Standing Committee on Crown Corporations

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STANDING COMMITTEE ON CROWN CORPORATIONS
1998

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Channel Lake Petroleum Ltd.

The Chair: — If everyone is ready we will once again start the hearings into the Channel Lake affair. And I would advise committee members that we do have witnesses from out of province today. I will shortly be swearing them in. Before I do that I want to table some documents with the committee members.

First of all we have, as requested by our legal adviser, the complete file from Milner Fenerty including the handwritten notes by Mr. Hurst. It's quite a substantial document and I understand that caucuses were provided with one copy yesterday so — I know that all of you have taken speed reading courses — you will have had an opportunity to go through it. And since we do have Milner Fenerty on our witness list, you will have an opportunity to question that legal counsel in depth at some point.

I also want to table with the committee, two letters that I've received from Mr. Garrett Wilson. First dated April 30, indicating that representatives from DEML (Direct Energy Marketing Limited) will be appearing today but are not available to be here on Thursday. No, the letter is silent on that. But indicating that Mr. Portigal has made arrangements to come — to appear before the committee — on May 12 and 13 and right now it looks like it may be difficult for him to be available on May 14. That letter will be circulated as soon as we have copies for you.

And finally there's a letter dated May 4 from Mr. Wilson regarding the questioning of witnesses and the . . . reminding committee members of the opening statements that I had made, cautioning committee members to treat all witnesses with dignity and respect. I will just once again remind all committee members that our job here is to uncover the facts of the matter.

And we will be receiving, from time to time, various documents from people giving their, their facts as they see them. So I would remind committee members our job is to ask questions, to avoid editorializing, and to treat the witnesses fairly. At the end of the day it's our job to decide whether we have a cow, a camel, or some other mythical beast before us. But we do have to . . . before we do that, before we come to conclusions, we have to uncover the facts.

We also have two documents that we will be dealing with this morning: the opening remarks by Mr. DeLuca, legal counsel for DEML, and a summary document — I understand that committee members have just been handed that. It is my intention after we have Mr. DeLuca go through the facts as he perceives them, to call a short break so that committee members will have time to look through this and to see what questions come to mind as a result of the those . . . of the document and the statement that he's presenting.

Right now then if there are no questions or comments from committee members, what I will do is swear in the three witnesses that we have from Calgary so that we can do it at once. We will then be questioning witnesses in an orderly manner. And it is my hope that we will be able to be finished with the witnesses from DEML by tomorrow.

Again I would caution the witnesses it is only my hope. We don't know how many questions the committee members may have and we do have the ability to recall witnesses. But we're hoping to minimize the disruption in your own personal and business lives, and hopefully to finish with the witnesses from DEML by tomorrow.

I do have to read you a statement, gentlemen, and if you would please listen. This is regarding testimony of witnesses appearing before the Crown Corporations Committee:

Witnesses should be aware that when appearing before a legislative committee your testimony is entitled to have the protection of parliamentary privilege. The evidence you provide to this committee cannot be used against you as the subject of a civil action.

In addition, I wish to advise you that you are protected by section 13 of the Canadian Charter of Rights and Freedoms which provides that:

> A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

A witness must answer all questions put by the committee. You are advised that you may be recalled to appear again before this committee at a later date if the committee so decides. You are also reminded to please address all comments through the Chair. Thank you.

If you require a copy of that I can make that available for you. I will now swear in the witnesses.

I take it you're Mr. DeLuca.

Mr. DeLuca: — I am.

The Chair: — I've never shaken the hands of more lawyers in my life. Did you want to swear or affirm?

Mr. DeLuca: — I will swear.

The Chair: — Do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DeLuca: — I do.

The Chair: — Thank you.

Mr. Drummond, did you wish to swear or affirm?

Mr. Drummond: — Swear.

The Chair: — Okay. Do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Drummond: — Yes, I do.

The Chair: — Thank you.

And finally, you have to be Mr. Dufresne.

Mr. Dufresne: — Correct.

The Chair: — Welcome to Regina. Did you wish to swear or affirm?

Mr. Dufresne: — I do.

The Chair: — Okay. Do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Dufresne: — I do.

The Chair: — Thank you. And now I would remind committee members that we have decided as a standard procedure that we will allow witnesses an opening and a closing statement. And I understand that Mr. DeLuca will be making the opening statement for DEML. Mr. DeLuca if . . . I would also remind everyone present that we wish that the counsel will speak through the witnesses, but I understand this is a point of information, is it, Mr. Wilson?

Mr. Wilson: — You're incorrect. I think that Mr. Priel could perhaps advise you that Mr. DeLuca will be making his own opening statement. When we come to Mr. Dufresne, he will be making an opening statement on behalf of Direct Energy.

The Chair: — All right. Thank you. That wasn't exactly what I had understood was going to happen, but that's quite fine. We will then right now receive an opening statement from Mr. DeLuca.

Mr. DeLuca: — Thank you, Madam Chair. Good morning, other members of the committee. As you are aware, my name is Dino DeLuca. I'm a partner with the law firm of Burnet Duckworth & Palmer. BD&P, as we're known, is a law firm of approximately 85 lawyers, and we have represented Direct Energy in connection with the acquisition of the shares of Channel Lake Petroleum Ltd. from Saskatchewan Power Corporation.

We have distributed a small appendix of documents and I have also brought with me, and will leave with the Clerk, a binder with every share purchase agreement ever prepared on this transaction, and comparing every version from . . . we'll get into what a blackline is, but I will leave it with you and if you need copies you can do with it as you wish.

The Chair: — Mr. DeLuca, the committee is already very aware of what blacklining is.

Mr. DeLuca: — Okay, then I'll delete that from my opening remarks.

The Chair: — Thank you.

Mr. DeLuca: — On or about March 13, I was contacted by Direct Energy to act on its behalf in connection with the potential acquisition of Channel Lake. I was informed that the transaction would have to be completed by March 31. This is a very tight time line, but I understand it was imposed by SaskPower. As you will see later on, the first draft of the share purchase agreement was produced on March 18 and SaskPower's first comments were received on March 24.

And then between March 24 and April 3, it really only left us 10 days to work and attempt to complete the entire transaction, with Easter weekend in between. I would consider that a fairly aggressive time line.

Most of my remarks will be in the form of a chronological time line of the events that transpired between the 14th and April 3.

But before I commence this summary, I wish to point out to the committee that at all times the transaction between Direct Energy and SaskPower was negotiated between Gary Drummond, the president of Direct Energy; Louis Dufresne, senior vice-president of Direct Energy; and Lawrence Portigal, on behalf of SaskPower. Direct Energy was represented by myself at the law firm of Burnet Duckworth & Palmer, and SaskPower retained Michael Hurst at the law firm of Milner Fenerty.

These five people constituted the negotiating team given the authority to complete the transaction. To my knowledge, at no time after March 14 — basically when I heard about the transaction — did any other employee, officer, or director of SaskPower participate in direct negotiations on the documents required to complete the acquisition of the shares of Channel Lake. It was just those five individuals.

I have perused transcripts of some of the proceedings before this committee and I'm deeply disturbed by the allegation that somehow the share purchase agreement executed by Direct Energy and SaskPower was altered before it was final. The share purchase agreement was never final and was continually changing until the signing by Direct Energy on the afternoon of April 3.

In addition, there are two key schedules to this share purchase agreement. One is a list of trading contracts and the other is a draft of the financial statements of Channel Lake, neither of which were delivered by SaskPower to Direct Energy until Tuesday, April 1 in the case of the trading contracts, and Monday, March 31 in the case of the financial statements.

These key pieces of information were delivered what I would call late in the process and were key to determining how to properly reflect the information we got from those schedules into the documents.

In addition, my letter to Mr. Portigal on March 13, and I'll elaborate on this later, it was copied to Mr. Hurst, and I specifically stated at the time, the execution copies of these agreements have not been stapled in order that any replacement pages that are required may be inserted at the closing on Wednesday.

The Chair: — Excuse me, Mr. DeLuca. I'm sorry to interrupt. I believe you said March 13. I think you meant March 31.

Mr. DeLuca: — Thank you for correcting me — March 31.

These documents were couriered to Saskatchewan only to facilitate the execution of the documents by SaskPower. As I understood, representatives of SaskPower did not wish to attend the closing.

It's common practice in commercial transactions that documents are executed prior to finalization, and a party would execute a document either by fax or in original form at its primary business location and not attend the closing.

Subsequent to the April 1 delivery of all the documents to Mr. Portigal, additional changes were made to the documents and the resultant changes were circulated to all the parties.

There appears to also be some confusion surrounding the determination of the purchase price for the shares of Channel Lake. I wish to highlight that there's a significant difference between an asset acquisition and a share purchase.

Originally Direct Energy proposed to acquire only the assets of Channel Lake for $20.8 million. The advantage of an asset acquisition is that Direct Energy would have received only the oil and gas properties, the income stream generated from the oil and gas properties, and there would be no responsibility for any liabilities that Channel Lake may have incurred in the past, or might be liable for in the future.

From a purchaser's perspective, this is what I would call a cleaner transaction as it's very difficult to determine all the potential liabilities that a corporation may have incurred or be liable for in the future. And that's what happens when you buy the shares of a company — you take all of its warts.

A share acquisition requires a significant amount of research and a review of the affairs of the corporation. We refer to this as due diligence. In a share purchase transaction, the price a buyer is willing to pay for the same assets is often lower than the price the same buyer would pay for the assets alone. The difference in price reflects the risk that the buyer is taking by assuming the liabilities that may exist in the corporation.

In the case of Channel Lake, a share acquisition would clearly be at a lower price than an asset acquisition as a result of all of the trading losses that had been incurred by Channel Lake and that Channel Lake would continue to be obligated for on a going forward basis. Most of these trading losses, or all of these training losses, were under various gas purchase and sale agreements that Channel Lake was a party to. And I'll just refer to these gas purchase and sale agreements, and the arbitrage business conducted by Channel Lake, as the trading contracts throughout the rest of my remarks.

The initial written proposal from Direct Energy to SaskPower contemplated a base purchase price of $27.7 million with all production revenue from September 1, 1996. The committee will notice there's a typographical error in my remarks. It should be September 1, '96. We haven't quite got to September 1, '98.

So all production revenues from September 1, '96 in the amount of $1.7 million would be for the benefit of Direct Energy, and SaskPower was required to capitalize Channel Lake with up to a maximum amount of $7.1 million to fund anticipated amount of trading losses under these trading contracts. The net purchase price based on this preliminary proposal is less than 20.8 million, which is the amount Direct Energy was prepared to pay for an asset acquisition.

At all times through the process I was instructed to ensure that even though this acquisition was to be structured as a share purchase, the economic effect of the transaction to Direct Energy would be the same as an asset purchase. Now simply put, Direct Energy was prepared to pay 20.8 million for the assets and be obligated for no liabilities.

To structure a share purchase in this fashion is not easy to do, as Channel Lake would have ongoing benefits and ongoing liabilities, a working capital deficit, a working capital surplus, plus all of these trading losses under the trading contracts. As a result, most of our energies on the negotiating team focused on the purchase price, adjustments to the purchase price, and liability for trading losses.

From the very first draft, including Mr. Hurst's first comments on March 24, the proper method of determining and adjusting the purchase price was always an issue that had to be resolved.

I'll now proceed with a chronological summary of events and I'll begin on March 18. On this day I delivered the first draft of the share purchase agreement to Mr. Portigal. At tab 1 I've only enclosed my cover letter. This binder has all the necessary documents to back up enclosures.

I recall at the time I was asked to prepare two copies of this share purchase agreement as Mr. Portigal was going to pick up the first draft from my office and deliver it to Mr. Hurst of Milner Fenerty.

The first draft of the share purchase agreement contemplated again a base purchase price of 27.7 million, with a reduction to the purchase price for trading losses under the trading contracts up to a maximum, and that was 7.1 million. The net purchase price based on the first draft would equal 20.6 million, which is close to the amount that Direct Energy was prepared to pay for an asset acquisition only.

Both my enclosure letter of March 18 and Mr. Hurst's response letter both contemplated an additional adjustment to the purchase price for what we call working capital adjustment. As a result of all these adjustments, the purchase price based on draft no. 1 would likely be less than 20.8.

I'll digress for a second to explain what I think working capital is. Working capital is the difference between a corporation's current assets and their current liabilities. And if the assets are greater than the liabilities there's a surplus, and if liabilities are greater than assets there's a working capital deficiency. And in a share acquisition you have to adjust for that somehow. You don't have to, I shouldn't say that, but it's often considered in a share purchase acquisition.

On to March 24. On this day I received a letter from Mr. Hurst which was copied to Mr. Portigal and Mr. Kram, containing preliminary comments on the first draft. These comments were primarily in the form of Mr. Hurst's handwritten comments directly on draft no. 1. This is usually a more efficient way of

communicating comments between solicitors, is to just hand-write right on the document as opposed to doing a lengthy letter saying in paragraph 5.9 at line 3 please replace this with this. It's just more efficient. You can give it to your staff and they can start to make the changes. It works quite well.

You'll note the covering letter of Mr. Hurst clearly identified there would have to be a working capital adjustment to the purchase price.

On March 25 was the first meeting of Mr. Hurst, Mr. Portigal, and myself to discuss comments on the first draft of the share purchase agreement. From this meeting, on March 26 I generated the second draft of what now is called a share and note purchase agreement, and I distributed it to Mr. Portigal, Mr. Hurst, and Mr. Drummond, Dufresne, and Hugh McIntosh, who is general counsel of Direct Energy.

I also circulated a blackline copy comparing the second draft against the first draft. I will not bore the committee with what a blackline is so I'll proceed further into my text.

I've come to understand the Channel Lake board approved the transaction on the evening of March 26, and the SaskPower board of directors approved the transaction on the morning of March 27. At the time of both of these meetings, only the second draft of the share purchase agreement — and I would call it a fairly preliminary draft since there were six in total — had been generated and all changes subsequent to that, they were distributed to Direct Energy and SaskPower for their review, comments, and approval.

Draft 2 of the share purchase agreement contemplated a base purchase price of $26 million subject to a $5,287,635 reduction for trading losses under the trading contracts. Again Direct Energy's purchase price would not exceed 20.8 million, being the amount it was prepared to pay for an asset equivalent acquisition.

There was no working capital adjustment included in the second draft of the share purchase agreement as the parties had not yet agreed on a proper mechanism to address this working capital adjustment, due primarily to the fact that the financial statements and information on the trading losses under the trading contracts were not yet available.

