



**Public Hearing**

**Audience publique**

**Commissioner / Commissaire**

The Honourable / L'honorable  
C. William Hourigan

**VOLUME 15**

**Held at :**

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

Monday, July 4, 2022

**Tenue à:**

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

Lundi, le 4 juillet 2022

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## II Appearances / Comparutions

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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	

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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. DREK WYNNE, Sworn</b>	2
<b>MR. STEVE KANELLAKOS, Sworn</b>	1
Examination in-Chief by Mr. John Adair	1
Cross-Examination by Mr. Michael Fenrick	67
Cross-Examination by Mr. Jacob McClelland	67
Cross-Examination by Mr. Michael Fenrick (cont'd)	73
Cross-Examination by Mr. John McLuckie	76
Cross-Examination by Mr. Sharon Vogel	83
<b>MS. MONICA SECHIARI, Sworn</b>	134
Examination in-Chief by Mr. Mark Coombes	134
Cross-Examination by Ms. Catherine Gleason-Mercier	169
Cross-Examination by Ms. Jackie Van Leeuwen	205
Re-Examination by Mr. Mark Coombes	211

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

<b>No</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
242	COW0472612 – Letter City of Ottawa to RTG 27 November 2017	12
243	COW0104444 – City of Ottawa Memo from City Manager to Mayor and Members of Council 24 January 2018	40
244	COW0104288 – Draft City of Ottawa Memo from General Manager to Mayor and Members of Council et al. 16 August 2019	53
245	COM0000051 – City of Ottawa FEDCO Minutes of Meeting No. 34 6 February 2018	56
246	ALS0014096 – Letter Alstom to RTG 20 January 2020	69
247	COW0000294 – OLRT Project Agreement Schedule 1 Commissioning 7 November 2019	113
248	AGG0000294 - Independent Certifier's Report on Substantial Completion #2 27 July 2019	148
249	COW0450696 – Letter TUV Rheinland to City of Ottawa 30 August 2019	193

Ottawa, Ontario

1  
2  
3  
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7  
8  
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--- Upon commencing on Monday, July 4, 2022, at 9:04 a.m.

**COMMISSIONER HOURIGAN:** We begin. We need to either swear you in to tell the truth or have you affirmed to tell the truth. Which do you prefer?

**MR. STEVE KANELLAKOS:** Swearing in, Mr. Commissioner.

**--- MR. STEVE KANELLAKOS, Sworn:**

**COMMISSIONER HOURIGAN:** All right. Thank you. You will first be examined by Commission counsel, Mr. Adair.

**--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR:**

**MR. JOHN ADAIR:** Good morning, Mr. Kanellakos.

**MR. STEVE KANELLAKOS:** Good morning, Mr. Adair.

**MR. JOHN ADAIR:** Sir, you, as I understand it, came on to the scene in terms of this project in May of 2016 in the capacity of your role as City Manager?

**MR. STEVE KANELLAKOS:** That's correct.

**MR. JOHN ADAIR:** And my understanding, sir, is at the time you had fairly extensive briefings from others who were already involved in the project to bring you up to speed?

**MR. STEVE KANELLAKOS:** I did, yes.

**MR. JOHN ADAIR:** And as part of those briefings, sir, were you told that this was -- that the project was being done on a P3 model?

**MR. STEVE KANELLAKOS:** Yes, I was.

**MR. JOHN ADAIR:** Were you also told that it was being done -- that the delivery model was a Design Build Finance Maintain?

**MR. STEVE KANELLAKOS:** Yes.

**MR. JOHN ADAIR:** And my understanding, sir, from your formal interview that was conducted by Commission counsel at the end of April is that you did not have prior experience with a light rail project?

1                   **MR. STEVE KANELLAKOS:** I did not.

2                   **MR. JOHN ADAIR:** And also no prior experience in any  
3 meaningful or comparable sense with a P3 model or a DBFM?

4                   **MR. STEVE KANELLAKOS:** Smaller projects previous to that and  
5 some larger ones once I assumed this role as City Manager.

6                   **MR. JOHN ADAIR:** Right. But prior to assuming this role, my  
7 understanding is you didn't have any experience with comparable projects that were  
8 being delivered under that model?

9                   **MR. STEVE KANELLAKOS:** No, I did not.

10                  **MR. JOHN ADAIR:** All right. And did you come to understand, sir,  
11 through those briefings and through your initial sort of familiarization with the project that  
12 the City's role under this kind of P3 model was primarily to enforce the contract?

13                  **MR. STEVE KANELLAKOS:** No, that wasn't the discussion in  
14 terms of the briefing. It was -- the role is complicated. It's a complicated relationship.  
15 We go to the contract and we have disagreements that we can't deal with in a  
16 collaborative fashion so that wasn't imposed on me or impressed upon me when I was  
17 getting briefed.

18                  **MR. JOHN ADAIR:** All right. Did you come to the view at some  
19 point that a guiding principle for you as City Manager, of course acting on behalf of the  
20 City, was to ensure that the requirements of the Project Agreement were met?

21                  **MR. STEVE KANELLAKOS:** That's correct.

22                  **MR. JOHN ADAIR:** And if I can take you, sir, to a particular  
23 document. I want to ask you whether this was part of the initial briefings. The  
24 document ID is COW593639.

25                         Mr. Kanellakos, just while we wait for that to be called up, the  
26 document I'm talking you to is a December 4, 2012 delegation of authority. And if we  
27 can just scroll down to page 2, please.

28                         Mr. Kanellakos, point 3 there on the page you'll have in front of you

1 is what I'm calling the delegation of authority. And you can read it for yourself, of  
2 course, but it provides a delegation of authority with respect to this project for the City  
3 Manager and the terms described there. Do you see that?

4 **MR. STEVE KANELLAKOS:** I do.

5 **MR. JOHN ADAIR:** And sir, just as starting point, why is it  
6 important that the delegation of authority be stated clearly and in writing?

7 **MR. STEVE KANELLAKOS:** Well, the way municipal government  
8 works is that all authority stems from Council ultimately. My authority is granted to me  
9 by delegation by Council. And Council has the ability to give me broad delegate  
10 authority, restrict it, rescind it, amend it. They are supreme in terms of ultimate decision  
11 making. And it's clear from this document in 2012 that they gave the City Manager a  
12 broad delegation of authority with respect to the Project Agreement.

13 **MR. JOHN ADAIR:** And is it the case, sir, that one of the reasons  
14 why it would be important to have this set out clearly and in writing is that that allows  
15 everyone involved -- Council, City staff, et cetera -- to know who is responsible for  
16 what?

17 **MR. STEVE KANELLAKOS:** I don't agree with that statement as  
18 it's stated. I'd like to elaborate and give some context, please.

19 What's important about this is that this provides the City Manager at  
20 the time, and then subsequent to me when I assumed the role, the ability to do all those  
21 things. And the requirement of the delegated authority bylaw is that I report out to  
22 Council once I execute my delegated authority. So once I fulfill those things or do those  
23 things I'm required to report out to Council and advise them how I exercised my  
24 delegated authority.

25 **MR. JOHN ADAIR:** Let's just follow up on two points there. First  
26 of all, sir, it clearly doesn't say here that you are only going to report once you fulfill the  
27 delegated authority. It doesn't say that, correct?

28 **MR. STEVE KANELLAKOS:** It says that in the Delegated

1 Authority Bylaw.

2 **MR. JOHN ADAIR:** Right. And we know it's the case, more  
3 importantly in regards to what it says, we know it's the case that Council were getting  
4 regular reports and updates throughout the course of the Project, correct?

5 **MR. STEVE KANELLAKOS:** They were getting regular reports on  
6 a frequent basis; that's correct.

7 **MR. JOHN ADAIR:** And so it's not the case -- and I take it you're  
8 not suggesting that the delegation of authority in effect says you are only to report once  
9 the project is complete. You knew you had an obligation to report on a periodic basis,  
10 correct?

11 **MR. STEVE KANELLAKOS:** No. The circumstances changed. I  
12 don't --- that isn't correct. The circumstances of when I report is obviously not black and  
13 whit. It's a judgement call about when is there enough information for Council to have  
14 relevant information to either make a decision or be informed. And that's a judgement I  
15 apply all the time across 100 different service lines in the City, not just to this project.

16 **MR. JOHN ADAIR:** Right. I think that we're probably agreeing  
17 with one another. The delegation of authority doesn't require you to report or not report  
18 at any particular time. That's a matter for your professional judgement.

19 **MR. STEVE KANELLAKOS:** That's correct. But I do have to  
20 report out at a certain point.

21 **MR. JOHN ADAIR:** All right. And just coming back to my original  
22 question, sir, and you've given context and you've given some elaboration which I  
23 appreciate. But I take it you would agree with me that one of the reasons having a  
24 written delegation of authority is appropriate rather than just some ad hoc loose  
25 delegation -- one of the reasons having a written delegation of authority is appropriate is  
26 it allows everyone to know who is responsible for what.

27 **MR. STEVE KANELLAKOS:** Oh yes. The whole point of the  
28 delegated authority is to ensure that it's clear who's responsible and that also provides

1 me the ability to delegate the report, the authority further to other parts of the  
2 organization because it's a 17,000 person organization and I can't be responsible for  
3 every aspect of what happens every minute of the day in a city this size.

4 **MR. JOHN ADAIR:** Understood. And sir, how did you come to  
5 learn of this particular delegation of authority?

6 **MR. STEVE KANELLAKOS:** It would have been part of the  
7 briefing when I assumed the role.

8 **MR. JOHN ADAIR:** With respect to that, what were you told about  
9 the scope of your authority when you were briefed?

10 **MR. STEVE KANELLAKOS:** I don't recall being told anything  
11 specifically. It's clear to me in terms of what that says in Item 3, in terms of what my  
12 authority is.

13 **MR. JOHN ADAIR:** All right. And so is it the case, sir, that you  
14 read it at the time?

15 **MR. STEVE KANELLAKOS:** I don't recall that, Mr. Adair. I know  
16 about it and I've seen it and it's familiar to me but I don't recall in 2016 if I specifically  
17 read this document.

18 **MR. JOHN ADAIR:** I'm sorry. And Mr. Kanellakos, I appreciate  
19 that you may not recall the act of reviewing it in 2016. But I thought you just said a  
20 moment ago it was clear to you what the scope of your authority was and I'm having  
21 trouble understanding how you could arrive at that clarity other than by reading this.

22 **MR. STEVE KANELLAKOS:** Well, that's my point. I've seen it. I  
23 just don't remember when I saw it or if I saw it when I was getting briefed. But I have  
24 seen that particular item in terms of what my authority is.

25 **MR. JOHN ADAIR:** Okay. And you did understand at the time --  
26 whether you recall specifically seeing it or not, you did understand that this is what set  
27 out your authority.

28 **MR. STEVE KANELLAKOS:** That's correct.

1                   **MR. JOHN ADAIR:** And there's really two parts of this, Mr.  
2 Kanellakos. There's a scope of authority, which is captured in the Authority 2, and then  
3 everything that comes after that is the scope of your authority. And then there's also to  
4 whom the authority is being delegated, correct? And that's the City manager.

5                   **MR. STEVE KANELLAKOS:** That's correct.

6                   **MR. JOHN ADAIR:** And so if a member of council who came on to  
7 council after December 4<sup>th</sup>, 2012, wanted to know who was making decisions about the  
8 project, they would, among other sources, be able to look at this delegation of authority  
9 and they would understand both the scope and to whom the authority had been  
10 delegated, correct?

11                   **MR. STEVE KANELLAKOS:** That's correct.

12                   **MR. JOHN ADAIR:** All right. Let me move past that. I'm going to  
13 come back to it.

14                   I want to talk just briefly, sir, about the decision in 2017 to  
15 undertake what we've been calling the debt swap, which is the City stepping into the  
16 shoes of the long-term lender. You're familiar with that?

17                   **MR. STEVE KANELLAKOS:** Yes, I am.

18                   **MR. JOHN ADAIR:** I understand, sir, from your formal interview,  
19 that the people who made that decision, both in terms of providing the input and advice  
20 and then ultimately making the decision, were yourself, Mr. Manconi, the executive  
21 steering committee as well as some outside advisors, like Mr. Guest and Mr. Bucci. Is  
22 that accurate?

23                   **MR. STEVE KANELLAKOS:** And Mr. Gilbert, the lawyer -- Geoff  
24 Gilbert.

25                   **MR. JOHN ADAIR:** Fair enough. Thank you. And just to be clear,  
26 Mr. Kanellakos, I'm going to steer away from any discussions that you may have had  
27 with City lawyers, not to avoid confusion, and I'll ask you to do the same, okay?

28                   **MR. STEVE KANELLAKOS:** Okay.

1                   **MR. JOHN ADAIR:** Not that you were, but I just want to be careful  
2 about that.

3                   And sir, that group of people making the decisions -- making this  
4 particular decision for the debt swap, key City staff as well as professional advisors --  
5 that's consistent with the delegation of authority that you had that we just looked at,  
6 correct?

7                   **MR. STEVE KANELAKOS:** That's correct.

8                   **MR. JOHN ADAIR:** And I understand, sir, that the reason that this  
9 possibility of this debt swap came up was that there was a belief that it would give the  
10 City more leverage to enforce the project agreement. Is that accurate?

11                  **MR. STEVE KANELAKOS:** Well, there's context to that. It's not  
12 the sole reason. I know in my previous testimony, when I was asked about it, I didn't  
13 have the benefit of the document or the recall of something that happened. Actually, as  
14 I looked at it now, this actually occurred in 2017, and I think I mixed up my dates when I  
15 was speaking to the council before. And in 2017, we looked at it from the perspective of  
16 Stage 2. That's where the conversation started. I went back and reviewed the  
17 documents. And it was really about debt resiliency ratio and the notion that RTG may  
18 have to inject more equity into the project. And that would have cost the City, over the  
19 30-year period of the contract, \$134.4 million more in interest payments. And this was  
20 an avenue for us to avoid that cost and avoid the cost to the taxpayer. And yes, there  
21 were benefits -- again, I'm trying to avoid the advice from our legal counsel -- but yes,  
22 there are benefits also, just like there are in the project agreement with respect to  
23 leverage in terms of dealing with the proponent.

24                  **MR. JOHN ADAIR:** Okay. And let's just try to unpack that a little  
25 bit and do it in smaller chunks.

26                  I understand that the reason -- let me start over. Stage 2 required -  
27 - in order to enter into the contracts necessary for Stage 2, you had to deal with the  
28 lenders, who needed to consent, correct?

1                   **MR. STEVE KANELLAKOS:** That's correct.

2                   **MR. JOHN ADAIR:** And you had various options available for  
3 consideration about how to obtain the lenders' consent, correct?

4                   **MR. STEVE KANELLAKOS:** I'm not sure I understand the  
5 question, Mr. Adair. I'm sorry.

6                   **MR. JOHN ADAIR:** There were various different ways you could  
7 accommodate Stage 2 into the lending agreement with respect to Stage 1. One of them  
8 was you could have injected a bunch of equity, and the lenders would have consented  
9 then, correct?

10                  **MR. STEVE KANELLAKOS:** Yeah. RTG could have injected  
11 equity, yes.

12                  **MR. JOHN ADAIR:** Right, and my question is simply that there  
13 were options.

14                  **MR. STEVE KANELLAKOS:** Well, that was probably the only  
15 other option, yes, which would have been ---

16                  **MR. JOHN ADAIR:** Right. If there are two options, then there are  
17 options.

18                  **MR. STEVE KANELLAKOS:** That's right. It would have been a  
19 cost to the City.

20                  **MR. JOHN ADAIR:** Right. My understanding is that the reason  
21 this option of the debt swap was pursued is because there was a belief it would have a  
22 positive benefit for the City in the form of leverage over RTG.

23                  **MR. STEVE KANELLAKOS:** That's only one benefit. The main  
24 benefit was a financial benefit.

25                  **MR. JOHN ADAIR:** All right. And none of this was discussed in  
26 your interview on the 28<sup>th</sup> of April.

27                  **MR. STEVE KANELLAKOS:** No. I didn't have the benefit of the  
28 documents or the recall. It was a question that came out of context for me on the fly.

1 So I've been able to go back and review what happened five years ago.

2 **MR. JOHN ADAIR:** Right. And you didn't correct your transcript  
3 with respect to that issue, did you?

4 **MR. STEVE KANELLAKOS:** No, I did not.

5 **MR. JOHN ADAIR:** All right. But you did correct your transcript  
6 with respect to other issues, correct?

7 **MR. STEVE KANELLAKOS:** There were some corrections that  
8 you were advised of, yes.

9 **MR. JOHN ADAIR:** Right. So a review was undertaken and  
10 corrections were identified and then communicated to the Commission.

11 **MR. STEVE KANELLAKOS:** There were, yes. You received  
12 them. I understand.

13 **MR. JOHN ADAIR:** And in terms of the specific leverage that the  
14 City saw as beneficial with respect to the debt swap, the leverage was an enhanced  
15 ability to force RTG to comply with the project agreement, correct?

16 **MR. STEVE KANELLAKOS:** Well, that could be a potential  
17 benefit, but we've never exercised it. The credit agreement and the debt swap has  
18 never been exercised. It was one of the considerations in the discussion, with advice  
19 from our legal and financial advisors at Deloitte, but it wasn't the only benefit. And it's  
20 never been used; it's just there.

21 **MR. JOHN ADAIR:** Right. My question was -- to make sure that I  
22 understand properly and that the Commission understands properly the nature of the  
23 leverage you have been talking about as one of the issues -- and I appreciate that there  
24 were others. The nature of the leverage was leverage to be able to force RTG to  
25 comply with the project agreement, correct?

26 **MR. STEVE KANELLAKOS:** But we never used that leverage.

27 **MR. JOHN ADAIR:** That's not my question, sir.

28 **COMMISSIONER HOURIGAN:** That's twice now, Mr. Kanellakos.

1 You need to listen to the question, please, and answer the question. It's not suggested  
2 that you exercised it. He's just trying to understand what the nature of the leverage  
3 was.

4 **MR. STEVE KANELLAKOS:** Thank you, Mr. Commissioner.

5 **MR. JOHN ADAIR:** And Mr. Kanellakos, the nature of the leverage  
6 that we are talking about as one of the positive benefits of this was leverage to force to  
7 RTG to comply with the project agreement, correct?

8 **MR. STEVE KANELLAKOS:** It really was more about, should they  
9 default -- what are the benefits to the City should they default? But now I'm entering  
10 into the legal discussion and advice that I received.

11 **MR. JOHN ADAIR:** All right. Let me call up your transcript, sir,  
12 and see if I can help you out with this. Document ID is TRN31, and page 64 of the  
13 transcript, which is 65 of the PDF.

14 Mr. Kanellakos, you were being asked about this by Commission  
15 counsel on April the 28<sup>th</sup>, and if we start at line 2 on page 64 here, you say:

16 "Brian [which is Brian Guest] was -- he basically -- I  
17 would say him and Remo..." (As read)

18 And just pausing there, that's Remo Bucci from Deloitte.

19 "...would have been the people that brought forward --  
20 they were discussing how the City could further  
21 enhance its position with respect to the contract in the  
22 future in the event that this contract doesn't go well as  
23 we go down." (As read)

24 Just pausing there, sir, the contract you're referring to is the project  
25 agreement?

26 **MR. STEVE KANELLAKOS:** That's correct.

27 **MR. JOHN ADAIR:** And then if we go to the next page, page 65,  
28 Ms. McGrann asks you at line 2:

1 "When you say 'enhance the City's position' what do  
2 you mean?" (As read)

3 Your answer:

4 "Well, it gave us further tools as part of the credit  
5 agreement to further enforce, you know, our ability to  
6 get action from RTG. At the time when this came up,  
7 we were still -- there was lots of -- there was a lot of  
8 frustration around the performance of the system, a  
9 lot of frustration around the history of how this system  
10 evolved, and I think we all knew that this was going  
11 through the dispute resolution process of the PA and  
12 ultimately to litigation. I mean, it was clearly heading  
13 that way. There was a lot of money involved that they  
14 were claiming, and the credit agreement was a way to  
15 give the City further leverage in the event -- we were  
16 obviously receiving legal advice from Geoff too -- but  
17 in the event that there was a default or other things  
18 were happening, the litigation -- that we could  
19 exercise our authority, which gave us a clear and  
20 more direct path to impact what we needed through  
21 the credit agreement. It was just another tool to give  
22 us." (As read)

23 Do you see all that?

24 **MR. STEVE KANELAKOS:** Yes, I do.

25 **MR. JOHN ADAIR:** And just coming back to where I was, the  
26 leverage that you are talking about is leverage to use the terms of the credit agreement  
27 to assist you in enforcing the project agreement, correct?

28 **MR. STEVE KANELAKOS:** As I said, the context is that was one

1 of the aspects in terms of the consideration, and I felt I had a responsibility to ensure  
2 that the City was able to execute the project agreement and receive what we were  
3 promised by the consortium. So it's a reasonable approach to take.

4 **MR. JOHN ADAIR:** Yeah. And, sir, just going to the question of  
5 whether the City ever exercised the leverage, which you said several times, "We never  
6 exercised it. We never acted on it." Just as a basic starting point, you'd agree with me  
7 that leverage can be effective without ever being used, correct?

8 **MR. STEVE KANELLAKOS:** No, I disagree with that. A project  
9 agreement -- a project agreement has all kinds of leverage and so that -- I don't see that  
10 point. I don't agree with that.

11 **MR. JOHN ADAIR:** All right. Party A has leverage over Party B,  
12 just hypothetically speaking. Party A can pressure Party B through the existence of and  
13 an acknowledgment of the leverage; they don't actually have to use it, correct?

14 **MR. STEVE KANELLAKOS:** I don't agree with that.

15 **MR. JOHN ADAIR:** All right. Let's have a look at a document,  
16 please. I'm going to ask that the transcript be taken down. The document ID is  
17 COW472612.

18 **--- EXHIBIT No. 242:**

19 COW0472612 – Letter City of Ottawa to RTG 27 November  
20 2017

21 **MR. JOHN ADAIR:** And Mr. Kanellakos, this is a letter that goes  
22 out under your name on November the 27<sup>th</sup>, 2017 to Mr. Estrada. And if we just look at  
23 the first paragraph under the "Re:" line, the City, first of all, expresses its concern about  
24 the current state of the progress of the project. Do you see that?

25 **MR. STEVE KANELLAKOS:** Yes.

26 **MR. JOHN ADAIR:** And the purpose of the letter was to express  
27 concern to RTG about the state of the project, right?

28 **MR. STEVE KANELLAKOS:** Yes, yes.

1                   **MR. JOHN ADAIR:** And in the opening sentence, the City reminds  
2 RTG that the City is both a party to the Project Agreement and also RTG's long-term  
3 lender. Do you see that?

4                   **MR. STEVE KANELLAKOS:** Yes, I do.

5                   **MR. JOHN ADAIR:** And I'm going to suggest to you that the  
6 reason to remind RTG in a letter with respect to the state of the affairs on the project --  
7 the reason to RTG that the City is the lender is to remind RTG that the City has  
8 leverage in its capacity as lender. Do you agree with that?

9                   **MR. STEVE KANELLAKOS:** Well, what I would say on this letter  
10 is, you know, the two things were brought together in one letter. And I heard the  
11 testimony of Mr. Estrada. And in hindsight, I should have separated those two letters,  
12 but I wasn't exercising leverage over them. But I also -- from my perspective, I'm also --  
13 feel responsible and accountable to ensure that RTG delivers what they promised to  
14 deliver to the City of Ottawa.

15                   **MR. JOHN ADAIR:** Right. And I'm going to just come back to my  
16 question. The reason that there was reference to both rather than the separation that  
17 you've just acknowledged should have taken place -- the reason that there was  
18 reference to the City's role as long-term lender is to put additional pressure on RTG and  
19 to remind RTG of that leverage, correct?

20                   **MR. STEVE KANELLAKOS:** But as I said earlier, RTG knew that  
21 we had the Credit Agreement so this wasn't something new that they would be aware  
22 of.

23                   **MR. JOHN ADAIR:** Do you think, Mr. Kanellakos, that you might  
24 answer my question, please?

25                   **MR. STEVE KANELLAKOS:** Can you repeat the question, sir?  
26 I'm sorry.

27                   **MR. JOHN ADAIR:** Sure. The reason that there was reference to  
28 the City's role as long-term lender is to put additional pressure on RTG and to remind

1 RTG of the leverage.

2 **MR. STEVE KANELLAKOS:** It's to remind them -- yes, it's to  
3 remind RTG of the options the City has.

4 **MR. JOHN ADAIR:** Right. And so you'd agree with me that  
5 leverage can be effective even if it is not actually exercised? It can be effective just by  
6 reminding the party that's subject to the leverage that it exists?

7 **MR. STEVE KANELLAKOS:** Well, I'll agree that it exists, but I'm  
8 not agreeing that it's effective because it didn't make any changes. It wasn't a positive  
9 response despite the leverage we have in the Project Agreement or the Credit  
10 Agreement. It did not improve the situation ---

11 **MR. JOHN ADAIR:** Right.

12 **MR. STEVE KANELLAKOS:** --- so it wasn't effective.

13 **MR. JOHN ADAIR:** I'm sorry?

14 **MR. STEVE KANELLAKOS:** So it wasn't effective.

15 **MR. JOHN ADAIR:** Okay. If we go to page 2, please. I won't read  
16 the paragraph to you, Mr. Kanellakos. I'll let you do that for yourself. But the paragraph  
17 that begins, "Pursuant to Section 22.3...", and then it goes on. And I'm going to suggest  
18 to you that the City was making it clear to RTG what the City required under the Project  
19 Agreement with respect to scheduling issues. Just take a minute. Read that for  
20 yourself and let me know if you agree.

21 **MR. STEVE KANELLAKOS:** Yes, and this is in the context -- I  
22 agree, and this is in the context of them not achieving the dates that they had advised  
23 the City.

24 **MR. JOHN ADAIR:** Yeah, and we're going to come back to that.  
25 The very next paragraph, sir, tells the City that -- sorry, tells RTG, rather, that the City,  
26 in its capacity as lender and the long-term credit facility, is not going to grant any relief  
27 under the credit facility either, correct?

28 **MR. STEVE KANELLAKOS:** Yes, and that's a reasonable

1 statement to make under the circumstances, in my opinion.

2 **MR. JOHN ADAIR:** And the reason that you were making it clear  
3 to RTG that the City, as long-term lender, would not be granting any relief irrespective of  
4 any delays is because you wanted to put pressure on RTG to perform under the Project  
5 Agreement and to use the status as lender to do that?

6 **MR. STEVE KANELLAKOS:** Yes, we wanted RTG to deliver what  
7 they said they were going to deliver to the City which, up to that point, they had been  
8 failing.

9 **MR. JOHN ADAIR:** Now, sir, in deciding to combine the roles of  
10 lender and counterparty to the Project Agreement, and using those dual roles to put  
11 pressure on RTG, did the City consider whether it had the right to use -- and I don't  
12 want to know any legal advice that you received. I just want to know whether this issue  
13 was even considered. Did the City consider whether it had the right to use the Credit  
14 Agreement to enforce Project Agreement?

15 **MR. STEVE KANELLAKOS:** I will answer simply with a yes,  
16 based on the legal advice I received.

17 **MR. JOHN ADAIR:** All right. And did the City consider the impact  
18 on the relationship under the Project Agreement between the City and RTG if the City  
19 were to start using the Credit Agreement to leverage the Project Agreement?

20 **MR. STEVE KANELLAKOS:** Well, the impact of the relationship  
21 was -- is -- is -- was taking many forms based on all the things that were happening in  
22 that context. It wasn't just one aspect, the Credit Agreement or the Project Agreement.  
23 There were all kinds of discussions and things happening in terms of the relationship at  
24 that time.

25 **MR. JOHN ADAIR:** Okay. Let me ask my question slightly  
26 differently. Did the City consider whether undertaking the debt swap and then using  
27 that it acquired -- did the City consider whether that would have a detrimental impact on  
28 the relationship with RTG?

1                   **MR. STEVE KANELLAKOS:** I saw it as a business transaction  
2 and not about a -- having a detrimental relationship. It was a -- it was a business  
3 transaction, mostly for financial reasons, also for -- for leverage, as you say, or being  
4 able to use it in the event things did not go well, which we never did. And so that was  
5 the extent of it.

6                   **MR. JOHN ADAIR:** All right.

7                   **MR. STEVE KANELLAKOS:** It's a transactional thing.

8                   **MR. JOHN ADAIR:** So is that a no, sir, that the City did not  
9 consider the impact on the relationship because you saw it purely as a business  
10 decision?

11                   **MR. STEVE KANELLAKOS:** I didn't consider, no.

12                   **MR. JOHN ADAIR:** Okay. And, Mitchell, if we could take that  
13 down, please, I would appreciate it. I'm now going to move forward to the summer of  
14 2019, Mr. Kanellakos, and the issue of trial running and revenue service. I'm going to  
15 start, sir, with a document I expect you're familiar. It's the July 10<sup>th</sup> presentation. The  
16 document ID is COW104281, please. And if we could go to page 7 of 16, please. And  
17 yeah, just right there. Perfect, thank you. Now, this was a presentation, Mr.  
18 Kanellakos, that was given to FEDCO; you're aware of that?

19                   **MR. STEVE KANELLAKOS:** Yes.

20                   **MR. JOHN ADAIR:** And I understand that the last bullet point here,  
21 if we just look at it once:

22   "Once RTG has achieved all trial running  
23   requirements, staff will inform Council." (As read).

24                   Let me just pause on that and ask you a few questions. I take it  
25 you were not telling Council through that statement that no updates would be provided  
26 until trial running was complete?

27                   **MR. STEVE KANELLAKOS:** That's what I was telling them, yes.

28                   **MR. JOHN ADAIR:** I'm sorry; you were saying that no updates

1 would be provided until trial running was complete?

2 **MR. STEVE KANELLAKOS:** That's correct.

3 **MR. JOHN ADAIR:** Do you agree with me that a reasonable  
4 person reading that bullet point, "Once RTG has achieved all trial running requirements,  
5 staff will inform Council," would understand that of course they would be informed once  
6 it was complete but also know that if anything significant happened in the meantime,  
7 they would be informed?

8 **MR. STEVE KANELLAKOS:** No, I don't agree with that because I  
9 also advised Council in a memo format a second time on what's on this slide. So it was  
10 clear that we weren't going to be providing updates in between while trial running was  
11 on. So I disagree with that.

12 **MR. JOHN ADAIR:** All right. So the commitment from staff to  
13 Council was no updates until trial running is complete?

14 **MR. STEVE KANELLAKOS:** That's correct.

15 **MR. JOHN ADAIR:** And that's within the purview of what was  
16 delegated to you under the delegation that we looked from December of 2012, correct?

17 **MR. STEVE KANELLAKOS:** That's correct.

18 **MR. JOHN ADAIR:** It was up to you and your staff but, on the staff  
19 side, it was up to you, and you alone, to decide how and when to update Council?

20 **MR. STEVE KANELLAKOS:** Well, I informed Council in terms of  
21 how and when I would update them, and I never received any change or direction, as I  
22 said earlier. They have every ability to change the delegated authority direction to me,  
23 modify it, amend it, restrict it, remove it, and they never did.

24 I was clear when I would -- what I was going to do, and I did what I  
25 was -- what I told them I was going to do. There was never anything from them that  
26 was contrary or changed, what I told them I was going to do, and they could have.

27 **MR. JOHN ADAIR:** So my question, sir, was, the delegation of  
28 authority that we looked at earlier in your examination made it clear that the decision of

1 what to report and when was for you to make, correct?

2 **MR. STEVE KANELLAKOS:** Yes, and I advised counsel of that.

3 **MR. JOHN ADAIR:** Right. And the delegation of authority makes it  
4 clear that although you might have input from your key staff, this was a staff issue, what  
5 information to share with Council and when, that was an issue for staff to determine?

6 **MR. STEVE KANELLAKOS:** I'm not following your question, Mr.  
7 Adair. I'm sorry.

8 **MR. JOHN ADAIR:** It's okay. The delegation of authority takes  
9 certain issues, and it makes those staff issues, and staff, meaning you, at the end of the  
10 day, correct?

11 **MR. STEVE KANELLAKOS:** Yes, that's -- we went through that,  
12 yes.

13 **MR. JOHN ADAIR:** And one of the issues that the delegation of  
14 authority makes a staff issue as opposed to a Council issue is the decision making  
15 about what to tell Council and when?

16 **MR. STEVE KANELLAKOS:** Well, as I said earlier, I don't agree  
17 with that. As I said earlier, I'm required to tell Council once I execute my delegated  
18 authority, which I did. I was -- I shared that with Council on -- and I'm sure we'll into that  
19 -- on August 23<sup>rd</sup>.

20 **MR. JOHN ADAIR:** Right. And it's your decision and your exercise  
21 of professional judgement that matters under the delegation of authority, correct?

22 **MR. STEVE KANELLAKOS:** It is, but I also advised Council of  
23 what I was going to do, so they weren't uninformed about what my intent was with  
24 respect to the judgement I applied for when they would receive the information. They  
25 knew that.

26 **MR. JOHN ADAIR:** Right. And sir, I take it you've seen -- and  
27 we're going to come to them -- but I take it you've seen the memos that were sent to  
28 Council on July 27, August 7, and August 16?

1                   **MR. STEVE KANELLAKOS:** I have seen them, but you'll have to  
2 put them up or I'll have to see them again, to be clear.

3                   **MR. JOHN ADAIR:** Yeah. I'm going to take you to each of them,  
4 just so we're clear. I'm not going to ask you questions about the contents without  
5 showing them to you, but you're aware that they were sent?

6                   **MR. STEVE KANELLAKOS:** Thank you. Yes.

7                   **MR. JOHN ADAIR:** Right. So why is it that Council were given  
8 updates on July 27, August 7, and August 16 if a commitment was made not to update  
9 them until trial running was complete?

10                  **MR. STEVE KANELLAKOS:** Mr. Adair, I'd have to see the memos  
11 to ---

12                  **MR. JOHN ADAIR:** Okay.

13                  **MR. STEVE KANELLAKOS:** --- answer that question. I'm sorry. I  
14 don't -- I ---

15                  **MR. JOHN ADAIR:** No problem. So let's ---

16                  **MR. STEVE KANELLAKOS:** --- have in this binder what you sent  
17 for me, but I'd have to flip through to find them.

18                  **MR. JOHN ADAIR:** Sure. That's no problem.

19                                 Can we go then, please, to the July 27 memo, which is  
20 COW529052? This is the July 27<sup>th</sup> memo, Mr. Kanellakos?

21                  **MR. STEVE KANELLAKOS:** Yes.

22                  **MR. JOHN ADAIR:** And this memo provides an update to Council.  
23 For example, in the third paragraph, you'll see the words:

24   "Now that substantial completion has been confirmed  
25   by the IC, RTG plans to begin trial running the week  
26   of July 29." (As read)

27   Just pausing there. So there's an update to Council about the  
28 exact day on which trial running would start, as a for example, correct?

1                   **MR. STEVE KANELLAKOS:** Yes, but that's before trial running  
2 started.

3                   **MR. JOHN ADAIR:** Yes.

4                   **MR. STEVE KANELLAKOS:** I wouldn't give an update when trial  
5 running started.

6                   **MR. JOHN ADAIR:** Sorry, the July 10<sup>th</sup> presentation we just looked  
7 at says, "No updates until the day trial running starts from the day trial running starts  
8 until the day it ends."

9                   That's how you read it?

10                  **MR. STEVE KANELLAKOS:** Yes.

11                  **MR. JOHN ADAIR:** And so giving an update on the specific day  
12 the trial running was going to start is not inconsistent with that commitment, is your  
13 evidence?

14                  **MR. STEVE KANELLAKOS:** Can you please repeat that? That  
15 confused me.

16                  **MR. JOHN ADAIR:** Sure. My concern is this, Mr. Kanellakos, to  
17 be very candid. Your evidence is that on July 10<sup>th</sup>, you made a commitment not to  
18 update Council until trial running was complete, and I read this memo as an update with  
19 respect to trial running, specifically, the day on which it would start. And I say to you  
20 that those two things are inconsistent. Can you help me with that, please?

21                  **MR. STEVE KANELLAKOS:** No, I don't, because the intent of the  
22 information I provided to Council about when I would update them was with respect to  
23 when trial running started and when it ended, and I did that. This is telling them when  
24 it's going to start, and I didn't -- so my commitment was, in -- from that point on til the  
25 end, the 24 days, I wasn't going to update them.

26                  **MR. JOHN ADAIR:** All right. And sir, given that you were  
27 providing an update on the 27<sup>th</sup> of July, why was Council not told that there had been  
28 some very bad days immediately around the achievement of substantial completion in

1 terms of the launch of the system?

2 **MR. STEVE KANELLAKOS:** The information that -- are you -- just  
3 to be clear, are you talking about substantial completion, what they had substantial  
4 completion, or trial running, I'm sorry?

5 **MR. JOHN ADAIR:** So substantial completion is July the 26<sup>th</sup>. Just  
6 so you know, I'm going to give you the dates, just so you have them, okay, and then I'm  
7 going to clarify for you.

8 Substantial completion was the 26<sup>th</sup>, and on both the 25<sup>th</sup> and 26<sup>th</sup>  
9 of July, the launch went quite poorly. And my question is, why, when you're writing on  
10 the 27<sup>th</sup>, did you not tell Council that the launch had gone quite poorly the day before  
11 and the day of substantial completion?

12 **MR. STEVE KANELLAKOS:** Because the substantial completion  
13 was signed off by the independent certifier, so everybody that was an expert on the  
14 system -- and I think where we're getting -- where some people are getting confused in  
15 terms of the sequence of events here, what the difference is -- substantial completion  
16 wasn't a sign-off that the system was ready for passenger service. It was basically  
17 putting it ready to begin trial running. So the issues that happened with substantial  
18 completion were signed off by the final -- substantial completion was signed off by the  
19 independent certifier, and all the other engineering reviews that were done. So I was  
20 satisfied that that was complete.

21 **MR. JOHN ADAIR:** Right. And I'm not suggesting to you that you  
22 were not satisfied that substantial completion was complete. I'm suggesting to you that  
23 in addition to telling Council that substantial completion had been achieved, you ought  
24 to have told Council that there were some very rocky days right around the same time,  
25 and that there was reason to be concerned.

26 **MR. STEVE KANELLAKOS:** No, I don't agree with that, because  
27 once the independent certifier signed off, for context, it wasn't a question of rocky days  
28 of one day or two days or any days. It was did they meet the requirement out of the

1 Project Agreement or not, and did they meet all the requirements that the experts said  
2 were required to meet out of the Project Agreement? That's the information that's most  
3 relevant. That's the outcome that Council was looking for.

4 **MR. JOHN ADAIR:** Okay. If we can go to the next update, please,  
5 to Council, which was August the 7<sup>th</sup>? The document ID is COW104401.

6 Mr. Kanellakos, just for context, this is August the 7<sup>th</sup> of 2019, and  
7 I'm going to give you a couple of facts for context. I'm sure if I'm wrong about those, I'll  
8 be corrected later.

9 But as of August the 7<sup>th</sup>, there had been 11 days of trial running, 7  
10 of which had failed, and there had been 5 consecutive failures off the first day of trail  
11 running, and there had been the pause and restart.

12 Do you generally recall those facts?

13 **MR. STEVE KANELAKOS:** Generally, yes.

14 **MR. JOHN ADAIR:** And then here we come to an update for  
15 Council on August the 7<sup>th</sup>.

16 First of all, why was Council getting an update on August the 7<sup>th</sup>  
17 during trial running, if the commitment had been no updates from trial -- from the start to  
18 the end of trial running?

19 **MR. STEVE KANELAKOS:** Well, I think this memo is taken out  
20 of context. It's -- when I look at the heading, this was the quarterly report that Mr.  
21 Morgan, as was directed by Council to provide, this was an update up to June 30<sup>th</sup>. He  
22 did provide a look ahead in terms of what was happening, on what was the outlook in  
23 terms of the trial running, the next steps.

24 However, this is a -- when I read this memo, and when I looked at it  
25 when you sent it to me, this memo is looking in the rear-view mirror in terms of the  
26 things that were happening in the last quarter, not a report on what's happening on the  
27 trial running. It's different context, different requirement, different delegated authority.

28 **MR. JOHN ADAIR:** And if we can go to page 2 of the memo,

1 please, to the bottom of page 2 where it says, "Path to Revenue Service Availability".

2 And sorry, if we can just scroll up just a little bit, I'm going to even  
3 look at "Key Activities to Monitor" as well. Thank you.

4 So you'll see there, sir, under "Key Activities to Monitor", there's  
5 reference to the trial running, and then under "Path to Revenue Service Availability",  
6 there's additional reference to the trial running and the fact that it had started, et cetera.  
7 Do you see that?

8 **MR. STEVE KANELLAKOS:** Yes, I do.

9 **MR. JOHN ADAIR:** And so there was certainly a degree to which  
10 this memo was informing Council that trial running was ongoing, correct?

11 **MR. STEVE KANELLAKOS:** Yes, it was a -- it was a statement of  
12 what was -- a line of sight of what's happening, just a reminder to Council.

13 **MR. JOHN ADAIR:** Right. But just to be clear, just focusing on  
14 that answer you've just given, it was clearly not a line of sight into what was happening,  
15 because what was happening was, 7 of 11 days had failed, 5 consecutive days off the  
16 bat had failed, and there had been a pause and restart, and none of that is mentioned  
17 here. Do you agree with that?

18 **MR. STEVE KANELLAKOS:** I do, but there's also context in that,  
19 and I'd be happy to provide the context if the Commission wants to hear.

20 **MR. JOHN ADAIR:** Sir, I -- believe me, we certainly want to  
21 understand the context in respect of which you would help us to understand why  
22 Council was not told about the -- what can only be described as disastrous results of  
23 trial running in the first 11 days. So please go ahead.

24 **MR. STEVE KANELLAKOS:** Thank you, Mr. Adair.

25 Well, as I told Council, I would report after it was completed. In my  
26 mind, my opinion and my judgement based on the experts was that trial running is a  
27 process. It's an exercise of the system. It's not about what happened one day, one  
28 hour, or one week. It's about whether the system successfully met the independent

1 certifier, the independent safety officer, the RTG engineers, our own independent  
2 engineers. RTG and the City sign off that the system was safe and reliable to go. So  
3 advising people and Council when one day is not going bad, two days or even three  
4 days are going bad is I think an exercise that puts Council in a very difficult position  
5 because the testing wasn't done.

6                   And if you notice, I never advised Council when we had good days  
7 either. I didn't go back later on when they were having pass days and say, "Oh guess  
8 what? We've had pass days." I stayed consistent with what I told Council. And I  
9 reported that when it was finished because in my mind, and everyone else that was  
10 advising me, this was a process to exercise the system over a period of time, and not  
11 what happened on a day-to-day basis. That wasn't relevant information because at the  
12 end of the day they had to pass.

13                   So if they didn't pass I would have gone back and advised Council  
14 that they hadn't passed like I did when I gave them bad news when they met -- they  
15 failed to meet the substantial completion Revenue Service Availability dates that they  
16 had been giving us in the previous year and a half. I'm not ---

17                   **MR. JOHN ADAIR:** Let me just follow up. Oh, I'm sorry, go head,  
18 Mr. Kanellakos. I apologize.

19                   **MR. STEVE KANELLAKOS:** I said I'm not afraid to deliver; I'm  
20 sorry. I'm not afraid to deliver bad news to Council. And this could have failed, this test.  
21 And Council would have been advised at the end and they would have had the benefit  
22 of all the data, all the information, everything that transpired over that testing period, and  
23 be able to ask the questions to make that assessment.

24                   **MR. JOHN ADAIR:** So I'm just a little bit -- I'm struggling a little bit  
25 and I'm confused a little bit because in fact the system did fail the testing and it only  
26 passed because the criteria were lowered. And Council wasn't told that.

27                   **MR. STEVE KANELLAKOS:** No, that's not -- I don't agree with  
28 that statement. The Project Agreement allows the parties to amend and modify, I

1 believe it's -- when I was looking at it again, it was Schedule 14 of the Project  
2 Agreement -- allows them to modify the testing criteria. The contract, the Project  
3 Agreement itself only had the 12 consecutive days. So it was fully within the  
4 parameters and the ability of the experts to make modifications to those criteria. And at  
5 the end I was relying on the independent certifier and the independent safety auditor to  
6 give me the certificates that basically said that that system was fit, ready to go, and  
7 safe. That's what I had to rely on. I couldn't rely on what was happening in the making  
8 of the sausage.

9 **MR. JOHN ADAIR:** Okay. And then I guess what that means, if  
10 we just take that to its logical extension, the system could have continued or fail to meet  
11 even the revised trial running criteria. Then the parties could have agreed without going  
12 to Council to lower the test requirements again. The system could have failed to meet  
13 that; you could have lowered them again and then as long as you passed, that's all  
14 Council needs to know.

15 **MR. STEVE KANELLAKOS:** No, I disagree with that, Mr. Adair,  
16 because the ---

17 **MR. JOHN ADAIR:** Well, where does it stop, sir? Where does the  
18 City's -- where does staff's ability to agree with RTG to continue to lower the criteria --  
19 where would that stop?

20 **MR. STEVE KANELLAKOS:** Where it stops is when safety and  
21 reliability is going to be compromised in the professional opinion of the engineers that  
22 had extensive experience with light rail systems. Those advisors and all the parties  
23 would have to agree where is the line before we're now compromising the ability for the  
24 system to be safe or not? And I was satisfied that it was, based on the signatures and  
25 the certificates that I received from the people who were supposed to reviewed the  
26 system on a daily basis, and then review at the end all the data and determine whether  
27 it passed or not. And they said it passed and met those criteria under the Project  
28 Agreement.

1                   **MR. JOHN ADAIR:** Are you aware, sir, that the independent  
2 Certifier, just to take as an example there -- that the independent certifier is certifying  
3 whether the agreement -- whether the requirements of the Project Agreement have  
4 been met?

5                   **MR. STEVE KANELLAKOS:** I can't speak for the independent  
6 certifier, Mr. Adair.

7                   **MR. JOHN ADAIR:** No. Were you aware at the time that the  
8 independent certifier's role was to certify whether the requirements of the Project  
9 Agreement had been met? Were you aware of that?

10                  **MR. STEVE KANELLAKOS:** Yes.

11                  **MR. JOHN ADAIR:** And so if you change the requirements of the  
12 Project Agreement, the independent certifier is still only certifying whether those new  
13 requirements had been met, correct?

14                  **MR. STEVE KANELLAKOS:** No, I disagree because the  
15 requirements were not in the Project Agreement. The only thing that referenced trial  
16 running in the Project Agreement -- and this is the problem which goes back to the root  
17 of the development of the contract many years ago, a decade ago -- is that it only talked  
18 about 12 consecutive days. There were no criteria. It was left to the parties to come up  
19 with the criteria and the parties also had leeway to adjust the criteria as the project -- as  
20 the commissioning process, which included trial running, progressed.

21                  So there was no guidance with respect to the -- there were no  
22 scores, percentage scores. There were no other factors that were there. I think there  
23 was a page and a half in the entire Project Agreement of over 1000 pages that  
24 references this. So there was full leeway up to the parties and the professionals to  
25 determine what would be a proper exercise of the system for the IC to be able to sign  
26 off.

27                  **MR. JOHN ADAIR:** Right. And then after the parties have agreed  
28 on the criteria, that's what the IC assesses, correct?

