



Standing Committee on Crown Corporations

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**STANDING COMMITTEE ON CROWN CORPORATIONS
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Channel Lake Petroleum Ltd.

The Chair: — We will resume our special hearings into the Channel Lake circumstances. I would first of all like to advise committee members that Mr. Trew will not be attending the meetings for the next two days. There has been a death in his family and so he will not be able to be present. Mr. Johnson, who is a regular member of the committee, will be sitting in his place.

Our item of business today and tomorrow is to hear testimony from Mr. Lawrence Portigal. And so following the customary committee procedures, what I will do this morning is swear in Mr. Portigal, and then begin rounds of questioning, and at approximately 10 to 12, if I, on a break, receive an indication from any committee members that they have any procedural items that they wish to deal with, we will stop with deliberations and deal with procedural matters. So I would appreciate it if at the break, which should occur at around 10:30, if committee members have procedural items they wish to deal with, if they would please inform me.

Mr. Portigal, before we begin to receive your testimony, I have a caution that I wish to read to you, and then I will swear you in. This is a standard procedure, Mr. Portigal, it's nothing different. If you would please pay attention to this standard statement by the Chair that I wish to read to you. And it is as follows:

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

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

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

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

And I will now swear you in.

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

Mr. Portigal: — I do.

The Chair: — Thank you very much. And again as is customary in this committee, we afford all witnesses the privilege of making an opening statement of whatever length

they choose and also a closing statement if they so choose. I have received copies of the opening statement from Mr. Portigal. I will ask the Clerk to now distribute it and then we will begin with the opening statement from Mr. Portigal and then we'll move into questioning by all three party caucuses.

All right, Mr. Portigal, if you're ready, would you please make your opening statement.

Mr. Portigal: — Thank you, Madam Chair. Good morning, Madam Chair. I'm here today to meet with you to attempt to assist the committee in determining what exactly happened with regard to the acquisition, management, and sale of Channel Lake Petroleum.

I was involved in most of the transactions that were undertaken in the acquisition of Dynex assets by Channel Lake, the management of Channel Lake, and the sale of the shares of Channel Lake from SaskPower to Direct Energy Marketing Ltd. I was also involved in and managed the gas trading activities of Channel Lake.

Initially I have to state that I have been somewhat hampered in my preparation for my appearance by the fact that my working files seem to have disappeared from SaskPower and haven't turned up in any of the document volumes that we've seen.

Background. I first contacted Mr. Messer in November of 1991 and introduced myself to him by letter. I stated that I had had considerable experience in fuel supply matters and felt that I could contribute to SaskPower by conducting a review of the fuel supply area.

During the spring and early summer of 1992, I had several discussions with Mr. Messer regarding problems in the fuel supply area, especially with respect to the coal supply contracts SaskPower had in place with Manalta Coal Ltd. and Luscar Ltd.

In July 1992, I received an invitation from Mr. Messer to submit a proposal to carry out a review of the fuel supply area at SaskPower. My initial proposal was detailed and is document CLP 15/42. Mr. Messer asked me to submit a brief, more general proposal which I submitted a day later.

He accepted it and it became the contract I was retained under until June 4, 1997, when the contract was terminated without payment or notice. The contract was for an initial term of six months and from month to month thereafter.

The contract was not full time, but required that I spend 150 hours per month on SaskPower activities. SaskPower and I agreed that I would continue to do work for persons other than SaskPower.

I was associated with the Balfour Moss law firm at the time and intended to return full time to my law practice when the fuel supply task force study was completed. My association with Balfour Moss ended September 30, 1993.

During the period from July 1992 to June '97 I continued to practice law and as well to perform consulting work in both Regina and Calgary.

During the term of the contract that I had with SaskPower, I was not and never became a part- or full-time employee of SaskPower. I was paid a monthly fee, plus an amount equivalent to benefits together with GST (goods and services tax) on these amounts.

My detailed proposal for a fuel supply task force focused on coal-related issues, and natural gas was the 15th out of 15 subjects of study. The month of August 1992 was spent organizing the people and gathering together mountains of material relating to the coal contracts.

In late August or early September 1992 a very serious problem with the natural gas supply was developing. Simply put, SaskPower was running out of natural gas and was being told by SaskEnergy that SaskEnergy could not, allegedly due to physical and technical constraints with their storage facilities, supply SaskPower with more natural gas.

You will have noted from the reports which have been prepared in this matter that SaskPower is a very difficult natural gas customer. For instance, see the recommendation to purchase the Dynex assets, document CLP 6/2. SaskPower uses natural gas as a swing fuel — “natural gas generation is the last generation turned on and the first generation turned off” — and as a result, SaskPower experiences needle peaks of demand.

SaskPower’s natural gas load factor is less than 20 per cent. Sellers of natural gas prefer customers of load factors of 80 to 100 per cent. SaskPower was therefore in a position where it had to go to the market for natural gas for the first time since SaskEnergy was created. There were no staff remaining within SaskPower who had experience in the gas market.

Owen Mickleborough, who at the time was director of fuel supply and was a member of the fuel supply task force, and Keith Rever, who at the time was the vice-president of production and transmission, met with me and requested me to see if I could obtain natural gas from the market. Among the companies we requested natural gas from was SaskEnergy.

Early natural gas trading activities. We were successful in obtaining the natural gas but, as happened many times over the years, SaskPower’s natural gas requirements changed. A portion of the purchased natural gas was injected into storage and the balance was sold, which is also known as trading to other parties. September 1992 was the first time since the establishment of SaskEnergy that SaskPower had bought and sold natural gas in the market.

The effect of this series of events was to bring to the forefront the problem SaskPower could have with its natural gas supply. SaskPower had the potential to be the second largest natural gas consumer, after Saskferco, in Saskatchewan. The fuel supply task force was requested by the SaskPower board of directors to review SaskPower’s natural gas requirements and to recommend how these requirements should be met in the future.

The fuel supply task force recommendation is document CLP 6/1 and was approved by the SaskPower board of directors in October of 1992. At the same time the fuel supply task force was reviewing the Poplar River coal operation and presented a lengthy report to the CIC (Crown Investments Corporation of

Saskatchewan) board in November of 1992.

The fuel supply task force was buying natural gas for SaskPower’s requirements and selling natural gas where it was contracted but not required for SaskPower’s immediate needs. Document CLP 9/8 states, and this is a quote but I won’t take responsibility for the wording of it:

The Task Force has approval from the President to sell 40,000 10³m³ of Alberta natural gas that we are currently purchasing from Luscar and SaskEnergy at prices above the (market) price. This excess gas, (and the words in here should be, which were not required for SaskPower) that we have contracted for (delivery), and do not require for generation between 1992 October 1 and December 31.

Acquisition of natural gas reserves. During November 1992, the fuel supply task force reviewed many property sale proposals. On December 2, 1992, the fuel supply task force recommended that SaskPower submit a non-binding bid of 43.3 million for the Sand Hills project owned by Precambrian Shield Resources, a subsidiary of Mark Resources Ltd. of Calgary. Document CLP 9/12 is the topic summary recommending the Sand Hills purchase; and document CLP 9/13 is the SaskPower board approval to purchase the Sand Hills property for up to 55 million.

The importance of this series of documents is that it represents a changing assessment of value as more knowledge is gained through due diligence. This is very similar to what happened in the SaskPower-DEML (Direct Energy Marketing Limited) transaction. However we were unable to close the Sand Hills project transaction because Enron Oil Ltd. were prepared to agree to certain price escalation terms which could have taken the price over 60 million. You will recall that our approval was for 55.

Acquisition of the Dynex assets. In the course of our review of all the properties that were available, the fuel supply task force had identified Dynex Petroleum Ltd.’s assets as a potential purchase. The Dynex assets were primarily interests in two substantially fully developed natural gas fields in the Medicine Hat area of Alberta. Dynex Petroleum owed approximately 65 million to the Bank of Montreal, which had been trying to realize on these assets since 1988.

In mid-November 1992 we entered into a confidentiality agreement with Dynex and commenced a series of meetings with Dynex on November 20, 1992.

After several months of meetings with Dynex officials and with officials of the Bank of Montreal, on March 8, 1993, SaskPower proposed to the Bank of Montreal that subject to receiving the required board and other approvals, to the negotiation and execution of acceptable agreements, to the receipt of a satisfactory independent engineering evaluation, and to a number of other conditions, SaskPower, either directly or through a subsidiary, would enter into an asset purchase agreement to purchase the Dynex assets for 25 million.

SaskPower indicated in the offer that it was willing to enhance the purchase price by up to \$5 million if Dynex could demonstrate an enhancement in value. In addition, SaskPower

was flexible regarding the type of transaction, subject to a purchase price adjustment.

The Bank of Montreal was directed to contact me if it wished to pursue this proposal. In a memorandum to J.R. Messer dated March 1, 1993 I had discussed the possibility of a share purchase versus asset purchase, and the result and effect of purchase price. In this case an asset value of 25 million would have been reduced to 15 million if the shares of Dynex were purchased.

On March 22, 1993 the fuel supply task force recommended the purchase of the Dynex assets and received a verbal approval from Mr. Messer. The Bank of Montreal indicated that it was interested in SaskPower's asset purchase proposal and proceeded to commission the independent engineering study which would have an effective date of April 1, 1993.

Owen Mickleborough and myself then travelled to Toronto for negotiating meetings with the Bank of Montreal and Dynex on the structure of the transaction. At the close of those meetings, I executed on behalf of SaskPower a letter of intent and a commitment letter between Many Islands Pipe Lines Ltd. and Dynex Petroleum Ltd. During the subsequent approval process these documents were before the SaskPower board, the CIC board, and cabinet. Not once was it suggested to me that I had exceeded my authority by executing these documents on behalf of SaskPower.

On April 22, 1993, by topic summary and subsequent SaskPower board resolution, the acquisition of the Dynex assets was approved. The approval contains the following statement:

The Board does not want SaskPower to enter the gas business beyond activities necessary to provide security of supply and predictability of price. Therefore the Board agreed the Corporation should dispose of any excess Dynex assets with deliberate haste.

This proviso has been widely misinterpreted as referring to natural gas trading activities. I was present at the board meeting and can verify that what the board was concerned about was the possibility that SaskPower management would get into the business of exploration and development of non-producing natural gas properties. Thus the board directed that the excess Dynex assets be disposed of with deliberate haste. I will return to this topic later in my statement.

Document CLP 9/26 is a detailed presentation made by myself and Mr. Mickleborough to the SaskPower board at the meeting and subsequently to the Crown Investments Corporation board. The Crown Investments Corporation approved the transaction on April 28, 1993. The transaction was later approved by cabinet.

The purchase transaction was very complex and the final adjustment did not take place until early in the spring of 1994. SaskPower used Many Islands Pipelines Ltd., an inactive Alberta subsidiary company which was renamed Channel Lake Petroleum Ltd., to purchase the assets. Both the SaskPower and the CIC boards had directed:

That SaskPower Corporation enter into an agreement with

a third party to manage the gas fields . . .

The Bank of Montreal had requested that SaskPower make an effort to retain the former Dynex Petroleum Ltd. employees. In order to avoid having unionized employees, SaskPower had made the decision that Channel Lake would not have employees of its own. Therefore Channel Lake retained Management Ventures Inc., a company made up of the former Dynex employees, to provide management, accounting, land, and field operating services with respect to the properties. I should mention that all the properties were in Alberta, with one minor property in B.C. (British Columbia) which wasn't operated by Dynex.

At that time I assumed the duties and the responsibilities as general manager of Channel Lake. The Channel Lake operation was well run, had an excellent staff, both in Regina and Calgary, and generated significant profits for SaskPower. From April 1, 1993, the effective date of the acquisition of the Dynex assets, to January 1, 1997, the effective date of the sale of the Channel Lake shares to DEML, SaskPower received approximately \$11 million.

SaskPower removed the cash from the Channel Lake bank account daily and consolidated it with SaskPower cash. This is reflected in the 1996 audited financial statements of Channel Lake. They indicate that at December 31, 1996, SaskPower had received approximately 11 million in cash from Channel Lake which was shown as an amount due from SaskPower in the Channel Lake accounts.

Natural gas trading activities. Due to the large number of matters which had to be completed in order to get Channel Lake up and running and to get the acquisition transaction closed, it was several months before SaskPower turned its attention to how Channel Lake would operate on an ongoing basis and what would be its mandate.

In January of 1994, Mr. Messer retained David Dombowsky to review the natural gas activities and to recommend a structure for ongoing activities. The Dombowsky report recommended that the natural gas supply functions within SaskPower be divided between the operational functions, which would remain with SaskPower, and natural gas commercial functions, which could be managed by Channel Lake. The commercial functions included the purchase and sale of natural gas and the utilization of SaskPower's sunk costs such as prepaid storage and pipeline transportation in a manner that would generate revenues and thus effectively lower costs to SaskPower.

SaskPower decided that the commercial functions would be best handled by a standalone subsidiary which could operate more flexibly because it would be outside of the SaskPower bureaucracy. Channel Lake was ideally suited to carry out these commercial functions. SaskPower's natural gas supply management functions would be undertaken by Channel Lake subject to the terms of a natural gas supply agreement which was to be negotiated between SaskPower fuel supply and Channel Lake. These negotiations lasted several months and resulted in an agreement which was recommended to the SaskPower board of directors in October of 1994.

Channel Lake and SaskPower entered into the natural gas

supply agreement in November 1994. Among the provisions of this agreement was a paragraph allowing Channel Lake to borrow natural gas from SaskPower for use in Channel Lake's trading activities. One of the purposes of the natural gas supply agreement was to utilize for a profit, facilities, transportation, and storage that SaskPower was not using at any particular point in time.

