9 looked at comparables and the comparables
 10 probably, the way it's constructed or what they
 11 are comparing, essentially, what they gave them
 12 was for the value of that FIT Contract that was
 13 destroyed or lost.
 14 MS. DOSMAN: The value of the
 15 Project, yes.
 16 CO-ARBITRATOR GOTANDA: Right.
 17 Right.
 18 MS. DOSMAN: Yeah.
 19 CO-ARBITRATOR GOTANDA: So
 20 your argument is they have already been
 21 compensated for the entirety of what they lost on
 22 the FIT Contract.
 23 MS. DOSMAN: Correct.
 24 Correct.
 25 CO-ARBITRATOR GOTANDA: So

1 now, taking it one step further, though, and
 2 following the Tribunal's logic here that says its
 3 valueless now but you have got something because
 4 it's not, it's not gone in terms of it hasn't been
 5 actually terminated at this point.
 6 MS. DOSMAN: Um-hmm, um-hmm.
 7 CO-ARBITRATOR GOTANDA: It can
 8 still possibly have value, they say that, by the
 9 parties created it.
 10 MS. DOSMAN: Um-hmm.
 11 CO-ARBITRATOR GOTANDA: But it
 12 can still possibly have value, could it, apart
 13 from what the parties create, just because
 14 circumstances make it more valuable; right.
 15 And that was what I was
 16 getting to earlier where the market rises and, all
 17 of a sudden, when the contract is terminated,
 18 assuming it's wrongful, it might not be, and your
 19 argument, I get, is that there's no reasonable
 20 investment-backed expectation as well as no
 21 expropriation.
 22 But, if there is an
 23 expropriation, you could value it, at that point,
 24 on the difference between the value at the date
 25 that it was terminated, expropriated, that short

1 period of time, that window could be valued,
 2 couldn't it, by looking at how the market changed?
 3 MS. DOSMAN: So I think it's
 4 important to look at the FIT Contract and where it
 5 was.
 6 So the termination right,
 7 under Section 10.1(g), was inevitable. This was a
 8 question of the Tribunal. It was impossible for
 9 them to come to commercial operation in time.
 10 We have evidence from
 11 Ms. Powell who states that, in her view, lenders
 12 would not finance a Project unless that type of
 13 right, termination right, was waived.
 14 So what they had was a
 15 contract that was going to be terminated -- I
 16 mean, in a blue sky world where everything is
 17 rewritten, sure, fine. But, in this world, they
 18 had a contract that was -- where a mutual right of
 19 termination would inevitably arise. And that was
 20 not financeable in any way.
 21 So I suppose it depends on
 22 which factors you are taking into account. We
 23 will get, in a little bit, to what the factual
 24 circumstances, in fact, were in the market.
 25 But, from the perspective of

1 the FIT Contract, nothing in the market could make
 2 it achieve commercial operation on time.
 3 CO-ARBITRATOR GOTANDA: Except
 4 if the termination was wrongful?
 5 MS. DOSMAN: Well, the
 6 termination would have to be wrongful. The
 7 moratorium would have to be reversed. The
 8 contract would have to be amended and.
 9 CO-ARBITRATOR GOTANDA: Yeah.
 10 MS. DOSMAN: Yeah.
 11 CO-ARBITRATOR GOTANDA: Okay.
 12 Thank you.
 13 MS. DOSMAN: Yes.
 14 PRESIDING ARBITRATOR MILES:
 15 Can I just come back to your pie.
 16 MS. DOSMAN: Yes, please.
 17 PRESIDING ARBITRATOR MILES:
 18 Or orange.
 19 MS. DOSMAN: I like the pie.
 20 PRESIDING ARBITRATOR MILES: I
 21 am on Slide 103.
 22 I understand entirely the point
 23 you're making with these slides and, if I may, I
 24 think it's a very helpful way to present it.
 25 So I understand the point

1 you're making is that the valuation approach of
 2 the Windstream I Tribunal was to value the Project
 3 in its entirety which necessarily included the FIT
 4 contract.
 5 Now, parentheses, you can
 6 value an early stage renewables Project without an
 7 FIT Contract and Mr. Guillet would say it's more
 8 often than not that you would have early stage
 9 without an FIT.
 10 But, that aside, here, they
 11 valued what they had.
 12 MS. DOSMAN: Um-hmm.
 13 PRESIDING ARBITRATOR MILES:
 14 Here, you have done the bottom, the FIT Contract,
 15 in this illustration because that's what the
 16 Claimant is saying.
 17 MS. DOSMAN: This is exactly
 18 as presented by the Claimant.
 19 PRESIDING ARBITRATOR MILES:
 20 Yeah.
 21 But then the pie over to the
 22 right is yours.
 23 MS. DOSMAN: It is.
 24 PRESIDING ARBITRATOR MILES:
 25 And you say, you are decoupling the FIT Contract

1 from the \$6 million. So you're treating the
 2 letter of credit, \$6 million, as a \$6 million
 3 asset that was not part of the valuation, so was
 4 deducted.
 5 MS. DOSMAN: Correct.
 6 PRESIDING ARBITRATOR MILES:
 7 And treating that as something entirely separate
 8 and apart from the FIT Contract.
 9 In this illustration.
 10 MS. DOSMAN: In the way that
 11 the claim was pled, it was said to be a separate
 12 item, a component of the investment.
 13 In the way that the Windstream
 14 I Tribunal treated the investment, it formed part
 15 of the value of the investment.
 16 PRESIDING ARBITRATOR MILES:
 17 Can you just talk me through that. I am not sure
 18 I understand that nuance.
 19 In the way the claim was pled,
 20 it was said -- so it was a separate investment?
 21 MS. DOSMAN: This is and, by
 22 the way, this is Windstream I, how they pled.
 23 PRESIDING ARBITRATOR MILES:
 24 Let me get to the bit that's bothering me.
 25 MS. DOSMAN: Yeah, sure.

1 PRESIDING ARBITRATOR MILES:
 2 Which is really the crux of what this Award, the
 3 potential door, as Professor Gotanda characterized
 4 it.
 5 The letter of credit or the
 6 security deposit didn't exist in isolation in a
 7 vacuum. It was contingent upon the FIT Contract,
 8 3 million 2 to bid for and another 3 million to
 9 obtain for the FIT Contract.
 10 So they were symbiotic, if you
 11 like.
 12 In the period after the
 13 Windstream I Award, not only did the Claimant
 14 still have an FIT Contract, but it continued, as
 15 has been described to us this morning, to be
 16 required to carry the burden of the \$6 million
 17 escrow or deposit or however it was held and
 18 incurred interest costs on that.
 19 And when I look at what the
 20 Tribunal said even more closely, I am not sure it
 21 does decouple the two quite as starkly as I
 22 previously thought or, indeed, as this depiction
 23 would suggest.
 24 The FIT Contract is an element
 25 of the Project. The security deposit is a

1 necessary requirement of the FIT Contract. I can
 2 put a number on that security requirement. I
 3 can't put a number on the rest of the FIT
 4 contract.
 5 MS. DOSMAN: I don't need to.
 6 I am valuing this as a comparables -- comparable
 7 early stage Project.
 8 PRESIDING ARBITRATOR MILES:
 9 Well, then, the Tribunal's reasoning, it does need
 10 to, because it's taken the FIT Contract as an
 11 asset out of the valuation.
 12 MS. DOSMAN: No, it's
 13 including it in the Project.
 14 PRESIDING ARBITRATOR MILES:
 15 And then it subtracts the value of it.
 16 MS. DOSMAN: It subtracts the
 17 value of the collateral or the security that the
 18 Claimant had posted.
 19 PRESIDING ARBITRATOR MILES:
 20 Right.
 21 MS. DOSMAN: Perhaps in the
 22 timing -- so the Award was September 2016. The
 23 right to terminate arose in May 2017. That's a
 24 short period of time it would have been required
 25 to still keep the security deposit.

1 And then we had the
 2 termination, the domestic application and the
 3 termination decision itself.
 4 So, in terms of the period of
 5 time -- I am not sure if this is what you're
 6 getting at but you'll tell me if it's not -- they
 7 were required to keep that part of the investment
 8 going if they wanted to -- or the FIT Contract
 9 coming out of the Windstream I Award still
 10 contained that security deposit requirement.
 11 PRESIDING ARBITRATOR MILES:
 12 Well, they were required to keep that part of the
 13 investment going, period. If they wanted to
 14 anything, they couldn't unilaterally.
 15 MS. DOSMAN: They could have
 16 withdrawn. They could terminate. I mean -- oh,
 17 am I -- sorry, I am wrong about that. Sorry. We
 18 will get to the termination rights. They are very
 19 particular. Sorry about that.
 20 PRESIDING ARBITRATOR MILES:
 21 Right, right.
 22 MS. DOSMAN: I am being waved
 23 down, so just one moment.
 24 PRESIDING ARBITRATOR MILES:
 25 Okay.

1 MS. DOSMAN: I am reminded
 2 that one of the termination rights available to
 3 the Claimant, under the FIT Contract, was the pre
 4 notice to proceed termination right. I believe is
 5 2.4(b).
 6 Prior to the notice to proceed
 7 being issued by the IESO -- and we are well prior
 8 to that -- the Claimant could have terminated and
 9 withdrawn its -- and it would have had its
 10 security deposit returned to it.
 11 So it could have, as of
 12 May 4th, 2012, when it said it could no longer
 13 obtain financing, terminated the contract and
 14 brought back whatever security it had posted.
 15 CO-ARBITRATOR MCLACHLIN: So,
 16 in a sense, the 6 million is tied to the FIT
 17 contract in the sense that the Award in that
 18 paragraph recognizes a potential, the ongoing
 19 nature of the FIT Contract, and a potential for
 20 future value. And in order -- the Claimant has a
 21 choice. If they want to maintain that potential
 22 value and maintain the FIT on foot, they have to
 23 leave the 6 million.
 24 On the other hand, as you just
 25 pointed out, if they called it quits, they could

1 get the 6 million back.
 2 And so that explains, kind
 3 of -- the Tribunal could have reasoned it in a
 4 different way but I think is that, is my
 5 understanding correct, that that's how they were
 6 thinking about it?
 7 MS. DOSMAN: I share that
 8 understanding.
 9 CO-ARBITRATOR MCLACHLIN:
 10 Thank you.
 11 PRESIDING ARBITRATOR MILES:
 12 We might have to come back to this if it matters
 13 but I am not reading 2.4(b) to be a termination
 14 right.
 15 But maybe we will come back to
 16 it. Maybe it won't matter.
 17 MS. DOSMAN: We will find it
 18 for you.
 19 PRESIDING ARBITRATOR MILES:
 20 But I think it is important to understand if the
 21 parties were able to agree overnight, I think it's
 22 important for us to understand if the Claimant, if
 23 it's accepted that the Claimant had a valid
 24 termination, unilateral termination right from
 25 12th of May or 4th of May 2012.

1 MS. DOSMAN: Can we please go
 2 to Slide 145.
 3 This is from the affidavit of
 4 an IESO representative, Mr. Cecchini, in the
 5 domestic application. So we have taken an
 6 extract. This is only a part of the many
 7 termination rights.
 8 But perhaps you could zoom in
 9 on the third row, Ryan.
 10 In Mr. Cecchini's affidavit,
 11 you will find a comprehensive listing of the
 12 termination rights that were present in the FIT
 13 contract and when they were able to be exercised
 14 by each party, in addition to the consequences for
 15 the security deposit.
 16 PRESIDING ARBITRATOR MILES:
 17 Right.
 18 If Windstream terminates the
 19 contract, IESO is entitled to retain the security
 20 deposit. 2.4(a), the last paragraph on the
 21 consequences.
 22 MS. DOSMAN: Right. That
 23 would have been forfeit.
 24 PRESIDING ARBITRATOR MILES:
 25 All right.

1 So the point being I had not
 2 understood that either party were able,
 3 unilaterally, to terminate the FIT prior to the
 4 February 2018 date of termination.
 5 If I am wrong about that, then
 6 you ought to correct me.
 7 MS. DOSMAN: You mean without
 8 consequence.
 9 PRESIDING ARBITRATOR MILES:
 10 Without consequences; right.
 11 MS. DOSMAN: Yes.
 12 PRESIDING ARBITRATOR MILES:
 13 And the consequence for the Claimant, really, is
 14 the consequence we care about because that is the
 15 way the 6 million falls.
 16 MS. DOSMAN: Let us come back
 17 to you with a very clear -- all of the termination
 18 rights and all of their impacts. You are right
 19 that there would have been a consequence in that
 20 circumstance.
 21 PRESIDING ARBITRATOR MILES:
 22 Okay. I actually had --
 23 MS. DOSMAN: We focused so
 24 much on Section 10.1(g) because that's the
 25 termination provision that was, in fact, at issue

1 here but there were many more, as Mr. Cecchini
 2 explains.
 3 And I found the Grasshopper
 4 decision to be helpful in explaining the various
 5 overlapping termination rights available under the
 6 FIT Contract.
 7 PRESIDING ARBITRATOR MILES:
 8 Okay, that's helpful.
 9 And you have characterized the
 10 termination under 10.1(g) as inevitable. It's
 11 inevitable only if the parties hadn't renegotiated
 12 terms; correct?
 13 MS. DOSMAN: I was using the
 14 words of the Claimant. They said it was
 15 inevitable in one of their pleadings in
 16 June 15th -- in June 2015.
 17 PRESIDING ARBITRATOR MILES:
 18 That's their pleading in the first proceeding.
 19 MS. DOSMAN: Right. Right.
 20 So it was not inevitable,
 21 obviously. As the Tribunal recognized, the
 22 contracting parties could do what they wished in
 23 the view of, you know, commercial circumstances.
 24 There was simply no obligation
 25 imposed to renegotiate.

1 It's a contractual matter.
 2 And the contract was followed with respect to the
 3 termination.
 4 So I think we might be able to
 5 fast forward a little bit.
 6 I wanted to make the point, of
 7 course, that we have made that the Award was paid
 8 and the security deposit was returned.
 9 And perhaps we could flip
 10 forward to the slide where we show what the
 11 Claimant alleges is the investment in this
 12 arbitration.
 13 CO-ARBITRATOR MCLACHLIN:
 14 Page.
 15 MS. DOSMAN: Unfortunately, my
 16 slide numbers aren't.
 17 PRESIDING ARBITRATOR MILES:
 18 113 -- it might be before that, 112.
 19 MS. DOSMAN: Here we go.
 20 So the Claimant has alleged,
 21 in this proceeding, the exact same alleged
 22 investment as it did prior.
 23 PRESIDING ARBITRATOR MILES:
 24 Just while I remember, a tiny bit of homework.
 25 You said in the earlier

1 proceedings the Claimants pled the 6 million as a
 2 separate or separate leave.
 3 MS. DOSMAN: Yes.
 4 PRESIDING ARBITRATOR MILES:
 5 Could you just, overnight, get us, through José
 6 Luis -- sorry, are you coming to it?
 7 MS. DOSMAN: No. It was on
 8 the slides when we had the projects, (a) through
 9 (f), those are as the Claimant pled. Those are
 10 its exact words, and so the reference to the
 11 pleading will be on the bottom of the slide.
 12 PRESIDING ARBITRATOR MILES:
 13 Oh, all right.
 14 MS. DOSMAN: Yeah. And you
 15 will see it again here.
 16 The Claimant again seeks
 17 compensation or alleges that it has, as its
 18 investment, FIT Contract, WWIS' work product,
 19 the data, the onshore meteorological tower, et
 20 cetera. It's verbatim the same alleged
 21 investment.
 22 But what actually happened
 23 after the Windstream I Tribunal Award that could
 24 give any of this additional value?
 25 So I'd like to now discuss the

1 additional work that the Claimant did after the
 2 Windstream I Tribunal Award.
 3 Oh, sorry, this is just fun.
 4 So they have the same alleged
 5 investment, and instead of it being valued at 30
 6 million, they now say that it's worth over 300
 7 million. To keep us awake at this stage of the
 8 day.
 9 PRESIDING ARBITRATOR MILES: I
 10 don't think they said it was worth 31 million in
 11 the first proceedings.
 12 MS. DOSMAN: No, no, fair
 13 enough. Fair enough. Fair enough. Keeping me on
 14 my toes.
 15 So let's talk about what's
 16 new, though.
 17 There are three things: There
 18 was a reformatted Project description report;
 19 there was a rerun wind resource assessment; and
 20 there was a reprocessed geological assessment.
 21 And what we are trying to get
 22 at here is one of the Tribunal's questions: What
 23 was the new investment? What changed? Where was
 24 the addition? What was new?
 25 Turning to the reformatted

1 Project description report.
 2 So a PDR, and it was mentioned
 3 this morning, is one of many elements that is
 4 required for a renewable energy approval
 5 application that would go to the Ministry of the
 6 Environment. And it was produced here by Ortech,
 7 which was a consulting firm that had also been
 8 engaged as an expert in the first arbitration.
 9 So Ortech had prepared a
 10 Project description report in 2012, you see on the
 11 left there. And the reference to the record is,
 12 again, in the footer to the slide.
 13 And that 2012 PDR was put to
 14 the Windstream I Tribunal.
 15 After the Windstream Award, in
 16 late 2016, early 2017, Ortech prepared an updated
 17 Project description report, and we can see it
 18 looks a little different.
 19 But what else changed besides
 20 the formatting?
 21 Not much.
 22 They noted that a particular
 23 wind turbine foundation would be used. That's on
 24 page 16 of the PDF. They added a bullet point to
 25 note that a noise assessment would be required.

1 And the map is now in colour.
 2 The 2017 version is also
 3 longer. And why is that? It includes, in
 4 Table 2, a list of studies and reports, and we saw
 5 that in the Claimant's presentation this morning,
 6 in fact.
 7 As the Tribunal noted, all of
 8 these predate the Windstream I Award. The
 9 information in this table was also reproduced in a
 10 separate Ortech document. My friend referred to
 11 it as a status report. I believe it's called a
 12 summary of studies. That's C-2075.
 13 Which replicates the table
 14 that appears here in pages 28 to 30 of the PDF.
 15 So turning to the rerun wind
 16 recourse assessment. Here, it's the same story.
 17 Ortech had prepared a wind
 18 resource assessment for the Windstream I
 19 arbitration in 2015.
 20 And, in 2017, they reran the
 21 assessment using the very same data from prior to
 22 the Windstream I Award.
 23 The only difference was that
 24 they used a different turbine model and Project
 25 layout. And that's it.

1 What about the reprocessed
 2 geological assessment?
 3 In 2010, CSR had done some
 4 geological work.
 5 In 2018, and that's after the
 6 IESO sent its notice of termination, they provided
 7 an updated report.
 8 Again, this rerun report is
 9 based on new turbine locations that is based on a
 10 reprocessed 2010 data. There's nothing new here
 11 and, in our submission, certainly nothing that
 12 advances the Project.
 13 As Mr. Baines stated in 2012:
 14 "Our current endeavour is
 15 suing under NAFTA to
 16 recover lost profits. We
 17 won a similar case in
 18 2016, but unfortunately
 19 the Project is no closer
 20 to being built."[as read]
 21 So all of this, recall, is in
 22 our threshold question of what does the -- what
 23 does the Claimant allege was taken?
 24 They are alleging that
 25 something was taken that did not exist.

1 The Claimant's case is that
 2 the expropriation -- the case on expropriation is
 3 that Ontario was required to create value that was
 4 then expropriated. So it's entirely circular.
 5 They have not identified any investment capable of
 6 expropriation.
 7 And, in our submission, the
 8 expropriation inquiry can end there. They have
 9 not passed the threshold to get into determining
 10 whether, on these facts, the Claimant has
 11 established an indirect expropriation.
 12 I can be relatively quick in
 13 finishing on expropriation and then perhaps if we
 14 would want to take a break, I am in your hands.
 15 PRESIDING ARBITRATOR MILES:
 16 Just on your point, something taken that did not
 17 exist. The FIT Contract did exist.
 18 MS. DOSMAN: It existed.
 19 PRESIDING ARBITRATOR MILES:
 20 Right.
 21 So, presumably, your
 22 submission is not they are alleging something was
 23 taken that did not exist. But, rather, it's they
 24 are alleging something was taken that did exist
 25 that an earlier Tribunal said wasn't worth

1 anything?
 2 MS. DOSMAN: I don't believe,
 3 and they will correct me if I am wrong, that the
 4 actual FIT Contract, the contractual document was
 5 expropriated.
 6 What they are alleging was
 7 expropriated is something that they say they were
 8 owed under the FIT Contract. And that's the
 9 essential difference between the parties.
 10 PRESIDING ARBITRATOR MILES: I
 11 had certainly understood, from Mr. Terry's
 12 submission in response to our question Number 4 as
 13 to whether or not the FIT Contract was capable of
 14 being expropriated, that he was indeed arguing
 15 expropriation of the FIT Contract. And he
 16 corrected me. That's not his entire case,
 17 expropriation of the entire Project.
 18 MS. DOSMAN: So I guess then
 19 the question is the, FIT Contract, with all of its
 20 termination rights, one of which was clearly
 21 arising eight months after the Windstream I Award,
 22 even if we are talking just about the piece of
 23 paper, what was that worth?
 24 We know from Ms. Powell that
 25 financing wasn't available against it because it

1 couldn't be built -- the Project under it could
 2 not be built by the commercial operation date.
 3 PRESIDING ARBITRATOR MILES:
 4 Coming back to your submission is that they're
 5 alleging that something was taken that did not
 6 exist.
 7 MS. DOSMAN: We heard this
 8 morning that they say that Ontario was required to
 9 create value and the Tribunal pressed them on
 10 this. Where does that appear? Where in the
 11 Windstream I Tribunal Award is that stated? It is
 12 not.
 13 Where, in the FIT Contract, is
 14 that stated? It is not.
 15 PRESIDING ARBITRATOR MILES:
 16 Now but the FIT Contract did exist.
 17 MS. DOSMAN: It did exist. It
 18 was in force majeure as it had been.
 19 PRESIDING ARBITRATOR MILES:
 20 It had not been terminated.
 21 MS. DOSMAN: It had not been
 22 terminated.
 23 PRESIDING ARBITRATOR MILES:
 24 And it was still --
 25 MS. DOSMAN: It was a valid

1 contract.
 2 PRESIDING ARBITRATOR MILES:
 3 Subject to its \$6 million security.
 4 MS. DOSMAN: Correct, yes.
 5 PRESIDING ARBITRATOR MILES:
 6 There were rights and obligations.
 7 MS. DOSMAN: Yes, exactly.
 8 PRESIDING ARBITRATOR MILES:
 9 All rights and obligations continued so it's more
 10 than a piece of paper.
 11 MS. DOSMAN: It's more than a
 12 piece of paper but it is not a right to build a
 13 wind farm.
 14 PRESIDING ARBITRATOR MILES:
 15 And that was on one analysis and the Claimant will
 16 tell us whether or not this is their case.
 17 But, on one analysis, a thing
 18 that was capable of being taken, leave aside how
 19 much you value that thing.
 20 MS. DOSMAN: Right.
 21 PRESIDING ARBITRATOR MILES:
 22 It's a thing capable of being taken. And leave
 23 aside your vested interests argument, so all of
 24 your reasons why that thing wasn't.
 25 MS. DOSMAN: Sure.

1 But I guess where I struggle
 2 is that the FIT Contract existed. Coming out of
 3 the Windstream I Award, we know that it had no
 4 value, as of September 2016. That was a finding.
 5 Something had to change after
 6 the Windstream I Award for the FIT Contract to
 7 have value such that anything could be taken,
 8 anything could be expropriated with respect to the
 9 Project.
 10 And we don't have evidence of
 11 that. We don't have evidence, really, of any new
 12 investment.
 13 CO-ARBITRATOR GOTANDA: I will
 14 get back to my point.
 15 There is evidence that the
 16 market changed, right, and that alone could create
 17 value.
 18 In other words, if this was a
 19 gold contract and the price of gold, let's say,
 20 hovering around \$600. And, all of a sudden, the
 21 price of gold jumps to \$1,200, it becomes -- all
 22 of a sudden, the contract becomes a lot more
 23 valuable just because the price rose.
 24 So couldn't one make the
 25 argument here that the circumstances changed where

1 it became more efficient, I think was the
 2 argument. The need arose. And so, all of a
 3 sudden, there is an interest in making this, and
 4 this, all of a sudden, becomes maybe it's not
 5 valueless anymore. The market has created sort of
 6 this value. They didn't have to do anything.
 7 They just sat back and held the contract.
 8 Question where the investment
 9 is but the investment could be that they keep
 10 paying interest on this and, therefore, that's an
 11 investment alone.
 12 So they may get around that.
 13 But what I want, though, you eventually to get to
 14 is, is the argument of were there reasonable
 15 investment-backed expectations, though.
 16 MS. DOSMAN: Yes. Very happy
 17 to come to those. But perhaps just one remark.
 18 Coming out of the Windstream I
 19 Award, we do have to exist in the real world of a
 20 FIT Contract that had no value as of that date,
 21 September 30th, 2016.
 22 And I believe Ms. Squires will
 23 address the market issue that, in our view, does
 24 not support the idea that additional value was
 25 created.

1 PRESIDING ARBITRATOR MILES:
2 Just a quick time check.
3 MS. DOSMAN: Could I ask just
4 how much time we have used.
5 MR. ARAGÓN CARDIEL: One hour
6 and 30 minutes excluding Tribunal questions.
7 MS. DOSMAN: I probably need
8 another 15 and then Ms. Squire will address
9 damages. So she will need another half hour.
10 PRESIDING ARBITRATOR MILES:
11 All right. So we will let you finish and then we
12 might just take a five minute.
13 --- Off-the-record discussion re timing
14 MS. DOSMAN: Okay. So,
15 turning to Professor Gotanda's interest, let's
16 move into the factors that feed into this
17 fact-specific determination about whether or not
18 there's been an indirect expropriation.
19 The first factor -- and this
20 is agreed with the Claimant -- is what was the
21 economic impact of the government action.
22 So we know it had no value in
23 September 2016. And the Claimant points to
24 three -- makes three points about why, after the
25 Windstream I Award, the FIT Contract had value and

1 we say none of these have merit.
2 First of all, the Claimant
3 says the third parties were interested. But, as
4 Ms. Squires will address, no third party even
5 expressed interest in valuing the Project. And
6 that makes sense, given that, in eight months'
7 time, either party could terminate the contract.
8 Second, the Claimant points to
9 internal calculations that Ontario performed in
10 the context of receiving the Windstream I Award.
11 Immediately after receiving
12 the Award, the Ontario officials sought to
13 understand the decision. They undertook some
14 theoretical calculations based on assumptions that
15 we know were impossible, including that the
16 Project would have entered into commercial
17 operation that very same year.
18 These calculations do not
19 purport to and nor do they reflect any indication
20 of value in the real world or reflect valuation,
21 as understood by the Windstream I Tribunal.
22 The Claimant also argues that
23 an agreement between the Government of Ontario and
24 a third party, White Pines, indicates that its
25 investment had value.

1 Even if this type of
2 comparison was relevant, the two situations are
3 fundamentally unlike. The White Pines Project was
4 cancelled by way of legislation, which also set
5 out the principles of compensation. It was an
6 onshore wind facility for which permitting was
7 complete and financing was in place. It was
8 partially built.
9 So that situation provides no
10 indication that the FIT Contract, again, in its
11 seventh year of force majeure had any value
12 whatsoever.
13 Turning to the next factor in
14 the fact-specific inquiry.
15 Does the government action
16 interfere with the Claimant's distinct,
17 reasonable, investment-backed expectations?
18 I will come back to these also
19 in Article 1105, so shortly. But, for the
20 moment -- and I believe this is where, Professor
21 Gotanda, you may have been going.
22 In the absence of an
23 investment, there can't have been
24 investment-backed expectations.
25 So there needs to be a

1 specific representation to the Claimant in order
2 to induce an investment. And I don't think any of
3 those factors are established here.
4 I will come back to it,
5 though.
6 The third factor: Was the
7 character of the government action, including its
8 object, context and intent, expropriatory.
9 So I just want to zoom in on
10 what is the government action here.
11 The government action was the
12 refusal to interfere in a contract between WWIS
13 and the IESO. And we don't have anything on the
14 record that indicates that Ontario's decision to
15 stand by, to not create value, was expropriatory
16 in nature.
17 Because, from Ontario's
18 perspective, the Windstream I Award had resolved
19 its dispute with Windstream.
20 This week, we will hear from
21 Mr. Teliszewsky, who was chief of staff to the
22 Minister of Energy in 2016 and '17. And he
23 recalls that the Award was discussed as an
24 information or awareness piece, not as an item
25 requiring particular Ministerial decision.

1 Beyond the payment of the
 2 Award, nothing further was required.
 3 And we have nothing on the
 4 record --
 5 PRESIDING ARBITRATOR MILES:
 6 Yes, quickly.
 7 Had resolved the -- had
 8 resolved whose dispute with Windstream; Ontario's,
 9 the state?
 10 MS. DOSMAN: Correct, yes.
 11 PRESIDING ARBITRATOR MILES:
 12 Not Canada's, not IESO's?
 13 MS. DOSMAN: Sorry, had
 14 resolved all of the measures that were challenged
 15 in that Windstream I arbitration, so, yes, Canada.
 16 PRESIDING ARBITRATOR MILES:
 17 So Canada qua Ontario --
 18 MS. DOSMAN: Yes, shorthand.
 19 PRESIDING ARBITRATOR MILES: --
 20 not necessarily the IESO qua contracting party.
 21 MS. DOSMAN: Right.
 22 So the Windstream I Tribunal
 23 did not make any decision with respect to the
 24 IESO.
 25 Turning now to the IESO's

1 decision itself to terminate.
 2 There is nothing here to
 3 indicate that this was expropriatory.
 4 We have talked about
 5 Section 10.1(g) of the FIT Contract which entitled
 6 either party to terminate if, as a result of a
 7 force majeure, commercial operation had not been
 8 achieved within 24 months of the milestone
 9 commercial operation date.
 10 And we have already seen the
 11 extensive termination rights available in the FIT
 12 contract.
 13 It wasn't required to do so
 14 but the IESO undertook a reasoned evaluation based
 15 on the best available evidence at the time to
 16 determine whether it should waive its right to
 17 terminate. And that analysis is at Exhibit
 18 R-0808.
 19 The IESO reviewed the terms of
 20 the contract, how it had acted in other situations
 21 in which termination rights arose in the context,
 22 and concluded that it should not waive its right
 23 to terminate.
 24 The contract management team
 25 also consulted internal forecasting experts whose

1 analysis supported non-waiver of the right to
 2 terminate.
 3 We have no evidence that the
 4 IESO's decision to terminate was anything but the
 5 exercise of a contractual right.
 6 Those will conclude my
 7 submissions on 1110. If you will permit me to
 8 move to 1105, I can go through that a little bit
 9 quicker, I think.
 10 Perhaps I will leave for the
 11 slides much of the legal discussion.
 12 But we know that Article
 13 1105(1) of the NAFTA establishes a floor for
 14 treatment to be accorded to investments of
 15 investors of another party.
 16 And that floor is set at the
 17 customary international law minimum standard of
 18 treatment, or MST. As was clarified by the NAFTA
 19 parties in the 2001 note of arbitration -- sorry,
 20 interpretation.
 21 This note confirmed that
 22 Article 1105(1) prescribes the customary
 23 international law minimum standard of treatment of
 24 aliens as the minimum standard of treatment to be
 25 afforded to investments of investors of another

1 party.
 2 And that the concept of fair
 3 and equitable treatment does not require treatment
 4 in addition to or beyond that which is required by
 5 the customary international law minimum standard
 6 of treatment.
 7 And we know, from Article
 8 1131(2) of NAFTA, that that interpretation is
 9 binding on this Tribunal.
 10 Other NAFTA Tribunals have
 11 recognized that the threshold for a breach of
 12 Article 1105 is high.
 13 Perhaps just two quick points
 14 on the legal test.
 15 Contrary to the Claimant's
 16 submissions, a general protection against
 17 discrimination does not form part of the customary
 18 international law minimum standard of treatment.
 19 The treaty parties, Canada,
 20 the US and Mexico, all agree that the minimum
 21 standard of treatment does not incorporate a
 22 general obligation of non-discrimination.
 23 Nationality-based
 24 discrimination falls under the exclusive purview
 25 of Articles 1102 and 1103 and there is no overall

1 prohibition on economic discrimination or
 2 differential treatment.
 3 With respect to legitimate
 4 expectations, the Claimant has confirmed its
 5 agreement that not meeting expectations itself
 6 does not give rise to a breach and, importantly,
 7 that any such expectations must arise from
 8 specific commitments made to the investor to
 9 induce the investment.
 10 And of course expectations
 11 must be objectively reasonable.
 12 So let's turn to the
 13 Claimant's allegations of the breach of Article
 14 1105.
 15 The Claimant argues that the
 16 Ontario government created the conditions that led
 17 to the termination of the FIT Contract, including
 18 by failing to intervene with the IESO and failing
 19 to conduct any studies to lift the moratorium.
 20 I'll recall that the condition
 21 that led to the termination of the FIT Contract
 22 was the fact that it had been in force majeure for
 23 24 months past its milestone date of commercial
 24 operation.
 25 That condition was embedded in

1 the FIT Contract itself and that condition did not
 2 change as between the Windstream I Award and the
 3 termination date.
 4 So let's though still get into
 5 the weeds of what is alleged to be grossly
 6 unfair -- arbitrary and grossly unfair.
 7 So the Claimant makes four
 8 points.
 9 First, they allege that -- it
 10 alleges that Canada has provided no legitimate
 11 rationale for Ontario's refusal to do anything to
 12 make good on its promises and representations, and
 13 that the Ontario government appeared to adopt an
 14 obstructionist attitude as a matter of reflex.
 15 Here are the facts.
 16 With respect to the so-called
 17 promises -- and I suspect we will come back to
 18 this in closing because we have heard a lot of
 19 interesting information this morning -- I just
 20 first recall that, and I am quoting here,
 21 Windstream is not arguing that the continued
 22 application of the moratorium to the Project is,
 23 in and of itself, a breach of the NAFTA.
 24 I will also note, with respect
 25 to the decision not to meet, Ontario is not

1 required to have a legitimate rationale for not
 2 engaging. But, in any event, it had one. As
 3 Mr. Teliszewsky testified, Ontario viewed the
 4 matter as concluded.
 5 Regardless, as you can see in
 6 detail in Canada's rejoinder at paragraph 111, the
 7 Ministries of Energy and the Environment responded
 8 to Windstream's correspondence, Mr. Teliszewsky
 9 met with one of its representatives and Windstream
 10 met directly with the IESO.
 11 It's difficult to see anything
 12 here that is unreasonable, let alone grossly
 13 unfair or in violation of international law.
 14 The second allegation is that
 15 there was no legitimate rationale for the IESO's
 16 decision to terminate the FIT Contract.
 17 Here are the facts.
 18 Termination, in these
 19 circumstances, was guaranteed by the contract
 20 itself. WWIS agreed to that right when it signed
 21 the contract. The IESO is not required to have
 22 other reasons for exercising its right to
 23 terminate. The reason was the Project had not met
 24 the contractual requirements.
 25 As I noted, though, the IESO

1 went above and beyond and did undertake a reasoned
 2 analysis about whether it should waive its right
 3 to terminate in this circumstance. It even
 4 invited additional information from WWIS and it
 5 decided not to waive its contractual right to
 6 termination.
 7 Again, it's impossible to see
 8 anything here that is unreasonable, let alone
 9 something that would meet the high threshold for a
 10 breach of the minimum standard of treatment.
 11 Third, the Claimant states
 12 that Ontario has failed to conduct additional
 13 studies and has no rationale for refusing to
 14 advance the research, and that this contributes to
 15 the arbitrariness of the conduct and the
 16 circumstances that led to the termination of the
 17 FIT Contract.
 18 Here are the facts.
 19 Ontario had confirmed, in the
 20 Windstream I proceeding, that further studies were
 21 not planned.
 22 Ontario was in a good position
 23 in terms of energy supply.
 24 And I'd also note that the
 25 Claimant states, and I am quoting, that it has not

1 alleged that the failure to do the work necessary
2 to lift the moratorium is, itself, a breach of the
3 NAFTA.

4 This allegation then provides
5 no support for the charge of arbitrary or grossly
6 unfair conduct.

7 Fourth, the Claimant alleges
8 that the only purported rationale provided by
9 Canada for Ontario's deliberate decision not to
10 intervene is that Ontario decided not to interfere
11 in the contractual relationship and that that was
12 flawed.

13 The fact is that Ontario's
14 power to direct the IESO does not result in an
15 obligation to do so, and that Ontario's
16 non-interference was particularly reasonable in
17 this case, given that it had already been ordered
18 to pay damages to the Claimant.

19 And I will add a final word
20 about the Claimant's expectations.

21 Based on the evidence, even if
22 there had been a new investment, and even if
23 general statements or statements to the media
24 could be taken as specific inducements to this
25 Claimant, the Claimant cannot have had reasonable

1 expectations that the FIT Contract would be
2 amended and the Project would be built.

3 Why?

4 The Claimant had been
5 compensated for the value of its investment, via
6 the Windstream I Award, and its security deposit
7 had been returned.

8 Ontario was in a strong energy
9 position at that time and was moving away from
10 standard offer procurement contracts.

11 The FIT Contract allowed
12 either party to terminate in these circumstances.
13 And, as early as June 2015, the Claimant itself
14 recognized that termination due to this extended
15 force majeure was inevitable.

16 I know we will hear from
17 witnesses this week about their disappointment
18 that the Project did not move forward, but that
19 does not amount to a treaty breach.

20 The IESO terminated a contract
21 it had a right to terminate. Ontario did not
22 interfere. Nothing on the record supports a
23 finding of internationally wrongful conduct here.

24 That will conclude my
25 submissions on liability.

1 PRESIDING ARBITRATOR MILES:
2 Excellent. Thank you.

3 That is one hour and 45, which
4 leaves -- you had 45 minutes but you only used 30.

5 MS. SQUIRES: I will take the
6 30. Maybe 22.

7 PRESIDING ARBITRATOR MILES:
8 22 is magic. Okay, so off you go.

9 As we said, if anybody needs a
10 break other than Ms. Squires, we won't be
11 offended.

12 Okay, we will press on.
13 Ms. Squires, the graveyard
14 shift.

15 OPENING STATEMENT BY MS. SQUIRES:

16 MS. SQUIRES: Everyone's
17 favourite six o'clock topic, damages.

18 Good evening, members of the
19 Tribunal.

20 Over the course of the next
21 half an hour or 22 minutes, I hope to provide you
22 with some additional guidance on why the Claimant
23 is not entitled to any damages even if you
24 determine there has been a breach of the NAFTA.

25 Now, as far as damages go, the

1 Claimant had a simple straightforward burden to
2 prove: Show how the measures it alleged breached
3 the NAFTA caused it the actual loss it seeks to
4 recover.

5 Instead, what you have before
6 you is a claim based on a fundamentally flawed
7 theory of damages that is lacking in causation and
8 is completely divorced from the breaches alleged
9 in this arbitration.

10 On many occasions in the
11 Windstream I proceeding, the Claimant argued that
12 its Project could be built within the timelines
13 required by the FIT Contract. It has done so
14 again in this proceeding.

15 It has once again hired some
16 of the world's leading technical experts in the
17 offshore wind industry to come before with you so
18 that it could continue to relay the same message
19 that it did there. Trust us, we can get this
20 done.

21 Despite not having any prior
22 experience in the offshore wind development and
23 being in a market where there are no other
24 offshore wind farms and we will do it faster than
25 any other offshore wind developer has ever done

1 it.
 2 Yet, no matter how many
 3 experts the Claimant puts forward or how many
 4 experts -- how many exhibits it collects on
 5 offshore wind farms around the world, the reality
 6 is the Claimant's ability to develop and construct
 7 its Project within the timelines of the FIT
 8 contract remained highly uncertain.
 9 But that point is also
 10 irrelevant to this proceeding.
 11 That very issue is at the
 12 forefront of the Windstream I damages case, was
 13 extensively litigated and squarely addressed by
 14 that Tribunal when it failed to accept the
 15 Claimant's request that it be rewarded damages on
 16 a discounted cash flow model.
 17 Unsatisfied with that outcome,
 18 the Claimant has now put forward arguments of a
 19 new breach, allegedly based on post Windstream I
 20 measures, a new alleged loss, but with the same
 21 Windstream I damages ask, hoping that this
 22 Tribunal arrives at a different result. And, in
 23 doing so, is asking the Tribunal to Award it a
 24 windfall of damages it properly failed to receive
 25 in 2016.

1 This litigation strategy must
 2 be rejected.
 3 Now let's look at the details
 4 as to why.
 5 To assess the damages in this
 6 arbitration, two fundamental questions must be
 7 asked.
 8 First, has the Claimant proven
 9 that any of the challenged measures caused it any
 10 actual loss, let alone the specific losses the
 11 Claimant seeks?
 12 And, second, if causation has
 13 been proven, what is the specific valuation
 14 methodology that this Tribunal should have used in
 15 addressing the quantum of damages.
 16 I will answer that first
 17 question in two parts.
 18 First, I will explain that the
 19 Claimant has not demonstrated that it had an
 20 investment of any value as of the valuation date,
 21 such that it could suffer any further loss. In
 22 that context, I will answer the question of
 23 Mr. Professor John Gotanda.
 24 With the exception of the
 25 \$6 million security deposit that has since been

1 returned to the Claimant, the Claimant's
 2 investment, its FIT Contract, its Project and its
 3 enterprise was already valueless as of May of 2012
 4 due to the breach found in Windstream I.
 5 And, second, by demonstrating
 6 that the Claimant's but-for scenario, the only
 7 ones that they have put forward here, is entirely
 8 inappropriate and, therefore, leaves the Tribunal
 9 without a proper method to evaluate causation and
 10 the Claimant's alleged damages.
 11 Following this, I will address
 12 the fifth question of the Tribunal posed by the
 13 parties last week.
 14 PRESIDING ARBITRATOR MILES:
 15 Would you like me to ask Ms. Squires to slow down
 16 a tiny bit?
 17 --- Off-record discussion re the transcript
 18 MS. SQUIRES: That's okay.
 19 PRESIDING ARBITRATOR MILES:
 20 It's a balance. 22 minutes too fast to get on the
 21 transcript is not going to achieve our purpose.
 22 MS. SQUIRES: It's also in my
 23 genes of a lot of Irish heritage so I will knock
 24 it down.
 25 Okay. So I will then address

1 the second question that I pose with respect to
 2 quantum.
 3 For the sake of completeness
 4 only, I will demonstrate that, as Canada did in
 5 Windstream I, that the value of the Claimant's
 6 investment cannot properly be assessed on a
 7 discounted cash flow basis. But, as the Tribunal
 8 will see shortly, it need not even entertain the
 9 Claimant or Canada's arguments in that regard.
 10 So let's turn to the issue of
 11 causation.
 12 At international law, an Award
 13 of monetary damages should repair the wrongful
 14 conduct by returning the Claimant to the position
 15 it would have been in absent that wrongful
 16 conduct.
 17 This follows the reasoning of
 18 the Permanent Court of International Justice in
 19 the Chorzow Factory case. The Claimant and Canada
 20 agree in this regard.
 21 PRESIDING ARBITRATOR MILES:
 22 Just on Chorzow, is there a difference, in your
 23 submission, to the standard or purpose of
 24 compensation in the case of expropriation, which
 25 Chorzow was an expropriation case, versus fair and

1 equitable treatment breach?
 2 MS. SQUIRES: I think,
 3 fundamentally, no. The idea would always be to
 4 return the Claimant to the position it would have
 5 been absent the breach.
 6 The distinction between 1110
 7 and 1105 is that it's almost certainly the case
 8 with 1110, the expropriation claim, that you are
 9 looking to value the full value of the Claimant's
 10 investment. So putting them back in that place
 11 they would have been, absent the breach, would be
 12 that full investment value.
 13 With 1105, it could be the
 14 case that the full value of the Project or the
 15 investment has been lost. But, in other
 16 circumstances, it's not.
 17 And, in that case, to put the
 18 Claimant or the investor back in the position it
 19 would have been absent the breach, you would be
 20 giving them back damages to the investment but not
 21 the full value of the investment.
 22 So continuing with
 23 causation --
 24 PRESIDING ARBITRATOR MILES:
 25 And also to your point, 1110 provides some of the

1 variables for the valuation methodology, such as
 2 the valuation date and some other variables.
 3 So would that qualify your
 4 answer as well?
 5 MS. SQUIRES: Yes, exactly.
 6 So Article 1110 would be the
 7 only provision in the NAFTA that gives you those
 8 criteria for how to calculate the loss of a full
 9 value of an investment. You would not see that,
 10 for example, in 1105.
 11 PRESIDING ARBITRATOR MILES:
 12 Right. So you have extra elements for
 13 expropriation under NAFTA.
 14 MS. SQUIRES: That's right.
 15 So a fundamental --
 16 PRESIDING ARBITRATOR MILES:
 17 But, to be clear, in your damages assessment,
 18 there's no distinction. You have not separated
 19 them out. You have treated them as a single, a
 20 single damages assessment.
 21 MS. SQUIRES: I would say the
 22 answer to that is, if Claimant has treated it as
 23 one single damages assessment, Canada has
 24 responded to their one single damages assessment.
 25 And given that it is the Claimant's burden to

1 prove their losses in this case, should this
 2 Tribunal find that there's been a breach of 1105
 3 and that that loss only resulted in damages to the
 4 investment but not loss of the whole value of
 5 investment, the Claimant has not met its burden
 6 because it has not provided the Tribunal with a
 7 method of quantifying that damage.
 8 PRESIDING ARBITRATOR MILES:
 9 But you've not made any submission that we should
 10 approach damages differently in expropriation, as
 11 opposed to fair and equitable treatment.
 12 MS. SQUIRES: Not in this
 13 submission, no. We have made those comments with
 14 respect to Article 1105 and 1110 in Windstream I.
 15 But, in this submission, no,
 16 we have just made submission, the general
 17 principle of returning the party to the position
 18 it would have been in, absent the breach.
 19 PRESIDING ARBITRATOR MILES:
 20 Okay.
 21 MS. SQUIRES: So I am just
 22 going to skip ahead two slides there, the Biwater
 23 Gauff.
 24 So we see the notion of
 25 causation reflect in decisions of other Tribunals

1 as well.
 2 For example, the Tribunal in
 3 Biwater Gauff v. Tanzania refused to Award any
 4 compensation for the identified breach because the
 5 Project was already valueless by the time of the
 6 breaching measure and, thus, there was no
 7 causation.
 8 As that Tribunal explained,
 9 compensation for any violation of the BIT, whether
 10 in the context of lawful expropriation or the
 11 breach of any other treaty standard, will only be
 12 due if there is a sufficient causal link between
 13 the actual breach of the BIT and the loss
 14 sustained.
 15 One can simply not allege a
 16 breach on one hand and then make a claim of
 17 damages on the other. The two must be connected.
 18 The Tribunal must be satisfied
 19 that any loss claimed by the Claimant arises out
 20 of the specific breach alleged in this arbitration
 21 and that breach alone. Not some other breach and
 22 not an intervening event.
 23 Nor can damages flow from an
 24 investment which is already valueless as of the
 25 date of the breach due to a different measure.