On to March 28, being Good Friday. On this day I was contacted by Mr. Drummond to discuss the mechanism for determining the purchase price, adjustments to the purchase price as a result of a working capital surplus or working capital deficiency, and an allocation of the risk on the trading contracts.

To simplify matters, Mr. Drummond proposed, and I understood that Mr. Portigal agreed, that the base purchase price would be $20.8 million. Direct Energy would receive all of the production revenue from the oil and gas properties as of from January 1, 1997 and SaskPower would be responsible for funding and continue to be liable for all trading losses under the trading contracts.

At that time, it was anticipated that these losses would not exceed $5.2 million, and accordingly draft no. 3 indicated that SaskPower's obligations for trading losses under the trading contracts would be $5.2 million.

This $5.2 million number and the amount of the trading losses is an amount which was determined exclusively by SaskPower at that time, and Direct Energy relied upon it. It wasn't until April 1 that Direct Energy received preliminary information — and I want to emphasize preliminary — because we received information on April 1, 2, and 3 regarding trading losses. So it wasn't until April 1 that we got the first piece of information.

Once Direct Energy was provided with the information on the actual trading losses under the trading contracts, it was apparent that the $5.2 million trading loss obligation wasn't nearly sufficient to retire all of the trading losses.

Again to recap, the simplified purchase price structure more properly reflected the original business deal — that Direct Energy would not pay in excess of $20.8 million for the assets of Channel Lake, and SaskPower remained responsible for all of the trading losses.

I'll move to March 29. On this day, Saturday, Mr. Hurst and Mr. Portigal came to the office, the office of BD&P, for a meeting to discuss changes to the second draft.

I'll then move to Monday, March 31. On the morning of Monday, March 31, I distributed a third draft of the share and note purchase agreement to Mr. Hurst and to SaskPower in Regina, to the attention of Mr. Portigal. This would have been a blackline copy of a document and it incorporated all the changes agreed to over the weekend.

Over the course of the day I received more comments on the third draft and then in late afternoon on March 31 I produced the fourth draft of the share and note purchase agreement and a second draft of the escrow agreement. Execution copies of the share and note purchase agreement and escrow agreement, together with all the blackline copies, were delivered by courier by SaskPower in Regina to the attention of Mr. Portigal, with a copy to Mr. Hurst.

I also enclosed a disk containing the most current versions of both the share and note purchase agreement and the escrow agreement. These documents were saved on Microsoft Word 6.0.

For your information, there's two primary word processing systems used, as you all may be aware, but our firm uses WordPerfect and SaskPower, I understand, uses Microsoft Word. So I was asked to enclose with my package the documents on a disk and to convert them from WordPerfect, which is our system, to Microsoft Word, which is SaskPower's system. And that disk was included in the package to Mr. Portigal. Unfortunately this conversion didn't work, as you'll see based on comments I will get to.

I'd like to actually ask the committee to open this appendix of documents to tab 5, and this is the enclosure letter that I'm referring to. And to take you through it again: I sent the share and note purchase agreement, a blackline copy; the escrow agreement, a blackline copy; and the disk.

And now I'd like to read out my concluding . . . second to the

last paragraph. The execution copies of these agreements have not been stapled and/or that any replacement pages that are required may be inserted at the closing on Wednesday. That was our view at the time.

From my point of view, the documents we delivered to Regina for receipt on April 1 were not final, and they're still subject to ongoing negotiations. And at a risk of repeating myself, several schedules, including the financial statements and the trading contracts, were not prepared or produced by SaskPower for review by Direct Energy. At the time this letter went out we probably received the first draft of the financial statements and we definitely didn't receive any information on the trading contracts.

These two schedules are the most important pieces of information that Direct Energy would require to properly assess the value of Channel Lake on a share acquisition basis as opposed to an asset acquisition basis. Direct Energy was able to determine a fair purchase price for the assets of Channel Lake based primarily upon the engineering report it had received and reviewed. However, an assessment of Channel Lake's liabilities and all of the obligations under the trading contracts cannot be determined until the financial statements and a summary of the trading contracts were produced by SaskPower for Direct Energy's review.

This didn't occur till March 31 in the case of financial statements, and information on the trading contracts was received over the course of three days, April 1, 2, and 3. Based on this information I'm not sure how anyone can say the documents attached to my letter dated March 31 were final.

On to April 1. This is the first day Direct Energy received any information on the trading contracts. On this day I was also contacted by Mr. Portigal as there was an error in the amount of the purchase price that should have been allocated to the SaskPower note.

I'm not sure how familiar you are with this document, but Direct Energy was acquiring both shares in the capital of Channel Lake and a promissory note which reflected amounts of money that were owed by Channel Lake to SaskPower. And the note was originally $25 million back in, if I recall, 1993.

And some of the money had been repaid. The purchase price of 20.8 was going to be allocated partly towards the note; so we would pay for that portion and the remaining amount of the purchase price would go for the shares . . . to the shares.

So Mr. Portigal noticed that in the draft, the way the purchase price was allocated was not correct. The conversion to Microsoft Word didn't work so he couldn't make the changes himself. So he requested that I make these changes to the purchase price allocation and fax them to him in Regina for insertion in the version of the share and note purchase agreement which he had received that day.

And I've attached at tab 6, my fax. It's a short fax. It just has . . . let's see. There's just three pages and I've circled the minor changes in the amounts.

On to April 2. A meeting was scheduled to complete the closing at the offices of Burnet Duckworth & Palmer at 10:30 a.m. In attendance were Mr. Hurst, Mr. Portigal, Mr. Dufresne, and Mr. McIntosh.

After reviewing the trading contracts summary received by Direct Energy for the first time on April 1, and the information provided after that date, it became apparent to Direct Energy that the trading losses would potentially be far in excess of SaskPower's estimate of $5.2 million.

The drafts until that point contemplated a maximum $5.2 million trading loss based exclusively on representations Direct Energy received from SaskPower. As a result of these representations, Direct Energy had been prepared to accept any risk over 5.2 million.

Once it became apparent that these liabilities would potentially be far in excess of 5.2 million, Direct Energy refused to close, as the trading losses were in the past, during negotiations, and after closing, they always were SaskPower's exclusive responsibility.

You must remember, Direct Energy and SaskPower were trying to structure a share purchase on an equivalent basis to an asset purchase. In an asset purchase, Direct Energy would never have had any liability for the trading losses under the trading contracts.

Based on this new information, Direct Energy decided it would not proceed with the closing of the transaction as a result of the significant increased exposure under the trading contracts.

On the evening of April 2, I think it was around 8 p.m., I was called at work by Mr. Dufresne to see if I would have time for a meeting with Mr. Dufresne and Mr. Portigal to discuss a potential solution to the trading loss exposure. At this meeting I was informed that Direct Energy and SaskPower had agreed conceptually on a cost-sharing formula for the trading contracts problem.

The arrangement would see SaskPower remain responsible for the first $5.2 million of trading losses under the trading contracts; Direct Energy and SaskPower would share the next $800,000 of trading losses, and SaskPower would continue to be responsible for all trading losses in excess of $6 million.

Essentially Direct Energy agreed to a $400,000 increase in the purchase price and it took responsibility for a liability it would never have been responsible for under an asset acquisition.

After the meeting, I was asked to revise the share and note purchase agreement to reflect these changes and to prepare an acknowledgement on the handling of the losses under the trading contracts.

The next morning, April 3, I distributed blacklined pages to the share and note purchase agreement and . . . I'll have to flip it. Yes, these blacklined . . . Sorry. This blackline showed all changes to the share and note purchase agreement since the draft which was delivered to Regina by courier on Monday night. And the changes were distributed to Mr. Dufresne, Mr. Portigal, and Mr. Hurst.

As I was scheduled to be in a meeting all of Thursday morning, I proposed that the closing occur on Thursday afternoon and that any changes to the agreements be communicated to my office by fax so my assistant could make changes in my absence.

This went out early in the morning, if I recall, at 8:48 a.m. I wasn't going to be back in the office until around 12:30. It gave everyone the morning to review the documents and get back to me by phone or fax with their changes.

Subsequent to that morning fax, a minor change was made to properly define the trading contracts. So we're now Thursday morning — I sent out one fax Thursday before signing — and at tab 8 are the last changes which were made.

Prior to these changes, the trading contracts were an undefined number of contracts; we had some kind of nebulous term that it wasn't as precise as everyone would have liked. And since the trading contracts were now attached to the schedule, it was more appropriate to define the trading contracts and to make the necessary changes to the share and note purchase agreement. Once all the documents were signed on April 3, these documents were held by Burnet Duckworth and Palmer as escrow agent pursuant to an escrow agreement.

Sorry, I do want to back up because I knew I'd miss something important here. My apologies.

Back to April 3 at the closing, we're all in a room together. Mr. Portigal at that time provided me with originals of all the other documents for deposit into escrow in accordance with the terms of the escrow agreement. I imagine most of the committee's proceedings are focused on this share and note purchase agreement and very . . . pretty much no other document. There are about, I think, 25 documents to close a deal; all of them, I'd say, are minor once you get past the share and note purchase agreement.

So Mr. Portigal brought all of these documents to the closing. We were missing the resignation and general release of Mr. Messer at the time, and it followed the following day. At that April 3 closing, I was instructed by Mr. Portigal to attach the SaskPower signature page to the final share and note purchase agreement, which included all the amendments which were negotiated and distributed up to and including the closing time.

Having signature pages attached in this fashion is common practice in commercial transactions. In my experience in today's technological age when parties aren't in the same city, it's very difficult to coordinate a closing where all parties are present and a document is in front of you and is stapled and everyone walks around the table and signs the documents.

I'd say a significant, as in far in excess of 50 per cent of the transactions I work on, the transaction is completed by the signature page being faxed or couriered to a central depository — usually one of the lawyers on the transaction — and once all the signature pages are accumulated, the transaction is closed. It is common practice.

I have already spoken about the minor change that was made. So after this closing, all the documents are on the table and our firm has an obligation as escrow agent under the escrow agreement.

Our duties were pretty simple. If, prior to June 1, 1997, we did not receive the remaining purchase price, a verification notice from SaskPower and Channel Lake agreeing to interests and adjustments to the purchase price, and an exemption order which was required by the . . . or from the Alberta Energy & Utilities Board, we were to return all the documents to the original party that deposited them in escrow. And SaskPower was entitled to keep the $2.5 million deposit. If these documents were received on or prior to June 1, the transaction would be concluded and I would distribute all the closing documents to the parties.

During the escrow period, from April 3 until June 1, SaskPower could not withdraw from the transaction, as all of the escrow conditions were in the control of Direct Energy. And if Direct Energy failed to satisfy one of the escrow conditions, they would forfeit their $2.5 million deposit.

At this time I'd be happy to answer any questions the committee may have.

The Chair: — Thank you very much, Mr. DeLuca, and you do have copies of the binder with all those documents available?

Mr. DeLuca: — This is for you to keep.

The Chair: — You only have one copy?

Mr. DeLuca: — Yes. Should I have brought 25? I didn't want to kill all those trees.

The Chair: — I would have preferred that, but I'm not going to get hung up on that . . . (inaudible interjection) . . . Mr. Wilson, I'm not recognizing you at this moment.

Mr. DeLuca if you could . . . the Clerk will take the copy of it and we will make copies available for committee members. Is it sufficient at this time if we make one copy per party caucus? Thank you. There will also be a copy made obviously for our legal adviser and for our permanent records.

I had suggested earlier that what we would do is hear from Mr. DeLuca and then have a short adjournment to give committee members an opportunity to be able to quickly review this.

Mr. Kowalsky: — Could you advise the committee of the order of witnesses that we'll be hearing?

The Chair: — It is my understanding — we've now sworn in all of them — it's my understanding that committee members did wish to begin questioning Mr. Dufresne, and then move to Mr. Drummond. However I don't know what will happen once committee members have the opportunity to review the documents that Mr. DeLuca has just referred to, so I'm not going to predetermine the order of questioning right now. I will be asking committee members after the break.

The hour is now 10 to 10. I would suggest we will adjourn until 10 o'clock. Thank you. Committee is now adjourned until 10 o'clock.

The committee recessed for a period of time.

The Chair: — The committee will now resume its deliberations. During the break I've been advised that all party members wish to, notwithstanding the opening statement by Mr. DeLuca, wish to move first of all to questioning Mr. Dufresne.

So I apologize, Mr. DeLuca, committee members have indicated to me that they want to have overnight to digest the information that you've given them and that they have prepared a line of questioning for Mr. Dufresne, so we will be moving to Mr. Dufresne.

Before we do that, and before I recognize the Saskatchewan Party, I do want to say that just right after I called the break, I unfortunately let my frustration in some of the process show and I made an inappropriate remark. I apologize to you, Mr. Wilson.

I would now call Mr. Dufresne to the witness chair, and I will recognize Mr. Gantefoer for the Saskatchewan Party, for . . . (inaudible interjection) . . . Yes.

After Mr. Dufresne makes his opening statement I will be recognizing Mr. Gantefoer for 30 minutes. I have no idea at this point how long Mr. Dufresne's opening statement will be, but will you please watch the clock, Mr. Gantefoer, and judge yourself accordingly.

Mr. Hillson: — Madam Chair, may I suggest to all members, if there is to be an opening statement from Mr. Dufresne as well, perhaps then prior to commencing any of the questioning by Mr. Gantefoer, we should have all opening statements. So if there is also . . . I don't know, but if there is to be an opening statement by Mr. Drummond, I would suggest we do that immediately as well, so the opening statements are completed.

The Chair: — That is an excellent suggestion and certainly will expedite the process, because I note that Mr. Dufresne's opening statement is 18 pages. Mr. DeLuca's was only seven pages and took some considerable time. Mr. Drummond, will you be having an opening statement?

Mr. Wilson: — There will be no opening statement for Mr. Drummond.

Mr. Hillson: — And opening file of documents?

Mr. Wilson: — No.

The Chair: — Will there be any other documents being filed?

Mr. Wilson: — No.

The Chair: — So I will take it then for the record, Mr. Drummond waves the privilege of an opening statement. And DEML is indicating that there will no further documents tabled today or tomorrow regarding this affair.

Mr. Wilson: — For the record, Madam Chair, we have just filed with the Clerk, 15 copies of the opening statement and attached documentation.

The Chair: — Committee members will know that we do have some considerable interest in this — 15 copies generally is sufficient for normal committee business. In this instance though, since we do have requests from the media and some from some general . . . members of the general public for documents, what we're going to do is distribute two copies of the blue file to each caucus, and then a copy of the opening statement to each committee member so that there will be sufficient copies left over for members of the media or the public.