Channel Lake had approval from both the SaskPower and Channel Lake boards for the trading activities, which included arbitrage. Both Mr. Messer and Mr. Christensen have confirmed in their testimony that there was authority for Channel Lake's natural gas trading activities.

Channel Lake's methods of operation were standard in the industry at the time and were constantly evolving. The bankruptcies which took place in late 1996, especially that of NESI Energy Marketing, were unanticipated by the industry in general and caused serious losses to a large number of companies, including Alberta Energy, Crestar, Shell, and even SaskEnergy, as is shown on the list of creditors.

During the time that SaskPower was consuming large quantities of natural gas, the natural gas supply agreement provided sufficient revenue for Channel Lake to be self-supporting as a business unit. However, when water was plentiful and the hydro and coal facilities could be run at full load, then natural gas was not required and revenue was insufficient. This led to a significant increase in trading activities as demonstrated from some of the reports you have received.

Sale of Channel Lake. I was not aware until mid December of 1996 that SaskPower had decided to sell Channel Lake. At about that time, Stampeder Exploration had indicated to me an interest in purchasing the Channel Lake assets in order to resolve a right of first refusal dispute. Partly due to this realization and partly due to audit requirements, I requested Gilbert Laustsen Jung to carry out an independent engineering valuation of the Channel Lake assets.

On January 13, 1997, I was invited to lunch with Ken Christensen and one of his staff. At the lunch I was informed that SaskPower finance was submitting a recommendation that very afternoon to the SaskPower board to sell the Channel Lake assets into a royalty trust. I understood from the discussion with Mr. Christensen that SaskPower finance had been looking into this possibility for several months. I was not invited to attend the SaskPower board meeting, nor was I advised of the results until far later in the process. I indicated that I would assist in whatever way they felt was needed.

On February 17, 1997 in a meeting with Mr. Christensen and Mr. Murray Black of SaskPower finance, I was informed that SaskPower finance had again gone back to the SaskPower board and this time had received a broad approval to sell Channel Lake.

I had not been consulted regarding the recommendation and was not invited to attend the SaskPower board meeting. I was informed by Mr. Christensen that SaskPower finance had been seeking potential purchasers but had been unsuccessful in receiving an offer which could be recommended. I was requested by Mr. Christensen to seek out potential purchasers

and solicit proposals.

While I do not recollect receiving a copy of Mr. Christensen's handwritten statement of goals for the sale of Channel Lake, which is document CLP 13/16, he certainly communicated them to me — especially the importance of having the transaction completed on or before March 31, 1997 to facilitate year end financial reporting.

That is, it was my understanding that SaskPower preferred to have the trading losses and the gains on sale to owner in the same fiscal year. Due to the time required to complete the purchase of Dynex assets, which I've mentioned was approximately 14 months, SaskPower decided that it would attempt to elicit a share purchase proposal rather than an asset purchase proposal in order to have the transaction completed by March 31, 1997.

It is fundamental to an understanding of this transaction — the Channel Lake-DEML transaction — that the differences between a share and asset sale are understood. In an asset transaction one only has to look at the assets in order to determine value or worth. In a share transaction the purchaser is buying a balance sheet, and the state of that balance sheet is of fundamental importance to the value or worth.

There was not enough information in the form of audited financial statements and accurate calculations of trading losses until after March 31, 1997 regarding the Channel Lake balance sheet which would enable anyone to establish, with certainty, any value other than an asset equivalent value.

For example, SaskPower removed all of the cash from the company on April 2, 1997 — the day before the sale transaction closed and one day after SaskPower management had signed the papers. If SaskPower had not removed the 11 million, there would have been a significant working capital adjustment in favour of SaskPower on May 31, 1997 when the transaction was concluded.

However at December 31, 1996, Channel Lake had a working capital deficiency of 2.2 million. By March 31, 1997, Channel Lake had a working capital deficiency of 3.2 million. And at May 31, 1997, Channel Lake had a bank overdraft of 2.4 million and a working capital deficiency of 6.2 million.

On January 24, 1997, the independent engineering evaluation prepared by Gilbert Laustsen Jung had been delivered to SaskPower showing an asset valuation of approximately 21.2 million at a 15 per cent discount based on proved plus probable producing reserves. The evaluation was later revised in a report dated March 7, 1997, but with effect from January 1, 1997, to reflect a reduction of approximately \$900,000 due to the Thunder property going to water.

Copies of these evaluations were delivered to SaskPower finance. In mid-January SaskPower finance received an offer from Management Ventures Inc., the management company that managed Channel Lake's Alberta assets, to purchase the Channel Lake assets. This offer was viewed with some considerable scepticism by SaskPower finance, and I might add myself, due to the Management Venture Inc.'s lack of financial wherewithal.

The companies that I approached at Mr. Christensen's request were TOM Capital, Stampeder Exploration, and Direct Energy Marketing — all of whom indicated an interest in purchasing the assets. I met with each of these organizations and provided each with a copy of the Gilbert Laustsen Jung report together with an explanation of the Thunder property value reduction.

I indicated to each party that SaskPower wished to complete a transaction as expeditiously as possible and preferably before March 31, 1997. In addition I advised that a share purchase proposal would be looked at favourably by SaskPower. Each party was also advised of the then current estimate of the amount of the trading losses, which at that time had been estimated to be 5.2 million based on the then current gas price forecasts.

I also advised each party that there would be sufficient current assets in Channel Lake to fund the trading losses and that SaskPower did not expect that a purchaser would assume these liabilities without an offsetting value in Channel Lake.

The DEML proposal. The DEML proposal was dated February 28, 1997 and was delivered to Mr. Messer on March 4, 1997. Immediately after receiving the DEML proposal, Mr. Messer telephoned me at the Channel Lake Calgary office and indicated that he was faxing it to me for my urgent review. I reviewed the DEML proposal and telephoned Mr. Messer to indicate that I thought it was worth exploring.

At Mr. Messer's direction I arranged to meet with Mr. Owen Mitchell of First Marathon Securities Limited on March 6, 1997 in Toronto, and Mr. Louis Dufresne of Direct Energy Marketing Limited on March 7 and March 10, 1997 in Calgary, to discuss the DEML proposal.

At the meeting with Mr. Mitchell I provided him with a revised Gilbert Laustsen Jung independent engineering evaluation which he told me was going to form the basis for the OPTUS-DEML financing for the transaction. Following those meetings, I understood that what DEML was proposing was an asset equivalent transaction based on a \$500,000 premium to the 20.3 million value stated in the Gilbert Laustsen Jung report.

Following my return to Regina late in the day on March 10, 1997, I met with Mr. Christensen and Mr. Black, and explained my understanding of the DEML proposal, which was that it was for an asset equivalent value of 20.8 million. I then wrote a memorandum of March 11, 1997 to Mr. Messer stating that:

It is my view that the offer is reasonable but not generous.

I also stated that:

In addition it represents the only real option SaskPower has to achieve a sale of Channel Lake prior to the tabling of SaskPower and Channel Lake statements in the legislature.

I did not recommend accepting the Direct Energy Marketing Limited proposal. Mr. Christensen and I met with Mr. Messer briefly to discuss this recommendation, and Mr. Messer agreed with the proposed course of action. The memorandum of March 11, '97 was the basis for Mr. Messer's March 12, 1997 letter to

DEML which stated that:

We have completed an initial review of your offer. We are not prepared to accept it but believe that it could form the basis of an agreement subject to a number of additional conditions. We would like to commence negotiations with you with a view to reaching an agreement satisfactory to both parties prior to March 31, 1997, subject to necessary internal and external approvals.

If you are willing to proceed on this basis, I would ask that you contact Lawrie Portigal. I have directed Lawrie and other SaskPower officials to proceed with these negotiations and, hopefully, completion of an agreement, as expeditiously as possible.

I personally delivered the letter to Mr. Dufresne on March 13, 1997. At the same time and at the request of SaskPower finance, I obtained from DEML the execution of a confidentiality letter.

I was at no time under the impression that DEML was proposing to pay \$5.7 million above the 20.3 million asset value stated in the independent engineering report. If I had, I would certainly have recommended that SaskPower accept the DEML offer and move forward from there, and I would have characterized the DEML proposal as: "generous, SaskPower should accept it immediately."

Direct Energy Marketing Limited was the only party at that time willing to try to accomplish a share transaction. The basis of the transaction was that it had to be structured in such a way that on an asset equivalent basis, the price was and would remain 20.8 million and that the responsibility for the trading losses would remain with SaskPower. At no time was it ever suggested that the responsibility for funding the trading losses would be assumed by any of the potential purchasers, including DEML.

In my memorandum of March 17, 1997, I compare the proposals that were before SaskPower at the time, and indicate that:

TOM Capital Associates Inc. - has offered \$24.2 million subject to the successful completion of an initial public offering of a new royalty trust. While this offer appears to be better than OPTUS-DEML offer, it requires SaskPower to take the risk that the royalty trust may not close or may not sell at the proposed price. In addition SaskPower would have to agree to stand still on the sale for 60 to 90 days.

It is apparent that I recognize that the DEML proposal was below 24.2 million. On June 20, 1997, Ken Christensen prepared a comparison of offers and reached a similar conclusion. Now I might add that the TOM Capital royalty trust never was completed.

The proposal from DEML did not state that any potential agreement for the sale and purchase of shares would contain a working capital adjustment but it did say that it was subject to normal business conditions. Normal business conditions would always include a working capital adjustment or a zero balance sheet warranty. The proposal from DEML was also subject to a

number of other conditions including due diligence, which is a review conducted, by a purchaser, of operating reports and financial statements to ensure that fair market value is being achieved.

Draft no. 1. I received the first draft of the share purchase from Mr. DeLuca on March 18, 1997. I delivered one copy to Mike Hurst at Milner Fenerty, and briefly outlined the changes that would be required in the second draft, such as changing the effective date and thus the purchase price. I asked Mike Hurst to provide copies of everything directly to Larry Kram and told him that Kram would be contacting Hurst directly shortly to arrange a formal retainer agreement. I had previously spoken to Hurst, I believe on March 10, and asked if he was willing to act on behalf of SaskPower in this matter.

The natural gas supply management agreement was being negotiated the same time as the note and share purchase agreement. On March 20, 1997, Direct Energy officials met with SaskPower fuel supply and Channel Lake to discuss the proposed natural gas supply management agreement. Direct Energy Marketing Limited had been provided with a copy of the existing natural gas supply agreement between SaskPower and Channel Lake in order to indicate what would be acceptable in terms to SaskPower.

Much has been said about the Sunday, March 23 meeting which I attended and which was also attended by Christensen, Kram, and other SaskPower finance personnel to discuss the transaction. In the March 23 meeting, I said repeatedly that DEML was to pay 20.8 million on an asset equivalent basis — no more, no less. I stressed that no matter how the transaction was structured, at the end of the day, DEML was not willing to pay more than 20.8 million. In retrospect it seems clear that there was a fundamental misapprehension or miscommunication between myself and SaskPower finance with respect to the purchase price and how the purchase price related to the trading losses.

I at no time represented the 20.8 was to be a net price with DEML bearing the trading losses. While some items might be confusing, there is no representation from Direct Energy Marketing Limited that would accept the SaskPower liabilities without a clear means or obligation for SaskPower to fund such liabilities. In addition it was impossible to identify a fixed price unless, at this particular point in time, unless the price was on an asset equivalent basis.

Following the March 23, 1997 meeting Mr. Christensen sent me a memorandum, document CLP 14/23, which was intended to clarify the flow of funds. I noted that the memorandum did not deal with the trading losses. I did not understand the memorandum to state that the 20.8 million had now become the net price with Direct Energy assuming the trading losses.

The \$5.2 million estimate of trading losses was just that — an estimate. Mr. Christensen and others were totally aware of that fact. All of the SaskPower management involved in the transaction had received a copy of the SaskPower internal audit report dealing with Channel Lake's trading activities dated January 22, 1997, document CLP 12/40, which estimated the trading losses as being in a range from 9.4 million to 20.9 million, with the most likely number being 10.9 million based

on gas price forecasts of January 22, 1997.

Nobody inside SaskPower had any reason to expect the 5.2 million was the number at March 23; 5.2 million was simply the number at the end of February.

Draft no. 2. On March 24, 1997, Mike Hurst of Milner Fenerty provided Mr. Kram and myself with a marked-up version of the first draft together with a covering letter.

I travelled to Calgary on March 25 for meetings with DEML and its solicitors and Mr. Hurst of Milner Fenerty. On March 25, 1997 I met with Mr. Hurst briefly to discuss his mark-up of the first draft. And then we went to the Burnet Duckworth offices where we met with Mr. DeLuca.

On March 26, 1997, shortly before leaving for Regina, I received draft 2 from Mr. DeLuca. Now this particular date is fairly important because I only received draft 2 on the afternoon of March 26. The Channel Lake board meeting was the afternoon of March 26 and the SaskPower board meeting was the morning of March 27. The second draft had not been circulated at the time of the board meetings.

The second draft was very preliminary, contained no schedules whatsoever. The second draft reflected a purchase price of 26 million with an effective date of January 1, 1997. While the first and second drafts of the note and share purchase agreement contained adjustment provisions respecting the trading losses, they did not contain working capital adjustment provisions, as is normal and expected in this type of transaction and was identified as being required by outside legal counsel, Mr. DeLuca of Burnet Duckworth and Palmer for DEML and Mr. Hurst of Milner Fenerty for SaskPower.

The finalized statements of Channel Lake were not finalized by SaskPower finance and the external auditors, Ernst and Young, until late in March 1997. The amount of the trading losses had not been determined or scheduled to the satisfaction of either party prior to March 31, 1997. In fact the amount of the trading losses could not be determined with certainty until the open positions were closed and there was assurance that no more bankruptcies would occur among the parties with whom Channel Lake was trading.