1 Simply put, an investment that
 2 was worthless to start with cannot suffer further
 3 damages as a result of additional breaches.
 4 And that means that this
 5 Claimant must prove that, first, after the
 6 Windstream I Award, the Claimant had an investment
 7 of some value; and, second, that a new breach, not
 8 the breach at issue in Windstream I, caused the
 9 specific loss suffered by that investment.
 10 The Claimant has failed on
 11 both accounts.
 12 First, the Claimant has failed
 13 to demonstrate that its investment had any value
 14 at the time of the alleged breach.
 15 PRESIDING ARBITRATOR MILES: I
 16 know I am not helping us get away.
 17 But, Biwater Gauff, has the
 18 dissenting opinion in that case been picked up in
 19 the reasoning of any subsequent awards that you're
 20 aware of?
 21 MS. SQUIRES: Not that I am
 22 aware of offhand.
 23 PRESIDING ARBITRATOR MILES:
 24 What about the majority Award?
 25 MS. SQUIRES: I am not -- I

1 would have to go back and check. I am not
 2 entirely sure.
 3 PRESIDING ARBITRATOR MILES:
 4 And we do have both in our record, don't we, the
 5 majority Award and the dissent?
 6 MS. SQUIRES: I believe so.
 7 PRESIDING ARBITRATOR MILES:
 8 Okay. Thank you.
 9 MS. SQUIRES: So, first, the
 10 Claimant has failed to demonstrate that it held an
 11 investment of any value as of the date of the
 12 breach.
 13 And, second, the Claimant has
 14 failed to put forward the appropriate but-for
 15 analysis that would allow this Tribunal to isolate
 16 damages arising after the Windstream I Award.
 17 The Claimant's failure to
 18 quantify its alleged losses, based on only
 19 measures which arose after the Windstream I Award,
 20 means that its damages claim collapses on that
 21 ground alone.
 22 I will turn to each of these
 23 in turn.
 24 As I previously mentioned, an
 25 investment that was worth zero on the date of the

1 Award and continues to be worth nothing as of
 2 February 18th, 2020, cannot suffer further losses
 3 when the FIT Contract termination took effect on
 4 that date.
 5 The Claimant is fully aware of
 6 the finding of its Tribunal in its statements --
 7 the Claimant is fully aware of the finding of the
 8 Tribunal that, as a result of the breach in
 9 Windstream I, by May 2012, the Project had reached
 10 a point at which it was no longer financeable.
 11 The Claimant's investment,
 12 with the exception of a \$6 million security
 13 deposit that it still retained at that time, had
 14 been rendered worthless.
 15 So the Claimant, fully aware
 16 of this finding and its statements to the same
 17 effect in the Windstream I proceeding, now argues
 18 that, following the Windstream I Award, its
 19 investment increased in value such that losses
 20 arose upon the termination of the FIT Contract.
 21 And it does so by first
 22 stating that their damages valuation in this
 23 arbitration conclude that the Project is worth
 24 almost \$300 million on the valuation date and,
 25 therefore, it must have had value prior to the

1 breach.
 2 And, second, because there
 3 were alleged meetings, invites and emails between
 4 the Claimant and several industry participants,
 5 many of which the Claimant's own arbitration
 6 experts after the Windstream I -- many of which
 7 were the Claimant's own arbitration experts after
 8 the Windstream I Award.
 9 Now, neither of these help the
 10 Claimant overcome its issues with causation.
 11 Neither demonstrate that the Claimant's investment
 12 had any value as at the valuation date.
 13 Now, before I get to the two
 14 points that the Claimant has argued specifically,
 15 I would like to answer the question from Professor
 16 Gotanda about the increase in the market between
 17 2010 and 2020 with respect to offshore wind.
 18 And I think there are three
 19 important points for the Tribunal to keep in mind
 20 here. And there is no dispute, I think, that
 21 there was a decrease in things like capital
 22 expenditures, operating expenditures, and things
 23 like this in the offshore wind market during that
 24 time period.
 25 And I think Canada's expert,

1 Dr. Guillet, will testify to that as well.
 2 There are a couple of problems
 3 with that, though, in terms of how the Claimant
 4 can take advantage of that.
 5 The first is the Claimant's
 6 financial close date is not in 2020. It's in
 7 February of 2023.
 8 So, as of the but-for world,
 9 when the Claimant is going to restart its Project
 10 construction, it has to go through all its
 11 permitting, it has to get all of that done. It
 12 gets a notice -- it gets some kind of financing
 13 plan.
 14 And, in that process, it is
 15 going to be signing procurement contracts. It is
 16 going to be looking for a supplier of turbines.
 17 It is going to sign a contract to have foundations
 18 built. It is going to sign contracts with Jakob
 19 vessels.
 20 It hasn't signed or done any
 21 of this work. That is going to start in 2020, not
 22 in 2010 to 2020.
 23 And what did we see in 2020?
 24 The evidence on the record
 25 demonstrates that the offshore wind industry saw

1 40 percent increase in costs.
 2 In fact, world leading experts
 3 in offshore wind, Vattenfall, DONG Energy, all of
 4 them saw projects cancelled, modified, price
 5 reductions taken, because of the increase in the
 6 costs.
 7 Second, Windstream, right now,
 8 at the time they would have restarted Project
 9 operation or Project development, was so far out
 10 from financial close that we are not even sure
 11 they could have taken advantage of any of those
 12 lower costs.
 13 And this is exactly the reason
 14 why a DCF is not appropriate. We don't know what
 15 their CAPEX would have been. We don't know what
 16 their OPEX would have been. They, themselves,
 17 don't even know what turbines they would have
 18 used.
 19 They also don't know where
 20 they Project would have been placed. They don't
 21 know what kind of vessels they need.
 22 So to say they would take
 23 advantage of the market is a bit -- a 10,000 view
 24 of things, when, really, they should have been on
 25 the ground.

1 The other thing I will note is
 2 that, even if the market increased, we can't
 3 divorce ourselves from the specifics of the
 4 Project.
 5 Even if we take a but-for
 6 world, for example, where the Claimant Project is
 7 frozen, the Project remained, subject to the
 8 IESO's termination rights under Section 10.1(g).
 9 So even if the market
 10 elsewhere around the world is developing, the
 11 Claimant here still has a termination -- a FIT
 12 contract subject to a termination right.
 13 So I think there's a real
 14 question there about what value that has.
 15 So I think all of those things
 16 speak to the fact that the Claimant, as it's done
 17 many cases, as it's done by hiding behind many
 18 expert reports in the arbitration and exhibits,
 19 they are trying to hide behind the specific detail
 20 by pointing to more general concepts and this
 21 Tribunal should reject that altogether.
 22 I am going to turn back now to
 23 the two points that the Claimant actually argued
 24 for why they think they have value and I can
 25 dismiss that first point very quickly.

1 If all it took to prove
 2 causation of loss due to a specific breach was a
 3 damages expert's quantification of alleged loss,
 4 the causation analysis would be rendered obsolete.
 5 The Claimant's attempt to
 6 prove causation through quantum cannot hold. Even
 7 more so given the but-for analysis the Claimant
 8 has put forward.
 9 The Claimant's second argument
 10 is equally as unfailing.
 11 Following the Windstream I
 12 Award, the Claimant set up a data room with
 13 KeyBanc to try and attract interest in its
 14 Project. It filled that data room with the
 15 speculative expert reports from the first
 16 Windstream I arbitration, including its already
 17 tossed out discounted cash flow.
 18 None of the correspondence
 19 that occurred between Windstream and third parties
 20 as a result of this or otherwise, after the
 21 Windstream I Award, supports the Claimant's
 22 position that there was value in the investment as
 23 at the valuation date.
 24 Additionally, despite alleging
 25 this increase in value, the Claimant has not made

1 any attempt to quantify such an increase and has
 2 failed its burden in this regard.
 3 This Tribunal cannot derive a
 4 numerical value for damages based on Outlook
 5 invites and one-line emails.
 6 Nor has the Claimant
 7 demonstrated any quantifiable value that arose out
 8 of the three repurposed studies my colleague
 9 Ms. Dosman had mentioned a few moments ago, two of
 10 which do not even use the same turbines or layouts
 11 as the Project designed in this arbitration.
 12 It's hard to see how studies
 13 used for a different Project than the one in this
 14 arbitration could further the Project they want
 15 you to value here.
 16 Therefore, even if the
 17 Tribunal finds these arguments from the Claimant
 18 have the potential to demonstrate value after the
 19 Windstream I Award, it makes no difference to
 20 Canada's arguments on causation. There are no
 21 numbers here for the Tribunal to work with.
 22 And I cannot emphasize this
 23 point enough.
 24 It is not Canada or the
 25 Tribunal's job to make the Claimant's case out for

1 it.
 2 The Claimant has not
 3 demonstrated that its investment increased in
 4 value since the Windstream I Award. The
 5 Claimant's damages claim must be rejected.
 6 Turning now to the second
 7 point that, even if the Claimant can demonstrate
 8 it had an investment with value after the
 9 Windstream I Award, the Claimant has not provided
 10 the Tribunal with any manner in which to determine
 11 the required causation.
 12 PRESIDING ARBITRATOR MILES:
 13 Can I just check that I understand your causation
 14 case thus far.
 15 As I understand, your
 16 causation case is based on the fact that there is
 17 no loss. Therefore, there can't be any cause of
 18 any loss.
 19 So you haven't really
 20 addressed causation at all. You have gone to end
 21 game, ala Biwater Gauff, to say, if you haven't
 22 lost anything, there can't have been causation.
 23 Am I understanding you right?
 24 Because you have been calling it causation but you
 25 have actually been coming back to the same point

1 that nothing is lost?
 2 MS. SQUIRES: It's possibly a
 3 distinction without a difference, in effect.
 4 The point we are trying to
 5 make here is that, in order to have loss, you must
 6 have had something of value to begin with.
 7 And, if the investment in
 8 question is already rendered valueless, something
 9 else caused that. So the proper causation to
 10 assess here or the breach that's at issue here
 11 could not have caused that loss.
 12 So, by determining that there
 13 was already a valueless assessment, that
 14 necessarily means that there was an intervening
 15 event or some other reason that the investment was
 16 valueless that was not the breach at issue here.
 17 I'd like to turn now to the
 18 second point with respect to causation, which I
 19 think is a bit more clear in terms of the
 20 causation world.
 21 And that's that even if the
 22 Claimant can demonstrate it had an investment with
 23 value after the Windstream I Award, the Claimant
 24 has not provided the Tribunal with any way to
 25 quantify that, or to determine the required

1 causation. Sorry.
 2 In this arbitration, the
 3 Claimant argues, and it did as well this morning,
 4 that certain measures and facts that arose after
 5 the Windstream I Award are the source of loss in
 6 this arbitration.
 7 The Claimant also argues it
 8 suffered damages after the Windstream I Award and
 9 those damages arose when the FIT Contract
 10 termination took effect.
 11 Despite this, the Claimant's
 12 counterfactual world assumes that, instead of the
 13 FIT Contract being terminated and alleged damages
 14 accruing, the following additional events occurred
 15 and you can see them on your screen.
 16 --- Off-the-record discussion re external noise.
 17 MS. SQUIRES: As you can see
 18 by looking at the slide here, and I do apologize,
 19 there is quite a bit of text here.
 20 But the but-for world of the
 21 Claimant assumes that the moratorium itself has
 22 been lifted and has reversed what seems to be
 23 every event related to offshore wind in Ontario
 24 and the effect it had on the Project since its FIT
 25 contract entered into force majeure status in

1 November of 2010. This is untenable.
 2 It fails to address only new
 3 measures and facts that arose after Windstream I.
 4 Simply put, a counterfactual
 5 world in this arbitration, which alleges breaches
 6 that occurred after the Windstream I Award, cannot
 7 erase the effect of the moratorium on the Claimant
 8 investment before the Windstream I Award.
 9 In this arbitration, the
 10 Claimant has presented the same counterfactual
 11 scenario it presented in Windstream I, a
 12 counterfactual world which reverses the full
 13 effects of the moratorium.
 14 If both the Windstream I
 15 arbitration and this arbitration allege different
 16 breaches arising out of different measures during
 17 different periods of time, as the Claimant
 18 alleges, the counterfactual world in both disputes
 19 must be different.
 20 So why does the Claimant do
 21 this?
 22 Because without this
 23 assumption, without erasing the breach that
 24 occurred in Windstream I, it is abundantly clear
 25 that the starting point of any damages assessment

1 is the finding of the Windstream I Tribunal that,
 2 aside from the \$6 million security deposit which
 3 it has had -- which has since been returned to the
 4 Claimant, the Claimant's investment was already
 5 rendered valueless.
 6 It needs the Tribunal to go
 7 back to a point in time when its investment had
 8 value. It wants the Tribunal to go back to May of
 9 2012.
 10 And that point leads me to the
 11 Tribunal's fifth question, which I will address
 12 before dealing specifically with the issue of
 13 quantum.
 14 Now the Tribunal has asked
 15 both parties about the relationship between the
 16 damages model applied by the Tribunal in
 17 Windstream I and the methodologies open to the
 18 Tribunal here should it find a new breach.
 19 And, also, whether the
 20 Tribunal must apply the same methodology,
 21 irrespective of whether Canada is found to be in
 22 breach of Article 1110 or 1105.
 23 I am going to address both of
 24 these questions in part now and will revisit them
 25 in Canada's closing arguments once we have heard

1 from witnesses and experts this week.
 2 Now in the Windstream I
 3 Tribunal calculated damages incurred by the
 4 Claimant's investment defined by the Claimant as
 5 the Project, the FIT Contract, and its enterprise,
 6 as Ms. Dosman just explained, as a result of the
 7 failure to insulate its investment from the
 8 effects of the 2011 moratorium, the Tribunal had
 9 already determined that there had been a breach of
 10 1105 but not Article 1110.
 11 It found that the full value
 12 of the Claimant's investment had not been taken
 13 and proceeded to calculate damages to the
 14 investment rather than Award the Claimant that
 15 full value.
 16 But it's how it got there
 17 that's important.
 18 The Windstream I Tribunal's
 19 calculation of damages started with the
 20 calculation of the full value of the Claimant's
 21 investment on a market comparables basis, as of
 22 the valuation day, as \$31 million.
 23 In doing so, it rejected the
 24 Claimant's request that the full value of its
 25 investment be valued at \$300 million based on a

1 discounted cash flow, due to the early stage
 2 development of the Project.
 3 The Tribunal then deducted
 4 from the full value what it referred to as the
 5 substantial portion of the Claimant's investment
 6 that the Claimant had not lost, the \$6 million
 7 security deposit.
 8 The Tribunal made no further
 9 deductions because, in its view, in the real
 10 world, the FIT Contract was rendered worthless.
 11 The Tribunal then arrived at
 12 damages to the Claimant's investment of just over
 13 25 million Canadian dollars.
 14 Now, it's not open for this
 15 Tribunal to revisit or the Claimant to reargue
 16 those findings.
 17 The Windstream Tribunal found
 18 that the value of the Claimant's investment, the
 19 FIT Project, the contract, its enterprise, but-for
 20 the breach was \$31 million and that the
 21 appropriate way to arrive at that value was
 22 decisively not a discounted cash flow.
 23 But whether or not that is
 24 barred from being reargued by the Claimant in this
 25 proceeding, by the doctrine of res judicata or

1 collateral estoppel, is not something the Tribunal
 2 even needs to consider.
 3 And you'd be forgiven to think
 4 otherwise because of the damage valuation the
 5 Claimant has put forward: A damages analysis that
 6 looks strikingly similar to that which was done in
 7 Windstream I, because it is. The counterfactual
 8 scenarios you just saw confirms that.
 9 Now, despite this, the
 10 Claimant is adamant that its alleged losses arise
 11 out of new alleged breaches which took place after
 12 the Windstream I Award when new value was created
 13 and subsequently lost when the FIT Contract
 14 termination took effect.
 15 The Windstream I Tribunal did
 16 not consider that breach. Nor did it consider the
 17 specific increase in value the Claimant alleges it
 18 gained or any subsequent loss.
 19 This exercise will necessarily
 20 be different than the one undertaken by the
 21 Windstream I Tribunal when it determined that the
 22 full value of the Claimant's investment, prior to
 23 the breach in 2016, was \$31 million based on the
 24 market comparables approach.
 25 And such, if, indeed, what the

1 Claimant is arguing here, if they are correct that
 2 new value arose, new value arose which was then,
 3 in fact, lost, to Award damages in this
 4 arbitration, the Tribunal faces a different
 5 question than that which was decided by the
 6 Windstream I Tribunal.
 7 The Tribunal will be charged
 8 with assessing the value that was created after
 9 Windstream I and, of that value, what has been
 10 lost.
 11 The Windstream I Tribunal did
 12 not consider this, nor could it.
 13 As a result of this, it's open
 14 for the Tribunal to apply a new valuation
 15 methodology should it find a new breach.
 16 CO-ARBITRATOR GOTANDA: Just
 17 let me clarify that.
 18 So you're agreeing then with
 19 the Claimant that, should a breach be found that
 20 it's -- we don't have to, we are not bound by
 21 collateral estoppel on the approach?
 22 MS. SQUIRES: Canada's
 23 position is, if there is a new breach being found
 24 and the Tribunal is looking at new damages that
 25 accrued as a result of a new measure, then you are

1 not bound by the doctrine of res judicata or
 2 collateral estoppel.
 3 But I will say that does not,
 4 in any way, mean that Canada concedes that a
 5 discounted cash flow is appropriate in the
 6 scenario.
 7 CO-ARBITRATOR GOTANDA: Got
 8 you. Okay.
 9 MS. SQUIRES: And I will get
 10 to that shortly.
 11 So the second part of the
 12 Tribunal's question is whether it can use a
 13 different methodology.
 14 PRESIDING ARBITRATOR MILES:
 15 And that issue estoppel or -- I call it issue
 16 estoppel, relates to every element of that
 17 methodology finding?
 18 I mean, there's a finding by
 19 the Tribunal that the Project was at early stage
 20 development.
 21 Are you saying that's not res
 22 judicata and, therefore, a conclusion that you
 23 must use a market comparable approach because it's
 24 early stage, is not res judicata, or?
 25 MS. SQUIRES: No. So our

1 point is a little different and it's a little more
 2 nuanced than simply saying everything of the
 3 Windstream I Tribunal is not res judicata.
 4 What we are saying here is the
 5 Tribunal will be looking at different damages.
 6 So they -- the Claimant has
 7 alleged that there was an increase in value after
 8 the Windstream I Award and then that value was
 9 then lost.
 10 So how do you quantify that?
 11 That is the damages at issue here.
 12 The Windstream I Tribunal
 13 never quantified that damage and they couldn't
 14 because it happened after the Award.
 15 If, for the sake of argument,
 16 this Tribunal decides that the Project has not
 17 advanced at all since the Windstream I decision,
 18 it's still in early stage development Project,
 19 there is no reason for the Tribunal to depart from
 20 the Windstream I Tribunal's reasoning that a DCF
 21 is appropriate.
 22 And we would say that the
 23 Tribunal is bound by the Windstream I Tribunal's
 24 finding that, as of 2016, a DCF was not
 25 appropriate to value the Project.

1 But we are not talking about
 2 valuing that here and that's the difference.
 3 PRESIDING ARBITRATOR MILES: I
 4 am not sure I follow that.
 5 As at 27 September 2016, the
 6 Tribunal found that the Project was in early stage
 7 development; correct?
 8 MS. SQUIRES: That's correct.
 9 That's correct.
 10 PRESIDING ARBITRATOR MILES:
 11 If nothing has changed in the Project between the
 12 27th of September 2016 and today or the date of
 13 our Award, are we then, in your submission, bound,
 14 as a matter of res judicata, that the Project is
 15 at early stage development?
 16 Or could we say, actually, we
 17 think you had an FIT and we don't think a Project
 18 with an FIT can ever be an early stage. We think
 19 it must be a late stage?
 20 MS. SQUIRES: I want to think
 21 about it a little bit further in terms of parsing
 22 it out like that.
 23 But the Tribunal is bound by
 24 the Windstream I Tribunal's finding, by the
 25 doctrine of res judicata or issue estoppel, that

1 the Project was in an early stage of development
 2 and, thus, could not be valued on a discounted
 3 cash flow at that time.
 4 PRESIDING ARBITRATOR MILES:
 5 You just said the opposite.
 6 CO-ARBITRATOR GOTANDA: Yes.
 7 PRESIDING ARBITRATOR MILES:
 8 With respect.
 9 CO-ARBITRATOR MCLACHLIN: I
 10 probably will mess it up further.
 11 But, if I understand, you're
 12 saying if the Tribunal were to accept the
 13 Claimant's position and say that we are now in a
 14 totally different situation, post 2016, than
 15 Windstream I was, well, then, we would apply
 16 different -- we wouldn't be bound and we would
 17 apply the appropriate approach.
 18 If we don't, then we may be
 19 bound by whatever. I mean, it's whatever applies.
 20 So isn't that what you're
 21 saying?
 22 MS. SQUIRES: I think the
 23 question of the methodology to apply is very
 24 specific to what investment you're valuing, what
 25 damages you say are accruing.

1 CO-ARBITRATOR MCLACHLIN:
 2 That's what I am saying, yeah.
 3 MS. SQUIRES: And what -- so
 4 it's a difficult question to answer given how the
 5 Claimant has pled its case.
 6 We are not entirely clear on
 7 what the breach is. We are not entirely clear on
 8 what damages they are after because of the but-for
 9 world they have put forward.
 10 If we are in a world, for the
 11 sake of argument, where the Tribunal only has to
 12 value, as a matter -- if we are in a world where,
 13 for example, the Tribunal has made a finding of
 14 fact that the investment increased in value after
 15 the Windstream I Award --
 16 PRESIDING ARBITRATOR MILES:
 17 No, no. It's the wrong question.
 18 With respect, it's the wrong
 19 question. And I had this discussion with the
 20 Claimants as well.
 21 You need to decouple valuation
 22 methodology from valuation quantum. So the
 23 methodology is the process by which you reach the
 24 quantum. The value is the quantum that you reach.
 25 MS. SQUIRES: Yes.

1 PRESIDING ARBITRATOR MILES:
 2 The methodology, according to the first Windstream
 3 Tribunal, the methodology that's appropriate in
 4 offshore wind depends on, according to the
 5 Tribunal, the stage of the Project.
 6 They accepted Mr. Guillet's
 7 evidence that an early stage development Project
 8 is not appropriate for DCF. That's what the
 9 Tribunal found and they found, as a matter of
 10 fact, this was an early stage development.
 11 Now, if I understand the
 12 Claimant's case, they have said the world's moved
 13 on. The world's moved on and the basis by which
 14 the Tribunal concluded that DCF wasn't appropriate
 15 for an early stage development for offshore wind.
 16 Those circumstances have
 17 changed now. We know more now. And we know they
 18 are used all the time. I am paraphrasing. I am
 19 probably exaggerating their case. But that's the
 20 nub of it.
 21 It may or my not be right and,
 22 if that's their case, they will need to establish
 23 the facts on that and why that would then release
 24 us from the binding findings of the earlier
 25 Tribunal.

1 But the question of how much
2 is a separate and secondary question to how do you
3 get to how much. And how do you get to how much
4 is a temporal point, at least according to the
5 first Tribunal.

6 MS. SQUIRES: Yes, yes. So I
7 agree. I follow. Please correct me if I am not
8 then following in my response. I do agree with
9 what you have said.

10 The Windstream I Tribunal
11 found that the Project was an early stage
12 development Project and, as a result of that, no
13 DCF. I think everyone agrees with that finding of
14 the Windstream I Tribunal.

15 PRESIDING ARBITRATOR MILES:
16 Are we bound by that, is the question?

17 MS. SQUIRES: So the effect of
18 that on this Tribunal.

19 I would -- so.

20 PRESIDING ARBITRATOR MILES:
21 Mr. Neufeld has an urgently bright orange note
22 behind you.

23 MS. SQUIRES: So if the
24 Tribunal -- our position is that the Tribunal is
25 bound by the Windstream I Tribunal's finding that

1 it cannot use a DCF if the Claimant's investment
2 is still considered an early stage Project.

3 As a matter of fact, we would
4 say that remains the case.

5 I think the Claimant, in terms
6 of -- sorry.

7 Sorry, it's all good. It's
8 really late in the day.

9 So, yes, if the Tribunal finds
10 that this is an early stage Project and it remains
11 the same today, then the Tribunal is bound by the
12 Windstream I Tribunal's finding that a discounted
13 cash flow analysis is not appropriate.

14 PRESIDING ARBITRATOR MILES:
15 So you're saying what we would need to be released
16 from that methodology option only is additional
17 facts that bring along the stage of development of
18 the Project since that Award?

19 MS. SQUIRES: That's correct.

20 I guess there's two things that could change the
21 methodology.

22 The first is, yes, the Project
23 has advanced somehow, such that, for example,
24 imagine the Project advanced enough to have
25 turbines in the ground. I think the experts would

1 agree that a DCF is appropriate there.

2 The other way that the
3 Tribunal is released -- and I don't even know if
4 it's released. You don't have to turn your mind
5 to that as if you're valuing a different
6 investment.

7 So if you're not valuing the
8 full value of the investment, the Project, the FIT
9 contract, so if you're just looking at an increase
10 in value that occurred after and you're trying to
11 figure out what that value or that the Claimant
12 has established that there has been some increase
13 due to something, then how do you determine what
14 was taken?

15 And the Tribunal never looked
16 at how do you determine loss to an investment in
17 that stage -- in that type of scenario.

18 I think it really depends on,
19 at the end of the day, what investment we are
20 talking about here and what you're looking to
21 value which I know I fully appreciate is a
22 question of quantum.

23 So to get, I think,
24 fundamentally, if we are at an early stage
25 development Project and that remains in effect

1 today, a DCF is not appropriate.

2 CO-ARBITRATOR GOTANDA: Just
3 to clarify.

4 And the reason why this is so
5 important and the reason why I focused on whether
6 this is jurisdictional or not, is because you can
7 waive the application of collateral estoppel or
8 res judicata; right.

9 So I want to be -- I want to
10 make sure that, if you're waiving it, that we
11 understand what, what that entails.

12 MS. SQUIRES: That's right.

13 We are -- so I can say we are
14 not waiving the application of res judicata or
15 collateral estoppel.

16 Our position is that those
17 doctrines may not apply, depending on what the
18 Tribunal is then looking at to apply a methodology
19 to.

20 And that would be very
21 contextual, will depend on the investment at
22 issue, what losses are being evaluated and the
23 characteristics of the investment and that sort of
24 thing.

25 So I'll move ahead a bit now

1 to discuss quantum. I don't think I have a whole
 2 lot more to say on causation or the question from
 3 the Tribunal but we will return to it in closing,
 4 I think.
 5 But what I will say is that we
 6 can spend many hours discussing what the Claimant
 7 should have put forward as its damages case. We
 8 can postulate on whether its investment was
 9 worthless or gained value or whether a new
 10 investment arose.
 11 But the outcome of those
 12 discussions does not change the fundamental fact
 13 that the Claimant has not put forward anything but
 14 a repeat of its damages request in Windstream I.
 15 And that wholly inappropriate approach cannot
 16 satisfy the burden the Claimant must meet to be
 17 awarded damages here for an alleged breach that
 18 occurred after that arbitration.
 19 So let's turn now to address
 20 the quantum arguments the Claimant did put
 21 forward.
 22 And I have already explained
 23 why the Tribunal, maybe, need not engage with the
 24 specifics of this valuation but this means -- so
 25 where does it leave us?

1 And I don't want to spend a
 2 lot of time on this point because the Claimant and
 3 Canada have extensively talked about this in their
 4 written submissions on the applicability of the
 5 DCF. And I will encourage the Tribunal to read
 6 through the transcripts in Windstream I and
 7 Windstream II on this. There is a lot of
 8 testimony on this point.
 9 But, for the sake of
 10 completeness, I will point you to some specific
 11 arguments that we have made on quantum.
 12 And, first, I will respond to
 13 the Claimant's argument that a discounted cash
 14 flow model should be used to value the Claimant's
 15 investment but for the breach. And this should be
 16 in a world where it's not bound by the Windstream
 17 I's Tribunal's findings of course.
 18 And I will demonstrate why
 19 there is absolutely nothing on the facts of this
 20 case that provides this Tribunal with a reason to
 21 depart from the well established line of
 22 jurisprudence on the record, including that of the
 23 Windstream I Tribunal or the evidentiary record.
 24 And, second, I will
 25 demonstrate that, when the appropriate damages

1 methodology is applied, the value of the
 2 Claimant's investment is nowhere near the
 3 \$300 million it says it is.
 4 As international Tribunals
 5 have noted, where an investment is still in the
 6 preoperational stage or has no history of profits,
 7 awarding any amount of future profits would
 8 require an impermissible degree of speculation.
 9 As the Tribunal in PSEG v.
 10 Turkey noted, a Tribunal should be reluctant to
 11 Award loss profits for a beginning industry and
 12 unperformed work.
 13 This is consistent with the
 14 positions taken by other Tribunals where they have
 15 held that the sufficient certainty standards
 16 associated with using a discounted cash flow
 17 method to determine lost profits is usually quite
 18 difficult to meet in the absence of a going
 19 concern or a proven record of profitability.
 20 Now the Claimant has not put
 21 forward a single legal authority that supports the
 22 use of a DCF here.
 23 In fact, as Canada has
 24 explained in its written submissions, the
 25 authorities the Claimant has put forward, many of

1 which were dismissed by the Windstream I Tribunal,
 2 expressly disagree with such an approach.
 3 Now, prior to the termination
 4 of the FIT Contract, let me tell you what the
 5 Claimant did not have.
 6 It did not have an operating
 7 asset. It did not have a record of profits. It
 8 did not have a single one of the over 40 permits
 9 it needed from the ten regulatory agencies at the
 10 federal and provincial level that would allow
 11 development.
 12 It was operating in a market
 13 -- it intended to operate in a market with no
 14 prior development in offshore wind. It would have
 15 been the first.
 16 It did not have a financing
 17 plan.
 18 It did not have a single
 19 contract required to build the Project.
 20 And other than the technical
 21 experts hired for its NAFTA proceeding, not a
 22 single experienced offshore wind developer on the
 23 payroll.
 24 And the FIT Contract it did
 25 have, its revenue certainty depended entirely on

1 the Claimant satisfying numerous milestones it had
2 not yet met.

3 Now, the Claimant has spent a
4 lot of time and money hiring the leading offshore
5 wind experts so it could continue to argue that
6 the risks associated with the Project reaching
7 commercial operation do not trump the use of a
8 DCF.

9 With time, money, resources
10 and an ability to tolerate lengthy delays and
11 unplanned failures and major setbacks, could the
12 wind turbines be placed on the shoals of Wolfe
13 Island off Lake Ontario? Sure. But that is a
14 completely irrelevant question in this
15 arbitration.

16 The Claimant did not have
17 unlimited time, money and resources. It could not
18 tolerate lengthy delays.

19 The FIT Contract required the
20 Claimant to reach commercial operation within five
21 years. There was no flexibility in the FIT
22 contract on this point. Meet your milestone date
23 of commercial operation or risk termination.

24 Now, this morning, or perhaps
25 this afternoon, in their pleadings, the Claimant

1 brought you to the Grasshopper decision, which
2 Canada has relied on, for the proposition that the
3 IESO can terminate the FIT Contract on failure to
4 meet your MCO or your milestone date commercial
5 operation.

6 They have said that that case
7 is irrelevant to the FIT Contract held by the
8 Claimant because that case dealt with FIT projects
9 in phases 2, 3 and 4 and the FIT Contract was in
10 Phase 1.

11 However, the Court's finding
12 with respect to Article 9.1 of the FIT Contract
13 and with respect to the ability to terminate upon
14 failure to meet the MCO, did not turn on anything
15 in Article 8 of the FIT Contract. And that's the
16 distinguishing factor the Claimant relies on.

17 What it did turn on, what that
18 decision was looking at was identical wording that
19 can be found in the FIT 1 contracts and the FIT 2,
20 3 and 4 contracts.

21 In fact, the court held, at
22 paragraph 43, that if the IESO terminates the
23 contract under Section 9.1(b) for failure to
24 achieve commercial operation by the milestone date
25 of operation, then Section 8.1, which the Claimant

1 relies on, will not even come into play.

2 Now, in the Claimant's mind,
3 the Tribunal is to ignore this reality and value
4 its investment as if it was an operating asset.

5 As the overwhelming majority
6 of Tribunals have, this Tribunal should reject the
7 Claimant's invitation to speculation.

8 Now, before I leave the DCF,
9 one final point.

10 Even leaving the legal point
11 aside, the DCF is simply not how offshore wind
12 projects, at the development stage of the Project,
13 are valued in real life. And this goes to
14 President Miles' question earlier.

15 As Dr. Guillet notes, prior to
16 the time at which they are ready to begin
17 construction, projects are not usually valued on
18 the basis of future cash flows. They are still
19 viewed as highly speculative due to the absence of
20 financial close, up to the actual date for such an
21 event.

22 That was true in Windstream I.
23 That remains true as of today.

24 PRESIDING ARBITRATOR MILES:
25 Okay.

1 It is a little bit important
2 here, the heading on these slide is "DCF is not
3 how offshore wind projects are valued"; that is
4 not your submission; is it?

5 MS. SQUIRES: So the
6 submission is the DCF is not how offshore wind
7 projects are valued if the Project is at the early
8 stage of development.

9 PRESIDING ARBITRATOR MILES:
10 Right.

11 And then, subsequently, in
12 your submission, you said development stage
13 offshore wind, but you just qualified that
14 further.

15 We are talking about early
16 stage development. Not late stage development.
17 Early stage development. That was the limit of
18 the Tribunal's finding?

19 MS. SQUIRES: That's correct.

20 PRESIDING ARBITRATOR MILES:
21 Okay.

22 MS. SQUIRES: The Claimant
23 argues to the contrary. That the DCF is used to
24 value early stage development projects. And its
25 evidence to support this, one Project. Deepwater

1 wind was valued by Ørsted using a DCF model prior
 2 to its purchase.
 3 And who is Ørsted? Those in
 4 the room may know them by their former name, DONG
 5 Energy, the global market leader in offshore wind.
 6 A company that, unlike the Claimant, doesn't even
 7 require bank financing for its projects, from the
 8 Claimant's own admission.
 9 Corporate differences aside,
 10 though, why did we see -- what did we see with
 11 Deepwater Wind in the end. Dr. Guillet explains.
 12 A massive 2 billion euro
 13 charge in its accounts related to these projects,
 14 cruelly underlining how inaccurate the original
 15 valuation was. Even the global leaders get a DCF
 16 wrong for early stage development projects.
 17 The Claimant's overstated
 18 reliance on this single Project must be rejected.
 19 Let's then turn to look at an
 20 appropriate valuation method for the full value of
 21 the Claimant's investment, as it was defined by
 22 the Claimant. The market comparables approach.
 23 Both the Claimant and Canada
 24 have provided market comparables valuations for
 25 the Tribunal.

1 However, as Dr. Guillet notes,
 2 the Claimant's selective approach with
 3 inappropriate weight given to the fact that the
 4 Project had a FIT Contract does not lend any
 5 validity to the Claimant's market comparable
 6 valuation.
 7 Absent validity on these other
 8 milestones, like permits and site control, the
 9 revenue regime, even if settled early, has limited
 10 relevance to the valuation of a Project.
 11 And I will not repeat the
 12 debate between the parties with respect to which
 13 comparables are properly included in that
 14 analysis. This is laid out in the submissions of
 15 both parties and the reports of the various
 16 experts and you will hear from them on this point
 17 this week.
 18 But, as the week progresses,
 19 the Tribunal will be left with a clear message:
 20 The Claimant's skewed valuation must be rejected.
 21 A FIT Contract with a revenue
 22 stream that is contingent on obtaining all permits
 23 and financing cannot be afforded the weight the
 24 Claimant so wishes to place on it, even in a
 25 properly situated but-for world.

1 While the contract had revenue
 2 clarity, it knew what price it could get for its
 3 resource if it could build a Project. It simply
 4 does not have any revenue certainty and that is
 5 the argument upon which the Claimant hangs its
 6 hat, that it had revenue certainty.
 7 Real world valuations
 8 demonstrate that, absent access to the Project
 9 site and given the Claimant's lack of progress
 10 towards obtaining even a single permit required to
 11 move the Project forward, both at the federal and
 12 provincial level, the Claimant's Project had no
 13 material value on the market.
 14 I will now turn the floor back
 15 to my colleague Mr. Neufeld. He wanted to give a
 16 couple final thoughts.
 17 PRESIDING ARBITRATOR MILES:
 18 They will have to be tiny because you have about
 19 three and a half minutes.
 20 MR. NEUFELD: I had such
 21 clever thoughts to wrap up. I think the most
 22 clever thing to do is not to give any thoughts to
 23 wrap up.
 24 So I think we should probably
 25 go home and/or back to our hotels, in our case,

1 and resume our nightshift.
 2 And we are in your hands in
 3 terms of the rest of the organization.
 4 PRESIDING ARBITRATOR MILES:
 5 Good instruct. Thank you.
 6 Thank you very much,
 7 everybody, today. Spectacular presentations and
 8 incredibly useful.
 9 And thank you also, I think we
 10 were evenhanded in our level of interruptions so I
 11 don't apologize for that. It's been incredibly
 12 useful as an exercise for us. So I do thank you
 13 for your patience though.
 14 Right, Lisa, you may go. We
 15 can go off record.
 16 --- Off-the-record discussion
 17 --- Whereupon matter adjourned at 7:03 p.m., to
 18 resume Tuesday, February 6, 2024, at
 19 9:00 a.m.
 20
 21
 22
 23
 24
 25

<p style="text-align: center;">A</p> <p>a.m 1:11 5:3,5 22:23,24 45:9 48:1 82:24,25 115:23 141:4 464:19</p> <p>abandoned 53:25</p> <p>abandons 150:2</p> <p>ability 163:18 192:5 209:5 263:24 417:6 457:10 458:13 465:6</p> <p>able 6:17 16:8,10 23:23 29:10,14 29:18 48:8 76:9 84:19 92:25 93:3 103:5,21 148:16 161:23 174:4 176:13 177:1 181:17 182:11 196:25 200:19 202:4 215:14,17 247:23 283:2 340:15 385:21 386:13 387:2 389:4</p> <p>Aboriginal 114:12,18</p> <p>absence 250:13 343:6 347:2 403:22 455:18 459:19</p> <p>absent 214:21 420:15 421:5 421:11,19 423:18 462:7 463:8</p> <p>absolutely 30:15 48:14 135:1 287:20 291:22 295:13 308:1 331:18 335:19 348:19,20 360:23 454:19</p>	<p>absorb 123:18</p> <p>abstain 322:22</p> <p>absurd 248:20 296:22</p> <p>abundance 105:9</p> <p>abundantly 265:16 437:24</p> <p>abuse 234:11,13 235:24 236:14</p> <p>abuses 236:18</p> <p>accept 51:11 57:13 172:24 191:17 243:12 306:9 364:15 417:14 446:12</p> <p>accepted 192:19 332:3 343:20 365:8 385:23 448:6</p> <p>access 34:23 35:2 39:13 50:12 220:8 245:22 265:12,23 293:23 294:9 294:10 295:7 317:14 345:9 347:9 463:8</p> <p>accessible 104:11</p> <p>accessing 271:4</p> <p>accommodate 14:5 204:7</p> <p>accommodated 13:10</p> <p>accommodation 103:19</p> <p>accompanied 37:3 38:13</p> <p>accorded 407:14</p> <p>account 89:15 107:17 157:2 165:11 181:3 184:9 215:19 220:13 223:15 377:22</p> <p>accounted 203:15</p>	<p>accounts 425:11 461:13</p> <p>accrue 269:14</p> <p>accrued 91:16,20 268:20 442:25</p> <p>accruing 436:14 446:25</p> <p>accurate 20:9 93:7</p> <p>accurately 465:6</p> <p>accustomed 238:16</p> <p>achieve 20:11 80:21 123:9 195:24 196:19 378:2 419:21 458:24</p> <p>achieved 192:8 216:2,3 406:8</p> <p>achieving 216:4</p> <p>acknowledge 73:18 80:22 182:23 187:2 232:2</p> <p>acknowledged 167:4 227:8 332:12 349:10</p> <p>acknowledges 350:17</p> <p>acquire 227:9 256:19 324:19 325:4</p> <p>acquired 303:12 303:13 305:9 305:10,18 308:17 322:17 324:16,23 325:7 326:14 327:7 337:14 341:10</p> <p>acquires 329:12</p> <p>acquiring 339:20</p> <p>acquisition 324:12 327:20 328:17,18,18 328:19</p>	<p>act 36:3,17 37:17 132:8 190:22 190:23 248:15 248:17 251:10 261:8 263:9 277:7 287:22 307:2,11 314:17,23 340:19 341:1</p> <p>acted 191:10 202:5 406:20</p> <p>acting 260:19 283:20</p> <p>action 65:6 209:25 229:21 229:24 230:4,5 230:25 266:19 267:13,14 269:25 273:6 273:24 274:19 275:15 276:8 282:16,16 310:25 311:7 311:13,17,20 312:16 313:1,3 315:13,14 316:1 328:9 339:13,14 350:12 353:8 401:21 403:15 404:7,10,11</p> <p>actionable 339:22</p> <p>actions 176:16 192:3 273:11 275:17 276:9 302:19 309:6 309:13 328:24 337:4 338:5</p> <p>actively 335:24</p> <p>activities 196:8</p> <p>acts 70:17 191:6 241:20 247:7 264:7 266:1 283:14 319:2 320:8,11,17</p>	<p>340:25 353:2</p> <p>actual 52:23 89:10 132:11 145:23 160:11 180:3 191:21 205:4 219:22 259:21 268:21 273:21 276:11 318:5 322:6,9 322:13,23 323:21 324:16 331:8,25 333:15,19 336:25 340:2 352:19 396:4 416:3 418:10 424:13 459:20</p> <p>adamant 441:10</p> <p>add 78:22 79:9 100:22 161:7 165:7 174:4 333:14 413:19</p> <p>added 96:11 99:14 173:12 176:12,14,15 176:17 181:12 181:16 331:3 392:24</p> <p>adding 44:13 203:17</p> <p>addition 62:25 182:21 207:14 344:9,18 386:14 391:24 408:4</p> <p>additional 16:24 17:5 20:25 67:6 76:7,7,22 77:11 77:14 79:8,15 79:18 99:10 134:19 137:19 165:9 166:10 167:4 172:1 176:12,14 180:16 181:12 181:16 194:20</p>
--	--	--	---	--

198:3,23 199:11 203:23 234:7 246:22 248:24 275:11 297:16 304:2 329:8 337:2 390:24 391:1 400:24 412:4 412:12 415:22 425:3 436:14 450:16 Additionally 432:24 address 66:24 96:8 110:9 156:5 173:25 175:20 178:15 183:3 190:9 216:17 219:13 226:10 227:4 244:10 245:10 246:7 248:2 250:15 294:3 300:8 307:25 308:2,25 312:2 316:4 341:25 400:23 401:8 402:4 419:11 419:25 437:2 438:11,23 453:19 addressed 219:18 221:25 227:1 235:11 417:13 434:20 addresses 112:7 addressing 103:12,13 418:15 adequate 283:15 adequately 61:25 adhered 191:9 adjourn 143:3 adjourned 464:17 adjust 21:1 64:14	131:2 137:18 adjusted 207:8 adjustment 203:9 252:16 364:3,6 adjustments 252:22 299:14 ADM 87:12 admissibility 234:19 235:2 243:1 244:9,10 264:22 300:10 admissible 266:22 283:4 admission 326:13 461:8 admissions 334:17 admit 165:25 admits 282:6 admitted 171:24 248:18 326:1 adopt 410:13 adopted 191:1 265:20 358:21 374:10 advance 115:8 119:19 195:25 196:20 197:9 239:9 255:17 286:2 324:23 412:14 advanced 194:17 444:17 450:23 450:24 advances 248:19 394:12 advancing 195:9 advantage 429:4 430:11,23 advantageous 357:5 adverse 111:15 advisor 22:5,9,11 22:12 advisory 118:18	155:9 affairs 3:6 153:14 affect 352:22 affidavit 386:3 386:10 affirm 94:17 affirmative 284:10 affirmatively 200:24 afforded 197:17 407:25 462:23 afternoon 189:25 238:14 341:23 349:2 457:25 agencies 456:9 agent 283:16 ago 15:19 233:2 239:2,21 248:5 312:25 433:9 agree 16:10 18:2 48:18 56:13 80:14 124:10 143:3,22 144:7 175:4 226:22 229:22 232:8 257:20 267:8,9 285:10,11 287:9 295:24 296:13 303:24 313:7 319:24 369:7 375:8 385:21 408:20 420:20 449:7,8 451:1 agreed 72:24 79:1 130:4 142:16 182:5 190:14 192:17 215:1 232:10 247:21 250:6 252:7 258:5 259:16 260:6,8 267:7 291:25 295:3 299:6	313:6 401:20 411:20 agreeing 130:25 130:25 442:18 agreement 16:11 48:21 80:17 168:21 215:6,9 260:9 292:20 293:3 317:16 338:16 346:21 357:14 372:20 402:23 409:5 agrees 64:5 215:4 449:13 ahead 45:12 50:7 114:4 133:1,2 318:21 354:20 423:22 452:25 ala 434:21 Alex 5:25 7:19 Alexandra 2:3 3:3 aliens 407:24 aligned 121:24 alive 62:23 allegation 411:14 413:4 allegations 127:4 349:8 409:13 allege 339:16 394:23 410:9 424:15 437:15 alleged 138:22,25 139:5,7,22 164:1 191:6 227:9 230:25 237:4,7 258:25 265:18 271:11 300:25 301:1,6 301:6 302:4 303:13 305:10 305:18 306:4 306:13,19,22 307:5 308:7,17 310:10,22 311:12,25	318:3,6 321:5,7 322:7 323:3,12 323:15,18,22 324:1,6,7,24 325:4,23 327:25 328:14 329:7 332:25 333:20 334:13 334:25 341:11 352:14 361:25 389:20,21 390:20 391:4 410:5 413:1 416:2,8 417:20 419:10 424:20 425:14 426:18 428:3 432:3 436:13 441:10 441:11 444:7 453:17 allegedly 353:2 417:19 alleges 389:11 390:17 410:10 413:7 437:5,18 441:17 alleging 164:3 262:24 394:24 395:22,24 396:6 397:5 432:24 alleviate 102:22 allocates 12:22 allow 13:5 79:6 181:19 262:13 329:2 331:10 344:15 345:8 345:24 426:15 456:10 allowed 16:1 241:21 249:12 258:9 298:6 310:8 414:11 allowing 21:10 176:16 Alonso 12:3
--	--	--	--	--

