
PCA CASE No. 2021-26

PERMANENT COURT OF ARBITRATION

BETWEEN:

WINDSTREAM ENERGY LLC

Claimant

- vs -

THE GOVERNMENT OF CANADA

Respondent

TRANSCRIPT OF ARBITRATION PROCEEDINGS
Held at the offices of Arbitration Place
333 Bay Street, Suite 900, Toronto, Ontario
on Thursday, February 8, 2024, at 9:01 a.m.

VOLUME 4
FURTHER REVISED TRANSCRIPT
CONDENSED TRANSCRIPT WITH INDEX

TRIBUNAL:

Wendy Miles KC (Presiding Arbitrator)
Prof. John Gotanda
Rt. Hon. Beverley McLachlin

PERMANENT COURT OF ARBITRATION REGISTRY

José Luis Aragón Cardiel
Stefan Schäferling
Helen Griffin

COURT REPORTER:

Lisa Lamberti

Arbitration Place © 2024
900-333 Bay Street Toronto, ON M5H 2R2

APPEARANCES FOR CLAIMANT

John Terry, Counsel
Emily Sherkey, Counsel
Alexandra Shelley, Counsel
Julie Lowenstein, Counsel
Natasha Williams, Counsel
Shoshana Israel, Clerk
Nicole Wannop, Clerk
Torys LLP

Party Representative
David Mars

Fact Witnesses
Nancy Baines
Michael Killeavy

Expert Witnesses
Edward Tobis
Chris Milburn
Pierre-Antoine Tetard

APPEARANCES FOR RESPONDENT

Rodney Neufeld, Senior Counsel
Heather Squires, Senior Counsel and
Deputy Director
E. Alexandra Dosman, Counsel
Yu Cai Tian, Counsel
Kayla McMullen, Paralegal
Darian Bakelaar, Paralegal
Christine Ayoub, Paralegal
Global Affairs Canada, Trade Law Bureau

Party Representative

Rahim Punjani, Counsel
Ministry of the Attorney General, Government of
Ontario

Expert Witness
Dr. Jérôme Guillet

Fact Witnesses
Andrew Teliszewsky
Michael Lyle

Trial Graphic Expert
Ryan Knecht
Core Legal Concepts

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1 Toronto, Ontario
 2 --- Upon resuming on Thursday, February 8, 2024
 3 at 9:01 a.m.
 4 PRESIDING ARBITRATOR MILES:
 5 Good morning. Good morning, Dr. Guillet. How are
 6 you?
 7 DR. GUILLET: Good morning.
 8 PRESIDING ARBITRATOR MILES:
 9 Welcome back. Hopefully it won't be long.
 10 Unless there is any
 11 housekeeping, Mr. Terry, we will crack on.
 12 AFFIRMED PREVIOUSLY: DR. JÉRÔME GUILLET
 13 CROSS-EXAMINATION BY MR. TERRY (Cont'd):
 14 Q. Thanks very much.
 15 Good morning, Dr. Guillet.
 16 A. Good morning.
 17 Q. I would like to start on
 18 the same topic that we were discussing when we
 19 finished last night. And I'd like to look at,
 20 again, the evidence that you provided to the first
 21 Windstream Tribunal. I have got a transcript
 22 reference I would like to take you to and I will
 23 have it brought up on the screen.
 24 I apologize. I don't have a
 25 hard copy of this.

1 So if we could look --
 2 CO-ARBITRATOR MCLACHLIN: Is
 3 that in your brief?
 4 MR. TERRY: It's not in the
 5 brief. I have got an exhibit reference.
 6 Exhibit 2464. And we will bring it up on the
 7 screen and just perhaps if -- we will go slowly
 8 through it, just to make sure you are able to take
 9 notes on it.
 10 If I can have it brought up to
 11 the highlighted reference, please.
 12 And you recall, Dr. Guillet,
 13 when you were cross-examined in the -- and also
 14 made your presentation, in the Windstream I
 15 Tribunal hearing?
 16 A. Yes.
 17 Q. And this is during your
 18 presentation. You're talking about what you mean
 19 by "fully permitted". Again, in the -- the stage
 20 is early stage, late stage.
 21 Fully permitted means that you
 22 have all of these four things. Unappealable, and
 23 unappealable is quite important. It means there's
 24 nothing that can take any of these permits away
 25 from you. And we'll get back to this in a second.

1 And then, if we go a little
 2 further down the page in your discussion here.
 3 And you're speaking in the context of Windstream.
 4 You mentioned, you say:
 5 "As mentioned, fully
 6 permitted is actually
 7 having the permits at
 8 hand. It is not having
 9 good visibility and how
 10 you're going to get them;
 11 it's actually having them
 12 in your hand."[as read]
 13 You see that?
 14 A. Yes.
 15 Q. And that's what you
 16 testified at the Tribunal last time; right?
 17 A. I trust the transcript.
 18 It's consistent with what I have been saying, so,
 19 yes.
 20 Q. And what you said
 21 yesterday -- again, I am going from yesterday's
 22 transcript -- is you said that fully permitted,
 23 it's a formal status but you can be close enough
 24 that the transactions would be considered late
 25 stage.

1 And then later on:
 2 "It's professional
 3 judgment that they are
 4 close enough to be
 5 considered late
 6 stage."[as read]
 7 On the Dudgeon transaction,
 8 you said you couldn't recall exactly the missing
 9 piece but it was close enough to being fully
 10 permitted.
 11 An so you said:
 12 "The professional
 13 judgment is what's the
 14 risk to get there. Fully
 15 permitted means close
 16 enough to it."[as read]
 17 So and I just want to
 18 approach -- I appreciate I asked you this question
 19 yesterday but with this different information.
 20 In the first hearing, you are
 21 saying you have to have the permits at hand. It's
 22 not having -- it's not enough having good
 23 visibility and how you're going to get them. It's
 24 actually having them in your hand.
 25 In this proceeding, you say if

1 it's close enough to being fully permitted, you
 2 are going to exercise your professional judgment
 3 and you are going to say that they are late stage
 4 and they fulfil the fully permitted requirements.
 5 And my question is just a
 6 simple one.
 7 Do you recognize you're
 8 applying a different approach in terms of what you
 9 told the Tribunal?
 10 And I am not looking at what
 11 was in your head or what you were thinking, but
 12 what you told the Tribunal in Windstream I versus
 13 what you're telling us in this Tribunal now.
 14 A. Well, it's not exactly
 15 the same question I am answering, so.
 16 Fully permitted is a concept
 17 that, if you want to be formally fully permitted,
 18 indeed, you have to have all the permits
 19 unappealable. And, in order to reach financial
 20 close, you have to be fully permitted.
 21 And this is a stage where, in
 22 principle, what's the word, "cliques". I don't
 23 know the word in English. You know, safety. You
 24 can't move a safety.
 25 CO-ARBITRATOR MCLACHLIN: It's

1 frozen or it's done?
 2 PRESIDING ARBITRATOR MILES:
 3 Locked.
 4 CO-ARBITRATOR MCLACHLIN: It's
 5 locked.
 6 DR. GUILLET: You are locked
 7 and you can't go beyond or below that. You have
 8 reached a threshold that's valuable and that
 9 allows you to get to financial close.
 10 When you are close to that,
 11 you don't have that. It doesn't mean that it's
 12 valueless and there can be an argument again as to
 13 the fraction of the value.
 14 So it's not going to be
 15 100 percent of the value. It's going to be some
 16 set of the fraction. And, if you are close
 17 enough, the fraction can be high enough.
 18 So whether it's 60, 80, 90,
 19 95 percent is open for interpretation.
 20 And, in some cases, it falls
 21 back to zero. The risk is, when you are below
 22 fully threshold, you have a risk you could fall
 23 back to zero. The risk does exist. It has
 24 happened in some projects. So the value is not
 25 100 percent.

1 But, in some cases, it's close
 2 enough and, if it's a matter of process or time,
 3 then you're fully -- not fully permitted but you
 4 can get comfortable that you will get there.
 5 So financial close will not
 6 happen until you're actually fully permitted but
 7 the value of the project is largely there.
 8 So it's a nuance and there is
 9 something that needs to be black and white for
 10 certain purposes. It's not black and white in
 11 terms of valuation. Because, again, it's a
 12 continuum so you have a step at that moment in the
 13 valuation.
 14 Whether the step is very large
 15 or smaller, is a question of how important that
 16 missing piece and how risky that missing piece is.
 17 Q. I appreciate all that and
 18 it's consistent with what you were saying
 19 yesterday.
 20 A. Good.
 21 Q. But my question is not so
 22 much about what the approach you are telling us
 23 you're applying now, but understanding the
 24 difference between that and the approach you
 25 applied for the first Tribunal where you said,

1 very clearly, you set out very, very clearly --
 2 and I don't need to take you back to it. I think
 3 you recall it all.
 4 That the projects you were
 5 putting into late stage transactions were ones
 6 that were fully permitted and you defined that as
 7 having the four attributes. And, with respect to
 8 permits, that included permits under appeal.
 9 And, as I have just taken to
 10 you, for example, you said that fully permitted
 11 means actually having the permits in hand, not
 12 enough having good visibility, et cetera.
 13 My question isn't so much you
 14 explaining why you are applying, you are telling
 15 us about your approach now.
 16 It's a much more simple
 17 question.
 18 I mean, do you recognize that
 19 you're applying a different approach to
 20 distinguish between early and late stage
 21 development in this hearing than you were in the
 22 previous hearing?
 23 A. I don't believe so but, I
 24 mean, we can go back again to what I said in the
 25 2015 hearing.

1 This is about the definition
2 of fully permitted. It's not about the valuation.
3 I would need to check what I said about the
4 valuation.

5 I believe I have been
6 consistent. If you think I haven't, I guess
7 that's for the appreciation of the Tribunal.

8 Q. All right.

9 A. I mean, we have been
10 playing around with some of the concepts that are,
11 again, in a continuum and we are trying to put
12 definitions for steps on a path. Sometimes, these
13 steps are easy to define. Sometimes, they are not
14 so easy to define.

15 So if you want to flag me --
16 and to get back to the example of the project.
17 You are saying site control and formally it
18 doesn't have site control. So does the value go
19 back to zero?

20 So let's have a little bit of
21 judgment there and let's not be -- or if we have
22 the black and white application, then we apply it
23 everywhere. I am not sure that's very favourable
24 to the project.

25 So I am saying the project is

1 close to having a site control and a grid
2 connection, from what I understand of the project.

3 So I am giving credit for
4 that. And I am willing to give credit that this
5 has some value which was reflected previously but
6 formally doesn't have site control.

7 Again, it's not a continuum.

8 There's a step, at that moment. You can trip over
9 that step, in some cases, but, but don't make me
10 say things that I haven't said.

11 Maybe things were simpler in
12 2015? I mean, the number of projects that were on
13 the market were much smaller. I mean, there were
14 six projects in eight years or seven years that
15 were presented. And, at that point, I had a good
16 visibility on most of what was happening in the
17 sector today. There is lots of things that I
18 don't see.

19 So I certainly don't claim
20 that my database has the full market. It's as
21 good as it gets but it's only a fraction of the
22 market. Back then, it was -- things were maybe a
23 bit simpler and it was easier to make this
24 distinction. Now you have lots of projects and
25 they are all on that continuum and investors

1 exercise their judgment on that.

2 Q. So it sounds like it's
3 fair to say, what you're telling us here today, is
4 you have got -- there's more of a fluid line
5 between early stage and late stage and you have to
6 apply professional judgment as to which, which
7 side you fall on?

8 A. Yeah. But that doesn't
9 mean that 5 percent equals 95 percent.

10 I am saying that 95 percent is
11 close to 100. But if you want me to say that 95
12 is close to 5. So early stage and late stage are
13 still quite far apart.

14 But, yes, there is an element
15 of judgment. It is a continuum and that's why I
16 typically prefer to give ranges rather than firm
17 numbers because there is no firm number for any
18 project. It's a matter of both the project and
19 the context and the participants.

20 So it's very hard to pin a
21 value. The only way you actually pin a value is
22 when two parties agree to do a transaction on the
23 value. There, it crystallizes all these things.
24 And all you can do is try to see if, from many
25 transactions, that all are unique and individual,

1 you can see some general consistency.

2 And I believe there is some
3 level of consistency but with a lot of individual
4 variation.

5 Q. Okay.

6 I'd like to take you again now
7 to Table 8 in the first, your first report.

8 The December 2022 report,
9 page 28.

10 And I just want to go through
11 and read out the -- because I am going to take
12 these projects and then look at the valuations in
13 another table. I just want to identify which ones
14 you say don't have permits.