Basically it was impossible to actually come to a firm number on the trading losses until after December 1, 1997.

Board approvals and topic summaries. On March 25, 1997, I drafted the topic summary, document CLP 15/13, which refers to an asset equivalent price of 20.8 million and refers to the trading losses.

The topic summary was redrafted by Mr. Kram and Mr. Christensen to remove the reference to trading losses and to refer to the price as a "total price." The only interpretation that could logically be placed on this recommendation and subsequent approval was that this was an asset equivalent price and the trading losses were to be dealt with by some other mechanism.

In other words, the trading losses would remain a SaskPower responsibility but the means of dealing with such trading losses

was yet to be determined.

On March 26, 1997 I had taken an early afternoon flight from Calgary to Regina expecting that the Channel Lake board meeting would take place the next morning. Moments after landing I received a telephone call from my office indicating that the Channel Lake board wished to meet as soon as I returned to the office.

The Channel Lake board met at about 5:15 p.m. on March 26, 1997 and approved the transaction. I was not presented with a copy of the revised topic summary until the next morning at the SaskPower board meeting. The SaskPower board met by conference call early the next morning and also approved the transaction.

Later that day, I met with Kram and Christensen to review comments on draft 2. I indicated that I was travelling to Calgary for a Saturday meeting and asked them if either of them would attend. Both apparently had other commitments.

Easter weekend. On March 28, 1997, while driving from Calgary . . . from Regina to Calgary, I received a series of telephone calls from Mr. Drummond in which we discussed the second draft of the share and note purchase agreement which had been delivered to SaskPower on March 26, 1997. Mr. Drummond felt that the mechanism providing for the price determination in the draft agreement was flawed. It did not make any sense. He suggested using the asset equivalent price as the base price; some mechanism would have to be developed to deal with the trading losses.

In addition, with the recent run-up in natural gas prices, Drummond felt that the \$5.2 million number for the trading losses was probably low and requested that I provide Louis Dufresne with detailed backup for the calculation. I agreed to do so but said it would probably not be delivered until April 1, 1997 unless I could get someone to work over the weekend on the calculation.

I met with Mike Hurst for approximately two hours on Saturday, March 29, 1997. We reviewed the situation in some detail, especially the matter of the trading losses and the working capital adjustment. He had had a discussion with Mr. DeLuca regarding Mr. DeLuca's discussions with Mr. Drummond. I indicated to Hurst that my understanding was the same as Drummond's, and thus we should try to work out a method to incorporate this in draft 3.

Hurst and I then met with DeLuca for several hours to try to create a third draft that would reflect these concepts. DeLuca completed draft 3 on Monday, March 31, 1997.

Draft no. 3. According to Mr. DeLuca's record, the third draft of the share and note purchase agreement was faxed to the Channel Lake Regina office mid-morning on March 31, 1997.

At my request, the staff at the Channel Lake office at the SaskPower building in Regina had set up a procedure that when documents relating to this transaction were received, they were immediately copied and hand-delivered to Messer, Christensen, Patrick, and Kram. There is no doubt that this document, being draft no. 3, was received, as it is document CLP 15/1 in the

binders in these proceedings.

I can only speculate as to why it was apparently not circulated in a normal manner. My view is that since March 31, 1997 was Easter Monday, a SaskPower holiday, and since the next draft, which was prepared on March 31 in the afternoon, arrived by courier before 9 a.m. on April 1, 1997, that only draft 4 was circulated.

Early in the morning of April 1, 1997 I prepared my April 1, 1997 memorandum which highlights the significant changes made "since the first drafts were circulated." This memorandum was hand-delivered to the addressees by Channel Lake Regina staff shortly after 8 a.m. on the morning of April 1, 1997. This memorandum clearly sets out the changes from the second draft.

The SaskPower closing. A meeting to execute the documents was held in the fourth floor conference room in the SaskPower building. The documents that were executed were not stapled and did not contain at least two very important schedules, being the financial statements of Channel Lake and the schedule of contracts giving rise to the trading losses.

As I mentioned earlier, in a share purchase and sale transaction, the item being purchased is the balance sheet of the company, in this case Channel Lake, which item was not available at the time SaskPower executed the documents.

The meeting was pleasant and cordial with no questions being asked relating to the documents or the state of the negotiations. I indicated that I would be travelling to Calgary later in the day and the closing was scheduled for 10 a.m. on April 2, 1997 at the offices of Burnet Duckworth and Palmer.

While the documents were being executed, the Channel Lake staff were preparing the trading loss information which was then faxed to DEML in a series of faxes dated April 1, 2 and 3.

I believe that DEML were, for whatever reason, under the impression that the trading losses had been closed and capped at 5.2 million. When DEML did their own calculation on April 2 they reached a similar conclusion to that reached by SaskPower internal audit, that is that the trading losses were actually in the 10 to \$12 million range.

DEML refused to execute the documents at the closing on April 2, 1997 until some means was found to surround the trading losses. I met with Mr. Dufresne on the evening of April 2, '97 and we searched for a mechanism to achieve both SaskPower's and DEML's goals.

My memoranda dated April 2, 3, and 4 clearly indicate that I was encountering significant problems in getting the transaction closed, and that changes were being requested and being agreed to in the form of acknowledgement and other mechanical amendments flowing out of the acknowledgement. Each of these memoranda was delivered by hand to each of the addressees' offices. I received no response to any of my memoranda, which was not at all unusual and was consistent with past practice.

The amendments to the agreements which took place after the

SaskPower signing produced a result which was more favourable to SaskPower than its position before the amendments were agreed to. Previously SaskPower was responsible for all of the exposure relating to the trading loss contracts, and now that exposure was reduced by \$400,000.

The final executed documents were received from Burnet Duckworth and circulated approximately mid-April 1997 to the Channel Lake directors — Messer, Christensen, Patrick — and the Channel Lake secretary, Kram. The only questions I received relating to the documents were from Pat Hall, the SaskPower comptroller from SaskPower finance, and Larry Kram, the SaskPower general counsel — which questions generally related to the acknowledgement and its effect.

Once the transaction went into escrow, the deal was complete, other than the tendering of the balance of the purchase price and the satisfaction of the escrow conditions. At the release from escrow on June 2, 1997, I advised DEML that SaskPower wished to withdraw from the transaction. DEML officials expressed disbelief and advised that the escrow conditions had been met the previous Friday, May 31, 1997; therefore the transaction had been concluded.

Following a further discussion with Mr. Christensen in which I was instructed to accept the Burnet Duckworth & Palmer cheque in the amount of 15 million, which was tendered on behalf of DEML, I accepted the cheque on behalf of SaskPower. I delivered the cheque to SaskPower finance in Regina the next morning.

Authority. From the very beginning in July 1992 when the fuel supply task force was established, there was no clear definition of authority. Mr. Messer made it clear to me that when he delegated a matter, he wanted it carried out. This meant that when a project was delegated to either the fuel supply task force or Channel Lake, we were expected to carry it out with little or no supervision, support, or involvement from anyone at SaskPower.

I was comfortable with this mandate, carried out the matters delegated, and reported on their progress and completion. I came to expect no response to my reports unless there was disagreement with the course of action I proposed to follow or there was a change in instructions.

Mr. Messer has testified before this committee that I had the authority to carry out and complete all matters which he delegated to me.

Conflict of interest. Before I conclude this statement, I wish to deal with the matter of an alleged conflict of interest on my part. Simply put, there is no conflict of interest.

As I stated previously, during the almost six years I was engaged by SaskPower, I was not and never became an employee, whether full- or part-time. At all times I was a consultant with other clients and other responsibilities.

During the entire period from January 1, 1997, the effective date of the transaction, to June 1, 1997, I continued to manage the ongoing operations of Channel Lake, and as well carried out my instructions to negotiate an early and advantageous sale of

the company.

After January 1, Channel Lake was being operated for the benefit of whoever ended up owning it. As it turned out, that was DEML. But if DEML had failed to come through with the funds, Channel Lake would have reverted to SaskPower. It was essential that the value of the asset be maintained during these months.

Although the major portion of my work for SaskPower was the management of Channel Lake, my fee was paid by SaskPower. This was really a technicality because SaskPower arranged matters so that Channel Lake had no employees. However, from January 1, 1997, my consulting fees were charged back to Channel Lake as an expense to that operation.

At no time during the negotiations for the sale of Channel Lake did I fail in my responsibility to secure the best possible deal for SaskPower. DEML conducted thorough due diligence, but none of the precautions they took were at my suggestion.

I was aware that Direct Energy Marketing Limited had indicated to Mr. Messer and stated in its offer that it would attempt to retain as many CLP (Channel Lake Petroleum) staff as possible. That awareness was the extent of my relationship with Direct Energy before April 29, 1997.

On April 29, 1997 I entered into an arrangement with DEML that if the acquisition was completed, I would continue to be the general manager of Channel Lake. I went on the Channel Lake payroll on July 1, 1997. Direct Energy Marketing Limited, through Channel Lake, retained all of the Medicine Hat-based field staff and most of the Calgary office staff. None of the other Regina staff desired to move to Calgary due to family commitments.

My plan and my agreement with Direct Energy was that I would work four days a week for Direct Energy and continue to work one day a week for SaskPower on coal-related matters.

In early May 1997 I made this proposal to Gary Douglas, who is SaskPower's fuel supply manager. He was considering it along with other options. It was clear to all involved that I no longer had a natural gas-related role at SaskPower once the sale was concluded.

After April 4, in response to the question, "What are you going to be doing once the transaction is complete?" I told Mr. Christensen that I hoped to be able to continue in my role with Channel Lake under the new ownership.

After the transaction went into escrow on April 3, 1997, the conclusion of the transaction was in DEML's control. All negotiations were concluded and the interests of both SaskPower and DEML became similar, if not identical, in achieving the conclusion of the transaction.

I was requested by Mr. Messer, by a memo dated April 7, 1997, to propose an ongoing natural gas supply organization for SaskPower. I made that proposal by a memo dated May 7, 1997. I did not include myself in the ongoing SaskPower natural gas fuel supply organization. I had some discussions with Gary Douglas regarding my proposals, but received no

response from anyone.

While the negotiations were being conducted I continued in my role as general manager of Channel Lake. By default, and as usual in matters concerning Channel Lake, I was responsible for transition matters. The last days I spent at SaskPower were spent dealing with the allegations and the assertions which have led up to this proceeding before your committee.

Conclusion. It is notable that by June 20, 1997, SaskPower management was aware of all facts regarding my continuing role at Channel Lake. By adopting the June 20, 1997 topic summary, and passing the June 20, 1997 board resolution, SaskPower ratified all of my acts and made academic any question related to my authority. In addition, by acknowledging that SaskPower received fair value for the property, the SaskPower board determined that SaskPower had suffered no damage or loss as a result of this transaction.

I carried out my instructions properly, kept all parties informed, and completed a most difficult transaction in an extremely limited time frame with little help and support. Again this was consistent with my experience at SaskPower. At the end of the day, SaskPower received fair market value in the Channel Lake sale.

I am prepared to answer your questions.

The Chair: — Thank you very much, Mr. Portigal. The hour is now almost 10 o'clock so I will recognize Mr. Gantefer for the Saskatchewan Party until 10:30, at which point we will take a 15-minute break.

Mr. Gantefer: — Thank you, Madam Chairman, and good morning, Mr. Portigal. Mr. Portigal, your opening statement was extremely detailed and very comprehensive. So I hope you'll appreciate that some of my lines of questioning may be duplicated in some of the information that you've had. So I'll try to avoid that but it may creep in.

You gave a pretty detailed description of your early workings starting, I believe in November 1991, with your relationship with SaskPower and Mr. Messer. I wonder if you would provide for us briefly some background on your résumé of . . . going back to the early '80s, 1981-82, all the type of employers and contracting firms and job descriptions you would have in that period of time.

Mr. Portigal: — Yes, sir . . . or yes, Madam Chair. I will refer the committee to document, I believe it is 18/2, CLP 18/2, which is my résumé. Not particularly up-to-date but at least it carried through to approximately 1997, I believe.

Mr. Gantefer: — Could you give us your relationship with Gary Drummond?

Mr. Portigal: — At present, or at what particular point in time?

Mr. Gantefer: — Where you first entered into a relationship with Mr. Drummond.

Mr. Portigal: — The first time I met Mr. Drummond was when he was counsel for the Barber Commission on the privatization

of SaskEnergy. At that time I was executive vice-president of SaskEnergy and I was in charge of the group that was looking after the moving forward of the privatization.

Mr. Gantefer: — And ongoing was . . . did you have any business affiliation with Mr. Drummond?

Mr. Portigal: — No, no business affiliation. But as the committee has heard, that after I left SaskEnergy and when I was working at Balfour Moss, Mr. Drummond approached me and asked me to incorporate a company for him, which I believe was — I don't remember the exact name of the company — but I think it was T.P. Energy Management Ltd. or something to that effect.

Mr. Gantefer: — In your opening statement, I believe in the second paragraph, you indicate that: my working files seemed to have disappeared from SaskPower. Would you mind elaborating on that comment.

Mr. Portigal: — Yes, Madam Chair. When I attended meetings, when I attend meetings at any time pretty well, I make notes of each meeting in handwritten form and I usually have files that contain those handwritten notes. And I have not been able to locate in any way, shape, or form my series of handwritten notes that would relate to these . . . to approximately my last two years at SaskPower.

Mr. Gantefer: — Were they located in the SaskPower-Channel Lake Regina headquarters?

Mr. Portigal: — Yes, they would be.

Mr. Gantefer: — In your office there or what system would you use for filing those kinds of memos?

Mr. Portigal: — Unfortunately there was not much of a system. It was just whenever the secretaries had time, they would try to prepare a file of those particular documents.