1                   **MR. STEVE KANELLAKOS:** That's right. That's my  
2 understanding, yes.

3                   **MR. JOHN ADAIR:** So then to take a bit of a silly example, the  
4 parties could agree that the requirement is hit 60 percent on day out of 12 and if the  
5 parties agree on that, and then the system hits it, the IC would sign off.

6                   **MR. STEVE KANELLAKOS:** No, because the -- I think the IC is  
7 also assessing what is a reasonable -- and that's for her -- I understand she's speaking  
8 today and I won't speak for her. But the line which you referenced earlier is, What is the  
9 limit? What is the limit before we're compromising safety and reliability? And the  
10 professional opinion of the people that were -- who I have to rely on and who I relied on,  
11 was that it wasn't compromised with the criteria adjustments that were made as they  
12 were able to do per the Agreement on Schedule 14.

13                   **MR. JOHN ADAIR:** All right. If we can just go to the next memo,  
14 please. It's August 16<sup>th</sup>, and the document ID is RTC759323.1.2.

15                   Sir, this is a memo that was sent around on the 16<sup>th</sup> of August of  
16 2019. You'll see there the subject line is "Update on the O-Train Confederation Line";  
17 do you see this?

18                   **MR. STEVE KANELLAKOS:** Yes.

19                   **MR. JOHN ADAIR:** And that's not a quarterly update, correct?

20                   **MR. STEVE KANELLAKOS:** No.

21                   **MR. JOHN ADAIR:** And specifically it is an update on the progress  
22 of trial running, correct?

23                   **MR. STEVE KANELLAKOS:** Yes. Well, it's correct, but again, Mr.  
24 Adair, the context is Mr. Manconi is advising Council that we're going to be giving a  
25 briefing to Council and the media in the coming days. So we're establishing and  
26 informing Council that they're going to get an update to basically satisfy the requirement  
27 that I -- or the commitment that I made to Council with respect top advising them what  
28 the results of the trial running were.

1                   **MR. JOHN ADAIR:** Sir, my question was, it's not a quarterly  
2 update?

3                   **MR. STEVE KANELLAKOS:** I said, "No." I'm sorry.

4                   **MR. JOHN ADAIR:** Okay. And were you answering some other  
5 question with the rest of your answer?

6                   **MR. STEVE KANELLAKOS:** No, I was just providing context, Mr.  
7 Adair.

8                   **MR. JOHN ADAIR:** All right. Now, you'll agree with me that the  
9 second paragraph provides some degree of update with respect to the progress of trial  
10 running, correct, where it says:

11   "RTG has made significant progress during the trial  
12   running period, running various scenarios of regularly  
13   scheduled service and testing system readiness for  
14   passenger service by exercising the Confederation  
15   Line system at full functionality."

16                   And it goes on.

17                   Do you agree with me that there's some degree of update there,  
18 correct?

19                   **MR. STEVE KANELLAKOS:** A very lukewarm update, but yes.

20                   **MR. JOHN ADAIR:** That's right. It's a very limited update, correct?

21                   **MR. STEVE KANELLAKOS:** That's right.

22                   **MR. JOHN ADAIR:** And why was Council being given any update  
23 at all if there had been a firm commitment that there would be no updates between the  
24 start of trial running and the end?

25                   **MR. STEVE KANELLAKOS:** Well, I think with Mr. Manconi, the  
26 intent of the memo even though I can't speak for him why he added that part in it, but  
27 Mr. Manconi was establishing with Council, giving them a heads up, that they were  
28 going to receive a full briefing in the coming days. So I think that's fair to give them

1 advance notice. Everyone was wondering what was happening, as you've alluded to.  
2 And I think it's fair for Mr. Manconi to do that. I can't speak for why he put that  
3 paragraph in the second part.

4 **MR. JOHN ADAIR:** And did you, upon receiving a copy of this  
5 memo, did you say to Mr. Manconi, "Mr. Manconi, there's a problem here. We have  
6 committed not to update Council, and here you are updating Council. Either don't send  
7 it or revise it," or anything like that?

8 **MR. STEVE KANELLAKOS:** I'm not seeing this in the same  
9 context of what you just said, no.

10 **MR. JOHN ADAIR:** I'm sorry, Did you say anything to Mr.  
11 Manconi? Let me ask my question differently.

12 Did you say anything to Mr. Manconi to the effect of, "Why are you  
13 providing an update when we committed not to update?"

14 **MR. STEVE KANELLAKOS:** I don't recall on this particular memo.

15 **MR. JOHN ADAIR:** Okay. When the August 7<sup>th</sup> memo goes out  
16 and the August 16<sup>th</sup> memo goes out, they go to all of council, correct?

17 **MR. STEVE KANELLAKOS:** Yes.

18 **MR. JOHN ADAIR:** And roughly how many people would that have  
19 been at the time?

20 **MR. STEVE KANELLAKOS:** With the mayor I believe it was 23 at  
21 the time.

22 **MR. JOHN ADAIR:** Did any of those 23 people say, "I'm confused.  
23 Why are we getting these memos if you committed not to updating us?"

24 **MR. STEVE KANELLAKOS:** I don't recall that.

25 **MR. JOHN ADAIR:** On either the 7<sup>th</sup> of August or the 16<sup>th</sup>?

26 **MR. STEVE KANELLAKOS:** I don't remember.

27 **MR. JOHN ADAIR:** All right. Wouldn't you expect one of them to  
28 come forward and say, "Now I don't know what the reporting structure is because

1 previously you told us you wouldn't be updating and now you are."

2 **MR. STEVE KANELLAKOS:** No. I think what a member of council  
3 reading this -- again, you'd have to ask councillors that question, but my opinion is that if  
4 they were reading this, they'd be going "Great. We're getting an update soon on what's  
5 happening with trial running, a detailed update", which is what we committed to do.

6 **MR. JOHN ADAIR:** All right. Why was council not told in the  
7 course of this August 16<sup>th</sup> memo that that very day the criteria had to be lowered in  
8 order to ensure that the system could pass?

9 **MR. STEVE KANELLAKOS:** Mr. Adair, I believe I've answered  
10 that question in terms of what I told council I was going to do and what I ultimately did,  
11 but I can elaborate again if you wish me to.

12 **MR. JOHN ADAIR:** Sir, I'm asking about this specific memo, and I  
13 don't believe I've asked you this question. If I have, I apologize. The transcript will tell  
14 us one way or the other, but with respect to this specific memo, where council is given  
15 an update on August the 16<sup>th</sup>, my question is, why was council not told that on that very  
16 day, the criteria had been lowered in order to ensure the system could pass?

17 **MR. STEVE KANELLAKOS:** Again, my answer is what I had  
18 previously said. I wasn't going to advise council of the entire status of the trial running  
19 and the criteria until it was completed, and that's what I did.

20 **MR. JOHN ADAIR:** Okay. If we can go, please, to the August 23<sup>rd</sup>  
21 memo, and sorry, the doc ID is COW104291. And if we just go down -- sorry, sir, just to  
22 give us the context, this is the August 23<sup>rd</sup> memo that comes from you to mayor and  
23 council, correct?

24 **MR. STEVE KANELLAKOS:** That's correct.

25 **MR. JOHN ADAIR:** And this is the one that is intended to advise  
26 council not only that trial running was complete, but in fact of the performance during  
27 trial running and the results.

28 **MR. STEVE KANELLAKOS:** That's correct.

1                   **MR. JOHN ADAIR:** If we go down to the bottom of the first page,  
2 under the heading “Performance Targets”, just the second paragraph there, sir, it says,  
3 the first sentence:

4                                   “The City of Ottawa established targets for the trial  
5 running period that were based on industry best  
6 practices and focused on the two most important  
7 criteria: safety and customer dependability. For  
8 example, the target for system customer  
9 dependability was 96 per cent over 9 days during the  
10 12 days of continuous trial running days using various  
11 measurements across a variety of lenses, including,  
12 critically, a safety lens.” (As read)

13                   Just pausing there for a second, sir, why was council not told that in  
14 fact the City had established criteria of 98 per cent and then it had changed to 96?

15                   **MR. STEVE KANELLAKOS:** Mr. Adair, I never told council what  
16 the criteria was from the beginning, because, as I said, that criteria evolved as the  
17 testing went on, based on experts. There was nothing in the project agreement talking  
18 about criteria. I never advised council what the specific criteria was, because they were  
19 still being worked on up until trial running started.

20                   And again, I’m relying on people. As you established at the  
21 beginning, I’m not a light rail expert. I don’t have experience with light rail, so I’m relying  
22 on people who have run large systems globally and that provided their best advice in  
23 terms of what would satisfy the safety and reliability requirements of the project  
24 agreement. And that’s what the recommendation was, which I think was reasonable to  
25 accept based on their advice.

26                   **MR. JOHN ADAIR:** When you say the “recommendation”, you  
27 mean from the independent experts like STV?

28                   **MR. STEVE KANELLAKOS:** That’s correct.

1                   **MR. JOHN ADAIR:** Okay. We'll come back to that.

2                   **MR. STEVE KANELLAKOS:** They weren't the only ones.

3                   **MR. JOHN ADAIR:** Understood. We'll come back to that.

4                   If we can do to the next page, please, just above "trial running  
5 outcomes", sir, it says:

6                                   "RTG, as part of their trial running test plans,  
7 indicated they wanted to not only meet these targets,  
8 but exceed them. RTG targeted a figure of 98 per  
9 cent for service availability and wanted to assess if  
10 they could reach 98 per cent for the entire 12-day  
11 period." (As read)

12                   The reality, sir, is that the City actually agreed to -- prior to trial  
13 running, the City signed off on 98 per cent for 12 consecutive days. You're aware of  
14 that?

15                   **MR. STEVE KANELLAKOS:** I'm aware of it, but the confusion was  
16 that in May of 2017, the City and RTG signed off on the 9 of 12 days with 96 per cent as  
17 part of an RFI, and it seemed that the people changed that were in 2019 who made that  
18 agreement in 2017. So we basically had two agreed-upon versions of what the trial  
19 running would be.

20                   **MR. JOHN ADAIR:** Well, if you have an agreement in May of 2017  
21 and then a later agreement that changes the May 2017 to a different set of criteria, then  
22 you only have one agreement, right, the later one?

23                   **MR. STEVE KANELLAKOS:** No, but the ability -- as I said in the  
24 contract, they have the ability to change it as the testing progressed.

25                   **MR. JOHN ADAIR:** Right.

26                   **MR. STEVE KANELLAKOS:** That was their ability to do.

27                   **MR. JOHN ADAIR:** You have an agreement in July of 2019 to 98  
28 per cent for 12 consecutive days, and then you have an ability to change it, correct?

1                   **MR. STEVE KANELLAKOS:** That's right.

2                   **MR. JOHN ADAIR:** And you'd agree with me that -- I don't know if  
3 you've seen Mr. Holder's evidence, but Mr. Holder gave evidence that the City signed  
4 off on and agreed to 98 per cent for 12 consecutive day, and that's very different from  
5 what's stated in this paragraph, right? Because what's stated in this paragraph is RTG  
6 was targeting those figures, when the reality is the City had agreed to those figures.

7                   **MR. STEVE KANELLAKOS:** We had agreed to two figures, yes.

8                   **MR. JOHN ADAIR:** Right. And the 98 per cent and the 12  
9 consecutive days was the latest agreement the City had made with RTG, correct?

10                  **MR. STEVE KANELLAKOS:** Yes.

11                  **MR. JOHN ADAIR:** And council was not told there was an  
12 agreement that changed. They were told RTG hoped to meet some higher standard.

13                  **MR. STEVE KANELLAKOS:** Well, again, the standards -- or the  
14 criteria -- I shouldn't say the standards -- the criteria evolved, as it was allowed to do,  
15 during the testing process. There was a recognition that what RTG put forward -- and  
16 they recognized it themselves -- the 98 per cent was unreasonable for a new system to  
17 meet, and it could be reduced to 96 per cent without compromising safety and reliability.  
18 That was the assessment of the experts. That's who I relied on. That's who we relied  
19 on.

20                  **MR. JOHN ADAIR:** Just to be clear, I actually know what  
21 happened, because we've sat through ---

22                  **MR. STEVE KANELLAKOS:** I know.

23                  **MR. JOHN ADAIR:** --- many, many days of this and many formal  
24 interviews. I'm asking about what's written on the page and how that compares to what  
25 actually happened, and my suggestion to you, sir, just to put it very directly, is that this  
26 paragraph in particular misled council about what had happened with respect to the 98  
27 per cent and 96 per cent.

28                  **MR. STEVE KANELLAKOS:** No, I don't believe it misled council in

1 terms of what happened, because council was never advised what the criteria would be  
2 or that the criteria couldn't change in the project agreement. We never stated that to  
3 them. We never got into that level of detail.

4 **MR. JOHN ADAIR:** And when it says there in the second  
5 sentences, "RTG targeted a figure of 98 percent", that is inconsistent with the reality,  
6 which was that the parties had agreed on 98 per cent.

7 **MR. STEVE KANELLAKOS:** Yes, I'll agree with that.

8 **MR. JOHN ADAIR:** All right. Now, if I can take you, sir, please, to  
9 the -- we can leave the documents aside for a minute. During trial running, sir, I believe  
10 it was your evidence at your formal interview -- and I'm happy to show it to you -- that  
11 you found it mindboggling that RTG couldn't get 13 trains out on the line. Do you recall  
12 giving that evidence?

13 **MR. STEVE KANELLAKOS:** Yes.

14 **MR. JOHN ADAIR:** You were -- this is my word, but I think it's  
15 probably a fair one -- shocked and dismayed that RTG was unable to get 13 trains out  
16 on the line consistently.

17 **MR. STEVE KANELLAKOS:** After revenue service availability,  
18 yes.

19 **MR. JOHN ADAIR:** And also during trial running, correct?

20 **MR. STEVE KANELLAKOS:** I don't think that's what I was  
21 referring to. That's not the context I was referring to. The context for that comment was  
22 their inability, after they achieved certification, to consistently be able to maintain the  
23 number of trains that we had agreed to would go out every day on peak service. And  
24 that was what was mindboggling to me, that they couldn't get those out, and it was  
25 mindboggling to the consultants who I was discussing this with.

26 **MR. JOHN ADAIR:** Just bear with me one second, Mr. Kanellakos,  
27 please.

28 **(SHORT PAUSE)**

1                   **MR. JOHN ADAIR:** Sir, you'll recall that there was a proposal  
2 made during trial running. "Proposal" maybe makes it sound more formal than it was.  
3 There was a suggestion raised about the possibility of some sort of soft start or partial  
4 opening?

5                   **MR. STEVE KANELLAKOS:** Yes, I do.

6                   **MR. JOHN ADAIR:** And that was during trial running?

7                   **MR. STEVE KANELLAKOS:** That's -- yeah, I believe that was the  
8 period, yeah, but I remember it was raised with me.

9                   **MR. JOHN ADAIR:** Yeah. And that was something that the City  
10 rejected, correct?

11                   **MR. STEVE KANELLAKOS:** That's correct.

12                   **MR. JOHN ADAIR:** And if we go to your transcript, please; it's  
13 TRN31. And if we can go, please, to page 44 of the transcript, which is 45 using the  
14 PDF, just right to the top there, please. Ms. McGrann was asking you questions, just so  
15 you know, about the idea of a soft start or partial opening, just so you have the context.  
16 And that leads to her question at the top of page 44, "What could you tell me about the  
17 idea being floated?" And the idea is "soft start", "partial opening", you know, pick the  
18 language that you prefer. And then you begin to give your answer. At at line 19 -- and  
19 I'm happy for you to read the entirety of the answer, so just let me give you a moment to  
20 do that, sir, and you can tell us once you've finished through to line 14, there.

21                   **MR. STEVE KANELLAKOS:** Okay. I've read it.

22                   **MR. JOHN ADAIR:** If we can just scroll down now, please, so that  
23 we have the bottom of the page. Beginning at line 19, sir, you say:

24                                    "And the other thing, you know, that also reacted to is  
25                                    we're not running a New York subway with 6,000  
26                                    trains or London, England with 6,000 trains, or  
27                                    whatever their number is. We're talking about 13  
28                                    trains were supposed to roll out. And when you look

1 at the scope if it, it was -- to me, it was incredulous  
2 that they can't get a world-class organization like  
3 Alstom and the other people that are part of this  
4 consortium can't get 13 trains on one line. It's not  
5 even a multi-spur line. It's one line, east-west. So,  
6 for me, the suggestion that not only are we 15 months  
7 late on construction but, 'Gee, I don't think we can put  
8 out all the trains when I told you in the contract that  
9 this is when I want to put it out and, by the way, I want  
10 all the money to be paid for a service that isn't  
11 completely delivered,' I just could not -- I could not  
12 justify that from a taxpayer perspective, or just from a  
13 principle perspective, in terms of what they  
14 represented they would deliver, and I could not  
15 understand how they couldn't put 13 trains out on a  
16 single track. It -- to me, boggles -- and it still boggles  
17 my mind to this day that they can't do that." (As  
18 read).

19 I'm going to suggest to you that the context of your shock and  
20 dismay that they couldn't get the 13 trains out on the line was in the course of trial  
21 running and the proposal for a soft start; do you agree with me?

22 **MR. STEVE KANELLAKOS:** No, I -- when I read it there, I can  
23 see that I've -- that I integrated my feelings about post-launch in September with what  
24 we were talking about there. And I honestly left the -- a -- a conclusion that could come  
25 from reading that, but that's not what I was -- that's not what I intended. My intent was  
26 to talk about what happened after they launched. That's what I was -- what's in my  
27 mind, and that's what is still in my mind about their inability to maintain the required  
28 number of trains -- or certainly for the last two years on the track. That's what I was

1 talking about.

2 **MR. JOHN ADAIR:** All right. So in a question that was asking  
3 about ideas that were proposed during trial running, you integrated your feelings about  
4 what happened after trial running and gave that as part of your answer?

5 **MR. STEVE KANELLAKOS:** Yeah, it was a -- my answer was a  
6 little sloppy in that I went forward in time versus the time period that was referred to.

7 **MR. JOHN ADAIR:** And not something that was part of the  
8 corrections that you delivered to the Commission shortly before your evidence today?

9 **MR. STEVE KANELLAKOS:** No.

10 **MR. JOHN ADAIR:** All right. Can you take that down, please? If  
11 we can go, please, to COW104351. And Mr. Kanellakos, I want to give you a minute to  
12 read this over and you can sort of direct us to scroll up and down as needed, just to give  
13 you an opportunity to refresh your memory about what prompted your email to  
14 Councillors Leiper and Nussbaum in early January of 2018, okay?

15 **MR. STEVE KANELLAKOS:** Okay, I'm just reading it to try and  
16 flag it in my memory. Okay, I've read it.

17 **MR. JOHN ADAIR:** If we can go to the first page, please. And  
18 then there's a memo that you authored January 11<sup>th</sup> of 2018 to those councillors,  
19 correct?

20 **MR. STEVE KANELLAKOS:** Yes.

21 **MR. JOHN ADAIR:** And just pausing there for a minute, sir, do you  
22 recall, generally, that one of the issues the councillors were raising with you was some  
23 degree of questioning or concern about the sharing of information in terms of who was  
24 getting what information and when?

25 **MR. STEVE KANELLAKOS:** I'd have to read it. I'm just trying to  
26 refresh my memory because I don't recall this one now, just off the top of my head, Mr.  
27 Adair.

28 **MR. JOHN ADAIR:** Sure, if we -- just to give you this -- the precise

1 context for the question I've just asked, if we can go to page 8 of 10, which is page 6 of  
2 the memo. And, sir, questions that are marked there as 5 and 7, if you can just take a  
3 minute to read those questions and answers to yourself, please.

4 **MR. STEVE KANELLAKOS:** Okay.

5 **MR. JOHN ADAIR:** And similarly, if just read question 8. I don't  
6 think you need the answer, although you're free, of course, to read as much or as little  
7 as you'd like. If you can just read question 8.

8 **MR. STEVE KANELLAKOS:** Okay.

9 **MR. JOHN ADAIR:** And you'd agree with me, sir, that in early-  
10 January of 2018, late-December of '17, councillors were raising questions, and some  
11 might even say concerns, about the sharing of information with respect to the project,  
12 correct?

13 **MR. STEVE KANELLAKOS:** They were raising questions but I  
14 don't see the -- I'm sorry, I -- from what I'm reading, I'm not seeing the raising of  
15 concerns about information. Could you please point ---

16 **MR. JOHN ADAIR:** All right.

17 **MR. STEVE KANELLAKOS:** --- to that?

18 **MR. JOHN ADAIR:** They were asking questions about who had  
19 what information and when, correct?

20 **MR. STEVE KANELLAKOS:** Yes, but I didn't see that as  
21 concerns.

22 **MR. JOHN ADAIR:** All right. At a minimum, given that councillors  
23 were raising these kinds of questions, you understood that Council -- this was a very  
24 important project and Council wanted to ensure full information and transparency,  
25 agreed?

26 **MR. STEVE KANELLAKOS:** These two councillors were asking  
27 the question. It wasn't all of Council. There were two specific Councils I responded to.

28 **MR. JOHN ADAIR:** Okay. At least some councillors wanted to

1 ensure full transparency and information sharing with respect to this project; do you  
2 agree?

3 **MR. STEVE KANELLAKOS:** Yes, two of them.

4 **MR. JOHN ADAIR:** And if we can go to the next document I want  
5 to show you now, it's COW529881. This is a memo of August 13<sup>th</sup>, 2018, sir. And I  
6 don't need to ask you anything about the specific content beyond just the opening  
7 words of the memo. You'll see there reference to an ongoing commitment to keep  
8 Council apprised of all progress -- sorry, of the progress of the O-Train, Confederation  
9 Line Stage 1 and Stage 2 Projects; do you see that?

10 **MR. STEVE KANELLAKOS:** Yes.

11 **MR. JOHN ADAIR:** And there had been, in fact, an ongoing  
12 commitment to keep Council informed, correct?

13 **MR. STEVE KANELLAKOS:** Yes, prefaced by the commitment of  
14 what we were going to tell them, so absolutely. We were -- we did what we said we  
15 were going to do, as I did continuously with respect the trial running period.

16 **MR. JOHN ADAIR:** And sir, what did that ongoing commitment  
17 actually mean in practice and why was it important?

18 **MR. STEVE KANELLAKOS:** Well, in practice, the Council  
19 received many updates other than just these memos. There were about 150 memos  
20 over the life of the project. In 2018, staff appeared -- I appeared with staff at eight out of  
21 eight FEDCO meetings. In 2019, we appeared in, I think it was, eight out of 10 FEDCO  
22 meetings. So in practice, Mr. Adair, we were regularly updating Council on the progress  
23 as they requested when they requested it.

24 **MR. JOHN ADAIR:** And not just when they requested it, sir, but  
25 also, you were updating Council when any matter came to your attention that you  
26 thought was sufficiently important that Council should be aware?

27 **MR. STEVE KANELLAKOS:** Yes, and I was also directed by  
28 Council to come to, I believe, was at one point, every FEDCO meeting with an update,

1 which I fulfilled.

2 **MR. JOHN ADAIR:** Right. And if we could go, please, just to one  
3 more document on this? The document ID is COW104444.

4 **--- EXHIBIT No. 243:**

5 COW0104444 – City of Ottawa Memo from City Manager to  
6 Mayor and Members of Council 24 January 2018

7 **MR. JOHN ADAIR:** And Mr. Kanellakos, you'll have there on your  
8 screen from you to mayor and Council, January 24, 2018. And if you just take a minute  
9 to read it to yourself, it's quite short.

10 **MR. STEVE KANELLAKOS:** Yes, I read it.

11 **MR. JOHN ADAIR:** And what had happened was, RTG was  
12 required to advise the City by January 24<sup>th</sup> whether they would be able to meet the May  
13 2018 RSA date, correct?

14 **MR. SEVE KANELLAKOS:** That's correct.

15 **MR. JOHN ADAIR:** And then they requested an extension of  
16 roughly two weeks, to February 6<sup>th</sup>?

17 **MR. STEVE KANELLAKOS:** That's right.

18 **MR. JOHN ADAIR:** And you felt that RTG asking for an extension  
19 of two weeks to the time by which they had to confirm RSA was sufficiently important  
20 that Council should be informed?

21 **MR. STEVE KANELLAKOS:** Yes.

22 **MR. JOHN ADAIR:** And I would suggest to you that providing  
23 Council with proper and timely information is what allows Council to exercise the  
24 oversight role that it has after giving the delegation of authority; do you agree with that?

25 **MR. STEVE KANELLAKOS:** I agree with that; however, proper  
26 timely information has different meanings depending on the context and the time and  
27 what the commitments are made to Council. So it's not black and white. It's the  
28 judgement applied and it also has to be consistent with what Council is told about when

1 they're going to receive information and what the expectations they have around that.

2 **MR. JOHN ADAIR:** Could not agree with you more, sir, that it  
3 requires a consideration of context to determine what Council should be told and what  
4 they should not be told. And in January of 2018, they were getting updates about  
5 matters such as a two-week extension by which RTG would confirm a particular date,  
6 and yet, by August of 2019, they're not being told that trial running is going poorly and  
7 the criteria have to be changed. How do you explain that, sir?

8 **MR. STEVE KANELLAKOS:** Because as I said earlier, the testing  
9 criteria for the trial running is a process. It's over a period of time. It's not a day-to-day  
10 reporting. It's about getting to the end and making a determination if the exam, the  
11 exercise, the process was passed or not.

12 What happens in that process, that period, on a daily basis, is not  
13 relevant with respect to the final outcome, because the final outcome is what is at final --  
14 it's a determination of whether this system can be run or not. In this case, it's black and  
15 white in that they promised a date, they didn't deliver on that date, and there's a new  
16 date, which we made public.

17 On the trial running, I was clear -- and why I told them that we  
18 wouldn't be reporting -- it was -- why I told them that we would report at the end of it was  
19 specifically because all the advice that told me that there's going to be good days,  
20 there's going to be bad days, and that we'll report out when all the data is accumulated  
21 and Council can get all the information at one time to make that assessment, which is  
22 what I did. I delivered on the commitment I made to Council with respect to that.

23 **MR. JOHN ADAIR:** Not quite, sir, right, because there's just one  
24 part that I think you may have overlooked, which is the mayor and Mr. Hubley were  
25 getting daily updates with respect to all these matters that you said are unimportant,  
26 right?

27 **MR. STEVE KANELLAKOS:** Yes.

28 **MR. JOHN ADAIR:** And so it's not quite the case that you

1 committed not to informing Council and then followed through on that commitment.  
2 What you did was inform some members of Council and not others, correct?

3 **MR. STEVE KANELLAKOS:** Again, that's correct, but again,  
4 there's context to that in terms of the mayor and the chair in our system of governance.

5 **MR. JOHN ADAIR:** Sure. Go ahead.

6 **MR. STEVE KANELLAKOS:** Thank you. Well, the -- you know,  
7 I've been doing this role, I've been working for municipalities for 37 years, for the last  
8 30, in increasing roles with mayors, 7 councils and 7 mayors, and I also have  
9 colleagues across the country in the large cities with city managers, so it's not -- it's the  
10 norm to be updating the mayor. This happens in every city. It's a common practice to  
11 provide the mayor information, and the way our system of government here locally with  
12 the standing committee chair has evolved with standing committee chairs do get  
13 information on files that they're responsible for. That is the milieu, the environment, the  
14 operating environment we work in. All of councillors are aware of that. The chair  
15 certainly received that information of all the standing committees, the seven, eight  
16 standing committees, and the mayor is, it's a normal practice and it's a common  
17 business practice that the mayor receives updates in any city that I'm aware of with any  
18 other city manager.

19 **MR. JOHN ADAIR:** And the mayor and Councillor Hubley as well,  
20 so how do we get Councillor Hubley in the next -- help us with that context, please?

21 **MR. STEVE KANELLAKOS:** Well, the same. Well, I actually  
22 stated that, but I'll repeat, is that the system has evolved here over the last 20 years  
23 since amalgamation with standing committee chairs, and this puts seven or eight of  
24 them do receive updates and briefings from staff in their role as chairing the committee  
25 and in their role as managing, having oversight for the file and chairing those  
26 committees. And so that's been made common business practice, the governance  
27 structure, that staff work within at the City of Ottawa, and it's not unlike any other city in  
28 the country. And it's been the same way like that ever since I've been in municipal

1 government. That has never changed. I've never worked with a mayor or a chair that  
2 wasn't receiving information for the files they're responsible for.

3 And the mayor, head of Council -- I know this has come up before  
4 as a CEO, he's also the spokesperson for Council, and he also chairs Council and  
5 FEDCO, so he has a different role in terms of the City and talking about the *Municipal*  
6 *Act*, in terms of how the practices have evolved with respect to the information he  
7 receives by staff.

8 **MR. JOHN ADAIR:** All right. And sir, do you have knowledge of  
9 what the *Municipal Act* says and does with respect to the mayor's role?

10 **MR. STEVE KANELAKOS:** Yes.

11 **MR. JOHN ADAIR:** Right. And you're aware that the *Municipal Act*  
12 imposes a statutory obligation on the mayor to keep the rest of  
13 Council informed?

14 **MR. STEVE KANELAKOS:** That is in the *Municipal Act*. That's  
15 correct.

16 **MR. JOHN ADAIR:** Right. And just pausing there, sir, I take it  
17 what you're telling the Commission is that the frequent updates that the mayor and  
18 Councillor Hubley were receiving through the WhatsApp chat group, those updates are  
19 perfectly appropriate because they represent, effectively, briefings to the chair of  
20 FEDCO and the chair of the Transit Commission?

21 **MR. STEVE KANELAKOS:** Well, I wouldn't say they were  
22 briefings. Briefing is a different connotation in terms of how we use briefing here, Mr.  
23 Adair. It was basically a running conversation, the equivalent to what I would say would  
24 historically, would have been phone calls advising them in terms of what was  
25 happening.

26 **MR. JOHN ADAIR:** And then it was -- and thank you for the  
27 clarification. I'll avoid using the word "briefings". It was then up to the mayor and  
28 Councillor Hubley to decide whether and when to update FEDCO and the Transit

1 Commission, respectively, correct?

2 **MR. STEVE KANELLAKOS:** It is up to the mayor and the chair  
3 whether they wish to do that.

4 **MR. JOHN ADAIR:** And so to the extent that the information was  
5 necessary and important but not passed on to the rest of FEDCO or the Transit  
6 Commission, the decision not to pass it on was made by the mayor and Councillor  
7 Hubley and them alone, correct?

8 **MR. STEVE KANELLAKOS:** I can't speak to that on behalf of the  
9 mayor or Councillor Hubley.

10 **MR. JOHN ADAIR:** That was not my question.

11 **MR. STEVE KANELLAKOS:** Well ---

12 **MR. JOHN ADAIR:** You didn't participate in the decision about  
13 what to share with FEDCO and the Transit Commission, correct?

14 **MR. STEVE KANELLAKOS:** Yeah, that's what I was trying to say.  
15 I wasn't involved in any discussions about whether to share or not share information,  
16 other than the role I had and what I was going to tell Council and when.

17 **MR. JOHN ADAIR:** Right. And in terms of sort of scope of  
18 authority and who gets to decide what, it would be for the mayor, as chair of FEDCO, to  
19 decide what to share with the rest of FEDCO; and it would be for Mr. Hubley to decide,  
20 as chair of the Transit Commission, what to share with the rest of the Transit  
21 Commission?

22 **MR. STEVE KANELLAKOS:** Yes.

23 **MR. JOHN ADAIR:** Thank you. We can -- sorry, Mitchell, we can  
24 take that document down. Thank you.

25 Let me move past, Mr. Kanellakos, the issue of information sharing  
26 and talk to you about specifically, decision making, which I'm going to suggest to you is  
27 different from information sharing, although information sharing, of course, is a part of it.

28 The -- Mr. -- well, sorry, excuse me -- Mayor Watson testified on

1 Thursday before the Commission. You're aware of that?

2 **MR. STEVE KANELLAKOS:** Yes, I am.

3 **MR. JOHN ADAIR:** And he told the Commission that the updates  
4 that were provided through the WhatsApp chat represent simply sharing of information  
5 back and forth among the decision makers. Were you aware of that?

6 **MR. STEVE KANELLAKOS:** Not specifically, no.

7 **MR. JOHN ADAIR:** All right. And then he also testified that the  
8 July 10<sup>th</sup> decision to tell Council that they would only be -- there would only be a report  
9 back after trial running, that that specific decision was made by not just you, but also by  
10 Mayor Watson and Councillor Hubley; were you aware of that?

11 **MR. STEVE KANELLAKOS:** I don't recall that. I believe that was  
12 my decision.

13 **MR. JOHN ADAIR:** All right. Let me just show you, if I can,  
14 specifically what the Mayor had to say about this.

15 If we can go to the June 30<sup>th</sup> transcript, please. And if we can go to  
16 page 196 of 300 using the PDF which will take us to page 190 of the transcript.

17 And Mr. Kanellakos, I'm going to take you to line 10. Asking about  
18 this July 10<sup>th</sup> commitment not to update Council, I said to Mr. M  
19 ayor:

20 "And sir, when you say we decided not to update  
21 Council or we made a commitment not to provide  
22 information to Council until the process was over, who  
23 is the 'we' in that scenario?"

24 The Honourable Mayor Watson answered:

25 "Well, it's the people on the WhatsApp chat, the  
26 decision makers -- Mr. Kanellakos, Mr. Manconi, my  
27 chief of staff, and my director of issues management."

28 And then at line 16, the question from me:

1 "And yourself and Mr. Hubley?"

2 And then at line 17, the Mayor answers, "Yes."

3 Do you see all that?

4 **MR. STEVE KANELLAKOS:** I do.

5 **MR. JOHN ADAIR:** And those were in fact the people that were  
6 participating in those decisions, correct?

7 **MR. STEVE KANELLAKOS:** I don't recall that conversation, Mr.  
8 Adair. So the Mayor said it; that's his recollection. I don't have a recollection of a group  
9 of people getting together to decide when we would provide updates to Council. I just  
10 don't.

11 **MR. JOHN ADAIR:** All right. So you defer to the Mayor on that  
12 because you can't recall the conversation?

13 **MR. STEVE KANELLAKOS:** That's correct.

14 **MR. JOHN ADAIR:** And you agree with me, sir, that the decisions  
15 about this project in terms of how and when to update Council and how to deal with  
16 RTG, et cetera, those were decisions that were delegated to you and you alone?

17 **MR. STEVE KANELLAKOS:** Can you repeat the question? I'm  
18 sorry.

19 **MR. JOHN ADAIR:** Yes. The delegation of authority that we  
20 looked at the outset of this examination delegated to you and you alone authority over  
21 decision making with respect to this project, correct?

22 **MR. STEVE KANELLAKOS:** Yes.

23 **MR. JOHN ADAIR:** Not to you, the Mayor's chief of staff, the  
24 Mayor, and Councillor Hubley?

25 **MR. STEVE KANELLAKOS:** That's right.

26 **MR. JOHN ADAIR:** And so you agree with me that the actual -- the  
27 fact that the decisions were made by that group of people was inconsistent with the  
28 delegation of authority?

1                   **MR. STEVE KANELLAKOS:** No, I wouldn't say that. I think that  
2 they're having conversations, if that's in fact what happened. They're having  
3 conversations about, you know, when information would go to committee or Council.  
4 But that was the decision that would have been made in advance of the trial running  
5 starting, in terms of for the reasons that I would assume would be the reasons that I  
6 stated earlier about why we want to just finish the trial running and all the information at  
7 once.

8                   But as I said, I don't recall that particular interaction. I just don't  
9 recall that.

10                  **MR. JOHN ADAIR:** All right. Let me state my question slightly  
11 differently. To the extent that the Commissioner comes to the conclusion that the Mayor  
12 and Mr. Hubley were participating in decision making with regards to when Council  
13 should be updated, what Council should be told, and how to deal with RTG during trial  
14 running, that would be inconsistent with the delegation of authority, correct?

15                  **MR. STEVE KANELLAKOS:** No, because I think that the Mayor  
16 and Mr. Hubley can still come to decisions and do it through the political process in  
17 terms of how they want to execute the decision.

18                  **MR. JOHN ADAIR:** And what would that political process be, just  
19 pausing there? I'm going to let you answer, but I want to just pause there and ask you  
20 that.

21                  When you say, "through the political process", what does that  
22 mean?

23                  **MR. STEVE KANELLAKOS:** Well, they have to go back either to  
24 their committees to have that discussion. But the notion is that, you know, under the  
25 delegated authority that I have was something imposed on me, here or any other time,  
26 against my own judgement. And I'd say "No" because my judgement was that we  
27 should be advising Council after it's all complete for the reasons that I said. Giving day-  
28 to-day updates serve no purpose until it's complete.

1                   So my judgement was not impacted by anything that they did or my  
2 delegated authority wasn't impacted by anything they did.

3                   **MR. JOHN ADAIR:** And sir, just let me be very clear with you  
4 because I don't want us to be under any misapprehension about what my question is.

5                   I'm not suggesting that something was imposed on you. My  
6 suggestion is this. If the Commissioner finds that the Mayor and Councillor Hubley  
7 participated in the decision making, that would be inconsistent with the delegation of  
8 authority which gave the decision making to you and you alone; do you agree with that?

9                   **MR. STEVE KANELLAKOS:** No.

10                  **MR. JOHN ADAIR:** All right. Is it, sir, acceptable that on any file of  
11 any importance within the City that decisions would be made by not by staff to whom  
12 the authority had been delegated but rather by staff plus a couple of hand-picked  
13 councillors? Is that acceptable?

14                  **MR. STEVE KANELLAKOS:** Again, it's not a simple yes or no  
15 answer. I'm sorry. I'd have to expand on that answer whether it's acceptable. That's  
16 not what happens in terms of our process of how a policy is created at the City. There's  
17 an interaction between -- if you allow me to finish -- but I'm in your hands, Mr. Adair.

18                  **MR. JOHN ADAIR:** Mr. Kanellakos, we're here to hear your  
19 evidence.

20                  **MR. STEVE KANELLAKOS:** Thank you.

21                  Yeah, as I said earlier, the committee chairs have a role that's  
22 evolved over time. They are briefed. They do participate in discussions of what's going  
23 to come to committee. They do have input on policy before it comes to committee. And  
24 in this case, you know, the decision making and the forum that Mayor Watson and Mr.  
25 Hubley or any other chair of the committee has, is to go back to Council and direct and  
26 get the votes to change my delegated authority, amend it, restrict it, or tell me to do  
27 something differently. That's how -- when I talked about the political process, that's how  
28 they impose their will on the administration. That's how Council does it.

1                   **MR. JOHN ADAIR:** Okay. That's how Council -- if the Mayor and  
2 Councillor Hubley want to actually participate in decision making and have a vote, if you  
3 will, that's how they do it?

4                   **MR. STEVE KANELLAKOS:** Yes.

5                   **MR. JOHN ADAIR:** All right. Thank you.

6                   Mr. Commissioner, I know it; a little early but ---

7                   **COMMISSIONER HOURIGAN:** No, no. It's 10:30, so we'll take  
8 the morning break.

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

10                   The Commission will recess for 15 minutes.

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

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

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

14                   The hearing has resumed.

15 **--- MR. STEVE KANELLAKOS, Resumed:**

16                   **MR. JOHN ADAIR:** Thank you, Mr. Commissioner.

17 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR (cont'd):**

18                   **MR. JOHN ADAIR:** I'm just going to, Mr. Kanellakos, call up a  
19 couple of documents now starting with -- and ask you about them -- starting with  
20 COW366. And Mr. Kanellakos, this is a draft memo of July 31<sup>st</sup>, 2019, from Mr.  
21 Manconi to Mayor and Council as well as the Transit Commission.

22                   Do you recall seeing this in preparation for giving evidence today?

23                   **MR. STEVE KANELLAKOS:** Yes.

24                   **MR. JOHN ADAIR:** And sir, let me just ask you quickly about one  
25 issue. If we can just scroll down towards the bottom of the first page. Do you see there,  
26 sir, there's the track changes markups?

27                   **MR. STEVE KANELLAKOS:** Yes.

28                   **MR. JOHN ADAIR:** Do you, sir, recall whether you and Mr.

1 Manconi discussed a draft of this memo?

2 **MR. STEVE KANELLAKOS:** Can you just scroll up? Sorry, Mr.  
3 Adair, to the top just so I can read it again? I'm sorry.

4 **MR. JOHN ADAIR:** That's okay, Mr. Kanellakos. And sir, please  
5 direct us as you need, okay, for the scrolling.

6 **MR. STEVE KANELLAKOS:** It just saves me from going through  
7 my binder.

8 **(SHORT PAUSE)**

9 **MR. STEVE KANELLAKOS:** Okay. I'm sorry. I'm oriented now.  
10 Thank you.

11 **MR. JOHN ADAIR:** Just to come back to my question now, which  
12 is, do you recall discussing a draft of this memo with Mr. Manconi?

13 **MR. STEVE KANELLAKOS:** Yes.

14 **MR. JOHN ADAIR:** And do you know whether the edits that we  
15 see in the track changes on the screen are a result of your conversation with Mr.  
16 Manconi?

17 **MR. STEVE KANELLAKOS:** I don't believe they are. I didn't get  
18 into the detail of the draft memo with Mr. Manconi. It was a very short conversation  
19 about this memo.

20 **MR. JOHN ADAIR:** All right. And I take it that the short  
21 conversation was he presented the memo to you and you reminded him of the  
22 commitment you say you had made not to update council.

23 **MR. STEVE KANELLAKOS:** That's correct.

24 **MR. JOHN ADAIR:** And then the memo was not sent.

25 **MR. STEVE KANELLAKOS:** That's correct.

26 **MR. JOHN ADAIR:** And in terms of the information that is being  
27 provided in this memo -- or draft memo, rather -- you'll agree with me that the mayor  
28 and Councillor Hubley essentially had all of this information?

1                   **MR. STEVE KANELLAKOS:** Oh, yes. From what I understand,  
2 they would have been informed from that group chat, yes.

3                   **MR. JOHN ADAIR:** And when you told Mr. Manconi not to send  
4 the memo because of that earlier commitment that was made, did you at the time  
5 consider that certain councillors had previously asked questions about the sharing of  
6 information and requested to be kept fully informed?

7                   **MR. STEVE KANELLAKOS:** No, because the -- again, I go back  
8 to the principle that what we said -- and it's what I said to Mr. Manconi -- the concept  
9 was we would report out when it's finished. Reporting out on a day-by-day basis, or  
10 even on multiple days, would serve council no relevant purpose because the obvious  
11 question that would have to be asked is "Okay, well, you didn't have three good days.  
12 What's happening to the rest of the 20 days?" Until you finish, there's no way to make  
13 an assessment if things are going well or not; it's too premature. So I felt -- when Mr.  
14 Manconi brought this, I said, "You're basically bringing information that we said we  
15 wouldn't bring to the end until they had all information, not partial information." So to  
16 answer your question about the councillors -- and I think that was dated back over a  
17 year before, in 2018 -- I didn't connect those two memos, obviously.

18                   **MR. JOHN ADAIR:** Forgive me, but did you not -- sorry. You're  
19 not suggesting, I take it, that the desire for information to be kept fully informed that  
20 existed in January of 2018 somehow changed in the summer of 2019, are you?

21                   **MR. STEVE KANELLAKOS:** No. What I'm suggesting is that I  
22 made it clear to council what I was going to do, and I did what I said I was going to do.  
23 That's all I can offer, Mr. Adair.

24                   **MR. JOHN ADAIR:** All right. Any discussion of whether the  
25 information in this memo should go to council? Any discussion of that with the mayor or  
26 Councillor Hubley or Mr. Arpin?

27                   **MR. STEVE KANELLAKOS:** No. I don't believe I ever discussed  
28 this, and I was on record before. I don't believe I ever discussed this with any of them

1 when John brought me this memo. He came to my office. I think we were my board  
2 room, where I am right now, and it was a very brief conversation. He said, "I'm thinking  
3 we need to send a memo." I said, "What did we tell council we were going to do?" And  
4 he said, "We told them we'd tell them at the end of the trial running", and I said,  
5 "Exactly. You need to have the complete picture, John, before we start sharing partial  
6 information." And that was kind of the gist of the conversation. It was no longer than  
7 that.

8 **MR. JOHN ADAIR:** And ---

9 **MR. STEVE KANELAKOS:** I'm sorry. And I went on record with  
10 council twice in public and in the media stating the exact same thing.

11 **MR. JOHN ADAIR:** And sir, do you agree with me, in retrospect,  
12 that it would have been helpful to share this information with council so that if they did  
13 have questions and they did want to participate in decision-making, they could do so?

14 **MR. STEVE KANELAKOS:** No, I don't agree with that at all, for  
15 the same reasons that I've enunciated before. It's actually a disservice to council to  
16 give them partial information.

17 **MR. JOHN ADAIR:** Are you aware that certain councillors strongly  
18 disagree with the suggestion that it would be a disservice to them to send this memo?

19 **MR. STEVE KANELAKOS:** I'm aware there's a few, but there's  
20 23 people on council. I'm not aware of what everybody on council thinks.

21 **MR. JOHN ADAIR:** Understood. And I take it you acknowledge  
22 that, for example, when Councillor Deans says it's appalling that she didn't receive this  
23 information as a member of council -- I take it you would agree with me that, as far as  
24 you're aware, she's giving that view in good faith.

25 **MR. STEVE KANELAKOS:** That's her view, yes. I'm not  
26 questioning that.

27 **MR. JOHN ADAIR:** And do you agree with me that now, in  
28 retrospect, hearing that at least some members of council wanted that information, it

1 would have been preferable to share it with them?

2 **MR. STEVE KANELLAKOS:** No, I disagree with that completely. I  
3 think that council -- and that's a judgement we apply and I apply all the time: when is the  
4 best time and what information does council need so that they can make their  
5 decisions? It's not black and white, and in this case, council needed to have all of the  
6 information, not just a few days of information. I still firmly believe that.

7 **MR. JOHN ADAIR:** If we can go to another document, please, it's  
8 COW104288.

9 **--- EXHIBIT No. 244:**

10 COW0104288 – Draft City of Ottawa Memo from General  
11 Manager to Mayor and Members of Council et al. 16 August  
12 2019

13 **MR. JOHN ADAIR:** Now, Mr. Kanellakos, I just want to clarify  
14 something for you for context, okay? Because there are two August 16<sup>th</sup>, 2019, memos  
15 and I don't want to have confusion between us.

16 **MR. STEVE KANELLAKOS:** Yes.

17 **MR. JOHN ADAIR:** This is one that was not sent, okay?

18 **MR. STEVE KANELLAKOS:** Yes.

19 **MR. JOHN ADAIR:** And you'll see here -- I'm going to call this a  
20 draft memo as well because it wasn't sent. It's a draft memo from Mr. Manconi to  
21 council as well as the Transit Commission. And just to give you some flavour for what  
22 was in this memo, it's further to the July 27<sup>th</sup> memo that announced the start of trial  
23 running. In the third paragraph -- this is August the 16<sup>th</sup>, so the day the criteria were  
24 changed -- the third paragraph says:

25 "RTG has made significant progress on all elements.  
26 However, to achieve RSA, outstanding work of  
27 varying degrees remains. This includes the  
28 successful completion of trial running, the objective of

1 which is to complete 12 consecutive days of regularly  
2 scheduled service and to confirm system readiness  
3 for passenger service by exercising the Confederation  
4 Line system at full functionality.” (As read)

5 And the memo goes on, and the gist of it is that more time was  
6 required in order to be able to complete trial running, correct?

