

running base load it was just much more convenient providing steam to the recycle paper plant at Carter Holt Harvey, but those arrangements have terminated and Carter Holt Harvey now runs under its own steam.

5 MR MULLIGAN: Or under its own gas, doesn't it?

MR WHINERAY: I'm not sure how they're raising their steam bit it may be gas, yes. I don't know.

10 [2.35 pm]

MR MULLIGAN: The review and the decisions in relation to this particular plant in late 2014 into early 2015 when Mr Flexman came on board with Mercury, that had been preceded by quite a long build up of geothermal development by then Mighty River Power, wasn't it, under Dr Heffernan's stewardship?

MR WHINERAY: Yes, we had grown both sides of our portfolio, both sales and generation so if you're thinking because you build geothermal you can substitute out Southdown, it's not quite as simple as that.

MR MULLIGAN: No, no, I'm just trying to get a view of the market.

MR WHINERAY: Māori joint venture partners invested 1.4 billion over a decade in a key part of the geothermal renaissance in New Zealand, yes.

MR MULLIGAN: You certainly don't have to anticipate that I'll say to you, "Aha, because you've got geothermal you don't need this" but having that geothermal base load as well as the hydro assets in the Waikato which you've described as the most effective peaker today, and I think you've previously described ait as that because it's close to Auckland and you can ride on the river levels, the lake level, to push that peaker through. But it was that geothermal development that placed you in a position to adopt a different view in terms of Southdown at that particular time?

MR WHINERAY: No, it's more related to the viability of what you run on the sales side of your portfolio versus the costs of operating and the gas prices and all the other input costs that are associated with the thermal plant. So I wouldn't see geothermal as necessarily related to that. What geothermal did help us do with that base load generation, and in some instances we sold, for example in Kawerau when we built that power station, the majority of that output to a local pulp and paper processor under a long-term hedge to underwrite that plant.

45 So geothermal is very good for being able to write industrial contracts which like base load 24/7 electricity. So that's predominantly what geothermal is focused at. It's the only weather independent renewable. So we enjoy that aspect of it but Southdown had a combination of

flexibility, gas pricing, fixed costs against the sales portfolio and in the end we continued to look at what other participants in the market were doing and made the decision to suspend production. But only just a couple of years earlier, a year or so earlier, we got a consent to run that for another 20 years or 25 years. So it's a strategic site.

I would just add to that at Marsden we had a power station there too, sold the entire thing, have sold all the land, it's not a strategic site, it didn't -- NIWA now enjoys the water intake pipes across the foreshore for its hapuka farming or whatever it's trying to do there. But that isn't strategic, whereas this one is. It's has a consent and that's why -- unlike Marsden, which we sold the plant and sold the land, this was a different scenario, albeit we had suspended generation for the time being.

MR MULLIGAN: Yes. In terms of that value proposition, part of the issue, I think, you just said was in relation to the gas supply, which presumably that's part of the economic as to what you get the gas for?

MR WHINERAY: Yes, the price.

MR MULLIGAN: The price. Part of the issue with the gas supply there is that you pay, as I understand, for both gas and also the transportation of the gas by First Gas or is it one product? How's it done?

MR WHINERAY: No, you pay for transmission and you buy the gas separately.

MR MULLIGAN: So you pay Todd for the gas and then you pay First Gas, which used to be a Vector owned asset, for the transportation?

MR WHINERAY: Yes, so there's several parts to the pipeline now I think since Vector sold the First Gas, but you need to pay for the gas transmission, up through the Maui pipeline and then beyond and also to whichever gas supplier you've got. It could be any number of providers in Taranaki.

MR MULLIGAN: In terms of that gas supply, just like the transmission supply constraints that you've talked about, with every transmission there's a potential constraint?

[2.40 pm]

MR WHINERAY: Yes, typically it's less so on the pipeline to Auckland because Otahuhu's closed and that immediately freed up about 30% of the pipeline capacity to Auckland. But prior to Southdown and Otahuhu closing there were concerns that there wasn't enough gas capacity in Auckland for industry to grow. The likes of the glass companies and all these other industries that happen to the south of here. So, no, there

is sufficient gas transmission capacity.

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It typically doesn't constrain, if it is it's very intermittent because normally there's a bloke running away from a bulldozer and you know exactly whether the gas pipeline got hit.

MR MULLIGAN: And maybe a large flame.

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MR WHINERAY: Then you go and fix it. There are normally only very brief outages and there's also pipeline pressure which keeps things going as well in those events typically, yes.

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MR MULLIGAN: My question was simply a straightforward one which is there's transmission constraints with all of these matters and sometimes there aren't constraints, it's an open highway, so to speak, and sometimes it's a bit more crowded, that's all.

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MR WHINERAY: Yes, diversity of suppliers is pretty important and that's why gas can come up and why electricity can come up. I guess it's like having two roads instead of one.

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MR MULLIGAN: Yes. In terms of the value propositions, though, that's why some of the plants are based in Taranaki because they don't have to pay therefore for the transport of the gas, they can get the transportation of their product, the electricity, free into the market. So there are just different value propositions.

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MR WHINERAY: It's not for free, if you wanted to sell it in Auckland, you pay a nodal price in Auckland to buy it off the grid and there's a difference to the price in which you sell it into Taranaki and you buy it off the grid in Auckland. That's effectively your electricity transmission costs. Then, who knows, under the electricity authority's long running transmission pricing methodology changes, that may change again. But that's right, there is a transmission cost for each of them. Some people like Todd's want to put their gas power plants right on top of their fields and others you want to transmit the gas to site and generate it locally on as small a footprint as possible.

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MR MULLIGAN: And in relation to that, and you've just raised it, there are operators of peaking products, or potential operators, consent holders for them, who have that interest in gas, isn't there?

MR WHINERAY: To build plants?

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MR MULLIGAN: No, they own gas assets, such as Kupe or ...?

MR WHINERAY: Yes, New Zealand has a number of gas producers and consumers, the largest one of which is Methanex making methanol. It's takes more

than half the country's gas at the moment. So, yes, there's a number and a lot of the time they're extracting it for the liquid petroleum and gas is a by-product but there's a whole range of situations.

5 MR MULLIGAN: And Nova, who have recently got consents in Otorohanga for peaking plants, that's a Todd subsidiary, isn't it?

MR WHINERAY: That's Todd, yes.

10 MR MULLIGAN: And they have gas assets?

MR WHINERAY: Yes, they do, they have gas fields.

15 MR MULLIGAN: Genesis, who have gas going into Huntly, they've got 14% of the Kupe field, don't they?

MR WHINERAY: They own about -- yes, close to half of the Kupe field now, yes.

20 MR MULLIGAN: Right. Now, in your evidence you say, at your paragraph 10(a), that you told Mr Brash that Mercury - or at that point Mighty River Power probably - had suspended gas fired generation at Southdown. It wasn't suspended, was it? The station was closed, wasn't it?

25 MR WHINERAY: The station stopped operating, that is correct.

MR MULLIGAN: But in the market you told everyone that it's closed, didn't you?

30 MR WHINERAY: Yes, and the important thing is to signal that it's not available at short - and I mean like week or day - notice. So, yes, we did say that and that's correct. Then in the intervening year we saw three massive changes, or two other massive changes in gas fired electricity in the upper North Island.

35 MR MULLIGAN: What was the first one?

MR WHINERAY: Our one.

MR MULLIGAN: Yes.

40 MR WHINERAY: Genesis with respect to Huntly and Contact with respect to Otahuhu.

MR MULLIGAN: Yes, but you did, when you went down to the select committee in 2015 to go and talk to your number 1 shareholder, you did tell them that:

45 "We announce that we are closing our small thermal power station in Auckland and will conclude operations at the end of this year so will be 100% renewable from 1 January and we will be pushing the

conversation around electric vehicles for a better Kiwi future."

You said that, didn't you?

5 MR WHINERAY: Correct. I don't recall the exact words but, yes, it is something I think I would have said.

MR MULLIGAN: In fact the record of that select committee says that you received some bouquets from Gareth Hughes from the Greens that you'd moved to that
10 100% generation space.

[2.45 pm]

MR WHINERAY: He would have supported it, I think. Their policy is 100% renewable
15 electricity.

MR MULLIGAN: And you received that bouquet without blushing too much, because that was your position at the time; you had closed the plant, hadn't you?

MR WHINERAY: That's right. But unlike one of our competitors, who brands themselves
20 at 100% renewable as part of their consumer and company proposition, we don't do that. That's not the primary sales pitch for our business. I think I wouldn't call it core to Mercury's strategy, but it is certainly where we would like to go and it was a nice comment from Gareth. I think what Gareth Hughes and that are most interested in is our focus
25 on the substitution of transport fuels, which are imported and expensive and emit carbon, because Mercury has done the most, out of any company in New Zealand in the promotion of the substitution of electric vehicles.

MR MULLIGAN: If we have more electric vehicles, we have yet more power being used,
30 don't we?

MR WHINERAY: Yes, that is one of the technology changes, electric vehicles. On the
35 other side, you've got distributed generation like photovoltaic, and at a bookmark, if all three million light vehicles in New Zealand were electric, you would need another 7-terawatt hours of electricity out of a 40 terawatt-hour market.

MR MULLIGAN: You don't have to worry too much about hawking your business - I am
40 sure I'll go outside and try to hawk my business as well - presumably that is because there has been a decreasing, or a bit of a soft demand, in terms of electricity, and one of the benefits - I think you talked about moving from not just renewable electricity but renewable energy
45 generally - is because then you can squeeze out not just your power competitors, but the petroleum competitors as well. You can move the

Shells on, and the people importing fuel into this country.

5 MR WHINERAY: Yes, well, the biggest focus for it because New Zealand has an abundance of renewable energy, which does have some variability, and we are a long, stringy country, with transmission constraints, and it is better for the customer and it is better for the country, subject to the car companies coming to the party. So, that is a benefit of it but it's not to the exclusion of the country's or the customer's benefit. Yes, we will benefit from growing electricity demand, the market has been a bit flatter but it is largely been flat to slightly growing of late, but, just to be clear, you need a lot of electric vehicles to build a new power station.

10 MR MULLIGAN: Yes, but that is the world that we are heading towards and you have to anticipate that sort of scenario. One of the benefits of that new world would be also we are going to have a whole bunch more big battery storage wandering around, aren't we. I will be able to plug my car in and have that storage in my house, won't I, rather than by my Tesla battery?

15 MR WHINERAY: That is one of the possibilities, yes. Electric cars do need batteries and so there will be a lot of batteries on four wheels, assuming that comes to fruition, but how that actually plays out, that is all part of the dynamic scenarios in the exciting world of energy.

20 MR MULLIGAN: You indicated that it was a dynamic market and you had made the decision, after this relatively long lead in, well-planned lead in, I think, to close, and that there were some developments in the market after that, which showed you how the best laid plans of mice and men, so to speak, but you announced your closure of Southdown 135 in March, and then Otahuhu dropped out of the market all of a sudden, it seems, in August. You didn't review your position; that's a lot of capacity suddenly disappearing but you didn't review your position there in terms of keeping Southdown open.

25 MR WHINERAY: We had, in contemplating the March decision, looked at a whole range of scenarios, because as I have mentioned earlier, you can't predict exactly what all the competitors are going to do or how the market, or technology is going to evolve, and that wasn't sufficient for us to change that decision because there was still sufficient in the supply/demand situation for the North Island and New Zealand, and, indeed at that point Auckland, although I will note that there are new voltage constraints popping up, which Transpower has had to modify its soul for; it's just an operator end. We

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We can - pretty sure we reviewed it, but we contemplated a lot of those scenario in advance, but the speed at which Contact moved was a

surprise to us.

5 MR MULLIGAN: I wasn't proposing that it was something that changed the world - you gave that evidence - but you are saying in fact that you had planned for that particular scenario of Otahuhu closing and nonetheless you still wanted to close Southdown. Is that what you are saying? I'm a bit confused about your position.

10 MR WHINERAY: During that period, we still had the uncertainty of Genesis' Huntly situation also, so you can't take it in isolation; they are all potentially compounding; you have to see what the intersection is of power quality, transmission, energy capacity, ability to respond quickly, versus firming for hydro deficits. Then, after Contact, had made its announcement on Otahuhu, it was after that that Genesis solved its situation with respect to Huntly and life carried on.

15 MR MULLIGAN: But you had already closed your plant by that point and at the time you closed --

20 MR WHINERAY: No, it was still operating until 31 December 2015.

MR MULLIGAN: And Huntly didn't make its decision to extend beyond 2018 until later, because you commented in the press that they should extend.

25 MR WHINERAY: I can't recall the exact timing. I thought it was relatively solved at the end of 2015 for Huntly, or, if it wasn't, we were confident that it was going to come to that landing.

30 MR MULLIGAN: Because in the market - and I think you have said it today - everyone trusts in the market a wee bit. There may be certain circumstances, but the market forces should respond to fill that gap, shouldn't they?

35 MR WHINERAY: Yes, the market forces it was responding to were Genesis not wanting to provide a free option to South Island hydro generators.

MR MULLIGAN: In the end, it was determined, because everyone was saying at the time, Huntly is the cheapest option to fulfil that security issue, and so the market should take advantage of that.

