



Standing Committee on Crown Corporations

Hansard Verbatim Report

No. 39 – May 6, 1998



Legislative Assembly of Saskatchewan

Twenty-third Legislature

**STANDING COMMITTEE ON CROWN CORPORATIONS
1998**

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Channel Lake Petroleum Ltd.

The Chair: — Committee members would please take their place. The hearings will now resume. I have a couple of procedural items to deal with at the outset.

First of all, yesterday we did receive from Mr. DeLuca a binder — we received at that time only one copy — a binder accompanying his opening statement. We have reproduced the contents of that binder and committee members would note please that it is numbered now Channel Lake Petroleum 84/23. So when you are referring to documents that are in that binder, would you please use that numbering system.

Secondly, you did receive, and there were 15 copies distributed, of an appendix to an opening statement yesterday by Mr. Dufresne. And that binder, which is not being reproduced and put into plastic binders but is being used as it was given to us by Mr. Dufresne, is now numbered 85/23. And it's already tabbed and please refer to that when you are referring to documents from that binder. We do have some extra copies of this one available if anyone is coming short on the copies.

Secondly, I do have a notice of two motions that the Saskatchewan Party wishes to move. We will be dealing with them just shortly before we adjourn today but I think it is important for the record that all committee members know the contents of those motions. So I would ask at this time if Mr. Gantefer would please introduce them and give notice of them.

Mr. Gantefer: — Thank you, Madam Chair. Following testimony we've heard over the last day or two, I think there's a couple of motions that the committee should consider that are relevant and important, and I would like to speak to them now. And I certainly accept that we take time in order to consider the merits of the motions and vote on them later.

The Chair: — Before you speak to them, Mr. Gantefer, would you please allow me some time to have them distributed to all members.

Mr. Gantefer: — Thank you. I'll do that.

The Chair: — And I would ask you to speak very briefly to them. We're not going to entertain debate at this point.

Mr. Gantefer: — I appreciate that. There's another issue while that's being . . . that I would like to raise and it concerns documents that we receive, Madam Chair, and I'd like some direction and clarification from yourself or from the legal counsel in terms of the inconsistencies of the documents. I need to raise that issue to understand what's going on.

The Chair: — Are you talking about inconsistencies with the contents of the documents or inconsistencies in number?

Mr. Gantefer: — Inconsistencies with the content.

The Chair: — Perhaps we can meet at the break and discuss that so that you can give me an idea of what the inconsistencies are and then we can deal with it.

Mr. Gantefer: — Well again, Madam Chair, if it would be acceptable, I could raise the issue and then we can deal with it later so it gives time to, you know, think about and to provide a response. If that's acceptable.

The Chair: — Well we had been customarily setting aside time at the end of the hearings for procedural matters. If it's burning on your lips and you absolutely have to say it now, by all means go ahead but it's taking up time from questioning of the witnesses.

Mr. Gantefer: — Well I appreciate that, but if there's time taken at the beginning or the end, I think it's responsible to give an opportunity for yourself or the legal counsel to view the issue so that a response can be made. It's sometimes very difficult to do that at the spur of the moment — at the end — when we're maybe rushed for time.

The Chair: — Proceed.

Mr. Gantefer: — I would like to refer in a draft of a document as an example. It's CPL 1/5 in the Channel Lake legal opinions, document 878, that we received early on with all the documents and legal opinions.

On Monday, when we received further information at your direction, Madam Chair, we received what certainly is the same legal opinion dated June 12 to the attention of Mr. Kram that came from David Tavender of Milner Fenerty.

When you compare these two documents, which would appear to be the same legal opinion, they are substantially different in content, which is quite confusing, because on one case we accepted that this was the legal opinion as tabled with the group of documents that we've received early on and had been indexed and tabbed, and now we receive a further version of this document that is substantially — not just in small wording — different than the original.

It makes it extremely difficult for any of us as committee members to know what documents we can rely on. And so I refer to the document that was originally tabbed and indexed as document 878, CPL 1/5, and then I've included copies of the document that we received Monday and I can draw your attention to very significant differences in clause 3 for example, and clause 4. Just by paging to it you see substantial differences.

And you can go through it, and I won't belabour the point as to what the differences are but merely would like to try to determine what's going on in terms of substantial differences in documents.

The Chair: — Thank you, Mr. Gantefer. And I would point out the document you're circulating has on it: draft, for your review and comments. Likely, and I take it, that you have done the blacklining of the changes, have you, you or your staff?

Mr. Gantefer: — Yes.

The Chair: — Okay, likely what we're going to have to do is have the representative Mr. Tavender from Milner Fenerty here

to explain the differences. But I will discuss this with our legal adviser and I will advise you at the end of the day just exactly how we'll handle this.

Mr. Gantefer: — The point being not just the differences, the substance of the differences, but the fact is here we have two documents, apparently the same document, that are substantially different. How do we proceed having that dilemma before us on this particular document? It makes you wonder what you're working with.

The Chair: — Okay. You've made your point.

Would you now give notice of motion for your two motions.

Mr. Gantefer: — Thank you. Two motions, and the first one that we'd like to make — and I'll read it into the record perhaps first, Madam Chair, and then speak to it — the motion reads:

That the Standing Committee on Crown Corporations contract with an independent oil and gas industry expert to provide an opinion on whether the 15 per cent discount rate used to value Channel Lake Petroleum in the January 1, 1997 Gilbert Laustsen engineering report was the appropriate rate given market conditions at the time of the sale, and if the 15 per cent discount rate is not appropriate, provide an opinion on what the appropriate discount rate should be.

In the documents that have been tabled and particularly this Gilbert Laustsen report there was indicated on that report a whole range of discount rates that would substantially affect the asset value of the Channel Lake properties on that date.

There has been taken by witnesses before this hearing that the 15 per cent discount rate was the appropriate one. I certainly as a member of the committee have no industry expertise to either deny that or to agree with that. And it seems to me to be very substantive in terms of the rationale for the valuation of the assets and subsequently the shares of the Channel Lake properties.

And I think the committee should look at this seriously, to get an independent opinion as to what the appropriate discount rate should be. If a 10 per cent discount rate would be more appropriate at that point in time, it substantially affects the valuation of the assets of Channel Lake. And I think that none of us have the expertise to make that determination, and it is very substantial in terms of the impact on this hearing.

The second issue that I think again I would read for the record, and the motion reads:

That the Standing Committee on Crown Corporations contract with an independent oil and gas industry expert to evaluate the terms of the long-term gas supply contract awarded to DEML (Direct Energy Marketing Limited) as part of the sale of Channel Lake Petroleum to determine whether the contract was within industry standards; and that if the long-term gas supply contract is not within industry standards, provide information to the committee as to what those industry standards are.

And again, Madam Chairman, for almost identical reasons, I think none of us on the committee have that expertise from our backgrounds, and this issue has become very important as the substantive nature of our determinations and we believe that we need that independent industry advice, Madam Chair.

The Chair: — Thank you, Mr. Gantefer. I take your notice as given. We will deal with it at the end of the day.

Just for committee's information, if you would correct on the second motion, the third last line ending "not within industry," it says "stands." That should read "standards." All right. And so we will take it as read, that that change is made.

And secondly, Mr. Gantefer, I would point out for your caucus's information that a seconder is not required for a motion in this committee.

We will now move to questioning of witnesses. I have received an indication from all party caucuses that the witness they wish to question first today is Mr. Drummond. So, Mr. Drummond, would you please take the witness chair.

Mr. Wilson: — The committee might note that I've been sitting here waiting to be recognized. A couple of procedural matters, if you please, Madam Chair.

The Chair: — Proceed.

Mr. Wilson: — I don't want to belabour the unfortunate remark yesterday that got so much television coverage. I agree with the Premier's comments that these things happen from time to time and I've been too long at this business to have much thin skin left.

But the committee needs to know and the record needs to disclose that that was not an isolated occurrence.

The Chair and I on Saturday evening attended a banquet in Saskatoon where the Chair was representing the government. We were both guests. During the Chair's remarks to the several hundred people in attendance, some unfortunate and inappropriate comments were made directed to me. I treated those at that time as being an isolated and unfortunate breach of etiquette and said no more and thought no more. Compounded, however, by the events yesterday I'm concerned that the animosity of the Chair to me is reflecting on my clients and that is a matter of considerable concern.

The Chair yesterday alluded to a conversation that the Chair and I had in Saskatoon on Saturday and assurances that I gave away regarding procedural matters that she suggested were not followed. The Chair and I obviously have a different understanding of what was said and agreed to on Saturday. The understandings as I understood them were adhered to yesterday. However, the committee chose to alter the agreed-on procedures with respect to my clients yesterday in two material particulars.

First of all, it had been agreed by correspondence and by discussions with both committee Chair and Mr. Priel, committee counsel, that following Mr. Dufresne's opening statement, Mr. Drummond would be responding on behalf of

the company, Direct Energy Marketing Limited. The committee chose to alter that. So be it.

The committee also chose to extend its sitting hours yesterday by approximately an hour. And that was done without notice or advice to any of us. That caused, as was apparent to all, some serious distress to Mr. Dufresne who had not anticipated being in the witness box at all much less that long. That's a lack of courtesy and consideration to my clients and myself that I wish to place formally on the record of these proceedings, as I take objection to.

Now we're here this morning and the committee has identified that they wish to speak to Mr. Drummond. That will be accorded.

The committee also yesterday advised that the meetings would commence this morning at 8 o'clock. We were not invited to attend. We assumed that the committee wished us to be here and we are here.

If the committee proposes to sit beyond 12 o'clock today I must advise that my clients are not available. Mr. Dufresne is engaged in prior commitments this morning. He can possibly be made available later depending on how those turn out. But my clients do have other commitments, and unfortunately we will not be available to the committee beyond 12 o'clock noon. Thank you.

There's also one other item — documents. The question of the financial health of Direct Energy and OPTUS Natural Gas was raised yesterday, so in response to that I am pleased to provide the committee with 15 copies of the current 1997 annual report of the corporations. And I draw the committee's attention to the paragraph on page 9 which clearly identifies, under the heading of liquidity and capital resources, the financial health of the corporation that had been brought publicly into question.

The Chair: — Thank you for your comments, Mr. Wilson. I will recognize Mr. Hillson then Mr. Tchorzewski and then we will proceed with questioning of the witnesses.

Mr. Hillson: — Madam Chair, I was unaware of any agreements so I can't speak to that part of it. However, I would like to say for the record that many of us know Mr. Wilson as a senior and respected counsel in this province. And I would like that on the record, that I think that represents the feelings of myself and I think — I see Mr. Shillington nodding — and I know many, many other people in this province, both within and outside the legal profession.

However, I do have to say that in terms of witness order, how long a witness will be on the stand, the hours when we will sit — as Mr. Wilson would certainly know, if this were a courtroom, these things do change. Witnesses in a court take as long as they take, and if a court has to sit a little bit longer one day to finish with a witness, that's what's done. Or if it's important to get finished, especially with out-of-town witnesses, and the only way that could be done is by extending hours, leaving a bit earlier or sitting a bit later, that is routinely done. So I fail to see anything underhanded in that, or unusual.

I do however have to say that if Mr. Wilson is concerned that

cross-examination yesterday resulted in certain claims by Mr. Dufresne collapsing under cross-examination, I respectfully submit that's not the fault of committee members. And I respectfully submit that is exactly what happened, that certain allegations were made that simply did not stand the test of cross-examination. That's the purpose of the cross-examination procedure. And the fact that his answers simply didn't sustain what he had initially proposed, that's really not our fault. That's our function, to test these things.

And I would also point out that the questions of Direct Energy's financial health — the default on their bank loans — this was not something that came from committee members. This came from documents of Direct Energy. That's where they came from. Thank you.

The Chair: — Thank you, Mr. Hillson.

Mr. Tchorzewski: — Thank you, Madam Chair, and I appreciate the comments by Mr. Wilson and I want to agree with Mr. Hillson's comments as well.

We all have to alter our schedules; committee members have to alter their schedules to accommodate requirements of time. And I know that the process, whether it was this process or a process in the court of law, people have to adjust.

I mean we have gone out of our way as a committee to accommodate witnesses to appear on their time schedules, as I understand it from the correspondence I've seen back and forth, not only with these witnesses but others. So I'm not singling anybody out here. And the committee has been very good with that, although at times we would have preferred to have witnesses at other times. I think we have tried very hard to accommodate people because we know that they are busy people as well.

So although I recognize that sometimes once you get into a committee and you have to answer questions there may be an inconvenience with timing or the amount of time that is provided, but I think it clearly has to be on the record that the reason we are sitting at 8 o'clock this morning and may sit until 1 — and I hope that witnesses will accommodate us — is because the witnesses did indicate that they could not be here tomorrow. So just another example of trying to accommodate everybody.

So I think things have gone and carried out appropriately; have not been influenced in the line of questioning that have been asked by anything that's happened other than in the line of questioning. So I appreciate the concern. It's on the record, but quite frankly I think we've got to know what the realities are and accommodate, and I mean all of us.

Mr. Wilson: — One simple comment in response to all that, Madam Chair. I've been at this for 40 years; I've appeared in many, many committees. Most of my practice is in administrative tribunals, ad hoc statutory tribunals; a number of legislative committees over the years; disciplinary tribunals — I have never before encountered a standard of care, consideration, and courtesy as low as my clients and I have met in these proceedings. Enough said.

Mr. Tchorzewski: — Madam Chair, I mean we're not going to debate this, and I think Mr. Wilson has had his day in court. And I think we need to — and I'm not arguing that he should not have been able to speak in the committee — but I think we've got to remember in a committee that we're here asking questions of witnesses. And in future I think it's the witnesses we want to hear from.

The Chair: — Thank you, Mr. Tchorzewski. And I will simply note for the record, and I would assume that all committee members will concur in this, that I did discuss with all party caucuses, the change in the timing yesterday, and it was agreed to by all three party caucuses. This was not a unilateral decision by the Chair. And the decision with respect to the . . . which witness was called yesterday was a decision made by the Saskatchewan Party, who are the first recognized as we are questioning witnesses.

We will now proceed again, in consultation with committee members. I am informed that the witness that they wish to question today first off is Mr. Drummond. Mr. Gantefer, you have the floor for one half-hour, you and your party caucus.

Mr. Gantefer: — Thank you, Madam Chair. Welcome, Mr. Drummond, good morning. I would like to begin by asking you, prior to December 1, 1996, what was the nature of your relationship with former SaskPower president, Jack Messer?

Mr. Drummond: — None.

Mr. Gantefer: — Was there any business dealings with Mr. Messer prior to Channel Lake at all?

Mr. Drummond: — None.

Mr. Gantefer: — Did you know Mr. Messer on a personal basis?

Mr. Drummond: — No.

Mr. Gantefer: — Prior to December 1, '96, what was the nature of your relationship with Lawrence Portigal?

Mr. Drummond: — A casual acquaintance, I would call it.

Mr. Gantefer: — Did you have any business dealings with Mr. Portigal prior to the Channel Lake acquisition?

Mr. Drummond: — When we got into the gas marketing business he incorporated our original company. He was practising law with the Balfour law firm here in Regina.

Mr. Gantefer: — And that company was?

Mr. Drummond: — TransPrairie Management Ltd.

Mr. Gantefer: — Did you know Mr. Portigal on a personal basis?

Mr. Drummond: — Not especially. He was the only lawyer that I knew in Regina that had some experience in gas supply.

Mr. Gantefer: — When did you first become aware that

Channel Lake Petroleum was for sale?

Mr. Drummond: — It would've been fairly shortly before we wrote the original letter to Jack Messer.

Mr. Gantefer: — How did you find out it was for sale?

Mr. Drummond: — Mr. Portigal advised me.

Mr. Gantefer: — And that was . . . Did he call you or did he write you or . . . ?

Mr. Drummond: — He telephoned me.

Mr. Gantefer: — Did you ever discuss the fact that Channel Lake was for sale, or potentially for sale, prior to the time that Mr. Portigal talked to you?

Mr. Drummond: — No.

Mr. Gantefer: — When did you first consult with Owen Mitchell with respect to the possible purchase of Channel Lake Petroleum?

Mr. Drummond: — Between when I'd first talked to Mr. Portigal and when we wrote the letter.

Mr. Gantefer: — When did you first talk to Portigal in comparison to when you wrote the letter?

Mr. Drummond: — A matter of . . . I'm guessing because I don't recall, but I think a week to 10 days.

Mr. Gantefer: — Prior to the letter that was written to SaskPower expressing interest?

Mr. Drummond: — Yes.

Hon. Mr. Shillington: — Madam Chair, I'm just having a little difficulty hearing Mr. Drummond. If he could just speak up a little, please.

Mr. Drummond: — I'll try but I haven't got much of voice unfortunately. It's probably going to get worse.

Hon. Mr. Shillington: — I see.

Mr. Gantefer: — In your conversation with Mr. Mitchell, did he raise the possibility that Channel Lake might be for sale?

Mr. Drummond: — No, I raised the possibility with him.

Mr. Gantefer: — Did DEML pay, or agree to pay, any money or any other consideration to any party other than SaskPower for any issue or matter related to the Channel Lake sale?

Mr. Drummond: — Absolutely not.

Mr. Gantefer: — Did DEML or anyone acting on DEML's behalf pay legal fees or consulting fees or lobbying fees for any issue or matter related to the sale of Channel Lake Petroleum?

Mr. Drummond: — No.

Mr. Gantefer: — Did DEML or anyone acting on behalf of DEML pay or cause to be paid any commission, dividend, consulting fee, finder's fee, or lobbyist fee or any other money in 1996, '97 or '98 to any person or any other legal entity with respect to the sale of Channel Lake Petroleum?

Mr. Drummond: — No.

Mr. Gantefer: — Did you know Reg Gross, either on a personal or a business basis?

Mr. Drummond: — A very casual personal basis.

Mr. Gantefer: — What was the involvement of Reg Gross in the sale of Channel Lake Petroleum?

Mr. Drummond: — None, to my knowledge.

Mr. Gantefer: — Was Reg Gross paid as a lobbyist, a consultant or any other capacity in the sale of Channel Lake or any other transaction . . .

Mr. Drummond: — I've already answered that. The answer's no.

Mr. Gantefer: — There was no money paid to Reg Gross on behalf of DEML or any entity on behalf of DEML with respect to any aspect of the Channel Lake Petroleum sale?

Mr. Drummond: — No.

Mr. Gantefer: — To your knowledge, has DEML or Channel Lake paid any money or any other consideration to any entity that in turn hired or paid Reg Gross as a lobbyist, consultant or any other capacity with respect to the sale of Channel Lake Petroleum?

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

Mr. Gantefer: — Would you be prepared to make DEML or Channel Lake's payment records available to an independent audit to verify this?

Mr. Drummond: — I think I've answered the question under oath to the best of my knowledge. I don't see any reason to having our financial records public.

Mr. Gantefer: — In their opening statements, both Mr. DeLuca and Mr. Dufresne commented that the March 31, 1997 deadline imposed by SaskPower on the close of the Channel Lake sale was unusual.

Mr. DeLuca said he was hired on March 13, '97 by DEML in the potential acquisition of Channel Lake. Mr. DeLuca said he was, and I quote from his testimony: "... informed that the transaction would have to be completed by March 31. This is a very tight time line but I understood it was imposed by SaskPower."

Mr. DeLuca went on to say the first draft of the share purchase agreement was produced on March 18 and SaskPower's first comments were not received until March 24. That left 10 days between March 24 to April 3 to complete the deal, with the

Easter weekend in between. Mr. DeLuca said he considered that, and again I quote, "a fairly aggressive time line."

Mr. Dufresne said he was approached by Lawrence Portugal in February of '97 indicating, and I quote: "SaskPower wished to sell its Channel Lake assets as expeditiously as possible."

Mr. Dufresne went on to say, and again I quote:

We are advised by Mr. Portugal that the company Channel Lake 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.

Mr. Drummond, would you agree that the time line was unusually tight, given the size and scope of the Channel Lake deal?

Mr. Drummond: — I would indeed.

Mr. Gantefer: — Do you think the rushed sale caused any of the problems that got us into this inquiry?