15 First of all, Dudgeon is no,
16 no permit.

17 Then there's Gemini. No
18 permit.

19 EMF?

20 A. No being not having all
21 the permits?

22 Q. Yes, sorry, sir. So we
23 can assume no means not having all permits.

24 A. Yeah, yeah. It doesn't
25 mean it has no permits whatsoever, just to be

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1 clear.
 2 Q. Okay, okay.
 3 EMF is under appeal.
 4 A. Yeah.
 5 Q. So that would mean one or
 6 more permits is under appeal.
 7 A. Yes.
 8 Q. Okay.
 9 LEM, also under appeal.
 10 A. Yes.
 11 Q. Ørsted US assets, no?
 12 A. Yeah.
 13 Q. Saint-Brieuc, under
 14 appeal?
 15 A. Yes.
 16 Q. Empire Wind, no?
 17 A. Yes.
 18 Q. Maryland Bay, no.
 19 A. Yes.
 20 Q. So if I then take that
 21 list and if I could go, please, to -- take you,
 22 please, to Table 8 in the same -- sorry, my
 23 apologies. Table 7 in your second report. Your
 24 rejoinder report.
 25 And this is the one where you

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1 Q. And, of course, that's
 2 the one that has a contingent interest that you
 3 didn't include in that valuation?
 4 A. Indeed.
 5 Q. And then, if we go to
 6 Ørsted, the next one down. That's 0.23 million
 7 euros per megawatt?
 8 A. Based on the
 9 approximation of allocating 50 percent of the
 10 stated transaction value. That's the estimate,
 11 yes.
 12 Q. Right.
 13 And, as we discussed
 14 yesterday, that's one where Secretariat, at least,
 15 would say the valuation should be higher because
 16 it only had 834 megawatts rather than 860
 17 megawatts?
 18 A. I am not sure that would
 19 change the last digit on the valuation but, yes.
 20 Q. And then Saint-Brieuc,
 21 the valuation for that is greater than 0.5 million
 22 euros per megawatt?
 23 A. Yes.
 24 Q. And then Empire Wind is
 25 approximately 1.25 million euros per megawatt?

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1 set out the valuations for all these projects?
 2 A. Which page?
 3 Q. This is page 58.
 4 A. 58, okay.
 5 Q. And perhaps we could
 6 use -- this isn't all highlighted here so perhaps,
 7 on the screen, we can highlight as we go through
 8 to make it easier.
 9 But the first project, the
 10 Dudgeon project that we mentioned is valued at
 11 0.30 million euros per megawatt; correct?
 12 A. Correct, approximately.
 13 Q. Right, approximately.
 14 And then the second project,
 15 the Gemini project, is at 0.10 million euros per
 16 megawatt?
 17 A. Yes.
 18 Q. And then, if we go down
 19 to the EMF project, that is 0.27 million euros per
 20 megawatt?
 21 A. Yes.
 22 Q. And then the LEM project,
 23 a little further down, as we discussed yesterday,
 24 that's 0.32 million euros per megawatt?
 25 A. Yes.

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1 A. Yes.
 2 Q. And US Wind is
 3 approximately 0.50 million euros per megawatt.
 4 And I appreciate, sir, that
 5 you put those in your outlier category, as you
 6 described otherwise.
 7 A. Those were the yellow
 8 highlights on the table, yes.
 9 So not all of those that you
 10 have quoted but Saint-Brieuc, Empire Wind and US
 11 Wind and NNG which is not on your list.
 12 I am not sure if you are using
 13 two separate colours for highlight because I can't
 14 tell the difference.
 15 Q. It was not intentional to
 16 use two separate colours. I think that is just
 17 the technology --
 18 A. No, the previous one that
 19 was already there when you started and then you
 20 added some colour. I don't know if the colour you
 21 added was the same as the one that was already
 22 there.
 23 The yellow, I can see
 24 separately, but not the other colour. I have no
 25 idea what colour, if it's yellow or green.

1 Q. Oh, I see, yeah. Just a
 2 vision thing that --
 3 A. I am colour blind. I am
 4 colour blind, sorry. I do see that you
 5 highlighted them. I cannot see if they are
 6 different colours. The yellow, I can see.
 7 PRESIDING ARBITRATOR MILES:
 8 And they look orange to you?
 9 THE WITNESS: I have no idea
 10 what they look like.
 11 PRESIDING ARBITRATOR MILES:
 12 That's beautiful.
 13 BY MR. TERRY:
 14 Q. And we talked yesterday,
 15 at one point, you said that, you know, if I
 16 want -- if I wanted to, if the Tribunal disagreed
 17 with you, you could exclude the non-permitted
 18 projects.
 19 If I were to exclude those
 20 projects and move them into the early stage
 21 transaction table and that's, if we could go to --
 22 A. I am sorry, but I have to
 23 take a statement against that.
 24 The fact that they are not
 25 fully permitted does not make them early stage.

1 Q. Right. But work with me
 2 here --
 3 A. No, no, no. You can't do
 4 that. I mean you have got two ends of something.
 5 You are saying, okay, you're not at the end so I
 6 am putting it all back to zero. I object to that
 7 forcefully.
 8 Q. Okay.
 9 A. They are --
 10 Q. I hear you but I am going
 11 to ask you a question. I just would like an
 12 answer, please.
 13 If we could go to Table 5,
 14 which is page 57 of the same report.
 15 And you can see we have got
 16 the early stage table there. If we move --
 17 actually, let's move up, yeah, to the Table 4.
 18 If I were going to take these
 19 eight transactions -- and I appreciate you don't
 20 agree with this.
 21 But if I were going to take
 22 these eight transactions and move them into the
 23 early stage transaction table here so that they
 24 would be included in those comparables, it would
 25 result in a very substantial increase to the

1 average of all those early stage projects?
 2 And I am looking,
 3 particularly, if we look at the values that we
 4 just went through, in virtually all cases, they
 5 are substantially more than the values in the
 6 early stage transaction table.
 7 Do you agree that -- if you
 8 were to take -- if you were to put -- again, I
 9 appreciate you don't agree with this.
 10 But if you were to take those
 11 transactions we have identified, include them?
 12 A. As a mathematical
 13 question, yes.
 14 Q. As a mathematical
 15 question.
 16 A. But, if you do that, the
 17 project does not belong in the early development
 18 stage. It's even earlier. So these are not
 19 comparable to the project because they are not
 20 comparable. They are no longer comparable.
 21 Q. So, so --
 22 A. No, no. But you have to
 23 compare things that are comparable. If you want
 24 to bring things to torture, the definition of
 25 early stage and say the project is also early

1 stage, this doesn't make sense anymore.
 2 Q. And, listen, I appreciate
 3 your help here. I am working, as you know, with
 4 your definitions --
 5 A. No, you are not. You are
 6 torturing my definitions.
 7 CO-ARBITRATOR MCLACHLIN:
 8 Well, just answer.
 9 THE WITNESS: Well, I am
 10 stating that I disagree with what he is doing. I
 11 can answer the theoretical question that,
 12 mathematically, what he's doing is mathematically
 13 correct.
 14 PRESIDING ARBITRATOR MILES:
 15 Dr. Guillet, I know you don't agree with the
 16 exercise but you need to answer the questions on
 17 the basis of the exercise. We understand. Your
 18 objections are well registered.
 19 DR. GUILLET: Okay.
 20 PRESIDING ARBITRATOR MILES:
 21 Do you mind just going back to the slide you had
 22 with the one we had the discussion about colour
 23 just very briefly. Just hold it there for one
 24 minute.
 25 MR. TERRY: Okay.

1 PRESIDING ARBITRATOR MILES:
2 Thanks. You can go back to it.
3 BY MR. TERRY:
4 Q. Just before we continue
5 with this table, I'd like to take you -- and this
6 just is in respect to your assertion that we are
7 torturing the definitions you provided.
8 If we look at your first
9 report, your December 2022 report -- and I have
10 already taken you to this. Paragraph 26 of that
11 report.
12 And this is a report -- this
13 is not your Green Giraffe report for the first
14 Tribunal. This is your report for this Tribunal.
15 You say:
16 "Late development stages
17 are projects that are
18 fully permitted, meaning
19 that they benefit from 1,
20 site control; 2, permits
21 that are no longer
22 subject to any potential
23 appeals process; 3, a
24 price regime for the sale
25 of electricity (whether

1 under a Feed-In Tariff,
2 power purchase agreement,
3 with a fixed price
4 formula), or a contract
5 for differences, CFD;
6 and, 4, a grid access, as
7 further explained in
8 paragraph 47 and
9 subsequent."[as read]
10 You will agree with me that
11 that is how you defined "fully permitted" in --
12 and made the distinction between late stage and
13 early stage in the report that you provided to
14 this Tribunal.
15 And the words are the same as
16 the ones you used in the previous Tribunal.
17 And, sir, that is the
18 definition you have laid out for the Tribunal.
19 That's the definition you have laid out for us.
20 So, with the greatest of
21 respect, I don't see anything in that definition
22 that gives you -- where you're indicating that you
23 are going to take flexibility in applying nuance
24 in deciding whether something is fully permitted
25 or not.

1 You set out the bounds very
2 strictly and very carefully, as you did in the
3 previous Tribunal and as they relied upon.
4 Do you agree with me?
5 A. In this place, it's an
6 introduction to the stages of development. Fully
7 permitted is a fully defined concept.
8 The valuations, I am pretty
9 sure that I put it's at fully permitted or close
10 enough.
11 Q. So let's go back to my
12 question about the -- if we could go back to the
13 early stage development table.
14 And, in this particular table,
15 then, my question was, if you were to take the
16 transactions we just described that are not fully
17 permitted, move them from the late stage to the
18 early stage, and you don't have to -- I understand
19 everything you have said about why that would be
20 inappropriate.
21 That would result -- just
22 applying mathematics. And you have done some
23 averaging here.
24 That would result in the very
25 substantial increase to the 0.06 million euros per

1 megawatt average you provide in your chart of
2 averages for early stage development projects?
3 A. I don't know. It's a
4 complex calculation and would need to be done.
5 Q. I am not sure if it's a
6 complex calculation to add eight more numbers with
7 the others to average.
8 And I must admit. We would do
9 it ourselves but, because of the confidential
10 information in all the greater than and lesser
11 thans, we are not sure how we would go about
12 trying to reach an average because of the way that
13 you've put together those valuations.
14 CO-ARBITRATOR MCLACHLIN: Are
15 you asking him what the average would be? Because
16 I haven't heard that question.
17 MR. TERRY: Justice McLachlin,
18 that is just the question I was going to ask
19 about. I was explaining why we couldn't calculate
20 it.
21 THE WITNESS: Well, you could
22 calculate it if you wanted.
23 BY MR. TERRY:
24 Q. What would the average
25 be?

1 A. You could calculate it by
2 taking the rounding numbers. When it says below
3 0.10, it's below and close to, so you could
4 certainly do an approximation of the calculation
5 with the rounded numbers, if you want to do the
6 calculation.

7 If you want to ask me to do
8 the calculation, I can do it but then I need to go
9 back to the files and the computer. I am not
10 going to do it in my head right now.

11 Q. Fair enough.
12 Well, you have indicated to us
13 how we can do the calculation because we weren't
14 sure how to deal with those imprecise numbers.
15 And, if we use those rounded numbers, we -- yeah,
16 we will likely, Madam President, need a break at
17 some point to do that. But we could, if the
18 Tribunal would find it of assistance, we could do
19 the calculation and put it to Dr. Guillet?

20 PRESIDING ARBITRATOR MILES: I
21 just did the calculation.

22 So I did the calculation
23 taking out the non-disclosable items in the early
24 stage development which gave .066 for the first
25 chart and then adding back in. I didn't add in

1 the 1.33 because -- well, it just felt too much of
2 an aberration, right or wrong.

3 But I didn't add that back in
4 but I added in the other items you have and it
5 gave me .15 which is outside the range of the
6 earlier Tribunal for early stage, .01 to .1. But
7 not that far outside. And late stages, .1 to .5.

8 So it's -- it does move it
9 along but -- and, materially, but not off the
10 charts, materially.

11 Anyway, that was a calculation
12 I did.

13 I don't think this is a game
14 of precision. It clearly isn't. You have made
15 that point. Dr. Guillet's made that point too.

16 The extent to which the
17 earlier Tribunal treated it as a game of precision
18 is an issue you may or may not want to deal with
19 in submission. If you do, you are going to have
20 to deal with what, as a matter of law, we can
21 possibly do about that.

22 But I think the point is
23 taken.

24 If you feel the numbers expand
25 their early stage development hugely beyond 0.15,

1 you do those sums in the break and let me know.
2 But that's where I think they come out.

3 MR. TERRY: That's extremely
4 helpful. I -- hats off to your mathematical
5 abilities.

6 PRESIDING ARBITRATOR MILES:
7 Well, my calculator's maths, but okay.

8 MR. TERRY: The only other
9 calculation we may run is just -- is just looking
10 at the -- if you look at the additional -- the
11 projects you just went through, many of them were
12 later stage falling in the 2015 to 2020 period.

13 So looking at the increase,
14 because Dr. Guillet has charts that show the
15 increase between pre-2015 and 2015 to 2020, may
16 also run a calculation on that during the break
17 that we can put to Mr. Guillet. Sorry,
18 Dr. Guillet.

19 BY MR. TERRY:

20 Q. Dr. Guillet, there's one
21 more -- there's one more project I just want to
22 quickly ask you about, and this shows up in
23 your -- the late stage development chart that's in
24 Table 7.