Mr. Gantefer: — Were these handwritten notes a thing that you kept, for example, in your desk in a binder? Were they in a hard-bound memo book or what type of files were they?

Mr. Portigal: — I kept generally a series of what you call expand-a-files, that try to keep each transaction separately.

Mr. Gantefer: — So you would anticipate that there would be one expanded file or more expanded files with these handwritten notes related to different activities and projects you undertook for SaskPower.

Mr. Portigal: — Yes, I would think that there'd be about . . . somewhere about 40 or 50 pages of handwritten notes.

Mr. Gantefer: — In more than one expanded file or would they all be in different sections of one expanded file?

Mr. Portigal: — No, essentially one.

Mr. Gantefer: — Sorry. Essentially one file?

Mr. Portigal: — Essentially one.

Mr. Gantefer: — Would it be your recollection that there were essential bits of information in those files?

Mr. Portigal: — I doubt that there's anything in those files that's any different than what we've already seen. Simply my comment was that it would have been easier for me to prepare if I had had them in front of me.

Mr. Gantefer: — Thank you. Prior to your negotiation with DEML, did you have any relationship with them or any predecessor companies of DEML?

Mr. Portigal: — Yes, Channel Lake bought and sold gas with DEML occasionally over the years. We bought gas from DEML back in . . . I think right at the very start in the fall of '92. And then every so often we'd buy from them; I believe the last transaction I'm familiar with, and I think it shows in the schedule D, was a buy/sell transaction that was done in December of '96 for about 5,000 . . . (inaudible) . . . a day.

Are you asking about a personal relationship or a gas . . .

Mr. Gantefer: — Personal relationships as well, yes. Both.

Mr. Portigal: — Sorry, no, I didn't have any personal relationship.

Mr. Gantefer: — Thank you. In your résumé — let me back up a bit — it's clear that you began doing a fair bit of trading or gas exchange activities with Channel Lake. In your résumé, what qualifications would you have that would indicate that you had the ability to engage in what would be, I imagine, a very competitive activity?

Mr. Portigal: — Well I had spent a couple of years at SaskEnergy and basically worked with the gas trading organization over there and essentially they reported up through to me.

Mr. Gantefer: — So you had oversight responsibilities for trading activities at SaskEnergy.

Mr. Portigal: — Yes, I did.

Mr. Gantefer: — Would you say that your trading activities would be cautious or aggressive, or how would you think the industry would assess your trading style?

Mr. Portigal: — I'll try to give you an answer that's responsive but it will be a little bit long. The gas industry only . . . the gas trading and marketing area only came into existence after deregulation in about 1987. So it was a very, very much an evolving process. So at the time I was at SaskEnergy the amount of actual trading that was being done, in the sense of there being an open gas market, was quite limited. That market gradually opened up over the two-year period, so by the time I left it was much broader than it had been.

The gas market then continued on, and I think you may have a . . . I haven't read it, but I understood that you received a submission on Mr. Messer's behalf outlining the history of the industry — that as time went on, there were more and more players in the industry. It started out very much as a large group

of small shops doing a lot of small volume trading. And has gradually grown today where there is now extremely large players and almost no small shops doing any trading. So the whole industry has changed completely.

Mr. Gantefer: — When the SaskPower board of directors initially established a mandate for Channel Lake Petroleum, was it, in your opinion, beyond security of supply and predictability of price?

Mr. Portigal: — Well that term, security of supply and predictability of price, is subject to many definitions. The purpose of Channel Lake was to provide security of supply, predictability of price, by being involved in the market so that SaskPower did not become solely reliant on SaskEnergy as its sole supply . . . as the sole supplier of gas. Because SaskPower was of the view that it had been paying over market price for the gas for some time.

So by getting into the market, they felt that they would have an offsetting source of knowledge on where the market prices were. So that sure, we kept, through the years, you can see through the history of transactions, we kept dealing with SaskEnergy. But as long as they were kept disciplined by the market, we'd get a reasonable price from them. So yes, it involves trading.

Mr. Gantefer: — I know we use SaskPower interchangeably, but it strikes me as there as there may be some difference between the SaskPower management and the SaskPower board because it seems that the definition you have just given was not necessarily understood in the same light by those two entities within SaskPower.

Mr. Portigal: — Well I tend to disagree with that. The board understood that we were buying and selling gas. The board approved, and I haven't got the exact reference, but there was a particular reference where I wrote a letter or requested from the legal department of SaskPower, an opinion about whether we had the authority to sell gas. We definitely had the authority to buy gas, but there was some question at some point, and I believe that was towards the end of '94, whether we had the authority to sell gas. And I believe we went forward to the board to clarify that.

There was no doubt in the approval. For instance, we had an approval to buy up to \$50 million of gas per year during the term of the natural gas supply agreement. SaskPower was only using maybe 10 to \$15 million a year most years. Obviously the balance of gas was going to be used for some purpose and there is no doubt that it was intended that it be traded.

Now I can get into a very detailed discussion of exactly what the problems were that SaskPower was facing and the very, very expensive charges they were facing with some costs. And the intention was that we were . . . Channel Lake was to try, through whatever means, in the sense of marketing and that sort of stuff, both . . . not only gas but marketing transportation and storage and parking and various other activities, trying to offset those very significant sub-costs that SaskPower had with respect to this storage contract that it was carrying with SaskEnergy.

Mr. Gantefoer: — Did Channel Lake not engage, beyond the requirements of buying for SaskPower's requirements and selling those surpluses, engage into the speculation arbitrage activity and only receive the authority for \$50 million of trading after the trading had already occurred?

Mr. Portigal: — Well some trading had already occurred, but timing, I don't think the timing is that significant. I would disagree that arbitrage is speculation. Arbitrage is simply a buy/sell situation. The risk in arbitrage is credit risk and up till the end of November 1996, the credit risk did not seem that significant.

Mr. Gantefoer: — But the activities of the buying and selling of gas certainly expanded beyond what SaskPower board initially expected because the authorizations had to be increased.

Mr. Portigal: — That's correct.

Mr. Gantefoer: — So in their original mandate they never expected that they would get into that level of trading?

Mr. Portigal: — I expect that's probably true because again you have to look at the mandate of Channel Lake as set up. Channel Lake was set up to be an independent business unit to carry itself. And as I pointed out in my opening statement, that's just fine as long as SaskPower is buying gas . . . or consuming gas. When SaskPower wasn't consuming gas then some other, related business had to found to support Channel Lake in order to meet the business unit concept of being self-supporting.

Mr. Gantefoer: — It seems that there were no audited financial statements which would also indicate to the board what was really going on in Channel Lake. Why was the reporting so unprofessional?

Mr. Portigal: — Well again, I beg to differ. The audited financial statements for the years . . . I believe for every year that Channel Lake was in operation after September 1, '93 are in the documents in some place. And we had a great deal of difficulty initially organizing the accounting between . . . with respect to the acquisition of the asset. And as I mentioned in my opening statement, it took us many, many months to get that straightened out.

There was some decisions made with respect to accounting and with respect to the 1993 audit which was that stub year audit from September 1 to December 31. That when the audited statements for '93 were produced and the auditors, both external, internal, and the accountants in finance and . . . in finance at SaskPower and the accountants in Channel Lake took a look at the thing, they said, oops, we may not have accounted for those things exactly right.

So there was a whole series of adjustments that had to be made relating to the 1993 stub year that again related to the acquisition. And part of it of course, was because the people in SaskPower finance and the people that we were working with had not been used to doing gas accounting for some years. And the gas accounting was a different animal.

Now we also had difficulty with the reporting system of the Calgary operation and it took some time to set that up properly.

Mr. Gantefoer: — In your opening statement, you mentioned a lot of events that transpired. However it's interesting to note that on a memo that you received from Jack Messer dated November 6, 1996, your contracts were terminated. Did you expect to lose your job?

Mr. Portigal: — Well quite frankly, I expected to lose my job on a month-to-month basis from the end of the first six months. So I didn't feel any . . . after I talked to Mr. Messer, I believe on November 12, and he indicated that the dates were floating, I thought we were back on the same, roughly on the same basis.

Mr. Gantefoer: — Roughly on the same basis meaning that you were still engaged or you were fired?

Mr. Portigal: — Oh, that I was still engaged on a month-to-month basis.

Mr. Gantefoer: — Why would he indicate to you that your contract was no longer required and you're . . . seem to be saying that six days later that that was reversed?

Mr. Portigal: — Let's just take a look at that letter of November 6, because it's an interesting document.

The Chair: — Mr. Gantefoer, for the record, would you please state the number of the document for us?

Mr. Gantefoer: — Sorry, I don't have that, Madam Chairman, right at my fingertips.

Mr. Portigal: — I believe it's 15/44.

The Chair: — Thank you very much, Mr. Portigal. Proceed, Mr. Portigal, if you're ready.

Mr. Portigal: — This is one of the more interesting termination letters I've ever received — I've received one or two in my lifetime — because it starts out and indicates that everything is not working well at all, and then it continues to indicate that in the interim I'm going to be required to reorganize or set up an ongoing organization for Channel Lake. But then I go to the second page of the memo, and I find out that I'm still required to do consulting services on into the future.

So, Madam Chairman, the memo was somewhat inconsistent and I didn't find it surprising at all when Mr. Messer told me in my discussion with him that the dates weren't firm, that essentially we continued on with business as usual.

Mr. Gantefoer: — Why would he even write the letter then, given the unusual nature that you've described?

Mr. Portigal: — I'm afraid you have to ask Mr. Messer that. I don't know why he wrote the letter.

Mr. Gantefoer: — He didn't indicate to you in the discussion that you had with him why he was — on the first page, as you've identified — not all that happy, and by the second page indicating he expected you to do further services for the

company.

Mr. Portigal: — I can't speculate what was in his mind, Madam Chairman.

Mr. Gantefer: — He didn't . . . in part of your discussion, that was not discussed?

Mr. Portigal: — That was not discussed.

Mr. Gantefer: — Did you at any time prior to that have any indication from Mr. Messer that he was unhappy with your services as seemed to be indicated in the first page?

Mr. Portigal: — No, not at all.

Mr. Gantefer: — So it came as a surprise to you other than the fact that this was a month-to-month contract?

Mr. Portigal: — That's correct.

Mr. Gantefer: — In the second page of that memo, was the additional services indicated, that he would care to have you be mandated to negotiate the sale of Channel Lake?

Mr. Portigal: — No, that wasn't contained in that memo at all.

Mr. Gantefer: — Was it contained in any of the discussions that happened on the subsequent meeting that you've indicated?

Mr. Portigal: — I can't tell you for sure whether it . . . I don't believe it was in that November 12 meeting, but it certainly had come to mind by the time I wrote a response to this memo, which was my memo of December 6. So at some time between the date this November 7 memo was written and the response that I wrote on November 6 — and my response is CLP 15/45 — I had become aware or had been approached by Stampeder or whatever, so the sale of Channel Lake was definitely a possibility at that point.

Mr. Gantefer: — But you don't recall if that was what was implied in the second page of Mr. Messer's memo, that he would have you engage in as a project for SaskPower.

Mr. Portigal: — No.

Mr. Gantefer: — In terms of filling out the mandate or the second page of the memo that said there'd be further activities, when did Mr. Messer indicate to you what that specifically may refer to?

Mr. Portigal: — Well he indicated to me that I'd hear from Rick Patrick very quickly as to what that referred to, and I heard sort of like later that afternoon or whatever it was, from Rick Patrick.

I think if you . . . maybe it would be useful if I just read that into the record because it doesn't refer to gas matters at all, it refers strictly to coal matters.

The Chair: — Go ahead.

Mr. Portigal: — This is the second page of Mr. Messer's

November 7, 1996 memo to me:

In addition to arranging for the transition of your Channel Lake responsibilities, I require that you provide some services which are more in line with what was contemplated when you were first retained. In that regard SaskPower requires advice in respect of the negotiations associated with the relocation of Prairie Coal's mining operations to the Costello mine. Rick Patrick will contact you immediately and provide instructions on the Prairie Coal matter.

Mr. Gantefer: — So in the memo, you understood that Mr. Messer was removing you from all of the gas type of activities and that there was a potential for you to continue on in some role in regard to the coal matters?

Mr. Portigal: — That's correct.

Mr. Gantefer: — And so you would indicate . . . Or would you take it to indicate that Mr. Messer's termination of your gas activities was some reflection about the way you conducted those activities?

Mr. Portigal: — No, not in the slightest.

Mr. Gantefer: — Then why would he dismiss you?

Mr. Portigal: — Again, I think you have to ask Mr. Messer.

Mr. Gantefer: — When the possibility of the sale of Channel Lake was first made to you, who first made you aware of that possibility?

Mr. Portigal: — Well it actually came up because, as I mentioned, it came up because we were in this dispute with Stampeder regarding these right of first refusal notices on the Channel Lake and Channel Lake south properties.

We had indicated to Stampeder that there was a possibility that for the right amount of money, we could back away from the right of first refusal notices, but Stampeder indicated that they felt that the notices were not proper and continued to issue a series of them.

What that led to was a fairly significant dispute that they were concerned . . . Let me just step back two paces. Stampeder were in the process of selling these properties into a royalty trust, called the Viking Energy royalty trust, I believe, and they were extremely concerned that this dispute between SaskPower . . . or Channel Lake and Stampeder would have an adverse effect on their marketing of that royalty trust.

So as one possible solution to this right of first refusal problem, they suggested that they might be prepared to purchase the interests. I then discussed that with Mr. Messer and received the response that yes, that finance had been considering that as well and really there was no reason why we shouldn't consider selling. And that was the first time I became aware of that.

Mr. Gantefer: — When did you then receive the mandate to negotiate that process?