Mr. Drummond: — I think when you're rushing a share purchase transaction the main risk is with the purchaser. So I think we undertook, you know you could argue, undue risk by going through the procedures as quickly as we did. But we took that risk. From the communication between SaskPower management and their representatives, I can't really comment whether it was the tight time frame or not, whether it would have made any difference if they had a month.

Mr. Gantefer: — Did anyone from your negotiating team or Channel Lake or SaskPower ever explain to you why SaskPower was so focused on getting the deal done by March 31?

Mr. Drummond: — They didn't make any detailed explanation, other than what's in our opening statement that you've already read.

Mr. Gantefer: — Given your experience in dealing with SaskPower, can you provide any reason why Portugal was so intent on closing the deal by March 31?

Mr. Drummond: — No.

Mr. Gantefer: — Did DEML share SaskPower's sense of urgency in getting the deal done by the end of March?

Mr. Drummond: — No.

Mr. Gantefer: — Why was there no sense of urgency on your part?

Mr. Drummond: — There just wasn't. There's a lot of gas properties that are always for sale from time to time. If this didn't work out we were going to move on to another prospect, that's all.

Having said that, we felt that we're a relatively small company and if we can move quickly and give ourselves a competitive edge, then we take that.

Mr. Gantefer: — A critical issue in this inquiry is the final sale price in the application of the trading losses. Yesterday we spent a fair bit of time looking at the calculation of the final sale price, and at the risk of being repetitive, I want to revisit that issue with you.

I listened carefully to what Mr. Dufresne said yesterday, and to be frank, Mr. Drummond, it just doesn't seem to add up to me. And I'd like to go over it a bit to make sure that . . . I'm trying to understand this.

We know that the first offer from DEML to buy Channel Lake was dated February 28, '97, document 828, CLP 14/4, was for \$27.7 million minus trading losses not to exceed 7.1 million and a cash flow adjustment of 1.7 million. Not including the cash flow adjustment, that leaves us with a net of 20.6 million. There was no mention anywhere in that letter of any consideration of any other adjustment to the sale price. Why not?

Mr. Drummond: — The letter was merely an invitation to negotiate. And that's exactly how Mr. Messer took the letter. When he wrote back he said, here's our negotiating team, deal with them. If you really want to understand the transaction then look at the "Closing Book." The letter was a preliminary, almost immaterial, irrelevant document to what actually ended up happening.

I mean it, it, we had no financial information, we hadn't retained our solicitor, we had no due diligence on the engineering report, we had no knowledge of the state of their working capital. It was simply, here's our corporate portfolio; we're interested in your property; let's negotiate and see if we can do a deal. And that's the way it was taken by SaskPower.

Mr. Gantefer: — We know the second draft of the share purchase agreement, document CLP 14/16, agreement that your lawyers drew up was \$26 million gross minus \$5,287,635 in trading losses for a net of 20.7-odd million dollars. Again there was no mention anywhere in the second draft of the share and note purchase agreement, as it was specifically called, of any adjustment of the aggregate sale price of \$26 million other than the trading losses.

Mr. Drummond: — Because of the tight time frame, Mr. DeLuca of his own accord, tried to turn a one-page letter into a 35-page commercial document. And that was the so-called draft. Of his own accord, without detailed instructions, and without perhaps knowledge of what the business deal was.

I didn't read that draft until Good Friday and if you look through Mr. DeLuca's detailed chronology, you'll understand that SaskPower and DEML agreed on the purchase price and how too it would be structured on that date and everything flowed from there. And everything behind that date is irrelevant.

Mr. Gantefer: — Well . . .

Mr. Drummond: — If you read a clause in the agreement, the

final agreement, right above the signature page it says:

Clause 8.5 (The) Entire Agreement

This agreement contains all (of) the terms and provisions of the agreement between the parties related to its subject matter and cancels and supersedes any prior agreements, undertaking and commitments. There are no oral understandings, statements or stipulations bearing upon the meaning and effect of this Agreement which have not been incorporated . . .

That's the end of the story.

Mr. Gantefer: — Okay, we'll go to the third draft of the share and purchase agreement, CLP 15/1, again drafted by your lawyers, and it introduces a new aggregate price of 20.8.

Mr. Drummond: — That's not a new price, sir.

Mr. Gantefer: — Yes, it is.

Mr. Drummond: — No, it is not.

Mr. Gantefer: — . . . because there was no documentation that made the linkage between the . . .

Mr. Drummond: — The price was never different than \$20.8 million.

Mr. Gantefer: — Drafts 1 and 2 both talked about 26 and \$27 million.

Mr. Drummond: — That was not the . . . That's because we were trying to back out a purchase price for the underlying assets by buying shares.

Mr. Gantefer: — But there is no documentation of that calculation. There's nothing in any of those agreements other than those raw numbers, the 26, 27, depending on the first . . .

Mr. Drummond: — I've explained that.

Mr. Gantefer: — Why was there no documentation? That's a pretty significant amount of money.

Mr. Drummond: — I don't understand your questioning; you're not listening.

Mr. Gantefer: — I'm trying very hard to listen and I think that I'm trying to understand how we moved . . .

Mr. Drummond: — Well then listen. On Good Friday the agreement was reached. How we were going to structure it was agreed to between SaskPower and us. The lawyers were present. They took instructions and they redrafted the agreement. And what happened prior to that is fine to talk about, but it's immaterial to the transaction.

Mr. Gantefer: — It perhaps is immaterial to the way the transaction turned out, but it is a pretty significant change in the way the calculation was arrived at without any documentation.

Mr. Drummond: — It's, it's a different way to get from backing out \$20.8 million.

Mr. Gantefer: — Backing out 20.8 or . . .

Mr. Drummond: — Because that's the only thing that was relevant. When we wrote the letter the only thing that we knew is that we were prepared to pay \$20.8 million for the gas production assets and the two processing plants. That's the only thing we knew.

Mr. Gantefer: — It strikes me as the relevancy on the, on the first two drafts of the agreement compared to the third draft, is that you were bidding 27 and \$26 million and then you're bidding 20.8.

Mr. Drummond: — For the shares, based on representations that were made to us. But at all times we were working from a \$20.8 million asset equivalent value — at all times.

Mr. Gantefer: — But there's nothing in these documents that would indicate that.

Mr. Drummond: — The, the price when you're buying shares, to trace it through to the underlying asset value, you can't do it without a pro forma balance sheet, and you don't have that. And we didn't have that.

Mr. Gantefer: — Yet when you're . . . When you did the third draft of the sale agreement the date was stamped March 31 by your lawyers. And Mr. Dufresne testified yesterday that the financial statements and the trading losses didn't get to your office until April 1st.

Mr. Drummond: — That's precisely why we didn't have an agreement and a meeting of the minds until April 3; precisely that reason.

Mr. Gantefer: — Then what was the basis of the fact that you had altered the draft from the . . .

Mr. Drummond: — We didn't alter the draft.

Mr. Gantefer: — . . . second to third, from 26 to 28.

Mr. Drummond: — It was revised pursuant to an agreement between SaskPower and DEML.

Mr. Gantefer: — But you didn't have the information on the basis on which to adjust it. You just said that that information wasn't available.

Mr. Drummond: — So what?

Mr. Gantefer: — So why did you adjust it?

Mr. Drummond: — That was, that was based on the best information and belief we had there. And we knew we had to work to do the working capital adjustment after, which we did.

Mr. Gantefer: — Then how did it happen to get from the 26, 27 million to 20 based on what information, because you indicated you never . . . (inaudible) . . . three days later.

Mr. Drummond: — No, the information was that we were paying \$20.8 million for the underlying asset, and SaskPower were going to be responsible for their own liabilities.

Mr. Gantefer: — Yesterday Mr. Dufresne threw out another reason for reducing the gross sale price. He said Lawrence Portigal had told him, made a verbal commitment that there would be money in the Channel Lake bank account to cover off the trading losses. But since SaskPower withdrew most of the cash out of the Channel Lake account on April 2, a further adjustment of the gross sale price was necessary.

Mr. Drummond: — Whether they did or not, that is a calculation that had to be made immediately prior to closing. The way we were approaching the . . . the way we approached the transaction, it really wouldn't have mattered if there was \$5 million or 5 cents in the bank account. We were paying \$20.8 million for the asset, and SaskPower were looking after their liabilities.

Mr. Gantefer: — But all along it was called a share purchase agreement. It was not . . . nothing talked about assets.

Mr. Drummond: — That's because SaskPower . . .

The Vice-Chair: — Order. Mr. Drummond, Mr. Gantefer, what is happening here is both questions and answers are overlapping and it's in danger of potentially escalating into something less than adequate for committee members to hear. I just ask both of you to let the questioner finisher, the responder finish, and then continue the exchange. Carry on.

Mr. Drummond: — I appreciate your comments. Thank you.

Mr. Gantefer: — Whose turn is it?

Mr. Drummond: — When's the half-hour up?

Mr. Gantefer: — Okay. We were talking about the fact that Mr. Portigal . . . or it was the testimony of Mr. Dufresne that Mr. Portigal had given him or your company the assurance that there would cash in the account to cover the trading losses and that's why the share adjustment occurred.

Mr. Drummond: — The fact of the matter is that when we did the original letter, we had a rationale for the letter, but as I said, it was strictly to get into the negotiating mode. And the rationale for the letter was that we would gross up the purchase price, adjust for trading losses, and that there would be a working capital adjustment to actually pay the trading losses.

On Good Friday, on reading the legal document for the first time, I felt that that was a confusing and less than accurate way to reflect the real business deal. And we had from that point on, after talking to Mr. DeLuca, Mr. Portigal, there was a meeting at Mr. DeLuca's office the following day with Mr. Hurst and Mr. Portigal. We were all of the same mind that there was no reason to gross is up and then deduct it down. I agreed entirely with the committee members, it didn't make any sense to do that. And we came to that conclusion on Friday, Good Friday, and Saturday. And that was properly reflected in the agreements thereafter. It made no sense.

Mr. Gantefer: — Clearly Mr. Dufresne testified that he was given the assurance by Mr. Portigal that this cash adjustment would be available in order to gross up the share value . . .

Mr. Drummond: — I've said it's an academic issue.

Mr. Gantefer: — It's not academic if . . .

Mr. Drummond: — Yes it is.

Mr. Gantefer: — . . . If Mr. Dufresne clearly testified that he was given that assurance by Mr. Portigal.

Mr. Drummond: — Well I indicated to you that there was a notion that there would be working capital in the company to actually pay for the trading losses, and that was the genesis of our original letter. But that, in the evolution of the deal, there's the letter and there's five or six drafts. Each draft is closer to the parties getting a meeting of the mind. And why you're obsessed with the original letter and not the formal agreements is beyond me.

Mr. Gantefer: — Well I doubt if I'm obsessed by any of this; I do have a real life.

Mr. Drummond: — I used to have.

Mr. Gantefer: — However I think it's pretty important to understand where this notion that you say came from. It seemed that Mr. Dufresne was saying much more than a notion, it was a commitment.

Mr. Drummond: — It didn't matter what he said, because we were not relying on Mr. Portigal's view of anything. We did our own assessment of what the production assets were worth. That's all we were prepared to pay. The engineering report is 20.3; we were told there was no use putting in an offer unless it was for some premium to the engineering report. Our company decided we could rationalize 20.8 and that is all we ever talked about. Nothing more, ever.

Mr. Gantefer: — That isn't reflected in the documents.

Mr. Drummond: — And I've explained that twice, and I'm not going to do it again. In addition it's in our opening statement and in that of Mr. DeLuca as well.

Mr. Gantefer: — It seemed to be a very substantial difference of opinion between Mr. Dufresne and yourself in terms of the importance of the commitment in the initial documents, to explain if you could, the difference between the 26, 27 . . .

Mr. Drummond: — I'd like to explain why there's a difference, sir, and that is because I spent the last month preparing myself for these, whatever they're called. Mr. Dufresne, I didn't want to impose on him; he's too busy. He did not advise himself on all issues. He was going to answer questions on the gas management agreement and he was going to read out our statement. That was our agreement.

Mr. Gantefer: — If I accept your position regarding the working capital adjustment, how did you conclude that the adjustment was exactly 5.2 million loss?

Mr. Drummond: — Clear representation of SaskPower that that's what the maximum upset trading loss position would be. When we, on the 2nd, 3rd, and 4th, eventually got the schedule, we did our own internal assessment and it was apparent that it was far in excess of 5.2. And we took appropriate steps at that time.

Mr. Gantefer: — In your prospectus dated August 21, the OPTUS prospectus dated August 21, 1997, states Channel Lake's working capital deficit at \$2.2 million on page 80.

Doesn't that mean that the adjustment of the sale price should be no more than \$2.2 million?

Mr. Drummond: — That was the working capital adjustment at their year end December 31 of '96, which became the reference for the eventual working capital accounts. And we didn't — without having that reference, we were operating in a vacuum — and we didn't get that reference until April 2.

Mr. Gantefer: — But yet it seems that the capital adjustment exactly equalled the trading losses.

Mr. Drummond: — It did at the December 31 year end. That's correct. Approximated it.

And because of the fact that SaskPower were responsible by virtue of 6.3, that made it so that it was a zero balance sheet — no working capital adjustment required.

Mr. Gantefer: — I understand that you provided the terms of offering and the deal summary to investors and potential investors at meetings in April and May, 1997. According to the terms of offering, OPTUS intended to raise \$22 million through an issue of 1.6 million special warrants at 13.75 per warrant.

Were you successful in raising the funds?

Mr. Drummond: — Yes, we were.

Mr. Gantefer: — Did you raise the 22 million?

Mr. Drummond: — Less fees, yes.

Mr. Gantefer: — You indicate in the terms of offering that you intend to use the funds for the purchase of Channel Lake from SaskPower. In the deal summary, you state the purchase price is 20.8. Is that correct?

Mr. Drummond: — That was the purchase price of the underlying assets, correct.

Mr. Gantefer: — Yet you only paid 15.6 for the . . .

Mr. Drummond: — No, we paid 20.8.

Mr. Gantefer: — How do you explain . . .

Mr. Drummond: — In fact we paid 21.2 as a matter of fact.

Mr. Gantefer: — And the difference between the two numbers?

Mr. Drummond: — SaskPower had liabilities that had to be paid.

Mr. Gantefer: — And you paid the liabilities or SaskPower?

Mr. Drummond: — It's a moot point. Whether they paid them with their own funds and our money went into their account or whether there was an adjustment in the law firm doesn't make any difference.

Mr. Gantefer: — But it isn't a moot point, is it.

Mr. Drummond: — Yes it is. Sorry. I get excited.

The Chair: — Every one of us gets excited on occasion. We have a state of forgiveness here in our hearts for this.

Mr. Drummond: — I'll speak to him.

Mr. Gantefer: — I'm sorry, I think it makes a \$5 million difference who pays it.

Mr. Drummond: — If 20.8 or . . . if \$20.8 million goes into SaskPower's bank account and they thereafter pay the liabilities, how does it make any difference? Or if on closing, there's a fund set up out of purchase monies that does exactly the same thing.

We wrote a cheque for \$20.8 million, or I mean that's what we're out of pocket. The liabilities were never, ever going to be our responsibility and why would they.

Mr. Gantefer: — So if they weren't your responsibility then did you not pay them with the \$5 million?

Mr. Drummond: — What \$5 million?

Mr. Gantefer: — Well the difference between the 15 and the 20. If you said the purchase . . . (inaudible) . . .

Mr. Drummond: — Well they paid them. They paid them. We paid SaskPower \$20.8 million plus the 400,000 adjustment later. And they funded an account to pay their trading losses.

Mr. Gantefer: — So they . . . you actually paid 20.8, not 15 point . . .

Mr. Drummond: — Finally. Yes.

Mr. Gantefer: — But I don't still quite understand. You said that when the deduction on the deal on closing was for the deduction of the trading losses . . . and then you had to pay 15-point-odd.

Mr. Drummond: — We paid \$20.8 million plus an additional 400,000.

Mr. Gantefer: — Well I think we're going in circles on this one because I don't quite follow that.

Finally and briefly, in your recollection, what was the issue of Lawrence Portigal's future employment with Channel Lake Petroleum first . . . Lawrence Portigal's future employment for

Channel Lake Petroleum first raised?

Mr. Drummond: — Within a few days of April 29, prior.

Mr. Gantefer: — Early May or . . .

Mr. Drummond: — Few days prior.

Mr. Gantefer: — Oh, prior to April 29? Who raised the issue?

Mr. Drummond: — Don't recall.

Mr. Gantefer: — Could you recall if it was someone within your company? Was it Mr. Portigal? Did you raise it yourself?

Mr. Drummond: — It was either he or I. I don't recall whether he raised it or I raised it. I dealt with it.

Mr. Gantefer: — When did DEML offer Mr. Portigal a position of president of Channel Lake Petroleum?

Mr. Drummond: — Between when we first talked about it on April 29.

Mr. Gantefer: — So within those few days it was done.

Mr. Drummond: — Yes.

Mr. Gantefer: — Did you offer the position to Mr. Portigal.

Mr. Drummond: — Yes.

Mr. Gantefer: — Mr. Portigal was under contract as a consultant with SaskPower until he was terminated on June 4. There's no evidence before this committee that Portigal tendered his resignation to SaskPower prior to his termination of June 4. Yet Portigal signed a letter on May 30, '97 as president of Channel Lake Petroleum to MVI (Management Ventures Incorporated) terminating its management contract. On June 1 was named as president of Channel Lake Petroleum under DEML's new ownership structure. Closing documents also show that Portigal was named a director of the Channel Lake Petroleum as of June 1.

Did Portigal advise you or anyone at DEML that he was still on contract with SaskPower on June 1 when DEML named him president of Channel Lake and made a director of the company?

Mr. Drummond: — Actually he advised me of that during our discussions in April. And I viewed it as very positive. Mr. Portigal's in essence working part time for DEML. He told me that he was working on the coal supply with SaskPower, which we viewed as positive because at that time we knew we were going to have the gas supply management arrangement with SaskPower and he was going to be our liaison with the senior management.

Who's this that keeps popping up — is that proper?

The Chair: — Yes it is.

Mr. Drummond: — Okay. And so we viewed it as a positive thing that he would be still in contact with the senior people at

SaskPower.

Mr. Gantefer: — He indicated that his work with SaskPower was restricted to the coal area?

Mr. Drummond: — Yes he did.

Mr. Gantefer: — Did you not find that potentially in a conflict?

Mr. Drummond: — Not at all.

Mr. Gantefer: — You wouldn't define, if one of your employees was under contract with another company at the same time they were in employment with you, to be in a conflict?

Mr. Drummond: — Well it was two less than full-time commitments, and they had synergy because we felt that we had to have somebody at a senior level, you know, communicating with SaskPower in any event. And so after the problems arose I viewed it as a negative thing that he would not be available for that duty, because it was intended that he would be.

Mr. Gantefer: — So Mr. Portigal was your only conduit with SaskPower through this whole process.

Mr. Drummond: — What process?

Mr. Gantefer: — Of the sale and acquisition of Channel Lake.

Mr. Drummond: — He and their solicitors.

Mr. Gantefer: — Thank you.

The Chair: — Completed, Mr. Gantefer?

Mr. Gantefer: — My time is expired.

The Chair: — Yes. Thank you.

For the information of the witnesses, I would point out that just as the witnesses have legal counsel present, and just as we ask that legal counsel not speak directly to the committee but direct their comments or any additional information that they may wish that the witnesses give, through the witnesses and then to the committee, we do not allow the staff of the various party caucuses to speak directly too. But we certainly do allow staff present in the room to advise committee members; it's just we don't give them the luxury of sitting at the same table.

So you may on occasion see staff members from one or another party giving some suggestions to committee members. It's a perfectly normal and appropriate procedure in the committee. I will now call on Mr. Hillson to question the witness for approximately one half-hour.

Mr. Hillson: — Thank you. Good morning, Mr. Drummond.

Just so that I am clear, is your testimony that everything prior to Good Friday of 1997 was immaterial and irrelevant? That's what I have you written down as saying.

Mr. Drummond: — From a legal perspective, each new draft allowing the process of negotiation has the likelihood of negating prior drafts.

Mr. Hillson: — Yes I understand that. But it was . . .

Mr. Drummond: — Well we've been delving into the . . .