25 And this is the --

1 CO-ARBITRATOR MCLACHLIN:
2 Which report?

3 MR. TERRY: Sorry, Table 7 of
4 report Number 2.

5 CO-ARBITRATOR MCLACHLIN:
6 Okay.

7 BY MR. TERRY:
8 Q. And this is the Formosa 1
9 project.

10 And this project is bolded
11 because you didn't include it in your first
12 comparables chart because you weren't aware of it;
13 is that correct?

14 A. I did not have the
15 information, yes.

16 Q. Okay.

17 A. And I did, on the basis
18 of what was provided in the Secretariat rejoinder.

19 Q. Okay.

20 We have included, then,
21 exhibit, which is loose. It's Exhibit C-2150 in
22 the Guillet brief.

23 And, Tribunal members, you
24 should have that as well in your brief.

25 I have also brought it up on

1 the screen here.
 2 It it's a press release with
 3 respect to this Formosa project. And I would like
 4 to direct you --
 5 CO-ARBITRATOR MCLACHLIN: What
 6 tab is that?
 7 MR. TERRY: Pardon me?
 8 In the brief, it was just put
 9 in loosely, I am sorry, because we just got it
 10 later in the day yesterday. Right toward the end,
 11 it should be.
 12 CO-ARBITRATOR MCLACHLIN:
 13 Okay. There. I see it, yes.
 14 BY MR. TERRY:
 15 Q. And, Dr. Guillet, on the
 16 second page, we have highlighted the statement in
 17 the press release. The permitting process is
 18 described.
 19 It says:
 20 "The permitting process
 21 is on schedule and
 22 Formosa 1 signed a power
 23 purchase agreement, PPA,
 24 with Taipower in
 25 December 2017."[as read]

1 And I appreciate you don't
 2 know very much about this project but we assume,
 3 when a press release says the permitting process
 4 is on schedule, it doesn't mean the permitting
 5 process is completed; is that correct?
 6 A. As I think was mentioned
 7 in one of the earlier conversations, you have got
 8 the permits that you need to get started and then
 9 you have permits that you can only obtain along
 10 the way. And there are permits you are not
 11 allowed to ask for until you reach a certain
 12 stage.
 13 So that's -- these would not
 14 be part of the definition of "fully permitted",
 15 for obvious reasons.
 16 And the test is, in this case,
 17 the press release is about reaching FID and FID is
 18 a pretty formal step to investors.
 19 And the next sentence says the
 20 project will use non-recourse project finance.
 21 And that means the banks are comfortable that the
 22 permits that are there are all that you need to
 23 actually not take undue risk as a lender.
 24 So the fact that there is
 25 finance means that it is effective fully

1 permitted. De facto.
 2 So you are actually making my
 3 point that it is a continuum. Some are vital and
 4 some are impossible to have later. Some are part
 5 of the norm -- I mean, technically, the driver's
 6 licence of the guy driving the truck bringing
 7 equipment is part of the permits, under a wide
 8 definition of permits. You can have lapses on
 9 things like that. But does that mean that the
 10 project is not fully permitted? No.
 11 It's the major permits that
 12 allow you to start construction and that prevent
 13 people -- the permits that are unappealable.
 14 And, if you want to nail me
 15 down to definition, it's not possible and I am
 16 sure you will nail me down in some way.
 17 But, basically, there's fully
 18 permitted will rely on lawyers to put in their due
 19 diligence report, yes, all the permits that are
 20 necessary to reach financial close are there.
 21 So, formally, at the moment of
 22 the transaction on these that you listed, the
 23 permits that were necessary to reach financial
 24 close or FID were not there.
 25 But, in some cases, like the

1 French projects, there was one appeal left and
 2 there was a known date for the answer. And,
 3 basically, this was an on/off switch. If the
 4 decision allows the project to go on, then the
 5 transaction happens and the project happens.
 6 If the appeal is upheld and
 7 the project is stopped, then the project is dead.
 8 And you know this and you have a deadline for
 9 that. So that's why the risk that you take is, is
 10 very, is very straightforward.
 11 In the case of Gemini, was the
 12 same. You had a permit that could only be given
 13 after a certain process took place. And,
 14 basically, financial close happened right after
 15 that but the equity was comfortable to get into
 16 the project before that because they understood
 17 what the process to get that permit was.
 18 The banks didn't take that
 19 risk. That was the distinction between equity
 20 risk and lender's risk. But equity was willing to
 21 take the risk.
 22 So fully -- maybe the nuance
 23 is that this fully permitted concept is more
 24 essential for the lenders than for the investors.
 25 For the lenders, there's no

1 leeway. They want fully permitted, as you say,
 2 the black and white definition.
 3 Investors may be willing to
 4 take some risk on some of the permits if they see
 5 that it's a short delay or that is something that
 6 is a process that they understand.
 7 Q. Thank you for that.
 8 The -- I want to go to your --
 9 back to the early stage development table in your
 10 second report.
 11 And, Dr. Guillet, you have
 12 highlighted here certain projects that you
 13 describe as a floating wind project.
 14 What's a floating wind
 15 project?
 16 A. These are projects that
 17 would be on floating foundations as opposed to
 18 foundations that are firmly affixed to the
 19 subsurface below the sea; whether steel
 20 foundations are like a very big nail that you --
 21 or gravity base that are big, heavy structure that
 22 lays on the floor of the seabed.
 23 So that's fixed bottom. They
 24 are a fixed structure hanging on to the floor.
 25 Floating is what it says. It

1 floats at the surface. There's different types of
 2 floating structures.
 3 If you want the physics of
 4 that, I can give you a few more details but,
 5 basically, it is what it says.
 6 It's a foundation that's
 7 floating on the surface that's not -- it is
 8 connected to the ground by cables that keep it in
 9 place, mooring cables. But, in principle, it's
 10 not relying on the ground to stay in place.
 11 Q. Okay. Thanks for that.
 12 So you have six floating wind
 13 projects in your early development stage
 14 transaction, and that amounts to about a
 15 quarter -- a little more than a quarter of your 23
 16 early stage comparables; correct?
 17 A. Yes.
 18 Q. If I could turn you and
 19 the Tribunal, please, to your December 22nd
 20 report, paragraph 66.
 21 And here is where you talk
 22 about, including floating wind transactions, you
 23 say, in the third line:
 24 "They are seen as more
 25 risky than traditional

1 fixed-bottom wind such as
 2 the project, as the
 3 technology is not yet
 4 proven on a large scale
 5 and future costs are less
 6 well understood."[as
 7 read]
 8 Do you agree with that?
 9 A. I wrote it.
 10 Q. And you say:
 11 "Their financeability is
 12 seen as lower and will
 13 require funders with a
 14 higher cost of capital,
 15 driving down the value of
 16 the projects."[as read]
 17 I take it you agree with that
 18 statement?
 19 A. Yes, I wrote that.
 20 Q. And then you say:
 21 "The value of these
 22 projects can thus be seen
 23 as a lower bound for the
 24 value of development
 25 projects at a similar

1 stage."[as read]
 2 And that's what you stated;
 3 correct?
 4 A. I did.
 5 Q. And I see that, also,
 6 that five of these, of the six transactions here
 7 are listed as non-disclosed in terms of the
 8 transaction value; correct?
 9 A. Yes.
 10 Q. And the transaction
 11 amounts consistent with what you said are --
 12 million euros per megawatt are very low.
 13 The first two are less than
 14 0.02 million megawatts per euro. The next two are
 15 less than 0.05 million megawatts per euro.
 16 There's one greater than 0.05 and there's one that
 17 is 0.01.
 18 A. Yes.
 19 Q. And, if you were to
 20 remove floating wind turbines from the early stage
 21 development table, the average value of the
 22 comparables in that table would increase; is that
 23 fair?
 24 A. As an artificial
 25 calculation, yes.

1 Q. All right.
 2 And do you know how many -- if
 3 you compare the number of megawatts operating in
 4 offshore wind versus using, as you described,
 5 fixed either -- fixed foundations that are
 6 attached to the seabed or lake bed in some way, to
 7 the number that are actually operational that are
 8 floating turbines, what would the numbers be?
 9 A. There is about 100 times
 10 more fixed-bottom than floating currently
 11 operating. It's 277 megawatts at the end of 2023
 12 for floating and it's, I can't remember the
 13 number, for the end of '23 for fixed but it's
 14 27 -- it's in the 20s gigawatts. So, yeah,
 15 hundred times more.
 16 Yes, floating is unproven.
 17 It's still more expensive as a construction. So
 18 the projects -- the value of the projects as
 19 construction project is essentially unknown at
 20 this stage.
 21 But, as a development, the
 22 development risks are not dissimilar and the
 23 expectation is that, eventually, they will become
 24 financeable.
 25 In terms of the development

1 risk, they are not that dissimilar. But, given
 2 that we don't really know what they will be worth
 3 in the future or if they will be worth anything,
 4 that's why I said they tend to be the lower bound.
 5 But there's a number of
 6 jurisdictions where the only thing you can do is
 7 floating because their water depth, the water, the
 8 seabed goes very deep, very quickly. And you
 9 can't do fixed bottom or you need to -- you need
 10 to go further away to do -- because people
 11 complain about the turbines being too close to
 12 shore and, in some places, it's the way to go.
 13 So people want to make it
 14 happen but it hasn't happened yet. So these
 15 projects tend to be more early stage, although
 16 this is changing. You had some major allocation
 17 of projects to floating wind in Scotland and other
 18 allocations of leases in various places.
 19 But, again, in terms of the
 20 development risk, it's not that different from
 21 fixed bottom in terms of what you need to do. And
 22 the expectation is that the value of these
 23 projects -- and that's what we have seen from
 24 early stage. There are no -- very few late-stage
 25 floating projects. But, from the early stage, the

1 values that investors have been willing to put
 2 into these project is not that different as for
 3 fixed bottoms at the same stage of development.
 4 Q. Okay.
 5 I have a few questions just to
 6 fully understand your qualifications and
 7 credentials, education, et cetera.
 8 A. Okay.
 9 Q. And I know you have told
 10 us you're an economist and you have a PhD as an
 11 economist?
 12 A. I have never claimed to
 13 be an economist.
 14 Q. Okay.
 15 A. I have a PhD label in
 16 economics, yes. But my PhD was on the
 17 independence of Ukraine.
 18 Q. That's always a topical
 19 issue.
 20 A. But that's how I got into
 21 energy because I got to know a lot about the
 22 Russian, the former Soviet Union gas pipelines and
 23 then I got into financing gas pipelines in Soviet
 24 Union and elsewhere and then I got financing power
 25 and then renewables.

1 So, yes, Ukraine brings you to
 2 offshore wind.
 3 Q. What were your degrees?
 4 What is your PhD in and what others,
 5 undergraduate --
 6 A. I first did an
 7 engineering school, which is called Polytechnique
 8 in Paris. And then I did a PhD at EHESS, École
 9 des hautes études en sciences sociales.
 10 And my PhD, technically, is
 11 labelled as economics because the École
 12 Polytechnique is an engineering school and they
 13 don't fund PhD stipends for soft sciences so I was
 14 relabelled as economics which is hard enough to be
 15 funded by engineering school, so I got a stipend
 16 for my PhD. But, today, we would probably call it
 17 geopolitics or international relations.
 18 Q. Okay, international
 19 relations.
 20 And you mentioned engineering
 21 school but you told me, and I assume it's still
 22 correct, you told me in the last proceeding you
 23 are not an engineer?
 24 A. Define engineer.
 25 If you want to say what I am

1 not, you need to tell me what that is.
 2 Q. Well, perhaps --
 3 A. Since you are going to
 4 use my words against me, I would rather know
 5 what --
 6 PRESIDING ARBITRATOR MILES:
 7 Are you an engineer, Dr. Guillet?
 8 THE WITNESS: I don't know.
 9 Is that a formal qualification? I did an
 10 engineering school; is that enough to be an
 11 engineer?
 12 BY MR. TERRY:
 13 Q. Do you know what's
 14 required to be an engineer? Do you know about the
 15 standards and the accountability that you have to
 16 abide by if you're a Professional Engineer?
 17 A. I don't know that we have
 18 these standards in France, so. Technically, in
 19 France, I am an engineer, yes. I haven't
 20 exercised as an engineer but I have a diploma of
 21 an engineer.
 22 Q. If I could bring up,
 23 please, take you to Tab 7 of your cross brief.
 24 And this is, again, from the transcript where you
 25 testified previously.