7 **MR. STEVE KANELLAKOS:** Yes. Based on what RTG advised  
8 us, that’s correct.

9 **MR. JOHN ADAIR:** And the memo that was actually sent on the  
10 16<sup>th</sup> of August did not say that. In fact, it said trial running was going well and that there  
11 would be a further update on August the 23<sup>rd</sup>. Do you remember that?

12 **MR. STEVE KANELLAKOS:** Could you show me that one?

13 **MR. JOHN ADAIR:** Sure. Just let me get the document ID, Mr.  
14 Kanellakos. Bear with me one minute. It’s COW104291. I’m sorry; I’ve got the wrong  
15 document. I apologize, Mr. Commissioner and Mr. Kanellakos. It’s RTC759323.1.2.  
16 This is the memo that was sent, Mr. Kanellakos, that we looked a little bit earlier. The  
17 first paragraph says there’s going to be a further update. Second paragraph says  
18 significant progress has been made, and “We’re running the system at full functionality  
19 and it’s complex and rigorous with high-performance standards” and all that. I’m  
20 paraphrasing, of course.

21 **MR. STEVE KANELLAKOS:** Right.

22 **MR. JOHN ADAIR:** And you’d agree with me that telling council  
23 that everything is going well and “We’ll have an update soon” is not the same as saying,  
24 “In fact, we need more time.”

25 **MR. STEVE KANELLAKOS:** Which memo are you referring to,  
26 Mr. Adair, the first one or the second one? I’m sorry.

27 **MR. JOHN ADAIR:** So this memo, which was actually sent ---

28 **MR. STEVE KANELLAKOS:** Yes.

1                   **MR. JOHN ADAIR:** --- tells council that everything is going well  
2 and that there will be an update in the coming days.

3                   **MR. STEVE KANELLAKOS:** Basically these say significant  
4 progress is being made. I'm not saying the words "everything is going well".

5                   **MR. JOHN ADAIR:** I'm going to ask you to agree with me that any  
6 person reading those two paragraphs is going to think that everything is going just fine.  
7 Do you agree with that?

8                   **MR. STEVE KANELLAKOS:** No.

9                   **MR. JOHN ADAIR:** You disagree with that under oath.

10                  **MR. STEVE KANELLAKOS:** Well, it says -- well, you said -- I'm  
11 sorry. I'm not going to be argumentative. All I can say is that "RTG has made  
12 significant progress during the trial running period." I don't interpret that -- but that's my  
13 own personal opinion -- that that means everything is going well. Progress -- it's  
14 progressing. That's a different context for me in my world.

15                  **MR. JOHN ADAIR:** Under high-performance standards in a  
16 complex and rigorous progress, right?

17                  **MR. STEVE KANELLAKOS:** Well, I still -- that's the way I interpret  
18 it. I'm sorry. That's my interpretation of that word.

19                  **MR. JOHN ADAIR:** All right. Let's go back, if we can, to the draft  
20 memo, which is COW104288. And Mr. Kanellakos, I want to give you as much time as  
21 you need to familiarize yourself with the content of this. Let me ask my question and, if  
22 you need time, you'll tell me.

23                  **MR. STEVE KANELLAKOS:** Okay.

24                  **MR. JOHN ADAIR:** The question, sir, is, why this particular draft  
25 was not sent?

26                  **MR. STEVE KANELLAKOS:** I don't know.

27                  **MR. JOHN ADAIR:** Did you participate in the decision not to send  
28 it?

1                   **MR. STEVE KANELLAKOS:** I don't recall seeing this particular  
2 draft of the memo, and I don't recall participating in it. I just don't remember that.

3                   **MR. JOHN ADAIR:** All right. And do you recall whether there was  
4 any discussion of this draft with anybody else who was part of the decision-making  
5 group, the -- Councillor Hubley, Mayor Watson, yourself, and Mr. Manconi?

6                   **MR. STEVE KANELLAKOS:** Well, I wouldn't characterize them as  
7 a "decision-making group", based on my understanding of it, but I'm not aware of who  
8 discussed or who saw this -- this draft memo. It's not unusual to craft a draft and it's  
9 amended by the author, but I was not -- I do not have any recollection of seeing this one  
10 until I saw it recently when it was sent to me.

11                   **MR. JOHN ADAIR:** All right. Can we take that down, please? If  
12 we go, please, to COM51.

13 **--- EXHIBIT No. 245:**

14                                   COM0000051 – City of Ottawa FEDCO Minutes of Meeting  
15                                   No. 34 6 February 2018

16                   **MR. JOHN ADAIR:** This is a meeting of the -- of FEDCO from  
17 February of 2018, Mr. Kanellakos, and these are the meeting minutes of February 6,  
18 2018.

19                   **MR. STEVE KANELLAKOS:** Yes.

20                   **MR. JOHN ADAIR:** And if we can go down to the second page,  
21 you'll see the first item on the agenda was the LRT Project.

22                   **MR. STEVE KANELLAKOS:** Yes.

23                   **MR. JOHN ADAIR:** And -- just bear with me, Mr. Kanellakos --  
24 you'll see that your name appears on the last paragraph on page 2 as having been  
25 present in order to provide FEDCO with information?

26                   **MR. STEVE KANELLAKOS:** Yes.

27                   **MR. JOHN ADAIR:** All right. Just above that, sir, it says:

28                                   "Mayor Watson provided opening remarks on the

1 process of the LRT, now known as the Confederation  
2 Line. He announced the Confederation Line will open  
3 by the end of November 2018.” (As read).

4 That’s Mayor Watson announcing to FEDCO?

5 **MR. STEVE KANELLAKOS:** Yes.

6 **MR. JOHN ADAIR:** And you’ll agree that Mayor Watson was, at  
7 different times throughout the progress of the Confederation Line, announcing various  
8 RSA dates, correct?

9 **MR. STEVE KANELLAKOS:** As provided by RTG, yes.

10 **MR. JOHN ADAIR:** Right. And I’m going to suggest to you that  
11 when he was doing that, that the effect of that was to tie his own credibility -- to a  
12 degree, to tie his own credibility to meeting those RSA dates?

13 **MR. STEVE KANELLAKOS:** I can’t speak -- I can’t speak to the  
14 motivation other than to say that if RTG provided the date, we had a responsibility to  
15 provide it publicly because it would public. It’s not secret information when they provide  
16 that information to us. But I can’t speak to what was in the mind of Mayor Watson.

17 **MR. JOHN ADAIR:** Just to be clear, I’m not asking you what was  
18 in the mind of Mayor Watson. I’m asking about the consequences of what was  
19 happening. And I’m going to suggest to you that these various RSA dates that were  
20 missed -- you’re aware, of course, that there were something like four dates that were  
21 missed over the course of time.

22 **MR. STEVE KANELLAKOS:** Right.

23 **MR. JOHN ADAIR:** I’m going to suggest to you that the missing of  
24 those dates became politically embarrassing for the City; do you agree with that?

25 **MR. STEVE KANELLAKOS:** Yes, they were -- they were of  
26 concern to everyone on Council and anyone else that was interested in the project.  
27 You’re correct.

28 **MR. JOHN ADAIR:** And not just of concern but they became

1 embarrassing publicly?

2 **MR. STEVE KANELLAKOS:** Yes.

3 **MR. JOHN ADAIR:** And that meant that the public was beginning  
4 to lose confidence in the people in charge of the process?

5 **MR. STEVE KANELLAKOS:** I can't comment on that. I have no  
6 way to determine that.

7 **MR. JOHN ADAIR:** We can take that down, Mitchell, thank you. If  
8 I can just take you one last time to your transcript just in respect of the issue you can't  
9 comment on. And if we can go to TRN31, please. And if we go to -- once we're there,  
10 Mitchell, if we can go to page 25 of 176, which is 24 of the transcript, and I'm going to  
11 ask you to go the bottom of the page, please. And you'll see here, sir, your transcript  
12 from April the 28<sup>th</sup>. And if we can just go to -- sorry, it's okay; we have it there on the  
13 screen in front of us. Beginning at line 11, you say:

14 "There were a number of dates. There was a  
15 November date. I don't remember them exactly but I  
16 seem to recall that had the best hope for a date in  
17 spring of '19." (As read).

18 And it carries. And then it's the next paragraph I'm going to ask  
19 you about:

20 "And so what was happening was that communicating  
21 -- because we did a lot of presentations to Council  
22 and committee of Council, and communicating this  
23 publicly started to become quite the embarrassment,  
24 quite frankly, reputationally, in terms of, you know,  
25 people stopped believing in us, in my sense, in terms  
26 of when this thing would get launched." (As read).

27 Does that assist you in being able to confirm the suggestion I made  
28 that the public was losing confidence in the people who were making the decisions?

1                   **MR. STEVE KANELLAKOS:** That was my -- well, I'll reference  
2 back to my previous answer. That's my personal opinion, but I had no polling or -- of --  
3 or anything specific to say that was the case. That was a personal opinion I held and  
4 something -- and I'll substantiate what I said previously in this transcript. It was a -- I felt  
5 embarrassed.

6                   **MR. JOHN ADAIR:** And the embarrassment, and the reputational  
7 hit, and the loss of public confidence, those, I presume, got worse every time another  
8 date was missed?

9                   **MR. STEVE KANELLAKOS:** It felt worse, yes, but I don't know if it  
10 got worse, for sure.

11                  **MR. JOHN ADAIR:** I'm just asking for your perception, sir.

12                  **MR. STEVE KANELLAKOS:** Yes.

13                  **MR. JOHN ADAIR:** And so that by August of 2019, when trial  
14 running starts, the embarrassment, the reputational hit, the loss of public confidence,  
15 I'm going to suggest to you were acute given the four missed deadlines; do you agree  
16 with that?

17                  **MR. STEVE KANELLAKOS:** Well, I agree -- yes, I agree that  
18 there was a lot of public pressure, and Council pressure, media pressure with respect to  
19 the launch of the system. I will agree with that.

20                  **MR. JOHN ADAIR:** And that, in part, the pressure resulted from  
21 political embarrassment, reputational hit, loss of public confidence, the factors we've  
22 just been talking about?

23                  **MR. STEVE KANELLAKOS:** Well, I think it was more than that. I  
24 think it was -- it was credibility of the -- of RTG and their ability to deliver the system  
25 every time they missed a date. And so yeah, there was pressure because people  
26 wanted the system to go into -- into service. There was -- expectations were created  
27 every time they set the date. But again, that was what we were operating in. It was -- it  
28 was -- everybody felt pressure.

1                   **MR. JOHN ADAIR:** And let's talk now in terms of what happened  
2 in that period of August 2019. I want to talk about a few different issues and how they  
3 existed both pre-August 2019 and also during August 2019. We're going to start with  
4 governance. Sir, when you started on the project in May of 2016, oversight and  
5 decision making was being done by -- ultimately, by the executive -- sorry, the ESC, the  
6 executive steering committee, correct?

7                   **MR. STEVE KANELLAKOS:** Yes.

8                   **MR. JOHN ADAIR:** With advice from professional advisors?

9                   **MR. STEVE KANELLAKOS:** That's correct.

10                  **MR. JOHN ADAIR:** And neither the mayor nor Councillor Hubley  
11 were directly involved in decision making?

12                  **MR. STEVE KANELLAKOS:** Not on the executive steering  
13 committee, no.

14                  **MR. JOHN ADAIR:** And then what happens during trial running  
15 and as we approach revenue service availability, the decision-making changes to the  
16 group of people who are on the WhatsApp chat, being yourself, Mr. Manconi, Mr. Arpin,  
17 the mayor, and Councillor Hubley; do you agree with that?

18                  **MR. STEVE KANELLAKOS:** No, I don't. I don't ---

19                  **MR. JOHN ADAIR:** Okay.

20                  **MR. STEVE KANELLAKOS:** I don't characterize the WhatsApp as  
21 decision-making.

22                  **MR. JOHN ADAIR:** Okay. Just to be clear, because I think we had  
23 some -- the mayor and I had some confusion about this and I don't want to run into the  
24 same problem with you. I'm not suggesting that WhatsApp was making decisions or  
25 that the existence of WhatsApp was the means by which decisions were made. I'm  
26 suggesting that the people on that group are the same as the people who were making  
27 decisions; do you agree with that?

28                  **MR. STEVE KANELLAKOS:** No.

1                   **MR. JOHN ADAIR:** Okay. That's precisely what Mayor Watson  
2 said. Do you disagree with him?

3                   **MR. STEVE KANELLAKOS:** Yes.

4                   **MR. JOHN ADAIR:** Okay. And to the extent that the means by  
5 which governance and oversight were being exercised changed from when you came  
6 on in May of '16 to August of 2019, do you agree with me that changing it from the ESC  
7 to a small group of people, including Mayor Watson and Councillor Hubley, would  
8 create risk of poor decision-making?

9                   **MR. STEVE KANELLAKOS:** No, I completely disagree with that  
10 because the two things have two separate purposes. The ESC, the executive steering  
11 committee, was supported by -- excuse me, Mr. Adair -- was supported by professionals  
12 or consultants or engineers. And the decisions were being made there under delegated  
13 authority. The WhatsApp was a running conversation of updates of information,  
14 transactional things. It wasn't -- I'm not characterizing that group as a decision-making  
15 group.

16                   **MR. JOHN ADAIR:** All right. So we have a disagreement between  
17 you and Mayor Watson on that. We'll come back to that.

18                   In terms of the role of experts when you came on the scene and in  
19 particular after the sinkhole and some of the other construction problems started to  
20 arise, the City relied heavily on outside experts?

21                   **MR. STEVE KANELLAKOS:** Yes.

22                   **MR. JOHN ADAIR:** And I believe you have said on a number of  
23 occasions over the course of your evidence this morning that the city relied on those  
24 experts?

25                   **MR. STEVE KANELLAKOS:** Yes, we did.

26                   **MR. JOHN ADAIR:** And that relying on those experts was sort of a  
27 way that the City could protect itself in terms of ensuring that it got a safe and reliable  
28 system?

1                   **MR. STEVE KANELLAKOS:** Yes.

2                   **MR. JOHN ADAIR:** And among other experts, STV was a key  
3 player during the trial running period, correct?

4                   **MR. STEVE KANELLAKOS:** Yes, they were.

5                   **MR. JOHN ADAIR:** And I think you said a couple of times that one  
6 of the reasons you were comfortable with the decision to change the criteria is because  
7 STV was supportive?

8                   **MR. STEVE KANELLAKOS:** Well, Mr. Prendergast was the  
9 person I referred to, yes.

10                  **MR. JOHN ADAIR:** Yeah. And because Mr. Prendergast had the  
11 opinion that the change to the criteria was appropriate, that gave you a great deal of  
12 comfort?

13                  **MR. STEVE KANELLAKOS:** He was one of the people. But he  
14 did give me comfort, yes.

15                  **MR. JOHN ADAIR:** And are you aware, sir, that Mr. Prendergast  
16 testified at this Commission on June the 28<sup>th</sup>?

17                  **MR. STEVE KANELLAKOS:** I'm aware that he testified but I didn't  
18 hear his testimony.

19                  **MR. JOHN ADAIR:** And are you aware that he said -- whether you  
20 heard the testimony or just by any other means you may have become aware of it. Are  
21 you aware he was asked whether STV advised the City with respect to the change to  
22 the criteria and his answer, and I quote, was: "I don't think we opined on it." Are you  
23 aware of that?

24                  **MR. STEVE KANELLAKOS:** I am aware of that.

25                  **MR. JOHN ADAIR:** And does that trouble you at all, sitting here  
26 today, that the person you were relying on has testified under oath that he doesn't recall  
27 being asked for his opinion about the change to the criteria?

28                  **MR. STEVE KANELLAKOS:** Well, I did ask him for his opinion on

1 the change to the criteria right here in my board room which is what I referenced in my  
2 previous testimony.

3 **MR. JOHN ADAIR:** Does it trouble you at all that two of you have  
4 such different recollections of that?

5 **MR. STEVE KANELLAKOS:** I can't account for his recollection but  
6 I provided my recollection under oath.

7 **MR. JOHN ADAIR:** All right. Mr. Kanellakos, let me just ask you  
8 about another part of sort of decision making during this August time period.

9 You said several times during your formal interview -- and I'm more  
10 than happy to take you to it because I don't want to just put something to you without  
11 you having a chance to see it. But I think you'll probably remember this.

12 You said several times that one thing you were not going to do is  
13 you were not going to deviate from the Project Agreement. Do you recall that?

14 **MR. STEVE KANELLAKOS:** Yes.

15 **MR. JOHN ADAIR:** And so for example when the idea of a soft  
16 opening was floated and the City rejected it, one of the reasons the City rejected it is  
17 because that's not what the contract said and the contract governed.

18 **MR. STEVE KANELLAKOS:** Yes.

19 **MR. JOHN ADAIR:** And the contract, of course, provided  
20 important protection for the City to make sure you got what you paid for, which is a safe  
21 and reliable system among other things?

22 **MR. STEVE KANELLAKOS:** We relied on the contract for that.

23 **MR. JOHN ADAIR:** And so, sir, help me with this. If sticking to the  
24 contract was an important guiding principle for the City up to August of 2019, why did  
25 the City agree to change the agreements that had been made with RTG during trial  
26 running?

27 **MR. STEVE KANELLAKOS:** Mr. Adair, I believe I covered this  
28 before in terms of the ability for the City to evolve and the criteria at Schedule 14. And

1 so the City -- it was -- that's totally consistent. We did stay within what was provided in  
2 the contract for the commissioning and for the trial running, the commissioning process  
3 which included trial running. We stayed consistent with that.

4 **MR. JOHN ADAIR:** So let me just try to understand that a little  
5 better. When it comes to the idea of a soft opening, you could have amended the  
6 contract because you had that power to do so to provide for a soft opening, correct?

7 **MR. STEVE KANELLAKOS:** That's correct.

8 **MR. JOHN ADAIR:** And you said it was never really considered.  
9 You said this during your formal interview. It was never really considered because you  
10 went to the contract, looked at what the contract said. The contract didn't provide for it,  
11 and the contract governed. Right?

12 **MR. STEVE KANELLAKOS:** Well, it's more than that. It's the  
13 contract but we also wanted to receive the system they promised us which was ready to  
14 go from Day 1, once they achieved RSA. That was the commitment they made. And at  
15 the last minute they wanted a partial launch and the complications that that would  
16 create on all the logistics that were established with transforming our bus system into a  
17 feeder system for the trains was hugely complex and hugely costly. And so I went to  
18 the contract on the basis that what does the contract say? But let's also look at it from  
19 a judgement perspective. It doesn't make sense for us to do that based on what they  
20 committed and based on what the impact would have been to the City.

21 **MR. JOHN ADAIR:** And sir, let me just take you back now for a  
22 moment to your transcript and I'll get you out of here soon, at least in terms of my  
23 questions. If we can just go back to TRN31, please? And if we can go to page 47 of  
24 the PDF which is page 46 of the transcript.

25 And sir, you were being asked here by Ms. McGrann about a partial  
26 opening, and if you just look at line 1, this is the middle of your answer. I'm happy to  
27 show you other parts of your answer. I don't want to be at all unfair.

28 **MR. STEVE KANELLAKOS:** I recall this part.

1                   **MR. JOHN ADAIR:** But you say,  
2                                    "We need to go out partial because we need to  
3                                    embed the system. There was no embedding. There  
4                                    was no embedding in the project requirement. That's  
5                                    what all the testing was for leading up to it. So from  
6                                    when I heard that, I reacted like I'm reacting now. Are  
7                                    you kidding me? That's what we're going to tell the  
8                                    public? Either way, we're 15 months late and we  
9                                    can't put full service out because Alstom can't get 13  
10                                  trains out on the line in the morning peak? There's no  
11                                  way I could accept that."

12                   Just pausing there.

13                   I'm going to suggest to you, sir, that there was a real problem in  
14 August of 2019 during trial running in that you and the other people who were making  
15 decisions, whoever that my have been, felt that it was simply impossible to go to the  
16 public and tell them either that there would be a delay or that anything less than full  
17 service would be delivered. Do you agree with that?

18                   **MR. STEVE KANELAKOS:** No, I don't agree with that and I don't  
19 agree with your characterization of the group of decision makers.

20                   **MR. JOHN ADAIR:** Sorry, just to be clear, sir, I said, "the group of  
21 decision makers, whoever that may be"; so I actually didn't characterize it. I think we've  
22 moved past that. You and I have disagreed on who the decision makers were and you  
23 and Mayor Watson have disagreed on who the decision makers were.

24                   **MR. STEVE KANELAKOS:** We have.

25                   **MR. JOHN ADAIR:** Do you agree with me that the embarrassment  
26 and the strain on credibility and the delays were such that by August of 2019 the City  
27 did not believe it was an option to put off RSA?

28                   **MR. STEVE KANELAKOS:** No, I don't. My view on this and at

1 that time and still today is that yeah, we were under pressure. It was an  
2 embarrassment, but it's not going to change and influence my judgement in terms of  
3 what we needed to do. And if we didn't get -- I was clear on this throughout that entire  
4 time, that if we didn't get the sign-off by the independent certifier and the independent  
5 safety officer, auditor, we'd be going back to Council to tell them that we're not  
6 launching. I had no problem with that. We did that four other times before and I did it  
7 when the trains derailed last year. I wouldn't put the trains back into service until they  
8 were signed off by safety, by the safety auditors and the safety consultants. So I have  
9 no issues going back to Council. I was never pressured to change my decision making  
10 or my judgement because of this kind of pressure or embarrassment.

11 **MR. JOHN ADAIR:** The daily texts that you were receiving -- I'm  
12 going to say texts -- the WhatsApp chats, the daily presence of the Mayor's office on  
13 that chat group didn't -- and the pre-existing embarrassment put no pressure on you at  
14 all in terms of your decision making? Is that your evidence?

15 **MR. STEVE KANELLAKOS:** My evidence is that I was never -- I  
16 never had pressure to change my decision making and to change my judgement on  
17 what we needed to do. I never did from any member of Council or from the Mayor.

18 **MR. JOHN ADAIR:** Let me just make sure that you and I are clear  
19 about the question.

20 I'm suggesting to you that the existence of a daily WhatsApp chat  
21 involving the Mayor's office and the existence of the embarrassment and the strain on  
22 credibility and the loss confidence, the existence of those things created an enormous  
23 amount of pressure on you and Mr. Manconi during trial running. Do you agree with  
24 that?

25 **MR. STEVE KANELLAKOS:** Yes, we were under a lot of  
26 pressure.

27 **MR. JOHN ADAIR:** Thank you sir. Those are all my questions for  
28 you.

1                   **MR. STEVE KANELLAKOS:** Thank you.

2                   **COMMISSIONER HOURIGAN:** All right, Thank you, Counsel.  
3                   Next up is RTG/OLRTC/RTM. Mr. Fenrick, go ahead.

4                   **--- CROSS-EXAMINATION BY MR. MICHAEL FENRICK:**

5                   **MR. MICHAEL FENRICK:** Good morning, Mr. Kanellakos. Just a  
6                   few questions for you. My name is Michael Fenrick, for the record, here as counsel ---

7                   **COMMISSIONER HOURIGAN:** Mr. Fenrick, we're having some  
8                   difficulty hearing you, so if you could try to -- Mr. Kanellakos, make sure that you can  
9                   hear, okay? If you can't let me know.

10                  **MR. STEVE KANELLAKOS:** Thank you, Mr. Commissioner.

11                  **MR. MICHAEL FENRICK:** Am I clearer now?

12                  **MR. STEVE KANELLAKOS:** I am having difficulty, Mr.  
13                  Commissioner. It's muffled.

14                  **COMMISSIONER HOURIGAN:** I'm finding the same.

15                  **MR. MICHAEL FENRICK:** I'm sorry. Maybe I should -- maybe let  
16                  me -- I haven't had this problem before, but maybe I should rejoin. I'm sorry to do this,  
17                  but ---

18                  **COMMISSIONER HOURIGAN:** Right. Do you mind if we go  
19                  ahead with other counsel, or should we wait for you?

20                  **MR. MICHAEL FENRICK:** Absolutely.

21                  **COMMISSIONER HOURIGAN:** Okay. We'll come back to you,  
22                  then. All right. Thank you.

23                  So next up would be Alstom.

24                  **MR. JACOB McCLELLAND:** Good morning, Mr. Commissioner.  
25                  Jake McClelland, for the record, counsel for Alstom.

26                  **--- CROSS-EXAMINATION BY MR. JACOB McCLELLAND:**

27                  **MR. JACOB McCLELLAND:** Good morning, Mr. Kanellakos.

28                  **MR. STEVE KANELLAKOS:** Good morning.

1                   **MR. JACOB McCLELLAND:** I just have a couple of questions for  
2 you this morning.

3                   This morning Mr. Adair asked you some questions about your, in  
4 his words, shock and dismay that the consortium couldn't get 13 trains onto the line. Do  
5 you remember that?

6                   **MR. STEVE KANELLAKOS:** Yes.

7                   **MR. JACOB McCLELLAND:** And as I understand, your evidence  
8 was that this was in reference to issues arising post-RSA. Do I have that right?

9                   **MR. STEVE KANELLAKOS:** That's correct.

10                  **MR. JACOB McCLELLAND:** Okay. During your formal interview  
11 with Commission counsel, you talked about some of the challenges facing RTM and  
12 Alstom in keeping up with certain maintenance activities. Do you remember that?

13                  **MR. STEVE KANELLAKOS:** Yes.

14                  **MR. JACOB McCLELLAND:** And one of the examples you gave  
15 was the high occurrence of wheel flats. Do you remember that?

16                  **MR. STEVE KANELLAKOS:** Yes.

17                  **MR. JACOB McCLELLAND:** And the Commission has already  
18 heard a lot of evidence about the causes of wheel flats, so what I'm interested in is your  
19 evidence regarding how those wheel flats needed to be fixed, okay, sir?

20                  **MR. STEVE KANELLAKOS:** Yes.

21                  **MR. JACOB McCLELLAND:** And I think you'll agree with me,  
22 since you referred to it in your formal interview, that fixing a wheel flat requires the use  
23 of a wheel lathe. Do I have that right?

24                  **MR. STEVE KANELLAKOS:** That's my understanding, yes.

25                  **MR. JACOB McCLELLAND:** And as I understand, a wheel lathe is  
26 a piece of equipment used to re-profile a wheel after developing a flat. Would you  
27 agree with me?

28                  **MR. STEVE KANELLAKOS:** Yes.

1                   **MR. JACOB McCLELLAND:** Okay. And under the maintenance  
2 subcontract between RTM and Alstom, it's RTM that is responsible for providing and  
3 maintaining the wheel lathing equipment for this project. Were you aware of that?

4                   **MR. STEVE KANELLAKOS:** Yes.

5                   **MR. JACOB McCLELLAND:** During your formal interview, you  
6 alluded to problems with the wheel lathing equipment. Do you remember that?

7                   **MR. STEVE KANELLAKOS:** Yes.

8                   **MR. JACOB McCLELLAND:** And I just want to go to your  
9 transcript, if we could have that called up. It's TRN31, please and thank you. And while  
10 that's being called up, Mr. Kanellakos, I'm going to represent to you that there were a lot  
11 of wheel flats during the first winter of revenue service, which eventually led to the  
12 establishment of a wheel flats task force. Do you remember that?

13                   **MR. STEVE KANELLAKOS:** Yes, I do.

14                   **MR. JACOB McCLELLAND:** Okay. We have the image. If we  
15 can go to page 131, please. So in just the last paragraph on this page, Mr. Kanellakos,  
16 your evidence was that -- in reference to the wheel flats, you say:

17    "But it goes back to the problem that we were having  
18    them so frequently, [referring to the wheel flats], and  
19    RTM didn't have any lathing equipment here at their  
20    maintenance yard to be able to turn the wheels to  
21    correct them and get them back in service, which took  
22    out a whole bunch of trains because we couldn't get  
23    them back in service." (As read)

24                   Do you see that, sir?

25                   **MR. STEVE KANELLAKOS:** Yes, I do.

26                   **MR. JACOB McCLELLAND:** Okay. And if we could just go to  
27 another document, it's ALS0014096.

28                   **--- EXHIBIT No. 246:**

1 ALS0014096 – Letter Alstom to RTG 20 January 2020

2 **MR. JACOB McCLELLAND:** And while that's being called up, Mr.  
3 Kanellakos, I'm going to represent to you that this is going to be a formal letter to situate  
4 the evidence you gave during your formal interview. And I see that the letter is now on  
5 the screen. So this is an Alstom letter, letter 161, dated January 20<sup>th</sup>, 2022. Do you  
6 see that, sir?

7 **MR. STEVE KANELLAKOS:** Yes, I do.

8 **MR. JACOB McCLELLAND:** And have you seen this letter  
9 before?

10 **MR. STEVE KANELLAKOS:** Is this one from Michael -- I forget his  
11 last name.

12 **MR. JACOB McCLELLAND:** Perhaps maybe we could just scroll  
13 to the bottom.

14 **MR. STEVE KANELLAKOS:** Thank you. Oh -- Richard France.  
15 Would you give me a moment just to look at it? Because it's not coming to me, Mr.  
16 McClelland. I'm sorry.

17 **MR. JACOB McCLELLAND:** Sure. Of course.

18 (SHORT PAUSE)

19 **MR. STEVE KANELLAKOS:** Yes. Thank you. I've read it. I don't  
20 recall seeing this letter. I may have. I probably did, but I just don't have a recollection  
21 of it. But I'm familiar with it now. Thank you.

22 **MR. JACOB McCLELLAND:** Right. And I'm not suggesting that  
23 you have or haven't seen it. I'm just using the letter to situate some of the evidence you  
24 gave during your formal interview, okay, sir?

25 **MR. STEVE KANELLAKOS:** Yes.

26 **MR. JACOB McCLELLAND:** So if we can just scroll to the first  
27 page, the first paragraph -- and I just want to read this paragraph to you, Mr.  
28 Kanellakos. You can see that it says:

1 “Alstom is writing to notify RTM that further to the  
2 discussions which took place during the monthly  
3 contract review meeting on December 19<sup>th</sup>, 2019, and  
4 as outlined in the meeting minutes provided on  
5 January 17<sup>th</sup>, 2020, in letter reference...[and it  
6 provides the letter reference]...Alstom continues to be  
7 negatively impacted by the maintenance facilities.  
8 These facilities, including the wheel lathe, sand plant,  
9 railcar movers, lifting jacks, trains, et cetera, are  
10 critical for the maintenance subcontractor, [being  
11 Alstom], to be able to meet its obligations under the  
12 maintenance subcontract.” (As read)

13 Do you see that?

14 **MR. STEVE KANELLAKOS:** Yes.

15 **MR. JACOB McCLELLAND:** So if we can just scroll to the second  
16 page, I want to read two other paragraphs to you, sir. You’ll see the second last  
17 paragraph of this letter reads:

18 “Since the start of January 2020, Alstom has made  
19 the maintenance contractor, RTM, aware of issues  
20 surrounding the performance of the wheel lathe. The  
21 wheel lathe is a critical piece of machinery that is  
22 expected to be operational at all times, excluding any  
23 minor scheduled maintenance activities. At the time  
24 of writing this letter, the wheel lathe has not been  
25 operational since before the 7<sup>th</sup> of January 2020. This  
26 has led to a backlog of trains that require wheel  
27 trimming. Presently, there are 13 vehicles which  
28 require corrective wheel trimming to make available

1 for service.” (As read)

2 Do you see that, sir?

3 **MR. STEVE KANELLAKOS:** Yes, I do.

4 **MR. JACOB McCLELLAND:** And then just finally, in the next  
5 paragraph, the letter goes on to say that:

6 “Alstom will continue to take all steps reasonably  
7 practical to meet the daily vehicle availability  
8 requirements, despite the inadequate performance of  
9 the maintenance facility activities that are out of the  
10 maintenance subcontractor’s scope.” (As read)

11 And it goes on to say:

12 “However, Alstom reserves all rights under the  
13 subcontract, in equity and law, for any unjustified  
14 deductions to payments owed and costs associated  
15 with the recovery of the maintenance due to the  
16 impact of maintenance facilities under the  
17 responsibility of the maintenance contractor. Alstom  
18 looks forward to continued collaboration with RTM to  
19 improve the ongoing performance of this system.”

20 (As read)

21 Do you see that?

22 **MR. STEVE KANELLAKOS:** I do.

23 **MR. JACOB McCLELLAND:** Okay. So Mr. Kanellakos, having  
24 reviewed this letter, I take it you’ll agree that, consistent with your evidence during your  
25 formal interview, there appears to be issues with the wheel lathing equipment in  
26 January of 2020; is that right?

27 **MR. STEVE KANELLAKOS:** That was my understanding at the  
28 time, yes.

1                   **MR. JACOB McCLELLAND:** And these issues are resulting, at  
2 least according to this letter, in a backlog of 13 trains requiring wheel trimming; is that  
3 right?

4                   **MR. STEVE KANELLAKOS:** Yes.

5                   **MR. JACOB McCLELLAND:** And what Alstom is saying here is  
6 that that backlog has the potential of impacting vehicle availability, right?

7                   **MR. STEVE KANELLAKOS:** And it did, yes.

8                   **MR. JACOB McCLELLAND:** Okay. And I take it you'll agree that  
9 Alstom's trains continued to develop wheel flats into 2021; is that right?

10                  **MR. STEVE KANELLAKOS:** That was my understanding, yes.

11                  **MR. JACOB McCLELLAND:** And I'm going to suggest to you, Mr.  
12 Kanellakos, that during that time, RTM continued to struggle to provide and maintain  
13 operable wheel lathing equipment. Is that consistent with your recollection?

14                  **MR. STEVE KANELLAKOS:** That is my recollection, Mr.  
15 McClelland.

16                  **MR. JACOB McCLELLAND:** Okay. Thank you. Those are all my  
17 questions.

18                  **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.  
19 We'll go back to RTG.

20                  Are you there, Counsel?

21                  **MR. MICHAEL FENRICK:** I am, Mr. Commissioner. Is my audio  
22 coming through better now?

23                  **COMMISSIONER HOURIGAN:** It is. Go ahead.

24                  **MR. MICHAEL FENRICK:** Okay. Great.

25                  **--- CROSS-EXAMINATION BY MR. MICHAEL FENRICK:**

26                  **MR. MICHAEL FENRICK:** Good morning, Mr. Kanellakos. For the  
27 record, I'm Michael Fenrick, here as counsel for the RTG parties. Good morning.

28                  **MR. STEVE KANELLAKOS:** Good morning.

1                   **MR. MICHAEL FENRICK:** So just a few questions for you, sir. I  
2 believe your evidence was that you joined the project in or about May of 2016; is that  
3 correct?

4                   **MR. STEVE KANELLAKOS:** That's correct.

5                   **MR. MICHAEL FENRICK:** And that's about the same time as the  
6 sinkhole occurred there?

7                   **MR. STEVE KANELLAKOS:** Two weeks after I started this job.

8                   **MR. MICHAEL FENRICK:** It was a heck of a start then, I imagine?

9                   **MR. STEVE KANELLAKOS:** Yes.

10                  **MR. MICHAEL FENRICK:** And at that time, it's my understanding  
11 that people worked together to try and resolve the issues that arose at the site as a  
12 result of the sinkhole?

13                  **MR. STEVE KANELLAKOS:** Yes. Immediately after the sinkhole,  
14 there was very good cooperation by all parties to rectify the situation and repair it.

15                  **MR. MICHAEL FENRICK:** But you indicated that even though you  
16 had joined the project recently, in your formal interview, that the relationship between  
17 RTG and the City began to change after that point?

18                  **MR. STEVE KANELLAKOS:** Well, the relationship started to  
19 change more a relationship to the misses in the schedule. In the schedule notifications  
20 that they were giving us, there was -- the tension was related, where the relationship  
21 had some conflict over the schedule.

22                  **MR. MICHAEL FENRICK:** And initially, RTG was optimistic that it  
23 would be able to re-sequence the work in a way to achieve May 2018 date; is that fair?

24                  **MR. STEVE KANELLAKOS:** Yes, initially, right after the sinkhole  
25 happened, we did reach out to RTG executives and we were told initially that there  
26 wasn't going to be an impact on the schedule, but that changed as time went on.

27                  **MR. MICHAEL FENRICK:** And we heard evidence from the mayor  
28 on Thursday that he didn't recall being briefed when that change occurred, that there

1 would be delay to the schedule. Is that your recollection that he was briefed or that he  
2 was not briefed?

3 **MR. STEVE KANELLAKOS:** I don't recall whether he was briefed  
4 or not. I'm sorry, Mr. Fenrick.

5 **MR. MICHAEL FENRICK:** That's okay.

6 And you'd agree with me that RTG did seek schedule relief under  
7 the Project Agreement?

8 **MR. STEVE KANELLAKOS:** Yes, they did.

9 **MR. MICHAEL FENRICK:** And that the City was not prepared to  
10 offer that schedule relief?

11 **MR. STEVE KANELLAKOS:** No, we weren't, which was  
12 subsequently upheld by the independent certifier.

13 **MR. MICHAEL FENRICK:** Now, you're aware, sir -- or maybe  
14 you're not, in fairness to you -- that since this project, the Infrastructure Ontario template  
15 agreements no longer include the independent certifier as an adjudicative role under the  
16 dispute resolution procedure? Are you aware of that?

17 **MR. STEVE KANELLAKOS:** No.

18 **MR. MICHAEL FENRICK:** Okay. And those are my questions.

19 Thank you, sir.

20 **MR. STEVE KANELLAKOS:** Thank you, Mr. Fenrick.

21 **COMMISSIONER HOURIGAN:** All right. Thanks, Counsel.

22 STV is next.

23 **MR. MICHAEL O'BRIEN:** Yes, thank you, Mr. Commissioner.

24 Michael O'Brien for STV. We do not have any questions for this witness.

25 **COMMISSIONER HOURIGAN:** All right.

26 Province of Ontario?

27 **MS. HEATHER MacKAY:** Good morning, Commissioner. Heather  
28 MacKay, M-a-c-K-a-y for the Province of Ontario, and we don't have any questions for

1 this witness.

2 **COMMISSIONER HOURIGAN:** Next is the Amalgamated Transit  
3 Union, Local 279?

4 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

5 **MR. JOHN McLUCKIE:** Good morning, Mr. Kanellakos. John  
6 McLuckie, M-c-L-u-c-k-i-e, for the record, sir.

7 **MR. STEVE KANELLAKOS:** Good morning, Mr. McLuckie.

8 **MR. JOHN McLUCKIE:** Good morning, Mr. Kanellakos.  
9 So my clients are the Amalgamated Transit Union. You're familiar  
10 with my clients?

11 **MR. STEVE KANELLAKOS:** Very well.

12 **MR. JOHN McLUCKIE:** And they represent the staff at OC  
13 Transpo that maintain your buses and operate your buses?

14 **MR. STEVE KANELLAKOS:** That's correct.

15 **MR. JOHN McLUCKIE:** And you're aware they also represent staff  
16 at Alstom that maintain the trains that OC Transpo uses?

17 **MR. STEVE KANELLAKOS:** A portion of them, yes.

18 **MR. JOHN McLUCKIE:** Right. And they're also the operators of  
19 those trains that ride back and forth of revenue service every day?

20 **MR. STEVE KANELLAKOS:** That's correct.

21 **MR. JOHN McLUCKIE:** I just want to ask you a few questions  
22 about my clients and sort of their history.

23 So they've delivered public transit in Ottawa for many, many years,  
24 correct?

25 **MR. STEVE KANELLAKOS:** That's correct.

26 **MR. JOHN McLUCKIE:** And you'd agree they do a good job at it?

27 **MR. STEVE KANELLAKOS:** I very much agree to that.

28 **MR. JOHN McLUCKIE:** And you'd agree they've done a really

1 good job providing public service for a number of years, public transportation services?

2 **MR. STEVE KANELLAKOS:** Yes, I do.

3 **MR. JOHN McLUCKIE:** And they're able to fix your buses without  
4 issue?

5 **MR. STEVE KANELLAKOS:** They are.

6 **MR. JOHN McLUCKIE:** And those buses, they're simply one part  
7 of an integrated transportation network, correct?

8 **MR. STEVE KANELLAKOS:** That's correct.

9 **MR. JOHN McLUCKIE:** And you added light rail or heavy rail, I  
10 guess, would be a better description, in 2001 when you brought online the Trillium Line.  
11 Do you recall that, Mr. Kanellakos?

12 **MR. STEVE KANELLAKOS:** I was here, but I wasn't involved in  
13 that project, but yes.

14 **MR. JOHN McLUCKIE:** Are you aware it's ATU 279 members  
15 employed by OC Transpo that operate that train?

16 **MR. STEVE KANELLAKOS:** Yes, I am.

17 **MR. JOHN McLUCKIE:** And they were essentially bus operators  
18 that were retrained to provide that role, correct?

19 **MR. STEVE KANELLAKOS:** That's correct.

20 **MR. JOHN McLUCKIE:** And you feel they've done a good job at  
21 that?

22 **MR. STEVE KANELLAKOS:** They've done a very good with that.

23 **MR. JOHN McLUCKIE:** And the City was able to retrain them, and  
24 there were no concerns about their operation of that train?

25 **MR. STEVE KANELLAKOS:** No, not that I'm aware of.

26 **MR. JOHN McLUCKIE:** And that train was integrated into the bus  
27 system similar to how the Confederation Line is integrated into the bus system, correct?

28 **MR. STEVE KANELLAKOS:** It was.

1                   **MR. JOHN McLUCKIE:** And the Confederation Line, the goal of it  
2 wasn't to operate as a separate system, it was to be part of the overall public transit  
3 system, wasn't it?

4                   **MR. STEVE KANELLAKOS:** The Confederation Line was an  
5 integrated part of the entire -- well, just plus Stage 2 and hopefully Stage 3 transit  
6 system for the City, that's correct.

7                   **MR. JOHN McLUCKIE:** So it links in with the bus service at either  
8 end, primarily, correct?

9                   **MR. STEVE KANELLAKOS:** Yes.

10                  **MR. JOHN McLUCKIE:** And it links in with the existing Trillium  
11 Line or once it's back online, it will link in again with the Trillium Line at Bayview  
12 Station?

13                  **MR. STEVE KANELLAKOS:** That's correct.

14                  **MR. JOHN McLUCKIE:** And all of that provides one integrated  
15 network, correct?

16                  **MR. STEVE KANELLAKOS:** That's the purpose, exactly.

17                  **MR. JOHN McLUCKIE:** So counsel took you to some questions in  
18 their initial interview with you about who was going to operate the trains. I just wanted  
19 to be clear, in terms of operating the train and having City staff do that, that was always  
20 the plan of the City, correct?

21                  **MR. STEVE KANELLAKOS:** That's my understanding, yes.

22                  **MR. JOHN McLUCKIE:** And you feel that plan has worked well?

23                  **MR. STEVE KANELLAKOS:** It has.

24                  **MR. JOHN McLUCKIE:** And there's been no concerns with the  
25 staff of OC Transpo in terms of their role in operating the train system?

26                  **MR. STEVE KANELLAKOS:** Not that I'm aware of.

27                  **MR. JOHN McLUCKIE:** And the staff have been trained, they're  
28 capable in their role of operating the train in revenue service?

1                   **MR. STEVE KANELLAKOS:** Yes, they are.

2                   **MR. JOHN McLUCKIE:** I want to talk a little about the  
3 maintenance side of things, and we've talked about it a bit with your other -- with other  
4 counsel this morning.

5                   So the City elected to transfer the maintenance responsibilities for  
6 this project to the consortium, RTG, RTM?

7                   **MR. STEVE KANELLAKOS:** Yes.

8                   **MR. JOHN McLUCKIE:** And it still -- it remained the responsibility  
9 of the consortium as a whole, so as leaving aside sort of the finger pointing between  
10 Alstom and RTG, ultimately, it's the consortium that's responsible for the maintenance  
11 of the train; would you agree with that, sir?

12                  **MR. STEVE KANELLAKOS:** RTG is ultimately responsible, yes.

13                  **MR. JOHN McLUCKIE:** And how they get to that, that's up to  
14 them? That's not the City's problem, correct?

15                  **MR. STEVE KANELLAKOS:** I believe so, but I can't say  
16 categorically in terms of what was in the agreement or -- the Project Agreement.

17                  **MR. JOHN McLUCKIE:** And it's a P-3 agreement, so that means  
18 that you've essentially ceded the maintenance responsibility over to the consortium?

19                  **MR. STEVE KANELLAKOS:** That's what occurred, yes.

20                  **MR. JOHN McLUCKIE:** And it's not your staff operating it any  
21 more?

22                  **MR. STEVE KANELLAKOS:** No.

23                  **MR. JOHN McLUCKIE:** And that's different than at OC Transpo,  
24 where it's your staff, your managers, your employees, providing maintenance support?

25                  **MR. STEVE KANELLAKOS:** That's correct. There is a difference.

26                  **MR. JOHN McLUCKIE:** Okay. And in terms of the consortium,  
27 you're aware they assigned that role down to Alstom?

28                  **MR. STEVE KANELLAKOS:** Yeah, that's where they stopped,

1 yeah.

2 **MR. JOHN McLUCKIE:** Now, would you agree with me, sir, that  
3 the public is entitled to expect a reliable, a dependable public transit system?

4 **MR. STEVE KANELLAKOS:** Yes, they are.

5 **MR. JOHN McLUCKIE:** And as part of that, they're entitled to  
6 expect that the Light Rail System be reliable and dependable?

7 **MR. STEVE KANELLAKOS:** Yes, they are.

8 **MR. JOHN McLUCKIE:** And it's the consortium's job to provide the  
9 maintenance that allows that reliability and dependability to happen, correct?

10 **MR. STEVE KANELLAKOS:** That is their responsibility.

11 **MR. JOHN McLUCKIE:** And you'd agree with me that in ensuring  
12 they have a sufficient number of maintenance staff and that they're well trained, that  
13 they're well equipped, that's fundamental to providing a reliable and a dependable  
14 system, true?

15 **MR. STEVE KANELLAKOS:** That is a requirement for them to be  
16 able to get paid, is to meet the standards that are in the contract, to deliver the  
17 maintenance so that the trains meet the mileage and the other performance criteria, so  
18 yes.

19 **MR. JOHN McLUCKIE:** And during the trial running, so in July and  
20 August of 2019, isn't it true that the City staff had concerns about Alstom's ability to  
21 maintain those trains and provide that degree of reliability?

22 **MR. STEVE KANELLAKOS:** Which City staff are you referring to,  
23 Mr. McLuckie?

24 **MR. JOHN McLUCKIE:** Well, in particular, Troy Charter. He's one  
25 of the rail project managers?

26 **MR. STEVE KANELLAKOS:** I can't comment on that in terms of  
27 my knowledge of whether Mr. Charter had concerns at that time.

28 **MR. JOHN McLUCKIE:** Okay. Did any of the consultants, your

1 staff that the City engaged on this project during trial running -- so again, July, August  
2 2019 -- did anyone make sure you were aware if it had concerns about the level of  
3 maintenance support that Alstom was capable of providing? Did that make its way up  
4 to you, sir?

5 **MR. STEVE KANELLAKOS:** Yeah. Mr. Manconi had advised me  
6 of the concerns about the number of people that were maintaining the trains during that  
7 period, and achieved agreement with executives for RTG to bring in more resources to  
8 be able to fulfill that requirement.

