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IN THE COMPETITION

Case No: 1440/7/7/22 & 1518/5/7/22

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 20th May – Friday 6th June 2025

Before:

The Honourable Mr Justice Richards
Andrew Lenon KC
Anthony Neuberger

(Sitting as a Tribunal in England and Wales)

BETWEEN:

London Array Limited & Others.

Claimants

v

(1) Nexans France SAS
(2) Nexans SA

Defendants

AND BETWEEN:

Clare Mary Joan Spottiswoode CBE

Class Representative

v

(1) Nexans France SAS
(2) Nexans SA
(3) NKT A/S
(4) NKT Verwaltungs GMBH
(5) Prysmian Cavi e Sistemi S.R.L.
(6) Prysmian S.P.A.

Defendants

A P P E A R A N C E S

Ben Lask KC, Gerard Rothschild and Jamie Farmer (Instructed by Scott+Scott UK LLP) on behalf of Clare Mary Joan Spottiswoode CBE

Colin West KC (Instructed by Hausfeld) on behalf of London Array Limited & Others. Paul

Luckhurst and Tony Singla KC (Instructed by White & Case LLP) on behalf of Nexans Helen

Davies KC and Fiona Banks (Instructed by Macfarlanes) on behalf of Prysmian Daniel

Carall-Green (Instructed by Addleshaw Goddard) on behalf of NKT

1

2

Wednesday, 21 May 2025

3

(10.30 am)

4

Housekeeping

5

THE CHAIRMAN: Can we just make sure we're logged into Opus?

6

(Pause)

7

Before we start, just a matter of housekeeping.

8

Thank you very much for the note on the Class

9

Representative's case on -- or an outline of the Class

10

Representative's case -- on alternative request by wind

11

farms which we have. Thank you very much.

12

You will have perhaps gathered from reading the tea

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leaves from the few things that we said yesterday, that

14

we are certainly hopeful that cross-examination of the

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experts need not take all of the time allotted. It may

16

do, it may not, but we definitely see the possibility

17

that it might not need to.

18

Is it fair to say that arrangements are in place

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such that one expert can follow hot on the heels of the

20

other, or are there timing constraints about when

21

experts are able to attend?

22

MR LASK: That will be for the others because my expert is

23

first.

24

MS DAVIES: Moselle is here so he can start -- he is going

25

to be -- after Mr Druce it is going to be Mr Moselle,

1 and he can start whenever we get to the end of Mr Druce.

2 THE CHAIRMAN: Okay. Thank you very much.

3 MR WEST: Can I just mention that in connection with Mr
4 Lask's note, would you like us to respond to that by
5 preparing our own note, or will we simply deal with that
6 in closings?

7 THE CHAIRMAN: I have to say I rather -- I viewed Mr Lask's
8 note as just being for your benefit so you knew what
9 you -- to give you a leg up during cross-examination and
10 during the evidence. I certainly do not think I needed
11 a formal response to that, but it may be Mr Lask wants
12 one.

13 MR LASK: We're not inviting one.

14 THE CHAIRMAN: Okay. Is that adequate for your purposes?

15 MR WEST: That is fine. The only other point I would like
16 to make on it is that there is a mistake in it at
17 paragraph 3.3, when it says wind farm costs would have
18 been more by 26 per cent but that is obviously not
19 right. It is wind farm cable costs.

20 THE CHAIRMAN: Yes. Fair enough.

21 Can I suggest -- I am sorry to do this but I don't
22 think we can really make much progress until we are in
23 Opus so can I suggest that we rise and we will come back
24 when that is sorted?

25 (10.34 am)

1 (A break was taken)

2 (10.35 am)

3 THE CHAIRMAN: I know you have been waiting since yesterday
4 afternoon, but we will log in and then we will hear your
5 opening. Sorry to keep you waiting. (Pause)

6 Yes, Mr Carall-Green?

7 Submissions by MR CARALL-GREEN

8 MR CARALL-GREEN: Sir, I do not have enormous amount to say
9 because NKT adopts all of Prysmian's submissions that
10 you heard yesterday.

11 All I want to do, really, is update my Skeleton
12 Argument and map it on to where we are now after the
13 other Skeleton Arguments and the oral openings
14 yesterday. That is because there has been, as Ms Davies
15 explained to you yesterday, a little bit of movement
16 since the Skeleton Arguments were prepared.

17 I then do want, very briefly, to address the note
18 that you have had overnight on the inference, just to
19 set up what might be explored later in the evidence.

20 So, turning to the first item in my Skeleton
21 Argument, which can be seen in the Advocates' Bundle,
22 tab 4, page 3. If you have it in mind there is no need
23 to turn it up but it may be useful to have it open in
24 front of you [ROC-AB/4/3].

25 We introduced five points. We said that the case

1 could be seen through those five stages. First, we said
2 that Mr Druce had ascribed to the banding exercise a
3 level of precision that does not exist.

4 Second, we said that Mr Druce had conveniently
5 picked the most expensive wind farms as benchmarks.

6 Third, and I am now on paragraph 9, sir, we said
7 that Mr Druce had not followed [REDACTED] calculation
8 methodology with the result that he had produced a
9 figure that would not have been produced in the
10 counterfactual.

11 Fourth, we said that Mr Druce's results had to be
12 wrong. We illustrated that in two ways.

13 Finally, we said that after the difficulty with
14 Mr Druce had been pointed out to him, he had retreated
15 from his initial estimate of the cost elevation which
16 was £6.42 to a lower estimate of £4.3.

17 Now, there has been a bit of movement on the second,
18 third and fourth points. In order to understand that it
19 is helpful to see why those three matter. They are part
20 of the package. The answer is that all of those three
21 are about the mathematics of assessing the cost
22 elevation. So, the second point, which is about the
23 choice of benchmark wind farms, is, essentially, the
24 sample that one uses to assess what the facts were in
25 the factual and therefore what the cost elevation was on

1 the assumed overcharge of 26 per cent. The third point
2 is then how you analyse the data from that sample, and
3 then the fourth point is essentially about testing the
4 reliability of the results that one derives from that
5 analysis. So, those second, third and fourth points are
6 all about deriving the cost elevation.

7 However, we have seen from the Class
8 Representative's Skeleton Argument, and we have heard in
9 the oral opening yesterday, that the Class
10 Representative now says that in the counterfactual ██████████
11 cost estimate would have been lower by only £4.3. That
12 figure is actually in the middle of the range reached by
13 the other experts. So, the cost elevation, which is the
14 conclusion of my second, third and fourth points, what
15 they are driving at, the cost elevation is now
16 essentially common ground within a narrow margin. My
17 learned friend Mr Lask said yesterday that there is, in
18 his words, "a degree of convergence" around this point.

19 What that means is that the second to fourth points
20 in my Skeleton Argument, which all went to that
21 mathematical question of the cost elevation have now
22 largely receded into the background. Indeed, the
23 question of mathematically calculating the cost
24 elevation was one of the major points on which expert
25 evidence was required, and that is why I support

1 Ms Davies' position that the importance of the expert
2 evidence is now secondary.

3 The crucial question then is simply whether that
4 largely agreed cost elevation of £4, i.e. a
5 counterfactual cost estimate from ■ of £140, would have
6 led to a difference in the ROC banding. The answer to
7 that question turns on the documents, and specifically
8 the remaining two points in my Skeleton Argument which
9 are the first and the last. These two points map on to
10 what Ms Davies described as the two key pillars of the
11 Class Representative's case.

12 The way I put it in my Skeleton Argument, the first
13 point is about the general approach to the banding
14 exercise, the debate there being that the Class
15 Representative says that the cost elevation of £4 would
16 have made a difference, and we say that the exercise was
17 multifactorial. There were other factors in the
18 balance. The estimates were, in any event, inexact, and
19 so forth.

20 As Ms Davies put it yesterday, the Class
21 Representative has to say that the Government objective
22 was to subsidise offshore wind no more than necessary,
23 and I would add that it has to say that the Government
24 would have approached that task, or did approach that
25 task, with a certain level of precision which we say did

1 not exist. That is my first point and Ms Davies' first
2 point.

3 Our final point in my Skeleton Argument is about the
4 probability that the Government would have used
5 increments of 0.1 ROCs per megawatt hour. On that we
6 say that the evidence is clear that the only options on
7 the table were 1.75 and 2 for all the reasons that
8 Ms Davies gave yesterday. That was her second pillar.

9 Either way, the Tribunal will need to decide whether
10 the cost elevation of £4 would have been enough to make
11 a difference. We say that given the uncertainty and
12 inexactness of the exercise, given the kinds of margins
13 that the Commission had already approved, and you saw
14 from the document that Prysmian handed up yesterday,
15 given that the developers would still have asked for
16 two, and I will come back to that in a moment, and given
17 that ■ would still have recommended more than two, we
18 say that £4 would not have been enough to make a
19 difference.

20 As Ms Davies put it yesterday, the question is
21 whether a bit more daylight between the central cost
22 estimate and the central revenue estimate would have
23 caused the Government to make a different decision. It
24 is now common ground that the daylight is £9 and we say
25 that is not big enough in the context.

1 That is the update to my Skeleton Argument.

2 I have mentioned just now the point that the
3 developers would still have asked for two, and that is
4 the subject of the Class Representative's note
5 overnight.

6 Now, the gist of the point is that the developers'
7 requests were justified by reference to costs.

8 Before we get on to the quick answer, the sort of
9 simple answer to the point, I do want to reiterate what
10 my learned friend Mr West said, which is that the note
11 suggests that costs in the counterfactual would have
12 been lower by 26 per cent, but that is a slip of the
13 pen. It is the cost of the cables that would have been
14 lower by 26 per cent, or the relevant products, and as I
15 have said, it is common ground that the EY estimate
16 would have gone down from 144 to 140, so that is a small
17 reduction in the overall context.

18 So, what is the answer to the point that developers'
19 requests would have been lower? Well, the point that
20 they justified their request by reference to their costs
21 is rather uninformative in the sense that if you want
22 more revenue of course you have to justify it by
23 reference to an increase in costs.

24 What were the wind farms actually doing? Well, what
25 they were doing is pitching for an up-rating by one

1 notch from the pre-existing band of 1.5 to the
2 pre-existing band of 2, which was the only band they
3 could go to. So, on the pre-existing scheme from the
4 Renewables Obligation Order 2009, they were in the
5 second-highest band, and there was one band above them,
6 only one, and that was the 2 band. So, all they were
7 asking for is to step up from their step to the step
8 above.

9 The Class Representative's counterfactual has to be
10 one in which the wind farms would have felt so bashful
11 about doing that, that they would have asked the
12 Government to invent a new band at, say, 1.9, or, in the
13 terms of the Order, ten-nineteenths of a megawatt per
14 ROC.

15 We say that that is implausible, especially when one
16 bears in mind that the push for the 2 was something
17 around which multiple developers were coalescing, and we
18 heard yesterday that those developers included [REDACTED]

19 [REDACTED]
20 [REDACTED] Those wind
21 farms would all have had different financial structures
22 and they would have had different internal models
23 showing exactly what their costs and predicted revenues
24 were, all of which would depend on estimates, forecasts
25 and assumptions. What they were doing was reading off a
26 pre-existing menu and saying "we do not want the silver

1 grade, we want the gold grade".

2 It is not as if the margin of £9, the daylight,
3 would have been outlandish. For that, sir, if I could
4 ask you to turn up the hand-up that Prysmian gave you
5 yesterday, which is currently in the advocates' bundle
6 at tab 13, on the penultimate page, Table 3. In this
7 document we see the State aid approved banding from
8 2009, and we see that in the 2 band, and I am now about
9 two-thirds of the way down the page looking at the rows
10 titled "Dedicated biomass with CHP" and "Dedicated
11 energy crops", we see there that the Commission had
12 approved banding [ROC-AB/12/5] that resulted in margins
13 of £8 or £17 which, in relative terms, was 6 per cent
14 and 13 per cent. In that context we say that the idea
15 that a margin of £9 would have caused the Government to
16 rethink its entire position to look on in horror, we say
17 that that is not plausible. That is the short answer to
18 the overnight document.

19 Sirs, unless there is anything else, that is all I
20 wanted to say this morning.

21 THE CHAIRMAN: Thank you very much.

22 I think we are ready, then, for our witness of fact.

23 MR WEST: Yes. I would like to call Mr McNeal.

24 HUGH MCNEAL (Affirmed)

25 Direct Examination by MR WEST

1 THE CHAIRMAN: Do sit down, Mr McNeal. Make yourself
2 comfortable. I think I can see you have some water
3 there.
4 A. Yes, I will take some, if that is okay.
5 MR WEST: Do you have a copy of your statement with you
6 there in the box.
7 A. I do, yes.
8 Q. I am going to, nevertheless, ask that we be shown on
9 Opus Bundle C. That is the witness statement bundle.
10 [ROC-C/1/1]. It has only a single tab in it, tab 1.
11 Can you see that on the screen in front of you?
12 A. Yes, I can.
13 Q. Is that your first witness statement in this case?
14 A. Yes.
15 Q. If you then go on in this document to page [ROC-C/1/15],
16 or if you could be shown that? Is that your signature?
17 A. It is.
18 Q. Now, there is a letter in the bundle making a
19 clarification to one paragraph. Mr Lask has confirmed
20 that I can simply show you that letter. That is
21 [ROC-F2/48/1].
22 Do you see the indented paragraph with some wording
23 scored out and some wording in red there, Mr McNeal?
24 A. Yes I do.
25 Q. Is that a correction you wish to make to paragraph 33 of

1 your statement?

2 A. It is. I felt that the sentence, as drafted, suggested
3 that the department had data on every single renewable
4 energy project in the UK at that time and that was not
5 factually correct.

6 Q. So, yesterday, with the Tribunal, we were debating the
7 question of administrative costs and how that may have
8 affected the granularity of ROC banding. Sorry about
9 all that jargon. I understand you have been thinking
10 about that overnight and there is another brief
11 correction or clarification you would wish to make, so
12 can you be shown paragraph 35? [ROC-C/1/12]. Towards
13 the end of that paragraph, the final sentence, I
14 understand there is a correction or clarification you
15 would like to make. Can you explain what that is?

16 A. Yes, there is. The example is not correct. There were
17 two issues at that time that I recall. The first was
18 that the cost of administering the scheme, the costs
19 were rising -- Ofgem's costs for administering the
20 scheme -- were rising, and people were concerned about
21 that. Their concerns were that if you went and became
22 more granular in the calculation, any benefits that
23 might come, or potentially would be given to consumers
24 would be lost in greater administrative costs. I cannot
25 recall how those costs then fell through the scheme, and

1 on the detail of the position in the period prior to
2 your joining the department.

3 A. I think it is -- it depends on what questions I am
4 asked. Given that now I have seen some of the
5 documentation that was produced around that decision,
6 and given that some of the people involved worked with
7 me in the period that we are talking about here, I might
8 be able to shed light on that if it is helpful.

9 Q. If you could just go to page 5, please, of Mr McNeal's
10 statement, paragraph 19? [ROC-C/1/5].

11 I was intending to summarise what you say in the
12 second sentence here:

13 "I cannot comment on the detail of the position
14 during that time ..."

15 A. Yes, that is true.

16 Q. " ... given it pre-dates my joining DECC"?

17 A. But as I said, now that I have seen documentation and
18 seen the names of people who used to report to me and
19 work with me, if it is helpful, I am happy to comment on
20 that.

21 Q. I see. So, you would be commenting on the detail of the
22 position in the period prior to you joining -- sorry --
23 you would be commenting on the basis of documents you
24 have looked at recently rather than any personal
25 knowledge?

1 A. Yes.

2 THE CHAIRMAN: Can I just ask you, Mr McNeal, I know that
3 because it is being transcribed, maybe you would be kind
4 enough just to wait until the question is finished until
5 you start your answer. It just makes the transcriber's
6 life easier. Thank you.

7 MR LASK: I trust that the most recent answer is clear on
8 the transcript and that I do not need to re-ask the
9 question.

10 Yes. I think that is sufficiently clear. Thank
11 you.

12 In the circumstances, unless I say otherwise, you
13 can take it from me that my questions are concerned with
14 your understanding of the department's general approach
15 to banding under the RO scheme.

16 If we could go, please, to paragraph 26 of the
17 witness statement on page [ROC-C/1/7]? You explain in
18 paragraph 26 that administering the RO regime involved
19 trade-offs between various objectives and interests,
20 and, in particular, you say, in the second sentence:

21 "On the one hand, the regime seeks to maximise
22 deployment of renewable energy by ensuring that project
23 developers are incentivised via an expected return on
24 investment; on the other hand, it must minimise the
25 effect of this on consumer bills so as to avoid netting

1 off the benefits for the UK economy as a whole".

2 Then you refer in the next sentence that you need to
3 achieve a balance, or the department needed to achieve a
4 balance, and then paragraph 27, you say that:

5 "As a result of the changes that I have described
6 above which were introduced in 2009-2010 ... the
7 potential impact on consumer bills increased ... so,
8 too, did the level of scrutiny of DECC's
9 decision-making ..."

10 Do you see that?

11 A. I do.

12 Q. Now, your reference to the "changes described above" is,
13 I think, a reference to the introduction of the new
14 banding system and the change to the way supplier
15 obligations were calculated, both of which came in on 1
16 April 2009. I say that because that is what you deal
17 with at paragraph 20 and 21 on pages 5 and 6. Is that
18 correct?

19 A. Could I just look at those paragraphs?

20 Q. Of course.

21 A. I think that is correct but I would just like to make
22 sure.

23 Q. 20 and 21, pages 5 and 6. [ROC-C/1/5] [ROC-C/1/6].

24 A. Could we go back to the paragraph you just asked me
25 about?

- 1 Q. Yes. It is 27 on page [ROC-C/1/8].
- 2 A. Thank you. So the answer to your question is broadly
3 true. I think the answer is also caught in the second
4 sentence of my statement here. The scheme is growing.
5 The number of projects are growing. The cost and size
6 of those projects are growing. The scrutiny is greater
7 for a variety of reasons which we can talk about as
8 well, but the broad point holds. The broad point is
9 true.
- 10 Q. Thank you. It must follow from the evidence you give in
11 paragraph 26 to 27 that when deciding on the appropriate
12 level of banding, Government had to do its best to
13 strike a balance between the different objectives in
14 play; correct?
- 15 A. We would think about all of the different issues in
16 play, yes.
- 17 Q. It would strive to do its best --
- 18 A. Yes of course, of course.
- 19 Q. Thank you.
- 20 THE CHAIRMAN: Again, you jumped in a little bit before the
21 question had finished.
- 22 MR LASK: It would also be fair to say, would it not, that
23 given the stakes involved which, as you say, were
24 rising, Government would take a conscientious and
25 evidence-based approach to its decision-making; yes?

1 A. Of course, but the evidence was deeply uncertain and
2 variable, and, as I say elsewhere in the statement, that
3 made the task of balancing the trade-offs incredibly
4 difficult.

5 Q. If you could look, please, at paragraph 28 on page
6 [ROC-C/1/8]? You explain in this section -- you explain
7 the process in a bit more detail. Paragraph 28 -- I am
8 just going to summarise these paragraphs as I go
9 through, but do, of course, take the time to read them
10 in case you have anything to add -- at paragraph 28 you
11 explain that the review process involved a large team of
12 officials with dedicated teams for specific
13 technologies; yes?

14 A. Yes.

15 Q. At paragraph 29 you say -- and I appreciate that you say
16 at the end of 28 these stages may overlap, so I am not
17 seeking to imply that there was a definitive distinction
18 between the different stages. At paragraph 29, however,
19 you say that first we would engage an external
20 consultant to provide a technical report, and you say
21 this will take a number of months to complete, and at
22 paragraph 30 you say the report would be used by DECC as
23 a starting point to formulate and submit views to
24 ministers; yes?

25 A. Yes. That is true. I mean, the process would have been

1 far easier, and our relationship with the Commission
2 would have been far easier had we just taken what our
3 consultants -- and in our case our consultants were [REDACTED]
[REDACTED]

4
5 but [REDACTED] were also sub-contracted as they were in, I think
6 the case we are talking about because they had expertise
7 in offshore wind, if we had just taken what came in from
8 EY, but precisely because of what we have been talking
9 about, because we wanted to make sure we were trying to
10 make the right trade-offs and protect consumer bills, we
11 did not just take at face value what came back from
12 consultants, yes.

13 Q. You would not take at face value the conclusions and
14 recommendations --

15 A. On their own and then just go straight to making the
16 decision.

17 Q. I see.

18 A. That is the point I am making.

19 Q. Thank you. At 31 you explain that you would consult
20 extensively with various stakeholders, and at 31(a) you
21 say that developers would submit information on capital,
22 financing and operational costs which you would use to
23 reach judgments about the appropriate level of ROCs;
24 yes?

25 A. So the -- you would have a public consultation. It is
26 the last part of your question that I just want to sort

1 of say something about if I may. We would go through --
2 we would take the report from Arup, we would then do our
3 own work on it, or from EY, or from whoever the
4 consultant was. Then we would go out to public
5 consultation. Then data would come back, and then we
6 would analyse it, but the things that would be in our
7 minds when we made the decision and when we developed
8 the curves for the different technology areas would not
9 just have been the cost and revenue data that had come
10 through this process, and I think what you said to me,
11 unless I have misunderstood, was it seemed to jump ahead
12 a little bit in the process, so we would be thinking
13 about the different -- I mean, I think I say some of
14 this in my statement -- we will be thinking about, well,
15 different projects have different locations. They would
16 have different seabed routes. Could they still use
17 monopile foundations? Would they have to use jackets?
18 Which turbines might they use? What IRRs might the
19 companies have? What was going on with forward cost
20 curves? What PPAs might they have? So the key point
21 that I would try and stress to all of you is we were
22 drawing a curve of a range to the best of our knowledge
23 for each of the renewable energy technologies at a given
24 moment in time with incredibly complex and uncertain
25 data, and the decision at the end, and the process I

1 have described, involved me and my team, and others in
2 the department, going back and forth on these different
3 trade-offs, trying to work out, well look, if we pick
4 this point to the best of our knowledge, you have ROCs
5 up one side of a graph, and you have got volume at the
6 bottom, broadly speaking. If we pick this point, what
7 does that mean for consumers, what does that mean for
8 our ability to deliver on our renewable energy targets.
9 What might that mean for learning effects and the
10 transformation of the market in this technology in the
11 UK at that moment in time. After all, the UK was the
12 leading market in the world for offshore wind at that
13 moment in time which meant that if you increased volume
14 of deployment, you might ultimately benefit consumers
15 because new products would come into the market, more
16 learning would be done, so we were thinking about a
17 wider range of issues than simply the costs and
18 revenues, and we were thinking about it in terms of a
19 curve.

20 Q. Thank you. If I may say so, you have jumped ahead
21 somewhat.

22 A. Apologies.

23 Q. That is paragraph 33, I think, of your statement. I am
24 trying to take this in stages, but it is fair to say, is
25 it not, that the curve you have just described which,

1 from what you have said, must have been important, its
2 fair to say, is it not, that an important input into
3 those curves would have been the cost data that you
4 obtained from developers.

5 A. It would have been. It would have been one, but I stand
6 by the point I just made, and I take your correction,
7 and apologies for that, but it was one factor but not
8 the only factor in the conversations.