Mr. Portigal: — Well again, as with many other items in the history of the time, the only reason I was aware that I was going to have the mandate to negotiate it was that I read the letter of March 12 and went forward from Mr. Messer to Direct Energy Marketing. There were no other particular instructions.

Mr. Gantefer: — There was no discussion that occurred between you and Mr. Messer prior to that, asking you to do it or suggesting how it would function or how it would work?

Mr. Portigal: — No.

Mr. Gantefer: — So you're telling me that from the time that Mr. Messer in essence fired you from the gas side of the relationship with SaskPower up until the time that he empowered you to negotiate the sale, there was no conversation or discussion with Mr. Messer and yourself about these matters?

Mr. Portigal: — Not about those matters particularly. I'd made some presentations to a board meeting, I believe on December 16, 1996. I'd had some discussions with Mr. Messer about coal matters, but as far as actual discussions regarding the sale of the property, no.

The only discussion I had with him relating to that, I think I mentioned in my opening statement, was the phone call of March 4 I believe, and the meeting that Christensen and I had with him on March 11.

Mr. Gantefer: — And at that time you received a mandate to proceed with the negotiations to sell Channel Lake?

Mr. Portigal: — That's right.

Mr. Gantefer: — At that time as well, was the . . . I think people have said that there was an aggressive time line, or I don't know what kind of nice words you want to couch it in, but it seemed to be clearly the interpretation of many people that have testified before this committee that March 31 was a very significant date.

Mr. Portigal: — Well I certainly was under that impression, and the term, aggressive time line, is very accurate. If you take a look at the sequence and when we actually got to sort of a first draft stage, and the time period between that and the time we closed the transaction, I don't think . . . I can't recall another SaskPower transaction that ever has moved quite that fast.

Mr. Gantefer: — In your conversations with Mr. Christensen or Mr. Messer, was the significance and the importance of March 31 discussed?

Mr. Portigal: — Other than the fact that it was significant and other than the fact that there was, as I mentioned again in my opening statement, some feeling that the reporting could be essentially one-lined, I'd say no.

Mr. Gantefer: — So that there's been testimony received that SaskPower simply regarded this as a target date. Would you say that they regarded it as something much more significant than a target?

Mr. Portigal: — Well I don't think it's wrong to say that it was a target date, but I think it was a significant target date, if you like.

Mr. Gantefer: — A target based . . .

The Chair: — Excuse me, Mr. Gantefer, if I could just interrupt for just a moment. Mr. Portigal, as you're aware, we do have live television coverage of this and we've also made arrangements with the print media that they can come in either just before or just after a break to take a few pictures. And the photographer is here now and so you may catch some flashes. I hope it doesn't interfere with the giving of your testimony.

Mr. Portigal: — Thank you, Madam Chairman.

Mr. Gantefer: — Thank you for the interruption, Madam Chair. In terms of your comment, you said that you believed that it could be one-lined in that the potential realization on the sale of the shares could be used to offset the trading losses due to the bankruptcies that occurred prior to that. Is that . . . Was that discussed?

Mr. Portigal: — Well I'm not an accountant, so I can't really say exactly what it was planned, but it was something to that effect, yes.

Mr. Gantefer: — Thank you. In terms of the sale, why was there not the possibility of going to an auction system? I understand that there are companies that specialize in this — Watrous, Kobiashi and Associates and people of that nature. Why was the process not handed over to that type of professional system?

Mr. Portigal: — Well again that question wasn't a discussion item that I had with anybody but I know that SaskPower finance had had preliminary discussions, I think as far back as October or November — and I think it's demonstrated by some of the documents that have been filed — with various financial houses regarding the possibility of a royalty trust. And I believe that they felt that there was more profit to be gained by going the royalty trust route than by going the sort of auction route. And by going that route the auction companies, as you may not be aware, require fairly large fees and there may have been a feeling that the fees could be better spent and realize more through a royalty trust. It would be extremely unusual to go through an auction or a marketing company for a share sale.

Mr. Gantefer: — Was there an indication of why SaskPower was also determined to go by route of a share sale as compared to an asset sale?

Mr. Portigal: — Oh, the only reason to go share sale rather than asset sale, as far as I could tell and I certainly was in on the discussions, was that there was a feeling that an asset sale could be completed much more quickly than — sorry, I got it backwards — a share sale could be completed much more quickly than an asset sale.

Mr. Gantefer: — You said when a share sale happens — in essence buying a balance sheet — would that balance sheet also then potentially be able to diminish the impact of the trading losses?

Mr. Portigal: — Well it could, right? The balance sheet can either enhance the value of the underlying assets or reduce the value of the underlying assets. It all depends what the status of it is.

Mr. Gantefoer: — But would the fact that there were trading losses incurred in the financial year under review, that they would end up being just part of a summary balance sheet figure rather than being identified as a specific problem?

Mr. Portigal: — In a company the size of Channel Lake, as far as Channel Lake financial statements went, they would be significant I believe for accounting purposes and they'd have to be mentioned.

Mr. Gantefoer: — Thank you. You mention that there was an asset evaluation undertaken by Gilbert Laustsen and they went through and identified the assets — and I believe from my recollection of the report — sort of identified a different loss or a different asset values and then also what the asset values may be given different discount rates?

Mr. Portigal: — That's correct.

Mr. Gantefoer: — Can you tell me what basis was used or was there a discussion held as to why a 15 per cent discount rate was decided upon?

Mr. Portigal: — Well 15 per cent at that point in time was approximately standard for a property acquisition, an asset property acquisition, on a fairly straightforward transaction. If you were able to roll an asset into a royalty trust you might possibly be able to justify a 12. When we first started out in the business of looking up properties back in '93, we were using 18.

So what was happening basically . . . What these percentages really translated to are multiples of cash flow; and what was happening was that where originally you could buy assets for somewhere between four and five times cash flow — in other words four times or five times an annual cash flow as a purchase price — royalty trusts were achieving somewhere in the eight times range. Now there is some material in the documentation that says that somewhere it should be nine. I'm not aware of anybody that achieved nine.

And so what that was doing was that it was gradually, as the market was getting pushed by the royalty trusts, the multiple was gradually pushing up. So we ended up having to move the discount in order to buy anything at all down from 18 to 15. This is looking at it from a purchaser's point of view. From a vendor's point of view, you'd certainly like to use a 12, but nobody will pay you the 12. They can't make enough money.

The Chair: — Mr. Gantefoer, could you wrap up your questioning now please?

Mr. Gantefoer: — Yes, thank you. Finally, in the general sense, in your contract up to this time with SaskPower — you indicate it was on a contractual basis — what were the main features of the remuneration you're receiving in those contracts?

Mr. Portigal: — I was paid \$10,000 a month plus 3,100 as an amount equivalent to benefits plus GST.

Mr. Gantefoer: — Thank you very much.

The Chair: — Thank you. The hour now being 10:30, the committee will have a recess until 10:45.

The committee recessed for a period of time.

The Chair: — I'll call the proceedings back to order and I will recognize the Liberal Party for one half hour, please.

Mr. Hillson: — Yes, Madam Chair. And, Mr. Portigal, if I may first of all direct you to page 5 of the statement you read into the record this morning, and I would direct you to one sentence on that page:

In order to avoid having unionized employees, SaskPower had made the decision that Channel Lake would not have employees of its own.

Can you tell us who made that decision that is was important for Channel Lake not to have any unionized employees?

Mr. Portigal: — That decision was made in a discussion between Mr. Messer, Mr. Mahoney, who was vice-president of human resources at the time, and myself.

Mr. Hillson: — I'm sorry, after Mr. Messer . . .?

Mr. Portigal: — Mr. Mahoney, who was there as vice-president of human resources of SaskPower.

Mr. Hillson: — And that was the direction you were given?

Mr. Portigal: — Yes.

Mr. Hillson: — To avoid having unionized employees?

Mr. Portigal: — Right.

Mr. Hillson: — Thank you. Sir, I believe I follow you that Channel Lake was initially established in order to guarantee security of supply and predictability of price for the natural gas of SaskPower.

Mr. Portigal: — You used the word, guarantee. I don't believe that's . . .

Mr. Hillson: — Well to provide, yes. I guess there are no guarantees in this world are there?

Mr. Portigal: — Right.

Mr. Hillson: — Correct. I agree with you, sir. And a necessary adjunct of that was to also sell on the market, because SaskPower's demands were so fluctuating.

Mr. Portigal: — That's correct — to buy and sell on the market actually. At times we, because again of the demand fluctuation, we weren't really able to lock in on an affordable basis, long-term supply. So we were basically going into a very

short-term market. Essentially the procedure was that we received a notification every morning at around 8 o'clock of what the daily burn was going to be, and we were responsible for providing it.

Mr. Hillson: — So getting involved in the outside market would really not have been required if SaskPower had had stable requirements, stable and predictable natural gas supply requirements.

Mr. Portigal: — That's not quite correct. The way the gas business has now evolved is that normally what you would do today is that you'd put together a portfolio of the various lengths of term of gas supply for your portfolio, but you'd still be leaving yourself with a certain amount that you'd want to be buying on short-term. So you wouldn't be totally out of the day-to-day market but considerably more out of it than you were with a 20 per cent load factor.

Mr. Hillson: — But basically the gas marketing would really not be required if you could predict with some certainty what SaskPower's demand and requirements would be in one month, and six months, and one year.

Mr. Portigal: — Well okay, if you could predict it with some certainty you might be able to avoid the gas marketing — yes.

Mr. Hillson: — Now, sir, I have a letter here from you dated July 14, 1997. I'd ask you to look at it and I have a question for you on that letter. It's being distributed by the Clerk now at this time.

Mr. Portigal: — I have the document.

Mr. Hillson: — Now of course the reference is to Dynex Petroleum Ltd. and Enchant Resources Ltd. Royalty. Dynex was the company that Channel Lake had acquired, that really got Channel Lake off the ground. Is that correct?

Mr. Portigal: — Channel Lake acquired the Dynex assets; it didn't acquire the company.

Mr. Hillson: — Assets, yes. And that was required to make Channel Lake a going concern — the acquisition of the Dynex properties?

Mr. Portigal: — No, I think you've got it slightly in the wrong order. The decision was taken by SaskPower to acquire the assets, and then we needed a vehicle to put the assets into and that's when Many Islands was revived and became Channel Lake.

Mr. Hillson: — Now, I'd refer you to the underlined sentence:

I can confirm to you that since September 1, 1993 (other than approximately 20 10³m³) no gas produced from the property has been sold directly or indirectly to SaskPower.

Mr. Portigal: — That's correct.

Mr. Hillson: — That's correct. And you wrote this letter on July 14, 1997.

Mr. Portigal: — I did.

Mr. Hillson: — Now my problem with that, sir, is that suggests that gas trading is not an adjunct to supplying SaskPower's needs — that SaskPower's needs appear to have nothing to do with the gas trading.

Mr. Portigal: — How much detail do you want?

The Chair: — Mr. Portigal, the witnesses have every right to take as much time as they wish to answer the questions as completely as they wish.

Mr. Portigal: — Thank you. When the Dynex assets . . . or when Alberta assets were acquired, the purpose of acquiring the assets was to provide a hedge. It wasn't necessarily to provide supply, because you do have this item between the supply and the point of consumption called transportation; and in SaskPower's case you have storage.

We found after we'd acquired the asset that the production . . . we could sell the production from the properties in Alberta. And either on an exchange basis which we had on a fair number of occasions or simply on a buy/sell basis, we were able to buy the same amount of gas back in Saskatchewan from a Saskatchewan producer, supply that to that same marketer or whatever in Alberta and make a spread of approximately 4 or 5 cents.

So by having the asset producing gas in Alberta, we were able to buy gas in Saskatchewan for about 5 cents cheaper. If we hadn't had the asset in Alberta, the gas would have cost us just that more. In addition to that we were able to sell the balance of the gas at reasonable prices in Alberta.

Mr. Hillson: — Okay. So you're saying there's nothing unusual that although Dynex was acquired to supply SaskPower, that in fact it's never been used to supply SaskPower.

Mr. Portigal: — No. I think that's a misapprehension, Madam Chair. The idea was that we would have a source that then could balance or provide us with gas in the sort of extreme situation where we couldn't get gas any other way. But as time's gone on, as I answered previously, the gas market has matured. Gas has become way more fungible than it was and there has developed actually a Saskatchewan hub for gas. So gas can be purchased there.

But we also found that there was a market that we weren't aware of at the time that we bought the Dynex assets. By being the purchaser of last resort, SaskPower was able to sit in the market, and in days where we didn't need the gas and some producer had to sell it, we were able to buy gas at a fairly significant discount to normal prices.

Mr. Hillson: — Okay. Although you do say that no gas produced from the property has been sold directly or indirectly to SaskPower. These are your words.

Mr. Portigal: — That's right.

Mr. Hillson: — Okay. Thank you.

Mr. Portigal: — Let me just elaborate again. This letter is written because one of the interest holders in this particular case, Enchant Resources, has complained to the trustee and bankruptcy of Dynex. And he's also complained — I believe there's an article in this morning's *Calgary Herald* about it; he's also complained to the world, there's a letter I think in the documents to the Premier about it — that because of the relationship between Channel Lake and SaskPower, that Channel Lake has been selling gas to SaskPower at much below market price and therefore he's been getting way lower than what he should be getting on his royalties.

So that's where this letter comes from.

Mr. Hillson: — Thank you. Now volume 15, document 8/65, the . . .

Mr. Portigal: — I'm sorry, I missed that.

Mr. Hillson: — Document 8/65 . . .

The Chair: — Volume 15, Mr. Portigal. Could you use the numbering that we've agreed to, Mr. Hillson. I believe it will be tabbed probably somewhere between 5 and 11, CLP 15, 5 to 11 — 15/6.