45:11 46:23 47:25 116:2 122:8 133:17 141:22 alter 337:3 alternative 282:10 alternatives 57:19 altogether 68:25 431:21 amalgam 340:1 ambiguous 33:21 47:15 48:9 amend 129:20 133:8,24 152:15 204:3 271:17 272:4,8 302:11 336:17 amended 110:1,9 132:14 216:13 259:23 260:14 260:17 271:12 276:20,23 302:14 378:8 414:2 amending 68:24 amendment 129:22,23 amendments 110:7 250:14 America 221:11 amount 48:11 89:6 91:12,15 91:16 106:24 110:18 187:15 204:19 242:20 254:9 259:11 299:18 300:1 311:22 320:12 323:15 324:1,2 331:25 354:3 363:9,10 414:19 455:7 amounted 230:16 299:18	amounting 323:21 amounts 89:13 102:11 281:7 284:8 ample 105:5 analogous 281:21 analysis 34:2 81:2 143:2 193:2 207:18 207:20,21 229:5 246:4 266:18 268:1 307:1 350:8 359:15 363:1 367:3 369:14 370:9 373:7 398:15,17 406:17 407:1 412:2 426:15 432:4,7 441:5 450:13 462:14 analyze 308:14 337:11 340:21 analyzed 312:19 and/or 463:25 ANDAs 274:5,10 275:1 Andrew 3:12 22:10 angles 161:4 Annex 349:22 358:1,13,17 360:3,16,21 annexes 358:20 announced 36:2 50:20 155:19 announces 43:25 annul 289:13 answer 15:4 23:23 30:21,25 58:23 76:25 107:10 120:5 120:14 162:24 282:7 286:7 304:5 305:23	311:10 313:23 315:17 322:10 325:5 334:21 344:21,22 368:3 418:16 418:22 422:4 422:22 428:15 447:4 answered 106:21 190:10 304:24 answering 174:11 211:5 239:12 355:20 371:20 answers 104:19 174:19 212:24 anticipate 104:20 anticipating 103:12 anybody 415:9 anymore 400:5 anyway 100:24 104:19 215:21 217:18 291:15 AOR 35:5 39:16 42:14,17 194:5 203:4 apart 82:12 187:9 376:12 380:8 Apologies 351:5 apologize 38:11 436:18 464:11 apologizes 210:19 Apotex 274:1,3,7 274:15,21 281:19 328:3 332:2 appeal 95:10 199:15 203:15 appear 295:24 304:19 397:10 APPEARANC... 2:1 3:1 appeared 410:13	appearing 14:16 appears 393:14 appetite 129:21 applicability 200:8 454:4 applicable 69:2 170:1 241:25 274:22,25 279:12 280:6 applicant 35:6 345:5,8 346:4,8 346:14 application 43:3 46:5,7,12 84:3 98:6,13 115:3 131:10 142:16 142:17,20 143:4 144:9,10 150:3 154:25 157:16,20 194:12 228:19 236:21 256:24 258:14,15 259:15,18,24 260:14,18 261:15,17,21 262:11,24 265:11 270:25 273:25 276:21 276:24 294:8 295:25 302:14 302:15 336:1,4 336:9,10 346:4 346:9,15 383:2 386:5 392:5 410:22 452:7 452:14 applications 35:24 44:10 274:5,8,12 applied 184:5 216:23 222:5 251:1 280:11 301:18 359:4 438:16 455:1 applies 42:14,17	183:16 224:24 236:2,14,17 280:10 281:12 281:24 294:14 296:1 302:19 446:19 apply 115:11 150:9 181:24 183:17 199:18 200:16 216:21 219:16 227:20 228:4 235:25 236:3,12 268:1 275:7 287:22 294:13 349:25 357:19,22 359:10 438:20 442:14 446:15 446:17,23 452:17,18 applying 166:19 225:5 227:23 227:24 231:15 232:25 appreciate 164:17 451:21 appreciated 214:22 approach 37:11 94:15 115:11 128:6 156:19 161:1 219:24 220:7,22 222:5 222:24 223:5 224:10,24 226:23 308:14 349:25 358:21 374:10,11 379:1 423:10 441:24 442:21 443:23 446:17 453:15 456:2 461:22 462:2 approached 117:14 157:13 219:22
---	--	---	--	--

approaches 155:2,13 207:9 217:15	158:14 235:16 401:5	11:11 13:13 14:3 17:2 18:12	156:23 157:1,9 157:22 158:1	303:8 304:1,10 310:19 311:15
approaching 11:19	arbitrariness 412:15	18:21 23:2,6,20 24:11,20 25:6	158:16,21 159:1,9,18,22	312:9,22 313:12,17,20
appropriate 12:12 64:12 68:17 194:8 216:19 217:6 222:18 226:19 248:1 252:20 364:6 426:14 430:14 440:21 443:5 444:21 444:25 446:17 448:3,8,14 450:13 451:1 452:1 454:25 461:20	arbitrary 410:6 413:5 arbitrate 276:13 arbitration 1:2,9 1:10,18,24 20:13 25:20 32:14,22 45:4 49:14 51:17 53:22 57:14 58:1 81:10 83:24 89:23 112:19 120:18 121:2 123:25 155:10 167:16 231:9 237:7	25:19,22,25 26:4,8,12,23 30:12 31:5,11 37:19 38:1,16 39:3 45:10,15 45:18,25 46:9 46:18,22 47:24 48:4,15 51:19 51:22 52:19 53:16 54:1,5,23 56:22 57:3,8 58:2,21,25 63:16 66:8 74:6 77:19 79:10 81:6,12,17,21 82:9,21 83:1,22 87:5,17 90:12 90:19,22 91:2 91:25 92:24 93:9,16,24 94:5 101:23 102:5 102:15 103:4,9 103:14,25 104:15 105:12 106:20 107:9 107:19 108:4,9 109:15,23 111:18 112:24 113:6 116:1 119:5,21 120:15,22 121:10,14 122:7 125:6,15 125:19 126:2 132:13,23 133:16 134:24 135:10 141:5 141:12,21 142:2 147:3,12 148:7,11,18,23 149:4,9,13,19 151:21 156:11	159:25 160:4 164:9,12 167:9 170:21 171:1 171:14 172:6 172:20,23 173:5,13,18,24 174:12 175:7 177:4 178:9,16 178:23 184:13 184:23 185:1,5 185:10 187:17 187:20 188:4 189:3,12,18,22 193:6 195:2 196:24 197:6 200:9,21 201:20 202:8 204:2,6,13 205:1 208:14 208:18 209:6 209:13,17,24 210:2,6,13 211:1,25 212:8 212:13 213:1 217:19,24 218:17 221:19 222:21 223:8 223:20 235:3,7 237:17,20 238:6 247:8 257:2,24 259:25 260:11 270:6,10 278:17 279:6 284:2 286:17 290:13,19,23 291:1,5,20 292:4,7 293:14 293:20 294:4 294:17,24 295:6,9,14 299:24 300:4	315:8 317:3,24 318:8,19 320:23 321:25 324:8 332:21 333:10 338:9 338:20 339:3 341:20 344:4,7 344:17,20 345:15,22 346:23 347:4 347:11,21 348:1,4,9,13,17 348:21 351:9 354:17 357:12 357:16 358:4,7 358:15,23 359:3,6,23 360:17,24 363:13,16 366:2,8,12,16 366:21 367:24 368:10,13,21 368:25 369:8 374:18,21,25 378:14,17,20 379:13,19,24 380:6,16,23 381:1 382:8,14 382:19 383:11 383:20,24 385:11,19 386:16,24 387:9,12,21 388:7,17 389:17,23 390:4,12 391:9 395:15,19 396:10 397:3 397:15,19,23 398:2,5,8,14,21 401:1,10 405:5 405:11,16,19
appropriately 178:4	240:22 246:19 255:23 262:8 262:10 268:19 277:14,22 278:7,16 282:5 283:5 284:11 292:10 300:21 302:1,5,6 304:25 305:22 309:18 337:21 357:22 389:12 392:8 393:19 405:15 407:19 416:9 418:6 424:20 427:23 428:5,7 431:18 432:16 433:11 433:14 436:2,6 437:5,9,15,15 442:4 453:18 457:15			
appropriateness 222:11				
approval 35:23 36:19 39:24 40:7 149:17 256:4 392:4				
approvals 36:23 113:15 256:5 265:12,24				
approve 61:18				
approved 86:2 87:12 274:4,9 274:10,17,18 275:1				
approximated 366:1				
approximately 62:8				
approximation 191:16				
APRD 40:7				
April 201:25 259:24 260:15 276:24 302:15				
Aragón 1:19 5:13	arbitrations 272:25 275:4 Arbitrator 1:16 5:4,17 7:5,12 8:7,12 9:8 10:10,15,24			

415:1,7 419:14 419:19 420:21 421:24 422:11 422:16 423:8 423:19 425:15 425:23 426:3,7 434:12 443:14 445:3,10 446:4 446:7 447:16 448:1 449:15 449:20 450:14 459:24 460:9 460:20 463:17 464:4 area 169:12,13 343:15 345:14 345:25 argue 161:15 163:18 184:4,7 233:25 264:22 266:20 273:8 281:7 284:8,17 297:15 355:5 357:21 457:5 argued 33:2,9 45:5 47:7 136:12,17 137:7 232:3 270:2,3,20 271:3,11,19 272:6 274:11 274:14 277:5 279:17,21 286:9 298:20 298:20 299:1 300:15 320:4 333:21 416:11 428:14 431:23 argues 262:9 266:12 268:3 271:7 296:11 402:22 409:15 427:17 436:3,7 460:23 arguing 16:6 63:8 75:1,24	76:1 77:15 137:8 204:8 285:5 298:13 396:14 410:21 442:1 argument 10:7 21:12 32:23 75:5,8,17,23 100:21 131:15 138:12 139:25 162:3 163:7 164:24 165:19 167:8 177:17 178:14,14 179:23,24 180:2 183:3,4 201:5 220:22 227:3 231:3 239:16 272:20 286:1,18 312:3 312:6,8,10,15 320:14 321:6 323:23 335:8 340:9 375:20 376:19 398:23 399:25 400:2 400:14 432:9 444:15 447:11 454:13 463:5 arguments 12:21 33:9 51:17 146:13 172:9 181:22 220:4 232:16 237:10 239:10,14 244:9,22 246:13 284:25 287:17,25 288:4 331:12 341:19 357:18 417:18 420:9 433:17,20 438:25 453:20 454:11 arisen 176:23 289:24	arises 9:11 88:5 130:10 138:21 138:23 161:15 180:24 424:19 arising 13:7 63:15 168:16 183:25 240:13 279:14 396:21 426:16 437:16 arose 16:18 27:14 75:21 88:7 93:12 121:17 132:20 133:13 138:15 150:8,24 198:16 227:11 228:2 256:22 263:25 272:21 275:21 297:25 301:1 335:14 382:23 400:2 406:21 426:19 427:20 433:7 436:4,9 437:3 442:2,2 453:10 arrangement 61:9 arrangements 145:2 arrive 292:13 440:21 arrived 206:17 440:11 arrives 417:22 arrow 56:3 article 95:8 199:3 245:15 291:22 302:2 305:13 307:14 313:4 333:9,16 340:23 349:10 403:19 407:12 407:22 408:7 408:12 409:13 422:6 423:14 438:22 439:10	458:12,15 articles 262:15 300:14 305:2 305:19 307:5 310:13 314:15 321:4 328:16 332:24 339:17 340:20 408:25 articulate 28:24 articulates 64:18 artificial 272:18 319:11 artificially 273:1 275:4 ascertain 87:15 ascribes 241:12 aside 123:17 172:11,14 371:6 379:10 398:18,23 438:2 459:11 461:9 asked 11:23 12:22 77:20 81:25 95:11,15 95:19 98:17 148:15 160:14 227:17 229:8 275:12 332:23 342:4 418:7 438:14 asking 24:13 44:16 117:23 282:1 306:3 417:23 asks 122:24 130:8 328:12 aspect 99:9 353:13 aspects 99:2 100:7 167:23 170:17 assert 135:22 asserted 229:24 asserting 237:11 328:7	assertion 330:16 asserts 153:23 assess 172:25 191:18 205:9 265:13 418:5 435:10 assessed 205:5 212:20,23 217:1 242:25 268:15 282:25 340:17 420:6 assesses 214:5 assessing 214:14 442:8 assessment 80:18 217:5,14 266:21,23 273:13 298:3 391:19,20 392:25 393:16 393:18,21 394:2 422:17 422:20,23,24 435:13 437:25 asset 65:12 169:21 175:2,9 353:7 365:17 368:6,9 369:16 370:25 380:3 382:11 456:7 459:4 assets 63:3 207:23 assisted 7:22 205:23 assisting 7:24 associate 87:13 associated 455:16 457:6 assume 100:21 147:17 assumes 191:8 436:12,21 assuming 13:17 158:12 202:3 202:10 215:15
---	---	---	---	--

285:6 376:18	authorizations	126:11 133:20	404:18,23	back 7:20 8:2
assumption	274:13	135:8,15,15,16	405:2 410:2	17:15 18:25
190:10 437:23	available 11:3	135:20 136:8	414:6 417:23	20:16 23:3
assumptions	65:13 71:11	136:12,16	420:12 424:3	30:13 32:8
191:17 195:21	187:23 215:2	141:8 160:25	425:6,24 426:5	41:19 43:23
402:14	223:2,25	162:6,10,16,22	426:16,19	44:2,4,11 47:22
assured 238:24	224:11 248:23	167:11 171:17	427:1,18 428:8	54:2 56:23 57:4
attach 356:22	251:20 363:6	172:16 174:6	432:12,21	58:8 77:20,24
attached 110:20	365:18 368:7	174:15,17	433:19 434:4,9	78:8,18,19 79:7
243:23	370:25 372:13	175:1,13,16	435:23 436:5,8	82:22 83:2
attacked 161:4	372:15 384:2	181:11 184:14	437:6,8 439:14	88:19 91:8,17
attempt 337:18	388:5 396:25	184:17 188:9	441:12 442:3	105:17 106:4
337:24,25	406:11,15	188:20 206:22	444:8,14	106:11 111:19
340:2 364:20	average 147:14	207:1 212:15	445:13 447:15	111:25 120:12
432:5 433:1	averaged 147:15	212:17 223:4	450:18 455:11	122:10 129:7
attempted 98:3	avoid 10:7 268:8	233:8 240:14	Award's 242:7	133:17 142:5
155:24 283:10	322:23	240:20,23	awarded 16:17	155:15 159:15
attempting	awake 391:7	241:3,4,23	21:16 71:16	170:23 174:10
125:25	Award 17:1,3,20	242:8 243:8,12	137:25 167:5	185:7 188:24
attempts 19:8,22	17:24 18:7,11	245:12 246:25	182:21 192:20	216:15 217:22
122:16 236:18	20:6,14,19 21:4	248:7,10	193:10,13	221:15 226:11
272:18 327:24	21:9 24:24	250:18 251:21	232:6 237:12	230:20 231:24
329:18	25:23 27:3,15	252:10,15	242:20 254:9	237:24 238:7
attending 8:15	28:4,12,14	253:8 254:1,7	254:13,15	257:3 269:2
attitude 410:14	37:21,23 38:6	254:24 256:8	268:7,10 269:6	270:7 282:18
Attorney 3:8	38:17,20 42:9	268:5 272:16	298:4 332:13	284:4,25 286:5
attract 36:4	43:12 45:7 47:4	272:17 273:5	332:19 453:17	288:18 294:15
432:13	50:23 51:11	275:21 276:18	awarding 16:20	295:3,5 307:14
attractive 36:12	54:13 57:16	282:3,9 285:23	137:14 141:11	318:17 319:22
attributable	58:13 73:10,14	286:19 291:12	455:7	321:1,17,18
70:21 283:11	74:3,11 75:2,4	292:24 293:10	awards 28:13	322:3 325:22
attributes 61:8	77:1 80:11	296:24 297:18	338:10 425:19	330:5 331:19
attribution	84:10,23 85:16	299:10 301:10	aware 9:17,23	332:22 338:19
283:18	86:2 88:18 90:9	311:2 333:22	18:13 23:19	346:7 351:5,14
audio 21:23	91:7,8 94:12	334:4 335:5	24:16,18 25:3	352:15 354:11
22:23	96:14 101:12	341:4 359:20	131:16 324:25	356:11 357:13
August 43:10,15	105:21 107:2,3	362:21 363:10	339:23 342:22	367:10 368:16
47:14 114:18	107:4,15,16	364:7 381:2,13	425:20,22	371:4 378:15
115:2 201:24	108:24 109:10	382:22 383:9	427:5,7,15	384:14 385:1
201:25 325:9	109:19 110:2	384:17 389:7	awareness	385:12,15
326:5 358:5	111:21,23	390:23 391:2	404:24	387:16 397:4
authorities	112:2,25 117:5	392:15 393:8	Ayoub 3:5 7:24	399:14 400:7
455:25	117:10,12,22	393:22 396:21		403:18 404:4
authority 67:22	120:19,24	397:11 399:3,6	B	410:17 421:10
261:8 283:21	121:19 122:12	400:19 401:25	b 325:20 326:10	421:18,20
337:23 455:21	123:2,18	402:10,12	343:12	426:1 431:22

434:25 438:7,8 463:14,25 background 32:5 32:16 34:2 41:23 233:13 323:25 backing 250:2 bad 236:18 Baines 2:8 6:11 6:11,12 8:15 9:17 10:3,22 22:3 83:19,24 85:12,15,20 95:21 103:5 104:9 110:10 112:7 115:3 132:2 143:9 183:20 326:1 394:13 Baines' 84:12 85:4,21 110:19 Bakelaar 3:5 7:23 balance 419:20 ball 108:17 bank 89:9,11 91:12 99:3 106:12 107:17 250:2 369:21 461:7 bankruptcy 169:24,24 351:25 352:5,8 banner 11:25 122:8 bar 157:11 barred 232:18 233:6 237:11 319:13 440:24 base 327:25 338:6 based 52:1 66:4 138:22 147:20 161:8,16 167:11,13 170:8 199:12	200:11 206:9 218:21 222:7 230:5 248:10 252:11 360:3 373:15 394:9,9 402:14 406:14 413:21 416:6 417:19 426:18 433:4 434:16 439:25 441:23 basic 80:6 basically 36:22 106:2 138:15 basing 329:1 basis 82:10 90:7 109:5 192:20 205:14 208:23 214:15 217:7 227:18 242:20 243:3 265:19 267:5 274:10 277:6 283:1,18 294:14 296:15 298:4 300:19 300:20 301:2,5 301:9 302:24 311:2 313:13 313:15 339:13 344:23 362:25 420:7 439:21 448:13 459:18 baton 58:8 bats 112:15 Bay 1:10,25 bear 369:18 bearing 334:3 339:10 bears 205:11 beds 34:21 began 42:12 203:20 beginning 190:12 203:19 455:11 begins 34:2 239:25 behalf 268:23	309:23 behaviour 191:21 belabour 372:1 believe 12:3 24:15 30:22 50:25 53:10 89:21 91:18,22 92:12 94:18 118:11,20 120:20 123:8 146:23 169:16 183:8 235:5,10 253:16 306:4 329:24 346:13 347:18 357:25 360:13 365:1 368:5 384:4 393:11 396:2 400:22 403:20 426:6 believed 90:3 331:16 Benedetti 22:4 53:8 56:3 122:18 126:19 126:20 Benedetti's 30:18 53:13 benefit 352:20 best 82:8 218:11 331:20 354:10 406:15 465:5 better 17:9 48:19 80:18,21 82:18 118:8 318:20 Beverley 1:17 5:7 beyond 23:11 49:17 119:19 198:3 200:3 201:15 236:24 237:12,13 327:18 334:8 405:1 408:4 412:1 bid 381:8	bigger 20:5 Bilcon 308:13 313:16 332:2 Bill 120:25 239:17 billion 461:12 billions 49:4 bind 244:15 246:10 267:4 binding 408:9 448:24 binds 166:6 297:14 birds 112:15 bit 48:9 51:20 82:14,18 96:17 97:10 108:1 124:9 160:10 169:6 178:18 255:17 293:15 293:16 315:9 346:17 353:11 358:20 377:23 380:24 389:5 389:24 407:8 419:16 424:9 424:13 430:23 435:19 436:19 445:21 452:25 460:1 Biwater 423:22 424:3 425:17 434:21 black 278:19,21 279:2,5 blanche 322:21 blank 130:12 blind 253:20 block 134:21 189:2 blocked 75:16 181:18 blocking 234:9 blue 290:7 377:16 blunt 306:14	BMO 91:12 boils 243:11 bonus 158:18 215:20 bothering 145:16 320:21 380:24 bottom 18:4 130:8 199:1 379:14 390:11 bound 210:23 211:15 212:1 219:18,21,25 220:20 223:4 225:18,25 226:3,6 298:3 359:8 442:20 443:1 444:23 445:13,23 446:16,19 449:16,25 450:11 454:16 bounds 312:13 box 312:12 342:9 348:7 bracketed 291:6 brackets 18:3 74:9 77:1,23 165:20 branch 87:14 branches 229:18 breach 16:17,18 26:6,10,15 27:10,12 69:21 70:10 88:9 134:9,17 135:2 135:3,6,11 138:22,25 139:6,7,13,22 140:1,25 146:18 160:11 162:4,7 163:1 188:14 190:4 192:19 200:11 208:20 210:3 211:21 212:21 216:21 217:2,6
---	---	---	---	--

227:10,23,25	415:24 417:19	breakdown	192:7 196:19	422:8 439:13
228:9,17	419:4 421:1,5	147:11,13	247:6 261:4	calculated
230:16,21,24	421:11,19	breaks 12:12	394:20 397:1,2	251:18 439:3
233:1,15	423:2,18 424:4	81:20,22,25	403:8 414:2	calculation
243:17 251:16	424:11,13,16	82:11,11,11	416:12 429:18	216:22 439:19
258:11,25	424:20,21,21	159:8	bulk 127:2	439:20
259:11 262:25	424:25 425:7,8	Brenda 22:8	bullet 53:6 180:9	calculations
263:3,12 264:9	425:14 426:12	brief 14:24	392:24	402:9,14,18
264:11 266:5	427:8 428:1	briefly 34:17	bunch 50:6 347:6	call 8:4 22:2 23:9
269:9 271:1,9	432:2 435:10	66:9 246:14	burden 205:11	30:23 36:20
271:16 280:19	435:16 437:23	bright 449:21	295:19 300:9	54:17 56:16
282:14 299:18	438:18,22	bring 32:20 49:6	300:12,22	59:7 176:15
299:18 300:1	439:9 440:20	70:8 133:12	301:24 341:14	274:5 351:3
300:25 301:6	441:16,23	198:19 236:10	350:22 381:16	443:15
301:14,16	442:15,19,23	251:12 277:17	416:1 422:25	called 35:2,5 40:7
303:13 305:10	447:7 453:17	279:14,22	423:5 433:2	219:11 370:4
305:19 306:5	454:15	282:18 305:4	453:16	384:25 393:11
306:13,19,23	breached 163:4	314:1,5 315:22	Bureau 3:6 7:25	calling 434:24
307:15 308:2,7	164:3 242:4	346:17 450:17	busily 6:5	calls 196:16
308:7,18	251:4 270:21	bringing 20:11	business 35:22	255:20 267:25
310:10,22,22	271:3 302:4	57:25 209:25	42:1	Canada 1:7 3:6
310:24,24	307:5 416:2	303:23 336:8	busy 278:23,24	16:6 32:21 33:9
311:8,12,23	breaches 31:17	brings 121:20	but-for 191:4,7	45:5 47:6 51:16
314:16,19,21	31:20 58:16	129:11 359:25	191:18 192:1,3	56:10 58:11,19
314:21,24	63:13 156:10	broadcast 10:12	192:13 195:19	59:12 63:21
316:6,10,11,15	160:11 163:25	broader 102:11	200:10,11,22	73:18 84:20
316:19 318:3,6	164:1,2,14	broadly 82:10	201:6,13,14	91:8 105:22
318:9,10,25	208:23 210:23	broken 83:20	202:2 216:9	116:24,25
319:1 321:5,7,8	211:10 214:22	84:4	246:4 268:1	119:3 137:7
321:9 322:7	233:19 324:7	brought 160:20	369:19 419:6	152:1 153:23
323:4,12,15,22	328:2 337:15	193:22 203:25	426:14 429:8	161:11 170:1,8
324:1,2,24	338:8 339:17	243:12 244:14	431:5 432:7	170:9 177:21
325:4,23 328:8	416:8 425:3	256:10 269:21	436:20 440:19	180:8 194:23
328:14 329:20	437:5,16	274:10 277:13	447:8 462:25	233:5 238:21
332:25 333:7	441:11	351:4,10,13	buy 198:8 199:24	238:23 239:12
333:11,20	breaching 307:9	384:14 458:1	354:2	244:8 251:4,17
334:25 335:8	310:13 424:6	buffer 197:17		254:20,22
339:22,25	break 31:10	198:8	C	256:7,9 258:24
340:6,8,10,13	46:15 82:1,2,5	build 35:8 133:11	c 231:14 325:20	268:12,23
340:17,17,24	82:12 108:13	177:24 200:20	C-0408 342:4	270:21 275:6
341:11 349:5	159:3,12,13,13	209:5 245:8	C-2075 393:12	282:12 283:11
362:15 364:2	159:16 238:8	314:8 353:20	C-2149 115:13	286:9 300:17
371:12 408:11	303:4,6 308:20	357:2 398:12	C-484 30:22 31:1	300:20 323:13
409:6,13	311:6 313:9	456:19 463:3	31:4	340:11 353:13
410:23 412:10	320:24 332:23	built 84:25 95:12	Cai 3:4 7:20	356:17 358:9
413:2 414:19	395:14 415:10	95:15,20,24	calculate 298:7	358:17 362:15

405:15,17	350:19 361:20	301:20 306:1	causal 424:12	346:15
408:19 410:10	395:5 396:13	312:20 313:25	causation 190:5	cents 198:4
413:9 420:4,19	398:18,22	314:2,11,13,18	205:8 246:6	certain 17:15
422:23 433:24	capacity 41:4	315:20,23,25	416:7 418:12	66:14 191:17
438:21 443:4	198:5	316:6,14	419:9 420:11	219:24 220:18
454:3 455:23	CAPEX 430:15	321:10,11,13	421:23 423:25	295:23 307:8
458:2 461:23	capital 168:16	321:15 323:1	424:7 428:10	352:20 354:2,3
Canada's 56:24	215:2 428:21	323:16,20	432:2,4,6	355:4 364:19
59:1,22 123:24	Cardiel 1:19	324:4,21	433:20 434:11	436:4
198:13 199:8	158:14 235:16	325:12,20	434:13,16,20	certainly 5:21
240:9 244:22	401:5	328:21 333:18	434:22,24	9:23 10:6 58:24
254:3 259:12	care 323:2	334:16,22	435:9,18,20	74:12 160:25
266:18 273:13	387:14	337:4,11 341:1	436:1 453:2	163:23 165:24
277:8 284:10	careful 24:2,5	341:7,16	cause 9:23	167:6 170:25
284:15,25	37:23 102:7	356:17 394:17	229:20,23	176:25 187:4
304:25 329:5	293:11	395:1,2 396:16	230:4,5,25	192:22 221:13
331:11 334:22	carefully 172:5	398:16 413:17	266:19 267:13	237:6 239:10
341:19 349:17	286:23 313:23	417:12 420:19	267:14 269:24	268:17 327:21
353:21 405:12	carried 27:20	420:24,25	273:6,24	366:4 394:11
411:6 420:9	115:15 117:11	421:7,14,17	274:18 275:14	396:11 421:7
428:25 433:20	207:16 298:21	423:1 425:18	276:8 282:15	certainty 40:22
438:25 442:22	carry 178:1,2	433:25 434:14	282:16 310:25	220:9 335:19
Canada-United	381:16	434:16 447:5	311:7,13,17,17	455:15 456:25
349:22	carte 322:21	448:12,19,22	311:19 312:16	463:4,6
Canadian 7:25	case 1:1 9:5,6,7	450:4 453:7	312:25 313:3	certificate/per...
24:4,6,13 64:25	16:4 19:17	454:20 458:6,8	315:13,14	342:11 347:16
173:7 206:25	22:18,19 25:14	463:25	316:1 319:2	347:23
207:2 208:9,10	25:14 27:6,7	case-specific	336:5 339:14	CERTIFY 465:5
208:12 238:25	31:9 59:15 72:3	281:23	434:17	cetera 75:6
275:8 277:18	74:25 80:10	cases 146:14	caused 135:9	161:21 165:20
279:12 280:7,9	104:22 135:2	181:14 209:5	256:18 332:4	165:21 177:24
352:9 355:8	146:5 161:15	279:19 288:14	416:3 418:9	223:10 362:10
363:3 440:13	162:8 163:13	301:15 319:25	425:8 435:9,11	373:14 390:20
cancel 259:16	174:1,14 179:3	338:10,14	causes 180:5	chain 360:1
261:3 309:7	180:4 181:13	352:16 431:17	209:25	challenge 263:12
330:1	200:4 201:10	cash 89:7 207:6	caution 105:10	283:7 341:7
cancellation	205:5 206:5	417:16 420:7	cautioned 338:2	challenged 231:6
328:12 330:18	207:3 209:7	432:17 440:1	cautious 94:15	231:10 262:8
cancelled 15:24	211:7 212:14	440:22 443:5	caveat 173:11	270:20 272:14
271:14 298:22	215:25 221:10	446:3 450:13	cease 28:3 176:8	272:14 273:14
299:4 330:8	226:3 230:8	454:13 455:16	ceased 27:25	273:18 301:13
331:17 403:4	236:7 246:3	459:18	Cecchini 22:14	302:9,18
430:4	248:6 251:24	categories 143:14	386:4 388:1	306:15,21
capability 194:4	264:13 265:15	caught 125:1	Cecchini's	308:20 323:18
capable 211:4	265:22 273:1	293:13 344:8	386:10	325:13,19
245:13 285:3	275:5,6,16	causa 267:16	cells 44:9 346:10	326:4,10

336:24 405:14 418:9 challenges 31:18 263:13 270:25 272:20 307:7 309:6 310:12 310:15 326:11 327:9 340:6 challenging 230:23 232:19 232:23 233:6 262:17 309:19 change 88:21 112:19 132:10 135:21 202:16 204:15,24 213:12 214:6 214:18 223:15 224:12,23 346:14 399:5 410:2 450:20 453:12 changed 136:11 136:12 168:9 213:17 218:12 218:16,24,25 222:10 223:21 226:15 272:15 274:2 333:22 335:5 377:2 391:23 392:19 399:16,25 445:11 448:17 changes 13:11 79:20 214:11 327:19 changing 47:20 131:1 202:15 204:18 Chapter 305:5 328:5 character 350:11 404:7 characteristics 452:23 characterization	55:11 57:13 211:6 308:12 334:2 340:12 341:9 characterized 224:16 338:22 381:3 388:9 charge 413:5 461:13 charged 442:7 chart 202:22 chat 10:9 chatting 6:5 check 11:2 23:14 37:20 158:3,13 160:2 357:24 358:3 374:19 375:3,5 401:2 426:1 434:13 checking 158:9 checks 207:17 Chee-Aloy 154:24 155:9 Chee-Aloy's 157:17 chevron 173:7 chevrons 171:2 171:17 chief 22:7 122:20 126:9 255:5 404:21 chilly 238:21 choice 218:18 384:21 choose 238:23 Chorzow 190:17 420:19,22,25 chose 152:9 chosen 246:9,11 Chris 2:11 22:4 Christine 3:5 7:24 chronology 42:11 121:25 122:6 125:7 circle 133:18	circular 395:4 circumstance 189:11 387:20 412:3 circumstances 49:17 65:20 66:14 105:3 139:9 140:6 151:3 154:22 156:9 222:15 226:19 233:3 236:20 250:24 274:2,21 310:1 310:8,12,15 321:13 327:12 337:5 376:14 377:24 388:23 399:25 411:19 412:16 414:12 421:16 448:16 circumvent 340:3 cite 202:20 cited 85:20 190:18 cites 30:17 46:17 claim 26:5 64:24 66:7 79:16,19 79:21,22,25 81:9 138:15 140:14,18 144:19 185:21 204:8 209:21 210:7,20 225:6 225:7 229:18 229:20 231:1,4 235:2 236:11 236:23,25 237:14 241:14 242:25 244:12 244:13 246:5 247:6,14 248:21 251:4 252:10 261:18 262:1,5 266:16 266:18 267:3	267:20 268:19 269:19,21 270:14 272:21 272:21 274:9 277:11 279:14 280:15,15 284:11 291:11 295:1,21 296:6 301:3,6 302:3 303:24 304:7 305:4,7,22 314:1,5,9 315:22 318:15 329:1,19 337:24 338:6 339:9,21 352:12 353:4,9 380:11,19 416:6 421:8 424:16 426:20 434:5 Claimant 1:5 2:1 19:15 47:8 62:12 64:6 65:14,23 70:13 70:25 71:4,12 71:16,24 72:13 72:16 81:9 86:15,24 90:16 90:18,20 93:3 105:5 131:16 138:24 159:23 186:11 187:1 190:18 191:8 191:16,25 192:21 198:19 198:21 199:9 205:20,22 235:18 236:4,5 236:8 239:22 240:17,25 241:2,10,17,21 242:3,15 243:16,18 244:5,13,25 245:11 246:3	246:20 247:14 247:22 248:6,8 248:19 249:8 251:8,20,23 252:2,4,9,13 254:11,12,20 254:21,22 255:2,3,9,15 256:23 257:5 257:14 258:15 259:9,14,23 260:10,13 261:14,19,25 262:7,23 263:11,17 264:4,16,25 265:12,18 266:12,24 267:19,21 268:3,6 269:7 269:20 270:19 270:24 271:2 271:15 272:6 272:17 273:8 273:14 274:11 275:20 276:12 276:20,23 277:5,10,23 279:13 280:2 280:14,17,22 281:4 282:5,11 282:17 283:6 283:19 284:5 284:22 289:2 290:11,18 294:13 295:22 296:11,24 297:2,10,15,21 298:5,12,18 299:6 300:12 300:15,23 301:4 302:22 303:14,18 305:18 306:3 306:16,25 307:7 309:5
---	---	--	---	---

310:11,15	419:1 420:9,14	276:17 297:6	claiming 209:18	359:20 362:19
312:5 316:25	420:19 421:4	301:24 302:13	210:3	368:5 387:17
317:9 318:5	421:18 422:22	305:24 306:22	claims 183:7	422:17 435:19
322:6,9,25	423:5 424:19	309:5,9,16	227:3 230:7	437:24 447:6,7
324:16,22	425:5,6,10,12	316:6 318:2	232:14 250:21	462:19
325:3,7,10,18	426:10,13	323:7 326:1,9	264:19 265:1	clearer 108:7
325:21 326:6	427:5,7,15	327:19 329:22	272:25 275:3	231:4 277:24
326:11 327:7	428:4,10,14	330:14,19	277:17 282:4,9	309:12
328:12 329:12	429:3,9 431:6	331:8 334:5,7	282:18 295:23	clearly 16:20
329:23 330:13	431:11,16,23	335:7,12,16	301:8 302:20	182:2,4 255:12
330:16 331:3	432:7,12,25	336:22 337:3	327:25 329:18	263:19,24
331:16,24	433:6,17 434:2	337:18 340:12	337:16 347:7	276:7 294:6
332:12 333:19	434:7,9 435:22	341:6 349:8	clarification	327:6 336:15
333:21 335:17	435:23 436:3,7	350:10,20	13:25	367:25 396:20
335:21,24	436:21 437:7	365:6,9 393:5	clarifications	clerk 2:4,5 6:6
336:15 337:14	437:10,17,20	395:1 403:16	251:22	clever 463:21,22
337:22 338:6	438:4 439:4,14	408:15 409:13	clarified 407:18	client 5:18 6:8
339:15,24	440:6,15,24	413:20 417:6	clarifies 291:8	7:7 8:8,16,22
340:4,7,15,18	441:5,10,17	417:15 419:1,6	clarify 68:12	10:5 24:3 91:9
341:13 349:2,4	442:1,19 444:6	419:10 420:5	213:5 234:14	91:19 102:25
350:15,17	447:5 450:5	421:9 422:25	442:17 452:3	103:2 104:14
353:1,5,10,12	451:11 453:6	426:17 427:11	clarity 70:8	client's 19:3
353:17 354:13	453:13,16,20	428:5,7,11	108:14 251:12	200:5
361:19 363:6	454:2 455:20	429:5 432:5,9	463:2	clients 6:10 8:1
363:22 365:14	455:25 456:5	432:21 433:25	class 40:2 112:9	19:7,16 75:9
368:1,7 370:14	457:1,3,16,20	434:5 436:11	class-wide	80:1
370:23 372:22	457:25 458:8	438:4 439:4,12	129:22 130:1	climate 217:11
379:16,18	458:16,25	439:20,24	clause 45:19 46:1	217:11
381:13 382:18	460:22 461:6	440:5,12,18	48:8,10 148:1	close 149:6 197:2
384:3,8,20	461:22,23	441:22 446:13	204:3 329:16	216:14 235:23
385:22,23	462:24 463:5	448:12 450:1	clear 11:4 20:9	429:6 430:10
387:13 388:14	Claimant's 60:1	454:13,14	20:24 26:18	459:20
389:11,20	60:20 61:12,15	455:2 459:2,7	30:15,19 59:13	closely 381:20
390:9,16 391:1	63:23 64:23,25	461:8,17,21	59:15 74:20,24	closer 394:19
394:23 395:10	71:18 131:13	462:2,5,20	76:18 77:12	closing 12:21
398:15 401:20	185:23 199:18	463:9,12	81:7 135:1	14:1 31:22
401:23 402:2,8	207:4 239:16	Claimants 92:25	187:5 193:7	138:20 178:14
402:22 404:1	242:1,10,13	108:20 268:18	211:11 231:19	229:12 239:14
409:4,15 410:7	243:11 246:5	303:23 308:17	242:7 255:25	354:11 410:18
412:11,25	246:12,16	322:20 326:4	257:3 262:23	438:25 453:3
413:7,18,25,25	247:19 249:2	327:24 330:21	265:16 289:22	closings 13:5
414:4,13	249:18 254:6	339:23 357:11	289:22 291:22	CO-ARBITRA...
415:22 416:1	256:19 261:11	357:17 390:1	300:11 305:3	14:17,20 28:21
416:11 417:3	265:15 269:4	447:20	314:16 319:25	29:11,16 30:2,9
417:18 418:8	269:17 270:5	claimed 318:11	325:21 329:11	52:17 55:14
418:11,19	270:15 272:7	330:5 424:19	340:24 359:16	56:20 74:22

75:22 76:20,24 77:16 79:14 81:14 88:11 99:12 100:20 101:3,7,10,21 135:19 138:8 138:10 139:23 140:17,23 145:14,22 146:25 165:12 183:2 201:3 213:4 215:13 215:24 219:12 220:11 221:17 225:1,11,17 234:12,20,24 239:4 288:5 307:12 308:4,9 313:24 314:20 316:9 318:22 323:8 332:9 334:10 335:6 338:24 354:19 354:22 355:16 356:5 361:8 366:23 367:14 369:24 370:3,6 370:11 371:3 371:21 373:10 373:18,23 374:3,16 375:6 375:16,19,25 376:7,11 378:3 378:9,11 384:15 385:9 389:13 399:13 442:16 443:7 446:6,9 447:1 452:2 co-arbitrators 313:18 coast 41:2 coastal 112:14 coherent 301:5 cold 238:21 collapses 426:20	collateral 219:13 219:16 225:5 225:19 226:4 244:11 267:6 291:18 295:17 382:17 441:1 442:21 443:2 452:7,15 collateralized 89:8 colleague 219:13 244:17 287:24 341:18 433:8 463:15 colleagues 7:19 15:1 46:16 102:4 201:19 242:23 318:18 colleagues' 149:24 collection 255:22 collectively 313:2 collects 417:4 colour 393:1 combined 192:25 come 17:15 24:22 30:1,14 31:21 40:13 43:20 46:8 47:22 54:2 56:23 57:4 77:2 77:20 78:18,19 79:7 82:22 91:1 101:24 105:16 122:1,8 124:9 141:15 158:22 158:24 161:13 170:23 177:2 185:7 201:10 213:11,21 217:22 223:13 230:20 235:23 237:24 238:23 247:9 257:3 269:2 291:13 293:3 294:5,18 321:17,18	322:3 338:19 351:14 352:15 354:11 357:13 367:10 370:7 371:13 377:9 378:15 385:12 385:15 387:16 400:17 403:18 404:4 410:17 416:17 459:1 comes 35:22 94:12 319:8 320:9 352:3 368:16 comfort 159:13 208:2 224:7 coming 15:5 17:8 20:2 78:8 84:9 90:8 131:6 133:17 238:19 270:7 284:4 321:1 332:22 383:9 390:6 397:4 399:2 400:18 434:25 command 215:12 commence 131:9 commenced 142:15 329:6 commencement 202:10,17 commences 45:9 115:22 141:3 150:3 329:11 commencing 5:2 comment 9:16 241:10 254:3 commented 110:1 comments 195:14 423:13 commercial 44:15 49:2,6,19 49:20,23 132:15,21 133:9,12 192:8	193:22 195:24 195:25 196:12 196:20 197:1 197:20,23 198:20 199:5 247:24 249:14 250:9 353:23 354:1 377:9 378:2 388:23 397:2 402:16 406:7,9 409:23 457:7,20,23 458:4,24 commercially 118:18 commissioned 42:18 commit 181:6 commitment 168:16 commitments 113:20 409:8 committed 121:3 190:24 communicated 127:17,18,19 139:21 210:19 communications 254:20 communities 114:12,23 115:6 companies 37:5 116:16 117:2 117:14,21 207:23 company 41:10 41:13 86:12 109:11,11,12 124:23 461:6 comparable 173:2 206:9 224:2 366:10 367:3 373:6,13 382:6 443:23 462:5	comparables 206:12 207:5 207:15 208:7 213:18 214:4 216:25 218:10 219:5,21,25 220:18 221:12 223:5,6,9 224:7 226:22 363:1 374:10 375:9,9 382:6 439:21 441:24 461:22 461:24 462:13 compare 270:2 275:17 367:5,8 compared 65:18 66:5 187:16 364:24 370:18 371:1 comparing 375:11 comparison 403:2 compensate 171:18 compensated 20:21 92:18 95:17 141:7 173:14 234:3 241:5 242:16 246:21 254:14 373:19 375:21 414:5 compensation 16:20 70:25 71:15 72:14 137:2 190:15 242:11 244:25 252:3 268:19 349:12 390:17 403:5 420:24 424:4,9 complain 159:7 281:5 284:6 complaining 162:25 180:5
--	--	--	--	--

243:20 complains 272:3 280:17 353:18 complaint 243:19 244:6 262:10 270:5,15 276:17,19 309:5 341:3 complaints 266:10 complete 16:2 31:7 146:3 156:6,8 194:4 203:23 215:17 270:16,22 320:20 326:23 342:19 359:14 403:7 completed 54:20 55:8,13 59:10 64:8 196:11 247:23,23 287:10 completely 121:18 330:3 416:8 457:14 completeness 420:3 454:10 completing 68:14 completion 119:25 196:21 197:12 198:4 200:3 204:1 complicated 247:3 356:16 complied 110:15 114:8 comply 182:14 component 209:11,14,19 210:10,21 320:21 362:12 380:12 components 168:18 312:16 370:15	composite 262:18 307:11 308:12 311:19,22 312:5,20 313:2 313:5,8 314:14 339:25 340:6,8 340:10,12,16 340:22 comprehensive 60:10 386:11 comprehensively 13:6,15 comprise 310:24 362:8 concedes 443:4 concept 408:2 concepts 3:14 431:20 concern 6:25 9:21 25:13 52:10 201:4 240:8 351:25 455:19 concerned 322:13 369:14 concerning 108:14 246:13 concerns 8:18 22:17 33:22 51:14 52:16 223:21 concession 317:16 conclude 65:22 153:22 186:24 186:25 295:18 356:14 370:23 372:21 407:6 414:24 427:23 concluded 193:20 338:11 406:22 411:4 448:14 concludes 69:23 177:11 283:24 conclusion	111:15 152:15 208:6 246:18 246:20 295:21 311:8 352:3 443:22 conclusions 207:18 conclusively 269:22 concrete 331:24 CONDENSED 1:14 condition 112:14 216:4 355:17 355:18 356:8 356:10 409:20 409:25 410:1 conditional 165:14,20 166:1 176:22 188:20 conditioned 288:17 conditions 170:11 194:14 195:8 227:19 231:16 262:12 337:5 409:16 conduct 26:13 27:3,15 28:15 61:23 67:11 69:13 135:8 139:9 140:3,6 140:15 150:8 150:22 257:17 258:3 263:5,15 263:18 264:1 266:8 267:1 273:19,20 280:18 281:6 283:18 284:6 309:24 310:6 317:20 323:2,5 335:3 337:19 339:22 350:7 409:19 412:12	412:15 413:6 414:23 420:14 420:16 conducted 112:10 119:1 373:6 conducting 154:8 207:14 conference 40:21 confess 108:8 231:2 confidence 37:8 205:15 confident 44:8 confidential 11:15,15,19 45:7,9 46:21 47:3,5 48:1 51:20 86:1 115:21,22,25 116:4 119:6 122:3 133:15 141:1,3,20,25 142:5 151:11 151:17,19,24 152:3,4 158:22 158:25 confidentiality 11:14 12:1 45:6 47:23 122:2 142:7 254:23 confidentially 122:13 confirm 12:25 48:8,12 53:11 326:7 338:18 confirmed 54:17 59:8 130:15 155:4,16 331:23 336:15 407:21 409:4 412:19 confirming 28:2 335:14 confirms 129:19 130:18,20	441:8 confused 264:13 confuses 268:7 conjecture 191:20 connected 149:14 424:17 connection 112:13 149:10 149:12,17 consensual 338:16 consensus 171:20 consent 24:13,18 304:25 consented 23:24 consents 300:20 consequence 257:16 260:4 264:7,7 347:1 387:8,13,14,19 consequences 186:6 190:21 309:14 386:14 386:21 387:10 consequently 64:4 73:13 247:21 250:13 253:11 287:8 302:7 364:1 Conservative 260:22 consider 51:1 86:8 129:22 130:4 191:4 252:20 261:11 297:17,19 441:2,16,16 442:12 considerably 254:16 288:9 consideration 104:25 105:1 221:7 considered 20:17 20:18 51:4
---	--	--	--	--

73:16,20 80:12 87:22 100:8 156:19 206:13 253:13 273:23 297:7 299:13 364:8,16 369:23 450:2 considering 28:9 157:3 193:18 346:6 350:8 considers 72:8 consisted 365:10 consistent 16:13 56:12 59:14 88:22 124:3 162:12 187:8 255:6 327:24 328:20 455:13 constituent 310:24 constitute 105:3 237:4,8 274:6 283:4 301:16 312:5,25 315:14 371:17 constitutes 70:10 168:24 169:21 282:15 311:12 constrain 271:22 construct 417:6 constructed 149:15 375:10 construction 34:24 149:1,6,8 186:16 195:15 196:11 429:10 459:17 constructive 322:14,20 323:7 324:16 333:17 consult 201:18 210:17 318:18 consultant 126:20 consultant/lob...	127:14 consultation 97:10 114:18 115:8,10,14,17 consulted 114:24 406:25 consulting 392:7 cont'd 4:5,6,7,9 58:4 83:3 160:7 221:21 contacted 114:23 contain 309:10 contained 383:10 contains 354:6 contemplated 113:5 contemporane... 85:13 contends 62:11 content 10:22 55:4 349:19 context 28:11 32:5,19 34:18 56:15,19 64:23 79:12 135:21 137:22 144:24 163:8 181:24 185:20 248:24 304:20 352:8 352:11 353:3 354:16 355:20 356:19,20,21 356:23 371:11 402:10 404:8 406:21 418:22 424:10 context-specific 352:10 contextual 452:21 contingency 118:16 contingent 170:7 170:10 355:2,6 355:11,14 356:7,11,25	381:7 462:22 continuation 281:9 329:7 335:2 continue 60:3 302:8 416:18 457:5 continued 27:10 67:3 97:21 100:4 110:4 114:6 119:18 134:21 135:8 150:9 162:9 168:7 182:10 227:19 228:3 247:25 251:7 262:11,24 327:18 381:14 398:9 410:21 continues 22:20 64:9 134:7 137:25 252:16 287:11 427:1 continuing 21:4 75:19 114:4 123:19 134:17 135:2 162:4 188:14 200:16 231:15 233:18 266:8 267:1 269:9 326:15 421:22 continuous 326:12 327:9 328:8,8 335:8 continuously 330:16 continuum 100:19 contract 15:15 16:1,12,15,21 16:24 17:25 18:6 21:1,15 33:20 41:15,17 43:9,10,15,23 44:14,14,25	45:23 46:6,8,14 47:8,13 48:7 49:6,8,25 60:17 60:22,24 61:13 63:24 64:14 66:10,12,16 68:21 69:2 71:7 72:20 73:4,15 73:20 74:3,20 75:13 77:14 78:24 80:1,2,5 80:11,25,25 84:19 85:6,16 86:9,20,25 88:18,21 89:17 89:20,25 90:2 92:4,16 97:1 113:7,13,19 123:1 124:8 128:11,18,22 129:2,13,20,25 130:3,19 131:2 131:25 132:5 132:14,17 133:11 134:11 136:1,4,13,19 137:14,16 139:2,8,10,11 142:22 143:5 143:21 145:8,9 145:20 147:15 149:2 152:16 152:25 154:1,3 154:16 156:17 165:6,7,15 166:24 168:18 168:24 169:8 169:20 170:15 170:19 171:11 175:2 176:2,25 179:8 180:10 181:10 182:2 182:12,15,15 182:19,20 187:9,11 188:14 192:6	192:10 193:23 193:23 197:18 197:25 198:5 198:22 199:4,5 199:18,19,20 199:23 200:5 200:12,18,24 202:4,7 203:22 207:12 209:1,9 209:11,19 210:8,10,22,24 211:4,14,16,22 212:2,4,19 215:7 216:10 216:13 228:7 230:9,12,15,22 230:24 231:5 233:4,7,21 240:3 241:7,12 241:22,25 242:9,12,21 243:24 244:19 245:6,20,25 247:19 248:2 249:6,13,18 250:12,14 251:1,1 252:5 252:24 253:1 253:12,25 255:7,13 256:15,22 258:8 259:11 259:17 260:6 261:12,22 262:14,15,21 263:7,9,13,25 264:5,11 265:4 265:9 266:6,25 269:15,18 271:6,9,13,17 271:21,23,25 272:4,8 273:3,9 273:15 276:4 278:2 280:25 282:13,22,24 283:22,23
---	---	---	--	--

284:14 285:2,9 285:11,13,16 285:20 286:9 286:15 287:3 288:2 289:14 290:2 292:16 292:17,18 296:10,14,18 297:15 298:15 299:7,12,15,17 301:11,12,22 302:11,12,17 306:7,12 309:7 309:11 310:4,7 310:9 314:3,22 316:6,16,17 325:16 327:16 330:1,10 336:17,19 337:6 339:17 342:3,23 343:9 343:22 344:2 351:18 352:4 352:21 353:4,5 353:14,14,16 353:19,22 354:6,24 355:3 357:4,9 362:9 362:19,20,24 363:19 364:10 364:23 365:22 366:5,25 367:5 367:13 368:23 369:4,5 371:5 372:8 375:8,12 375:22 376:17 377:4,15,18 378:1,8 379:4,7 379:14,25 380:8 381:7,9 381:14,24 382:1,4,10 383:8 384:3,13 384:17,19 386:13,19 388:6 389:2	390:18 395:17 396:4,8,13,15 396:19 397:13 397:16 398:1 399:2,6,19,22 400:7,20 401:25 402:7 403:10 404:12 406:5,12,20,24 409:17,21 410:1 411:16 411:19,21 412:17 414:1 414:11,20 416:13 417:8 419:2 427:3,20 429:17 431:12 436:9,13,25 439:5 440:10 440:19 441:13 451:9 456:4,19 456:24 457:19 457:22 458:3,7 458:9,12,15,23 462:4,21 463:1 contract's 301:18 328:11 367:18 contracting 169:25 388:22 405:20 contracts 110:12 145:3,6 147:6,7 147:24 148:4,6 148:8 152:14 154:4,19 155:1 155:15,22 156:14,14,21 199:22 414:10 429:15,18 458:19,20 contractual 26:17 27:13 49:11 66:24 70:12 88:1,7 123:20 124:2,4 127:7 129:6	152:22 153:4 153:14 162:8 251:8 255:8 258:6 265:3 281:1 289:19 293:2 294:22 298:25 353:8 389:1 396:4 407:5 411:24 412:5 413:11 contradiction 302:5 contrary 21:7 150:11 193:9 269:15 277:8 290:2 300:15 331:12 408:15 460:23 contributes 412:14 control 49:18 152:1,7 295:7 462:8 controls 152:8 305:15 controversy 191:2 convenience 148:1 conversation 14:9 23:25 27:5 28:22 conversations 351:20 converted 207:1 convincing 265:7 cooperate 76:3 copies 14:18 31:6 copy 15:12 17:19 core 3:14 22:17 22:18,18,18 25:12,13,13,14 27:6,6 59:20 240:8 311:12 Corporate 461:9 corporation	283:13 correct 11:6,7,9 25:18,21,24 26:3,11 63:17 66:11,18 76:3 87:21 104:4 105:14 111:21 134:4 141:8 146:22 147:6 147:18 173:17 188:10 220:15 220:15 311:23 347:3 359:2 360:22 362:11 368:24 375:23 375:24 380:5 385:5 387:6 388:12 396:3 398:4 405:10 442:1 445:7,8,9 449:7 450:19 460:19 corrected 396:16 correctly 38:2 105:14 183:7 220:14 234:16 328:4 375:7 corrects 168:1 correspondence 411:8 432:18 cost 96:10 99:1 100:22 118:12 195:9 320:2 366:13,13 374:19 375:2 costing 320:12 costs 91:13 97:18 98:17,23 99:10 99:13 100:9 102:17,23 187:16 194:17 214:25 254:16 297:8 365:11 366:1 374:8,11 381:18 430:1,6 430:12	counsel 2:2,2,3,3 2:4 3:2,2,3,4,8 5:18,23 6:3,7 7:21 11:17 82:15 130:7 257:5,14 336:3 count 158:15 235:17 counter 191:4,19 192:13 195:19 counter-memo... 56:25 58:11 59:22,22 131:12 153:24 counterfactual 436:12 437:4 437:10,12,18 441:7 counterparty 41:14 123:20 124:2 129:7 255:8 283:22 289:19 couple 8:3 50:23 94:21 111:25 118:5 119:7 242:24 257:4 289:10 429:2 463:16 course 5:24 21:15 23:5 76:21 78:22 81:8 92:14 96:21 103:23 169:8 171:10 174:6 179:6 203:6 213:20 249:11 273:19 279:23 290:20 293:2 307:3 323:6 336:7 353:25 389:7 409:10 415:20 454:17 court 1:2,18,21 93:20 94:1
--	---	---	---	---