40 MR WHINERAY: Well, no. Everyone determining that, it sounds like it's sort of everyone sits round the table and does that; that's not how it happens. What actually happened is Genesis ran an auction for hedges and bilaterally negotiated sufficient such that it could make a decision to extend Huntly's life out to a later date, but not indefinitely. So, that was how that construct came about, but it is a dynamic market and people respond to whether they've got fuel constraints or capital or what the

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sales part of their portfolio looks like, as well.

5 MR MULLIGAN: But you have made quite a lot of the need for gas generation in Auckland in terms of your case, but at that point, when you closed and before you closed, you lost the largest gas generator in Auckland, Otahuhu, but you didn't decide to hold the horses at that particular point; it still wasn't a viable option then, was it?

10 MR WHINERAY: No, because NIGUP had been built.

MR MULLIGAN: That provides the generation into Auckland.

15 MR WHINERAY: For now. And the Transpower has subsequently, as I have mentioned earlier, adjusted zone 1 voltage constraints, which fortunately haven't manifested constraints, but they have had to respond to the way that they electricity solves because of lack of generation in Auckland, and that is sufficient for now but you will be familiar with the population growth here and the load that will come in to Auckland over time, and certainly within the timeframe of our 20-year consents.

20 DR PRIESTLEY: Just pause, Mr Mulligan, for a moment. You have twice mentioned over the last five minutes, Transpower adjusting its zone 1 voltage constraints. Could you just tell us, very briefly, what that means?

25 MR WHINERAY: What that means is nodally solved about, I think, every five minutes, and so what that means is there are about 200 different places where you can inject into or take from the national grid. What it means is that if there is insufficient voltage, it will try and force other sites, such as Huntly, to run, or boost their output, to deal with getting enough voltage so that you can import enough electricity to Auckland.

[2.55 pm]

35 DR PRIESTLEY: Keeping the pressure up in the pipes.

40 MR WHINERAY: Keeping the pressure up in the pipe. And it is not in Auckland, it's a proxy for it further down the road. So, they have had to dynamically respond, even despite building NIGUP, and that's a much bigger pipe, which should have less losses, and therefore less voltage losses, because of the closures in Auckland of that generation and because they had stepped back from voltage support contracts, which they used to run with both - well, actually, all three: Marsden, Otahuhu, and Southdown. What this means under a growing Auckland scenario, and also a scenario, say, for if Tiwai goes, that if Huntly isn't there to do that, then we won't have the voltage support for it. What that means is that wholesale prices in Auckland will go up a lot and that will mean that consumer prices will go up a lot, and you potentially also face the risk of insufficient power quality to satisfy demand here, and certainly,

within a 20-year timeframe, all of that is feasible. All I am saying is, it is quite dynamic, some of the decision-making, but none of that was sufficient at this point for us to change our decision on Southdown, to actually turn it on again.

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DR PRIESTLEY: So Mr Mulligan's been asking you, quite legitimately, questions about whether Mercury reappraised its decision to close Southdown as a result of what it subsequently found out about Contact deciding to cease operation at its Otahuhu site, which I think you said caught you unawares, but was one of the reasons why the decision wasn't changed, was this decision of Transpower to adjust its voltage constraints.

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MR WHINERAY: No, largely we would prefer that they wouldn't have done that, but the large thing was that the NIGUP transmission project was built, so there was, for that time being, sufficient transmission capacity into Auckland.

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DR PRIESTLEY: What is this project?

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MR WHINERAY: NIGUP. North Island Grid Upgrade Project.

DR PRIESTLEY: I see.

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MR WHINERAY: It was, I guess, close to \$1 billion, part of an about \$4 billion spend by Transpower.

DR PRIESTLEY: That was improving towers.

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MR WHINERAY: It was, yes, putting another whole entire cable from Whakamaru to South Auckland.

DR PRIESTLEY: Now I understand. Yes. Thank you, Mr Mulligan. I just wanted to clarify the nexus between all those things.

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MR MULLIGAN: There might have been different stages to it, but I think Mr Heaps gave evidence to say that it was about \$2.2 billion of effectively making that transmission road far - and we'll deal in roading terms - wider and a big pipeline of power.

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MR WHINERAY: Yes. There were three North Island projects, one around the Wairakei Ring because of the expansion of geothermal, one from Whakamaru to Auckland, and then also NAaN, which is the North Auckland Area Network, I think, one which goes around Auckland.

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MR MULLIGAN: Correct me if I'm wrong in terms of interpreting what you're saying. To take full advantage of that there needs to be - and there had previously been in the past - some voltage stability services either through generation or more passive means to make sure that the

maximum potential can be made of that big road. Is that --

MR WHINERAY: Well, no. So before that big road was put in, it did require voltage support in Auckland to actually be able to bring enough power up.

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MR MULLIGAN: Yes. But now we've got it, to make the most of it - and you'd want to make the most of all that money, presumably - it does need it. Is that what you're saying?

10 MR WHINERAY: Right now that's the case, yes, and they've made some other modifications we've talked about in terms of how the system operator works it, but that's not indefinite. There will be further growth and demand in Auckland and further changes to its consumption patterns, whether through photovoltaics or electric vehicles or storage, all sorts of things, or some catastrophic failure elsewhere, or indeed the withdrawal of a smelter, which may mean that that plant becomes particularly relevant at relatively short notice.

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MR MULLIGAN: Presumably, because of the volatility you're talking about, there will be winners and losers in terms of that investment, be it Transpower or those that have got consents for generation. There will be some that proceed and some that don't, presumably.

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[3.00 pm]

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MR WHINERAY: I think it's for each company to work out what their risk profile is over the long-dated infrastructure and make their investments accordingly.

MR MULLIGAN: Yes. And in terms of that voltage support which you say is required now, you'd indicated that Southdown had previously provided it. That was obviously not seen in late 2015 as a potential option at that point to keep the station open.

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MR WHINERAY: Well, no, you don't need the gas turbines to provide that voltage support. We can hook that voltage support up with the generators that are sitting there as you saw them, and Transpower is in fact running a process to secure additional voltage support into Auckland to facilitate the transfer of renewables from the south. So they are taking steps for that right now and we're participating in that process.

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MR MULLIGAN: Yes, okay.

MR WHINERAY: So you don't need to have the gas turbines. You don't need a gas pipe reservation. You don't need that.

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MR MULLIGAN: But you'd said that previously, when it was connected and it was operating, it did provide that voltage support.

MR WHINERAY: Yes, before NIGUP was introduced, so they terminated the voltage support contract because they put in the big pipeline, then the gas-fired power stations in Auckland stopped running, and now they're thinking about voltage into Auckland again. So that's how it played out.

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MR MULLIGAN: Okay. In terms of that decision-making though in late 2015, as I say, there's been talk of care and protection, which seems to be talking up closing the site down, but there could have been a more fulsome care and protection programme, couldn't there, to keep this opportunity latent? You could have kept the turbines, for example, rather than sell the turbines.

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MR WHINERAY: Well, the turbines, the LM6000 machine is the most widely used aero-derivative engine for power generation in the world, so it's practically like a Trade Me site for purchasing parts or all machines, and indeed we have purchased, and you have to refurbish them overseas, and we've flown them in whole on the Singapore freight jet twice a week, which lands in Auckland. We've flown them in whole and installed them. So LM6000 machines are a very fungible asset. They're not bespoke like large CCGTs.

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MR MULLIGAN: We've been talking about some big emergency that involves someone driving out to the airport and trying to unbolt one off a plane, sort of thing. You could have actually left the ones there, couldn't you, if the site was strategic in that medium term?

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MR WHINERAY: Yes. Well, if it's strategic in the medium term you might as well -- if you're going to own the asset then you're going to have to maintain it. We had three. We had a spare one which was kept at Air New Zealand because they had some capability to give it the right TLC, and indeed we did use their engineering services when we had the machines. But the point is if we can get them readily then there's no need to hold on to them, given that we can bring them back in the timeframe for the care and maintenance approach that we were seeking in the three to four months.

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DR PRIESTLEY: Well, if Mercury, for whatever reason, suddenly decided that it needed to buy more or acquire more of these turbines so that it could re-establish its generation plant, how long from whoa to go to making that decision to these turbines arriving at Southdown would it take, in your view, at the moment?

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MR WHINERAY: There's a range, but it's certainly within three to four months. At one point when we needed to bring in a jet engine, I think we got it here and leased it within three weeks.

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DR PRIESTLEY: In terms of strategy, isn't that an unacceptable delay? I would have thought that it would be more important to have these turbines

mothballed so that you could get into the grid three or four months faster.

5 MR WHINERAY: Yes. Well, that also comes with a significant cost of keeping the entire site staffing and all of the other necessary things. Gas pipeline reservations, which are fixed costs. There are a lot of overheads to actually having it being able to start up that quickly. We didn't see that we needed to cover that event. What we wanted to do was make sure that should events transpire in the next 20 years, some of which could be catastrophic failure of other people's plant or transmission, or there's some other event - Tiwai's we've mentioned - changing, then we have the ability under the recently acquired extended resource consents to turn the thing on. But the fixed costs of actually having the thing on standby, ready to go, that wasn't a good use of capital.

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[3.05 pm]

DR PRIESTLEY: So to recommission the plant is more, in your view, a medium- to long-term option, rather than an immediate option?

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MR WHINERAY: Yes. The fixed costs required to have the thing on something shorter than a three- to four-month lease, turnaround, are very high. But there are a range of scenarios which could be short-term and typically unplanned, or long-term because of the life of the consents which are more structural changes in the consumption or generation or transmission of energy in New Zealand, both of which could give rise to the refiring of the power station and indeed other uses of the site, such as battery storage.

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30 DR PRIESTLEY: So getting rid of the three turbines -- or were there four? There was one you had at Air New Zealand.

MR WHINERAY: There was a spare one at Air New Zealand, yes.

35 DR PRIESTLEY: Getting rid of them was more an immediate economic decision, rather than a long-term strategic decision?

MR WHINERAY: Yes. And because when you've got all those things, every asset you have, you have to have like that and it's a very high-spec asset. There's a lot of maintenance that goes in them. This is ultimately an aircraft engine so it's not cheap to look after.

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DR PRIESTLEY: It's not like a lawnmower in the shed.

45 MR WHINERAY: No.

DR PRIESTLEY: Yes, Mr Mulligan.

- 5 MR MULLIGAN: You talked about keeping staff. Again, you've started with your decision in March 2015, and then suddenly and more quickly I think you've said Otahuhu goes, but nonetheless you decided to get rid of -- I think your resource consent talks about 40 people on staff. I don't know. Press releases say 17 on staff.
- MR WHINERAY: Yes. It was closer to the latter number. Yes.
- 10 MR MULLIGAN: But you decided, notwithstanding Otahuhu going, that you were going to get rid of them as well?
- MR WHINERAY: In the near term the decision to close was unchanged by Otahuhu going. Yes. But I'm not sure how that informs future scenarios. It probably actually adds value to them - well, it did - because it adds the issue on risk, because then this becomes the only spot in Auckland which is capable of large-scale generation.
- 15 MR MULLIGAN: Yes, and it did when Otahuhu closed, but nonetheless you didn't see it as strategic at that particular point sufficiently to keep your staff on-site.
- MR WHINERAY: No, it was strategic to retain the option as we had intended, and we still have some staff involved in the care and maintenance aspects. So it was strategic, so the import of the decision we had made was only strengthened by Otahuhu going because then it became the only site in Auckland to generate electricity, but it didn't change the decision to keep the power station actively manned and ready to turn on at a moment's notice. So the strategy was intact but it didn't mean that we were going to have it on immediate standby.
- 25 MR MULLIGAN: No. Presumably you would accept that if something has got a very heightened or immediate level of strategic importance, you would have it on standby, but what you're saying is it wasn't of that heightened or immediate sense of strategic importance, "Therefore, we got rid of the staff and we sold the four turbines".
- 30 MR WHINERAY: Yes, I think we're confusing the issue of strategy here in the context of the timeframes for infrastructure. Geothermal was a strategy for the company as well and it took a decade to put together Ngatamariki. A lot of kōrero, a lot of engagement, a lot of arrangements, and that's how long these things take to get off the ground. So it was very strategic for us, but just because we couldn't turn it on immediately didn't mean it wasn't worth a decade to pursue. So I think with respect to this, this is about the strategy of being able to respond to short-dated or long-dated things within the timeframes of our consents for this site. No, but it didn't change the decision to say, "Hang on, let's actually keep this thing running right now".
- 35 MR MULLIGAN: No. Presumably you would accept that if something has got a very heightened or immediate level of strategic importance, you would have it on standby, but what you're saying is it wasn't of that heightened or immediate sense of strategic importance, "Therefore, we got rid of the staff and we sold the four turbines".
- 40 MR WHINERAY: Yes, I think we're confusing the issue of strategy here in the context of the timeframes for infrastructure. Geothermal was a strategy for the company as well and it took a decade to put together Ngatamariki. A lot of kōrero, a lot of engagement, a lot of arrangements, and that's how long these things take to get off the ground. So it was very strategic for us, but just because we couldn't turn it on immediately didn't mean it wasn't worth a decade to pursue. So I think with respect to this, this is about the strategy of being able to respond to short-dated or long-dated things within the timeframes of our consents for this site. No, but it didn't change the decision to say, "Hang on, let's actually keep this thing running right now".
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MR MULLIGAN: You will excuse me in asking that question, but all of the evidence that we have heard or a lot of the evidence that we were getting from Mercury was quite breathless about the need for this thing and the world is going to end unless it can start tomorrow, so that was the reason for my question, but what you are saying is it is more of a medium-term exercise?