Mr. Gantefoer: — Madam Chair, as you indicated, this is 18 pages long. Are we going to be given an opportunity to absorb this material? And the supporting documentation I see is even larger.

The Chair: — Yes, Mr. Gantefoer. I had earlier asked that I would be given advance notice if there was going to be something that would cause a disruption of the normal committee process. I was assured on Saturday that wouldn't be happening, but since it is now, what I'm going to propose is that once Mr. Dufresne has made his opening statement we will have yet another break.

I would also advise committee members that we did have an agreed-upon protocol with respect to the taking of photographs by the media, both the electronic media and the print media. Because we've been starting and stopping and having to call breaks, the photographer from the *Leader-Post* will be here at 10:30. So, Mr. Dufresne, please be aware that there will be a photographer taking pictures at around about 10:30. Hopefully it will be minimally disruptive, but if you're still reading your opening statement into the record by 10:30 there's going to be a photographer catching it on camera for you.

Any other questions by committee members before we hear from Mr. Dufresne?

Mr. Dufresne, will you commence your opening statement please.

Mr. Dufresne: — Thank you. You've had the opportunity to hear from our solicitor, Mr. Dino DeLuca, and I'd like to start with the opening statement for Direct Energy written by Mr. Drummond and myself.

Good morning, Madam Chair, and members of the committee. My name is Louis Dufresne. I'm a professional engineer and I'm senior vice-president of Direct Energy Marketing Limited, DEML.

We look forward to finally having an opportunity to make a public statement. DEML was formed in 1985 and started with zero assets. The market capitalization of the OPTUS Natural Gas Distribution income fund, which wholly owns DEML, is now approaching $275 million, has 55 employees, supplies gas to over 500,000 households in Ontario and Manitoba and Quebec, and in addition supplies natural gas to a host of major industrial and institutional users including, but not limited to, Dow, Honda, Labatt's, Stelco, Public Works Canada, and Consumers Gas.

We are proud of our company and can assure you that this

dramatic growth and success arose out of hard work, honesty, and integrity. We are a public company trading on the Toronto Stock Exchange and have in excess of 3,000 investors. You have heard and read in great detail about what went on at SaskPower during the time leading up to this hearing, but to date you have not had the benefit of hearing from Direct Energy.

In February 1997, we were approached by Mr. Lawrence Portigal as to our interest in acquiring the gas production assets of Channel Lake. Mr. Portigal indicated that SaskPower wished to sell its Channel Lake assets as expeditiously as possible. He advised that SaskPower would like to receive a share purchase proposal which could be expedited.

We stated that we were interested only in the assets but were prepared to work on the basis of a share purchase subject to normal business conditions. DEML had made a corporate decision in early February to acquire shallow gas production having a profile very similar to that of Channel Lake in order to hedge supply for some of our long-term residential markets.

Given this fact, we showed immediate and bona fide interest. In view of the very tight time frame being proposed by SaskPower, DEML submitted a conditional proposal to SaskPower. This proposal was submitted prior to any due diligence and, as explained in more details later, was based solely on information provided by Mr. Portigal which included a copy of the independent engineering evaluation carried out by Gilbert Laustsen Jung.

After submitting the proposal, we embarked upon the following due diligence, I and a production accountant reviewed and analysed the Gilbert Laustsen Jung engineering report, which as you know attributed a present value for the gas production assets at $20.3 million. We attended at the offices of Channel Lake in Calgary and reviewed the daily reports from 347 wells for the prior two-year period and verified that all production rates and cash flows were in accordance with the Gilbert Laustsen Jung report.

Once we had confirmed that our internal evaluation was in accord with the Gilbert Laustsen Jung evaluation, we convened a meeting of our board of directors on March 26 to seek approval in principle to proceed with the purchase of such production assets.

Our board is constituted by six individuals, including two management, being myself and Gary Drummond, who is also here with us today, and four independent board members including our chairman, Dr. Lloyd Barber, a resident of the province of Saskatchewan with over 40 years of business experience, including several years as president of the University of Regina and currently serving on the boards of several major public corporations, including the Bank of Nova Scotia, Molson's and Cominco.

F. William Woodward, a former resident of the province of Saskatchewan, retired executive vice-president and director of Aon Reed Stenhouse and currently on the boards of IPSCO, United Grain Growers, and two oil and gas companies head-quartered in Calgary.

Dane MacCarthy, a resident of Ontario and former senior vice-president of Ontario Hydro, now a consultant in various utility businesses; John Brussa, senior tax counsel in Calgary and on the boards of several publicly traded oil and gas companies head-quartered in Calgary, including Barrington Petroleum, Baytex Energy, and Penn West Petroleum; and as well, former chairman of the Canadian Tax Foundation.

Suffice it to say our board is experienced, credible, and its integrity is beyond reproach. We, being management, presented our internal evaluation in addition to the Gilbert Laustsen Jung report, and obtained a resolution on April 2 to proceed to close a transaction for a maximum purchase price of $20.8 million. The $20.8 million represented the very upper limits of our interest in acquiring the gas production of Channel Lake.

Conventional oil and gas royalty income trusts had in the previous two years caused valuations for such production to rise. However by March of 1997, the public markets had no additional appetite for such income trusts, and in fact there were no new oil and gas royalty income trusts formed after April 1,'97 or to date in 1998.

As a company we were confident that we could acquire production assets for approximately the cash flow multiple reflected in a $20.8 million purchase price, if not from SaskPower, from other producers in that region of Alberta. We were under no particular time constraints to fulfil our desire to acquire such properties in this regard.

Armed with the approval of our directors, we took the proposal to our board of trustees, that is the board of trustees of OPTUS, the income fund — being David Peterson, former premier of the province of Ontario and an experienced commercial lawyer in Toronto; Lawrence Haber, an experienced securities lawyer from Toronto; and Owen Mitchell, formerly from Regina, who is vice-president and director of First Marathon, our investment banker, and whose company raised in excess of $14 billion in the public markets in 1997.

These three trustees analysed our proposal and valuations and gave us clearance to proceed to finalize a purchase and sale agreement. We retained Burnet Duckworth & Palmer, a well-established commercial law firm in the city of Calgary having 85 licensed practitioners. We sought the advice of Bill Maslechko, our securities lawyer; John Brussa, our tax lawyer; and Dino DeLuca, our commercial lawyer, who is here with us today and you have the opportunity to hear.

After all was said and done, we paid Burnet Duckworth in excess of $115,000 in order to properly structure and document the transaction, including its financing. I was appointed to be the lead negotiator who was to deal directly with Lawrence Portigal who, pursuant to a letter dated March 12 from the president of SaskPower, Mr. John Messer, we were advised would be handling all negotiations on behalf of SaskPower.

In addition, in the normal course of business our solicitors dealt directly with Milner Fenerty, and in particular, Michael Hurst, who had been retained to act on behalf of SaskPower and Channel Lake to finalize the commercial arrangements.

Throughout the negotiations and the finalization of the

documents we had no contact with any other management of SaskPower, nor would it have been proper for us to endeavour to do so, let alone question the underlying authority of SaskPower's appointed representative, Lawrence Portigal, and SaskPower's solicitors, to finalize the agreements.

Several drafts of a share purchase agreement were prepared by Burnet Duckworth & Palmer, and reviewed by Milner Fenerty in order to satisfactorily define the complex arrangements between SaskPower and Direct Energy.

By Good Friday — being Friday, March 28, 1997 — we determined that the $5.2 million was probably no longer an accurate estimate of the trading losses. The problem was to surround the trading losses in such a manner that by buying the shares of Channel Lake, our shareholders did not acquire an open, unquantifiable trading loss position.

DEML had made it clear throughout that while it would be prepared to manage Channel Lake's closed positions, it could not accept the risks associated with the open positions.

An open position is a situation where a party has an obligation to sell natural gas at a certain price and that party has not yet contracted for the purchase of that natural gas. In that situation it is impossible to quantify the risk because the price is constantly changing. An open position to buy natural gas can also occur, but Channel Lake's problems were related to sale obligations.

We requested that SaskPower provide us with detailed information regarding the trading losses. The first information was delivered at 11:07 on April 1, '97 with a series of further faxes arriving by the opening of business on April 2, '97.

DEML immediately conducted an internal review of the material and concluded the open positions constituted an open-ended liability which had to be capped. The information provided simply raised more questions which could not be answered without a thorough and time-consuming due diligence of all underlying natural gas purchase and sale contracts.

Alternatively, DEML proposed that SaskPower provide a mechanism by which SaskPower would retain responsibility for the trading losses except for $400,000 and protect DEML against additional bankruptcies. This was accomplished through the acknowledgement and other revisions.

The January 5, '98 calculation shows '97 trading losses exceeding $6.1 million, of which DEML is responsible for $400,000. Once the transaction went into escrow on Thursday, April 3, '97, we immediately proceeded to obtain the regulatory approvals necessary in order for us to issue new units in our fund in order to pay the balance of cash required on or about June 1, '97.

As stated, we are a public company trading on the Toronto Stock Exchange and have very onerous requirements for full, clear, and complete disclosure, including that of the trading losses, by virtue of the rules and regulations of the Toronto Stock Exchange and the various provincial securities commissions.

Mr. Mitchell and Mr. Drummond organized investor meetings in Vancouver, Calgary, Regina, Winnipeg, Toronto, and Montreal and gave a presentation on Channel Lake which of course included the engineering evaluation and the purchase price, since we were endeavouring to raise the entire amount required to conclude the transaction.

On May 30 we received sufficient interest from investors and the regulatory approvals necessary in order to issue new investor units of OPTUS and take the monies into our account. We had back-up plans for financing if the public offering could not be completed on time.

I recite these details to give the committee and the media some idea of our fiduciary responsibility to our shareholders and therefore the scope and magnitude of our due diligence to the degree that the transaction was vetted at various levels in our organization and the fact that since we are a public company, the transaction was extremely public in every way.

At that point in time we had absolutely no inkling or concern about the integrity or enforceability of any aspect of the closing documents.

Share purchase versus asset purchase. When Direct Energy was originally approached by Mr. Portigal regarding the production assets, we naturally assumed that SaskPower would be structuring the sale by way of a simple asset purchase and sale. We, however, were immediately advised by Mr. Portigal that SaskPower had an interest . . . and in fact his mandate was to effect a sale of the underlying assets of Channel Lake by way of selling all of the shares of SaskPower in Channel Lake Petroleum.

This seemed very strange to us at the time, but we were advised by Mr. Portigal that the company had incurred open-ended trading losses which he estimated at that time to be in the range of $5.2 million. He further indicated that by effecting a share sale prior to March 31, 1997, it was felt by SaskPower management that this would result in a favourable treatment from a reporting and accounting perspective.

We reluctantly agreed to attempt to structure the deal by way of a share purchase and sale. And I say reluctantly because, as Mr. DeLuca's pointed out, a share purchase involves acquiring a legal entity whose value is the value of the underlying assets adjusted for the state of its working capital, which is defined as current assets less current liabilities.

Our expression of interest dated February 28, '97 was drafted without the benefit of due diligence, but based on the verbal representations and undertakings of Mr. Portigal that with appropriate adjustment from September 1, '96 for cash flow, trading losses, and working capital, it would equate to an asset equivalent value of $20.8 million.

The proposal was not accepted by SaskPower and ultimately the parties agreed to try to conclude a deal with a January 1, '97 effective date and that the purchase price would be shown as $26 million. It was at that time intended that the $26 million would be reduced by the $5.2 million estimate for trading losses, and further that the company would remain sufficiently funded on closing to pay out the entire liability with respect to

trading losses.

The working capital situation with respect to Channel Lake Petroleum was a constantly moving target. And in fact we did not obtain the March 26 draft of the financial statements of Channel Lake to December 31, 1996 until March 31, with limited opportunity to review them.

The final schedules of actual contracts which would give rise to the trading losses were received Tuesday, April 1, Wednesday, April 2, and Thursday, April 3, which of course is subsequent to the date of Tuesday, April 1 when Mr. Kram, Mr. Christensen, and Mr. Patrick signed the various agreements. We did not receive the final December 1996 financial statements until after Thursday, April 3, '97.

On Good Friday, being Friday, March 28, 1997, we determined that the $26 million figure was misleading and incorrect and that a more accurate description of the business deal was a share purchase of $20.8 million with a working capital adjustment in a separate provision for SaskPower to cover whatever the trading losses ultimately proved to be.

This revision was conveyed to Mr. Portigal, and he concurred that it was reflective of the business deal, which was a $20.8 million asset equivalent price. And in addition our solicitors discussed the issue with Milner Fenerty and received their agreement prior to the redrafting of the agreements.

Fair market value received. The significant issue regarding the sale of Channel Lake is whether fair value for the production assets and processing plants was obtained.

I do not ask that you totally accept my version here, but I would strongly urge you to review the three independent studies that have been undertaken regarding this transaction.

Firstly, the Gilbert Laustsen Jung engineering report, which clearly sets the price or fair value of the properties at $20.3 million. Secondly the Deloitte Touche report which, on page 31, indicates that fair market value was received by SaskPower. Third, the Gerrand report which, on pages 110 and 111, refers to the fact that there were no damages incurred by SaskPower since fair market value was received for the assets.

Indeed the SaskPower board of directors and SaskPower's management determined that SaskPower had received fair market value both in a topic summary and SaskPower board resolution dated June 20, '97 which ratified and confirmed the sale.

SaskPower management's confusion over purchase price. At the outset I want to make one thing perfectly clear, and that is the fact that there was no confusion over the purchase price, as between our solicitors and SaskPower's solicitors in Calgary, and there was certainly no confusion over the purchase price as between myself and SaskPower's designated negotiator, Mr. Portigal.

Furthermore there was never any confusion over the purchase price amongst our management team, our board of directors, our board of trustees, our solicitors, our bankers, or indeed our investors. The only source of confusion arose from the fact that senior management of SaskPower whom, from our perspective, had no visible input into the negotiations or the closing of the transaction, and who were clearly criticized very directly for lack of professionalism in both the Deloitte Touche report and the Gerrand report . . .

Furthermore, subsequent to our tendering the balance of cash required to close on June 1, '97, SaskPower management clearly were apprised and privy to the clear wording of the agreement of purchase and sale. And after due consideration, chose to deposit our cheque and subsequently obtain board approval for that transaction on the basis that they had received full, fair, and adequate compensation for the value of the underlying production assets of Channel Lake.