1 And at page 184. You -- I am
 2 asking you there:
 3 "You're not putting
 4 yourself forward here as
 5 an engineer; correct?"[as
 6 read]
 7 And this is what I was asking
 8 about your training and qualifications.
 9 And you say:
 10 "Correct."[as read]
 11 And, unless you have taken
 12 engineering courses since that first proceeding, I
 13 take it that's still a correct statement?
 14 MS. SQUIRES: I am sorry. I
 15 just want to object here for just one second
 16 because I don't think you are reading the
 17 transcript properly.
 18 PRESIDING ARBITRATOR MILES:
 19 You can stop, Ms. Squires.
 20 The question that was put to
 21 you was whether or not you were representing
 22 appearing as an expert engineer in the earlier
 23 proceedings.
 24 That is a separate question as
 25 to whether or not he is an engineer. He could

1 have three hats and might be providing expert
 2 evidence with one.
 3 I think the valid question, I
 4 think it's as valid as are you putting yourself
 5 forward as an engineer in these proceedings.
 6 THE WITNESS: I don't believe
 7 I am. I don't think I have claimed to be.
 8 MR. TERRY: Okay.
 9 DR. GUILLET: I don't think I
 10 have made any comments that would require me to be
 11 a Professional Engineer.
 12 So, but if you --
 13 BY MR. TERRY:
 14 Q. That's fine and totally
 15 fair.
 16 And then the next question
 17 highlighted I said, and similar:
 18 "And you are not putting
 19 yourself forward here as
 20 a construction
 21 expert?"[as read]
 22 In this proceeding and you --
 23 A. Well, what do you mean by
 24 construction expert. I probably know more than
 25 anyone in this room on, actually, what it takes to

1 build an offshore wind farm? Am I the guy that
 2 orders the cranes and --
 3 PRESIDING ARBITRATOR MILES:
 4 Dr. Guillet, just let me stop.
 5 There is a separation between
 6 what you can do, what you have done, what you're
 7 qualified to do and what you are representing
 8 yourself as opining on to us in these proceedings.
 9 We have volumes of engineering
 10 expert reports. We have the Wood report. We have
 11 the Two Dogs report. We have a number of expert
 12 engineering reports.
 13 So the question put to you is
 14 you are not putting yourself forward as an expert
 15 in construction engineering. That's not what your
 16 report deals with?
 17 THE WITNESS: If that's the
 18 question, I am happy to stipulate to that.
 19 However, since the question
 20 about is a valuation of complex engineering
 21 projects, I feel entitled to say that I do
 22 understand a little bit about the underlying
 23 issues. I don't claim to be an engineer. I don't
 24 claim to provide expertise in that topic. But I
 25 do claim to understand some of what's going on and

1 to be able to speak about it, especially as it
 2 pertains to the valuation of the projects.
 3 BY MR. TERRY:
 4 Q. And, again, to go a
 5 little further down the transcript. Sorry, if you
 6 go back up to the top of page 187.
 7 And this is in the context of
 8 my asking you about who the technical experts were
 9 that were testifying for Windstream in that
 10 proceeding and whether you're aware of them and
 11 what your views were of them.
 12 And you said here:
 13 "If you want me to attest
 14 to Sgurr is one of the
 15 top, top technical
 16 experts in the field, I'm
 17 happy to stipulate to
 18 that."[as read]
 19 And Sgurr, of course, now goes
 20 under the name Wood; you're aware of that?
 21 A. Of course.
 22 Q. Right.
 23 And Wood was the -- or is the
 24 technical expert firm that provided for -- that
 25 continued to provide for the second Windstream

1 proceeding, the expert reports on the technical
 2 feasibility of study; you're aware of that?
 3 A. Yeah. And I commented on
 4 that yesterday already.
 5 I will stipulate again that
 6 Sgurr/Wood is top technical expert in the field.
 7 And I will point out, again, that their reply will
 8 depend on the question that you ask them, and
 9 whether it is possible to build a project is not
 10 the same thing as is it highly certain that it
 11 will be built within that budget and that time
 12 frame.
 13 These are two different
 14 questions. They are qualified to answer both.
 15 Their reports that you've provided are about the
 16 question whether it's possible to build the
 17 project and I certainly believe them when they say
 18 that it is possible.
 19 But I am applying a different
 20 standard which is the standard that lenders and a
 21 number of investors would apply which is it highly
 22 likely that it can be built within that budget and
 23 that timetable. And that is a different question.
 24 They can answer it, but they
 25 have not answered it in the reports that you

1 provided.
 2 Q. All right.
 3 And then continuing with your
 4 qualifications, you were not -- and I am using
 5 these words as they're understood in business and
 6 legal terms.
 7 You're not a business valuer.
 8 You wouldn't describe yourself as a business
 9 valuer; that's not your area of expertise.
 10 A. I am sorry but I don't
 11 understand what is defining business. I mean
 12 you're mixing up terms that are used in common in
 13 business, and terms that are legally fraught with
 14 meaning and things that I certainly don't get.
 15 So don't make me say things --
 16 if you want me to say something that has legal
 17 meaning, please describe that legal meaning
 18 before. Otherwise, you are going to use my words
 19 against me.
 20 I am doing business valuation.
 21 I am -- that's my job. I value projects. I value
 22 businesses and projects.
 23 But is it if there's a
 24 specific definition of business valuation for the
 25 legal purposes, I don't know and I can't answer

1 that question.
 2 So be more precise about your
 3 definitions since you want to use words against
 4 me, then define the words.
 5 PRESIDING ARBITRATOR MILES:
 6 He is really not trying to trick you. It was an
 7 imprecise phrase and I think he will rephrase it
 8 but don't --
 9 THE WITNESS: He has been
 10 using it every single modification in one phrase
 11 compared to the other in different parts of my
 12 report to say that I am not saying thing so --
 13 PRESIDING ARBITRATOR MILES:
 14 The way your evidence --
 15 THE WITNESS: I am not taking
 16 any words.
 17 PRESIDING ARBITRATOR MILES:
 18 The way your evidence is of most use and, indeed,
 19 any use to us, as a Tribunal, is if you answer the
 20 questions.
 21 If you don't understand a
 22 question, say I don't understand the question.
 23 But, if you get into defensive argument with
 24 counsel, it doesn't help us.
 25 So we need you to help -- we

1 need your evidence to help us.
 2 So, Mr. Terry, business
 3 valuation is a curious way to put it. But perhaps
 4 you meant qualified valuer. I don't know. But
 5 maybe re-put your question.
 6 BY MR. TERRY:
 7 Q. Yeah, and I appreciate
 8 that.
 9 First of all, are you
 10 accredited, in any way, as a business valuator by
 11 any association?
 12 A. No.
 13 PRESIDING ARBITRATOR MILES:
 14 You don't mean business in there; do you? Valuer.
 15 BY MR. TERRY:
 16 Q. Are you accredited as a
 17 valuator?
 18 A. Look, I have no formal
 19 qualifications whatsoever to do what I've been
 20 asked to do. I have been asked to do it because
 21 that's what I have been doing for 25 years and
 22 that's it.
 23 So if you want me to say I
 24 have -- I am not an accountant. I am not an
 25 engineer. I am a banker. I don't know how to do

1 anything. I just use other people's money.
 2 It's -- I got -- I don't have
 3 any formal qualifications.
 4 CO-ARBITRATOR MCLACHLIN: Is
 5 that a definition of banker?
 6 PRESIDING ARBITRATOR MILES:
 7 Pretty much.
 8 THE WITNESS: So, yeah, I
 9 don't have any qualifications. I don't have any
 10 accreditations. I don't have any formal
 11 qualifications I can claim. I am not claiming to
 12 any of that. I have 20 years of history in the
 13 industry, full stop. Make of that what you will.
 14 MR. TERRY: Thank you very
 15 much. I believe those are all my questions. I
 16 will just maybe confer with my colleague for a
 17 moment.
 18 Yes, nothing further from me,
 19 Dr. Guillet. Thank you very much.
 20 THE WITNESS: It's a bit tough
 21 to answer very loaded questions.
 22 CO-ARBITRATOR GOTANDA: I have
 23 a few questions if you could.
 24 I am trying to understand the
 25 dates and the relevance of that. And you go back

1 to 2008 and there's valuation date, let's say, of
 2 2020.
 3 Is 2008 too far back?
 4 THE WITNESS: That is
 5 definitely a fair question.
 6 The advantage of having the
 7 old data is you can look and see if you see any
 8 trend.
 9 And I believe the trend that I
 10 see in the data that I have is that there has
 11 actually been very little movement. Maybe a very
 12 small upward trend but not orders of magnitude.
 13 Maybe some percentage which is hard to see in the
 14 volatility of the individual numbers which -- for
 15 what still remain as fairly small sample.
 16 So the fact that the more
 17 recent numbers are not so far from the earlier
 18 ones is a signal that there's been consistency, in
 19 my view. So that's why I left them in.
 20 I agree that if the goal is to
 21 say let's see what the recent valuations, it is
 22 not unreasonable to say let's just keep the more
 23 recent numbers.
 24 But given that they are fairly
 25 similar, it shouldn't change the end result too

1 much.
 2 CO-ARBITRATOR GOTANDA: Did
 3 you adjust for inflation?
 4 THE WITNESS: No.
 5 CO-ARBITRATOR GOTANDA: Could
 6 that be significant?
 7 THE WITNESS: Well, between
 8 2008 and 2020, not really. Since 2020, it's more
 9 an open question.
 10 Yeah, I mean, we have spent
 11 15 years without inflation, essentially, so people
 12 had forgotten about the whole thing. So now it's
 13 suddenly back on the agenda, on the horizon, and
 14 it will -- actually, it's an open question because
 15 some countries still have tariffs that are not
 16 inflated, not indexed.
 17 So you can't squeeze the
 18 cost -- I mean, if the revenue is still capped,
 19 the cost will lead to the valuation of the
 20 development project will remain labour force or
 21 the projects won't happen. Something will have to
 22 give.
 23 CO-ARBITRATOR GOTANDA: If the
 24 valuation date moved to 2023, the answers change
 25 to both? Or 2024. If the valuation date is,

1 let's say today.
 2 THE WITNESS: Also tough
 3 question because, actually, 2023, and even from
 4 mid 2022, the market has largely frozen. There
 5 has been a lot fewer transactions. Investors in
 6 very early development have stayed back from the
 7 market.
 8 Some have exited. Some, they
 9 have abandoned projects or stopped them. Some
 10 have stopped buying. Some that were active buyers
 11 across.
 12 So the volume of transactions
 13 have gone down significantly.
 14 What this has meant for prices
 15 is, is not obvious but it's not upward pressure
 16 for sure.
 17 So whether the new prices
 18 are -- what's the impact of inflation is probably
 19 a smaller for these projects than the more general
 20 market environment for the sector.
 21 CO-ARBITRATOR GOTANDA: So
 22 would your data set then change? I take it you
 23 are saying probably not.
 24 THE WITNESS: I don't have a
 25 lot of data points for '22 or '23. If anything,

1 they would probably be on the lower bound and my
 2 work is focused more on the very, very early stage
 3 projects, even before they have site control and
 4 things like that.
 5 So that's a very narrow part
 6 of the market. So I wouldn't be able to comment
 7 as much on the rest.
 8 But, from what I see in public
 9 information, there's been a lot fewer transactions
 10 also for late development stage projects.
 11 CO-ARBITRATOR GOTANDA: And
 12 would you have to adjust the numbers to account,
 13 then, for inflation?
 14 THE WITNESS: At this stage, I
 15 would not but that's personal, you know, shoot
 16 from the hip position.
 17 CO-ARBITRATOR GOTANDA: Okay.
 18 THE WITNESS: I would probably
 19 need to study it more to give you more informed
 20 answer.
 21 CO-ARBITRATOR GOTANDA: Thank
 22 you.
 23 PRESIDING ARBITRATOR MILES:
 24 In the little bundle, could you turn to Tab 3 for
 25 me, please. I want to take you to paragraph 474.

1 If you could also, at the same
 2 time, open up your slide. Have you got a hard
 3 copy of your slide presentation?
 4 THE WITNESS: I do.
 5 PRESIDING ARBITRATOR MILES:
 6 Yes so, page 7, the slide presentation.
 7 And what I'd like your help
 8 with is how -- I definitely don't want to get into
 9 the territory you have just been with Mr. Terry of
 10 where the nuances are.
 11 But insofar as there are broad
 12 blocks that the Tribunal has identified in the
 13 Award, I have been trying to match those blocks
 14 with your Slide 7. And I was hoping you could
 15 help me on that.
 16 So, at paragraph 474. We
 17 talked about this yesterday.
 18 Second paragraph:
 19 "The evidence before the
 20 Tribunal indicates that
 21 there are three critical
 22 value milestones for
 23 offshore wind projects:
 24 A, permitting, early
 25 stage."[as read]

1 So can you tell me where on
 2 your Slide 7, which columns are A permitting -- or
 3 column is A, permitting early stage.
 4 THE WITNESS: From reading
 5 and -- from reading this, I, I think that they
 6 mean, for permitting, what I have called fully
 7 permitted, so that would be the four blocks and
 8 that would be the end of the third column.
 9 So that would be the end of
 10 late development.
 11 And I agree I have used the
 12 definition of late development as being already
 13 fully permitted so there's -- no, sorry, the end
 14 of the second column.
 15 In this graph, it's called mid
 16 development. So, shovel ready, that's fully
 17 permit -- the end of the second phase is fully
 18 permitted. So the third page, late development,
 19 is from fully permitted to --
 20 PRESIDING ARBITRATOR MILES:
 21 Just let me ask the question.
 22 THE WITNESS: Yes.
 23 PRESIDING ARBITRATOR MILES:
 24 So the question was so can you just be very, very
 25 clear.