MR WHINERAY: No, it's not. It is both. The reason why it is, as we have already seen when TCC had to fire up in anger earlier this year it stuttered, 400 megawatt CCGT down in Taranaki and single shaft. So if one bit goes wrong you lose the lot.

[3.10 pm]

The HVDC has had challenges. In fact, it is running well now but if there are issues, and that could be - who knows - caused by a fishing boat dragging up the cables, then those are the sorts of events where you have probably got sufficient storage in hydro lakes and things to deal with a North Island shortfall.

But then, ultimately, you are going to need something to come on line, so the three to four months is a very important scenario. It is not the only scenario but what we've got to do is understand that this is relevant for a long period of time, and the chances of it being needed because of the consents lasting 20 years over that duration is only enhanced because of that duration. The circumstances which may give rise to its need just grow because of the time involved.

MR MULLIGAN: Those circumstances that you have just talked about, events which occurred at gas-fired plants or perhaps a waylaid fishing net or anchor, if those things did occur and the supply did do more than waver, then from New Zealand Inc's perspective I think what you are saying is that that is important, very important, critically important?

MR WHINERAY: Yes, it is, security of supply is fundamental.

MR MULLIGAN: Nonetheless, from Mercury's perspective, you were happy to ignore those criticalities, because that could have occurred then, couldn't it? A fishing boat could have gone through the cable. One of the other plants down in Taranaki could have blown a shaft. That could have all occurred then. But, from Mercury's perspective, it was happy to take that risk at that time, in terms of shutting down this plant or making it more difficult to start up by sacking workers and by selling turbines?

MR WHINERAY: Yes, because the risk was adequately covered in that three to four-month period. We are comfortable with that but it is not for us in the market to go writing free insurance just as Genesis wasn't prepared

5 to for South Island hydro generators. If someone wanted to pay us to keep it live then it may have been a possibility, but the issue is both are important, the three to four-month scenario and also long dated structural changes through technology or the changes to the economy or, indeed, Auckland's size, both of which can give rise to a need to re-fire this power station or indeed use it for voltage support which we were talking about.

10 MR MULLIGAN: Yes, we have talked about that. So, at that particular point, Contact had decided it wasn't going to hold the baby and Mighty River Power had decided it wasn't going to hold that security baby but at that particular point Genesis was with its Huntly plant, is that correct?

15 MR WHINERAY: Yes. Because that brought the security of supply for the country back to about --

MR MULLIGAN: Sorry, I thought it had fallen over.

20 MR WHINERAY: Yes. Those closures brought the security of supply nationally for the country back into about the 15% range, as assessed by Transpower as system operator. There had been up until that point -- because of the geothermal expansions and wind expansions, that is why parts of Huntly closed and that's why thermal reduced their activities and the number of hours they were running simply because renewables had pushed them out. Renewables can come with some drawbacks in terms of energy reliability, which we talked about.

25 MR MULLIGAN: As I say, it is that trade off as we move deeper into renewables. Someone has to hold that security baby and the question is are you going to get paid for that by someone else because it could be, just if you are waiting around for that day it doesn't rain, you have an asset that you have to maintain. Like your thing that you are not getting paid for, that's right, isn't it?

30 MR WHINERAY: Yes. Energy security is something that every company has to think about within the context of their portfolios. Indeed, in the announcement yesterday, talking about the TCC refurbishment for Contact at the annual results, it was talking about that in the context of a dry session in Clutha for the Clyde Dam.

40

[3.15 pm]

45 As an example, South Island hydro has their highest inflows during spring typically because the fuel gets stuck on the Southern Alps, whereas in the North Island the rain arrives in the Waikato hydro catchment during the winter when it's cold. Electricity demand here grows in the winter for space heating because of low or poorly insulated houses and commercial premises. In some instances, you may have a

5 hydro scheme which is providing you with the fuel at the right time of
year or the wrong time of year, and so to deal with those gaps either
you need storage of gas or you need storage of hydro or you need
flexible plant to be able to convert that when you need to, so everyone's
portfolio is different. The critical thing about the market is it helps with
a range of risk appetites and arrangements. It has actually resulted,
after 20 years, in far better outcomes in terms of system security, partly
because the signals are there to incentivise that. In the long market,
10 though - and we are not talking just about North Island, New Zealand
- Auckland is unique because of the gravity of the load. There is a lot
of it here and the transmission lines coming to it. It is not just about
balancing national energy security, because no one is really interested
in national energy security if the energy is not on at their house.

15 MR MULLIGAN: Yes.

MR PARSONSON: Mr Mulligan, I just had a quick question. There was quite a lot of
discussion yesterday, Mr Whineray, about the relevance of having
Southdown at the ready to be re-fired up in a dry winter, such as there
20 is a dry winter in the South Island at the moment. But the responses
you have given to Mr Mulligan so far suggest to me that that might be
a scenario that is less likely for Mercury to want to re-power Southdown
because of the lead in time to get the station up and running again. It
wouldn't give you much generation period before it wasn't worthwhile
25 generating, so is that --

MR WHINERAY: Yes.

MR PARSONSON: -- dry year not a likely scenario for getting the power station going?

30 MR WHINERAY: It would have to be an extreme event because for three to four months
you have less ability to do that. And then the time, as you correctly
point out, on which you can recoup the cost of flying in jet engines and
doing everything else in that three to four-month period would be
35 limited, but if it was a scenario where it was dry and either transmission
or thermal generation fell or that was material to dealing with that, then
I can expect that everyone would have to think pretty hard about how
the sector will maintain security, yes.

40 DR PRIESTLEY: So some of the questions yesterday were combinations of the failure of
one transmission plant somewhere, combined with a cold, dry winter.
Do you see that as a scenario where there is vulnerability?

MR WHINERAY: Well, it is a scenario where there is a probability attached to it and the
45 system operator is the best one to typically opine on that, from an
energy and capacity perspective, for the market's needs. But those are
all possible. Just like in South Australia, your Honour, no one saw that

coming but it happened too, so ...

5 DR PRIESTLEY: I want you to focus on the Auckland situation which you painted a very helpful picture of, as have other witnesses. We have a cold winter and we know what that means in terms of electricity consumption in the Auckland conurbation. We have a dry winter, which means that the norm of heavy rainfalls during winter in the Taupo and the hydroelectric lakes will not be occurring, coupled with the failure of some big generation plant somewhere or other. What are we faced with then?

10 MR WHINERAY: Well, look, I don't have that at my fingertips but it can move quite quickly into the security risk zones. We got to the 4% risk curve this year and that was only with a quite late in the piece dry spell in the South Island from about April. But if you get combinations of those then, yes, the risk of energy or capacity or public conservation campaigns which kick in at the 10% hydro risk curve, which a system operator runs, are an increased possibility. It's all probabilistic because ultimately it relies on probabilities related to what falls from the sky, and so no one will be able to predict it perfectly. I think the market is reasonably balanced nationally right now but it can get into stress because ultimately it only has 10% storage in hydro lakes.

[3.20 pm]

25 DR PRIESTLEY: Have you got a question?

30 MR BICKERS: Yes, Mr Whineray, you said that you were caught a bit by surprise by the Contact closure of Otahuhu. Can I just ask why did you give effectively nine months' notice? Your press release was nine months before you closed the plant. What was the reason for that? Why did you give so much notice?

35 MR WHINERAY: It was clarity for the employees and also the market.

40 MR BICKERS: So the market is interested and I anticipated that answer because I noticed the press release refers in the top NZX MRP and ASX MYT, which I presume you have got dual listings on the Australian and New Zealand Stock Exchange.

MR WHINERAY: That's correct.

45 MR BICKERS: So, part of that is a signal to the market that something is going to happen, and that is because revenue and balance sheet issues are likely to arise?

MR WHINERAY: Look, it needed to be disclosed to the capital markets for continuous disclosure obligations under the listing rules, and also - apart from the

employee thing I mentioned - it's important that the electricity market, particularly the system operator knows, once a certain decision has been made like that, that they can factor that into their overall thoughts on the system.

5

MR BICKERS: So in terms of trading and hedges and options and so on?

MR WHINERAY: Yes, and also the system operator's assessment of security.

10

MR BICKERS: Okay, so that's why you gave the market --

MR WHINERAY: Long period.

15

MR BICKERS: I hear what you're saying about the employees but you could have done that privately, couldn't you?

MR WHINERAY: Well, no. If we'd done it privately there was a risk of continuous disclosure issues, so we've got to --

20

MR BICKERS: Yes. With the employees, though. I understand the continuous disclosure requirement.

MR WHINERAY: Yes. No. If we'd told the employees and it leaked to the market then all our shareholders would be upset. Yes.

25

MR BICKERS: Then you'd be in trouble. Yes. Okay. All right. No, that's fine. So as soon as you become aware of a fact you have to release it to the market?

MR WHINERAY: That's correct.

30

MR BICKERS: Okay. Thank you.

35

MR MULLIGAN: So just in terms of that point, going back to your reference to operations being suspended on-site, you had to give nine months' notice of the closure of the plant because everyone has to get their ducks in a row, don't they, in terms of Transpower and other people in the markets? That's some of the reasons why you provided that long-term notice.

40

MR WHINERAY: It was predominantly drive by the ones we've already covered. But if it's known to the market, everyone can factor that into whatever decisions they're intending to make.

45

MR MULLIGAN: That would get factored into Transpower's monitoring of the market and of security and --

MR WHINERAY: They would have run it into their models, yes, for future scenarios on winter energy security.

MR MULLIGAN: Ultimately - and we'll get to this point - that's where the Transpower consultation with the market about voltage supply, part of that resulted from Otahuhu and Southdown closing, didn't it?

5 MR WHINERAY: Yes. They look at how the market is operating, well, live, and are focused on all of those parameters, including energy quality. Yes. Power quality, sorry.

10 MR MULLIGAN: Now, you've just mentioned the TCC plant. That's been up and running but they've announced a \$50 million upgrade of the plant to take it - I think you said - five years ahead. Is that correct?

MR WHINERAY: That's what my understanding of their announcement was yesterday.

15 MR MULLIGAN: But that's currently up and running, and so this is a refurbishment scenario.

MR WHINERAY: Yes. They've run out of hours so they've got to refurbish it and give it a few more running hours.

20

MR MULLIGAN: The turbines have reached their use-by date?

MR WHINERAY: Yes. It's the same with aeronautical engines. It's based on run hours.

25 MR MULLIGAN: Right. So where we're at after you've closed in November 2015, Otahuhu haven't adopted your responsible approach to the market. I won't say that, but they dropped out of the market quickly in August. You were quoted in November 2015 saying that while it may take some time, the market will adapt to closures. I assume that that means that any gaps created by Southdown or Otahuhu may take some time but would be ultimately filled by market forces, or market would deliver, as we've been saying.

30

[3.25 pm]

35

MR WHINERAY: It's just about filling a gap because, as I mentioned earlier, as far as it's concerned with national security of supply and demand, it was a shift to rebalance that from being something of a position of oversupply and underutilisation of thermal. So, yes, the market, as I've mentioned, is dynamic to a whole range of parameters, and partly what that was alluding to also was a belief that the electricity market will work through it as opposed to needing some sort of centralist intervention.

40

MR MULLIGAN: Government, Transpower or some other Government --

45

MR WHINERAY: Yes. The market has been operating for 20 years and successfully working through these things.

MR MULLIGAN: And when you talk about overcapacity, again, and excuse me for my poor analogies, it's this difficulty with the person left holding the baby, isn't it? While there's that need for security, if there's an overcapacity most of the time, there's not that opportunity for the person providing security to make enough money. Is that what you're talking about?

MR WHINERAY: No. Well, I think the market has solved for that in the context of the issues of instantaneous peaking capacity to meet the 7 o'clock on 15 July or whenever the maximum demand in the system is, all at the same high specification for electricity and not just running slow like broadband. So it's peak capacity, it's power quality, and it's also the energy in respect of if you don't have the rain arriving typically or the wind for that matter, but typically it's more of a rain issue, given the hydro predominance in New Zealand. So those companies which are selling contracts which have issues with respect to an increase in demand of their customer base on one hand and a reduction in fuel input on the other hand, namely if you've got snow stuck in the Southern Alps and you can't stick it through the hydro turbine, then they need to think about their own risk management. There are 29 retailers and 62 grid-connected generators, and there is a huge number of participants in the market. That's how they all have to think about their exposures to the wholesale market.

So the wholesale market, which as I mentioned has been running for 20 years, is the critical construct, and the futures market associated with that, with people managing their portfolios.

MR MULLIGAN: Yes.

MR WHINERAY: Transpower assesses the overall situation, doesn't control it. It can only signal the information to the market. The market, through the wholesale market and the futures market, largely works out what it's going to do.

MR MULLIGAN: But when you talk about that peaking capacity, at Southdown you had that peaking capacity, and Contact had that peaking capacity at Otahuhu, but it comes with a cost, doesn't it? You talked about that you've got to pay the workers, you've got to have your gas supply, you've got to maintain your equipment, and if you can't recover that cost, you don't want to be hanging around for, as I say, that one dry year that may never happen or that one dry day.