Cashing our cheque and signing a full release dated June 20, 1997, as well as obtaining board approval for their transaction while having the full benefit of any legal or financial analysis required to take those deliberate three steps, is not consistent with any confusion, trickery, or deceit.

Trading losses. There is no commercial basis for SaskPower management's apparent expectation that DEML would, in addition to paying in excess of fair market value for the underlying gas production assets, further assume undefined and unquantifiable liabilities, in particular the trading losses.

I can assure you this notion was never considered by DEML. In the very simplest of terms, if I sell my house for $100,000 and I have a $60,000 mortgage that has to be paid out of the sale proceeds, did I sell the house for $40,000 or $100,000? The answer obviously is $100,000, and it is exactly the same situation here.

For further illustration and conceptual clarity, what would the situation have been had the estimate of trading losses been $20.2 million as opposed to $5.2 million. Would the media and SaskPower management now say . . . now be saying that we should have paid $41 million? Or would they be critical of SaskPower for having sold the production assets for $600,000?

The trading losses should be characterized as a liability of Channel Lake which was in place prior to closing and which had to be reflected in a working capital adjustment together with all other assets and liabilities of Channel Lake on the effective date. The assets and liabilities of the company in no way alter the purchase price of $20.8 million or the fact that we paid $20.8 million for the underlying assets of Channel Lake.

Conflict of interest. DEML at all times negotiated in good faith directly with those SaskPower representatives, being Mr. Portigal and Mr. Hurst, that SaskPower management put forward. There is no precedent in practice or at law which would place any duty or obligation on our solicitors or negotiators to look beyond those individuals who had been authorized by SaskPower's management to negotiate and conclude the transaction. A more active participation in the commercial process by Mr. Kram, Mr. Christensen, or any other SaskPower officials was completely available but totally outside of our control.

We were specifically asked by Mr. Messer to, on a best-efforts basis, maintain employment for all employees of Channel Lake.

Subsequent to the agreements going into escrow and the payment of a $2.5 million non-refundable deposit, we deemed it advisable to offer employment to all employees of Channel Lake. Mr. Portigal's arrangement was negotiated in late April and formalized on April 29, 1997.

We make no apologies for taking this action. It is in keeping with most if not all corporate mergers. This is particularly appropriate in our case due to the fact that there was no operational overlap internally. I can assure you that there were no financial inducements, whether cash or in kind, that were made to Mr. Portigal or any other associate of SaskPower or Channel Lake either before or after the closing other than their current employment arrangements.

The supply management agreement. The supply management arrangement is a commercial agreement between two sophisticated parties negotiated between SaskPower's operations people and our own. There have been no substantive problems in the administration of the agreement and we commend SaskPower's operations people for adhering to the spirit of the agreement in the face of such intense public and perhaps internal pressure.

However, I must state that tabling this confidential commercial document in the legislature has not only led to embarrassment but competitive problems in the market-place since a number of our competitors have copies of and have openly discussed the agreement in dealing with other clients or potential clients of ours. This disclosure was totally contrary to the confidentiality provisions of the agreement and totally contrary to normal business practices.

The figure of $300 million, which was alleged in the media to be the value of the contract, was clearly calculated to mislead. In an agreement such as this we operate on gross margins of approximately 2 per cent, and in return for that we of course incur the not-unsubstantial overheads in administering the gas supply, transportation, storage, etc., but we also financially underwrite and guarantee the supply arrangements which, as you will know from Channel Lake's experience, is not without risk. My April 1, '97 letter to the National Bank indicates DEML's expected return from this agreement.

SaskPower management. In normal circumstances we would most definitely not comment upon the professionalism of the management of another corporate organization. However in view of the headlines in the Regina *Leader-Post* on April 22, and as a direct and in our opinion calculated result of their opening statement, we feel quite justified in presenting our honest views and how they relate to this situation we now all find ourselves in.

Firstly, as indicated, we were quite commercially justified in relying upon the fact that Lawrence Portigal, as SaskPower's designated representative, and their independent solicitors, had full authority to conduct not only the negotiations but the formalization of the transaction. Now however, with the benefit of hindsight and all the reams of documents, several matters come clear.

The draft agreement that SaskPower management now say they relied upon totally to obtain their directors' approval was accompanied with a memo from Mike Hurst of Milner Fenerty on March 24 which included the blacklined copy of the agreement and in addition contained the comment that, quote: "We understand that the next draft will have a working capital type of adjustment in section 2.3."

In addition, at the time the transaction was approved by the SaskPower board we had not been provided with draft, let alone the finalized financial statements from SaskPower; a statement as to the actual gas sales and supply arrangements which were giving arise to the trading losses so that we could do an independent analysis; and no undertakings with respect to other assets or liabilities and in particular the bank account of Channel Lake as to how it would appear on closing.

We now for instance know that $11 million cash was taken by SaskPower from the Channel Lake bank account on April 2, '97, which, of course, had it remained in the account, would have led to a substantial working capital adjustment on May 30 in favour of SaskPower. All of these outstanding issues which would materially affect the adjustment on May 30 were not determined, and it should been perfectly clear to anyone in the position of Mr. Kram or Mr. Christensen that such adjustments would have to be finalized prior to arriving at a net purchase price.

The meeting at SaskPower's office on Tuesday, April 1 did not in any way constitute a closing for much the same reason as indicated above, that is the final audited financial statements of Channel Lake had not been provided to us. An acceptable schedule with respect to the trading losses was just being faxed to us. And obviously these schedules could not have been affixed to the agreement nor a statement of adjustments prepared in absence of a mutual analysis of the working capital of the company as it would appear on closing. There is no evidence that the substantial working capital adjustments referred to in Mr. Hurst's memo of the 24th had been completed because we simply did not have the financial information to complete such.

The escrow agreement is a very simple and short-form agreement which clearly indicated that adjustments pursuant to clause 6.3 of the purchase and sale agreement would have to be undertaken. This escrow agreement had not been circulated with a draft on March 24, and in fact from Mr. Kram and Mr. Christensen's perspective, would have been a new and very fundamental document to the entire transaction. The very fact that our solicitors prepared and arranged to have the documents forwarded to Regina was as a result of the fact that we were advised SaskPower officials, other than Mr. Portigal and Mr. Hurst, were not willing to travel to Calgary and attend negotiating meetings due to commitments over the Easter holiday period.

If SaskPower management either failed or chose not to ask any or all of the obvious questions which should have been asked of Mr. Portigal, or of their solicitors in Calgary, or indeed of ourselves, then we should certainly not in any way be deemed to be accountable for such failure.

There was a lengthy negotiating meeting in Calgary on Wednesday night, April 2, at which our solicitor, Dino DeLuca, myself, and SaskPower's lead negotiator, Mr. Portigal, attended

and revised schedules regarding the actual contractual parties and other details relating to the trading losses.

The revisions were reviewed by Mr. Hurst on Thursday, April 3. In addition the parties tried to work through all other working capital adjustments prior to formalizing the escrow agreement and paying the non-refundable deposit of $2.5 million, which eventually occurred on Thursday, April 3.

Again, for SaskPower management to state that they felt that by signing the pages in their office on Tuesday, April 1, this constituted a closing, is totally naïve and totally contrary to the reality of how this commercial transaction was formalized.

The closing could not and did not occur until both parties fully understood the various adjustments that had to be made to the working capital of Channel Lake. And at the risk of sounding redundant, we did not have the most basic and fundamental information relating to trading losses from SaskPower until Wednesday, April 2, and no closing occurred until both parties formalized the escrow agreement and monies were tendered. This occurred on Thursday, April 3, at the offices of Burnet Duckworth & Palmer in Calgary.

Conspiracy, fraud — nothing is more indicative of how undisciplined this Channel Lake affair has become than the circumstances which give rise to the April 22 front page of the Regina *Leader-Post.* You have heard from Mr. DeLuca in great detail exactly how the transaction progressed from March 26 through to April 3. This chronology took Mr. DeLuca several hours to prepare, and I'm sure you will agree, was very helpful in better understanding what happened.

A mirror of such file has been available to SaskPower management since the minute the confusion arose. They haven't asked. Had they requisitioned their files from Milner Fenerty it would have contained all of Mr. DeLuca's correspondence; the three blacklined revisions which were produced subsequent to March 26; notes from the lengthy negotiating meeting on Saturday, March 29, from the Tuesday evening meeting of April 2, and from Wednesday, the 3rd. The billing sheets would have had particulars of all telephone calls, etc. Just so you understand, that file belongs to SaskPower, not to Milner Fenerty.

When we retained Mr. Wilson, the first thing he asked was whether he could get Mr. DeLuca's entire file so he could understand what happened. Why didn't SaskPower management request this last June when their mistakes became apparent. Why not right after this controversy started. Why didn't their solicitors ask for it?

I cannot forgive SaskPower management for alleging that we improperly inserted pages or altered the agreement, knowing the treatment such accusation would get from the committee, in the legislature, and in the press, protected I might add, by legislative immunity.

These headlines hurt our company, and several directors and employees with Saskatchewan roots will never fully recover. Mr. Drummond had several phone calls from Saskatchewan residents inquiring as to whether the police have been called in. Believe me, we could take the entire two days we are scheduled to be here to cite you examples of how SaskPower management's lack of professionalism has prejudiced us.

For the purposes of this transaction, SaskPower, as indicated by their former president under oath, was represented by Mr. Portigal and Mr. Hurst. Providing notice to them is notice to SaskPower; negotiating with them, agreeing to revisions and redrafting in accordance with those revisions, is with SaskPower's knowledge and consent. Any time a commercial transaction goes awry there should be lessons to be learned. We reported to our board last month that in spite of the allegations and incredibly bad press we were receiving, we could not find fault with any of the procedures we utilized to acquire Channel Lake Petroleum.

SaskPower management, however, have obviously not learned anything since they signed the pages on April 1, 1997 and their handling of the circumstance which gave rise to the fraud allegations is proof. They took what appeared to be the easy way out: blame someone else. They didn't review their own files. They didn't requisition their file from Milner Fenerty. Their solicitors didn't contact our solicitors. They misled the committee. They made wild, untrue assumptions without apparent thought of the obvious consequences.

Thank you for allowing me to take this time to at least partially address this fraud issue which, quite frankly, is the most offensive circumstance that I or Gary has ever been involved with.

Scandal? What scandal? As you now have heard, DEML followed proper corporate procedures throughout. There was never any confusion over the asset equivalent purchase price of $20.8 million amongst our trustees, directors, senior management, solicitors, investment bankers, or investors.

We could not in our wildest dreams have contemplated all of the omissions and lack of communication that must have occurred at SaskPower, including the following: that SaskPower management would sign an execution page to unbound sales agreements without a final set of schedules attached, without reading same, without consulting their solicitors in Calgary, without asking their representative any pertinent questions, without a statement of adjustments, without a schedule of trading losses, and most importantly, without the purchaser's solicitors or the money being present — and imagine it would constitute a closing.

That SaskPower management would not read, understand, question, or respond to Mr. Portigal's memos of April 1, April 2, April 3, or April 4; that their solicitors, Milner Fenerty, would not communicate with them or SaskPower management communicate with their solicitors during this period; and that all throughout the negotiations, management and their authorized representative would be totally at odds with respect to the purchase price.

That a management team at SaskPower would believe they could sell the underlying assets of a company for 25 per cent more than its appraised value, after having stripped all of the liquid assets, being cash, and leave the purchaser to cover all the liabilities including a minimum of $5.2 million in trading losses, although such losses were open-ended and

unquantifiable at the time.

Let me summarize. DEML paid and SaskPower received more than fair market value. SaskPower's representatives had actual authority to conclude the transaction. SaskPower retained a major Calgary law firm to protect its interests. There was no fraud, wrongdoing, or money lost by the province of Saskatchewan.

In closing, I am here, I am under oath, and I and my colleagues are quite prepared to answer all questions to the best of our abilities.

The Chair: — Thank you very much, Mr. Dufresne. The committee will now recess until 11:15 to give committee members an opportunity to digest the contents of the opening statement. The committee is now recessed until 11:15.

The committee recessed for a period of time.

The Chair: — . . . the hearings to order once again. I have consulted with all three party caucuses and I am advised that they wish to begin questioning with Mr. Dufresne.

The committee's procedure is that each party has a half-hour to question a witness on a rotational basis so I will begin with the Saskatchewan Party from now until approximately quarter to 12.

Mr. Gantefoer: — Thank you very much, Madam Chair. Welcome to the hearings, Mr. Dufresne. I am sure that you would prefer visiting Saskatchewan to go fishing or something other than this.

I would like to just have some very quick background. It may well have been covered in your very extensive opening statements but I want to just make sure that it's on the record.

Prior to December 1, 1996, what was the nature of any relationship you might have had with Lawrence Portigal?

Mr. Dufresne: — He was an industry acquaintance that I would meet every now and then at some industry functions and I would shake hands, chat for a few minutes, and carry on.

Mr. Gantefoer: — Was there in any of those casual comments or casual connections with Mr. Portigal, was there any indication at any time that Channel Lake might be offered for sale prior to the formal trading of information?

Mr. Dufresne: — No.

Mr. Gantefoer: — Did you ever discuss the possibility of buying or selling this type of property with Mr. Portigal prior to being informed that Channel Lake might be available?

Mr. Dufresne: — Never.

Mr. Gantefoer: — You indicated in the share structure . . . the nature of the share structure of your company . . . What's the nature of your business relationship with Mr. Owen Mitchell?

Mr. Dufresne: — Mr. Owen Mitchell is one of the three trustees of the OPTUS Natural Gas Distribution income fund, which wholly owns Direct Energy Marketing Limited. Mr. Mitchell, who works for First Marathon as vice-president, acts as their investment banker, or First Marathon is our investment banker.

Mr. Gantefoer: — Was Mr. Portigal ever involved with the predecessor company of DEML?

Mr. Dufresne: — Not that I'm aware of.

Mr. Gantefoer: — Thank you. I would like to move to the whole issue surrounding the offer to purchase. And we've been getting so many documents that I'm getting lost at which documents that are relevant any more that . . . In a letter that you wrote — I believe it's under your signature, and I'm now coming from your binder, tab 2, on February 28 to Mr. Messer — you indicate, as I read this letter, that you offer to purchase all of the shares. And I state very carefully that you offer to purchase all of the shares. It isn't mentioned in that sentence, an asset purchase for a sum of $27.7 million, and then you go on to list a number of terms and conditions that you attached to that share purchase offer.