108:18 199:13 199:15 256:24 259:6,19 260:4 261:16 275:17 277:12 280:3 285:14 289:13 289:14 302:20 420:18 458:21 Court's 458:11 courts 275:8 276:21 277:19 cousin 238:25 cover 83:5 111:4 covered 215:15 crafted 288:24 Craig 22:7 create 18:5 20:25 73:25 74:18 75:10,13 77:14 78:6 79:18 84:6 161:25 177:18 188:8 213:8,11 213:15 231:16 253:22 301:23 312:12 313:3 355:22 369:1 376:13 395:3 397:9 399:16 404:15 created 75:1,3,7 75:11,25 76:2,8 76:13,22 77:2,4 77:11 79:15 101:11,14 134:20 137:20 151:3 166:10 167:5 188:8,19 212:19 227:18 233:3 234:8 242:16 248:11 251:14 262:12 281:3 283:17 296:22 297:10 297:18 309:25 310:7,13 327:12 337:4	360:21 365:14 376:9 400:5,25 409:16 441:12 442:8 creates 36:19 317:8 creating 77:8 creation 99:9 190:2,8 credibility 239:6 credibly 324:22 credit 43:7,11 45:20,24 46:3 48:11 49:9 71:10 72:18 85:2 88:24 89:5 89:8 91:3,23 92:9 94:2 99:3 100:23 101:5 101:14,18 102:10,14,22 106:5,24 109:12 113:20 173:16 175:15 187:10 189:6,7 189:16 193:17 252:4,17 287:14 362:9 363:23 364:4 364:10 370:4 370:16 372:12 374:2 380:2 381:5 criteria 221:14 349:11,13 360:3,20 422:8 critical 305:25 308:18 325:1,6 327:10,13,18 328:15 331:7 332:17 333:20 336:16 337:1 338:21 339:8 341:2,11 criticizing 284:22 cross 125:1	cross-examinat... 11:20 cross-examined 152:19 194:22 Crown 34:22 35:2,8 39:14 50:12 256:19 265:11,23 283:16 294:7 295:7 346:10 cruelly 461:14 crux 381:2 crystallized 146:14 206:21 crystallizing 330:17 CSR 394:3 465:12 current 60:17 226:19 268:21 280:15 394:14 currently 272:13 272:13 CUSMA 349:23 358:1,13,22 359:1 360:12 360:21 customary 190:16 245:16 349:16,19 360:10,15 407:17,22 408:5,17 cut-off 227:12	206:20 217:1 227:10 241:5 301:1 305:12 305:20 319:14 320:21 329:22 332:3,19 334:14 364:2 423:7 441:4 444:13 damaged 176:4,5 damages 16:17 16:18 20:5 21:16 31:17 79:12 80:7 83:17 86:10,23 87:23 138:25 141:17,19 146:18 160:16 162:11 172:18 174:5 177:12 178:8 182:1 189:21 190:6 191:15 192:21 193:10,14 195:18 205:20 206:5 207:4 209:18,21 216:22 223:17 234:2 236:23 243:2 246:2,3,5 246:22 248:10 252:11 256:12 257:10,16 258:15 259:6 259:13 265:15 265:18,22 268:15 269:6 269:14 277:11 277:18 278:1,4 281:17 282:25 291:3 297:23 297:25 298:4,7 302:16 306:10 306:19 314:23 330:20 332:13 363:10 367:10	369:15 401:9 413:18 415:17 415:23,25 416:7 417:12 417:15,21,24 418:5,15 419:10 420:13 421:20 422:17 422:20,23,24 423:3,10 424:17,23 425:3 426:16 426:20 427:22 432:3 433:4 434:5 436:8,9 436:13 437:25 438:16 439:3 439:13,19 440:12 441:5 442:3,24 444:5 444:11 446:25 447:8 453:7,14 453:17 454:25 Darian 3:5 7:22 7:23 data 116:17 118:10,10 119:2 168:20 214:11 222:8 362:10 371:6 372:18 373:20 390:19 393:21 394:10 432:12 432:14 date 20:13 49:8 49:20 50:4 73:10,14,21 76:15 99:20 107:2,2 108:24 132:15,16 133:9 134:3,6 135:6,14 146:7 146:19,20,24 171:24 172:9 173:4,11 174:5 175:16 182:4,5
--	---	--	--	--

184:2 188:9	163:25 164:1	78:16 80:9	51:13,25 52:8	decisively 440:22
194:19 196:1	164:14 206:10	83:16 95:18	52:13 62:4	deck 321:11
196:21 197:1	294:15 295:5	105:11 117:24	67:14 94:18	declaration
197:12,13,21	314:16,19	119:9,19	95:11 124:17	260:16,18
197:22,24	340:24	138:19 141:6	126:5 127:16	276:25
198:4,17 199:5	dates 147:2 202:9	155:20 167:2	129:12 130:13	declaratory
200:4 201:21	233:7	181:15 201:16	130:21 131:24	259:3 278:3
201:23 202:10	David 2:7 6:9	217:22	139:18,20	declares 50:17
202:17 204:1	109:22	dealing 59:11	142:14,17	declined 248:9
204:16,23	day 6:13 10:23	127:20 162:23	143:1 144:1,3,5	252:10
206:20,21	69:5 133:3	281:21 304:6	144:8 150:4,18	decouple 381:21
207:11,11,13	174:16 219:9	438:12	155:14 171:21	447:21
207:20 209:2,3	221:10 239:18	deals 160:21	182:3 190:17	decoupling
213:13,14,19	239:21 256:5	167:18 197:11	199:13,14,15	379:25
214:9,9 222:7	304:15 311:16	dealt 78:15	199:17 206:11	decrease 428:21
223:1,2,15,17	327:19 333:2	169:15 264:23	218:21 229:1,5	decreased 194:17
224:20 227:12	391:8 439:22	371:6 458:8	231:17 243:23	214:25 215:9
247:24 250:15	450:8 451:19	dear 351:12	244:19 245:19	decreasing
253:7 266:4	days 125:16	debate 462:12	245:24 259:19	223:13
287:10 288:20	126:10 203:14	December 50:16	259:20,22	deducted 363:10
293:6 295:3	239:2	95:9 96:1 117:6	260:16,19	380:4 440:3
299:9 303:11	DCF 207:9,16	122:25 125:9	261:13,16	deductions 440:9
305:8,25	208:11 219:6	125:10,21	263:12,14	deemed 337:14
308:18 325:1,7	222:5,11,17	129:8 144:20	265:2 268:11	deep 239:3
327:10,13,18	224:18,21	196:12,22	273:9,21	Deepwater
328:10 330:11	246:13 268:1	228:12 262:2	274:25 277:2,2	460:25 461:11
331:7 332:17	298:6 366:17	294:15,16	278:1,5,14	default 132:17
333:20 335:19	366:18 374:9	295:4 305:25	280:23 281:13	197:14,20
336:16 337:1	430:14 444:20	339:1,5 342:7	283:3,11,12	defeasance 355:1
338:21 339:8	444:24 448:8	decide 81:8 104:1	302:11,16	355:13 356:12
340:18 341:2	448:14 449:13	142:21 166:20	309:20 320:6	357:1
341:12 342:7,8	450:1 451:1	decided 16:5	326:8,24 330:1	defence 284:10
342:22 362:20	452:1 454:5	20:4 79:19 81:9	359:9 383:3	defences 300:17
364:7 376:24	455:22 457:8	103:18 140:9	388:4 402:13	defer 153:10
387:4 397:2	459:8,11 460:2	144:20 145:19	404:14,25	271:17 272:4
400:20 406:9	460:6,23 461:1	151:22 219:18	405:23 406:1	281:11
409:23 410:3	461:15	226:6,12 229:3	407:4 410:25	deferral 34:9,10
418:20 422:2	de 136:20,22,25	232:12 261:3	411:16 413:9	35:14 61:20
424:25 426:11	137:6 146:3	274:16,24	444:17 458:1	62:5 137:9
426:25 427:4	179:15 330:17	282:8 296:3	458:18	154:12
427:24 428:12	331:17	412:5 413:10	decision-making	deferred 29:9
429:6 432:23	deadline 193:23	442:5	143:16	53:7 56:5 133:8
445:12 457:22	193:24	decides 444:16	decisions 125:2	133:23 231:14
458:4,24	deadlines 298:25	deciding 166:18	129:1,10	defies 325:1
459:20	deal 13:6,15	decision 9:12	268:12 275:8	define 343:14
dated 85:25	17:19 27:9	13:2 20:17 51:6	423:25	360:13

<p>defined 40:1 439:4 461:21 defines 343:22 349:12 definition 168:5 168:15 170:16 definitive 143:21 335:15 definitively 269:4 299:2 deflect 294:2 degree 455:8 delay 47:7 49:18 151:4 delayed 249:14 250:8 delays 151:3 281:1 457:10 457:18 delegated 283:21 deliberate 309:20 413:9 Deloitte 330:15 demand 242:21 demonstrable 352:19 demonstrate 276:18 308:22 323:17 327:7 349:4 420:4 425:13 426:10 428:11 433:18 434:7 435:22 454:18,25 463:8 demonstrated 418:19 433:7 434:3 demonstrates 429:25 demonstrating 302:1 325:5 419:5 denude 329:15 depart 444:19 454:21</p>	<p>depend 452:21 depended 456:25 depending 41:20 452:17 depends 377:21 448:4 451:18 depiction 381:22 deposit 65:1,16 187:24 242:2 245:2 249:2,7 251:19 288:8 288:13 297:1 362:24 363:7 365:12,19 368:5,8,22 371:1 381:6,17 381:25 382:25 383:10 384:10 386:15,20 389:8 414:6 418:25 427:13 438:2 440:7 deprivation 66:7 180:10 234:1 249:1 288:2 359:13,16 371:15,17 372:7,10,16 deprived 65:24 186:13 187:1 247:15 285:4 370:24 371:4 372:22 deputy 3:3 87:13 derive 208:1 433:3 derived 207:22 describe 171:22 300:17 described 26:17 36:4 172:2 199:10 266:16 302:24,25 381:15 describes 118:1 119:4 263:4</p>	<p>describing 293:12 373:1 description 111:1 114:11 125:12 342:16 391:18 392:1,10,17 descriptive 360:7 desert 270:11 design 194:9 196:9 designated 47:4 152:1 designations 142:8 254:23 designed 15:8 433:11 designing 261:9 despite 150:10 177:2 189:14 214:10 242:7 245:2 274:20 416:21 432:24 436:11 441:9 destroyed 375:13 detail 19:6 41:7 42:8 56:23 58:19 83:13 96:16 98:24 109:20 151:6 152:13 174:5 239:12 265:17 411:6 431:19 detailed 67:6 83:8 108:8 115:9 196:10 286:7 details 41:24 50:9 111:12 116:21 337:3 342:12 346:16 418:3 determination 71:3 143:11 161:5 187:8 236:10 242:8 248:14 296:19</p>	<p>297:4,20 299:12 359:21 401:17 determinations 244:15 296:8 determine 104:12 162:16 167:1 182:18 306:22 350:1 370:20 406:16 415:24 434:10 435:25 451:13 451:16 455:17 determined 72:12 86:14 193:9,12 218:4 218:6 222:20 226:17 230:11 230:17 231:22 232:1 233:4,22 234:10 252:1 265:4 269:22 296:18 297:11 362:22 439:9 441:21 determines 267:3 determining 164:6,20 349:13 395:9 435:12 develop 61:24 97:3,21 114:5 241:6 242:18 417:6 developed 16:2 26:20 27:19 59:5 60:3 62:18 67:10 100:18 132:21 191:7 195:20 217:15 330:6 developer 416:25 456:22 developers 116:10 118:24 developing 42:3</p>	<p>99:20 271:5 297:10 365:15 431:10 development 42:19,22 47:16 67:4 97:22 98:5 98:10 99:18 148:20 149:5 194:8,15 196:9 218:4,6,9,22,24 222:18 251:14 365:25 416:22 430:9 440:2 443:20 444:18 445:7,15 446:1 448:7,10,15 449:12 450:17 451:25 456:11 456:14 459:12 460:8,12,16,16 460:17,24 461:16 develops 99:24 diagram 177:7 188:1,16 dialogue 127:12 differ 199:22 difference 80:8 211:13 225:4 284:24 285:7 376:24 393:23 396:9 420:22 433:19 435:3 445:2 differences 461:9 different 6:20 9:12 20:16 55:23 107:13 121:24 147:20 156:21 161:4 174:19 180:20 208:19 209:20 216:21 217:9 222:14,15,23 229:18 240:25 276:11 289:9</p>
--	---	--	---	--

315:4 316:14 316:15 318:9 330:4 357:20 358:11 361:9 361:11 385:4 392:18 393:24 417:22 424:25 433:13 437:15 437:16,17,19 441:20 442:4 443:13 444:1,5 446:14,16 451:5 differential 409:2 differentiator 367:12 differently 165:23 219:8 423:10 difficult 135:22 411:11 447:4 455:18 diligence 119:1 diligent 191:11 direct 144:18 150:19 153:25 161:23 200:17 228:5 231:11 231:13 243:22 245:24 263:22 264:2 271:8,16 282:21 302:10 325:16 327:1 335:2 351:22 413:14 directed 152:9,21 271:21 directing 70:4 152:15 281:11 direction 67:19 94:1 240:3 264:21 directive 153:1 directly 41:14 99:13 130:9	153:14 219:15 222:3 229:9,10 268:25 283:7 411:10 director 3:3 130:3 152:24 disagree 121:22 123:23 267:12 267:15 289:5 456:2 disagreed 137:7 334:2 disagreement 340:13 disagrees 170:7 266:17 282:12 295:21 340:11 disappear 80:16 disappointment 414:17 disavow 331:11 discontinuance 261:20 discontinued 116:20 261:16 discounted 207:6 417:16 420:7 432:17 440:1 440:22 443:5 446:2 450:12 454:13 455:16 discrepancy 23:18 discretion 200:2 293:2 discrimination 408:17,24 409:1 discuss 6:14 13:3 78:18,19 79:7 123:1 157:6 173:23 180:9 206:4 255:4 320:25 390:25 453:1 discussed 12:20	130:4 166:9 216:24 404:23 discussing 105:2 157:18 257:4 278:20 453:6 discussion 6:21 81:20 131:1 134:6 186:5 238:3 286:5 292:20 321:2 343:12 344:10 346:25 401:13 407:11 419:17 436:16 447:19 464:16 discussions 53:25 100:13,17 119:14 122:17 144:13 162:15 255:1 292:22 346:5,12 453:12 disfeaseance 356:3 dismiss 431:25 dismissed 125:3 247:13 250:19 341:16 456:1 disposition 345:14 dispositions 250:18 dispute 152:6 199:8 230:1 240:24 243:13 256:10 279:22 285:16 287:19 299:21 302:8 364:23 404:19 405:8 428:20 disputed 33:5 144:4 153:7 235:4 338:22 338:23 disputes 437:18 disputing 267:8 355:23	disregard 306:15 dissent 426:5 dissenting 425:18 distinct 189:16 230:6 337:10 338:13 403:16 distinction 140:3 421:6 422:18 435:3 distinctively 274:23 distinctly 232:12 296:2 298:18 distinguish 59:15 164:5 212:15 273:1 275:4 distinguished 212:9 distinguishing 458:16 divorce 431:3 divorced 416:8 doctrine 181:23 268:8 440:25 443:1 445:25 doctrines 452:17 document 40:6,8 104:18 342:7 347:14,20 348:18 393:10 396:4 documents 11:16 39:19,21 85:13 87:9,16 88:17 98:22 110:20 120:11 145:11 148:15,17 doing 24:7 44:13 68:22 95:2 154:11 182:24 225:25 238:17 240:16 264:16 281:9 284:21 284:22 361:22 373:19 417:23 439:23	dollars 49:4 111:7 119:16 173:7 207:2 208:9,10,13 240:22 242:11 440:13 domestic 256:23 258:14 259:15 259:18 261:15 261:17,21 302:14,15,20 336:1,8,9 355:24 383:2 386:5 DONG 430:3 461:4 door 288:25 381:3 Dosman 3:3 4:12 7:19 244:21 245:14 294:2 341:18,22 344:6,16,19,25 345:20 346:1 347:3,8,18,24 348:3,6,11,15 348:19,24 351:11 354:21 355:15,19 356:13 357:15 357:23 358:6 358:10,19 359:2,5,11 360:8,22 361:1 361:12 363:15 364:22 366:4 366:11,15,20 367:9,23 368:2 368:12,19,24 369:6,10 370:2 370:5,10,13 371:9 373:2,12 373:21,25 374:5,20,23 375:4,14,18,23 376:6,10 377:3
--	--	---	--	---

378:5,10,13,16 378:19 379:12 379:17,23 380:5,10,21,25 382:5,12,16,21 383:15,22 384:1 385:7,17 386:1,22 387:7 387:11,16,23 388:13,19 389:15,19 390:3,7,14 391:12 395:18 396:2,18 397:7 397:17,21,25 398:4,7,11,20 398:25 400:16 401:3,7,14 405:10,13,18 405:21 433:9 439:6 Dosman's 245:4 double 332:18 double-check 91:19 92:13 93:14 102:13 107:8 120:8 Doug 260:22 Dr 3:10 206:1 214:4 215:1,4 215:10 373:16 429:1 459:15 461:11 462:1 draft 114:10 drag 259:19 dragged 240:24 draw 272:18 drawing 329:17 drinking 51:14 112:15 driven 52:8,14 drivers 214:24 dropped 107:11 drug 274:4 dry 270:12 due 33:21 47:8	76:21 119:1 251:5,6 268:16 297:23 414:14 419:4 424:12 424:25 432:2 440:1 451:13 459:19 duly 352:25 duplicates 372:5 duplicative 175:10 duty 201:10 275:15 dying 270:11 <hr/> E e 3:3 231:16 336:25 earlier 25:8 27:21 48:7 54:6 72:6 75:21 83:23 92:8 93:1 110:1 120:18 166:9 185:22 212:15,17,22 218:21 222:12 223:4,23 228:16 251:23 273:24 277:3 278:24 284:5 292:9 304:3 306:5 314:10 317:13 328:1 338:8 344:21 376:16 389:25 395:25 448:24 459:14 earliest 324:15 early 94:1 119:13 165:19 214:16 218:6,9 219:4 219:11 224:14 239:2 307:9 346:14 363:1 373:8 379:6,8 382:7 392:16	414:13 440:1 443:19,24 444:18 445:6 445:15,18 446:1 448:7,10 448:15 449:11 450:2,10 451:24 460:7 460:15,17,24 461:16 462:9 eat 149:23 echo 335:7 economic 156:24 350:9 401:21 409:1 Edward 2:10 effect 27:25 136:2 144:8 146:15,21 150:4 155:14 182:12,16 272:10 285:17 286:9 305:14 314:4 319:21 326:12,15 327:9 340:9 343:25 357:19 427:3,17 435:3 436:10,24 437:7 441:14 449:17 451:25 effective 50:18 109:7 136:22 204:15 338:3 effectively 204:7 250:16 284:18 329:15 330:8 effects 85:9 216:11 257:20 257:21 298:16 437:13 439:8 efficiency 65:9 efficient 400:1 effort 255:16 283:20 efforts 19:24	77:10 96:6,13 115:10,16 177:2 eight 159:6,14 396:21 402:6 either 24:18 49:25 68:13,22 109:10 169:17 211:19 258:7 260:4 291:25 292:16 300:5,6 329:19 387:2 402:7 406:6 414:12 elapsed 305:8 elected 260:21,25 electricity 48:25 283:15 element 172:15 319:14,14 321:8,8 359:15 361:4,18 364:13,17,24 374:15 381:24 443:16 elements 304:2 315:13 316:1 319:13 333:9 350:14 360:2,8 362:3,6 363:4 364:15,19,21 364:25 367:11 371:24 373:9 392:3 422:12 eliminated 163:18 email 85:25 126:8,15 emails 85:15 117:20 126:6 428:3 433:5 embedded 409:25 emerge 239:3 emerged 239:1 Emily 2:2 5:24	Emmis 353:6 emphasize 94:24 228:13 433:22 emphasized 21:18,19 275:9 309:6 employed 111:6 enabling 309:7 enact 36:3 encourage 52:3 56:2 57:15 329:18 454:5 endeavour 394:14 ended 288:22 endless 329:18 endorse 255:25 endpoint 143:21 ENDS 48:1 122:3 158:25 energy 1:4 22:8 34:4 36:3,17,19 36:24 37:17 39:25 40:19 42:3,3 44:7 53:12 69:1 86:5 87:10 94:13 122:16,20 126:15 127:8 152:20 153:23 154:2,15,18,18 154:20 155:3,7 155:20,22 156:1,2,5 157:3 195:11 261:1,8 354:2 357:6 392:4 404:22 411:7 412:23 414:8 430:3 461:5 engage 114:2 115:5 122:16 125:25 126:6 127:11 131:1 143:1 154:21 155:25 156:6
---	--	--	---	--

228:5 453:23 engaged 75:15 115:2 116:8 117:17 392:8 engagement 117:9 157:6 engages 196:7 engaging 411:2 engineering 42:13 97:15 99:21 100:5 110:23 112:9 196:8 343:17 enjoin 94:4 enquire 323:14 ensure 26:20,22 29:23 37:11 96:25 110:15 114:7 231:13 271:12,13 272:8 273:15 296:21 298:21 299:3 ensuring 35:23 101:15 283:15 entails 452:11 entered 15:16 203:5 345:13 402:16 436:25 entering 343:9 344:13 enterprise 168:4 168:10 170:18 171:11 175:25 255:2 265:3 273:20 362:7 364:17 419:3 439:5 440:19 enterprises 305:14 entertain 420:8 entire 8:25 16:21 30:23 71:5 77:22 86:16 173:6,9,14 200:10 209:21	225:22 229:23 241:14 248:6 248:21 254:8 331:1 360:14 364:17 373:21 396:16,17 entirely 45:20 200:2 268:12 295:11 311:1 378:22 380:7 395:4 419:7 426:2 447:6,7 456:25 entirety 71:25 364:12 375:21 379:3 entitle 353:22 entitled 72:13 198:8 252:2 353:5 386:19 406:5 415:23 entitlement 245:7 269:5 352:19 entitlements 353:15 entity 338:17 environment 22:10 37:5 38:4 38:15,22 42:4 52:1 94:20 114:17 255:16 255:24 326:6 392:6 411:7 environmental 36:23 39:24 111:13,15 112:10 196:8 envisage 67:4 114:7 equal 194:16 equally 274:25 432:10 equitable 16:16 75:18 140:1,19 160:12,20,23	161:9 163:11 163:12,21 164:7,20 165:3 166:14,19 180:1,22,23,25 183:1 188:13 208:21 211:21 225:14 408:3 421:1 423:11 equity 89:10 equivalent 55:10 338:16 erase 334:5 437:7 erasing 437:23 Erin 87:6,8 erroneously 255:20 ERRP 98:7 escape 325:23 336:10 escrow 381:17 Especialy 356:17 essence 306:8 309:4 337:3,15 339:9 essential 282:8 329:16 396:9 essentially 106:5 125:1 233:10 234:2 237:9 243:11 346:18 354:13 375:11 establish 35:11 56:6 245:11 302:23 305:3 306:2 323:3 341:14 349:3,5 350:23 354:14 360:20 448:22 established 39:24 153:13 205:8 246:14 256:2 274:8 345:7 395:11 404:3 451:12 454:21	establishes 407:13 establishing 68:16 205:12 establishment 36:1 estimate 205:15 estimated 205:5 estopped 220:23 221:13 232:16 295:22 297:3 297:22 298:13 estoppel 219:14 219:16 220:24 225:5,19 226:4 229:19,19,20 229:21 232:7 244:11,12,12 267:5,6 284:1 291:19 295:17 441:1 442:21 443:2,15,16 445:25 452:7 452:15 et 75:6 161:21 165:20,20 177:24 223:10 362:10 373:14 390:19 euro 206:25 461:12 European 220:18 221:8 euros 206:8,17 206:18 207:1 evade 328:6,25 evaluate 419:9 evaluated 452:22 evaluation 42:13 267:23 406:14 evenhanded 464:10 evening 14:10 415:18 event 66:14 92:5 132:16 146:4	197:13,20 273:4,23 293:17,21,23 294:21 295:11 313:19 317:1 317:20 338:12 338:15 345:19 347:5,20 411:2 424:22 435:15 436:23 459:21 events 15:8 28:12 32:12 109:19 133:20 135:11 150:5 312:24 313:1,3,5 314:6 317:22 318:14 337:9 342:16 436:14 eventually 166:23 400:13 everybody 5:5 8:5 238:7 464:7 Everyone's 415:16 evidence 26:1 31:23 33:3,4 51:12 52:12,22 75:11 83:12,14 83:17,23 84:2 84:12 85:12 102:18,25 103:5,18 104:2 104:3,20 119:22 120:1,4 120:6,17 134:2 136:2,10 148:14,19 152:2,11,19 153:12 154:7 154:10 157:10 157:11,12,16 157:19 161:23 169:10,16 170:9 194:2,23 195:1 203:11 203:12 214:18
--	---	--	--	--

217:8,13 218:5 219:2 222:19 224:18 226:13 286:24 350:24 351:17 354:15 356:4,21 373:16 377:10 399:10,11,15 406:15 407:3 413:21 429:24 448:7 460:25 evidentiary 192:24 454:23 evolved 191:21 274:20 exact 100:7 106:16,17 267:22,23 323:18 325:17 332:19 360:14 389:21 390:10 exactly 30:7 185:6 188:17 211:19 240:6 248:16 276:10 276:19 284:21 315:5 339:6 347:8 358:16 360:13 370:10 370:13 373:25 379:17 398:7 422:5 430:13 exaggerating 448:19 examine 306:21 examined 266:9 examining 243:16 example 99:25 119:23 220:12 223:13 276:20 300:24 352:17 356:2 358:20 422:10 424:2 431:6 447:13 450:23	examples 124:7 153:3,17 161:1 327:6 exceeded 297:9 Excellent 10:25 116:2 159:19 185:2 237:21 415:2 exception 29:6 34:20 181:23 244:1 418:24 427:12 exceptional 105:3 152:17 excerpt 30:7 91:13 142:23 206:15 excerpted 36:8 39:8 47:11 52:5 54:16 119:11 excerpts 50:10 54:21 exchange 206:25 312:23 exciting 177:7 exclude 68:25 excluding 235:17 401:6 exclusion 120:10 exclusive 408:24 Excuse 235:12 executed 201:25 execution 201:24 exercise 131:18 153:9 191:19 260:17 265:3 407:5 441:19 464:12 exercised 67:24 133:4 150:24 153:3 260:20 279:24,24 280:2 386:13 exercising 256:25 277:1 323:1 335:25 411:22	exhaust 138:2 exhausted 134:8 233:10 241:18 Exhibit 342:3,12 347:19 406:17 exhibits 417:4 431:18 exist 28:1,3 148:3 168:7 176:8,25 233:14 256:6 286:16 321:13 381:6 394:25 395:17,17,23 395:24 397:6 397:16,17 400:19 existed 80:3 174:14 190:23 244:1 256:4 284:19 327:13 335:4 360:6 369:5,21 395:18 399:2 existence 177:2 285:17,19 existing 174:7,8 177:19,20 296:20 352:20 exists 152:13 285:12 286:15 293:4 exits 105:19 expands 169:2 expect 48:20 119:14 126:22 165:22 224:21 226:24 expectation 85:4 95:19 184:12 248:11 376:20 expectations 84:9 88:25 119:17 131:13 183:5 183:11,11,12 183:19,21,24 184:6 314:8	350:11 400:15 403:17,24 409:4,5,7,10 413:20 414:1 expected 62:7 expenditures 428:22,22 expense 101:4 143:14 experience 42:2 99:15 153:1 416:22 experienced 42:1 456:22 experiencing 155:21 expert 2:10 3:10 3:13 33:3 97:16 97:20 98:18 100:2 110:6 112:5,6,18 152:12 154:24 169:10,12,14 169:16,20 170:8 195:4,18 196:14,16 205:18 207:4 207:13 217:8 217:13 218:6 255:22 330:14 351:2,21 373:5 392:8 428:25 431:18 432:15 expert's 432:3 expertise 169:13 194:21 experts 83:15 111:7,14 165:10 192:25 193:20 194:21 219:8 224:21 406:25 416:16 417:3,4 428:6,7 430:2 439:1 450:25 456:21 457:5 462:16	experts' 218:7 expire 315:15 316:1,24 explain 103:2 117:8 168:17 170:3 242:24 244:18,23 245:18 246:2,8 265:17 266:15 340:16 349:1 418:18 explained 111:5 111:6 119:11 170:6 233:12 340:5 424:8 439:6 453:22 455:24 explaining 108:2 170:14 244:13 388:4 explains 95:22 110:7,10 112:8 118:3 119:13 122:18 132:2 153:1 170:10 385:2 388:2 461:11 explanation 61:5 92:8 103:17 104:6 108:7 124:23 170:12 explore 31:9 103:24 explored 165:15 exposes 131:12 express 254:10 291:16 expressed 117:15 402:5 expressing 117:22 expressly 20:21 28:18 36:11 106:22 161:16 456:2 expropriated
--	---	---	--	---

136:19 182:19 187:6 211:4,20 212:20 239:24 285:3 286:10 317:9 352:14 376:25 395:4 396:5,7,14 399:8 expropriation 16:14 63:17,19 64:19,24 66:3,7 66:22 72:2 79:16,19,22,25 80:22 81:8 86:19 137:1,8 137:13 139:24 171:24 172:8 178:10,19 179:3,5,13,15 179:23,23 180:18,21 181:2,14 184:18 185:8 185:21 186:18 189:5 208:21 209:7,8,18 210:7,8,20 212:10 213:13 217:7 225:15 225:18 230:13 244:24 245:13 247:14 284:11 284:12,13,16 285:1 286:21 287:1 314:3 318:11,11,15 349:3,8,11,14 350:1,19 352:12,21 353:9 357:14 359:10,17 360:21 361:20 369:14 371:18 374:13 376:21 376:23 395:2,2 395:6,8,11,13	396:15,17 401:18 420:24 420:25 421:8 422:13 423:10 424:10 expropriatory 249:11 353:2 404:8,15 406:3 extant 92:9 173:20 284:14 extend 93:25 143:20 200:3 329:8 357:10 extended 245:21 265:10 285:20 334:8 414:14 extension 57:18 57:22 132:15 143:22 202:10 336:18 extensions 255:13 extensive 19:21 99:21 153:11 192:23 406:11 extensively 33:2 33:8 417:13 454:3 extent 194:18 205:9,16 220:19 306:10 320:4 332:4 359:7 external 98:9 436:16 extra 45:1 422:12 extract 369:15 386:6 extraordinary 259:4 extreme 117:22 eye 344:8 <hr/> F <hr/> f 336:14 390:9 face 193:25 218:9	faced 274:2 faces 442:4 facie 236:23 facility 40:2,5,10 403:6 facing 154:18 155:7 fact 2:8 3:11 24:24 27:24 28:20 33:3 38:21,25 48:17 55:4 59:25 61:9 66:22 73:11 74:8 77:22 78:12 79:11 80:24 81:2 83:15 90:6 135:16 139:1,1 187:7 207:7 218:5 230:11 233:13 240:7 247:4 252:23 253:9 256:4 281:20 283:17 287:18,19 296:2,18 299:7 302:22 306:15 316:17 327:17 334:1 335:4 354:5 355:10 362:13 377:24 387:25 393:6 409:22 413:13 430:2 431:16 434:16 442:3 447:14 448:10 450:3 453:12 455:23 458:21 462:3 fact-specific 143:2 350:8 401:17 403:14 facto 136:20,22 137:1,6 146:4 179:15 330:18 331:17	factor 156:24 218:22 274:22 401:19 403:13 404:6 458:16 factors 40:22 213:24 222:24 223:12,23 350:8 377:22 401:16 404:3 Factory 190:17 420:19 facts 28:1,1,5,7 28:10 31:16,22 31:25 32:2,3,16 44:21 55:18 121:23,24 123:23 131:21 132:11 135:15 139:2 164:21 228:16 237:4 240:20 243:7 246:23 262:3 266:10 275:12 286:25 292:24 315:19 321:13 323:12,14,21 323:25,25 324:4 329:8 334:23 395:10 410:15 411:17 412:18 436:4 437:3 448:23 450:17 454:19 factual 34:2 156:9 166:18 191:4,19 192:13 195:20 274:23 276:22 301:2,5 337:2 377:23 fail 61:16 failed 68:4,11 198:21 227:20 245:11 269:11 270:15 271:12 272:3 280:24	302:23 312:6 326:22 339:15 340:7 341:14 349:2,5 412:12 417:14,24 425:10,12 426:10,14 433:2 failing 163:5 200:17 270:21 409:18,18 fails 246:5 437:2 failure 69:24 198:23 231:11 231:12 232:19 243:21,22 251:11 262:11 263:1 264:20 271:8,16 282:21 293:23 302:10 306:1 317:13,14 323:5 325:14 325:15 334:13 335:1,3 413:1 426:17 439:7 458:3,14,23 failures 457:11 fair 16:16 75:18 140:1,18 160:12,20,23 161:8 163:10 163:11,21 164:6,20 165:3 166:14,19 180:1,21,23,25 182:25 186:21 188:12 189:9 208:1,20 211:21 218:11 225:14 275:10 276:13 391:12 391:13,13 408:2 420:25 423:11 fairly 14:24
---	---	--	--	---

fairness 187:14 211:2 322:6	5:2 15:19 23:9 25:17 42:14	79:21 80:18,21 162:7 176:19	192:15 197:1 429:6 430:10	460:18
faith 85:6 191:10 202:5 236:18 259:12 277:8	73:9 110:25 123:14,16 125:14,16	179:24 210:3,3 212:10,21 217:3,7 318:10 371:12	459:20 financing 102:22 133:2 195:14 384:13 396:25 403:7 429:12 456:16 461:7 462:23	findings 32:9 33:1,14,15,23 33:25 34:7 36:8 37:15 40:17 50:21 52:4,23 53:21 55:3 58:15 59:16 60:13 63:13 84:17 96:1 136:15 138:5 163:15,24 164:13 267:4 299:20 440:16 448:24 454:17
fall 47:20 116:20 117:10 346:14 347:7	127:24 130:17 130:24 131:22 132:19 134:6 139:20 142:14 143:25 145:18 145:25 146:7 146:11,16,19 146:23 150:4 196:3 197:4 200:13 202:13 202:23 203:3 207:11 214:7,8 214:9,23 227:12 238:20 238:22 251:12 253:6 255:11 255:21 259:21 261:23 277:4 279:25 299:9 306:5,16 316:18 324:24 326:8 327:14 329:25 332:14 336:16 387:4 427:2 429:7 464:18	field 343:16 fifth 102:9 246:8 271:24 298:10 419:12 438:11 Fifty 158:11 fifty-five 158:17 figure 220:25 366:7 451:11 file 23:22 filed 255:23 259:23 260:14 261:19,25 302:6 filing 301:25 filled 432:14 final 18:13,15 53:19 57:10 186:8 206:24 317:20,20 360:1 413:19 459:9 463:16 finalized 61:1,4 84:25 95:4 finalizing 94:20 94:22 150:11 finally 246:1 267:2 272:2 274:9,10,18 275:1 298:12 finance 106:23 335:15 377:12 financeable 68:9 194:13 285:9 330:7 377:20 427:10 financed 250:1 285:21 financial 98:22 118:15,18 119:24 149:5	102:22 133:2 195:14 384:13 396:25 403:7 429:12 456:16 461:7 462:23 find 16:15,24 17:5 23:23 31:3 34:5 97:5 98:10 190:17 202:20 216:21 217:17 233:14 235:14 276:4 282:23 291:7 372:9 385:17 386:11 423:2 438:18 442:15 finding 16:25 19:4 34:13 38:20,25 51:10 52:22 54:24 59:7 64:17 69:20 73:19 136:23 137:21 176:4 177:1 181:25 186:17 190:4 192:17 218:5,13 223:22 224:4 224:14,15 230:12 236:13 248:16 269:8 269:13 285:8 285:24 286:13 297:13 298:3 300:3 359:1 399:4 414:23 427:6,7,16 438:1 443:17 443:18 444:24 445:24 447:13 449:13,25 450:12 458:11	37:15 40:17 50:21 52:4,23 53:21 55:3 58:15 59:16 60:13 63:13 84:17 96:1 136:15 138:5 163:15,24 164:13 267:4 299:20 440:16 448:24 454:17 finds 39:18,23 47:12 51:5 52:6 66:3 69:12 88:4 137:13 282:12 286:25 433:17 450:9 fine 14:5 82:4 102:6 225:2 238:2 304:11 348:5 352:6 377:17 finer 329:19 fingers 129:5 159:5 fungertips 87:9 finish 16:10 81:23 82:8 401:11 finished 23:10 finishing 395:13 fires 125:2 firm 110:23 118:16,19 351:21 392:7 firms 98:2 112:10 118:22 first 15:7,16 16:4 16:4 20:12,18 21:25 22:3 23:8 27:6 32:18 34:8 34:13 39:22
fallen 215:17 falling 215:19 falls 226:11 387:15 408:24 false 296:16 familiar 160:24 far 285:4 357:10 415:25 430:9 434:14 farm 95:12 245:8 353:20 357:2 398:13 farms 416:24 417:5 farther 359:19 fast 158:20 362:4 389:5 419:20 faster 416:24 fault 16:11 371:22 faulted 336:8 favour 9:11 284:16 favourable 42:21 194:6 favourably 250:25 favoured 250:20 favourite 415:17 fear 304:5 feasibility 192:16 193:1,2,20 194:20 195:3 195:15 feasible 12:15 192:14,20 194:10,19,19 February 1:11	federal 456:10 463:11 feed 11:25 401:16 Feed-In 284:13 feel 7:2 115:4 159:3 feeling 239:18 fees 99:3 240:22 240:23 feet 114:3 fell 186:18 215:1 felt 239:16 280:2 FET 16:16 63:19 66:22 69:21			

41:8 45:4 53:6	351:2,19	139:2,8 145:3,6	266:6,25	388:6 390:18
56:3 58:1,9	356:14 357:22	145:8,8 147:6	269:15,18	395:17 396:4,8
59:12,21 64:17	358:18 361:4	147:24,25	271:6,9,13,17	396:13,15,19
64:18,18 81:10	365:4 368:17	148:4 156:22	271:21,23,24	397:13,16
84:16 87:20	388:18 391:11	168:18,24	272:4,8 273:3,9	399:2,6 400:20
94:17 96:7 97:9	392:8 401:19	169:20 170:15	273:15 278:2	401:25 403:10
100:18 104:7	402:2 410:9,20	171:11 175:1	280:25 282:13	406:5,11
111:21,23	418:8,16,18	176:1 179:2,5,8	282:24 283:22	409:17,21
115:8 118:6	425:5,12 426:9	180:10 181:9	283:23 285:1	410:1 411:16
120:23,24	427:21 429:5	182:2,11,14,20	287:3 288:2	412:17 414:1
124:6 138:24	431:25 432:15	185:12 189:7	291:23 292:1	414:11 416:13
139:22 144:2,5	448:2 449:5	189:15 192:6	296:14,18	417:7 419:2
154:7 161:16	450:22 454:12	192:10 193:22	297:15 298:14	427:3,20
162:5,10,18	456:15	193:23 197:18	299:7,12,15	431:11 436:9
167:11,16,18	firstly 222:5	198:22 199:4	301:11,21	436:13,24
168:3 169:19	224:5	199:18,18,20	302:11,12,17	439:5 440:10
170:5 171:17	fish 244:6 264:19	199:20,20,23	303:20 306:6	440:19 441:13
172:16 174:15	301:13	199:25 200:5	306:12 309:7	445:17,18
175:1 185:11	fit 15:15,25 16:14	200:12 201:22	309:11 310:3,7	451:8 456:4,24
190:12 196:15	16:21 17:25	202:12,17	310:9 325:16	457:19,21
199:7 213:19	18:6 21:1,14	204:14,15	327:15 328:11	458:3,7,8,9,12
221:6 223:23	33:20 36:1,18	207:12 208:25	330:1,10	458:15,19,19
227:2,8 232:18	37:2 41:14	209:8,11,19	336:17,19	462:4,21
241:18 242:6	42:23 43:3,9,10	210:8,10,21,24	337:6 339:16	FIT's 242:12
243:6 244:10	43:15 44:14,14	211:4,13,16,22	342:3,23	fits 168:14
244:23 245:10	44:25 45:19,22	212:1,3 230:9	343:22 344:2	170:15 344:13
266:14 267:10	46:6,8,14 47:7	230:11,15,22	351:17 352:3	fitting 188:15
267:18 276:4	47:13 48:7	230:23 231:5	353:13,19,22	five 13:8 15:3
284:10,24	49:25 60:22	233:3,7,21	354:6 362:8,11	28:24 40:2
286:1,11 287:2	63:23 64:13	240:3 241:7,12	362:18,24	44:16 49:7
296:7 301:17	66:10,12,16	241:21 242:9	363:19,23	57:18 62:9
303:12,13	67:25 68:20	242:21 243:23	364:7,10,16,23	159:4 198:19
305:9,9,18	69:1 71:6 72:19	244:19 245:6	365:22 366:5	204:11 256:21
307:1 308:2,21	73:3,15,19 74:2	245:20,25	366:17,25	272:11 311:18
314:17,19,24	74:20 75:13	247:19 248:2	367:4,6,13	311:19 313:2,5
315:12 316:4	77:14 78:24	249:6,13,18	368:23 371:5	317:11 333:3
317:22 318:10	80:1,2,11,17,21	250:11,14	372:8 375:8,12	340:1 401:12
319:25 320:1	85:6 89:17,20	251:1 252:5,24	375:22 377:4	457:20
321:3 322:16	89:25 90:2 92:4	253:1,11,24	378:1 379:3,7,9	five-year 57:22
324:12,24	92:10,16 97:1	255:7 256:15	379:14,25	202:11 203:9
327:7,19	110:12 113:7	256:22 259:10	380:8 381:7,9	fix 129:1
328:17 329:11	113:13,18	259:16 260:5	381:14,24	flawed 413:12
329:12 337:14	129:25 131:2	261:3,5,12,22	382:1,3,10	416:6
337:20 340:18	131:25 132:4	262:13,15,20	383:8 384:3,16	flaws 334:1
340:24 341:1	132:14 136:19	263:6,9,25	384:19,22	flee 443:5
347:13 349:1,7	137:13,16	264:5,10 265:9	386:12 387:3	flexibility 457:21

flip 39:18 45:6 389:9	192:4 196:22 227:13 240:21	409:22 414:15 436:25	112:21 125:25 127:22 128:21	442:23 445:6 448:9,9 449:11
float 196:19	243:9 244:21	Ford 260:22	129:10 139:3	458:19
floor 300:7	245:12 257:17	forecasting	152:10 166:8	foundation
341:18 407:13	262:7 288:6	406:25	170:14 191:3	392:23
407:16 463:14	298:22 376:2	foreclosed	191:23 192:1	foundations
flow 84:6 207:6	419:11 427:18	275:23	192:11 194:20	429:17
309:15 312:8	432:11 436:14	foreclosing	194:23 195:18	founded 246:3
417:16 420:7	449:8	275:11	196:10,15	founds 241:14
424:23 432:17	follows 122:24	forefront 417:12	197:9 201:8,10	four 37:18 39:8
440:1,22 446:3	248:24 420:17	foregoing 465:7	204:1 205:17	44:15 89:12
450:13 454:14	foot 384:22	forewarn 11:18	205:21,22	220:8 232:15
455:16	footer 392:12	forfeit 386:23	206:1 216:11	278:22 308:21
Flowing 137:12	force 16:15 17:25	forfeited 49:11	312:4 337:23	309:4 312:12
flows 134:18	49:15,17,20,23	66:15	353:11 362:4	325:11 326:23
459:18	50:17 60:18	forgiven 441:3	389:5,10	326:24 410:7
fluid 360:11	63:25 71:8	form 275:18	414:18 417:3	fourth 233:23
focus 31:22 84:23	72:21 78:24	276:10 306:18	417:18 419:7	245:5 271:15
160:19 176:19	84:19 85:17	309:4 310:14	426:14 432:8	298:5 354:12
190:3 239:10	86:21 87:1	311:13,19	441:5 447:9	413:7
243:8 296:7	88:21,22 89:17	323:12 337:15	453:7,13,21	frame 41:21 83:5
focused 171:9	93:4,12 110:12	339:13 340:6	455:21,25	110:8 123:17
367:21 387:23	113:17 128:12	348:16 408:17	463:11	220:19
452:5	135:24 136:1	formal 142:20,24	found 17:4 26:9	framework 31:24
focusing 31:25	137:14 143:20	formally 63:25	27:12 28:2,7	33:18,25 34:4,6
87:20 333:1	148:9 150:15	71:8 247:19	32:4,6 33:17,18	35:16 37:14
353:13	203:1,5,14,20	252:25 256:16	35:14,19 37:1	44:3 60:25 61:4
focussed 171:13	203:24 230:12	287:4 299:15	38:3,20 44:18	62:1 67:3 68:18
follow 12:7 231:2	245:21 247:20	formatting	47:11 50:24	106:19 110:2
311:3 314:7	249:19 250:8	392:20	53:3 54:9,14	162:4 222:1
372:25 373:1	252:6 256:16	formed 325:23	59:13 66:25	256:4,5 265:25
445:4 449:7	256:17 265:10	380:14	70:13 86:4	free 316:25 338:6
follow-up 123:4	273:16 285:10	former 152:20,24	110:4 114:6	freeze 15:22 21:5
125:11 255:11	285:20 287:4	461:4	134:9 135:6,7	21:10,20 53:1,3
follow-ups	289:21,21,24	forming 264:11	136:25 172:1	54:9,14,25 55:1
114:15	293:17,21,22	forth 41:20 142:6	180:11 189:5	55:10,10,16,19
followed 15:18	294:14,21	fortunately	206:6 212:17	68:24 75:21
53:23 124:24	295:2 301:19	121:22	233:15,15	80:15 124:18
241:23 258:4	327:3 341:25	forward 19:9,23	269:16 280:19	134:18 137:17
389:2	342:2,8,9,17	45:6 50:5,15	281:2 284:15	138:3 161:17
following 26:13	343:2,20,22,25	54:19 55:7,12	284:15 285:21	161:19,24
26:14 47:13	344:12,23	59:9 82:7 85:18	301:14 362:15	162:19 163:8
69:16 70:15	345:18 347:6	90:3,9 92:16	363:2 373:12	163:17 164:25
88:17 96:1	347:14 358:2	96:6,14,25	388:3 419:4	165:4 166:16
134:15 138:11	363:24 397:18	99:18 101:20	438:21 439:11	166:17 178:4
139:24 143:12	403:11 406:7	110:5,14	440:17 442:19	181:1,3 182:24