Mr. Hillson: — You used the term, immaterial and irrelevant. I wanted to check that that's your testimony, that everything prior to Good Friday was immaterial and irrelevant. Is that your testimony this morning?

Mr. Drummond: — With respect to the letter, in practical and legal terms, that's true.

Mr. Hillson: — Okay. So you are saying that the letter and drafts 1 and drafts 2 are really of no assistance to us in understanding the intentions of the parties as outlined in the purchase price as we see there and the deductions we see in those documents.

Mr. Drummond: — I'm saying that the best indication of the intention of the parties is the final, closing documents, of course. Not the first.

Mr. Hillson: — Were you informed that major cash reserves were to be in the company on take-over date?

Mr. Drummond: — As I mentioned to Mr. Gantefer, we had a general conversation in that regard.

Mr. Hillson: — With whom?

Mr. Drummond: — Pardon?

Mr. Hillson: — With whom?

Mr. Drummond: — Mr. Portigal. But it was of no consequence to how we pursued the ultimate documentation of the transaction.

Mr. Hillson: — Well Mr. Dufresne told us yesterday that it was of enormous consequence. And several million dollars of course does seem to be of some consequence.

Mr. Drummond: — It was a rationale for the letter. Nothing more, nothing less.

Mr. Hillson: — Okay. So what did Mr. Portigal tell you about cash reserves that would be acquired by yourselves?

Mr. Drummond: — At the very initial stages he indicated that there would be working capital on closing to cover the trading losses.

Mr. Hillson: — You see that.

Mr. Drummond: — Yes. But as you suggest, we found a much clearer and better way to approach the transaction.

Mr. Hillson: — Can you find any document anywhere that points to cash reserves being acquired?

Mr. Drummond: — No.

Mr. Hillson: — Mr. Dufresne, yesterday, seemed also to lay some significance in the fact that SaskPower withdrew money from the Channel Lake account.

Mr. Drummond: — Because of the way the transaction had to be eventually accounted for, it was academic. It's not a material issue to the transaction.

It was raised . . . it was put in our material just to give conclusive evidence that material things were happening to the company that had to be identified and quantified prior to having a closing. And taking \$11 million out of the company after the signature pages were signed is very material. It was for illustrative purposes only and of no legal consequences.

Mr. Hillson: — Okay. So you're not alleging that there was anything improper about SaskPower removing . . . (inaudible) . . .

Mr. Drummond: — We don't need another headline, Mr. Hillson, no.

Mr. Hillson: — Pardon me?

Mr. Drummond: — We don't need another headline. I'm not alleging that.

Mr. Hillson: — Okay. Now I'm not trying to argue with you, I'm trying to understand your testimony. And I think you have to clear up that you don't, you don't attach any significance to the removal of the \$11 million.

Mr. Drummond: — It was quite proper.

Mr. Hillson: — Quite proper. Thank you. And so that is why there has been of course no objection to it taken and we didn't hear it mentioned before yesterday.

Mr. Drummond: — Exactly.

Mr. Hillson: — And that is also the explanation of why we have not heard or seen any documentation, any reference, before yesterday to the cash reserves that were supposed to have been in the company according to Mr. Dufresne.

Mr. Drummond: — That was early in the negotiations and we moved on to a better way to describe the business deal.

Mr. Hillson: — Now Direct Energy Marketing Limited, would I be correct in saying that if we follow through the various corporate structures that ultimately it is controlled by yourself and Mark Silver. Would that be correct, sir?

Mr. Drummond: — That would be about as uncorrect as you could get. It's a wholly owned subsidiary of the OPTUS income distribution fund, which is probably traded on the TSE (Toronto Stock Exchange). I own less than 1 per cent.

Mr. Hillson: — And what is the connection then between OPTUS and Shelkor Investments, sir?

Mr. Drummond: — None.

Mr. Hillson: — There is no connection at all?

Mr. Drummond: — Not now.

Mr. Hillson: — Was there?

Mr. Drummond: — It may have lent money to the public company on a short-term basis. I don't . . . I mean I'm not sure which company it was. Be more specific what you're getting at and I can answer you.

Mr. Hillson: — Well I'm asking if there is a corporate connection between Shelkor and the DEML and you say there never was.

Mr. Drummond: — No.

Mr. Hillson: — Now is there a connection between Direct Energy and TP (TransPrairie Energy Marketing) Partnership?

Mr. Drummond: — No.

Mr. Hillson: — None. But your prospectus on page 8 seems to suggest that.

Mr. Drummond: — Well are you talking today or are you talking in the history? I don't know what you're talking about.

Mr. Hillson: — Okay. Well I guess we have to be careful playing word games, don't we. Page 8 of the OPTUS gas distribution income fund, revised initial information form, October 1, 1997. Are you familiar with that document, sir?

Mr. Drummond: — I'd like to look at it if you're going to question me.

Mr. Hillson: — Okay. There are 15 copies to be distributed, sir. Page 8, Mr. Drummond. The organizational structure diagram there seems to draw a connection between Direct Energy Marketing Ltd. and TP Partnership.

Mr. Drummond: — TP Partnership has, as it states here, has preferred shares. I mean the structure that you see there is obviously correct. It's correct.

Mr. Hillson: — Can you explain it to us, Mr. Drummond?

Mr. Drummond: — Mr. DeLuca probably could better than me. The unit holders are the investors. We have about 3,000 different unit holders.

Mr. Hillson: — And who controls TP Partnership?

Mr. Drummond: — Shalcor Investments.

Mr. Hillson: — And who is Shalcor Investments?

Mr. Drummond: — Madeira Investments Inc. and Shalcor Holdings Ltd.

Mr. Hillson: — And who are they, Mr. Drummond?

Mr. Drummond: — Myself and Mark Silver.

Mr. Hillson: — Thank you. That's what I was getting to.

Now in the 1980s I understand you did work for Saskatchewan Power. Is that correct?

Mr. Drummond: — Yes I did.

Mr. Hillson: — And I believe at that time Mr. Portigal was vice-president of legal affairs?

Mr. Drummond: — Actually when he became involved I was removed from the list of solicitors and I didn't get any more files.

Mr. Hillson: — So you got no files after Mr. Portigal came on the scene?

Mr. Drummond: — To my knowledge, no.

Mr. Hillson: — Were you at all involved in Mr. Portigal's initial hiring with SaskPower?

Mr. Drummond: — I didn't know the man at that time, no.

Mr. Hillson: — Were you at all involved in the severance package he received upon termination?

Mr. Drummond: — Not at all.

Mr. Hillson: — So would you have had any relationship or dealings with Mr. Portigal prior to his incorporating the company you referred to in 1991?

Mr. Drummond: — I had some dealings with him. I was counsel to the Barber Commission on privatizing SaskEnergy and I had some dealings with Mr. Portigal in that capacity in about 1988.

Mr. Hillson: — And what was the Barber Commission, just to refresh our memory, Mr. Drummond?

Mr. Drummond: — It was a provincially appointed commission that did a study on the appropriateness of privatizing SaskEnergy.

Mr. Hillson: — And you were involved in the purchase of the Regina court-house, were you?

Mr. Drummond: — Yes.

Mr. Hillson: — And was Mr. Portigal involved in that purchase?

Mr. Drummond: — No.

Mr. Hillson: — You were involved in the purchase of the SGI (Saskatchewan Government Insurance) building?

Mr. Drummond: — No.

Mr. Hillson: — You have no connection with that?

Mr. Drummond: — I was the solicitor acting on behalf of the purchaser.

Mr. Hillson: — Okay, so you were the solicitor on the deal but not a party to the deal.

Mr. Drummond: — Correct.

Mr. Hillson: — And was Mr. Portigal at all involved in that?

Mr. Drummond: — No.

Mr. Hillson: — Thank you. Now, do you know Owen Mitchell?

Mr. Drummond: — Yes.

Mr. Hillson: — And is he . . . or did he serve on the board of Direct Energy?

Mr. Drummond: — No.

Mr. Hillson: — He has never been on the board of Direct Energy?

Mr. Drummond: — He's a trustee.

Mr. Hillson: — He's a trustee.

Mr. Drummond: — Of the fund; one of the three trustees of the fund.

Mr. Hillson: — I'm sorry, which fund are you . . .

Mr. Drummond: — OPTUS income distribution fund, which is the holding company.

Mr. Hillson: — So he continues to be, are you saying?

Mr. Drummond: — Yes.

Mr. Hillson: — And do you know if Mr. Mitchell was also on the board of SaskEnergy?

Mr. Drummond: — I'm sure you have the dates. I know he was for three or four months; I don't recall the exact dates.

Mr. Hillson: — And would he have been on the board of SaskEnergy at the same time as he was a trustee for OPTUS?

Mr. Drummond: — Yes.

Mr. Hillson: — And had you known Mr. Mitchell prior to Mr. Mitchell becoming a trustee for OPTUS?

Mr. Drummond: — Yes.

Mr. Hillson: — And in what capacity had you known him?

Mr. Drummond: — Baseball and curling.

Mr. Hillson: — Thank you. Now where did the figure of \$27.7 million gross come from in the first place, Mr. Drummond?

Mr. Drummond: — It was pulled out of thin air because we had no information to act on at that time.

Mr. Hillson: — So that is why you are saying that that is immaterial and irrelevant now to our deliberations today.

Mr. Drummond: — Totally.

Mr. Hillson: — And you are saying that when you agreed to hire Mr. Portigal that you thought there was synergy to be achieved by him working for both SaskPower and Direct Energy.

Mr. Drummond: — Yes.

Mr. Hillson: — Did you ask him if he had revealed to Mr. Messer or SaskPower that he had formed a relationship with yourselves?

Mr. Drummond: — At some point I asked him if he had; I don't recall when.

Mr. Hillson: — And what did he reply?

Mr. Drummond: — He advised that he had.

Mr. Hillson: — He said he had.

Mr. Drummond: — Yes.

Mr. Hillson: — Okay. So could you be as specific — I realize, as you say, you don't have the exact date.

Mr. Drummond: — I don't. And I can't be specific.

Mr. Hillson: — Please tell us, as closely as you can, approximately when that would have occurred.

Mr. Drummond: — I can't be any more specific.

Mr. Hillson: — Well the month. Are we talking before June 1?

Mr. Drummond: — I can't say if it was before or after June 1. I mean I assumed that he had but I don't know when we had the discussion.

Mr. Hillson: — You assumed he had told SaskPower.

Mr. Drummond: — Yes.

Mr. Hillson: — Because in your view, it would be quite improper not to reveal this to SaskPower.

Mr. Drummond: — I wouldn't go that far, no.

Mr. Hillson: — Well I mean you're a member of the law society.

Mr. Drummond: — No, I'm not.

Mr. Hillson: — You are a non-practising member of the Law Society of Saskatchewan, is that not correct?

Mr. Drummond: — I don't think so, no.

Mr. Hillson: — Well the law society seems to have a different understanding.

Mr. Drummond: — I don't pay any fees so somebody's doing it, I guess.

Mr. Hillson: — You are a Queen's Counsel?

Mr. Drummond: — Yes.

Mr. Hillson: — You've been a member of the law society in Saskatchewan for many years.

Mr. Drummond: — What's your point?

Mr. Hillson: — I'm sorry, I'm asking the questions. You've been a member of the Law Society of Saskatchewan for many years was the question. That's my point. What's the answer?

Mr. Drummond: — What's the question? I can't even remember.

The Chair: — Excuse me. Mr. Drummond, I believe that Mr. Hillson is asking you to read in for the record the dates when you were a member of the Law Society of Saskatchewan.

Mr. Drummond: — Is that what it is?

Mr. Hillson: — You have been a member of the Law Society of Saskatchewan for many years, that is the question. Yes or no?

Mr. Drummond: — Oh, yes.

Mr. Hillson: — Okay. You are aware of conflict of interest rules for the law society?

Mr. Drummond: — Yes.

Mr. Hillson: — And you are aware that there are very strict rules when working for one side in what you can do to work for another side. That's what conflict of interest is.

Mr. Drummond: — Mr. Portigal was general manager of Channel Lake prior to our becoming involved in the transaction. When we acquired the shares in Channel Lake, he continued on in that exact same role. I personally don't see any conflict whatsoever.

Mr. Hillson: — Well except you asked him if he had told SaskPower about his new relationship with you; so obviously yes, your mind was alive to the issue and then you are . . .

Mr. Drummond: — No.

Mr. Hillson: — . . . as an experienced member of the law society, aware that this is an issue.

Mr. Drummond: — You're putting words in my mouth that I didn't have those thoughts at that time.

Mr. Hillson: — You didn't have any thoughts that a conflict of interest is a law society issue.

Mr. Drummond: — There was no conflict of interest in my view.

Mr. Hillson: — It didn't . . . there's just no conflict of interest to being on the payroll of Direct Energy and being on the payroll of SaskPower?

Mr. Drummond: — Mr. Hillson, I've explained that, that he was working four days for us and he had some ongoing obligations for an undefined length of time, on a transition basis even perhaps — you can ask him — on coal supply, which was part of his duties prior to our taking over Channel Lake.

Mr. Hillson: — But of course you were well aware that his main duties in terms of SaskPower was to negotiate the sale of Channel Lake to you people. That was his primary duty. You knew that.

Mr. Drummond: — I'm sorry, you'll have to repeat that question.

Mr. Hillson: — You knew though that his duties in terms of SaskPower were to negotiate the sale of Channel Lake to you people. That was what he was doing for SaskPower.

Mr. Drummond: — And on April 4, that deal was complete.

Mr. Hillson: — But the memo suggests that there continued to be alterations and negotiations and final fleshing-out of the agreement after Easter weekend.

Mr. Drummond: — I said on April 4 the deal was done.

Mr. Hillson: — And so . . . But there continued after that to be memoranda going back and forth concerning the sale of the company, and the various closing transactions.

Mr. Drummond: — After April 4? To my knowledge the agreements went into escrow, and we paid \$2.5 million non-refundable on April 4. That's when the deal was done.

Mr. Hillson: — And when was, when was the rest of the money paid, Mr. Drummond?

Mr. Drummond: — At the end of May.

Mr. Hillson: — The end of May.

Mr. Drummond: — There were no matters to be negotiated. They were all within our control. Our 2.5 million had been paid and was at risk. For all intents and purposes the deal was closed. We had a deferral on the second . . . on the balance of cash.

Mr. Hillson: — When was your first discussion with Mr. Portugal about the possibility of him coming to work for you?

Mr. Drummond: — I've indicated, a few days prior to April 29.

Mr. Hillson: — When did it first occur to you that that would be a good idea.

Mr. Drummond: — I didn't do any contemplating about staffing Channel Lake until after we knew we had a deal, until after we were totally convinced we were going to be able to close.

Mr. Hillson: — When did he actually go on the payroll of Direct Energy?

Mr. Drummond: — It's Channel Lake he's on the payroll.

Mr. Hillson: — Channel Lake.

Mr. Drummond: — It's either . . . That's an undertaking that we're going to provide that you asked for yesterday.

Mr. Hillson: — Did you know on June 4 that he was actually at his desk in the Saskatchewan Power building? Did you know that?

Mr. Drummond: — I didn't know. It wouldn't have surprised me. I don't know. I don't know if he was or not.

Mr. Hillson: — But you did ask him, have you told Saskatchewan Power that you're going to work for us? You did ask him that?

Mr. Drummond: — At some point I did.

Mr. Hillson: — And he told you that he had.

Mr. Drummond: — I believe he did, yes.

Mr. Hillson: — Okay. Now you have told us of course, that you don't see anything significant in the declining purchase price. However, as we discussed yesterday, the documents you have filed suggest that there was a serious cash problem in the Direct Energy company.

Mr. Drummond: — Not at all. Some of the . . .

Mr. Hillson: — Why were they in breach of paying their bank loans? Why was . . .

Mr. Drummond: — There was an amalgamation of Direct Energy into TransPrairie, which is the operating company of OPTUS. At all times material to this transaction, OPTUS was in extremely good financial shape, and as it is today. Mr. Wilson's pointed out page 9 of the annual report, audited financial statements through December 31 of 1997. I think it's nineteen point something operating income for the year and \$36 million of working capital. OPTUS had never had any financial problems.

Mr. Hillson: — When did the amalgamation take place, sir?

Mr. Drummond: — February of '97.

Mr. Hillson: — If I suggested to you the corporate registry documents suggest June of '97, you may wish to consult with your solicitor on that.

Mr. Drummond: — Well I don't have to consult. It happened in January . . . in February? February.

Mr. Hillson: — Not June?

Mr. Drummond: — No.

Mr. Hillson: — So are you saying that any cash problems were over as of February of '97?

Mr. Drummond: — A hundred per cent, absolutely. And their financial problems had nothing to do with OPTUS, ever. It was an opportunity for us to acquire an asset at what we believed to be under market value. They had a temporary working capital deficiency. We invested the cash and the company continued on. And we captured that goodwill for our investors.

Mr. Hillson: — Was it this agreement that recaptured the solvency for Direct Energy?

Mr. Drummond: — Not at all. The deal was closed long before this agreement even came into . . . even the concept of it.

I could point you out . . . Sorry. But there's a section . . .

Mr. Hillson: — The breach though, of financial obligations to the bank, that required a bail-out of seven and a half million dollars. Is that correct, Mr. Drummond?

The Chair: — Mr. Hillson, before we hear the answer on that question from Mr. Drummond, it is important that witnesses be able to answer all questions as completely as they wish. And I believe that Mr. Drummond had some further information that he wished to give you regarding your prior question.

Mr. Hillson: — Very well.

Mr. Drummond: — I appreciate that very much.

The Chair: — Just take your time, Mr. Drummond, and answer as completely as you're able to.

Mr. Drummond: — Yes, Mr. Hillson, on page, at the bottom of page 5 and the top of page 6 in our annual report, it refers to the Direct Energy deal.

Mr. Hillson: — And so what is the point you're making here, sir?

Mr. Drummond: — Well it indicates that the discussions commenced in December '96 and the deal was closed in February '97.

Mr. Hillson: — Thank you. Now I have a document that I want to refer you to and that is volume 5, document 866. I'm sorry — volume 15, document 866.

Mr. Drummond: — 866, Mr. Hillson?

Mr. Hillson: — Yes.

Mr. Drummond: — I have it here.

Mr. Hillson: — And I'd just like to read into the record that they may request a two-week to four-week delay and would be prepared to pay an additional 2.5 million on the same basis as the original 2.5 million was paid, for an extension of time.

Now what is behind this document in terms of putting financing in place to complete the purchase?

Mr. Drummond: — I believe we were concerned that the regulatory approvals that we required might take longer, might go past the May 30 date, so out of an abundance of caution we broached the topic of extending the second closing, if you will. All of which did not come to pass and we closed on time.

Mr. Hillson: — You did close on time. But this seems to refer to putting financing in place as opposed to regulatory approval.

Mr. Drummond: — It's all, it's all part of the same. I mean you have the investors' commitment on the funds, but until you get releases from the TSE and from the securities commissions you really can't access the money.

Mr. Hillson: — Okay, so you are saying that in May of 1997, raising the necessary capital was not an issue with Direct Energy.

Mr. Drummond: — No.

Mr. Hillson: — There were no problems at that time because of the amalgamation which had occurred in February?

Mr. Drummond: — Quite the contrary.

Mr. Hillson: — What do you mean by quite the contrary?

Mr. Drummond: — It was . . . things were very good for the company.

The Chair: — You have approximately five minutes more, Mr. Hillson.

Mr. Hillson: — Well I think the next would go into a new area, so I will defer at this time.

The Chair: — We've now been going an hour and a half. I think out of courtesy to all members and the witnesses we'll call a 10-minute break. So we will be recessed until 9:40.

The committee recessed for a period of time.

The Chair: — I would call the proceedings back to order. Our 10-minute break having extended into 15 minutes, we will now try to get back a little on schedule. The hour is now 9:45 and I will call on the New Democratic Party to begin their line of questioning with Mr. Drummond. Who is questioning? All right, Mr. Kowalsky. I would recognize you.

Mr. Kowalsky: — Good morning, Mr. Drummond. Some of the questions that I had prepared here have already been asked so I'll try not to be repetitive, but bear with me.

The Chair: — Mr. Kowalsky, before you begin. Mr. Drummond, I should inform you that we have given permission

to a still photographer to take photos. He'll be approximately two minutes or so.