MR WHINERAY: So what Contact had actually wasn't peaking. It was more firming, because you can't just whip a 400-megawatt CCGT into action. That's the unique engine situation at Southdown, where it was a much faster capability, so it had the ability to firm but also peak. But it's all weighing up. For our portfolio, with our other generation assets and our desired sales positions, what is the risk-return curve for Mercury,

and then everyone else adds those up and through the wholesale market, the market actually solves energy security 24-7.

5 I know in a sense you're looking for the bit of the gap of who's holding the baby for that rare moment, but I suggest the reason why we're trying to hold this option open is not just singularly for a rare moment or a dry year. There are many, many scenarios under which it may need to be restarted.

10 MR MULLIGAN: You don't have to anticipate my questions; we'll just get to them in time. But I think what you're saying is that I'm being a little too simplistic about it and treating it as the market as a whole, when in fact there are different forces depending on the different players in the market. For example, Meridian have got a whole bunch of water and so they have to adopt a different profile in terms of the value of that
15 Huntly plant to them than other generators like you up north. Is that --

[3.30 pm]

20 MR WHINERAY: Yes. Everyone has to make their own decisions for the risk appetite and risk tolerance of their companies, and in aggregate that needs to result in a good outcome for security of supply for the country, otherwise you can expect intervention.

25 MR MULLIGAN: You don't have to worry about the snow holding up the water as much as Meridian do, do you?

MR WHINERAY: We hardly have to worry about it at all. Whilst there is some snow on
30 Ruapehu, it tends to be infrequent for good ski seasons.

MR MULLIGAN: Again, in February 2016, there was a reference to you saying ... excuse
me. Whineray says:

35 "The coal units at Huntly are ideal for managing the risk of a two- to three-month drought in the South Island and are the lowest-cost option for the country. Were they to close and the smelter to remain operating beyond 2018, Mighty River estimates that 300 megawatts of new capacity would be required."

40 So at that time prior to Huntly saying it was going to extend, for Meridian at least that represented a potential option for holding that baby, that Huntly peaking.

45 MR WHINERAY: Well, what you highlighted is a wonderful scenario of decision-making by different companies, one on the demand side and one on the asset side. Let's remember Genesis didn't declare that their Huntly units are going to remain open indefinitely. They did it for a specific period of time, backed by the swaption contracts. And so these are the sorts of

scenarios that can manifest quite quickly. And even if it does close, as I mentioned, you've still got the issue of energy surplus, South Island, capacity shortfall, North Island. These scenarios can manifest and will require a response.

5

Now, going and building renewable power stations, sometimes the lead times on these things can be very, very long. So in the meantime, what's the customer going to do? This is the fundamental issue. That scenario you've just highlighted is a classic case of the dynamism which needs to be responded to in the market and which is a perfect scenario in which we need to rethink or consider Southdown's role. That's right.

10

MR MULLIGAN: But ultimately at that particular point not so much that you would maintain that cost of keeping the Southdown plant poised and ready to go?

15

MR WHINERAY: No, because there's at least 12 months' notice on all of those arrangements, which is well outside the 3 - 4 months we've been arguing in this case.

20

DR PRIESTLEY: Just choose a suitable break point, Mr Mulligan.

MR MULLIGAN: It might be an appropriate time now.

25

DR PRIESTLEY: We're in your hands totally.

MR MULLIGAN: Yes.

DR PRIESTLEY: How much longer have you got to run? Not to hurry you up because this is a vital cross-examination from your point of view. We've got a retinue of witnesses though, some of whom can probably be released.

30

MR MULLIGAN: Sir, I don't think we're going to get past Mr Flexman, who I'd imagine would want to stay anyway. If we finish, I don't think we're going to get past him.

35

DR PRIESTLEY: Yes, I understand. That might help, Ms Devine, in terms of your releasing witnesses.

40

MS DEVINE: Yes. Thank you, sir.

DR PRIESTLEY: Right. Thank you. We're adjourned for 15 minutes.

45

ADJOURNED

[3.33 pm]

RESUMED

[3.53 pm]

5 DR PRIESTLEY: Thank you. Yes, Mr Mulligan.

10 MR MULLIGAN: Thank you. Mr Whineray, before we broke you were referring to the inflow issues this year and I think we'd heard evidence yesterday from Mr Heaps that this year was a pretty dry year at certain periods in the South Island and I think he mentioned it reached the 4% risk, is that correct?

MR WHINERAY: Yes.

15 MR MULLIGAN: And comparatively, as I understand it, that's a reasonably high risk, 4% of the lakes going dry?

20 MR WHINERAY: Well, it's the fourth percentile and the system runs at -- at the tenth percentile, which means there's a 10% chance of there needing to be some curtailment, there's actually a trigger for a public conservation campaign in the South Island or, indeed, the country to conserve. So it was in the round more than managed by the market and various parties managed their risk in various ways. You saw the effect of a whole bunch of arrangement with Genesis and other matters.

25 MR MULLIGAN: Yes, and so just touching on that point and I think we'd talked about generation and stability and transmission being part of this dynamic situation, at certain points with that 10% level also there is the ability for the customer to become involved in addressing security of supply issues, isn't there?

30

[3.55 pm]

35 MR WHINERAY: Well, that is correct but I'd suggest it's not a good thing to rely on. That point exercises the minds of a lot of people observing the industry and setting the rules for it.

MR MULLIGAN: Yes, but it's a measure there in the market that's planned for and there are obviously specific thresholds that are set?

40 MR WHINERAY: Yes, the thing with the public conservation campaign is it doesn't actually force or incent curtailment of consumption by consumers, in fact it actually puts money in their pocket which may incent them to do the opposite. So it's not a guaranteed form of reducing energy demand in New Zealand, it's actually about retailers and generator retailers managing their risk.

45

MR MULLIGAN: Yes, and so it's a means of making sure, as you say, that the generators and retailers actually exercise their mind about what investments they

might need to implement in the future to make sure that they don't have that 10% scenario, isn't it?

5 MR WHINERAY: Yes, the 10% is a national outcome, it's not subject to the individuals, it's just that everyone gets hit with a reasonably broad stick on that and some companies may decide to take that risk where they don't have a big balance sheet and blow up, and others will weather it. But it certainly is to try and make sure that the -- the original reason for that getting put in place wasn't necessarily to curtail demand, it was to stop people lobbying the government and bringing the nation into dispute for having a wobbly electricity system. That's actually what the objective of that is.

15 MR MULLIGAN: But it's another tool in the toolbox for management?

MR WHINERAY: It assists in sharpening the mind and bringing the industry through the system operator at Transpower to focus on consumer outcomes, yes, it is.

20 MR MULLIGAN: Now, I'm just going to give you a copy of an article from the Energy News which quotes you in reference to the Huntly site from 2016. I think it's amongst a number of others, sir, so rather than pull staples we'll just try this.

25 FEMALE SPEAKER: Did we get a copy of that?

DR PRIESTLEY: I don't know. Your learned junior has been sparing with distribution at the moment. I say you trying to pull it back. We will just wait patiently, Ms Devine. When we all get it, Mr Mulligan, just read the date and page number into the record, please. Thank you.

30 MR MULLIGAN: Yes, sir, I will. I'm sorry, sir, I would have just asked questions about it but it's a reasonably long quote so I didn't want to subject everyone to my reading.

35 Sir, the article that I want to refer to - as I say I wouldn't have necessarily produced it for the witness, it's just that it's quite a long quote and I didn't want to read it - is 23 February 2016, Energy News, Mighty River Power may replace Genesis, swaption.

40 DR PRIESTLEY: Can we have a moment to read it?

MR MULLIGAN: Yes, well I was just going to point -- obviously you can read the whole thing but I was just going to point Mr Whineray to the last two lines of

the first page and then the section on North Island demand.

[4.00 pm]

- 5 Again, I apologise, Mr Whineray, it wasn't a long question, it was just the quote was quite long. That particular section there, the last two lines of the first page talking about drought in the South Island and the North Island demand, the fact that - essentially the point that we were discussing before - Huntly at that particular point, 2016, wasn't yet confirmed for that longer generation to 2022 or 2023, at that particular point represented probably a good market option that people were keeping an eye on, particularly some providers such as Meridian. Is that correct?
- 10
- 15 MR WHINERAY: For firming and making up the other side of the potential renewable shortfalls or catastrophic failure of CCGT, that's correct. That's my understanding of what they were looking at and like all opportunities in the market, and we have traditionally had a swaption with them, we looked at that as well.
- 20 MR MULLIGAN: Right, so you had traditionally had one but didn't opt in on this particular occasion?
- MR WHINERAY: No, we didn't need to. Well, we attempted to get -- just to be clear, we attempted to get a swaption but the swaptions were taken up through higher priced offers presumably from our competitors and so we didn't get one, but we priced the opportunity.
- 25
- MR MULLIGAN: Sorry, this is a slight deviation but how does that fit with your 100% renewable position?
- 30
- MR WHINERAY: It's like the contract with Genesis, it's not related to Huntly.
- MR MULLIGAN: Right. So it's Genesis generally, it could be their other --
- 35
- MR WHINERAY: Yes, they could back it up with Tekapo or Tokaanu or anything. That's probably a good question to put to Meridian.
- MR MULLIGAN: I'm sure from time to time you have. The final point there under that section North Island power demand, I think really comes back to that issue that you were talking about before when you were giving evidence, which is it's all fine and dandy in terms of renewables and the bright green future, but if push comes to shove, and it's a choice between the power going out and the lights going off and burning coal at Huntly, the customer will take Huntly, on that particular occasion.
- 40
- 45 MR WHINERAY: Yes, my quote in there is if customers are forced to consider Huntly - which is not just coal, it's gas and coal - closing or the reliable supply

5 of electricity, they will choose the latter first. Yes, that's absolutely the
case. Part of the reason for that comment also at the bottom of the first
page is because people started talking about battery storage in the same
vein as you talk about coal or water behind a dam. If you want to
replace, say, the coal behind Huntly with batteries, it's about a trillion
dollars and it will not hold its charge for six months or a year or
however long you're waiting. So we are just trying to make sure we
are contextualising hydro firming because of our hydro majority in
10 New Zealand and the volatility of that buffered by water behind the
dam versus some of these newer technologies.

MR MULLIGAN: Yes, so people were effectively overstating the potential of batteries in
comparison to the Huntly stock pile?

15 MR WHINERAY: Yes, a significant network company in Auckland, their chief executive
actually said batteries may mean Huntly can close, which is a ludicrous
statement.

20 MR MULLIGAN: Yes, and, as I say, the point is here later you were proven correct
because the market with Meridian did come in behind Huntly and said,
"Actually, we don't want to take that risk down south, we'll buy these
options" the higher price options.

[4.05 pm]

25 MR WHINERAY: I understand they were one of the participants, as well as Contact, as
well as Genesis probably needed it for itself, so, yes, they were the
parties that effectively wrote contracts, to my knowledge, yes. I haven't
seen a full disclosure of that.

30 MR MULLIGAN: Turning to something I had previously, or you had actually previously,
raised, after Southdown closed and after Otahuhu closed, Transpower,
who monitor the state of the market in a general sense, and the security,
went out the market in consultation about some of their concerns, or to
understand this idea of voltage support, didn't they?

35 MR WHINERAY: Well, yes. I'd describe it as where before we used to provide voltage
support, through three locations in Auckland, transmission was built,
power stations ceased operating, and one was permanently closed, and
then adjustments were made to voltage and now we are back in the
40 market for voltage-support arrangements again.

MR MULLIGAN: When you say permanently closed, I assume that you mean Otahuhu,
as opposed to you.

45 MR WHINERAY: That's correct. They can't restart; they have sold the land and they've
sold the plant.

MR MULLIGAN: But if you are one of those 17 employees that was on your site, you'd

feel reasonably permanently closed, wouldn't you?

MR WHINERAY: Yes, that's correct. They were made redundant.

5 MR MULLIGAN: So Transpower, in terms of this role it has of overseeing the market, went out to the market for market views about various options for voltage stabilisation, or voltage support.

10 MR WHINERAY: Yes. Mr Flexman's got all the detail on that and it's underway at the moment, and there's various arrangements getting discussed. But we have certainly acknowledged to Transpower our potential to provide voltage support with the current configuration on the site.

15 MR MULLIGAN: One of the points of consultation through that Transpower process, though, was also their identification of what upper North Island generation options there were, too, wasn't it?

20 MR WHINERAY: I don't know. Sorry, I can't confirm that. They will look at all the solutions, the outcomes, in the round, and I know they certainly would like generation in Auckland. I think I referred in my evidence to a recent - well, before I lodged this evidence - function in Auckland specifically on Auckland energy security that was led by the Honourable Tony Ryall and Alison Andrew, and a presentation to Auckland stakeholders to bring people together on that specific issues. In fact, Alison Andrew has appointed a GM reporting to her specifically for Auckland electricity matters, which is how much weight she places on the Auckland solution.

30 MR MULLIGAN: Yes. Certainly, what, I can direct these questions to Mr Flexman, so let me know when not, but certainly Mercury responded to that upper North Island study by Transpower by responding to the various questions but also by providing this, as you have described already - how to describe it - proposal for providing voltage supply.