9 Q. You have agreed with me that it was an important factor?

10 A. Absolutely.

11 Q. Thank you.

12 A. Absolutely.

13 Q. At 31(b) you say there was pressure to take account of
14 consumer -- of the impact on consumer bills, and at 30
15 you then refer to some other stakeholders at (c) and
16 (d), and then at 32 you come back to the costs
17 information, and you explained that it would be collated
18 into what you call "very detailed spreadsheets", and you
19 say here, this is paragraph 32, you say:

20 "As civil servants we could not simply take at face
21 value the information that was provided by a developer.
22 We had to critically analyse it and test it based on our
23 knowledge of the market and the factors that could have
24 influenced the accuracy of those costs/cost forecasts
25 submitted for the project in question".

1 It must follow from that that if, for example, the
2 developers said they required X number of ROCs, the
3 department would critically analyse those requests and
4 reach its own view on what was required; yes?

5 A. Yes, within the context of the macro curve, absolutely,
6 and to give an example from the period which we are
7 discussing, my understanding, having now seen some of
8 the documentation, is that [REDACTED] at that time was
9 asking in its meetings with officials for 2.5 ROCs. The
10 [REDACTED] got built at 2 ROCs, is my recollection, and
11 I apologise if it was less than 2.0 ROCs, but the broad
12 point is we -- you know, there were examples -- we were
13 not -- we were alive to the possibility of gaining
14 [sic]. That is the best way of putting it.

15 Q. The transcript has said that you were alive to the
16 possibilities of gaining --

17 A. "Gaming".

18 Q. Thank you.

19 A. In other words, that someone was exaggerating.

20 Q. Yes, and you referred there to [REDACTED] asking for
21 2.5, but getting 2, and you say that is your
22 recollection. You are referring, I think, to a document
23 from the --

24 A. I am.

25 Q. -- 2009, 2010 process.

1 A. Sorry.

2 Q. Yes, so it is not your personal recollection.

3 Yes, and at 32 in the subparagraph you describe
4 sources of uncertainty. At 33 you come on to speak in
5 some detail about the macro curves that you have
6 referred to a moment ago, and you explained that your
7 economists would take the detailed spreadsheets and turn
8 them into macro curves that you would then use to
9 formulate recommendations to ministers; yes?

10 A. Yes.

11 Q. And you refer again to the need to trade -- you refer
12 again to the trade-offs involved, and the need to take
13 account of, for example, the impact on consumer prices;
14 yes?

15 A. Well, absolutely. We had a -- from 2011 we had the Levy
16 Control Framework which meant that we were under much
17 greater scrutiny from the Treasury than had been the
18 case previously.

19 Q. And you refer at 33 to "consumer electricity prices",
20 and that is something you had to take into account.
21 Would that include commercial as well as domestic
22 electricity consumers?

23 A. Yes. I mean, what I am referring to there is the curves
24 that people might buy in or work internally as they are
25 making their investment decisions, so the sort of things

1 you buy from companies like ██████, because, after all,
2 the subsidy regime we are talking about here is not just
3 a function of the ROCs that you receive, but also the
4 ROCs that you think you can -- sorry -- the price you
5 think you can make in the market, and that is, of
6 course, also why PPAs were important because people were
7 not going to be able to make 100 per cent in the market,
8 you would have to apply a discount. I cannot remember
9 what sort of discounts we applied but they would have
10 been different for different technology -- sorry -- for
11 different companies.

12 Q. To sum up the process you describe in this section, it
13 is fair to say, is it not, that this was a highly
14 complex process involving numerous officials, detailed
15 evidence and careful analysis. Agreed?

16 A. Yes. I do agree. It took 18 months.

17 Q. If we could look, please, at paragraph 34? Here you
18 explain that having identified an appropriate banding
19 level for a given technology, you then had to look at
20 the overall picture across all technologies; yes?

21 A. Yes, because of the Levy Control Framework.

22 Q. And overly optimistic assumptions in one technology area
23 may need to be counter balanced by a more conservative
24 approach in another area; yes?

25 A. Yes.

1 Q. That means, does it not, that when setting the ROC level
2 for a number of different bands and technologies, as you
3 were doing for the 2013 decision, there would be a
4 degree of trading-off between different technology
5 areas; yes?

6 A. I can't recall, but what I am trying to convey here is
7 that there was definitely a conversation between --
8 okay, we have made some decisions that look slightly
9 optimistic for a technology here, are we sure about the
10 decisions. That is what I am trying -- in another
11 technology area. What I cannot say to you, I am afraid,
12 with certainty, is whether, in that specific moment, we
13 made specific decisions to change what we were
14 recommending to ministers vis-à-vis different
15 technologies.

16 Q. Well, if we could just look at paragraph 34, you say:
17 "If we had taken a risk by making what appeared to
18 be overly-optimistic assumptions in one technology area
19 (e.g. based on less reliable data) then we would counter
20 balance that by taking a more conservative approach in
21 another area".

22 The question I am putting to you is that that looks
23 a lot like a trading-off between different technology
24 areas; yes?

25 A. I just want to put it in my own words if that is

1 alright.

2 Q. Those were your words that --

3 A. Yes of course. I take that point, of course. I think
4 what I had in mind here is there were some technologies
5 that we were supporting which were really early stage,
6 right? Some of the things to do with wave power and the
7 like, and we might be tempted to try, for a variety of
8 reasons because it is not commercialised yet, to use the
9 ROC to take those things forward, and that might lead us
10 to take some fairly optimistic assumptions around what
11 we were doing, and therefore we then might counter
12 balance that against a more developed technology, but as
13 I said, I am afraid I can't recall what the specific
14 trade-offs at the specific time were.

15 Q. But it would be right to say that where, as was the case
16 in 2013, you were dealing with multiple technologies,
17 that was an additional --

18 A. Yes.

19 Q. -- complexity in the process, and to the extent that you
20 were trading-off, or, as you say, "counterbalancing"
21 between different technologies, that may make the final
22 outcome less precise in respect of any specific
23 technology; yes?


24 A. I would never use the word "precise" about any outcome
25 through the ROC process. There was -- there simply was

1 not precision. It is not the right word to use. I take
2 the broad point that you are making, but I -- you know,
3 even with -- as the paragraph before, and as we have
4 just been discussing makes clear, we are developing
5 curves on the back of inherently uncertain data where,
6 you know, things are -- there are so many moving parts,
7 and they are so large, that it was not even possible
8 just with offshore wind to have a single levelised cost
9 for offshore wind at the end of our process. At the end
10 of the process that happened in 2013, there was not one
11 levelised cost for offshore wind, there were six.

12 Q. You looked at the documents now in relation to the 2010
13 process and you will have seen that in that process the
14 documents zero in on a single levelised cost figure
15 taken from the EY report. You will be familiar with the
16 £144 figure. That sounds like a point of distinction
17 between the 2010 process and the process are you
18 describing.

19 A. Well -- so not as I understand it, and remember, at the
20 time, because I would place more emphasis myself on the
21 process with the Commission, which is after the decision
22 has been taken and you are looking for what happens, and
23 the process with the Commission is all around the
24 range --


25 Q. Sorry, you said you would place more emphasis --

- 1 A. With the Commission, I think.
- 2 Q. Do you mean for the purposes of identifying the relevant
3 cost figure?
- 4 A. No. You said that there would be a distinction in
5 the -- you did not use the word "thinking", but you said
6 there would be a distinction in how people approached
7 this, so I do not know whether they used -- you know,
8 different parts of the department, sometimes they did
9 use a single levelised cost figure, I am simply saying
10 in the ROC process we had a variety of different things
11 for round three and for -- for offshore wind for round
12 three and for non round three projects.
- 13 However, the point I would make is based on the
14 documents and the back and forth of the Commission from
15 the time that you are talking about, which is clearly
16 focused on ranges of costs, and that is -- that is
17 clearly what people were thinking about in the
18 department. I would place my emphasis on that, then on
19 the EY figure. In other words, at the end of the
20 process, the Government's view, as set out to the
21 Commission, is there are a range of -- there is a range
22 of costs which sort of reflects the sort of curve I am
23 describing that we have previously been discussing.
- 24 Q. Could we look, please, at [ROC-E/138/11]? This is the
- 

1 [REDACTED]. You will see some
2 tables of figures. Have you seen this document before?

3 A. I saw it last week. Yes.

[REDACTED] Q. And you will see that -- [REDACTED]



14 A. Let me correct what I said. I got ahead of myself.

15 I think the point I was trying to make was to
16 emphasise previously around the point of precision, and
17 the point about -- and the use of that word -- I was
18 simply saying at the end of the 2013 process, we did not
19 have one set of levelised costs in the documents that
20 were published and that were publicly available for
21 offshore wind, we had six. We had a low, medium and
22 high for projects that were not round three, and we had
23 a low, medium and high for projects that were round
24 three. Round three projects had not been built yet and
25 were further out to sea. Rounds one and two, some had

1 been built.

2 In terms of this document, what I am saying to you
3 is I would place more emphasis based on my experience,
4 and based also on some of the back and forth that I have
5 also seen from this time between officials, only
6 officials -- economists going back and forth with the
7 Commission -- on the £128 to £160 range, on the £112 to
8 £170 range. If those were not important they would not
9 be there.

10 Q. The same as you said about the £144. If it was not
11 important it would not be there; correct?

12 A. I suppose so. I made my point.

13 Q. Ultimately you were not there, so you cannot say what
14 was in the minds of the officials that were drafting
15 these documents.

16 A. Well, as I said at the start, the officials that were
17 drafting these documents then worked for me, or with me,
18 for many years. The engagement with the Commission --
19 I think I understood -- I understand pretty well. We
20 knew that we could not get forward 100 per cent of the
21 technology cost, but as long as we were -- so you could
22 not take the very top of a curve, you could take 80 per
23 cent, for example, of a curve, and you knew that you
24 could go between an IRR of about 10 and 14 for a
25 technology that was already being -- that was already

1 commercialised, so as I said, in my recollection these
2 conversations are all about ranges. They are not about
3 precise things.

4 Q. The original question that I was asking you was in
5 relation to paragraph 34, and you objected to the use of
6 the word "precision" which, in fairness to you, does not
7 appear in paragraph 34, but what you do say is that --
8 you say:

9 "I remember the process as one with many moving
10 variables and many levels of abstraction, especially
11 once it got to a macro curve stage and we had to
12 consider all technologies in the round which meant it
13 was simply not possible to pinpoint the ROC level in a
14 way that accurately reflected all factors".

15 The point I was putting to you was that because of
16 this need to counterbalance between different
17 technologies, in those circumstances it is even less
18 possible to pinpoint -- accurately pinpoint a value for
19 a specific technology, because some of it is being lost
20 in the counterbalancing between the technologies?

21 A. And I take that point, and my only point in response is
22 that it is an additional point. I take that point as
23 well, but I am also trying to convey to everyone that --
24 the way in which we thought about it was not based on a
25 precise point. It was based on these curves, and we had

1 an understanding of the trade-offs and the uncertainty
2 in what we were using in making that decision,
3 recommending to ministers what the decision should be.

4 Q. Could we turn, please, to paragraph -- sorry -- page 13
5 of your statement. This is section 5, and in this
6 section you opine on a hypothetical counterfactual
7 scenario in relation to the 2009 banding process, and
8 when you say the 2009 banding process, I think you mean
9 the process that culminated in the decision to award 2.0
10 ROCs in the 2010 Order; yes?

11 A. This was put to me by Hausfeld, as the statement case,
12 but yes, I think that is what we were talking about,
13 yes.

14 Q. You have explained, or you have agreed with me, that the
15 decision-making process was a highly complex one
16 involving numerous officials, detailed evidence, and
17 careful analysis, and you acknowledge, at paragraph 40,
18 and you have confirmed that in your oral evidence today,
19 that you had no personal involvement in the 2009 banding
20 process. Again, I mean the process that culminated in
21 the 2010 Order; yes? [ROC-C/1/13]

22 A. Yes.

23 Q. So as you recognise at paragraph 40 it is difficult for
24 you to say what would have happened in a hypothetical
25 counterfactual of that process; yes?

1 A. Yes, with a caveat. Unless the process was different,
2 there would not have been a separate cables line. Cables
3 would have fallen within balance of plant which would
4 then have gone up to the other costs involved in the
5 building of the wind farm, some of which would have been
6 larger, so the turbine costs and possibly the foundation
7 costs, and then you would have considered some of the
8 other factors that we discussed previously, but of
9 course it is true I was not there.

10 Q. My point is that the process of deciding on an
11 appropriate level of banding is, as you have described
12 it, highly complex. You are saying here that because
13 you were not there at the time, it is hard for you to
14 comment on the detail. The point I am putting to you is
15 the -- is what would have happened in a counterfactual
16 is the detail. It is precisely the thing you say you
17 cannot comment on; correct?

18 A. Sorry, I am thinking about it. There are plenty of
19 things I could say about this example, if it is helpful,
20 based on my experience, if you wish me to.

21 Q. All I am putting to you is the point you have made in
22 paragraph 40, which is that because you were not there,
23 because you did not have any personal involvement, it is
24 difficult for you to comment on the detail of what would
25 have happened in the counter factual.

- 1 A. On the detail, yes, but on what might have driven the
2 decision, how people might have thought about the
3 decision, given what I said, I think there are things
4 that I could say about it, but that is up to you.
- 5 Q. Could we look at paragraph 42(a), please? This is on
6 page [ROC-C/1/14]. One of the reasons you give for your
7 opinion is that -- and I am quoting:
8 " ... a whole host of variables and adjustments had
9 to be applied to and considered alongside the cost
10 information".
- 11 You see that at the end of paragraph 42(a)?
- 12 A. Yes.
- 13 Q. And one of those variables and adjustments was the --
14 and again I am quoting, this is from four lines up from
15 the bottom:
16 "One of those variables and adjustments was the
17 wider analysis for all technologies across the RO
18 regime"; yes?
- 19 A. Yes.
- 20 Q. And this is the point we have been discussing about the
21 trading-off between different technologies. You
22 understand that insofar as it involved a change to the
23 level of banding support, the 2010 decision only
24 concerned offshore wind; yes?
- 25 A. Yes.

1 Q. So when considering the appropriate level of support for
2 offshore wind in 2009, 2010, the department did not need
3 to factor in that wider analysis of all technologies,
4 did it?

5 A. Yes, I accept that.

6 Q. Thank you. I have no further questions.

7 MR WEST: I have no re-examination.

8 THE CHAIRMAN: Presumably it is agreed that no one else
9 wants to cross-examine Mr McNeal? Right. No
10 re-examination. Any questions from us?

11 Thank you very much for your time, Mr McNeal. You
12 are free to go.

13 MR LASK: It falls to me, unless the Tribunal wants to take
14 a break now, it is Mr Druce next.

15 THE CHAIRMAN: I think let us just press on. It is perhaps
16 slightly early for a break. Well, actually, you know
17 what? Let us have a break, otherwise we then have the
18 uncomfortable thing where Mr Druce then starts and then
19 promptly gets out of the witness box. Let us have an
20 early break and come back at half past, please.

21 (11.23 am)

22 (A break was taken)

23 (11.33 am)

24 MR LASK: May I call Mr Druce, please?

25 THE CHAIRMAN: Please do, yes.

1 RICHARD DRUCE (Affirmed)

2 Direct Examination by MR LASK

3 Please do sit down, Mr Druce, and make yourself
4 comfortable. You have some water, and I hope a fresh
5 glass.

6 A. Thank you.

7 MR LASK: Sir, Mr Druce has provided five expert reports and
8 signed the joint expert memorandum as well. I am very
9 happy to take him through each in turn and ask him to
10 confirm, but it may be more efficient if I simply ask
11 him -- invite him to confirm all of them in one go.

12 THE CHAIRMAN: I am quite happy with the bulk approach,
13 unless anyone has got any difficulty with the bulk
14 approach. Let us do the bulk approach.

15 MR LASK: Thank you. I am grateful.

16 Mr Druce, you have provided five expert reports in
17 these proceedings and you have also joined a joint
18 expert memorandum. Are the facts and opinions stated by
19 you in those documents true and correct to the best of
20 your knowledge and belief?

21 A. Yes.

22 MR LASK: Thank you. I have no questions at this stage but
23 I expect the others will.

24 A. Thank you.

25 Cross-examination by MS DAVIES

1 MS DAVIES: Good morning, Mr Druce.

2 I am going to start, if I may, with the views that
3 you expressed in your initial expert report in these
4 proceedings in May 2022, and I am, of course, conscious
5 that additional information has become available to you
6 as a result of the disclosure of the DESNZ documents,
7 and we are going to come to that, but I just want to
8 ensure that we are all clear as to what you were
9 initially saying in relation to this case when you first
10 looked at it.

11 So, going back to your first report, which we have
12 in tab 11.1 of ROC-D [ROC-D-IC/11.1/2], it is right, is
13 it not, that in your first report your view was that the
14 Cartel had increased the subsidies that were provided to
15 offshore wind farms via the ROC mechanism, both for the
16 2009 Order and the 2010 Order?

17 A. Yes.

18 Q. And that was because -- is this right -- your view in
19 each case was that the Government had calibrated the
20 number of ROCs each renewable generation technology
21 received, so that the developers received revenues
22 reflecting their total costs, including the effect of
23 any overcharge?

24 A. I think that is a broadly correct summary. My position
25 in Druce 1 was based on the -- obviously the published

1 statements from the Government at the time which
2 described the banding decisions taken in all three
3 Renewables Obligation Orders, and, indeed, the decision
4 to introduce the banding regime in the first place in
5 the context of seeking to set subsidy levels that ensure
6 developers of each technology were able to cover their
7 costs, but to the extent that Ms Davies' question refers
8 to individual developers of individual projects, I do
9 not think I was ever -- ever held the view that under
10 the Renewable Obligation regime, every single project
11 would recover their costs, their own costs. It was more
12 a general reflection of the policy that the banded ROC
13 was seeking to cover the costs of individual
14 technologies.

15 Q. I am sorry to cut you off, Mr Druce. I am sorry, I was
16 not trying to suggest that it was being done on a
17 project by project basis?

18 A. Okay.

19 Q. If we look at paragraph 42 of your first report at
20 [ROC-D-IC/11.1/24], what I was trying to encapsulate in
21 my question is what you say in the first sentence, which
22 is:

23 "the Government calibrated the number of ROCs each
24 renewable generation technology ... receives per
25 megawatt-hour of electricity generated, so that the

1 developers of each technology receive revenues that
2 reflect their total costs ..." yes?

3 A. Yes.

4 Q. So the essential reasoning underlining your opinion that
5 for both the 2009 Order and the 2010 Order, the Cartel
6 had had an impact, was this process of calibration
7 between the costs and revenues. Is that right?

8 A. Yes. That was the position I took in my first report,
9 yes.

10 Q. At that stage your position, is this right, is that the
11 increase in the amount of subsidy provided, both for
12 2009 and 2010, equated to the overcharge on products
13 found by the Commission? In other words, you were
14 assuming there was a direct correlation between the
15 level of subsidy provided and the amount of any
16 overcharge.

17 A. In my first report I was assuming that the -- an
18 estimate that I made at that time of the increase in
19 costs incurred by the supported wind farms would be a
20 reasonable estimate of the damage associated with the
21 Cartel through that mechanism, so it was an estimate
22 using the information I had at the time, but yes,
23 I think that is broadly -- Ms Davies' characterisation
24 of what I did was broadly correct.

25 Q. If we look at paragraph 477 of your first report on page

1 [ROC-D-IC/11.1/174], I am sorry, I should show you -- go
2 back to page [ROC-D-IC/11.1/171]. This is in section
3 9.21 dealing with the 2009 Order. Your conclusion at
4 paragraph 477 in relation to that Order was that because
5 the Government had based its decision on Ernst & Young
6 cost calculations you conclude the banding levels were
7 influenced by the overcharge. So, your view at the time
8 of looking at the material you had was that it was the
9 Ernst & Young cost calculations that had driven the
10 banding decision. Is that right?

11 A. Yes. Since then, of course, I have reviewed the
12 disclosed documents which provide more -- a wider range
13 of information on what informed the Government decision,
14 but yes, using the information in the public domain,
15 that was the conclusion I drew at the time.

16 Q. Going forward to paragraph 484 on page
17 [ROC-D-IC/11.1/175], at this time your view was the same
18 in relation to the 2010 Order. It was the Ernst & Young
19 cost analysis that had driven the banding decision. Is
20 that right?

21 A. Yes. Again, at the time the information in the public
22 domain suggested that was the case. Since receiving the
23 information through the disclosure process, of course, I
24 have been able to improve my understanding, I think, of
25 what drove the 2009 and 2010 decisions and how they

1 differed. I am sure we will come on to that in due
2 course.

3 Q. We're definitely going to come to that, Mr Druce. I am
4 just trying to start with where you started.

5 A. Of course.

6 Q. If we turn on to paragraph 492 on page 177
7 [ROC-D-IC/11.1/177], there you were considering the
8 issue of whether the increase in offshore wind costs was
9 too small to affect the banding levels, but, is this
10 right, you were rejecting that possibility because, in
11 your view, the costs that were increased by the Cartel
12 equated, on average, to 14.5 per cent of the wind farm
13 costs?

14 A. I rejected that -- well, I took the view in my first
15 report that because the public information suggested
16 that the -- or indeed showed -- that cables costs were a
17 sizeable portion of offshore wind farms' costs, that it
18 was unlikely that inflation, or elevation in those costs
19 caused by the Cartel would have no effect.

20 Q. Now, essentially the points we have just been through
21 remained your view in relation to 2009 and 2010 in both
22 your second and third reports, did they not?

23 A. Yes. I mean, I was in all three of my first reports
24 I was working from, essentially, the same information.
25 It was published information.

1 Q. If we look at your third report which is in tab 13 of
2 ROC-D, and is dated 22 December 2023 [ROC-D/13/2], and
3 by the time of this report you were expressing the view
4 that it is highly likely that all offshore wind farms
5 receiving support under the 2009 and 2010 Orders got
6 higher subsidies than they would have done absent the
7 Cartel. Is that fair?

8 A. Yes. I think that is fair. Certainly the damage
9 calculations that I performed in the third report assume
10 that there was an effect associated with the 2009 and
11 2010 Orders.

12 Q. Turn to paragraph 125 on page [ROC-D/13/45]. The
13 reason -- am I right in understanding -- you were saying
14 it was highly likely that all offshore wind farms
15 receiving support under both the 2009 and 2010 Order had
16 received higher subsidies than they would have done
17 absent the Cartel, was, again, because you were
18 considering the cable costs were sufficiently material
19 that have affected the advice provided to Government?

20 A. Yes.

21 Q. When you are referring to the advice provided to
22 Government in paragraph 125, that is a reference, is it
23 not, to the Ernst & Young reports?

24 A. Again the -- yes. The only advice to Government that
25 was available in the public domain at the time of

1 preparing that report was the published consultancy
2 reports.

3 Q. Now, by the time you served your third report,
4 Dr Moselle had served a report himself, had he not,
5 which you considered in this report?

6 A. Yes.

7 Q. If we turn on to paragraph 148 in your third report at
8 page 52 [ROC-D/13/52] you set out an extract of
9 Dr Moselle's report where -- by all means remind
10 yourself of it if you would like to. (Pause)

11 Essentially what Dr Moselle was saying in relation
12 to the 2009 Order was that because the Government had
13 adopted an approach of banding together different
14 technologies to simplify the ROC regime, it was unlikely
15 that the 2009 banding decision for offshore wind would
16 have been different, but for the Cartel; yes?