You indicate that there would be cash adjustments approximated — and I recognize in your statement all of this was preliminary because there wasn't final adjustments — of 1.7 approximately dollars . . . million dollars, and that you anticipate trading losses not to exceed 7.1 million against the purchase price.

Now if I understand the offer, you're talking about $27.7 million gross price minus the trading losses of approximately 7.1 and minus a possible cash flow adjustment of 1.7, assuming a sale date of September 1, for a net of about 18.9 or $19 million. Is that right?

Mr. Dufresne: — Everything is correct except with the reference to the net sale price of $18 million.

Mr. Gantefoer: — What would you define the $18.9 million at under that calculation?

Mr. Dufresne: — I don't think I can define an $18.9 million. The offer which was sent makes reference to a gross price of $27.7 million. It assumes cash flow for the period, the stub period of September 1, '96 to December 31, '96 of $1.7 million and some estimate of the trading losses. And as well, includes conditions with respect to due diligence and other appropriate legal and commercial matters in this type of transaction.

The assets, I'd like to — I'm not sure if you'd let me — answer a question that I think you're leading to — the assets as per the Gilbert Laustsen Jung were valued at twenty point . . .

Mr. Gantefoer: — I'm sorry. I'm leading very specifically to understanding your letter in which it clearly says that you are suggesting an offer to purchase the shares of Channel Lake for $27.7 million. You refer to the trading losses of . . . not to exceed $7.1 million — and I accept that they weren't absolutely defined at that point — and an estimation of a cash adjustment because of the September to March period of approximately $1.7 million.

Now aside from that $1.7 million, which is a calendar operational adjustment, we're talking about $27.7 million minus 7.1. Now you're saying that's not in that price, but what would you call that? Would you not say that on that basis of those numbers that's what the cheque would be issued for?

Mr. Dufresne: — No. Clause 10 refers specifically to normal due diligence which would include a review of the financial statements of the company. This letter is dated February 28, 1997.

As has been stated by Mr. DeLuca and myself, we did not have financial statements of the company. If Channel Lake had a hundred million dollars cash in its bank account that day, are you implying that we would be entitled to that amount of cash? There had to be a working capital adjustment.

Mr. Gantefoer: — No, I'm not implying anything, Mr. Dufresne. I'm trying to understand how we move from these very substantial changes in the numbers. It seems quite clear from the letter that you were offering $27.7 million, recognizing that there were ongoing trading losses. And although they weren't quantified, that they were estimated at that point in time, plus a cash flow adjustment of the fact of September to March deadline, and then you're suggesting that there is some due diligence that would allow for a working capital adjustment. Is that what you're trying to suggest?

Mr. Dufresne: — Effectively and in addition, we were specifically told by Mr. Portigal that on closing there would be sufficient cash in the company to cover the trading losses.

Mr. Gantefoer: — But then the trading losses wouldn't be a de facto loss if there's cash to cover them. They're only a loss if you're stuck for them, and that was going to be adjusted for as per this agreement.

Mr. Dufresne: — Which is why we chose to change the wording of the transaction to better represent the commercial transaction.

Mr. Gantefoer: — You seem to have gotten SaskPower on the hook with the $27 million figure for the purchase of the shares, minus the $7 million trading loss.

Mr. Dufresne: — Mr. Gantefoer . . .

Mr. Gantefoer: — I understand the 7 million trading loss had to come off — that was a loss.

Mr. Dufresne: — Mr. Gantefoer, this proposal was not accepted, and it is very clear that normal due diligence must take place. This is a share transaction. It does not talk about the financial statements and the status that they're going to be in, particularly the bank account of Channel Lake. This has to be addressed.

Mr. Gantefoer: — The working capital was also an issue that you brought forward in terms of the current assets/current liabilities ratio. Is that the due diligence portion that you're referring to at this stage?

Mr. Dufresne: — That would be a portion of it, yes.

Mr. Gantefoer: — In your definition of the due diligence section of this initial offer, how does that square with the approval of the boards of directors? Because clearly from the testimony that was given by SaskPower, they clearly had the anticipation that the trading losses were going to be taken off the $27 million figure and that they testified before the committee, clearly everyone involved seemed to have an absolute belief that they were talking of, you know, I use net, but I mean I understand of some minor adjustments of the $20 million figure.

Mr. Dufresne: — I cannot speculate as to the happenings at the SaskPower board meetings.

Mr. Gantefoer: — Now you're indicating that in your discussions with Mr. Portigal that he at least clearly and absolutely understood the differences.

Mr. Dufresne: — That is correct.

Mr. Gantefoer: — Did he indicate to you that he had communicated clearly those differences? Because I think you will appreciate there seems to be a very great difference of opinion between the testimony this committee has heard about what they were expecting and what you understood you were offering. Did Mr. Portigal indicate to you that he had clearly communicated your position to SaskPower management?

Mr. Dufresne: — I think you've asked me two questions here. But did he indicate to me that SaskPower understood our position? He was SaskPower. He understood our position. Mike Hurst understood our position. I was aware of no challenges in communications between Mr. Portigal and SaskPower, or Michael Hurst and SaskPower. We relied totally upon our discussions with Mr. SaskPower and Mr. Hurst.

Mr. Gantefoer: — So from your perspective you were not concerned if senior management of SaskPower understood and Mr. Portigal . . . you know, your concern was that Mr. Portigal and Mr. Hurst clearly understood your position. Beyond that you felt no responsibility.

Mr. Dufresne: — That's correct. Our responsibility is on the side of our company and the level of the discussions that are taking place with Mr. Portigal and Mr. Hurst.

Mr. Gantefoer: — And in any of these discussions with the, I think the term used was negotiating team, of which Mr. Hurst and Mr. Portigal were members of that, in any of the discussions held by the negotiating team, there was no comments or indications that you had that they, the members opposite if you like, had fully informed their management about the position you seem to feel very clearly you are articulating.

Mr. Dufresne: — I was aware there were communications going on.

Mr. Gantefoer: — But they didn't indicate to you in any way . . .

Mr. Dufresne: — The contents? Not whatsoever.

Mr. Gantefoer: — I am still . . . I guess I'd like to understand

then how you, or how your position moved from $27.7 million minus the trading losses, to 20.8 I believe, minus the trading losses. Where did that $7 million adjustment somehow happen?

Mr. Dufresne: — The company was going to be funded with sufficient cash flow equivalent to that of the trading losses. So in a sense, in us buying the shares of the company with the knowledge that that amount of cash would reside in a bank account and would show up as a current asset on the balance sheet, we would have had to pay SaskPower that additional amount. I mean effectively what we would have had to do here in that lay of the price is we were changing four quarters for a buck.

I mean if the bank account showed up with $2 million, well then when we're preparing that letter, we're anticipating paying an additional $2 million. If the bank account had $50 million in it, we would have had to pay an additional $50 million. We would then have taken the proceeds from the bank account to apply it against the purchase price.

Mr. Gantefoer: — I think I heard you say then Mr. Portigal assured you that there would be enough cash on closing to cover off the losses. Was that correct?

Mr. Dufresne: — That's correct. That's at the time that we were discussing and prior to us preparing that letter.

Mr. Gantefoer: — So Mr. Portigal assured you that there would be that amount of liquid asset cash in the account to cover whatever the trading losses would be at closing.

Mr. Dufresne: — That is correct.

Mr. Gantefoer: — So on that basis is where you, when you bid $27 million, why would you not make reference to the fact that there was going to be a $7 million asset sitting in there if you make reference to the $7 million trading loss. Because it would be four quarters for a dollar and wouldn't have had any impact, would it not?

Mr. Dufresne: — This was a simple letter agreement, and all accounting adjustments normally associated with a share purchase were implied and specifically stated when we get into the due diligence portion to have been accounted for.

Mr. Gantefoer: — Was any of this . . .

Mr. Dufresne: — I mean we're not talking about environmental liabilities, any employment . . . I guess we did . . . We are given a certain undertaking there but we're not talking about litigations. We're not talking about a host of other issues that form part of the transaction. I mean if it was that simple, the share no purchase agreement would have another paragraph to it, but it isn't.

Mr. Gantefoer: — It seems to me a bizarre sort of way of structuring a deal. I think it's been said that you'd have much preferred a straight asset purchase, and that was indicated very strongly to you that there was the desire to have this convoluted share purchase with all these adjustments, that was done on SaskPower's request.

Mr. Dufresne: — What you referred to as convoluted adjustments are very standard adjustments in share purchases. The only additional adjustment here is with respect to the trading losses. It was not SaskPower's desire to have all of those adjustments. SaskPower's desire was to do a share sale, and quickly I might add.

Mr. Gantefoer: — The — and I'm sorry, I'm not sure in which statements it was made this morning — that there was the indication that that was requested by SaskPower in order for them to facilitate reporting that they would have to make.

Mr. Dufresne: — Yes.

Mr. Gantefoer: — And so that the request to do the share purchase compared to an asset purchase was done on the request of SaskPower.

Mr. Dufresne: — That is correct.

Mr. Gantefoer: — Was it just done by Mr. Portigal or did he take . . . or did he indicate where that direction had come from?

Mr. Dufresne: — It was done by Mr. Portigal, and he represented a corporate desire to do it in that fashion.

Mr. Gantefoer: — Did he also represent the fact that a March 31 deadline was very critical?

Mr. Dufresne: — Very much so.

Mr. Gantefoer: — Did he indicate that that may or may not be for the same reason, about the reporting requirements because the March 31 reporting deadlines?

Mr. Dufresne: — Can you repeat your question please?

Mr. Gantefoer: — Did he indicate that that deadline was also because of reporting requirements?

Mr. Dufresne: — Yes.

Mr. Gantefoer: — So both the desire to do it by way of a share instead of an asset purchase and the March 31 deadline were indicated by Mr. Lawrence Portigal that they were because of reporting concerns that SaskPower had.

Mr. Dufresne: — Reporting desires, not reporting concerns.

Mr. Gantefoer: — Okay. Thank you. I would like to quickly move on to . . . On June 6, '97 Jack Messer sent a letter to yourself . . . or to Mr. Drummond, document 875, indicating that SaskPower did not consider the share purchase agreement binding because Portigal had closed the deal without authority. Basically Messer was saying Portigal was not authorized to buy in SaskPower to a price of less than 20.8 million, as approved by the SaskPower board.

You wrote back to SaskPower on June 11, document 877, saying that you were shocked by the content of Mr. Messer's June 6 letter.

Mr. Dufresne: — Absolutely.

Mr. Gantefoer: — You suggested in your letter that while there were internal communication problems between senior officials should be of concern to Mr. Messer, it did not change the fact that you considered the agreement binding in all its parts.

Looking back on this, and from your statements this morning, were you aware that you were dealing with competent people at SaskPower? Do you feel you were?

Mr. Dufresne: — Mr. Portigal and Mr. Hurst?

Mr. Gantefoer: — The people and senior management that . . . You know, Mr. Messer's letter to you seemed to indicate a fair bit of unhappiness on your part.

Mr. Dufresne: — I'd have to look at the letter here. I may have got lost in the question.

Mr. Gantefoer: — It's CLP 15/17, letter 877.

Mr. Dufresne: — So I have Mr. Messer's letter addressed to Mr. Drummond.

Mr. Gantefoer: — And then your reply — the next document, I believe.

Mr. Dufresne: — And you were pointing me to which section, which paragraph?

Mr. Gantefoer: — You say that you were shocked and the general tone of your letter was questioning if you were very pleased with the approach of senior management.

Mr. Dufresne: — Let me review the letter. Essentially in the third paragraph I express a certain conclusion, and that . . . We're zeroing in here, or you're zeroing in on individuals who signed the agreement as opposed to Mr. Portigal and Mr. Hurst. So I'd like to use the words SaskPower management. I'd appreciate if you could indicate to me who you're referring to specifically.

Mr. Gantefoer: — Well the letter you received was from Mr. Messer.

Mr. Dufresne: — Yes.

Mr. Gantefoer: — And you indicate that you were shocked at SaskPower's, or management, or the contents of the letter, which would indicate . . .

Mr. Dufresne: — Well we were shocked at the letter as a whole.

Mr. Gantefoer: — And do I take it to indicate from you that you were concerned about the fact that that letter would be generated in light of your negotiations with Mr. Portigal and Hurst, that SaskPower management . . . Who were you shocked with?

Mr. Dufresne: — We were shocked with where SaskPower was coming from. I mean we just were in total disbelief as to what they had sent.

Mr. Gantefoer: — Did at any time Mr. Portigal raise SaskPower's concerns over the net price that seemed to be inferred by the letter of Mr. Messer, that they felt they didn't have a deal. Was that ever raised to you by Mr. Portigal?

Mr. Dufresne: — No.

Mr. Gantefoer: — So in terms of your relationship with SaskPower through Mr. Portigal and Mr. Hurst, this concern was never raised in the past?

Mr. Dufresne: — Until this letter arrived from Mr. Messer — no, there was never any indications of any letter like that coming.

Mr. Gantefoer: — You indicate I think in your statements today that in retrospect you were not at all sure that SaskPower management really understood the nature of the negotiations and of this deal.

Mr. Dufresne: — That is correct. And here I'm referring to individuals other than Mr. Portigal or Mr. Hurst.

Mr. Gantefoer: — Yes. Do you have any indication of which individuals?

Mr. Dufresne: — I have mentioned them before. Obviously all of the individuals who signed all of the closing documents, namely Mr. Kram, Mr. Christensen, and Mr. Patrick.

Mr. Gantefoer: — Finally . . . I notice my time is quickly evaporating.

The Chair: — You have approximately 5 minutes more, Mr. Gantefoer.

Mr. Gantefoer: — Thank you. It's not unusual for companies such as yourselves, when you enter into this kind of negotiations, to hire consultants to assist you in identification, negotiation, or closing of corporate deals. I'm assuming that you used consultants in this purchase arrangement.

Mr. Dufresne: — We retained Burnet Duckworth & Palmer, we had a solid engineering valuation, and we had the direction of our board of directors and our board of trustees, and as well as experience which resides within the corporation. We did not retain other consultants to help us in this fashion. We probably at some point in time had discussions with KPMG, our auditors, but they were not an essential element of the negotiations.

Mr. Gantefoer: —So you're saying that you or no one acting on your behalf paid legal fees or consulting fees or lobbying fees for any matter related to the sale of Channel Lake other than what you've already mentioned?

Mr. Dufresne: — I'm sorry, you're going to have break these one at a time. We did pay legal fees, we did . . .

Mr. Gantefoer: — To your company. Consulting fees to the individuals you mentioned.

Mr. Dufresne: — Which . . .

