



**Public Hearing**

**Audience publique**

**Commissioner / Commissaire**

The Honourable / L'honorable  
C. William Hourigan

**VOLUME 13**

**Held at :**

Ian Scott Building  
100 Thomas More Private  
Second Floor Courtroom  
Ottawa, Ontario  
K1N 1E3

Wednesday, June 29, 2022

**Tenue à:**

Immeuble Ian Scott  
100, Thomas More Private  
Salle de cours au 2<sup>e</sup> étage  
Ottawa, Ontario  
K1N 1E3

Mercredi, le 29 juin 2022

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## II Appearances / Comparutions

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Christine Mainville	Co-lead Counsel / Avocate principale
Kate McGrann	Co-lead Counsel / Avocate principale
John Adair	Co-lead Counsel / Avocat principal
Chris Grisdale	Commission Counsel / Avocat de la Commission
Mark Coombes	Commission Counsel / Avocat de la Commission
Anthony Imbesi	Commission Counsel / Avocat de la Commission
Fraser Harland	Commission Counsel / Avocat de la Commission
Liz McLellan	Commission Counsel / Avocate de la Commission
Carly Peddle	Commission Counsel / Avocate de la Commission
Emily Young	Commission Counsel / Avocate de la Commission
Peter Wardle	The City of Ottawa
Betsy Segal	
Catherine Gleason-Mercier	
Jesse Gardner	
John McLuckie	Amalgamated Transit Union 279
Jaime Lefebvre	
Michael Valo	Alstom Transport Canada Inc.
Charles Powell	
Lena Wang	
Jacob McClelland	
Sarit Batner	Ontario Infrastructure and Lands Corporation (IO)
Julie Parla	
Morgan Watkins	
Solomon McKenzie	

### III Appearances / Comparutions

Kyle Lambert  
Jeremiah Kopp

Morrison Hershfield

Heather MacKay  
Jeffrey Claydon  
Adam Mortimer

The Province of Ontario

Michael Varantsidis  
Gary Gibbs  
Kim Gillham

Rideau Transit Group – EJV (Engineering Joint Venture)

Jennifer McAleer  
Peter Mantas  
Maria Braker

Thales Canada Inc.

David Jeanes

Transport Action Canada

Linda Rothstein  
Gordon Capern  
Michael Fenrick  
Jean-Claude Killey  
Kartiga Thavaraj  
Jesse Wright  
Mannu Chowdhury

RTG (Rideau Transit Group General Partnership)

+

OLRTC (Ottawa Light Rail Transit Group General Partnership)

+

RTM (Rideau Transit Maintenance General Partnership)

Michael O'Brien  
James Doris

STV

**IV**  
**Table of Content / Table des matières**

	<b>PAGE</b>
<b>MR. PETER LAUCH, Affirmed</b>	1
Examination in-Chief by Ms. Kate McGrann	1
Cross-Examination by Ms. Sharon Vogel	61
Cross-Examination by Ms. Lena Wang	110
Cross-Examination by Mr. James Doris	125
Cross-Examination by Mr. John McLuckie	129
Cross-Examination by Mr. Kyle Lambert	138
Cross-Examination by Mr. David Jeanes	139
Cross-Examination by Mr. Manu Chowdhury	141
<b>COUNCILLOR SARAH WRIGHT-GILBERT, Affirmed</b>	148
<b>COUNCILLOR DIANE DEANS, Affirmed</b>	148
<b>COUNCILLOR CATHERINE McKENNEY, Affirmed</b>	148
<b>COUNCILLOR ALLAN HUBLEY, Affirmed</b>	148
Examination in-Chief by Mr. Chris Grisdale	149
Cross-Examination by Mr. John McLuckie	177
Cross-Examination by Mr. David Jeanes	180
Cross-Examination by Mr. Peter Wardle	183
Re-Examination by Mr. Chris Grisdale	200

**V**  
**Exhibit List / Liste des pièces**

<b>No</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
208	RTC00885962 – Email from Peter Lauch to Ramon Villaamil et al. For Discussion: Revises RSA Prerequisites 15 August 2019	57
209	COMH0000033 – Article – RTG Confident It Will Complete LRT By March 31 Manconi Not Convinced 12 February 2019	71
210	COMH0000032 – Article – RTG to Hand over reins to Ottawa LRT by early August, service to launch in September – Mayor 19 June 2019	72
211	COW0468363 – Letter RTG to City of Ottawa 10 May 2019 with attached Letter OLRT to RTG 9 May 2019	77
212	COW0523210 – Independent Certifier’s Report on Revenue Service Availability 31 August 2019	91
213	COW0523248 – Letter City of Ottawa to RTG 10 March 2020	106
214	ALS0013678 – Letter Alstom to RTG 30 April 2020	112
215	ALS0064653 – Email from Tom Pate to Richard France et al. Re: Proposed additional works 27 April 2020	115
216	COMH0000030 – Email from Richard France to James Messel et al. Re: OCS Parts 8 May 2020	119
217	ALS0013513 – Letter Alstom to RTG 4 May 2020	122
218	ALS0014680 – Letter Alstom to RTG 14 May 2020	123
219	RTC00069375.002 – Letter RTGEJV to OLRTC 21 January 2019	144
220	ALS0012477 – Technical Compliance Report 27 June 2019	145

Ottawa, Ontario

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--- Upon commencing on Wednesday, June 29, 2022, at 8:58 a.m.

**THE REGISTRAR:** The hearing is not resumed. The Honourable Justice Hourigan is presiding.

**COMMISSIONER HOURIGAN:** Good morning. Welcome to day 13 of the hearings. The witness this morning is Mr. Peter Lauch.

Are you there, sir?

**MR. PETER LAUCH:** I am. Good morning.

**COMMISSIONER HOURIGAN:** Good morning. You're going to be asked some questions by counsel today. Before we do that, though, we need you either to swear an oath to tell the truth or affirm to tell the truth. Which would you prefer?

**MR. PETER LAUCH:** Affirm, please.

**COMMISSIONER HOURIGAN:** All right, stand by.

**--- MR. PETER LAUCH, Affirmed:**

**COMMISSIONER HOURIGAN:** All right, thank you.

Mr. Lauch, you'll first be examined by Ms. McGrann of Commission staff.

Go ahead, Ms. McGrann.

**--- EXAMINATION IN-CHIEF BY MS. KATE McGRANN:**

**MS. KATE McGRANN:** Good morning, Mr. Lauch. I'm sorry for my delayed appearance here. We're just experiencing a couple of technical details. Can you hear me okay?

**MR. PETER LAUCH:** I can hear you, yes.

**MS. KATE McGRANN:** Okay, perfect. We'll start with some questions about your background. I understand that you're a professional engineer?

**MR. PETER LAUCH:** I am.

**MS. KATE McGRANN:** And the Stage 1 Ottawa Light Rail Transit

1 Project was the first rail project that you worked on; is that correct?

2 **MR. PETER LAUCH:** That's correct.

3 **MS. KATE McGRANN:** Sorry, I missed your answer there.

4 **MR. PETER LAUCH:** That's correct.

5 **MS. KATE McGRANN:** And was it also the first P3 project that  
6 you've worked on?

7 **MR. PETER LAUCH:** Yes, it was.

8 **MS. KATE McGRANN:** Okay. And I understand that you joined  
9 the project in or about June of 2013 as a Technical Director for RTG; is that right?

10 **MR. PETER LAUCH:** That's correct.

11 **MS. KATE McGRANN:** And that role involved, on behalf of RTG,  
12 liaising OLRTC and the City?

13 **MR. PETER LAUCH:** Correct.

14 **MS. KATE McGRANN:** Dealing with the independent certifier?

15 **MR. PETER LAUCH:** Correct.

16 **MS. KATE McGRANN:** Interacting with the lender's technical  
17 agent who's also sometimes referred to as the senior creditor's technical advisor?

18 **MR. PETER LAUCH:** Yes, that's correct.

19 **MS. KATE McGRANN:** Okay. And then reporting up to the RTG  
20 Board of Directors?

21 **MR. PETER LAUCH:** Correct.

22 **MS. KATE McGRANN:** So fair to say that you were familiar with  
23 the RGT Board of Directors? You were appearing before them and reporting to them  
24 regularly?

25 **MR. PETER LAUCH:** My direct report at the time was the CEO of  
26 RTG, Mr. Estrada. I wasn't part of the board meetings while I technical director but I  
27 certainly was aware of the board, and I was responsible to provide updates to Mr.  
28 Estrada who would then present them to the board.

1                   **MS. KATE McGRANN:** Okay, so you're familiar with at least some  
2 of the information that's being provided to the board?

3                   **MR. PETER LAUCH:** Yes.

4                   **MS. KATE McGRANN:** And you're also familiar with the board's  
5 response to that information?

6                   **MR. PETER LAUCH:** Yes.

7                   **MS. KATE McGRANN:** And you're interacting regularly with the  
8 City in your role as technical director?

9                   **MR. PETER LAUCH:** Correct.

10                  **MS. KATE McGRANN:** And then, in or about July 2018, you  
11 replaced Mr. Estrada as the CEO of RTG; is that right?

12                  **MR. PETER LAUCH:** That's correct.

13                  **MS. KATE McGRANN:** And in that role, I understand, amongst  
14 things, you negotiated the Substantial Completion Agreement with the City?

15                  **MR. PETER LAUCH:** That's correct.

16                  **MS. KATE McGRANN:** And you negotiated the Revenue Service  
17 Availability Term Sheet with the City?

18                  **MR. PETER LAUCH:** That's correct.

19                  **MS. KATE McGRANN:** You were a member of the trial running  
20 review team?

21                  **MR. PETER LAUCH:** I was.

22                  **MS. KATE McGRANN:** Okay. And you continued on as RTG's  
23 CEO until in or about July 2020?

24                  **MR. PETER LAUCH:** That's correct, yes.

25                  **MS. KATE McGRANN:** In addition to acting as RTG's CEO, you  
26 also took on the role of CEO of RTM in or about November of 2019; is that right?

27                  **MR. PETER LAUCH:** That is correct.

28                  **MS. KATE McGRANN:** And you also remained in that role until



1 about July 2020?

2 **MR. PETER LAUCH:** Yes.

3 **MS. KATE McGRANN:** Prior to you stepping into that role, am I  
4 correct that there wasn't a CEO of RTM?

5 **MR. PETER LAUCH:** There wasn't a CEO, per se. There was a  
6 general manager that reported directly to the RTM Executive Committee.

7 **MS. KATE McGRANN:** And just while we're speaking about this --  
8 I apologize; we'll be jumping around in the chronology a little bit -- from a governance  
9 perspective, in your view, was there any change to the management of RTM once a  
10 CEO was appointed?

11 **MR. PETER LAUCH:** Well, one of the reasons that I was  
12 appointed was to -- was to introduce some changes to the structure of RTM. But as far  
13 the management and reporting, other than the replacement of the general manager, I  
14 would have to say no, there wasn't any -- there wasn't any upstream reporting change.

15 **MS. KATE McGRANN:** Okay. Stepping back in time to in or  
16 around early 2019 -- and I want to speak a little bit about the relationship that RTG had  
17 with the City. And in your Commission interview -- I'm paraphrasing here, but you said  
18 that the relationship with the City became more litigious after the sinkhole in 2016. Do  
19 you remember saying that?

20 **MR. PETER LAUCH:** I do.

21 **MS. KATE McGRANN:** And that's accurate?

22 **MR. PETER LAUCH:** That is accurate.

23 **MS. KATE McGRANN:** And I'm going to read from your transcript  
24 here. In the interest of saving time, I'm not going to pull it up. But if you'd like to see it,  
25 you can just let me know. You said:

26 "When you think something is going in the wrong  
27 direction, you want to be able to give your client a  
28 heads up. But the problem was that I always got the

1 sense that, you know, if you wanted something from  
2 the client, well, there had to be something in return,  
3 you know, and that's is not always the way -- or that's  
4 not the way a partnership works." (As read).

5 Do you remember giving that evidence?

6 **MR. PETER LAUCH:** I do.

7 **MS. KATE McGRANN:** And I take it from that that you meant that  
8 when you went to the City with a proposal or a suggestion for the next step in the  
9 project, you found that the City wanted something from RTG to consider or to agree to  
10 proposals that RTG was making.

11 **MR. PETER LAUCH:** Yeah, that's a good interpretation.

12 **MS. KATE McGRANN:** Okay. And this notion that if RTG was  
13 looking for something on the project, or was seen to be asking for something from the  
14 City, the City wanted something in return, did that -- did that sort of persist throughout  
15 substantial completion and revenue service availability?

16 **MR. PETER LAUCH:** I wouldn't say "persist". And when -- what I  
17 meant at the time -- I mean that sort of approach reflected the -- it was the general  
18 approach of the City at the time that, you know, a discussion, or a negotiation, a  
19 compromise, even for the good of the project, there was -- you know, there was a  
20 transaction involved.

21 And the -- and bear in mind, at the time -- I mean we were, you  
22 know, throughout the entire -- I shouldn't say throughout the entire project, but for a  
23 good chunk of the project we were talking about disputes and variations. So when we  
24 talk about give and take, I mean it was in that context. It was to the benefit -- you know,  
25 the City would believe it would be to the benefit of the project. And as I said, it was that  
26 sort of give and take that we were discussing.

27 **MS. KATE McGRANN:** Okay. And so that general approach of  
28 the City, where if RTG comes with the proposal the City is looking for for a give and a

1 take, a transaction as opposed to just dealing with a single request at a time, did that  
2 general approach remain the City's approach throughout substantial completion and  
3 revenue service availability?

4 **MR. PETER LAUCH:** I would say so, yes, but I also would say that  
5 it wasn't unusual.

6 **MS. KATE McGRANN:** And you mean wasn't unusual -- I hope  
7 you understand what you're comparing things to that?

8 **MR. PETER LAUCH:** In the context of the project, I mean, there  
9 was -- it's -- so typically on a project like this, as I said, I mean, I used the term give and  
10 take. I mean, there's -- it is a partnership, and so it is a collaborative relationship, so  
11 you discuss, you negotiate.

12 **MS. KATE McGRANN:** And when I read your evidence about  
13 wanting to be able to give the client a heads up, you don't describe the City's approach  
14 of "I want something in return" as normal collaborative behaviour. You describe it as a  
15 problem. You say:

16 "When you think something's going in the wrong  
17 direction, you want to be able to give your client a  
18 heads up, but the problem was I always got the sense  
19 that if you wanted something from the client, there  
20 had to be something in return." (As read)

21 So I'm just trying to square what you're saying, that this was normal  
22 collaborative behaviour with the evidence you gave at your Commission interview that  
23 this approach from the City was seen as a problem, and it made -- it sounds like it made  
24 it difficult at times to have the kind of relationship and collaborative approach you were  
25 looking for.

26 **MR. PETER LAUCH:** Yeah. Perhaps "problem", you know, might  
27 not have been the right word, but I mean, it was something where I was cognizant of  
28 that it wouldn't -- there was again, you know, I'm going to repeat myself, but I mean, I

1 was fully aware that there would be some give and take, depending on the nature of  
2 what the issue is.

3 **MS. KATE McGRANN:** And I do have to press you on this, sir,  
4 because you finished that bit of evidence by saying, "You know, and that is not the way  
5 a partnership works."

6 So sitting here today, you're saying that it is, but in your  
7 Commission interview, you said it wasn't. And so I have to press you. Was it the case  
8 that the attitude from the City was not a partnership-like attitude at times, in your  
9 experience?

10 **MR. PETER LAUCH:** I would say yes, at times.

11 **MS. KATE McGRANN:** And we won't spend much time on this, but  
12 in terms of changes that are made to the RSA date from the original date through to the  
13 date that's ultimately achieved, it's my understanding that RTG was generally under  
14 pressure from the City to set the earliest RSA date possible. The City wanted you to get  
15 to RSA, the City wanted the project to get to RSA?

16 **MR. PETER LAUCH:** I would agree with that.

17 **MS. KATE McGRANN:** There is at least one exception to that  
18 approach, I think, and in order to look at that, I'll ask that RTG677410.1 be put on the  
19 screen.

20 **MR. PETER LAUCH:** And Counsel, if I may, if I divert my eyes, it's  
21 because I've set myself up with a larger screen so I can actually read what's up there.

22 **MS. KATE McGRANN:** And in the same mode, when you see me  
23 looking, I actually have another computer over here that will help me see, so we're on  
24 the same -- we're in the same situation here.

25 While we're waiting for that document to be pulled up, I'll just let you  
26 know that it's board meeting minutes from the regular -- the RTG board that took place  
27 on February 28<sup>th</sup>, 2018.

28 **MR. PETER LAUCH:** Okay.

1                   **MS. KATE McGRANN:** So here we are, and if we could scroll  
2 down to numbered point number 3, which is on the second page, under the heading  
3 "Executive Summary" -- perfect -- and I would just like to look at -- it's the fourth  
4 paragraph down that it says, "80-RTG", and I believe it -- Antonio Estrada; is that right?

5                   **MR. PETER LAUCH:** That's correct.

6                   **MS. KATE McGRANN:** Okay. And so it's reported here, RSA date  
7 of August 31<sup>st</sup> proposed to the City, and that would be August 31<sup>st</sup>, 2018?

8                   **MR. PETER LAUCH:** Correct.

9                   **MS. KATE McGRANN:** "However, City reluctant to accept this due  
10 to political risk if not achieved."

11                   It goes on to say:

12                                   "City preference is for an RSA date which is  
13                                   subsequent to the October 22<sup>nd</sup> municipal election. A  
14                                   revenue service availability date of November 2<sup>nd</sup>,  
15                                   2018 was agreed, but subject to resolution of delay,  
16                                   cost claims." (As read)

17                   My question for you, sir, is do you recall the City seeking to have  
18 the RSA date set in a way that would be politically advantageous or responsive to  
19 perceived political risk?

20                   **MR. PETER LAUCH:** And as you noted, at the -- at that --  
21 discussion, it was Antonio that presented this, so I'm assuming this was a discussion  
22 that he would have had. So you know, based on this, I would have to answer your  
23 question as yes.

24                   **MS. KATE McGRANN:** Okay. You don't have an independent  
25 recollection of this being a rationale coming from the City at any time?

26                   **MR. PETER LAUCH:** I do not, no.

27                   **MS. KATE McGRANN:** You don't have any reason to doubt the  
28 accuracy of these board meeting minutes?

1 **MR. PETER LAUCH:** No, certainly not.

2 **MS. KATE McGRANN:** So we can take that document off the  
3 screen.

4 And sticking with the topic of changing RSA dates for a moment, is  
5 it fair to say that the only time the City -- or sorry, the only time that RTG ever spoke  
6 publicly about -- well, fair to say that the only time that RTG ever spoke publicly about  
7 the dates that it was predicting or sharing with the City, was at the City's invitation, so  
8 for example, where RTG was asked to attend at a FEDCO meeting and speak to the  
9 date, or something like that?

10 **MR. PETER LAUCH:** That's correct.

11 **MS. KATE McGRANN:** RTG is not publicly announcing dates on  
12 its own initiative, right, sir?

13 **MR. PETER LAUCH:** No, that's correct.

14 **MS. KATE McGRANN:** And in fact, it's prohibited from doing that  
15 by terms of the Project Agreement?

16 **MR. PETER LAUCH:** Correct. Our communications agreement  
17 was such that that type of information would come to the City.

18 **MS. KATE McGRANN:** Okay. And so given that the only time that  
19 RTG ever speaks publicly about an anticipated RSA date is at the invitation to the City,  
20 fair to say that it's never a surprise to the City when RTG speaks about a date?

21 **MR. PETER LAUCH:** No.

22 **MS. KATE McGRANN:** And the City would not be hearing about  
23 an anticipated date from RTG for the first time when it's invited to speak publicly? This  
24 would not be news to the City?

25 **MR. PETER LAUCH:** Certainly not.

26 **MS. KATE McGRANN:** So presumably, the City had time to  
27 anticipate how it would respond publicly and otherwise to any dates that RTG shared?

28 **MR. PETER LAUCH:** Correct.

1                   **MS. KATE McGRANN:** We've heard evidence about this from  
2 others, including your colleague Mr. Slade, but I take it that by the time you get to the  
3 beginning of 2019, everybody is under pressure to try to achieve substantial completion  
4 and get to revenue service availability?

5                   **MR. PETER LAUCH:** That's correct.

6                   **MS. KATE McGRANN:** And is it fair to say that every time an  
7 anticipated RSA date, formal or informal, is missed, the pressure increases to achieve  
8 that milestone?

9                   **MR. PETER LAUCH:** I think that's fair, yes.

10                  **MS. KATE McGRANN:** Okay. And my understanding is that  
11 OLRTC, by 2019, is paying daily liquidated damages to RTG as a result of the failure to  
12 miss the RSA milestone; is that right?

13                  **MR. PETER LAUCH:** That's correct.

14                  **MS. KATE McGRANN:** And I'm hoping that we can just clear  
15 something up here. We know that RTG had sought consent from its lenders to provide  
16 some relief to OLRTC on those liquidated damages. We see that the liquidated  
17 damages are being paid. Was it the case that the lenders would not agree to the relief  
18 that RTG sought?

19                  **MR. PETER LAUCH:** That would have been under Antonio's remit  
20 at the time, but if I recall correctly, I think the first reaction was not positive, but I think  
21 then as discussions ensued, I think eventually it was something that the lenders agreed  
22 to.

23                  **MS. KATE McGRANN:** Okay. And once lender agreement was  
24 achieved, did RTG extend that relief to OLRTC?

25                  **MR. PETER LAUCH:** Yes.

26                  **MS. KATE McGRANN:** And do you recall approximately when that  
27 was?

28                  **MR. PETER LAUCH:** No, I don't recall.

1                   **MS. KATE McGRANN:** Okay. I'm just going to ask you a little bit,  
2 but if you don't recall, you can let me know.

3                   Do you recall -- like, could you put it at a point in time, at any point  
4 in time, like, 2019, closer to RSA? Could you help us at all with where that might have  
5 happened?

6                   **MR. PETER LAUCH:** I mean, there was some of the testimony  
7 given by others, I'm trying to remember what date they gave. It would probably be end  
8 of 2018, early 2019, if I had to guess.

9                   **MS. KATE McGRANN:** Okay. And I appreciate that you don't  
10 recall, and thank you for -- thanks for bearing with me while I pushed you a little bit on  
11 that point.

12                   Turning back to the pressure that everybody is under in 2019 to  
13 achieve these milestones and substantial completion and revenue service availability,  
14 RTG is under pressure, as is OLRTC, right?

15                   **MR. PETER LAUCH:** As is the City, yes.

16                   **MS. KATE McGRANN:** That's exactly where I am going. So it's  
17 not just RTG and its subcontractors that's under pressure, the City is also under  
18 pressure, right?

19                   **MR. PETER LAUCH:** Certainly.

20                   **MS. KATE McGRANN:** And that includes your counterparts or OC  
21 Transpo?

22                   **MR. PETER LAUCH:** Correct.

23                   **MS. KATE McGRANN:** And you understood that Mr. Manconi, the  
24 General Manager of OC Transpo was under significant pressure to keep this project  
25 moving towards completion, right?

26                   **MR. PETER LAUCH:** I do.

27                   **MS. KATE McGRANN:** And I understand that at times in your  
28 interactions with Mr. Manconi there was a departure from what I'll describe as a



1 professional dialogue as between you two.

2 **MR. PETER LAUCH:** At times. And given the situation, you know,  
3 99 percent of the time it was very professional. And every once in a while sometimes  
4 emotions kicked in but that's --- it wasn't anything untoward.

5 **MS. KATE McGRANN:** Okay. And I just want to spend a little bit  
6 of the time on that with you today.

7 So in your Commission interview you said, among other things, that  
8 you learned some new words from the GM. And I take it that the GM is the General  
9 Manager of OC Transpo, Mr. Manconi?

10 **MR. PETER LAUCH:** That's correct.

11 **MS. KATE McGRANN:** And when you said you learned some new  
12 words from him, we're not talking about word of the day calendar type words, right, sir?

13 **MR. PETER LAUCH:** No, no we're not.

14 **MS. KATE McGRANN:** You're talking about strong language that  
15 wouldn't normally be used in professional conversations?

16 **MR. PETER LAUCH:** That's correct.

17 **MS. KATE McGRANN:** And just to stick with this point for a  
18 second here, in your Commissioner's review you gave an example of a day during  
19 Revenue Service where there was a horrible launch and you said Mr. Manconi called  
20 you and said to you, "I'm going to bury you guys now."

21 **MR. PETER LAUCH:** That is correct.

22 **MS. KATE McGRANN:** And you explained that this was during a  
23 time where there was a lot of pressure on everyone.

24 **MR. PETER LAUCH:** That is correct, yes.

25 **MS. KATE McGRANN:** And you identified that there were  
26 technical problems with the vehicles at that point in time.

27 **MR. PETER LAUCH:** There was. And on that particular day we  
28 had some issues with the platform monitoring system that had to do with having bodies

1 on the platforms and I think our supplier at the time was threatening to pull them off.  
2 And I mean, that's sort of what was the catalyst for that discussion. And it was a one-  
3 on-one discussion with Mr. Manconi and myself.

4 **MS. KATE McGRANN:** And you described that particular reaction  
5 as a visceral emotional reaction.

6 **MR. PETER LAUCH:** It was.

7 **MS. KATE McGRANN:** And that was an example, after Revenue  
8 Service while the system was in service, but I take it that these kind of interactions with  
9 Mr. Manconi occurred periodically throughout your time as RTG CO, before Revenue  
10 Service, after Revenue Service.

11 **MR. PETER LAUCH:** I think "periodically" is correct. But I would  
12 also say infrequent too. You know, it wasn't the standard.

13 **MS. KATE McGRANN:** Okay. And just for one more example, we  
14 saw yesterday during Mr. Manconi's evidence that in a WhatsApp chat group he was  
15 reporting back on a meeting with your side of the project in which described him as  
16 having left or there being RTG/RTM blood on the floor at the end of the meeting. Were  
17 you familiar with that evidence, sir?

18 **MR. PETER LAUCH:** I'm familiar with--- obviously I wasn't privy to  
19 it but I did see it yesterday.

20 **MS. KATE McGRANN:** And I am asking you these questions for a  
21 reason. And the reason is I want to know whether these interactions with Mr. Manconi  
22 and the City more generally, where you see a departure from a professional dialogue  
23 you would normally see, had any impact on RTG's ability to work as effectively as it  
24 could towards a successful completion of the project.

25 **MR. PETER LAUCH:** I would say "No." I would say it might have  
26 been a distraction but no.

27 **MS. KATE McGRANN:** And did these kind of reactions put any  
28 sort of dampening effect on RTG's ability to make suggestions that it thought may not

1 be immediately palatable to the City but ultimately to the benefit of the project and the  
2 ridership?

3 **MR. PETER LAUCH:** Well, I would say “No.”

4 **MS. KATE McGRANN:** Okay. And I’ll just ask you one more  
5 question on this point, sir. I’ll use the concept of a soft launch or a partial opening as an  
6 example. We’ve heard from other that that concept was not one that was palatable to  
7 the City. In your view, was the City’s attitude, or Mr. Manconi’s attitude more  
8 specifically towards suggestions like this, one that shut down conversations that may  
9 have otherwise led to discussions that would be beneficial to the project?

10 **MR. PETER LAUCH:** I’m sorry, could you repeat that?

11 **MS. KATE McGRANN:** I can do my best. And I’ll try to shorten it if  
12 I can.

13 The City’s attitude and Mr. Manconi’s infrequent exchanges with  
14 you as we’ve described, did they in any way dampen RTG’s ability to suggest or pursue  
15 suggestions that, while not immediately palatable to the City may have ultimately been  
16 productive discussions to the benefit of the system and its ridership?

17 **MR. PETER LAUCH:** I would say “No.” If we thought there was  
18 something that we could propose, we would still.

19 **MS. KATE McGRANN:** Okay. And turning back to -- I apologize  
20 for jumping around in the chronology but I’ll try to flag it for you as we go. So now I’d  
21 like to talk about the period heading into the first application for substantial completion  
22 and then the second. So were ---

23 **COMMISSIONER HOURIGAN:** I’m so sorry to interrupt.

24 As you head into a new topic, we need to take a break here for five  
25 minutes. So just stand by.

26 **MS. KATE McGRANN:** Okay.

27 **THE REGISTRAR:** Order. All rise.

28 The Commission will recess for five minutes.

1

2 --- Upon recessing at 9:20 a.m.

3 --- Upon resuming at 9:27 a.m.

4 **THE REGISTRAR:** The Commission has resumed.5 **--- PETER LAUCH, Resumed:**6 **COMMISSIONER HOURIGAN:** Sorry about the brief interruption.

7 Please proceed, Counsel.

8 **MS. KATE McGRANN:** I apologize, everybody. We continue to  
9 struggle with the technology this morning. I cannot hear you. I don't know if you can  
10 hear me. So I wonder if we can just stand down for another two minutes or so until we  
11 get this sorted out on our end, and I do apologize.

12 **COMMISSIONER HOURIGAN:** We can hear you.13 **MS. KATE McGRANN:** And I can now hear you.14 **COMMISSIONER HOURIGAN:** Okay, perfect.

15 **MS. KATE McGRANN:** So let's just assume that we can continue  
16 and if something goes wrong, somebody will let me know.

17 Okay.

18 **--- EXAMINATION IN-CHIEF BY MS. KATE McGRANN (cont'd):**

19 **MS. KATE McGRANN:** Before that brief break I had indicated to  
20 you that we would be moving on to talk about applications for substantial completion  
21 and those begin in the spring of 2019. And just to help us situate ourselves in time, sir,  
22 you recall that RTG applied for substantial completion unsuccessfully on April 29<sup>th</sup>,  
23 2019?

24 **MR. PETER LAUCH:** That's correct.

25 **MS. KATE McGRANN:** And the City raised a number of issues  
26 with that application that in its view made it an untenable application and could not  
27 proceed.

28 **MR. PETER LAUCH:** Correct.

1                   **MS. KATE McGRANN:** And the independent certifier did as well.

2                   **MR. PETER LAUCH:** Correct.

3                   **MS. KATE McGRANN:** Now, I'd like to discuss a June 24<sup>th</sup>, 2019  
4 that you wrote to at least some members of the RTG executive committee with you and  
5 so I'll ask that Document RTC885419.1 be pulled up.

6                   Okay. So we're looking at a June 24<sup>th</sup>, 2019 email from you to Jeff  
7 Smith and others. These are members of the RTG executive committee; is that right?

8                   **MR. PETER LAUCH:** Sorry, I'm just squinting a bit. There seems  
9 to be a three or four second lag before it comes on my big screen. So I'm looking at the  
10 names there. Yeah, some of those gentlemen were -- Jeff Smith as certainly part of the  
11 OLRTC Board as was Mr. Wilkinson, yes.

12                   **MS. KATE McGRANN:** And at this point in time, RTG has not yet  
13 submitted for substantial completion a second time, right?

14                   **MR. PETER LAUCH:** I'm trying to remember all the dates but I  
15 have no reason to dispute that.

16                   **MS. KATE McGRANN:** And if you look at the email you'll see that  
17 you've written, "The City wants an RTG, and executive.." -- XCO and that's executive  
18 committee?.

19                   **MR. PETER LAUCH:** Correct.

20                   **MS. KATE McGRANN:** "The City wants an RTG and executive  
21 committee called this Friday." And then you go on to say:

22                                   "Matt and I met with John Manconi and team today to  
23                                   map out some key dates."

24                   And that's Matt Slade?

25                   **MR. PETER LAUCH:** Correct.

26                   **MS. KATE McGRANN:** Okay.

27                                   "Steve Kannellakos and John Manconi will want to  
28                                   hear from XCO that we are all aligned. The dates

1 are..."

2 And then you set out a number of dates. The ones that I'm most  
3 interest in speaking with you about start at July 9<sup>th</sup>, and we see it's got two asterisks  
4 beside it.

5 "July 9<sup>th</sup> RTG submits new substantial completion  
6 application and commits to an RSAD..."

7 That's Revenue Service Availability Date?

8 **MR. PETER LAUCH:** Correct.

9 **MS. KATE McGRANN:** "of 16<sup>th</sup> August." Do you see that?

10 **MR. PETER LAUCH:** I do.

11 **MS. KATE McGRANN:** And that July 9<sup>th</sup> date, do you recall how  
12 that date was landed on?

13 **MR. PETER LAUCH:** If you don't mind scrolling down a bit I see  
14 the two astericks there but I can't see what ---

15 **MS. KATE McGRANN:** So you see that the two asterisks below  
16 say "The date is important to the City as they need to book drivers' schedule from 17<sup>th</sup>  
17 July for three weeks parallel bus service that would start the second week of  
18 September". And that's linked to a 16<sup>th</sup> of August revenue service availability date.

19 So it looks to me from this email, sir, that that July 9<sup>th</sup> date is  
20 coming from the City, but is that consistent with what you recall?

21 **MR. PETER LAUCH:** It is and it would be working backwards from  
22 the 16<sup>th</sup> of August, yes.

23 **MS. KATE McGRANN:** And the August 16<sup>th</sup> date, is that a date  
24 that's also coming from the City? It certainly looks like it is.

25 **MR. PETER LAUCH:** I believe it is, yes; that would have been a  
26 target.

27 **MS. KATE McGRANN:** And that August 16<sup>th</sup> date is driven,  
28 according to what you've written here with the two asterisks, would the City need to

1 book drivers for three weeks parallel bus service?

2 **MR. PETER LAUCH:** Yeah, that makes sense.

3 **MS. KATE McGRANN:** And that's a parallel bus service that is to  
4 run alongside the public revenue service of the LRT system; correct?

5 **MR. PETER LAUCH:** That's correct.

6 **MS. KATE McGRANN:** And it looks to me that the City is targeting  
7 that three week parallel bus service to start the second week of September; right?

8 **MR. PETER LAUCH:** Targeted, yes, correct.

9 **MS. KATE McGRANN:** And I mean it's not just targeting it, sir, it  
10 looks like they need to get this booked in order for it to happen; right? So it's fair to say  
11 that this is a plan that's being put in place?

12 **MR. PETER LAUCH:** I think that's fair to say, but the reason I use  
13 the term "target" is because to get to RSAD there is quite a few things that have to  
14 happen first. And it would have been difficult on July 9<sup>th</sup> to say, with 100 per cent  
15 certainty, that we'll meet that date, but it certainly was a target.

16 **MS. KATE McGRANN:** Fair enough. And you'll note that this is  
17 the only date, this July 9<sup>th</sup> date that's described as tentative in this email, and let me  
18 hold back, July 13<sup>th</sup> is also described as tentative; that's the start to trial running. So  
19 we've got a tentative start to trial running but July 9<sup>th</sup> for substantial completion  
20 application is set down and certainly August 16<sup>th</sup> and the second week of September  
21 start a parallel bus and LRT service, those appear to be pretty set from the City's  
22 perspective; is that right?

23 **MR. PETER LAUCH:** That's correct.

24 **MS. KATE McGRANN:** So at this point in time, as I look at the  
25 dates that are set out here, we've got July 13<sup>th</sup> as a tentative start to trial running and if  
26 we look down at the first asterisk there you've written "July 13<sup>th</sup> for trial running start  
27 date is the earliest date" and then you go on to say: "OLRTC and RTM may want to use  
28 the week of July 15<sup>th</sup> for practice runs and to make sure RTM is ready to take on the

1 revenue service support role”; do you see that?

2 **MR. PETER LAUCH:** I do.

3 **MS. KATE McGRANN:** So it looks to me like what everybody is  
4 contemplating at this point in time, is that trial running is going to take between four to  
5 five weeks to complete; right?

6 **MR. PETER LAUCH:** That’s correct.

7 **MS. KATE McGRANN:** And the one week difference there is really  
8 a question of whether that first week is going to be used for practice or whether you’re  
9 just going to straight into trial running; right?

10 **MR. PETER LAUCH:** That is correct.

11 **MS. KATE McGRANN:** And that’s what everybody is anticipating  
12 based on what they know about the reliability of the system, the maintenance  
13 preparedness, everything like that at this point in time?

14 **MR. PETER LAUCH:** That’s correct.

15 **MS. KATE McGRANN:** And I’m going to suggest to you, sir, that  
16 there is not a material improvement in the reliability of the system or the maintenance  
17 readiness as between July 24<sup>th</sup>, 2019 and when trial running ultimately does start at the  
18 end of July; is that fair?

19 **MR. PETER LAUCH:** I suppose it’s fair; I mean I don’t have all the  
20 details of where we were in terms of reliability growth but I think that’s a fair statement.

21 **MS. KATE McGRANN:** I’m going to suggest to you, that if there  
22 was a real market jump in reliability or material change for the better, you’d probably  
23 remember sitting here today?

24 **MR. PETER LAUCH:** I probably would, yes.

25 **MS. KATE McGRANN:** And this City’s interest and decision to  
26 start LRT bus service the second week of September, and we’re looking at that right  
27 now, June 24<sup>th</sup>, 2019, do you ever remember hearing that there was any consideration  
28 that that date would change between June 24<sup>th</sup> and when the system ultimately



1 launched?

2 **MR. PETER LAUCH:** I don't remember, but I'm sure it would have  
3 been discussed in some of the meetings we had with the City. And you've heard the  
4 term RAMP meetings, we were meeting on a regular basis so I'm sure this was  
5 discussed at that time.

6 **MS. KATE McGRANN:** Okay. So as of July 24<sup>th</sup>, 2019 the City is  
7 planning on opening the LRT system the second week of September; right?

8 **MR. PETER LAUCH:** Based on this, yes, but as I said, I mean it  
9 was predicated on several things falling into place, not the least of which would be the  
10 substantial completion agreement and then trial running and of course RSAD.

11 **MS. KATE McGRANN:** Well, that's not what your email says, sir.  
12 It does not say that date is predicated on anything. In fact it says everything is  
13 predicated on that date; right? Everything working back from that date?

14 **MR. PETER LAUCH:** That certainly was the target, yes.

15 **MS. KATE McGRANN:** Well, and it's a target that was met; right?

16 **MR. PETER LAUCH:** No, I think we reached RSAD on the 30<sup>th</sup> of  
17 August, if memory serves.

18 **MS. KATE McGRANN:** That's my fault, sir. My question was not  
19 clear. The opening of the system to the public on September 14<sup>th</sup> of 2019, that is a date  
20 that was met?

21 **MR. PETER LAUCH:** That was met, yes.

22 **MS. KATE McGRANN:** So the things between where we sit here  
23 before the achievement of substantial completion and the September 14<sup>th</sup> opening,  
24 there was some movement in the in between pieces but the September 14<sup>th</sup> date does  
25 not change?

26 **MR. PETER LAUCH:** That's correct.

27 **MS. KATE McGRANN:** And you sitting here today don't recall any  
28 discussions with the City in which an opening date, other than September 14<sup>th</sup> was

1 discussed?

2 **MR. PETER LAUCH:** Not specifically; I do recall conversations  
3 where we – you know, we had already discussed and even assumed, I suppose, that  
4 anywhere from three to four weeks after RSAD is when the City would open.

5 **MS. KATE McGRANN:** M'hm. But do you recall any discussions  
6 about a change to the September 14<sup>th</sup> opening?

7 **MR. PETER LAUCH:** Not specifically, no.

8 **MS. KATE McGRANN:** And we know that there's departure from  
9 this schedule almost immediately. July 9<sup>th</sup> as a submission for substantial completion,  
10 that date is not met; right?

11 **MR. PETER LAUCH:** That's correct.

12 **MS. KATE McGRANN:** But we also know that despite RTG not  
13 submitting for substantial completion on July 9<sup>th</sup>, the City goes ahead and publicizes an  
14 August 16<sup>th</sup> RSA date on July 10<sup>th</sup> as planned in this email?

15 **MR. PETER LAUCH:** I'd have to assume so; I don't remember  
16 what they said publicly but I have no reason to doubt that.

17 **MS. KATE McGRANN:** And do you recall, sir, if the City is sticking  
18 to this schedule despite the fact that there's already slippage, increased the pressure of  
19 RTG and its sub-contractors to meet substantial completion?

20 **MR. PETER LAUCH:** Well, to be frank, at the time it was hard to  
21 increase the pressure but it probably added to it.

22 **MS. KATE McGRANN:** And for the same reasons, to the extent  
23 that the pressure could be increased, and I take your point that at some point you hit a  
24 maximum and you're just there and the City is in the same position; correct?

25 **MR. PETER LAUCH:** Correct.

26 **MS. KATE McGRANN:** I'm going to suggest to you that that's a  
27 situation, to a certain extent at least, of the City's making by announcing dates when the  
28 schedule that led to those dates is already not working?

1 **MR. PETER LAUCH:** I would disagree with that.

2 **MS. KATE McGRANN:** Now, we know that RTG and the City  
3 negotiated an agreement to help OLRTC reach substantial completion on its second  
4 application; right?

5 **MR. PETER LAUCH:** There was – we certainly negotiated a term  
6 sheet that was part of both the substantial completion and the RSAD, yes.

7 **MS. KATE McGRANN:** Okay. And we will come to the RSA term  
8 sheet in a second but for now I just want to focus on the substantial completion term  
9 sheet. Is it fair to say that without the agreements that are encapsulated in that term  
10 sheet and otherwise, RTG would not have been successful on its application for  
11 substantial completion?

12 **MR. PETER LAUCH:** No, that's absolutely fair.

13 **MS. KATE McGRANN:** Okay. So the City helps you get there?

14 **MR. PETER LAUCH:** The City helps us get there.

15 **MS. KATE McGRANN:** And as part of what it needs to do to help  
16 you get there, the City ends up deferring or waiving substantial completion  
17 requirements; right?

18 **MR. PETER LAUCH:** Some of them, yes. I mean the City helped  
19 us get there but obviously if we look at the term sheet there were some concessions  
20 made, yes.

21 **MS. KATE McGRANN:** Yeah, I'm not suggesting to you that the  
22 City waived every single requirement to get to substantial completion, but there are  
23 some significant ones that were waived in order to help that last one be achieved;  
24 correct?

25 **MR. PETER LAUCH:** Yeah, I think I'd probably use the word  
26 "deferred" as opposed to "waived", but, yes.

27 **MS. KATE McGRANN:** I won't take you there, sir, but I am  
28 relatively certain that both deferred and waived are used in the substantial completion

1 achievement document, so I think we can just agree that the documents speak for  
2 themselves; is that fair?

3 **MR. PETER LAUCH:** That's very fair.

4 **MS. KATE McGRANN:** Whose idea was the substantial  
5 completion agreement?

6 **MR. PETER LAUCH:** It would have been the catalyst for – it would  
7 have been the City but once that – you know there was lots of discussions that ensued.  
8 Once we were trying to determine what would it take to get to substantial completion,  
9 there was many, many meetings to sort of lay out what would be waived and what  
10 would be deferred.

11 **MS. KATE McGRANN:** Okay. So the catalyst, or sort of the  
12 starting point, comes from the City, and then the City and RTG begin to discuss what  
13 could possibly be part of that agreement; is that fair?

14 **MR. PETER LAUCH:** That's correct. And the independent certifier  
15 would have been involved in that as well at a certain time.

16 **MS. KATE McGRANN:** Okay. And I think it's fair to say, with this  
17 schedule and the August 16<sup>th</sup> RSA date that the City had announced, the plan is, as  
18 soon as you get to substantial completion, you -- we're now going straight into trial  
19 running at this point in time. There's week of practice. There's no room for that  
20 anymore, correct?

21 **MR. PETER LAUCH:** That's -- that's the plan, yes.

22 **MS. KATE McGRANN:** So substantial completion is achieved on  
23 July 26<sup>th</sup>, 2019, and trial running starts on July 29<sup>th</sup>?

24 **MR. PETER LAUCH:** Yes, that's correct.

25 **MS. KATE McGRANN:** Okay. And trial running is a simulation of  
26 revenue service, right?

27 **MR. PETER LAUCH:** It's a simulation of revenue service, yes.