17 A. I think that is a summary of what Dr Moselle is saying,
18 but I am sure I can --

19 Q. You rejected that as an outcome, did you not?

20 A. Yes. At the time the -- it was unclear to me what
21 had -- well, the first thing to say is that the offshore
22 wind technology was banded -- placed in the same band as
23 the biomass technology in the 2009 Order, and they were
24 provided with a support level of 1.5 ROCs, and I think
25 my view at the time of my third report was that it was

1 very likely, considering the importance of offshore wind
2 as a technology to meeting the UK renewable energy
3 targets, that when calibrating support to those
4 technologies, the most important factor was likely to
5 have been the cost of offshore wind and to ensure that
6 offshore wind developers could cover their costs, so
7 I -- but yes, I certainly felt at the time that the
8 simple fact that there was a banding of technologies
9 within -- in groups, as we see in the 2009 Order, was
10 not sufficient by itself to conclude that there would be
11 no effect of -- or no de-linking of costs and banding
12 levels.

13 Q. Not only did you reject Dr Moselle's opinion, but, in
14 fact, in paragraph 151 on page 53 you expressed the
15 conclusion that it was highly likely that the Government
16 would have reduced the banding level for offshore wind
17 [ROC-D/13/53], notwithstanding the approach it was
18 taking in relation to grouping technologies into bands.

19 A. Again, my position in Druce 3 was that -- indeed it was
20 highly likely that there was a link between the banding
21 outcome and the costs of these technologies, based on
22 the cost estimates that were provided in the public
23 domain, and I think based on the information that was
24 published at the time of that decision, that was a
25 reasonable conclusion to make.

1 Q. One of the things you were aware of at the time that you
2 wrote your third report, was that the Government had
3 expressed the view that it did not think it was
4 appropriate to make fine distinctions between the levels
5 of support given to different technologies. That is
6 right, is it not?

7 A. Sorry, you are referring to a particular paragraph of my
8 work here?

9 Q. Well, look at paragraph 166 on page [ROC-D/13/58], the
10 second sentence:

11 "As acknowledged by Dr Moselle, the Government's
12 explanation was that it did not think 'it appropriate to
13 make fine distinctions between the levels of support
14 given to different technologies'".

15 So you were aware this that was the Government's
16 view in relation to the 2009 Order when you wrote your
17 third report?

18 A. I was -- yes. Yes. I think again, as I mentioned a
19 moment ago, my view was that the Government had set --
20 had introduced banding at the time of the 2009 Order,
21 and one of the major policy objectives of introducing
22 banding and taking the 2009 Order was to allow for the
23 development of offshore wind, which was a particularly
24 important technology in enabling the UK to meet its
25 renewable energy targets and the Government knew that at

1 the time, and, therefore, whatever cost estimate had
2 been taken from the Ernst & Young, or indeed other work
3 done at that time, that had led to that decision, must
4 have been affected by the Cartel, because offshore wind
5 costs at that time, were themselves -- would themselves
6 have been affected materially by the Cartel, and
7 therefore the banding outcome would have been also.

8 Again, the fact that there was -- the fact that
9 there was -- it was difficult to make fine distinctions
10 between -- and perhaps to make precise estimates of the
11 cost at that time -- because this was early days in the
12 UK renewable energy -- or the offshore wind industry,
13 I should say, is certainly true, but -- and it would
14 have been difficult for the Government to make precise
15 estimates of how much offshore wind costs cost at the
16 time of the 2009 decision, but, nonetheless, the
17 Government was estimating costs. It was surveying
18 evidence, it had appointed advisors to study the costs
19 of offshore wind, and those studies looked at the cost
20 of offshore wind projects which would have included the
21 cost of the cables that they were purchasing, and the
22 Government was using that analysis to reach a decision
23 on the appropriate level of banding support needed for
24 the offshore wind technology that was eventually passed
25 on to customers through the electricity bill, so my

1 position in Druce 3 was that there was cost evidence
2 that was being studied by the Government and its
3 advisers, that cost evidence was looking at how much it
4 costs to build offshore wind farms, including the cost
5 of cables, and the Government was using that cost
6 evidence to reach a decision on the level of support
7 needed to cover the costs of those projects in the
8 development pipeline, and that was the position that I
9 formed from the published information.

10 Q. Mr Druce, I do not want to stop you saying anything you
11 want to say but we are going to be here for a very long
12 time if, in answer to a question, "Were you aware of X",
13 you give long explanations, so I am just asking you if
14 you could possibly think about trying to shorten your
15 answers to what is an answer to the question.

16 We can see from paragraph 166 also that you were
17 also aware that the Government's preference in 2009 was
18 to take groups of technologies and set support levels
19 which reflect the general position of the group; yes?

20 A. Yes.

21 Q. At this stage, that is your third report, you were still
22 approaching matters, were you not, on the basis that any
23 overcharge would have directly fed through to the amount
24 of increased subsidy, so that the increased subsidy
25 equated to the level of any overcharge.

1 A. I think as I explained in response to the last question,
2 yes, I was taking the view that the cost evidence that
3 had been relied on by the Government at the time of the
4 2009 decision by way of its timing and the nature of the
5 evidence surveyed appeared to me at that time like it
6 must have been affected by the Cartel, and I was
7 inferring from published documents that there was a
8 direct link between the costs of offshore wind as
9 estimated by the Government and its advisers and the
10 banding outcome.

11 Q. So, coming back to my question, you were approaching
12 matters on the basis that any overcharge directly fed
13 through to the amount of the increased subsidy.

14 A. That was certainly the way in which I performed the
15 damage calculations, yes.

16 Q. You actually specifically rejected, did you not, the
17 proposition that the Government had a policy of using
18 round numbers for the purposes of setting banding
19 levels?

20 A. Well, in the 2009 -- or in the 2009 process we can see,
21 in fact, that the Government considered a range of
22 options, some of which included very much more granular
23 banding options across technologies. I think it is,
24 from memory, Table 5.1 in my fourth report, but that is
25 taken from an Oxera study showing that they were

1 considering more granular options.

2 Q. Take it in stages, Mr Druce. My question was: you had
3 specifically rejected the proposition that the
4 Government had a policy of using round numbers for the
5 purposes of setting banding levels?

6 A. Yes, for the reason I just gave. Yes.

7 Q. You have just referred to the Oxera study. That is the
8 study pre-dating the 2009 Order. In the 2009 Order
9 itself, the Government set banding levels for five
10 groups which were on 0.25 increments, were they not?

11 A. Yes. I believe that was scenario five or six that was
12 considered in that Oxera study.

13 Q. Now, by the time you received your fourth report --
14 sorry -- you produced your fourth report in
15 December 2024, you had received all the DESNZ
16 disclosure. Is that right?

17 A. Yes. That's right.

18 Q. If we could turn to your fourth report now which is in
19 [ROC-D/1/1], at paragraph 28 on page [ROC-D/1/15], you
20 explained that despite the public statements you
21 surveyed in your previous reports, the disclosed
22 information from DESNZ shows that the level of ROCs
23 awarded in 2009 may not have reflected costs precisely:
24 "I therefore cannot conclude that on the balance of
25 probabilities the banding levels for offshore wind in

1 2009 were affected by the Cartel".

2 The first point: you changed your view about the
3 2009 Order. Is that right?

4 A. I certainly changed my view having reviewed the DESNZs,
5 or the DECC, later DESNZ's disclosure information, yes.
6 In particular, the evidence from internal communications
7 from within the department showing that the Government
8 knew at the time of the decision that its cost estimates
9 were not accurate and that costs were rising.

10 Q. Let us take it in stages again, Mr Druce. You changed
11 your view, and the explanation you are giving in
12 paragraph 28 is that it was materials in the disclosure
13 that became available to you after your previous reports
14 that led you to change your view. Is that right?

15 A. Yes. That is right. Those materials are covered in
16 more detail in section 5, I think.

17 Q. The reason, is this right, you changed your view, is
18 that having looked at that disclosure, you have
19 concluded that it indicates that the level of support
20 granted under the 2009 Order for offshore wind was not
21 reflective of offshore wind costs -- directly
22 reflective?

23 A. Yes.

24 Q. Closely correlated.

25 A. There were a number of statements from the disclosure

1 materials that showed that the Government knew at the
2 time of the decision that its cost estimates were not or
3 no longer accurate, and there is a -- those documents
4 reveal a kind of transition between the 2009 and the
5 2010 process, because the 2010 process was initiated
6 because the -- by the time the 2009 decision took
7 effect, and that decision was finalised, the Government
8 already knew that its cost evidence was inaccurate, so
9 it seemed to me for that reason very difficult to
10 conclude that there would have been a close link between
11 the outcome of the 2009 banding decision and offshore
12 wind costs, because internal Government documents said
13 there was not one.

14 Q. Look at paragraph 26 on page [ROC-D/1/14] of your fourth
15 report. There you say that the material shows that the
16 link between the banding levels and the offshore wind
17 development costs was imprecise due to a combination of
18 two factors. So, both these factors were feeding into
19 your change of view. Is that right?

20 A. Yes. I mean, both of those factors, yes.

21 Q. Look at the first factor which you identify in paragraph
22 26A, namely that the 2009 Order had grouped technologies
23 into five bands, and the Government considered at the
24 time that technology-specific banding was more precise
25 than it is really possible to be when predicting future

1 costs. You see this?

2 A. Yes.

3 Q. That reference to the technology specific banding being
4 more precise than it was really possible to be when
5 predicting future costs, we can see from footnote 18 is
6 to an impact assessment which we have at [ROC-E/59/10].
7 Paragraph 33 on page 10.

8 Looking at paragraph 33, a point that you picked up
9 in paragraph 26A is in the first sentence of this
10 paragraph, is it not?

11 A. That appears to be what I am quoting, yes.

12 Q. The paragraph goes on, as we can see, to refer to some
13 other matters being that the banding regime is likely to
14 require banding levels to be reset on a more frequent
15 basis than one with fewer bands, and leading the
16 Government to try to predict the market and pick
17 winners. Those were also reasons why the Government was
18 explaining it was rejecting more precise banding levels.

19 A. Yes. I mean, without re-reading the preceding
20 paragraphs, that appears to be true.

Q. [REDACTED]

[REDACTED]

[REDACTED]

2 A. Sorry, could you repeat the question?

[REDACTED] Q. [REDACTED]

[REDACTED]

1 A. There are multiple reasons given in that paragraph, yes.

2 I agree.

3 Q. Now, it is right, is it not, that where there is a range
4 of potential costs -- cost requirements making any given
5 project economic -- so you have a range of predicted
6 costs, the more closely correlated the subsidy level is
7 to the central estimate in that range the higher the
8 likelihood that the subsidy will not be sufficient for a
9 greater number of wind farms?

10 A. I am not sure I completely understand the use of the
11 term "correlation" in this context, but the -- it is
12 certainly true that if the -- if there is a range of
13 uncertainty around a cost estimate, and this is a
14 general point rather than a specific one, then the party
15 estimating that cost may have uncertainty around whether
16 that cost estimate -- or a certain revenue number would
17 be sufficient to cover costs. If you want to rephrase
18 your question without "correlation" it may be --

19 Q. "Correlation" is your word, Mr Druce. What do you mean
20 by "correlation" when you refer to it in your reports?

21 A. In which -- can you refer me to a paragraph?

22 Q. You do not remember using the word "correlation" in your
23 reports between the revenue estimate and the cost
24 estimate?

25 A. I would have to re-read the paragraph in question.

1 Q. We will come back to that. Can we address a different
2 point?

3 You see in the second sentence of paragraph 33 --

4 THE CHAIRMAN: Sorry, can I just make sure I have understood
5 the answer to this question? I think your question was
6 that if there is a range of possible outcomes and you
7 target in the middle of the range then the risk is that
8 people who are above the range, you are not covering
9 their costs. Was that the essence of the question?

10 MS DAVIES: Yes. It increases the risk that less wind
11 farms' costs will be covered, yes. The more closely you
12 target to the centre.

13 THE CHAIRMAN: I took you, Mr Druce, to be broadly accepting
14 that, but tell me if I have misunderstood your answer.

15 A. I think I do accept the point that if there is a range
16 of uncertainty, obviously the higher the number that is
17 selected in terms of the revenue, the more likely it is
18 that a larger number of wind farms will cover their
19 costs, or that certain wind farms will cover their costs
20 with a high degree -- higher degree of certainty. I
21 certainly accept that point.

22 MS DAVIES: The converse to that, Mr Druce, is that the
23 closer you set subsidy to the central estimate, the
24 higher the risk is that less wind farms will be
25 economic, if you have that range of uncertainty that you

1 were describing.

2 A. If you have a low, a central and a high estimate of
3 costs, and one is trying to decide where, within that
4 range, just to calibrate the level of revenue, then the
5 higher in the range that revenue is set, the more it
6 is -- I think it is very clear -- that the more likely
7 it is that any given wind farm or -- well, I -- you can
8 think of it two ways. If there is uncertainty as to the
9 costs of a particular wind farm, then the higher level
10 of revenue support provided by the Government, the
11 higher the likelihood that that wind farm will be
12 economic, given the revenue offered. You could also
13 think of it in terms of there being a range of different
14 offshore wind projects that are being developed in
15 the -- by market participants which I think does reflect
16 the situation, as, in fact, Mr McNeal explained. There
17 is a range, there is a curve of projects that vary
18 according to their costs, their size, their technical
19 characteristics, and some would be more expensive than
20 others, and the higher the level of revenue support
21 provided through the subsidy regime, the more of those
22 projects one might expect to be economic.

23 THE CHAIRMAN: I mean, I do not know how important this is
24 to you, but I -- if you go to the middle of the range,
25 the bigger the risk is that half lose out. Is that --

1 MS DAVIES: I am assuming Mr Druce agrees with that because
2 it is basic.

3 A. I think that is broadly right. If you had cost
4 estimates for a number of different wind farms ranging
5 from low to high, and you set revenue in the middle,
6 then clearly half of them will not be able to recover
7 their costs.

8 THE CHAIRMAN: Thank you.

9 MS DAVIES: It is not only that --

10 A. I am sorry if I am over-complicating things.

11 THE CHAIRMAN: No, I just wanted to make sure I understood
12 your answer.

13 MS DAVIES: It is not only that, is it, Mr Druce. If you
14 have uncertainty as to future costs, so you have a range
15 of potential costs for your average wind farm in the
16 future, and you set the subsidy very close to the
17 central estimate, you are increasing the risks, are you
18 not, that there are more wind farms that will not
19 actually be developed because your cost estimate is not
20 accurate.

21 A. Well, the central point is not the point in the range at
22 which the probability of wind farms costs being covered
23 is minimised or maximised.

24 The higher you set -- the higher the subsidy is set,
25 the higher the revenue of wind farms is set, the higher

1 the likelihood of a future wind farm being able to cover
 2 their costs, so setting support at the central point
 3 would generate a higher probability of some notional
 4 wind farm being able to cover its costs than setting
 5 support at the low point. Similarly, setting support at
 6 the high point would generate a higher probability of
 7 wind farms being able to cover their costs than at the
 8 central point. I agree with the general point that the
 9 higher the level of support offered, the higher the
 10 likelihood that more wind farms will be able to cover
 11 their costs, and revenues in excess of them, by earning
 12 revenues in excess of those costs.

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Do you see that?

21 A. Yes.

[REDACTED]

A. [REDACTED]

2 Q. But that is correct as a matter of analysis, is it not,
3 Mr Druce?

4 A. Well, I am not sure what the evidential -- the
5 analytical basis is for that statement, but I do not
6 think that it is -- it necessarily changes anything
7 fundamental for -- to have a regime in which the banding
8 or support level for each technology is set differently.
9 Ultimately, the banding regime under the Renewables
10 Obligation was seeking to ensure that sufficient
11 renewable generation could be deployed in order to cover
12 the costs of -- or rather to meet the Government's
13 renewable energy targets, and it seems to me there is
14 no -- that given the very significant importance of
15 offshore wind in meeting those targets there is a risk
16 that the banding level would need to be revised from
17 time to time for offshore wind anyway, however it is
18 set, and, indeed, we see that the banding level was
19 revised just a year after this 2009 Order came into
20 force, because of changes in offshore wind costs.

21 Q. The more precise, i.e. the more granular the banding
22 level that is chosen, the greater the likelihood that it
23 may need to be reset. Is that right?

24 A. I appreciate that this sentence suggests so, but I would
25 tend to think that the more -- a more granular banding

1 regime would allow a more accurate representation, or
2 alignment between costs and revenues which might reduce
3 the probability of such revisions being needed. The
4 alternative of setting bands for groups of technologies
5 which was, of course, the approach that was taken in the
6 2009 Order inevitably injects a degree of imprecision
7 that I would suggest increases the likelihood of costs
8 and revenues falling out of step.

9 Q. Well, let us take that in stages, Mr Druce.

10 If you have banding increments of 0.25, before you
11 get to a determination that there needs to be a change
12 in the banding increment, by definition you would, on
13 your approach, need the costs to either have gone up by
14 the equivalent to 0.25 ROCs, or to have gone down by the
15 equivalent of 0.25 ROCs; yes?

16 A. I do not necessarily accept that if you have a -- if the
17 Government did have a -- constrain itself in this way of
18 only considering banding of -- in quarter ROC
19 increments, that you would necessarily need to see costs
20 change by as much as a full quarter ROC in order to
21 decide that a change in banding was needed. As the
22 earlier discussion illustrates, in a scenario where
23 there are ranges of costs associated with a number of
24 different projects, it may be that -- it may be that the
25 Government would decide that in order to -- at a banding

1 review -- that it wanted to attract more investment from
2 a technology than it had sought at a previous review,
3 and, therefore, it might increase the banding anyway,
4 even if costs had not changed very much.

5 Q. Can we look at it a different way, Mr Druce? I assume
6 you would agree that for this to be a significant change
7 in costs that could trigger a banding review, which is
8 what the renewals Order 2009 required --

9 A. Yes.

10 Q. -- you need a larger change of costs if you have banding
11 increments of 0.25 than you would have if you had
12 banding increments of only 0.1?

13 A. I think I would -- in order to answer that question -- I
14 would have to speculate because in -- because the -- I
15 do not think that the criteria for triggering a banding
16 review are tied to any concept of granularity, as I
17 understand it. The -- and the facts of the matter that
18 led to the banding review that took place in 2010 were
19 the Government observing that there were substantial
20 upward cost pressures on offshore wind projects for a
21 variety of reasons --

22 Q. Mr Druce I am going to stop you because -- I am not
23 asking about the actual, I am asking about this in
24 theory?

25 A. Okay.

1 Q. Can we go to [ROC-E/51/1] which is the Renewable
2 Obligation Order, 33E? It is the provision -- I am sure
3 you have looked at it. It is page [ROC-E/51/26] which
4 enabled a review of a banding decision in the event that
5 the costs of generating electricity are significantly
6 different from the costs of generating electricity in
7 the way to which the Secretary of State had regard when
8 making the banding provisions, so the trigger is the
9 significant change in costs between the costs perception
10 at the time of the banding decision, and whichever point
11 before four years you get to this review; yes?

12 A. Yes.

13 Q. The simple proposition I was putting to you was that you
14 are more likely to have a significant change of costs
15 where -- which could trigger a review -- where you have
16 a banding increment which is lower, say 0.1, than you
17 would if you had a banding increment that is higher, say
18 0.25.

19 A. All paragraph (e) talks about is an increase in costs.
20 It does not make reference to the granularity of
21 banding.

22 Q. I understand that, Mr Druce, but that was not my
23 question.

24 A. I think that if you -- the suggestion is, I think, as I
25 understand it, that if you have larger increments in the

1 calibration of banding, then it is less likely that the
2 Government would need to adjust those banding levels in
3 response to changes in costs, and I do not see that
4 reflected in this paragraph. I also do not think that
5 it is a fair characterisation of the situation, because
6 if you -- if the Government did have a practice of
7 setting banding to calibrate revenues to costs very
8 precisely, it seems to me less likely that there would
9 be substantial departures between revenues and costs
10 because the original banding decisions that had been
11 taken prior to any change in costs would have aligned
12 revenues and costs more closely.

13 Q. That would be right, but only if your central estimate
14 was actually correct within your range of uncertainty,
15 would it not? I mean, if, in fact, your central
16 estimate, which you closely correlated it to, proved to
17 be inaccurate because costs are higher, for example, it
18 must follow, as a matter of logic, that if the banding
19 increment was only 0.1, you are going to need a banding
20 review sooner than you would have done if the banding
21 granularity had been 0.25.

22 A. Again, I do not think that the conditions for a review
23 of the banding levels make reference to the degree of
24 granularity. I think that -- and fundamentally when the
25 Government sets banding, it is estimating the costs of a

1 particular technology, in this case we are concerned
2 with offshore wind, and it is deciding what level of
3 revenue is needed in order to recover -- to cover those
4 costs, and I agree that there is -- there are ranges
5 involved. There are cheaper projects, there are more
6 expensive projects. There may be ranges, because of
7 uncertainties over particular value drivers for offshore
8 wind projects like the required rate of return or the
9 load factor, but it is -- the conditions for a review of
10 the banding level are linked to changes in costs, and if
11 costs are rising, as they were between 2009 and 2010,
12 this provision, to me, seems to suggest that a review of
13 the banding could be triggered, and I would suggest it
14 is more likely that a review of banding would be needed
15 if the decisions -- the decision taken in the first
16 place was less precise.

17 Q. As we know, the Government adopted the approach, and as
18 you explain in paragraph 26A of your report, coming back
19 to that at page [ROC-E/51/14], adopted an approach in
20 the 2009 Order of grouping different technologies
21 together to produce five separate ROC bands; yes?

22 A. Yes.

23 Q. Offshore wind was grouped with biomass, as you mentioned
24 earlier.

25 A. Right. Yes.

1 Q. If different technologies are being grouped together for
2 the purpose of the ROC banding, it is obvious, is it
3 not, that the band levels may not reflect costs
4 precisely?

5 A. I would not say "obvious", no. I think it -- you could
6 group two technologies together if they had very similar
7 costs, for example. That would be entirely -- an
8 entirely reasonable thing to do. It may also be the
9 case that one particular technology was more important
10 than another, and that, therefore, the level of banding
11 was perhaps more -- or the costs of that more important
12 technology were more important in determining the
13 banding.

14 Q. Can we at least agree this: it is unlikely that the
15 costs of two different technologies in each of the five
16 banding groups are going to be precisely the same.

17 A. There may be -- again, I would have to look at the
18 estimates in question to comment substantively, but in
19 principle there is no -- it probably is unlikely that to
20 the nearest pound, two technologies or three
21 technologies that are grouped in the same band would
22 have the same, let us say, central estimate of costs
23 from a consultancy study that was seeking to estimate
24 the costs of a typical project. It is, of course,
25 possible that within the ranges of uncertainty

1 associated with the cost estimates for each generation
2 technology there could have been a great deal of overlap
3 between the costs -- the cost ranges estimated for them,
4 but I think that answers your question, but I am ...

5 Q. Yes, but focusing on the central estimate, it is very
6 unlikely, would you agree, looking just at the numbers
7 of technologies that were covered by the 2009 Order,
8 that for each technology stuck in each band their
9 central estimates were the same?

10 A. Yes. I would expect that there would be some
11 differences in the central estimates of technologies
12 included within the same band, but I would think that it
13 would be evident from the -- looking at the EY
14 materials, for example, from the 2009 Order, whether,
15 and the extent to which that was the case. I don't
16 recall the figures.

17 Q. Had you looked at the Commission's State aid decision
18 approving the 2009 Order before you produced your first
19 three reports?

20 A. I believe I had, but I --

21 Q. If it helps, it is in the list of data in Druce 1, so
22 would that suggest that you had actually looked at it
23 and read it properly? And carefully?