1 The Tribunal's A permitting
 2 early stage; did you say that's your first three
 3 columns or your first two columns?
 4 THE WITNESS: That's the first
 5 two.
 6 PRESIDING ARBITRATOR MILES:
 7 Okay.
 8 So B, contracting, financing
 9 and construction late stage; which column or
 10 columns would that be on your Slide 7?
 11 THE WITNESS: On my Slide 7,
 12 that is the third column.
 13 PRESIDING ARBITRATOR MILES:
 14 Okay.
 15 So Slide C would be which
 16 column?
 17 THE WITNESS: Well, they have
 18 put construction in B. So B would be the third
 19 and the fourth. If -- since they have included
 20 contracting and financing and construction, so
 21 they haven't separated third and fourth column in
 22 their level B.
 23 And then C operations is the
 24 last column.
 25 PRESIDING ARBITRATOR MILES:

1 Okay.
 2 So if I were to match the
 3 three, what the Tribunal describes as three
 4 critical value milestones for offshore projects
 5 with your chart, just to summarize what I think I
 6 heard you say, permitting early stage would be
 7 columns 1 and columns 2.
 8 THE WITNESS: Yes.
 9 PRESIDING ARBITRATOR MILES:
 10 Late stage would be columns 3 and 4, so to include
 11 construction.
 12 THE WITNESS: In their
 13 writing, yes.
 14 PRESIDING ARBITRATOR MILES:
 15 And third stage operations would be your Column 5.
 16 THE WITNESS: Yes.
 17 PRESIDING ARBITRATOR MILES:
 18 When you talk about late stage development, do you
 19 mean before or after financial close or both?
 20 THE WITNESS: I mean before
 21 financial close. So the third column.
 22 PRESIDING ARBITRATOR MILES:
 23 So, in your view -- so has the Tribunal's three
 24 critical value milestones that it's identified
 25 here, in your opinion, do they match your

1 definitions of early stage and late stage?
 2 THE WITNESS: The border
 3 between the two is correct.
 4 I would not include
 5 construction in the late stage. I would split
 6 that into two, to have late stage development and
 7 then construction.
 8 But the border between early
 9 stage and late stage is the same.
 10 PRESIDING ARBITRATOR MILES:
 11 How can both of those things be correct?
 12 If the border is correct, then
 13 construction belongs in late stage.
 14 THE WITNESS: In their
 15 definition.
 16 The border between early stage
 17 and late stage, so one side of the border is
 18 correct. The other side, they haven't put a
 19 border between late stage and construction.
 20 I would put an --
 21 PRESIDING ARBITRATOR MILES:
 22 They had put a border. They have put a border on
 23 the other side of construction; is that correct,
 24 in your opinion, or not?
 25 THE WITNESS: Yeah. That's

1 another border that I use. That's COD.
 2 PRESIDING ARBITRATOR MILES:
 3 So you say construction belongs in late stage
 4 development?
 5 THE WITNESS: No, that's what
 6 the Tribunal wrote.
 7 PRESIDING ARBITRATOR MILES:
 8 All right. What do you say?
 9 THE WITNESS: I say they are
 10 two separate phases.
 11 PRESIDING ARBITRATOR MILES:
 12 So is the Tribunal right or wrong, in your
 13 opinion?
 14 THE WITNESS: I would not
 15 group contracting financing and construction in
 16 one phase.
 17 PRESIDING ARBITRATOR MILES:
 18 Can you turn over to paragraph 478 which is where
 19 they apply these categories.
 20 And what I have been grappling
 21 with is whether the categories identified in 474
 22 are then applied consistently in 478. And that's
 23 what I have been trying to understand.
 24 So if you could just look with
 25 me at that. And, here, they are referring to your

1 testimony. Offshore wind projects have
 2 relatively -- and they don't refer to you in
 3 paragraph 474.
 4 478, they do.
 5 Depending on development
 6 stage, project value may range from .1 million for
 7 projects that are not fully permitted, to
 8 .2 million for fully permitted.
 9 So if we come back to your
 10 Slide 7. That range of .1 million to .2 million,
 11 which of your columns would that be?
 12 THE WITNESS: The first part
 13 of the sentence say that the project that are not
 14 fully permitted are below 0.1 million, so that
 15 would be early development.
 16 And, in that, they are
 17 consistent with me. And that's my first column.
 18 They are putting that at below .1 million.
 19 And then it goes -- and then
 20 they say it goes to 0.2 million for fully
 21 permitted projects. That would be my second
 22 column.
 23 And then they sort of jump to
 24 the 4 million value for project that have reached
 25 financial close, which is consistent with what I

1 say, but it sort of jumps over that thing that
 2 they have put together in paragraph 474.
 3 PRESIDING ARBITRATOR MILES:
 4 What is your mean or average multiplier for early
 5 stage development?
 6 THE WITNESS: Below 0.1.
 7 PRESIDING ARBITRATOR MILES:
 8 Right.
 9 So did you just say your
 10 Column 1 is .1 to --
 11 THE WITNESS: No, my first
 12 column is below 0.1. That's what they say also.
 13 The early projects that are not fully permitted
 14 are below 0.1.
 15 That's what 478 says:
 16 "The project values may
 17 range from below 0.1 for
 18 projects that are not
 19 fully permitted, 0.2 for
 20 fully permitted."[as
 21 read]
 22 So they say the projects, in
 23 the first column, are below 0.1. And the projects
 24 in the second column are up to 0.2.
 25 So I believe that's consistent

1 with what I am saying.
 2 PRESIDING ARBITRATOR MILES:
 3 So if we go down to the next sentence after the
 4 footnote 1043, so as to the early stage project,
 5 specifically, Dr. Guillet's evidence on actual
 6 transaction shows overall projects range from
 7 .01 million to approximately .1 million, depending
 8 on the development stage.
 9 Which column is that?
 10 THE WITNESS: That's inside
 11 the first column.
 12 PRESIDING ARBITRATOR MILES:
 13 So that's only your first column. So that's where
 14 you get to the sentence we were just looking at.
 15 Below 0.1 is way below to 0.01.
 16 THE WITNESS: Yes.
 17 PRESIDING ARBITRATOR MILES:
 18 So finish first column at .1.
 19 Whereas late stage development
 20 projects have been sold for prices ranging from .1
 21 to .5.
 22 Where is that in your --
 23 THE WITNESS: So that would
 24 cover Columns 2 and 3.
 25 CO-ARBITRATOR MCLACHLIN: I

1 thought you said Column 2 was an early stage. I
 2 took that note.
 3 THE WITNESS: Well, I mean, we
 4 haven't used early stage fully consistently across
 5 the different testimonies and the different
 6 phases.
 7 So I think the, the -- these
 8 tables are consistent.
 9 The early stage, as it's been
 10 defined, is anything below fully permitted and
 11 that's the -- sorry, maybe I am getting confused
 12 myself as well.
 13 So the real milestones -- I
 14 mean fully permitted is a real milestone so that's
 15 the end of the second column. That's where shovel
 16 ready is. That's fully permitted.
 17 CO-ARBITRATOR MCLACHLIN: Can
 18 I just ask you. I am getting confused too.
 19 I want to take you to your
 20 first, that is 12 December '22 report.
 21 Paragraph 24. And 25.
 22 This is where you first set
 23 out, for our purposes, how you divide these
 24 stages.
 25 So, if we look at

1 paragraph 24, you say:
 2 "The methodology is based
 3 on the development stage
 4 of offshore wind
 5 projects, whereby
 6 investors differentiate
 7 between early stage
 8 development, late stage
 9 development, projects
 10 under construction and
 11 operating projects."[as
 12 read]
 13 So you have got four stages.
 14 Then, in 25, you say that the
 15 cutoff between the first two development stages,
 16 early and late, is financial investment decision,
 17 FID; is that correct?
 18 Prior to financial investment
 19 decision, we have two development phases; that's
 20 what you seem to say in 25, at the first line?
 21 THE WITNESS: Yeah. So
 22 there's early development up to fully permitted,
 23 and then late development after fully permitted.
 24 CO-ARBITRATOR MCLACHLIN:
 25 Right. And that's the moment that the development

1 phases end. All of them.
 2 And we move, then, into
 3 construction.
 4 THE WITNESS: Construction.
 5 CO-ARBITRATOR MCLACHLIN: And
 6 then operation.
 7 And then you say, in
 8 paragraph 25, I am not worried about Phase 3 and 4
 9 because they're not at issue here. What I am
 10 worried about is early development and late
 11 development.
 12 And that's where my confusion
 13 comes. Because I thought, originally, that early
 14 development ends, and I will give you your point
 15 about lack of absolute cutoffs. But about the
 16 point where you're pretty sure about your
 17 permitting. All the permitting is done at the
 18 end, effectively.
 19 Or maybe you're in a situation
 20 where you know the government is going to give you
 21 all the permits or whatever. But you're pretty
 22 assured that this is going ahead.
 23 THE WITNESS: Yes.
 24 CO-ARBITRATOR MCLACHLIN: And
 25 you put something like 90 percent on that at the

1 end of early development; did you, or this
 2 morning? I thought you did? I want to be clear
 3 about that.
 4 THE WITNESS: Yeah. I mean,
 5 that you're close enough to fully permitted that
 6 it can be valued in that ballpark.
 7 CO-ARBITRATOR MCLACHLIN:
 8 Okay. So that's the end of early development.
 9 Then what happens in the next
 10 development phase?
 11 THE WITNESS: That's financing
 12 and contracting --
 13 CO-ARBITRATOR MCLACHLIN: No.
 14 Well, you are working on the financing because the
 15 second one ends when you get the financing.
 16 THE WITNESS: No, no. The
 17 full development phase ends at financial close.
 18 CO-ARBITRATOR MCLACHLIN:
 19 That's right, yeah.
 20 So what are you doing? What
 21 is a project operator doing, after they get all
 22 their permits, what happens in the second phase?
 23 Just bear with me. I am confused. Seriously.
 24 THE WITNESS: So you have your
 25 permits. You know the size of your site. You

1 know how high you're allowed to build the
 2 turbines. You know how many you are allowed. You
 3 know how many megawatts. Then you have done the
 4 technical studies to identify how you are going to
 5 do your layout.
 6 And then that's when you
 7 actually negotiate the contracts to buy the
 8 turbines, to install them, to buy the cables, the
 9 foundations.
 10 So that's the commercial
 11 negotiations to actually get the project built.
 12 And, in parallel to that, you negotiate the
 13 financing for that if you need external financing
 14 or you --
 15 CO-ARBITRATOR MCLACHLIN:
 16 Yeah. And then, if you're successful in that
 17 late, what you call the late stage development,
 18 you get your financing and you move on to
 19 construction and operation.
 20 I think that helps me a lot.
 21 Thank you very much.
 22 THE WITNESS: The confusion
 23 may have come from the fact that what we've --
 24 what is labelled here early development stage, all
 25 the way to fully permitted, since I have been

1 working in that, I have started to split it into
 2 different sub phases, so to speak, and that has
 3 generally -- which, in this graph, is early and
 4 mid, which is maybe would be the good way.
 5 But the report doesn't use
 6 early and mid so that's maybe why the confusion.
 7 And in terms of the benchmarks
 8 that I have been using, the early -- what I have
 9 called early stage project, those would be at the
 10 early half or bottom --
 11 CO-ARBITRATOR MCLACHLIN: The
 12 first development phase.
 13 THE WITNESS: The first part
 14 of the development phase, the early stages. And
 15 the late development are those that are around
 16 fully permitted. So either at fully permitted or
 17 as some formally, slightly before fully permitted.
 18 But in that general area.
 19 CO-ARBITRATOR MCLACHLIN: They
 20 are all in Phase 1 but --
 21 THE WITNESS: Well, some are
 22 at the back end of early stage and but close to
 23 late and some are already fully permitted but they
 24 are not all formally fully permitted, yes.
 25 CO-ARBITRATOR MCLACHLIN:

1 Thank you.
 2 PRESIDING ARBITRATOR MILES:
 3 So just finishing on paragraph 478 of the
 4 Tribunal's Award.
 5 It's Tab 3.
 6 THE WITNESS: 478, yes.
 7 PRESIDING ARBITRATOR MILES:
 8 478.
 9 So the second sentence:
 10 "Project value may range
 11 from below 0.1 for
 12 projects that are not
 13 fully permitted to .2 for
 14 fully permitted early
 15 stage projects."[as read]
 16 Just stop there.
 17 That's your Columns 1 and 2,
 18 you said earlier.
 19 I think you already said that.
 20 Early stage development is your Columns 1 and 2.
 21 THE WITNESS: Yes. But these
 22 columns don't exactly fit with the definitions in
 23 my report. So I am using different definitions in
 24 this graph and my report and the Tribunal use
 25 slightly.