184:8,10	30:22 43:11	92:18 97:3,11	general 3:8	155:10 157:5
188:14 189:1	56:2,19 71:21	97:20 99:23	106:19 280:8	224:7 234:5
216:11 228:6	72:15 75:13	100:3,17 135:9	280:11 408:16	289:2 307:2
233:9 239:3	82:13 116:21	137:23 148:16	408:22 413:23	324:13 326:19
286:5 296:9	121:18 133:18	148:17 154:11	423:16 431:20	342:12 359:7
325:16 327:1	134:23 137:2	167:6 178:15	generally 122:1	360:11 402:6
Friday 10:16	137:15 141:7	187:12 189:2	374:13	413:17 422:25
12:21	141:15 143:6	200:22 212:7	generate 339:21	432:7 447:4
friend 12:19 30:1	177:2 193:3	235:15 250:14	generated 192:9	462:3 463:9
55:25 89:22	205:13 232:4	252:16,22	Generation	gives 32:6 85:12
118:1 153:5	248:10 251:18	259:22 283:25	352:24	114:18 126:18
228:14 230:20	252:3,11 275:9	293:16 299:14	genes 419:23	135:17 144:18
232:15 233:5	276:13 296:13	320:16 323:2,6	genuine 117:15	160:25 198:2
393:10	306:10 336:4	326:2,25	118:19	209:1 347:5
friend's 57:13	363:21 421:9	331:22 339:20	geological 391:20	422:7
92:20 142:8	421:12,14,21	340:11 342:11	394:2,4	giving 106:25
227:2 236:23	422:8 437:12	364:2 367:16	geophysical	109:7 150:5
237:9	439:11,15,20	371:15 376:1	112:13	203:11 421:20
friends 6:15,19	439:24 440:4	405:2 412:20	gestalt 135:21	global 3:6 461:5
7:2 9:15 12:20	441:22 451:8	418:21 425:2	getting 121:4,9	461:15
12:23 20:3	461:20	427:2 433:14	149:22 167:21	gloss 74:16 78:3
43:19 53:22	fully 92:18,20	440:8 445:21	218:3 376:16	go 12:16 18:19
112:3 121:23	95:16 110:15	446:10 460:14	383:6	20:15 21:21
friends' 131:11	121:3 149:14	future 89:22	gist 122:22	31:13 32:1,9,12
front 17:19 26:21	165:25 234:3	114:22 137:22	give 32:4,13 37:8	33:1,22 35:1
26:24 291:22	242:16 246:21	248:12 254:5	45:11 57:22	41:7,19 45:11
316:7	254:13 345:6	268:15 269:5	93:4 98:24	47:23 54:18
front-end 356:10	362:13 427:5,7	269:14 299:19	103:5 107:5	55:7,12,17 59:9
frozen 16:1,8,12	427:15 451:21	300:1 302:20	108:7 120:5	59:19 65:10
26:22 29:9,21	fun 391:3	322:8 367:17	129:23 157:11	66:19 69:22
29:23 53:7	fundamental	384:20 455:7	160:8 171:4	70:23 78:23
55:20 56:5,13	28:11 304:24	459:18	178:20 201:17	81:23 83:20
57:1 58:13 60:2	310:17 324:10	fuzzy 106:17	203:11 218:10	84:6 85:24 87:3
60:24 62:22	364:13 418:6		222:1 226:7	96:15 102:21
63:9,22 85:9	422:15 453:12	G	304:20 314:6	115:5,20
231:14 240:3	fundamentally	gain 265:12	321:19 322:9	120:12 123:20
271:13 281:12	27:23 310:12	gained 441:18	322:20 341:17	124:2 129:3,5
282:22 286:6	341:7 403:3	453:9	366:6 390:24	129:16 131:5
298:15,22	416:6 421:3	game 434:21	409:6 463:15	133:1,2,14
299:4 431:7	451:24	gaps 108:19	463:22	141:1 142:5
frustrations	funding 98:8	gas-fired 251:2	given 33:6 40:19	143:8 144:25
291:17	further 1:13	gather 143:15	41:1 50:9,14	146:15 153:5
fulfil 85:8 299:3	39:12 40:12,17	Gauff 423:23	60:20 83:11	153:18 158:5
fulfilled 22:20	41:24 62:10	424:3 425:17	84:12 105:5	158:18 166:2
80:19 177:21	78:18 87:4	434:21	110:11 127:2	167:6 170:3
full 20:22 21:11	88:16 90:4	GEGEA 67:23	134:2 146:2	177:18,23

183:3 187:14	84:22 93:6	399:19,21	16:22 19:5,7,23	309:21 317:6
189:1 191:13	95:17 96:4,7,15	good 5:5,22 7:16	22:1,4,6 24:15	317:12 319:7,9
191:24 193:5	96:18 100:14	11:12 26:25	26:18 27:18	338:17,17
198:10 199:15	109:20 121:7	39:4 58:3 81:18	28:19 34:11,23	346:6 350:11
205:17 214:2	122:21 123:8	81:22 85:6 94:6	35:10,14,19	401:21 402:23
230:19 234:21	123:10,15	124:14 154:2	43:25 44:7,13	403:15 404:7
235:13 284:25	127:22 129:20	189:25 191:10	47:4,14 48:18	404:10,11
291:11,13	131:20 138:19	202:5 238:14	54:17 59:7 64:3	409:16 410:13
318:21 320:16	139:3 142:4,9	256:14 259:12	65:7 66:13,23	government's
342:13 345:6	142:13 146:1	277:8 279:7	67:10,17 68:11	52:7 61:17
351:4 359:18	149:22,25	294:5 303:5	69:4,7,25 70:19	69:13 128:13
365:2 371:15	151:7,8,22	304:11 308:5	71:14 75:14,20	260:25 280:23
373:3 386:1	152:3 153:18	341:23 356:1	76:2,9,11 80:19	297:23
389:19 392:5	155:2,3,7,20,21	360:25 410:12	81:3 84:24 85:1	gradually 47:15
407:8 415:8,25	156:9 159:2,14	412:22 415:18	85:5,23 88:16	Grand 322:19
426:1 429:10	160:10,13,15	450:7 464:5	88:23 90:10	332:2 338:1
438:6,8 463:25	160:16 166:8	goodness 320:10	93:2 94:25	grant 245:7
464:14,15	169:6 173:25	goodwill 237:23	95:10,12 96:3	296:15 317:8
goal 75:12	178:10,13	Gotanda 1:17 5:8	96:23 98:1,4	granted 251:3
283:15	184:5 200:16	79:14 81:14	112:21 113:3	265:23 294:15
goes 19:14 37:15	201:15,18	138:10 139:23	114:2,15	319:6 357:10
39:6,13 43:13	216:9 217:22	140:17,23	122:17 124:17	granting 317:22
52:15 54:3	224:13 228:18	180:20 183:2	124:18 125:1	Graphic 3:13
92:25 99:8	230:19 231:24	213:4 214:21	126:1,7,14,23	graphical 177:15
112:16 127:1	232:17 253:20	219:12 220:11	127:10,25	grapple 367:19
131:14,15	267:17 288:18	223:9 225:1,11	142:6 144:24	Grasshopper
152:13 174:4	291:11,16	225:17 227:5	146:1 150:23	199:14,19
200:22 201:14	294:1,2,5 298:8	229:16 232:9	151:4 152:8	200:7 388:3
214:20 219:15	298:10 303:20	234:12,20,24	155:25 157:2	458:1
227:14 285:18	304:6,13	288:5 313:24	157:13,19	graveyard
288:7 332:7	307:14,20,24	354:19,22	161:9,19,22,23	415:13
459:13	314:7,14	355:16 356:5	162:7,13 163:4	great 135:23
going 6:20 9:18	316:21 317:15	366:23 367:14	163:13 164:8	159:17 322:2
14:24 17:8	320:2,11,24	375:6,16,19,25	165:2 166:2,22	greater 195:6,9
18:25 22:15,25	349:1,4 354:20	376:7,11 378:3	166:22 176:19	265:17
25:12 26:19	355:5 371:4	378:9,11 381:3	176:23 181:18	Green 36:3,17
27:19 29:3,5,6	372:6 373:15	399:13 403:21	182:8,15 184:1	37:17 261:7
29:8,21,22 30:1	377:15 383:8	418:23 428:16	191:9 192:4	grew 33:20 47:15
31:19 32:3,15	383:13 403:21	442:16 443:7	195:4,11	grid 44:9 112:13
32:20 33:13,22	419:21 423:22	446:6 452:2	200:11,15,23	149:10,12,17
34:17 35:4,11	429:9,15,16,17	Gotanda's	201:1 215:18	220:8 346:10
36:12 41:7 44:1	429:18,21	401:15	260:5,22 261:3	346:15
46:25 50:8	431:22 438:23	governing 34:4	261:10 264:2	Griffin 1:20
56:23 57:4	455:18	67:7	267:1 271:20	grossly 410:5,6
58:22 82:7 83:5	gold 317:5,6,9,16	government 1:7	280:20 281:3	411:12 413:5
83:10,13 84:5,8	318:2 399:19	3:8 8:2 15:16	283:21 287:7	ground 267:14

<p>361:22 426:21 430:25 450:25 Groundhog 239:18 grounds 230:6 group 41:24 196:10 growing 238:16 growth 155:19 guarantee 37:12 354:4 guaranteed 192:9 199:11 411:19 guess 93:8 288:11 292:14 293:25 396:18 399:1 450:20 guidance 128:20 275:7 281:19 340:21 415:22 guidelines 40:12 44:3 Guillet 3:10 195:5,14,17 206:1 215:1,4 215:10 373:16 379:7 429:1 459:15 461:11 462:1 Guillet's 214:4 448:6</p> <hr/> <p>H</p> <p>hairs 225:2 half 12:24 13:5 13:14,20 48:11 48:12 105:17 118:2,19 196:23 237:24 314:19 401:9 415:21 463:19 half-hearted 119:4 hand 364:5 384:24 424:16</p>	<p>hands 158:7 303:6 395:14 464:2 handy 343:21 hangs 248:6 463:5 happen 50:15 95:11 138:7 142:13 316:23 happened 32:13 40:18 43:14 57:12,24 73:12 75:6 84:23 105:24 135:20 136:7 137:3,4 142:12 155:13 157:8 192:1 202:25 240:15 247:4 253:10 312:17,24 313:1 314:10 317:13 318:7 370:4 390:22 444:14 happening 50:13 196:3 242:6 happens 32:20 130:9 140:9 196:21 319:12 happy 5:21 7:2 10:6 13:10 172:3 175:20 190:8 254:12 400:16 hard 17:19 175:17,18 433:12 harder 139:25 harm 88:4 135:6 135:9 208:23 209:1 212:21 212:22 336:6 harmed 134:10 hat 463:6 HAUSER 45:13 46:20 48:2</p>	<p>115:24 122:10 141:23 head 276:16 295:5 header 348:14 heading 34:3 309:10 460:2 heads-up 304:11 hear 21:25 29:12 29:17,20 32:11 35:4 36:20 41:19 50:3 53:20 56:9 69:4 75:11 76:6 83:18 126:9 143:19 152:24 178:18 195:16 205:24 206:2 217:8 219:7 220:4 221:9 224:21 235:8 289:8 373:16 404:20 414:16 462:16 heard 28:23 29:20 30:24 38:2 53:21 161:17 194:8 199:7 217:13 239:5,22 240:9 241:3 255:17 263:19 264:12 275:19 341:6 362:6 397:7 410:18 438:25 hearing 7:1 13:9 21:25 58:12 105:19 111:17 121:6,6 171:7 183:20 184:2 194:24 196:15 237:1 238:20 239:9 240:21 274:15 hearsay 104:9 354:15</p>	<p>hearted 118:2,20 Heather 3:2 7:19 Helbronner 130:7 held 1:10 81:3 89:10,14 91:17 91:24 113:21 182:8 249:5 266:2 268:14 268:18 269:10 272:24 274:21 283:12 298:1 301:21 322:19 324:18 328:4 337:12 343:5 352:24,25 353:15 363:7 372:14 381:17 400:7 426:10 455:15 458:7 458:21 Helen 1:20 Hello 8:13 help 12:6 84:5 221:1 225:3 315:9 428:9 helped 239:10 365:4 helpful 13:12 14:21 34:18 46:19 90:13 92:8 174:9 373:3 378:24 388:4,8 helpfulness 237:23 helping 425:16 helps 147:1 heritage 419:23 hesitate 74:15 hesitated 78:3 hid 236:6 hide 431:19 hiding 431:17 high 96:19 138:18 373:4</p>	<p>408:12 412:9 higher 83:8 215:11,16 highlight 32:25 41:8 42:9 43:17 43:21 49:15 51:9,15 85:11 98:8,21 126:13 151:9 152:11 153:17 228:14 228:20 267:4 highlighted 36:9 47:17 51:20 53:2 54:8 55:6 57:15 59:24 65:11 73:2 85:3 85:14,20 86:3 87:21 111:11 117:19 151:1 169:19 185:12 186:5 231:8 highlighting 40:16 152:5 154:23 highly 352:10 417:8 459:19 hint 249:10 hired 336:3 416:15 456:21 hiring 457:4 historic 329:17 historical 98:23 history 15:13 42:6 43:14 57:15 455:6 hold 53:7 56:5 59:3 62:15 89:9 100:16 107:18 133:7,23 134:1 134:3 207:23 299:17,25 350:15 432:6 holder 60:22 holding 85:1 89:4 90:4,11 101:13 107:25 250:7</p>
---	---	--	--	---

299:6 hole 239:1 home 221:16 463:25 homework 389:24 Hon 1:17 honour 238:18 304:18 hook 89:16 96:24 244:5 264:19 266:7,25 282:18 337:19 hope 415:21 hopeful 13:9 hoping 221:22 375:7 417:21 hot-buttoning 313:18 hotels 463:25 hour 158:15,17 159:3 215:8 401:5,9 415:3 415:21 hours 12:11,22 12:24 13:5,9,14 13:17 235:18 242:24 453:6 housekeeping 12:10,18 hovering 399:20 hundreds 119:15 242:10 hypothetical 311:21 323:24 hypothetically 312:24	400:24 421:3 identical 33:9 458:18 identified 42:20 69:8 116:10 154:17 155:6 157:17 179:16 342:10 346:9 361:20 370:14 395:5 424:4 identifies 262:7 identify 108:18 300:25 307:1 352:13 identifying 352:25 identity 229:22 230:1,4 231:25 236:4 267:9,11 267:15,20 IESO 8:3 41:18 41:20 88:19 89:24 90:4 123:8,11,21 124:15,19 128:10,19,25 129:6,9,15,16 129:17,19 130:9,12,12,17 131:6,18,24 139:17 140:8 142:13,16,20 143:4,19,25 144:18 145:1 145:19 146:1 147:25 150:19 152:1,7,8,15,21 152:25 153:2 153:10,12,25 155:6 161:24 166:23 192:5 200:17 202:5 228:3,5,25 229:3,9 231:12 231:13,17 240:4 243:13	243:22 249:13 255:7,10,12 256:25 259:10 259:16 260:10 260:16,19 261:12 262:13 263:10,22 264:3,5 271:8 271:17 272:3 277:1 281:11 282:19,22 283:11,12,20 289:17,18 292:8,8 295:2 295:11 297:1 302:10 306:7 307:8 308:24 309:7,24 310:2 310:8 327:15 335:24 336:4 336:13,14 337:5,18 343:19 354:1,8 357:6,6 363:8 384:7 386:4,19 394:6 404:13 405:20,24 406:14,19 409:18 411:10 411:21,25 413:14 414:20 458:3,22 IESO's 123:7 129:12 130:3 130:24 131:6 143:16 150:23 151:2 155:5 245:19 259:20 259:22 261:21 263:12,18,24 264:17 266:24 271:24 273:9 276:1,2 277:7 278:1,5 282:13 282:24 283:3 309:13 329:25	335:13 337:11 339:7,12,16 405:12,25 407:4 411:15 431:8 IESOs 340:1 ignore 124:1,1 166:16 459:3 II 27:2 75:1 168:1 228:14 270:3,4 272:12 272:19 274:3 274:16 324:18 328:3 332:2 454:7 III 274:1,7,21 281:19 ILC 314:15 340:20,23 illegal 190:22 illustrated 367:1 illustration 379:15 380:9 imagine 55:24 450:24 immediately 26:13,14 122:15 291:12 402:11 impact 95:25 100:7 147:20 251:7 256:11 256:13 257:8 257:11,23,25 258:1,2,3 324:5 339:9 350:9 401:21 impacted 114:12 impacting 127:6 129:2,10 impacts 21:5 111:16 148:5 387:18 impediments 194:11 344:11 impermissible	272:24 455:8 impetus 88:2 implement 61:25 62:5 110:2 124:16 133:7 133:22 134:13 137:16 138:6 228:6 implementation 194:10 implemented 134:12 137:6 154:17 implications 121:25 implicitly 106:21 importance 310:17 324:11 important 6:21 40:22 80:6 108:20 123:5 161:2 235:18 248:25 279:9 280:10 352:24 356:19 377:4 385:20,22 428:19 439:17 452:5 460:1 importantly 64:22 66:23 185:14,16,19 187:3 189:15 256:2 409:6 impose 44:4 51:6 52:13 346:6 imposed 15:19 113:24 388:25 imposing 232:21 270:23 346:7 imposition 66:25 69:16 70:6,15 232:24 251:6 impossible 242:17 275:3 377:8 402:15 412:7
--	---	--	--	---

I

I's 95:25 454:17
i.e 86:17 146:1
187:24 365:18
Ian 6:11 196:14
ice 112:14
idea 12:20 23:15
273:22,22

imprecise 360:12	245:15	374:15	initiated 336:1	90:17,20,24
improved 194:16	increase 428:16	individually	injunct 93:21	91:4 99:3 102:8
195:8	430:1,5 432:25	308:15 312:19	injunctive 132:7	102:9,10,11,22
impugned 350:4	433:1 441:17	313:10 316:22	259:3	105:21,25
inability 241:6	444:7 451:9,12	324:7	injured 319:5,5	106:19 107:1,6
256:19	increased 214:17	induce 404:2	injuries 328:2	107:11,22
inaccurate	215:6,7 427:19	409:9	338:8	109:1,4,5,7
461:14	431:2 434:3	inducements	Innogy 119:1	117:3,16,22
inappropriate	447:14	413:24	inquired 216:20	121:9 168:16
419:8 453:15	increases 99:24	indulge 293:16	inquiries 118:2	169:23 170:7
462:3	213:23	indulgence 103:2	323:2,6	170:10 254:25
inclined 80:14	increasing 155:8	178:20	inquiry 322:22	350:5,16,19
include 13:21	incredibly 464:8	industry 97:18	395:8 403:14	351:1 352:5
30:23 34:15	464:11	99:23 416:17	insignificant	353:7 361:5,9
35:16 36:6	incurred 86:12	428:4 429:25	110:18	361:11,16
40:10 58:19	227:10 305:11	455:11	insofar 201:9	381:18 400:3
199:24	307:17 381:18	ineffective 329:3	364:18	400:10 401:15
included 33:17	439:3	inequitable 69:19	insolvency	402:5 432:13
59:18 110:25	indefinite 151:5	inevitable 377:7	351:22	interested 116:11
241:25 255:1	271:3 326:19	388:10,11,15	instance 326:17	119:18 121:5
297:8 370:16	independent	388:20 414:15	327:2	185:11,15
379:3 462:13	283:13 339:14	inevitably 335:22	instruct 334:13	402:3
includes 99:2	independently	377:19	464:5	interesting 93:19
168:18 176:1	283:14 323:14	Infinito 306:25	instructions 11:4	107:20 187:21
251:22 262:18	323:19 339:17	311:2,7 313:13	instrument	410:19
271:16 300:24	339:21	321:11 340:7	352:21	interests 168:22
301:25 393:3	index 1:14 4:1	inflation 49:2	instruments	352:22 398:23
including 19:16	215:7	inflationary	45:21	interfere 317:7
26:5 40:1 59:1	indicate 406:3	215:7	insulate 280:24	350:4 403:16
70:2 98:22	indicated 198:15	info 116:4	439:7	404:12 413:10
117:14 135:3	308:14 327:15	inform 143:15	insulated 204:20	414:22
148:24 151:4	indicates 214:7	318:2 323:6	298:15	interministerial
155:22 203:23	248:9 402:24	335:12	intact 136:6	51:7
245:1 254:24	404:14	information	intangible 169:21	internal 88:16
264:2 302:9	indicating 58:10	103:22 132:1	intend 9:15	98:9 126:6,14
328:21 350:9	indication 326:20	143:12,15	intended 61:21	402:9 406:25
362:23 363:3	402:19 403:10	223:1,14 393:9	190:3 456:13	internally 127:19
382:13 402:15	indirect 244:24	404:24 410:19	intent 254:10	international
404:7 409:17	349:3 350:1	412:4	261:19,25	188:22 190:16
432:16 454:22	395:11 401:18	informed 62:1,13	404:8	191:9 223:25
incomplete 31:7	indirectly 239:24	306:6,11 326:6	intention 85:17	245:16 279:11
inconsistency	individual 123:1	328:11 329:25	360:15	316:8 349:16
175:21	124:8 307:10	inherent 333:25	intentions 260:25	349:20 355:21
incorporate	311:5 312:16	initial 34:7 214:8	interact 14:8	360:10,15
408:21	313:10 315:13	347:10	interest 6:16	407:17,23
incorporates	315:25 318:14	initiate 258:22	89:12 90:15,16	408:5,18

411:13 420:12 420:18 455:4 internationally 111:14 414:23 internet 11:3 interpret 290:11 290:17 interpretation 248:20,22 254:6 289:5 357:14 407:20 408:8 interpreted 199:19 290:18 interrelated 325:11 interrupt 74:23 94:8 151:11 329:9 interrupted 54:10 178:18 338:21 interruptions 464:10 intervene 144:21 150:18 178:4 245:23 280:23 309:22 409:18 413:10 intervening 144:25 153:13 424:22 435:14 intervention 126:24 127:5 introduce 5:12 5:18 7:15 8:5 introduces 36:18 introducing 14:24 67:25 introduction 5:20 248:5 invalid 357:9 invest 37:8 42:13 invested 89:11 118:24,24 119:3 370:1	investing 116:11 investment 15:14 20:22 33:16,19 35:20 36:5 37:5 38:4,15 42:6 65:19 66:1,6 71:6,20,22 72:1 72:16 86:17 119:9,15,23 120:2 121:11 137:15 141:7 167:10,12,15 167:24 168:2,6 168:11,15 170:16,17 173:20 174:14 175:1,3,15,19 175:22 176:5,7 176:8,11,14,21 176:22 181:15 186:14 187:16 189:2 212:21 217:2 232:4 245:1,13 247:15 248:11 252:3,12 254:9 274:6 285:2 297:6,8 327:23 330:11 331:22 332:13 337:8 350:6,16 361:20,25 362:16,23 363:2,22 365:6 365:10 366:13 369:11 370:7,8 370:19,24 371:2 372:4 373:22 374:1 374:14 380:12 380:14,15,20 383:7,13 389:11,22 390:18,21 391:5,23 395:5 399:12 400:8,9	400:11 402:25 403:23 404:2 409:9 413:22 414:5 418:20 419:2 420:6 421:10,12,15 421:20,21 422:9 423:4,5 424:24 425:1,6 425:9,13 426:11,25 427:11,19 428:11 432:22 434:3,8 435:7 435:15,22 437:8 438:4,7 439:4,7,12,14 439:21,25 440:5,12,18 441:22 446:24 447:14 450:1 451:6,8,16,19 452:21,23 453:8,10 454:15 455:2,5 459:4 461:21 investment-ba... 183:5 184:6,12 314:8 350:10 376:20 400:15 403:17,24 investments 134:10 211:23 241:5 330:10 407:14,25 investor 41:23 100:11 191:12 303:12 305:4,7 305:9,11,14 307:17 324:19 328:25 329:2 352:20 409:8 421:18 investors 40:22 41:6 42:2 91:9 91:10,15,22	100:13 105:24 106:8,15 107:25 109:6,8 117:3 121:1 215:3 407:15 407:25 invests 99:14 invitation 459:7 invited 412:4 invites 118:2 428:3 433:5 invoke 49:16 invokes 275:21 involve 191:20 involved 120:3 144:18 150:19 254:19 338:15 involvement 76:10 involving 124:4,8 259:5 338:4 353:4 Irish 419:23 irrelevant 340:14 417:10 457:14 458:7 irreparable 330:21 irrespective 267:2 315:17 438:21 Irvine 196:14 Island 41:3,12 168:4,10,19 175:25 457:13 isolate 100:6 426:15 isolation 290:20 381:6 Israel 2:4 6:4 issue 10:8 20:13 25:2 28:9 33:5 74:13 78:18 94:21 108:8 128:22 129:25 152:20 154:9	166:4,25 167:3 169:15,17 194:13 217:20 225:6,7,9,12 226:5,12,20 229:19 232:7 232:11,11,12 233:23 234:9 234:17,19 244:12,12 255:7 258:7 267:5 274:23 274:24 276:10 277:21 278:6 278:15 279:4 284:1 294:19 295:18,25 296:2 298:19 328:7,24 338:12 344:23 345:12 347:23 354:8 359:21 361:19 387:25 400:23 417:11 420:10 425:8 435:10,16 438:12 443:15 443:15 444:11 445:25 452:22 issued 35:10 39:1 285:23 342:24 384:7 issues 9:24,24 13:7,15 31:21 83:8,16 112:12 192:24 194:24 203:4 222:15 229:12,16 232:16 233:21 274:16 282:8 325:11 428:10 issuing 290:1 326:24 itching 304:5 item 102:9 374:8 380:12 404:24
--	--	--	---	--

items 189:15,16 312:11 343:4	June 260:23 388:16,16 414:13	keeping 71:2 86:24 102:6 161:20 182:7 188:14 391:13	329:24 335:19 337:20 340:18 463:2	414:16 425:16 430:14,15,17 430:19,21 448:17,17 451:3,21 461:4
J	jurisdiction	kept 29:24 62:22 72:11 116:5 252:1	knock 419:23 know 6:13,19 8:24 9:15,17 10:3 12:4,13 19:10 25:3 37:5 58:18 78:8 80:6 81:4 82:18 83:9 93:19 105:16 106:16 118:12 130:13,14 132:6 133:19 135:25 139:15 141:13 142:11 142:12 146:4 147:9,11,13,19 156:18 166:13 166:21 169:2 171:25 172:4,7 176:14 179:19 183:23 187:9 188:12 189:4 189:10 196:18 212:22 215:14 219:8,12 220:2 229:10 280:2 285:17,19,22 286:15 287:21 289:14 290:6 291:9,13,15 292:19,22,23 293:11 294:1 303:3,5 307:19 307:23 308:5 315:22 319:14 319:22,23 331:13 336:5 352:9 356:16 359:19 360:12 362:14 369:11 373:13 388:23 396:24 399:3 401:22 402:15 407:12 408:7	knowing 40:23 258:10 knowledge 103:8 108:8 132:11 145:25 146:1,3 227:9 303:13 303:15,19,23 304:3 305:10 305:11,18,24 306:12,22 307:16 308:2,7 308:17 314:23 314:24 316:13 316:15 318:3,6 318:25 319:25 320:1,1,19,20 321:4,7,7 322:7 322:9,13,14,20 322:23 323:7 323:11,20,21 324:12,17,19 324:23 325:4,7 325:24 326:10 326:14 327:8 327:20 328:1 328:14,17,19 329:13,22 331:8,11,19,24 332:3,15,25 333:2,4,7,11,11 333:15,19 334:3,5,7,24,24 335:12 336:10 337:15 338:8 339:20 341:10 351:23 known 138:24 139:1,4,22 179:12 229:7 284:18 304:3 315:21 343:8
Jakob 429:18 January 34:11 50:25,25 51:7 51:13 98:7 129:17 131:22 142:14 196:23 203:16 255:10 261:17 Jay 351:21 Jérôme 3:10 206:1 jettisoned 55:21 job 433:25 John 1:17 2:2 5:8 5:24 418:23 Jos 1:19 5:13 102:6 390:5 judicata 217:20 217:23 222:4 229:14,16,17 234:16 236:1,2 236:12,21,25 237:10,14 244:11 266:11 266:15,20 267:8 268:9 273:25 275:8 279:10,18 280:8,10 283:25 295:22 359:8 440:25 443:1,22,24 444:3 445:14 445:25 452:8 452:14 judicata's 225:6 judicial 236:9,13 Julie 2:3 5:25 July 155:18 jump 169:6 354:20 jumps 399:21	jurisdictional 31:18 160:17 217:25 234:17 237:2 243:1 295:18 300:16 300:18 303:18 304:7 452:6 jurisprudence 146:2 160:23 246:15 327:23 328:5 331:23 454:22 Justice 56:14 99:7 188:20 202:2 316:4 318:20 322:4 332:8,22 420:18	key 15:8 31:16 33:15 34:7 39:19,20 41:25 42:10 43:17 48:22 49:14 50:23 97:6 118:5 121:16 121:23 129:18 133:5,6 161:5,5 343:4 353:4 356:9 KeyBanc 97:23 116:8,8 117:17 118:6,15 432:13 Killeavy 2:9 83:19,25 84:2 130:2 143:10 152:2,23 336:22 kilometre 44:2,4 44:10 346:7 kilometres 346:11 kilowatt 198:5 kind 84:6 97:6 99:15 116:18 158:7 365:3 372:24 385:2 429:12 430:21 Kingston 41:3 Knecht 3:14 7:23 knew 132:4 142:10 228:15 228:23 306:4 306:17 307:21 315:21,22 325:18,22 326:4,18,22,25	knock 419:23 know 6:13,19 8:24 9:15,17 10:3 12:4,13 19:10 25:3 37:5 58:18 78:8 80:6 81:4 82:18 83:9 93:19 105:16 106:16 118:12 130:13,14 132:6 133:19 135:25 139:15 141:13 142:11 142:12 146:4 147:9,11,13,19 156:18 166:13 166:21 169:2 171:25 172:4,7 176:14 179:19 183:23 187:9 188:12 189:4 189:10 196:18 212:22 215:14 219:8,12 220:2 229:10 280:2 285:17,19,22 286:15 287:21 289:14 290:6 291:9,13,15 292:19,22,23 293:11 294:1 303:3,5 307:19 307:23 308:5 315:22 319:14 319:22,23 331:13 336:5 352:9 356:16 359:19 360:12 362:14 369:11 373:13 388:23 396:24 399:3 401:22 402:15 407:12 408:7	
	K			
	Kayla 3:4 7:23 KC 1:16 keen 264:25 keep 12:14 29:21 29:23,23 84:7 89:24 101:17 102:2 105:13 179:25 240:2 249:16 281:11 282:22 304:13 307:22 325:14 382:25 383:7 383:12 391:7 400:9 428:19			

L	42:24 98:12 116:18 118:10 256:23 336:3 law 3:6 6:6 7:25 24:4,6,13 31:22 36:18 55:18 69:2 146:5 168:25 169:10 190:16 228:20 229:12 241:25 243:3 245:16 266:10,15 267:7 275:6 279:11,12 280:7,9,9,9 285:14 349:16 349:20 351:21 352:10 355:8,9 355:9,21,24 356:15 360:6 360:10,16 407:17,23 408:5,18 411:13 420:12 lawful 424:10 laws 169:25 259:7 lawyer 169:12 lawyers 6:3 lay 239:11 layout 97:17 393:25 layouts 433:10 lead 140:6 leader 461:5 leaders 461:15 leading 32:16 116:9 118:15 136:7 207:20 227:19 342:16 416:16 430:2 457:4 leads 57:25 88:3 131:8 137:22 438:10 leap 310:21	311:1 learn 142:20 learned 144:5 learning 195:10 learns 144:2 lease 207:19 345:12 leases 168:21 371:8 372:20 leave 102:3 104:23 105:10 105:15 108:11 130:22 166:23 178:13 288:25 303:5 371:5 384:23 390:2 398:18,22 407:10 453:25 459:8 leaves 415:4 419:8 leaving 258:6 363:10 459:10 led 260:22 276:3 409:16,21 412:16 ledger 98:22 left 5:8 114:2 130:8 136:6,18 174:23 180:12 194:25 251:8 263:20 363:4 367:16,22 392:11 462:19 leftover 136:6 legal 3:14 6:3 26:17 27:12 31:21 60:17 63:2 66:24 87:14 88:1,8 130:7 134:17 162:3,8 178:13 223:16 228:8 230:6 240:22 251:8 258:6 267:14 275:11	275:23 276:15 281:1 283:13 308:6 310:18 321:14 324:11 331:23 352:21 407:11 408:14 455:21 459:10 legality 349:11 legally 337:9 338:13 legislation 36:4 403:4 legitimacy 263:14 legitimate 409:3 410:10 411:1 411:15 lend 462:4 lenders 215:3 377:11 length 57:23 135:23 337:20 lengthy 218:8 457:10,18 let's 14:4,9 104:6 105:13 156:3,3 162:18 246:23 262:5 269:24 270:1 271:25 304:13 314:2 329:21 342:13 351:4,14 391:15 399:19 401:15 409:12 410:4 418:3 420:10 453:19 461:19 letter 42:25 43:6 45:20,23 46:3 48:11 71:10 72:17 85:1 88:24 89:5,8 91:3,23 92:8 94:2 99:3 100:23 101:5 101:13,17	102:10,14,21 106:5,24 109:11 111:4 113:20 123:4 143:10 150:17 173:15 175:15 187:10 189:6,7 189:16 193:17 252:4,17 255:11,19 287:14 336:21 362:9 363:22 364:4,10 370:4 370:16 372:12 374:2 380:2 381:5 letters 125:8 letting 83:9 level 83:8 96:19 138:18 156:16 268:16 373:4 456:10 463:12 464:10 liabilities 134:18 liability 83:16 243:2 244:23 341:19,24 348:25 414:25 liable 263:6 310:6 lie 25:2 lies 322:11 life 459:13 lift 150:13 154:11 201:1 227:21 232:19 262:11 263:2 270:16 326:3 409:19 413:2 lifted 29:10,14,20 34:11 35:14 100:16 192:7 196:5 204:12 204:22 265:24 283:1 326:21 330:23 331:5
----------	--	--	--	--

436:22	lingering 190:7	LLP 2:5	377:4 381:19	329:22,24
lifting 202:14,14	link 424:12	loan 91:3 109:8	418:3 461:19	330:25 331:9
light 19:4 31:20	Linley 22:11	loans 102:11	looked 104:18	331:11,19,25
likelihood 131:18	Lisa 1:22 12:13	location 42:19	165:19 172:24	332:3,16 333:2
228:17	81:19 159:4	346:10,19,20	173:2,2 175:23	333:4,6,12,19
Likewise 297:21	464:14 465:12	locations 394:9	191:5 220:14	333:23,24
limbo 26:17	Lisa's 158:6	logic 243:3 325:2	220:17 274:4	334:3,6,8,14,25
27:13 66:24	list 96:8 101:4	334:1 376:2	361:3 371:10	341:11 416:3
70:12 88:1,3,5	114:11,19,21	logical 301:5	373:7 375:9	417:20 418:10
88:8 110:4	114:25 231:10	long 12:13 30:24	451:15	418:21 422:8
162:9 188:15	354:6 370:15	61:22 197:13	looking 31:14	423:3,4 424:13
228:8 242:16	393:4	197:23 243:10	40:24 82:7	424:19 425:9
251:9 257:22	listen 22:16	247:3 285:22	109:18 118:11	432:2,3 434:17
258:6,7 281:1	25:12 201:10	354:6	121:8 131:21	434:18 435:5
limit 49:21	313:22	long-term 154:4	163:10 167:21	435:11 436:5
287:23 293:5	listened 240:4	154:15,19	173:3 174:13	441:18 451:16
460:17	listening 22:13	155:1,15,21	188:18 189:9	455:11
limitation 131:14	239:15	156:14,17,21	219:24 220:7	losses 138:25
138:21,23	listing 386:11	longer 64:7 68:8	229:14,25	268:20 269:5
142:10 146:9	lists 143:14	80:2,25 92:22	254:2 270:7	322:7 418:10
244:18 303:1	264:10 325:11	107:5 158:5	340:16 359:15	423:1 426:18
304:7 305:3,20	354:7	221:10 285:9	367:15 372:3	427:2,19
309:2 316:23	litigate 275:10,24	330:7 384:12	374:15 377:2	441:10 452:22
317:1 319:3,8	275:25	393:3 427:10	421:9 429:16	lost 21:11 71:5,13
319:15 320:9	litigated 135:23	look 17:22 23:22	436:18 442:24	71:24 72:17
320:17,19	256:11 257:7	38:5 42:18 52:4	444:5 451:9,20	86:15 134:11
323:13 324:5	337:20 417:13	56:18 74:11	452:18 458:18	134:22 139:12
327:3,22 328:6	litigation 15:14	76:15 80:6 87:8	looks 141:16	140:15 209:4
328:13 329:6	20:11 261:13	108:12 118:25	392:18 441:6	211:20,24
329:10,16	418:1	151:1 155:4	looming 133:3	252:4 296:14
332:6,17	little 66:23 78:18	164:21 166:14	lose 180:12	331:1 363:22
337:13,25	97:10 102:3	172:4 181:4	354:25 356:6,6	368:1,4 369:23
338:12 340:3	108:1 124:9	188:22 199:3	loss 21:13,14	375:13,21
limitations	145:17 169:6	211:9 220:12	71:18 89:19	394:16 421:15
146:12 328:25	173:10 255:17	223:11,12	146:21 191:16	434:22 435:1
329:3 338:3	280:6 293:15	225:13,20,24	205:9,16	440:6 441:13
limited 164:8	303:3 315:9	227:5,16	206:22 208:20	442:3,10 444:9
175:8 289:15	342:9 353:11	230:18 237:6	208:21 210:4	455:17
289:16,20	354:20 355:20	262:5 311:4,6	225:22 227:10	lot 32:11 42:8
462:9	377:23 389:5	311:24 313:4	228:21 232:3	50:3 58:18
line 45:7 47:4	392:18 407:8	314:14 316:21	233:25 237:5,5	75:15 81:22,25
60:19 138:11	444:1,1 445:21	317:19 319:18	237:8 279:14	82:6 83:6 109:1
164:22 185:17	460:1	324:15 334:23	301:1,7 305:11	118:13 120:8
246:14 272:18	live 11:25 202:7	337:8 348:7	305:20 306:5	120:11 136:2
329:17 454:21	lived 154:15	361:6 371:24	307:17,20	190:1 226:25
lines 47:18 82:17	LLC 1:4	372:4 374:14	308:8 319:1,2	239:17 268:23

320:12 361:10 366:18 399:22 410:18 419:23 453:2 454:2,7 457:4 lots 196:18 low 178:12 237:3 Lowenstein 2:3 6:1 lower 195:11 430:12 lowering 216:5 LSB 87:12 Lucas 22:8 Luis 1:19 5:13 102:6 390:6 lump 372:23 lumped 372:24 lunch 82:12 159:16 luncheon 238:4 luxury 199:10 Lyle 3:12	57:21 150:14 maintains 275:20 majeure 49:15 49:17,21,23 50:17 60:18 88:22 89:17 93:4,13 113:17 128:12 143:20 148:9 150:15 203:1,6,14,20 203:24 245:21 249:19 250:8 256:17 265:10 285:11,20 289:21,22,24 293:17,21,23 294:14,21 295:2 301:19 327:3 342:1,3,8 342:10,17 343:3,20,22,25 344:13,23 345:19 347:6 347:14 397:18 403:11 406:7 409:22 414:15 436:25 major 457:11 majority 425:24 426:5 459:5 making 9:12 79:4 111:5,9 113:3 122:8 143:11 145:1 172:10 181:10 254:10 269:6 285:5 295:23 312:15 378:23 379:1 400:3 manage 158:6,6 management 41:23 130:4 152:25 406:24 manager 110:22 mandate 113:8 manipulation	236:4 manner 18:4 78:15 434:10 map 160:9 393:1 March 35:9 105:22 106:11 107:4 108:25 256:7 262:1 335:23 market 79:21 156:12 208:1 213:9,9,12,17 213:23 214:24 215:9 218:10 218:11,16 220:13 221:4 222:10 223:5,6 224:2,24 226:19 366:10 376:16 377:2 377:24 378:1 399:16 400:5 400:23 416:23 428:16,23 430:23 431:2,9 439:21 441:24 443:23 456:12 456:13 461:5 461:22,24 462:5 463:13 market's 218:25 market-based 155:2,12 156:14,16,19 Mars 2:7 6:9,9 7:9,11 22:3 103:7 104:10 104:21 105:10 105:15,19 108:6,16 111:17,19 116:19 117:7 117:17 118:3 118:25 119:13 157:18 330:20 Mars' 116:22	120:13 massive 461:12 match 165:18 material 11:19 104:1 194:11 463:13 materialized 306:10 materially 199:22 materials 17:18 32:21 33:10 41:17,25 43:20 50:10 112:3 116:24 211:11 235:11 math 147:17,17 matrix 166:18 matter 12:18 19:24 59:16 73:11,23 74:8 75:18 77:22 78:14 79:9,15 79:23 110:24 144:21 146:9 146:17 169:22 183:12 194:21 196:16 218:25 225:24 253:8 253:17 268:4 269:21 274:24 275:10 276:13 279:11,13 292:18 298:19 299:7 308:11 317:25 324:20 341:9 350:4 355:24 385:16 389:1 410:14 411:4 417:2 445:14 447:12 448:9 450:3 464:17 matters 11:15 123:1 124:4,9 152:22 153:4	254:23 351:22 352:16 353:14 385:12 maximum 57:18 McLachlin 1:17 5:8 14:17,20 28:21 29:11,16 30:2,9 52:17 55:14 56:14,20 74:22 75:22 76:20,24 77:16 88:11 99:12 100:20 101:3,7 101:10,21 135:19 138:8 145:14,22 146:25 165:12 188:20 201:3 202:2 215:13 215:24 221:17 239:4 307:12 308:4,9 314:20 316:4,9 318:20 318:22 322:4 323:8 332:8,9 332:23 334:10 335:6 338:24 361:8 369:24 370:3,6,11 371:3,21 373:10,18,23 374:3,16 384:15 385:9 389:13 446:9 447:1 McLaughlin 99:7 McMullen 3:4 7:23 MCOD 64:8 113:16 196:1 196:22 199:11 202:24 247:25 249:15,20 250:10 458:4 458:14 mean 27:13
--	---	---	--	---

M

M5H 1:25
MacLennan 22:7
53:11,15,17
56:7
Madam 7:17
45:14 46:21
48:3 53:5 89:15
115:25 122:11
141:24 142:1
188:18 238:14
304:17 308:10
311:11 316:20
323:11 341:5
magic 415:8
magically 334:5
main 287:25
maintain 43:1
101:9,11
331:18 384:21
384:22
maintained

28:17 55:11,17 55:19,21 77:6 79:5 132:19 141:6 151:13 166:3,15 175:24 215:22 220:7 223:6,12 226:9 279:18 285:25 290:4 298:17 313:25 347:19 355:11 358:8 364:22 365:21 366:6 367:25 371:4,9 377:16 383:16 387:7 443:4,18 446:19 meaning 256:3 324:13 meaningful 89:5 90:11 124:11 125:5 meaningfully 340:5 meanings 55:23 56:14 means 13:8 55:11 55:16 141:15 311:9 313:11 314:10 321:7 339:12 341:13 356:3,7 425:4 426:20 435:14 453:24 meant 164:10,14 249:17,22,25 360:9 365:5 measure 135:17 137:9 172:15 172:19,21,21 172:24 180:4 227:17,17 230:6 262:18 264:11 265:19 268:17 270:20 272:3 281:7,14	283:4 284:8 308:15 310:16 310:23 311:9 311:11,22 312:5,19,20 313:9,10 314:9 314:14,15 316:21 321:8 322:8 326:4,10 328:7 336:14 336:25 340:22 350:9 424:6,25 442:25 measurement 112:13 measures 20:13 32:7,13 70:2 135:14,18 138:22 140:3 162:25,25 164:2 227:16 227:18 231:5 231:10 240:13 240:14 243:20 243:25 258:24 262:7,8,14 263:5 264:23 272:12,13,13 272:19,20 275:21,25 277:20 278:6 278:12,15 281:15 302:3,8 302:18 306:15 306:18,21 307:3,4,8,10,15 307:24 308:12 308:20 309:4 309:15 310:5 310:14,23 311:5,16,18,19 312:4 316:22 317:6 323:18 324:2,17,25 325:8,18,20,22 326:13 327:8	327:13 336:12 336:12 337:11 337:18 340:2,5 340:19 341:3,8 341:10 350:4 405:14 416:2 417:20 418:9 426:19 436:4 437:3,16 mechanics 106:16,17 mechanism 156:12,16 meddling 318:1 media 98:3 413:23 meet 10:25 37:18 39:7 44:10 111:8 118:25 122:21 123:5 123:11,11,15 123:19 124:15 126:5 131:5 156:3,6 157:5 236:20 255:9 280:20 300:13 300:23 341:14 355:3 410:25 412:9 453:16 455:18 457:22 458:4,14 meeting 27:5 44:6 51:8 97:1 116:9,15 118:2 122:25 123:8 124:19,22,22 127:25 129:8 129:19 130:5 144:14 255:4 255:11 271:5 281:10 409:5 meetings 44:22 44:24 118:9 122:19 157:8 428:3 meets 129:17	168:5 megawatt 41:4 215:8 megawatts 149:3 198:6 MEI 122:25 123:19 124:1 125:17 129:5 131:4 144:19 150:16 MEI's 122:19 members 7:17 14:14 19:13 166:5,13 189:9 238:15 304:18 308:11 341:5 415:18 memo 142:24 memorial 263:23 325:10 350:21 memorials 58:18 mention 358:1 mentioned 14:16 81:5 99:4 248:4 251:23 253:15 258:14 392:2 426:24 433:9 merely 60:2 62:21 241:4 263:13 merit 402:1 merits 237:2 Merrill 352:18 mess 446:10 message 416:18 462:19 met 49:12 51:1 112:23 126:18 229:23 236:1 267:10 302:2 411:9,10,23 423:5 457:2 meteorological 168:20 362:10 371:7 372:19 373:20 390:19	method 216:19 217:1 219:22 267:23 298:7 419:9 423:7 455:17 461:20 methodologies 208:7 217:9 438:17 methodology 172:19 214:5 216:22 217:6 218:19,20 222:25 223:24 224:8 246:9,11 364:14 366:10 366:14 372:25 418:14 422:1 438:20 442:15 443:13,17 446:23 447:22 447:23 448:2,3 450:16,21 452:18 455:1 meticulous 352:25 metrics 207:22 214:12 Mexican 355:9 Mexico 329:4 408:20 mic 351:10 Michael 2:9 3:12 micro 159:3 mid 149:1 midpoint 206:16 206:18 midway 149:6,7 Milburn 2:11 Miles 1:16 5:4,6 5:17 7:5,12 8:7 8:12 9:8 10:10 10:15,22,24 11:11 13:13 14:3 17:2 18:12 18:21 23:2,6,20 24:11,20 25:6
--	---	--	--	---