28 **MS. KATE McGRANN:** So we're looking at operations and

1 maintenance teams out in full force as if the system's open to public service day after  
2 day for at least 12 consecutive days, right?

3 **MR. PETER LAUCH:** That's correct.

4 **MS. KATE McGRANN:** Okay. And this is an across-the-board  
5 effort that had not been undertaken before this point in time.

6 **MR. PETER LAUCH:** That's correct.

7 **MS. KATE McGRANN:** And we know that the system's still facing  
8 a variety of issues. I can take you to documents if you want to dig into, sir, but I think  
9 you'll agree with me that there's known vehicle-reliability issues, and there's switch  
10 issues, and there's brake issues, there's power issues. There's a number of issues that  
11 the system is facing.

12 **MR. PETER LAUCH:** At the time, yes.

13 **MS. KATE McGRANN:** And everybody's aware of all of those  
14 issues, right?

15 **MR. PETER LAUCH:** That's correct.

16 **MS. KATE McGRANN:** Did you have a view of how realistic it was  
17 to think that the various pre-RSA conditions that were agreed in the Substantial  
18 Completion Agreement -- how realistic was it that those conditions would actually be  
19 met prior to the revenue service availability date?

20 **MR. PETER LAUCH:** I think it was very realistic.

21 **MS. KATE McGRANN:** We know that they're all ultimately met,  
22 though, right?

23 **MR. PETER LAUCH:** I think there were some -- there were  
24 definitely some that were deferred, yes, or possibly still being worked on close to RSA.

25 **MS. KATE McGRANN:** Okay. So the expectation that is was  
26 realistic that they would all be met was not a -- not necessarily a -- didn't just -- it just  
27 didn't turn out to be -- to be true, right? It wasn't met? Your expectation wasn't met?

28 **MR. PETER LAUCH:** Based on the information we had at the time,

1 I think we -- we had assumed it would be met but obviously, subsequent to that, some  
2 of them weren't met, no.

3 **MS. KATE McGRANN:** Okay. And I won't go into detail with you  
4 here, sir, but in terms of what's outstanding on the RTG side, we've got the pre-RSA list  
5 that's set out in the Substantial Completion Agreement, correct?

6 **MR. PETER LAUCH:** That's correct.

7 **MS. KATE McGRANN:** And then there's a tracking list that's  
8 attached to the OLRTC Notice of Substantial Completion that has items that are still  
9 open, and items that are being monitored, and things like that, correct?

10 **MR. PETER LAUCH:** That's correct.

11 **MS. KATE McGRANN:** And there's the minor deficiencies list that  
12 includes a number of retrofits that are required fleet-wide for the vehicles?

13 **MR. PETER LAUCH:** Correct.

14 **MS. KATE McGRANN:** And then issues continue to be discovered  
15 following substantial completion and put on one or other of those lists for attention down  
16 the road?

17 **MR. PETER LAUCH:** That's correct.

18 **MS. KATE McGRANN:** So it's fair to say that there's quite a bit of  
19 outstanding work for everybody on the RTG/RTM side when substantial completion is  
20 achieved?

21 **MR. PETER LAUCH:** There certainly was, yes.

22 **MS. KATE McGRANN:** Okay. And so then -- and so then you  
23 jump into trial running. And you're a member of the trial running review team. You've  
24 already let us know that. Right?

25 **MR. PETER LAUCH:** Correct.

26 **MS. KATE McGRANN:** And the trial running criteria agreed to  
27 between RTG and the City in July 2019 -- when I say that, do you know what criteria I'm  
28 referring to, sir?

1                   **MR. PETER LAUCH:** I do.

2                   **MS. KATE McGRANN:** If at any point in time, you need to take a  
3 look at it, you let me know and I will throw it up on the screen, but I have limited time  
4 with you this morning so where we can avoid going to a document, we'll do it. But you  
5 knowing what we're talking about is more important than time so just let me know if you  
6 need to see anything.

7                   **MR. PETER LAUCH:** Thank you.

8                   **MS. KATE McGRANN:** The 2019 criteria, I just -- yesterday, when  
9 Mr. Manconi was giving evidence, his recollection was that there was a question about  
10 whether the 2019 criteria had been agreed as between the City and RTG and OLRTC.  
11 Do you recall any question about whether that criteria had been agreed to between the  
12 City and RTG?

13                   **MR. PETER LAUCH:** No. In fact, it was -- it was generated or  
14 created jointly by OLRTC and the City.

15                   **MS. KATE McGRANN:** Okay. And you gave this evidence in your  
16 Commission interview, I think, sir, but you'll agree with me that the 2019 criteria was set  
17 to sort of mirror or reflect the expectations that would be placed on the system as far as  
18 reliability in service once the system open to the public, right?

19                   **MR. PETER LAUCH:** Correct. It was more tailored to what we  
20 would see during the maintenance regime.

21                   **MS. KATE McGRANN:** Okay. And we'll go into this in some detail  
22 as we move through the conversation, but fair to say that there's a real struggle to  
23 consistently pass the 2019 criteria day after day during trial running, right?

24                   **MR. PETER LAUCH:** That's correct.

25                   **MS. KATE McGRANN:** Okay. And I want to work through the trial  
26 running results with you and then pause on some correspondence that's sent  
27 throughout the trial running period. So, for starters, can we pull up COW270758?  
28 Okay, so this is the August 23<sup>rd</sup>, 2019, validation of trial running acceptance from the

1 Altis Group, and that's the independent certifier, right, sir?

2 **MR. PETER LAUCH:** That's correct.

3 **MS. KATE McGRANN:** And there's a summary of some of the trial  
4 running results that's at the end of this document, but the first five days of trial running  
5 are not reflected there so we've got to the scorecards to understand what happened on  
6 those days. Could we go to page 5 of this PDF? Okay, so we're looking at the trial  
7 running scorecard for Monday, July 29<sup>th</sup>, and this is the first day of trial running, right?

8 **MR. PETER LAUCH:** That's correct.

9 **MS. KATE McGRANN:** Okay, good. And I'm not going to take you  
10 through the details. We'll just -- the first day is a fail. Do you see that?

11 **MR. PETER LAUCH:** I certainly do, yes.

12 **MS. KATE McGRANN:** Okay. And then if we can go down to the  
13 next page, Day no. 2. July 30<sup>th</sup>, there is a repeat. Do you see that?

14 **MR. PETER LAUCH:** I do.

15 **MS. KATE McGRANN:** And if we go down page 7, and this is July  
16 31, Day 3, that's a restart.

17 **MR. PETER LAUCH:** Yeah, I see that, yes.

18 **MS. KATE McGRANN:** Okay. And then you go down to page 8,  
19 August 1<sup>st</sup>. and that's a pause. Do you see that?

20 **MR. PETER LAUCH:** I do. Sorry, yes.

21 **MS. KATE McGRANN:** No problem. And I just want to stop for a  
22 second here, sir. I'm going to read you what I see in the 2019 trial running plan about a  
23 pause because, for the most part, the criteria that we see applied to these things is  
24 pass, repeat, restart. And we see -- we see all those engaged throughout trial running.  
25 But the 2019 criteria says:

26 "In some exceptional situations, the review team may  
27 agree to pause trial running for a predefined period of  
28 time. For example, a pause could be warranted to



1 address any gaps in systems that are discovered  
2 during trial running or to conduct further investigation  
3 of a safety incident. In these cases, the trial running  
4 will start again from Day 1.” (As read).

5 So, based on that description, it sounds to me like pauses are only  
6 available in exceptional situations and it’s serious for the team to agree to pause trial  
7 running. Would you agree with that?

8 **MR. PETER LAUCH:** I agree.

9 **MS. KATE McGRANN:** And do recall what led to the agreement to  
10 pause trial running on August 1<sup>st</sup>?

11 **MR. PETER LAUCH:** No, I do not. I’m just looking at the  
12 scorecard now, but I don’t know -- I don’t know what built up to make that a pause.

13 **MS. KATE McGRANN:** Yeah, and just in response to you saying  
14 you’re looking at the scorecard, I’m going to hand you the control, so to speak. Just let  
15 the court operator if you’d like to scroll down and see the rest of the scorecard to see if  
16 there’s information there that suggests to you what led to the pause.

17 **MR. PETER LAUCH:** Yeah, if you wouldn’t mind scrolling down  
18 just a little bit. But I mean if I just look at scheduled number of trains versus actual  
19 number of trains, there’s -- that’s blank, so I’m assuming there was something going on  
20 with the launch at the time.

21 **MS. KATE McGRANN:** And then if we go onto the next, which is  
22 August 9<sup>th</sup>, this is -- it looks like it was originally classified as a pause and it's now being  
23 classified as a repeat; is that fair?

24 **COMMISSIONER HOURIGAN:** Counsel, just to be fair, it's August  
25 2<sup>nd</sup>, for the record.

26 **MS. KATE McGRANN:** I apologize. I'm getting my page number  
27 and my day numbers mixed up. Thank you, Commissioner.

28 So page 9, fifth day of trial running on August 2<sup>nd</sup>, initially classified

1 as a pause, and then it's classified as a repeat. Do you see that?

2 **MR. PETER LAUCH:** I do see that, yes.

3 **MS. KATE McGRANN:** Okay. And now we can go to the last page  
4 of this document and rely on the summary of results there for the rest of the  
5 conversation, so I think that's page 31.

6 Okay. So we just looked at August 2<sup>nd</sup>, and now we're looking at  
7 August 3<sup>rd</sup>. And we can see that after the first five days that we looked at leading up to  
8 August 2<sup>nd</sup>, we had the results that we looked at, and then you've got four days of  
9 passes, right, August 3<sup>rd</sup> to August 6<sup>th</sup>?

10 **MR. PETER LAUCH:** Yeah. Correct.

11 **MS. KATE McGRANN:** Okay. And then on August 7<sup>th</sup>, there's  
12 another pause? Do you see that?

13 **MR. PETER LAUCH:** Yeah, I do. I see that, yes.

14 **MS. KATE McGRANN:** So out of the first 10 days of trial running,  
15 you've got 4 days of passes, right?

16 **MR. PETER LAUCH:** Correct, yeah.

17 **MS. KATE McGRANN:** And so you're passing on less than half of  
18 the days?

19 **MR. PETER LAUCH:** That's correct.

20 **MS. KATE McGRANN:** I'm going to pause here to take a look at  
21 an email that you sent on the evening of August 7<sup>th</sup>, and that's at ALS66772.

22 Okay. So we're looking at an email chain, and if you scroll down a  
23 little bit, we'll get to the email that I want to speak about with you. Just a little bit further  
24 so we can see the to and from information. That's perfect. Oh, scroll up a little bit -- the  
25 other up. I'd like to -- that's perfect.

26 So you see that there is -- there you are, from you to a number of  
27 people on August 7<sup>th</sup> of 2019. Do you see that, sir?

28 **MR. PETER LAUCH:** I do.

1                   **MS. KATE McGRANN:** And then if we could scroll down to see the  
2 body of the email, the subject is "City Meeting Summary, 7<sup>th</sup> August, 2019", and you  
3 write:

4                                   "Dear Board, I'm taking licence here and using key  
5                                   parts of Matthew Slade's email to the OLRT executive  
6                                   committee in the summary below. I'm also cc'ing the  
7                                   EXCO." (As read)

8                   So I take it that you're sending this email to the RTG board; is that  
9 fair?

10                   **MR. PETER LAUCH:** I'm just looking at the list. I think at that point  
11 in time, I was probably sending it to all of the EXCOs, RTG, OLRTC, and RTM.

12                   **MS. KATE McGRANN:** And that was going to be my next  
13 question. When you said you were cc'ing all the EXCOs, it's for RTG, OLRTC, and  
14 RTM; is that right?

15                   **MR. PETER LAUCH:** Correct, the people in the two are -- were my  
16 direct reports at the RTG board, but everyone else is either part of the RTM or the  
17 OLRTC board.

18                   **MS. KATE McGRANN:** Okay. And in the first paragraph of what  
19 I'll call the body of the email, you write, "This evening we met with Mr. Manconi and his  
20 team for a one-hour meeting that lasted two hours."

21                                   And you describe it as a "very, very difficult meeting."

22                                   Do you see that?

23                   **MR. PETER LAUCH:** I do.

24                   **MS. KATE McGRANN:** Do you recall this meeting?

25                   **MR. PETER LAUCH:** I do.

26                   **MS. KATE McGRANN:** And you speak about several things in this  
27 email, but I want to focus with you on two topics that you cover, Alstom's  
28 responsiveness in performance and then the trial running results more generally.

1                   So we'll start with Alstom. If we could scroll down to the fourth  
2 paragraph on the second page -- oh, no, the first page, actually.

3                   And it's here you write:

4                   "Alstom were challenged on their hollow promises and  
5 continual lying. They did apologize for lying to the  
6 City manager about the roving tech support (a  
7 technician located at the western part of the line area,  
8 peak period, to ask about troubleshooting). They also  
9 confirmed that they did not have the cover this past  
10 weekend that they promised, as some of their people  
11 took vacation over the long weekend (apparently  
12 unbeknownst to the execs.)" (As read)

13                  And you say:

14                  "This irritated Manconi and worsened an already  
15 tense situation, with Mr. Manconi and team becoming  
16 more aggressive and agitated." (As read)

17                  So a couple of questions about this, starting at the beginning of the  
18 paragraph. You say that Alstom is challenged on their hollow promises and continual  
19 lying. What were you referring to there?

20                  **MR. PETER LAUCH:** So there were promises made to increase  
21 resources, there were promises made to bring in people from outside to deal more  
22 proactively with some issues, to be more proactive in terms of -- not proactive, but I  
23 guess, reactive in terms of root cause analysis. We were just -- we were struggling to --  
24 what precipitated this meeting was a particularly bad morning, if I recall correctly, and I  
25 think by mid-morning, we had already had three trains stranded, if I'm not mistaken, for  
26 a variety of reasons.

27                  And the reaction, in our opinion, wasn't sufficient, so I mean, this --  
28 you know, that paragraph sort of summarizes that. And there was certainly frustration

1 on our part, and certainly frustration on the City's part.

2 **MS. KATE McGRANN:** And looking in particular at the phrases  
3 that you chose to use here, "hollow promises and continual lying", that's strong  
4 language; would you agree with me?

5 **MR. PETER LAUCH:** It is strong language. It's also an internal  
6 meeting, but -- or internal memo, but no, it certainly is strong language, and I wouldn't  
7 use it if I didn't believe it.

8 **MS. KATE McGRANN:** That was exactly what I was going to ask  
9 you next. And I take it this isn't the language that you would go to after the first issue  
10 you encounter with Alstom. You're using this language at this point in time because this  
11 is a real problem and it's a problem that has not been solved, despite concerted efforts  
12 on your part and others at RTG; is that fair?

13 **MR. PETER LAUCH:** That's fair, and this, if I recall correctly, I had  
14 a conversation with Mr. Manconi in the morning after -- I think after the third train had  
15 failed on the line, and it was a sort of -- this meeting was at five o'clock, and I think there  
16 was sort of a build up of tension and aggravation up until this time.

17 **MS. KATE McGRANN:** And at the end of this paragraph where  
18 you write, "This irritated Manconi and worsened an already tense situation, with Mr.  
19 Manconi and team becoming more aggressive and agitated," you include that  
20 information to your board and all of the executive committees for a reason, right, sir?

21 **MR. PETER LAUCH:** I do, yes.

22 **MS. KATE McGRANN:** And I am going to suggest to you that the  
23 reasons that you include that description are 1) to help communicate the seriousness of  
24 the situation?

25 **MR. PETER LAUCH:** Absolutely.

26 **MS. KATE McGRANN:** And 2) to help communicate the very  
27 difficult situation that you find yourself in in trying to work with the City, moving forward;  
28 is that fair?

1                   **MR. PETER LAUCH:** That's fair, yes.

2                   **MS. KATE McGRANN:** And at this point in time, is the City's  
3 stance and approach becoming counterproductive to the approach to trial running?

4                   **MR. PETER LAUCH:** No, I wouldn't say it was counterproductive,  
5 but I would say it was understandable.

6                   **MS. KATE McGRANN:** It's understandable, but it's also making  
7 things quite difficult for you and others at RTG; is that right?

8                   **MR. PETER LAUCH:** You could phrase it that way, but I mean, it  
9 was -- you know, we -- and when I say "we", I'm talking about RTG and OLRTC and  
10 Alstom -- I mean, we made it difficult for ourselves.

11                   **MS. KATE McGRANN:** But I'm not talking about you making the  
12 situation difficult for yourselves. At this point, sir, I'm talking about the City's contribution  
13 to the mix here. You've already agreed with me that you shared this in order to help the  
14 board understand the very difficult situation you find yourself in. And I'm going to  
15 suggest to you that the fact that Mr. Manconi and his team are becoming more  
16 aggressive and agitated isn't making it any easier for RTG to try to solve the problems  
17 that are in front of everybody to get through trial running; is that fair?

18                   **MR. PETER LAUCH:** That's fair. And part of my -- the reason that  
19 I -- you know, I said getting more irritated and more agitated is because I do recall that  
20 the first part of the meeting was with an Alstom presentation discussing some of the  
21 issues. But it wasn't very solid. It was kind of wishy-washy, and I think that just sort of  
22 exacerbated the situation.

23                   **MS. KATE McGRANN:** Okay. And if we could scroll down to -- it's  
24 going to have to be further down in the email. I have pages, but I don't think you do, so  
25 we'll just keep scrolling and I'll let you know where to start. Perfect. Oh, could we go  
26 back up a little bit? Perfect, that's great.

27                   I'm looking at paragraph that's about halfway on the page, and it  
28 says, "After this, we had a general washup on Alstom."

1 Do you see that?

2 **MR. PETER LAUCH:** Yeah, sorry. I'm just -- I'm waiting for the  
3 other screen to catch up to you.

4 **MS. KATE McGRANN:** No problem. While you're waiting for your  
5 screen to catch up, I'll let you know that we're jumping around in the email, so I'm kind  
6 of trying to deal with one topic at a time, but you have reported that after the  
7 presentation, Alstom had left, and so now, I believe, it's just you and your team and the  
8 City. And you write:

9 "And after they left we had a general washup on  
10 Alstom."

11 Do you see that?

12 **MR. PETER LAUCH:** I do, yeah. And Alstom participated in the  
13 meeting, I think, for the first half and then it was just OLRTC, RTG and the City  
14 representatives.

15 **MS. KATE McGRANN:** Okay. And you say:

16 "The City wants to know why we don't have a  
17 technician on every single train to ensure we're not  
18 losing so many kilometres. We told the City that RCN  
19 and Alstom had been talking to an external supplier to  
20 find more support."

21 What are you describing there? What's the efforts to talk to an  
22 external supplier to find more support?

23 **MR. PETER LAUCH:** So both the City and the consultant STV in  
24 other meetings were recommending strongly and rightly so at the time, I think, that we  
25 would be in a better position to maybe mitigate some issues on the track if we had a  
26 technician on the train. And you know, it depends on the issue but there could be some  
27 validity to that because sometimes an issue would simply be a reset of something. And  
28 if a technician was on board rather than sending one out from the MSF, the

1 Maintenance and Storage Facility, it would expedite the reparation. And Alstom had  
2 agreed to it. But you know, it wasn't easy to find an army of qualified technicians  
3 because, as you rightly noted at the outset of this discussion, we're replicating Revenue  
4 Service, so we're talking about running, you know, 20 hours a day. So you can't -- it  
5 cant be a single person sitting on the train the whole time. You have to shift. You have  
6 to schedule people. So -- but that was part of the frustration from the City at the time  
7 because Alstom had made a promise to do that, to provide a tech per train. And it  
8 simply didn't happen.

9 **MS. KATE McGRANN:** And did that happen at any point prior to  
10 the completion of trial running?

11 **MR. PETER LAUCH:** I can't remember if it did, if there was a tech  
12 per train. But certainly there was an increase in staffing and we had discussions and  
13 agreements on how many techs we would have on the train at particular times because  
14 obviously at launch you have more trains so you want more support.

15 And then we would even station a technician at the extremity, so at  
16 Tunney's Pasture and at Blair and at each end of the alignment. And I think there was  
17 even a rover, if you will, in a truck that could sort of be on call and be mobilized to a  
18 station. So it improved after that.

19 **MS. KATE McGRANN:** Okay. And others may deal with this in  
20 more detail than I have time to with you today, sir. But while there may have been  
21 improvements, I think you'll agree with me that the support that the City wanted is never  
22 completely delivered, not during trial running and not at least at the beginning of  
23 Revenue Service. There isn't a tech on every train. There's issues with tech  
24 representation throughout the system and things like that. Is that fair?

25 **MR. PETER LAUCH:** That's fair.

26 **MS. KATE McGRANN:** And the Cit continued to raise this and the  
27 level of support that it felt was necessary was never achieved on the Alstom RTM side;  
28 is that fair?



1 **MR. PETER LAUCH:** I think that's fair, yes.

2 **MS. KATE McGRANN:** And you explained it -- and I'll just take  
3 you back there for a second -- that it is a challenge to find the army of technicians that  
4 was -- that the City saw as necessary to get the system to run as it was supposed to; is  
5 that also fair?

6 **MR. PETER LAUCH:** That's fair.

7 **MS. KATE McGRANN:** And turning back to the email for a  
8 second, it's about halfway down, you write:

9 "We do need someone to talk to the Alstom CEO in  
10 Paris. I spoke with him last week but there is just not  
11 enough response from the people here."

12 Do you see where I'm at?

13 **MR. PETER LAUCH:** I do.

14 **MS. KATE McGRANN:** Okay. And you say:

15 "There's still a huge lack of urgency and huge lack of  
16 resources and a huge lack of experience."

17 Do you see that?

18 **MR. PETER LAUCH:** I do.

19 **MS. KATE McGRANN:** And you write that because that is your  
20 experience with Alstom's maintenance work on trial running to date at this point in time,  
21 right?

22 **MR. PETER LAUCH:** That is my experience and that is with -- you  
23 know, we were a team from OLRTC and RTM and that was our joint opinion, yes.

24 **MS. KATE McGRANN:** Yeah. And you actually highlight there.  
25 You go on to say:

26 "The good thing is that optically OLRTC and RTM  
27 executive committees have sent in the troops with  
28 experienced XTTC (inaudible)."

1 And then you contrast that with Alstom where you say:

2 "Alstom has not done anywhere near enough."

3 Do you see that?

4 **MR. PETER LAUCH:** I do see that. And that's -- each on of the  
5 partners, ACS and SNC and EllisDon, they pulled resources from other projects and  
6 gave them to us to provide additional support.

7 **MS. KATE McGRANN:** And when you're pulling resources from  
8 other projects you're doing that because the situation that you're trying to resolve is  
9 quite critical, right?

10 **MR. PETER LAUCH:** Absolutely,

11 **MS. KATE McGRANN:** But pulling resources from other projects  
12 isn't a sustainable solution to the problem, right? It's an immediate solution but not  
13 sustainable.

14 **MR. PETER LAUCH:** Absolutely. I mean, you're penalizing one  
15 project for the sake of the other.

16 **MS. KATE McGRANN:** Okay. So where you may see some short-  
17 term resolution of the issues as a result of all of the external resources that have been  
18 brought to bear, you can't rely on that resolution to be a lasting one, fair?

19 **MR. PETER LAUCH:** It's not a long-term solution. That's fair.

20 **MS. KATE McGRANN:** And turning back to what you described as  
21 on the part of Alstom, a "huge lack of urgency, a huge lack of resources, and a huge  
22 lack of experience," did you see any meaningful change in that from Alstom before the  
23 end of trial running?

24 **MR. PETER LAUCH:** I think there was an improvement and I think  
25 there was some high level discussions that definitely sort of acted as a catalyst to  
26 provide some additional help. But I mean, it wasn't over night. I mean, it was a build  
27 up.

28 **MS. KATE McGRANN:** Yeah. And when you say "improvement" I

1 think you're intentionally not going as far as I did. You say "improvement" I'm looking to  
2 see if there's a meaningful change. I take it there wasn't a meaningful change that you  
3 saw. You saw some improvements but not a big movement.

4 **MR. PETER LAUCH:** Not an immediate change, no.

5 **MS. KATE McGRANN:** Okay. So then my next question for you is  
6 did you see a lasting meaningful change in their approach through the first few months  
7 of Revenue Service?

8 **MR. PETER LAUCH:** I have to say no.

9 **MS. KATE McGRANN:** And then my last question for you is, you  
10 step into the role of RTM CEO in late 2019. Did you ever see a consistent meaningful  
11 change in their approach during the time that you spent on the project?

12 **MR. PETER LAUCH:** Yes, I did. To be fair at Alstom they brought  
13 in additional people. They were restructuring. But again, I mean, it's not a flick of a  
14 switch type of thing. I mean, it's time sensitive. It takes time to bring on resources. It  
15 takes time to make organizational changes. But the effort was there.

16 **MS. KATE McGRANN:** Okay. We stepped away from our review  
17 of the progress through trial time running to focus on this particular email that you sent  
18 around on the evening of August 7<sup>th</sup>. We can take this email down now and we'll turn  
19 back, if we could, to the last page of COW270758.

20 And you know what, sir? I was so interested in getting back to trial  
21 running that I failed to ask you about the second topic on that email. So I'm going to  
22 test everyone's patience and take us back for a second.

23 Can we pull up ALS66772 one more time because I neglected to  
24 ask you about the information that you're sharing about the progress through trial  
25 running more generally.

26 Thank you. And if we could scroll down. It's sort of the bottom third  
27 of the email, I'll say. We're looking for the paragraph that starts with, "The final  
28 conversation was around trial running."

1 So at least for me sir, it's called the third full paragraph down the  
2 page here. Let me know when your monitor has caught up with mine.

3 **MR. PETER LAUCH:** Thank you.

4 **MS. KATE McGRANN:** So the final conversation was around the  
5 trial running score card and how we're trending on lost vehicle kilometres. And was  
6 there any particular reason that lost vehicle kilometres was the focus of this  
7 conversation?

8 **MR. PETER LAUCH:** I don't recall specifically, but if we're talking  
9 about lost vehicle kilometres, I mean that has to do with trains defaulting on the track.  
10 And as I mentioned, I do remember August 7<sup>th</sup> was a particularly difficult day where by  
11 mid-morning we had already had three trains that had to be recovered. So that would  
12 be directly – you know, this a direct correlation to kilometres.

13 **MS. KATE McGRANN:** Okay. And you write here, the message  
14 was clear: "We are passing, but as a passenger experience the days that are passes  
15 would be horrendous for the City and public outcry would be brutal as well as from the  
16 Mayor and Council"; do you see that?

17 **MR. PETER LAUCH:** I do.

18 **MS. KATE McGRANN:** And I take it, sir, that that means that even  
19 where we see passes during the trial running, the pass doesn't necessarily represent a  
20 good day for a passenger on the system?

21 **MR. PETER LAUCH:** That's correct.

22 **MS. KATE McGRANN:** So in order to understand whether any day  
23 during trial running would be a good day for a passenger on the system, I think we need  
24 to look at the percentage of kilometres; is that right?

25 **MR. PETER LAUCH:** I would say so, yes, because I mean that's a  
26 representation of how efficient the vehicles are moving on the line.

27 **MS. KATE McGRANN:** And probably the best representation of  
28 passenger experience, at least as far as the trial running score cards go?

1                   **MR. PETER LAUCH:** I would say so, yes.

2                   **MS. KATE McGRANN:** And I think we've heard from others, and  
3 I'm paraphrasing here, that anything in the low 90s, so the 90, 91, 92, that's a bad day  
4 for a passenger even if it's a pass?

5                   **MR. PETER LAUCH:** That's correct. And I think I remember  
6 listening to some of Mr. Morgan's testimony and I think he said something along that  
7 line. And if you're in the 91, 92 range, that means something was disruptive on the line;  
8 it would have been disruptive to the passenger, to the client.

9                   **MS. KATE McGRANN:** Okay. And that helps everybody whose  
10 following along here, I think, put the trial running results in context when we're looking at  
11 whether you passed the test that's been set here versus what can passengers'  
12 experience when the line opens up based on the results of trial running. So – bear with  
13 me while I just find myself in the email for a second.

14                   In the next paragraph you say: "The score card for today", and  
15 that's August 7<sup>th</sup>; right?

16                   **MR. PETER LAUCH:** Yeah.

17                   **MS. KATE McGRANN:** "Will be addressed in the Committee  
18 meeting tomorrow at 2:00 p.m. but we were expecting a fail, meaning a restart from day  
19 one"; do you see that?

20                   **MR. PETER LAUCH:** I do.

21                   And then you say, "We tried to make a case for a repeat as  
22 opposed to a restart, another favour we need from the client." So I want to pause here  
23 for a second, because I was a little bit confused when I read this. My understanding  
24 was that the scoring for each day is done by members of the trial running review team;  
25 right?

26                   **MR. PETER LAUCH:** The scoring was actually done by a team of  
27 people; they would prepare all the metrics; they would prepare all the – they would  
28 crunch numbers and those numbers were presented to us at the 2:00 o'clock meeting.

1                   **MS. KATE McGRANN:** Okay. So there's a team that goes  
2 through all of the data in the morning and pulls that together for the trial running review  
3 team; right?

4                   **MR. PETER LAUCH:** That's correct.

5                   **MS. KATE McGRANN:** And then the actual entries on the trial  
6 running review score card, those are determined by the trial running review team; right?

7                   **MR. PETER LAUCH:** Most of those scores, no, they would be  
8 determined by the team that are crunching the numbers before we get there. So we're  
9 populating the score sheet but we're populating the score sheet with the numbers that  
10 were presented to us from all of the analysis that had been done several hours prior.

11                   **MS. KATE McGRANN:** Okay. And we can go to the score card if  
12 we have to, but let's see if we can do this without going to the score card. Some of the  
13 entries at least are – involve a bit of judgment and that judgment is exercised by the  
14 team together on a consensus basis; right?

15                   **MR. PETER LAUCH:** Absolutely, correct.

16                   **MS. KATE McGRANN:** Because if that wasn't the case, then you  
17 wouldn't need the trial running review team, you'd just deal with the data put forward by  
18 the morning team and everybody would get their afternoon off. I'm being facetious, but  
19 the trial running review team is there for a reason; right?

20                   **MR. PETER LAUCH:** It certainly is, yes.

21                   **MS. KATE McGRANN:** They're interpreting the data and they are  
22 determining what information goes on the trial running score card; right?

23                   **MR. PETER LAUCH:** That's correct.

24                   **MS. KATE McGRANN:** And that determination, in my  
25 understanding was, was made by the trial running review team based on information  
26 prepared by the morning team only; right?

27                   **MR. PETER LAUCH:** Absolutely, yes.

28                   **MS. KATE McGRANN:** Members of the trial running review team

1 are not calling out for help to people outside of that room?

2 **MR. PETER LAUCH:** If there was an anomaly or if we needed an  
3 explanation of something, you know, sometimes you would see a fail on a certain item.  
4 It could have been a maintenance item, it could have been a CCTV that wasn't working  
5 at the station and it might have ended up with a fail on the score card.

6 So then, you know, you would hear that maybe there was a reason  
7 for it; maybe it was something that – you know, that one of the testers did by accident.  
8 You know, if there was a reason for it, then we would call and support it. If there was  
9 something we were uncertain of, as I said, you know, you'll see a couple of score cards  
10 where we all would initial something because after the fact someone said "Oh, you  
11 know, we missed this particular set of kilometres" or "We missed this, we missed that."  
12 I'm trying to think of a specific example but we did have recourse to challenge  
13 something and get – you know, get validation from the people that produced the  
14 numbers.

15 **MS. KATE McGRANN:** Okay. And let me see if I can say that  
16 back to you to make sure that I understand. In a nutshell, if there's any questions about  
17 the objective data that's been provided to the trial running review team, you can see to  
18 fill those gaps or to have those questions answered?

19 **MR. PETER LAUCH:** Or to get clarifications, correct.

20 **MS. KATE McGRANN:** But other than that, the determination of  
21 what goes on the score card is made by the trial running review team and the trial  
22 running review team alone?

23 **MR. PETER LAUCH:** That's correct. The numbers are the  
24 numbers.

25 **MS. KATE McGRANN:** So if that is the case throughout, then can  
26 you help me understand what you're describing here where you say in your evening  
27 meeting with John Manconi and others who aren't on the trial running review team, "We  
28 try to make a case for a repeat as opposed to a restart for August 7<sup>th</sup>"?

1                   **MR. PETER LAUCH:** Yes, I don't recall – the numbers wouldn't  
2 have been presented at that time because the August 7<sup>th</sup> numbers would have been  
3 presented the next day as I say at the top of the email. And I think – we knew it was  
4 going to be a fail because we knew that there were three vehicles that would have been  
5 stranded in mid-morning. But having not seen the numbers yet, we would, you know –  
6 and it's all predicated on the numbers, but not having seen the numbers yet, you know,  
7 we were trying to make a case exactly as I said in the email, that as opposed to a  
8 restart where as you defined it at the start of this discussion, I mean it's starting from  
9 scratch, do a repeat. But the numbers would have to support that. And as I said, we  
10 would not see the full – you know, the full list of data until the following morning.

11                   **MS. KATE McGRANN:** So we looked at where the group can  
12 agree to a pause a little bit earlier, and that was based on exceptional circumstances  
13 and agreement; right?

14                   **MR. PETER LAUCH:** Correct.

15                   **MS. KATE McGRANN:** I'm going to suggest to you that at that  
16 point the numbers are irrelevant; that's talking about exceptional circumstances and  
17 agreement among the members of the group. So it's not always predicated on the  
18 numbers; right?

19                   **MR. PETER LAUCH:** No, not always; it's a fair comment.

20                   **MS. KATE McGRANN:** And August 7<sup>th</sup> is in fact classified as a  
21 pause?

22                   **MR. PETER LAUCH:** Eventually it was, yes.

23                   **MS. KATE McGRANN:** So coming back to this notion that on the  
24 evening of August 7<sup>th</sup>, before the morning team has done their assessment of the day;  
25 right, sir? That happens the next day?

26                   **MR. PETER LAUCH:** Correct.

27                   **MS. KATE McGRANN:** And you're talking to people who aren't on  
28 the trial running review team?



1                   **MR. PETER LAUCH:** Some of us in the meeting were, I think ---

2                   **MS. KATE McGRANN:** I think we can shortcut this. Some of the  
3 people you're speaking to are not on the trial running review team; right? Mr. Manconi,  
4 for example, is not on the trial running review team?

5                   **MR. PETER LAUCH:** Correct.

6                   **MS. KATE McGRANN:** And you were describing to your Board  
7 and all the executive committees that you're trying to make a case for a repeat as  
8 opposed to a restart. Who were you trying to make the case to?

9                   **MR. PETER LAUCH:** It would have been to the – I wasn't trying to  
10 make the case at that time; it would have been to try to make the case to the  
11 participants and the TLRT.

12                   **MS. KATE McGRANN:** Well, let's look at your email, sir; you're  
13 describing the meeting that you attended on the evening of August 7<sup>th</sup> and you say "We  
14 tried", past tense, "To make a case for a repeat as opposed to a restart". That reads to  
15 me like you tried at the August 7<sup>th</sup> meeting with Mr. Manconi and his team, to make a  
16 case for a repeat as opposed to a restart. That's what you wrote, right, sir?

17                   **MR. PETER LAUCH:** That's what I wrote, correct.

18                   **MS. KATE McGRANN:** And you would not be misleading the RTG  
19 Board and the executive committees of all of those companies as to what happened at  
20 that meeting; right?

21                   **MR. PETER LAUCH:** No, certainly not.

22                   **MS. KATE McGRANN:** Because you tried to make a case at that  
23 meeting for a repeat as opposed to a restart?

24                   **MR. PETER LAUCH:** I'm sure I did, yes, otherwise I wouldn't have  
25 said it.

26                   **MS. KATE McGRANN:** And you describe it as another favour we  
27 need from the client; do you see that?

28                   **MR. PETER LAUCH:** Correct.

1                   **MS. KATE McGRANN:** And so I take it that classifying this day as  
2 a repeat as opposed to a restart would require the City to go farther than it normally  
3 would if they're doing you a favour?

4                   **MR. PETER LAUCH:** Not just the City. I mean there would have  
5 to be a consensus in the meeting and ultimately the IC would have to sign off on it, but I  
6 mean it was – you know, it was – it would have been – I don't want to use the word  
7 “concession”, but there would have been some discussion on it.

8                   **MS. KATE McGRANN:** So in terms of who you're asking for a  
9 favour for, you only describe the client here; do you see that?

10                  **MR. PETER LAUCH:** I do.

11                  **MS. KATE McGRANN:** And the client is the City?

12                  **MR. PETER LAUCH:** Correct.

13                  **MS. KATE McGRANN:** And just because you've raised the IC  
14 here, was it your understanding that if the City and RTG and its subcontractors on the  
15 trial running review team came to an agreement about any particular day's score, that  
16 the IC would make an independent assessment and if it disagreed, it would intervene?

17                  **MR. PETER LAUCH:** That's correct.

18                  **MS. KATE McGRANN:** Did you ever see that happen?

19                  **MR. PETER LAUCH:** I can't recall. I mean, it wasn't always a  
20 slam dunk. There were -- sometimes there certainly discussion, especially on the days  
21 where we were looking at restructure pauses.

22                  **MS. KATE McGRANN:** Is it ---

23                  **MR. PETER LAUCH:** But ---

24                  **MS. KATE McGRANN:** --- that you were relying on the  
25 independent certifier to make an independent assessment and make sure that  
26 everybody, when they scored that day, got the scores right?

27                  **MR. PETER LAUCH:** That was -- that's correct, yeah.

28                  **MS. KATE McGRANN:** So you saw them as really being the final

1 word on this regardless of what the City and the other members of the trial running  
2 review team agreed?

3 **MR. PETER LAUCH:** Correct.

4 **MS. KATE McGRANN:** Just out of curiosity, sir, where you say,  
5 “another favour we need from the client”, had RTG sought favours from the City up until  
6 this point in order to get where it was in terms of substantial completion or the trial  
7 running scores to date?

8 **MR. PETER LAUCH:** I’m trying to think of the context now, but it  
9 probably goes back to some of the agreements we have in the substantial completion.

10 **MS. KATE McGRANN:** And then, if we could scroll down to the  
11 second-last paragraph of this email, you write:

12 “Manconi made it clear that he wants to know, ‘What’s  
13 in it for me to get you a pass on trial running?’” (As  
14 read).

15 Do you see that?

16 **MR. PETER LAUCH:** I do.

17 **MS. KATE McGRANN:** And that’s consistent with what you told us  
18 earlier, sir, about the City wanting something in it for them any time RTG brought a  
19 proposal forward, right?

20 **MR. PETER LAUCH:** That’s correct.

21 **MS. KATE McGRANN:** And you say:

22 “We’ve been down that road before.” (As read).

23 Do you see that?

24 **MR. PETER LAUCH:** I do.

25 **MS. KATE McGRANN:** What are you referring to there?

26 **MR. PETER LAUCH:** So we had lots of discussions, lots of  
27 meetings, not just about trial running. There was lots of other things going on in the  
28 background and we were always talking -- one of the subjects that was always -- or

1 frequently discussed were some of the variations that were in dispute. So there was  
2 oftentimes meetings where, you know, potential -- you know, we talked before about  
3 give and take, but a potential give on our side would be, if there was a low-hanging  
4 variation, perhaps, that we would dispute, that that would be something that we would  
5 be willing to absorb or to negotiate. That's what I was referring to.

6 **MS. KATE McGRANN:** Earlier in the email -- and we just looked at  
7 -- you describe making a case at this meeting with Mr. Manconi and his team to try to  
8 have August 7<sup>th</sup> classified not as a fail. And here, you've got Mr. Manconi -- you saying  
9 Mr. Manconi made it clear that he wants to know, "What's in it for me to get you a pass  
10 on trial running." And I think you'll agree with me, sir, that somebody off the street of  
11 Ottawa reading this email for the first time may form some concerns that Mr. Manconi is  
12 exercising some control over the results of trial running. Can you see how they might  
13 form that opinion?

14 **MR. PETER LAUCH:** They might form that opinion.

15 **MS. KATE McGRANN:** And can you see how that would be  
16 extremely troubling to somebody who's reading this email for the first time given that the  
17 trial running experience is supposed to be an objective scoring by a team known to  
18 everybody, made up of both sides, right?

19 **MR. PETER LAUCH:** I can certainly see that, but I mean it was an  
20 internal -- internal email to people who are aware of the situation. And I can assure you,  
21 at the time, I never would have thought that it would end up in a public domain.

22 **MS. KATE McGRANN:** That's fair, but let's leave that aside and  
23 turn back to the concern here. It looks to me like you're saying Mr. Manconi is bartering  
24 with you over whether trial running is going to pass, overall, of not. Can you see how I  
25 get there?

26 **MR. PETER LAUCH:** I can see how you get there, yes.

27 **MS. KATE McGRANN:** And was the tenor of the conversation that  
28 you had at this meeting?

1                   **MR. PETER LAUCH:** No, I think the context of that comment was  
2 in the repeat versus pause sort of discussion.

3                   **MS. KATE McGRANN:** Well, I'm going to suggest to you that  
4 that's not the case, sir, because you take a different approach here. You're very clear in  
5 your email earlier where you're talking about trying to get others to agree that it's not a  
6 fail on August 7<sup>th</sup>. Two paragraphs later, you're talking about an all-caps pass that Mr.  
7 Manconi is offering up on trial running, and he's asking, "What's in it for me?" You see  
8 that, right?

9                   **MR. PETER LAUCH:** I do.

10                  **MS. KATE McGRANN:** You were very careful in the information  
11 that you shared with the board of directors and the executive committees of the  
12 companies involved in this project, right?

13                  **MR. PETER LAUCH:** I was.

14                  **MS. KATE McGRANN:** At all times?

15                  **MR. PETER LAUCH:** At all times.

16                  **MS. KATE McGRANN:** And particularly during this critical day  
17 during trial running, right?

18                  **MR. PETER LAUCH:** Correct.

19                  **MS. KATE McGRANN:** And so we've got to assume that you  
20 meant whatever you wrote down here.

21                  **MR. PETER LAUCH:** Yes.

22                  **MS. KATE McGRANN:** So help me understand what you're  
23 describing when you tell all those people that Mr. Manconi has made it clear to you that  
24 he wants know what's in it for him to get you a pass on trial running, not a particular  
25 day, on trial running?

26                  **MR. PETER LAUCH:** So yeah -- so, first of all, it wasn't for Mr.  
27 Manconi. It was for the City. And again, I think -- I'm trying to remember three years  
28 ago what the context was but, as I said, we've had -- we had many discussions prior to

1 that about other things where the subject of disputed variations would come up. And so  
2 it was probably in that context that I meant this.

3 **MS. KATE McGRANN:** Okay, but you don't remember?

4 **MR. PETER LAUCH:** I don't. It was three years ago. I don't  
5 remember exactly what transpired, no.

6 **MS. KATE McGRANN:** Okay. So as between you and your email,  
7 the best record of what happened is what you wrote in the email, right?

8 **MR. PETER LAUCH:** Correct.

9 **MS. KATE McGRANN:** You mention that he did bring up the  
10 issues of the public and the SNC Stage 2 issue.

11 "Can you explain the Trillium Line? Technical score  
12 issue is all over the news and social media." (As  
13 read).

14 Why was he bringing that up at this time?

15 **MR. PETER LAUCH:** I think it was because of just the perception  
16 at the time. I don't recall how much of the trial running was out there in the public, but I  
17 think he -- I think he raised that because, I mean, there was already pressure in the  
18 media. There was already pressure in the public, and not just on our project. There  
19 was -- it had absolutely nothing to do with RTG but I mean on the -- SNC was in the  
20 news because of the Stage 2 and so it was -- I think it was really just to highlight that,  
21 you know, this just -- it just -- it just fed into the -- into the negative media sort of media  
22 stream that was going on at the time.