35 MR WHINERAY: Yes. The detail of that, you want to cover off with Mr Flexman, yes. closure, when the Southdown site closed it was part of a package of initiatives that you undertook for, then, I think, Mighty River Power, of closing Southdown and also retrenching operations overseas, Chile and perhaps some other sites. Is that correct?

40 MR WHINERAY: We made a decision to cease international geothermal development in December 2014. Then in March 2015, we made the decision we are talking about today. But I wouldn't describe them as a package. They

were just decisions which happened to be four months apart.

[4.10 pm]

- 5 MR MULLIGAN: And that came not long after you were appointed as CEO.
- MR WHINERAY: I was appointed chief executive, announced as chief executive, on 1 May and appointed on 1 August.
- 10 MR MULLIGAN: 2014 or 2015?
- MR WHINERAY: That's correct.
- MR MULLIGAN: 2014?
- 15 MR WHINERAY: 2014.
- MR MULLIGAN: Then in addition to making your staff redundant and selling your turbines, presumably you had to finish the gas contracts, as well.
- 20 MR WHINERAY: Yes, we finished our gas supply contracts for the site. We still had gas supply contracts for our customers.
- MR MULLIGAN: First Gas, through that process, removed from the site their let down facilities and their metering facilities.
- 25 MR WHINERAY: I understand that metering isn't there but that's a good question for Mr Flexman.
- 30 MR MULLIGAN: Okay.
- MR WHINERAY: But we did conclude our gas transmission contract, which is a very significant fixed cost, so we didn't need that.
- 35 MR MULLIGAN: Because that site, I think, is being described by the Auckland Council air quality people as the largest emitter in Auckland, you had quite a lot of headroom of carbon credits you could sell as a result of that.
- 40 MR WHINERAY: I don't know about the former part of the question, but we have announced at the half year, in February 2017, we have divested some carbon credits because we have long-term offtake contracts with forests in New Zealand, so we didn't need as many for the foreseeable future. So we took an opportunity to divest some of those and we will look at capital management opportunities for those at the year-end.
- 45 MR MULLIGAN: Because in the media it was described as a cause and effects scenario, where because you had closed down Southdown, you were able to sell the carbon credits for \$19 million, giving you a \$5 million profit,

because the price had gone up since, and that that assisted in the company's performance that year. Is that correct?

5 MR WHINERAY: Well, in the half year. We haven't announced our full year results yet, that's next Tuesday, but yes we did; there was a linkage between closing Southdown's operations to the state that they are currently in and no longer requiring, as the inventory which we had built up, for carbon credits. So we had surplus and we decided the deal; we still have long-term carbon purchase arrangements with forests because we have emissions in other parts of our business but we had built up a bit of a surplus, and given the uncertainty of when we might need to restart, we felt it was good use of shareholder capital not to retain those, particularly given the regulatory uncertainties around the ETS, the sort of bird in the hand.

10 MR MULLIGAN: It is similar to that turbine thing. You would back yourself as a CEO. You wouldn't want your assets sitting around. You would back yourself to make some other money elsewhere with freeing up that capital, wouldn't you?

15 MR WHINERAY: Well, yes, carbon credits are readily available in New Zealand. There are more than a hundred million of them in inventory at the moment, and, as I said earlier, yes, the LM6 turbines are pretty readily available as well.

20 MR MULLIGAN: But, again, just going back to this point, because you have equivocated just a bit on this, to describing the site as being suspended, and you have already acknowledged the importance of this, all of your press releases in relation to this site, all indicate that it's closed; all of the staff on site were made redundant; you sold the turbines; you sold the carbon credits; you are taking bouquets in parliament for renewables for closure. Aren't you equivocating a wee bit by describing it as suspended? I mean, it's accepted it can start up, but, I mean, it's closed, isn't it?

25 MR WHINERAY: I think of it like this. I'm not sure why I would have gone and seen the chief executive of NZ Transport Agency to clarify the Southdown situation if that wasn't the case.

30 [4.15 pm]

35 MR MULLIGAN: If what was the case, sorry? I asked the question, is it closed or is it suspended. You seemed to be equivocating.

40 MR WHINERAY: It has ceased to generate. The site has numerous assets and aspects which can't be replicated. There's enough land at the engineering school out the back, as I said earlier, to put a power station, but it can't go there, and nothing else, there's no other consented power station site

5 in Auckland. So I think the above-ground plant is actually to a degree, particularly the gas turbines, a red herring. The point is, there is uncertainty as to when it can restart within the 20-year resource consent programme. You have already covered numerous options as to how that might come about because none of us can predict that scenario. The security of supply is the fundamental licence to operate in this country, and it is location specific. So, yes, we did take those moves, but why sit around with costs that are uncertain and unnecessary in the meantime? So we did take those moves to set up the plant such that it could be restarted, but separate to the plant, there's a consent, a gas pipeline, and 220 kV grid infrastructure and I just don't see those sitting elsewhere in Auckland.

15 MR MULLIGAN: In addition to all of those, what seem like quite permanent steps towards suspension, you also responded to Transpower with a proposal to use this particular site for something that isn't generation, that is just voltage support, and up to ten years, I think, the proposal was.

20 MR WHINERAY: I don't know how long the proposal is. You would have to ask that of Mr Flexman. But it has done that duty in the past for Transpower, and for the benefit of security of supply to the customers, and so that was an opportunity for it to do so again.

25 MR MULLIGAN: I suppose the reason I am asking this question is it seemed that there has been a lot of emphasis on the four months between when you could start up and when you could start up potentially with the East West Link in sight, and that four months seems to be basically the most critical time in the world for New Zealand. But what about the four months before that, that doesn't seem to be as critical for some reason? So I am just a bit confused as to why that first four months for New Zealand is fine and dandy, four months there, the world is going to end four months after.

35 MR WHINERAY: It is because of the New Zealand electricity system, as I said earlier, you can't run slow electricity. It runs on an N-1 basis for transmission and has typically 15% security of supply going into a winter. That is assessed by the system operator and it is determined by the net of supply and demand available at the time. So there is risk mitigation in it because the first time that a power station or transmission circuit falls over, if that results in a significant issue with security of supply to customers, that would be unacceptable to New Zealand.

45 So there has to be some degree of risk management built in on energy and capacity and voltage support. However, that is not guaranteed and so, therefore, that is why the first three months is less critical because, typically, there is some water behind a dam somewhere, there is some gas storage in Contact's reservoir or there are some additional plants or circuits that can be brought to bear for small periods of time. But

certainly, as it relates to Mercury, we have a portfolio which we think, based on the degree of sales we have, the type of sales we have and the plant that we've got, is suitable for our circumstances.

5 I think the first three to four months, this interim period of being ready to go at a moment's notice, as we've said earlier, that comes at a very, very heavy cost, and I don't think that is necessarily where the highest risk is because of the redundancy that I've talked about is on an interim basis for the market.

10 MR MULLIGAN: But your counsel spent a lot of time talking to Mr Heaps yesterday about the potential for these emergency situations where, as I say, people are getting hold of bits of kit and dragging them there in very short timeframes. The case that you are presenting is that those very short timeframes are strategically important. So which is it?

15 MR WHINERAY: Sorry, I am not sure I understand your question.

[4.20 pm]

20 MR MULLIGAN: There was a lot of talk yesterday, in cross-examination, about the importance of being able to start immediately and of time-critical events occurring, so why is it that you are saying today that those things aren't important, that first four months. They are just not important. Is that your --

25 MR WHINERAY: No, we have designed the arrangements on the site for a three to four-month lead time. As I said, I think there are some various other mechanisms. It depends entirely on the scenario that is presented, whether it is slow, it is catastrophic failure somewhere else or it is a notice period on a contract for supply to an aluminium smelter. There is a huge range of scenarios. The issue is we don't necessarily know and we can't predict what those scenarios are but we do know that, over 30 20 years, there is a high likelihood that this may be necessary, for whatever reason, to be brought back.

35 So, no, the first three to four months on a risk return trade off is very expensive and that means having the plant fully staffed, all the jet engines in place and having reserved gas transmission costs from OnGas and having gas contracts which have no take or pay requirement in them. So there are a whole number of reasons why that first three to 40 four months is something that we considered was, "Well, let's put this plant and its arrangements into a state which has flexibility but not, frankly, at the cost tradeoffs for that". And that is an optimal place, we 45 think, for the issue that I brought up first, which is around security of supply for the customer because ultimately they --

DR PRIESTLEY: Mr Whineray, I think what Mr Mulligan is trying to tease out or get

5 some explanation about - I understand there is a huge range of scenarios which could threaten the supply of electricity, particularly to Auckland, and I understand also that you are looking at a time period in which some of those scenarios might occur over 20 years - what seems to be puzzling Mr Mulligan is that, if the strategic value of this site is to prevent or minimise this risk of a secure supply of electricity, why is a four-month delay acceptable before it can come on line?

10 MR WHINERAY: It is because of, your Honour, the types of scenarios that we have decided to cover the risk for.

DR PRIESTLEY: So, water in the dam, that sort of thing. Somebody else can cover the four months, is that what you are saying?

15 MR WHINERAY: The whole energy system typically can manage the risk in that regard, and certainly there is a range, whether it is through the wholesale market or the futures market. I mean droughts don't happen overnight. They don't. The amount of water that is behind the dam is entirely visible to everybody. So the immediacy comes at a significant price and that just adds cost to the entire system. When you have a situation
20 which now we have got into a more balanced supply and demand situation, of around 15% going into winter energy margins, that things are more covered by the system for extremely short term events, but there is a range of scenarios which may play out in that timeframe and we have discussed some of them. The first three to four months just
25 doesn't weigh up, given the other mitigations that are available to us and the market as value.

30 DR PRIESTLEY: Many, many years ago when I was in the Territorial Army, various army groups, and particularly the SAS, would have training exercises in the now disbanded Meremere coal-fired plant, training on how if they were to go into a plant of that type where they would put their bombs or explosive devices to render it useless. You have got to know where to put your explosive charges. Some form of attack on
35 Transpower's pylons running up to Auckland is always a possibility, is it not?

MR WHINERAY: There is any manner of creative possibilities for water, electricity, gas and transport infrastructure to be damaged, I would agree.

40 DR PRIESTLEY: Which is the nearest current generating high capacity - if that is the

right word - power generation plant to Auckland at the moment?

[4.25 pm]

- 5 MR WHINERAY: The nearest to Auckland is the Huntly site.
- DR PRIESTLEY: And the next?
- MR WHINERAY: Will be Karapiro.
- 10 DR PRIESTLEY: Karapiro?
- MR WHINERAY: Yes.
- 15 DR PRIESTLEY: The lowest dam on the river?
- MR WHINERAY: That's correct.
- DR PRIESTLEY: All right. Thank you, Mr Mulligan.
- 20 MR WHINERAY: Thank you.
- MR MULLIGAN: Sir, I did wonder why you were so quick to the grenade analogy right at the beginning of this. Now I see why.
- 25 DR PRIESTLEY: All right. Well, you're reasonably safe at the moment.
- MR MULLIGAN: Is it the red wire or the green wire?
- 30 Mr Whineray, you just talked about that high cost or the cost of immediate response, and I think you said what one of the criteria of that would be and I assumed you were talking about in terms of gas supply. When Southdown was running before it had a take or pay scenario. Whereas, if you had that and were sitting around waiting for something to happen, you couldn't have a take or pay, would you, otherwise you would be handing over money left, right and centre? You would have to have that higher gas price just to get on demand, get on tap when you want it. Is that what you are talking about?
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- 40 MR WHINERAY: No, what I was referring to is if you are on a take or pay gas contract, if you are on a committed gas contract, and that can have various thresholds of take or pay or flexibility, it just depends on the shape and that is all negotiable with gas suppliers.
- 45 MR MULLIGAN: Presumably you pay more for flexibility, like we do in most things in life.
- MR WHINERAY: But then you have also got the ability to run on the spot market, gas as

well, and there is a traded gas spot exchange, which I am sure Mr Flexman can elaborate on in terms of being able to get hold of gas at short notice.

5 MR MULLIGAN: I don't think we've quite got to unity as to closure or suspended, but if you were to re-commission this site - and I think you have already said it - there would have to be a number of circumstances which are in play that aren't today, a number of variables

10 MR WHINERAY: Yes. Otherwise we would be doing it today so that is correct, yes.

MR MULLIGAN: From a business perspective, it would involve a reasonable capital investment and you are not going to leap into it willy-nilly, some money to be spent?

15 MR WHINERAY: You would need to spend some money but it is certainly within our banking covenants.

20 MR MULLIGAN: I would hope so. There would be a number of practical events that would need to be put in place. You would need to organise your turbines. You would need to get some new staff up and running and trained. There are a number of steps that would need to be gone through in that period?

25 MR WHINERAY: Yes, in that window. It would be a busy period but that is what was contemplated for going into the December 2015 arrangements. Just like Vector - now it's Vector - will move very quickly to put transmission into central Auckland, or that failure.

30 MR MULLIGAN: We were talking about the renewable energy position of Mercury, and I think when you initially answered questions from the Board you accepted that that was a central part of Mercury's current branding. But then when I asked you the question, you seemed to say it wasn't a central part of the branding. I put it to you that really it is a key part of
35 the change from Mighty River Power to Mercury, that renewable generation.