24 A. Yes.

25 Q. Could we go to the State aid decision which is in

1 [ROC-E/80/14]? Do you see there there is a list of
2 predicted costs per technology and banded level of
3 support? Do you think you would have looked at that
4 table carefully before you produced your first three
5 reports?

6 A. Yes.

7 Q. That sets out, does it not, an overview of the ranges
8 that had been predicted for total production costs per
9 technology for the years 2010 through to 2020, where
10 available.

11 A. Yes. That is right.

12 Q. If we look at the 1.5 ROC band for offshore wind and
13 dedicated biomass, do you see for 2010 offshore wind is
14 given a range of £92 to £140, and dedicated biomass is
15 given a range of £77 to £114?

16 A. I see that, yes.

17 Q. And if we took the mid-points of those ranges for
18 present purposes, they are, will you take it from me,
19 £116 and £95.5? I can explain my maths if --

20 A. I take your word for the maths, yes.

21 Q. So if one was trying to aim for the mid-point of the
22 range for those two technologies, those technologies
23 would require different levels of support, would they
24 not?

25 A. They would, but I think it is worth remembering that the

1 £140 is an estimate that was provided very late in the
2 process and did not feature in the original consultancy
3 reports that informed the -- as far as I am aware --
4 informed the 2009 decision. The one --

5 Q. Is that a point you are making reflecting the fact that
6 the costs were rising in relation to offshore wind
7 during the 2009 Order process?

8 A. Yes, and I think specifically the £140 was a figure that
9 was provided by the UK Government to the European
10 Commission in discussion through the -- during the State
11 aid clearance process, so the original ranges that the
12 Government and its advisers were working with when -- at
13 an earlier stage in the 2009 banding decision were
14 somewhat narrower because the offshore wind technology
15 had a much lower upper bound -- the £140 figure did not
16 appear until somewhat later.

17 Q. This is the State aid decision, so this represents the
18 final submissions to the Government to justify the 2009
19 Order, does it not?

20 A. It represents the latest information provided by the UK
21 Government to the Commission at the time of the --
22 during the State aid clearance process, yes, and I think
23 that this -- if I recall -- the £140 figure appears in
24 communication from the UK Government to the Commission
25 in late 2008 which is somewhat after, I think, the

1 original banding decisions were announced, which I think
2 were in that year, from memory.

3 Q. Mr Druce, again, it was a simple question: this
4 represents the final submissions. We will be here for a
5 long time, I am afraid, if you keep adding commentary in
6 relation to simple questions, so could you possibly try
7 and confine your answers to yes or no where it is
8 possible? I again make clear, I am not trying to stop
9 you from saying anything that you regard as significant
10 but just focus on the question a little more if that is
11 possible?

12 A. Of course, and I think I felt in this case that it is
13 important to note that difference, because the £140 was
14 part of this -- part of the evidence that was coming in
15 after the 2009 banding decision had been -- appears to
16 have been taken by the Government, and during the time
17 when the Government had realised that its cost estimates
18 were too low, costs were rising, and it needed to
19 initiate the banding review that led to the 2010 Order.

20 Q. Nonetheless, it is also clear from the State aid
21 decision that the Commission was happy to approve 1.5
22 ROCs for offshore wind and dedicated biomass,
23 notwithstanding, if you just look at the mid-point of
24 the ranges, they were very different for those two
25 technologies; yes?

1 A. The mid-points of these ranges are, indeed, different,
2 yes, and I agree the Commission certainly did approve
3 the State aid package.

4 Q. If you look at the 2.0 ROCs banding level where there is
5 a number of different technologies listed, you can see a
6 wide variety of ranges, can you not?

7 A. Yes, although --

8 Q. And again, would you take it from me that the mid-points
9 of those ranges also vary significantly from technology
10 to technology?

11 A. I take that maths, yes.

12 Q. So the fact that they were all grouped together
13 suggests, does it not, that the levels of ROCs awarded
14 in the 2009 Order were not reflecting the mid-point of
15 the cost range precisely.

16 A. No. I mean, for these technologies within the 2.0 ROCs
17 per megawatt hour band, I would agree that is certainly
18 true, and you can see for these technologies that many
19 of them were emerging technologies that were far less
20 mature than wind, and they also had a much lesser
21 ability to contribute to the Government's renewable
22 energy targets, so it is my understanding that -- and
23 I think this is reflected in the documents -- that far
24 less attention was paid to precisely whether the levels
25 of subsidy awarded to these technologies was reflective

- 1 of their costs or not.
- 2 Q. These figures indicate, do they not, that the levels of
- 3 ROC awarded in the 2009 Order were not reflecting the
- 4 mid-point of costs closely.
- 5 A. I do not think you can draw that inference from this
- 6 table alone, because this is obviously a cost table, and
- 7 the levels of banding provided are the amounts necessary
- 8 to cover those costs, having already accounted for the
- 9 revenues generated from other means, in particular the
- 10 sale of LECs and the sale of wholesale electricity.
- 11 Q. Turn back to Table 4 on the previous page, page
- 12 [ROC-E/80/13]. Do you see that the Commission set out
- 13 in Table 4 the revenues that it was using for its
- 14 over-compensation analysis, and it did that by reference
- 15 to the different bands, not by reference to the
- 16 different technologies.
- 17 A. I see that, yes.
- 18 Q. So, it was comparing, was it not, the revenues in
- 19 Table 4 with the costs in Table 5.
- 20 A. I do not see that comparison here, but I -- because it
- 21 is conceivable that there was more -- different revenue
- 22 numbers underpinning the ranges shown in Table 4, but
- 23 that is a possibility from what you have shown, but I
- 24 would have to review the document in more detail.
- 25 Q. Mr Druce, it is apparent -- Table 4 and Table 5 -- that

1 the Commission, in approving the 2009 Order was
2 approving cost estimates per technology banding that
3 ranged quite considerably and with no single targeted
4 margin. Do you agree with that?

5 A. It is certainly true that when approving aid for the --
6 approving the State aid package in the 2009 Order, the
7 Commission would have been aware that there were a
8 number of technologies within each -- particularly the
9 2.0 ROCs per megawatt hour bracket, there were several,
10 as Table 5 in this document showed, I also think the
11 Commission would have been aware that these were
12 emerging technologies that were, for that reason, rather
13 less important than onshore and offshore wind in
14 assessing the extent and risk of overcompensation, and
15 I think that the documents show that onshore and
16 offshore wind were considered far more important in that
17 assessment of overcompensation than some of these other
18 emerging technologies.

19 Q. Mr Druce, I would suggest that if you have regard, both
20 to the fact that the Government was grouping
21 technologies into five different bands, and that the
22 material that was available in the Commission's decision
23 indicated different cost profiles for different
24 technologies within each band, it was, in fact -- or
25 ought to have been apparent to you at the time that you

1 wrote your first three reports -- that for the 2009
2 Order there was no precise correlation between costs and
3 specific technologies -- the banding given to specific
4 technologies.

5 A. Well, one of the sections of my earlier work -- I think
6 in Druce 1 -- that was not put to me points out that the
7 selection of scenarios -- scenario five or six, I think,
8 from the Oxera table, Table 5.1 in Druce 4 was -- came
9 about because those were the scenarios which were found
10 to be the most beneficial to the consumer, and to
11 deliver the largest amount of renewable energy, and
12 fundamentally my position in Druce -- well, in my work
13 prior to receiving the disclosure information was that
14 the Government had renewable energy targets that it
15 needed to meet. Offshore wind was pivotal to meeting
16 those targets. The Government had examined carefully
17 the costs of offshore wind and therefore it was highly
18 likely that the costs of -- the subsidy levels provided
19 to offshore wind in order to ensure that those renewable
20 energy targets could be met would have been affected by
21 the Cartel, and I still hold the view that from the
22 published information alone that would be a reasonable
23 conclusion to draw, but I think what is -- but there are
24 other documents that I cite in my fourth report that
25 came through the disclosure information that show there

1 was more to it than that, and that is ultimately what
2 led me to change my mind.

3 Q. If we could look at paragraph 26B? [ROC-D/1/14]. The
4 second point you are making, have I understood it
5 correctly, is that through the disclosure materials you
6 became aware that the Government had information that
7 the banding level for offshore wind was too low -- many
8 offshore wind projects to cover their development costs.

9 A. Yes.

10 Q. Does it follow that you are seeking to suggest in
11 paragraph 26B that you were not aware of that at the
12 time you wrote your first three reports?

13 A. I was not -- again, yes. I was not -- I had not seen
14 the disclosure materials showing the very -- the
15 concerns that the Government had about the accuracy of
16 the cost information it had previously relied on. That
17 is right.

18 Q. I understand you had not seen the disclosure materials,
19 but I am just trying to understand what you are saying
20 about what you were aware of. Is your position that at
21 the time you wrote your first three reports you were not
22 aware that the Government had information that the
23 banding level for offshore wind was too low for many
24 offshore wind projects to cover their development costs.

25 A. I think that is a fair -- I think that is a fair summary

1 of the position. I certainly had not seen, and was not
2 aware of the concerns that the Government had around its
3 cost estimates, and also the -- so, for example, some of
4 the internal communications from within DESNZ, or
5 "DECC", rather, and the Q&A with the Commission, for
6 example, are quite revealing in terms of showing that
7 the Government was not -- or no longer believed the cost
8 estimates that it had previously obtained from Ernst &
9 Young were accurate because of the cost pressures.

10 Q. Go on in paragraph 26B. You refer to the 2007 Ernst &
11 Young study, and the last sentence you say that "it",
12 being the Government:

13 " ... was aware that the Ernst & Young cost estimate
14 only matched the lower bound of these wind farms'
15 costs".

16 Just stopping there, is that again something you are
17 seeking to convey you were not aware of at the time you
18 wrote your first three reports?

19 A. I was certainly not aware of the general lack of
20 confidence that the Government had in its -- in the
21 previous cost estimates, and the knowledge the
22 Government had that the previous cost estimates were
23 inaccurate.

24 Q. Then you go on to say:

25 " ... and that the 1.5 ROCs banding might not be

1 sufficient to allow many projects to meet their target
2 hurdle rate".

3 Again, are you seeking to convey that that is also
4 something you were not aware of at the time you wrote
5 your first three reports?

6 A. I was aware at the time of writing my first three
7 reports that in late 2008, I think, the Government was
8 beginning a process of reviewing the banding level of
9 1.5, and initiating the banding review. I think there
10 is public information that shows that that was on the
11 cards, so to speak.

12 What I didn't have is the Government's commentary on
13 that from the internal documents that came through the
14 disclosure process.

15 Q. That was not my question, Mr Druce. I was focusing on
16 what you say in paragraph 26B and in the last part of
17 it. It is a simple question: were you seeking to convey
18 that at the time you wrote your first three reports you
19 were not aware that the 1.5 ROCs banding might not be
20 sufficient to allow many projects to meet their target
21 hurdle rate?

22 A. I think in this particular paragraph I am trying to
23 explain why I drew the conclusion that I did in my
24 fourth report. What I knew when I wrote my first,
25 second and third reports would have been more limited,

1 because I didn't have -- I had not seen the Government's
2 commentary on the information it had that had led it to
3 that view that 1.5 ROCs per megawatt hour might not be
4 sufficient to allow many projects to meet their target
5 hurdle rate, but I think I was -- in fact I was aware
6 that the Government was -- had at some point between the
7 2009 and the 2010 orders decided that a review was
8 necessary because wind farms were not able to cover
9 their costs at the 1.5 banding.

10 Q. Just one last time, Mr Druce, in relation to my
11 question. If you would not mind just focusing on the
12 question.

13 In giving an explanation for your change of view in
14 paragraph 26B you refer specifically to information that
15 the 1.5 ROCs banding might not be sufficient to allow
16 many projects to meet their target hurdle rate. What I
17 am asking is a simple question. Are you seeking to
18 convey, by referring to that in that paragraph, that
19 that was new information when you came to draft your
20 fourth report, that was not available to you when you
21 drafted your first to third report?

22 A. There was certainly -- I was certainly aware that the
23 Government knew at some point that 1.5 ROCs might not be
24 sufficient, as I say in that sentence here, and I was
25 aware of that at the time when I wrote my first three

1 reports, and frankly, that fact is self-evident because
2 the Government did review the banding decision. It
3 initiated the review of banding, and some statements on
4 its reasons for that were public, and I reviewed those
5 public statements in preparing my first three reports.
6 What the disclosure material provided was a much richer
7 discussion from internal Government documents as to the
8 background to those which led me to change my mind.

9 THE CHAIRMAN: So, am I right to deduce from this exchange
10 that when you wrote your first report you were aware
11 that the Government knew at the time that its ROC --
12 that 1.5 ROCs might not be enough to enable many
13 projects to achieve their hurdle rate?

14 A. I was aware that at some point between the 2009 and the
15 2010 Orders that the Government came to that
16 realisation, but the -- what was less clear to me, if it
17 was clear at all, is the fact that during the 2009
18 process, even before that process had concluded, the
19 Government was already effectively losing faith in its
20 cost estimates that had informed the 2009 banding
21 decision, and we see that, for example, in the exchanges
22 with the Commission on the State aid process in the
23 context of the 2009 Order that were not published. You
24 know, we see very clear statements from the Government
25 explaining that it did not -- that costs were rising.

1 THE CHAIRMAN: I will just hand back to Ms Davies again.

2 MS DAVIES: Yes. So, the point you are making is a timing
3 one, is it? Is what you are suggesting that the
4 disclosure made clear to you that had not been clear
5 before was that the concerns about offshore wind farms
6 meeting their target hurdle rates had been raised before
7 the 2009 Order was made?

8 A. It is a question of both timing and the extent of the
9 evidence, I think. There is only so much that I was
10 able to deduce from published information, but the
11 disclosed documents were extremely helpful in providing,
12 I would suggest, a more candid and thorough description
13 of the reasons the Government had for initiating the
14 banding review and the -- and timing was part of that.

15 Q. Look at paragraph 27 on page 14. [ROC-D/1/14]. Do you
16 see in the second sentence you refer -- you say that:

17 "The fact that the Government was aware that the
18 banding level it set for offshore wind was too low when
19 it took the 2009 banding decision weakens the link
20 between banding levels and the costs of offshore wind".

21 Do you see that?

22 A. Yes.

23 Q. Am I right in understanding that by that sentence you
24 are seeking to convey that you were not aware at the
25 time of your prior reports that at the time the

1 Government took the 2009 banding decision, the banding
2 level it set for offshore wind was too low?

3 A. So the context for this sentence, the second sentence in
4 paragraph 27, was the point I think I made earlier which
5 is that the Government's practice of grouping offshore
6 wind with biomass, as it did in the 2009 Order, does not
7 necessarily weaken the link between offshore wind costs
8 and the banding decision because of the importance of
9 offshore wind in meeting the Government's renewable
10 energy targets. That is one of the reasons why the mere
11 fact of grouping technologies alone did not lead me to
12 think that there would be a weakened link between
13 offshore wind costs and the subsidy provided to offshore
14 wind.

15 What changes, I suppose, which is the second
16 sentence in paragraph 27, is that that -- if the
17 Government knew that there was a weak link between -- or
18 that the cost estimates for offshore wind that it had
19 relied on when it set the banding decision were
20 themselves inaccurate, then that logic falls down, and
21 even if they -- even despite the importance of offshore
22 wind in meeting the renewable energy targets there would
23 still be a very -- a weakened link between offshore wind
24 costs and the banding outcome. I think that is what I
25 am trying to say in the second part of 27.

1 Q. This is a section of your report when you are seeking to
2 explain why you have changed your mind in relation to
3 the 2009 Order; yes?

4 A. It is seeking to explain my conclusions, or my answers
5 to the Tribunal's ROC issue questions in relation to the
6 2009 Order.

7 Q. Which, as we have already established, changed in
8 your --

9 A. Yes.

10 Q. -- fourth report as regards to your first three reports.
11 In these paragraphs you are seeking to explain why you
12 have changed your view about the 2009 Order. That is
13 right, is it not?

14 A. Yes.

15 Q. Yes. The second sentence, the fact that the Government
16 was aware that the banding level it set for offshore
17 wind was too low when it took the 2009 banding decision
18 was, can we agree, an important factor in your change in
19 view in relation to the 2009 Order?

20 A. Yes. My reading of the disclosed documents from DECC --

21 Q. Mr Druce, I am not asking about your reading of the
22 documents, I am asking you about your view and why you
23 changed your mind --

24 A. Yes. So, why I --

25 Q. -- and come back to my question which was the fact that

1 the Government was aware that the banding level it set
2 for offshore wind was too low when it took the 2009
3 banding decision was an important feature -- it is the
4 thing that led you to change your view between your
5 first to third reports and your fourth report.

6 A. So, the thing that led me to change my mind between my
7 early reports and my fourth, was my reading of the
8 Government's statements, and Government officials'
9 statements from the disclosure material that show how
10 the Government and DECC officials were not -- were aware
11 of a weak link between the banding levels and the cost
12 of offshore wind. That information was newly available
13 to me through the disclosure process.

14 Q. And that was, in your view, the most crucial reason why
15 you changed your view, right?

16 A. Well, yes, because had the disclosure materials revealed
17 that there was, indeed, a very close accord between the
18 cost of offshore wind and the banding level, then I
19 might have reached a different conclusion in relation to
20 the ROC issue questions for the 2009 Order, of course.

21 Q. Now, just so we can get the chronology right, the 2009
22 Order was made on 24 March 2009, and came into effect on
23 1 April 2009. I am sure you are familiar with those
24 dates; yes?

25 And at the time you produced your first three

1 reports, you had access, did you not, to the Ernst &
2 Young 2009 report?

3 A. Yes.

4 Q. Presumably you had read that carefully.

5 A. Yes. Yes.

6 Q. If we go to the report which is in [ROC-E/112/2], we can
see in

8 ; yes?

9 A. Yes. I see that.

15 A. Yes.

16 Q. You also, therefore, understood, did you not, at the
17 time you wrote your first report that the contract with
18 Ernst & Young indicated that the Government was
19 reconsidering banding levels for offshore wind, even
20 before it adopted the 2009 Order.

21 A. Yes. That chronology is correct. The review process
22 for the -- that included the Ernst & Young report -- had
23 started before the 2009 Order took effect. That's
24 right.

25 THE CHAIRMAN: You are not just being asked whether the

1 review -- whether the chronology is correct, you are
2 being asked whether you knew that was the position at
3 the time you wrote your first report.

4 A. Yes. I was aware that that was the chronology, yes.

5 MS DAVIES: Now, the fact that the Government, in
6 January 2009, was commissioning [REDACTED]
7 [REDACTED], even before it adopted the 2009
8 Order, can we agree, suggests, does it not, that by
9 January 2009 the Government was concerned that there had
10 been a change in costs and the requirement for financial
11 support for offshore wind, as opposed to the banding
12 level that it was going to put in place in the 2009
13 Order.

14 A. Yes. That's right.

15 Q. Again, is that something that you appreciated at the
16 time you wrote your first three reports?

17 A. I was -- when I wrote my first three reports -- I was
18 certainly aware of that chronology that there was --
19 that Ernst & Young was commissioned in early 2009 and
20 that the Renewable Obligation Order 2009 took effect on,
21 I think, 1 April 2009. I had not, of course, seen the
22 other documents that were not made public, that led up
23 to the decision to appoint Ernst & Young, for example,
24 to undertake the review of offshore wind costs.

25 Q. Again, Mr Druce, and I apologise if it is my fault, but

1 I am not sure that was an answer to my question.

2 We agreed that the fact that the Government had
3 commissioned Ernst & Young by January 2009 to produce
4 another report indicates that the Government was
5 concerned by January 2009 that there had been a change
6 in costs and the 2009 banding Order would not provide
7 sufficient support for offshore wind; yes?

8 A. Yes. I think I confirmed that.

9 Q. My question was whether that is something you
10 appreciated at the time you wrote your first three
11 reports.

12 A. I -- I was certainly aware that -- I think I have
13 confirmed that that is the case. I was aware that Ernst
14 & Young had been commissioned to review offshore wind
15 costs because the Government was aware of a -- that
16 offshore wind costs were rising, and I was aware that
17 that took place before the offshore -- the 2009 Order
18 took effect. I think I have answered your question but
19 please do --

20 Q. We looked at Article 33 of the 2009 Renewable Order a
21 little earlier. Article 33(e), as we saw, only allowed
22 the Government to have an early review on cost grounds
23 if it was -- if there was a significant change in costs.
24 Do you remember the wording?

25 A. Yes.

1 Q. Again, had you appreciated at the time you produced your
2 first three reports that if the Government was
3 considering triggering an early review of offshore wind,
4 it would be because it perceived that there was a
5 potential for a significant change in costs.

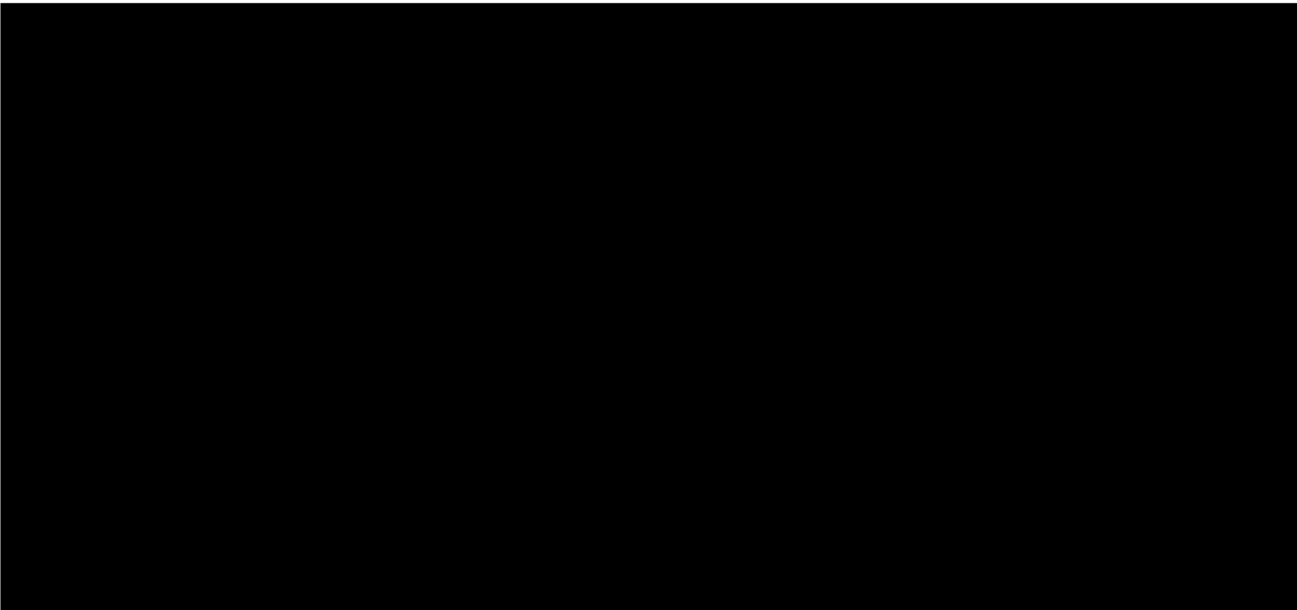
6 A. Yes. I was aware of the conditions that were needed in
7 order to review the banding. Yes.

8 Q. Now, if we look at the [REDACTED] which is in
9 ROC-E/112 -- sorry, we have it open, but go to -- before
10 I go to various points in it, would I be right in
11 presuming that before you produced your first report you
12 read this document carefully?