23 **MS. KATE McGRANN:** Okay. And then, just to turn to the last  
24 sentence in this email, sir, you write:

25 "The City is still trying to find ways to get to the 16<sup>th</sup> of  
26 August." (As read).

27 Do you see that?

28 **MR. PETER LAUCH:** Yes.

1                   **MS. KATE McGRANN:** And I take it you mean there that the City  
2 is still trying to find ways to pass trial running and achieve that August 16<sup>th</sup> revenue  
3 service availability date that it announced back on July 10<sup>th</sup>; is that right?

4                   **MR. PETER LAUCH:** I think that's correct, yes.

5                   **MS. KATE McGRANN:** Okay. And so is it fair to say that at least  
6 part of the City's focus, sir, is not so much on how trial running is going but, "How can  
7 we get to August 16<sup>th</sup>? What do we need to do to get there?"

8                   **MR. PETER LAUCH:** I wouldn't characterize it as that. I mean -- I  
9 mean we had to -- we had to pass. I mean it's -- the 16<sup>th</sup> was serving the target but if  
10 we didn't -- if we didn't meet the trial running criteria by -- you know, by -- if we didn't  
11 respect what was -- what was expected in the trial criteria, I mean it -- as -- we wouldn't  
12 meet the 16<sup>th</sup> of August. As I said start, I mean it was certainly the target, but there was  
13 lots of prerequisites to that.

14                   **MS. KATE McGRANN:** Yeah. And would you say the City is still  
15 trying to find ways -- one of the ways that is found is a change to the trial running  
16 criteria, right?

17                   **MR. PETER LAUCH:** I don't believe that we even discussed or  
18 that was even entertained at that time. I think we started talking about that about a  
19 week later.

20                   **MS. KATE McGRANN:** Okay. The notion that the City is still trying  
21 to find ways to get to revenue service availability on the 16<sup>th</sup> of August -- and I just want  
22 to spend a quick minute on that with you before we move any further. So August 7<sup>th</sup>,  
23 you've already projected it's not going to be a pass. It's going to be a fail. At best, it's  
24 going to be a repeat if you manage to convince people, right?

25                   **MR. PETER LAUCH:** Correct.

26                   **MS. KATE McGRANN:** And what ultimately ends up happening is  
27 that it's neither. The group agrees that it's going to be that "exceptional pause" option  
28 that's available in 2019, right?

1                   **MR. PETER LAUCH:** Correct.

2                   **MS. KATE McGRANN:** And up until this point, you've have  
3 passes, right?

4                   **MR. PETER LAUCH:** Yeah. I'm trying to remember the  
5 spreadsheet you put up, but yes.

6                   **MS. KATE McGRANN:** Okay. And it's the night of August 7<sup>th</sup>;  
7 you've got nine days until August 16<sup>th</sup>, right?

8                   **MR. PETER LAUCH:** Correct. Yeah.

9                   **MS. KATE McGRANN:** The 2019 criteria requires 12 consecutive  
10 pass days, right?

11                   **MR. PETER LAUCH:** Correct.

12                   **MS. KATE McGRANN:** So you need eight passes in nine days in  
13 order to get revenue service availability by August 16<sup>th</sup>?

14                   **MR. PETER LAUCH:** Yes.

15                   **MS. KATE McGRANN:** I'm going to back to COW270758, a  
16 document that I think we'll be spending our most time on today. And we'll go back to  
17 that last page of that chart we've been looking at.

18                   **COMMISSIONER HOURIGAN:** Ms. McGrann, we're going to take  
19 the morning break now, okay?

20                   **MS. KATE McGRANN:** Okay.

21                   **THE REGISTRAR:** Order, all rise. The Commission will recess for  
22 15 minutes.

23 --- Upon recessing at 10:30 a.m.

24 --- Upon resuming at 10:46 a.m.

25                   **THE REGISTRAR:** The Commission has resumed.

26                   **COMMISSIONER HOURIGAN:** All right. Please continue.

27 **--- MR. PETER LAUCH, Resumed:**

28 **--- EXAMINATION IN-CHIEF BY MS. KATE McGRANN (cont'd):**



1                   **MS. KATE McGRANN:** Okay. So if we could turn up  
2 COW270758.

3                   **MR. PETER LAUCH:** Counsel, if I may. Just on the break I  
4 noticed that there was a communications truck outside my house playing with the lines  
5 which is usually not a good sign. So just if I do lose you, I've got my phone set up so I  
6 can do a hotspot if necessary. So I just want a fair warning.

7                   **MS. KATE McGRANN:** Fair enough. And let's hope it doesn't go  
8 there. One more reason for me to try to wrap up with you as quickly as we can.

9                   So if we could go to the last page of this document. I know we've  
10 spent some time there so there is a reason for it.

11                   So we had been discussing August 7<sup>th</sup> which we see ends up being  
12 one of those exceptional pause days as does August 8<sup>th</sup>, right?

13                   **MR. PETER LAUCH:** Correct.

14                   **MS. KATE McGRANN:** And at this point in time I think it's fair to  
15 say that an August 16<sup>th</sup> RSA date is out of reach, right?

16                   **MR. PETER LAUCH:** Correct.

17                   **MS. KATE McGRANN:** And then you get five pause days followed  
18 by two more repeat days, right?

19                   **MR. PETER LAUCH:** Correct.

20                   **MS. KATE McGRANN:** And then the second repeat day is on  
21 August 15<sup>th</sup>.

22                   **MR. PETER LAUCH:** Yeah, I see that.

23                   **MS. KATE McGRANN:** And we've already discussed this but in  
24 terms of how the scoring works, the scoring of August 15<sup>th</sup> is going to take place on  
25 August 16<sup>th</sup>, right?

26                   **MR. PETER LAUCH:** Yes.

27                   **MS. KATE McGRANN:** Okay. So we can take this document  
28 down and can you please pull up COW158931.

1                   Okay. And this is in an August 16<sup>th</sup>, 2019 letter to Michael Morgan,  
2 the subject: trial running procedures. And it's written by you. I'll just ask that you scroll  
3 down so we can see the body of the letter and you, sir, can get familiar with what we're  
4 talking about here.

5                   And just to situate ourselves in time, this letter is sent on August  
6 16<sup>th</sup>. That is both the day that the August 15<sup>th</sup> repeat result would be determined by the  
7 trial running review team, right?

8                   **MR. PETER LAUCH:** Correct.

9                   **MS. KATE McGRANN:** And it's also the date that the City had  
10 announced RSA would be achieved, right?

11                  **MR. PETER LAUCH:** Correct.

12                  **MS. KATE McGRANN:** Okay. And this letter, just to summarize it,  
13 identifies two changes that are going to be made to the trial running procedures --- a  
14 switch to the 2017 trial running criteria and a reduction in the weekday peak vehicle  
15 requirements from 15 down to 13; is that right?

16                  **MR. PETER LAUCH:** That's correct.

17                  **MS. KATE McGRANN:** Okay. And we've discussed the  
18 implications of those changes with others but I think you'll agree with me that the 2017  
19 criteria is easier to meet than the 2019 criteria?

20                  **MR. PETER LAUCH:** Correct.

21                  **MS. KATE McGRANN:** And that's one of the reasons that it's  
22 switch to at this point in time; is that right?

23                  **MR. PETER LAUCH:** Yes.

24                  **MS. KATE McGRANN:** Okay And you discussed what led to this  
25 letter in your Commission interview. But to summarize it, your evidence is that Mr.  
26 Charter suggested these two changes to the trial running criteria, right?

27                  **MR. PETER LAUCH:** I don't know if it was Mr. Charter specifically.  
28 If I recall my testimony I think Mr. Charter pulled Matthew Slade and I out of a meeting

1 and said that Mr. Manconi and others wanted to have a discussion with us. And then  
2 subsequent to that there was a flurry of meetings throughout the course of that day.

3 **MS. KATE McGRANN:** Okay. So fair enough. You don't know  
4 whether the idea originated from Mr. Charter but he communicates to you that the City  
5 wants to look at making these changes to the trial running criteria; is that right?

6 **MR. PETER LAUCH:** That's correct.

7 **MS. KATE McGRANN:** And the idea comes from the City; is that  
8 right?

9 **MR. PETER LAUCH:** That's correct.

10 **MS. KATE McGRANN:** And Mr. Manconi has given evidence,  
11 including evidence yesterday, that he recalls that the request to make these changes to  
12 the trial running requirements came from you; are you aware of that?

13 **MR. PETER LAUCH:** I am.

14 **MS. KATE McGRANN:** And I take it you disagree with that  
15 evidence?

16 **MR. PETER LAUCH:** I do.

17 **MS. KATE McGRANN:** Your evidence remains that the idea came  
18 from the City through Mr. Charter?

19 **MR. PETER LAUCH:** Correct.

20 **MS. KATE McGRANN:** Okay. And you recall that the City said,  
21 "We don't think 98 percent is going to be achievable. Why don't we basically go back to  
22 what you wanted to do in 2017?" Right?

23 **MR. PETER LAUCH:** Yes, more or less in those words, yes.

24 **MS. KATE McGRANN:** Okay. And the City wanted some  
25 conditions along with any agreement to make those changes; is that right?

26 **MR. PETER LAUCH:** Yes.

27 **MS. KATE McGRANN:** And did RTG try to impose any conditions  
28 on the agreement to make these changes?

1                   **MR. PETER LAUCH:** No, I don't think so. I mean, the way it was  
2 presented -- and I think I said it in some correspondence that it was essentially non-  
3 negotiable. But when presented to our respective boards, they -- everyone agreed with  
4 it.

5                   **MS. KATE McGRANN:** Okay. Is it fair to say that RTG doesn't  
6 have much bargaining power at all in this situation, right?

7                   **MR. PETER LAUCH:** That's fair to say, yes.

8                   **MS. KATE McGRANN:** Okay. before the suggestion to make  
9 these changes came to RTG through the City, did RTG ask for any changes to the trial  
10 running criteria to be made?

11                   **MR. PETER LAUCH:** No.

12                   **MS. KATE McGRANN:** To your knowledge, did RTG suggest at  
13 any point prior to or during trial running that it would rely on the Project Agreement  
14 language to assert that the 2019 trial running criteria was too high or didn't need to be  
15 met?

16                   **MR. PETER LAUCH:** Would you mind repeating the question?

17                   **MS. KATE McGRANN:** Yeah, let me try to rephrase it to make it  
18 clear. I understand that the Project Agreement language about the trial running  
19 requirements was somewhat vague; is that fair?

20                   **MR. PETER LAUCH:** That's fair.

21                   **MS. KATE McGRANN:** At any point prior to or during trial running  
22 did RTG ever assert that it didn't need to meet the 2019 criteria based on the language  
23 in the Project Agreement?

24                   **MR. PETER LAUCH:** No.

25                   **MS. KATE McGRANN:** Did RTG ever, before the suggestion was  
26 made from the City, seek to move away from the 2019 trial running criteria?

27                   **MR. PETER LAUCH:** No.

28                   **MS. KATE McGRANN:** In fact, RTG held the pen largely on the

1 2019 trial running criteria and that's what it set out to meet, right?

2 **MR. PETER LAUCH:** That's not 100 percent correct. As I said,  
3 the 2019 criteria was a collaborative affair between OLRTC and people from the City.  
4 And if I recall correctly, there was a gentleman who was on loan from Calgary Transit  
5 and he worked with Matthew to come up with the 2019 criteria.

6 **MS. KATE McGRANN:** Okay. And that's entirely fair, sir. And one  
7 of the reasons at least that RTG was in favour of the 2019 criteria is that it provides  
8 protection for RTM because it requires a demonstration that the Revenue Service  
9 requirements that will be applied to RTM can in fact be met, right?

10 **MR. PETER LAUCH:** Correct.

11 **MS. KATE McGRANN:** And whether this was an intention in  
12 setting the 2019 criteria on RTG's part or not, it also provides protection for the riders by  
13 showing that the service that they expect can actually be delivered.

14 **MR. PETER LAUCH:** That's fair.

15 **MS. KATE McGRANN:** In your Commission interview, you said  
16 that some of the conditions that the City requested made their way onto the term sheet.  
17 Do you remember that?

18 **MR. PETER LAUCH:** Yeah.

19 **MS. KATE McGRANN:** And that was the August 30<sup>th</sup>, 2019 term  
20 sheet that was part of the achievement of revenue service availability, right?

21 **MR. PETER LAUCH:** That's correct.

22 **MS. KATE McGRANN:** And it's fair to say that the -- without that  
23 term sheet, revenue service availability would not have been achieved at that time?

24 **MR. PETER LAUCH:** That's correct.

25 **MS. KATE McGRANN:** And I take it that all of the items that  
26 landed on that term sheet, based on what you've told us about the relative negotiating  
27 power of the City and RTG at this point in time, came from the City; is that right?

28 **MR. PETER LAUCH:** That's correct.

1                   **MS. KATE McGRANN:** So the City is selecting the various things  
2 that go on the term sheet and the requirements of revenue service availability in the  
3 Project Agreement that it will not require RTG to meet; is that right?

4                   **MR. PETER LAUCH:** Correct.

5                   **MS. KATE McGRANN:** At what point in time did RTG and the City  
6 come to an agreement about those conditions?

7                   **MR. PETER LAUCH:** It was -- I think it started around mid-August  
8 when we were --when the subject of changing criteria was broached. It was laid out for  
9 us briefly, and I think I remember sending an email to my respective boards, sort of a  
10 point form summary, and then all the lawyers got involved to solidify it and make sure  
11 the wording was correct, because we had to get consensus from the legal teams of  
12 OLRT, RTM, RTG, present it to the City, so that there was lots of -- and you would know  
13 better than I -- there was lots of wordsmithing, lots of agreement on the language. So it  
14 was pretty much up to the eleventh hour that those discussions were ongoing.

15                   **MS. KATE McGRANN:** Okay. And I think in this particular case,  
16 sir, you would probably know better than I would, because you were there and I was  
17 not, but I take your point. Lawyers tend to make things take a little bit longer than they  
18 otherwise would.

19                   Can we turn up RTC885962?

20                   **--- EXHIBIT No. 208**

21                   RTC00885962 – Email from Peter Lauch to Ramon Villaamil  
22 et al. For Discussion: Revises RSA Prerequisites 15 August  
23 2019

24                   **MS. KATE McGRANN:** So this is an email to -- from you to others,  
25 and you can let us know who you're emailing here, if you don't mind.

26                   **MR. PETER LAUCH:** Sorry, I'm just waiting, waiting for the line to  
27 stick in, but I can see the names, some of the names on there.

28                   So I would have reported that to the board. And just looking at

1 those names again, I would have then shot that out to -- instead of just my board, I  
2 would have sent it to the OLRTC and RTM board as well.

3 **MS. KATE McGRANN:** Okay. And this is an email that you send  
4 on August 15<sup>th</sup> of 2019, at 5:42 p.m., and the subject line is "For Discussion, Revises  
5 RSA, Pre-requisites". And you write, "We just had a meeting with the City. City has  
6 proposed a non-negotiable offer."

7 And then you set out a number of bullet points with -- outlining the  
8 offer; is that right?

9 **MR. PETER LAUCH:** Yeah, that's correct, and that's what I said a  
10 few minutes ago, that we hadn't fleshed out all the details yet, but in point form  
11 summary, this was the criteria, and then the details would follow.

12 **MS. KATE McGRANN:** Okay. And we don't have time to pull up  
13 the term sheet today, sir, but I think if we did, you would see that there's symmetry  
14 between what the layout here and what's actually put in the term sheet; is that right?

15 **MR. PETER LAUCH:** Yes, that's right.

16 **MS. KATE McGRANN:** Is it fair to say that the City and RTG reach  
17 an agreement in principle, at least, with paper, and to follow about the conditions that  
18 RTG would agree to before the changes in the trial running criteria are made?

19 **MR. PETER LAUCH:** That's correct.

20 **MS. KATE McGRANN:** Okay. And then in terms of just the letter  
21 outlining the changes coming from you, in your Commission interview, I think you said  
22 that that was a request from the City, that that letter outlining those changes to the trial  
23 running criteria and the vehicle requirements come from RTG; is that right?

24 **MR. PETER LAUCH:** So what had to come -- so what the client  
25 asked us to do was more in terms of the criteria. They wanted us to make an RFI --  
26 sorry, request for information request to change the trial running criteria. This letter --  
27 there could -- I mean, they are related, but they were mutually exclusive. The letter was  
28 not related to the technical RFI that we sent.

1                   **MS. KATE McGRANN:** Okay. And can you -- we can take this  
2 email down. We're done with it now.

3                   What was your understanding of why the RFI needed to come from  
4 RTG?

5                   **MR. PETER LAUCH:** So we had a paper trail. I mean, RTG was  
6 the one initially in 2017 and again in 2019, although both criteria were collaborative  
7 affairs, but the way the system worked, it was initiated through an RFI from RTG. So  
8 we were following the protocol that we had established through the PA and through e-  
9 Builder.

10                  **MS. KATE McGRANN:** Is the purpose of the paper trail to help  
11 somebody who's working at the project later understand what happened and why?

12                  **MR. PETER LAUCH:** That's the purpose. You want it to be  
13 traceable.

14                  **MS. KATE McGRANN:** Okay. And it seems to me that the paper  
15 trail here may be a little misleading to somebody who happens upon it later, given that  
16 the request came from the City, but the letter comes from RTG?

17                  **MR. PETER LAUCH:** That's -- it may appear that way, but that  
18 was what we were instructed to do.

19                  **MS. KATE McGRANN:** And did you have an understanding as to  
20 why, other than that -- that prior to procedures that emanated from RTG, as to why this  
21 particular letter needed to come from RTG?

22                  **MR. PETER LAUCH:** I think there's -- you know, they're sort of  
23 combined. I mean, the RFI was technical, and that's what, you know -- and then -- and  
24 the system was built. So it was a request for information, a technical change, and the  
25 letter was more commercial.

26                  **MS. KATE McGRANN:** Okay. And we are, unfortunately, out of  
27 time here, but I do have just one last quick item I want to cover with you.

28                  And so it's over -- we've spent some time today, sir, in the individual



1 results on the days of trial running, and in particular, on that email on which you  
2 explained that the City made it clear to you that a pass on any particular day is not  
3 reflective of the ridership experience, and in fact, a pass on the lower end would be  
4 disastrous, I think, for some people, and result in public outcry, including from the  
5 mayor, right?

6 **MR. PETER LAUCH:** Correct.

7 **MS. KATE McGRANN:** And it's been suggested before the  
8 Commission that trial running is a test, and you'll agree that, and that it's like a driver's  
9 test in that what's really important is if you pass the test. Are you familiar with this  
10 evidence?

11 **MR. PETER LAUCH:** I heard someone say that yesterday, yes.

12 **MS. KATE McGRANN:** Okay. And so -- and you're familiar with  
13 the suggestion that's been made that past failures on the driver's test aren't important;  
14 what's really important and what people need to know is that you ultimately passed.  
15 You're familiar with that?

16 **MR. PETER LAUCH:** That's correct.

17 **MS. KATE McGRANN:** And I don't know that the analogy  
18 necessarily works, and I want to walk through that with you for a second, based on what  
19 you know about what it took to get a pass on any given day and what that day would  
20 have looked like if there were riders on the system.

21 So would you agree with me that looking at the pass results overall,  
22 the final result, there's a pass, doesn't give you any information about what a rider's day  
23 during any one of those particular pass days would have been like?

24 **MR. PETER LAUCH:** I would agree with you.

25 **MS. KATE McGRANN:** And so in order to really understand what  
26 kind of experience is going to be offered up to the riders, you need to dig quite a bit  
27 deeper into the details of any particular day to understand what the system is doing,  
28 right?

1                   **MR. PETER LAUCH:** I would agree to that, yes.

2                   **MS. KATE McGRANN:** So it's kind of like -- going back to this  
3 somewhat awkward example of the driver's test -- if I hear that you passed the driver's  
4 test, then I know that you passed, right?

5                   **MR. PETER LAUCH:** Yes.

6                   **MS. KATE McGRANN:** I'm going to suggest to you that it doesn't  
7 give me enough information to figure out if I want to get in the car with you, put my life in  
8 your hands as a driver, right?

9                   **MR. PETER LAUCH:** I would not disagree with you.

10                  **MS. KATE McGRANN:** In order to make that decision, I want to  
11 see what your driving looks like, I want to understand what your record is like. Like, I  
12 want to know what it's really like to be in the car, right?

13                  **MR. PETER LAUCH:** I don't disagree with you. I don't think that's  
14 an analogy I would have picked.

15                  **MS. KATE McGRANN:** And do you think it's fair to say, sir, that  
16 the decision to open this system up to the public in order to give them the kind of  
17 reliable ridership experience they would want, in order to make that decision, the people  
18 making that decision need to know not only that the trial running period was pass, but  
19 what that pass actually looked like, day to day?

20                  **MR. PETER LAUCH:** I would agree, yes.

21                  **MS. KATE McGRANN:** Thank you very much for your time.  
22 Those are my questions.

23                  **MR. PETER LAUCH:** Thank you.

24                  **COMMISSIONER HOURIGAN:** All right. Next up is the City of  
25 Ottawa.

26 **--- CROSS-EXAMINATION BY MS. SHARON VOGEL:**

27                  **MS. SHARON VOGEL:** Good morning. My name is Sharon Vogel,  
28 V-o-g-e-l, and I'm counsel for the City of Ottawa.

1 Mr. Lauch, can you hear me okay?

2 **MR. PETER LAUCH:** I can. I do.

3 **MS. SHARON VOGEL:** Thank you.

4 I'd like to start by asking a few questions about your relationship  
5 with the City of Ottawa. I understand you had a good relationship with people at the  
6 City of Ottawa, is that correct?

7 **MR. PETER LAUCH:** I'd like to think so, yes.

8 **MS. SHARON VOGEL:** That you found them to be professional  
9 and experienced, especially on the construction side, I believe you said in your  
10 Commission interview?

11 **MR. PETER LAUCH:** That's correct, yes.

12 **MS. SHARON VOGEL:** And the City had good qualified staff from  
13 the start of the project; correct?

14 **MR. PETER LAUCH:** I would say so, yes.

15 **MS. SHARON VOGEL:** And so people like Steven Cripps and  
16 Michael Morgan, they were experienced and competent and they understood the  
17 complexity of the project; is that fair to say?

18 **MR. PETER LAUCH:** That's absolutely fair to say.

19 **MS. SHARON VOGEL:** And generally the City understood the  
20 complexity of this project?

21 **MR. PETER LAUCH:** Yes.

22 **MS. SHARON VOGEL:** And you were asked in your Commission  
23 interview about whether the City had a strict approach in interpreting the project  
24 agreement and you answered "yes, but that is not unexpected"; correct? Do you recall  
25 saying that?

26 **MR. PETER LAUCH:** I do.

27 **MS. SHARON VOGEL:** And the reason for that is because when  
28 an owner and a contractor enter into a construction contract or a project agreement in

1 the case of a P3, the general idea is to follow the contract for the benefit of both parties;  
2 correct?

3 **MR. PETER LAUCH:** Correct.

4 **MS. SHARON VOGEL:** And the contract is essentially the code  
5 book for the parties that reflects the agreed upon risk allocation; correct?

6 **MR. PETER LAUCH:** I would agree to that, yes.

7 **MS. SHARON VOGEL:** And you'd agree that sometimes a  
8 contract can't anticipate every scenario and unexpected things happen or where a  
9 project agreement doesn't deal with a particular situation and the parties try to reach a  
10 compromise because it makes sense to do so; correct?

11 **MR. PETER LAUCH:** That's been my experience, yes.

12 **MS. SHARON VOGEL:** And would you agree that this happened  
13 a number of times on this project?

14 **MR. PETER LAUCH:** I would agree.

15 **MS. SHARON VOGEL:** I'll give you some examples ---

16 **MR. PETER LAUCH:** Sure.

17 **MS. SHARON VOGEL:** --- and ask if it accords with your  
18 recollection. I understand that the City issued about 400 variations to address changes  
19 to the contract; correct?

20 **MR. PETER LAUCH:** That's correct.

21 **MS. SHARON VOGEL:** And sometimes those variations needed  
22 to be negotiated; and I think you mentioned this, this morning, correct?

23 **MR. PETER LAUCH:** Correct.

24 **MS. SHARON VOGEL:** And that's normal on any large  
25 construction project; isn't it?

26 **MR. PETER LAUCH:** 100 per cent.

27 **MS. SHARON VOGEL:** And you explained in your interview with  
28 Commission counsel how the City and RTG worked well together in determining the

1 payment milestones, including the one for tunnelling and another one in relation to  
2 access to the MSF; correct?

3 **MR. PETER LAUCH:** Yeah, and there was one on material supply  
4 as well, correct.

5 **MS. SHARON VOGEL:** And these are other examples of slight  
6 deviations from the project agreement where it made sense for all the parties; correct?

7 **MR. PETER LAUCH:** Correct.

8 **MS. SHARON VOGEL:** And in relation to the time period around  
9 substantial completion, the City dealt cooperatively with you as you grappled with the  
10 problems created by the fact that plywood had been installed in the escalators; correct?

11 **MR. PETER LAUCH:** That was one of the issues we were dealing  
12 with, yes.

13 **MS. SHARON VOGEL:** Well, the City didn't – and the City didn't  
14 ask you to rip out all the escalators and take out all the plywood in the days leading up  
15 to substantial completion; did it?

16 **MR. PETER LAUCH:** No, they were in fact quite supportive in  
17 trying to help us with TSSA.

18 **MS. SHARON VOGEL:** And you together got past that hurdle and  
19 TSSA eventually approved the escalators; correct?

20 **MR. PETER LAUCH:** That is correct.

21 **MS. SHARON VOGEL:** And you would agree with me that the  
22 City took a reasonable approach with respect to the interpretation of the project  
23 agreement in response to RTG's second substantial completion notice; correct?

24 **MR. PETER LAUCH:** That's correct.

25 **MS. SHARON VOGEL:** And the City could have taken a hard line  
26 approach and not accepted any mitigations or commitments to complete certain works  
27 prior to revenue service availability; correct?

28 **MR. PETER LAUCH:** Correct.

1                   **MS. SHARON VOGEL:** But the City understood the practical  
2 realities of the situation and the progress of the work and it was collaborative with RTG;  
3 is that fair?

4                   **MR. PETER LAUCH:** That is fair.

5                   **MS. SHARON VOGEL:** And the project agreement actually  
6 contains an explicit provision that gives the City discretion to allow waiver of any of the  
7 requirements of substantial completion; correct? That's in section 26.4(d) of the project  
8 agreement?

9                   **MR. PETER LAUCH:** I have to trust you, yes.

10                  **MS. SHARON VOGEL:** We don't need to pull it up, but you recall  
11 that they did have a discretion there in relation to substantial completion?

12                  **MR. PETER LAUCH:** I do.

13                  **MS. SHARON VOGEL:** And as a cooperative owner there were  
14 certain items that the City agreed could be completed after substantial completion;  
15 correct?

16                  **MR. PETER LAUCH:** Correct.

17                  **MS. SHARON VOGEL:** And that was an example of cooperation  
18 by the City; correct?

19                  **MR. PETER LAUCH:** Correct.

20                  **MS. SHARON VOGEL:** Now I would just like to ask you a few  
21 questions about RTG. I think you advised Commission counsel that RTG had a low of  
22 five employees and a high of ten employees, so a relatively small staff; you'd agree?

23                  **MR. PETER LAUCH:** Yes.

24                  **MS. SHARON VOGEL:** With RTG.

25                  **MR. PETER LAUCH:** With RTG.

26                  **MS. SHARON VOGEL:** And RTG flowed down responsibilities to  
27 RTM and OLRTC; correct?

28                  **MR. PETER LAUCH:** Correct.

1                   **MS. SHARON VOGEL:** And the key individual roles that are set  
2 out in Schedule 9 to the project agreement, do you recall that schedule to the project  
3 agreement, sir?

4                   **MR. PETER LAUCH:** I do.

5                   **MS. SHARON VOGEL:** And those were mostly OLRTC and RTM  
6 roles; correct?

7                   **MR. PETER LAUCH:** I'm trying to remember the exact schedule,  
8 but, yeah, there was a division between our decisions, but I would say, yes, most of the  
9 subcontractors, yes.

10                  **MS. SHARON VOGEL:** I think it's about 25 for OLRTC and 4 for  
11 RTM in the key individual schedule; does that accord with your recollection?

12                  **MR. PETER LAUCH:** That sounds correct.

13                  **MS. SHARON VOGEL:** And other than through requiring the key  
14 individual positions be filled, the City had no other mechanism in the project agreement  
15 or any particular staffing at RTG, OLRTC or RTM; correct?

16                  **MR. PETER LAUCH:** Other than the key individuals, yes, that's  
17 correct.

18                  **MS. SHARON VOGEL:** So RTG, it didn't include any organization  
19 charts in its monthly works reports; did it?

20                  **MR. PETER LAUCH:** Not that I recall, no.

21                  **MS. SHARON VOGEL:** And staffing and organization, that was all  
22 within the control of RTG and its subcontractors; correct?

23                  **MR. PETER LAUCH:** That's correct.

24                  **MS. SHARON VOGEL:** And RTG is ultimately responsible as the  
25 single point of responsibility that is a cornerstone of the P3 model for its subcontractors;  
26 correct?

27                  **MR. PETER LAUCH:** Correct.

28                  **MS. SHARON VOGEL:** And any construction means methods

1 and sequences; they were all within the control of RTG, were they not?

2 **MR. PETER LAUCH:** No, that was flowed down to OLRTC, so it  
3 was OLRTC who generated those.

4 **MS. SHARON VOGEL:** Right. But under the terms of the project  
5 agreement, that that was under the RTG umbrella as opposed to the City umbrella;  
6 correct?

7 **MR. PETER LAUCH:** Yes.

8 **MS. SHARON VOGEL:** I'm sorry, I couldn't quite hear you.

9 **MR. PETER LAUCH:** Yes.

10 **MS. SHARON VOGEL:** And in relation to the lenders, I  
11 understand based on your Commission interview that you indicated that the lenders –  
12 and I'm paraphrasing, but that the lenders' technical agent conducted a detailed  
13 monthly review of the project; is that correct?

14 **MR. PETER LAUCH:** Correct. That is correct.

15 **MS. SHARON VOGEL:** And the lenders' technical agent spent  
16 two or three days a month on the project; correct?

17 **MR. PETER LAUCH:** Correct, yes.

18 **MS. SHARON VOGEL:** And the role of the lenders' technical  
19 agent, that did not change in any way after the City became lender; did it?

20 **MR. PETER LAUCH:** Not with RTG, no.

21 **MS. SHARON VOGEL:** Now to take you back to another provision  
22 of the project agreement, which is related to the proposal; Schedule 13 to the project  
23 agreement contains excerpts – extracts from RTG's proposal, from the proposal period;  
24 correct?

25 **MR. PETER LAUCH:** Yeah, that predated me but I am familiar  
26 with Schedule 13, yes.

27 **MS. SHARON VOGEL:** But once a proposal extract is inserted in  
28 Schedule 13 it becomes part of the project agreement; correct?



1                   **MR. PETER LAUCH:** That's correct.

2                   **MS. SHARON VOGEL:** And you understood from reading the  
3 project agreement that RTG had committed in its proposal that it would be able to  
4 provide appropriate maintenance services; correct?

5                   **MR. PETER LAUCH:** Correct.

6                   **MS. SHARON VOGEL:** And that was so important that it was  
7 inserted in the proposal extracts that were included in Schedule 13; correct?

8                   **MR. PETER LAUCH:** That's correct, yes.

9                   **MS. SHARON VOGEL:** And in general, in relation to RTG's  
10 proposal that was submitted in response to the City's RFP, and appreciating that you  
11 weren't there at the time and you weren't involved in the proposal, but in particular in  
12 respect of the geotechnical risk that RTG agreed to take on, you noted that this was  
13 ACS, Ellis Don and SNC Lavalin in your Commission interview, and you had indicated  
14 that you'd like to think they knew what they were doing. So RTG conducted a  
15 sophisticated risk analysis to forecast and analyze potential risks occurring over the  
16 course of the project; correct?

17                   **MR. PETER LAUCH:** Certainly. And there was – I think it was  
18 even a deliverable in the monthly work report and we reviewed the risk matrix with the  
19 City quite often.

20                   **MS. SHARON VOGEL:** So that was an ongoing effort over the  
21 course of the project, to review project risks and assess them, and that was RTG's  
22 obligation; correct?

23                   **MR. PETER LAUCH:** Correct.

24                   **MS. SHARON VOGEL:** And in relation to the maintenance  
25 requirements, RTG planned to have the maintenance requirements performed by RTM  
26 and its subcontractor Alstom; correct?

27                   **MR. PETER LAUCH:** That's correct. I'm just trying to think of the  
28 timeline now; I mean initially it was RTM and then eventually I think in the early days,

1 2013, I think RTM had negotiated some additions to the maintenance contract with  
2 Alstom. But that's my longwinded way of saying yes.

3 **MS. SHARON VOGEL:** And Alstom, they're one of the top  
4 maintenance providers of LRTs around the world, correct?

5 **MR. PETER LAUCH:** That's my understanding.

6 **MS. SHARON VOGEL:** And RTG committed to meet the  
7 maintenance obligations found in the Project Agreement starting at Revenue Service  
8 Availability, correct?

9 **MR. PETER LAUCH:** Correct.

10 **MS. SHARON VOGEL:** Because the day after Revenue Service  
11 Availability is achieved, the maintenance term starts, correct?

12 **MR. PETER LAUCH:** Correct.

13 **MS. SHARON VOGEL:** The design and construction period is  
14 completed and the maintenance term starts, correct?

15 **MR. PETER LAUCH:** Correct.

16 **MS. SHARON VOGEL:** And in relation to the vehicles, you  
17 indicated in your interview with Commission counsel that the vehicle specification was  
18 prescriptive but everyone signed up to it, correct?

19 **MR. PETER LAUCH:** That's correct.

20 **MS. SHARON VOGEL:** And winter testing was done by the  
21 National Research Council and the vehicles were put out on the line on the test track in  
22 the winter, correct?

23 **MR. PETER LAUCH:** That's correct.

24 **MS. SHARON VOGEL:** And no significant issues were noted in  
25 relation to those vehicles as a result of that winter testing?

26 **MR. PETER LAUCH:** Not that I recall, nothing specific.

27 **MS. SHARON VOGEL:** You would agree that the vehicles  
28 delivered were built for the Ottawa winter weather?

1                   **MR. PETER LAUCH:** I would agree.

2                   **MS. SHARON VOGEL:** I'd like to turn now to ask you some  
3 questions about the delay to the achievement of Revenue Service Availability.

4                   On November 24<sup>th</sup>, 2017, RTG advised the City that it would  
5 achieve Revenue Service Availability by the required Revenue Service Availability date.  
6 As such date may be extended, pursuant to the Project Agreement, including due to the  
7 occurrence of delay events. Do you recall that?

8                   **MR. PETER LAUCH:** Yeah. I don't think I authored the letter but I  
9 do recall the letter.

10                  **MS. SHARON VOGEL:** I believe that RTG wrote a letter and then  
11 it attached a letter from OLRTC. That was the normal course, correct in relation to such  
12 letters?

13                  **MR. PETER LAUCH:** That's correct, yes. Correct.

14                  **MS. SHARON VOGEL:** And we can agree that RTG in the end, it  
15 didn't meet the May 24, 2018 RSAD, if I can refer to the required Revenue Service  
16 Availability date as the RSAD, correct?

17                  **MR. PETER LAUCH:** Yes.

18                  **MS. SHARON VOGEL:** And then on February 5<sup>th</sup>, 2018 RTG  
19 stated that it was

20   "...pleased to advise that we are confident that RSA  
21 will be achieved by November 2<sup>nd</sup>, 2019."

22                  Do you recall that?

23                  **MR. PETER LAUCH:** I do, yes.

24                  **MS. SHARON VOGEL:** And we would agree that RSA was not  
25 achieved by the new RSAD of November 2<sup>nd</sup>, 2019, correct?

26                  **MR. PETER LAUCH:** We would agree, yes.

27                  **MS. SHARON VOGEL:** And on January 3<sup>rd</sup>, 2019, RTG advised  
28 that RSA would be achieved by March 31, 2019, correct?

1                   **MR. PETER LAUCH:** Yes, I believe that. Yes, that's correct.

2                   **MS. SHARON VOGEL:** In relation to this commitment to achieve  
3 RSA by March 31, 2019, do you recall presenting at a Fedco meeting on February 12,  
4 2019 in relation to that March 31 RSA date that RTG had put forward?

5                   **MR. PETER LAUCH:** I certainly attended some Fedco meetings.  
6 Do I have a recollection of that exact one? No.

7                   **MS. SHARON VOGEL:** Why don't we pull up a news article that  
8 was published following that meeting. Could I please ask that COMH0000033 be pulled  
9 up and it's an article dated February 12, 2019. And we'll just give folks a minute to pull  
10 that up, Mr. Lauch.

11 **--- EXHIBIT No. 209:**

12                                   COMH0000033 – Article – RTG Confident It Will Complete  
13                                   LRT By March 31 Manconi Not Convinced 12 February 2019

14                   So we'll just give you a chance to take a look at this article, Mr.  
15 Lauch because it reports that at this February 12, 2019 Fedco meeting that during this  
16 meeting you advised Fedco -- and if we could scroll down please so that Mr. Lauch  
17 could read the article.

18                   So if we give you an opportunity to read the article, you see at the  
19 top of the page, and it appears to be a quote from you:

20                                   "We don't contemplate any other scenario than  
21                                   handover the 31<sup>st</sup> of March,' he said. 'We had a very  
22                                   committed contractor. We have a very committed  
23                                   vehicle supplier so I am still confident we will meet our  
24                                   obligation and hand over on the 31<sup>st</sup> of March.'" (As  
25                                   read)

26                   Do you recall saying that at that Fedco meeting?

27                   **MR. PETER LAUCH:** I do.

28                   **MS. SHARON VOGEL:** In February 2019.

1                   **MR. PETER LAUCH:** I do.

2                   **MS. SHARON VOGEL:** And the article goes on to quote Mr.  
3 Manconi, OC Transpo's general manager who expressed some skepticism about RT's  
4 ability to actually achieve that date. So Mr. Manconi, according to this article stated:

5                                   "I am happy to be wrong but I'm highly skeptical that  
6                                   they are going to achieve March 31." (As read)

7                   Do you recall Mr. Manconi making this statement?.

8                   **MR. PETER LAUCH:** I do.

9                   **MS. SHARON VOGEL:** And Mr. Manconi was correct. RTG was  
10 not able to meet the March 31, 2019 RSA date that it had set, correct?

11                   **MR. PETER LAUCH:** Correct.

12                   **MS. SHARON VOGEL:** Okay. And I think we can pull down the  
13 share.

14                                   And in relation to the City's plans in respect of launching the  
15 system, as of June, 2019, RTG was aware that the plan was to launch in September,  
16 correct?

17                   **MR. PETER LAUCH:** I can't remember the specifics but I'm sure  
18 that was discussed in the various meetings including the wrap meetings.

19                   **MS. SHARON VOGEL:** Why don't we pull up a further article. This  
20 is an article that's been given Document number COMH0000032, June 19, 2019, a  
21 Global News article. We'll just give folks a minute to pull this up.

22                                   So we'll scroll down in the article. You'll see it's titled "RTG to hand  
23 over reins to Ottawa LRT by early August; service to launch in September, Mayor."

24                                   And if we go down in the article and give you a chance to read it.

25 **--- EXHIBIT No. 210:**

26                                   COMH0000032 – Article – RTG to Hand over reins to  
27 Ottawa LRT by early August, service to launch in September  
28 – Mayor 19 June 2019

1                   **MR. PETER LAUCH:** I think I'm familiar with the article.

2                   **MS. SHARON VOGEL:** You're familiar with the article?

3                   **MR. PETER LAUCH:** Yeah.

4                   **MS. SHARON VOGEL:** So if you go further down in the article, I  
5 just want to refer you to a quote from you. It's page 3 of the PDF. And I believe you  
6 sate, if we look at the top quote on the article. You said --- you're quoted as saying:

7                                    "We don't want to disappoint again. We want to be  
8                                    precise, said Lauch. 'We want a few more weeks to  
9                                    continue to track Alstom's progress. They've been  
10                                  doing extremely well. They're trending in the right  
11                                  direction. The metrics are very positive.'" (As read)

12                   And is that an accurate quote from you on or around June 19, sir?

13                   **MR. PETER LAUCH:** I would say so, yes.

14                   **MS. SHARON VOGEL:** Okay. And the article goes on to  
15 reference that the system was projected to be launched in September 2019, correct? If  
16 you read down and we should give you a chance to read further down on this page in  
17 the article.

18                                    If you could scroll down just a little bit so Mr. Lauch can see.

19                   **MR. PETER LAUCH:** I mean, I certainly won't dispute it if it's  
20 written down there.

21                   **MS. SHARON VOGEL:** Yeah. But you were aware and RTG was  
22 aware in June 2019 that the system was projected to be launched in September of  
23 2019, correct?

24                   **MR. PETER LAUCH:** That's correct.

25                   **MS. SHARON VOGEL:** And at that time RTG was reporting that  
26 Alstom was doing extremely well, according to your quote in this article, correct?

27                   **MR. PETER LAUCH:** That's correct.

28                   **MS. SHARON VOGEL:** And RTG didn't raise an issue with the

1 projected launch date of September 2019, correct?

2 **MR. PETER LAUCH:** No, that's correct, based on the information  
3 at the time. We were confident, yes.

4 **MS. SHARON VOGEL:** And on July 9, 2019, RTG sent another  
5 one of these RSA notices. And we've already talked about three of them, I believe, so  
6 this is the fourth one and it advised the City that it would achieve RSA on or before  
7 August 16, correct?

8 **MR. PETER LAUCH:** Correct.

9 **MS. SHARON VOGEL:** So this is the fourth time RTG has given  
10 the City an RSA date, correct?

11 **MR. PETER LAUCH:** That is correct, yes.

12 **MS. SHARON VOGEL:** Okay. We can take down the share.  
13 Thanks very much. And this morning, you were taken to an internal email about the  
14 August 16, 2019, date, but whatever discussions were held with the City about booking  
15 drivers for certain dates for a launch in September, it was RTG's decision about what  
16 the RSA date would be, correct?

17 **MR. PETER LAUCH:** Ultimately, yes, because it was predicated  
18 some of the prerequisites that I discussed with previous counsel. I mean we had to  
19 achieve substantial completion. We had to have successful trial running. And so, once  
20 that was done, then we would achieve RSAD, but -- so I don't want to say it was fluid  
21 but obviously there were prerequisites.

22 **MS. SHARON VOGEL:** Right. You had an obligation under the  
23 Project Agreement -- I think it's Section 26.7 -- to deliver an RSA notice 180 days before  
24 the required revenue service availability date. And then, every time RTG misses a date,  
25 the process replicates every time, and you have to give that notice again until you  
26 actually achieve RSA, correct?

27 **MR. PETER LAUCH:** That's correct.

28 **MS. SHARON VOGEL:** And the purpose of that is so that the City

1 can make bookings and scheduling arrangements, correct?

2 **MR. PETER LAUCH:** Correct.

3 **MS. SHARON VOGEL:** And if a date that RTG commits to is  
4 missed, there is a liquidated damage of \$1M, correct ---

5 **MR. PETER LAUCH:** That's correct.

6 **MS. SHARON VOGEL:** --- for each occasion when a date is  
7 missed, correct?

8 **MR. PETER LAUCH:** Yes.

9 **MS. SHARON VOGEL:** And that \$1M is only intended to cover  
10 those kinds of scheduling and booking costs that are incurred, correct? That's the  
11 purpose of that?

12 **MR. PETER LAUCH:** I believe that was the intent, yes.

13 **MS. SHARON VOGEL:** And so, in summary, after reviewing these  
14 four RSA dates, you'd agree with me that RTG proposed four RSA dates and missed all  
15 four of those dates, correct?