9 **MR. JOHN McLUCKIE:** And in your interview with counsel staff,  
10 you indicated that that led to some initial improvements through the month of  
11 September. Do you remember that?

12 **MR. STEVE KANELLAKOS:** Yes.

13 **MR. JOHN McLUCKIE:** And then you indicated that after  
14 September was done -- so into October and November of 2019 -- you saw a drop off in  
15 the reliability of the system. Do you recall telling Commission counsel that?

16 **MR. STEVE KANELLAKOS:** Yes, the performance did deteriorate.

17 **MR. JOHN McLUCKIE:** And you indicated with Commission  
18 counsel that your concern was that Alstom didn't have the maintenance resources in  
19 place to provide the reliability. Do you recall telling them that?

20 **MR. STEVE KANELLAKOS:** Well, it's -- you know, I named  
21 Alstom, but it's RTG and RTM that are ultimately accountable. RTG is accountable.  
22 We don't have a direct relationship, as you know, with Alstom. We don't have a  
23 contractual relationship with them.

24 **MR. JOHN McLUCKIE:** Right. So you don't have the ability to tell  
25 them to add a particular number of staff or how to deploy those staff? That's outside of  
26 your scope, correct, sir?

27 **MR. STEVE KANELLAKOS:** Yes. It has to go through RTG.

28 **MR. JOHN McLUCKIE:** Right. And through RTG, you can simply

1 expect a standard, but you don't get to direct how they meet that standard, correct?

2 **MR. STEVE KANELLAKOS:** No, and the incentive's obviously the  
3 financial ones in the contract and the penalties that derive from the contract, deductions  
4 that are derived from the contract.

5 **MR. JOHN McLUCKIE:** Right. But again, your staffing, if they  
6 think they have a better solution than RTG, RTM, RTG doesn't have to listen to them.  
7 They simply have to achieve a standard and how they meet it is up to them, correct?

8 **MR. STEVE KANELLAKOS:** It is, but there is collaboration,  
9 obviously. They do discuss it. But you're correct.

10 **MR. JOHN McLUCKIE:** And over the course of the fall of 2019,  
11 from November through the early winter months, it's true the train was not displaying the  
12 reliability the public was entitled to expect, correct?

13 **MR. STEVE KANELLAKOS:** That's correct.

14 **MR. JOHN McLUCKIE:** And as you've just covered with counsel  
15 for Alstom, there were concerns about the ability of the staff to maintain elements of the  
16 train, particularly the wheels. Do you recall that a few minutes ago?

17 **MR. STEVE KANELLAKOS:** Yes.

18 **MR. JOHN McLUCKIE:** And in terms of the responsibility, it's  
19 ultimately the consortium's job to figure out those issues, isn't it?

20 **MR. STEVE KANELLAKOS:** Yes, it is.

21 **MR. JOHN McLUCKIE:** So who was supposed to supply the  
22 wheel lathe, or who was supposed to pay for the wheel lathe, that's not the City's  
23 problem, is it?

24 **MR. STEVE KANELLAKOS:** It should not be, no.

25 **MR. JOHN McLUCKIE:** And it's not the public's problem; they're  
26 entitled to a reliable system regardless of who provides what maintenance equipment,  
27 right?

28 **MR. STEVE KANELLAKOS:** That's correct.

1                   **MR. JOHN McLUCKIE:** So pointing fingers back and forth  
2 between RTG and Alstom, that really isn't helpful, is it?

3                   **MR. STEVE KANELLAKOS:** No, it's not helpful, no.

4                   **MR. JOHN McLUCKIE:** And it wasn't helpful at the time because  
5 the wheels still weren't getting fixed, were they?

6                   **MR. STEVE KANELLAKOS:** Yes, as was established previously.

7                   **MR. JOHN McLUCKIE:** And as a result of the wheels not getting  
8 fixed, the number of trains in service dropped dramatically, correct?

9                   **MR. STEVE KANELLAKOS:** We had a loss of trains that we could  
10 not put back on the line because of the wheel flats, yes.

11                   **MR. JOHN McLUCKIE:** So this finger-pointing between the  
12 consortium partners led to a decrease in the reliability of the service for the public, true?

13                   **MR. STEVE KANELLAKOS:** Yes.

14                   **MR. JOHN McLUCKIE:** Thank you, sir. Those are all my  
15 questions.

16                   **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

17                   Next up is the City of Ottawa.

18                   **MS. SHARON VOGEL:** Good morning. My name is Sharon Vogel,  
19 v-o-g-e-l, counsel for the City of Ottawa.

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

21                   **MS. SHARON VOGEL:** Mr. Kanellakos, I know it's been a long  
22 morning and I appreciate your patience, especially as you're not feeling well.

23                   I'd like to take you back in time to the public inquiry announcement.

24 Do you recall first hearing about the public inquiry back in March 2021?

25                   **MR. STEVE KANELLAKOS:** Yes, I do.

26                   **MS. SHARON VOGEL:** How did you hear about it?

27                   **MR. STEVE KANELLAKOS:** I think the first time I heard about it is  
28 when there was an announcement out of the Minister of Transportation's Office

1 concerning -- concerning the -- a public inquiry and related to the two derailments that  
2 had occurred.

3 **MS. SHARON VOGEL:** And what did she say about why the  
4 inquiry was being held?

5 **MR. STEVE KANELLAKOS:** Well, as I seem to recall, there was a  
6 statement about value for money. There was a statement about safety and reliability of  
7 the system, and that the issues were identified so that this doesn't happen again after  
8 the derailments.

9 **MS. SHARON VOGEL:** And prior to last fall, the funder, being the  
10 Federal and the Provincial Governments, had they raised any concerns about the  
11 project or its administration by the City of Ottawa?

12 **MR. STEVE KANELLAKOS:** No, up until that point, no.

13 **MS. SHARON VOGEL:** And those two funders, the Federal and  
14 Provincial Government, had they done their own periodic reviews of the project?

15 **MR. STEVE KANELLAKOS:** Yes, they were doing regular  
16 reviews.

17 **MS. SHARON VOGEL:** And had they been satisfied by the  
18 answers of City Staff?

19 **MR. STEVE KANELLAKOS:** Well, I was never made aware of any  
20 concerns that they had, post-discussions with City staff in review of the project.

21 **MS. SHARON VOGEL:** And they were satisfied until after the  
22 derailments of August and September 2021?

23 **MR. STEVE KANELLAKOS:** Before or after? I'm sorry, Mr. Vogel.

24 **MS. SHARON VOGEL:** They were satisfied until after the  
25 derailments of August and September 2021.

26 **MR. STEVE KANELLAKOS:** Oh, that's ---

27 **MS. SHARON VOGEL:** Is that correct?

28 **MR. STEVE KANELLAKOS:** Yes, sorry, I misinterpreted your

1 question. That's correct.

2 **MS. SHARON VOGEL:** And last fall, the province held back  
3 certain monies; is that correct?

4 **MR. STEVE KANELLAKOS:** Yes, we received a letter from a  
5 staffer at the province in the ministry saying that they're holding back the \$60M in  
6 holdback payments, which was a surprise to us.

7 **MS. SHARON VOGEL:** And so did you understand the impetus for  
8 this public inquiry to be the derailments?

9 **MR. STEVE KANELLAKOS:** I think that's what triggered it from  
10 the minister's office. That was my understanding and based on the communication that  
11 was released.

12 **MS. SHARON VOGEL:** And what do you understand the causes  
13 of the derailments to be, as explained to you by your staff?

14 **MR. STEVE KANELLAKOS:** Well, the first one in August -- and  
15 you know, we ended up getting into this in great detail because we ended up hiring TRA  
16 as safety -- an independent safety auditor to look at it, so I go immersed in derailments  
17 and the causes. The first one in August was because of a wheel bearing. The  
18 tolerances were too tight. And the root cause, we still don't know. There's two different  
19 versions. I think RTG's disputing what Alstom's saying about it, but -- it's too technical  
20 for me, but I know that the wheel bearing burned off and eventually burned off a wheel  
21 and burned off the axle which caused that derailment.

22 And then the second derailment in September was a quality-  
23 control/quality assurance issue where, during a shift change, someone that was putting  
24 bolts on the transmission box for the train didn't complete it, handed off the job to a  
25 second person who wasn't made aware of what the status of the previous person's work  
26 was, and they allowed the train without the documentation, it's my understanding, to  
27 head back into service. And after a short period of time, the box fell off the train causing  
28 significant infrastructure damage to the track and equipment alongside the track, the

1 wayside equipment.

2 **MS. SHARON VOGEL:** And no one from your staff or RTG has  
3 ever alleged that the City did anything to cause the derailments, correct?

4 **MR. STEVE KANELLAKOS:** Well, there's no way -- absolutely,  
5 but there's no way anybody from the City in any of the time previous to that could have  
6 predicted something that's encased in a bogie, which no one can see and is inspected  
7 visually and from other methods -- could anticipate a wheel bearing would burn off.  
8 They're rare, apparently, in the industry, from what I understand. And no one could  
9 anticipate that someone wouldn't put 12 bolts on properly on a gearbox and allow it to  
10 fall off. That's -- there's no way to anticipate the human error that resulted in that  
11 significant accident.

12 **MS. SHARON VOGEL:** Who is responsible for the derailments?

13 **MR. STEVE KANELLAKOS:** Well, in my mind, it's clearly RTG.

14 **MS. SHARON VOGEL:** I'd like to ask you a few questions now  
15 about delegated authority. Commission counsel reviewed with you this morning that  
16 you, as City Manager, were delegated certain authority in relation to this project under  
17 the report to Council of December 4, 2012, that Commission counsel showed you this  
18 morning. Do you recall that?

19 **MR. STEVE KANELLAKOS:** Yes, I do.

20 **MS. SHARON VOGEL:** And that delegation of authority entitled  
21 you to amend the Project Agreement, correct?

22 **MR. STEVE KANELLAKOS:** Yeah, that was clearly in the  
23 Resolution of Council.

24 **MS. SHARON VOGEL:** And also to negotiate ---

25 **MR. STEVE KANELLAKOS:** Yeah.

26 **MS. SHARON VOGEL:** --- provisions of the Project Agreement,  
27 correct?

28 **MR. STEVE KANELLAKOS:** Yes.

1                   **MS. SHARON VOGEL:** And you've been involved in Municipal  
2 Government all your career?

3                   **MR. STEVE KANELLAKOS:** First 15 years, I was with the police  
4 service. And then the last 22, I've been with the City.

5                   **MS. SHARON VOGEL:** So for those last 22 years, you've seen  
6 similar language, which is typical of the operational authority given to you as City  
7 Manager and staff in respect of construction projects?

8                   **MR. STEVE KANELLAKOS:** Yes, most reports -- excuse me.  
9 Most reports that go to Council have resolutions in the -- in motions coming out of the  
10 reports or moved by councillors which provide delegated authority to staff or direct staff  
11 through delegated authority to carry out certain actions and to have the authority to do  
12 so. And then some have restrictions on them. Some have more guidance, duty to  
13 consult, duty to report back. And some are much more open-ended, depending on the  
14 situation.

15                   So it's varied depending on the wisdom of what they want to  
16 delegate because it falls in their mandate, their supreme, to decide what they want to  
17 keep and make decisions on, and what they wish to delegate to staff to be able to  
18 execute for them. And our delegation of authority by-law is quite extensive because it's  
19 a complex, large organization and Council delegates most activities to staff so that we  
20 don't bog down the efficient running of the City. Otherwise, everything would have to go  
21 back to Council and committee on a monthly basis to get approval for fundamental  
22 operational issues that we -- that we do in the City.

23                   **MS. SHARON VOGEL:** So in relation to this Delegation of  
24 Authority By-law, it all you as City Manager to further delegate and to authorize further  
25 delegations to others of any powers, duties, and functions delegated to the City  
26 Manager by Council pursuant to Section 3 of that Delegation of Authority Bylaw, is that  
27 right?

28                   **MR. STEVE KANELLAKOS:** Yes, there's -- that provision is there

1 because, I think -- you know, my opinion is that -- that there's no way for myself to be  
2 able to assume all that delegated authority under the delegated by-law and operate the  
3 City as one person with all the various services that the city provided, and activities.  
4 And so those authorities are delegated to other executive in the organization, and  
5 directors, to fulfill the mandate of delivering City services to the public.

6 **MS. SHARON VOGEL:** And on a project of this maghnitude, to  
7 bring it back to this project, it would not be practical from a timing or technical  
8 perspective to bring every single decision to Council to debate, for example, technical  
9 issues in relation to which Council does not have expertise.

10 Is that right?

11 **MR. STEVE KANELLAKOS:** I agree with that, yes.

12 **MS. SHARON VOGEL:** And is that why authority is delegated in  
13 the first place, the give the decision-making authority to staff who are best placed to  
14 manage the project?

15 **MR. STEVE KANELLAKOS:** I think it's a recognition, yes. I think  
16 it's a recognition that his is a very specialized technical area. Most infrastructure  
17 projects are. And that people who are engineers and other specialties should be  
18 advising and making decisions on the project in the best interests of the public. My  
19 responsibility is to report that back to Council and advise them on what decisions have  
20 been made based on the guidance of the experts.

21 **MS. SHARON VOGEL:** And your delegation of authority in respect  
22 of this project of December 4, 2012, it didn't prescribe any particular reporting  
23 requirements to Council in advance of exercising our delegation of authority, did it?

24 **MR. STEVE KANELLAKOS:** There are none there, no.

25 **MS. SHARON VOGEL:** And in terms of the exercise of your  
26 delegated authority, you did exercise it at various times over the six year design and  
27 construction period and over the almost three years of the maintenance term of this  
28 project, correct?

1                   **MR. STEVE KANELLAKOS:** Yes, I do on a regular basis.

2                   **MS. SHARON VOGEL:** For example, hundreds of variations were  
3 issued over the course of the project, correct?

4                   **MR. STEVE KANELLAKOS:** Yes, there were hundreds of  
5 variations. I forget the exact number but it was several hundred, maybe 400 or  
6 something I think was the number. And we reported that back. We executed that, bring  
7 in each one of those to Council again would be a very difficult process in terms of the  
8 timeliness and also putting Council in a position where they're making a decision that  
9 relies on experts while we reported back through the contingency management fund  
10 committee, regular reporting to Council, and to committee, to FEDCO, and then to  
11 Council on how we were dealing with those variations and where we were spending the  
12 money in the contingency fund. So they were getting regular updates from our City  
13 treasurer and from myself as the chair of the steering committee on a result basis.

14                   **MS. SHARON VOGEL:** And that same mechanism applied as well  
15 to the settlements of various claims that were made by RTG over the course of the  
16 project?

17                   **MR. STEVE KANELLAKOS:** Yes. They had the benefit of public  
18 meetings and detailed in camera meetings with our solicitors and our experts to ask any  
19 questions they wished on any of those issues.

20                   **MS. SHARON VOGEL:** And if a technical issue arose during the  
21 course of construction involving the interpretation of the Project Agreement or its  
22 application to a specific issue, over the six years of the design and construction of the  
23 project, you would rely on staff with the assistance of experts who were responsible for  
24 dealing with those issues to make decisions?

25                   **MR. STEVE KANELLAKOS:** Yes. We had access to lawyers,  
26 financial people, engineers, and other technical rail people, technology people, to  
27 receive information, guidance, and expertise in terms of making those assessments.

28                   **MS. SHARON VOGEL:** And in terms of your sub-delegation to

1 staff that you've described, in your view experienced staff are better placed to make  
2 decisions in relation to such technical matters including engineering decisions, correct?

3 **MR. STEVE KANELLAKOS:** Absolutely. I'm not an engineer.  
4 That was established at the beginning. I don't have an expertise in rail systems and I  
5 rely on those experts who bring that experience and their corporate experience, the  
6 support of their corporations that they represent to guide us in terms of the decision  
7 making, and make the best decisions in the interest of the City.

8 **MS. SHARON VOGEL:** And is this process that you've described  
9 of your delegation of authority and sub-delegation of authority -- is that a common  
10 process based on your experience at the City of Ottawa, the City of Vaughn, and this  
11 collaborative forum you described with the other city managers of Canada's major  
12 municipalities?

13 **MR. STEVE KANELLAKOS:** That's exactly how it operates.  
14 That's the operating methodology for us to conduct our business. And it happens  
15 across -- it happens in every city that I'm aware of, but it's always happened here. That  
16 is the operating forum I'm placed in as Council's only employee and the employee who  
17 receives a delegated authority for Council which I can sub-delegate. That's how we --  
18 that's the only way we can function as an organization.

19 **MS. SHARON VOGEL:** And when you're endowed with that  
20 delegated authority, does that preclude you from consulting with committee chairs or the  
21 Mayor before exercising your discretion?

22 **MR. STEVE KANELLAKOS:** No, there's no restriction on who I  
23 can consult with, who I can talk to, whether it's political, expert, staff, those  
24 conversations happen all the time. They've happened throughout the history of the City  
25 as long as I've been here since amalgamation. Where business is conducted in formal  
26 settings, there's no question. Where formal decisions are made at committee and at  
27 Council and other formal settings.

28 But I don't know of an organization, private sector or public sector,

1 where staff -- and in that case there's a Board of Directors; in our case there's elected  
2 officials -- are having conversations about issues of the day or discussing topics  
3 informally in whatever platform, whether it's face-to-face or on some application which  
4 are transient conversations, in my view.

5 **MS. SHARON VOGEL:** So when you consult a chair of a standing  
6 committee or the Mayor there's no requirement that you need to then consult all other  
7 councillors about a particular issue? Is that right?

8 **MR. STEVE KANELLAKOS:** Absolutely not.

9 **MS. SHARON VOGEL:** So it's not an all or nothing proposition.  
10 You can consult those you feel will assist staff with its work, correct?

11 **MR. STEVE KANELLAKOS:** That's correct, and depending on the  
12 role that they have in the governance structure of the City.

13 **MS. SHARON VOGEL:** So and then as appropriate, a report to  
14 Council or a relevant committee is made as appropriate; is that correct?

15 **MR. STEVE KANELLAKOS:** Well, ultimately it will head back to  
16 committee or Council once the report or the issue is developed to the point that Council  
17 can have all the information and have a discussion. That's correct. That's the way  
18 reports work their way through the system.

19 **MS. SHARON VOGEL:** And so to take it back again to this project  
20 -- so in relation to the determination that substantial completion had been achieved, this  
21 decision would be made by the City? The City staff would render an opinion and the  
22 independent certifier and then report it to Council after, correct?

23 **MR. STEVE KANELLAKOS:** That's what happened. Correct.

24 **MS. SHARON VOGEL:** And just as an unfavorable opinion by the  
25 City and the independent certifier was reported after the fact in May, 2019, correct?

26 **MR. STEVE KANELLAKOS:** That's correct. We report good news  
27 and we report bad news. It doesn't matter. Council gets it all. And we have throughout  
28 the history of this project.

1                   **MS. SHARON VOGEL:** And Council would never be able to have  
2 the level of detail and doesn't have the expertise to make such a determination about an  
3 issue such as whether substantial completion has been achieved or whether Revenue  
4 Service Availability has been achieved, correct?

5                   **MR. STEVE KANELLAKOS:** That's absolutely correct.

6                   **MS. SHARON VOGEL:** And the fact that staff was diligent in its  
7 consideration of substantial completion, is reflected by the fact that RTG's May  
8 application for substantial completion that I just referred to a few minutes ago was  
9 rejected; is that right?

10                  **MR. STEVE KANELLAKOS:** That's correct.

11                  **MS. SHARON VOGEL:** And if the City was so desperate for the  
12 system to launch no matter what reliability and safety issues existed, it would not have  
13 given a negative opinion back in May of 2019, would it?

14                  **MR. STEVE KANELLAKOS:** No, it would not. I still -- I'm of the  
15 opinion, I was then and I am now, that it was up to RTG to pass. And if they didn't pass,  
16 it wouldn't go into service. And that was a line in the sand for me.

17                  **MS. SHARON VOGEL:** So I think now you've shifted to talking  
18 about trial running and Revenue Service Availability. So that same approach applies to  
19 trial running and Revenue Service Availability; is that right?

20                  **MR. STEVE KANELLAKOS:** That's right. The notion that it was a  
21 pass only at all costs is incorrect, in my view. It was -- they need to complete it and  
22 demonstrate they could do it. If they couldn't do it, Council would be informed they  
23 couldn't do it because we didn't get the sign-offs from the IC and the independent safety  
24 auditor and all the other sign-offs from the team. And without that, it doesn't matter  
25 what the expectations were or what the pressure was or what anybody was saying. It  
26 would not go into service because it didn't have the sign-off.

27                               I don't think anyone would expect that without those sign-offs that  
28 we would still put something into service just to meet some arbitrary date and risk public

1 safety and any other harm that may come by just the notion that we have a date; we're  
2 going to meet the date no matter what. That has not been proven true four other times  
3 previously where we had dates; we missed the date and we kept on going. We kept  
4 trying for the next date for them to get to a place where they could actually pass trial  
5 running.

6 **MS. SHARON VOGEL:** And in relation to substantial completion,  
7 Revenue Service Availability, the City and the independent certifier rendered their  
8 opinions and then staff reports that decision has been made to council, correct?

9 **MR. STEVE KANELLAKOS:** That's correct.

10 **MS. SHARON VOGEL:** And in relation to trial running, at the end  
11 of the day, was it you who decided what information would be given to council and  
12 when?

13 **MR. STEVE KANELLAKOS:** Well, there seems to be a different  
14 version of that, but in my belief it was my decision in terms of when council went -- from  
15 when I stated when council -- what would happen during trial running and when they  
16 would receive the information. And as I said previously in my testimony, I believed --  
17 and I still believe -- that council needed to have all of the information because there was  
18 a process. It wasn't about one or two days. They needed to understand what  
19 happened completely and have every opportunity to do, which they did on August 23<sup>rd</sup>.  
20 They were able to ask any expert -- Mr. Manconi, myself, we were all there -- any  
21 questions they wanted about what happened during the trial running period. That was  
22 all made available to them.

23 **MS. SHARON VOGEL:** I'd like to ask you a few questions about  
24 records management, Mr. Kanellakos.

25 Under the City's records management policy, how are text  
26 messages and WhatsApp chats treated?

27 **MR. STEVE KANELLAKOS:** Well, the records management policy  
28 has two types of records: permanent records and temporary records. The permanent

1 records have to be entered into the official City record-keeping systems and kept for an  
2 extended period of time, based on the criteria that's set by our records policy. And then  
3 there's the temporary records, which are transient, which in the policy are encouraged  
4 to be deleted because they complicate search for actual records. So those are things  
5 where they're transitory in nature. They're conversational. They're updates. They're  
6 immediate actions. They're not things that people are making decisions on or are  
7 required to be kept, and in fact should be deleted off people's devices. They're the  
8 equivalent of, I would say -- and people have used this analogy, but back in the day,  
9 before we had apps, I'd be making those phone calls on cellphones. We'd be talking to  
10 people. You'd be asking what's going on. You'd be updating them. You'd be getting  
11 information. That's a regular practice in any organization to have those informal  
12 updates and discussions on a regular basis.

13 **MS. SHARON VOGEL:** And was the WhatsApp chat a decision-  
14 making forum?

15 **MR. STEVE KANELLAKOS:** Not in my mind at all. It was an  
16 information-sharing forum of which I was also receiving information. On the WhatsApp  
17 chat I have very few entries. I wasn't a contributor to the WhatsApp chat because I  
18 wasn't on the ground having access to the daily information that was happening with the  
19 trial running. So I was a benefactor of receiving the information as well. It wasn't about  
20 decisions. It was about understanding -- for me to understand what was happening on  
21 a regular basis to stay informed.

22 **MS. SHARON VOGEL:** You didn't agree with Mr. Adair's  
23 statement to you this morning that the mayor and Councillor Hubley were making the  
24 decisions that were delegated to you. So to be clear, why, then, were the mayor and  
25 Councillor Hubley being provided with information during trial running through this  
26 WhatsApp chat?

27 **MR. STEVE KANELLAKOS:** As I explained before, the mayor has  
28 a unique role as head of council, the CEO, and the chair of FEDCO. His role and the

1 information he's provided on a regular basis is no different than any other mayor of a  
2 municipality in Canada that I'm aware of and any other mayor that -- I've worked with  
3 seven different mayors and regional chair and Police Board chairs over time -- and  
4 committee chairs -- over the numerous years I've been here. And that is the practice  
5 that is in place in terms of the mayor getting briefed and updated. In terms of his role,  
6 he's the only person designated in the municipal act as the CEO, chief executive officer.  
7 I'm designated as the chief administrative officer -- I mean, in terms of the act -- so  
8 there's a difference. The mayor has that role.

9 Councillor Hubley was the chair of the Transit Commission and has  
10 a role over the file in terms of the operational integration of the trains and to OC  
11 Transpo, and chairs have also been made available -- we've made available information  
12 to chairs on a regular basis for every standing committee that we have. Councillor  
13 Hubley was not an exception in terms of the information he's getting, nor are the other  
14 committee chairs, who chair environment or planning or community and protective  
15 services. All of those chairs, and the ones that came before them in previous terms of  
16 council, all receive information on important files that are going to their committee that  
17 their managing. That is the common operating practice in the City, and that's the  
18 system I've been working in and continue to work in.

19 **MS. SHARON VOGEL:** In response to the Commission's first  
20 request for a collection of WhatsApp message from you several weeks ago, you did a  
21 search of your records and produced certain WhatsApp chats, I gather.

22 **MR. STEVE KANELLAKOS:** From the initial request or the  
23 secondary? Sorry.

24 **MS. SHARON VOGEL:** The initial request several week ago, you  
25 collected ---

26 **MR. STEVE KANELLAKOS:** Oh. Several weeks ago.

27 **MS. SHARON VOGEL:** Several weeks ago you collected  
28 WhatsApp chats.

1                   **MR. STEVE KANELLAKOS:** Yeah. Leslie Donnelly has been  
2 appointed to manage the information and the requirements of the work and liaise with  
3 the Commission. I think she's been doing a great job doing that. And I was first initially  
4 advised that the Commission had asked for a series of documents, emails, et cetera, on  
5 various platforms. And the only information I had at that point was that all of my emails  
6 and messages from my content -- my electronic content -- was frozen and was going to  
7 be searched for the benefit of the Commission to have that information. I didn't think  
8 anything else of it at that time. It wasn't until I received the second summons -- or I was  
9 made aware of it, about the WhatsApp chats -- that I asked about whether those  
10 WhatsApp chats were released or not in the first tranche of half a million documents that  
11 went out.

12                   And that's when I realized that the WhatsApp chat is device to  
13 device. They aren't backed up; they're not required up to be. They're transient records  
14 and should have been deleted. I still had mine on my phone, as did other people. I  
15 didn't delete it. I didn't think anything of it. It was buried down deep in my app, because  
16 I wasn't using it. And then I was made aware that I produced the WhatsApp chat that I  
17 had. It was the only record that I had on my phone related to this particular issue.

18                   **MS. SHARON VOGEL:** And there was a bit of gap in your  
19 WhatsApp messages, wasn't there? Can you explain why that was?

20                   **MR. STEVE KANELLAKOS:** No, I had asked about that, because  
21 it dawned on me when I looked at it that I was missing about six months' worth of  
22 conversation. And I tracked that back to in December -- in that period there, my phone  
23 basically stopped working or my phone was exchanged. And when it was exchanged --  
24 because those conversations are temporary records; they're not stored and they're not  
25 kept -- and I lost -- when I switched to my new phone at that point, an upgraded phone, I  
26 lost the first six months of the conversation. It didn't transfer over to my new phone. So  
27 I was missing that, but other people had the entire conversation that the Commission  
28 could see.

1                   **MS. SHARON VOGEL:** And you didn't start the WhatsApp chat,  
2 did you?

3                   **MR. STEVE KANELLAKOS:** No, I didn't start the WhatsApp chat.  
4 The WhatsApp chat -- but I discussed it. From the point of view, I thought it was an  
5 efficient way to quickly get information, share information about a running conversation  
6 versus the phone calls and other multiple messages that go to various parties. It was  
7 an efficient way to have information shared on a transient basis so that people would  
8 know what's going on.

9                   **MS. SHARON VOGEL:** And it was suggested previously by  
10 Commission counsel that when someone is added to a WhatsApp chat, they receive all  
11 the previous messages exchanged prior to their joining. That's not correct, is it?

12                   **MR. STEVE KANELLAKOS:** I'm not an IT specialist, but that's not  
13 my understanding and it certainly didn't happen with my phone. None of my messages  
14 -- I lost a lot of data that was transient in nature when I transferred. When I signed up or  
15 logged on to a new phone, I was logged on to a new phone. Because those records  
16 aren't -- those temporary records aren't permanent records. They're supposed to be  
17 deleted.

18                   **MS. SHARON VOGEL:** So when you're added to a WhatsApp  
19 chat, you don't receive the chat messages that came before you joined, correct?

20                   **MR. STEVE KANELLAKOS:** No. My experience is that you only  
21 receive anything going forward.

22                   **MS. SHARON VOGEL:** You've already talked a bit about  
23 questions that you were asked about pressure to open the line. Did you get pressure  
24 from the mayor to open the line?

25                   **MR. STEVE KANELLAKOS:** The mayor never pressured me to  
26 open the line.

27                                   And we were under pressure, as was established by the  
28 Commission counsel. There's no question about it. But we'd been under pressure

1 since the project started and the mayor never told me, not once, and neither did  
2 Councillor Hubley, or any other councillor as a matter of fact, that this has to open by a  
3 certain date to meet a political objective. That never happened. I never had that  
4 discussion with anybody.

5                   And in fact, the mayor was quite the opposite because he had an  
6 experience -- or there was an experience with the Trillum Line, which is the north-south  
7 line that's closed now but that was initially opened, our first light rail system, diesel  
8 system, that was running where they had a launch after an upgrade to the system and  
9 the Transit Commission Chair and other delegates were down on the platform and the  
10 train never showed up with all the media and the public there waiting for the train  
11 because the train broke down or there was some technical problem.

12                   And the mayor would constantly say to me, you know, "That thing  
13 better be reliable and safe when it goes in. Don't put it into service if it's going to fail." I  
14 think he was very concerned about having a launch, having everybody there, and the  
15 trains don't run. That was -- and if you know Mayor Watson, that's his concern; he likes  
16 to see things operate -- operate well and reliably. And in this case, he was -- he never  
17 pressured me.

18                   And quite frankly, receiving that kind of pressure would not have  
19 swayed what my decision would be because I could not succumb to any pressure  
20 based on the fact that I still needed the IC and the ICA Certificates to be able to launch  
21 that train. I didn't have that discretion to launch something despite when people wanted  
22 it launched without the establishment that it was safe and reliable by the people that  
23 were hired and that were retained with their expertise to make that judgment. I didn't  
24 have that scope of authority to do that without receiving it. So the answer back to the  
25 mayor was always -- was, "We need to get the certification before we launch." And we  
26 were fully prepared to delay the launch and put it another date.

27                   In fact, that was contemplated because RTG would have had to  
28 give us another date by September 15<sup>th</sup> that they missed the August -- the 2<sup>nd</sup> there;

1 they missed the first one in August, mid-August 16<sup>th</sup>. When they gave us the August  
2 30<sup>th</sup>, they -- we were prepared, if they missed -- before they gave us that, I should say,  
3 to change the date. And in fact, it was contemplated that they had to give us a date by  
4 mid-September about when they would give us a new RSA date. So that could have  
5 kept rolling based on the results.

6 **MS. SHARON VOGEL:** To refresh your memory, I think, in terms  
7 of that date, I believe you're referring to the revenue service availability term sheet, Mr.  
8 Kanellakos. And just to refresh your memory about what that date was by which they  
9 had to give a date, I think we should pull up the revenue service availability term sheet.  
10 It's RTG00151032. And I recognize, Mr. Kanellakos, that there's a lot of dates floating  
11 around here.

12 **MR. STEVE KANELLAKOS:** Sorry, I don't have it in front of me,  
13 so I was just trying to recollect.

14 **MS. SHARON VOGEL:** So -- no, for sure. We're going to pull it up  
15 for you. And Mr. Kanellakos, if we go down in the term sheet, please, to -- sorry, just a  
16 second. If you scroll down to the next page, please, Clause 4 states:

17 "The date by which RTG shall provide a proposed  
18 date pursuant to Section 26.7 of the Project  
19 Agreement shall be modified such that if RTG does  
20 not achieve RSA by September 15, 2019, it must  
21 provide a new proposed date by October 7, 2019."  
22 (As read).

23 Does that help refresh your recollection, Mr. Kanellakos?

24 **MR. STEVE KANELLAKOS:** Yes. Yes, that's what I was referring  
25 to but I didn't have the document in front me so I was just trying to recall off memory,  
26 sorry.

27 **MS. SHARON VOGEL:** So what that means is that if RTG hadn't  
28 achieved RSA by September 15, they would have to give you a date by October 7; is

1 that correct?

2 **MR. STEVE KANELLAKOS:** That was my understanding, correct.

3 **MS. SHARON VOGEL:** They wouldn't actually have to achieve  
4 RSA by October 7; they would just have to give you a date by October 7, correct?

5 **MR. STEVE KANELLAKOS:** Yeah, that's correct.

6 **MS. SHARON VOGEL:** And would have reported that new date to  
7 Council, correct?

8 **MR. STEVE KANELLAKOS:** Yes, just like we reported every other  
9 date that they gave us, missed, and then resubmitted to us.

10 **MS. SHARON VOGEL:** Thank you very much. You can take down  
11 the share. As City Manager, you work with the mayor a fair bit, Mr. Kanellakos?

12 **MR. STEVE KANELLAKOS:** Yes, I do.

13 **MS. SHARON VOGEL:** And is it fair to say he asks for updates in  
14 relation to all kinds of different issues?

15 **MR. STEVE KANELLAKOS:** Yes. Yes, the mayor is very actively  
16 engaged in the City and what's happening in the City.

17 **MS. SHARON VOGEL:** And is that because his role is different?  
18 You described him as CEO in the organization; is that why you give him more frequent  
19 updates?

20 **MR. STEVE KANELLAKOS:** Well, it's the -- the City Manager-  
21 mayor relationship is founded on that -- in the *Municipal Act* in terms of what his role  
22 and what my role is. And yes, he gets more frequent updates by virtue of being the  
23 mayor, as did every other mayor I've known over the last 30 years. Even in the smaller  
24 municipalities like Gloucester, same thing.

25 **MS. SHARON VOGEL:** And committee chairs also get additional  
26 information that other councillors don't get as a routine matter?

27 **MR. STEVE KANELLAKOS:** All of them do. All of them get --  
28 have access to senior staff to prepare for their committee meetings, to get briefed up on

1 reports, policy reports. They discuss the policy reports in advance. The committee  
2 chairs have a role to chair the meeting but it's evolved into them being engaged in --  
3 with staff in terms of managing the issues that come to their committee so that they can  
4 manage their committee meetings.

5 **MS. SHARON VOGEL:** But in relation -- in -- specifically in respect  
6 of the exercise of your delegated authority at substantial completion, at RSA, or after  
7 the derailments, were you pressured to make decisions that you wouldn't otherwise  
8 make?

9 **MR. STEVE KANELLAKOS:** I never pressured to do it, and I  
10 wouldn't do it.

11 **MS. SHARON VOGEL:** Did the mayor or Chair Hubley influence  
12 your exercise of your discretion under your delegated authority to make decisions you  
13 would not otherwise make in relation to substantial completion, trial running, revenue  
14 service availability, or after the derailments?

15 **MR. STEVE KANELLAKOS:** They never did. I was -- I was bound  
16 and determined that the only way this would go into service is once I received the  
17 required certifications and signoffs from our staff and RTG. It doesn't matter what the  
18 mayor or Council would have said. The same way I would not put the trains into service  
19 after they derailed, I was not going to put them in regardless of what anybody said.  
20 Council would have to remove my delegated authority and do it themselves if they  
21 wanted to do that. I needed to have those certificates before it went into service.

22 **MS. SHARON VOGEL:** And just to be clear on the certificates that  
23 you needed -- or that you were relying on, Mr. Kanellakos, those included certificates  
24 from the -- I believed you've referred to as the IC. That's the independent certifier,  
25 correct?

26 **MR. STEVE KANELLAKOS:** Yeah, and the ISA, sorry.

27 **MS. SHARON VOGEL:** And that's the independent safety auditor,  
28 correct?

1                   **MR. STEVE KANELLAKOS:** That's right. Correct.

2                   **MS. SHARON VOGEL:** And as well, at RSA, you placed  
3 significant reliance on the advice of City staff and experts like STV?

4                   **MR. STEVE KANELLAKOS:** I did.

5                   **MS. SHARON VOGEL:** And Mr. Kanellakos, I'm going to suggest  
6 to you that Commission counsel's statement about Mr. Prendergast's evidence was not  
7 complete and I would like to pull up Mr. Prendergast's transcript. It's TRN00000201.  
8 And if we could start with page 13 of that transcript, please. At the top of the page --  
9 and I believe there might be an error in relation to one of these percentages, but line 1  
10 says:

11   “Okay, Mr. Kanellakos told the Commission that he  
12 recalled you telling him that 12 out of 12 days, 90  
13 percent..” (As read).

14                   I think he's referring to availabilities:

15   “...and 98 percent availability, they could be going  
16 until Christmas and that will essentially never be  
17 achieved on any rail system. Do you recall telling Mr.  
18 Kanellakos that?” (As read).

19   “In exact words, no, but generally, yes. I definitely  
20 remember because I was making a comment about  
21 the -- two comment, really -- testing criteria, so  
22 whether you call it trial running there or trial running  
23 on some other system, generally, are very, very  
24 demanding and, in many cases, exceed what the  
25 service requirements ever will be. So I recall making  
26 the statement.” (As read).

27                   So that is what Mr. Prendergast actually said to Commission  
28 counsel. And is that consistent with what you recall about your discussion with Mr.

1 Prendergast pre-revenue service availability?

2 **MR. STEVE KANELLAKOS:** Yes. I remember where Mr.  
3 Prendergast was actually sitting in my boardroom when he made it, and that was a  
4 significant statement to me when he made that, in addition to all the other feedback and  
5 advice I was getting. So I absolutely do remember that, and that was what I said under  
6 oath ---

7 **MS. SHARON VOGEL:** And if we go to pages 41 to 42 of Mr.  
8 Prendergast's transcript, please, this is Mr. Gardner of my office questioning Mr.  
9 Prendergast. And if we could just go to the bottom of the following page, because I --  
10 sorry, I have to come in -- sorry, apologies -- scrolling up, and Mr. Gardner asks:

11 "Okay. Now we've touched a little bit this morning on  
12 the criteria that was used for this trial running, and is it  
13 fair to say the difference between 98 percent AVKR  
14 and 96 percent is not very significant in terms of  
15 demonstrating the system's capability; is that fair?"  
16 (As read)

17 Mr. Prendergast responded, "It is fair."

18 "And I think you mentioned earlier, you recall having  
19 some discussions about trial running with Steve -- Mr.  
20 Steve Kanellakos, Steve Kanellakos. Do you recall  
21 that?" (As read)

22 The answer given, "Yes."

23 "Okay. Do you recall ever mentioning to Mr.  
24 Kanellakos that 98 percent, as a percentage rate,  
25 AVKR, was very high, and that it would be unlikely  
26 that it could be met for all of trial running?" (As read)

27 Mr. Prendergast responded, "Yes."

28 "All right. And I believe -- I understand it was your

1 position at the time, in talking to Mr. Kanellakos, that  
2 96 was more reasonable in terms of AVKR for trial  
3 running than 98, which was quite high?"

4 "Yes." (As read)

5 And Mr. Kanellakos, does that accord with your recollection of that  
6 conversation that you had with Mr. Prendergast before the completion of trial running?

7 **MR. STEVE KANELLAKOS:** That's correct. That's my  
8 recollection.

9 **MS. SHARON VOGEL:** We can take down the share. Thanks very  
10 much.

11 And people like the mayor and Chair Hubley, over the course of  
12 RTG's efforts to achieve substantial completion and revenue service availability, they  
13 might ask questions about why decisions are made or why things have or have not  
14 been done; is that right?

15 **MR. STEVE KANELLAKOS:** Yes, that's -- all councillors ask me  
16 that.

17 **MS. SHARON VOGEL:** And that's not an attempt by those  
18 individuals to take over the role of staff or to control staff, is it?

19 **MR. STEVE KANELLAKOS:** No. My experience over this many  
20 years is that councillors, as elected officials, feel vulnerable when they're out in the  
21 community and people are expecting them to have answers on things. And there are  
22 certain times that councillors will ask about specific operational issues and want to  
23 know, and the mayor is no different. He wants to know sometimes, Councillor Hubley,  
24 the same thing. But it's not dictating what the decision's going to be or to change your  
25 decision or to put pressure on you to change your position. They want to be informed,  
26 they want to understand. They want to understand something that they don't  
27 understand.

28 **MS. SHARON VOGEL:** And in relation to trial running in particular,

1 is it your understanding that the mayor or Chair Hubley were trying to understand what  
2 was going on and how it was going, because the City was about to launch one of the  
3 City's largest projects and would need to be prepared, not that they were trying to  
4 change the outcome of trial running?

5 **MR. STEVE KANELLAKOS:** That's my understanding, yes.

6 **MS. SHARON VOGEL:** And the line couldn't be open until the  
7 contractual pre-conditions were met, correct?

8 **MR. STEVE KANELLAKOS:** It could not, regardless of what they  
9 said.

10 **MS. SHARON VOGEL:** And was there ever a discussion with the  
11 mayor or John Manconi or any other staff or any of your consultants about just letting  
12 RTG get across the finish line because they were so delayed?

13 **MR. STEVE KANELLAKOS:** Never. And Mr. Manconi was  
14 adamant about that too. He was -- both of us had the same viewpoint that they had to  
15 pass and they had to meet with the requirements and get those certificates. There was  
16 never any discussion about giving them a pass and giving them an ability to not meet  
17 those requirements.

18 **MS. SHARON VOGEL:** And so the City was going to ensure that  
19 the contractual requirements had been met prior to launch?

20 **MR. STEVE KANELLAKOS:** Yes, absolutely.

21 **MS. SHARON VOGEL:** And in relation to the concerns about  
22 Alstom's maintenance services prior to launch, if Alstom had not committed to the City  
23 and to the mayor that it would take significant steps to meet the maintenance  
24 requirements, the City would not have launched, correct?

25 **MR. STEVE KANELLAKOS:** Well, that was a big difference maker  
26 when the CEO of Alstom came to meet with the mayor. I think that was a significant  
27 meeting. They committed to bring the resources. John was -- Manconi -- was  
28 instrumental in pressuring them behind the scenes to consider that proposal, to bring in

1 people, put them on the trains, on the platform, and all the other things that they were  
2 concerned about with respect to maintenance. And they delivered that. They actually  
3 beefed up the resources and were able to have a good launch, and continued that for a  
4 period of time. So yes, without that injection of resources, I think we might have been in  
5 a different situation, heading into RSA.

6 **MS. SHARON VOGEL:** So at the time of the launch, this concern  
7 about ensuring sufficient maintenance resources were in place by Alstom and RTM, the  
8 City had addressed that concern and had -- correct?

9 **MR. STEVE KANELLAKOS:** Yes. Mr. Manconi pushed that  
10 particular issue very hard, as we saw, was very determined to make that happen,  
11 because he knew, in his assessment, that we needed to have those resources there.

12 And Mayor Watson concluded that by having the senior executives  
13 of RTG and Alstom appear here and make a commitment to support what we believed  
14 was a shortcoming at the time.

15 **MS. SHARON VOGEL:** And at the time of RSA, you had a  
16 package of certificates and documentation signed and sealed by engineers from Alstom  
17 and RTG that confirmed that the system was safe and reliable, correct?

18 **MR. STEVE KANELLAKOS:** I had all of it, yes. It was presented  
19 to me.

20 **MS. SHARON VOGEL:** And neither the City nor RTG would have  
21 launched the system if they did not genuinely believe it was ready, correct?

22 **MR. STEVE KANELLAKOS:** I believe that would not have  
23 happened. Absolutely not.

24 **MS. SHARON VOGEL:** And even with public pressure to open, as  
25 -- that you've described, and the embarrassment factor, it would be counter-intuitive for  
26 the City to launch prior to the system being ready, correct?

27 **MR. STEVE KANELLAKOS:** Well, I know a lot's been made about  
28 the embarrassment factor, and -- but that doesn't drive the decisions. The decisions are

1 based on what's in the contract, is it safe, is it reliable, and do we have all the expert  
2 sign offs, and put it in? Embarrassment is an emotion. It's not a business decision.

3 **MS. SHARON VOGEL:** So in -- and in relation to launch, you've  
4 already described the experience of the launch of the Trillium Line, which was not a  
5 success, and you only have one opportunity for a successful launch, correct?

6 **MR. STEVE KANELLAKOS:** Absolutely. That was ---

7 **MS. SHARON VOGEL:** And this -- sorry, go ahead, Mr.  
8 Kanellakos.

9 **MR. STEVE KANELLAKOS:** That was a very difficult day when  
10 that train didn't show up, with everyone standing on the platform.

11 **MS. SHARON VOGEL:** So the City knew it would be worse to  
12 launch a system that wasn't ready than to wait for the system to be ready, correct?

13 **MR. STEVE KANELLAKOS:** Certainly, Mayor Watson was  
14 obsessed and focused on that. Launching a system that wasn't ready and the ensuing  
15 fallout from that for an elected official was a worst-case scenario for him.

16 **MS. SHARON VOGEL:** And I'd like to ask you just a couple of  
17 questions about the sinkhole.

18 RTG maintained that it could still meet the required revenue service  
19 availability date of May 24, 2018 when it delivered its notice in November 2017 that it  
20 would meet that date, correct?

21 **MR. STEVE KANELLAKOS:** Yes.

22 **MS. SHARON VOGEL:** And that was almost 18 months after the  
23 sinkhole, correct?

24 **MR. STEVE KANELLAKOS:** That's right.

25 **MS. SHARON VOGEL:** And I believe in your discussion with  
26 Commission counsel, you indicated that the City did not accept that RTG was entitled to  
27 a relief event or a delay event because of the sinkhole, correct?

28 **MR. STEVE KANELLAKOS:** That's correct.

1                   **MS. SHARON VOGEL:** And that was because the sinkhole was  
2 caused by RTG's tunnelling activities, correct?

3                   **MR. STEVE KANELLAKOS:** That's what our determination was,  
4 yes.

5                   **MS. SHARON VOGEL:** And the independent certifier concluded  
6 the same thing, based on her review of multiple expert reports, correct? I believe you've  
7 referred to that this morning?

8                   **MR. STEVE KANELLAKOS:** That's correct.

9                   **MS. SHARON VOGEL:** And that issue is not going to be litigated  
10 because RTG and the City reached a settlement, correct?

11                   **MR. STEVE KANELLAKOS:** That's correct.

12                   **MS. SHARON VOGEL:** And it was agreed that there would be no  
13 extension of time for the sinkhole, and the City paid RTG no money, correct?

14                   **MR. STEVE KANELLAKOS:** That is correct.

15                   **MS. SHARON VOGEL:** And RTG did recover for the sinkhole from  
16 its insurers, correct?

17                   **MR. STEVE KANELLAKOS:** They did.