13 A. I read the published version of the Ernst & Young
14 report, yes.

15 Q. If we could go to the executive summary on page

[REDACTED] ROC-E/112/3], do you see in the second paragraph [REDACTED]



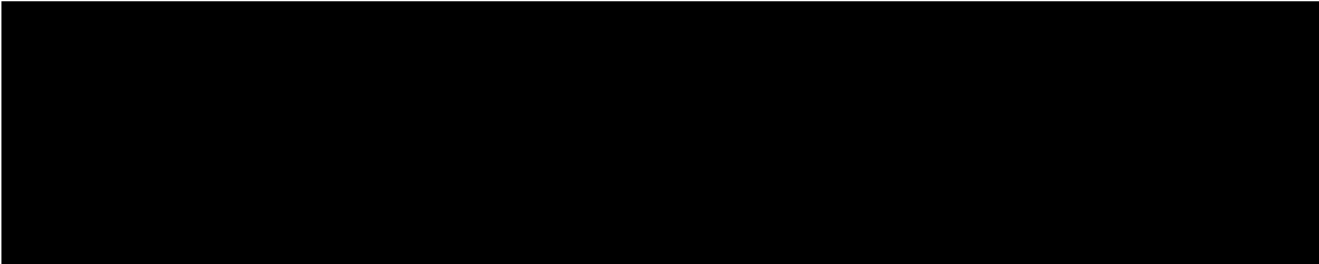
1 [REDACTED] Do

2 you see that?

3 A. I see that, yes.

4 Q. That is, presumably, a paragraph that you were familiar
5 with when you produced your first three reports?

6 A. Yes.



11 A. Yes, although I would suggest that the details behind
12 that are, as shown in this paragraph at least, are
13 extremely imprecise. This is just a general statement
14 that at some point prior to commissioning the Ernst &
15 Young work the Government was aware of rising offshore
16 wind costs. It does not convey the same sense as the
17 documents which are not published that the Government --
18 about the Government's more detailed information about
19 rising offshore wind costs and the concerns it had about
20 the economic viability of particular projects.

21 Q. Well, can we agree that it does convey a concern that
22 the economic case for investment, even with the levels
23 of subsidy provided under the 2009 Order, would not be
24 made out?

25 A. It summarises fairly succinctly the general problem that

1 the Government was faced with when it initiated the
2 review of the 2009 banding levels. Offshore wind costs
3 were rising and because of those rising costs it was
4 becoming more difficult for investors to justify
5 investment in those projects, that the Government needed
6 to meet its renewable energy targets.

7 Q. Indeed, so, therefore, there was a concern that the
8 Government's ability to meet those renewable energy
9 targets would be jeopardized. That is what this
10 paragraph is also conveying.

11 A. Yes, I was certain -- to this sort of general line of
12 questioning -- I was generally aware, of course, that
13 the Government knew at the time of commissioning Ernst &
14 Young that offshore wind costs were rising, and that
15 the -- there was a need to review the banding support
16 provided to offshore wind developers to ensure that they
17 would be economic, and that is the reason why the 2010
18 review took place. That is the fundamental driver of
19 the review, so I was, of course, aware of that general
20 point when I wrote all of my reports.

21 MS DAVIES: Is that a convenient moment?

22 THE CHAIRMAN: Shall we leave it there? Let us break there,
23 then, please, and come back at 2 o'clock.

24 I say to all witnesses, Mr Druce, factual and
25 expert, do not talk about your evidence over any of the

1 breaks.

2 A. Of course.

3 THE CHAIRMAN: Thank you.

4 (1.01 pm)

5 (Luncheon adjournment)

6 (2.00 pm)

7 THE CHAIRMAN: Yes, Ms Davies?

8 MS DAVIES: Thank you, sir.

9 Mr Druce, when we broke, we were looking at the
10 executive summary of the Ernst & Young report at
11 [ROC-E/112/3]. I had been asking you about the second
12 paragraph under "Background". If we could just go down
[REDACTED] to "Conclusions" at the bottom of the page? [REDACTED]

18 [REDACTED] Yes?

19 A. Yes.

20 Q. That is, in effect, making it clear, is it not, as the
21 rest of the report does, that the banding level for 2009
22 was not sufficient to support economic investment in
23 wind farms.

24 A. Yes.

25 Q. That is something you were also aware of when you wrote

1 your first three reports.

2 A. Yes.

3 Q. Before you wrote your three reports, you had access,
4 also, did you not -- sorry, your first three reports --
5 you had access, also, did you not, to the Government's
6 consultation on renewable electricity financial
7 incentives for the 2009 Renewables Order?

8 A. Yes.

9 Q. In fact, if we go back to your first report at paragraph
10 479 [ROC-D-IC/11.1/175]? Sorry, I think that is the
11 wrong reference. I think it might be your third report.
12 I have the wrong bundle. Bear with me. Sorry,
13 Mr Druce. (Pause)

14 At 479, you see in footnote 466 you refer to that
15 consultation, and, in particular, paragraph 2.74 of it?

16 THE CHAIRMAN: Which paragraph number?

17 MS DAVIES: Paragraph 479.

18 A. Yes? Footnote number?

19 Q. You said that in 2009, following representations from
20 offshore wind farm developers concerned about recent
21 cost increase "the Government commissioned Ernst &
22 Young" and then the footnote reference you to give to
23 that firstly the debt consultation for July 2009,
24 paragraph 2.74.

25 A. Yes.

1 Q. Would that suggest that you had specifically looked at
2 paragraph 2.74 of the consultation before you produced
3 your first report?

4 A. Yes. It would.

5 Q. If we could go to that, it is in [ROC-E/120/48]? You
6 see, just to refresh your memory, Mr Druce, that that
7 explained that a number of offshore wind developers have
8 argued over the past winter, so that would be the winter
9 of 2008, would it not?

10 A. Presumably, yes.

11 Q. Yes -- that:

12 "The economics of offshore wind projects have been
13 particularly hard hit by the credit crunch at a time
14 when their supply chain costs were already rising. We
15 therefore commissioned Ernst & Young to carry out a
16 study".

17 Yes? You see that?

18 A. Yes.

19 Q. If I could also remind you of paragraph 2.77 on the next
20 page of this consultation [ROC-E/120/49], which, again,
21 I presume you looked at before you produced your first
22 three reports?

23 A. Yes.

24 Q. There is an explanation:

25 "Offshore wind is expected to make a critical

1 contribution to renewable electricity. It is therefore
2 essential we provide the right level of support. We are
3 aware of at least 1.3 gigawatts of offshore wind
4 capacity whose economics are under threat -- enough to
5 power around 1 million homes".

6 Yes?

7 A. Yes.

8 Q. That demonstrates, did it not -- sorry, that
9 demonstrates, does it not that prior to the 2009 Order
10 the Government had received representations from
11 offshore wind developers concerned about the viability
12 of developing offshore wind farms at the 2009 Order
13 support levels.

14 A. Yes. I was aware of the general problem that offshore
15 wind farm developers were facing higher costs, and
16 seeking higher support from the Government, and I was
17 aware of that both -- well, both now and at the time of
18 my earlier reports.

19 Q. Particularly, what they were saying was that their
20 developments would not be viable under the levels of
21 support provided by the 2009 Order.

22 A. That is right.

23 Q. If we could go back into your fourth report at
24 [ROC-D/1/53], paragraph 146, do you see in the middle of
25 that paragraph you say that the link between the banding

1 levels and cost of offshore wind was imprecise,
2 primarily because the Government had information that
3 the banding for offshore wind at 1.5 ROCs might not be
4 sufficient to cover the cost of the new wind farms
5 needed to meet its renewable targets? Do you see that?

6 A. Sorry, this is 147?

7 Q. 146?

8 A. Sorry, the screen just --

9 Q. I some sorry?

10 A. It is okay. I will just take a second to read it.

11 (Pause)

12 Yes. I see that.

13 Q. I suggest, Mr Druce, that when you produced your first
14 three reports, you were aware, as a result of the
15 various documents I have shown you, that the Government
16 had information that the banding for offshore wind at
17 1.5 ROCs might not be sufficient?

18 A. I was aware of the general issue, yes, and some of the
19 published -- and, well, the published documents that
20 Ms Davies has shown me I was aware of, both then and
21 now. I was also aware of the statements in the
22 published DECC documents about the -- that relate to the
23 decision to group technologies by band, which is also --
24 has also been a theme of our discussion, but as I have
25 said earlier, and I will not repeat myself too much, the

1 disclosed documents from DECC that I reviewed after
2 receiving them provide a lot more colour and detail on
3 the Government's thinking which led me to change my
4 mind.

5 Q. I suggest, Mr Druce, that your original view in relation
6 to the 2009 Order, that it was highly likely that the
7 2009 banding level for offshore wind was always
8 incorrect if you took proper account of the material in
9 the published information that was available to you.

10 A. I would disagree with that assessment. I think that the
11 2009 Order represented an attempt by the Government to
12 provide a level of subsidy sufficient to cover the costs
13 of more expensive technology -- renewable energy
14 technologies that would be needed to meet the
15 Government's renewable energy targets for 2020, of which
16 offshore wind was by far the most important, and I
17 consider it reasonable, considering the evidence in the
18 public domain that the Government studied the costs very
19 carefully of those renewable energy technologies, and
20 sought to calibrate the level of support provided to --
21 of a range of renewable technologies as illustrated, for
22 example, in the Oxera report. I consider that all of
23 that led me to a very reasonable conclusion that the
24 Government was setting subsidy to cover cost to achieve
25 a policy target, and it was a reasonable assumption

1 based on the published information to assess that the
2 Government would have sought to reflect the costs of
3 offshore wind in the subsidy levels provided as closely
4 as practicable.

5 Q. I assume you are aware, Mr Druce, that as part of your
6 role as an independent expert it is your duty to
7 tribunal to point out matters that might be inconsistent
8 with the views that you are expressing?

9 A. Yes.

10 Q. I suggest if you had been providing a truly objective
11 assessment in relation to 2009 you would, at the very
12 least in your earlier reports have acknowledged that if
13 the Government had concerns about the banding level
14 being insufficient for offshore wind, it is unlikely
15 that it would have been reduced absent the overcharge.

16 A. I think that I was making clear in my earlier reports
17 that the concerns that -- that the Government had those
18 concerns about the -- that the level of costs of
19 offshore wind were rising and made the level of support
20 offered under the 2009 Order insufficient. I think I
21 made that -- I think I made that -- I believe I made
22 that clear.

23 Q. You did not express, did you, in your first three
24 reports, a counter view to the one you were suggesting
25 was highly likely by the time of your third report, that

1 because the Government had concerns that the level of
2 banding under the 2009 review would not be sufficient,
3 it may not have changed the banding level. You did not
4 present that as a plausible alternative and explain why
5 you disagreed with it. You did not address it at all.

6 A. Well, I think I did discuss the -- some of the topics
7 that we have discussed this morning around the effect of
8 the grouping of technologies by band, for example, and
9 I think that -- I think I did make clear that my
10 conclusion that the 2009 banding decision would have
11 been affected by the Cartel was based on statements from
12 the -- that the Government had made in the public domain
13 and by interpreting the evidence that the Government had
14 obtained from its advisers, I also, I believe, discussed
15 in my earlier reports the fact that the grouping of
16 technologies by -- into groups may weaken the link and I
17 explained, I think, why my conclusions -- I reached my
18 conclusions in spite of that.

19 Q. Can we at least agree this, Mr Druce: the fact that you
20 have changed your view in this way in relation to the
21 2009 Order demonstrates the dangers of speculating as to
22 the Government's views in the absence of direct evidence
23 demonstrating the reasons for their decision?

24 A. I think that the matter at hand requires an assessment
25 of what the Government would have done in a

1 counterfactual scenario but for the Cartel, and it is
2 inevitable in answering that question that I have needed
3 to form a view as to what would have happened in that
4 counterfactual scenario, so I think that the discussion
5 that we are having here about the change in my opinion
6 between the third and the fourth reports reflects the
7 fact that I was seeking to do that to form a view on
8 what would have happened but for the Cartel using the
9 best information available to me, and the fact that I
10 changed my mind is, frankly -- recognises my
11 understanding of my -- the need for me to provide an
12 independent and objective opinion to the Tribunal. I --
13 it would have been wrong for me not to change my mind,
14 certainly, in light of the new evidence that I saw
15 through the disclosure process, so -- but I think the
16 general statement that you make is too strong.

17 Q. The general statement I make about the dangers of
18 speculating in the absence of direct evidence you are
19 suggesting is too strong?

20 A. Yes. So, I think "direct evidence" is not a -- is --
21 although perhaps we can discuss how one might interpret
22 that term, but "direct evidence" of what would have
23 happened but for the Cartel does not exist, because the
24 Cartel happened, and there is no such evidence.

25 Q. What happened in relation to 2009, as I have understood

1 your explanation -- your views in relation to 2009 -- as
2 I have understand your explanation to the Tribunal, is
3 that your understanding of the reasons why the
4 Government had made the decisions it did in 2009 changed
5 between your third report and your fourth report?

6 A. Yes. My assessment of what -- of the impact of the
7 Cartel on the Government's 2009 decision did change,
8 yes.

9 Q. That was not my question. It was your understanding of
10 the reasons that the Government adopted the approach
11 that it did in 2009?

12 A. Yes, and my understanding of the reasons and the -- if
13 you like, the emphasis placed on each of those reasons
14 changed, having reviewed the disclosed materials. So,
15 it was not just the list of reasons, if you like, it was
16 the -- it was also the colour provided around them
17 through the wider set of disclosed documents.

18 Q. That is an understanding that the wider set of documents
19 gave you in relation to the Government's actual thinking
20 in the actual in 2009; yes?

21 A. Yes.

22 Q. All I am suggesting to you, Mr Druce, is that the fact
23 that you have had to change your opinion as to what the
24 Government would have been likely to do in the
25 counterfactual in 2009 shows the dangers of making

1 inferences and drawing inferences as to the reasons for
2 the Government's decision-making in 2009.

3 A. I think it shows you that once new information is made
4 available, one may be able to reach a different
5 conclusion on -- from that new information. I think --
6 if I could just re-read your question... (Pause)

7 I think there is -- I am not sure that the word
8 "dangers" is quite right, but it is certainly inevitable
9 that when one is forming a view on what would have
10 happened but for the Cartel that there is uncertainty
11 over that, but I do not think that -- and I think that
12 that uncertainty as to what would have happened in a
13 different state of the world is inevitable and
14 ever-present in these sorts of situations.

15 Q. Could we turn, then, to the 2010 Order? I would like,
16 first, to see if we can agree some initial points of
17 context which I would hope will be uncontroversial, but
18 obviously you must tell me if you disagree.

19 The first initial point of context is that the
20 development of further offshore wind farms was an
21 important means by which the Government anticipated its
22 targets for renewable generation could be met.

23 A. Yes.

24 Q. The second, which is what we have essentially just been
25 discussing, is that the 2010 Order followed from an

1 emergency review of wind farm costs which came about
2 because the Government had become concerned that the
3 level of subsidy provided under the 2009 Order would be
4 insufficient to enable sufficient levels of offshore
5 wind farm development.

6 A. Yes.

7 Q. Thirdly, there are significant uncertainties inherent in
8 estimating the costs of developing an offshore wind
9 farm.

10 A. I do not think I can agree with that wholly without some
11 colour to the statement. There are uncertainties in the
12 sense that the Government was faced with a number of
13 projects that were in the development pipeline, all of
14 which had different costs. So, to the extent
15 "uncertainty" refers to the variance in costs amongst
16 projects, then I would agree with that -- the statement.
17 I would also agree that there were uncertainties about
18 the future in terms of the -- some of the key input
19 assumptions that would -- that one would need to make
20 when calculating the costs of offshore wind. For
21 example, we know there was uncertainty about some key --
22 some parameters that fed into the levelised cost
23 calculations that Ernst & Young performed, and some of
24 those were uncertain, and the Government did have to
25 take a view on what to assume about those things when

- 1 taking the banding decision.
- 2 Q. One of the things we can see from the Ernst & Young
3 report in relation to costs is that where you have a
4 technology that is still developing, one of the things
5 you have to take a view about is future learning and how
6 costs may come down over time; yes?
- 7 A. Yes. That is certainly one of the input assumptions
8 that fed into the Ernst & Young work, yes. That is
9 right.
- 10 Q. That is, by definition, a matter of uncertainty, because
11 you are seeking to predict the future.
- 12 A. Yes. That is right.
- 13 Q. You also, when you are trying to come up with a
14 levelised cost estimate, need to predict the future in
15 relation to operating costs, do you not?
- 16 A. Yes, and, indeed, we see that the Government and Ernst &
17 Young had estimates of operating costs, for example,
18 provided to it by a number of wind farms that were in
19 the development pipeline, so -- and those OPEX,
20 operating cost, estimates covered the life of the
21 offshore wind farm projects that had provided cost
22 information to DECC.
- 23 Q. The assumed life of a wind farm for these purposes was
24 20 years, was it not?
- 25 A. That was the assumption Ernst & Young made, yes.

1 Q. If you are trying to predict operating costs over a
2 20-year period, by definition that is an exercise which
3 involves a significant degree of uncertainty, does it
4 not?

5 A. Yes. Clearly any offshore wind farm owner will not know
6 with certainty what its operating costs will be over the
7 full life of its asset at the point of developing it,
8 but the Government was provided with estimates from a
9 number of wind farms to inform the 2010 banding
10 decision.

11 Q. There were also, were there not, significant
12 uncertainties inherent in estimating the likely revenues
13 of any given wind farm over its assumed lifetime?

14 A. Yes, that is right. So, the wind farms that were
15 supported under the Renewables Obligation scheme derive
16 some of their revenue from Renewables Obligation
17 Certificates and the sale of those to electricity
18 retailers but they also derive a portion of their
19 revenue from sales into the wholesale electricity
20 market, and the price in the wholesale electricity
21 market is -- may vary, and is therefore subject to some
22 uncertainty.

23 Q. It is not only the price of the wholesale market that
24 provided uncertainty. There was also uncertainty in
25 predicting actually what the level of generation would

1 be.

2 A. Yes. That is true.

3 Q. The volume of product that was being sold.

4 A. Yes. So, that would be captured by the load factor,
5 that is right. Then again, there were -- we see the
6 uncertainty in the load factor from the fact that Ernst
7 & Young looked at a number of scenarios on that
8 parameter, and we also see disclosed documents
9 discussing how the Government handled that uncertainty
10 when taking the 2010 banding decision.

11 Q. As at 2010, there was an additional uncertainty as
12 regards the revenues for future offshore wind farms
13 arising out of the transition to the OFTO regime, was
14 there not? It was unclear what revenues that would
15 generate, if any, for offshore wind farms.

16 A. Yes. I think the impact of the OFTO regime is not so
17 much on revenues, it is more on costs. So, the impact
18 of the OFTO regime is that the assets that -- which are
19 offshore transmission assets -- that were originally
20 constructed by the wind farm developers, and then
21 subsequently transferred to offshore transmission
22 owners, would -- the Government assumed -- be able to be
23 financed at a lower cost of capital than the cost of
24 capital that an offshore wind farm would typically
25 require. So, for example, the Ernst & Young sensitivity

1 that looks at the impact of the OFTO regime shows how a
2 reduction in the financing costs associated with OFTO
3 assets would reduce the levelised cost of energy for
4 offshore wind farms, and in that particular case we know
5 that the Government expected the OFTO regime to generate
6 value and reduce costs in that way through lower
7 financing costs.

8 Q. Can we agree, that was another matter of significant
9 uncertainty as at the time that the 2010 Order was being
10 adopted?

11 A. It is certainly clear that Ernst & Young treated that as
12 a sensitivity -- had scenarios with and without that
13 saving in costs associated with the OFTO regime -- but
14 I think the Government took a view that the OFTO regime
15 would, in fact, be -- I think the phrase that was used
16 in the documents is "value positive", but I may be
17 getting that wrong. The OFTO regime would, in fact,
18 create value by reducing the financing costs associated
19 with those assets.

20 Q. It was also, again, something that involved a prediction
21 as to the future.

22 A. Yes, but the Government did seem to take a view. It
23 took a view that there was a saving to be had associated
24 with the OFTO regime.

25 Q. Can we then also agree that there are significant

1 uncertainties inherent in assessing the level of subsidy
2 required to attract sufficient levels of development?

3 A. If I can unpack that a bit, there is -- I will certainly
4 agree that future costs are uncertain, and there were a
5 number of wind farms in the development pipeline. The
6 Government had cost estimates for some of them and not
7 for others, and I think it is certainly reasonable to
8 say that the costs of the wind farms for which the
9 Government did not have cost evidence were clearly
10 uncertain, and one of the reasons why they may vary --
11 the costs of those wind farms may change over time and
12 vary compared to the Government's assumptions at the
13 time of the decision might include learning effects, for
14 example, as Ms Davies suggested, but they might also
15 affect -- they might also vary for -- because of changes
16 in the market for the equipment that is used by the
17 offshore wind farm developers. We see that, for
18 example, between the 2009 and the 2010 banding
19 decisions, clearly there is -- the reason for that --
20 the reason that the 2010 review was necessary was
21 because of fluctuations in costs associated with
22 offshore wind equipment, so I think it is very clear
23 that there is uncertainty about future costs, but I also
24 think it is clear from the disclosed documents how the
25 Government handled that, and how -- and what emphasis it

1 put on the cost evidence it had at hand when taking the
2 2010 decision.

3 Q. Mr Druce, I was not -- we are going to come to how the
4 Government handled it. I am not asking you about that
5 at the moment. I am just asking you in terms of the
6 principles, and my proposition to you was that there are
7 significant uncertainties inherent in assessing the
8 level of subsidy required to attract sufficient levels
9 of investment because of both the uncertainties as to
10 cost and the uncertainties as to revenue.

11 A. Yes. I will agree that costs are uncertain in the
12 future, and revenues are uncertain in the future, but at
13 the time of making the decision, the Government was
14 taking a -- examining the evidence before it on costs,
15 and on the outlook for revenues at that point in time,
16 and was setting subsidies in order that the wind farms
17 that it was hoping to bring forward to the development
18 stage, to -- generating electricity in helping to meet
19 the renewables targets -- would be able to cover their
20 costs with the information available at the time, and I
21 am sure we are going to come on to talk about the -- the
22 nature of what that cost evidence -- and how the
23 Government approached that problem, but the Government
24 had before it cost estimates for wind farms that were of
25 particular interest to it in --

1 THE CHAIRMAN: Sorry, just to make sure I understand your
2 answer to the question --

3 A. Of course.

4 THE CHAIRMAN: -- I think what was put to you is that if
5 costs are uncertain and revenue is uncertain, the
6 Government cannot be sure that it is pitching its level
7 of support at the right level to enable them to go
8 ahead. I think that was the --

9 MS DAVIES: No one right answer.

10 A. I think that is a slightly -- I think that way of
11 putting it is a little bit simplistic, because it is
12 certainly true that in over -- when looking into the
13 future about the costs of wind farms in the development
14 pipeline, the revenues that they would obtain and the
15 costs that they would obtain are uncertain, but in
16 taking the banding decision in 2010, the Government had
17 cost estimates for wind farms that were -- from the
18 developers, so from the horse's mouth, as it were, about
19 what costs they expected to incur to develop their
20 projects that were imminent. The Government was also
21 looking at market evidence from at the time on the
22 levels of revenues that a wind farm in that position
23 would expect to earn, and comparing the two.

24 So, I accept the point that if you had a wind farm,
25 for example, that was, say, two, three, four years away

1 from a final investment decision being made and from
2 construction starting, the costs of that wind farm that
3 was further into the future would be uncertain, but at
4 the point of taking the 2010 banding decision, the
5 Government had cost data that the developer has provided
6 to it on what costs they were assuming they would incur.