40 MR WHINERAY: I'm not aware of any above-the-line advertising which waxes lyrical about being 100% renewable. We are. We enjoy that position. But as I said, in what you provided to me earlier, if customers are forced to consider - in this case Huntly - thermal generation or a reliable supply of electricity, they'll choose the latter first. I absolutely stand by that. It comes back to security of supply. So, no, it is something we enjoy, but you can go on to our website and the first thing that hits you is not
45 "100% renewable generation" as the key marketing thesis to our customers, or indeed our investors.

[4.30 pm]

- MR MULLIGAN: I don't know what above the line or below the line is --
- MR WHINERAY: TV.
- 5 MR MULLIGAN: -- but when you opened the site of the R&D centre of the car park of the plant, you said that that was a signpost to the future and New Zealand's continued leadership in renewable energy.
- 10 MR WHINERAY: Yes. I didn't open it, by the way, but the quote, if there was one associated with that -- where is that? Is that in James Flexman's evidence?
- MR MULLIGAN: No. It's in an article. Again, it's a news release, one of Mercury's news releases, I think. I can show it to you.
- 15 MR WHINERAY: Yes, if you could, that would be good. Oh, the front page of this thing?
- MR MULLIGAN: Yes, sorry. It's the second page in the bundle you've got. Sorry. There are a number of items in that, so we've already done the work handed up.
- 20 MR WHINERAY: To the front one?
- MR MULLIGAN: Second one.
- 25 MR WHINERAY: Second one. Sorry. How far down? Yes. In renewable energy. That's correct. And the main focus of us is, as I mentioned, particularly on the emphasis on energy, which relates to electrification of transport. But yes, we offer customers solar, we offer them battery storage, and we have the R&D centre to support that, and other things we'd like to do with these new technologies. But I don't see anything in there which says, "Exclusive".
- 30 MR MULLIGAN: No, and that wasn't my question. So maybe we'll just stick to those. But whenever I look at your website it's got a reference to Mercury as, "The home of renewable energy", and emphasises your -- well, you say it doesn't emphasise, but it certainly references your 100% renewable energy generation reputation.
- 35 MR WHINERAY: Yes, that is part of the company but it's strategically -- we can just cut straight to the point. It's not an exclusive proposition for Mercury's company position. It's something we enjoy currently, but security of supply is the critical element for our customers. And again, I'm not sure why I'd go and see the Chief Executive of NZ Transport Agency in February 2016 and be ignored when I clarified the Southdown position for him. I'm not sure why I would do that. That was actually before we rebranded as Mighty River Power, and then after we
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rebranded, again we had to write to Fergus Gammie. So I'm not sure why we would do that if we were hard out on a proposition that our central thematic for the company was 100% renewable. So, sorry if I'm asking you a question, but I just thought we'd cut to the chase a little.

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MR MULLIGAN: Yes, I don't know why you are asking me a question, and we will be coming to that particular discussion. I'm just asking you at the moment, and I don't consider it to be a controversial proposition, because all of the material that I've seen suggests that it's an important part of your current branding. I don't know why you'd be disavowing it now.

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MR WHINERAY: Yes. No, the most important thing in it is that very few New Zealanders actually understand how unique New Zealand's renewable electricity position is, and that is so central to communicating the renewables and why the relevance, for example, of electric vehicles is communicating that it is renewable, and that is very different to how it is globally. Otherwise we end up with misguided activity and regulation to create more renewables, when actually the system is already predominantly renewable, when the focus should be on energy. So it is part of a campaign to make sure that we have the correct conversations in New Zealand about the opportunity in renewable electricity. That's genuinely what it's about.

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MR MULLIGAN: Renewable energy, beyond even electricity, to use your --

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MR WHINERAY: That is correct. It's the opportunity of renewable electricity in renewable energy, yes.

MR MULLIGAN: You've said previously that those unique positions - well, maybe not unique but certainly unusual in the world - mean that we could be, I think the words were, a "superpower" in renewable generation.

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MR WHINERAY: That's correct. Our Transport Minister has said those words when he was Energy Minister as well.

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[4.35 pm]

DR PRIESTLEY: Mr Mulligan, with respect, and this is only designed to help you, the whole area of the electricity market in New Zealand, as we're finding out, is extremely complex. So too are the interrelationships of various suppliers and reticulators and retailers, etc, and some of these of course impact on the Southdown site which is central to what we're going to do, but I'm not sure that you're really going to get too far by cross-examining on whatever the latest slogan of Mercury might be or what may appear in a PR sense on their website, any more than a car I've seen out there for the last week with NZ Transport Agency decals on, which says, "Safe speeds are my business" or something or other. It

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describes accurately the central core of NZ Transport Agency's operation. So there is a limit to how far you can go with this, with respect, I think.

5 MR MULLIGAN: Yes, sir, and I take that point. I suppose I would have thought, as I say --

10 DR PRIESTLEY: It's puffery, put out by an advertising agent as a result of lots of assessments of consumers to see what makes everybody feel good. That's how I see these things. I may be a terrible cynic, but if you think I am wrong, please proceed. You may strike gold but I'll be surprised.

15 MR MULLIGAN: Well, sir, as Mr Whineray has indicated, when he speaks, the market listens.

DR PRIESTLEY: Indeed.

MR MULLIGAN: So it's not a straight situation of puffery.

20 DR PRIESTLEY: It's not quite what's on the website. You can tax him with his words and are doing so effectively, but you can't tie the poor man to his slogan.

25 MR MULLIGAN: Well, I think I'd beg to differ, but I can talk to him about that.

DR PRIESTLEY: Go ahead.

30 MR MULLIGAN: The other thing is, in terms of branding, obviously everything costs these days and it's all part of the investment.

DR PRIESTLEY: I know. I know.

35 MR MULLIGAN: But we will move on, I think, with that indication, Mr Whineray. Just, though, not you suggesting that somehow it wasn't tied to your brand, and taking the point of his Honour in terms of the branding, what I've seen is that in 2016 when you announced your new symbol, the black bee on yellow, you said:

40 "The bee is energetic and optimistic. It is also critical for the global environment, just as renewable energy is."

45 So you're actually even tying that one visual symbol, which presumably cost a lot of money to get someone to draw, to renewable energy, aren't you?

MR WHINERAY: The logo was quite inexpensive to produce, so I just want the record to note that.

MR MULLIGAN: They always are.

MR WHINERAY: It is not like other logos which have attracted a lot of media attention for their cost. Yes, and the bee is connected to that thesis. Let me just
5 run through what our tagline is on those ads, which are above the line, around people riding electric bikes. It's energy made wonderful. It's people enjoying and connecting to energy, which they don't connect to a lightbulb turning on anymore. They just expect it to happen.

10 The objective of what we're trying to do is energy freedom, actually, is the company's mission. That is what it's about. Now, energy freedom comes down to reliable, ideally renewable and equitably priced energy, and also for the country not importing as much fossil fuel. That's
15 actually what is in our mission statement, which is in our annual report, is energy freedom, and the purpose is to inspire people to enjoy energy in more wonderful ways. Part of that is communicating that renewable electricity is an opportunity for this country as opposed to something
20 which gets kicked regularly for necessarily opportunity, particularly if it's underperforming. And the greatest mark of underperformance is security of supply. That's when the sector definitely gets a thrashing.

MR MULLIGAN: Really what you're saying to me is, as part of that rebranding - and I know I do it - it's like petrol: if it makes my car go, I don't really care, and I literally couldn't even tell you who my power company is,
25 because as long as my light goes I'm not worried. So this branding is really to get over that or to start to distinguish your company from others, isn't it? You'd hope so.

MR WHINERAY: It's actually multiple facets. You need to align your employees around a common purpose, because half the employees thought they were
30 Mighty River Power and half of them thought they're Mercury Energy. It's to have a common thesis for what you're trying to achieve for the customer, and working back from that to manage and ideal exceed their expectations.

[4.40 pm]

40 So there are multiple facets to the branding, and a year on, since we rebranded on 28 July 2016, it has been a very strong success with customers, not because we've changed it from the old logo or Mighty River or the Mercury Energy logo to a new logo. That doesn't do it. Actually there are hundreds of other steps that go into a successful rebrand which deliver the performance. So I wouldn't overemphasise the logo, because if it was that simple then I wouldn't have bothered
45 doing all the other things which have taken so much effort from our staff.

MR MULLIGAN: And spending all the money, presumably, to do so. But that's the point

of the spear and of that brand, and it is in some shape or form tied to that idea of renewable energy, unlike some of your competitors, isn't it?

5 MR WHINERAY: Well, of course you do want to differentiate yourself in a competitive market. The strongest point on differentiation that we have, which is borne through in our customer results, is on loyalty. We focus very hard on making it easy for our customers - these are our three promises - rewarding them, and inspiring them. Whether it is electric bikes, free-
10 power days, revised websites, easier contact-centre calls, all of that stuff actually adds up and is the brand. That is actually what made the difference, not a new logo or a slogan.

15 MR MULLIGAN: No, but part of that brand, part of what you are paying for, part of what you are building, is this commitment to renewable energy, surely.

MR WHINERAY: Yes. It is. And fundamentally, though, before it is renewable, you've got to have security of supply.

20 MR MULLIGAN: I must admit I'm somewhat surprised that it has taken me so long to sort of drag you to that idea, when I think his Honour mentioned it, that you are identified as kind of the poster boy in the market for renewable energy at the moment.

25 MR WHINERAY: The reason for that isn't because our generation is 100% renewable. The reason for that is we are trying to leverage a position of a competitive advantage in renewable electricity generation in New Zealand for the national benefit, through the electrification of transport. That is actually the reason we are the so-called, as you call it, poster
30 boy, or child, or something, may be referring to. That is because of the push on electric vehicles. It's not because of our, necessarily, geothermal and hydro generation.

35 MR MULLIGAN: Okay. Well, perhaps, and we'll move on to another line of questioning, but perhaps if, then, it is not as critical to you getting customers and building that customer loyalty you were just talking about, you may not want to mention the 100% renewable quite as much.

40 MR WHINERAY: Well, we are 100% renewable today, so I'm not sure what -- I'm not misleading any customers with that statement.

45 MR MULLIGAN: Would you accept that when various opportunities come up in the marketplace, down the track, and these other conditions that we've talked about that might lead you to consider opening the Southdown plant, that there would be other people in the market who wouldn't have to consider that reputational issue and that reputational cost and the sunk cost, in terms of linking yourself with renewables? There are other people who have dirty hands that can get there quicker. Is that a

fair proposition?

5 MR WHINERAY: Everyone in this market has either thermal generation, or a contract for thermal generation. So I'm not -- if the situation arose, I'm more than comfortable with how we will manage those communications.

MR MULLIGAN: But it is going to cost you more than it is Genesis, isn't it?

10 MR WHINERAY: But the site is not just for thermal generation; it's for a lot of other activities, including battery storage and power quality, and they are just equally important for getting security of supply to customers.

MR MULLIGAN: Yes.

15 MR WHINERAY: So it's not just about generating electricity on a site.

MR MULLIGAN: But I was asking you about that --

20 MR WHINERAY: Genesis has the largest retail base in the country and are the least renewable, and the opposite is true for Meridian.

[4.45 pm]

25 MR MULLIGAN: I just want to move on to the issue of health and safety and you are obviously having to take that responsibility on yourself as the pre-eminent manager, but also reporting to your board, of the stringency of the obligations under the new Act, the 2015 Health and Safety at Work Act.

30 MR WHINERAY: Yes. I'm an officer of the company in that regard.

35 MR MULLIGAN: While there is perhaps - I will use the road analogy - a more direct line now to the board with those obligations, under the previous Health and Safety in Employment Act, there were equal obligations to make sure that your employees on site didn't suffer any injury if at all possible. Is that correct?

40 MR WHINERAY: Yes, we have been focussed on the wellbeing of staff, which includes health and safety, before, under the old legislation, and under the new legislation. So that continues to be a focus for us.

45 MR MULLIGAN: To discharge that risk in terms of some of your equipment and your sites, is a reasonably onerous and involved exercise because of its size and its complexity and its potential for harm.

MR WHINERAY: Yes. There are a lot of risks on all of our sites, and there are risks in our offices as well, and not just to ourselves, but our contractors, members of the public, visitors. We are, and continue to be, focussed

on our ultimate goal of zero harm.

5 MR MULLIGAN: Part of that, both previously under the old regime, and certainly under the new regime, part of the means of discharging that is that you are undertaking constantly sufficient due diligence of what those risks are, that active process of identification of those risks. Would you accept that?

10 MR WHINERAY: I think your words "due diligence" are more a feature of the new Act, but certainly, understanding the risks and considering those in a dynamic way, depending on the situation, whether it is a toolbox meeting at the start of a shut, or on a daily basis, that's all part of managing risk. So, yes, it is a dynamic assessment of the hazards that are on site.

15 MR MULLIGAN: As part of that, if you've got a piece of equipment, a piece of kit, that could pose a risk, part of discharging that duty is to understand whether that piece of equipment could spin out of control, break up, and hurt someone standing next to it.

20 MR WHINERAY: Yes. The discharging of that duty isn't through the chief executive on all occasions. My job is to make sure it is adequately resourced, has the right processes, and I'm receiving the correct assurance and lag reporting, and I'm across those key things, which could have significant risk periodically, but as far as it's dynamically assessed on the sites, we have site managers and things like that, who would undertake those activities, because it's physically impossible for a chief executive to be across those things.