18                   **MS. SHARON VOGEL:** They recovered 40 million for direct costs  
19 and 74 million for soft costs, including delay, correct?

20                   **MR. STEVE KANELLAKOS:** That is my understanding, yes.

21                   **MS. SHARON VOGEL:** And you were asked a bunch of questions  
22 this morning about the City taking over as lender in relation to the Stage 1 Project. And  
23 I'd like to bring up a document, COW05252727. And I think that's a presentation dated  
24 July 26, 2017 regarding the long-term debt release.

25                   I'll read out the number one more time. COW05252727.

26                   And if we could go to Slide 4, please, of this presentation?

27                   **COMMISSIONER HOURIGAN:** Let's just stand by for a second.  
28 You're looking at it? This is the right one?

1 **MS. SHARON VOGEL:** This is the right one. Yes.

2 **COMMISSIONER HOURIGAN:** All right. So for the record,  
3 COW0525727 is the number we have.

4 All right. Go ahead.

5 **MS. SHARON VOGEL:** Correct. Thank you very much, Mr.  
6 Commissioner.

7 So when we look at Slide 4 we see that the procurement options  
8 analysis for Stage 2 determined that it was in the City's best interest to have RTG  
9 assume the maintenance responsibilities for Stage 2 via a fixed price MOU; is that  
10 correct?

11 **MR. STEVE KANELLAKOS:** Yes. I was involved directly in that  
12 decision. I was -- we were concerned about having a different maintainer on one line  
13 and the complications that that would cause. I mean, it's like having one telecom  
14 company come to your door with their wiring and then a second one coming into your  
15 house when you have a problem and you don't know where the problem originates  
16 from. That was the concept of doing this.

17 **MS. SHARON VOGEL:** So that was the impetus for it, Mr.  
18 Kanellakos?

19 **MR. STEVE KANELLAKOS:** That's right.

20 **MS. SHARON VOGEL:** And if we go to Slide 5, please? The final  
21 bullet states:

22 "The long-term lender debt release was determined to  
23 be preferred as it was relatively simple to implement,  
24 did not have a cost impact to the City, and would  
25 enable the Cit to meet the target MOU completion  
26 date to move forward with State 2."

27 So that was the reason for the City to take over as lender, Mr.  
28 Kanellakos?

1                   **MR. STEVE KANELLAKOS:** Yes. The number I was provided at  
2 the time was just over \$130 million impact to the City over the 30-year life of the  
3 contract in interest payments if we didn't choose this option.

4                   **MS. SHARON VOGEL:** And RTG consented to the City  
5 proceeding to take over as lender, correct?

6                   **MR. STEVE KANELLAKOS:** Yes, they did.

7                   **MS. SHARON VOGEL:** And are you aware of -- we can take down  
8 the share. Thanks very much.

9                   Are you aware of the City ever refusing a request for relief from  
10 RTG in respect of its position as lender?

11                   **MR. STEVE KANELLAKOS:** I'm not aware of once ever doing  
12 that.

13                   **MS. SHARON VOGEL:** And you were shown -- and I don't think  
14 we need to pull it up again -- a November letter that you sent as City Manager at a time  
15 when there had been numerous delays and the relationship was under strain, correct?

16                   **MR. STEVE KANELLAKOS:** Yes, I did say that.

17                   **MS. SHARON VOGEL:** And the response from RTG was  
18 essentially, "Don't mix up your roles as lender and as owner": is that fair?

19                   **MR. STEVE KANELLAKOS:** Yes, that's what Antonio said, yeah.

20                   **MS. SHARON VOGEL:** And do you recall ever a similar exchange  
21 being exchanged subsequently?

22                   **MR. STEVE KANELLAKOS:** No. I never had another discussion  
23 on the Credit Agreement after that with RTG, myself.

24                   **MS. SHARON VOGEL:** And in subsequent letters, did the City  
25 write separate letters as owner and separate letters as lender?

26                   **MR. STEVE KANELLAKOS:** I believe so, yes. We separated  
27 those two things and I acknowledge that at that point I should have sent two letters.

28                   **MS. SHARON VOGEL:** And to the best of your knowledge, the

1 City has not to this date as we sit here today, taken any steps as lender, based on its  
2 position as owner under the Project Agreement?

3 **MR. STEVE KANELLAKOS:** We have not.

4 **MS. SHARON VOGEL:** And the City has not exercised its rights of  
5 default under the Credit Agreement at any time, has it?

6 **MR. STEVE KANELLAKOS:** No. We were relying on the Project  
7 Agreement.

8 **MS. SHARON VOGEL:** So would it be accurate to suggest -- so it  
9 would not be accurate to suggest that the City used its role as lender to actually exert  
10 pressure on RTG because nothing was ever done by the City as lender to take steps  
11 against RTG or to use its role as lender to better its commercial position, correct?

12 **MR. STEVE KANELLAKOS:** That's correct.

13 **MS. SHARON VOGEL:** And in relation to the Substantial  
14 Completion Agreement, Mr. Kanellakos, the Substantial Completion Agreement that  
15 allowed for certain deferred works -- that was within your delegated authority?

16 **MR. STEVE KANELLAKOS:** It was.

17 **MS. SHARON VOGEL:** And that agreement amended the PA  
18 which was expressly allowed?

19 **MR. STEVE KANELLAKOS:** Yes, in the 2012 delegated authority  
20 it was.

21 **MS. SHARON VOGEL:** And it was your understanding that this  
22 agreement came about as a result of RTG not the City raising that there was confusion  
23 about the two significant events being substantial completion and Revenue Service  
24 Availability; is that correct?

25 **MR. STEVE KANELLAKOS:** Yes.

26 **MS. SHARON VOGEL:** And so the city being reasonable and  
27 cooperative agreed to defer certain limited works but they were supposed to be  
28 completed by Revenue Service Availability, correct?

1                   **MR. STEVE KANELLAKOS:** There was an agreement to defer  
2 certain limited works. That's correct.

3                   **MS. SHARON VOGEL:** Those works weren't waived, were they?

4                   **MR. STEVE KANELLAKOS:** No, they weren't waived; they were  
5 deferred for a short period of time.

6                   **MS. SHARON VOGEL:** And substantial completion just required  
7 that the project be substantially complete, correct? It wasn't going to be open to the  
8 public until after RSA, correct?

9                   **MR. STEVE KANELLAKOS:** I stated that earlier in my testimony.  
10 It wasn't intended to allow passengers on the system.

11                   **MS. SHARON VOGEL:** And you would agree that all the deferred  
12 works in the Substantial Completion Agreement were in fact addressed by Revenue  
13 Service Availability, correct?

14                   **MR. STEVE KANELLAKOS:** They were. They were.

15                   **MS. SHARON VOGEL:** And exactly how they were addressed or  
16 mitigated was specifically out in RTG's RSA notice of August 30, correct?

17                   **MR. STEVE KANELLAKOS:** Yes. When I read the notice, it was  
18 attached, yes.

19                   **MS. SHARON VOGEL:** And you prepared a memo on July 22<sup>nd</sup> to  
20 advise of the anticipation of the achievement of substantial completion, correct?

21                   **MR. STEVE KANELLAKOS:** That's correct.

22                   **MS. SHARON VOGEL:** And you advised Council in the July 27  
23 memo that substantial completion had been achieved. That was actually the purpose of  
24 the July 27 memo that you were shown this morning, correct?

25                   **MR. STEVE KANELLAKOS:** Yes.

26                   **MS. SHARON VOGEL:** Trial running hadn't even started yet on  
27 July 27<sup>th</sup>, correct?

28                   **MR. STEVE KANELLAKOS:** Yes, as I pointed out.

1                   **MS. SHARON VOGEL:** And that memo of July 27 just says that  
2 trial running is going to start the week of July 29, correct?

3                   **MR. STEVE KANELLAKOS:** That's correct.

4                   **MS. SHARON VOGEL:** And so contrary to Commission counsel's  
5 assertion, there is no launch before trial running starts, is there?

6                   **MR. STEVE KANELLAKOS:** No.

7                   **MS. SHARON VOGEL:** And in relation to trial running, trial running  
8 is part of the commissioning process, correct?

9                   **MR. STEVE KANELLAKOS:** Well, I reviewed in preparation again.  
10 I went back and refreshed my memory. Schedule 14 talks about the commissioning  
11 process of which trial running is a subset of that process. It's one -- it's a number of  
12 exercises in a process to get the system ready for public use safely and reliably.

13                   **MS. SHARON VOGEL:** So if we could pull up, please  
14 COW0000294 which is Schedule 14 of the Project Agreement.

15 **--- EXHIBIT No. 247:**

16                                   COW0000294 – OLRT Project Agreement Schedule 1  
17                                   Commissioning 7 November 2019

18                   **MR. SHARON VOGEL:** And if we could go to section 1.3 of this  
19 Schedule 14, please. And I believe you're referring, Mr. Kanellakos, to section 1.3(a)  
20 which states:

21                                   “The scope of the testing and commissioning  
22                                   plan/strategy will include trial running of the system in  
23                                   segments and as a fully integrated system, to the  
24                                   extent necessary to demonstrate the functional  
25                                   capability and safety of the system.”

26                   Correct?

27                   **MR. STEVE KANELLAKOS:** That's what I was referring to, yes.

28                   **MS. SHARON VOGEL:** And if we could go down to section 1.3(d),

1 please. I believe you referred this morning to the fact that the Project Agreement in  
2 section -- and I believe this is the section you were referring to -- states that:

3 "The commissioning plan strategy shall be developed  
4 and modified as required to address the evolution of  
5 the project."

6 Correct?

7 **MR. STEVE KANELLAKOS:** Yes, this is why I was giving my  
8 answer in terms of with relation to the change in criteria. It was contemplated and  
9 provided for in the delegation of authority and what the parties were able to do under  
10 the Schedule.

11 **MS. SHARON VOGEL:** And the second sentence of section 1.3.(f)  
12 states:

13 "The test and commissioning plan strategy shall  
14 undergo review and modification as the project  
15 progresses as agreed by the City and Project Co."

16 Correct?

17 **MR. STEVE KANELLAKOS:** That's exactly correct, yes.

18 **MS. SHARON VOGEL:** So you're aware of those provisions of the  
19 Project Agreement?

20 **MR. STEVE KANELLAKOS:** Yes, I am. And that was why, during  
21 the period, I felt comfortable with the criteria evolving as was allowed under the Project  
22 Agreement.

23 **MS. SHARON VOGEL:** And therefore, you did not need to  
24 exercise your delegated authority in relation to this evolution of the trial running criteria,  
25 correct?

26 **MR. STEVE KANELLAKOS:** No, because I didn't have to amend  
27 the contract because it was already in the contract allowing the parties to do exactly  
28 what they did.

1                   **MS. SHARON VOGEL:** And we can take down the share. Thanks  
2 very much,

3                   And on July 10, 2019, in a FEDCO presentation, you had advised  
4 Council you would not tell them about the results of trial running until it was complete,  
5 correct?

6                   **MR. STEVE KANELLAKOS:** That's correct.

7                   **MS. SHARON VOGEL:** And again, on July 22<sup>nd</sup>, 2019, in a memo  
8 to council, do you recall that staff advised that "Once RTG has achieved all trial running  
9 requirements, staff will inform council and members of the Transit Commission",  
10 correct?

11                   **MR. STEVE KANELLAKOS:** Yes, and I referenced that in my  
12 testimony earlier.

13                   **MS. SHARON VOGEL:** And you were kept informed of the  
14 progress of trial running on a regular basis in terms of passes and fails, correct?

15                   **MR. STEVE KANELLAKOS:** Yes.

16                   **MS. SHARON VOGEL:** Through the WhatsApp chat, correct?

17                   **MR. STEVE KANELLAKOS:** Through WhatsApp and telephone  
18 conversations with Mr. Manconi, or he would come by my office and give me an update  
19 on what's happening. But that was the level it was at.

20                   **MS. SHARON VOGEL:** And you didn't actually receive copies of  
21 the scorecards for trial running as the process went along.

22                   **MR. STEVE KANELLAKOS:** No, I don't recall receiving  
23 scorecards as the project went along. I don't have a recollection of that. I know I saw  
24 them at the end when everything was completed, a summary of what happened, but no,  
25 I wasn't receiving what the team was doing on their analysis on the day after each  
26 testing day to score what the results were. So no, I wasn't aware -- I was aware of  
27 them, but I wasn't seeing the specific information.

28                   **MS. SHARON VOGEL:** And you were shown a draft memo

1 prepared by John Manconi in or around July 31<sup>st</sup> this morning by Commission counsel.  
2 And if that memo had been released, would it have changed any steps taken by City  
3 staff in respect of trial running?

4 **MR. STEVE KANELLAKOS:** No.

5 **MS. SHARON VOGEL:** And the reason for not sharing this memo  
6 was because staff had already told council it would not report a play by play on trial  
7 running, correct?

8 **MR. STEVE KANELLAKOS:** Well, as I said, I was clear in terms  
9 of what I was going to do. I did what I was going to do, and providing council with  
10 partial information on how trial running was doing would serve no purpose, because  
11 they can't make an assessment of whether it's going to be successful or not, which was  
12 the outcome. It's the notion that let's understand this from when it's complete in terms  
13 of what was the final outcome, and we delivered that.

14 **MS. SHARON VOGEL:** And you referenced this morning that after  
15 the fact, this was raised by councillors with you at a FEDCO meeting. That was on  
16 December 17<sup>th</sup>, 2021, correct?

17 **MR. STEVE KANELLAKOS:** The memo specifically -- not  
18 releasing it?

19 **MS. SHARON VOGEL:** Yes.

20 **MR. STEVE KANELLAKOS:** I don't remember December. It may  
21 have been November, but I know I was in front of them. And I was asked specifically  
22 about the memo by one councillor, and I addressed it directly. And then I was asked  
23 about it a second time about a year later, where I think councillors may have forgotten  
24 or weren't aware that I answered that question to council, and I answered it a second  
25 time. I answered it in media conferences several times also, because there was an  
26 interest from the media on it. So I gave my explanation several times.

27 **MS. SHARON VOGEL:** And was that explanation consistent with  
28 what you've told the Commission today?

1                   **MR. STEVE KANELLAKOS:** Yes. I'm on record, so it is  
2 consistent.

3                   **MS. SHARON VOGEL:** And no further action was taken by council  
4 in respect of that memo, correct?

5                   **MR. STEVE KANELLAKOS:** No, there was no further action taken  
6 by council.

7                   **MS. SHARON VOGEL:** And in relation to the change in criteria,  
8 did you understand that there was a change in the criteria for trial running partway  
9 through that process?

10                  **MR. STEVE KANELLAKOS:** Yes.

11                  **MS. SHARON VOGEL:** What were you told about that?

12                  **MR. STEVE KANELLAKOS:** Well, I was told that there was a  
13 previous agreement in 2017 that people seemed to have forgotten about. I was told  
14 that the team that was reviewing it felt that the criteria were too high and would not be  
15 met, and that the difference in criteria from what we had in 2017 would not make a  
16 significant -- were not significant in terms of exercising and testing the system and as  
17 sharing its reliability and its safety, and that they were able to do it based on what was  
18 in the project agreement. And it was evolving. And so it wasn't about dilution. It was  
19 about being pragmatic and reasonable to ensure that we actually could get the system  
20 in service in a safe, reliable way, and nobody felt they were compromising those  
21 standards by adopting a more detailed version of what was agreed to in 2017.

22                  **MS. SHARON VOGEL:** Commission counsel put it to you that the  
23 criteria for trial running was changed so trial running could pass. Do you agree that's  
24 why it was changed?

25                  **MR. STEVE KANELLAKOS:** No, absolutely not. It wasn't about  
26 so that it could pass. It still had to meet all the other criteria that the independent  
27 certifier was reviewing that satisfies that it was safe and reliable. And the experts that  
28 weighed in on this felt that applying the percentage of 96 per cent versus 98 per cent

1 was not a significant change but would allow the system to be properly tested and  
2 exercised based on its maturity at that time as a new system.

3 **MS. SHARON VOGEL:** And you were shown two versions of an  
4 August 16<sup>th</sup> memo this morning by Commission counsel. Do you recall that?

5 **MR. STEVE KANELLAKOS:** Yes.

6 **MS. SHARON VOGEL:** And I believe you indicated to Commission  
7 counsel you do not recall seeing the longer draft version of this memo, correct?

8 **MR. STEVE KANELLAKOS:** I don't recall seeing it. I may have.  
9 There's a lot of memos that come through my office. I normally don't deal with draft  
10 versions. I usually see the final product.

11 **MS. SHARON VOGEL:** So you don't know why the changes were  
12 made, Mr. Kanellakos.

13 **MR. STEVE KANELLAKOS:** I don't recall why the changes were  
14 made or whether I discussed that with Mr. Manconi. I just don't remember.

15 **MS. SHARON VOGEL:** And you recall being asked by  
16 Commission counsel about the words used in the memo about the progress being  
17 made. But when we look at the versions of the August 16<sup>th</sup> memo, the two versions,  
18 both versions have the same reference to "significant progress has been made". Both  
19 versions use those same words, correct?

20 **MR. STEVE KANELLAKOS:** Yes, that's correct.

21 **MS. SHARON VOGEL:** And just seven days later, council was  
22 advised of the criteria that were applied for trial running in the August 23<sup>rd</sup> memo,  
23 weren't they?

24 **MR. STEVE KANELLAKOS:** Yes, they were, a week later.

25 **MS. SHARON VOGEL:** And in relation to this August 23<sup>rd</sup> memo,  
26 at the time did it appear to be consistent, based on your knowledge, with the information  
27 you'd learned during trial running?

28 **MR. STEVE KANELLAKOS:** Yes, it was.

1                   **MS. SHARON VOGEL:** And did you understand at the time that  
2 the system had successfully passed trial running?

3                   **MR. STEVE KANELLAKOS:** Yes.

4                   **MS. SHARON VOGEL:** And did you believe that council needed to  
5 know about the specifics, including the passes and fails day by day?

6                   **MR. STEVE KANELLAKOS:** As I've said, I don't think that  
7 information is relevant. The outcome is the most relevant information. They can ask  
8 questions about what happened during the trial running, but providing information about  
9 very technical operational issues, during the time, I didn't feel was value for council. But  
10 they had every opportunity to ask any question they wanted about what happened  
11 during that 24-day period.

12                   **MS. SHARON VOGEL:** And you had told council that RTG was  
13 going to be starting trial running the week of July 29<sup>th</sup>. So now, as at August 23<sup>rd</sup>, with  
14 RTG having just achieved substantial completion, anyone with a calendar would be  
15 aware that it took more than 12 days.

16                   **MR. STEVE KANELLAKOS:** Yes. I believe it was a 24-day period  
17 that they were running those trains.

18                   **MS. SHARON VOGEL:** And at the time that trial running was  
19 completed, did advisors to the City, including STV and City staff, tell you the system  
20 was safe and reliable and ready for service?

21                   **MR. STEVE KANELLAKOS:** Yes, they all did.

22                   **MS. SHARON VOGEL:** And you referred already to the mayor's  
23 reach-out to Alstom to secure maintenance resources. Would you describe that as a  
24 watershed moment in relation to the achievement of RSA?

25                   **MR. STEVE KANELLAKOS:** On reflection, I think it was. I think it  
26 was a milestone moment in that the executives were all here. We were all in the  
27 mayor's board room. They all pledged their commitment to provide the resources that  
28 were required to get this system up and running, and supported when it's up and

1 running. And I think that was one of those moments where we really saw the  
2 partnership come together with respect to taking concrete actions in a collaborative way  
3 to ensure that the system could be maintained properly going forward.

4 **MS. SHARON VOGEL:** And Peter Lauch, CEO of RTG -- do you  
5 recall him saying at the time that RTG was happy that the mayor had called Alstom to  
6 deal with the maintenance resource issues?

7 **MR. STEVE KANELLAKOS:** Yes, he was. And Mr. Lauch was  
8 concerned about it, and he was very pleased that the City intervened in that  
9 relationship.

10 **MS. SHARON VOGEL:** And nobody at the time suggested that  
11 this was inappropriate or undue pressure or interference?

12 **MR. STEVE KANELLAKOS:** Not that I recall, no.

13 **MS. SHARON VOGEL:** It was welcomed by all parties as a way to  
14 resolve the last remaining issues prior to launch, correct?

15 **MR. STEVE KANELLAKOS:** My recollection is they were all very  
16 happy that that meeting was happening.

17 **MS. SHARON VOGEL:** And RTG -- it delivered its RSA notice,  
18 which indicated that it was ready for launch and to start the maintenance term, correct?

19 **MR. STEVE KANELLAKOS:** They also did, yes.

20 **MS. SHARON VOGEL:** And what did you tell City staff about their  
21 assessment of whether or not RSA had been achieved?

22 **MR. STEVE KANELLAKOS:** I'm sorry; what did I tell which City  
23 staff?

24 **MS. SHARON VOGEL:** Your City staff. Mr. Manconi, and Mr.  
25 Morgan, and the others involved in the trial running process, what did you tell them  
26 about their assessment of whether or not RSA had been achieved?

27 **MR. STEVE KANELLAKOS:** What did I tell them?

28 **MS. SHARON VOGEL:** Yes, in terms of making ---

1                   **COMMISIONER HOURIGAN:** Sorry, I think you better do it one  
2 more time, counsel ---

3                   **MS. SHARON VOGEL:** Sure.

4                   **COMMISIONER HOURIGAN:** --- because you used "their" and I  
5 think it's confusing the witness. So just ---

6                   **MS. SHARON VOGEL:** Sure.

7                   **COMMISIONER HOURIGAN:** --- break it down slowly, please.

8                   **MS. SHARON VOGEL:** All right, will do. Thank you, Mr.  
9 Commissioner.

10                   What did you tell your City staff, including Mr. Morgan and Manconi,  
11 about their assessment, being Mr. Manconi, and Mr. Morgan, and other City staff's  
12 assessment, about whether or not RSA had been achieved?

13                   **MR. STEVE KANELLAKOS:** I'm not sure I'm following, I'm sorry,  
14 in terms of what did I tell them. I'm not sure what you're asking?

15                   **MS. SHARON VOGEL:** Well, did you tell them to exercise their  
16 independent assessment about whether or not RSA had been achieved?

17                   **MR. STEVE KANELLAKOS:** Well, the discussion -- oh, so okay,  
18 so I -- I'm sorry, I just didn't understand context.

19                   **MS. SHARON VOGEL:** Sure.

20                   **MR. STEVE KANELLAKOS:** I understand now. No, the  
21 conversation -- it was a running conversation with City staff about RTG having to meet  
22 the certification requirements. It was -- it was -- it was a non-starter that we would move  
23 forward without achieving that. And so, in my mind, it was -- it wasn't even having to  
24 reinforce it. Everyone understood that the mission was for RTG to meet the  
25 requirement of a safe and reliable system and get those certificates. There's no way we  
26 could launch without having those signoffs. It was a non-starter.

27                   **MS. SHARON VOGEL:** Right. And Mr. Kanellakos, in terms of  
28 launch, Commission counsel took you to a portion of your transcript that related to a

1 bedding-in period and a request for a bedding-in period. Even though I think it's called  
2 "embedding" in your transcript, it's actually -- the reference is a "bedding-in period",  
3 correct?

4 **MR. STEVE KANELLAKOS:** Yes.

5 **MS. SHARON VOGEL:** And that "bedding-in", does that refer to a  
6 pre or a post-launch process?

7 **MR. STEVE KANELLAKOS:** Post-launch process.

8 **MS. SHARON VOGEL:** So it is after customers start riding the  
9 trains, correct?

10 **MR. STEVE KANELLAKOS:** Yes, that's right.

11 **MS. SHARON VOGEL:** So it would be after trial running, correct?

12 **MR. STEVE KANELLAKOS:** Yes, it would be how the system  
13 went into service with actual paying public -- after.

14 **MS. SHARON VOGEL:** So when that portion of your transcript  
15 was being put to you this morning, you were referring to the period after launch when  
16 you would expect 13 trains to be on the line reliably in the morning peak, correct?

17 **MR. STEVE KANELLAKOS:** Yeah, the bedding-in process was  
18 never -- I may have mischaracterized it or misstated it, but the bedding-in period was  
19 never about during the trial running. It was about a request to launch with less than the  
20 full system to the paying public.

21 **MS. SHARON VOGEL:** And there was, in fact, no bedding-in  
22 period provided for in this Project Agreement, correct?

23 **MR. STEVE KANELLAKOS:** There was none that I could find of --  
24 that I could find.

25 **MS. SHARON VOGEL:** And in relation to a bedding-in period,  
26 RTG wanted to be paid when it proposed a bedding-in period? In still wanted to be paid  
27 its full maintenance payment; is that correct?

28 **MR. STEVE KANELLAKOS:** That was my understanding, yes.

1                   **MS. SHARON VOGEL:** And in relation to RTG's notice of revenue  
2 service availability, RTG was contractually required to give notice 180 days before they  
3 intend to achieve RSA; is that correct?

4                   **MR. STEVE KANELLAKOS:** Yeah, that's what the contract says.

5                   **MS. SHARON VOGEL:** And Council knew that; is that correct?

6                   **MR. STEVE KANELLAKOS:** Yeah.

7                   **MS. SHARON VOGEL:** And so that's why you updated Council on  
8 the shifting dates, correct?

9                   **MR. STEVE KANELLAKOS:** Yes.

10                  **MS. SHARON VOGEL:** And that 180 days before RSA, that's  
11 clearly long before substantial completion or trial running, correct?

12                  **MR. STEVE KANELLAKOS:** Yes, it is.

13                  **MS. SHARON VOGEL:** But that's the requirement of the contract?  
14 That's when the notice has to be given?

15                  **MR. STEVE KANELLAKOS:** Yes, it's a long time out.

16                  **MS. SHARON VOGEL:** Did the City ever announce a date for RSA  
17 before RTG had given it a date?

18                  **MR. STEVE KANELLAKOS:** No, we relied on RTG to give us a  
19 date. We never unilaterally announced a date.

20                  **MS. SHARON VOGEL:** So any date for RSA reported to Council  
21 or the public came from RTG, didn't it?

22                  **MR. STEVE KANELLAKOS:** Yes.

23                  **MS. SHARON VOGEL:** And in fact, when RTG took the significant  
24 contractual step of delivering its RSA notice, the City was sometimes skeptical of the  
25 date provided, correct?

26                  **MR. STEVE KANELLAKOS:** Yes, our experts reviewed it and they  
27 were skeptical, and that was shared with me.

28                  **MS. SHARON VOGEL:** And do you remember a press conference

1 in February 2019 where RTG announced it would reach RSA by March 31 and John  
2 Manconi publicly said this was unlikely, correct?

3 **MR. STEVE KANELLAKOS:** Yes, I remember that day very well.

4 **MS. SHARON VOGEL:** And he would not express such skepticism  
5 publicly if the City's sole focus was on launching as soon as possible, correct?

6 **MR. STEVE KANELLAKOS:** Well, I think if the motivation was to  
7 launch as soon as possible, Mr. Manconi, if he was motivated by that, and if in fact  
8 that's what happened, he would have been supporting the announcement of RTG and  
9 Mr. Lauch that day, but he took the difficult position of saying in public and contradicting  
10 what RTG had proposed in front of everybody, and in front of the media, which I think  
11 was the right thing to do, and he did the right thing.

12 **MS. SHARON VOGEL:** And the RSA date, that was RTG's date to  
13 set, not the City's, right?

14 **MR. STEVE KANELLAKOS:** Very clearly.

15 **MS. SHARON VOGEL:** I mean there is a required revenue service  
16 availability in the Project Agreement of May 24, 2018, but after that -- after that date's  
17 missed and RTG is obligated to provide notices of the dates it's going to meet, that's  
18 RTG's responsibility, correct?

19 **MR. STEVE KANELLAKOS:** Yes.

20 **MS. SHARON VOGEL:** And if RTG hadn't achieved revenue  
21 service availability by September 15<sup>th</sup> and, pursuant to that term of the RSA term sheet  
22 that we looked at, they would have had to give you another date by October 7, you  
23 would have had to go back to Council for a fifth time, just as you had on four previous  
24 occasions, to tell them that RTG had yet again missed an RSA date that it had  
25 committed to, correct?

26 **MR. STEVE KANELLAKOS:** Yeah, we had a lot of practice doing  
27 that and we would have done it again.

28 **MS. SHARON VOGEL:** And in relation to RSA agreement, certain

1 amounts were held back, is that correct, at the time of RSA?

2 **MR. STEVE KANELLAKOS:** Yes, there were -- I forget the  
3 amount. It was -- I don't want to speculate. I have a number in my head but I'm not  
4 sure what it was.

5 **MS. SHARON VOGEL:** Well, to help you -- and I don't think we  
6 have time to pull it up, Mr. Kanellakos, but I believe it was \$16M for the vehicles, \$2M  
7 for certain software, and \$2M for another type of software, plus ---

8 **MR. STEVE KANELLAKOS:** That ---

9 **MS. SHARON VOGEL:** --- additional amounts for additional  
10 monitoring by STV and Deloitte, correct?

11 **MR. STEVE KANELLAKOS:** Yeah, I had \$16M in my head but I  
12 couldn't remember the other components, yes.

13 **MS. SHARON VOGEL:** Sixteen million (\$16M), plus \$2M, plus  
14 \$2M for a total of \$20M in holdbacks, plus an additional \$2M for increased monitoring,  
15 correct?

16 **MR. STEVE KANELLAKOS:** Yes, that's correct.

17 **MS. SHARON VOGEL:** And in relation to those holdbacks, the  
18 items in respect of which holdback was kept, those did not contribute to the problems  
19 post-RSA, did they?

20 **MR. STEVE KANELLAKOS:** Not in my mind, no.

21 **MS. SHARON VOGEL:** And RTG completed those items and the  
22 monies were paid? Those monies held back were paid out to RTG; is that correct?

23 **MR. STEVE KANELLAKOS:** Yes.

24 **MS. SHARON VOGEL:** And you've already explained to  
25 Commission counsel the level of detail of your reports to Council on this project. And  
26 you have given Council a level of detail in relation to the reporting on this project that is  
27 not typical; is that fair?

28 **MR. STEVE KANELLAKOS:** Yes, I would say on this project,

1 Council had access to detail and information that goes beyond most significant issues  
2 that appear before committee and Council. They were getting very -- you know, as I  
3 said, every committee meeting in 2018, we went to FEDCO; eight out of 10 in 2019, we  
4 went to FEDCO; and that continued on. And we were providing regular information on  
5 almost everything that -- that -- the detail that Council would require and wanted to see.  
6 And so they had plenty of opportunity to ask questions of staff and the experts at any  
7 one of those sessions, including our legal staff because we had several in-camera  
8 sessions with legal -- long, long, meetings -- and we also had very public meetings  
9 where they were able to ask -- there's 23 councillors including the mayor -- were able to  
10 ask any questions that they wanted for extended periods of time. They were very long  
11 meetings.

12 **MS. SHARON VOGEL:** And have you received positive comments  
13 from councillors about the briefings that Council was given?

14 **MR. STEVE KANELLAKOS:** Well, not by all, but Council has  
15 different viewpoints on that. But overall, yes, councillors appreciated the meetings that  
16 we had, that we provided the information that we provided to them.

17 **MS. SHARON VOGEL:** And individual councillors, as we saw  
18 Commission counsel took you to an example of that. They've had the opportunity to  
19 ask many questions over the course of the project, correct?

20 **MR. STEVE KANELLAKOS:** They have.

21 **MS. SHARON VOGEL:** And they were given detailed responses  
22 by staff and consultants, correct?

23 **MR. STEVE KANELLAKOS:** Yes.

24 **MS. SHARON VOGEL:** And in relation to the reports given to  
25 Council and the level of detail in those reports about substantial completion, trial  
26 running, and Revenue Service Availability, if further more detailed information had been  
27 given would it have changed the result?

28 **MR. STEVE KANELLAKOS:** I do not believe it. I do not believe

1 that at all.

2 **MS. SHARON VOGEL:** And was that because Council had  
3 expressly delegated authority to City staff who would make decisions with the  
4 assistance of experts and then report to Council when the decisions had been made?

5 **MR. STEVE KANELLAKOS:** Council has to, in this particular  
6 project, myself included, we had to rely on the experts. Council certainly did in terms of  
7 assessing what transpired and the way forward. This is a very technical unique project  
8 to the City and Council would have had to rely on that as did I.

9 **MS. SHARON VOGEL:** And there was never an intention for  
10 Council to debate every contractual step on this project, correct?

11 **MR. STEVE KANELLAKOS:** No.

12 **MS. SHARON VOGEL:** And is it fair to say that if we are here  
13 today to get to the truth of the problems experienced during the maintenance period  
14 including the derailments, reporting to Council has nothing to do with those issues,  
15 correct?

16 **MR. STEVE KANELLAKOS:** I would say no.

17 **MS. SHARON VOGEL:** And if things like the daily trial running  
18 score cards, which you weren't even seeing over the course of trial running, would have  
19 been shared with Council on a daily basis, would there be any change to the results?

20 **MR. STEVE KANELLAKOS:** No, there's no value to see that  
21 when you're part of a -- when you're in a process to basically pass an exam. It's like  
22 sitting down and writing a three hour exam in university. I don't do well in the first three  
23 questions but I ace the next 15 and I pass the exam. If I was to report out after  
24 Question 3 and I didn't do well in the first Question 3, what value of conversation are  
25 going to have after because I haven't finished the next 17 questions. I have to finish the  
26 entire exam.

27 **MS. SHARON VOGEL:** And would you agree that the intention of  
28 staff is always to report as accurately as possible to Council?

1                   **MR. STEVE KANELLAKOS:** Well, there's always the judgement  
2 applied on information given to Council because it's not black and white. We don't bring  
3 it in piecemeal fashion and in dribs and drabs and threads. We try to bring complete  
4 information so that Council has the benefit. And they don't like it when we bring  
5 incomplete information, quite frankly. They want to have the benefit of all the  
6 information so that they can have a proper debate, ask their questions, and then make a  
7 decision and give us direction as the see fit, because it is ultimately their decision to  
8 direct staff.

9                   **MS. SHARON VOGEL:** And is it fair to say that generally speaking  
10 its challenging for staff to distill a significant volume of technical information into a high  
11 level briefing to Council?

12                   **MR. STEVE KANELLAKOS:** Well, this is a very --- this is the most  
13 complicated project we've every undertaken. There's many layers of technical  
14 information that are related to this and so yes, it's very difficult and I feel for elected  
15 officials. It's very difficult for them to absorb even the legal briefings and all the other  
16 technical briefings we're giving them. You know, in a short span of period so that -- and  
17 they do a great job at it but so that they can understand it, ask the right questions and  
18 then give the direction. It's a real challenge because they're not immersed in it every  
19 day. They're immersed in so many different issues City-wide and in their wards.

20                   **MS. SHARON VOGEL:** Right. Mr. Kanellakos, I'm going to wrap  
21 up very shortly because I know everyone wants to get to their lunch. But I'd just like to  
22 ask you a few questions about the maintenance period.

23                   So there were problems that arose in the fall of 2019 some weeks  
24 after the launch, correct?

25                   **MR. STEVE KANELLAKOS:** Yes.

26                   **MS. SHARON VOGEL:** And with the vehicle doors, they were a  
27 problem and there were other problems in the fall, correct?

28                   **MR. STEVE KANELLAKOS:** Yes.

1                   **MS. SHARON VOGEL:** And those problems became much worse  
2 in the winter, correct?

3                   **MR. STEVE KANELLAKOS:** Yes, they did.

4                   **MS. SHARON VOGEL:** And a Notice of Default was issued on  
5 March 10, 2018, correct?

6                   **MR. STEVE KANELLAKOS:** Yes.

7                   **MS. SHARON VOGEL:** And RTG -- sorry, I shouldn't have said  
8 2018. I meant 2020, Mr. Kanellakos, March 10, 2020.

9                   RTG delivered a rectification plan in response to that Notice of  
10 Default and they started to implement that plan?

11                   **MR. STEVE KANELLAKOS:** Yes, I saw the rectification plan, yes.

12                   **MS. SHARON VOGEL:** And service started to improve, albeit  
13 aided by reduced passenger volumes and a reduced service that the City agreed to  
14 during COVID? Is that correct?

15                   **MR. STEVE KANELLAKOS:** Yes. We did, yes.

16                   **MS. SHARON VOGEL:** But RTG was still in default as at the time  
17 the derailments happened on August 8 and then September 19, 2021, correct?

18                   **MR. STEVE KANELLAKOS:** Yes, they were.

19                   **MS. SHARON VOGEL:** And then after the derailments, a new  
20 Notice of Default was delivered to RTG because of the failure points incurred. Is that  
21 correct? Among other issues?

22                   **MR. STEVE KANELLAKOS:** Yes, as Council was advised, yes.

23                   **MS. SHARON VOGEL:** And after the derailments, what did Alstom  
24 say to you after the derailments and in their letter of September 24, 2021? It's  
25 COW0593599. Just what they're pulling up. Do you recall what Alstom said to you  
26 after that second derailment, Mr. Kanellakos, as reflected in this letter that's on the  
27 screen now?

28                   **MR. STEVE KANELLAKOS:** Can we just scroll down so I can

1 make sure I have the right letter?

2 **MS. SHARON VOGEL:** Yes.

3 **MR. STEVE KANELLAKOS:** Okay. That's the one from Mike,  
4 yeah. He had come to Ottawa. We had met him and we were on a call with him also.  
5 And he basically reflected what he said in conversation with us after he reviewed the  
6 MSF and the operations. He basically outlined the issues that he identified in the MSF.  
7 He committed to doing better and he was making a number of process and structural  
8 organizational changes to improve the performance of the maintenance for our train  
9 system.

10 **MS. SHARON VOGEL:** Okay. We can take down the share.

11 And MacDonald, an independent expert retained by the City after  
12 the first default in March, 2020, has prepared a very detailed report of over 300 pages  
13 that has been made publicly available and it confirmed the validity of the defaults, didn't  
14 it?

15 **MR. STEVE KANELLAKOS:** Yes. I read through that report too,  
16 and it did confirm the validity of the defaults.

17 **MS. SHARON VOGEL:** And it identified certain measures that  
18 RTG should take to improve its performance, correct?

19 **MR. STEVE KANELLAKOS:** Yes. It gave them a list.

20 **MS. SHARON VOGEL:** And you've heard other witnesses ask  
21 about RTG's current performance and about the current level RTG is performing at,  
22 correct, and the percentages have been given -- 98, even 99 percent. But are those  
23 percentages based on reduced service criteria applied over much of this period even in  
24 the morning peak periods that RTG has over much of this period been performing at a  
25 reduced service level post the derailments once they went back into service after  
26 November 12, 2021? Is that correct?

27 **MR. STEVE KANELLAKOS:** Yes. They were performing at  
28 reduced service at peak and for much of the time and only recently as of approaching

1 Canada Day they would get back up to what the contractual requirements are.

2 **MS. SHARON VOGEL:** So it's early days in them getting back to  
3 what the contractual requirements are?

4 **MR. STEVE KANELLAKOS:** It's only been a few days to get  
5 there.

6 **MS. SHARON VOGEL:** And it's easier for RTG to do well when  
7 they're running fewer trains, isn't it?

8 **MR. STEVE KANELLAKOS:** Absolutely.

9 **MS. SHARON VOGEL:** And the failure points incurred by RTG  
10 following the derailments mean RTG is still in default as we sit here today, correct?

11 **MR. STEVE KANELLAKOS:** They still are. They haven't come  
12 out of default yet.

13 **MS. SHARON VOGEL:** And the City is still concerned to this day  
14 as we sit here about RTG's ability to provide consistent and reliable service, correct?

15 **MR. STEVE KANELLAKOS:** All I'm going on are experts from  
16 MacDonald and from TRA. The concern of course is the level of deferred maintenance  
17 that they have on those trains and that even though they're improving, they have  
18 improved recently in the last little while, the concern is that if they don't get ahead of that  
19 deferred maintenance eventually that maintenance will catch up under the reliability of  
20 the trains and start impacting that reliability again. So I'm very concerned about it still.

21 **MS. SHARON VOGEL:** Those are my questions.

22 **COMMISSIONER HOURIGAN:** All right. Thanks very much.

23 It's now 1:06 so we went a little late. But we wanted -- oh, I'm  
24 sorry. I forgot to ask. Would you like to do a re-examination?

25 **MR. JOHN ADAIR:** Just very briefly, Mr. Commissioner on just  
26 one point.

27 **COMMISSIONER HOURIGAN:** All right, stay on the line

28 **MR. JOHN ADAIR:** I'll be quite quick. And Mr. Commissioner, the

1 first issue doesn't necessarily concern the witness directly but numerous references  
2 have been made to the City's records management policy. And I wonder if might just  
3 have your authorization just to introduce that as an exhibit. It was provided by the City  
4 in their Notice of Documents that may be put to Mr. Kanellakos. My concern is simply  
5 that if references have been made to the policy then the policy itself should be part of  
6 the record.

7 **COMMISSIONER HOURIGAN:** Counsel, do you have any issue  
8 with that?

9 **MS. SHARON VOGEL:** Sorry, no, none at all. That's fine.

10 **COMMISSIONER HOURIGAN:** I think it's a housekeeping matter  
11 so we'll do that. Go ahead.

12 **MS. SHARON VOGEL:** Yes, I would have put it to him if I had had  
13 a little more time. I just didn't want to slow you down.

14 **COMMISSIONER HOURIGAN:** Well, whenever you feel you need  
15 more time, just take it, but that's fine. Go ahead.

16 **MS. SHARON VOGEL:** Well, thank you. Thank you.

17 **MR. JOHN ADAIR:** Okay, Mr. Kanellakos, just following up on that,  
18 without taking any of the details of the policy, because I don't think that that's  
19 necessarily entirely fair to you, I take it that the records management policy itself is not  
20 the reason why the WhatsApp chat messages were or were not produced by you. I had  
21 understood the case to be that you simply didn't recall that they existed until you were  
22 asked for them; is that correct?

23 **MR. STEVE KANELLAKOS:** Yes. When I initially was asked  
24 about what I was telling the mayor, I didn't recall that particular chat, no.

25 **MR. JOHN ADAIR:** Right. And then after you were asked  
26 specifically for WhatsApp chats, you did recall, you went back and looked, and realized  
27 you still had the chat, and that's why you produced it when you did, correct?

28 **MR. STEVE KANELLAKOS:** That's correct.

1                   **MR. JOHN ADAIR:** It wasn't an issue one way or the other of the  
2 records management policy?

3                   **MR. STEVE KANELLAKOS:** No, no.

4                   **MR. JOHN ADAIR:** All right. And I take it, sir, that regardless of  
5 what you understood about why this inquiry was called, you understood that the  
6 Commission would be examining in detail issues surrounding the Light Rail Transit  
7 Project?

8                   **MR. STEVE KANELLAKOS:** Yes, I did.

9                   **MR. JOHN ADAIR:** And that that -- you understood that that would  
10 include trial running and handover?

11                   **MR. STEVE KANELLAKOS:** Yes. I saw the terms of reference of  
12 the Commission, Mr. Adair.

13                   **MR. JOHN ADAIR:** And I take it, sir, if you had recalled back when  
14 you were first asked for documents or when you were examined on April 28<sup>th</sup>, if, at  
15 those times, you had recalled the existence of the WhatsApp chat messages, you would  
16 have produced them at the time?

17                   **MR. STEVE KANELLAKOS:** Yes.

18                   **MR. JOHN ADAIR:** And that's because you understood that they  
19 might be important to the Commission in the fulfillment of its mandate?

20                   **MR. STEVE KANELLAKOS:** Yes. And if I had something in my  
21 possession that could help, I would produce it.

22                   **MR. JOHN ADAIR:** Right. Thank you very much, Mr. Kanellakos.  
23 Those are my re-examination questions for you.

24                   **MR. STEVE KANELLAKOS:** Thank you.

25                   **COMMISSIONER HOURIGAN:** Thank you, Mr. Kanellakos. I  
26 know that you're not feeling particularly well. We appreciate you giving evidence today.  
27 Very helpful for the Commission and its work.

28                   So it's now 1:09, so we'll break til about 2:09 for lunch. Thanks.

1                   **THE REGISTRAR:** All rise. The Commission is adjourned until  
2 2:09.

3 --- Upon recessing at 1:09 p.m.

4 --- Upon resuming at 2:08 p.m.

5                   **THE REGISTRAR:** The hearing has resumed.

6                   **COMMISSIONER HOURIGAN:** All right. The next witness is

7 Monica Sechiari. Is the witness there?

8                   **MS. MONICA SECHIARI:** Yes, I am.

9                   **COMMISSIONER HOURIGAN:** Madam, did I pronounce your name  
10 correctly?

11                   **MS. MONICA SECHIARI:** No, it's Monica Sechiari.

12                   **COMMISSIONER HOURIGAN:** Sechiari. I apologize.

13                   **MS. MONICA SECHIARI:** No, no worries.

14                   **COMMISSIONER HOURIGAN:** Well, as someone who's had his  
15 name mispronounced a few times, I try to get it right, but I don't always.

16                   Okay, now, I don't see the witness. I see Mr. Coombes, but I'm  
17 looking for the witness.

18                   **MS. MONICA SECHIARI:** I can see my ---

19                   **COMMISSIONER HOURIGAN:** Okay, we can see you now, very  
20 good.

21                   **MS. MONICA SECHIARI:** Okay, great. Okay.

22                   **COMMISSIONER HOURIGAN:** Would you like to swear to tell the  
23 truth or affirm to tell the truth? What's your preference?

24                   **MS. MONICA SECHIARI:** I can swear.

25                   **COMMISSIONER HOURIGAN:** Okay, standby.

26 **--- MS. MONICA SECHIARI, Sworn:**

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

28                   So you'll hear questions from several lawyers. The first is from

1 Commission counsel, Mr. Coombes.

2 Go ahead.

3 **MR. MARK COOMBES:** Thank you, Mr. Commissioner.

4 **--- EXAMINATION IN-CHIEF BY MR. MARK COOMBES:**

5 **MR. MARK COOMBES:** And thank you, Ms. Sechiari, for  
6 attending today.

7 Well, I'd like to begin just by maybe a brief overview of who you are  
8 and who the Altus Group is, just to provide some context for the evidence that we're  
9 going to give today.

10 **MS. MONICA SECHIARI:** Sure.

11 **MR. MARK COOMBES:** So if we could just start out, may you can  
12 tell us a little bit about Altus Group and the roles that it fulfills as an independent  
13 certifier.

14 **MS. MONICA SECHIARI:** Yes, so Altus Group, and specifically the  
15 area I work in, Cost and Project Management, I work for the Infrastructure Group and  
16 we provide a wide variety of consulting services in the infrastructure area, you know,  
17 with P3 jobs, whether it be lenders' technical advisor services, technical advisor  
18 services, independent certifier services, dispute resolution, schedule analysis, you  
19 know, all different types of sort of, you know, services related to infrastructure projects.

20 **MR. MARK COOMBES:** Thank you. And in terms of you,  
21 personally, maybe you can talk a little bit about your professional background ---

22 **MS. MONICA SECHIARI:** Sure.

23 **MR. MARK COOMBES:** --- and your experience as an  
24 independent certifier on other projects.