16 **MR. PETER LAUCH:** I'm trying to remember the four letters. I  
17 guess the last one is the 16<sup>th</sup> of August, so I would have to say yes.

18 **MS. SHARON VOGEL:** And you'd agree that at this point the City  
19 would under stably be skeptical of RTG's representations regarding its ability to meet  
20 the RSA dates it committed to meet?

21 **MR. PETER LAUCH:** After the first three, yes. I mean the last was  
22 -- was a matter of 10 days, I think, so -- but to answer your question, yes.

23 **MS. SHARON VOGEL:** Yes, I believe the RSA was actually  
24 achieved on August 30, 2019, correct?

25 **MR. PETER LAUCH:** Yeah. We completed trial running on the  
26 23<sup>rd</sup> and RSAD was the 30<sup>th</sup>.

27 **MS. SHARON VOGEL:** I'd like to ask you a few questions now  
28 about substantial completion. So RTG submitted a Notice of Substantial Completion for



1 the first time to the City on April 26, 2019. Do you recall that? This was its first Notice  
2 of Substantial Completion. And the City gave a negative opinion in relation to the  
3 achievement of substantial completion on May 6, 2019. Do you recall that? It had a  
4 five-business-day period to do that. Do you recall?

5 **MR. PETER LAUCH:** Yeah, I do.

6 **MS. SHARON VOGEL:** And in its letter, when it rendered a  
7 negative opinion, the City provided a detailed outline of the outstanding work and the  
8 issues that needed to be resolved prior to the achievement of substantial completion,  
9 correct?

10 **MR. PETER LAUCH:** Yeah, I do remember that, yes.

11 **MS. SHARON VOGEL:** And RTG understood that this work was  
12 outstanding and needed to be complete prior to the system being made available to the  
13 public, correct?

14 **MR. PETER LAUCH:** Correct.

15 **MS. SHARON VOGEL:** But it was RTG's position that there was  
16 confusion between the two milestones, being substantial completion and revenue  
17 service availability. Is that correct? Do you recall that?

18 **MR. PETER LAUCH:** I don't quite recall it that way. Perhaps we  
19 could elaborate.

20 **MS. SHARON VOGEL:** Sure. My understanding is, and please  
21 correct me if I'm wrong, that the position that RTG was taking at the time was that the  
22 City was importing into the RSA -- was importing the RSA requirements into the  
23 assessment of substantial completion. Do you recall this, sir?

24 **MR. PETER LAUCH:** Not specifically, but I do recall -- I do recall  
25 the letter being rejected and I do recall subsequent substantial completion agreements  
26 being -- having term sheets, or punch lists, and other items attached to it, yeah.

27 **MS. SHARON VOGEL:** So, to be fair to you, sir, I -- it's hard to be  
28 asked questions in a vacuum without taking a look at documents. And I know I have

1 limited time this morning but I'd like to pull up another document to help you refresh  
2 your memory. It's COW0468363. So again, COW0468363.

3 **--- EXHIBIT No. 211:**

4 COW0468363 – Letter RTG to City of Ottawa 10 May 2019  
5 with attached Letter OLRT to RTG 9 May 2019

6 **MS. SHARON VOGEL:** So this is a letter dated May 10, 2019, from  
7 yourself. If we could scroll on the page, please -- from yourself, and it's attaching an  
8 OLRTC letter, which I think is dated the day before, May 9. If we could keep scrolling to  
9 the next page, please. And as I understand this letter -- and we'll give you time to look  
10 at it -- it's a response to the City's negative opinion on substantial completion. And the  
11 Project Agreement doesn't set out a specific entitlement for a response to a negative  
12 opinion from the City on substantial completion, does it?

13 **MR. PETER LAUCH:** I don't believe so.

14 **MS. SHARON VOGEL:** But in this instance, RTG chose to start a  
15 discussion about what was needed for substantial completion, correct, based on this  
16 letter?

17 **MR. PETER LAUCH:** I'm just trying to refresh my memory looking  
18 at the letter, but I have ---

19 **MS. SHARON VOGEL:** For sure. We will give you ---

20 **MR. PETER LAUCH:** I have no reason to dispute what you're  
21 saying.

22 **MS. SHARON VOGEL:** Well, let's look at the second paragraph of  
23 the letter.

24 **MR. PETER LAUCH:** M'hm.

25 **MS. SHARON VOGEL:** And here, RTG says:  
26 "The City's interpretation of SC is incorrect as it conflates the requirements of SC with  
27 those for revenue service availability." (As read).

28 **MR. PETER LAUCH:** Okay, now I understand your questioning,

1 yes.

2 **MS. SHARON VOGEL:** Now do you -- does that help place it in  
3 context?

4 **MR. PETER LAUCH:** It certainly does.

5 **MS. SHARON VOGEL:** So what RTG was saying, if we read the  
6 next sentence:

7 “The City incorrectly assumes that all components of  
8 the system must be ready for the public’s use at SC.  
9 In fact, the Project Agreement contemplates two  
10 stages of completion. The first is SC, pursuant to  
11 which a substantial part of the system will be ready for  
12 use with an allowance for defects provided they are  
13 remediable for a prescribed amount. The second  
14 stage is RSA, pursuant to which the system will be  
15 ready to operate at revenue service level but with an  
16 allowance for minor defects as defined in the PA.  
17 There is no expectation in the PA that the system will  
18 be complete and ready for use at the SC stage.” (As  
19 read).

20 Correct, Mr. Lauch? That’s the position that RTG and OLRTC were  
21 taking at the time?

22 **MR. PETER LAUCH:** Correct.

23 **MS. SHARON VOGEL:** Because the system wasn’t going to be  
24 open for the public until after RSA, correct?

25 **MR. PETER LAUCH:** That’s correct.

26 **MS. SHARON VOGEL:** And it was OLRTC’s position that the  
27 defects with the system, at that time, fell below the threshold that it set out in this letter  
28 which, if we scroll down in the letter, fell below the financial requirements under the

1 Construction Act, which is referenced at the bottom of this page and over to the top of  
2 the next page. And we'll give you as much time as you'd like, sir, to take a look at this.  
3 You see over to the top on that next page, they're referencing that SC is achieved -- and  
4 when I say "they", I mean OLRTC. They're saying:

5 "SC is achieved with the defect is capable of  
6 correction for a cost of less than about \$17.2M." (As  
7 read).

8 Correct?

9 **MR. PETER LAUCH:** I'm just -- there's a lag from the small screen  
10 to the big screen, so ---

11 **MS. SHARON VOGEL:** Of course, of course.

12 **MR. PETER LAUCH:** So forgive me.

13 **MS. SHARON VOGEL:** No, take your time.

14 **MR. PETER LAUCH:** Okay, I do read that, yes.

15 **MS. SHARON VOGEL:** So there were two elements of substantial  
16 completion. There's substantial completion of the fixed component and the vehicle  
17 component, correct?

18 **MR. PETER LAUCH:** Correct.

19 **MS. SHARON VOGEL:** And it was OLRT's position that it fell  
20 below the financial threshold such that a substantial part of the improvement was ready  
21 for use in relation to both the vehicles and the fixed component; correct?

22 **MR. PETER LAUCH:** That's correct, as I read it, yes.

23 **MS. SHARON VOGEL:** And that was the position of RTG and  
24 OLRTC at the time; correct?

25 **MR. PETER LAUCH:** Yes.

26 **MS. SHARON VOGEL:** And if we could go to page five of the  
27 PDF, page four of the letter, under the heading "Vehicle Component". In terms of  
28 OLRTC and RTG's position at the time, sir, this letter dated May 9, 2019 states that: "At

1 this time all 34 vehicles are in service and available.” Does that accord with your  
2 recollection, sir?

3 **MR. PETER LAUCH:** I believe so, yes. I know they were all – they  
4 were certainly built.

5 **MS. SHARON VOGEL:** Yes. And in respect of the deficiencies,  
6 you’ll see there’s certain deficiencies with the vehicles that are listed on this document.  
7 And if we scroll down you can see there’s a whole series of them related to the two-car  
8 cons, the brakes, the doors, the communications, line contactor and over to the top of  
9 the page I believe it continues to the top of the next page. But – if we just scroll there.  
10 There we are, we see “Integration of onboard communication base train control system  
11 and the vehicle minimum operating standards”, but RTG was characterizing all those  
12 defects as minor; correct?

13 **MR. PETER LAUCH:** I believe so, yes, based on the letter.

14 **MS. SHARON VOGEL:** So based on the letter, OLRT was saying  
15 that as at substantial completion there could be minor defects, minor deficiencies, and  
16 even at revenue service availability the system would be ready to operate for revenue  
17 service with minor deficiencies; correct?

18 **MR. PETER LAUCH:** Correct.

19 **MS. SHARON VOGEL:** So the City determined that RTG was not  
20 ready for substantial completion when it issued its first notice in April and the  
21 independent certifier agreed; correct?

22 **MR. PETER LAUCH:** That’s correct, yes.

23 **MS. SHARON VOGEL:** I think we can take down this screen.

24 And there was some confusion about the deliverables for  
25 substantial completion and revenue service availability, which were too significant but  
26 separate milestones; correct?

27 **MR. PETER LAUCH:** That’s correct.

28 **MS. SHARON VOGEL:** And, again, the system wasn’t going to be

1 used by the public right after substantial completion; correct?

2 **MR. PETER LAUCH:** Correct.

3 **MS. SHARON VOGEL:** It wasn't going to be used by the public  
4 until after revenue service availability; correct?

5 **MR. PETER LAUCH:** That's correct.

6 **MS. SHARON VOGEL:** So the City was reasonable in deferring  
7 certain works until revenue service availability; correct?

8 **MR. PETER LAUCH:** That's correct.

9 **MS. SHARON VOGEL:** And I will come back to this, but after your  
10 letter works continued to address the issues that needed to be rectified and completed  
11 or resolved prior to achieving substantial completion; correct?

12 **MR. PETER LAUCH:** That's correct, yes.

13 **MS. SHARON VOGEL:** And after there was a negative opinion  
14 from the City and a negative opinion from the independent certifier, RTG began work on  
15 completing the outstanding work identified by the City and the independent certifier;  
16 correct?

17 **MR. PETER LAUCH:** I wouldn't say "began", I would say  
18 continued working on it, but, yes.

19 **MS. SHARON VOGEL:** Yes. And both the City and the  
20 independent certifier and RTG and OLRTC, they tracked the progress made over the  
21 next three months; correct?

22 **MR. PETER LAUCH:** Absolutely.

23 **MS. SHARON VOGEL:** And then on July 22<sup>nd</sup>, 2019, RTG  
24 submitted its second substantial completion notice; correct?

25 **MR. PETER LAUCH:** That's correct.

26 **MS. SHARON VOGEL:** And between May and July RTG had  
27 worked cooperatively with the City and the independent certifier in advance to show  
28 how it had completed the necessary work to meet the substantial completion

1 requirements; correct?

2 **MR. PETER LAUCH:** Yeah, we were giving updates on a regular  
3 basis, yes.

4 **MS. SHARON VOGEL:** And the parties generally knew that  
5 substantial completion would be achieved this time, three months later, because the  
6 progress of the work had been tracked; correct?

7 **MR. PETER LAUCH:** I would say so, yes.

8 **MS. SHARON VOGEL:** And also in this timeframe, RTG and the  
9 City had discussed the issues raised in the May 9 letter that we just looked at about the  
10 two milestones for completion; correct?

11 **MR. PETER LAUCH:** That's correct.

12 **MS. SHARON VOGEL:** And specifically there was a discussion  
13 about the project agreement tying the achievement of substantial completion to the  
14 requirement that the system be ready for public use, an issue that you had raised in  
15 your May 10 letter attaching the May 9 OLRTC letter; correct?

16 **MR. PETER LAUCH:** Correct.

17 **MS. SHARON VOGEL:** And it didn't make sense that this  
18 requirement would be tied to substantial completion when the revenue service  
19 availability requirement was quite literally intended to assess the system's availability for  
20 revenue service to the public; correct?

21 **MR. PETER LAUCH:** That's correct.

22 **MS. SHARON VOGEL:** So the City and RTG reached an  
23 agreement that they titled the substantial completion agreement; correct?

24 **MR. PETER LAUCH:** I recall that, yes.

25 **MS. SHARON VOGEL:** And the agreement deferred certain  
26 specific work that needed to be done prior to revenue service availability; correct?

27 **MR. PETER LAUCH:** Yes.

28 **MS. SHARON VOGEL:** As opposed to having to wait to compete

1 certain elements of the work that RTG characterized as minor deficiencies until final  
2 completion. In the substantial completion agreement RTG committed to complete those  
3 things by revenue service availability; correct?

4 **MR. PETER LAUCH:** That's correct. If I recall the lists correctly, I  
5 think we categorized them as post RSA and pre-RSA, but, yes, that's correct.

6 **MS. SHARON VOGEL:** Correct. And I believe the terminology  
7 used to describe those documents was deferred works. Why don't we pull up the actual  
8 agreement so that – because, you know, I'm not wanting to ask you to take my word for  
9 it or to talk to you about these things in a vacuum because this morning there was  
10 discussion about waived requirements versus deferred requirements. So I'd like to give  
11 you a chance to actually look at the agreement itself.

12 So it's RTG00332043. And just while we're waiting for that  
13 agreement to be pulled up, sir, you'll recall that this substantial completion agreement, it  
14 didn't just fall out of the sky; did it?

15 **MR. PETER LAUCH:** Certainly not.

16 **MS. SHARON VOGEL:** It was the result of extensive discussions  
17 between – that started in around May, about what specifically needed to be completed  
18 before revenue service availability and then what could wait and that needed to be  
19 completed before final completion; correct?

20 **MR. PETER LAUCH:** I would agree with that, yes.

21 **MS. SHARON VOGEL:** And you would agree that the City could  
22 do this because it would have no impact on the system's safety, functionality or the  
23 public's use or enjoyment of the system, because the system wouldn't actually be used  
24 until after revenue service availability; correct?

25 **MR. PETER LAUCH:** That is correct, yes.

26 **MS. SHARON VOGEL:** So we can agree that when faced with  
27 confusion in the project agreement and Project Co that was asking for the City to be  
28 reasonable, the City was reasonable in its assessment of the second substantial



1 completion notice without sacrificing the public's safety and ultimate use and enjoyment  
2 of the system after RSA; correct?

3 **MR. PETER LAUCH:** I would agree with that, yes.

4 **MS. SHARON VOGEL:** And you talked to Commission counsel  
5 about works being deferred versus waived; do you recall that this morning, you were  
6 asked some questions about that?

7 **MR. PETER LAUCH:** I do recall that, yes.

8 **MS. SHARON VOGEL:** But in fact when we looked at the  
9 substantial completion agreement, and perhaps we could scroll down to look at the  
10 agreement that should be attached. I believe this is an email from a Michael Morgan to  
11 you.

12 **COMMISSIONER HOURIGAN:** Is it at the top or the bottom? I  
13 see PDF.

14 **MS. SHARON VOGEL:** Yeah, the actual agreement should follow.  
15 .0002. So if I read out the full number because it may be that you have to open the ---

16 **COMMISSIONER HOURIGAN:** Yeah, I think it's a separate  
17 document.

18 **MS. SHARON VOGEL:** So it might be listed as a separate  
19 document. So let me read out the number again; apologies; that's my mistake.  
20 RTG00332043.0002.

21 **--- EXHIBIT No. 219:**

22 RTG00332043.0002

23

24 **MS. SHARON VOGEL:** So you see this agreement is headed  
25 "Substantial Completion Agreement", sir?

26 **MR. PETER LAUCH:** I do, yes.

27 **MS. SHARON VOGEL:** And the parties entered into this  
28 agreement as of July 26<sup>th</sup>, 2019, and they agreed that the work described in Schedule A

1 attached to the agreement was not the completed by -- substantial completion, and has  
2 not been complete as of the date of this agreement. And they called it the "deferred"  
3 work, correct?

4 **MR. PETER LAUCH:** That's correct.

5 **MS. SHARON VOGEL:** And no work was actually waived, was it,  
6 Mr. Lauch? It was all just deferred, correct?

7 **MR. PETER LAUCH:** I'm trying to remember what I said this  
8 morning, but I don't know if I was the one that brought up waived, but no, it was ---

9 **MS. SHARON VOGEL:** No, I don't think that you were. So I -- and  
10 I just wanted to clarify, to give you a chance to look at this ---

11 **MR. PETER LAUCH:** Yeah.

12 **MS. SHARON VOGEL:** --- and confirm that the works were  
13 deferred and not waived.

14 **MR. PETER LAUCH:** No, certainly.

15 **MS. SHARON VOGEL:** And if we could ---

16 **MR. PETER LAUCH:** I'm sorry.

17 **MS. SHARON VOGEL:** Pardon?

18 **MR. PETER LAUCH:** I said certainly. I didn't mean to interrupt  
19 you.

20 **MS. SHARON VOGEL:** If we go down to section 8 of this  
21 agreement, it specifically states that:

22 "Except as specifically provided in this agreement,  
23 none of the provisions contained herein will limit,  
24 modify, prejudice, impair, or act as a waiver of any  
25 right or remedy of the City or Project Co." (As read)

26 Correct?

27 **MR. PETER LAUCH:** Correct.

28 **MS. SHARON VOGEL:** Okay. And then let's look at Schedule A.

1 And it refers to deferred work. Can we just scroll down to the Schedule A? Keep  
2 scrolling. It's on a separate page, after the signature pages.

3 And so we can see Schedule A contains a list of deferred work, and  
4 there are a number of items listed. This is the vehicle cab doors is number 1. And if we  
5 can continue on the next page, then there's additional items of deferred work here,  
6 including vehicle missions and platform edge cameras, onboard public address.

7 And if we can continue down, safety and security service case and  
8 final engineering, safety assurance case certificate and vehicle bill of sale.

9 And I think that that's the end. If we just confirm that that's the end  
10 of the document?

11 Sorry, there are a few more items, occupancy permit, elevator and  
12 escalator licences, and fire safety plans.

13 So none of those works were waived, were they, Mr. Lauch, based  
14 on your recollection?

15 **MR. PETER LAUCH:** Certainly not, no.

16 **MS. SHARON VOGEL:** And each of those deferred works was  
17 addressed by RSA, correct?

18 **MR. PETER LAUCH:** Yes.

19 **MS. SHARON VOGEL:** And in fact, RTG's RSA notice confirmed  
20 that each of those deferred works had been addressed and described how they were  
21 resolved or mitigated. Do you recall that saying -- setting that out in your RSA notice?

22 **MR. PETER LAUCH:** I do remember that we did describe how we  
23 rectified or how we dealt with those items, yes.

24 **MS. SHARON VOGEL:** Okay. I think we can take down the  
25 screen share. Thank you very much.

26 And you would agree with me that there is nothing nefarious about  
27 a deferred works agreement? It is similar to ---

28 **MR. PETER LAUCH:** No.

1                   **MS. SHARON VOGEL:** --- a punch list, as you described it in your  
2 Commission interviews, things that need to get done but don't hold up a project from  
3 progressing, correct?

4                   **MR. PETER LAUCH:** No, I certainly would agree. We even had --  
5 on occasion, we even had deferred items in some of the milestones, so yes.

6                   **MS. SHARON VOGEL:** I'd like to turn now to trial running.  
7 You'd agree with me, sir, that the Project Agreement doesn't  
8 contain detailed pass/fail criteria for trial running, correct?

9                   **MR. PETER LAUCH:** I agree.

10                  **MS. SHARON VOGEL:** And back in May 2017, through RFI266,  
11 RTG and the City agreed to certain pass/fail criteria, correct?

12                  **MR. PETER LAUCH:** Correct.

13                  **MS. SHARON VOGEL:** And those criteria included an aggregate  
14 vehicle kilometre ratio -- I will refer to it as the AVKR -- of 96 percent for 9 of 12 days,  
15 correct?

16                  **MR. PETER LAUCH:** Correct.

17                  **MS. SHARON VOGEL:** And then you were asked some questions  
18 this morning about the trial running test procedure from July 2019, that it included  
19 criteria including AKVR of 98 percent over 12 of 12 days, correct?

20                  **MR. PETER LAUCH:** Correct.

21                  **MS. SHARON VOGEL:** And you'd agree with me that 98 percent  
22 AVKR is quite a high percentage, very difficult to achieve?

23                  **MR. PETER LAUCH:** I certainly would consider it, especially at the  
24 time. I certainly would consider that express target, yes.

25                  **MS. SHARON VOGEL:** And 96 percent AKVR, which is what RTG  
26 and the City had agreed to back in 2017, that was a reasonable target, in your view, for  
27 trial running?

28                  **MR. PETER LAUCH:** I would say so, yes.

1                   **MS. SHARON VOGEL:** And you've already indicated this morning  
2 that you were on the trial running review team, correct?

3                   **MR. PETER LAUCH:** I was, yes.

4                   **MS. SHARON VOGEL:** And you participated in the daily review of  
5 trial running, correct?

6                   **MR. PETER LAUCH:** I did.

7                   **MS. SHARON VOGEL:** And you would agree that it's not just  
8 assessing raw data, but requires use of some judgement on the part of the participants  
9 on that trial running review team, correct?

10                  **MR. PETER LAUCH:** Certainly, yes.

11                  **MS. SHARON VOGEL:** And you had intensive and detailed  
12 discussions on a daily basis when you met over the course of trial running, correct?

13                  **MR. PETER LAUCH:** Yes.

14                  **MS. SHARON VOGEL:** And the daily results were not a secret  
15 from either City management or RTG management, correct?

16                  **MR. PETER LAUCH:** That's correct.

17                  **MS. SHARON VOGEL:** The trial running review team would report  
18 back to respective representatives within the City and within RTG about how each day  
19 went, correct?

20                  **MR. PETER LAUCH:** That's correct.

21                  **MS. SHARON VOGEL:** And that was at the level of was it a pass  
22 day or was it a fail day, correct?

23                  **MR. PETER LAUCH:** Exactly. I was just going to qualify that.  
24 There was quite high-level information, but yes.

25                  **MS. SHARON VOGEL:** And you would agree that if a day was a  
26 close pass, the trial running review team would discuss whether, based on the  
27 circumstances of the day, there should be a pass, correct?

28                  **MR. PETER LAUCH:** Yes.

1                   **MS. SHARON VOGEL:** And by the time trial running was  
2 completed, approximately 24 days of trial running had been conducted, correct?

3                   **MR. PETER LAUCH:** That's right, yes.

4                   **MS. SHARON VOGEL:** And this is a process of testing, correct?

5                   **MR. PETER LAUCH:** Absolutely, yes.

6                   **MS. SHARON VOGEL:** So RTG is permitted to keep on trying as it  
7 goes through the process, correct?

8                   **MR. PETER LAUCH:** Absolutely. I think I said that in my witness  
9 statements, that even if we had a bad launch, we had a bad morning, we kept on  
10 running, because we wanted to -- it would help us down the road, just to continue  
11 cycling the system, learning more and more about it.

12                   So to answer your question, yes.

13                   **MS. SHARON VOGEL:** Because you're exercising the system to  
14 demonstrate that it can meet the performance requirements under the Project  
15 Agreement, correct? So you just -- you don't just stop if you have a bad day, correct?

16                   **MR. PETER LAUCH:** That's 100 percent correct.

17                   **MS. SHARON VOGEL:** So you know, take -- stepping away from  
18 any analogies about driver's tests or whatever they might be, which, the relevance of  
19 which, you know, is questionable, what this trial running is supposed to do is test the  
20 reliability and the safety of the system, correct?

21                   **MR. PETER LAUCH:** Correct.

22                   **MS. SHARON VOGEL:** And that is what you did, correct?

23                   **MR. PETER LAUCH:** Yes.

24                   **MS. SHARON VOGEL:** And so when trial running was completed,  
25 you felt that the requirements of trial running in relation to both safety and reliability, had  
26 been met, correct?

27                   **MR. PETER LAUCH:** Not just myself, but all of the parties, so the  
28 IC, the City, RTM, OLRTC, RTG, yes.

1                   **MS. SHARON VOGEL:** And but -- and you were one of the  
2 people?

3                   **MR. PETER LAUCH:** I was.

4                   **MS. SHARON VOGEL:** One of the number of people who signed  
5 off on the trial review running team conclusion of trial running statement, correct?

6                   **MR. PETER LAUCH:** That's correct.

7                   **MS. SHARON VOGEL:** And it was RTG's responsibility to perform  
8 trial running properly, correct?

9                   **MR. PETER LAUCH:** Correct.

10                  **MS. SHARON VOGEL:** The City wasn't performing trial running,  
11 was it?

12                  **MR. PETER LAUCH:** No. The City was providing operators but it  
13 was RTG's responsibility.

14                  **MS. SHARON VOGEL:** And by signing that trial running  
15 conclusion statement, you were agreeing that RTG had performed trial running properly,  
16 correct?

17                  **MR. PETER LAUCH:** Yes, myself and the other members of the  
18 team, yes.

19                  **MS. SHARON VOGEL:** And the problems that arose in the  
20 maintenance term for as long as you were there -- and I appreciate you left in June  
21 2020 -- those problems were not foreseen as of revenue service availability, correct?

22                  **MR. PETER LAUCH:** Certainly not, no.

23                  **MS. SHARON VOGEL:** And I'd like to turn now to ask you some  
24 questions about the revenue service availability term sheet.

25                         You indicated that during trial running, you discussed with the City  
26 certain conditions the City would impose if it was to agree that revenue service  
27 availability had been achieved, correct?

28                  **MR. PETER LAUCH:** That's correct.

1                   **MS. SHARON VOGEL:** And those conditions were eventually  
2 embodied in the term sheet, correct?

3                   **MR. PETER LAUCH:** They were, yes.

4                   **MS. SHARON VOGEL:** And I'd like to pull up that term sheet,  
5 please.

6                   I believe the document number is COW0523210. And just while  
7 we're waiting for that to be pulled up, Mr. Lauch, I believe this morning that you  
8 indicated that this term sheet was under negotiation for a period of weeks starting in  
9 mid-August, correct?

10 **--- EXHIBIT No. 212:**

11                   COW0523210 – Independent Certifier's Report on Revenue  
12                   Service Availability 31 August 2019

13                   **MR. PETER LAUCH:** I think the wording -- I think the basic  
14 premise -- I think there was an email that popped up this morning and there were a  
15 bunch of bullets. So I think that was the framework for it. What was in negotiation was  
16 the wording, to make sure that all the parties agreed on the nomenclature and so for  
17 that ---.

18                   **MS. SHARON VOGEL:** Sorry to interrupt, sir. Were you done?

19                   **MR. PETER LAUCH:** No, I was just going to say that as you can  
20 imagine, I mean, there was lawyers involved from the City, from RTG, from OLRTC,  
21 from RTM. So it took a little while to get a consensus just on the wording. But the basic  
22 framework was agreed to I think even on the 15<sup>th</sup> or 16<sup>th</sup>.

23                   **MS. SHARON VOGEL:** Right.

24                   **COMMISSIONER HOURIGAN:** Is this the document you're looking  
25 for, Counsel?

26                   **MS. SHARON VOGEL:** It is, Mr. Commissioner.

27                   **COMMISSIONER HOURIGAN:** Okay.

28                   **MS. SHARON VOGEL:** Because the independent certifier



1 attached the Revenue Service Availability term sheet in this document.

2 **COMMISSIONER HOURIGAN:** Okay.

3 **MS. SHARON VOGEL:** So we thought it would be the fastest way  
4 to pull it up. And we could ---

5 **COMMISSIONER HOURIGAN:** Perfect. Just let him know.

6 **MS. SHARON VOGEL:** --- go straight to page 19 of 39 of the PDF,  
7 that might help. So sorry, I'm back one page so that the witness could just see the first  
8 page so he knows what he's looking at of the Revenue Service Availability. Sorry, if  
9 you could just go back a page.

10 **COMMISSIONER HOURIGAN:** We're going to go to 18.

11 **MS. SHARON VOGEL:** Eighteen (18). Apologies.

12 And just while we're waiting for that, Mr. Lauch, you referenced the  
13 email that popped up this morning. I did note in that email as it popped up this morning  
14 that the amount of money to be withheld from RTG, that was an "x" in the bullet point.  
15 So that was a number that was negotiated, wasn't it?

16 **MR. PETER LAUCH:** That's correct, yes.

17 **MS. SHARON VOGEL:** And the City started out at a much higher  
18 number than RTG was prepared to accept, correct?

19 **MR. PETER LAUCH:** That is correct.

20 **MS. SHARON VOGEL:** And eventually that number was  
21 negotiated and we see the number actually agreed to reflected in this term sheet,  
22 correct?.

23 **MR. PETER LAUCH:** That is correct, yes.

24 **MS. SHARON VOGEL:** And so now we've pulled up the term  
25 sheet that's dated as of August 30, 2019, correct?

26 **MR. PETER LAUCH:** Yes.

27 **MS. SHARON VOGEL:** And you recall this term sheet?

28 **MR. PETER LAUCH:** I do.

1                   **MS. SHARON VOGEL:** And when I look at this term sheet, and in  
2 particular Clause 4 of the Agreement -- and if we could go to Clause 4 of the Agreement  
3 which is on page 19, just one page down. And I'll give you a chance to read it. But  
4 appreciating that this Agreement was under negotiation for some time, a period of  
5 weeks, it indicates that if RTG doesn't achieve RSA by September 15, 2019 -- I'm  
6 paraphrasing here. Then all that RTG is required to do is give the Cit a new date by  
7 which it would try to achieve RSA by October 7, 2019, correct?

8                   **MR. PETER LAUCH:** That's how I read it, yes.

9                   **MS. SHARON VOGEL:** And this clause indicated that both parties  
10 appreciated that in fact RSA could extend well into the fall, correct?

11                   **MR. PETER LAUCH:** Yes.

12                   **MS. SHARON VOGEL:** And doesn't this contradict any suggestion  
13 that the City was desperate to launch the system even if it wasn't ready, correct?

14                   **MR. PETER LAUCH:** I would say so, yes.

15                   **MS. SHARON VOGEL:** And the City was prepared to enter into an  
16 agreement that would push RSA out into the fall and not even levy another liquidated  
17 damage amount of \$1 million unless RTG missed a date that it committed to after  
18 October 7, correct?

19                   **MR. PETER LAUCH:** That's correct. I'm just trying to remember. I  
20 think the date of this letter was the 30<sup>th</sup> of August, you said?

21                   **MS. SHARON VOGEL:** The date that it was actually signed was  
22 August 30.

23                   **MR. PETER LAUCH:** Okay.

24                   **MS. SHARON VOGEL:** And so in terms of other key elements of  
25 this term sheet, we understand RTG was permitted to achieve RSA with 13 double car  
26 trains. We look at Clause 1 that's up on the screen here.

27                   **MR. PETER LAUCH:** Yes.

28                   **MS. SHARON VOGEL:** Available for the morning peak instead of

1 the 15 double car trains that were originally required or the Operation Services Plan,  
2 correct?

3 **MR. PETER LAUCH:** That's correct.

4 **MS. SHARON VOGEL:** And the Operation Services Plan, that's a  
5 living document, correct?

6 **MR. PETER LAUCH:** I'm sorry, could you repeat that?

7 **MS. SHARON VOGEL:** The Operations Services Plan, that's a  
8 living document? It can change, correct?

9 **MR. PETER LAUCH:** Yes. Yes.

10 **MS. SHARON VOGEL:** And in relation to those 15 double car  
11 trains, we've heard a lot about those. But the 15 double car trains, they only operate  
12 even under peak conditions only in the morning peak, right?

13 **MR. PETER LAUCH:** Yeah.

14 **MS. SHARON VOGEL:** In the afternoon peak there's only 13  
15 double car trains, correct?

16 **MR. PETER LAUCH:** That's correct. Fifteen (15) is only for a few  
17 hours in he morning, yes.

18 **MS. SHARON VOGEL:** That's right, 2.5 hours to be exact,  
19 correct?

20 **MR. PETER LAUCH:** Correct.

21 **MS. SHARON VOGEL:** And so the change from 13 double cars --  
22 from 15 double car trains to 13 double car trains is deemed a minor service change  
23 under the terms of this Agreement, correct?

24 **MR. PETER LAUCH:** That's correct, yes.

25 **MS. SHARON VOGEL:** And RTG was going to provide a timeline  
26 to increase the number of vehicles pursuant to section 8, if we can scroll down in the  
27 document, if we can scroll down over to the top of the next page. Correct.

28 Mr. Lauch, RTG was to provide a timeline as to when the morning

1 peak period is anticipated to increase from 13 to 15 double car trains, correct?

2 **MR. PETER LAUCH:** That's right. Sorry, I'm just -- I'm waiting for  
3 my big screen to catch up to the small screen because it's really small here.

4 **MS. SHARON VOGEL:** Of course. No, I can understand.

5 **MR. PETER LAUCH:** Yes, that's correct.

6 **MS. SHARON VOGEL:** I can understand.

7 Okay. And if we can go down to section 14 and 15. The monthly  
8 service payments as referenced in Clause 14, they were still going to be measured  
9 against 15 double car trains in the morning peak period, correct?

10 **MR. PETER LAUCH:** I believe so, yes.

11 **MS. SHARON VOGEL:** And when you say nothing came for free, I  
12 think was your characterization in your Commission interview, this measuring against 15  
13 trains in the morning peak was part of that nothing coming for free, correct?

14 **MR. PETER LAUCH:** That was correct, yes.

15 **MS. SHARON VOGEL:** And another part of that "nothing coming  
16 for free" was the \$16 million set off that would be reduced by 50 percent when the 14<sup>th</sup>  
17 vehicle and then another 50 percent when the 15<sup>th</sup> double car train arrived and was  
18 available for use in the -- sorry -- was available not -- I shouldn't have said "arrived" --  
19 was available for use in the peak period according to section 15?

20 **MR. PETER LAUCH:** That's correct.

21 **MS. SHARON VOGEL:** And again, we're going to have to let the  
22 scrolling catch up because that's at the top of the next page. Is that correct?

23 **MR. PETER LAUCH:** I do. Yeah, that's 100 percent correct.

24 **MS. SHARON VOGEL:** And as you already indicated that from  
25 your evidence this morning, under the terms of this Agreement section 3, to go back up  
26 in the document, there would be the completion of trial running when RTG achieved the  
27 target availability of 96 percent on nine of twelve days, correct?

28 **MR. PETER LAUCH:** That is correct, yes.

1                   **MS. SHARON VOGEL:** And in general terms, RTG was obligated  
2 to provide door technicians until a new fleet safety certificate with new door software  
3 was issued, correct?

4                   **MR. PETER LAUCH:** Correct.

5                   **MS. SHARON VOGEL:** And if we look at sections 16 and we can't  
6 quite see section 17 there so if we could scroll down a bit. There were another two  
7 setoffs, one for vehicle doors of \$2 million and one for the PACIS software, \$2 million,  
8 correct?

9                   **MR. PETER LAUCH:** That's correct, yes.

10                  **MS. SHARON VOGEL:** Until those were working, correct?

11                  **MR. PETER LAUCH:** They were working but we had to do a  
12 software upgrade. So the setoff was in relation to the upgrade, yes.

13                  **MS. SHARON VOGEL:** Right. Quite right, sir. And the upgrades  
14 were accomplished and that setoff was released, correct?

15                  **MR. PETER LAUCH:** I believe so, yes.

16                  **MS. SHARON VOGEL:** And the remaining trans were delivered --  
17 or sorry, were made available for use in peak period and the \$16 million was also  
18 released, correct?

19                  **MR. PETER LAUCH:** Yeah, I think it came in two tranches, as the  
20 14<sup>th</sup> and 15<sup>th</sup> came on line, yes.

21                  **MS. SHARON VOGEL:** And as well, there was increased  
22 monitoring put in place by STV and Deloitte and there was a \$2 million charge for that  
23 as well, correct?

24                  **MR. PETER LAUCH:** That was part of the Agreement, yes.

25                  **MS. SHARON VOGEL:** Okay. We can take down the screen  
26 share, please.

27                                 So RTG acknowledged, I understand, on or around July 24, that it  
28 was ready for the maintenance services, correct? Do you recall this?

1                   **MR. PETER LAUCH:** On July 24? So that would have been -- I  
2 guess that would have been at substantial completion, so yes.

3                   **MS. SHARON VOGEL:** Yes. And you were CEO of both  
4 organizations at the time ---

5                   **MR. PETER LAUCH:** Actually ---

6                   **MS. SHARON VOGEL:** --- RTG and RTM?

7                   **MR. PETER LAUCH:** Actually, no, I became CEO of RTM in  
8 November of 2019.

9                   **MS. SHARON VOGEL:** So in this letter -- and I'll ask that it be  
10 pulled up -- COW0469165 -- because the letter sets out additional resources, as I  
11 understand it, that were being committed to be provided. So I'd like to give you a  
12 chance to take a look at it, sir, so if we could go down in this July 24 letter from RTG to  
13 the City. And it speaks to a meeting that had been held earlier in the month, an RTM  
14 readiness meeting held on July 4. And specifically, the letter references "augmented  
15 support and RTM takeover discussions". And here, it lists in the letter -- and we'll scroll  
16 to have you -- to let you look at it -- about additional resources that were going to be  
17 brought to bear, and it references that:

18    "It is incumbent on RTG to provide and sustain ample  
19    resources to support our trial running efforts." (As  
20    read).

21                   Correct?

22                   **MR. PETER LAUCH:** I'm not disputing. I'm just waiting -- waiting  
23 for it to catch up so I can read it.

24                   **MS. SHARON VOGEL:** Absolutely, absolutely. We all have to be  
25 patient with these things.

26                   **MR. PETER LAUCH:** Yes.

27                   **MS. SHARON VOGEL:** You let us know when it's caught up and  
28 you've had a chance to read it.

1 **MR. PETER LAUCH:** Yeah, I'm good. Thank you.

2 **MS. SHARON VOGEL:** Okay. So the first bullet indicates:

3 "It's incumbent on RTG to provide and sustain ample  
4 resources to support our trila running efforts." (As  
5 read).

6 Correct?

7 **MR. PETER LAUCH:** That is correct, yes.

8 **MS. SHARON VOGEL:** And the second bullet refers to:

9 "RTG maintaining augmented support for a sufficient  
10 period, minimum one-month post-passenger service  
11 to ensure that post-RSA through the commencement  
12 of passenger service is redundantly supported as we  
13 ramp up, enhance our support systems as a function."  
14 (As read).

15 And then it goes on to list a number of augmented resources,  
16 correct, if we go to the next page?

17 **MR. PETER LAUCH:** Right. This echoes discussions we had with  
18 the City, so yes.

19 **MS. SHARON VOGEL:** And it accords with what you referred to  
20 earlier about additional resources like rover technicians, additional Alstom technicians,  
21 et cetera?

22 **MR. PETER LAUCH:** Correct.

23 **MS. SHARON VOGEL:** And in fact, those technicians were  
24 provided, correct?

25 **MR. PETER LAUCH:** Yes.

26 **MS. SHARON VOGEL:** And Commission counsel took you to an  
27 internal this morning about concerns raised about Alstom resources during trial running.  
28 Alstom committed to providing additional resources, didn't they?

1                   **MR. PETER LAUCH:** They did.

2                   **MS. SHARON VOGEL:** And are you are that the City Mayor had a  
3 discussion with the CEO of Alstom who confirmed that commitment to provide adequate  
4 through the launch and for the months after the launch?

5                   **MR. PETER LAUCH:** I certainly am. At a board level, we were --  
6 we were talking to Mr. Manconi and Mr. Kanellakos and we were very much hoping that  
7 the mayor would place that call just because we thought it would provide a bit more  
8 leverage. So yes, I'm -- I do remember that that call took place.

9                   **MS. SHARON VOGEL:** All right. And in relation to your RSA  
10 notice, sir -- and perhaps we could pull that up. The RSA notice was submitted to the  
11 City on August 30, 2019; is that correct?

12                   **MR. PETER LAUCH:** Yeah, that's correct.

13                   **MS. SHARON VOGEL:** Okay. And if we could pull up the RSA  
14 notice, COW0523210. And do you recall, sir -- and we'll pull up the letter to let you look  
15 at it -- you indicated that the requirements of RSA had been satisfied and that the  
16 specific works -- and we'll let you look at once it's pulled up -- listed in the letter had  
17 been addressed, correct?

18                   **MR. PETER LAUCH:** That's correct.

19                   **MS. SHARON VOGEL:** And this is page -- it's page 9 of this  
20 document, I believe.

21                   **MR. PETER LAUCH:** Yeah. No, I'm familiar with the letter.

22                   **MS. SHARON VOGEL:** You recall this letter?

23                   **MR. PETER LAUCH:** I do, yes.

24                   **MS. SHARON VOGEL:** And do you recall referencing the items  
25 that had been addressed ---

26                   **MR. PETER LAUCH:** Yes.

27                   **MS. SHARON VOGEL:** --- as you indicated and describe in some  
28 detail in this letter, correct?



1                   **MR. PETER LAUCH:** Yeah, these were -- these were critical pre-  
2 RSA items, yes.

3                   **MS. SHARON VOGEL:** And you'd agree with me that this letter  
4 confirms that the outstanding work from substantial completion, agreed-to-be-deferred  
5 works, was completed by revenue service availability, correct?

6                   **MR. PETER LAUCH:** Correct.

7                   **MS. SHARON VOGEL:** And you would agree that if that work is  
8 completed by revenue service availability, it would not impact the public's use of the  
9 system because the public wouldn't be using the system until after RSA, correct?

10                  **MR. PETER LAUCH:** That is correct.

11                  **MS. SHARON VOGEL:** And when you sent the revenue service  
12 availability notice, you're telling the City that the system is available for revenue service,  
13 right? Correct?

14                  **MR. PETER LAUCH:** That's correct.

15                  **MS. SHARON VOGEL:** And that means it's safe for revenue  
16 service, correct?

17                  **MR. PETER LAUCH:** Absolutely, yes.

18                  **MS. SHARON VOGEL:** And that RTG is prepared to provide  
19 reliable service, correct? That's the representation you're making in sending this letter?

20                  **MR. PETER LAUCH:** That's correct.

21                  **MS. SHARON VOGEL:** And it means that the system meets all of  
22 the PA requirements, correct?

23                  **MR. PETER LAUCH:** That's correct.

24                  **MS. SHARON VOGEL:** And that the system is fit for use, correct?

25                  **MR. PETER LAUCH:** Yes.

26                  **MS. SHARON VOGEL:** And that the system is ready for  
27 maintenance, correct?

28                  **MR. PETER LAUCH:** Yes.

1                   **MS. SHARON VOGEL:** And as we discussed earlier, it's RTG that  
2 is responsible to perform maintenance, correct ---

3                   **MR. PETER LAUCH:** Yes.

4                   **MS. SHARON VOGEL:** --- through RTM and its subcontractors,  
5 including Alstom, correct?

6                   **MR. PETER LAUCH:** I was going to qualify that, yes.

7                   **MS. SHARON VOGEL:** So telling the City that RSA has been  
8 achieved is telling the City that RTG, RTM, and Alstom are ready to perform because  
9 that's necessary during revenue service, correct?

10                  **MR. PETER LAUCH:** That is correct.

11                  **MS. SHARON VOGEL:** And RTG provided the City with significant  
12 documentation to support its achievement of RSA, correct?

13                  **MR. PETER LAUCH:** Yes, we had to. That was part of a huge list  
14 of prerequisite documentation, yes.

15                  **MS. SHARON VOGEL:** Yes. And you might be relieved to hear  
16 I'm not going to run you through all of it. But ---

17                  **MR. PETER LAUCH:** Thank you.

18                  **MS. SHARON VOGEL:** --- do you recall that some of the key  
19 elements included a signed and sealed Fleet Safety Certificate, correct?

20                  **MR. PETER LAUCH:** Yes.

21                  **MS. SHARON VOGEL:** Track Safety Justification Report signed  
22 and sealed by Mr. Bergeron, correct?