7 Q. They were still estimates, were they not, Mr Druce?

8 A. The Government --

9 Q. Certainly for the operating costs they must have been
10 because, as we have agreed, it would be looking over the
11 20-year period.

12 A. I would agree that the -- no wind farm developer or
13 owner would know with certainty what its operating costs
14 will be over the life of their projects but they did
15 provide their latest assumptions on those parameters to
16 the Government, and because those wind farms were very
17 close to a final investment decision I think it is
18 reasonable to assume that OPEX forecast that those
19 developers were making were sufficiently accurate for
20 not just the purposes of setting a subsidy, but for the
21 wind farm developers themselves to be taking an
22 investment decision to spend money on these projects.
23 So, I think it is obviously true that the future is
24 uncertain, and future costs are uncertain, but what was
25 going on at the point of the 2010 Order was that the

1 Government was taking the wind farm developers' latest
2 view on what their CAPEX and OPEX would be for their
3 projects, and calibrating the subsidy levels sufficient
4 to cover those costs after netting off revenue from
5 other sources.

6 Q. Can we agree this: the cost of any specific offshore
7 wind farm will depend on the specific details of the
8 project, and will, therefore, vary from wind farm to
9 wind farm?

10 A. Yes.

11 Q. Could we look at Dr Moselle's third report at paragraph
12 5.13 which is in [ROC-D/7/40]. Do you see in this
13 paragraph Dr Moselle is setting out significant sources
14 of variation and uncertainty in relation to
15 project-specific details; yes?

16 A. Yes.

17 Q. I just want to see the extent to which you agree with
18 the points that Dr Moselle is identifying as giving rise
19 to uncertainty.

20 The first is distance from shore and other
21 project-specific physical features that would have
22 material implications for the turbines, cabling cost of
23 installation, and maintenance. You agree that would
24 vary from wind farm to wind farm?

25 A. Yes.

1 Q. The second is the size of individual turbines, because
2 of the economic -- economies of scale which could be
3 achieved when moving from smaller to larger turbines,
4 that could also vary from wind farm to wind farm?

5 A. Yes.

6 Q. The next one is the annual output from an individual
7 turbine which would depend on both the technology
8 employed and on the speed and variability of wind at the
9 site. Again, therefore, that could vary from wind farm
10 to wind farm.

11 The discount rate used to produce the LCOE figure,
12 that is something that is going to be specific to the
13 particular developer in question, is it not?

14 A. Different developers will have their own hurdle rates,
15 yes.

16 Q. Then uncertainty as to the future evolution of many key
17 parameters such as macro-economic uncertainty which
18 could affect wholesale prices, for example, and other
19 industry-specific factors. That is going to vary
20 between wind farm -- from wind farm -- depending on when
21 they are developed, for example.

22 A. Yes. Each wind farm developer will forecast the future.
23 I think -- and wind farms developed at different times
24 might, for example, face different steel prices and
25 therefore different equipment costs.

- 1 Q. Those sorts of macro-economic factors can vary from
2 year-to-year, can they not?
- 3 A. Why yes.
- 4 Q. Now, the Renewable Obligation banding level was,
5 throughout, set by the Government as a single rate
6 applicable to every wind farm first commissioned during
7 the period of application of the relevant Renewables
8 Obligation Order; yes?
- 9 A. Yes. I think you have the formal definition right, but
10 yes.
- 11 Q. So, for the 2010 Order, whilst originally they were
12 looking at a shorter period of application by reference
13 to the date of letting the turbine contract, in fact, by
14 the time it came to be adopted, it was set up on the
15 basis that 2.0 ROCs would apply to every wind farm
16 commissioned between the date of the Order and the
17 subsequent review in 2013?
- 18 A. Yes. I believe that is correct.
- 19 Q. So it must follow, must it not, Mr Druce, that by
20 definition the process of setting the banding level in
21 the 2010 Order did not involve an exercise of precisely
22 matching expected costs for each wind farm anticipated
23 to be developed during that period, to the subsidy?
- 24 A. The Government could not have hoped to do that if the
25 Government knew, as I said, that there were a number of

1 wind farms in the development pipeline at the time it
2 took the 2010 banding decision, and it would have known
3 because of -- because it did not have cost information
4 for some of them, that the costs of those future wind
5 farms was uncertain, both because things can change over
6 time, but also because the Government did not have any
7 information from those developers. As you will be
8 aware, my position is based on the statements that the
9 Government has made in the disclosed documents,
10 explaining that it did have the cost evidence for some
11 wind farms that were in the development pipeline, that
12 were close to financial close, and that the Government
13 was particularly keen to see developed, so the
14 Government was taking a view based on the costs of the
15 wind farms that it wanted to support through the Order,
16 and for which it had cost evidence at the time.

17 Q. I understand that is your view. We are obviously going
18 to come to that.

19 A. Of course.

20 Q. I think you agreed with the proposition that there was
21 not -- it could not be an exercise of precisely trying
22 to match the level of subsidy to the expected costs of
23 future wind farms?

24 A. Certainly there was no sense that the Government was
25 trying precisely to match the level of support provided

1 to the costs of all wind farms in the pipeline, because
2 that would have been an impossible standard. The
3 Government was setting -- as Ms Davies explained, and I
4 agree with this -- there is a -- there was a single
5 level of banding provided to offshore wind for the
6 period of -- over which the Order applies, and this
7 would have been a range of wind farms that were in the
8 development pipeline over that period, and that would
9 eventually come on to the -- or come along in the future
10 to be supported under that Order. They would vary in
11 cost. They would vary in their technical
12 characteristics, and to some extent that variation is
13 driven by differences between the projects, and to some
14 extent it is driven by differences in timing, but
15 ultimately the decision that the Government took was
16 based on the cost evidence it had in front of it about
17 the wind farms that it was particularly keen to see
18 developed, and that it needed to support in order to
19 meet its renewable energy targets.

20 Q. I understand that you recognise, and this is a further
21 point that I am hoping we can set the context for the
22 2010 Order, that in setting the banding coefficients,
23 the Government was required, under the Energy Act, to
24 take into account a number of different criteria?

25 A. Yes.

- 1 Q. Of which the estimated costs of an offshore wind farm
2 were one of the relevant considerations?
- 3 A. That was in the list, yes.
- 4 Q. Yes, and another one was the likely cost of the scheme
5 for consumers.
- 6 A. Yes. Indeed.
- 7 Q. As I understand it, for that reason you approach the
8 issues in this case on the basis that the Government
9 must have been concerned to seek to avoid unnecessary
10 over-compensation.
- 11 A. Yes. That is right. So, my position was that the
12 Government was essentially trying to balance those two
13 key objectives. It needed to ensure that it could cover
14 the costs of sufficient offshore wind farms to enable
15 them to be economic and to meet its renewable energy
16 targets, and its wider policy objectives to encouraging
17 renewable energy, but on the other hand it also was very
18 concerned about minimising costs to the consumer. Those
19 are two countervailing pressures that the Government
20 faced, and you can certainly characterise that, as
21 Ms Davies suggested, as avoiding unnecessary -- or
22 avoiding over-compensation to wind farms.
- 23 Q. Is this fair: in your reports you treat the need to
24 avoid unnecessary over-compensation as the overriding or
25 most important policy objective?

1 A. I would not characterise it quite that way. I would say
2 that the most important -- or the key consideration that
3 faced the Government when taking the banding decision
4 was making sure that enough wind farms could cover their
5 costs and be economic in order to meet its policy
6 objectives and its targets, but doing no more than was
7 necessary to achieve that in order to protect the
8 consumer and minimise the impact of subsidies on bills.

9 Q. Now, given the uncertainties that we have discussed, and
10 the differences between different projects, there could
11 never be, can we agree, a precise calculation ensuring
12 no over-compensation?

13 A. Again, just to avoid making statements that are too
14 broad, there are a range of wind farms with a range of
15 different costs, and some of them are more expensive
16 than others, and if over-compensation -- if the term
17 "over-compensation" is used to suggest that -- well, let
18 me put it this way: it would -- because the Government
19 was setting one level of subsidy to apply to all wind
20 farms covered by the Order, and some wind farms are more
21 expensive than others, it is inevitable that some wind
22 farms that are developed may earn, for example, rates of
23 return in excess of the minimums that they would require
24 in order to be economic, but what the Government was
25 doing was seeking to set the level of support in order

1 that the wind farm -- the more expensive of the wind
2 farms that were in the development pipeline would be
3 economic and would come online in order to meet the
4 Government objectives.

5 So I think it is -- but to the point on whether a
6 precise calibration of costs to revenues is possible,
7 I think that the Government and Ernst & Young were
8 working very -- doing very careful work to discuss with
9 the developers what their costs are, what their load
10 factors were, for example, what their required rates of
11 return are, or were at the time, rather, and I think
12 that through that process the Government was seeking to
13 calibrate support so that the revenues resulting from
14 its banding decision would be as close as it practically
15 could, as close as they probably could be, to the costs
16 of those wind farms that were of particular interest.

17 Q. Does that mean you are approaching your analysis in this
18 case on the basis that the Government had a high degree
19 of confidence in the Ernst & Young base case figure?

20 A. I think that the Ernst & Young base case figure was a --
21 one of many numbers that appears in Ernst & Young's
22 analysis, and what the Ernst & Young report provided was
23 not just a single number, but a series of calculations
24 showing how the cost of offshore wind might vary
25 according to key input assumptions on some of the

1 factors that are listed on the screen here in 5.13 of
2 Dr Moselle's report, but also factors that are discussed
3 widely in the disclosure evidence, for example load
4 factor, rate of return, CAPEX and things like that. So,
5 my position on this question of how the Government went
6 about setting the banding level is that the disclosed
7 documents make very clear and discuss repeatedly the
8 Government's efforts to support particular wind farms
9 and ensure that they would be economically viable, that,
10 in particular, London Array, Lincs and Walney, and, as I
11 am sure you are aware, my approach is simply to reflect
12 those -- the costs of those projects that the Government
13 was particularly keen to see supported.

14 Q. Come back to my question, Mr Druce, which was not about
15 your analysis, it was about whether you were approaching
16 your analysis in this case on the basis -- sorry -- it
17 was not about your analysis on the three. We are going
18 to come to them, I promise, so you do not need to keep
19 explaining that because we are going to come to it.

20 What I was asking about was whether you were
21 approaching your analysis in this case on the basis that
22 the Government had a high degree of confidence in the
23 accuracy of the Ernst & Young base case.

24 Now, you may say "I do not have a view about that"
25 or you may say "I do not agree" or so on, but can we

1 just understand what your view is in relation to that
2 question?

3 A. We know that the Government did not take the Ernst &
4 Young base case as read, because the Ernst & Young
5 report in its base case suggested that a support level
6 of 2.5 ROCs per megawatt hour was needed, so I think it
7 is -- so, on that very simple point I think we know that
8 the Government did not take --

9 Q. Mr Druce, the reason you have explained in your reports
10 why the Government did not use the 2.5 ROCs level of
11 support is because it took a different view, you say, in
12 relation to revenues. I am -- and I apologise if my
13 question was not clear -- I was focusing on the Ernst &
14 Young base case in relation to levelised cost, and I am
15 just trying to understand from you whether your position
16 is that the Government had a high degree of confidence
17 in that levelised -- that base case levelised cost
18 figure or not.

19 A. Well, we know that the Government took a slightly
20 different view from Ernst & Young in relation to some
21 parameters that fed into its £144 figure, so the
22 disclosure documents show, for example, that the
23 Government expected the OFTO regime to reduce offshore
24 wind farms' costs, as we discussed a moment ago, and
25 that saving was not reflected in the Ernst & Young base

1 case estimate of £144, so I do not think -- you know, I
2 do not have a definitive view on how -- on to what
3 extent the Government -- on the Government's view on the
4 base case precisely -- sorry, let me rephrase that.

5 I do not have a definitive view on how the
6 Government interpreted Ernst & Young's base case number.
7 What I can see from the disclosed documents, though, is
8 a series of things. We can see evidence of the
9 Government cross-checking Ernst & Young's work against
10 information it was receiving from developers. We can
11 see evidence of the Government taking different
12 assumptions from Ernst & Young on certain parameters,
13 and we can see that, as I said, the Government was not
14 taking Ernst & Young's recommendation from its base case
15 anyway. The way I think that the Government has used
16 the Ernst & Young report is essentially as a guide to
17 showing it how the levelised cost of energy might vary
18 across different sets of input assumptions that Ernst &
19 Young made across its sensitivity analysis.

20 Q. We are going to come to it, but for the purposes of
21 various analyses in your report it is right, is it not,
22 that you took the Ernst & Young base case levelised cost
23 estimate of £144 and deducted your cost elevation of 6.4
24 to come up with a counterfactual levelised cost which
25 you then sought to match the subsidy to. Yes?

- 1 A. Yes. That's right.
- 2 Q. And that suggests, does it not, that you were
3 approaching the £144 figure as being a figure in
4 relation to which one could have a high degree of
5 confidence as to its accuracy.
- 6 A. I was seeking to illustrate how the £144 figure might
7 change but for the Cartel, and I was subtracting the
8 estimated cost elevation number from the £144 to
9 illustrate how certain comparisons between costs and
10 revenues that the Government had made in the course of
11 the State aid process might have looked different but
12 for the Cartel. I was not forming my own view as to
13 whether the Ernst & Young base case was accurate, or
14 making a judgment about how accurate the Government
15 thought it was, I was simply trying to illustrate how
16 those comparisons between costs and revenues might look
17 different in a different state of the world.
- 18 Q. If one was seeking to avoid unnecessary
19 over-compensation when setting the level of subsidies
20 for offshore wind, it would not be appropriate, would
21 it, simply to look at the costs of the most expensive
22 wind farm or wind farms that might be developed in the
23 relevant period.
- 24 A. I think it is a basic economic necessity that when faced
25 with a set of wind farms whose costs differ, and all of

1 which are required by the Government, that the support
2 provided must align with the costs of the most expensive
3 amongst them. If it did not, then the policy would not
4 succeed in attracting the desired investment.

5 Q. Well, suppose someone was proposing to develop a wind
6 farm a long distance offshore with higher cost, whereas
7 there were, in fact, alternative, less expensive
8 possibilities, in other locations. Setting the subsidy
9 at a level necessary to enable the construction of the
10 further offshore wind farm would result in consumers
11 incurring unnecessary costs, would it not?

12 A. Yes. So, my -- my answer to the previous question
13 should not be interpreted as saying that the Government
14 would have set support to cover the costs of the most
15 expensive wind farm in the development pipeline.
16 Rather, the Government was seeking to cover the costs of
17 the most expensive wind farms that were needed to meet
18 its objectives, and we see practical examples of this in
19 the disclosed evidence. For example, the Government was
20 told around the time of the 2010 banding decision that
21 ██████████, I think it was a wind farm being developed
22 by RWE at the time, would not be economic at a banding
23 of 2 ROCs per megawatt hour, the developers told the
24 Government that they would require banding of 2.5 ROCs
25 per megawatt hour but the Government -- again,

1 internally -- internal documents that we have seen
2 through the disclosure -- show that the Government was
3 okay with that, the Government was comfortable with an
4 outcome in which some wind farms would not be economic
5 as long as the wind farms that it was particularly keen
6 to see developed as a result of the Order would come on
7 to the --

8 THE CHAIRMAN: Sorry, can I just make sure that this is
9 addressing Ms Davies' question?

10 A. Of course.

11 THE CHAIRMAN: Maybe I have misunderstood Ms Davies'
12 question. I thought the question was: if the Government
13 is setting itself a target of avoiding over-compensation
14 it would not make sense to then fix costs by reference
15 to the most expensive wind farms, so I think Ms Davies
16 was inviting you to ask if the aim of the game, if I
17 could put it that way, was to avoid over-compensation,
18 would it make sense to fix costs for the most expensive
19 wind farm? Have I got that right, Ms Davies?

20 A. Okay. Sorry if I misunderstood, but the -- but I think
21 my answer is still valid, or still relevant in the sense
22 that if the Government wants to encourage, say, four
23 wind farms to be developed in response to the Order, and
24 it is setting subsidy to cover the costs of those four
25 wind farms, and those four wind farms vary according to

1 cost, they have a spectrum -- high, medium, low --
2 whatever, if you set revenue at a level which is in the
3 middle, the most expensive one or two wind farms in that
4 range will not be economic.

5 So, you can set it -- so, if you interpret the
6 avoidance of over-compensation as saying "we have to set
7 revenue equal to the average of the low cost and the
8 high cost wind farms", then it is inevitable that the
9 high cost wind farms will never be developed.

10 Now, at the same time the Government has to draw a
11 line somewhere, and we see that the -- we see in the
12 disclosed documents that the Government was acutely
13 aware of the need to see particular wind farms be
14 developed -- London Array links and Walney in
15 particular -- and it was not concerned about the
16 information it had received at the time that, for
17 example, [REDACTED]

18 wind farm would not be developed,
19 so the concept of over-compensation I think should be
20 thought about in the context of the Government needing
21 to calibrate support so that the full range of wind
22 farms that it wanted to attract in order to meet its
23 policy objectives would be economic, and that inevitably
24 precludes a level of revenue being provided to those
25 wind farms equal to the average of the costs of the wind
26 farms whose costs vary, but are nonetheless all deemed

1 important by the Government.

2 Q. That was a balancing exercise by definition, was it not,
3 Mr Druce, between -- essentially -- what level of
4 subsidy does one need to set in order to ensure that
5 sufficient capacity is built?

6 A. Yes. That is the name of the game, if you want to put
7 it that way, yes.

8 Q. And you do not want to encourage economically
9 inefficient new buildings, so the example I gave of one
10 that is further away than it needed to be and was going
11 to be more costly when you had other possibilities, it
12 would be economically inefficient to encourage that wind
13 farm as opposed to the cheaper alternatives, but what
14 you are trying to do is to set the subsidy at a
15 sufficient level that sufficient amounts of
16 economically-efficient development occur; yes?

17 A. I think the term "economically-efficient" in this
18 context can be interpreted as saying that the Government
19 knew that there was a -- there were a range of wind
20 farms with a range of costs, some more expensive than
21 others, and it did not want to set -- it was not trying
22 to set subsidy at a level that would attract investment
23 in all of them, irrespective of, for example, their
24 distance from shore, it had particular projects in mind
25 and it explicitly, in the -- we see this explicitly in

1 the disclosed documents -- that the Government is very
2 keen to attract investment in some, but is not so
3 worried about others. So, if that is what you mean by a
4 balance, and by ensuring an economically-efficient
5 extent of offshore wind development, then I would agree,
6 but it is that balance, as Ms Davies put it. The
7 Government is trying to set revenue to cover the costs
8 of enough wind farms to meet its policy objectives in
9 circumstances where the costs of those wind farms vary.

10 Q. In order to meet that objective, it would be necessary,
11 would it not, for the subsidy to be set at a level which
12 exceeded -- as a minimum, matched or potentially
13 exceeded -- any central case as to the anticipated costs
14 of developing the capacity that you wanted to bring
15 onstream. I will rephrase the question. You earlier
16 talked about having a low, medium and high cost wind
17 farm, and you explained that if you set the subsidy
18 level in relation to the medium wind farm, then by
19 definition the high cost wind farm would not come on
20 stream so the subsidy would be too low; yes?

21 A. Yes. That was my point.

22 Q. And if you have a central levelised cost estimate which
23 you have some degree of confidence in, if you set the
24 subsidy at a level below that central levelised cost
25 estimate, the likelihood is you are setting it too low

- 1 to encourage investment, is it not?
- 2 A. If that were the case, that would be true, yes.
- 3 Q. It would not be expected, would it, that a rational
4 investor would fund a development where the level of
5 subsidy available produced returns that were below a
6 centralised cost estimate?
- 7 A. Yes. An investor would seek to earn a return that
8 covers its cost of capital, yes.
- 9 Q. So when, at various points in your reports, you refer to
10 the Government aiming to set the banding at a sufficient
11 level to cover or recover costs or to provide sufficient
12 report, am I right in understanding that you mean that
13 the Government was aiming to set the banding at a level
14 which would not leave a shortfall between any central
15 case as to the projected costs and the projected
16 revenues?
- 17 A. The Government was seeking to set revenue at a level
18 that would cover the costs of the wind farms that it was
19 keen to see developed in response to the 2010 banding
20 decision, yes.
- 21 Q. By definition, it therefore was not seeking to set the
22 subsidy at a level below the central cost estimate.
- 23 A. It would depend on the -- what we mean here by the
24 "central cost estimate" but I think it is very clear
25 from the disclosed documents that the Government was

1 seeking to cover the costs of particular wind farms. It
2 was forming an assessment of what the costs of those
3 projects might be, and it was setting subsidy to
4 cover -- setting subsidy so that revenue would exceed
5 costs.

6 Q. Can we look at your third report at paragraph 178(f)
7 which is in [ROC-D/13/64]? I just want to make sure we
8 are all clear, Mr Druce, about what your view is about
9 this. You say there -- sorry, just let me get it -- you
10 say that:

11 "To ensure the renewable targets would be achieved,
12 the Government would need to ensure the ROC banding
13 levels provide sufficient support to renewable
14 generators (i.e. ensure full cost recovery)".

15 Just to make sure we are all clear, what do you mean
16 by "ensuring full cost recovery"?

17 A. So, I am referring to the recovery of the full economic
18 costs of wind farm development, including a return on
19 capital commensurate with the investor's required hurdle
20 rates.

21 Q. So, just so we all understood that, if you are looking
22 at an average levelised cost estimate for wind farms at
23 the particular time, to ensure full cost recovery you
24 need to set the banding level such that it produces
25 revenues above that levelised cost estimate. Is that

1 right?

2 A. Yes. So, the Government would have needed to set
3 revenues above, and at whatever it assessed the
4 levelised cost to be, otherwise the wind farm would not
5 have been able to achieve full cost recovery, as I
6 phrase it in that sentence.

7 Q. Now, can we agree this, that if you were trying to do
8 that and set the subsidy above the estimate of levelised
9 costs, doing that is not a precise science, because of
10 the uncertainties that are inherent in the exercise?

11 A. It is certainly true that there were uncertainties
12 facing the Government when estimating costs, and I think
13 that is one of the reasons why we see -- why there would
14 be a sort of necessity to have a degree of buffer,
15 perhaps, between the expectation of revenue and the
16 expectation of costs.

17 Q. By a, "degree of buffer" you mean a margin?

18 A. Yes.

19 Q. If we look, for example, at paragraph 254(e) of your
20 fourth report which is in [ROC-D/1/102], where you say
21 in the middle of this:

22 "the Government sought to set the level of RO
23 banding no higher than necessary to cover the full
24 project costs of offshore wind farms ..."

25 In light of the answer you have just given, what you

1 mean is no higher than that but with a buffer or a
2 margin to reflect uncertainty.

3 A. Yes. I think the way I have phrased it in my reports in
4 most cases, anyway, is using the phrase "as close as
5 practicable". So, the Government was trying to -- would
6 obviously have liked to set -- in an ideal world the
7 Government would want to set revenues to cover costs as
8 closely as it could, because doing so would achieve the
9 desired outcome of attracting investment, whilst also
10 imposing no more cost on the consumer than was
11 absolutely necessary, but in the real world it is --
12 there is a -- well, we know from what the Government
13 said to the European Commission, for example -- there is
14 a margin between costs and revenues.