Mr. Kowalsky: — Thank you. And you'll bear with me if I'm flipping papers here because I'm just trying to do some editing while I'm going through some of this material.

Mr. Drummond, I want to ask a question about how you determined the value of the Channel Lake assets. What process did you use to determine the liabilities and the trading losses?

Mr. Drummond: — Sir, is it the asset that you want me to . . .

Mr. Kowalsky: — I'm sorry?

Mr. Drummond: — Is it the asset that you want me to indicate or the . . .

Mr. Kowalsky: — How did you determine the value of the Channel Lake assets?

Mr. Drummond: — We primarily worked off of the Gilbert Laustsen engineering report. We have Mr. Dufresne, who's an engineer, as you heard yesterday. And we have a production accountant on staff. They visited physically at the offices of Channel Lake and did a bit of an audit of the last two years — the actual cash receipts and the volumes of gas — to ensure that the assumptions made in the Gilbert Laustsen report were in fact correct.

We concurred with the 15 per cent discount rate which was industry standard at the time. And we felt that we could offer a slight premium to that engineering report, being \$500,000.

Mr. Kowalsky: — Were you yourself involved in negotiating the terms of the Channel Lake deal?

Mr. Drummond: — Yes.

Mr. Kowalsky: — And were you involved with the lawyers?

Mr. Drummond: — I had not much involvement with the lawyers after Good Friday because I left on vacation.

Mr. Kowalsky: — When was the first occasion you spoke to Jack Messer?

Mr. Drummond: — I spoke to Mr. Messer only once, and that was after June 1 when the problem arose.

Mr. Kowalsky: — Who else did you talk with from SaskPower?

Mr. Drummond: — I only talked to their representatives — actually their representative, Lawrie Portigal. I personally did not talk to Mr. Hurst.

Mr. Kowalsky: — You mentioned that you used the Gilbert Laustsen Jung report. When did you get this evaluation?

Mr. Drummond: — We got that prior to writing the original letter.

Mr. Kowalsky: — Could you be a little more specific?

Mr. Drummond: — No, I could not.

Mr. Kowalsky: — That would be prior to . . . The date of the letter was February 28?

Mr. Drummond: — February 28.

Mr. Kowalsky: — And did you get it from Mr. Portigal?

Mr. Drummond: — Yes, we did.

Mr. Kowalsky: — Did you have any other evaluations done of Channel Lake?

Mr. Drummond: — No.

Mr. Kowalsky: — You mentioned that you were on holidays a week or so prior to April 1, '97. Could you give us the dates when you were away?

Mr. Drummond: — I left on the Saturday after Good Friday, and I believe I returned the following weekend.

Mr. Kowalsky: — Did you continue to deal with the Channel Lake purchase even while you were away?

Mr. Drummond: — While I was away I had a phone call from Mr. Dufresne and Mr. DeLuca when the fact that the trading losses were apparently far in excess of 5.2 million, when that issue arose I was contacted by telephone.

Mr. Kowalsky: — The first draft of the sale purchase agreement was prepared by your lawyers, Burnet Duckworth, on March 18, 1997. Is that true?

Mr. Drummond: — Yes.

Mr. Kowalsky: — Were you involved in these documents?

Mr. Drummond: — No.

Mr. Kowalsky: — I want to turn to the issue regarding the initial letter and issues arising from the initial letter. In Mr. Dufresne's testimony he mentioned that the reason for, the specific reason for the \$27.7 million figure was because he was given information by Mr. Portigal that there was \$5.2 million or thereabouts, I understood, in the account. Do you concur with that? Channel Lake . . . in the account of Channel Lake.

Mr. Drummond: — Well as I indicated I think twice this morning already, there was a general premiss very early on in the negotiations that there would be working capital in the company to actually fund the eventual pay-out of the trading losses, correct. At that time we didn't know what those numbers really were.

Mr. Kowalsky: — But you were told about the \$5.2 million figure.

Mr. Drummond: — I was told that there would be working capital in the company on closing, sufficient to pay the trading

losses.

Mr. Kowalsky: — Were you told how much?

Mr. Drummond: — No.

Mr. Kowalsky: — And you were told this by Mr. Portugal?

Mr. Drummond: — Yes.

Mr. Kowalsky: — Now the trading losses, would you agree that the trading losses formed a significant part of the deal?

Mr. Drummond: — As it turns out, they certainly didn't have to because it would have been very easy to assign those contracts to SaskPower and it wouldn't have been our concern. However as it turned out, it had a major financial impact on the flow of the funds, right.

Mr. Kowalsky: — At the time that you wrote the first letter of February, I believe it was 28, you knew about the 5.2 million. At that time of course it was a significant part of the deal. It didn't end up to be at the end. It's interesting to me that why you wouldn't have put a significant part of that deal into the contract at that time, or into the letter at that time.

Mr. Drummond: — In retrospect, as I've indicated, on Good Friday and the Saturday following, both SaskPower and us agreed that there was a much more clear, accurate way to reflect the business deal. But when we wrote the letter we did not have the financial information and it was not intended to be a final commercial document of course.

Mr. Kowalsky: — So the intent then to write it in the first letter, of \$27.7 million, was then to up the purchase price, presumably to be able to outbid any other competitors.

Mr. Drummond: — Not at all. I never gave one moment's consideration to other bidders. We did our own valuation. We came to the fact that we could pay up to \$20.8 million and that's all we were going to pay in our minds at that time. It was above fair market value. There were other assets we could have pursued. We had no intentions then or any time after that of paying more than that.

Mr. Kowalsky: — You mentioned at one point in your testimony that you sort of pulled that figure out of thin air, or the figure could have been pulled out of thin air.

Mr. Drummond: — It was based on very preliminary discussions about the state of working capital in the company. We knew full well that prior to any closing we'd have to have very definitive numbers in order to arrive at a net purchase price. SaskPower knew that and we knew that.

Mr. Kowalsky: — I'm not sure why you chose the 27.7 million then.

Mr. Drummond: — I'm not either.

Mr. Kowalsky: — It could have been arbitrarily any figure.

Mr. Drummond: — We didn't know the components that were

going to go into that end figure. You know, in retrospect, as I've said, there would have been better ways to have structured that letter. But that letter got replaced by five or six additional drafts, each one of which came closer to reflecting the meeting of the minds of the two parties.

And by Friday, Good Friday, there was no confusion between SaskPower and Direct Energy as to the purchase price or the structure of the deal. And that is reflected through Mr. DeLuca's chronology that you have, very, very clearly.

Mr. Kowalsky: — Would you agree that it could be seen by outside observers such as myself that that \$27.7 million bid, because there isn't any substantial reason for it, that it could be seen, could be viewed as an attempt to scare off other bidders or to outbid other bidders?

Mr. Drummond: — It would be nonsensical to do that. I mean we're not talking about a used car for \$500. It's a 20-plus million dollar transaction. Nobody was going to trick somebody. People that can write a cheque for \$20 million don't do business that way. And if they did, they wouldn't have the \$20 million in the first place.

Mr. Kowalsky: — Mr. Drummond, you, I understand, were interviewed by Mr. Gerrand.

Mr. Drummond: — Yes.

Mr. Kowalsky: — Why did you not tell him this information . . . (inaudible) . . .

Mr. Drummond: — I'll tell you exactly why I didn't. Because when he came to see us I had no idea how out of control this thing was going to get. I took . . . we'd met for 15 minutes before he got there. I hadn't looked at the closing documents or thought about that part of it for over a year, and if I was as prepared as well then as I am now, I would have told him exactly what I'm telling you.

Mr. Kowalsky: — Thank you.

Earlier in your testimony you mentioned that the 15 per cent discount was an industry standard at the time. Why did you say that?

Mr. Drummond: — Because that's the fundamental . . . as Mr. Gantefer has pointed out, the discount rate is a fundamental component of any valuation of gas production properties.

Mr. Kowalsky: — Can you provide any evidence that would indicate that the 15 per cent discount was within the industry standards at that time?

Mr. Drummond: — I could. I'm not sure that I will. If the motion gets accepted, then I mean you'll have that information.

Mr. Kowalsky: — What advice would you give the committee about how to establish that kind of information?

Mr. Drummond: — Exactly as Mr. Gantefer put forward.

Mr. Kowalsky: — Thank you.

What drafts of the agreement then were you involved in?

Mr. Drummond: — The only draft I read was . . . I'm not sure what draft it was — I read it on Good Friday — it would be the draft that Mr. Hurst had commented on, on March 24.

Mr. Kowalsky: — When you returned from your . . .

Mr. Drummond: — Excuse me, sir, draft no. 2.

Mr. Kowalsky: — Draft no. 2. Just for clarification, draft no. 2 was the draft that was submitted on . . . Was it March 26?

Mr. Drummond: — Correct.

Mr. Kowalsky: — When you returned from your holidays when did you first talk to Lawrie Portigal?

Mr. Drummond: — I don't recall. It was . . . My main concern when I returned from holidays was attending to the financing to pay the balance.

Mr. Kowalsky: — So you don't recall.

Mr. Drummond: — I don't recall.

Mr. Kowalsky: — Did you talk to anybody else from SaskPower after that time?

Mr. Drummond: — I did not.

Mr. Kowalsky: — When you had viewed that . . . the document that you viewed, was that the document that had been signed by SaskPower officials?

Mr. Drummond: — Excuse me, I didn't catch the question.

Mr. Kowalsky: — I'm just double checking here. The document that you said you viewed, you viewed, you looked at . . .

Mr. Drummond: — Was the second draft.

Mr. Kowalsky: — Second draft. That was the one that was signed . . .

Mr. Drummond: — No, no. No. The draft they signed reflected the change in the agreement that was agreed to by SaskPower and Direct Energy. There was draft 3 in the morning, on Monday morning, and draft 4 on Monday afternoon.

Mr. Kowalsky: — Were you aware that the documents that were to be signed by SaskPower were to be signed by officials other than Mr. Portigal?

Mr. Drummond: — I was not aware of that.

Mr. Kowalsky: — Did Mr. Portigal not advise you then of . . . that he did not have signing powers?

Mr. Drummond: — He did not advise me. Obviously he must have advised his lawyer and his lawyer must have talked to Mr.

DeLuca about that, but I was not privy to that conversation.

Mr. Kowalsky: — Now you discovered that you needed . . . that there was changes needed. You've indicated there were changes needed to the Channel Lake documents between draft 2 and draft 3.

Mr. Drummond: — Correct.

Mr. Kowalsky: — Would you, just one more time, briefly outline the changes?

Mr. Drummond: — Well certainly. The main . . . I read the draft and, much like you people, it came clear to me at that point that it was redundant to gross the purchase price up and then have an adjustment for trading losses, and then have working capital in the company to pay those trading losses.

So I phoned Mr. DeLuca to see whether my viewing of the agreement, what I thought I was reading, I was. He said yes. I said well that's . . . we're just not going to do that. It's not the best way to describe the deal. Put it at 20.8 and let SaskPower look after their own trading loss liabilities. Let's keep it as simple as we can.

And that was conveyed to Mr. Hurst by Mr. DeLuca. And I conveyed that, and Mr. Portigal agreed that that was the underlying business deal, and that it would better be reflected . . . it would be better reflected the way it was eventually reflected in draft 3.

Mr. Kowalsky: — Can you explain why it was that Mr. DeLuca of Burnet Duckworth did not know this prior to that?

Mr. Drummond: — No.

Mr. Kowalsky: — You hadn't advised . . .

Mr. Drummond: — It's a working capital adjustment issue, which we found a way to simplify that and describe it much more clearly.

Mr. Kowalsky: — When the offer was made to purchase shares of Channel Lake on February 27 how did you plan to manage the company after the purchase? Had you any plans in place?

Mr. Drummond: — No plans in place.

Mr. Kowalsky: — Was it your intention to maintain the Channel Lake staff from the start?

Mr. Drummond: — Mr. Messer had asked us if on a best efforts basis we would maintain all employees of Channel Lake. And we agreed on a best efforts basis that we would do so, which we in fact offered employment to everybody who wanted to stay working with Channel Lake, was able to stay, including Mr. Portigal.

Mr. Kowalsky: — Are you aware that the sale purchase agreement called for the vendor to terminate all the employees?

Mr. Drummond: — That's because all employees were employees of a company called Management Ventures Inc.

which had a management contract with Channel Lake Petroleum. And it was a way we had to terminate that arrangement in order to take the employees on behalf of the company itself, as opposed through a management arrangement.

Mr. Kowalsky: — Did you ever talk with Mr. Messer or anybody at SaskPower about Mr. Portigal being terminated?

Mr. Drummond: — No.

Mr. Kowalsky: — Did you talk to Mr. Portigal about that?

Mr. Drummond: — No.

Mr. Kowalsky: — And you told us that the first time you spoke to Mr. Portigal about his carrying on with Channel Lake was by phone?

Mr. Drummond: — Excuse me, could you repeat that?

Mr. Kowalsky: — I believe you told us earlier today that the first time you spoke to Mr. Portigal about his carrying on with Channel Lake was by phone.

Mr. Drummond: — I didn't say that, no. It was a telephone call regarding the original purchase. I don't recall — on the employment issue — I don't recall whether that was in person or by telephone.

Mr. Kowalsky: — Do you recall the circumstances under which that conversation occurred?

Mr. Drummond: — No I don't.

Mr. Kowalsky: — And when did you first speak to Mr. Portigal about acting as director of Channel Lake?

Mr. Drummond: — Sometime between April 29 and May 30, but I don't know when.

Mr. Kowalsky: — All the closing documents were initially to be signed by SaskPower and DEML by April 2, 1997. Is that true?

Mr. Drummond: — That was the target date.

Mr. Kowalsky: — In order to complete these documents was it necessary to state who would be directors of Channel Lake?

Mr. Drummond: — Repeat the question, please.

Mr. Kowalsky: — In order to complete these documents — the documents, the final documents of signing — was it necessary to state who would be the directors of Channel Lake?

Mr. Drummond: — No.

Mr. Kowalsky: — Did you get . . .

The Chair: — I'm sorry, I was getting an indication from Mr. Thomson that he wished to ask questions as well, Mr. Kowalsky. Again, it's up to the individual party caucuses to divide their times as they choose.

Mr. Kowalsky: — Did you get Mr. Portigal's consent to act as a director prior to April 3, 1997?

Mr. Drummond: — No.

Mr. Kowalsky: — Is it true that officials of DEML and Lawrie Portigal met for several hours during the evening of April 3, 1997?

Mr. Drummond: — I think it's the 2nd, sir, not the 3rd.

Mr. Kowalsky: — And I repeat: was Mr. Portigal approached during this time to be director or to continue doing . . .

Mr. Drummond: — No. The first time he was approached was a few days prior to April 29 about any of those matters.

Mr. Kowalsky: — Under the sale purchase agreement, SaskPower was to terminate its employees as of June 1, '97 then?

Mr. Drummond: — I accept your word there. I'm not sure.

Mr. Kowalsky: — If you or your company had made arrangements for Mr. Portigal to work for you before that, would they not have to sever the employment?

Mr. Drummond: — I didn't know and I still don't know what his terms of employment were with SaskPower or Channel Lake prior to our involvement.

Mr. Kowalsky: — So you never at any time advised SaskPower that Mr. Portigal had been hired?

Mr. Drummond: — No. He maintained his position as general manager of Channel Lake. There was nothing new.

Mr. Thomson: — Thank you, Madam Chair. I have just a couple of questions I want to ask. Could you just tell me again what your relationship was with Mr. Portigal during the time you were with SaskEnergy?

Mr. Drummond: — I don't understand your question.

Mr. Thomson: — Did you have a relationship with Mr. Portigal at the time that you were working on the privatization of SaskEnergy?

Mr. Drummond: — No relationship other than we interviewed dozens of stakeholders throughout the province and he was one of them.

Mr. Thomson: — Okay. I'm looking at the document, this is document 874, it's the resolution of shareholders of Channel Lake Petroleum Ltd. dated as of June 1. It is signed by Mr. Dufresne. This is the one that appoints Mr. Portigal as one . . . or elects Mr. Portigal as one of the directors. Can you tell me what date the document was signed?

Mr. Drummond: — I wouldn't know the answer to that, sir.

Mr. Thomson: — I'm sorry, I didn't hear.

Mr. Drummond: — I wouldn't know the answer to that.

Mr. Thomson: — You don't know what date the election . . . you were elected to the board of Channel Lake, when it was signed?

Mr. Drummond: — It's dated as of June 1, but I don't know when it was signed.

Mr. Thomson: — Is it likely it was signed before June 1?

Mr. Drummond: — No. Either the 31st, the 1st, or the 2nd, my solicitor advises me.

Mr. Thomson: — Could you tell me what day you signed your consent to serve as a director?

Mr. Drummond: — Mr. DeLuca thinks I signed it after.

Mr. Thomson: — After June 1?

The Chair: — Again I remind you, Mr. Thomson, Mr. DeLuca is present. It may be that at a certain point committee members will want to put questions directly to Mr. DeLuca and he can answer those directly.

Mr. Thomson: — I want to ask one other set of questions very quickly just to clarify in my mind. On what basis in your opening statement . . . I think it's the opening statement given by Mr. Dufresne yesterday on your and his behalf. He concludes that SaskPower representatives had actual authority to conclude the transaction. On what basis did you come to that conclusion?

Mr. Drummond: — That's a legal . . . it's a legal issue that probably you could debate. I mean our position, we were entitled to rely on his authority because he was the person put forward by SaskPower to negotiate and finalize the deal. But I can't . . . I don't want to get into a legal debate about whether or not that's the case. We certainly believed it was the case and we relied on that.

Mr. Thomson: — Yet you were aware that Mr. Portugal had to go to Regina in order to get the documents signed.

Mr. Drummond: — I wasn't personally aware of that, no, till long after the fact.

Mr. Thomson: — A transaction of this . . . Let me just back up. So you weren't aware then that Mr. Portugal had gone to Regina to get the documents signed?

Mr. Drummond: — I mean Direct Energy officials were certainly aware. I was not aware, no.

Mr. Thomson: — So at this point, what was your involvement in the deal? You were not involved in overseeing the deal at this point?

Mr. Drummond: — After, as I mentioned, after Good Friday, until I got a phone call on the Wednesday following about the trading loss situation, I was not involved, no.

Mr. Thomson: — So it didn't strike you as being strange the documents, all previous documents, had to be signed by two signatures and yet the final one was acceptable simply to be arranged by Mr. Portugal?

Mr. Drummond: — I wasn't there.

Mr. Thomson: — Okay. So who was there?

Mr. Drummond: — Mr. DeLuca, Mr. Dufresne, and Mr. Portugal, to my knowledge.

Mr. Thomson: — It appears I'm not going to get the answer to the question I want without Mr. Dufresne. But that's . . . with that point I'll just conclude my questioning. Thank you, Madam Chair.

The Chair: — I assume, Mr. Kowalsky, that you're completed as well. We'll deal with the individual witnesses individually. It's now 10:15. I would assume that the New Democratic Party is finished their line of questioning. And what I would suggest now is that we will open it up to all committee members to complete their questioning with Mr. Drummond so that we can then move to Mr. DeLuca.

So I'm going to suggest, with the committee's concurrence, that we pursue questions for approximately one half-hour and then take a break at 10:45. I will recognize any committee member and I would ask that we use courtesy so that all committee members have an opportunity to complete their questioning of Mr. Drummond.

Is that satisfactory to you, Mr. Drummond?

Mr. Drummond: — Yes, very appropriate. Thank you.

Mr. Gantefer: — Thank you, Madam Chair. I'll try to be brief. A couple of issues that I'd like to return to, Mr. Drummond.

In your testimony and our discussion this morning, and I want to go back to it, in the final sales agreement it says that in section 2.2 that the aggregate price of 20.8 less an adjustment subject to section 6.3 of \$5.2 million. You testified, I believe this morning, that you wrote a cheque for \$20.8 million. Is that correct?

Mr. Drummond: — I think I clarified that. That was the price . . . there were a series of cheques and adjustments but we were certainly . . . I mean, our audited financial statements show we paid \$21.3 million for the asset. And I can point you to that on our statements if you wish. That's what we paid for the asset.