23                  **MR. PETER LAUCH:** Yes.

24                  **MS. SHARON VOGEL:** The Engineering Assurance Safety Case  
25 was also a key document, correct?

26                  **MR. PETER LAUCH:** Yes.

27                  **MS. SHARON VOGEL:** Safety Audit Report prepared by the safety  
28 auditor was also a key document, correct?

1                   **MR. PETER LAUCH:** It was, yes.

2                   **MS. SHARON VOGEL:** The Testing Conformance Letter from you  
3 dated August 26<sup>th</sup>, 2019, confirming that all SIDs tests were performed in compliance  
4 with the PA, correct?

5                   **MR. PETER LAUCH:** Correct.

6                   **MS. SHARON VOGEL:** And the Final System Completion Letter  
7 signed by you on August 26 confirming the only work remaining in relation to systems  
8 were minor deficiencies not critical to revenue service, and that the remaining items  
9 would not hinder proceeding with revenue service, correct?

10                  **MR. PETER LAUCH:** That's correct.

11                  **MS. SHARON VOGEL:** And would agree with me that all these  
12 documents, signed and sealed by many engineers, are telling the City that the system is  
13 ready and safe and reliable for revenue service, correct?

14                  **MR. PETER LAUCH:** I would agree with that, yes.

15                  **MS. SHARON VOGEL:** And the message to the City is that RTG is  
16 satisfied the contract requirements and the system is fit for public use, right?

17                  **MR. PETER LAUCH:** Yes.

18                  **MS. SHARON VOGEL:** Okay. In relation to the longstop date --  
19 we can take down the share -- you would agree that the City did not note RTG in default  
20 when it missed the longstop date which is a year after the required revenue service  
21 availability date of May 24, 2018, correct?

22                  **MR. PETER LAUCH:** That's correct.

23                  **MS. SHARON VOGEL:** And RTG would have understandably  
24 been concerned about missing the longstop date because this would have been a  
25 Project Co. event of default, correct?

26                  **MR. PETER LAUCH:** Absolutely, yes.

27                  **MS. SHARON VOGEL:** And the City, acting collaboratively and  
28 cooperatively, advised RTG in writing that, at that time, it was not going to note RTG in

1 default because of that effort to work collaboratively and cooperatively, correct?

2 **MR. PETER LAUCH:** That's correct. At the time, they weren't  
3 going to exercise that option. That's correct.

4 **MS. SHARON VOGEL:** Now I'd like to ask you a couple of  
5 questions about the RTG desire to have a soft start. And you referred to this in your  
6 Commission interview. But RTG didn't create a detailed plan for what a soft start would  
7 look like, did it?

8 **MR. PETER LAUCH:** I don't believe so. I mean these were  
9 technical discussions that I think Matthew, and Rupert, and others had with the City. I  
10 was there for some of them. And I think it was proposed. And I know that Mr. Manconi  
11 and his team took it away, but it didn't evolve to a point that a detailed proposal was put  
12 in place.

13 **MS. SHARON VOGEL:** Okay. And RTG wanted fewer trains,  
14 fewer stations, and shorter running times, correct?

15 **MR. PETER LAUCH:** I think that was part of it, yeah, and there  
16 was shorter running times, yeah, because that would give you more time to do the  
17 maintenance regime. I'm trying to remember all the details about what you've just said  
18 is what I recall, yes.

19 **MS. SHARON VOGEL:** And having fewer trains, fewer stations  
20 available and shorter service hours, that would not be a good thing for the public, would  
21 it?

22 **MR. PETER LAUCH:** No, it would definitely take some calibration  
23 and definitely – and as Mr. Manconi said yesterday, I mean it would be disruptive,  
24 multiple transfers and so forth, so that's – I think that's why the City told us after a  
25 relatively short period of review, that it was intended.

26 **MS. SHARON VOGEL:** And RTG wanted to be paid in full even  
27 during this soft launch period; correct?

28 **MR. PETER LAUCH:** No, that's not correct.

1                   **MS. SHARON VOGEL:** And RTG understood when it submitted its  
2 proposal that the concept, the ask from the City generally, was when we go back to the  
3 proposal originally at the time the project agreement is entered into, was that the City  
4 was starting launching an LRT that would replace the existing bus rapid transit system;  
5 correct?

6                   **MR. PETER LAUCH:** That's correct, yes.

7                   **MS. SHARON VOGEL:** And the idea was to start at a service level  
8 that would satisfy the high ridership levels and the ridership levels that were current at  
9 that time; correct?

10                  **MR. PETER LAUCH:** That is correct, yes.

11                  **MS. SHARON VOGEL:** So the idea was not to have a long soft  
12 transition into full service; correct?

13                  **MR. PETER LAUCH:** No, I don't think that was ever contemplated  
14 initially.

15                  **MS. SHARON VOGEL:** And the City was concerned about the  
16 public having proper use and enjoyment of this brand new system; correct?

17                  **MR. PETER LAUCH:** That is correct, yes.

18                  **MS. SHARON VOGEL:** And it's reasonable and appropriate for the  
19 City to have been concerned about the impact of a soft start on the public; correct?

20                  **MR. PETER LAUCH:** I would say so, yes.

21                  **MS. SHARON VOGEL:** And we've already talked a bit about the  
22 City's concerns prior to RSA about RTM and Alstom being able to adequately staff up in  
23 terms of maintenance resources; correct?

24                  **MR. PETER LAUCH:** Yes.

25                  **MS. SHARON VOGEL:** And you've accepted that RTG was  
26 responsible or maintenance; correct?

27                  **MR. PETER LAUCH:** Yes.

28                  **MS. SHARON VOGEL:** And do you think it was reasonable for the

1 City to believe RTG and Alstom when they advised that they would provide sufficient  
2 maintenance resources during the maintenance term?

3 **MR. PETER LAUCH:** Yes.

4 **MS. SHARON VOGEL:** So – I recall you remained with the project  
5 through the fall of 2019 and there were some early problems; do you recall those  
6 problems?

7 **MR. PETER LAUCH:** I do.

8 **MS. SHARON VOGEL:** And so there were problems with the train  
9 control monitoring system, the vehicle passenger stores and other reliability issues  
10 through the fall of 2019; correct?

11 **MR. PETER LAUCH:** Yeah, there were a few issues, yes.

12 **MS. SHARON VOGEL:** And the City sent a series of letters raising  
13 those concerns, correct?

14 **MR. PETER LAUCH:** Yes.

15 **MS. SHARON VOGEL:** And through the winter of 2019 to 2020,  
16 the problems became more serious; correct?

17 **MR. PETER LAUCH:** Yes.

18 **MS. SHARON VOGEL:** There were issues with the overhead  
19 catenary system; correct?

20 **MR. PETER LAUCH:** Yes.

21 **MS. SHARON VOGEL:** And the failures of the OCS, they were not  
22 something that was known about as a risk as a revenue service availability; correct?

23 **MR. PETER LAUCH:** That's correct, yes.

24 **MS. SHARON VOGEL:** And there were problems with a non-  
25 functioning wheel lathe in the winter of 2020; correct?

26 **MR. PETER LAUCH:** Yeah, I remember that it was out of service  
27 for a while and we struggled to get a qualified technician to get it up and running, yes.

28 **MS. SHARON VOGEL:** And in the winter of 2020 there was

1 metallic dust on the roof of trains causing them to stop during service; correct?

2 **MR. PETER LAUCH:** I think that was part of the root cause, but,  
3 yes.

4 **MS. SHARON VOGEL:** And as well there are other potential  
5 causes resulting in inductor failures; correct?

6 **MR. PETER LAUCH:** That's correct, yes.

7 **MS. SHARON VOGEL:** And, again, this inductor failure issue, that  
8 wasn't an issue that was known or foreseen as at revenue service availability; was it?

9 **MR. PETER LAUCH:** No, it only manifested as we got farther and  
10 farther into service, and as you noted, especially when we got into the winter months.

11 **MS. SHARON VOGEL:** And there were repeated switch failures in  
12 the winter of 2019, 2020; correct?

13 **MR. PETER LAUCH:** Yes.

14 **MS. SHARON VOGEL:** And, finally, on March 10, 2020 I notice a  
15 default was issued by the City; correct?

16 **MR. PETER LAUCH:** Correct.

17 **MS. SHARON VOGEL:** And if we could pull up that notice of  
18 default, it's COW0523248. I can read that number again. It's COW0523248. Are you  
19 familiar with this letter, Mr. Lauch?

20 **--- EXHIBIT No. 213:**

21 COW0523248 – Letter City of Ottawa to RTG 10 March  
22 2020

23 **MR. PETER LAUCH:** Yes.

24 **MS. SHARON VOGEL:** So this notice of default raised concerns  
25 regarding the availability of the system and, in particular, an increase in issues that  
26 arose in the winter of 2019-2020; correct?

27 **MR. PETER LAUCH:** That's correct.

28 **MS. SHARON VOGEL:** If we scroll down in the letter we see a

1 listing of issues that affected the availability of the system. You have to keep scrolling  
2 down in the letter, please. After the “failure points” heading. Keep scrolling down,  
3 please. Scroll down further, please. Keep scrolling down. And in this section of the  
4 letter, if we stop here, at the top of this page there’s a reference to the “... 25  
5 consecutive weekday rush hour periods between January 16, 2020 and February 3<sup>rd</sup>,  
6 2020 where RTG failed to deliver the required number of trains at peak service and was  
7 only able to provide between 8 and 12 trains; and the average number of trains  
8 provided during that critical period was just over ten trains.” Do you recall that; did that  
9 occur, Mr. Lauch?

10 **MR. PETER LAUCH:** Yes, it did.

11 **MS. SHARON VOGEL:** And then subsequently in February, on the  
12 days listed there in February, RTG failed to provide the required number of days; again,  
13 did that occur, Mr. Lauch?

14 **MR. PETER LAUCH:** Yes.

15 **MS. SHARON VOGEL:** And then there are a whole series of sub-  
16 bullets listed in this letter about a number of other issues that arose in the winter of  
17 2020, including vehicle parts coming loose, brake faults, vehicle failure incidents, failure  
18 of the overhead catenary system on February 26<sup>th</sup>, this one where a catenary wire  
19 dropped. And then supplementary heat being necessary in the vehicle, driver cabs and  
20 switch heater performance issue and then material availability and spare parts issues.  
21 Do you recall all of these issues, Mr. Lauch?

22 **MR. PETER LAUCH:** I do.

23 **MS. SHARON VOGEL:** And RTG provided a remedial plan in  
24 response to this notice of default; do you recall that, Mr. Lauch?

25 **MR. PETER LAUCH:** I certainly do. I was very much involved in  
26 that; it was a very fulsome response to these issues, yes.

27 **MS. SHARON VOGEL:** And RTG proceeded to implement that  
28 remedial plan? I believe there were a couple of versions of it; correct?



1                   **MR. PETER LAUCH:** There were a couple of versions and it was a  
2 detailed schedule, scheduled dates for each one of the items – as I said, it was very  
3 voluminous but a very fulsome document.

4                   **MS. SHARON VOGEL:** And is it fair to say that that remedial plan  
5 that RTG was implementing was proceeding along and RTG was implementing it,  
6 perhaps not at the pace that the City would have liked, but RTG was applying additional  
7 resources to attempt to implement that remedial plan; correct?

8                   **MR. PETER LAUCH:** That's correct. And at the time it was  
9 certainly tempered with what was going on in the world with Covid and resources and  
10 plants, and material availability, but, yes.

11                   **MS. SHARON VOGEL:** And I think we can take down the screen  
12 share. And in relation to that period, the maintenance period where RTG was working  
13 on rectifying these problems that had been identified, particularly in the winter of 2019  
14 and 2020, the City on a number of occasions made accommodations and collaborated  
15 with RTG; correct?

16                   **MR. PETER LAUCH:** It certainly collaborated, I'm not sure what  
17 you mean by accommodations, but certainly collaborated, yes.

18                   **MS. SHARON VOGEL:** Well, would one example be the variation  
19 directive that was issued effective March 27<sup>th</sup>, 2020 that allowed a reduction in service  
20 post the onset of the Covid pandemic; would that be an example of an accommodation?

21                   **MR. PETER LAUCH:** Certainly. It made a lot of sense at the time  
22 given the ridership.

23                   **MS. SHARON VOGEL:** And did that reduction in service  
24 throughout the Covid period give RTG further opportunities to deal with issues that had  
25 arisen in relation to the provision of its maintenance services?

26                   **MR. PETER LAUCH:** It certainly did. But I also qualify that that, I  
27 mean, everyone in the world was struggling at the time with material and resources and  
28 I think there was -- you know, we had some discussions -- we were waiting for some

1 material. I know Alstom was waiting for some material from some of the OEMs in  
2 France and Italy, and the plants had just shut down. It wasn't a question of delayed  
3 delivery. It was a question of shut down. So we were certainly struggling with that.

4 But to answer you question, yes. I mean, less vehicles on the line  
5 and certainly it afforded more hands on time.

6 **MS. SHARON VOGEL:** And in addition to reducing the service  
7 level, the term sheet that was agreed to at the time also provided for reduced  
8 deductions, correct?

9 **MR. PETER LAUCH:** Yeah, there was a direct correlation there,  
10 yes.

11 **MS. SHARON VOGEL:** And during COVID, the City could have  
12 required full service with all trains but it entered into this Agreement early on as of  
13 March 27, 2020, to provide for reduced service, correct?

14 **MR. PETER LAUCH:** That's correct.

15 **MS. SHARON VOGEL:** And it did that in part to allow RTG to  
16 employ its rectification efforts, correct?

17 **MR. PETER LAUCH:** I would say I agree with you, with what  
18 you're saying in part because, I mean, I recall sitting in the control room looking at the  
19 camera images from the station where there was one or two people every hour. So  
20 certainly in part but not exclusively.

21 **MS. SHARON VOGEL:** But a reduced service level means that  
22 fewer vehicles in service which means more vehicles are in the MSF and those vehicles  
23 can be worked on in the MSF in relation to maintenance, correct?

24 **MR. PETER LAUCH:** Absolutely, yes.

25 **MS. SHARON VOGEL:** And that allowed RTG to catch up on its  
26 maintenance work, correct?

27 **MR. PETER LAUCH:** As much as we could with the resource and  
28 material availability, yes.

1 **MS. SHARON VOGEL:** And more vehicles were able to be used  
2 as spares, correct?

3 **MR. PETER LAUCH:** Correct.

4 **MS. SHARON VOGEL:** And would you agree that this was an  
5 example of good collaboration in an effort to solve the problem?

6 **MR. PETER LAUCH:** I certainly wouldn't disagree. And as I said, I  
7 mean, it was -- that was certainly a part of it. And the other part was it made good  
8 sense for the City as well.

9 **MS. SHARON VOGEL:** Thank you, sir. Those are my questions.

10 **MR. PETER LAUCH:** Thank you.

11 **COMMISSIONER HOURIGAN:** All right. Next up is Alstom.

12 **MS. LENA WANG:** Good afternoon, Mr. Commissioner.

13 **--- CROSS-EXAMINATION BY MS. LENA WANG:**

14 **MS. LENA WANG:** Good afternoon, Mr. Lauch.

15 **MR. PETER LAUCH:** Good afternoon.

16 **MS. LENA WANG:** My name is Wang Lena, W-a-n-g, counsel for  
17 Alstom.

18 Mr. Lauch, you told us this morning that in addition to your role as  
19 CEO of RTG you were also the CEO of RTM from, I think you said, November 2019 to  
20 July 2020; is that right?

21 **MR. PETER LAUCH:** That's correct.

22 **MS. LENA WANG:** Okay. And you were fully involved or heavily  
23 involved with the maintenance activity for Stage 1 of the project?

24 **MR. PETER LAUCH:** I'm sorry, what stage --- yes. Yes.

25 **MS. LENA WANG:** The maintenance activity of Stage 1.

26 **MR. PETER LAUCH:** Correct.

27 **MS. LENA WANG:** Okay. And during your term as CEO of RTM,  
28 RTM did have an interim general manager and that was James Messel?

1                   **MR. PETER LAUCH:** That's correct.

2                   **MS. LENA WANG:** Okay. And Mr. Messel was in charge of the  
3 day-to-day operations of RTM?

4                   **MR. PETER LAUCH:** Yes.

5                   **MS. LENA WANG:** I take it you're aware that Alstom's  
6 maintenance obligations under the subcontract did not start until Revenue Service.

7                   **MR. PETER LAUCH:** That's correct.

8                   **MS. LENA WANG:** Okay. And therefore, Alstom's maintenance  
9 obligations had not actually started during trial running.

10                  **MR. PETER LAUCH:** That's correct.

11                  **MS. LENA WANG:** Would you agree with me, sir, that if the  
12 system had been put into Revenue Service prior to it being fully reliable then the  
13 maintainer would have had to perform a lot more work than they would have reasonably  
14 expected to at the time they entered into the contract?

15                  **MR. PETER LAUCH:** I wouldn't disagree with that statement.

16                  **MS. LENA WANG:** So you would agree with that statement?

17                  **MR. PETER LAUCH:** It's not wrong, yes.

18                  **MS. LENA WANG:** Okay. And in your interview with Commission  
19 counsel you indicated that your view is that Alstom was not performing on maintenance  
20 tasks even though you thought it was Alstom's responsibility. Do you recall saying that?

21                  **MR. PETER LAUCH:** I think that was more in the context of the  
22 infrastructure, but yes, I do recall saying that.

23                  **MS. LENA WANG:** Right. And I think you gave an example of  
24 some work to the OCS, the Overhead Catenary System. Do you recall that?

25                  **MR. PETER LAUCH:** That was part of the infrastructure, yes.

26                  **MS. LENA WANG:** Okay. And I want to talk to you about that in a  
27 second. But first, do you agree with me, sir that under the Project Agreement, the  
28 Project Agreement allows for a maintenance shutdown period.

1                   **MR. PETER LAUCH:** It certainly does. There is a provision in  
2 there.

3                   **MS. LENA WANG:** Okay. And these are periods where the line is  
4 shut down so that the maintainer can get an extended period of time to perform work.

5                   **MR. PETER LAUCH:** Yeah. I think there is a very prescriptive  
6 window of time in the PA, but yes, I would agree with you.

7                   **MS. LENA WANG:** Okay. Because normally the maintainer only  
8 has limited engineering hours to perform maintenance work.

9                   **MR. PETER LAUCH:** That's correct.

10                  **MS. LENA WANG:** And on this project these engineering hours  
11 are limited to two to three hours per day.

12                  **MR. PETER LAUCH:** During the week, yes.

13                  **MS. LENA WANG:** And these two to three hours, that's after  
14 service is done for the day.

15                  **MR. PETER LAUCH:** Correct.

16                  **MS. LENA WANG:** And that's to perform all of the daily  
17 preventative and corrective maintenance to the guideway, for example.

18                  **MR. PETER LAUCH:** The guideway, the vehicles, the entire  
19 system, yes.

20                  **MS. LENA WANG:** Exactly. Okay. So now I want to look at the  
21 OCS work that you referenced. If I could have a document put up, and it's  
22 ALS0013678.

23 **--- EXHIBIT No. 214:**

24                                   ALS0013678 – Letter Alstom to RTG 30 April 2020

25                  **MS. LENA WANG:** So while this document is being pulled up, I'm  
26 just going to give you some background. This is going to be a letter from Alstom to  
27 RTM. And it's dated April 30, 2020.

28                                   And if you could just -- just give me a second to sort myself out

1 here. Okay.

2 If you could just scroll down a little bit, please, so we could see the  
3 first paragraph. There, that's it. If you could just scroll back up a little bit so we could  
4 see the date as well as the first paragraph of the letter. I think that's fine.

5 Sir, I know there's a lag on your end.

6 Could you just scroll back up to the top of the letter, please? Just  
7 the first, at the beginning where we could see the date, and then the first paragraph.  
8 That's good. Thank you.

9 Can you see the letter? I know there's a lag on your end.

10 **MR. PETER LAUCH:** I can, yes.

11 **MS. LENA WANG:** Okay. So this is a letter that was sent to Mr.  
12 James Messel. Do you recall seeing this letter at the time?

13 **MR. PETER LAUCH:** I don't remember it specifically but now that  
14 you bring it up, it certainly rings a bell, yes.

15 **MS. LENA WANG:** Okay. So the first paragraph of this --- I'm just  
16 going to read it. It says:

17 "Alstom is writing to RTM further to the City's  
18 branching of RTG's request to shut down the O-Train  
19 Line 1 and MSF during May 2 to 3, 2020 and May 9 to  
20 13, 2020 to perform rectification work on the OCS and  
21 other infrastructure deficiencies."

22 Do you see that, sir?

23 **MR. PETER LAUCH:** Yeah, as well as the train control software,  
24 yes.

25 **MS. LENA WANG:** Yes. And so RTM is planning to shut down the  
26 line to perform some maintenance work including work on the OCS. That's what that's  
27 telling us.

28 **MR. PETER LAUCH:** Correct.

1                   **MS. LENA WANG:** And then the letter goes on to say:

2                                    “In order to plan accordingly, Alstom requests formal  
3                                    notification confirming this decision as  
4                                    communications regarding the shutdown have only  
5                                    been confirmed by RTM email on April 27, 2020.”

6                   Do you see that?

7                   **MR. PETER LAUCH:** Yeah, that’s what I read, yes.

8                   **MS. LENA WANG:** Okay. And I’m gong to come back to the  
9                   manner in which Alstom was notified of the plant shutdown in a second. But for now I  
10                   just want to scroll down a little bit more and read just the next paragraph.

11                   That’s perfect. Thank you. And it says:

12                                    “Furthermore, a description of the work and plan must  
13                                    be presented to Alstom prior to the start of the  
14                                    shutdown and Alstom requires a clear commitment  
15                                    from RTM to provide a status on the system following  
16                                    completion of the work.”

17                   And then there’s a number of items that Alstom is requesting  
18                   following the completion of the work including description of the work, rectification plan,  
19                   copy of all records of the comprehensive OCS inspection and cleaning to be completed.

20                   Do you see that? .

21                   **MR. PETER LAUCH:** I’m just waiting for it to catch up here. Yes.  
22                   I see the point form summary. Yes.

23                   **MS. LENA WANG:** Okay. Would you agree with me, sir, that it’s  
24                   important for Alstom to have the requested documents because the repair work may  
25                   impact Alstom’s future maintenance work?

26                   **MR. PETER LAUCH:** I wouldn’t disagree with you.

27                   **MS. LENA WANG:** So you would agree?

28                   **MR. PETER LAUCH:** Yes.

1                   **MS. LENA WANG:** And would you agree with me, sir, that it's  
2 important for your maintenance subcontractor to be given advance notice prior to a  
3 shutdown?

4                   **MR. PETER LAUCH:** Certainly. And I would also agree there was  
5 day-to-day communication Mr. Messel and Mr. France so, you know, things like this  
6 wouldn't come as a surprise. There was constant communication. We were on the  
7 same floor at the MSF.

8                   **MS. LENA WANG:** Okay, so we'll get to that, but I think you said,  
9 sir, you do agree with me that it's important for your maintenance subcontractor to be  
10 given advanced notice prior to a shutdown, and that's because it's important for your  
11 maintenance subcontractor to be involved in the planning of a maintenance shutdown,  
12 correct?

13                   **MR. PETER LAUCH:** Correct.

14                   **MS. LENA WANG:** Okay. So now, if we can go to an email -- and  
15 the document is ALS0064653 -- thank you.

16 **--- EXHIBIT No. 215:**

17                                   ALS0064653 – Email from Tom Pate to Richard France et al.  
18                                   Re: Proposed additional works 27 April 2020

19                   **MS. LENA WANG:** If you could just scroll down to the bottom  
20 email. This is a very long email chain and I just want to start at the bottom. Keep going.  
21 Keep going, please. Okay, here. So this is -- oh, so this is the bottom email, but if  
22 could scroll up a little bit so we can see the beginning of this email. And it's an email  
23 exchange -- just a little bit more so we can see the sender and the recipients. Perfect.  
24 Okay, perfect. So, sir, this is an email from you. Has it caught up to you yet on the  
25 screen?

26                   **MR. PETER LAUCH:** It's making me dizzy right now, so just have  
27 to give it a minute.

28                   **MS. LENA WANG:** No problem. We'll be patient.



1                   **MR. PETER LAUCH:** Okay, it's stabilized.

2                   **MS. LENA WANG:** Okay. So this is an email from you, sir, dated  
3 April 23, 2020, and it's being sent to Michael Morgan, and there are a number of people  
4 copied -- Steven Nadon, Tom Pate, James Messel, Troy Charter. Do you see that?

5                   **MR. PETER LAUCH:** I do, yes.

6                   **MS. LENA WANG:** Okay. And it says, "Hello, Michael." And the  
7 subject of this email tells us this "Proposed additional work." You're proposing two  
8 different shutdown periods in the body of this email, with an additional shutdown period  
9 down the road for works that -- primarily on the OCM. That's what the first two  
10 paragraphs say. Is that right?

11                   **MR. PETER LAUCH:** Yeah, that's how I read it, yeah.

12                   **MS. LENA WANG:** Okay. And then if you could scroll down,  
13 operator, just a little bit. That's good right there. And you list several items, sir, under  
14 "May 2-3" and a subheading of "infrastructure". It's the third bullet because we're talking  
15 about OCS works that I want to focus on, and it says, "OLRT requests for OCS works."  
16 Do you see that?

17                   **MR. PETER LAUCH:** Sorry, you have to -- you have to be patient  
18 for a couple of seconds. The font is incredibly small on the laptop so I need to -- I need  
19 it to catch up.

20                   **MS. LENA WANG:** Sure, no problem.

21                   **MR. PETER LAUCH:** Okay, it's caught up, yes.

22                   **MS. LENA WANG:** Okay. Do you see that it says, "OLRT  
23 requests for OCS works"?

24                   **MR. PETER LAUCH:** Required level, yes.

25                   **MS. LENA WANG:** Okay. You agree with me, sir, that the OCS  
26 works you're referring to here is a request from OLRTC?

27                   **MR. PETER LAUCH:** That's what it says, yes.

28                   **MS. LENA WANG:** And that's because OLRTC has an obligation

1 to correct construction defects, correct?

2 **MR. PETER LAUCH:** If what was going to be done was a  
3 construction defect, yes, that's correct.

4 **MS. LENA WANG:** Okay. And we'll keep going with that. But I  
5 think what you've seen from just this bottom email, for now, is that no one from Alstom  
6 has been included in this email. We saw the sender and the recipient, and the people  
7 who were copied, and there's no one from Alstom on it.

8 **MR. PETER LAUCH:** Yeah, and I agree with you, but I don't think  
9 that's abnormal.

10 **MS. LENA WANG:** Okay. Let's keep going and scroll up. This is  
11 a very long chain. I'm just going to take you to an email sent by Steve Nadon to  
12 Michael Morgan that's dated April 24, 2020, if you could keep going up. Keep going,  
13 please. Keep going. And keep going. Yes, right here. Thank you. So this is an email  
14 -- oh, okay. Do you see the email, sir, from Steve Nadon sent April 24, 10:31 a.m.?

15 **MR. PETER LAUCH:** I do see it, but you'll just have to -- again,  
16 you'll have to give it a minute to catch up here.

17 **MS. LENA WANG:** Yeah, let me know when you're there.

18 **MR. PETER LAUCH:** Okay.

19 **MS. LENA WANG:** Okay. And it says here:

20 "Michael, I had attached an email from Dwayne  
21 Duquette dated April 16 to RTM." (As read).

22 Do you see that?

23 **MR. PETER LAUCH:** I do.

24 **MS. LENA WANG:** Okay. So it appears that RTM and the City  
25 were discussing a shutdown at least as of April 16, 2020. Do you agree with that?

26 **MR. PETER LAUCH:** It would appear so, yes.

27 **MS. LENA WANG:** Okay. And again, on this email, nobody from  
28 Alstom was copied on it?

1                   **MR. PETER LAUCH:** That's correct.

2                   **MS. LENA WANG:** And Mr. Nadon, in this email, explains that  
3 OSC works as proposed?

4                   **MR. PETER LAUCH:** Yeah, that's correct.

5                   **MS. LENA WANG:** And this is the OSC works that you were  
6 talking to Commission counsel about when you were interviewed?

7                   **MR. PETER LAUCH:** Probably, yes.

8                   **MS. LENA WANG:** Okay. So now let's go all the way to the top of  
9 this email so we see the very -- yes, thank you. And so now we see Tome Pate of RTM  
10 forwarding this email to a number of people, Richard France being one of them. Do you  
11 see that, sir?

12                   **MR. PETER LAUCH:** I do.

13                   **MS. LENA WANG:** Okay. So Richard France worked for Alstom  
14 and this email was sent April 27<sup>th</sup>; is that right?

15                   **MR. PETER LAUCH:** Yes.

16                   **MS. LENA WANG:** And so Alstom was only made aware of the  
17 shutdown a few days before the shutdown?

18                   **MR. PETER LAUCH:** In writing, yes.

19                   **MS. LENA WANG:** You're suggesting, sir, that there was some  
20 communication that's not in this email and that's not referred to in the letter that I  
21 showed you at first?

22                   **MR. PETER LAUCH:** I'm certainly suggesting that there was -- the  
23 two parties worked very closely together and we were in perpetual discussion,  
24 especially James, Tom, Richard, and Neil at Alstom.

25                   **MS. LENA WANG:** That's not the same thing as being made of a  
26 planned shutdown.

27                   **MR. PETER LAUCH:** I don't disagree with you but it's not that they  
28 were -- it's also not -- you know, you're implying that they were blindsided by it, and

1 that's something that I wouldn't agree with.

2 **MS. LENA WANG:** Okay. Let's go to the next email, which is  
3 COMH0000030.

4 **--- EXHIBIT No. 216:**

5 COMH0000030 – Email from Richard France to James  
6 Messel et al. Re: OCS Parts 8 May 2020

7 **MS. LENA WANG:** Okay, perfect. If you could scroll again to the  
8 bottom of this email -- again, a very long email thread -- at the very bottom email, it's an  
9 email from Mr. Nadon, and he's writing to a number of individuals. Yeah, so this the  
10 bottom -- there, thank you, perfect. If you just -- oh, yeah, this is it. And let me know,  
11 sir, once it's caught up on your screen.

12 **MR. PETER LAUCH:** So I have it now. It's starting to scroll on the  
13 big screen.

14 **MS. LENA WANG:** Are you at the bottom email.

15 **MR. PETER LAUCH:** I'm just past the photo.

16 **MS. LENA WANG:** Oh ---

17 **MR. PETER LAUCH:** Now I am, yes, the email to Damien.

18 **MS. LENA WANG:** Okay. Oh, sorry, the operator's just moved it  
19 again. Can you come back to the bottom?

20 And now I'm going to have to wait for it to catch up on your screen  
21 again, so if you could just pause here for now? Thank you.

22 **MR. PETER LAUCH:** I'm going to do my best to squint so I don't  
23 take up too much of time. So ---

24 **MS. LENA WANG:** This isn't -- there isn't anything really  
25 contentious in this. It's an email from Steve Nadon. I just want to make sure you can  
26 see it. And your copy on this email is sent April 29<sup>th</sup>, and the subject is "OCS Parts".

27 **MR. PETER LAUCH:** Okay.

28 **MS. LENA WANG:** Steve says:

1 "Damien, we will need access to all of the spare parts  
2 for this coming May 2,3 weekend, and also for May 9  
3 for 13 weeks." (As read)

4 That's what the email says.

5 **MR. PETER LAUCH:** Okay.

6 **MS. LENA WANG:** And I just want to confirm with you, sir, that  
7 that's the shut down that has been discussed in the other email thread.

8 **MR. PETER LAUCH:** Yeah, to the lines up, yes.

9 **MS. LENA WANG:** Okay.

10 And then if you could scroll up, Operator, to an email from Richard  
11 France that's dated May 6, 2 -- and it's sent 2:21 p.m.

12 So it's -- keep going past the picture -- yeah. Keep going. Oh, right  
13 here, yeah.

14 Richard France says:

15 "James, Tom, while these items are available and  
16 ready for collection, Alstom requires confirmation that  
17 RTM will take responsibility for the replenishment of  
18 these parts promptly." (As read)

19 And the reason why Alstom was asking for this replenishment of  
20 parts promptly is because the OCS repair work is a construction contractor defect, isn't  
21 it?

22 **MR. PETER LAUCH:** I don't have the actual list of work before me,  
23 so I don't know if it was a maintenance issue or a defect issue, but I'll take your word for  
24 it.

25 **MS. LENA WANG:** But you agree with me, sir, that the OCS work  
26 that they discuss in this email, at least as it relates to the May 2 to 3 shutdown, is what  
27 was referenced in your -- the other email chain you saw?

28 **MR. PETER LAUCH:** Yes. If ---

1 **MS. LENA WANG:** You confirm that?

2 **MR. PETER LAUCH:** If OLRT is doing it as opposed to Alstom  
3 maintenance, yes.

4 **MS. LENA WANG:** And it was a shutdown that was proposed and  
5 discussed between OLRTC and RTM, and then we saw, Alstom maintenance was  
6 brought in a few days before the shutdown, the planned shutdown, correct?

7 **MR. PETER LAUCH:** It would appear so. I'm not sure that context  
8 or what Alstom's scope would have been at the time. What I'm reading here is that  
9 RTM wants to borrow some spares or some material.

10 **MS. LENA WANG:** Okay. If you could scroll up to the second  
11 email from the top -- right here. Oh, go down a little bit more. This is perfect, thank you.

12 And -- oh, sorry, if you could just scroll up a little bit so we can see -  
13 - oh, we -- okay, we can -- here, this is an email from James Messel. Are you there with  
14 me, sir, where he says, "Richard"?

15 **MR. PETER LAUCH:** I can -- I'm squinting. I can see it on the  
16 small screen, yes.

17 **MS. LENA WANG:** Okay. And it's only just the first sentence that I  
18 want to talk to you about. It says -- here's Mr. Messel confirming, "These parts are to be  
19 used to address CC defects."

20 Do you see that?

21 **MR. PETER LAUCH:** I do.

22 **MS. LENA WANG:** And that's construction contractor defects?

23 **MR. PETER LAUCH:** That's correct.

24 **MS. LENA WANG:** And so Mr. Messel has confirmed that the work  
25 that's to take place as it relates to the OCS between May 2<sup>nd</sup> and 3<sup>rd</sup>, and then again  
26 May 9 to 13, this was to correct construction defects?

27 **MR. PETER LAUCH:** Evidently, yes, yes.

28 **MS. LENA WANG:** You agree? Okay.

1                   So we can take this email down and I promise, no more emails. I  
2 just have a couple more letters, but they won't be as confusing to scroll through.

3                   So if we can put up ALS0013513?

4 **--- EXHIBIT No. 217:**

5                                   ALS0013513 – Letter Alstom to RTG 4 May 2020

6                   **MS. LENA WANG:** So when this comes up, sir, this is going to be a  
7 letter from Alstom to RTM dated May 4, 2020, and that's a day after the planned  
8 shutdown that we've been looking at. If you could scroll down so we can see the first  
9 two paragraphs, please?

10                                   Okay. Pefect, thank you.

11                                   So Alstom says, "Alstom's writing to RTM further to the shutdown  
12 during May 2 to 3, 2020."

13                                   And then in the middle of the second paragraph:

14   "The first shutdown took place this weekend, and to  
15 date, Alstom has not received a formal reply or  
16 information/confirmations requested. We therefore  
17 repeat our request for a description of the work  
18 completed as handover documents, as well as other  
19 elements detailed in our letter." (As read)

20                                   And there's a letter reference 253, and that's the letter we looked at  
21 earlier. Do you see that?

22                   **MR. PETER LAUCH:** Okay. I do.

23                   **MS. LENA WANG:** And the next paragraph goes on to say -- I'm  
24 not going to read it all -- but the next paragraph goes on to point out that there is a  
25 requirement in the Project Agreement for RTM to submit a request for City approval for  
26 a maintenance shutdown 45 days in advance of the proposed shutdown; is that right?

27                   **MR. PETER LAUCH:** That's correct.

28                   **MS. LENA WANG:** Would you agree with me, sir, that that's a

1 requirement of the Project Agreement?

2 **MR. PETER LAUCH:** It's what the PA says, yes.

3 **MS. LENA WANG:** Okay. And RTM didn't comply with that in this  
4 case?

5 **MR. PETER LAUCH:** Possibly, yeah. I mean, sometimes things  
6 are more reactive, but no, that's -- I mean, I can't disagree with what you're saying.

7 **MS. LENA WANG:** RTM did not comply with that because we saw  
8 that Alstom was given notice of this a few days before the shutdown?

9 **MR. PETER LAUCH:** In writing, yes, okay.

10 **MS. LENA WANG:** If we can go to ALS0014680?

11 **--- EXHIBIT No. 218:**

12 ALS0014680 – Letter Alstom to RTG 14 May 2020

13 **MS. LENA WANG:** Okay. So this is another letter from Alstom  
14 dated May 14, so now it's 10 days after the first maintenance shutdown. If you could  
15 just scroll down a little bit so we could see the body of the letter? Okay, perfect. This is  
16 good.

17 So this letter is further to our letters, and then there's the three letter  
18 references. We've looked at two of those letters today, sir, concerning the shutdown  
19 periods for which Alstom has not received a formal reply.

20 And those letters that's referenced in the first paragraph of this one,  
21 that's where Alstom is requesting documents from RTM such as a description of the  
22 work that was completed, correct?

23 **MR. PETER LAUCH:** Sorry, I'm waiting for it to catch up.

24 **MS. LENA WANG:** No problem, sir. But I think you'll agree with  
25 me that the letters we've already looked at, in those letters, Alstom is requesting for  
26 multiple documents, one of which is a description of the work that was completed during  
27 the maintenance shutdown.

28 **MR. PETER LAUCH:** That's what I read, yes.



1                   **MS. LENA WANG:** Okay. And Alstom is saying here as of the  
2 date of this letter, RTM had not provided Alstom with those records?

3                   **MR. PETER LAUCH:** That's what the letter says, yes.

4                   **MS. LENA WANG:** Okay. And sir, I'm going to suggest to you that  
5 RTM never provided Alstom with the records required.

6                   **MR. PETER LAUCH:** I wouldn't have knowledge of that, but if  
7 that's what you say, I'd have to take your word for it.

8                   **MS. LENA WANG:** And you would agree with me, sir, that those  
9 are important records for Alstom to have?

10                  **MR. PETER LAUCH:** I would agree, yes.

11                  **MS. LENA WANG:** And there were additional maintenance  
12 shutdowns in 2020, weren't there?

13                  **MR. PETER LAUCH:** I think we talked about a couple already in  
14 some of the letters, so I'd have to say yes. I don't recall exactly, but yes.

15                  **MS. LENA WANG:** Fair enough. You don't recall, and I know you  
16 left, I think, July 2020, but there -- I'll represent to you, sir, that there was an additional  
17 maintenance shutdown during the time you were there in June 2020 ---

18                  **MR. PETER LAUCH:** No, I ---

19                  **MS. LENA WANG:** --- where ---

20                  **MR. PETER LAUCH:** I've got no reason to doubt you.

21                  **MS. LENA WANG:** Okay. And construction defects were  
22 corrected during that period?

23                  **MR. PETER LAUCH:** Okay. I agree.

24                  **MS. LENA WANG:** You agree? In fact, work was done on the  
25 track?

26                  **MR. PETER LAUCH:** There was some work done on the track,  
27 yes.

28                  **MS. LENA WANG:** Okay. And in those shutdown, the later

1 shutdown -- so not the May 2, 3 shutdown that we've looked at the letters for -- even  
2 though Alstom requested records of those corrections made during the shutdown, RTM  
3 failed to provide them?

4 **MR. PETER LAUCH:** Again, if you say so. I don't have a  
5 recollection of that, but again, I have no reason to dispute what you're saying.

6 **MS. LENA WANG:** Okay. Those are all my questions. Thank you.

7 **COMMISSIONER HOURIGAN:** All right. Thank you.

8 Next is IO.

9 **MR. SOLOMON McKENZIE:** Good afternoon. My name is  
10 Solomon McKenzie, M-c-K-e-n-z-i-e, counsel for Infrastructure Ontario. We have no  
11 questions for this witness.

12 **COMMISSIONER HOURIGAN:** All right. Thank you.

13 STV?

14 **MR. JAMES DORIS:** Good afternoon. It's Jim -- James Doris from  
15 -- for STV.

16 **--- CROSS-EXAMINATION BY MR. JAMES DORIS:**

17 **MR. JAMES DORIS:** Just a few questions for you, Mr. Lauch.  
18 I want to clarify one aspect of your testimony from this morning.  
19 Do you recall that Ms. McGrann took you to a June 24<sup>th</sup> email to  
20 EXCO?

21 **MR. PETER LAUCH:** I do recall, yes.

22 **MR. JAMES DORIS:** And that email referenced a meeting that you  
23 had had with Mr. Manconi and his team to map out some key dates; do you recall that?

24 **MR. PETER LAUCH:** I do, yes.

25 **MR. JAMES DORIS:** And the email referenced tentative dates for  
26 trial running and revenue service availability; do you recall that?

27 **MR. PETER LAUCH:** I do.

28 **MR. JAMES DORIS:** And in the course of reviewing that email, my

1 notes record your testimony that you agreed with the proposition put to you by Ms.  
2 McGrann that you did not see a change in the reliability of the system in the period  
3 between June 24<sup>th</sup> and the end of trial running. Do you recall that?

4 **MR. PETER LAUCH:** I'm trying to remember exactly what I said --  
5 I mean I think said something along "marks change" or "marked improvement", but yes,  
6 I won't dispute what you're saying.

7 **MR. JAMES DORIS:** She put it to you that you did not see a  
8 change in the reliability of the system between June 24<sup>th</sup> and the end of trial running,  
9 and you ---

10 **COMMISSIONER HOURIGAN:** I'm not sure those were the exact  
11 words she used, actually, Counsel. I remember "marked change", but just to be fair to  
12 the witness ---

13 **MR. JAMES DORIS:** Yes.

14 **COMMISSIONER HOURIGAN:** --- there may be some confusion  
15 about what term was put to him.

16 **MR. JAMES DORIS:** Yes. And that's what I'm really hoping to  
17 clarify in my question. That's really the purpose of my question.

18 Am I right, sir, that after June 24<sup>th</sup>, RTG undertook a number of  
19 actions to improve the reliability of the system?

20 **MR. PETER LAUCH:** You are right. You are correct.

21 **MR. JAMES DORIS:** And it took a number of actions to address  
22 concerns that had been raised by the City concerning the reliability of the system?

23 **MR. PETER LAUCH:** That's correct.

24 **MR. JAMES DORIS:** And you'd agree that the work was done  
25 after June 24<sup>th</sup> to improve the performance and the reliability of the system?

26 **MR. PETER LAUCH:** I agree that the work was continued. It  
27 wasn't a stop and go exercise, but yes.

28 **MR. JAMES DORIS:** And the objective of doing that work was to

1 continue to improve the performance and reliability of the system, right?

2 **MR. PETER LAUCH:** That's correct. And I think that's even  
3 corroborated by some of the WhatsApp comments I saw Scott Krieger and some other  
4 folks from your team.

5 **MR. JAMES DORIS:** And, sir, with respect to trial running, you'd  
6 agree that the reliability of the system did improve over the course of trial running?

7 **MR. PETER LAUCH:** Yes.

8 **MR. JAMES DORIS:** And the system was performing better and  
9 more reliably at the end of trial running than it had been at the start of trial running?

10 **MR. PETER LAUCH:** Certainly, yes.

11 **MR. JAMES DORIS:** And given the improvements in the  
12 performance seen in trial, you'd agree it's not accurate to say that the reliability of the  
13 system did not improve between June 24<sup>th</sup> and the end of trial running?

14 **MR. PETER LAUCH:** I don't think I said that.

15 **MR. JAMES DORIS:** And you agree there was improvement  
16 between June 24<sup>th</sup> and then of trial running?