Mr. Hillson: — This is the news release issued by yourself on the sale of Channel Lake which I guess became the subject of a statement in the legislature to the effect that we had made a profit of \$5 million. That it had been purchased for 25 million and now sold at a \$5 million profit:

SaskPower acquired Channel Lake Petroleum Ltd. in 1993 for 25 million and will see a \$5 million return on that investment as a result of this sale.

First of all would you agree with me that the casual reader of this news release could be forgiven for concluding that we had sold the property for 30 million?

Mr. Portigal: — Possibly. First of all let me just answer your . . . it wasn't quite a question but this is not my news release. I believe it's issued by SaskPower. Well I'm the contact person but that's the extent of it.

Mr. Hillson: — Your name is on this.

Mr. Portigal: — Right.

Mr. Hillson: — Now did you believe the contents of this statement when it was issued over your name?

Mr. Portigal: — Yes.

Mr. Hillson: — You believed this information to be correct?

Mr. Portigal: — Yes.

Mr. Hillson: — Do you still believe this information to be correct?

Mr. Portigal: — It's not correct, because I was under the impression that, I think in one of my memos that I wrote on

June 4 I believe, or June 3, I was under the impression that retained assets had some value. I've since been informed by the accountants that a retained asset is merely an adjusting account. In fact what SaskPower made on the transaction overall is approximately 2.3 to 2.5 million.

Mr. Hillson: — Did you or anyone connected . . .

Mr. Portigal: — Perhaps I can just refer you specifically to my June 4 memo which . . . reference . . . it's CLP 15/13.

Mr. Hillson: — Right. Did you or anyone else associated with SaskPower issue any news release subsequent to the April 9 news release correcting the information there that we had realized a \$5 million profit?

The Chair: — Mr. Hillson, before . . .

Mr. Portigal: — Perhaps I'll answer the previous question then.

The Chair: — Yes. Mr. Portigal wants to answer your earlier question more completely and then he'll move to your current question.

Mr. Portigal: — I was asked the question by Mr. Kram as to how the \$5 million amount — the very same question as was just proposed — and I said I did not determine the \$5 million amount. As I indicated about the amount that I determined was 4.2 million made up of 2.2 million on the sale and 2 million in retained earnings. Now, as I say, I have since been informed the retainer earnings aren't real. They call them retained earnings but it's simply an adjusting entry. The answer to the second question is, I'm not aware of any clarifying or further release.

Mr. Hillson: — So this release over your name saying we made \$5 million, that was just simply allowed to stand on the record and to be reported to the legislature.

Mr. Portigal: — As far as I know.

Mr. Hillson: — Was there ever any discussion that the legislature and the public should be informed that the information they had been given was false?

Mr. Portigal: — I believe we believed . . . Again, I believed that the information was correct when it was issued, and I wasn't involved in any discussion to the effect that it was false.

Mr. Hillson: — And that it ought to be corrected.

Mr. Portigal: — And that it ought to be corrected.

Mr. Hillson: — Now throughout the 1980s, sir, you were closely connected with the provincial government of the day?

Mr. Portigal: — No.

Mr. Hillson: — You had a number of senior positions in the public service in the Crown corporations, in the Crown corporations in those days?

Mr. Portigal: — Maybe you could clarify by "throughout the

'80s."

Mr. Hillson: — Well 1982 to 1990. Would that be correct to say, sir?

Mr. Portigal: — No. I didn't start with SaskPower until 1987.

Mr. Hillson: — Was that your first connection with the provincial government?

Mr. Portigal: — That's right.

Mr. Hillson: — Had you done any consulting work or any other work for them prior to that date?

Mr. Portigal: — No, I hadn't.

Mr. Hillson: — And . . .

Mr. Portigal: — Excuse me. I had worked with SaskPower in November and December of 1986 before I joined them.

Mr. Hillson: — Okay. And what was your contact with SaskPower at that time, sir?

Mr. Portigal: — Who was the contact?

Mr. Hillson: — Yes.

Mr. Portigal: — It was Mr. Hill.

Mr. Hillson: — George Hill.

Mr. Portigal: — George Hill.

Mr. Hillson: — And how long had you known him?

Mr. Portigal: — I'd known Mr. Hill since about 1979 I believe.

Mr. Hillson: — And you . . . when did you cease your relationship with the Crown corporations?

Mr. Portigal: — I believe it was in November of 1990.

Mr. Hillson: — And I believe you were paid severance at that time.

Mr. Portigal: — I'm under a little difficulty here because I entered into a confidentiality arrangement with SaskEnergy which I don't . . . which I assume they've waived because they certainly didn't honour their side of it. But the answer is yes.

Mr. Hillson: — And how much was that severance, sir?

Mr. Portigal: — I don't recall but it was approximately \$350,000.

Mr. Hillson: — And then after the change of government, you began working for SaskPower again?

Mr. Portigal: — I began to do some consulting for SaskPower in July of 1992.

Mr. Hillson: — And what was your contact with SaskPower at that time?

Mr. Portigal: — My contact was Mr. Messer.

Mr. Hillson: — Now you have told us, I believe, that your consulting contract was for \$10,000 a month plus expenses and GST. Is that correct?

Mr. Portigal: — Plus an amount equivalent to benefits. Plus GST.

Mr. Hillson: — And you have said that your understanding was that you would be working approximately a hundred and fifty hours a month?

Mr. Portigal: — That's correct.

Mr. Hillson: — Now, I've got volume 15, document 1001. Is that on new numbering now, Madam Chair?

The Chair: — Yes. Just a moment and we'll get the correct number for you. It would be 15/42.

Mr. Hillson: — Thank you, Madam Chair. So you've told us that you continued work for other parties, both as a lawyer and as a consultant?

Mr. Portigal: — That's right.

Mr. Hillson: — Now I refer though, to this document July 28, 1992 signed by yourself and Mr. Messer.

Mr. Portigal: — Are you referring to the one of July 23?

Mr. Hillson: — Yes. Substantially full-time basis, at least 150 hours per month.

Mr. Portigal: — That's right.

Mr. Hillson: — So was it substantially full time and you're saying it was clear to Mr. Messer that you would in fact be carrying on other employment?

Mr. Portigal: — Absolutely.

Mr. Hillson: — Mr. Messer was at all times aware that you would be working for other parties as well?

Mr. Portigal: — Yes.

Mr. Hillson: — Both as a consultant and as a lawyer?

Mr. Portigal: — Yes. I might add that for most people, it was pointed out to me that a hundred and fifty hours is pretty close to full-time, but I generally work 200.

Mr. Hillson: — Okay. And volume 14, document 8/36.

The Chair: — Mr. Hillson, I believe that your caucus has been provided with a tabbed copy of documents, so perhaps tomorrow you could use the numbering system that we had agreed upon. I know that you do have at the very least an index

provided by the Clerk's office.

Mr. Hillson: — Now there is a reference to the Direct Energy sale being the only real option prior to the tabling of SaskPower and CLP financial statements in the legislature?

Mr. Portigal: — Yes.

Mr. Hillson: — Now what is the reference to, prior to tabling the statements in the legislature?

Mr. Portigal: — That's essentially a reference to getting it done before March 31.

Mr. Hillson: — Is this so that the financial losses would not have to be disclosed to the Saskatchewan legislature? Is that what you mean by that statement?

Mr. Portigal: — I think I said in my statement that I believed what it was, was that so that the losses and the gain on sale could be combined and reported together.

Mr. Hillson: — As a \$5 million or a \$2 million or whatever net profit?

Mr. Portigal: — Yes.

Mr. Hillson: — And the trading losses would never have to be detailed and outlined to this provincial legislature?

Mr. Portigal: — Well I'm not 100 per cent sure because the losses are identified in other documents, and so I don't know that that was the reason.

Mr. Hillson: — Well you're aware though that the financial statements of Channel Lake were not filed with the provincial legislature. This was the only subsidiary of SaskPower that did not file its financial statements.

Mr. Portigal: — Yes. I wasn't aware of that.

Mr. Hillson: — But I guess the point is this, is your memo. And your memo flags that the whole point of the sale is to avoid having to table financial statements in the legislature.

Mr. Portigal: — And that was my understanding at the time.

Mr. Hillson: — So, sir, is it then fair to say that the key to understanding this transaction, that everything that has flowed therefrom, all stems from the one basic fact that this had to be completed by March 31 so that we could bury it?

And I'm not suggesting that was your decision, sir.

Mr. Portigal: — Okay. Well I don't think I can say that that was correct or incorrect. I think I can just say that certainly I had the impression that there was a driver of the process with that thought in mind.

Mr. Hillson: — So you did not come up with this, that we have to do this before the date for tabling with the legislature. Where did you get the idea that that was the driving force behind everything we're doing here?

Mr. Portigal: — I expect I derived it from a number of discussions that I'd had with SaskPower finance and others.

Mr. Hillson: — Pardon me?

Mr. Portigal: — I expect that I derived it from a number of conversations that I had with SaskPower finance and others.

Mr. Hillson: — And who did you understand this to be the driving force behind the sale?

Mr. Portigal: — Well I believe that the . . . well the only persons that really expressed that to me were from SaskPower finance.

Mr. Hillson: — Who was that?

Mr. Portigal: — Especially Mr. Christensen.

Mr. Hillson: — Mr. Christensen. And the discussion we see in the various documents from auditors as to how the trading losses can be buried, did you have any personal involvement in that or is this the involvement of other senior officials in providing advice to SaskPower as to how we can go about burying the trading losses?

Mr. Portigal: — I'd need specific references to that, sir.

Mr. Hillson: — Well one is volume 13, document 8/21; and I guess document 11/42, a memo from Mr. Spelliscy to Mr. Christensen. For some reason he's discussing whether or not we can make Channel Lake go away as of December 31, 1996. And he says to Mr. Christensen, well I don't think we can, I don't think that would be proper. But it kind of begs the question as to how the issue ever arose in the first place.

Mr. Portigal: — I'm sorry, could I have the document reference number again?

Mr. Hillson: — Volume 17, document 11/42, that's CLP 14/52.

Mr. Portigal: — CLP 14/52 . . .

Mr. Hillson: — In binder 17.

Mr. Portigal: — Could you just describe what it is, please?

Mr. Hillson: — Well it's a memo from Mr. Spelliscy to Mr. Christensen discussing whether or not we can make Channel Lake go away as of December 31, 1996. And Mr. Spelliscy offers the opinion that he doesn't think that would be proper.

Mr. Portigal: — I have it now.

Mr. Hillson: — Yes, you're familiar with that?

Mr. Portigal: — I'd seen it, yes.

Mr. Hillson: — You'd seen it. How did this question arise?

Mr. Portigal: — I believe it arose because the first proposal for Direct Energy Marketing Limited was dated September 1.

Mr. Hillson: — But why did the question arise, how can we make Channel Lake go away? Where did the question come from?

Mr. Portigal: — Well as I answered previously, I believe it came from SaskPower finance because I certainly didn't have any particular enthusiasm with the idea of making Channel Lake go away.

The Chair: — Mr. Hillson, if I may, just for the records. The document that is being discussed at the moment is CLP 17/43.

Mr. Hillson: — Thank you. Now is it not correct that in all of your transactions here, the March 31 deadline was more important than the purchase price. More important than the money was getting rid of this before March 31.

Mr. Portigal: — I don't believe that's correct.

Mr. Hillson: — Well, you told us that it would have been preferable to do an asset sale rather than a share sale.

Mr. Portigal: — No I didn't.

Mr. Hillson: — I thought that was your testimony this morning.

Mr. Portigal: — No.

Mr. Hillson: — Did you not tell us that the reason it had to be share sale was so the trading losses would not have to be reported?

Mr. Portigal: — No, the reason I said that we needed to do a share sale was so it could be accomplished by March 31.

Mr. Hillson: — Right. But was that also not . . .

Mr. Portigal: — There was no particular . . . in any transaction of this sort, by the time the end of the day comes along, there shouldn't be any particular imbalance between doing an asset or a share sale, provided the right adjustment provisions are set up in the documents.

Mr. Hillson: — But isn't the reason it had to be a share sale was again so there would never be any reporting of the trading losses?

Mr. Portigal: — The reason as far as I was informed, was that we wanted to have it done by March 31.

Mr. Hillson: — And March 31 again reports, relates to tabling with the legislature.

Mr. Portigal: — I expect so.

Mr. Hillson: — Is there any other reason for what everyone has told us is extreme haste here other than the date for tabling with the legislature?

Mr. Portigal: — I'm not aware of any other reason.

Mr. Hillson: — Thank you, sir. So whenever we see reference

to March 31 you can think of no other reason for March 31 being so significant outside of it being the date for tabling?

Mr. Portigal: — That's correct.

Mr. Hillson: — Thank you. Now I believe you told us this morning, Mr. Portigal, that it took 14 months to buy the Dynex assets?

Mr. Portigal: — To complete the transaction. In fact, the initial discussions . . . Well it's actually longer than that if you look at it from a whole chronology. As outlined in my opening statement, we initiated discussions with Dynex officials in November of 1992 I believe, and those carried on, on a preliminary basis, until sometime in February of '93 when we first met with the Bank of Montreal officials. We continued with discussions with the Bank of Montreal officials until an offering letter went forward in March.

Mr. Hillson: — I'm sorry, pardon me for interrupting you. I'm not actually wanting it done, I'm just pointing out that you gave us a 14-month time line and I wanted to contrast that with the fact that apparently you were given a few weeks to sell Channel Lake.

Mr. Portigal: — Yes, that's right.

Mr. Hillson: — That was my only point raised. Not trying to argue with you, sir. How many weeks was it you had to sell Channel Lake? Was it five?