Mr. Gantefer: — In the closing documents there were photocopies of two cheques. The document numbers, if we need them, are CLP 16/4 for DEML cheque number 10348 for \$2.5 million written to SaskPower Corporation. It is a deposit that is refundable to DEML, I believe, in the event that the Channel Lake sale goes through and non-refundable if DEML backs out of the deal. Is that correct?

Mr. Drummond: — That's correct.

Mr. Gantefer: — And then there's another cheque, CLP document, CLP 16/23, which is a Burnet Duckworth & Palmer cheque number 20387 dated June 2 for \$15 million. And it's DEML's payment out of the law firm's trust account to settle the Channel Lake sale. Is that correct?

Mr. Drummond: — Yes.

Mr. Gantefer: — Was the \$2.5 million cheque deposit refunded to you?

Mr. Drummond: — No.

Mr. Gantefer: — It was refunded to SaskPower. It went to SaskPower?

Mr. Drummond: — Yes.

Mr. Gantefer: — So it appears that the actual cash you paid to Channel Lake was \$15 million, not including your share of the trading losses of about 5.2. Is that right?

Mr. Drummond: — I could, if you want clarification, I could refer you to our audited financial statements which indicates 21.303 million.

Mr. Gantefer: — I guess what I'm trying to understand is where that money came from.

Mr. Drummond: — Well there were adjustments made, cash. I mean there were adjustments made but we paid 21.303 million. And Mr. DeLuca perhaps could speak to the adjustments. Or inform himself in the next few minutes if you want the actual adjustments.

Mr. Gantefer: — Was there . . . in addition, in addition to this documented evidence that we have, do you have or could you provide documentation of cancelled cheques that would reconcile the 20.8 purchase price?

Mr. Drummond: — Well cheques or consideration we certainly could. It's on tab . . . the adjustments are in our closing book but we could certainly undertake to provide that to the committee. Absolutely.

Mr. Gantefer: — So that that reconciliation of the fact . . .

Mr. Drummond: — We'll reconcile exactly to the 21.303 million.

Mr. Gantefer: — And that reconciliation document will be provided?

Mr. Drummond: — Later this week, later this week.

Mr. Gantefer: — Thank you. The other issue that I would like to go back to briefly, if I could, is the conflict of interest potential with Mr. Portigal. You testified that Portigal was working at least part time for your company between April and June of '97. Is that correct?

Mr. Drummond: — No, absolutely not.

Mr. Gantefer: — When was he then engaged?

Mr. Drummond: — We made the arrangement on April 29 but it was effective, of course, after closing.

Mr. Gantefer: — So it was . . . so he wasn't being paid by your company then in June?

Mr. Drummond: — In the month of June I believe he would have been. By Channel . . . he would have been paid by Channel Lake.

Mr. Gantefer: — But you would own the company at that time?

Mr. Drummond: — Yes.

Mr. Gantefer: — And he was still being paid by SaskPower at that time?

Mr. Drummond: — Well that arrangement, I understand from all these proceedings, I think early in June that arrangement was terminated. I don't know the exact date, but early in June.

Mr. Gantefer: — But there certainly was a period of time where he was serving both masters.

Mr. Drummond: — And I had full knowledge of that.

Mr. Gantefer: — And I believe you testified that Mr. Portigal had indicated that he had informed SaskPower about it as well.

Mr. Drummond: — We had the discussion. I wasn't sure of the date.

Mr. Gantefer: — And I believe you said that you didn't feel that that constituted a conflict of interest.

Mr. Drummond: — It isn't.

Mr. Gantefer: — Mr. Portigal was representing the other side of the negotiations of the sale of the assets, was he not?

Mr. Drummond: — No, no. No. No. We did not have our arrangements until after the formal agreements went into escrow, on April 3.

Mr. Gantefer: — Thank you, Madam Chair.

The Chair: — Thank you. Do I have further speakers?

Mr. Hillson: — Mr. Drummond, I am trying to understand your testimony this morning, and as I see it, and I want you to tell me if I'm understanding you correctly, but as I see it you had not taken a detailed and active interest in negotiations until Easter of 1997 and when you came in at that time and read the drafts, you were not happy with what you saw.

Mr. Drummond: — I would disagree with that.

Mr. Hillson: — Well certainly, although you say it's . . .

Mr. Drummond: — No, no. I should have expanded. I took a

very active role in assessing the value of the underlying production assets of Channel Lake and arriving at a purchase price that our company would be prepared to pay, which was \$20.8 million. I took a very active role in that.

Mr. Hillson: — However, although you now call it immaterial, the fact is prior to Easter weekend all of the documentation points to something in the order of 20.8 million as a figure after trading losses, and then of course, over the Easter weekend, 20.8 million is the figure prior to trading losses.

Mr. Drummond: — Well, Mr. Hillson, I indicated to you the premiss that our company was acting upon when we wrote the letter. I told you that on Friday, Good Friday, we and SaskPower agreed on a better way of describing the business deal.

Mr. Hillson: — Pardon me, I don't mean to interrupt you, sir, but when you say we and SaskPower, who do you mean by SaskPower?

Mr. Drummond: — I mean SaskPower.

Mr. Hillson: — Who?

Mr. Drummond: — Their representatives.

Mr. Hillson: — Who?

Mr. Drummond: — That's who SaskPower was.

Mr. Hillson: — Who?

Mr. Drummond: — Mr. Hurst and Mr. Portugal.

Mr. Hillson: — Thank you. Continue.

Mr. Drummond: — I'm done.

Mr. Hillson: — However, understandings not beside the point, the fact is the documentation all points to 20.8 as a net figure after the deduction of the trading losses. So I mean I'm not going to argue with what may have been in your mind. I can't obviously quarrel with that. But the papers, the papers all say we get the 20.8 after we've deducted the trading losses. And over Easter, 20.8 is prior to . . .

Mr. Drummond: — The higher number was on the assumption, as I've said three or four times . . . There were adjustments. There was an adjustment for trading losses and there was an assumption regarding working capital. We did not have the information to fully assess working capital at any time prior to April 2.

Mr. Hillson: — Yes. I wanted to come to that, Mr. Drummond. I wrote down here — and I hope I have it accurate because I tried to write while you were speaking so it was completely accurate — that your testimony is that over that famous Easter weekend “. . . after I read the documents, I concluded it was redundant to have working capital in the company to cover trading losses.”

Mr. Drummond: — No. My conclusion was it was redundant

to gross the purchase price up and then adjust it back down. And that a better way than worrying about working capital was simply have SaskPower contractually responsible for their own liabilities.

Mr. Hillson: — Yes, I understand that. But the phrase that I was referring to that I believe you used was, “after I read the documents” you concluded as you have continued, sir.

Mr. Drummond: — Yes.

Mr. Hillson: — My problem, sir, is that your use of the term, after I read the documents we should take out the reference to working capital. I can't find any reference in these documents anywhere to working capital in the company. I have failed to find any notes of that, and I would ask you to kindly refer us to these documents you read about working capital that then you decided to do it a better way.

Can you point out where working capital is referred to in any documents?

Mr. Drummond: — The mark-up of SaskPower's . . . Their solicitor marked up the March 24 agreement and said there needs to be substantial work done on working capital. Plus their letter to their own client indicated that.

Mr. Hillson: — Well, you know, I'm prepared to give you some time here, but I can't find any reference to working capital in the documents. And so, you know, you and your lawyers should have a moment to show me what I'm missing here. Please do so, and show me where you find in the documents reference to working capital being in the company.

You can take a moment. As I say, I can't find it. I can't find it.

Mr. Drummond: — It's only in the correspondence.

Mr. Hillson: — Pardon me?

Mr. Drummond: — It's in the correspondence.

Mr. Hillson: — Well yes. Go ahead and find it. Because I can't find any reference to working capital in the company. So please correct me.

Mr. Drummond: — Prior to the draft on the 31st, there was not . . . It was in the correspondence and we all knew it had to happen.

Mr. Hillson: — Yes. I'm asking you to . . .

Mr. Drummond: — It's not in the agreement. It's not in those early drafts.

Mr. Hillson: — I'm saying anywhere. I can't find it anywhere. So if you can find it, please do so. Because that will clarify a lot of what's going on in this inquiry.

Mr. Drummond: — On the closing? You mean on the closing book?

Mr. Hillson: — I think . . . Madam Chair, did you hear me say

“anywhere”?

Mr. Drummond: — Section 6.3 amounts to a working capital adjustment.

The Chair: — Mr. Hillson, I believe that Mr. Drummond feels he has answered your question by saying . . . he feels that by answering that section 6.3 answers your question is his answer. You may wish to pursue it further with another witness.

Mr. Hillson: — No.

The Chair: — I think that’s he’s answered the question in his way. Do you have any further questions?

Mr. Hillson: — Absolutely.

The Chair: — All right. Go ahead.

Mr. Hillson: — Anywhere. That’s my question. Anywhere in the documents, do you find reference to working capital? Please place it before us.

Mr. Drummond: — Clause 6.3 has that effect.

Mr. Hillson: — Would you please read clause 6.3 so we can hear the term working capital.

Mr. Drummond: — It doesn’t refer to working capital. I said it has . . .

Mr. Hillson: — Read it into the record, sir.

Mr. Drummond: — I said it has the effect.

Mr. Hillson: — Please read it into the record, sir.

Mr. Drummond: —

As of January 1, 1997, the Vendor agrees to establish from its own assets a trading account in favour of the Corporation in the amount of \$5,200,000 . . . The Trading Account will be available to, and used by, the Corporation to reduce the natural gas trading losses it has incurred or will incur from and after January 1, 1997 under the gas trading purchase and sale contracts listed and described on Schedule D . . . Notwithstanding Sections 6.1 and 6.2, from the date hereof until the Closing Date, the Vendor covenants and agrees that it will not permit the Corporation to reduce or (maximize) its exposure under any of the Trading Contracts without the prior consent of the Purchaser, provided that the Corporation shall not be required to default on its obligations under any of the Trading Contracts. On the Closing Date, the amount payable by the Purchaser to the Vendor pursuant to Section 2.2(b) shall be reduced by the amount remaining in the Trading Account on the Closing Date.

Mr. Hillson: — Yes. Thank you. Now I think it’s common ground you’re reading from the third draft.

Mr. Drummond: — I’m reading from the final draft.

Mr. Hillson: — Final draft. The one created over the Easter weekend.

Mr. Drummond: — No.

Mr. Hillson: — What date?

Mr. Drummond: — It was created . . . if you follow Mr. DeLuca’s chronology, there were several drafts after the Easter weekend.

Mr. Hillson: — Well when is the first we see the 6.3?

Mr. Drummond: — Draft 3.

Mr. Hillson: — What date?

Mr. Drummond: — March 31.

Mr. Hillson: — March 31. Okay. Now I’m asking you — and you’re saying that this draft was to get rid of the concept of working capital — so I’m asking you again: where before do we see any reference anywhere — any letter, any memorandum, any draft, you choose it, to working capital? I haven’t been able to find it.

Mr. Drummond: — Milner Fenerty’s letter of March 24.

Mr. Hillson: — Okay.

Mr. Drummond: — And the mark-up of the draft.

Mr. Hillson: — Read into the record what you’re referring to in terms of working capital.

Mr. Drummond: — “We understand that the next draft will have a working capital type of adjustment in section 2.3.”

Mr. Hillson: — That’s it. And who is that letter to, sir?

Mr. Drummond: — From Milner Fenerty to our solicitor.

Mr. Hillson: — On March 24.

Mr. Drummond: — And copies to Portugal and Kram.

Mr. Hillson: — Okay. Now anything else?

The Chair: — Just for committee members’ information, I believe that’s now called document 85/3.

Mr. Hillson: — Please continue. What other references do you find anywhere to working capital being part of this agreement and part of the \$27.7 million offer.

Mr. Drummond: — It was not, the 27.7 million, was not an offer, Mr. Hillson. It was a way to get into a negotiating mode. It was not an offer.

Mr. Hillson: — I realize you have told us it was a figure pulled out of thin air. I appreciate that. So that’s your testimony. We understand that.

But I come back to it: working capital. Please point to me where I can find the reference to this working capital, this 5 or \$7 million in the till. If you can point me to a document please, please, please do so.

Mr. Drummond: — There's nowhere else.

The Chair: — Mr. Hillson, I believe that the witness is answering that it is in the light blue document, which I believe is now numbered 85/3, and it's tab 2. That is, as I understand it, the reference to working capital. And the only reference that you're aware of, Mr. Drummond?

Mr. Drummond: — That's correct, yes. In the second draft that Mr. Hurst marked up in his own handwriting there was a reference to working capital.

Mr. Hillson: — What is that, sir? Would you read that into the record.

The Chair: — Page 7 of the attachment to tab 2, Mr. Drummond.

Mr. Drummond: — I think in Mr. DeLuca's opening remarks, tab no. 2 in the margin on page 8, there's a handwritten reference, working capital adjustment.

The Chair: — And for the record it is also on page 7 as well, Mr. Drummond.

Mr. Drummond: — Also on page 7, I understand.

Mr. Hillson: — And whose handwriting are you saying that is?

Mr. Drummond: — It is Mr. Hurst's handwriting.

Mr. Hillson: — That's Mr. Hurst's handwriting. Okay. And that, you say, is the reference to the purchase price being subject to a working capital account of 5 to \$7 million?

Mr. Drummond: — I'm telling you the basis upon which we wrote that letter, we based it on our understanding. Later we clarified that and both parties agreed to it.

Mr. Hillson: — So your testimony is that to go from a \$20.8 million offer net to a \$20.8 million gross figure is not a material change. It is consistent with your feelings throughout.

Mr. Drummond: — We based the letter on the assumptions that I've told you and we later, for clarity, changed those assumptions. We never, ever were paying any more than \$20.8 million, and never conveyed or wanted to convey that to SaskPower.

Mr. Hillson: — Okay. Now I see the reference to Mr. Hurst's handwriting, working capital adjustment, appears to be his marginal notations to draft 1. So were they carried then into draft 2?

Mr. Drummond: — You'll be asking Mr. DeLuca questions. He's got a full chronology. I'd suggest you do that.

Mr. Hillson: — Okay. Then I would like to refer you if I may

then, to something quite different, to binder 15. I'd like you to look at three documents — 866, 868, and 872.

The Chair: — Mr. Hillson, repeat the numbers again.

Mr. Hillson: — 866, 868, 872.

The Chair: — Just for the assistance of anyone who doesn't have some binders, briefly identify those documents, Mr. Hillson.

Mr. Hillson: — Yes. Now these are a series of three memoranda from Mr. Portigal — the first two to Mr. Messer, and the last to Mr. Kram of the legal department of SPC (Saskatchewan Power Corporation). The first is dated May 21, 1997; the second is dated May 29, 1997; and the third is dated June 4, 1997. And it is the last two, the May 29 and June 4 memos are written by Mr. Portigal on Channel Lake Petroleum letterhead . . . the Channel Lake SaskPower . . . the SaskPower Channel Lake with the Regina return address.

You have those documents?

Mr. Drummond: — I expect I do.

The Chair: — And your question?

Mr. Hillson: — Well I'm letting him, you know, pull them out and have them before him before I start questioning him.

The Chair: — And again, Mr. Hillson, I would remind you we do want to take a break at 10:45. And I have an indication from the New Democratic Party that they have a couple of questions to put to Mr. Drummond as well.

Mr. Hillson: — And yes, the May 21 document refers to a number of attachments . . . May 29.

Now the May 21, 1997 document is of course where we were discussing earlier that he is alerting SaskPower to the possibility that you may require a delay for closing. That's correct?

Mr. Drummond: — Yes.

Mr. Hillson: — What intrigues me about all those three memos is, first of all, they come after you had an agreement to hire Mr. Portigal. That's correct?

Mr. Drummond: — Yes.

Mr. Hillson: — They are written by Mr. Portigal in his capacity with the SaskPower Channel Lake? That's what you see in them.

Mr. Drummond: — Yes.

Mr. Hillson: — They refer to Direct Energy Marketing in the third person as they, not us. There's no reference there that I'm part of Direct Energy.

Mr. Drummond: — At that time he was not.

Mr. Hillson: — And there is in the May 29 . . . I'm sorry, June

4 — yes June 4 — on paragraph no. 6, page 2. Mr. Portigal makes reference there to having a meeting to explain to his principals what was going on in the negotiations. Do you see that? The meeting of May 23.

Mr. Drummond: — I have it.

A Member: — What is the date we're looking for?

Mr. Hillson: — That is the date of June 4, 1997.

Mr. Drummond: — Right.

Mr. Hillson: — So all of this is after the agreement for him to work for the new company.

Mr. Drummond: — Yes.

Mr. Hillson: — And in fact on June 4 he was on the payroll of the new company.

Mr. Drummond: — It wasn't a new company, it was the same company.

Mr. Hillson: — Same company, new owners.

Mr. Drummond: — Yes.

Mr. Hillson: — But he's writing on . . . this is on the letterhead of the old owners.

Mr. Drummond: — Well the office . . . they maintained their office until they could arrange to move into ours.

Mr. Hillson: — But this memo is from Channel Lake SaskPower, written in his capacity to Channel Lake SaskPower, referring in the third person to Direct Energy.

Mr. Drummond: — Mr. Portigal will be here next week. I didn't write the memos.

Mr. Hillson: — Right. I appreciate that, but I just have one question for you. When you see these memos after you have an agreement that he will work for you, and even after he's on your payroll, do you consider that synergy or conflict?

Mr. Drummond: — Transition synergy.

Mr. Hillson: — Thank you. And I have one last question. Did you or anyone with Direct Energy engage any consultants or negotiations to broker the Channel Lake deal?

Mr. Drummond: — No.

Mr. Hillson: — Thank you.

The Chair: — Thank you, Mr. Hillson. And now from the New Democratic Party, Mr. Thomson.

Mr. Thomson: — Thank you, Madam Chair. I just want to follow up on this question of when exactly you engaged Mr. Portigal's services. When did that discussion happen, and make sure we all understand exactly what the chronology was.

Mr. Drummond: — Okay. The chronology was, my first concern was getting the transaction agreed to and documented; my next concern was arranging the financing. After that appeared to be in order, I then addressed the issue of the ongoing operation of Channel Lake. Mr. Portigal, the discussion, the original discussion would have been a few days immediately prior to April 29.

And I'm not sure what . . . We have an undertaking to provide the committee with the information. I'm not just certain whether the payroll started June 1 or July 1 from Channel Lake, but I will . . . that's one of our undertakings.

Mr. Thomson: — But it was your intention as far back as February 28 when the initial letter went in to SaskPower to continue the staff, the current staff of Channel Lake?

Mr. Drummond: — We had an undertaking on a best efforts basis and we didn't address that issue until after we knew we had a deal.

Mr. Thomson: — Now did you ever talk to Mr. Messer or anyone at SaskPower about Portigal being terminated?

Mr. Drummond: — No.

Mr. Thomson: — I'm curious as to the conversation that happened on the evening of April 12 . . . or sorry, April 2.

Mr. Drummond: — Mr. DeLuca was there and he'll be glad to answer that question. I was not there.

Mr. Thomson: — You were not at that discussion?

Mr. Drummond: — I was not.

Mr. Thomson: — And you say that you spoke to Mr. Portigal about acting as a director, first, when? — April 29?

Mr. Drummond: — No, it was after that and before he was appointed.

Mr. Thomson: — But you're not sure when?

Mr. Drummond: — No.

Mr. Thomson: — Would anyone else have that information?

Mr. Drummond: — It's doubtful. It's a housekeeping function at closing, nothing more than that. It's a subsidiary. It's a non-issue in our company. It might have even been addressed by the solicitors on closing; I don't recall. It was not significant.

Mr. Thomson: — Well it's interesting that, you know, under the sale purchase agreement SaskPower was to terminate its employees as of June 1, yet you had obviously intended to continue on with Mr. Portigal. If you and your company had made arrangements for Portigal to work for you, why wouldn't you tell SaskPower that?

Mr. Drummond: — The terminating of the employment arrangements as I mentioned earlier, was because SaskPower was operating Channel Lake through a management company,

Management Ventures Inc., and that contract had to be terminated on closing. And then we took the employees — we being Channel Lake — took the employees.

Mr. Thomson: — But you never advised SaskPower that you intended to keep Mr. Portigal as one of the employees?

Mr. Drummond: — No.