25 **MS. MONICA SECHIARI:** Sure. My name's Monica Sechiari and  
26 I'm a professional civil engineer, and I'm licensed with the PEO in the Province of  
27 Ontario. I became a professional engineer in 1996, so it's been 26 years now. I've  
28 worked internationally and obviously within Canada. I joined Altus Group 12 years ago

1 specifically to work on independent certifier roles. So for the last 12 years, I have acted  
2 as independent certified team lead when Altus Group had been appointed as an  
3 independent certifier.

4 So over the last 12 years, we've been awarded 28 different roles as  
5 the independent certifier in all provinces except for Saskatchewan, Newfoundland, and  
6 Prince Edward Island. I, myself, have issued Substantial Completion Certificates and  
7 Final Completion Certificates on 22 of those 28 projects. So currently, we have six  
8 project ongoing that are at various stages of starting, and midway through, and towards  
9 completion. So that's the -- you know, basic extent of our experience as an IC.

10 I'd also like to add, as the independent certifier, it's all different  
11 types of infrastructure projects. So I've done a few hospitals. There's been athletic  
12 facilities with the PanAm Games. I've done highways. I've done other LRT projects,  
13 water treatment plants, sewer treatment plants, large-scale organic composting. We  
14 just finished a project in Gatineau on the Library of Archives. So the role of independent  
15 certifier can have a lot of different asset types and we've got a lot of experience with  
16 different asset types. It's not one particular area of, say, transit, or social, or -- or, you  
17 know, that type of thing. We've done courthouses and so on. So we've got a well-  
18 rounded experience in most asset types.

19 **MR. MARK COOMBES:** Thank you. And I just wanted to be clear  
20 because when several witnesses are giving evidence, they're referring to the  
21 independent certifier in the feminine form. They say "she" or "her" when their making a  
22 reference to the independent certifier. So generally speaking, they would be  
23 understood to be referring to you, personally?

24 **MS. MONICA SECHIARI:** Yeah. The independent certifier is Altus  
25 Group Limited. And we have an independent certifier team, which is laid out in our  
26 independent certifier agreement in Schedule 6 of the PA. I am the IC team leader so I  
27 am the face and the main communication with the Project Agreement parties, so I'm the  
28 most well-known person on the team and that's probably way they're identifying the

1 independent certifier as a she, but it is Altus Group as a whole.

2 **MR. MARK COOMBES:** Okay. Thank you for the -- thank you.

3 **MS. MONICA SECHIARI:** Or the IC team there, yeah.

4 **MR. MARK COOMBES:** Right, thank you for the clarification.

5 **MS. MONICA SECHIARI:** Yeah.

6 **MR. MARK COOMBES:** So, in other words, while you might be  
7 the sort of face of the team, it's really a team effort that the IC is bringing to any project.

8 **MS. MONICA SECHIARI:** Correct.

9 **MR. MARK COOMBES:** Thank you. And I'd just like to talk briefly  
10 about a timeline of Altus' involvement in this project, being the Ottawa LRT Stage 1. So  
11 After the parties execute the Project Agreement in 2013, Altus is really -- begins to be  
12 engaged at that point; is that correct?

13 **MS. MONICA SECHIARI:** That's correct. There's an RFP process  
14 where bidders are invited to bid on the role of the independent certifier. We end up  
15 being jointly appointed by both PA parties, and it happens at the same time as financial  
16 close or execution of the Project Agreement. Because the IC agreement is a schedule  
17 in the Project Agreement, we execute it almost on the same day as the Project  
18 Agreement is executed. So we are engaged as of the date of the Project Agreement.

19 **MR. MARK COOMBES:** And just if I could give a brief overview of  
20 sort of the different tasks that Altus takes on during the project -- so, at the beginning,  
21 Altus produces a certification quality plan, which is an outline of the different  
22 responsibilities, different tasks that Altus is going to fulfil as part of its role in the Project  
23 Agreement?

24 **MS. MONICA SECHIARI:** Correct, yeah, it details all the  
25 certification services we're required to provide pursuant to our IC agreement, and how  
26 we intend to carry that out, and what kind of involvement we may need from either PA  
27 party. That's correct.

28 **MR. MARK COOMBES:** And Altus is also a certifier of the

1 payment milestones in the agreement, so perhaps you could just speak briefly to what it  
2 means to certify a payment milestone.

3 **MS. MONICA SECHIARI:** Sure, we -- that is correct. There were, I  
4 believe, 12 payment milestones on this project. There's a process outlined in the PA  
5 upon which when Project Co. is of the opinion that they've satisfied the criteria for a  
6 milestone payment, they would submit a milestone application. At that time, the City  
7 has five business days to provide their opinion to the independent certifier whether they  
8 consider those requirements or criteria as being satisfied as well. And then the  
9 independent certifier has another five business days to assess both the evidences that  
10 Project Co. has provided in their application and the opinion -- the detailed opinion that  
11 the City's provided with their technical advisors. So then we would make an ultimate  
12 decision on whether the conditions have been met for the issuance of that milestone  
13 payment certificate.

14 The milestones in this Project Agreement and the criteria is scope-  
15 based, so it was -- it would be determined on a certain amount of work being completed.  
16 It was not -- the criteria was not financially based in this case. So whether it was the  
17 completion of the tunnel or certain stations had to be complete, that's work -- that was a  
18 criteria upon which we were issuing the certificate, not on the value of the milestone  
19 payment.

20 **MR. MARK COOMBES:** I say. In order to assess whether or not a  
21 certain milestone had been met, what tasks would you undertake as the independent  
22 certifier?

23 **MS. MONICA SECHIARI:** Sure. As -- you know, as the IC and  
24 trying to set expectations for -- you know, what our expectations would be, we would  
25 have milestone payment type meetings in the months leading up of, "What was this  
26 milestone? What was the scope of works? And what are the requirements and  
27 criteria?" you know, as a group with Project Co, and the City, and myself, we would  
28 develop checklists, let's say, of all the requirements, and then we would discuss what

1 kind of evidence Project Co. would provide to support that they'd met those  
2 requirements. What would be that deliverable, whether it's a report or a sign-off from an  
3 engineer of record or it's a test result? It just depends on the requirements, but as a  
4 group, the IC, the City, and RTG, we would agree what those evidences should be, and  
5 if those were provided and they were successful, in general the requirements would be  
6 met. So it's a bit of a tool for Project Co. to follow and for the City to also use in their  
7 assessment, and then ultimately the IC.

8 In determining whether the conditions have been met, the IC  
9 determines whether the conditions have been met based on the evidence Project Co.  
10 provides and based on the City's opinion. So our role can at times be a mediator-type  
11 role if the two parties disagree. We can at least have the detailed information from  
12 Project Co, we can have the City's detailed opinion from their technical advisors, and  
13 we can make a judgement on whether the criteria has actually been satisfied or not and  
14 if we can issue that certificate.

15 **MR. MARK COOMBES:** I see. So in other words, in issuing those  
16 certifications of milestones, you're relying on the reports of other experts that are  
17 involved in the project -- other engineers, other professionals that are involved -- to tell  
18 you, for example if something is required to be completed, that that thing has in fact  
19 been completed. Is that right?

20 **MS. MONICA SECHIARI:** That's correct. We are not considered a  
21 professional record on the job or an engineer of record, and we're not responsible for  
22 the design or construction. Project Co., being the design builder, has their team of  
23 engineers of record that provide those kinds of assurances, ensure they're compliant  
24 with the PA, and the City also has a team of technical advisors that they use. So we're  
25 not another set of that technical advisor expertise.

26 **MR. MARK COOMBES:** And I just want to touch on your ongoing -  
27 - in addition to certifying those 12 payment milestones over the course of the project,  
28 you were also involved, on a monthly basis, in issuing monthly status reports; is that

1 correct?

2 **MS. MONICA SECHIARI:** That's correct.

3 **MR. MARK COOMBES:** Okay. And what was the function of  
4 those reports?

5 **MS. MONICA SECHIARI:** It's to provide a monthly update on the  
6 status of the project. It's our independent opinion on the status of the project. And the  
7 contents of the report would comment on design progress, construction progress, the  
8 schedule, schedule changes, perhaps a permitting process, review of the quality control  
9 documentation in the sense -- is there anything concerning going on with the quality of  
10 works? Commissioning, if that's at the time -- our report does vary depending on the  
11 stage of the project. If the Commission is going on, how is the commissioning and  
12 testing going?

13 So we base that on documentation we receive from both parties  
14 and is made available to us, but we also base our report also on -- we conduct a  
15 monthly site visit to view the progress on site. So in that way, we can provide an update  
16 of what we've seen completed and how that looks against the monthly updated  
17 schedule. Are they aligned, or is the schedule indicating that perhaps they're further  
18 ahead than maybe what's see on site? So we want to provide a monthly status update  
19 to both PA parties.

20 And also, one of the key elements of our report is to identify any  
21 concerns we have -- concerns with meeting the completion date, concerns with, say, the  
22 quality of work, concerns with any, say, disputes or delay events or things like that that  
23 may have a material impact on a project. There's always challenges on projects, but  
24 what we try and identify in our monthly report is material issues that we would like the  
25 PA parties to be aware of.

26 **MR. MARK COOMBES:** And as part of that process, you  
27 mentioned you performed a monthly site visit or more than one site visit. Can you  
28 clarify -- as part of that function, are you performing any independent testing or

1 verification of any of the works of things completed to date, or are you really relying on  
2 the materials that have been submitted to you by the project parties?

3 **MS. MONICA SECHIARI:** We are not conducting our own testings  
4 or inspections. We go and visit the site monthly, but we are not conducting our own  
5 independent analysis of the information that's presented to us.

6 **MR. MARK COOMBES:** And that's because that's not part of the  
7 function of an independent certified; is that right?

8 **MS. MONICA SECHIARI:** Correct.

9 **MR. MARK COOMBES:** Now, just a quick overview -- I want to  
10 just maybe quickly touch on a few things that happen once the project gets closer to  
11 completion. So at a certain point, the Project Co. would issue a substantial completion  
12 notice.

13 **MS. MONICA SECHIARI:** Correct.

14 **MR. MARK COOMBES:** And that would kick off the process  
15 towards substantial completion. After you certify substantial completion is when you  
16 would issue a minor deficiencies list; is that correct?

17 **MS. MONICA SECHIARI:** That's correct.

18 **MR. MARK COOMBES:** Yeah. And maybe we can just talk briefly  
19 about the minor deficiencies list. I'm not going to take you to it, because I'm not sure it's  
20 necessary for you to comment on, but if you do need me to pull it up, please let me  
21 know. Can you talk a little bit about the process of the issuing of the minor deficiencies  
22 list? How does that start and where does that information about what a minor  
23 deficiency is come from?

24 **MS. MONICA SECHIARI:** Sure. The start of the minor deficiency  
25 list preparation and discussion starts quite a bit in advance of substantial completion. I  
26 would say it's touched on almost a year in advance, but the minor deficiency list actually  
27 starts to come together I'd say six months before substantial completion. That's not to  
28 say that -- Project Co. has a deficiency list running throughout this project, and they're

1 tracking deficiencies from day one all the way through and closing them off. Where we  
2 start to look a little deeper is as we get close to substantial completion.

3                   And again, similar to the milestone criteria process, we do it jointly  
4 with the City and Project Co. and the IC to start discussing, what does a minor  
5 deficiency mean? It is defined in the PA. So we start to get -- so that we're aligned,  
6 that we're all agreeing with that definition means.

7                   And at substantial completion, you are allowed to have minor  
8 deficiencies. It can be deficiencies, defects. It can be elements of incomplete work.  
9 They just can't materially impair -- I don't have the definition in front of me, but I believe  
10 it's use and enjoyment of the system, governmental operations -- I don't have all four in  
11 front of me, but again, materially impair that.

12                   In general, in my experience, minor deficiencies cannot be  
13 considered minor if -- generally, if it's got an operational significance or a maintenance  
14 significance or a safety significance -- it's not to say that you can't have an operational  
15 deficiency that's substantial, but it can't be materially significant. So it's that sort of  
16 general basis that we move forward with the discussion.

17                   So once we get close to substantial, there's a lot of joint lockdowns  
18 physically on site to review, say, defects and so on. And it's done as a group, with the  
19 City, Project Co., and the IC. So just to sort of summarize, these joint lockdowns  
20 happen, a deficiency list is maintained and updated by Project Co., they initially  
21 categorize the type of deficiency they feel it is. They may categorize it as minor or not  
22 minor. That was the terminology used on this project. And then we sit as a group and  
23 we review that. And the City can weigh in and say, "We agree. That's minor or not  
24 minor." And if they disagree, that's where the IC can come and weigh in and sort of try  
25 and clarify, get more information, and see if we can get a better understanding of what  
26 the actual category is.

27                   So as we're going towards substantial completion, the minor  
28 deficiency list is constantly being updated. There's lockdowns. There's also review of

1 documentation. That may organically bring up deficiencies associated with  
2 documentation. But ultimately, it's the continual review: are these minor or not minor?  
3 Focusing on the not minor ones, Project Co. has to resolve in order to have substantial  
4 completion.

5 **MR. MARK COOMBES:** Right. Just because this has come up in  
6 another piece of evidence, I'd like to bring up a transcript at this point.

7 **MS. MONICA SECHIARI:** Sure.

8 **MR. MARK COOMBES:** And this is transcript TRN200. And I'll  
9 just give staff a minute to pull that up. And I'd like to take you to page 106 of that  
10 transcript, if we could. It's actually page 106 of the transcript itself. All right. And it will  
11 be towards the bottom of the page. Now, this is evidence that Michael Morgan gave, of  
12 the City of Ottawa. He said the following. I'm just going to read it into the record and  
13 then I'll ask you for your input. So in response to a question by my colleague Christine  
14 Mainville, which was:

15 "Mr. Morgan, first of all, in terms of a minor  
16 deficiencies list, were there any deficiencies the City  
17 did not want included on the minor deficiencies list but  
18 the independent certifier had included." (As read)

19 And Mr. Morgan responds:

20 "I don't recall that we got into that level of detail. We  
21 were, you know, happy for the independent certifier to  
22 put issues on the list. I mean, I guess they -- I --  
23 yeah, I think if she had put things on the list, we were  
24 okay with that. There were certain things that we  
25 didn't want to be treated as minor deficiencies. That's  
26 probably the nuance there." (As read)

27 And then Ms. Mainville says, "And the independent certifier did not  
28 have to disagree with that position, correct?"

1 And Mr. Morgan says, "Unlikely, no."

2 So can you just clarify for us if you agree with that characterization  
3 by Mr. Morgan that you would be independently putting items on the minor deficiency  
4 list?

5 **MS. MONICA SECHIARI:** We could. We could, definitely, and my  
6 overall experience as the IC, once we're at the point of issuing that substantial  
7 completion certificate, the IC does issue the ultimate minor deficiency list, but it's been  
8 prepared by Project Co. and discussed with the City. You know, we can add items that  
9 we feel are missing, and generally, they would be items that have come up in the last  
10 couple of days of our review; otherwise, we would have suggested them earlier.

11 So in the case of Ottawa, I don't believe I included any items on my  
12 own, just because the process was so involved in detail that the minor deficiency list  
13 was -- the content was sufficient, and from my recollection, both parties were happy with  
14 it, and so was I. We spent a lot of time developing that. So in this project, I didn't feel  
15 the need to add anything additional, but I could, I could.

16 **MR. MARK COOMBES:** Okay. Thank you for that clarification.  
17 And we can bring that transcript down now.

18 So just to clarify this, because again, I think this might have come  
19 up at points in other evidence, but the minor deficiencies list is essentially issued by the  
20 IC as a one-time list? That list is issued after substantial completion and that fulfills the  
21 IC's function with respect to the minor deficiencies, yes?

22 **MS. MONICA SECHIARI:** Correct. We issue it once.

23 **MR. MARK COOMBES:** Thank you.

24 Now, after that minor deficiencies list is issued, the IC appears to  
25 have been involved in this project in a few other capacities leading up to revenue  
26 service ability. So one is that the IC is responsible for validating that trial running was  
27 successful; is that correct?

28 **MS. MONICA SECHIARI:** Yes, that we were responsible for

1 validating trial running acceptance.

2 **MR. MARK COOMBES:** Okay. And I am going to take you to  
3 some documents with respect to that, but just briefly, you also then certify that revenue  
4 service availability has been achieved?

5 **MS. MONICA SECHIARI:** Correct.

6 **MR. MARK COOMBES:** And after revenue service availability is  
7 achieved, what is the IC's role with respect to the project?

8 **MS. MONICA SECHIARI:** So we basically, in -- we don't have a  
9 role right now. We are still engaged as independent certifier, but what was supposed to  
10 happen was after revenue service availability was completed, within six months, Project  
11 Co. wasn't -- was supposed to achieve final completion. So that still hasn't happened  
12 as of today. So we've taken a step back from our role. We do not provide monthly  
13 reports, we don't attend meetings. This was at the request of both PA parties, but we  
14 will return when Project Co. feels they're ready to achieve final completion. We have  
15 not been notified of that as of yet.

16 **MR. MARK COOMBES:** Okay. And with respect to final  
17 completion, that would involve the closing out of minor deficiencies on the minor  
18 deficiency list; is that correct?

19 **MS. MONICA SECHIARI:** Yeah. There are no minor deficiencies  
20 allowed at final completion. All of those deficiencies, and any other deficiencies that  
21 maybe are construction related that may have come up since substantial, you know, as  
22 everybody endeavours to make the minor deficiency list as complete as possible, there  
23 can be items that come up, so you know, just, there can't be any deficiencies at final  
24 completion that are related to the design and construction.

25 **MR. MARK COOMBES:** All right. But just to be clear, the project  
26 parties haven't officially engaged you in any role since revenue service availability with  
27 respect to minor deficiencies?

28 **MS. MONICA SECHIARI:** No, they have not.

1                   **MR. MARK COOMBES:** Okay. And you would expect that your  
2 next involvement with the minor deficiency list would be when you are issued a notice  
3 that Project Co. intends to achieve final completion; is that right?

4                   **MS. MONICA SECHIARI:** Correct. You know, in line with the  
5 Project Agreement, there's a 10-day advance notice of when they think they will achieve  
6 final completion, and they'll issue the notice, but I -- you know, we -- we've discussed  
7 quite a while ago that, you know, we'd like sort of a couple of months' notice and we can  
8 do similar to what we did at substantial, start having some meetings, you know, get  
9 together sort of a checklist of sorts to discuss the criteria, agree on deliverables, and so  
10 on, you know, just so that every -- this can run smoothly when the time comes. But I  
11 have not been advised of any timing towards financial completion as of today.

12                   **MR. MARK COOMBES:** Okay. And speaking of substantial  
13 completion, perhaps we can just go into substantial completion, a little bit of intel. I'm  
14 going to pull up -- or ask staff to pull up a document, AGG137, and this, I believe you'll  
15 recognize, Ms. Sechiari, is the independent certifier's report on substantial completion?

16                   **MS. MONICA SECHIARI:** Correct.

17                   **MR. MARK COOMBES:** And this is the report that the independent  
18 certifier issued after RTG's first substantial completion notice; is that correct?

19                   **MS. MONICA SECHIARI:** That's correct.

20                   **MR. MARK COOMBES:** That's right.

21                   Now, you will recall that the outcome of this substantial completion  
22 notice and report was that it was your view that RTG had not achieved substantial  
23 completion at that time; is that correct?

24                   **MS. MONICA SECHIARI:** That's correct.

25                   **MR. MARK COOMBES:** All right. Now, I just want to clarify,  
26 because you have just given your evidence before that sort of the path to one of these  
27 milestones, a path to issuing one of these certifications, starts several months ahead of  
28 the actual giving of notice by the Project Co.; is that correct?

1 **MS. MONICA SECHIARI:** That's correct.

2 **MR. MARK COOMBES:** That's right. So even though Project Co.  
3 or RTG issues its notice in -- at the end of April in 2019, discussions have been ongoing  
4 with the City and with the independent certifier and RTG for several months before that?

5 **MS. MONICA SECHIARI:** Yes. We -- I believe we started in June  
6 or May of 2018, so almost a year in advance, and a great deal of time and effort was  
7 expended by all parties in several different types of meetings and working groups to get  
8 to the point where we were all aligned.

9 **MR. MARK COOMBES:** Okay. And so would it be your view,  
10 then, that at the point at which RTG issued its substantial completion notice in April of  
11 2019, there wouldn't have been any confusion as to what the requirements were for  
12 achieving substantial completion?

13 **MS. MONICA SECHIARI:** There should have been no confusion  
14 what the requirements were.

15 **MR. MARK COOMBES:** And you are not aware, notwithstanding  
16 that fact, of why RTG issued its notice, notwithstanding the fact that many issues still  
17 appeared to be outstanding and not complete?

18 **MS. MONICA SECHIARI:** Yeah. I can't answer the question of  
19 why they issued the notice. That would be a question they would have to answer.

20 **MR. MARK COOMBES:** So perhaps we can just take a look briefly  
21 at page 2 of the report. Okay. If we can just move -- there we go.

22 So as part of the substantial completion report, you are setting out  
23 definitions from the Project Agreement, this what substantial completion means. If we  
24 scroll down a bit further, it involves substantial completion of the fixed component and  
25 also substantial completion of the vehicle component.

26 If we go to the next page, both of those need to be substantially  
27 performed, is what you set out in this report. And then you set out further on this page  
28 that there are additional requirements that need to be satisfied including the fact that

1 there can exist minor deficiencies, but they all have to meet the definition of minor  
2 deficiencies in the Project Agreement; that's correct?

3 **MS. MONICA SECHIARI:** That's correct.

4 **MR. MARK COOMBES:** All right. And then if we go to page 4, just  
5 over to the next page, please, we see that you highlight a number of issues that you  
6 didn't included before the issuance of the substantial completion certificate could take  
7 place?

8 **MS. MONICA SECHIARI:** That's correct. Yeah.

9 **MR. MARK COOMBES:** And so if we went through these, we  
10 would see that there is a list of 15 items, and you note after that that due to the large  
11 volume of information that was being provided to you, that list wasn't exhaustive. So  
12 there was quite a few things that still needed to be done at the time the first substantial  
13 completion notice was issued?

14 **MS. MONICA SECHIARI:** Yes, that was my opinion.

15 **MR. MARK COOMBES:** All right. And we can take this report  
16 down, thank you.

17 And now if I can pull up another document which is AGG294 --  
18 thank you very much -- and this is -- you'll recognize as your independent certifier's  
19 report on substantial completion number 2?

20 **--- EXHIBIT No. 248:**

21 AGG0000294 - Independent Certifier's Report on Substantial  
22 Completion #2 27 July 2019

23 **MS. MONICA SECHIARI:** Correct.

24 **MR. MARK COOMBES:** And that was issued on July the 27<sup>th</sup>,  
25 2019?

26 **MS. MONICA SECHIARI:** That's correct.

27 **MR. MARK COOMBES:** So approximately two and a half months  
28 after the first substantial completion report was issued?

1 **MS. MONICA SECHIARI:** Yes.

2 **MR. MARK COOMBES:** Approximately? And if we can go to page  
3 1 of this report, toward the bottom of the page, you've set out that:

4 "Project Co. has issued a further substantial  
5 completion notice on July 22<sup>nd</sup>..."

6 **MS. MONICA SECHIARI:** Yes.

7 **MR. MARK COOMBES:**

8 "...confirming that all outstanding matters have been  
9 completed with the expectation of deficiencies  
10 deemed minor in nature or ..."

11 And if we can go over to the next page:

12 "...deficiencies/incomplete work agreed to be deferred  
13 and completed prior to revenue service availability."

14 (As read).

15 **MS. MONICA SECHIARI:** Correct.

16 **MR. MARK COOMBES:** Is that correct?

17 **MS. MONICA SECHIARI:** Yes.

18 **MR. MARK COOMBES:** So I will take you to it in a moment, but  
19 perhaps you can just explain to us, what is this "agreed to be deferred"? Who is that  
20 agreement between?

21 **MS. MONICA SECHIARI:** That agreement's between the City and  
22 Project Co., and it's entitled the "Substantial Completion Agreement". There were  
23 certain works, and I believe they were called "deferred works" in that agreement.  
24 "Deferred works" isn't defined in the PA, but it was in this Substantial Completion  
25 Agreement. It's certain works could be completed prior to revenue service availability  
26 but they did not need to be completed for the achievement of substantial completion so,  
27 therefore, they would be tracked to the minor deficiency list with a different rectification  
28 date. The rectification date being pre-RSA as opposed to the Project Agreement date

1 that they would have 180 days to rectify any deficiencies. But they were essentially  
2 items that were waived as requirements for substantial completion.

3 **MR. MARK COOMBES:** Okay, so a couple of questions on that.  
4 You say they're included on the minor deficiencies list. Does that mean that the parties  
5 had agreed that they were minor deficiencies?

6 **MS. MONICA SECHIARI:** They agreed to waive them as  
7 requirements for substantial completion. And the City, at their sole discretion, has the  
8 right to do that under the Project Agreement for the purposes of substantial completion  
9 in which they can be placed on the minor deficiency list. So they are minor deficiencies  
10 in that sense. They are declared minor deficiencies.

11 **MR. MARK COOMBES:** I see. So for your purposes, in other  
12 words, even though some of these might have existed at the time of the first substantial  
13 completion notice, which would have sort of prevented you from issuing the Substantial  
14 Completion Certificate, because of the subsequent agreement of the -- of RTG and the  
15 City, that recharacterizes those things and they now are not impediments to you issuing  
16 the Substantial Completion Certificate; is that ---

17 **MS. MONICA SECHIARI:** That's correct.

18 **MR. MARK COOMBES:** --- a good way to put it?

19 **MS. MONICA SECHIARI:** That's correct.

20 **MR. MARK COOMBES:** And so I just also wanted to get your view  
21 -- I would -- I believe that since you issued the Substantial Completion Certificate  
22 following this notice that you would have been of the view that those were, in fact, minor  
23 deficiencies? Or is it simply the case that because the parties had agreed, they're able  
24 to go on the minor deficiency list?

25 **MS. MONICA SECHIARI:** We didn't -- we weren't consulted in the  
26 preparation of that Substantial Completion Agreement and what they were going to  
27 consider to be deferred works and therefore waived for substantial and put on a minor  
28 deficiency list. We didn't have an opinion on that. But once that is done, they're now

1 minor deficiencies. So we didn't do any independent investigation or -- that wasn't our  
2 role to do that. These are now no longer requirements for substantial and are on the  
3 minor deficiency list.

4 **MR. MARK COOMBES:** Okay, thank you for confirming that. So  
5 just to be absolutely clear here, the parties agreed that certain items, essentially, did not  
6 have to be considered by you during your evaluation of whether substantial completion  
7 had been met?

8 **MS. MONICA SECHIARI:** Essentially, that's what the Substantial  
9 Completion Agreement did because they were waived, so then they're minor  
10 deficiencies, and that's how the PA reads, so there's nothing for us to consider at that  
11 point.

12 **MR. MARK COOMBES:** I see. Okay, thank you. And we'll take  
13 that report down now. One other element I just wanted to touch on with respect to the  
14 minor deficiency list -- so the IC is responsible for issuing the list, but the IC is also  
15 responsible for costing the items on that list; is that correct?

16 **MS. MONICA SECHIARI:** Yes, it's initially costed by Project Co.  
17 with their application. And we actually got into costing with the City -- and Project Co.,  
18 again, it's sort of this three-party joint effort of reviewing some of the costs beforehand  
19 but, initially, Project Co. prices it and then we'll review and adjust those prices as we  
20 see fit, and it should be the cost to rectify those deficiencies. In the PA, the minor  
21 deficiency lists, although the IC issues it, it's to be prepared in conjunction with both  
22 Project Co. and the City, and so that's how that was conducted.

23 **MR. MARK COOMBES:** I see. And I just want to pull up another  
24 transcript of evidence just to take you to it to make sure that you either agree or don't  
25 agree with the ---

26 **MS. MONICA SECHIARI:** Okay.

27 **MR. MARK COOMBES:** --- statements being made. But this is  
28 TRN198. And you'll see it come up shortly. This is the evidence that Mr. Richard

1 Holder gave to the Commission on Day 9 of the public hearings. If we could go to page  
2 29 of Mr. Holder's evidence, and it's essentially in the middle of the page. I'll just read  
3 you the transcript portions and then we can discuss. Mr. Holder and my colleague, Ms.  
4 McGrann, were talking about the requirements for substantial completion and the  
5 process, and Mr. McGrann says:

6 "And if the City is of the view that the substantial  
7 completion requirements have not been met, they can  
8 object to the ---"

9 Mr. Holder says:

10 "Correct."

11 Ms. McGrann says:

12 "And they would provide all the reasons it supported  
13 that objection, right?"

14 Mr. Holder says:

15 "Correct."

16 Ms. McGrann says:

17 "And all of that information then goes to the  
18 independent certifier, right?"

19 "Correct."

20 Ms. McGrann then says:

21 "The independent certifier reviews RTG's submission  
22 and the City's response?"

23 Mr. Holder says:

24 "And they undertake a calculation of the value of  
25 minor deficiencies because that is another component  
26 of the evaluation of the achievement of substantial  
27 completion." (As read).

28 And I just want to be clear here with respect to that particular point

1 in Mr. Holder's evidence, you're only undertaking a calculation of the minor deficiencies  
2 list costing at the -- if substantial completion is going to be successful, in other words, if  
3 the Substantial Completion Certificate is going to be issued; is that correct?

4 **MS. MONICA SECHIARI:** Correct. So I don't agree with the  
5 comment from Mr. Holder, that he says the value of the minor deficiencies is another  
6 component of the evaluation for the achievement of substantial completion. There's no  
7 financial component for substantial completion. I'm -- I'm -- I believe -- and I don't want  
8 to pretend to interpret his comments -- he's speaking about substantial performance,  
9 which is under the *Construction Lien Act* which involves a calculation of the cost to  
10 complete, that it has to basically be less than or around one percent of the contract  
11 value.

12 So substantial performance is a requirement of substantial  
13 completion and that's something that Project Co. has to have certified. It's not certified  
14 by the IC, substantial performance. It's certified by the LTA or the engineer of record  
15 that substantial performance has been achieved. It's then published pursuant to the  
16 *Construction Lien Act*. And it's provided by Project Co. with their substantial completion  
17 notice or application, so it's something that's done far before the final calculations are  
18 done on the minor deficiency list.

19 One would hope that -- you know, that whatever the final value of  
20 the minor deficiency list is, you know, meets those requirements, and it did in this case.  
21 But they're two separate calculations so I don't agree with that comment that it was  
22 another component of the evaluation of substantial completion. I think what he meant  
23 was substantial performance there.

24 **MR. MARK COOMBES:** I see. And in any event, just to be clear,  
25 that substantial performance calculation or consideration is not performed by the  
26 independent certifier?

27 **MS. MONICA SECHIARI:** No, it's not. No.

28 **MR. MARK COOMBES:** And then if we move on to the next

1 question that Ms. McGrann poses to Mr. Holder, she says:

2 "And where there isn't agreement between the City  
3 and RTG about whether RTG has achieved  
4 substantial completion, the IC makes a determination  
5 about whether RTG has been successful, right?"

6 And Mr. Holder says:

7 "They would, yes." (As read).

8 And so that -- you would agree with that statement, I take it, but if  
9 one party said that something had been achieved and the other party didn't, the  
10 independent certifier would undertake an independent assessment of whether, in fact,  
11 that milestone or other item had been achieved; is that correct?

12 **MS. MONICA SECHIARI:** That's correct. And that's evidenced by  
13 our first Substantial Completion Report in May because Project Co. felt they had made -  
14 - achieved all the requirements and the City didn't, so we independently, fairly,  
15 impartially assessed which was correct and we found that the requirements hadn't been  
16 satisfied, so that's a correct statement.

17 **MR. MARK COOMBES:** Okay. Now I just want to ask a few  
18 questions on that. So would it ever be the case that Project Co. could issue a notice,  
19 milestone notice, or a substantial completion notice, or any other type of notice that  
20 they're able to put in the contract, and the City would disagree with the assessment that  
21 they had achieved that and that the IC would find that in fact it had been; they would  
22 disagree with the City's opinion?

23 **MS. MONICA SECHIARI:** Yes, that could happen. That's sort of  
24 the crux of why you have an independent certifier on these types of projects, is we're  
25 meant to act, you know, fairly and impartially and in the interest of both parties. If -- and  
26 this is just using -- this is sort of talking in generalities, not what happened at this  
27 project, but if a Project Co. could prove and provide the evidence they've satisfied those  
28 requirements and the public side disagreed, you know, it could be a reason that the

1 public side was not interpreting the PA requirements correctly or being unreasonable in  
2 what they were asking for or -- you know, I'm just trying to think. But it could highly be  
3 possible that we would, you know, make a decision to issue the certificate for Project  
4 Co. in that instance. It didn't happen on this project but that's sort of the crux of why  
5 you have an independent certifier here to make sure that the Project Agreement is  
6 being followed properly by both parties.

7 **MR. MARK COOMBES:** Right. And maybe I can put sort of the  
8 counterpoint to you as well which is if the Project Co. and the City both agree that a  
9 requirement has been met is the IC able to disagree and essentially take a position that  
10 that milestone or that particular thing has not occurred?

11 **MS. MONICA SECHIARI:** It would be highly, highly unlikely. I've  
12 never encountered it nor heard of it. I suppose it is possible. There would have to be a  
13 complete breakdown in due diligence conducted by either party, whether professionals  
14 of record and everything. I suppose that is a possibility but highly unlikely and it  
15 certainly did not happen on this project.

16 **MR. MARK COOMBES:** Right. And so maybe we can view the  
17 Substantial Completion Agreement as one of those instances where, you know, in a  
18 vacuum you may have assessed that substantial completion had not been achieved but  
19 for the agreement reached between the parties. Is that fair to say?

20 **MS. MONICA SECHIARI:** Yes, with that agreement reached, it  
21 changed the requirements of the Project Agreement. So the requirements for  
22 substantial had changed so there was, you know, new requirements. It was a new  
23 goalpost had been set, I guess.

24 **MR. MARK COOMBES:** Thank you for that, and we can take  
25 down this transcript.

26 So just going back to the timeline of this project. After substantial  
27 completion is achieved, trial running begins?

28 **MS. MONICA SECHIARI:** Yes.

1                   **MR. MARK COOMBES:** And it is confirmed that you weren't  
2 present during trial running?

3                   **MS. MONICA SECHIARI:** That's right. Just excuse me.  
4 Sorry about that. Could you repeat that?

5                   **MR. MARK COOMBES:** Sure I can. So after substantial  
6 completion is achieved , trial running begins?

7                   **MS. MONICA SECHIARI:** Correct.

8                   **MR. MARK COOMBES:** And a member of the independent  
9 certifier was a member of the trial running review team; is that correct?

10                  **MS. MONICA SECHIARI:** Correct. Yes, that's correct.

11                  **MR. MARK COOMBES:** It wasn't you, however?

12                  **MS. MONICA SECHIARI:** It was no me. I was a member to a  
13 certain point of the trial running review team in the months leading up, you know, in  
14 development of Project Co.'s trial running plan or procedures and understanding what  
15 the criteria -- you know, that was set. But I was not present during the actual trial  
16 running.

17                  **MR. MARK COOMBES:** Okay. And another more junior  
18 employee, a Mr. Kyle Campbell, was the member of the team on behalf of the IC; is that  
19 correct?

20                  **MS. MONICA SECHIARI:** That's correct.

21                  **MR. MARK COOMBES:** Okay. But prior to that -- I suppose prior  
22 to him fulfilling that role on the trial running review team, you or your team or everyone  
23 collectively would have had a discussion about what the IC's role was on that team?

24                  **MS. MONICA SECHIARI:** Oh yes. Kyle attended the meetings,  
25 the trial running meetings leading up to before trial running was done. Kyle attended a  
26 lot of the works committee meetings. He conducted site visits. He assisted with the  
27 monthly report preparation. He had been at all the substantial completion meetings. He  
28 was well ensconced, you know, as part of the IC team on this project.

1                   **MR. MARK COOMBES:** All right. And perhaps I can just have you  
2 speak briefly to what do you view the independent certifier's function as a member of  
3 the trial running review team. What is the independent certifier there to do?

4                   **MS. MONICA SECHIARI:** So I think one of the things is to have a  
5 clear understanding of Project Co.'s plan or procedure to conduct trial running. How --  
6 what kind of tests or how are they going to conduct themselves? What are going to be  
7 the results for the, to prove that trial running acceptance has been achieved? You  
8 know, so it's understanding what their plan is. It's understanding the City's concerns,  
9 say, with that plan and their review of that plan, getting to the point of a final plan and  
10 understanding how trial running is going to play out on a day-to-day basis,  
11 understanding what the criteria is from the PA, understanding how the criteria or the  
12 day's results will be interpreted. So you know, based on all the different criteria,  
13 whether it be safety related, operational, maintenance, station availability, all the  
14 different sort of elements that were being tested on each day of trial running.

15                   So our role was to understand that and be involved, you know,  
16 witness some of the conducts of the trial running and attend every day the daily meeting  
17 where the results were provided by Project Co. and being part of those discussions.

18                   Important for us to be involved there is because at the end of the  
19 day the two parties will sign off on the results whether they feel it's a pass, I should be a  
20 repeat day, or an entire restart. It's understanding, you know, interpreting those results,  
21 understanding what they are, understanding why the PA parties have come to that  
22 conclusion and again, similar to substantial, if there was a disagreement, we're right  
23 there at the current time. We're not away by ourselves independently. You know, we  
24 can make a determination and sort of mediate between the parties of what the actual  
25 results would be.

26                   But my understanding when I returned at the end of trial running -- I  
27 was out of the country -- Kyle said there wasn't any days where there was a  
28 disagreement on what the results were, that the parties interpreted the test results the

1 same, whether the day would be a pass or a repeat day or a restart. You know, after  
2 discussion and review there's a lot of information to review, that they came together.  
3 The IC didn't have to step in and make it their own independent determination.

4 **MR. MARK COOMBES:** I see. So just to clarify a couple of points  
5 there. In other words, if the parties have reached an agreement as to the results of the  
6 day, the IC is not likely to intervene and ---

7 **MS. MONICA SECHIARI:** We're not ---

8 **MR. MARK COOMBES:** --- those results.

9 **MS. MONICA SECHIARI:** We're not likely but we are there at the  
10 same time seeing those results so we can -- we're also sort of doing our own  
11 assessment as well. Like, it's fairly clearly laid out in the plan and procedure if I recall  
12 correctly what would trigger a pass or a restart or a repeat day, depending on the  
13 category or the type of results or what they had to achieve, you know. It was fairly  
14 clearly laid out so you know, we were getting the results at the same time the City was,  
15 same time the Project Co. was, OC Transpo. There was members of RTM there. So  
16 you know, it was sort of a joint effort, you know. We weren't sitting beside a group of 10  
17 people and being the only ones that disagreed with them. That wasn't the case. We  
18 interpreted the results the same way the PA parties did.

19 **MR. MARK COOMBES:** Okay. And you had mentioned that you  
20 were involved sort of you yourself were involved as a part of whether it was the trial  
21 running review team proper or sort of trial running process to understand what the  
22 requirements for trial running were. That's correct? That was your evidence?

23 **MS. MONICA SECHIARI:** That's correct.

24 **MR. MARK COOMBES:** Okay. Were you involved at all in actually  
25 setting criteria for trial running?

26 **MS. MONICA SECHIARI:** No, we weren't involved at all.

27 **MR. MARK COOMBES:** And were you asked to opine on the  
28 criteria for trial running?

1                   **MS. MONICA SECHIARI:** No. No, there was -- it was based on  
2 the output specifications of what, you know, the operational performance or  
3 maintenance performance, what service level that the system had to perform at. So it  
4 wasn't something in my opinion that -- it wasn't sort of a new criteria site. It was taken  
5 from Project Agreement on -- it's supposed to be a test to see that the system is going  
6 to run to the output specifications when it does open. So for me it was similar to what  
7 was in the Project Agreement.

8                   It was just how are you going to test and prove that you've met  
9 those criteria? That was sort of what the plan for me did for myself. How are you going  
10 to prove that the stations have this much availability? How are you going to prove, you  
11 know, that the headways have been met? You know, that's a little bit easier to prove  
12 but, you know, that's what the plan did for me, was how -- what was the test to show  
13 they met the criteria?

14                   **MR. MARK COOMBES:** Okay. And the independent certifier  
15 would have been aware that the -- that one of the criteria for successful trial running  
16 was changed partway through the trial running process?

17                   **MS. MONICA SECHIARI:** We were aware.

18                   **MR. MARK COOMBES:** And perhaps you can tell me what your  
19 view of that change was in terms of what the IC's role was with respect to that change.

20                   So I can pull up your trial running validation if it would assist you.  
21 Please let me know if I need to. Given that the IC was a member of the trial running  
22 review team, did the independent certifier have to agree that that change could be  
23 made?

24                   **MS. MONICA SECHIARI:** No. We didn't have to agree that that  
25 change could be made. Changing that criteria is changing a requirement in the PA in  
26 the output specifications. I believe it was surrounding vehicle availability and 13 trains  
27 down to 15, if I recall, there was sort of two changes. That involves change, you know,  
28 to the criteria that's set in the PA and we have no authority to do that so I wasn't there

1 when these changes happened because it was during trial running. But in my  
2 conversations with Kyle after I returned and wanted to review with him, you know, our  
3 validation and how did it go, my understanding is that you know, the PA parties  
4 discussed some changes to the criteria. They agreed that -- and then we were advised  
5 of what those changes were, because it of course impacted what the final result would  
6 be on each day because the criteria changed. So to get a pass on certain categories  
7 had changed based on this new criteria, so it was really important for us to understand  
8 what the changes were, but we weren't -- I don't know why they changed it, the  
9 reasoning. That would have to be a question for Project Co. and the City to know what  
10 spurred this change on. I wasn't there. I'm not sure why, but they would be the ones to  
11 answer that question for you. We weren't consulted with it. We weren't given sign-off  
12 or approval on that. And that's not our role. We don't have that role. We can't do that.  
13 So we were made aware of what the changes were so that we could continue with this  
14 trial running and be able to properly adjudicate the score on each day and finally the  
15 validation.

16 **MR. MARK COOMBES:** So it was important for you to understand  
17 the change to the criteria ---

18 **MS. MONICA SECHIARI:** Yes.

19 **MR. MARK COOMBES:** --- from your perspective of fulfilling the  
20 IC's role on the trial running review team.

21 **MS. MONICA SECHIARI:** Correct.

22 **MR. MARK COOMBES:** But it was not the case that the  
23 independent certifier was asked to opine or provide any kind of evaluation as to the  
24 change to the trial running criteria.

25 **MS. MONICA SECHIARI:** We were not asked to opine or provide  
26 any evaluation on that. That's not our role in the general services that the IC provides,  
27 but we were not asked. Even as an additional service we were not asked to opine on  
28 that. We didn't have any involvement with setting the original criteria, and we didn't

1 have any involvement with setting modified criteria.

2 **MR. MARK COOMBES:** Now, with respect to trial running -- just  
3 before we leave that topic, I want to pull up another transcript of evidence that was  
4 given before the Commission, just to see if you would agree or disagree with the  
5 characterization of the independent certifier's role. And that is TRN202. And this you  
6 will see is the evidence of Mr. Peter Lauch of RTG, and this is going to be at page 45 of  
7 the transcript. All right. And if we can just scroll down to the bottom half to the page.  
8 Okay. Ms. McGrann says to Mr. Lauch:

9 "Just because you've raised the IC here, was it your  
10 understanding that the if the City and RTG and its  
11 subcontractors on the trial running review team came  
12 to an agreement about any particular day's score, that  
13 the IC would make an assessment, and if it  
14 disagreed, it would intervene?" (As read)

15 Mr. Lauch says, "That's correct." Ms. McGrann says, "Did you ever  
16 see that happen?" Mr. Lauch says:

17 "I can't recall. I mean, it wasn't always a slam dunk.  
18 There were sometimes -- there were certainly  
19 discussion, especially on the days where we looking  
20 at restructure pauses." (As read)

21 Ms. McGrann says, "Is it ---", and Mr. Lauch intervenes, "But ---".

22 And then Ms. McGrann continues:

23 "Is it that you were relying on the independent certifier  
24 to make an independent assessment and make sure  
25 that everybody, when they scored that day, got the  
26 scores right?" (As read)

27 And Mr. Lauch says, "That's -- that was -- that's correct, yeah."

28 And Ms. McGrann says:

1 "So you saw them as really being the final word on  
2 this, regardless of what the City and the other  
3 members of the trial running review team agreed." (As  
4 read)

5 Mr. Lauch says, "Correct."

6 Would you agree with that characterization of the independent  
7 certifier's role on the trial running review team?

8 **MS. MONICA SECHIARI:** Yeah, I would. As I've previously said,  
9 when the day's results were available, the entire group reviewed them together. And I  
10 believe when he's saying the independent certifier could make an independent  
11 assessment to make sure everybody got it right, again, that goes to if the City  
12 disagreed, they thought the day was a restart, and RTG felt it was a pass, we would be  
13 there to make that determination on what it finally was.

14 We didn't encounter that, as far as I understand. Again, I wasn't  
15 there, but we didn't encounter that the parties disagreed and we ended up having to do  
16 that, and possibly because of how the entire group worked together and structured that  
17 all the results were reviewed together, discussed together. Anything that looked  
18 unusual, we could seek clarification and get satisfaction, and everybody could conduct  
19 their due diligence at that same time. So I would generally agree with his comments  
20 there.

21 **MR. MARK COOMBES:** And just to be clear, though, with respect  
22 to the independent certifier "being the final word on this, regardless of what the City and  
23 the other members of the trial running review team agreed", he says, "Correct." What I  
24 take, though, however, is that if both parties agreed on what the results should be, the  
25 IC is likely not to intervene and change that result. Is that fair?

26 **MS. MONICA SECHIARI:** Yeah. We're not likely -- again, similar  
27 to the question you asked me earlier about if both parties agree a milestone or  
28 completion was achieved, would we intervene? -- it would be unlikely the level of

1 expertise on that team and their supporting characters. I mean, it would be very unlikely  
2 that the two parties would have it completely wrong. But we were there; we were  
3 assessing the results with everybody else, and I did not feel that anybody had it wrong  
4 during trial running. It was what it was, whether it a pass, a repeat, restart -- I believe  
5 there even was. So we agreed with what everybody had decided.

6 **MR. MARK COOMBES:** Thank you. We can take that transcript  
7 down.

8 And just before we leave the topic of trial running, Mr. Steve  
9 Kanellakos testified before the hearing this morning, the City of Ottawa -- and of course  
10 we don't have a transcript yet for me to be able to put to you. And I'm just going to  
11 characterize Mr. Kanellakos's evidence with respect to the change in the trial running  
12 criteria. I trust that if my characterization is unfair or incorrect, my friends from the other  
13 parties will correct that. But Mr. Kanellakos was asked about the change in the trial  
14 running criteria, and he indicated his belief that an independent certifier would have  
15 intervened and weighed in on the change to the criteria if the independent certifier had  
16 concerns about that change. And I just want to make sure I'm clear. I don't think you  
17 would agree with that characterization; is that right?

18 **MS. MONICA SECHIARI:** I don't agree with that characterization.

19 **MR. MARK COOMBES:** Okay. So in other words, just like with  
20 the substantial completion agreement, just to confirm this, you're presented with a new  
21 set of criteria and you accept that those are the new criteria that need to be applied  
22 moving forward.

23 **MS. MONICA SECHIARI:** Absolutely. I don't agree with that  
24 comment. We wouldn't have intervened. We don't have that kind of role.