17 **MR. PETER LAUCH:** I certainly would, yes.

18 **MR. JAMES DORIS:** And you agree that, in terms of reliability, the  
19 system had improved in the period after June 24<sup>th</sup>?

20 **MR. PETER LAUCH:** Yes.

21 **MR. JAMES DORIS:** Thank you, sir. Those are my questions.

22 **COMMISSIONER HOURIGAN:** All right. We'll take the lunch  
23 break.

24 **THE REGISTRAR:** Order, all rise. The Commission is adjourned  
25 until 2:00 p.m.

26 --- Upon recessing at 12:57 p.m.

27 --- Upon recessing at 1:57 p.m.

28 **--- MR. PETER LAUCH, Resumed:**

1                   **COMMISSIONER HOURIGAN:** All right, good afternoon. We're  
2 back on the record. For those watching at home, I mentioned a few days ago that we  
3 will have, on occasion, panels of witnesses. So rather than just hearing from one  
4 witness, we'll hear from several at a time. We have a panel this afternoon of City  
5 councillors, and they are Catherine McKenney, and Allan Hubley -- oh, I'm sorry. We're  
6 not quite ready for the panel, are we?

7                   Okay. I apologize. We still have got the -- Mr. Lauch to deal with.  
8 So we'll just focus on Mr. Lauch. I thought, "Wow, Mr. Lauch is really keen. He's  
9 staying extra time after we were done." Normally, we're done with our first witness in  
10 the morning so we have this afternoon's -- okay, so eventually I'll get it right. So let's  
11 proceed with the next examiner of Mr. Lauch, and then we'll -- to the councillors, I  
12 apologize. We'll get to you as soon as we can, all right? Thank you.

13                   Okay, so I believe next is the Province of Ontario?

14                   **MR. JEFFREY CLAYDON:** Yes, good afternoon, Commissioner.  
15 Jeffrey Claydon for the Province of Ontario, c-l-a-y-d-o-n. We have no questions for this  
16 witness.

17                   **COMMISSIONER HOURIGAN:** All right, thank you.

18                   Next, Thales.

19                   **MS. MARIA BRAKER:** Hello, Maria Braker for Thales. We have  
20 no questions for this witness.

21                   **COMMISSIONER HOURIGAN:** Thank you.

22                   Next is RTG JV

23                   **MR. JOHN McLUCKIE:** Mr. Commissioner, if I could interject --  
24 McLuckie, John, for the record -- I understood from the executive director that we would  
25 be next in the order for 10 minutes, sir. And that was ---

26                   **COMMISSIONER HOURIGAN:** I know you're on the list. I don't  
27 happen to have it in front of me right now. So if you say you're up next, that's fine. I  
28 know you have 10 minutes, so go ahead.

1                   **MR. JOHN McLUCKIE:** I'm happy to defer until later, sir. That  
2 was just on the list she published last night.

3                   **COMMISSIONER HOURIGAN:** No, no, that's fine. That's fine. Go  
4 ahead.

5 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

6                   **MR. JOHN McLUCKIE:** So, Mr. Lauch, my name is John  
7 McLuckie, sir. I represent the Amalgamated Transit Union and we are the union for the  
8 staff at Alstom and the staff at OC Transpo. You're familiar with my clients?

9                   **MR. PETER LAUCH:** I am.

10                  **MR. JOHN McLUCKIE:** I just want to start by talking a little about  
11 the light rail project. So this was a major infrastructure project for the city, correct?

12                  **MR. PETER LAUCH:** Correct.

13                  **MR. JOHN McLUCKIE:** And in fact, it was a \$2.1B infrastructure  
14 project?

15                  **MR. PETER LAUCH:** Actually, a little bit more than that when you  
16 take into the maintenance period.

17                  **MR. JOHN McLUCKIE:** And you'd agree that it's reasonable for  
18 the taxpayers to expect a reliable system that comes out of a \$2.1B investment?

19                  **MR. PETER LAUCH:** Yes.

20                  **MR. JOHN McLUCKIE:** And the reliability of a transit system is  
21 fairly important to the public, to the taxpayers of the City of Ottawa; do you agree with  
22 that?

23                  **MR. PETER LAUCH:** I would.

24                  **MR. JOHN McLUCKIE:** And this is how people get to and from  
25 work, to appointments, and it's important that the transit operate as it's advertised to.

26                  **MR. PETER LAUCH:** Yes.

27                  **MR. JOHN McLUCKIE:** Okay. And it was important, as someone  
28 involved in the construction in the operation that the consortium -- Project Co., RTM,

1 RTG -- deliver that level of reliability to the public?

2 **MR. PETER LAUCH:** Yes.

3 **MR. JOHN McLUCKIE:** In terms of the trial running, I just want to  
4 ask you a couple of questions about that. You'd indicated in your testimony this  
5 morning; the initial scoring cards were based on a 98 percent reliability. Do you  
6 remember that from this morning?

7 **MR. PETER LAUCH:** Actually, the initial scoring cards were 96 in  
8 2019, and it went to 98.

9 **MR. JOHN McLUCKIE:** When you initially started the trial running  
10 -- just to be more specific, then, when you started trial running, it was at a 98 percent  
11 reliability score, correct?

12 **MR. PETER LAUCH:** That's correct.

13 **MR. JOHN McLUCKIE:** And you indicated with Commission  
14 counsel this morning that that number was drawn from the maintenance objective that  
15 Alstom was expected to meet once the service went into public operation, correct?

16 **MR. PETER LAUCH:** That RTG was expected to maintain, yes.

17 **MR. JOHN McLUCKIE:** Right. So the public had a right to expect  
18 98 percent of the time that the train would be available and ready for service, correct?

19 **MR. PETER LAUCH:** Correct.

20 **MR. JOHN McLUCKIE:** Every day?

21 **MR. PETER LAUCH:** Correct.

22 **MR. JOHN McLUCKIE:** But the trial was modified from 98 percent  
23 every day to 96 percent nine days out of 12, correct?

24 **MR. PETER LAUCH:** Well, the 98 percent and the 96 percent  
25 were averages. It's AVKR. So you have to take that into account, but yes.

26 **MR. JOHN McLUCKIE:** Right. So a lesser standard was applied  
27 to the trial running than the public had been led to expect, correct?

28 **MR. PETER LAUCH:** Yes.

1                   **MR. JOHN McLUCKIE:** And in the interview with Commission  
2 counsel, you indicated that Mr. Charter -- and Mr. Charter works for OC Transpo,  
3 correct?

4                   **MR. PETER LAUCH:** Correct.

5                   **MR. JOHN McLUCKIE:** And you indicated that Mr. Charter had  
6 raised some concerns with you during the trial running that he didn't think that the trains  
7 were going to be capable of achieving 98 percent consistently day after day during the  
8 trial. Do you recall saying that in your interview with Commission counsel?

9                   **MR. PETER LAUCH:** You're talking about the initial witness  
10 statements, not -- as opposed to what I just went through the last few hours?

11                   **MR. JOHN McLUCKIE:** Right, your initial interview with  
12 Commission counsel, you would have ---

13                   **MR. PETER LAUCH:** Yes, I do recall, yes.

14                   **MR. JOHN McLUCKIE:** And Mr. Carter was letting you know the  
15 City had those concerns, that RTG would not be capable of delivering a train 98 percent  
16 reliable day after day? That's true.

17                   **MR. PETER LAUCH:** I think that's true, yes.

18                   **MR. JOHN McLUCKIE:** And you agreed with Commission counsel  
19 at that point that that level of service even in your opinion was likely not achievable at  
20 that point in the trial running, correct?

21                   **MR. PETER LAUCH:** Yeah, I think I referred to it a few hours ago  
22 as a stretch target, yes.

23                   **MR. JOHN McLUCKIE:** Right. Even though that was the level of  
24 reliability the Project Co. had agreed with the City to obtain once the service went into  
25 public operation.

26                   **MR. PETER LAUCH:** That was the level of reliability before  
27 deductions were taken, yes.

28                   **MR. JOHN McLUCKIE:** Right. So then the standards were



1 ultimately changed to provide for a lesser standard.

2 **MR. PETER LAUCH:** Yes, during the trial running.

3 **MR. JOHN McLUCKIE:** One of the ways in which reliability of a  
4 system is affected is by the maintenance team. Would you agree with that?

5 **MR. PETER LAUCH:** Certainly.

6 **MR. JOHN McLUCKIE:** And one of the issues that was affecting  
7 reliability at the time of trial running was the ability of Alstom to maintain the vehicles  
8 that were going out on the track. Would you agree with that?

9 **MR. PETER LAUCH:** I would agree with that.

10 **MR. JOHN McLUCKIE:** And it's fair to say that at the point the trial  
11 running was in July and August of 2019, the maintenance teams of Alstom were  
12 struggling to keep up with the maintenance needs of the system. Would you agree with  
13 that?

14 **MR. PETER LAUCH:** They were certainly faced with some  
15 challenges, yes.

16 **MR. JOHN McLUCKIE:** And you indicated in your interview with  
17 Commission counsel earlier that dropping from 15 trains each day to 13 trains each day  
18 was going to provide some breathing room for the maintenance crew as it provided two  
19 additional trains that could be spares. Do you remember saying that?

20 **MR. PETER LAUCH:** I do.

21 **MR. JOHN McLUCKIE:** And you indicated at the time that what  
22 that provided the maintenance crew was an opportunity that if problems arose they  
23 didn't need to rush out and fix that train because they now had two more spares they  
24 could rely upon instead. Do you recall that?

25 **MR. PETER LAUCH:** I do.

26 **MR. JOHN McLUCKIE:** So that again made for an easier standard  
27 for RTG and Project Co. to meet, correct?

28 **MR. PETER LAUCH:** As they provided some flexibility, yes.

1                   **MR. JOHN McLUCKIE:** And a lesser standard than originally had  
2 been prophesized in the Project Agreement.

3                   **MR. PETER LAUCH:** I'm trying to remember, Counsel, if there  
4 was a specific or a prescriptive number other than the 12 days in the PA. I don't think  
5 there was.

6                   **MR. JOHN McLUCKIE:** And in terms of Alstom's ability to maintain  
7 the train would you agree that even at the end of trial running there still continued to be  
8 questions of Alstom's ability to reliably maintain the trains?

9                   **MR. PETER LAUCH:** I don't think it was a question of ability but I  
10 think there were questions of sufficient resources.

11                   **MR. JOHN McLUCKIE:** Okay. And you indicated in your interview  
12 with Commission counsel earlier that even post RSA, so post August of 2019 that you  
13 were concerned that Alstom was not in a position to meet its maintenance  
14 responsibilities. Do you recall saying that to her?

15                   **MR. PETER LAUCH:** I do.

16                   **MR. JOHN McLUCKIE:** And that you felt that at that point Alstom  
17 was under-resourced with respect to its maintenance capabilities.

18                   **MR. PETER LAUCH:** That's what I said, yes.

19                   **MR. JOHN McLUCKIE:** And that when the City took over the train  
20 in September of 2019 it was your view that Alstom needed more staff to meet the  
21 maintenance responsibilities.

22                   **MR. PETER LAUCH:** That was my view and they reacted and they  
23 did staff up.

24                   **MR. JOHN McLUCKIE:** And you indicated that with respect to the  
25 time immediately around Revenue Service Availability, and I'm quoting you here. You  
26 said, "We didn't see the bodies and we didn't see the sense of urgency either," in  
27 reference to Alstom's maintenance team. Do you recall telling her that?

28                   **MR. PETER LAUCH:** Absolutely.

1                   **MR. JOHN McLUCKIE:** So your concern was they didn't have  
2 enough staff, correct?

3                   **MR. PETER LAUCH:** At that time, yes.

4                   **MR. JOHN McLUCKIE:** And the staff that they did have coming in  
5 to Revenue Service Availability was not operating with a sense of urgency that you  
6 thought the situation warranted.

7                   **MR. PETER LAUCH:** That's what I said, yes.

8                   **MR. JOHN McLUCKIE:** And you went on to indicate, for example,  
9 that the Alstom staff were not working overtime to keep the trains maintained.  
10 Remember that?

11                   **MR. PETER LAUCH:** I do.

12                   **MR. JOHN McLUCKIE:** And you indicated the Alstom staff were  
13 not working weekends to keep the system maintained.

14                   **MR. PETER LAUCH:** I do recall saying that and the context was  
15 insufficient resources on the weekends. But yes.

16                   **MR. JOHN McLUCKIE:** And these insufficient resources continued  
17 past the point that the City assumed responsibility for the system in September of 2019,  
18 correct?

19                   **MR. PETER LAUCH:** I'm trying to recall, Counsel, when we  
20 started to see more people. I think it was before then because one of the obligations  
21 was technicians on board and so forth. But it was a slow ramp up. But I don't think it  
22 was as discreet as you just described.

23                   **MR. JOHN McLUCKIE:** Okay. When the City took over the train in  
24 September of 2019 were you convinced that Alstom had sufficient boots on the ground,  
25 as it were, to maintain the trains as they were required to do?

26                   **MR. PETER LAUCH:** No, not when combined with some of the  
27 issues we had, and not when combined with some of the caveats in the term sheet  
28 where we had to have bodies on trains or at stations at certain times.

1                   **MR. JOHN McLUCKIE:** And you indicated in your interview again  
2 with Commission counsel that you had been told this fact both by consultants, by your  
3 own staff, and even people like Mr. Charter were indicating concern about the degree  
4 that Alstom could maintain the system, correct?

5                   **MR. PETER LAUCH:** Yes. I think that RTG and the City were  
6 certainly aligned with -- in that opinion.

7                   **MR. JOHN McLUCKIE:** And this is all at the point immediately  
8 before the City took over the system in September of 2019.

9                   **MR. PETER LAUCH:** And as we transferred to RSA and the City  
10 taking over, yes.

11                  **MR. JOHN McLUCKIE:** And while it might have been improving,  
12 that problem was not fully resolved at the point the City took over in September of 2019,  
13 was it?

14                  **MR. PETER LAUCH:** I would say that's a fair statement.

15                  **MR. JOHN McLUCKIE:** I just want to talk a little bit about P3s if I  
16 could for a second, and take you to a few comments you made in the interview.

17                                So the P3 is a commercial relationship between yourself and the  
18 City, yourself being RTG?

19                  **MR. PETER LAUCH:** It is.

20                  **MR. JOHN McLUCKIE:** And ultimately, the idea of the P3 is that a  
21 commercial incentive will apply to ensure that the private parties sort of carry out their  
22 side of the deal; would you agree with that?

23                  **MR. PETER LAUCH:** One hundred percent.

24                  **MR. JOHN McLUCKIE:** If you do what you're supposed to do,  
25 you'll get paid, and if you don't then you won't. And that's supposed to be a carrot and  
26 stick type approach. Would you agree with that?

27                  **MR. PETER LAUCH:** I would.

28                  **MR. JOHN McLUCKIE:** And do you recall talking to Commission

1 counsel in discussions with her about Alstom, you indicated that, "RTG ran out of stick  
2 in respect of Alstom." Do you remember telling her that?

3 **MR. PETER LAUCH:** I certainly do.

4 **MR. JOHN McLUCKIE:** And do you remember telling her that at a  
5 certain point Alstom had stopped being paid and there was nothing else that RTG could  
6 do to bring (audio skip) with their maintenance obligations?

7 **MR. PETER LAUCH:** That stick, if you will, certainly didn't exist  
8 anymore because, I mean, nobody was being paid at the time so there wasn't much  
9 leverage to be had in that regard.

10 **MR. JOHN McLUCKIE:** And you indicated to her that at that point  
11 to try and get the maintenance side performing at a level that was necessary you were  
12 relying on the good faith of Alstom to make that happen. Do you recall telling her that?

13 **MR. PETER LAUCH:** I do, and I ---

14 **MR. JOHN McLUCKIE:** The commercial side of the P3, this ide of  
15 penalties, if wasn't effective in getting Alstom to maintain the trains at the level they had  
16 agreed upon, was it?

17 **MR. PETER LAUCH:** I mean, not getting paid meant that it was  
18 punitive so -- and I'm not quite sure what you're asking me here.

19 **MR. JOHN McLUCKIE:** The P3 model was supposed to ensure  
20 that we got the service that we were promised in return for the commercial payments  
21 that you were promised. And not getting the payments did not result in a maintained ad  
22 reliable system, did it?

23 **MR. PETER LAUCH:** No, I wouldn't agree with that.

24 **MR. JOHN McLUCKIE:** The system became reliable suddenly?

25 **MR. PETER LAUCH:** No, but there was still lots of incentive to  
26 provide a s=good system.

27 **MR. JOHN McLUCKIE:** But you indicated again to Commission  
28 counsel that those incentives had stopped to work for Alstom because, "You had no

1 stick.”

2 **MR. PETER LAUCH:** And that’s why we would appeal to their  
3 good will and to their sense of pride and so forth, yes.

4 **MR. JOHN McLUCKIE:** That’s not how the P3 is supposed to  
5 work, is it? You’re not supposed to ---

6 **MR. PETER LAUCH:** No.

7 **MR. JOHN McLUCKIE:** --- somebody’s sense of pride or good will  
8 to get things done.

9 **MR. PETER LAUCH:** No. But one of the Pas is partnership and  
10 so you rely on that element of it as well.

11 **MR. JOHN McLUCKIE:** The last couple of questions and then I’m  
12 all done.

13 With respect to the parallel bus service, you had spoken earlier  
14 today about a soft launch. Do you recall talking about that this morning?

15 **MR. PETER LAUCH:** I do.

16 **MR. JOHN McLUCKIE:** And one of the elements of a soft launch,  
17 I’m assuming, was a continuation in some form of the bus service the City was running?

18 **MR. PETER LAUCH:** That would have been one of the elements,  
19 yes.

20 **MR. JOHN McLUCKIE:** And the goal of that would be to take  
21 some of the pressure off the train system?

22 **MR. PETER LAUCH:** That coupled with perhaps reduced run  
23 times and a few other elements. That’s not one item in isolation; it was a combination  
24 thereof. But yes.

25 **MR. JOHN McLUCKIE:** And you knew then it was planning to  
26 remove the parallel service within three weeks of taking control of the train?

27 **MR. PETER LAUCH:** That was my understanding, yes.

28 **MR. JOHN McLUCKIE:** Was that something you supported

1                   **MR. PETER LAUCH:** It really wasn't for me to opine on.

2                   **MR. JOHN McLUCKIE:** Well, looking back on it, is it something  
3 that you were in a position to support?

4                   **MR. PETER LAUCH:** Well, given that we actually did quite well the  
5 first few days and weeks of running, it wasn't nonsensical to me at the time.

6                   **MR. JOHN McLUCKIE:** And the City was quite wedded to that  
7 three weeks, were they not?

8                   **MR. PETER LAUCH:** I think you'd have to ask the City that.

9                   **MR. JOHN McLUCKIE:** I have no further questions, sir.

10                  **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.  
11 Now, RTG EJV.

12                  **MR. MICHAEL VRANTSIDIS :** Thank you, Mr. Commissioner.  
13 Michael Vrantsidis for RTG EJV. We do not have any questions for this witness.

14                  **COMMISSIONER HOURIGAN:** Thank you. Morrison Hershfield?

15                  **MR. KYLE LAMBERT:** Pardon me, Mr. Commissioner. A minor  
16 technical issue there.

17                  Kyle Lambert for Morrison Hershfield. Two sets of questions that  
18 should proceed very quickly with the witness.

19                  **--- CROSS-EXAMINATION BY MR. KYLE LAMBERT:**

20                  **MR. KYLE LAMBERT:** First, sir, Mr. McLuckie referred to the 98  
21 versus 96 percent AKVR; you recall that?

22                  **MR. PETER LAUCH:** Yes.

23                  **MR. KYLE LAMBERT:** We've heard evidence from, I believe it's  
24 several witnesses that the difference for your everyday commuter, myself included,  
25 between 98 and 96 percent is generally immaterial. Is that your understanding as well?

26                  **MR. PETER LAUCH:** It is.

27                  **MR. KYLE LAMBERT:** Thank you. And Mr. McLuckie also  
28 mentioned the parallel bus, and just to confirm, RTG was not involved in operating that

1 parallel service; is that right?

2 **MR. PETER LAUCH:** That's correct.

3 **MR. KYLE LAMBERT:** Thanks very much; those are my  
4 questions.

5 **COMMISSIONER HOURIGAN:** All right, thank you, counsel. Next  
6 is Transportation Action Canada, Mr. David Jeanes.

7 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

8 **MR. DAVID JEANES:** Thank You very much. Mr. Lauch, I just  
9 have five minutes, so just a few questions. Starting with basically the same question  
10 that Mr. McLuckie just asked about the three weeks of parallel bus service. One of the  
11 documents we saw today indicated that OC Transpo had to book the drivers for that  
12 service on July 17<sup>th</sup>, 2019 and indicated that they were just booked for that three weeks.  
13 So were you aware that that was really a hard cut-off at the end of that three-week  
14 period and that you would be in full service at the end of the three weeks?

15 **MR. PETER LAUCH:** That was discussed in several meetings, so I  
16 would have to say "Yes".

17 **MR. DAVID JEANES:** Okay, was that three-weeks like a partial  
18 soft launch, and what I mean is, that there were definitely fewer passengers using the  
19 train; they were probably interested or willing passengers who may be reasonably well  
20 informed about the rail system and they were obviously, most of them, prepared to  
21 make bus transfers in order to try out the train during that three weeks. So all of those  
22 were kind of favourable circumstances for the operation? I'm saying a more  
23 manageable crowd and a much smaller one?

24 **MR. PETER LAUCH:** That's hard to say, sir, I mean it obviously  
25 was a pretty popular ride in the early days so I don't think we would have seen a  
26 reduction. And it's not just the bus service that would have been part of a soft start;  
27 there were other elements that I just explained.

28 **MR. DAVID JEANES:** Okay, but we certainly at the end of that



1 three weeks saw a massive increase in crowding on the system and I believe that was  
2 because – well, first of all, all passengers were essentially forced to use it whether they  
3 were willing to try it or not, they had to. And many of them may have been less well  
4 informed than the people who were using it during the first three weeks.

5 **MR. PETER LAUCH:** I don't know if that's a question, but we  
6 weren't responsible for communicating to the public, so ---

7 **MR. DAVID JEANES:** No, I understand that. So I guess I've  
8 asked this question a number of times before, RTG didn't actually recommend a longer  
9 soft launch period or the ability to prolong or reinstate the normal bus service, should  
10 there be a problem?

11 **MR. PETER LAUCH:** No, I think you've heard from several people  
12 that the soft launch subject was discussed and was considered and then put aside.

13 **MR. DAVID JEANES:** Now, in terms of reliability as it affected  
14 passengers, you've talked quite a lot about the number of trains and the daily availability  
15 in terms of total kilometres and so on, but you've also talked about the problems of  
16 stopped trains that were encountered during the testing period in the summer, and  
17 certainly in the early service period. And I'm just going to ask you, we're not – the  
18 actual customer experience where stopped trains that maybe were immobilized for an  
19 hour before they could be removed from the system, not a much bigger problem in  
20 terms of their impact on the system capacity and the end-to-end travel time?

21 **MR. PETER LAUCH:** Of course. But I also think that – I'm  
22 detached from it now, but I've also read recently in the paper that the percentages, the  
23 up-times are much better and part of that is also attributed to the learning curve. So in  
24 the early days, I mean if there was an issue there would be a full stop put on the system  
25 as opposed to, you know, using a transfer track or using a single track and so forth. So  
26 I think as the system evolved, people got more experienced.

27 **MR. DAVID JEANES:** So the public, when they were using a  
28 single track operation might be seeing trains come half as often or approximately as the

1 normal scheduled service and, therefore, from the passenger's point of view, the system  
2 had only half the capacity and the stations essentially got doubled the crowding when  
3 we were in that mode of operation? We certainly saw that at Tunney's Pasture, the  
4 extent to which many people were just giving up and walking downtown from Tunney's  
5 Pasture because the crowding was so bad during these failures.

6 **MR. PETER LAUCH:** I don't know if that's a question, but I don't  
7 dispute what you're saying.

8 **MR. DAVID JEANES:** Okay. So I'm just saying that the measures  
9 that had been agreed on for the testing regarding the number of trains that should be  
10 available and the number of kilometres per day, aren't necessarily matters that really do  
11 effect the customer experience and I think you may have referred to that a couple of  
12 times in your testimony.

13 **MR. PETER LAUCH:** We discussed that and there was a certain  
14 threshold that when you got below, it certainly would effect the efficiency of the system.

15 **MR. DAVID JEANES:** Okay. Those are all my questions. Thank  
16 you very much.

17 **COMMISSIONER HOURIGAN:** Thank you, Mr. Jeanes. Next is  
18 witness's counsel, RTG.

19 **--- CROSS-EXAMINATION BY MR. MANU CHOWDHURY:**

20 **MR. MANU CHOWDHURY:** Thank you, Mr. Commissioner, and  
21 thank you, Mr. Lauch for staying with us. A very brief set of questions for you.

22 First, during your time at the Confederation Line Project how did  
23 you approach your relationship with the City?

24 **MR. PETER LAUCH:** Well, I think we tried to follow the – you  
25 know, with what the P3 intended; it was a – as I just said to one of the counsel, it's one  
26 of the pieces of the partnership so we certainly wanted to cultivate that. I know my  
27 predecessor certainly did. We wanted to have a collaborative and a corroborative  
28 approach. This is a long term agreement; it wasn't just about the construction period, it

1 was about working together joined at the hip for the next 30 years.

2 **MR. MANU CHOWDHURY:** And, Mr. Lauch, you'll remember that  
3 Ms. Vogel, counsel for the City, asked you about 400 variations that the City requested  
4 at some point; do you recall that discussion with her?

5 **MR. PETER LAUCH:** Yes.

6 **MR. MANU CHOWDHURY:** In respect of those variations, did the  
7 increased time require – or add time to the schedule?

8 **MR. PETER LAUCH:** Some of them ended up being subject to  
9 disputes that had some schedule extension elements to them, but a lot of them, a lot of  
10 the 400 were small changes in scope agreed by the parties and didn't necessarily have  
11 a significant schedule impact, but as I said, if you – the ones that were subject of  
12 dispute certainly had a schedule element attached to them.

13 **MR. MANU CHOWDHURY:** And with respect to Alstom, you  
14 spoke with Ms. McGrann and certainly in your earlier interview with Commission  
15 counsel – I believe it was Ms. Mainville – about some of the challenges that during your  
16 tenure you saw with respect to Alstom. Were you surprised by the challenges that  
17 Alstom encountered?

18 **MR. PETER LAUCH:** I would have to say, yes, just because my –  
19 when I first started on the project my vision, or my pre-conception of Alstom, and rightly  
20 so, was that it was a major player in the industry. Alstom wasn't just about trains; I had  
21 dealt with Alstom people on other projects that didn't pass before OLRT; so I had a –  
22 like I said I had a pre-conception in my mind that this was – and they are, you know, it's  
23 a topnotch, high class, well oiled machine. So there were times where I was probably a  
24 little disappointed.

25 **MR. MANU CHOWDHURY:** Thank you, Mr. Lauch. Ms. Wang,  
26 counsel for Alstom, asked you about some issues related to notice; do you recall that  
27 discussion?

28 **MR. PETER LAUCH:** I believe so, yeah.

1                   **MR. MANU CHOWDHURY:** She took you, if you remember, took  
2 you through a series of letters that Alstom sent from Richard France and so forth; do  
3 you remember that?

4                   **MR. PETER LAUCH:** Yes, I'm thinking of Notice with a capital "N",  
5 yes.

6                   **MR. MANU CHOWDHURY:** No, no.

7                   **MR. PETER LAUCH:** But now I remember, yes.

8                   **MR. MANU CHOWDHURY:** Yes, notice with a smaller "n". So I  
9 think you provided this evidence already but I just wanted to be clear on this, where is  
10 Mr. France's office located?

11                   **MR. PETER LAUCH:** I would say it was probably 25 metres from  
12 Mr. Messel's office and probably about 70 metres from my office, literally on the same  
13 floor and down the hall around the corner.

14                   **MR. MANU CHOWDHURY:** And I take it that that is the MSF that  
15 you're talking about?

16                   **MR. PETER LAUCH:** Sorry, yes, to be precise; it's the MSF, yes.

17                   **MR. MANU CHOWDHURY:** And in your experience is it common  
18 to have maintenance-related discussions with Alstom that would not necessarily be  
19 written down, let's say, by way of an email or a letter?

20                   **MR. PETER LAUCH:** 100 per cent. I mean you could not run into  
21 someone from Alstom as you were walking around the MSF; we shared a kitchen, we  
22 shared a conference room, so invariably you were going to have discussions.

23                   **MR. MANU CHOWDHURY:** And Ms. Wang also asked you about  
24 construction contract or defects; do you remember that discussion?

25                   **MR. PETER LAUCH:** I do.

26                   **MR. MANU CHOWDHURY:** What was your impression of  
27 Alstom's approach to collaborating with OLRTC to perform work on construction  
28 contract or defects?

1                   **MR. PETER LAUCH:** There was a reluctance to cooperate. If it  
2 was a construction defect, it was -- you know, it wasn't up for debate. It was something  
3 that OLRTC would have to do under the warranty regime. But if you needed assistance  
4 -- actually, it was difficult to get them to cooperate on some of the infrastructure  
5 maintenance.

6                   **MR. MANNU CHOWDHURY:** Thank you.

7 I want to take you to one document now, Mr. Lauch.

8 Mr. Operator, if we could go to RTC00069375.302? Thank you.

9 Do you have that on your system, Mr. Lauch?

10 **--- EXHIBIT No. 219:**

11                   RTC00069375.002 – Letter RTGEJV to OLRTC 21 January  
12                   2019

13                   **MR. PETER LAUCH:** I do.

14                   **MR. MANNU CHOWDHURY:** Okay. So this is a 2019 letter from  
15 Mr. Vokey, who was the director of track systems for -- of track systems, and it's sent to  
16 OLRTC's technical director.

17 Do you recognize this letter?

18                   **MR. PETER LAUCH:** I do.

19                   **MR. MANNU CHOWDHURY:** Okay. And we won't go through it at  
20 any great depth, but I just want to take you to one element of it.

21 Mr. Operator, if we could just scroll up a little bit so we could see  
22 the second paragraph that starts with, "On the basis"? Yeah, that's perfect.

23 So the first sentence of the second paragraph says:

24                   "On the basis of these reviews and reports submitted  
25 to our firm by OLRTC's independent testing and  
26 inspection, it is our opinion that the work, in general,  
27 conforms with the drawing and the specification  
28 prepared by RTGE Joint Venture with the exception of

1 deficiency punch list." (As read)

2 Do you see that?

3 **MR. PETER LAUCH:** I do.

4 **MR. MANNU CHOWDHURY:** Okay. So Mr. Lauch, can you just  
5 explain what Mr. Vokey is doing in this letter? What is the purpose of this letter?

6 **MR. PETER LAUCH:** So this is very common wording, and it's  
7 pretty much a template when it comes to these types of certifications at the end of a --  
8 at the end of the project.

9 So Mr. Vokey, as a rail engineer, as a subject matter expert, he  
10 was confirming, as the engineer of record, that having reviewed independent testing  
11 and inspection reports from third-party QA/QC organizations, that the track following  
12 met the requirements of the intended design.

13 **MR. MANNU CHOWDHURY:** Thank you, Mr. Lauch.

14 And Mr. Operator, just one other document, please. This one is  
15 ALS0012477. Perfect, thank you. Yeah, just right there is good.

16 So Mr. Lauch, this is a technical compliance report dated June --  
17 actually, Mr. Operator, can we just pull up a little bit so we could see the date? Perfect.

18 It is dated June 27, 2019. Are you familiar with this document?

19 **--- EXHIBIT No. 220:**

20 ALS0012477 – Technical Compliance Report 27 June 2019

21 **MR. PETER LAUCH:** I'm certainly familiar with it.

22 **MR. MANNU CHOWDHURY:** Okay. And you'll see at the cover  
23 page that it's authorized by Derek Wynne, who was the systems engineering manager,  
24 correct?

25 **MR. PETER LAUCH:** Correct.

26 **MR. MANNU CHOWDHURY:** Okay. And he was part of SEMP, I  
27 believe? Is that right?

28 **MR. PETER LAUCH:** Yeah, he -- SEMP was a subcontractor to

1 OLRTC to provide assistance in assistance engineering certification.

2 **MR. MANNU CHOWDHURY:** Okay.

3 Mr. Operator, may we please go to page 32, please, of the PDF?

4 Yeah. And just go to -- yeah, just there is great. That's perfect, thank you.

5 So Mr. Lauch, just looking at section 4.41, the report says, and I  
6 quote:

7 "Design compliance statements and evidence for  
8 Schedule 15.2 part 2, have been provided by the  
9 engineer of record for track work." (As read)

10 Do I have it right that would be Mr. Vokey's letter?

11 **MR. PETER LAUCH:** That would be, yes.

12 **MR. MANNU CHOWDHURY:** Okay. And then it goes on to say,  
13 "This design compliance evidence has been analyzed to ensure that --- "

14 And then do you see a bullet of sort of what they looked at?

15 **MR. PETER LAUCH:** I do, yes.

16 **MR. MANNU CHOWDHURY:** Okay. And then the third bullet  
17 reads, "The evidence provided demonstrates compliance of two requirements."

18 Can you explain to us what that's explaining, Mr. Lauch?

19 **MR. PETER LAUCH:** Certainly. I mean, it pretty much goes along  
20 with what I just said in terms of the certificate that Mr. Vokey signed.

21 So this is corroborating that after SEMP having done some of their  
22 due diligence in terms of verifying the various compliance documents -- and these  
23 would be design briefs, inspection and test reports, and so forth -- that this provides the  
24 necessary documentation to make a statement that we're compliant to the  
25 requirements.

26 **MR. MANNU CHOWDHURY:** Okay. Thank you, Mr. Lauch.

27 Mr. Operator, we don't need this document any more. We can take  
28 it down.

1           The one last thing I wanted to ask you about very quickly is, do you  
2 have any knowledge of a key ceremony that took place at City Hall on August 23<sup>rd</sup>,  
3 2019?

4           **MR. PETER LAUCH:** I do.

5           **MR. MANNU CHOWDHURY:** Can you tell us a bit about it?

6           **MR. PETER LAUCH:** Yes. I'm trying to jar my memory. I think  
7 Matthew Slade was in my office at the time. We got a phone call from someone from  
8 the City's communications group, and said that they wanted to have a ceremonial  
9 handover, if you will, because we had just finished trial running.

10           And our first reaction was, where are we going to find a key at this  
11 short notice, because I don't know if it was within the day or within the afternoon,  
12 actually.

13           In any event, it became unnecessary, because the City told us they  
14 had one and the intent was for me to present myself to council chambers that afternoon  
15 for a -- I guess it was a bit of a photo op where we would just unveil a key that the City  
16 had provided and I would hand it to the mayor, and it was supposed to signify or  
17 commemorate the end of trial running and the -- basically, sort of handing over the key  
18 to the vehicles.

19           **MR. MANNU CHOWDHURY:** Thank you, Mr. Lauch.

20           No further questions, Mr. Commissioner.

21           Thank you for your time, Mr. Lauch today.

22           **COMMISSIONER HOURIGAN:** All right. Thank you.

23           Any re-examination?

24           **MS. KATE McGRANN:** No, thank you, Mr. Commissioner.

25           **COMMISSIONER HOURIGAN:** Mr. Lauch, thank you for coming  
26 and testifying today. It's been very helpful to the Commission's work. You're excused.

27           **MR. PETER LAUCH:** Thank you.

28           **COMMISSIONER HOURIGAN:** Okay. As promised, we have a



1 panel next. So if we could get the panel members up?

2 I see you all there now.

3 I will say at the beginning, it is sometimes a challenge when you  
4 have a panel where people talk over each other. Let's try to avoid that.

5 Having said that, I know it's going to happen once or twice, but the  
6 reason why we don't want people talking over each other is then we can't get a proper  
7 transcript of what happens this afternoon. So let's just do our best.

8 All right. So the first thing we need to do is have people either  
9 swear to tell the truth or affirm to take -- to tell the truth. And so we'll go through  
10 everybody.

11 First is Sarah Wright-Gilbert. Would you prefer an oath or to  
12 affirm?

13 **COUNCILLOR SARAH WRIGHT-GILBERT:** I would prefer to  
14 affirm, Your Honour.

15 **--- COUNCILLOR SARAH WRIGHT-GILBERT, Affirmed:**

16 **COMMISSIONER HOURIGAN:** All right. Diane Deans, what's  
17 your preference?

18 **COUNCILLOR DIANE DEANS:** I will affirm.

19 **--- COUNCILLOR DIANE DEANS, Affirmed:**

20 **COMMISSIONER HOURIGAN:** All right. Catherine McKenney?

21 **COUNCILLOR CATHERINE MCKENNEY:** Hi. I will affirm as well.

22 **--- COUNCILLOR CATHERINE MCKENNEY, Affirmed:**

23 **COMMISSIONER HOURIGAN:** And Councillor Hubley?

24 **COUNCILLOR ALLAN HUBLEY:** Yes, I can do the same. I'll  
25 affirm, please.

26 **--- COUNCILLOR ALLAN HUBLEY, Affirmed:**

27 **THE REGISTRAR:** The witnesses have been sworn in.

28 **COMMISSIONER HOURIGAN:** All right. So you'll hear from a

1 number of counsel today who will have questions. We'll begin with Commission  
2 counsel, Mr. Chris Grisdale.

3 Go ahead.

4 **--- EXAMINATION IN-CHIEF BY MR. CHRIS GRISDALE:**

5 **MR. CHRIS GRISDALE:** Thank you, Mr. Commissioner, good  
6 afternoon, Councillor Deans, Hubley, McKinney and Commissioner Wright-Gilbert. My  
7 name is Chris Grisdale. I'm one of the counsel for the Commissioner. To get started I'll  
8 ask you each a few questions about your tenure with the City. If you have any trouble  
9 hearing me, please let me know.

10 Councillor Deans, I understand that you've been a City councillor  
11 since 1994 with a short medical leave; is that right?

12 **COUNCILLOR DIANE DEANS:** That is correct.

13 **MR. CHRIS GRISDALE:** And I understand that you were a  
14 member of FEDCO from 2001 to 2008; is that correct?

15 **COUNCILLOR DIANE DEANS:** Yes, but I was a member of  
16 FEDCO from 2001 to 2018.

17 **MR. CHRIS GRISDALE:** Thank you. And you were the  
18 chairperson of the Transit Commission from 2010 to 2014?

19 **COUNCILLOR DIANE DEANS:** Correct.

20 **MR. CHRIS GRISDALE:** Mr. Hubley, I understand that you had  
21 been elected to Council on three consecutive occasions, beginning in 2010; do I have  
22 that right?

23 **COUNCILLOR ALLAN HUBLEY:** Correct.

24 **MR. CHRIS GRISDALE:** And I understand that you're member of  
25 FEDCO?

26 **COUNCILLOR ALLAN HUBLEY:** Correct.

27 **MR. CHRIS GRISDALE:** How long have you been a member?

28 **COUNCILLOR ALLAN HUBLEY:** Since 2010.

1                   **MR. CHRIS GRISDALE:** And, sir, I understand that you've been  
2 the Chair of the Transit Commission since 2018; is that right?

3                   **COUNCILLOR ALLAN HUBLEY:** I think it was January of 2019  
4 that I took over as Chair.

5                   **MR. CHRIS GRISDALE:** Thank you. Councillor, McKenney, I  
6 understand that you were elected as City Councillor in 2014 and re-elected in 2018; do I  
7 have that right?

8                   **COUNCILLOR CATHERINE McKENNEY:** Yes, that's correct.

9                   **MR. CHRIS GRISDALE:** And I understand that you've been a  
10 Transit Commissioner since you were re-elected in 2018; is that correct?

11                   **COUNCILLOR CATHERINE McKENNEY:** That is correct.

12                   **MR. CHRIS GRISDALE:** And Commissioner Wright-Gilbert, I  
13 understand that you became a Citizen Transit Commissioner in February of 2019; is  
14 that right?

15                   **COUNCILLOR SARAH WRIGHT-GILBERT:** That's correct; that's  
16 when I signed my oath of office.

17                   **MR. CHRIS GRISDALE:** Now before I turn to specific questions  
18 about the information available to Council and the Transit Commission on key  
19 developments in the procurement and the delivery of the Confederation Line, I want to  
20 set the table with a few governance questions.

21                   Councillor Dean, the first sequence of questions will be directed to  
22 you. I understand that Council assigned responsibility of the Confederation Line to  
23 FEDCO in or about July of 2011, and we've heard over the course of this hearing that  
24 FEDCO is responsible for among other things, the contracts associated with the project,  
25 the projects' procurement budget, real estate and any modifications or variations from  
26 the original systems design. Is that how you understand it?

27                   **COUNCILLOR DIANE DEANS:** Yes, ultimately though Council is  
28 the final arbiter, so all of the information that goes through a committee structure

1 ultimately rises to Council.

2 **MR. CHRIS GRISDALE:** And I understand that FEDCO is a  
3 Standing Committee of Council; is that right?

4 **COUNCILLOR DIANE DEANS:** Correct.

5 **MR. CHRIS GRISDALE:** And it's comprised of the Chairs of other  
6 Committees?

7 **COUNCILLOR DIANE DEANS:** Correct.

8 **MR. CHRIS GRISDALE:** And, Councillor Deans, the Mayor is the  
9 Chair of FEDCO; correct?

10 **COUNCILLOR DIANE DEANS:** That is right.

11 **MR. CHRIS GRISDALE:** Now, I'd like to briefly talk about  
12 FEDCO's role in the project. Again, this question is for Councillor Deans. Having been  
13 a member of FEDCO is it fair to say that FEDCO set the City's priorities with respect to  
14 the Confederation Line and directed staff accordingly?

15 **COUNCILLOR DIANE DEANS:** Yes.

16 **MR. CHRIS GRISDALE:** And so, for example, if FEDCO  
17 determined that the project schedule should be accelerated, it would instruct City  
18 staffers in that regard?

19 **COUNCILLOR DIANE DEANS:** Well, ultimately Council would  
20 have the final decision but it would be a recommendation to Council. The actual work  
21 and hearing all of the information to inform that recommendation to counsel would be  
22 done at the Committee level.

23 **MR. CHRIS GRISDALE:** Okay. But I just want to make sure that I  
24 understand each step. If FEDCO's priority is to accelerate the schedule, do they first  
25 turn to City staffers and say "How do we get this done? Can you deliver a report?", and  
26 then that report ultimately goes to Council and FEDCO?

27 **COUNCILLOR DIANE DEANS:** That is correct.

28 **MR. CHRIS GRISDALE:** Okay. And this would arise later in the

1 project, Councillor Deans, but if an issue arose on RTG's end they would first interface  
2 with City staff, then City staff would bring the issue to FEDCO, theoretically, and  
3 FEDCO would then elevate that issue to Council. I understand that it's somewhat  
4 complicated, depending on the issue at play; is that right?

5 **COUNCILLOR DIANE DEANS:** That is correct. That's how the  
6 system is intended to work.

7 **MR. CHRIS GRISDALE:** Okay, the next sequence of questions  
8 that I have on governance are for Councillor Hubley. Would members of FEDCO work  
9 with staffers as they prepare reports on issues related to the project?

10 **COUNCILLOR ALLAN HUBLEY:** That's possible. It would  
11 depend on what the reports are and so on.

12 **MR. CHRIS GRISDALE:** And did members of FEDCO ever review  
13 draft reports before they were circulated with FEDCO and Council?

14 **COUNCILLOR ALLAN HUBLEY:** I think the Chair of the various  
15 committees might be involved in the review to make sure that the information is  
16 accurate.

17 **MR. CHRIS GRISDALE:** Did the Mayor ever review the draft  
18 reports before they were circulated to Council?

19 **COUNCILLOR ALLAN HUBLEY:** That would be a question for  
20 him.