Mr. Thomson: — And you didn't see there to be any conflict in this?

Mr. Drummond: — There isn't. Any merger of two operating businesses where there's non-operational overlap, it's strong likelihood that most of senior management will stay on. Mr. Portigal, he purchased the property on behalf of SaskPower. He was the general manager and they entrusted him with the sale of it. He was a valuable asset of the company and one that we would have been foolish not to try to capture, and we did.

Mr. Thomson: — So Mr. Portigal who is negotiating on behalf of SaskPower . . .

Mr. Drummond: — No.

Mr. Thomson: — No?

Mr. Drummond: — No.

Mr. Thomson: — He was not negotiating on behalf of SaskPower?

Mr. Drummond: — Our arrangement was made after the agreements went into escrow, after the terms and conditions were all set, and after we had paid a \$2.5 million non-refundable deposit.

Mr. Thomson: — Did you talk to Mr. Portigal about the staffing arrangements for any of the other employees of Channel Lake?

Mr. Drummond: — At around the . . . at or about the same time, yes.

Mr. Thomson: — So that didn't happen on the evening of April 2 at the meeting you weren't at?

Mr. Drummond: — No.

Mr. Thomson: — You won't know.

Mr. Drummond: — Well no, because I had that conversation much later and I didn't know the specifics of who would be required or who wouldn't be required. On a best efforts basis we wanted to keep them on. And we did.

Mr. Thomson: — But you saw no reason to tell SaskPower of this?

Mr. Drummond: — No.

The Chair: — Are there any further questions of the witness? I almost hesitate to even ask.

Mr. Thomson: — Thank you, Madam Chair.

The Chair: — Thank you.

Mr. Hillson: — You just told Mr. Thomson that there was no negotiating after April 29. But the May 21 memo I referred you to, Mr. Portigal is negotiating, it would appear, a possible delay in the closing date. So I mean, there are simply details to be tied up. And the question of exactly where his loyalties lie are certainly . . . surely material. There is negotiating going on according to this May 21 memo.

Mr. Drummond: — You've made your point.

Mr. Hillson: — Well you said there was no negotiating. The May 21 memo suggests otherwise.

Mr. Drummond: — I don't call that negotiating.

Mr. Hillson: — Okay, one last question then. I know you've said you can't remember but you've had another hour or two to think about it. I would ask you again, when did you ask Mr. Portigal if he had informed SaskPower that he was working for you and he replied no? I mean he replied that he had.

Mr. Drummond: — My recollection is no better now than it was an hour ago.

Mr. Hillson: — Very good.

The Chair: — We will now have a 15-minute break. I take it that the committee wishes to question Mr. DeLuca when we return. Can you, at the break, please give me some idea if you're going to want to question Mr. Dufresne again today? And again I would remind committee members that our time is rather short. So we will now have a recess until the hour of 11 o'clock.

The committee recessed for a period of time.

The Chair: — We will now reconvene our hearings. We've heard from Mr. Drummond; yesterday we heard from Mr. Dufresne. Before that we had an opening statement from Mr. DeLuca but committee members chose at the time not to put questions to Mr. DeLuca. I now have an indication from committee members that they wish to question Mr. DeLuca, and I see that he's present and ready to answer questions.

So I will at this time recognize Mr. Gantefer from the Saskatchewan Party for approximately half an hour. Then we'll move to Mr. Hillson and then to the New Democratic Party, which should leave us with adequate time to deal with procedural matters.

There also is the question of a closing statement from the witnesses and I will ask them to make a decision as to whether or not they wish to make a collective closing statement now or whether they want to make individual closing statements, or if they want to send us something in writing.

Mr. Wilson: — I'd like to respond to that, Madam Chair. The decision has already been made that the latter will be their choice.

The Chair: — I have an indication then that we will have a closing statement in writing received as a document before this committee. And again, I can't put any time lines on your closing statement, but I would advise you that you probably should try to get it in as expeditiously as possible. I would ask then at this time for Mr. Gantefer to begin questioning of Mr. DeLuca. I remind you, you still are under oath.

Mr. Gantefer: — Thank you. It still is good morning, Mr. DeLuca. A few brief questions. I don't think that I'll require the full half-hour. I want to just follow up and to make sure I have in my mind clear, there was the undertaking this morning by Mr. Drummond, and I believe with your assistance, that we would have a full reconciliation of the transactions related to the sale of Channel Lake.

Mr. DeLuca: — That's correct.

Mr. Gantefer: — Will that include the supporting documentation, like photocopies of cheques and deposits and all of the things that would verify that?

Mr. DeLuca: — Background information, yes.

Mr. Gantefer: — Okay. Thank you. I was just wanting to make sure and I wasn't sure if I'd asked for the background information and all the other stuff. Thank you.

In the testimony that we heard yesterday and from your opening statements, you indicated that there was a rush on the sale. Would you elaborate, were you aware of where the rush was coming from specifically?

Mr. DeLuca: — It had just been communicated to me by Direct Energy that SaskPower wanted to close this deal by the end of the month.

Mr. Gantefer: — And communicated to you by Direct Energy, was that by Mr. Dufresne or Mr. Drummond?

Mr. DeLuca: — I can't recall.

Mr. Gantefer: — So your instructions from DEML were that they had the instructions that SaskPower wanted this to move forward by the end of March.

Mr. DeLuca: — Correct.

Mr. Gantefer: — And you indicated that that was — I forget your exact quote, but you said it was a very tight time line or something to that effect, in your experience.

Mr. DeLuca: — That's right. It's aggressive.

Mr. Gantefer: — Aggressive, that was the word. I'm learning all these new vocabularies that people use in this trade. I am not sure for what practical purpose. On . . . (inaudible interjection) . . . Yes, to write my book. I take it that there will not be a great financial prospect from that possibility.

Mr. DeLuca, you indicated again that there were a number of drafts of the agreement. There was the first and second drafts, I believe, that specifically talked about the 27- or 26-point-odd

million dollars, which was the upward side number that SaskPower came to clearly believe was going to be the price before the adjustments for trading losses. Were they . . . they were in both draft no. 1 and 2. Is that correct?

Mr. DeLuca: — Twenty-seven seven in one and 26 million in draft two.

Mr. Gantefer: — The differences between those two drafts really reflected a different closing date that would not require a final adjustment as to who had ownership of the company for that small period of time. Is that right? That was purely in . . .

Mr. DeLuca: — Correct.

Mr. Gantefer: — Non-substantial.

Mr. DeLuca: — Right.

Mr. Gantefer: — It was also indicated in the testimony yesterday that you were part of the, as I understand it, you were part of the negotiating team?

Mr. DeLuca: — That's the term I used, yes.

Mr. Gantefer: — Yes. And that it was conveyed . . . was it conveyed to the team that Mr. Portugal was also part of that, Mr. Portugal was also part of that team. Is that correct?

Mr. DeLuca: — Yes, he was SaskPower's representative.

Mr. Gantefer: — Yes. Now was the information that was alluded to by Mr. Dufresne yesterday, that Mr. Portugal had given the indication that there would be sufficient cash in the company to cover the trading losses, was that given to the team?

Mr. DeLuca: — I was not party to that.

Mr. Gantefer: — So then I am to assume that it was made known to Mr. Dufresne.

Mr. DeLuca: — I assume so.

Mr. Gantefer: — Okay. In the change between draft no. 2 and draft no. 3, which I believe Mr. Drummond said was a result of him reading draft no. 2 and determining that DEML was not prepared to no longer discuss the inflated amount of the shares, etc., the direction came from Mr. Drummond then to change the drafting of no. 3 so that that no longer happened, went down to the 20.8 or whatever.

Mr. DeLuca: — Yes, but Mr. Drummond, I will say, talked to me initially about how to change — change is not the right word — but how to more accurately describe the purchase price in the documents. And then he would have talked to Lawrie Portugal, I would talk to Mike Hurst. We had a meeting on Saturday and then the draft 3 was only produced on the Monday.

So it wasn't one telephone call changed the purchase price. It was the telephone call and a series of other telephone calls and meetings which resulted in draft no. 3.

Mr. Gantefer: — Now draft no. 3 then, was that something that was discussed between all the parties of the negotiating team?

Mr. DeLuca: — Well certainly. Well the information to change draft 2 to draft 3 was discussed by all the parties. So draft 3 reflected all the parties' intentions at that time.

Mr. Gantefer: — So that there the discussions went on in terms of the appropriateness of reflecting the price in a different way, I believe, using your terms, and then as a result of the negotiating team, came to one mind on that direction and as a result of that, you crafted draft no. 3.

Mr. DeLuca: — Correct.

Mr. Gantefer: — So both the legal counsel for SaskPower and their negotiator, Mr. Portigal, were in consensus with the changes that were reflected in draft 3.

Mr. DeLuca: — Yes.

Mr. Gantefer: — Draft 3 also, I believe, seemed to anticipate both the financial statement and the price adjustment material that you didn't have yet incredibly accurately. Was that a shot in the dark?

Mr. DeLuca: — Maybe you can be more clear on where you're ...

Mr. Gantefer: — Well it seemed to reflect the 5.2 very directly, or the anticipated losses before you had the financial information.

Mr. DeLuca: — Well the 5.2 was still the same number that was represented to us by SaskPower on March 31. That's where it would have come from. And you say, reflects it accurately, but to date the losses are 6.1 or over. So it really didn't.

Mr. Gantefer: — So in your opinion as a member of the negotiating team, all the parties in that team, yourself as the legal entity and the negotiators both for SaskPower and for DEML, were fully conversant with the change of pricing that was reflected in draft 3 and subsequent drafts?

Mr. DeLuca: — Absolutely.

Mr. Gantefer: — I would like to also just briefly talk about the issue of the employment of Lawrie Portigal by both SaskPower or by Channel Lake as reflected by SaskPower being the owner, and Channel Lake as reflected by DEML being the owner, and the overlap of employment.

Would that, as a lawyer — and I am not — would that not be pretty clearly a conflict of interest?

Mr. DeLuca: — The fact that Mr. Portigal was ... or let's say, had an appointment contract starting June 1 with Channel Lake and that he worked for SaskPower as well?

Mr. Gantefer: — Yes.

Mr. DeLuca: — Based on the information I have, no. Sounds

to me like one role is what he used to do as general manager of Channel Lake and the other role is in the coal supply business. And another role is transition person to effectively move what it takes to change owners and to ensure a smooth transition.

Mr. Gantefer: — In order to avoid being in a classical conflict of interest, would there would be the clear requirement of disclosure to both parties by Mr. Portigal?

Mr. DeLuca: — To avoid there being a conflict?

Mr. Gantefer: — Yes.

Mr. DeLuca: — Well if I don't think there's a conflict to start with, I'm not sure how disclosure impacts on that.

Mr. Gantefer: — So the fact that he might ... It was indicated that the fact that he was still employed by SaskPower was disclosed to Mr. Drummond. So that, from DEML's side, there was an understanding of the dual nature of the employment.

Mr. DeLuca: — Right.

Mr. Gantefer: — In order to avoid a conflict, would it not be a requirement that SaskPower be afforded that same disclosure?

Mr. DeLuca: — If there is a conflict, and I've said I didn't think there was, then you should get the consent of both parties to the conflict.

Mr. Gantefer: — It was also indicated that there were final terms of the agreement that Mr. Portigal agreed to in terms of the potential of a delay in the final dispersal of funds. That would indicate that he was doing more than negotiating coal contracts or things of that nature; that he was still acting as a negotiator for SaskPower.

Mr. DeLuca: — Well you're probably referring to that memo which, if I recall, is dated prior to June 1, firstly. And secondly, I think it's just a method of communicating a request from Direct Energy. That's all there is. Or a potential request.

Mr. Gantefer: — It seems that there was a clear understanding or a clear expectation that he was still able to act on behalf of SaskPower as the negotiator of the acquisition and sale of Channel Lake.

Mr. DeLuca: — Well he was the negotiator of the SaskPower sale of Channel Lake.

Mr. Gantefer: — But he was still acting in that capacity by that memo after he was clearly in the employment of ... also in the employment of DEML.

Mr. DeLuca: — Perhaps he is acting in that capacity. But on April 3, when it went into escrow, it doesn't really matter.

Mr. Gantefer: — Okay. Thank you. That completes my questioning, Madam Chair.

The Chair: — Thank you. Do any other members of the Saskatchewan Party have questions of Mr. DeLuca? We'll

move now then to the Liberal Party.

Mr. Hillson: — Mr. DeLuca, when were you engaged to represent Direct Energy in the acquisition of Channel Lake?

Mr. DeLuca: — Well I think it was March 13, 1997.

Mr. Hillson: — Do you have a letter of engagement?

Mr. DeLuca: — Oh no.

Mr. Hillson: — So it was verbal?

Mr. DeLuca: — Yes.

Mr. Hillson: — Did you receive instructions as to what was to be your function on this transaction?

Mr. DeLuca: — I was to act for Direct Energy, to assist them in acquiring the shares of Channel Lake.

Mr. Hillson: — And what were you told was to be the objective here? What were your instructions, the terms of the sale; what was to be accomplished?

Mr. DeLuca: — Get the deal done by March 31. Do you want more specific than that? I'm trying to get . . .

Mr. Hillson: — No, you're answering the question. So one of the things you . . . part of your instructions were March 31. Okay, what else?

Mr. DeLuca: — Oh, okay. I'll go down that. First instruction was very clear: we are buying the assets of Channel Lake; we are not paying more than \$20.8 million; we don't want any liabilities; get it done by March 31. That's pretty much it.

Mr. Hillson: — So you were told that — yes, I guess this links up with your statement yesterday — you were told that this was to be a purchase of assets, not a purchase of shares.

Mr. DeLuca: — Well we knew it had to be structured as a purchase of shares. But from Direct Energy's perspective, and how they explained it to me, and how I . . . is, we have to do this as a share purchase because SaskPower has requested it that way. Economically it has got to be this to us — 20.8 million for the underlying assets, no liabilities.

Mr. Hillson: — Okay, I guess that's my point. You explained yesterday for us, and I think I followed you, the difference between a share purchase and an asset purchase. However you would agree with me, all the documentation from day one is unanimous, this is a share purchase. There is no time anywhere, a talk about an asset purchase. You can't find it in anything.

Mr. DeLuca: — In all the documents it's referred to as a share acquisition.

Mr. Hillson: — So I realize that there's no attempt to mislead, but I mean you're talking about, well there's a change from an asset purchase to a share purchase. Well I mean there was no change. I mean we were talking about share purchase from day one, never changed, never deviated, always a share purchase.

That's correct, is it not?

Mr. DeLuca: — Am I allowed to expand?

Mr. Hillson: — Yes.

Mr. DeLuca: — Yes it is correct. Other than the economic effect to the buyer, had it be identical to an asset purchase.

Mr. Hillson: — You would have reviewed Mr. Dufresne's letter of February 28, 1997 I assume?

Mr. DeLuca: — That's the proposal?

Mr. Hillson: — Yes.

Mr. DeLuca: — Yes.

Mr. Hillson: — And in your view does that reflect what you say are your instructions, that it will be 20.8 less trading losses?

Mr. DeLuca: — It doesn't reflect it accurately enough, no.

Mr. Hillson: — Does draft 1 of the agreement reflect that?

Mr. DeLuca: — No, draft 1 is only a reflection of the offer. I recall this clearly. It was faxed to me on the Friday — maybe the Thursday but I probably didn't read it till the Friday — and I was told to prepare a draft based on this. And that's all I did, was to try and get the ball moving, given the time frame.

Mr. Hillson: — Okay. Does draft 2 reflect a gross of 20.8 million less trading losses?

Mr. DeLuca: — I guess it reflects a gross of 26.0.

Mr. Hillson: — Less trading losses?

Mr. DeLuca: — Yes, and other adjustments. Yes.

Mr. Hillson: — So would it be fair to say then, sir, that the first time we see a gross of 20.8 million less trading losses is the third and . . . the executed draft, the Easter draft?

Mr. DeLuca: — It would be the draft no. 3 that comes out of the Easter weekend.

Mr. Hillson: — Yes, that's the first time we see this.

Mr. DeLuca: — Correct. On paper, yes.

Mr. Hillson: — But you're telling us that these were always your instructions. They never changed.

Mr. DeLuca: — Yes, and I would like to elaborate.

Mr. Hillson: — Yes, please.

Mr. DeLuca: — Because you're going to ask me why didn't the first draft and second draft do that and all that.

I mean my first draft has a purchase price adjustment in it in addition to the twenty-seven-seven and in addition to the 7.1,

whatever it was, in trading losses, in addition to getting the economic benefit of the deal from September, whatever the date was. Actually my first draft may be from the December . . . (inaudible) . . . I don't really remember.

But my letter to Mike Hurst and Mike Hurst's letter to me always said we've got to have a working capital adjustment, or some adjustment. We — me, I should say — couldn't figure out quite at that stage how we are going to get to it being 20.8 net economic benefit, or net payment to Direct Energy for the assets.

Those two drafts didn't figure it out, hadn't been figured out. It's not on paper. It was up here — it was in Mike Hurst's head. We knew we had to get it figured out but we didn't until draft 3.

Mr. Hillson: — And I assume you didn't have access to the SaskPower memos of authorization to the effect that this was 20.8 million net. That's what they had approved and that's what they thought they'd approved. You knew nothing about that?

Mr. DeLuca: — No.

Mr. Hillson: — So it comes as news to you that SaskPower understood it was a \$20.8 million net figure not a \$20.8 million gross figure.

Mr. DeLuca: — SaskPower . . . Sorry, I'm just getting my nets and grosses mixed up. That's why I want you to repeat the question.

Mr. Hillson: — Well you say you didn't have any access to any of the SaskPower documents that we do that say that SaskPower approved, and as far as they were concerned had entered into, a deal to sell for 20.8 million, that is after deduction of the trading losses. This is all news to you.

Mr. DeLuca: — Yes, all I knew was that SaskPower in the form of Lawrence Portugal and Mike Hurst agreed to what we were doing.

Mr. Hillson: — So you were of one mind with those two. And what might have been going on in Regina, you can't comment on?

Mr. DeLuca: — Yes.

Mr. Hillson: — Fair enough. Were your instructions at any time in writing?

Mr. DeLuca: — From Direct Energy?

Mr. Hillson: — Yes.

Mr. DeLuca: — No. I . . . (inaudible) . . . I never have received instructions or anything from Direct Energy.

Mr. Hillson: — But notwithstanding, you're saying that Direct Energy's objectives in the sale did not deviate? You are telling us that the drafts and the other documentation do not point to 20.8 million and then we deduct the trading losses? You can't point to us where we would find that in writing?

Mr. DeLuca: — In those first two drafts? No.

Mr. Hillson: — Well please go outside those two drafts if you can.

Mr. DeLuca: — Okay, prior to the first . . . I mean prior to draft 3?

Mr. Hillson: — Yes.

Mr. DeLuca: — No.

Mr. Hillson: — No. Thank you. And may I say, sir, I appreciate your candour. You also a few moments ago used the phrase "change in purchase price" and that was a reference to the draft 3 answering Mr. Gantefoer's question. Do you recall using that phrase?

Mr. DeLuca: — And I think I tried to correct myself. I mean we're throwing about the number \$20.7 million purchase price, \$26 million purchase price, \$20.8 million purchase price — gross, net, adjusted, unadjusted. We had to structure it properly and it wasn't working until draft 3.

Mr. Hillson: — Okay.

Mr. DeLuca: — Starting to work on draft 3, I should say.

Mr. Hillson: — Okay, so are you saying that you misspoke yourself when you referred to a change in the purchase price?

Mr. DeLuca: — I thought I corrected myself at that time.

Mr. Hillson: — Okay, so you're not saying there was a change in the original price?

Mr. DeLuca: — Yes.

The Chair: — I would like to remind you that there is a complete *Hansard* of the proceedings. It's available on the Net. You may wish to review it. It will be available probably by about 2:30 this afternoon, and if you wish to include that, a comment on that in your closing statement, that will be provided in due course. That might give you sufficient comfort level that you have actually clarified it to your satisfaction.

Mr. DeLuca: — Okay. Thank you.

Mr. Hillson: — Did it strike you as odd that the closing date of March 31 appeared to be so significant in the minds of SaskPower?