Mr. Portigal: — From the beginning of the process, if you look at the beginning of the process as being the last week in February, yes, it was five weeks.

Mr. Hillson: — Five weeks. Contrasting with 14 months to acquire Dynex?

Mr. Portigal: — Right.

Mr. Hillson: — I assume you sold your house in Regina. I assume that took you longer than five weeks.

Mr. Portigal: — It's still for sale.

Mr. Hillson: — It's still for sale.

Mr. Portigal: — If you know anybody who would like to buy it.

Mr. Hillson: — Okay, well I won't ask anything further on that. At any rate, for a transaction of over \$20 million, that is an extremely tight time frame for you to be given.

Mr. Portigal: — It's not related so much to the monetary amount, it's related to the complexity of the transaction.

Mr. Hillson: — The complexity, yes.

Mr. Portigal: — And for this type of transaction . . . Well as we saw, it took . . . in fact it's taking considerable time to finish the adjustments simply because it could not be accomplished in a five-week period.

Mr. Hillson: — So five weeks is not only extremely short, in fact it's downright unrealistic to complete a transaction of this complexity.

Mr. Portigal: — To complete it in the sense, it's not unrealistic to have it sort of negotiated and executed, but it's certainly unrealistic to have the adjustments and everything sort of nailed down in that time period. It doesn't happen.

Mr. Hillson: — And again I think you've already answered this for us, sir, but that short time frame that was so difficult for you to work into, the only reason for it is the March 31 tabling with the Saskatchewan legislature.

Mr. Portigal: — As far as I'm aware.

The Chair: — Thank you, I will now recognize the New Democratic Party.

Mr. Thomson: — Thank you, Madam Chair, and good morning. I want to return to the question of your role in the negotiation of the Channel Lake sale.

Mr. Portigal, evidence has been given in these proceedings that SaskPower's team in terms of these negotiations was comprised of you as the manager of Channel Lake, together with Mr. Christensen, Mr. Kram, and Mr. Hurst. Is that true?

Mr. Portigal: — That's correct.

Mr. Thomson: — So what were the respective roles then of each of these individuals, perhaps starting with yourself — what was your role in this?

Mr. Portigal: — As I indicated earlier, the roles were not defined. But my role was essentially to put it together and negotiate it.

Mr. Thomson: — So it would be fair to describe you as the lead negotiator.

Mr. Portigal: — That's correct.

Mr. Thomson: — What was Mr. Kram's role?

Mr. Portigal: — He didn't really have much of a role. He was simply a person who was reviewing documents as they came back, and that sort of thing. There was no indication that he wished to participate in negotiations or become more active than simply as a reviewer and approver.

Mr. Thomson: — What about Mr. Christensen's role then?

Mr. Portigal: — Mr. Christensen's role is more active because basically the financial terms were reviewed by him and his group, and he certainly was involved in each discussion I believe that I had with Messer relating to the transaction. But he also did not appear to be wanting to become involved in the actual negotiation.

Mr. Thomson: — Could you explain to me what Mr. Hurst's role was?

Mr. Portigal: — Mr. Hurst was the outside counsel in Calgary. He was providing assistance to me on behalf of SaskPower in putting together the documentation.

Mr. Thomson: — What role did Mr. Messer play in the sale?

Mr. Portigal: — I've outlined in my opening statement that he had the initial meeting with Mr. Mitchell. He contacted me. Mr. Christensen and I met with him. I met with Mr. Messer at least once, maybe twice, during the March period. And he attended the board meetings. That was about the extent of it.

Mr. Thomson: — So was he part of the negotiating team?

Mr. Portigal: — No.

Mr. Thomson: — So he was not part of the negotiating team. Okay.

You stated in your opening remarks this morning that on April 1 you dictated a memo to Mr. Messer at about 8 in the morning.

Mr. Portigal: — That's correct.

Mr. Thomson: — That's document, I guess for reference purposes, CLP 17/18. Is that correct?

Mr. Portigal: — That's correct.

Mr. Thomson: — I'm curious as to why you would send Mr. Messer a memo if he wasn't part of the negotiating team.

Mr. Portigal: — I was reporting to the Channel Lake board of directors and my report was always to Mr. Messer.

Mr. Thomson: — Why wouldn't you send it directly to Mr. Christensen or Kram?

Mr. Portigal: — That's not exactly who I was reporting to.

Mr. Thomson: — So you felt that the topic, the information contained in the memo of April 1 was important enough it should go directly to the CEO (chief executive officer) of SaskPower.

Mr. Portigal: — Well as you've seen from the series of memos which have been filed in these documents, almost exclusively when I did a reporting memo, it was as the general manager or in the general manager role of relating to Channel Lake. And I reported to the chairman.

Mr. Thomson: — So then you agree that as lead negotiator it was your responsibility to ensure that other SaskPower officials were kept informed.

Mr. Portigal: — I'm sorry — repeat the question.

Mr. Thomson: — As the lead negotiator it was your responsibility to ensure that SaskPower officials were informed.

Mr. Portigal: — Absolutely.

Mr. Thomson: — And that they fully understood the deal?

Mr. Portigal: — No, that's their responsibility.

Mr. Thomson: — You have no responsibility to ensure that the information you're conveying is understood by the officials at SaskPower.

Mr. Portigal: — No, I don't.

Mr. Thomson: — Could you tell me when you met with Mr. Kram and Mr. Christensen on April 1?

Mr. Portigal: — It was approximately 3 o'clock in the afternoon.

Mr. Thomson: — So you sent a memo to Mr. Messer, which by his time stamp appears to have been received about 8:45 in the morning, copied to Mr. Christensen, Mr. Kram, and Mr. Patrick. What was the purpose of the meeting then that afternoon with Christensen and Kram?

Mr. Portigal: — The purpose of the meeting in the afternoon, as I mentioned right in the memo, is to execute the documents as they were . . . whatever state they were in at that time.

Mr. Thomson: — And how long did the meeting last?

Mr. Portigal: — I don't have an exact recollection of the time, but I believe that it lasted somewhere between 40 minutes and 50 minutes.

Mr. Thomson: — And what did you discuss during that meeting?

Mr. Portigal: — We discussed what people had done on the long weekend, what the weather was doing, and that sort of stuff.

Mr. Thomson: — So you didn't discuss any particulars around the transaction?

Mr. Portigal: — I wasn't asked any questions about the transaction and I didn't make any comments about it.

Mr. Thomson: — So you're meeting with the other members of the bargaining team and you're discussing the weather?

Mr. Portigal: — This wasn't a meeting with the bargaining team; this is a meeting to sign the documents as they existed at that time.

Mr. Thomson: — But you had stated earlier that Mr. Christensen, Mr. Kram, Mr. Hurst and yourself comprised the negotiating team.

Mr. Portigal: — That's correct.

Mr. Thomson: — So this was not part . . . this was not a meeting of the negotiating team. This was simply to have the documents executed.

Mr. Portigal: — That's correct.

Mr. Thomson: — But you're meeting with officials from the

negotiating team.

Mr. Portigal: — Yes. In addition, Mr. Patrick and, I believe, somebody else from finance attended.

Mr. Thomson: — And so you described the meeting as upbeat and positive this morning.

Mr. Portigal: — I think I said cordial.

Mr. Thomson: — Cordial?

Mr. Portigal: — Yes.

Mr. Thomson: — And the reason for that description is what?

Mr. Portigal: — It was a pleasant discussion. Nobody was . . . they all seemed to be happy after having their restful Easter weekend.

Mr. Thomson: — So when you concluded this meeting at which you were asking them to execute the documents, what did you advise them?

Mr. Portigal: — That I was going to Calgary to attend the closing the next day.

Mr. Thomson: — So then it . . . you're saying at this point then that the closing is supposed to happen on April 2. Is that correct?

Mr. Portigal: — That's correct.

Mr. Thomson: — Well let me move on again to this April 1 memo. So that morning at 8 o'clock in the morning, you send a memo to Mr. Messer which says, and I'm quoting from the document now:

Following considerable negotiation, Channel Lake Petroleum has reached agreement with DEML on outstanding matters.

You then go on to say:

The following are the significant changes in the document since the first drafts were circulated last week.

Now are you trying to say the documents are final or that they're still undergoing fundamental change?

Mr. Portigal: — I'm trying to say that the documents as at that morning were at this particular state.

Mr. Thomson: — They were at what particular state?

Mr. Portigal: — They were at the state that we had reached with the draft that had arrived that morning.

Mr. Thomson: — So they were ready to be executed?

Mr. Portigal: — From the SaskPower perspective, yes.

Mr. Thomson: — Meaning what?

Mr. Portigal: — Meaning that the essential terms and conditions had been established.

Mr. Thomson: — Well Mr. DeLuca said when he appeared before us, and I'm quoting from his testimony:

I'm deeply disturbed by the allegation of some of the share purchase agreement executed by the Direct Energy and SaskPower was altered before it became final. The share purchase agreement was never final and was continually changing until the signing by Direct Energy on the afternoon of April 3.

Now in support of this, Mr. DeLuca refers to a letter that he dated March 31 to you that he provided in the documents to us. And I don't know what the document numbers are on this, Madam Chair, but it's in the light blue binder from BD & P (Burnet Duckworth & Palmer).

The Chair: — Yes, and that's how we're identifying it right now. We haven't numbered that particular binder as yet.

Mr. Thomson: — It's tab 5.

Now he says at the end of this letter:

The execution copy of these agreements have not been stapled in order that any replacement pages that are required may be inserted at the closing on Wednesday.

I am wanting to take you back now to your memo of April 1. In the second sentence you write:

The execution copies of various copies were couriered from Calgary late yesterday afternoon and should be ready to execute later on today.

How is it you're telling Kram and Christensen the documents are ready to execute when Mr. DeLuca is telling you that there are still changes to be made?

Mr. Portigal: — Sorry, the documents were ready to execute. The word that's not there is "final". The documents weren't final.

Mr. Thomson: — Why would you execute documents that weren't final?

Mr. Portigal: — It's normal in commercial transactions. We were in a huge hurry to get this thing done. There were some documents that we were still waiting for — SaskPower was responsible for producing and they hadn't.

Mr. Thomson: — So is it your view then that Kram and Christensen's signatures were just formalities and that you could have final say on the terms of the agreement?

Mr. Portigal: — No. The essential terms of the agreement were contained in the agreement otherwise they wouldn't have been executed.

Mr. Thomson: — Well on your April 1 memo to Mr. Messer, you point out the significant changes have occurred from the

first draft. Most significant of those, it would seem to me, is the change in the purchase price from \$5.2 million, correct?

Mr. Portigal: — The purchase price changed from the first to the second draft, changed from the second to the third draft, and I don't think it changed from the third to the fourth draft. But the purchase price was in flux until at such time as the fourth draft was executed.

Mr. Thomson: — Well that seems to be a fairly significant change — this change of \$5.2 million — wouldn't you agree?

Mr. Portigal: — The purchase price never changed in my perspective.

Mr. Thomson: — So it's your view that the purchase price never changed. Period.

Mr. Portigal: — Precisely.

Mr. Thomson: — Well then why would you say the purchase price has been modified to \$20.8 million to match board approvals?

Mr. Portigal: — Madam Chair, it would be very . . . with the benefit of hindsight, I could have chosen better words for it. Because in fact what I had said in previous memos and what I had said all along was that the purchase price, on an asset equivalent basis was 20.8. I was dealing the board approval as a 20.8 asset equivalent purchase price, and that's what it's doing.

Mr. Thomson: — But the key point of this, Mr. Portigal, is that you're saying the purchase price has been modified — this is on April 1 — to \$20.8 million to match the board approvals. I take it you're referring in this particular case to SaskPower board approvals?

Mr. Portigal: — That's correct.

Mr. Thomson: — Which one?

Mr. Portigal: — Sorry.

Mr. Thomson: — What board approval?

Mr. Portigal: — Of course I hadn't seen the board approval, but I understood the board had approved the 20.8 million on an asset equivalent basis.

Mr. Thomson: — But the SaskPower approval states SaskPower is to receive a net purchase price of \$20.8 million.

Mr. Portigal: — I don't think it says that. I'd have to look at the document but I believe the word "total" was there.

The Chair: — We'll just take a moment and we'll find the appropriate document and we'll read it into the record. Would members of the committee please look at document CLP 15/13?

Hon. Mr. Shillington: — Mr. Portigal, I'm going from your draft statement in which you referred to topic summary and give that as a reference number.

The Chair: — Now once Mr. Thomson and Mr. Portigal have located the document, I would ask that one of them would please read the relevant statement into the records so we can then continue this line of questioning. Mr. Thomson, do you have the document now in front of you?

Mr. Thomson: — I have the document. It is document . . . look into March 27 minutes, I'm not sure what the document number is on it.

The Chair: — March 27, SaskPower board minutes?

Mr. Thomson: — Yes, that's right.

Mr. Portigal: — That's what I have to. The wording on page two is for a total price.

Mr. Thomson: — So what does that mean to you then, total price?

The Chair: — Just a moment, Mr. Thomson. It's becoming apparent that a lot of the testimony hinges on exact wording, so I would ask that either you or Mr. Portigal read into the record the specific wording that is in the document and then we'll continue the line of questioning.

Mr. Thomson: — I don't have the document in front of me again. Could you perhaps read that in?

Mr. Portigal: — I can.

The Chair: — Mr. Portigal, can you identify the number as well for us please?

Mr. Portigal: — I can't tell you which of your conversion numbers it is. It should be . . . it's number 24 in the volume entitled, SaskPower board of directors meetings, documents 1 to 26.

The Chair: — Thank you. That's sufficient.

Mr. Portigal: — Okay. And it's headed: 1997 minutes, Saskatchewan Power Corporation board of directors, fifth meeting, conference call meeting, 9:00 a.m., Thursday, March 27, 1997, Regina, Saskatchewan.