21 **MR. CHRIS GRISDALE:** Did you ever review the draft reports  
22 before they were circulated to Council?

23 **COUNCILLOR ALLAN HUBLEY:** Through FEDCO, I can't  
24 remember reviewing any FEDCO reports before they went to the Committee.

25 **MR. CHRIS GRISDALE:** Okay.

26 **COUNCILLOR ALLAN HUBLEY:** I would have read Transit  
27 reports before they – if they would arise to FEDCO or moved over to FEDCO for  
28 consideration; I would have read anything like that, but I can't think of any reports off

1 hand that were tabled at FEDCO that I would have reviewed ahead of time.

2 **MR. CHRIS GRISDALE:** So just to give an example, if FEDCO  
3 asked staffers to prepare a report to determine whether or not acceleration of the  
4 schedule is possible, the project schedule is possible, do you have any recollection of  
5 whether or not you or the Mayor or anybody else reviewed a draft report on the  
6 acceleration of the project schedule before it went to Council?

7 **COUNCILLOR ALLAN HUBLEY:** I thought that took place in  
8 2017, so I wouldn't have been the Chair at that point; it would have been Councillor  
9 Blais, I believe.

10 **MR. CHRIS GRISDALE:** Okay. Now switching gears, these  
11 questions are for Commissioner Wright-Gilbert. I want to briefly touch on the Transit  
12 Commission's role. I understand that the Transit Commission was responsible for  
13 passenger experience and operations after handovers; is that right?

14 **COUNCILLOR SARAH WRIGHT-GILBERT:** Partially. The role of  
15 the Transit Commission is to provide oversight of and direction to OC Transpo. So the  
16 day-to-day operations of the passenger experience and the operations of the transit  
17 system as a whole, are really – they really sit through delegated authority with OC  
18 Transpo. The Transit Commission would receive updates at meetings about the system  
19 as a whole, but specifically the light rail system after its launch and we would – there  
20 certainly could be motions or directions to staff, but the day-to-day operations about  
21 customer experience are really in the hands of OC Transpo and RTM, I suppose.

22 **MR. CHRIS GRISDALE:** And the Transit Commission sort of  
23 provided oversight to OC Transpo, is that right?

24 **COUNCILLOR SARAH WRIGHT-GILBERT:** We attempt to, yes.

25 **MR. CHRIS GRISDALE:** And you were one of I believe it was four  
26 Citizen Commissioners on the Transit Commission; is that right?

27 **COUNCILLOR SARAH WRIGHT-GILBERT:** Correct.

28 **MR. CHRIS GRISDALE:** And how do you understand a Citizen

1 Commissioner's role as opposed to an elected official's role on the Transit  
2 Commission?

3 **COUNCILLOR SARAH WRIGHT-GILBERT:** I can only speak for  
4 myself, but my understanding of my role is that I represent the public. I represent the  
5 public who use our transit system, the public who don't use our transit system. I really  
6 see – saw myself and continue to see myself as an advocate for our customers, given  
7 that at the time in 2019 up until of course the pandemic of March 2020, I too was using  
8 the transit system, both bus and light rail from end to end every single work day,  
9 Monday to Friday.

10 **MR. CHRIS GRISDALE:** Is it fair to say that because the Transit  
11 Commission was responsible for operations after handover, or to put it more clearly,  
12 oversight over OC Transpo after handover, the Transit Commission I think wanted more  
13 information leading up to revenue service; is that right, leading up to handover?

14 **COUNCILLOR SARAH WRIGHT-GILBERT:** That's absolutely  
15 right.

16 **MR. CHRIS GRISDALE:** And the reason the Transit Commission  
17 wanted more information was because the Commissioners wanted to understand the  
18 system that they were going to inherit; right?

19 **COUNCILLOR SARAH WRIGHT-GILBERT:** Yes. I mean for me,  
20 I can only speak from my own experience, but for me it's always helpful for me to have  
21 the context, to understand the root of an issue or the contextual experience of the issue.  
22 And so for me, I was hungry for information about the system, specifically the testing,  
23 just so that we could understand, perhaps, where some of the hiccups might come  
24 down the road in order to, you know, provide oversights, some suggestions, some  
25 direction to OC Transpo so that we could really sort of, you know, head those off at the  
26 pass.

27 **MR. CHRIS GRISDALE:** And were you receiving -- who were  
28 receiving updates from, or who was the Transit Commission receiving updates from?

1 Was it City staff?

2 **COUNCILLOR SARAH WRIGHT-GILBERT:** It was solely through  
3 City staff at the beginning. They would come -- updates would come -- prior revenue  
4 service availability, which is when Transit Commission really took ownership, I guess,  
5 for lack of a better word, over the light rail line -- there were few and far between prior to  
6 RSA, from my recollection, maybe one or two. I certainly got more emails about the  
7 launch and the public events than I did about updates on the actual system. Post-  
8 launch, post-RSA, all of our information came from John Manconi and his staff.

9 **MR. CHRIS GRISDALE:** Okay. I'm going to circle back to that  
10 issue near the end of this examination, but I want to move forward. And I'm going to  
11 speak to you about it, Commissioner Wright-Gilbert, in some detail, but I wanted to turn  
12 to Councillor Hubley.

13 And I just wanted to ask you, sir, how do you see the role of a  
14 Citizen Transit Commissioner on the Transit Commission?

15 **COUNCILLOR ALLAN HUBLEY:** I understood the role to be that  
16 they would provide their insight from their experience using the system. I don't think it's  
17 fair to say that they represent the public because they were not elected to represent the  
18 public. However, the calibre of commissioners that we chose gave us very good insight  
19 into what people were experiencing with the system. But that was their role.

20 **MR. CHRIS GRISDALE:** Is it fair to say that a Citizen  
21 Commissioner, perhaps, is sort of free from the political forces that elected officials  
22 might experience and therefore could offer a different point of view, or more likely to  
23 offer a different point of view?

24 **COUNCILLOR ALLAN HUBLEY:** Definitely. They don't have the  
25 same accountabilities as an elected person, you know. To give an example, if I was to  
26 say, "Let's increase the budget to \$10B," tomorrow, I'd be out of job with my electorate.  
27 But Commission Wright-Gilbert can say that at will and not be out of a job.

28 **MR. CHRIS GRISDALE:** And so there's some value-add in terms



1 of the oversight function of a Citizen Commissioner because they're free to say some  
2 things that elected officials might feel pressure not to say because they might be out of  
3 a job?

4 **COUNCILLOR ALLAN HUBLEY:** True, yeah.

5 **MR. CHRIS GRISDALE:** And now I want to turn to the delegation  
6 of authority to the City Manager to, among other things, negotiate, amend, and extend  
7 the Project Agreement. I understand that delegation was recommended by the Deputy  
8 City Manager and Council approved it. And we heard Mr. Manconi yesterday say that  
9 the City Manager's delegated authority was limited to non-significant issues.

10 Mr. Hubley, did you understand that the delegation of authority with  
11 respect to the Project Agreement related to non-significant issues?

12 **COUNCILLOR ALLAN HUBLEY:** When was that delegation  
13 given?

14 **MR. CHRIS GRISDALE:** I believe it was 2012.

15 **COUNCILLOR ALLAN HUBLEY:** Okay. No, I'm sorry. I'm not  
16 recalling the details of that.

17 **MR. CHRIS GRISDALE:** Okay. Councillor Deans, when council  
18 delegated this authority, was it your understanding that significant issues or concerns  
19 with respect to the Project Agreement would be reported to Council?

20 **COUNCILLOR DIANE DEANS:** Yes, that was always my  
21 expectation. I don't think that always happened but it was my expectation.

22 **MR. CHRIS GRISDALE:** And would Council still have decision-  
23 making authority over significant issues with respect to the Project Agreement, to your  
24 understanding?

25 **COUNCILLOR DIANE DEANS:** Yes, since the Board of Directors  
26 of the Corporation of the City of Ottawa, we were ultimately responsible, so I would  
27 expect any significant issue -- I mean delegation of authority comes down to a matter of  
28 trust, and we were putting our trust into our most senior managers at the City of Ottawa.

1 If there was to be any change from what our expectations were, I would have  
2 reasonably expected that to be reported back in a fulsome and timely fashion to  
3 members of Council.

4 **MR. CHRIS GRISDALE:** And Councillor Dean, if you had concerns  
5 that that trust relationship was breaking down, could you have revoked that delegation?  
6 Or could Council have revoked that delegation?

7 **COUNCILLOR DIANE DEANS:** Theoretically, yes. I suppose,  
8 when I was becoming more and more concerned about it, it was also at a time in our  
9 history as a City that I felt the mayor had brought in an inner circle of councillors and  
10 members that were controlling the agenda, and that those of us who were most  
11 concerned were unable to make our voices known through the traditional democratic  
12 process.

13 **MR. CHRIS GRISDALE:** So if I understand you correctly, you  
14 didn't think you'd have the votes and you thought that the person in control had the  
15 votes?

16 **COUNCILLOR DIANE DEANS:** Correct.

17 **MR. CHRIS GRISDALE:** And, Councillor Dean, you're aware of -- I  
18 know you're aware of your duty to provide oversight.

19 **COUNCILLOR DIANE DEANS:** Yes.

20 **MR. CHRIS GRISDALE:** And I assume that the expectation that  
21 Council had in the context of a large public infrastructure project like this with a big price  
22 tag was maybe more oversight rather than less.

23 **COUNCILLOR DIANE DEANS:** Yes. Yes. We also recognized  
24 that we needed to take -- take -- not direction, but take advice from experts, subject-  
25 matter experts, which member of Council sitting at the table were not. So we needed to  
26 believe in the advice that we were being given.

27 **MR. CHRIS GRISDALE:** Okay, thank you.

28 Councillor McKenney, besides being a legal obligation, would you

1 agree with me that councillors' oversight of the project also had a protection function in  
2 the sense that more eyes were reviewing the project and scrutinizing decisions?

3 **COMMISSIONER McKENNEY:** Yes, I would agree with that.

4 **MR. CHRIS GRISDALE:** And in addition to that protection function  
5 that Council's oversight brings, would you agree with me that Council's involvement  
6 adds a layer of public transparency that's important? After all, it's taxpayers dollars.

7 **COMMISSIONER McKENNEY:** I believe that the conversation  
8 around Fedco Committee and ultimately at Council would provide that level of  
9 transparency as far it -- you know, as far as it was allowed to progress. You'll note that  
10 several times we did ask for information, meetings, and that was denied, but it is a  
11 function of Council and Committee, absolutely.

12 **MR. CHRIS GRISDALE:** And why -- why do you think that  
13 protection function and transparency are so important?

14 **COMMISSIONER McKENNEY:** Because we are dealing with, in  
15 this case, a very large budget amount, taxpayer dollars. But with everything we do, it's  
16 in the public interest to be as transparent and as accountable to the residents that we  
17 represents, the City of Ottawa, as is possible.

18 **MR. CHRIS GRISDALE:** Okay. Now I'm going to focus the  
19 balance of our discussion on two time periods. First -- and I realize I'm going out of  
20 order here. I'm ask some questions about the information made available to Council and  
21 the Transit Commission leading up to revenue service. And then, if time permits, I'll ask  
22 some questions about the information available to Council leading up to the execution of  
23 the Project Agreement.

24 So fast-forwarding to the time leading up to revenue service  
25 availability in August of 2019, the Project Agreement contemplated that revenue service  
26 availability would originally occur on May 24, 2018, and I believe RTG pushed that date  
27 out four time. And we know that between May 24<sup>th</sup>, 2019 and actual RSA, STV, an  
28 engineering consultant engaged by the City, expressed various concerns over that

1 timeframe about RTM's maintenance readiness.

2                   Now, bear with me. I just want to fully situate you before I ask  
3 some questions.

4                   Yesterday, we heard Mr. Prendergast discuss the concerns that  
5 STV raised with the City in March and April of 2019 and during trial running in July and  
6 August of 2019 about RTM's maintenance readiness which included inspection of  
7 equipment, troubleshooting of equipment, and what he referred to as "running  
8 maintenance", things like checking fluid levels.

9                   And we heard yesterday that Mr. Prendergast was concerned that  
10 RTM did not have the right kind of maintenance resources, had inadequate  
11 management and supervision, did not have a plan for rolling over the manufacturing  
12 workforce into maintenance and operations.

13                   And he emphasized yesterday that he was concerned that RTM did  
14 not have the right level of resources on the ground.

15                   Councillor Hubley, were you aware of these concerns at the time  
16 that STV was making them to Mr. Manconi again between -- during trial running and  
17 March and April of 2019?

18                   **COUNCILLOR ALLAN HUBLEY:** Certainly I sat in some meetings  
19 where Mr. Prendergast was there. There was briefings, in camera briefings that I don't  
20 think we can discuss here today that all the councillors were in about the FEDCO. And I  
21 believe Mr. Prendergast participated in some of those. So I'm aware of at least some of  
22 the concerns that he had and the advice he gave us.

23                   **MR. CHRIS GRISDALE:** Did you ever discuss those concerns via  
24 text message over WhatsApp with Mr. Manconi?

25                   **COUNCILLOR ALLAN HUBLEY:** It's possible, yes. We would  
26 talk a fair bit either in person or by phone or by text.

27                   **MR. CHRIS GRISDALE:** And did you have telephone  
28 conversations with Mr. Manconi about these issues, maintenance readiness issues,

1 maintenance -- sorry, concerns over maintenance readiness?

2 **COUNCILLOR ALLAN HUBLEY:** Well, leading up to service,  
3 there was lots of conversations about, you know, how ready are we, what are the red  
4 flag issues that we're watching, that kind of thing. And like I say, it was the same  
5 discussion that was taking place with all the council afterwards.

6 **MR. CHRIS GRISDALE:** So your evidence is that all of the council  
7 received all the information that you received about STV's concerns about trial  
8 readiness?

9 **COUNCILLOR ALLAN HUBLEY:** I believe so.

10 **MR. CHRIS GRISDALE:** Sorry, maintenance readiness.

11 **COUNCILLOR ALLAN HUBLEY:** Put it this way, I can't think of  
12 anything that I was told at that point that wasn't later shared with council either through  
13 a briefing or if it became public information sometimes it was sent out in memos.

14 **MR. CHRIS GRISDALE:** Councillor Deans, were you aware of  
15 STV's concerns with respect to RTM's maintenance readiness?

16 **COUNCILLOR DIANE DEANS:** I do not believe I was.

17 **MR. CHRIS GRISDALE:** And Councillor McKenney, were you  
18 made aware of STV's concerns with respect to RTM's maintenance readiness?

19 **COUNCILLOR CATHERINE McKENNEY:** No, I was not.

20 **MR. CHRIS GRISDALE:** And Transit Commissioner Wright-  
21 Gilbert, were you made aware of RTM's concerns with respect to maintenance  
22 readiness leading up to trial running and during trial running?

23 **COUNCILLOR SARAH WRIGHT-GILBERT:** Absolutely not.

24 **MR. CHRIS GRISDALE:** And Councillor Deans, is this information  
25 that you would need to properly discharge your oversight function as councillor?

26 **COUNCILLOR DIANE DEANS:** Yes.

27 **MR. CHRIS GRISDALE:** And Councillor McKenney, would you say  
28 that you required this information to discharge your oversight function?

1 **COUNCILLOR CATHERINE McKENNEY:** Yes, most certainly.

2 **MR. CHRIS GRISDALE:** And why do you say that?

3 **COUNCILLOR CATHERINE McKENNEY:** Because we had  
4 Revenue Service approaching. We had handover requirements. We had -- you know,  
5 the date was quickly approaching and we had -- I know that I had questions and  
6 concerns about that 122 days of -- 12 consecutive days that we were supposed to have  
7 overall error-free running from the train. I could see, physically because I live very close  
8 to the train, that that wasn't happening. And I did have questions and they were never  
9 answered.

10 **MR. CHRIS GRISDALE:** And just be way of example, Councillor  
11 Deans, we heard yesterday that Mr. Prendergast had advised Mr. Manconi that there  
12 was a concern about RTM having insufficient track and signal experts available. Were  
13 you aware of that concern?

14 **COUNCILLOR DIANE DEANS:** No.

15 **MR. CHRIS GRISDALE:** And had you been aware of that concern,  
16 would that have prompted you to ask some questions?

17 **COUNCILLOR DIANE DEANS:** Of course. I had a general sense  
18 that information was being withheld from me and other members of Council and that  
19 there was work going on behind the scenes. It wasn't until yesterday that the WhatsApp  
20 chat room came to light to me where information was being shared that was not being  
21 shared with me as a member of Council.

22 And also, you know, it was interesting to me that the mayor and the  
23 chair of the transit commission were on that WhatsApp chat. What wasn't pointed out  
24 yesterday is Councillor George Darouze was also on that chat. And I don't know why in  
25 what capacity he was given inside information that other members of Council were not.

26 **MR. CHRIS GRISDALE:** And what was your reaction to seeing that  
27 WhatsApp chat yesterday?

28 **COUNCILLOR DIANE DEANS:** It was frustrating. I mean, it was

1 confirmation that a lot of what I had been suggesting publicly in interviews was in fact  
2 absolutely the case that there was more to it than met the eye, that all of the information  
3 was not being shared publicly. And I just think we're a public corporation spending  
4 public dollars and we should not be hiding that kind of information from public view and  
5 from the decision makers and the people that have the duty of oversight..

6 **MR. CHRIS GRISDALE:** And Councillor Hubley, I want to ask you  
7 some questions about that.

8 Who invited you to the WhatsApp chat group?

9 **COUNCILLOR ALLAN HUBLEY:** I believe it was set up by John  
10 Manconi.

11 **MR. CHRIS GRISDALE:** And was it ultimately the mayor that  
12 suggested that you should be added to the group?

13 **COUNCILLOR ALLAN HUBLEY:** I don't know about that.

14 **MR. CHRIS GRISDALE:** And can you explain to me, sir, why it's  
15 the case that you are differently situated than Councillor McKenney and Councillor  
16 Deans with respect to getting information in a real-time basis, being a member of that  
17 WhatsApp chat group?

18 **COUNCILLOR ALLAN HUBLEY:** Well, it wouldn't be any other  
19 than the fact it was done by an app. It would be no different than the briefings that  
20 Councillor Deans would have had when she was chair that were confidential as well.  
21 it's part of the role of every chair to get briefings on what's going on and in the case of  
22 the construction piece, even though it didn't fall under the Transit Commission, I was  
23 there to become aware of what was going on as we were getting ready but also to  
24 provide advice to the mayor. There would be times he might ask me about something,  
25 ask my advice and I would offer it.

26 **MR. CHRIS GRISDALE:** You understand, sir, that you were  
27 receiving detailed information about, for example, the state of trial running on an  
28 ongoing basis. Do you think that the rest of Council should have had the benefit of that

1 information?

2 **COUNCILLOR ALLAN HUBLEY:** My recollection is that most of  
3 that information, if at all, was eventually share with Council as part of the briefings  
4 before launch. There might have been some specifics of the testing, you know. For  
5 example we didn't get the details of every day. What you go was a pass or a fail or I  
6 think there was another category where they could restart a day or do over a day or  
7 something. What's the term?

8 But it wasn't always into, you know, a very detailed level. And I  
9 thought that pretty well all that was shared. But at the time we're doing some of these  
10 briefing s and meetings; at the same time we're doing a lot of in camera meetings or  
11 briefings out to Council or technical briefings to the media and the public about  
12 everything. So unfortunately, because of the time span, some of that's all blurred for  
13 me whether it was an in camera or a public meeting. But certainly there was a lot of  
14 information coming out at that time.

15 **MR. CHRIS GRISDALE:** I'm going to circle back to this later, but I  
16 want to suggest to you, sir, that the balance of Council did not have the same  
17 information that you had. And that's evident in the memo that Mr. Manconi prepared but  
18 did not circulate.

19 **COUNCILLOR ALLAN HUBLEY:** Yeah, that's a fair statement.  
20 There was some things that I knew that I would be briefed on as part of my role, but  
21 some of the -- in the case of the memo, it was prepared, but it wasn't sent. Well, there's  
22 other things that, you know, you'd have some information, but then it gets resolved, you  
23 know? There's an issue. Okay, they fixed that.

24 You know, the resources, we were told that the resources were  
25 coming and that were identified as an issue.

26 So that ---

27 **MR. CHRIS GRISDALE:** Sorry. I believe Mr. Manconi's evidence  
28 yesterday was not that the issues were resolved, but that the issue was an operational



1 issue and therefore, he did not have to pass that information on to Council.

2 But you had that information; is that right, sir?

3 **COUNCILLOR ALLAN HUBLEY:** Some of it, at least. I don't  
4 know how much -- what the total sum of the information is, but anything that was said  
5 on WhatsApp, I would have had access to that.

6 **MR. CHRIS GRISDALE:** And why, sir, were other councillors -- I  
7 believe Councillor Darouze on the WhatsApp chat?

8 **COUNCILLOR ALLAN HUBLEY:** I believe that when he was  
9 acting mayor, and there was a period in there where he was acting mayor, and so they  
10 would have added him into the chat.

11 **MR. CHRIS GRISDALE:** Okay. I'm going to circle back to  
12 maintenance readiness.

13 Commissioner Wright-Gilbert, despite the fact that the Transit  
14 Commission was responsible for the operations for the system after handover, I take it  
15 you did not have the information that we have just discussed about STV's concerns with  
16 respect to maintenance readiness?

17 **COUNCILLOR SARAH WRIGHT-GILBERT:** Absolutely not. I did  
18 not have it.

19 **MR. CHRIS GRISDALE:** And you'd want to understand that  
20 information because you want to understand the system that you're inheriting; is that  
21 right?

22 **COUNCILLOR SARAH WRIGHT-GILBERT:** Absolutely. Having  
23 that information would form a foundation, a basis for me to be able to form questions  
24 that I could ask the Commission to really understand the issues with the system.

25 The way I think about it is, one person having information, to me, is  
26 like giving the foreperson of a jury all of the details, the salient details, of the case, but  
27 that person doesn't tell the rest of the jury. But you expect the entire jury to come to  
28 even then a verdict. That's how I think about it.

1                   We were -- in my view, without this information, we were, as  
2 Commission members, casting about in the darkness, trying to figure out why, all of a  
3 sudden, our brand-new system has all of these issues compounding one on another.

4                   If we had known that during the testing period -- and I admit that I  
5 did see Mr. Manconi's testimony almost in full yesterday -- but during the testimony  
6 period -- during the testing period, that there were days that were "passes", that would  
7 have been, I think, it was described as "horrendous" or "horrific" for our customers,  
8 those are things that are contextually helpful when we're trying to form questions to City  
9 staff about what the heck is going on with our brand-new system?

10                   **MR. CHRIS GRISDALE:** And so I take it you understand that you -  
11 - or you felt like you were operating in the dark? And this obviously interfered with your  
12 ability to bring oversight to OC Transpo in the operation of the system, right?

13                   **COUNCILLOR SARAH WRIGHT-GILBERT:** Absolutely. Similar  
14 to Councillor Deans, I also suspected that there was information that was being made  
15 available to some members of Commission and not others.

16                   Councillor Deans alluded to it earlier that there was an inner circle  
17 of the mayor's that includes some of the -- in my view -- some of the citizen  
18 commissioners. And as a result, I felt as though information was being withheld from  
19 Commission. I won't speculate as to the reasons why, but the revelation yesterday  
20 about the WhatsApp conversations between Mr. Kanellakos, the mayor, Chair Hubley,  
21 and Mr. Manconi confirmed for me that my suspicions were correct, that information  
22 was being withheld from Council and Transit Commission.

23                   **MR. CHRIS GRISDALE:** And Councillor Deans, I see you shaking  
24 your head. Did that -- did the revelation of the WhatsApp chat also confirm for you that  
25 you felt as though there was a circle of Councillors that were operating in sort of  
26 unison?

27                   **COUNCILLOR DIANE DEANS:** Yes. I mean, I have thought that  
28 way for a long time. I had lots of reasons to believe it, but Mr. -- the revelation of the

1 WhatsApp chat was certainly, to me, a confirmation that there was an inner cycle of  
2 information that all of us were not privy to.

3 **MR. CHRIS GRISDALE:** Sitting here today, have you asked for a  
4 copy?

5 **COUNCILLOR DIANE DEANS:** Of the WhatsApp chat?

6 **MR. CHRIS GRISDALE:** That's right.

7 **COUNCILLOR DIANE DEANS:** No, but that is a great idea  
8 because I would like to have the benefit of all of it.

9 And I -- you know, I would also actually really like to have the  
10 benefit of seeing the other WhatsApp chat between individual members of Council and  
11 the mayor, and certainly the mayor's chief of staff, Serge Arpin, who is a prolific texter  
12 on behalf of the mayor.

13 **MR. CHRIS GRISDALE:** So now I'm going to move to the trial  
14 running period, and just to situate the panel, as you know, RTG is required under the  
15 Project Agreement to carry out testing to validate the system safety and reliability, and  
16 the final step in that testing is what's called the trial running period.

17 The testing metrics used during that trial running period were set in  
18 2017, then set differently in 2019, but as we've heard, ultimately reverted back to the  
19 2017 criteria during testing.

20 Councillor McKenney, did you know in July of 2019 going into trial  
21 running that a passing grade was 98 percent performance over a 12-day period?

22 **COUNCILLOR CATHERINE McKENNEY:** No. What I knew in  
23 July was what we had learned earlier -- I believe it was in May -- around the 12-day  
24 performance testing, around substantial completion, the 12-day test, the RSA.

25 It came to us via memo, and it was very clear what the 12-day  
26 performance testing was supposed to accomplish. It was only in another memo in  
27 August that there was a real change in messaging. I don't have the memo in front of  
28 me, but I remember clearly, in August, there was a change in messaging regarding the

1 12-day performance testing.

2 And that's when I realized that what I had seen and what I had  
3 asked about actually was the case, that the trains had not passed the 12-day  
4 performance testing and that the performance standards were being adjusted to meet  
5 RSA.

6 **MR. CHRIS GRISDALE:** So just tell me here, was that memo  
7 where you learned that the metrics had been adjusted, was that the memo that was  
8 circulated when Mr. Manconi announced the trial running was successful at the end of  
9 August in 2019?

10 **COUNCILLOR CATHERINE McKENNEY:** I believe it's the same  
11 one. It was near the end of August, yes. And it was ---

12 **MR. CHRIS GRISDALE:** So you ---

13 **COUNCILLOR CATHERINE McKENNEY:** --- a change in the  
14 message around the 12 days, yes.

15 **MR. CHRIS GRISDALE:** So you only learned about the change  
16 after the change had been implemented and after it was determined the trial running  
17 was successful?

18 **COUNCILLOR CATHERINE McKENNEY:** Yes.

19 **MR. CHRIS GRISDALE:** Okay. And Councillor -- sorry,  
20 Commissioner Wright-Gilbert, as a Transit Commissioner, did you understand -- I'm  
21 putting the same question to you -- did you know that the passing grade was 98 percent  
22 performance over a 12-day period in July of 2019?

23 **COUNCILLOR SARAH WRIGHT-GILBERT:** To the best of my  
24 recollection, I only knew that information as a result of media articles. There was a  
25 number of media articles done by, I think, Joanne Chianello from the CBC that talked  
26 about it. And obviously, I was keeping an eye on all things LRT because I was the  
27 Transit Commissioner.

28 But at that time, because RSA had not -- revenue service

1 availability had not been achieved -- sorry, that was my cat -- we -- the Line 1 didn't fall  
2 into the purview of Transit Commission. So the memo that you just asked Councillor  
3 McKenney about, that memo, I believe, was not sent to Transit Commission. It was  
4 only -- it only went to Council.

5                   So yes -- sorry, long answer -- yes, I did know about the 12 days,  
6 98 percent. My understanding was that it was 12 consecutive days, and that if there  
7 was a problem on Day 4, for example, you had to restart because you needed to have  
8 12 consecutive passing days.

9                   I will say is -- and this is not anyone's fault but my own, so I'll admit  
10 my own limitations -- I did not know that it was an average of 98 percent over the 12  
11 days. I thought every day had to hit 98 percent. But regardless, I was aware of it but  
12 only through media articles. That was a very long answer. I'm sorry.

13                   **MR. CHRIS GRISDALE:** And Councillor Hubley, given that are a  
14 participant in the WhatsApp group in Mr. Manconi, I take it that you knew that the City  
15 and RTG were working to set test criteria in July of 2019, and understood, during the  
16 testing, that that criteria had changed?

17                   **COUNCILLOR ALLAN HUBLEY:** I recall the discussion around  
18 the 98 and 96 percent. And I think, you know, Mr. Manconi led those discussions with  
19 RTG. Myself, I wasn't involved in those discussions, but I do recall being briefed that,  
20 you know, there was -- the criteria was being refined and changed a bit.

21                   **MR. CHRIS GRISDALE:** But you were given that information  
22 before Councillor McKenney was given that information and Councillor Deans was  
23 given that information. And in fact, they only received that information after trial running  
24 was declared a success and after the criteria had in fact been changed.

25                   **COUNCILLOR ALLAN HUBLEY:** Well, this is an example of what  
26 I said earlier, was that sometimes in my role as chair, I was learning some of this  
27 information but, in cases like this, it came out to Council and FEDCO members in either  
28 a memo of a brief. So yes, I was aware ahead of them, but then it did -- and we had --

1 by the way, I believe it was Commission Wright-Gilbert put the inquiry in asking about  
2 whether the chair and the mayor was entitled to have that type of information, and I  
3 believe the legal response was that, yes, it was part of our roles.

4 Councillor Deans -- if you don't mind me going back to the former,  
5 Councillor Deans, as the chair, can attest that these -- this is not unique to the transit or  
6 the LRT. Every single committee chair had these kinds of briefings with staff. I believe  
7 when she was Transit Chair, she didn't have her co-chair involved. I chose to. That  
8 was some of the discretion we had. But we still had to have these meetings and these  
9 briefings and decide what went where from there, like how it would fit into an agenda,  
10 you know, whether you needed a report or presentation. Is that a fair assessment? I  
11 don't know if I can ask Councillor Deans to answer that.

12 **MR. CHRIS GRISDALE:** Councillor Deans, was that your  
13 experience while you were chair?

14 **COUNCILLOR DIANE DEANS:** I think Councillor Hubley is correct  
15 in that a chair is given a lot of information in their capacity as the chair of the committee.  
16 My personal view on that is that I would, as the chair, make an assessment of what  
17 information was important, and relevant, and contextual for the members of Council to  
18 have in the performance of their duty. And I would proffer that, if I had been given that  
19 kind of information, it would have been very important for me to ensure that that was  
20 shared with all members of Council in a timely fashion.

21 **MR. CHRIS GRISDALE:** And why would you ensure that that was  
22 shared with all members of Council in a timely fashion?

23 **COUNCILLOR DIANE DEANS:** Well, to me, it goes right to the  
24 heart of system readiness. And I harken back to a presentation that Mr. Manconi did to  
25 FEDCO in September of 2018 where he spoke about Mr. Lauch and RTG asking for a  
26 number of changes to the agreement in order to meet revenue service availability. And  
27 he -- and I have the slides in front of me, but he said quite clearly that the City was not  
28 prepared to accept any dilution of the prescribed trial running requirements because

1 they would degrade the ability of the City to be assured that the system will operate as  
2 designed, a risk that the City is not prepared to take. And he was very emphatic about  
3 that. We weren't changing anything in that agreement because that was our insurance  
4 policy. Those 12 consecutive days, 98 percent was the insurance policy that we  
5 needed to make sure that this system would perform as we expected.

6 And so, frankly, I'm shocked that it went from 98 to 96 three  
7 quarters of the time, nine out of 12 days. That is not what we had been promised and  
8 what Mr. Manconi emphatically promised members of Council in September of 2018.

9 **MR. CHRIS GRISDALE:** And Councillor McKenney, you're  
10 currently the chair of the Transit Commission, correct?

11 **COMMISSIONER McKENNEY:** Me?

12 **MR. CHRIS GRISDALE:** That's right.

13 **COMMISSIONER McKENNEY:** No, I'm not a chair of anything.

14 **MR. CHRIS GRISDALE:** Oh, okay.

15 **COUNCILLOR ALLAN HUBLEY:** Want the job, counsellor?

16 **COMMISSIONER McKENNEY:** Not now.

17 **MR. CHRIS GRISDALE:** Now I want to take -- or, sorry, ask some  
18 questions about the information that Council received about the performance of the  
19 trains during trial running. And to do that, I want to pull up a document. That document  
20 is COW0270758. And could we scroll down to page 5?

21 So what you see on your screen is the scorecard for Monday, July  
22 29<sup>th</sup>, the first day of trial running, and we see that it's a fail. And if you scroll down to the  
23 next page -- sorry, right there -- you'll see that the performance percentages is below  
24 the minimum of 90, and we heard Mr. Morgan say on Monday that high-80s and low-  
25 90s could ruin someone's commute. And then if you scroll down to the next scorecard,  
26 that's the second day of trial running, it's a repeat, and again performance is below the  
27 90 percent. If you could just scroll down a little bit, it's at 86.5 percent.

28 And if you could go to August 1<sup>st</sup>, the next scorecard, it's -- sorry,

1 this is July 31<sup>st</sup>. Sorry, if you go up to July 31<sup>st</sup>, it was a fail in almost every respect, and  
2 it was -- the performance percentage is only 73.9 percent. If you go down one more to  
3 August 1<sup>st</sup>, you'll see that trial running was paused, and my understanding is that that's  
4 reserved for exceptional circumstances where the system is not meeting the  
5 requirements to a significant degree. Again that happens on August 2<sup>nd</sup>, if you scroll  
6 down. Again paused. Could you scroll down to August 3<sup>rd</sup>? So August 3<sup>rd</sup> is a pass.  
7 And I believe that the next three are also passes. And August 6<sup>th</sup>, yeah. And then I  
8 think that there were some problems again on Day 9 and 10.

9                   Councillor Hubley -- and thank you, Mitchell, you can take the  
10 document the down. Through the WhatsApp chat group, were you aware of the  
11 information about these trial running days on a -- sort of in a real-time way?

12                   **COUNCILLOR ALLAN HUBLEY:** I wasn't aware, even in that  
13 detail that you just showed there. I don't -- I don't ever recall seeing one of those  
14 scoresheets and I can be certain that none of those signatures on there are mine. As I  
15 said earlier, we would hear that it either pass/failed. You just used the term "pause".  
16 There's one that's something like a do-over, or whatever, that there was a certain -- if  
17 they hit certain thresholds, they were going to be allowed to do a day over again without  
18 losing the count, I believe. But that was what we were told. We weren't told that level  
19 of detail as to what -- how badly they failed or how great they passed.

20                   **MR. CHRIS GRISDALE:** So you didn't know how badly they failed  
21 but you knew that they failed?

22                   **COUNCILLOR ALLAN HUBLEY:** Yeah, they were -- I think it was  
23 pretty clear that, you know, they were struggling to get through their testing.

24                   **MR. CHRIS GRISDALE:** And do you think that that's information  
25 that your fellow councillors would want to know?

26                   **COUNCILLOR ALLAN HUBLEY:** Well, certainly everybody wants  
27 to know as much information as possible, and it helps in the decision making. I agree  
28 with all those statements. However, in the vacuum or the context of the situation, if we



1 had published the results every day, it would have caused a lot of issues. The goal was  
2 -- I believe the -- if I recall correctly, the decision was taken, I believe, at FEDCO, that  
3 they would brief out only once they passed RSA, but that's my recollection of it, that it  
4 was done either at Council or FEDCO. And so there was no daily briefings as to how  
5 they were doing on testing.

6 **MR. CHRIS GRISDALE:** Thank you, sir. I take your point, that  
7 there were no daily briefings. I just want to pull up a couple of documents, the first  
8 document is COW0104401. And this is a memo to Council dated August 7<sup>th</sup>. And the  
9 memo refers to trial running having commenced on July 29<sup>th</sup>, 2019. I'll just wait for the –  
10 there we go.

11 Could you scroll down Mitchell; I believe it's on page two, what I'm  
12 looking for. Keep going. Okay. So it says "As noted in the memo to Council, RTG  
13 achieved substantial completion on July 27<sup>th</sup>, 2019 and trial running started the week of  
14 July 29<sup>th</sup>, 2019. RTG provided an updated RSA date of August 16<sup>th</sup>, 2019 and the July  
15 10<sup>th</sup>, 2019 Finance and Economic Development Committee meeting."

16 So we know that this memo was circulated and we know that it's  
17 saying the trial running started. I take your point, Councillor Hubley, that other  
18 Councillors might not be – may not be updated daily, but would you agree with me that  
19 this potentially left other Councillors with the impression that there weren't significant  
20 challenges with trial running. Because if there were, they would appear in this memo.

21 **COUNCILLOR ALLAN HUBLEY:** Or in the briefing at the time  
22 and I can't remember whether – I rely on my colleagues here, the two Councillors,  
23 whether they were briefed about details of the 12 days after this memo came out.  
24 Because I believe there was a discussion around that with all of us at the table.

25 **MR. CHRIS GRISDALE:** Okay. Could we take this document  
26 down, please?

27 Councillor Deans, did you know as of August 7<sup>th</sup> that there were  
28 some problems with trial running in the early days?

1                   **COUNCILLOR DIANE DEANS:** I do not believe that I was briefed  
2 on that. I was certainly hearing through, you know, media channels and conversations  
3 on the street that there were problems with the trial running, but that information, to the  
4 best of my recollection, was not shared with me as a member of Council through formal  
5 channels.

6                   **MR. CHRIS GRISDALE:** And if you were to think back to this  
7 memo on August 7<sup>th</sup>, do you think you were left with the impression that things were fine  
8 when you read the memo?

9                   **COUNCILLOR DIANE DEANS:** It was intentionally so, that I was  
10 to be left with the impression that everything was fine.

11                   **MR. CHRIS GRISDALE:** And, Councillor McKenney, were you left  
12 with the impression when you received the memo that everything was fine?

13                   **COUNCILLOR CATHERINE McKENNEY:** I never believed that  
14 everything was fine. Again, I could see that the trains weren't running for days, so when  
15 I saw the memo, the memo was, to me anyway, an indication from staff that they were  
16 continuing to move forward. Again, I – you know, looking back in terms of the change of  
17 messaging around the 12 days and what that entails, I remember quite clearly that I was  
18 very concerned when the system was to kick off that it had not met the requirements of  
19 an effective and safe system. But that memo, to me, was the indicator – it was meant to  
20 give me that impression. It didn't.

21                   **COUNCILLOR ALLAN HUBLEY:** Can I just speak to something  
22 on that; would that; okay?

23                   **COMMISSIONER HOURIGAN:** Yes. Standby. All right, I think  
24 we had a glitch here. Go ahead. Sorry, go ahead, Councillor Hubley.

25                   **COUNCILLOR ALLAN HUBLEY:** Okay, thank you. I recall what  
26 Councillor McKenney is saying, they did have some really good questions about what  
27 was happening at that time. Perhaps Councillor, if I could ask, I seem to recall that you  
28 submitted those questions by email to John or to ---

1                   **COMMISSIONER HOURIGAN:** Sorry, Mr. Hubley, we don't have  
2 witnesses ask other witnesses questions; that's not the way this works; all right?

3                   **COUNCILLOR ALLAN HUBLEY:** Okay, that's why I was asking.

4                   **COMMISSIONER HOURIGAN:** Let me finish, please. Counsel is  
5 going to ask questions and the witnesses are going to answer the questions; that's the  
6 way it works; it's not a dialogue between witnesses, otherwise things will be very  
7 difficult. So let's proceed with questions and answers, please.

8                   **MR. CHRIS GRISDALE:** Okay, for the sake of time, what I'd like to  
9 do is speak to Commissioner Wright-Gilbert about my understanding of what transpired  
10 with respect to a motion that was brought to the Transit Commission.

11                   Commissioner Wright-Gilbert, I understand as the project – and we  
12 discussed this – in your handover, the Commission wanted increased visibility into the  
13 Confederation Line. And in fact many Commissioners were frustrated at the time with  
14 ad hoc updates about the Confederation Line prompting Councillor Brockington to move  
15 for the Confederation Line becoming a standing agenda item. Is that right?

16                   **COUNCILLOR SARAH WRIGHT-GILBERT:** Yes, that's correct.  
17 Based on my conversations with Councillor Brockington – he and I are actually quite  
18 friendly. It was my understanding that Councillor Brockington had originally brought the  
19 idea to Chair Hubley who can – it's my understanding, can place agenda items. And  
20 Chair Hubley vehemently dismissed his suggestion and so Councillor Brockington was  
21 required to bring a motion to the Transit Commission. Because as you said, we were  
22 getting ad hoc high level emails or updates, memos sometimes, and when I say "high  
23 level", I mean like high level, "everything's fine; the best system ever, world class." That  
24 was essentially the kind of updates we were getting initially. So, yes, you are correct,  
25 Councillor Brockington did bring a motion that we did vote on.

26                   **MR. CHRIS GRISDALE:** And Councillor, you've heard  
27 Commissioner Wright-Gilbert's evidence; did Councillor Brockington approach you to  
28 put updates on the Confederation Line as a standing agenda item, and did you refuse

1 that request?

2 **COUNCILLOR ALLAN HUBLEY:** No, I'll speak to this with  
3 context here. What we had in the agenda, every agenda for the meeting, was the  
4 General Manager's update, and it included everything in there, LRT, bus, para transpo,  
5 the three issues that we covered off as part of the Commission mandate.

6 What Councillor Brockington asked, was to pull out and have a  
7 separate update just on LRT. So it was the same information that was provided, or the  
8 discussion around it I was having with him was, so we're talking the same information  
9 that's provided under the General Manager's update and just have it as a separate  
10 agenda item. And that's what he was asking for and I didn't see the need for that. It  
11 was not a matter of not having any information there. In fact the reference to the  
12 memos, this was something that I had asked John to do because the circumstances  
13 were changing rather rapidly. We couldn't have two meetings in a week. We were only  
14 scheduled supposedly to have a meeting once a month, but the information was  
15 changing like daily at some points and weekly for sure.

16 So what I asked him to do to make sure that Councillors had the  
17 information as fast as possible, was that if there was big issues, issue a memo so that  
18 everybody gets the same information. We were experiencing a lot of misinformation  
19 getting out there on social media and through different channels, and we had tried to get  
20 the facts to everybody as fast as possible.

21 **COMMISSIONER HOURIGAN:** All right. Counsel, we'll take the  
22 afternoon break.

23 --- Upon recessing at 3:32 p.m.

24 --- Upon resuming at 3:46 p.m.

25 **COMMISSIONER HOURIGAN:** All right. Let's continue, please.

26 **MR. CHRIS GRISDALE:** Yesterday we heard Mr. Manconi in  
27 response to questions about reporting to Council say that if you give Council too much  
28 information they may ask too many questions and that takes too much time.

1 Councillor Deans, what was your reaction to that statement?

2 **COUNCILLOR DIANE DEANS:** Well, I think it's appalling.

3 Members of Council have the duty of oversight. We are the overseers of the public  
4 purse. We are ultimately responsible for the entire system. And Council can only make  
5 good decisions if we have good information. And purposefully and wilfully withholding  
6 information from members of Council should never happen from a bureaucrat in the City  
7 of Ottawa.

8 **MR. CHRIS GRISDALE:** And Councillor Hubley, what was your  
9 reaction to that statement yesterday?

10 **COMMISSIONER HOURIGAN:** I think you're on mute, sir.

11 **COUNCILLOR ALLAN HUBLEY:** Sorry. I'm concurring with  
12 Councillor Deans that it has to be extreme circumstances for anything to be withheld  
13 from all of Council. And as mentioned earlier, it helps the more information that we  
14 have to make those decision.

15 **MR. CHRIS GRISDALE:** Okay. That's all of my questions.

16 **COMMISSIONER HOURIGAN:** All right. So what happens next is  
17 various parties, or participants as we call them, have counsel who get to ask questions.  
18 So the first is RTG/OLRTC/RTM.