1 So, in paragraph 478, there
 2 they are consistent with my graph --
 3 PRESIDING ARBITRATOR MILES:
 4 Just stop.
 5 Just -- is your -- and
 6 Mr. Terry did ask you about this.
 7 But are you using entirely
 8 different categories in your expert opinion before
 9 us, to what you used in your expert opinion with
 10 the other Tribunal?
 11 THE WITNESS: Well, the
 12 problem is that I haven't used defined words. So
 13 early and late are vague terms and I realize that
 14 there is some ambiguity as to early of what phase
 15 and late of what phase.
 16 But, in paragraph 478, their
 17 first sentence refers to Column 1 of my Table 7.
 18 And their second sentence refers to Column 2.
 19 But I accept that I haven't
 20 used these two columns in my report -- they are
 21 both covered by early stage in my definition in
 22 the reports.
 23 PRESIDING ARBITRATOR MILES:
 24 You don't mean first sentence because the first
 25 sentence is -- let's throw away the first

1 sentence.
 2 So the second sentence,
 3 depending on the development stage, that refers
 4 only to Column 1 of your report?
 5 THE WITNESS: Of my graph in
 6 my presentation.
 7 PRESIDING ARBITRATOR MILES:
 8 So your first of your five columns in your graph,
 9 could go up to 4.5 million per megawatt?
 10 THE WITNESS: No.
 11 PRESIDING ARBITRATOR MILES:
 12 Well, that's what the first sentence says.
 13 THE WITNESS: No, it doesn't.
 14 PRESIDING ARBITRATOR MILES:
 15 Well, yes, it does, sir. Read the sentence:
 16 "Depending on the
 17 development stage, the
 18 project value may range
 19 and up to."[as read]
 20 End of the first sentence:
 21 "And up to
 22 4.5 million --"[as read]
 23 THE WITNESS: That's the full
 24 cycle of the project. Up to 4.5 is Column 5.
 25 PRESIDING ARBITRATOR MILES:

1 Just work with me here, please.
 2 You said -- and I think you
 3 tried to cut this short and it can't be cut short.
 4 The first sentence refers to
 5 Column 1 of your report. The second sentence
 6 refers to Column 2.
 7 That can't be right because
 8 the first sentence doesn't refer to any stage at
 9 all.
 10 The second sentence, in
 11 paragraph 478, seems to me to refer to at least
 12 two stages, possibly three stages.
 13 I am trying to understand
 14 which phrase of the second sentence relates to
 15 which column.
 16 THE WITNESS: Okay. Let's cut
 17 this down in propositions rather than sentences
 18 because the second sentence, the one starting at
 19 "depending", I believe, covers the -- the whole
 20 sentence covers the full gambit of projects, all
 21 the way from early development up to operations.
 22 PRESIDING ARBITRATOR MILES:
 23 Right.
 24 THE WITNESS: So the first
 25 proposition within them is from below 0.1 million

1 for projects that are not fully permitted. That's
 2 the first -- stopping there.
 3 PRESIDING ARBITRATOR MILES:
 4 Below 0.1 to .2.
 5 THE WITNESS: No, no. I am
 6 stopping at from 0.1. That's the first column.
 7 Then 0.2 is already the
 8 second column.
 9 And to, approximately 4
 10 million, they jump to the fourth column.
 11 PRESIDING ARBITRATOR MILES:
 12 Okay. Slow down.
 13 Below 0.1 is your first
 14 column, what you call site control early
 15 development.
 16 THE WITNESS: Yes.
 17 PRESIDING ARBITRATOR MILES:
 18 And then from, so that's below, less than 0.1.
 19 From 0.1 to 0.2, fully
 20 permitted early stage, you'd put that in your
 21 second column?
 22 THE WITNESS: Well, that's
 23 actually third column already since it's fully
 24 permitted.
 25 So it's the end of the second

1 column. It's the border. The 0.2 is the border
 2 between the second and the third column in my
 3 graph, page 7.
 4 PRESIDING ARBITRATOR MILES:
 5 And then we have from 0.1 to approximately 4
 6 million for projects that have reached financial
 7 close.
 8 THE WITNESS: So 4 million is
 9 at the border between the third column and the
 10 fourth column. That's when you have reached
 11 financial close and construction starts.
 12 PRESIDING ARBITRATOR MILES:
 13 And then we have up to 4 and a half that have
 14 reached commercial operation.
 15 THE WITNESS: So that's the
 16 end of the fourth column when you have reached COD
 17 and you start into operations.
 18 PRESIDING ARBITRATOR MILES:
 19 So, if we come back to paragraph 474, when the
 20 Tribunal says early stage permitting, that is the
 21 two ranges from up to .1, early stage, and then,
 22 then to fully permitted to .2.
 23 THE WITNESS: Yes.
 24 PRESIDING ARBITRATOR MILES:
 25 That includes both of those.

1 THE WITNESS: Yes.
 2 PRESIDING ARBITRATOR MILES:
 3 Their second, their B, late stage, does that
 4 correspond with the next category of .2 to 4
 5 million?
 6 THE WITNESS: Well, in that
 7 paragraph 474, in item B, they regroup Columns 3,
 8 the development, contracting and financing, and
 9 Column 4, which is construction.
 10 And there is really a
 11 milestone at the middle of that which is financial
 12 close. I don't know why they have put that in the
 13 middle but it's really a big distinction in the
 14 middle of that phase.
 15 PRESIDING ARBITRATOR MILES:
 16 So if the word "construction" was not in B, then
 17 the .2 to the 4 million would correspond with B?
 18 THE WITNESS: But, somewhere
 19 else, they put the -- in paragraph 479, they made
 20 the reference to 0.1 to 0.5 -- no, that's in --
 21 PRESIDING ARBITRATOR MILES:
 22 Just answer my question, hey.
 23 So can we come back, please.
 24 Can you look at paragraph 478 which is what my
 25 question relates to.

1 478, other page, please.
 2 THE WITNESS: It's the next
 3 sentence in 478 where they make that distinction,
 4 as to the early stage project, specifically,
 5 Dr. Guillet's evidence on actual transactions
 6 shows that the overall valuations of such project
 7 range from 0.1 to 0.1 beginning stage, whereas
 8 late development projects have been sold from
 9 prices ranging from 0.01 to 0.05.
 10 That would be the late
 11 development. That would be my third column.
 12 They don't have that
 13 milestone. The 0.5 million per megawatt is not
 14 mentioned in 474. But it would be the
 15 intermediate point in their level B.
 16 4 million is financial close.
 17 I mean, there is no ambiguity. No project under
 18 development is worth 4 million per megawatt.
 19 That's billions of euros for any project.
 20 PRESIDING ARBITRATOR MILES:
 21 The part of the second sentence that I asked you
 22 to look at, "to approximately 4 million megawatts
 23 for projects that have reached financial close";
 24 would that correspond with the Tribunal's B from
 25 474 if construction were omitted from B?

1 THE WITNESS: Yes -- omitted
 2 or included, sorry?
 3 PRESIDING ARBITRATOR MILES:
 4 Omitted.
 5 THE WITNESS: So if it was
 6 taken out of B, then the limit would not be 4
 7 million. It would be 0.5 -- 0.4, 0.5.
 8 PRESIDING ARBITRATOR MILES:
 9 So was it consistent with your evidence that there
 10 is a valuation range from .2 -- is it consistent
 11 with your evidence here -- this is what matters to
 12 me -- that .2 million to 4 million euro per
 13 megawatt is the range up to financial close?
 14 THE WITNESS: No.
 15 PRESIDING ARBITRATOR MILES:
 16 Okay.
 17 THE WITNESS: Well, I mean,
 18 the 4 million is what you get at financial close.
 19 So, yes. But, before financial close -- sorry.
 20 PRESIDING ARBITRATOR MILES: I
 21 give up. Okay. That's fine. Forget it.
 22 Ms. Squires, he is all yours.
 23 THE WITNESS: I am sorry.
 24 MS. SQUIRES: I just need
 25 one --

1 PRESIDING ARBITRATOR MILES:
 2 Do you want to take a five-minute?
 3 MS. SQUIRES: Yes.
 4 PRESIDING ARBITRATOR MILES:
 5 Yeah, that might be a good idea. I think I need
 6 coffee.
 7 Okay. All right.
 8 --- Upon recess at 10:29 a.m.
 9 --- Upon resuming at 10:46 a.m.
 10 PRESIDING ARBITRATOR MILES:
 11 Ms. Squires, I want to be able to give Mr. Terry
 12 and, indeed, you the opportunity to ask any
 13 questions arising out of my additional questions
 14 after Mr. Terry had finished his cross. And I am
 15 just not quite sure when to do that but it would
 16 be easy if he didn't have any.
 17 So did you have any,
 18 Mr. Terry?
 19 MR. TERRY: It's easy.
 20 PRESIDING ARBITRATOR MILES:
 21 Good. I will put that out of my mind.
 22 Ms. Squires, it's all yours.
 23 Thank you, Mr. Terry.
 24 RE-EXAMINATION BY MS. SQUIRES:
 25 Q. Hi, Dr. Guillet.

1 A. Hello again.
 2 Q. I am going to ask Ryan,
 3 our technical person here, to put your slide
 4 presentation up on the screen just so we can have
 5 a better look at it. And I am going to ask you
 6 some questions and, as I do that, I am going to
 7 ask Ryan to highlight things to make it easy as to
 8 what I am referring to.
 9 So if you can just keep an eye
 10 on the screen.
 11 A. Okay.
 12 Q. And I would also like if
 13 you can take out the Award, Presiding Arbitrator
 14 Miles had you there a minute ago. But I would
 15 like to look at paragraph 474.
 16 Okay. So we see in the Award
 17 that the Tribunal said, the Tribunal indicated
 18 three critical value milestones for offshore
 19 projects, A, B and C in the Award; right?
 20 A. Yes.
 21 Q. I am just going to try
 22 and match those up right now to where -- I am
 23 going to ask you to match them up, I guess, to
 24 where they are on this.
 25 So if we -- would I be correct

1 in saying that permitting early stage would be the
 2 first two columns in your table?
 3 A. Yes, up to fully
 4 permitted. Yes.
 5 Q. So the first two columns.
 6 So that would encapsulate
 7 paragraph 474A, 474(a).
 8 Is it right to say that, if we
 9 look at 474(b), and we were only to look at
 10 contracting and financing, am I right that that's
 11 the third column in your table?
 12 A. If we are looking only at
 13 the contracting and financing, that is, indeed,
 14 the third column.
 15 Q. Okay. So that would be
 16 474(b) for contracting and financing; is that
 17 right?
 18 MR. TERRY: Just if may make
 19 one comment, Madam President.
 20 I appreciate that this may be
 21 quite helpful the way Ms. Squires is doing this,
 22 and clearly, it's leading. But I am just going to
 23 ask the Tribunal to be a little bit cautious and
 24 Ms. Squires to be a little bit cautious in doing
 25 that and adding new things up to the slide and

1 things like that.
 2 So that's the one comment I
 3 would make.
 4 MS. SQUIRES: Okay. We don't
 5 have to add things on to the slide. We could just
 6 do the highlights, if that's preferred.
 7 PRESIDING ARBITRATOR MILES:
 8 Yeah, the highlights is fine. I am interested to
 9 know what you are going to do when you get to 478.
 10 The 474, I thought we had done
 11 and was easy, but I assume she is setting it up
 12 for 478 which has still left me baffled.
 13 MS. SQUIRES: That is where I
 14 am trying. Yes, exactly.
 15 PRESIDING ARBITRATOR MILES: I
 16 think -- look, we are in the realm of submission.
 17 I understand that. How we would weigh the expert
 18 testimony, insofar as it is expert testimony, we
 19 will take into account the fact that we are in the
 20 realm of submission.
 21 Nevertheless, while we have
 22 Dr. Guillet, it would be useful to try to unravel
 23 this --
 24 MR. TERRY: I have no
 25 objection to that. I just wanted to kind of put

1 it out there --
 2 PRESIDING ARBITRATOR MILES: I
 3 understand. And noted. Yeah, all right.
 4 And, if gets too carried away,
 5 just.
 6 THE WITNESS: Can I maybe make
 7 one clarification or am I not allowed to?
 8 PRESIDING ARBITRATOR MILES:
 9 No. You answer questions. That's your job.
 10 Okay.
 11 BY MS. SQUIRES:
 12 Q. On your table then,
 13 Dr. Guillet, where would you put 474(c)?
 14 A. So 474(c) is operations,
 15 that would be the last column.
 16 Q. And then the part of
 17 474(b) that we didn't talk about, the
 18 construction?
 19 A. That's the second part of
 20 474(b) and construction.
 21 Q. And your table, that's
 22 column, which one?
 23 A. Column 4.
 24 Q. Okay. So now I am going
 25 to go to 478.