Mr. DeLuca: — No. I wouldn't have even questioned it. I was retained to try and get the deal done by then, and I did what I had to do to get it done by then. It eventually slipped, but that was our objective.

Mr. Hillson: — In your opening statement you've told us that you had informed Saskatchewan Power that after the documents were executed that the agreements had not been stapled in order, that replacement pages could be inserted. Do you recall that in your opening statement?

Mr. DeLuca: — Yes.

Mr. Hillson: — Who specifically on the SaskPower side would have known that the omission of stapling the pages was quite deliberate because there would be changes?

Mr. DeLuca: — Lawrence Portigal and Mike Hurst.

Mr. Hillson: — Now you have of course, I say, explained very well to us the difference between share purchase and asset purchase as being, you know, and the liabilities obviously being significant in terms of the valuation and what is being paid. Would you agree with me, sir, that the 10-year supply contract and the profits thereof are also significant in determining what SaskPower actually netted from this deal?

Mr. DeLuca: — What SaskPower netted from the deal?

Mr. Hillson: — Yes. How SaskPower actually came out of this deal. You can't really give an opinion on that unless you include the 10-year supply contract, can you?

Mr. DeLuca: — I don't know. Not for me to speculate how you want to characterize the transaction.

Mr. Hillson: — Well I'm not the one who's speculating. Direct Energy says there will be \$5 million in profit coming out of that agreement. That's their speculation, if you will. That's their assessment of the situation. So there's another \$5 million right there. Isn't that correct?

Mr. DeLuca: — I don't agree with where you're going with this. I mean the gas supply agreement is a contract that commenced after the closing and runs for 10 years.

Mr. Hillson: — However it was part . . .

Mr. DeLuca: — Sorry. I paused, but . . . sorry. They had to get gas from somewhere. They needed it before; they'll probably need it in the future. I don't know how they're linked in the way you're portraying them.

Mr. Hillson: — What do you mean, how they're linked?

Mr. DeLuca: — The way you're portraying them.

Mr. Hillson: — I understand that Direct Energy was adamant there would be no purchase here without the 10-year supply contract. It was part and parcel of the agreement. It wasn't collateral. It was at the heart. There would be no, there would be no purchase of Channel Lake without the 10-year supply contract. Wasn't that your instructions?

Mr. DeLuca: — It was a condition precedent to the deal being done, yes.

Mr. Hillson: — In other words, yes.

Mr. DeLuca: — Yes.

Mr. Hillson: — Okay. So it's not a collateral; it's at the very heart.

Mr. DeLuca: — I think it's collateral to the purchase price issue, but yes, it's part of the deal.

Mr. Hillson: — It's not collateral to the purchase agreement.

Now on page 5 of your opening statement, sir, you inform us that your company uses WordPerfect and SaskPower uses Microsoft Word, and consequently a disc you included in your material was unable to be read in Regina. Is, is that correct?

Mr. DeLuca: — That's what I said, yes.

Mr. Hillson: — And who told you that they had been unable to read the accompanying disc?

Mr. DeLuca: — Lawrence Portigal. Or it might have been a staff member, like someone who works with Lawrie, but I don't know.

Mr. Hillson: — Okay, so did Mr. Portigal then indicate to you that he was unable, in the city of Regina, to find WordPerfect that would read this disc?

Mr. DeLuca: — No, he just said that the conversion didn't work.

Mr. Hillson: — So he hadn't read it?

Mr. DeLuca: — Read what?

Mr. Hillson: — The disc.

Mr. DeLuca: — I think they tried to put it in their system. First of all, we tried to save it in Microsoft Word at our office.

Mr. Hillson: — Right.

Mr. DeLuca: — We did not give him a disc with a WordPerfect version on it. We attempted to convert it in our office and save it. And we saved it in Microsoft Word, sent it over. I imagine he put it in his computer, and it didn't come up looking like it should have.

Mr. Hillson: — Okay. So it didn't work on those computers. But my question is, I gather from your statement here that the indication you got from Mr. Portigal was that he hadn't read the disc because it didn't work on his computer. Is that your understanding of what you had been told?

Mr. DeLuca: — I just don't understand your use of the phrase, read the disc. I'm sorry, I mean they tried to retrieve the document from the disc.

Mr. Hillson: — Yes.

Mr. DeLuca: — It didn't work, so they called me.

Mr. Hillson: — So you prefer the word "retrieve" to the word "read."

Mr. DeLuca: — Sure.

Mr. Hillson: — Okay, I'll use the word retrieve if it will make

you happy.

Mr. DeLuca: — Thank you.

Mr. Hillson: — So did you point out the ludicrousness to Mr. Portigal of saying well he couldn't retrieve WordPerfect in Regina?

Mr. DeLuca: — No, I don't think you've understood. He had a Microsoft Word version of the document that, in our office when it was put on the disc, did not convert properly. He could not have used it on a WordPerfect machine.

Mr. Hillson: — Correct. Oh, on a . . . I'm sorry.

Mr. DeLuca: — He could not have used it on a WordPerfect machine.

Mr. Hillson: — What would he have needed to have retrieved it?

Mr. DeLuca: — Us to have converted it properly in Calgary.

Mr. Hillson: — Well what could he have retrieved it on here?

Mr. DeLuca: — Probably nothing.

Mr. Hillson: — Nothing.

Mr. DeLuca: — That's my guess.

Mr. Hillson: — So it could not be retrieved.

Mr. DeLuca: — The conversion failed in Calgary.

The Chair: — I think the term, Mr. Hillson, is a corrupt disc.

Mr. Hillson: — Corrupt disc.

The Chair: — Yes, if the conversions don't work, you're in trouble. Doesn't matter what kind of machine, what kind of a program you put it in.

Mr. Hillson: — I'm not going to use the word corruption, Madam Chair. On this transaction, Mr. DeLuca, who did you deal with on both sides? First of all who did you deal with in terms of SaskPower?

Mr. DeLuca: — Lawrence Portigal and Mike Hurst.

Mr. Hillson: — Did you have discussions or negotiations with anyone else?

Mr. DeLuca: — No.

Mr. Hillson: — So you at no time conferred with anyone else from the SaskPower side?

Mr. DeLuca: — No.

Mr. Hillson: — Who did you discuss this transaction with from the Direct Energy side?

Mr. DeLuca: — Well Louis Dufresne, Gary Drummond, perhaps Hugh McIntosh who was . . . I think he was drafting the gas supply management agreement. I'm not sure which party was drafting it. I wasn't really responsible for that.

Mr. Hillson: — Well it's common ground that the supply agreement is part and parcel of the . . .

Mr. DeLuca: — Yes, but I'm not sure who had the carriage of drafting it. Whether it was SaskPower or Direct Energy.

Mr. Hillson: — Okay. Anyone else?

Mr. DeLuca: — Like you don't want me to go into my staff and that kind of stuff.

Mr. Hillson: — Did you at any time have any communications with Mr. Reg Gross?

Mr. DeLuca: — No, I've . . .

Mr. Hillson: — Now the discussions we've had the last two days about working capital, can you tell us what your understanding of that was, sir?

Mr. DeLuca: — You mean in generic terms, what working capital is?

Mr. Hillson: — No, in reference to this agreement.

Mr. DeLuca: — Okay. I think working capital is being used generically to describe the excess liabilities over the assets of Channel Lake.

Mr. Hillson: — I used the phrase, cash in the till. Do you disagree with that characterization?

Mr. DeLuca: — Well maybe I can just step back and try to elaborate as to what . . .

Mr. Hillson: — Okay. Please do.

Mr. DeLuca: — There's various components to the purchase. There is the underlying assets which Direct Energy was prepared to pay \$20.8 million for. And then there were the trading contract liabilities which they wanted no part of. And they wanted the whole . . . all the trading contract liabilities to be taken care of by SaskPower. And then the third component is potentially cash in a bank.

I break it into those three major components. I personally don't necessarily lump trading contracts with cash in the bank.

Mr. Hillson: — So what was your understanding about cash in the bank? Or had it been discussed with you? Had you received instructions about cash in the bank?

Mr. DeLuca: — No, it was kind of one of those things floating around just like draft 1 and draft 2. We knew we had to deal with it. We just didn't know what the number was going to be; what the final bank account was going to look like. We knew it had to be dealt with but we just . . . It was an issue.

Mr. Hillson: — So you're saying at no time were you told that part and parcel of the original offer was the fact that there would be five or seven million dollars cash in hand on closing.

Mr. DeLuca: — Not that specifically. I mean if you look at the new . . . or the final section 6.3, cash has to be coming in somewhere to make 6.3 work.

Mr. Hillson: — That's the final draft?

Mr. DeLuca: — Yes.

Mr. Hillson: — And that's the first time we 6.3 is in the final draft. We didn't see it before.

Mr. DeLuca: — No. We see it March 31.

Mr. Hillson: — March 31.

Mr. DeLuca: — Draft 1, draft 3, draft 4, draft 5, final. We see it four times.

Mr. Hillson: — Okay. Thank you, Mr. DeLuca. But March 31, that's the first time we see this.

Mr. DeLuca: — Yes. On paper like that, yes.

Mr. Hillson: — Okay. So as I said, I do appreciate your candour. But where we are left with in terms of your clients is that while we are told that cash of several millions being in the bank on closing was part and parcel throughout, yesterday was the first we heard of that. And you can't seem to point . . . or didn't even know yourself this very major, major point.

Mr. DeLuca: — On specifically what number or amount of cash had to be there, I didn't know.

Mr. Hillson: — You can't shed any light on Mr. Dufresne's testimony yesterday that this was part and parcel of his offer?

Mr. DeLuca: — No, other than . . . no I can't.

Mr. Hillson: — So when I say this came as a bolt out of the blue to us yesterday, this several millions of dollars cash being available on closing, I gather it came as a surprise to you as well as much as us.

Mr. DeLuca: — What, yesterday's statements by Mr. Dufresne?

Mr. Hillson: — Yes.

Mr. DeLuca: — I'm not sure I was surprised. Money had to be coming from somewhere to make the first offer letter work on a numeric basis.

Mr. Hillson: — Well let me just say, it came as news to you just as it came as news to us.

Mr. DeLuca: — I didn't know anything about it.

Mr. Hillson: — Okay. And then the last thing is the other sort of underlying problem we have with all of this, besides the cash

— I think that you've told us what you can about it, which is nothing — the other problem we have is that, well all of the Direct Energy witnesses have assured us that the deal from day one was to be 20.8 million less trading losses. I take it your testimony this morning is that we will search in vain for any reference to anything approaching that figure prior to March 31, 1997.

Mr. DeLuca: — In writing? That is my testimony.

Mr. Hillson: — Thank you, Mr. DeLuca. And again I appreciate your candour.

The Chair: — Thank you. Are you completed with the witness, Mr. Hillson?

Mr. Hillson: — I am completed.

The Chair: — Thank you. I will then move to the government members. If you would put some questions for approximately one-half hour.

Mr. Thomson: — Thank you, Madam Chair. I want to pick up on this question of Mr. Dufresne's testimony yesterday, in which he said that he expected there to be about \$5 million in cash in Channel Lake at closing. And you say the number was floating around, that's fine, I don't want to get bogged down on the \$5 million.

Could you tell me what were your initial instructions from DEML respecting cash monies to be contained in Channel Lake?

Mr. DeLuca: — We're paying \$20.8 million for the assets. We want a zero balance sheet on December 31, we want no liabilities. So if you start from the premiss of no liabilities somehow you've got to get there. When you want no liabilities, somehow they have to be covered by someone. And it wasn't going to be us, or Direct Energy, rather.

Mr. Thomson: — So did you in fact receive instructions that, whatever the number was, let's say it's 5 million as Mr. Dufresne says, was to be contained within Channel Lake to offset the initial \$27.7 million offer?

Mr. DeLuca: — Not specifically, no.

Mr. Thomson: — So how did you expect to get from 27.7 down to . . . how did you expect the initial offer to work then?

Mr. DeLuca: — I didn't know. That's why my first draft includes a purchase price adjustment and it includes representations on the financial condition, which we didn't know about. And it contemplates in my letter, there's got to be some kind of working capital adjustment.

Mr. Thomson: — So your initial instructions then were a purchase price of 20.8 million and yet in the initial draft there's nothing that would lead us down to that number, down to 20.8. There's no reference to the cash that's supposed to be . . . (inaudible) . . . in coming.

Mr. DeLuca: — That's right, that's right. I mean that's the

instruction, that's the business deal as was portrayed to me from day one, consistently.

Mr. Thomson: — Did this not seem somewhat unworkable to you?

Mr. DeLuca: — Well that's what we were trying to figure out. I mean I didn't have any information. I didn't know if there was \$30 million in the bank account. I didn't know any of those factors.

All I did was draft 1, looked at the offer, put it in there, and knew somehow we had to get to 20.8, no liabilities. And that's why all these adjustments were "in the air" being contemplated — how do you get there, how do you get there.

Mr. Thomson: — And yet in the first draft there's no reference to the cash amount or cash in the Channel Lake accounts.

Mr. DeLuca: — No. Sorry, no as in there is no reference.

Mr. Thomson: — No reference. And you didn't think that was necessary to include in order to make the deal workable?

Mr. DeLuca: — No, because there was influx entirely.

Mr. Thomson: — I see. Okay. Were you involved in the preparation of DEML's February 28 letter of offer?

Mr. DeLuca: — No.

Mr. Thomson: — So they didn't ... they prepared it themselves and then asked you afterwards to prepare a draft based on that.

Mr. DeLuca: — Yes. And the other instructions they gave me, yes.

Mr. Thomson: — Was that the reason you left ... there is no mention in the first draft of the \$5 million Mr. Dufresne made reference to yesterday, is that you solely based your initial draft on the February 28 letter.

Mr. DeLuca: — Yes. And a conversation with Gary.

Mr. Thomson: — So I guess what I'm having difficulties with is that we know from Mr. Dufresne's testimony yesterday that there's a certain amount of money that he was expecting to be in the bank account — whatever that amount is. You confirm that there was a number floating around. And yet between February 28, when the initial offer is made, and — what is it? — March 31 I guess, when we see the, finally start to see some or possibly see a reference to it, why did it take a month to get that?

Mr. DeLuca: — I have no ability to even attempt to answer. I don't know.

Mr. Thomson: — Did you have any discussions with DEML during that time about this issue?

Mr. DeLuca: — No, not on the specific basis, other than trying to figure out how to make the drafts work to reflect the business

deal. In that generic sense, yes; other than that, no.

Mr. Thomson: — Let me turn to another set of issues. I'm interested in the question of Mr. Portigal's role in terms of having authority to conclude this agreement. Now were you aware that SaskPower required two signatures on the documents?

Mr. DeLuca: — No.

Mr. Thomson: — You weren't aware of that?

Mr. DeLuca: — No.

Mr. Thomson: — That doesn't seem like something you should be aware of in terms of executing the agreements, in terms of who has signing authority?

Mr. DeLuca: — Well there's different stages in a commercial transaction you can go to. We could have asked for an opinion from Mike Hurst or from in-house counsel at SaskPower that all the documents were properly executed. And this was a transaction where you had sophisticated parties, and they just say, we're not going to do any of that.

Mr. Thomson: — Were you aware Mr. Portigal had to go to Regina to get the signatures?

Mr. DeLuca: — Well I sent them a letter there, yes.

Mr. Thomson: — So you're aware that Mr. Portigal had to go to Regina in order to get the signatures on the agreement in order to make it official.

Mr. DeLuca: — Well to be fair, I didn't know what he was going there for. I didn't know if he was going for board approval, for what — committee approval. I didn't know. It's only because of these proceedings I now know that there was a board meeting on March 26, and all these other things. At that time I didn't know.

Mr. Thomson: — But the documents you prepared were prepared with two signature spaces for SaskPower.

Mr. DeLuca: — I guess they are.

Mr. Thomson: — And so if you were aware that Mr. Portigal had to go to Regina, obviously there had to be two signatures on the agreements. What led you to believe that Mr. Portigal was able to conclude the agreement on April 4?

Mr. DeLuca: — Third.

Mr. Thomson: — Third. April 3.

Mr. DeLuca: — What do you mean by conclude the agreement? I guess, simply put, where I sat, he is SaskPower. He negotiated everything. He did everything. He brought all the documents to the closing. He did it all. So nothing seemed ... I mean he did it all from day one to the finish, till April 3.

Mr. Thomson: — So it didn't seem unusual then that you have signatures, a signature page attached to unbound documents

after the fact?

Mr. DeLuca: — Absolutely not unusual.

Mr. Thomson: — That's not unusual?

Mr. DeLuca: — Not even . . . No.

Mr. Thomson: — Okay. Let me ask you about the meeting on the night of April 2. You stated yesterday that you attended that meeting.

Mr. DeLuca: — Yes.

Mr. Thomson: — Can you quickly outline for me what the topics of discussion were that evening?

Mr. DeLuca: — Sure. Louis called me, I was still at work, and asked if the two of them could come over and discuss with me what they had potentially agreed to from — I can't recall the time now — but the morning or the afternoon of April 2 when we had intended to close. So what transpired between that point and 8 o'clock, they came over and said they wanted to discuss it with me. And they came over. And then they outlined for me a cost-sharing formula relating to the trading contracts.

Mr. Thomson: — Was there any discussion that evening about staffing?

Mr. DeLuca: — No.

Mr. Thomson: — There was no discussion that evening about Mr. Portugal's continued role with the company after the transition?

Mr. DeLuca: — Absolutely none.

Mr. Thomson: — There was another set of questions that I addressed to Mr. Drummond that I guess are more appropriately addressed to you. That concerns the date of signing of various agreements, or sorry, various resolutions, concerning the election of directors to Channel Lake and the consent of these.

Can you tell me when they were prepared?

Mr. DeLuca: — You're talking about the appointment of directors and officers of Channel Lake once Direct Energy owned all the shares of Channel Lake. Is that the time frame?

Mr. Thomson: — That's correct. That's right.

Mr. DeLuca: — My best estimate is they would have been prepared the last week of May, 1997. To elaborate a bit, yesterday Mr. Dufresne was questioned on the notice of change of directors. He wouldn't have prepared it; I would have prepared it.

Mr. Thomson: — That's why I'm asking you.

Mr. DeLuca: — I mean I knew that once all the resignations were effective when we came out of the escrow period, Channel Lake had no management. They had no officers, they had no directors, all they had was a shareholder. So we had to put in

place new officers and new directors to take the company forward. So I would have drafted all of these.

Mr. Thomson: — And when would you have drafted them?

Mr. DeLuca: — I can pretty much guarantee it wouldn't have been more than a day before June 1.

Mr. Thomson: — So you're saying that these were signed, drafted a day before June 1, so the last day of May, and they were signed when?

Mr. DeLuca: — Well I don't know for sure. My guess is in the case of Louis, it would have been March 31, which is the Friday, or June 2, which is the Monday.

Mr. Thomson: — May 31?

Mr. DeLuca: — Sorry, thank you. May 31 or June 2, which I believe is the Monday, because he would have been around my office around that time.

Mr. Thomson: — And when did you become aware that Mr. Portugal was going to be one of the directors?

Mr. DeLuca: — Well my best estimate is two days before that, a day before that, I would have called someone. I don't have any specific recollection. All I know is I would have tried to have been prepared for this when we came out of escrow so I would have called him just before May 31.

Mr. Kowalsky: — Referring back, Madam Chair, referring back to the April 2 meeting, I would understand that after that meeting you would have gone and completed the final draft, the closing draft.

Mr. DeLuca: — I would have prepared actually what . . . There was one more change subsequent to that, so I would have prepared what came very, very close to being the closing draft.

Mr. Kowalsky: — Okay. When was the real, the final change that was ever done? Shortly after or early next day or later that day?

Mr. DeLuca: — You mean like the last change to the share purchase agreement?

Mr. Kowalsky: — Yes.

Mr. DeLuca: — On the . . . I'd have to guess, but I'm guessing it was in the afternoon of April 3.

Mr. Kowalsky: — And did you fax that change and the prior changes to Milner Fenerty, Mr. Hurst?

Mr. DeLuca: — I did fax the changes that came out of the April 2 meeting in the evening to Milner Fenerty. I did not fax — to my knowledge I didn't; maybe my first letters show something different — I did not fax the, what I'll call the final change that occurred after the morning of April 3 and before the final signing.