19 **MR. MICHAEL FENRICK:** Good afternoon, Councillors. My name  
20 is Michael Fenrick. I'm here for the RTG parties. We have no questions for these  
21 witnesses.

22 **COMMISSIONER HOURIGAN:** All right. Next is Alstom.

23 **MR. CHARLES POWELL:** Thank you, Mr. Commissioner.  
24 Charles Powell, counsel for Alstom. We have no questions for the councillors. Thank  
25 you.

26 **COMMISSIONER HOURIGAN:** Next is the Province of Ontario.

27 **MR. JEFFREY CLAYTON:** Good afternoon, Commissioner.  
28 Jeffrey Clayton for the Province. We have no questions for these witnesses.

1                   **COMMISSIONER HOURIGAN:** All right. Thank you. Next is the  
2 Amalgamated Transit Union, Local 279.

3 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

4                   **MR. JOHN McLUCKIE:** Good afternoon, Mr. Chairman. John  
5 McLuckie for the Amalgamated Transit Union. I have some very brief questions.

6                   Starting with you, Councillor McKenney, if I could. Were you made  
7 aware at any point of the concerns apparently held by senior OC Transpo staff,  
8 consultants hired by OC Transpo, and even the RTG senior management staff of the  
9 ability of Alstom to properly maintain the light rail system in the summer of 2019?

10                  **COUNCILLOR CATHERINE McKENNEY:** I'm sorry. Could you  
11 just repeat your question? I want to make sure that I'm responding to exactly what  
12 you're asking.

13                  **MR. JOHN McLUCKIE:** So we've heard evidence that in the  
14 summer of 2019 the system was undergoing trial running. And we've heard evidence  
15 that various individuals including Mr. Troy Charter from OC Transpo, consultants  
16 retained by the City, and even today we've heard evidence from RTG's management  
17 group that they had concerns at that point in time as to the ability of Alstom to maintain  
18 reliably the train system. And I'm asking were you, as a member of Transit Committee  
19 made aware of any of those concerns held by staff or consultants retained by the City?

20                  **COUNCILLOR CATHERINE McKENNEY:** No, I was not at any  
21 time made aware of those concerns.

22                  **MR. JOHN McLUCKIE:** And as a member of Transit Committee  
23 would you have felt that information to be helpful in your role?

24                  **COUNCILLOR CATHERINE McKENNEY:** As a member of Transit  
25 Commission, and as a City councillor, with oversight, on behalf of residents, absolutely,  
26 I would have needed that information to question whether we move ahead with our say  
27 in eventual kickoff of the system.

28                  **MR. JOHN McLUCKIE:** And just a more general question in terms

1 of oversight. So do you agree that there needs to be oversight of public services by  
2 Council and its committees and its commissions?

3 **COUNCILLOR CATHERINE McKENNEY:** Absolutely, there needs  
4 to be.

5 **MR. JOHN McLUCKIE:** And how do you see a P3 model such as  
6 has been adopted here for the light rail system -- how do you see that as impacting your  
7 ability to provide oversight and accountability?

8 **COUNCILLOR CATHERINE McKENNEY:** It did make it more  
9 difficult to provide that oversight mostly because our staff don't have the oversight. So  
10 when we had the previous Trillium line running it was, you know, we had Bombardier in.  
11 Those were the experts. But it was our staff who oversaw Bombardier.

12 In this case, that was not the cases. We did not have the expertise,  
13 the engineering expertise to oversee Alstom, RTM, to truly understand what the issue  
14 were and how they were not meeting their Project Agreements.

15 **MR. JOHN McLUCKIE:** Commissioner Wright—Gilbert, if I could  
16 just ask a question of you. In your interview with Commission counsel you spoke of  
17 what you called an incident of broken telephone. Could you perhaps discuss that with  
18 us today?

19 **COUNCILLOR SARAH WRIGHT-GILBERT:** Could you please  
20 remind me of the context of that comment? I apologize.

21 **MR. JOHN McLUCKIE:** That's okay. You were talking about a  
22 maintenance issue that you had seen arise with regards to the light rail system and the  
23 difficulty that it was in getting that maintenance issue resolved as between RTG and OC  
24 Transpo. Do you recall giving comments such as that?

25 **COUNCILLOR SARAH WRIGHT-GILBERT:** Vaguely, yes. Sorry.  
26 I can generally speak to it for sure. So you know, thee were multiple maintenance  
27 issues and continue to be on LRT Line 1. So some of the more memorable ones are  
28 the downtown tunnel stations, the choice of tile for the stairs becomes very very slippery

1 when it's wet and in Ottawa there's a lot of snow. And so another one would be the  
2 infamous smell in the tunnel. Those in general, trying to get information from RTG  
3 through OC Transpo was an exercise in frustration. We were never able to talk directly  
4 to RTG until they were invited to Transit Commission eventually. But we were never  
5 able to speak directly to them. So OC Transpo was speaking on their behalf about  
6 issues so I did get the sense that OC Transpo wasn't always necessarily in the know  
7 about these various issues.

8                   So an example I can provide to you is that the infamous smell in the  
9 tunnel. You know, we were provided with -- we as in the Transit Commission -- were  
10 provided with, if I recall, four different explanations for the source of the smell. It was  
11 the substance that was used to seal cracks in the tunnel, and that's off gassing, and  
12 that'll go away. It was water pooling in a sump pump pit, but that'll go away.

13                   We got continuously different explanations for the problem, and  
14 come to find out though, I believe, an article written by Joanne Chianello of the CBC,  
15 that the City actually knew, the City and RTG actually knew about the cause of the  
16 tunnel odour which smelled like feces, and so that they knew about it on August 9<sup>th</sup>  
17 because they knew of a sewer line that had been struck as part of construction.

18                   But nothing was done, and we were given four -- from August 9<sup>th</sup> to  
19 I believe it was November or December of 2019, Transit Commission was provided  
20 with, I believe, four different explanations for the cause of this odour, including  
21 statements that were given in writing by Mr. Troy Charter to various media outlets.

22                   And so that type of broken telephone makes it nearly impossible for  
23 Commissioners to ask questions and get information. As I said earlier, it's like casting  
24 about in the dark. You're not entirely sure.

25                   Personally, I never really felt as though I was ever getting the whole  
26 story, and that certainly made my role as a Transit Commissioner incredibly difficult. I  
27 hope that answers your question.

28                   **MR. JOHN McLUCKIE:** Those are all my questions, so thank you.



1                   **COMMISSIONER HOURIGAN:** All right. Thank you.

2                   Next is David Jeanes on behalf of Transportation Action Canada.

3 Mr. Jeanes?

4                   **MR. DAVID JEANES:** Yes, thank you very much. As is usual, I  
5 have five minutes, but this time, I get to ask you questions rather than the other way  
6 around.

7 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

8                   **MR. DAVID JEANES:** So first of all, for Commissioner Wright-  
9 Gilbert, as a citizen member, Mr. Hubley -- Councillor Hubley suggested that you were  
10 mainly there to bring experience to the Commission as a transit rider or user.

11                   Do you feel that was the important selection criterion when you  
12 applied, or did you bring other qualities to the position?

13                   **COUNCILLOR SARAH WRIGHT-GILBERT:** That's an interesting  
14 question. So when I applied to the position, I had to provide my CV, a cover letter was  
15 optional. I provided the cover letter. I certainly spoke about my experience as a transit  
16 user, a long-time transit user, to get to my job.

17                   I don't know what the selection criteria were, so I can't really  
18 comment on the selection criteria. What I can say is that when I interviewed, there were  
19 eight City councillors in the room -- most of them, I didn't have any idea who those  
20 people were -- and a representative from the mayor's office.

21                   I do know that there are 97 people that were interviewed that  
22 applied and interviewed, I think, somewhere around there.

23                   I don't know what the selection criteria were, but in terms of my --  
24 oh, go ahead, Mr. Jeanes. I'm sorry.

25                   **MR. DAVID JEANES:** Yeah. No, I'm sorry, because my time is  
26 limited here, but basically, you don't feel that having been a transit rider was an  
27 overwhelming factor in your getting the position?

28                   And perhaps just a follow up, don't you think that City councillors

1 should be regular users of transit as well?

2 **COUNCILLOR SARAH WRIGHT-GILBERT:** I absolutely believe  
3 that City councillors, especially those that sit on transit commissions, should be regular  
4 user of public transit. How can you provide direction on public transit if you take your  
5 car to work every day?

6 **MR. DAVID JEANES:** Okay, thank you.

7 Councillor McKenney, talking about subject matter experts, I think  
8 you are aware, we've certainly heard from many of them during these hearings. These  
9 are experts who were hired with great depths of knowledge and experience by OC  
10 Transpo, by the City, to give advice on many matters, people who had, you know, been  
11 responsible for operating half of the Toronto Transit Commission's bus and subway  
12 lines, people with similar experience for New York and Calgary and wherever.

13 Do you feel that these subject matter experts should have been  
14 made available more regularly to committee for you to talk to them, hear from them, and  
15 ask their opinions?

16 **COUNCILLOR McKENNEY:** Yes, that certainly would have been  
17 helpful for us to hear from subject matter experts. We know that when TRA arrived, we  
18 were able to get more clarity on questions that we had around the system and why it  
19 was as dysfunctional as it is -- as it was at the time.

20 **MR. DAVID JEANES:** Yeah, but I mean, there were many other  
21 experts whose advice the City was paying for, but it's my impression that most of that  
22 advice was rendered to staff, and that you didn't have the same opportunity to learn  
23 from them.

24 **COUNCILLOR McKENNEY:** Yes, that's correct. And as was the  
25 case with TRA, any type of information provided to us by experts in the system would  
26 be helpful. At least we can ask the questions and understand what the underlying  
27 issues are, yeah, in this.

28 **MR. DAVID JEANES:** Okay. Thank you. Thank you.

1 Councillor Deans, over the life of this project, you've often raised  
2 the question of unnecessary secrecy, I think, with respect to the specification, the  
3 contract, perhaps the Project Agreement, the testing, and so on.

4 And I'm just wondering, we did hear quite a bit about the exercise  
5 that was taken to keep this project within a very tight budget. The \$2.1 billion was  
6 clearly not enough to build what the environmental assessment and the consults had  
7 recommended, and many, many cuts were made. And I'm wondering to what extent  
8 you and the committee were aware of those?

9 And I'll just give you one or two details. We were told that, for  
10 example, the number of escalators was dramatically reduced, so most of the stations  
11 only have up escalators, not down escalators.

12 The tunnel, rerouting the tunnel under Queen Street was obviously  
13 very public knowledge, but did you feel that you had enough awareness of how the  
14 budget cutting was happening to meet that very tight budget?

15 **COUNCILLOR DEANS:** Thank you for the question, Mr. Jeanes.

16 I did have some understanding of some of the ways that the City  
17 was looking to trim the budget to keep it within the 2.1 billion. I do specifically recall a  
18 discussion that I had with Mr. Arpin, the mayor's chief of staff, around the elimination of  
19 the station at the National Arts Centre.

20 And certainly, there was a lot made of the shallow and the change  
21 of direction of the tunnel and making the tunnel shallower. I was actually quite  
22 fascinated by Brian Guest's testimony the other day where he said he had -- the value  
23 he had brought was, he had saved a billion dollars and we still came out with a budget  
24 of 2.1, so I was left thinking that he must have thought that the actual cost was \$3.1  
25 billion and I was just doing the math on that, and it made me ---

26 **MR. DAVID JEANES:** Yes.

27 **COUNCILLOR DIANE DEANS:** --- really wonder how far short this  
28 project was.

1                   **MR. DAVID JEANES:** Okay. Thank you very much.

2                   And finally, I think I have time for a last question to Councillor  
3 Hubley.

4                   During the meetings in the run up to RSA and revenue service, the  
5 public was told again and again, usually by Mr. Manconi, but also by yourself and the  
6 mayor, I think, that we, as citizens, were well protected by the contract, that the City had  
7 very limited exposure and that should anything go wrong, we could depend on the fact  
8 that because of the penalties that were built into the contract, they would be fixed.

9                   Can you react to that statement?

10                  **COUNCILLOR HUBLEY:** I think that's a fair statement, and they  
11 were certainly the selling points of the P-3 model. The fact, as Councillor McKenney  
12 had alluded to earlier, we didn't have the in-house expertise. But also, the sheer scope  
13 of this project was beyond the City alone to build and operate -- build -- design, build,  
14 and operate all together.

15                  We just didn't have that expertise. So that's what the P-3 brought  
16 to it.

17                  We're clearly seeing that the financial penalties -- you know, with  
18 the extra things that they've had to do, that RTG or Alstom, of picking up the tab on, I  
19 can only imagine what that would have done to our City budget if we had had to absorb  
20 all these costs.

21                  **MR. DAVID JEANES:** Okay. Thank you very much. I am out of  
22 time. I appreciate that.

23                  **COUNCILLOR HUBLEY:** Thank you for your question.

24                  **COMMISSIONER HOURIGAN:** Thank you, Mr. Jeanes.

25                  Next up is counsel for the City of Ottawa.

26                  **MR. PETER WARDLE:** Thank you, Mr. Commissioner.

27                  Peter Wardle, W-a-r-d-l-e, last for the City of Ottawa.

28                  **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

1                   **MR. PETER WARDLE:** If I could start with Ms. Deans, and just  
2 want to go back briefly over a little bit of information, Ms. Deans.

3                   You were Chair of the Transit Commission from 2010 to 2014?

4                   **COUNCILLOR DEANS:** Correct.

5                   **MR. PETER WARDLE:** And I understand that later on, you were  
6 Chair of another committee, Community and Protective Services; is that correct?

7                   **COUNCILLOR DIANE DEANS:** Correct, from 2014 to 2018.

8                   **MR. PETER WARDLE:** And so during that period, 2010 to 2018,  
9 you were, as a chair of committee, a member of FEDCO, correct?

10                  **COUNCILLOR DIANE DEANS:** I was.

11                  **MR. PETER WARDLE:** And you would have received regular  
12 briefings on FEDCO, as a FEDCO member, on a variety of topics, including Stage 1 of  
13 the Confederation Line.

14                  **COUNCILLOR DIANE DEANS:** That's right.

15                  **MR. PETER WARDLE:** And then in 2018, as I understand it, you  
16 were no longer a committee chair, and so some of those briefings you would not have  
17 gotten because you no longer sat on FEDCO; is that fair?

18                  **COUNCILLOR DIANE DEANS:** Not entirely. Members of council  
19 that are not members of FEDCO are still welcome to fully participate in the meetings, so  
20 I was still able to access that information.

21                  **MR. PETER WARDLE:** And during the period you were a chair of  
22 First Transit Commission and secondly Community and Protective Services, as I think  
23 Mr. Hubley has alluded to, you would be briefed on a regular basis on matters that  
24 involved the subject matter of those two committees by staff; isn't that fair?

25                  **COUNCILLOR DIANE DEANS:** That's fair.

26                  **MR. PETER WARDLE:** And you would then, as I understand it,  
27 have to make a decision or an assessment of whether or not to share that information  
28 with other members of the committee.

1 **COUNCILLOR DIANE DEANS:** Correct.

2 **MR. PETER WARDLE:** Back in the 2008/2009 period, there had  
3 been a controversy, as I understand it, about the earlier north-south project, which was  
4 cancelled by council. Do you remember that?

5 **COUNCILLOR DIANE DEANS:** Very well.

6 **MR. PETER WARDLE:** I'm asking you because I think you're the  
7 only person on this panel who goes back that far.

8 **COUNCILLOR DIANE DEANS:** Yeah.

9 **MR. PETER WARDLE:** Okay. And it led to a significant monetary  
10 settlement with the constructor of that proposed project. Do you remember that?

11 **COUNCILLOR DIANE DEANS:** Yes.

12 **MR. PETER WARDLE:** Okay. And you were on council while that  
13 was taking place, as I understand.

14 **COUNCILLOR DIANE DEANS:** I was.

15 **MR. PETER WARDLE:** And is it fair to say, then, that when the  
16 Confederation Line was coming forward in the 2010/2011 period, there were regular  
17 briefings to FEDCO from the deputy City manager and her staff?

18 **COUNCILLOR DIANE DEANS:** Yes.

19 **MR. PETER WARDLE:** And you and other councillors had an  
20 opportunity to raise questions at FEDCO about the direction the project was taking; is  
21 that fair?

22 **COUNCILLOR DIANE DEANS:** Yes.

23 **MR. PETER WARDLE:** And the fact that it was being procured as  
24 a P3, correct?

25 **COUNCILLOR DIANE DEANS:** Correct.

26 **MR. PETER WARDLE:** And you were ultimately satisfied that the  
27 project should proceed as a P3 because you voted in favour of that procurement model  
28 in 2011; is that fair?

1 **COUNCILLOR DIANE DEANS:** That's fair.

2 **MR. PETER WARDLE:** And you voted again in favour of the  
3 contract award to RTG in December of 2012.

4 **COUNCILLOR DIANE DEANS:** Yes.

5 **MR. PETER WARDLE:** And the last two decisions of council -- I  
6 don't know if you remember this, but I'm going to suggest to you, Mr. Deans, that they  
7 were unanimous. Do you recall that?

8 **COUNCILLOR DIANE DEANS:** I don't, but I'll take your word for it.

9 **MR. PETER WARDLE:** We just talked for a minute, Ms. Deans --  
10 and again I'm sort of singling you out because you're the councillor with the most  
11 experience. And I'm not suggesting that others don't have experience, but you have  
12 definitely the most experience. The concept of delegated authority -- so first of all,  
13 delegated authority comes from council to the city manager, and then it's delegated  
14 down from there to specific staff functions. Is that correct?

15 **COUNCILLOR DIANE DEANS:** Yes.

16 **MR. PETER WARDLE:** And that actually -- and I'm not going to  
17 take you to it, but it stems from provisions in the municipal act, which outlines the role of  
18 council and the role of staff.

19 **COUNCILLOR DIANE DEANS:** Yes.

20 **MR. PETER WARDLE:** And I'm going to suggest to you that  
21 generally, council's role is to deal with policy matters and oversight staff.

22 **COUNCILLOR DIANE DEANS:** Correct.

23 **MR. PETER WARDLE:** And staff's role is to deal with operational  
24 issues.

25 **COUNCILLOR DIANE DEANS:** Yes.

26 **MR. PETER WARDLE:** And would you agree with me that it's  
27 important to separate those functions?

28 **COUNCILLOR DIANE DEANS:** Yes.

1                   **MR. PETER WARDLE:** In fact, in the early 2000s, there was the  
2 famous report of Justice Bellamy arising out of the MFP project in Toronto, and that was  
3 all about councillors who became too directly involved in a procurement process. Do  
4 you recall that report?

5                   **COUNCILLOR DIANE DEANS:** I don't.

6                   **MR. PETER WARDLE:** Is it fair to say that since the period of time  
7 of the Bellamy report, there has been an emphasis at the City of Ottawa in trying to  
8 ensure that those lines are respected, the lines between policy and oversight on the part  
9 of council, and operational issues on the part of staff?

10                  **COUNCILLOR DIANE DEANS:** I think it's fair to say that we are  
11 aware of those basic principles.

12                  **MR. PETER WARDLE:** So just to use a simple example, if  
13 someone called your office about a pothole on their street or an icy -- or the City staff  
14 not salting a sidewalk, your staff or you -- but probably your staff -- would relay that  
15 information to the right department within the City, correct?

16                  **COUNCILLOR DIANE DEANS:** Yes.

17                  **MR. PETER WARDLE:** And you would ask them to handle it and  
18 perhaps report back to you?

19                  **COUNCILLOR DIANE DEANS:** We would ask for information  
20 about it. We would ask when it could be repaired to the satisfaction of our resident, and  
21 we would follow up with our resident.

22                  **MR. PETER WARDLE:** But you wouldn't become directly involved  
23 in what staff is doing to respond to your inquiry. You wouldn't go out to the street and  
24 supervise what salting they were putting down, right?

25                  **COUNCILLOR DIANE DEANS:** No, and I wouldn't be filling the  
26 pothole.

27                  **MR. PETER WARDLE:** Absolutely. And that's my point. That's  
28 not really your role, right?



1                   **COUNCILLOR DIANE DEANS:** Correct.

2                   **MR. PETER WARDLE:** Okay. And there are processes and  
3 mechanisms in any municipality to ensure that you can fulfill your oversight role,  
4 correct?

5                   **COUNCILLOR DIANE DEANS:** Yes.

6                   **MR. PETER WARDLE:** And one of those is reporting by staff to  
7 council, to FEDCO, and to other standing committees, correct?

8                   **COUNCILLOR DIANE DEANS:** That's right. Correct.

9                   **MR. PETER WARDLE:** Now, is it fair to say that in December  
10 2012, the delegated authority to the City manager with respect to this project was quite  
11 extensive?

12                   **COUNCILLOR DIANE DEANS:** Yes, it is fair to say that. And this  
13 was a large-scale, complex project, so yes, the delegated authority was extensive. But  
14 as I said earlier today, delegated authority is really a matter of trust, and members of  
15 council have to trust and believe in our senior officials that when there are significant  
16 issues of public interest or public concern, that those issues would be reported back to  
17 council, and thus the public, in a timely and fulsome fashion.

18                   **MR. PETER WARDLE:** That proposition I understand and agree  
19 with. The fact that there's delegated authority doesn't end the matter, right? It doesn't  
20 stop there with delegated authority. You have to have the trust and confidence that staff  
21 will report up to you when something goes wrong.

22                   **COUNCILLOR DIANE DEANS:** Yes. And perhaps more so in  
23 Stage 2 than Stage 1, but I can think of ---

24                   **MR. PETER WARDLE:** I should just be careful, Ms. Deans. We're  
25 not here to talk about Stage 2. It's not part of this process.

26                   **COUNCILLOR DIANE DEANS:** No, I understand. The broad point  
27 I wanted to make is that I can hearken to an example where City staff took it upon  
28 themselves to take what I would suggest was more delegated authority than council

1 intended to give.

2 **MR. PETER WARDLE:** Fair enough, but let's come back to this  
3 project and your role in it.

4 Can I suggest to you as well that in the period when you were on  
5 FEDCO, and maybe even after you left FEDCO but attended FEDCO meetings, staff  
6 did report up to FEDCO on a very regular basis about the project?

7 **COUNCILLOR DIANE DEANS:** Yes, they did.

8 **MR. PETER WARDLE:** And in connection with some of the delays  
9 on the project, there was extensive reporting to FEDCO.

10 **COUNCILLOR DIANE DEANS:** I guess I would take some issue  
11 with that, Mr. Wardle, because my opinion is that I've never argued with the voluminous  
12 mountain of information that City staff provided to us. But my argument has been with  
13 the critical deletions of pertinent information that were omitted from what council was  
14 given.

15 **MR. PETER WARDLE:** So let's just take that step by step. You  
16 agree with me that there was a lot of reporting.

17 **COUNCILLOR DIANE DEANS:** Yes.

18 **MR. PETER WARDLE:** You just don't happen to agree with all of  
19 the reporting; is that fair?

20 **COUNCILLOR DIANE DEANS:** No, I don't think that's fair. I  
21 pointed earlier this afternoon to the report Mr. Manconi did in September of 2018 to  
22 FEDCO where he made it abundantly clear that there would be no dilution of the  
23 agreement, which was 98 percent, 12 consecutive days, and then did not report to  
24 Council back when there was a dilution of that agreement that allowed them to pass the  
25 12 days and get to the RSA. That was a significant, in my estimation, omission that  
26 Council should have had, as was the memo that Mr. Manconi intended to send to  
27 members of Council in July of 2019 that was indicating there were -- they were having  
28 considerable problems with the trial running.

1                   And Mr. Kanellakos decided, because he had at some point said,  
2 “We’ll let you know when it’s done,” that he hung his hat on that to think that Council  
3 didn’t need to know or wasn’t going to be told this very relevant, pertinent information.  
4 And it was that kind of omission of pertinent information that was annoying to me as a  
5 member of Council.

6                   **MR. PETER WARDLE:** All right. So, you know, I understand. I  
7 understand what you’ve just said, Ms. Deans, but at the end of the day, the  
8 Commissioner is going to have to determine, isn’t he, what took place in the trial running  
9 period, what was pertinent, what was not pertinent, what was an engineering or  
10 technical decision, and what was something that had to be communicated to Council?

11                   **COUNCILLOR DIANE DEANS:** Right.

12                   **MR. PETER WARDLE:** Isn’t that fair?

13                   **COUNCILLOR DIANE DEANS:** Yeah, I think that’s fair. I mean,  
14 as a member of Council, I have my own opinions on the appropriateness, and I’m just  
15 sharing my opinion on the appropriateness of the lack of information that was shared in  
16 a timely fashion with members of Council in the performance of our oversight duties.

17                   **MR. PETER WARDLE:** Thank you. And is it also fair that the way  
18 the political process works is it does require, typically, a majority of Council to take a  
19 particular course of action; isn’t that fair?

20                   **COUNCILLOR DIANE DEANS:** That is correct.

21                   **MR. PETER WARDLE:** So when you referred to -- and you did  
22 refer to, in your evidence a few minutes ago, an “inner circle around Mayor Watson”, the  
23 fact is that, under the municipal governance model, for the mayor to move forward with  
24 his agenda, he has to have a majority of votes, right?

25                   **COUNCILLOR DIANE DEANS:** Yes.

26                   **MR. PETER WARDLE:** In other words, the mayor has one vote  
27 but he has to have other votes to move forward with whatever agenda he has at any  
28 particular point in time, correct?

1                   **COUNCILLOR DIANE DEANS:** That's right.

2                   **MR. PETER WARDLE:** And that's how Council works. That's the  
3 democratic process, Ms. Deans, right?

4                   **COUNCILLOR DIANE DEANS:** Yes, that is the democratic  
5 process. I would suggest to you that it was finessed at the start of the terms in 2018.

6                   **MR. PETER WARDLE:** But whether it was it was finessed or it  
7 was ---

8                   **COMMISSIONER HOURIGAN:** Sorry, Counsel, let her -- let her  
9 answer your question that you put to her directly.

10                  **MR. PETER WARDLE:** Fair enough.

11                  Ms. Deans.

12                  **COUNCILLOR DIANE DEANS:** Thank you. The tradition at City  
13 Council has always been that the FEDCO Committee, which is sort of seen as the super  
14 committee of Council, would basically be committee chairs. Committee chairs would be  
15 those members of Council with the knowledge, experience, expertise, background that  
16 would bring the most knowledge and range of views to that table.

17                  Mr. Watson, Mayor Watson, made a deliberate decision at the start  
18 of that term to do something very different, to overpromote members of Council who, in  
19 my opinion, were new and did not have the depth and breadth of experience to staff  
20 those roles. And it appeared, from my vantage point, that that was in exchange for their  
21 undying commitment to his agenda for entire four-year period. So I sort of saw it as a  
22 suspension of our local democracy.

23                  **MR. PETER WARDLE:** Well, is it fair, coming to the bottom line,  
24 that Mayor Watson, for whatever reason, did not choose you to be a committee chair in  
25 2018?

26                  **COUNCILLOR DIANE DEANS:** Well, Mr. -- Mayor Watson  
27 purposefully and willfully set me aside from FEDCO because, in my estimation, I was  
28 asking far too many questions around LRT that he did not want asked.

1 **MR. PETER WARDLE:** All right, fair enough.

2 Councillor Hubley, if I could ask you a few questions, you ran in  
3 2010 on a platform of ensuring that the project was on time and on budget; is that fair?

4 **COUNCILLOR ALLAN HUBLEY:** I didn't use the term "on time, on  
5 budget". I ran in 2010 consulting with residence about whether, a, they even supported  
6 LRT. And 2, the number that was being floated around in 2010 by candidates such as  
7 the mayor, when he was a candidate, was 2.1 and I had overwhelming, knocking on  
8 doors, that that's what my residents would support, and the common statement was,  
9 "No blank cheques on LRT," that it had to -- we had to lock in that price.

10 **MR. PETER WARDLE:** And you also voted in favour of the  
11 procurement model and you voted in favour of the contract award to RTG; is that  
12 correct?

13 **COUNCILLOR ALLAN HUBLEY:** Absolutely.

14 **MR. PETER WARDLE:** And you had, I'm going to suggest, as Ms.  
15 Deans said, opportunity, as a councillor, as this went to Council and FEDCO numerous  
16 times between 2010 and 2012, to ask any questions you had about the process?

17 **COUNCILLOR ALLAN HUBLEY:** Absolutely.

18 **MR. PETER WARDLE:** And, ultimately, I'm going to suggest that  
19 you, sir, were also comfortable with the recommendations that were made by staff?

20 **COUNCILLOR ALLAN HUBLEY:** Absolutely.

21 **MR. PETER WARDLE:** Let's just talk for a moment about the  
22 WhatsApp chats in 2019. In 2019, you were a committee chair, correct?

23 **COUNCILLOR ALLAN HUBLEY:** Correct.

24 **MR. PETER WARDLE:** And you were getting information. As  
25 Chair of Transit Committee, you were being briefed on a regular basis by Mr. Manconi;  
26 is that correct?

27 **COUNCILLOR ALLAN HUBLEY:** That's correct.

28 **MR. PETER WARDLE:** And the WhatsApp chat was a convenient

1 way to share information with you, in particular, in real time; is that fair?

2 **COUNCILLOR ALLAN HUBLEY:** That's fair.

3 **MR. PETER WARDLE:** And as Councillor Dean, if you thought  
4 there was something that needed to be shared with the other members of Transit  
5 Commission, you would have done so?

6 **COUNCILLOR ALLAN HUBLEY:** Absolutely. And I believe, Mr.  
7 Wardle, that the submission by the City, the Exhibit A, has a full list of those meetings,  
8 whether in-camera or out of camera, but also the memos. The staff have compiled the  
9 list of all those events. So there was a lot of information sharing.

10 **MR. PETER WARDLE:** And I'm going to suggest to you that at the  
11 time, in the summer of 2019, unlike Ms. Deans, who was not a committee chair, you, as  
12 a committee chair, were satisfied with the information you were being provided by Mr.  
13 Manconi; is that fair?

14 **COUNCILLOR ALLAN HUBLEY:** Yes. Yes, that's fair.

15 **MR. PETER WARDLE:** And is it also fair to say that you still have  
16 confidence in the information and reporting that Mr. Manconi gave to you during that  
17 time period in connection with the project as it came towards revenue service  
18 availability?

19 **COUNCILLOR ALLAN HUBLEY:** Yes, I still to this day have a lot  
20 of confidence and respect for Mr. Manconi and the work he did on behalf of the City.

21 **MR. PETER WARDLE:** And is it also correct to say, Councillor  
22 Hubley, that after trial running was completed, there was a -- I'm going to call it an "open  
23 session of Council" where Mr. Manconi and others came and answered questions? Do  
24 you recall that?

25 **COUNCILLOR ALLAN HUBLEY:** I think there was a lot of those  
26 sessions so I can't recall a specific one that was titled "open forum", but there was  
27 certainly -- like, whether it was FEDCO or Council, he was before us a lot back in those  
28 days giving us updates. And in between those updates were memos.

1                   **MR. PETER WARDLE:** Thank you. And, Councillor McKenney, I  
2 just a few questions for you. You were -- became a councillor in 2014, as I think you've  
3 already indicated.

4                   **COMMISSIONER McKENNEY:** Yeah, correct.

5                   **MR. PETER WARDLE:** And you were not a committee in  
6 2018/2019; is that correct?

7                   **COMMISSIONER McKENNEY:** That is correct.

8                   **MR. PETER WARDLE:** And you did attend FEDCO meetings from  
9 time to time; is that correct?

10                  **COMMISSIONER McKENNEY:** I attend almost every FEDCO  
11 meeting to stay on top of the issues. Yes, I attempt to.

12                  **MR. PETER WARDLE:** As is it fair to say, in 2018/2019, you had  
13 the opportunity to ask questions at FEDCO meetings and inquire into anything that  
14 wasn't presented to you?

15                  **COMMISSIONER McKENNEY:** I certainly had the opportunity to  
16 attend any FEDCO meeting. My recollection was that there wasn't a meeting that took  
17 place in between the August 16<sup>th</sup> memo when we realized that there was a significant  
18 change in the 12 day consecutive run requirement and the kickoff on September 14<sup>th</sup>.  
19 So there was no opportunity in between those two dates when concerns really were  
20 elevated to ask questions in a public forum.

21                  **MR. PETER WARDLE:** No, I was asking it in a little more general  
22 – at a little more general level in the period 2018-2019. I understand there's also a  
23 formal process that allows Councillors to ask written questions and receive a formal  
24 written response from staff; is that correct?

25                  **COUNCILLOR CATHERINE McKENNEY:** Yes, there is a formal  
26 inquiry process.

27                  **MR. PETER WARDLE:** And you've used that process to obtain  
28 information from time to time about this project; correct?

1 **COUNCILLOR CATHERINE McKENNEY:** I have, yes.

2 **MR. PETER WARDLE:** And you as a Councillor, Councillor  
3 McKenney, can petition for a special meeting of Council or a committee of which you  
4 are a member?

5 **COUNCILLOR CATHERINE McKENNEY:** Yes, I can petition.

6 **MR. PETER WARDLE:** And provided again that you can convince  
7 your colleagues and the majority approved, then that meeting could take place; correct?

8 **COUNCILLOR CATHERINE McKENNEY:** Yes, my  
9 understanding is that for a committee meeting, it could take place at the discretion of the  
10 Chair if requested, or a majority of committee members or at a Council meeting, again  
11 at the discretion of the Chair which is the Mayor, or a majority of Council.

12 **MR. PETER WARDLE:** And after trial running was completed and  
13 there was the August 23<sup>rd</sup> memorandum to Council, I'm going to suggest to you that Mr.  
14 Manconi gave a briefing to members of Council that was open in fact to the media; do  
15 you recall that?

16 **COUNCILLOR CATHERINE McKENNEY:** If you are referring to  
17 the open forum that took place, it wasn't a Council meeting, it was a media briefing, yes.

18 **MR. PETER WARDLE:** Yes, I wasn't sure how to describe it; I  
19 understand it was in the Council Chamber but you weren't sitting in your usual places, if  
20 I've got that right.

21 **COUNCILLOR CATHERINE McKENNEY:** That's correct; it was a  
22 media briefing so we were in a ---

23 **MR. PETER WARDLE:** And is it fair to say that at that meeting  
24 which took place I'm going to suggest on August the 23<sup>rd</sup>, Council members had an  
25 opportunity to question Mr. Manconi about trial running?

26 **COUNCILLOR CATHERINE McKENNEY:** I don't recall  
27 specifically but I would imagine that there would have been. Any type of media briefing  
28 we had the opportunity to ask questions, yes.



1                   **MR. PETER WARDLE:** And about the criteria that were used for  
2 trial running, do you recall that?

3                   **COUNCILLOR CATHERINE McKENNEY:** I don't recall, no. I  
4 don't recall the specifics of that meeting.

5                   **MR. PETER WARDLE:** And about the change in morning peak  
6 service between 15 to 13 trains?

7                   **COUNCILLOR CATHERINE McKENNEY:** Again, I don't recall the  
8 specifics of that media briefing and the questions that were asked.

9                   **MR. PETER WARDLE:** And do you recall that one of the people  
10 asking the questions at that meeting was Councillor Brockington?

11                   **COUNCILLOR CATHERINE McKENNEY:** Again, I don't recall the  
12 specifics, no.

13                   **MR. PETER WARDLE:** So if I suggested to you that after trial  
14 running was completed there was this open session with media present where Mr.  
15 Manconi gave members of Council an opportunity to ask questions about the process,  
16 you wouldn't disagree with that?

17                   **COUNCILLOR CATHERINE McKENNEY:** No, I wouldn't disagree  
18 with that, but with a caveat, it was not around a Council table; we did not have – we  
19 were just members of – Council members of a public forum that could ask questions.

20                   **MR. PETER WARDLE:** Fair enough, fair enough.

21                   Ms. Wright-Gilbert, I just have a few questions for you. You have  
22 been a Transit Commissioner since 2018; correct?

23                   **COUNCILLOR SARAH WRIGHT-GILBERT:** No, not really.  
24 Council was voted into office in October of 2018 but I didn't sign my oath of office as the  
25 Citizen Transit Commissioner until – I believe it was February 6<sup>th</sup> of 2019.

26 ;                   **MR. PETER WARDLE:** And you did make that clear in your  
27 earlier evidence, and I apologize. So February 2019.

28                   Is it fair to say that you are very active on social media?

1                   **COUNCILLOR SARAH WRIGHT-GILBERT:** I think that is a fair  
2 way to put it, yes.

3                   **MR. PETER WARDLE:** In fact you have been tweeting on a  
4 regular basis since the hearings of this Commission began about the evidence; is that  
5 fair?

6                   **COUNCILLOR SARAH WRIGHT-GILBERT:** That's fair. Sorry,  
7 not on a regular, regular basis. I haven't been able to watch every single day. I'm  
8 currently suffering from pretty severe back injury so if truth be told, I am napping during  
9 the day a lot of the time due to the pain. But, yes, I have tweeted about some of the  
10 evidence that I have heard and seen personally, yes.

11                  **MR. PETER WARDLE:** And is it fair to say, Ms. Wright-Gilbert,  
12 that you believe that the system is not currently safe?

13                  **COUNCILLOR SARAH WRIGHT-GILBERT:** I'm not sure that I  
14 would – if we're going to stick with a blunt short statement, I would say that I do not  
15 currently trust RTM to maintain a safe and reliable system. If given the choice, which I  
16 do have a choice currently, whether or not to get on the LRT, I personally would not ride  
17 the LRT. I don't feel that it is safe. And I would like to add some context to that, if I  
18 may.

19                  Obviously we've had opportunities as the Commission to question  
20 RTM, RTG – I conflate the two entities – through Transit Commission. I have never,  
21 with some exceptions, been satisfied with any of the answers that RTG and RTM  
22 provided to my questions, to my colleagues' questions. But mainly my conclusion, for  
23 my own personal safety, I do not feel that the LRT is something that I would use. That  
24 came as a result of the report from TSB about both the August and September  
25 derailments in which it was noted that a train that was not involved in the August  
26 derailment but had the same problem as the train involved in the August derailment,  
27 was in the MSF for fixing the problem, essentially. And the technicians who were  
28 charged with fixing the problem that caused the August derailment couldn't find the work

1 order for that train. And so instead decided to use a work order from another train and  
2 just sign off on it. And about six days later I believe that train was the one that derailed  
3 in September.

4 To me, that indicates a level of uncaring and irresponsibility and  
5 lack of awareness for safety, that that is when I formed my final opinion that I do not  
6 trust RTM to maintain our system in a safe and reliable manner. So a long answer to  
7 your question, but, yes, I do not feel that the LRT is safe.

8 **MR. PETER WARDLE:** And in fact in your formal interview you  
9 said that you have not been on the LRT since the pandemic was declared; correct?

10 Correct. And I will not be going on it at all.

11 **MR. PETER WARDLE:** And you've been very public about what  
12 we just talked about; isn't that fair?

13 **COUNCILLOR SARAH WRIGHT-GILBERT:** I'm pretty public  
14 about most things that I say, yes.

15 **MR. PETER WARDLE:** And that's – your views are not likely to  
16 encourage ridership in confidence in the LRT system; isn't that fair?

17 **COUNCILLOR SARAH WRIGHT-GILBERT:** To the extent that  
18 my views are influential in any way, what I will say is that I do understand that it is part  
19 of the mandate of the Transit Commission to increase ridership. However, I will not – I  
20 will not be silenced about the concerns that I have with respect to our transit system,  
21 particularly the light rail system, to the extent that the safety of our residents, simply  
22 because I'm supposed to promote public transit. I'm not going to be a mindless  
23 cheerleader for a system that I truly believe is dysfunctional. And so that's just my own  
24 personal belief, that's my own personal moral compass. So technically I suppose I'm  
25 breaking the rules of my job as a Transit Commissioner, but my own personal moral  
26 compass would not allow me to cheerlead for a system that is dysfunctional.

27 **MR. PETER WARDLE:** Do you recall, Ms. Wright-Gilbert, that an  
28 organization and expert retained by OC Transpo called TRA came and provided a

1 presentation to the Transit Commission in the fall of 2021?

2 **COUNCILLOR SARAH WRIGHT-GILBERT:** Yes.

3 **MR. PETER WARDLE:** And you were in your formal interview  
4 quite complimentary of TRA; do you recall that?

5 **COUNCILLOR SARAH WRIGHT-GILBERT:** Yes, I am quite  
6 complimentary of TRA.

7 **MR. PETER WARDLE:** And the purpose; I'm going to suggest to  
8 you that the purpose of TRA being retained was to provide an opinion to the City  
9 Manager on whether was to provide an opinion to the City manager on whether the  
10 system was safe following the two derailments.

11 **COUNCILLOR SARAH WRIGHT-GILBERT:** It's my understanding  
12 with respect to the contract with TRA, which I have not seen, that they were to provide  
13 their opinion, their expert opinion with respect to the return to service plan that RTG was  
14 putting forward after the derailments. And I should note that I have also not see the  
15 return to service plan.

16 **MR. PETER WARDLE:** And isn't it the case that although a TRA  
17 provided assurances to the City with respect to the return to service plan that it could go  
18 into effect, you remain of the view -- and you've made that very clear publicly -- that the  
19 system is not safe and you will not use it.

20 **COUNCILLOR SARAH WRIGHT-GILBERT:** I do remain of that  
21 view because TRA is here for a limited amount of time. They are not here permanently  
22 to oversee RTM as I publicly referred to TRA as being RTM's babysitter. They will not  
23 be here permanently to oversee RTM. And for me, the type of institutional failure that  
24 took place with the August derailment, the interim time between the August derailment  
25 and the September derailment as I referenced earlier with the work order -- that's an  
26 institutional failure in my opinion. And as a result, I'm not entirely sure that RTM can  
27 change its stripes. And I'm one of those people; I'll believe it when I see it. But as long  
28 as TRA is here babysitting RTM, sure, the system is running relatively well.

1 It's what's going to happen when TRA leaves. That's my concern.

2 **MR. PETER WARDLE:** Ms. Wright-Gilbert, I don't think TRM [sic]  
3 is anywhere near the LRT system in the City of Ottawa right now; did you know that?

4 **COUNCILLOR SARAH WRIGHT-GILBERT:** I believe they're not  
5 currently in Ottawa. Yes, but they are providing oversight to RTM on numerous things  
6 including maintenance, inspections, things like that, yes.

7 **MR. PETER WARDLE:** All right. Thank you. Those are all my  
8 questions for the panel.

9 **COMMISSIONER HOURIGAN:** Is there any re--examination?

10 **MR. CHRIS GRISDALE:** Just one question.

11 **--- RE-EXAMINATION BY MR. CHRIS GRISDALE:**

12 **MR. CHRIS GRISDALE:** Councillor McKenney, you referred to an  
13 August 16<sup>th</sup> memo as indicating the performance metric had changed to 96 percent? I  
14 think you might have the date wrong. Could we just call up that document? It's  
15 COW0104291.

16 Councillor McKenney, is this the memo that you were referring to?

17 **COUNCILLOR McKENNEY:** Yes, it is. And my apologies for that.  
18 It was August 23<sup>rd</sup>.

19 **MR. CHRIS GRISDALE:** Okay, thank you.

20 **COMMISSIONER HOURIGAN:** All right. I want to thank the  
21 members of the panel for giving evidence today. It was insightful and helpful to hear  
22 from all of you and we appreciate you taking the time and you're all excused from the  
23 Inquiry.

24 We're down until tomorrow at 9:00 a.m. Thank you.

25 **THE REGISTRAR:** All rise.

26 The hearing is now adjourned for the day and we will resume  
27 tomorrow at 9:00 a.m.

28 --- Upon adjourning at 4:37 p.m.

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### CERTIFICATION

I, Wendy Clements, a certified court reporter, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Wendy Clements, une sténographe officiel, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



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Wendy Clements