30 MR MULLIGAN: If you were in charge of all your sites by yourself, then it would be hard work.

MR WHINERAY: Yes. There is a bit of travelling involved.

35 MR MULLIGAN: But you would accept that in terms of setting those systems and making the resources available for them, that if you've got that piece of kit, you need to understand how it works, and its probability of failure, if a failure could cause harm to someone standing next to it. You would accept that as a general proposition.

40 MR WHINERAY: No, I'd accept that I'd need a framework so that the business can identify, and then go about managing, those risks in a number of ways.

45 MR MULLIGAN: You need a framework, and you need a process, which allows you to understand, to the degree which is commensurate with the risk, that things are not going to spin out of control and that someone can stand next to it. You need to understand that, or otherwise you have to

exclude them, don't you?

MR WHINERAY: I think the key word is "you". It's not me as chief executive because that's not possible. I think it is -- I need to ensure that there are people who have relevant training, awareness, knowledge of the risk appetite, the culture where they'll put up their hand and say something is not right, and manage those risks accordingly, and, if necessary, evacuate a site.

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[4.50 pm]

MR MULLIGAN: When Southdown was operating, prior to its closure in 2015, you had those processes in place, I presume.

15 MR WHINERAY: Yes, we did have processes with respect to safety management, the details of which I'm sure Mr Flexman can elaborate on.

DR PRIESTLEY: Mr Whineray, I'm not sure where Mr Mulligan is going with these questions, but my understanding of the new health and safety legislation is that it's no longer satisfactory for boards, or trustees, or indeed general managers, to say this is a managerial, or sub-managerial, responsibility. There has to be some process in place whereby the board can be satisfied, and indeed ask questions, that all hazards and health and safety risks across the entire operation of a commercial entity have been properly identified and mitigated. Would you agree with that?

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MR WHINERAY: That is correct.

30 DR PRIESTLEY: That doesn't mean that you and -- who is the chair of the board?

MR WHINERAY: Joan Withers.

DR PRIESTLEY: It doesn't mean that you and Ms Withers have to wander around every hydroelectric dam and the Southdown site looking at things and checking things, but there has to be a greater degree of diligence than existed hitherto. You would accept that as a general thing.

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MR WHINERAY: That's absolutely correct. The due diligence aspect has a very constructively upped the ante, indeed, including site visits, and so that is something that we do do.

40

DR PRIESTLEY: I think related to that, Mr Parsonson had a question he wants to ask you about site visits. Did you? You had better ask it now, anyway, because you have to go soon.

45

MR PARSONSON: Yes, I must apologise; I have to leave at 5.00 pm so I might need to sneak out. My question was, and I will explore this in detail with Mr

Flexman, earlier you said there is space on the north part of the site to build a power station, but it can't go there, I remember you saying.

5 MR WHINERAY: Did I say that?

MR PARSONSON: Yes. You said there is space to the north part of the site to build a station, I think - but maybe you meant reshape the station --

10 MR WHINERAY: Sorry, could I clarify?

MR PARSONSON: And you said, "But it can't go there" and I just wanted to know what the reason for that was.

15 MR WHINERAY: I'm sorry, I'm not --

DR PRIESTLEY: I thought I heard you say that, too.

MR WHINERAY: Could you just give me some of the context around that?

20 MR PARSONSON: My question is a bit out of sync, but it is because I'm going to be out of sync shortly. What was the context?

25 MR MULLIGAN: It was, I think, in relation to a discussion about the visit to Mr Brash and as far as I recall, and obviously others, you said, "Look, cutting to the chase, a power plant could go to the north of the site", I'd perhaps pick somewhere else, "but it can't go there".

30 MR WHINERAY: I think what I was referring to is that the road, in the discussion I was having with Mr Brash, was slightly north of where it is on that diagram --

DR PRIESTLEY: Behind the engineering school was also mentioned, in the context.

35 MR WHINERAY: Yes. No, I certainly said it can't go there, but sorry, I wasn't intending to make comments about reconfiguration of the site. Sorry. I think I was referring -- it can't go there, in Newmarket, even though that has sufficient land, for all of the reasons that are strategic to the site, irrespective of the plant that is on it. But in the conversation with Mr Brash, what I was referring to is the road can't go there; the road was running straight ... I'm not suggesting that the current alignment is fine either, I'm not, but the road was, on the map that I presented to David Brash, which was the one that was available to us from NZ Transport Agency, had it pretty much going right where the 220 kV pylon cables are, which are hard to see on the TV screen, but that was where I was

40

referring to, the road can't go across that bit. Sorry.

MR PARSONSON: Okay. Thank you.

5 MR WHINERAY: In terms of site reconfiguration, I don't know; I'm not the expert on that.

MR PARSONSON: Ask Mr Flexman?

10 MR WHINERAY: Yes.

MR PARSONSON: Thanks.

15 MR MULLIGAN: Perhaps we will move on to that particular issue and your visits with Mr Brash; you seem keen to talk about that, and it is helpful because I think we are probably going to get there in terms of the optioneering and it can be a somewhat painful exercise, going through all those. But I think what you are confirming, in your answers to the Board, is that when you first visited Mr Brash in February or March 2016, the alignment proposal was through here somewhere. Is that correct?

20 MR WHINERAY: It was slightly north of where it is now; pretty much straight through the 220 kV pylons that traverse the site, which Mr Brash was unaware of their existence.

25 [4.55 pm]

MR MULLIGAN: Where is that? Tell me.

30 MR WHINERAY: Just where the grey roofs are. It's pretty much in that alignment.

MR MULLIGAN: Here?

MR WHINERAY: Yes, across there.

35 MR MULLIGAN: We have been through this particular process a bit, but we know to get some plans up.

40 DR PRIESTLEY: Sorry to interrupt you again, Mr Mulligan. Mr Parsonson has to slip away, I think in about five minutes. I am just wondering whereabouts you are in terms of timeframes, because I'm not sure about Mr Whineray's schedule tomorrow, and we've still got re-examination. This is a pretty crunchy issue, from a whole point of view, so you are not curtailed, but I'm trying to plan the rest of the evening.

45 MR MULLIGAN: Well, sir, I'd like to say that I am close to finish, but I think going through the options in relation to this, because there are a number of

different --

DR PRIESTLEY: Well, that is going to take quite a while.

5 MR MULLIGAN: Yes.

DR PRIESTLEY: Well, start off, and we'll probably draw stumps in about 10 or 15 minutes. Are you happy with that?

10 MR MULLIGAN: Well, sir ...

DR PRIESTLEY: Or do you want ...

15 MR MULLIGAN: I suppose if Mr Parsonson is going at 5.00 pm, I would prefer the whole Board to hear this. I'm appreciative of Mr Whineray's position ...

MR PARSONSON: If you can give me five minutes, I can probably hang around. I just need to ...

20 DR PRIESTLEY: We can break for five minutes, but we had better check. Are you available tomorrow at 9.00 am, Mr Whineray?

MR WHINERAY: I haven't looked at my diary for that purpose, so I'd have to

25 MR MULLIGAN: Yes, there is a site visit tomorrow.

DR PRIESTLEY: You continue on. We will sort out the logistics later. Give it another five minutes

30 MR PARSONSON: I'll duck out now.

DR PRIESTLEY: You go now.

35 MR PARSONSON: I'll sort something out. I'll come back.

DR PRIESTLEY: Oh, I see. Do you want us to adjourn?

MR MULLIGAN: Perhaps if we have a short adjournment, for five minutes.

40 DR PRIESTLEY: A short adjournment. You and your learned friend need to have a discussion with Ms Smeaton, who will probably kill you both, as to what if this involves tomorrow.

45 MR MULLIGAN: Can we stay, then?

ADJOURNED [4.57 pm]

RESUMED [5.06 pm]

DR PRIESTLEY: Thank you. I gather, counsel, we can sick until 5.30 pm, and then our sound disappears like Cinderella, and you can come back tomorrow at about 9.00 am, Mr Whineray. Is that right?

5

MR WHINERAY: Yes, I can. Yes.

DR PRIESTLEY: So let's make as much progress as we can. I understand that Ms Tepania very riskily mouthed in your direction, Ms Devine, when I was talking about explosions on the Meremere site that no bomb was left there on Monday, but I should tell you, Mr Whineray, just in case you are worried, that I didn't leave any explosive devices on your Southdown site, but I identified without difficulty where the vulnerable pipelines and cables were, if I had been so disposed. Next question.

10

15

MR MULLIGAN: Thank you. Thank you, sir. I'm just going to go through some of the plans that we've already been through and they're already in evidence, but we'd just prepared a little bundle of them so that they were close at hand, so I'll just get those distributed around.

20

Just going back to this, and I've gone a few times through this, Mr Whineray, you'd accept or you may not know that in terms of the NZ Transport Agency process there has been, roughly speaking, a two-stage process of first identifying corridors, an appropriate corridor of some width, and then within that corridor doing more fine-grained option analysis about the alignment. Are you aware of that?

25

MR WHINERAY: I don't know that but I'll take your word for it.

30

DR PRIESTLEY: I suggest you do be focused on this because his knowledge will be limited to whatever plans he was shown.

MR MULLIGAN: Yes, sir, and I appreciate that probably Mr Whineray has ducked in and out of this particular exercise.

35

In December 2015 there was a corridor alignment that was approved by the NZ Transport Agency board, and that's what's shown on-screen now. What's it described as? Is that not in the bundle? Is that the corridor somewhere? There was one that was a corridor. DBC. Is that right? It's the first plan in your bundle. It's the DBC bundle. See that?

40

[5.10 pm]

MR WHINERAY: This one?

45

MR MULLIGAN: Yes.

MR WHINERAY: Yes.

- MR MULLIGAN: Now, you talked about going to visit Mr Brash down in Wellington, I assume.
- 5 MR WHINERAY: Yes, it was, at their offices in Wellington.
- MR MULLIGAN: Yes. And talking to him about the option at the time and indicating that you didn't consider that suitable. Was that the option that you were talking about roughly?
- 10 MR WHINERAY: No, it wasn't. It was further south than that.
- MR MULLIGAN: How far south?
- 15 MR WHINERAY: It was pretty much as I mentioned earlier, where the 220-kilovolt pylons are.
- MR MULLIGAN: So where maybe those pink lines are, or close to --
- 20 MR WHINERAY: That's correct. It's close to the pink lines.
- MR MULLIGAN: Yes. Now, you indicated at that time, according to your evidence, that it should go further south. Do I assume you mean south of the current gas plant?
- 25 MR WHINERAY: Of the site.
- MR MULLIGAN: Yes. Of the site?
- 30 MR WHINERAY: Yes. There's the land to the south off the site. Yes.
- MR MULLIGAN: Now, at this point, this would have been early 2016. It was prior to you opening up your solar panels and the research panel. What's the problem with it going through that area to the north of the power plant? Why couldn't it do that in your view?
- 35 MR WHINERAY: Well, I hadn't seen this chart when I was discussing it, but there are --
- MR MULLIGAN: In general terms.
- 40 MR WHINERAY: Well, no, look. It never comes down to the general. There are a whole range of reasons where that may not be suitable for the road to go there, which may extend to accessibility, manoeuvring of large plant, safety. There are numerous things. I don't know. I'm not the expert on why that would be an issue, but it's probably pretty similar to the issues of the current alignment.
- 45 MR MULLIGAN: No. The question I was asking you, and it related to a question that you

gave to the Board, which was in general terms you indicated that you'd seen an alignment that was to the north of the power plant and you told Mr Brash that that wasn't suitable. And I'm simply asking, at that time, why did you view that alignment as not being suitable?

5

MR WHINERAY: Because it was going to restrict the operation of what Mercury and Aucklanders currently enjoy with respect to that site. It was going to restrict its activities.

10 MR MULLIGAN: It was going north of the Southdown gas-fired generation, going through what was a car park at that point.

MR WHINERAY: I'd just repeat what I said. I think it would have restricted -- it wasn't going actually to the north of it. It was going pretty much over the top of some of the buildings and the other facilities.

15

DR PRIESTLEY: Mr Whineray.

MR WHINERAY: Yes.

20

DR PRIESTLEY: On the basis - and I'm talking about February 2016 - of what you had been told about the Southdown site by those people who had hands-on involvement with it, you went to Wellington. Correct?

25 MR WHINERAY: Yes.

DR PRIESTLEY: Would I be right that your preferred option would have been the alignment of this proposed highway avoided the Mercury site entirely?

30 MR WHINERAY: Correct.

DR PRIESTLEY: Did you say that to Mr Brash?

MR WHINERAY: Yes, and I handed him a picture or showed him a picture - I'm not sure if I left it with him - which showed my, to use his words, "crayon on a page" of that actually happening and putting it to the south of the site entirely. There was no misunderstanding with Dave Brash of the alignment that I preferred.

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40 DR PRIESTLEY: So if Mr Mulligan shows you various possible alignments, any one of which would impact or impinge, go over part of the Mercury site, that would not have been what you wanted. Am I right?

MR WHINERAY: That is not what I wanted, and certainly I didn't have at my fingertips at the time, because it was a preliminary meeting, all of the other necessary assessments to make that decision.