Mr. Gantefoer: — Consulting fees. You've mentioned just in your previous statement that you hired, engaged consultants. So those were . . .

Mr. Dufresne: — Burnet Duckworth & Palmer . . .

Mr. Gantefoer: — Yes.

Mr. Dufresne: — . . . and the engineering study was not engaged by us.

Mr. Gantefoer: — Was not hired by you, okay.

Mr. Dufresne: — We paid no consulting fees to anybody with respect to the acquisition of Channel Lake. We paid no lobbying fees, or ever have, and I hope ever will.

Mr. Gantefoer: — Okay, thank you. Do you know anybody by the name of Reg Gross?

Mr. Dufresne: — Never. Never heard of the name.

Mr. Gantefoer: — Thank you. I think that inquired . . . in the line of time that I have, Madam Chairman, I think I have to take a break at this stage because I would get into another section which will not be completed.

The Chair: — Thank you, Mr. Gantefoer. I'll now recognize Mr. Hillson for a half-hour.

Mr. Hillson: — Yes, thank you. Mr. Dufresne, you say that you had received assurances from Mr. Portigal at the outset that there would be cash in the account to offset the trading losses.

Mr. Dufresne: — Correct.

Mr. Hillson: — In what form did Mr. Portigal make that promise to you?

Mr. Dufresne: — Orally.

Mr. Hillson: — Now would you agree with me that if the agreement provides that we deduct the trading losses from the purchase price, from the gross purchase price of 27.7 million, but in addition there is money in the till to cover the trading losses, that in effect we would have deducted the trading losses twice?

Mr. Dufresne: — The agreement, if you're speaking about the share note purchase agreement, does not contemplate that.

Mr. Hillson: — Would you agree with me that, in point of fact, deducting the trading losses twice is precisely where we ended up in the end? That's exactly what happened.

Mr. Dufresne: — I do not agree with you.

Mr. Hillson: — Well your letter, sir, of February 28 refers to a purchase price of 27.7 million less trading losses. That's where we started out. And where we ended up of course was 20.8 million less trading losses.

Mr. Dufresne: — The $27.7 million number . . .

Mr. Hillson: — Less trading losses.

Mr. Dufresne: — The $27.7 million number includes an assumed cash component that would be present in the Channel Lake bank account on closing equivalent to $5.2 million or as I said at that time, $7.1 million, and thus we had to gross up the price.

If we had not done so and had put forward a number like $20.8 million minus trading losses and stand still on the cash of the company on that very day, we would have pocketed an extra, who knows, 5, 10, $15 million which was not our money — the money of the owners of Channel Lake. We did not want to do that.

We were willing. We went . . . I mean, if there's cash in the company, you have to pay cash for cash. You can't discount it.

Mr. Hillson: — Are you saying your letter of February 28 when you made the offer of 27.7 million less trading losses of 7.1 million was on the basis that there would be cash in the till?

Mr. Dufresne: — Absolutely.

Mr. Hillson: — Is that in your letter?

Mr. Dufresne: — It is in the letter by virtue of the fact that we're speaking about specific due diligence with respect to a share purchase which would include a review and acceptance of financial statements or of having pro forma statements prepared so that the company's delivered in a known state.

Mr. Hillson: — I'm sorry. Yes, I want to ask you, sir, to actually get out the letter and tell me what line in that letter suggests to you that your letter is based on several million dollars being in the till when you take over. I'm asking, kindly, not a . . . (inaudible) . . . I want you to read it from the letter.

Mr. Dufresne: — It is specific in paragraph 10 of the letter.

Mr. Hillson: — I want you to read specifically from the letter what would tell me as I read this letter that on closing date there'll be several million dollars in the till. Volume 14, document 828, Madam Chair.

Mr. Dufresne: — My answer stands. It's right there in paragraph 10.

Mr. Hillson: — I want you to read into the record what tells us that there's going to be several million dollars.

Mr. Dufresne: — This offer is subject to the negotiation and execution of a share sale and purchase agreement acceptable to both parties.

Mr. Hillson: — Okay.

Mr. Dufresne: — As well as normal due diligence periods and approval of the appropriate boards of directors on or before March 31, 1997. Due diligence is just that — it's due diligence. And it encompasses a review of the various liabilities and obligations that Channel Lake is under.

Mr. Hillson: — Okay. So what you're . . .

Mr. Dufresne: — And there are many. We did not talk at all here about environmental liability.

Mr. Hillson: — No, I'm just asking you to read from the letter, sir. I just want you to tell me what is in this letter and I guess you have. So you tell me it's paragraph 10, that as I read this I should understand that to mean that there'll be $7.1 million in cash that the company will acquire when it acquires the shares.

Mr. Dufresne: — The 27.7 number has an assumed amount of cash in the company on closing, and that is what we are basing our letter on at that point in time. We have no financial statements and we're going to make an offer to buy shares.

Mr. Hillson: — Right. So this . . .

Mr. Dufresne: — In order for the transaction to proceed properly we will need to have that. And that amount of cash not being there was a very significant discrepancy in our assumption although at that time . . .

Mr. Hillson: — Yes, but I'm sorry, that's not my question.

Mr. Dufresne: — That is my answer though. That is my answer.

Mr. Hillson: — No, Mr. Dufresne, I'm sorry. Madam Chair . . .

Mr. Dufresne: — It is my answer. In addition to that, as we all know, there's $11 million that was removed on April 2.

The Chair: — I'm just going to ask both the witness and the questioner to try to be a little calmer. I would ask, Mr. Hillson, if you would give Mr. Dufresne the opportunity to answer as fully as he wishes. Mr. Dufresne, I would ask that you give Mr. Hillson the opportunity to put his questions as fully as he wishes.

Mr. Hillson: — I'm just asking though — I'm not trying to argue with the witness, but what is there here that tells me that there's $7 million-plus in cash for the company. And you say it's in paragraph 10. That's what should alert me that there's $7 million in cash. Is that your testimony this morning?

Mr. Dufresne: — It was indicated to us that there would be sufficient funds, cash funds in the company equivalent to what the trading losses would be.

Mr. Hillson: — I understand that.

Mr. Dufresne: — In that we then had to gross up the price by the amount of the trading losses.

Mr. Hillson: — What is in this letter that tells me about the 7.1 million? Is it your testimony this morning that it's paragraph 10 that tells me that? Or is it somewhere else?

Mr. Dufresne: — It's based on paragraph 10 and the additional statement which I've made that we were told that there would be 7 . . . or sufficient cash to cover the trading losses.

Mr. Hillson: — It's in the letter I'm asking about. In the letter? And your answer is paragraph 10.

Mr. Dufresne: — A combination of paragraph 10 and the information we were given that there would be sufficient cash on closing to fund the trading losses. That is my answer.

Mr. Hillson: — Now, Mr. Dufresne, you're telling us that this was to gross up the purchase price so that you could say there's a purchase price of 27.7 million. Where did this purchase price of 27.7 million come from? Where did the suggestion come from that that should be the gross?

Mr. Dufresne: — I'm very glad you asked that question, Mr. Hillson. The assets were valued at $20.3 million. We were willing to pay a premium of half a million dollars. We were told there's to be $5.2 million cash in the company, which was equivalent to the trading losses, for a total of $26 million.

In addition, since at that point in time the effective date would be September 1, 1996, we were to retain the cash flow from the period September 1, '96 to December 31, '96 which was estimated to be $1.7 million. So those numbers add up to $27.7 million. That's how I got to $27.7 million, and I'm glad that you asked the question.

Mr. Hillson: — But I don't think you've answered it. I said, who came up with the figure? Was it you . . .

Mr. Dufresne: — Yes.

Mr. Hillson: — . . . Or was it suggested to you that that would be a good figure to come in at?

Mr. Dufresne: — It was the number which was discussed in-house and that's how we got to that number.

Mr. Hillson: — Okay. So the 27.7 million figure comes from yourself?

Mr. Dufresne: — Myself, not exclusively.

Mr. Hillson: — And who did you discuss this with in coming to that figure?

Mr. Dufresne: — Mr. Drummond.

Mr. Hillson: — Okay. Now I believe your testimony this morning is that it was Mr. Portigal who first contacted you regarding the possibility of purchasing Channel Lake.

Mr. Dufresne: — It was Mr. Drummond . . . Sorry, it was Mr. Portigal who first contacted us. That's correct.

Mr. Hillson: — And your testimony this morning is that there was certainly no trickery or anything underhanded involved in your company because Mr. Portigal clearly understood at all times what was going on and what the deal was.

Mr. Dufresne: — That is correct. And I would like to repeat that we are very offended by those allegations and . . . I will stop now.

Mr. Hillson: — So your testimony this morning is that certainly Mr. Portigal understood that your letter of February 28 when you say 27.7 million less trading losses, that that did not in any way, shape, or form translate into a net of 20 million-plus. He would have understood that and he knew that from the outset that we were never talking about a 20 million net.

Mr. Dufresne: — I cannot understand how anyone could think that assets valued at $20.3 million less liabilities of $5.2 million would equate to anything close to $20 million. Mr. Portigal was never that . . . under that notion and it's beyond us how anybody could be.

Mr. Hillson: — Is it possible that when the first draft agreement said 27.7 less trading losses, that that could have misled someone as to what the net was? Or you don't understand how that could happen?

Mr. Dufresne: — Are you asking me to speculate on possibilities of how . . .

Mr. Hillson: — Well okay, what about the second draft? With the second draft we've got 26 million now, less trading losses of 5.3. That too seems . . . we're still coming out . . . the figures are changing but we're still coming out to basically the same net.

Mr. Dufresne: — We still have the assumption that there will be sufficient cash to fund the trading losses.

Mr. Hillson: — Now I've actually . . . maybe I haven't been exhaustive enough, but I've gone through the two drafts and I don't see any reference to a promise that 5 or 7 million cash will be in the company upon your . . . its acquisition date.

Mr. Dufresne: — That's correct. Because those drafts were prepared in the absence of any financial statements.

Mr. Hillson: — So there is no reference in any of the drafts, or in your letter, to this cash you're talking about this morning?

Mr. Dufresne: — That is correct.

Mr. Hillson: — Thank you, sir. Okay, now the 10-year supply contract you now have with SaskPower. As I read your documents this morning, you expect to net approximately $5 million from that.

Mr. Dufresne: — I'm sorry, $5 million?

Mr. Hillson: — Yes.

Mr. Dufresne: — Yes. Over the term, yes.

Mr. Hillson: — So in terms of saying what we got for Channel Lake, there's really another $5 million to come off that, isn't there? Because there's 5 million back to your company.

Mr. Dufresne: — We are gross. If I could answer a little bit more clearly . . .

Mr. Hillson: — I believe the figure is net in your letter. Is that your net cash, 500,000 per year?

Mr. Dufresne: — It is an estimate.

Mr. Hillson: — Yes, I appreciate that. So your estimate is a net profit of 5 million over the life of the contract?

Mr. Dufresne: — That is based on certain assumptions.

Mr. Hillson: — Right. It could be more, it could be less.

Mr. Dufresne: — It could be zero.

Mr. Hillson: — Yes. And it could be more. But your best guess this morning, your best estimate is that you will make $5 million in profit.

Mr. Dufresne: — Over the course of a 10-year agreement where we have people on call 24-hours a day and provide a variety of services including marketing, intelligence, and so on and so forth to SaskPower.

Mr. Hillson: — So that comes off . . .

Mr. Dufresne: — We expect to make a return on our . . .

Mr. Hillson: — Yes.

Mr. Dufresne: — Well if it's such a . . .

Mr. Hillson: — Now . . .

Mr. Dufresne: — I'd like to emphasize that there is, there is a potential of zero return in that if no gas is consumed by SaskPower we get nothing. There are no minimum fees.

Mr. Hillson: — Right.

Mr. Dufresne: — Whatsoever.

Mr. Hillson: — Sure. And it could be more.

Now what about the financial viability of DEML while these negotiations were going on last year?

Mr. Dufresne: — Financial viability of DEML while these negotiations were going on last year?

Mr. Hillson: — Yes.

Mr. Dufresne: — What is your question?

The Chair: — I would ask you to be a little bit more specific in your question and please make sure you frame it in terms of our terms of reference.

Mr. Hillson: — Oh I think this is very relevant, Madam Chair. Was DEML in a solid financial shape while these negotiations were ongoing?

Mr. Dufresne: — Absolutely.

Mr. Hillson: — Were there any financial problems at DEML?

Mr. Dufresne: — You'd have to refer me to very specific . . .

Mr. Hillson: — Okay, I will. Volume 13, document 823, pages 83 and 85. And I will just read into the record a statement there:

> As at October 31, 1996 the company was in breech of certain financial covenants associated with its demand loan. The company has signed a standstill agreement with its principle banker. Under the terms of the standstill agreement, the company's principle banker has agreed to maintain a credit facility until the earlier of March 15, 1997 or the completion of new financing arrangements between the bank and the company. Under certain conditions the bank may, without notice to the company, terminate all or any portion of the agreement.

Now what is this about?

Mr. Dufresne: — What is the date of that document? I don't have it in front of me, but I'll . . . (inaudible) . . . to the best of my . . .

The Chair: — February 14, 1997.

Mr. Hillson: — Thank you, Madam Chair. So what is it meaning that in breech of financial covenants?

The Chair: — Excuse me, just for the benefit of all committee members, we are talking about document 823 in binder no. 13.

Mr. Dufresne: — That is the prospectus of OPTUS Natural Gas Distribution income fund where to cover a special warrants offering which had closed prior and the prospectus was now going through. And I believe you're referring to historical information out of that prospectus where there is, I mean, an absolute litany of historical information.

My recollection is that the company was served with standstill notice by our bank in December of '96 and a new banking facility was put at some point in 1997. But I don't recall the exact date.

Mr. Hillson: — But it seems to be saying here that the company was not meeting its obligations to the bank; it was in breech and the bank was threatening to call the loan.

Mr. Dufresne: — That occurred, Mr. Hillson, in December '96.

Mr. Hillson: — They called the loan.

Mr. Dufresne: — They called the loan; the loan was repaid.

Mr. Hillson: — And that was repaid then by TransPrairie guaranteeing a seven and a half million dollar loan. Is that correct?

Mr. Dufresne: — That sounds correct.

Mr. Hillson: — So Direct Energy was in financial difficulty and TransPrairie had to come and bail it out to the tune of seven and a half million at that time?

Mr. Dufresne: — In December, 1996, there was a requirance for working capital.

Mr. Hillson: — And so Direct Energy required an injection of seven and a half million?