And item no. 54, which has a side note called sale of Channel Lake Petroleum Ltd., reads:

54. The board reviewed a recommendation from management concerning the sale of Channel Lake Petroleum Ltd. It was duly moved, seconded, and resolved that SaskPower divest itself of all its interest in Channel Lake Petroleum Ltd. by entering into an agreement with Direct Energy Marketing Limited effective January 1, 1997 to do the following:

- (a) sell all of its shares in Channel Lake Petroleum Ltd.;
- (b) dispose of the promissory note dated September 1, 1993 from Channel Lake Petroleum Ltd. for a total price of 20.8 million which purchase price may be allocated between such note, shares . . . (I'm sorry) will contain such shares in note which allocation may result in a loss on the

note.

Reference schedule B54/97.

The Chair: — Thank you, Mr. Portigal, and for the record the document you were reading from is referenced as CLP 6/24.

Mr. Portigal: — Now could I proceed to answer your second question?

Mr. Thomson: — Please.

Mr. Portigal: — Okay. Now there was only one interpretation that was possible if that was a fixed number at that point in time and that was that that number was the asset equivalent price. There were no other numbers that were known at the time.

Financial statements were not available. The draft of the share purchase and sale agreement that was before the board, if it was really there at the time, had to be draft 1. Draft 1, if you recall, had a purchase price of \$27 million. Draft 2 wasn't even before them because I had carried draft 2 over from Calgary with me the afternoon of Wednesday, the 26th.

Mr. Thomson: — But at this point then you know that there's been a change in the purchase price, and you state that in point 5 of your letter — your memo to Mr. Messer, dated April 1 — point 5 where you say the purchase price has been modified to 20.8 million to match board approvals.

Mr. Portigal: — I believe, Madam Chair, that the best way to look at this is that there's been a change in the definition of the purchase price. There hasn't been a change in the purchase price. I believe Mr. DeLuca testified last week that as far as those of us who are involved in the negotiation were concerned, the whole matter was in flux until we got to some method of dealing with the trading losses.

As I've indicated previously, we knew the trading losses . . . it would have been serendipitous if they actually came out to be 5.2 because 5.2 was the number that was calculated at the end of February. When the SaskPower internal audit group did their audit of the Channel Lake trading losses, they came up with a number — and it's in my opening statement but I don't remember — but some place between 9 and 20 million.

Now we didn't happen to agree with that assessment, but certainly there was potential that the whole value of Channel Lake could be wiped out with those trading losses. So that it became essential that the trading losses either be defined or some mechanism be established to deal with the trading losses outside of the purchase price. The purchase price was and never changed from being a premium on the asset evaluation by the engineering of 20.3 million plus a premium of \$500,000.

Mr. Thomson: — Well, Mr. Portigal on April 1, if you're presenting documents to be executed to the SaskPower officials would it not be appropriate to assume that those matters had been worked out?

Mr. Portigal: — It might happen in some transactions. But as I pointed out earlier to another question, we're only going to get so far in so much time. In fact, we were hoping to have it all

done by March 31. By March 31 you could see what status we were in — we basically had just gone to draft 2 which was an extremely preliminary document.

All I can say is that I wasn't scheduling the board meetings. And I wasn't setting up the schedule. We were just scrambling to meet the schedule and we did the best we could in the time period we had.

Mr. Thomson: — But Mr. Portigal you were in fact in control of the time when the documents are presented to SaskPower for signature. You've presented them now for execution on April 1 knowing full well from the memo of March 31 that they aren't going to be ... the deal isn't going to close until that Wednesday.

You meet with the SaskPower officials on April 1. Did you not feel that it was important enough to discuss the potential changes in the price?

Mr. Portigal: — I assumed — perhaps wrongly — that they had read the ... read my memos and understood it. You apparently understand that paragraph 5 indicates that the purchase price has been changed; they apparently didn't.

Mr. Thomson: — I'm not sure why in a 40- to 50-minute meeting on April 1 you wouldn't have discussed the material points of this deal rather than the weather.

Mr. Portigal: — It wasn't a meeting I was running.

Mr. Thomson: — But it was a meeting you were participating in.

Mr. Portigal: — That's correct.

Mr. Thomson: — And you're the lead negotiator.

Mr. Portigal: — But the most — effectively — junior person at the meeting.

Mr. Thomson: — And you're taking these documents to be executed by the officials at SaskPower.

Mr. Portigal: — Correct.

Mr. Thomson: — You didn't feel it was necessary to make sure they understood what they were signing?

Mr. Portigal: — I think it was quite legitimate on my part to assume that they had read the material that had been placed before them and they understood what they were signing.

Mr. Thomson: — I'm not completely satisfied with this explanation from what happened on the April 1 meeting knowing that there's still ... that you have at this point a March 31st document from Mr. DeLuca. You're telling me that you're meeting with the SaskPower officials on April 1 to have them execute the agreement, which you know is not going to be closed until that Wednesday. You're telling me that in 40 to 50 minutes you didn't discuss the material details even though they're yet to be worked out.

Mr. Portigal, I just find this very, very difficult to understand and I hope that you can understand that perhaps all of us, particularly the taxpayers, would have some concern about this issue not being discussed.

Mr. Portigal: — I can understand that.

Mr. Thomson: — Well don't you think that that should have happened?

Mr. Portigal: — In a normal circumstance people would have read the memo which was in their hands, as you noted, by a quarter to nine in the morning. It's not a very long, complicated memo. It should have raised questions if they had questions and I'd received no questions.

And as I mentioned in my opening statement, my experience in sending memos to various people in SaskPower over the five-and-some years I was there was that I might get a response approximately one in a hundred times.

Mr. Thomson: — That being the case, Mr. Portigal, and perhaps my experience in the civil service is different than yours, but if I'm going to be meeting with the officials on the day that I'm sending them out a memo, why wouldn't I simply say to them, did you get my memo?

Mr. Portigal: — I knew they'd got the memo because it was delivered by hand to their offices.

Mr. Thomson: — And you didn't feel ... you felt it important enough to write them a memo on April 1 but you didn't feel it important enough to discuss with them five or six hours after the fact?

Mr. Portigal: — Madam Chair, I believe that in any sort of transaction like this, and this is what I've done historically, is I've always reported by memo so what I've reported has been relatively clear. Yes, things could be reported more clearly. These weren't people I was in contact with on a day-to-day basis. I generally reported by memo. There was nothing unusual about it.

Mr. Thomson: — So you've reported by memo, you've taken the documents to be signed on April 1, you've sent them a memo saying that the purchase price has been modified, and then for 40 to 50 minutes you discuss the weather. Is that correct?

Mr. Portigal: — That's correct.

Mr. Thomson: — I'm not sure what else to ask on that. I just ...

The Chair: — Well then I will move to recognize Mr. Shillington.

Hon. Mr. Shillington: — I have the same difficulty Mr. Thomson does. I really do. And let me try just a different way. The officials of DEML, I think, to put it charitably, felt that the SaskPower officials did not understand the agreement that was entered into. Would you concur in that?

Mr. Portigal: — I think you have to get more specific about it than that. I didn't understand what part of it . . .

Hon. Mr. Shillington: — Well all right, let me try to . . . a different question. I think it's fair to say as well that they felt that the officials of SaskPower had not understood the process by which commercial transactions of this complexity are handled and closed.

Mr. Portigal: — I think that's correct.

Hon. Mr. Shillington: — Did you have any reason to believe they did? It's not in their backgrounds. It's not in their experience. They're not commercial lawyers.

Mr. Portigal: — I don't believe they would have had to be commercial lawyers to have engaged in transactions that were not necessarily all signed in the same place or whatever else.

Hon. Mr. Shillington: — As the consultant, did you not see it as your responsibility to ensure that they at least understood the process by which this was going to be sold?

Mr. Portigal: — Madam Chair, I . . . again in hindsight, sure, I probably should have explained it to them. The fact that there's no schedules attached to the agreement you're signing probably indicates that it's not final. But I don't know why it was necessary to say that. If you look at the document that Mr. Christensen had xeroxed at the signing . . . I'm sorry, Madam Chair, I'm going to do it again. I've got document 1119 but I don't know what the cross-reference is.

The Chair: — We'll look it up in the index and we will identify it appropriately. CLP 17/20 is the document.

Mr. Portigal: — And I presume what we have here is what was before them. You'll notice that there seems to be a distinct lack of schedules and yet the schedules — and especially the two schedules: the financial statements and the trading loss schedules — were fundamental to this transaction.

Hon. Mr. Shillington: — Mr. Portigal, you knew the officials. You had met with them on a number of occasions. It must have been apparent to you that these people did not understand the process by which this was going to be handled. I can't believe that this came as a surprise to you afterwards that these officials did not understand the process for closing such a complex agreement.

Mr. Portigal: — Well I know they'd like to make it out as being such a complex agreement and that, but we're talking about a \$25 million or \$20 million transaction in a situation where dealing with a company — I don't know what the assets of SaskPower are, but they're \$1.4 billion or something like that. — this isn't a significant transaction.

And I think you've heard testimony that the problem wasn't so much of complexity, the problem was that I believe they didn't regard it as particularly significant. They basically in my opinion — and this is simply my opinion — decided that they wanted to get rid of Channel Lake and the faster they could get it done the better they felt.

Hon. Mr. Shillington: — But it's not . . . whether or not that's an accurate description of them, it's not my question actually.

Mr. Portigal: — Okay, let me try to answer the question slightly differently.

Hon. Mr. Shillington: — All right. Okay.

Mr. Portigal: — It came as a complete surprise to me to read in Mr. Gerrard's report that Mr. Kram had never seen an escrow agreement. That just took me totally aback. When Mr. Kram came to SaskPower, he'd spent a number of years at several large firms in Regina.

These are senior officials at a very large corporation. They've been doing transactions of much greater complexity than this. Coal transactions for instance are way more complex than these are. And they've been doing those over the years, so I had no reason to expect that they wouldn't understand this stuff.

The Chair: — Mr. Shillington, can you begin to wrap up your line of questioning, please.

Hon. Mr. Shillington: — Well did you have any reason to believe that Mr. Kram had actually handled the sale documents for coal, for the purchase and sale of coal transactions?

Mr. Portigal: — Oh yes. In fact when I worked with him at SaskPower, he had been working on coal transactions at that time.

Hon. Mr. Shillington: — Well let me just try one final question and I'll leave it at this. Did you not see it as your responsibility to ensure, to satisfy yourself, that the officials at SaskPower understood the process by which this was going to happen and understood the agreement which you had finally negotiated? Did you not see that as your responsibility to ensure that that was the case?

Mr. Portigal: — It certainly was my responsibility to inform them of the changes, and I did inform them of the changes by memo. They did have the revised agreements. They could have read them. There was certainly lots of time. Rather than talking about the weather, they could have read the documents. They didn't do that. And as I pointed out, the document that was presented to them for signature was clearly not the final document.

Hon. Mr. Shillington: — Well I'll take it up another day.

The Chair: — Thank you, Mr. Shillington. Mr. Portigal, we've completed with questioning of you for today. We will resume questioning again at 9 o'clock tomorrow morning. As is the committee's custom, we will now deal with procedural matters. Before we do, I wonder if I could have just a bit of quiet here.

I would like to inform committee members that I do have a request from Mr. Goohsen, the independent member, that he would like to put questions to Mr. Portigal tomorrow morning. So when we convene tomorrow morning at 9 a.m. the first questioner will be the independent member for 15 minutes, and then we'll move into our customary round of questioning.

Secondly, I did receive a letter, which I will ask the Clerk to table, from Mr. Hillson, dated May 7, 1998, asking for my resignation as Chair. I, on May 8, wrote Mr. Priel and asked for an opinion on that request, and dated May 11, we do have the opinion from Mr. Priel. I'll ask that the Clerk circulate copies of those three documents.

Thirdly, I did circulate to Mr. Tchorzewski, Mr. Gantefoer, and Mr. Hillson a letter yesterday, asking for suggestions regarding the expert opinion on oil and gas supply contracts as per the May 6 motion by Mr. Gantefoer that was affirmed in the committee.

So I would appreciate it if the caucuses do have any suggestions for anyone that they would like me to contract with for that expert opinion, if you could give them to me by tomorrow so that we can deal with that as expeditiously as possible.

Finally with respect to witnesses next week, Mr. Priel and I have been working on availability of witnesses and I would like to inform committee members that we have scheduled Mr. Hurst of the Milner Fenerty law firm to be here Tuesday morning at 9 o'clock. That's right the day after the long week-end. And he will be testifying for that Tuesday.

On the Wednesday we will have available to us Mr. Tavender, also from the Milner Fenerty law firm. And unless I hear to the contrary from committee members, I will also attempt for that Wednesday to schedule a representative from the Gilbert Laustsen Jung firm to provide testimony with respect to their opinions. So that will be what we will be doing next week — next Tuesday and Wednesday.

Now do committee members have any comments either on the procedural matters that I've raised or any other procedural matters they wish to raise?

Mr. Hillson: — On Gilbert Laustsen Jung, will their opinion be on net asset worth of Channel Lake or will it also include the 10-year supply contract?

The Chair: — I believe, Mr. Hillson — and again that's only a cursory examination of the documents — but they only gave an opinion on the asset value worth of Channel Lake, not on the long-term supply contract. So I would think that that would be what we would be questioning them about. The matter of the long-term supply contract, as you're aware with Mr. Gantefoer's motion, we are going to find an expert opinion that can comment on that.

Are there any other matters that committee members wish to raise?

Mr. Tchorzewski: — That we adjourn.

The Chair: — Thank you. I have a motion for adjournment. The committee now stands adjourned.

The committee adjourned at 11:58 a.m.