25 **MR. MARK COOMBES:** Thank you. And if maybe we can pull up  
26 another document here, this is going to be with respect to the independent certifier's  
27 role in certifying revenue service availability. I'm going to ask to pull up COW0523210.  
28 And I'm sure you'll recognize this as the independent certifier's report on revenue

1 service availability.

2 **MS. MONICA SECHIARI:** I do recognize it.

3 **MR. MARK COOMBES:** And if we go to the first page of that  
4 report, we see that Project Co. issued its revenue service availability notice. The report  
5 reviews the definition of “revenue service availability”. If we go to the next page -- so  
6 the first page was the definition of “revenue service availability” in the project  
7 agreement, and then the independent certifier indicates in this report:

8 “In addition, the IC confirms that several further  
9 requirements were agreed between the PA parties at  
10 the time of substantial completion as follows.” (As  
11 read)

12 And then you set out the items that were agreed to by the parties in  
13 the substantial completion agreement. And then the third bullet point there is:

14 “Any items of defects, deficiencies, and outstanding  
15 work categorized as pre-RSA is detailed in the minor  
16 deficiencies list.” (As read)

17 So that goes to the items that you are talking about before as being  
18 included on the list. That’s correct?

19 **MS. MONICA SECHIARI:** That’s correct.

20 **MR. MARK COOMBES:** Okay. And then in the next paragraph,  
21 you indicate:

22 “Pursuant to the relevant section of the project  
23 agreement, on August 30<sup>th</sup>, 2019, the City provided  
24 their opinion as to whether the conditions for issuance  
25 of the RSA certificate have been satisfied and any  
26 reasons as to why they consider that the certificate  
27 should not be issued. The City’s opinion at that time  
28 was that the conditions had been satisfied.” (As read)

1 That's correct?

2 **MS. MONICA SECHIARI:** That's correct.

3 **MR. MARK COOMBES:** Right. And then the next line says:

4 "Please refer to Appendix C for a copy of the City's  
5 opinion and the term sheet regarding revenue service  
6 availability executed by the PA parties." (As read)

7 So maybe I can ask the court staff to take us to Appendix C. It's  
8 page 15 of the PDF. All right. And this is the City's opinion on revenue service  
9 availability. You recognize that?

10 **MS. MONICA SECHIARI:** Correct.

11 **MR. MARK COOMBES:** Right. And I'm just going to ask staff to  
12 scroll down to just as the bottom of the page there. That's perfect. I'm going to read  
13 some of this, because I just want to make sure that I'm characterizing the independent  
14 certifier's function here correctly. So it says:

15 "The City of Ottawa acknowledges receipt of the  
16 revenue service availability notice. Having carefully  
17 reviewed the status of the completion of the project,  
18 and based on the agreement between RTG and the  
19 City described below, it's the City's opinion that RTG  
20 has now satisfied conditions for the issuance of the  
21 revenue service availability certificate. As a result of  
22 the discussions between the parties, the City has  
23 agreed to waive the requirement that certain defects,  
24 deficiencies and items of outstanding work will be  
25 addressed prior to revenue service availability on the  
26 express condition that these items will be completed  
27 before and as a precondition to revenue service  
28 commencement scheduled for September 14<sup>th</sup>, 2019."

1 (As read) ...

2 If we just skip the bullet points, the City goes on to say:

3 "In addition, Appendices B(1) to B(3) of this letter set  
4 out in detail the items which the City requires be  
5 completed prior to revenue service commencement.  
6 The items listed in Appendix B(1) are those carried  
7 over from Appendix A to the executed substantial  
8 completion agreement dated July 26<sup>th</sup>, 2019." (As  
9 read)

10 So just pausing there for a minute. So am I correct that what the  
11 City is indicating in this letter is that there are still items that have been agreed -- that  
12 were agreed to, not for a part of substantial completion, that are also now not going to  
13 form part of revenue service availability? That is his determination; is that correct?

14 **MS. MONICA SECHIARI:** You're correct. There were items in the  
15 substantial completion agreement called deferred works that were to be completed or  
16 rectified prior to revenue service availability; however, some items were not, I guess,  
17 you know, fully rectified or completed. They are now a part of what this term sheet, the  
18 agreement that they've made -- I believe it was called a term sheet -- where now,  
19 there's certain items that have to be completed before revenue service commencement,  
20 when the system opens to the public, yes, correct.

21 **MR. MARK COOMBES:** Right. And so following that agreement  
22 between the parties, again, I'm going to have you confirm for me that this is, like the  
23 substantial completion agreement from the independent certifier's perspective, the  
24 requirements for revenue service availability change?

25 **MS. MONICA SECHIARI:** That's correct. The substantial -- the  
26 main difference between a term sheet and a substantial completion agreement is, a  
27 substantial agreement, although changed the requirements, it did, indeed of the PA, it  
28 was more of waiving requirements for substantial completion. The term sheet actually

1 is an amendment to the Project Agreement, so it amended the definition of revenue  
2 service availability and various conditions thereof.

3 **MR. MARK COOMBES:** Right. And just like with the substantial  
4 completion agreement, did the independent certifier weigh in on those items that were  
5 being agreed to between the City and RTG?

6 **MS. MONICA SECHIARI:** No. We weren't asked to weigh in on  
7 those. We were part of discussions. We were aware with both the substantial  
8 completion agreement and the term sheet, we were aware this was in discussions. We  
9 were aware this is -- you know, where the parties were going towards an agreement. I  
10 believe the documents were even shared with us in a draft form so that we could be up  
11 to date on what the eventual agreement or change to the PA would be. But we weren't  
12 asked to provide an independent opinion on whether they should do this or not, or -- you  
13 know, that wasn't our role.

14 We were -- we knew it was coming. We were given drafts. We  
15 were able to ask questions about it in a way so that I could have a full understanding of  
16 how things have changed.

17 **MR. MARK COOMBES:** Right. And a full understanding of how  
18 things have changed, just to be clear, so that you could ensure that the requirements of  
19 the Project Agreement were being fulfilled?

20 **MS. MONICA SECHIARI:** Correct.

21 **MR. MARK COOMBES:** Right. But no opinion was sought from  
22 you in order to give one as to whether an item should or should not be a part of that  
23 term sheet?

24 **MS. MONICA SECHIARI:** No, we weren't involved with those  
25 types of discussions.

26 **MR. MARK COOMBES:** Right. Now, you indicated to me earlier in  
27 your testimony today that following the certification of RSA, so following the certificate  
28 that was issued as a part of this report, that you really had no continuing role as the

1 independent certifier at that point?

2 **MS. MONICA SECHIARI:** No. We haven't -- there was no more  
3 monthly reports issued, site visits, attendance at meetings, and so on. We did, I  
4 believe, a year after that, in sort of 2021 -- maybe that's two years after -- we were  
5 involved with Schedule 27 of the dispute resolution process in the PA. There were  
6 several disputes that the PA parties, that notices had been issued and the dispute  
7 resolution procedure in the PA had been followed. And at a certain level, you know,  
8 there's discussions between Project Agreement reps, there's senior executive  
9 discussions, trying to resolve a dispute. Eventually, it could be referred to the IC. It  
10 doesn't have to be, but there were several disputes that were referred to the IC, I  
11 believe in 2021, I want to say.

12 **MR. MARK COOMBES:** At least with respect to the period  
13 between you certifying or the independent certifier certifying revenue service availability,  
14 and the commencement of revenue service ---

15 **MS. MONICA SECHIARI:** No involvement.

16 **MR. MARK COOMBES:** No involvement, no role?

17 **MS. MONICA SECHIARI:** No. No involvement of -- in the  
18 operational phase, operational and maintenance phase of this project.

19 **MR. MARK COOMBES:** Okay. And so when the City indicates in  
20 its letter here that, you know, they have agreed to -- with Project Co. that revenue  
21 service availability can be met as long as these other items can be completed before  
22 the commencement of revenue service, you, as the independent certifier, would be in  
23 no position to opine on whether or not Project Co. did, in fact, meet those requirements?

24 **MS. MONICA SECHIARI:** We would be in no position to opine on  
25 that, nor were we required to certify that those were complete.

26 **MR. MARK COOMBES:** Right. And so if other witnesses had  
27 given evidence that the independent certifier was essentially signing off that the system  
28 was ready for service, you would not be in a position to give that "sign off"?

1                   **MS. MONICA SECHIARI:** No. Because of this term sheet, there  
2 were several conditions that were specific had to be concluded before it opened to the  
3 public before revenue service commenced. So the issuance of this certificate, revenue  
4 service availability on its own, the requirements had been changed, and yeah, there  
5 were certain things that still needed to be done before it could be opened. And I don't  
6 know for sure, but I believe the ultimate decision on when this -- when the system is  
7 going to be open to the public is the City's decision, when they're going to actually open  
8 to the public. So I'm not sure what happened after revenue service availability as far as  
9 those items.

10                   **MR. MARK COOMBES:** But just to be clear here, the revenue  
11 service availability certificate and the independent certifier's issuance of that certificate  
12 doesn't really seem to indicate that the system was ready for revenue service, as this  
13 name on the certificate would suggest. It really means that the independent certifier  
14 was satisfied that the new requirements set out by the parties had been achieved?

15                   **MS. MONICA SECHIARI:** Correct. That's correct.

16                   **MR. MARK COOMBES:** And those are all of my questions, Mr.  
17 Commissioner.

18                   **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.  
19 Next up is the City of Ottawa.

20 **--- CROSS-EXAMINATION BY MS. CATHERINE GLEASON-MERCIER:**

21                   **MS. CATHERINE GLEASON-MERCIER:** Good afternoon. Can  
22 you hear me?

23                   **MS. MONICA SECHIARI:** I can.

24                   **MS. CATHERINE GLEASON-MERCIER:** Great. My name's  
25 Catherine Gleason-Mercier, that's G-l-e-a-s-o-n - M-e-r-c-i-e-r, for the City.

26                   I'm going to be asking you some questions this afternoon, okay,  
27 Ms. Sechiari?

28                   **MS. MONICA SECHIARI:** Sure.

1                   **MS. CATHERINE GLEASON-MERCIER:** Great. So I believe you  
2 had started by telling Commission counsel about the various projects that you have  
3 acted on as the IC, and many of those, just to confirm, are P-3 projects, correct?

4                   **MS. MONICA SECHIARI:** Yeah, the majority were P-3 projects,  
5 correct, yeah.

6                   **MS. CATHERINE GLEASON-MERCIER:** Right. And I believe you  
7 said you had been working exclusively in the independent certifier role for infrastructure  
8 projects with Altus since about 2010, correct?

9                   **MS. MONICA SECHIARI:** That's correct.

10                  **MS. CATHERINE GLEASON-MERCIER:** And you're currently  
11 acting as the IC on, I believe you said, nine different projects in the province; is that  
12 correct?

13                  **MS. MONICA SECHIARI:** Currently, right now, it's six different  
14 projects, not all in Ontario. There's one in Montreal, one in Nova Scotia, yeah, those  
15 other two in the other two provinces. So there's six ongoing right now.

16                  **MS. CATHERINE GLEASON-MERCIER:** Okay. So presumably,  
17 that changed from the time you gave your interview with the Commission counsel?

18                  **MS. MONICA SECHIARI:** It did. Two projects last week came to  
19 completion. I may have had the nine projects around, but just last week, two projects  
20 did come to substantial completion, so that's why we're down to six now.

21                  **MS. CATHERINE GLEASON-MERCIER:** Sure. Right?

22                  **MS. MONICA SECHIARI:** Yeah.

23                  **MS. CATHERINE GLEASON-MERCIER:** And I'm not going to  
24 spend too much time on this because I have a limited amount of time this afternoon, but  
25 the role of the IC, it's set out in the Project Agreement, correct?

26                  **MS. MONICA SECHIARI:** Yes, it's set out in Schedule 6 of the  
27 Project Agreement which is the independent certifier agreement.

28                  **MS. CATHERINE GLEASON-MERCIER:** And in the main body of

1 the PA, there are also other references to the IC and different obligations that the IC has  
2 to perform, correct?

3 **MS. MONICA SECHIARI:** Yes, that's correct.

4 **MS. CATHERINE GLEASON-MERCIER:** And the IC is appointed  
5 jointly by the parties, by RTG and the City, in this case?

6 **MS. MONICA SECHIARI:** Correct.

7 **MS. CATHERINE GLEASON-MERCIER:** And the IC takes  
8 instructions from both parties, correct?

9 **MS. MONICA SECHIARI:** Yes.

10 **MS. CATHERINE GLEASON-MERCIER:** And both parties share  
11 equally the payment of the IC fees and costs, correct?

12 **MS. MONICA SECHIARI:** That's correct.

13 **MS. CATHERINE GLEASON-MERCIER:** And just to delve into  
14 some of the services provided by the IC, I believe you touched on some of them, but the  
15 IC provides a determination of all disputes related to the design and construction works  
16 under Schedule 27 of the PA; is that correct?

17 **MS. MONICA SECHIARI:** If referred to the IC, there's several  
18 steps in that schedule the PA parties hopefully resolve before it gets to us, or they could  
19 skip over us and go on to arbitration or litigation if they choose to refer it, yes.

20 **MS. CATHERINE GLEASON-MERCIER:** Excellent. And then the  
21 IC also conducts monthly site visits and issues a report, correct?

22 **MS. MONICA SECHIARI:** That's correct.

23 **MS. CATHERINE GLEASON-MERCIER:** And I believe you stated  
24 that that would be used to assess RTG's achievement of milestones on the project; is  
25 that fair?

26 **MS. MONICA SECHIARI:** Yes. Not just the milestones, just to  
27 provide a monthly status report of everything that's going on, and you know, tracking  
28 towards milestones, so that's correct.

1 **MS. CATHERINE GLEASON-MERCIER:** Yeah. Okay sure.

2 Thank you for the clarification. And with regards to the milestones, specifically, is it fair  
3 to say that you saw flexibility or cooperation between the parties in relation to  
4 achievement of the different milestones throughout the course of the project?

5 **MS. MONICA SECHIARI:** Yes, I did.

6 **MS. CATHERINE GLEASON-MERCIER:** I believe you also  
7 mentioned that the IC will issue a report detailing matters that the IC considers required  
8 to be performed in order to issue the Certificate of Substantial Completion or the RSA  
9 Certificate; is that correct?

10 **MS. MONICA SECHIARI:** That's if we feel that they have not met  
11 the conditions for, say, the Substantial Completion Certificate or RSA. Then we issue a  
12 report detailing the reasons why we feel that they haven't achieved that. If we feel  
13 they've achieved it, we'll just issue the certificate.

14 **MS. CATHERINE GLEASON-MERCIER:** With a covering report  
15 with ---

16 **MS. MONICA SECHIARI:** With a covering report which we attach  
17 their application, and the City's opinion, and -- you know, but the more detailed report  
18 comes only if we're saying no, basically, to whatever completion.

19 **MS. CATHERINE GLEASON-MERCIER:** Okay. And then I  
20 believe the IC also validated trial running acceptance, correct?

21 **MS. MONICA SECHIARI:** Correct.

22 **MS. CATHERINE GLEASON-MERCIER:** And the IC also ensures  
23 that all safety and regulatory documentation is complete and approved, and that  
24 includes safety -- sorry, security assessments, hazard analysis, and the safety case  
25 prior to RSA, correct?

26 **MS. MONICA SECHIARI:** Yes, we don't do those assessments,  
27 but we make sure they're done by -- and the independent safety auditor, I believe,  
28 issues a certificate. I can't recall all the different terms now, but yes, correct.

1                   **MS. CATHERINE GLEASON-MERCIER:** Right. It's ensuring that  
2 that's all together before RSA?

3                   **MS. MONICA SECHIARI:** All together, yes, absolutely.

4                   **MS. CATHERINE GLEASON-MERCIER:** Right. So I want to talk  
5 a little bit more about trial running with you. And there's been a lot of focus on trial  
6 running in this hearing but, to date, no one's actually looked at the PA and the schedule.  
7 So let's do that.

8                   **MS. MONICA SECHIARI:** Sure.

9                   **MS. CATHERINE GLEASON-MERCIER:** If we could turn up  
10 Schedule 14, that would be helpful. And the number is COW0000294. Do you  
11 recognize this, Ms. Sechiari?

12                   **MS. MONICA SECHIARI:** I sure do, yeah.

13                   **MS. CATHERINE GLEASON-MERCIER:** And so this is the  
14 commissioning schedule under the PA, correct?

15                   **MS. MONICA SECHIARI:** Correct.

16                   **MS. CATHERINE GLEASON-MERCIER:** And it's fair to say that  
17 this sets out the testing and commissioning requirements under the PA?

18                   **MS. MONICA SECHIARI:** Yes.

19                   **MS. CATHERINE GLEASON-MERCIER:** And let's situate  
20 ourselves. So if we could go to Section 1.4 -- and that's page 4 of the PDF, please --  
21 we'll see that the commissioning team includes the IC, correct?

22                   **MS. MONICA SECHIARI:** Correct.

23                   **MS. CATHERINE GLEASON-MERCIER:** And let's go back to  
24 page 1 and Section 1.3 of Schedule 14. We see under "Project Co. Commissioning  
25 Parameters", the last sentence in that paragraph states that:

26   "The scope of the testing and commissioning  
27   plan/strategy will include trial running of the system in  
28   segments and as a fully-integrated system to the

1 extent necessary to demonstrate the functional  
2 capability and safety of the system.” (As read).

3 Correct?

4 **MS. MONICA SECHIARI:** Correct.

5 **MS. CATHERINE GLEASON-MERCIER:** And then, on the next  
6 page, still under Section 1.3, “P Co. Commissioning Parameters”, under Item C, we see  
7 that:

8 “The testing and commissioning plan/strategy shall  
9 demonstrate how Project Co. intends to validate and  
10 verify that the functional and technical requirements  
11 trial running performance criteria, quality, and safety  
12 aspects of the system have been met or exceeded,  
13 and that the overall OLRT system is fit for purpose.”  
14 (As read).

15 Do you see that?

16 **MS. MONICA SECHIARI:** Yes, I do.

17 **MS. CATHERINE GLEASON-MERCIER:** So it’s fair, then, to say  
18 that the overall testing and commissioning plan and strategy is to demonstrate how  
19 Project Co. intends to validate and verify, among other things, trial running, correct?

20 **MS. MONICA SECHIARI:** Yes, correct. I -- in my opinion, trial  
21 running is the ultimate testing and commissioning test that needs to be run.

22 **MS. CATHERINE GLEASON-MERCIER:** Right, but trial running  
23 forms part of the overall testing and commissioning plan and strategy, correct?

24 **MS. MONICA SECHIARI:** It forms part of the overall testing and  
25 commissioning, but it’s the most critical test, in my opinion.

26 **MS. CATHERINE GLEASON-MERCIER:** It’s not the entire testing  
27 and commissioning plan and strategy, thought?

28 **MS. MONICA SECHIARI:** No.

1                   **MS. CATHERINE GLEASON-MERCIER:** And there's, fair to say,  
2 extensive testing and commissioning that come before trial running, correct?

3                   **MS. MONICA SECHIARI:** There is. There is. I guess it's -- maybe  
4 what you'd say is is sort of the proof that all the testing and commissioning -- it shows  
5 that everything is working together and, you know, it's sort of the conclusion of testing  
6 and commissioning. Maybe that's a better way to say it.

7                   **MS. CATHERINE GLEASON-MERCIER:** Right. It comes at the  
8 end of the testing and commissioning process.

9                   **MS. MONICA SECHIARI:** Correct. Yes.

10                  **MS. CATHERINE GLEASON-MERCIER:** And if we look at 1.3(d),  
11 just below what we were looking at, we see that:

12                                   “The commissioning plan/strategy shall be developed  
13                                   and modified as required to address the evolution of  
14                                   the project.” (As read).

15                  Do you see that?

16                  **MS. MONICA SECHIARI:** Yes.

17                  **MS. CATHERINE GLEASON-MERCIER:** So, then, fair to say the  
18 overall commissioning plan and strategy, which we've just discussed includes trial  
19 running, that can be modified as the project evolves; fair?

20                  **MS. MONICA SECHIARI:** That's fair. And in my experience, the  
21 commissioning plans on all the projects I've worked on evolves over time. It's sort of an  
22 ongoing, evolving plan. So that very much in my experience.

23                  **MS. CATHERINE GLEASON-MERCIER:** And then again, if we  
24 look at sub (f), we see:

25                                   “The testing and commissioning plan and strategy  
26                                   shall undergo review and modification as the project  
27                                   progresses as agreed by the City and Project Co.”  
28                                   (As read).

1 So again, the testing and commissioning plan and strategy could  
2 undergo modification as the project evolves as agreed the City and RTG, correct?

3 **MS. MONICA SECHIARI:** Yeah. Absolutely, yes.

4 **MS. CATHERINE GLEASON-MERCIER:** So, then, it's not a  
5 change or an amendment to the PA to adjust or modify the specific criteria for the  
6 testing and commissioning plan, including trial running; is that fair?

7 **MS. MONICA SECHIARI:** That's fair, yeah.

8 **MS. CATHERINE GLEASON-MERCIER:** And that's because,  
9 specifically, we see here in Schedule 14, there can be modifications to the criteria at  
10 any time, correct?

11 **MS. MONICA SECHIARI:** Yeah, there could be modifications to  
12 the commissioning plan/strategy. Yeah, that's what it's called.

13 **MS. CATHERINE GLEASON-MERCIER:** And that's, in fact, what  
14 happened on this project, correct, the parties agreed to modify the commissioning plan  
15 and strategy?

16 **MS. MONICA SECHIARI:** Yes. Yeah.

17 **MS. CATHERINE GLEASON-MERCIER:** And specifically with  
18 regards to trial running, fair?

19 **MS. MONICA SECHIARI:** Yes. Yeah, there was, you know, the --  
20 I guess the trial running plan, which is part of the testing and commissioning plan, was  
21 modified. There was criteria changed. But it was modified, you know, to suit the  
22 project, one would assume.

23 **MS. CATHERINE GLEASON-MERCIER:** And it was modified  
24 upon agreement between the parties, correct?

25 **MS. MONICA SECHIARI:** Between both parties, correct.

26 **MS. CATHERINE GLEASON-MERCIER:** Let's go to Section 1.5 in  
27 this Schedule. This is the "Commissioning Procedures". And it's page 4 of the PDF.  
28 There we go. And if we just scroll down to the next page and we look at 1.5(e), we see

1 “The integrated revenue of service availability testing”. Do you see that?

2 **MS. MONICA SECHIARI:** Ah, 1.5 -- oh, there, e. Okay, sorry, yes,  
3 okay.

4 **MS. CATHERINE GLEASON-MERCIER:** There we go. And under  
5 that section, we see “Trial Running Objectives”. Do you see that?

6 **MS. MONICA SECHIARI:** I do.

7 **MS. CATHERINE GLEASON-MERCIER:** And I think this will  
8 confirm what we were just talking about, which is that:

9 “Trial running will be the final step in confirming  
10 readiness for revenue service commencement.” (As  
11 read).

12 Do you see that under (a)?

13 **MS. MONICA SECHIARI:** Yes.

14 **MS. CATHERINE GLEASON-MERCIER:** Right. So then this is  
15 the final step in the whole testing and commissioning process, the evolution of the  
16 process, correct?

17 **MS. MONICA SECHIARI:** Correct, yes.

18 **MS. CATHERINE GLEASON-MERCIER:** And that makes sense  
19 because trial running is the final step to confirm readiness. So you’ve gone through all  
20 your testing and commissioning and trial running confirm the readiness, right?

21 **MS. MONICA SECHIARI:** Correct, yes.

22 **MS. CATHERINE GLEASON-MERCIER:** And in the Design Built  
23 context, the Design Built requirements are performative and they’re tested throughout  
24 the entire commissioning process. So the entire process has to be examined and then,  
25 as you said, the trial running puts that all together, correct?

26 **MS. MONICA SECHIARI:** That’s correct.

27 **MS. CATHERINE GLEASON-MERCIER:** And if we look at (b), just  
28 underneath what we were looking at, we see:

1 “The fundamental objective of trial running and it’s to exercise the complete integrated  
2 system including all subsystems, operating personnel, and operating procedures to  
3 confirm readiness for revenue service commencement.” (As read).

4 Do you see that?

5 **MS. MONICA SECHIARI:** Yes, I do.

6 **MS. CATHERINE GLEASON-MERCIER:** And then the PA in this  
7 schedule divides that into a specific objectives, correct?

8 **MS. MONICA SECHIARI:** M’hm.

9 **MS. CATHERINE GLEASON-MERCIER:** We see:

10 “Familiarizing the operating and maintenance staff.”

11 **MS. MONICA SECHIARI:** Correct.

12 **MS. CATHERINE GLEASON-MERCIER:** And then, if we scroll to  
13 the next page, we see:

14 “Exercising and validating the schedules and the  
15 performance requirements”?

16 **MS. MONICA SECHIARI:** Correct.

17 **MS. CATHERINE GLEASON-MERCIER:** And then we see:

18 “Exercising and confirming the operating reliability of  
19 the subsystems simulated under various operating  
20 conditions.” (As read).

21 Fair?

22 **MS. MONICA SECHIARI:** Yes, correct.

23 **MS. CATHERINE GLEASON-MERCIER:** So again, these are the  
24 different objectives to exercise the system to make sure it’s ready for revenue service,  
25 correct?

26 **MS. MONICA SECHIARI:** That’s correct.

27 **MS. CATHERINE GLEASON-MERCIER:** And if we go down under  
28 (2), so we see “Scope of Trial Running”, and (a), under that, we see the only actual

1 metric provided to trial running in this whole schedule, correct?

2 **MS. MONICA SECHIARI:** The only actual -- which are you  
3 looking? Sorry.

4 **MS. CATHERINE GLEASON-MERCIER:** Well, I'm going to  
5 suggest to you that the only actual metric that we have to measure trial running is this  
6 period of 12 consecutive days following successful completion of testing and  
7 commissioning. Do you see that?

8 **MS. MONICA SECHIARI:** Yes, I see that.

9 **MS. CATHERINE GLEASON-MERCIER:** There's no other metrics  
10 in this schedule. There's no percentage criteria for a pass rate, is there?

11 **MS. MONICA SECHIARI:** Not in Schedule 14. There's certain  
12 requirements, if I correctly, in Schedule -- in the output specifications.

13 **MS. CATHERINE GLEASON-MERCIER:** The output  
14 specifications, though, don't specify a past criteria for trial running, do they?

15 **MS. MONICA SECHIARI:** No, they specify -- and, you know, this I  
16 just my recollection -- what they need to operate at during revenue service availability.  
17 So that's how the pass, restart, repeat criteria would be set. They were trying to  
18 demonstrate that they could meet the requirements of the output specifications. At least  
19 that's my interpretation. And that's how those percentages came about for, I believe  
20 that was for vehicle availability and such like that. I don't have the plan in front of me.

21 **MS. CATHERINE GLEASON:** All right. But that's not what trial  
22 running is defined as in this Schedule, right?

23 **MR. MONICA SECHIARI:** Not in this Schedule, yeah.

24 **MS. CATHERINE GLEASON:** And what you're talking about in the  
25 output specs, that's for revenue service once the system is in public use, right?

26 **MR. MONICA SECHIARI:** Yes, but trial running was to  
27 demonstrate that they could, you know, provide that certain level of service in revenue  
28 service. It was a final sort of demonstration.

1                   **MS. CATHERINE GLEASON:** It was a final demonstration based  
2 on the requirements set out in this commissioning schedule, correct?

3                   **MR. MONICA SECHIARI:** Yeah. And I would say the criteria  
4 though in their procedure was taken by the criteria from the output specifications of what  
5 they need to provide during the operational phase. That's what they initially set it at. I  
6 understand the criteria has been changed but, you know, that's where those original --  
7 as far as I'm aware. I didn't prepare that plan. But that would be a question for RTG, is  
8 that they were from, you know, the output specs.

9                   **MS. CATHERINE GLEASON:** But you'll agree to me -- you'll agree  
10 with me that this schedule which deals with trial running specifically, the only metric it  
11 refers to is the 12 consecutive days, correct?

12                   **MR. MONICA SECHIARI:** Yes.

13                   **MS. CATHERINE GLEASON:** And if we scroll down just a little bit  
14 further on the page, we'll see under (b) at the bottom of the page, "Validation of the trial  
15 running acceptance shall be performed by the IC." Do you see that?

16                   **MR. MONICA SECHIARI:** Correct. Yes.

17                   **MS. CATHERINE GLEASON:** Based on your experience, is it fair  
18 to say that it happens on some projects there is no agreement on criteria for trial  
19 running and so there's no percentage of success where it's silent as it is in this  
20 schedule?

21                   **MR. MONICA SECHIARI:** I don't think I can fairly comment on  
22 that. I mean, the other LRT project that I've been on that involved a trial running was  
23 the Waterloo LRT and those criteria were set as far as I recall. That was a few years  
24 ago.

25                   I'm currently the IC on the Hurontario LRT but again I haven't gone  
26 into detail to be able to comment on that. So I couldn't say. I haven't worked  
27 exclusively on LRT projects so...

28                   **COMMISSIONER HOURIGAN:** All right Counsel. It's 3:30. We'll

1 take the afternoon break. Thank you.

2 **MS. CATHERINE GLEASON:** All right, thank you.

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

4 The commission will recess for 15 minutes.

5 --- Upon recessing at 3:30 p.m.

6 --- Upon resuming at 3:47 p.m.

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

8 The hearing has resumed.

9 **--- MS. MONICA SECHIARI, Resumed:**

10 **COMMISSIONER HOURIGAN:** All right. Please proceed.

11 **MS. CATHERINE GLEASON:** Thank you, Mr. Commissioner.

12 **--- CROSS-EXAMINATION BY CATHERINE GLEASON (cont'd):**

13 **MS. CATHERINE GLEASON:** So we had a document up on the  
14 screen. Maybe we can pull it back up. It was Schedule 14, and that was at  
15 COW0000294. Lovely, thank you.

16 And just to be fair to you, Ms. Sechiari, I did say there was only one  
17 metric but if you look at 3(a) just above where we were speaking on the validation of  
18 trial running acceptance, you'll see there is one other metric. It's the LRU of 10 percent  
19 stated in that paragraph. And in that section that really is just about the cumulative  
20 failure of any LRU exceeding 10 percent of the total LRU population then Project Co.  
21 shall redesign and replace the defective LRUs.

22 So to be fair to you, that's the only other metric, other than the 12  
23 days that we looked at earlier.

24 **MR. MONICA SECHIARI:** Yes, I see that.

25 **MS. CATHERINE GLEASON:** Okay. And so if we just scroll up a  
26 little bit. Under "Scope of trial running" under (c) -- so we looked at (a) where the 12  
27 days are referred to; (c) discusses the various modes. So it's to operate a full regular  
28 scheduled service on the full line using the peak and non-peak schedules. Passengers

1 will not be carried. And the tests will include a variety of failure management scenarios  
2 that could be reasonably expected to occur during revenue service. Do you see that?

3 **MR. MONICA SECHIARI:** Yes, I do.

4 **MS. CATHERINE GLEASON:** So you'll agree with me then that  
5 when the trial running is doing a failure management scenario it's not going to meet any  
6 of the specifications or the requirements set out in the output specs in terms of revenue  
7 service, correct?

8 **MR. MONICA SECHIARI:** No. They would not meet those criteria.

9 **MS. CATHERINE GLEASON:** Right. So then fair to say trial  
10 running is more than just meeting those output specifications, correct?

11 **MR. MONICA SECHIARI:** Sure. Yes.

12 **MS. CATHERINE GLEASON:** Okay. And the I think we had  
13 talked about the objectives of trial running and that it needed to be completed to the  
14 satisfaction of the CI, the acceptance to the satisfaction of the IC, correct?

15 **MR. MONICA SECHIARI:** We were to validate the trial running  
16 acceptance which we did.

17 **MS. CATHERINE GLEASON:** Right. And so is it fair to say that if  
18 there were concerns with regards to the criteria used to perform the trial running, then  
19 the IC would have raised those concerns?

20 **MR. MONICA SECHIARI:** You know, the criteria is set. Like I had  
21 set before with the output specification, the criteria was set with the two parties  
22 agreeing. So we didn't have any concerns.

23 **MS. CATHERINE GLEASON:** If you did have concerns would you  
24 raise them?

25 **MR. MONICA SECHIARI:** If they weren't in compliance with the  
26 Project Agreement, you know, and those output specifications, we would voice them.

27 **MS. CATHERINE GLEASON:** Right. And just to a point on it, if  
28 you thought that the criteria were too low to demonstrate the trial running met the

1 reliability requirements under the objectives that we looked at earlier, you would have  
2 raised that as an issue, correct?

3 **MR. MONICA SECHIARI:** I mean, if it was still -- even if it was low  
4 but if it matched what was in the Project Agreement, then yeah, we would not be  
5 objecting.

6 **MS. CATHERINE GLEASON:** Even if that didn't meet the  
7 objectives of trial running that we looked at earlier in this schedule?

8 **MR. MONICA SECHIARI:** So I'm not sure what you're asking me  
9 exactly here.

10 **MS. CATHERINE GLEASON:** So when we looked under 1.5 (e)  
11 we talked about how Protect Co. shall conduct trial running when the integrated system  
12 has been tested and is essentially ready for revenue service commencement. And trial  
13 running is the final step in confirming readiness for revenue service commencement,  
14 correct?

15 **MR. MONICA SECHIARI:** Correct.

16 **COMMISSIONER HOURIGAN:** Why don't you take her to the  
17 section so that we can all see it, okay?

18 **MS. CATHERINE GLEASON:** Sure. Let's scroll up and look at it.  
19 That's a good idea.

20 **COMMISSIONER HOURIGAN:** Yeah. Okay. Where are you  
21 reading from?

22 **MS. CATHERINE GLEASON-MERCIER:** So I'm reading from  
23 1.5E(a).

24 **COMMISSIONER HOURIGAN:** Sub 1, sub (a). Yeah. Okay.

25 **MS. CATHERINE GLEASON-MERCIER:** There you go.  
26 And then underneath that we see the fundamental objectives in sub  
27 (b), correct?

28 **MS. MONICA SECHIARI:** Correct.

1                   **MS. CATHERINE GLEASON-MERCIER:** And those objectives  
2 included -- and we looked at them -- familiarizing the operating and maintenance staff,  
3 exercising and validating the schedules, and exercising and confirming the operating  
4 reliability, correct?

5                   **MS. MONICA SECHIARI:** Correct.

6                   **MS. CATHERINE GLEASON-MERCIER:** So then my question to  
7 you is, if the trial running criteria could not meet those objectives, you would have  
8 spoken up and said something during the trial running process, correct?

9                   **MS. MONICA SECHIARI:** Correct.

10                  **MS. CATHERINE GLEASON-MERCIER:** I think we can take down  
11 that share now.

12                  I believe you told Mr. Coombes earlier today that you were involved  
13 in discussing the trial running test plan, correct?

14                  **MS. MONICA SECHIARI:** Yes. We had a copy of it. We weren't  
15 involved in the preparation or approval of it.

16                  **MS. CATHERINE GLEASON-MERCIER:** Right, but you had a  
17 copy, you had reviewed it, and you were familiar with it going into ---

18                  **MS. MONICA SECHIARI:** We were familiar with it.

19                  **MS. CATHERINE GLEASON-MERCIER:** --- trial running.

20                  **MS. MONICA SECHIARI:** Of course, yes. We had to be familiar.

21                  **MS. CATHERINE GLEASON-MERCIER:** And the trial running test  
22 plan -- it sets out, among other things, the different roles of the parties on the trial  
23 running test team.

24                  **MS. MONICA SECHIARI:** Yes, if I recall correctly. Yeah.

25                  **MS. CATHERINE GLEASON-MERCIER:** And one of those roles is  
26 that the IC will make the final assessment for the day, correct?

27                  **MS. MONICA SECHIARI:** Correct.

28                  **MS. CATHERINE GLEASON-MERCIER:** And if the IC requires

1 clarification, then it can request further investigation to be conducted before making an  
2 assessment of the final day, correct?

3 **MS. MONICA SECHIARI:** Yes.

4 **MS. CATHERINE GLEASON-MERCIER:** And then finally, the IC  
5 provides that final classification for the day, being a pass, a repeat, or a restart, correct?

6 **MS. MONICA SECHIARI:** Yes.

7 **MS. CATHERINE GLEASON-MERCIER:** So let's turn to  
8 substantial completion. And I believe you walked through the timeline a bit with my  
9 friend. What I'm interested in is looking at a particular letter that comes out in between  
10 RTG's first notice of substantial completion and the IC report. So this is a letter dated  
11 May 10<sup>th</sup>, and if we can pull it up, this is letter COW0468363. Right. So we see it's  
12 dated May 10<sup>th</sup> and it's from RTG to Michael Morgan at the City.

13 And I believe you had told my friend there was no confusion on  
14 your part or on the IC's part with regard to substantial completion and RSA as the  
15 milestones. But I put it to you that there was actually confusion between the parties. So  
16 let's scroll down and look at that first paragraph. And you'll agree with me that RTG  
17 states in this letter:

18 "The City's interpretation of SC, [being substantial  
19 completion], is incorrect, as it conflates the  
20 requirements of SC with those for revenue service  
21 availability. The City incorrectly assumes that all  
22 components of the system must be ready for the  
23 public's use at SC." (As read)

24 Do you see that?

25 **COMMISSIONER HOURIGAN:** Sorry. Just stand by. We're not in  
26 the right place.

27 **MS. CATHERINE GLEASON-MERCIER:** I'm so sorry.

28 **COMMISSIONER HOURIGAN:** We need to go to the next letter.

1 **MS. CATHERINE GLEASON-MERCIER:** It's the next page.

2 **COMMISSIONER HOURIGAN:** Yeah. There we go. Okay. Now  
3 you can go.

4 **MS. MONICA SECHIARI:** Oh, okay.

5 **MS. CATHERINE GLEASON-MERCIER:** The perils of working in  
6 hard copy.

7 Do you see that first paragraph, Ms. Sechiari?

8 **MS. MONICA SECHIARI:** I do.

9 **MS. CATHERINE GLEASON-MERCIER:** So then it's fair to say  
10 that in this letter, RTG is disagreeing with the City's interpretation of what needs to be  
11 accomplished for substantial completion, fair?

12 **MS. MONICA SECHIARI:** Fair.

13 **MS. CATHERINE GLEASON-MERCIER:** And in fact, RTG is  
14 saying that the City is expecting RTG to have completed work for substantial completion  
15 that, in RTG's opinion, was really only necessary for RSA, correct?

16 **MS. MONICA SECHIARI:** Yeah, I believe that was the intent of  
17 this letter. They were trying to communicate that to the City.

18 **MS. CATHERINE GLEASON-MERCIER:** Right, and try and clear  
19 up the confusion that appeared to exist between the substantial completion and the  
20 RSA milestones, correct?

21 **MS. MONICA SECHIARI:** Correct.

22 **MS. CATHERINE GLEASON-MERCIER:** So I think we can take  
23 down that letter.

24 And I'm going to suggest to you that two things happened after that  
25 letter was issued. So one, RTG continued to work on the outstanding scope of work  
26 that had been identified in the City's opinion, and that comes out just before RTG sends  
27 this May 10<sup>th</sup> letter. And two, RTG and the City engage in discussions which lead to the  
28 substantial completion agreement. And I believe my friend took you to that earlier -- or

1 discussed it with you earlier this afternoon.

2 **MS. MONICA SECHIARI:** The second part of your question can  
3 you just repeat for me?

4 **MS. CATHERINE GLEASON-MERCIER:** Yeah. So the issuance  
5 of this May 10<sup>th</sup> letter triggers two events. RTG is continuing to perform the work, and  
6 the parties begin negotiations or discussions regarding the substantial completion  
7 agreement. And I don't think this is controversial and we don't need to dwell on it, but  
8 I'd like to look at the agreement itself, so let's pull that up. I believe the document  
9 number we have is RTG00332043.2. Great. So we see that this is the substantial  
10 completion agreement and it's dated as of July 26<sup>th</sup>, 2019. Do you recognize that?

11 **MS. MONICA SECHIARI:** I do.

12 **MS. CATHERINE GLEASON-MERCIER:** And we see the second  
13 paragraph states:

14 "The parties agree that the works described in  
15 Schedule A attached hereto, which have not been  
16 completed by substantial completion and not  
17 completed as of the date of this agreement...." (As  
18 read)

19 And those are defined as the "deferred works", correct?

20 **MS. MONICA SECHIARI:** Correct.

21 **MS. CATHERINE GLEASON-MERCIER:** And then under section  
22 1 we see that the "deferred work shall be completed in accordance with the  
23 requirements of the PA prior to the achievement of RSA", correct?

24 **MS. MONICA SECHIARI:** Correct.

25 **MS. CATHERINE GLEASON-MERCIER:** And in fact, as an  
26 express condition of the achievement of RSA, correct?

27 **MS. MONICA SECHIARI:** Yes.

28 **MS. CATHERINE GLEASON-MERCIER:** So you'll agree with me

1 that this agreement doesn't actually waive the obligation to perform this deferred work.  
2 It defers it until revenue service availability.

3 **MS. MONICA SECHIARI:** Yes. It's not that the requirements or  
4 that the deferred work is waived. It still has to be completed, and it has to be completed  
5 before revenue service availability. It just doesn't need to be completed for substantial  
6 completion.

7 **MS. CATHERINE GLEASON-MERCIER:** Exactly. And if we can  
8 scroll down to the bottom of the page, we'll see section 8. And it says, "no amendment  
9 of the PA". Actually, that's wonderful, so we can see it over onto the next page. We'll  
10 see that it states that:

11 "In particular, this agreement does not act as a waiver  
12 of any other requirement relating to substantial  
13 completion or the achievement thereof." (As read)

14 Do you see that?

15 **MS. MONICA SECHIARI:** Correct.

16 **MS. CATHERINE GLEASON-MERCIER:** So again, the agreement  
17 is not waiving requirements related substantial completion. It's deferring work to RSA,  
18 correct?

19 **MS. MONICA SECHIARI:** Yes. It's not waiving -- these are  
20 requirements of the PA that have to be met that don't need to be met for substantial  
21 completion. They now, according to this agreement, need to be met prior to RSA.

22 **MS. CATHERINE GLEASON-MERCIER:** I'm going to suggest to  
23 you that this agreement took some time to negotiate and resolve. Is that fair? It  
24 wouldn't have just happened overnight.

25 **MS. MONICA SECHIARI:** It wouldn't have happened overnight. I  
26 can't comment on the timeline because we weren't a party to this agreement, but it's not  
27 something that would happen overnight, most definitely.

28 **MS. CATHERINE GLEASON-MERCIER:** Right. And I believe you

1 said you had received a draft of this agreement; is that correct?

2 **MS. MONICA SECHIARI:** I believe so. To the best of my  
3 recollection, a draft was shared. There was a lot of meetings going on during this time,  
4 from the SC notice to the City's opinion, the issuance of this agreement. So I was  
5 aware so that this wasn't provided and it didn't lead to the IC now meeting a couple  
6 days to understand it. So we were shared with a draft of it so that we could ask any  
7 questions if we were unclear, mainly relating to the scope of works in the deferred  
8 works.

9 **MS. CATHERINE GLEASON-MERCIER:** Right. And you've  
10 anticipated what I wanted to ask you, which is, at this point, because of this agreement  
11 and the fact that the parties, including the IC, had been discussing it, the work had  
12 already been done. The analysis to understand what RTG had accomplished since its  
13 first notice of substantial completion, that had already been done, correct?

14 **MS. MONICA SECHIARI:** Yes. There was a lot of work  
15 accomplished in between the two notices, and even with the notice, the second time it  
16 was issued, RTG continued to work on the minor deficiencies to keep going, to keep  
17 progressing on the job.

18 **MS. CATHERINE GLEASON-MERCIER:** So then what happens in  
19 the timeline -- and I believe you discussed this with my friend, which is the second  
20 notice of substantial completion is issued by RTG. The City provides its opinion and the  
21 IC provides its report, finding that substantial completion has been achieved at this time,  
22 correct?

23 **MS. MONICA SECHIARI:** Yes, correct.

24 **MS. CATHERINE GLEASON-MERCIER:** Now, in your experience,  
25 are you aware of owners and contractors entering into these types of deferred work  
26 agreements?

27 **MS. MONICA SECHIARI:** Yes, I am. And my experience -- the  
28 majority of the 22 projects I've been involved in, there has been either items waived for

1 substantial completion, set out in agreements like this. They can have different names  
2 for the agreement, but this is very common.

3 **MS. CATHERINE GLEASON-MERCIER:** And if you had thought  
4 there was a significant problem or concern about substantial completion being achieved  
5 with this agreement in place, that would have been raised as a concern in your report,  
6 correct?

7 **MS. MONICA SECHIARI:** We would have -- we have raised that.  
8 It would be very unusual. You know, again, it would have to be a breakdown in advice  
9 that, you know, both parties and all of their technical advisors are giving, so it would be  
10 very unusual. And I -- and there was no need. We weren't consulted on the drafting of  
11 this or to provide input, but we would have raised, if we had that kind of concern -- that  
12 would be very unusual.

13 **MS. CATHERINE GLEASON-MERCIER:** And you would have  
14 raised it if ---

15 **MS. MONICA SECHIARI:** Yes.

16 **MS. CATHERINE GLEASON-MERCIER:** Even it were unusual, it  
17 would have been raised? Okay.

18 **MS. MONICA SECHIARI:** Yes.

19 **MS. CATHERINE GLEASON-MERCIER:** So then we move to  
20 RSA. And I believe you discussed with my friend. I'd like to take you to the RSA notice.  
21 But before we go into that, just to be clear -- and this is important and it hasn't really  
22 come out yet -- under the Project Agreement, RTG's required to provide its notice 180  
23 days before RSA, correct?

24 **MS. MONICA SECHIARI:** Yes, to the best of my recollection. It's  
25 the R -- it's not the revenue service availability notice, which is issued when they've  
26 satisfied all the requirements, and that triggers the five days before the City opinion. I  
27 believe it's called a "countdown notice" or there's another term for it. It's not the one  
28 where they provide their application with all their evidences, is what I'm saying, so just

1 to get the terminology right.

2 **MS. CATHERINE GLEASON-MERCIER:** Right.

3 **MS. MONICA SECHIARI:** But there is 180-day advanced notice. I  
4 can't recall right now what it was called.

5 **MS. CATHERINE GLEASON-MERCIER:** Right. And just for the  
6 record, that's in Section 26.7. And I don't think we need to go to it because, as we've  
7 discussed, you recall it's 180 days prior.

8 **MS. MONICA SECHIARI:** Yes.

9 **MS. CATHERINE GLEASON-MERCIER:** The point being that that  
10 notice would have to come before substantial completion and trial running, correct?

11 **MS. MONICA SECHIARI:** Yes. Yes.

12 **MS. CATHERINE GLEASON-MERCIER:** So then you'll agree with  
13 me that any suggestion that there was pressure to announce an RSA date with this  
14 notice in advance of substantial completion and trial running, that that's factually  
15 inaccurate given the timing of the delivery of the notice, correct?

16 **MS. MONICA SECHIARI:** Yeah, it's more a countdown notice. It's  
17 to let all the parties -- in my opinion, the intent of that 180-day notice is to notify all the  
18 parties that this is coming. "Let's gear up. We've got six months and we do plan on  
19 hitting that date."