15 Q. Can we agree this, that the smaller the margin between
16 costs and revenues that is allowed in the banding
17 mechanism, the less buffer there is available to meet
18 the range in terms of the uncertainties as to revenue or
19 costs that you have described as being met by a buffer.

20 A. Yes. I think I agree with that.

21 Q. Now, am I right in understanding that your view is that
22 the Government's approach in relation to both the 2009
23 Order, as well as the 2010 Order was to seek to set the
24 level of banding no higher than necessary to cover costs
25 in the way that we have just been describing?

1 A. I think that that statement captures the essence of what
2 the Government was seeking to achieve. I think as we
3 were discussing this morning the Government's ability to
4 balance those objectives improved with the extent and
5 quality of cost evidence that it had available to it,
6 but no doubt we will come to that.

7 Q. But just as a matter of principle, the approach you are
8 indicating you understand the Government to be adopting
9 for both 2009 and 2010 was to seek to set the level of
10 banding no higher than necessary to cover the costs,
11 including the buffer, to deal with uncertainty.

12 A. I think as a statement of principle it does reflect
13 the -- what the Government was seeking to achieve
14 through both the 2009 and the 2010 processes, but the
15 different nature of those two processes, and the way in
16 which the Government went about reviewing and analysing
17 the cost evidence available to it meant that it went
18 about those decisions and set about trying to achieve
19 that objective in a rather different way in the 2009 and
20 2010 Orders.

21 Q. Just so we understand, what are you saying -- because in
22 relation to 2009 it had both the Ernst & Young and Oxera
23 analysis of costs and required levels of support, and in
24 2010 -- sorry -- for the 2010 Order it had Ernst &
25 Young's updated figures. What are you suggesting was

1 different --

2 A. Well --

3 Q. -- as regards the two processes, so, so I have
4 understood?

5 A. Most importantly and obviously, the 2010 process was a
6 review of offshore wind costs. The 2009 process was a
7 much broader review of the costs of a wide range of
8 technology, and the combination of banding scenarios
9 that the Government asked Osera to look at was -- as you
10 can see from Table 5.1 in Druce 4 which is taken from
11 Osera -- has a range of different support -- has a
12 number of -- well, has six different support levels,
13 I think, which each have -- which offer different
14 combinations of support across different technologies,
15 so it was a much more -- a much broader review covering
16 a much wider range of policy questions in relation to
17 the support that would be provided to all of those
18 technologies, and in contrast the 2010 process was
19 focused specifically on examining the costs of offshore
20 wind with a view to -- well, as ultimately happened --
21 setting a specific support level for the offshore wind
22 technology, so the 2010 review was very focused on
23 offshore wind in the way that the 2009 process was not.

24 Q. You referred in that answer to six different support
25 levels. In fact there is five under the 2009 Order,

- 1 Mr Druce. I am sure you are aware of that?
- 2 A. Apologies. I do not have the table in front of me.
- 3 I can turn to it and we can check, but --
- 4 Q. Okay, but am I right in understanding the point you are
5 trying to make is to suggest that there was a more
6 detailed scrutiny in some way on offshore wind in 2010
7 than there was in 2009?
- 8 A. That is certainly true. There was -- the Government had
9 more evidence to work with when it took the 2010
10 decision in relation to the cost of offshore wind, and
11 the review process was focused specifically on that
12 technology and not on a wider range of decisions.
- 13 Q. Now, as we discussed this morning, the State aid
14 decision for the 2009 Order set out ranges for
15 production costs and revenues for the various
16 technologies for which the support was being approved;
17 yes? And it is therefore possible to compare the
18 central case and ranges for each of those technologies;
19 yes?
- 20 A. This is from the 2009 --
- 21 Q. Yes?
- 22 A. Yes. That is right, yes.
- 23 Q. Had you undertaken an exercise of comparing the central
24 case LCOE estimates and the revenue estimate at any
25 point prior to producing any of your report?

1 A. So the tables that I understand were circulated
2 yesterday showing that comparison is not a comparison
3 that I previously made, but I understand the -- but I
4 understand that one can perform that comparison between
5 the levels of revenue assumed in that decision, or --
6 and the levels of cost associated with it, and I am
7 happy to answer questions on it.

8 Q. If we look at Table 3 which I understand has gone into
9 [ROC-AB/12/5], page 5, as I understand from your
10 previous answer you had not previously sought to do an
11 exercise like this, and looking at what margin was
12 implied by the levelised cost and revenue estimates for
13 the various different technologies covered by the 2009
14 Order.

15 A. I had not previously performed these calculations, no.

16 Q. Can we agree this, Mr Druce, that for each of the 17
17 separate technologies listed, there was no case in which
18 there is an exact match between the central LCOE figure
19 and the central revenue estimate?

20 A. That is what the table shows, yes.

21 Q. The table is also showing that for ten technologies
22 there is a positive margin and for the remainder a
23 negative margin.

24 A. I have not counted but I take your word for it.

25 Q. Where there is a positive margin that ranges in size

- 1 from 6 per cent to 35 per cent.
- 2 A. That appears to be the case, yes.
- 3 Q. What I would suggest to you, Mr Druce, is that that
4 indicates that in the 2009 Order the Government was not
5 seeking, with any degree of precision, to set the
6 banding level no higher than necessary to cover the
7 anticipated costs.
- 8 A. Within the context of how the Government approached the
9 2009 banding review, there is evidence of them making
10 that trade-off. For example, we can see from the
11 Government's comparison of the scenarios that Oxera was
12 asked to model, that the Government was concerned with
13 identifying which of those scenarios would be most or
14 least costly to consumers, and in that sense the
15 Government was seeking to trade-off the different
16 support packages that were under consideration
17 through -- under those scenarios, again, and -- or
18 rather, for each of those packages of banding options,
19 the Government was seeking to trade off the amount of
20 renewable energy that would be developed versus the cost
21 to the consumer. What is different between the 2009 and
22 2010 --
- 23 Q. I am not asking you about -- can we just focus on 2009?
- 24 A. Okay.
- 25 Q. Can we focus again on the question that I asked you?

1 A. Yes.

2 Q. This demonstrates, does it not, that the Government was
3 not seeking in 2009 to set the ROC banding level no
4 higher than necessary to cover the anticipated costs
5 with any degree of precision at all.

6 A. It is clearly the case from this comparison that taking
7 the central estimates alone there were -- there are
8 margins between the levels of revenue and levels of cost
9 that are not precisely -- not as precisely calibrated as
10 the 2010 results seem to have been for offshore wind,
11 and I think focusing specifically on the 2009 Order and
12 the process that led to it, I think that that is because
13 the Government was approaching that problem at a sort of
14 slightly higher level -- it was looking at the -- it was
15 looking at a series of defined packages of support as
16 reflected in the scenarios it asked Oxera to model, and
17 examining how those packages were balancing those
18 competing objectives of bringing forward investment in
19 renewables on the one hand, versus costs to the consumer
20 on the other, but the 2009 Order was not -- so whilst
21 this was not -- the margins are wider in part, I
22 suspect, because the analysis was not done kind of
23 line-by-line on a technology-by-technology basis, the
24 Government was still trying to reach that overall --
25 strike that balance between cost to the consumer and the

1 delivery of renewable energy, and I still think it is
2 reasonable to think -- which is what led me to the
3 conclusions in my earlier reports -- that the
4 Government -- that offshore wind would have been -- and
5 the balance between offshore wind costs and revenues
6 would have been particularly pivotal in making that
7 balance, because offshore wind was the main technology
8 that was going to help the UK meet its renewables
9 targets, and when we look at offshore wind
10 specifically --

11 THE CHAIRMAN: Sorry, can I just make sure that the question
12 is being addressed here? As I understood Ms Davies'
13 question, Ms Davies is asking whether the existence, the
14 very existence of these margins is counter -- points
15 against the proposition -- that the Government was
16 seeking to set a ROC banding level no higher than
17 necessary to cover the anticipated costs --

18 MS DAVIES: With any great degree of precision.

19 THE CHAIRMAN: -- with any great degree of precision at all,
20 and so I think what Ms Davies is suggesting to you is
21 that if that was what the Government was trying to do,
22 we would see margins of at or around zero in many cases,
23 and I think that was what -- Ms Davies was inviting you
24 to comment on the fact that there is a positive/negative
25 margin in some cases and I am not quite sure that I got

1 from your answer an answer to that question.

2 A. Well, let me try again.

3 So, the Government was still trying to balance costs
4 to the consumer against delivery of renewable energy but
5 it was not doing so on a technology-by-technology basis,
6 and so it approached the 2009 Order in a slightly
7 different way from the 2010 Order which was focused on
8 offshore wind. I think what you see here is a mixture
9 of positive and negative numbers suggesting that the
10 revenues associated with some technologies were below
11 the costs of those technologies, and in some cases the
12 revenues exceed the costs by a larger margin, and I
13 suspect what this reflects is that for some technologies
14 the Government was not seeking to encourage deployment
15 at the very high costs that it had estimated, so, for
16 example, if we look at solar PV, for instance, on this
17 table, there is a very negative -- there is a negative
18 margin that is very large, and that, to me, suggests
19 that the Government had selected a package -- a
20 combination of banding levels that it knew was
21 insufficient to cover the costs of solar PV deployment,
22 and it was -- and it had reached a decision that would
23 not result in solar PV being developed.

24 For other technologies the margin is smaller, but it
25 is not precise, and I suspect the lack of precision

1 reflects the fact that the Government was comparing
2 these defined -- pre-defined -- combinations of banding
3 levels that it had asked Oxera to model, and it was --
4 and the consequences of those constraining the choice to
5 those pre-defined sets is that whichever one of those
6 sets of banding levels had been selected, some
7 technologies would have received revenues in excess of
8 their costs, and others would have received -- would
9 have been in the opposite position.

10 Q. Can I just try one last time, Mr Druce? Can we just
11 focus on the positive margins, all right?

12 A. Okay.

13 Q. So the ones where the Government was allowing additional
14 revenue over the levelised cost figure, which ranged
15 from 6 to 35 per cent; yes? And can we agree that that
16 analysis indicates that in 2009 the Government was not
17 seeking to set the banding level no higher than
18 necessary to cover the anticipated costs at any degree
19 of precision, because otherwise you would not have had
20 margins ranging up to 35 per cent?

21 A. I see from this analysis that the way that the
22 Government -- the comparison of revenues and costs
23 emerging from this decision implies that for some
24 technologies there were wide margins between the central
25 estimate of revenue and the central estimate of cost,

1 and I -- but I still think that the principle that the
2 Government was trying to balance those competing
3 considerations between renewable energy deployment on
4 the one hand and consumer costs on the other is evident
5 from its evaluation of the results of -- from
6 different -- the different -- from the combinations of
7 support levels that Oxera examined through its study.

8 Now, the -- but what that means is that because
9 it -- because the Government was effectively
10 constraining itself to those defined packages of
11 support, that you opened the possibility that the level
12 of revenue provided to any particular -- one particular
13 technology might be somewhat above the costs of others
14 in a way that it did not -- and, of course, this was
15 different in the 2010 Order that we're going to come on
16 to later I am sure.

17 Q. We need to take a break. Can I just ask one last
18 question on this table? Can we also agree that the
19 analysis in this table shows that the Government was
20 not, in 2009, seeking to set a banding level for each
21 technology that would generate total revenues that were
22 as close as possible to the cost for each separate
23 technology?

24 A. As close as possible, no, but the Government was still
25 seeking to balance those objectives of minimising the

1 cost to the consumer against delivering renewable
2 energy, and my view that I expressed in particular in my
3 earlier reports that that was what the Government was
4 trying to do was informed by, on the one hand,
5 statements from the Government saying that that is what
6 it was trying to do, but on the other hand also the --
7 I think quite widely-established fact that offshore wind
8 as a technology was pivotal to meeting the UK's
9 renewable energy target, so my position in the -- my
10 earlier reports -- was that in order to make that
11 balance the Government must have formed a view that the
12 level of revenue delivered to offshore wind farms
13 through the 2009 Order was sufficient to cover the costs
14 of those projects, and this idea that they should try to
15 make this balance as closely as practicable comes from
16 the competing nature of those objectives.

17 Q. Thank you. I think the answer to my question is, "no,
18 they were not seeking to set the banding level to
19 produce revenues that were as close as practicable to
20 costs for each technology in 2009".

21 A. Well, they were certainly not setting banding levels
22 at -- in order to cover -- you know, with different
23 banding granularity, technology-by-technology because
24 that would have been scenario one in the Osera table and
25 they did not do that.

1 MS DAVIES: Is that a convenient moment?

2 THE CHAIRMAN: Okay. Let us break there then, please. Let
3 us come back somewhere between half past and twenty five
4 to.

5 (3.27 pm)

6 (A break was taken)

7 (3.37 pm)

8 MS DAVIES: Could we look at paragraph 198 of your fourth
9 report which is [ROC-D/1/79] where you expressed the
10 view that cost was the main evidence the Government
11 relied on when setting the banding levels for the 2010
12 Order, with the objective to set a banding level that
13 would generate total revenues as close to cost as
14 practicable.

15 In fact, in the 2010 Order, the Government's central
16 revenue estimate -- well, Ernst & Young's central
17 revenue estimate in the factual was £144, as we know,
18 and the Government's central revenue estimate was £149,
19 so that led to a margin of £5 over the central Ernst &
20 Young cost estimate, which is greater, am I right in
21 understanding, then, your calculation of the monetary
22 value of 0.1 ROCs?

23 A. Yes. That is right. Yes.

24 Q. Because your monetary calculation of the value of 0.1
25 ROCs is £4.20.

- 1 A. That is right.
- 2 Q. Now, it must follow, must it not, that if the Government
3 had been seeking to set the banding level under the 2010
4 Order as close as possible to the central Ernst & Young
5 estimate, it did not achieve that with a banding level
6 of two, assuming it had been prepared to change the
7 banding increments by 0.1.
- 8 A. That is right. The £144 is roughly equivalent to 1.89
9 ROCs, I think, if you do it in the most granular way
10 possible, so just slightly below 1.9.
- 11 Q. Does it follow from that that in the actual on your
12 mathematics the Government was contemplating a buffer
13 that was more than 0.1 ROCs? More than the equivalent
14 of 0.1 ROCs?
- 15 A. That comparison suggests that there was a buffer in the
16 Order of £5 per megawatt hour, that's right, yes, which
17 is very slightly more than 0.1 ROCs.
- 18 Q. Now, you have told us a couple of times already that
19 there was close scrutiny of costs in 2010, and I want to
20 move to the exercise conducted by Ernst & Young.
21 Ernst & Young obtained, did it not, cost information
22 from a range of offshore wind farms via DECC, firstly?
- 23 A. Yes.
- 24 Q. It also had its own internal cost information in
25 relation to additional wind farms.

1 A. Yes. Ernst & Young had some proprietary data that did
2 not come from the DECC data request.

3 Q. If we could turn to the joint memorandum at paragraph
4 13, which is in [ROC-D-IC/11/27], you have agreed, I
5 believe, with the other experts a list of the offshore
6 wind farms which you say was the offshore wind farms for
7 which Ernst & Young got data in this proposition.
8 Sorry, it is page 27.

9 A. Yes.

10 Q. You see you are all agreed.

11 A. Yes.

12 Q. Those are all the wind farms for which data was obtained
13 via DECC, are they not?

14 A. That is right, yes.

15 Q. And in your report you actually also refer to Solway
16 Firth, so there is an additional one or have you changed
17 your mind about that? If you want to look at it, it is
18 paragraph 160(a), at ROC-D, page 58 {ROC-D/1/58}.
19 Received data for, and then the third line of 160(a)
20 there is a reference to B/Solway Firth?

21 A. Yes. I see that. I cannot now remember precisely which
22 of those lists is the full set, but I imagine it could
23 be checked.

24 Q. Now, as we just discussed, in addition, the documents
25 indicate that Ernst & Young had access to internal data

1 for other wind farms, Ernst & Young proprietary data,
2 but the documents do not identify which wind farms those
3 were. Is that right?

4 A. That is right, yes.

5 Q. In paragraph 160(a) at page 58, next sentence after the
6 one we have just looked at, you say that of the various
7 wind farms you list, London Array, Walney, Lincs, were
8 expected to be supported under the 2010 pipeline; yes?

9 A. Yes. That seems to be right.

10 Q. They were not the only wind farms which the documents
11 indicate it was being contemplated would or might be
12 supported under the 2010 pipeline, were they?

13 A. So the Government knew that there were a number of wind
14 farms in the development pipeline that might be
15 supported under the 2010 Order. Based on my
16 understanding, and a table which I can point you to in
17 my fifth report, I think, the three benchmark wind farms
18 that I have identified are those which the Government --
19 for which the Government both had cost evidence and so
20 their cost evidence could have fed into the decision --

21 THE CHAIRMAN: Sorry, but I think the narrow question at
22 this stage is --

23 A. Apologies.

24 THE CHAIRMAN: -- there were others other than the three.
25 Is that correct?

1 MS DAVIES: Yes.

2 THE CHAIRMAN: Maybe that could just be answered.

3 A. Absolutely. There was a range of projects that the
4 Government knew were in the development pipeline and
5 that might, in the future, be supported under the 2010
6 Order.

7 MS DAVIES: Turn on to paragraph 83(b) of your fifth report
8 in [ROC-D/2/48]. You see you say there:

9 "the Government was aware that London Array, Lincs,
10 and Walney, were the only wind farm projects that would
11 be supported by the 2010 Order".

12 Would I be right in understanding that what you mean
13 is that the Government was aware that it was only these
14 three projects for which cost data had been provided
15 which would be supported under the 2010 Order?

16 A. Yes, that is right. Sorry for the ambiguity but that
17 is, indeed, what I mean.

18 Q. Now, as I understand it, you accept that in principle --
19 sorry -- you accept the principle that the Ernst & Young
20 LCOE figures were most likely based on an average of six
21 projects.

22 A. Yes. They say so, I think, in their report.

23 Q. Given that Ernst & Young do not identify which other
24 wind farms they had data for, I presume you would agree
25 that you are not in a position, actually, to state

1 whether or not Ernst & Young also had access to data for
2 other wind farms expected to be supported under the 2010
3 pipeline.

4 A. Well, we -- I do not know which are the two -- which are
5 the wind farms that Ernst & Young have -- which of the
6 six wind farms that Ernst & Young used as part of its
7 averaging calculation. I note that the other experts
8 have formed an opinion on which those -- on the identity
9 of those wind farms, but I did not do that for reasons
10 that we could discuss in due course.

11 Q. It must follow, therefore, Mr Druce, if you come back to
12 my question, that you are not in a position to state
13 whether or not the other two wind farms were ones which
14 were expected to be supported under the 2010 pipeline.

15 A. I think the -- well, again, I have not -- I have not
16 formed a view on which those wind farms are because my
17 opinions are based on the -- my selection of the
18 benchmark wind farms is based on other considerations
19 besides which six wind farms fed into Ernst & Young's
20 calculations, but I, of course, am aware that the other
21 experts have formed a view on the identity of those wind
22 farms, and I -- there are good reasons to -- why, based
23 on taking -- or taking their identification of those
24 other wind farms as given, it would be reasonable to
25 think that they would not have been determinative of the

1 Government's ultimate decision.

2 Q. That is not my question, Mr Druce. Can we just focus on
3 the question, please? I am simply seeking to agree with
4 you that because you do not know the identity of the
5 other two wind farms for which Ernst & Young had
6 proprietary data, you are not actually in a position to
7 tell the Tribunal one way or the other whether Ernst &
8 Young also had access to data for other wind farms that
9 were expected to be supported under the 2010 pipeline.

10 A. I am not in a position to comment on what data Ernst &
11 Young did or did not have. That is -- so, I think -- I
12 am not -- I think that answers the question, but --

13 Q. Yes. So, you cannot actually definitively conclude that
14 the only wind farms for which Ernst & Young had data
15 that were included in the six, which were expected to
16 form part of the 2010 pipeline were your three wind
17 farms, can you?

18 A. Well -- sorry, I am just going to re-read your question.
19 (Pause)

20 I am not -- I have not formed a view on which are
21 the six benchmark wind farms that Ernst & Young used as
22 part of its calculations. I note that the other experts
23 have formed views on which of those -- which are
24 those -- the identity of those wind farms. I note there
25 is agreement amongst them that the three benchmark wind

1 farms I have identified are three of the six, but I have
2 not formed an independent view on the identity of the
3 other wind farms. I am also not in a position, as I
4 said, to comment on what data Ernst & Young did or did
5 not have.

6 Q. So the simple proposition I am putting to you, and I am
7 not sure why we are having so much difficulty with it
8 is: you cannot therefore definitively say one way or the
9 other whether the Ernst & Young analysis included any --
10 the additional two wind farms were ones that would come
11 into the 2010 pipeline over the three that you say were
12 coming into the 2010 pipeline.

13 A. I cannot definitively say that, no.

14 Q. Now, you are aware, I assume, that Dr Hesmondhalgh, and
15 I am mispronouncing her name, I am sure, has formed the
16 view that Ormonde is one of the wind farms that formed
17 part of the group of six that Ernst & Young analysed?

18 A. Yes.

19 Q. And if she were to be right about that it would follow,
20 would it not, that Ernst & Young also had access to cost
21 information for an additional project that was
22 ultimately expected to be eligible.

23 A. I would -- again, I would have to go back to the details
24 on that particular wind farm, I am afraid, but the --
25 I think that the -- yes, I have forgotten the details of

1 that particular wind farm but I imagine it is evident --
2 there might have been some discussion of it in the
3 disclosed documents, but I can't recall.

4 Q. If you look at Annex A to the State aid notification at
[REDACTED] ROC-E/138/18], you see [REDACTED]
[REDACTED]

7 [REDACTED]. Do you see that?

8 A. I see that.

9 Q. So it would follow, would it not, that if she is right
[REDACTED]

11 [REDACTED] Ernst &

12 Young also had access to cost information for an
13 additional project over and above your three key
14 benchmark wind farms.

15 A. If Ernst & Young -- yes. Sorry, I think that does
16 follow. The only thing I would want to check is -- or
17 consider, I suppose, in assessing its relevance to the
18 2010 decision -- is when -- is what the Government knew
19 about the stage of development that project had reached,
20 and whether it had been committed or not by the time the
21 decision was taken, because in addition to thinking
22 through whether individual wind farm projects were
23 likely to be supported under the Order because of the
24 timing of their commissioning, I would -- the other
25 relevant consideration is what the Government understood

1 about the degree of commitment that had already been
2 achieved in relation to those projects. So, if the
3 investors had already decided that those projects would
4 go ahead anyway, irrespective of the banding decision,
5 there would be no reason to think they would have been
6 determinative in the Government's decision-making
7 process.

8 Q. I just want to make sure I have understood the approach
9 that you have adopted in your reports. Firstly, as I
10 understand it, you have not sought to replicate the
11 Ernst & Young analysis.

12 A. That is right, yes.

13 Q. You also take the view, as I understand it, that any
14 assessment of how Ernst & Young's central cost estimate
15 would have changed but for the Cartel is not indicative
16 of how the banding decision would have changed but for
17 the Cartel.

18 A. That is right. I have formed a view on which were the
19 particular wind farms of -- that determined the level of
20 subsidy required and I have estimated the costs of those
21 wind farms that were affected by the Cartel.

22 Q. So it follows, does it, that an interrogation of the
23 approach Ernst & Young adopted to get to the central
24 cost estimate, or indeed any of the other figures in its
25 report, was not relevant to the approach you adopted in

1 your reports?