25:19,22,25	159:1,9,18,22	310:19 311:15	419:19 420:21	193:13,13,14
26:4,8,12,23	159:25 160:4	312:9,22	421:24 422:11	193:16,16
30:12 31:5,11	162:20 164:9	313:12,17,20	422:16 423:8	206:8,17,18
37:19 38:1,16	164:12 167:9	315:8 317:3,24	423:19 425:15	207:1,2 208:8
39:3 45:10,15	170:21 171:1	318:8,19	425:23 426:3,7	208:10,12
45:18,25 46:9	171:14 172:6	320:23 321:25	434:12 443:14	241:23 242:1
46:18,22 47:24	172:20,23	324:8 332:21	445:3,10 446:4	245:2 249:2
48:4,15 51:19	173:5,13,18,24	333:10 338:9	446:7 447:16	251:17,19
51:22 52:19	174:12 175:7	338:20 339:3	448:1 449:15	252:18 254:10
53:16 54:1,5,23	177:4 178:9,16	341:20 344:4,7	449:20 450:14	261:24 269:17
56:22 57:3,8	178:23 184:13	344:17,20	459:24 460:9	288:17,18,20
58:2,10,21,25	184:23 185:1,5	345:15,22	460:20 463:17	288:20 296:25
63:14,16 66:8	185:10 186:21	346:23 347:4	464:4	297:4,9,12,19
74:6 77:19	187:17,20	347:11,21	Miles' 459:14	363:3,6,11
79:10 81:6,12	188:4 189:3,12	348:1,4,9,13,17	milestone 132:15	365:24 368:4
81:17,21 82:9	189:18,22	348:21 351:9	133:9,24	369:19,21
82:21 83:1,22	193:6 195:2	354:17 357:12	195:25 196:21	370:1 371:14
87:5,17 90:12	196:24 197:6	357:16 358:4,7	197:12,22	372:12,23,24
90:19,22 91:2	200:9,21	358:15,23	198:3,17 200:3	373:4,15 374:2
91:25 92:24	201:20 202:8	359:3,6,23	204:1 247:24	380:1,2,2 381:8
93:9,16,24 94:5	204:2,6,13	360:17,24	293:6 406:8	381:8,16
101:23 102:5	205:1 208:14	363:13,16	409:23 457:22	384:16,23
102:15 103:4,9	208:18 209:6	366:2,8,12,16	458:4,24	385:1 387:15
103:14,25	209:13,17,24	366:21 367:24	milestones 220:8	390:1 391:6,7
104:15 105:12	210:2,6,13	368:10,13,21	457:1 462:8	391:10 398:3
106:20 107:9	211:1,25 212:8	368:25 369:8	militate 9:11	418:25 427:12
107:19 108:4,9	212:13 213:1	374:18,21,25	million 17:1 43:6	427:24 438:2
109:15,23	217:19,24	378:14,17,20	43:11 46:3,4,7	439:22,25
111:18 112:24	218:17 221:19	379:13,19,24	46:10,10,11,12	440:6,13,20
113:6 116:1	222:21 223:8	380:6,16,23	46:13,13 49:9	441:23 455:3
119:5,21	223:20 235:3,7	381:1 382:8,14	65:1 66:4,13,15	millions 99:19
120:15,22	237:17,20	382:19 383:11	71:10 81:3 85:1	119:15 240:22
121:10,14	238:6 247:8	383:20,24	88:24 89:5 92:5	242:11
122:7 125:6,15	257:2,24	385:11,19	96:22 99:5	mind 10:18 13:23
125:19 126:2	259:25 260:11	386:16,24	100:22 101:4	71:2 72:11
132:13,23	270:6,10	387:9,12,21	102:20 106:3,4	86:25 105:8
133:16 134:24	278:17 279:6	388:7,17	106:10,25	108:22 178:17
135:10 141:5	284:2 286:17	389:17,23	107:3,5,16,18	178:21 179:25
141:12,21	290:13,19,23	390:4,12 391:9	107:21 109:6	182:7 249:16
142:2 147:3,12	291:1,5,20	395:15,19	111:7 113:20	252:1 281:19
148:7,11,18,23	292:4,7 293:14	396:10 397:3	145:5,7 147:4,5	286:4 290:5
149:4,9,13,19	293:20 294:4	397:15,19,23	173:7,10,15	307:23 369:18
151:21 156:11	294:17,24	398:2,5,8,14,21	175:14 182:9	428:19 451:4
156:23 157:1,9	295:6,9,14	401:1,10 405:5	185:23 186:7	459:2
157:22 158:1	299:24 300:4	405:11,16,19	186:19 187:10	minds 78:9
158:16,21	303:8 304:1,10	415:1,7 419:14	187:15 193:11	315:10

<p>mine 317:5,7,10 317:16 318:2 minimum 245:16 251:4 349:5 407:17,23,24 408:5,18,20 412:10 Minister 22:8,9 35:21 36:9 40:19 44:6 51:12,25 52:22 94:13,19 95:10 95:14 122:20 152:20 255:5 404:22 Ministerial 404:25 ministries 44:23 126:14,16 411:7 ministry 3:8 22:11 42:24 53:12 86:5 87:14 114:17 122:16 124:13 124:14 128:23 129:15 144:17 255:16 326:6 345:4 346:22 392:5 Ministry's 124:3 124:7 126:9 Ministry's 255:24 minor 100:24 minus 251:19 373:22 374:1 minute 272:1 308:19 401:12 minutes 12:11 21:23 82:10 105:18 158:11 158:15 159:2,4 159:13,15 160:9 178:20 233:2 235:19</p>	<p>243:7 303:3,7 333:3 401:6 415:4,21 419:20 463:19 mischaracterizes 300:19 misinterpretati... 301:9 misplaced 268:13 missed 290:14 missing 199:4 mistake 264:15 mistaken 320:13 Mitchell 22:10 mitigation 115:12 MNR 295:8 346:13 Mobil 228:14 268:12,14 269:3 324:18 332:2 modalities 349:12 mode 45:6 47:23 115:21 133:15 141:2,20 142:5 152:4 model 80:22 208:11 358:20 393:24 417:16 438:16 454:14 461:1 modified 430:4 modify 271:21 moment 10:2 23:4 57:7 81:18 89:3 103:15 105:8,16 171:5 172:12,15 201:18 210:16 226:8 248:5 306:9,12 324:15 353:1 383:23 403:20 momentarily</p>	<p>40:13 214:1 moments 433:9 Monday 1:11 5:2 monetary 420:13 money 89:6,9,11 89:19,24,24 90:11 91:16 106:9 107:25 109:13 133:2 258:11 336:3 370:8 457:4,9 457:17 month 85:25 196:23 261:22 months 36:16 44:5 49:23,24 110:24 114:14 123:14,18 131:7 132:22 143:7 159:7 197:22 198:17 198:24 199:4 199:11 203:15 203:21,23 243:9 249:15 250:9 254:19 277:3 290:6 292:14 293:6,7 301:25 326:24 396:21 406:8 409:23 months' 402:6 moratorium 15:18,20 16:2,9 21:2,6 26:5,10 26:15 29:2,9,14 29:19 34:10 50:19,22 51:3,6 51:25 52:14,24 57:23 64:16 67:1,15 69:17 70:7,16 85:10 86:13 87:24 88:2,2,10 94:14 94:17,18 100:15 110:3</p>	<p>123:6 124:17 128:14 131:3 133:8,23 134:13 137:19 150:9,12 151:5 161:21 192:6 193:24 196:4 200:16 201:1 202:14,15 203:7 204:11 204:20,21 216:12 227:20 227:24 231:15 232:19,21,24 240:1 242:17 243:21 248:3 251:6,12,15 256:11,13,18 257:7,12,17,18 257:20,21,25 258:3,4 260:23 262:12,25 263:2,21 264:1 264:20 265:14 265:24 270:17 270:23 271:1,3 272:9 277:6 280:25 281:9 282:21 283:1 293:18 297:24 298:16,16,23 302:10 325:14 326:3,9,18,21 327:2 330:17 330:23,24 331:5 335:2 378:7 409:19 410:22 413:2 436:21 437:7 437:13 439:8 morning 5:5,22 7:16 31:16 158:6 190:2 194:6,9 239:16 240:11,20 241:17 247:17</p>	<p>248:19 253:16 255:18 263:20 270:18 275:20 309:10 333:22 351:4,14 361:22 367:20 368:17 381:15 392:3 393:5 397:8 410:19 436:3 457:24 motivation 275:13 276:8 motives 265:16 mouth 281:7 284:7 move 19:9,23 23:1 32:19 36:14 50:7 85:17 90:9 96:4 96:6,13,25 99:10 100:11 101:19 110:13 113:4 115:16 121:21 122:2 125:24 133:8 133:24 149:22 149:25 155:1 158:24 177:12 179:10 190:11 191:3,23 205:3 210:25 226:24 321:15 346:19 401:16 407:8 414:18 452:25 463:11 moved 97:18 100:2 155:12 218:14 448:12 448:13 moves 66:21 99:22 100:19 181:6 201:8 moving 50:5,14 83:7 94:9 114:3 121:3 122:4,5 128:21 143:24</p>
--	---	---	---	---

154:3 192:11 216:11 346:20 348:11 414:9 MST 371:12 407:18 multi-stage 345:4 multifactorial 142:25 229:5 multiple 56:14 126:13 municipal 261:8 Murray 239:17 mutual 93:13 377:18 mutually 291:24	320:2 328:5,21 349:10,20 352:13 357:19 394:15 407:13 407:18 408:8 408:10 410:23 413:3 415:24 416:3 422:7,13 456:21 NAFTA's 328:6 name 5:6 461:4 names 8:4 116:4 116:5 Nancy 2:8 6:10 6:12 narrow 220:24 Natasha 2:4 6:2 nation 97:9 100:18 115:9 250:20 national 250:20 250:22 Nationality-ba... 408:23 nations 280:12 natural 22:12 35:21 40:19 42:24 264:6 345:4 346:22 naturally 309:15 nature 29:15 112:19 119:23 120:2 151:5 360:12 384:19 404:16 navigate 84:6 navigation 112:15 NDA's 116:17 118:9 near 455:2 nearing 214:3 nearly 256:17 necessarily 26:14 109:9 323:25 379:3 405:20	435:14 441:19 necessary 8:6 60:4 61:22 70:1 70:3 227:21 232:13 252:21 262:13 263:2 270:16 296:5 299:11,20 303:22 326:23 354:8 382:1 413:1 need 6:14 11:24 12:2 13:1 78:16 89:23 103:18 104:20 108:15 146:15 153:23 153:24 154:3,4 155:3 201:12 204:15 205:14 235:15 261:11 279:5 286:2 294:6 299:14 315:5 320:25 333:8,11 334:23 337:10 382:5,9 400:2 401:7,9 420:8 430:21 447:21 448:22 450:15 453:23 needed 36:24 40:10 43:7 50:12 203:5 346:18 456:9 needless 10:7 179:7 needs 34:22 154:17,18 156:5 157:3 160:1 359:4 403:25 415:9 438:6 441:2 negotiate 21:8 92:15 98:3 215:15 negotiated	116:17 202:6 303:21 negotiation 67:12 145:2 201:7,7 201:11,15 215:18 216:1,2 358:3 negotiations 53:23 57:12 67:21 68:3 120:18 254:24 264:3 292:23 neither 26:18 83:23 249:3 329:6 428:9,11 net 102:8 366:18 Neufeld 3:2 4:10 7:14,16,18 8:10 8:14,20 10:18 10:19 11:7 12:25 13:24 24:9,22 103:16 103:20 104:16 104:24 108:17 151:10,13,16 151:20 160:1 178:17,21 235:9,12,20 238:1,9,11,12 239:7 247:11 257:19 258:5 260:1,8,13 270:12 278:19 279:16 284:3 284:23 287:16 289:4 290:16 290:22,25 291:3,7 292:2,6 292:11 293:19 293:22 294:7 294:22 295:1,8 295:13,16 300:2,6 303:25 304:4,19 309:3 449:21 463:15 463:20	never 28:18 67:9 69:5,6 79:19 88:23 90:2 95:3 110:1,8 120:10 124:20,21,22 140:9 143:22 159:7 163:16 165:16 229:4 259:18 261:16 271:20 285:16 294:19 444:13 451:15 Nevertheless 330:2 new 16:11 36:4,5 38:3 75:2,6,24 76:2 77:2,4 91:16 97:17 112:5,25 121:18 177:18 201:16 214:9 226:20 233:21 235:13 260:21 261:2,10 266:19 268:19 274:9 275:23 276:15 281:7 284:8 296:21 313:1 339:13 339:21 346:15 360:5 391:16 391:23,24 394:9,10 399:11 413:22 417:19,20 425:7 437:2 438:18 441:11 441:12 442:2,2 442:14,15,23 442:24,25 453:9 nice 5:10 Nicole 2:5 night 10:16 nightshift 464:1 nine 42:20 149:2
--	---	--	--	---

214:7	459:15 462:1	114:15 118:9	obscured 236:6	419:17
noise 112:15	notice 144:19	337:24 457:1	observation	Off-the-record
392:25 436:16	145:25 148:2		215:21	81:20 401:13
non-discrimin...	231:9 237:6	O	obsolete 432:4	436:16 464:16
408:22	259:23 260:14	o'clock 81:24	obstructionist	offended 415:11
non-financeable	261:6,19,25	415:17	410:14	offending 268:17
244:3 250:16	302:1 342:2	obiter 232:13	obtain 381:9	offer 49:8 143:18
298:2 303:16	343:3,20,25	254:3	384:13	143:23 414:10
303:20	354:9 384:4,6	object 24:9	obtaining 462:22	offered 43:22
non-interference	394:6 429:12	231:25 267:16	463:10	57:19 201:24
413:16	noticeable 309:8	267:18,20	obvious 369:25	offering 43:15
non-reactivation	noticed 293:11	269:20 404:8	obviously 9:14	57:18
299:17,25	notification	objection 25:5	13:8 19:14	offers 43:8
non-relevant	145:19	103:17,21	138:19 142:7	offhand 425:22
34:20	notion 324:11	objectively	171:7 172:4	office 123:10
non-share 283:12	328:15 423:24	409:11	177:22 191:15	291:10
non-waiver	notwithstanding	obligated 113:14	388:21	offices 1:10
407:1	217:14	obligation 21:5,8	occasion 324:20	officials 51:1
note 17:14 47:10	noun 345:18	27:14,24 28:20	occasions 131:5	54:17 59:7
52:15 94:21	November 43:6	75:19 80:16,20	416:10	402:12
107:18 123:6	50:18 122:19	138:3 153:9	occur 21:13	offshore 15:20,20
131:20 144:23	122:24 125:8	161:10,14	146:4 166:11	15:23 26:19
145:10 148:15	143:9 144:16	162:14 163:21	197:2 228:23	29:4 33:12,16
150:1 154:6,13	145:4 150:17	163:22 164:3,7	244:4 273:4	33:17,21 34:10
249:9 276:19	203:3,20	164:21 165:2,4	occurred 28:13	34:15 35:17,20
280:14 288:14	293:25 294:1	165:17,21	146:21 163:2,3	35:20,23 36:6
289:10 299:16	294:15 295:3	166:2,8,15,21	164:3,21 176:7	36:13,14 37:14
351:19,24	342:8 437:1	176:19,20	197:21 228:11	37:17 39:6 40:1
392:25 407:19	NTP 170:10	177:18,23,25	228:21 317:17	40:4,5,9,20
407:21 410:24	nuance 365:4	179:24 180:24	330:12 333:2	41:2 42:19,21
412:24 431:1	380:18	188:23,25	336:25 339:8	47:16 51:2 56:7
449:21	nuanced 88:9	241:13 242:5	353:2 432:19	60:6,23 62:2,17
noted 33:5 77:24	444:2	245:23 248:16	436:14 437:6	67:5,8 68:18,25
86:22 89:15	nub 448:20	256:14 260:3	437:24 451:10	69:7 94:16 96:2
97:12 111:25	number 39:13	277:7 296:21	453:18	110:9 113:5
147:23 149:2	51:1 85:19	296:23 301:11	occurring 163:6	114:7 116:9
229:15 240:6	116:10 153:2	301:22 369:4	273:23	129:24 207:18
304:19 328:22	173:10 188:1	388:24 408:22	occurs 140:25	239:25 256:3,6
329:4,15	216:18 267:4	413:15	197:20	260:23 265:14
339:20 342:18	362:4 365:23	obligations 89:16	October 94:11	265:20,25
342:21 352:18	382:2,3 396:12	89:25 97:1	110:23,24	342:24 345:7
353:6 392:22	numbers 52:18	163:4 182:13	122:19 126:10	416:17,22,24
393:7 411:25	54:11 389:16	182:14 188:23	127:22 325:25	416:25 417:5
455:5,10	433:21	191:10 233:18	odd 331:21	428:17,23
notes 14:21 44:22	numerical 433:4	259:12 277:9	odds 260:24	429:25 430:3
70:25 73:1 93:7	numerous 111:7	369:3,4 398:6,9	Off-record 238:3	436:23 448:4

448:15 456:14 456:22 457:4 459:11 460:3,6 460:13 461:5 oh 6:2 54:4 88:19 109:22,24 184:24 257:22 268:25 291:10 292:2 294:1,5 320:10 351:11 366:3 374:24 383:16 390:13 391:3 okay 7:6,13 9:9 10:14 12:8 14:4 14:11,12 15:11 18:13 23:21 24:21 26:24 30:3 38:17 39:4 51:23 82:19,20 87:18 90:23 92:1 93:17 94:6 101:22 102:16 105:13 106:21 107:20 108:5 108:10 109:14 109:16 120:16 120:23 121:15 126:3 129:22 135:11 140:23 147:1 148:12 157:23 159:10 159:11,15 160:2,5 171:15 173:14 177:5 187:25 189:13 189:19 205:2 213:3 222:22 235:20 246:23 260:12 269:24 292:6 295:15 295:16 304:9 317:10 321:19 323:9 335:9 342:6 346:20 346:24 347:12	347:22 348:2 348:10,11 354:18,21 358:24 359:24 360:18,25 369:9 373:2,11 374:4,17 378:11 383:25 387:22 388:8 401:14 415:8 415:12 419:18 419:25 423:20 426:8 443:8 459:25 460:21 old 264:19 265:1 282:18 omission 307:2 omissions 70:18 247:6,6 264:8 266:1 301:13 301:16 320:8 320:11,17 334:13,15 once 16:2,8 29:9 29:13 54:19 55:7,12,21 59:9 60:4 204:11,21 205:7 217:13 329:5,11,12 331:13 416:15 438:25 one-line 433:5 one-time 326:12 ones 419:7 ongoing 80:15 123:6 136:13 138:4 165:16 165:21 250:8 384:18 online 5:11 11:5 onshore 15:21 207:21 362:10 390:19 403:6 Ontarians 37:8 Ontario 1:10 3:9 5:1 8:2 15:16	15:19 21:4,8 33:16 34:4,21 34:23 35:10,22 36:2 38:14,21 41:13 47:15 51:1 62:3 64:3 65:8 69:25 70:19 84:3 85:5 85:23 93:20 94:12,15,25 98:13 110:1 115:3 124:17 131:9 134:21 139:9 144:9,9 144:20 145:1 150:5,8,17,23 151:4 152:7 153:3,6 154:1,8 154:14,17,25 155:3,12,17 157:16,20 168:25 169:10 169:25 170:1 176:16,23 177:22 188:24 188:25 189:4 191:9 192:4 197:24 199:13 202:5 207:21 227:18 228:19 231:6 233:20 241:21 242:4 243:13 245:23 248:16 254:21 255:3 256:2,9 256:24 260:21 263:5,10,20,21 263:22 264:1,8 265:19 267:1 269:10 270:5 270:15 271:12 276:21 282:21 296:21 298:14 298:20 299:2 301:10,22 307:8 308:21	309:4,21 310:6 310:7,13 325:18 326:7 326:19,22,25 327:12 340:1 348:14 362:7 395:3 397:8 402:9,12,23 405:17 409:16 410:13,25 411:3 412:12 412:19,22 413:10 414:8 414:21 436:23 457:13 Ontario's 153:10 153:22 155:19 228:4 251:10 263:15,17 266:7 270:25 271:7,16 273:11 301:13 309:6,15 324:25 325:14 327:8 337:4,19 341:3,8 404:14 404:17 405:8 410:11 413:9 413:13,15 Ontario-caused 309:10 OPA 16:10 22:14 41:18,18,20 42:17 43:8 44:6 48:24 53:23 57:12,17,20 61:10 62:25 67:11,18,20 68:3 70:4 198:24 199:6 200:2 240:4 250:11 271:12 271:21 272:7 325:16 327:1 OPA's 198:16 271:22 273:15	327:4 open 18:7 29:21 35:22 64:10 74:5,21 78:7 121:5 157:18 201:11 241:11 247:25 248:15 288:25 297:14 297:20 298:6 303:17 438:17 440:14 442:13 opened 287:12 opening 4:3,4,5,6 4:7,8,9,10,11 4:12,13 6:18,22 7:11 8:15 9:16 9:18,21 14:13 14:15,25 15:4,6 17:9,18 18:14 24:23 30:11 58:4 83:3 160:7 185:6 189:24 198:15 221:21 238:11 239:16 304:16 341:22 415:15 openings 6:16 7:1,4,8 8:19,24 9:2 11:19 operate 121:12 245:8 353:20 456:13 operating 190:9 428:22 456:6 456:12 459:4 operation 34:25 44:16 49:3,7,19 49:20,24 132:16,22 133:9,12 192:8 193:22 196:1 196:12,20,21 197:1,21,23 198:20 199:5 247:24 249:14 250:3,9 293:6
--	--	---	--	---

353:24 354:1 377:9 378:2 397:2 402:17 406:7,9 409:24 430:9 457:7,20 457:23 458:5 458:24,25 operational 113:7 149:10 operations 195:25 317:7 OPEX 430:16 opinion 195:4 218:7 425:18 opportunities 36:13 97:5 98:10 opportunity 61:12 105:5 138:5 188:8 275:10,24,25 276:13 opposed 7:1 225:5 423:11 opposite 446:5 optimism 84:14 option 18:7 20:25 74:4,21 78:7 161:6,10,11 165:1,14 200:7 450:16 options 51:2,3 oral 14:1 198:15 orange 369:2 378:18 449:21 order 6:17,25 9:13 12:21 43:1 105:4 162:15 204:7 256:24 259:10 267:18 290:1 314:8 322:22 347:9 364:1,17 384:20 404:1 435:5 ordered 145:11	180:16 251:17 256:12 257:9 288:12 413:17 organization 464:3 organize 82:8 organized 243:5 origin 275:13 276:7 original 121:11 201:22 202:24 204:1 250:10 461:14 originally 133:11 204:19 originated 84:14 originates 88:10 Ortech 110:21,23 111:11 392:6,9 392:16 393:10 393:17 ought 323:2 387:6 outcome 264:6 286:20 417:17 453:11 outliers 223:10 outline 158:5 outlook 155:5 433:4 outreach 121:4 outside 123:16 197:22 293:15 overall 65:18 66:5 195:3 207:17 297:6 297:11 363:2 370:19 371:2 371:14 408:25 overcome 428:10 overlapping 362:2,5 388:5 overnight 385:21 390:5 overstated 208:3 461:17	overstating 195:7 overview 276:23 overwhelming 459:5 owe 161:12 owed 163:12,21 164:7 242:10 396:8 owing 243:3 owned 168:5,8 175:25 owner 175:5 owns 41:11,13 305:14 <hr/> P <hr/> p.m 23:10 158:25 159:20,21 238:4,5 321:23 321:24 464:17 pace 12:14 package 88:12 175:23 307:10 packaged 112:18 112:20 packages 282:3 page 4:2 17:12,17 17:22 36:17 60:12,12 65:10 66:20 69:22 72:5 85:25 95:7 98:16 102:8 111:3,10 122:23 123:3 143:8,18 170:3 184:22 186:23 191:13 193:5 342:13 343:2 347:13 389:14 392:24 pages 33:4,4 193:2 393:14 paid 89:13 90:18 90:20 91:4,5,7 91:8,20 99:3 102:21 105:21	105:22 106:17 106:19 107:3 107:17 109:10 118:16 137:2 145:5,7 147:21 148:5 256:7 389:7 panic 101:24 paper 14:18 15:12 396:23 398:10,12 para 344:11 paragraph 17:24 18:4 34:3 38:5 38:18 47:12 51:11 52:5,12 54:10 72:6 78:24 87:21 98:20 105:4 119:11 126:18 184:16,20 185:18 186:17 186:22 262:6,9 262:22 286:19 291:13 296:12 298:13 311:2 325:11 342:18 343:2 344:8 346:24 349:18 350:21 363:21 375:2 384:18 386:20 411:6 458:22 paragraphs 36:7 43:13 44:19 47:3 50:22 57:16 59:2 342:16 351:5,7 351:16,25 Paralegal 3:4,5,5 paraphrasing 448:18 paras 184:14 parentheses 379:5 parenthesis	74:14 77:7 78:2 78:13 79:3 253:16 park 271:25 parse 272:24 275:3 337:24 parsing 329:19 445:21 part 10:4 21:24 28:11 29:12,17 52:9 55:18 65:11 79:2 87:20 96:5 107:3,15 110:4 112:11,21 118:8 135:25 150:1 163:8 166:18 168:10 170:12 171:12 185:11 235:18 253:16 263:5 264:11 267:10 268:24 271:1,9 273:5,24 275:22 279:18 287:17 308:25 310:5 312:3 318:14 328:7,8 333:24 366:5 366:25 370:8 380:3,14 383:7 383:12 386:6 408:17 438:24 443:11 partially 261:4 403:8 participants 22:2 428:4 participate 118:19 particular 9:11 9:25 15:14 17:11,21,22 27:14 28:9,11 28:15,15,17,19 40:25 65:17
--	---	---	--	--

66:10 80:5 108:19 162:21 176:9,21 181:13 185:8 187:11 218:1 321:15 353:1 359:7 366:7 383:19 392:22 404:25 particularly 114:5 160:12 229:8 413:16 parties 18:2,5 20:24 23:24 24:12 25:2 64:11 72:24 73:7,24 74:18 77:7,10,13 78:5 79:1,17 86:1 92:14 116:5 118:9 120:19 122:13 129:4 142:16 143:3 144:7,13 146:23 163:9 182:5 190:15 191:22 193:1 213:11,20 229:21 230:1,2 232:8,10 236:5 236:16 241:11 248:1,15 252:7 253:4,21 254:4 267:8,11,12 274:23 289:17 291:24 292:21 293:3 294:20 294:23 295:24 328:21 349:21 355:23 360:12 376:9,13 385:21 388:11 388:22 396:9 402:3 407:19 408:19 419:13 432:19 438:15	462:12,15 parties' 33:6 49:18 197:16 218:7 partly 27:10 partner 351:21 partners 119:17 partnership 119:25 120:9 120:12 parts 32:2 33:14 84:5 91:6 190:12 307:15 310:24 346:10 418:17 party 2:6 3:7 6:9 49:25 92:11 97:24 100:13 109:21 115:20 118:23 169:25 289:18 291:25 292:16 295:12 319:4,5,18 328:6 386:14 387:2 402:4,7 402:24 405:20 406:6 407:15 408:1 414:12 423:17 pass 58:8 109:12 151:7 216:15 221:15 passage 76:16 272:15 passed 198:17 276:15 395:9 patently 296:16 path 90:3,9 92:16 97:21 162:1,19 180:20 181:25 188:13 paths 188:12 patience 464:13 patterns 153:13 pause 12:3 69:3 89:2	pausing 123:22 280:7 pay 147:5 215:20 251:17 256:12 257:10 296:23 372:13 413:18 payable 90:15,16 257:16 paying 400:10 payment 106:14 106:14 147:9 241:23 254:24 254:25 255:1 259:5 405:1 payments 145:1 145:12 payout 91:9 105:23 108:25 payroll 456:23 PCA 1:1 5:13 PDF 342:14 392:24 393:14 PDR 392:2,13 penalty 50:1 pending 144:9 260:6 327:2 penultimate 368:14 people 42:2 119:2 121:5 238:22 perceived 47:9 percent 87:15 91:11,18,22 105:21 106:1,9 106:15,25 107:12,24 109:1,3,4,7 309:9 430:1 perception 333:23 perfect 82:22 184:24 perfectly 123:25 performed 132:17 307:2	402:9 period 19:1 69:15 70:5 73:8 81:4 93:4,13 98:11 99:6 131:15 138:21 138:23 142:10 146:9 182:8 197:11 202:11 203:2,6,9,14 207:19 213:9 214:12 244:18 247:1 251:11 253:5 269:12 293:12 299:9 305:4,21 309:2 316:24 317:2 319:3,8,15 320:9,18,19 323:13 324:5 327:22 328:6 328:13,25 329:3,6,10 332:6,17 337:13,25 340:3 377:1 381:12 382:24 383:4,13 428:24 periods 202:25 437:17 permanent 1:2 1:18 330:24 420:18 permission 34:22 permit 265:13 266:23 317:19 319:6 407:7 463:10 permits 113:14 194:12 291:19 317:15 456:8 462:8,22 permitted 310:2 permitting 40:8 196:7 294:12	403:6 429:11 perpetual 143:20 Perry 22:14 persisted 198:23 person 89:21 104:4 238:18 319:4 personal 168:25 169:21 351:18 personality 283:13 perspective 19:3 42:1 79:25 192:16 243:1 308:16 322:24 352:1 377:25 404:18 pertain 100:21 pertaining 56:7 petendi 267:16 petitum 267:14 phase 237:2 458:10 phases 458:9 Phil 239:1 phone 30:23 108:2 128:9 phrasing 356:1 picked 55:22 56:18 425:18 picking 63:21 pie 378:15,19 379:21 piece 371:10 396:22 398:10 398:12 404:24 pieces 337:24 369:2 Pierre-Antoine 2:11 205:23 Pines 145:7 148:24,25 261:4 402:24 403:3 pithy 56:17 place 1:10,24
---	--	--	---	---

15:4 17:9 33:11 37:14 39:19 60:7,11 65:2 72:19 77:2 88:8 94:17 101:14 101:16 104:3 110:16 114:8 116:19 118:8 142:21,25 184:18 185:25 196:12,22 238:21 241:7 242:6 247:1 249:3 252:5,25 260:24 263:21 265:25 268:18 276:5 286:12 287:2 292:20 292:22 299:15 306:16 308:3 314:25 319:2 349:14 350:2 363:23 371:18 403:7 421:10 441:11 462:24 placed 430:20 457:12 plan 15:2,3 31:15 31:21 100:18 115:9 154:15 155:19 239:13 308:1 343:15 429:13 456:17 planned 41:4 115:10 121:11 270:22 326:2 412:21 planning 155:5 304:12 plans 115:8,17 194:10 plant 251:2 platform 261:1 play 21:22 22:21 89:18 188:25 223:13 459:1	played 22:23 23:11,17 25:11 playing 105:8 239:17 plays 217:10 pleaded 59:14 pleading 388:18 390:11 pleadings 211:18 213:6 263:17 330:3,22 334:17 388:15 457:25 please 5:20 7:14 12:2,16 21:22 22:22 23:4 24:10 30:15 45:12,14 54:12 58:6 59:13 87:12 141:24 238:10 310:20 316:3 344:6 347:19 348:7,8 378:16 386:1 449:7 pleasure 238:17 pled 380:11,19 380:22 390:1,9 447:5 plenty 14:8 plural 77:7 plus 202:15 point 32:18 35:18 41:25 47:6 49:13 53:19 54:12 57:11 68:7 73:19 74:18 78:5,15 78:20,21,23 79:4,5 100:24 106:8 108:14 109:16 115:1,5 115:19 121:17 126:25 129:12 130:6,11 133:5 133:21 142:9	153:21 167:23 177:12 178:6 180:14,14 181:21 186:23 187:5,6,14 188:21 211:6 217:25 218:18 228:14,16 230:20 233:15 236:22 243:2 250:5 256:16 257:4,13 277:3 284:4 285:5 292:16 303:11 303:14,18 307:25 315:18 316:25 318:4 321:12 332:11 349:20 350:25 353:21 364:11 374:6 376:5,23 378:22,25 387:1 389:6 392:24 395:16 399:14 417:9 421:25 427:10 431:25 433:23 434:7,25 435:4 435:18 437:25 438:7,10 444:1 449:4 454:2,8 454:10 457:22 459:9,10 462:16 pointed 124:14 129:7 136:1 273:8 384:25 pointing 129:4 328:10 431:20 points 42:10 43:18 50:23 63:1 116:23 118:5 129:18 221:24 231:14 263:17 325:6 356:13 401:23	401:24 402:8 408:13 410:8 428:14,19 431:23 police 181:22 288:3 policies 60:6,11 policy 22:9,10,12 34:14,16 35:10 35:16 39:14,16 52:9 154:14 326:24 political 22:7 33:21 52:15 125:2 126:23 127:5,9 129:1,9 popped 276:15 344:8 portion 47:18 86:3 190:2 297:5 440:5 pose 361:13 420:1 posed 322:4 419:12 poses 322:5 position 20:7 43:2 47:14,19 57:21 60:21 76:4,5 77:4 92:21 114:20 114:23 125:4 131:11 137:11 182:11 198:12 199:9,12 217:4 229:13 233:12 234:15 236:6 237:10 241:1 242:13 243:14 246:16 313:9 328:20 329:5 334:22 335:10 338:2 412:22 414:9 420:14 421:4,18 423:17 432:22	442:23 446:13 449:24 452:16 positions 33:6 201:11 455:14 possibility 118:21 132:4 139:16 140:11 140:16 228:24 229:6 335:15 possible 16:22 228:22 237:4 possibly 75:10 79:22 376:8,12 435:2 post 20:13 32:13 48:12 49:9 83:5 98:17 99:5 109:19 110:8 112:25 120:24 133:19 134:3,5 135:8,14 163:5 163:25 164:1,4 164:14,23 168:8 175:1 183:11,21 188:19 214:15 233:7 280:15 417:19 446:14 postdates 121:19 posted 382:18 384:14 posting 45:23 posts 43:6,11 postulate 453:8 potential 116:13 117:3 119:17 144:19 242:12 352:22 381:3 384:18,19,21 433:18 potentially 195:6 Powell 110:6 152:12 169:11 194:1 351:2,8 351:20 352:3 377:11 396:24
--	---	--	---	--

<p>power 67:23 69:9 113:22 114:1 123:7 152:13 153:7 155:9 215:5,9 285:12 288:3 317:8 413:14 powering 155:19 PowerPoint 9:19 14:15 powers 153:1 181:22 289:13 PPA 367:13 practice 124:3,7 153:9,10 pre 48:12 148:2 164:10,15,18 164:23 240:20 292:24 384:3 precautionary 52:1 preceded 339:23 precedent 170:11 355:17 precise 37:23 173:9 289:2 precisely 54:13 174:1,13 209:14 247:5 270:20 276:3 326:14 precluded 266:16 266:20 preclusion 225:6 225:7,10,12 267:3 predate 111:21 111:22 112:2 135:15 341:3 393:8 predated 135:16 162:22 184:10 predates 305:24 prefatory 77:21 78:13 preference 13:4</p>	<p>pregnant 159:7 prejudice 124:21 124:22 prejudicial 9:4 preliminary 356:15 premier 94:12 260:22 premise 200:10 212:14,16 299:12 premium 49:1 215:10,12,16 preoperational 455:6 preparatory 74:7 prepare 82:16 prepared 9:2 55:16 97:9 115:9 207:5 336:17 392:9 392:16 393:17 preparing 13:18 145:17 prerequisites 170:11 prescribed 198:9 prescribes 407:22 prescriptive 360:7 present 206:5 207:3 219:9 221:10 244:22 325:20 341:19 366:18 378:24 386:12 presentation 138:20 158:10 160:10 245:9 303:2 393:5 presentations 243:5 464:7 presented 243:16 245:1 276:20 279:19 280:4</p>	<p>280:15 282:14 301:5 309:14 379:18 437:10 437:11 presents 264:4 273:10 preserve 61:11 97:4 98:14,14 132:3 President 7:17 10:22 45:14 46:21 48:3 53:6 58:10 89:15 115:25 122:11 141:24 142:1 162:20 172:4 186:21 188:18 238:15 304:17 308:11 311:11 316:21 323:11 341:5 459:14 Presiding 1:16 5:4,17 7:5,12 8:7,12 9:8 10:10,15,24 11:11 13:13 14:3 17:2 18:12 18:21 23:2,6,20 24:11,20 25:6 25:19,22,25 26:4,8,12,23 30:12 31:5,11 37:19 38:1,16 39:3 45:10,15 45:18,25 46:9 46:18,22 47:24 48:4,15 51:19 51:22 52:19 53:16 54:1,5,23 56:22 57:3,8 58:2,21,25 63:16 66:8 74:6 77:19 79:10 81:6,12,17,21 82:9,21 83:1,22 87:5,17 90:12</p>	<p>90:19,22 91:2 91:25 92:24 93:9,16,24 94:5 101:23 102:5 102:15 103:4,9 103:14,25 104:15 105:12 106:20 107:9 107:19 108:4,9 109:15,23 111:18 112:24 113:6 116:1 119:5,21 120:15,22 121:10,14 122:7 125:6,15 125:19 126:2 132:13,23 133:16 134:24 135:10 141:5 141:12,21 142:2 147:3,12 148:7,11,18,23 149:4,9,13,19 151:21 156:11 156:23 157:1,9 157:22 158:1 158:16,21 159:1,9,18,22 159:25 160:4 164:9,12 167:9 170:21 171:1 171:14 172:6 172:20,23 173:5,13,18,24 174:12 175:7 177:4 178:9,16 178:23 184:13 184:23 185:1,5 185:10 187:17 187:20 188:4 189:3,12,18,22 193:6 195:2 196:24 197:6 200:9,21 201:20 202:8</p>	<p>204:2,6,13 205:1 208:14 208:18 209:6 209:13,17,24 210:2,6,13 211:1,25 212:8 212:13 213:1 217:19,24 218:17 221:19 222:21 223:8 223:20 235:3,7 237:17,20 238:6 247:8 257:2,24 259:25 260:11 270:6,10 278:17 279:6 284:2 286:17 290:13,19,23 291:1,5,20 292:4,7 293:14 293:20 294:4 294:17,24 295:6,9,14 299:24 300:4 303:8 304:1,10 310:19 311:15 312:9,22 313:12,17,20 315:8 317:3,24 318:8,19 320:23 321:25 324:8 332:21 333:10 338:9 338:20 339:3 341:20 344:4,7 344:17,20 345:15,22 346:23 347:4 347:11,21 348:1,4,9,13,17 348:21 351:9 354:17 357:12 357:16 358:4,7 358:15,23 359:3,6,23</p>
---	--	---	---	--

360:17,24	pretense 150:12	27:15 34:9,10	258:9 261:6	205:7 219:10
363:13,16	pretty 213:17	120:19 135:11	283:2 341:24	234:11,13
366:2,8,12,16	238:21	143:10 214:15	354:9 384:4,6	235:24 236:14
366:21 367:24	prevent 29:3	273:4 285:22	proceeded 9:7	265:11,13
368:10,13,21	163:5 236:17	301:25 306:16	439:13	294:8,9 342:20
368:25 369:8	242:5 335:24	308:18 316:23	proceeding 8:25	342:24 343:7
374:18,21,25	prevented 271:4	323:12 325:1,6	16:7 19:17	345:3,3,4,6,17
378:14,17,20	276:4 277:25	332:17 338:10	24:25 29:5,6,19	345:21 347:2,5
379:13,19,24	299:22	341:2,11 343:9	89:1 127:3	347:22 429:14
380:6,16,23	preventing	345:1 384:6,7	163:20,24	447:23
381:1 382:8,14	259:10 260:18	387:3 389:22	168:14 170:5	processes 112:14
382:19 383:11	prevents 294:8	393:21 416:21	185:22 213:19	344:15
383:20,24	previous 25:5	427:25 441:22	230:4 260:4	procure 154:20
385:11,19	80:17 198:13	456:3,14	326:18 388:18	procurement
386:16,24	231:24 244:6	459:15 461:1	389:21 412:20	156:20 414:10
387:9,12,21	308:13 322:18	priority 43:2	416:11,14	429:15
388:7,17	332:1	345:9	417:10 427:17	procuring 155:21
389:17,23	previously 21:16	proactively	440:25 456:21	155:25
390:4,12 391:9	23:16 81:1	117:13	465:7	produce 68:5
395:15,19	156:22 174:15	probability	proceedings 1:9	144:15 259:19
396:10 397:3	244:14 272:14	190:23	11:16 19:18	produced 354:2
397:15,19,23	301:13 381:22	probably 46:5	25:5,8 26:2	392:6
398:2,5,8,14,21	426:24	105:17 279:9	37:22 59:3,12	product 168:20
401:1,10 405:5	price 157:19	288:14,16	84:21 93:20,21	362:9 372:11
405:11,16,19	195:12 216:5,6	303:4 371:22	167:12 171:2	372:18 373:20
415:1,7 419:14	216:9,12 220:9	371:22 375:10	230:2 232:1,3	390:18
419:19 420:21	354:3 357:5	401:7 446:10	258:17,22	production
421:24 422:11	399:19,21,23	448:19 463:24	259:2 260:6	145:11 148:15
422:16 423:8	430:4 463:2	problem 108:2	268:20,21	productions
423:19 425:15	prices 207:22	128:5 133:6	323:19 326:16	145:13
425:23 426:3,7	215:9,19	348:24	331:9 334:9	productive
434:12 443:14	223:13	problems 346:2	358:18 390:1	123:11 129:8
445:3,10 446:4	prima 236:23	429:2	391:11	Prof 1:17
446:7 447:16	primarily 18:16	procedural 6:17	proceeds 287:23	Professor 180:19
448:1 449:15	18:19 221:8	6:25 9:13,24	process 23:7 35:1	214:21 223:9
449:20 450:14	primary 121:1	12:21 105:4	35:3,7,12 36:25	227:5 229:15
459:24 460:9	275:15 286:18	236:3	39:15 43:2	232:9 381:3
460:20 463:17	321:1	procedurally	97:24 104:3	401:15 403:20
464:4	principal 8:8	105:14	109:21 112:12	418:23 428:15
press 37:3 38:6,9	principle 52:2	proceed 12:5	115:14,20	profile 373:14
38:13,22 39:1	80:7 280:8	16:8 19:16	116:19,20,24	profitability
117:4 415:12	423:17	29:10,15 51:2	117:1 118:1,7	455:19
pressed 397:9	principles 115:11	84:14 85:7	118:20 119:4,7	profits 394:16
pressing 174:19	226:4 229:22	148:2 160:1	121:18 142:19	455:6,7,11,17
presumably	280:11 403:5	181:17,20	142:21,25	456:7
395:21	prior 25:20,23	201:2,6 202:7	143:5,6,16,17	program 36:1,12

36:18 37:2	119:24 125:24	227:24 228:1,4	430:20 431:4,6	68:23 75:21
42:24 43:4 68:1	129:24 131:17	228:10 231:13	431:7 432:14	80:15,19 85:8
156:22	132:21 133:12	241:6 242:18	433:11,13,14	124:18 134:18
progress 15:24	136:25 137:11	244:3 245:22	436:24 439:5	135:16,23
19:3 463:9	137:23 138:6	247:22 248:12	440:2,19	136:3,5,10
progresses	139:16 145:2	249:14,20,25	443:19 444:16	137:5,17 138:2
462:18	150:9 156:4,7	250:2,16 251:7	444:18,25	138:6,16 139:2
prohibition	157:7 161:21	251:14,19	445:6,11,14,17	161:17,19
409:1	161:24 168:12	255:4,17	446:1 448:5,7	162:19 163:8
Project 10:5	168:13 170:18	256:12,14,20	449:11,12	163:17 164:24
15:23,25 16:7	171:10,11,12	257:9 261:3,4,9	450:2,10,18,22	165:4 166:15
19:9,11,23	171:22,23	262:25 265:13	450:24 451:8	166:16,17
21:10 26:22	172:7,17,25	271:5,5,13,18	451:25 456:19	177:21 178:4
27:18 29:7,8,10	173:4,6,9,15,21	272:4 280:24	457:6 459:12	180:25 181:2
29:14,24 34:24	174:7,22,23,23	281:11 283:2	460:7,25	182:24 184:8
35:8 36:24	175:5,9,14,24	297:11 298:2	461:18 462:4	184:10 188:13
40:25 41:2,13	176:1,4 177:19	298:17,22	462:10 463:3,8	189:1 228:6
42:3,7,15,20	177:24 178:2	299:3 303:15	463:11,12	233:9,14 299:3
44:9,23 48:25	179:8 180:3	327:1,5 330:6,7	Project's 125:11	promised 298:14
49:2,6 50:7	181:17,19	330:18 331:2	129:10	promises 124:16
53:6 54:18	191:20 192:7,8	331:16 335:16	Project-related	133:7,22,25
55:12 56:4	192:14,18,19	343:15 344:14	98:17 100:9	134:2 240:2
58:13,20 59:8	193:10,21,25	345:9,14,24	projects 15:23	241:17 296:9
60:1 61:15	194:4,7,7,8,12	346:9,19,20	29:3,4 39:25	298:21 410:12
62:14,20 63:3,8	194:15,18	353:23,25	40:4 62:2,18	410:17
64:6 68:6 72:10	195:20,24	362:8,13,23	147:21 156:1	promoted 33:16
76:15 84:14,25	196:4,7,25	364:12,15	173:3 214:14	35:19 36:5
85:9,18 86:11	197:5 198:20	365:16 366:5	214:16 215:11	37:11
86:18 87:23	200:17,20	367:1,12	219:3 221:8,10	promoting 37:4
88:7,20 89:1,22	201:2,8 202:19	369:12 370:15	221:11 222:12	38:10,14,21
92:16,19 95:15	202:23 203:19	372:6 373:9,15	224:19 226:14	40:20,21
95:20,24 96:6	207:15,24	375:15 377:12	261:5 342:25	promptly 68:13
96:11,13,25	208:1,4,16	379:2,6 381:25	363:1 373:8	proper 72:9
97:3,5,17,21	209:5,11,14,19	382:7,13	390:8 430:4	112:6 308:14
98:5,11,15	209:21 210:4	391:18 392:1	458:8 459:12	317:14,14
99:11,18,20,22	210:11,15,21	392:10,17	459:17 460:3,7	345:18 369:15
100:3,12,16	210:24 211:14	393:24 394:12	460:24 461:7	419:9 435:9
101:9,16,18	211:17,23	394:19 396:17	461:13,16	properly 10:25
102:11 110:13	212:2,4,23	397:1 399:9	promise 15:21	174:11 191:8
110:22 111:1	213:21,23	402:5,16 403:3	21:9,19,25	260:2 340:8
111:16 112:23	214:6,22 218:4	410:22 411:23	22:16,19,20	369:22 417:24
113:4 114:4,10	218:9,14 219:5	414:2,18	27:21 28:15,18	420:6 462:13
114:13,22,24	219:10,11	416:12 417:7	28:19,22,24,25	462:25
115:17 116:12	221:6 222:6,10	419:2 421:14	29:2,15 30:8	property 168:25
116:14 117:16	222:16 224:24	424:5 427:9,23	53:1,3 54:9,14	169:9,22
117:23 118:25	225:23 226:20	429:9 430:8,9	54:25 55:1	179:19 350:5

<p>350:15,15,18 351:1,18 352:9 353:7 354:14 354:23,24 355:22,23 356:15,18,22 361:4,10,11,16 proponent 34:22 37:17 39:7 114:10 proponents 145:3 proposal 36:3 proposals 36:15 157:5 272:7 proposed 347:10 proposing 44:1,2 proposition 18:14 458:2 proprietary 187:22 prosecution 329:17 prospect 331:4 protect 11:25 protected 167:16 protection 408:16 protests 267:19 353:10,12 protocol 11:17 12:7 prove 283:10 333:4,6,7 416:2 423:1 425:5 432:1,6 proven 237:5 418:8,13 455:19 provide 38:4 108:14 132:14 205:14 208:2 255:12 286:7 336:18 340:21 349:13 415:21 provided 83:14</p>	<p>96:9 114:21,25 152:19 214:13 239:9 256:1 281:20 394:6 410:10 413:8 423:6 434:9 435:24 461:24 provides 34:18 44:15 48:11 114:10 197:19 248:25 252:18 258:19 275:7 278:10 322:12 403:9 413:4 421:25 454:20 providing 37:12 67:19 province 56:6 provincial 36:23 456:10 463:12 provision 46:2 59:24 77:6 92:4 93:15 183:1 245:15 387:25 422:7 provisions 48:23 169:19 179:12 199:21 200:1 289:22,23 300:19,24 338:3 PSEG 455:9 public 39:2 98:2 116:6 117:5,21 181:23 publicly 95:1 117:10,12 publicly-traded 207:23 pull 46:16 360:13 pulled 342:4 Punjani 3:8 8:5 8:11 Punxsutawney 239:1 purchase 48:25</p>	<p>119:24 120:11 195:11 198:3 215:6,9 461:2 purport 402:19 purported 413:8 purpose 7:8,10 86:22 90:4 181:23 238:20 295:12 303:19 313:4 319:20 329:16 356:18 419:21 420:23 purposes 308:15 312:20 313:11 316:22 337:7 338:12 369:15 370:9 pursuant 66:12 249:6,10 336:19 pursue 61:13 261:18 pursued 19:19 211:17 212:2 259:14 purview 408:24 push 49:19 304:14 put 11:24 15:3 38:12,22 49:24 56:5 62:14 74:15 78:3 81:24 88:8 89:9 91:17 104:3 106:4,24 107:4 107:17 109:6 110:5 112:21 119:8 130:11 133:7,23 134:1 134:3 152:10 153:11 158:12 162:7 166:4 170:14 171:8 188:21 194:20 194:23 195:6 195:17 196:10</p>	<p>196:15 201:9 201:11 205:21 205:22,25 212:22 232:12 240:23 274:23 279:1 296:2 298:18 312:3 320:14 337:22 346:3 365:23 382:2,3 392:13 417:18 419:7 421:17 425:1 426:14 432:8 437:4 441:5 447:9 453:7,13 453:20 455:20 455:25 puts 109:11 191:25 417:3 putting 106:8 172:11,14 421:10 puzzling 55:15</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qua 405:17,20 quagmire 258:10 qualification 330:22 qualified 460:13 qualify 422:3 quantifiable 433:7 quantification 206:19 332:5 432:3 quantified 206:22 444:13 quantifies 265:18 quantify 98:23 172:16 364:2 374:7 426:18 433:1 435:25 444:10 quantifying 423:7</p>	<p>quantity 259:8 quantum 205:12 418:15 420:2 432:6 438:13 447:22,24,24 451:22 453:1 453:20 454:11 quarter 82:2,22 question 24:12 25:10 27:1 30:21 45:16 48:7 53:5 54:6 55:15 58:22 60:10 92:3,7 93:1 96:8 99:8 103:1,13 104:16 106:21 113:12 127:24 128:8 130:11 145:24 146:6 147:4 166:12 167:19,22 169:3,8,9,11 171:8 173:19 174:10 179:18 179:19 180:8 180:19 181:5,5 202:2 211:5 212:25 214:21 216:18 218:2 219:20 220:1 222:17 223:16 223:17 226:10 227:4,7,15 230:14 232:20 234:3 245:5,10 246:8 264:17 279:8 282:2,6 285:18 286:16 288:11 295:10 296:1 297:22 298:10 300:8 303:9 304:5 305:16,23 310:20 311:11 313:22,23</p>
--	---	--	--	--