1 Okay. I am going to try and
 2 look at this here. Let's read together.
 3 The Tribunal said:
 4 "Depending on the
 5 development stage, the
 6 project value may range
 7 from below 0.1 million
 8 megawatts per projects
 9 that are not fully
 10 permitted."[as read]
 11 Can you tell me where, on your
 12 table, you would put that 0.1 million per
 13 megawatt?
 14 Like in terms of columns and
 15 lines, I mean.
 16 A. So that's Column 1 and
 17 part of 2 because it's Column 2 but not fully
 18 permitted. So it's somewhere -- it includes at
 19 least part of Column 2 but not the end, not the
 20 border of Column 2.
 21 Q. Okay.
 22 And then so the up to 2
 23 million per megawatt for fully permitted, where
 24 would that fall on your chart?
 25 A. So that would be the end

1 of Column 2.
 2 Q. Okay.
 3 A. At the border when you
 4 get to fully permitted.
 5 Q. And then to
 6 approximately --
 7 PRESIDING ARBITRATOR MILES:
 8 Hang on, sorry. The 2 million --
 9 THE WITNESS: 0.2 million.
 10 PRESIDING ARBITRATOR MILES:
 11 If 0.2 would be at the end but up to wouldn't be
 12 at the end. The up to would be all the way
 13 through, presumably.
 14 THE WITNESS: Yes.
 15 PRESIDING ARBITRATOR MILES:
 16 So was the question was where is he up to?
 17 THE WITNESS: It would have
 18 been Column 2.
 19 BY MS. SQUIRES:
 20 Q. You said the column ends
 21 with a .2; is that correct?
 22 A. As an order of magnitude,
 23 yes.
 24 Q. And then the next part of
 25 paragraph 478 says, to approximately 4 million

1 euros per megawatt for projects that have reached
 2 financial close.
 3 Where would we place the 4
 4 million?
 5 A. So the 4 million is at
 6 financial close. That's the border. That's the
 7 beginning of the fourth column.
 8 Because what happens, on
 9 financial close, is that you commit to budget for
 10 construction. So you had a project that was up to
 11 now only in development and a fully developed
 12 project ready to sign.
 13 That's what's worth 0.4, 0.5
 14 depending on the number you use.
 15 And then you add, on top of
 16 that, 3.5ish million of new money, which is the
 17 construction budget added on top of the
 18 development budget and that's how you get to 4
 19 million.
 20 Q. Okay. Yeah. Okay --
 21 A. It's because there is no
 22 money coming in at this point in time.
 23 Q. Yeah, no. All I am doing
 24 right now, Mr. Guillet, is asking for your help in
 25 trying to match up the exact numbers in 478 and

1 your table.
 2 If we just continue with 478,
 3 and then it says up to 4.5 million megawatts per
 4 projects that have reached commercial operation,
 5 where, on your table, would you place 4.5 million
 6 megawatts?
 7 A. So that's the beginning
 8 of Column 5. The 4 million is the beginning of
 9 Column 4 and 4.5 million is the beginning of
 10 Column 5.
 11 Q. Okay.
 12 So, if we just keep going with
 13 the paragraph, we have -- they are relying on your
 14 testimony to say the overall valuations of such
 15 projects range from 0.01.
 16 So where would you put -- so
 17 we are talking about early stage project, sorry.
 18 Where would you put the 0.01?
 19 A. So that would be
 20 somewhere in the first column or at the beginning,
 21 beginning to middle of the first column. That's
 22 the earliest, earliest stage projects.
 23 Q. And we discussed a minute
 24 ago the .01, I think you said was somewhere in the
 25 second column --

1 CO-ARBITRATOR MCLACHLIN: He
 2 said at the border.
 3 BY MS. SQUIRES:
 4 Q. .1?
 5 A. The 0.1 is the beginning
 6 of the second column.
 7 Q. Okay. Yeah.
 8 A. And the 0.5 that is
 9 mentioned in paragraph 478 would be the end of the
 10 third column, just before financial close.
 11 Q. Sorry, just to follow
 12 what you said there, Dr. Guillet.
 13 You are talking about:
 14 "Whereas late development
 15 stage projects have been
 16 sold for prices ranging
 17 from 0.1."[as read]
 18 Which you said was the end of
 19 the first column.
 20 A. Yeah.
 21 Q. To 0.5 -- I am going to
 22 have a follow up question, I think, to this.
 23 But the 0.5 million, where did
 24 you place that?
 25 A. That's the end of the

1 third column. And the 0.5 is a part of the 4
2 million because the 4 million comes from adding to
3 the development budget, the construction budget.

4 Q. Okay. So some -- is what
5 you're saying, correct me if I am wrong, that
6 somewhere between -- somewhere before that
7 \$4 million line, it's worth 0.5 and then, when you
8 reach financial close --

9 PRESIDING ARBITRATOR MILES:
10 Ms. Squires, I don't think you are helping
11 yourself.

12 It's not linear. It's not
13 from 0 to 4 and a half million. Every single
14 stage of every single project has a value range
15 and those value ranges overlap all the way along.
16 So the exercise won't work.

17 So I think we will stop there.
18 If you want to create a slide.

19 MS. SQUIRES: Yeah.

20 PRESIDING ARBITRATOR MILES: I
21 don't think Dr. Guillet is going to give you
22 anything else other than what's already in his
23 testimony, either oral or written. If you want to
24 create a slide for closing, then I think perhaps
25 do that.

1 I think, at this point, it's
2 just going to get murkier rather than clearer.

3 MS. SQUIRES: Yes.

4 PRESIDING ARBITRATOR MILES:
5 So perhaps move on to your next topic.

6 MS. SQUIRES: Yes, I don't
7 think we have anything else for Dr. Guillet this
8 morning.

9 PRESIDING ARBITRATOR MILES:
10 Okay.

11 So, Dr. Guillet, I did tell
12 you that cross-examination is not fun for anybody.
13 Well, maybe for counsel. But it's not fun for the
14 people being cross-examined.

15 But it's a really important
16 part of our process and the integrity of our
17 process and testing the legitimacy of written
18 opinions and testing the veracity of evidence and
19 not the truthfulness of experts. But, rather, you
20 know, whether the assumptions they are using
21 actually can only be construed in the way they put
22 or whether they can be construed in other ways.

23 It's been enormously helpful
24 having you testify.

25 Dr. Tetard, Mr. Milburn and

1 Mr. Tobis, I know you are still here. It was also
2 extremely useful having you testify.

3 We appreciate the four of your
4 expertise.

5 For my part, I value and
6 appreciate having a totally immersed industry
7 expert who values these particular projects every
8 single day, rather than just professional valuers
9 who value anything. I think it is valuable and
10 worthwhile.

11 And, certainly, from my part,
12 it was not a criticism. I was trying to
13 understand what your expertise parameters were.

14 So thank you for coming.
15 Don't be put off, any of you. It's been a
16 valuable exercise.

17 And thank you very much to
18 counsel for handling all of those experts in a
19 very, very professional and helpful way.

20 So you're done. You can speak
21 to whom so ever you please.

22 CO-ARBITRATOR MCLACHLIN: Have
23 dinner with them.

24 PRESIDING ARBITRATOR MILES:
25 Have dinner with them, have lunch.

1 And so we are closing the
2 evidence now. And let's take a moment about what
3 we are going to do tomorrow.

4 Can I just -- so, as I said
5 yesterday, I think we would like the Tribunal to
6 go away for 15 minutes or so and work out what's
7 helpful for us.

8 What might be useful before we
9 do that is just to solicit your views.

10 So, Mr. Terry, if you could,
11 perhaps, indicate what your thinking might be a
12 useful way to run tomorrow, from your perspective,
13 so we can think about that.

14 And, Mr. Neufeld, Ms. Squires,
15 Ms. Dosman, one or all of you do the same and then
16 we can just take that into consideration.

17 But there will be particular
18 bits that you would have saved for closing that
19 you will want us to be mindful of as well, I am
20 sure.

21 So what will tomorrow look
22 like in your wish list, Mr. Terry?

23 MR. TERRY: And I might seek
24 further input from my team afterwards but just, on
25 a preliminary basis, we are, of course, most

1 interested in what's troubling the Tribunal and
 2 most interested in hearing your questions or
 3 concerns.
 4 We have been, as you do in
 5 these hearings, you know, getting ready and
 6 preparing materials to deal with whatever may
 7 happen on Friday. So we have got room to pivot as
 8 to whatever makes the most sense.
 9 We certainly appreciate the
 10 approach the Tribunal has been taking in terms of
 11 having what we might call a hot bench, which we
 12 certainly very much appreciate having the
 13 interaction. And if we can run something tomorrow
 14 that involves a focus on what's concerning you.
 15 We want to make sure that we
 16 leave you with indications or summaries of what we
 17 see as things that are important in the facts and
 18 the law, but we don't want to spend a lot of time
 19 taking you through certain areas of case law that
 20 might be -- we might have dealt with in the
 21 pleadings that may be less relevant to you.
 22 So I think that's where we
 23 really appreciate your questions.
 24 And we are happy to -- I mean,
 25 it might be appropriate, in the give and take

1 tomorrow, to have, you know, some part of reply or
 2 four rounds to the discussions. We are open to
 3 what the Tribunal wants to do on that.
 4 But I -- or we could break it
 5 up in some way by issue.
 6 But I think what we are
 7 thinking tomorrow is something that allows all of
 8 us, I guess, to get at a reasonable period of time
 9 but allows you to thoroughly consider and have
 10 thorough discussions on the issue.
 11 And we are happy to. In terms
 12 of timing, I think we are happy looking at the
 13 team to start at the regular time at 9 o'clock. I
 14 don't think -- assuming we will get some direction
 15 for you. We are willing to take all the time
 16 that's necessary to have submissions that are
 17 going to be focused.
 18 I will just check to see
 19 whether anyone on my team has anything to add on
 20 that.
 21 No, nothing further right now.
 22 PRESIDING ARBITRATOR MILES:
 23 Okay, thank you very much.
 24 Mr. Neufeld.
 25 MR. NEUFELD: Thank you.

1 Madam President.
 2 I was comforted by Mr. Terry's
 3 words that -- although I dislike the word "pivot".
 4 I think that's horrible. But we should move
 5 forward with the Tribunal's questions.
 6 We have been at this a long
 7 time and I don't mean this week. I mean years and
 8 years and years.
 9 So it is time now to draw a
 10 line. We are very happy to be directed by the
 11 Tribunal to answer questions. We heard you loud
 12 and clear that there are legal matters you want
 13 addressed and we are very happy to address those
 14 matters and to focus entirely, our submissions
 15 entirely on those and even to jettison anything
 16 that we had planned to say.
 17 I mean, it's really -- the
 18 focus here is to give you what you need so please
 19 tell us what you need and we will do that for our
 20 closings.
 21 Thank you.
 22 MR. TERRY: Madam President,
 23 if I might just add one more thing.
 24 I think it's the preference on
 25 both sides not to -- if not necessary, to do

1 post-hearing briefs.
 2 But, of course, if there
 3 should end up being something at the end of the
 4 day tomorrow that you want some further written
 5 materials on or some further help and we sort of
 6 are starting to run out of time, we, of course,
 7 are open to that, if it makes sense.
 8 PRESIDING ARBITRATOR MILES:
 9 Okay. Thank you, Mr. Terry.
 10 Mr. Neufeld, I understood that
 11 as a specific focused offer if there is a specific
 12 issue left over needing something more, perhaps,
 13 more law or more argument, would you -- I don't
 14 anticipate that, but would you be amenable if we
 15 needed that?
 16 MR. NEUFELD: Of course we are
 17 amenable to whatever you need. I think it can be
 18 done in the closing statements tomorrow.
 19 PRESIDING ARBITRATOR MILES:
 20 Yeah. Okay. All right.
 21 So, in New Zealand rugby
 22 parlance, that was a hospital pass. You have all
 23 said -- now you all go and figure it out and tell
 24 us what you want.
 25 So we will go do that. It may

1 be a little bit longer than 15 minutes but we will
 2 come back as soon as we can.
 3 But thank you very much very,
 4 very much.
 5 --- Upon recess at 11:06 a.m.
 6 --- Upon resuming at 11:42 a.m.
 7 PRESIDING ARBITRATOR MILES:
 8 Thank you all for the extra time. That was really
 9 helpful for us.
 10 So we have had our discussion
 11 and actually jumped ahead and determined the
 12 questions that we want you to address. So we are
 13 going to give them to you now orally. They will
 14 be in the transcript. But, if they are not clear,
 15 it will give you an opportunity to clarify as
 16 well.
 17 In terms of format for
 18 tomorrow, what we would like to do is keep with
 19 the two and a half hours per party.
 20 We would like each party, at
 21 the beginning of its presentation, to give an
 22 uninterrupted 15-minute executive summary.
 23 So having, you know, heard our
 24 concerns and input thus far, and you know what our
 25 questions are, sort of your best case path to

1 success on the claim or path to success on the
 2 defence, you know, the elevator pitch, the
 3 15-minute executive summary.
 4 Then, at the end, we would
 5 like each of you or so -- we may do this after you
 6 have addressed the two-hour body of our questions.
 7 At the end, we would like each side to give
 8 another 15-minute wrap up. It doesn't have to be
 9 15 but up to 15 wrap up.
 10 So insofar as there are sort
 11 of prepared submissions, that's where they will
 12 be.
 13 Now, in terms of the two hours
 14 in the middle -- and we didn't talk about this
 15 but.
 16 --- Off-the-record discussion.
 17 PRESIDING ARBITRATOR MILES:
 18 The way we are going to do it is the 15-minute
 19 executive summaries, Mr. Terry, you will give
 20 yours. Mr. Neufeld or whoever from your team, you
 21 will give yours. The 15, the 15.
 22 Then we will get into the body
 23 where we want you to address our questions but
 24 not -- the two hours of your sort of the body of
 25 your closing, address our questions but also give

1 us what you think we need to do and we need to
 2 know.
 3 So you're not limited to our
 4 questions but we do want you to answer them.
 5 And we didn't feel entirely
 6 that all of our questions, from prior to opening,
 7 were fully addressed. So we really do want our
 8 questions addressed.
 9 And then, after you have each
 10 done that two-hour bit, the wrap up, and we will
 11 take a break before this, but the wrap up, the
 12 sort of closing, closing, 15, Mr. Terry and
 13 Mr. Neufeld will do those at the end.
 14 So if you could be 15, 15,
 15 two, two, 15, 15. Yeah?
 16 All right.
 17 MR. TERRY: May I ask a
 18 question about the two hours?
 19 PRESIDING ARBITRATOR MILES:
 20 Yes.
 21 MR. TERRY: Are we thinking
 22 two hours including Tribunal question time?
 23 PRESIDING ARBITRATOR MILES:
 24 Yes, yes.
 25 MR. TERRY: Okay.