2 A. Yes. As I said, the approach I adopted was to look at
3 the cost data for the -- it is a sort of short-cut to
4 the Ernst & Young analysis, in a way. I took the view
5 based on the disclosed documents that the Government was
6 particularly concerned with ensuring that three
7 particular wind farms could -- would be economic, and
8 because there are some uncertainties about precisely how
9 Ernst & Young did its calculations, I considered it to
10 be both simpler, more objective and also aligned with
11 the information in the disclosed documents to just go --
12 cut to the chase and look at the costs of the wind farms
13 that I assessed were of particular concern to the
14 Government.

15 Q. If you go to proposition 39 of the joint memorandum?
16 Which is at [ROC-D-IC/11/66] -- actually, and then we
17 can go -- you see the proposition is: what were the wind
18 farms that Ernst & Young used to calculate its LCOE, and
19 for which of these did the Government have data, and if
20 we could go to the end of your answer in relation to
21 proposition 39, you see there is a sentence saying:

22 "Therefore, an average of the cost of wind farms
23 including some relatively cheap projects that the
24 Government knew would not be supported under the 2010
25 Order would be irrelevant to understanding the impact of

1 the Cartel on the 2010 banding decision".

2 Do you see that? [ROC-D-IC/11/67].

3 A. Yes.

4 Q. Just to make sure I have understood what you are saying,
5 the average of the cost of wind farms including some
6 relatively cheap projects that you were referring to in
7 that sentence is the Ernst & Young central LCOE
8 estimate. Is that right?

9 A. Yes. So, it is referring to the fact that Ernst &
10 Young's LCOE was an average of six, and given that --
11 indeed, the other experts agree -- that six included
12 London Array, Walney and Lincs which were -- appear to
13 be more expensive than average, they -- it would have
14 not been consistent with the Government's objectives to
15 just take -- set support based on an average of the --
16 an average of the six. It would have been necessary to
17 consider the costs of -- the fact that some of the wind
18 farms had costs that were more expensive than average as
19 well.

20 Q. You actually seem to be expressing an even stronger view
21 because you are saying that the average is irrelevant to
22 understanding the impact of the Cartel, so your position
23 is that the central Ernst & Young LCOE estimate is just
24 completely irrelevant to the questions that the Tribunal
25 needs to address. Is that right?

1 A. I think that the Tribunal needs to address -- to
2 understand that the underlying drivers behind the
3 Government's decision was to ensure that wind farms,
4 including those that were more expensive than average,
5 could cover their costs, and, therefore, an average of
6 projects that -- some of which are more expensive than
7 others but all of which are required would not do the
8 job.

9 Q. It must follow that your view is that the 2010 banding
10 decision was not being driven by the Ernst & Young
11 centralised cost estimate at all.

12 A. Well, it -- of course the Government -- it is clear from
13 disclosed documents, again, that the Government did use
14 the Ernst & Young results, it did look at the results,
15 and it did consider them, but I think that the
16 determinative factor that led to the Government's
17 decision was ultimately the need to support the -- to
18 support particular wind farms that it felt were
19 important to achieving its policy objectives.

20 Q. Which had, on average, higher levelised costs than the
21 central Ernst & Young estimate.

22 A. If the levelised cost of those projects is calculated
23 using the same assumptions as the Ernst & Young average
24 but, for example, you replace the Ernst & Young CAPEX
25 assumption of 3.2 million pounds per megawatt with the

1 CAPEX associated with those three wind farms, then yes,
2 that would certainly be true, and you see in several of
3 the expert reports, actually, these scatter plots that
4 show the differences between -- the differences
5 between -- that show the variance in costs across the
6 wind farms. I think that you can see from those
7 pictures that Lincs, Walney and London Array had costs
8 that were higher than average.

9 Q. So, bringing that together, your view is that what was
10 driving the Government's decision in relation to the
11 2010 Order was the need to ensure that wind farms with
12 costs -- levelised costs higher than the Ernst & Young
13 average central cost were built. That is what was
14 driving it.

15 A. Yes. I mean, the Government -- Ernst & Young knew that
16 some -- or that Ernst & Young's analysis showed that
17 some wind farms were more costly than others and the
18 Government was concerned with not just the average, but
19 the wind farms -- some of the wind farms that had costs
20 which appeared to be higher than average, but there is,
21 of course -- but we know that the Government may not
22 have been using the Ernst & Young report in a purely
23 mechanical way, because the Government was taking views
24 on key parameters that fed into the Ernst & Young base
25 case of £144, that differed from the assumptions that

1 Ernst & Young itself had made when it performed that
2 calculation.

3 Q. But this comes back, does it not, to the balancing
4 exercise we have been discussing earlier, which is the
5 Government -- your view, as I understand it, is that the
6 Government was aware that there were these three wind
7 farms that it needed in order to support its meeting the
8 renewable targets, they had costs that were higher than
9 the Ernst & Young levelised cost estimate, and,
10 therefore, the banding decision was being driven by the
11 need to ensure that that more expensive capacity came on
12 stream. Is that fair?

13 A. Yes, but some care is needed, I think, on precisely
14 how -- what we mean by, "more expensive", because,
15 again, the levelised costs of energy that have been --
16 that I have calculated, for example, in my report, and
17 Dr Moselle has also calculated, I think, for those wind
18 farms in particular suggest that they have an LCOE that
19 is somewhat higher than the £144 per megawatt hour
20 number, and there are -- so -- but those calculations
21 come about primarily from taking -- well, from taking
22 the costs associated with those wind farms as provided
23 to the Government, and applying the Ernst & Young
24 central assumptions, base case assumptions on the other
25 parameters like the cost of capital or the load factor,

1 or the OFTO regime, to derive a levelised cost of
2 energy. We know that the Government was looking very
3 carefully about which of those -- about whether Ernst &
4 Young's base case assumptions on those important value
5 drivers was correct, so it is possible that if one were
6 to -- well, sorry -- I mean -- sorry -- if one were to
7 take the levelised cost of energy calculations that fall
8 out of applying Ernst & Young's base case to the London
9 Array project, for example, you would end up with a
10 levelised cost of energy that was lower than those
11 figures estimated in -- for that project in my report
12 and Dr Moselle's report.

13 Q. I am going to come to your calculations of the levelised
14 cost.

15 A. Sure.

16 Q. Your calculations of the levelised cost for each of the
17 three wind farms produce figures that are significantly
18 higher than the Ernst & Young base case, do they not?

19 A. Yes.

20 Q. Yes, and that is the reason why you have been explaining
21 that the Government's decision was not based on an
22 average that looked at lower cost wind farms as well,
23 because you know, don't you, Mr Druce, that on your
24 calculations these three wind farms had higher levelised
25 costs than the Ernst & Young average?

1 A. Yes. They -- so I have calculated levelised cost of
2 energy numbers in my report, and -- which are in excess
3 of £200 per megawatt hour for those projects.
4 Dr Moselle has calculated similar levelised cost of
5 energy numbers for those three projects using an
6 approach which he believes is more aligned with what
7 Ernst & Young did, and the results come to, I think,
8 £180 or so for those three benchmark wind farms that I
9 have identified, but we -- but those calculations take
10 as given some assumptions on things like -- well, take
11 as given Ernst & Young's other base case assumptions on
12 things like cost of capital, load factor and the OFTO
13 regime, and we know that from the disclosed documents,
14 that the Government believed that developers would
15 achieve load factors in excess of the --

16 THE CHAIRMAN: Sorry, I am not sure that the question is
17 about load factors. I think the first part of
18 Ms Davies' question effectively was: do you agree that
19 your -- that the three that we are talking about, the
20 three that we have been discussing, have an LCOE that is
21 more than the EY average. I think --

22 MS DAVIES: In your calculations.

23 A. Yes.

24 THE CHAIRMAN: I think you have agreed with that.

25 A. Yes.

1 THE CHAIRMAN: And then I think there was then a second part
2 to the question.

3 MS DAVIES: The second part of it is: that is why you have
4 reached the conclusion that the Ernst & Young LCOE
5 figure was irrelevant to the Government's analysis,
6 because you recognise that the Ernst & Young LCOE figure
7 has been brought down by lower cost wind farms,
8 including -- being included in the six; yes?

9 A. Yes.

10 Q. And so you therefore say, well, that is irrelevant
11 because what is actually relevant is the Government's
12 desire to bring these higher cost wind farms onstream;
13 yes?

14 A. Yes. So, the reason why I have used the term
15 "irrelevant" I think, is just as you describe, because
16 the Government was concerned with the most expensive
17 wind farms needed that were not yet committed, and not
18 some average of wind farms that included some cheaper
19 ones that perhaps were already in existence or were
20 already under construction.

21 Q. Now, you are obviously aware that the other experts have
22 sought to identify the six wind farms that were used by
23 Ernst & Young from the material available to them, and
24 that the other experts are all agreed that the six
25 included four wind farms, namely Gunfleet Sands 1,

1 London Array, Walney 1 and Lincs; yes? And
2 Dr Hesmondhalgh has expressed the opinion that the
3 remaining two are Greater Gabbard and Ormonde; yes?

4 A. Yes.

5 Q. Now, can we look at what you say about that in the joint
6 memorandum at [ROC-D-IC/11/66]? Proposition 39. You
7 say in the first paragraph in this proposition:

8 "My understanding is that Ernst & Young used cost
9 data from six. The other experts have formed opinions
10 on which wind farms they consider these to be but I note
11 they reach different conclusions".

12 Just stopping there, that is not a fair summary of
13 the other experts' views, is it? They are, in fact, all
14 agreed on four of the six.

15 A. Yes, but they have reached different conclusions on the
16 other two.

17 Q. Well, I suggest a fairer summary would have been to
18 acknowledge that they had agreed in relation to four,
19 and then add, if you thought it was relevant, that two
20 of them were unable to identify the remaining two,
21 whereas NKT's expert was of the opinion that she could.
22 That would be a fairer summary of the position, would it
23 not? Sorry, Nexans' expert?

24 A. I have no problem with that summary.

25 Q. You then go on to say that their various hypotheses

1 cannot be corroborated based on the information
2 available to us. The reason why, as I understand it,
3 your position, as explained in the joint memorandum, is
4 that the identification of the wind farms used by Ernst
5 & Young amounts to speculation on the part of the other
6 experts. Do you recall using that language?

7 A. I recall using the term "speculation". They have --

8 Q. So look at proposition 15 of the joint memo
9 [ROC-D-IC/11/29]. The penultimate paragraph. You have
10 seen:

11 "... no evidence in the disclosure that identifies
12 these six wind farms. Therefore, as I explain in
13 section 3.23 of RD-5 the other experts speculate over,
14 and are unable to definitively determine, the identity
15 of these six wind farms".

16 Do you see that?

17 A. Yes.

18 Q. It is not fair to categorise what the other experts have
19 done as "speculation", is it, Mr Druce?

20 A. I would imagine they would characterise it differently.
21 By using the term "speculation" I am simply pointing out
22 and trying to highlight the fact that they do not know.
23 They are forming a view. It is possible that
24 "speculation", the word "speculation" carries a slightly
25 negative connotation and it might be fairer to

1 characterise what they have done is formed an opinion,
2 but the substantive point is that they have done that,
3 they have formed an opinion but they do not know for
4 sure.

5 Q. If we could look at Dr Moselle's fourth report at
6 paragraph 420? [ROC-D/7/32]. He is here explaining how
7 he has gone about identifying the four which he
8 identifies, and, in particular, do you see at (c) he is
9 explaining that he is taking the information in the cost
10 template -- so that is the information that developers
11 provided to DECC -- he has calculated the capital
12 expenditure per megawatt for each of the offshore wind
13 farms, which data was provided within those documents,
14 and then tried to match those figures with the capital
15 expenditure in the shaded rectangle in Figure 3 above,
16 and he also used for the purposes of trying to match,
17 the expected date of commissioning of the offshore wind
18 farms which was disclosed in the data from developers in
19 the documents. Do you see he's explaining that?

20 A. Yes.

21 Q. And then in paragraph 4.21 he explains that that has
22 allowed him to obtain a close match to four wind farms,
23 the four he has identified. In fact, it is an exact
24 match for three of them, and a close match for Walney.
25 Do you see that?

1 A. I see that.

2 Q. That is not mere speculation on Dr Moselle's part, is
3 it?

4 A. I think it remains the case that the other experts do
5 not know for sure which wind farms are which, or rather
6 which -- the identity of the six. I have -- I am -- I
7 do note that the other experts are in a -- have a degree
8 of agreement between them as to the identity of four,
9 certainly, and I think it is -- and I have no particular
10 disagreement with their conclusions, but I would simply
11 note that there is a -- that it is not certain. There
12 is a -- as, for example, illustrated by the discrepancy
13 there on Walney, but the -- as again, again, my use of
14 the term "speculation" was intended to highlight that
15 the other experts do not know for sure, but it is
16 possible, as I said, that that is a slightly unfair
17 characterisation of what they have done, and that they
18 have made efforts to identify those wind farms such as
19 described here by Dr Moselle.

20 Q. Now, you just said in that answer that you have no
21 particular disagreement with their conclusions. Does it
22 follow that you accept that the approach that Dr Moselle
23 explains in these paragraphs was a reasonable approach
24 to adopt to identifying the four wind farms that he has
25 identified?

1 A. I think the approach he has followed is reasonable as a
2 starting point for trying to replicate what Ernst &
3 Young did.

4 Q. And it was perfectly possible, was it not, Mr Druce, for
5 you to seek to corroborate -- or to check --
6 Dr Moselle's approach?

7 A. We were working -- yes. I mean, we were working from
8 the same information, so yes.

9 Q. And you have not, anywhere, taken any issue with the
10 calculations that Dr Moselle has undertaken that
11 resulted in his Table 3?

12 A. I have not, no.

13 Q. In fact you do not address Dr Moselle's Table 3 in your
14 responsive report at all, do you?

15 A. I do not think so, no.

16 Q. If we look at what you did say in your responsive
17 report, it is in [ROC-D/2/45]. Paragraph 76. You say
18 that the other experts' selection of benchmark wind
19 farms relies on speculation as to which wind farms
20 correspond to particular data points. I can I think we
21 have agreed that that is not a fair categorisation of
22 what they have done.

23 A. I agree that the term "speculation" could be rephrased
24 as something like, say -- something that characterises
25 the fact that they have made an attempt to identify the

1 unknown wind farms from the data available to them.

2 Q. You say:

3 "Their matching exercise aims to identify which
4 points in the scatter plot corresponds to which wind
5 farm's cost data submitted to DECC. I do not agree with
6 the approach the other experts follow as I explain
7 below".

8 Do you see that?

9 A. I see that.

10 Q. And then the explanations you give in paragraph 77, you
11 say, first of all, that the Ernst & Young figure does
12 not provide definitive information on the list of wind
13 farms it studied; yes?

14 A. That is right.

15 Q. But Dr Moselle was not suggesting that the figure
16 provided definitive information, was he?

17 A. I do not believe so.

18 Q. Then you refer to -- you then go on in this paragraph to
19 criticise Nexans' expert's attempt to replicate the
20 Ernst & Young overall CAPEX figure of 3.2 million; yes?

21 A. Yes.

22 Q. But that was based on an exercise where she had also
23 sought to identify the remaining two wind farms by
24 reference to the publicly-available documents, was it
25 not?

1 A. I believe so, yes.

2 Q. So that does not cast any doubt on the matching exercise
3 that Dr Moselle undertook in relation to the four green
4 wind farms, does it?

5 A. The point about Dr Hesmondhalgh's work, no, not at all.

6 Q. No, and then if you look at paragraph 78 and subsequent
7 in this section you are going on to address a different
8 issue, are you not, which we are going to come to,
9 namely which wind farm costs were determinative of the
10 Government's approach; yes?

11 A. Yes. So, when I said in paragraph 76, I think, that I
12 disagreed with the other experts' approach, I think I am
13 making the more general point that I disagreed with the
14 approach of seeking to -- the approach of seeking to
15 replicate what EY had done as a general point of
16 principle. I do not think I was necessarily criticising
17 the efforts that -- or not -- beyond pointing out that
18 they are attempts to identify unknown wind farms, and we
19 cannot be sure about the accuracy of their results.
20 Beyond that, I do not have a particular problem with the
21 other experts' efforts to try and identify them. We
22 cannot be sure that they are -- we cannot be certain
23 that they are correct, but the identity of those six is
24 not -- was not pivotal to my calculations anyway, so
25 I was not -- it was not something that I dedicated very

1 much -- you know, or did not -- you know, I did not seek
2 to respond to Dr Moselle's table as Ms Davies suggested
3 because I -- that replication exercise was not an
4 exercise that I thought was necessary to get to the
5 heart of the problem.

6 Q. You did not, anywhere in your fifth report or the joint
7 memo, acknowledge, did you, that the approach that
8 Dr Moselle had taken to identifying the four was
9 reasonable?

10 A. No, but again I do say in many places throughout my
11 evidence, probably, that the exercise of identifying the
12 six wind farms that Ernst & Young used was not pivotal
13 to the core of the issue as I assessed it.

14 Q. Well, it was not pivotal to your approach, Mr Druce, but
15 you appreciate, don't you, that it was important to the
16 approach of the other experts, and what I am suggesting
17 to you, Mr Druce, is that if you had actually been
18 trying to produce a report that assisted the Tribunal,
19 you would, at the very least, have acknowledged that the
20 other experts' approach to determining the identity of
21 the four was a reasonable approach?

22 A. I certainly was trying to assist the Tribunal, but I
23 felt that the replication of the Ernst & Young
24 calculations was not -- did not get to the heart of
25 the -- of how the Government was taking the banding

1 decision. My approach was different, and I was focused
2 on explaining my approach and how it was different from
3 that of the other experts. I was not seeking to form a
4 view on how a replication of the Ernst & Young -- or --
5 on how the replication of the Ernst & Young report
6 should be done, because I did not think that that was
7 central to the question at hand, but had I been trying
8 to replicate the Ernst & Young £144, I -- you know, I
9 think that the approach that Dr Moselle performed in
10 order to identify wind farms would have been a sensible
11 thing to do as part of that replication process, but I
12 disagree with it in the sense that I do not consider it
13 to be -- to capture the core issue at hand. I did not
14 think it was necessary.

15 Q. Can we agree this, Mr Druce, that if the Tribunal were
16 to determine that the wind farms which are to be
17 considered as benchmark wind farms for the purposes of
18 answering Question 1, were the wind farms that formed
19 part of the Ernst & Young analysis of CAPEX, it would be
20 appropriate to include the four wind farms that
21 Dr Moselle identified?

22 A. If the Tribunal determined that replicating Ernst &
23 Young was the appropriate starting point, then I would
24 agree that the first thing you would need to do is try
25 and establish which were the benchmark wind farms that

1 fed into its calculation, and I have no reason to
2 believe that I would have reached a different conclusion
3 from Dr Moselle that those four wind farms would be
4 included.

5 Q. To put it another way, if one was seeking to replicate
6 the Ernst & Young cost estimate it would be clear, would
7 it not, that it would not be appropriate simply to use
8 the three benchmark wind farms that you refer to in
9 circumstances where you are actually able to identify a
10 fourth, namely Gunfleet Sands?

11 A. It would depend on the reasons that had been -- the
12 reasons why that decision had been reached, I think,
13 because, as I said, a conclusion that the Ernst & Young
14 base case determined the outcome directly without
15 consideration of other factors --

16 Q. My question, Mr Druce, it was a simpler question. If
17 one was seeking to replicate the Ernst & Young cost
18 estimate -- you do not need to be thinking ahead to what
19 one might do with it, I am just focusing on the question
20 of seeking to replicate the Ernst & Young cost
21 estimate -- it would be clear, would it not, that it
22 would not be appropriate simply to use the three
23 benchmark wind farms that you refer to in circumstances
24 where you are able to identify the fourth, namely
25 Gunfleet Sands. Yes?

1 A. If one were trying to replicate EY and EY's base case
2 then I agree that it would be necessary to consider a
3 wider set of wind farms than my three. I have said in
4 my written evidence that I fully accept that Ernst &
5 Young said that the costs that it used was an average of
6 six wind farms, so if one -- if the objective is to
7 replicate EY, I agree with what Ms Davies is saying,
8 that one would need to think about six not three.

9 MS DAVIES: I am about to come on to a different topic. I
10 am obviously not going to finish Mr Druce today. I am
11 just wondering if that is a convenient moment.

12 THE CHAIRMAN: Yes. Well, let us break there. That is
13 fine. How are you doing for timing? I am conscious
14 that Mr Druce came on an hour-and-a-half early, so
15 I think you were on the predecessor timetable scheduled
16 to finish with Mr Druce at, I think, 3.15 tomorrow.

17 MS DAVIES: I was, but his answers to the questions have
18 been, with no disrespect to Mr Druce, rather longer than
19 could have been anticipated. I am making good progress,
20 but I -- if you are asking me am I going to finish
21 significantly before 3.15, not if the answers carry on
22 at this length.

23 MR LASK: Obviously that is not acceptable to us, if there
24 is extra time available, which there now is, it has been
25 agreed in writing, there was correspondence from the

1 other parties before the trial started that that extra
2 time should be split equally between the two sides --

3 MS DAVIES: I am not trying to push back --

4 THE CHAIRMAN: Sorry, let me hear Mr Lask finish.

5 MR LASK: So, there has been correspondence that makes clear
6 that the extra time should be split equally between the
7 two sides, and as you say, sir, the result of that is
8 Mr Druce needs to -- or Ms Davies and the other parties'
9 counsel need to have finished with Mr Druce by 2.30
10 tomorrow.

11 MS DAVIES: I was not trying to suggest that we had not
12 agreed the time should be split. We did agree that at a
13 time when Mr Druce -- before we knew how long Mr Druce
14 was going to be. I will do everything I can, but I
15 would ask Mr Druce if he could do what I have asked him
16 to do a number of times today, which is to focus on the
17 question and just answer the question and not give a
18 lengthy additional explanation and then we will be able
19 to finish by 2.30 tomorrow.

20 THE CHAIRMAN: Okay. Well, let us leave it like this:
21 I think you should aim to finish by 2.30 tomorrow so
22 that the extra hour-and-a-half is split 50/50 between
23 you and the other side. Is it only you who is going to
24 be cross-examining Mr Druce? Because obviously there
25 are other -- well, let me put it this way: your side,

1 the four aligned parties on this issue, need to finish
2 by 2.30 tomorrow.

3 Mr Druce, there is something in the point that
4 occasionally you are going beyond the question.
5 Sometimes you are asked a question and the impression is
6 that it could perhaps be answered yes/no, and I am sure
7 with a view to helping the Tribunal you elaborate and
8 you give reasons. Perhaps tomorrow you could just, on
9 occasions, just ask whether the elaboration is
10 necessary, and I am not suggesting you are doing it -- I
11 am sure you are doing it to try to help us but I think
12 sometimes we feel that the elaboration is not always
13 necessary.

14 Let us -- and for your part, Ms Davies, if you feel
15 that you are not getting an answer to the question, so
16 that we do hit the 2.30 finish time, please make it
17 clear.

18 MS DAVIES: I have been trying not to interrupt the answers.

19 I am sure you understand.

20 THE CHAIRMAN: I do understand. I do understand. Let us
21 adopt that modus operandi tomorrow and let us come back,
22 please, at 10.30 tomorrow.

23 I am not labouring the point but the usual warning,
24 please, Mr Druce. Please do not, over this long
25 adjournment, talk about your evidence with anyone else.

1 Thank you very much.

2 (4.26 pm)

3 (The hearing adjourned until 10.30 am on Thursday, 22

4 May 2025)

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