Mr. Dufresne: — That's correct.

Mr. Hillson: — Would it have been insolvent and gone under without that injection?

Mr. Dufresne: — That's quite speculative.

Mr. Hillson: — That's a lot of money.

Mr. Dufresne: — It is quite speculative.

Mr. Hillson: — How much was the loan that was called?

Mr. Dufresne: — I don't recall.

Mr. Hillson: — Can you give us an estimate, sir?

Mr. Dufresne: — No, I couldn't.

Mr. Hillson: — This prospectus though — it is accurate I take it that loans were being called and the company was in breach of its financial obligations.

Mr. Dufresne: — Yes, several months before there were any discussions with respect to the potential acquisition of Channel Lake there was events taking placed that involved their bank.

Mr. Hillson: — So TransPrairie then presumably was then owed 7.5 million were they?

Mr. Dufresne: — Yes.

Mr. Hillson: — And who is TransPrairie?

Mr. Dufresne: — TransPrairie is a corporation which Direct Energy was transacting with.

Mr. Hillson: — Who are the principals behind that?

Mr. Dufresne: — There's a number of . . . there was a restructuring which took place which I'm not very familiar with, but certainly Mr. Drummond is . . .

Mr. Hillson: — Mr. Drummond.

Mr. Dufresne: — . . . involved and . . . or was involved.

Mr. Hillson: — Now page 18 of the same prospectus refers to legal proceedings. Can you tell us was Direct Energy involved in significant litigation that would have an impact on the viability of the company at that time?

Mr. Dufresne: — Legal proceedings. I have sort of two ways . . . page 18. None of the legal proceedings listed there are very significant.

Mr. Hillson: — Thank you. Now was Direct Energy Marketing

involved previously with Channel Lake's trading in any way during the operations of Channel Lake?

Mr. Dufresne: — There were some very insignificant amounts of natural gas which were bought and sold between Direct Energy and Channel Lake; and I think that that's shown right in the details of the fax which was sent to us on April 1. It's quite hard to read, but it is described there; I guess our name does appear somewhere.

And you will also see the names of other parties that Channel Lake was dealing with — some of the same parties which went into receivership and caused Channel Lake its trading losses. The same as were . . . the same parties who caused similar losses to Direct Energy, and this is how this, what you term the financial difficulty, took place in December '96.

Channel Lake and Direct Energy were not the only companies that were dealing with financial challenges at the time because of those various bankruptcies which took place due to the fact that gas prices moved very significantly.

Mr. Hillson: — Now when were your first negotiations with Mr. Portigal regarding the possibility of him coming to work for you?

Mr. Dufresne: — Directly with Mr. Portigal?

Mr. Hillson: — Or indirectly.

Mr. Dufresne: — Directly with Mr. Portigal, late April. Prior to that, Mr. Drummond and myself had had some discussions that really didn't go anywhere; we weren't really certain what we were going to do.

Channel Lake was staffed by a management company. There was an individual who headed up the management company, and he was also somebody that we were considering extending the opportunity to.

Mr. Hillson: — Now I believe April 20 is the date you . . . that was given us this morning that it was agreed that Mr. Portigal would come to work for you?

Mr. Dufresne: — I think it was concluded on April 29 or 28. I don't have the document in front of me.

Mr. Hillson: — So when would be the first date that there would have been discussions with Mr. Portigal?

Mr. Dufresne: — In the latter part of April. I don't recall exactly. I didn't have the initial discussions with Mr. Portigal.

Mr. Hillson: — Were you aware then when subsequent to that, that Mr. Portigal was continuing in his relationship with SaskPower?

Mr. Dufresne: — He still had some functions there.

Mr. Hillson: — And you filed a notice of directors for Channel Lake, I understand.

Mr. Dufresne: — Yes.

Mr. Hillson: — And that gave a Calgary address for Mr. Portigal, on Bow Crescent?

Mr. Dufresne: — I believe that's where he resides. And I don't know since when.

Mr. Hillson: — I'll just hand that down to you and see if that's the document that you filed.

I believe that says as of June 1 that he's a director of Channel Lake and resides in Calgary.

The Chair: — Mr. Hillson, I'm sorry. Is that a document that committee members have in their possession?

Mr. Hillson: — Yes, it's in . . .

The Chair: — Could you please identify it then for the record.

Mr. Hillson: — Is that correct sir?

Mr. Dufresne: — I've just been informed that this is the residence of Mr. Portigal's son, and Mr. Portigal also has a private practice at that address.

The Chair: — Mr. Hillson, can you identify the document?

Mr. Hillson: — I'm just trying to find the number. It is in our doc . . .

Now were you at all uncomfortable knowing that on June 4 he was still at his desk in SaskPower? Did that give you an uneasy feeling at all, or not?

Mr. Dufresne: — Well he definitely had an office in Calgary. That's where the offices of Channel Lake were.

Mr. Hillson: — Yes.

Mr. Dufresne: — And he was in Calgary, the head honcho of Channel Lake.

Mr. Hillson: — Right. But he was also still at his office in SaskPower. Did you know that?

Mr. Dufresne: — I think you're referring to the building of SaskPower, or the floor space of SaskPower?

Mr. Hillson: — Yes, in Regina.

Mr. Dufresne: — I mean the corporation, Channel Lake, also had offices in SaskPower.

Mr. Hillson: — Right.

Mr. Dufresne: — Now I'm not sure if he's sitting in a SaskPower desk or a Channel Lake desk.

Mr. Hillson: — In the SaskPower building.

Mr. Dufresne: — In the SaskPower building.

Mr. Hillson: — Binder 16, document 27, Madam Chair. My

question was, did that make you at all uneasy?

Mr. Dufresne: — The company was in a transition period. I mean we had the shares. We're operating the company and the shares were in escrow. We were probably more uneasy about that than the happenings of an individual.

Mr. Hillson: — Okay. When did Mr. Portigal actually go on your payroll?

Mr. Dufresne: — I don't have the exact details but it would have been in June or July.

Mr. Hillson: — Could you undertake to find that and let us know when he actually went on the payroll?

Mr. Dufresne: — Sure, we will do that.

Mr. Hillson: — Thank you.

The Chair: — About five minutes more, Mr. Hillson.

Mr. Hillson: — If someone was on your payroll and had entered an agreement to work for one of your competitors, how would you feel about that?

Mr. Dufresne: — That would be inappropriate, but Mr. Portigal wasn't working for one of our competitors. We knew exactly where he was coming from and he was there specifically to aid in the transition.

Mr. Hillson: — The transition. How would you feel if an employee of yours or someone you had contracted with was working for a competitor and had not disclosed that fact, that he would be working for a competitor. How would you feel about that? I'm putting a hypothetical to you, sir.

Mr. Dufresne: — Yes, definitely. You're asking me to speculate.

Mr. Hillson: — I'm putting a hypothetical.

Mr. Dufresne: — I'm not going to be shy, and let you know that if somebody who's on our payroll and works for a competitor, it would not be something that I would find acceptable.

Mr. Hillson: — And what if they didn't even tell you that fact. What if you just eventually found it out. How would you feel?

Mr. Dufresne: — I would be disappointed.

Mr. Hillson: — And if that person was actually on both payrolls simultaneously, how would you view that? Very disappointing.

Mr. Dufresne: — I would tend to believe that there's either some very unusual circumstances are giving rise to that, such as the possibility of a transition period . . . I mean an example that comes to mind is if we were to pay somebody that . . . like, if we wanted to, if we have a desire to . . . Like if there was somebody without cause, as you're aware, we have to give him sufficient notice period to find suitable employment.

The matter which takes place very frequently, is that a severance package equal to the amount that would have been earned during the notice period is paid. Sometimes it will actually carry on as a monthly payment, and with the signing of the mutual releases that person could actually wind up working for a competitor.

Working for a competitor is not, from my understanding, not illegal; the use of confidential information however, maybe. And we had also given very specifically, at the request of Mr. Messer, a non-obligatory but certainly had a strong desire to meet that requirement, undertaking, to keep as much of the Channel Lake staff which was really staff of the management company of Channel Lake. Channel Lake did not have any payroll. Only after Direct Energy did employees find themselves on a Channel Lake payroll as opposed to management consulting contract.

Mr. Hillson: — Under the hypothetical I've given you, sir, would you expect that the person on your payroll would advise you if he had entered into an arrangement with the other side?

Mr. Dufresne: — It's totally hypothetical and I'd like to . . .

Mr. Hillson: — Yes. What would you expect? Would you expect to be informed?

Mr. Dufresne: — You're asking me to speculate here. There's a very obvious case in front of us where there was a direct undertaking given to keep as many employees as possible. And I mean just as an example, the Royal Bank and the Bank of Montreal have announced plans to merge. I don't think that's any surprises to anybody.

Mr. Hillson: — Madam Chair, may I request that you ask the witness to directly answer the question.

Mr. Dufresne: — And in coming out with that, they have been very forward in disclosing their future organizational chart for everybody, including Mr. Matthew Barrett, currently president of the Bank of Montreal . . . (inaudible) . . . and everybody. It's all very public. We would not . . .

The Chair: — Mr. Dufresne, I appreciate that you're using an analogy. Mr. Hillson though, is asking you to respond directly to his question rather than by analogy.

Mr. Dufresne: — Yes. I thought that the use of analogy would help my answer.

The Chair: — I've got an indication from a committee member that it was not helpful.

Mr. Dufresne: — Thank you, Madam Chair.

Mr. Hillson: — Would you expect to be informed?

Mr. Dufresne: — I'm sorry. Could you rephrase your question entirely.

Mr. Hillson: — If someone on your payroll had entered an arrangement with the other side, would you expect to be informed?

Mr. Dufresne: — You're asking me to speculate.

Mr. Hillson: — Well you've already told us you'd be disappointed if this happened. You're a company president. You have many people under you. Would you expect . . .

Mr. Dufresne: — I would look into the matter before jumping to conclusions.

The Chair: — Mr. Hillson, would you please wind down your questioning; your time is over.

Mr. Hillson: — No further questions, thank you.

The Chair: — Thank you very much. We will now move, by agreement, to the New Democratic Party. Mr. Kowalsky, are you leading . . . Mr. Thomson is leading the questioning. For approximately one-half hour, please Mr. Thomson.

Mr. Thomson: — Thank you, Madam Chair. Good morning, Mr. Dufresne. I'm Andrew Thomson. I want to go back to the beginning. And I guess I'm wanting to start with where and with when did you first begin dealing with Channel Lake?

Mr. Dufresne: — Direct Energy had had some transactions involving the purchase and sale of natural gas with Channel Lake over the course of the years. I don't think they were anything very material. Channel Lake may have had some requirements for short-term gas and we'd have been selling them this gas and Channel Lake may have had excess short-term gas production which we have bought from them.

Mr. Thomson: — So when were you first approached about making an offer to purchase Channel Lake?

Mr. Dufresne: — In February, 1997.

Mr. Thomson: — When abouts in February?

Mr. Dufresne: — I don't have an exact date. Mr. Portigal initiated discussions with Mr. Drummond, and Mr. Drummond apprised me of the situation.

Mr. Thomson: — Okay, so it was that Mr. Portigal and Mr. Drummond that were initially involved. Okay. Now I'm interested in what we refer to as document 828, which is your letter to Mr. Messer dated February 28. And I want to go back to that, pick up that line of questioning which was left off. In this letter you outlined that you were interested in purchasing the company for $27.7 million less adjustments.

Mr. Dufresne: — Correct.

Mr. Thomson: — And you are taking the position that there was . . . that Mr. Portigal made a representation that there was in fact cash in the company that would offset the trade . . . supposed trading losses of $7 million.

Mr. Dufresne: — No, there was going to be cash.

Mr. Thomson: — Okay. Okay.

Mr. Dufresne: — The amount of cash at that point in time, I'm not sure what it was, but I think it was far in excess of what would be required.

Mr. Thomson: — So is this document an offer to purchase?

Mr. Dufresne: — Yes.

Mr. Thomson: — And you were authorized to obviously make this offer?

Mr. Dufresne: — Definitely.

Mr. Thomson: — Now if SaskPower had signed this offer . . .

Mr. Dufresne: — No. The offer was primarily rejected.

Mr. Thomson: — But if they had, this would have constituted an agreement on price?

Mr. Dufresne: — Subject to due diligence.

Mr. Thomson: — And the other conditions outlined in there. But it would have constituted an agreement to purchase the shares for 27.7 million less the adjustments, not exceeding 7.1 million in trading losses, which comes to 20.8 million net.

Mr. Dufresne: — Subject to due diligence as well as negotiation and execution of the share sale and purchase agreement, where all those things come up: what are the actual numbers on the balance sheets; what are the outstanding liabilities; whether they be environmental; whether they be staffing issues; union contracts.

Mr. Thomson: — So at this point your offer's based solely on what?

Mr. Dufresne: — This is based solely on verbal information received. This is the first piece of paper that refers to us having an interest in buying the shares of Channel Lake, and this is why it is a highly qualified offer. Any purchase of shares or of a certain entity like this, even the underlying assets would have a number of qualifiers with respect to . . . It would have to be undertaken and vetted against.

Mr. Thomson: — I find it curious that this offer from DEML is so much higher than the other offers that were accepted . . . or considered at that point, considerably higher. This is the only one that deals with $27.7 million. I'm assuming, and I guess I'll have to ask Mr. Portigal that directly, but I'm assuming that he would give you the same information as everybody else, Stampeder and . . .

Mr. Dufresne: — I have no idea what Mr. Portigal is . . .

Mr. Thomson: — Let me . . .

Mr. Dufresne: — . . . everybody else, he was very anxious to get this done quickly, and could we move quickly. Could we do this by March 31?

Mr. Thomson: — So when did you conduct your own . . .

Mr. Dufresne: — Operating in a vacuum of information.

Mr. Thomson: — So when did you conduct your own due diligence?

Mr. Dufresne: — After we received the letter from Mr. Messer, there were discussions held with Mr. Portigal and due diligence started there. It was in the last . . . maybe actually a couple of days went by and it was during the last week of March or the 10 days prior to the end of March . . . (inaudible interjection) . . . Thanks for reminding me of that. But effectively, due diligence continued right until April 3. Not until then were we prepared to buy the company.

Mr. Thomson: — So when again? Perhaps you can give me a more specific date. When did you . . .

Mr. Dufresne: — Well I would say the last ten days in March to the first three days in April.

Mr. Thomson: — So it wasn't until then — interesting. So up until that point you relied solely upon Mr. Portigal's assurances in terms of what the assets were worth.