20 **MS. CATHERINE GLEASON-MERCIER:** Right. And so there  
21 can't be pressure to announce the date. This is the gear-up time, as you say.

22 **MS. MONICA SECHIARI:** Yeah. And I can't recall if it's necessary  
23 to issue that notice or, if they don't, then the PA parties are to assume that the  
24 scheduled revenue service availability date is going to be the date. I don't have that PA  
25 requirement but, to the best of my recollection, that's how the PAs are usually worded.

26 **MS. CATHERINE GLEASON-MERCIER:** Yeah, I think you're  
27 right. And, for our purposes, it's really the countdown notice that we're interested in  
28 right now.

1 **MS. MONICA SECHIARI:** Yes, correct.

2 **MS. CATHERINE GLEASON-MERCIER:** So let's go to the notice  
3 that comes on August 30<sup>th</sup>, 2019. And I believe this can be found at COW0159308. I  
4 want to make sure I'm looking at the right letter. That's right, August 30<sup>th</sup>. So we see  
5 this is the Revenue Service Availability Notice delivered by RTG, correct?

6 **MS. MONICA SECHIARI:** Correct.

7 **MS. CATHERINE GLEASON-MERCIER:** And if we scroll down,  
8 we'll see the -- the last sentence in the first paragraph, it states that:

9 "Project Co. is of the opinion that the requirements for  
10 revenue service availability have been satisfied as of  
11 August 30<sup>th</sup>, 2019 and, more specifically, the following  
12 items have been addressed." (As read).

13 And then we can scroll through and we see the different headings,  
14 "Vehicles", "Transit Operation Control Centre", "Stations", et cetera. These are the  
15 items that were required to be completed under the Substantial Completion Agreement,  
16 correct?

17 **MS. MONICA SECHIARI:** I think, generally. I don't have a  
18 comparison but I think that was the intent of RTG, to list these items here.

19 **MS. CATHERINE GLEASON-MERCIER:** And RTG is confirming  
20 that these items have been addressed, correct?

21 **MS. MONICA SECHIARI:** Yes, correct.

22 **MS. CATHERINE GLEASON-MERCIER:** And when you received  
23 this notice as the IC, you're confident that RTG had addressed these issues because  
24 otherwise you couldn't issue your report that comes the next day, correct?

25 **MS. MONICA SECHIARI:** Correct. And some of these items had  
26 been completed and evidence was provided prior to August 30<sup>th</sup>, so it was an ongoing  
27 review. They -- we were -- the team worked very well together, the City, RTG, and the  
28 IC, you know, as far as, you know reviewing things as they came available.

1                   **MS. CATHERINE GLEASON-MERCIER:** Right, right. And so the  
2 parties worked together; the status is understood by the IC at the time, which allows you  
3 to issue your report the next day ---

4                   **MS. MONICA SECHIARI:** Yes.

5                   **MS. CATHERINE GLEASON-MERCIER:** --- that these issues  
6 have been addressed? Okay.

7                   **MS. MONICA SECHIARI:** Correct.

8                   **MS. CATHERINE GLEASON-MERCIER:** I think we can take that  
9 down. I believe you told my friend that there was an outstanding item at RSA, and I'll  
10 put it to you that the only outstanding item was actually the Safety Audit Report and that  
11 that was delivered on September 13<sup>th</sup>, 2019. And the evidence of TUV Rhineland was  
12 that that was quite normal and in the normal course to have that Safety Audit Report  
13 delivered before public use. Do you agree with that?

14                   **MS. MONICA SECHIARI:** I don't think I can necessarily comment  
15 on that. I don't recall when that report was issued. It was -- if you're saying it's in  
16 September, it was after revenue service availability, so one would assume it was part of  
17 the terms sheet. I can't recall.

18                   **MS. CATHERINE GLEASON-MERCIER:** Okay, well, let's just go  
19 to the letter that's on August 30<sup>th</sup>. It's COW0450696.

20 **--- EXHIBIT No. 249:**

21                                   COW0450696 – Letter TUV Rheinland to City of Ottawa 30  
22                                   August 2019

23                   **MS. CATHERINE GLEASON-MERCIER:** Great. And if we go to  
24 the next page, we'll see the second paragraph on the page states that:

25                                   “The SONO items form the basis of the overall Safety  
26                                   Audit Report, however, there are a number of  
27                                   remaining items that prevent a positive statement  
28                                   regarding the use of the system for passenger-

1 carrying operations.” (As read).

2 So you’ll agree with me that this is for launch, correct?

3 **MS. MONICA SECHIARI:** That’s for launch. And if I recall  
4 correctly, this was part of the term sheet that -- this was one of the items that had to be  
5 completed before the launch.

6 **MS. CATHERINE GLEASON-MERCIER:** Right. And I put it to you  
7 that the City would not have proceeded with the opening if this had not been in place,  
8 correct?

9 **MS. MONICA SECHIARI:** I wouldn’t think so. I wouldn’t think so,  
10 no.

11 **MS. CATHERINE GLEASON-MERCIER:** And when we look at the  
12 last paragraph and we see:

13 “Note that the items identified above do not impact the  
14 RSA and are typical activities associated with the final  
15 versions of the Safety Audit Report in support of  
16 passenger-carrying operations.” (As read).

17 Do you see that?

18 **MS. MONICA SECHIARI:** I do.

19 **MS. CATHERINE GLEASON-MERCIER:** Right. So then the  
20 outstanding statement of non-objection, that doesn’t affect RSA, correct?

21 **MS. MONICA SECHIARI:** Sorry, can you repeat that, “the  
22 statement of”?

23 **MS. CATHERINE GLEASON-MERCIER:** So the SONO that we  
24 looked up above, it doesn’t affect ---

25 **MS. MONICA SECHIARI:** Oh, sorry.

26 **MS. CATHERINE GLEASON-MERCIER:** --- RSA, correct?

27 **MS. MONICA SECHIARI:** It doesn’t affect -- in my opinion, it didn’t  
28 affect RSA because it became part of the term sheet.

1 **MS. CATHERINE GLEASON-MERCIER:** Right, and it's resolved.

2 **MS. MONICA SECHIARI:** It's something that had -- yeah, that had  
3 to be resolved prior to opening to the public so it did not impact RSA due to the term  
4 sheet.

5 **MS. CATHERINE GLEASON-MERCIER:** And it was resolved prior  
6 to the public launch, correct?

7 **MS. MONICA SECHIARI:** Yeah, again, I wasn't involved with any  
8 decisions on when the public launch would happen or if -- when this was done. I don't  
9 recall.

10 **MS. CATHERINE GLEASON-MERCIER:** All right. Well, just to put  
11 a point on it, let's go to COW0536897. And if we just scroll down, this is the Safety  
12 Audit Report, and we'll scroll down to the first page. You see it was delivered on  
13 September 13<sup>th</sup>, 2019. Do you see that?

14 **MS. MONICA SECHIARI:** I can see that.

15 **MS. CATHERINE GLEASON-MERCIER:** And the system was  
16 launched the next day, on September 14<sup>th</sup>, 2019, so this was in place prior to public  
17 launch, correct?

18 **MS. MONICA SECHIARI:** As far as this document shows, yes, that  
19 would be correct.

20 **MS. CATHERINE GLEASON-MERCIER:** And you have no reason  
21 or information to suggest it wasn't delivered on the date that's on the document?

22 **MS. MONICA SECHIARI:** I have no reason to think that. Again,  
23 once we issued the RSA Certificate, we weren't involved in certifying those items in the  
24 term sheet that had to be done before public launch were done. So we didn't have a  
25 certification or a role in that. But I have no reason to believe that this would be an  
26 inaccurate date at all.

27 **MS. CATHERINE GLEASON-MERCIER:** Okay, very fair. We can  
28 take that share down. So you'll agree with me that when RSA was achieved, it was not

1 apparent and couldn't be anticipated that there would be issues with the switch heaters;  
2 is that fair?

3 **MS. MONICA SECHIARI:** Yeah, it was not readily apparent in my  
4 opinion, no.

5 **MS. CATHERINE GLEASON-MERCIER:** And likewise, it wasn't  
6 readily apparent there would be issues with the overhead catenary system?

7 **MS. MONICA SECHIARI:** No.

8 **MS. CATHERINE GLEASON-MERCIER:** Or there would be  
9 issues with the inductors?

10 **MS. MONICA SECHIARI:** No. Again, I -- we're not heavily  
11 involved with what happened, but there were no readily apparent issues in those areas  
12 that I was aware of.

13 **MS. CATHERINE GLEASON-MERCIER:** And you weren't aware  
14 of any issues with cracked wheels?

15 **MS. MONICA SECHIARI:** No.

16 **MS. CATHERINE GLEASON-MERCIER:** Or that there would be a  
17 derailment because of a latent defect in an axle?

18 **MS. MONICA SECHIARI:** Not -- not aware at all.

19 **MS. CATHERINE GLEASON-MERCIER:** Or there would be a  
20 derailment due to an Alstom maintenance tech forgetting to tighten and torc a bolt?

21 **MS. MONICA SECHIARI:** No.

22 **MS. CATHERINE GLEASON-MERCIER:** And you, you and Altus  
23 as the IC, were involved in trial running. They were in the room every day. You were  
24 observing and you were giving the final acceptance, correct?

25 **MS. MONICA SECHIARI:** Absolutely. These items couldn't have  
26 been readily discoverable at the time of trial running or revenue service availability, in  
27 my opinion.

28 **MS. CATHERINE GLEASON-MERCIER:** So I just want to talk

1 about pressure a little bit more because this has come up quite a bit in this hearing. So  
2 you work on these big projects, in particular, these P3 projects, and you're involved in  
3 this long and intensive process of getting into substantial completion and, in this case,  
4 RSA, correct?

5 **MS. MONICA SECHIARI:** Correct.

6 **MS. CATHERINE GLEASON-MERCIER:** And you'd agree with me  
7 that on every one of these projects, the team feels some sort of pressure to get those  
8 milestones?

9 **MS. MONICA SECHIARI:** Yeah. On every project I've been  
10 involved in, there is pressure. In the last year of the project, six months, three months  
11 before substantial, it's -- there's a lot of pressure. Everybody wants the project to  
12 succeed and there's a lot of cooperation and you know, to reach the end point. And I  
13 view my role as the independent certifier, you know, to do what we can do to assist that  
14 in the way of laying out clearly what the requirements are, helping people \*4:11:40  
15 (agree evidences), you know, reviewing documentation. But there is a -- there's a lot of  
16 pressure on every single project that I've been on for substantial completion.

17 **MS. CATHERINE GLEASON-MERCIER:** And that's, in part, due  
18 to the fact that on many of these projects, there are delays, correct?

19 **MS. MONICA SECHIARI:** Correct.

20 **MS. CATHERINE GLEASON-MERCIER:** And of course, on these  
21 projects, there's a timeline. The owner doesn't say, "Get it done when you can get it  
22 done." There's a deadline, correct?

23 **MS. MONICA SECHIARI:** There's a -- if you mean there's a  
24 scheduled substantial completion date defined in the PA, correct. In my experience, as  
25 well, I would add that out of the 22 projects I've seen to completion, only two have  
26 finished on time. So this is not unusual, you know, for projects to be delayed. In my  
27 experience, it's sort of more common than not, obviously.

28 **MS. CATHERINE GLEASON-MERCIER:** Right. And you saw this

1 on this project. This project was about 15 months late, correct?

2 **MS. MONICA SECHIARI:** Correct.

3 **MS. CATHERINE GLEASON-MERCIER:** And in the P-3  
4 environment, the pressure is on the design builder because they're financing the project,  
5 correct?

6 **MS. MONICA SECHIARI:** That's correct.

7 **MS. CATHERINE GLEASON-MERCIER:** And so they're  
8 incentivized to complete the project in as timely a manner as possible, correct?

9 **MS. MONICA SECHIARI:** Yes, correct.

10 **MS. CATHERINE GLEASON-MERCIER:** And you're not aware of  
11 anyone at the City putting pressure on anyone in the project team or yourself or any  
12 other member of the IC to get this project completed, correct?

13 **MS. MONICA SECHIARI:** No, I'm not aware and I can only  
14 comment on any pressure that I would have felt or dealings, but it's -- that's not really  
15 part of my job, you know? I don't let the pressure -- it doesn't impact how I conduct  
16 myself in my role. You know, it's very clear what our role is and what our job is to do.  
17 So I'm not aware of the City putting additional pressure. They didn't do that to me, and  
18 I'm not aware -- that would be a question for RTG -- I'm not aware of that.

19 **MS. CATHERINE GLEASON-MERCIER:** And you're not aware of  
20 any untoward pressure, political or otherwise, on having the IC sign off on substantial  
21 completion, correct?

22 **MS. MONICA SECHIARI:** No. I didn't receive any political  
23 pressure from either party to do that. Ultimately, at the end of the day, we'll sign off  
24 when the requirements have been met, when the conditions have been met. So it's  
25 everybody else's job to get us to that point.

26 **MS. CATHERINE GLEASON-MERCIER:** And likewise, same with  
27 trial running? There was no untoward pressure, political or otherwise, to complete trial  
28 running?

1 **MS. MONICA SECHIARI:** No towards us, no.

2 **MS. CATHERINE GLEASON-MERCIER:** Or to get to the RSA  
3 milestone?

4 **MS. MONICA SECHIARI:** No.

5 **MS. CATHERINE GLEASON-MERCIER:** And that includes any  
6 pressure from the mayor, from Mr. Kanellakos, Mr. Morgan, Mr. Manconi?

7 **MS. MONICA SECHIARI:** In my role as the independent certifier, I  
8 did not feel that pressure from either parties, whether they were Project Agreement  
9 parties or outside parties of that. I did not feel that way.

10 **MS. CATHERINE GLEASON-MERCIER:** And you didn't see any  
11 of that pressure being exerted on any of the other parties?

12 **MS. MONICA SECHIARI:** I -- we wouldn't be part of those type of  
13 meetings. I didn't have any meetings with the mayor or Mr. Manconi. I knew of them,  
14 but you know, I wasn't -- that wasn't our role. We weren't in discussions with those  
15 outside parties.

16 **MS. CATHERINE GLEASON-MERCIER:** You didn't hear any  
17 pressure in the trial running room? It wasn't reported back to you that there was any  
18 pressure?

19 **MS. MONICA SECHIARI:** It wasn't reported back to me, and I  
20 wasn't in, you know, the trial running room when trial running was conducted, but it  
21 wasn't reported back to me as such.

22 **MS. CATHERINE GLEASON-MERCIER:** Presumably, if your  
23 associate, Kyle, was feeling that pressure, he would have reported that back to you?

24 **MS. MONICA SECHIARI:** He would have reported that back to my  
25 -- I was not in contact with him during trial running, but he would have reported that to  
26 my senior director or you know, the other support members of our IC team. And I'm  
27 sure he would have let me know upon my return, but I -- that wasn't a conversation that  
28 we had.

1                   **MS. CATHERINE GLEASON-MERCIER:** I want to talk just briefly,  
2 one last topic, about the disputes. So I believe we had talked about it very early when I  
3 started asking you questions, about one of the roles of the IC, which is to deal with  
4 disputes, if they get escalated under the dispute resolution procedure, correct?

5                   **MS. MONICA SECHIARI:** Correct.

6                   **MS. CATHERINE GLEASON-MERCIER:** And in particular, there  
7 was a dispute regarding the vehicles, and RTG alleged that the City was responsible for  
8 the delay to the project because the City was allegedly late on something called the  
9 design book. Do you recall that?

10                  **MS. MONICA SECHIARI:** I do.

11                  **MS. CATHERINE GLEASON-MERCIER:** And multiple experts  
12 from both the City and RTG provided evidence, including a delay analysis for this  
13 dispute, correct?

14                  **MS. MONICA SECHIARI:** That's correct.

15                  **MS. CATHERINE GLEASON-MERCIER:** And the design book,  
16 that's not a term in the PA, correct?

17                  **MS. MONICA SECHIARI:** It's not a defined term in the PA  
18 anywhere.

19                  **MS. CATHERINE GLEASON-MERCIER:** And the determination  
20 from the IC on this dispute, it found that there was no requirement for the City to provide  
21 a design book to RTG, correct?

22                  **MS. MONICA SECHIARI:** It was -- the design book was from  
23 RTG's side. They were -- the dispute was over the City to sign off on that design book,  
24 so it wasn't a -- the design -- sorry -- the design book wasn't a document that originated  
25 with the City. But there was a question to whether they should have provided sign off  
26 and you know, the timely manner in which to do that, provide those approvals.

27                                 And we did not find that there was a responsibility for that sign off.  
28 There were some items, I believe, if I recall correctly, that the City needed to provide on

1 -- advise on. It was more esthetics, colours, possibly seating layout, you know, the  
2 upholstery. It was sort of more esthetics, and we did find that those were provided in  
3 accordance with Schedule 10, if I recall correctly our determination.

4 **MS. CATHERINE GLEASON-MERCIER:** And in addition, in that  
5 determination, it was found that the design book -- sorry, it was not found that the  
6 design book caused any delay? So there was no delay with the City providing its  
7 opinions or its decisions on the upholstery, et cetera?

8 **MS. MONICA SECHIARI:** That was our determination.

9 **MS. CATHERINE GLEASON-MERCIER:** And rather, the delay  
10 with -- the delay that OLRTC experienced was with the design procurement,  
11 manufacturing, testing, and retrofits of the vehicles; it wasn't the City?

12 **MS. MONICA SECHIARI:** Yeah. We did do a schedule analysis or  
13 a delay analysis based on what Project Co. had provided as part of their evidence, and  
14 they had presented to us during that dispute resolution process, but we didn't find that  
15 they had proved their case that it was the design book and those decisions that led to  
16 the delay to RSA, that they hadn't proven that case that that was the cause. And  
17 further, we didn't find that that was a requirement for the City to prove that, so ---

18 **MS. CATHERINE GLEASON-MERCIER:** Right. So there was no  
19 requirement and the delay wasn't caused by the City?

20 **MS. MONICA SECHIARI:** Yeah. We didn't make a determination  
21 on what the delay was or what was the causation of the delay to RSA, but we did review  
22 and did not agree with -- we didn't find Project Co. had proved their position that that  
23 was the cause.

24 **MS. CATHERINE GLEASON-MERCIER:** And then the last dispute  
25 I want to discuss is the sinkhole dispute. So RTG brought a claim against the City with  
26 regards to the sinkhole, correct?

27 **MS. MONICA SECHIARI:** Correct.

28 **MS. CATHERINE GLEASON-MERCIER:** And again, there was

1 expert evidence provided in relation to the cause of the sinkhole and also the delay that  
2 was alleged to have been caused by the sinkhole, correct?

3 **MS. MONICA SECHIARI:** Yes, from both parties. I believe they  
4 had experts, subject matter experts from both parties.

5 **MS. CATHERINE GLEASON-MERCIER:** Yes, you are entirely  
6 correct -- thank you -- from both parties.

7 And it was determined in the IC decision that it was the tunnelling  
8 activities actually, by OLRTC, that caused the sinkhole, correct?

9 **MS. MONICA SECHIARI:** Yeah. Our determination of Project  
10 Co.'s position was, it was a coupler on a water main -- and I'm not you know, going  
11 word for word of our determination, that that was the cause that the water main broke  
12 and it was, you know, that water that was the cause of the sinkhole.

13 We determined, based on both experts' opinions, that that was not  
14 the cause of the sinkhole, that more likely, the cause was the tunnelling activities and/or  
15 the geotechnical existing conditions, which Project Co. would have, you know, had risk  
16 over, you know, in doing this work.

17 We didn't do an analysis to determine the exact causation of the  
18 sinkhole, but the claim that it was the water main Hylax coupler, I think was the  
19 terminology, was the cause, we did not find that they had proven that case. And we  
20 considered both experts' opinions on that, and that was our opinion and final  
21 determination.

22 **MS. CATHERINE GLEASON-MERCIER:** Right. And then in terms  
23 of the delay, it was also found that the sinkhole did not cause a critical path delay to  
24 RSA, correct?

25 **MS. MONICA SECHIARI:** I believe so. I don't have a  
26 determination in front of us, but we did analyze the schedule analysis that Project Co.  
27 provided, but you know, it -- we didn't find that the sinkhole was the sole reason for the  
28 delay to RSA, that there were other critical path items such as the station construction, I

1 believe, and guideway. I could be slightly off here, but that they hadn't proved their  
2 case either that it was the sinkhole that caused that sole delay.

3 **MS. CATHERINE GLEASON-MERCIER:** Right. And I want to be  
4 absolutely fair to you, so if you want to look at the determination, we can pull it up.

5 But the discussion was about concurrent delay, and that the delay,  
6 as evidenced by the schedules, didn't show the sinkhole as being the main source of  
7 the delay, correct?

8 **MS. MONICA SECHIARI:** That's correct. That's what our analysis  
9 approved and or, you know, based on our review of their schedule analysis. So that's  
10 correct.

11 **MR. CATHERINE GLEASON:** And as a result, RTG was not  
12 entitled to a delay event, correct?

13 **MS. MONICA SECHIARI:** Correct.

14 **MR. CATHERINE GLEASON:** Thank you so much, Ms. Sechiari.  
15 Those are my questions.

16 **MS. MONICA SECHIARI:** Okay. Thank you.

17 **COMMISSIONER HOURIGAN:** All right. Next up is RTG. I will tell  
18 counsel for RTG that the City went well over, substantially over their time. So if you  
19 need more time than you have been allotted, just in terms of fairness, I can give you  
20 some flexibility. Okay?

21 **MS. JESSE WRIGHT:** And that's okay. Thank you. I don't think I'll  
22 need very much time, but thank you.

23 **COMMISSIONER HOURIGAN:** Okay.

24 **--- CROSS-EXAMINATION BY MS. JESSE WRIGHT:**

25 **MS. JESSE WRIGHT:** Good afternoon, Ms. Sechiari. My name is  
26 Jesse Wright and I'm counsel for the RTG parties. I just have a few very brief questions  
27 for you.

28 **MS. MONICA SECHIARI:** Sure.

1                   **MS. JESSE WRIGHT:** So you discussed this bit with Commission  
2 counsel and you were just discussing this with counsel for the City of Ottawa. But as  
3 part of the IC services under the Project Agreement, the IC can provide services with  
4 respect to dispute resolution under Schedule 27. Is that right?

5                   **MS. MONICA SECHIARI:** That's correct, if it's referred to the IC.

6                   **MS. JESSE WRIGHT:** Right. And so while the IC has the ability to  
7 provide a determination of a dispute, that's not the IC's primary function, is it?

8                   **MS. MONICA SECHIARI:** No. A dispute may not come up in a  
9 project so it's definitely only if it happens and if it gets to that point.

10                  **MS. JESSE WRIGHT:** Right. And so you would agreed that there  
11 are, of course, certain functions like certifying milestones that are met and certifying that  
12 certain milestones are met and issuing substantial completion that all requirements  
13 ultimately have to be met.

14                  **MS. MONICA SECHIARI:** Correct.

15                  **MS. JESSE WRIGHT:** And as you just said, it may not be that a  
16 dispute comes up and even if a dispute does come up it may not be referred to you?

17                  **MS. MONICA SECHIARI:** It may not be.

18                  **MS. JESSE WRIGHT:** And so is it fair to say that it's not your  
19 regular role to determine disputes?

20                  **MS. MONICA SECHIARI:** No. Like I say, it could not happen but  
21 we do do a lot of it. We do do a lot.

22                  **MS. JESSE WRIGHT:** But it's not your primary function on this  
23 project?

24                  **MS. MONICA SECHIARI:** No, it wasn't our primary function. The  
25 disputes also only came up , were referred to us I believe in 2021 so it was well after all  
26 the completions and certificates had been issued.

27                  **MS. JESSE WRIGHT:** Okay. Thank you very much, Ms. Sechiari.  
28 Those are my questions.

1 **MS. MONICA SECHIARI:** Thank you.

2 **COMMISSIONER HOURIGAN:** All right. Thank you.

3 Next up is Alstom.

4 **--- CROSS-EXAMINATION BY MS. JACKIE VAN LEEUWEN:**

5 **MS. JACKIE VAN LEEUWEN:** Good afternoon, Ms. Sechiari.

6 **MS. MONICA SECHIARI:** Good afternoon.

7 **MS. JACKIE VAN LEEUWEN:** My name is Jackie van Leeuwen  
8 and I'm counsel for Alstom. We only have about five minutes together today so I'll just  
9 get started.

10 **COMMISSIONER HOURIGAN:** Again, we've gone substantially  
11 over so if you want more time, that's fine. You can take it, okay?

12 **MS. JACKIE VAN LEEUWEN:** Sure, thank you.

13 So you will agree with me, Ms. Sechiari, that the Confederation  
14 Line is a highly complex project?

15 **MS. MONICA SECHIARI:** Yes.

16 **MS. JACKIE VAN LEEUWEN:** And you'll also agree with me that  
17 trial running was an important phase of the project and arguably the most important  
18 phase?

19 **MS. MONICA SECHIARI:** Yes, I would say that because it proved  
20 that the system would be ready for Revenue Service Availability.

21 **MS. JACKIE VAN LEEUWEN:** Thank you. That was actually my  
22 next question. As soon as trial running is deemed successful, then Revenue Service  
23 Availability is achieved, correct?

24 **MS. MONICA SECHIARI:** There are other requirements for  
25 Revenue Service Availability, trial running being one. So it's not automatic if trial  
26 running is successful. But you, know, there's a few other requirements there that have  
27 to be met. But generally that's the way it would lead, yes.

28 **MS. JACKIE VAN LEEUWEN:** Thank you. And once Revenue

1 Service Availability was achieved, the system was put into public service?

2 **MS. MONICA SECHIARI:** It wasn't put right away. I believe  
3 Revenue Service Availability was August 30<sup>th</sup> and I think the system opened to the  
4 public September 14<sup>th</sup> or 15<sup>th</sup>.

5 **MS. JACKIE VAN LEEUWEN:** Right, so shortly thereafter.

6 **MS. MONICA SECHIARI:** Shortly thereafter, yes.

7 **MS. JACKIE VAN LEEUWEN:** Thank you. So you will agree with  
8 me that there was a lot riding on the determination that trial running was successful  
9 because it leads to these other steps and ultimately public service, correct?

10 **MS. MONICA SECHIARI:** Correct, yeah. Correct.

11 **MS. JACKIE VAN LEEUWEN:** And you'll also agree with me that  
12 the independent certifier plays an important role in trial running because they're part of  
13 the trial running team?

14 **MS. MONICA SECHIARI:** Yes, we play an important role in that  
15 we have to validate the trial running as accepted at the end of the day.

16 **MS. JACKIE VAN LEEUWEN:** Right. Thank you. And the  
17 independent certifier's role as part of the trial running team was to verify to its  
18 satisfaction that the trial running goals set out in the trial running plan were met. I take it  
19 you'd agree with that as well?

20 **MS. MONICA SECHIARI:** I would agree with that, yes.

21 **MS. JACKIE VAN LEEUWEN:** Thank you. And I heard you  
22 confirm with Commission counsel earlier this afternoon that you were out of the country  
23 during the trial running period. Did I hear that right?

24 **MS. MONICA SECHIARI:** Yes, that's correct.

25 **MS. JACKIE VAN LEEUWEN:** And your junior, Kyle Campbell,  
26 was appointed to be the independent certifier representative during that time in your  
27 place; is that correct?

28 **MS. MONICA SECHIARI:** In my place with support from my senior

1 director and other people on the IC team. But he was the person on the ground there  
2 every day, correct. And Kyle had been involved with the project by then for two years  
3 so he was very familiar with the IC role in the project.

4 **MS. JACKIE VAN LEEUWEN:** Understood. Mr. Campbell is not a  
5 trained engineer, is he?

6 **MS. MONICA SECHIARI:** No.

7 **MS. JACKIE VAN LEEUWEN:** He doesn't have an engineering  
8 degree?

9 **MS. MONICA SECHIARI:** Not that I'm aware of, no.

10 **MS. JACKIE VAN LEEUWEN:** And he's not a professional  
11 engineer?

12 **MS. MONICA SECHIARI:** No.

13 **MS. JACKIE VAN LEEUWEN:** Right. So I recall that he described  
14 himself as a cost consultant during his interview with Commission counsel. I'm not sure  
15 if you had a chance to read his transcript. But does that align with your understanding?

16 **MS. MONICA SECHIARI:** That's his current title is a cost  
17 consultant. That comes from Altus Group being a cost consultant. But he does a lot of  
18 different roles at Altus, not just cost estimating. He does lender's technical advisor  
19 monitoring, and he helps me with the IC roles. You know, I can't say all the items that  
20 he does but that is his title, correct, cost consultant.

21 **MS. JACKIE VAN LEEUWEN:** Thank you. And before this  
22 project, Mr. Campbell had never previously worked on a rail project, correct?

23 **MS. MONICA SECHIARI:** You would have to ask him that. I don't  
24 know. I don't know.

25 **MS. JACKIE VAN LEEUWEN:** Okay. I'll put it to you, based on  
26 his resume that's in exhibit to his witness interview transcript, this was the only rail  
27 project that he had worked on. Do you have any reason to doubt that?

28 **MS. MONICA SECHIARI:** I don't if that's what his CV says, yeah.

1                   **MS. JACKIE VAN LEEUWEN:** Thank you. And he also had no  
2 experience with infrastructure or vehicle maintenance; does that align with your  
3 understanding?

4                   **MS. MONICA SECHIARI:** He had experience with infrastructure  
5 projects, maybe not this type of large scale transit project. But what was the other part  
6 of it?

7                   **MS. JACKIE VAN LEEUWEN:** It was vehicle maintenance,  
8 specifically light rail vehicle maintenance.

9                   **MS. MONICA SECHIARI:** I don't think so, no.

10                  **MS. JACKIE VAN LEEUWEN:** Thank you. And earlier this  
11 afternoon, Commission counsel asked you about Peter Lauch's testimony that the  
12 independent certifier would intervene if it disagreed with the day's or during trial running.  
13 Do you recall that?

14                  **MS. MONICA SECHIARI:** Yes.

15                  **MS. JACKIE VAN LEEUWEN:** And you agreed with Mr. Lauch's  
16 characterization that the independent certifier had the final word on each day's score  
17 regardless of what the City, RTG, and the other members of the trial running review  
18 team agreed to. Is that correct?

19                  **MS. MONICA SECHIARI:** That's correct, and that's -- in particular,  
20 in the case where the parties disagree that we will have the final say. Otherwise there's  
21 a standstill. People don't agree, you're in a dispute situation. So that's the purpose of  
22 that.

23                  **MS. JACKIE VAN LEEUWEN:** Right. And in a dispute situation it  
24 may come to the independent certified to ---

25                  **MS. MONICA SECHIARI:** Certifier. You know, that's why we were  
26 part of the meetings every day. We reviewed the results jointly so that if the two parties  
27 couldn't agree on that day, we didn't have time to go down a three-week dispute  
28 resolution process, that we would make that decision on that day. So that's why we

1 were together, understanding both parties' positions of how they determine the day's  
2 results. But from my understanding that there wasn't -- at the end of each meeting  
3 every day there wasn't a disagreement between the parties on what the day's results  
4 were.

5 **MS. JACKIE VAN LEEUWEN:** Right. And if there was, then that's  
6 when the ---

7 **MS. MONICA SECHIARI:** Then we would. Yes, correct.

8 **MS. JACKIE VAN LEEUWEN:** And in your view, was Mr.  
9 Campbell qualified to be the final word on the trial running scoring regardless of what  
10 the City, RTG, and the other members of the team agreed to?

11 **MS. MONICA SECHIARI:** Yeah, I think so. Yeah.

12 **MS. JACKIE VAN LEEUWEN:** Okay. And we've also heard  
13 evidence from Troy Charter. Are you familiar with who that is?

14 **MS. MONICA SECHIARI:** Troy Charter -- I believe he's with OC  
15 Transport?

16 **MS. JACKIE VAN LEEUWEN:** Yes. So he's the Director of  
17 Transit ---

18 **MS. MONICA SECHIARI:** That's right. Sorry. I just -- my  
19 involvement with Troy Charter was really in the month sort of leading up to trial running  
20 and that was sort of my only interaction with Troy. I didn't have interaction during the  
21 design and construction or most of the testing phase. It was only at trial running in  
22 those weeks leading up to that.

23 **MS. JACKIE VAN LEEUWEN:** Okay. No problems. So I just  
24 wanted to make sure that you were familiar with the name and who he is overall.

25 **MS. MONICA SECHIARI:** Yes.

26 **MS. JACKIE VAN LEEUWEN:** The evidence that he gave was  
27 that the independent certifier had to provide their opinion as to whether or not they felt  
28 that the conditions for Revenue Service Availability were met. I take it that aligns with

1 your general understanding as well?

2 **MS. MONICA SECHIARI:** Yes.

3 **MS. JACKIE VAN LEEUWEN:** Thank you. And based on the fact  
4 that Mr. Campbell's background is as a cost consultant, I take it you will agree with me  
5 that he was not qualified to opine on the performance of the maintainer and whether or  
6 not they were meeting their daily obligations, was he?

7 **MS. MONICA SECHIARI:** No, I wouldn't say that. There were  
8 daily results from the maintainer. I don't have the plan or a copy of the results, but this  
9 wasn't technical subject matter expert things. It was results, and either they met that  
10 criteria that was in the trial running or the scorecard or not. I never understood that  
11 there was any issue with Kyle being able to interpret those results, along with City and --  
12 with the whole team.

13 **MS. JACKIE VAN LEEUWEN:** Okay. But you do agree that he is  
14 making a qualitative assessment, so ultimately, if the independent certifier were to step  
15 in and make that final determination along the lines of what we were just talking about,  
16 Mr. Campbell would have been required to independently interpret the results.

17 **MS. MONICA SECHIARI:** Yes, and he would have been able to do  
18 that himself, or if he needed assistance, he had the balance of the IC team at Altus to  
19 support him in that.

20 **MS. JACKIE VAN LEEUWEN:** Understood. In your view, was it  
21 appropriate for Altus to assign Mr. Campbell to the trial running review team given his  
22 patent lack of qualifications for this critical task?

23 **MS. MONICA SECHIARI:** I don't agree with that statement. Yeah,  
24 he was the person to do it. He was the most familiar with the job. He was on my IC  
25 team and I'd worked with him for over two years leading up to this.

26 **MS. JACKIE VAN LEEUWEN:** Okay. Thank you, Ms. Sechiari.  
27 Those are all my questions.

28 **MS. MONICA SECHIARI:** Thank you.

1                   **COMMISSIONER HOURIGAN:** All right. Thanks, Counsel.

2                   Next up is the Province of Ontario.

3                   **MS. HEATHER MACKAY:** Good afternoon, Commissioner. The  
4 Province has not questions for this witness.

5                   **COMMISSIONER HOURIGAN:** All right. Thank you.

6                   Next up is Thales.

7                   **MS. MARIA BRAKER:** Hello. Maria Braker for Thales. We have  
8 no questions for this witness.

9                   **COMMISSIONER HOURIGAN:** Next up is witness counsel.

10                  **MS. REBECCA CURCIO:** No questions for this witness.

11                  **COMMISSIONER HOURIGAN:** All right. Thanks.

12                  And then re-examination.

13                  **MR. MARK COOMBES:** Just briefly, Mr. Commissioner.

14                  **--- RE-EXAMINATION BY MR. MARK COOMBES:**

15                  **MR. MARK COOMBES:** So Ms. Sechiari, counsel for the City of  
16 Ottawa took you through a schedule to the project agreement that deals with the  
17 requirement for trial running. And she put to you that if the trial running criteria were not  
18 sufficient to meet the requirements of the project agreement, you would have raised that  
19 as an issue.

20                  **MS. MONICA SECHIARI:** Yeah. I mean, my understanding is the  
21 criteria is set out in the output specifications, as far as the operation or maintenance  
22 requirements, and that was a criteria used to test trial running. So I would have said  
23 something if it was completely non-compliant in a critical way with what they were trying  
24 to test, what the intent of trial running was, but that wasn't the case.

25                  **MR. MARK COOMBES:** Just to be clear, your evidence to me  
26 earlier was that, though you were involved on the trial running review team to an extent  
27 -- the pre-trial running team -- you weren't asked to weigh in on any of the criteria that  
28 were being set out.

1                   **MS. MONICA SECHIARI:** That's correct. We were not asked to  
2 weigh in.

3                   **MR. MARK COOMBES:** Okay. And then you were also not asked  
4 to weigh in on the criteria change that happened midway through trial running.

5                   **MS. MONICA SECHIARI:** We were not asked to weigh in on that.

6                   **MR. MARK COOMBES:** But I take it from your answer to City of  
7 Ottawa counsel that you did perform some type of assessment of those criteria, at least  
8 to make sure, in the City of Ottawa counsel's words, they were sufficient to meet the  
9 requirements of the project.

10                  **MS. MONICA SECHIARI:** Yeah. I mean, the criteria was set with  
11 the plan and procedure, and reviewed -- proposed by Project Co. based on the  
12 requirements of the project agreement, reviewed by the City -- agreed. So the changes  
13 -- what the City and Project Co. agreed to -- were not reviewed, or we weren't asked to  
14 advise on them or set them. If they decided to -- I mean, I think what we're talking  
15 about is extremes here. If they decided to have no criteria or stations being available,  
16 well, we would have put our hand up to say, "What's happening?" But we weren't asked  
17 to consider what this change in criteria was. If it had been something dramatic like that,  
18 then I would think that everybody would have put their hands up. It would have not  
19 been beneficial to any party.

20                  **MR. MARK COOMBES:** So what I'm just trying to put to you here,  
21 Ms. Sechiari, is what happened in this specific case. I guess what I'm trying to get at is,  
22 because the parties were in agreement on the trial running criteria, you didn't take it a  
23 step further to evaluate those criteria to make sure that they met the project agreement.

24                  **MS. MONICA SECHIARI:** No, and we don't have a role in that.  
25 They changed the criteria; we were advised of it. We didn't have a role in deciding what  
26 that change would be or evaluating that.

27                  **MR. MARK COOMBES:** So to just take it one step further -- to put  
28 to you a counterfactual that didn't happen in this case -- if Project Co. put forward some

1 criteria and the City disagreed saying that those criteria didn't meet the project  
2 agreement, then you would have undertaken an exercise to evaluate whether in fact the  
3 criteria did meet the project agreement.

4 **MS. MONICA SECHIARI:** Correct. That to me would have been  
5 developed into a dispute.

6 **MR. MARK COOMBES:** But you didn't do that in this case ---

7 **MS. MONICA SECHIARI:** No.

8 **MR. MARK COOMBES:** --- because the parties agreed.

9 **MS. MONICA SECHIARI:** The parties agreed and advised me of  
10 the changes.

11 **MR. MARK COOMBES:** And so just to be clear for the record, you  
12 did not perform that analysis to determine whether ---

13 **MS. MONICA SECHIARI:** I did not ---

14 **MR. MARK COOMBES:** Go ahead.

15 **MS. MONICA SECHIARI:** Sorry. We did not perform that analysis.

16 **MR. MARK COOMBES:** If we could just avoid talking over each  
17 other, Ms. Sechiari ---

18 **MS. MONICA SECHIARI:** Yeah, sorry.

19 **MR. MARK COOMBES:** --- we'll make it easier for the transcript.

20 So just so that I'm clear and we have this answer on the record, because the parties  
21 agreed as to what the trial running criteria should be and they later subsequently agreed  
22 as to the change to the trial running criteria, the independent certifier did not perform  
23 any assessment of whether or not the trial running criteria met the requirements of the  
24 project agreement.

25 **MS. MONICA SECHIARI:** No. We did not perform that. We  
26 weren't asked to, and it's not a responsibility of the independent certifier.

27 **MR. MARK COOMBES:** Thank you. Next, my friend from the City  
28 took you to ask you, following the issuance of the revenue service availability certificate

1 -- the City counsel put to you that the City would not have proceeded to launch if those  
2 issues that had been identified were resolved. Do you recall her putting that question to  
3 you?

4 **MS. MONICA SECHIARI:** Yes, I do.

5 **MR. MARK COOMBES:** Okay. And your answer to her was you  
6 assumed so; you presumed so.

7 **MS. MONICA SECHIARI:** Yes. I ---

8 **MR. MARK COOMBES:** But just to be ---

9 **MS. MONICA SECHIARI:** Yeah. Sorry.

10 **MR. MARK COOMBES:** Go ahead.

11 **MS. MONICA SECHIARI:** I'm not part of the City group, and I  
12 wasn't involved with the decisions to move forward with opening the system. I wasn't  
13 involved with analyzing whether those items were actually done or not. I can only say I  
14 would presume so that those items would have been completed if I were in their place.  
15 But again, I can't say exactly what the situation was at that time.

16 **MR. MARK COOMBES:** All right. And then again, just because I'd  
17 like to be clear for the record, you presumed so, but that's based on your logical  
18 assessment of the situation. You have no knowledge one way or the other.

19 **MS. MONICA SECHIARI:** I have no knowledge one way or  
20 another; that's correct. It's based on my assumptions.

21 **MR. MARK COOMBES:** And then I also just wanted to put to you  
22 another -- clarify another question that the City of Ottawa counsel put to you. And she  
23 put a number of issues to you, for example, with the overhead catenary, with cracked  
24 wheels -- she put to you that those issues were not "readily apparent" prior to revenue  
25 service. And I just want to again be clear that the independent certifier was not  
26 performing any independent assessment of any of those systems.

27 **MS. MONICA SECHIARI:** That's correct.

28 **MR. MARK COOMBES:** So your opinion as to whether or not

1 those were readily apparent were based on the fact that they were not identified, in any  
2 reports by any other professional party in this project, as an issue.

3 **MS. MONICA SECHIARI:** Correct.

4 **MR. MARK COOMBES:** And lastly, I just want to, in response to  
5 certain of City counsel's questions to you regarding the substantial completion  
6 agreement and the revenue service availability term sheet -- I'd just like to take you  
7 back to the independent certifier's report on substantial completion number 2. And if we  
8 could just pull up for a second AGG0000294, and if we could start at page 10 of the  
9 PDF. All right. Thank you. Now this -- and I'll just identify it for you; you may recognize  
10 it -- is the letter from RTG to the City indicating that RTG is of the opinion that they have  
11 now reached substantial completion. This would be their substantial completion notice;  
12 is that correct?

13 **MS. MONICA SECHIARI:** Correct.

14 **MR. MARK COOMBES:** Okay. And if we just move down I believe  
15 another two pages, we will come to a letter from OLRT constructors. And this is a letter  
16 from OLRT constructors to RTG, and OLRTC is indicating to RTG that it has now  
17 reached substantial completion. And I'm just interested in your view on one of the  
18 attachments to that letter. If we can go down to page 17 of the PDF, there's something  
19 called a "substantial completion tracker".

20 **MS. MONICA SECHIARI:** M'hm.

21 **MR. MARK COOMBES:** And I take it that what is going on in this  
22 document is certain issues. There's a status column indicating whether that issue is still  
23 an issue or closed, presuming -- I presume that means that it's no longer an issue. I  
24 think you'd agree with that.

25 **MS. MONICA SECHIARI:** Correct.

26 **MR. MARK COOMBES:** And then timing, so those issues having  
27 to be resolved pre-substantial completion, post-substantial completion, pre-RSA?

28 **MS. MONICA SECHIARI:** Correct. As I recall, the substantial

1 completion tracker was tracking the items that they needed to rectify from their first  
2 application. I believe that that was the purpose. That's why some these say "post-SC",  
3 so they should be closed, you know, to achieve SC, or some are pre-RSA. But I believe  
4 that was the purpose -- this was a -- this is a tracker that RTG had -- or OLRT, if I recall  
5 correctly.

6 **MR. MARK COOMBES:** Okay. And I'd just like to take you down  
7 on page 19 of the PDF. Starting on page 19 at the bottom, there are a number of  
8 issues regarding vehicles that are identified as being system-wide. And some of them  
9 are characterized as "pre-RSA" including, if we look at no. 72, "vehicle system-wide  
10 failure to meet service standards due to reliability of subsystems", and that's  
11 categorized as a "monitor." Now, can you recall if you were asked to opine on some of  
12 these vehicle reliability issues prior to RSA? In other words, did they form part of your  
13 consideration as to whether RSA had been achieved or not?

14 **MS. MONICA SECHIARI:** No, this -- this was list at -- this was  
15 provided with their substantial completion notice. I couldn't say whether -- which ones  
16 of these were resolved at the time they applied for RSA. But no, we weren't asked to  
17 further analyze or provide any opinions -- detailed opinions on any of these vehicle  
18 items.

19 **MR. MARK COOMBES:** Right. And so, in other words, if -- the  
20 independent certifier wasn't then asked to track these issues or consider these?

21 **MS. MONICA SECHIARI:** No, these -- because this list was  
22 provided with their substantial completion notice, their RSA notice. These would be  
23 tracked on the minor deficiency list at substantial completion. Some items that were  
24 part -- became part of the Substantial Completion Agreement were agreed to be  
25 considered minor deficiencies and be rectified pre-RSA, which would be -- I mean you'd  
26 have to crosscheck with the Substantial Completion Agreement, but I think it would be  
27 some of these items that are labelled "pre-RSA" here. But at RSA, everything had been  
28 closed with the exception there were some items that weren't closed that were then

1 covered off on the term sheet. So we were not asked to opine on any of these items.

2 **MR. MARK COOMBES:** Okay. And so, then, can I just maybe put  
3 all of your answers together there and just suggest to you that, in other words, if at  
4 revenue service availability, the items were not addressed on the term sheet but,  
5 instead, were addressed in the revenue service availability notice and then the City's  
6 response to that, to the extent that any of these would have formed a part of the term  
7 sheet, you would not have been taking a detailed investigation of them? You would  
8 have accepted that they were allowable under the Project Agreement? And whether or  
9 not they were completed at RSA -- or revenue service commencement, you wouldn't  
10 know?

11 **MS. MONICA SECHIARI:** I wouldn't know due to the term sheet. I  
12 mean it was agreed that these would be closed before RSA and, obviously, the term  
13 sheet, then, took a step further and some of the items that weren't closed were then  
14 agreed to be closed before the station opened. So we -- I mean, to answer your  
15 question, we didn't -- we weren't asked to or didn't take a deep, you know, technical  
16 review of any of these items.

17 **MR. MARK COOMBES:** Right. And to the extent that they formed  
18 a part of the term sheet -- again, just to clarify that answer, to the extent they formed a  
19 part of the term sheet, they were no longer a part of your consideration as to whether  
20 RSA had been achieved?

21 **MS. MONICA SECHIARI:** That's correct.

22 **MR. MARK COOMBES:** Thank you. I believe those are all of my  
23 questions, Mr. Commissioner.

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

25 I'd like to thank the witness for giving us her time today and giving  
26 very valuable evidence to the Commission. We're down until tomorrow at nine o'clock.

27 **MS. MONICA SECHIARI:** Thank you.

28 **THE REGISTRAR:** Order, all rise. The hearing is now adjourned

1 for the day and will resume tomorrow at 9:00 a.m.

2 --- Upon adjourning at 4:46 p.m.

3

4

### CERTIFICATION

5

6 I, Wendy Clements, a certified court reporter, hereby certify the foregoing pages to be  
7 an accurate transcription of my notes/records to the best of my skill and ability, and I so  
8 swear.

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10 Je, Wendy Clements, une sténographe officiel, certifie que les pages ci-hautes sont une  
11 transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et  
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