Mr. Kowalsky: — What was that final . . . what was the

substance of the final change?

Mr. DeLuca: — I included it in my remarks and I believe I included it as a tab. Madam Chair, I have no . . . Or, Mr. Chair, now. I have no ability of telling you what this document's called. The light blue, what this is called I have no idea. But it's at tab 8.

Mr. Kowalsky: — Tab 8 in here?

Mr. DeLuca: — Yes. And if you turn to section 6.3. Maybe I'll speak generically first and then we can look at it specifically.

There used to be a generic term for the trading contracts. It was not like a nice, neat list. It was all . . . Well I can actually read what it was. Basically all gas purchase and sale contracts with independent third parties to which there's not a matching buy or sell contract. So there used to be this term which was a bit more generic.

Mr. Kowalsky: — Is there any substantive change in terms of price as a result of this?

Mr. DeLuca: — Oh, absolutely not. No. It's just defining definitively what the trading contracts are. No change.

Mr. Kowalsky: — So the substantive change was done in the draft previous, which reflected the change in the way we're describing the purchase price going from 26 million to 20.8.

Mr. DeLuca: — No, no. That 26 to 20.8 happened on the Easter weekend.

Mr. Kowalsky: — No, but the final copy. I'm talk . . . The final . . . The substantive changes that occurred . . . Were there any substantive changes that occurred in the copy that you faxed to Mr. Hurst? This last one . . .

Mr. DeLuca: — On the morning of April 3?

Mr. Kowalsky: — Right. Or was it just on the April 1 day that the substantive changes occurred?

Mr. DeLuca: — Well I guess the change which you would characterize as substantive would be the allocation of risk on the trading losses.

Mr. Kowalsky: — Right. And that . . .

Mr. DeLuca: — It didn't really require many changes to the share purchase agreement.

Mr. Kowalsky: — Didn't require any changes?

Mr. DeLuca: — Many.

Mr. Kowalsky: — Many.

Mr. DeLuca: — Did not require many, yes.

Mr. Kowalsky: — What I want to find out is, after you faxed this to Mr. Hurst, did you confirm in any way that he got the fax?

Mr. DeLuca: — I don't recall.

Mr. Kowalsky: — How do you know that the information was transferred to him? How do you know if he got the information and was able to read it, then pass it on to SaskPower?

Mr. DeLuca: — I guess I don't know. At least standing here I don't know. You could grab me Mike Hurst's file right now if you want.

Mr. Kowalsky: — It seems to me if you're making major changes — which I would think this would be a fairly substantive change or at least it's been interpreted that way in the last month or two — that you would make sure, you'd want to make sure lawyer to lawyer, firm to firm, that these changes which you were making and that you had agreed upon, I guess the night before, you'd point them out to the lawyer? I'm talking about the communication chain here, Mr. DeLuca.

Mr. DeLuca: — Yes, okay. I think it's pretty simple. Mike knew about the meeting happening on April 2. On the evening of April 2 I was told when Lawrie came over, that Mike was not able to attend that evening. Mike knew that we were trying to negotiate changes and I sent a letter, or a fax, that shows he got 11 pages.

Mr. Kowalsky: — You see what was important here is that the administration of SaskPower would have the same understanding of the agreement that you would have. And this would only occur if there was communication and the communication was followed up on. And so what you're telling me now is you know that you faxed the stuff to the lawyer, to the SaskPower's lawyers, but you did not follow up with any conversation to be sure that this was pointed out and you're assuming that he knew what the changes were as a result of your meeting on April 2.

Mr. DeLuca: — Well maybe I can clarify. When Mr. Portugal came to the closing on the afternoon of April 3 I asked him if Mike Hurst had any comments.

Mr. Kowalsky: — Okay. You asked him if Mr. Hurst had any comments?

Mr. DeLuca: — On the fax I sent out. Because I asked him if he and Mr. Hurst had any comments on the fax.

Mr. Kowalsky: — And what was his response?

Mr. DeLuca: — Yes, we got comments on the acknowledgement. And I don't know who "we" was. I don't know if it was just Hurst, just Lawrie, or both. So they had comments on the acknowledgement.

Mr. Kowalsky: — Thank you. Thank you, Madam Chair.

The Chair: — Are there any further questions from the NDP (New Democratic Party)? Are there any further questions of any committee members? No. Mr. DeLuca, you are now excused. I understand there are no further questions from any committee members.

Just out of a sense of abundant caution, do any committee

members have any further questions of Mr. Drummond?

That will complete your testimony then. I'll take it as a given that there are no further questions of Mr. Dufresne and we will be receiving from you a written closing statement in due course?

Mr. Drummond: — I thank you very much.

The Chair: — Thank you. And thank you all very much, gentlemen, for travelling from Calgary. And will you please submit your expense claims to the Clerk. Thank you.

Committee members will be aware that we have asked that Mr. Lawrence Portugal will attend this committee next Tuesday and Wednesday; I believe the dates are the May 14 and 15. It is my intention to begin the proceedings at 9 in the morning and go through till noon for both days, unless I received any indication of any desire to do anything differently . . . (inaudible interjection) . . . Well I don't carry a calendar in my head. The 12th and 13th? I'm sorry. Okay. May 12 and 13, next Tuesday and Wednesday.

Since we have now completed testimony from the witnesses from DEML, we will now move to procedural matters. I have two notices of motion that Mr. Gantefer gave earlier this morning. I would like to inform the committee before we begin discussion of those notices . . . or of those motions, that if they are affirmed we will need to report that to the House, since there are financial implications and we need authorization from the House to expend those monies.

I have prepared a draft report which assumes that both motions will be voted on in the affirmative. I will ask the Clerk right now to make a copy available to each party caucus so that you can see what it is.

So what we will do then is deal with the motions, and then depending on the outcome of those motions, we will then move the draft report. And I would also ask that all party caucuses, if we are reporting to the House, would discuss the matter with their House Leader so that they know that this will be coming to the House this afternoon.

Mr. Gantefer: — Thank you, Madam Chairman. I would be interested in hearing responses. I believe I attempted to make the case this morning as to why I believe that both of these motions are very appropriate.

They both are asking that we solicit and contract with independent industry experts to assist this committee's work in order that we can have an evaluation of the long-term gas supply contract. And also to have an evaluation as to the appropriateness of the discount rate that was chosen coming out of the Gilbert Laustsen engineering report.

I have no quarrel with the Gilbert Laustsen engineering report in terms of its evaluation of the assets. And in that summary of that report there were first of all listed the non-discounted value of the assets. That's not a question that I am . . . or an issue that I am questioning; and it gave a range of discount rates, and one was chosen in testimony as the appropriate asset level.

And what I believe is important to this committee is that independent industry advice is given in terms of what the appropriate discount level would be at that time in the energy sector. Because I believe, with volatility of the energy sector, that that discount rate could be very mobile. And so I think that no one on this committee has the expertise or the ability to make that determination. And I believe it has some very clear relevance to the testimony that was given and ultimately to the final determination of this committee, Madam Chair.

The Chair: — Mr. Gantefer, would you put one of the motions, whichever one you choose, and then we'll have discussion.

Mr. Gantefer: — Okay, I read them into the record. I guess now we have to . . .

The Chair: — We're going to deal with them individually.

Mr. Gantefer: — Okay, thank you. And in no particular order, just what I have grabbed. I move:

That the Standing Committee on Crown Corporations contract with an independent oil and gas industry expert to evaluate the terms of the long-term gas supply contract awarded to DEML as part of the sale of Channel Lake Petroleum to determine whether the contract is within industry standards; and that if the long-term gas supply contract is not within industry standards, provide information to the committee as to what those industry standards are.

The Chair: — The motion has been moved. Do I have speakers? Mr. Tchorzewski and Mr. Hillson.

Mr. Tchorzewski: — Thank you, Madam Chair. Since we're dealing with each motion individually I was going to speak to both. But I guess it's quite all right. I don't need to. I'm not going to speak to both.

Mr. Hillson: — I was going to suggest, just simply for the sake of expediency, that we be allowed to go beyond the strict wording of the motion. I think it'll take less time if we can put forward our points as to what's required here for the committee to do its work. I have a couple of other points to make and rather than being called on individually, if I can just simply make them and Mr. Tchorzewski can make them, I think we'll get through this quicker, by leave.

The Chair: — I'm going to deal with both motions individually, but if committee members want to address both motions in their remarks, that's fine. So we are now dealing with the long-term gas supply contract motion, but committee members can comment on both motions at the same time.

Mr. Tchorzewski: — Thank you, Madam Chair. May I? Yes, thank you. I want to . . . I don't disagree with Mr. Gantefer; in fact I agree with him that it is very important that we seek out all the facts so that when we come to the position and the time when we have to draw some conclusions, we're able to draw those conclusions based on information we need to be able to do that.

On the motion that is now before us, I think it is important that we do get some view as to whether it is within industry standards because of the need to be able to have that. And I would like to suggest that we proceed with this motion, with instructions to the Chair, in consultation with the legal counsel and whoever else you need to consult with, to seek out such an evaluation, keeping in mind the need to, in the interest of the taxpayers, keeping in mind the need to be cognizant of the costs here.

Because I think it goes without saying, you can get all kinds of opinions and pay an awful lot of money but sometimes you can get opinions and not have to pay that kind of money. So I think I would like the committee to agree that we give that kind of instructions and proceed from there.

On the second motion — if you say I could speak to both?

The Chair: — Yes, just as clarification, Mr. Tchorzewski. Are you saying that you would assume embedded in that motion that the Chair is authorized to engage the independent expert in consultation with the legal adviser and anyone else?

Mr. Tchorzewski: — Yes. That is what I'm saying.

The Chair: — All right.

Mr. Tchorzewski: — Maybe I'll leave it there. I'll leave it there.

The Chair: — It makes sense that we would have to have an agency to do this and I will poll the committee afterwards to see if that's satisfactory to them.

Mr. Tchorzewski: — Now, and if I may, I will speak to both motions and then I won't take the time the second time around. And the reason I want to do that is because what I'm about to suggest is in keeping with the need to get the information that the committee needs to have, and we have had others before this committee who have provided — and will have others before this committee — who have provided reports in writing to the legislature or to ministers and they have been tabled.

And has been quite appropriate and I think it is appropriate to call those people as witnesses to this committee in order that they can answer questions on things that they have said, as Gilbert Laustsen engineering has done in their report as to the discounted rate and evaluation. It is my view that, and our view that we should, before we proceed further on this motion, give Gilbert Laustsen an opportunity to be present and to answer questions under examination and cross-examination to this committee to explain the conclusions that they have reached, and then based on that we may then determine whether we need to go further than that. Because I think that's the right way to approach it.

I don't think anybody in the committee would question that Gilbert Laustsen are an independent firm, no doubt gave an independent evaluation, including comments on the discount rate. And I think in the appropriate way to do this we need to speak to them about it and find out from them why they drew these conclusions, and other questions as well.

And I'm like everybody else here . . . I am not an expert in this field — so all I can do is look to what experts can advise us. And in some of the material that we have been provided — documents 801, 824, Channel Lake Petroleum Ltd. property sale — I noted that there was some material provided by Nesbitt Burns which I think is relevant to this. And in that material there is an article by John E. Bakken, of Business Appraisal Associates, Denver, Colorado; and he talks about oil and gas evaluation aspects of natural resources and so on. And he speaks to . . . and I will quote:

For the appraiser working in the value of an oil-gas exploration production company, different organizations have different basic reserve definitions.

I'm on page 229. And he refers to financial accountants standards board, the society of petroleum engineers, a Securities and Exchange Commission, as having different definitions on reserves. And then he goes on to say that:

The oil and gas companies may choose to use differing standards depending on the circumstances and requirements, leaving the valuer to figure out and interpret the meaning of various reserve numbers in annual reports, financial statements, and other company documents.

Oil companies typically change their published reserves as the economy, oil-gas prices, and internal requirements change. The valuer is best advised to go back to the sources and use the reserve estimates of the engineers or the analysts who prepared the source data.

I mean that I think to me, tells me as well as what I know about procedures in the committee like this, that the appropriate thing for us to do is call Gilbert Laustsen engineering to this committee so that we can ask them about these kinds of issues that Mr. Gantefer has mentioned, and then proceed on the basis of what we hear, to do what more, if anything, we need to do.

The Chair: — If you are finished, Mr. Tchorzewski, I'll recognize Mr. Hillson.

Mr. Hillson: — Yes, I think the debate is certainly one of mechanics and not of principle. We are all in agreement here that, in order to complete our work, we are in areas which require specialized expertise which none of us have.

I would just like to make the point that this would be no different of course, if we were in a public or judicial inquiry. I mean that too would be faced with exactly the same issue, that a judge is highly unlikely to have technical industry information. He or she would need some explanation from industry experts.

But in that regard I do have a couple of other issues that I think possibly could come from our legal adviser, but that I think are required for us to complete our work. The first is that the legal adviser, in his opinion he filed with us last week, talked about deprivation or loss. Now of course the position taken by a number of witnesses at this inquiry is that there has been no deprivation or loss for the simple reason that Channel Lake was ultimately sold for market value.

That in turn raises the question as to whether we had an agreement prior to March 31. Was there anything legally binding prior to that date or is the only agreement before us in a legal sense the signed document, in order to say, say that there has been some loss or deprivation here. Or is it simply a case, as some of the witnesses have suggested, that we got full market value and that is the end of that.

There is also, I see, the issue, and this may be premature but it will clearly come up before us: is working for Direct Energy and not disclosing that to SaskPower while still being paid by SaskPower, is that a conflict of interest? And I think we are going to need some expert opinion on that.

Another issue that, if you are making a report, Madam Chair, to the House, I would like to raise for you now, and that is: we have been told that minority reports are not allowed from committees. I think it's quite clear that there will have to be minority reports here and I am told by the Speaker's office that can be accomplished in one of two ways, and I defer to my colleagues on the committee in that regard.

One is to simply ask leave of the House, in which case we're not changing the rules of the House, we're simply saying for this occasion only, minority reports be allowed. And the other is, the House Rules Committee could be called into session to deal with the issue of whether the rules ought to be changed. And that would . . . of course, there'd be an ongoing rule change as opposed to for this occasion only.

And the last thing I would very quickly like to flag is that there have been a number of undertakings given during the course of the testimony. And I would simply inquire if the Clerk's office is keeping track of these undertakings and what follow-up is being done to ensure that the undertakings are coming back to us in timely fashion.

The Chair: — Mr. Hillson, I have allowed you extremely wide latitude in speaking to the motions before us, which are the question of the discount rates and the long-term gas supply contract. Part of the reason I allowed you that latitude was because I also want to indicate as Chair that we have received an opinion that was commissioned by Mr. Messer from the firm of Milne & Associates, I believe, that was a comment on gas arbitrage.

And it may be that the committee members at a certain point will also be wanting an additional opinion on the gas arbitrage issue. Or it may also be that if you choose to affirm Mr. Gantefer's motion regarding the long-term gas supply contract right now, that we could also discuss with the people, the experts that we contract with, to see if they have that expertise as well.

Mr. Gantefer, did you have any closing comments before we put the motions? As I hear it, it appears that your motion with respect to long-term gas supply contract is likely to be agreed to. And the other one, I think I was sensing that there was a desire that you would withdraw it, pending the testimony from Gilbert Laustsen Jung.

Mr. Gantefer: — Thank you, Madam Chairman. If I may, I certainly detected that there was the underlying support on both

motions for the intent of what we needed to accomplish. On the first motion, the one before us, I understand that there will be support for that motion to proceed at this time.

In terms of the second motion, I've heard the comments that were made in terms of the agreement that we should, before we perhaps consider this motion, that we bring the Gilbert Laustsen people before the committee to determine if they can provide the information that is indeed agreed to. I think in principle that is required and if they are unable to provide that information, then we could consider the motion that I have proposed.

So I am not sure which is the most appropriate way. I'm prepared to either have the second motion tabled until such time, or to withdraw it with the understanding that if we don't get the appropriate information then we will deal with it later.

The Chair: — Mr. Gantefer . . .

Mr. Gantefer: — So whatever is the best direction, I'm prepared to do it.

The Chair: — Okay, I would advise you that you can't table a motion before the committee . . .

Mr. Gantefer: — In committee — so that I can just withdraw it at this stage?

The Chair: — And in fact all you have done is give notice of the motion.

Mr. Gantefer: — So then I will not move it at this time then.

The Chair: — You haven't moved it at this time.

Mr. Gantefer: — I'll leave the notice on the agenda.

The Chair: — Yes.

Mr. Gantefer: — And then I just will not move the motion as this time, Madam Chair.

The Chair: — We already have another notice of motion from Mr. Hillson that we're dealing with in the same manner.

Mr. Gantefer: — Thank you.

The Chair: — Okay, so the question then has been called on the one motion before us, that being the matter of the long-term gas supply contract. All those in favour of that motion, please indicate. It's been a long day. Anyone opposed? No. The motion is unanimous.

All right, before we, before we adjourn, may I seek committee guidance. Is it agreed that the Chair will be seeking out the expert opinion on this in consultation with the legal adviser and I will also consult with all parties on that? Okay.

Mr. Gantefer: — The understanding is that if anyone has some suggestions of people who may have the credentials, that they be offered to the Chair.

The Chair: — Yes. All right. Thank you. Now what we need is

I need a motion to move the draft of the Standing Committee on Crown Corporations fifth report that I will present to the House. If committee members could take it as read that clause 2 is not in that draft report. If I could have a motion to present this report to the House.

Okay, Mr. Shillington moves it. All those in favour please . . . (inaudible interjection) . . . Oh, discussion.

Mr. Hillson: — As I indicated earlier, if we are reporting to the House, I would like us to deal with the issue of minority reports. And as I said, I'm prepared to deal with it on either basis. Either by leave, which is an exception for this occasion, or by a request that there be a House Rules Committee convened to deal with the rules change.

But I do wish that this be done in one form or the other. And I'd like to hear from other committee members as to which format they would like to put it on.

Mr. Tchorzewski: — Can you . . . Well no, I think I know. No, I think, let's . . . I think we shouldn't deal with this at this particular time. I think as we approach the conclusions of the work of the committee, there will be ample time to address that question.

I know Mr. Hillson's concern. I understand it. But I think we now have a motion and a report which we're taking to the legislature. It is our view we should do that. I think we need to have maybe a longer discussion about how the final report should come together rather than dealing with one small aspect of it, although it's not small to Mr. Hillson. So I would suggest we don't deal with it at this time and leave it to another day.

The Chair: — I would just like to point out to committee members that there are several outstanding issues. The question of the drafting of the report to the House is one. There's also the question of the ordering of the witnesses and so forth.

It seems to me that we have probably reached the stage in our proceedings where once we hear from Mr. Portigal, that the committee may wish to have an in camera meeting to deal with all these outstanding issues. And we can certainly deal with the question of minority reports or dissenting opinions, the mechanics of the report, at that time.

My suggestion to committee members is that we deal with the report dealing with the long-term gas supply contract at this point and that I consult with all of you and arrange some time within the next couple of weeks for us to have an extended in camera meeting to discuss any and all of these issues.

Mr. Hillson: — Madam Chair, if we're going to have an open, a full discussion in the near future, I'm certainly content with that. I didn't like Mr. Tchorzewski saying that we'd deal with it at the end of the inquiry. I'd like it dealt with fairly promptly, but having said that, I'm prepared to abide by your . . .

Mr. Tchorzewski: — I misspoke myself.

The Chair: — It's only a suggestion, but I think that it might make it a little easier.

The question has been called on the vote on the content of the fifth report. All those in favour of the report? That is carried unanimously. Could I have a motion to adjourn?

Mr. Hillson: — Madam Chair, one last thing.

The Chair: — Oh, I misspoke myself, didn't I.

Mr. Hillson: — I did raise the question a minute ago: is the Clerk tracking undertakings and are they coming back to us? What are we doing to track undertakings?

The Chair: — She definitely is tracking undertakings, and that was another matter that I thought that we could deal with in the in camera meeting.

Are there any further matters to be put to the committee at this time? I have the motion of adjournment from Mr. Trew. The committee is now adjourned. We will meet again 9 o'clock, May 12.

The committee adjourned at 12:28 p.m.