Mr. Dufresne: — No. We had the Gilbert Laustsen engineering evaluation given to us in late February. That, we knew what it was worth. The crux of the assets of the company add a certain valuation, namely the reserves in the plants. We need to ensure that the production was still at those levels and that it was reasonable to expect that the ongoing gas streams generated by the production of natural gas would carry on for many years. And that's why we had the engineering study.

And myself and production accountants in-house reviewed documents from all of the production logs. We had interviews with a number of the production accountant staff and ensured that engineering evaluation and the business that was running there were matching. So from the production aspect we were satisfied as to the evaluation. We needed to continue to do due diligence with respect to all of the other issues.

Mr. Thomson: — I guess I share my colleagues' interest in this question of the cash, and I have to say I share their lack of ability to see this in this point 10 of your February 28 letter. But so be it; perhaps that was what you intended.

Mr. Dufresne: — Yes.

Mr. Thomson: — Let me look then to where we start to get into the drafts of the agreements. March 18, which I guess is document 844, and March 26, which is 841. Is there anywhere in these documents where you outline the fact that you would be taking over some cash reserve?

Mr. Dufresne: — I have never reviewed the first draft. And I don't believe it does, but nonetheless the financial statements were definitely not available in final form at that time. We did not even have draft statements.

Mr. Thomson: — I think Mr. Tchorzewski has a couple of questions.

Mr. Tchorzewski: — May I?

Good morning, Mr. Dufresne. I think I'm beginning to understand this letter of February 28, 1997 and its intent. Am I correct in assuming that in this letter to the Saskatchewan Power Corporation to the attention of Mr. Messer, you would have stated all that you knew at that time — the 27.7 million and all those things — you would have stated all that you knew and what was known at that time and then put in some qualifiers about the rest. Is that what's the purpose of the letter?

Mr. Dufresne: — That's correct. We didn't put anything in about environmental liabilities or staffing problems or other things like . . . We put, I mean, we put this with the limited knowledge we had.

Mr. Tchorzewski: — So all the knowledge . . . but the limited knowledge you had would have been in here?

Mr. Dufresne: — That's correct.

Mr. Tchorzewski: — Now, Mr. Dufresne, you have on three occasions today testified that you knew, according to your statement because of something that what Mr. Portigal had said to you, that there was going to be cash in an account.

Mr. Dufresne: — Yes.

Mr. Tchorzewski: — Well there seems to be something not flowing here because you have just said that everything you knew would have been in this letter as a normal course of events and statements. You knew, in your opinion, as you allege in the committee here, that there would be 5 . . . or $.2 million or something to that amount in the cash account because Mr. Portigal told you.

As a good manager, why would you not have indicated that in such a letter because you had this understanding?

Mr. Dufresne: — Because it was . . . I mean we knew it and included it in the $27.7 million number.

We did not state where the plants were near Medicine Hat. There's a number of things we didn't state. I mean we . . . You're asking me if I said, did I know that the cash was there. Yes, I did know that. And did I — or it was supposed to be there — and did I include that in the letter. Yes I did, by virtue of the fact that we've included the number of $27.7 million.

Mr. Tchorzewski: — You knew that the gross price was $27.7 million. You knew — according to you. And there's no documents to show it — no paper trail, no documents from Mr. Portigal, no reference from you. But you say you knew that there was going to be cash in an account. But yet you would not have referred to that in a document which is an offer to purchase. Don't you think that's . . . Was that a normal way of doing business in your view?

Mr. Dufresne: — In that we're operating without any financial statements. And there's a number of other things which we believe we know but don't have any final statements to work with. We cannot go and put, you know, all these numbers without having them.

We wholly believed Mr. Portigal that there would be sufficient cash left in the company to be able to get . . . to cover the

trading losses, and hence we had to pay an additional amount to pay for the cash and that's what formed part of the $27.7 million. We did know that and applied it and it computated that way.

Mr. Tchorzewski: — Did he give you an amount?

Mr. Dufresne: — No, he didn't because it was a constantly moving number. There was a number of things with respect to transactions between Channel Lake and SaskPower which were not within our control, let alone our understanding. There's issues with respect to transfer price and provisional price. And we never did have a fix on the Channel Lake cash bank account until at closing . . . or after closing.

Mr. Tchorzewski: — So all there is then is your suggestion that Mr. Portigal at some point in time told you there would be cash in an account. He never gave this to you in the form of documentation and you never asked for confirmation in documentation.

Mr. Dufresne: — Oh no, we asked often as to when we could have finalized statements from Ernst & Young, the auditors of Channel Lake.

Mr. Tchorzewski: — But you never thought of putting it into your . . . That being one of the terms of the conditions for the offer to purchase, that didn't seem to be significant enough to put into that letter?

Mr. Dufresne: — It is put in that letter but it's not spelled very directly. What is put in that letter is an umbrella which captures all of those issues in respect to the due diligence. I don't think you will find anybody who would say they're qualified to perform due diligence of an acquisition of shares without requesting, reviewing, and auditing financial statements.

Mr. Tchorzewski: — Thank you.

Mr. Thomson: — Thank you, Madam Chair. Let me return to the question then, moving away from the February 28 letter, to the question of the draft agreements. Who prepared the draft agreements?

Mr. Dufresne: — All agreements were prepared — draft agreements and final agreements — were prepared by Burnet Duckworth & Palmer.

Mr. Thomson: — So they were prepared by your legal firm.

Mr. Dufresne: — Yes.

Mr. Thomson: — But you did not review the draft agreements?

Mr. Dufresne: — Not the first one.

Mr. Thomson: — How about the second one?

Mr. Dufresne: — I believe I did.

Mr. Thomson: — So the second one, which was dated March 26. Now on March 26 the purchase price is still $26 million. It's been adjusted down.

Mr. Dufresne: — Yes, down from the cash flow of $1.7 million for the stub period of September '96 to December 31, '96. The effective date of the acquisition has now shifted from September 1, '96 to January 1, 1997.

Mr. Thomson: — And at this point the trading losses have been clarified at $5.2 million.

Mr. Dufresne: — I'm not sure what you mean by clarified. We did not have . . .

Mr. Thomson: — Well it's stated in the agreement at 5.287635.

Mr. Dufresne: — Yes, in the draft agreement there was a number that makes reference to $5.2 million of trading losses which is what we were told were in a sense the trading losses, as of January 1, that remained to be absorbed.

Mr. Thomson: — So that still takes us down to a net of $20 million — 26 million less the reduction for the trading losses of 5.2, takes us down to $20 million as of March 26 in the second draft prepared by your lawyers.

Mr. Dufresne: — With the assumption that there would be sufficient cash on closing to cover the trading loss, to fund the trading losses, the liability of the trading losses. And that is based on the expectation of financial statements in a certain . . . representing a certain amount of liquid assets.

Mr. Thomson: — Well it seems unusual to me that you would include . . . that you would base a draft on assumptions. Everything seems to be spelled out fairly clearly in here.

Mr. Dufresne: — Not so. The cover letters of the draft, and I don't have them in front of me, would have made it very clear that this is a draft agreement and that there's documents going and conversations taking place between our solicitors and SaskPower solicitors with a clear understanding that some sort of a working capital adjustment will have to be made because of all these unknowns with respect to the financial status of Channel Lake on December 31, '96, on its balance sheet at that date.

And those statements were not available till very late March '97.

Mr. Thomson: — Very late meaning after March 26?

Mr. Dufresne: — Correct.

Mr. Thomson: — So at some point between March 26 . . . So you're not sure when the financial statements became available?

Mr. Dufresne: — We're not sure when . . . I'm not sure when Ernst & Young delivered those to our solicitors, or if they were delivered by SaskPower or Channel Lake.

Mr. Thomson: — So the final draft . . . a third draft, sorry, was prepared on March 31, and at that point the purchase price is now at $20.8 million. And you're saying that the reason for that is because of the financial statements had arrived at that point.

Mr. Dufresne: — Could you rephrase the question here? I'm getting a little . . .

Mr. Thomson: — A third draft of the agreement was prepared on March 31 — document 870.

Mr. Wilson : — Madam Chair, I think it's time that we had a break for the witness, if you don't mind.

The Chair: — We will be adjourning in 10 minutes. Can you hold on for another 10 minutes, Mr. Dufresne?

Mr. Dufresne: — I'll do my best.

The Chair: — Thank you.

Mr. Dufresne: — I'm sorry, can you repeat the question?

Mr. Thomson: — So a third draft was produced on March 31, and at that point the purchase price was $20.8 million. This is document 870. The reason for that change was?

Mr. Dufresne: — I had indications that cash wouldn't be there; it was a confusing way of representing the transaction. And we went back to our first principles — to buy the asset; like you know, determine what the underlying assets of the company were — the production facilities at $20.3 million, for which we were willing to pay $20.8 million, and from there deduct the trading losses and be surrendered a clean balance sheet.

Mr. Thomson: — So then this third draft — the March 31 draft — was provided to SaskPower in triplicate on April 1, 1997. Is that correct?

Mr. Dufresne: — I believe so.

Mr. Thomson: — Okay. Then on April 2, when the documents were delivered to you fully signed by SaskPower, you refused to sign them?

Mr. Dufresne: — That is very correct. On April 1, 1997 I received a first fax from SaskPower indicating what the trading losses were, how they were structured. The fonts, the size of the data was . . . I mean I could not read it and I found it interesting in that I'd just turned 40 years old early last April, and I just had the opportunity to have my eyes checked and I was told that I had 20/20 vision. And I looked at these numbers and could not discern 3's from 5's from 8's and I could not function with that.

We then asked for more information. We got another fax that day which gave us a summary which itself presented things in much more summarized fashion, and it was somewhat more legible but definitely not sufficient for us to conduct an analysis of what the trading losses were.

On April 2 we received at least two faxes and other copies of the summaries of the underlying commercial arrangements with respect to the trading losses. But we took the transaction summaries and were able to compute in-house what the extent of the trading losses were at that particular point in time.

Mr. Thomson: — Okay, so let me just make this absolutely clear — and I understand that for compassionate reasons we should probably wind up questioning very shortly here — but trading losses at this point remained at $5.2 million.

Mr. Dufresne: — The $5.2 million was a number which was told to us as this is what it is, this is what it should be.

Mr. Thomson: — Okay.

Mr. Dufresne: — We calculated it in February and that's what it was.

Mr. Thomson: — That it was . . .

Mr. Dufresne: — There was a period of stability in gas prices where there was no real significant changes in what the trading loss position was. But late March I think, prices were moving a certain way which was causing the Channel Lake open position, vis-a-vis the trading losses, to get wider.

We calculated a number on April 2 on a first-cut basis, like no chance to review these numbers. Late afternoon our staff calculated an open position of $6.1 million.

Mr. Thomson: — Okay, well why would you send on April 1 this agreement prepared by your lawyers, including the $5.2 million figure, to SaskPower for signature, have it returned to you and refuse to sign it three days later yourself? I don't understand this. This is your set of orders. You prepared the documents.

Mr. Dufresne: — We refused to sign it on April 2.

Mr. Thomson: — Okay.

Mr. Dufresne: — The documents left on April 1. I'm not sure by which means. But we were told we were going to get . . . I mean we knew we were going to have a chance to look at the trading losses. We were carrying on with our due diligence and it was a very significant item we needed to go through.

And the fact that the documents left to go for signature did not bother us in any way and that we were not prepared to sign the documents and surrender $2.5 million until we were satisfied that what had been represented to us was correct and true to form.

Mr. Thomson: — So you authorized your lawyer to prepare the . . .

Mr. Dufresne: — Well he was authorized from . . . he was engaged to prepare the documents. So that we would meet both parties' objectives — that is the purchase of Channel Lake.

Mr. Thomson: — I just find it interesting that you and your lawyers didn't seem to have the same understanding as to what was in the agreement.

Mr. Dufresne: — No, we . . . there was never any confusion between us and our lawyers.

Mr. Thomson: — Well I'm sure we'll pursue this again . . . (inaudible) . . . and pursue this again.

The Chair: — Mr. Thomson, please allow Mr. Dufresne to answer fully.

Mr. Dufresne: — I may have answered inaccurately with respect to a certain date. It appears that the documents went out on March 31 from Burnet Duckworth and not on April 1. So they were here physically in Regina on April 1.

Somehow they got here. I'm not sure if it's because Mr. Portigal carried them or if they were couriered, leaving on the 31st. The 31st, I believe, was a Monday which was a holiday for SaskPower. And the documents were . . . that were signed were finalized on March 31 and arrived here, or were here on April 1 and those are the documents that SaskPower signed on.

Mr. Thomson: — Okay. Madam Chair, that does lead us into a different line of questioning which we'll want to pursue tomorrow.

The Chair: — Yes, and the time is now well past our normal hour of adjournment. I do want to just simply ask all committee members and witnesses, when you're referring to specific documents, if you could for the record identify them by number and by binder. I believe when Mr. Dufresne was being questioned about the faxes that were going back and forth on April 1 and 2, that he found difficult to read because of the reduction in size, I believe those are referred to in Direct Energy Marketing Limited's opening statement, the appendix, tabs no. 7, 8, and 9. I would refer committee members to that.

Mr. Dufresne: — It actually starts with tab 6, Madam Chair.

The Chair: — Okay. It starts with tab 6 through to 9. Again if we can try as much as possible for the record to identify the documents formally, it will assist the committee when we're going over and reviewing the evidence.

Mr. Thomson: — On that point, Madam Chair, I have to admit I find this new numbering system cumbersome and difficult. Is it possible to get a key provided so that we can simply refer to the number? Most of the members, I think, are used to referring to the documents by document number.

The Chair: — Mr. Thomson, your caucus has been provided with an index of the numbering system as agreed upon by the Clerk. So if you could please use that numbering system in the future. The DEML opening statement appendix of course was just tabled with the committee today so that it hasn't been indexed.

Mr. Thomson: — That doesn't address my concern but I don't want to argue with you, Madam Chair.

The Chair: — I would hope not.

I would simply at this point like to remind the witnesses that reasonable travel expenses and accommodation and meal expenses are reimbursable. I will give you a copy to each of the three witnesses upon adjournment.

I would also inform committee members that by agreement with all three parties, we will commence our deliberations tomorrow morning at 8 a.m. It is not certain at this point if there will be live television coverage from the hours of 8 until 9 but there will be *Hansard* coverage in any case.

The committee now stands adjourned until tomorrow morning at 8 a.m.

The committee adjourned at 12:45 p.m.