45

DR PRIESTLEY: So when you finally found out what alignment NZ Transport Agency

had alighted on, you must have been brassed off.

[5.15 pm]

- 5 MR WHINERAY: Absolutely.
- DR PRIESTLEY: What did you do?
- 10 MR WHINERAY: Well, the first one was when, I think in the middle of 2016, a number of solutions --
- DR PRIESTLEY: No, the final one. The one we're dealing with now.
- 15 MR WHINERAY: The final one that we're looking at now?
- DR PRIESTLEY: Yes.
- MR WHINERAY: Yes, we were very disappointed, so then we had to gear up to oppose this.
- 20 DR PRIESTLEY: All right. Next question, Mr Mulligan.
- MR MULLIGAN: Sorry, sir, I am going to go back to a particular point.
- 25 DR PRIESTLEY: That's all right. I can't force you to do anything.
- MR MULLIGAN: Later alignments go through - and we may or may not ask questions of you in relation to that - excuse my French, the guts of the Southdown plant, but this one goes right through the guts of it. But that alignment that was originally proposed by way of the corridor alignment did go to the north through the car park area, an area that was not actively being used at the time. What I'd like to understand, and I know that you're saying, "I don't know all the details", is what was the problem of going through an empty car park, given all of the issues that you've raised with risk and proximity to the gas-fired generation? What was the problem with the car park alignment?
- 30
- 35
- 40 DR PRIESTLEY: Well, there could have been numerous problems with it, notwithstanding NZ Transport Agency's own requirement for setbacks from petroleum facilities of 40 - 100 metres, and I can see that alignment is very close to a lot of other activity, notwithstanding electricity, gas, moving pieces, chemicals. I don't know. The problem was it was seriously going to potentially impinge on the operability or the future options for that site and its consent. My issue with it was I wasn't sure, and no one ever came back to me to explain, why the road had to go over the site in the first instance, notwithstanding my counsel's evidence this morning of the complete lack of inclusion of Southdown. It's almost an issue of manaakitanga. They'd ignored us
- 45

5 entirely, and having taken the courtesy of going to see them very early on to talk to the most senior officer. So I couldn't understand why no one could tell me why it actually had to go through that site, given the road gets wet feet to the west of that point. So it clearly wasn't an issue of getting wet feet, so I wasn't sure why this was just being completely ignored.

10 MR MULLIGAN: But currently in terms of land use, putting aside all of the gas risk issues which you are raising, that site to the north is at that particular time a car park. Now, it's on structure, and if one assumes that you can get to your power plant, what is the problem in your view of NZ Transport Agency going through your car park?

15 MR WHINERAY: All of, and possibly other areas that my counsel referred to this morning. the whole list of it. Reverse sensitivity. The lot. The key objective is that Mercury enjoys and Aucklanders enjoy what they currently have with respect to that strategic site.

20 MR MULLIGAN: A car park.

MR WHINERAY: It is a consented, 135-megawatt power station with all of the necessary facilities around it to make that operate and, therefore, assist with security of supply to Auckland over the long term.

25 MR MULLIGAN: Would you accept that in terms of issues such as safety and issues such as access to equipment to get into the Southdown site with issues in relation to what else, cars falling off the edge of it, that going through your car park would have been a more preferable option than what you are complaining about now, going close to your --

30 MR WHINERAY: I don't know. I can't answer that. This is the first time I've seen that picture, because that wasn't the one that I discussed with Dr Brash, from my recollection.

35 MR MULLIGAN: So the one that you discussed with Dr Brash was the one to the north, but closer to the Southdown plant in the south. Is that your evidence?

40 MR WHINERAY: Yes. So the predominant issue was: I don't know why it's going through, and I wanted to clarify for them that it is a consented power station site. Not then. No, actually then it was the only one in Auckland, because Otahuhu had closed in 2015, and why did it need to go across any of that site, irrespective of location? I hadn't thought through flying LPG tankers and all the rest of it at that point. It was more simply I needed to clarify with the chief executive the understanding around what Southdown was about.

45

[5.20 pm]

MR MULLIGAN: I'm not trying to make it difficult, but this was a relatively high-level discussion between two CEOs, who are not necessarily appraised with detail, but your simple point was, "Get off our site. This is an operating site. Move to the south of the power plant".

5

MR WHINERAY: Yes. Well, the first point was this is a consented and operable power site, and whilst we've ceased generating electricity there, that may change in the future. There are a lot of options for it, and so I wanted to point that out, and I had a map with me to illustrate that. And I was assured that Dave Brash, whether he went back from being his acting CE, would be the person that was responsible for overseeing this.

10

MR MULLIGAN: Just coming to that point and as has been said, you made it very clear to him that notwithstanding whatever anyone may have seen in the paper about closures, you wanted to make sure that the option for opening this site continued?

15

MR WHINERAY: Correct.

20

MR MULLIGAN: Now, in terms of the options that were developed subsequently, as I say, there were a number. Well, essentially four, two that went through the car park and two that went through what I'm describing colloquially as the middle of the plant or the guts of the Southdown plant. Presumably, in terms of your understanding of things, none of those would have worked as far as your aspirations.

25

MR WHINERAY: Yes, I haven't --

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MS DEVINE: Sir, just an objection I think. My friend is putting to my witness plans he hadn't seen before, hasn't examined closely, and asking him to speculate on what he might have thought about those options, which weren't before him when he had this discussion. I'm not sure that it's entirely fair to put those matters to the witness, given his reservations on all those things.

35

DR PRIESTLEY: Thank you, Ms Devine. Mr Mulligan, there is some strength to your learned friend's objection, but nonetheless I think the witness is capable of dealing with the question in any way you want to formulate it. Whether you want to reformulate it is up to you.

40

MR MULLIGAN: Yes, sir, and all I'm trying to do is just move along through the process, and these are reasonably crude terms.

45

DR PRIESTLEY: If he didn't do something or consider something, Mr Mulligan, he'll tell you I'm sure.

MR MULLIGAN: Yes, yes. I think, to be fair to Mr Whineray, he's being quite upfront that he's operating at a higher level, and that's what I was trying to do.

They're either to the north or they're going through it. Don't have to worry about the minutiae because he wasn't involved in it.

5 DR PRIESTLEY: Which is where I was trying to get you to.

MR MULLIGAN: Yes. In terms of those four options though, in broad terms, none of them equated with what you'd understood your discussion with Mr Brash would result in, would they?

10 MR WHINERAY: No, I didn't expect, and this is the first time I've seen all of these, as my counsel has suggested. No, these were not where I was attempting to influence Mr Brash.

MR MULLIGAN: You were trying to move things further to the south.

15 MR WHINERAY: Yes, off the site entirely or wherever it needed to go. But yes, particularly well to the south off the site was my expectation.

MR MULLIGAN: Yes. And even thought that was a car park there, in essence what I understand you're saying to me is: no option which is on the Mercury site, be it the northern site or the southern site which has got the power plant, was acceptable in terms of your understanding with Mr Brash?

25 MR WHINERAY: We didn't discuss a range of options. I only had one map in front of me.

MR MULLIGAN: All right. But in general terms you wanted an option that didn't involve the road on either the northern part or the southern part?

30 MR WHINERAY: That's correct.

MR MULLIGAN: Now, I don't know the extent to which you were involved in it, but do you accept that there was from that period prior to 2016, right the way through 2016, extensive discussion between NZ Transport Agency staff and your staff about the location of the road?

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[5.25 pm]

40 MR WHINERAY: I'm not aware of those discussions in any detail but that's a good question for Mr Flexman.

MR MULLIGAN: I think you said earlier in your evidence that you're aware that some discussions were taking place.

45 MR WHINERAY: Yes, I was vaguely aware of it, but not the nature of them. I'd had my conversation with the chief executive of NZ Transport Agency and I was also seeing that the balance for which there was no pushback -- and as I've said, it was described to me as a line in good faith and a

crayon on a page, and the rest of the motorway to the west was in the water. So I expected that would be quite an easy solve.

- 5 MR MULLIGAN: Sorry, in your answer to your questions you said didn't feel as a result of that response that you needed to push the boat out at that point. I took from that that you didn't have to yell or scream, not that you would yell or scream, at Mr Brash. You felt like you had a message --
- 10 MR WHINERAY: Yes. We had a very cordial discussion, as you would expect. It was the first time we'd met each other. Yes, it was a cordial discussion and like any discussion I'd have with an equivalent infrastructure counterpart.
- 15 MR MULLIGAN: To what extent did you communicate that aspiration that the alignment would not be on the Mercury site to your side of the table, to your employees?
- 20 MR WHINERAY: Yes, I communicated that to my general manager, who subsequently wrote to Fergus Gammie in October 2016 with a slightly more forcefully-worded letter, given our frustration. Our GM of corporate affairs and also our land manager. So they're aware of the conversation that I had with Mr Brash.
- 25 MR MULLIGAN: We'll come to that later email. We're talking about Mr Gibson, who was your operations --
- MR WHINERAY: He looks after generation in the wholesale markets.
- 30 MR MULLIGAN: Now, in terms of that discussion between staff, one of those staff you'd accept was Duncan Annandale?
- MR WHINERAY: Yes, he's aware.
- 35 MR MULLIGAN: Who is he? Who was he? Is he still working?
- MR WHINERAY: Yes, he still works for us. He works on a range of property matters, whether it's wind farms in the Manawatu or Marsden land or things like that. New buildings.
- 40 MR MULLIGAN: So the feedback in discussions between Mr Annandale and Mr Wickman for the NZ Transport Agency at the time in terms of the four options, two that went to the north through the car park, two that went through the south, accorded with your position that they were not acceptable, and as a result of that an option to the south was formulated, and the evidence has been that this was the option, so an option which
- 45 on structure, across the railway line, and went in proximity and just over the south of the site.

MR WHINERAY: I don't know. This is the first time I've heard and seen this.

MS DEVINE: Sir, just to clarify, my friend is asking questions where my witness again has said he's not familiar with the detailed correspondence between NZ Transport Agency and people who report to him. He is not aware, as I heard him answer, what that correspondence was. There was a long statement from my friend in terms of feedback between Annandale and Wickman, according with your proposition and so on, and he has none of that information before him.

DR PRIESTLEY: Yes, Ms Devine, but his first three words before you got up to your feet were, "I am not", so he is probably going to answer along those lines in any event.

MR MULLIGAN: I'm sure Mr Whineray is capable of --

MR WHINERAY: Just to be clear, Mr Annandale doesn't actually report to me, so let's make that clear as --

MR MULLIGAN: That's fine.

DR PRIESTLEY: I missed that. Mr Annandale does not?

MR WHINERAY: Does not report to me.

DR PRIESTLEY: Does not report to you.

MR WHINERAY: No. He's further in the organisation.

[5.30 pm]

MR MULLIGAN: Sorry for the long prelude. It's just you are not aware of the situation. I am just outlining previous information, and it's not controversial. But what I wanted to ask you, which I assume is in your knowledge, is: that alignment which goes across the site and touches on the site, to what extent does that accord with what you wanted when you spoke to Mr Brash?

MR WHINERAY: As I said, my indication to Mr Brash was to do with clarifying the Southdown site, making sure that Mercury and Auckland could continue to enjoy the strategic nature of it in various guises over the long term, and that I wasn't sure why the road had to intersect with the site.

DR PRIESTLEY: Had you ever seen that alignment map before?

MR WHINERAY: No.

DR PRIESTLEY: Was it ever discussed with you before today?

MR WHINERAY: No. I've never seen that one.

5 DR PRIESTLEY: That's fairly self-evident, Mr Mulligan, and with respect, this witness
is here to discuss matters at a very high level, particularly the strategic
importance and what Mercury's general thrust was. I can't say it's
10 unfair because it's not, but I'm not sure there's going to be any mileage
in you cross-examining him on maps, alignments, details, emails from
Mr Annandale, etc, which he has never seen or is not a party to. It's
now just after 5.30 pm.

MR MULLIGAN: Okay, sir.

15 DR PRIESTLEY: I'm not trying to bludgeon you into a position, Mr Mulligan, as I'm sure
you'll appreciate, but this witness was called, he gave his witness
statement for a specific purpose, and he has given to the Board very
helpful evidence. We have asked him a number of questions, and I
20 appreciate totally the dilemma which you are in, but there are limits to
which -- I see totally the appropriateness of your cross-examination
before the afternoon tea break and just after, but you are now
descending into an area where he probably has no grasp, for obvious
reasons, because he is close to the pinnacle of the Mercury hierarchy,
25 on this sort of fine detail. You may get it from another witness, and of
course you can always call evidence of your own if you think there is
something which is left undone, but that's for another day.

So you can come back at 9.00 am tomorrow, Mr Whineray?

30 MR WHINERAY: Yes, I can.

DR PRIESTLEY: You are - I will have to warn you, as it were - under what's called cross-
examination, and although the Mercury team have a clear interest in all
35 this, I would ask you to give me an assurance that you won't be
discussing the fine detail of your evidence or the questions which Mr
Mulligan is asking you or is likely to ask you or what your answers will
be overnight. Can you give me that assurance?

40 MR WHINERAY: I give you that absolute assurance.

DR PRIESTLEY: Thank you very much indeed. We'll adjourn until 9.00 am.

45 **MATTER ADJOURNED AT 5.33 PM UNTIL
THURSDAY, 17 AUGUST 2017**