314:21 315:12	quick 10:17	224:11 226:23	457:6	readmit 266:25
315:15,16,18	57:11 90:14	ranged 206:13	reacted 191:11	ready 33:11
315:24 316:4	158:3 221:23	ranges 217:16	reaction 291:14	322:1 459:16
316:19,20	303:9 395:12	rate 49:1 91:10	reactivate 16:23	reaffirmed
318:18,21	401:2 408:13	91:18,21	64:11 76:12	349:25
319:23 321:2,3	quicker 407:9	105:21,25	161:7 165:1,6	reaffirming
322:4,5,11	quickly 6:23 83:7	106:7 107:24	176:24 202:4	136:10 329:5
323:11 325:5	121:21 122:5	130:10 198:4,9	241:11 248:1	real 131:17
332:8,22	149:22,25	206:25	reactivated 17:5	166:12 228:16
334:11,20,22	151:9 344:9	rates 107:1	73:5 77:13	362:19 369:17
341:25 350:14	405:6 431:25	156:21 195:6	162:16 241:8	369:20 400:19
354:12 355:20	quite 121:23	rational 270:23	253:3 299:8	402:20 431:13
356:1,24	178:18 182:1	rationale 410:11	reactivating 18:6	440:9 459:13
357:20 359:13	193:8 240:6	411:1,15	68:19 74:1,19	463:7
360:1 361:3,13	248:13 257:15	412:13 413:8	78:6 253:23	reality 242:15
371:20 377:8	344:9 381:21	ratione 304:21	reactivation	374:19 375:2
394:22 396:12	436:19 455:17	339:10 341:15	245:24	417:5 459:3
396:19 400:8	quits 384:25	re-enters 111:17	read 41:17 44:21	realize 320:10
418:17,22	quote 43:1 95:23	re-raised 32:23	47:21 52:10	really 9:16 15:8
419:12 420:1	262:18 280:18	re-retained	57:16 60:8 61:2	22:17 31:22
428:15 431:14	280:24 296:12	110:21	63:5 64:16 65:8	37:22,23 55:16
435:8 438:11	322:15	REA 36:21 37:10	66:1 68:21	90:13 152:6
442:5 443:12	quotes 35:21	39:22,23 40:3	69:19 70:22	161:14 162:23
446:23 447:4	55:2	40:11,14 56:7	72:4,25 73:17	166:25 167:24
447:17,19	quoting 38:6	97:8 100:1,4	74:5 78:9,14	175:22 177:10
449:1,2,16	410:20 412:25	109:20 110:7	87:2 126:25	188:7 203:18
451:22 453:2		110:14 112:11	127:15 128:4	204:14 211:13
457:14 459:14	R	112:21 113:1,3	128:24 171:21	211:15 247:4
questions 11:21	R-0808 406:18	113:9 114:9	174:10 185:14	284:24 291:8
13:7,16,19,21	Rahim 3:8 8:5,11	125:11,12	186:3,14 213:5	292:24 367:16
14:1 15:3 23:7	raise 25:1 43:18	194:11 203:14	235:14 240:18	367:20 369:3
63:15 81:25	300:17	203:24 255:20	253:14,18,19	371:10 381:2
82:6 90:14 96:9	raised 25:5 32:21	343:18 344:15	254:1 257:12	387:13 399:11
101:24 119:7	33:9 57:14	reach 20:16	259:8 262:21	430:24 434:19
160:13,18	93:19 94:4	48:21 119:12	277:22 287:12	450:8 451:18
161:3 162:21	106:23 116:23	129:14 246:18	290:21 291:12	rearbitrate
172:12 177:11	138:12 162:21	353:23 354:5	310:4 322:17	276:14
179:20 190:8	180:8 230:20	447:23,24	343:7,18	reargue 244:6
235:17 237:22	257:14	457:20	347:19 348:8	440:15
239:8 268:25	raises 33:10	reached 49:2	365:20 394:20	reargued 440:24
269:1 278:18	raising 236:20	68:7 111:14	454:5	reason 8:23 9:2
283:25 290:5	ran 250:3 287:17	346:21 354:1	readiness 61:18	23:13 64:18
304:24 315:10	288:4	427:9	reading 20:10	66:2 82:13
367:20 368:17	range 206:16,17	reaches 129:15	56:2 160:25	87:25 117:16
391:22 401:6	208:8,12	152:15	183:7 282:2	134:20 158:20
418:6 438:24	217:18 224:9	reaching 113:16	292:18 385:13	162:6 174:18

181:14,15	receive 145:13	recorded 10:12	299:14 364:3	39:19,21 44:3
228:2 231:6	261:6 417:24	23:25	402:19,20	47:8 59:4 60:25
247:18 248:25	received 44:24	recording 21:24	423:25	61:3 62:15 67:2
356:1 411:23	86:1 90:24	22:23 24:16	reflected 58:12	68:17 70:9,11
430:13 435:15	194:5 240:23	25:11 240:5	87:10 97:16	110:2 113:8
444:19 452:4,5	receives 130:16	recourse 349:15	126:6 127:23	192:15 193:25
454:20	receiving 44:19	393:16	128:6 305:1	196:7 251:13
reasonable 70:5	402:10,11	recover 332:19	reflecting 360:15	269:11 344:11
89:21 118:18	recess 82:24	394:16 416:4	reflection 360:9	344:14 456:9
123:25 183:4	159:20 238:4	recovering 331:4	reflex 410:14	reimbursed
184:6,11	321:23	recreate 23:16	reformatted	106:3
191:11 195:21	recognize 27:12	recycled 243:19	391:18,25	reinforces 326:9
205:15 251:11	181:8,11	red 312:12	refund 106:5	reiterated 27:15
269:12 289:6,7	273:13	redirect 153:25	refusal 156:6	27:22 330:21
314:7,7 322:25	recognized	reduce 261:1	228:4 243:11	reject 337:17
323:1 350:10	180:15 215:11	reduced 21:15	264:2 273:15	431:21 459:6
376:19 400:14	234:7 287:18	reducing 195:8	404:12 410:11	rejected 57:20
403:17 409:11	287:20 354:23	reduction 198:22	refused 21:8	272:7 374:9
413:16,25	355:7 388:21	reductions 430:5	131:4 150:16	418:2 434:5
reasonableness	408:11 414:14	reestablish	150:18,19,20	439:23 461:18
90:7 191:18	recognizes	190:22	154:21 299:2	462:20
reasoned 251:25	384:18	refer 41:11 59:3	337:8 345:25	rejecting 327:24
385:3 406:14	recognizing	reference 18:18	424:3	rejects 273:13
412:1	18:24 137:15	18:20 29:25	refusing 280:20	rejoinder 198:15
reasoning 184:17	reconcile 108:23	79:3 310:22	412:13	199:8 230:21
281:23 311:3	reconfiguration	321:4 349:17	regard 168:9	349:17 411:6
382:9 420:17	343:13 345:24	350:20 390:10	305:16 345:13	relate 334:15
425:19 444:20	347:1	392:11	420:9,20 433:2	related 145:12
reasons 69:11	reconfigure 44:9	referenced	regarding 245:6	148:16 275:13
151:2 172:2	reconsider	330:17	regardless 57:22	276:7 277:19
184:9 193:21	282:20	references 17:23	411:5	278:5,9,12
247:16 274:22	record 19:21	33:7 59:19	regime 462:9	280:25 281:14
398:24 411:22	23:9 31:3 35:6	281:23	REGISTRY 1:18	296:8 302:17
reassurances	52:18 115:13	referred 35:7	regulated 69:6	328:24 338:5
44:20,25 50:14	116:6 119:22	393:10 440:4	regulation 37:10	436:23 461:13
reassured 95:23	153:12,19	referring 14:1	39:23,24 40:11	relatedly 93:18
recall 169:12	157:10,13,20	18:11 30:17	40:15 56:6	relates 45:19
220:14 248:4	192:24 193:4	220:10	114:9	139:7 298:9
276:22 285:1,3	228:25 345:5,8	refers 306:25	regulations 26:19	443:16
285:4 288:1	346:4,9,15	307:3	33:11 34:14	relating 282:9
295:4 361:24	350:25 392:11	refiled 276:23	38:3 40:3 67:7	relation 98:3
394:21 409:20	404:14 405:4	refinanced	68:24 69:5,8,10	107:22 152:14
410:20	414:22 426:4	107:11	114:5,6	152:21 153:4
recalls 404:23	429:24 454:22	refined 97:17	regulatory 32:23	222:7 279:10
recap 53:8,9	454:23 455:19	reflect 71:17	33:18,25 34:3,6	286:20
206:5	456:7 464:15	252:17,23	35:15 37:13	relations 22:4

98:2,2 122:17 relationship 127:7 163:9 413:11 438:15 relatively 158:13 221:23 395:12 relay 416:18 release 35:3 37:4 38:7,10,13,22 39:1,16 43:2 93:5 94:2 117:4 117:21 223:22 246:25 272:16 342:20,23 343:6 345:3,17 347:2,5,22 448:23 released 96:2 117:10,12 122:13 450:15 451:3,4 releases 224:3 relevance 27:4 462:10 relevant 32:5 68:24 71:23 199:21 243:7 280:12 282:2 286:24 343:23 356:22 358:14 359:22 403:2 reliance 233:9 461:18 relied 26:1 28:6,7 28:8 90:8 184:11 263:14 358:19 458:2 relief 132:8 231:25 232:2 259:4 267:16 267:22 268:5,7 268:7 278:4 296:15 relies 135:3 210:24 241:17 252:9 265:22	268:11 339:24 458:16 459:1 relieved 21:4 relitigate 20:4 232:20 236:15 reliving 292:23 reluctant 455:10 rely 19:8 27:23 56:24 59:2 75:19 135:14 136:3,4 151:3 163:19,19 182:24 183:18 252:13 311:7 314:9 334:17 338:11 358:17 358:25 359:8 relying 18:15,20 30:16 135:11 138:16 286:1 334:12 351:20 352:2 remain 28:10 63:4 64:10 104:11 170:17 247:25 273:16 276:19 287:11 remained 27:25 88:21,22 89:16 92:9 101:16 182:12 241:7 241:11 242:22 248:15 251:20 256:16 260:24 268:17 272:10 343:25 363:6 369:16,17 417:8 431:7 remaining 85:16 203:22 296:25 353:19 365:24 remains 22:19 28:16,20 194:16,19 240:8 324:21 450:4,10	451:25 459:23 remark 400:17 remarks 283:24 295:17 352:16 356:15 remedies 19:20 remedy 251:16 314:11 remember 355:17 389:24 remind 201:21 reminded 384:1 remove 69:7 removed 199:25 removing 298:25 327:3 render 329:3 338:2 rendered 65:4 186:1 206:11 244:3 249:3 427:14 432:4 435:8 438:5 440:10 renegotiate 16:23 64:13 128:17 130:18,25 138:6 139:15 153:25 161:7 165:5 176:24 202:4 228:7 241:12 248:2 301:11 388:25 renegotiated 17:4,5 18:2 72:23 73:6 79:1 84:20 134:12 134:12 137:16 137:18 139:3 162:17 180:17 241:8 252:7 253:3 299:8 363:25 388:11 renegotiating 18:6 20:25 74:2 74:19 78:6	253:24 renegotiation 75:6 134:16 245:25 renewable 34:4 36:19,24 39:25 69:1 156:1 392:4 renewables 379:6 renowned 111:14 reopen 244:13 298:6 reopening 297:3 297:22 299:22 repackaged 255:22 repackaging 112:4,25 repaid 245:3 297:19 repair 420:13 reparation 190:13,16 205:13 repealed 261:7 repeat 224:13 453:14 462:11 repeated 328:18 repeatedly 62:13 309:5 repeating 233:2 repeats 51:16 replacing 281:22 replicates 393:13 reply 262:6 296:12 298:14 350:20 report 40:5,10 97:10 98:19,21 98:25 108:13 110:6 111:1,2 111:11 114:11 125:12 152:12 154:25 155:10 157:17 169:20 170:4 196:16	202:22 214:8 351:2 391:18 392:1,10,17 393:11 394:7,8 reported 95:9 145:5 reporter 1:21 127:25 128:7,8 reports 97:16,20 100:2 111:1,12 112:5,6,18 169:14 194:22 205:18,21 255:22 393:4 431:18 432:15 462:15 represent 300:16 representation 177:16 404:1 representations 19:5 56:24 183:24 184:3 198:14 240:10 410:12 representative 2:6 3:7 6:10 7:8 8:8,16 122:18 386:4 representatives 5:19 6:9 8:3,9 8:23 24:16 44:7 86:5 127:11 411:9 represented 85:13 297:5 represents 124:11 373:24 374:1 reprocessed 391:20 394:1 394:10 reproduced 393:9 repurposed 433:8 request 143:12
---	---	---	--	--

267:22 345:23 417:15 439:24 453:14 requested 268:5 requesting 144:17 require 113:8 408:3 455:8 461:7 required 45:23 48:24 49:5 68:14 111:8 181:19 196:6 320:18 342:19 343:14 345:2 349:16 354:2 354:14 357:7 360:20 381:16 382:24 383:7 383:12 392:4 392:25 395:3 397:8 405:2 406:13 408:4 411:1,21 416:13 434:11 435:25 456:19 457:19 463:10 requirement 46:3 113:8 183:8 300:25 301:2 302:2 340:10 368:22 382:1,2 383:10 requirements 37:18 39:8,10 39:25 40:8,9,14 59:4 62:16 110:16 112:23 113:24 114:8 170:15 219:16 225:12 236:1 256:3 300:13 300:16,18,23 312:7 354:8 411:24 requires 21:13	200:23,25 233:8 267:8 344:18 requiring 404:25 reran 393:20 rerun 391:19 393:15 394:8 res 217:20,23 222:4 225:5 229:14,16,17 234:16 236:1,2 236:12,21,24 237:10,13 244:11 266:11 266:15,20 267:8 268:9 273:25 275:7 279:10,18 280:8,10 283:25 295:21 359:8 440:25 443:1,21,24 444:3 445:14 445:25 452:8 452:14 research 27:20 61:24 68:15 84:24 94:14,20 94:23 95:1,2,3 95:4 150:10,11 150:12 154:5,9 154:11 196:5 263:22 270:22 326:23 412:14 reset 327:21 329:8 resets 337:25 resolution 53:24 92:15 296:4 resolve 6:23 123:7 228:7 269:11 281:1 299:21 resolved 237:14 279:3 284:20 404:18 405:7,8	405:14 resolving 258:7 296:5 resort 19:20 181:4 resource 42:13 112:13 391:19 393:18 463:3 resources 19:15 22:12 35:21 42:25 98:9 118:7,13 194:7 345:5 346:22 457:9,17 respect 9:21 16:17 58:15 63:7,13,17 69:9 74:13 78:1 93:1 139:24,25 142:7 163:25 164:14,25 166:7 167:14 169:17 180:21 186:6 205:19 244:11,22 246:12,15 250:22 256:13 257:11 258:23 265:20 278:11 278:15 279:22 281:15 300:9 302:3,8,25 317:6 351:17 364:6 374:8 389:2 399:8 405:23 409:3 410:16,24 420:1 423:14 428:17 435:18 446:8 447:18 458:12,13 462:12 respected 9:6 respectful 115:5 124:11,25 respective 277:16	respectively 214:17 respond 103:21 116:23 160:13 243:13 282:4 454:12 responded 411:7 422:24 respondent 1:8 3:1 60:15,16 61:7,20 62:10 62:20 63:1,8 70:22 138:13 190:19 205:20 205:25 328:24 338:5 Respondent's 137:10 207:13 236:19 responding 121:9 responds 53:12 56:8 114:17 117:7 122:25 144:19 response 60:9 76:19 86:2 87:13 103:1 108:18 114:16 117:4 123:13 123:16,24 124:12,21 125:5,17,20 128:1 130:16 143:23 167:18 180:19 201:6 202:1 226:9 227:4,14 255:25 357:18 396:12 449:8 responses 11:20 76:17 255:5 responsibility 207:17 314:16 340:21 responsible 94:15 129:9	150:5 231:6 233:20 rest 82:17 105:11 238:24 382:3 464:3 restart 196:4 197:1,5 200:19 200:24 204:21 429:9 restarted 115:18 430:8 restarting 200:12 restored 261:8 restraining 256:25 327:4 restriction 24:7 rests 300:12,22 341:7 resubmit 266:7 337:19 result 53:24 65:5 68:2 70:17 72:1 86:13 87:23 123:9 134:22 186:3 208:20 211:21 217:2 233:21 264:6,6 273:11,20 283:2 330:7 346:5 349:15 353:18 406:6 413:14 417:22 425:3 427:8 432:20 439:6 442:13,25 449:12 resulted 19:25 162:10 261:21 344:12 423:3 resulting 262:14 262:19 263:6 305:19 results 68:5 144:15 resume 464:1,18 resumed 48:3
--	---	--	---	--

144:10 resumes 202:23 resuming 82:25 159:21 238:5 321:24 retain 386:19 retained 97:23 98:1 112:9 116:7 198:24 427:13 retesting 345:24 retroactively 357:19 return 91:10,22 92:4 105:25 106:7 107:25 160:17 242:1 261:23 288:12 288:18,21 421:4 453:3 returned 88:23 106:11 186:7 245:3 249:8 269:17 297:1 384:10 389:8 414:7 419:1 438:3 returning 420:14 423:17 revenue 456:25 462:9,21 463:1 463:4,6 revenues 49:3 192:9 reversals 266:1 reverse 265:21 267:18 reversed 378:7 436:22 reverses 437:12 revert 239:14 reverted 154:19 155:15 review 34:17 272:11 reviewed 84:18	98:21 286:23 406:19 reviewing 123:2 revised 1:13 196:20 197:12 revisit 218:13 438:24 440:15 revisiting 326:8 revive 165:15 264:25 revived 18:1 72:22 78:25 252:6 revoked 28:18 rewarded 417:15 rewritten 377:17 RFP 251:1 Richard 22:11 right 5:7,14 7:13 8:14 10:14,17 13:2 15:11 18:22 26:11,21 31:12 32:15 43:23 57:9 66:16 79:6 81:15 82:22 93:12,13 94:6 94:18 107:1 108:5,16,21,22 109:16 125:8 127:17,17,18 131:6,19 132:19,20,24 133:3,13,17 140:10 148:3,8 150:7,16,24 156:24 157:23 159:2 169:4,9 179:2,19 188:18 189:19 193:8,15 198:2 198:16,24 199:24 200:6 204:10,17 209:10,25 210:10 212:14	213:16 215:22 216:6,7 222:6 228:2 234:20 234:23 244:2 246:21 249:23 250:11 255:14 256:22 257:1 257:15 258:16 265:4 269:1 275:15 276:1,2 279:23,23,24 280:1 281:16 289:21,23 290:22,22 293:4 295:15 296:1 302:16 304:12 311:3,9 319:25 320:6 321:16,21 327:4 335:14 335:18,22,25 336:18 348:23 350:5,15,18 353:19,23 354:14,23,24 355:2,6,7,13 356:6,8,11,25 357:1,3 361:5 361:10,11,16 361:17 363:18 366:11,22 367:8 368:14 369:19 370:10 370:12 375:16 375:17 376:14 377:6,13,13,18 379:22 382:20 382:23 383:21 383:21 384:4 385:14,24 386:17,22,25 387:10,18 388:19,19 390:13 395:20 398:12,20 399:16 401:11	405:21 406:16 406:22 407:1,5 411:20,22 412:2,5 414:21 422:12,14 430:7 431:12 434:23 448:21 452:8,12 460:10 464:14 rightfully 316:18 rights 89:18 97:4 98:14 129:20 132:4 258:21 260:17 271:22 277:17 286:16 292:13 351:1 352:25 354:7 355:4,22 356:22 357:9 383:18 384:2 386:7,12 387:18 388:5 396:20 398:6,9 406:11,21 431:8 rigid 305:3 329:11 Ring 352:18 ripen 320:18 ripened 314:2 rise 28:20 32:6 32:13 93:5 106:25 107:6 135:17 139:9 150:6 163:1 209:1 314:6 347:6 409:6 rises 376:16 rising 240:14 risk 47:8 92:21 115:11 195:6 207:8 250:2 284:21 373:14 457:23 risks 457:6 River 322:19	332:2 338:1 road 160:9 roadblocks 317:8 Rodney 3:2 7:18 role 87:8,10 182:17 283:21 room 11:5 82:14 103:3 104:23 105:10,19 111:17 116:17 118:10,11 119:2 239:21 432:12,14 461:4 rose 399:23 row 386:9 Royal 369:21 RPR 465:12 rsted 461:1,3 Rt 1:17 Rule 39:15 rules 35:11 37:6 40:14,23 59:4 60:5,10 62:16 124:24 run 159:15 178:19 329:6 329:11 running 178:11 178:12 202:11 337:13 runs 146:10,19 Rusoro 308:13 313:16 Ryan 3:14 7:23 386:9
--	---	---	---	--

S

sake 323:23
420:3 444:15
447:11 454:9
Sarah 152:12
169:11 194:1
sat 239:15 400:7
satisfied 242:19
356:8 424:18

satisfy 205:13 333:9 453:16	281:25 283:7 317:9,10,12 344:12,24	126:17 129:12 141:23 167:12 173:6 185:13	sections 17:20 secure 89:24 security 46:1	366:3 370:20 390:15 392:10 392:17 411:5
satisfying 457:1	363:20 376:2 402:3 455:3	186:23 203:9 203:13 248:25 270:24 279:8	49:10 65:1,15 90:5 96:22 169:23 182:9	411:11 412:7 420:8 422:9 423:24 429:23
Saulnier 356:16	scale 336:4	282:15 297:2 308:3,25 315:18 336:11	185:24 187:24 242:1 245:2 249:2,7 251:19	433:12 436:15 436:17 461:10 461:10
saw 98:15 150:17	scenario 27:10	356:24 361:7 361:18 402:8 411:14 418:12	261:24 269:17 288:8,13 296:25 297:4	seek 132:7 234:2 258:15 259:13 269:5 281:16
165:13 200:6	191:7,19 196:17 202:3	419:5 420:1 425:7 426:13 428:2 430:7	352:4 362:24 363:7 365:12 365:19 368:4,8	302:16 332:18 seeking 260:15 277:25 296:16
207:6 393:4	216:9 240:7 268:2 281:20	432:9 434:6 435:18 443:11 454:24	368:22 371:1 381:6,25 382:2 382:17,25	333:4 seeks 232:20 244:25 390:16
429:25 430:4	281:20 323:24 437:11 443:6 451:17	secondary 449:2 secondly 20:20	383:10 384:10 384:14 386:15 386:19 389:8	416:3 418:11 seen 183:15 197:15 288:14
441:8	scenarios 441:8	287:13 secretariat 11:23	398:3 414:6 418:25 427:12 438:2 440:7	364:24 406:10 sees 196:11,19 select 206:19
saying 19:14 24:5	Schäferling 1:19	98:25 100:8 104:17 108:13 118:12 171:3,7	see 5:10 6:1,21 6:22 7:13 10:3 10:21 14:10	selected 206:8,16 206:18 selective 462:2
35:22 53:14	schedule 81:23	202:19,21 203:10 205:23 207:4,16	22:3 24:23 25:7 25:7 27:9 28:25 38:18 46:2	self-standing 339:14 sell 357:6
60:15 74:16,25	82:16 98:25 99:4 102:13 118:11 195:15	217:15 223:10 Secretariat's	63:20 65:10 79:8,21 80:18 87:9,12 89:19	semantic 282:1 semblance 364:20
76:25 87:12	196:10,11,17	293:5 336:20 343:23 377:7 387:24 406:5	92:7 93:14 97:6 97:15,19 104:6 119:15 120:13	sending 85:15 sends 123:4 126:13
90:9 123:10,14	science 52:15	431:8 458:23 458:25	127:21 136:10 140:2 148:17 171:10 180:24	senior 3:2,2 22:9 22:10,12 sense 15:5 30:5
128:25 129:5	54:19 55:7,12 59:9 60:5,10 243:21 264:21	secretary 5:13	198:11,19 199:2 206:14 207:7 246:17	109:10 161:1 220:20 226:12 280:13 366:19
129:22 131:5	281:10 335:3	section 17:22	261:15 305:1 319:21 342:7,9 359:20 360:14	366:24 384:16 384:17 402:6 sensible 81:24
136:5 139:17	scientific 61:23	50:4 79:12 121:21 141:17 141:19 190:12	363:4 365:3	sent 114:15 126:8
143:10,11,19	68:15 263:21 270:23 326:2	197:18 198:1 216:15 249:7 249:10,12,22		
144:25 154:25	Scotland 369:22	251:21 291:4 293:5 336:20 343:23 377:7		
155:11 161:13	screen 6:6 231:9	387:24 406:5 431:8 458:23 458:25		
163:20 166:1,3	253:20 258:19 278:20,21,25 279:2,4 342:5			
177:16 181:8	436:15			
188:22 232:25	screens 14:16			
233:8 300:3	15:10 278:23 279:5			
318:13,16	279:5			
320:5,7 357:8,9	scroll 343:1			
367:15,25	scrutiny 254:7			
369:25 379:16	se 264:9			
443:21 444:2,4	second 6:13			
446:12,21	35:18 37:22 40:6 45:13 64:20,21 92:3			
447:2 450:15	96:5 124:10			
says 39:20 42:25				
47:17 50:14				
52:12 53:15				
56:4 121:3				
122:25 123:4				
123:19 126:17				
126:21 128:8				
129:16 130:12				
152:12 153:6				
161:11 169:18				
184:19 185:12				
186:9 201:15				
223:9 224:8				
228:15 233:5				
241:4 271:15				

255:19 394:6 sentence 18:13 18:16 74:9,21 77:23 87:20 186:8 248:6,9 248:20 251:22 252:8,13 268:22 290:15 301:9 322:18 368:14 370:21 separable 339:22 separate 45:21 175:2 179:7 282:16 295:12 315:10 321:12 345:12 380:7 380:11,20 390:2,2 393:10 449:2 separated 422:18 separately 362:17,18 365:22 September 27:4 37:3 42:23 108:25 122:14 134:3 135:4,12 144:14 154:1 173:21 174:16 206:12,23 246:25 247:2 249:17 254:18 382:22 399:4 400:21 401:23 445:5,12 sequestered 9:1 sequestration 8:17 series 247:6 314:17 317:22 328:23 329:2 338:4 340:19 340:25 357:17 serious 154:18 service 37:12 services 87:14	set 31:24 33:5 35:11 37:7 38:25 39:10 40:15 41:22 44:2,4,10 50:22 64:18 98:18,24 110:18 115:10 116:22 123:17 156:22 179:11 179:14 184:15 206:9 211:10 211:23 275:14 278:22 297:9 301:2 336:12 346:7 349:21 360:3,12 403:4 407:16 432:12 setbacks 457:11 sets 37:16 39:7 115:3 142:24 153:2 164:21 195:23 202:19 202:21 272:24 272:25 275:3 349:10 358:13 setting 88:17 211:19 settle 19:24 settled 236:8,15 269:4 462:9 settlement 107:15 144:12 144:14 145:1 145:12 236:9 seven 83:15 97:7 206:9 239:21 seven-year 301:18 seventh 403:11 share 207:22 267:20 385:7 shared 85:23 95:24 116:12 349:21 shares 269:20 sharply 155:8	Shelley 2:3 4:8 5:25 15:1 83:16 107:8 146:22 160:15 172:13 173:25 174:3 178:7 189:24 189:25 193:15 195:13 197:3,8 200:14,25 201:17,23 202:18 204:5 204:10,17 205:3 208:17 208:22 209:10 209:16,22 210:1,5,12,16 212:11,16 213:3,16 215:22 216:7 217:21 218:15 219:1 220:6 221:2,20 222:12 224:8 Sherkey 2:2 4:4,6 4:9 5:24 15:1 19:5,21 22:25 23:5 27:16 30:1 30:11,13,20 31:8,13 37:25 38:8,24 39:5 45:17,22 46:4 46:11,24 48:6 48:13,20 51:21 51:24 52:21 53:18 54:2,4,15 55:2 56:1 57:2 57:6,10 58:8,9 66:9 69:4 83:3 83:4 84:1 87:7 87:25 88:13 90:17,21,25 91:5 92:12 93:6 93:11,23 94:3,9 99:16 101:1,6,8 101:15 102:1 102:12,24	103:7,11 104:8 105:20 107:7 107:14,23 108:6 109:14 109:18,25 111:22 113:2 113:11 116:3 119:10 120:7 120:20,25 121:13,16 122:4,12 125:13,18,22 126:4 132:18 132:25 134:5 135:5,13 136:14 138:18 140:2,21,24 141:9,18 142:4 145:21 146:8 147:8,16 148:10,13,21 148:25 149:7 149:11,16,21 151:12,15,18 151:23 156:18 156:25 157:4 157:15,25 158:2,4,9,11,19 158:23 159:6 159:17 160:16 183:18 194:5 216:16 217:21 221:15,21,22 223:7,19 224:5 225:9,16 226:7 234:18,23 235:1,5,10,22 237:19 241:16 263:20 264:13 270:17 Sherkey's 17:15 shift 156:10 204:9 213:9 415:14 shoals 41:12 168:4,10,20	176:1 457:12 shore 44:2 346:7 shorn 281:25 short 46:25 57:17 149:22 154:15 159:12,13 186:18 262:3 376:25 382:24 shorter 238:8 shortfall 155:20 shortfalls 155:7 shorthand 405:18 shortly 42:17 95:8 239:12 261:24 403:19 420:8 443:10 Shoshana 2:4 6:4 shot 239:5 show 15:9 76:21 243:18 244:24 245:7,10 246:14 264:22 268:2 283:20 289:23 302:15 309:1 389:10 416:2 showed 95:24 116:12 117:3 270:17 showing 112:22 131:15 214:11 shown 296:16 shows 15:13 131:13 202:22 272:12 353:8 side 169:17 205:19 220:5 236:8 247:12 281:6 284:7 sided 117:1 sides 11:4 220:4 sidestepping 264:16 sign 43:23 429:17 429:18
--	---	---	---	---

signal 11:24 12:3	456:18,22	32:1,19 33:7	389:10,16	361:16 374:24
signed 33:20	461:18 463:10	34:1 38:13 39:9	390:11 392:12	383:17,17,19
44:25 116:17	sit 53:19 188:24	39:18 40:17	436:18 460:2	390:6 391:3
118:10 336:22	303:9	41:5 42:10	slides 30:6 57:7	405:13 407:19
411:20 429:20	site 35:2 39:16	43:20 45:3,8	59:19 82:7 83:6	436:1 450:6,7
significance	42:16 43:2	47:1,2,23 50:8	96:18 111:25	sort 22:16 161:3
95:22 147:1	194:7,7 245:22	51:16 52:25	128:6 141:16	167:7 175:21
significant 19:15	256:20 265:12	54:8 58:6,17	153:16 154:24	186:24 195:17
33:3 89:6 297:5	271:5 293:24	63:11 70:24	177:7 184:22	198:11 205:18
337:9 338:13	294:10 342:20	83:10,21 84:11	211:3 309:9	213:17,22
significantly	342:23 343:6	85:12,15 87:4	351:6,16 360:4	214:6,11
213:17 215:1	345:3,10,17	88:15,19 91:1	378:23 390:8	217:18 220:8
signing 43:16	347:2,5,9,10,22	94:10 96:12	407:11 423:22	220:18,25
47:7,13 342:23	462:8 463:9	111:20 116:25	slightly 200:22	225:22 226:4,6
429:15	sites 42:18,21	117:20 118:1	357:20	290:3 367:21
signs 43:10	sitting 6:5 7:20	122:2,5 125:12	slow 419:15	372:23 400:5
similar 99:15	8:1 128:3	127:23 129:4	small 118:13	452:23
179:24 201:4	situated 462:25	130:8,17 131:9	smaller 147:10	sought 231:25
207:23 217:16	situation 68:12	131:21 142:6	149:1	255:4 259:9
328:23 338:4	190:22 338:4	143:24 147:24	Smitherman	260:18 268:7
358:20 394:17	344:12 403:9	151:1,18,23	36:9 152:2,18	276:25 335:24
441:6	446:14	152:6 153:6	snapshot 15:9,9	402:12
similarly 329:4	situations 403:2	155:5,17 156:3	so-called 410:16	sounds 88:12
339:19	406:20	158:24 160:21	solar 199:14	335:7
simple 164:25	six 114:14 125:16	167:17,19	soliciting 117:2	source 68:25
181:5 282:2	203:15,21,23	169:1,5,7,7	solution 279:1	69:9 353:8
321:3 332:3	240:24 272:12	170:23 173:19	somebody 82:16	436:5
416:1	290:6 301:25	177:11,15	104:4,5 141:6	sources 88:25
simply 10:4	308:20 312:4	178:25 179:11	141:15	155:23 156:2
21:12 38:6	312:11 415:17	179:14 184:15	soon 239:3 268:2	space 275:13
76:15 95:13	six-and-a-half	188:1 191:14	sooner 285:22	276:7
124:20 166:16	301:17	191:24 192:11	sophisticated	speak 10:2 13:18
166:23 177:21	six-month 37:12	197:10 198:10	322:25	40:13 85:5
182:1 200:4	sixth 185:17	198:18 199:1	sorry 24:12,14	120:8,11
248:23 268:6,9	272:2	205:6,18	30:13 45:5 54:2	160:16 226:8
270:2 286:8	size 147:19,20	206:15 208:5	74:23 94:7	246:2 287:24
325:1 388:24	148:14	214:3 227:5,14	101:1 125:9	303:7 331:8
424:15 425:1	skewed 462:20	229:21 230:19	151:10,20	431:16
437:4 444:2	skill 465:6	230:19 231:25	164:11 172:22	speaker 240:5
459:11 463:3	skip 179:20	278:18,21	184:21 193:23	279:4
single 208:22	423:22	279:2 303:10	204:23 209:22	speaking 40:20
210:22 212:12	skipping 353:11	312:11 357:13	212:18 240:13	44:12 159:23
307:11 328:8	sky 290:7 377:16	362:3 364:11	242:9 247:9	speaks 129:21
337:23 422:19	slide 14:15 15:7,8	365:3 367:1	257:22 281:15	special 44:24
422:20,23,24	19:1 20:8 21:21	371:5,24	317:4 330:24	specialized
455:21 456:8	30:6,14 31:14	378:21 386:2	348:14 358:10	110:22

<p>specific 45:19 46:17 86:10 95:6 120:14 152:14,21 153:2,4 169:3 174:10 202:9 211:5 219:24 220:7 256:3 282:4 404:1 409:8 413:24 418:10,13 424:20 425:9 431:19 432:2 441:17 446:24 454:10 specifically 17:8 28:23 35:15 36:5 46:2 57:4 67:9 129:23 199:21 202:16 220:14,17 250:6 268:18 279:17 325:13 428:14 438:12 specifics 431:3 453:24 specified 40:9 specify 40:4 Spectacular 464:7 speculate 140:12 228:22 347:25 speculation 455:8 459:7 speculative 432:15 459:19 Spence 329:14 337:12 339:19 spend 31:15 96:17 97:10 133:2 229:11 240:19 243:6 243:15 453:6 454:1 spending 258:10 261:1</p>	<p>spends 98:9 spent 99:2,5,10 99:19 118:7,14 336:3 457:3 sphere 123:7 split 32:2 splitting 225:2 272:22 spoke 84:17 102:25 165:16 194:5 278:23 spoken 103:11 spot 51:13 spring 117:17 239:2 squarely 166:4 188:15 281:24 300:12 417:13 Squire 401:8 Squires 3:2 4:13 7:19 160:3,6 246:1,7 265:17 268:2,24 270:7 270:9 298:10 373:5 400:22 402:4 415:5,10 415:13,15,16 419:15,18,22 421:2 422:5,14 422:21 423:12 423:21 425:21 425:25 426:6,9 435:2 436:17 442:22 443:9 443:25 445:8 445:20 446:22 447:3,25 449:6 449:17,23 450:19 452:12 460:5,19,22 stable 37:4 38:4 38:15,21 stacked 290:3 staff 22:7,7 122:20 126:9 255:6 404:21</p>	<p>stage 46:7 119:12 129:19 148:19 149:5 214:16 218:4,6,9,22,23 219:4,11 222:6 222:12,18 224:14,14,19 224:25 226:15 226:20 354:5 363:1 373:8 379:6,8 382:7 391:7 440:1 443:19,24 444:18 445:6 445:15,18,19 446:1 448:5,7 448:10,15 449:11 450:2 450:10,17 451:17,24 455:6 459:12 460:8,12,16,16 460:17,24 461:16 stand 82:18 306:1 404:15 standard 190:13 190:15,25 205:13 237:3 245:16 251:5 349:6 407:17 407:23,24 408:5,18,21 412:10 414:10 420:23 424:11 standardized 35:11 standards 224:1 455:15 standpoint 146:9 146:13,18 192:15 star 116:2 starkly 381:21 start 13:11 84:5,8 84:11 162:18</p>	<p>243:8 266:13 266:14 425:2 429:21 started 19:1 47:19 117:9 439:19 starting 15:14 17:17 33:24 63:19 437:25 starts 246:24 337:13 state 59:23 150:15 161:20 166:9 265:2 273:19 283:18 314:15 328:24 338:5 340:20 405:9 stated 86:6 216:10 255:12 309:3 394:13 397:11,14 statement 4:3,4,5 4:6,7,8,9,10,11 4:12,13 14:13 18:10 30:11,24 56:2 58:4 60:14 80:10 83:3 84:13 85:4,21 95:22 110:11 112:8 115:4 116:22 117:8 118:3 120:13 121:2 160:7 170:8,9 171:25 186:24 189:24 221:21 238:11 304:16 331:6 341:22 415:15 statements 18:10 19:7 27:16 28:3 30:18 37:4 40:18 44:20 63:7 84:20,24 94:13 110:19 150:10 413:23</p>	<p>413:23 427:6 427:16 states 60:16 263:24 305:6 328:22 343:3 377:11 412:11 412:25 States-Mexico 349:23 stating 38:14 39:1 86:2 330:22 427:22 status 35:5,6 39:16 42:14,17 60:17 63:2 88:18,20 111:2 131:16 137:11 194:5 245:6 251:14 346:4 393:11 436:25 statute 283:17 stay 6:18,22 31:19 120:2 142:5 151:22 152:3 stayed 92:9 steal 304:6 Stefan 1:19 stemmed 321:2 step 10:7 100:3 113:21 114:11 125:24 206:24 307:1 376:1 steps 26:20 75:5 75:10 76:12 96:20,24 97:2,3 97:4,7 98:4 99:17 100:11 114:1 116:18 132:3 144:10 150:13,20 161:22,24 163:5 181:19 213:22 228:18 stood 239:20 stop 22:15 29:5</p>
--	---	---	---	--

102:2 197:13 197:24 304:13 307:13 stopping 101:25 277:1 stops 229:23 stopwatch 158:12 story 243:10 246:24 247:3 330:4 393:16 straight 109:13 292:18 359:12 straightforward 305:17 416:1 strategy 115:12 194:9 418:1 strayed 293:15 stream 11:25 48:2 113:4 462:22 streamlined 36:25 37:11 street 1:10,25 117:24 strenuously 285:5 stressed 275:16 stretch 248:13 strict 235:25 244:20 strike 331:20 strikes 136:9 strikingly 309:8 441:6 strong 414:8 strongly 7:3 127:8 struck 260:9 292:21 structure 41:9 84:7 structuring 207:8 struggle 399:1 struggling	108:23 studies 54:19 55:7,13 59:9 94:21 96:2 97:12,12 99:22 111:8,13 112:1 112:5,6,11,12 112:17,22 196:5,8 255:25 326:2 343:16 393:4,12 409:19 412:13 412:20 433:8 433:12 study 42:18 subcomponents 329:20 subcontracted 364:19 subcontracting 366:17 subject 11:15 34:19 49:1,21 169:22 198:21 235:13 272:9 273:16 344:14 352:4 353:9 354:25 355:13 356:2,25 398:3 431:7,12 subjection 343:23 submission 38:19 55:9 59:1 74:10 78:4,10 87:22 97:9 100:1 109:21 110:14 110:25 111:5,9 112:22 113:1,3 113:9 141:14 156:13 166:6 167:15,24 172:16 174:20 175:22 176:5 181:5 221:25 231:3,19	255:20 262:23 279:9 284:21 305:22 307:19 312:7 328:23 333:5,6 348:8 360:5,19 394:11 395:7 395:22 396:12 397:4 420:23 423:9,13,15,16 445:13 460:4,6 460:12 submissions 8:15 17:16 33:4 96:5 141:10 151:6 183:15 190:3 197:16 218:8 226:25 227:7 234:6 237:15 245:5 252:14 340:9 341:24 360:5 407:7 408:16 414:25 454:4 455:24 462:14 submit 40:4 43:3 282:14 315:17 submits 242:4 280:19 323:13 submitted 59:12 97:8 100:1,3 125:16 271:20 280:3 295:2,4 325:10 Submitting 272:6 subsequent 261:23 318:15 322:8 328:13 328:17 329:8 337:9 355:18 425:19 441:18 subsequently 441:13 460:11 subsidiary 41:11 substance 221:24 275:17 276:9	substantial 65:16 66:5,6 118:7 187:15 234:1 249:1 288:2 359:12,16 365:20 368:8 370:18 371:1 371:15,17 372:7,10,16 440:5 substantially 65:24 186:12 187:1 247:15 285:4 330:9 331:17 370:23 substantiate 312:6 340:8 substantiated 312:1 substantive 25:10 237:13 subtracted 193:13,17 subtraction 364:21 subtracts 382:15 382:16 succeeded 265:6 success 216:2,3,5 successful 19:11 201:7 215:18 286:20 sudden 376:17 399:20,22 400:3,4 suddenly 327:14 suffer 307:20 319:1 418:21 425:2 427:2 suffered 233:25 297:23 333:23 425:9 436:8 sufficient 283:17 332:5,16 424:12 455:15 suggest 20:3	357:11 381:23 suggestion 216:12 suggests 52:13 69:6 89:22 117:1 127:8 286:19 328:5 suing 394:15 Suite 1:10 sum 193:14 264:4 269:19 summarize 83:14 summarized 50:8 summarizes 205:18 summarizing 243:7 summary 41:1,6 48:22 55:5 83:12 84:12 96:12 98:24 111:4 126:18 156:8 214:13 229:13 343:2 393:12 summed 8:21 20:8 summer 346:13 sunk 187:16 254:16 297:8 365:11 366:1 366:13 374:7 374:11,19 375:2 supplementary 170:4 261:25 supplied 198:5 supplier 197:13 197:20 198:2 199:24 353:22 354:5 429:16 supply 154:2 168:21 283:16 371:7 372:19 412:23 support 131:14
--	--	---	---	---

<p>283:15 400:24 413:5 460:25 supported 330:15 407:1 supporting 131:14 supports 90:7 329:5 337:23 414:22 432:21 455:21 suppose 103:20 105:9 292:15 377:21 supposed 154:12 supposition 77:1 Supreme 199:13 sure 12:7 13:6 14:7 25:4 30:20 36:14 41:16 45:17 81:7 93:10 102:18 107:13 122:8 141:22 148:10 149:11,23 171:5,20 174:11 185:9 212:24 285:25 286:10,15 292:11 319:5 355:8 356:2 362:3 369:6 371:20 377:17 380:17,25 381:20 383:5 398:25 426:2 430:10 445:4 452:10 457:13 surely 319:20 surprise 9:17,19 surrounded 127:4 surrounding 251:13 surviving 173:20 suspect 335:18 410:17</p>	<p>suspension 250:15 sustained 424:14 swap 44:9 Swartz 351:21 352:2 sweeping 36:4 sweet 262:4 swing 82:13 switched 222:4 symbiotic 381:10</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 111:20 119:9 393:4,9 393:13 tables 214:14 tag 108:2 Taiwan 221:11 take 10:2 17:3,10 18:18 21:23 27:17 30:25 32:3,16 33:13 50:9 62:7 70:1 76:4,25 81:18 81:22 82:1,2,5 87:7 91:14 95:3 99:17 113:21 113:25 114:20 114:22 117:23 121:24 144:8 150:20 157:2 159:11,12 160:22 161:22 161:24 163:5 184:16 196:12 199:12 203:18 213:25 216:16 220:13 221:16 255:6 267:18 292:22 298:11 308:19 318:17 319:2 320:24 357:7 364:11 367:16 395:14 401:12 415:5</p>	<p>429:4 430:22 431:5 takeaway 43:18 taken 65:3,6,15 66:13 71:13 75:9 76:11 137:24 138:7 139:12 144:10 165:10 175:16 177:6 181:3,18 184:9,18 186:1 187:24 218:3 223:15 249:4 287:2 292:20 307:8 317:17 318:12 339:4 349:14 350:2 368:8 370:18 371:18 382:10 386:5 394:23 394:25 395:16 395:23,24 397:5 398:18 398:22 399:7 413:24 430:5 430:11 439:12 451:14 455:14 takes 19:14 143:6 146:20 150:4 196:22 199:9 240:25 241:10 247:1 317:6 talk 14:4 36:11 42:5 44:7 58:10 70:24 82:7 94:14 97:24 98:13 100:14 108:21 109:20 120:10 128:19 133:25 151:25 156:3 160:10 160:17 178:7 178:10 183:23 332:25 380:17 391:15 talked 19:2 39:14</p>	<p>72:6 77:7 96:22 107:12 190:1 233:24 247:16 288:9 361:10 375:2 406:4 454:3 talking 27:2 28:12 49:10 85:16 86:3 100:10 134:17 153:22 158:19 179:1,5 180:1,2 211:3 222:3 225:7 240:20 307:23 358:11 358:12,16 365:5 396:22 445:1 451:20 460:15 talks 66:22 126:19 288:8 tangible 131:17 228:17 Tanzania 424:3 tape 23:25 taped 24:3 tariff 156:16,21 157:14 195:5 215:11 284:14 task 62:6 205:9 304:19 team 5:18,23 6:7 7:15 23:15 41:23 78:19 167:25 173:23 189:9 211:12 268:24 406:24 teams 82:16 tease 55:25 tech 11:18,24 technical 111:8 111:13 112:11 194:20 416:16 456:20 technicalities 282:1</p>	<p>Technically 192:14 technologies 97:18,19 technology 194:17 195:9 teeing 219:14 Teliszewsky 3:12 255:6 404:21 411:3,8 Teliszewsky's 128:1 tell 75:23 167:20 175:11 196:25 226:3 246:4 268:23 311:4 330:3 383:6 398:16 456:4 telling 104:4 315:4 tells 144:1 347:20 temporal 172:9 172:14 449:4 temporary 137:9 137:9 154:12 temporis 304:21 339:11 341:15 ten 21:23 28:24 159:10,13,14 178:19 243:6 333:3 456:9 ten-year 143:22 tend 374:13 tentatively 274:4 274:17 tenure 344:18,22 345:1,2,11,12 term 49:1 165:15 198:22 203:22 204:4,15,18,24 204:24 271:3 280:6 301:19 326:19 357:5 terminable 284:19 terminate 49:25</p>
---	--	---	---	--