1 PRESIDING ARBITRATOR MILES:
 2 And I will be disciplined.
 3 MR. TERRY: It's very helpful
 4 hearing what's on your minds.
 5 PRESIDING ARBITRATOR MILES:
 6 No, but we will be disciplined.
 7 So there are five questions.
 8 Some might require a little bit more than the
 9 others but we will be thinking of the blocks of
 10 those five.
 11 So we will be keeping watch on
 12 time. José Luis will be keeping watch on our
 13 time.
 14 So the five questions or
 15 issues that we would like you to deal with, there
 16 are two threshold issues. And I am calling them
 17 threshold so as not to label them jurisdictional
 18 or admissibility, but two threshold issues.
 19 The first issue we want to
 20 hear you from, in terms of your best case, is res
 21 judicata.
 22 And, cause of action estoppel,
 23 we don't think there is a dispute between the
 24 parties. We think it's pretty clear that the
 25 Tribunal decided what it decided on fair and

1 equitable treatment and decided what it decided on
 2 expropriation at that time.
 3 If there is dispute on cause
 4 of action estoppel, you need to tell us what that
 5 is but we are assuming there isn't.
 6 What we are much more
 7 interested in and concerned about is the
 8 collateral estoppel or what I would call issue
 9 estoppel.
 10 And so which are the issues of
 11 fact that each party says are barred from
 12 reopening and which are not barred from reopening
 13 and why.
 14 Now, if the legal principles
 15 on issue estoppel are largely agreed, please just
 16 confirm that to us in the course of tomorrow.
 17 But, if there's dispute as to
 18 some of the nuance of the collateral estoppel,
 19 then set out your legal position on that as well.
 20 But we think the cause of
 21 action estoppel is primarily a fact issue. We
 22 want to understand which issues you're saying are
 23 closed for good and which issues are not closed.
 24 Any questions on that?
 25 MR. TERRY: None from us.

1 PRESIDING ARBITRATOR MILES:
 2 Okay. So the next threshold issue is the
 3 limitation point.
 4 So Articles 1116, 1117 and the
 5 knowledge of the alleged breach and knowledge that
 6 the investor has incurred loss or damage.
 7 We want to understand better,
 8 we want better to understand both parties'
 9 positions as to the effect of the application of
 10 1116 and 1117.
 11 So what is the knowledge of
 12 the alleged breach in these proceedings and what
 13 is, in addition, the knowledge of the alleged loss
 14 or damage in these proceedings.
 15 And, really, as a matter of
 16 law, to what extent, if at all, can elements of
 17 that knowledge of alleged brief predate the
 18 three-year limitation period.
 19 We think that's a legal and a
 20 factual question. So we want you to address both.
 21 Any questions?
 22 MR. TERRY: Nothing from us.
 23 PRESIDING ARBITRATOR MILES:
 24 Okay.
 25 So then we move into the

1 merits.
 2 And related to that 1116, 1117
 3 question, for fair and equitable treatment, we
 4 want to understand clearly, from both parties,
 5 what your best case is for either alternative if
 6 we were to accept, as we think is the Respondent's
 7 case, but subject to clarification, that there are
 8 certain acts, actions, measures, if you like, by
 9 Canada that will fall out the three-year period.
 10 If we were to accept that and
 11 take certain acts of conduct, actions or measures,
 12 elements out, take them out at the cut-off date of
 13 the critical date. I think the Respondent
 14 described it as on December 22nd, 2017. What
 15 would be the FET case left for the Claimants?
 16 So to understand those two
 17 alternatives, the knowledge of the alleged breach
 18 and knowledge of the alleged loss, in total, as
 19 limitation point. But then, if we were to accept
 20 the Respondent's case, as we think we understand
 21 it, that certain elements of that list of conduct
 22 are out of time, what would the FET basis be
 23 arising out of the remaining elements.
 24 And I should, I hope it was
 25 clear but I didn't say it expressly.

1 Absolutely nothing is
 2 predetermined here. There are many, many lines of
 3 analysis and logic that we need to consider. And
 4 some of our questions arise as we are going down
 5 one line of logic but it doesn't mean we have
 6 decided to go down that line of logic.
 7 So we just want to know where
 8 each route would take us.
 9 So then the second part of the
 10 merits is expropriation.
 11 We'd like to understand more
 12 clearly -- and it may well be in your written
 13 submissions, Mr. Terry.
 14 But we would like to
 15 understand and for you to address tomorrow,
 16 please, more clearly, your position on the
 17 application of the CUSMA Annex 14B. And, in
 18 particular, the application of investment-backed
 19 expectations as a requirement for expropriation,
 20 either as a matter of application of Annex 14B or
 21 as a matter of customary international law.
 22 And you'll recall the
 23 Respondent said it was descriptive rather than
 24 prescriptive, so we would like you to address
 25 that.

1 So do we need to look at
 2 investment-backed expectations as a requirement or
 3 element of expropriation and, if we do, we would
 4 like you to consider what that means for Claimant.
 5 Any questions?
 6 MR. TERRY: None from us.
 7 PRESIDING ARBITRATOR MILES:
 8 Okay.
 9 So then we are moving and it
 10 may feel a jump, but our fourth question is -- our
 11 fifth question -- I was looking at the notes -- is
 12 loss.
 13 What we would like you to
 14 address is, if we were to reach the point where
 15 we -- if we needed to reach the point and we
 16 reached the point, that we considered the Award in
 17 Windstream I made the Claimant whole at that time,
 18 we would like you to address what is your case,
 19 what is each side's case on the appreciation of
 20 value -- perhaps, on the Respondent's side, the
 21 lack of appreciation of value -- between the date
 22 of the first Award and today and on what basis are
 23 you claiming that appreciation of value.
 24 There is a bit of nuance
 25 between there that you probably do need to come

1 back and address, following the experts, on which
 2 date we take into account. And I think there's a
 3 legal question there that touches on res judicata,
 4 perhaps.
 5 The Claimant's experts
 6 yesterday reached back to the date of the last
 7 Deloitte report being June 2015, if I remember
 8 rightly, but the Award is, of course, 27th of
 9 September 2016.
 10 So, as a matter of law, what
 11 would be the right date if the Tribunal were to
 12 get there and were to consider that Claimant was
 13 made whole as at -- by the first Award.
 14 Any questions on that?
 15 MS. SHERKEY: Not on that but
 16 I do have a question back to -- I have one
 17 follow-up question on cause of action estoppel not
 18 on the loss.
 19 Which was just your question
 20 focused on issue estoppel and had said there
 21 doesn't seem to be a dispute on cause of action
 22 estoppel. And I just wanted to clarify that.
 23 I think we agree on the legal
 24 principles. The parties disagree as to whether
 25 cause of action estoppel is met.

1 So I have your question on
 2 issue estoppel, but I just wanted to clarify what
 3 you meant on there not being a dispute on cause of
 4 action estoppel, to just make sure we properly
 5 address that issue.
 6 PRESIDING ARBITRATOR MILES:
 7 If there is a dispute, you better make us aware of
 8 it. So you need to address it, if there is a
 9 dispute.
 10 MS. SHERKEY: Okay.
 11 PRESIDING ARBITRATOR MILES: I
 12 had understood that the Claimant's position was it
 13 was bound by res judicata in the first Award.
 14 MS. SHERKEY: Yes.
 15 And I think the dispute is on
 16 the application here. We say there isn't cause of
 17 action estoppel because there aren't the same two
 18 causes of action between the two proceedings. And
 19 they say this whole claim is barred.
 20 That's what I was getting at.
 21 PRESIDING ARBITRATOR MILES:
 22 Okay, Ms. Sherkey. It may have been just the way
 23 I expressed it.
 24 Insofar as the causes of
 25 action have been litigated, the Claimant is

1 precluded from bringing those same causes of
 2 action again. That is undisputed.
 3 MS. SHERKEY: Yes.
 4 PRESIDING ARBITRATOR MILES:
 5 Right.
 6 Insofar as whether the causes
 7 of action in this proceeding are new or not,
 8 that's an open issue.
 9 MS. SHERKEY: Yes.
 10 PRESIDING ARBITRATOR MILES:
 11 All right.
 12 Yes, you can address that but
 13 where we would like precision on the issues and I
 14 think it gets us to the same place.
 15 MS. SHERKEY: Yes.
 16 PRESIDING ARBITRATOR MILES:
 17 Thank you.
 18 So our last question, question
 19 six was causation. And I know it feels a bit odd
 20 to have causation after loss. But we think
 21 it's -- we'd asked you to deal with causation in
 22 our first questions and we don't feel it has been
 23 satisfactorily dealt with by either party.
 24 So we, think, if you address
 25 what is the loss caused -- what is the loss that

1 has arisen since the first Award.
 2 And then what, of each of the
 3 causes of action, what breach, and breaking into
 4 each of the causes of action, what breach has
 5 caused that loss.
 6 So separating expropriation
 7 for inequitable treatment, in particular.
 8 Any questions on that?
 9 MR. NEUFELD: The question I
 10 have is are there any factual, just straight facts
 11 that you need us to -- and I don't mean any facts
 12 related to these questions.
 13 I mean is there anything that
 14 you have left in your mind, any questions on
 15 facts -- any question marks on facts?
 16 CO-ARBITRATOR MCLACHLIN: Yes.
 17 Lots but we will decide.
 18 PRESIDING ARBITRATOR MILES:
 19 Did you hear that? Lots but we will decide.
 20 I don't think it's a priority
 21 for these two and a half hours. We have extensive
 22 fact witness statements. We had the benefit of
 23 the cross-examination of the witnesses that were
 24 called. We have a very experienced judge.
 25 We think we have the evidence

1 to hand for what we need to determine in terms of
 2 facts in dispute.
 3 Except for insofar as the
 4 facts arise out of the questions.
 5 So if there is a loss of
 6 appreciation in value, what are the facts that
 7 support that appreciation or that lack of
 8 appreciation, so. And same with causation.
 9 If there are still disputed
 10 facts between the parties as to particular actions
 11 by the government or measures by the government,
 12 then that will obviously come into the discussion
 13 on whether or not they can cause a loss.
 14 MR. NEUFELD: Okay. I think
 15 Ms. Squires has a question to ask as well.
 16 MS. SQUIRES: Just a very
 17 quick one.
 18 Does the caveat in Question 3
 19 about if you were to accept Canada's case that
 20 certain measures are time-barred, does that follow
 21 through to the damages questions as well, the
 22 questions on loss and causation?
 23 Or are we to assume there that
 24 no measures are time-barred?
 25 PRESIDING ARBITRATOR MILES: I

1 think, for loss and causation, certainly start by
 2 assuming no measures are time-barred. But, if you
 3 have additional submissions to make, to say if you
 4 were to accept our time-bar, then this may reduce
 5 the loss, if it does reduce the loss.
 6 But you will tell us tomorrow
 7 but I don't actually think it's that nuanced.
 8 Okay.
 9 Go ahead, Ms. Shelley.
 10 MS. SHELLEY: Could we just
 11 ask one clarifying question on Question Number 5.
 12 PRESIDING ARBITRATOR MILES:
 13 Yes.
 14 MS. SHELLEY: You had said
 15 what are the parties' cases on the appreciation
 16 value between the date of the first Award and
 17 today.
 18 And does "today" mean today
 19 or --
 20 PRESIDING ARBITRATOR MILES:
 21 February 2020. It will be the date of valuation.
 22 MS. SHELLEY: Okay.
 23 PRESIDING ARBITRATOR MILES: I
 24 don't think the date of valuation is in dispute;
 25 right, in these proceedings.

1 MS. SHELLEY: We have used the
 2 same valuation date as our friends, yes.
 3 PRESIDING ARBITRATOR MILES:
 4 Yes, good question. Date of valuation.
 5 Okay, all right, we are really
 6 looking forward to tomorrow. We hope you get some
 7 sleep.
 8 And we will see you bright
 9 eyed and bushy tailed at 9:00 a.m. tomorrow
 10 morning. So thank you all.
 11 --- Whereupon matter adjourned at 12:05 p.m., to
 12 resume Friday, February 9, 2024,
 13 at 9:00 a.m.
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