92:21 93:4	377:15 384:8	277:1,7 279:15	134:13 137:19	135:1 137:10
129:13 130:21	384:13 397:20	279:23 280:16	146:13 156:12	158:4,8 159:24
131:25 140:9	397:22 414:20	281:12 282:13	157:7,14	160:1,7,8
142:21 144:1	436:13	282:19,24	160:19 161:5	164:11,16
145:20 146:2	terminates	283:10 289:21	162:3 163:20	165:24 167:17
148:2 166:24	386:18 458:22	289:23 292:12	164:19 168:1	170:25 171:4
192:5 197:24	terminating 69:1	297:1 298:17	170:14 171:13	171:19 172:18
198:16,25	92:22 259:10	301:12 306:6	173:20 176:3	172:22 173:1,8
200:18 228:3	termination 20:1	306:11 307:21	176:20 177:17	173:17,22
229:4 231:12	50:4 66:14	309:11 310:7	179:2 190:5	174:3 175:6,17
231:16,17	89:18 92:6	320:10 327:4	195:3,8 205:7	177:9 178:12
233:3 243:23	93:12,15,22,25	327:15 335:13	208:15 211:14	179:4 183:14
244:19 245:20	94:1,4 130:10	335:18,25	211:18 222:11	184:21,25
249:13 250:11	130:13 131:6	336:25 338:15	224:6,13 225:4	185:3,9 186:20
256:22 262:13	131:19 132:20	339:7,16 340:2	233:25 241:24	187:19 188:2
263:25 271:8	133:3,13 139:8	344:1 353:18	246:10 248:2	188:10 189:8
273:9,21 278:1	139:11,20	354:7 377:6,13	260:5 290:2	189:17,20,23
278:5,14 283:3	140:7,13,19,20	377:19 378:4,6	376:4 383:4	209:8 210:17
292:9,17 296:9	140:22 142:11	383:2,3,18	388:12 406:19	210:19 211:2,8
302:12,17	145:23 146:7	384:2,4 385:13	412:23 429:3	212:6,22 226:8
310:3,9 317:15	146:20 148:1,2	385:24,24	435:19 445:21	232:4 233:11
336:19 337:6	150:3,6,7,16,23	386:7,12 387:4	450:5 464:3	248:18 278:23
382:23 383:16	151:2 154:16	387:17,25	terrible 290:12	362:6 368:18
387:3 402:7	155:14 163:3,6	388:5,10 389:3	terribly 178:17	Terry's 141:10
406:1,6,17,23	180:3 186:6	394:6 396:20	Terry 2:2 4:3,5,7	396:11
407:2,4 411:16	196:3 207:12	406:11,21	5:15,16,21,24	test 148:16
411:23 412:3	208:25 209:3	409:17,21	7:10 9:9,14	179:15 183:15
414:12,21	227:19 228:2	410:3 411:18	10:14,21 11:9	184:5,15
458:3,13	229:1 230:9,15	412:6,16	12:16,17 13:22	229:23 232:9
terminated 19:12	230:23 231:5	414:14 427:3	14:12,13,14,19	232:10 267:9
21:10 54:18	231:20 233:7	427:20 431:8	14:23 17:7	267:10 275:14
55:6 59:8 62:24	233:20 241:22	431:11,12	18:17,23 23:3	295:25 296:1
64:2 92:11,17	242:5 244:1,2,4	436:10 441:14	23:14 24:1,14	308:6 310:18
132:5,24 133:1	249:10,23	456:3 457:23	25:4,18,21,24	324:11 331:23
136:20 139:10	255:14 257:1	terms 6:8 8:15	26:3,7,11,16	359:4,9 408:14
140:12 145:5	259:20,21	14:5,7 21:1	27:8 29:1,13,22	testified 10:13
147:6,8 182:3,4	260:17 261:11	24:4,6 31:20	30:4 32:8 53:20	330:20 411:3
182:16,20	261:22 262:15	39:13 40:18	56:10,23 58:4,5	testify 429:1
199:6 228:10	262:20 263:6,8	57:11 64:15	58:24 59:17	testifying 8:17
241:22 247:20	264:5,10,14,17	66:9,12,16	63:18 66:17	103:10
249:6 250:4	264:18 265:3,7	74:16 75:20	74:10 75:8 76:5	testimony 7:1
258:8 283:22	266:5,6,24	80:4 87:11,19	76:23 77:5,18	8:18 9:1,22
284:18 287:6	269:14 271:22	96:19 99:9	78:17 79:24	454:8
292:1 303:21	271:25 272:9	119:8,19,19	81:11,16 82:4	testing 34:24
314:3 316:18	273:2,10,17	121:6 125:7	82:20 84:16	203:5 294:11
376:5,17,25	276:1,2,6,11	128:17 131:1,2	99:8 109:25	343:11 345:9

346:25 347:10 Tetard 2:11 205:23 text 328:4 360:14 436:19 thank 7:13,15 9:9 11:12 25:9 30:10 39:4 46:19,23 48:3,5 48:16,19 56:21 58:3 77:17 82:23 92:2 94:7 101:22 108:10 116:2 122:11 138:9 142:3 147:2 158:2 159:19 164:16 170:22 177:5,8 178:24 189:19 189:23 197:7 221:18,20 234:24 235:9 235:20 237:18 237:21,21 238:7,12,18 239:8 284:3 294:25 321:22 322:2 323:9 324:9 335:10 341:17,21 360:25 374:4 378:12 385:10 415:2 426:8 464:5,6,9,12 thanks 10:20 14:11 18:22 31:12 104:7 109:17 122:9 149:20 213:2,3 295:15 321:21 348:23 thawed 55:22 theoretical 402:14 theory 18:1 72:22 78:25	160:11 252:6 275:11,23 276:15 321:14 339:25 363:24 416:7 thereof 304:22 Thibeault 255:5 thing 78:21 96:7 177:14 186:18 199:2 210:14 225:25 234:14 271:20 272:6 272:15 319:12 356:17 369:17 398:17,19,22 398:24 431:1 452:24 463:22 things 6:14 28:13 58:7 78:12 97:6 100:19 105:7 115:12 124:5 150:22 154:6 163:1 166:10 175:18 188:24 240:13 289:11 289:14 291:8 293:4,13 314:25 317:13 358:11 391:17 428:21,22 430:24 431:15 450:20 think 8:21 12:9 23:15 30:17 37:22 45:5 54:10 91:11 99:14 104:17 104:18 106:21 108:6,11 120:8 121:16 123:5 156:4 158:8 160:24 164:22 166:17,25 167:2 175:4,10 175:20 177:10 177:12 179:10	184:21 189:8 189:10 191:2 195:16 200:22 203:20 210:9 211:9,12 212:5 212:6 213:5 219:1,7 220:3 221:4,6,7,23 223:21 224:12 226:9,25 235:8 235:22 257:19 257:22 280:7 284:23 286:6 287:17,18 289:4,7 290:10 290:12,14,16 291:21 307:24 311:8,11 315:3 315:6,6,9,22 319:6,22 320:5 321:2,19 322:10 335:9 348:3,6 355:15 355:25 358:5,6 358:10 359:25 361:22 365:2 367:9 369:13 369:25 377:3 378:24 385:4 385:20,21 389:4 391:10 400:1 404:2 407:9 421:2 428:18,20,25 431:13,15,24 435:19 441:3 445:17,17,18 445:20 446:22 449:13 450:5 450:25 451:18 451:23 453:1,4 463:21,24 464:9 thinking 93:1 113:12 359:20 385:6	third 20:23 96:8 97:24 100:13 109:21 115:19 118:9,23 120:19 168:23 180:9 233:23 271:7 362:11 362:12 386:9 402:3,4,24 404:6 412:11 432:19 This's 304:11 Thompson 87:6 87:8 thoroughly 256:11 257:6 thought 6:17 38:9 165:23 278:24 292:8 312:23 313:6 315:2 320:11 358:12 381:22 thoughts 463:16 463:21,22 three 21:3 32:2 33:14,14,18 62:8 76:17 84:5 97:6 105:17 131:7 132:22 138:15 153:15 167:23 170:17 190:12 197:4 222:23 223:24 239:1 296:4 305:7,20,21 311:16 312:17 312:24 315:15 316:1 328:20 339:4 349:20 362:2,5 391:17 401:24,24 428:18 433:8 463:19 three-part 232:10 three-step 39:15	three-year 138:23 244:20 287:23 305:3 316:23 threshold 350:3 350:13 359:21 361:3,19 394:22 395:9 408:11 412:9 thunder 304:6 Tian 3:4 4:11 7:20 244:17,21 287:24 300:8 302:25 303:7 304:16,17 308:1,6,10 311:10,21 312:18 313:8 313:15,19 314:13 316:3 316:11 317:21 318:1,17 321:22 322:1,2 323:10 324:10 332:11 333:8 333:13 334:21 335:11 338:18 338:23 339:1,6 Tian's 304:6 tick 348:7 tied 40:6 135:15 136:15 138:4 141:9 261:13 384:16 ties 286:6 time 9:25 11:24 12:13 13:9,11 14:5,8 15:22 19:7,15 21:11 24:3 41:21 49:20 56:5 58:20 70:6 73:7 75:4 76:16 80:11,16 81:22 81:23 83:5,7 96:16,17 97:11
--	--	---	---	---

98:11 99:20	329:20 330:6	239:22,25	372:19 373:20	180:1,22,23,25
101:12,24,25	354:3 358:2	241:4 264:12	390:19	183:1 188:13
102:2,4 106:8	377:1,9 378:2	304:20 332:18	track 102:2,7	208:21 211:21
110:8 113:10	382:24 383:5	445:12 450:11	Trade 3:6 7:25	225:15 245:17
115:2 118:7,13	401:2,4 402:7	452:1 459:23	transaction	250:20,23
118:22,24,24	406:15 414:9	464:7	118:21 207:8	251:5 349:6
119:3,9,16	424:5 425:14	today's 217:10	207:19	407:14,18,23
120:23 123:17	427:13 428:24	toes 391:14	transactions	407:24 408:3,3
127:15 130:3	430:8 437:17	told 44:23 119:14	206:10,10	408:6,18,21
132:12 133:10	438:7 446:3	122:21 126:22	207:21 373:7	409:2 412:10
135:7 144:2,5	448:18 454:2	131:23 142:13	TransCanada	421:1 423:11
144:24 146:10	457:4,9,17	143:9 144:22	250:23,25	treaty 408:19
146:16 149:22	459:16	228:24 229:10	transcribed	414:19 424:11
149:24 153:18	time-bar 287:21	tolerate 457:10	465:7	Trial 3:13
158:3,9,12,13	308:15 312:7	457:18	transcript 1:9,13	tribunal 1:16 5:9
176:9,25	312:19 313:10	tolerating 237:22	1:14 21:24 23:9	7:17 11:21 13:7
177:13 178:11	316:22 337:7	toll 204:14,14	23:10,12,16	13:12,15 14:14
178:13 181:9	340:10	244:20 309:1	30:16,22 31:6	15:3 16:13 17:1
181:10 182:3	time-barred	317:1 328:13	45:9 48:1 53:4	17:4 18:23
182:19 187:9	227:3 308:23	tolled 260:5	53:17 54:22	19:13 20:5,16
187:11 198:3,9	340:1 341:8	tomorrow 11:1	55:3,4 81:7	20:17,18,21,24
199:8,24 203:8	timeline 15:8	83:19 126:10	115:22 122:3	21:17 26:9
203:17,21	42:10 50:6	152:24 183:20	141:3 158:25	27:11 28:2,6,8
204:19,21	113:16 195:20	346:16	240:18 419:17	32:4,10 33:3,5
209:23 213:8,9	195:23 244:20	tool 235:25	419:21	33:15 34:1
213:13 214:12	247:9 250:3	top 13:19 78:23	transcripts 454:6	35:15,18,25
215:8 216:10	timelines 49:11	198:18 206:15	transferable	36:9,10 37:1,15
219:3 220:18	113:15 271:6	265:14 283:9	169:23 352:5	38:3,6,20 39:5
221:5 222:22	416:12 417:7	295:4 312:12	transgression	39:12,17,23
224:18 225:23	timely 35:23	topic 11:14 15:5	328:1 329:1	40:17 43:13
226:15 229:11	times 134:25	415:17	transgressions	44:18,20,21
233:16 235:14	152:13,21	topics 222:4	338:7	47:11,12 50:24
235:23 238:19	153:12 214:17	Toronto 1:10,25	translate 99:13	51:5,10 52:4,6
238:22 240:19	214:17 257:5	5:1 238:19	treated 103:18	52:13 53:3 54:9
243:15 251:11	344:1 361:14	Torys 2:5 5:25,25	182:15 211:22	54:13,21,24,24
253:5 268:16	timing 113:24	6:1,2,7	239:23 250:24	54:25 56:11
269:12 272:16	204:24 218:22	tossed 432:17	295:11 380:14	58:13 59:13
273:23 274:7	238:3 254:25	total 46:10,12,13	422:19,22	63:21 64:5
275:13 276:7	382:22 401:13	99:1,5 147:7	treating 380:1,7	65:21 66:3,21
276:14 283:8	tiny 293:16	158:5 363:5	treatment 16:16	69:6,12,23
284:14,19	389:24 419:16	totally 446:14	75:18 140:1,19	70:24 72:7 73:1
287:23 292:1,9	463:18	touch 233:24	160:12,20,24	74:12 77:25
293:5 299:8	Tobis 2:10	239:13 245:5	161:9 163:11	78:9,12 79:20
302:25 304:7	today 31:22 50:3	touched 232:9	163:12,22	80:14 81:1,8
321:19 322:8	81:23 110:1	tower 168:21	164:7,20 165:3	84:18 86:4,7,21
324:15,24	128:2 235:15	362:10 371:7	166:14,19	87:22 88:4 89:7

104:11 110:3	272:23 273:12	397:9,11 401:6	245:10 246:9	125:24 165:5
114:6 134:8,14	274:1,8,15,21	402:21 405:22	281:23 297:3	222:22 318:23
137:13,25	274:24 275:2	408:9 415:19	304:21 306:2	432:13
141:11,13	276:3 281:2,20	417:14,22,23	334:4 339:10	trying 20:4,5,10
145:11 160:22	281:25 282:4,7	418:14 419:8	341:15,25	20:10,15 78:9
161:6 162:5	282:12 284:15	419:12 420:7	354:12 359:9	102:1,3 110:12
163:15,24	284:20 285:8	423:2,6 424:2,8	367:25 376:2	113:25 114:1
164:6,8,13	285:12,13,21	424:18 426:15	382:9 391:22	139:15 174:22
165:13,22,25	285:25 286:22	427:6,8 428:19	433:25 438:11	190:20 220:15
166:3,5,13	287:20 288:7	431:21 433:3	439:18 443:12	220:25 225:21
167:2,3 171:17	288:10,12	433:17,21	444:20,23	236:14 292:24
174:6 176:3,6	289:9,12,18,25	434:10 435:24	445:24 449:25	315:3 367:21
176:10 179:16	290:6 291:19	438:1,6,8,14,16	450:12 454:17	373:1 391:21
180:11,14,15	293:9 295:20	438:18,20	460:18	431:19 435:4
181:9 182:17	296:4,5,13,17	439:3,8 440:3,8	Tribunals 181:15	451:10
182:21 184:1	297:7,14 298:1	440:11,15,17	274:3 308:13	Tuesday 464:18
184:15,19	299:6,16,21	441:1,15,21	322:19 332:1	turbine 168:21
186:25 187:4	301:21 304:18	442:4,6,7,11,14	337:8 374:13	371:7 392:23
188:19 189:5	305:17 306:9	442:24 443:19	408:10 423:25	393:24 394:9
189:10 190:4	306:20,25	444:3,5,12,16	455:4,14 459:6	turbines 149:2
191:1,17	308:11 313:21	444:19,23	trickier 11:22	372:19 429:16
192:16 193:19	316:8 317:10	445:6,23	tried 76:1 124:25	430:17 433:10
205:14 206:6,8	317:19 324:14	446:12 447:11	236:10	450:25 457:12
206:15 216:20	324:18 328:3	447:13 448:3,5	tries 307:9	Turkey 455:10
216:23,25	328:12 329:15	448:9,14,25	339:25	turn 17:12 20:7
217:5,13 218:3	331:15,21	449:5,10,14,18	trigger 332:6,16	36:16 41:13
219:2,17,23	332:13,20	449:24,24	triggered 250:10	45:2 47:2 58:5
222:20 223:23	334:2 335:21	450:9,11 451:3	triggers 306:12	63:10 170:2
224:1,15 226:5	337:10,12,17	451:15 452:18	triple 229:22	178:7 189:20
226:13,18,22	338:1 339:19	453:3,23 454:5	267:9	234:2,13 244:8
227:15 230:11	341:6 349:9,24	454:20,23	tripping 280:5	244:18 245:14
230:25 231:23	352:17,23	455:9,10 456:1	troubled 268:22	246:23 250:10
233:13 234:7	353:6 358:9,25	459:3,6 461:25	true 117:8 118:4	266:10,11
235:17 238:15	362:15 363:2	462:19	131:13 170:11	269:24 284:1
240:10,11,18	363:19 364:16	Tribunal's 33:1	232:22 233:19	291:18 304:8
241:19 244:15	365:5 367:15	33:25 34:13	234:6 281:8	329:21 336:11
244:16 246:10	367:21 369:1	50:21 53:20	287:19 292:17	344:3 409:12
247:13 248:9	369:13 370:19	58:15 59:6	324:21 459:22	420:10 426:22
249:5 250:6,19	370:22 372:21	60:13,14 63:6	459:23	426:23 431:22
251:3,25	374:10 375:1,1	63:12 71:3	truly 304:18	435:17 451:4
252:10,19	375:8 377:8	74:11 80:10	trump 457:7	453:19 458:14
254:8 264:24	379:2 380:14	138:4 177:1	Trust 416:19	458:17 461:19
266:3,17,21	381:20 385:3	184:17 205:8	trustee 169:24	463:14
267:3,5,25	388:21 390:23	216:18 218:21	try 19:24 23:15	turning 232:7
268:4,10,14	391:2 392:14	223:4 224:6	96:25 97:2,3,4	296:8 300:7
269:6,8,23	393:7 395:25	234:21 241:10	98:10,14	348:25 349:7

<p>350:13 391:25 393:15 401:15 403:13 405:25 434:6 turns 35:25 237:10 317:7 twenty 321:18 two 12:11,22,23 13:5,14,17,20 19:18 23:7 31:6 33:16 34:6 39:19,20 57:7 58:7 59:19 83:15,18 84:16 85:14 90:14 91:6 96:2 97:12 105:7 111:1,24 111:25 116:23 117:20 123:14 124:5 128:6 129:4,18 131:7 150:21 154:6 160:13 161:14 169:14 175:18 188:12 189:15 189:16 192:25 205:21 209:25 217:9 229:16 230:2,7 247:16 259:15 268:11 269:18 272:24 272:25 275:3,4 277:3 278:18 293:2 296:3 304:2 307:15 308:24 311:17 311:18 312:24 313:1 315:10 315:16 336:12 350:14 351:25 356:13 369:1,3 369:3 381:21 403:2 408:13 418:6,17 423:22 424:17 428:13 431:23</p>	<p>433:9 450:20 two-week 240:21 tying 154:9 286:4 type 342:9 377:12 403:1 451:17 types 347:14 typos 293:10</p> <hr/> <p style="text-align: center;">U</p> <p>Ukraine 352:24 ultimate 92:15 113:16 276:6 328:19 ultimately 43:9 44:17 51:5 57:25 88:3,4 98:7 100:12 106:10 114:16 115:1,15 116:16 140:5 224:9 226:18 281:18 287:21 340:13 um-hmm 209:16 210:1,12 303:25,25 344:16 368:19 370:2,5 376:6,6 376:10 379:12 umbrella 362:13 unable 65:21 186:25 370:22 unaffected 63:4 unblock 178:1 uncertain 417:8 uncertainty 32:24 70:9 193:25 251:13 268:16 269:11 unchallenged 152:11 155:11 unclear 145:17 332:5 uncontested 343:24</p>	<p>undecided 81:13 underline 334:23 underlining 461:14 underlying 306:21 understand 13:14 22:16 24:3 25:12 29:17 31:24 66:11 78:10 87:11 89:7 91:6 92:20 101:2 109:16 113:23 134:1 147:1 149:20 156:13 163:10 167:10 172:8 174:13 174:22 183:6,9 186:15 199:12 200:10 201:4 209:7 210:7 216:8 221:2 234:16 258:12 260:1 279:18 303:14 312:10 315:5,18 321:11,14 345:16 357:17 360:9 365:4 375:7 378:22 378:25 380:18 385:20,22 402:13 434:13 434:15 446:11 448:11 452:11 understanding 6:24 11:10 14:2 31:4 53:9,14 56:4 66:18 85:22 88:14 93:11 95:25 102:13 104:14 105:23 106:13 106:18 107:15 107:23 116:12</p>	<p>210:18 316:5 349:22 372:2 385:5,8 434:23 understated 208:3 understood 63:7 93:21 187:18 187:18 198:12 279:7 307:18 312:14 344:21 348:22 387:2 396:11 402:21 undertake 190:5 412:1 undertaken 67:16 101:9 111:13 263:9 441:20 undertakes 143:4 undertaking 118:13 200:15 undertook 97:11 402:13 406:14 underway 142:18 undisputed 122:1 305:25 355:22 undoubtedly 341:2 unfailing 432:10 unfair 69:18 140:6 319:16 320:15 410:6,6 411:13 413:6 unfairly 239:23 unfortunately 19:25 46:25 351:15 361:13 389:15 394:18 unfrozen 55:21 unhappy 268:9 unheard 273:25 unilateral 198:16 198:24 292:12 293:4 385:24 unilaterally 64:1 197:24 199:6</p>	<p>247:20 250:11 287:5 292:17 383:14 387:3 unique 60:21 344:13 United 328:22 universe 215:3 221:12 unknown 331:14 unlawful 263:13 unlimited 457:17 unlock 301:23 unlocked 177:20 242:12 296:20 297:16 unperformed 455:12 unplanned 457:11 unreasonable 243:14 289:1,5 290:10,17 411:12 412:8 Unsatisfied 417:17 untenable 246:16 437:1 untoward 245:19 update 44:3 100:4 updated 34:13,14 35:15,16 97:14 97:16 181:6 255:20 392:16 394:7 updates 97:20 157:7 upgraded 97:19 upheld 199:16 uphold 21:9 178:3 upwards 145:7 urgently 449:21 use 15:12 54:25 56:25 94:22 137:17 156:13</p>
--	---	--	---	--

172:16 187:21 217:9 219:5 223:5,6 224:1 266:5,24 282:17 298:6 306:24 309:16 318:14 335:20 336:9 337:18 364:14 433:10 443:12,23 450:1 455:22 457:7 useful 464:8,12 uses 134:14 214:12 244:5 251:23 266:5 268:1 301:12 usually 238:22 455:17 459:17	212:9,10,12 213:14,14,19 214:4,8,9 216:19 217:10 217:16,16 218:19,20 221:5 222:7,24 222:25 223:1 223:16,17,25 224:20 226:13 226:17,18 246:9,11,15 296:8 298:7 364:12 366:6 371:11 379:1 380:3 382:11 402:20 418:13 418:20 422:1,2 427:22,24 428:12 432:23 439:22 441:4 442:14 447:21 447:22 453:24 461:15,20 462:6,10,20 valuations 461:24 463:7 value 16:21,24 17:6 18:5 20:22 20:25 21:11,14 58:16 65:12,19 65:25 66:5 71:5 71:21 72:15 73:17,20,25 74:19 75:1,3,7 75:10,11,13,15 75:24 76:2,7,8 76:12,22 77:2,4 77:8,11,14 78:6 79:15,18,20 80:7,12,21,22 86:8,16 92:23 96:11 98:14 99:9,13,14,24 100:8,22 101:9 101:11,12,14	134:19,23 137:15,20 138:7 139:11 141:7,15 148:5 161:7,25 165:7 165:9 166:10 167:4 171:10 171:18,23 172:1,8,25 173:2,3,12,14 175:8,8,10,14 176:12,13,15 177:18,20 179:9 180:10 180:16 181:10 181:12,16 182:20 187:12 187:23 188:7,8 188:18 190:2,8 192:18 193:10 193:12,16 208:1,3,19,23 209:21 210:14 211:24 212:4 212:18,18,19 212:23 213:8 213:12,15,22 213:22 214:6 214:14,19,23 214:24 218:8 218:11 224:19 225:21,22 232:4 234:8 237:11 242:8,9 242:12 248:10 251:18 252:3 252:11,17 253:14,22 265:5 269:18 286:14 288:3 296:14,20,21 296:25 297:10 297:11,16,17 299:13 301:22 301:23 331:2,4 352:13 362:16	362:17,18,20 362:22,23 363:2,5,19,21 364:3,8,17,19 364:21,25 365:13,16,22 365:23,25 366:18,25 367:12 368:6,9 369:15 370:19 370:24,25 371:2,14 372:9 374:1,14 375:12,14 376:8,12,23,24 379:2,6 380:15 382:15,17 384:20,22 390:24 395:3 397:9 398:19 399:4,7,17 400:6,20,24 401:22,25 402:20,25 403:11 404:15 414:5 418:20 420:5 421:9,9 421:12,14,21 422:9 423:4 425:7,13 426:11 427:19 427:25 428:12 431:14,24 432:22,25 433:4,7,15,18 434:4,8 435:6 435:23 438:8 439:11,15,20 439:24 440:4 440:18,21 441:12,17,22 442:2,2,8,9 444:7,8,25 447:12,14,24 451:8,10,11,21 453:9 454:14	455:1 459:3 460:24 461:20 463:13 valued 165:10 167:16 171:3 173:6,8 208:15 209:12,15,20 219:3 226:14 254:8 377:1 379:11 391:5 439:25 446:2 459:13,17 460:3,7 461:1 valueless 242:22 376:3 400:5 419:3 424:5,24 435:8,13,16 438:5 valuing 80:4 219:10,10 222:9,12,16 225:13,14 364:9,10 369:10 373:8 382:6 402:5 445:2 446:24 451:5,7 variables 222:24 422:1,2 various 19:6,8 22:6 36:23 99:2 115:12 168:18 168:22 183:19 183:23 184:3 211:10 325:6 388:4 462:15 Vattenfall 430:3 vein 261:2 verbatim 390:20 version 86:1 117:5 393:2 versus 80:8 156:14 172:7 208:21 268:12 355:2,17 356:7 420:25
--	---	--	---	--

V

v 424:3 455:9
vacuum 192:23
381:7
valid 85:17
303:24 385:23
397:25
validity 294:20
462:5,7
valuable 76:16
99:23 100:12
169:21 355:7
355:11 376:14
399:23
valuation 21:14
72:9 76:15
79:12 100:9
146:19,24
171:13 172:9
173:4,11 181:6
181:7,7 182:6
206:8 207:5,7
207:10,15,20
207:22 208:7,8
208:19 209:2
210:23 211:14

valuations

value 16:21,24
17:6 18:5 20:22
20:25 21:11,14
58:16 65:12,19
65:25 66:5 71:5
71:21 72:15
73:17,20,25
74:19 75:1,3,7
75:10,11,13,15
75:24 76:2,7,8
76:12,22 77:2,4
77:8,11,14 78:6
79:15,18,20
80:7,12,21,22
86:8,16 92:23
96:11 98:14
99:9,13,14,24
100:8,22 101:9
101:11,12,14

<p>vessels 429:19 430:21 vested 169:3,9 179:19 350:18 354:14,23,25 355:12 398:23 view 6:20 20:8 76:3 116:13 213:7 220:24 242:10 243:2 254:3 266:18 277:24 278:4 289:3 314:12 359:11 371:10 371:13 377:11 388:23 400:23 430:23 440:9 viewed 411:3 459:19 viewing 10:16 views 103:22 violate 262:15 violated 277:7 violation 329:7 352:12 411:13 424:9 virtually 238:17 vis-à-vis 69:14 visa 317:22 visas 317:8,14 visualization 227:6 voiceover 12:4 VOLUME 1:12 volumes 331:8 vs 1:6</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 57:9 132:6 174:1 290:6 313:22 322:21 waiting 45:11,16 247:9 301:25 waive 255:14 258:21 336:18 406:16,22</p>	<p>412:2,5 452:7 waived 148:4 258:16 277:16 281:16 302:16 377:13 waiver 258:18 277:25 278:10 278:11 302:5 302:19 waiving 452:10 452:14 walk 83:13 96:18 289:2,6 Wannop 2:5 want 9:22,23 10:1 24:2,5 25:1,3 32:19,25 42:5 47:10 58:7 61:14 78:10 82:1,2 89:2 90:10 93:7,8 103:21 104:22 120:5,9 123:11 126:12 128:20 129:23 142:7 143:19 149:23 157:11 160:19 167:10 171:5 186:15,21 204:8,10 210:25 213:5 216:14 220:25 226:8,10 234:13 246:5 270:11 278:24 290:8 291:21 300:11 303:4 307:16,22 313:21 321:14 359:18 371:19 372:1 384:21 395:14 400:13 404:9 433:14 445:20 452:9,9 454:1 wanted 10:3 13:1</p>	<p>74:17 78:5 110:15 113:21 114:7 187:4,5 206:5 220:4 308:5 346:6,14 383:8,13 389:6 463:15 wants 128:16 306:8 438:8 washroom 159:8 wasn't 16:10 23:23 24:13 50:13 80:19 81:13 94:3 110:17 113:18 118:12 121:7 125:5 132:25 134:7,20 137:6 142:13 149:14 161:10 165:1 166:3,7 232:13 233:14 236:9 264:9 357:24 395:25 396:25 398:24 406:13 448:14 waste 118:22 wasting 119:16 watch 10:13 160:2 watching 11:5 water 51:14 112:15 270:8 waved 383:22 waves 112:14 way 6:12 9:3,7 15:2 68:13 70:3 74:14 77:15 78:2 121:8 129:10 133:6 133:22 134:21 161:13,25 162:2 165:7 166:9 178:2 181:4 182:25 201:12 219:3</p>	<p>219:22 222:11 225:13,20,24 236:6 247:11 252:14 256:18 258:7 260:24 280:3 286:3 287:22 288:25 290:3,11,18 291:25 292:25 300:5,6,18 314:10 315:1 317:1 320:14 335:11 336:21 367:2 375:10 377:20 378:24 380:10,13,19 380:22 385:4 387:15 403:4 435:24 440:21 443:4 451:2 ways 161:14 220:21 246:18 281:5 284:6 we've 53:21 211:24 weatherman 239:17 Wednesday 14:4 14:10 195:16 205:24 206:3 weeds 410:5 week 35:5 36:20 82:17 96:9 104:10 261:18 373:17 404:20 414:17 419:13 439:1 462:17 462:18 weeks 256:21 weighed 218:7 weight 462:3,23 weighted 214:15 welcome 5:10,11 8:13 30:13 83:2 111:19 197:8 238:7</p>	<p>Wendy 1:16 5:6 went 23:11 36:11 74:13 78:1 166:8 206:19 359:12 361:21 364:13,15 374:8,9 412:1 weren't 9:5,5 16:20 19:10 33:11,11 49:11 134:10 274:12 274:17 304:3 whatsoever 154:10 157:6 403:12 wheelhouse 103:6 White 145:7 148:24,25 261:4 402:24 403:3 wholly 186:21 300:18 321:12 453:15 Wiarnton 238:25 246:19 wiggle 82:14 159:4 Wilkinson 51:12 52:22 willfully 322:22 Williams 2:4 6:2 Willie 238:25 246:19 willing 12:23,25 61:10 130:18 wind 15:20,21,21 15:23 26:19 29:4 33:12,16 33:17,21 34:10 34:14,15,24 35:17,20,20,23 36:6,13,14 37:14,17 39:6 40:1,2,4,5,10 40:20 41:2 42:3</p>
--	---	--	---	---

42:19,21 47:16	32:17 33:2,19	137:24 138:4	266:2 267:21	410:2,21 411:9
51:2 56:7 60:7	36:11 38:20	140:11 141:8	267:24 268:4	412:20 414:6
60:23 62:2,17	40:25 41:6,10	142:10 143:9	268:10 269:5	416:11 417:12
67:5,8 68:19,25	41:12 42:6,12	143:15,18	269:22 270:2,3	417:19,21
69:8 84:24	42:25 43:3,5,9	144:2,16 145:8	270:4,19 271:2	419:4 420:5
94:16 95:12	43:10,22 44:6	147:25 148:3	271:11,19	423:14 425:6,8
96:2 110:9	44:16,19,23	149:18 150:2	272:5,12,19,19	426:16,19
112:12 113:5	49:16 50:6,13	150:14 154:21	273:14 275:22	427:9,17,18
114:7 116:10	50:17 51:18	155:24 157:4	276:3 277:13	428:6,8 430:7
155:22 156:1	53:24 56:11,25	157:13,18	277:15,25	432:11,16,19
194:6 207:18	57:19,25 58:11	162:8,15	280:21 281:2	432:21 433:19
207:21 239:25	59:23 66:25	163:13,19	281:10,15	434:4,9 435:23
245:8 256:3,6	67:13 68:4	165:5,13,22	282:3,7,17	436:5,8 437:3,6
260:23 261:4	69:14 74:25	167:25 168:1,4	285:1 286:2,11	437:8,11,14,24
265:14,20,25	75:2,9 76:9	168:5,8,9,14,19	287:18 296:3,3	438:1,17 439:2
291:10 294:11	77:10 80:20	169:15 174:8	296:5,13,15,17	439:18 440:17
342:24 343:11	84:18 88:18,24	175:25 176:6	298:1,19 299:5	441:7,12,15,21
345:7 346:25	89:8,15 90:2,8	176:10,24	301:10,21	442:6,9,11
353:20 357:2	92:17 95:11,16	177:3,23 178:1	302:4,9,18	444:3,8,12,17
391:19 392:23	95:25 96:24	180:11 182:10	309:19 323:1	444:20,23
393:15,17	97:8,11,23 98:1	182:12,13	323:17,19	445:24 446:15
398:13 403:6	98:9,23 99:1,19	183:21 191:1	325:10,15,19	447:15 448:2
416:17,22,24	100:1,4 106:3	191:11 192:4	326:15 330:3	449:10,14,25
416:25 417:5	107:4 111:6	192:17 193:9	330:15 331:1,7	450:12 453:14
428:17,23	112:4,9 113:9	193:19 194:3	331:9,12	454:6,7,16,23
429:25 430:3	113:19,25	198:2,7,14	332:12,20	456:1 459:22
436:23 448:4	114:3,14,19	205:10,11	333:22 334:1,8	Windstream's
448:15 456:14	115:2,7,15,20	206:2,6,7,21	334:18 335:4	16:11 22:17,18
456:22 457:5	116:7,8 117:2	207:6 215:5	335:21 336:2,7	22:19 25:13,14
457:12 459:11	117:13 118:6	216:23,25	340:7 341:4	25:14 53:22
460:3,6,13	120:2 121:3,11	219:2 227:8	342:19,22	68:20 69:1 84:9
461:1,5,11	121:17,19	228:5,23 229:7	345:23 348:18	84:13 86:11
windfall 417:24	122:15,24	230:10 232:18	349:9 361:25	87:23 88:25
window 204:8,9	123:4,18 124:1	232:25 233:6	362:14 379:2	96:6,13 116:4
377:1	124:12,13	233:25 234:3	380:13,22	116:13 117:4
Windstream 1:4	125:9,11,23	237:11 240:10	381:13 383:9	126:20 130:7
15:17,22,22,25	126:5,11	240:11,14	386:18 390:23	143:5 152:16
16:4,9,22 19:8	127:12,18,20	241:19 243:8	391:2 392:14	154:20 193:20
19:16,19,22	128:16 129:7	243:19 244:7	392:15 393:8	252:12 276:8
20:2,3,10,14,15	129:14,16,21	244:15 245:1	393:18,22	309:23 330:9
20:18,20,21,23	129:24 130:16	245:12 246:8	396:21 397:11	330:24 346:3
21:5,9,19 22:1	130:23 131:8	250:6,25	399:3,6 400:18	411:8
22:5 24:24,25	131:23 132:1,3	252:12 255:23	401:25 402:10	wipe 190:21
25:20,23 26:1,9	132:11 133:10	256:1 258:16	402:21 404:18	wish 13:2 178:15
27:2,3 28:8	134:8,21,22	258:20 259:1	404:19 405:8	wished 200:3
29:7,24 32:4,9	136:8,17,18,21	264:3,20,23	405:15,22	388:22

<p>wishes 462:24 withdraw 7:3 10:23 withdrawn 383:16 384:9 withstand 254:7 witness 3:10 6:13 8:17 36:10 84:13 85:21 95:21 110:11 110:19 112:8 115:4 116:22 117:8 118:3 120:13 121:2 206:1 326:1 330:19 336:23 witnesses 2:8,10 3:11 8:25 11:3 76:6 83:15 184:2 205:19 414:17 439:1 Wolfe 41:3,12 168:4,9,19 175:25 457:12 won 394:17 wonderful 36:13 wondering 372:17 Wood 196:10 word 10:17 12:14 55:1 56:16,17 57:1 95:6 278:8 278:9 322:22 413:19 wording 134:14 172:5 458:18 words 26:21 28:22,25 53:10 53:13 61:3 74:8 77:21 79:9,17 136:21 137:18 138:14 185:16 187:2 198:7 213:10 248:23 277:11 281:22 288:19 290:10</p>	<p>290:11,17 302:14 306:24 309:17 325:15 326:3 327:11 335:20 367:6 388:14 390:10 399:18 work 14:25 19:22 50:7,11 76:8 80:20 82:10 90:10 96:10,10 99:21 101:8,19 110:18 111:11 112:20 115:7 165:5 168:20 177:23 178:2 200:15 221:5 227:20 263:1 270:16 280:11 294:10,12 362:9 372:11 372:18 373:19 390:18 391:1 394:4 413:1 429:21 433:21 455:12 worked 110:23 176:23 working 6:5 works 82:5,17 98:3 318:16 world 112:9 190:3 191:5 192:2 200:19 280:12 311:22 362:20 369:17 369:19,20 377:16,17 400:19 402:20 417:5 429:8 430:2 431:6,10 435:20 436:12 436:20 437:5 437:12,18 440:10 447:9 447:10,12</p>	<p>454:16 462:25 463:7 world's 416:16 448:12,13 worried 136:3 worsened 195:10 worst-case 196:17 worth 75:3 80:5 280:7 282:1 286:14 296:19 297:15 361:22 391:6,10 395:25 396:23 426:25 427:1 427:23 worthless 65:5 89:21 90:1 186:2 249:3 330:9,12 331:17 425:2 427:14 440:10 453:9 wouldn't 119:3 140:18 142:16 165:21 179:8 249:11 279:17 282:25 288:23 317:18 347:24 366:9,18,24 367:15 371:24 446:16 wrap 463:21,23 writes 42:25 144:17 writing 30:7 130:16 written 23:11 142:24 151:6 235:11 252:14 454:4 455:24 wrong 75:23 146:22 175:11 220:16 234:8 242:14 246:3 278:8 314:10</p>	<p>315:6 319:18 319:21 320:2,6 334:19 353:13 354:16 383:17 387:5 396:3 447:17,18 461:16 wrongful 140:15 232:21,24 241:20 251:10 264:18 265:7 266:2 273:10 273:11 282:25 314:23 320:17 327:14 376:18 378:4,6 414:23 420:13,15 wrongfulness 282:20 wrongs 334:12 334:13,15 wrote 123:9 255:15 365:7 WWIS 41:11,18 49:5 168:19 175:4 245:7 249:13 258:20 262:12 277:15 330:10 343:8 344:14 346:9 353:15 362:7 362:18 372:4 404:12 411:20 412:4 WWIS' 390:18 WWIS's 342:2</p>	<p>171:21 177:9 183:14,18 188:5,22 204:25 223:19 291:4 347:3 348:16,18 359:11 363:17 367:23 368:14 368:19,20 374:4 375:18 378:9,10 379:20 380:25 390:14 447:2 year 44:14 45:1 57:18 118:8 313:1 402:17 403:11 years 15:19 30:25 44:15,17 49:7 62:9 70:14 89:12 91:23 95:3 138:16 197:4 198:19 204:11 214:7 239:21 240:24 256:17 259:15 301:17 305:8 305:20,21 311:17 312:17 312:25 315:15 316:2 317:11 326:23 339:4 457:21 yield 217:15 Yu 3:4 7:20</p>
<hr/>				
Z				
<hr/>				
<p>zero 28:23 58:14 426:25 Ziegler 121:1 zoom 278:22 386:8 404:9 zooming 342:6</p>				
<hr/>				
0				
<hr/>				

1	310:13 339:17 403:19 407:8 408:12 409:14 421:7,13 422:10 423:2 423:14 438:22 439:10 1105(1) 407:13 407:22 111 411:6 1110 262:16 305:19 307:6 310:14 339:18 349:10 407:7 421:6,8,25 422:6 423:14 438:22 439:10 1116 303:11,19 307:14 310:21 311:5 313:4 316:2 317:18 318:16 321:4 332:24 333:9 1116(2) 305:2,6 322:11 328:16 333:16 1117 307:15 310:21 311:5 313:5 316:2 317:18 318:16 321:4 1117(2) 305:2,13 322:12 328:16 333:17 112 389:18 1121 300:14 302:2 1128 328:23 113 389:18 1131(2) 408:8 114 197:10 116 300:14 118 205:6 11th 25:16 134:6 299:9 12 192:25	12.5 91:11 105:21 106:1,25 109:1 12:00 158:25 12:12 159:20 12:20 159:14 12:21 159:21 122 214:3 126 43:13 128 227:5 12th 255:10 325:25 385:25 13 143:14 343:2 346:24 130 351:5,7,16 131 229:21 351:5 351:7,16 137 43:13 14 4:3 15:19 119:11 256:7 14-B 358:1,17 14(b) 349:22 145 386:2 146 349:18 15 82:11,11 119:2 125:10 198:4 401:8 15.2 340:23 15th 125:14,16 255:21 261:17 388:16 16 235:19 392:24 160 4:7 17 332:25 404:22 18 197:22 198:17 198:24 199:4 199:11 202:13 206:17 261:23 18-month 197:16 197:23 198:8 18.45 149:3 185 203:14 189 4:8 18th 196:3 200:12,24 202:23 207:11 427:2	19th 325:9 336:16 1st 203:16 <hr/> 2 <hr/> 2 39:13 96:17 145:6 147:6,24 199:25 235:18 261:5 344:11 381:8 393:4 458:9,19 461:12 2,000 193:1 2.4(a) 386:20 2.4(b) 384:5 385:13 2:33 238:5 20 159:3 303:3,7 20-year 49:1 2001 407:19 2004 35:9 2006 34:8 2008 34:9,11 35:13 42:12,14 2009 36:2,17 37:3 42:23 206:11 206:13 213:18 222:7 2010 15:15 43:8 47:14,21 50:16 50:18 201:24 201:25 203:3 203:20 245:21 249:19 265:20 342:7,8 344:1 394:3,10 428:17 429:22 437:1 2011 15:19 25:17 27:5,25 50:25 50:25 73:9 134:6 135:3,23 136:6 138:16 148:4 203:3 214:7,8 240:7 242:17 244:2	251:7,12 253:6 299:9 307:9 326:8 439:8 2012 68:6 242:18 244:4 250:1,8 251:7 285:9 286:14 298:1 299:2 303:15 330:12 331:18 335:16 384:12 385:25 392:10 392:13 394:13 419:3 427:9 438:9 2013 206:11,13 213:18 222:8 269:21 276:8 2014 169:20 325:9,22 358:5 2015 49:7 202:24 214:15,15 293:7 388:16 393:19 414:13 2016 16:5 27:4 28:14 32:13 80:3,8 83:5 94:11 95:9 98:18 99:6 108:25 110:8 115:16 116:16 120:19 125:9 127:22 134:3 135:4,12,20 138:1 139:14 154:1,14 163:2 163:5 164:1,4 164:22,23 168:8 173:21 174:16 181:7 182:3,22 183:12,21 184:10 194:14 194:19 206:12 206:23,25 221:5 222:7 226:13 227:23
----------	--	--	--	--

246:25 247:2	2019 144:12,14	127:24	189:4 286:19	341 4:12
249:17 325:25	144:16,20	22 415:6,8,21	290:17,20,20	35 158:15
332:14 334:14	145:4 150:17	419:20	291 186:22	366 47:12
334:18 382:22	155:14 199:14	221 4:9	187:21 189:4	367 52:12,20
392:16 394:18	2020 19:12 21:11	22nd 50:18 203:3	368:11,15	368 50:22
399:4 400:21	21:13,15 80:7	228:12 262:2	291.4 208:12	369 50:23 51:11
401:23 404:22	106:11,15	294:16 295:4	292 262:22	52:5,21
417:25 441:23	145:23 146:19	305:25 330:12	297.7 208:10	371 54:8
444:24 445:5	146:23 150:4	338:25 339:1,4	2R2 1:25	376 52:23
445:12 446:14	163:4 181:7	231 145:5 147:4,5	_____	377 52:18,20,23
2017 50:3 64:9	182:4,7,16,20	236 298:13 311:2	3	38 84:11
97:12 105:22	196:4 200:13	238 4:10	3 43:6 46:3,4,10	_____
107:4 108:25	202:13,23	24 49:23,24	46:12,13 81:24	4
112:1 114:18	207:11 213:19	206:17 249:15	98:25 145:6	4 31:14 64:8
115:2 116:8,16	214:9,23 217:6	250:9 292:14	147:6,24	96:17 145:6
116:20 117:11	217:11,16	293:6,7 309:9	199:25 261:5	147:24 199:20
117:15,18,21	219:9 222:10	406:8 409:23	342:13,18	199:23,25
127:24 130:9	222:16 223:6	24-month 293:12	381:8,8 458:9	250:3 261:5
130:24 132:19	224:20 226:16	24th 51:7	458:20	303:15 304:13
139:16 154:14	261:17,23	25 17:17 58:6,17	3.4 214:17	396:12 458:9
227:24 228:12	262:2 339:5	241:23 251:17	3.7 214:17	458:20
247:2 249:21	427:2 428:17	363:11 365:23	3.92 107:21 109:2	4.10.04 34:14
249:24 250:3	429:6,21,22,23	372:23,24	30 4:4 12:11 17:1	35:10 39:15
255:10,21	2021 155:6	440:13	69:22 391:5	4:04 321:18,23
256:7,23	2021-26 1:1	25-plus 373:24	393:14 401:6	4:22 321:24
292:13,15	2022 110:6	25.2 193:14	415:4,6	40 303:10 430:1
293:8 305:25	2023 155:18	254 215:8	300 41:4 198:5	456:8
326:5 335:14	197:4 429:7	25th 262:1 326:5	391:6 427:24	40,000 118:12
335:22,23	2024 1:11,24 5:2	26 60:12	439:25 455:3	415 4:13
336:16 339:2	196:13 464:18	260 59:2	304 4:11	43 458:22
382:23 392:16	2025 203:16	27 134:3 135:3,12	305,000 147:15	45 96:13 111:12
393:2,20	2026 155:7	184:22 278:18	30th 246:25	415:3,4
2018 98:7 139:20	2029 155:8	278:21 279:2	254:18 400:21	48 125:12 312:11
143:25 144:11	206 262:6	445:5	31 173:7 288:17	481 375:2
145:19,25	208 262:9	27th 108:24	288:19 297:12	483 17:24 18:14
146:7,11,16	20th 143:25	123:14 445:12	363:3 369:18	72:6 78:24
154:25 157:17	145:18 146:7	28 65:10 102:20	371:14,16	291:2 363:21
227:12 259:21	196:13 197:4	107:3 393:14	373:4,15	484 290:25
259:24 260:15	227:12 259:21	281.8 208:8	391:10 439:22	487 59:1
260:23 276:24	259:24 260:15	284 184:14	440:20 441:23	49 111:20
277:4 279:25	276:24 277:4	285 184:14	31.2 173:9,10	4th 49:7 50:3
302:15 306:5	279:25 302:15	28th 108:24	193:11,13,16	132:5 139:16
306:16 316:18	21 30:6,15 59:2	173:21 174:16	207:2	140:10 202:24
324:24 327:14	206:8,18 207:1	29 66:20	32 17:22	229:9 249:21
329:25 387:4	219 184:20	290 184:16	326 350:21	249:23 250:1,7
394:5	21st 123:16	185:18 186:17	333 1:10 208:12	256:23 285:8

292:13 298:1 299:2 335:14 335:22 384:12 385:25	370:1 371:16 372:12 373:22 374:2 380:1,2,2 381:16 384:16 384:23 385:1 387:15 390:1 398:3 418:25 427:12 438:2 440:6 464:18	9.2(d)(1) 66:10 9.48 99:5 101:4 9.8 105:4 9:00 1:11 5:3,5 464:19 9:21 22:23 9:33 22:24 9:57 45:9 90 82:10,12 900 1:10 900-333 1:25 91 296:12 93 357:13 360:4 94 36:7 360:4 95 36:7 177:8,11 177:15 188:2,5 360:4 97 38:18 178:25 179:11 98 184:15 99 169:7 211:3 9th 130:17 255:11		
<hr/> 5 <hr/>				
5 1:11 5:2 44:2,4 44:10 145:6 147:6,24 216:18 218:2 261:5 343:2 346:7,11 5.1 48:8 50 159:15 505 325:11 55 159:2 160:9 58 4:5 5th 126:10 130:9 131:7 292:13 292:15	6.81 98:20 600 399:20 64 42:18 65 42:18 6th 122:25 125:8 125:20			
	<hr/> 7 <hr/>			
	7 38:5 256:17 260:23 7:03 464:17 758 147:7,8 7th 51:13			
	<hr/> 8 <hr/>			
6 32:1 43:11 46:7 46:10,11,13 49:9 50:25 64:25 66:4,13 66:15 71:9 81:3 85:1 88:24 89:5 92:5 96:22 100:21 106:3,4 106:10,24 107:5,16,18 109:6 113:20 173:15 175:14 182:9 185:23 186:7,18 187:10,15 193:13,16 242:1 245:2 249:2 251:19 252:18 254:10 261:24 269:17 288:18,20 296:25 297:4,9 297:19 363:6 368:4 369:20	8 32:19 91:18,22 106:9,15 107:12,24 109:3,4,7 458:15 8.1 204:3 458:25 8.1(d) 197:18 198:1 199:24 200:6 8.45 149:2 83 4:6 84 155:5 86 34:3 89 167:19 170:24 173:19			
	<hr/> 9 <hr/>			
	9 34:1 105:4 199:3 9.1 458:12 9.1(b) 458:23 9.1(j) 197:17,19			